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"Focus is itself an achievement

Focus is not a quality"

-CA Darshan Khare

Mark wise Table Analysis

Chapter wise Weightage of Marks of Last 10 CA Inter Examinations

Sr. No	Name of Chapter	MAY 2018	NOV. 2018	MAY 2019	NOV. 2019	NOV 2020	JAN. 2021	JULY. 2021	DEC. 2021	MAY 2022	NOV. 2022
1.	Preliminary & Basics of Company Law	6	6		4			11	2	9	5
2.	Incorporation of Company and Matters Incidental Thereto	2	10	9	7	13	5	10	3	3	5
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4.	Share Capital and Debentures	13	2	5	8	8	10	3	7	8	12
5.	Acceptance of Deposits By Companies	6	6	2	6	6	7	4	5	2	4
6.	Registration of Charges	6	6	2	5	4	3			4	5
7.	Management and Administration	19	14	16	4	2	8	9	15	7	4
8.	Declaration and Payment of Dividend	4	10	7	5	8	5	3	2	2	6
9.	Accounts of Companies	10	7	7	9	6	6	6	6	7	5
10.	Audit and Auditors	6	6	3	6	6	3	8	9	10	6
11.	Interpretation of Statutes, Deeds and Documents	10	12	9	6	6	6	6	6	6	6
12.	The General Clauses Act, 1897	10	4	6	7	8	7	7	7	7	7
13.	The Indian Contract Act, 1872	15	13	12	12	11	12	12	12	12	12
14.	The Negotiable Instrument Act, 1881	13	13	10	10	13	10	10	10	10	10

Note : Chapter LLP Act, FEMA 1999 & Foreign Company Mark wise analysis not given as they are newly added in CA Inter Syllabus Form May 2024 onwards

Section	Name	Cross Ref (Sec)	Resolution/Approval	E-forms	Penalty	Special Points
3	Formation of company	2(62) , 2(69), 2(68) & 2(71), 149	No resolution/ Approval	INC-2 to INC-6	If OPC or any officer of such company contravenes the provisions, they shall be punishable with fine which may extend to Rs. 10,000 + Rs. 1000 per day after first day during which such contravention continues.	
3A	Members severally liable in certain cases.	2(68), 2(71) & 2(92)	No resolution/ Approval	NO E-Forms	Liability will be unlimited after 6 months	If a member goes above statutory minimum liability will become limited.
4	Memorandum	12,13,16,10A ,61,65,3 & Schedule I	No resolution/ Approval	INC 13 , INC 30 & INC 33	No penalty	a)Name Clause b)Object Clause c) Registered Office Clause d) Capital Clause e) Subscription Clause f) Liability Clause g) Nomination Clause
5	Articles		No resolution/ Approval	NO E-Forms		
6	Act to override memorandum, articles, etc.	4. 5 , 13 & 14	No resolution/ Approval	NO E-Forms	Such a provisions of MOA & AOA will be invalid which overrides the act.	Refer Chart given in main Book
7	Incorporation of company	3,4,5,447,448	ROC Approval	INC 7 to INC 11 & SPICE 29 & 32	If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under section 447 as follows: a) 6 months to 10 years of jail; &/or b) Penalty from amount of fraud to 3 times of amount of fraud. And 5 Orders from Tribunal as given in main book.	
8	Formation of companies with charitable objects, etc.	13 (Object Clause Alteration)	a) CG Approval, b) ROC Approval	INC 12 to INC 20	a) Fine of minimum 10 lakhs up to Rs. 1 Crores, and b) Every director and any other officer who is found guilty for such default will be punishable with Fine of Rs. 25000 to 25	a) OPC cannot be section 8 company b) No use of Ltd/Pvt Ltd c) Only for charitable object d) No dividend payment e) Two types of contravention

					lakhs c) License revoke – Convert to LTD/Pvt. Ltd , winding up and amalgamate to similar company.	
9	Effect of registration.	2(20)	No resolution/ Approval	NO E-Forms		9 Characters of Company
10	Effect of memorandum & articles	4 & 5	No resolution/ Approval	NO E-Forms		Binding all the stakeholders to each other
10A	Commencement of business, etc.	4 & 12	a) ROC Approval & b) Sectorial Authorities (RBI,CCI,SEBI)	INC20A	If any default is made in complying with the requirements of this section: a) The company shall be liable to a penalty of Rs. 50000 and b) Every officer who is in default shall be liable to a penalty of Rs.1000 for each day during which such default continues but not exceeding an amount of Rs 1 lakh. c) Removal of Name	Comply all the provisions within 180 days of the date of incorporation of the company.
12	Registered office of company.	4, 10A & 13	a) BM-OR b) GM-SR c) Both Roc Approval d) Prior CG Approval (Sec. 13)	INC 22 INC 23	Company & Every officer who is found liable for default will have to pay penalty of Rs. 1000 for every day during which such default continues but not exceeding Rs. 1 lakh	a) Set Up registered office in 30 days and Intimate the ROC b) INC 23 Process (30 days confirmation from 1st Regional director – 60 days confirmation from 2nd Regional director – Register to certify such change within 30 days of such confirmation)
13	Alteration of memorandum	3,4,12,16,10 A,61,65, & Schedule I	a) GM-SR b) Filing with ROC	INC 22 to INC 25 INC 4, INC 13,INC 30 & INC 33,	Refer Penalties given in Bird eye view penalty list	Refer Master Chart for MOA
14	Alteration of articles	18	a) GM-SR b) Filing with ROC	INC 13, INC 27 ,INC 28 ,INC 31 &		Conversion of the company can be made through this year's process

				INC 34		
15	Alteration of memorandum or articles to be noted in every copy	4,5,13,14 & 128	No resolution/ Approval	Schedule 1 INC 13, INC 30 , INC 31, INC 33 & INC 34	Company and every officer who is in default shall be liable to a penalty of Rs. 1000 for every copy of the memorandum or articles issued without such alteration.	Noted copy of MOA or AOA to be maintained for 8 years
16	Rectification of name of company.	4 & 13	a) Order of CG b) GM-OR	INC 1	a) Company will be liable to pay penalty equal to Rs.1000 per day till default continues, and b) Every officer concerned will be liable to penalty of Rs.5000 to Rs. 1 lakhs.	Application within 3 years and change within 3 months
17	Copies of memorandum, articles, etc., to be given to members.	4,5,15 & 117	Inspection by ROC	Schedule 1 INC 13 , INC 30 , INC 31 , INC 33 & INC 34	Company and every officer who is in default shall be liable for each default, to a penalty of Rs. 1000 for each day during which such default continues or Rs 1 lakh, whichever is less.	Member can also demand the copies provide it to them within 7 days.
18	Conversion of companies already registered.	2(62) , 2(68), 2(71) & 14	a) GM-SR b) NCLT Approval - file with ROC	INC 6, INC 27 & INC 28		Refer chart from Main book
19	Subsidiary company not to hold shares in its holding company.	2(46) & 2(87)	No resolution/ Approval	NO E-Forms		Voting rights will be there only on nominee and trustee and not for past holding.
20	Service of documents.		No resolution/ Approval	NO E-Forms		If members demands communication in specific way it shall be made on payment of such fees.
21	Authentication of documents, proceedings and contracts.	2(51)	BOD-OR	NO E-Forms		Signed by KMP or officer or employee of company
22	Execution of bills of exchange, etc.		a) BOD-OR b) Authorisation (signing) by 2 directors and CS	NO E-Forms		
23	Public offer and private	28, 42,54, 62	SEBI Governance	NO E-		Private Company cannot issue its

	placement.	& 63		Forms		securities using public offer.
25	Document containing offer of securities for sale to be deemed prospectus.	26, 2(70)	No resolution/ Approval	NO E-Forms		Deemed prospectus must be signed by 2 directors – for Company and not less than one half of partners – for Firm
26	Matters to be stated in prospectus	2(38),25, 62	a) SEBI Governance with CG consultation b) Filing with ROC signed by BOD	NO E-Forms	Company & Every person who is knowingly a party to the issue of such prospectus, shall be punishable with fine Rs. 50000 to Rs 3 lakh.	a) Written consent from Expert b) Not applicable to Existing Shareholders c) Not applicable to issue of shares/debenture of similar nature already issued.
27	Variation in terms of contract or objects in prospectus.	13(object clause), 26 & 110	a) GM-SR b) SEBI regulation c) SR through postal ballot (rule 7)	PAS-1		Same provisions as Alteration of Object clause u/s 13 of chapter formation.
28	Offer of sale of shares by certain members of company	23 & 62	Existing shareholder approval SEBI Regulation	NO E-Forms		a) No minimum subscription and minimum application value requirement. b) Company to act on behalf of members whose shares are offered under sec 28
29	Public offer of securities to be in dematerialised form.		a) SEBI Regulation b) Provisions of the Depositories Act, 1996	NO E-Forms		Refer Rule 9A
31	Shelf prospectus.	2(70), 25 & 26	a) SEBI Regulation b) Filing with ROC	PAS-2	Penalty under section 34,35 & 37	a) Valid for 1 year b) advance given can be refunded
32	Red herring prospectus.	2(70), 25 & 26	Filing with ROC & SEBI	NO E-Forms		
34	Criminal liability for misstatements in prospectus	2(69), 2(34) 447,448	Order of authority or court	NO E-Forms	Liable u/s 447	Intentional misstatement
35	Civil liability for misstatements in prospectus.	2(38), 25, 26, 36, 447	Order of authority or court	NO E-Forms	Liable to pay compensation to every person who has sustained such loss or damage.	Unintentional misstatement
36	Punishment for fraudulently	34, 37, 447	No resolution/	NO E-	Liable u/s 447 & 34	Pursuing an investor to invest in

	inducing persons to invest money	& 448	Approval	Forms		security is inducement.
37	Action by affected persons.	34, 35 & 36	Order of Court	NO E-Forms	As ordered by court	Aggrieved person can File a suit or any other action Class action suit
39	Allotment of securities by company	29 & 40	SEBI Regulation	PAS-3	Company & Every officer in default, liable to penalty of Rs.1,000 per day of default being continued, Or Rs. 1,00,000 whichever is less. Penalty u/s 34 & 35	Refer Rule 12 Min subscription 90 % Min application money 5%
40	Securities to be dealt with in stock exchanges.	29 & 39	RSE Approval SEBI Regulation	NO E-Forms	For Company- Rs.5,00,000≤Fine ≤ Rs.50,00,000 For every officer in default - Rs.50,000 ≤ Fine ≤ Rs.3,00,000	Details of underwriters & prospectors Commission – 5% for equity and 2.5% for debentures
42	Issue of shares on private placement basis	23	SEBI Regulation	PAS-4 & PAS-5	**Persons liable** – Company, Promoters, Directors **Penalty –** Amount involved in offer, or Rs. 2 Cr. Whichever is lower And Company shall refund all monies to subscribers within 30 days of the order imposing the penalty.	QIB & Employees not counted Refund after 60 days within 15 days Refund the subscription within 30 days from order of penalty
43	Kinds of share capital	47, 48		NO E-Forms		Not applicable to Private and IFSC Companies if MOA & AOA provides for it.
46	Certificate of shares	88,89 & 447	BOD-OR	SH-1 SH-2	**For company –** 5 X Face value ≤ **Fine** ≤ (10 X Face value OR Rs. 10 crores) whichever is higher. **For every officer in default –** Liable for action u/s 447	**A listed company** to issue duplicate share certificate within **15 days** from date of submission of documents with company & an **unlisted company** should issue same within **3 months.**
47	Voting rights	43, 50, 88 & 188	a) AOA Authorisation b) GM-OR Differential rights) c) Resolution through postal ballot (Equity listed on SE)	NO E-Forms		
48	Variation of shareholders 'rights.	43 & 64	a) GM-SR b) AOA/MOA	NO E-Forms	Penalty is omitted by The Companies Amendment Act,2020	Tribunal decision is binding on shareholders (final & non-

			Approval c) Filing with ROC			questionable)
49	Calls on shares of same class to be made on uniform basis.	50 & 64		NO E-Forms		Notice to ROC u/s section 64
50	Company to accept unpaid share capital, although not called up	2(21), 5, 47	AOA approval	NO E-Forms		
51	Payment of dividend in proportion to amount paid-up.	123-127		NO E-Forms		A company may, if so authorised by its articles, pay dividends in proportion to the amount paid- up on each share.
52	Application of premiums received on issue of shares	2(41), 40, 55, 63, 68 & 133		NO E-Forms		BOD decides whether to issue shares at premium or not
53	Prohibition on issue of shares at discount	54		NO E-Forms	Company & every officer who is in default shall be liable to a penalty which may extend to an amount equal to amount raised through issue of shares at a discount or 5 lakh rupees, whichever is less, and Company also be liable to refund all monies received with interest rate of 12% p.a. from date of issue of such shares to such persons.	
54	Issues of sweat equity shares.	2(37), 2(88), 53, 64, 133, 134 & 247	a) GM-SR b) SEBI Regulation c) Notice to ROC	SH-3		Sweat equity shareholders shall rank pari-passu with other equity shareholders.
55	Issue and redemption of preference shares.	43, 52, 64, 69, 133 & Schedule VI	a) AOA Approval (for issue) b) Notice to ROC c) Tribunal Approval (For UPS's)	SH-7		a) No issue of any preference shares which are irredeemable. b) No AOA approval for redemption. c) Notice to ROC u/s 64 in SH-7 in 30 days.
56	Transfer and transmission of securities	39, 46, 71 & 89	a) BOD-OR b) Filing with ROC	SH-4 SH-5	a) Company & every officer of company who is in default - liable to a penalty of Rs. 50,000. b) Where any depository/depository participant, with an intention to defraud a person, has transferred shares, it shall be liable u/s 447.	

57	Punishment for personation of shareholder.	64	Notice to ROC	NO E-Forms	Any person who deceitfully personates owner of any security and thereby attempts to obtain any such security or amount from such security shall be punishable with- 1 year ≤ Jail ≤ 3 years & Rs.1,00,000 ≤ Fine ≤ Rs.5,00,000.	
58	Refusal of registration and appeal against refusal.	56, 59 & 64	a) Tribunal Approval b) Notice to ROC	NO E-Forms	If a person contravenes the order of the tribunal he shall be punishable a) With Jail of 1 year to 3 years and b) With fine of Rs. 1 lakh to 5 lakh.	
59	Rectification of register of members	47, 58, 71, 88	a) Order of Tribunal b) Notice to ROC	NO E-Forms	a) Tribunal may, on an application made by the depository, company, depository participant, holder of the securities or the SEBI, direct any company or a depository to set right contravention & rectify its register or records concerned. b) One Penalty is omitted by The Companies Amendment Act,2020	Notice to ROC u/s section 64
61	Power of limited company to alter its share capital	2(8), 13 (Capital clause)	a) GM-OR b) AOA Approval	NO E-Forms		Section 61 overrides Section 13
62	Further issue of share capital.	47, 64 & 102	a) GM-SR b) AOA Approval c) Notice to ROC d) Order of CG (for conversion)	SH-6		
63	Issue of bonus shares	52, 64, 69	a) AOA Approval b) BOD-OR c) GM-OR	NO E-Forms		The bonus shares shall not be issued in lieu of dividend.
64	Notice to be given to Registrar for alteration of share capital	48, 49, 54, 55, 57-59, 61-63, 66 & 68	Notice to ROC	SH-7	Company & every officer who is in default shall be liable to penalty of Rs.500 for per day during which default continues to maximum of Rs. 5 lakhs in case of a company and Rs. 1 lakh in case of an officer who is in default	

66	Reduction of share capital	64, 67, 68 & 447	a) Approval of Tribunal b) GM-SR c) Notice to ROC	NO E-Forms	a) Every officer shall be liable u/s 447, who (i) knowingly conceals the name of any creditor entitled to object to the reduction; (ii) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or (iii) abets or is privy to any such concealment or misrepresentation as aforesaid, b) One Penalty is omitted by The Companies Amendment Act,2020	
67	Restrictions on purchase by company or giving of loans by it for purchase of its shares	66, 68, 70, 92, 102 & 137	GM-SR	NO E-Forms	Penalty for Company- Rs.1,00,000 ≤ Fine ≤ Rs.25,00,000 Penalty for every officer in default: Jail ≤ 3 Years And Rs.1,00,000 ≤ Fine ≤ Rs.25,00,000	Section shall not apply to redemption of preference shares.
68	Power of company to purchase its own securities.	52, 64, 67, 69, 70 & 102	a) BOD-OR b) GM-SR c) AOA approval d) SEBI Approval (for listed co.) e) Filing with ROC	SH-8 to SH-11 & SH-15	If a company makes any default in complying with the provisions of this section or with SEBI regulations, penalty shall be as under- For Company-Rs.1,00,000 ≤ Fine ≤ Rs.3,00,000 For Every officer in default- Rs.1,00,000 ≤ Fine ≤ Rs.3,00,000	
69	Transfer of certain sums to capital redemption reserve account	52, 55, 63	No Resolution/Approval	NO E-Forms		Transfer amount = Nominal value of shares. CRR to be only used for issue of fully paid bonus shares.
70	Prohibition for buy-back in certain circumstances	55, 67, 68, 73, 76, 92, 123, 127 & 129	No Resolution/Approval	NO E-Forms		
71	Debentures.	2(30), 39,	a) BOD-OR b) GM-SR c) Procedure by CG d) Order of tribunal	SH-12 PAS-3	One Penalty is omitted by The Companies Amendment Act,2020	

73	Prohibition on acceptance of deposits from public.	2(31), 76A, 77	a) GM-OR b) Filing with ROC c) RBI approval	DPT-1 DPT-3	Penalty u/s 76A as given below in Sec 76A	a) Create DRRA @ 20% b) Sec 73(1) does not apply to banking company, NBFC & Housing Finance Co.
74	Repayment of deposits, etc., accepted before commencement of this Act.		No Resolution/Approval	DPT-4	For Company-Rs.1 Cr ≤ Fine ≤ Rs.10 Cr (This penalty shall be in addition to amount of repayment of-Deposit/part of deposit + Interest due thereon if any) For every officer in default-Jail up to 7 Years, And/OrRs.25 lakh ≤ Fine ≤ Rs.2 Cr	
76	Acceptance of deposits from public by certain companies	26, 73, 74, 76A, 77 & 180(1)	a) GM-SR b) Filing with ROC c) GM-OR[u/s 180(1)] d) RBI approval	DPT-2	Penalty u/s 76A as given below in Sec 76A	
76A	Punishment for contravention of section 73 or section 76.	73, 76 & 447	No resolution / approval	NO E-Forms	Where company act in contravention of section 73 or 76 or fails to repay deposits or interest then: a) Company shall, in addition to payment of amount of deposit or part thereof & interest due, be punishable with fine which shall not be less than Rs, 1 cr or twice amount of deposit accepted by company, whichever is lower but max. Rs. 10 cr & File with ROC before making such invitation. b) Every officer of company who is in default shall be punishable with jail up to 7 years & with fine of min. Rs 25 lakhs but max of Rs. 2 Cr. c) If officer done it wilfully liable u/s 447.	Penalty for Sec 73 & Sec 76
77	Duty to register charges, etc.	2(16), 78 & 79	a) Filing with ROC b) RBI approval	CHG-1 CHG-2 CHG-3	For Company-Rs.5,00,000 For every officer in default-Rs.50,000 If any person wilfully furnishes any false or	

					incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.	
78	Application for registration of charge	2(16), 77 & 79	No resolution / approval	CHG-9	Penalty given u/s 86 (as given above in sec.77)	
79	Section 77 to apply in certain matters	77 & 78	No resolution / approval	NO E-Forms	Penalty given u/s 86 (as given above in sec.77)	
80	Date of notice of charge	77	No resolution / approval	NO E-Forms	Penalty given u/s 86 (as given above in sec.77)	
82	Company to report satisfaction of charge	77 & 83	Intimation to ROC	CHG-4 CHG-5	Penalty given u/s 86 (as given above in sec.77)	
83	Power of Registrar to make entries of satisfaction and release in absence of intimation from company	77 & 82	No resolution / approval	CHG-5	Penalty given u/s 86 (as given above in sec.77)	
84	Intimation of appointment of receiver or manager.		Notice to ROC	NO E-Forms	Penalty given u/s 86 (as given above in sec.77)	
86	Punishment for contravention	77 to 85, 87 & 447	No resolution / approval	NO E-Forms		Penalty given for whole chapter (Sec.77 to 87)
87	Rectification by Central Government in register of charges	77 to 85	CG Consent	NO E-Forms	Penalty given u/s 86 (as given above in sec.77)	
88	Register of members, etc.	91	NSDL approval AOA approval	MGT-1 MGT-2 MGT-3	Penalty for non-compliance with the provisions of the section for company and every officer in default- a) For Company-Rs.3,00,000 b) For every officer in default -Rs.50,000	Electronic register by NSDL approval Foreign register by foreign shareholders
89	Declaration in respect of beneficial interest in any share.	90,91	Rules by CG Filing with ROC	MGT-4 MGT-5 MGT-6	**89(5)-** Punishment when a person liable to make a declaration under subsection (1), (2) or (3) fails to do so- For One time failure- Fine ≤ Rs.50,000	Primary filing of Beneficial Owner in 30 days and Company filing to ROC further 30 days.

					For Continuing failure- A further fine Rs.200 per day subject to maximum of Rs.500,000 **89(7) –** Where a company fails to file a return as above within prescribed time - Penalty for company & every officer in default- Rs. 1000 for each day during which such failure continues, maximum of Rs. 5 lakhs for company and Rs. 2 lakhs for an officer who is in default.	
90	Investigation of beneficial ownership of shares in certain cases.	88, 89	a) Filing with ROC b) Order of Tribunal	NO E-Forms	If any person fails to make a declaration as required under sub-sec (1), he shall be liable to a penalty of Rs. 50000, with a further penalty of Rs. 1000 per day, maximum of Rs.2 lakh If a company, required to maintain register under sub-section (2) and file information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, a) Company shall be liable to a penalty of Rs. 1 lakh, with a further penalty of Rs.500 per day, maximum of Rs. 5 lakhs and b) Every officer of the company who is in default shall be liable to a penalty of Rs. 25000, with a further penalty of Rs. 200 for each day, maximum of Rs. 1 lakh.	
91	Power to close register of members or debenture holders or other security holders.	88 & 89	7 days prior notice to SEBI & ROC	NO E-Forms	For company & every officer in default- • Rs.5,000 per day of default; or • Rs. 1,00,000 Whichever is lower	One time -30 days Together in a year – 45 days (max) Publish in 2 newspaper (English & vernacular language)
92	Annual return.	96, 134 & 137	Sign by CS & BOD	MGT-7 MGT-7A MGT-8 MGT-9	Upto 330 days additional fees company and its every officer in default penalty of Rs. 10000 & further penalty of Rs. 100 per day & maximum of Rs. 2 lakhs for	Filing within 60 days maximum upto 330 days Maintain for 8 years.

					company and Rs. 50000 in case of an officer who is in default. When a CS certifies an AR which is not in conformity with the section, he shall be liable to a penalty of Rs. 2 lakhs.	
94	Place of keeping and inspection of registers, returns, etc.	88,89,92 & 137	10% shareholder in such place GM-SR	NO E-Forms	If company refuses to allow any inspection or taking of any extract, penalty for company & every officer in default- Rs.1,000 per day of defaulting period; or Rs.1,00,000 Whichever is lower.	Maintain for 8 years. Inspection for 2 hours in business hours.
95	Registers, etc., to be evidence.	88,89,91, 92 & 137	No resolution / approval	NO E-Forms		
96	Annual general meeting	92, 97, 99, 116, 117, 121 & 137	ROC approval (3 months extension) All member approval for change in place of AGM	MGT-14 MGT-15	Penalty given u/s 99 -	First AGM within 9 months from end first financial year 3 Condition for subsequent AGM No Condition for OPC AGM in Registered office city in Business hours. AGM not be conducted on national Holiday AGM at any other place then RO approval of all members.
97	Power of Tribunal to call annual general meeting	96 & 99	Tribunal Approval	NO E-Forms	Penalty given u/s 99 (as given above in sec.96)	
98	Power of Tribunal to call meetings of members, etc.	99 & 100	Tribunal Approval	NO E-Forms	Penalty given u/s 99 (as given above in sec.96)	
99	Punishment for default in complying with provisions of sections 96 to 98.	96, 97 & 98	No resolution / approval	NO E-Forms	Company & every officer in default- one time default- Fine up to Rs.1,00,000 Continuing default- A further fine up to Rs.5,000 per day for defaulting period.	
100	Calling of extraordinary general meeting.	98	Requisitionists approval ($1/10^{th}$ of paid up capital or voting power)	NO E-Forms	Reimbursement of expenses by directors to requisitionists.	Director shall conduct EGM within 45 days if not requisitionists conduct the same in 3 months.

101	Notice of meeting.	115	95% of members approval (for shorter notice)	NO E-Forms		Accidental omission and non-receipt of notice shall not invalidate proceedings of general meeting.
102	Statement to be annexed to notice.	2(51), 20, 22, 96 & 100	No resolution / approval	NO E-Forms	Person liable – Every promoter, director, manager & KMP Penalty Higher of Fine up to Rs.50,000; or 5 x Amount of benefit to person liable	Inspection of document to be presented in GM.
103	Quorum for meetings.	92, 100, 105 & 137	No resolution / approval	NO E-Forms		If no quorum then meeting is adjourned to same day next week. If called by requisitionists it shall stand cancelled.
104	Chairman of meetings	92, 109 & 137	No resolution / approval	NO E-Forms		Chairman has casting vote
105	Proxies	103	No resolution / approval	NO E-Forms	Penalty for non-compliance of sec.105(2) - Every officer of the company who is in default shall be liable to penalty of Rs. 5000.	Every officer who issues invitation at company's expense shall be liable to fine up to Rs. 50000.
106	Restriction on voting rights.	105 & 109	No resolution / approval	NO E-Forms		AOA of Company may override whole act as to right to vote for any shares on which call is not paid or company exercised right of lien.
107	Voting by show of hands	108 & 109	No resolution / approval	NO E-Forms		
108	Voting through electronic means.	107 & 114	No resolution / approval	NO E-Forms		
109	Demand for poll.	105, 112 & 113	Chairman Power (manner of poll)	MGT-12 MGT-13		Chairman to appoint scrutinizers for poll.
110	Postal ballot.	13, 43, 48, 68, 122, 168, 180 & 186	No resolution / approval	NO E-Forms		Resolution passed by postal ballot shall be deemed to have been duly passed at GM.
111	Circulation of members' resolution.	100	Requisition (1/10th of paid up capital or voting power)	NO E-Forms	Penalty for Company and Every officer in default shall be Rs. 25000.	
112	Representation of President and Governors in meetings.	103 & 105	No resolution / approval	NO E-Forms		All rights as given to members is given to such person appointed u/s 112

113	Representation of corporations at meeting of companies and of creditors.	103 & 105	No resolution / approval	NO E-Forms		All rights as given to members is given to such person appointed u/s 113
114	Ordinary and special resolutions.			NO E-Forms		Casting vote of chairman will not count in Special resolution.
115	Resolutions requiring special notice.	101, 140 & 169	No resolution / approval	NO E-Forms		Publish notice in 2 newspaper (English & vernacular language) Notice shall be published 7 days before the meeting
116	Resolutions passed at adjourned meeting.	114				
117	Resolutions and agreements to be filed.	102, 114 & 121	Fling with ROC	MGT-14	Additional fees in case beyond 30 days but within 300 days. Penalty for filing beyond 300 days – For Company-Penalty of Rs. 10000, with further penalty-Rs. 100 per day, max Rs 2 lakh. For every officer in default(including liquidator)- penalty of Rs. 10000 & further penalty of Rs. 100 per day, max of Rs. 50000.	
118	Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.	96, 104 & 110	No resolution / approval	NO E-Forms	Penalty for Company-Rs.25,000 & For every officer in default-Rs.5,000. Punishment for tampering with minutes: Jail up to 2 years & Rs.25,000 ≤ Fine ≤ Rs.1 lakh.	Chairman have discretionary power as to inclusion or non-inclusion of any matter in minutes.
119	Inspection of minute-books of general meeting	118	No resolution / approval	NO E-Forms	Penalty if any inspection is Refused; or Not furnished- For Company-Rs.25,000 For every officer in default-Rs.5,000 for each refusal or default	In case of refusal to inspect tribunal may order immediate inspection or direct to send copy of minutes.
120	Maintenance and inspection of documents in electronic form.	91	No resolution / approval	NO E-Forms	Company & every officer in default punishable with fine of Rs. 5000 with further penalty of Rs 500 per day till the default continues.	Copies of records as maintained in e-form should be provided on payment of not exceeding Rs. 10 per page.
121	Report on annual general meeting.	96 & 117	Filing with ROC	MGT-15	If a company fails to file the report- Penalty for company- Rs. 1 lakh with further	

					penalty of Rs. 500 per day, max of Rs. 5 lakhs. Penalty for every officer in default- Penalty not less than Rs. 25000 with further penalty of Rs. 500 per day, max of Rs. 1 lakh.	
122	Applicability of this Chapter to One Person Company.	98, 100- 111	No resolution / approval	NO E-Forms		Sec 98 & Sec 100-Sec 111 shall not apply to OPC. Ordinary business transacted by non-opc u/s 102(2)(a) at its AGM shall be transacted by OPC as per Sec 122(3).
123	Declaration of dividend	2(35), 2(43), 73, 74 & 124	BOD-OR GM-OR	NO E-Forms		No dividend unless past year losses or depreciation is set off against profit of current year.
124	Unpaid Dividend Account	125 & 127	No resolution / approval	NO E-Forms	If a company fails to comply with section a) Company liable to penalty of Rs. 1 lakh with a further penalty of Rs. 500 per day, maximum of Rs. 10 lakhs and b) Every officer of co. who is in default liable to penalty of Rs. 25000, with further penalty of Rs. 100 per day, max. Rs. 2 lakh.	Delay in transfer dividend to unpaid account – interest @ 12% for such delay. Failure to pay dividend due to operation of law saves company & every director from consequences u/s 127 but no relief in transferring dividend to unpaid account.
125	Investor Education and Protection Fund	38, 124	CG Establish IEPF	NO E-Forms		Audit of IEPF by CAG and audited accounts & audit report forwarded to CG.
126	Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.	62 & 63	No resolution / approval	NO E-Forms		
127	Punishment for failure to distribute dividends	124, 164(2)	No resolution / approval	NO E-Forms	If Company fails to pay dividend to any shareholder consequences will be as follows. a) Every Director of company who is knowingly party to default will be punishable with: (i) Fine of Rs. 1000 per day. (ii) Jail up to 2 years. b) Company liable to pay interest of 18% p.a.	

					to shareholder for delayed payment. In addition to this if the default in payment of the dividend is subsisting for continuous 1 year after end of 30 days all the directors holding the position of director will be disqualified u/s 164(2) & need to vacate office u/s 167 immediately after end of such 1 year.	
128	Books of account, etc., to be kept by company.	2(40), 2(41)	BOD-OR (for keeping books at any other place in India) & (For inspection of books) Filing with ROC	NO E-Forms	In case of contravention the officer in default will be as follows: a) MD, WTD in charge of finance/ BOD (if qualified person or CFO is not appointed). b) CFO / Qualified person appointed. (in case if the CFO / Qualified Person is appointed for maintenance of books.) The officer in default will be liable to Fine of Rs. 50,000 – Rs. 5,00,000;	
129	Financial statement.	2(40), 2(41) & 128	No resolution / approval	AOC-1	In case of contravention of section any of following persons will be considered as officer in default for the section. MD,WTD,CFO or Eligible person appointed by BOD; or And in absence of the all of above BOD of company. Officer in default liable for penalty: a) Jail upto 1 year; or b) Fine of Rs. 50,000 to Rs. 5 lakhs; or c) Both.	
129A	Periodical financial results.	129	BOD approval Filing with ROC	NO E-Forms		File copy with ROC in 30 days of completion of relevant period.
130	Re-opening of accounts on court's or Tribunal's orders.	128, 129 & 131	Court/Tribunal order	NO E-Forms		No Re-opening of accounts earlier than 8 financial years immediately PFY.
131	Voluntary revision of financial statements or Board's report	129, 130 & 134	CG to make rules Tribunal order	NO E-Forms		
132	Constitution of National Financial Reporting Authority.		No resolution / approval	NO E-Forms	In case if professional misconduct is proved against person then NFRA have power to make	Audit of NFRA by CAG and audited accounts & audit report forwarded to

					following orders – (i) Penalty from Rs. 1 lacs to 5 times of audit fees for individual CA. (ii) Penalty of Rs. 5 lacs to 10 times of audit fees for firm of CA. (iii) In addition to above NFRA can debar any individual or firm from being the member of ICAI from 6 months to 10 years.	CG. Company or Auditor if fails to comply with NFRA Rules then punishable under provisions of Section 450 of the Act.
133	CG to prescribe accounting standards	133	No resolution / approval	NO E-Forms		
134	Financial statement, Board's report, etc.	92, 129, 131,143(12), 149(6), 178(1), 188	BOD approval	AOC-2	If a Company is in default, company liable to a penalty of Rs. 3 lakhs and Every officer of company who is in default liable to a penalty of Rs. 50,000.	BOD report shall be signed by chairman or by 2 directors (one shall be MD) if no authorisation is given to chairman of company.
135	Corporate Social Responsibility.	8, 134(3), 149(4), 198, 380(1) Schedule VII	No resolution / approval	NO E-Forms	If a company is in default in complying with provisions of sub-sec (5) or sub-sec (6), a) Company shall be liable to a penalty of twice the amount required to be transferred by company to Fund specified in Schedule VII or Unspent CSR Account, as the case may be, or Rs. 1 Cr, whichever is less, and b) Every officer of company who is in default shall be liable to a penalty of 1/10thof amount required to be transferred by company to such Fund specified in Schedule VII, or Unspent CSR Account, as case may be, or Rs. 2 lakhs , whichever is less.	
136	Right of member to copies of audited financial statement	129	No resolution / approval	AOC-3	In case of contravention of this section by not circulating or publishing accounts or audit report or by not making it available for the inspection consequences will be as follows: a) Company will be penalised for Rs. 25000;& b) Every officer will be penalised for Rs. 5000.	FS available for inspection or circulated for shorter period than 21 days than 95% of voting power holders shall pass resolution.

137	Copy of financial statement to be filed with Registrar	92	Filing with ROC	AOC-4	a) The company shall be liable to penalty of Rs. 10,000 with a further penalty of Rs.100 per day, maximum of Rs.2,00,000 b) The officer in default (CFO/CEO/any other director appointed/BOD) shall be liable to a penalty of Rs.10000 with further penalty of Rs. 100 per day, maximum of Rs. 50,000.	Filing of accounts in XBRL form as per rule 12 (for specified companies)
138	Internal Audit.	144, 177 & 179(3)	BOD-OR	NO E-Forms		Statutory auditor of company cannot also be its internal auditor.
139(1)	Appointment of regular auditor in normal company	141	GM-OR	ADT-1	Penalty as mentioned u/s 147 given below in section 147.	
139(2)-(4)	Rotation of auditors	139(1) & 139(5)	CG to make rules	NO E-Forms	Penalty as mentioned u/s 147 given below in section 147.	Tenure of auditor - 1 term of 5 years(for Individual) & 2 terms of 5 years(for a firm) Cooling period of 5 years for both individual & firm (after completion of term of office)
139(5)	Appointment of regular auditor in Government controlled company	139(2)	CAG to appoint auditor	ADT-1	Penalty as mentioned u/s 147 given below in section 147.	
139(6)	Appointment of 1st auditor in Normal Company		BOD-OR GM-OR	ADT-1	Penalty as mentioned u/s 147 given below in section 147.	
139(7)	Appointment of 1st auditor in Government Controlled Company		CAG Appoints BOD appoints (if CAG fails) Members at EGM(if BOD fails)	ADT-1	Penalty as mentioned u/s 147 given below in section 147.	
139(8)	Casual Vacancy auditor	140	BM-OR Approval in GM(in case vacancy due to resignation) CAG to appoint (in case of GCC)	NO E-Forms	Penalty as mentioned u/s 147 given below in section 147.	If GM does not approve appointment done by BOD then GM shall appoint their own CVA. If CAG fails to appoint CVA in case of GCC then BOD will appoint CVA in next 30 days.
139(9)-	Reappointment & automatic			NO E-	Penalty as mentioned u/s 147 given below in	

(11)	reappointment of auditors.			Forms	section 147.	
140	Removal, resignation of auditor and giving of special notice.	115, 139(8), 447	BOD-OR GM-SR Prior Approval of CG CAG approval(in case of GCC) Order of tribunal [u/s 140(5)]	ADT-2 ADT-3	If the auditor fails to file Form ADT-3 statement of resignation as stated above auditor will be liable for penalty of Rs. 50,000 or an amount equal to remuneration of auditor, whichever is less. With further penalty of Rs. 500 per day, maximum of Rs 2 lakh.	Special notice not required in case individual auditor completed 5 years and firm completes 10 years of term of office. Statement of resignation shall be filed within 30 days in ADT-3 with Company, ROC & CAG(in case of GCC)
141	Eligibility, qualifications and disqualifications of auditors.	2(62), 2(68) 2(85), 139, 144 & 455	No resolution / approval	NO E-Forms	If auditor disqualified in any of the disqualification then he shall vacate office. Penalty as mentioned u/s 147 given below in section 147.	Practicing CA can be auditor in Max 20 Co.s (OPC, Small Company & Private company whose paid up capital is below 100 Cr not to be counted in 20)
142	Remuneration of auditors		No resolution / approval	NO E-Forms	Penalty as mentioned u/s 147 given below in section 147.	The one who appoints the auditor will decide the remuneration of auditor
143	Powers and duties of auditors and auditing standards.	92, 132, 136, 139, 137, 148 164(2) & 204,	No resolution / approval	NO E-Forms	If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall a) in case of a listed company, be liable to a penalty of Rs. 5 lakh; and b) in case of any other company, be liable to a penalty of Rs. 1 lakh.	
144	Auditor not to render certain services.	2(77), 138, 141	No resolution / approval	NO E-Forms	If auditor provides Specified services as given u/s 144(1) then auditor will be disqualified in section 141.	
145	Auditor to sign audit reports, etc.		No resolution / approval	NO E-Forms	Penalty as mentioned u/s 147 given below in section 147.	
146	Auditors to attend general meeting.		No resolution / approval	NO E-Forms	Penalty as mentioned u/s 147 given below in section 147.	
147	Punishment for contravention.	139-146	No resolution / approval	NO E-Forms	If any provision of section 139 – 146 is contravened consequences will be as follows. a) Company will be punishable for fine of Rs.25000 to Rs.5 lakhs; and b) Every officer in default will be liable for fine which shall not be less than Rs. 10000	Refund remuneration and pay damages to company, statutory bodies or creditors of company for facing any loss due to misleading statement made in audit report.

					but which may extend to Rs. 1 lakh If auditor of company contravenes any provision of sec 139, 143, 144, 145 then auditor is liable for following consequences. **1.** In case of unintentional default he shall be punishable with:- **a)** Minimum fine:- Rs. 25000 **b)** Maximum fine:- lower of following Rs 5 lakhs or 4 * **or** Remuneration of auditor. **2.** In case default made with an intention to deceive the company or its shareholders or creditors or tax authorities -he shall be punishable with- **a)** Jail upto 1 year; and **b)** Fine Minimum fine:- Rs.50,000 Maximum fine:-lower of following -Rs25 lakh or 8*Remuneration of auditor	
148	Central Government to specify audit of items of cost in respect of certain companies	138 & 147	CG Consultation BOD-OR	CRA-1 CRA-2 CRA-3 CRA-4	Same penalty as given u/s 147	Statutory auditor u/s139 shall not conduct cost audit.

Important Note : Special point may vary student to student so you can add if any special points you feel in any sections.

Private Company Exemptions

Exemption	Relevant Sections	Effect of Exemption
Chapter I, Clause (40) of Section 2.	Sec 2(40) Financial Statements	For the proviso, the following shall be substituted, namely:- "Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;" **Explanation.** - For the purposes of this Act, the term 'start-up' or "start-up company" means a private company incorporated under the Companies Act, 2013 (18 of 2013) or the Companies Act, 1956 (1 of 1956) and recognised as start-up in accordance with the notification issued by the Department of industrial Policy and Promotion, Ministry of Commerce and Industry".
Chapter I, sub-clause (viii) of clause (76) of section 2.	Sec 188 Related Parties Transaction	Shall not apply with respect to section 188
Chapter IV, section43 and section 47	Sec 43 - Kinds of shares Sec 47 – Voting rights	Shall not apply where MOA or AOA of private company so provides.
Chapter IV, sub-clause (j) of clause (a) of sub-section (1) and (2) of section 62	Sec 62 - Further Issue of Share Capital	In Sub-clause (i) of clause (a) of Sub-section (1) and Sub-section (2) of section 62 the following proviso shall be inserted Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of this section, in case 90%, of the members of a private company have given their consent in writing or in electronic mode, the periods lesser than those specified in the said sub- clause or sub-section shall apply.
Chapter IV, sub-clause (j) of clause (a) of sub-section (1) and (2) of section 62	Sec 62 - Further Issue of Share Capital	In clause (b) of Sub-section (1) of section 62 for the words "special resolution", the words "ordinary resolution" shall be substituted
Chapter IV, section 67	Sec 67 - Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares	section 67 shall not apply to a private company- (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid up share capital or 50 crore rupees, whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section
Chapter V, clauses (a) to (e) of sub-section (2) of section 73	Sec 73 - Prohibition on acceptance of deposits from public.	Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies (A) which accepts from its members monies not exceeding 100% . of aggregate of the paid up share capital, free reserves and securities premium account; or (B) which is a start-up, for five years from the date of its incorporation; or (C) which fulfills all of the following conditions, namely:- (i) which is not an associate or a subsidiary company of any other company; (ii) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid

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		up share capital or 50 crore rupees, whichever is lower; and (iii) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section: Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified."
Chapter VII, clause (g) of sub-section (1) of section 92	**Sec 92 – Annual returns**	Shall apply to private companies which are small companies, namely: (g) aggregate amount of remuneration drawn by directors.
Chapter VII, proviso to sub-section (1) of section 92	**Sec 92 – Annual returns**	for the proviso the following proviso shall be substituted, namely:- "Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company."
Chapter VII, section 101 to 107 and section 109	**Sec 101 to 107 & Sec 109**	Shall apply unless otherwise specified in respective sections or AOA of the company provide otherwise
Chapter VII, clause (g) of sub-section (3) of section 117	**Sec 117 - Resolutions and Agreements to be Filed**	clause (g) of Sub-section 3 of section 117 shall not apply
Chapter X, Clause (g) of sub-section (3) of section 141.	**Sec 141 Disqualification of Auditor**	Section 141(3) deals with conditions for eligibility for appointment as an auditor of a company. Section 143(3)(g) limits the number of audits by an auditor to 20 companies. OPCs, Dormant Cos., Small Cos. and Pvt. Cos. having paid-up share capital less than Rs 100 cr are excluded from this limit.
Chapter X, Clause (i) of sub-section (3) of section 143	**Sec 143 - Powers and duties of auditors and auditing standards.**	Shall not apply to a private company:- (i) which is a OPC or a small company; or (ii) which has turnover less than rupees 50 crores as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or any body corporate at any point of time during the financial year less than rupees 25 crore."

Sec 8 Company Exemptions

Exemption	Relevant Sections	Effect of Exemption
Clause (24) of section 2	**Sec 2(24)**	The provisions of Clause (24) of section 2 shall not apply
Clause (68) of section 2	**Sec 2(68) – Private Company**	The requirement of having minimum paid up share capital shall not apply.
Clause (71) of section 2	**Sec 2(71) – Public Company**	The requirement of having minimum paid up share capital shall not apply.
Sub-section (2) of section 96	**Sec 96 – Annual General Meeting**	In Sub-section (2) of Section 96 after the proviso and before the explanation the following proviso shall be inserted ; Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the Board of Directors having regard to the directions, if any, given in this regard by the company in its general meeting.
Sub-section (1) of section 101	**Sec 101 – Ordinary notice**	in clause (1) of Sub-section (1) of section 101 for the words "21 days", the words "14 days" shall be substituted.
Section 118	**Sec 118 - Minutes**	The section shall not apply as a whole except that minutes may be recorded within thirty days of the conclusion of every meeting in case

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		of companies where the articles of association provide for confirmation of minutes by circulation
Sub-section (1) of section 136.	Sec 136 - Copies of Financial statements and audit report inspection	in clause (1) of Sub-section (1) of section 101 for the words "21 days", the words "14 days" shall be substituted.

Government Company Exemptions

Exemption	Relevant Sections	Effect of Exemption
Chapter I, clause (45) of section 2	2(45) Government Company	Explanation.- For the purposes of this clause, the "paid up share capital " shall be construed as "total voting power ", where shares with differential voting rights have been issued.
Chapter II, section 4	4 Memorandum	In Section 4, in sub-section (1), in clause (a), the words "in the case of a public limited company, or the last words "Private Limited" in the case of a private limited company" shall be omitted.
Chapter IV, section 56.	56 Transfer and Transmission of Securities	In Sub-section (1) of Section 56, after the proviso, the following provisos shall be inserted, namely' - Provided further that the provisions of this sub-section, in so far as it requires a proper instrument of transfer, to be duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee, shall not apply with respect to bonds issued by a Government company, provided that an intimation by the transferee specifying his name, address and occupation, if any, has been delivered to the company along with the certificate relating to the bond; and if no such certificate is in existence, along with the letter of allotment of the bond: Provided also that the provisions of this sub-section shall not apply to a Government Company in respect of securities held by nominees of the Government.
Chapter VII section 89	89 Declaration in Respect of Beneficial Interest in any Share	Section 89 shall not apply
Chapter VII section 90	90 Register of significant beneficial owners in a company	Section 90 shall not apply
Chapter VII sub-section (2) of section 96	96 Annual General Meeting	in Sub- section (2) of Section 96 for words "some other place within the city, town or village in which the registered office of the company is situate", the words "such other place as Central Government may approve in this behalf" shall be substituted.
Chapter VIII, second proviso to sub-section (1) of section 123.	Sec 123 Declaration of Dividend	In case of inadequate profit in the current year the Government company can declare dividend out of accumulated profit without following the rules required to declare the dividend out of such accumulated profit.
Chapter VIII, sub-section (4)	Sec 123(4) Transfer of	Section 123(4) states that the amount of dividend, including interim dividend, shall be deposited in a scheduled bank in a separate bank in

of section 123	dividend to separate account	a separate account within five days from the date of declaration of such dividend. It does not apply to a Government Co. in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Govt. Co.
Chapter IX, section 129.	Sec 129 Financial statement	The provisions of sec 129 which applies the financial statement requires the compliance of all AS including the AS 17 segment reporting. The same provision relating to AS 117 is not applicable to Government company.
Chapter IX, clause (e) of sub-section (3) of sec. 134	134(3) Contents of Board's Report	The Board's report shall disclose the company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178. It shall not apply to Government Companies.
Chapter IX, clause (p) of sub-section (3) of section 134.	134(3) Contents of Board's Report	The board report shall disclose a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors. In case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the Co., the State Government, as per its own evaluation methodology shall not be liable for such statement and its comments.

IFSC Company Exemptions

Exemption	Relevant Sections	Effect of Exemption
Clause (41) of section 2	2(41)	In Clause (41) of section 2 after the second proviso, the following proviso shall be - "Provided also that in case of a Specified IFSC public company, which is a subsidiary of a foreign company, the financial year of the subsidiary may be same as the financial year of its holding company and approval of the Tribunal shall not be required."
Sub-clause (viii) of clause (76) of section 2	Sec 188 Related Parties Transaction	Shall not apply with respect to section 188.
sub- section (2) of section 3	Sec 3	In Sub-section (2) of section 3 the following proviso shall be inserted, namely :- "Provided that a Specified IFSC public company shall be formed only as a company limited by shares."
Clause (a) of sub-section (1) of section 4	Sec 4 Memorandum	Clause (a) of sub - section (1) of section 4 after the proviso, the following proviso shall be inserted, namely:- "Provided further that a Specified IFSC Public Company shall have the suffix "International Financial Service Company" or "IFSC" as part of its name."
Clause (c) of sub-section (1) of section 4	Sec 4 Memorandum	Clause (c) of subsection (1) of section 4 the following proviso shall be inserted, namely:- "Provided that a Specified IFSC Public Company shall state its objects to do financial services activities, as permitted under the Special Economic Zones Act, 2005 (28 of 2005) read with the Special Economic Zones Rules, 2006 and any matter considered necessary in furtherance thereof, in accordance with license to operate, from International Financial Services Centre located in an approved multi services Special Economic Zone, granted by the Reserve Bank of India or the Securities and Exchange Board of India or the Insurance Regulatory and Development Authority of India."

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Topic : Common things at One place		
Sub-section (1) of section 12	Sec 12 Registered Office of Company	Sub-section (1) of section 12 the following proviso shall be inserted, namely:- "Provided that a Specified IFSC Public Company shall have its registered office at the International Financial Services Centre located in the approved multi services Special Economic Zone set-up under the Special Economic Zones Act, 2005 read with the Special Economic Zones Rules, 2006, where it is licensed to operate, at all times."
Sub-section (2) of section 12	Sec 12 Registered Office of Company	In sub-section (2) of Section 12 for the words "thirty days" read as "sixty days"
Sub-section (4) of section 12	Sec 12 Registered Office of Company	In Sub-section (4) of section 12 For the words "fifteen days" read as "sixty days"
Sub-section (5) of section 12	Sec 12 Registered Office of Company	In Sub-section (5) of section 12 the following sub-section shall be substituted, namely:- "(5) Except on the authority of a resolution passed by the Board of Directors, the registered office of the Specified IFSC Public Company shall not be changed from one place to another within the International Financial Services Centre: Provided that the Specified IFSC Public Company shall not change the place of its registered office to any other place outside the said International Financial Services Centre."
Section 21	Sec 21 Authentication of Documents, Proceedings and Contracts	For the words "an officer" read as "an officer or any other person"
Sub-section (3) & (7) of section 42	Sec 42 Private Placement	Shall not apply
Sub-section (6) section 42	Sec 42 Private Placement	For the words "sixty days" at both places read as "ninety days".
Section 43	Sec 43 Kinds of Shares	Shall not apply to specified IFSC Company, where MOA or AOA of such company provides for it.
Section 47	Sec 47 Voting rights	Shall not apply to specified IFSC Company, where MOA or AOA of such company provides for it.
Clause (c) of sub-section (1) of section 54	Sec 54 Issue of sweat equity shares	Shall not apply
Sub-section (4) of section 56	Sec 56 Transfer and Transmission of Securities	In sub-section (4) of section 56 ,after the proviso, the following proviso shall be inserted, namely:- "Provided further that a Specified IFSC public company shall deliver the certificates of all securities to subscribers after incorporation, allotment, transfer or transmission within a period of sixty days."
Clause (a) of sub-section (1) of section 62	Sec 62 Further Issue of Share Capital	In clause (a) of sub-section (1), the following proviso shall be inserted, namely:- "Provided that notwithstanding anything contained in sub-clause (i), in case of a Specified IFSC public company, the periods lesser than those specified in the said sub-clause shall apply if ninety per cent. of the members have given their consent in writing or in electronic mode."
Clause (b) of sub-section (1) of section 62	Sec 62 Further Issue of Share Capital	For the words "special resolution" read as "ordinary resolution"

Topic : Common things at One place		
Chapter IV, section 67	**Sec 67 - Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares**	section 67 Shall not apply to a Specified IFSC public company- (a) in whose share capital no other body corporate has invested any money; (b) if the borrowings of such company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.
Chapter V, clauses (a) to (e) of sub-section (2) of section 73	**Sec 73 - Prohibition on acceptance of deposits from public.**	Clauses (a) to (e) of subsection (2) of section 73 Shall not apply to a Specified IFSC public company which accepts from its members, monies not exceeding one hundred per cent. of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified
Sub-section (1) of section 82	**Sec 82 Company to Report Satisfaction of Charge**	In Sub-section (1) of section 82 the following proviso shall be inserted, namely:- "Provided that in case of a Specified IFSC public company, the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed."
Sub-section (6) of section 89	**Sec 89 Declaration in Respect of Beneficial Interest in any Share**	For the words “thirty days” read as “sixty days”.
Sub-section (3) of section 92	**Sec 92 Annual Returns**	Shall not apply
Sub-section (1) of section 100	**Sec 100 Calling of Extraordinary General Meeting**	In sub-section (1) of section 100, the following proviso shall be inserted, namely:- “Provided that in case of a Specified IFSC company, the Board may subject to the consent of all the shareholders, convene its extraordinary general meeting at any place within or outside India.”
Section 101 to 107 and section 109	**Sec 196 Appointment of Managing Director, Whole-time Director or Manager**	Shall apply in case of a specified IFSC public company , unless otherwise specified in AOA of company.

Penalty Chart

Section	Penalty to	Penalty levied in case of
	Preliminary & Basics of Company Law	
2(62)	One Person Company or any officer	If OPC or any officer of such company contravenes provisions, they shall be punishable with fine which may extend to **Rs. 10,000 + Rs. 1000 per day** after the first day during which such contravention continues.
	Any person/persons who does improper use Limited or Private Limited	Punishment for improper use of **Limited or "Private Limited** Such offence will be punishable with fine of **Rs. 500 to Rs. 2000** per day during use of such name
	Incorporation of Company and Matters Incidental Thereto	
4	Company	If after such registration it is found that the registration of name was done by furnishing wrongful or incorrect information then- **a)** If such company is yet to be incorporated, then said name will be cancelled and penalty up to **Rs. 100000** can be imposed. **b)** If the company is incorporated, then it will be ordered to either: - **i.** change the said name or **ii.** appeal for winding up of the company by passing the resolution within a period of 3 months **iii.** take action for striking off the name of the company from the register of companies; **iv.** make a petition for winding up of the company.
7	Any person	If any person furnishes any **false or incorrect particulars** of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action under **section 447** as follows: **a)** 6 months to 10 years of jail; &/or **b)** Penalty - amount of fraud to 3 times of amount of fraud.
8	Company & Director and Officer in default	If Company makes any default in complying any provisions of the section then the company will be liable to: **a)** Fine of minimum 10 lakhs up to Rs. 1 crores, and **b)** Every director and any other officer who is found guilty for such default will be punishable with Fine of Rs. 25000 to 25 lakhs
12	Company & Every officer	If any of default is made to comply with provisions of this section- **Company & Every officer** who is found liable for default will have to pay penalty of **Rs. 1000 for every day** during which such default continues but **not exceeding Rs. 1 lakh**
14	Company & Every officer	If a company makes any default in complying with provisions, **Company and every officer who is in default** shall be liable to a penalty of **Rs. 1000** for every copy of the articles issued without such alteration.
15	Company and Every officer who is in default	If a company makes any default in complying with the provisions of sub-section (1), the **company and every officer who is in default** shall be liable to a penalty of **Rs. 1000** for every copy of the memorandum or articles issued without such alteration.
16	Company & Every officer	If any default is made by the company in following the provisions of this section then:

		a) Company will be liable to pay penalty equal to **Rs.1000 per day** till default continues, **and** b) Every officer concerned will be liable to penalty of **Rs.5000 to Rs. 1 lakhs.**
17	Company & Every officer	In case of default, **the company and every officer who is in default** shall be liable for each default, to a penalty of **Rs. 1000 for each day** during which such default continues **or Rs 1 lakh**, whichever is less.
	Prospectus and Allotment of Securities	
26	Company & Every person who is knowingly a party	Company & Every person who is knowingly a party to the issue of such prospectus, shall be punishable with **fine Rs. 50000** to **Rs 3 lakh.**
39	Company & Every Officer in default	In case a company fails to return the amount to subscribers u/s 39(3) or in filing the return of allotment with ROC u/s 39(4), it shall be, with every officer in default, liable to penalty. Penalty: **Rs.1,000** per day of default being continued, Or **Rs. 1,00,000** whichever is less.
40	Company & Every officer in default	Penalty for default will be as under- For Company- Rs.5,00,000 ≤ Fine ≤ Rs.50,00,000 For every officer in default - Rs.50,000 ≤ Fine ≤ Rs.3,00,000
42	Company, Promoters, Directors	If a company makes an offer or accepts monies in contravention of this section; **Persons liable** – Company, Promoters, Directors **Penalty – Amount involved in offer, or Rs. 2 Cr.** Whichever is lower And Company shall refund all monies to subscribers within **30 days** of the order imposing the penalty.
	Share Capital and Debentures	
46	Company & Every officer in default	Penalty when a company, with intent to defraud, issues a duplicate share certificate : **For company** – 5 X Face value ≤ **Fine** ≤ (10 X Face value OR Rs. 10 crores) whichever is higher. **For every officer in default** – Liable for action u/s 447
53	Company & Every officer in default	Where any company fails to comply with provisions of this section, **a)** Company & every officer who is in default shall be liable to a penalty which may extend to an **amount equal to amount raised through issue of shares at a discount or 5 lakh rupees**, whichever is less, and **b)** Company shall also be liable to refund all monies received with **interest at rate of 12% p.a.** from date of issue of such shares to persons to whom such shares have been issued.
56	Company & Every officer in default	Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of **Rs. 50,000.**
57	Any person	Any person who deceitfully personates owner of any security and thereby attempts to obtain any such security or amount from such security shall be punishable with- 1 year ≤ **Jail** ≤ 3 years **AND** Rs.1,00,000 ≤ **Fine** ≤ Rs.5,00,000.
58	Any Person	If a person contravenes the order of the tribunal he shall be punishable a) With Jail of 1 year to 3 years and b) With fine of Rs. 1 lakh to 5 lakh.
64	Company & Every officer in	Where any company fails to comply with the provisions of sub-

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	default	section (1), such company and every officer who is in default shall be liable to a penalty of Rs.500 for each day during which such default continues, subject to a maximum of Rs. 5 lakhs in case of a company and Rs. 1 lakh in case of an officer who is in default
67	Company & Every officer in default	**Penalty for Company-** Rs.1,00,000 ≤ Fine ≤ Rs.25,00,000 **Penalty for every officer in default:** Jail ≤ 3 Years **And** Rs.1,00,000 ≤ Fine ≤ Rs.25,00,000
68	Company & Every officer in default	If a company makes any default in complying with the provisions of this section or with SEBI regulations, penalty shall be as under- **For Company-** Rs.1,00,000 ≤ Fine ≤ Rs.3,00,000 **For Every officer in default-** Rs.1,00,000 ≤ Fine ≤ Rs.3,00,000
	Acceptance of Deposits By Companies	
74	Company, Every officer or CS who is in default	If a company fails to repay within prescribed time or such extended time allowed by the Tribunal- • The deposit; or • Any part of deposit; or • Any interest thereon, Penalty shall be as under- **For Company**-Rs.1,00,00,000 ≤ Fine ≤ Rs.10,00,00,000 (This penalty shall be in addition to the amount of repayment of-Deposit/part of deposit + Interest due thereon if any) **For every officer in default**-Jail up to 7 Years, And/OrRs.25,00,000 ≤ Fine ≤ Rs.2,00,00,000
76A	Company & Every Officer in default	Where company act in contravention of section 73or 76 or fails to repay deposits or interest then: **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 which shall not be less than **Rs, 1 cr or twice** the amount of deposit accepted by the company, whichever is lower rupees but which may extend to **Rs. 10 cr** and Filed with ROC before making such invitation **b)** every officer of company who is in default shall be punishable with imprisonment up to 7 years & with fine which shall not be less than Rs 25 lakhs but which may extend to Rs. 2 Cr **c)** if officer done it willfully liable u/s 447
	Registration of Charges	
86	Company and Every officer who is in default	Penalty for contravention of any provision of chapter VI For Company-Rs.5,00,000 **For every officer in default-**Rs.50,000 If any person willfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.
	Management and Administration	
88	Company & Every officer in default	Penalty for non-compliance with the provisions of the section for company and every officer in default- a. For Company-Rs.3,00,000 b. For every officer in default - Rs.50,000
89(5)	Beneficial Owner	Punishment when a person liable to make a declaration under subsection (1), (2) or (3) fails to do so, without any reasonable cause-

		For One time failure- Fine ≤ Rs.50,000 For Continuing failure- A further fine Rs.200 per day subject to maximum of Rs.500,000
89(7)	Company	Where a company fails to file a return as above within prescribed time(270 days)- **Penalty for company and every officer in default-** penalty of **Rs. 1000** for each day during which such failure continues, subject to a maximum of **Rs. 5 lakhs** in the case of a company and **Rs. 2 lakhs** in case of an officer who is in default.
90	Any person who required to make declaration	If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty of **Rs. 50000** and in case of continuing failure, with a further penalty of **Rs. 1000** for each day after the first during which such failure continues, subject to a maximum of **Rs.2 lakh**
90	Company & Every officer in default	If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, a) **Company** shall be liable to a penalty of **Rs. 1 lakh** and in case of continuing failure, with a further penalty of **Rs.500** for each day, after the first during which such failure continues, subject to a maximum of **Rs. 5 lakhs** and b) **Every officer** of the company who is in default shall be liable to a penalty of **Rs. 25000** and in case of continuing failure, with a further penalty of **Rs. 200** for each day, after the first during which such failure continues, subject to a maximum of **Rs. 1 lakh**.
90	Any person who willfully furnishes any such information	If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under **section 447**.
91	Company & Every officer in default	Penalty for every day during which the register is kept closed in contravention of sec. 91 of the Companies Act, 2013- **For company and every officer in default-** • Rs.5,000 per day of default; or • Rs. 1,00,000 Whichever is lower
92(5)	Company & Every officer in default	Where Company **fails** to file even within 270 days from the expiry of 60 days time-limit (i.e., fails to file within 330 days of date of holding AGM/date on which AGM should have been held),penalty shall be as under- such **company and its every officer who is in default** shall be liable to a penalty of **Rs. 10000** and in case of continuing failure, with further penalty of **Rs. 1000** for each day during which such failure continues, subject to a maximum of **Rs. 2 lakhs** in case of a company and **Rs. 50000** in case of an officer who is in default.
92(6)	Company Secretary	When a CS certifies an AR which is not in conformity with the requirements of this section or the applicable rules, he shall be liable to a penalty of **Rs. 2 lakhs**.
94	Company & Every officer in default	If company refuses to allow any inspection or taking of any extract, penalty for the company & every officer in default shall be as under- Rs.1,000 per day of defaulting period; or Rs.1,00,000 Whichever is lower.
99	Company & Every officer in default	If any default is made in- **(i)** Holding a meeting of a company as per sec 96, 97 or 98; or

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		(ii) Complying with any directions of the Tribunal. Penalty for the company and every officer in default- **For one time default-** Fine up to Rs.1,00,000 **For continuing default- A further fine up to Rs.5,000 per day for the defaulting period.**
102	Every director, promoter, Manager , Any KMP who is in default	**Higher of** Fine up to Rs.50,000; or 5 x Amount of benefit to person liable
105	Every officer in default	Every officer of the company who is in default shall be liable to penalty of Rs. 5000.
111	Company & Every officer in default	Penalty for Company and Every officer in default shall be Rs. 25000.
117	Company & Every officer in default	**Penalty for filing beyond 300 days -For the Company-** Penalty of Rs. 10000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 2 lakh. **For every officer in default(including liquidator if any)**- penalty of Rs. 10000 and in case of continuing failure, with further penalty of Rs. 100 for each day after the first during which such failure continues, subject to a maximum of Rs. 50000.
118(11)	Company & Every officer in default	Penalty for Company-Rs.25,000 & For every officer in default-Rs.5,000
118(12)		Punishment for tampering with the minutes: Jail up to 2 years AND Rs.25,000 ≤ Fine ≤ Rs.1,00,000
119	Company & Every officer in default	Penalty shall be there if any inspection under subsection (1) is- **(i)** Refused; or **(ii)** Not furnished within specified time **For Company-**Rs.25,000 **For every officer in default-**Rs.5,000 for each refusal or default
120	Company & Every officer in default	Company & every officer in default punishable with fine of Rs. 5000 with further penalty of Rs 500 per day till the default continues.
121	Company & Every officer in default	If a company fails to file the report under sub-section (2) within prescribed time- **Penalty for company** liable to a penalty of **Rs. 1 lakh** and in case of continuing failure, with further penalty of **Rs. 500** for each day after the first during which such failure continues, subject to a maximum of **Rs. 5 lakhs.** **Penalty for every officer in default-** a penalty which shall not be less than **Rs. 25000** and in case of continuing failure, with further penalty of **Rs. 500** for each day after the first during which such failure continues, subject to a maximum of **Rs. 1 lakh.**
	Declaration and Payment of Dividend	
124	Company & Every officer in default	If a company fails to comply with any of the requirements of this section, such a) Company shall be liable to a penalty of Rs. 1 lakh and in case of continuing failure, with a further penalty of Rs. 500 for each day after the first during which such failure continues, subject to a maximum of Rs. 10 lakhs and b) Every officer of the company who is in default shall be liable to a penalty of Rs. 25000 and in case of continuing failure, with a further penalty of Rs. 100 for each day after

		the first during which such failure continues, subject to a maximum of two lakh rupees.
127	Every Director of Company and Company	In such situation if the company fails to pay the dividend to any shareholder in the above manner then the consequences will be as follows. **a)** Every Director of the company who is knowingly party to default will be punishable with: **(i)** Fine of Rs. 1000 per day. **(ii)** Jail up to 2 years. **b)** Company will be liable to pay the simple interest of 18% per annum to the shareholder for delayed payment. In addition to this if the default in payment of the dividend is subsisting for continuous 1 year after end of 30 days all the directors holding the position of the director will be disqualified u/s 164(2) and need to vacate the office u/s 167 immediately after end of such 1 year.
	Accounts of Companies	
128	The officer in default	Normally the duty of maintenance of books of accounts is of the MD / WTD / BOD. But if they feel so they can transfer the duty to CFO / any other qualified person. In case of contravention the officer in default will be as follows: **a)** MD, WTD in charge of finance/ BOD (if qualified person or CFO is not appointed). **b)** CFO / Qualified person appointed. (in case if the CFO / Qualified Person is appointed for maintenance of books.) The officer in default in above case will be liable to the following penalty. **Fine of Rs. 50,000 – Rs. 5,00,000;**
129	The officer in default	In case of contravention of the section any of the following persons will be considered as officer in default for the section. **a)** MD,WTD,CFO or Eligible person appointed by BOD; or **b)** And in absence of the all of the above the BOD of the company. The officer in default as stated above will be liable for the following penalty: **a)** Jail upto 1 year; or **b)** Fine of Rs. 50,000 to Rs. 5 lakhs; or **c)** Both.
132	CA or CA Firm	In case if the professional misconduct is proved against the person then NFRA have power to make following orders – **(i)** Penalty from Rs. 1 lacs to 5 times of audit fees for individual CA. **(ii)** Penalty of Rs. 5 lacs to 10 times of audit fees for firm of CA. **(iii)** In addition to above the NFRA can debar any individual or the firm from being the member of ICAI from 6 months to 10 years.
134	Company & Every officer in default	If a company is in default in complying with the provisions of this section: **Company** shall be liable to a penalty of **Rs. 3 lakhs** and **Every officer** of the company who is in default shall be liable to a penalty of **Rs. 50000**.
135	Company & Every officer in default	If a company is in default in complying with the provisions of sub-section (5) or sub-section (6), Company shall be liable to a penalty of **twice** the amount required to be transferred by the

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		company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or **Rs. 1 Crore**, whichever is less, and Every officer of the company who is in default shall be liable to a penalty of **1/10th** of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or **Rs. 2 lakhs** , whichever is less.
136	Company & Every officer in default	In case of contravention of this section by not circulating or publishing the accounts or audit report or by not making it available for the inspection the consequences will be as follows: a) Company will be penalised with **Rs. 25000**; and b) Every officer will be penalised with **Rs. 5000.**
137	Company & Every officer in default	If company fails to file the Financial statement or other required documents as required by section 137(1) or 137(2)as the case may be, before the expiry of the period specified therein then consequences will be as follows. **a)** The company shall be liable to penalty of **Rs. 10,000** and for a continuing failure with a further penalty of **Rs.100** for each day during which such failures continues subject to maximum of **Rs.2,00,000** **b)** The officer in default (CFO or CEO or any other director appointed or BOD) shall be liable to: • a penalty of **Rs.10000** and • in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues subject to a maximum of **Rs. 50,000.**
Audit and Auditors		
140	The Auditor	If the auditor fails to file **Form ADT-3** statement of resignation as stated above the auditor will be liable for the penalty of **Rs. 50,000** or an amount equal to the remuneration of the auditor, whichever is less. and in case of continuing failure, with further penalty of **Rs. 500** for each day after the first during which such failure continues, subject to a maximum of **Rs 2 lakh.**
143(12)	Auditor, Cost Accountant or Company Secretary in practice	If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12), he shall a) in case of a listed company, be liable to a penalty of Rs. 5 lakh; and b) in case of any other company, be liable to a penalty of Rs. 1 lakh.
147(1)	Company & Every officer in default	If any provision of section 139 – 146 is contravened the consequences will be as follows. a) The company will be punishable for the fine of Rs.25000 to Rs.5 lakhs; and b) Every officer in default will be liable for:fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
147(2)	Auditor of Company	If auditor of company contravenes any provision of sec 139, 143, 144, 145 then the auditor is liable for following consequences. 1. In case of unintentional default he shall be punishable with:-

		a) Minimum fine:- Rs. 25000 b) Maximum fine:- lower of the following i. Rs 5 lakhs or 4 * ii. Remuneration of the auditor. 2. In case default made with an intention to deceive the company or its shareholders or creditors or tax authorities -he shall be punishable with- a) Jail upto 1 year; and b) Fine i. Minimum fine:- Rs.50,000 ii. Maximum fine:- lower of the following Rs.25 lakh or 8 * Remuneration of the auditor
148	Cost Auditor	If the section is contravened the consequences are as follows. The company and every officer in default shall carry the same liability as specified in sec 147(1) as follows. a) The company will be punishable for the fine of Rs. 25000 to Rs 5 lakhs; and b) **Every officer in default** will be liable for:fine which shall not be less than ten thousand rupees but which may extend to **one lakh rupees**. The cost auditor in default will be liable to penalty u/s 147(2) to (4) as follows: 1. In case of unintentional default - he shall be punishable with:- a) Minimum fine:- Rs. 25000 b) Maximum fine:- lower of the following i. Rs 5 lakhs or ii. 4 * Remuneration of auditor. 2. In case default made with an intention to deceive the company or its shareholders or creditors or tax authorities - he shall be punishable with- a) Jail upto 1 year; and b) Fine i. Minimum fine:- Rs.50,000 ii. Maximum fine:- lower of the following Rs.25 lakh or 8 * Remuneration of the auditor Where an auditor has been convicted under sub-section (2), he shall be liable to— (i) refund the remuneration received by him to the company; and (ii) pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

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Resolutions

General Meeting – Ordinary Resolution Chart

Section No.	Particulars
4	Where Registrar direct to change the name of the company within 3 months
16	Where Central Government direct to change the name of the company within 3/6 months
61	Alteration of Memorandum of Association (Increase /Consolidate/ sub-divide/ convert/ cancellation of Share Capital)
63	Capitalization of Company profit or Reserves to issue fully paid bonus shares
65	Unlimited company to provide for reserve share capital on conversion into a limited company
73 & 76	Accepting deposits from public
102 read with 123, 139, 140, 142, 152	Ordinary Business transacted at Annual General Meeting only
148	Fixing of Remuneration of Cost Accountant

General Meeting Special Resolution Chart

Section No.	Particulars
5	Alteration of Article Of Association while converting from Private Limited to Public Limited and Vice Versa
12	To change the Registered office of the company outside the Local limits of the city, town or village
13	For Alteration of Memorandum of Association of the Company
14	For Alteration of Article of Association of the Company
13 & 27	Change in the Object Clause of Memorandum of Association of the Company
54	Issue of Sweat Equity Shares (Except this share cannot be issued at discount)
62	For issuing further shares to Employees of the Company under the scheme of Employee Stock Option Plan & to determine the terms of issuing Debentures convertible into shares
66	Reduction of Share Capital
68	a) Buy Back of Shares
71	To issue Debenture convertible into shares , wholly or partly
140	a) Removal of Auditor appointed U/s 139 before expiry of his term and after approval of Central Government

BOD Ordinary Resolution Chart

Section No.	Particulars
2(41)	For change in Financial year of the company as 1st April to 31st March every year
2(41)	For Approval for adoption of Financial Year of the Company as 1st January to 31 December (or any other financial year other than April to March) every year
5	For Entrenchment of Articles of Association of Company
7	For Issue of NOC for use of same premises as the Registered Office while incorporating new Company
7	For granting NOC to use common name while incorporating a new company
7	For Authorization for Subscribing, Signing and Executing the Memorandum of

	Association & Articles of Association for combined Subscribers approval while incorporating a new Company
12	For change in Registered office address of the Company within local limits
13	For application for reservation of name for changing the Name of the Company.
14	For Alteration of Articles of Association of the Company
42	For Issue of Shares on Private Placement basis and approval of Letter of Offer in Form PAS-4 & Record of Private Placement in form PAS-5
46	For approval of format of Share Certificates and Debentures
56	For registration of transfer of Shares & For Split of Shares Certificates
64	To Increase the Authorized Share Capital and Alteration of Capital Clause of Memorandum of Association of the Company
96	For making application to the Registrar of Companies for Extension of Time for holding the Annual General Meeting
101	To approve the draft notice for convening Annual General Meeting/Extraordinary General Meeting of the Company
113	For general authorization to attend the any General Meeting as representative of a Body corporate shareholder
113	For Authorization to attend a specific Annual General Meeting of a Company as representative of a Body corporate shareholder
123	For Recommendation of Final Dividend
123(3)	For Declaration of Interim Dividend
134	For consideration and approval of the draft Director's Report
135	For constitution of Corporate Social Responsibility (CSR) Committee & For approval of Corporate Social Responsibility policy
137	a) For consideration and take note of the Audited Annual Financial Statements and the Auditors' Report thereon of the Subsidiary Company b) For consideration and approval of draft Annual Financial Statement of Company c) To take note of Auditor's Report and approval of Audited Annual Financial Statement of the Company d) For grant of authority to file the Annual Forms with Ministry of Corporate Affairs
139	a) For recommendation of appointment of Statutory Auditors of the Company in the Annual General Meeting b) For considering the appointment of Statutory Auditors of the Company to fill the casual vacancy caused due to resignation c) To appoint the first Statutory Auditors of the Company
140	To take note of resignation of Statutory Auditors of the Company
148	a) For appointment of the Cost Auditors b) To consider and approve the Cost Statements and Other Statements to be annexed to the Cost Audit Report c) To consider and take note of the Cost Auditors' Report

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Resolution Passed by Postal Ballot Chart

Section No.	Particulars
2(68)	Alteration of articles of association in relation to insertion or removal of provisions, which under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company
4 & 13	Alteration of 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
12(5)	Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12
13(8)	Change in objects for which a company has raised money from public through prospects and still has any unutilized amount out of the money so raised under sub-section (8) of section 13
43	Issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43
48	Variation in the rights attached to a class of shares or debentures or other securities as specified under section 48
68	Buy-back of shares by a company under sub-section (1) of section 68

Statutory Register to be maintained Under Companies Act,2013

Name of Statutory Register	Form no.
Register of members (Section – 88)	MGT-1
Register of Debenture holders (Section- 88)	MGT- 2
Foreign Register of Members, Debenture holders, other security holders or beneficial owners residing outside India (Section- 88)	No E-forms
Register of significant beneficial owners (Section 90) BEN-3	BEN-3
Register of Renewed and Duplicate Share Certificate (Section – 46)	SH-02
Register of Sweat Equity Shares (Section – 54)	SH-03
Register of Employee Stock Options (Section- 62)	SH-06
Register of Shares or Securities which have been Bought Back (Section-68)	SH-10
Register of Deposits (Section- 74)	No E-forms
Register of Charges (Section- 85)	CHG-07
Register of Directors and KMPs (Section- 85)	No E-forms
Register of Loans/Guarantee/Security and Acquisition by Company (Section 186)	MBP-2
Register of Investments not held in its own name (Section-187)	MBP-3
Register of Contracts or Arrangements in which Directors are interested (Section-189)	MBP-4

Central Government Approval Chart

Section No.	Particulars
8	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.
12	Prior CG approval is required in case there is a Change of registered office from One state to another state.
132	The NFRA shall prepare annual report in prescribed form and present it before CG.
135	CG may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall company with such directions.
139	The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).
140	Prior CG approval is required in case of removal of auditor

1 PRELIMINARY AND BASICS OF COMPANY LAW

Characteristics of Company

Incorporated Association

The company is **not natural person** like human plant or animal. It is created by human. It is a creation for some specific object. So it will run for achieving the object & beyond for new objects.

