

## Corporate and Other Laws: A Capsule for Quick Recap (The Companies Act, 2013)

At the Intermediate level, the Company Law portion of the subject "Corporate and Other Laws" largely involves knowledge and comprehension, analysis and application of provisions of the Companies Act, 2013 to solve simple situation based and application-oriented issues. The subject is very dynamic on account of the large number of amendments/ circulars/ notification as issued by the Ministry of Corporate Affairs.

Significant provisions from Section 1 to Section 122 of the Companies Act, 2013 are covered here. Remaining sections (123 to 148) will be covered in the forthcoming issue of Students' Journal. You are advised to read and understand the July, 2017 edition of the Study Material and relevant RTP for a thorough understanding of the relevant provisions of Companies Act, 2013, to hone your application skills. This capsule on Intermediate Paper 2: Corporate and Other Laws is intended to assist you in the process of revision of concepts discussed in the Study Material.

<b>Title</b>	Companies Act, 2013
<b>Extent</b>	Whole of India
<b>Commencement</b>	Section 1 came into force at once and the remaining provisions on different dates through Notifications.
<b>Application</b>	<ol style="list-style-type: none"> <li>1. Companies</li> <li>2. Insurance companies</li> <li>3. Banking companies</li> <li>4. Companies producing /supplying electricity</li> <li>5. Company regulated by special Act</li> <li>6. Entities as notified by Central Government</li> </ol>

### A BRIEF INTRODUCTION ABOUT COMPANY AND ITS TYPES

**What is a Company:** Company means a company incorporated under this Act or under any previous Company Law [Section 2(20)].

A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession.

### TYPES OF COMPANIES

#### 1. On the basis of liability

##### Company Limited by shares [Section 2(22)]

- Liability of the members of a company is limited by its Memorandum of Association (MOA) to the amount (if any) unpaid on the shares held by them

##### Company Limited by Guarantee [Section 2(21)]

- Liability of its members is 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
- Members cannot be called upon to contribute beyond that stipulated sum

##### Unlimited Company [Section 2(92)]

- No limit on the liability of members
- The liability ceases when he ceases to be a member

#### 2. On the basis of members

##### One Person company (OPC) [Section 2(62)]

- Only one person as member.
- Minimum paid up capital – no limit prescribed
- The MOA shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- Here, the member can be the sole member and director

##### Private Company [Section 2(68)]

- No minimum paid-up capital requirement
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company

##### Public Company [Section 2(71)]

- Is not a private company (Articles do not have the restricting clauses).
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members – 7
- Maximum numbers of members – No limit
- Subsidiary of a public company is deemed to be a public company

### 3. On the basis of control

#### Holding and Subsidiary company

**Holding company [Section 2(46)]:** Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**Subsidiary company [Section 2(87)]:** means a company in which the holding company—

- controls the composition of the Board of Directors; or
- exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies.

However, prescribed class or classes of holding companies shall not have layers of subsidiaries beyond such numbers as may be prescribed.

#### Associate Company [Section 2(6)]

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

**“Significant influence”** means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

**“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 thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

### 4. On the basis of access to capital

#### Listed company [Section 2(52)]

Which has any of its securities listed on any recognised stock exchange

**Unlisted company** - company other than listed company

### 5. Other companies

#### Government company (GC) [Section 2(45)]

At least 51% of the paid up share capital is held by-

- The Central Government (CG), or
- Any State Govt./s (SG), or
- Partly by CG and partly by one or more SG

Includes a company which is a subsidiary company of such Government company.

#### Small Company [Section 2(85)]

- A private company
- Paid up capital – not more than ₹ 50 lakhs or such higher amount as may be prescribed which shall not be more than 10 crore rupees; **and**  
Turnover (as per P&L A/cc of immediate preceding FY) – not more than ₹ 2 crores or such higher amount as may be prescribed which shall not be more than 100 crore rupees.
- **Should not be** – Section 8 company  
– Holding or a Subsidiary company  
– a company or body corporate governed by any special Act

#### Foreign company [Section 2(42)]

Any company or body corporate incorporated outside India which—

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

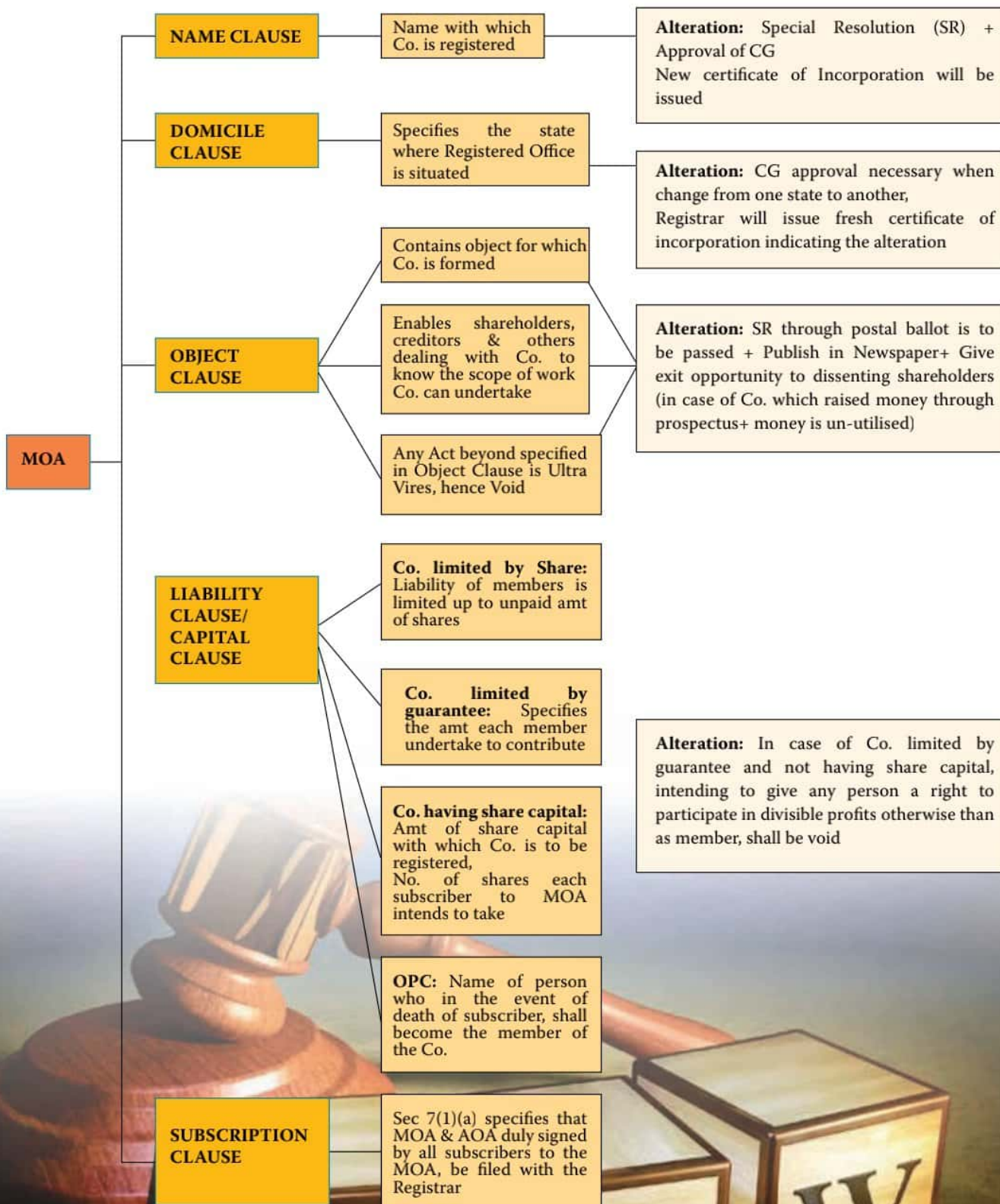
#### Formation of companies with charitable objects etc. [Section 8]

- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Enjoy same privileges and obligations as of a limited company
- Licence revoked if conditions contravened
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply



## INCORPORATION OF COMPANIES

### I. MEMORANDUM OF ASSOCIATION (MOA)



II. ARTICLES OF ASSOCIATION (AOA)



ALTERATION OF AOA

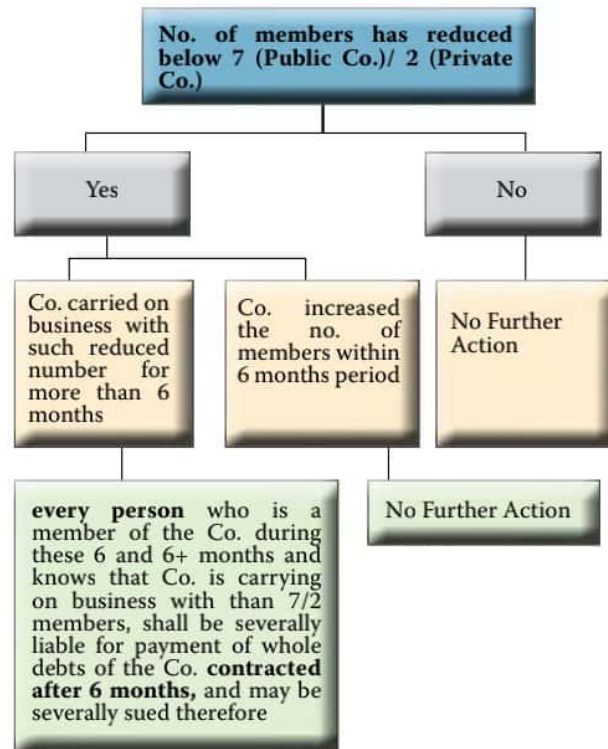
(i) Alteration is effected by SR
(ii) Alteration of AOA may include the Conversion of Pvt Co. to Public Co. and Vice versa. However, when Public Co. is converted into Pvt. Co., approval of CG is necessary.
(iii) Alteration of AOA+ Approval of CG (if any) to be filed with ROC within 15 days
(iv) Alterations once registered will be valid as if it were originally contained in AOA

III. STEPS FOR INCORPORATION OF COMPANY

1	Reservation of name by filing e-application
2	Drafting & signing of MOA & AOA and its submission to ROC. These documents have to be e- filed and e- stamped
3	Consent of persons nominated as directors to act as directors to be submitted electronically
4	Submission of 'statutory declaration of compliance' and other declarations
5	Pay fees
6	Obtain certificate of incorporation digitally signed by ROC
7	File declaration about address of Registered office

Note: New requirement of submitting declaration that 'all subscribers have paid the value of shares agreed to be taken by him' and 'verification of Registered office has been filed' has been inserted vide section 10A. This requirement is needed to be complied with before the commencement of business.

IV. COMPANY TO MAINTAIN MINIMUM NUMBER OF MEMBERS [Section 3A]



V. COMMENCEMENT OF BUSINESS ETC [Section 10 A]

Co. incorporated after the commencement of the Companies (Amendment) Act, 2019 + having a share capital shall not commence any business or exercise any **borrowing** powers unless—

- 1. Declaration is filed by director**
  - within **180 days** of the date of **incorporation** with the **Registrar**
  - that every subscriber to the memorandum has **paid** the value of the shares agreed to be taken by him on the date of making of such declaration
- 2. The Co. has filed with the Registrar a verification of its registered office**
- 3. If no declaration** has been filed with the Registrar within a period of said 180 days and the Registrar has reasonable cause to believe that the Co. is **not carrying on any business** or operations,
  - Registrar may, initiate action for the removal of the name of Co. from the register of companies under Chapter XVIII.

# COMPANY LAW

## VI. REGISTERED OFFICE (RO) OF COMPANY [Section 12]

1.

### Need for RO

- It is a physical office, capable of receiving & acknowledging all communication and notices.
- Domicile & nationality of Co. is determined by the place of RO

### Time Limit

- A Co. within 30 days of its incorporation and at all times thereafter, have RO

### Verification of RO

- Within 30 days of incorporation furnish to ROC verification of RO

### Labeling of company: Every company shall—

- Paint/ affix its name, address of RO on the outside of every office / place of business, in a conspicuous position, in legible letters, and if the characters employed are not those of the language/s in general use in that locality, then also in the characters of that language/s.
- have its name engraved in legible characters on its seal, if any;
- get its name, address of RO and the CIN along with Ph no., fax no., if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- have its name printed on hundies, promissory notes, bills of exchange and other prescribed documents

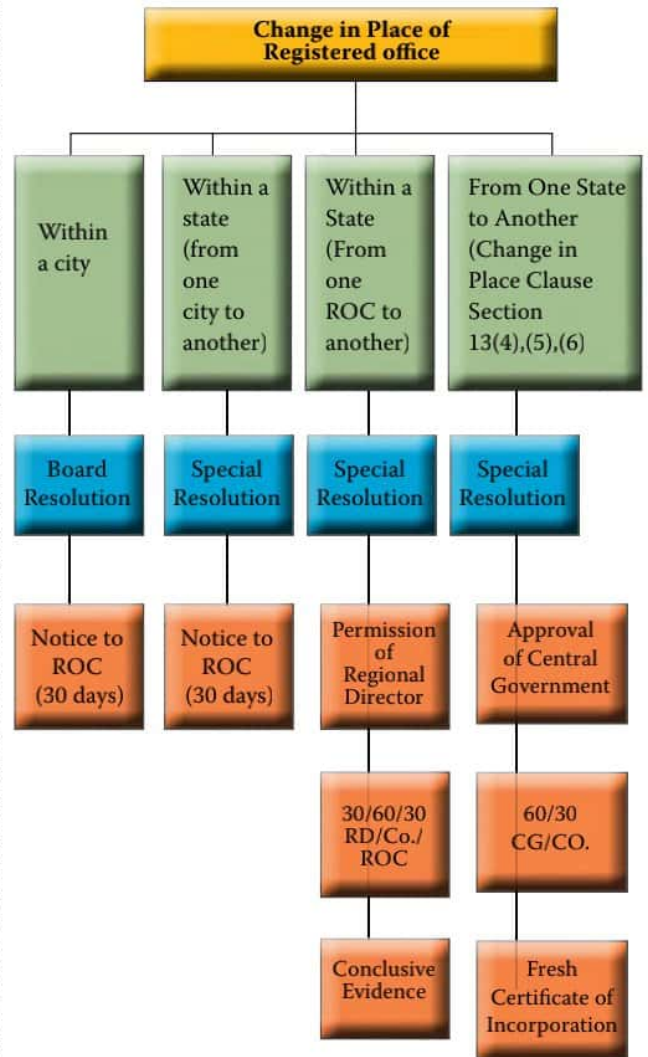
### Name change by the company during the last two years

- Co. shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

### In case of OPC

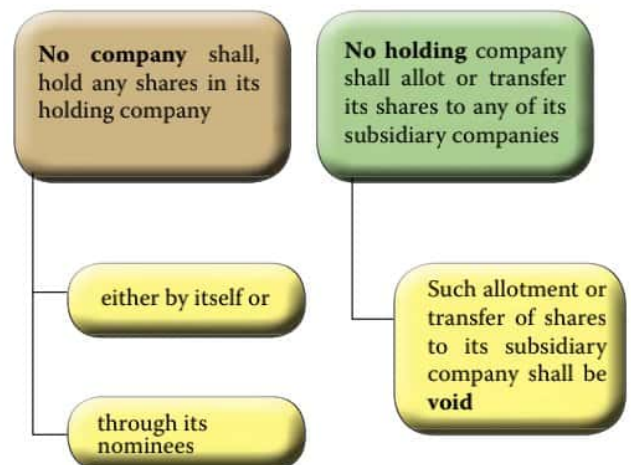
- The words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

2.



