

# dronacharya

FOR  
**CA INTERMEDIATE**

2024

Corporate Laws- Part 1

Revision Notes

Law

May 24



By – Kunal Mandhania

CA Inter **Law May 2024**

# **Audit & Auditors**

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# Qualifications of Auditor

- CA under CA Act, 1949.
- Nationality is not imp.
- Holds COP

Can Accept Audit

By Proprietor firm

In his own name

By Partnership  
Firm

In firm's name

By L.L.P

Foreign L.L. P  
disqualified

# Disqualifications of Auditor [Sec. 141 (3)]

(CA + COP) Still cannot do audit

## To Be checked

On appointment

If disq. cannot be appointed  
as auditor[sec 141(3)]

After Appointment

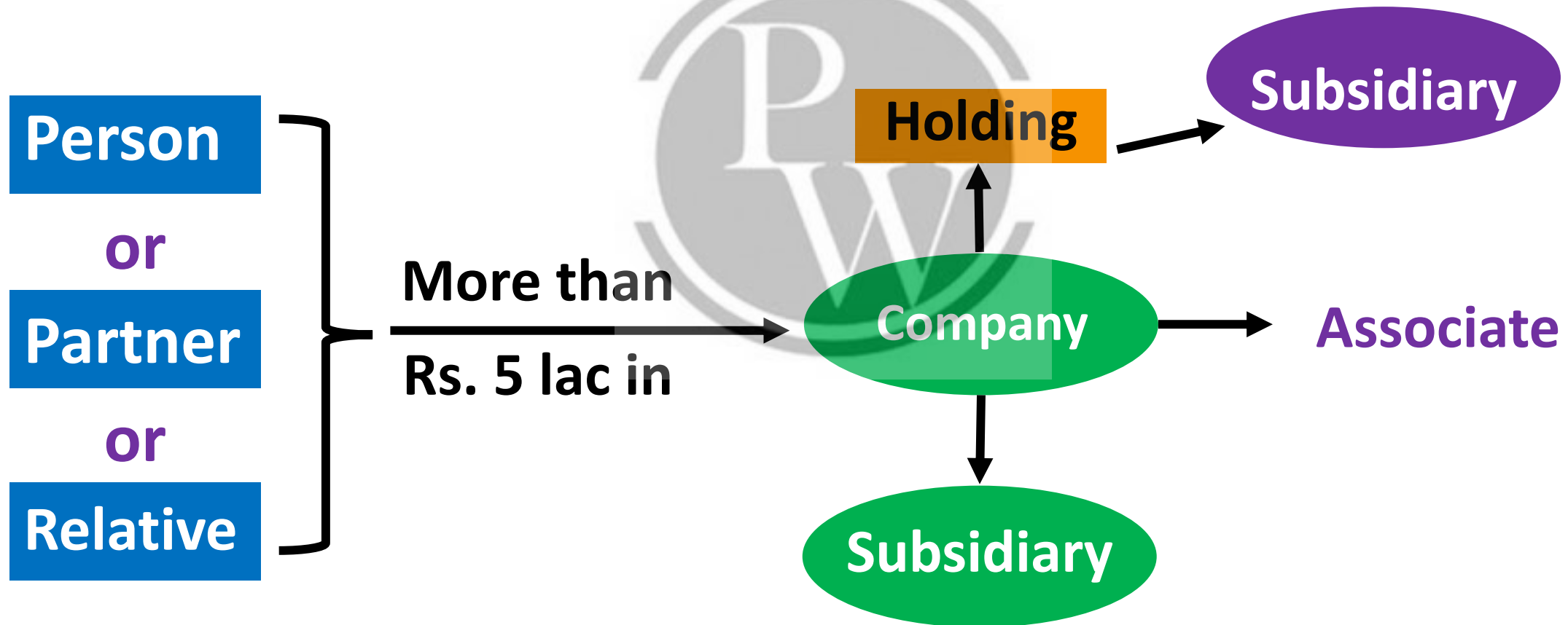
If disq. Attracts will leave office of  
auditor i.e casual vancancy[sec 141(4)]

**Shortcut → BIG FIBRE ROPE**

# B- Body Corporate

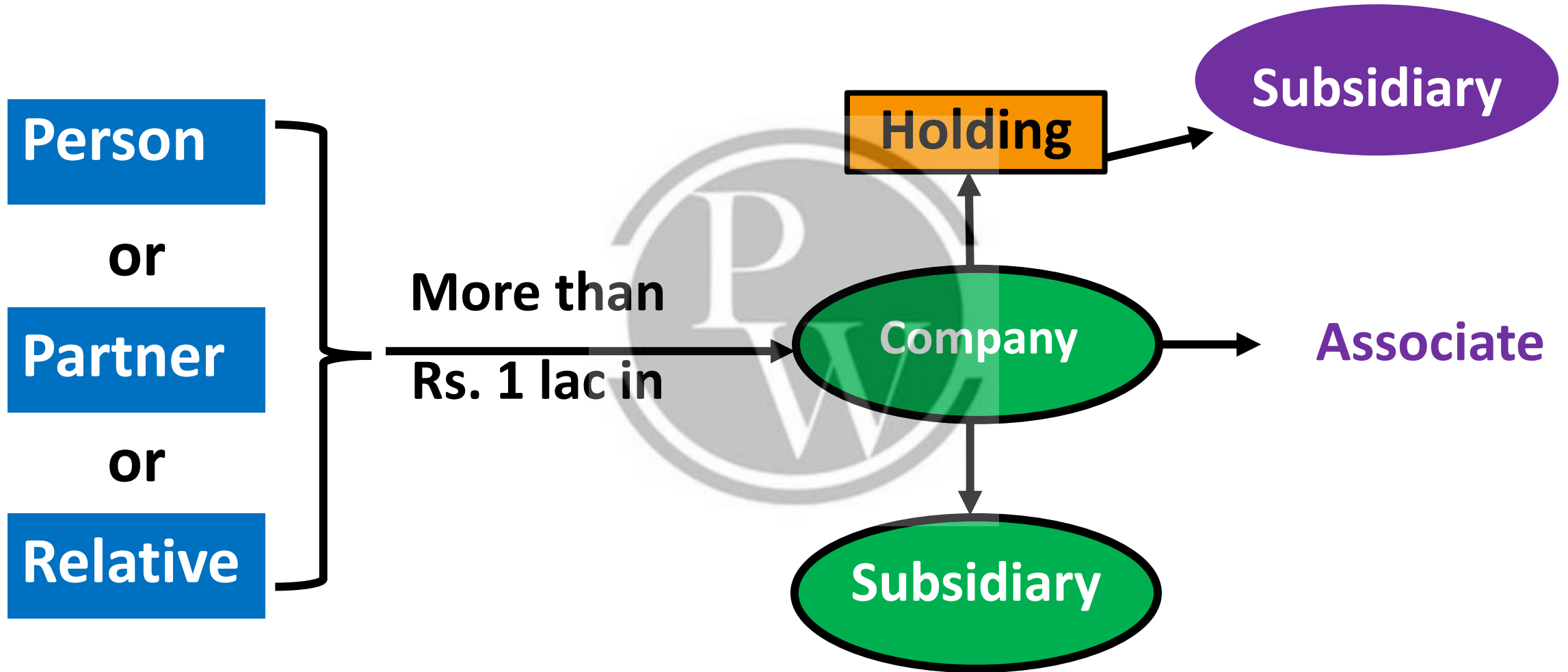
- Except L.L.P

## I- Indebtedness to Company





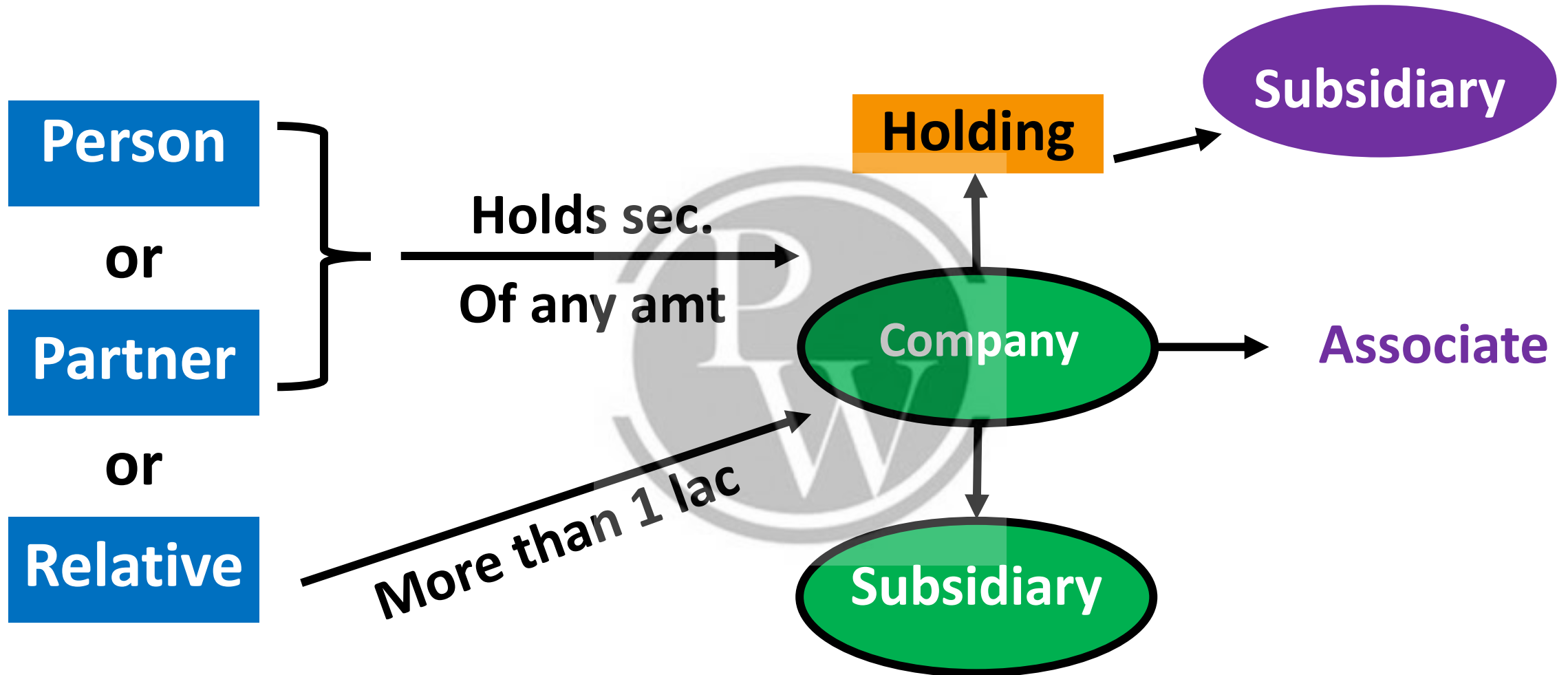
# G → Guarantee



# F → Full time Employment

Employment	That Co.	Other Co.
Part- Time		
Full-Time		

# I-Interest in securities of Company





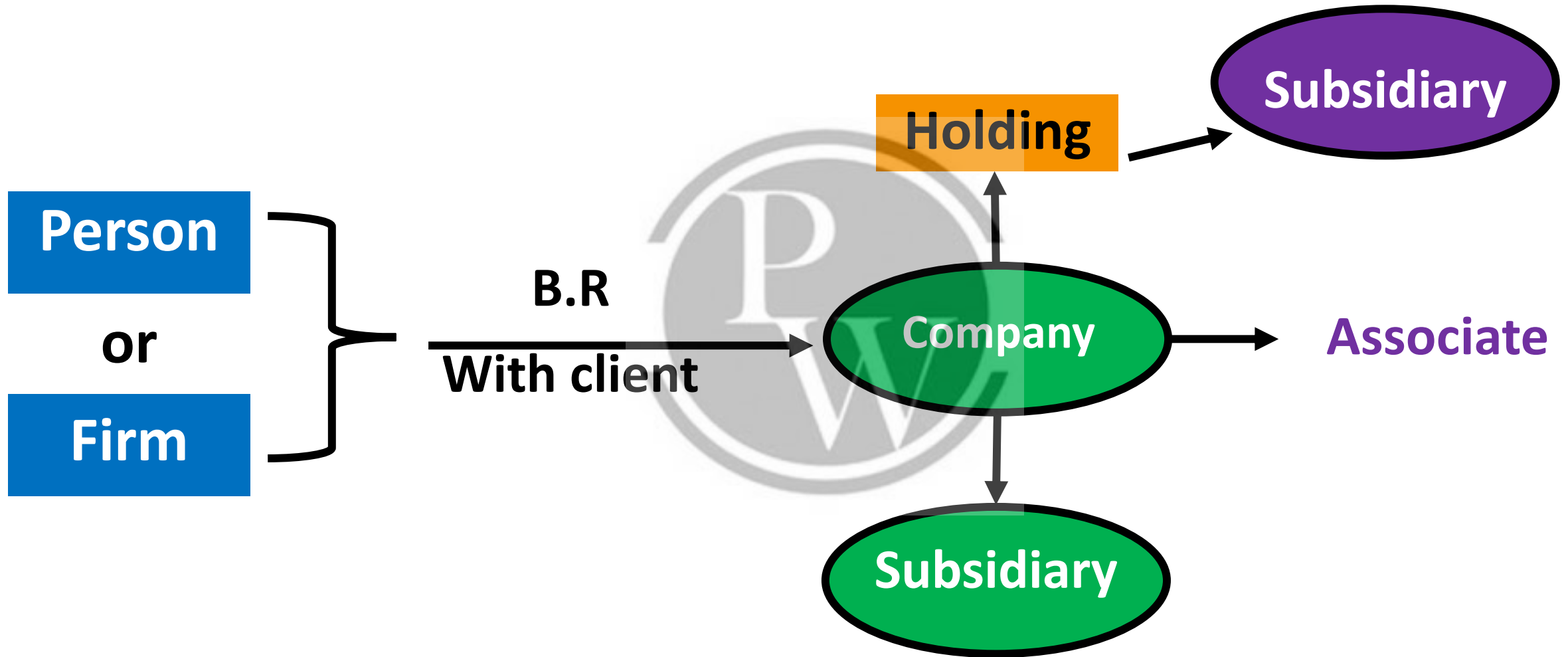
**Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of `1,20,000 (face value ` 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd. (3 Marks) (MTP Oct. 21)**

**Hint: As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner 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 shall not be appointed as an auditor of the Company.**

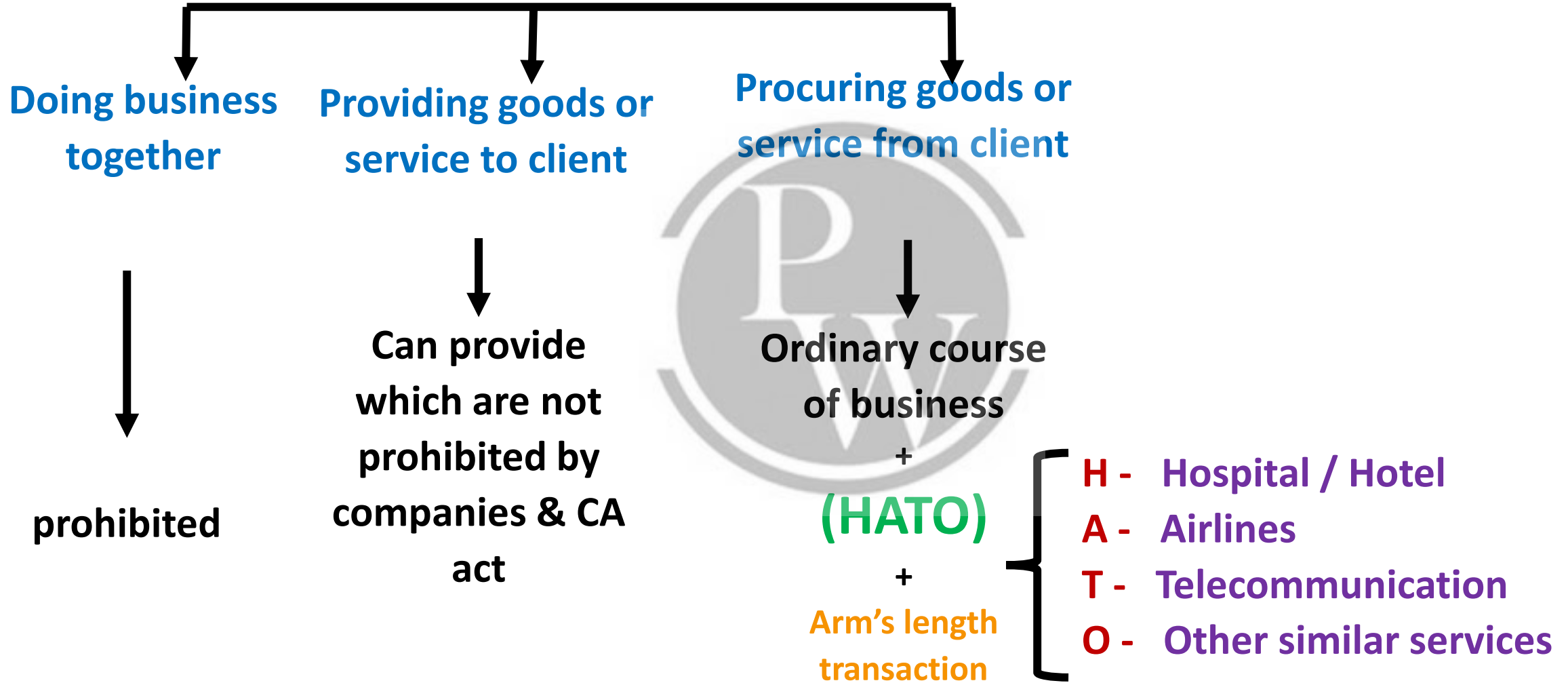
**However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ` 1,00,000 [as prescribed under the Company (Audit and Auditors) Rules, 2014].**