Artificial Judicial Person

As the company is created by human, its **not natural.** Its an **artificial entity** which cannot be formed on its own. It has to be created. But creation will be **judicial** i.e. legal under any law in force in the territory of any country.

Separate Legal Entity

Company have its **own identity,** its **own legal** existence like any other human. It is just that the Company is intangible & exist only on paper. As company is **separate legal entity,** it has right to enter into contract on its own, it work in it own name. Everything which is done in the Company will be known by the name of the company

Perpetual Succession

Members, owners, promoters, BOD, stakeholders may **come & go** but company will **remain till eternity.**

The company does not have life equal to its promoters or members. Even after death of all, company **can run for ages.** The company will only cease to exist when it is dissolved.

Limited Liability

The liability of the members of the company is normally **limited up** the amount of the share **capital invested** in the company. The personal assets of the owners of the company will **not be liable** for any payment to creditor.

Common Seal

Human uses signature to show the authentication of document & to mention personal identity. For company signature means Seal. The document is deemed to be signed by company if the document **bears the seal of the** company.

Transfer of Shares

The ownership of the Company is represented by the shares of the company. So for ease of transactions, the share-holders **can transfer the shares** of the company with its ownership & it does not affect the company in any way, it only changes the share-holding pattern.

Separation of Ownership from Management

The Company is combination of the three pillars Investor, Management, Auditor. Investor invests the money which is **used by management** to **run** the **business** and is checked by auditor whether money is being properly used or not. Thus the investors need not enter in to day to day transaction of the company or management of the company.

Separate Property

As company is separate legal entity it has **right to enter into contract** on its **own.** Thus company can purchase or sale property on its own. Do transaction on its own. Its like company has its **entire separate range** of assets or liabilities.

Separate Legal Entity: Land Mark Case Laws

Case Name	Decision of the court	Key Word
Salomon Vs. Salomon & Co. Ltd	There can be a transfer of property from a member to the company & vice-versa. A person can be a member, director, employee and creditor of the company at same time. A company **has rights and duties** of its own. A company is **not an agent** of members or directors.	Creditors compensation
Lee Vs Lee Air Farming Ltd.	Lee is a person who is a member as well as director as well as employee and he have valid contract of compensation if he gets damaged or diseased during the course of employment. After few days Lee met with an accident and becomes dead. Then it was hold that there was a **valid contract** between the company and Lee of service as worker. Therefore contention of Mrs. Lee is right in law.	Employees compensation
Gramophone & Typewriter Co. Vs Stanley.	Property of the company is not the property of the shareholders, it is the property of the company. Therefore shareholders do **not have any right on the property** of the company during the entire life of the company.	Unauthorised use
Macaura Vs. Northern Assurance Co. Ltd.	a) It was held that the insurance company is not liable to Macaura due to loss of Insurable Interest as the owner of the timber is company and the insurance is in the name of Macaura. b) As the company is a separate legal entity, the timber **should be insured in the name of the company.**	Insurance of companies property

Lifting of Corporate Veil

Meaning

A) The company has a **separate legal entity** from its members. This principle is called the **'Veil of Incorporation'.**

B) Board of Directors act **behind** the Company

C) If BOD executes fraud behind the company then question is **who shall be penalised Company** or Board of Director ?

D) In such case veil of the company **shall be lifted** and **culprit** shall be identified

E) This process is called as **lifting of corporate** veil.

Crux – In short the person committing fraud or illegal activity or coercive activity inside the company shall be held personally liable for the acts done by setting aside the separate identity of the company.

Lifting of Corporate Veil: Land Mark Case Laws

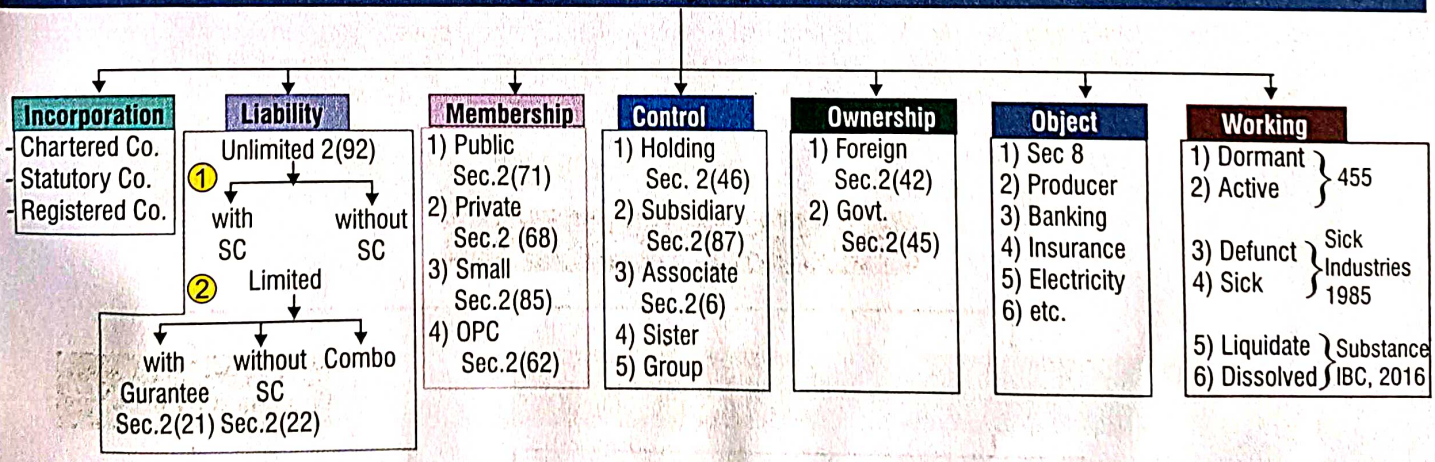
Case Name	Decision of the court	Key Word
Dinshaw Maneckji Petit	a) It was held that companies and the assessee are **no separate legal** entity. These are created only for purpose of running from **tax burden.** b) As the company has done no business & is formed just for the purpose of converting dividend income into loan and **avoid tax.**	Protection of Revenue
Daimler Co. Ltd Vs. Continental Tyre & Rubber Co. (Great Britain) Ltd.	It was held that the company was **alien company** & the payment of debt to it would amount to trading with enemy. Therefore the company is **not allowed to proceed** with action.	Contract with enemy

Jones Vs. Lipman	The court looked into reality and ignored the transfer and ordered the company to **transfer the land to J.**	Fraud and improper conduct improper resale
Guildford Motors Company Vs. Horne	Horne is in fact controlling the company. Its formation was mere **Cloak** or **Sham** to break the agreement with plaintiff. The court issued the injunction against him. And his company was **restrained** from soliciting the Plaintiff's customer.	Fraud and improper conduct– Solicitation of Customers
Merchandise Transport Ltd. Vs. British Transport Commission	Held that parent and subsidiary company is **one commercial** unit. And application for the license was **rejected.**	Protection of public policy
Workman of Asso. Rubber Industry Ltd. Vs. Asso. Rubber Industry Ltd.	**Company avoiding legal obligation or welfare legislation** Where the sole purpose of formation of a new company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Corporate veil should be **pierced** to look at the real transaction.	Protection of welfare legislation
F.G. Films Ltd.	The decision is considered as **valid** since the British Company acted as nominee of the American company.	Acting as an agent for prohibited actions
New Horizons Ltd. Vs. Union of India	The experience of the promoters could be considered as the experience of the company in the technical field of the company	Expertise and experience of company

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

If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability.	Such offence will be punishable with fine of **Rs. 500 to Rs. 2000** per day during use of such name.

Types of company chart



Companies with Limited Liability

Heading	Limited by Guarantee	Limited by Shares
Section	2(21): Company Limited by Guarantee	2(22): Company Limited by Shares
Definition	"company limited by guarantee" means a company having the liability of its members **limited** by the **memorandum** to such amount as the members may respectively **undertake to contribute** to the assets of the company in the event of its being **wound up.**	"company limited by shares" means a company having the liability of its members **limited by** the **memorandum** to the amount, if any, **unpaid** on the **shares** respectively held by them.
Meaning	The company in which the investor does not invest any amount at the incorporation or during the life of the company, but they **invest the amount** max upto **amount agreed** at the time of **winding up** of the company depending on the liability of the company is company limited by guarantee.	The Company in which the **investor invests the funds** at the **incorporation** or/& during the life of the company or/& at the winding up against the instrument indicating ownership and part in capital of the company is company limited by shares.
Owners	In these companies the members or owners **act** as **guarantor.**	In these companies the shares are **held** by the **shareholders.**
Practical Use	These companies are normally the **non-profit making** organisations.	These companies are normally **profit making** organisations.
Classes	There can be different classes of members **voting and not voting.**	There can be different classes of members **based** on **the shares.**
Capital clause	Company limited by guarantee do **not have capital clause.**	Company limited by shares **have capital clause** in its MOA

Companies with Limited Liability – As per membership

Public Company 2(71)

The Companies Act, 2013, defines public company as a company which–

- ✓ is not a private company
- ✓ has a minimum paid up share capital as may be prescribed
- ✓ Seven or more members are required to form the company.

This section provides that a company which is subsidiary of a company (not being a private company) shall be deemed to be public company even where such subsidiary company continues to be a private company in its articles.

Chart for Understanding

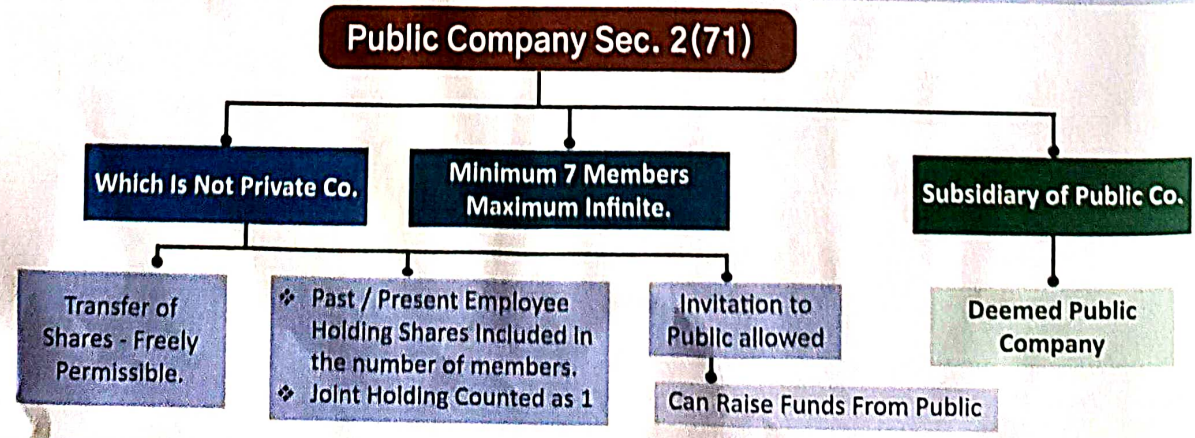


Chart for Understanding

One Person Company [Sec. 2(62) + Sec. 3]

Name

E.g
Private Co. = ABC Pvt. Ltd.
Public Co. = ABC Ltd.
OPC = ABC Pvt.Ltd.(OPC)

Member / Nominee

Individual

(Resident / Non Resident)

Member = Nominee
Papa = Baccha

OPC - I	OPC - II
papa	Baccha
Nominee	Baccha
Nominee	Nominee

ICAI Allowed

Maximum Limit

Paid Up Share Capital — Maximum 50 L.
Turnover — Maximum 2 Cr.

INC 5

Broke Any 1 (Rule 6 Co. Inc. Rules 2014)
6 Month
1. Either Comply Condition
OR
2. Compulsory Conversion

Broke Both of Them Rule 6 [Co. Inc. Rules 2014]
Ceased to be OPC
ASAP

Conversion [INC 6]
Private / Public

Restricted Business

Sec.8 — Formation of Companies With Charitable Object

NBFC — Non Banking Finance Co. E.g. *Bajaj Finance*, *Muthoot Finance*, *L & T Finance*

Type Of Company

Registered
- Unlimited
- limited
  - Private
    - OPC
    - Normal
  - Public

One Person Company 2(62)

"One Person Company means a company which has only one person as a member."

Special Provision for OPC

1. Only **Natural person** (Indian Citizen) Resident in India or not (person who stayed in India for period less than **120 days** in immediately PFY) is eligible to incorporate OPC
2. Every OPC must have **one nominee** and **one member** who are individuals.
3. OPC can have **min 1** & **max 15 Directors.**
4. Nomination can be given in **INC 2** with written consent in INC 3 and can be changed in **INC 4.**
5. OPC can have **PC < Rs. 50 Lakhs** & **Turnover < Rs. 2 cr.** (INC–5)
6. Minor **cannot** become member or nominee in OPC
7. OPC **cannot** do business of **sec 8** company and **NBFC.**
8. OPC will be **always** small company as per sec 2(85).
9. OPC can convert to other company by **INC–6**

INC–2 : Application for incorporation and nomination by Member of OPC (Formation of Company)
INC–3 : One Person company nominee's written consent form
INC–4 : One person company change in member/Nominee
INC–5 : OPC–intimation of exceeding threshold
INC–6 : OPC– Application for Conversion

For Concept Query only 8530902666

BASICS

Private Companies 2(68)

Means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, —

(I) restricts the right to transfer its shares;

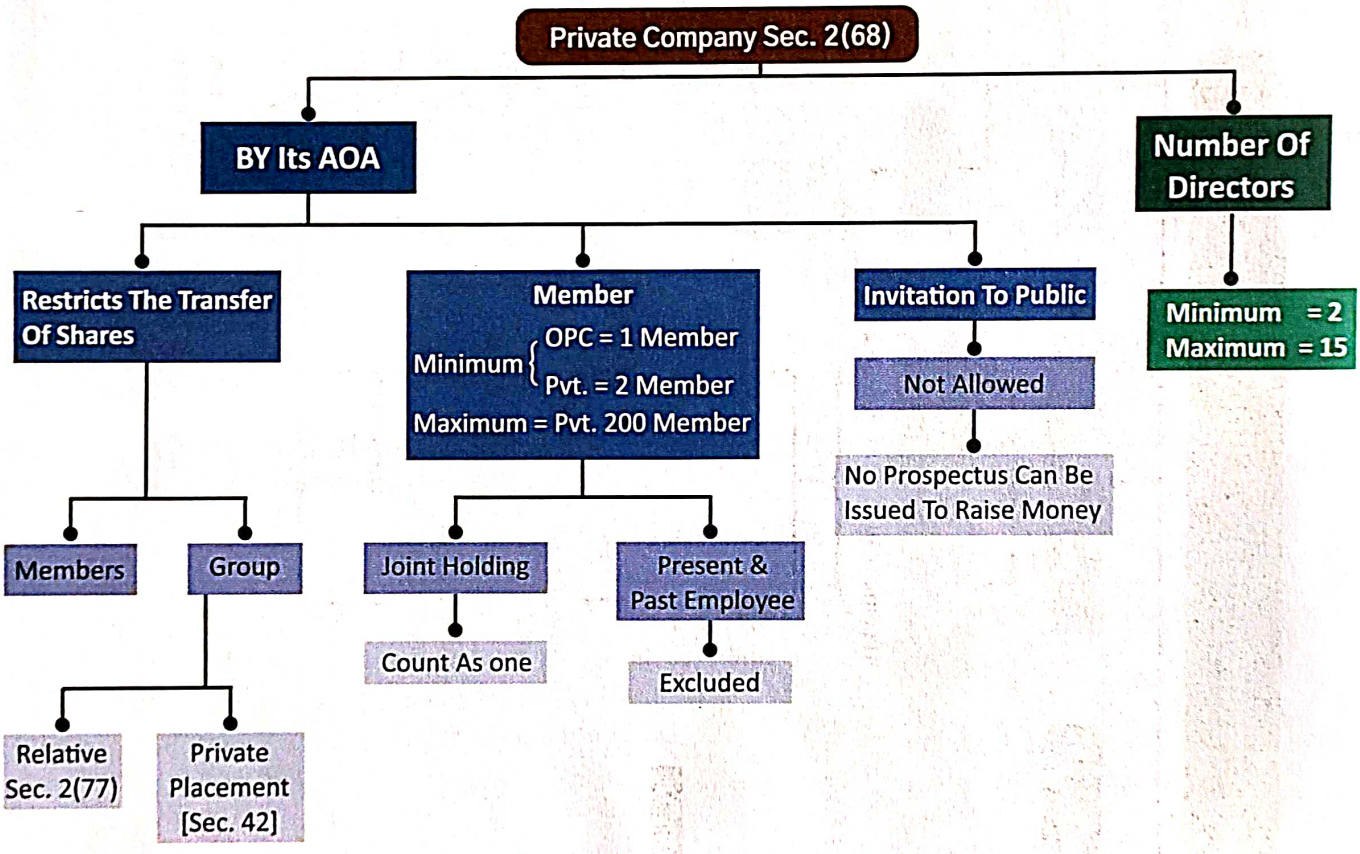
(ii) limits the number of its members to two hundred (except in case of One Person Company):

The section provides that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this section, be treated as a single member. However, following shall not be included in the number of members:

- ✓ persons who are in the employment of the company; and
- ✓ persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

Chart for Understanding



Small Company 2(85)

"small company" means a company, other than a public company,—

(i) paid-up share capital of which does **not exceed ₹ 50 Lakh** or such higher amount as may be prescribed which shall not **be more than ₹ 10** crore ; **and**

(ii) turnover of which as per its last **profit and loss account for the immediately preceding financial year does not exceed ₹ 2 crore** or such higher amount as may be prescribed which shall **not be more than ₹ 100 crore :**

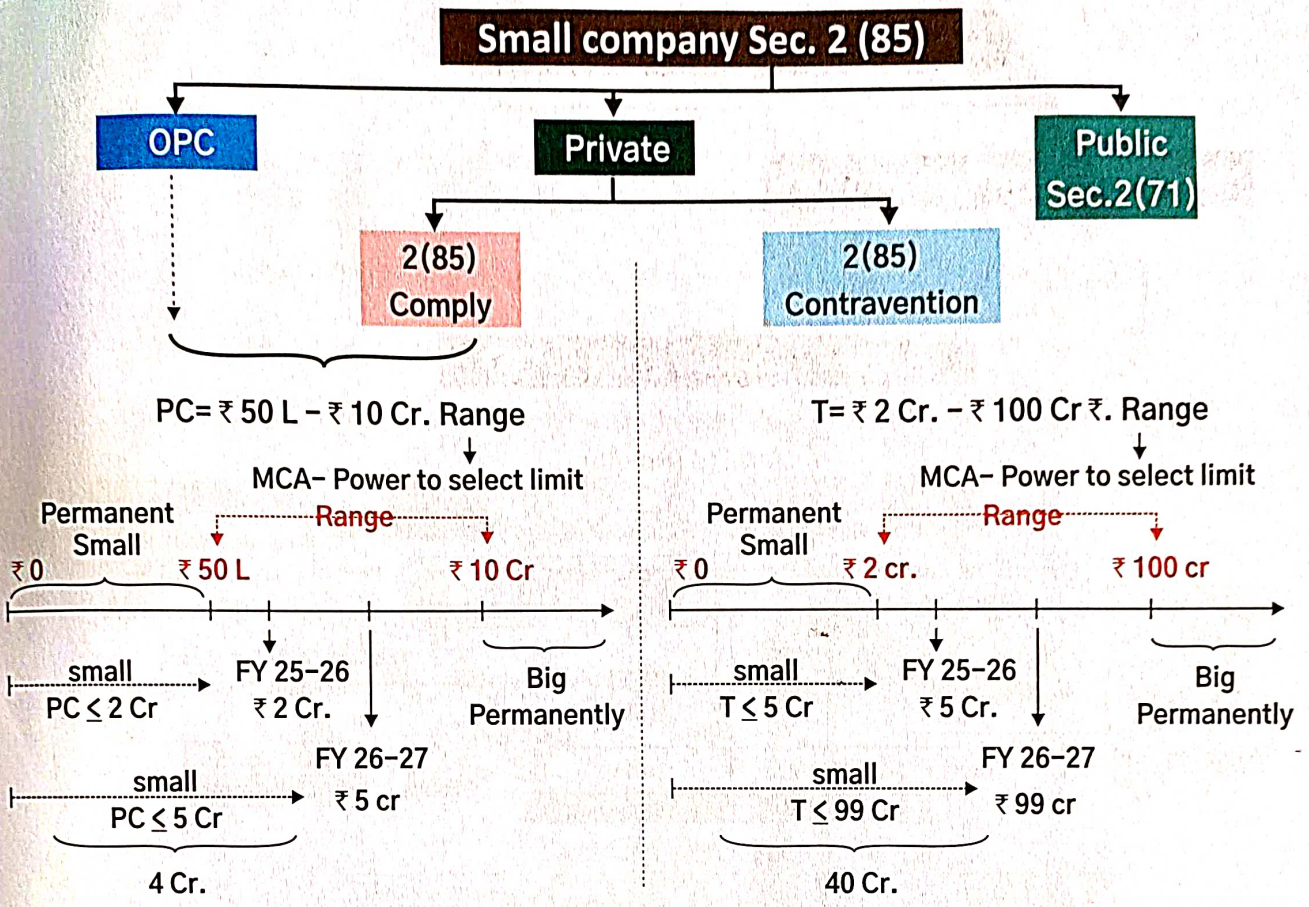
For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed ₹ 4 crores and ₹ 40 crores respectively.

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company; (B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

Chart for Understanding



Imp Note :- As per the latest Amendment paid up Capital is 4 Cr. and Turnover is 40 Cr.

As per Control

Holding Company | **Subsidiary Company** | **Associate Company**

Holding Company 2(46)

Holding and subsidiary' companies are relative terms. A company is a **holding company** in relation to **one or more other companies**, means a company of which such companies are subsidiary companies.

Explanation.— For the purposes of this clause, the expression "company" includes any **body corporate.**

Subsidiary Company 2(87)

Section 2(87) defines "**subsidiary company**" in relation to any other company (that is to say the holding company), means a company in which the holding company –

(i) controls the **composition** of the **Board of Directors**; or

(ii) exercises or controls **more than one-half of** the **total voting power** either at its **own or together** with **one or more** of its **subsidiary companies.**

Provided that such class or classes of holding companies as may be prescribed **shall not have layers of subsidiaries beyond such numbers as may be prescribed.**

Associate Company 2(6)

Associate Company means a company in which 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.**

Explanation. – For the purpose of this clause

The term "**significant influence**" means control of at least **20% of total voting power**, or of business decisions under an agreement control of or participation in business decisions under an agreement;

the expression "**joint venture**" means a joint arrangement whereby the parties that have **joint control** of the arrangement have rights to the net assets of the arrangement.

"**total voting power**", in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members there of or their proxies having a right to vote on that matter are present at the meeting and cast their votes;

BASICS

Chart for Understanding

1 Subsidiary Company 2(87)

OR

- Majority of Voting power Hold - Control
  - Example: Tata Sons 55% Equity & TCS
- Control the Composition of Board
  - Example: Tata Sons Control BOD LRJ. Ltd.

2 Subsidiary Company 2 (87) + 2 (46)

Holding Company

Ash Ltd (Holding)

- Control the Composition of BOD (2(10))
  - Majority BOD, Appointment, Reappointment, Removal Remuneration
  - Sallu Ltd. (Control 7800 / Total 12,800)
- Exercise / Control > 50% (Half) Voting Power
  - Sec.47 - SC & D
    - 1) Only to equity 99%
    - 2) In very odd case preference 1 % shares
  - (OPC) Vivek Pvt. Ltd. (Control 50 Cr. + 1 share / Total Equity 100 Cr.)
- 2(68)
  - 10%
  - 25% VP
  - 20% VP
  - Abhi Pvt. Ltd. (DPC) (Sub-subsidiary)
- Equity: 50,001 Equity / 1,00,000 shares

Sallu + Vivek = 45% + Ash (10%) = 55%

A Ltd. ⟶ B. Ltd. = 0.1 ⟶ 19.99 % / 20% - 50% / 50 + 1 ⟶ 99.99 / 100%

Investment — Associate — Subsidiary — WOS

3 Associate Company 2(6)

- Holds Significant Voting Of Other Company. > 20% = Voting Power

OR

- Who Are in Joint Venture

4 Sister Concern Company

No Definition in Companies Act, 2013.

e.g

Tata Son's Ltd. (Holding Company)

Subsidiary

- TCS Ltd.
- Salt
- Land Rover & Jaquar

Sister Concern

EKATVAM ACADEMY COMMERCE KE LIYE HAMESHA PRATHAM

Government Company 2(45)

means any company in which **not less than 51%** of the paid-up share capital is held by–

(I) the **Central Government**, or

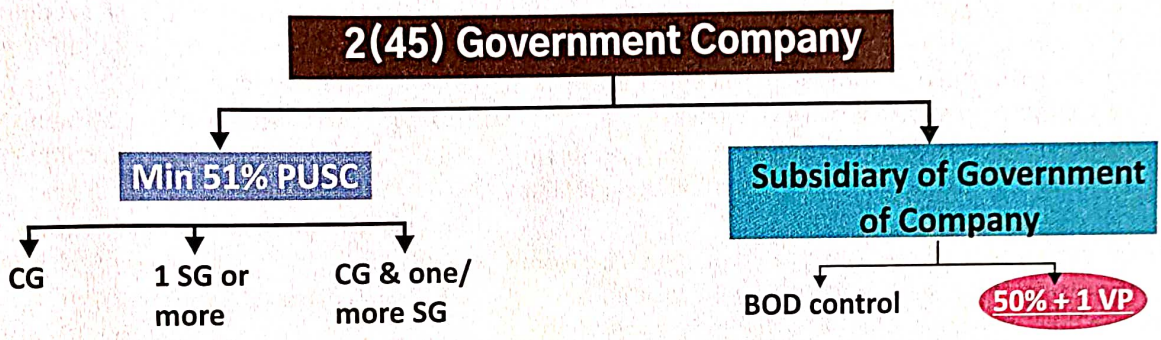
(ii) by any **State Government** or Governments, or

(iii) **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;

[**Explanation.–** For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.]

Chart for Understanding



Foreign Company 2(42)

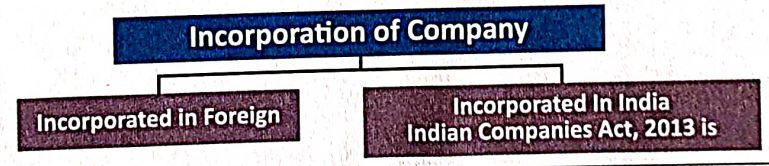
means any company or body corporate **incorporated outside India** which—

(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

Sec 379 From chapter foreign Company states that:

Where **not less than fifty per cent** of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company is held by **one or more citizens of India** or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in aggregate, such company shall comply with the provisions of this Chapter and such other provisions of this Act as maybe prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.



Place of Business	Foreign	Foreign	India	India
50% of PC is held by India?	No	Yes	No	Yes
Status of the Company	NA	NA	Foreign Company	Deemed Indian Company
Laws Applicable?	No laws	No laws	Chapter Foreign Company	Indian Companies Act, 2013

Important Definition from ICAI Module

Sec 2(52) – "Listed company" means

1) a company which has any of its securities listed on any recognised stock exchange;

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies.

According to rule 2A of the Companies (Specification of definitions details) Rules, 20146, the following classes of companies shall not be considered as listed companies, namely:–

"2A. Companies not to be considered as listed companies.– For the purposes of the proviso to clause (52) of section 2 of the Act, the following classes of companies shall not be considered as listed companies, namely:–

a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their
   (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
   (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
   (iii) both categories of (i) and (ii) above.

b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

Sec 2(72) – "Public Financial Institution" means—

i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

ii) (the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;

iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002);

iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 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:

Provided that no institution shall be so notified unless—

a) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or

b) not less than 51 % of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;

For Concept Query only 8530902666

E-Filing Forms
Companies (Incorporation) Rules, 2014

E-Form	Details	Relevant section	Rule No
INC-1	Reservation of name (MOA)	4(4)	9
INC-2	Nomination by Member of OPC (Formation of Company)	3	3
INC-3	One Person company nominee's written consent form.	3(1)	4
INC-4	One person company change in member / Nominee	3(1)	4
INC-5	OPC – Intimation of exceeding threshold	3	6
INC-6	OPC – Application for Conversion	3	7
INC-7	Application for Incorporation of Company	7	12
INC-8	Declaration by professionals	7	14
INC-9	Declaration from subscribers and directors	7	15
INC-10	Particulars of every subscriber to be filed with the ROC at time of incorporation	7	16
INC-11	Certificate of Incorporation	7	18
INC-12	Application for granting license under section 8	8	19
INC-13	Memorandum of association	8	19
INC-14	Declaration by professionals to be filed at the time of incorporation of the company with charitable objective with the ROC.	8	19
INC-15	Declaration by each of the persons making application to the Registrar of Companies for the grant of licence under section.	8	19
INC-16	License under sec 8(1) of the Companies Act, 2013	8	20
INC-17	License under sec 8(5) of the Companies Act, 2013	8	20
INC-18	Application to regional director for conversion of the sec 8 company into company of any other kind.	8	21
INC-19	Notice by sec 8 company which is seeking for conversion into some other kind of company.	8	22
INC-20	Intimation to ROC revocation / surrender of license under sec 8.	8	22
INC-20A	Declaration for commencement of business	10A	23A
INC-21	Declaration prior to the commencement of business or exercising borrowing powers.	11	24
INC-22	Notice of situation or changes of situation of registered office.	12	25,27
INC-23	Application to the regional directors for approval to shift the registered office from one state to another state or from jurisdiction of one ROC to another ROC within same state.	12	28
INC-24	Application to CG for change in name.	13	29
INC-25	Certificate of incorporation pursuant to change in name.	13	29
INC-26	Advertisement to be published in the newspaper for license for existing companies.	8,13	20,30
INC-27	Conversion of public company in private company or private company in public company.	14	33
INC-28	Notice of order of court or any other competent authority.	13	31
INC-29	SPICE (Integrated Incorporation form)		
INC-30	MOA		
INC-31	AOA		
INC-32	SPICE (Incorporation form for Company)		
INC-33	E-MOA		
INC-34	E-AOA		

Coverage of Chapter

Section	Name of Section
3	Formation of company
3A	Members severally liable in certain cases (members below min.)
4	Memorandum of Association
5	Articles of Association
6	Act to override memorandum, articles, etc.
7	Incorporation of company
8	Formation of companies with charitable objects, etc. (NPO)
9	Effect of registration
10	Effect of memorandum and articles
10A	Commencement of business etc.
~~11~~	~~Commencement of business, etc.~~
12	Registered office of company
13	Alteration of memorandum of association
14	Alteration of articles of association
15	Alteration of memorandum or articles to be noted in every copy
16	Rectification of name of company
17	Copies of memorandum, articles, etc., to be given to members
18	Conversion of companies already registered
19	Subsidiary company not to hold shares in its holding company
20	Service of documents
21	Authentication of documents, proceedings and contracts
22	Execution of bills of exchange, etc.

Sec. 3 Formation of Company

Who Is Promoter? 2(69)

The Companies Act, 2013 **defines the term "Promoter" under section 2(69)** which 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.

Provided that, a person **who is acting merely in a professional capacity,** shall **not be** regarded as **promoter,** e.g., the solicitor, banker, accountant etc. are not regarded as promoters.

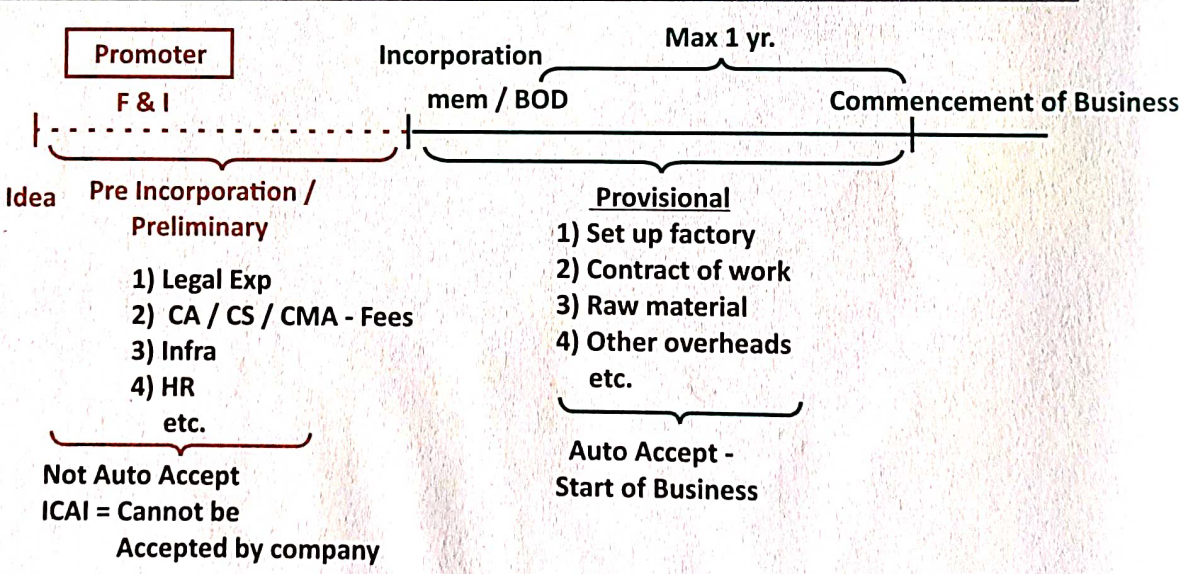
Chart for Understanding

Promoter (Sec. 2(69))

Person

(a)	OR	(b)	OR	(c)
Named as promoter in prospectus U/s 25 or Annual Return U/s 92		Control over affairs of company, directly/Indirectly as a shareholder / director / other (Decision making)		In accordance with whose advice / instruction the BOD of company are accustomed to Act.

Normal Case : Promoter is a person involved in formation & Incorporation of company



Difference between Pre incorporation Contracts and Provisional Contract

Basis of differences	Pre-Incorporation Contracts	Provisional Contracts
Meaning	Contracts which are entered into, by the persons proposing to float a company in the name of the prospective company before it have come into existence.	Contracts which are entered into by a company after obtaining the Certificate of Incorporation but before eligible to commence business under section 11 of the Companies Act.

Nature & Consequences Execution	Contracts are **void ab initio** as the company is not in existence and hence cannot enter into a contract either in its own name or through agents. A company is **neither** bound by **nor can it enforce** a pre incorporation contracts nor can it ratify the same after incorporation as being **non-existent** it cannot appoint agents on its behalf.	Contract shall be binding upon the company from the date on which the company is **entitled to commence** business
Nature & Consequences Execution	As the company is not in existence , so company is neither bound by **nor can it enforce** a pre-incorporation contracts nor can it **ratify the same** after incorporation	Contracts entered into by a company after its incorporation and before it is entitled to commence business are **provisional only** and are **not binding on** the company until the trading company completes the added formalities under section 11 (1) (a) and (b)

Answer Writing Points

A Company can be formed for **any legal purpose** i.e. for **profit making** or others and of any type whether Public or Private or One Person Company (OPC)

By **minimum Number of members** as per the type of the company **coming together** and **subscribing** their names in the memorandum and fulfilling **all the conditions** required by the registrar.

Heads	Members			Directors		
	Public	Private	OPC	Public	Private	OPC
Section No.	2(71)	2(68)	2(62)	149(1)	149(1)	149(1)
Minimum	7 	2 	1 	3 	2 	1 
Maximum	No limit	200	1	15 [AOA can provide lower amount]		
Who can be	Any person	Any person	Individual	Individual		

Sec 3A: Members severally liable in certain cases.

Answer Writing Points

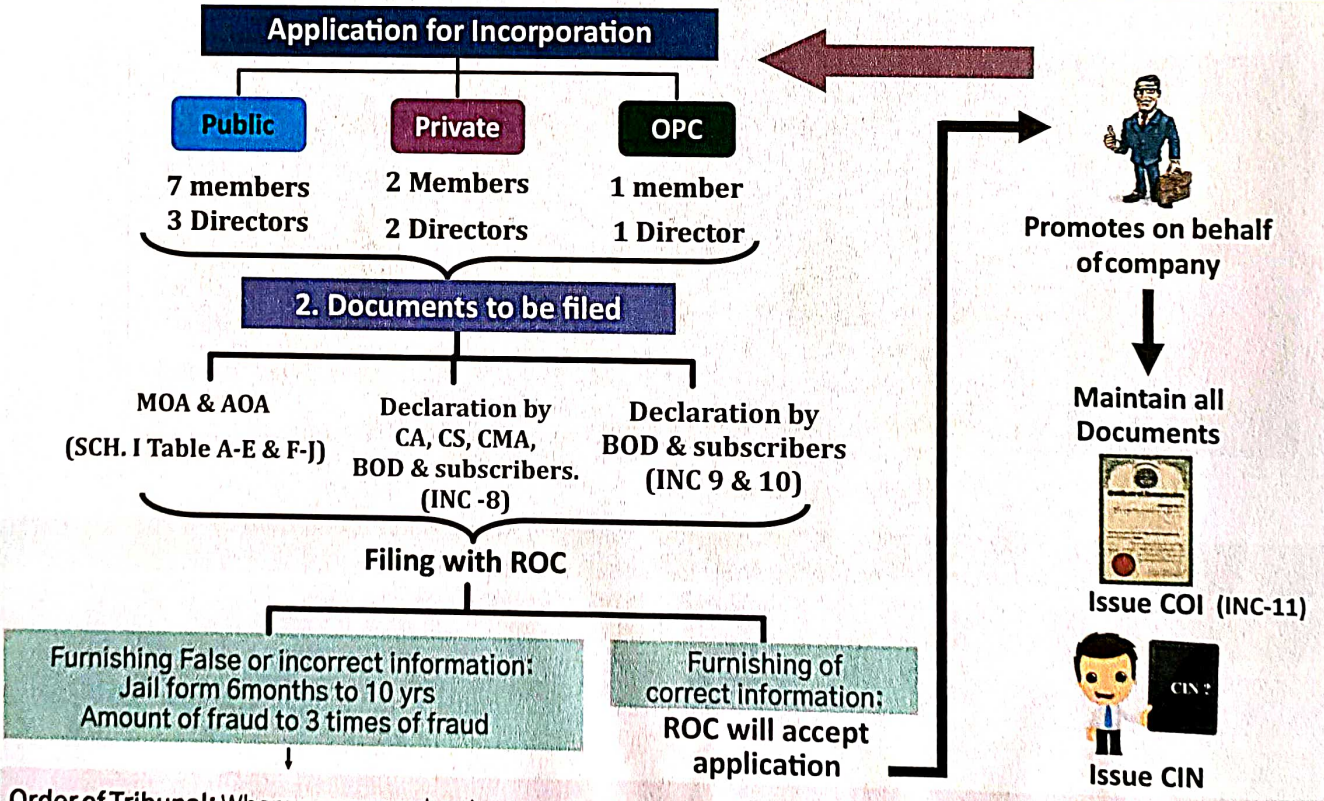
Conditions	Liability
If at any time– i) the number of members of a company is **reduced (below** statutory minimum limit) i.e · in the case of a public Co. – **below 7,** · in the case of a private Co.– **below 2,** and ii) the company carries on business for **more than 6 months** while the number of members is so reduced,	**every person who ,** • is a member of the company during the time that it so carries **on business** after **those 6 months** and • is **cognisant** of the fact that it is carrying on business with **less than 7 members or 2 members,** as the case may be, shall be severally **liable** for the **payment of the whole debts** of the company contracted **during that time** (i.e debts contracted **after 6 months),** and may be severally **sued** therefor.

Sec 7: Incorporation of Companies

Answer Writing Points

1) The company shall be **legally created, legally constituted with legal object.**
2) As per section 3 the company to incorporate and manage necessary member and BOD.
3) Promoter shall file **MOA & AOA** with **ROC.**
4) Promoter shall file **INC 8** for declaration by **CA/CS/CMA** regarding authentication of documents.
5) The **subscribers & BOD** shall file personal details in **INC 9** & sign following Affidavit/declaration in **INC 10** regarding
   a) Not involved in **any offence** in formation/management of company.
   b) Not involved in **fraud** of any law in last **5 years.**
   c) All the documents & information provided to best of his knowledge is **true & fair.**
6) The above documents shall be filled with **ROC** in **Form INC 7/ SPICe 29/ SPICe 32** for application of incorporation and **ROC** shall verify status and Allot **CIN & COI** within **30 days.**
7) If the above information is false/incorrect then **NCLT** will pass order **u/s 447** for **fraud** &
   a) **Take over** management of company
   b) **Liability** of members **unlimited**
   c) **Winding up** of company
   d) **Removal of Name** of company from **ROC**
   e) Any other required order.

Chart for Understanding



Order of Tribunal: Where a company has been **got incorporated** by furnishing **false** or incorrect information then NCLT –
(a) pass **such orders**, as it may **think** fit, for regulation of the management of the company including changes, if any, in its **memorandum** and **articles**, in **public interest** or in the **interest** of the company and its **members and creditors**; or
(b) direct that liability of the **members** shall be **unlimited**; or
(c) direct **removal of the name** of the company from the **register** of companies; or
(d) pass an **order** for the **winding up** of the company; or
(e) pass such other orders as it may deem fit.

Definition

As per **section 2(56)** memorandum means the memorandum of association of a company **as originally framed or as altered from time to time** in pursuance of any previous company law or of this Act;

Memorandum of Association (Sec. -4)

Name Clause	Object Clause	Registered Office Clause	Capital Clause	Subscription Clause	Liability Clause	Nomination Clause
The name of the company with the last word **"Limited"** in the case of a public limited company, or the last words **"Private Limited"** in the case of a private limited company. This clause is **not applicable** on the companies formed under **section 8** of the Act. The name including phrase 'Electoral Trust' may be allowed for Registration of companies to be formed under section 8 of the Act.	The **objects** for which the company is **proposed** to be **incorporated** & any matter considered necessary in furtherance there of; If any company has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a **period of six months** from the change of activities after complying with all the provisions as applicable to change of name.	The State in which **the registered office of the company** is to be situated. It is the place of business of the company where the **official communications will be made** with the company. The Registered office defines the ROC under which the company will be registered & function accordingly. The **General Meetings will be held** in city in which the Registered office of the company is **situated.**	The **amount of share capital with which the company is to be registered** and the division there of into shares of a fixed amount and the number of shares which the subscribers to the memorandum agree to subscribe which shall not be **less than one share.** The share capital also states proportion of member's holding in the company and voting rights available to him and control according to same.	The number of share each subscriber to the memorandum intends to take is indicated opposite his name. Subscription clause states that **how many persons** are **involved** in **membership** of the company at the time of incorporation. Subscriber can be any person. Either **artificial** or **natural.** First director will be elected from the subscribers if the names of directors are not mentioned in AOA.	The liability of members of the company, whether limited or unlimited, and also state,— **1)** in the case of a company limited by shares, that the **liability** of its members **is limited to** the **amount unpaid**, if any, on the **shares held by them**; and **2)** in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute— • to the **assets of the company** in the event of it **being wound-up** while he is a member or within one year after he ceases to be a member, and • to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among them selves;	**In the case of OPC,** the name of the person who, in the **event of death** of the subscriber, shall become the **member** of the company. The OPC contains only one member who is individual. So in case of death of original member, the OPC will not function. In such case the nominee will become the sole member of the OPC and OPC will function as it is.

EKAT VAM ACADEMY
CA CS Darshan Khare
For Concept Query only 8530902666

Forms of Memorandum and Articles (as per schedule I)

Sr. No.	Type Of Company	Form of Memorandum
1)	Company Limited By Shares	Table A
2)	Company Limited By Shares and not having Share capital	Table B
3)	Company Limited By Shares and having Share capital	Table C
4)	Unlimited Company not having Share capital	Table D
5)	Unlimited Company having Share capital.	Table E
6)	Articles of association of a Company limited by shares	Table F
7)	Articles of association of a company limited by guarantee and having a share capital	Table G
8)	Articles of association of a company limited by guarantee & not having share capital	Table H
9)	Articles of association of an unlimited company and having a share capital	Table I
10)	Articles of association of an unlimited company and not having share capital	Table J

Sec 4, 13 & 16 – Name Clause

Sec 4: Application for Name

1) The person shall make application for Name in **INC 1 or SPICe 32 to ROC**
2) The application can be accepted considering following prohibitions:
   a) **Identical/resembling** name **not** allowed
   b) **Defensive** name **not** allowed
   c) **Undesirable name not** allowed
   d) Name showing any **connection to CG / SG / Statutory Company/ Body corporate** is **not** allowed.
   e) Name with prohibited words as per **rule 8A** not allowed.
3) The application can be accepted/rejected. If rejected resubmit after correction in **15 days** of rejection.
4) If accepted then name will be reserves as follows:
   a) Primary for **20 days**
   b) Additional **20 days** on payment of **Rs 1000**
   c) Additional extra 20 days on payment of **Rs 2000**

   [Total **20+20+20= 60 days** on payment of total **Rs 3000**]
5) The application for incorporation shall be made within above period of reservation. If not name can be allotted to other company after above period.
6) In case of **false/wrong/fraudulent** information–
   a) Penalty upto **Rs. 100000**
   b) Order for:
      i) **Change** name in **3 months**
      ii) **Strike** of the name from **ROC**
      iii) **Winding up** of company

Sec 13(1)(2)(3)(6): Voluntary Change / Alteration of Name

1) For voluntary change in name the company shall pass **GM-SR**
2) The company shall apply to **CG(ROC)** for such change
3) **CG(ROC)** approval **not** required in case of **conversion from Ltd to Pvt Ltd.**
4) The application shall be made in **INC 24**
5) The new certificate of incorporation shall be allotted with new name in **INC 25.**

Sec 16: Rectification of Name

1) For Alteration of Name:
   a) The **CG (RD-delegated)** shall pass order to change name.
   b) The company shall pass **GM-OR** for change in name.
   c) Such change shall be made in **3 months.**
2) For Alteration of Trade mark:
   a) The application by aggrieved party to **CG** within period of 3 **years** of copy of trademark.
   b) **CG(RD)** shall pass order to change Trademark.
   c) **GM-OR** shall be passed for such change
   d) **Change** shall be made in **3 months**
3) In both of above case the new name shall be filed with **CG(RD)** in **15 days** of such change.

Chart for Understanding

Name Clause
1) Identical or similar name not allowed.
2) Name shall not constitute offence under any law.
3) It shall not be undesirable as per CG.
4) The name shall not show any connection with CG / SG or local authority, etc.
5) Name shall not contain the words prohibited by CG to be used without its approval.

Application ↓ INC 1

ROC

ROC will accept application & reserve name for 20 days

↓ 20 days

Incorporation of Company with Name reserved

Voluntary alteration of Name Sec 13

Name Clause
1) **GM-SR** shall be passed.
2) **Prior CG approval** shall be obtained.
3) **No CG approval** to change in Pvt Ltd to Ltd.
4) Apply in form **INC 24.**
5) ROC will issue **fresh certificate** of incorporation in new name in form INC 25.

Compulsory alteration of Name or Rectification Sec 16

Identical or Similar to existing name.

Rectification
1) Rectification **order by CG.**
2) Pass **GM-OR** for change in name.
3) Rectify name within **3 months** of order of CG.

Identical or Similar to existing trade mark.

1) Person aggrieved can **apply to CG** within **3 years.**
2) The CG can order to change name.
3) Pass **GM-OR** for change in name.
4) Rectify name within **3 months** of order of CG.

If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and the **Registrar shall enter** the new name in the register of companies in place of the old name and **issue a fresh certificate** of incorporation with the new name, which the company shall use thereafter.

Sec 4: Object Clause / Sec 13: Alteration of Object

Answer Writing Points

1) Object clause means a **purpose** for which company **runs its business** & there are 2 types of objects.
   a) Main object
   b) Supplementary/Ancillary/Other [low cost profitable]
2) For **alteration** of object clause company shall pass **GM-SR**
3) **Dissenting** shareholders can get there **shares/capital refunded**
4) The **GM-SR** shall be published in:
   a) One English newspaper
   b) One Regional newspaper
5) The change in clause of memorandum and **GM-SR** shall be filed with **ROC** in **30 days.**

[All the above points are common/Similar for alteration of content of prospectus u/s 27]

Sec 4: Registered Office Clause / Sec 12 & 13: Alteration of Registered Office

Answer Writing Points (Setting up of RO)

1) The Registered office is a physical presence of company geographically
2) It determines domecile & nationality of company.
3) It also decides jurisdiction of court for litigation
4) The books & accounts shall be kept at **RO & place of GM** is as per RO.
5) All official communications/legal communications shall be **posted at registered office** of company.
6) It shall be physical office not a post box
7) The address of RO shall be mentioned on all invoices & officials communications & prospectus letter heads.
8) Registered office is a physical existence of company as per geography.
9) The company shall set up Registered office within 30 days of its incorporation & shall file INC 22 with ROC.
10) If there is **default in setting up** RO in **30 days** the **ROC** can remove the name of the company.
11) The Registered Office address shall be mentioned:
    a) Outside every place of business
    b) Official communication
    c) Other documents
    d) Letters heads/ Bill heads
    e) Bill/Notes/Hundi
    f) Etc.

Sec 13: Alteration of Registered office of the company

1) If the company want to shift Registered office **within same city**, then it shall pass **BOD-OR.**
2) The company shall pass **GM-SR** in case it wants to shift registered office **from one city** to **another** i.e. **inter-city**. But in **same state.**
3) In case company wants to shift its registered office from **one ROC** to **another then** company shall take **approval of both the ROC.**
4) Such **application to regional Director** for shifting of registered office is to be given in **Form INC 23** along with such fee as may be prescribed. Confirmation should be **received in 30 days** from such regional director.
5) Then company shall file copy of **INC-23** with the ROC within **60 days** & get approval regarding the same in **30 days.**
6) In case registered office is shifting from one state to another then **prior approval of CG** is required.
7) Once the certificate of **such change is issued** it will be the proof that change in location of **registered office has taken place** as per the provisions of the act .
8) Further, if the **Registrar remains the same** for the **whole state,** there will be **no need** for the company to seek the confirmation to such change from the **Regional Director.**

In India there are only 2 states who have 2 ROC

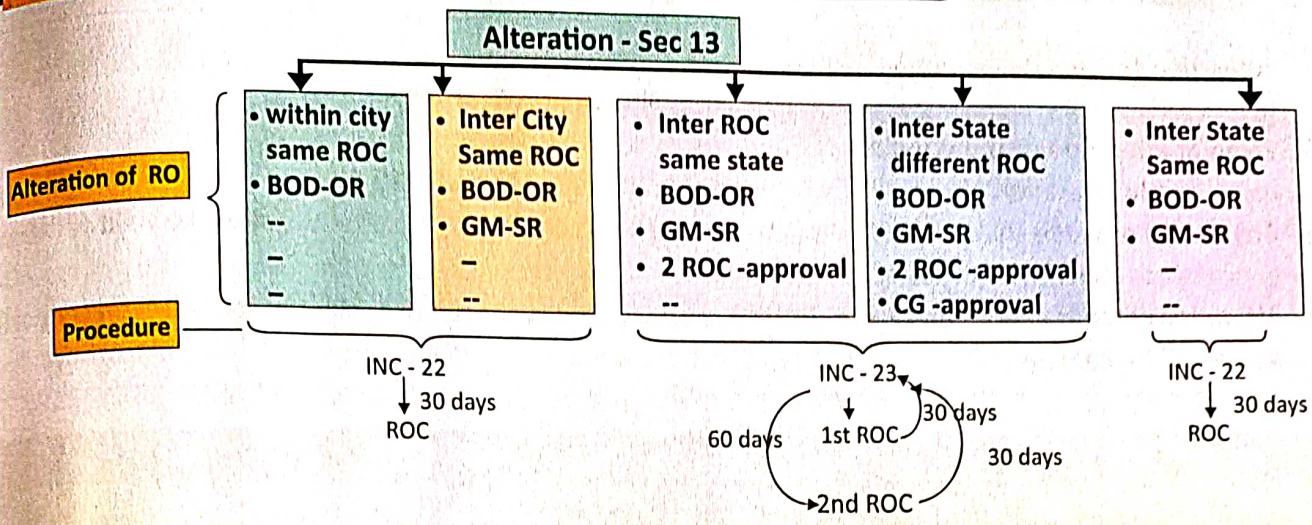
In Maharashtra there are 2 ROC.	In Tamilnadu there are 2 ROC.
1) Mumbai ROC: for Mumbai and Vidharbha Region.	1) Chennai ROC.
2) Pune ROC: for Pune and Marathwada Region.	2) Coimbatore ROC.

Chart for Understanding

Registered office clause

Set up of RO

Sec 4 + Sec 12 + Sec 13
1) RO set up in 30 days
2) File with ROC in 30 days in INC 22
3) RO-Place of communication
4) RO-Decide nationality / Domicile
5) RO- Name & liability
6) RO - Document /Communication & leter heads



Sec 4: Capital Clause & Subscription Clause & Sec 61: Alteration of Capital

Answer Writing Points

1) Capital is part of **own funds** in the form of **equity or preference** in company.
2) The alteration of capital will require **GM-OR** u/s 61
3) The capital can be altered in following cases
   a) Increase in Capital
   b) Decrease in Capital
   c) Conversion of Capital
   d) Division of Capital
   e) Consolidation of Capital
4) The alteration of capital shall be authorized by **AOA.**

Suggestion:

Apart from above the capital can be altered in specific way like Buy back (sec.68), Bonus share (sec. 63), Sweat Equity (Sec.54) etc.

In cases the specific resolutions of such section shall override section 61 i.e. **GM-OR.**

Sec 4 & 13(1): Liability Clause & Alteration of Liability Clause.

Answer Writing Points

1) Liability of members can be limited or unlimited.
2) It is an amount members agreed to contribute to company either as share capital or guarantee
3) Capital in form of shares can be contributed through out the life of company.
4) Guarantee is promise to contribute of winding up of liability is more then assets.

Imp Note for Exam – Section 65 is not applicable in the syllabus and unanimous resolution for increase in liability is not stated or accepted by any Institutes Material so from exam point of you, liability clause cannot be altered and if it can be only through unanimous resolution by increase in liability.

Sec 14: Alteration of Article of Association (AOA)

Answer Writing Points

1) The **articles of association** are in fact the **bye-laws** of the company according to which directors and other officers are required to **perform their functions** as regards the management of the company, its accounts and audit.
2) Section 14 of the Companies Act, 2013, vests companies with **power** to alter or add to its **articles.** The law with respect to alteration of articles is as follows:

a) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a **special resolution** alter **its articles.**

b) **Filing of alteration with the registrar:** Every alteration of the **articles** and a copy of the order of the Tribunal approving **the alteration**, shall be filed with **the Registrar**, within a **period of 15 days.**

c) **Any alteration made shall be valid:** Any alteration of the articles registered as above **shall, be valid** as if it were originally **contained** in the **articles.**

d) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case **may** be.

Sec 6: Act to Override MOA & AOA

Answer Writing Points

1) The provisions of companies act, 2013 overrides **MOA/AOA**
2) **MOA/AOA** overrides agreements & resolution and contracts along with Companies Act, 2013.
3) Any provision which is in contravention to Companies Act, 2013 in MOA/AOA/Contracts/Agreements/Resolution will be void & unenforceable.

Sec 15: Alteration of MOA or AOA to be noted in every copy

Answer Writing Points

1) Every **alteration** made in MOA or AOA of a company shall be **noted** in **every copy of MOA or AOA.**
2) If a company makes **any default** in complying it, **company & every officer** who is in default shall be liable to a **penalty** of **Rs. 1000** for every copy of MOA or AOA issued without such alteration.

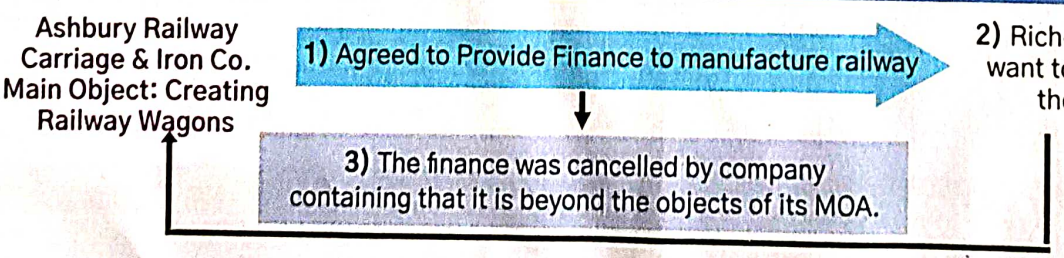
Sec 17: Copies of MOA & AOA

Answer Writing Points

1) Every company shall send **copies of MOA, AOA** & Every agreement and resolution as per **sec. 117** to members on his request.
2) In case of default, **company & every officer** who is in default shall be liable to a penalty of **Rs. 1000 for each day or** Rs. **1 lakh, whichever is less.**

Doctrine of Ultra Virus &Doctrine of Constructive Notice

Aushbary Railway & Iron Co Vs. Richie



4. Richie sued the company claiming that as the company is itself involved in the manufacturing of railway wagons so the financing for manufacturing of the same is well within its scope.

Meaning and Conclusion

Doctrine of Ultra Virus	Doctrine of Constructive Notice
The company shall not work beyond the powers of its MOA and **AOA.** The MOA and **AOA** are the limitations of the company which are stated and approved by the members i.e. owners of the company. The company shall not work beyond the same. Any act done beyond the MOA and **AOA** will be considered as void-ab-initio.	The MOA and AOA are **public documents.** The outsider or the 3rd party dealing with the company shall have the **knowledge of the MOA and AOA** of the company. Anything which is not approved as per MOA and AOA or beyond its powers will be considered as invalid in law. All the requirements of MOA and AOA shall be complied by the company before entering into contract with the 3rd party or outsider. If the contract is beyond the limits of MOA or AOA it will be void and 3rd party or outsider cannot claim any compensation for the same as it is assumed that he had knowledge of contravention through MOA or AOA.

Doctrine of Indoor Management / Turquand Rule

Rule of doctrine of indoor management

The aforesaid doctrine of constructive notice does in no sense mean that outsiders are deemed to have notice of the internal affairs of the company. For instance, if an act is authorised by the articles or memorandum, an outsider is entitled to assume that all the detailed formalities for doing that act have been observed.

The Royal British Bank Vs. Turquand

RBB

Royal British Bank

1. The bank has policy to issue bond after BOD-OR

2. The Director of the bank issued the bonds without passing BOD OR.

4. The bank demanded the bonds back contending the issue is invalid as resolution is not passed. & Turquand must be aware of company's AOA policy regarding BOD-OR requisition.



Turquand

3. He assumed that BOD-OR is passed by company.

Exceptions to Doctrine of Indoor Management

1) Knowledge of irregularity:-	The rule does not protect any person when the person dealing with the company has notice, of the irregularity. The transaction must be executed in good faith. **[Moris vs. Kenssen (1946) A.C.459; Devi Ditta Mal vs. The Standard Bank of India (1972) I.C. 568]**
2) Negligency:-	The doctrine in no way, rewards those who behave negligently. **[Underwood vs. Bank of Liverpool (1924) I.K.B. 775]**
3) Forgery :	When an instrument purporting to be executed on behalf of the company is a forgery. **[Ruben vs. Great Fingal Consolidated (1966) A.C. 439: Official Liquidator vs. Commr. Of Police (1969) I Comp. L.J. (Mad.)]**

Chart for Understanding

Ashbury Railway & Iron Vs. Richie

DOCN : 3rd Party shall be aware about clauses of MOA / AOA - as it is a Public Document

DOUV : If 3rd party contracts with company beyond powers of MOA / AOA then such contract is void in law & 3rd Party is not protected for same

→ Protection → Company

RBB Ltd. Vs. Turquand

DOIM : 3rd Party need not be aware of internal process of company so any Internal deficiency in the process of company will not damage 3rd party & contract is valid.

→ Protects 3rd party

Exception

① Negligence
② Aware of Default
③ forgery → Null

→ Protection → Company

Sec 8: Non Profit making organisation / Charitable Organisation

Chart for Understanding

Non-Profit Organisation

Charitable Object	Income Usage	Restriction on Dividend
Education, Research, Social Welfare, Environment Protection charity Religious Donations, etc.	Net Income from the business and donations shall be used only for the charitable object.	The company shall not pay dividend however it can pay Interest on Debentures, Deposit, etc.

Application in INC-12 - MOA + AOA + Details of Company + DIN of directors Verified by CA / CS / CMA

INC 13 - MOA / AOA | INC 14-Declaration by CA/CS/CMA | INC 15- Details of BOD, Subscriber

- Either CG will give the written permission to the ROC to register the company. (INC 16 - License u/s 8(1))
- If application is directly made to the ROC then the ROC can give direct approval. (INC 17 - License u/s 8(5))

Section 8 Company will be either public or private

Alteration of Object clause of MOA by sec 8 company will require prior CG approval

Contravention

- Company not working as per its object
- Provided wrong information during formation

Consequences

Penalty
1) For Company Min ₹ 10 lacs to ₹ 1 Cr.
2) For officer ₹ 25000 – ₹ 25 lacs

Licence Revoke

- Convert to Ltd./ Pvt. Ltd.
- Winding up Surplus transfer to
  - Similar co.
  - Insolvency & Bankruptcy Fund
- Amalgamate with similar co.

