

# Declaration And Payment Of Dividend

## Investor Education and Protection Fund [Section 125]

### Amount credited to IEPF

- |  |  |  |
|--|--|--|
| 1. Grants by CG 2. Donations by CG/SG/C0./ other institution | After 7 Years Old Co. Act<br>3. Matured deposits<br>4. Matured debentures<br>5. Application Money due for refund<br>6. Interest accrued on point 3 to5<br>7. Redemption amount of preference shares<br>8. Amount lying in unpaid dividend Ac<br>9. Amount received through disgorgement or dispose of securities<br>10. Amount received from sale proceeds of fractional shares arising out of Bonus/ Merger/ Amalgamation | Misc.<br>12. Interest or any other income out of Investment made from fund<br>13. Such other amount as may be prescribed |
|--|--|--|

### Utilization of IEPF Fund

- |  |  |   |
|--|--|---|
| 1. Refund of<br>a. Unclaimed dividend<br>b. Matured deposits<br>c. Matured debentures<br>d. Application money due for refund<br>e. Interest on above | 2. Promotion of Investor education, awareness and protection | 3. distribution of any disgorged amount among eligible and Identified applicants<br>4. Reimbursement of legal expenses of class action suit as approved by Tribunal<br>5. Any other purpose incidental thereto in accordance with Rules |
|--|--|---|

## Other provisions governing IEPF :-

1. IEPF authority for administration and maintenance of funds
2. Composition of IEPF Authority
  - a) Chairperson ⇒ Secretary, MCA
  - b) Other 6 Members
  - c) CEO ⇒ Convenor of Authority
3. Accounts of IEPF audited by Comptroller and Auditor General of India (C&AG)
4. CG establish IEPF and constituted IEPF authority
5. EIPF authority give annual report to CG and C&AG give Audit report to CG with Audited account of IEPF.
6. CG give these two reports to both the houses of parliament



## Punishment for failure to pay dividend [Section 127]

1. Where dividend has been declared but dividend has not been paid or warrant has not been posted to entitled shareholder within 30 days of such declaration, then punishment shall be

Particulars	Every director who is knowing a party to default	Company
Imprisonment	Extend to 2 Years	–
Fine-during the period where default continues	And Minimum 1000/day – till default continues	Simple interest @ 18% p.a.

### Exception from punishment u/s 127

- |   |  |  |  |   |
|---|--|--|--|---|
| 1<br>Dividend could not be paid by reason of operation of any law | 2<br>Shareholder gave directions to Co. regarding payment of dividend AND those directions cannot be complied with AND Same has been communicated to him | 3<br>Dispute regarding right to receive dividend | 4<br>Dividend has been lawfully adjusted against any sum due from shareholder to company (ex-calls-in arrears) | 5<br>Any other reason which was not due to fault on part of the company |
|---|--|--|--|---|

Section 127 dealing with punishment shall apply to the **Nidhi Co.**, subject to the following modification: In case the dividend payable to a member is Rs.100 or less, it shall be sufficient compliance of the provisions of the section 127, if the declaration of the dividend is announced in the local language in one local newspaper of wide circulation and announcement of the said declaration is also displayed on the notice board of the Nidhi Co. for at least 3 months.

The registers, their indices and copies of annual returns maintained u/s 88 and 94 shall be prima facie evidence.

## **Section 94 : Place of keeping and Inspection of Registers, Returns, etc**

- (1) Register (u/s 88) and copy of annual return filed - (u/s 92) shall be kept at the RO
- (2) It may also be kept at any other place in India in which > 1/10th of the total number of members, as per ROM, reside, if approved by SR
  - Register of member (foreign included) ~ Permanent
  - Register of debenture or other security holder (foreign included) ~ 8 Years from date of redemption

[These Registers Kept in custody of CS or any other person authorised by board]

  - Annual Return ~ 8 Years from date of filing with RoC
- (3) Inspection of Registers, Indices and Annual Returns shall be open for inspection during business hours (for minimum 2 hours)
  - ☐ by members, debenture holders or other security holders – without any fees
  - ☐ by any other person – on payment of such fees as prescribed
- (4) Any member/debenture holder/other security holder/beneficial owner/any other person may-
  - ☐ take extracts from any register or index or return without payment of any fee or
  - ☐ require a copy there of on payment of fees as per AOA (not > Rs. 10 /page) Co. to provide copies within 7 days
- (5) On refusal of any inspection or making extract or copy:
  - Co. and every officer in default – liable for each such default, to a penalty of Rs. 1000/day subject to a max of Rs. 1 lakh during which the refusal or default continues.
  - CG may also, by order, direct: an immediate inspection of the document or that extract required shall for the with the allowed to be taken by person requiring it.

## **Sec. 89 : Declaration of Beneficial Interest in share**

### **1. Declaration**

#### **Registered Owner**

File Declaration in

MGT-4 within 30 days

#### **Beneficial Owner**

File Declaration in

MGT-5 within 30 days

to Company - > File Declaration  
in MGT-6 within 30 days - > ROC

2. Where any change occurs in BI such shares, such person and BO shall – within 30 days from date of such change, make a declaration to the Co. in prescribed form.
3. Where declaration required under this section is not made by BO-No rights in respect of such shares shall be enforceable by him
4. Notwithstanding this section, Co. to pay dividend to members
5. Trust created to set up Mutual fund, venture capital fund or other SEBI approved fund –Need not file such declarations.
6. Penalty : Failure to declaration to Co. – Rs. 50000 + 200/day – Max 5 lakhs ■ Failure of Co. to file MGT 6 – Co. + officers in default – Rs. 1000/day –Max 5 lakhs (Co.) and 2 lakhs (OID)

## **Section 90 : Register of significant beneficial owners in a Co.**

Significant Beneficial Owner means an individual holding indirectly or together with any direct holdings not less than 10 percent of beneficial interest. Every SBO shall make a declaration to the Co. the nature of his interest and other particulars in form BEN -1 within 30 days of becoming SBO ☐ Every Co. shall maintain a register of SBO and changes therein in Form BEN-3 which shall include the name of individual, his date of birth, address, details of ownership and other prescribed details. The register shall be open to inspection during business hours, (minimum 2hr) on every working day, by any member on payment of fee specified by Co. – not more than Rs. 50 for each inspection. ☐ Return of SBO :Every Co. shall file return of SBO of the Co. and changes therein in Form BEN-2 with the ROC containing names, addresses and other prescribed details within 30 days of receipt of declaration from SBO in form BEN-1 ☐ Every Co. shall take necessary steps to identify an individual who is a SBO in relation to the Co. and require him to comply with the provisions.



☐ A Co. shall give notice in form BEN-4 to any person, whether or not a member whom the Co. knows or has reasonable grounds to believe

(a) to be a SBO of the Co.

(b) to having knowledge of identify of a SBO or another person likely to have such info

(c) to have been a SBO of the Co. at any time during 3 years immediately preceding the date on which the notice is issued and who is not registered as a SBO with the Co. as required under this section. Concerned person to give within 30 days of date of the notice.

☐ Apply to tribunal:

- ☐ where that person fails to give information with time specified therein or
- ☐ where information given is not satisfactory

The Co. shall apply to tribunal within 15 days of expiry of period specified in notice, for an order directing that shares in question be subject to restrictions w.r.t. transfer of interest

☐ After giving OOBH to parties concerned, Tribunal may make such order restricting the rights attached with the shares within 60 days of receipt of application.

☐ Co. or the person aggrieved by order of Tribunal may apply to Tribunal for relaxation of lifting of the restrictions placed, within 1 year from the date of such order.

☐ Provided that if no application is made within 1 year, such shares shall be transferred to IEPF Authority.

#### Penalty u/s 90

☐ If a person fails to make declaration under sub sec 1, such person will be held liable and shall pay a penalty of Rs. 50000/-. For continuing failure penalty shall be Rs. 1000/day, max Rs. 2 Lakhs.

☐ If Co. fails to maintain register or allow inspection there of :

- Co. shall be liable to pay penalty of Rs. 1 Lakh For continuing failure penalty shall be Rs. 500/ day, max Rs. 5 lakhs

- Officer in default shall be liable to pay penalty of Rs. 25000/- For continuing failure penalty shall be Rs. 200/day, max Rs. 1 lakh

☐ If person willfully furnishes false or incorrect information or suppresses material information, then such person shall be liable for action u/s 447

## Section 96 : Annual General Meeting

Due Date of AGM:

First AGM	Subsequent AGM
Within 9 month from the end of FY	Within 6 months of closure of FY
No AGM is necessary in year of incorporation	Not more than 15 months shall elapse between 2 AGMs
	AGM to be held in each calendar year
RoC has no power to grant extension for First AGM	For special reason, RoC may grant extension for period upto 3 months

AGM shall be called during business hours [9 AM to 6 PM] on any day other than national holiday as declared by CG.

