

INTER C.A. – LAW

INDEX

| CHAPTER | PARTICULARS | PAGE |
|--------------------|---|-------------|
| COMPANY LAW | | |
| 1. | PRELIMINARY | 1 – 6 |
| 2. | INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO | 7 – 13 |
| 3. | PROSPECTUS AND ALLOTMENT OF SECURITIES | 14 – 21 |
| 4. | SHARE CAPITAL AND DEBENTURES | 22 – 33 |
| 5. | ACCEPTANCE OF DEPOSITS BY COMPANIES | 34 – 38 |
| 6. | REGISTRATION OF CHARGES | 39 – 42 |
| 7. | MANAGEMENT AND ADMINISTRATION | 43 – 55 |
| 8. | DECLARATION AND PAYMENT OF DIVIDEND | 56 – 61 |
| 9. | ACCOUNTS OF COMPANIES | 62 – 70 |

CHAPTER 1

THE COMPANIES ACT, 2013

UNIT 1: PRELIMINARY

• BACKGROUND AND AIM OF THE ACT

- It came into existence at once from the date of notification in the Official Gazette i.e., from **30th August, 2013**,
- It extends to the **whole of India**.
- Structure of the Act: The Companies Act, 2013 has 470 Sections (covered in 29 Chapters) and 7 Schedules as against 658 Sections (covered in 13 Parts) and 15 Schedules of the Companies Act, 1956.
- promote the development of the economy.
- encourage transparency, accountability and high standards of corporate governance;
- recognize various new concepts and procedures facilitating convenience of doing business
- enforce stricter action against fraud

The word 'company' is derived from the Latin words (**com= with or together; and panis = bread or meal**); and originally referred to an association of persons who took their meals together.

The term 'company' has been defined under Section 2(20) of the Companies Act, 2013. As per this, '**company**' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.

'Company' shall be used in the sense as defined above for the entire Companies Act, 2013, unless the context otherwise requires.

1. Separate legal entity
2. Limited liability
3. Perpetual Succession
4. Separate Property
5. Transferability of Shares
6. Common Seal
7. Capacity to sue and be sued
8. Separate Management:
9. Voluntary Association for Profit

❖ IS COMPANY A CITIZEN?

Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

❖ HAS COMPANY A NATIONALITY AND RESIDENCE?

- **Corporate veil:** refers to a separate legal existence enjoyed by the company which is distinct from people who own & manage it.
It is an artificial curtain created by law which separates the company from the people who own and manage it.
- It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the **Courts shall lift the corporate veil**.

TYPES OF COMPANY

❖ **Company limited by shares:**

Section 2(22), company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.

❖ **Company limited by guarantee:**

Section 2(21), "guarantee company" is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company.

- ❖ But a **guarantee company having a share capital** raises its initial capital from its members, while the normal working funds would be provided from other sources, such as fees, charges, subscriptions.

Unlimited Company:

- As per Section 2(92), unlimited company is a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
- Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.
- The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

Private Company:

Section 2(68),

- restricts the right to transfer its shares;
- limits the number of its members to two hundred (except in case of One Person Company)
- prohibits any invitation to the public to subscribe for any securities of the company.
- There should be at least two persons to form a private company i.e., the minimum no. of members in a private company is two. A private company should have at least two directors. The name of a private limited company must end with the words "Private Limited".

Public Company:

- As per Section 2(71),
 - is not a private company
 - Seven or more members are required to form the company.
 - a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles
 - A public company should have at least three directors. The name of a public limited company must end with the word "Limited".

One Person Company:

- **Definition:** As per Section 2(62), one person company is a company which- One Person Company' means a company which has only one person as a member. It is basically a private company with some unique features. As regards the name of a One Person Company, the Act provides that the words "One Person Company" or 'OPC' shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved.
- **Law with respect to formation of OPC provides that—**
 - The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
 - The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
 - Such other person may be given the right to withdraw his consent.
 - The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
 - Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
 - Only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year)-
 - a) Shall be eligible to incorporate a OPC;
 - b) Shall be a nominee for the sole member of a OPC.
 - A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
 - Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria (as given in point above) within a period of 182 days.
 - No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
 - Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of the Chapter II.
 - Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
 - OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Small Company**Section 2(85),**

- (i) paid-up share capital of which **does not exceed fifty lakh rupees** or such higher amount as may be prescribed which shall not be more than ten crore rupees;
- And
- (ii) turnover of which as per as per profit and loss account for the immediately preceding financial year **does not exceed two crore rupees** or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to--

- (i) a holding company or a subsidiary company;
- (ii) a company registered under section 8; or
- (iii) a company or body corporate governed by any special Act.

It is basically a private company meeting prescribed threshold.

Following are some of the **important relaxations** provided to a small company:

- (i) Financial statements of small company may not include the cash flow statement.
- (ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
- (iv) Merger or amalgamation between two or more small companies have been simplified without the requirement of court process.

Holding & Subsidiary Company

- (a) that other controls the composition of its Board of Directors;
- (b) that other exercises or-controls more than one-half of the **total voting power** either at its own or together with one or more of its subsidiary companies; or
- (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.

Associate company

- (a) Section 2(6), In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- (b) **"significant influence" means control of at least twenty per cent.** of total voting power, or control of or participation in business decisions under an agreement;

BASED ON CAPITAL

- Listed company:
- Unlisted company:

OTHER COMPANIES**1. Government Company**

- Section 2(45), government company means any company in which not less than fifty- one per cent. of the paid-up share capital is held by-
 - (i) the Central Government, or
 - (ii) by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments,
- And the section includes a company which is a subsidiary company of such a Government company;

2. Foreign Company

As per Section 2(42),

- (i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (ii) conducts any business activity in India in any other manner.

3. Company not for profit/Non-Profit companies

- (i) **Object of formation of Section 8 Company :** Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc. Such company intends to apply its profit in promoting its objects and **prohibiting the payment of any dividend to its members.**
- (ii) **Power of Central government to issue the license :**
 - ✓ This section allows the Central Government to register such person or association of persons as a company with limited liability **without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence** on such conditions as it deems fit. The registrar shall on application register such person or association of persons as a company under this section.
 - ✓ In exercise of powers conferred by Section 458 of the Companies Act, 2013 the **Central Government hereby delegates to the ROC** the power & functions vested in it under the section 8 (1), subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers & functions under the said sections, if in its opinion, such course of action is necessary in the public interest.
- (iii) **Privileges of Limited Company:** On registration the company shall enjoy same privileges and obligations as of a limited company.
- (iv) **A firm may be a member** of the company registered under section 8.
- (v) **Alteration of Memorandum and Articles:** A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

4. Dormant company:

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.
- "Significant accounting transaction" means any transaction other than—
 - (i) payment of fees by a company to the Registrar;
 - (ii) payments made by it to fulfil the requirements of this Act or any other law;
 - (iii) allotment of shares to fulfil the requirements of this Act; and
 - (iv) payments for maintenance of its office and records.

5. Nidhi company:

As per Section 406, a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

6. Public financial institutions

As per Section 2(72), following institutions are to be regarded as public financial institutions.

- (i) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;
- (ii) The Infrastructure Development Finance Company Limited,
- (iii) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;
- (iv) Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;
- (v) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

JKSSC

CHAPTER 1

THE COMPANIES ACT, 2013

UNIT 2: INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

- **PROMOTER**

- **Meaning:** A promoter is a one (i.e. individual firm, company etc.) who performs the preliminary duties necessary to bring the company into being and float it, i.e. who brings the company into existence. He conceives the idea, develops it and induces others to join the enterprise.

The promoter originates the scheme for the formation of a company, gets together the subscribers to the memorandum, gets the memorandum and articles prepared, executed and registered; finds the bankers, brokers and legal advisers, finds the first directors, settles the terms of preliminary contracts with vendors and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital.

- **Definition:** The term "Promoter" under section 2(69) means a person—
 - a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
 - b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
 - c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
- A person who merely acts in a professional capacity on behalf of the promoter, such as a solicitor or an accountant and who is paid by him is not a promoter.

- **INCORPORATION OF COMPANIES**

- I. Selection of the type of company
- II. Preliminary Requirements
- III. Reservation of Name
- IV. Preparation of the Memorandum of Association and Articles of Association
- V. Filing of the documents with the Registrar of Companies
 - (a) The memorandum and articles
 - (b) a declaration in the prescribed
 - (c) an declaration in Form INC-9
 - (d) The address for correspondence
 - (e) prescribed particulars of every subscriber
 - (f) particulars of the interests of the persons mentioned in the articles as the first directors along with FormDIR-12
 - (g) E-Form INC-22
- VI. Certificate of Incorporation and allotment of Corporate Identity Number
- VII. Effect of Registration [Sec. 9]
- VIII. Commencement of Business [Sec. 11]

• **MEMORANDUM OF ASSOCIATION**

“Fundamental Document”

- Memorandum of Association is the fundamental condition upon which alone is allowed to incorporate.

| | |
|---|--|
| <p>Definition and Meaning of Memorandum: Section 2(56) of the Companies Act, 2013.</p> | <p>"Memorandum" means memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.</p> |
|---|--|

- The memorandum of association is a document, which contains the fundamental provisions of the company's constitution. It defines as well as confines the powers of the company. It not only shows the objects of formation but also determines the utmost possible scope of its operations beyond which its action cannot go.

| | |
|--------------------------------------|---|
| <p>Purpose of Memorandum:</p> | <p>The purpose of memorandum is two-fold.</p> <ol style="list-style-type: none"> 1. The Prospective shareholder who contemplates the investment of his savings, should know the field in, or the purpose for which it is going to be used and what risk he is taking in making the investment. 2. Outsiders or Creditors dealing with the company will know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects. |
|--------------------------------------|---|

| | |
|---|---|
| <p>Form of Memorandum [Section 4]:</p> | <ul style="list-style-type: none"> • Table A is applicable to companies limited by shares; • Table B is applicable to companies limited by guarantee and not having a share capital; • Table C is applicable to the companies limited by guarantee and having a share capital; • Table D is applicable to unlimited companies and not having a share capital; • Table E is applicable to unlimited companies and having a share capital. |
|---|---|

- **Printing and Signing of Memorandum [Sections 3 & 4]:** The memorandum of association must be
 - a. Printed,
 - b. Divided into paragraphs, numbered consecutively and Signed by each subscriber (7 in the case of a public company; 2 in the case of a private company and 1 in the case of OPC) in the presence of at least one witness who shall attest the signatures of the subscribers.

- **Contents of Memorandum:** Section 4 of the Companies Act provides that the memorandum of association of every company must contain the following clauses:-
 - Name Clause
 - Situation or Registered Office Clause
 - Objects Clause
 - Liability Clause
 - Capital Clause (only in the case of a company having a share capital)
 - Association Clause and Subscription Clause
 - Succession Clause (only in the case of OPC)

- **Change of Name [Section 13] :**
 - Pass SR
 - Approval of CG (not required in case of addition or deletion of the word private)
 - Intimate to ROC under a form MGT 14
 - INC 24
 - New name INC 1
 - Alter MOA
 - Copy of altered MOA + Copy of SR + copy of approval from CG – file to ROC
 - New COI

- **Rectification of Name (Sec. 16)**
 - Mere resemblance
 - Central Government – SUO – MOTO given notice to the company for rectification of name (pass OR within three months)
 - Company approaching CG for rectification of name – CG will give notice (pass OR within 6 months – only within 3 years from DOI)

➤ Methods of shifting of Registered Office within same state:

Change within the local limits of same town [Sec. 12]:

A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a **Board Resolution**.

A notice of the change is to be given to the Registrar of Companies in Form INC.22 within **15 days** of such change.

● **This change of registered office does not involve alteration of memorandum.**

Change from one city to another within the same State and which does not involve the change of jurisdiction of Registrar of Companies, [Sec. 12]:

A **special resolution** has to be passed in the general meeting of the company. The special Resolution shall be passed by Postal Ballot in case of public company.

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

Also within 15 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22**.

● **This change of registered office also does not involve alteration of memorandum.**

Change from one city to another within the same State involving change of jurisdiction of Registrar of Companies [Sec. 12]:

A **special resolution** has to be passed in the general meeting of the company.

Apply to Regional Director for approval

Regional Director shall communicate within a period of 30 days from the date of receipt of application

The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation

ROC shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

Also within 15 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22**.

● **This change of registered office also does not involve alteration of memorandum.**

● **This provision is applicable only in those states where there are more than one offices of Registrar of Companies. At present there are two states, where there are more than one offices of ROCs. They are Maharashtra and Tamil Nadu. In Maharashtra, the two offices of ROCs are located at Mumbai and Pune; whereas in Tamil Nadu, the two offices of ROCs are located at Chennai and Coimbatore.**

- **Change from one State to another State [Sec.13]**

A **special resolution** has to be passed in the general meeting of the company.

↓
Apply to Central Government for approval

↓
Central Government shall communicate within a period of 60 days from the date of receipt of application

The Central Government, before passing its order, may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debt and obligations or that adequate security has been provided for such discharge.

↓
File following documents with Registrar of both states:

- a) A certified copy of the order of the Central Government approving the alteration for change.
- b) Altered copy of MOA

↓
The ROC of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

↓
Also **Form No. MGT.14** shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Also within **15 days** of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22**.

- A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.
- It was held that employees' union, which is a registered body and which represents quite a number of the employees employed at a registered office of the company, has the right to appear and to oppose the application made to the Central Government u/s 13 on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by the Central Government
- **This change of registered office INVOLVES alteration of memorandum.**

- **OBJECT CLAUSE**

- Pass SR
- Alter MOA
- Copy of SR + copy of altered MOA submit to ROC

- **LIABILITY CLAUSE**

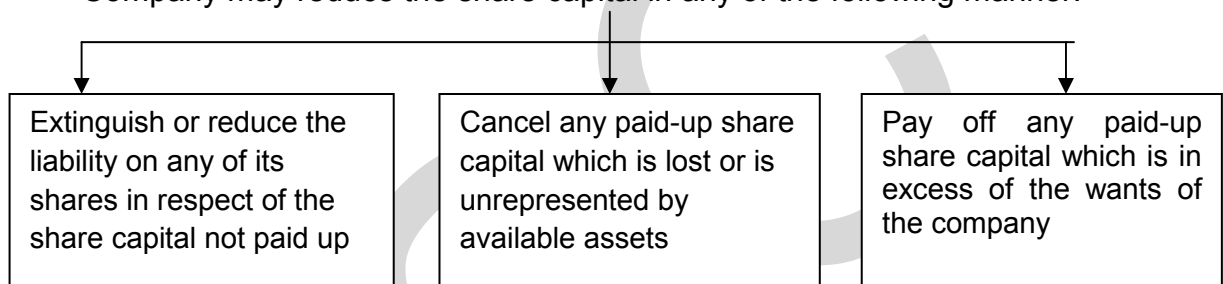
- CAPITAL CLAUSE (ONLY IN THE CASE OF A COMPANY HAVING A SHARE CAPITAL):**

Alteration of Capital Clause (Section 61)

- By increasing its authorized share capital by such amount as the company requires;
- By consolidating existing shares into shares of larger denomination;
- By converting fully - paid shares into stock or vice - versa;
- By sub-dividing its existing shares into shares of smaller denomination; and
- By cancelling shares which have not been taken up or agreed to be taken up and diminishing the amount of its share capital by the amount of the shares cancelled. **Such cancellation is known as diminution of share capital and shall not, however, be deemed as reduction of share capital within the meaning of Sec. 66.**

Reduction of share capital (Section 66)

Company may reduce the share capital in any of the following manner:



Difference between diminution of share capital and reduction of share capital

| Diminution of share capital | Reduction of share capital |
|--|---|
| 1. Affects Authorised share capital | 1. Affects Paid up share capital |
| 2. Ordinary Resolution | 2. Special Resolution |
| 3. No NCLT Approval required | 3. NCLT Approval required |
| 4. Balance Sheet is not affected | 4. Balance Sheet is affected |
| 5. Interest of creditors is not affected | 5. Interest of creditors is affected |
| 6. The words "And reduced" are not be used | 6. The words "And reduced" are to be used |