Answer Writing Points

Incorporation of NPO

1) The Not for Profit Organisation [NPO] shall have following objects:
   a) Business of Education, Research, Social welfare, Sports, Environment protection, Religious, Donations etc.
   b) The company uses its profit for promoting its objects
   c) The Company does not distribute dividend but provides interest on loan/debenture.
2) Application of NPO shall contain:
   a) **INC 12/32** - Application for Incorporation
   b) **INC 13** - Memorandum/Articles of NPO
   c) **INC 14** - Declaration of CA/CS/CMA/Advocate
   d) **INC 15** - Details of BOD/Subscribers.
3) The Company shall receive license for NPO as follows:

a) **INC 16** – License by CG (ROC)
b) **INC 17** – License by ROC

4) The NPO can be a private or public company & it need **not** use the words **"Pvt Ltd" or "Ltd"** in its name.

Conversion of NPO

1) For **conversion** of NPO/Change in object of NPO to other company requires **GM-SR.**
2) The Company shall provide **explanatory statement (section 102)** for such conversion to members.
3) The Company shall make application to **RD (CG) in INC 18.**
4) The Company shall publish the **Notice** of conversion in **INC 19** in two newspapers, one in **vernacular** and other in **English** and on the website of company.
5) The Company shall give a notice to following persons
   a) Chief commissioner of Income Tax
   b) Income Tax Officer
   c) Charity Commissioner
   d) Chief Secretary of SG
   e) Department of CG/SG for charitable Concerns
6) After such conversion the approval of RD along with **GM-SR** shall be filed with **ROC.**

Revocation, Contravention & Consequences

1) If company executes any of the following contravention then liability is discussed from point no. 2
   a) Company is not working as per its object
   b) Wrongful or false information provided by Company
2) The **Company** shall be liable for penalty of **Rs. 10 lakhs to Rs 1 Cr & Officer in default** shall be liable for penalty of Rs. **25000 to Rs. 25 lakhs.**
3) The license of NPO shall be revoked under **INC 20** & additionally company will be liable for
   a) Conversion of Company
   b) Surplus assets will be transferred to other NPO having some objects
   c) Winding up of NPO under IBC Code, 2016
   d) Amalgamation of NPO with other NPO having similar objects.

Sec 9: Effect of Registration (Characteristics of Company)

Additional Case Studies

Hari Nagar Sugar Mills Ltd. vs. S.S. Jhunjhunwala	From the date of incorporation mentioned in the certificate, the company becomes a legal person separate from the incorporators; and there comes into existence a binding contract between the company and its members as evidenced by the Memorandum and Articles of Association
State Trading Corporation of India vs. Commercial Tax Officer	A company on registration acquires a separate existence and the law recognises it as a legal person separate and distinct from its members
[Spencer & Co. Ltd. Madras vs. CWT Madras].	Merely because a company purchases all shares of another company it will not serve as a means of putting an end to the corporate character of another company and each company is a separate juristic entity
[Heavy Electrical Union vs. State of Bihar].	As has been stated above, the law recognizes such a company as a juristic person separate and distinct from its members.

Sec 10: Effect of MOA & AOA

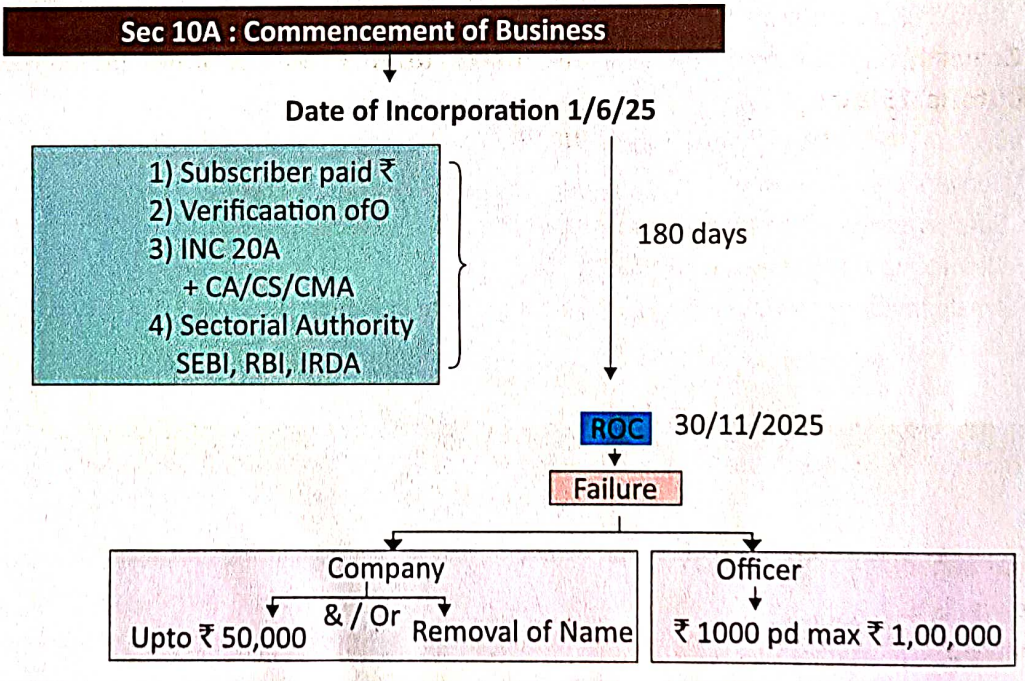
1) The Memorandum and Articles, when registered, would be **binding on the company** and its members to the same extent as if each one of them had **individually** signed the documents, so far as the **covenants** therein are **concerned.**
2) All monies payable by any member to the company under the **memorandum** or **articles** shall be a **debt due** from him to the company.

Sec 10A: Commencement of business etc.

Answer Writing Points

1) Every company shall after its incorporation ensure that its **BOD** shall file a declaration that the subscribers have brought the amount committed in **180 days.**
2) Additionally the company shall file physical verification of its registered office with **ROC.**
3) The above declaration by **BOD** shall be filed in **Form INC 20A** with **ROC.**
4) Additionally the declaration of **CA/CS/CMA/Advocate** will be required with above filing
5) The approval of sectorial authority will be required within **180 days** of incorporation (Eg SEBI, RBI)
6) In case of contravention of section 10A
   a) **The company** will be liable upto **Rs 50000** and/or **Removal of Name** from ROC
   b) **The officer who is in default** will be liable for **Rs.1000** per day max upto **Rs 1 lakh.**

Chart for Understanding



Sec 11: Commencement of Business

Omitted by Companies Amendment Act, 2015.

Sec 18: Conversion of the Company

Answer Writing Points

Conversion of One Person Company into a Public company or a Private company.

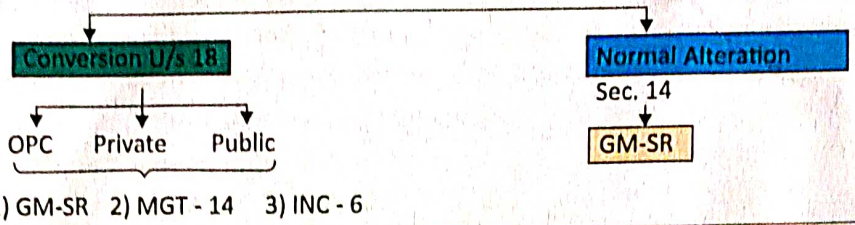
1) The OPC shall alter its MOA and AOA by **passing a resolution** in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.
2) A OPC may be **converted** into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to **2 or 7 members and 2 or 3 directors**, as the case may be, and maintaining the **minimum paid-up capital** as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion
3) The company shall file an application in **e-Form No.INC-6** for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely: -
   a) Altered MOA and AOA; b) copy of resolution;
   c) the list of proposed members and its directors along with consent;
   d) list of creditors; and e) the latest audited balance sheet and profit and loss account.
4) On being satisfied that the requirements stated herein have been complied with, the Registrar shall **approve the form and issue the Certificate.**

Conversion of private company into One Person Company.

1) A private company other than a company registered under section 8 of the Act may convert itself into OPC by passing a **GM-SR.**
2) Before passing such resolution, the company shall obtain **No objection** in writing from members and creditors.
3) The one person company shall file copy of the special resolution with the **ROC within 30 days** from the date of passing such resolution in **Form No. MGT.14.**
4) The company shall file an application in **Form No.INC.6** for its conversion into OPC along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
   (i) The directors of the company shall give a **declaration** by way of **affidavit** duly sworn in confirming that all members and creditors of the company have given their consent for conversion.
   (ii) the **list of members and list of creditors;**
   (iii) the **latest Audited Balance Sheet** and the **Profit and Loss Account**; and
   (iv) the **copy of No Objection letter** of secured creditors.
5) On being satisfied and complied with requirements stated herein the **Registrar** shall **issue the Certificate.**

Chart for Understanding

Sec 14 : Alteration of OA



For conversion we Amend AOA / MOA for following things .	OPC ⟷	Private ⟷	Public
1) Section	2(62)& 3	2(68)	2(71)
2) Members	1	2-200	7-∞
3) BOD	Min 1	Min. 2	Min. 3
4) Transfer of Shares	prohibited	Restricted (member Relati e Pvt.Placement)	Freely
5) Nomination	✓	✗	✗
6) Max limit	PC ≤ 50 L T ≤ 2 Cr.	✗	✗
7) Restriction on business	NBFC Sec. 8	✗	✗
8) Joint Holding counting	NA	as 1	as 1
9) Employee to be counted as member	NA	Prohibited	Allowed
10) Invitation / Pospectus to public	Prohibited	Prohibited	Allowed
11) Listed	Prohibit	Can be for Debt Instrument only	freely for any security
12) Co Act Applicable	Less Restriction	Moderate Restriction	Huge Restriction

Sec 19: Subsidiary Company shall not hold shares in Holding Company

Answer Writing Points

1) According to section 19 of the Companies Act, 2013 a company shall **not hold any shares in its holding company** either by **itself** or **through its nominees.** Also, holding company shall **not allot** or transfer **its shares** to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary **company shall be void.**

2) Chart for Understanding

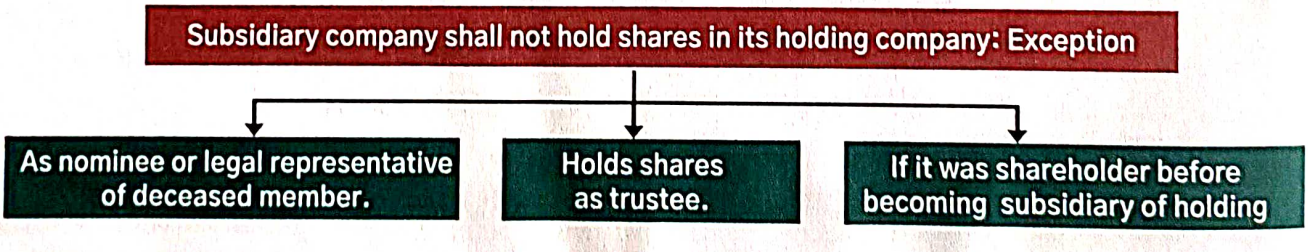
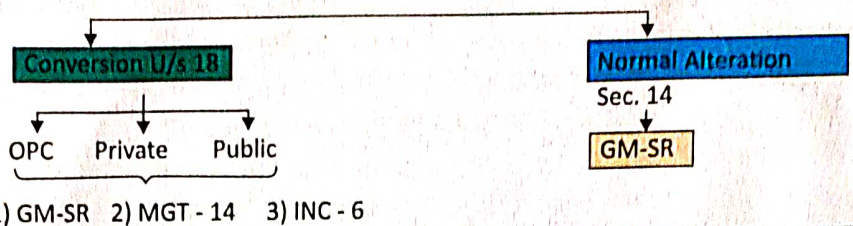


Chart for Understanding

Sec 14 : Alteration of OA



1) GM-SR 2) MGT - 14 3) INC - 6

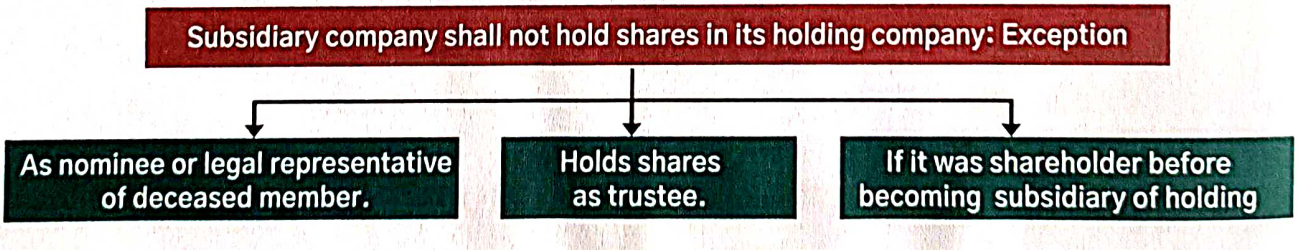
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2) **Chart for Understanding**



Sec 20: Service of Document & Sec 21. Authentication of Documents, Proceeding & Contracts & Section 22: Execution of Bill of Exchange

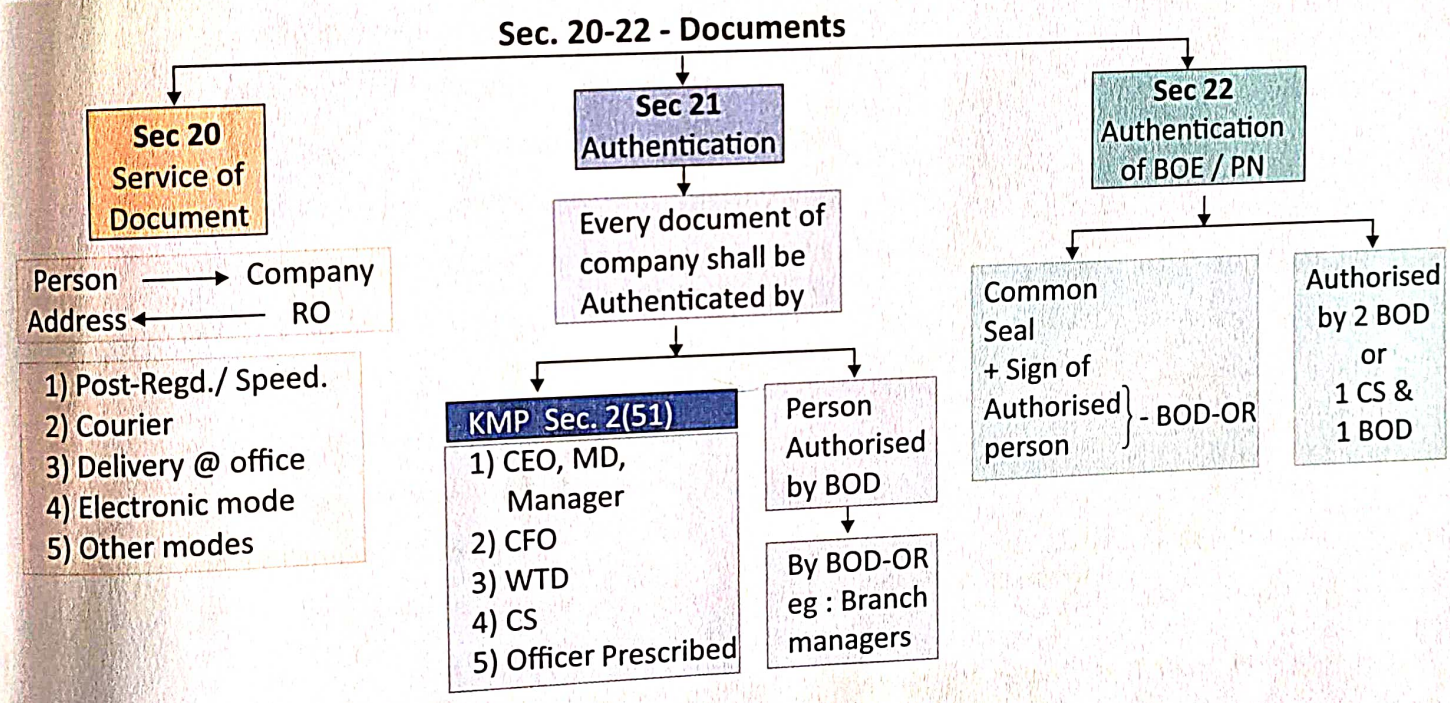
Answer Writing Points

Sec 20: The ROC or 3rd person **can serve document** on company or vice-versa by way of **physical delivery**, **registered** or speed post, courier, E-Mail, Fax, or any other means of which **evidence can** be obtained.

Sec 21: Were the **genuineness of a document**, proceedings, contracts made by or on behalf of company etc. is to be verified, we have to see whether, the Key Managerial Person or an officer who is authorised by board to do so has signed such documents.

Sec 22: Bills of exchange, **Promissory notes** etc. will be deemed to be executed if they are signed or **accepted or endorsed** by any person who is **impliedly** or **expressly** authorised to do so. Company can authorise any person in **writing** by affixing common **seal** on such **written document** to execute in general or for any **special contract** or deed on behalf of the company in or outside India. If such authorised person **signs any document** or executes any contract or deed then the company is liable to continue such contract or deed.

Chart for Understanding



3 PROSPECTUS & ALLOTMENT OF SECURITIES

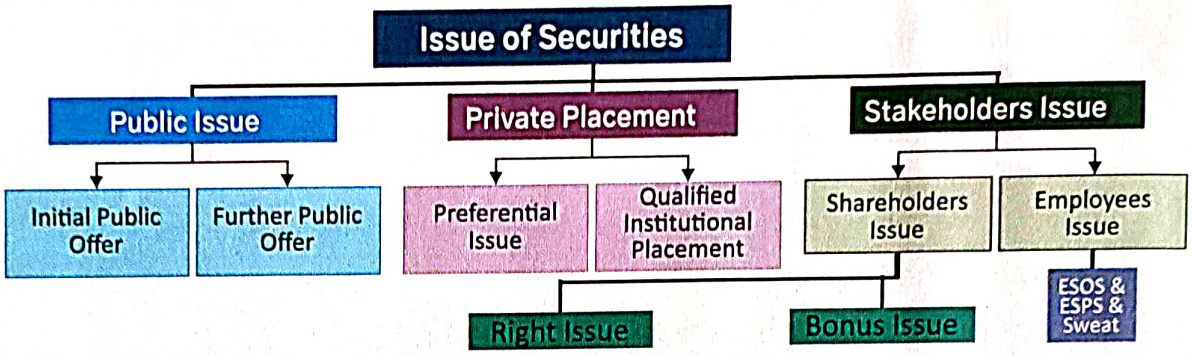
Coverage of Chapter	
Section	**Name of Section**
23	Public offer and private placement
24	Power of Securities & Exchange Board to regulate issue and transfer of securities, etc.
25	Document containing offer of securities for sale to be deemed prospectus
26	Matters to be stated in prospectus
27	Variation in terms of contract or objects in prospectus
28	Offer of sale of shares by certain members of company
29	Public offer of securities to be in dematerialised form
30	Advertisement of prospectus
31	Shelf prospectus
32	Red herring prospectus
33	Issue of application forms for securities
34	Criminal liability for misstatements in prospectus
35	Civil liability for misstatements in prospectus
36	Punishment for fraudulently inducing persons to invest money
37	Action by affected persons
38	Punishment for personation for acquisition, etc., of securities
39	Allotment of securities by company
40	Securities to be dealt with in Stock Exchanges
41	Global Depository Receipt
42	Offer or invitation for subscription of securities on private placement

E-Filing Forms Companies (Prospectus and Allotment of Securities) Rules, 2014			
E-Form	**Details**	**Relevant section**	**Rule No**
PAS-1	Advertisement Giving Details Of Notice Of Special Resolution For Verifying The Terms Of Any Contract Referred To In The Prospectus Of Altering The Objects For Which Prospectus Was Issued.	27(1)	7
PAS-2	Information Memorandum	31(2)	10
PAS-3	Return of Allotment	39(4)	12
PAS-4	Private Placement Offer Letter	42(7)	14
PAS-5	Record of Private placement offer to be kept by the company.	42(9)	14

Sec 24,33,38 & 41 is being deleted by ICAI from new syllabus.

Sec 23: Issue of Securities by the Company

Chart for Understanding



Sec.2(70): Prospectus

"Prospectus" means

a) Any document issued as a prospectus

b) And includes

   i) Shelf prospectus [Sec 31] & Red herring prospectus [Sec 32]

   ii) Any document, Notice, Circular, Advertisement or other inviting offers for subscription of securities from public.

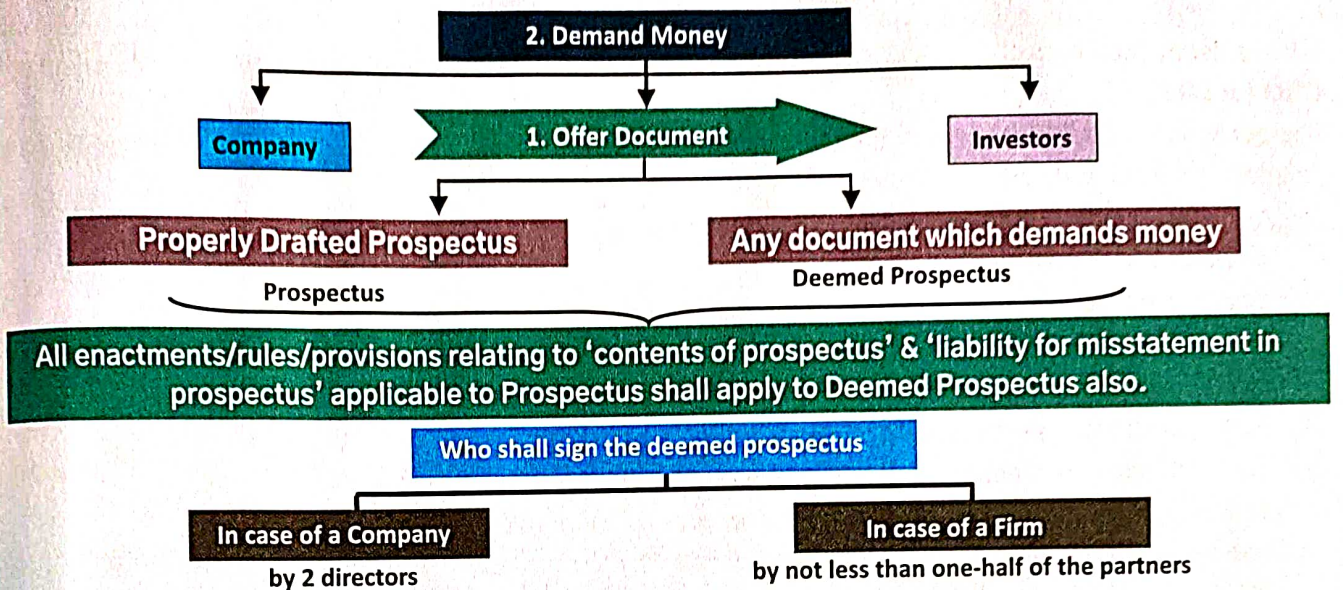
Sec 25: Deemed Prospectus

Answer Writing Points

1) Section 25 defines deemed prospectus having following inclusions:
   a) **Any document** issued to public for issue of securities to public in **next 6 months** whether money is received or not
   b) **SEBI Vs Kunnamkulam Paper mill Ltd** – Document issued for right issue which is renounced to more than 50 **other person** is public issue & such document is prospectus
   c) The document containing details of section 26 & offered to public is prospectus.
2) For sub-point a) of point 2 Public issue means:
   a) Issue to person other than the **Relative, own friend, connection and acquittance** of promoters
   b) Issue to **public at large** compared to promoters by using words **'Private circulation'** still counted as prospectus **[South of England Natural Gas & Petroliam Co. Ltd]**
   c) **Nash Vs. Lynde** – The document to specific person does **not** constitute prospectus
   d) **Viscount summer :** The offer open to any with money and following procedures is prospectus.
3) The prospectus shall be **signed** by minimum **2 directors.**

EKATVAM

Chart for Understanding



Sec 26: Contents of Prospectus

Answer Writing Points

1) Prospectus should be in **proper dated** form.
2) Prospectus should **signed.** If it is **company** then it should be **signed by 2 directors** and if it is **a firm** then such prospectus should be signed by **half of the** partners.
3) Prospectus shall state such information and set out such reports on financial information as specified by SEBI.
4) **Financial reports** of **last 5 years** should exists in such prospectus.
5) Prospectus before issuing to public should be **filled with ROC** and such copy shall be **signed by every directors** of the company.
6) Expert has given his **written consent** to the issue of prospectus, who is **not involved** in **formation** of company and not withdrwan such consent before delivery of copy of prospectus to ROC.
7) **Attach copies** as required by SEBI.
8) The section is **not applicable to existing shareholders or** debenture holders also it is not applicable to to issue of shares or debentures of similar nature which are already issued by company.
9) Any default in complying with the provisions, fine to company and every person who is party to the issue of prospectus is **Rs 50000 to Rs 3 lakhs.**
10) Not applicable to Existing Shareholders & to issue of shares/debenture of similar nature already issued.

Sec 27: Variation in Terms of Contract or Objects in Prospectus

Answer Writing Points (Similar to object Clause)

1) The company shall **not** use the amounts received through prospectus for dealing in securities of other company.
2) The company shall pass **GM–SR** for alteration of content of prospectus.
3) **Refund** shall be given to the **dissenting shareholders** who does **not support** alteration.
4) The company shall file advertisement of Alteration in two newspaper out of which one shall be English and one in vernacular (regional) language. **(PAS 1)**
5) The company shall file altered copy with **ROC** within **30 days.**

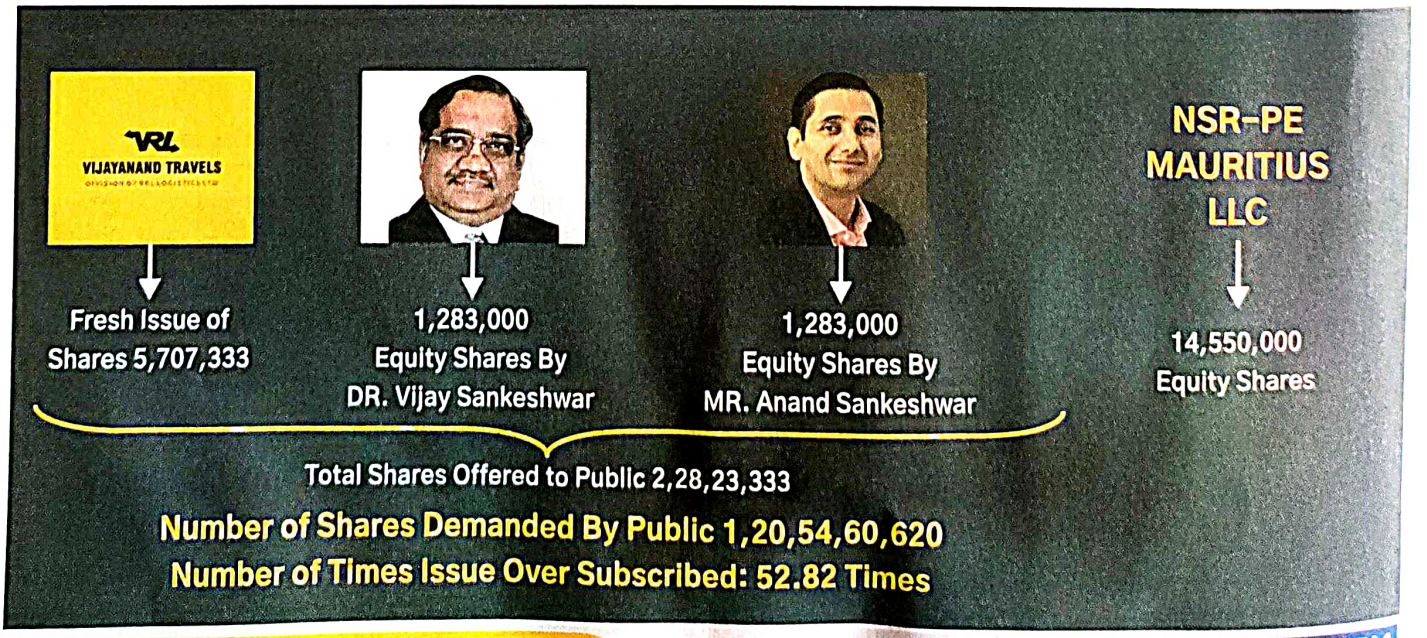
Sec 28: Offer of sale of shares by certain members of company

Answer Writing Points

1) When **existing members** of company issues their shares to the public, but through Company in FPO/IPO is called as **Offer for Sale.**
2) The public issue offer document is **deemed to be prospectus** for such offer for sale and all the provisions of prospectus are applicable to such document as it is.
3) The members of company shall collectively authorise company
   a) To act on their behalf for such issue
   b) Collect expenses of issue from them
4) The **exceptions** of Offer for sale compared to Public issue are as follows:
   a) Money raised **goes** to the **shareholders** instead of coffers of Company
   b) No requirement of **minimum subscription**
   c) No requirement of **minimum application value**
   d) Provisions of public issue in general does **not apply** to offer for sale.

Distinction between IPO/FPO & Offer for Sale

Heading	IPO/ FPO	Offer for Sale
Meaning	Initial Public Offer or Further Public Offer is a **public offer made by a company** to subscribe for its securities by the public through a prospectus.	Offer for sale is an offer of **securities by existing shareholder**(s) of a company to the public for subscription through an offer document (i.e. deemed prospectus).
Money Utilisation by	In case of IPO/FPO, the **money goes** into the **coffers** (i.e. hands/ accounts / funds) of the company.	In case of an offer for sale, the **funds go into** the pockets of the share holders who are selling their holdings.
Minimum Subscription	Minimum subscription **applies to IPO/FPO.**	Minimum subscription does **not apply to offer for sale.**
Minimum application money payment	In case of IPO/FPO, **minimum sum payable** on application shall **not be less than 25%** of the issue prices.	In case of an offer for sale, the (entire) **issue price payable** for each specified security shall be brought in **at the time of application.**



Sec 29: Public offers of Securities to be in Dematerialized form

Answer Writing Points

1) **Dematerialisation** is **mandatory** for
   a) For **every company** making public offer b) **Prescribed companies**
2) Any company **not making public offer** may, at its option:
   a) **Convert** its securities b) Issue its securities
3) No issuer shall make a public issue or rights issue of specified securities unless it has entered into an agreement with a depository for dematerialization of specified securities already issued or proposed to be issued.

Rule 9A of PAS Rules mentions about issue of securities in dematerialised form by unlisted public companies.

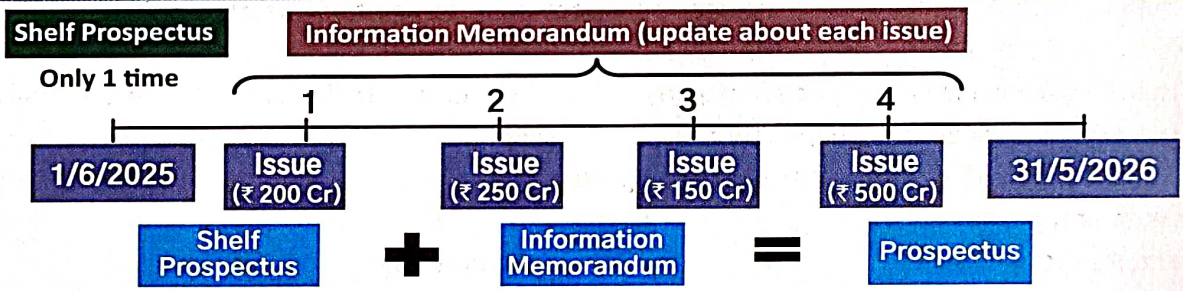
1) According to **Rule 9A (1)**, **every unlisted public company** (excluding a Nidhi, a Govt. company and a wholly owned subsidiary) shall **issue** securities only in **dematerialised form.**
2) **Rule 9A (2)** states that **every unlisted public company** making any offer for issue of any securities or buyback or bonus issue or rights offer of shares shall **ensure** that before making such offer, **all securities has been dematerialised** in accordance with provisions of Depositories Act, 1996.
3) According to **Rule 9A (3)**, every **holder** of securities of **an unlisted public company:**
   a) who intends to transfer such securities **on or after 2nd October, 2018**, shall get such securities dematerialised before the transfer; or
   b) who subscribes to any securities of an **unlisted public company on or after 2nd October, 2018** shall **ensure** that all his existing securities are held in dematerialized form before such subscription.
4) As per **Rule 9A (4)**, **every unlisted public company** shall facilitate **dematerialization** of all its **existing securities** by making necessary **application** to a **depository** as defined in **section 2 (1) (e)** of the Depositories Act, 1996.
5) According to **Rule 9A (5)**, **every unlisted public company** shall ensure that –
   a. It makes **timely payment** of fees to the depository and registrar
   b. It maintains **security deposit**, at all times, of not less than **two years'** fees with the depository and registrar.
   c. It **complies** with regulations/directions/guidelines/circulars, if any, issued by the **SEBI** or **Depository** with respect to dematerialisation of shares of unlisted public companies.
6) **Rule 9A (6)** states that **no unlisted public company** which has **defaulted** in sub-rule shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
7) According to **Rule 9A (7)**, except as provided in sub-rule (8), provisions of Depositories Act, 1996, **SEBI** (Depositories and Participants) Regulations, 2018 and SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply **mutatis mutandis** to **dematerialization of securities** of unlisted public companies.
8) **Rules 9A (8)** prescribes that **every unlisted public company** governed by Rule 9A shall submit **Form PAS-6** to the Registrar with such fee **within 60 days** from the conclusion of each half year duly certified by a **CS in practice** or **CA in practice.**
9) As per **Rule 9A (8A)**, the company shall immediately bring to the notice of the depositories any **difference** observed in its issued capital and the capital held in dematerialized form.
10) According to **Rule 9A (9)**, the grievances, if any, of security holders of unlisted public companies under Rule 9A shall be filed before the **IEPF.**
11) **Rule 9A (10)** states that the IEPF Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent after prior **consultation with SEBI.**

Sec 31: Shelf Prospectus

Answer Writing Points

1) Shelf prospectus is **offer document** issued by company for **two or more** subsequent issues in specified period
2) At every such issue the company shall also issue and updated **information memorandum** giving following changes for each issue from last issue
   a) All the facts about new charge created
   b) Financial changes & interim financial statements
   c) Any such change as may be prescribed
3) All the **rules & regulations** of prospectus and **SEBI** shall be **applicable** to Shelf prospectus and Information memorandum.
4) The **shelf prospectus & Information memorandum** shall together **constitute prospectus** and it shall be filled with **ROC.**
5) The Information memorandum shall be created in **PAS 2** for every separate issue.
6) The Shelf prospectus shall be **valid** for maximum **1 year** from its listing.
7) Any person who has given advance amount on the basis of shelf prospectus for further issue may withdraw his application and company shall **refund** him the amount within **15 days.**

Chart for Understanding

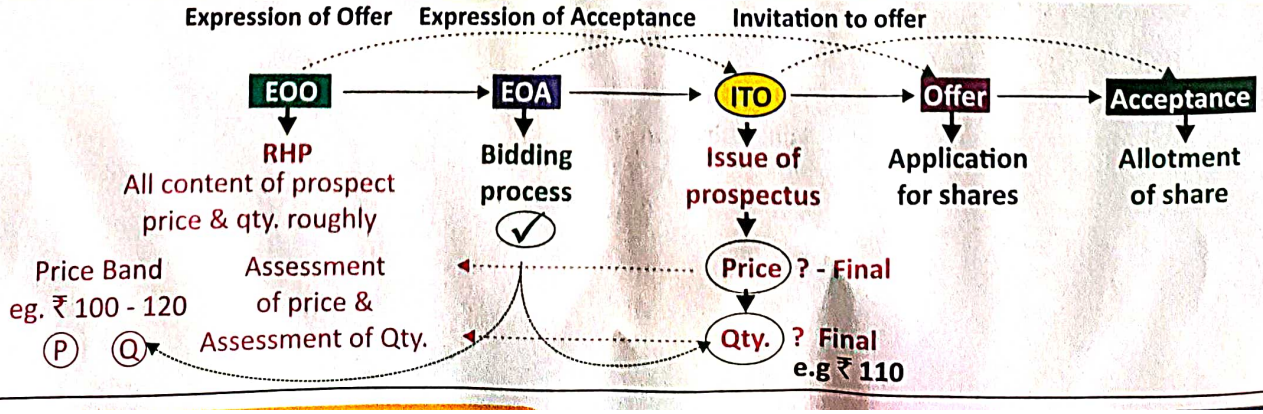


Sec 32: Red-herring Prospectus

Answer Writing Points

1) Red-herring prospectus are the one which **does not include complete particulars** of quantum or price and issued before the actual issue of prospects.
2) To be filled with **ROC** at least **3 days** prior to opening of issue.
3) It shall carry same **obligation** applicable for **actual prospectus.**
4) Once offer closed company shall file **actual Prospectus** with **ROC & SEBI** containing details of :
   a) Total capital raised b) Closing price of securities c) Any other details not included in RHP
5) **Any alteration or variation** in between issue of red hearing prospectus and actual prospectus **shall be highlighted** on the main prospectus as a **substantial variation** other than price & quantity.

Chart for Understanding



Sec 33: Abridged Prospectus

Answer Writing Points

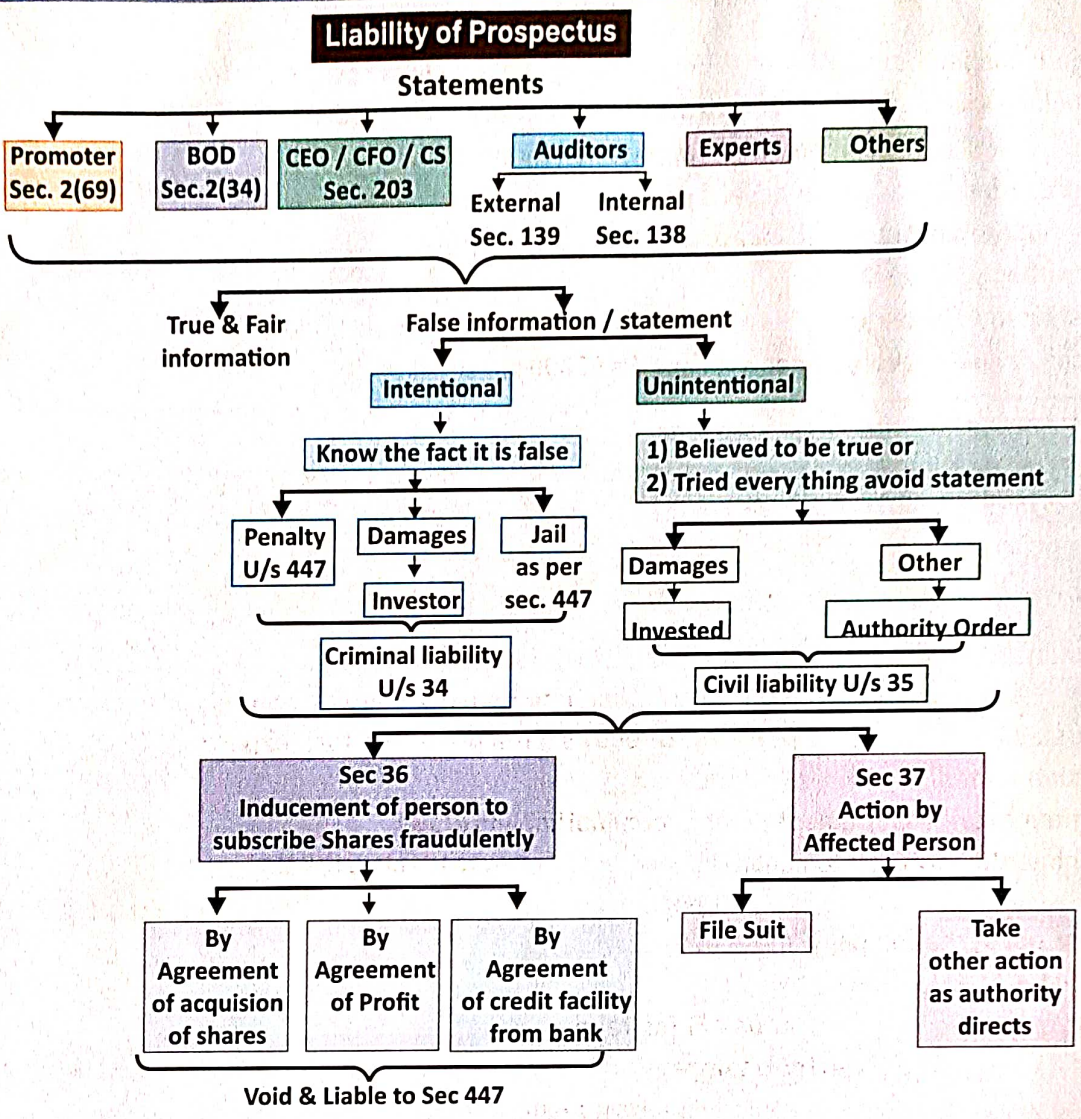
1) **The abridged prospectus** means an offer document containing **salient features** of prospectus as per SEBI 1992
2) This prospectus is made & provided **to save cost** on printing actual prospectus.
3) The prospectus shall be **accompanied** with **application form** for securities.
4) The investor can demand original prospectus & company shall provide the same.
5) This prospectus need **not** be issued in case of
   a) Underwriting agreement
   b) To existing shareholders or debenture holders for issue of existing securities.
6) In case of contravention **every officer** is liable to **Rs 50000** for each offence.

Sec 34: Criminal Liability for Misstatements in Prospectus , Sec 35: Civil Liability for Misstatements in Prospectus, Sec 36: Penalty for fraudulently inducing persons to invest money Sec 37: Action by Affected Persons

Answer Writing Points

1) The misstatements in the prospectus are of two types **intentional & unintentional** misstatement
2) The above statements can be made by either **directors, promoters, auditors, experts** etc.
3) In such situation the above person will be liable as follows
   a) For **intentional misstatement** (fraud) – **criminal liability u/s 34**
   b) An **unintentional misstatement** (misrepresentation) – **civil liability u/s 35**
4) Under the misstatement the company will **not** be liable for any criminal or civil liability as misstatement is made by the **person and not by the company** (lifting of corporate veil).
5) **Criminal liability**
   a) The culprit person will be liable **u/s 447 for fraud**
   b) He will also be liable to **pay the damages** to the investor who invested on the basis of his misstatement.
   c) The person can also become liable for **imprisonment** as per the order of court.
6) **Civil liability**
   a) As the person has made statement in good faith there **cannot** be any penalty for fraud or imprisonment as per court order.
   b) But the person can be made **liable for the damages** incurred by the investor on the basis of his misstatement.
   c) Here the authority also has the power to pass additional order against such a person
7) Such person can escape from any of these liabilities if he proves
   a) He **withdrawn** his consent before issue of the prospectus
   b) His **consent** is published **without his knowledge** and he also gave a public notice for the same.
   c) He believed the statement to be **true** or he **avoided** to publish such a statement when he came to know that it is false.
8) **Inducement**
   a) A person can be liable **u/s 447** and also for **section 34** if he induces a person to enter into agreement regarding the securities.
   b) Such an agreement can also includes agreements for the profit, subscription for underwriting or yield base agreements.

Chart for Understanding

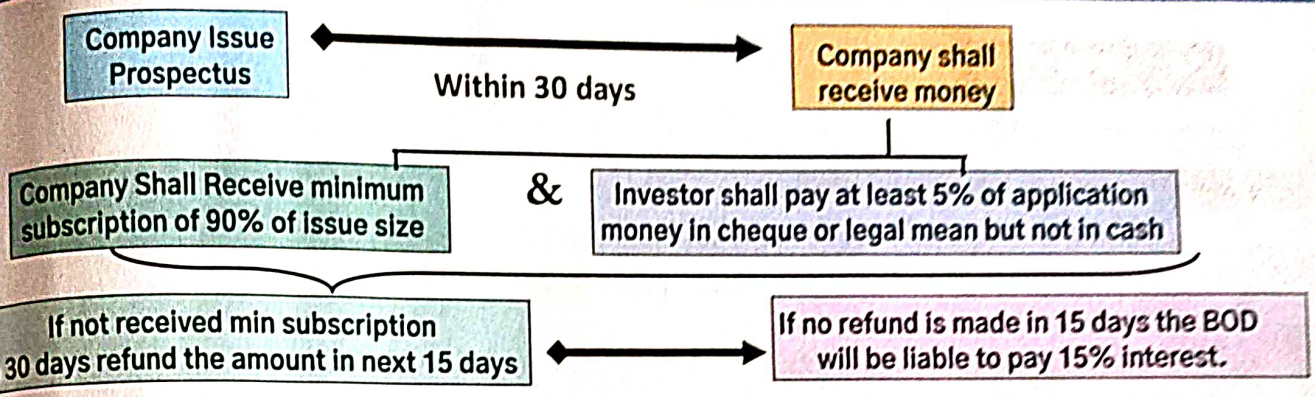


Sec 39: Allotment of Securities by Company

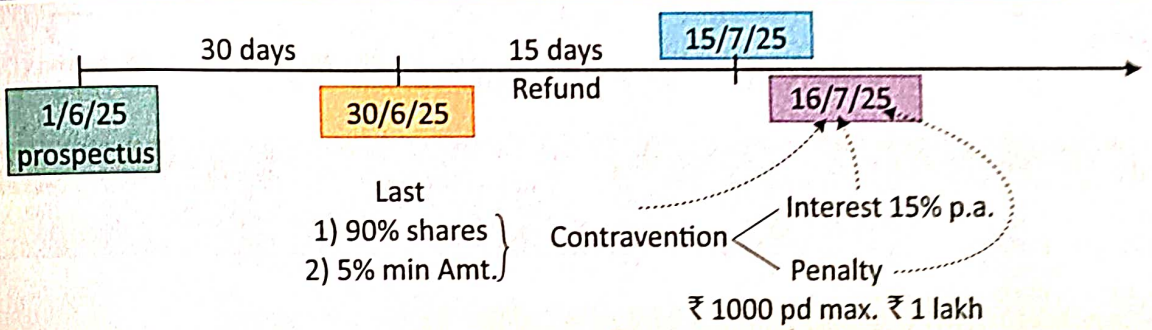
Answer Writing Points

1) The company shall issue **offer document** for any public for any public issue to be made for specific projects as and when required.
2) The company shall receive minimum subscription within **30 days** of issue of offer document as follows
   a) **90%** of issue size (no of shares)
   b) **5% / 25%** of application money per share for unlisted & listed company respectively
3) The company on failure to receive above minimum subscription within **30 days** it shall refund the whole amount in next 15 days.
4) Failure to refund whole amount received in next **15 days** the **BOD, officers** etc. will be liable to pay **interest @** 15% **p.a.** after such **15 days till refund.**
5) If company receives minimum subscription within 30 days it shall allot the securities and file return of allotment within **30 days** in **Form PAS–3** with the following details:
   a) Allotee and their personal details
   b) No of securities allotted to each allottee.

Chart for Understanding



Timeline for Understanding

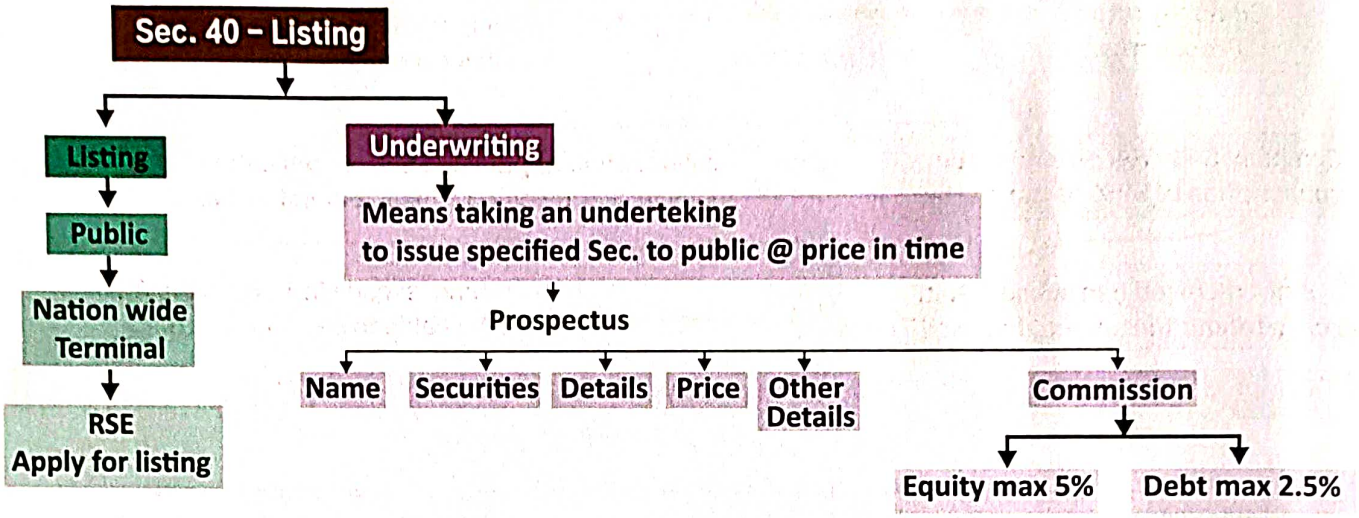


Sec 40: Securities to be dealt with in stock exchanges

Answer Writing Points

1) The company shall after public issue **apply to recognised stock exchange (RSE)** having nation wide terminals for listing of securities.
2) The name of such **RSE** shall be mentioned in prospectus of company.
3) **The company** can enter into an underwriting agreement with underwriter for subscription of securities.
4) In case of underwriting company shall **mention** following details in prospectus
   a) **Agreement** of underwriting
   b) **Name** of details of underwriter
   c) **Amount & percentage** of commission agreed.
   d) The **other details** of agreement
5) The **maximum commission** that can be paid to underwriter is:
   a) **2.5%** for debt instrument
   b) **5%** for equity instrument
   c) **AOA** can state lower percentage
6) The company shall **not pay commission** for securities **not subscribed by public.**

Chart for Understanding



Sec 41: Global Depository Receipt

Answer Writing Points

Meaning :

1) GDR is an instrument **represent Indian Securities of a Companies** which can be **traded outside India.**
2) GDR can be issued by Company after passing **GM-SR.**
3) GDR shall be issued by **public offer or private place.**
4) GDR can be issued for the **new share or existing** security.
5) Indian Securities will be underline asset for such a GDR.
6) Holder of GDR is a member of the Company and he can **exercise** all the rights of members such as **dividend and** voting etc.

Sec 42: Private Placement

Answer Writing Points

1) Private placement means issuing of securities on private basis to investor for raising funds without any public offer as follows:
   a) Max to **50 investor** at **one time issue**
   b) Max **200 investor** in all issue in **entire financial year.**
2) The company shall give placement document in **Form PAS 4** to investors
3) The investor shall fund the company and company shall allot securities within **60 days.**
4) If company **fails** to allot securities in **60 days** then it shall refund money in next **15 days.**
5) For failure to allotment in **60 days** company is liable to pay interest @ **12% p.a.** after **60 days** till refund.
6) Failure to refund money within **15 days** after **60 days** of allotment the penalty will be
   a) Amount involved or **Rs 2 Cr** whichever is lower
   b) It shall be paid by promoter, director, company.

Optional point

1) The limit of **50/200** shall **not** include employees & QIB
2) The company shall pass **GM-SR** for private placement
3) If company fails to file **Form PAS-3** as return of allotment the company is liable to **Rs.1000** per day max **Rs. 25 lakhs.**
4) The company shall maintain register of private placement in **Form PAS-5.**

Chart for Understanding



Company



1. Issue offer letter to Investors In form no PAS-4



2. Investors

- Max 50 at one time
- Max as may be prescribed

QIB and employees subscribing to ESOS / ESPS shall not be counted in above number.



3. Investor shall pay application money according to provisions

Within 60 days



4. Company shall keep money in separate bank account
5. Company shall allot securities



If securities not allotted In 60 days

Within 15 days

6. Company shall refund the application money

If money not refunded company shall pay interest @ of 12% pa from the end of 60 days.

7. After Completion of Successful private placement

- Company shall file return of private placement in form no PAS-3
- Company shall Maintain records of private placement in form no PAS-5

4 SHARE CAPITAL & DEBENTURES

Coverage of Chapter

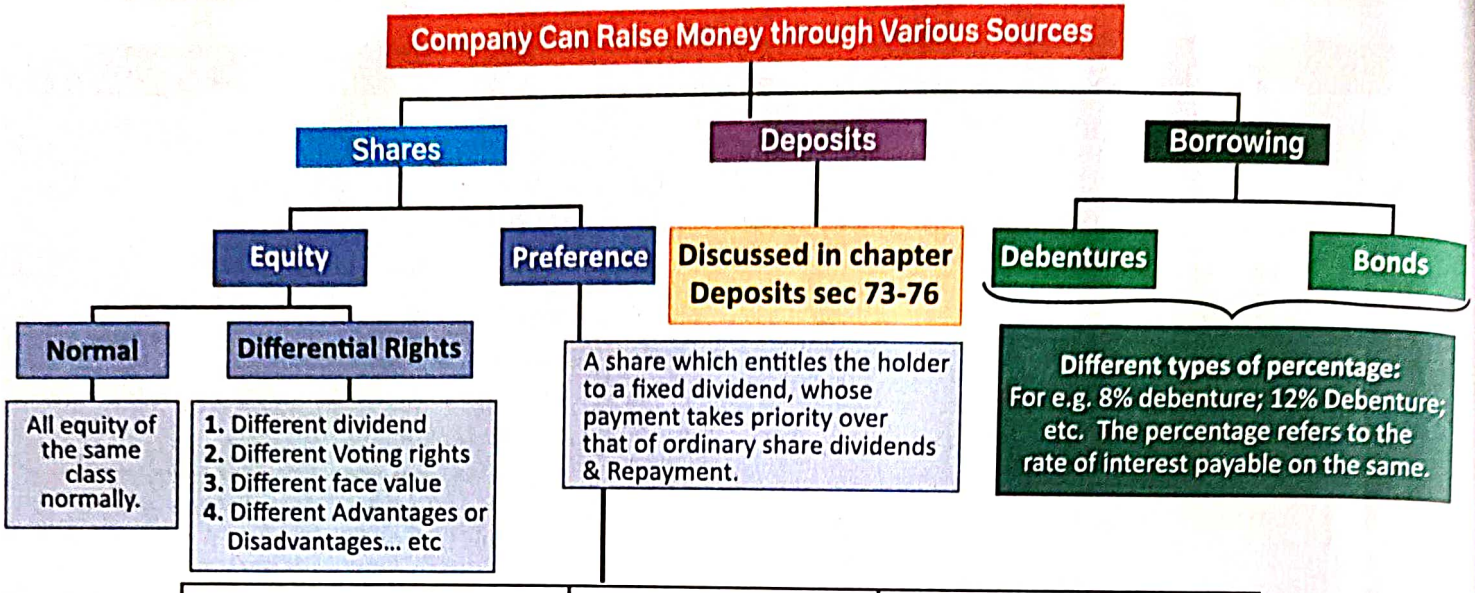
Section	Name of Section
43	Kinds of share capital
~~44~~	~~Nature of Share or Debentures~~ [Deleted by ICAI]
~~45~~	~~Numbering of Shares~~ [Deleted by ICAI]
46	Certificate of Shares
47	Voting Rights
48	Variation in shareholder's Rights
49	Calls on shares of Same Class to be Made on Uniform Basis
50	Company to Accept Unpaid share capital although not called up
51	Payment of Dividend in Proportion to Amount paid up
52	Application of Premiums Received on issue of shares
53	Prohibition on issue of shares at discount
54	Issue of sweat equity shares
55	Issue and Redemption of Preference Shares
56	Transfer and Transmission
57	Punishment for Personation of Shareholder
58	Refusal of Registration and Appeal against Refusal
59	Rectification of Register of members

Section	Name of Section
~~60~~	~~Publication of Authorised, Subscribed and Paid-Up Capital.~~ [Deleted by ICAI]
61	Power of Limited Company to Alter its Share Capital
62	Further Issue of Share Capital
63	Issue of Bonus Shares
64	Notice to be Given to Registrar for Alteration of Share Capital
~~65~~	~~Unlimited Company to Provide for Reserve Share Capital on Conversion into Limited Company.~~ [Deleted by ICAI]
66	Reduction of Share Capital.
67	Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares
68	Power of Company to Purchase its Own Securities
69	Transfer of Certain Sums to Capital Redemption Reserve Account
70	Prohibition for Buy-Back in Certain Circumstances
71	Debentures
~~72~~	~~Power to Nominate~~ [Deleted by ICAI]

E-Filing Forms
Companies (Share Capital & Debentures) Rules, 2014

E-Form	Details	Relevant section	Rule No
SH-1	Certificate of shares for physical form	46(3)	5
SH-2	Duplicate share certificate for Physical form	46(2)(3)	6
SH-3	Issue of sweat equity shares	54(1)	8
SH-4	Securities Transfer Form	56(1)(3)	11
SH-5	Notice for transfer of partly paid securities	56(1)(3)	11
SH-6	Issue of ESOP / ESOS	62(1)	12
SH-7	Notice to ROC for alteration of share capital	64(1)	15
SH-8	Letter of offer	68	17
SH-9	Decalaration of solvency	68	17
SH-10	Register of shares or other securities bought back	68	17
SH-11	Return in respect of buy back of securites	68	17
SH-12	Debentures	71	18
SH-13	Nomination Form	72	19
SH-14	Nomination by security holders	72	19
SH-15	Certificate of compliance in respect of buy-back of. securities.	68	17

Sec 43: Kinds of Share Capital



Based on Dividend	Based on Redemption	Based on Conversion	Based on participation
Cumulative Preference Shares: A preference share whose annual fixed-rate dividend accrues if it cannot be paid in any year.	**Redeemable Preference Shares:** It means company will repay the amount of share capital to the holders of this category of shares after the fixed period or even earlier at the discretion of the company.	**Convertible Preference Shares:** It means the preference shares which can be converted into equity shares after specific period at the option of the preference shareholder.	**Participating Preference Shares:** It means preference shares which will participate in surplus asset & profit of the company with equity shares.
Non-Cumulative Preference Shares: A preference share whose annual fixed-rate dividend does not accrue if it cannot be paid in any year.	**Irredeemable Preference Shares** It means shares which shall not be repaid at any time during the life of the company. It will be only repaid at the time of winding up.	**Non-convertible Preference Shares:** It means the preference share which are not convertible into any kind of equity shares till its redemption.	**Non-participating Preference Shares:** It means the preference shares which do not participate in the surplus asset or profit of the company. They only receive fix dividend and face value redemption.

Sec 44,45,60,65 & 72 is being deleted by ICAI from new syllabus.

Sec 46: Certificate of shares

Answer Writing Points

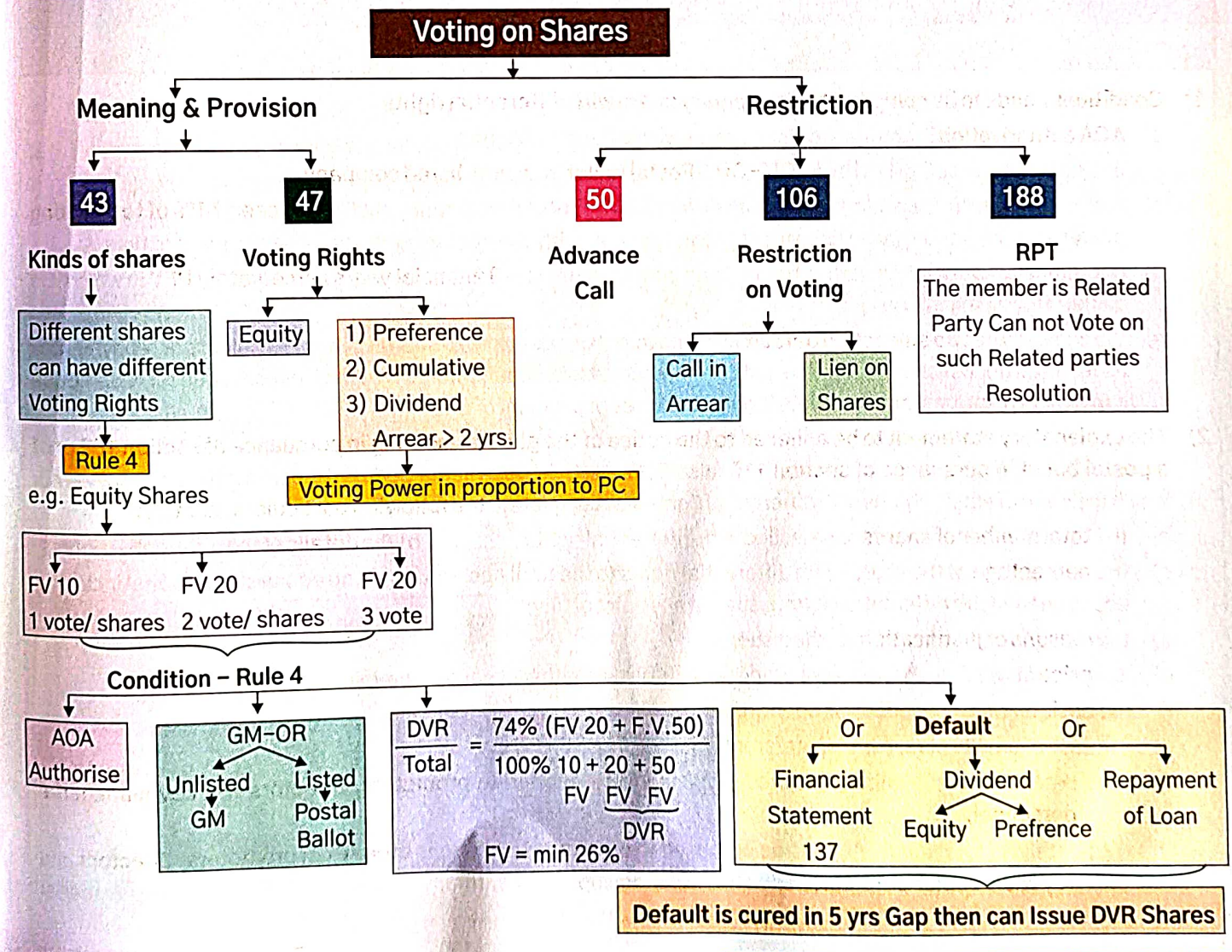
1) The share certificate is **document showing title** to the shares of company
2) The share certificate shall be signed by at least **2 directors or 1 director & 1 company secretary.**
3) If share certificate is **mutilated, torn** etc. then new certificate can be obtained on payment of **Rs 20.**
4) If share certificate is **lost or destroyed** then the duplicate certificate shall be issued if
   a) **BOD approves** the same &
   b) On payment of **Rs 50**
5) The duplicate share certificate shall bear the stamp of duplication and the word duplicate shall be indicated in front of name of member in register.
6) In case of **listed company** the shares are in **dematerialised form** so no share certificate is required.
7) The company will be liable for penalty of **5 times of face value to Higher of 10 times of Face value or Rs 10 Cr.**

Difference between share certificate and Share warrant

Heading	Share Certificate	Share Warrant
Meaning	Share Certificate is Document Shows who is Owner Of Shares.	Share Warrant is Document Gives Title of Shares to Bearer
Document of Title	Share Certificate is Document Showing Title.	Share Warrant is Document of Title
Transfer of Shares	Share Certificate Can be transfered with Registered Agreement	Share Warrant Can be transfered by only Delivery.
Voting Right	Share Certificate Holder have Voting Rights in General Meeting	Share Warrant Holder Have No Voting Rights.
Transferable/ Bearar	Share Certificate is Transferable	Share Warrant is Bearar
Paid up Value	Share Certificate be Partly Paid	Share Warrant is Always Fully Paid
Authorisation	It Need Not Required any Authorisation	Share Warrant issue Shall be Authorised by AOA & CG.
Company	Private & Public Company	Only Public Company

Sec 47: Voting Rights

Chart for Understanding



Answer Writing Points

1) The **voting powers** are always given to **equity shares** for voting at general meeting.
2) Preference shares will have voting powers in proportion to paid up capital if These are **cumulative preference** shares and **dividend is in arrears for 2 or more years.**
3) The company can issue the **differential equity shares (DRS)** with voting power at general meeting. But such differential voting shares (DVS) shall **not exceed 74%** of total share capital.
4) For issuing DVS there should be **no default** in payment of dividend, repayment of preference shares, debentures, deposits and its interest
5) The company shall issue **explanatory statement u/s 102** with the notice of general meeting following particulars
   a) Total number of shares
   b) Details of differential rights
   c) Percentage of voting
   d) Reason for issue
   e) Price of issue
   f) Price valuation basis
   g) Details in case of private placement
   h) Percentage of total capital
   i) Diluted EPS
   j) Pre & post issue capital
6) The company shall **not convert** existing shares into DVS and vice versa.
7) All the details of DVS holders shall be mentioned in register of members **u/s 88.**
8) The company shall not be defaulted in payment of loan of PFI, SFI, Employee dues, IEPF dues.
9) The company should **not** have been **penalized** in last **3 years** by under
   a) FEMA, 1999 b) SEBI, 1992 c) SCRA, 1956 d) RBI (authority)
   e) Special Act/Authority

Rule 4 of the Companies (Share capital & Debenture) Rules, 2014

Answer Writing Points

1) **Conditions needs to be complied to issue equity share with differential rights**
   a) **AOA authorization** is required to issue shares with differential rights;
   b) issue of shares is authorized by an **GM-OR** & **Postal ballot** in case of **listed company**
   c) the voting power in respect of shares with differential rights of the company shall not **exceed 74% of total voting power** including voting power in respect of equity shares with differential rights issued at any point of time.
   d) the company has not defaulted in filing FS and annual returns for **3 financial years immediately PFY** in which it is decided to issue such shares;
   e) the company has **no subsisting default** in the payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures that have become due for redemption or payment of interest on such deposits or debentures or payment of dividend;
2) **The explanatory statement to be annexed to the notice of the general meeting in pursuance of section 102 or of a postal ballot in pursuance of section 110** also BOD shall, disclose in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed, **the following particulars, namely:-**
   a) the **total number of shares** to be issued with differential rights; b) the **details** of the differential rights;
   c) the **percentage** of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time;
   d) the **reasons or justification** for the issue;
   e) the **price** at which such shares are proposed to be issued either at par or at premium;
   f) the **basis** on which the price has been arrived at;
   g) (i) in case of private placement or preferential issue-
      (a) details of total number of shares proposed to be allotted to **promoters, directors** and **key managerial personnel;**
      (b) details of total number of shares proposed to be allotted to persons **other than promoters, directors** and **key managerial personnel** and their relationship if any with any promoter, director or key managerial personnel;

(ii) in case of public issue – **reservation**, if any, for different classes of applicants including promoters, directors or key managerial personnel;

h) the **percentage** of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital;

i) the **scale or proportion** in which the voting rights of such class or type of shares shall vary;

j) the **change in control**, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights;

k) the **diluted Earning Per Share** pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards;

l) the **pre and post issue shareholding pattern** along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.

m) the particulars of promoters, directors or key managerial personnel to whom such shares are issued; (only for Board report)

3) The company **shall not convert** its existing equity share capital with voting rights into equity share capital carrying **differential voting rights** and vice-versa.

4) The holders of the equity shares **with differential rights** shall **enjoy all other rights** such as **bonus** shares, **rights** shares etc., which the holders of equity shares are entitled.