**Place of holding AGM:**

Type of Co.	Place of Holding AGM
AGM of Govt Co.	RO or within city/town/village where RO is situated or other place approved by CG
AGM of unlisted Co.	Held at any place in India if consent in writing/e-mode by ALL members in advance
AGM of other Co.	Held at RO or some other place within city, town/village where RO is situated

## Section 97 : Power of Tribunal to call AGM

In case of default in holding AGM u/s 96, , on application by any members of Co., Tribunal may call or direct calling of AGM and give such consequential directions. (Directions may include that 1 member present in person or proxy shall be deemed to constitute a meeting)

## Section 98 : Power of Tribunal to call EGM of members

Either suo moto or on application of director or member entitled to vote at the meeting. Tribunal may order a meeting of Co. to be called, held and conducted in manner as Tribunal thinks fit and give such ancillary directions as may be expedient (Directions may include that 1 member present in person or proxy shall be deemed to constitute a meeting)

## Section 99 : Punishment for default u/s 96 to 98

If default is made in holding meeting u/s 96 to 98 or in complying Tribunal's directions: Co. and officer in Default – Fine which may extend to Rs 1 lakh + continuing default – further Rs. 5000/day

## Section 100 : Calling of Extraordinary General Meeting (EGM)

The board can call an EGM at its discretion, held in India except for wholly owned subsidiaries incorporated outside India. If requested, the board must call an EGM under certain conditions: for companies with share capital, by members holding at least 1/10th of the total paid-up share capital, and for those without share capital, by members holding at least 1/10th of the total voting power. The requisition must specify the matters for consideration, be signed by requisitionists, and sent to the Registered Office (RO) of the company. Upon receipt of a valid requisition, the board must call the meeting within 21 days and hold it within 45 days. If the board fails to do so, requisitionists can call and hold the meeting within three months. The meeting by requisitionists must follow the same procedures as those by the board. Reasonable expenses will be reimbursed to requisitionists by the company, with the sum deducted from the remuneration of directors who failed to call the meeting.

### Rule 17 outlines the process for calling an EGM by requisitionists:

1. The requisition must be in writing or electronically made at least 21 CLEAR days before the proposed EGM date.
2. The notice must specify the meeting's place, date, day, and hour, and the business to be transacted. It should be held at the Registered Office (RO) or in the same city or town as the RO, except on national holidays.
3. If the proposed resolution is a special resolution, notice must be given as required under section 114(2).
4. The notice must be signed by all requisitionists or by a requisitionist duly authorized in writing.
5. No explanatory statement needs to be annexed to the notice; reasons for proposed resolutions may be disclosed at the meeting.
6. Notice shall be given to members whose names appear in the Register of Members within three days of the Co.'s receipt of a valid requisition.
7. If the meeting is not convened, requisitionists have the right to receive a list of members, their registered addresses, and the number of shares held. The Co. must provide this information within 21 days from the valid requisition's receipt, with any changes, if any, before the expiry of 45 days.
8. Notice can be sent via speed post, registered post, or through e-mode.
9. Accidental omission to give notice, or non-receipt of such notice by any member, shall not invalidate the meeting's proceedings.

## Section 101 : Notice of Meeting

1. General meetings require at least 21 clear days' written notice, excluding the day notice is served and the meeting day.
2. Alternatively, shorter notice is permitted if:
  - For AGMs: 95% of members entitled to vote consent.
  - For other GMs:
    - Companies with share capital: Majority in numbers + representing at least 95% of paid-up share capital.
    - Companies without share capital: Members representing at least 95% of total voting power.
3. Notice must specify the meeting's place, date, day, and hour, and the business to be transacted.
4. Notice must be given to every member, legal representative of deceased member or assignee of insolvent member, auditors, and every director.
5. Accidental omission to give notice to or non-receipt by any member does not invalidate the meeting's proceedings.

### Rule 18 : Modes of sending notice

1. Electronic mode includes communication sent by the company via authorized and secured computer programs capable of producing confirmation and keeping records. These communications are addressed to the person entitled to receive them at their last provided email address.
2. Notices may be sent through email as text, attachments, URLs.
3. Emails should be addressed to entitled persons as per depository records.
4. The company must allow changing or adding email IDs at least once in a financial year.
5. The subject line of the email should state the company's name, type of meeting, place, and date.
6. Notices must be placed on the company's website and other websites notified by the Central Government.
7. If notices are sent by post, they are deemed served 48 hours after the letter containing them is posted.



**Section 102 : Statement to be annexed to notice – Explanatory statement**

Section 102 mandates an explanatory statement with every meeting notice, detailing material facts regarding special business items, including interests of directors, managers, and other key management personnel. Failure to disclose interests leading to benefits to related parties obligates them to hold such benefits in trust for the company and compensate accordingly. In AGMs, all business is special except for specific items like financial statements review, dividend declaration, director appointment, and auditor appointment. In EGMs, all business is deemed special. If special business affects another company, shareholding interests of relevant personnel must be disclosed. Non-compliance results in penalties of either Rs. 50,000 or five times the accrued benefits, whichever is higher. Explanatory statements are not necessary for ordinary business transactions.

**Section 103 : Quorum for meeting**

Section 103 specifies the minimum number of members needed for a meeting to proceed, known as the quorum. For public companies, the quorum depends on the number of members, with 5 members needed if there are up to 1000 members, 15 members needed if there are between 1000 to 5000 members, and 30 members needed if there are more than 5000 members. For private companies, only 2 members need to be present. Proxy members don't count towards the quorum, but authorized representatives do. The quorum must be present throughout the meeting. If the quorum isn't met within half an hour from the appointed time, the meeting stands cancelled if it was called by a requisitionist under section 100. Otherwise, it's adjourned to the same time and place the following week, or another date set by the board. In case of an adjourned meeting, the company must give at least 3 days' notice to members, either individually or through newspaper ads in both English and the local language. If at the adjourned meeting the quorum is still not met within half an hour, then the members present, even if just one, constitute the quorum.

9. Officers issuing proxy invitations at the company's expense can face a penalty of Rs. 50,000 unless it's at the member's written request.

10. Proxy appointments in form MGT-11 are valid even if they don't comply with the company's articles of association.

11. Members entitled to vote can inspect lodged proxies during a specified period with prior notice to the company.

**Section 104 : Chairman of meetings**

1. Unless the Articles of Association state otherwise, members present at the meeting will choose one of themselves as the chairman through a show of hands.
2. If a poll is requested regarding the election of the chairman:
  - The poll will be conducted immediately.
  - The person elected as chairman through the show of hands will continue in that role until someone else is elected as chairman through the poll.
  - The person elected through the poll will be the chairman for the remainder of the meeting.
3. Additional points about the chairman:
  - The chairman is responsible for managing the meeting and ensuring that proper conduct is maintained.
  - The chairman has the initial authority to make decisions on all matters arising during the meeting.
  - If authorized by the Articles of Association, the chairman may have a casting vote in both board meetings and general meetings.

**Section 105 : Proxies**

1. Members can appoint proxies for meetings and voting.
2. Proxies don't need to be company members, except for Sec. 8 Co.
3. Proxies can't speak at meetings.
4. Proxies can't vote on show of hands.
5. A proxy can represent up to 50 members in a meeting with less than 10% of total share capital.
6. An exception allows a proxy for a single member with more than 10% share capital, but they can't represent any other member.
7. Proxy appointments must be in form MGT-11.
8. Proxy forms must be deposited 48 hours before the meeting, unchangeable by the company's articles of association.

## Section 106: Restriction on Voting Rights

1. Members cannot vote on shares with unpaid calls or liens as per the AOA.
2. Companies cannot prohibit members from voting for any other reason.
3. During a poll, members are not obliged to use all their votes in the same way.

## Section 108: Voting through Electronic Means

1. Mandatory e-voting for:
  - (a) Companies listed on a recognized stock exchange.
  - (b) Companies with 1000 or more members, except Nidhi Companies.
2. Procedure for e-voting: ( HERE SCRUTINIZER IS WRITTEN AS SCZ)
  - Step 1: Appointment of SCZ(s) who can be CS, CA, CMA, Advocate, or a person not in employment, with written consent.
  - Step 2: 21 days notice of meeting to members, directors, and auditors, along with website publication and newspaper advertisements.
  - Step 3: Announce to a cut-off date, not earlier than 7 days before the GM.
  - Step 4: Remote e-voting open for at least 3 days; members cannot change their votes but can attend the meeting for quorum.
  - Step 5: Remote e-voting concludes at 5:00 P.M. 1 day before the GM, and the facility is blocked.
  - Step 6: SCZ has access to e-voting details without knowing the vote.
  - Step 7: SCZ conduct voting in the GM electronically or by polling paper.
  - Step 8: SCZ counts meeting votes first, then unblocks remote e-votes in the presence of two witnesses.
  - Step 9: SCZ submits a consolidated report within 3 days of the conclusion.
  - Step 10: Chairman or authorized person countersigns the SCZ report.
  - Step 11: Chairman or authorized person declares voting results immediately.
  - Step 12: SCZ maintains a register, kept in safe custody until the chairman approves and signs the minutes.
  - Step 13: Voting results along with the SCZ's report displayed on the company and agency websites.
  - Step 14: Minutes prepared and signed by the Chairman.
  - Step 15: SCZ hands over the register and related papers to the Chairman of the company.