## VII. SUBSIDIARY COMPANY NOT TO HOLD SHARES IN ITS HOLDING COMPANY [Section 19]

1.



2. Exceptions to point (1)

- where the subsidiary company holds such shares as the **legal representative** of a deceased member of the holding company; or
- where the subsidiary company holds such shares as a trustee; or
- where the subsidiary company is a shareholder even **before it became a subsidiary** company of the holding company:

VIII. AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS [Section 21]

**Authentication of documents, proceedings and contracts**

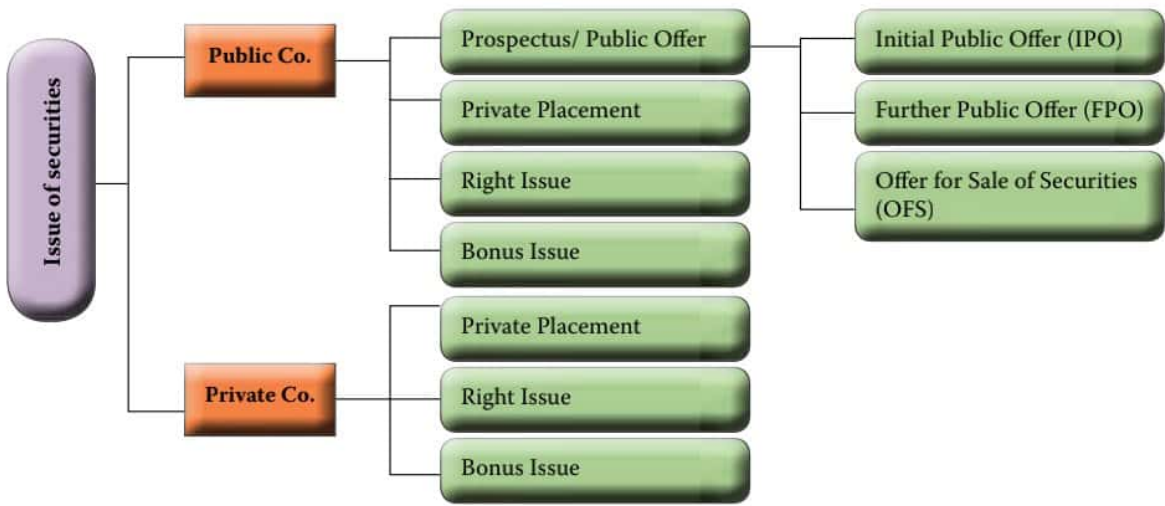
As per Sec.21 these may be signed by any "key managerial personnel" or an officer or employee of the company duly authorised by the Board in this behalf.

As per **Sec.2(51)-Key managerial personnel**, in relation to a company, means—

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

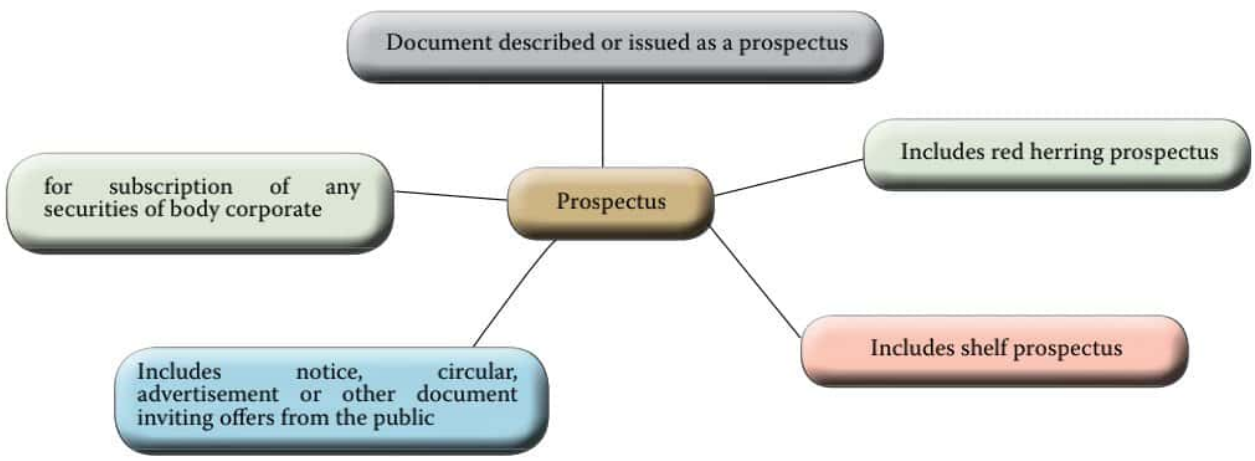
ISSUE OF SECURITIES

I.

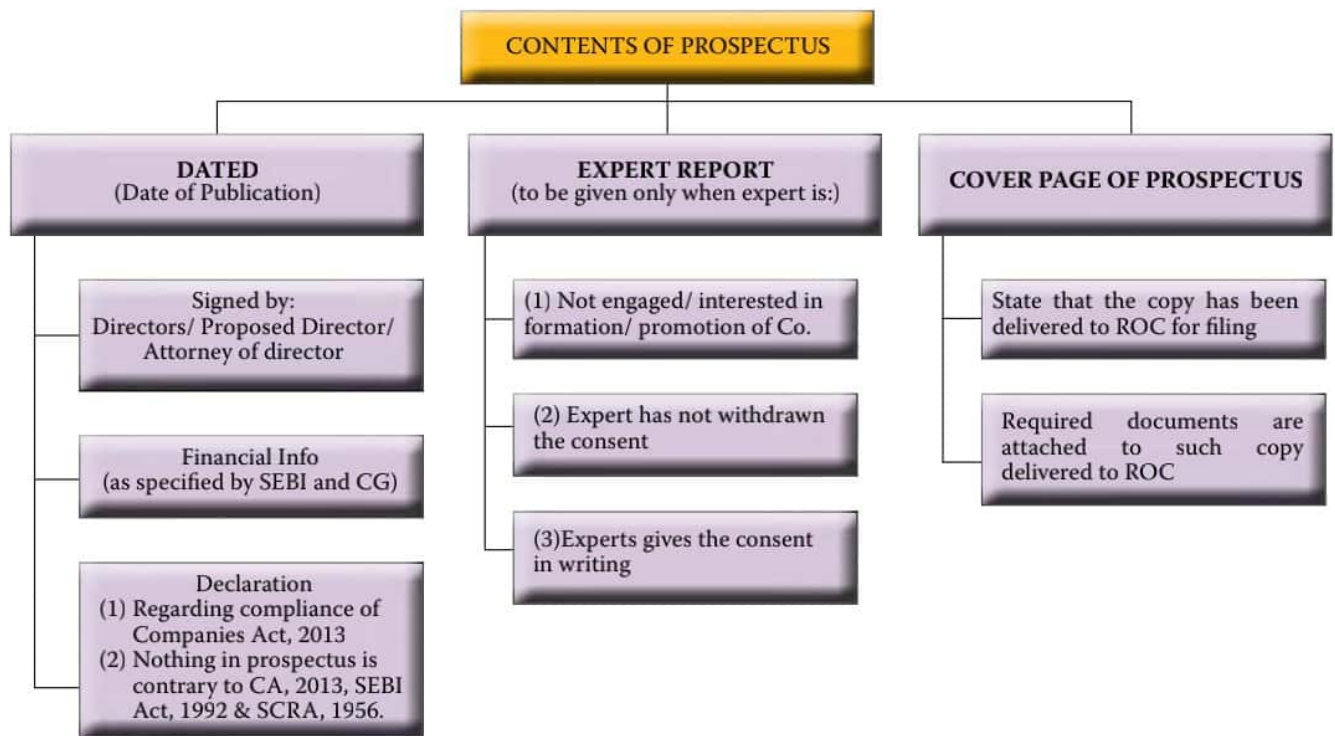


II. PROSPECTUS

(1) WHAT IS PROSPECTUS?



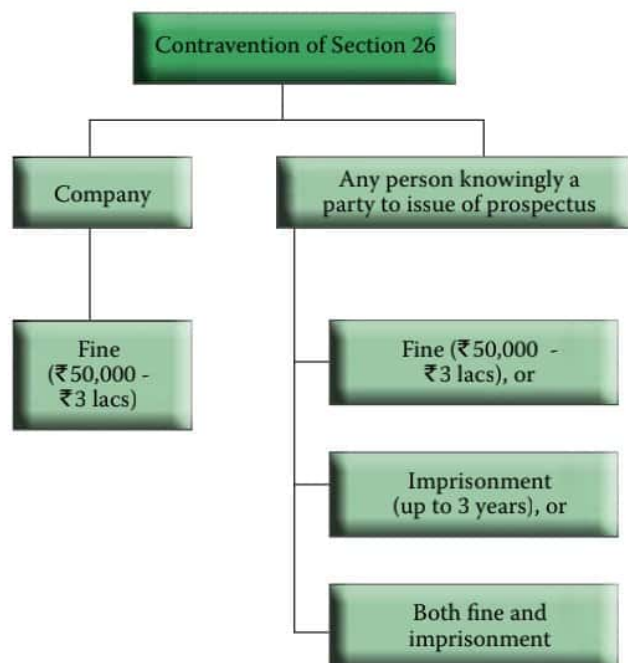
## 2. CONTENTS OF PROSPECTUS [Section 26]



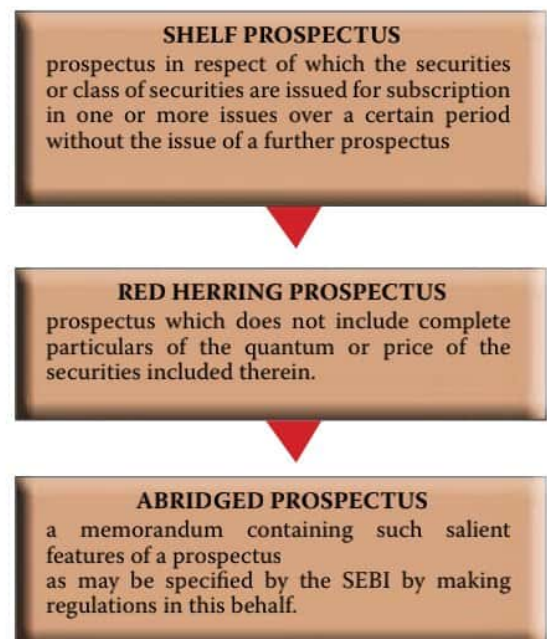
## 3) PROCESS FOR VARIATION IN TERMS OF CONTRACT OF PROSPECTUS [Section 27]