- ASSOCIATION CLAUSE AND SUBSCRIPTION CLAUSE**
- SUCCESSION CLAUSE (ONLY IN THE CASE OF OPC)**

• **ARTICLES OF ASSOCIATION**

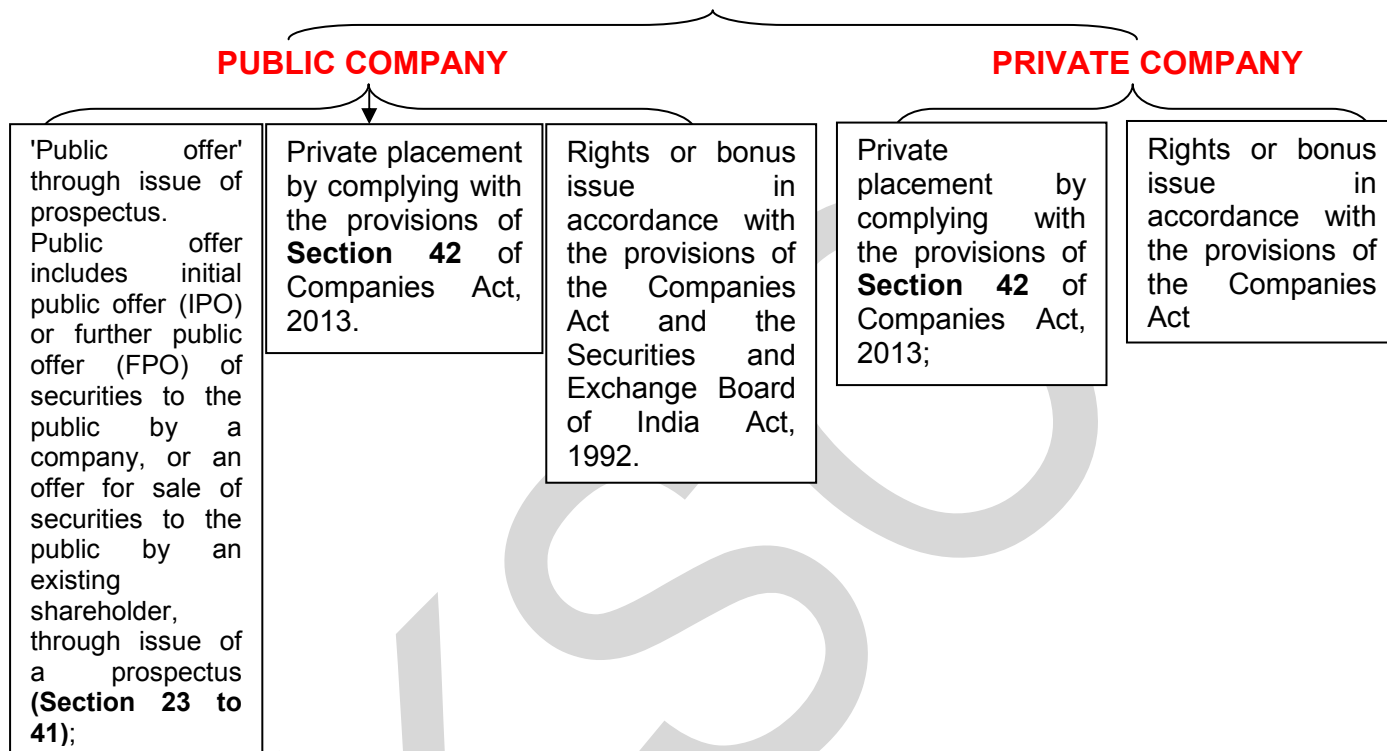
- The articles of a company are its bye — laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles of a company are sub—ordinate to and are controlled by the memorandum of association. The memorandum lays down the scope and powers of the company and the articles govern the ways in which the objects of the company are to be carried out.
- **Definition and Meaning of Articles Section 2(5) of the Companies Act, 2013:** 'Articles' means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act.

| | |
|--|---|
| <p>Form and Contents of Articles [Section 5]:</p> | <p>Schedule I Table F= companies limited by shares; Table G= is applicable to companies limited by guarantee and having a share capital; Table H = companies limited by guarantee and not having a share capital; Table I= unlimited companies and having a share capital; Table J = unlimited companies and not having a share capital.</p> <ul style="list-style-type: none"> • A company may adopt all or any of the regulations of the aforesaid Model Articles. If duly registered articles of a company do not expressly exclude or modify the regulations contained in applicable model articles, such regulations shall apply as if they were contained in the duly registered articles of a company. |
|--|---|

CHAPTER 1
THE COMPANIES ACT, 2013

UNIT 3: PROSPECTUS AND ALLOTMENT OF SECUTITIES

• **ISSUE OF SECURITIES BY THE COMPANY**



➤ **Matters to be stated in prospectus[Section 26]**

- (1) **Dated:** Every prospectus must be dated. The date appearing on the prospectus is deemed to be date of publishing prospectus
- (2) **Registered:** The prospectus must be registered with ROC on or before issue of prospectus to public
- (3) **Issued:** The prospectus must be issued to public within 90 days of registration with ROC. Any issue of securities under the prospectus which is issued beyond 90 days shall be deemed to be an issue without a prospectus.
- (4) **Contents of the prospectus:** Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

←
↓
→

General Information Financial Information Statutory Information

➤ **Variation in terms of contract or objects in prospectus (Section 27)**

- special resolution
- Notice of resolution to shareholders:
- Exit offer to dissenting shareholders:

TYPES OF PROSPECTUS

➤ Shelf Prospectus (Section 31)

The Companies Act, 2013 defines the term "shelf prospectus" which means a **prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.**

Section 31

- **Filing of shelf prospectus with registrar:**

- (i) At the stage of the **first offer of securities** included therein, which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
- (ii) In respect of a **second or subsequent offer of such securities** issued during the period of validity of that prospectus, no further prospectus is required.

- **Filing of an information memorandum containing all material facts with the registrar-**

- **Shelf prospectus with information memorandum deemed to be prospectus:**

➤ Red Herring Prospectus (Section 32)

The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. Red Herring Prospectus' concept has been introduced to facilitate Book Building method for public issue of securities.

- Issue of red herring prospectus prior to prospectus:
- Filing with the registrar:
- Obligation and any variation in the red herring prospectus is same as that of prospectus:
- Prospectus with the details not included in the red herring prospectus:

➤ Abridged Prospectus

Section 33 of the Act relating to the issue of application forms for securities says that:

- (1) The form of application for the purchase of any of the securities of a company shall be issued along with an abridged prospectus.

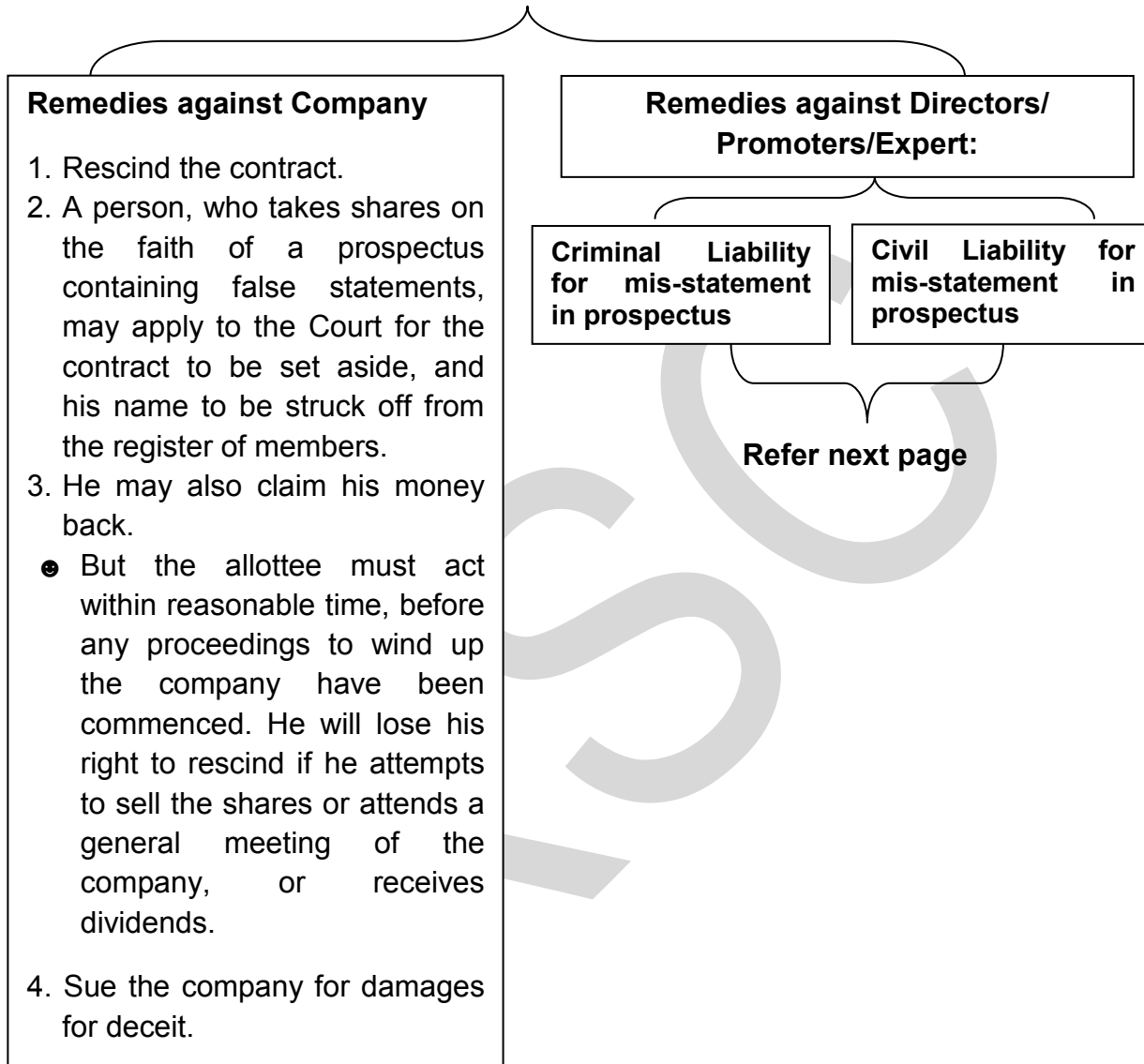
As per the definition contained in the section 2(1) of the Companies Act, 2013, **abridged prospectus means a memorandum containing such salient features of a prospectus** as may be specified by the Securities and Exchange board by making regulations in this behalf.

Exceptions: There are, however, certain *exceptions* to the above provision, where an abridged prospectus containing all the prescribed details need not accompany the Application Forms sent out. These exceptions are:

- (a) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (b) In relation to securities which were not offered to the public.

- (2) A copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.
- (3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

➤ **REMEDIES FOR MISREPRESENTATION IN THE PROSPECTUS**



**Remedies against Directors/
Promoters/Expert:**

Criminal Liability for mis-statement in prospectus:

Section 34 fastens criminal liability for mis-statements in prospectus. Where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading, every person who has authorised the issue of such prospectus shall be held **guilty for fraud** involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower punishable with imprisonment and fine under **section 447**.

Section 447 provides the penalty for fraud

- which is imprisonment for a term which shall not be less than **6 months but which may extend to 10 years** (Where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years)

and

- **fine which shall not be less than the amount involved in the fraud, but which may extend to 3 times the amount involved in the fraud.**

➤ Where the fraud involves an amount less than 10 lakh rupees or 1%. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with

Imprisonment: Upto 5 years

Or

Fine: Upto 20 lakh rupees

Or

Both

Civil Liability for mis-statement in prospectus:

Section 35 makes the following persons liable to **pay compensation for loss** or damage sustained by reason of mis-statement/untrue statement or inclusion or omission of any matter in the prospectus:-

1. Every person who is a director of the company at the time of issue of prospectus;
2. Every person who has authorized himself to be named and is named in the prospectus as a director [proposed directors];
3. Every person who is a promoter of the company;
4. Every person who has authorized the issue of the prospectus; and
5. Every person who is named in the prospectus as an expert.

Exemptions from the liability: No person shall be liable for the mis-statement, where such person proves that—

1. **Withdrawn his consent before the issue of prospectus-** Where a person having consented to become a director of the company, withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
2. **Prospectus issued without his knowledge/ consent-** Where the prospectus was issued without the knowledge or consent of a person, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge
3. As regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26 to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment there under..

Further, **Section 36** prescribes punishment for any person who fraudulently induces persons to invest money by making statement which is false, deceptive, misleading or deliberately concealing any material facts. He will be held guilty for fraud punishable with imprisonment and fine under section 447, an offence which is non-compoundable.

Allotment of securities & underwriting commission (section 39 – 40)

- Allotment should be done by proper authority, allotment should be communicated, it should be unconditional etc.
- **Application Money :** The company must have received in cash the amount payable on application, which must **not be less than 5%** of the nominal value of the securities or such other amount or per cent as may be specified by SEBI; and deposited the amount received in a separate account.
- **Minimum Subscription:** The minimum subscription as provided in the prospectus must have been received **within 30 days** from the date of issue of the prospectus or such other period as may be specified by SEBI.
- **Listing Permission:**
- **Return of Allotment:**
PAS.3,

PRIVATE PLACEMENT [SECTION 42]

- **Definition of Private Placement:** Private Placement' means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter (Form PAS.4) and which satisfies the specified conditions.
- **Important Provisions:** Following are the key provisions relating to private placement :
 1. A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), **whose number shall not exceed 50** or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option, in a financial year subject to such conditions as may be prescribed.
Provided that, subject to the maximum number of identified persons, a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed
 2. A company making private placement shall issue **private placement offer and application** in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:
The private placement offer and application **shall not carry any right of renunciation.**
 3. If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same **shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of this Chapter.**

4. Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with **subscription money paid either by cheque or demand draft or other banking channel and not by cash.**
5. A company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar.
6. No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.
7. A company making an offer or invitation under this section shall allot its securities within **60 days** from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within **15 days** from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with **interest at the rate of 12% p.a** from the expiry of the sixtieth day.
8. The monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
 - (a) For adjustment against allotment of securities; or
 - (b) For the repayment of monies where the company is unable to allot securities.
9. Company issuing securities under this section **shall not release any public advertisements or utilise any media, marketing or distribution channels** or agents to inform the public at large about such an issue.
10. A company making any allotment of securities under this section, shall file with the Registrar a **return of allotment within 15 days** from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

If a company defaults in filing the return of allotment within the period prescribed, the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.
11. **Penalty:** If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified to subscribers within a period of thirty days of the order imposing the penalty.