## Section 107: Voting by Show of Hands

1. Resolutions in general meetings are decided by a show of hands unless a poll is demanded or e-voting is used.
2. The passing of a resolution or otherwise is evidenced by the chairman's declaration and its entry in the meeting minutes.

## Section 109: Demand for Poll

- Poll may be ordered by the chairman on his own motion or demanded by:
  - Members present in person or proxy having  $\geq 1/10$ th of total voting power or holding shares with paid-up capital  $\geq$  Rs. 5 lakhs in companies with share capital.
  - Members present in person or proxy having  $\geq 1/10$ th of total voting power in other companies.
- The demand for a poll can be withdrawn by the person who made.
- Poll demanded for adjournment or appointment of chairman to be taken immediately or within 48 hours.
- The chairman appoints scrutineers to scrutinize the poll process and votes.
- The manner of poll-taking is regulated by the chairman.
- The result of the poll is deemed the decision of the meeting on the resolution.

## Rule 21: Scrutiny of Poll Process by Chairman

- Scrutineers provided with necessary documents.
- Polling papers distributed to members and proxies, recorded, and sealed.
- Ambiguities in proxy validity resolved by scrutinizers and chairman.
- If a member votes in person despite appointing a proxy, the proxy's vote is disregarded.
- Scrutineers count votes, prepare a report (Form MGT-12), signed, and submitted within 7 days.
- Chairman countersigns the report.
- Company provides necessary support for e-voting.
- Scrutineer's report includes total votes cast, valid votes, and details of polling papers and votes.
- Chairman or authorized person declares the voting result.



**Section 110: Postal Ballot**

- 1. Postal ballot conducted via post or e-mode.
- 2. Specific business items transacted only through postal ballot.
- 3. If resolution approved by majority via postal ballot, it's deemed passed at GM.
- 4. Procedure:
  - Step 1: Board appoints an independent scrutinizer who consents.
  - Step 2: Notice, draft resolution, postal ballot form sent to every member via registered post, courier, or electronic means, with 30-day response window.
  - Step 3: Advertisement in newspapers and on the website.
  - Step 4: Received postal ballots kept by scrutinizer until chairman approves minutes.
  - Step 5: Scrutinizer submits report within 7 days after last date of receipt.
  - Step 6: Scrutinizer maintains a register.
  - Step 7: Replies received after 30 days treated as no response.
  - Step 8: Scrutinizer's report and results declared on the company's website.

**Section 115: Resolutions Requiring Special Notice**

- Special notice signed by members holding:
  - Not less than 1% of total voting power, or
  - Shares with paid-up capital not less than Rs. 5 lakhs on the notice date.
- Meeting notice sent to the Co. not earlier than 3 months but at least CLEAR 14 days before the meeting.
- Co. immediately notifies members of the resolution at least CLEAR 7 days before the meeting.
- If not possible, notice in newspapers and on company website at least 7 days before meeting.
- Special notice required for:
  - Appointment of auditor other than retiring auditor (Sec 140).
  - Removal of director (Sec 169).
  - Matters specified in the Articles of Association.

**Section 116: Resolutions Passed at Adjourned Meeting**

- Resolutions passed at an adjourned meeting of a company are deemed passed on the date of the adjourned meeting.
- For example, if an extraordinary general meeting (EGM) is held on 22nd September but lacks quorum, and then adjourned to 30th September where two resolutions are passed, the effective date of the resolutions is 30th September, not 22nd September.

**Section 112: Representation of President and Governors in Meetings (GOVT CO.)**

The President of India or Governor of a state, if a member of a Co, can appoint a representative for Co. meetings. The appointed representative is deemed a member and can appoint a proxy.

**Section 113: Representation of Corporations at Meetings**

A body corporate, if a member of a co, can authorize a representative via BR for Co. meetings, or creditors meeting. The appointed representative is deemed a member or creditor and can appoint a proxy.

**Sec.114: Ordinary and Special Resolutions**

- An Ordinary Resolution ( $V_f > V_a$ ) requires:
  - Proper notice given.
  - Votes in favor (including chairman's casting vote) exceed against.
- A Special Resolution ( $V_f \geq 3V_a$ ) requires:
  - Specification of intention in the meeting notice or member intimation.
  - Proper notice given.
  - Votes in favor by entitled members are at least 3 times the votes against.

**Sec.120: Maintenance and Inspection of Documents in Electronic Form**

- Any document, register, record, or minutes required to be kept by a company or allowed to be inspected or copies given to any person under this Act may be kept, inspected, or copies given in electronic form.

### **Section 117: Resolutions and Agreements to be Filed**

■ Copies of specified documents along with explanatory statements under sec. 102, if any, must be filed with the ROC in Form MGT 14 within 30 days of passing the resolution or making the agreement.

■ Documents include:

- Special Resolution.
- Resolution agreed to by all members.
- Agreement executed by the company related to the appointment, re-appointment, or variation of terms of Managing Director.
- Resolutions of the Board of Directors.
- Resolutions or agreements agreed to by any class of members.
- Resolution for voluntary winding up under section 59 of the Insolvency and Bankruptcy Code.
- Resolutions passed under section 179(3).
- Any other resolution or agreement.

■ Failure to file incurs penalties:

- For the co: Rs. 10k + Rs. 100/day after the 1st day, up to 2 lakhs.
- For the OID: Rs. 10k + Rs. 100/day after the 1st day, up to 50k.

### **Sec. 119: Inspection of Minute Book of GM**

- Minute books of any General Meeting or resolutions by postal ballot shall be kept at the registered office of the company.
- Members can inspect them during business hours (minimum 2 hrs) without any charge.
- Upon payment of fees, a copy of the minutes must be furnished to the member within 7 working days.
- A member requesting a soft copy of minutes of any previous GM held during the immediately preceding 3 financial yrs is entitled to receive it at no cost.
- Penalties for refusal of inspection or failure to furnish copy: Company: Rs. 25,000, Officer in Default: Rs. 5,000
- In case of refusal or default, the Tribunal may: Direct immediate inspection of the minute books. Direct that the copy required shall forthwith be sent.

### **Section 121: Report on Annual General Meeting (AGM)**

- Every listed public Co. must submit a mandatory report on AGM, confirming that the AGM was called, held, and conducted as per the provisions of Act.
- The report is filed by the Co. in Form MGT-15 with the ROC within 30 days of the conclusion of the AGM.
- Penalties for default:
  - Co : 1lakh + Rs. 500/day after the 1st day, up to 5 lakhs And OID: Not less than Rs. 25k plus Rs. 500/day after the 1st day, up 1 lakh.

### **Sec. 118: Minutes of Proceedings of GM and Resolutions by Postal Ballot**

- The Co. must prepare, sign, and keep minutes in the minute books within 30 days of the conclusion of:
  - General meetings of any class of shareholders or creditors.
  - Board meetings or committee meetings.
  - Resolutions passed by postal ballot.
- Minutes should contain a fair and correct summary of the proceedings, including appointments made.
- For board or committee meetings, minutes should include names of directors present and dissenting directors for passed resolutions.
- Certain matters deemed defamatory, irrelevant, or detrimental to the Co.'s interest should not be included in the minutes, at the chairman's discretion.
- Minutes serve as evidence of the proceedings recorded therein.
- Penalties for defaults: Rs. 25,000 for the Co., Rs. 5,000 for the OID.
- Tampering with minutes can lead to imprisonment up to 2 years and a fine of Rs. 25,000 to Rs. 1 lakh.
- Companies must observe secretarial standards specified by ICSI.
- Details of General Meeting, Board of Directors, or Committee:
  - Kept at the registered office or another place as decided by the board.
  - Preserved permanently.
  - Custody: Company Secretary or a director duly authorized by the board.
  - Signed by the chairman of the same meeting within 30 days. In case of the chairman's death or inability, signed by a director duly authorized by the board or the chairman of the next succeeding meeting.



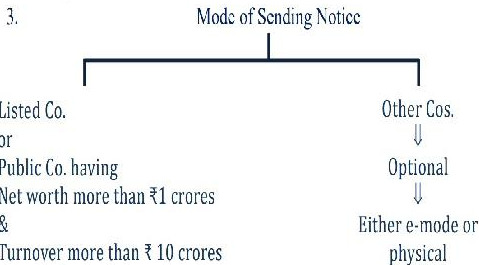
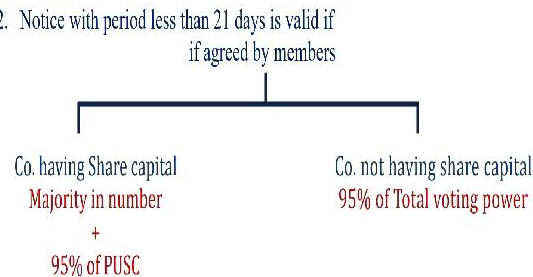
- The report must be signed and dated by the chairman and Company Secretary. In case of the chairman's inability, it is signed by two directors (including one managing director, if any) and the Company Secretary.
- The report must contain the following details:
  - Date, day, hour, and venue of the AGM.
  - Confirmation regarding the appointment of the chairman of the AGM.
  - Number of members attending the AGM.
  - Confirmation of quorum.
  - Business transacted and its results.
  - Confirmation of compliance with the Act, Rules, and secretarial standards regarding conducting the AGM.
  - Particulars regarding any adjournment, postponement of the meeting, or change in venue.
  - Any other relevant points.