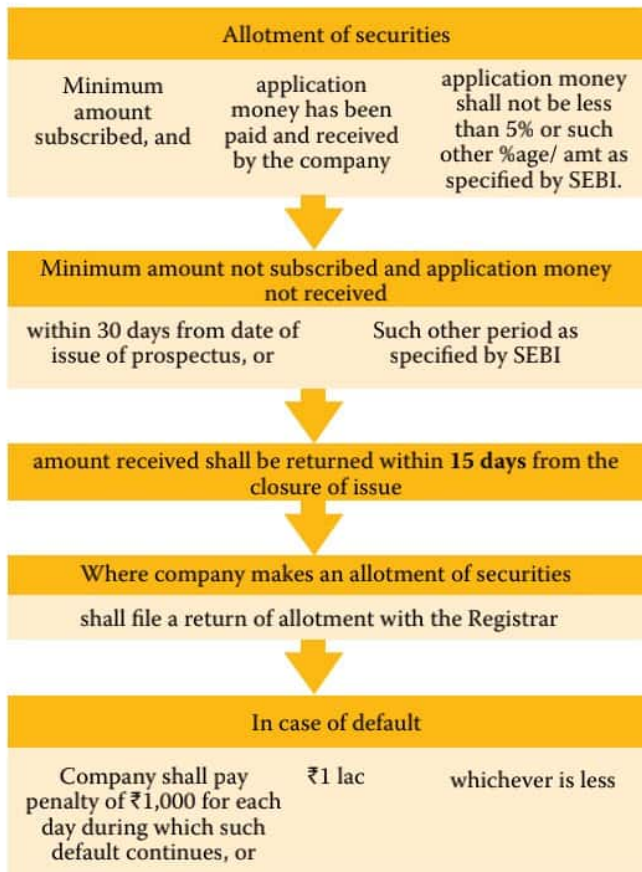
## (4) PENALTY FOR CONTRAVENTION OF SECTION 26



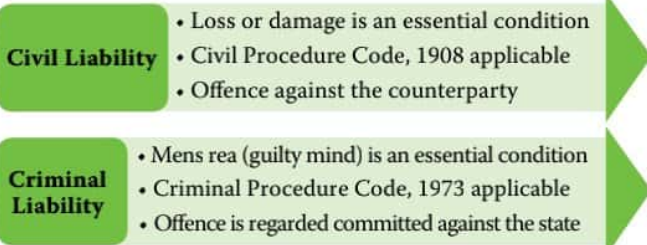
## (5) SHELF PROSPECTUS, RED HERRING PROSPECTUS AND ABRIDGED PROSPECTUS



### III. ALLOTMENT OF SECURITIES [Section 39]



### IV. LIABILITY IN CASE OF MIS- STATEMENTS IN PROSPECTUS

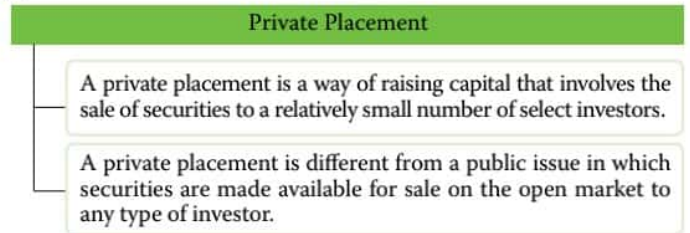


### V. PRIVATE PLACEMENT

(1)



(2)



#### PRIVATE PLACEMENT [Section 42]

- any offer or invitation to subscribe or issue of securities
- to a select group of persons by a company (other than by way of public offer)
- through private placement offer-cum-application

#### To whom can the private placement be made?

- only to a select group of persons
- identified by the Board ("identified persons")

#### Maximum No. of persons to whom offer can be made

- not more than 200 in the aggregate in a financial year

#### Exclusions from the list of 200 members

- qualified institutional buyers, or
- employees of the company under a scheme of employees stock option [Sec 62(1)(b)]

#### Application for Private Placement

- Identified person may subscribe to the private placement issue shall apply in the private placement
- application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash

#### Utilisation of Money received in private placement

- Co. shall **not utilise** monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar

#### Return of allotment

- Co. shall file with the Registrar a **return of allotment** within 15 days from the date of the allotment

Co. shall issue private placement offer cum application letter only after the relevant **special resolution** or **Board resolution** has been filed in the Registry

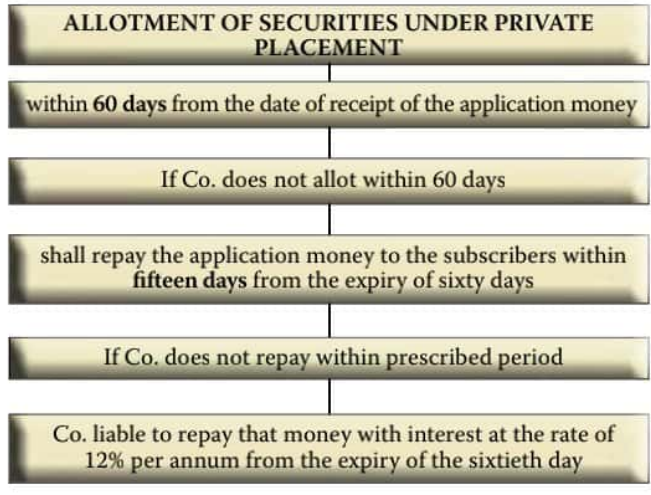
- Private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under 179(3)(c)

Any private placement issue not made in compliance of the provisions shall be deemed to be a **public offer**



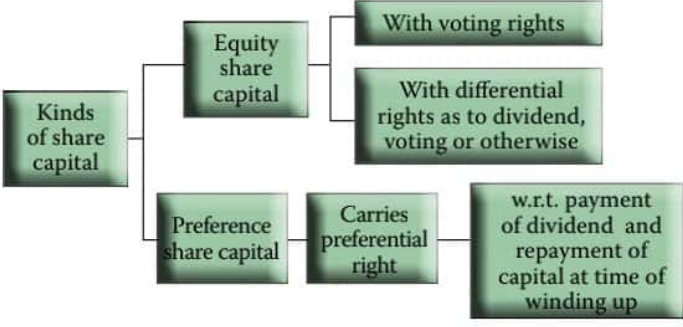
# COMPANY LAW

(3)

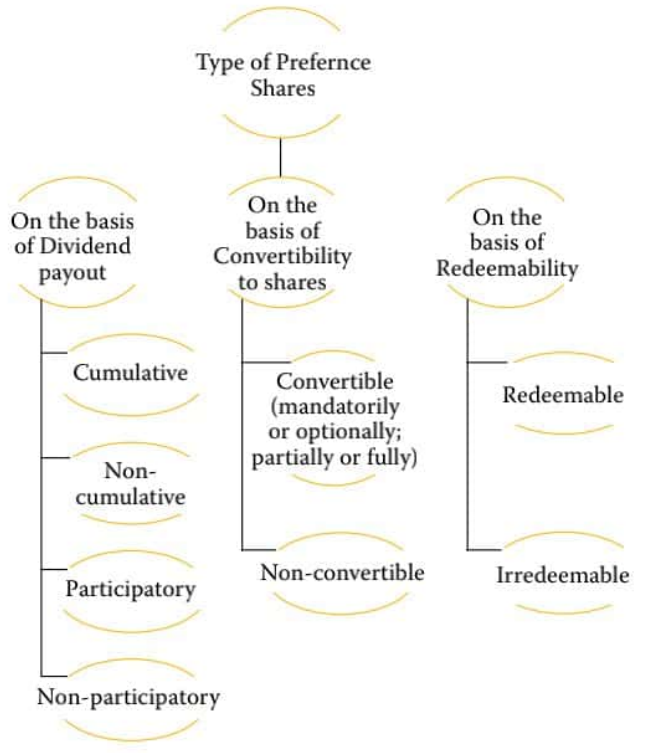


## SHARE CAPITAL AND DEBENTURES

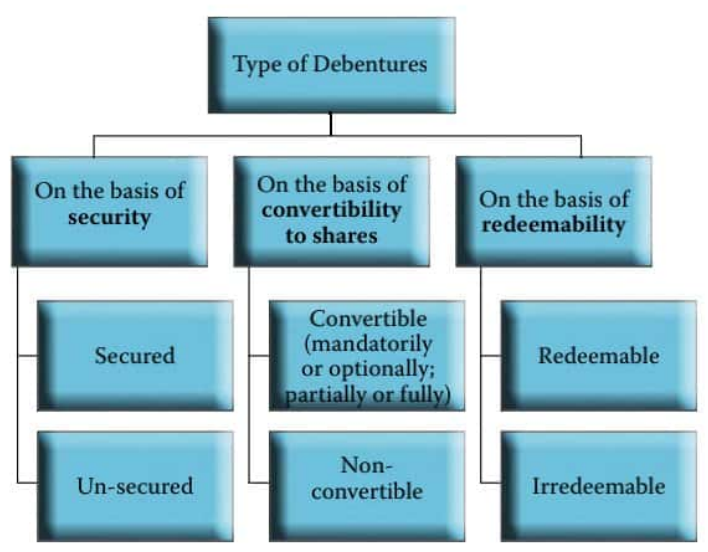
### I. TYPES OF SHARE CAPITAL



### II. TYPES OF PREFERENCE SHARES

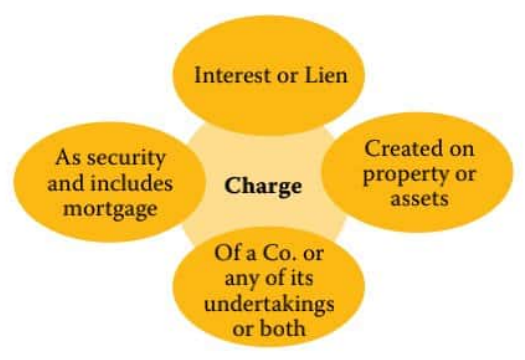


### III. TYPES OF DEBENTURES



## REGISTRATION OF CHARGES

### I. DEFINITION OF CHARGE [Section 2(16)]



### II. NOTICE OF CHARGE

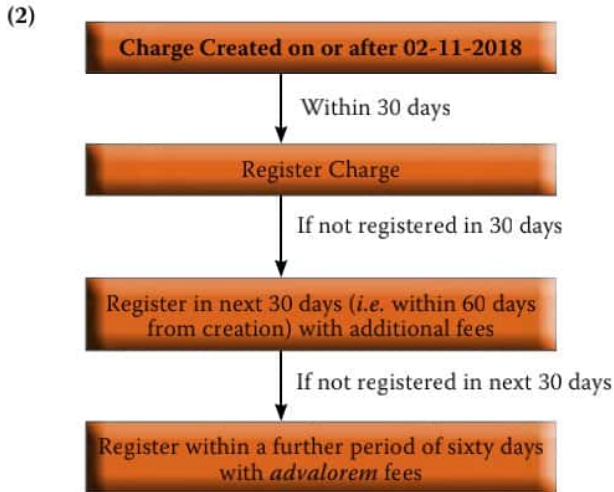


### III. PROCESS OF REGISTRATION OF CHARGE

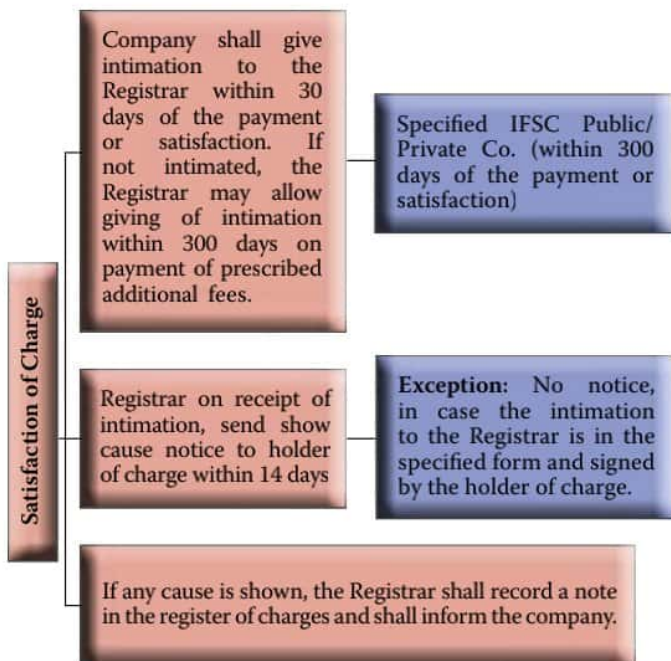
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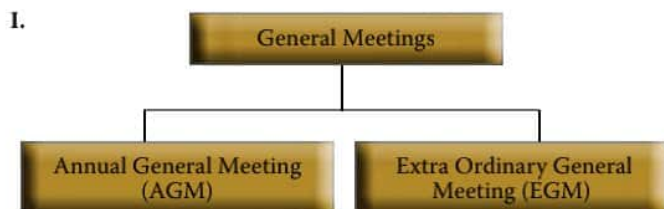
III. PROCESS OF REGISTRATION OF CHARGE



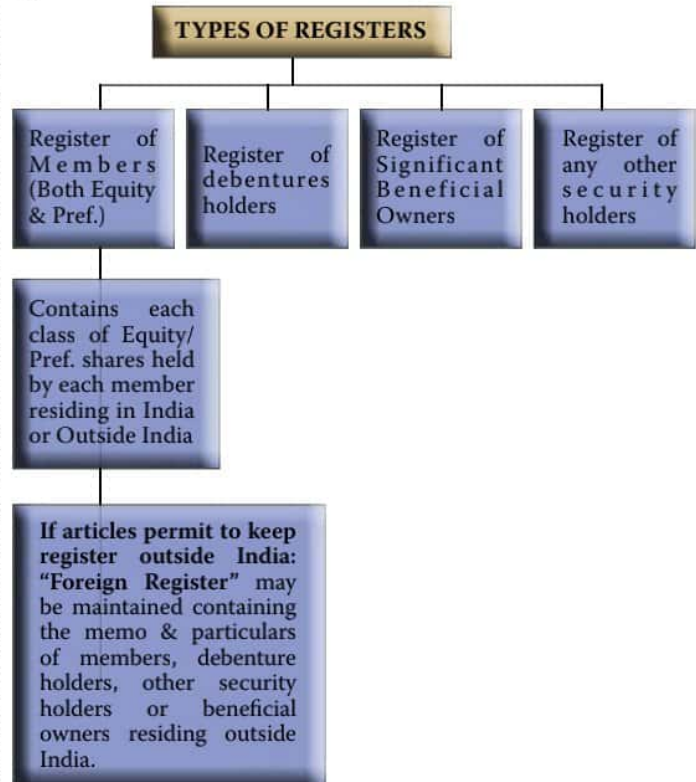
IV. SATISFACTION OF CHARGE



MEETINGS OF THE COMPANY



II.