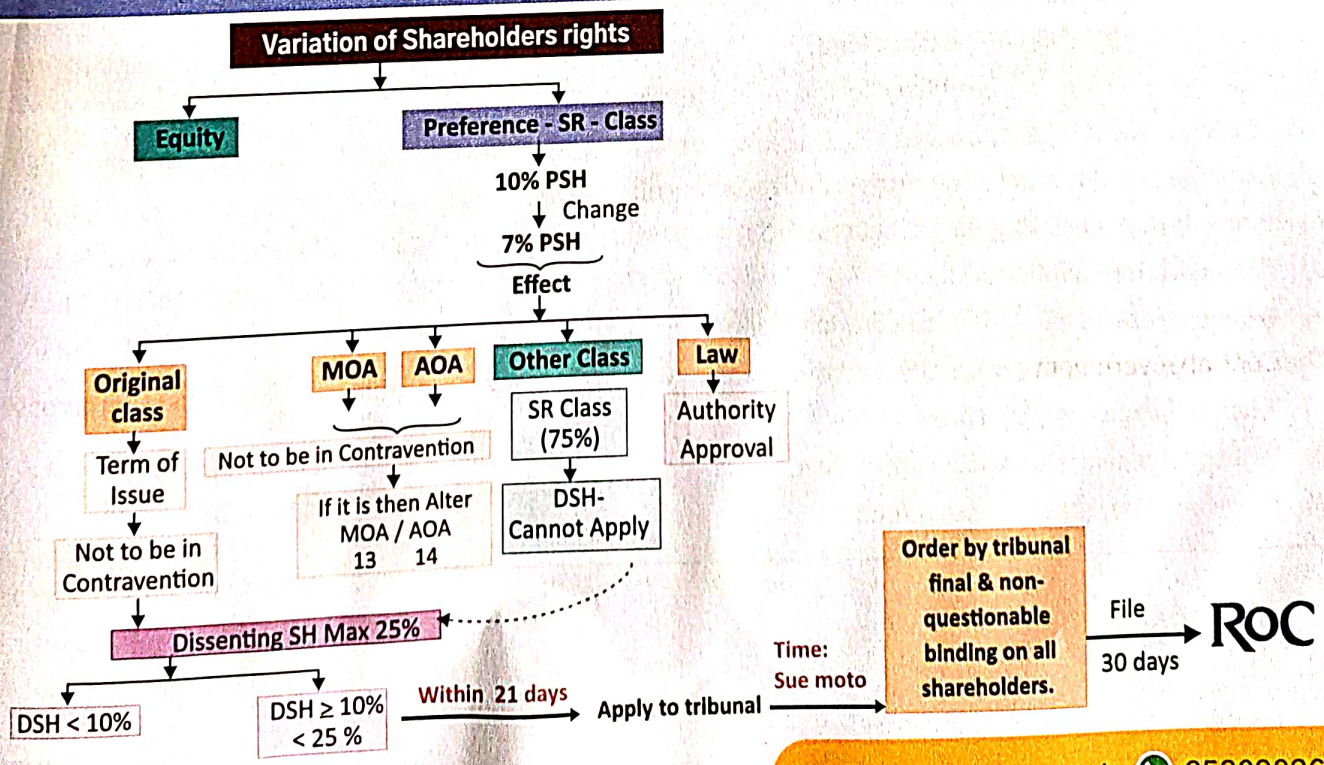
5) Where a company **issues equity** shares **with differential** rights, the **Register** of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

Section 48 : Variation of Shareholder's Rights

Answer Writing Points

1) The rights of shareholders can be altered after **passing** following approvals
   a) The **Special Resolution** of such **class of shareholders**
   b) The **Special Resolution of affected class of shareholders**
2) Such alteration shall be as per terms of issue of such shares and agreement.
3) The alteration should be permissible by Memorandum & Articles of company.
4) The **dissenting** shareholders if **10% or above** can appeal to **NCLT** against such variation within **21 days** from such resolution
5) **The NCLT** will give an order **suo-moto** and such order shall be filed with **ROC** within **30 days.**

Chart for Understanding



Section 49 :Uniform calls for same class of shares

Answer Writing Points

1) Call on class of shareholder shall be made on **uniform and together** basis.
2) If face value is same the paid-up value does **not** differ the Class.

Section 50 :Call in Advance

Answer Writing Points

1) Authorized by **AOA**
2) It is an amount **not called up** by company but **paid by shareholder**
3) **No voting right** over call in advance
4) Call in advance is **debt to company**. It shall be repaid first before payment to equity shares in case of surplus assets.
5) Call in advance is always **voluntary paid** by shareholder.
6) Call in advance be used and received in the best interest of company.
7) The interest on call in advance shall be paid **@ 12% p.a. as per Table F.**
8) In case of **no surplus** assets at winding up then **unpaid amount** will be **called up** and call in advance will be **utilised to pay liabilities.**

Section 51 :Payment of Dividend in proportion to amount paid up

Answer Writing Points

Generally, dividend is paid as a proportion of **nominal value** of **shares**. However the articles of a company may provide that the dividend shall be **paid in proportion** to the **amount paid** up **on each share.**

Section 52 :Application of Premium money received

Answer Writing Points

1) **The company** can issue shares at premium and it is decision of **Board of Director** to do so or not.
2) The **Article** shall **not** require provision of securities premium.
3) The premium can be received in **cash or kind.**
4) The Securities Premium can be **utilised** for following purposes:
   a) To issue fully paid bonus shares
   b) Commission or Discount on issue of securities to write off.
   c) Premium payment on buy back of shares u/s 68
   d) Premium on redemption of shares
   e) Writing off preliminary/pre-incorporation expenses
5) The **Central Government** can specify class of companies who can use securities premium only for following purposes
   a) To issue fully paid bonus shares
   b) Writing off commission or discount of shares
   c) Premium on buy back of shares u/s 68

Chart for Understanding

Securities Premium

↓

Utilised for

Issue of Bonus Shares	Writing off Pre-incorporation Exp.	Writing off Commission & Discount on shares	Premium on Redemption of preference / Debenture	Buy Back of shares U/s 68
SP A/c– Dr. To SC A/c - Cr.	SP A/c - Dr To P&L A/c - Cr.	SP A/c - Dr To P&L A/c - Cr.	SC A/c - Dr. SP A/c - Dr. To bank A/c - Cr.	ES A/c - Dr SP A/c - Dr To EBB A/c

1) No law to issue shares above par as they are **saleble at premium.** It's question for **BOD to decide** (Hilder Vs. Dexter (1902)]
2) No **Provision in AOA** required
3) Amount **received as premium** to be **transferred to securities premium Account**
4) Provisions are applicable irrespective of the fact that securities **have been issued for cash / other than cash.**
5) If **SP A/c** used for any other purpose then mentioned in section **same shall be treated as normal share capital** & provision of act will be applicable.

Section 53 : Prohibition on issue of shares at discount

Chart for Understanding

Discount on Shares is Prohibited

↓

Penalty for Issue

Amount Received on Shares (or) **₹ 5 Lakh**

Lower
+ Refund of amount Raised
+ Interest @ 12% PA

Exception

Sec 54 : Sweat Equity Shares | **Sec 53 (2A) : Shares issued under Debt Restructuring Scheme**

Discount Allowed

Section 54 : Issue of Sweat Equity Share

Answer Writing Points

1) Sweat equity shares means the **shares** offered by **company to employees & directors** of company, Holding, Subsidiary, Associate at discounted price against cash or other than cash consideration.
2) The company shall pass **GM–SR** for issuing Sweat equity shares and such resolution will be **valid for 1 year.**
3) The company shall maintain Sweat equity shares register under **Form SH–3** containing details of:
   a) **Number and name** of employees
   b) Shares allotted to them
   c) Price at which shares issued
4) The company shall comply with all regulations of SEBI if lifted for Sweat equity shares.

Optional

5) The shares shall be of same class and type of existing equity share holders
6) The company can issue Sweat equity shares upto
   a) **Max higher of 15% of capital or Rs 5 Cr in 1 year**
   b) **Max 25%** of capital in entire life for normal company

c) **For Start up** company **max 50% of capital for first 10 years**

7) The Sweat equity shares shall be issued as per **valuation by registered valuer**

8) For **Non cash consideration** against Sweat equity shares shall be treated as follows
   a) Depreciable asset shall be brought to balance sheet
   b) Other thing shall be expended to profit and loss

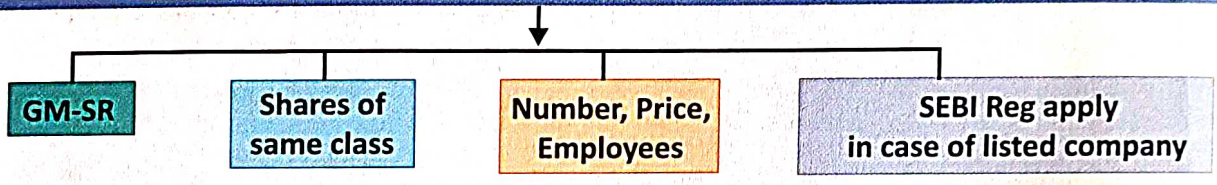
9) The BOD report **u/s 134** shall mention report about Sweat equity shares.

10) The Sweat equity shares shall be locked in for **3 years** from date of issue.

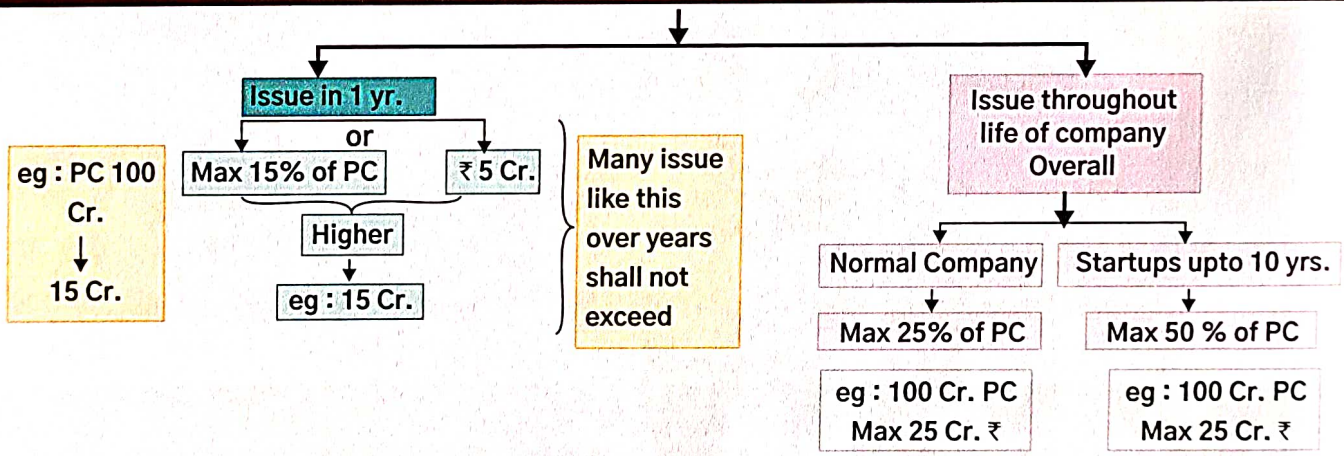
As per the Rule 8 of the Companies (Share and Debentures) Rules, 2014

1) **SR** valid for Sweat equity shares which shall be valid only for **12 months** to make the allotment (Rule 8(3))
2) Sweat equity shares issued to director or employees shall be **locked in for 3 years** (Rule 8(5))
3) Sweat equity shares price determined by **register valuer** using fare pricing policies (Rule 8(6))
4) Valuation of IPR or Know how for which sweat equity shares are issued shall be done by registered valuer (Rule 8(7))

Chart for Understanding



% issue of Sweat equity Shares



Section 55: Issue & Redemption of Preference Shares

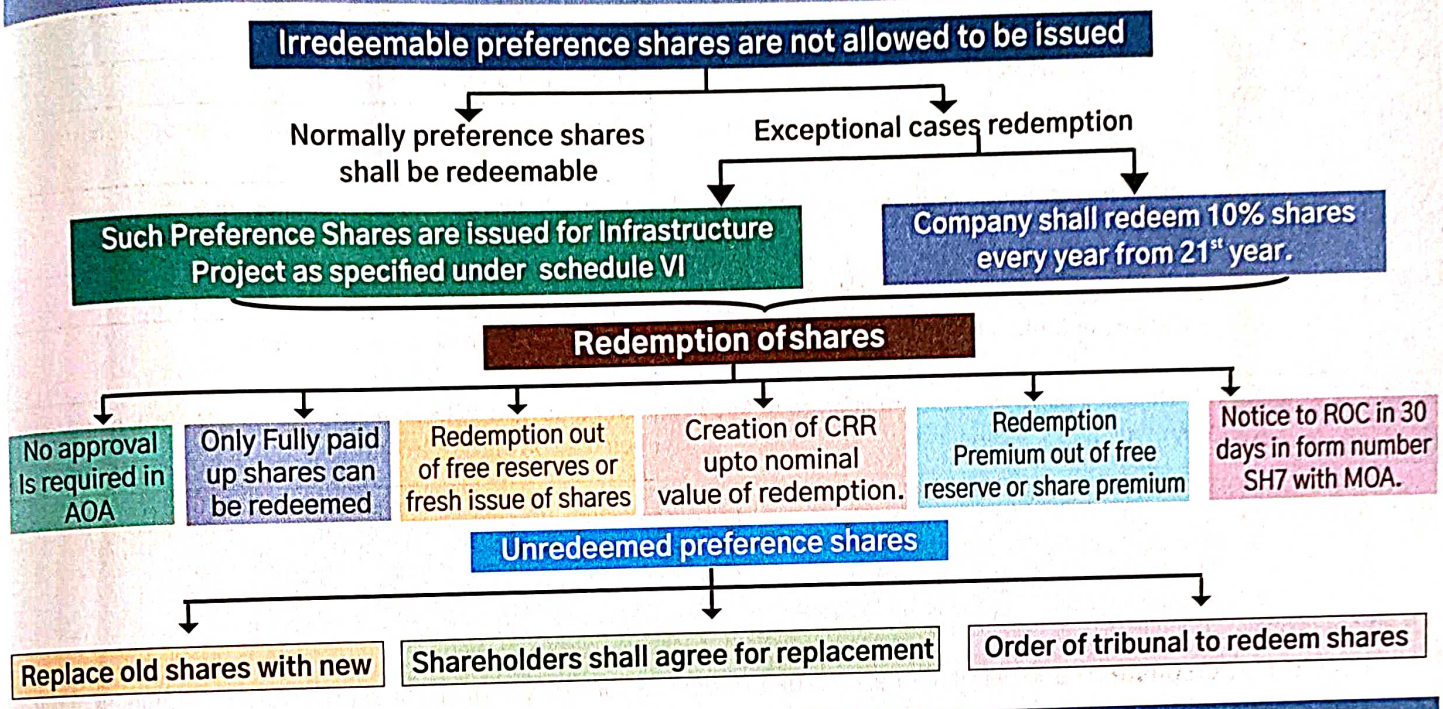
Answer Writing Points

1) The company shall **not** issue **irredeemable preference shares.**
2) The company can issue following redeemable preference shares
   a) Normal company – **20 years** redeemable shares
   b) Infrastructure Company – **30 years** redeemable shares
3) The **AOA** requires authorisation of issue of preference shares.
4) Only fully paid preference shares can be redeemed by company
5) Company shall create **CRR on redemption** of preference shares out of reserves
6) The **premium** on redemption shall be **paid out of securities premium A/c**
7) As at the time of redemption if shares **cannot** be redeemed the company shall **take back old shares** and issue **new shares** on basis of

a) Preference **Class meeting special resolution**
b) Approval of **NCLT** on application

8) On redemption or issue of preference shares company shall file **Form SH-7** with **ROC** in **30 days.**

Chart for Understanding



Section 56: Transfer and Transmission of Securities

Answer Writing Points

Transfer of Securities

1) The parties to transfer of shares shall file **Form SH-4** within **60 days** of such transfer to company with following details
   a) Stamp duty payment
   b) Details of both parties
   c) Deed/Instrument of transfer
   d) Certificate to securities
2) The deed/instrument of transfer can be excused but certificate of securities is mandatory.
3) If **Government** transfers bonds of Government company, then no registration or stamp duty is required.
4) For partly paid shares file **Form SH-5** for transfer along with **Form SH-4.**
5) The Transferee shall place no objection to such transfer of partly paid shares in **2 weeks** of such transfer.

Transmission of Shares

1) In case of Transmission of shares by Death, Unsoundness etc. or by operation of Law the **transferee/Nominee/legal heir** shall file **Form SH-4** with the company with following details
   a) Personal details of Holder and Nominee
   b) Will of transmission, etc.
   c) Certificate of Securities
2) The instrument/Will can be excused by Certificate of Securities is mandatory.
3) The **Nominee/Legal heir** can transfer securities without registration themselves as member and it will be valid transfer.
4) For transmission of partly paid shares the Nominee/Legal heir shall also file **Form SH-5** with **Form SH-4.**

Difference between Transfer and Transmission

Heading	Transfer	Transmission
Meaning	Transfer of shares refers to the transfer of title to shares, voluntaril, by one party to another.	Transmission of shares means the transfer of title to shares by the operation of law.
Affected by	Deliberate act of parties.	Insolvency, death, inheritance or lunacy of the member
Initiated by	Transferor and transferee	Legal heir or receiver
Consideration	Adequate consideration must be there.	No consideration is paid.
Transfer Deed	Valid transfer deed need to be executed for transfer of shares.	No transfer deed is required for transmission of shares.
Liability	Liabilities of transferor cease on the completion of transfer.	Original liability of shares continues to exist.
Stamp duty	Payable on the market value of shares.	No need to pay
Power of BOD to refuse	The Board of Directors can refuse	The Board of Directors cannot refuse
Example	10 Shares held by Mr. X are transferred to Mr. Y by way of voluntary sale by Mr. X.	15 shares held by Mr. A are transmitted to Mr. B being legal heir of A, on the death of A.

Section 57: Punishment for personation of shareholder

Answer Writing Points

If any person;

1) **deceitfully personates** the owner of any security or interest in a company or of any share warrant or coupon issued in pursuance of this Act; and
2) thereby **obtains or attempts to obtain** any such **security** or interest or any such share warrant or coupon, or receives or attempts to receive any money **due to any such owner.**

Penalty- he shall be punishable with-

1 year ≤ Jail ≤ 3 years AND Rs. 1,00,000 ≤ Fine ≤ Rs. 5,00,000.

Section 58 : Refusal of registration and appeal against refusal

Answer Writing Points

For Private Company

1) If company refuse to register transfer of shares following procedure shall be adopted.
2) If private company refuse to register transfer of shares it shall communicate the same in **30 days** of filling for transfer.
3) If transferor/transferee not satisfied with rejection they can appeal within **30 days** of communication made above to **NCLT.**
4) If there is no communication of rejection the parties can file appeal within **60 days** of filling of transfer to NCLT.

For Public Company

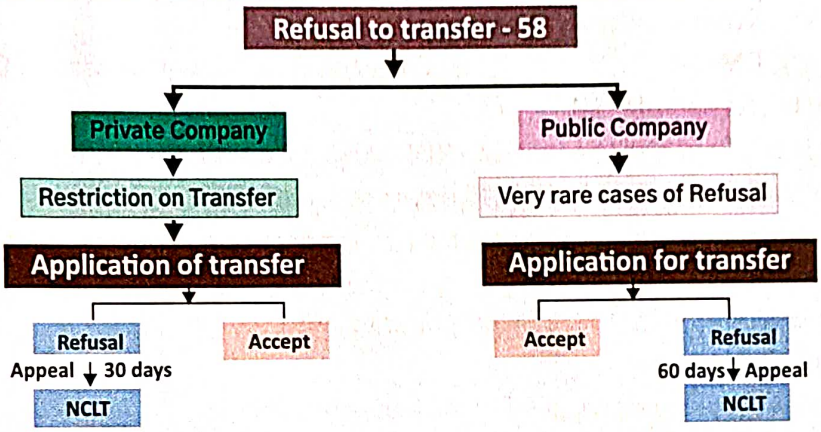
1) If public company refuse to register transfer of shares it shall communicate rejection within **30 days** of filling of such transfer.
2) If public company refuse to register transfer of shares it shall communicate rejection within **30 days** filing of such transfer.
3) If parties to transfer are not satisfied, they can appeal within **60 days** to **NCLT** from communication of rejection.
4) If there is no communication of rejection parties to transfer can appeal within **90 days** of filing of transfer to **NCLT.**

Common Points for Private and Public

5) NCLT can order Suo-Moto to transfer securities within **10 days** of order.

6) In case of contravention the person in default is liable to
   a) Jail from **1 year to 3 years**
   b) Penalty of **Rs. 1 lakh to Rs. 5 lakhs**

Chart for Understanding

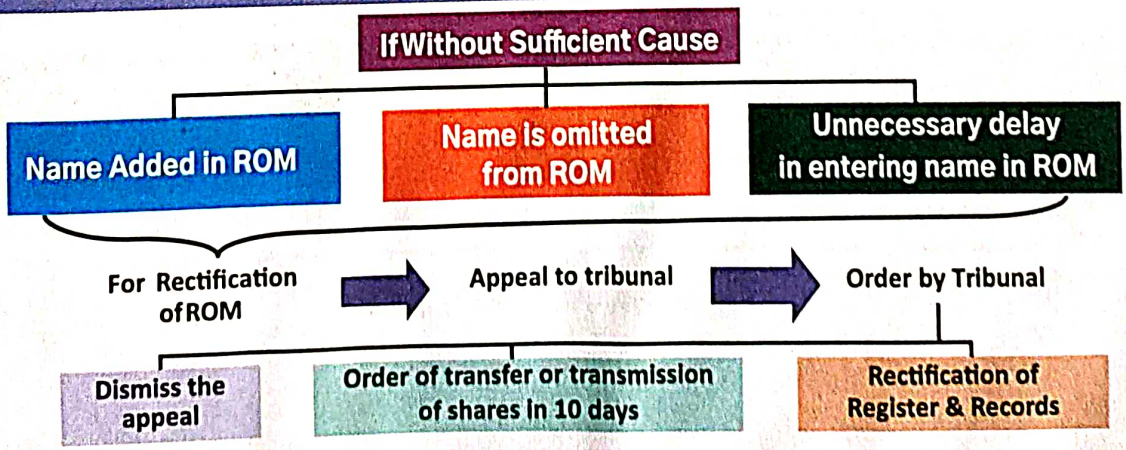


Section 59: Rectification of Register of Members [ROM]

Answer Writing Points

1) In case of following default the aggrieved party can appeal to **NCLT** for correction of Register of members.
   a) Unnecessary entering name in ROM.
   b) Omission of name from ROM
   c) Unnecessary delay in entering name in ROM.
2) On basis of appeal **NCLT** can pass following orders.
   a) Dismiss the appeal
   b) Transfer to be registered in **10 days.**
   c) Correction of ROM
3) The appeal can be made as follows
   a) Indian person to **NCLT**
   b) Foreign person to court as per **CG**
4) **NCLT** can order to set aside the transfer and rectify the records if its in contravention of
   a) SEBI, 1992
   b) Companies Act,2013
   c) SCRA, 1956
   d) Any other law in force

Chart for Understanding



Section 61: Power of a limited company to alter its Share Capital

Already covered in Sec.4 & 13- MOA of Chapter 2

Section 62: Further Issue of Share Capital

Answer Writing Points

1) The company can make following further issues
   a) Right Issue by passing **GM-SR** b) Employee Stock Option by passing **GM-SR**
   c) Further Public offer by passing **GM-SR**
2) The Offer document of such issue shall be filed with **ROC** at least **3 days** before opening of issue.
3) The company shall keep offer open for minimum **15 days** and for max **30 days.**
4) The existing shareholders can renounce right issue but same cannot be renounced in stock option or Further Public Offer. (Renouncement allowed by **AOA**)
5) In case of unsubscribed securities Board shall have power to dispose them.

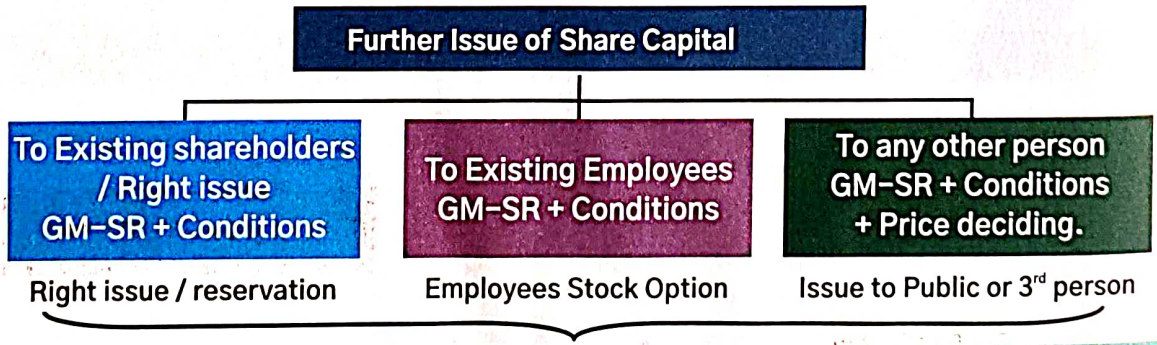
CG/SG Debt Restructuring

1) **CG** in public interest can order conversion of following into equity shares.
   a) Debentures issued to **CG/SG** b) Loan given by **CG/SG**
2) Above conversion can also be ordered even if terms of issue does not allow any conversion
3) The member/aggrieved party can apply to **NCLT** in **60 days** of order.
4) The **CG** can order such conversion after looking at situation of company.

Employees Option Scheme

1) **Employee means**
   a) Permanent Employee in India or Outside b) Directors and Managing Directors
   c) Employee and Directors of Subsidiary
2) **Employee not includes**
   a) Promoters and Promoters Group b) Directors holding > **10%** of capital
3) There shall be minimum **1 year** gap in Granting and vesting option.
4) ESOS/ESOP lock in for **3 years** from sale/pledge.

Chart for Understanding



Further Issue of Share Capital

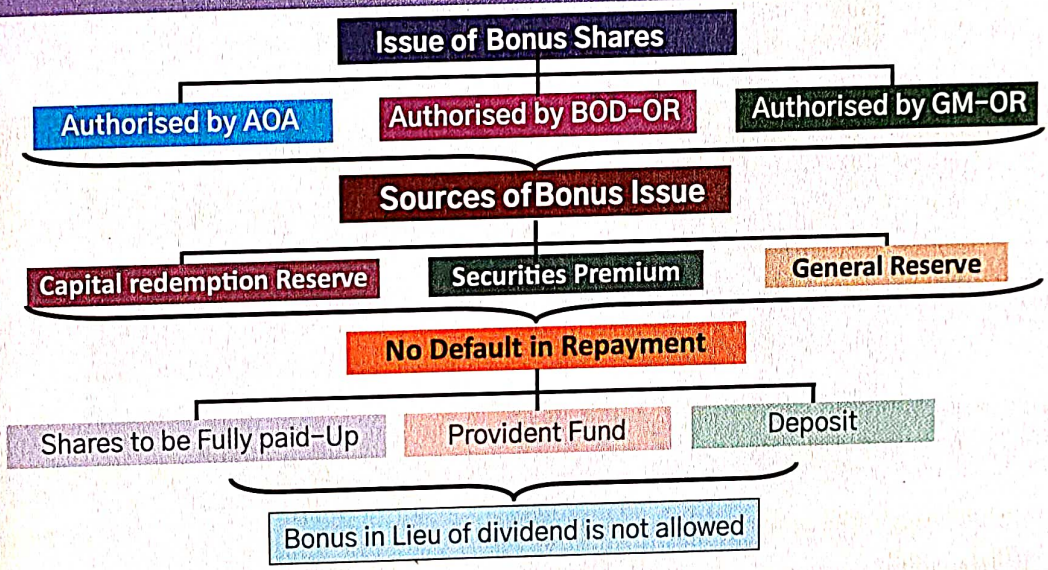
- Offer shall be made by a notice specifying the **no. of shares** offered.
- Time limit given to accept the offer shall **not be less than 15 days** but **not more than 30 days** of offer.
- Notice shall be sent **through speed post** or registered post or electronic **mode at least 3 days** before the opening of issue.
- Unless otherwise **provided in the AOA**, the shareholders will have a right of renouncement and same will be mentioned in the notice.
- BOD may dispose the shares offered, in a manner which is **not disadvantageous** to the shareholders, if
  (I) time given in **notice expires**, or **(II)** the person denies from **accepting the offer.**

Section 63: Issue of Bonus Shares

Answer Writing Points

1) The company shall pass following approval for bonus issue
   a) **AOA** shall approve bonus
   b) The company shall pass **GM-OR**
   c) The company shall pass **BM-OR**
2) The company can declare **bonus shares** out of
   a) Capital Redemption Reserve **(Sec.69)**
   b) Securities Premium **(Sec.52)**
   c) General Reserve
3) The following **condition** shall be **complete** for bonus issue
   a) Shares shall be **fully paid up**
   b) **No dues** should be pending towards employee
   c) There shall be **no default in repayment of deposit or interest**
4) The **bonus in lieu of dividend is not allowed**
5) The bonus **cannot** be declared **out of revaluation reserve or non-cash profit.**
6) The company shall file **Form SH-7** with **ROC** in **30 days** for alteration of capital.

Chart for Understanding



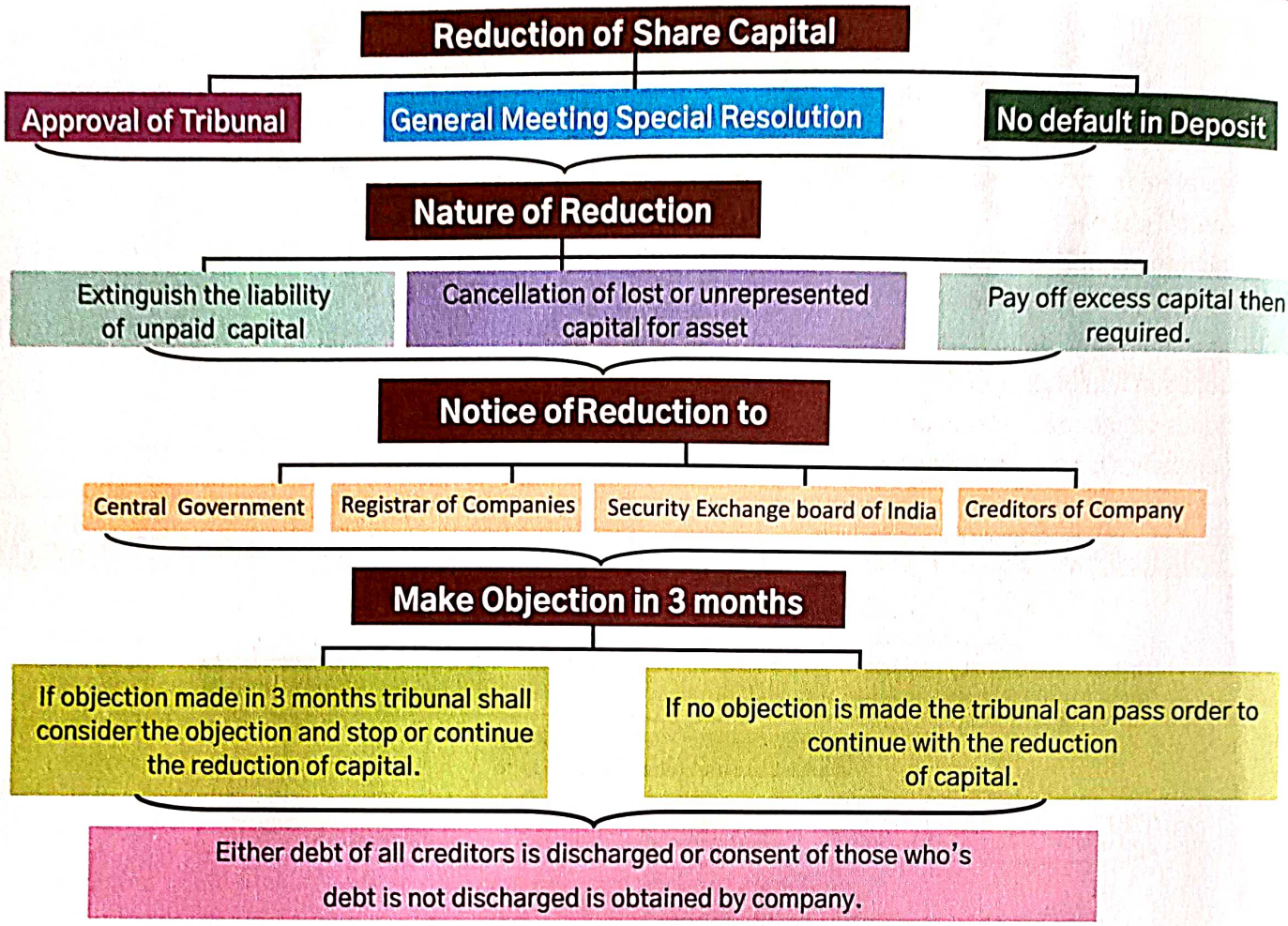
Section 64: Notice to Registrar for Alteration of Share Capital

Answer Writing Points

1) Company shall give **notice to ROC** for alteration of share capital in case of **Sec 48, 49, 54, 55, 61, 62, 63, 66, 68** & in other cases of alteration.
2) Manner of giving notice-
   a) the notice shall be in **Form No. SH 7.**
   b) it shall be filed within **30 days** of such alteration.
   c) it shall be filed with the **ROC.**
   d) It shall be accompanied by the altered memorandum.
3) Where any **company fails** to comply with the provisions of sub-section (1), such **company and every officer who is in default** shall be liable to a penalty of **Rs.500** for each day during which such default continues, subject to a maximum of **Rs. 5 lakhs** in case of a company and **Rs. 1 lakh** in case of an officer who is in default.

Section 66: Reduction of Share Capital

Chart for Understanding



Answer Writing Points

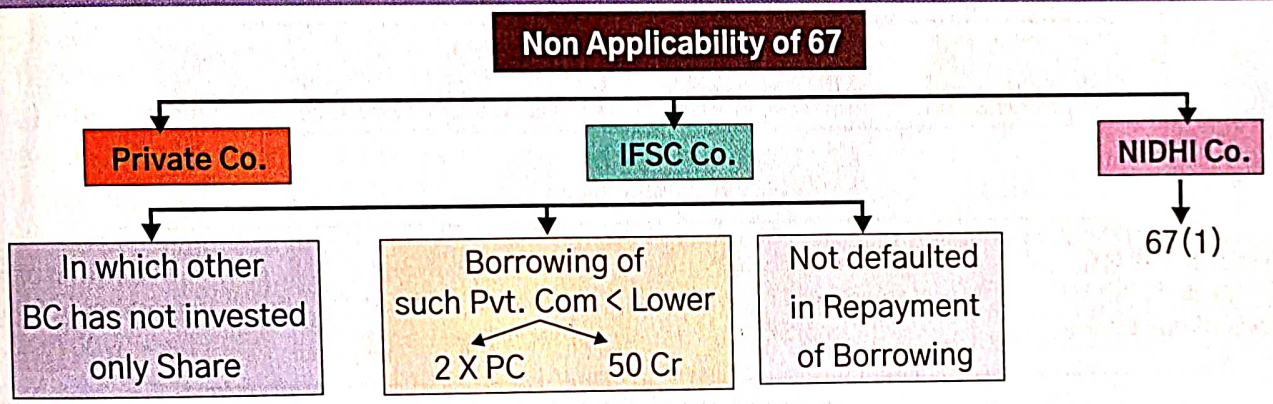
1) The **Reduction of share capital** can be done in following ways
   a) Reduce unpaid capital
   b) Reduce excess capital
   c) Reduce lost/unrepresented capital
2) For reduction of capital the company shall pass **GM-SR** .
3) **The NCLT** Approval is required after giving notice to following person
   a) CG
   b) ROC
   c) SEBI
   d) CREDITORS
4) If above person have objection they shall place it within **3 months**. If no objection raised the reduction is deemed to be approved
5) If Creditor does **not approve** reduction they shall be repaid in full before such reduction of share capital.
6) **The NCLT** can order to publish notice in news paper.
7) The filling of reduction shall be made with **ROC** within **30 days** in **Form SH-7**.
8) In case of default by company or officer will be liable **u/s 447.**
9) After Reduction of capital the words **"As Reduced"** shall be used with the name of company.

Section 67: Purchase by a company of its own shares

Answer Writing Points

1) A company Limited by shares (whether, private or public); or Limited by guarantee Shall **not** buy its own shares Unless the consequent reduction of share capital is effected under the provisions of this act.
2) **Exceptions** to this is **Unlimited companies** & **Redemption of Preference Shares**
3) The provisions are applicable to a public company only.
4) A public co. shall **not,** whether directly or indirectly, give to any person a- Loan, Guarantee, Security or Any other financial assistance. For purchase of - Its own shares; or Shares in its Holding Company.
5) **Exceptions to Above:**
   a) Lending by banking companies.
   b) Lending by the company for subscription by Trustees for the benefit of the employees; subject to —**SR + Prescribed requirements.**
   c) Lending by the company to its own employees for beneficial holding; subject to —not to director's/key managerial persons + loan amount not exceeding their salary/wages for a period of **6 months.**
6) This section shall **not apply** to redemption of Preference Shares '(vide case 1 given below in Case Laws section)
7) Penalty for non-compliance:
   a) Penalty for Company-**Rs.1,00,000 ≤ Fine ≤ Rs.25,00,000**
   b) Penalty for every officer in default: **Jail ≤ 3 Years** And **Rs.1,00,000 ≤ Fine ≤ Rs.25,00,000**

Chart for Understanding



Section 68: Buy Back of shares / Power of company to purchase its own shares

Answer Writing Points

1) The company shall not buy-back its own shares by itself or any of its agents except u/s 68.
2) The company shall pass following resolution for buy-back
   a) Upto **10% - BOD-OR** b) Above **10% - Upto 25% - GM-SR**
3) The buy-back shall be authorised by **AOA.**
4) The Debt-Equity ratio after Buy-back shall be **≤ 2:1**
5) The listed company shall comply with **SEBI rules.**
6) The company shall file return of buy-back with **ROC** in Form SH 11
7) The buy-back shall be **made out of**
   a) Existing shareholders b) From open market c) ESOS/ESOP/SES to employees.

Optional points

8) The buy-back **time limits** are as following
   a) The buy-back shall be completed **in 1 year** of resolution

b) Gap between **2 buy-backs** shall be minimum **1 year**

c) The shares bought back shall **not** be issued till **6 months**

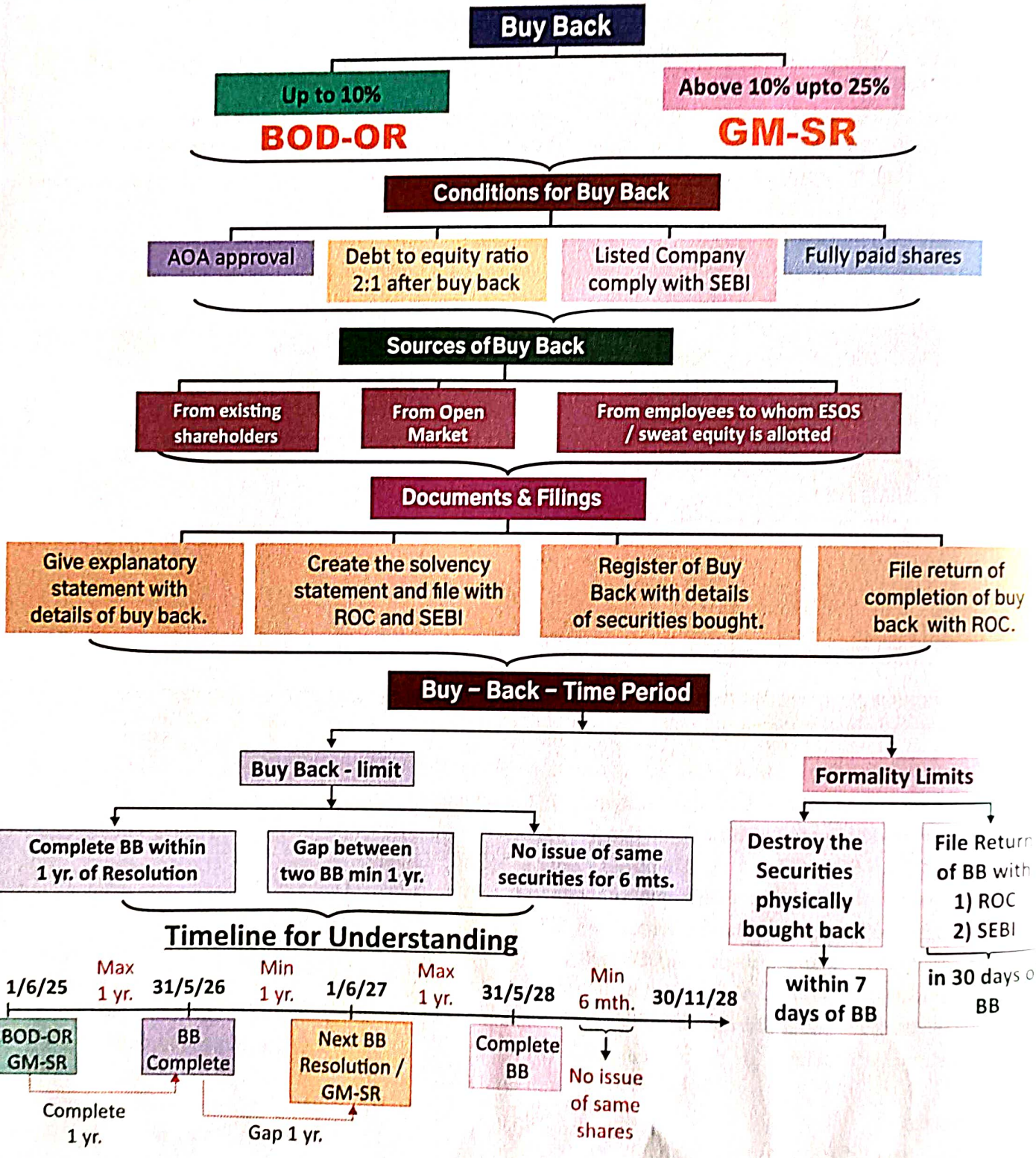
9) The shares bought back shall be **destroyed physically** and certified by **CA/CS/CMA** in **7 days.**

10) The register of buy-back shall be maintained in **Form SH-10**

11) **The BOD** shall create solvency statement in **Form SH-9**

12) The Company shall give **explanatory statement** of buy-back with details with notice of General meeting u/s 102

Chart for Understanding



Section 69: Transfer to CRR Account

Answer Writing Points

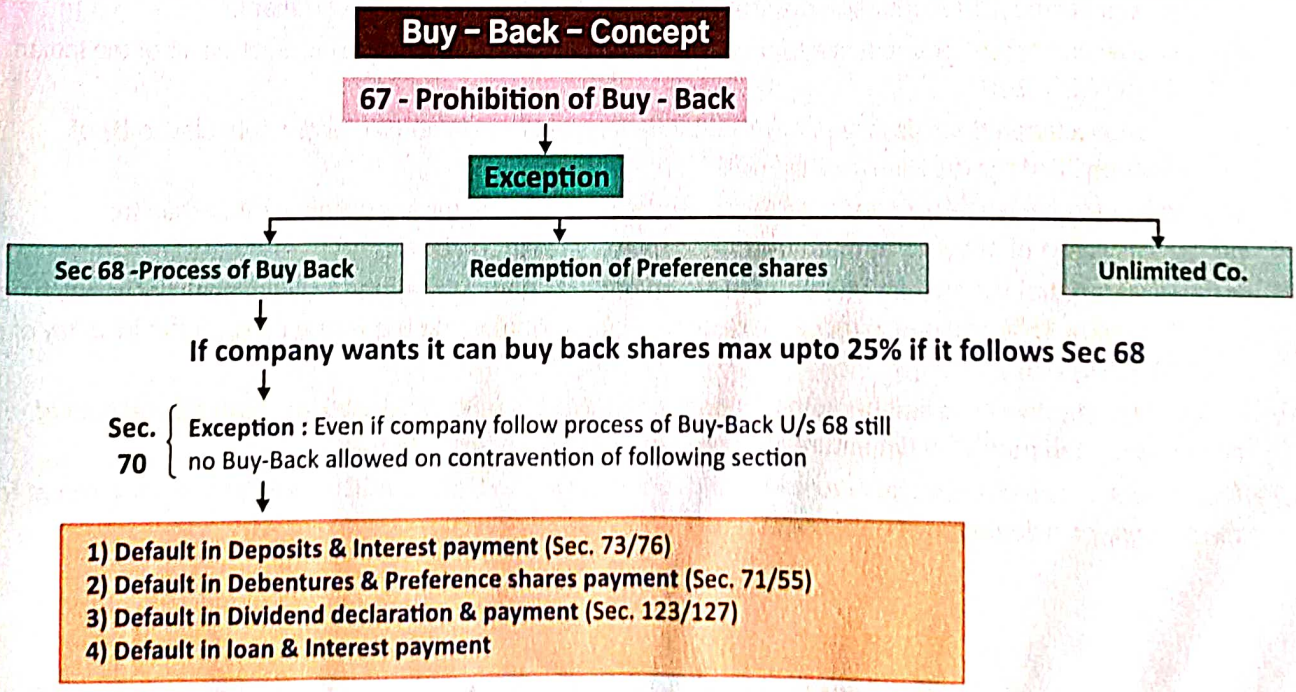
1) Requirement and disclosure of transfer to **CRR**
   a) When a company purchases its own shares
   b) Out of free reserves; or
   c) Out of securities premium account
   d) A sum equal to nominal value of such shares shall be transferred to CRR A/C
   e) Transfer Amt. = Nominal value of shares
   f) Disclosure: The details of such transfer shall be disclosed in the balance Sheet.
2) **Utilisation of CRR account**– The CRR account shall be used only for issue of fully paid bonus shares to existing shareholders.

Section 70: Prohibition for Buy–Back in certain cases

Answer Writing Points

1) The company shall **not** buy back its shares directly or indirectly if it **defaulted:**
   a) Repayment of deposit **u/s 76**
   b) Redemption of debenture & preference shares **sec.71 & 55**
   c) Payment of declared dividend **sec.127**
   d) Repayment of loan or interest
   e) Filling of annual return **sec.92**
   f) Filling financial statement **sec.129 &137**
   g) Any other 3rd person
2) Buy back can be made after **3 years** from curing of such defects.
3) A company shall not buyback its shares if it has not complied with the provisions of sec.

Chart for Understanding

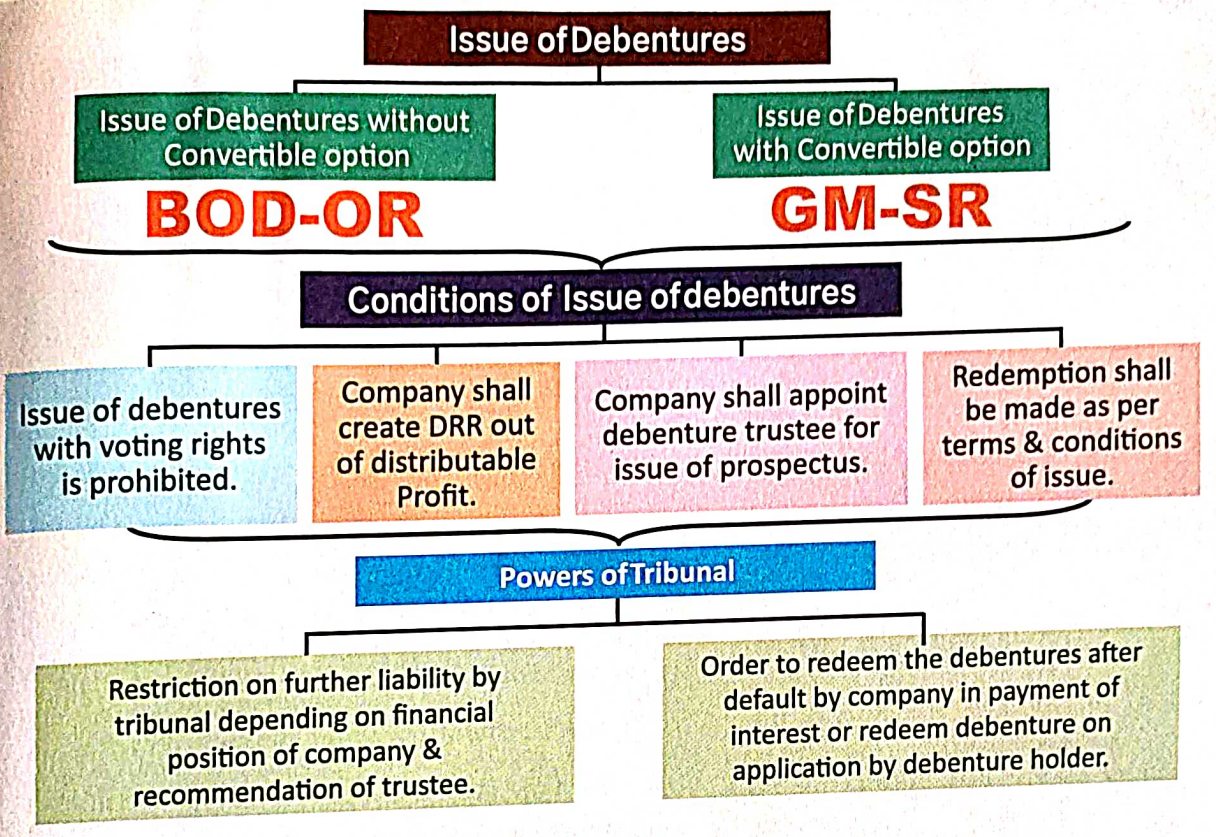


Section 71: Debentures

Answer Writing Points

1) Conditions for issue of debentures:
   a) Issue of convertible debentures : **GM-SR**
   b) Issue of non-convertible debenture: **BM-OR**
   c) No voting rights on debentures
   d) Company shall **create DRR**
   e) Company shall appoint debenture trustee
   f) Redemption as per terms & condition of issue.
   g) **NCLT** can put restriction on incurring any further liability by issue of debenture.
2) Company shall create DRR account which shall only be used for redemption of debentures.
3) As per the Companies (Share Capital and Debentures) Rules, 2014, the company shall create a DRR for the purpose of redemption of debentures, in accordance with the conditions given below:
   a) The DRR shall be created out of the profits of the company available for payment of dividend;
   b) The company shall create Debenture Redemption Reserve (DRR) in accordance with the following conditions:
      i. No DRR is required for debentures issued by All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions(FIs) within the meaning of clause (72) of Section 2 of the Companies Act 2013, DRR will be as applicable to NBFCs registered with RBI.
      ii. For NBFCs registered with RBI under **Section 45-1A** of the RBI (Amendment) Act, 1997 for Housing Finance Companies registered with the National Housing Bank, no DRR is required
      iii. No DRR is required in the case of privately placed debentures.
      iv. For other companies including manufacturing and infrastructure companies there is no adequacy of DRR
      v. For unlisted companies issuing debentures on private placement basis, the DRR will be **10%** of the value of debentures.
   c) Every company required to create DRR shall on or before **30th day of April** in each year, as the case may be, a sum which shall be not less than **15%**, of the amount of its debentures, maturing during the year ending on 31st **day of March** of the next year, in any one or more of the following methods, namely:
      i. in deposits with any scheduled bank, free from any charge or lien;
      ii. in unencumbered securities of the Central Government or any State Government;
      iii. in unencumbered securities mentioned in sub-clauses (a) to (d) and (e) of Section 20 of the Indian Trust Act, 1882;
      iv. in unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trust Act, 1882;
      v. the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.
      vi. Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below **15%** of the amount of the debentures maturing during the year ending on the 31st day of March of that year.
   d) In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non- convertible portion of debenture issue in accordance with this sub-rule.
   e) The amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures.

Charts for Understanding



5 ACCEPTANCE OF DEPOSIT BY COMPANIES

Coverage of Chapter	
Sec.	**Name of Section**
73	Prohibition on Acceptance of Deposits from Public
74	Repayment of Deposits, etc.,Accepted Before Commencement of this Act
~~75~~	~~Damages for Fraud.~~ [Deleted by ICAI]
76	Acceptance of Deposits from Public by Certain Companies
76A	Punishment for Contravention of Section 73 or Section

E-Filing Forms Companies (Acceptance of Deposit) Rules, 2014			
E-Form	**Details**	**Relevant section**	**Rule No**
DPT-1	Form and particulars of advertisement or circular	73	4
DPT-2	Appointment of trustee for depositors	76(1)	7
DPT-3	Return of deposit to be filed with ROC	73	16
DPT-4	Statement regarding existing deposit on commencement of Companies Act, 2013.	74	20

Section 75 is being deleted by ICAI from new syllabus.

CERTAIN IMPORTANT TERMS EXPLAINED

A) DEPOSIT

Definition: According to section 2 (31) of the Act, the term **'deposit'** includes any receipt of **money by way of deposit or loan** or in any other form, **by a company**, but does not include such categories of amount as may be prescribed in consultation with the **Reserve bank of India.**

B) DEPOSITOR

Definition: As per Rule 2 (1) (d), the term **'Depositor'** means:

i) any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or

ii) any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act.

C) ELIGIBLE COMPANY

Definition: As per Rule 2 (1) (e) the term **"eligible company"** means a **public company** as referred to in section 76 (1), having a **net worth** of **not less** than ₹ **100 crore** or a turnover of not less than ₹ **500 crore** and which has obtained the prior consent in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the public for acceptance of deposits:

However, an eligible company, which is accepting deposits within the limits specified under section 180(1) (c), may accept deposits by means of an ordinary resolution.

A public company is **'eligible'** to **accept deposits** from the public at large only if it meets the above-mentioned criteria.

Amounts not consider as Deposit (Rule 2(1)(c))

Deposits – 73 – 76A

Deposit 2(31)

Meaning
1) Deposit
2) Loan
3) Any other form
Secured/unsecured

Condition
It shall be time bound. Repayment in Specific period.

IT does not Include
Amount prescribed by RBI

1
Amount Received from CG/SG/LA
↓
Can be grant Donation
↓
e.g. Gov. Company

2
Amount received From foreign Gov./ Banks subject to FEMA, 1999

3
Loan taken from Banks / FI as per RBI
↓
Normal Loan

4
Loan from PFI 2(72)
↓
LIC, UTI, IFCI, etc.

5
Inter Corporate Loans
↓
Company — Loan 186 Sec. — Company

6
Amount Received on commercial papers / Instrument
eg. Bill Discounting

7 9 9A
Amt. Received on Issue of Securities
IPO, FPO
Equity preference | Debentures (C, NC) | Bonds

8
From BOD / Relative of BOD
↓
Declare that loan from other Company is not forwarded

10
Security Deposit from employees
↓
Non Interest Bearing

11
Non Interest Amount held in transfer some person
↓
Gratuity / Bonus/ PF

12
Amount for ordinary Business
↓
1) Advance for Supply of goods/service
2) Advance for sale of immovable property- Real Estate pre-booking
3) Security deposit for performance of Contract- Rental/ lease
4) Advance for long term project
5) Advance for Gurantee/warranty
6) Advance as per Authority
7) Subscription of Publication / Books Magazine

13
Unsecured Loan by promoter
Loan
NM —— Infosys

14
Amount Received by NIDHI Company Sec.406
↓
Members Deposit Amount in company monthly & needy member can take it as Loan

15
Subscription Received by Funds.
↓
Members Deposit Monthly Subscription & winner will get all amount

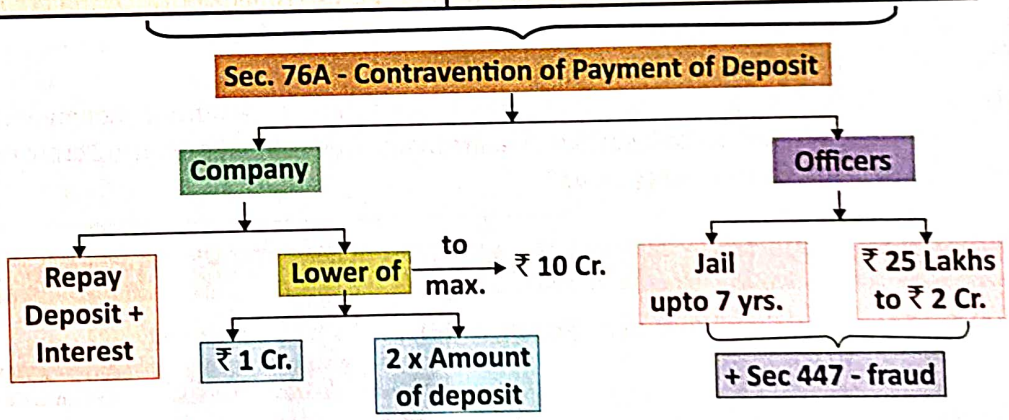
16
Amount Received by collective Investment Scheme
Mutual Fund
Public — Investment — MF

17
Amount Received by start up company > 25 lakh by note/ shares repayable with 10 years

18
Amount Received by
1) Venture Capital Fund
2) Real Estate Investment Trust (REITS)
MF of Real Estate

Combine Chart for Sec 73, 76 and 76A

Head	Sec. 73	Sec. 76
Name	Acceptance of Deposit from members	Acceptance of Deposit from public
Exception Companies	1) Banking 2) NBFC 3) Notified by CG	1) Banking 2) NBFC 3) Notified by CG
Resolution	GM-OR	GM-SR
RBI - Approval	Required	Required
Other Documents	Circular to members a) Financial Position b) Credit Rating c) Depositor & Amount	Prospectus to Public a) All content of Sec 26 b) Credit Rating c) Amount & Rate
Filing with ROC	Required	Required
DRRA	20% of Amount	20% of Amount
Security change on Asset	Make charge on Asset of company	Make charge on asset of company
Deposit Insurance	Required	Required
Companies Eligible	Any Company	Public Company → NW ≥ 100 Cr. / T ≥ 500 Cr. → Eligible; Others → Not Eligible



Section 73: Prohibition on acceptance of deposits from public

Answer Writing Points

1) Company **shall not accept** deposits from **public.**
2) Deposits from bank, NBFC and other company **notified by CG** are **allowed.**
   a) **GM-SR**
   b) CG in consultation with RBI may set rules for accepting deposits, company shall comply with rules as prescribed
3) Issue Circular to its **members inviting deposits**
4) Filing of circular **with ROC** from the date of issue of circular to the member in **Form DPT 1**
5) Created **Deposit Redemption Reserve Account.** A sum not less than **20%** (deposit maturing in current year + in next FY) shall be deposited in DRRA at a scheduled bank.

6) Create **deposit insurance** for contingency
7) **Certify** that company has **not** made **any default** in repayment of any deposits or interest.
8) Provide security on amount of **Deposits** and/**or interest** due.
9) When company accepts deposits, it shall **repay such deposits** with interest as per the terms & conditions of the agreement of acceptance.

Section 76: Acceptance of Deposits from Public

Answer Writing Points

1) Eligible Company– A public company having **net worth≥ Rs.100 Cr.**, OR **Turnover ≥ RS. 500 Cr.;**
2) **GM–SR**
3) **Filed with ROC** before making such invitation
4) If accepting deposits u/s 180 (1) (c) then **GM–OR**
5) CG in consultation with **RBI** may **set rules** for accepting deposits, company shall comply with rules as prescribed
6) The company shall, every year, **obtain rating** with respect to its deposits from a recognised credit rating agency.
7) **Within 30 days** of accepting secured deposits, create a **charge on its assets**
8) The amount of charge shall **not be less than** the **amount** of deposits accepted
9) Appointment of trustee for depositors in Form **DPT 2** The provision of Sec. 73 to 75 shall apply to the **acceptance of deposits** from public u/s 76

Section76A: Punishment for Contravention of Section 73 or Section 76.

Answer Writing Points

Where company act in **contravention** of section 73 or 76 or **fails to repay** deposits or interest then:

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 which shall **not be less than 1 crore rupees** or **twice the amount** of deposit accepted by the company, **whichever is lower** rupees but which may extend to ten crore rupees; and Filed with ROC before making such invitation
b) every officer of the company who is in default shall be punishable with **imprisonment** which may extend to **7 years** and with fine which shall **not be less than 25 lakh rupees** but which may extend to **2 crore rupees,**
c) if officer done it willfully **liable u/s 447**

The Companies (Acceptance of Deposits) Rules, 2014

Rule 3 – Terms and Conditions of Acceptance of Deposits by Companies:

Conditions for Acceptance of Deposits

As per the Companies (Acceptance of Deposit) Rules, 2014.

Rule 3

- Accept or Renew Deposit only of 6 mths–36mths
  - **Exception :** Less than 6 mths allowed
    1) For meeting shot term < 6 mths. Funds requirements
    2) Max 1/10 of (PC+FR+SP) x 10%
    3) Min 3 Mths. Pay Back Period.
- Max Joint Holders of 1 Deposit can be 3
- Max Deposit that can be Accepted =35% of = (43cr) (PC+FR+SP) (Apply no Gov. Co. Also)
- Max Acceptance / Renewal of deposit Allowed
  - From members Max 10% of (PC+FR+SP)
  - From others Max 25% of (PC+FR+SP)
- General Conditions
  1) Interest & Brokerage as per RBI
  2) Every year File
     - From members Max 10% of (PC+FR+SP)
     - From others Max 25% of (PC+FR+SP)

Rule 3

Total Deposit that can be Accepted is max 35% (PC + FR + SP)
(100 +30 +10)

= 35% of 140 Cr = 49 Cr ₹

- from members: max 10% (PC+FR+SP) = 14 Cr ₹
- From others: Max 25% (PC+FR+SP) = 35 Cr ₹

According to term 35% 49 Cr.

- Short term: 3 mths – 6 mths; max 10% (PC+FR+SP); min 0%; = 0 cr. – 14 cr.
  - If No short termdeposit then it can be used for term
- Long term: 6 mths – 36 mths; min 25% (PC+FR+SP); max 35% (PC+FR+SP); = 35 cr. – 49 cr.

Rule 4 – Form and Particulars of Advertisements or Circulars

Conditions / Form of Advertisement & Circular – Rule 4

- Issue Circular in DPT–1 to members
  + Publish in News paper (English & Regional)
  + Attach Auditors Certificate No default in Repayment of deposit in last 5 yrs.
- Upload copy of circular on website of company
- It shall be issued in the authority & Name of BOD
- File copy with ROC 30 days before date of issue of Circular
  - Signed by majority of BOD

Circular will be valid till

- 6 mths after F.Y. in which it is issued
- upto AGM of F.Y. in which it is issued

Whichever is Later

Rule 6 – Creation of Security:

1) For the purposes of providing security, every company referred to in sub-section (2) of section 73 and every eligible company **inviting secured deposits** shall **provide for security** by way of a **charge on its assets** as referred to in Schedule III of the Act excluding intangible assets of the company for the due repayment of the amount of deposit and interest thereon for an amount which shall **not be less than** the amount remaining unsecured by the deposit insurance:

   Provided that in the case of deposits which are **secured by the charge on the assets** referred to in Schedule III of the

Act excluding intangible assets, the amount of such deposits and the **interest payable thereon** shall **not exceed** the **market value** of such assets as assessed by a registered valuer.

Explanation. I – For the purposes of this sub-rule it is clarified 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.

Explanation. II– For the purposes of proviso to sub-clause (ix) of clause (c) of sub-rule (1) of rule 2 and this sub-rule, it is hereby clarified that pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an **independent merchant** banker **who is registered** with the Securities and Exchange Board of India or an independent **chartered accountant** in practice having a minimum **experience of 10 years.**

2) The security (not being in the nature of a pledge) for deposits as specified in sub-rule (1) shall be created in favour of a **trustee for the depositors** on:
   a) **specific movable property** of the company, or
   b) specific **immovable property** of the company wherever situated, or any interest therein.

Rule 7 – Appointment of Trustee for Depositors & Rule 8 – Duties of Trustees:

Depositors Trustee [Rule (7+8)]

Appointment

1) **Appoint trustee** to Protect Depositions & Interest
2) Take his **written consent** before circular. (DPT1)
3) Execute Deposit Trust Deed in form DPT-2
4) He shall not be :
   a) BOD, KMP, Officer, Employee of Group campanies (or related person)
   b) Indebited to Group Companies
   c) Having Pecuniary Interest with company.
   d) Entered in Guarantee Agreement
5) **Removal** only by **BM-UR**

Powers & Duties

1) **Ensure** Assets under charge act sufficient to meet amt due.
2) Ensure Circular shall **not contain** information inconsistant with terms of deposits
3) Ensure company does **not breach agreement** & there are consequences if company breaches
4) **Call meeting** f Deposit holders whenever necessary.
5) Supervise **creation of deposit** security & insurance.
6) Enforce Security in case of non **repayment of deposit.**
7) Protect interest of depositor & solve complaints.

Rule 9 – Meeting of Depositors:

The trustee for depositors shall call a meeting of all the depositors on–
   a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding;
   b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

Rule 10 – Form of Application for Deposits:

1) On and from the commencement of these rules, no company shall accept, or renew any deposit, whether secured or unsecured, unless an application, in such form as specified by the company, is submitted by the intending depositor for the acceptance of such deposit.
2) The form of application referred to in sub-rule (1) shall contain a declaration by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.

Rule 11 – Power to Nominate:

Every depositor may, at any time, nominate any person to whom his deposits shall vest in the event of his death and the provisions of section 72 shall, as far as may be, apply to the nomination made under this rule.

For Concept Query only 8530902666

Rule 12 – Furnishing of Deposit Receipts to Depositors:

1) Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company, within a period of twenty one days from the date of receipt of money or realisation of cheque or date of renewal.
2) The receipt referred to in sub-rule (1) shall be signed by an officer of the company duly authorised by the Board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate of interest payable thereon and the date on which the deposit is repayable.

Rule 13 – Maintenance of Liquid Assets and Creation of Deposit Repayment Reserve Account:

Every company referred to in sub-section (2) of section 73 and every eligible company shall on or before the 30th day of April of each year deposit the sum as specified in clause (c) of the said sub section with any scheduled bank and the amount so deposited shall not be utilised for any purpose other than for the repayment of deposits:

Provided that the amount remaining deposited shall not at any time fall below twenty per cent. of the amount of deposits maturing during the financial year.

Rule 14 – Registers of Deposits:

1) Every company accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:–
   a) name, address and PAN of the depositor/s; **b)** particulars of guardian, in case of a minor;
   c) particulars of the nominee; **d)** deposit receipt number;
   e) date & amount of each deposit; **f)** duration of the deposit and the date on which each deposit is repayable;
   g) rate of interest or such deposits to be payable to the depositor; **h)** due date for payment of interest;
   i) mandate and instructions for payment of interest and for non-deduction of tax at source, if any;
   j) date or dates on which the payment of interest shall be made; **k)** Omitted
   l) particulars of security or charge created for repayment of deposits; **m)** any other relevant particulars;
2) The entries specified in sub-rule (1) shall be made within seven 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.
3) The register referred to in sub-rule (1) shall be preserved in good order for a period of not less than eight years from the financial year in which the **latest entry** is made in the register.

Rule 15 – General Provisions Regarding Premature Repayment of Deposits:

Where a company makes a **repayment of deposits**, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but **before the expiry of the period** for which such deposit was accepted, the rate of interest payable on such deposit shall be **reduced by one per cent.** from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at **any rate higher than** the rate so **reduced :**

Provided that nothing contained in this rule shall **apply to the repayment of any deposit** before the expiry of the period for which such deposit was accepted by the company, if such repayment is made solely for the purpose of—

a) complying with the provisions of rule 3; or

b) providing war **risk** or other **related benefits** to the personnel of the **naval, military** or air forces or to their families, on an application made by the **associations or societies** formed by such **personnel, during** the period of emergency declared under article 352 of the Constitution :

Provided further that where a company referred to in under sub-section (2) of section 73 or any eligible company permits a depositor to **renew his deposit**, before the **expiry of the period** for which such deposit was accepted by the company, for availing of a **higher rate of interest**, the company shall **pay interest to** such depositor at the **higher rate** if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the **unexpired period** of the deposit.

Explanation: For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is **less than six months**, it shall be **excluded** and if such part is six months or more, it shall be **reckoned**

as one year.

Rule 16 – Return of Deposits to be Filed With the Registrar:

Every company to which these rules apply, shall **on or before the 30th day of June**, of every year, file with the Registrar, a return in **Form DPT-3** along with the fee as provided in Companies Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.

Explanation.– It is hereby clarified that **Form DPT-3** shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company.