## **Section 122: Applicability to One Person Company (OPC)**

- Provisions from section 98 to 111 are not applicable to OPCs.
- Member Resolution in OPC:
  - Resolution communicated by the member to the company.
  - Entered in the minutes book.
  - Signed and dated by the member, with the date deemed to be the date of the meeting for all purposes under this Act.
- Board Resolution in case of one director:
  - Resolution entered in the minutes book.
  - Signed and dated by the director, with the date deemed to be the date of the Board of Directors meeting for all purposes under this Act.

# ACCOUNTS OF COMPANIES

## Right of member to copies of audited FS [Section 136]



Shareholding is in	Mode
1. Demat + email registered	E-Mode
2. Physical form but members consented for e-mode	E-Mode
3. All other cases	Dispatch of physical copies through recognised mode u/s 20

5. Companies must allow members or Debenture Trustees (DT) to inspect documents at the RO during business hours.
6. Companies with subsidiaries must provide copies of separate audited or unaudited FS to any member upon request.
7. Non-compliance with these provisions results in penalties: Rs. 25,000 for the company and Rs. 5,000 for the OID.

## Copy of FS to be filled with ROC [Section 137]

2. Forms for filling FS with ROC
- FS & other docs - AOC-4
  - Consolidated FS - AOC-4 CFS
  - NBFC to file FS & other doc's and CFS - AOC-4-NBFC(Ind As)
3. Following class of Cos. shall file FS & other docs in e-form AOC-4-XBRL
- Co. listed in India & their Indian Subsidiary
  - Co. having PUSC > = 5 Crores.
  - Co. having T/O > = 100 Cr
  - Co required to prepare FS as per Ind AS
- Note:- Once Co. falls under above Category, it continue to file AOC-4 XBRL forever
4. Along with FS, Co. shall attach accounts of its subsidiaries incorporated o/s India & which have not established their place of business in India.
5. In case of OPC, file copy of FS duly adopted by its member within 180 days from closure of FY.
6. In case of subsidiary incorporated o/s India which is not required to get FS audited under law of such country, then holding Indian Co. to file unaudited FS + declaration to such effect to ROC.
7. Where FS is in language other than English translated copy to be sent to ROC.

4. For listed companies, several important points are to be noted:

a) Documents must be available for inspection at the Registered Office (RO) during working hours for 21 days before the

meeting, with a statement of salient features sent to members unless they request the full FS.

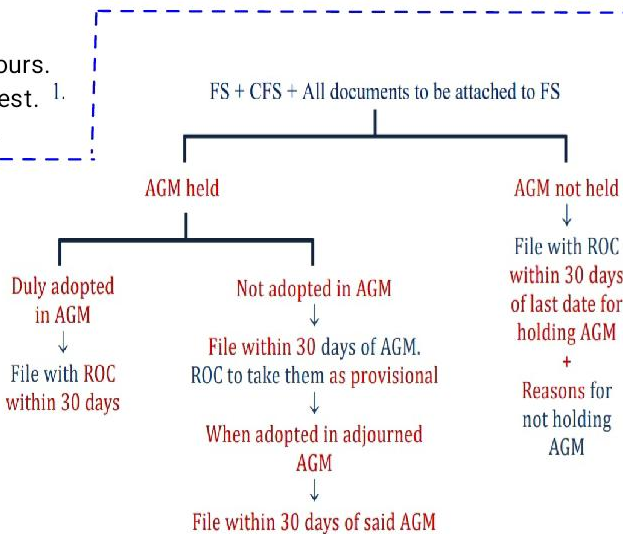
b) Listed companies must also publish their FS, including CFS and other documents, on their website.

c) Listed companies with subsidiaries must provide separate audited accounts for each subsidiary on their website.

d) If a foreign subsidiary is required to prepare CFS, the listed company complies by placing them on its website.

e) If a foreign subsidiary is not required to audit its FS, the listed company may place unaudited FS on its website.

f) Translated copies of FS from foreign subsidiaries in other languages must be provided on the web in English.



## 2. Forms for filing FS with ROC

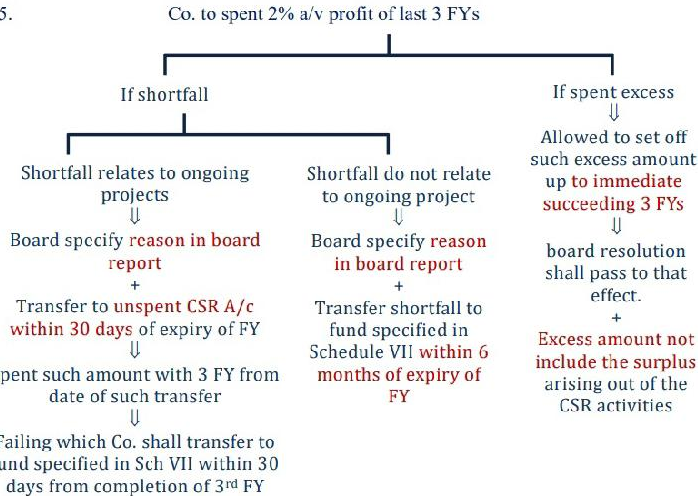
AOC-4 AOC-4 CFS AOC-4-NBFC(Ind As) AOC-4-NBFC(Ind As)	FS & other docs Consolidated FS NBFC to file FS & other docs NBFC to file CFS
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Internal Audit [Section 138]

- 1. Co. covered under ambit of Internal audit:-
  - a) All Listed Co.
  - b) Unlisted Public Co.
    - Turnover at least 200 Crores
    - Outstanding loans or borrowings from banks or PFIs exceeds ₹ 100 Cr
    - PUSC at least ₹ 50 Crores
    - O/s deposits at least ₹ 25 Crores
  - c) Private Co. Which fulfill first 2 conditions of UPC (above)
- 2. Can become an internal auditor, Individual, Partnership firm, Body Corporate, CA, Cost Accountant, other professional as may be decided by BOD
- 3. Internal auditor may or may not be an employee of Co.

If the company's expenditure is ≤ ₹50 lakhs, the CSR committee isn't needed; in this scenario, the board handles the committee's duties. The board report must disclose the CSR committee's composition. CSR expenditure mandates that the company spend 2% of the average net profits from the previous three FY. Preference must be given to the local area and surrounding regions where the company operates when spending CSR funds. The board must ensure that administrative overheads do not exceed 5% of the total CSR expenses for the FY. Any surplus from CSR activities must not be considered business profit, and it should either be reinvested in the same project, transferred to an unspent CSR account and utilized for CSR purposes, or transferred to a specified fund in schedule VII within six months of the fiscal year's end.



6. Default u/s 135(5) or 135(6)

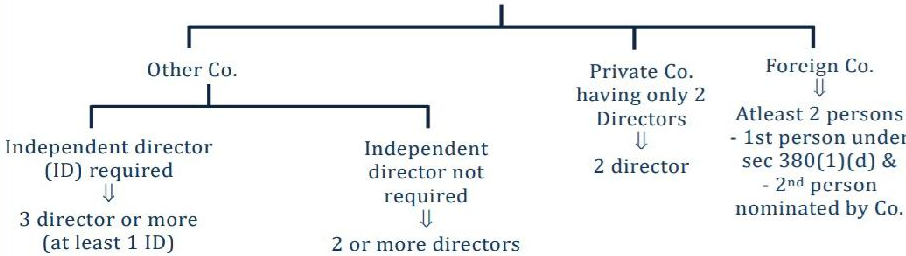
For Co. Lower of	For Officer in default Lower of
a) 2 × (amt. required to transfer to fund or unspent A/C)	a) 1/10 <sup>th</sup> of (amt. required to transfer to fund or unspent A/C)
b) ₹ 1 Crore	b) ₹ 2 Lakhs

Corporate Social Responsibility (CSR) [Section 135]

- 1. Applicability of CSR :-
  - Co. having
  - Net worth > = ₹ 500 Crores or
  - Turnover > = ₹ 1000 Crores or
  - Net profit > = ₹ 5 Crores

during **immediately preceding FY**

shall constitute **CSR committee having composition**



- 7. CSR funds can be used to create or acquire capital assets held by sec. 8 entities with charitable objectives and a CSR registration number, beneficiaries of the project, or public authorities.
- 8. CSR projects can be implemented by the company itself, or through entities like Section 8 companies, registered public trusts, societies, statutory bodies, or entities with a track record of at least three years in similar activities.
- 9. Co. can collaborate with others for projects, provided each company can separately report on the project.
- 10. Impact assessments are required for companies with average CSR obligations of ≥ ₹10 crores in the preceding three FY, conducted by independent agencies for projects with outlays of ≥ ₹1 crore, with a maximum assessment cost of the higher of 2% of total CSR expenditure or ₹50 lakhs.
- 11. Co. can engage international organizations for CSR project design, monitoring, evaluation, and personnel capacity building.
- 12. CSR spending by foreign holding companies in India qualifies as CSR spending for Indian subsidiaries if routed through them as per Section 135 of the Act.
- 13. CSR excludes activities integral to normal business operations, activities outside India (except specified cases), political party contributions, employee benefits, sponsorships for marketing benefits, and activities fulfilling other statutory obligations.
- 14. Net profit, for CSR calculation, excludes profits from overseas branches and dividends from Indian companies covered under Section 135 of the Act, while for foreign companies, it refers to Indian operations' profits as per applicable sections.