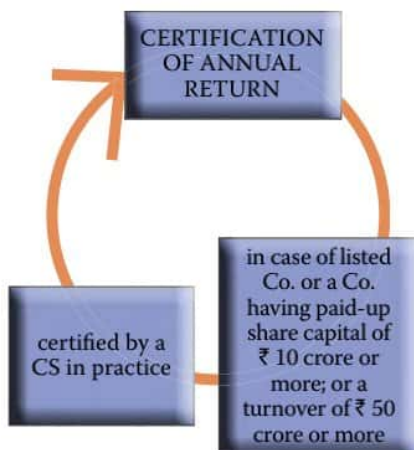
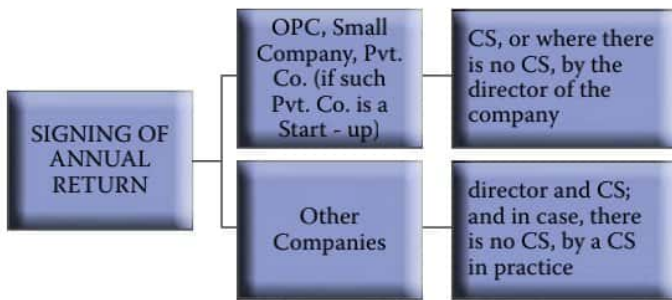
III. ANNUAL RETURN

(1) PARTICULARS TO BE CONTAINED IN THE ANNUAL RETURN AS THEY STOOD ON CLOSE OF FINANCIAL YEAR

1. Company's registered office, principal business activities, particulars of its holding, subsidiary and associate companies
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness
4. Its members and debenture-holders along with the changes therein since the close of the PFY
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the PFY
6. Meetings of members or a class thereof, Board and its various committees along with attendance details
7. Remuneration of directors and key managerial personnel  
In case of Private Company - "aggregate amount of remuneration drawn by directors;"
8. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment
9. Matters relating to certification of compliances, disclosures
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and % of shareholding held by them.

# COMPANY LAW

## (2) SIGNING OF ANNUAL RETURN

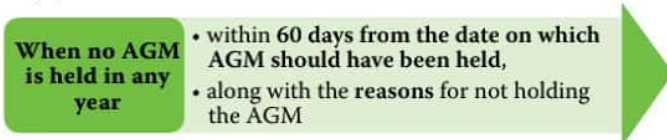


## FILING OF ANNUAL RETURN

(1)



(2)



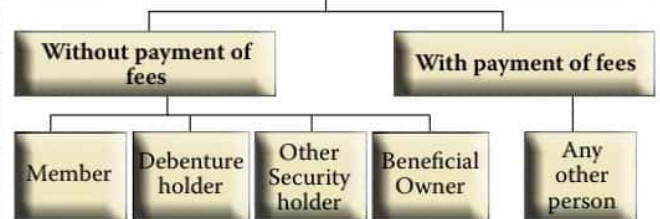
## IV. PLACE OF KEEPING OF REGISTERS AND ANNUAL RETURNS

Question	Answer
What is the Place of keeping of Registers and Annual Returns?	Registered Office (RO)
Can the Registers and Annual Returns be kept at any other place in India?	Yes



## V. INSPECTION

### Persons Who Can Inspect Register & Their Indices & Annual Return (During Business Hours)



## VI. MEETINGS OF MEMBERS

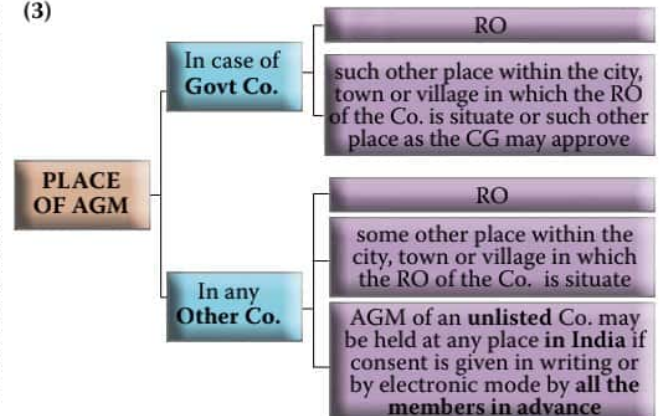
(1) AGM

Question	Answer
Maximum time duration between two AGMs	15 months + 3 months (for special reasons)
Date of AGM	Any day except National Holiday

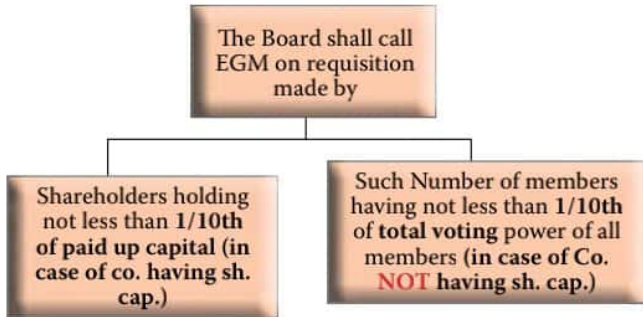
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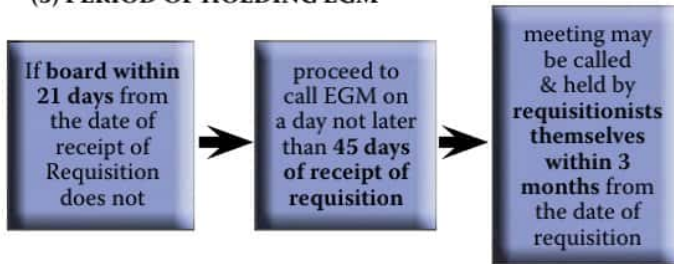
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## (4) CALLING OF EGM



## (5) PERIOD OF HOLDING EGM

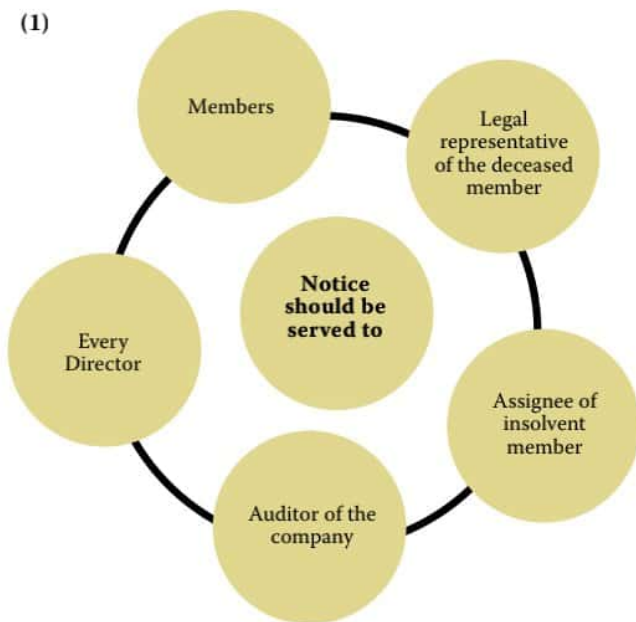


## (6) PLACE OF HOLDING EGM

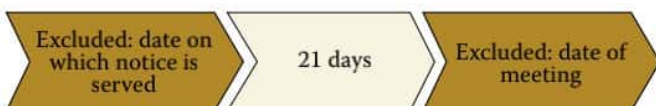
EGM of the company, other than of the wholly owned subsidiary of a Co. incorporated outside India, shall be held at a place within India

## VII. NOTICE OF MEETING

(1)

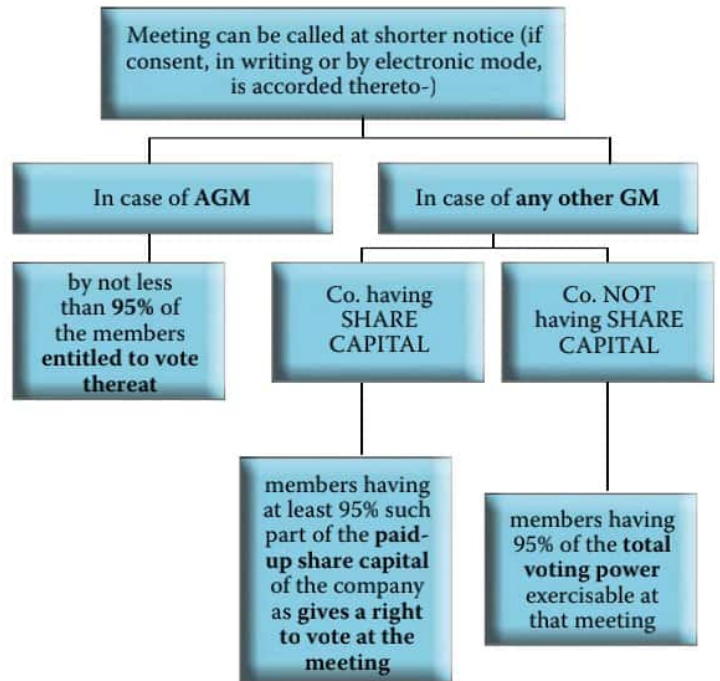


## (2) LENGTH OF SERVING OF NOTICE- 21 clear days'



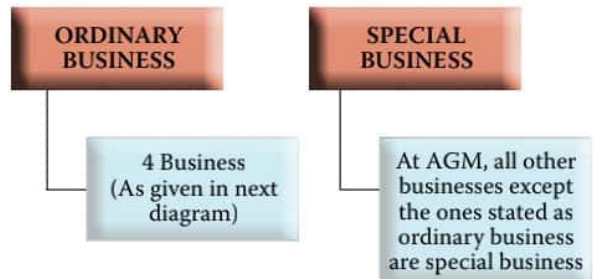
As per Rule 35 of Companies (Incorporation) Rules, 2014, in case of notice of a meeting (when delivery is by post), such service shall be deemed to have been effected at the expiration of 48 hours after the letter containing the same is posted.

## (3) MEETINGS HELD AT SHORTER NOTICE- Less than 21 clear days'



## VIII. TYPES OF BUSINESS TRANSACTED IN AGM

(1)



(2)



# COMPANY LAW

## IX. QUORUM FOR MEETINGS

### PUBLIC COMPANY

NO. OF MEMBERS	QUORUM
Number of members $\leq 1000$	5 members personally present
1000 < Number of members $\leq 5000$	15 members personally present
Number of members > 5000	30 members personally present

### PRIVATE COMPANY

QUORUM	2 members personally present
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## X. PROXIES

**PROXIES:** Any member of a Co. entitled to attend and vote at a meeting of the Co. shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

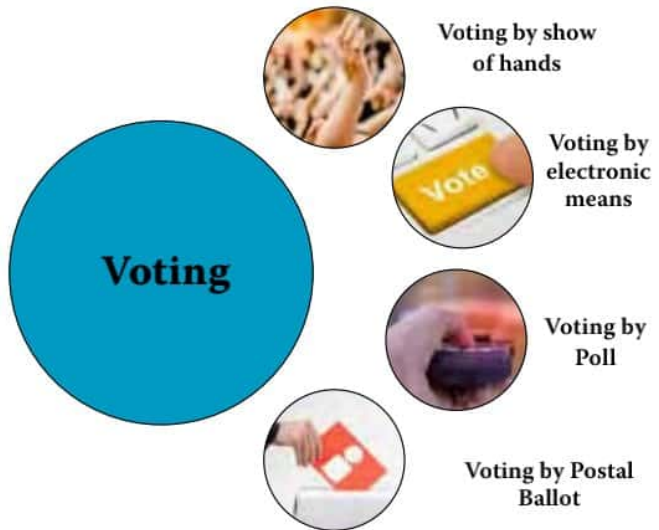
a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

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

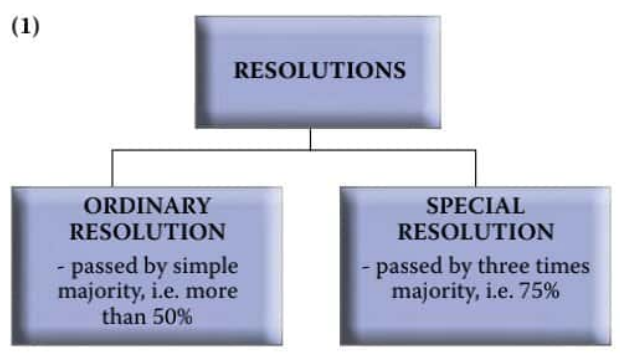
a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

The instrument appointing a proxy shall be in writing

## XI. VOTING



## XII. TYPES OF RESOLUTION



### (2) CHARACTERISTICS OF SPECIAL RESOLUTION

1. Specified Majority - 75%
2. Resolution shall be set out in the notice
3. Notice must state that resolution is to be passed as a special resolution and omission, would invalidate the resolution.
4. Proper notice of 21 days is given for holding the meeting
5. Explanatory Statement should be annexed to the notice for conducting special business

## XIII. MINUTES

Minutes of the proceedings of meeting shall be kept within 30 days of the conclusion of every such meeting concerned or passing of resolution by postal ballot in books.

The minute book shall be consecutively numbered.