Rule 16A – Disclosures in the financial statement:

1) Every company, other than a private company, shall **disclose in its financial statement**, by way of notes, about the **money received from the director.**
2) Every private company shall **disclose in its financial statement**, by way of notes, about the money received from the directors, or relatives of directors.
3) Every company other than Government company **shall file a onetime return** of **outstanding receipt** of money or loan by a company but not considered **as deposits**, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to 31st March 2019 as specified in **Form DPT-3** within **90 days** from **31st March**, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014

Rule 17 – Penal Rate of Interest:

Every company shall pay a **penal rate of interest of 18%.** per annum for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

Rule 18 – Power of Central Government to Decide Certain Questions:

If any question arises as to the **applicability** of these rules to a particular company, such **question** shall be decided by the **Central Government in consultation** with the **Reserve Bank of India.**

Rule 19 – Applicability of Sections 73 and 74 to Eligible Companies:

Pursuant to provisions of sub-section (2) of section 76 of the Act, the provisions of sections 73 and 74 shall, mutatis mutandis, apply to acceptance of deposits from **public by eligible companies.**

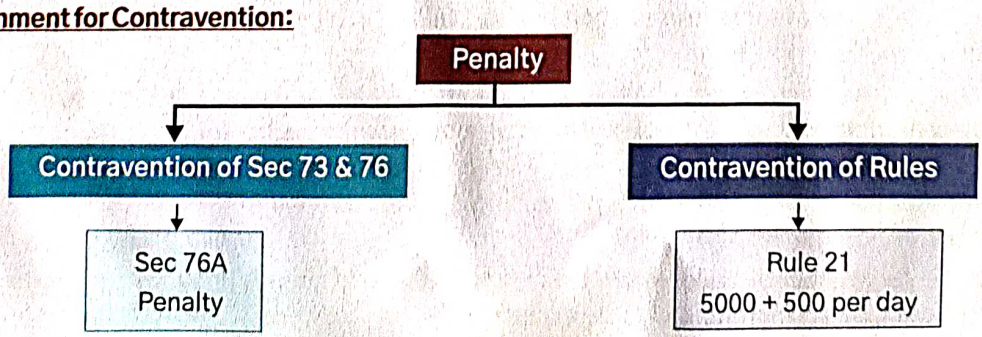
Explanation.– For the purposes of this rule, it is hereby clarified that in case of a company which had **accepted or invited public deposits** under the relevant provisions of the Companies Act, 1956 and rules made under that Act (hereinafter known as "Earlier Deposits") and has been repaying such deposits and interest thereon in accordance with such provisions, the provisions of clause (b) of sub-section (1) of section 74 of the Act shall be **deemed to have been complied** with if the **company complies with requirements** under the Act and these rules and continues to **repay such deposits** and **interest due** thereon on due dates for the **remaining period of** such deposit in accordance with the terms and conditions and **period of such Earlier Deposits** and in compliance with the requirements under the Act and these rules;

Provided further that the **fresh deposits** by every eligible company shall have to be in accordance with the provisions of Chapter V of the Act and these rules;

Rule 20 – Statement Regarding Deposits Existing as on the Date of Commencement of the Act:

For the purposes of clause (a) of sub-section (1) of section 74, the statement shall be in Form DPT-4.

Rule 21 – Punishment for Contravention:



6 REGISTRATION OF CHARGES

E-Filing Forms Companies (Registration of Charges) Rules, 2014			
E-Form	Details	Relevant section	Rule No
CHG-1 & CHG-9	Registration of creation or modification of the charge.	77, 78, 79	3
CHG-2 & CHG-3	Certificate of registration.	77	6
CHG-4 & CHG-5	Satisfaction of charge.	82,83	8
CHG-6	Intimation of appointment of receiver or manager	84	9
CHG-7	Company's register of charge.	85	10
CHG-8	Condonation of delay and rectification of register of charge.	87	12

Coverage of Chapter	
Sec.	Name of Section
77	Duty to Register Charges, etc.
78	Application for Registration of Charge
79	Section 77 to Apply in Certain Matters
80	Date of Notice of Charge
~~81~~	~~Register of Charges to be kept by Registrar~~ [Deleted by ICAI]
82	Company to Report Satisfaction of Charge
83	Power of Registrar to Make Entries of Satisfaction and Release in Absence of Intimation from Company
84	Intimation of Appointment of Receiver or Manager
~~85~~	~~Company's Register of Charges~~ [Deleted by ICAI]
86	Punishment for Contravention
87	Rectification by Central Government in Register of Charges

Definition and types of charges

Definition :

Section 2(16) of the Companies Act, 2013 defines **"charge"** as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Distinction between fixed charge and floating charge:

Fixed charge	Floating charge
1) It is a **legal charge.**	It is an **equitable** charge.
2) It is a charge on **specific, ascertained** and **existing** asset.	It is a charge on **present** and future assets. No specific assets.
3) Company **cannot deal** with the **assets** except with the consent of the charge holder.	Company is **free to use** or deal with the assets the way it likes until the charge becomes fixed.
4) Registration of fixed charge on movable assets is **not compulsory.**	Registration of all floating charge on all kinds of assets is **compulsory** by law.
5) Fixed charge has always **priority over** floating charge.	It is **ambulatory** and **shifting** in character.
6) Fixed Charge holder is a **Secured** Creditor.	Floating Charge holder is **Unsecured** Creditor
7) Once fixed charge is always a **fixed charge till winding** up also	Floating charge crystallizes When the company goes into **liquidation** or When the company ceases to carry on business

Sec 77: Application for Registration of Charge

Answer Writing Points

1) The company shall register the charge within **30 days** with **ROC** in **Form CHG-1.**
2) If company fails to do so it can get a further grace period of **30 days** on payment of additional fees i.e. **total 60 days** from creation of charge.

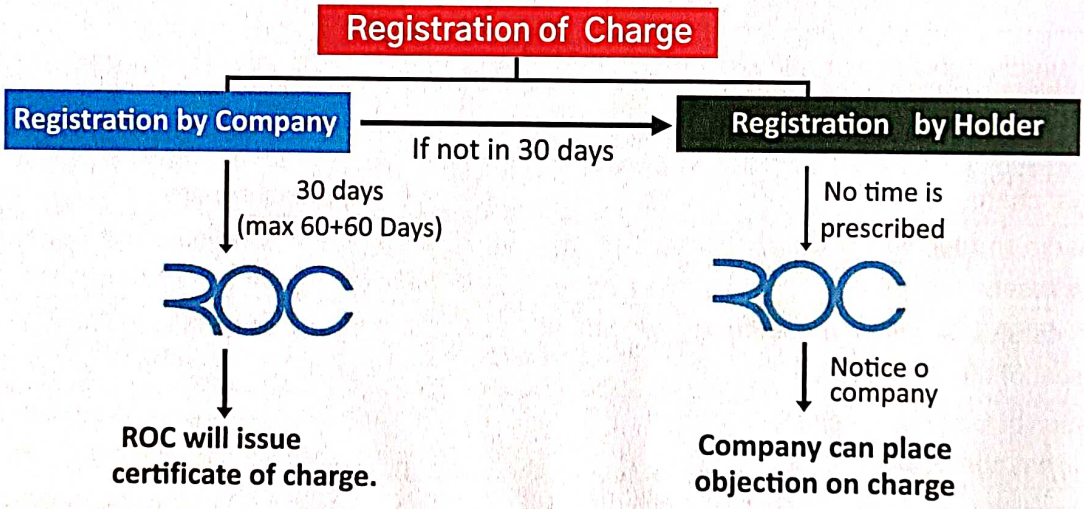
3) If company also fails to register the charge in **60 days** of creation then it can get **further 60 days** to register charge on payment of **Ad-valorem fees.**
4) On the application made by company the ROC shall issue Certificate of Charge in **Form CHG-2 & CHG-3.**
5) If company fails to register charge then the security deemed to be invalid and company is liable **u/s 86** for contravention.
6) For registration of the charge for foreign property the authentication shall be given by:
   a) Company through Common Seal
   b) Director & CS through signatures
   c) The person authorized & connected to such charge
7) For Registration of charge for property situated in India the authentication shall be given by
   a) Company through Common seals
   b) Director & CS through signatures

Sec 78: Application for Registration of Charge

Answer Writing Points

1) If company fails to register charge within **30 days** the holder/creditor will have right to register the charge.
2) The holder shall file the charge or register the charge with ROC in **Form CHG-9.**
3) ROC shall confirm such charge with company in writing and it shall issue Certificate of charge in **Form CHG-2** & CHG-**3** (modification).

Charts for Understanding



Sec 79: Sec 77 to apply in certain matters

Answer Writing Points

ncludes variation in any of the terms and conditions of the agreement including **change in rate of interest** which may be by **mutual agreement** or by **operation of law.** Variation in extent or operation of any charge is also a kind of modification. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a **modification.**

1) The **changes in charge** means either **change in terms of loan** or **change in the asset** under the charge.
2) Such a change should be registered again with the **ROC** by following the process of section 77.
3) **ROC** will register such a change and it will issue new certificate of charge in **Form CHG-2** to company and **Form CHG-3** to holders.

Sec 80: Date of Notice of Charge & Deemed Notice of Registration

Answer Writing Points

1) Where any charge on property is **registered u/s 77 a** person shall be **deemed to have notice** of such registration who is acquiring such property, assets, undertaking or part thereof
2) Every person who propose to deal with company shall **verify if assests** of company has any charge by going through records of charges maintained **under ROC.**
3) In case enters into transaction **without making any enquiry** and suffers loss, he **cannot claim such loss** from the company.

Sec 81: Register of Charges to be kept by Registrar

Answer Writing Points

1) The Register of charge shall be maintained at every **ROC** for all charges of all companies in its territory.
2) The Register will also be available on website of **MCA.Gov.in**
3) The details of register can also be **inspected** on payment of prescribed fees.

Sec 82: Company to Report Satisfaction of Charges

Answer Writing Points

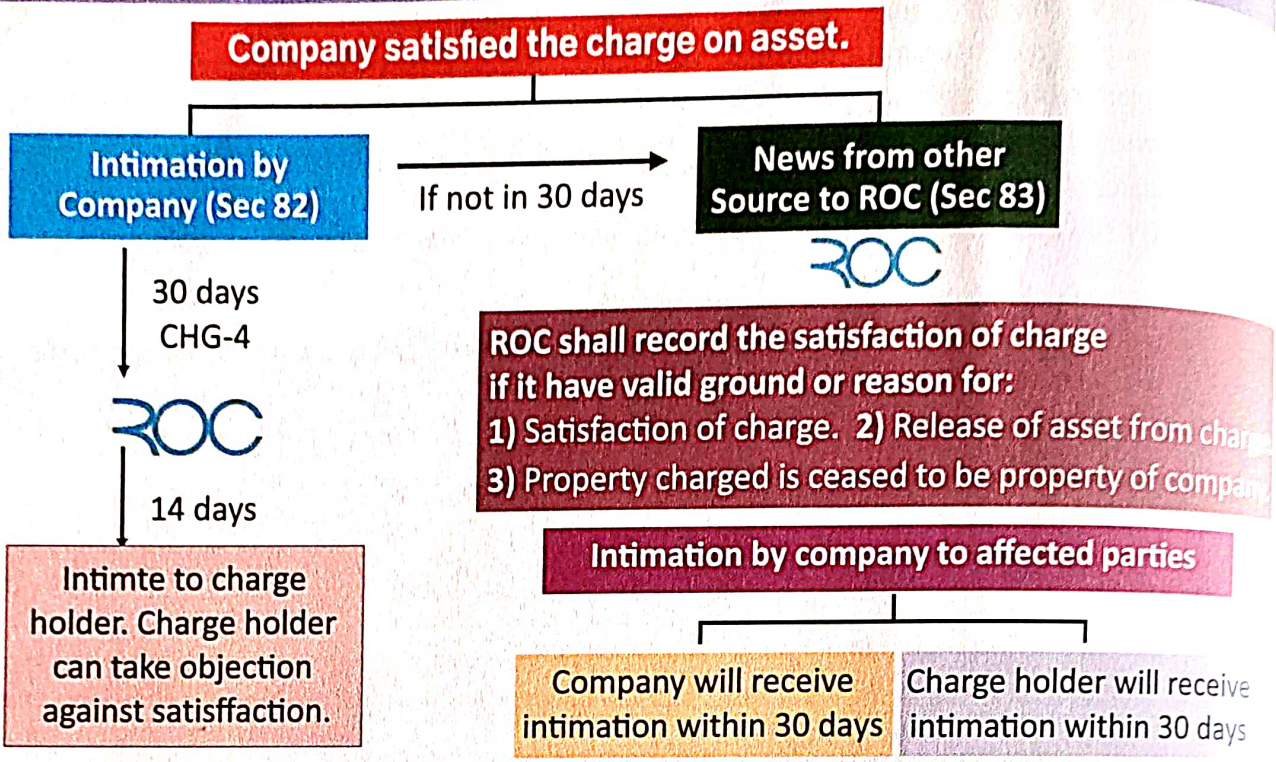
1) The company shall record satisfaction of charge and file same with **ROC** within **30 days in Form CHG-4.**
2) If **company fails** to file the satisfaction within **30 days** it can file the same in 300 days from satisfaction **(30+270 days)** on payment of additional fees.
3) On the application by company **ROC** shall intimate to the holder/creditor and ask about satisfaction of charge.
4) The **holder/creditor** shall submit their response in **14 days.**
5) On the basis of response of holder, **ROC** can record satisfaction and issue **Form CHG-5** as Certificate.

Sec 83: Power of The ROC to make entries of satisfaction and release in absence of intimation from company

Answer Writing Points

1) If in case Company does **not** file satisfaction u/s 82, the **ROC** can record same on the basis of
   a) Application by Holder
   b) Application by 3rd party (2nd Charge Holder)
   c) Suo-Moto by **ROC**
2) The **ROC** on the basis of evidence shall record satisfaction as follows:
   a) If debt is repaid in full
   b) Asset under charge is released
   c) Asset under charge ceased to be asset of company.
3) On recording **satisfaction ROC** shall intimate to company and holder within **30 days.**
4) The company & Holder shall reply within **14 days**
5) On the basis of evidence & reply, **ROC** may issue Certificate of Satisfaction under **Form CHG-5**

Chart for Understanding for Sec. 82 & 83



Sec 84: Appointment of Receiver or Manager

Answer Writing Points

1) The company shall on **non-satisfaction or non-repayment** of loan **intimate creditor.**
2) The creditor shall **appoint receiver** for sale of charged assets
3) The details of receiver shall be filed with **ROC** in **Form CHG-6 in 30 days** of appointment.
4) The receiver shall be liable for sale of assets and payment of debt.
5) If the receiver **ceases to hold office** the intimation of vacation shall be sent to **ROC in Form CHG-6.**

Sec 85: Company's Register of Charges

Answer Writing Points

1) The company shall maintain the register of charge for its all charges **Fixed/Floating in Form CHG-7.**
2) The company shall **maintain such register** at registered office of company.
3) The register is available for inspection:
   a) **Free of cost** to existing members, creditors
   b) **On payment** of fees to 3rd party

Sec 86: Punishment for Contravention

Answer Writing Points

Penalty for contravention of any provision of chapter VI (this chapter) –

For **Company** – ₹ 500000

For **every officer in default** – ₹ 50000

If any person wilfully furnishes any **false** or **incorrect information** or **knowingly** suppresses any **material information,** required to be registered in accordance with the provisions of section 77, he shall be **liable** for action under **section 447.**

Sec 87: Rectification by CG in Register of Charges

Answer Writing Points

1) The company can apply to CG in **Form CHG–8** for delayed registration of charge or satisfaction in case of earlier omission to register it.
2) The CG have **power to condone** delay for registration on payment of fees/penalty as per CG.
3) The CG also have **power to correct register** of charge in call of mistake, false information etc. for ROC as well as company.

E-Filing Forms
Companies (Management & Administration) Rules, 2014

E-Form	Details	Relevant section	Rule No
MGT-1	Register of members	88	3
MGT-2	Register of Debenture Holders or any other security holders	88	4
MGT-3	Foreign register of members, debenture holders, security holders or beneficial owners in foreign.	88	7
MGT-4	Declaration by Registered owner	89	9
MGT-5	Declaration by beneficial owner	89	9
MGT-6	Declaration by company to registrar	89	9
MGT-7	Annual return of normal company	92	11
MGT-7A	Annual return of OPC and Small Company	92	11
MGT-8	Certificate by Company Secretary	92	11
MGT-9	Extract of annual return in board report	92	12
~~MGT-10~~	~~Return of changes in shareholding of promoters and top 10 shareholders~~ [Deleted by ICAI]	93	13
MGT-11	Proxies form	105	19
MGT-12	Manner in which chairman shall process, scrutinize and report the poll voting.	109	21
MGT-13	Report of Scrutinizer	94	15
MGT-14	Filing of resolution with ROC	94	15
MGT-15	Report on annual general meeting	121	31

Coverage of Chapter

Section	Name of Section
88	Register of Members, etc.
89	Declaration in Respect of Beneficial Interest in any Share
90	Register of significant beneficial owners in a company
91	Power to Close Register of Members or Debenture-Holders or Other Security Holders
92	Annual Return
~~93~~	~~Return to be Filed with Registrar in Case Promoters' Stake Changes~~ [Deleted by ICAI]
94	Place of keeping and Inspection of Registers, Returns, etc.
95	Registers, etc., to be Evidence
96	Annual General Meeting
97	Power of Tribunal to Call Annual General Meeting
98	Power of Tribunal to Call Meetings of Members, etc
99	Punishment for Default in Complying with Provisions of Section 96 to 98
100	Calling of Extraordinary General Meeting
101	Notice of Meeting (Ordinary Notice)
102	Statement to be Annexed to Notice (Explanatory Statement)
103	Quorum for Meetings
104	Chairman of Meetings
105	Proxies
106	Restriction on Voting Rights
107	Voting by Show of Hands
108	Voting through Electronic Means
109	Demand for Poll
110	Postal Ballot
111	Circulation of Members' Resolution
112	Representation of President and Governors in Meetings
113	Representation of Corporations at Meeting of Companies & of Creditors
114	Ordinary and Special Resolutions
115	Resolutions Requiring Special Notice
116	Resolutions Passed at Adjourned Meeting
117	Resolutions and Agreements to be Filed
118	Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meeting and Resolutions Passed by Postal Ballot
119	Inspection of Minute-Books of General Meeting
120	Maintenance and Inspection of Documents in Electronic Form
121	Report on Annual General Meeting
122	Applicability of this Chapter to One Person Company

7 MANAGEMENT & ADMINISTRATION OF COMPANIES

For Concept Query only 8530902666

Sec 93 is being deleted by ICAI from new syllabus.

Section 88: Register of Members

Chart for Understanding

Registers for different types ofcompanies

- **Companies which are listed on stock exchange** → The registers are maintained by Depository in electronic form.
- **Companies which are not listed on stock exchange** → Company needs to maintain all registers in physical form.

Types of registers to be maintained

- Register of Members (ROM)
- Register of Debenture Holders(RODH)
- Register of Security Holders(ROSH)

1) Register of foreign security holders shall be maintained at the foreign office.
2) In case of default, penalty will be from Rs. 50,000 to 3 lac & Rs. 1000 per day in case of continuing offense.

Answer Writing Points

1) The company shall maintain the register of members in **Form MGT–1** at registered office
2) The company shall also maintain register of debenture holders and other securities holder in **Form MGT–2** at registered office.
3) The register shall contain personal details of securities holders such as **Name, address, E–mail, PAN,** etc.
4) The company shall also maintain foreign register at foreign place in **Form MGT–3,** if authorised by **AOA.**
5) Such **Form MGT–3** shall be filed to **ROC in 30 days** of creation and changes shall be filed in **15 days.**
6) Any change in ROM/RODH shall be recorded in **15 days.**
7) If company wants to change place of Register it shall pass **GM–SR.**
8) In case of default, penalty will be from **Rs. 3 lacs for Company. & Rs.50,000 for officer in default.**
9) The name of minor member will be entered in ROM under **Form MGT–1** only if:
   a) Shares allotted are fully paid (or allotment is void)
   b) The name of guardian is also entered with name of minor.
10) In case of joint holding the name of all members shall be entered in ROM. However the joint holders shall decide priority in which such name shall be entered.

Section 89: Declaration in respect of beneficial interest in any share

Answer Writing Points

1) In case of company where shareholder are only registered owner and benefit is given to someone else then make following declaration
   a) RO shall file **Form MGT–4** With the company in **30 days** about transfer of benefit
   b) Beneficial Owner BO shall file **Form MGT–5** with the company in 30 days about obtaining benefits.
2) Company shall record all RO and BO details and maintain register.
3) Company shall file with ROC the registers of RO and BO in **Form MGT–6 within 30 days** of filling or change.
4) In case of contravention

a) RO/BO for not making declaration is
b) liable to **Rs. 50000 + Rs. 200** per day max up to **Rs. 5 lakhs**
c) Company is liable to **Rs. 1000 per day max up to Rs. 5 lakhs**
d) Officer in default is liable to **Rs. 1000 per day max up to Rs. 2 lakhs.**

Section 90: Investigation of beneficial ownership of shares In certain cases

Answer Writing Points

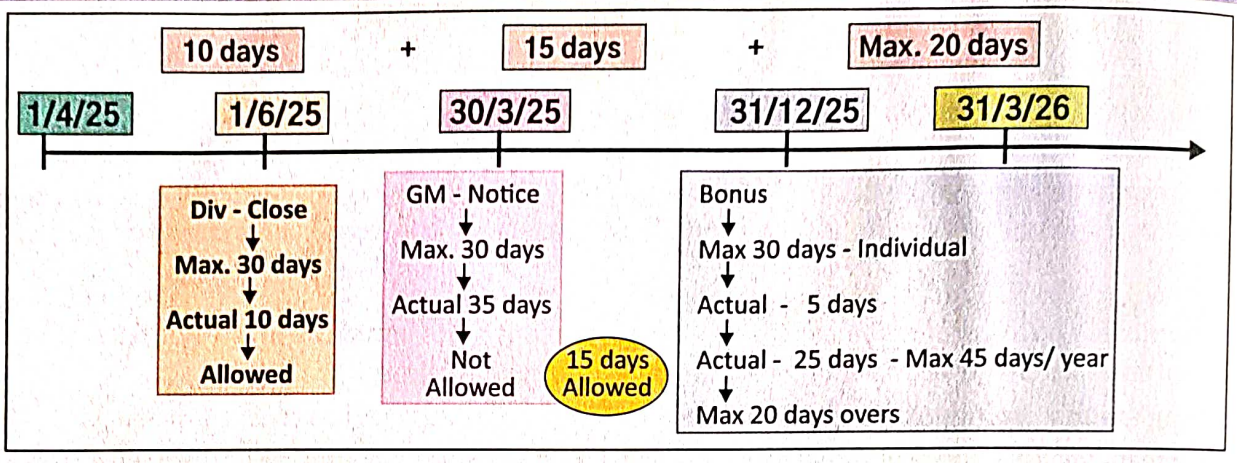
1) Every individual who alone or together with one or more persons holds **beneficial interest** for **not** less than **25%** of significant influence shall give a declaration to company about his interest.
2) Every company shall **maintain the register** of above individuals containing their details and holdings.
3) Every company shall **file a return** of significant beneficial owner and changes there in **Form MGT-6** with **ROC.**
4) Above registers and returns shall be available for inspection to the members on payment of prescribed fees.
5) Company shall give notice to any person who they believe:
   a) have **significant influence**
   b) have **knowledge** of beneficial owner
   c) who had **significant beneficial ownership** during last **3 years.**
6) The company shall give above information to the person who demands it within **30 days** and if company fails to do so then person can make an application to the **Tribunal.**
7) The **Tribunal** after investigation shall pass a order within **60 days.**
8) If any person fails to make a declaration as required under sub-sec (1), he shall be liable to a **penalty of Rs. 50000,** with a further penalty of **Rs. 1000per day, maximum of Rs.2 lakh**
9) If a **company**, required to **maintain register** under sub-section (2) and file information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein
   a) Company shall be liable to a penalty of **Rs. 1 lakh**, with a further penalty of **Rs.500 per day,** maximum of **Rs. 5 lakhs** and
   b) Every officer of the company who is in default shall be liable to a penalty of **Rs. 25000**, with a further penalty of **Rs. 200** for each day, maximum of **Rs. 1 lakh.**

Section 91: Power to close register of members or debenture holders or other security holders

Answer Writing Points

1) The company shall close register to declare benefits to members as follows:
   a) **Max 30 days at one time** and
   b) **Max 45 days** in a **year.**
2) The company shall give a **notice** of closure **minimum 7 days** before as follows:
   a) To **SEBI**
   b) To **ROC**
   c) To members in **2 newspapers** (English and vernacular language)
3) The private company is exempted from public notice if it gives individual **notice 7 days before.**
4) In case of contravention of provision, company is liable to **lower of:**
   a) **Rs. 5000 per day** for every extra day of closure
   d) **Rs. 1 lakh**

Chart for understanding



Notice regarding closure of books & register to SEBI & ROC at least 7 days before.

ROC & SEBI

Closure of books

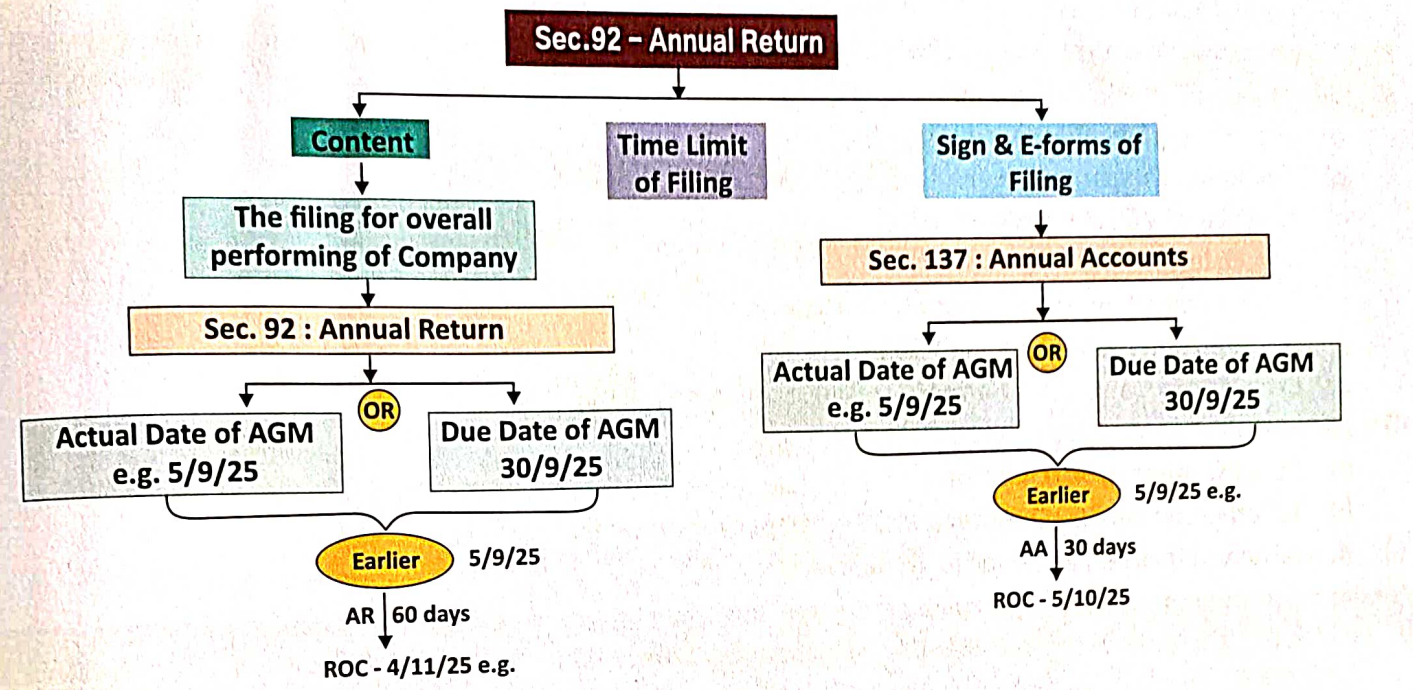
- Only one time closure shall not exceed 30 days.
- Total closure days in year together of all closures shall not exceed 45 days.

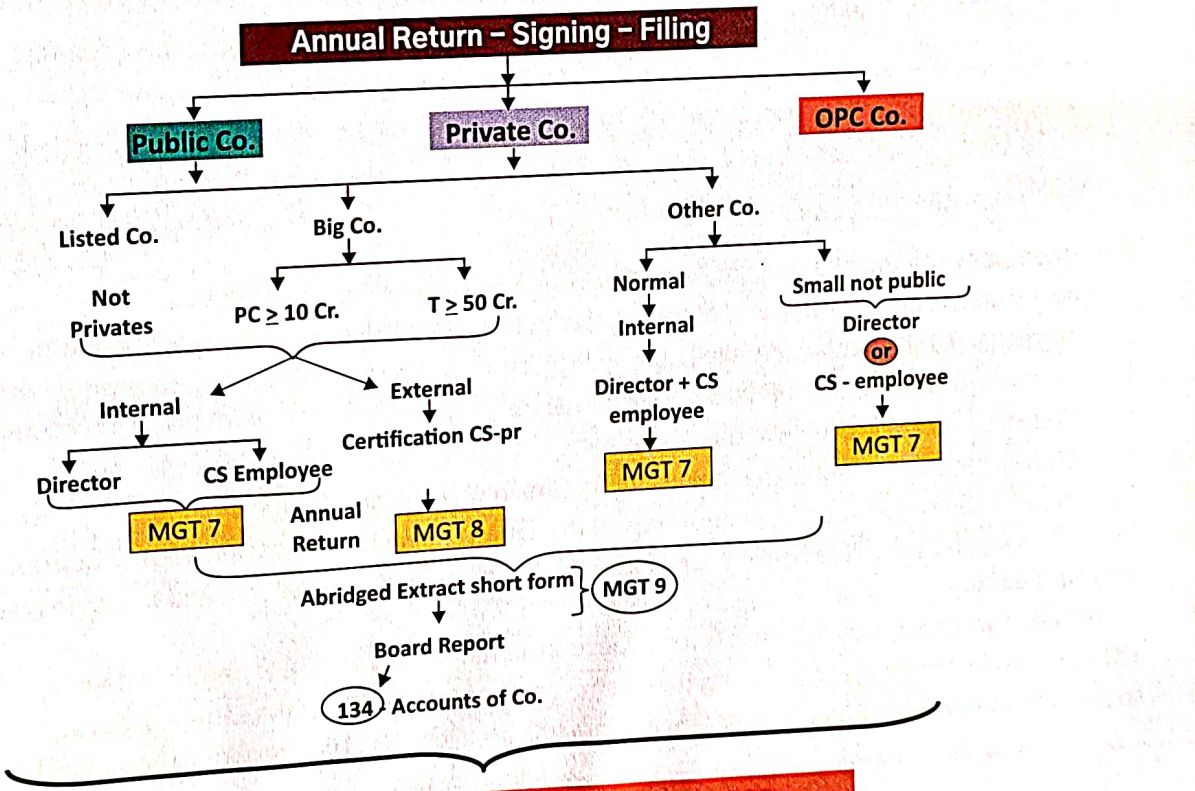
Penalty for every day during which the register is kept closed in contravention of sec. 91 of the Companies Act, 2013-
For company and every officer in default–

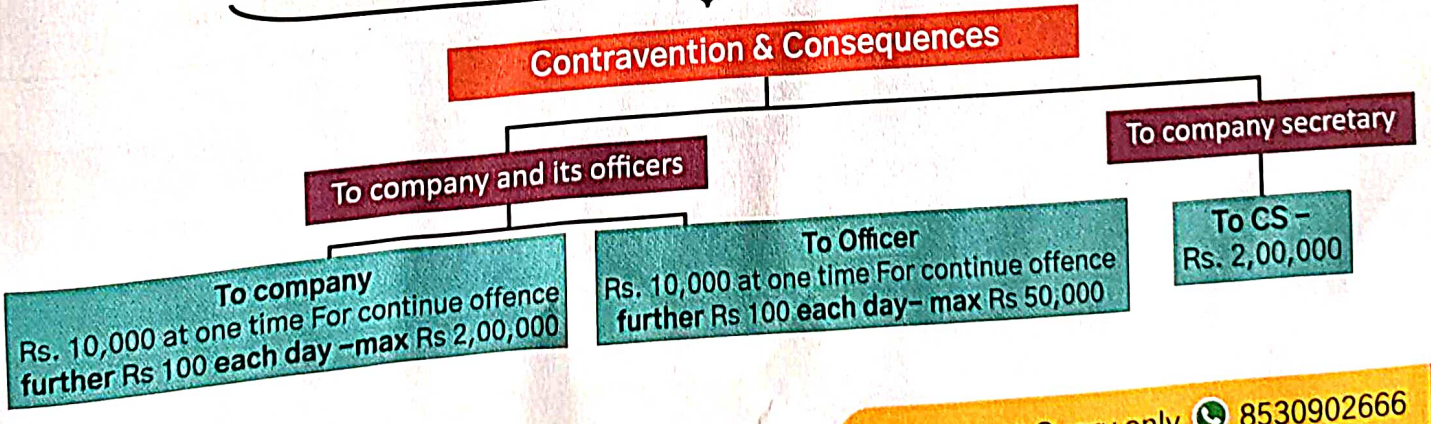
➲Rs.5,000 per day of default; or ➲Rs. 1,00,000 Whichever is lower

Section 92: Annual Return

Chart for Understanding







Answer Writing Points

1) **Every Company shall except OPC** and Small company file annual return within **60 days** of earlier of:
   a) Actual date of AGM b) Due date of AGM
2) The company can avail extension of **270 days** on failure to file in **60 days** on payment of additional fees.
3) Such annual return shall be filed in following forms
   a) For OPC and Small Company – **Form MGT–7A**
   b) For normal company and listed company – **Form MGT–7**
   c) Certificate by **CS** in Form **MGT–8** for
      i. Listed Company
      ii. Company having **paid up capital > 10 Cr**
      iii. Company having **turnover > 50 Cr**
   d) Extract of annual return in **Form MGT–9** in Board report u/s 134
4) The annual return shall be signed by
   a) For OPC – either **CS or Director**
   b) For other companies – **Director and CS** in company or in practice.
5) Annual Return shall be maintained for **8 years.**
6) In case of contravention consequences are
   a) Company is liable to **Rs.10000 + Rs.100 per day up to Rs. 2 lakhs**
   b) Officer in default is liable to **Rs. 10000 + Rs.100 per day up to Rs.50000**
   c) For **CS up to Rs. 2 lakhs.**

Section 94: Place of keeping & Inspection of Registers, Returns etc.

Answer Writing Points

1) **Every company** shall maintain its books of accounts and register at Registered office.
2) If company want to maintain books of accounts at any other place in India it shall comply following requirements:
   a) More than **10%** shareholders shall be at such place.
   b) Company shall pass **GM–SR** for such maintenance
   c) Keep the books & accounts **updated and safe.**
3) Such books of accounts shall be maintained for **8 years** from end of financial year
4) The book shall be available for inspection on working during business hours for **minimum 2 hours.**
5) The members and securities holders can inspect books or accounts free of cost and for copies requires **Rs.** 10 per **page in 7 days.**
6) Third party can inspect books at **Rs.50** per inspection and copies at **Rs. 10 per page in 7 days.**
7) **CG** can order inspection of books at any time free of cost and take copies of the same in **7 days.**
8) In case of contravention Company and Officer in default is liable to **Rs. 1000** per day to maximum **Rs 1 lakh.**

Chart for Understanding

Sec 94 : Place of keeping books & Register

- The company shall maintain all its books & Registers @ RO of company for inspection
- & If company have > 10% shareholders @ other city then books can be kept @ such city / place by passing (GM-SR)

Register shall be Preserved for 8 years

Copies & Extracts & Inspection

Stockholders	Others	CG
members, Debenture, Security	3rd Person	can inspect & take copies of any time without cost
→ Inspect, → Extract — without Fees	→ Inspect, → Extract, → Copies — At Cost	
→ Copies → At Cost		

Penalty - ₹ 1000 pd max ₹ 1 Lakh

Section 95 : Registers etc. to be evidence

Answer Writing Points

The **registers**, their **indexes** and copies of **annual returns** maintained under sections 88 and 94 shall be **prima facie evidence** of any matter directed or authorised to be inserted therein.

Section 96: Annual General Meeting

Chart for Understanding

Annual General meeting

In case of first AGM

It shall be held within **9 months** from **the end of first financial year**

In case of subsequent AGM

1) Within **6 months** from **end of FY.**
2) Within **15 months** from **last AGM.**
3) At **least 1 AGM** in **1 calendar year.**

Other Provisions of AGM

Time

AGM shall be held within business hours.

Day

AGM shall be held on business days.

Place

AGM shall be held at RO or city of RO

Answer Writing Points

1) Every company **except OPC** shall hold Annual General Meeting as following:
   a) First AGM within **9 months** from end of the first financial year
   b) Subsequent AGM **at earliest of:**
      i. 1 AGM in every calendar year
      ii. Gap between 2 AGM can be max **15 months**
      iii. AGM within **6 months** from the end of financial year

2) The AGM shall be conducted with the following requirements:
   a) AGM shall be held at Registered office or its City or Town where Registered office is situated
   b) AGM shall be held on a day other than National Holiday
   c) AGM shall be held in business hours i.e., **9.00 am to 6.00 pm**
3) If in case of AGM to be conducted other than the City of Registered office then all members shall give consent electronically. (**For Unlisted Company only**)
4) In case of specific reason **ROC** can grant extension of AGM for **3 months** except for first AGM.

Section 97: Power of Tribunal to call AGM
Section 98: Power of Tribunal to call meeting of members, etc
Section 99: Punishment for default in complying with provisions of Sec. 96 to 98

Answer Writing Points

1) If there is default in conducting AGM or it is impractical to hold EGM, **application to NCLT** shall be made
2) NCLT have power to **conduct the AGM** or EGM or direct any person to conduct the same.
3) It is a duty of such person to obey the **directions of NCLT** and conduct the meetings.
4) The meeting shall be held at such time, place and date as **directed by NCLT.**
5) In case of contravention of Sec. 96, 97 & 98, penalty up to **Rs. 1,00,000** plus **5000 per day** for the defaulting period

Chart for Understanding

Conduct of Annual General meeting

Conduct of AGM by Company
1) Within **6 months** from **end of FY.**
2) Within **15 months** from **last AGM.**
3) At **least 1 AGM** in **1 calendar year.**

Conduct of AGM by Tribunal
Tribunal may order AGM in following circumstances.

- **In case of company being at default to conduct AGM**
- **In case it is impractical for company to hold AGM**

Penalty

If any default is made in
(i) Holding a meeting of a company as per sec 96, 97 or 98; or
(ii) Complying with any directions of the Tribunal.
Penalty for the company and every officer in default

For one time default -	For continuing default -
Fine up to Rs.1,00,000	A further fine up to Rs.5,000 per day for the defaulting period.

Section 100: Calling of Extra Ordinary General Meeting

Answer Writing Points

1) The company shall conduct extraordinary General meeting if **10% of paid up capital** or **10% voting power** holders make requisition at Registered office in writing form.
2) After such requisition the **BOD** shall conduct EGM within **45 days** and proceed to give notice in **21 days.**
3) If **BOD** fails to conduct meeting in **45 days** then the **requisitionists** shall conduct such EGM within **3 months.**
4) In case of meeting is conducted by **requisitionists** then the company will refund entire amount of expenses to them and recover them from **BOD** in default.
5) The notice of meeting shall be accompanied by explanatory statement **u/s 102** for special business to be transacted and not for any ordinary business.
6) If **requisitionists** conducts EGM the company shall provide all necessary help such as ROM, posting facilities etc.

Chart for Understanding

Calling of Extraordinary General Meeting

Share Capital company
Min 10% of paid up capital holders shall apply for conducting EGM.

No share capital company
Min 10% voting power holders shall apply for conducting EGM.

Application must be supported by requisition

The requisition shall set out the matters for the consideration for which the meeting is to be called.

→ Within 45 days of application → BOD shall call EGM with minimum notice of 21 days

Members to call EGM

IF BOD fails to call GM in 45 days the members may call same in 3 months from the date of application.

→ Within 45 days of application

Company shall refund the expenses incurred to those member who called the GM in case of failure by BOD.

Section 101: Notice of Meeting

Answer Writing Points

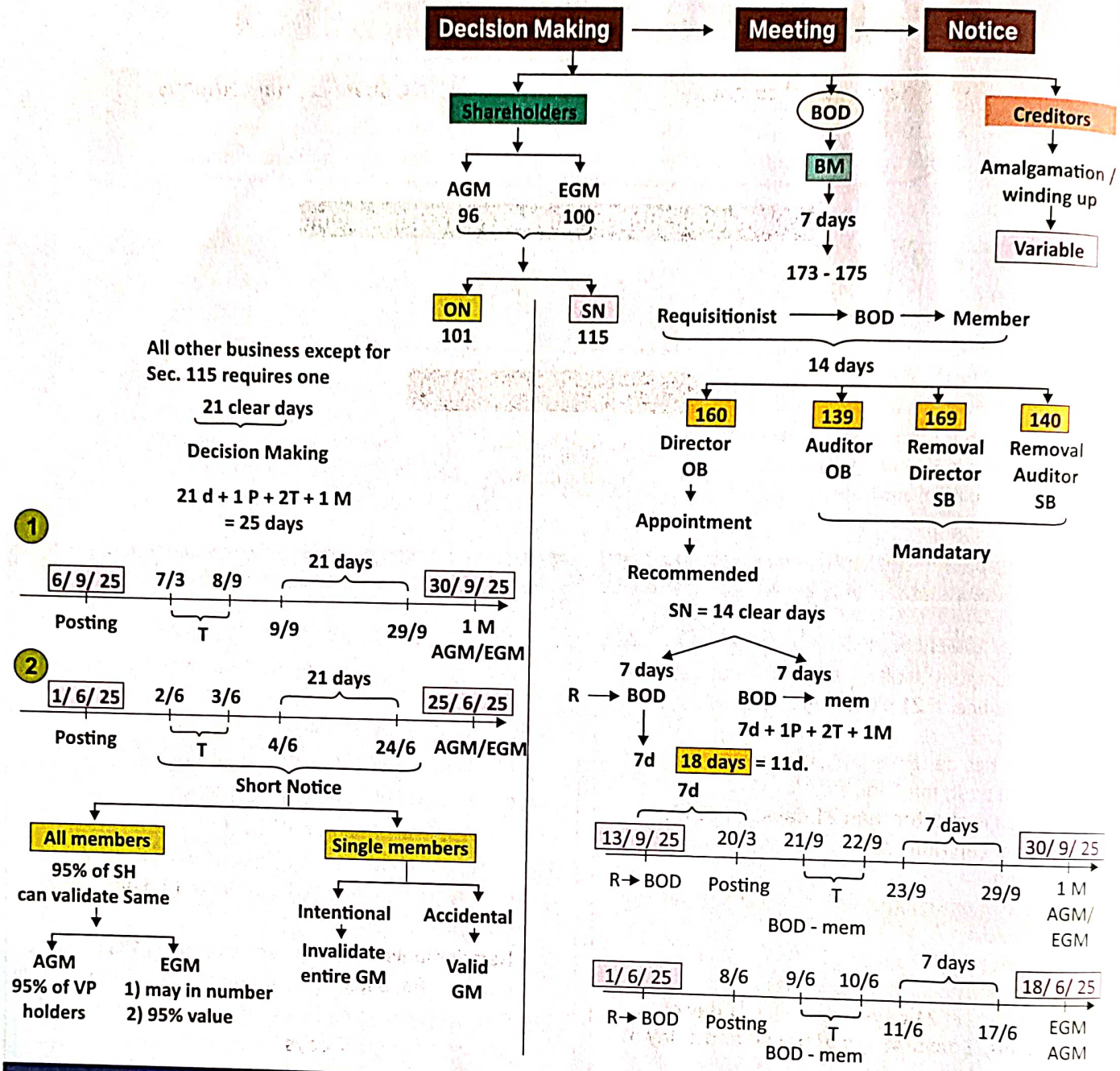
1) Every company shall for every General meeting give a notice of **21 clear days** before such meeting.
2) Such notice can be physical or electronic through post, mail, fax etc.
3) If notice is **shorter than 21 days** than **95%** of member can ratify such notice to conduct meeting.
4) In case of omission of notice consequences are as follows:
   a) Accidental omission – GM is valid
   b) Intentional omission – GM is void
5) The notice of **21 days** is excluding **1 day of posting, 2 days/48 hrs of transit and 1 day of meeting.**

Section 115: Resolutions requiring Special Notice

Answer Writing Points

1) Every company shall send special notice for following business:
   a) Appointment of Director (Sec.160)
   b) Appointment of Auditor (Sec.139)
   c) Removal of Director (Sec.169)
   d) Removal of Auditor (Sec.140)
2) The special notice shall be given by requisitionist to company's registered office at least **14 days** before General meeting.
3) **Requisitionist** means person who holds **1%** of voting power or **Rs. 5 lakhs** capital whichever is lower
4) Such notice shall be forwarded by directors to members at least **7 days** before as follows:
   a) Individual Notice or
   b) Publish in newspaper one regional and one in English.
   c) Notice shall be posted on website of company before time limit.

Chart for Understanding

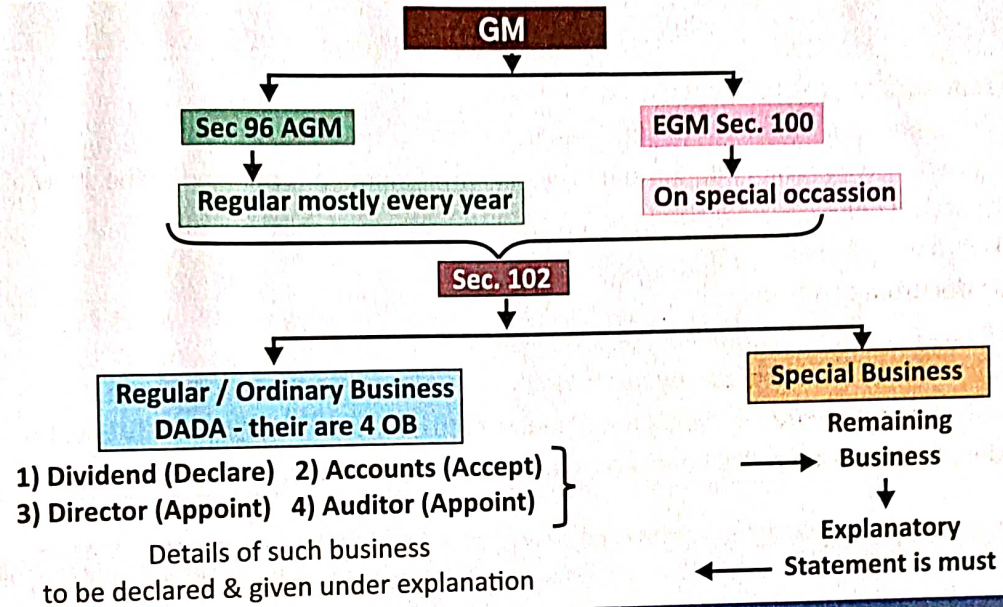


Section 102: Statement to be annexed to notice

Provisions

1) Explanatory statements are **annexed to notice** of General meeting contain **details about business to be transacted** at meeting for informed decision making.
2) Explanatory statements are given **for special business** to be conducted.
3) Explanatory statements shall contain all the details of the business which can affect decision making of members.
4) **The 2%** or more interest of following persons at other company shall also be **disclosed.**
   a) Promoters
   b) Manager
   c) Director
   d) Key managerial person
5) In case of **failure** to disclose the person shall be liable for
   a) Refund of profit
   b) Compensation to company
   c) **Rs.50000 to 5*Profit.**

Chart for Understanding



Section 103: Quorum for Meetings

Answer Writing Points

1) **Quorum** means minimum no. of members required to hold a meeting
2) The **quorum** of public company for conduct of GM –
   a) **upto 1000** members quorum will be **5**
   b) **above 1000 upto 5000** member quorum will be **15**
   c) **above 5000** quorum will be **30**
   AOA can state higher quorum for above public Company.
3) In case of **Private Company**, minimum **2 members** personally present or amount prescribed by Article whichever is higher.
4) The quorum shall be present within **half an hour** of conduct of meeting.
5) If quorum is not presented, the meeting will **adjourned** as –
   a) AOA b) Same time, same place, same day, next week
6) The company shall send the notice of adjourn meeting as –
   a) At least **3 days before** meeting b) **Publish** in Regional & English language newspaper
6) If quorum is not presented in adjourn meeting also, then **present members** will be considered as **quorum.**

Chart for Understanding

Quorum of General Meeting

In case of public company
1) 5 members personally present – if members ≤ 1000
2) 15 members personally present – if 1000 < members < 5000
3) 30 members personally present – if members > 5000

In case of private company
2 members personally present. If articles provide for larger quorum than that given in the above table, such larger quorum shall be the quorum.

In case of absence Quorum

The meeting shall be adjourned to same time, same place, same day next week or to day, time, place as decided by BOD. → Minimum 3 days notice shall be given for adjourned meeting to members of company.

Section 104: Chairman of Meetings

Answer Writing Points

1) **The AOA** can state who can be chairman and its provision
2) If **AOA** is silent members present in meeting can elect chairman
3) Chairman shall be elected by show of hands and in case of poll chairman is demanded the show of hands, chairman shall conduct poll for appointment.
4) **The chairman** will have following powers:
   a) **Maintain decorum** of meeting
   b) **Decide agenda** and sequence of business
   c) He can decide **type of voting's** as by hands/poll
   d) He will have a **casting vote** additional to original vote to decide in case of equality of votes
   e) He will **decide the content** of minutes and sign the same in **30 days**.

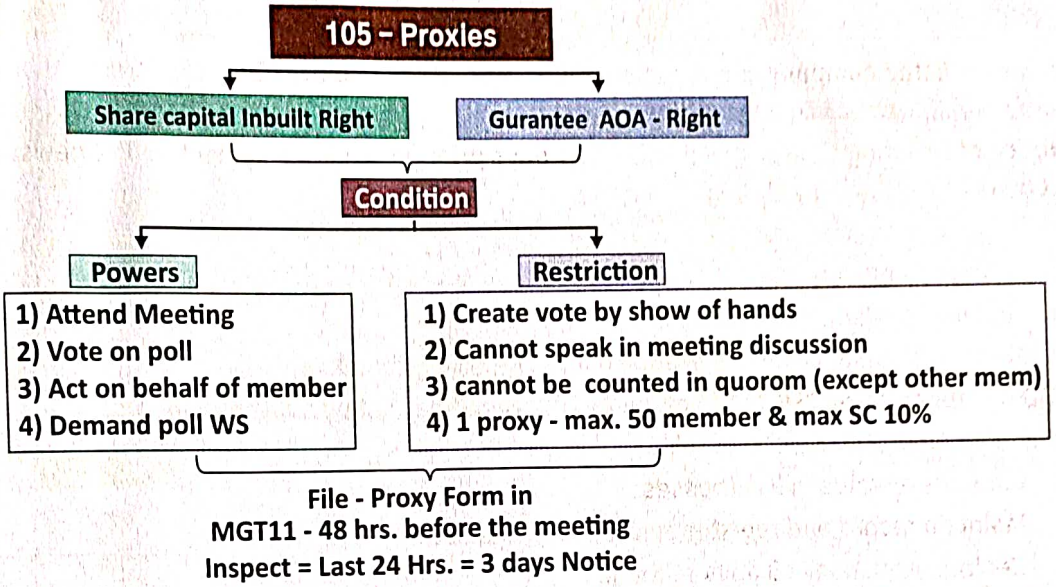
Section 105: Proxies

Answer Writing Points

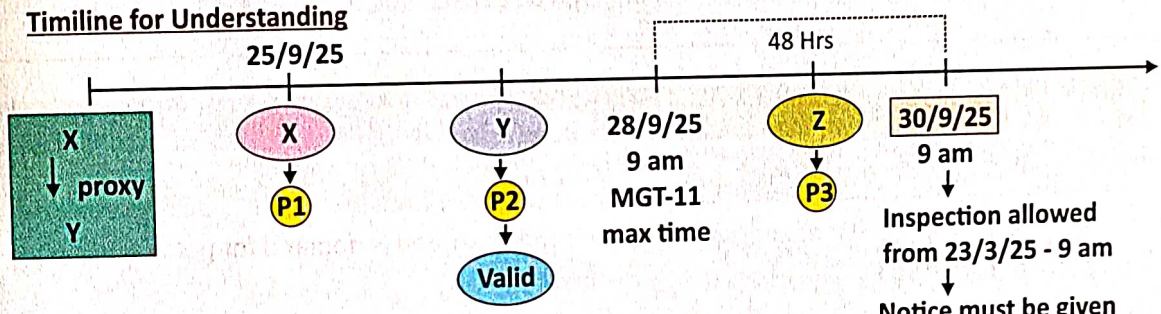
1) **Proxy** is a representative appointed by member on his behalf to attend the meeting.
2) Share capital company have this right inbuilt and guarantee company shall specify in **AOA.**
3) Following are the powers and duties of proxy:
   a) **Powers:**
      i. Attend General meeting
      ii. Right to represent member
      iii. Demand poll
      iv. Vote on poll
   b) **Duties**
      i. Not to be counted in quorum
      ii. Represents max **50 members** or **10%** of total share capital
      iii. Cannot participate in discussion
      iv. Cannot vote on show of hands
4) A latest proxy filled in **Form MGT–11** before **48 hours** of meeting will be valid.
5) Proxy can be inspected from **24 hours** before meeting for which **3 days** notice shall be given.
6) In case of contravention following are consequences:
   a) Default in section 105 – **Rs.5000**
   b) Proxy advertisement at companies expenses is made officer is liable to **Rs.50000.**
7) If member is appointed as proxy, then the member can perform his rights for his holding but restriction of proxy applies for proxy holding.

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Chart for Understanding



Timiline for Understanding



Imp. Notes : 1) Proxy must be 48 Hr. before
2) The latest proxy to meeting is valid in case of multiple nomination.

Section 106: Restriction on voting rights

Answer Writing Points

1) **No voting rights** are allowed to members in case, calls on shares are unpaid or the company has exercised any right of lien.
2) When, on poll taken at a meeting of a company, an **entitlement to vote** more than one vote is there with –
   a) Any person; or b) His proxy; or c) Any other person entitled to vote for him
3) Then it is not necessary to use all votes or cast in the same way by such person

Section 107: Voting by show of hands

Answer Writing Points

1) A resolution at any meeting shall be decided by show of hands except a poll is demanded u/s 109 and voting is carried out electronically.
2) Resolution by show of hands is recorded in the minutes books then these will be conclusive evidence of the fact that such resolution has been passed.

Section 108: Voting through Electronic Means

Answer Writing Points

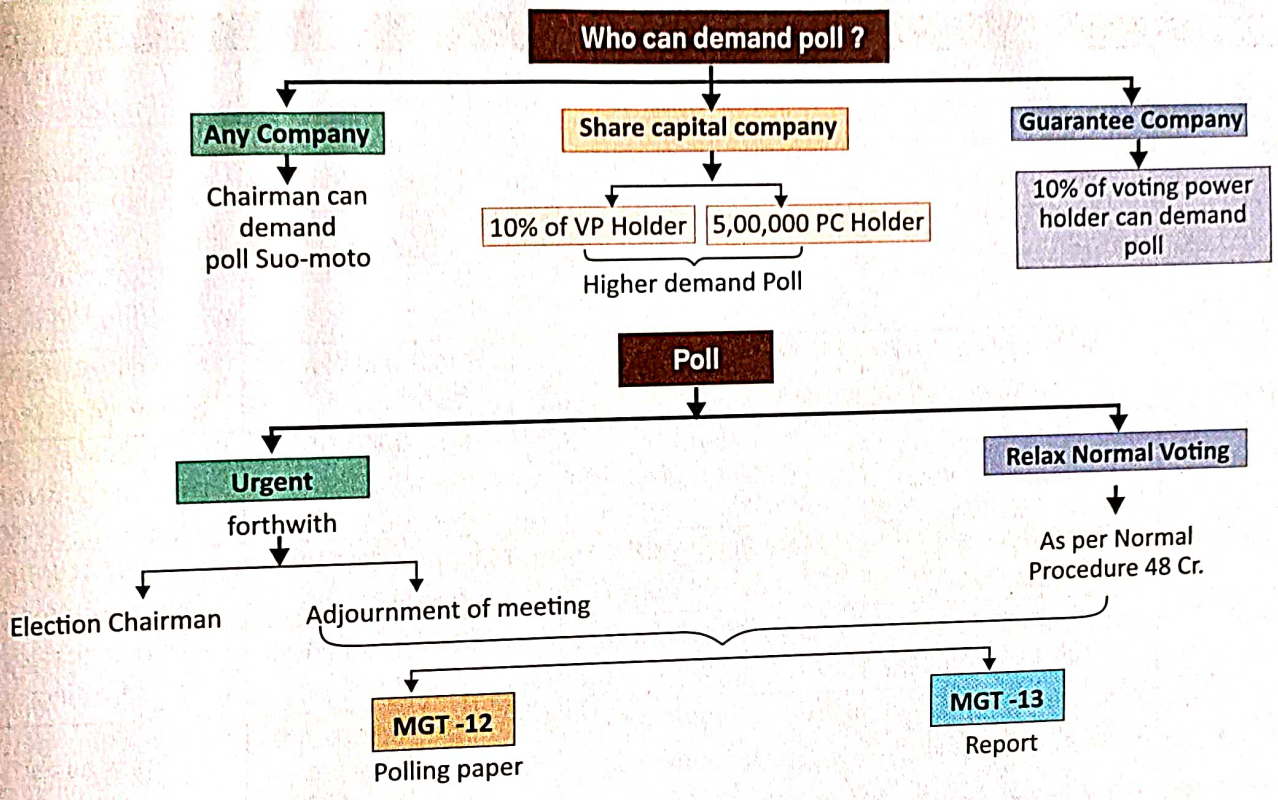
1) In case of **listed company** or companies where members are **below 1000** vote through mail or website from home are at general meeting.
2) **Notice of E-voting** shall be given at least **21 days prior** before General meeting in **2 newspapers** and on the **website** of the company stating:
   a) Logic id and password
   b) Start and end date
   c) Process to vote
   d) Name and contact with designation of person solving complain
3) **BOD** will **appoint CA/CS/CMA** to calculate votes who shall not be an employee
4) Scrutinizer shall after e-voting shall
   a) Calculate **e-votes** in **2 witnesses**
   b) **Maintain record and register** of favour and against
   c) **Declare** resolution in **3 days** of voting
5) No of shares held shall be relevant i.e., no of shares will be equal to no. of votes.

Section 109: Demand for Poll

Answer Writing Points

1) When member vote in General meeting by casting their vote in writing is **demand for poll.**
2) It is the **secondary method** and voting is done in General meeting
3) The polling paper shall be as an evidence as the poll is more accurate in accounting
4) The voting can be demanded by **lower of:**
   a) **Chairman** himself
   b) Members having **1/10th of voting power of Rs. 500000 of paid-up capital**
5) The votes will be **calculated by chairman**
6) **Scrutinizer** shall provide:
   a) Polling paper in **Form MGT-12**
   b) Open poll box in **2 witnesses**
   c) Calculate votes
   d) Consulting with chairman
   e) Declaration of resolution
   f) Report on poll – **Form MGT-13**
7) Number of shares shall be relevant i.e., **number of shares held is equal to number of votes.**

Chart for Understanding



Section 110: Postal Ballot

Answer Writing Points

1) When member **vote through post** from home is known as **postal ballot.**
2) Postal ballot is the **replacement for electronic voting** which is less accurate then electronics.
3) **Postal date** plays as evidence of any resolution passed through.
4) Postal ballot can only be exercised by business **notified by CG.**
5) Notice of postal ballot shall be given in **2 newspapers** and on **the website** of the company stating.
   a) Business to consider for **passing resolution**
   b) Start and end date
   c) Voting to be done in **30 days**
   d) Date of reporting
   e) Name, contact and designation of person solving complain
6) **BOD** shall appoint any person to calculate votes which is not as employee.
7) **Scrutinizer** shall after voting:
a) **Collect** all postal ballots and keep it safe
b) Calculate votes and declare resolution in **7 days.**
c) Maintain register of favour and against
d) **Submit report** of same
8) Number of shares held is relevant i.e., **no. of shares held = no of votes.**
   f) Buy-back of securities **(sec.68)**
   g) Appointment of small shareholder director **(sec.151)**

Master Table for Sec. 107 to 110

Section	Sec. 107	Sec. 109	Sec. 108	Sec. 110
Name	Voting by Show of Hands	Voting by Poll	Voting by Electronic	Voting by Postal Ballot
Meaning	When members vote in GM just by raising hands	When members vote in GM by casting their vote	When members vote through mail or through website from home or at GM	When members vote through post from home
Voting in GM / from Home	IN GM	IN GM	from Home	from Home
Primary / Secondary	It's primary method of Voting	It is secondary method of voting	It is in replacement to post	It is in replacement to electronic voting
Number of Shares held relevance?	Irrelevant 1 member = 1 vote	Relevant No. of shares = No of votes	Relevant No. of shares = No of votes	Relevant No. of shares = No of votes
Accuracy of Voting	Less Accurate than Poll	More Accurate than show of Hands	More Accurate than postal ballot	Less Accurate than electronic
Evidence of Resolution	Recording in minutes of meeting	Polling paper & Boxes	Electronic data of voting	Postal dates of voting
Applicability	To All Companies	To All Companies	To listed companies or Companies members ≥ 1000	Business as notified by CG
Requirement	Chairman will decide in meeting unless poll is demanded	1) Chairman himself 2) 1/10th of VP or Rs 5L PC Lower can demand poll	Notice of E-Voting shall be given at least 21 day before GM in 2 NP & on website stating a) Login ID, Password b) Date of start-end c) Process to vote d) Cut of date e) Name, Contact, designation of person solving complaint	Notice of Postal Ballot shall be given in 2 NP & on website of company stating : a) Business to consider b) Date of start-end c) Voting in 30 days d) Date of Resposting e) Name, Contact, designation of person solving complaints
Appointment of Scrutiniser	Chairman will calculate votes so no need of scrutiniser	Chairman will appoint to calculate poll	BOD will appoint CA, CS, CMA to evaluate voting (Not on employee)	BOD shall appoint any person to evaluate voting (Not on employee)
Function of Scrutiniser	NA	Scrutiniser should provide a) polling paper (MGT-12) b) Open poll box in 2 witness c) Calculate Votes d) Consult Chairman e) Declare Resolution f) Report on poll (MGT-13)	Scrutiniser shall after e-voting a) Calculate E-Votes in 2 witness b) maintain records & Register of favour & Against c) Declare Resolutions in 3 days of Voting	Scrutiniser shall after Voting. a) Collect all postal ballot & keep safe b) Calculate votes & Declare resolution in 7 days. c) Maintain Register of favour & Against d) Submit Report of Same.

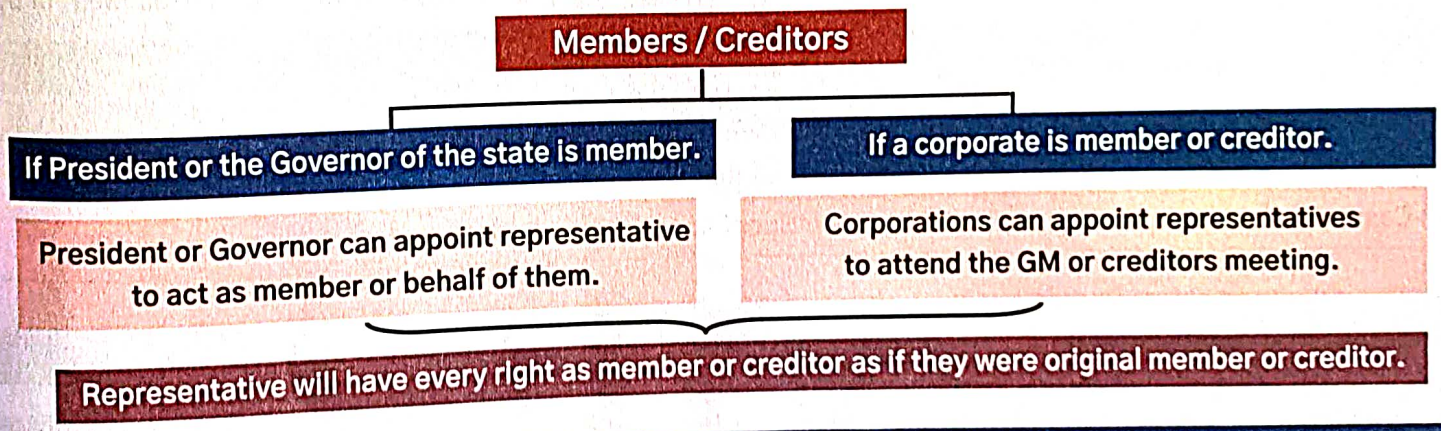
Section 111: Circulation of Members Resolution

Answer Writing Points

1) Resolution by circulation means circulating an **intended resolution** amongst the members to be considered for GM.
2) When a requisition in writing is made by–
   a) In case of a company having share capital– **Members ≥ 1/10th** of **paid-up equity**; or
   b) In case of a company having no share Capital–**Members ≥ 1/10th** of **total voting power**
3) Company shall give a **notice** to members on the basis of requisition made.
4) A company shall not be bound under this section to give notice or circulate statement as under subsection (1) unless following conditions are satisfied –
   a) the requisition is signed by the requisitionists.
   b) Such requisition is deposited at the registered office of the company.
   c) A sum reasonably sufficient to meet the company's expenses must be deposited by requisitionists.
5) Such requisition shall be made by registered office **at least 6 weeks** prior to **GM**. However shorter period can be accepted by GM.
6) If only information is need to be given then requisition shall be made **2 weeks** before the meeting.
7) The CG may also direct that the cost incurred by the company by virtue of this section shall be paid to the company by the **requisitionists**, notwithstanding that they are not parties to the application.

Section 112 & 113: Representation of President and Governors / Corporations in meetings of members or creditors.

Chart for Understanding



Section 112: Representation of President and Governors in meetings

Answer Writing Points

1) If President of India or the Governor of any state is a member of a company. He has authorise person as his representative at any GM or class meeting of the Company.
2) Representative will have all rights of members/creditors.

Sec. 113: Representation of Corporations at meeting of company and of creditors

Answer Writing Points

1) A body corporate being member may appoint a representative if the body corporate should be a member of the company within the meaning of the Act and such representative is authorised by the BOD or other governing body.

2) A body corporate being creditor of Company may appoint a representative if the body corporate is a creditor of the company within the meaning of the Act and such representative is authorised by the BOD or other governing body.
3) Representative will have all rights of members/creditors.

Difference points between Sec. 105 & Sec. 112/113

Sec.105 – Proxy

1) Here representative is not considered as member so he do not have right of member.
2) Can't vote on show of hands
3) Cannot discuss or talk in meeting.
4) Represent max
   50 mem. max 10% VP
   Lower
5) File form MGT 11 48 Hr. before GM
6) he is not counted in Quorum

Sec. 112 / 113 – Proxy

1) Here representative is considered as member & have all rights of member.
2) Can vote on show of hands
3) He can participate in discussion.
4) Represent → President / Governor, Corporate
5) No Form required only written nomination
6) He is counted in quorom as he is as goods as member

Section 114: Ordinary and Special Resolutions

Answer Writing Points

1) Ordinary Resolution means **votes in favour** shall be **more than** votes **against** the resolution of present & voting members.
2) Ordinary Resolution may be passed **by show of hands** or on Poll or electronically.
3) The votes should be **counted** whether these are cast by members voting in person or by proxy (where allowed) or by postal ballot.
4) **Casting** vote of **chairman** is applicable in case of ordinary resolution, will be **counted.**
5) Special resolution means **votes in favour** shall be **at least 3 times of votes against** resolution.
6) The intension to propose the special resolution has been duly specified in the notice.
7) **Casting** vote of chairman is not applicable in case of **Special resolution**, will **not count.**

Section 115 is covered with Section 101 on page no. 7.8

Chart for Understanding

Types of Resolution at GM

Ordinary Resolution	Special Resolution	Unanimous Resolution
Votes casted in favour of resolution shall be more than votes casted against resolution of present & voting members.	Votes Casted in favour of resolution shall be at least 3 times of votes casted against resolution of present & voting members.	All the votes of present & voting members shall be casted in favour of resolution without any vote against it.

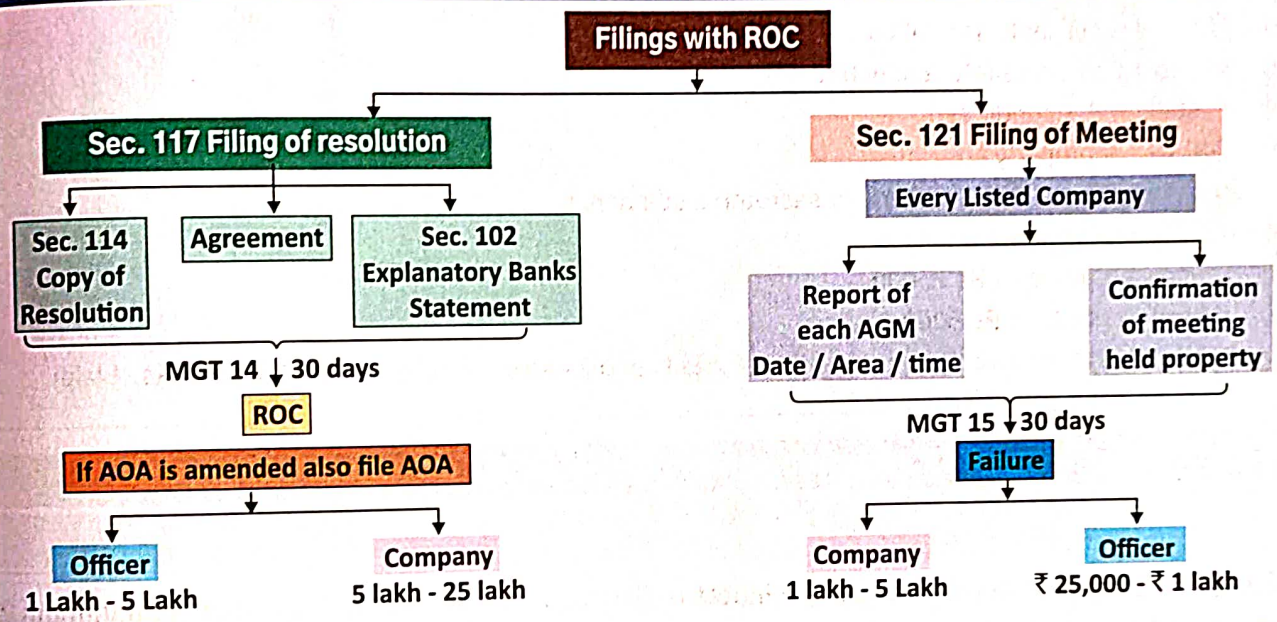
Section 116: Resolutions passed at adjourned meeting

Answer Writing Points

A resolution shall be treated as passed on the date on which it was actually passed and not on any earlier date, which is passed at an adjourned meeting of–

1) A General Meeting; or
2) Any class meeting; or
3) Any BOD meeting.