# AUDIT AND AUDITORS

## Eligibility, Qualifications & Disqualifications of Auditor [Section 141]

Eligible Auditors: Individual CA with certificate of practice. And Firm/LLP with a majority of partners as practicing CAs in India.

Signing Authority: Only CA partners authorized to sign on behalf of the firm.

If disqualification after appointment: Must vacate office and it is deemed a casual vacancy

Disqualifications :-

- o Body corporate (except LLP).
- o Officer or employee of the company.
- o Partner or employee of an officer or employee of the company.
- o Person/his relative/his partner holding securities, indebted >₹5 lakh, or guaranteeing >₹1 lakh to the CASH or Subsidiary of holding Co.
- o Exemption - Relative may hold securities up to ₹1 lakh; corrective action required within 60 days if exceeded.
- o Business relationship with the CASH or S Of H or A (not include: ordinary course transactions at arm's length, permitted professional services).
- o Relative is a director/KMP or employed as such.
- o Full-time employee elsewhere, or auditor/partner holding appointment as auditor of >20 Co. (20 limit excluding OPC, small, dormant, and private companies with PUSC <₹100 crores).
- o Convicted of fraud (10 years since conviction).
- o Providing services prohibited under Section 144 to the CSH (excluding associate companies).

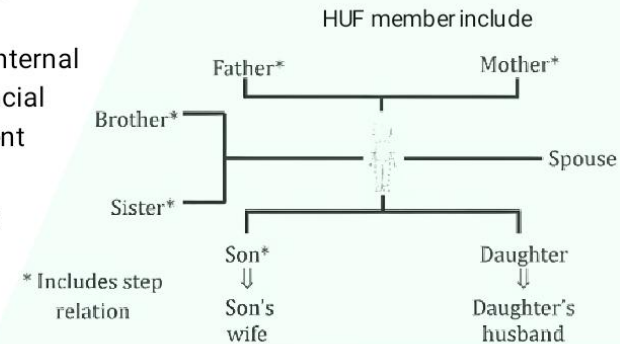
## Auditor not to render certain services [Section 144]

(1) Auditor can provide services to Co. which are approved by Audit committee/BoD

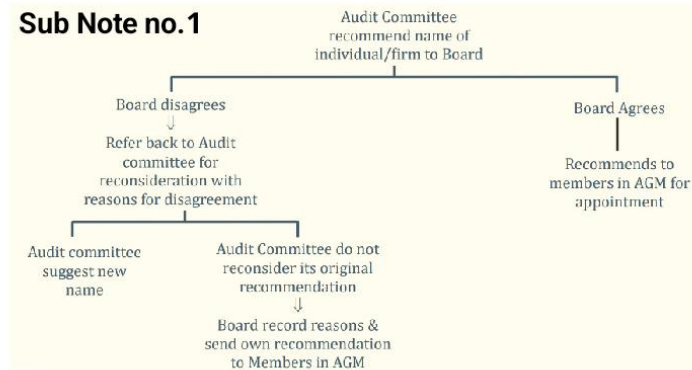
(2) But such services shall not include following services (directly or indirectly) to CaSH :-

- (a) Accounting and book keeping services (b) Internal Audit (c) Design & implementation of any financial info. System (d) Actuarial services (e) Investment advisory & banking services (f) Rendering of outsourced financial services (g) Management services (h) other kind of services as may be prescribed (Not yet prescribed)

## Relative [sec. 2(77)]



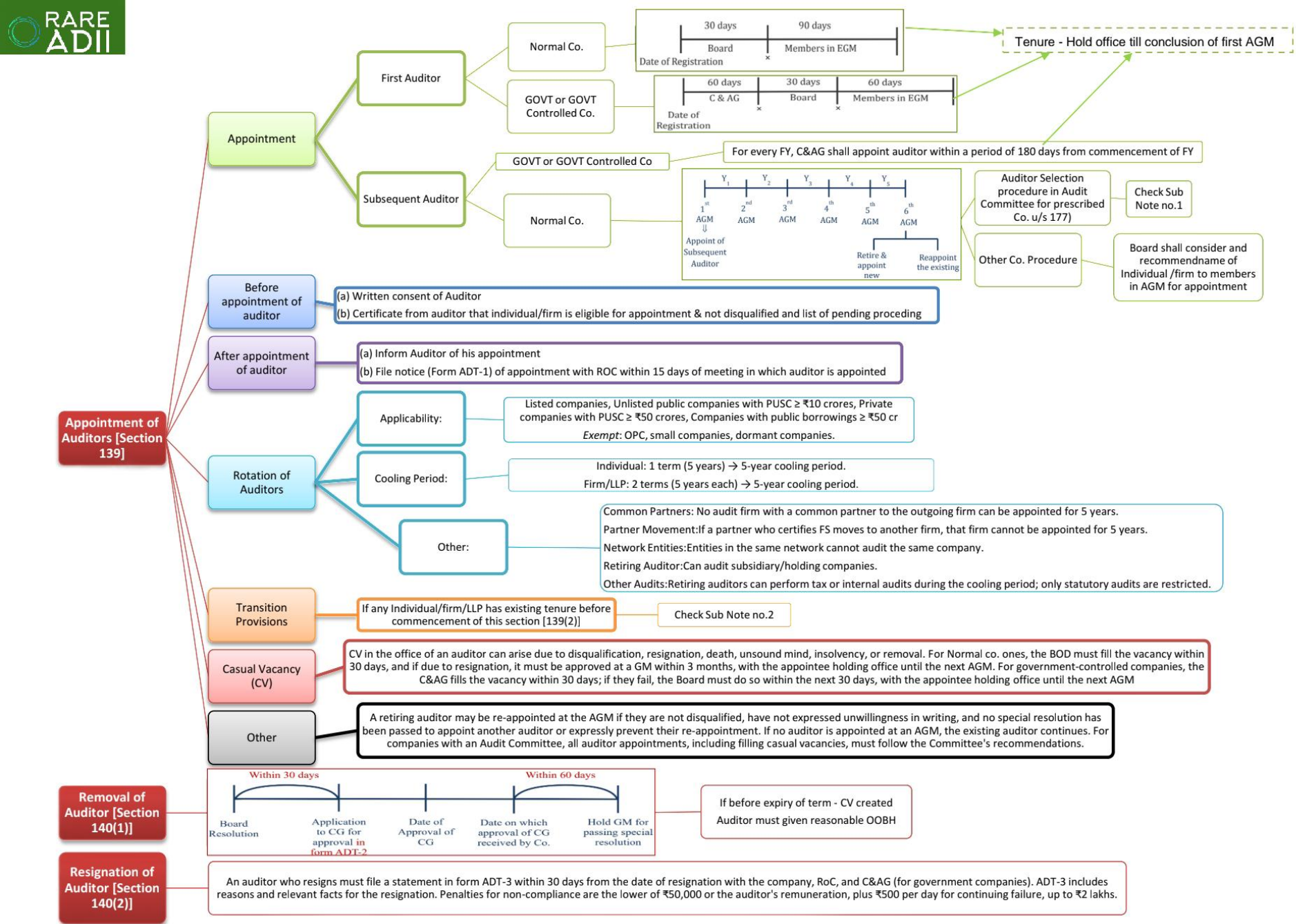
## Sub Note no. 1



## Sub Note no. 2

Firm/LLP			Individual Auditor		
Existing Tenure	Max <sup>m</sup> Tenure after sect 139 (2)	Total Tenure	Existing Tenure	Future Max <sup>m</sup> Tenure after sec. 139 (2)	Total Tenure
10 or More	3	13	5 or more	3	8
9	3	12	4	3	7
8	3	11	3	3	6
7	3	10	2	3	5
6	4	10	1	4	5
5	5	10			
4	6	10			
3	7	10			
2	8	10			
1	9	10			





## Special Notice [Section 140(4)]

1. **\*\*Requirement\*\***: Special notice is needed for a resolution at the AGM to:
  - Appoint someone other than the retiring auditor.
  - State expressly that the retiring auditor will not be re-appointed, except if the auditor has completed their 5/10-year tenure.
2. **\*\*Procedure\*\***: Refer to Section 115 for the procedure.
3. **\*\*Company's Responsibility\*\***: Upon receiving a special notice, the company must immediately send a copy to the retiring auditor.
4. **\*\*Member's Eligibility\*\***: Members holding 1% of total voting power or ₹5 lakh paid-up capital can issue a special notice.
5. **\*\*Representation by Auditor\*\***:
  - If the auditor's representation is received on time, the company must send it to all members and state that the representation has been made. Send copy of representation to every member.
  - If received too late, the auditor can request that their representation be read out at the meeting. And copy of such representation file with ROC
  - On application to NCLT by Co. or aggrieved person, If NCLT is satisfied that rights are being abused by auditors. Then tribunal may order such representation may NOT be Sent to Members Or Read out at Meeting

## Auditor to Sign Audit Report [Section 145]

- The auditor must sign the auditor's report and certify any other company documents in accordance with Section 141(2).
- Qualifications, observations, or comments in the auditor's report on financial transactions or matters adversely affecting the company must be read before the GM and be open to inspection by any member.
- Note: The entire audit report does not need to be read in the GM.