• **GLOBAL DEPOSITORY RECEIPTS (Section 41)**

| | |
|--|---|
| <p>Eligibility to issue depository receipts [Rule 3]</p> | <p>A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations.</p> |
| <p>Conditions for issue of depository receipts [Rule 4]</p> | <ol style="list-style-type: none"> 1. The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so. 2. The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting. A special resolution passed under section 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for the purpose of section 41 as well. 3. The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank. 4. The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts. 5. The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts. The committee of the Board of directors referred to above shall have at least one independent director in case the company is required to have independent directors. |
| <p>Manner and form of depository receipts [Rule 5]</p> | <ol style="list-style-type: none"> 1. The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform. 2. The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company. 3. The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad. |
| <p>Voting rights [Rule 6]</p> | <ol style="list-style-type: none"> 1. A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act. 2. Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of |

| | |
|--|---|
| | depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard |
| Proceeds of issue [Rule 7] | The proceeds of issues of depository receipts shall either be remitted to a bank account in India or deposited in an Indian bank operating abroad or any foreign bank (which is a Scheduled Bank under the Reserve Bank of India Act, 1934) having operations in India with an agreement that the foreign bank having operations in India shall take responsibility for furnishing all the information which may be required and in the event of a sponsored issue of Depository Receipts, the proceeds of the sale shall be credited to the respective bank account of the shareholders. |
| Non applicability of certain provisions of the Act. | <ol style="list-style-type: none">(1) The provisions of the Act and any rules related to public issue of shares or debentures shall not apply to issue of depository receipts abroad.(2) The offer document, if prepared for the issue of depository receipts, shall not be treated as a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.(3) Notwithstanding anything contained under section 88(Register of members etc.) of the Act, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the company. |

CHAPTER 1

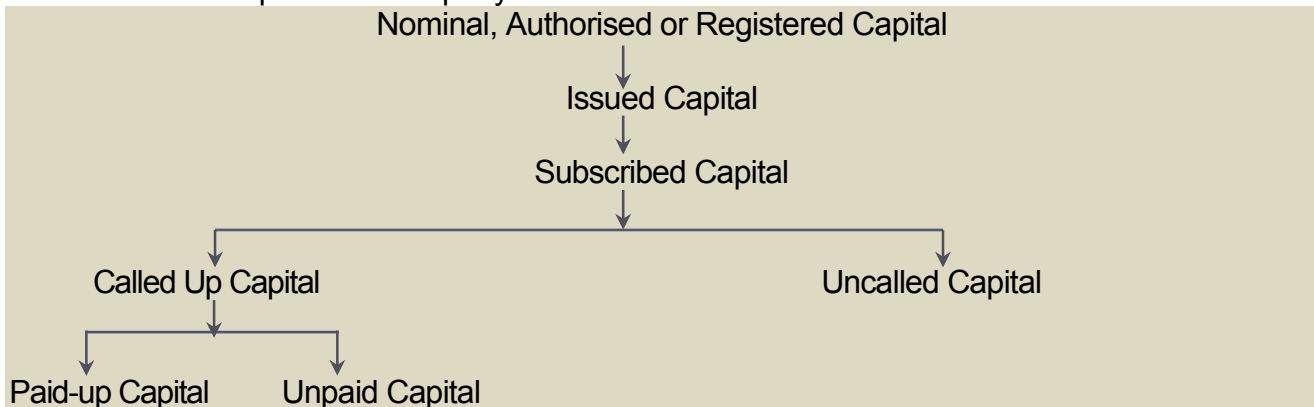
THE COMPANIES ACT, 2013

UNIT 4: SHARE CAPITAL AND DEBENTURES

PART A: SHARE CAPITAL

- CLASSIFICATION OF SHARE CAPITAL**

The share capital of a company can be classified as :

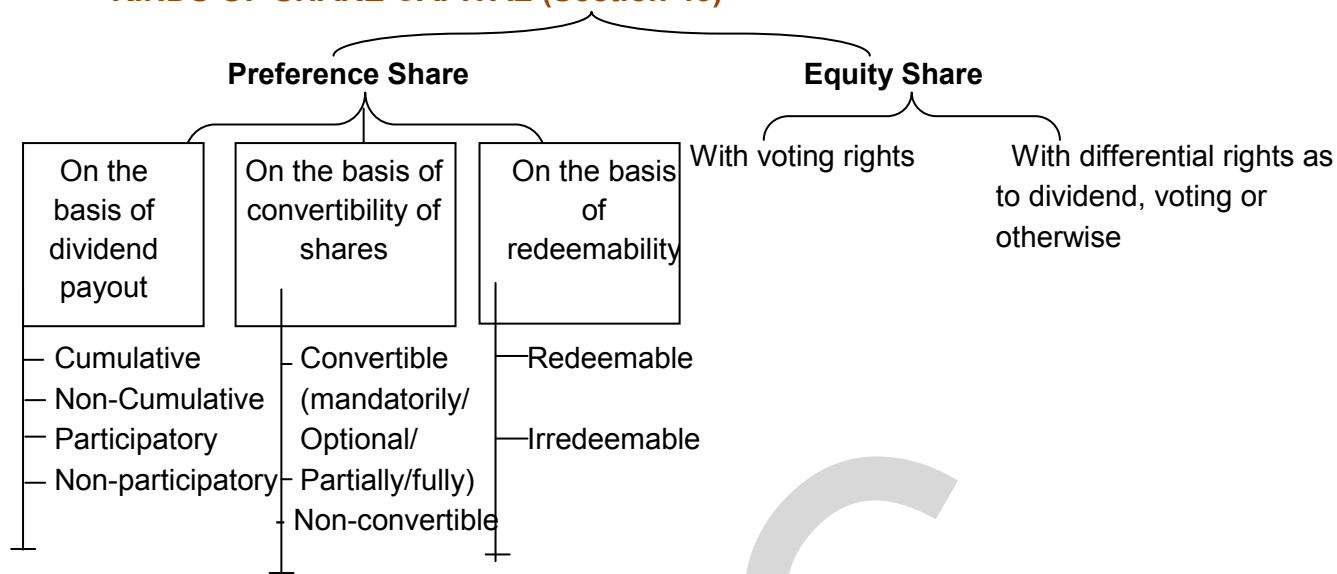


- SHARE**

- **Definition and Meaning of Share:** Section 2(84) of the Companies Act, 2013 defines the term "share". As per this, share means a share in the share capital of a company and includes stock.
- By its nature, a **share is not a sum of money but a bundle of rights and liabilities**. A share is a right to participate in the profits of a company, while it is a going concern and declares dividend; and a right to participate in the assets of the company, when it is wound up.
- The shares or debentures or other interests of any member in a company shall be movable property transferable in the manner provided by the articles of the company [Section 44 of the Companies Act, 2013]. Every share in a company having a share capital, shall be distinguished by its distinctive number [Section 45]. This shall not apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.
- Basic requirement (Section 45 and 46): Physical entitlement to a particular portion of share capital is prima facie evidenced by way of a share certificate which has to be
 1. Distinctively numbered; &
 2. To be issued under common seal of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.
- **Demat**—Now-a-days most of the listed shares are held in electronic format. Even banks and financial institutions now insist for demat of securities for charge creation to facility corroboration with central registry for loans and mortgages. Physical securities are mostly limited to private limited companies and closely held companies.

At present there are **two depositories in India: NSDL and CDSL** with various depository participants (DPs) linked to them. Dematerialised securities are held by investors in their respective accounts with the DP. The DP keeps a track of transfer, transmission, charge creation etc. There are necessary enabling legal enactments to facilitate all these procedures.

• **KINDS OF SHARE CAPITAL (Section 43)**



• **PREFERENCE SHARE**

- **Meaning:** A preference share is a share which fulfils the following two conditions:
 - ♦ It carries preferential right in respect of payment of dividend; and
 - ♦ It also carries preferential right in regard to repayment of capital.

In simple terms, preference share capital must have priority both regards to dividend as well as capital.
- **Issue of preference shares:** Section 55 of the Companies Act, 2013 read with Companies (Share Capital and Debentures) Rules, 2014 provides that a company, if so **authorized by its articles of association**, may issue redeemable preference shares, subject to the following conditions :
 - (a) The issue of such shares has been authorized by passing a **special resolution** in the general meeting of the company;
 - (b) The company, at the time of such issue of preference shares, has **no subsisting default in the redemption of preference shares** issued either before or after the commencement of this Act or in payment of dividend due on any preference shares; and
 - (c) The company cannot issue preference shares which is redeemable after the expiry of 20 years from the date of its issue. However, a company engaged in the setting up and dealing with of infrastructural projects, as defined in Schedule VI to this Act, may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum ten percent of such preference shares per year from the twenty first year onwards or earlier, on proportionate basis, at the option of the preference shareholders.
 - ♦ It may be noted that a company cannot issue **irredeemable** preference shares.
- **Redemption of preference shares:** A company can redeem its redeemable preference shares subject to the following conditions:-
 1. Shares are fully paid-up;
 2. Share may be redeemed only out of the profits available for distribution as dividend or out of proceeds of a fresh issue of shares made for the purpose of redemption;
 3. Where the shares are redeemed out of the profits available for distribution as dividend, a sum equal to the nominal amount of the shares redeemed shall be transferred out of profits to the Capital Redemption Reserve Account, which can be utilized only for the purpose of issuing fully-paid

bonus shares, otherwise it shall be deemed to be reduction of share capital; and

4. If premium is payable on redemption, it must have been provided for out of profits or out of company's security premium account. However, such class of companies as may be prescribed whose financial statements comply with Accounting Standards prescribed for such class of companies cannot utilize securities premium account for providing premium payable on redemption of preference shares or debentures.

- **VARIATIONS OF SHAREHOLDERS' RIGHTS [SECTION 48]**

1. Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class **may be varied with the consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,**
2. Provided that if variation by one class of shareholders affects the rights of any other class of shareholders, the **consent of three-fourths of such other class of shareholders shall also be obtained** and the provisions of this section shall apply to such variation.
3. Where the **holders of not less than 10 %** of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they **may apply to the Tribunal** to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:
4. The decision of the Tribunal on any application shall be binding on the shareholders.

- **ISSUE OF SHARES AT A PREMIUM [SECTION 52]**

- A company may issue shares at a premium when it is able to sell them at a price above par or nominal value, irrespective of the fact whether the shares are listed on Stock Exchange or not. The rate of premium will be decided by the Board of Directors of a Company. Section 52 of the Companies Act, 2013 deals with the concept of share or securities premium.
- The premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend.
- The amount of premium, whether received in cash or in kind, must be kept in a separate account, known as the "Securities Premium Account".
- The amount of share premium is to be maintained with the same sanctity as the share capital.
- The securities premium account cannot be treated as free reserves as it is in the nature of capital reserve. [Section 52(1)].

In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilized only for the following purposes :-

- (a) **Issuing fully — paid bonus shares to members;**
- (b) **Writing off the balance of the preliminary expenses of the company;**
- (c) **Writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;**
- (d) **For providing for the premium payable on redemption of any redeemable preference shares or debentures of the Company; and**
- (e) **For the purchase of its own shares or other specified securities u/s 68.**

- However, certain class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies, can utilize the share premium account only for the purposes stated below :
 - (a) Issuing fully — paid bonus shares to members;
 - (b) Writing off commission paid or discount allowed, or the expenses incurred on issue of equity shares of the company;
 - (c) For the purchase of its own shares or other specified securities u/s 68.
- It may be noted that if a company proposes to apply share premium for any purpose other than those mentioned above, it must then comply with the requirements of the Act with respect to reduction of share capital.

- **ISSUE OF SHARES AT A DISCOUNT [SECTION 53]**

- Section 53 **prohibits** a company to issue shares at discount except in the case of issue of sweat equity shares. Any share issued by a company at a discount shall be void.
- However, a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949 (**Notification dated 3rd Jan, 2018**)
- In case of default, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

- **SWEAT EQUITY SHARES [SECTION 54]**

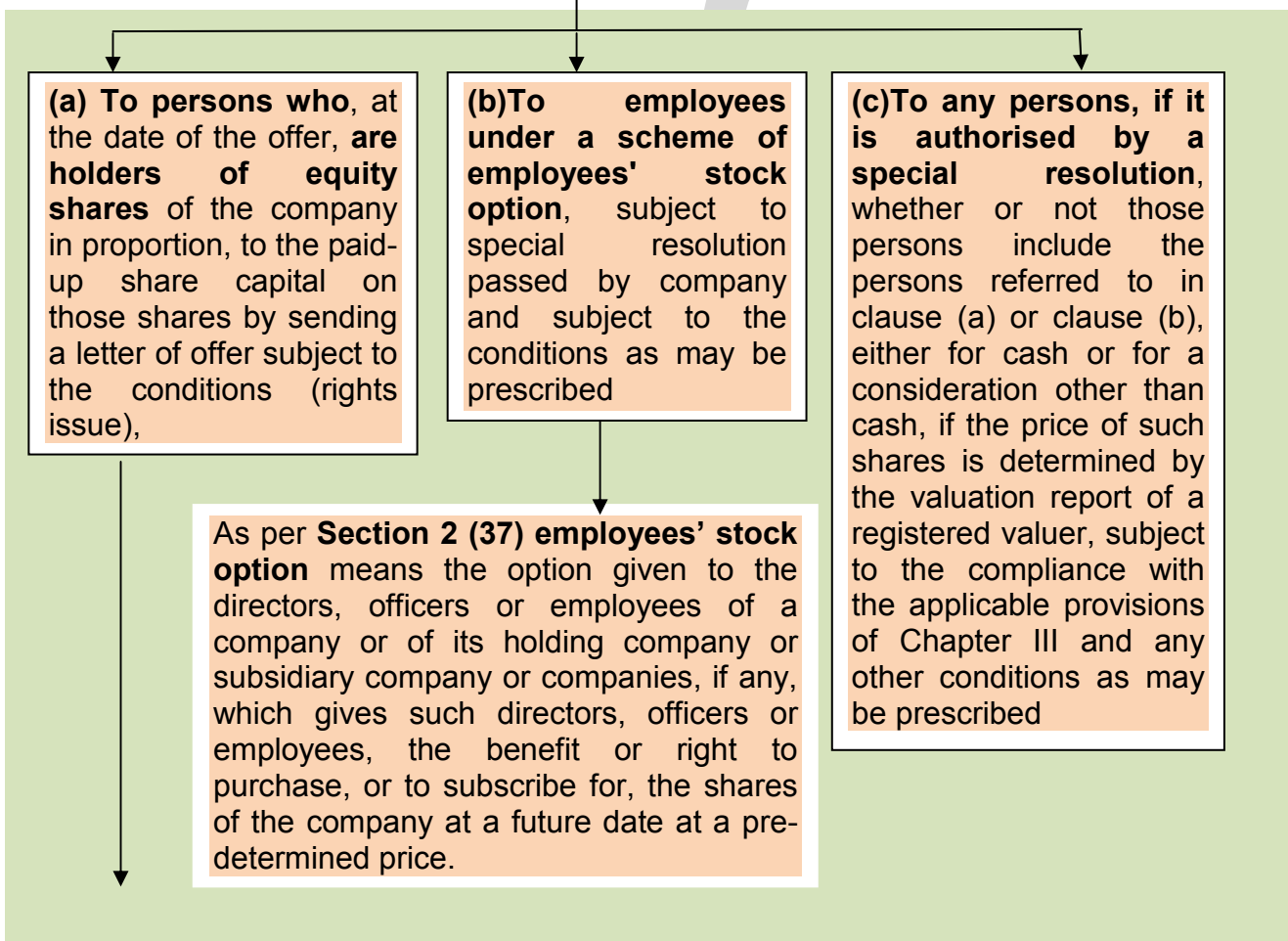
- The concept of 'sweat equity shares' is defined in **Section 2(88)** of the Companies Act, 2013. As per this, 'Sweat Equity Shares' means such equity shares as are issued by a company to its directors or employees at a discount or for consideration other than cash, for providing their know — how or making available rights in the nature of intellectual property rights, or value addition, by whatever name called.
- Here the term "**Employee**" means:
 - (a) a permanent employee of the company who has been working in India or outside India, for at least last one year; or
 - (b) a director of the company, whether a whole time director or not; or
 - (c) an employee or a director as defined in sub-clauses (a) or (b) above of a subsidiary, in India or outside India, or of a holding company of the company;
- The expression '**Value additions**' means actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional for providing knowhow or making available rights in the nature of intellectual property rights, by such person to whom sweat equity is being issued for which the consideration is not paid or included in the normal remuneration payable under the contract of employment, in the case of an employee.
- **Conditions:**
 1. The shares must be of class already issued;
 2. **At least one year** must have elapsed since the Company had commenced business;

3. The issue must be authorized by a **special resolution** passed by the Company in general meeting;
4. The resolution must specify number of shares; their current market price; consideration (if any); and the class or classes of directors or employees to whom they are to be issued;
5. The shares must be issued in accordance with SEBI Regulations, in the case of listed companies; and in accordance with Central Govt. Rules, in the case of unlisted companies.

It may be noted that the rights, limitations, restrictions and provisions applicable to equity shares shall be applicable to sweat equity share and holders of such shares shall rank *pari passu* with other equity shareholders.

• **FURTHER ISSUE OF SHARE CAPITAL [SECTION 62]**

- As per the section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered—



• **BONUS SHARES/ CAPITALISATION OF RESERVES [SECTION 63]**

- **A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of its:**

1. Free reserves
2. Securities premium account
3. Capital redemption reserve account.

However, no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets. Further, the bonus shares shall not be issued in lieu of dividend.

- **A company may issue fully paid bonus shares, subject to the following conditions:**
 - (a) it is authorized by its articles;
 - (b) it has, on recommendation of Board, been authorized in general meeting of the company;
 - (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - (d) it has not defaulted in respect of the payment of statutory dues of the employees;
 - (e) the existing shares are fully paid-up.
 - (f) it complies with such conditions as may be prescribed.

It may be noted that the company, which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

- **RESTRICTION ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES (SECTION 67)**

- Company limited by shares or by guarantee and having a share capital shall not have power to buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.
- No public company shall give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.
- **Exceptions :** There are, however, certain exceptions where the company may provide the financial assistance, namely :
 1. The lending of money by a **banking company** in the ordinary course of its business;
 2. The provision is made by a company for **lending of money in accordance with any scheme** approved by company through special resolution with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid up shares in the company or its holding company, if the purchase of, or the subscription for, the shares held by trustees for the benefit of the employees or such shares held by the employee of the company;
 3. The **giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel**, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

Nothing in Section 67 shall affect the right of a company to redeem any preference shares issued under this Act or under any previous Companies law.