Combine Chart for Sec. 117 and 121



Section 117: Report on Annual General Meeting

Answer Writing Points

1) Every company shall after conducting General meeting shall file following things in **Form MGT–14** with ROC in **30 days.**
   a) Resolution passed at General Meeting
   b) All agreements executed
   c) All explanatory statements u/s 102
   d) Amended copy of AOA
2) In case of failure following consequences are there:
   a) For officer in default – **Rs.10000 + Rs.100 per day max up to Rs.50000**
   b) For Companies – **Rs.10000 + Rs.100 per day max upto Rs. 2 lakhs**

Section 118: Minutes of proceedings of general meeting, meeting of board directors and other meeting and resolutions passed by postal ballot.

Answer Writing Points

1) **Every company** shall maintain summery of meeting as minutes of following:
   a) General Meeting
   b) Board Meeting
   c) Resolution by postal ballot. (shall be complied in **30 days**)

2) The minutes shall contain **fair and correct summery** of meeting and also
   a) Appointment of Officers
   b) Name of members, directors present
   c) Favour and against voting
   d) All the information as per chairman
3) The minutes shall **not** contain the information:
   a) **Defamatory** of any person
   b) **Irrelevant, immaterial** information
   c) Information **detrimental to interest** of company.
4) **Minutes are evidence** that
   a) Meeting is duly **held and called**
   b) All resolution are **validly conducted**
   c) Postal ballot is **conducted**
   d) Officers are **properly appointed**
5) Minutes of meeting shall be made as per **secretarial standards**
6) In case of contravention of provision
   a) Company is liable for **Rs.25000**
   b) Officer in default for **Rs.5000**
7) Any tampering with minutes then person is liable to **jail up to 2 years** and penalty of **Rs.25000 to Rs. 1 lakh.**

Section 119: Inspection of Minutes books of General Meeting

Answer Writing Points

1) **Every company** shall maintain **copy of minutes** of General meeting open for inspection for **minimum 2 business hours** on business day at Registered office.
2) The cost of inspection is as follows
   a) **Member** can inspect **free of cost**
   b) Member can take **soft copies** of minutes of last **3 years** free of cost.
   c) Member can demand any hard copy at **Rs.10** per page
   d) 3rd party inspection and soft copies at **Rs.50** per inspection
   e) 3rd party copies of minutes **Rs.10** per page
3) Company shall co-operate with inspection and provide all copies in **7 days.**
4) In case of failure by company tribunal can order inspection and copies to be given forthwith
5) Contravention – **Company – Rs.25000 and Officer in default – Rs.5000**

Chart for Understanding

Minutes & Resolution

The minutes of the meeting and the resolution shall be kept at the registered office of the company.

Inspection at Registered office



Min 2 hours inspection shall be allowed on working days at RO of the company.

Inspection by demanding copies

Company shall furnish the copy of the minutes within 7 days of demand made for inspection.



In case of default to provide for inspection

Penalty
Penalty shall be there if any inspection under subsection (1) is–
(i) Refused; or
(ii) Not furnished within specified time For Company–Rs.25,000
For every officer in default– Rs.5,000 for each refusal or default

Order of Inspection by tribunal



Tribunal may order immediate inspection in case of default by company

Section 120: Maintenance and inspection of documents in e-form

Answer Writing Points

1) Any document, record, register, minutes, etc, required to be kept by a company or **allowed to be inspected** or copies to be given to any person by a company under this Act may be kept or inspected or copies given, as the case may be, in electronic form.
2) Rule 27 of the Companies (Management and Administration) Rules, 2014 states that **every listed** company or a company having **at least 1000 shareholders**, debenture-holders and other security holders, may **maintain its records**, as required to be maintained under the Act or rules made thereunder, in **electronic form.**
3) Rule 28 sets out that the Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be **responsible for the maintenance** and security of electronic records.
4) Rule 29 states that the records maintained in electronic form shall be **made available for inspection** by the company in electronic form. Copies of the records **maintained in e-form**, should be provided on payment of not exceeding ₹ 10/page.
5) Rule 30 states that If any default is made in compliance with any of the provisions of this rule, the company and every officers or such other person **who is in default** shall be **punishable with** fine which may extend to ₹ **5000** and where the contravention is a **continuing** one, with a further fine which may extend to ₹ **500 for every day** after the first during which such contravention continues.

Section 121: Report on Annual General Meeting by Listed Companies

Answer Writing Points

1) Every listed company after conducting a General meeting shall file **Form MGT–15** with **ROC** in **30 days** contain following particulars.
   a) Date, time, place of GM
   b) Whether meeting properly held or not
   c) Quorum of meeting
   d) List of members
   e) No of Business/Resolution
   f) Etc.
2) In case of default following consequences are there
   a) For company – **Rs 1 lakh + Rs.500 per day max upto Rs. 5 lakhs**
   b) For officer in default – **Rs. 25000 + Rs. 500 per day max upto Rs. 1 lakh.**

Section 122: Applicability of Chapter VI to OPC

Answer Writing Points

1) Section **92, 94, 95, 118, 119 & 120** are applicable to OPC.
2) Where there is only one director on the **BOD** of an OPC, any business which is required to be transacted at the meeting of the **BOD**, it shall be sufficient if –
   a) The resolution is entered in the Minutes book; and
   b) The Minutes–book is signed & dated by such director.

8 DECLARATION AND PAYMENT OF DIVIDEND

Coverage of Chapter

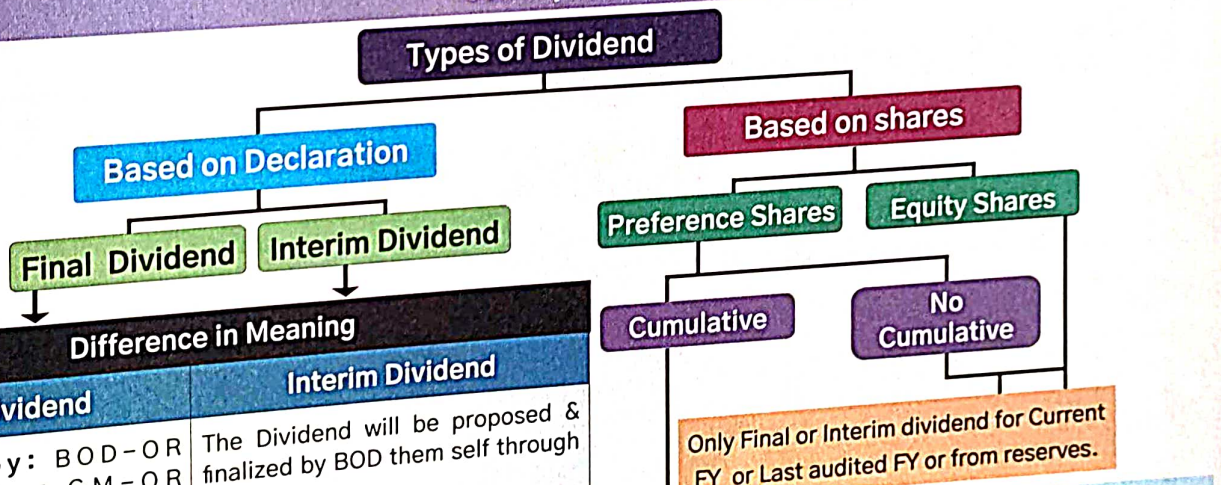
Section	Name of Section
123	Declaration of dividend
124	Unpaid Dividend Account
125	Investor Education and Protection Fund
126	Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares.
127	Punishment for failure to distribute dividends in 30 days.

Meaning and Definition of Dividend

Section 2(35) of the Companies Act, 2013, while defining the term dividend simply states that "dividend" includes any interim dividend.

Types of Dividend & basis concepts

Concept



Difference in Meaning

Final Dividend	Interim Dividend
Proposed by: BOD-OR **Finalized by:** GM-OR (In above situation if BOD proposes max rate 25% then GM shall finalized the Rate < 25%)	The Dividend will be proposed & finalized by BOD them self through BM-OR. The rate of the dividend shall be subject to sec 123(3)
The dividend declared at AGM is final dividend.	The dividend declared between 2 AGM is interim dividend.
The Dividend declared out of last audited FY profit or reserve is final dividend.	The dividend declared out of current year's profit that is on going year is interim dividend.

1) the dividend can be in arrears for any number of years. And it shall be paid for all years on declaration.
2) If the arrears are for any of the following the voting right will be obtained.
   a) For continuous **last 2 FY.**
   b) For any **3 FYs in last 6 FYs.**

123(1)-(2): Declaration of Dividend

Answer Writing Points

1) The dividend shall be **declared out of** following:
   a) Current year profit/Audited FY Profit
   b) Amount provided by **CG/SG**
   c) Out of Free Reserve
2) The company can declare **2 types of dividends**
   a) Final Dividend - by **GM-OR**
   b) Interim Dividend - by **BM-OR**

Current Year Profit

1) **The company** can declare dividend out of current or last audited FY Profit only after deduction of:
   a) Interest on Debt
   b) Depreciation on Assets (Schedule II)
   c) Taxes
2) After above deduction the company shall deduct **lower of** following for years of **losses** which are **not set off**:
   a) Depreciation of such year
   b) Loss of such year
3) The company shall after above deduction shall **transfer** amount to **reserves** by passing **BM–OR**
4) After all, above deduction company can declare dividend.

Dividend out of Reserves (Accumulated Profits)

1) If company declare dividend from P&L credit balance it shall be done by passing **GM–OR**
2) If company declare dividend out of general reserve it shall pass **GM–OR** and comply following condition:
   a) Rate of dividend shall be lower than Avg rate of last **3 years**.
   b) Maximum withdrawal from reserve can be **1/10th** of paid up capital and free reserve.
   c) After withdrawal minimum **15%** of paid up capital shall be maintained in reserves
   d) **Set off** current year loss from withdrawal and declare dividend.

Chart for Understanding

Sources of Dividend

Net Profit of CFY or LFY

Calculation
PBIDT
Less: Interest
Depreciation (sch II) Taxes
PAT
Less: Previous year's loss or depreciation Whichever is lower**.
Profit after previous loss / Depreciation
Less: Transfer to reserve as Per BOD-OR
Amt distributable as dividend.

Money Provided by CG / SG

Company can directly pay dividend by passing just a **GM–OR** for the same.

As the amount is itself provided by CG or SG there is **no restriction** for the same.

##Out of Reserves

1) Rate ≤ Average rate of last 3 FYs. (do not count the year in which dividend is not declared.)
2) $W^1 \leq (PC + FR)/10$
3) $FR - W^2 > 15\%$ of PC
   i.e. $W2 < FR - 15\%$ of PC
4) (W^1 or W^2) whichever is lower – Current Year Loss = Distributable amount.

***** Meaning of deduction of previous year's loss or depreciation.***

Dividend out of Accumulated profit

Profit & Loss A/c Credit balance

No condition GM-OR give Dividend

Assumption

General Reserve - CFY / PFY = Loss / Inadequate

1) Rate ≤ Avg Rate of Last 3 yrs. (Avg. of yr. declared)
2) Reserve - withdraw - for dividend
   W1 ≤ 1/10th (PC + FR)
3) FR-W2 ≥ 15% PC, After withdrawal free reserve shall contain balance of 15% of PC
4) W2 = FR - 15% PC and
   (W1 or W2) lower - CY Loss = Dividend can he paid.

If the Profit for year 25–26 is Rs. 5 lacs and the company wants to declare the dividend then the deduct the following amount from the last column first.

FY	PAT + Depreciation	Depreciation	PAT	Lower of (Loss / Depre)
20 – 21	90,000	(30,000)	60,000	NA (as there is no loss)
21 – 22	30,000	(40,000)	(10,000)	(10,000)
22 – 23	(20,000)	(30,000)	(50,000)	(30,000)
23 – 24	40,000	(60,000)	(20,000)	(20,000)
24 – 25	(15,000)	(25,000)	(40,000)	(25,000)

So Rs. 5 lakhs – (10,000 + 30,0000 + 20,000 + 25000) = Rs. 4.15 lakhs.

BOD can transfer the amount to reserve from above amount of Rs. 4.15 lakhs by passing **BM–OR.** Assuming such amount is of transfer is Rs. 2.15 lakhs, then the distributable profit will be Rs. 2 lakhs for purpose of payment of dividend.

The Concept of declaration of Dividend out of Reserve is quite hard to understand with all cumulative conditions. So for the purpose the example is as follows.

(1) PC	(2) FR	(3) W^1=(PC +FR) / 10	(4) W^2= FR –15% of PC	(5) Lower of W^1 or W^2	(6) Current yr. Loss	(7) (5) Less (6)	(8) Avg Rate of Last 3 yrs (assume)	(9) (8) X (1)	(10) Lower of (7) & (9)	(11) Actual Div	(12) Actual declaration lower of (10)(11)
100	60	16	45	16	4	12	15%	15	12	10	10
100	40	14	25	14	3	11	8%	8	8	12	12
100	20	12	5	5	1	4	13%	13	4	8	8
60	80	14	71	14	7	7	25%	15	7	6	6
120	70	19	52	19	5	14	8%	9.6	9.6	12	12
123.45	98.76	22.22	80.24	22.22	6.7	15.52	12%	14.81	14.81	15	15

Sec.123(3) – Interim Dividend

Answer Writing Points

1) Dividend includes **interim dividend.**
2) It means declaration of dividend **before General meeting or between 2 AGM** is interim dividend.
3) The dividend shall be **declared out of**
   a) Profit & loss credit balance
   b) Profit of current year
   c) Profit till last quarter
4) If there is **loss** in previous quarter the interim dividend shall be lower then average rate of last **3 years** of dividend.

127: Dividend shall be paid in 30 days

Answer Writing Points

1) The company shall pay dividend within **30 days** of its declaration.
2) Pay dividend in **30 days** means give right to shareholder to claim dividend by coupon or warrant or deposit to account of shareholder.
3) If company fails to pay dividend in **30 days**, then following consequences will be there.
   a) Company is liable to pay interest **@18% p.a.** to shareholders

b) Officer is liable to **Rs. 1000 per day and/or jail up to 2 years**

4) In following cases company need not pay dividend in **30 days**
   a) Where dividend cannot be paid by **operation of law.**
   b) Shareholder requires payment in specific manner & it cannot be followed by company and communicated to shareholder in **30 days.**
   c) **No clarity** to whom dividend shall be paid or **dispute** between right to receive the dividend
   d) Company **set off** the dividend **against dues** from shareholders.
   e) Where **delay is not due to fault of company.**

124: Unpaid Dividend Account

Answer Writing Points

1) If company declare dividend, it shall be paid in **30 days** u/s 127.
2) The company shall transfer the **unclaimed dividend** to **unpaid/unclaimed A/c** in next **7 days** after 30 days.
3) After such transfer the **company** shall **declare** following details on **its website** within **90 days**
   a) Name of shareholder
   b) Address and personal details
   c) Amount of dividend due
   d) Number of shares held
4) The dividend will remain in **unpaid A/c** up to **7 years** and afterwards will be transferred to IEPF.
5) In addition to dividend such shares belonging to such dividend can also be transferred to IEPF.
6) The shareholder will have **right to claim dividend** and shares out of IEPF on presenting evidence.
7) In case of **delay** in any of the above transfer the company is liable to pay interest **@12% p.a.**
8) **Contravention** with following consequences:
   a) Company is liable to **Rs. 1 lakh + Rs. 500 per day max up to Rs. 10 lakhs**
   b) Officer in default is liable to **Rs. 25000 + Rs. 100 per day max up to Rs. 2 lakhs.**

Chart for Understanding

Declaration of Dividend by Company u/s 123

↓ 30 Days

Payment of Dividend in 30 days u/s 127 →

Exception: Dividend cannot be paid due to:
1) Operation of law.
2) The directions of the shareholder cannot be complied with and the same is communicated to him.
3) Dispute for title to dividend.
4) Dividend is set off against any other due.
5) Situation which is not under control of company.

↓ If not then in Next 7 days

Transfer of Dividend to Unpaid A/C u/s 124(1) →

Publish on the Website:
a) Names of the shareholder who's dividend is unpaid.
b) Their address. (in case of change in address then last known address.)
c) The amount of unpaid dividend.
The company needs to pay the interest @ of 12% for delayed transfer in unpaid dividend account.

↓ 7 Years

Transfer of Dividend to IEPF u/s 124(5) →

The company shall transfer those shares to IEPF on which the dividend has not been paid or claimed for seven consecutive years or more
But the shareholder can reclaim such shares on giving specific proof.

Interest Under Dividend

	Bank Interest	Delayed Transfer Interest	Delayed Payment Interest
Section	Common	124	127
Rate	Saving Deposit / Current Deposit	12%	18%
Concept	It is interest given on all accounts by bank	When company delay in transfer of amount to a) Separate Bank - 5 days b) Unpaid Div A/c - 37 days c) IEPF A/c = 7 years	The Interest paid when dividend paid after 30 days without any reason
Where this interest goes	Goes to IEPF → Normal	Separate A/C → Unpaid A/C → IEPF A/c → Penal Interest → IFPF - Govt.	Goes to member while claiming Divided → Penal Interest → Members

125: Investor Education & Protection Fund [IEPF]

Answer Writing Points

1) The CG shall establish fund to be called the Investor Education & Protection Fund.
2) There shall be credited to the fund
   a) Amount given by CG by way of grants
   b) Donations to fund by CG, SG, Companies or any institutions for purpose of the fund.
   c) Amount in unpaid dividend account u/s 124
   d) Amount in general revenue account u/s 205A of Companies Act,1956
   e) Amount lying in IEPF u/s 205C of Companies Act,1956
   f) Interest or other income received out of investment made from fund.
   g) Amount received u/s 38(4)
   h) Application money received for allotment of any securities & due for refund.
   i) Matured deposits with companies
   j) Matured debentures with companies
   k) Interest accrued on amounts referred in clauses (h) to (j)
   l) Sale proceeds of fractional shares from bonus shares & merger
   m) Redemption amount of preference shares remaining unpaid
   n) Such other amount as may be prescribed

Chart for Understanding

Deposit to IEPF

Government Amount

1) CG– Grants
2) Donations by CG/SG – Gov. Companies
3) Amount in General Revenue A/c
4) Grant, Fees, Charges received by IEPF Authority
5) Income of IEPF Authority

Transition Amounts

1) Amount in old & New Separate A/c
2) Amount of old IEPF A/c of Co. Act, 1956
3) Amount in old unpaid A/c

Unpaid / unclaimed Amounts

1) Surrendered Securites
2) Matured Deposit
3) Matured Debentures
4) Unpaid Preference Shares
5) Unpaid equity shares
6) Unpaid Application money
7) Other unpaid securities
8) Shares on which dividend not claimed

Other Incomes & Amounts

1) Interest / other Income
2) Investment Income
3) Interest on All of given points
4) Sale proceed of fractional shares
5) Shares / ceased in fraud securities

Utilisation of IEPF

- Refund of unclaimed Securities
- Promotion of Investor Education & Protection
- Distribution of Disgorged Amount
- Refund of legal expenses of claiming
- Other purpose as per Law

IEPF Authority

Constitution

1) 1 Chairman
2) 7 other members
3) CEO

9 persons

Management & Admin

CG can make Rules for :
1) Admin of Funds
2) Appointment of Chairman
3) Appointment of member
4) Appointment of CEO
5) Holding meetings

Accounts of Fund

1) Authority will Administer fund
2) Records & Audit by CAG
3) CAG will decide Rules of Audit
4) Audit report to CG on demand

Reporting to CG

1) Annual report by Authority
2) Audit report by CAG
3) Put both reports of Parliament

126: Dividend or Bonus on shares in abeyance.

Answer Writing Points

1) A Company **cannot** have lien on shares unless provided in the **Articles of Association.** Therefore, provision to this effect should be in the articles.
2) The company has **first and paramount lien** on every share (which has not been fully paid up for all monies (whether presently payable or not) called or payable at a fixed time in respect of that share and on all shares which are **not fully paid up** standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company.
3) However, companies are free to frame their own Articles of Association and need **not** follow the **Table F.** The key point is that lien is permissible only on partly paid shares and only if provided in the Articles of the company.
4) The **Board of Directors** may, however, at any time declare any share to be wholly or in part exempt from the said lien.
5) Further, the Company's lien is extended to all dividends payable on such shares if provided for in the **Articles** or if the company adopts **Table F.**

9 ACCOUNTS OF COMPANIES

Coverage of Chapter

Sec.	Name of Section
128	Books of account, etc., to be kept by company
129	Financial statement
130	Re-opening of accounts on Court's or Tribunal's orders
131	Voluntary revision of financial statements or Board's report
132	Constitution of National Financial Reporting Authority
133	Central Government to prescribe accounting standards
134	Financial statement, Board's report, etc.
135	Corporate Social Responsibility
136	Right of member to copies of audited financial statement
137	Copy of financial statement to be filed with Registrar
138	Internal audit

E-Forms Companies (Accounts) Rules, 2014

E-Form	Details	Relevant section	Rule No
AOC-1	Statement containing silent features of subsidiaries / associates / JV	129	5
AOC-2	Form of disclosure of the particulars of contract or arrangement entered into by company with related parties u/s 188	134	8
AOC-3	Statement containing silent features of balance sheet and profit and loss account	136	10
AOC-4	Form of filing financial statement and other documents with ROC	137	12

Definitions

Section 2(12) "Book and paper" and "book or paper" include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form.

Section 2(13) "books of account" includes records maintained in respect of—

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.

128: Maintenance of Books by Company

Answer Writing Points

1) Every Company shall **maintain** Books of accounts, Other books and papers, Financial statements.

2) Shall be **maintained** at **RO** in true and fair manner.

3) Shall be **maintained** at both **head & branch** office & Shall be maintained on accrual basis.

5) For maintaining at any other place comply following.
   a) Pass BOD-OR **b)** Filing with ROC in **7 days**

6) According to sections 128 and 206 of the Companies Act, 2013, the following persons have the right to carry out the **inspection of the books** of accounts of the company:
   a) Directors of the Company [Section 128(3)]
   b) Registrar of Companies [Section 206]
   c) CG or It's Officer (Section 206).
   d) Such officers of SFIO [Section 212].

7) The following companies shall **maintain the books** of account as per their respective period:
   a) Company in **existence for 8 years** or more: maintain the books for 8 FY's.
   b) Company in existence for **less than 8 years**: maintain the books for **all years of existence.**

8) In case of contravention, the officer in default will be as follows:

9 ACCOUNTS OF COMPANIES

Coverage of Chapter	
Sec.	**Name of Section**
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133	Central Government to prescribe accounting standards
134	Financial statement, Board's report, etc.
135	Corporate Social Responsibility
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Section 2(13) "books of account" includes records maintained in respect of—

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.

128: Maintenance of Books by Company

Answer Writing Points

1) Every Company shall **maintain** Books of accounts, Other books and papers, Financial statements.

2) Shall be **maintained** at **RO** in true and fair manner.

3) Shall be **maintained** at both **head & branch** office & Shall be maintained on accrual basis.

5) For maintaining at any other place comply following.
   a) Pass BOD-OR **b)** Filing with ROC in **7 days**

6) According to sections 128 and 206 of the Companies Act, 2013, the following persons have the right to carry out the **inspection of the books** of accounts of the company:
   a) Directors of the Company [Section 128(3)]
   b) Registrar of Companies [Section 206]
   c) CG or It's Officer (Section 206).
   d) Such officers of SFIO [Section 212].

7) The following companies shall **maintain the books** of account as per their respective period:
   a) Company in **existence for 8 years** or more: maintain the books for 8 FY's.
   b) Company in existence for **less than 8 years**: maintain the books for **all years of existence.**

8) In case of contravention, the officer in default will be as follows:

a) **MD, WTD** in charge of finance/ BOD (if qualified person or CFO is not appointed).
b) **CFO** / Qualified person appointed. (In case if the CFO / Qualified Person is appointed for maintenance of books.)

9) The officer in default in above case will be liable to the Fine of **Rs. 50,000 - Rs. 5,00,000.**

Sec.129: Financial Statement (FS)

Definitions

Sec.2(40) Financial Statement

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):

Answer Writing Points

1) The financial Statements **includes**
   a) Balance Sheet
   b) Profit & Loss Account
   c) Cash Flow Statement
   d) Changes in equity Statement
   e) Explanatory Statement
2) The **OPC & Small & Dormant Company need not maintain Cash Flow Statement.**
3) The books of account should be maintained as follows :
   a) True & Fair
   b) Shall comply with Accounting Standards
   c) Shall comply with Schedule III
4) The following companies shall maintain FS **as per their respective Laws-**
   a) Insurance Company
   b) Banking Companies
   c) Electricity Companies
   d) Any other company which are not prescribed.
5) The holding & subsidiary companies shall maintain standalone as well as consolidated financial statements in **AOC-1**
6) **In case of deviation** from Accounting standards company shall mention reason & effect of deviation
7) In case of **contravention** the officer in default will be liable for Jail upto 1 year & fine of ₹ 50,000 to ₹ 5 lakh.

Sec.129A: Periodical financial results

Answer Writing Points

The **Central Government** may, require such class or classes of unlisted companies, as may be prescribed,—

a) to **prepare the financial results** of the company on such periodical basis and in such form as may be prescribed;
b) to obtain **approval of the Board of Directors** and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and
c) file a **copy with the Registrar** within a period of **30 days** of completion of the relevant period with such fees as may be prescribed.

130: Reopening of accounts on court's or Tribunal's orders

Answer Writing Points

Provision : [Sec. 130 of Companies Act, 2013]

1) The Company can open its books of accounts only if application passed by following persons is ordered by tribunal
   a) Central Government **b)** Income Tax Authority
   c) SEBI **d)** State authority or NCLT etc.
2) The reopening of books can be done of last 8 financial year.
3) The reopening of books shall take place due to–
   a) Fraud **b)** Mismanagement
   c) Misstatement **d)** Books of A/C being undesirable
4) Once order is passed or approved reopening is compulsory compulsion.

131: Voluntary revision of financial statements or Board's report.

Answer Writing Points

1) The Board of directors in a company can revise the financial statements upto last **3 financial years.**
2) The application shall be made by the company to **NCLT** for such revision of books.
3) The revision shall take place due to
   a) Correction of Accounts
   b) If Sec 129 or 194 is not complied
4) The revision of books of accounts is a **voluntary process.**

Chart for Understanding

	130 – Reopening	131 – Revision
Reason	Fraudulent A/C Authority is opinion True & fair	Accounts are not in line with Sec. 129/134
Order by	By Court / NCLT	By NCLT
Time period	Last 8 yrs. A/c Can be Reopened	Last 3 yrs. Accounts Can be Revised
Consolidated	Can be Reopened / Revised	

132: National Financial Reporting Authority (NFRA)

Answer Writing Points

1) The CG by notification in the OZ constitute NFRA.
2) **Composition of NFRA Constitutes :**
   a) One Chairman **b)** Maximum 15 members
3) **The Composition shall Comply–**
   a) Declaration of Independence.

b) Not be associated with any audit or legal consultant firm upto the tenure of **2 years.**

4) Functions / Duties of NFRA

a) Recommendation to CG on formation of AS.
b) Recommendation on adoption of above standards.
c) Supervision & implementation of AS.
d) Review quality of service of CA.
e) Increase the quality of service of CA.
f) Perform supplementary task.

5) Powers of NFRA

a) Investigation Sue moto or on reference made by CG.
b) The NFRA will have following **powers** of civil court.
   i) Summoning & examination on oath
   ii) Discovery & Production of books
   iii) Inspection of books, registers & documents
   iv) Appoint commission for examination of witness

6) Consequences & Penalties

a) Individual CA : from ₹ **1 lacs to 5 times of audit fees**
b) Firm ₹ **5 lakhs to 10 times**
c) In addition to above the NFRA can debar any individual or the firm from being the member of ICAI from **6 months** to **10 years.**

Chart for Understanding

CG by notification in the official gazette of India will constitute the NFRA

Composition of NFRA.

1) One Chairman (expert in Accounts, finance and Law.)
2) Max 15 members; combination of whole time and part time members.

Conditions for Composition

1) The member of NFRA shall give the **declaration** of the **independence.**
2) The member of NFRA shall not be associated with any audit firm or legal consultant firm during his / her tenure as member & even upto to **2 years** from vacation of the office.

Functions / Duties of NFRA

1) Recommendation to the CG on formation of AS & Auditing standards.
2) Recommendation on adoption of above standards.
3) Supervision and implementation of above standards.
4) Review quality of service of CA.
5) Take measures to increase the quality of service of CA.
6) Perform supplementary tasks.

Powers of NFRA

1) Investigation suemotu or on reference made by CG.
2) The NFRA will have following powers of the civil court.
a) Discovery and the production of the books.
b) Summoning & enforcing attendance & examination on oath.
c) Inspection of books, register & documents.
d) Issuing commission for examination of witness or documents.

Consequences and Penalties by NFRA

In case if the professional misconduct is proved against the person then NFRA have power to make following orders –
(I) Penalty from Rs. 1 lacs to 5 times of audit fees for individual CA.
(ii) Penalty of Rs. 5lacs to 10 times of audit fees for firm of CA.
(iii) In addition to above the NFRA can debar any individual or the firm from being the member of ICAI from 6 months to 10 years.

133: Central Government to prescribe accounting standards (AS)

Answer Writing Points

1) The CG may **consult with NFRA** for recommendation of AS.
2) On consultation with NFRA, CG have declared that AS made by ICAI will be considered as AS for all India.
3) If CG thinks fit, they can **recommend AS** being applicable or can recommend standards by any other authority.

134: Financial statement, Board's report, etc.

Applicability

1) The BOD shall approve financial statements or consolidated Financial Statements before the same are signed by–
   a) Chairman or by 2 directors & **b) By CEO, CFO, CS**
2) In case of **OPC** it should be signed by **1 Director.**
3) After signing financial statement it should be submitted to auditor.
4) The board report shall be attached to FS & incase of OPC such a report containing **explanation & comments of auditor** should be attached to FS.
5) The BOD shall also compose the **director responsibility statement (DRS)** which shall contain following particulars–
   a) Preparation of annual accounts as per applicable AS & reasons for non–compliance.
   b) The selection of accounting policies which shall be prudential giving true & fair view.
   c) The director has taken care to maintain proper accounting records & to safeguard them.
   d) The accounts are prepared on going concern basis.
   e) Internal financial controls given by listed entities.
   f) Compliance of applicable laws & regulation & system devised for same.
6) The Board Report should be **signed by**
   a) Chairman of the company or
   b) By 2 directors out of which 1 shall be MD
7) The signed copies of financial statements including Ca's shall be circulated or published with notes to accounts, auditors report, board report.
8) The company in default will be liable to ₹ 3 lacs & officer upto 50,000

135: Corporate Social Responsibility (CSR)

Answer Writing Points

1) CSR is applicability to following companies :
   a) Networth ≥ 500 cr. or **b) Turnover ≥ 1000 cr. or**
   c) Net profit ≥ 5 cr.
2) The above companies need to form a **CSR committee** & make CSR policies as follows.
   a) Public companies with independent directors – 3 directors committee of CSR out of them 1 shall be Independent director.
   b) Other companies – 2 BOD's CSR Committee.
   c) Where CSR expenses are less than 50 lakhs then no need of CSR committee.
3) The above committee shall create CSR policy for local areas individually or combined with other companies.

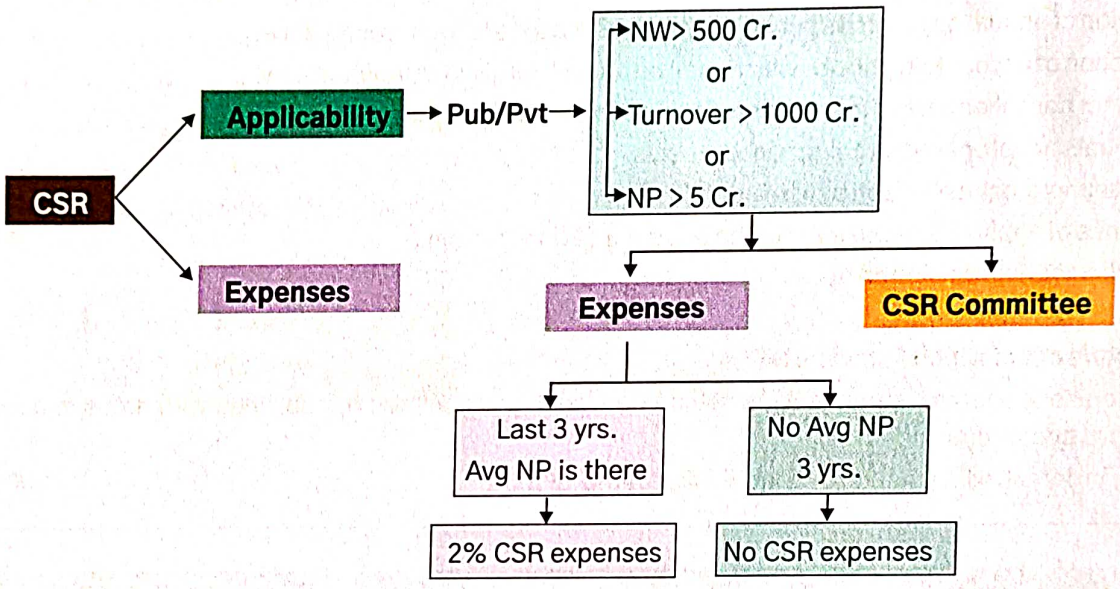
CSR Expenses :

1) Every company to whom CSR is applicable as above shall make following expenses CSR.
   a) Min **2%** of average net profit of **last 3 years** FinancialYear, and
   b) The expenses for policy made by **CSR committee or BOD**
2) If company **fails** to make CSR expenses as above then it shall **transfer** such amount to funds given in **Sch VII** within **30 days.**
3) In case company makes CSR expenses in excess then it can take **set off of CSR expenses** in next years CSR expenses.

Optional Points –

1) Once CSR **is applicable** it will apply for such **FY & next 3 FY's**
2) The **CSR Policy & CSR expenses** shall be **disclosed in Board Report** u/s 134
3) In case of contervention of Sec 135 Following are consequences
   a) Company is liable to penalty of **lower of CSR amount or ₹ 1 Cr. twice**
   b) Office is liable to **lower of CSR Amount or ₹ 2 lakhs 1/10**
4) Company making CSR shall apply to department under **CSR-1** for CSR registration number.

Chart for Understanding

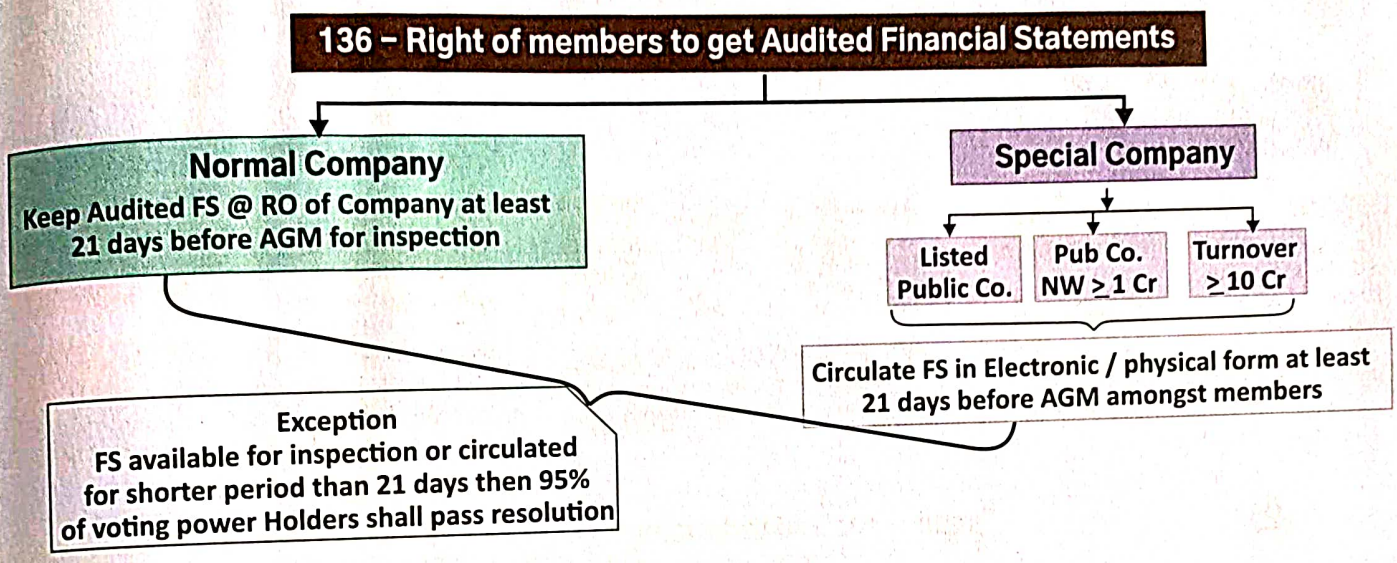


136: Right of member to copies of audited financial statement.

Provisions

1) Every company shall **before 21 days** of General Meeting shall send to its members & also keep at registered office following documents :
   a) Financial Statements including consolidated
   b) Auditors report
   c) Every document required for general meeting
2) Such documents can be **inspected & circulated** to shareholders debenture holders, debenture trustee & person who can attend General Meeting.
3) In case of short circulation or short inspection **less than 21 days 95% of members can ratify the same**
4) Following companies shall circulate above documents in electronic form–
   a) listed company or
   b) Pubic Company having net worth of **1 cr.**, or
   c) Public Company having turnover of **10 cr.**
5) The holding companies of subsidiary **shall also maintain consolidated** or updated books of subsidiary for inspection in **form no. AOC 3**
6) The normal company shall also maintain salient features of FS in Form AOC 3 & Forward compliance of Accounting standard in statement **AOC 3A**
7) In case of **contravention** company is liable upto **25000 & officer upto 5000.**

Chart for Understanding



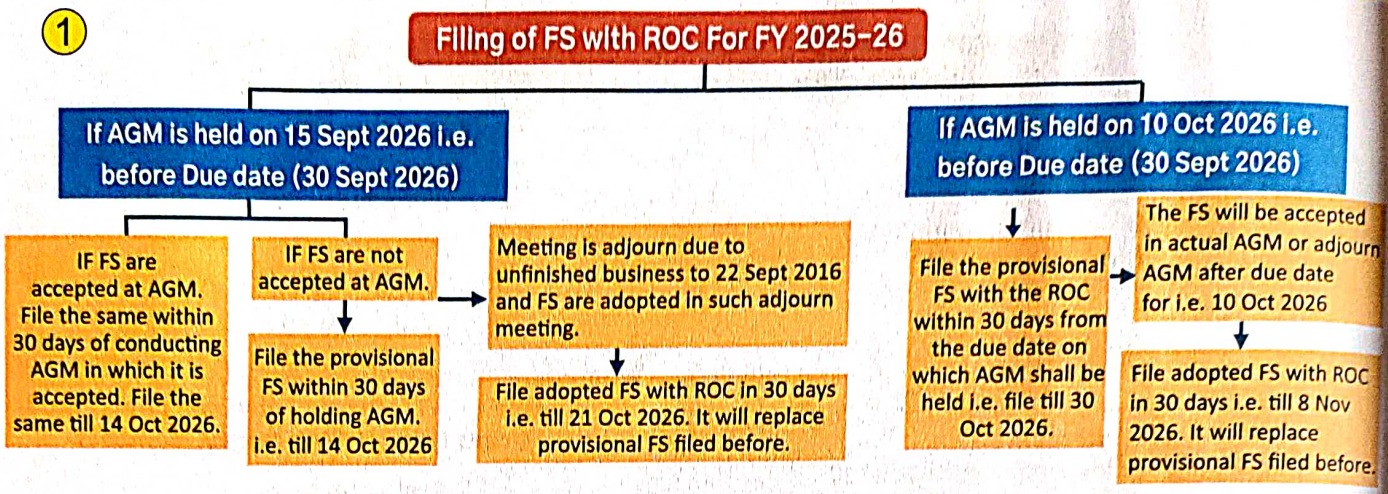
137: Filing of Financial Statement with ROC.

Answer Writing Points

1) **Every company except OPC** shall file annual accounts / Financial Statements within **30 days** of **earlier of**
   a) Actual date of AGM
   b) Due date of AGM as per Sec 96
2) If Financial Statements are **not accepted** at AGM or **AGM is not held** before 30 Sept i.e. due date the company shall file the provisional Accounts **within 30 days** of such a date of AGM or due date respectively.
3) In case of delay in filing or accepting the FS the company shall Account file reasons for non-acceptance.
4) In caes of **OPC** the FS shall be filed in **180 days** of end of Financial Year.
5) The FS shall be filed in following e-forms-
   a) Normal Company – **Form AOC 4**
   b) NBFC company – **Form AOC 4** NBFC
   c) Consolidated Normal Co– **Form AOC 4** CFS
   d) Consolidated NBFC– AOC 4 CFS NBFC
   e) **Specified Companies– Form AOC 4 X BRL**
      i) Listed company & Subsidiary
      ii) Company with **PC ≥ 5 cr.**
      iii) Company with **TO ≥ 100 Cr.**
      iv) Specified companies by rules
6) The FS filing includes filing of
   a) Balance sheet
   b) Profit & loss
   c) Notes to A/cs
   d) Audit report
   e) Other statements as prescribed
7) In case of **contravention** consequence are as follow–
   a) Company liable to **₹ 10,000 + ₹ 100 p.d mare upto ₹ 2 lakh**
   b) officer liable to **₹ 10,000 + ₹ 100 p.d. mare upto ₹ 50,000**

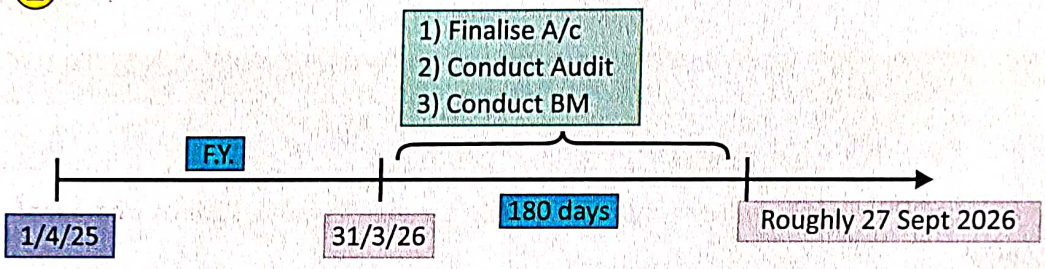
Chart for Understanding

1



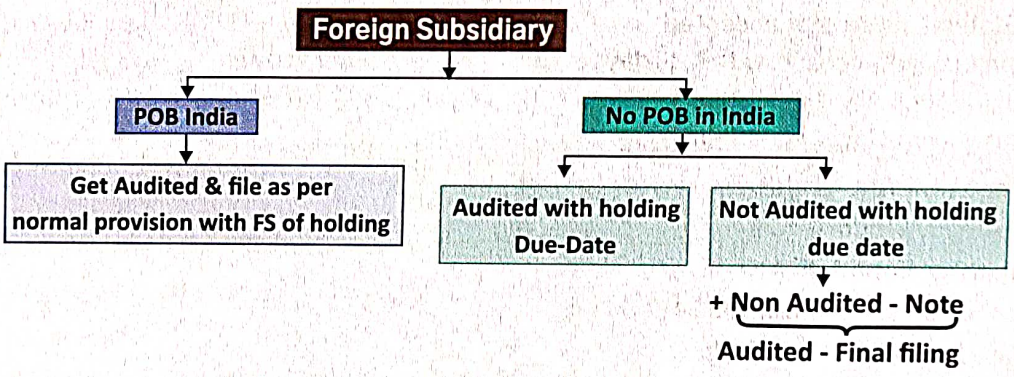
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Timeline for Understanding



Tata Steel → Chorus

3



Rule 12 – XBR Filing with ROC Final A/c

1) Every company shall file the financial statements with Registrar together with Form AOC-4 and the consolidated financial statements, if any, with **form AOC-4 CFS.]**
2) CG have notified following companies shall file their accounts with ROC in XBRL form.
   a) **Listed Companies** & their subsidiaries; or
   b) Every company having paid up capital **>Rs. 5 cr; or**
   c) Every Company having Turnover **>Rs. 100 cr.**

   "Provided that the companies in banking, insurance, power sector, non banking financial companies and housing finance companies need not file financial statements under this rule."
3) The fees or additional fees referred to in sub-section (1) of section 137 and in the second proviso to the said sub-section and in sub-section (2) of the said section shall be as specified in the Companies (Registration Offices and Fees) Rules, 2014.

Chart for Understanding

- Physical / Electronic → Normal
- XBRL Extended Business Reporting Language
  - 1) Listed → 2) Subsidy
  - 3) PC ≥ 5Cr
  - 4) T ≥ 100 Cr

138: Internal audit

Provisions

1) Following companies shall conduct internal audit by appointing **internal auditor–**
   - **a) Public Company**
     - **i)** listed on RSE
     - **ii)** Paid up capital ≥ ₹ **50 cr.**
     - **iii)** Turnover ≥ ₹ **200 Cr**
     - **iv)** Loan / borrowing– bank / PFI ≥ ₹ **100 cr.**
   - **b) Private Company**
     - **i)** Turnover ≥ ₹ **200 cr.**
     - **ii)** Loan / borrowing – bank / PFI ≥ ₹ **100 cr.**
2) The company shall appoint **CA / CMA** as internal auditor
3) The company shall pass **BOD** for appointment
4) The **employee** of company can also become internal auditor

Internal Auditor

- **Public Company**
  - Listed
  - PC ≥ 50Cr.
  - Turnover ≥ 200Cr.
  - Loan, Borrow PFC ≥ 100 Cr.
  - Deposit ≥ 25 Cr.
- **Private Company**
  - Turnover ≥ 200 Cr.
  - Loan Borrow PFI ≥ 100 Cr.

→ As per Latest Audited FY shall appoint CA / CS / CMA as Intecnal Auditor

10 AUDIT & AUDITORS

Coverage of Chapter

The following content is covered till now from different chapters of Companies Act, 2013.

Section	Name of Section
139	Declaration of dividend
140	Removal, resignation of auditor and giving of special notice
141	Eligibility, qualifications and disqualifications of auditors
142	Remuneration of auditors
143	Powers and duties of auditors & auditing standards.
144	Auditor not to render certain services
145	Auditor to sign audit reports, etc.
146	Auditors to attend general meeting
147	Punishment for contravention
148	Central Government to specify cost audit of certain companies

E-Forms Companies (Audit & Auditors Rules) Rules, 2014

E-Form	Details	Relevant section	Rule No
ADT-1	Notice of appointment of auditor by company	139	4
ADT-2	Application for removal of auditor before expiry of his term.	140	7
ADT-3	Notice of Resignation by Auditor	140	8
ADT-4	Report to the central Government	143	13

139(1)-(4): Appointment of auditors.

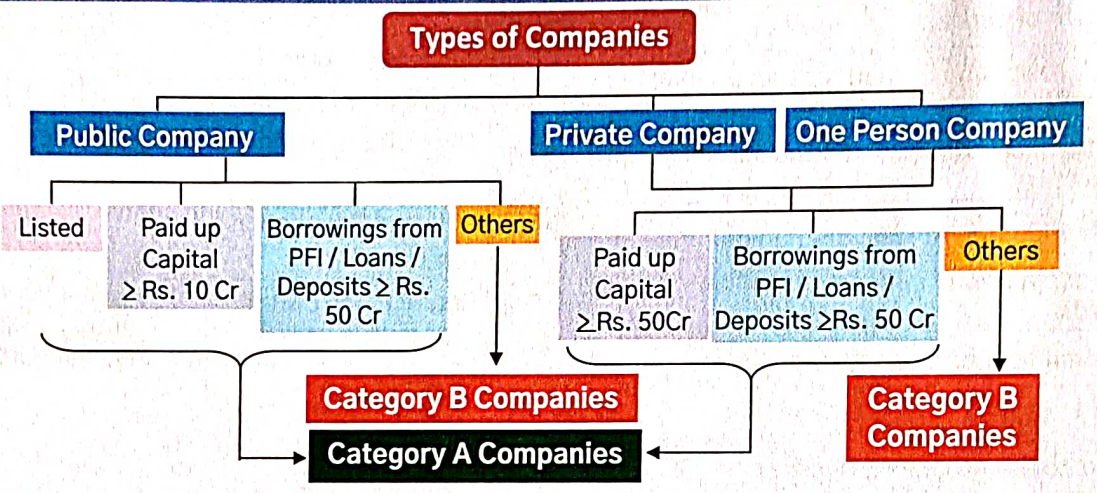
Answer Writing Points

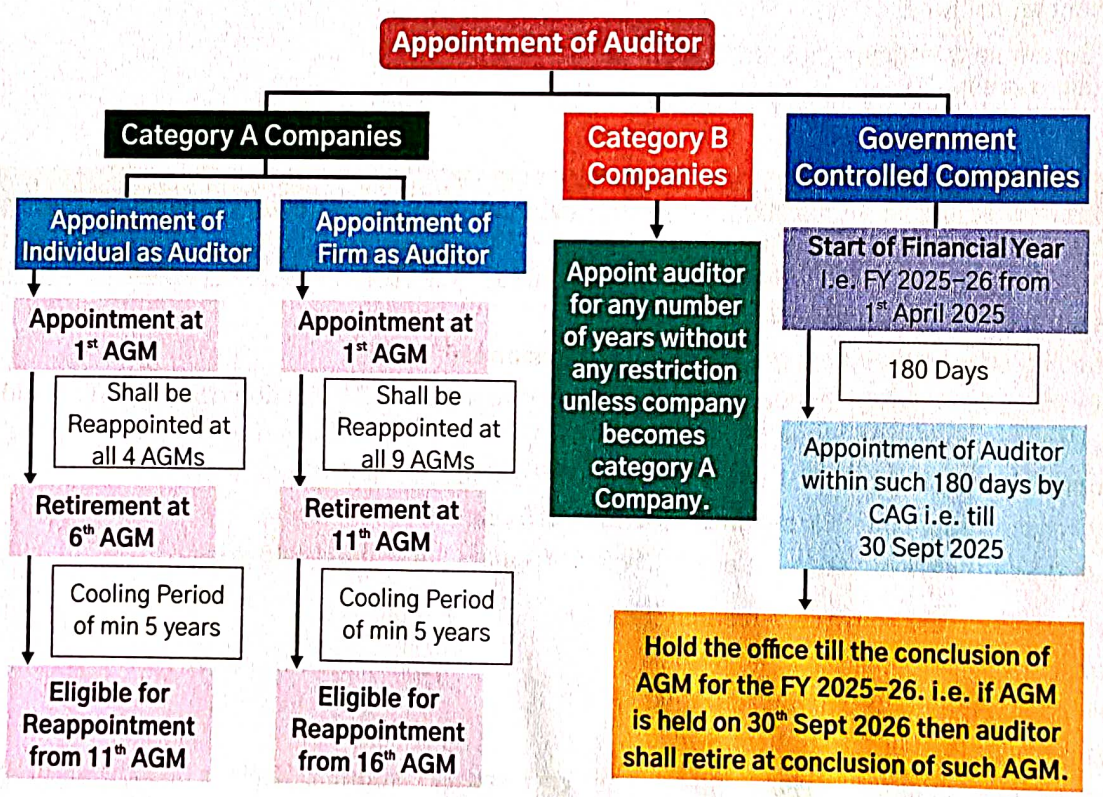
1) Every company shall appoint **regular auditor at 1st AGM.**
2) The auditor as appointed above shall hold the office till the **conclusion of 6th AGM.**
3) The procedure for the selection of the auditors will be as stated in rules. (Rule 3 & 4 of Companies (Audit & Auditors) Rules, 2014 discussed at starting of chapter).
4) **The specified companies shall appoint following auditor for following specified terms.**
   a) Individual auditor can be appointed for **maximum one term of 5 years.**
   b) The firm of auditors can be appointed for maximum **2 terms of 5 years.** i.e. at max for 10 years.
5) **The specified companies in the above case means: (Rule 5)**
   a) Listed Company;
   b) Unlisted Public company having Paid Up Capital ≥ **Rs. 10 Cr.**
   c) Private company having Paid Up Capital ≥ **Rs. 50 Cr.**
   d) Any company other than above having Public Borrowings from Financial Institution, Banks or Public Deposit ≥ **Rs. 50 Cr**
6) **In case of above companies the cooling period for the respective auditors is as follows:**
   a) Individual auditor will have the **cooling period of 5 years** after completion of his term.
   b) Auditor in case of firm will have the cooling period of 5 years after completion of its term.
7) The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors in pursuance of sub-section (2).

139(5): Appointment of the Regular Auditor in case of Government Controlled Company (GCC)

1) In case of government controlled company the regular auditor will be **appointed by CAG.**
2) Such regular auditor shall be appointed by GCC within the **period of 180 days** from the start of FY for which the auditor is appointed.
3) Such regular auditor appointed by CAG shall **hold the office** till conclusion **of next AGM** i.e. till conclusion of AGM for such FY for which he was appointed as auditor.

Chart for Understanding





139(6) & (7): Appointment of First Auditor of company.

Answer Writing Points

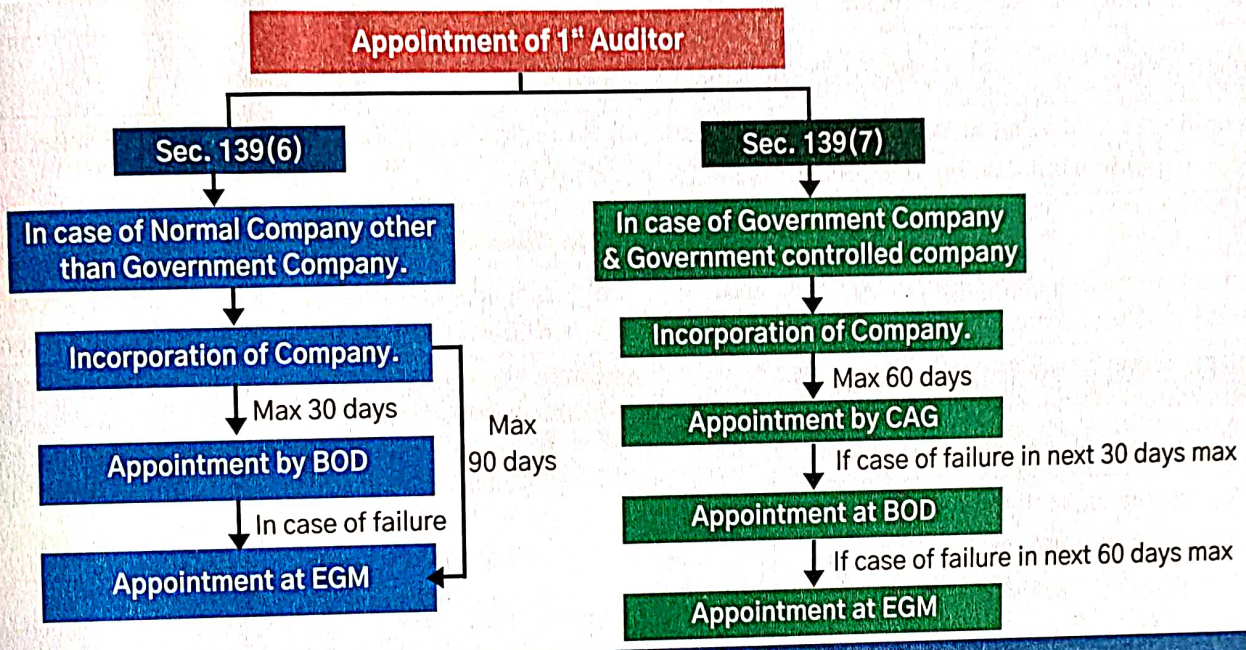
139(6): Appointment of first auditor in case of normal company.

1) BOD shall appoint **1st auditor in 30 days** of incorporation of the company.
2) If BOD fails then **1st auditor shall** be appointed in the EGM within **90 days**
3) The 1st auditor shall **hold office** till **conclusion of 1st AGM.**

139(7): Appointment of 1st auditor in case of government company.

1) 1st auditor shall be appointed by **CAG** within **60 days** from date of registration of company.
2) If CAG fails then **BOD shall appoint 1st auditor** within next **30 days.**
3) If BOD also fails then **1st auditor** shall be appointed in the EGM within **next 60 days**
4) The 1st auditor appointed as above shall hold office till **conclusion of 1st AGM.**

Chart for Understanding

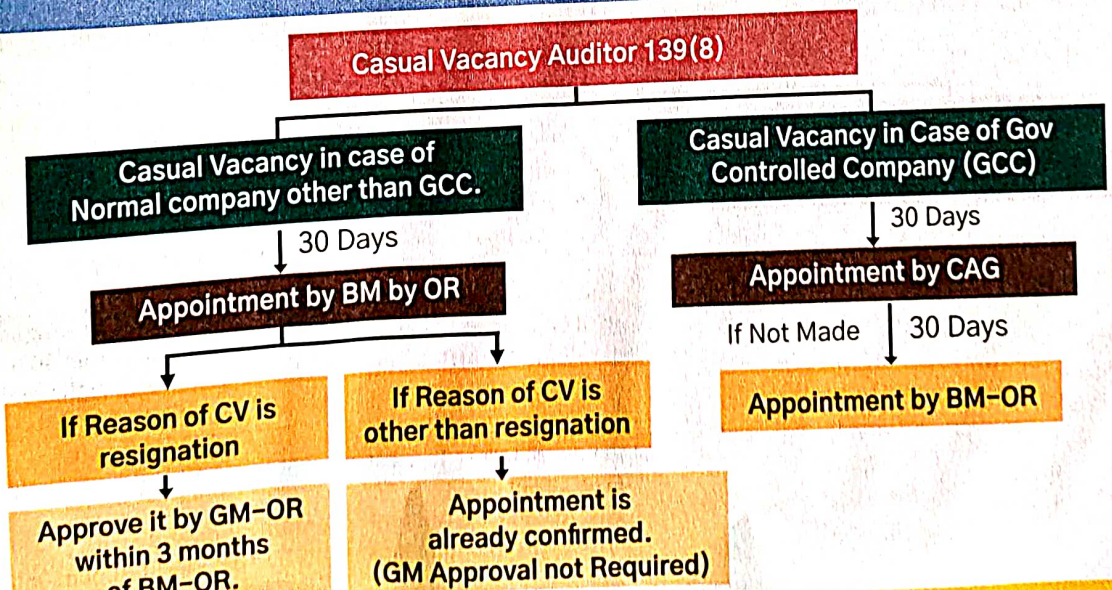


Sec. 139(8): Casual Vacancy Auditor (CVA)

Answer Writing Points

1) CAG shall appoint **CVA** within **30 days** of casual vacancy.
2) If CAG fails to fill CV then BOD shall it in **next 30 days**
3) In case resignation it shall be **approved by GM** within **3 months** of appointment made by BM
4) If GM does not approve such appointment by BM then shall put their **own new CVA**
5) For other reasons of vacancy appointment made by **BM is sufficient**
6) The tenure of such **CVAs** will be up to **conclusion of next AGM**

Chart for Understanding



Sec. 139(9)-(11): Reappointment & Automatic Reappointment of Auditors

Answer Writing Points

1) Auditor have tenure till next AGM can be reappointed. But cannot be reappointed if:
   a) He is **disqualified** b) Gave **notice of his unwillingness** to get reappointed c) **GM-SR** is passed
2) Retiring auditor will be appointed automatically if:
   a) No auditor appointed b) Retiring auditor is not being reappointed as auditor The meeting
3) The **audit committee** constituted under sec.177 shall recommend regarding **appointment** given above and companies shall consider the same.

139(10): Automatic Reappointment of Auditor

The retiring auditor will be **automatically reappointed** if: **a) No auditor is appointed** in his place at such meeting; & **b)** Retiring auditor is not **being reappointed** as auditor at such AGM.

139(11): Recommendation of Audit committee.

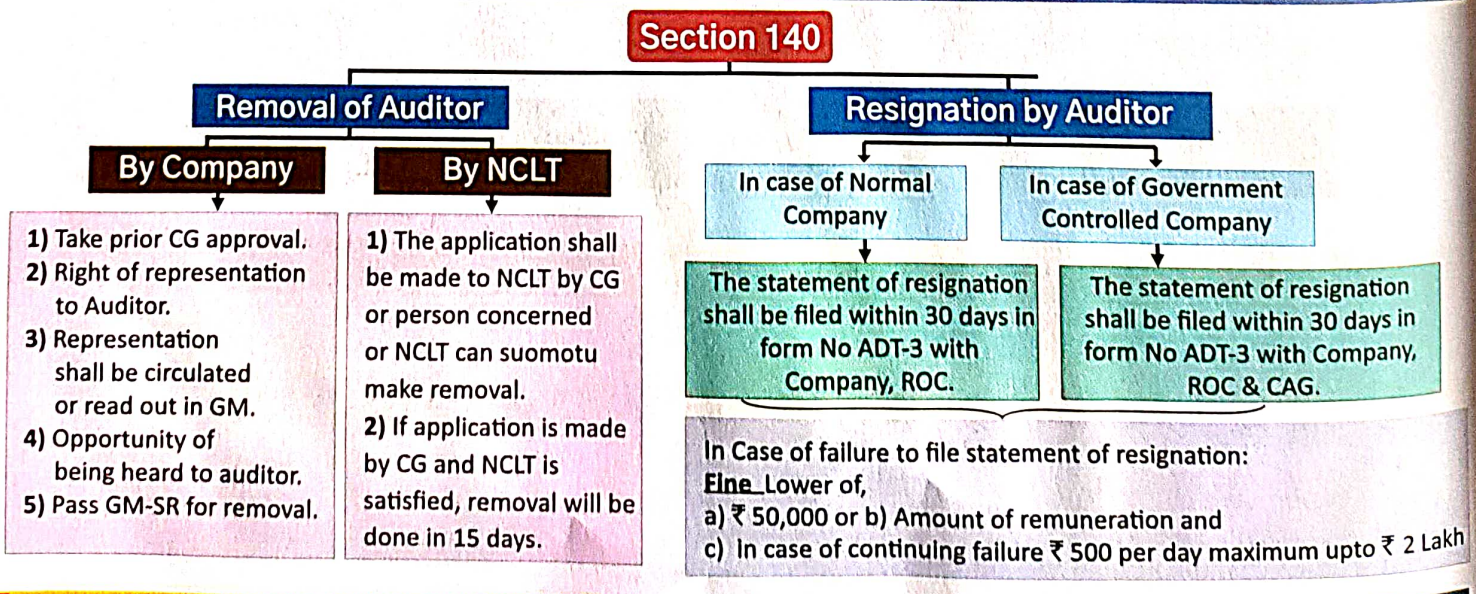
The audit committee is required to be constituted by such big companies as stated in sec 177. In such situation while appointing auditor or casual vacancy auditor the company shall consider recommendation made by such audit committee.

Sec. 140 Removal, resignation of auditor and giving of special notice.

Answer Writing Points

1) Removal of auditor by company:
   a) Take prior CG approval
   b) Right of representation to Auditor.
   c) Representation shall be circulated or read out in GM.
   d) Opportunity of being heard to auditor.
   e) Pass **GM-SR** for removal.
2) Removal of auditor by NCLT:
   a) The application shall be made to CLT by CG or person concerned or CLT can suo motu make removal.
   b) If the application is made by CG and the CLT is, satisfied the removal will be done in **15 days.**
3) In case of resignation by auditor:
   a) In normal company statement of resignation shall be filled in **30 days** in **FORM ADT-3** with company & ROC
   b) In case of Govt., company statement to be filled in 30 days with company, ROC & CAG.
4) Failure will be liable to penalty of **Rs. 50,000** or an amount equal to the remuneration of the auditor, whichever is less. and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, maximum upto **Rs.2 lakh**

Chart for Understanding



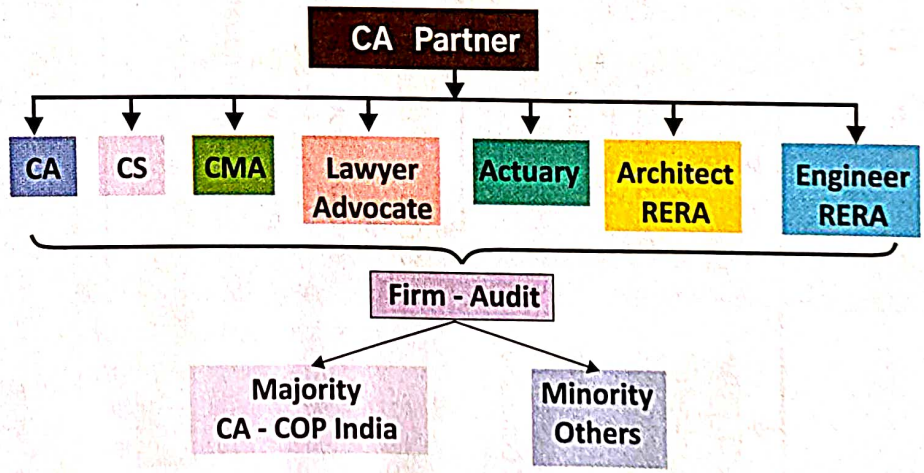
Sec. 141: Eligibility, qualifications and disqualifications of auditors.

Answer Writing Points

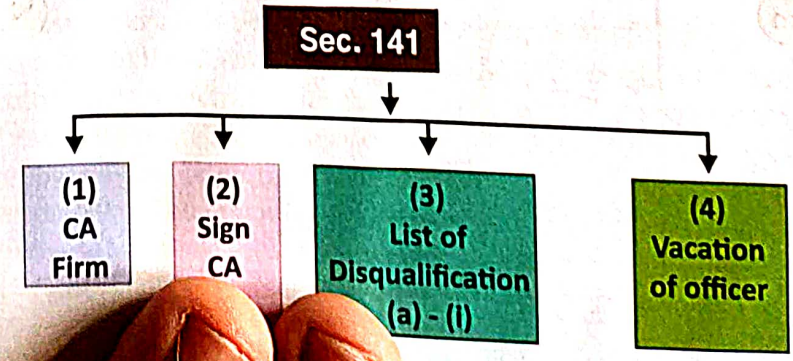
1) **Only CA** is qualified to be appointed as auditor. & **for a firm majority shall be CA**
2) **Signing powers** are given only to **CA'S.**
3) Following person **not** eligible to be appointed as auditor:
   a) A body corporate
   b) An officer or employee
   c) Person who is partner or is in employment in office
   d) A person who or his relative :
      (i) is **holding any security of or interest** in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
      Provided that the relative may hold security or interest in the company of face value such sum as may be prescribed; **(face value upto 1 lakh)**
      (ii) is **indebted to** the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of such amount as may be prescribed; **(i.e. Rs. 5 lakhs)** or
      (iii) has **given a guarantee** or provided **any security in connection with the indebtedness** of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, for such amount as may be prescribed; **(i.e. Rs. 1 lakh)**
   e) Person having **business relationship**
   f) Person whose relative is **KMP or Director** in such company
   g) A person having **full employment** elsewhere
   h) A person **convicted by court** due to fraud
   i) Person who provided **services u/s 144.**

Chart for Understanding

1



2



Sec. 141– Dissqualification

3

- (1) CA–Firm CA
- (2) Firm majority CA to be Indian
- (3) (a)– (i)
- (4) Vacation

(3) (a)– (i):

- (a) Body Corporate (LLP - Allowed)
- (b) Employee, Officer of Company
- (c) Employee, Partner
  - of Employee or Officer of Company
- (d) Divided Disqualification A, R, P - Hold Sub Ass
  - SH ₹ 1
    - Exception R ≤ ₹ 1 Lakh FV
  - Indebted
    - A R ≤ 5 L P Individually
  - CS
    - A R < ₹ 1 Crore P Individually
- (e) Special Business
- (f) Relative of employee officer
- (g) Employment CA-COP / Max Audit 30
  - Max 20
    1) Public Co.
    2) Pvt. Co. ≥ 100 Cr.
    3) Dormant Co. ≥ 100 Cr.
    4) Small Co.
    5) OPC Co.
  - Max 10
    1) Pvt < 100 Cr.
    2) Dormant < 100 Cr.
    3) OPC Co.
    4) Small Co.
- (h) Fraud 10 yrs. not elapsed Disqualified All companies
- (i) Invalid services 144 prohibited services

4

Max number of audits 30 as per sec 141(3)(g) + view of ICAI

Sec 141(3)(g): Maximum 20 audits in total of:

1) Public company
2) Private Co having PC ≥ Rs 100cr.
3) Dormant Co having PC ≥ Rs. 100 cr.
4) *Small Co having PC ≥ Rs. 100 cr.
5) #OPC having PC ≥ Rs. 100 cr.