## Remuneration of Auditor [Section 142]

1. Remuneration is fixed at the GM or as determined in the GM.
2. Board may fix the remuneration of first auditor appointed by the Board.
3. Inclusions: Remuneration includes fees, out-of-pocket expenses incurred during the audit, and any facilities extended to the auditor. But It excludes payment for other services rendered at the company's request.
4. **\*\*Engagement Letter\*\***: Valid even if signed without stating remuneration, provided it includes a clause that the fee will be mutually decided.

## Tribunal may order to change auditor [Section 140(5)]

NCLT SuoMoto, Application by CG, Application by person Concerned ->If satisfied that auditor (directly/indirectly)Acted in fraudulent manneror Abetted or colluded in fraud ->NCLT may by order direct the Co. to change its Auditor.

Note:- Removed auditor not eligible to be appointed as auditor of any Co. for 5 years & liable under sec. 447

- If application is made by CG & NCLT is satisfied that auditor change is required, then within 15 days of receipt of application, NCLT shall make an order that :  
He shall not function as auditor & CG may appoint another auditor in his place.



## Punishment for Contravention [Section 147]

1. [Of Sections 139-146] **\*\*Co. \*\***: Minimum ₹25,000, max ₹5 lakh  
**\*\*Officers in default\*\***: Minimum ₹10,000, maximum ₹1,00,000.
2. **\*\*Auditor Contravention [Of Sections 139, 144, 145]\*\***Minimum ₹25,000, maximum the lesser of ₹5,00,000 or 4 times the remuneration.
  - **\*\*Knowing or Willful Contravention\*\***: Minimum ₹1,00,000, max. the lesser of ₹25 lakh or 8 times the remuneration + imprisonment up to 1 yr.
3. **\*\*Consequences of Conviction\*\***:
  - Auditor must refund remuneration to the company.
  - Pay damages to the company, statutory bodies, authorities, members, or creditors for losses due to incorrect or misleading audit reports.
4. **\*\*Audit Firm Liability\*\***:
  - If partners acted fraudulently or abetted/colluded in fraud, they are jointly and severally liable under section 447 for civil or criminal liability.
  - For criminal liability punishable with imprisonment, only the concerned partners are liable.



**Auditors to attend General Meeting [Section 146]**

- (1) Notice or other communication related to any GM shall be forwarded to Auditor
- (2) Unless exempted by Co., Auditor shall attend GM by himself or through Authorised representative (qualified to be auditor)
- (3) Auditor shall have right to be heard on such business which concerns him as auditor.

**Cost Records & Cost Audit [Section 148]**

- 1. COST RECORDS - Companies, including foreign companies, producing specified goods or providing specified services with a turnover ≥ Rs. 35 crores must maintain cost records.
  - Not applicable to Micro or Small Enterprises.
- 2. COST AUDIT - Required for companies in regulated sectors with a turnover ≥ Rs. 50 crores or non-regulated sectors with a turnover ≥ Rs. 100 Cr. Additionally, the aggregate turnover of specified goods/ services must be ≥ Rs. 25 crores (regulated) or ≥ Rs. 35 crores (non-regulated). Exemptions: Co. with 75% revenue from exports, operating in SEZs, or generating electricity for captive consumption.

**3. APPOINTMENT AND REMUNERATION**

- With Audit Committee -Audit Committee recommends, BOD appoints, remuneration approved by BOD and ratified by shareho..
- Without Audit Committee - BOD appoints and approves remuneration, which is later ratified by shareholders.

4. COMPLIANCE - Cost auditors must follow standards by the Institute of Cost Accountants of India. Cost audit is in addition to statutory audit, and relevant auditor regulations apply to cost auditors.

5. REPORTING - Cost auditor submits the report to the BOD. Co. submits the report to the CG within 30 days, along with explanations for any Reservation or Qualifications. CG can request additional information if needed.

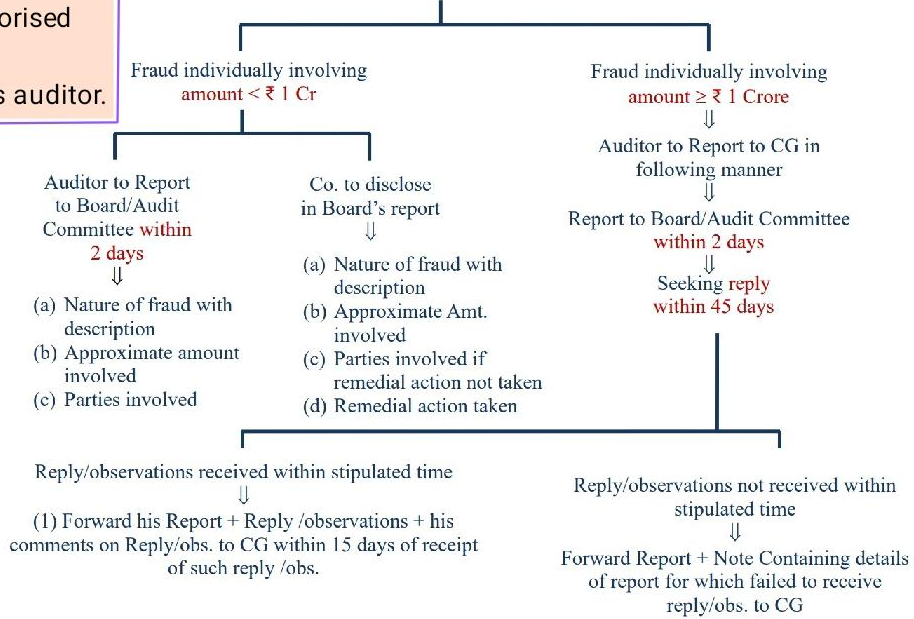
6. ADDITIONAL PROVISIONS - Statutory auditors cannot be cost Auditors. BOD appoints a cost auditor within 180 days of the FY start. Appointment is communicated to the cost auditor and filed with CG using form CRA-2 within 30 days of the Board meeting or 180 days of FY commencement. Tenure: Cost auditor continues until 180 days post-FY or until submitting the report, whichever is earlier. Cost auditor can be removed by BoD resolution after giving an opportunity to be heard and informing the CG via form CRA-2. Casual vacancy filled within 30 days by BoD, informed to CG in form CRA-2.

7. PENALTY - Company and officers in default (OID): Punished under Section 147(1) And Cost auditor: Punished under Sections 147(2) and (4).

8. FORMS - \*CRA-1\* Manner of maintaining cost records. \*CRA-2\* Intimation of cost auditor appointment to CG. \*CRA-3\* Cost Audit Reports. \*CRA-4\* Filing of the cost audit report with CG.

**Fraud Reporting [Section 143 (12)]**

If auditor in the course of performance of his duties



Reports under Section 143(12) must be in Form ADT-4 and sent to the Secretary, MCA in a sealed cover via RPAD or speed post, followed by an email confirmation. The report should be on the auditor's letterhead, including postal address, email address, and contact number, and signed with the auditor's seal and membership number. These requirements also apply to cost accountants conducting cost audits and company secretaries conducting secretarial audits. Non-compliance penalties are ₹5 lakh for listed companies and ₹1 lakh for other companies.

## **Powers and Duties of Auditors [Section 143]**

1. **POWERS OF AUDITORS** :- Right to access the company's books of accounts (BOA) and vouchers at all times. Entitled to require information and explanations from company officers necessary for their duties. Right to access records of all subsidiaries or associates for consolidation purposes.
2. **\*\*Inquiries by Auditors\*\***:
  - Proper security and terms of loans and advances.
  - Loans and advances shown as deposits.
  - Transactions represented by book entries.
  - Personal expenses charged to revenue.
  - Cash received for shares.
  - Sale of assets (shares, debentures) at a price lower than purchase cost.
3. **\*\*Auditor's Report\*\***:
  - Report on accounts examined and financial statements (FS) laid before the company in the General Meeting (GM).
  - Express opinion on the true and fair view of the state of the company's accounts and FS.
4. **\*\*Matters in Auditor's Report\*\***: 🖱️ *SHORT TRICK - AUDIT REPORT*
  - Qualifications/reservations on accounts.
  - Compliance with unpaid dividend laws.
  - Director disqualification status.
  - Adequacy and effectiveness of internal financial controls.
  - Compliance with accounting standards (AS).
  - Adverse financial transaction observations.
  - Provisions for foreseeable losses on long-term contracts.
  - Reports on branch office audits.
  - Proper books of accounts kept.
  - Adequate information obtained for audit.
  - Agreement of BS and P&L with BOA and returns.
  - Operation of the audit trail feature in accounting software.
5. **\*\*Negative or Qualified Responses\*\***: Must state reasons if any report matter is answered negatively or with a qualification.
6. **\*\*Audit of Government Companies\*\***:
  - **\*\*Appointment\*\***: C&AG appoints the auditor and directs the audit manner.
  - **\*\*Supplementary Audit\*\***: C&AG can conduct supplementary audits within 60 days and comment on the audit report.
  - **\*\*Test Audit\*\***: C&AG may conduct a test audit if necessary.
7. **\*\*Branch Audit\*\***:
  - **\*\*In India\*\***: Audited by the company's auditor or another qualified person.
  - **\*\*Outside India\*\***: Audited by the company's auditor or a qualified person as per local law.
  - **\*\*Reporting\*\***: Branch auditor's report sent to the company's auditor.
  - **\*\*Fraud Reporting\*\***: Branch auditor must report fraud relating to the branch.
8. **\*\*Compliance\*\***: Auditors must comply with auditing standards prescribed by the Central Government in consultation with NFRA.
9. **\*\*CARO Reporting\*\***: For prescribed companies, auditors must report on matters under the Companies (Auditor's Report) Order (CARO).