- **BUY-BACK OF SHARES AND SECURITIES (Section 68)**

- **Meaning:** A procedure which enables a company to go back to the holder of its shares/ specified securities and offer to purchase from them the shares/ specified securities that they hold.
- **Purpose :** A company would opt for buy — back for the following reasons:
 - (i) To improve shareholder value - Buy back generally results in higher earning per share (E.P.S.)

- (ii) As a defence mechanism - Buy back provides a safeguard against hostile take — overs by increasing promoters' holding.
- (iii) To provide an additional exit route to shareholders when shares are undervalued or thinly traded.
- (iv) To return surplus cash to shareholders.
- **Sources of buyback:** Following are the important provisions of Section 68 :-
A company may purchase its own shares or other specified securities out of :
 - (i) its free reserves;
 - (ii) the securities premium account; or
 - (iii) the proceeds of an earlier issue of shares or other specified securities.
However, no buy - back can be done out of proceeds of an earlier issue of same kind of shares/ securities.
- **Conditions for buyback:** For buy - back purpose, the following conditions must be fulfilled :-
 - (i) Buy - back is **authorized by the articles of association** of the Company.
 - (ii) A company may, by a Board Resolution, buy - back up to 10% of the aggregate of paid - up equity capital and free reserves. This Board resolution must be passed at a Board Meeting only and not by circulation.
If the company wants to buy-back more than 10% of the aggregate of paid up equity capital and free reserves but up to 25% of the aggregate of the paid - up capital (equity & preference) and free reserves, then a Special Resolution in the general meeting is required.
The aforesaid limits are to be applied to the amount required for buy-back of such shares/ securities.
 - (iii) In the case of buy - back of equity shares only, the buy - back in any financial year shall not exceed 25% of its total paid - up equity capital in that financial year.
The aforesaid limit is to be applied to the number of shares to be bought back.
 - (iv) After buy - back, the debt equity ratio shall be less than or equal to 2 i.e., the debt should not be more than twice the equity after buy - back. Here 'debt' means secured as well as unsecured debts; and 'equity' means paid-up share capital and free reserves.
However, Central Government may, by order, notify a higher debt equity ratio for a class or classes of companies.
 - (v) All the shares or other specified securities for buy - back are fully paid - up.
 - (vi) Buy-back offer shall not be made within a period of one year reckoned from the date of the closure of the preceding offer of buy-back, if any.
 - (vii) If company is listed, then SEBI (Buy-Back of Securities) Regulations, 1998 made by SEBI are complied with; and if the company is not listed, then Companies (Share Capital and Debentures) Rules, 2014 made by Central Government are complied with.
- **Disclosure:** The Companies will have to make full and complete disclosure of all material facts in the notice of the meeting at which special resolution is proposed to be passed. These disclosures will include the necessity for buy — back; the time limit for completion of the buy — back; class of securities intended to be purchased; and amount to be invested for buy — back.
- **Time period for buyback:** Every buy — back shall be completed within one year from the date of passing the Special Resolution or Board Resolution, as the case may be. If the company is not able to do so, then the reasons for such failure shall be disclosed in the Directors' Report. Further, in order to pursue the same buy-back, a fresh Board Resolution or Special Resolution, as the case may be, will be required.

- The buyback may be
 - (i) from the existing holders on a proportionate basis;
 - (ii) from the open market; or
 - (iv) from the employees of the company to whom shares / securities have been issued under a scheme of stock option or as sweat equity.

A company can implement buy-back by any of the aforesaid methods but, for a single offer of buy-back, different methods of buy-back cannot be adopted.
- **Declaration of solvency:** After passing the special resolution or board resolution and before making buy back, the company is required to file 'a declaration of solvency' in Form No. SH.9 with the ROC and also with SEBI, if listed. This declaration of solvency shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.
- **Destruction of securities:** The company shall extinguish and physically destroy the shares / securities bought— back within 7 days of the last date of completion of buy — back.
- **Cooling period:** The Company shall not make any issue of same kind of shares/ securities (including rights shares) within a period of 6 months from the date of completion of buy — back.
Exceptions are :-
 - (i) Bonus issue;
 - (ii) Conversion of warrants;
 - (iii) Stock option scheme;
 - (iv) Sweat equity; and
 - (v) Conversion of preference shares debentures into equity shares.
- **Register of buyback:** The Company shall maintain a register of shares / securities bought—back in Form No. SH.10, giving the following details :-
 - (i) the consideration paid;
 - (ii) the date of cancellation;
 - (iii) the date of extinguishment and physical destruction; and
 - (iv) such other particulars as may be prescribed.
- After the completion of buy — back, the company shall file with the ROC and also with SEBI, if listed, a return in Form No. SH.11 containing such particulars as may be prescribed, within 30 days of such completion.
- **Penalty:** In case of default, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
- **Transfer to Capital Redemption Reserve [Section 69] :** Where a company purchases its own shares out of free reserves, then a sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet. The capital redemption reserve account shall be utilized by the company only for the purposes of issuing fully paid bonus shares.
- **Prohibition for buy-back in certain circumstances (Section 70):** This section of the Companies Act, 2013 prohibits the company for buy back in the certain circumstances.
 - (1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities-
 - (a) Through any subsidiary company including its own subsidiary companies; or
 - (b) Through any investment company or group of investment companies; or
 - (c) If a default, is made by the company, in repayment of deposits or interest

payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institutions or banking company.

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, there such buy-back is not prohibited.

- (2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92(Annual Report), 123(Declaration of dividend), 127(Punishment for failure to distribute dividends), and section 129(Financial Statements).

• **TRANSFER OF SHARES**

➤ Transfer of shares means the voluntary conveyance of the rights and possibly, the duties of a member (as represented in a share in the company) from a shareholder who wishes to cease to be a member to a person desirous of becoming a member. Thus, shares in a company are transferable like any other moveable property in the absence of express restrictions under the articles.

➤ **Section 56** of the Companies Act, 2013 deals with the transfer and transmission of securities or interest of a member in the company.

1. A **proper instrument of transfer**, in such form as may be prescribed, duly **stamped, dated and executed** by or on behalf of the transferor and the transferee (except where the transfer is between persons both of whose names are entered as holders of beneficial interest in the records of a depository), specifying the name, address and occupation, if any, of the transferee, has been **delivered to the company by the transferor or the transferee within a period of 60 days from the date of execution,**

(+)

The certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

2. In case a company has **partly —paid shares** and where the company has received any instrument of transfer of such shares from transferor, the company shall give a notice by registered post to the transferee and shall register the transfer only when no objection is received from the transferee within 2 weeks from the date of receipt of notice.

3. Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.

Company may register the transfer ↓

Company shall issue share certificate within 1 month of registering the transfer

Company may refuse to register the transfer ↓

Refer next page

➤ **Refusal of Registration (Section 58)**

Private company refuses to register the transfer of shares

The Board of Directors of a private company can refuse to register transfer of shares in favour of any person in terms of the provisions of Articles of Association of the Company. However while refusing to transfer shares; the power must be exercised by the Board bona fide and in the best interests of the company.

- ♦ Company shall within a period of **30 days from the date on which the instrument of transfer was delivered to the company**, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.
- ♦ Transferee may appeal to the NCLT against the refusal within a period of **30 days** from the date of receipt of the refusal notice. **In case no notice** has been sent by the company, then appeal may be made within a period of **60 days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

Public company refuses to register the transfer of shares

The shares or debentures and any interest therein of a company shall be freely transferable. The Board of Directors and the concerned depository has no discretion to refuse or withhold transfer of any security on any ground, except on the ground of sufficient cause.

- ♦ Company shall within a period of **30 days from the date on which the instrument of transfer was delivered to the company**, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.
- ♦ Transferee may appeal to the NCLT against the refusal within a period of **60 days** from the date of receipt of the refusal notice. **In case no notice** has been sent by the company, then appeal may be made within a period of **90 days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

Apply to NCLT

Power of National Company Law Tribunal (NCLT) : The tribunal, while dealing with an appeal both in respect of private and public company, may, after hearing the parties, either dismiss the appeal, or by order —

- (a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

➤ **Distinction between Transfer and Transmission**

- (1) Transfer is a voluntary act of a member while transmission is by operation of law.
- (2) There is always consideration involved in transfer whereas in transmission, there is no question of consideration, hence no stamp duty, etc.
- (3) Transfer is affected as transfer of property when a member intends to sell it whereas transmission takes place only on the death, bankruptcy and lunacy of the member.
- (4) In case of transfer, the member has to execute a valid instrument of transfer whereas in case of transmission, it is not so possible.

PART B : DEBENTURES

➤ Definition and meaning of debenture

Section 2 (30) of the Companies Act, 2013 defines a debenture as :

"Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not".

In simple terms, a debenture may be defined as an instrument acknowledging a debt by a company to some person or persons.

➤ Features/ Characteristics of debenture

The usual features of a debenture are as follows:

1. A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company.
2. The certificate is an acknowledgement by the company of indebtedness to a holder.
3. A debenture usually provides for the payment of a specified sum at a specified date.
4. A debenture usually provides for payment of interest until the principal sum is paid back..
5. A company shall not issue any debentures carrying voting rights. [Sec. 71(2)]
6. A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance. [Sec. 71(12)]

➤ Kinds of debenture

1. **Issue of debentures with an option to convert:** A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a **special resolution** passed at a general meeting.
2. **Unsecured/Naked Debentures:** Where they are not secured by any mortgage or charge on any property of the company, they are said to be naked or unsecured.
3. **Secured Debentures:** Where debentures are secured by a mortgage or a charge on the property of the company. They are called secured debentures.

A company shall issue secured debentures, after unless it complies with the following conditions, namely:-

- (a) An issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue. However, a company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding **ten years but not exceeding thirty years** for companies engaged in setting up of infrastructure projects;
- (b) Such an issue of debentures shall be secured by the creation of a charge on the assets of the company, *by way of either mortgage or hypothecation only*, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;
- (c) The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures; and
- (d) The company shall execute a debenture trust deed in Form No. SH.12 or as near thereto as possible, within **60 days** from the date of allotment of the debentures.

➤ Trust Deed :

There are several advantages of having a trust deed, some of which are as follows :-

1. The trustees hold the title deeds of the mortgaged property, which prevents the company from misusing the title deeds for any purpose.
2. The trustees are given power under the trust deed so that the property mortgaged is kept insured and is maintained in proper condition.

3. The company can, with the consent of the trustees, enjoy a number of powers over the property charged, e.g., by way of sale, exchange or lease, thus enabling the company to put the property to advantageous use without jeopardizing the interest of debenture holders.
4. In case of default by the company, the trustees can take necessary steps to realise the security without the aid of the Court.

➤ **Debenture Trustee:**

- ♦ When debentures are issued for public subscription, involving a considerable number of debenture holders, who do not have the time to look after their interests in the properties mortgaged or charged to them, a trustee may be appointed for the supervision of their common interest.
- ♦ The trustees act as watchdogs to ensure that company's obligations under the trust deed are carried out and they can act expeditiously and effectively to safeguard the interests of the debenture holders.
- ♦ **Appointment of Debenture Trustee :**
 - a) When the company issues prospectus or make an offer or invitation to the public or to its members **exceeding 500** for the subscription of its debentures, then appointing a debenture-trustee is mandatory
 - b) The company shall appoint debenture trustees, after complying with the following conditions, namely.-
 - the **names of the debenture** trustees shall be stated in letter of offer inviting subscription for debentures and also in all the subsequent notices or other communications sent to the debenture holders;
 - before the appointment of debenture trustee or trustees, a **written consent** shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

➤ **Redemption of debentures [section 71]**

- ♦ **Debenture Redemption Reserve (DRR) :** The company shall create a Debenture Redemption Reserve **out of the profits** of the company available for payment of dividend;
The amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.
- ♦ **Failure in Redemption of Debentures:**
 1. Where at any time the debenture-trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amounts as and when it becomes due, the debenture-trustee may **file a petition before the Tribunal** and the Tribunal may by order/ impose such restrictions as may consider necessary in the interests of the debenture-holders.
 2. Where a company fails to redeem the debentures on the date of their maturity or fails to pay interest on the debentures when it is due, the Tribunal may, on the application of any or all of the debenture-holders, or debenture-trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.
 3. If any default is made in complying with the order of the Tribunal under this section, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than two lakh rupees but which may extend to five lakh rupees, or with both.

CHAPTER 1

THE COMPANIES ACT, 2013

UNIT 5: ACCEPTANCE OF DEPOSITS BY COMPANIES

KINDS OF DEPOSIT

ACCEPTANCE OF DEPOSIT FROM MEMBERS (SECTION 73)

- Private or public company can accept deposits from its members
- By passing of a **resolution in general meeting** and subject to certain specified conditions.
- In order to accept deposits from members, the company has to certify, in circular, that it has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits.

ACCEPTANCE OF DEPOSITS FROM THE PUBLIC (SECTION 76)

- Only Eligible company can accept deposits from public
- **Eligible Company: Public company** having Net worth \geq 100 crores
Or
Turnover \geq 500 crores
- **Pass Special Resolution in general meeting**
However, if the proposed deposits from the public together with the existing borrowings of the company do not exceed its net worth (i.e., sum total of paid-up share capital and free reserves). an eligible company may accept deposits by means of an **ordinary resolution.**
- In order to accept deposits from the public, the company has to certify, in circular in the form of an advertisement, that it has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits.
- Further, such company shall obtain the credit rating from a recognized credit rating agency for information the public about such rating at the time of invitation of deposits from the public. The rating shall be obtained for every year during the tenure of deposits

TERMS AND CONDITIONS OF ACCEPTANCE OF DEPOSITS BY COMPANIES [RULES]

| | |
|--|---|
| <p>Periods of Acceptance of Deposits [Rule 3(1)(a)]</p> | <ul style="list-style-type: none"> ➤ No company shall accept or renew any deposit, which is repayable on demand; or on notice; or after a period of less than 6 months or more than 36 months from the date of acceptance or renewal of such deposits, as the case may be. ➤ However a company may, for meeting short-term requirements of funds, accept or renew short-term deposits for repayment earlier than 6 months from the date of deposit or renewal; provided that such deposits do not exceed 10% of the aggregate of the paid-up share capital and free reserves of the company and such deposits are not repayable earlier than 3 months from the date of acceptance or renewal, as the case may be. |
| <p>Ceiling limits for acceptance of Deposits [Rule 3(3), (4)&(5)]</p> | <ul style="list-style-type: none"> ➤ For a Company other than an Eligible Company: It may accept or renew any deposit from its members, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits does not exceed 35% of the aggregate of the paid-up share capital and free reserves of the company. ➤ For an Eligible Company : <ul style="list-style-type: none"> other than a Government Eligible Company, can accept or renew deposits, together with existing deposits, subject to the following ceiling <ul style="list-style-type: none"> • Deposits from Members: 10% of the aggregate of paid-up share capital and free reserves. • Any other Deposits: 25% of the aggregate of paid-up share capital and free reserves. ➤ A Government Eligible Company can accept or renew deposits, together with existing deposits, up to 35% of aggregate of its paid-up capital and free reserves. ➤ Any private company may accept deposits from its members up to 100% of its (Paid up share capital and Free reserves) |
| <p>Ceiling on Rate of Interest and Brokerage [Rule 3(6)] :</p> | <p>No company shall accept/renew deposits at a rate of interest exceeding the maximum rate of interest prescribed by RBI that the NBFCs can pay on their public deposits. Similarly, no company shall pay brokerage at a rate exceeding the maximum rate of brokerage prescribed by RBI that the NBFCs can pay on their public deposits.</p> |
| <p>Credit Rating [Rule 3(8)]</p> | <ul style="list-style-type: none"> ➤ Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3. ➤ The credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified for Non- Banking Financial Companies in the Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998, issued by the Reserve Bank of India, as amended from time to time. |
| <p>Creation of Security [Rule 6] :</p> | <ul style="list-style-type: none"> ➤ Every company inviting secured deposits shall, within 30 days from the date of acceptance, provide for security by way of a charge on its assets, by way of either mortgage or hypothecation only. ➤ It may be noted that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon. |

| | |
|---|---|
| <p>Appointment of Trustee for Depositors, etc. [Rules 7] :</p> | <ul style="list-style-type: none"> ➤ Every company, inviting secured deposits, shall appoint one or more trustees for depositors for creating security for the deposits. ➤ The company shall execute a deposit trust deed in Form DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement. ➤ The duties and functions of depositor trustee shall generally be --- <ul style="list-style-type: none"> (i) To protect the interest of holders of depositors (including creation of securities within the stipulated time); and (ii) To redress the grievances of holders of depositors effectively. ➤ Disqualification: No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee— <ul style="list-style-type: none"> a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company; b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company; c) has any material pecuniary relationship with the company; d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon; e) is related to any person specified above. ➤ No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. |
| <p>Register of Deposits [Rule 14] :</p> | <ul style="list-style-type: none"> ➤ Every company accepting deposits shall keep, at its registered office, one or more registers in which there shall be entered, separately in case of each depositor, the following particulars, namely:- <ul style="list-style-type: none"> (i) Name, address and PAN of the depositor/s; (ii) Particulars of guardian, in case of a minor; (iii) Particulars of the nominee; (iv) Deposit receipt number; (v) Date and the amount of each deposit; (vi) Duration of the deposit and the date on which each deposit is repayable; (vii) Rate of interest or such deposits to be payable to the depositor; (viii) Due date for payment of interest; (ix) Mandate and instructions for payment of interest and for non-deduction of tax at source, if any; (x) Date or dates on which the payment of interest shall be made; (xi) Details of deposit insurance including extent of deposit insurance; (xii) Particulars of security or charge created for repayment of deposits; (xiii) Any other relevant particulars; ➤ The entries specified above shall be made within 7 days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose. ➤ The register or registers must be preserved in good order for a period of not less than 8 calendar years from the financial year in which the |

| | |
|---|---|
| | latest entry is made in the register. |
| Return of Deposits [Rule 16] : | Every company shall file a return of deposits, in Form DPT-3, with the Registrar of Companies on or before 30th June of every year. This return shall contain information as on 31st March and shall be duly certified by the Auditors of the Company. |
| Disclosures in the financial statement [Rule 16A]: | <ul style="list-style-type: none"> ➤ Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director. ➤ Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors. |
| Penal rate of interest [Rule 17]: | A penal rate of interest of 18% per annum shall be paid for the overdue period, in case of public deposits, whether secured or unsecured, matured and claimed but remaining unpaid. |

● **REPAYMENT OF DEPOSITS, ETC, ACCEPTED BEFORE COMMENCEMENT OF THIS ACT [SECTION 74]**

According to section 74 of the Companies Act, 2013,

- (i) Where in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall—
 - a) File, within a period of **3 months** from such commencement or from the date on which such payments, are due, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law; and
 - b) **Repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier.**

Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made there under (As amended as per **Notification dated 3rd Jan, 2018**).