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

All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain –

- The names of the directors present at the meeting; and in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting –

- Is or could reasonably be regarded as defamatory of any person; or
- Is irrelevant or immaterial to the proceedings; or
- Is detrimental to the interests of the company

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

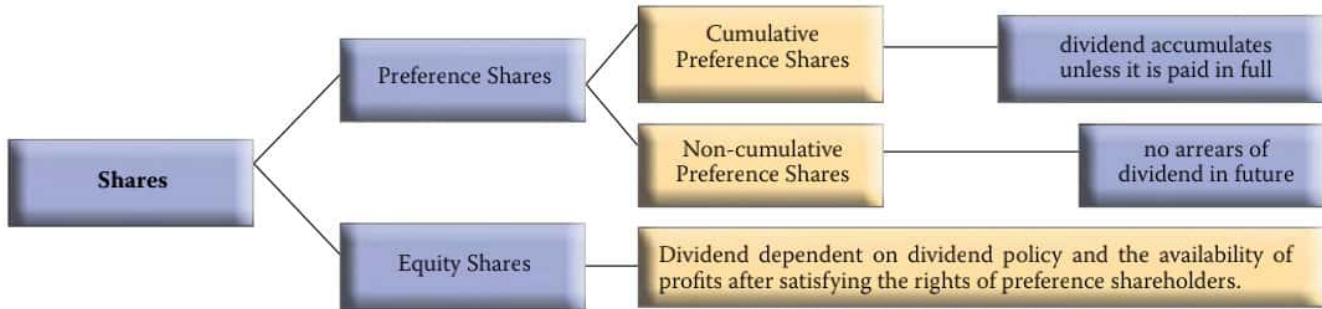
The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.

Intermediate (New Course) Paper 2 - Corporate and Other Laws: A Capsule for Quick Recap (The Companies Act, 2013)

This Capsule on 'Company Law' in the October 2019 issue of Students' Journal is in continuation of the September 2019 issue. It covers the remaining sections of the Companies Act, 2013 (relevant at the Intermediate Level) i.e. significant provisions from section 123 to section 148. You are advised to read both the capsules together. Further, students are also advised to read the July, 2017 edition of the Study Material and relevant RTP for a thorough understanding of the relevant provisions of Companies Act, 2013, to hone your application skills. The capsules on Intermediate Paper 2: Corporate and Other Laws are intended to assist you in the process of revision of concepts discussed in the relevant publications.

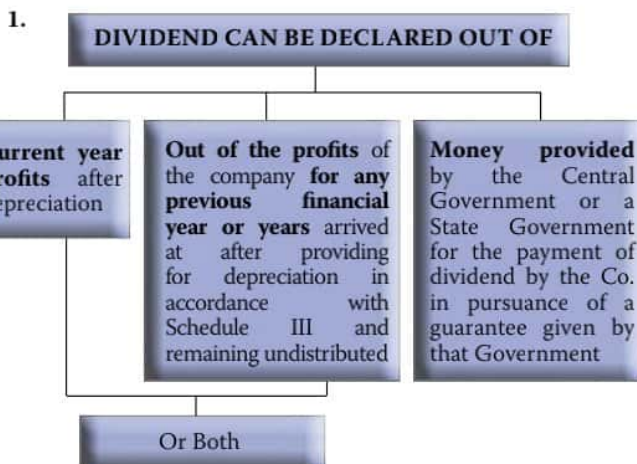
DIVIDEND

I. DIVIDEND PAYABLE ON DIFFERENT TYPES OF SHARES



Section 2(35) of the Companies Act, 2013, states that "dividend" includes any interim dividend

II. DECLARATION OF DIVIDEND



2. TRANSFER TO RESERVE

Before declaration of dividend, transfer such % of its profit for that year, as it may consider appropriate (i.e. left at the discretion of the Co.)

3. DEPOSITING AMOUNT OF DIVIDEND

Amount of dividend including interim dividend shall be deposited in a **scheduled bank in a separate bank account within 5 days** from the date of declaration of such dividend

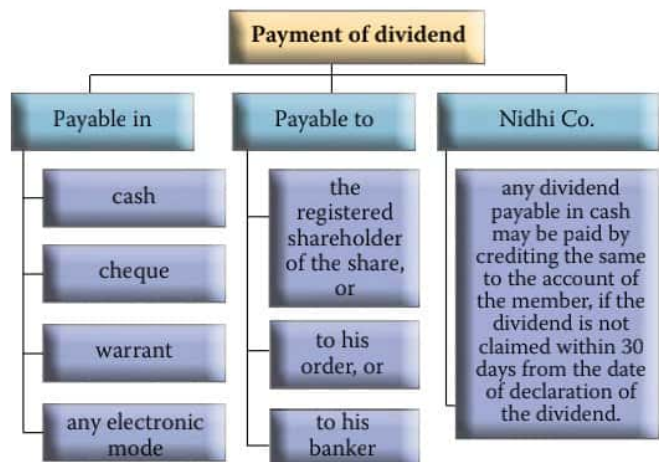
**Exception:** Government Co. in which entire paid up capital is held by CG/ SG/ or combination of CG & SG

III. RULES TO BE FOLLOWED WHILE DECLARING DIVIDEND OUT OF RESERVES

- Rate of Dividend  $\leq (RD1 + RD2 + RD3) / 3$   
Where, RD1, RD2, RD3 are rates at which dividend was declared by it in the 3 years immediately preceding that year.

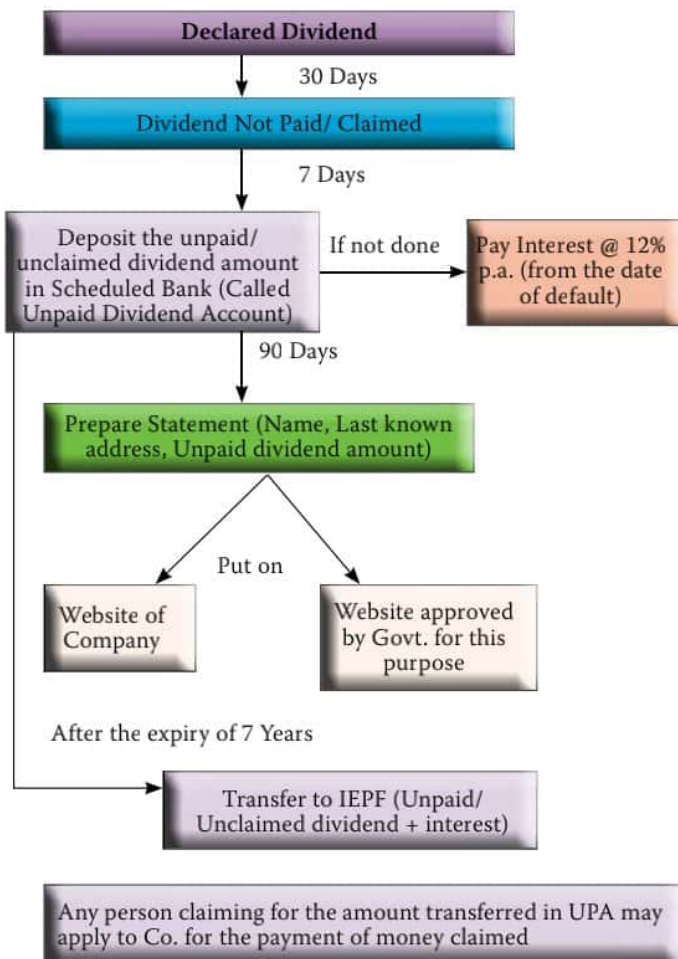
However, **this rule will not apply** if a company has not declared any dividend in each of the 3 preceding financial years.
- Total amount that can be drawn from accumulated profits  $\leq$  1/10 of (Paid up share capital + Free reserves) [as per latest audited Financial statement]
- Drawn amount be first utilised to set off losses incurred in FY in which dividend is declared
- Balance of Reserve (after drawal of Amt)  $\geq$  15% of Paid up capital [as per latest audited Financial statement]

IV. PAYMENT OF DIVIDEND

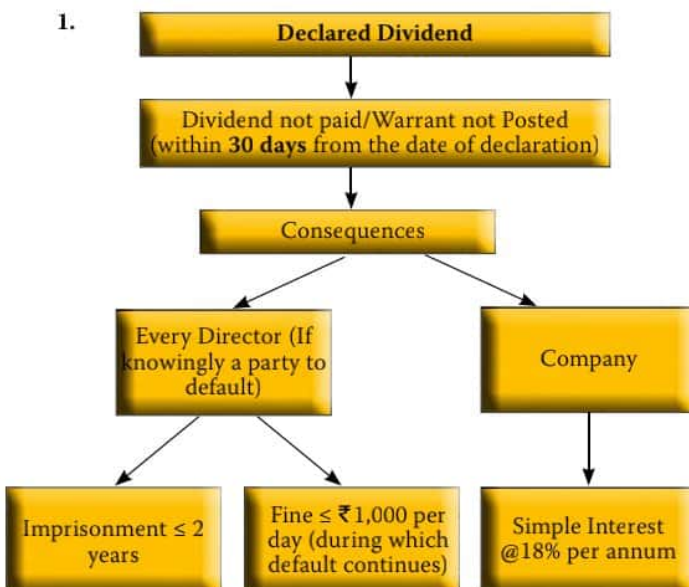


# COMPANY LAW ||

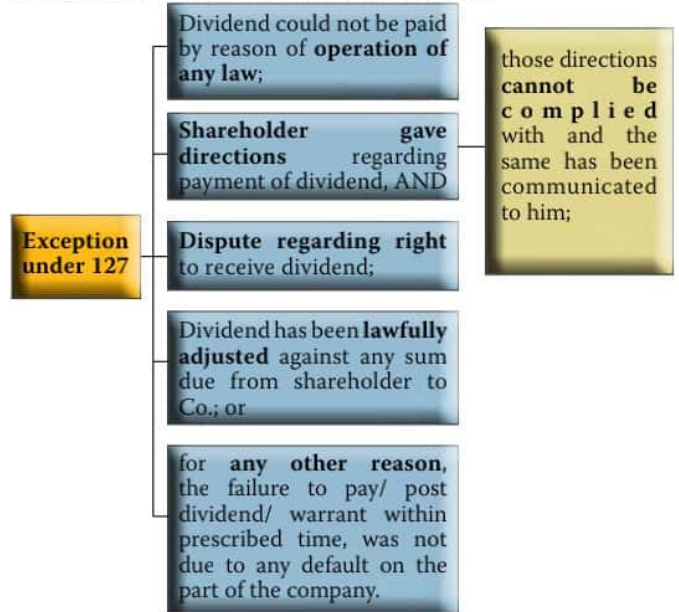
## V. UNPAID DIVIDEND ACCOUNT (UPA)



## VI. PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS



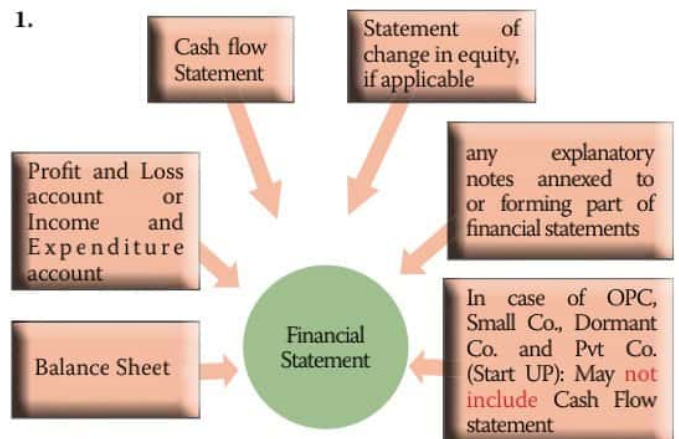
## 2. EXCEPTIONS UNDER WHICH NO OFFENCE SHALL BE DEEMED TO HAVE BEEN COMMITTED



## ACCOUNTS OF COMPANIES

### I. FINANCIAL STATEMENT (FS)

Financial Statement is defined under Section 2 (40), to include –



### 2. Financial statement shall:

- Give True & Fair view of state of affairs of the Co.
- Comply with AS
- Be in form as provided for different classes of Co.s in Schedule III

### 3.

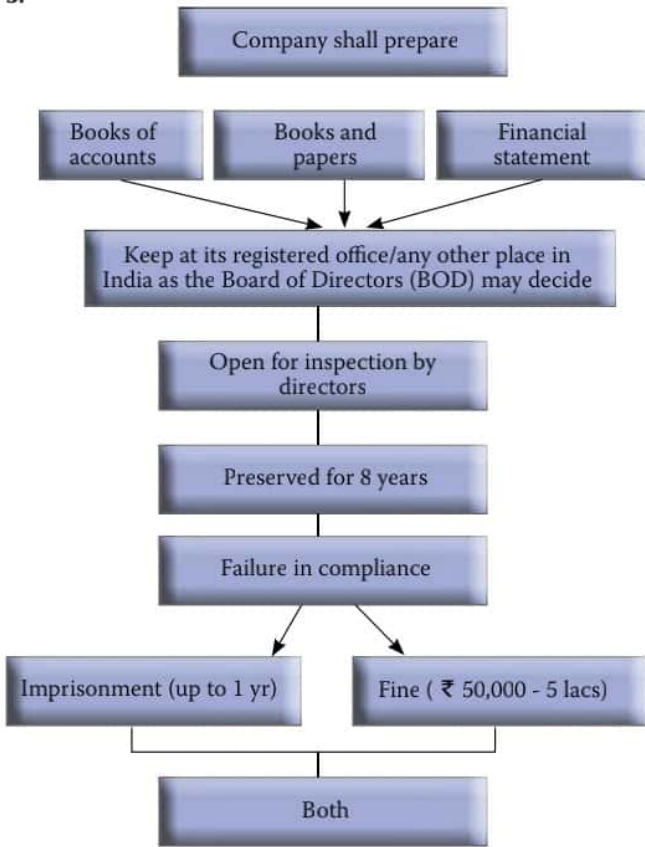
**At each AGM, the Board of Directors (BOD) shall lay the FS for the FY**

- If the Co. has subsidiary or associate companies, Consolidated Financial Statement [CFS] (in same form and manner as of the Co.) is also to be laid before AGM

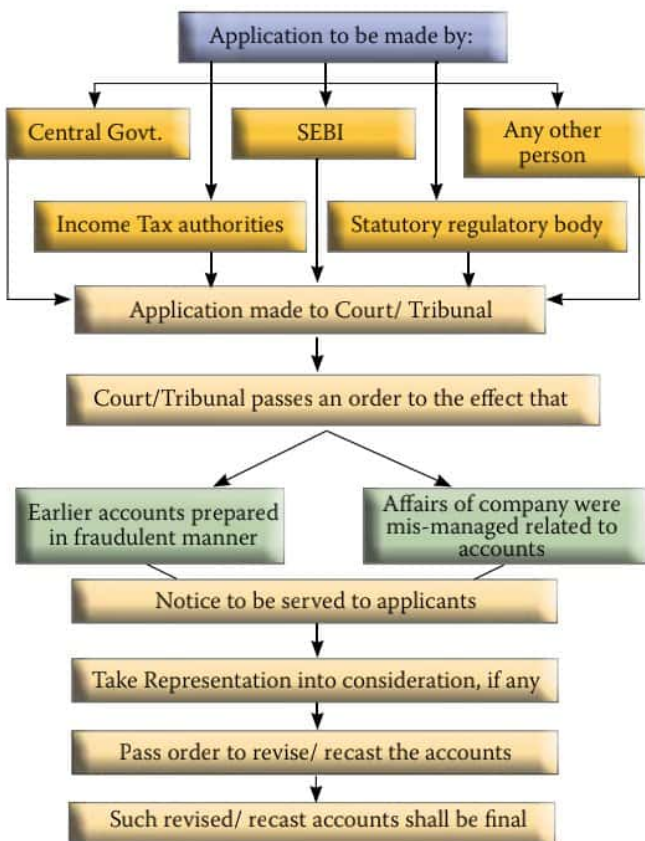
### 4.