# COMPANIES INCORPORATED OUTSIDE INDIA

## ### FOREIGN CO. (Section 2(42))

FOREIGN CO. :- Any company or body corporate incorporated outside India which has a Place of Business (POB) in India (by itself or through an agent, physically or electronically). Conducts any business activity in India in any manner.

ELECTRONIC MODE :- Includes business transactions, data interchange, financial settlements, online services, etc., conducted through email, mobile, social media, etc. Excludes electronic offerings of securities in IFSC.

## ### Application of Act to Foreign Companies (Section 379)

- Sections 380-386, 392, and 393 apply to all foreign Co.
- If  $\geq 50\%$  of the paid-up share capital is held by Indian citizens or companies, Chapter XXII provisions and other prescribed provisions apply to the foreign company as if it were incorporated in India.

## ### DOCUMENTS TO BE DELIVERED TO ROC (Section 380)

- Deliver Form FC-1 within 30 days of establishing POB in India, including:
  - Certified copy of charter, statutes, or memorandum and articles (with certified translation if not in English).
  - Full address of the registered/principal office.
  - List of directors and secretary with prescribed particulars.
  - Name and address of resident individuals authorized for service of process.
  - Full address of the office in India.
  - Details of previous POBs in India.
  - Declaration regarding the directors' qualifications.
  - Any required regulatory approvals or declarations.
- File alterations with ROC in Form FC-2 within 30 days of change.

## ### Display of Name (Section 382)

- Foreign companies must display their name, country of incorporation, and liability status (limited/unlimited) at each office in India and in each docs. in English and the local language.

## ### Accounts and Audit (Section 381)

- Prepare Balance Sheet and P&L A/c as per Schedule III and include related party transactions, repatriation of profits, transfer of funds, list of all POBs in India.
- Deliver documents to ROC in Form FC-3 within 6 months of FY close (extension up to 3 months possible).
- Accounts must be audited by a practicing CA in India.

## ### Service of Documents (Section 383)

- Notice or documents served on the person listed under section 380 at the registered address.

## Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection [Section 384]

Section 71 – Debentures	Apply Mutatis Mutandis to Foreign Co.
Section 92 – Annual Return	Applicable to Foreign Co. file annual return in Form FC-4 within 60 days from last day of its FY
Section 135 – CSR	Applicable to Foreign Co.
Section 128 – Books of Accounts	Applicable to Foreign Co., subject to modifications:- -BoA kept at principal PoB in India - BoA kept with respect to monies received and spent, sales and purchase made, and assets and liabilities, in course of or in relation to its business in India.
Section 77 to 87 – Registration of Charges	Apply Mutatis Mutandis to Foreign Co.
Section 206 to 229 – Inspection, Inquiry & investigation	Apply Mutatis Mutandis to Foreign Co.

(Sec. 385) Registration Fees :- Prescribed fees for document registration.

(Sec. 386) Interpretation :- Definitions of "certified," "director," and "POB."

### ### PROSPECTUS AND SECURITIES (Sections 387-390)

Prospectus :- Must state matters as per section 26 and additional specified particulars. Include expert consent, contracts, underwriting agreements, and power of attorney.

IDRs:- CG may specify rules for IDR (opposite to GDR) offerings, disclosures, and handling.

Section 391 applies Sections 34 to 36 to the issuance of a prospectus or Indian Depository Receipts (IDRs) by foreign Co., covering criminal and civil liability for misstatements and fraud. It also mandates that the winding-up provisions of Chapter XX apply to the closure of a foreign Co.'s Place of Business (POB) in India if it has raised funds through securities that remain unpaid or unredeemed, treating it similarly to an Indian Co.

### ### MERGERS (Section 234)

Mergers between Indian and foreign companies subject to CG approval and RBI approval. Payment to shareholders can be in cash or Depository Receipts.

### ### PENALTIES (Section 392)

Fines for non-compliance: - Foreign Co.: Rs. 1-3 lakh, additional Rs. 50,000/day for continuing default. - OID: Rs. 25,000-5 lakh.

### ### VALIDITY OF CONTRACTS (Section 393)

- Non-compliance does not affect contract validity but restricts the company's ability to enforce legal actions until compliance.

### ### MISUSE OF FOREIGN COMPANY STATUS

- Unauthorized use of the description as a foreign company can lead to investigation and action under section 210.

### ### EXEMPTIONS

- CG may exempt certain classes of foreign Co. from specific requirements in IFSC.

## LLP ACT, 2008

### Designated Partners [Section 7]

Every LLP must have at least two DP who are individuals, with at least one being a resident in India, defined as someone who has stayed in India for at least 120 days during the financial year. If all partners are bodies corporate or a mix of individuals and bodies corporate, at least two individuals who are partners or nominees must act as designated partners. DP must provide prior written consent and obtain a DP Identification Number (DPIN). The LLP must notify the registrar of their appointment within 30 days. If the incorporation document specifies DPs, those individuals will assume the role upon incorporation; otherwise, any partner can become or cease to be a DP according to the LLP agreement. LLP shall intimate registrar within 30 days about appointment of DP

### Liabilities of Designated Partners [Section 8]

Designated partners are responsible for ensuring the LLP complies with the Act, including filing documents, returns, and statements, and are liable for penalties imposed on the LLP for any contraventions.

### Changes in Designated Partners [Section 9]

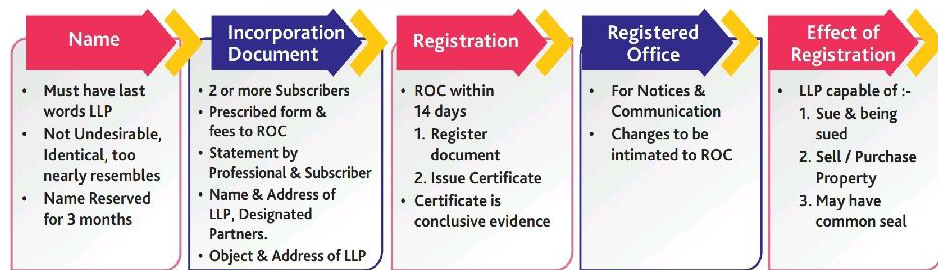
If a vacancy arises, the LLP must appoint a new DP within 30 days and inform the registrar within 30 days of the appointment. If no designated partner is appointed or if there is only one, all partners are deemed designated partners.

### Punishment for contravention of sections 7 and 9 [Section 10]

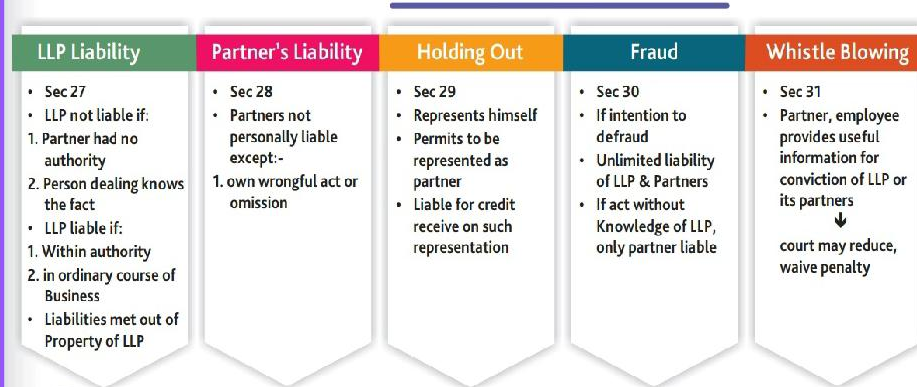
Contravention	Liable	Penalty	Continuing contravention
LLP to have at least 2 designated partners who are individuals & at least 1 of them is resident in India	LLP & its every partner	Rs. 10,000	Rs.100 per day subject to maximum Rs. 1 lakhs for LLP and Rs.50,000 for every partner.
Non-filing of particulars of designated partner with registrar	LLP & its every designated partner	Rs. 5,000	Rs.100 per day subject to maximum of Rs.50,000 for LLP and Rs.25,000 for every designated partner
Where the designated partner is disqualified	LLP & its every partner	Rs. 10,000	Rs.100 per day subject to maximum Rs.1,00,000 for LLP and Rs.50,000 for every partner of such LLP.
Where there is vacancy in office of designated partner and not filled within time	LLP & its every partner	Rs. 10,000	Rs.100 per day subject to maximum Rs.1,00,000 for LLP and Rs.50,000 for every partner of such LLP.