- (ii) The Tribunal may on an application made by the company, after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.
- (iii) **Punishment:** If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal, the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

- **DAMAGES FOR FRAUD [SECTION 75]**
 - Section 75 provides that in case the company fails to pay the deposit or any interest thereon within 3 years from the commencement of the Act or from the date on which such payments becomes due, whichever is earlier, or within such time periods as allowed by the NCLT and it is proved that the deposits had been accepted with intent to defraud the depositors,
Every officer who was responsible for acceptance of such deposits shall be liable without prejudice to the provisions contained under section 74 and liability for fraud under section 447, be personally responsible, without any limitation of liability for all losses or damages incurred by the depositors.
 - For failure to repay the deposits, action may also be taken by any person, group of persons or any association of persons who had incurred any loss as a result such failure.

- **PUNISHMENT FOR CONTRAVENTION OF SECTION 73 OR SECTION 76 [SECTION 76A] (As amended as per Notification dated 3rd Jan, 2018).**
 - Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73:
 - (a) The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine **minimum ₹ 1 Crore or twice the amount of deposit accepted by the company, whichever is lower up to ₹10 Crore** and
 - (b) Every officer of the company who is in default shall be punishable with **imprisonment which may extend to 7 years AND with minimum fine of ₹ 25 lacs and a maximum fine of ₹ 2 crore.**
 - Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

CHAPTER 1

THE COMPANIES ACT, 2013

UNIT 6: REGISTRATION OF CHARGES

• DEFINITION OF CHARGE

A charge is a security, given for securing loans or debentures. The security may be provided either by way of mortgage, hypothecation or pledge.

Thus, charge is a general concept and it covers each and every mode of creating the security on the assets of a company, for the purpose of securing the repayment of any debt due by a company.

KINDS OF CHARGE

Fixed or Specific Charge

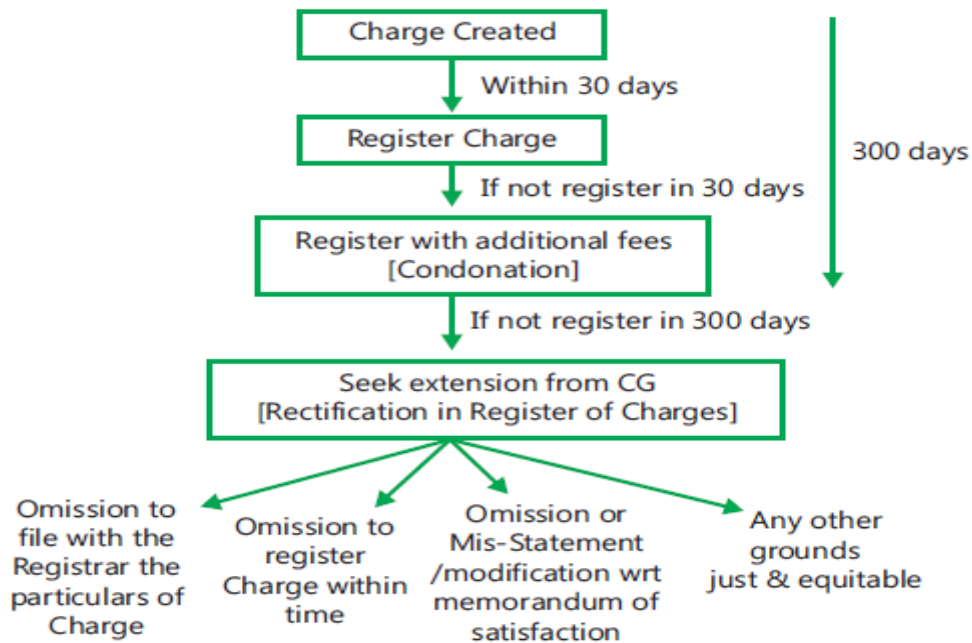
- A charge is fixed or specific when it is made specifically to cover assets, which are ascertained and definite or are capable of being ascertained and defined, at the time of creating charge e.g., land, buildings, or heavy machinery.
- A fixed charge is against security of certain specific property.
- The company loses the right-to dispose off that property as unencumbered.

Floating Charge

- A floating charge is a charge on a class of assets present and future, which in the ordinary course of business is changing from time to time.
- A floating charge is not attached to any definite property but covers property of a fluctuating type e.g. stock - in - trade, debtors, etc. and is thus necessarily equitable.
- The company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security.

• FILING OF PARTICULARS OF CREATION OF CHARGE [SECTION 77]

- Section 77 of the Companies Act, 2013 provides that a Company shall file, the particulars of every charge created, with the ROC, **within a period of 30 days** from the date of creation of charge on its properties, within or outside India.
- The particulars of charge shall be filed in Form No. CHG.1, together with the instrument, if any, creating, evidencing, etc. the charge. If the charge relates to debentures, the particulars of charge shall be filed in Form No. CHG.9.
- The Registrar, after registering the charge, shall issue certificate of registration.
- The **ROC has power to grant extension of time for registration of charge, for a period not exceeding 300 days from the date of creation of charge**, on the payment of prescribed additional fees.
- The **power to grant extension of time for registration of charges, beyond the period of 300 days, vests in the Central Government u/s 87.**
- It may be noted that a charge created orally would also require registration. The registration of a charge with the ROC itself would show that the charge is created even if no instrument is created. A Board resolution can also be taken to be the fact of creation of a charge.
- This section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India.



• **APPLICATION FOR REGISTRATION OF CHARGE [SECTION 78]**

Where a company fails to register the charge, the person in whose favour the charge is created may apply to the Registrar for registration and the Registrar may, on such application, within a period of 14 days after giving notice to the company, unless the company itself registers the charge or shows sufficient cause why such charge should not be registered, allow such registration.

➤ **Consequences of Non – Registration :**

If a charge, which requires registration under Section 77, is not registered, the consequences are as follows:-

- (a) An unregistered charge is not void from its inception and would be enforceable against the company so long it is a going concern.
- (b) During liquidation, a creditor with an unregistered charge assumes the status of an unsecured creditor.
- (c) Although, the security becomes void by non - registration but it does not affect the contract or obligation of the company to repay the money thereby secured.
- (d) The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

[Section 86]

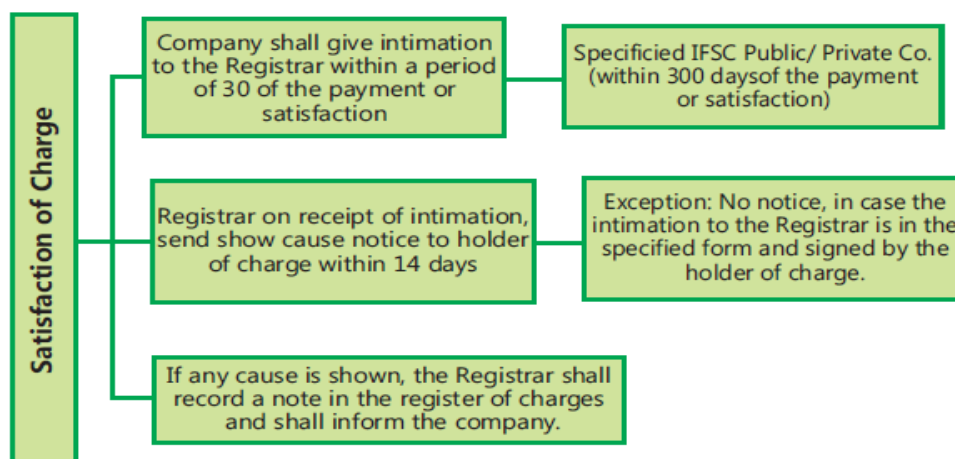
• **REGISTRAR'S REGISTER OF CHARGES [SECTION 81]**

Section 81 requires ROC to keep a register of charges in respect of each company and register therein the full particulars relating to charges created by the Company. This register is open to inspection to any person on payment of prescribed fess.

It may be noted that the particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges for the purposes of section 81 of the Act.

• **SATISFACTION OF CHARGES [SECTION 82]**

- Section 82 requires that on payment or satisfaction of charge, in full, relating to a Company, the Company shall give intimation to ROC, **within a period of 30 days** from the date of such payment or satisfaction. The 'particulars of satisfaction of charge shall be filed in Form No. CHG.4, **together with 'no dues letter'** issued by the creditor.
- Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of **300 days** of such payment or satisfaction on payment of such additional fees as may be prescribed. **(Amended as per notification dated 3rd Jan, 2018).**



• **COMPANY'S REGISTER OF CHARGES [SECTION 85]**

- Every company is required to keep at its registered office, a register in Form No. CHG.7 containing the particulars of all charge created, modified and satisfied. Further, every company must keep at its registered office a copy of every instrument creating/modifying/satisfying any charge.
- Inspection of the Register of charges and of the instruments creating/modifying/satisfying charges can be allowed only during the business hours to any member or creditor of the Company without any fees and to any other person on payment of prescribed fees.
- **According to the rules related to the Company's register of charges-**
 - (1) every company shall keep at its registered office a register of charges and enter therein particulars of all the charges registered with the Registrar on any of the property, assets or undertaking of the company and the particulars of any property acquired subject to a charge as well as particulars of any modification of a charge and satisfaction of charge.
 - (2) The entries in the register of charges maintained by the company shall be made forthwith after the creation, modification or satisfaction of charge, as the case may be.
 - (3) Entries in the register shall be authenticated by a director or the secretary of the company or any other person authorised by the Board for the purpose.
 - (4) The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall be preserved for a period of **eight years** from the date of satisfaction of charge by the company.

- **RECTIFICATION OF THE REGISTER OF CHARGES MAINTAINED BY THE ROC [SECTION 87]**
 - **Under Section 87 of the Companies Act, 2013, the Central Government (Power delegated to RD) has powers to grant extension of time for filing particulars of any charge; or any modification thereof; or for giving of any intimation about the payment or satisfaction of charge, if the Central Government is satisfied: -**
 - (a) That the omission to do so within the prescribed time: -
 - (i) is accidental; or
 - (ii) is due to inadvertence; or
 - (iii) is not of a nature, as to prejudice the position of creditors I shareholders,
 - (b) That it is just and equitable to grant relief on other grounds.
 - **For this purpose, an application shall be made to the Central Government in Form No. CHG.8, along with the following documents : -**
 1. Copy of the agreement creating I modifying the charge/ no dues letter, as the case may be.
 2. Copy of the resolutions passed for borrowing the funds by the company and creation of security thereof.
 3. Affidavit verifying the petition.
 4. Memorandum of appearance with copy of Board resolution, authorizing any one of the Directors or Company Secretary of the Company, to appear before the Central Government (RD), as the case may be.

CHAPTER 1

THE COMPANIES ACT, 2013

UNIT 7: MANAGEMENT AND ADMINISTRATION

➤ **Register of members [Section 88]:**

| | |
|---------------|---|
| Rule 3 | <p>Particular in register of members: Every company limited by shares, shall, from the date of its registration, maintain a register of its members in Form MGT – 1.</p> <p>In case of a company not limited by shares, the register shall contain the following particulars, in respect of each member–</p> <ol style="list-style-type: none"> 1. Name of the member, address (registered office address in case the member is a body corporate); email address; Permanent Account Number or Corporate Identity Number ('CIN'); Nationality; in case member is a minor – name of his guardian and the date of birth of the member, name and address of the nominee; 2. Date of becoming the member; 3. Date of cessation; 4. Amount of guarantee, if any; 5. Any other interest, if any; and o Instructions, if any, given by the member with regard to sending of notices, etc. |
| Rule 4 | <p>Particular in register of debenture holder/any other security holder: Every company which issues or allots debentures or any other security shall maintain a separate register for debenture holder or security holder in Form– MGT–2.</p> |
| Rule 5 | <ol style="list-style-type: none"> 1. Time period for entries in register: As per <i>Rule 5</i>, entries have to be made in the Register within 7 days of the date of approval by the Board or Committee thereof by approving the allotment or transfer as the case may be. 2. Place where register shall be maintained: <i>Rule 5</i> also states that the registers shall be maintained at the registered office of the company unless a special resolution is passed in a general meeting authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than 1/10th of the total members entered in the register of members reside. 3. Other information also to be referred in register: Any order passed by the authority attaching the shares or relating to dividends is also required to be referred in the register of members. Hypothecation and pledge of shares is also required to be entered in the register of members. 4. Updating of rewards of members: <i>Rule 5</i> also states that the changes relating to the status of the member should be effectively captured and updated accordingly in the relevant register. If any change occur in the status of a member or debenture-holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries shall be made in the respective registers. |
| Rule 6 | <p>Index of names: The maintenance of index is not necessary where the number of members is less than 50. It also states that the company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.</p> <p>Register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.</p> |

| | |
|---------------|---|
| Rule 7 | <p>Foreign Register: A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register, called foreign register containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India</p> <p>The company shall –</p> <ol style="list-style-type: none"> 1. Transmit to its registered office in India, a copy of every entry in any foreign register within 15 days after the entry is made; and 2. Keep at such office a duplicate register for all the purposes of this Act, be deemed to part of the principal register. |
|---------------|---|

| | |
|---|--|
| Power to close register of members or debenture-holders or other security holders [Section 91] | <p>Company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time, subject to giving of previous notice of at least 7 days.</p> |
| Annual return [Section 92] | <p>✓ Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—</p> <ol style="list-style-type: none"> a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; b) its shares, debentures and other securities and shareholding pattern; c) its indebtedness; d) its members and debenture-holders along with changes therein since the close of the previous financial year; e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; f) meetings of members or a class thereof, Board and its various committees along with attendance details; g) remuneration of directors and key managerial personnel; h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment; i) matters relating to certification of compliances, disclosures as may be prescribed; <p>such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.</p> <p>✓ The Central Government may prescribe abridged form of annual return for "One Person Company, small company and such other class or classes of companies as may be prescribed</p> <p>✓ Every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held together with the statement</p> |

| | |
|--|---|
| | <p>specifying the reasons for not holding the annual general meeting, with such fees</p> <p>✓ Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.</p> |
| Section 93 | Omitted as per Notification dated 3rd Jan,2018 |
| Place of keeping and inspection of registers, returns, etc [Section 94] | <p>✓ The registers required be keeping and maintaining by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.</p> <p>Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.</p> <p>✓ The copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees.</p> <p>✓ Any such member, debenture-holder, other security holder or beneficial owner or any other person may—</p> <p>(a) Take extracts from any register, or index or return without payment of any fee; or</p> <p>(b) Require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.</p> |
| Preservation of register of members etc. and annual return— (Rule 15) | <p>✓ Preservation of register of members: Rule 15 states that the register of members along with the index shall be preserved permanently.</p> <p>✓ Preservation of register of debenture holders/ other security holders: The register of debenture-holder or any other security holder along with the index shall be preserved for a period of 8 years.</p> <p>✓ Copies of documents filled with ROC to be preserved: for a period of 8 years from the date of filing with the RoC.</p> <p>✓ Preservation of foreign register: Shall be preserved permanently</p> |
| Registers, etc., to be evidence [Section 95] | The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be <i>prima facie</i> evidence of any matter directed or authorised to be inserted therein by or under this Act |

PART B: MEETINGS

ANNUAL GENERAL MEETING (AGM) [SECTIONS 96, 97, 99 & 121]

Introduction:

- ♦ Every company, *other than One Person Company (OPC)*, shall, in each year hold (in addition to any other meetings) a general meeting as its Annual General Meeting.
- ♦ According to General Clauses Act, 1897, a 'year' means a period of 12 months running from 1st January to 31st December. Thus, holding of an Annual General Meeting, in every calendar year is a statutory requirement.
- ♦ The proper authority to call Annual General Meeting is the Board of Directors.