If FS do not comply with AS, deviation from AS along with reasons for such deviation and financial effects, need to be disclosed in FS.

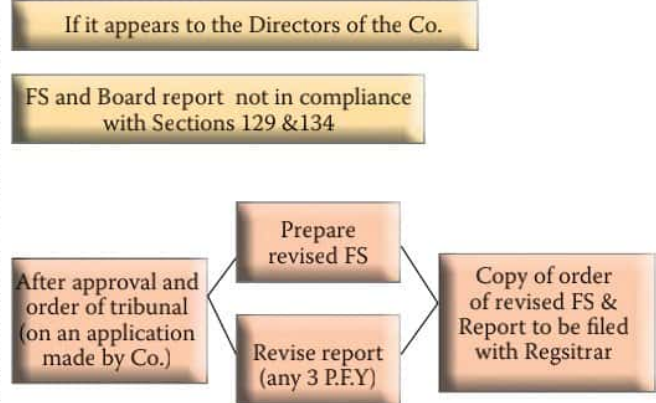
5.



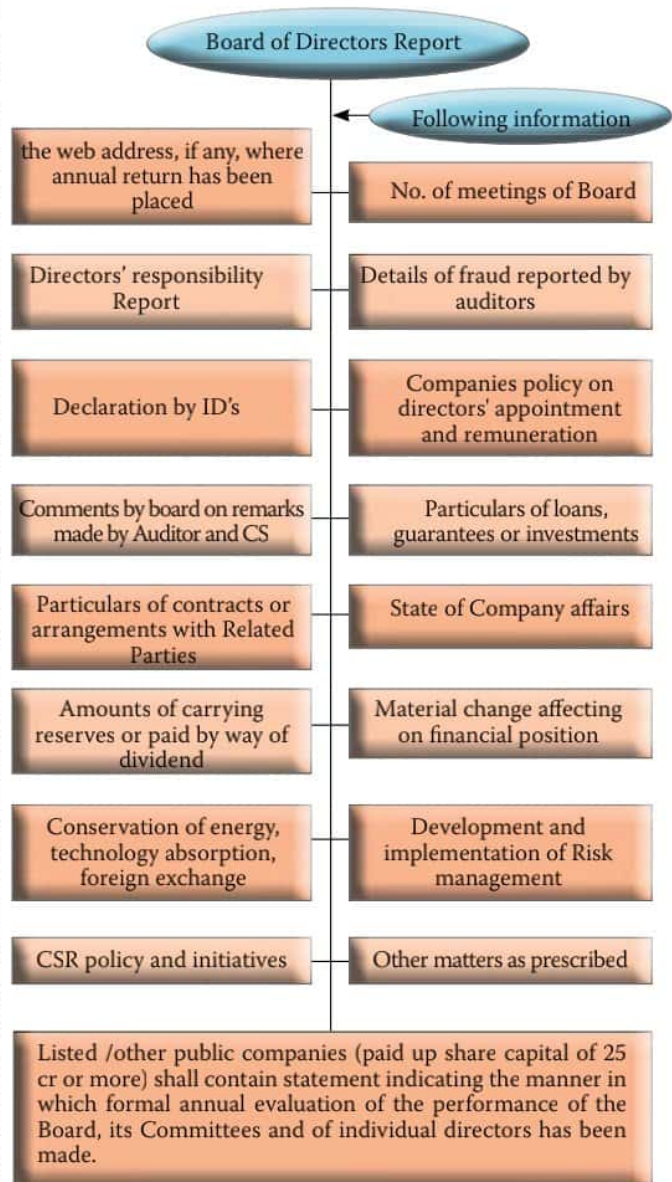
## II. RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDER



## III. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT



## IV. CONTENTS OF BOARD REPORT

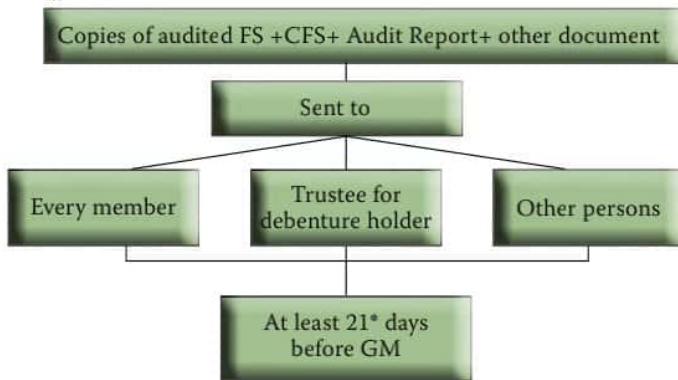




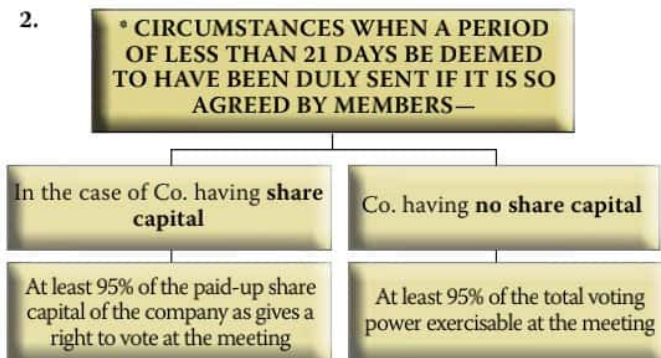
# COMPANY LAW

## V. ENTITLEMENT TO RECEIVE FINANCIAL STATEMENT [Section 136]

1.

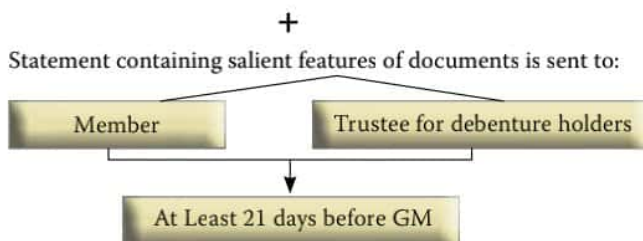


2.

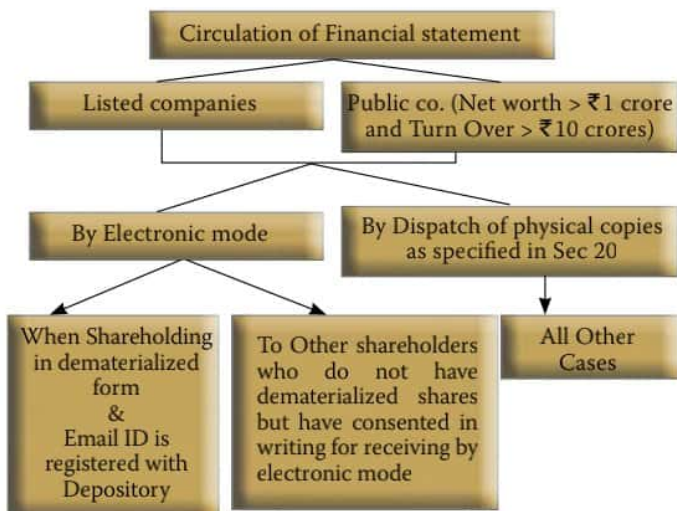


### 3. IN CASE OF LISTED COMPANIES

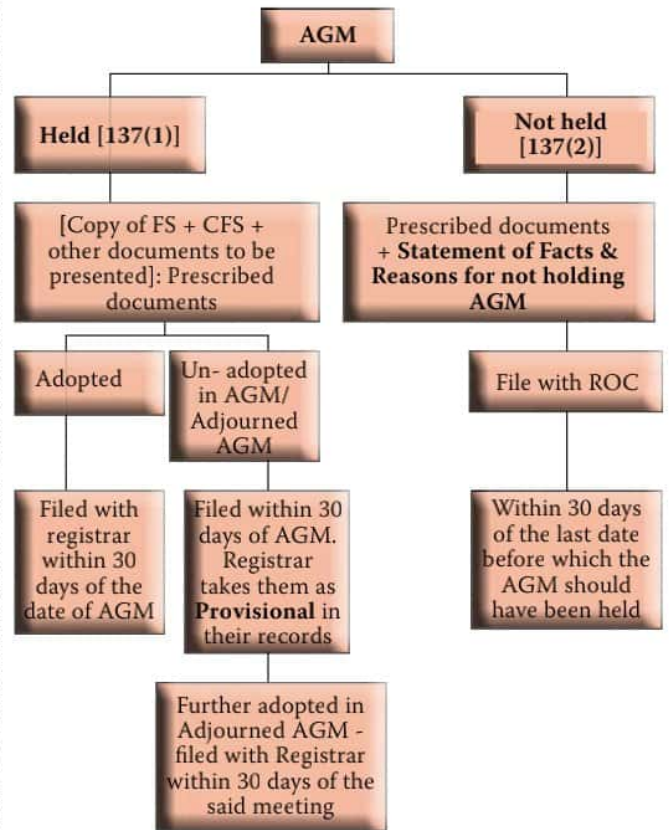
The above steps shall have deemed to be complied, if the copies of documents are made available for inspection at **RO** during **Working Hours** for a period of **21 days** before the meeting



## VI. MANNER OF CIRCULATION OF FINANCIAL STATEMENTS

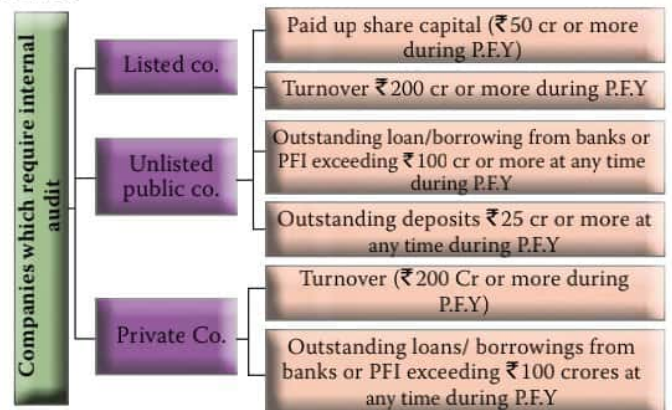


## VII. FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR



## VIII. INTERNAL AUDIT

### COMPANIES REQUIRED TO CONDUCT INTERNAL AUDIT



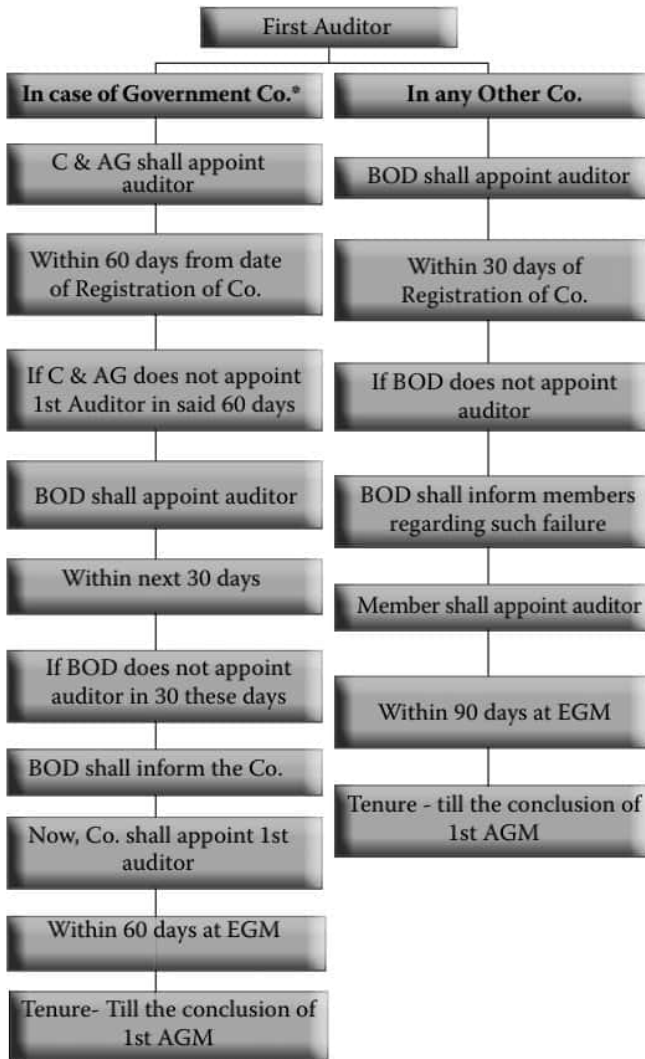
Here P.F.Y means 'Preceding Financial Year'