**In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ` 95,000 in the said company, which is within the prescribed limit.**

# B- Business relationship



# Business Relationship



# R- Relative in company


- A person whose relative is
- A Director or is in the employment of the Company as a director or key Managerial Personnel

# E- Employee

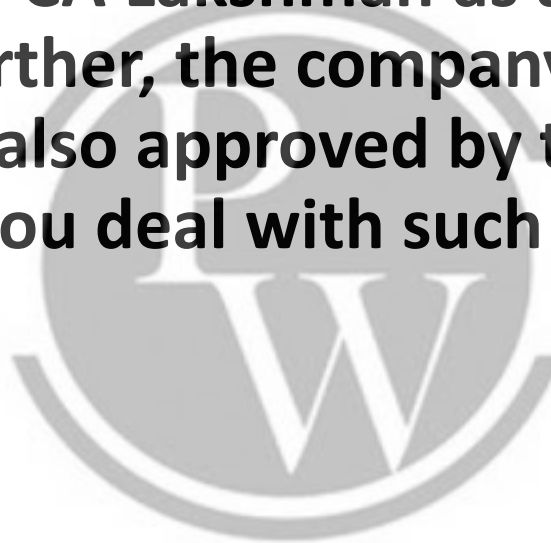
- An officer or employee of the company
- A person who is a partner, or who is in the employment, of an officer or employee of the company

# R- Restricted services(section 144).

## Shortcut - ACADEMICS

- 1) **Accounting** and book keeping services;
  - 2) **Carry** out outsourced financial services;
  - 3) **Actuarial services**;
  - 4) **Design** and implementation of any financial information system;
  - 5) **Engaged** in investment advisory or investment banking services;
  - 6) **Management** services
  - 7) **Internal audit**
  - 8) **Carry** out any other kind of services as may be prescribed
- 

- **Harry Limited appointed CA Lakshman as an auditor of the company for a term of 5 years. Further, the company offered him the services of actuarial which were also approved by the board of directors. As an auditor, how would you deal with such situation? (RTP May 2022)**



Which of the following is a prohibited service to be rendered by the auditor of the Company?

- (a) Design and implementation of any financial information system**
- (b) Making report to the members of the company on the accounts examined by him
- (c) Compliance with the auditing standards
- (d) Reporting of fraud against the company by officers or employees to the Central Government

## Overall Limit

1 person = 20 company audit

Excludes

1. One person company
2. Dormant company
3. Small company
4. Private company having paid up capital less than 100 cr



# Person who is Convict

- A person who has been convicted by a Court of an offence
- Involving fraud and
- A period of ten years has not elapsed from the date of such conviction



The word 'firm' for the purpose of Section 139 shall include-

- (a) An individual auditor
- (b) A LLP**
- (c) An individual auditor and LLP both
- (d) A company

**Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021-22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:**

- (1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.**
- (2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh. (5 Marks) (MTP Sep. 22)**

**Hint:**

**(1) As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company.**

**Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.**

**(2) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.**

- Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013 :
- "Ms. Rekha," a practicing Chartered Accountant, and "Mr. Alok," who happens to be a spouse of "Ms. Rekha," holds securities of "Charcoal Ltd." valued at a face amount of 85,000 (with a market value of 75,000/-). The directors of Charcoal Ltd. are considering the appointment of Ms. Rekha as an auditor for the company.
- Mr. Pun, a practicing Chartered Accountant, has a debt of 7 lakhs owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of Mr. Puri as an auditor for the company.
- Ms. Komal, the real sister of Mr. Sharad, a Chartered Accouitant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of Mr. Sharad as an auditor for the company. **6 Marks (Nov 23)**

# Appointment of First Auditor [Tenure till 1<sup>st</sup> AGM]

## Other Company [Sec. 139(6)]

## Govt. Company [Sec. 139(7)]

By BOD

If BOD fails

By CAG

If CAG fails

If BOD fails

- Within 30 days from incorporation
- Naming in AOA not sufficient

Intimate to shareholders

Within 60 days from incorp.

By BOD

Intimate to shareholders

By shareholders

Within 30 days

By shareholders

Take valid B.M & Pass B.R

Within 90 days from intimation in EGM

Within 60 days from intimation in EGM

# Appointment of subsequent Auditor

## Other Company [139(1)]

- In AGM
- By shareholders
- By passing O.R.
- Tenure



1 term = 5 years



i.e. from 1<sup>st</sup> AGM to 6<sup>th</sup> AGM

- After appointment



Co. intimates to ROC within 15 days



(ADT-1)

## Govt. Company [139(5)]

- By CAG
- Within 180 days from commencement of F.Y.
- Tenure



AGM to AGM



For appointing an auditor other than the retiring auditor, (1 Mark) (MTP Oct. 21)

- (a) **Special notice is required.**
- (b) Ordinary notice is required.
- (c) Neither ordinary nor special notice is required
- (d) Approval of Central Government is required.

**1. The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:**

**(i) Appointment of Mr. Teja by the Board of Directors.**

**(ii) Re-appointment of Mr. Teja at the first AGM in the above situation. (RTP Nov. 21)**

**Hint: As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.**

**Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.**

**As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.**

**As per the given provisions following are the answers:**

**(i) Appointment of Mr. Teja by the Board of Directors is valid as per the provisions of section 139(6).**

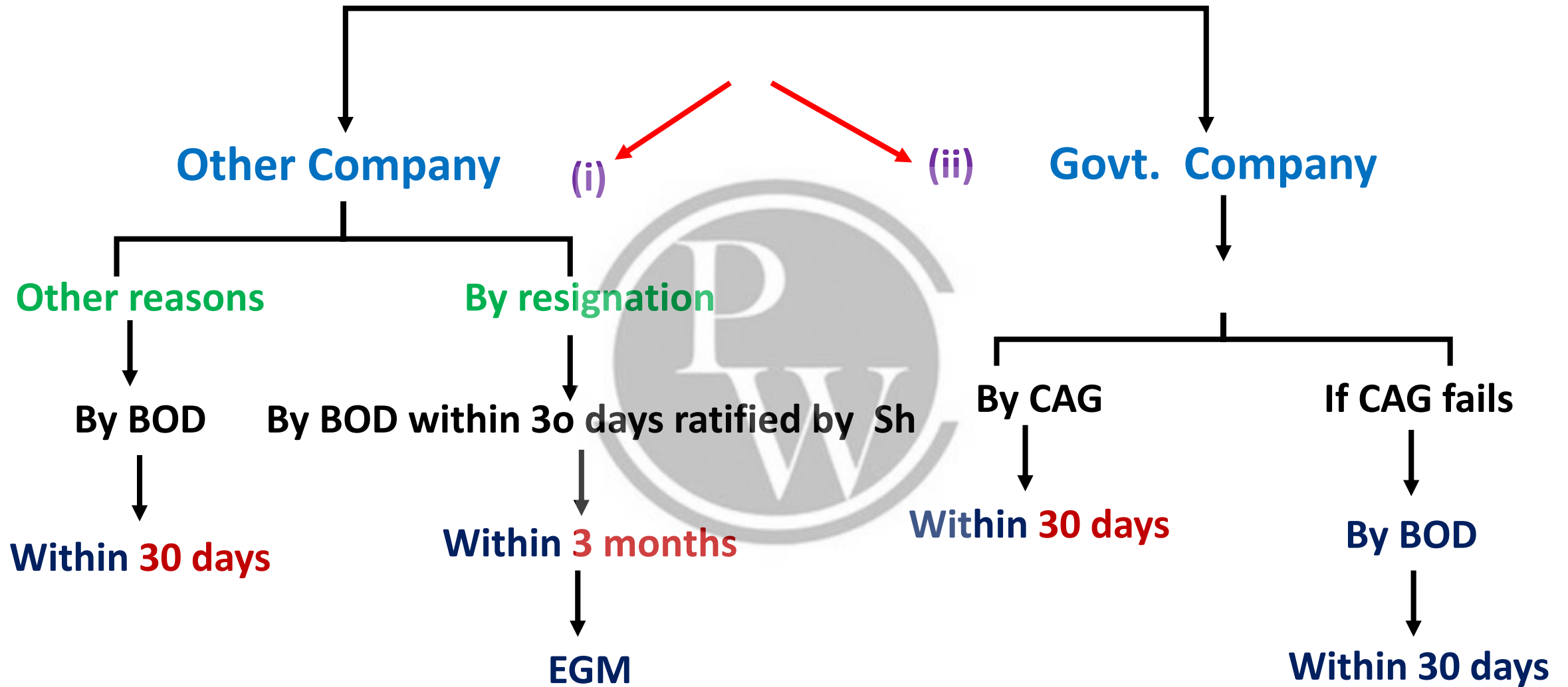
**(ii) Appointment of Mr. Teja at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Teja is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.**

**2. Discuss the Provisions regarding appointment of Auditors -**

**a) First auditor of a Government company and a Non-Government company.**

**b) Subsequent auditor of a Government company and a Non-Government company. [RTP - May 21]**

# Appointment in case of Casual vacancy Sec. 139(8)



**Note :-** In case of resignation, Auditor within 30 days intimate to

→ (1) Company, (2) ROC, (3) CAG(Govt. Co.) in form No. – ADT-3



# Reappointment of Auditor [ 139(9)]

**Not eligible for reappointment if rotation applicable & term expired (individual – 5yrs / firm – 2 terms i.e. 10 yrs)**

**Same auditor appointed earlier can be reappointed except**

- 1) Disqualified [U/s 141(3) + 139(2)(3)(4)]**
- 2) Unwilling to continue**
- 3) Company has appointed somebody else instead of him or expressly stating that retiring auditor will not be reappointed**

# Automatic Reappointment [ 139(10)]

If no new auditor is appointed

+

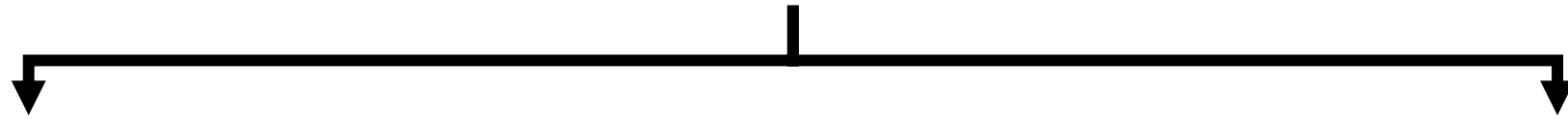
Auditor can be reappointed  
[not disqualified u/s 139(9)]

↓

Existing auditor will be automatically reappointed for next tenure

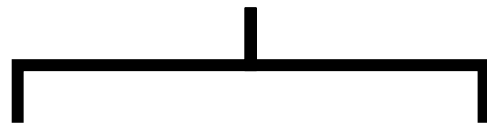
Note: if no new auditor appointed + retiring auditor cannot be reappointed → Casual vacancy → filled by BOD within 30 days

# Rotation Applicability



**Public**

**Private**



**Listed**

**Unlisted**



**Always  
Applicable**

**Paid up share  
Capital of 10 cr  
or more**

Or	
Public from	borrowing
• F.I	
• Bank	
• Public Deposit	

**50 cr or more**



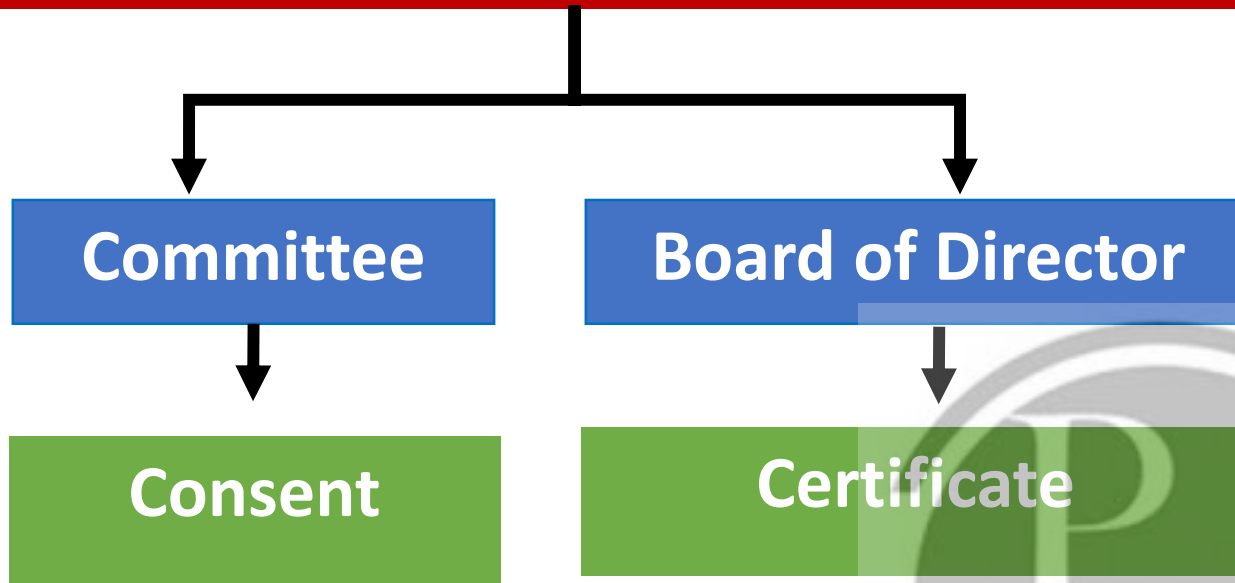
**Paid up Capital  
is 50 cr or more**

- **S Private Limited has a paid-up share capital of ` 49 Crores and borrowings from bank of ` 99 Crores. The audit firm P & Company was appointed as statutory auditors of the Company for one term of six consecutive years. Is the provision of rotation of auditors applicable to the company? Comment.(RTP Mar 23)**

# Rotation – [Sec. 139(2)]

- CA Proprietary firm → Max 1 term
- CA Partnership firm / LLP → Max 2 term
- Cooling period for both → 5 years
- In cooling period cannot appoint
  - a) Same firm
  - b) Other firm with any common partner
  - c) Firm with same network i.e same brand name , trade name or common control [Sec. 139(4)]
- Sec 139(3) → In same auditing firm → members can decide to rotate partners & term

# Consent & Certificate



- I/We agree to become auditor of the company
- He should take NOC from previous auditor before sending Consent as per CA Act, 1949

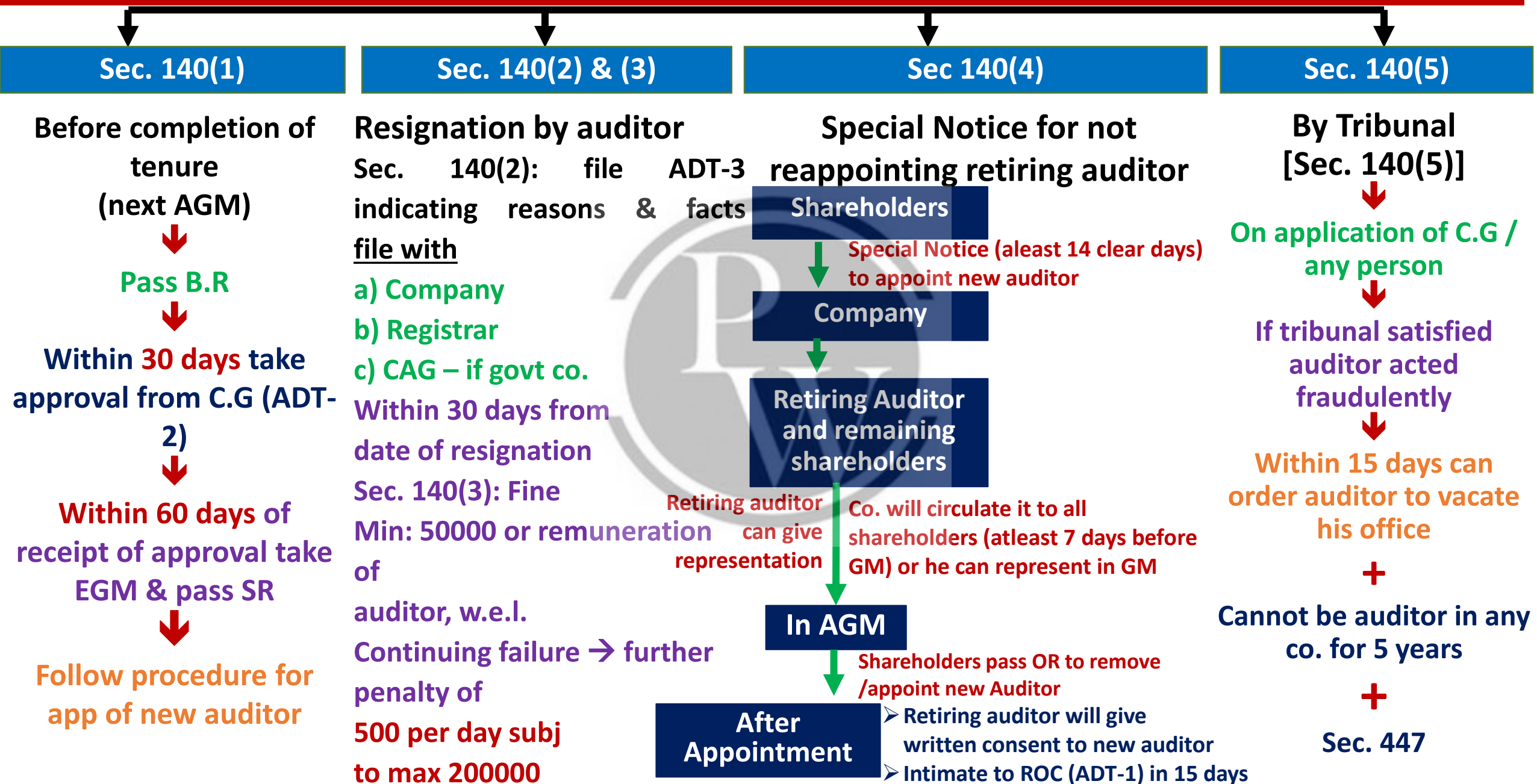
I certify that following is True & Correct.