ICAI guidelines.
Remaining (normally 10)

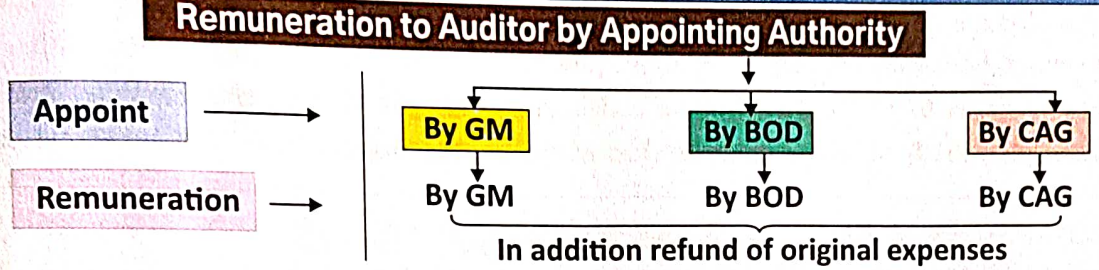
1) #OPCs having PC < Rs 100cr.
2) Dormant Cos. having PC < Rs 100cr.
3) *Small Cos. having PC < Rs 100cr.
4) Pvt. Cos. having PC < Rs 100cr.

142: Remuneration of auditors.

Answer Writing Points

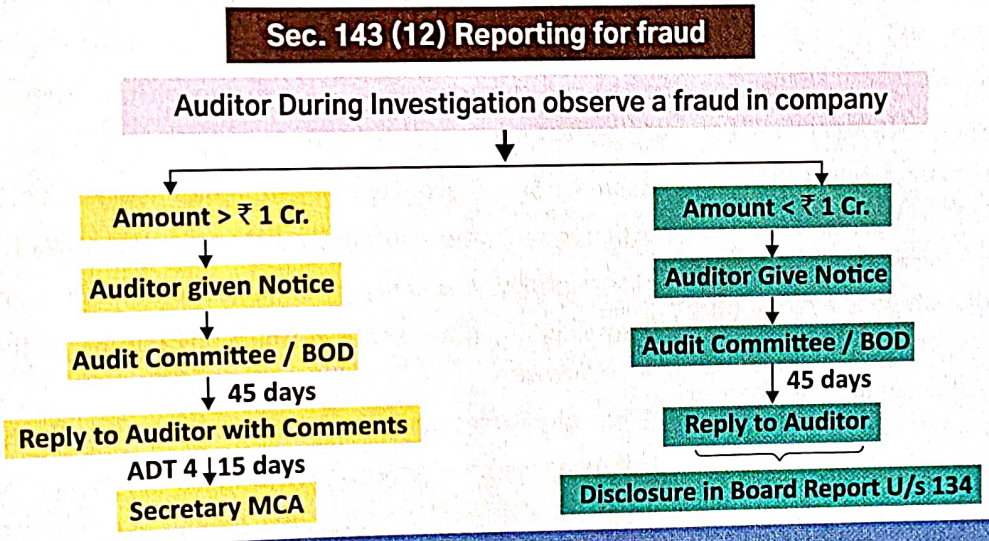
1) Auditor **appointed in GM** then GM decides remuneration
2) If **appointed by BOD** then BOD shall decide remuneration of auditor.
3) If auditor done any expenses for audit same shall be refunded to him
4) Remuneration not include any remuneration paid for any other services.

Chart for Understanding



Sec.143 (12) : Reporting for fraud

Chart for Understanding



Answer Writing Points

1) Auditor during investigation observe a fraud in a company;
   a) If amount is more than **1 crore;**
      i) Auditor shall report the matter to **Audit committee/ BOD.**
      ii) Immediately but **not later than 2 days** of his knowledge of fraud
      iii) Audit committee/ BOD shall reply to auditor with comments within **45 days.**
      iv) and same shall be filed in **ADT-4 within 15 days** to secretary of MCA.
      v) Auditor **fails** to get reply or observations from Board or Audit Committee **within 45 days,**
      vi) Auditor **shall forward** his report to the **CG** along with a note containing details of his report that was earlier forwarded to the Board or the Audit Committee for which he has **not received any reply or observations;**
      vii) The report shall be sent to **Secretary, (MCA)** in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;
      viii) The report shall be on **letter-head of auditor** with postal address, e-mail address & contact telephone number or mobile number and be signed by the auditor with his seal and shall indicate his Membership Number; and
      ix) The report shall be in the form of a statement as specified in **Form ADT-4**
   b) If amount is less than **1 crore;**
      i) Auditor shall give a notice of same to Audit committee/ BOD.
      ii) Audit committee/ BOD shall reply to auditor with comments **within 45 days.**
      iii) The disclosure of the same shall be given in Board report u/s 134.

2) If any **auditor, cost accountant or company secretary in practice** do not comply with the provisions of Sec 143(12), he shall:
   a) In case of a **listed company**, be liable to a penalty of ₹ **5Lakh**; and
   b) In case of **any other company**, be liable to a penalty of ₹ **1 Lakh.**

Sec. 144: Auditor not to render certain services.

Answer Writing Points

Auditor **not to render** certain services which includes
a) accounting and book keeping services; **b)** internal audit;
c) design and implementation of any financial information system; **d)** actuarial services;
e) investment advisory services; **f)** investment banking services; **g)** rendering of outsourced financial services;
h) management services; and **I,** any other kind of services as may be prescribed

144: Explanation.

For the purposes of this sub-section, the term **"directly or indirectly"** shall include rendering of services by the auditor,—

(A) In case auditor being an individual, the term directly or indirectly shall include rendering of services :

a) either by himself or
b) through his relative [see para 2.77] or
c) through any other person connected or associated with himself
d) through any other entity, whatsoever, in which such individual has significant influence or
e) through any other entity, whatsoever, in which such individual has control or
f) through any other entity whose name or trade mark or brand is used by such individual.

(B) In case of auditor being a firm (including LLP incorporated under the LLP Act) the term directly or indirectly shall include rendering of services:

a) either by itself or b) through any of its partners or
c) through its parent or d) through its subsidiary or
e) through its associate entity or
f) through any other entity in which the firm has significant influence or
g) through any other entity in which the firm has control or
h) through any other entity whose name or trade mark or brand is used by the firm
i) through any other entity in which any partner of the firm has significant influence
j) through any other entity in which any partner of the firm has control
k) through any other entity whose name or trade mark or brand is used by any of its partners. It may be noted that the expressions, 'associate entity', 'associated person', 'connected person' are used in the Explanation to section 144 but are not defined in the Act.

Sec. 145: Auditor to sign audit reports, etc.

Answer Writing Points

1) Auditor shall **sign** report
2) Auditor shall **sign & certify** document in relation to company
3) Auditor shall **discuss any qualification,** matters & comments on FS in GM
4) Auditor shall make such **report &document** for inspection by members.

Sec.146: Auditors to attend general meeting.

Answer Writing Points

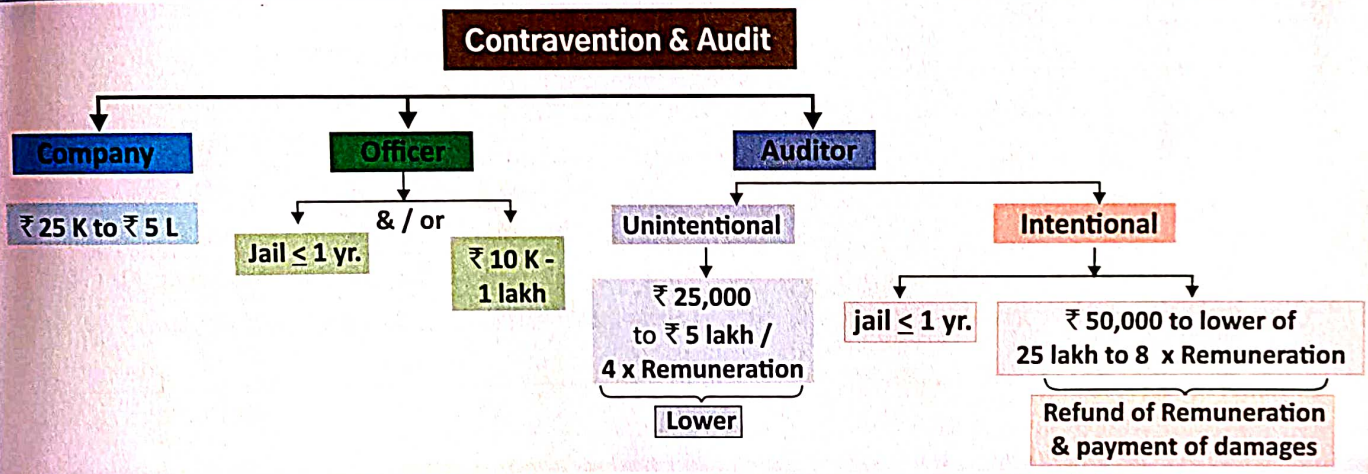
1) **All the notices of GM** shall also be sent to auditor of company.
2) Auditor shall **attend any GM** by himself or through his representative.
3) Auditor shall have **right to be heard** in such GM in any matter which concerns him as auditor.

Sec.147: Punishment for contravention.

Answer Writing Points

1) If any provision of **section 139 - 146** is contravened the consequences will be as follows.
   a. The **company** will be punishable for the fine of **Rs.25000 to Rs.5 lakhs**; and
   b. **Every officer in default** will be liable for fine which shall not be less then **Rs.10000** to **Rs. 1 lakh**
2) If auditor of company contravenes any provision of **sec 139, 143, 144, 145** then the auditor is liable for following consequences.
   a) In case of **unintentional** default- he shall be punishable with:-
   i) Minimum fine:- Rs. **25000**
   ii) Maximum fine:- **lower of the following** - a) Rs **5 lakhs** or b) **4 x Remuneration** of the auditor.
   b) In case default made with an **intention to deceive** the company or its shareholders or creditors or tax authorities he shall be punishable with-
   i) **Jail up to 1 year**; and ii) Fine: a) Minimum fine:- **Rs.50,000** b) Maximum fine:- **Lower of the following** Rs.**25 lakh** or; **8 x Remuneration** of the auditor

Chart for Understanding



Sec.148: Central Government to specify audit of items of cost in respect of certain companies.

Answer Writing Points

1) **CG** shall decide & specify companies to which cost audit shall be applicable (normally involved in production of specified goods or services)
2) CG shall also state manner in which the cost audit shall be conducted.
3) **Cost audit** shall be conducted by **Cost Accountant.**
4) **BOD** shall appoint & **decide the remuneration** of the cost auditor.
5) **Auditor u/s 139** shall **not** conduct cost audit & it shall be complied with cost accounting standards.
6) Cost audit report to be given **to BOD.**
7) If the section is contravened the consequences are as follows.

The company and every officer in default shall carry the same liability as specified in sec 147(1) as follows.
   a) The company will be punishable for the fine of **Rs. 25000 to Rs 5 lakhs**; and
   b) Every officer in default will be liable for fine which shall not be less then **Rs.10000** to **Rs. 1 Lakh**

The cost auditor in default will be liable to penalty u/s 147(2) to (4) as follows:
   a) Fine of **Rs. 25000 to Rs 5 lakhs** or **4 x Remuneration** of the auditor. in case of unintentional default.
   b) In case of intentional default auditor will be punishable with:
   i) **Jail up to 1 year**; and ii) Fine: a) Minimum fine:- **Rs.50,000** b) Maximum fine:- **Lower of the following** Rs.**25 lakh** or; **8 x Remuneration** of the auditor

11 FOREIGN COMPANY

Overall Section List Under the Chapter

Sec.	Details
379.	Application of Act to Foreign Companies
380.	Documents, etc., to be Delivered to Registrar by Foreign Companies
381.	Accounts of Foreign Company
382.	Display of Name, etc., of Foreign Company
383.	Service on Foreign Company
384.	Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection
385.	Fee for Registration of Documents
386.	Interpretation
387.	Dating of Prospectus and Particulars to be Contained Therein
388.	Provisions as to Expert's Consent and Allotment
389.	Registration of Prospectus
390.	Offer of Indian Depository Receipts
391.	Application of Sections 34 to 36 and Chapter XX
392.	Punishment for Contravention
393.	Company's Failure to Comply With Provisions of This Chapter Not to Affect Validity of Contracts, etc.
393A.	Exemptions under this Chapter

E-Forms Companies (Registration of Foreign Companies) Rules, 2014

E-Form	Details	Relevant section	Rule No
FC-1	Information to be filed by company with ROC	380	3
FC-2	Return for alteration of information or documents filed with ROC	380	3
FC-3	Filing of annual accounts with list of all Place of Business in India	381	6
FC-4	Annual Return of Foreign Company	384	7
FC-5	Nomination by IDR holder	390	13

Sec 379: Application of Act to Foreign Companies

Answer Writing Points

Unless an exemption is explicitly granted via Order and such Order is placed before both Houses of Parliament, **Sec 380 to 386 (both included) & Sec 392** and **393** shall apply to Foreign Companies. If minimum 50% of PUC of above mentioned Foreign Company is held by following then provisions of Companies Act, 2013 shall apply to such Company:

a) One or more citizen or citizens of India; or/&

b) One or more companies in India; or/&

c) One or more bodies corporate in India.

Sec 380: Document delivered to Register by foreign Companies

Answer Writing Points

1) Any Foreign company whose principal **place of business** is in India shall file Form **FC-1** within **30 days** along with following details

- **a) Constitutional** and other details
  - **i.** Constitutional documents **ii.** MOA / AOA
  - **iii.** COI **iv.** Bye laws **v.** Other information
- **b) Regarding office / Place of Business**
  - **i.** Full address of Registered office/ Head office in foreign
  - **ii.** Principle Place of business in India
  - **iii.** Old Place of business – open/closed
- **c)** Document **regarding personal**
  - **i.** List of BOD and CS
  - **ii.** Name and address of person responsible in India
  - **iii.** Declaration by BOD/Officer qualification to form company in India

2) All such documents shall be filled with **apex ROC of Delhi** and it required with Registered office ROC.

Sec 381: Accounts of Foreign Company

Answer Writing Points

1) Every Foreign company having a place of business in India shall **maintain the following A/c's**

- **a)** Balance sheet, P&L of every POB **separately.**
- **b)** Balance sheet, P&L **consolidate of all POB** in India.
- **c) Consolidated FS of Head office** of such a foreign company.

2) In addition to above following documents should be maintained as prescribed by CG:

- **a) Related parties** transaction register
- **b) Repatriation** register
- **c)** Register of **fund transfer**

3) The **audit** of all above documents shall be conducted by CA in practice

4) All the above documents shall be filled with ROC **within 6 months of close of Financial Year.**

Sec 382: Display of Name, etc., of Foreign Company

Answer Writing Points

1) Every foreign company shall conspicuously exhibit following 3 things at the places mentioned in point 2
   a) **Name** of company
   b) **Country** of incorporation
   c) **Liability** of its member
2) The above things shall be disclosed at following places:
   a) Every **offer document**
   b) Every **official document** (letter heads, biils)
   c) **Outside** of every POB

Sec 383: Service on Foreign Company

Answer Writing Points

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served,

1) if addressed to any person whose name and address have been delivered to the ROC u/s 380; and
2) left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

384 : Debentures, annual return, registration of charges, books of account and their inspection

Answer Writing Points

The following sections shall apply mutatis mutandis to Foreign company unless provided otherwise:

1) Section **71** related to Debentures
2) Section **92** relating to annual returns & sec **135** of CSR
3) Section **128** relating to Books of Accounts to the extent of requiring it to keep at its principal POB in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.
4) Sec **135** related to Corporate Social Responsibility subject to such exceptions, modifications, adaptations.
5) Chapter VI (Sec **77** to **87**) to charges on properties which are created or acquired by any foreign company.
6) Chapter XIV (Sec **206 to 240**) relating to inspection, inquiry & investigation.
7) Companies (Registration of Foreign Companies) Rules, 2014
   File **Annual Return** in **FC-4** along with such fee as prescribed with **ROC ≤ 60 days** from the last day of FY.

Sec 385: Free for Registration of Document

Answer Writing Points

Fees as may be prescribed shall be paid to the Registrar for registering any document.

Sec 386: Interpretation

Answer Writing Points

According to **section 386** of the Companies Act, 2013, for the purposes of Chapter XXII of the Companies Act,2013 (Companies incorporated outside India), expression **"Place of business"** includes a share transfer or registration office. Accordingly, to qualify as **'foreign company'** a company must have the following features:

a) it must be **incorporated outside India;** and

b) it should have a **place of business in India.**

c) That place of business may be either in its **own name or through an agent or may even be through the electronic mode;** and

d) It must **conduct a business activity of any nature in India.**

i) Therefore, a company incorporated outside India having a share registration office at Mumbai will be treated as a foreign company provided it conducts any business activity in India.

ii) In the case of a company incorporated in Singapore for the purpose of carrying on business in Singapore will not fall within the definition of a foreign company. Its incorporation by Indian citizen is immaterial. In order to be a foreign company it has to have a place of business in India and must conduct a business activity in India.

387 : Dating of prospectus and particulars to be contained therein.

Answer Writing Points

1) The details of the **constitutional documents** of the foreign company.

2) The **Law under which** such a foreign company is incorporated.

3) The **address where such a foreign law** and its provisions are available for inspection.

4) The **date** on which and the **country** in which such a foreign company is incorporated.

5) The address of principal **Place of Business** in India if any.

6) Any provision which exempts foreign company from above disclosures is void in law.

7) Company shall **comply** with the following:

a) Chapter Foreign Company

b) Provisions of Sec.388

Sec 388: Provisions as to Expert's Consent and allotment

Answer Writing Points

The Foreign company shall not file prospectus with **ROC** or circulate it to public unless

1) Expert opinion is being received with his written consent regarding circulation of such statement.

2) Provisions of section 33–section 40 are made applicable to such a prospectus and its application.

Sec 389: Registration of prospectus

Answer Writing Points

1) Every Foreign company shall not issue the prospectus to public unless following conditions are complied
   a) A copy of prospectus **certified by chairman and by 2 directors** with approval of managing body
   b) On the face of prospectus, it is mentioned that it is **delivered to ROC**
   c) It complies with **section 388**
2) The prospectus shall be annexed with:
   a) **Written consent of expert** u/s 388
   b) **Copy of a contract** with MD or manager
   c) **Material contracts** of ordinary business in last 2 years
   d) **Underwriting agreements** and details
   e) **Power of attorney** of agent or director.

390: Offer of Indian Depository Receipts.

Answer Writing Points

CG may make rules for the following:

1) Offer of Indian Depository Receipts.
2) They shall make rule w.r.t. disclosures required to be made in prospectus or letter of offer issued in connection with Indian Depository Receipts.
3) Manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian & underwriters; &
4) Manner of sale, transfer or transmission of Indian Depository Receipts by a company incorporated or to be incorporated outside India irrespective of whether the company has or has not established, or will or will not establish, any place of business in India.

Sec. 391: Application of sections 34 to 36 and Chapter XX.

Answer Writing Points

391(1): applicability of the provisions of the liability :

The provisions relating to Civil liability/Criminal Liability for misstatement in prospectus/Fraudulently inducing to invest (Sections 34 to 36) shall apply:

a) To the issue of a prospectus by a company incorporated outside India [See section 389] as they apply to prospectus issued by an Indian company.

b) The issue of Indian Depository Receipts by a foreign company.

- Section 34 deals with criminal liability for mis-statements in prospectus
- Section 35 deals with Civil Liability for mis-statement in prospectus
- Section 36 deals with punishment for fraudulently inducing persons to invest money

391(2): Applicability of the provisions for winding up.

Co Act 2017 (2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

Sec. 392: Punishment for Contravention

Answer Writing Points

Where a foreign company **fails** to comply with any of the provisions of this Chapter (Chapter XII):

1) the foreign company shall be punishable:

a) with fine which shall not be less than ₹ **1,00,000** but which may extend to ₹ **3,00,000;** and

b) in the case of a continuing offence, with an additional fine which may extend to ₹ **50,000** for every day during which the default continues;

and

2) every **officer who is in default** shall be punishable:

with fine which shall not be less than **25,000** but which may extend to **5,00,000**.

393: Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc.

Answer Writing Points

1) Shall not affect the validity of any contract or any act entered into by the company or its liability to be sued
2) Company shall not be entitled to bring any suit, claim any set-off, make any counter- claim or institute any legal proceeding until the company has complied with the provisions of this Act applicable to it.

393A – Exemptions under this Chapter

Answer Writing Points

The Central Government may, by notification, exempt any class of–

1) foreign companies;
2) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,.

as may be specified in the notification, from any of the provisions of this Chapter and a copy of every such notification shall, as soon as may be after it is made, be laid before both Houses of Parliament.

12 LLP ACT,2008

Sec.5 – Partners

Answer Writing Points

Any individual or body corporate may be a partner in a LLP.

However, an individual shall not be capable of becoming a partner of a LLP, if—

a) he has been found to be of **unsound mind** by a Court of competent jurisdiction and the finding is in force;

b) he is an **undischarged insolvent**; or

c) he has applied to be **adjudicated as an insolvent** and his application is pending.

Sec.6 – Minimum number of partners

Answer Writing Points

1) Every LLP shall have at least **two partners.**

2) If at any time the number of partners of a LLP is **reduced below 2** and the LLP carries on business for **more than 6 months** while the number is so reduced,

   a) the **person**, who is the **only partner** of the LLP during the time that it so carries on business **after those 6 months** and

   b) has the **knowledge of the factthat** it is carrying on business with him alone,

   c) shall be **liable personally** for the obligations of the LLP incurred during that period.

Sec.7 – Designated partners

Answer Writing Points

1) Every LLP shall have **2 designated partners.** One of them shall be resident.

2) In case if both partners are **artificial persons**, then there **representators** will be **designated partner.**

3) If LLP agreement or incorporation documents states the name of designated partners then such a person shall be appointed as designated partner.

4) The **individual** who is becoming **designated partner** shall give his **consent** and same should be filled by LLP with **ROC** within **30 days.**

5) The designated partner shall hold **DPIN** (Designated Partner Identification Number) which is same as **DIN** (Director Identification Number).

Sec.8 – Liabilities of Designated Partner

Answer Writing Points

1) The Designated Partner is **liable for all the formalities** and **compliances** of the LLP such as filling of documents, returns, etc.

2) He is also liable to penalties imposed on LLP for the contravention of LLP.

Sec.9 - Changes in Designated Partners

Answer Writing Points

1) In case of vacancy of designated partner LLP shall fill up the same within **30 days** and all the provisions of designated partner will apply to such a new partner.
2) If in case all the designated partner has vacated their positions then all the remaining partners will be deemed to be designated.

Sec.10 - Punishment for contravention of sections 7 and 9

Answer Writing Points

1) If the **LLP contravenes** the provisions of **sub-section (1) of section 7** (meaning that the number of designated partners are less than 2 or none of the designated partner is a resident in India),
   a) the **LLP and its every partner** shall be liable to a penalty of **Rs. 10,000** and
   b) in case of **continuing contravention**, with further penalty of **Rs. 100 per day** subject to maximum **Rs. 1,00,000** for LLP and **Rs. 50,000** for every partner of such LLP.
2) If the **LLP contravenes** the provisions of **sub-section (4) of section 7** (failure to file the consent of appointment of designated partner within **30 days** of his appointment),
   a) the **LLP and its every designated** partner shall be liable to a penalty of **Rs. 5,000** and
   b) in case of **continuing contravention**, with further penalty of **Rs. 100 per day** subject to **maximum Rs. 50,000** for LLP and **Rs. 25,000** for every designated partner.
3) If the LLP contravenes the provisions of sub-section (5) of section 7 or section 9.

Sec.11 - Incorporation Document

Answer Writing Points

1) LLP should be constituted with **legal object, legal information.**
2) The **two or more** persons want to carry a **lawful business** shall come together to form LLP.
3) The person shall file with the **ROC** and incorporation document consisting of
   a) The form of LLP
   b) The name of LLP
   c) The proposed business of LLP (object).
   d) Address of LLP
   e) Name and address of partners and designated partners.
   f) The amount of contribution and sharing
   g) Other information as may be prescribed.
4) The above documents shall be authenticated by **CA / CS / CMA** while filling with **ROC.**
5) Also file the **details of subscribers** who signs the incorporation.
6) The above document should be filed with **ROC** and ROC shall issue **Certificate of Incorporation (CIN) within** 14 days.
7) In case a person gives a **false information** or **false statement** then **jail is up to 2 years and fine of Rs.10000 to** Rs.5 **lakhs.**

Sec.12 - Incorporation by Registration

Answer Writing Points

1) When the requirements **imposed** by clauses (b) and (c) of sub-section (1) of section 11 have been complied with, the Registrar shall retain the incorporation document and, unless the requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within a period of **14 days:**
   a) **register** the incorporation document; and
   b) **give a certificate** that the LLP is incorporated by the name specified therein.
2) The Registrar may accept the statement delivered under clause (c) of sub-section (1) of section 11 as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
3) The certificate issued under clause (b) of sub-section (1) shall be **signed by the Registrar** and **authenticated** by his **official seal.**
4) The certificate shall be **conclusive evidence** that the LLP is incorporated by the name specified therein.

Sec.13 - Registered office of LLP and change therein

Answer Writing Points

1) The Registered office of LLP should be a place of communication of all official documents.
2) The documents should on LLP or its partners by **registered post or speed post** on its registered office.
3) LLP may change the place of Registered office and **file** with **ROC** details of such a new place.
4) In case of **contravention** of section partners is liable to **Rs. 500 per day maximum up to Rs. 50000.**

Sec.14 - Effect of Registration

Answer Writing Points

On Registration, LLP shall by its name, be **capable of -**

a) **Suing** and **being sued;**
b) **Acquiring, owning, holding and developing or disposing** of property, whether movable or immovable, tangible or intangible;
c) Having a **common seal,** if it decides to have one; and
d) **Doing and suffering** other acts and things as bodies corporate may lawfully do and suffer.

Sec.15, 16 & 17 - Name, Reservation

Answer Writing Points

of Name & Rectification of name of LLP

1) The name of the LLP should contain the words LLP as a Limited Liability Partnership.
2) Following names are not allowed:
   a) Similar nature
   b) Offensive i.e., abusive
   c) Connected with Govt. or undesirable as per Govt.

3) The application for the name should be made to registrar for new name or change in name.
4) The ROC will allot a name and it should be represented for 3 months.
5) If LLP change its name and obtains a new name it shall notify to ROC within 15 days and ROC will issue fresh certificate of incorporation with new name. such a new name shall be incorporated in LLP agreement.
6) If the name of LLP is identical or similar to the existing name of company or LLP then CG can pass the order to alter such name, such a alteration should be executed within 3 months.

Sec.22 and 23 - Eligibility and Relationship of partner

Answer Writing Points

1) The person can be partner of LLP as per incorporation document or as per LLP agreement.
2) The partner shall have **mutual rights and duties** as per there LLP agreement in between the partners and in between the LLP and the partners.
3) In case of **alteration of LLP agreement** it should be **filed with ROC** in such a form and manner as may be prescribed.
4) In **absence of LLP agreement** mutual rights and duties shall be decided as per **schedule I.**

Sec.24 - Cessation of partnership interest

Answer Writing Points

1) The **partner** can become **cease to be a partner** due to **death, unsound mind, Insolvency, Resignation**, etc.,
2) When a person cease to be a partner he shall give notice to LLP in writing of not less then **30 days.**
3) The LLP shall give **notice to ROC** about cessation of partners within **30 days.**
4) The discharging partner will be eligible to share of his capital and profit to be **withdrawn** from LLP.

Sec.25 - Registration of changes in partners

Answer Writing Points

1) **Every partner** shall inform LLP about change in his name or address within **15 days.**
2) The LLP shall file the change of partner such as **name, address, cessation** within **30 days.**
3) The **notice to ROC** shall be given with such as fees as may be prescribed and sign of designated partner and consent of new partner if any.
4) In case of contravention the **LLP and its partners** will be liable for penalty up to **Rs. 10000.**

Sec. 26- 30

Answer Writing Points

Liability of LLP

1) The LLP is **bound** by any **legal acts** done by the partner.
2) LLP is **not bound** by the **acts of the partner** if
   a) Partner works **beyond** his authority intentionally.
   b) Partner **involves in wrongful acts or omission**
   c) Where obligation is personal obligation of the partner

3) The liability of the LLP should be **paid only out of the property of the LLP.**

Liability of Partner

4) If partner executes any legal acts, then his liability is limited up to the amount promised in LLP.

5) If partner executes any illegal acts such as:
   a) Defraud the creditors, third parties, LLP.
   b) Wrongful or negligent act intentionally
   c) Then his **liability will be unlimited plus jail up to 5 years and fine of Rs. 50000 to Rs. 5 lakhs.**

6) In case of partner by holding out he will be liable as follows:
   a) **Compensation** to such a third person to whom he represents
   b) **Unlimited liability and penalty** as mentioned above for illegal, defrauding wrongful activity.

Sec.31 - Whistle blowing

Answer Writing Points

1) The whistle blowing means the **inferior partner** can **complain** about actions of **superior partner** and their **coercion or undue influence.**
2) Second form of whistle blowing is partner can apply to **NCLT** to reduce their **damages and consequences** and **penalties** which is as good as **surrender to NCLT.**
3) **NCLT** can reduce such **penalty or waive** off such **fine or imprisonment** if it is satisfied that:
   a) Such a partner can provide **useful information during investigation.**
   b) And above information can **lead to conviction of defaulting partner.**
4) No other partner shall **harass or suspend or discharge** the partner giving such information.

Sec.33 - Obligation to Contribute

Answer Writing Points

1) The **obligation** of a partner **to contribute** money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.
2) **A creditor** of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, **without notice** of any compromise between partners, may **enforce the original** obligation against such partner.

Sec.34 - Maintenance of books of account, other records and audit, etc.

Answer Writing Points

1) **Proper Books of account:**
   a) The LLP shall maintain such proper books of account as may be prescribed
   b) relating to its affairs for each year of its existence
   c) on cash basis or accrual basis and
   d) according to double entry system of accounting and
   e) shall maintain the same at its registered office

f) for such period as may be prescribed.

2) **Statement of Account and Solvency:**

a) Every LLP shall,

b) within a period of 6 months from the end of each financial year,

c) prepare a Statement of Account and Solvency

d) for the said financial year as at the last day of the said financial year

e) in such form as may be prescribed, and

f) such statement shall be signed by the designated partners of the LLP.

3) **Every LLP** shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to sub-section (2) with the **Registrar** every year in such form and manner and accompanied by such fees as may be prescribed.

4) The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central **Government** may, by notification in the **Official Gazette**, exempt any class or classes of LLP from the requirements of this sub-section.

5) Penalty for non-compliance of provisions of sub-section 3- LLP - **₹100 per day subject to maximum** ₹1,00,000 **Every Designated Partners - ₹100 per day subject to maximum ₹50,000.**

6) Penalty for non-compliance of provisions of sub-section 1, 2 & 4 - LLP - not less than **₹25,000** which may extend to **₹ 5 Lakhs**. Every designated partner -not less than **₹10,000** which may extend to **₹1 Lakh.**

Sec.34A - Accounting and auditing standards

Answer Writing Points

The **Central Government** may, in consultation with the National Financial Reporting Authority constituted under **section 132** of the Companies Act, 2013,—

a) prescribe the standards of accounting; and

b) prescribe the standards of auditing, as recommended by the ICAI

Sec.35 - Annual Return

Answer Writing Points

1) **Every LLP** shall file an **annual return** duly authenticated with the Registrar within **60 days** of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

2) **Penalty** for non-filing of annual return:

a) **LLP :Rs.100 per day subject to maximum Rs.1,00,000**

b) **Every Designated Partners - Rs.100 per day subject to maximum Rs.50,000**

Sec.36 - Inspection of documents kept by registrar

Answer Writing Points

The incorporation document, name of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each LLP with the Registrar shall be **available for inspection** by any person in such manner and on payment of such fee as may be prescribed.

Sec.37 – Penalty for false statement

Answer Writing Points

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement—

a) which is false in any material particular, knowing it to be false; or

b) which omits any material fact knowing it to be material,

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to 5 lakh rupees but which shall not be less than 1 lakh rupees.

Sec.38 – Power of registrar to obtain information

Answer Writing Points

1) ROC may require any person including any present or former partner or designated partner or employee of a LLP to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.
2) In case such persons does not answer such question or make such declaration or supply such details asked for by ROC within a reasonable time or when ROC not satisfied with the reply or declaration or details or particulars provided by such person, ROC shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.
3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than Rs. 2000 but which may extend to Rs. 25000.

Sec.39 – Compounding of Offences

Answer Writing Points

1) A Regional Director or any officer below the rank of a regional director who would be authorized via the central government in the same concern might compound the offences that would be punishable with a fine.
2) A Regional Director or any officer below the rank of a regional director who would be authorized via the central government may direct any partner, designated partner or other employee of the LLP to file or register such return, account or other document on payment of additional fees.
3) Application towards compounding would be incurred to the ROC first, and then ROC would forward that to RD including his comment in this field.
4) For no case when the amount liable to file on the compounding would surpass the max amount of penalty which might be levied beneath the same act towards the crime so compounded.
5) No compounding of an offence would be performed when that offence was compounded in the three years former to the date of this application to compounding.
6) Where any offence is compounded, whether before or after institution of any prosecution, intimation given to ROC within a period of 7 days from date on which the offence is so compounded.
7) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.

Sec.42 – Partner's transferable interest

Answer Writing Points

1) The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part.
2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP.
3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP, or access information concerning the transactions of the LLP.

Sec.55 – 58 – Conversion of LLP

Answer Writing Points

1) Following are the regulation for conversion of LLP:
   a) For conversion of **firm into LLP** comply with **Schedule II of LLP Act.**
   b) For conversion of **private company into LLP comply with Schedule III of LLP Act.**
   c) For conversion of **unlisted public company into LLP** comply with **Schedule IV of LLP Act.**
2) **ROC** will issue a certificate of incorporation for new LLP and the same shall be filled with old authorities within 15 days.
3) After such conversion following things will be transferred:
   a) Existing assets and liabilities
   b) Employment contracts
   c) Pending litigations
   d) LLP will be liable for old acts of such entity before conversion.

Sec.59 – Foreign limited liability partnerships

Answer Writing Points

The **Central Government** may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed.

Sec.60 – Compromise or arrangement of LLP

Answer Writing Points

1) Where there is **compromise or arrangement** is proposed between **LLP and its creditor** or **between LLP and its partner**, etc. the following process should be adopted.
2) Such **LLP / Creditor or partner** can apply to **NCLT** for compromise or arrangement (C & A).
3) If such LLP is being wound up the liquidator shall order the meeting or creditor and partners to be conducted as per NCLT. For working LLP, NCLT will conduct the meeting by giving directions.
4) The majority of creditors representing **3/4th of contribution** shall **approve such compromise or arrangement.**
5) In addition to above approvals NCLT shall pass **order for acceptance or rejection** of compromise.

6) After above approvals following documents should be filed with **ROC** within **30 days** of approval of **NCLT.**
   a) Order of NCLT
   b) Approval of partner and creditors
   c) Incorporation documents
   d) Financial results
7) In case of **contravention** of above provisions every designated partner will be liable for **Rs.10000 and Rs. 100 per day max up to Rs. 50000 and LLP will be liable for Rs.10000 and Rs. 100 per day max upto Rs. 1 lakh.**
8) It is power of **NCLT** to **enforce** the compromise and arrangement and work according to terms and in case of inconsistency the NCLT can order modification.

Sec.61 – Power of Tribunal to enforce compromise or arrangement

Answer Writing Points

1) Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a LLP, it—
   a) shall have power to supervise the carrying out of the compromise or an arrangement; and
   b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.
2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the LLP, make an order for winding up the LLP, and such an order shall be deemed to be an order made under section 64 of this Act.

Sec.62 - Amalgamation or Reconstruction of LLP

Answer Writing Points

1) A person concerned can make **application to NCLT** for amalgamation or reconstruction of LLP with another LLP or entity.
2) Such application should be **accompanied** with a scheme of amalgamation containing following particulars:
   a) Transfer of LLP its undertaking, property, liability
   b) Transfer of legal proceeding
   c) Transfer of employment contract
   d) Winding up or dissolution of amalgamated LLP.
   e) Such other order as may be prescribed.
3) After such order a **certified copy** with following documents within **30 days with ROC.**
4) After above approvals following documents should be filed with **ROC** within **30 days** of **approval of NCLT.**
   a) Order of NCLT
   b) Approval of partner and creditors
   c) Incorporation documents
   d) Financial results

In case of contravention of above provisions every designated partner will be liable for **Rs.10000 and Rs. 100 per day max up to Rs. 50000 and LLP will be liable for Rs.10000 and Rs. 100 per day max upto Rs. 1 lakh.**

Sec.63 - Sec.65 - Winding up and Dissolution

Answer Writing Points

1) The winding up of a LLP may be either **voluntary** or by **the Tribunal** a and LLP, so wound up may be dissolved.
2) An LLP may be wound up by the Tribunal:
   a) if the LLP decides that **LLP be wound upby the Tribunal;**
   b) if, for a period of **more than six months**, the **number of partners** of the LLP is **reduced below two;**
   c) if the LLP is **unable to pay its debts;**
   d) if the LLP has **acted against the interests of the sovereignty and integrity of India,** the security of the State or public order;
   e) if the LLP has **made a default in filing with the Registrar the Statement of Account and Solvency or annual return** for any **five** consecutive financial years; or
   f) if Tribunal is of the opinion that **it is just and equitable** that the **LLP be wound up.**
3) The **Central Government** may make rules for the provisions in relation to **winding up and dissolution of LLP.**

Sec.66 - Business transactions of partner with LLP

Answer Writing Points

A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Sec.67 - Application of the provisions of the Companies Act

Answer Writing Points

1) **The Central Government** may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 1956 specified in the notification—
   a) shall apply to any LLP; or
   b) shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
2) **A copy** of every notification proposed to be issued under sub-section (1)
   a) shall be **laid in draft** before each House of Parliament, while it is in session,
   b) for a total period of **30 days** which may be comprised in one session or in two or more successive sessions, and
   c) if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses **agree in disapproving** the issue of the notification or both Houses agree in making any modification in the notification,
   d) the notification shall **not** be issued or, as the case may be,
   e) shall be issued only in **such modified form** as may be agreed upon by both the Houses.

Sec.69 – Payment of additional fee

Answer Writing Points

Any document or return required to be registered or filed under this Act with Registrar, if, is **not registered or filed** in time provided therein, may be registered or filed after that time, on **payment of such additional fee** as may be prescribed in addition to any fee as is payable for filing of such document or return

Sec.70 – Enhanced Punishment

Answer Writing Points

In case a limited liability partnership or any partner or designated partner of such limited liability partnership **commits any offence,** the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be **punishable with imprisonment** as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with **fine which shall be twice the amount of fine for such offence.**



13 FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Concept of FEMA

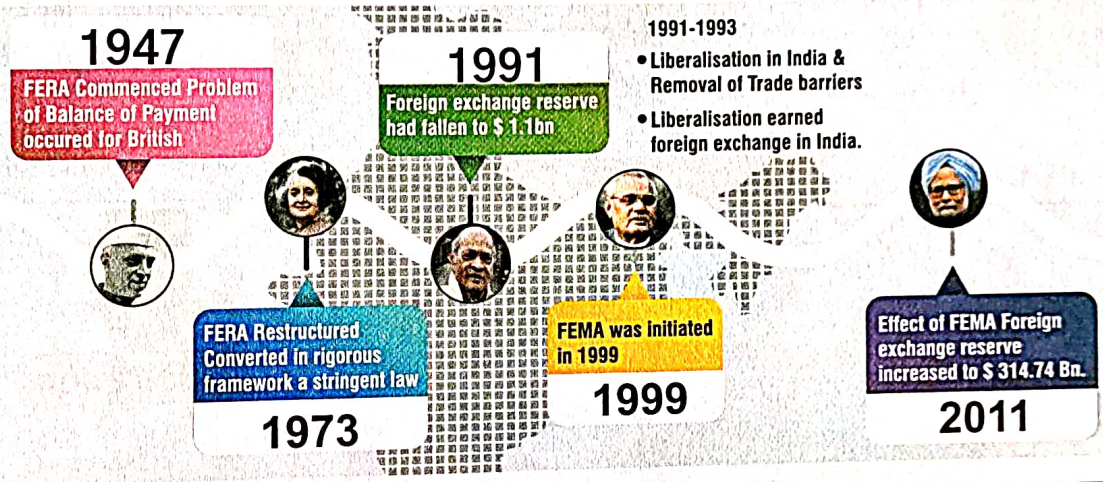
FEMA is made

1) For conservation and management of foreign exchange in India;
2) Also to manage foreign trade & business;
3) To prohibit use of foreign exchange for unnecessary purpose.

Preamble: This Act aims to consolidate and amend the law relating to foreign exchange with the objective of

i) facilitating external trade and payments and
ii) for promoting the orderly development and maintenance of foreign exchange market in India.

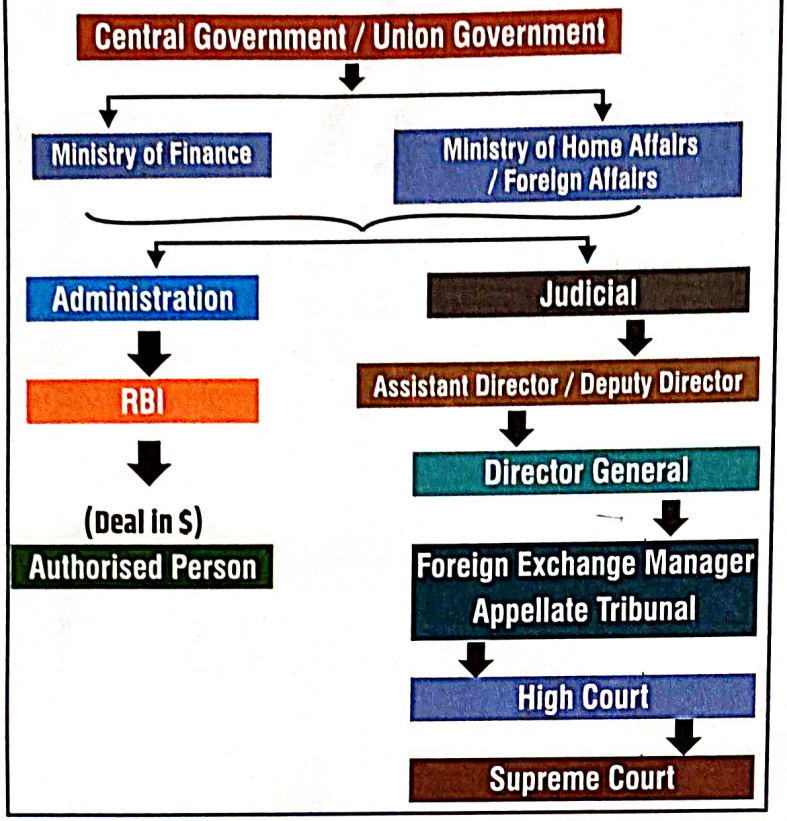
History



The difference between FERA and FEMA are as follows

Headings	FERA, 1973	FEMA, 1999
Offence Under Law	Any offence under FERA, was a criminal offence	Here, the offence is considered to be a civil offence
Names of transactions	No Name	1. Capital Account Transaction 2. Current Account Transaction
Permission on transaction	Transaction is prohibited unless permitted.	Transaction is permitted unless prohibited.
Rigid / Liberal	It was rigid law	It is liberal law
Rigidity regarding	FERA is rigid regarding foreign exchange.	FEMA is rigid regarding disclosure.
Provisions	FERA consisted of 81 sections, and was more complex	FEMA is much simple, and consist of only 49 sections.
Features	Presumption of negative intention (Mens Rea) and joining hands in offence (abatement) existed in FERA	These presumptions of MensRea and abatement have been excluded in FEMA
Quantum of Penalty	The monetary penalty payable under FERA, was nearly the five times of amount involved.	Under FEMA the quantum of penalty has been considerably decreased to three times the amount involved.

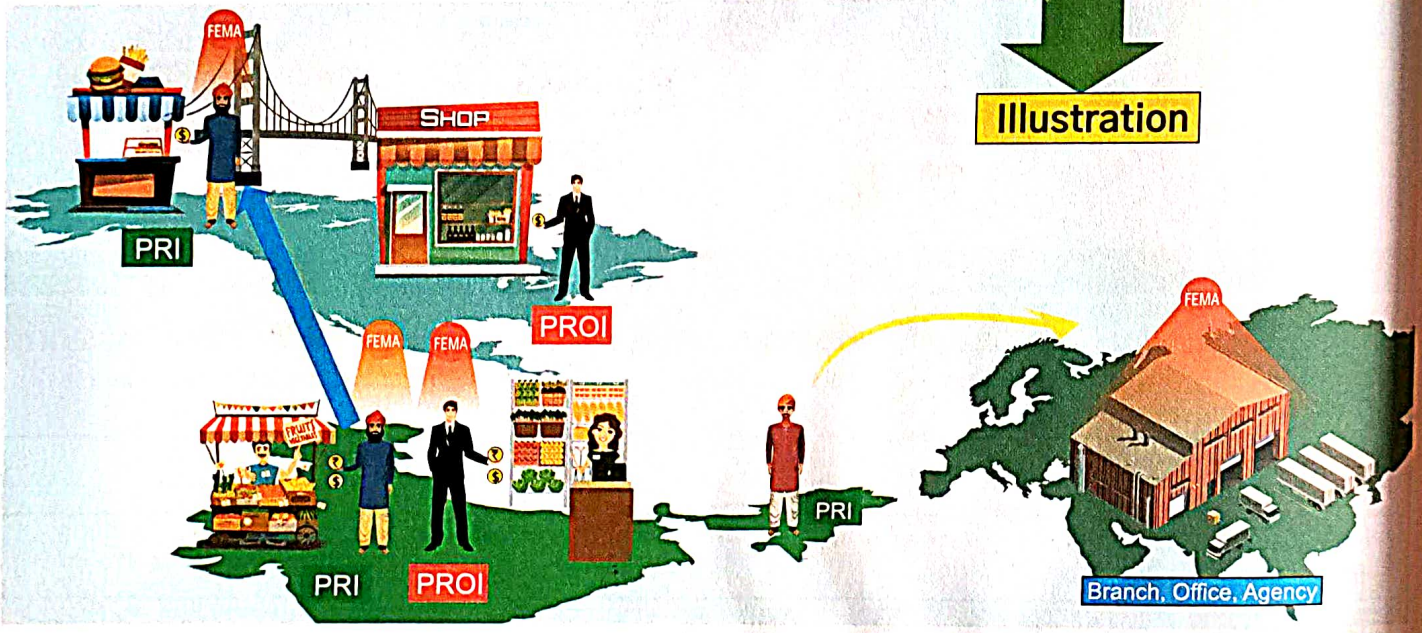
FEMA : Authority Structure



Sec 1: Application of FEMA, 1999

Situation no.	Situation	Applicability status
1)	**PRI** doing transaction **in India** In Indian Currency (₹)	FEMA not applicable
2)	PRI doing transaction **in India** In Foreign Currency ($).	FEMA applicable
3)	PRI doing transaction **Outside India** In Indian Currency (₹)/ Foreign Currency ($).	FEMA applicable
4)	Branch/office/agency outside India **owned/ controlled by PRI doing** transaction outside India in Indian Currency (₹) / Foreign Currency ($).	FEMA applicable
5)	**PROI** doing transactions in India in Indian Currency (₹)/ Foreign Currency ($).	Applicable

Illustration



Sec 2: Definitions

"Foreign currency" [Sec.2(m)]

Foreign Currency means any currency other than Indian currency.

2(q) "Indian Currency" means currency which is expressed or drawn in Indian rupees but does not include special bank notes and special one rupee notes issued under section 28A of the Reserve Bank of India Act, 1934.

"Foreign exchange" [Sec. 2(n)]

Foreign Exchange means foreign currency and includes–

i) deposits, credits and balances payable in any foreign currency,

ii) drafts, traveller's cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

iii) drafts, traveller's cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

For drafts, traveller's cheques, letters of credit or bills of exchange

Head	Case 1	Case 2	Case 3	Case 4
Expressed or Drawn	₹	$	₹	$
Payable in	₹	₹	$	$
Status	Not a Foreign Exchange	Foreign Exchange	Foreign Exchange	Foreign Exchange

"Foreign security"[Sec.2(o)]

Foreign Security means

1) any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency

and

2) includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency.

For shares, stocks, bonds, debentures or any other instrument

Head	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6	Case 7	Case 8
Expressed or Denominated	$	$	$	$	₹	₹	₹	₹
Redemption	$	$	₹	₹	$	$	₹	₹
Return	$	₹	$	₹	$	₹	$	₹
Status	Yes-(1)	Yes-(2)	Yes-(2)	Yes-(2)	No	No	No	No

Derivative [Sec.2(da)]

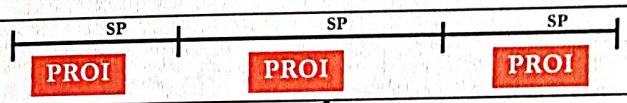
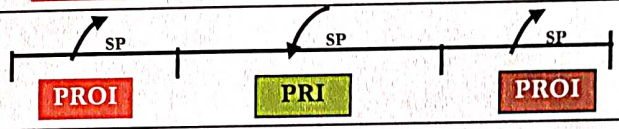
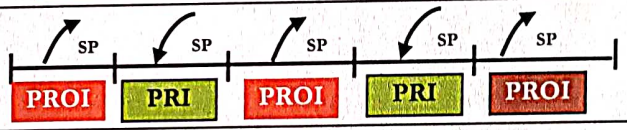
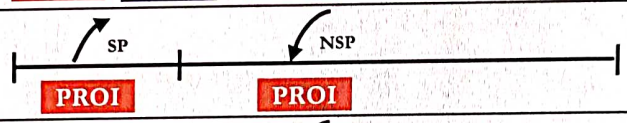
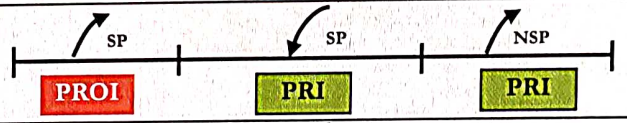
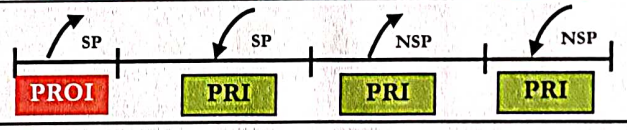
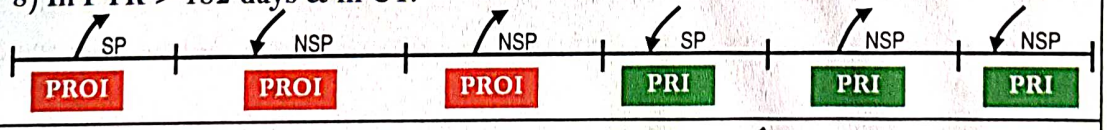
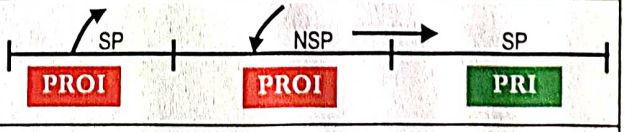
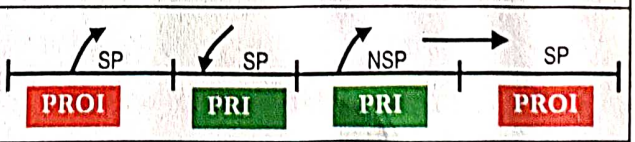
(da) 'Derivative' means a financial contract, to be settled at a future date, whose value is derived from one or more financial, or non-financial variables.

"Person resident in India" (PRI) [Sec 2. (v)] / "Person Resident outside India" (PROI) [Sec 2. (w)]

Person resident in India Means:

1)	Person residing in India for more than one hundred and eighty-two days during the course of the preceding financial year but does not include–

	A) A person who has **gone out of India** or who stays outside India, in either case– I) For or on taking up **employment** outside India, or II) For carrying on a **business or vocation** outside India, or III) For any other purpose, in such circumstances as would indicate his **intention to stay outside India** for an uncertain period;
	B) A person who has **come to or stays in India,** in either case, otherwise than– I) For or on taking up **employment** in India, or II) For carrying on a **business or vocation** in India, or III) For any other purpose, in such circumstances as would indicate his **intention to stay in India** for an uncertain period;
2)	Any person or body corporate **registered or incorporated in India,**
3)	An office, branch or agency in India **owned or controlled by a person resident outside India,**
4)	An office, branch or agency outside India **owned or controlled by a person resident in India**

1) In PY R < 182 days & in CY:	
2) In PY R > 182 days & in CY:	
3) In PY R > 182 days & in CY:	
4) In PY R > 182 days & in CY:	
5) In PY R > 182 days & in CY:	
6) In PY R > 182 days & in CY:	
7) In PY R > 182 days & in CY:	
8) In PYR > 182 days & in CY:	
10) In PYR > 182 days & in CY:	
11) In PYR > 182 days & in CY:	

ICAI : If a person comes to India after 1st June 2019 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a PRI from day he comes to India, even if his residence in PY ≤ 182 days.

Analysis of Definition of PRI/PROI



Important Note :

1) Residence > 182 days can only be PRI (PY)

SP – Specified Purpose
NSP – Non Specified Purpose

Individual

↓

Residence in India ≤ 182 days in PFY

↓

Without any further question person will be considered *as PROI* in

If not

↓

Residence in India > 182 days in PFY

Person goes out of India in CFY

In case of SP

Person comes to India in CFY

Job

Business

PRI

Carry Forward

↑

In case of NSP

In case of SP

Business

Job

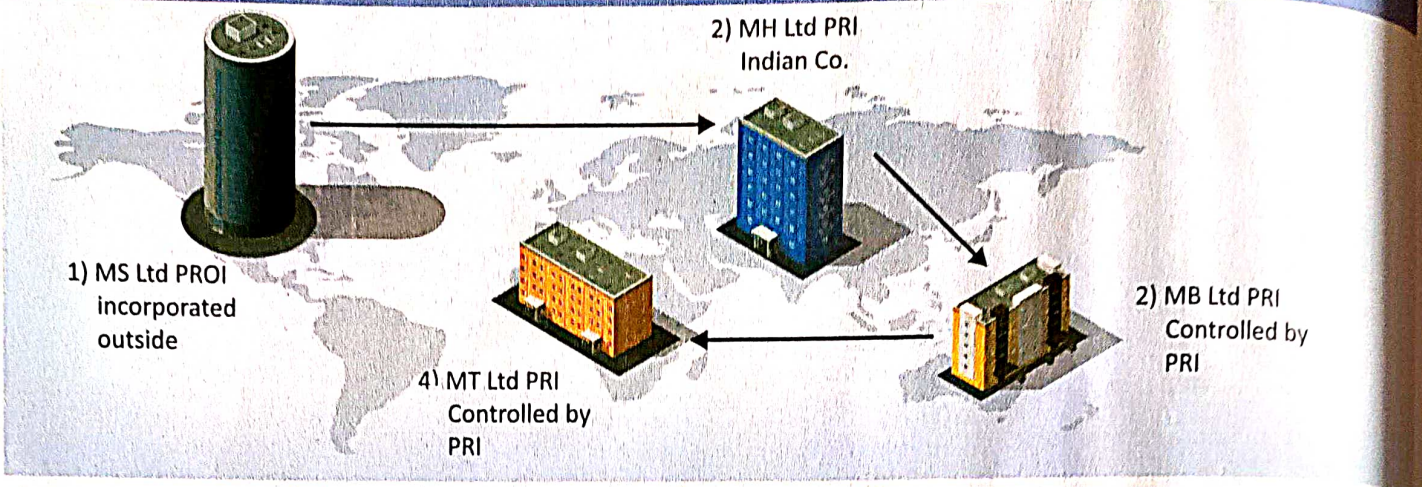
PROI

In case of NSP

Carry Forward

was residing in India > 182 days in P.Y.

Residential status of Artificial Person

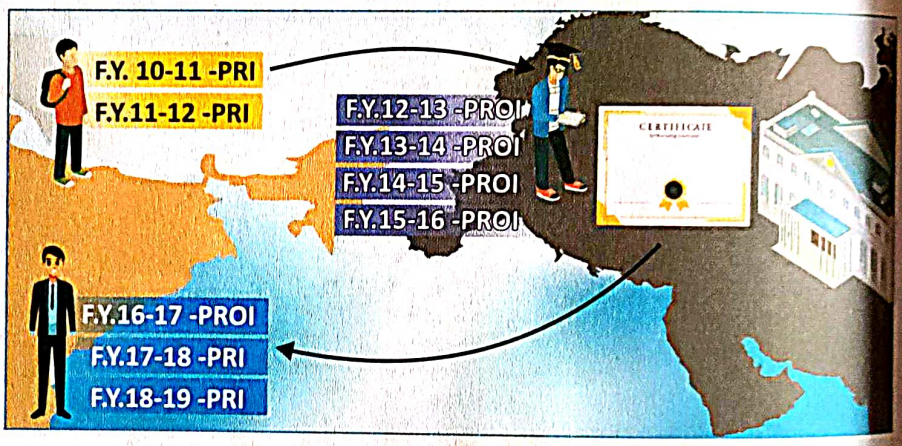


1) Registered or incorporated (Commenced) in India = PRI;
2) Registered or incorporated (Commenced) outside India = PROI
3) Branch, office or agency in India owned or controlled by = PRI
4) Branch, office or agency outside India owned or controlled by PRI = PRI

Analysis

1. In case if a person goes out for Education what will be his residential status?

Ans: Education is Non Specified Purpose. Thus the answer will be as follows.



2) Whether Minor have residential status in FEMA?

Ans: He will have normal residential status as per definition

3) What will be status of the unregistered partnership firm?

Ans: Its status will be as per definition

Some extra important points

1) In FEMA Residential status is not for a year.
2) It is from a particular date that a person will be a resident or a non-resident.
3) **Citizenship is not the criteria for determining whether or not a person is resident in India.**
4) Status of air hostess having layover in India in PY > 182 days in CY will be PROI. (It's not permanent residence)
5) **What is the meaning of Intention to stay for uncertain period?**
Ans: Woman leaving India because marriage to NRI.
6) If a person goes outside India in such circumstances that his period of stay outside India not certain, it cannot be said that he has intention to stay outside India for uncertain period. (R.P Verma vs. Union of India)

Definition of PRI [2(v)] & PROI [2(w)]



For Individual Residential Status :

Normal Points:

1) Citizenship is irrelevant
2) In P.Y. Residence > 182 days, in C.Y. can only be PRI
3) In P.Y. Residence > 182 days, in C.Y. Going out for SP = PROI
4) In P.Y. Residence > 182 days, in C.Y. Coming in for SP = PRI
5) In P.Y. Residence > 182 days, in C.Y. Coming in or Going out for NSP = last status carry forward

Special Points :

1) Air Hostes staying in India in P.Y. more than 182 days because of some problem will not be PRI in C.Y.
2) Intention to stay outside India for uncertain period can be defined with example of a wife accompanying her NRI husband outside India.
3) Going abroad for education will be PROI from 1st year itself as RBI and ICAI.

Note : ICAI : If a person comes to India after 1st June 2019 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a PRI from day he comes to India. Even if his residence in PY < 182 days

For Artificial Person

1) Registered or incorporated (Commenced) in India = PRI; Registered or incorporated (Commenced) outside India = PROI
2) Branch, office or agency in India owned or controlled by PROI = PRI
3) Branch, office or agency outside India owned or controlled by PRI = PRI

"Repatriate to India" [Sec. 2 (y)]

"Repatriate to India" means bringing into India the realised foreign exchange and

i) the selling of such foreign exchange to an authorised person in India in exchange for rupees, or

ii) the holding of realised amount in an account with an authorised person in India to the extent notified by the Reserve Bank.

It includes use of the realised amount for discharge of a debt or liability denominated in foreign exchange and the expression "repatriation" shall be construed accordingly;

Section 3 & 4: Regulation & management of Foreign Exchange

Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, **no person shall–**

a)	deal in or transfer any foreign exchange or foreign security to any person not being an authorised person
b)	make any payment to or for the credit of any person resident outside India in any manner
c)	receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.
d)	enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

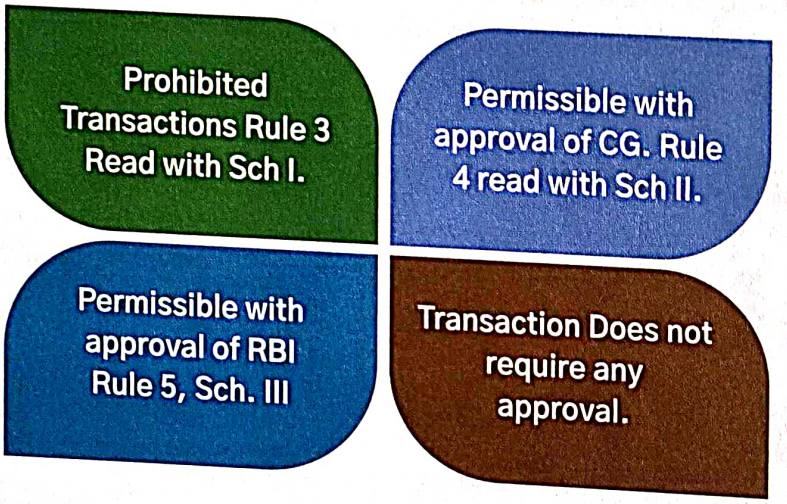
Current account Transaction (Sec 5 & 2(j))

Definition

Sec 2(j): "Current account transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes:

i) payments due in connection with foreign trade, other current business, services, and short term banking and credit facilities in the ordinary course of business,
ii) payments due as interest on loans and as net income from investments,
iii) remittances for living expenses of parents, spouse and children residing abroad, and
iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children

Foreign Exchange Management (Current Account transaction) Rules, 2000



Particulars	Schedule	Rule
Prohibited	I	3
Centrel Government	II	4
RBI	III	5

Prohibited CUT [Rule 3 read with Schedule I]

Important Note Prohibited Current Account Transactions.

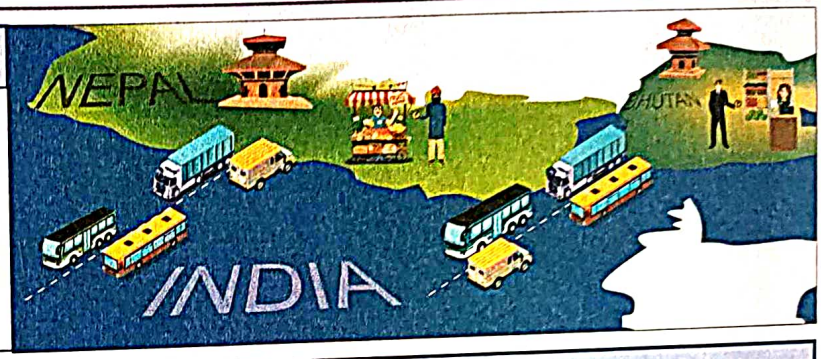
1. Whether prohibited current account transactions are illegal?

Ans: These transactions are not illegal, those are legal transaction. The only meaning of prohibited means you cannot get $/FC for these transaction. Spending $/FC on these transaction is prohibited.

1-Relating to Nepal and Bhutan:

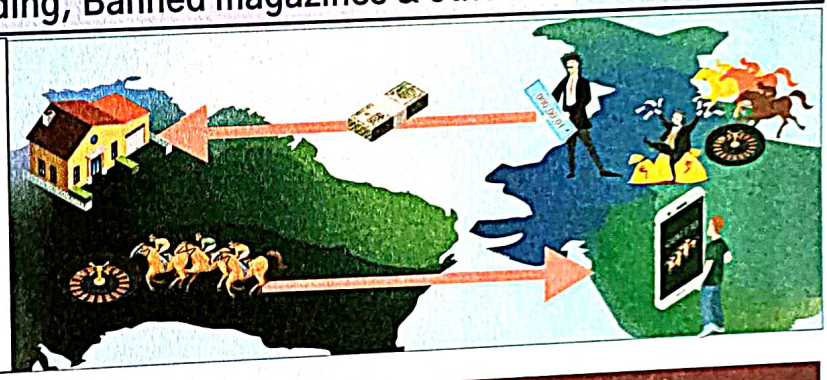
i. Payment for travel to Nepal and Bhutan.

ii. Payment for any transaction with person of Nepal and Bhutan.



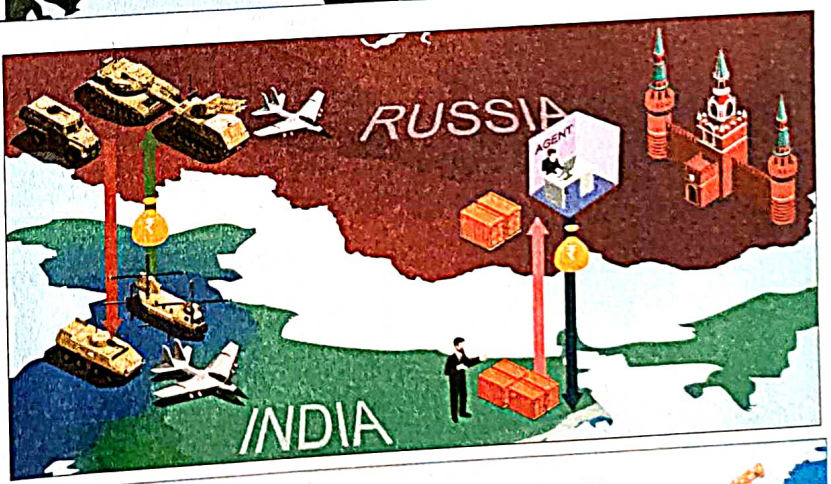
2-Lottery, Racing/ Riding, Banned magazines & others :

- **Remittance out of income from:**
  1. Lottery Winnings.
  2. Racing/Riding or any other hobby.
- **Remittance for purchase of:**
  1. Lottery Tickets
  2. Banned/Prescribed magazines,
  3. Football pools, sweepstakes, etc.



3-Payment of commission on export: Export under Rupee State Credit Route

Payment of commission on export of only 2 goods are **allowed with the 10% of invoice value of Export.** One is TEA and second TOBACCO.



4-Payment of Commission for Export made towards equity investment in joint venture / Wholly owned subsidiaries abroad of Indian Companies.

Investment A/c ---------- Dr

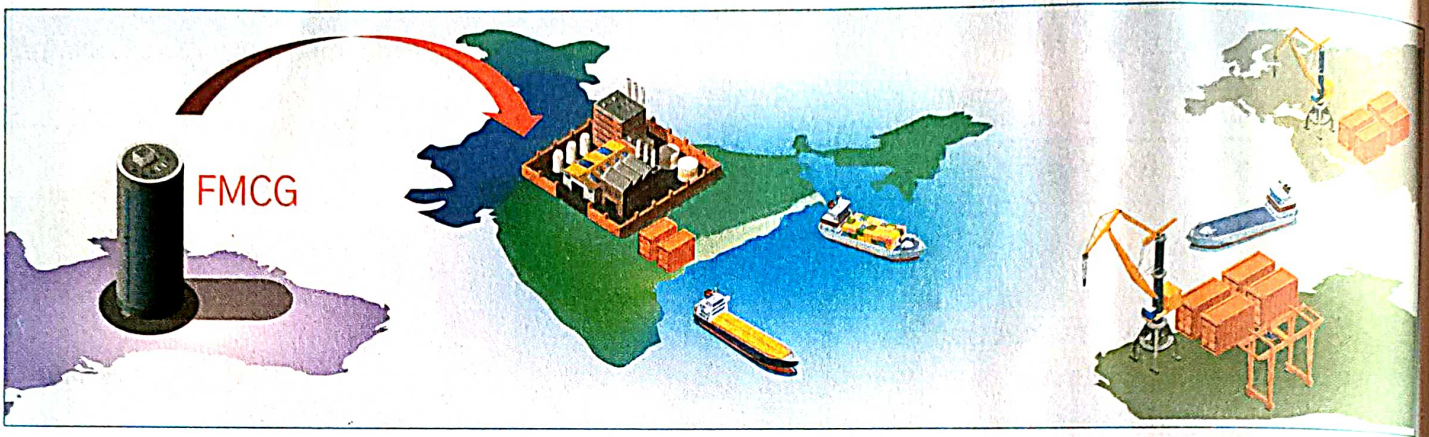
To, Sales A/c ----------Cr

(Being exports sales vide invoice no. XXXX made in lieu of equity participation in B Ltd.)