### WHO CAN BE AN INTERNAL AUDITOR



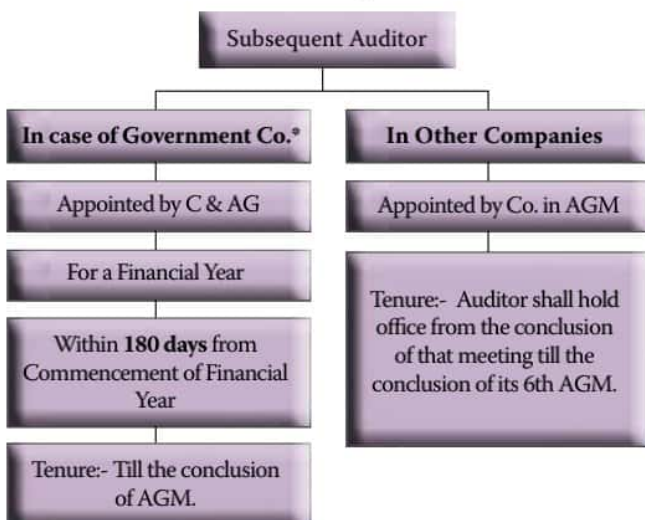
## AUDIT AND AUDITORS

### I. APPOINTMENT OF FIRST AUDITOR



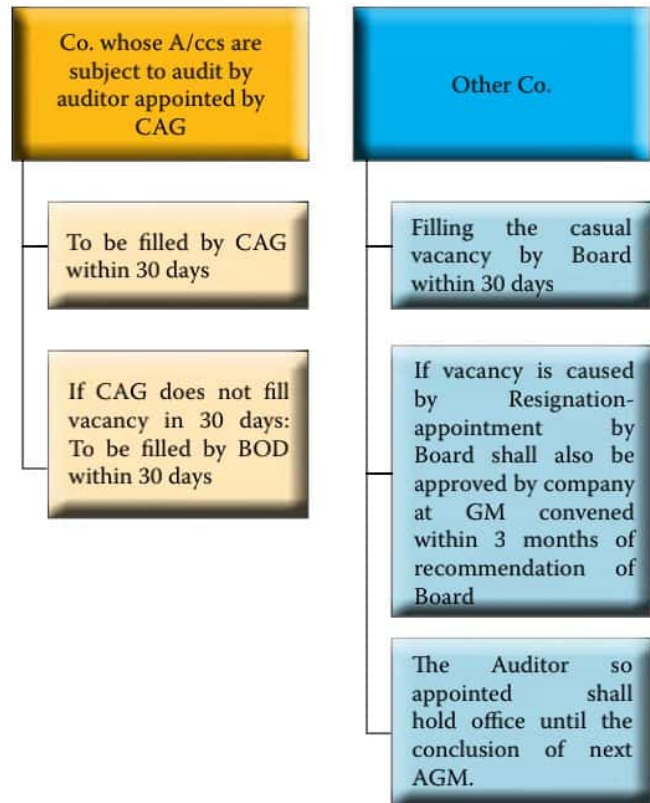
\* Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

### II. APPOINTMENT OF SUBSEQUENT AUDITOR

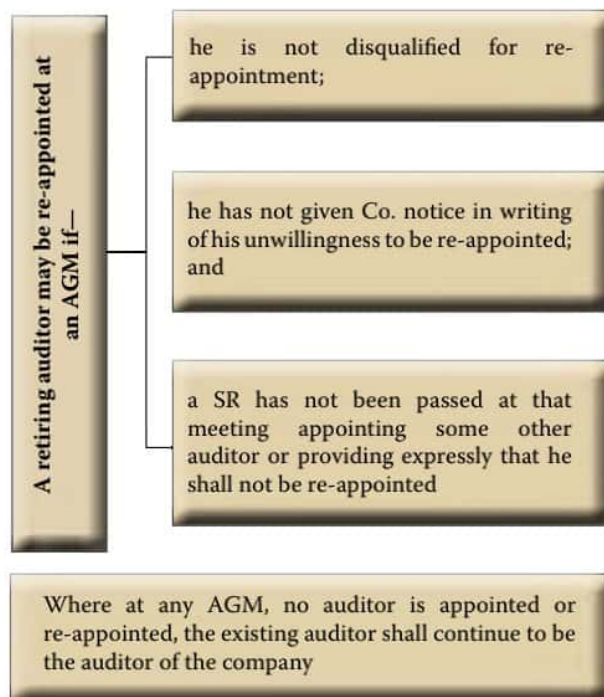


\* Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

### III. CASUAL VACANCY OF AUDITOR

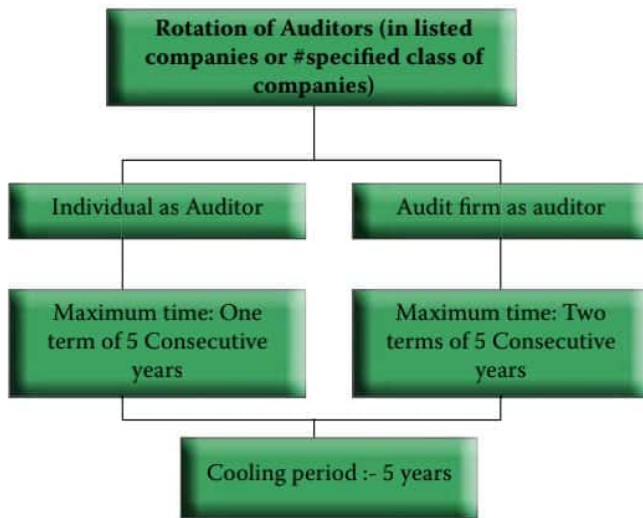


### IV. RE- APPOINTMENT OF RETIRING AUDITOR



# COMPANY LAW

## V. ROTATION OF AUDITORS

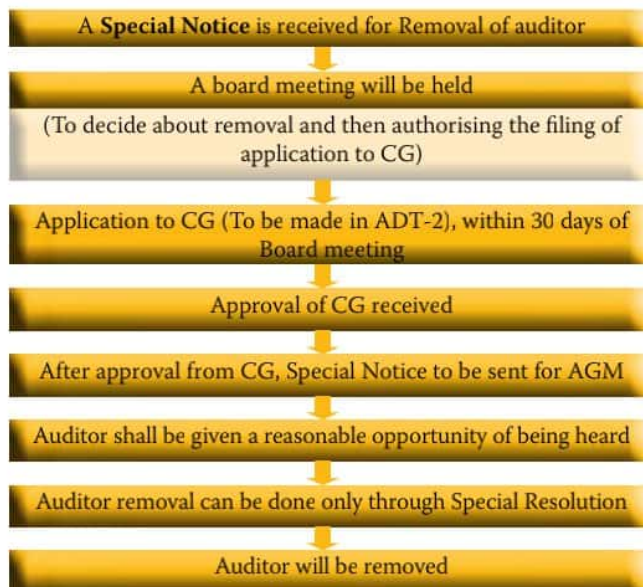


Further, as on the date of appointment no audit firm which has common partner/s to the other audit firms whose tenure has expired in a company immediately preceding the Financial Year, shall be appointed as auditor of the same Co. for a period of 5 years.

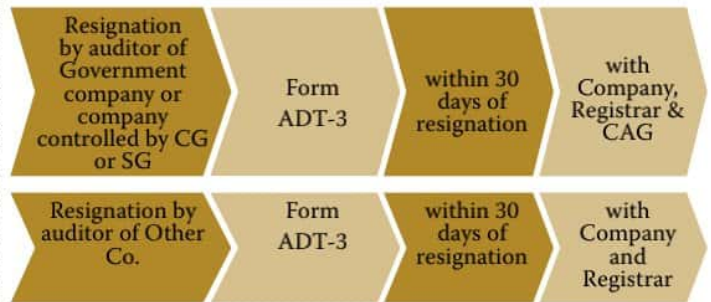
**#Specified Class of Companies**

- **unlisted public companies** having paid up share capital of rupees 10 crore or more
- **Pvt Ltd. companies** having paid up share capital of rupees 50 crore or more
- companies having paid up share capital of below threshold limit mentioned in above two bullet points, but having **public borrowings from financial institutions, banks or public deposits** of rupees 50 crores or more.

## VI. STEPS FOR REMOVAL OF AUDITOR

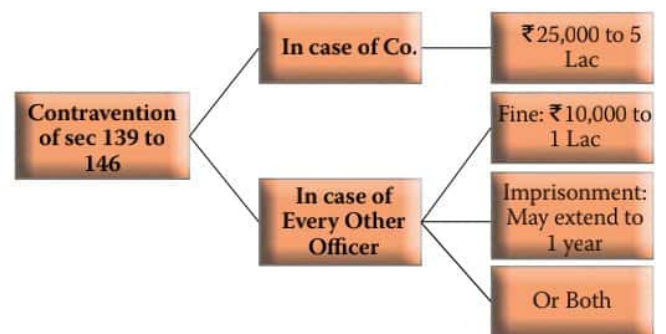


## VII. RESIGNATION BY AUDITOR

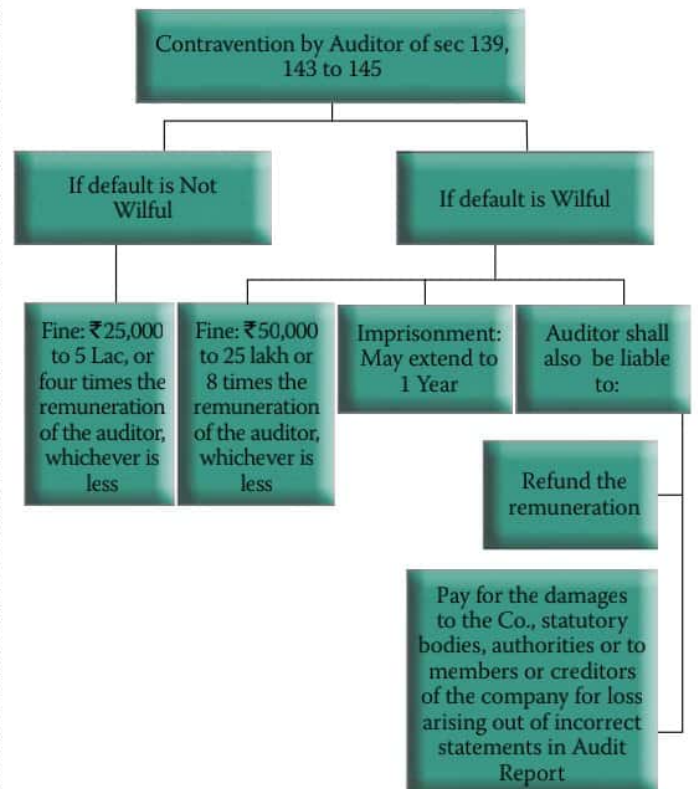


## VIII. PUNISHMENT UNDER SECTION 147

### 1. IN CASE OF COMPANY AND OFFICER OF COMPANY



### 2. IN CASE OF AUDITOR



The 'List of Penalties under the Companies Act, 2013' in the November 2019 issue of Students' Journal is in continuation of the Capsule on 'Company Law' in the September 2019 and October 2019 issue. It covers a compilation of penalties of significant provisions from section 1 to section 148. You are advised to read the three issues together. Further, students are also advised to read the July, 2017 edition of the Study Material and relevant RTP for a thorough understanding of the relevant provisions of Companies Act, 2013, to hone your application skills. The capsules on Intermediate Paper 2: Corporate and Other Laws are intended to assist you in the process of revision of concepts discussed in the relevant publications.