- I am qualified u/s 141
- I am not disqualified u/s 141.
- Appointment is correct as per other sections of companies Act, & CA Act, 1949.
- I have limit to accept audit
- List of orders & proceedings provided to company is True & Correct.

CA

CA Firm

# Removal, Resignation & Special Notice (Sec. 140)





## Question

(b) ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013.

**(5 Marks) (MTP Mar. 24)**

- **XYZ Ltd. removed its statutory auditor by passing a resolution in the meeting of Board of Directors for his removal without obtaining prior approval of the Central Government. Such removal of the auditor was made before the expiry of term of the auditors. Give your comments in this regard.(RTP Mar 23) (4 Marks) (MTP Oct. 23)**

XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013. (5 Marks) (MTP Oct. 22)

**Hint: Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.**

**From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.**

**Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard. Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:**

- 1. The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.**
- 2. The application shall be made to the Central Government within thirty days of the resolution passed by the Board.**
- 3. The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.**

**Hence, in the instant case, the decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.**

For the removal of an auditor before the expiry of his term, which of the following sequence of events is correct (Nov 23)

- A. Board meeting - General meeting for passing a special resolution Application to Central Government - Grant of approval by Central Government
- B. Application to Central Government - Grant of approval by Central Government - Board meeting - General meeting for passing a special resolution
- C. General meeting for passing a special resolution - Board meeting Application to Central Government - Grant of approval by Central Government
- D. **Board meeting - Application to Central Government - Grant of approval by Central Government - General meeting for passing a special resolution**

- **CA B, an auditor of DBF Limited engaged in the manufacturing & trading of hardware products, while auditing got aware of some secrets of the company. The auditor acted in an unlawful way in order to deceive or gain an advantage over others & also he encouraged & assisted directors to do something wrong, in particular to commit crime. Now company has requested you to guide it as to how such acts are covered under Companies Act, 2013 & what consequences auditor may face ? (4 Marks May 2022)**

# Sec. 143(1) → Duty to enquire

- Enquire means to inquire & report only in case of discrepancy

**S** Security → Loan & Advance → Made by co.   
 ↗ Properly secured   
 ↘ Terms –prejudicial

**B** Mere book entries → Prejudicial to interest of Co.

**I** Investment in securities → Whether selling price < Purchase Price

**D** Deposits → Loan & Advance → Shown as deposits

**P** Personal expense → Charged to revenue a/c's

**S** Shares → Paid up → Actually cash received or not

# Sec. 143(3)– Principal Assertions

<b>I</b>	Information & Explanation	→	Needed to be obtained	→	Has been obtained
<b>A</b>	A.S	→	Complied or not		
<b>B</b>	Books of accounts	→	Properly maintained		
<b>B</b>	B/s & P&L	→	In agreement with BOA		
<b>B</b>	Branch Audit Report	→	Timely submitted to H.A		
<b>C</b>	Control system	→	Adequate (financial control system)		
<b>D</b>	Directors	→	Disqualified	→	u/s 164(2)



# Sec. 143(3)– Principal Assertions

**E**

Effect

→ Matters having adverse effect on functioning of company

**F**

Further Points

Pending litigations

Provision made

Delay

Company has  
disclosed  
impact

For material  
foreseeable  
losses

In transfer of  
amount to IEPF



# Amendment

After clause (d), the following clauses shall be inserted –

(a)

**(i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts,**

- **no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company**
- **to or in any other person(s) or entity(ies), including foreign entities (“Intermediaries”),**
- **with the understanding, whether recorded in writing or otherwise, that**
- **the intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;**

**(ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company**

- from any person(s) or entity(ies), including foreign entities (“Funding Parties”),
- with the understanding, whether recorded in writing or otherwise, that
- the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

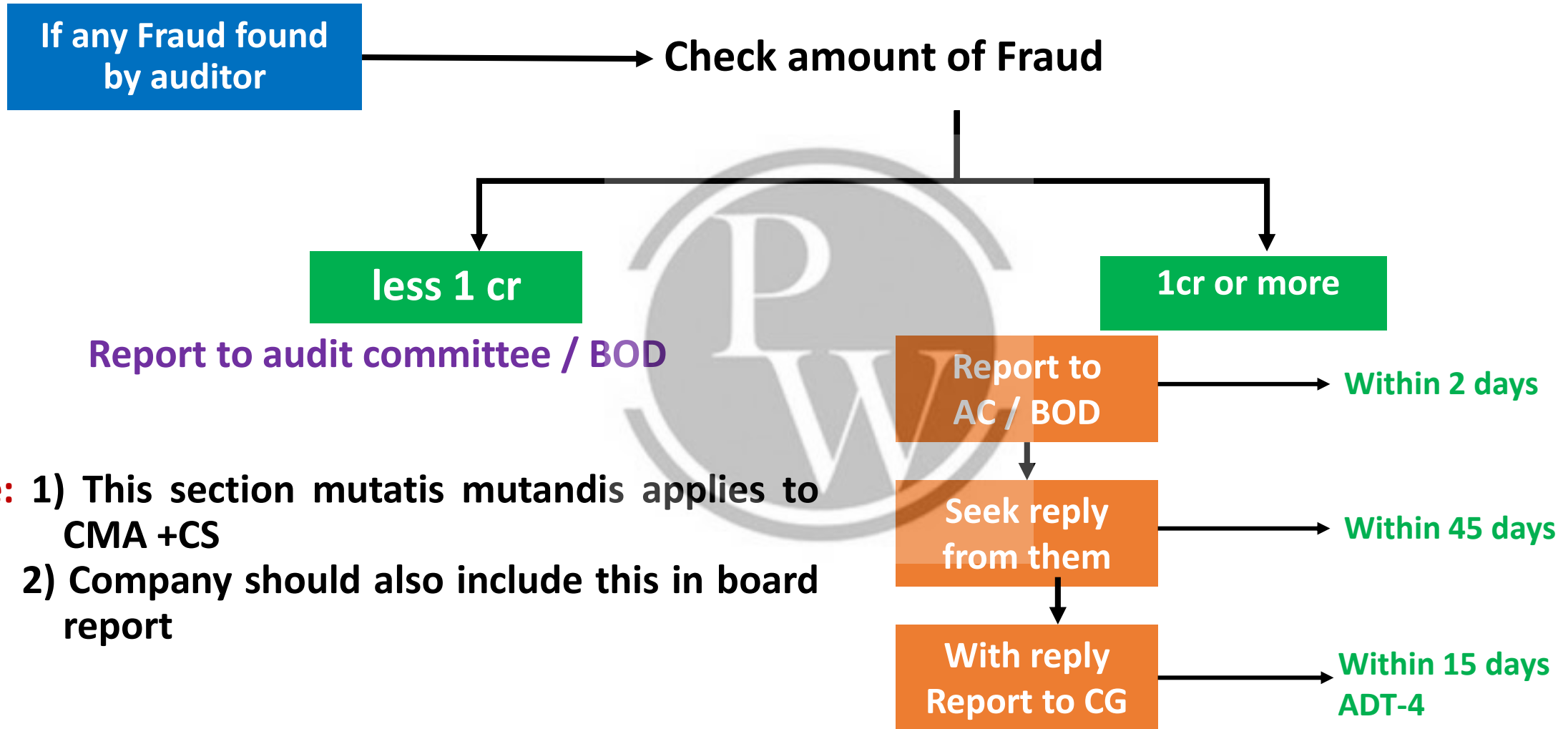
**(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.**

**(b) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.**

**(c) Whether the company, in respect of financial years commencing**

- **on or after the 1st April, 2022 has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and**
- **the same has been operated throughout the year for all transactions recorded in the software and**
- **the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention**

# Sec. 143 (12) → Fraud Reporting



# 142 → Remuneration of Auditor

- To app<sup>n</sup> Karta hai wohi rem<sup>n</sup> fix Karta except Govt Co. 
  - App<sup>n</sup> → CAG
  - Rem<sup>n</sup> fix → Sh.
- Where SH rem<sup>n</sup> fix 
  - By themselves or
  - Authorise BOD to negotiate & fix
- Rem<sup>n</sup> → include- Out of pocket exp      Exclude → any other services

## Sec. 145 → Duty to sign A.R.

- Any partner of Firm (CA + COP)
- Employee (CA +COP) → cannot sign.
- Modification in AR → read in GM in front of shareholders

- **As per section 142 of Companies Act, 2013, the remuneration to the auditor shall also include any facility provided to him. (May 23)**
- 
- **Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013. (RTP Nov 23)**
- **Hint -** As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.

# 146 → Right / Duty to attend GM

- **Right** → Co will send notice / any comm<sup>n</sup> of GM to auditor.
- **Duty** → Auditor (atleast 1 partner – CA +COP ) has to attend GM



By himself or representative (CA+COP).

- **It not possible** → take permission from Co.
- **Right** → to representation → **in case of removal**

# Sec. 147 → Penalties

To whom	Contravention Sec.	Min Penalty	Max Penalty
1) Company	139 to 146	25,000	5 lac
2) Officer in default	139 to 146	10,000	1 lac
3) Auditor (unknowingly )	139, 144, 146	25,000	5 lac or 4x Rem (w.e.l)
4) Auditor (Knowingly willfully )	Any contravention	Fine 50,000 + Imprison → max	25 lac or (well) 8x Rem <sup>n</sup>



Basis	Cost Audit U/s 148	Branch Audit Sec. 143(8)
(i) Applicable	As per Sec. 148	Compulsory
(ii) Appointed by	Board / A.C within 180 days from Commencement of F.Y (Intimate to ROC – CRA-2)	Shareholders in consultation with Head Auditor
(iii) Tenure	1 year	1 year
(iv) Qualification	Prac. CMA	<ol style="list-style-type: none"> <li>1. Company Auditor</li> <li>2. Person qualified u/s 141(1)(2)</li> <li>3. Foreign Branch – as per rules of that country</li> </ol>
(v) Disq.	Same Like 143 (3)	Same like 143(3)
(vi) Reporting	<ol style="list-style-type: none"> <li>i. Prepare report and submit to BOD within 180 days of closure of year in CRA-3</li> <li>ii. Within 30 days Board report to CG in CRA-4 (along with explanation)</li> </ol>	<ul style="list-style-type: none"> <li>• Prepare same like H.A using SA 700, 701, 705, 706 &amp; Sec. 143 (Incl. CARO)</li> <li>• Submit to P.A.</li> </ul>

# Cost Record applicability

## Cost Records

Applicable



(1) Having product  
of Regulated /  
unregulated  
sector

+

(2) Overall  
T/O of C.Y  $\geq$  35 Cr

Not Applicable



(1) Foreign co.  
having liaison  
office in India

(2) Micro & small  
enterprises



# Cost Audit

**Applicable**



**(1) Maintaining cost records**

**+**

**(2)**

	<b>Regulated</b>	<b>Un-regulated</b>
<b>(a) Overall T/O</b>	<b>50 Cr or more</b>	<b>100 Cr or more</b>
<b>(b) Individual T/O</b>	<b>25 Cr or more</b>	<b>35 Cr or more</b>

**+**

**Not Applicable**



**(1) Revenue from export**



**≥ 75% of Total revenue**

**(2) Operating in SEZ (Don't count T/O limit)**

CA Inter **Law May 2024**

# **Accounts Of the Company**

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# CSR [Sec. 135]

## Applicable



(Any 1)

- 1) T/O – 1000 cr. or more
- 2) Net worth – 500 cr or more
- 3) Profit – 5 cr or more

During immediate preceding FY

Consisting of 3 or more directors (at least 1 should be independent director)

Where to spent



Project / program specified in Sch. VII (refer Module )

## Procedure



Constitute CSR Committee



CSR Committee will

- Formulate
- Recommend

a CSR policy and monitor



Board will approve ,disclose ,ensure recommendation followed



Spend at least 2% of avg. net profit of preceding 3 FY

## Other Imp points



1. If no independent director and for private companies , csr committee should have atleast 2 directors
2. Where the CSR amt does not exceed Rs. 50 lakhs, CSR Committee shall not be constituted & functions of such committee shall be discharged by the BOD.
3. If Company has not completed 3 years then take average of such years as completed 135 (5)
4. Also, if amt is spent in excess then such excess amt shall be adjusted in 3 succeeding FY as may be prescribed.
5. ~~Company who doesn't fulfill requirement till next 3 consecutive years can cease CSR spending (deleted)~~

## Not CSR Activity



Shortcut – PEON



- 1) P – Political party
- 2) E – Employees of Co. & family
- 3) O – Outside India.
- 4) N – Normal course of business

Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	` 5.00 crore	` 3.75 crore
2021-22	` 7.00 crore	` 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

(RTP Mar 23)

Hint : In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is ` 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ` 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)  
Average Net Profit since incorporation: ( $\text{` 5 crore} + \text{` 7 crore}$ ) / 2 = ` 6 crore  
Minimum contribution towards CSR will be: 2% of ` 6 crore = ` 0.12 crore or ` 12 Lacs.