PERIOD OF HOLDING AN ANNUAL GENERAL MEETING

First Annual General Meeting

- ♦ The first annual general meeting shall be held within a period of **9 months from the closing of first financial year**.
- ♦ If a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
- ♦ **No extension by authority possible**

Subsequent Annual General Meeting

- ♦ The subsequent annual general meeting shall be held within a period of **15 months from the last AGM**.
- ♦ Subsequent annual general meeting shall be held within a period of six months of closure of relevant financial year.
- ♦ Such meeting should be conducted every calendar year.
- ♦ The Registrar may, for any special reason shown, grant an **extension of time** for holding the subsequent AGM **up to 3 months**.

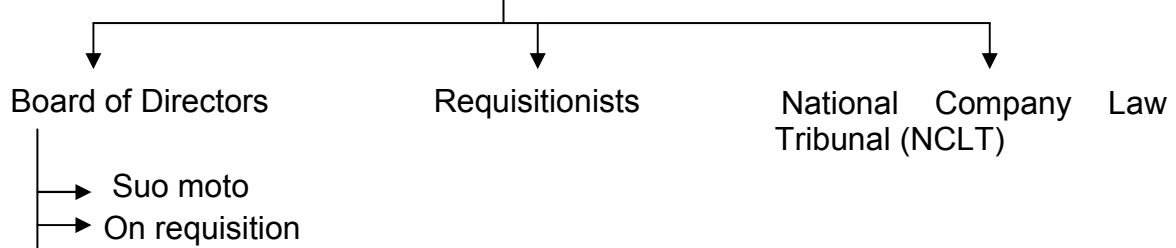
- ⊙ Department of Company Affairs has clarified that while granting the extension, ROC can ignore the requirement of holding an AGM in every calendar year. However in such a case, AGM held in the next year shall be deemed to be the AGM of the previous year and for the next year, one more AGM will be required to be held.

Business transacted at an Annual General Meeting:

- ♦ Both Ordinary Business and Special Business can be transacted at an Annual General Meeting.
- ♦ Following matters are related with the Ordinary Business :-
 - (a) The consideration of the accounts, balance sheet and the reports of the Board of Directors and Auditors;
 - (b) The declaration of dividend;
 - (c) The appointment of directors in the places of those retiring; and
 - (d) The appointment of and the fixing of remuneration of, the auditors.

- ♦ Any business other than the above mentioned business, which can be transacted at an Annual General Meeting, shall be deemed to be Special Business. It may be noted that in the case of Extra-ordinary General Meeting (EGM), all businesses are special businesses. [Section 102]
- **Day for holding an Annual General Meeting:**
 - ♦ Every Annual General Meeting shall be called on a day, which is not a National Holiday. 'National Holiday' means and includes a day declared as National Holiday by the Central Government.
 - ♦ Where the Central Government declares a day to be a National Holiday, after the company has issued the notice convening the meeting, it shall not be deemed to be a national holiday in relation to that meeting.
 - ♦ It may be noted that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.
- **Time for holding an Annual General Meeting:**
 - ♦ Every Annual General Meeting shall be called at a time during the business hours i.e., between 9 a.m. and 6 p.m. It may be noted that Annual General Meeting convened during business hours may continue even after business hours.
 - ♦ It may be noted that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.
- **Place for holding all Annual General Meeting :**
 - ♦ Every Annual General Meeting shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated.
 - ♦ Annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. **(Amended as per notification dated 3rd Jan,2018)**
 - ♦ It may be noted that the Central Government may exempt any company from the aforesaid provisions subject to such conditions as it may impose.
- **EXTRA-ORDINARY GENERAL MEETING [EGM] [SECTIONS 98 & 100]**
 - **Introduction:**
 - ♦ Sometimes, matters requiring immediate consideration by members may crop up whose consideration cannot be deferred till the next Annual General Meeting.
 - ♦ To meet such emergencies, the companies can provide for holding of emergency meetings of the members, which are known as Extra-ordinary General Meetings. Regulation 42 of Table F provides that all general meetings, other than annual general meetings, shall be called as extra-ordinary general meetings. All business which can be transacted at an E.G.M. shall be deemed special.

➤ **Who may call Extraordinary General Meeting:**



➤ **Calling of E.G.M. by Board of Directors [Section 100(1) and Regulation 43(i) of Table F]:** The Board of Directors may, whenever it thinks fit, call an extra-ordinary general meeting. For this purpose, a resolution of the Board is required.

Subject to the provisions in the articles, any general meeting of the company can be called only on the authority of a Board resolution. If the managing director, manager, secretary or other officer calls a meeting without the authority of the Board of Directors, it will not be effectual unless the Board ratifies the convening of the general meeting before it is held.

➤ **Calling of E.G.M. on requisition [Section 100]:** The demand of members to convene a meeting is called requisition. The requisition must be in plenty. It shall set out the matters for the consideration of which the meeting is to be called. It shall be signed by the requisitionists. It must be deposited at the registered office of the company.

The number of members entitled to requisition a meeting in regard to any matter shall be:

(a) In the case of a company having a share capital, members **holding at least one-tenth of such paid - up capital** of the company which carries a right of voting in regard to that matter;

(b) In the case of a company not having a share capital, members holding at least one-tenth of total voting power of all the members who have a right to vote in regard to that matter.

The Board of Directors shall, on receipt of requisition, immediately **proceed to call E.G.M. within 21 days from the date of the deposit of requisition, on a date, which shall not be later than 45 days of the date of deposit of requisition.** The BOD shall be said to have failed in calling the meeting if:

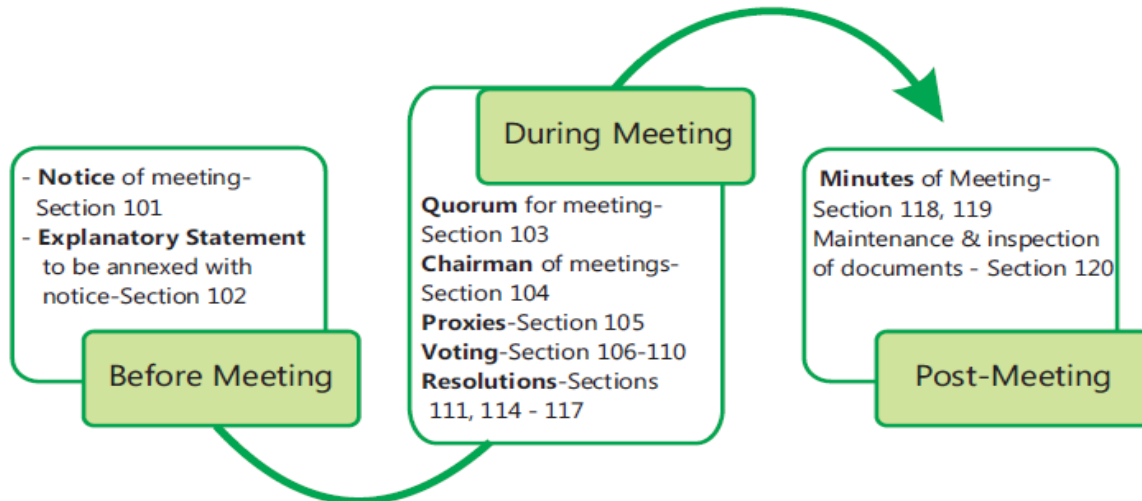
- (i) it does not call the meeting within 21 days of the deposit of requisition;
- (ii) it calls the meeting on a day which is later than 45 days from the date of deposit of requisition; or
- (iii) it convenes a meeting to transact only a part of the business specified in the requisition.

(c) Where the Board fails to call a meeting, the meeting may be called by the **requisitionists themselves within a period of three months from the date of the deposit of requisition.** A meeting under called by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.

Here, requisitionists shall convene the meeting at the Registered Office of the Company or at some other place within the city, town or village in which the registered office of the company is situated. Further, the **EGM shall be held on a working day.**

Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration payable to such of the directors who were in default in calling the meeting.

• **PROCEDURE FOR CONVENING AND CONDUCT OF GENERAL MEETINGS**



• **NOTICE OF MEETING [SECTIONS 101 & 102]**

➤ **Meaning :**

The term 'notice' is derived from the Latin word 'Notitia' this means 'knowledge'. A meeting cannot be validly held unless a proper notice of it has been given. Three things in connection with the notice have to be considered namely:-

- (a) Length of notice;
- (b) Contents of notice; and
- (c) To whom it must be given

➤ **Length of Notice [Section 101(1)]:**

- ♦ A general meeting of a company can be called by giving not less than 21 days' notice either in writing or through electronic mode in such manner as may be prescribed. However, a company may, by its Articles, provide a period longer than 21 days for convening a meeting. It must be noted that 21 days imply **21 clear days i.e., 21 days excluding the day of the service of notice and the day on which the meeting is to be held.**
- ♦ **For companies covered under section 8,** general meeting of a company can be called by giving not **less than 14 clear days notice.**
- ♦ If the notice is sent through post then service of notice shall be deemed to have been effected in the case of notice of meeting on the **expiry of 48 hours** since the posting of the same.
- ♦ It may be noted that a general meeting may be called up by giving a notice shorter than 21 days, if consent is accorded thereto in writing or by electronic mode, by **not less than 95% of the members** entitled to vote at such meeting. The consent of the members may be obtained either at the meeting or before the meeting.
- ♦ The expression "electronic mode" shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

• **QUORUM OF GENERAL MEETING [SECTION 103]**

➤ **Meaning :**

- ♦ Quorum is the minimum no. of members required to be present at a general meeting of the company to validly transact any business. Quorum is the minimum number of members of a company where presence is necessary for the transaction of business.
- ♦ Generally, preference shareholders are not counted in quorum, unless there is some matter affecting their rights.
- ♦ In the case of joint shareholders, only one shareholder, as per the order in which their name appears in the Register of Members, shall be counted towards quorum
- ♦ Proxies are not counted in quorum as section provides for personal presence of members.

➤ **Provisions:**

♦ **In case of public company:**

| Number of members as on date of meeting | Quorum for meeting |
|---|-------------------------------|
| Up to 1000 | 5 members personally present |
| > 1000 but ≤ 5000 | 15 members personally present |
| > 5000 | 30 members personally present |

- ♦ In the case of a **private company**, **2 members** personally present, shall be the quorum for a meeting of the company.
- ♦ The **representative of a company**, if it holds shares in another company, shall be **deemed to be a member** of the company for all practical purposes under **Section 113** of the Companies Act, 2013.
- ♦ Similarly, the **representative of the President or the Governor of a State, if they hold shares in a company, shall be deemed to be member** of the company for all practical purposes under **Section 112** of the Companies Act.

➤ **Consequences of absence of quorum [Section 103(2)]:**

- ♦ If the quorum is not present within **half-an-hour** from the time appointed for holding a meeting of the company—
 - a. the meeting shall stand adjourned to the same day in the next week at the same time and place, or
 - b. to such other date and such other time and place as the Board may determine; or
 - c. The meeting, if called by requisitionists (under section 100), shall stand cancelled.

➤ **In case of adjournment, notice is required to be given to the members:**

- ♦ Where there is adjournment or of change of day, time and place of meeting, the company is required to give **not less than three days' notice** to the members either **individually or by publishing and advertisement in the newspapers (one in English and one in vernacular language)** which is in circulation at the place where the registered office of the company is situated.
- ♦ Section 103(3) lays down that if at the adjourned meeting also, quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall constitute quorum.
- ♦ Any resolution passed without a quorum is invalid. In fact, if no quorum is present there is no meeting and the proceedings are invalid. But if all the members of a company are present in person the proceedings will be valid even if the quorum required is more than the total number of shareholders.

- **CHAIRMAN OF MEETING [SECTION 104]**
 - One of the essentials of a valid meeting is that it must have a presiding officer endowed with authority to conduct its affairs in an orderly fashion. A Chairman derives his authority from the assembly over which he presides.
 - The provisions of the articles in respect of appointment of chairman are to be followed in preference; to the provisions of Section 104.
 - Appointment of Chairman under Articles**
 - Regulation 45 of Table F:** It provides that the Chairman, if any, of the Board shall preside as Chairman at every general meeting of the company.
 - Regulation 46 of Table F:** If there is no Chairman or he is not present within 15 minutes after the appointed time of the meeting or is unwilling to act as Chairman of the meeting, the directors present shall elect one among themselves to be chairman of the meeting.
 - Regulation 47 of Table F:** If at any meeting, no director is willing to act as chairman or if no director is present within 15 minutes after the appointed time of the meeting, the members present should choose one among themselves to be chairman of the meeting.
 - **Appointment under section 104:** If the articles of association of a company do not contain any provision for the appointment of chairman, such appointments shall be made by the **members personally present at the meeting who shall elect one of themselves to be the chairman thereof on a show of hands.** If a poll is demanded on the election of the Chairman, it shall be taken immediately. If some other person is elected as a result of poll, he shall be the Chairman for the rest of the meeting.
 - **Appointment of Chairman by National Company Law Tribunal:** Where the NCLT under Section 97 or Section 98 directs the calling of general meeting of a company, it may give directions regarding its calling, holding and conducting. It may appoint any person as its Chairman.
 - **Casting Vote of Chairman:** In the case of an equality of votes on a matter requiring ordinary resolution, the Chairman of general meeting shall be entitled to a second or casting vote. It is a right of chairman to cast such vote and not his duty. Chairman may cast such vote different from the original one. It may be noted this provision can be used by a company only if the AOA of a company so provides.
- **PROXIES [SECTION 105]**
 - **Meaning:** The word "proxy" has two different meanings.
 - ◆ Firstly, it means the agent appointed by the member of a company to attend and vote on his behalf at a meeting of members.
 - ◆ Secondly, it means the document by which such an agent is appointed.
 - ◆ The relation between the member appointing proxy and the proxy so appointed is that of principal and agent and thus this relationship is governed by the relevant provisions of Indian Contract Act, 1872.
 - **Who has right to appoint proxy:**
 - ◆ In the case of a company having a share capital **every member of the company who is entitled to attend and vote at the meeting can appoint a proxy.**

- ♦ In the case of a company not having a share capital, this right is available only if the articles make a specific provision for it. **A proxy need not to be member of the company.** Generally, the preference shareholders are not entitled to appoint a proxy as they are not entitled to vote at the meeting. It may be noted that a member of a company registered under section 8 (Non-Profit Company) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.
- **Person acting as a proxy:**
A person can act as proxy on **behalf of members not exceeding 50 and holding in the aggregate not more than ten percent of the total share capital of the company carrying voting rights.** A member holding more than ten percent, of the total share capital of the Company carrying voting rights may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder.
- **VOTING [SECTION 106-109]**
 - **Methods**
 1. Voting by show of hands – **(Section 107);**
 2. Voting by electronic means – **(Section 108);**
 3. Voting by demand of poll – **(Section 109);**
 4. Voting by Postal Ballot – **(Section 110).**
 - **Restriction on voting rights [Section 106]:**
A company shall not prohibit any member from exercising his voting right on any ground except:
 1. Any calls or other sums presently payable by him have not been paid, or
 2. In regard to which the company has exercised any right of lien.
 - **Show of Hands [Section 107]:**
 - ♦ Here, 1 member = 1 vote
 - ♦ The method of voting by show of hands shall be adopted first for deciding the fate of motion. It may be noted that proxies are not allowed to vote on a show of hands.
 - ♦ After counting the votes in favour and against the resolution, the Chairman may declare that on show of hands, it has been carried on or it has been lost. A declaration by the Chairman of the resolution of the voting by show of hands and an entry to this effect in the minute's book of the proceedings of the meeting shall be a conclusive evidence of such a declaration.
 - **Voting through Electronic Means [Section 108]:**
 - ♦ This new concept of e-voting is a method of voting via electronic means. The Central Government has prescribed that every listed company or a company having **≥ 1000 shareholders**, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.
 - ♦ The expressions "voting by electronic means" or "electronic voting system" means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.