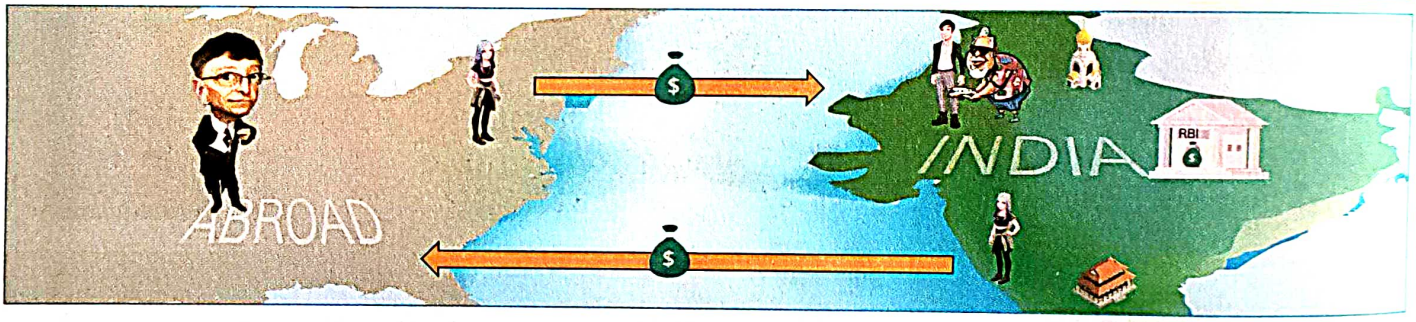
5- Remittance of Devidend

Remittance of dividend by company to which the requirements of **Dividend balancing is applicable.**



6-Payment Related to 'Call Back Services' of telephone

7-Remittance of interest income on funds held in Non- Residential Special Rupee (Account) Scheme.



Transaction Permissible with approval of CG: [Rule 4 read with Schedule II]

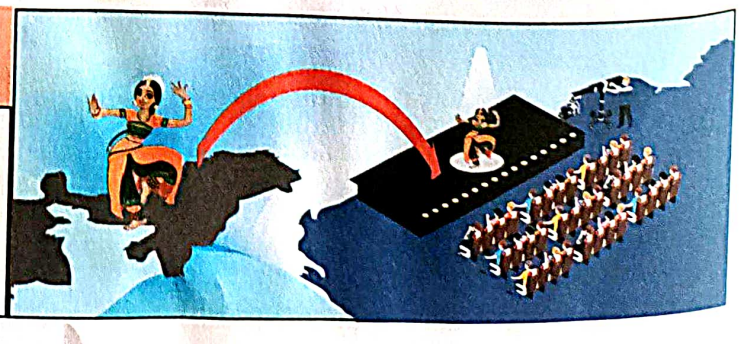
Important Current Account Transactions CG approval.

1) Why CG approval when the RBI is apex authority in FEMA?

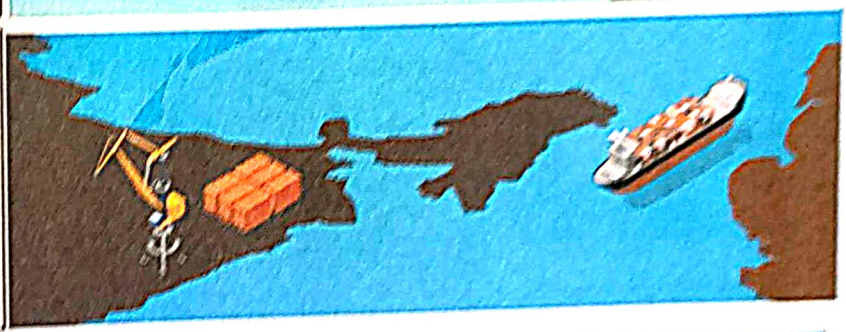
Ans :

Approval
- Public → CG → Public benefit for public / Group of person
- Personal → RBI → Administration

1) Approving Authority	Transaction
Ministry of Human Resource Development (Department of Education and Culture)	Approval for Cultural Tours for any amount of expenditure.



2) Ministry of Finance (Department of Economic Affairs)	Advertisement in foreign print media by State Government or its PSU Exceeding US$ 10,000. No restriction or approval required for: I. promotion of tourism, II. foreign investment and III. International bidding	
3) Ministry of Surface Transport (Chartering Wing)	a. Remittance of freight of any vessel chartered by PSU, b. Payment for import through ocean transport by Government Dept/PSU on CIF basis.	

4) Director General of Shipping.	
a. Remittance for Multi model Transport operators making remittance to their agents abroad.	
b. Remittance for container detention charges exceeding the rates prescribed by Director General of Shipping	

5) Ministry of Information & Broadcasting, Ministry of Communication & Information Technology.	Remittance of Hiring Charges of Transponders. a. TV Channels b. Internet Service providers.	
6) Ministry of Human Resource Development (Department of Youth Affairs and Sports)	Remittance of prize money or sponsorship of sports activity abroad exceeding US$ 100,000. No restriction and approval if payment is made by: a. International sports bodies; or b. National level sports bodies; or c. State level sports bodies.	
7) Ministry of Finance (Insurance Division)	Remittance for membership of P & I club.	

Note : No approval is required in case of remittance through REFC account for all above transactions In case of remittance through EEFC account no approval is required except remittance for membership of P & I

Summery of CUT with approval of CG

Authorities of CG

	Human Resource Development		Ministry of Finance		Ministry of surface transport		Director general of shipping		Ministry of Information and Broadcasting
	cultural Tour	Sports Activities	Advertisement in foreign print Media	P & I	Freight on Vessel	Import through ocean	Multi Model Transport	Container Detention Charges	Hiring charges for transponders TV Channels
Amount	Any Amount	> $ 1 Lakh	> $ 10,000	Any Amount	Any Person	Any - CIF basis	Any Amount	> Rate by DGS	Any Amount
Person	Any Person	Any person Except • International sports bodies • National level sports bodies • State level sports bodies	State Government & PSU	Any Person	State Government & PSU	State Government & PSU	Any Person	Any Person	Any Person
Exemption	No Exemption	< $ 1 Lakh	• Audio/ Visual • Tourism • Foreign Investment • International Bidding • Others Person	All Time Approval (Even though the transaction from EEFC / RFC Account)	Air, Land transport	Air, Land transport	No Exemption	up to the rate given by DGS	No Exemption

Transaction requiring the RBI's approval : [Rule 5 Read with Schedule III]

RBI Approval Transaction Schedule III Rule 5 + **Liberalised Remittance Scheme (ICAI)**

LRS Limit ≤ $ 2.5 Lakhs

CUT + CAT ≤ $ 2.5 Lakhs (PRI)

- Prohibited CUT / CAT- Not Allowed
- Approval of CG- Not Allowed
- Approval Of RBI & other CAT allowed

Individual PRI

LRS

1) Gift
3) Private visit
5) Medical treatment
7) Employment
9) Education

Individual PROI & Any artificial person

~~LRS~~

2) Donation
4) Business/ conference
6) maintain close relative
8) Emigration

Amount >$ 2.5 Lakhs

RBI Approval & Per Transaction RBI Approval

1) Commission On Real Estate
5% or $ 25,000 Higher

2) Pre Incorporation Exp - Refund
5% or $ 1,00,000 Higher or Actual Exp whichever is lower

3) Consultancy Services
Private $ 1mn | Infrastructure $10mn

4) Donor Employment
1% of Last 3 years FE Earning or US $ 5mn whichever is lower

5) Probationes - PROI
Net salary After Taxes/ Statutory Dues

Transaction Permissible under LRS

1) Gift

2) Donation

3) Private Visit

4) Business Travel

5) Conference

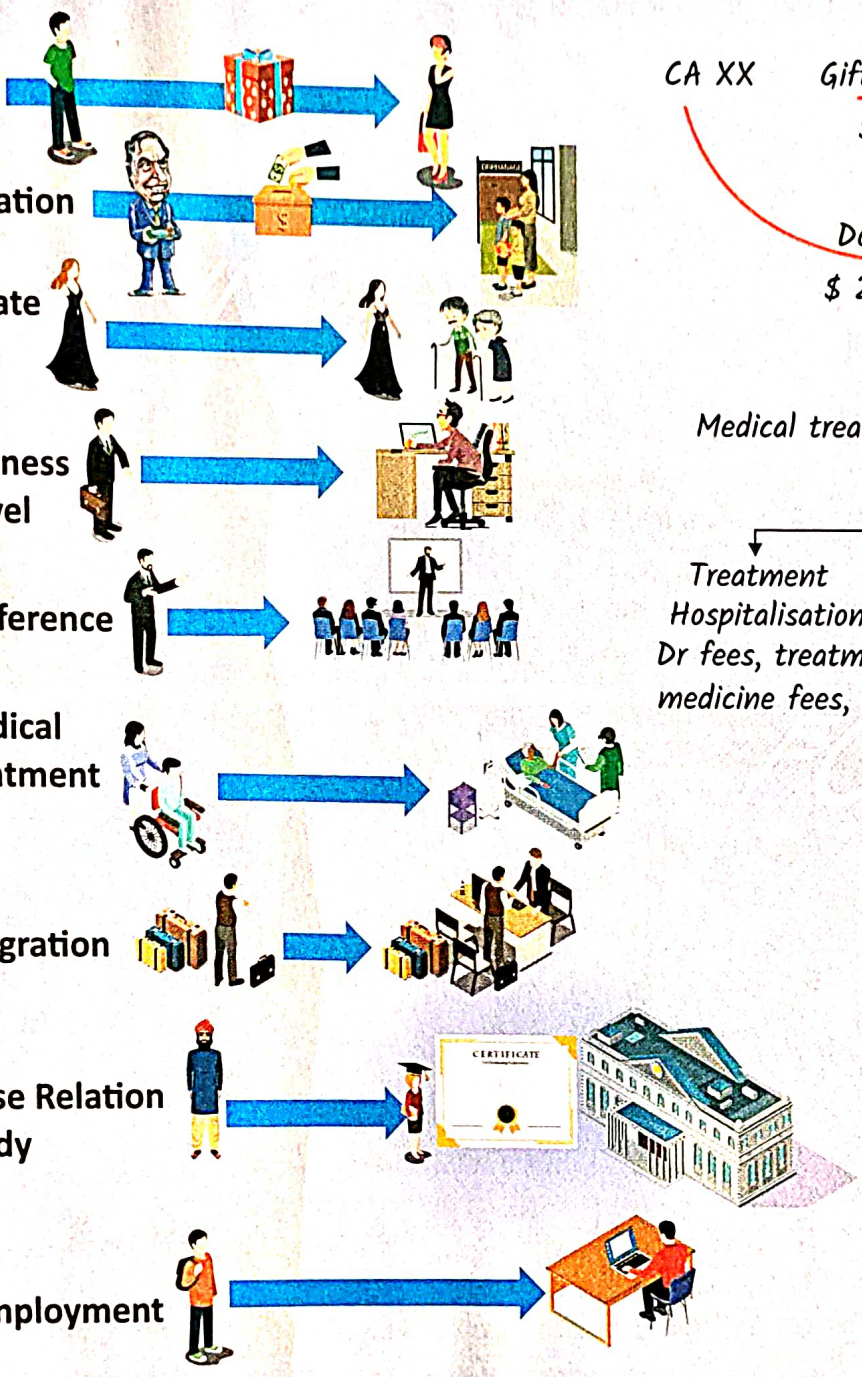
6) Medical treatment

7) Emigration

8) Close Relation

9) Study

10) Employment



CA XX — Gift → Elizabeth
$ 2.5 L max/

Donation → Orphange
$ 2.5 L max

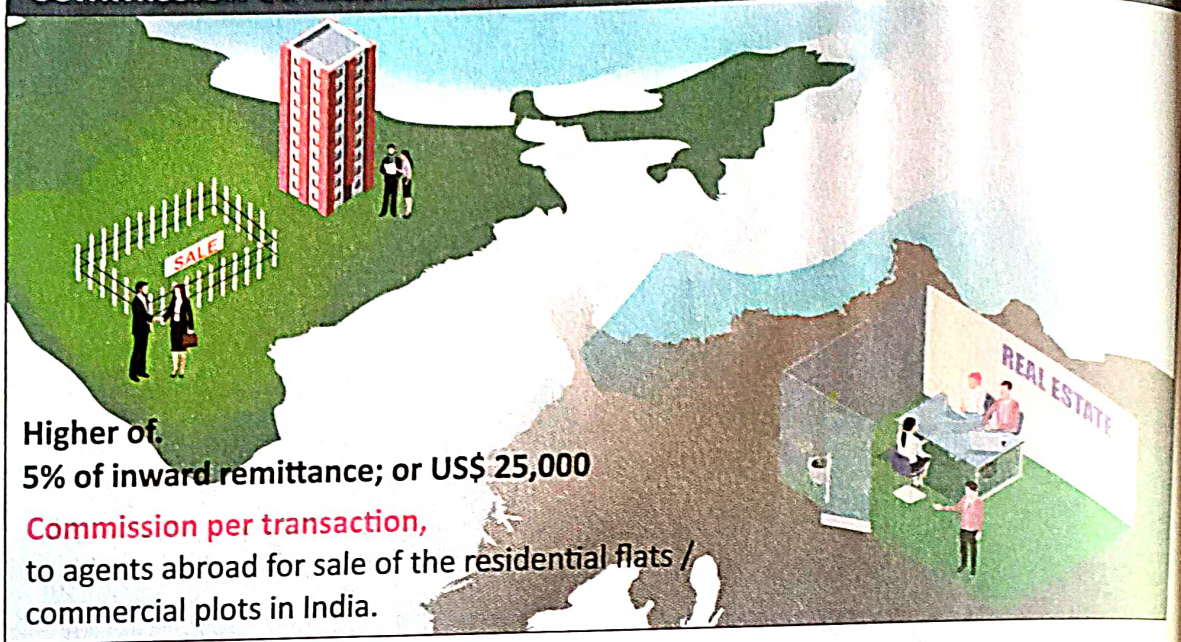
Medical treatment = $ 2.5L max

- Treatment
  Hospitalisation, Dr fees, treatment, medicine fees, etc.
- Maintain Living expenses
  - Patient
  - Attendant

Separate Limit Transactions Charts

Separate Limit Transactions

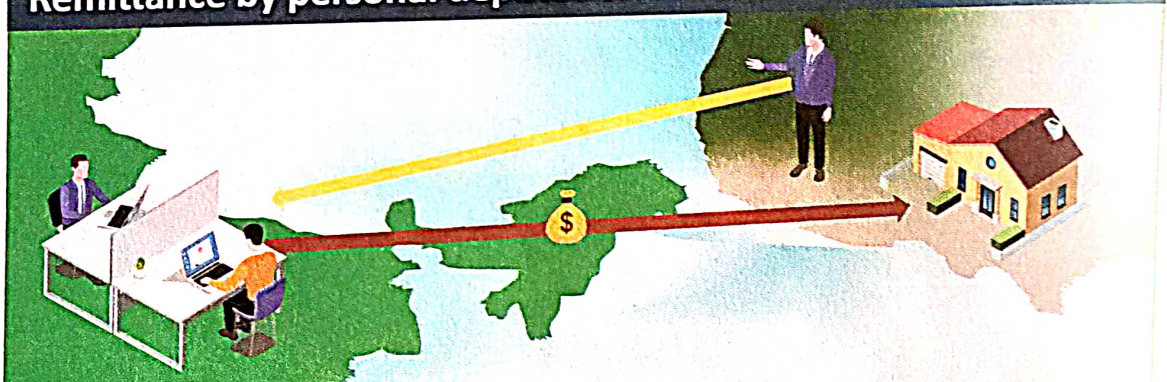
Commission on Real Estate



Higher of,
5% of inward remittance; or US$ 25,000

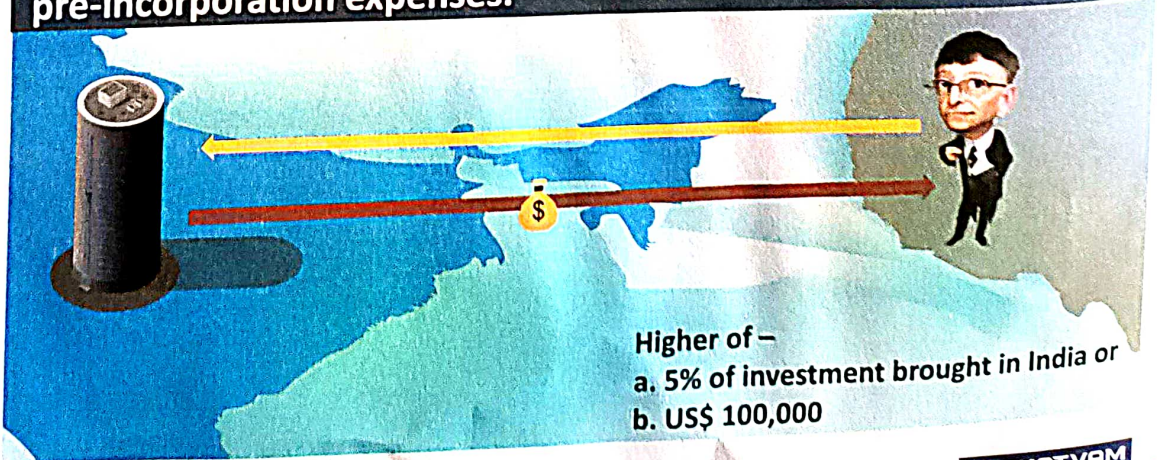
Commission per transaction,
to agents abroad for sale of the residential flats / commercial plots in India.

Remittance by personal deputation in India



If the person is resident and not permanently resident in India.
a. The person is citizen of foreign country other than Pakistan.
b. The person is citizen of India on deputation to office of branch or subsidiary or JV in India of such foreign company.
Can remit net salary after deduction of Taxes and PF and other statutory dues

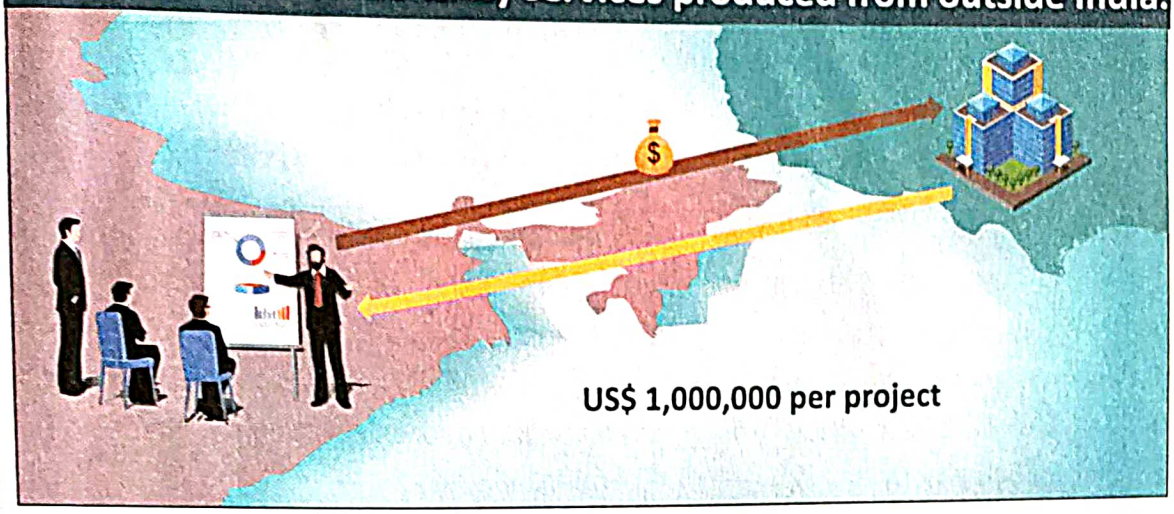
Remittance by an entity in India by way of reimbursement of pre-incorporation expenses.



Higher of –
a. 5% of investment brought in India or
b. US$ 100,000

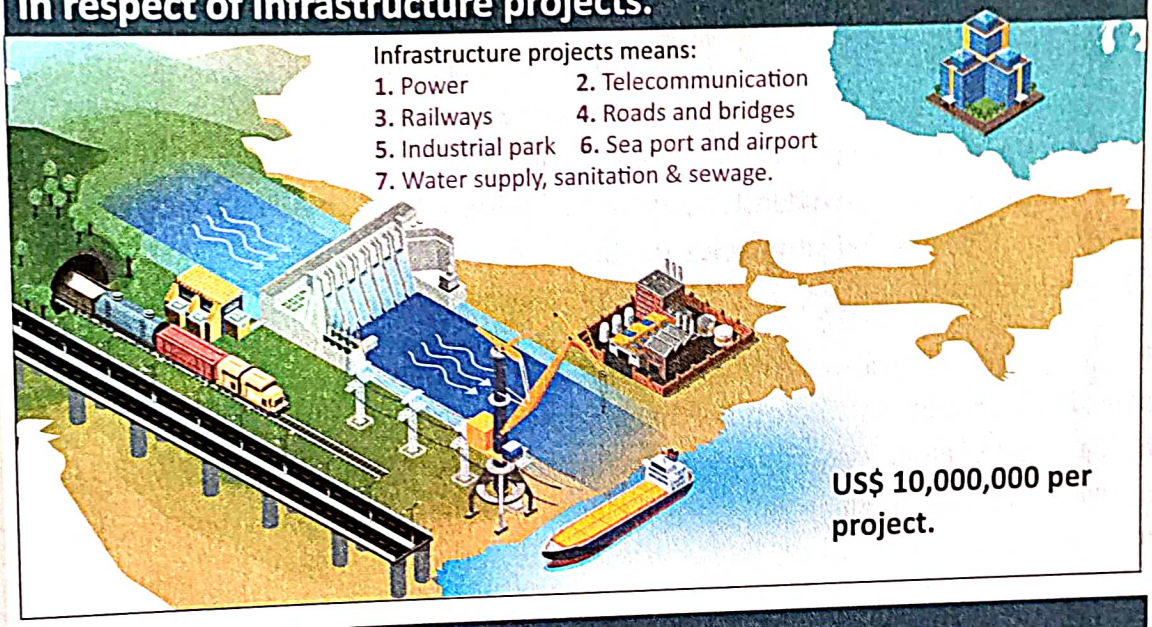
EKATVAM ACADEMY
COMMERCE KE LIYE NAMESHA PRATNAM

Remittance for consultancy services produced from outside India.



US$ 1,000,000 per project

Remittance for consultancy service produced from outside India in respect of Infrastructure projects.



Infrastructure projects means:

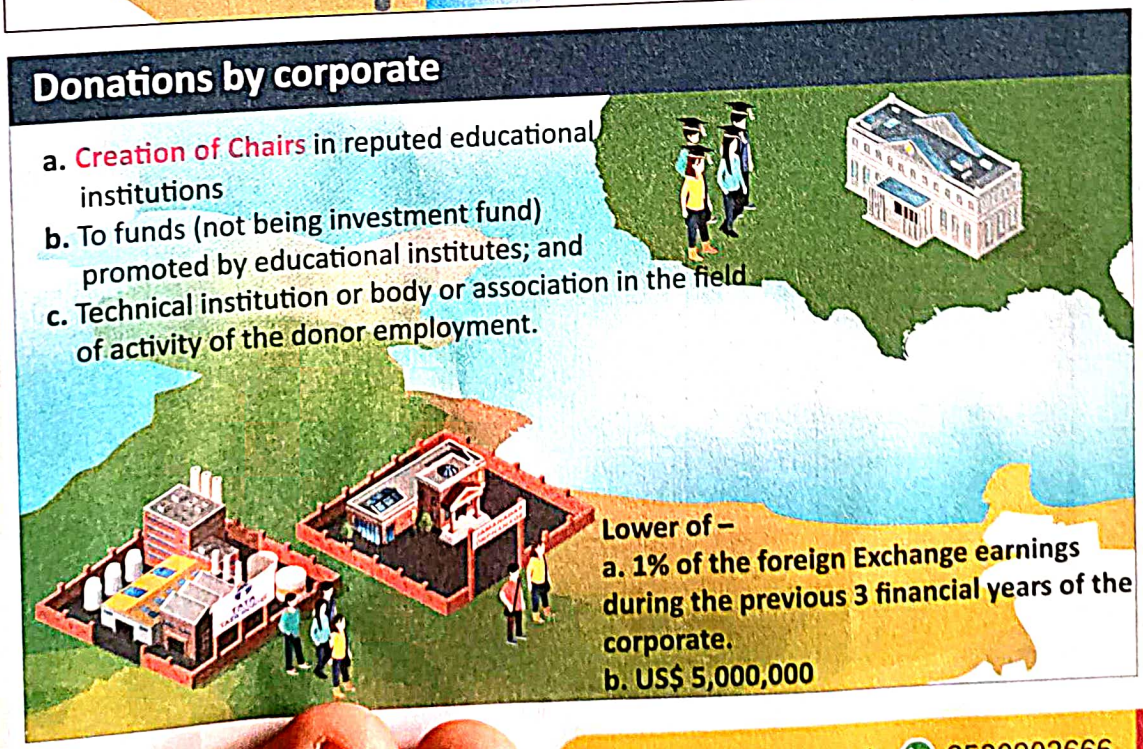
1. Power
2. Telecommunication
3. Railways
4. Roads and bridges
5. Industrial park
6. Sea port and airport
7. Water supply, sanitation & sewage.

US$ 10,000,000 per project.

Separate Limit Transactions Charts

Donations by corporate

a. Creation of Chairs in reputed educational institutions
b. To funds (not being investment fund) promoted by educational institutes; and
c. Technical institution or body or association in the field of activity of the donor employment.



Lower of –
a. 1% of the foreign Exchange earnings during the previous 3 financial years of the corporate.
b. US$ 5,000,000

Liberalised Remittance Scheme

Applicability: Only PRI can avail the facility.

a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein.

Facility: Facility is for making the remittance up-to US$ 250,000 per FY without any approval of RBI for: 1. Current Account transaction (CUT). 2. Capital Account Transaction (CAT). 3. Combination of both.	**Non Applicability:** In short the facility is not available for prohibited transactions and transaction requiring the approval of the CG. Remittances made 'Non-cooperative countries and territories' by Financial Action Task Force (FATF) viz. Cook Islands, Egypt, Guatemala, Indonesia, Myanmar, Neuru, Nigeria, Philippines and Ukraine.

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 2,50,000 per FY only.

1) Private visits to any country **2)** Gift or donation. **3)** Going abroad for employment
4) Emigration **5)** Maintenance of close relatives abroad
6) Travel for business, or attending a conference or specialised training
7) for meeting expenses for meeting medical expenses, or check-up abroad,
8) for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
9) Expenses in connection with medical treatment abroad
10) Studies abroad **11)** Any other current account transaction

Further, that for a person who is resident but not permanently resident in India and–

a) is a citizen of a foreign State other than Pakistan; or

b) is a citizen of India, who is on deputation to the office or branch of a foreign company or Subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

IF an individual remits any amount under LRS scheme in a FY, then applicable limit for such individual would be reduced from USD 2,50,000 by the amount so remitted.

Concept Analysis

S. N.	1	2	3	4	Total (Lakh)	Approval?	For ?	Reason ?
1	Gift $45,000	Education $1,30,000	Property $60,000	Donation $10,000	$ 2.45	No	NA	< LRS
2	Gift $45,000	Education $1,30,000	Property $60,000	Donation $40,000	$ 2.75	Yes	Donation	> LRS
3	Gift $45,000	Education $1,30,000	Property $60,000	Employment $80,000	$ 3.15	Yes	Employment	> LRS
4	Gift $45,000	Education $1,30,000	Property $60,000	Employment $1,20,000	$ 3.55	Yes	Employment	> LRS
5	Gift $45,000	Education $1,30,000	Property $60,000	Investment $10,000	$ 2.45	No	NA	< LRS
6	Gift $45,000	Education $1,30,000	Property $60,000	Investment $30,000	$ 2.65	Yes	Investment	> LRS

Current Account Transaction



Prohibited

1) With Nepal and Bhutan:
   a) Transaction with person of Nepal and Bhutan;
   b) Travel to and within Nepal and Bhutan.
2) Remittance for :
   a) Winning from lottery, Horse Race, any other gambling activity to abroad;
   b) Purchase of lottery ticket, banned prescribed magazines, football pools and sweepstakes, etc from abroad.
3) Payment of commission on export:
   a) Under rupees state credit route; (10% Tea, Tobacco)
   b) Equity investment in joint venture and only on subsidiary of Indian Company abroad.
4) Remittance of a dividend by company to whom dividend balancing is applicable.
5) Payment related to call back service of telephone.
6) Remittance for interest on Non Residential Special Account (NRSA) to abroad.

CG Transaction

Approving Authority	Transaction
1) Ministry of Human Resource Development (Department of Education and Culture)	Approval for Cultural Tours for any amount of expenditure.
2) Ministry of Finance (Department of Economic Affairs)	Advertisement in foreign print media by State Government or its PSU Exceeding US$ 10,000. No restriction or approval required for: i. promotion of tourism, ii. foreign investment and iii. international bidding
3) Ministry of Surface Transport (Chartering Wing)	a. Remittance of freight of any vessel chartered by PSU. b. Payment for import through ocean transport by Govt. Dpt./PSU on CIF basis.
4) Director General of Shipping.	a. Remittance for Multi model Transport operators making remittance to their agents abroad. b. Remittance for container detention charges exceeding the rates prescribed by Director General of Shipping
5) Ministry of Information & Broadcasting, Ministry of Communication & Information Technology.	Remittance of Hiring Charges of Transponders. a. TV Channels b. Internet Service providers.
6) Ministry of Human Resource Development (Department of Youth Affairs and Sports)	Remittance of prize money or sponsorship of sports activity abroad exceeding US$ 100,000. No restriction and approval if payment is made by: a. International sports bodies; or b. National level sports bodies; or c. State level sports bodies.
7) Ministry of Finance (Insurance Division)	Remittance for membership of P & I club.

RBI + LRS

RBI Approval Transaction Schedule III Rule 5 + Liberalised Remittance Scheme (ICAI)

LRS Limit ≤ $ 2.5 Lakhs

CUT + CAT ≤ $ 2.5 Lakhs (PRI)

- Prohibited CUT / CAT- Not Allowed
- Approval of CG- Not Allowed
- Approval Of RBI & other CAT allowed

Individual PRI	Individual PROI & Any artificial person
LRS	~~LRS~~

1) Gift
2) Donation
3) Private visit
4) Business/ conference
5) Medical treatment
6) maintain close relative
7) Employment
8) Emigration
9) Education

Amount >$ 2.5 Lakhs

RBI Approval

&

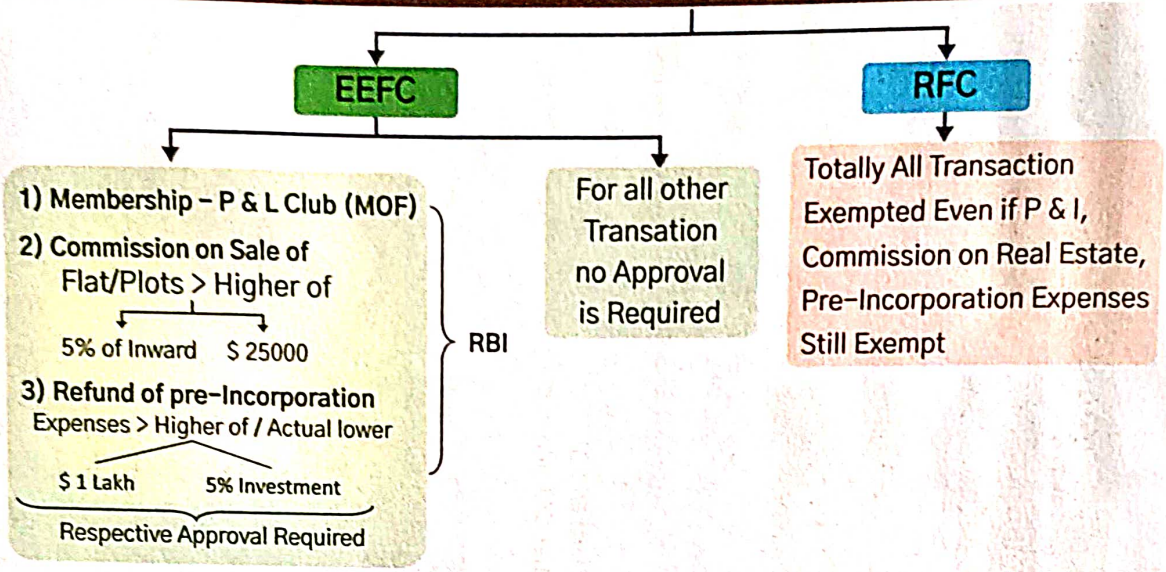
Per Transaction RBI Approval

1) Commission On Real Estate
   5% or $ 25,000 Higher
2) Pre Incorporation Exp - Refund
   5% or $ 1,00,000 Higher or Actual Exp whichever is lower
3) Consultancy Services
   - Private $ 1mn
   - Infrastructure $10mn
4) Donor Employment
   1% of Last 3 years FE Earning or US $ 5mn whichever is lower
5) Probationes - PROI
   Net salary After Taxes/ Statutory Dues

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Importance about EEFC & RFC Accounts

Remittances for Schedule II (Central Government) & Scheme III (RBI) Transaction through EEFC / RFC / AC



Sec 2(y) & 8 & 9: Realisation and repatriation of foreign exchange

1) Foreign Exchange is a common resource and has a vital impact on interest rates and inflation. The funds belong to the individual but the equivalent foreign exchange belongs to the Government of India. Therefore all foreign exchange should be realized, repatriated and surrendered to the Reserve Bank through Authorised Persons. Permitted amounts can be held as foreign currency as per the guidelines issued from time to time.

2) Where any amount of foreign exchange is due or has accrued to any person resident in India, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank.

Exemptions from Realisation & Repatriation in certain cases (Section 9)

The provisions of sections 4 and 8 shall not apply to the following, namely:

a) possession of foreign currency or foreign coins by any person up to such limit as the Reserve Bank may specify

b) foreign currency account held or operated by such person or class of persons and the limit up to which the Reserve Bank may specify

c) foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing there on which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank

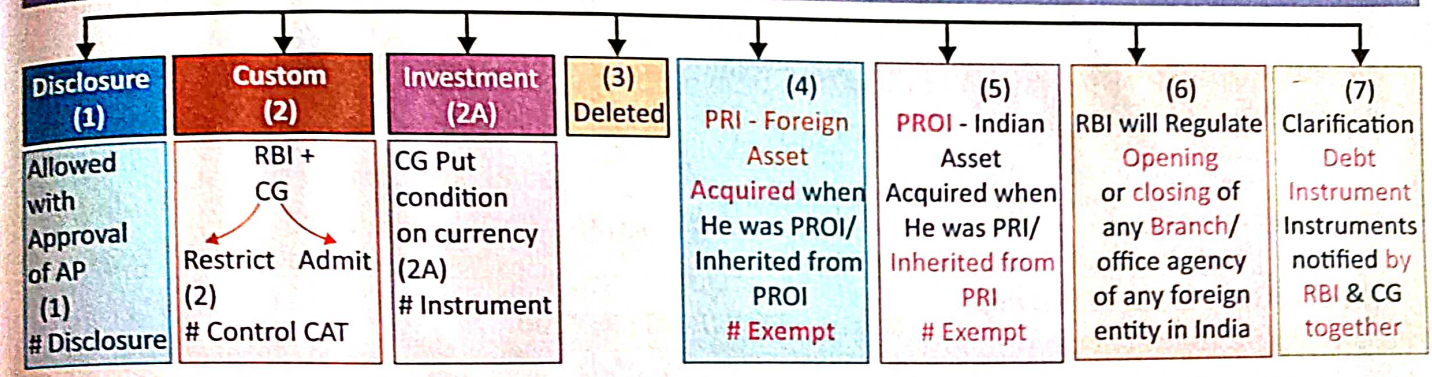
d) foreign exchange held by a person resident in India up to such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from

e) foreign exchange acquired from employment, business, trade, vocation, service, honorarium, gifts, inheritance or any other legitimate means up to such limit as the Reserve Bank may specify; and

f) such other receipts in foreign exchange as the Reserve Bank may specify.

Foreign Exchange Management (Realisation, repatriation and surrender of foreign exchange) Regulations, 2000 This topic is being deleted by ICAI from old as well as new syllabus. If you need more details, please refer syllabus change lecture on YouTube channel CA Darshan Khare in video list released at end of June 2019 (Video Link: https://www.youtube.com/watch?v=E-XpxeXSzgo&t=1503s).

Chart for Understanding



1) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

2) The Reserve Bank may, in consultation with the Central Government, specify—

   (a) any class or classes of capital account transactions, involving debt instruments, which are permissible

   (b) the limit up to which foreign exchange shall be admissible for such transactions

   (c) any conditions which may be placed on such transactions:

   Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

2A) The Central Government may, in consultation with the Reserve Bank, prescribe—

   (a) any class or classes of capital account transactions, not involving debt instruments, which are permissible

   (b) the limit up to which foreign exchange shall be admissible for such transactions; and

   (c) any conditions which may be placed on such transactions.

3) **Before 15th October 2019**, Section 6(3) specified a list of capital account transactions which could be regulated by RBI [apart from the general powers which it had under Section 6(2)]. **This list has now been deleted from 15th October 2019**

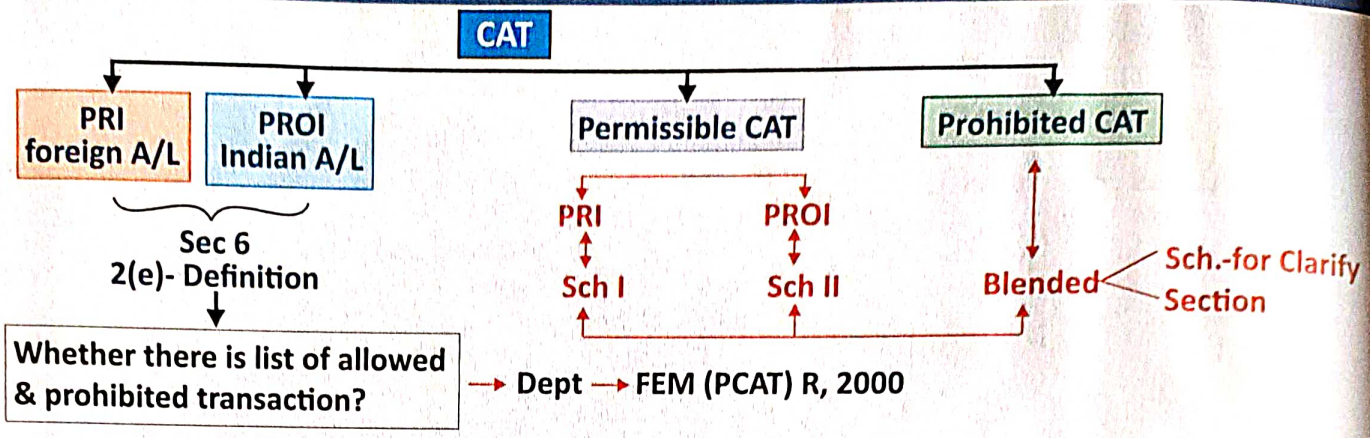
4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

5) A person resident outside India may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by a such person when he was resident in India or inherited from a person who was resident in India.

6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

Regulation on CAT



The RBI has framed **Foreign Exchange Management (Permissible Capital Account Transaction) Rules, 2000.** The regulation has following three parts.

a) **Transaction, which are permissible in respect of persons resident in India and outside India.**

b) **Transaction on which restrictions cannot be imposed; and**

c) **Transactions, which are prohibited.**

Permissible after the regulations specified by RBI are complied.	Permissible after the regulations specified by RBI are complied.
1. Investment by a person resident in India in foreign securities. 2. Foreign currency loans raised in India and abroad by a person resident in India foreign securities. 3. Transfer of immovable property outside India by a person resident in India. 4. Guarantees issued by a person resident in India in favour of a person resident outside India. 5. Export, import and holding of currency / currency notes. 6. Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India. 7. Maintenance of foreign currency accounts in India and outside India by a person resident in India. Currency/currency notes. 8. Taking out of insurance policy by a person resident in India from an insurance company outside India. 9. Loans and overdrafts by a person resident in India to a person resident outside India. 10. Remittance outside India of capital assets of a person resident in India. 11. Undertake derivative contracts.	1) Investment in India by a person resident outside India, that is to say, i) issue of security by a body corporate or an entity in India and investment there in by a person resident outside India; and ii) Investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India. 2) Acquisition and transfer of immovable property in India by a person resident outside India. 3) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India. 4) Import and export of currency/currency notes into/from India by a person resident outside India. 5) Deposits between a person resident in India and a person resident outside India. 6) Foreign currency accounts in India of a person resident outside India. 7) Remittance outside India of capital assets in India of a person resident outside India. 8) Undertake derivative contracts

CAT on which restrictions cannot be imposed

They are:

(1) For amortisation of loan and

(2) For depreciation of direct investments in ordinary course of business.

Also, restrictions **cannot be imposed** when drawing is of the purpose of **repayments of loan instalments.**



Important Note:

1) *Amortisation of loan means pre payment of loan before due date.*

& Govt. cannot stop prepayment of loan or their will be huge interest cost.

Prohibited CAT

Monetary Prohibition

CUT + CAT - PRI Individual

Amount ≤ $ 2,50,000 per year outgoing. (₹ ⟷ $)

Above $ 2,50,000 RBI Approval

Liberalized Remittance Scheme

Transactions Prohibition

Prohibited only to PROI

1) Investment Chit funds
2) Investment Nidhi
3) Agriculture & Plantation
4) Real Estate Development / construction of farm houses } Invest
5) Invest in TDR

On certain transactions, the Reserve Bank of India imposes prohibition.

a) The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:

i) In the **business of chit fund;**

- Registrar of Chits or an officer authorised by the state government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Non-resident Indians.
- Non- resident Indians shall be eligible to subscribe, through banking channel and on non-repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the Reserve Bank of India from time to time

ii) As **Nidhi company**

iii) In **agricultural or plantation activities**

iv) In **real estate business, or construction of farm houses**

v) In trading in **Transferable Development Rights (TDRs)**

Explanation: In "real estate business" the term shall not include development of townships, construction of residential /commercial premises, roads or bridges and **Real Estate Investment Trusts (REITs)** registered and regulated under the SEBI (REITs) Regulations 2014.

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Capital Account Transaction Sec 2(e) + Sec 6 + Foreign Exchange management (Capital Account Transactions) Regulations, 2000



"Capital account transaction" means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of person resident in India or assets or liabilities in India of person's resident outside India, ~~and includes transactions referred to in sub-section (3) of section 6.~~ (Omitted w.e.f.15.10.2019)

Definition (Sec 6)

(1) Disclosure

Allowed with Approval of AP (1) # Disclosure

(2) Custom

RBI + CG

Restrict (2) # Control CAT — Admit

(2A) Investment

CG Put condition on currency (2A) # Instrument

(3) Deleted

(4) PRI - Foreign Asset Acquired when He was PROI/ Inherited from PROI # Exempt

(5) PROI - Indian Asset Acquired when He was PRI/ Inherited from PRI # Exempt

(6) RBI will Regulate Opening or closing of any Branch/ office agency of any foreign entity in India

(7) Clarification Debt Instrument Instruments notified by RBI & CG together

Permissible to PRI (Sch I)

1. Investment
2. Foreign currency loans raised
3. Transfer of immovable property outside India
4. Guarantees issued
5. Export, Import and holding of currency/ currency notes.
6. Loans and overdrafts
7. Maintenance of foreign currency accounts
8. Taking out of insurance policy
9. Loans and overdrafts
10. Remittance outside
11. Undertake derivative contracts

Permissible to PROI (Sch II)

1. Investment
2. Acquisition and Transfer of immovable property in India
3. Guarantees
4. Import & Export of currency/ currency notes into/from India.
5. Deposits between a person resident in India
6. Foreign currency accounts in India
7. Remittance outside India of capital assets
8. Undertake derivative contracts

Prohibited

Monetary Prohibition

↓

CUT + CAT - PRI Individual

Amount ≤ $ 2,50,000 per year outgoing. (₹ ⟷ $)

↓

Above $ 2,50,000 RBI Approval

↓

Liberalized Remittance Scheme

Transactions Prohibition

↓

Prohibited only to PROI

1) Investment in Chit funds. It can be allowed on following points :
   a) With state government approval;
   b) On repatriation basis;
   c) Through proper banking channels.
2) Investment in Nidhi Company
3) Investment in Agriculture & Plantation - Invest
4) Investment in Real Estate Development - Invest.
   (Real Estate does not include development of township, residential / commercial premises, roads or bridges & REITs.
5) *Investment in TDR (Transferable Development Rights)*

Transactions with No Restriction

(1) For amortisation of loan and

(2) For depreciation of direct investments in ordinary course of business.

Also, restrictions cannot be imposed when drawing is of the purpose of **repayments of loan** instalments.

CA CS Darshan Khare
EKATVAM ACADEMY COMMERCE KE LITE MARGDARSHAN PRATHAM

Terms of Interpretation

Ejusdem Generis

Ejusdem = Belonging
Generis = From Generia

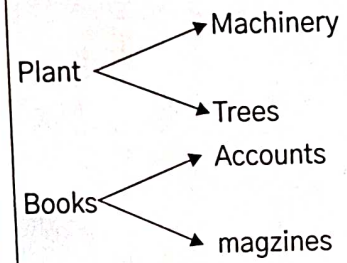
e.g. Ghee, Curd, butter, cheez, Paneer etc. – Milk Product.

The meaning of General word will be derived from specific word which is follows:

1) If specific words are used to exhaust the whole category then general word will cover larger category.
2) This rule only applies where specific word belongs from same category.

Noscitar A– Sociis

Noscitur – Derivation
A–Sociis – Associated



1) The derivation of dual meaning derived from a specific word to which it is associated.
2) The words like business, trade & profession should be considered as per associated word.
   [Devendra M. Surti Vs. State of Gujrat]
3) The word entertainment would have different meaning such as refreshment or musical or theatrical
4) The words like power has diff. mean also such as atomic power, physical, mental power, etc.
   [State of Karnataka Vs. Union of India]

Expressio Unius

EST Exclusio Alterius

The express selection of one thing from a group will automatically exclude the things from such group.
For. e.g. SEBI applicable to listed companies which means from the group of the companies only the listed companies are selected & all other are exempt.
For. e.g. Express selection of one student shall exclude the other students.

Contomporonea Explositio

When the law is old but effective one & is being used throughout the period then it should be exposed to new circumstances new situations for proper implementation.
For e.g. Contract Act, 1872 is very old law but still we used it for validity of all the contracts even electronic contracts that means exposed old contract law to new circumstances & situations.

Deeds and Documents

1) The Golden rule to interpret the deed is read it as a rational person
2) The deed should be understood as a whole
3) The words will carry same meaning throughout the deed.
4) The background of the parties & circumstances of case should be considered while reading the deed.
5) When there is dispute amongst clause, the earlier clause will override later clause.

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Rules of Interpretation

Literal Construction

Grammatical Construction construction as it is word to word construction

1) It is a primary rule of Inter-pretation or entry gate.
2) Every reader of law knowingly, unkonowingly / intentic nally, unintentionally use this rule.
3) In this rule the meaning should be taken word-toword as per grammar & dictionary.
4) The technical words & pharses should be understood as per their technical meaning or their ordinary popular meaning.
5) If there are two interpretations available & narrower interpretation is not enough then vider information should be taken.
6) In this rule if there are ommissions then only reference to new rule should be taken here, assumption of perfect draftsman is there.
7) 'absoulatasententia expositor non indiget". It means when plane words capable of giving the meaning a separate explanation or interpretation is required.
   [SS Railway Company Vs. Workers Union]
8) When there are two possible construction one is mechanical one is iteral. then court can also refer mechanical construction.
   [Arora Vs. State of U.P.]
9) The law should be understood in their natural & gramatical meaning first. If it is inconsistent then is should be modified
   [state of H.P. Vs. Pawan Kumar]

Reasonable Construction

Purposive Construction Golden Rule

1) It is a secondary rule of Interpretation.
2) Interpreter should use this rule knowingly when interpreter fails to achieve the purpose through literal construction.
3) "Ut res magis valeat quam Pareat"
   It means words at statute should be interpreted in sensible meaning or logical meaning.
4) Here draftsman is assumed to be faulty.
   [Dr. Al Mudaliar Vs. LTC of India] – the MOA should be interrelated in reasonable way.

Beneficial Construction Heydon's Rule Mischiff Rule

1) It is a secondary rule of Interpretation
2) When literal construction is fails to achieve he purpose & two different meaning are derived which creates the mischiffs then in such situation his rule is used to solve such a mischiff.
3) This rule is also called as purposive construction because it reasonably solves the purpose
4) In this rule following steps are taken to find interpretation:
   a) what was the law before making of this Act.
   b) What is mischieff or defect which is occurred
   c) What is remedy that Act has provided
   d) What is reason for remedy
5) In this rule uses meaning also fall short then extended meaning should obtain for interpretation of law.
6) Where this law requires something be done by person then it is sufficient compliance if some otherdone it on his behalf.
7) Here it is assumption of faulty draftsman "quo Facit per alium Facit per Se"

Exceptional Construction
Coverage / Certainly Construction

1) It is secondary rule of Interpretation
2) Where literal construction fails to achieve the purpose & gives uncertainly or lower coverage to provision then this rule should be used.
3) In this rule the less certain & law coverage words are replaced by more certain & high coverage words so as to uphold the provision of law.
4) Few Interpretations are as follows :
   a) 'OR'–and – For coverage
   b) 'May–Must' – For directory to mandatory.
   c) 'Shall–Must' for more certainty etc.
5) Here it is assumption of faulty draftman.
   E.g. Finder of Goods may sale perishable goods.

Harmonious Construction
Construction together

1) It is secondary rule of Interpretation.
2) The literal construction fails to interpret 2 or more provisions together and creates the dispute then this rule is used.
3) In this rule 2 or more laws are interpreted together to resolve the dispute in following priority.
   P1 : Try to uphold both the laws / Provisions.
   P2 : Specific law will prevail the general law/provision
   P3 : The latest law will prevail order laws.
4) Try to read statute as a whole
5) Here it is assumption of faulty draftsman

Internal Aids of Interpretation

Answer Writing Points

Long Title / Short Title :

1) It is basically a name of law through which the law is **being identified.**
2) It **does not describe** much about the law but it gives a idea where the **law moving towards**
3) The **title of the Statute** is important part but it cannot **override original law. [Aswini Kumar Gose Vs. Arabinda Bose]**

Preamble :

1) Preamble expresses the **scope, purpose, object** of the Act
2) It **decides & presents** the ground on which Act is made
3) Preamble **cannot override** the **provisions** of the Act. It can only tell different ways to derive the meaning.
4) If there is confusion in the provisions of the law the preamble can help you to **clear the confusion** & take appropriate interpretation.

Definition :

1) Definition provides the **meaning** of the words used in a law
2) The definition can be **act based** which can be used for whole Act or it can be **Section based** for specific Section.
3) As per **coverage** the definition can be divided into following two parts :
   a) **Exhaustive Definition :** This definition starts with the words **'Means'** & restricts the meaning only upto the **limited area** which is defined. It does not extends or clarifies any other thing than given in the definition e.g. Veg 'means' Fruits, roots, leaf, any part of plant or tree or climber or creeper.
   b) **Inclusive definition :** It actually **extends or clarifies** the **scope & meaning** of the word. The general meaning of the word in normal paralance is assumed here & in addition few clarifications are made. for e.g. Veg. 'Includes Milk & Eggs.

Heading & Title of a Chapter :

1) The number of **Sections groups for particular** subject or object or ground then it is called as chapter, heading, Titles.
2) Normally title of the chapter suggests about which **topic or a thing discussions** are made in the sections.
3) But the heading of the chapter is **not conclusive** & it does not overrides the provisions.

Marginal Notes :

1) It is quite a disputed content and it is widely **used for a different purpose** in different area's.
2) This normally **clarifies the terms** & Conditions, interpretations, amendments, changes, suppliments, specific provision, section, words.

3) Whatever may be the marginal notes but it **cannot defeat the original purpose** of the section.

Ambiguous Definition :

1) Sometimes definitions of the Act are in **reference to specific section** or provision etc.
2) When the definition is to be interpreted in specific context or the word or the pharse, then it is **ambiguous definition.**

Illustrations :

1) Illustrations means the example which **explains** the provision **with logic.**
2) Normally those are **not the part of section** they follow the provisions & give interpretations in better way.

Proviso :

1) Proviso's normally **creates exceptions,** exemptions, additional points to the original provision.
2) It **qualifies & narrow downs** the purpose of provision which seems to be general.

Explanation :

1) Explanation is **appendix or supplement** to original Section which defines or gives meaning to specific word **used in a** section.
2) Sometime explanation can be **used to include or exclude** something from the meaning of the provisions.

Schedules :

1) Schedules normally provides –
   a) Additional provision (e.g. Sch. IV, V to companies Act)
   b) Formats (e.g. Sch. I, III to companies Act)
   c) Lists (e.g. Sch. II, IV to Companies Act)
   d) Additional clarification & process required for provisions (e.g. Sch. VII to Companies Act)
2) Schedules are **integral part** of law so, they should be interpreted with the provisions.
3) Schedules go hand in hand with the law & it **never overrides** the law.

External Aids of Interpretation

Answer Writing Points

History :

1) History means the **external circumstances** outside the law which **provoked the situation** to create a law.
2) History normally tells the reason the **purpose & the manner** in which law is inacted.
3) History also tells wheather law is **entirely new** or it **replaced original** or old laws.
   For. e.g. Bhopal Gas tragedy.

Previous Law :

1) It can also be called as **'Consolidated Statute'**
2) Previous law states the period of the history through which the law is passed & survived over a period of time.
3) The previous law also states the **circumstances** their **changes** and **effects** and Amendments that they lead to.

Usage :

1) It means the way in which the law is **used & implemented** over a period of time
2) This can help & support & gives a **way to implement** the new laws.

Earlier and later Acts : [Analogous Act] :

1) When there is a need that **two or more laws** are to be **interpreted together** then :
   a) Those are to be interpreted as a **composite for analogous** Act. [simply try to uphold both the laws]
   b) In case of dispute its not necessary to interpret both the laws in one way the more **logical & specific law will override** general.
   c) Still if point b) is not possible the **latest law** will overide earlier laws.

Dictionary Meaning :

1) It means the **literal construction of the words** used in law to understand the clear meaning of the provison.
2) It is a fundamental rule the meaning of the word should be **used in a context** in which the provision is made.
3) For technical terms refer to **technical dictionaries.**

Decisions of the Court :

1) When law is **ambagious & disputed** then reference should be made to the court's decision as follows :
   a) If it is a **question of fact** then reference can be made upto **tribunal level.**
   b) If it is a **question of law** reference can be made to **supreme court** or **high court** decisions
2) IF law is **still disputed** & Indian litigations are not available then reference can be made with **similar foreign laws** & there decisions but those references are just guidance for interpretation & not decisions of Indian court.

15 THE GENERAL CLAUSES ACT, 1897

Basics & Object of the Act

Answer Writing Points

1) The General Clauses Act, which was enacted on March 11, 1897, consolidated the two earlier enactments of 1868 and 1887. It is largely modeled on the (English) Interpretation Act 1889.
2) Its object was simply to shorten the language of future statutory enactments.
3) As far as possible, to provide for uniformity of expression where there was identity of subject matter.
4) To state explicitly certain convenient rules for the construction and interpretation of central acts.
5) In "The Chief Inspector of Mines v. Karam Chand Thapar", It was held by Supreme Court that the purpose of this Act is to place in one single Statute different provisions as regards interpretation of words and legal principles which would otherwise have to be specified separately in many different Acts and regulations.

Important Definitions

1) **Document [Sec.3(18)]** → **Shall include**
   - Any matter written, expressed or described upon any substance
   - By means of letters, or figures or by more than one of those means
   - Which is intended to be used or which may be used
   - For the purpose of recording that matter

2) **Financial Year [Section 3(21)]** → **Shall mean** → The year → Commencing on the first day of April

3) **Immovable Property [Section 3(26)]** → **Shall include**
   - Land
   - Benefits to arise out of land
   - Things attached to the earth
   - Things permanently fastened to anything attached to the earth

"Coming Into Operation of Enactments" [Section 5]

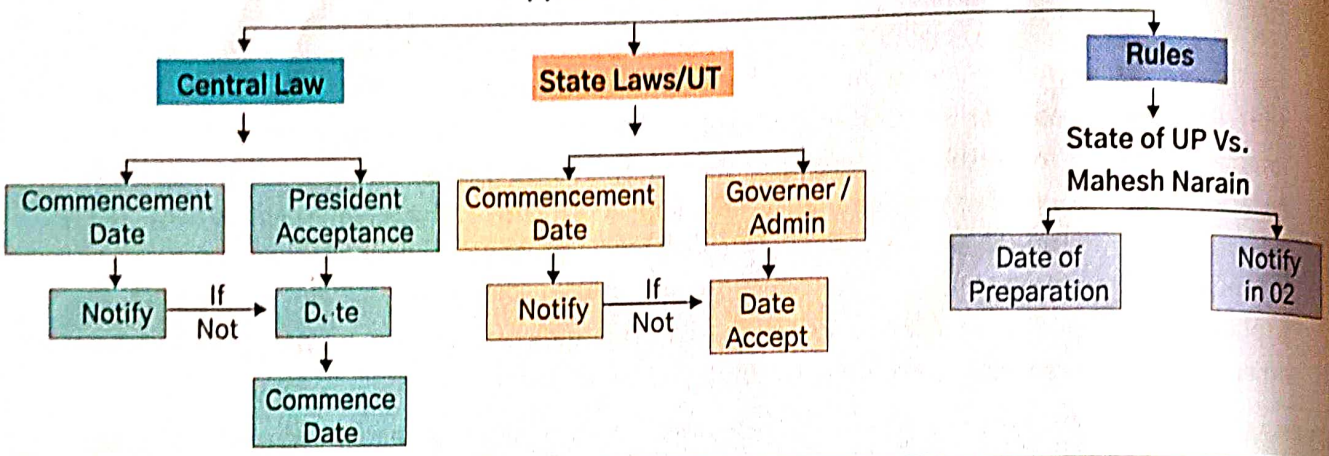
Answer Writing Points

1) IF SPECIFIED:–From Specified Date
2) IF NOT SPECIFIED:–
   (a) In the case of a Central Act made before the commencement of the Constitution, The date of assent of the Governor-General, and
   (b) In the case of an Act of Parliament, The date of assent of the President.
3) Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date.

Chart for Understanding

Sec 5 : Commencement of Laws

[Applicability of Law]



Co. Act : 29/08/2013 President App → 12/9/2013 98 Sec. commencement → 1/4/2014 183 Sec Commenced → 2015 Partly Commenced — June, Aug., Nov.

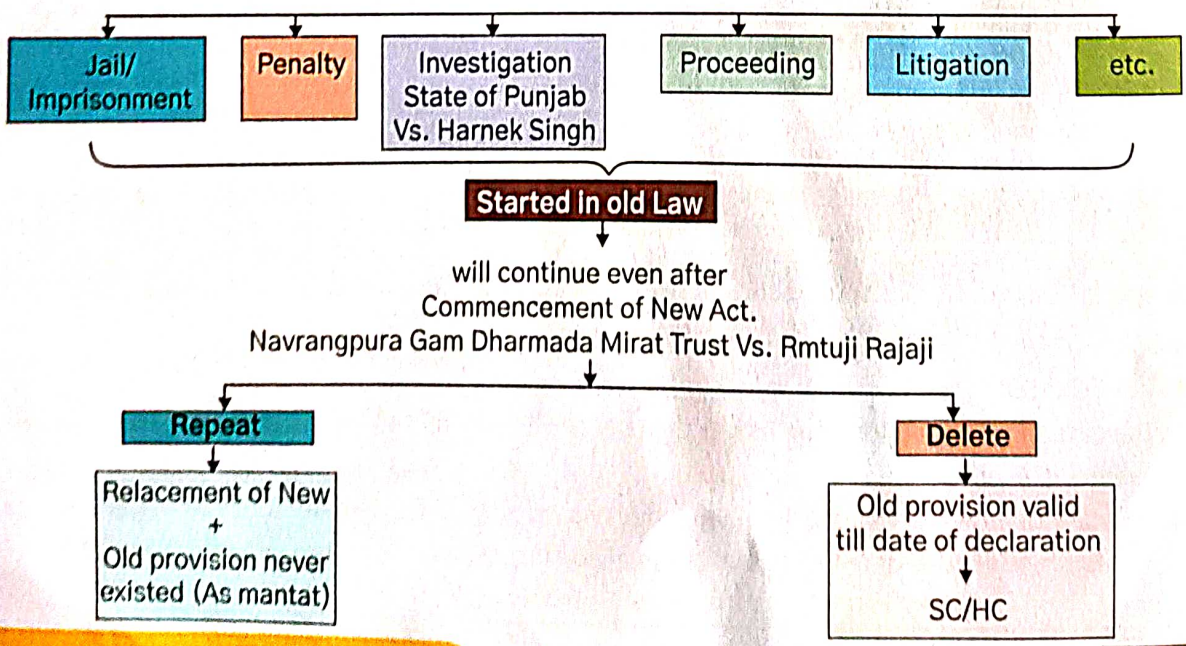
"Effect of Repeal" [Section 6]

Answer Writing Points

1) If any Act repeal the other Act, then it will not affect:-
   a) The previous operation of repealed Act.
   b) Anything duly done under previous Act.
   c) Rights, privileges under previous Act.
   d) Liabilities incurred under previous Act.
   e) Any penalty or punishment for offence committed under repealed Act.
   f) Any Inquiry, Investigation pending under repealed Act.

Chart for Understanding

Sec 6 : Repeat of Law + Sec 24



"Revival of Repealed Enactments" [Section 7]

Answer Writing Points

1) If any Act is repealed & Government wants to revive the same or its part then Government shall state the reason & purpose of the same.
2) Government can revive any law or its part made after 3rd jan 1868 or any law or its part or regulation made after 14th Jan 1887.

"Construction of References to Repealed Enactments" [Section 8]

Answer Writing Points

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and reenacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted

IT 1961 ⟶ Reference given of Companies Act, 1956
↓
Companies Act, 2013 Consider it as reference of new law.

Provision : [Sec 8 of the General Clauses Act, 1897]

1) When in any Law in India reference is made to some other law which is repeated & new law is in the force then it will be considered as reference made to new law.
2) The all Amendment, circular, notification should also be consider from new law.

Answer Writing Points for Sec. 9 to Sec 13

1) Commencement and Termination of Time : For the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

2) Computation of Time : Any act or proceeding is directed to allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open. Except in case of Time Barred Debt.

3) Measurement of Distances : Distance shall be measured in a straight line.

4) Duty to be Taken Pro Rata in Enactments : If any Excise or Custom Duty is given for any particular Quantity, weight, lenght or value, then it shall be calculated proportionately for any lesser item.

5) Gender and Number : In all legislations and regulations, unless there is anything repugnant in the subject or context–
Words importing the masculine gender shall be taken to include females, and
Words in singular shall include the plural and vice versa.

"Power Conferred to be Exercisable from Time to Time" [Section 14]

Answer Writing Points

1) Under many laws CG have power to make the regulations regarding such laws.
2) Unless & untill the power is time barred CG can use the same as many times as wished.

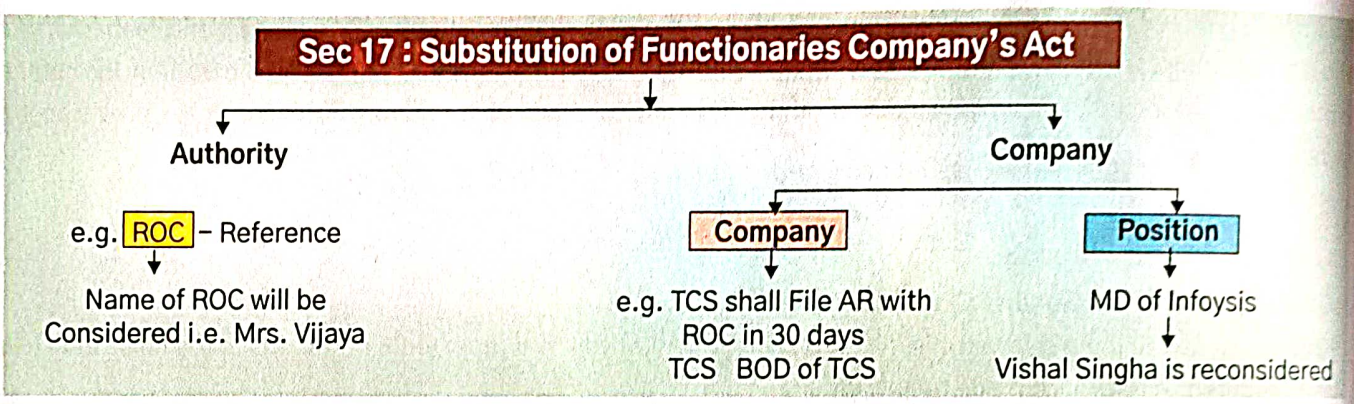
Eg. Sec 469 (Power to make rules as times)
Sec 470 (Power to remove difficulties 5 years from commencement)

Answer Writing Points for Sec 15 to Sec 19

Power to Appoint to Include Power to Appoint Ex-officio : A power to appoint any person to fill any office any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office

Power to Appoint to Include Power to Suspend or Dismiss : The authority having for the time being power to make the appointment shall also have power to suspend or dismiss any person appointed.

Substitution of Functionaries : It shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the function of an office, to mention the official title of the officer at present executing the functions.



Successors : In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations.

Official Chiefs and Subordinates : For the purpose of expressing that a law relative to the chief or superior of an officer shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior.

"Construction of Orders, Etc., Issued Under Enactments" [Section 20]

Answer Writing Points

1) Where any law or regulation issued or power to issue if used to give any notification or order, scheme or rules shall have same respective meanings for the definitions which are provided in Act.
2) For e.g. Govt. issued notification for exemption to Govt. Companies. Here Govt. Company will defined as per Sec 2(45) of companies Act.

"Power to Issue, to Include Power to Add to, Amend, Vary or Rescind Notifications, Orders, Rules or Bye-Law" [Section 21]

Answer Writing Points

1) Normally under the every law the authority have power to issue notification, order rules etc.
2) The same authority under the same law have unlimited power to rescind such or revoke such rules notifications & orders which are already passed.

"Making of Rules or Bye-Laws & Issuing of Orders between Passing & Commencement of Enactment" [Section 22]

Answer Writing Points

If some notification, rules or order are issued in between acceptance & commencement of Act then they will be effective from the date of commencement of Act.

"Provisions Applicable to Making of Rules or Bye-Laws after Previous Publications" [SECTION 23]

Answer Writing Points

1) The Authority while making any rule by laws must make a publication of the same for the persons who are likely to be affected by such rules.
2) The publication should also state the date from which by laws will be effective
3) If two or more authority's are making the rules or by laws reference should be given to such a other authority for objections & suggestion.
   E.g. MCA shall give reference to SEBI for the rules of listed companies.
4) Publication of rule & by laws will be concluded as official proof that by laws are made.

Answer Writing Points for Sec 24 to Sec 27

Continuation of Orders Etc. Issued Under Enactments Repealed & Re-enacted : The provisions of repealed act will be effective until new act has superseded or withdrawn or modified it.

Recovery of Fines : Sections 63 to 70 of the Indian Penal Code (45 of 1860) and the provision s of the 1Code of Criminal Procedure in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law.

Provisions as to Offence Punishable Under Two or More Enactments : Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Meaning of Service by Post : Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i) Properly addressing
ii) Pre-paying, and
iii) Posting by registered post

Answer Writing Points for Sec 28 to Sec 30

Citation of Enactments :

1) Any central Act regulations, rule or bye laws shall be refereed as per the title of Act & which section or subsection given act.
2) When description of citation of other enactment is made then every part of such enactment, provision or the word should be considered from start to end.

Savings for Previous Enactments, Rules and Bye Laws : The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

Application of act to Ordinance : The word act include ordinance.