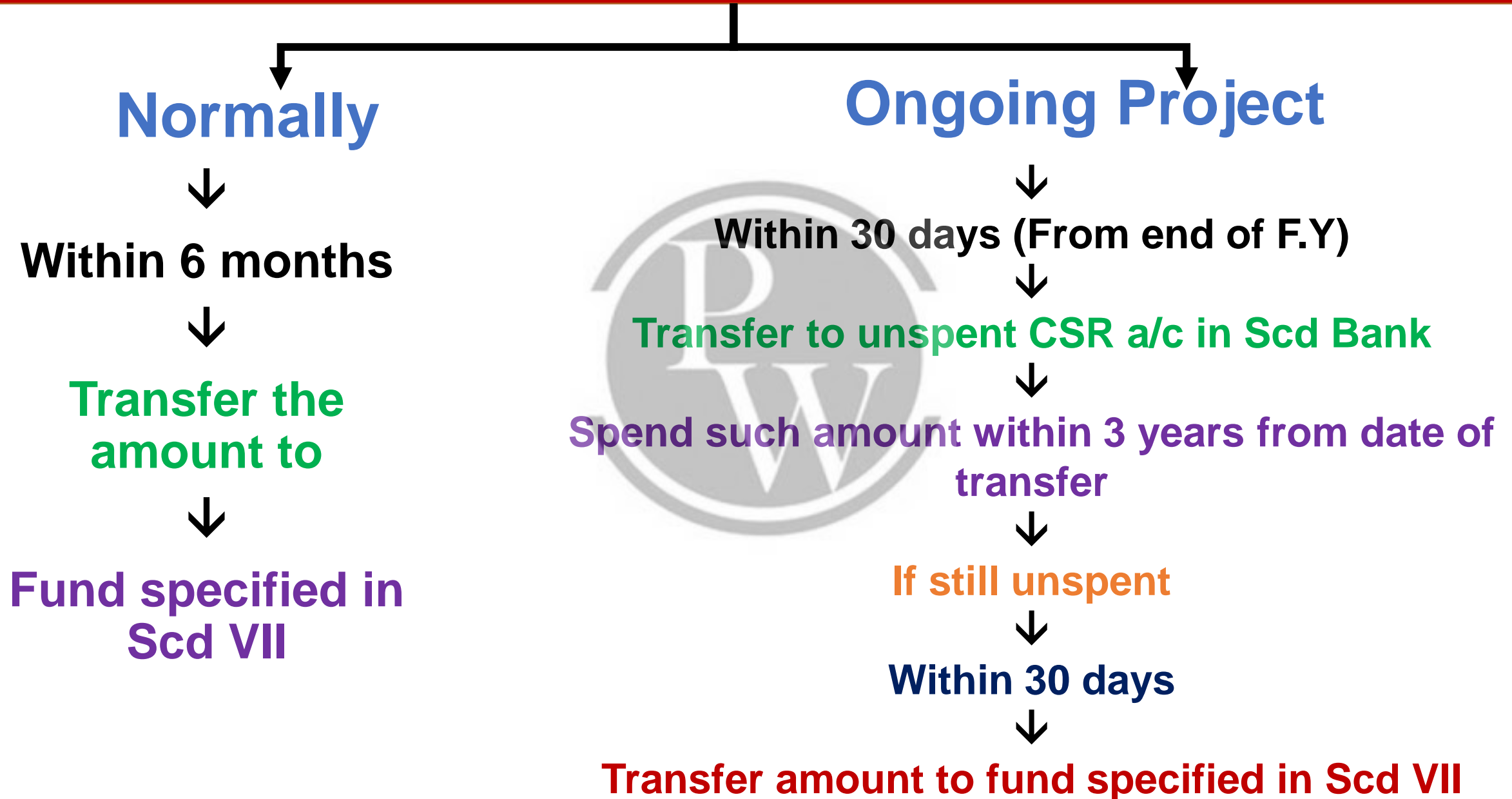
CSR Committee of the Board of shall consist of:

- (a) Directors forming 1/3rd of the total no of directors.
- (b) At least 2 directors out of which one shall be independent director.
- (c) 3 or more directors out of which one shall be managing director.
- (d) 3 or more directors, out of which at least 1 director shall be an independent director.**

Provisions of CSR are applicable to:

- (a) Companies with net worth of ` 250 crore or more but less than 500 crore.
- (b) Companies with turnover of ` 1000 crore or more.**
- (c) Companies with net profit of ` 1 crore or more but less than ` 5 crore in any financial year
- (d) Companies having aggregate outstanding loans and deposits Exceeding ` 50 crore or more in any financial year.

# If unspent CSR till end of year





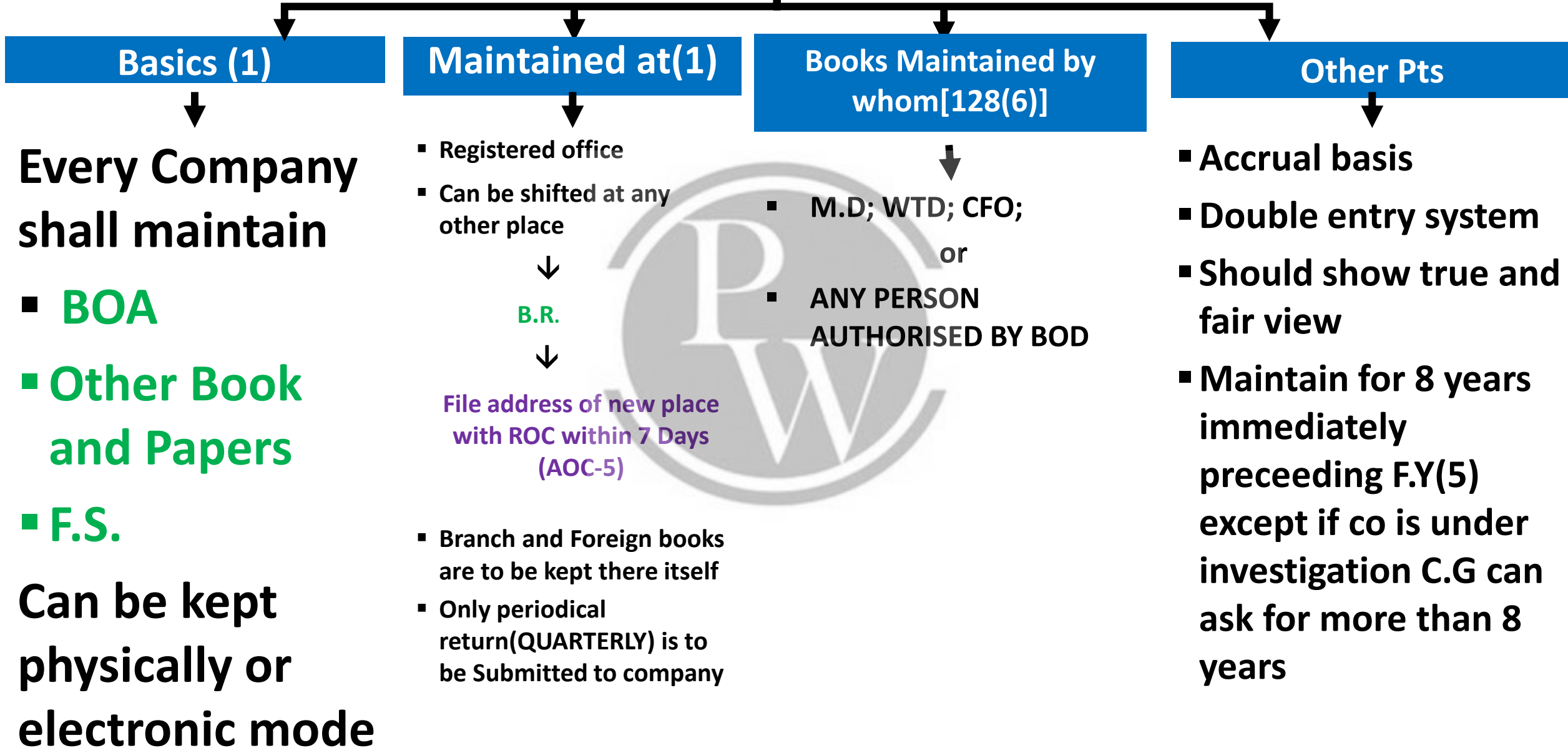
# OTHER IMP POINTS

1. Sec 135 not applicable to specified IFSC Public & Pvt Co. for 5 years from the commencement of business.
2. Administrative overheads should not exceed **5 %** of total CSR exp.
3. Calculation of Avg. Net Profit (sec 198): Shall not include
  - a) profits from overseas branches
  - b) dividend from other co. in India covered u/s 135
4. Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities
  - A Company undertaking impact assessment may book the impact assessment expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed ~~LOWER~~ Higher of :-
    - ~~5%~~ 2 % of the total CSR expenditure for that financial year or
    - 50 lakhs.

- The Board shall ensure that the CSR activities are undertaken by the company itself or through –
  - a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
  - b) a company established under section 8 of the Act or a registered trust or a registered society, established by CG or State Government; or
  - c) any entity established under an Act of Parliament or a State legislature; or
  - d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least 3 years in undertaking similar activities.
- The board shall ensure that the administrative overheads shall not exceed 5%—of total CSR expenditure of the company for the financial year.

- As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities: (Mar. 22) (1 Mark)
- The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.
- **The surplus shall not form part of the business profit of a company**
- The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.
- The surplus shall form part of the business profit of a company

# Books Of Accounts (Sec. 128)



# Inspection of BOA by Directors

## [128(3) r/w Rule 4]

### a) Inspection by Directors:

- Open during business hours
- If books outside India, Send to registered office at quarterly intervals and if asked by director should be made available in 15 Days from the date of receipt of request

### b) Can inspect BOA of subsidiary only by resolution of BOD.(holding co)

### c) If information maintained outside India – director will request and information will be sent within 15 days

### d) Members may inspect – if provided in AOA

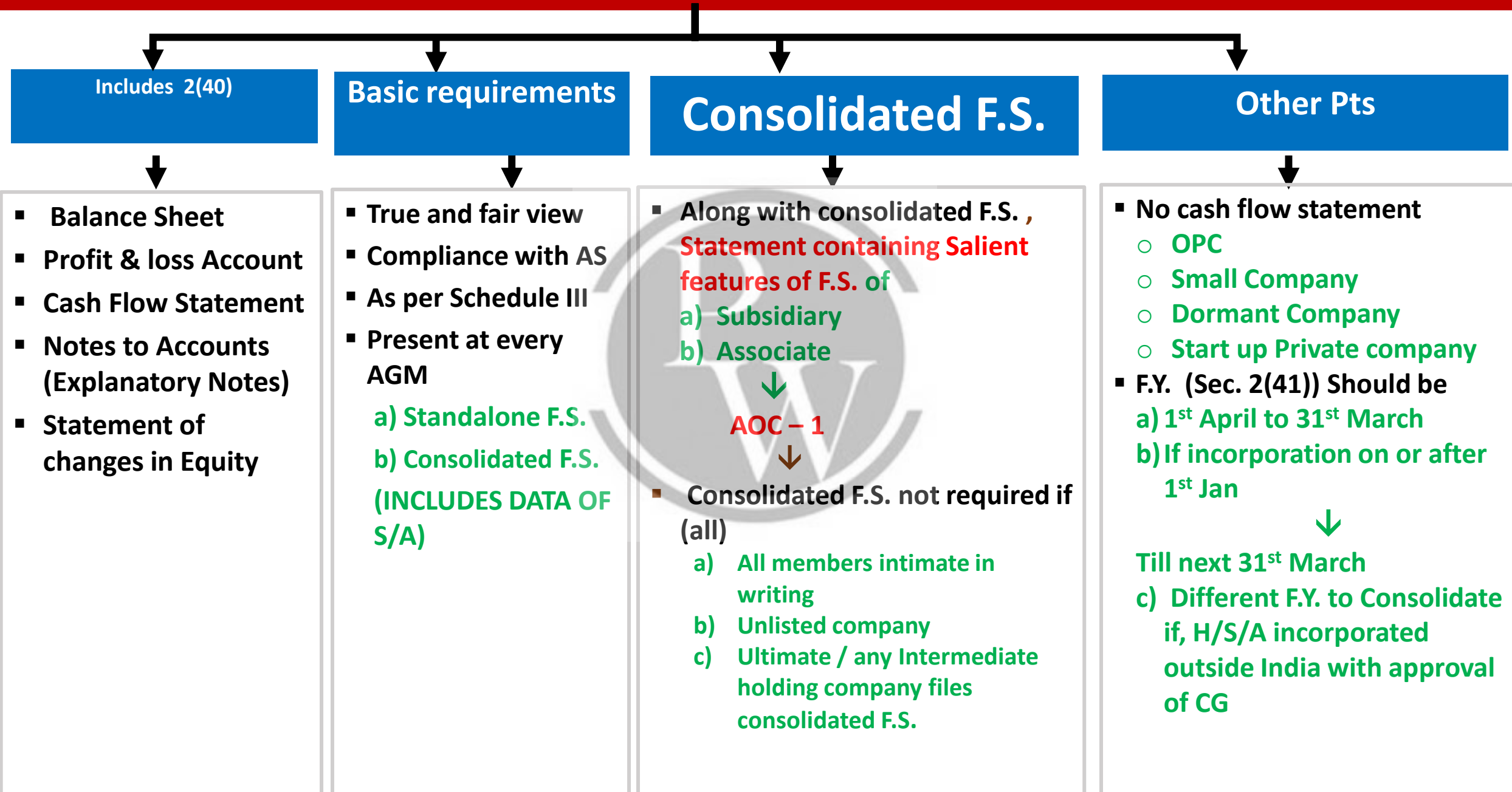
# Accounts Amendment Rules

In Rule 3(1), the following proviso shall be inserted-

Provided that

- a) For the **Financial Year Commencing on or after the 1<sup>st</sup> day of April, 2022,**
- b) every company which uses **Accounting Software** for maintaining its books of accounts,
- c) Shall use only such accounting software which has a **feature of recording audit trail of each and every transaction,**
- d) Creating an edit log of each change made in books of accounts along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

# Financial Statements (Sec. 129)



The financial statement in relation to a dormant company may not include:(1 Mark) (MTP Sep. 22)

- |                                |                                 |
|--------------------------------|---------------------------------|
| (a) balance sheet              | (c) applicable explanatory note |
| <b>(b) cash flow statement</b> | (d) profit and loss account     |

**Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors. Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ` 1.5 crore with 40 members and turnover of ` 18 crore, respectively and the said company is not a start-up company.**

**In the context of aforesaid case-scenario, please answer to the following question(s):**

**Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements? Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:**

**(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively. (RTP Mar 23)**

**Hint:**

**For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:**



## Section 129A- Periodical Financial Results

**CG 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**

**Note – Listed Co is already asked to do so as Per SEBI Guidelines.**

## Question

**4. (a) Crystal Limited recently received a communication from the Central Government requesting the preparation of periodical financial results along with the completion of either a full audit or a limited review of these financial results. The Board of Directors, however, has raised an objection, arguing that Crystal Limited, being an unlisted company, are not obligated to prepare periodical financial results. Analyze the situation, citing relevant provisions of the Companies Act, 2013, with respect to the company's obligation regarding the preparation of periodical financial results.**

**(5 Marks) (MTP April 24)**

Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard. (RTP Mar 23)

**Hint: Periodical Financial Results [Section 129A of the Companies Act, 2013]**

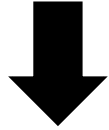
**The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—**

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

**Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.**

# RE-OPENING OF ACCOUNTS [Sec. 130]

- ✓ The Central Government
- ✓ Income Tax authorities
- ✓ SEBI
- ✓ Statutory Regulatory body
- ✓ Any person concerned



Applies to

Court / Tribunal



Court passes  
order

## → REASONS

1. earlier accounts prepared in a **fraudulent** manner or
2. doubt on reliability of F.S due to **mismanagement**



1. and serves notice to the applicant



2. The accounts so revised / re-casted shall be final



3. No order – for period earlier than 8 FY immediately preceding the current FY (except on order from C.G)

Adani Enterprises Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31<sup>st</sup> March 2020, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company.

Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise

with which last financial year for reopening of books of accounts an application can be made?

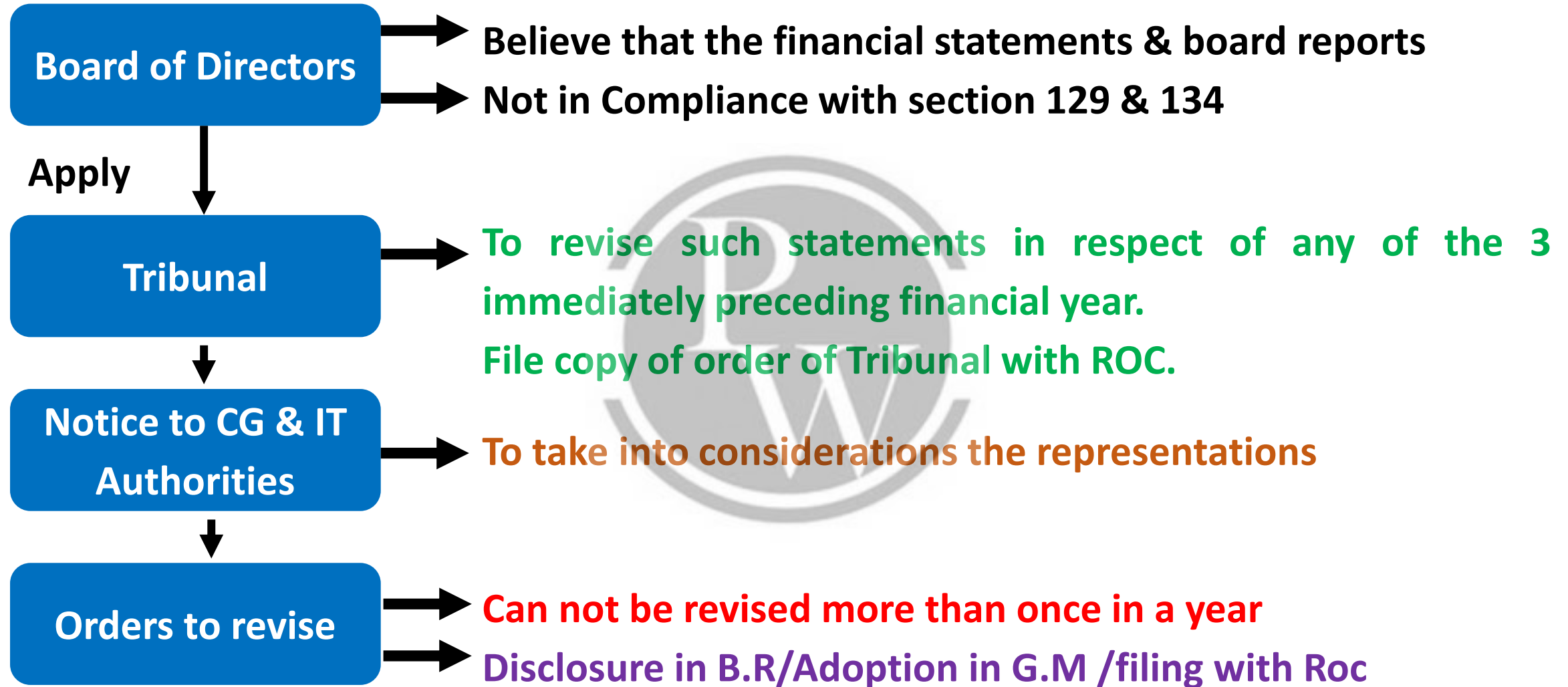
- (a) 2015-2016
- (b) 2013-2014
- (c) 2010-2011
- (d) 2011-2012**

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008 -09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT. (MTP NOV 2020)

**Hint: In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.**

**Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.**

# VOLUNTARY REVISION [Sec. 131]



During the half year ended September 2019, the board of directors (BOD) of Vidyut Manufacturing Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended as on March 2017. Further during the year ended March 2020, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2019. You are required to state the validity of the acts of the Board of directors.