- ♦ **Procedure-** A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure, namely:-
 - (i) Notice of meeting- The notice of the meeting shall be sent to all the members, directors and auditors of the company either-
 - (a) by registered post or speed post; or
 - (b) through electronic means, namely, registered e-mail ID of the recipient; or
 - (c) by courier service;
 - (ii) The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
 - (iii) The notice of the meeting shall clearly state -
 - (a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
 - (b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
 - (c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be **entitled to cast their vote again;**
 - (iv) The notice shall -
 - (a) indicate the process and manner for voting by electronic means;
 - (b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
 - (c) provide the details about the login ID;
 - (d) Specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.
 - (v) The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting.

➤ **Demand for Poll [Section 109] :**

- ♦ A poll can be ordered at any time before or after the declaration of the result on the voting of any resolution by show of hands.
- ♦ Here, 1 share = 1 vote
- ♦ A poll can be demanded by any of the following persons :-
 - (i) Chairman himself;
 - (ii) Members and proxies.
- ♦ The Chairman shall order a poll to be taken, if any demand is made in this behalf:-
 - (a) In the case of a company having a share capital, by any member or members present in person or by proxy and holding shares in the company:
 - (i) Which confer a power to vote on the resolution $\geq 1/10^{\text{th}}$ of the total voting power in respect of the resolution; or
 - (ii) On which an aggregate sum of $\geq \text{₹ } 5,00,000$ has been paid up;

- (b) in the case of any other company, by any member or members present in person or by proxy and having $\geq 1/10^{\text{th}}$ of the total voting power in respect of the resolution.
 - ♦ The demand for a poll may be withdrawn at any time by the person or persons who made the demand.
 - ♦ **Time of taking poll:** A poll demanded on the question of adjournment of the meeting and on the election of Chairman under Section 104 must be taken immediately. A poll demanded on any other question shall be taken at any time within 48 hours of the time of making a demand.
- **Passing of resolution by Postal Ballot [section 110]**
 - **Introduction:**
 - ✓ 'Postal Ballot' means voting by post or through any electronic mode.
 - ✓ The concept of postal ballot is a welcome step. Usually, at an AGM, attendance is by a few hundred members. The AGM of some companies are held in remote places, where the registered offices of such companies are situated. This makes it inconvenient for the members to attend in large number. Further, members do not evince much interest in attending EGM.
 - ✓ The postal ballot brings the voting at the doorsteps of members. Hence, a very large number of members can conveniently participate in voting on the resolutions of the company.
 - **Provisions :**
 - ✓ Transaction of business through postal ballot: According to section 110, the following items of business shall be transacted only by means of voting through a postal ballot-
 - (a) **alteration of the objects clause of the memorandum** and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
 - (b) **alteration of articles of association** in relation to insertion or removal of provisions which, under section 2(68), are required to be included in the articles of a company in order to constitute it a private company;
 - (c) **change in place of registered office outside the local limits** of any city, town or village as specified in section 12(5);
 - (d) **change in objects for which a company has raised money from public through prospectus** and still has any unutilized amount out of the money so raised under section 13(8);
 - (e) **issue of shares with differential rights** as to voting or dividend or otherwise under section 43;
 - (f) **variation in the rights attached to a class of shares or debentures** or other securities as specified under section 48;
 - (g) buy-back of shares by a company under section 68;
 - (h) election of a director under section 151 of the Act;
 - (i) **Sale of the whole or substantially the whole of an undertaking** of a company as specified under section 180;
 - (j) **giving loans or extending guarantee or providing security in excess of the limit specified under section 186:**
 - ✓ It is mandatory for a company to pass resolution by postal ballot in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of

postal ballot. It is, however, discretionary for a company to pass any resolution by way of postal ballot other than -

- (i) Ordinary business items; and
 - (ii) Any business in respect of which directors or auditors have a right to be heard at any meeting.
- ✓ **It may be noted that One Person Company (OPC) and other companies having members up to 200 are not required to transact any business through postal ballot.**

- **MINUTES OF PROCEEDINGS OF MEETINGS [SECTIONS 118 & 119]**

- **Important Provisions [Section 118]:**

- ♦ The minutes are a record of business transacted at meetings. Every company must keep minutes containing a fair and correct summary of all proceedings of general meetings (including the resolutions passed by postal ballot) and those of Board meetings or those of meetings of Committee of the Board or meeting of the Creditors, in books kept for that purpose.
- ♦ The minutes books must have their pages consecutively numbered, and the minutes must be recorded therein **within 30 days of the meeting**, along with the date of such recording. They have to be written directly on the numbered pages. Pasting or attaching of papers is not allowed.

CHAPTER 1

THE COMPANIES ACT, 2013

UNIT 8: DECLARATION AND PAYMENT OF DIVIDEND

- MEANING AND TYPES**

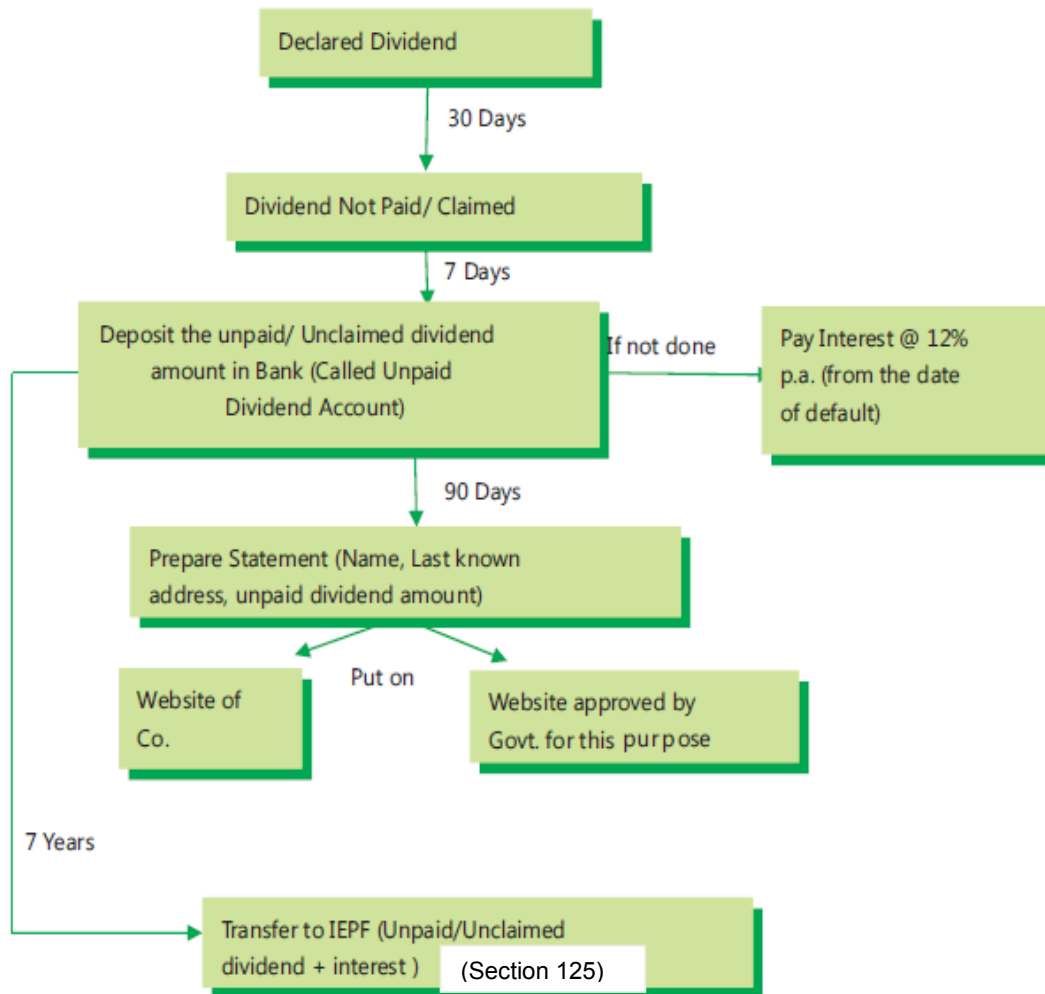
| | |
|----------------|--|
| Meaning | A dividend is a payment made by a company to its shareholders, usually as a distribution of profits i.e. a portion of profits earned and allocated as payable to the shareholders yearly or whenever declared. Section 2(35) of the Companies Act, 2013, simply states that “dividend” includes any interim dividend. |
| Types | <p>I. Dividend payable on the basis of Time (When declared)</p> <ol style="list-style-type: none"> 1. Interim Dividend: When the Board of Directors declare dividend between two annual general meetings of the company, such dividend is known as Interim dividend. 2. Final Dividend: When the dividend is declared at the annual general meeting of the company, it is known as Final dividend. All the provisions applicable on dividend are also applicable on interim dividend. <p>II. Dividend payable on the basis of Nature of shares</p> <ol style="list-style-type: none"> 1. Equity Shares – as per the dividend policy of the company and availability of profits. 2. Preference shares <ol style="list-style-type: none"> a) Cumulative Preference shares b) Non – Cumulative Preference Shares |

• **DECLARATION OF DIVIDEND [SECTION 123]**

| | |
|---|--|
| <p>Dividend shall be declared or paid by a company for any financial year —</p> | <p>(a) Out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of section 123(2), Or (b) Out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, Or (c) Out of both (a) and (b); Or (d) Out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government. ● Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded (Amended as per Notification dated 3rd Jan,2018)</p> |
| <p>Transfer to reserves</p> | <p>A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the free reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company.</p> |
| <p>Declaration of dividend from free reserves</p> | <p>Dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend.</p> |
| <p>Declaration of dividend out of accumulated profits :</p> | <p>Where a company, owing to inadequacy or absence of profits in any financial year, proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall be made only in accordance with following prescribed rules. Exemption: The above shall not apply to a Government Company.</p> |
| <p>Declaration of dividend by set off of previous losses and depreciation against the profit of the company for the current year</p> | <p>Company shall not declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year. The following conditions shall be fulfilled before declaring dividend out of reserves: (a) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year However, this rule will not apply if a company has not declared any dividend in each of the 3 preceding financial years. (b) The total amount to be drawn from such accumulated profits</p> |

| | |
|--|---|
| | <p>shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.</p> <p>(c) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.</p> <p>(d) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.</p> |
| <p>Depositing of amount of dividend</p> | <p>The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend.</p> <p>This sub-section shall not apply to a Government Company</p> |
| <p>Payment of dividend</p> | <div style="text-align: center;"> <p>Payment of dividend</p> <pre> graph TD Root[Payment of dividend] --> PayableIn[Payable in] Root --> PayableTo[Payable to] Root --> NidhiCo[Nidhi Co.] PayableIn --> Cash[Cash] PayableIn --> Cheque[cheque] PayableIn --> Warrant[warrant] PayableIn --> Electronic[any electronic mode] PayableTo --> Shareholder[the registered shareholder of the share, or] PayableTo --> Order[to his order, or] PayableTo --> Banker[to his banker] NidhiCo --- Note[any dividend payable in cash may be paid by crediting the same to the account of the member, if the dividend is not claimed within 30 days from the date of declaration of the dividend.] </pre> </div> |
| <p>Prohibition on declaration of dividend</p> | <p>A company which fails to comply with the provisions of section 73 (Prohibition on acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.</p> |
| <p>Prohibition on section 8 companies</p> | <p>Companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.) of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the company.</p> |

• **UNPAID DIVIDEND ACCOUNT [SECTION 124]**



• **INVESTOR EDUCATION AND PROTECTION FUND [SECTION 125]**

The Central Government shall establish a Fund to be called the Investor Education and Protection Fund (herein referred to as the Fund).

• There shall be credited to the Fund—

- (a) The amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;
- (b) Donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) The amount in the Unpaid Dividend Account of companies transferred to the Fund under sub-section (5) of section 124;
- (d) The amount in the general revenue account of the Central Government which had been transferred to that account under sub-section (5) of section 205A of the Companies Act, 1956 (1 of 1956), as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 (21 of 1999), and remaining unpaid or unclaimed on the commencement of this Act;
- (e) The amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;

- (f) The interest or other income received out of investments made from the Fund;
- (g) The amount received under sub-section (4) of section 38;
- (h) The application money received by companies for allotment of any securities and due for refund;
- (i) Matured deposits with companies other than banking companies;
- (j) Matured debentures with companies;
- (k) Interest accrued on the amounts referred to in clauses (h) to (j);
- (l) Sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) Redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) Such other amount as may be prescribed:

Provided that no such amount referred to in clauses (h) to (j) shall form part of the Fund unless such amount has remained unclaimed and unpaid for a period of seven years from the date it became due for payment.

• **The Fund shall be utilised for—**

- (a) The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- (b) Promotion of investors' education, awareness and protection;
- (c) Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement (The disgorged amount refers to the amount received through disgorgement or disposal of securities);
- (d) Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and
- (e) Any other purpose incidental thereto, in accordance with such rules as may be prescribed:
 - ♦ Provided that the person whose amounts referred to in clauses (a) to (d) of sub-section (2) of section 205C transferred to Investor Education and Protection Fund, after the expiry of the period of seven years as per provisions of the Companies Act, 1956 (1 of 1956), shall be entitled to get refund out of the fund in respect of such claims in accordance with rules made under this section.

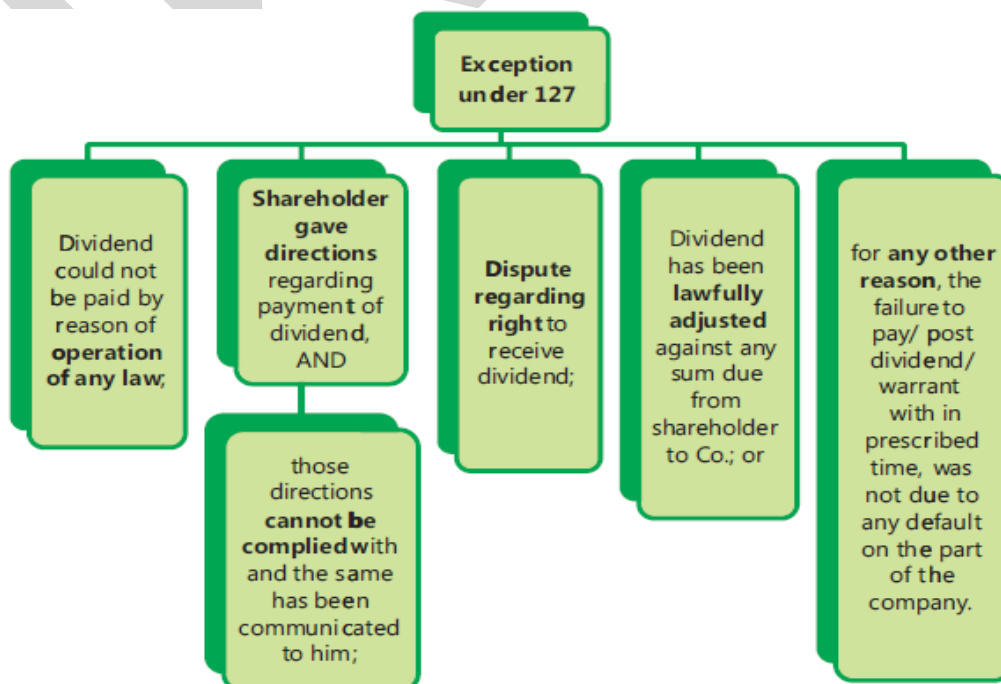
➤ **Constitution of IEPF**

- The Central Government shall constitute, by notification, an authority for administration of the Fund consisting of a chairperson and such other members, not exceeding seven and a chief executive officer, as the Central Government may appoint.
- The manner of administration of the Fund, appointment of chairperson, members and chief executive officer, holding of meetings of the authority shall be in accordance with such rules as may be prescribed.
- The Central Government may provide to the authority such offices, officers, employees and other resources in accordance with such rules as may be prescribed.