## INCORPORATION OF LLP



## LIABILITY OF LLP & PARTNER



## Rectification of name of LLP [Section 17]

If an LLP is registered with a name identical to or closely resembling another LLP, company, or registered trademark, the Central Government (CG) may, upon application by the affected entity, direct the LLP to change its name within three months. The application by a trademark proprietor must be made within 3 yrs. Upon changing its name, the LLP must notify the Registrar within 15 days along with the CG's order. The Registrar will then issue a fresh certificate of incorporation, and the LLP must amend its name in the LLP agreement within 30 days. If the LLP fails to comply within three months, the CG will assign a new name, and the Registrar will update the register and issue a new certificate of incorporation.

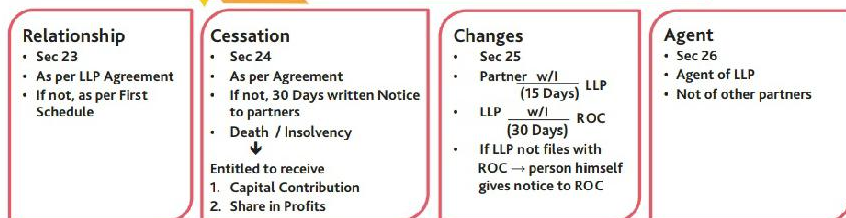
## Form of contribution [Section 32]

A partner's contribution to an LLP can include tangible, movable, immovable, or intangible property, as well as other benefits to the LLP, such as money, promissory notes, agreements to contribute cash or property, and contracts for services performed or to be performed. The monetary value accounted and disclosed in the LLP's a/c

## Obligation to contribute [Section 33]

A partner's obligation to contribute money, property, benefits, or services to an LLP is determined by the LLP agreement. Creditors of the LLP, who extend credit or act based on this obligation without knowledge of any compromise among partners, can enforce the original obligation against the partner.

## PARTNERS & THEIR RELATIONS



## FINANCIAL DISCLOSURES

### Books of Account & Other Records etc.

- Sec 34
- For each year
- Cash / Accrual Basis, Double entry system
- Maintain at Registered office
- Statement of Account & Solvency within 6 months from end of each F.Y.

### Accounting & Auditing Standards

- Sec 34a
  - CG with consultation with NFRA prescribes:-
- Standards of Accounting
  - Standards of Auditing

### Annual Return

- Sec 35
- Annual Return within 60 Days of closure of F.Y.

## Eligibility to be partners [Section 22]

Upon the incorporation of an LLP, the individuals who subscribed their names to the incorporation document become its partners. Any additional person can become a partner in accordance with the terms outlined in the LLP agreement.

Under Section 36, the incorporation document, partner names and changes, Statement of Account and Solvency, and annual returns of an LLP filed with the Registrar are available for public inspection upon payment of a prescribed fee. Section 37 penalizes making false statements in any return or document with imprisonment up to 2 years and a fine between ₹1 lakh to ₹5 lakhs. Section 38 empowers the Registrar to obtain necessary information from any person related to the LLP, requiring them to answer questions, make declarations, or provide details. Non-compliance with the Registrar's summons or requisitions without lawful excuse is punishable with a fine between ₹2000 and ₹25000.

### Registration and Effect of Conversion [Sec. 58]

1. Registrar shall register documents submitted under schedule and issue a certificate of registration.
2. LLP shall inform the registrar of the firm/Co. within 15 days.
3. Upon conversion, LLP and partners shall be bound by provisions of the schedule.
4. Effect of Conversion:
  1. There shall be LLP with the name specified in the certificate.
  2. All property shall vest in LLP.
  3. Firm or company shall be deemed dissolved.

### Foreign LLPs [Section 59]

The CG may make rules regarding the establishment of a place of business by foreign LLPs within India and their business operations. These rules may apply or incorporate provisions of the Companies Act, 2013, with necessary modifications, or establish a regulatory mechanism with a prescribed composition.

Section 62 of the LLP Act encompasses provisions aimed at facilitating the reconstruction or amalgamation of LLPs. Tribunal holds the authority to approve a compromise or arrangement involving LLP reconstruction or amalgamation, along with the transfer of properties and liabilities. This approval includes several considerations: the transfer of assets and liabilities to another LLP, the continuation of legal proceedings by or against the transferee LLP, the dissolution of the transferor LLP without the need for winding up, provisions for dissenting parties, and addressing any other incidental matters

**Compounding of Offences [Sec. 39]** of the LLP Act allows for the compounding of offences punishable with fines only by the RD or an officer authorized by the CG. Offences cannot be compounded if repeated within 3 yrs. Applications for compounding are submitted to the Registrar, who forwards them with comments to the RD. If approved, compounding is intimated within 7 days, and no prosecution will be initiated if compounded before prosecution. If compounded after prosecution starts, the court must be notified, leading to the discharge of the offender. The authorized officer can also direct the filing or registration of documents, and failure to comply can result in fines up to twice the maximum penalty.

**Partner's Transferable Interest [Sec. 42]** states that a partner's right to share in the profits, losses, and distributions of an LLP can be transferred wholly or partly. Such a transfer does not lead to the partner's disassociation, nor does it result in the dissolution or winding up of the LLP. However, this transfer does not grant the transferee or assignee the right to participate in the mgmt or activities of the LLP or to access its transaction info.

### Compromise, Arrangement, or Reconstruction of LLPs

**\*\*Compromise or Arrangement of LLPs [Section 60]:\*\***

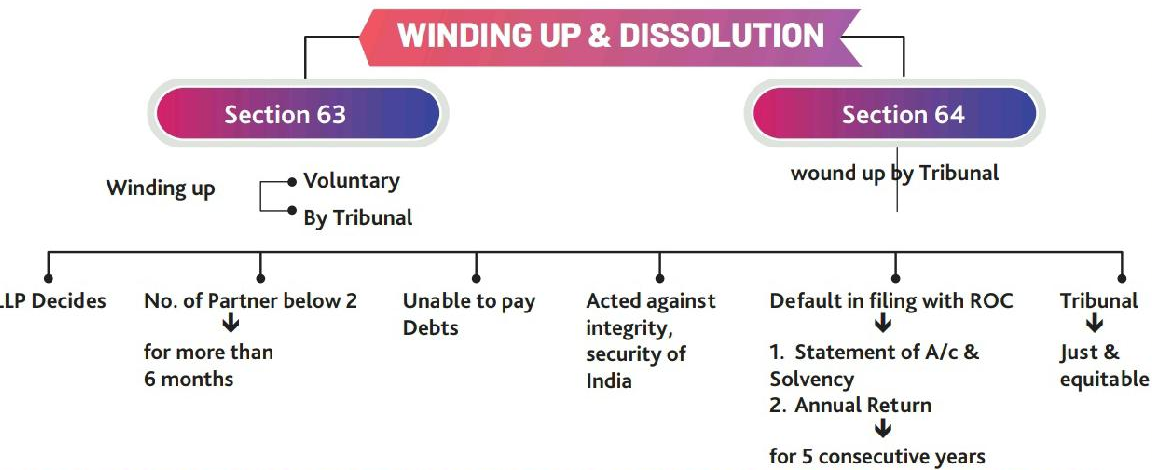
1. Application for compromise or arrangement can be filed with the Tribunal by LLP, any creditor or partner, or the liquidator (if LLP is being wound up).
2. Tribunal may order a meeting of creditors or partners to be held as prescribed or directed.
3. If three-fourths of creditors or partners agree, and Tribunal approves, the arrangement is binding on all parties.
4. LLP must disclose all material facts, including its financial position and any ongoing investigations, to the Tribunal.
5. Order by Tribunal must be filed with Registrar within 30 days and takes effect post-filing.

**\*\*Power of Tribunal to Enforce Compromise or Arrangement [Section 61]:\*\***

1. Tribunal can supervise and modify the compromise or arrangement for proper implementation.
2. If the arrangement cannot be worked satisfactorily, Tribunal may order the winding up of LLP.



necessary to ensure the reconstruction or amalgamation process proceeds smoothly. It is mandated that a certified copy of the Tribunal's order be submitted to the Registrar within 30 days for registration purposes.



Business Transactions of Partner with LLP [Section 66]  
A partner may lend money to and transact other business with LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

Application of the Provisions of the Companies Act [Section 67]

1. The CG may direct that any of the provisions of the Companies Act, 2013 specified in the notification shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.

2. A copy of every notification proposed to be issued shall be laid in draft before each House of Parliament, while it is in session,

for a total period of 30 days

Payment of Additional Fee [Section 69]

Any document or return if not registered or filed in time may be registered or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return

Enhanced Punishment [Section 70]

Second or subsequent offence, be punishable with

- imprisonment as provided,
- fine which shall be twice the amt of fine for such offence.