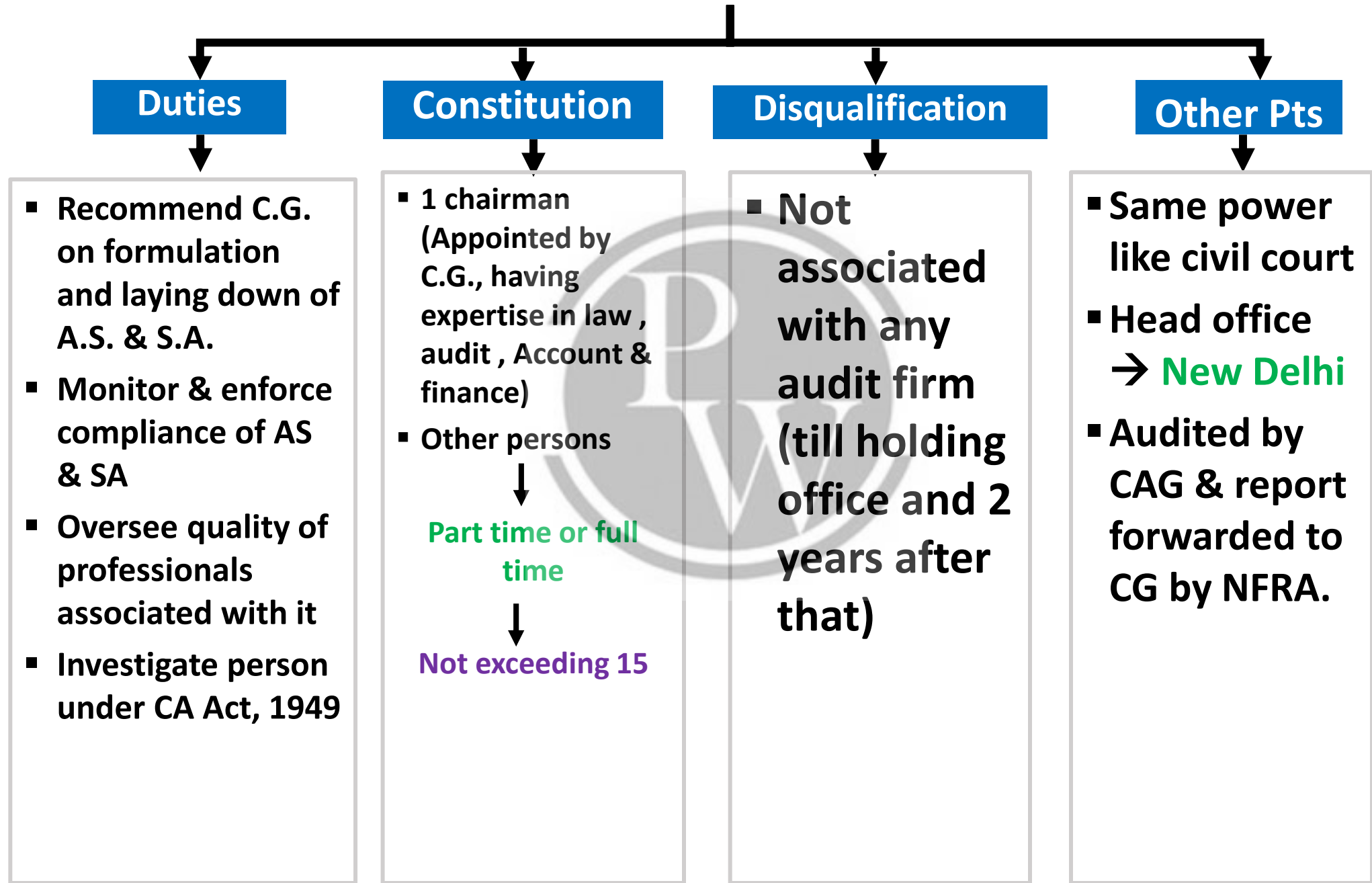
(a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.

**(b) The act of the BOD is valid as the applications made for revision in the accounts and board's report pertain to two different financial years.**

(c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.

(d) The act of the BOD is invalid as the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2020. The application made for revision in the Board report is however valid in law.

# National Financial Reporting Authority (Sec. 132)





# COMPANIES & BODY CORPORATE GOVERNED BY NFRA

1. Listed Co.
2. Unlisted Public Co. having
  - a) PUC  $\geq$  Rs. 500 Cr. or
  - b) T/O  $\geq$  Rs 1000 Cr. or
  - c) O/s loans, deb, deposits  $\geq$  Rs. 500 Cr as on 31 Mar of preceding FY.
3. Insurance Co, Banking Co, Electricity Co, Co. under special Act
4. Body corporate or company or person as referred to NFRA by CG in public interest.
5. Body corporate outside India, being S/A of Co. or Body corporate in India as ref. in a to d above, if the net-worth of such S/A exceeds 20% of consolidated net-worth.

## Note:

- 1) Existing body corporate (other than above) shall inform the particulars of auditor to NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1.
- 2) Companies governed by NFRA shall continue to be governed for 3 years after it ceases to be governed as per above conditions.

# Directors Responsibility Statement (134)

Shortcut: **(AAAAGE)**

Should state:

- 1) **Accounting** standards has been followed
- 2) **Accounting** policies are consistently selected and applied
- 3) **Maintenance of accounting records**
- 4) **Adequate Financial Control system Maintained**
- 5) **Going concern** is followed
- 6) **Ensure compliance of all other related laws**

The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a "Directors' Responsibility Statement". Briefly enumerate any four matters to be furnished in the said statement. (6 Marks) (MTP Oct. 22)

## Question

4. (a) The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly mention any four matters to be furnished in the said statement.

**(5 Marks) (MTP Mar. 24)**

# SEC 134

FS approved by BOD  
(Sec. 134)

- Before submission to auditor
- Cannot be approved by teleconference / video meeting / circulation
- Signed by → **Chairperson or 2 director (1 MD if any) + CEO + CFO + CS**
- OPC → **1 director**

FS Submitted to auditor

- As per contents of section 134 (REAL DIRECTOR)
- Including directors responsibility statement and management discussion analysis report
- Signed by → **Chairman (if authorised) / 2 directors (1 MD if any)**
- OPC → **1 director**

Prepare Board Report

**MGT-14, within 30 days**

File resolution  
approving Board  
Report & FS with ROC

Ganesh Company Ltd, a public company incorporated under the Companies Act, 2013 has Mr. Jay- Director, Mr. Sagar – Independent Director, Mr. Abhishek – Nominee Director and Mr. Yash – Whole time director. Mr. Abhishek wants to inspect the books of account of Shankar Company Limited, the subsidiary of Ganesh Company Limited. You are required to state whether Mr. Abhishek is eligible to inspect the books of accounts of Ganesh Company Limited?

(a) Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization of the public financial institution on whose behalf he has been so appointed in the board of the Ganesh Company Ltd.

(b) No. Mr. Abhishek being a nominee director can only inspect the books of account of Ganesh Company Ltd and not its subsidiary company.

**(c) Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the board of directors.**

(d) Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the members holding not less than 25% of the paid up share capital of the company.

**1. ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. C, on its rolls. The financial statements of the company for the year ended 31 March,2019 were authenticated by two of the directors, Mr. X and Mr. Y under their signatures.**

**Referring to the provisions of the Companies Act, 2013:**

- i. Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.**
- ii. What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? (MTP MAY 2020)**

**Hint:**

- i. In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director, Mr. D should be one of the two signatories. Since, the company has also employed a full- time Secretary Mr. C, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.**
- ii. In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.**

# Rights for copy of financial statements [Section 136]

Copy of financial statement, consolidated financial statement, audit report, Board report

## Other than listed company

A copy is to be send to

1. Every member
2. Trustee of debenture holders
3. Other person

21 days (14 days – sec 8 co ) before the date of meeting

## Listed company

Deemed to serve the document if

- Copy made available for inspection at its registered office during the business hours for a period of 21 days before the meeting &
- Statement containing salient features of such documents are send in form AOC-3(AOC-3A for Co. req. to comply IND AS) or full document as the company deems fit delivers it to its members, trustee & other persons at least 21 days before the meeting.

# NOTE:

1. Nidhi co. is not required to send notice to members holding

a) Shares not more than 1000 FV

b) >1% of PUC

w.e.l.



Publish in newspaper (Public Notice- Regional language)

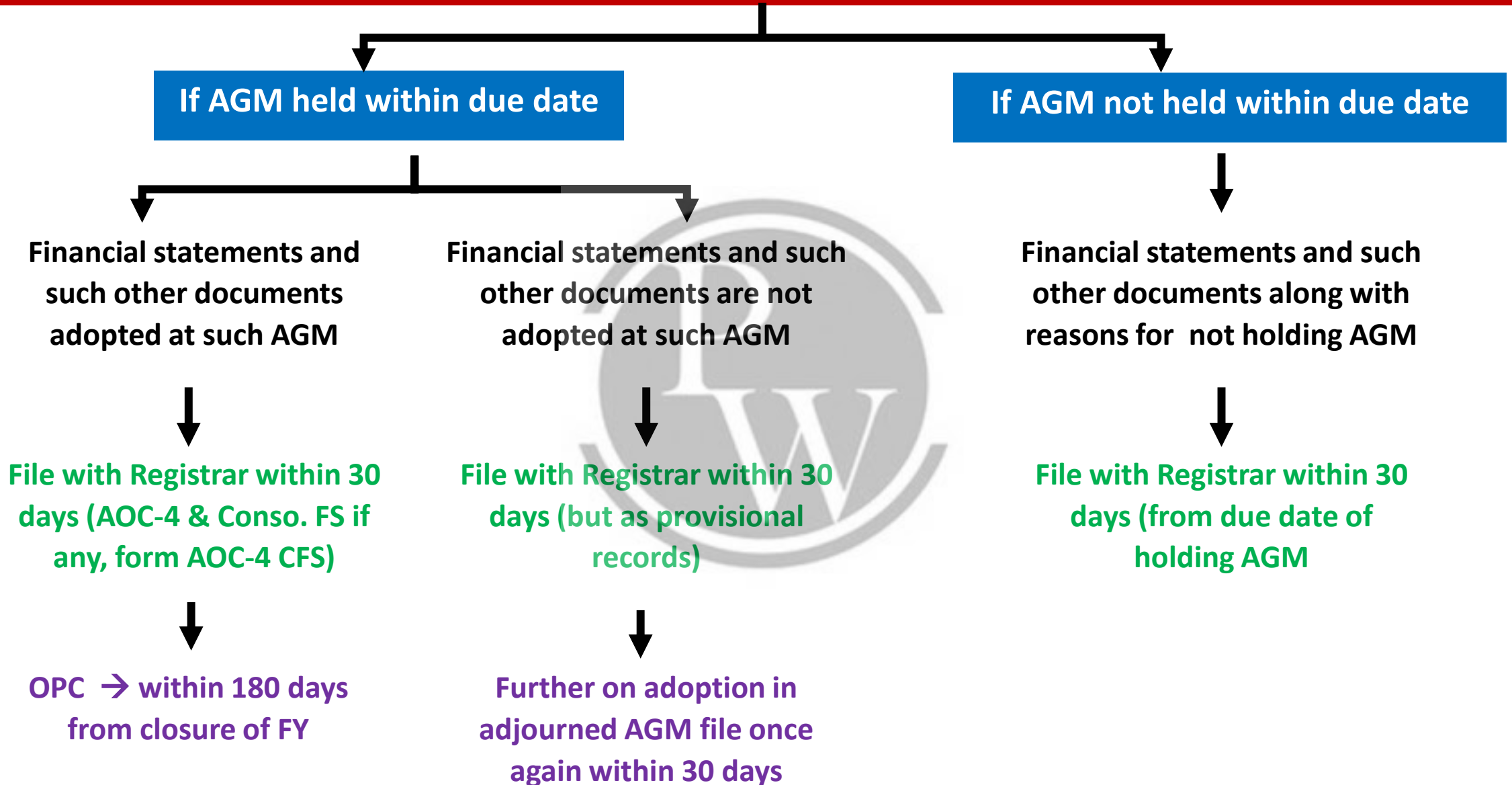
2. In sec. 136, for sec. 8 Co. Instead of 21 days it is 14 days

3. Less than 21 days if agreed by,

a) Co. having share capital: members holding  $\geq 95\%$  of PUSC: OR

b) Co. not having share capital: Members holding  $\geq 95\%$  of total voting rights.

# Filing of financial statement [Section 137]





# Question

14. The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid-up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th August, 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.

**(RTP May24)**

One Person Company shall file a copy of the duly adopted financial statements to the Registrar within:

- (a) 30 days of the date of meeting at which it was adopted.
- (b) 90 days of the date of meeting at which it was adopted.
- (c) 90 days from the closure of the financial year.
- (d) 180 days from the closure of the financial year.**

Rema formed and occupied the office of director in Rem Stationers (OPC) Private Limited which deals in manufacturing and trading of various items of stationery. Rema noticed a changed provision which mandates that from the Financial Year 2020-21 onwards, an OPC shall file its Annual Return in MGT - 7A. Rema is also one of the directors in another company which too is required to file its Annual Return in

MGT - 7A. Which is that 'other company' where Rema also occupies the office of director in addition to OPC.

- (a) That other company is a 'small company' where Rema also occupies the office of director in addition to OPC.**
- (b) That other company is an 'associate company' where Rema also occupies the office of director in addition to OPC.
- (c) That other company is a 'subsidiary company' where Rema also occupies the office of director in addition to OPC.
- (d) That other company is a 'dormant company' where Rema also occupies the office of director in addition to OPC.

# Internal audit [Section 138]

## APPLICABILITY

Following Class of companies are required to appoint an internal auditor (individual or firm or body corp.)

- **Listed company**
- **Unlisted company having**
  1. Paid up Capital not less than 50 crore, or
  2. Turnover not less than 200 crore, or
  3. Borrowing from banks or PFI not less than 100 crore, or
  4. Deposits not less than 25 crore
- **Private company having**
  1. Turnover of not less than 200 crore or
  2. Borrowings from banks or PFI not less than 100 crore.

**(All above limits during preceding FY)**

## QUALIFICATION

- Any person certified as :
  1. Chartered accountant
  2. Cost accountant
  3. Such other professional as may be decided by board.
- May or may not be an employee of the company.
- CA or cost accountant whether in practice or not.