## LIST OF PENALTIES UNDER THE COMPANIES ACT, 2013

Section	Particular	Penalty
Section 4: Memorandum	If Co. name is reserved by giving incorrect information:	<b>C, OID</b> <b>Reserved Name:</b> Cancelled Person who made application: Fine ₹ Max 1 Lac
	If the Co. has not been incorporated	
	If Co. has been incorporated	<b>Name:</b> Change name within 3 months (by passing OR), or ROC may strike off name from Register of Companies, or ROC may make a petition for winding up of Co.
Section 10 A: Commencement of business etc.	Co. commenced business or exercise any borrowing powers, without filing required declaration within 180 days or failed to file with the Registrar a verification of its registered office	<b>C, OID</b> <b>C:</b> ₹ 50,000 <b>OID:</b> ₹ 1,000 / day during which such default continues but not exceeding an amount of ₹ 1 Lac
Section 15: Alteration of MOA and AOA to be noted in every copy	If alteration made in the MOA or AOA of a company is not noted in every copy of the MOA or AOA.	<b>C, OID</b> ₹ 1,000 for every copy of the MOA or AOA issued without alteration
Section 16- Rectification of name of company	Company makes default in registration of name as (which in the opinion of CG is identical to the name of company already registered.)	<b>C:</b> ₹ 1,000 for every day during which the default <b>OID:</b> ₹ 5,000 to 1 Lac
Section 17- Copies of memorandum, articles, etc., to be given to members	If on request of member, Co. has not provided them a copy (within 7 days) of <ul style="list-style-type: none"> <li>• MOA</li> <li>• AOA</li> <li>• Every agreement and resolution referred in Sec 117(1)</li> </ul>	<b>C, OID</b> (for each default) ₹ 1,000 for each day during which such default continues or ₹ 1 Lac, whichever Less
Section 26- Matters to be stated in prospectus	If a prospectus is issued in contravention of provisions of Sec 26	<b>C, Every other person who is knowingly a party to default</b> <b>C:</b> ₹ 50,000 to 3 Lac <b>Other person</b> who is knowingly a party to default- Imprisonment: Max 3 Years or, Fine: ₹ 50,000 to 3 Lac, or both
Section 39 – Allotment of securities by company	If the Co. has not returned the application money received (when minimum subscription is not received) If a company having a share capital has not filed return of allotment with Registrar.	<b>C, OID</b> (for each default) ₹ 1,000 for each day during which such default continues or ₹ 1 Lac, whichever Less.
Section 40- Securities to be dealt with in stock exchanges	If a company is making public offer and it fails to inform to one or more stock exchange and/ or fails to follow other related provisions of Sec 40	<b>C, OID</b> <b>C:</b> ₹ 5 Lac to 50 Lac <b>OID:</b> Fine: ₹ 50,000 to 3 Lac Imprisonment: May Extend to 1 Year, Or Both
Section 42- Offer or invitation for subscription of securities on private placement	If a company makes an offer or accepts monies in contravention of Sec 42	<b>C, promoters and directors</b> Penalty: May extend to amt raised through the private placement or 2 crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in Sec 42(6) to subscribers within a period of 30 days of the order imposing the penalty
Section 53 - Prohibition on issue of shares at discount	If a Co. does not comply with Sec 53 i.e. issues shares at discount [except as provided in Sec 54 or Sec 53 (2A)]	<b>C, OID</b> Fine: May extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less + Co. also liable to refund all monies received with interest at the rate of 12% p.a. from the date of issue of such shares
Section 56 -Transfer and transmission of securities	If a Company make any default in the provisions of transfer of securities	<b>C, OID</b> <b>C:</b> ₹ 25,000 to 5 Lac <b>OID:</b> ₹ 10,000 to 1 Lac
	Default is made by depository or depository participant with an intention to defraud	Liable under Sec 447
Section 57 -Punishment for personation of shareholder	If a person deceitfully personates as owner of any security or interest etc. in a Company.	<b>Such Person</b> Fine: ₹ 1 Lac to 5 Lac AND Imprisonment: 1 Year to 3 years

Section	Particular	Penalty
<b>Section 58- Refusal of Registration and Appeal Against Refusal</b>	Contravention of the order of the Tribunal for registration or refusal of registration of shares	<b>Any Person</b> Imprisonment: 1 Year to 3 Years and Fine: ₹ 1 Lac to 5 Lac
<b>Section 59- Rectification of register of members</b>	If a Company fails to comply with the orders of tribunal regarding rectification of registers of members.	<b>C, OID</b> C: ₹ 1 Lac to 5 Lac OID: ₹ 1 Lac to 3 Lac Imprisonment: May extend to 1 Year, Or Both
<b>Section 64- Notice to be given to Registrar for alteration of share capital</b>	If a Company fails to file notice to Registrar after alteration of Share Capital.	<b>C, OID</b> Fine which may extend to ₹ 1,000 / day during which such default continues, or ₹ 5 Lac whichever is less.
<b>Section 67- Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares</b>	Contravention of the provisions of sec 67	<b>C, OID</b> C: ₹ 1 Lac to 25 Lac OID: Fine: ₹ 1 Lac to 25 Lac Imprisonment: May extend to 3 years
<b>Section 68- Power of company to purchase its own securities</b>	If a Co. does not follow the provisions of buy back of Securities as provided in Sec 68 or any regulation made by SEBI	<b>C, OID</b> C: ₹ 1 Lac to 3 Lac OID: Fine: ₹ 1 Lac to 3 Lac Imprisonment: May extend to 3 years Or both
<b>Section 71- Debentures</b>	If default is committed in complying with the order of the Tribunal under section 71	<b>OID</b> Fine: ₹ 2 Lac to 5 Lac Imprisonment: May extend to 3 years Or both
<b>Section 74- Repayment of deposits, etc., accepted before commencement of this Act</b>	If Company fails to repay deposit or interest thereof, within the time specified or such further time as allowed by Tribunal	<b>C, OID</b> C: ₹ 1 Crore to 10 crores OID: Fine: ₹ 25 Lac to 2 Crores Imprisonment: May extend to 7 years Or both The <b>Co. is also</b> liable to pay the amount of deposit or part thereof and the interest due
<b>Section 76 A- Punishment for Contravention of Section 73 or Section 76</b>	Punishment for Contravention of Sec 73 or Sec 76	<b>C:</b> In addition to payment of the amount of deposit or part thereof and the interest due, be punishable with fine ranging from ₹ 1 crore rupees or twice the amount of deposit accepted by the company, whichever is lower but which may extend to ₹ 10 crore <b>OID:</b> Imprisonment which may extend to 7 years and with fine which shall not be less than ₹ 25 Lac but which may extend to ₹ 2 crore  Also, if it is proved that the OID, has contravened such provisions <b>knowingly</b> or <b>wilfully</b> with the intention to <b>deceive</b> Co. or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447
<b>Section 86- Punishment for contravention</b>	If a Company contravenes the provisions of registration of Charge	<b>C, OID</b> C: ₹ 1 Lac to 10 Lac OID: Fine: ₹ 25,000 to 1 Lac Imprisonment: May extend to 6 months Or both
	If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required for registration u/s 77	He shall be liable for action under Sec 447
<b>Section 88- Register of members, etc</b>	If a Company fails to maintain register of members, debenture holders, other security holders or other provisions of Sec 88	<b>C, OID</b> Fine: ₹ 50,000 to 3 Lac Where default is a continuing one: Fine which may extend to ₹ 1,000/ day, after the first during which the failure continues
<b>Section 91- Power to close register of members or debenture- holders or other security- holders</b>	If the register of members/ debenture-holders/ other security holders is closed without giving notice as provided in sec 91(1), or after giving shorter notice, or for a continuous or an aggregate period in excess of the limits specified in sec 91(1)	<b>C, OID</b> Fine: ₹ 5,000 for every day subject to a maximum of ₹ 1 Lac

Section	Particular	Penalty
Section 92- Annual Return	If a Company fails to file copy of Annual Return within prescribed time.	<b>C, OID</b> Fine: ₹ 50,000 and in case of continuing failure, with further penalty of ₹ 100/ day during which such failure continues, subject to a maximum of ₹ 5 Lac
	If a CS in practice certifies the AR otherwise than in conformity with the requirements of Sec 92	<b>CS</b> Fine: ₹ 50,000 to ₹ 5 Lac
Section 94- Place of keeping and inspection of Registers, Returns, etc	Refusal for inspection or making of any extract or copy	<b>C, OID (for each default)</b> ₹ 1,000/ day during which the default/ refusal continues, subject to maximum of ₹ 1 Lac
Section 99- Punishment for default in complying with provisions of sections 96 to 98	If Company defaults in holding meeting in accordance with Sections 96, 97 and 98 or the directions of Tribunal	<b>C, OID</b> Fine: May extend to ₹ 1 Lac In the case of a continuing default: With a further fine which may extend to ₹ 5,000/ day during which default continues
Section 102- Statement to be annexed to notice	If default is made in complying with the provision of Sec 102	Every <b>promoter, director, manager or other KMP</b> of the company who is in default: Penalty- ₹ 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is <b>higher</b> .
Section 105- Proxies	When an officer (Co. having Share capital or where Articles allow voting by proxy) fails to mention in the notice regarding the facility of proxy	<b>OID</b> ₹ 5,000
Section 111- Circulation of members' resolution	Violation of provisions in regard to circulation of members' resolution.	<b>C, OID</b> ₹ 25,000
Section 117- Resolutions and agreements to be filed	Co. fails to file the resolution or the agreement in prescribed time	<b>C, OID</b> <b>C:</b> ₹ 1 Lac and in case of continuing failure, with further penalty of ₹ 500/ day after the first during which such failure continues, subject to a max of ₹ 25 Lac <b>OID including liquidator of the company, if any:</b> ₹ 50,000 and in case of continuing failure, with further penalty of ₹ 500/ day after the first during which such failure continues, subject to a maximum of ₹ 5 Lac
Section 118- Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot	Co. is not complying with the provisions of Sec 118.	<b>C, OID</b> <b>C:</b> ₹ 25,000 <b>OID:</b> ₹ 5,000
	If a person tempts with the minutes of proceedings of meeting	Fine: ₹ 25,000 to 1 Lac Imprisonment: Up to 2 years
Section 119- Inspection of minute-books of General Meeting	Co. refuses for inspection or to take copy of minutes of general meeting.	<b>C, OID</b> <b>C:</b> ₹ 25,000 <b>OID:</b> ₹ 5,000 for each such default or refusal
Section 121- Report on Annual General meeting	Co. fails to file the report on AGM with ROC within 30 days of conclusion of AGM	<b>C, OID</b> <b>C:</b> ₹ 1 Lac and in case of continuing failure, with further penalty of ₹ 500/ day after the first during which such failure continues, subject to a maximum of ₹ 5 Lac. <b>OID:</b> ₹ 25,000 and in case of continuing failure, with further penalty of ₹ 500/ day after the first during which such failure continues, subject to a maximum of ₹ 1 Lac.
Section 124- Unpaid Dividend Account	Co. fails to comply with requirement of Sec 124	<b>C, OID</b> <b>C:</b> ₹ 5 Lac to 25 Lac <b>OID:</b> ₹ 1 Lac to 5 Lac
Section 127- Punishment for failure to distribute dividends	-	See Chart in October 2019 issue of The Chartered Accountant Student journal
Section 128- Books of account, etc., to be kept by company	If the persons charged by BOD (MD, WTD in charge of finance, CFO or any other person of a company charged by the Board with the duty of complying with the provisions of this section) with the duty of maintaining accounts of the Co. contravenes the relevant provisions	<b>Such designated persons</b> Fine: ₹ 50,000 to 5 Lac Imprisonment: May extend to 1 year Or both

Section	Particular	Penalty
<b>Section 129- Financial statements</b>	Co. contravenes the provisions of Sec 129	<b>MD, WTD in charge of finance, the CFO or any other person charged by the Board</b> with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable. Fine: ₹ 50,000 to 5 Lac Imprisonment: May extend to 1 year Or both
<b>Section 134- Financial Statement, Board's report, etc</b>	If Company violates the provisions of Sec 134	<b>C, OID</b> C: ₹ 50,000 to 25 Lac OID: Fine: ₹ 50,000 to 5 Lac Imprisonment: Upto 3 Years Or Both
<b>Section 136- Right of member to copies of audited financial statement</b>	Co. fails to send copy of FS, including CFS, if any, auditor's report and every other document required to be attached to FS, which are to be laid before at GM, to member/ trustee/ other entitled person, within the prescribed time or other provisions of Sec 136	<b>C, OID</b> C: ₹ 25,000 OID: ₹ 5,000
<b>Section 137- Copy of financial statement to be filed with Registrar</b>	Co. fails to file the copy of the FS with the Registrar	<b>C, Other designated Officers</b> C: ₹ 1,000/ day during which the failure continues but which shall not be more than ₹ 10 Lac. MD and CFO, if any, and, in the absence of the MD and the CFO, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of ₹ 1 Lac and in case of continuing failure, with further penalty of ₹ 100/ day after the first during which such failure continues, subject to a max of ₹ 5 Lac.
<b>Section 140- Removal, Resignation of Auditor and Giving of Special Notice</b>	Auditor does not file with ROC or C&AG (as the case may be), a statement indicating the reasons and other facts as may be relevant with regard to his resignation	<b>Auditor</b> Fine: ₹ 50,000 or an amt equal to remuneration of auditor, whichever is less. In case of continuing failure, further penalty of ₹ 500/ day after the first during which such default continues, subject to max of ₹ 5 Lac
<b>Section 143- Powers and Duties of Auditors and Auditing Standards</b>	Auditor, fails to report the matter to CG, Audit Committee or BOD (depending on the amount involved) regarding a fraud which is being or has been committed in the company by its officers or employees (for which he has reason to believe)	<b>Auditor, cost accountant or company secretary in practice</b> Fine: ₹ 1 Lac to 25 Lac
<b>Section 147- Punishment for Contravention</b>		See Chart in October 2019 issue of The Chartered Accountant Student journal
<b>Section 148- Central Government to Specify Audit of Items of Cost in Respect of Certain Companies</b>	Default in complying with the provisions of Sec 148	<b>C, OID, Cost Auditor</b> C & OID: As per Sec 147 <b>Cost Auditor</b> in default: in the manner as provided in sub-sections (2) to (4) of Sec 147
<b>Section 447- Punishment for Fraud</b>	Fraud/ wrongful gain/ wrongful loss	<b>Any person</b> who is found to be guilty of fraud (i) Involving an amount of <b>at least ₹ 10 Lac</b> or 1% of the turnover of the company, whichever is lower Fine: At least amount involved in the fraud, which may extend to 3 times the amount involved in the fraud, and Imprisonment: 6 months to 10 years Also, if fraud in question involves public interest, the term of imprisonment shall not be less than 3 years. (ii) Where fraud involves an amount <b>less than ₹ 10 Lac</b> or 1% of the turnover of the company, whichever is lower, and <b>does not involve public interest</b> , Fine: May extend to ₹ 50 Lac Imprisonment: May extend to 5 years, or both

Here in the table:

C stands for Company

OID stands for Officer in Default