- The authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India.
- It shall be competent for the authority constituted to spend money out of the Fund for carrying out the objects specified above.
- The accounts of the Fund shall be **audited by the Comptroller and Auditor-General of India** at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually by the authority to the Central Government.
- The authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.

PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS [SECTION 127]

- Where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within **30 days from the date of declaration** to any shareholder entitled to the payment of the dividend, every **director** of the company shall, if he is knowingly a party to the default, be punishable with **imprisonment which may extend to two years** and with **fine which shall not be less than one thousand rupees for every day** during which such default continues and the **company** shall be liable to pay simple **interest at the rate of 18 % p.a.** during the period for which such default continues.



CHAPTER 1
THE COMPANIES ACT, 2013

UNIT 9: ACCOUNTS OF COMPANIES

• **BOOKS OF ACCOUNT, ETC., TO BE KEPT BY COMPANY**
[SECTION 128]

| | |
|--|--|
| General requirement | <ul style="list-style-type: none"> ✓ Every company shall prepare “books of account” and other relevant books and papers and financial statement for every financial year. ✓ These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of accounts must be kept on accrual basis and according to the double entry system of accounting. ✓ Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid. ✓ Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt and credit and therefore, needs to be recorded in at least two accounts. ✓ Company have the option of keeping such books of account or other relevant papers in electronic mode. |
| Definitions | <ul style="list-style-type: none"> ✓ “Books of account” as defined in Section 2(13) includes records maintained in respect of— <ul style="list-style-type: none"> (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) All sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) The items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section. ✓ “Book and paper” and “book or paper” as defined in Section 2(12) include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form; |
| Place of Keeping Books of Account | <ul style="list-style-type: none"> ✓ Every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. ✓ Provided all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within 7 days thereof file with the registrar a notice in writing giving full address of that other place. |
| Books of Account Branch | <p>Proper books of account relating to the transactions effected at the branch office are to be kept at that office and proper summarized returns periodically are sent by the branch office to the company</p> |

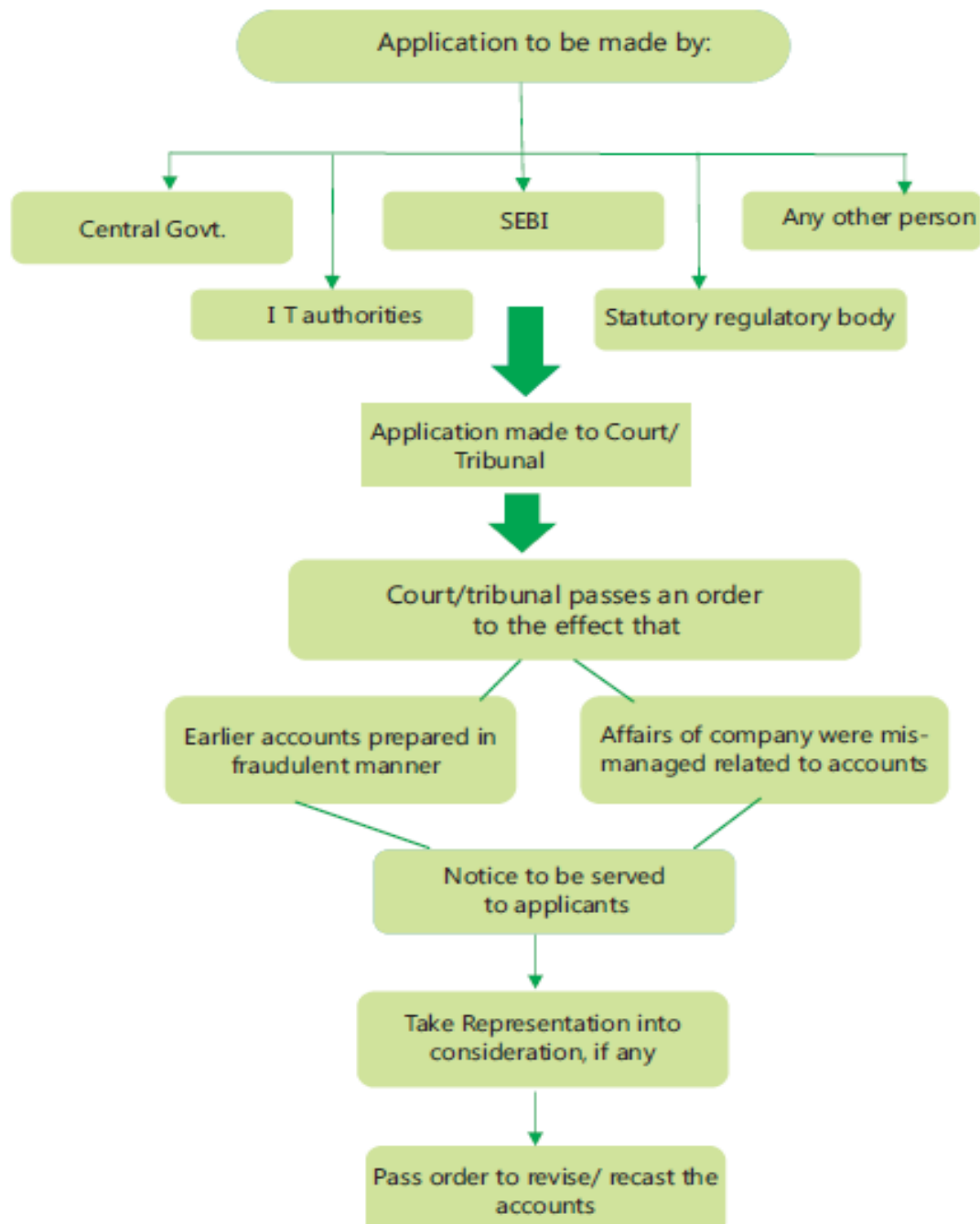
| | |
|--|---|
| Office | at its registered office and are kept open for inspection at the registered office of the company or at such other place in India by any director during business hours. |
| Inspection by directors | Any director can inspect the books of accounts and other books and papers of the company during business hours. |
| Period for preservation of books | The books of account of every company relating to a period of atleast 8 financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order. |
| Persons responsible to maintain books | The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be : (i) Managing Director, (ii) Whole-Time Director, in charge of finance (iii) Chief Financial Officer (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128. |
| Penalty provisions | Imprisonment for a term which may extend to one year or with fine which shall not be less than 50,000 rupees but which may extend to 500,000 rupees or both . |

● **FINANCIAL STATEMENT [SECTION 129]**

| | |
|---------------------------|--|
| Definition | As per section 2(40) , financial statement in relation to a company, includes— (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account , or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity , if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement; Note: Students may note that ‘Profit and Loss Account’ may also be referred as ‘Statement of Profit and Loss’ under the Act at some places. |
| True and Fair view | The financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III . |

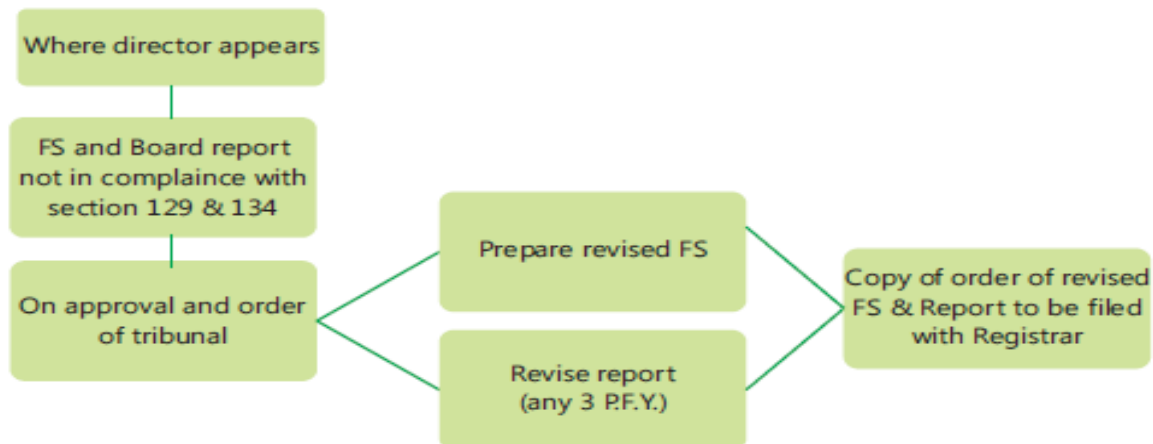
| | | |
|--|--|--|
| Non Applicability | Type of Company | Matters |
| | Insurance Company | Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999 |
| | Banking company | Matters which are not required to be disclosed by the Banking Regulation Act, 1949 |
| | Company engaged in the generation or supply of electricity | Matters which are not required to be disclosed by the Electricity Act, 2003 |
| | Company governed by any other law | Matters which are not required to be disclosed by that law |
| Consolidation of financial statements | <ul style="list-style-type: none"> ✓ The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards. ✓ Prepare a consolidated financial statement of the company and of all the subsidiaries and associate companies in the same form and manner as that of its own | |
| Laying of financial Statements | At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. | |
| Exemptions from preparation of CFS : | <ul style="list-style-type: none"> (i) It is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, having been intimated in writing do not object to the company not presenting consolidated financial statements (ii) It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and (iii) Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards. | |
| Penal provisions | Imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees , or with both . | |

• **RE-OPENING OF ACCOUNTS ON COURT’S OR TRIBUNAL ORDERS [SECTION 130]**



- ✓ No order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year:
- ✓ Provided that where a direction has been issued by the Central Government for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.
(As amended by notification dated 3rd Jan, 2018)

• **VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT [SECTION 131]**



• **FINANCIAL STATEMENT, BOARD'S REPORT, ETC [SECTION 134]**

(i) **Authentication of Financial statements:**

(a) The financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are **signed on behalf of the Board at least by the following:**

- (1) The **chairperson** of the company where he is authorised by the Board; or
- (2) By **two directors** out of which one shall be managing director and other the Chief Executive Officer, if he is a director in the company,
- (3) The **Chief Executive Officer**, wherever he is appointed;
- (4) The **Chief Financial Officer**, wherever he is appointed; and
- (4) The **company secretary** of the company, wherever he is appointed.

(b) In the case of a **One Person Company**, the financial statement shall be signed by only **one director**, for submission to the auditor for his report thereon.

(c) The **auditors' report shall be attached** to every financial statement.

(d) A signed copy of every financial statement, including consolidated financial statement, if any, shall be issued, circulated or published along with a copy each of— (1) Any notes annexed to or forming part of such financial statement; (2) The auditor's report; and (3) The Board's report.

(ii) **Signing of Board's Report:** The Board's report and any annexures thereto shall be **signed by its chairperson** of the company if he is authorised by the Board and where he is **not so authorised, shall be signed by at least two directors**, one of whom shall be a managing director, or by the director where there is one director.

(iii) Contravention:

| Persons liable | Punishment for contravention of any provision of this section |
|--|---|
| Company | fine which shall not be less than ₹50,000 but which may extend to ₹25 Lacs |
| Every officer of the company who is in default | (1) Imprisonment for a term which may extend to 3 years; or (2) fine which shall not be less than ₹50,000 but which may extend to ₹5 Lacs; or (3) Both with imprisonment and fine |

• **CORPORATE SOCIAL RESPONSIBILITY [SECTION 135]**

The Companies Act, 2013 lays down the provisions requiring corporate to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, CSR implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way.

(i) Which Company is required to constitute CSR committee:

- (a) Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having
 - (1) Net worth of rupees 500 crore or more, or
 - (2) Turnover of rupees 1000 crore or more or
 - (3) a net profit of rupees 5 crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board.

(ii) Amount of contribution towards CSR:

- (a) The Board of every company shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.
- (b) The company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities.

(iii) Activities which may be included by companies in their CSR Policies

Activities as specified under **Schedule VII** are as follows:

- (1) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;

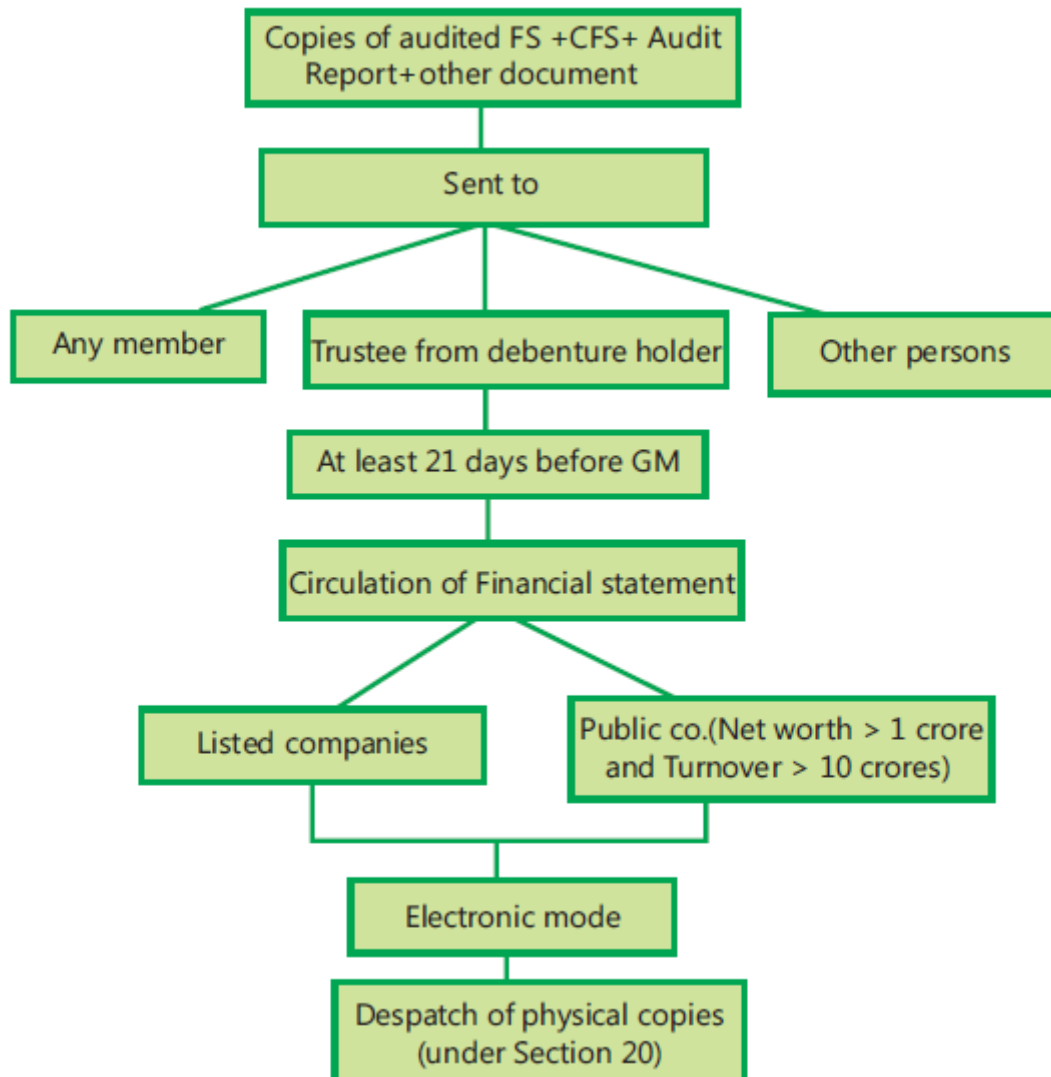
- (2) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects;
- (3) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (4) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga;
- (5) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (6) measures for the benefit of armed forces veterans, war widows and their dependents;
- (7) training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;
- (8) contribution to the Prime Minister's National Relief Fund or any other -fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (9) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- (10) rural development projects;
- (11) slum area development. [For the purposes of this item, the term 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force.]

(iv) Exceptions to CSR Activities:

The Companies (CSR Policy) Rules, 2014 provides for some activities which are not considered as CSR activities:

- 1) The CSR projects or programs or activities undertaken outside India.
- 2) The CSR projects or programs or activities that benefit only the employees of the company and their families.
- 3) Contribution of any amount directly or indirectly to any political party under section 182 of the Act.

- RIGHT TO MEMBERS TO COPIES OF AUDITED FINANCIAL STATEMENT [SECTION 136]**



- COPY OF FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR [SECTION137]**