## Question

**(b) Kesar Limited, an unlisted company furnishes the following data:**

- (i) Paid-up share capital as on 31st March 2024 49 Crore.**
- (ii) Turnover for the year ended 31st March 2024 100 Crore**
- (iii) Outstanding loan from bank as on 3rd March 2024 is 102 crore (Z 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 95 crore after repayment.**

**Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025.**

**(5 Marks) (MTP April 24)**

CA Inter **Law May 2024**

# **Company Incorporated Outside India**

---



# Company Incorporated Outside India [Sec. 379 to 393A ]

**\* Foreign Company [Sec. 2(42)]**



**Co. or B.C**

**Incorporated  
outside India**

**+**

**Place of Business  
in India**

**(Itself / agent)**

**(Physically / Electronic mode)**

**And  
(or)**

**Conducts any  
business  
activity in India**

# Note

1) Electronic means carrying out electrically

→ Whether main server in or outside India



Including

↓ S T<sup>2</sup> D<sup>2</sup>

S → Services

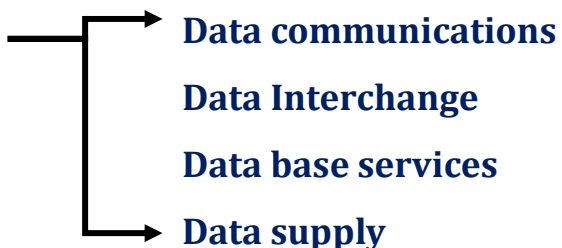


T → Transactions → B2B, B2C

T → Tele (i) Telemarketing (ii) Telecommunications (iii) Telemedicine (iv) Education / Research

D → Deposits or subscription in securities → in India /from Indian

D → Data



## **\*Note:**

- 2) If Branch office in India then deemed to place of business in India.**
- 3) If CIOI only takes any business decision in India then not F.C.**
- 4) Place of business includes share transfer or share registration office**
- 5) Listing of Securities in IFSC is not electronic mode**
- 6) POB matters even if no transaction during the year.**



# Application of Act to F.C (Sec. 379)

**Normal Foreign Co.**



➤ **Sec. 380 to 386**

➤ **Sec. 392 & 393**



**Of this chapter**



**FC ← at least 50% of PUC  
(Eq.+ Pref.)**



**Held by**



- **Citizen of India (Singly, Jointly)**
- **Co./ B.C of India**



**Entire Companies act as  
if normal Indian Co.**

# **Sec. 392 → Penalty / Punishment for contravention of any section in this chapter**

	<b>F.C.</b>	<b>Officer in default</b>
<b>Fine</b>	<b>1 lac to 3 lac</b>	<b>25 k to 5 lac</b>
<b>Additional Fine</b>	<b>50,000 per day Till default continues</b>	<b>N.A.</b>

# Documents to be filed with Roc (Sec. 380)

**On establishes POB in India** → **Within 30 days** → **File followers documents** → **F.C.1 form**

↓  
**CAR → PDC** → with ROC

**C → Constitutional documents (e.g. MOA/AOA)**

**A → Address** → **Principal / Regd. Office.**  
→ **POB → in India**

**R → Representative (Indian) → Name & address**

**P → particulars of opening / closing of POB on earlier occasions**

**D → Director/ secretary → List & full details**

**C → Declaration that director & Represecter (not secretary)**

→ **No convicted debarred** → **From in corp. Co.** → **In India or outside India**

## **\*Note:**

- 1) If any change in above → file FC-2 within 30 days**
- 2) If document in other language → file certified translation in English with registrar.**
- 3) In this chapter registrar always means registrar of new Delhi**
- 4) If F.C ceases to have POB in India apply to ROC → then obligation to file doc. ceases.**

## Question

16. Fine Publishers, registered in Tokyo, began operating in India during the financial year 2009. The company has duly submitted all necessary documents to the registrar within the specified due date. On 1st March, 2023, Fine Publishers has shifted its principal office in Tokyo. Is Fine Publishers required to undertake any steps due to change in address of principal office. Give your answer in reference to the provisions of the Companies Act, 2013. **(RTP May24)**

# \*Financial Statements [Sec. 381]

**F.C**

**In every  
calendar year**



**Should file  
F.S with ROC**



**Within 6  
months of  
closure of F.Y**



**In form F.C  
3**

**→ 3 months  
extension allowed**



# \*Note:

- 1) F.S as per Scd III or as near as practical
- 2) Audit by person qualified u/s 141 (CA+ COP)
- 3) F.S to annexed with **PRACT**

**P → Profit repatriation statement**

**R → RPT statement**

**A → Accounts of Co → documents (B.R/ A.R) etc.**

**C → consolidated F.S of Parent foreign Co.**

**T → Transfer of funds (Including dividend)**

- 4) If documents of parent Co. not in English



Then file certified translated document



In English language with ROC

- 5) File annual return → Within 60 days of last day of F.Y → In form FC -4

## Question

(b) Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company.

**(5 Marks) (MTP Mar. 24)**



**Sec. 382**



**Sec. 383**



**Sec. 384**



**Sec. 385**



# \*Provisions applicable to CIOI but not F.C

## Sec. 387 → Dating of Prospectus and Particulars

Prospectus  
issued in India

(N.A )



Where prospectus not  
required

(a) Dated & Signed

(b) Particulars (Instrument incorporate **karne K**  
**liye ACP ko bulao**

i. Instruments defining constitution

ii. Incorporation → details & documents

iii. Address where (i) & (ii) can be inspected

iv. Country of Incorporation

v. Principal POB → address

Not req.  
after 2  
years from  
COB

(a) Matters specified u/s 26

## Question

**(b) What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014?**

**(5 Marks) (MTP April 24)**

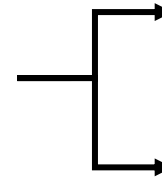
## Sec. 388



If expert  
statement  
included in  
prospectus



Don't circulate  
unless such expert



Give consent in writing

Consent not withdrawn by him

## Sec. 389



No prospectus  
issued  
unless



(i) Delivered for registration to ROC

(ii) Consent attached

(iii) Some documents annexed



**ME -CUP**

**M** → M.D / Manager → appointment contract

**E** → Expert consent

**C** → Contracts → last 2 yrs. → outside normal course of business (material)

**U** → Underwriting agreement → copy

**P** → Power of attorney (copy) → if signed by authorized agent

## Sec. 390

Indian  
Depository  
receipt

Meaning → Instrument → In form of → Depository receipt → Created by domestic depository in India

C. G can make rules

Has to follow SEBI guidelines

Standard chartered PLC was first Co. to file IDR in India in 2010

## Sec. 391

→ Sec. 34 to 36 and Chp. XX → Also apply to CIOI

## Sec. 392

→ Punishment discussed earlier

## **Sec. 393**

→ If Co. fails to comply with provision of this chapter

→ Such contracts continue to remain valid



But co. cannot

- File suit
- Claim set off
- Counter claim



On such contracts



Till co. has complied with provision of act.

## **Sec. 393A**



C.G can exempt any Co. from provision of this chapter



1. Foreign Company means

- a. any Company or Body Corporate outside India
- b. place of business in India
- c. conduct any business activity in India
- d. all of the above**

2. Radix Healthcare Ltd., a company registered in Thailand, although has no place of business established in India, yet it is engaged in online business through remote delivery of healthcare services in India. Select the incorrect statement from those given below as to the nature of the Radix Healthcare Ltd. in

the light of the applicable provisions of the Companies Act, 2013:

- a. Radix Healthcare Ltd. is not a foreign company as it has no place of business established in India.
- b. Radix Healthcare Ltd. is a foreign company being involved in business activity through telemedicine.**
- c. Radix Healthcare Ltd. is a foreign company for conducting business through electronic mode.
- d. Radix Healthcare Ltd. is a foreign company as it conducts business activity in India.

- One or More Citizens of India, and I or Companies or Bodies Corporate incorporated in India, whether singly or in the hold less than\_\_\_\_\_ the Paid Share Capital (Equity or Preference or in aggregate, not of -Up partly both) of a Foreign Company, such Company shall comply with such of the provisions the Act with regard to the business carried on by it in India, as if it were a Company incorporated in India.
  - **50%**
  - 25%
  - 51%
  - 49%

-



- Foreign Companies shall, the \_\_\_\_\_ of business, deliver Documents to the within of establishment of place ROC for registration
  - 60 days
  - **30 days**
  - 15 days
  - 45 days



- Jackson Communications LLC, incorporated in Arizona, USA, has established a principal place of business at Kolkata, West Bengal. It is required to deliver requisite documents to the specified authority. You are required to select an appropriate option from the four given below which indicates the number of days within which such documents shall be delivered:
  - Jackson Communications LLC shall, within 10 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
  - Jackson Communications LLC shall, within 15 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.
  - **Jackson Communications LLC shall, within 30 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.**
  - Jackson Communications LLC shall, within 45 days of the establishment of a principal place of business in India, deliver the requisite documents to the specified authority.

- Morgen Stern Digi Cables GmbH incorporated in Berlin, Germany, established a place of business at Mumbai to conduct its business of data interchange and other digital supply transactions online. However, Morgen Stern Digi Cables GmbH failed to deliver certain documents to the jurisdictional Registrar of Companies within the prescribed time period in compliance with the respective statutory provisions. Which option, out of the four given below, shall correctly indicate the amount of fine with which Morgen Stern Digi Cables GmbH shall be punishable for its failure to deliver certain documents:
  - Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 50,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 25,000 rupees for every day after the first during which the contravention continues.
  - Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 20,000 rupees for every day after the first during which the contravention continues.
  - Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 2,00,000 rupees but which may extend to 5,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.
  - **Morgen Stern Digi Cables GmbH is punishable with fine which shall not be less than 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine upto 50,000 rupees for every day after the first during which the contravention continues.**

- Any alteration is made or occurs in the documents delivered to ROC, the Foreign Company shall file\_\_\_\_\_ to ROC, containing the particulars of the alteration, within 30 days of such alteration.
  - Form FC-1
  - Form FC-4
  - **Form FC-2**
  - Form FC-3
-

- A Foreign Company shall, in \_\_\_\_\_make out a Financial Statement of its Indian business operations as per Schedule III or as near thereto as possible for each financial year,
  - Every Financial year
  - **Every calendar year**
  - every Half year
  - either (a) or (b)
- A Foreign Company shall deliver a copy of financial statement to ROC along with\_\_\_\_ a list showing of all Places of Business established by the Foreign Company in India as on the date of Balance Sheet.
  - Form FC-1
  - Form FC-4
  - Form FC-2
  - **Form FC-3**

- Time Limit for filing all the documents with ROC by Foreign Company shall be\_\_\_\_\_ from the close of the financial year.
  - 4 months
  - 3 months
  - **6 months**
  - 9 months
- A Copy \_\_\_\_\_of statements shall be accompanied with Financial statements for filing with ROC.
  - Statement of Related Party Transactions showing specified particulars
  - Statement of Repatriation of Profits showing specified particulars
  - Statement of Transfer of Funds showing specified **particulars**
  - **All of the above**
- 5K Cosmetic Shop plc., a company incorporated in Switzerland, is involved in digital supply services through electronic mode, the server of which is located outside India. The company follows calendar year as its financial year. Every year the company is required to prepare a balance sheet and profit and loss account. You are required to choose the correct timeline within which such documents shall be filed with the Registrar of Companies considering the provisions of Chapter XXII of the Companies Act, 2013:
  - Within a period of 30 days from the close of the financial year of 5K Cosmetic Shop plc.
  - Within a period of 3 months from the close of the financial year of 5K Cosmetic Shop plc.
  - Within a period of 60 days from the close of the financial year of 5K Cosmetic Shop plc.
  - **Within a period of 6 months from the close of the financial year of 5K Cosmetic Shop plc.**
  -

- Every Foreign Company shall prepare and file Annual Return in Form No.FC-4, to ROC fees, with within\_\_\_\_\_ — from the last day of its financial year
  - 90 days
  - **60 days**
  - 120 days
  - 45 days
- Time Limit of 6 months for filing all the documents with ROC by Foreign company \_\_\_\_\_and Time limit 60 days for filing Annual return with .ROC\_\_\_\_\_
  - **can be extended and cannot be extended**
  - cannot be extended and can be extended
  - cannot be extended and cannot be extended
  - can be extended and can be extended
- Time Limit of 6 months for filing all the documents with ROC by Foreign company \_\_\_\_\_and Time limit 60 days for filing Annual return with .ROC\_\_\_\_\_
  - **can be extended and cannot be extended**
  - cannot be extended and can be extended
  - cannot be extended and cannot be extended
  - can be extended and can be extended
-

# CA Inter **Law May 2024**

## **Mgt and Admin**

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# AGM (SEC. 96)

## Meaning

- G.M held once every year
- Compulsory for every company except 'OPC'

## Time Limit

### First AGM

- Within 9 months from closing of first F.Y.

### Subsequent AGM

#### Whichever is earlier

- 1) One AGM, each calendar year (i.e. up to 31<sup>st</sup> Dec)
- 2) Within 6 months from closure of F.Y. (i.e. till 30<sup>th</sup> Sep normally)
- 3) Gap between previous AGM & this AGM does not exceed 15 months.

## When to conduct

- Only during business hours. (9 am to 6 pm)
- On any day except National holiday

## Where to conduct (Place)

- Registered office of Co. City, town, village of Regd. Office.
- AGM of unlisted Co. can be held any where in India with consent of all members in advance.
- Sec 8 – at discretion of BOD

## Consequences of default

- Meeting beyond time not void
- Fine – up to 1,00,000 + 5000 per day (sec 99)
- On default tribunal can direct AGM (sec 97) on application of members

\*Note :- Extension of 3 months if AGM (except first) not conducted in specified time.

- **Sunshine Limited, an unlisted company, registered in the State of U.P. 4 with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022-23 as under:**
- **The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.**
- **The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.**
- **Advise the Company on the feasibility of the above with reference to the provisions of Companies Act, 2013.4 M (Nov 23)**

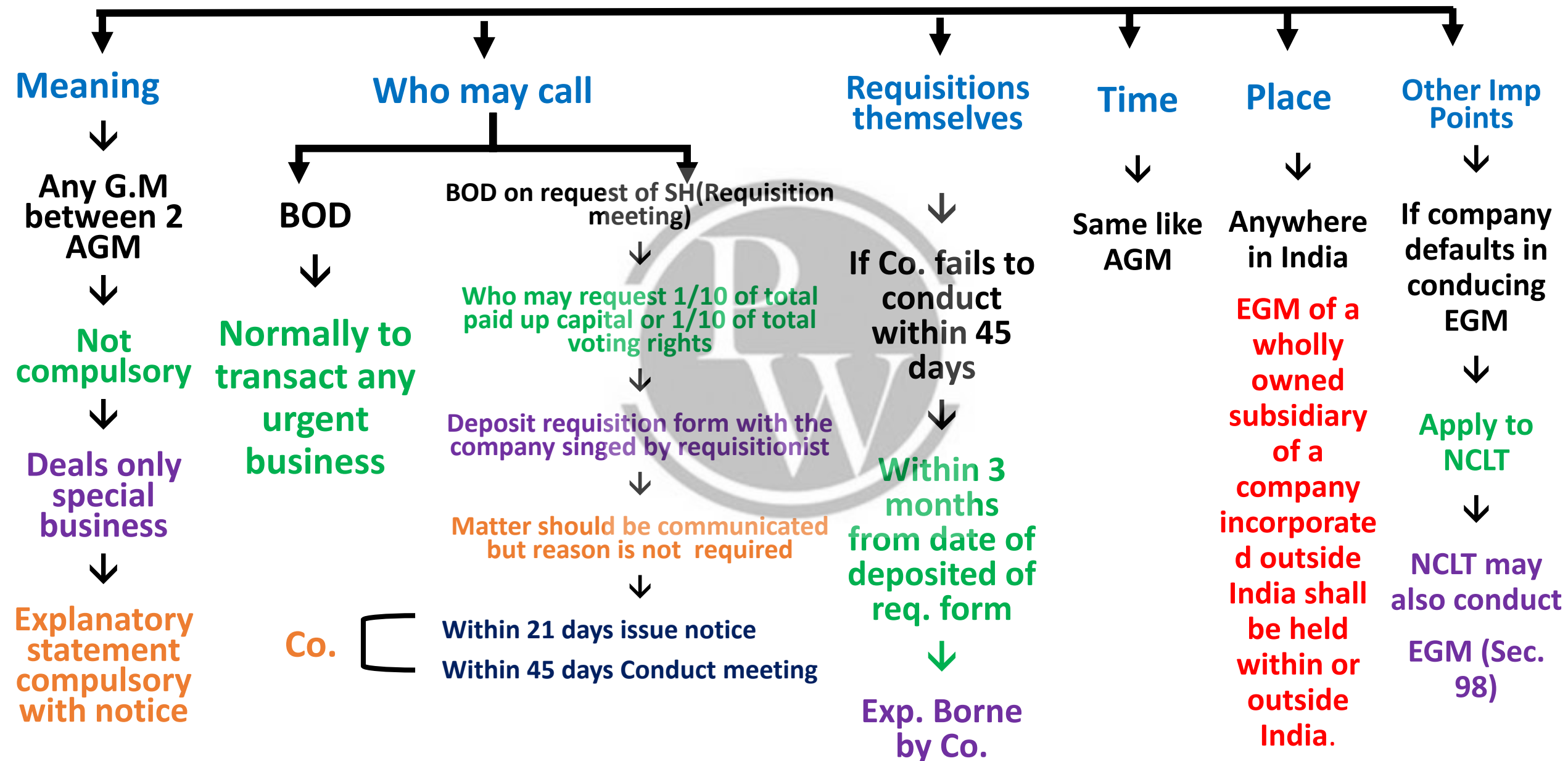
**Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:**

- (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.**
- (ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held. (MTP Mar. 22)(4 Marks)**

**Hint**

**Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.**

# EGM – Sec. [100]



- **Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:**
- **The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.**
- **Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.(6 Marks) (MTP Oct. 23)**

# Notice (SEC. 101)

## Meaning

- Intimation to members to attend meeting
- Intimates time, place, date & Agenda of meeting
- Should always be in writing

## Who can give?

- BOD
- Can delegate their powers to secretary, manager, etc.
- If secretary or other issue without delegation from BOD, Notice invalid
- However it can be ratified by BOD

## Who are entitled to receive notice?

- Every member
- L.R/ Nominee of deceased member
- Official assignee/ receiver of insolvent member
- Auditor & director of Co.

## Time limit (length notice)

- Should be sent at least 21 clear days before meeting to calculate clear days
- For calculating clear days
  - A) Leave date of sending notice & date of meeting
  - B) If Posted exclude 2 more days
- For Sec. 8 Co., it should be 14 clear days

# Shorter Notice when valid

- Annual General Meeting may be called by giving a shorter notice, if consent is obtained from **95% of members entitled to vote** at such meeting.
- EGM may be called by giving shorter notice, if consent is obtained from:
- **Majority of members in number** who are entitled to vote; and
- **Who represent not less than 95% of paid up share capital of company** (If company does not have share capital, consent of members having 95% of voting power required)

The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?

- (a) 75% of members entitled
- (b) 90% of members entitled
- (c) 91% of members entitled
- (d) 95% of members entitled**

1) Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide, as per the provisions of the Companies Act, 2013:

(i) Whether the contention of Amar is valid.

(ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held? (April 22)(5 Marks)

**Hint:** Accordingly, the questions as asked may be answered as under:

(i) The contention of Amar shall be tenable, for the reason that the notice was not properly served.

(ii) In the given circumstances, the company is bound to serve a valid notice to Amar by registered post at his residential address at Kanpur and not outside India.

2) Chetan Ltd. issued a notice for holding its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

i. Whether the meeting has been validly called?

ii. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

iii. Can the delay in giving notice be condoned? (RTP NOV 2020)

**Hint**

i. A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

ii. As explained in (i) above, notice falls short by 2 days.

iii. The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.



# Ordinary Business .[Section 102(2)(a)]

# Special Business [Section 102 (2)(b)]

- For AGM:

- 1) A-Consideration and **adoption** of F.s , A.R , D.R
- 2) D- Declaration of **dividend**
- 3) D- Retirement of directors and appointment of **directors** in place of those retiring
- 4) A- Retirement ,appointment and reappointment of **auditors** and fixing his remuneration

- For EGM: No business is ordinary

- For AGM:

- All business except the four business is considered special business.
- For EGM- All business are deemed to be special business

# Explanatory Statement (Sec 102)(MISD)

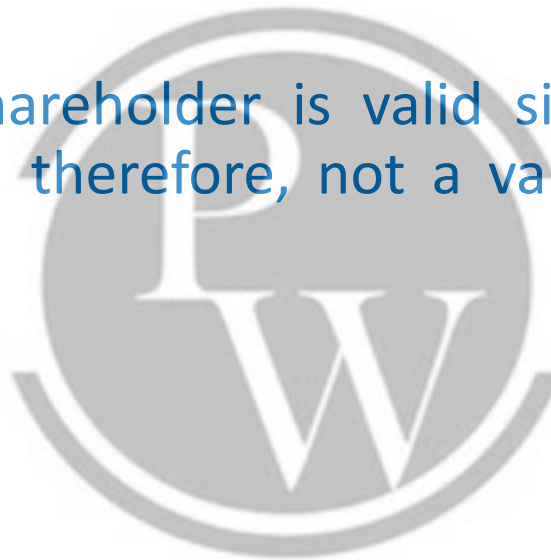
- 1) All **material facts** concerning each item of business to enable members to take decisions.
- 2) The nature of **interest** of every director, managers, Key Managerial Persons, and relatives of them
- 3) If any item of the special business affects any other company, then the extent of **shareholding** of every director and manager in that company in case their shareholding interest is at **least 2% of the paid up share capital** of the other company.
- 4) The time when and place where the document to be approved at the meeting can be inspected.

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

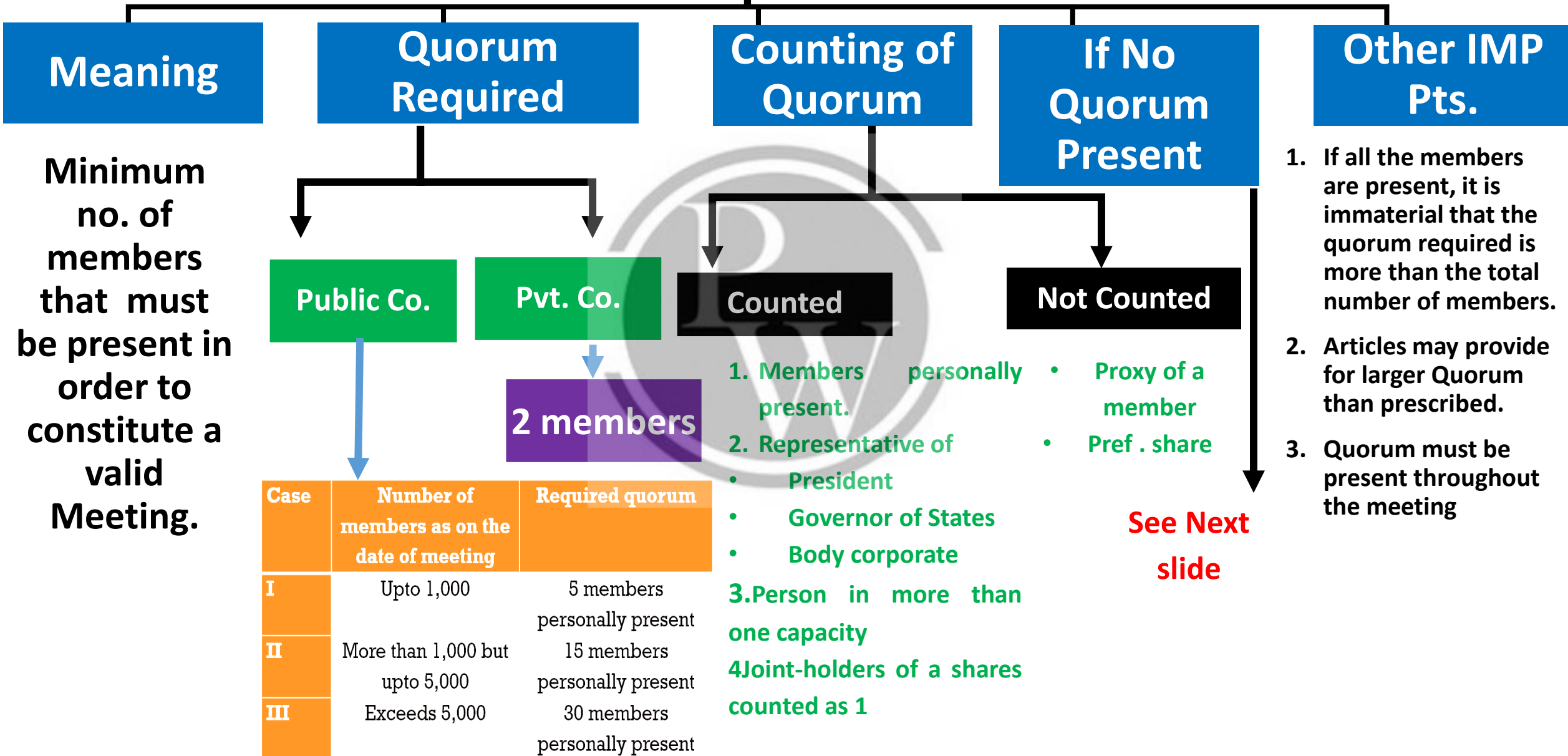
- (i) Resolution to increase the Authorised share capital of the company.
- (ii) Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.(NOV 2019)

**Hint:** Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.



# Quorum [Sec 103]



Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:(April 22) (5 Marks)

- (a) Quorum for the general meeting if the company has 800 members.
- (b) Quorum for the general meeting if the company has 6500 members.
- (c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

**Hint: According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:**

- (1) five members personally present if the number of members as on the date of meeting is not more than one thousand,**
- (2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,**
- (3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.**

**The term ‘members personally present’ as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.**

**Thus,**

- (a) If the company has 800 members, quorum shall be 5 members personally present.**
- (b) If the company has 6500 members, quorum shall be 30 members personally present.**
- (c) If the company has 5500 members, quorum shall be 30 members personally present.**

**However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).**

# IF NO QUORUM PRESENT

↓  
Wait for 30 min

↓  
If still not present see which meeting

↙  
Requisitionist's meeting

↘  
Other Meeting

↓  
Dissolved

↓  
See time / day specified

↙  
Yes

↘  
No

Meeting adjourned to that day (but 3 days  
prior notice required)

Meeting automatically stand adjourned to next week  
-- same day, same time, same place

**Meeting automatically adjourned to next week, same day, time place**

**On day of Adjourned meeting**



**If no Quorum is present**

**Members present will form Quorum.**

**[Rule → But there should be at least 2 members]**

Red Flag Ltd., which has its registered office at Delhi and having 12500 members is holding its Annual General Meeting in Ashoka Hotel. Despite swanky arrangements most of the members did not turn up and quorum was not present within half an hour of the schedule time of the meeting, as a result meeting was adjourned. However, due to heavy booking schedule, hotel authorities could not make available, for adjourned meeting, sufficient space in the same hall where meeting was originally called but allowed conduct of meeting in a different hall on a different floor next week at same time. Please advise the option available to board:(RTP NOV 2020)

- a. The meeting stands adjourned automatically to the same place and time next week as per provisions of law. There is no alternate but to hold meeting in the same hall,
- b. **As same banquet hall is not available meeting can be held at different place as may be decided appropriate by the Board,**
- c. As the same hall is not available to conduct meeting after one week, a fresh notice of 21 days is needed for a different location,
- d. As the same hall is not available to conduct the meeting, the company needs to conduct meeting electronically through internet and give sufficient notice to shareholders,

**The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:**

- ✓ **A, the representative of Governor of Uttar Pradesh.**
- ✓ **B and C, shareholders of preference shares,**
- ✓ **D, representing Y Ltd. and Z Ltd.**
- ✓ **E, F, G and H as proxies of shareholders.**

**Can it be said that the quorum was present in the meeting? (RTP MAY 2020)**

**Hint:** The requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.



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- ✓ B and C, shareholders of preference shares,**
- ✓ D, representing Y Ltd. and Z Ltd.**
- ✓ E, F, G and H as proxies of shareholders.**

**Can it be said that the quorum was present in the meeting? (RTP MAY 2020)**

**Hint: The requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.**

# Sec.104 → Chairman

## Appointment

- Normally → By Shareholders → show of hand
- If Poll demanded →
  - During poll → Chairman by show of hand continues
  - After Poll if some body else is appointed he continues till rest of meeting

## Other Imp points

In case of tie on a resolution, chairman puts his casting vote

# Proxy [Sec. 105]

## Meaning

- Person who is appointed by member to represent themselves to attend and vote
- He is agent of person appointing him
- Also form in which proxy is appointed is called as proxy form.

## Who can be appointed as Proxy

- Any person members or not(except sec 8 company)
- A person can act as proxy on behalf of member—
  - i. Not exceeding 50
  - ii. Holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.
- A member holding more than 10% of the total share capital of the Company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.

## Gen. Pts. Regarding Proxy

- Cannot speak at meeting
- Is not counted for counting quorum.
- Cannot vote by show of hand
- Can demand poll and also vote.

## Proxy Form

### Time to deposit

- At least 48 hrs. before meeting
- Articles may specify less than but not more than 48 hrs..
- If articles specify more than 48 hrs. then rule of 48 hrs. will apply

### Inspection

- Any members can inspect
- He has to give 3 days notice
- Can inspect not less than 24 hrs. before meeting till completion of meeting

## Other Imp. Point

- 1) Company can make it's own proxy form or can use form no. MGT-11
- 2) If member and proxy both vote, members vote will be counted
- 3) Revocation of Proxy
  - If members personally present
  - If members appoint new proxy.

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? (RTP MAY 2021)

**Hint:** In case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? (RTP MAY 2021) (MTP MAY 2019)

**Conclusion -** Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

# Voting Rights (Sec 106)

- 1) Voting rights cannot be restricted except
  - a) If calls unpaid
  - b) Company has lien on shares.
- 2) This restriction should be expressly provided in AoA or else no prohibition allowed

## Sec. 107 – Voting by Show of Hands

- 1) Voting is conducted by show of hands unless
  - a) Poll demanded
  - b) Voting carried out electronically
- 2) Here – **1** Person = **1** Vote
- 3) Proxy cannot vote

# Sec. 108 – Voting through Electronic means

## Applicable to

- (a) Every listed co.
- (b) Other co.



Members  $\geq$   
1000 members

## Preliminary

- 1) In Notice
  - Give details of meeting
  - How to create Login ID, Password
  - Time, process, manner of voting
- 2) Give Advertisement In
  - a) English newspaper
  - b) Vernacular newspaperAt least 21 clear day

## Voting rules

- Shall remain open for at least 3 days
- Close at 5 pm on date preceding GM
- Once voted cannot be changed
- Those who cannot vote can vote in meeting

## Scrutinizer

- Appointed by BOD to give result
- Can be CA/CMA /CS /Advocate (Practice)
- Duties
  - Open & close voting
  - Count total votes (through remote e-voting and In G.M)
  - Give result not later than 3 days from meeting

**If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy? (MAY 2019)**

**Hint:- In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.**

**Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:**

Sr. No.	Particulars
1	A member individually holding shares with face value of ` 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of ` 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.

**In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means. In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?**

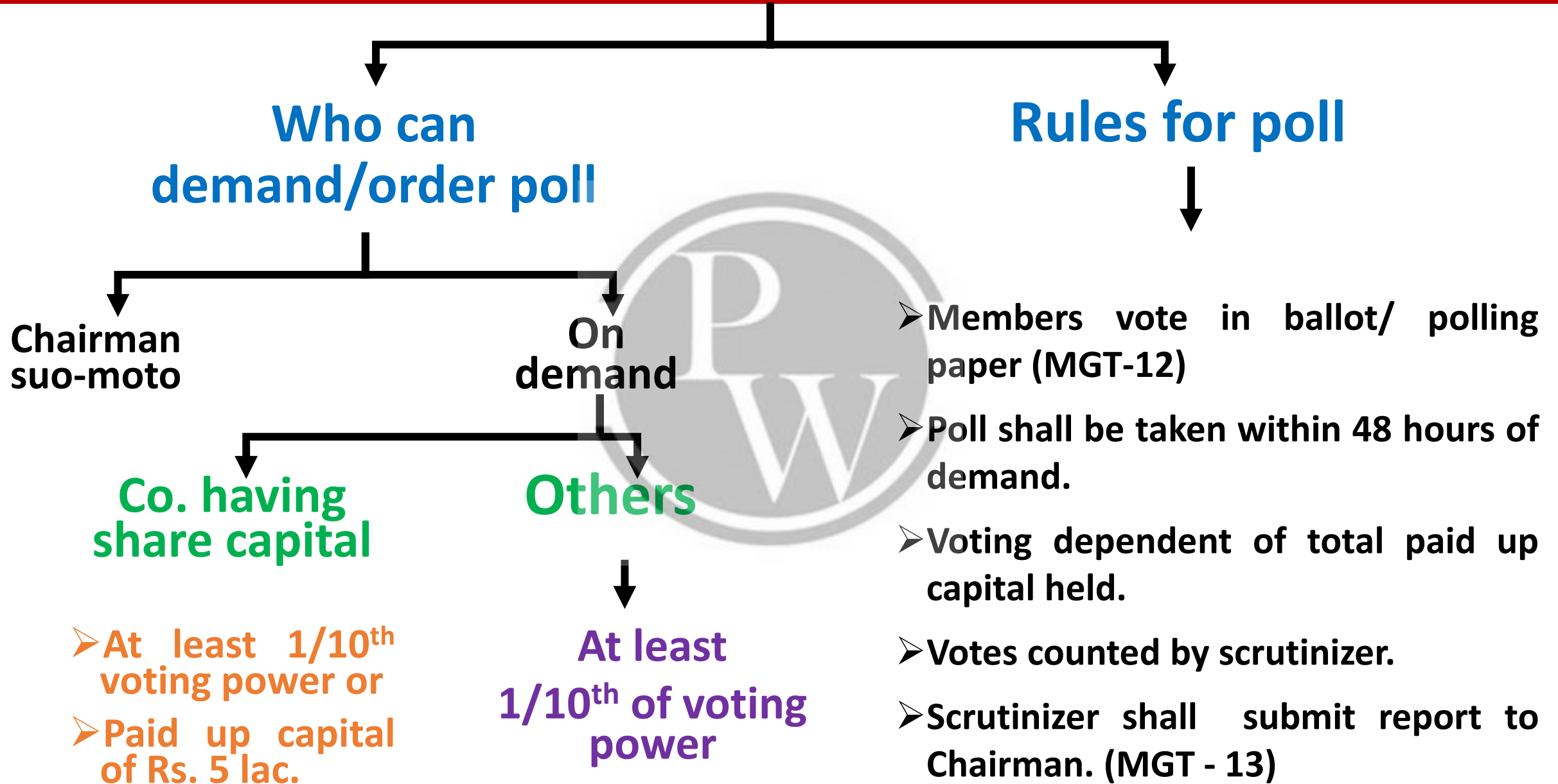
**(RTP Mar 23)**

**Hint: Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ` 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:**

- (i) Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital**
- (ii) All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.**

**For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.**

# Poll [109]





**Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.**

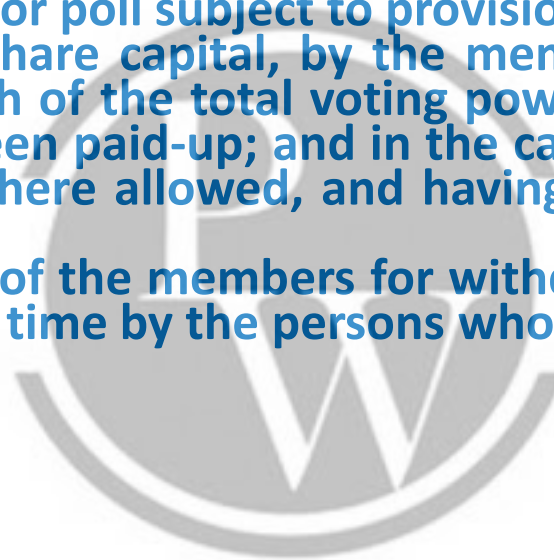
- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.**
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. (RTP May 2016) (RTP NOV 2018) (MTP NOV 2017) (MTP MAY 2020)**

**Hint: As per sec 109 of companies act ,**

**(i) The chairman cannot reject the demand for poll subject to provision in the articles of company.**

**Because In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.**

**(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll because The demand for a poll may be withdrawn at any time by the persons who made the demand.**



# Postal Ballot (Sec 110)

For which matter shortcut **A<sup>2</sup> B C<sup>2</sup> D E F G**

All company

except –

(i) OPC

(ii) Company  
having members  
up to 200

**A → Alteration** or object clause (clause 3 of MOA)

**A → Alteration** of AOA to convert private company into public Company.

**B → Buy Back** of shares (Redemption of equity shares)

**C → Change** in place of registered office outside local limits (Clause 2<sup>nd</sup> of MOA)

**C → Change in object** for which money was raised but still has unutilized money.

**D → Issue of shares with (DVR) Differential Voting Rights**

**E → Election** of Small Shareholders Directors

**F → For variation in rights** attached to shares or debentures

**G → Giving loans/guarantee** or **Enactment** exceeding amount specified under Sec. 186

\*Note – Items of business required to be transacted by means of postal ballot, may be transacted at GM by voting through Electronic means, only companies on which Sec 108 is applicable.

# Procedure for Postal Ballot (Sec. 110)

**Along with  
Notice**

→ **Send copy of draft resolution and prepaid reply card.**

↓  
**Reply**

→ **Replies within 30 days from date of issue of notice will be valid**

↓  
**Result**

→ **Declared by scrutinizier within 7 days of last date of receive replies**

# Sec. 111

Members may

- a) Include their business in meeting (at least 6 weeks)
- b) Circulate any statement (at least 2 weeks)



But by depositing request by members by at least  $1/10^{\text{th}}$  of total voting power or  $1/10^{\text{th}}$  of total paid up capital (same like IGM)

## Question

12. Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ` one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

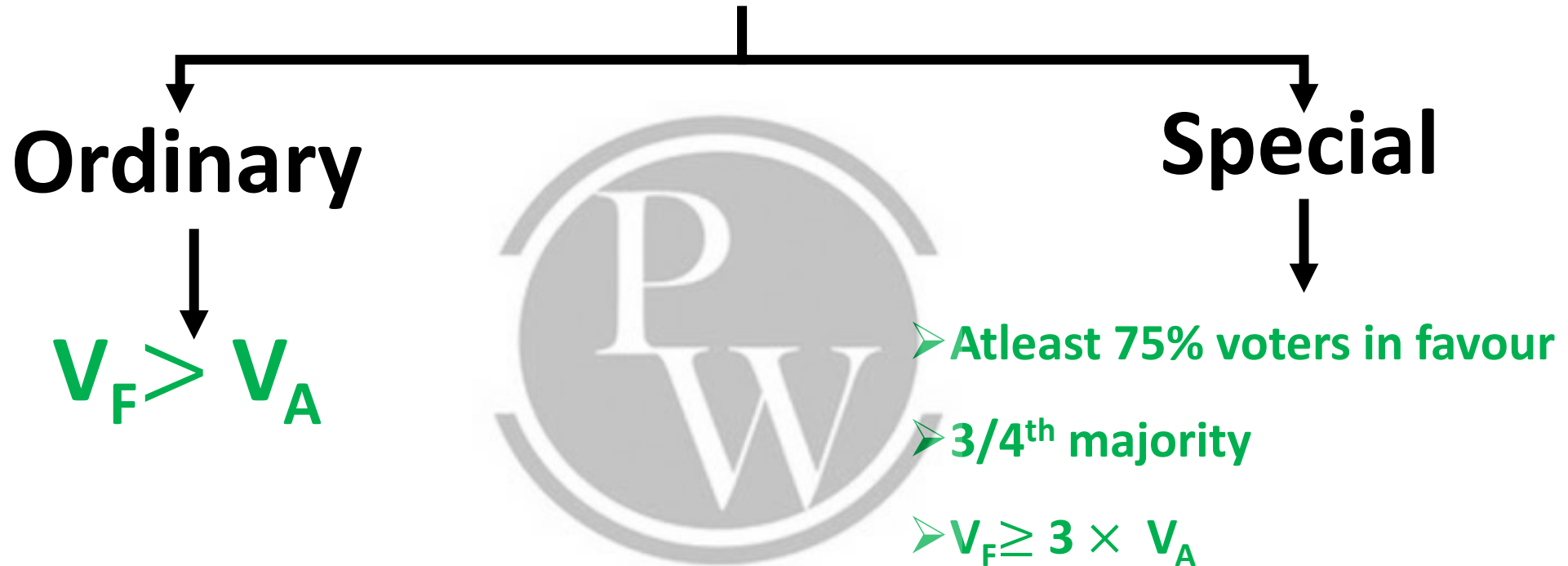
(i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.

(ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

**(RTP May24)**

# Sec. 114

## Resolution



**Note:** Votes will be counted only of members present, whose votes are valid and are not abstained to vote.

Which one of the following transactions requires the passing of an ordinary resolution?

- (a) To change the name of the company
- (b) To alter the articles of association
- (c) To reduce the share capital
- (d) To declare dividends.**

A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than \_\_\_\_\_the number of votes, if any, cast against the resolution.

- (a) Twice
- (b) Three times**
- (c) Three fourth of
- (d) Two third of



# 115 → Resolution Requiring Special Notice

**What**

→ By shareholders

↓  
**By Whom**

→ 1% of voting powers, or at least 5 lac P.U.C

↓  
**Time Limit**

→ Max- 3 months before meeting

→ Min – at least 14 days before meeting

↓  
**Reply by Co.**

→ At least 7 days before meeting, if not possible publish in newspaper & post in website

↓  
**E.g.**

**Director**

- Removal
- Appointment

**Auditor**

- Appointment
- Removal
- Expressly providing that retiring auditor shall not be reappointed



# 116 → Resolution passed on Adjourned meeting

**Although adjourned meeting is an extension to and part of original meeting**



**But any resolution passed in adjourned meeting**



**Is deemed to be passed on date of passing and not earlier date**

# 118→ Minutes & 119

Meaning	Applicability	Signing	Inspection (sec 119)	Other IMP Points
<ul style="list-style-type: none"> <li>▪ Fair &amp; correct summary of proceeding of meeting</li> <li>▪ Official record of event held in meeting</li> </ul>	<ul style="list-style-type: none"> <li>• To all Co.</li> <li>• For all meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Prepared &amp; entered into min. book within 30 days of meeting</li> <li>• Every page initialed &amp; last page signed by chairman</li> <li>• If chairman dies/unavailable ↓</li> <li>• Any director authorize by BOD</li> </ul>	<p>Only by members ↓ During business hours ↓ Co. Should reserve at least 2 hrs Copy provided ↓ Presc. Fees (Rs. 10 per page) ↓ Within 7 days (Penalty if failed)</p> <p><b>Note : Refusal to members under any Circ. Not allowed even if B.R passed</b></p>	<ol style="list-style-type: none"> <li>Chairman can exclude any matter if (DID) <ul style="list-style-type: none"> <li>a) Immateria</li> <li>b) Defamator y to person</li> <li>c) Detriment al to Co.</li> </ul> </li> <li>Preserve permanently <ul style="list-style-type: none"> <li>• Sec. 8 Co. Not req. to have minute book</li> </ul> </li> </ol>

Awareness Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General meetings of Awareness Limited will be kept at:(MTP Mar. 22) (1 Mark)

(a) That place where members of

Awareness Limited will decide.

(b) That place where all employees of

Awareness Limited will decide.

**(c) Registered office of Awareness Limited.**

(d) That place where senior officials of

Awareness Limited will decide.

Yellow Limited's General Meetings are

held at its registered office situated in Kochi. The minute book of General meetings of Yellow Limited will be kept at:(1 Mark) (MTP Oct. 22)

(a) That place where members of Yellow Limited will decide.

(b) That place where all employees of

Yellow Limited will decide.

**(c) Registered office of the company Yellow Limited.**

(d) That place where senior officials of Yellow Limited will decide.

In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013? (RTP MAY 2018) (MTP NOV 2019)

Hint- Under Section 118 (5) of the Companies Act, 2013, chairman can exclude certain matters in Minutes of a meeting, which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Conclusion - Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

# Sec. 121

**Every listed public company**



**Shall file MGT-15 with ROC within 30 days from AGM**



**Which contains details of AGM**

Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?(RTP MAY 2021)

**Hint: Pristine Ltd. is a listed company, hence it has to file a copy of ONE annual Report with the Registrar within 30 days from 31st August, 2020.**

The Annual General Meeting of Yellow Limited was held on 25th June 2022. According to the provisions of Companies Act, 2013, till what date the company should submit report on AGM to the registrar? (2 Marks) (MTP Sep. 22)

- (a) 30.06.2022
- (b) 10.07.2022
- (c) 24.07.2022
- (d) 25.07.2022**

Every listed company shall file with the Registrar a copy of the report on each annual general meeting within \_\_\_\_\_ of the conclusion of the annual general meeting.

- (a) 7 days
- (b) 30 days**
- (c) 60 days
- (d) 90 days

The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM. (2 Marks) (MTP Oct. 22)

- (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
- (b) No, the signing is not in order as only the Chairman is authorised to sign the report
- (c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
- (d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.**

# Sec. 88

Every company whether pvt or public, whether having capital or not.

Register of  
Members



**MGT 1**

(+)

Register of  
Debt. Holders



**MGT 2**

(+)

Reg. of  
other Sec.  
hold.



**MGT 2**

(+)

Foreign Register

(Rule 7)



- Kept outside India
- Details of Sec.holder residing outside India in that country
- Location of office to be noted to ROC within 30 days of opening of foreign register in **MGT 3**.
- Any change in location of such office, notice in Form No. **MGT 3**
- Format and rules for inspection same like main register

## Sec. 88 – Note

- Entries in register u/s to be made within 7 days of approval of BOD/committee (except foreign register to be held simulatenously )
- Register to be maintained at regd office but can be shifted by S.R where atleast 1/10 th of total members reside
- If no of members are 50 or more also make index

M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

- (i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
- (ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? (MAY 2018)

**Maintenance of the Register of Members etc.:**

(i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it. (MAY 2018)

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

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



## Sec. 90

→ C.G if required → can order enquiry or investigation



To investigate beneficial ownership of shares

## Sec. 91

→ A company can close register of members / deb.holder / other sec. holder



Max → 30 days → at one time

Max → 45 days → in a year



By giving notice of at least 7 days prior to closure

Public Co.

Pvt. Co.



- Publish in website
- In newspaper



To all members

Sec. 92

→ Annual Return → **MGT-7**

Contents

→ Details regarding shares / Deb. / indebtedness / change of member / promoter / directors / KMP/ meeting held / resolution details / penalty on Co. etc.

Signing

→ Director + CS (If no C.S then Pract.C.S)

→ In OPC + Small co. + Pvt. Co. → only CS or director (if no C.S)

Certification

→ **By PCS if**

Issue Certificate In MGT- 8

Listed Company; or

P.U.C → 10 cr or more; or

T/o → 50 cr or more

Preservation

→ **8 years**

Time limit  
of filling

→ **Within 60 days** of AGM or last date of AGM ought to have been held

# Abridged Form of Annual Return MGT- 7A

- **Special Provision for One Person Company & Small Company**
- Central Government has prescribed **Abridged Annual Return (MGT-7A)** for :-
  - One Person Company.
  - Small Company.

In relation to **One Person Company, Small Company** and **Start-up private company**, the annual return shall be signed by:-

- The CS, where there is a CS **or**,
- The DIRECTOR of the company, where there is no CS.

# Question

**2. (a) Explain the following as per the provisions of the Companies Act, 2013:**

**(i) Abridged Form of Annual Return**

**(ii) Signing of Annual Return**



**(5 Marks) (MTP April 24)**

## Sec. 94

→ Additional matters → reg. Registers, Returns, etc.

→ Inspection

→ At least 2 hrs every working day

→ Fees

→ Mem/ Deb. Holder / sec. holder → no fees

→ Other → Rs 50

→ For copy → Max Rs. 10 per page

→ Period of  
maintenance

→ Reg. of members → Permanently

→ Reg. of deb. Holder → 8 years from redemption

→ Annual return → 8 years from filing

## Sec. 95

→ Reg. u/s 88 and annual return u/s 92 prima facie evidence

Shreya is a director of Shree Limited. She intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Shreya for how long such declaration shall be valid. (1 Mark) (MTP Oct. 22)

- (a) 1 month
- (b) 6 month
- (c) 1 year**
- (d) She has to furnish declaration for each meeting separately

All the 40 members of Taxila Traders Limited have valid voting rights. Due to some urgency, its directors are desirous of convening Annual General Meeting (AGM) at a shorter notice than statutorily required. Is it possible for them to do so? (RTP NOV 2019)

- a. Taxila Traders Limited cannot convene AGM at shorter notice than statutorily required.
- b. Taxila Traders Limited can convene AGM at shorter notice than statutorily required, if consent in writing or by electronic mode is accorded by all the forty members who are entitled to vote at the AGM.
- c. Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 38 members who are entitled to vote at the AGM.**
- d. Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 36 members who are entitled to vote at the AGM.

Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advice the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution? (MTP MAY 2019)

- a.60 Votes**
- b.80 Votes
- c.41 votes
- d.20 votes

The Annual General meeting of Tirupati Limited was scheduled for 28th December, 2017. Mr. Ananat, shareholder of Tirupati Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least \_\_\_\_\_ before the meeting:(MTP MAY 2019)

- a.24 hours
- b.1 day
- c.2 days
- d.3 days**

**In the current financial year Zunee Traders Limited, a non-listed company, has 556 members, increased from 451 members which it had in the immediate previous financial year. For the forthcoming Annual General Meeting (AGM), advise the company whether it is required to provide to its members the facility to exercise their right to vote at this AGM by electronic means. (MTP NOV 2019)**

a.Since the company has more than 500 members it is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means.

**b.The company is not required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means since its members are less than one thousand.**

c.Though the company is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means because it has more than 500 members, it can, as a one-time measure, seek exemption from ROC beforehand and in that case, it need not provide facility of voting by electronic means.

d.Only a listed company is required to provide to its members the facility to exercise their right to vote at the General Meetings by electronic means.

**10.A company undertook to vary the rights attached to the shares of a particular class and a special resolution with 76% majority was passed by the members of that class. However, all the remaining dissenting members holding 24% shares of that class approached Tribunal for cancellation of variation. The Tribunal passed an order cancelling such variation of rights. Within how much time a copy of the order of Tribunal needs to be filed with the jurisdictional**

**Registrar. (MTP NOV 2020)**

a.Within ten days of the date of the order of Tribunal

**b.Within fifteen days of the date of the order of Tribunal**

c.Within thirty days of the date of the order of Tribunal

d.Within sixty days of the date of the order of Tribunal

**14.During the half year ended September 2019, the board of directors (BOD) of Vidyut Manufacturing Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2017. Further during the year ended March 2020, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2019. You are required to state the validity of the acts of the Board of directors.**

a.The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.

**b.The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.**

c.The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.

d.The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2020. The application made for revision in the Board report is however valid in law.