



CA INTERMEDIATE

CORPORATE & OTHER LAWS

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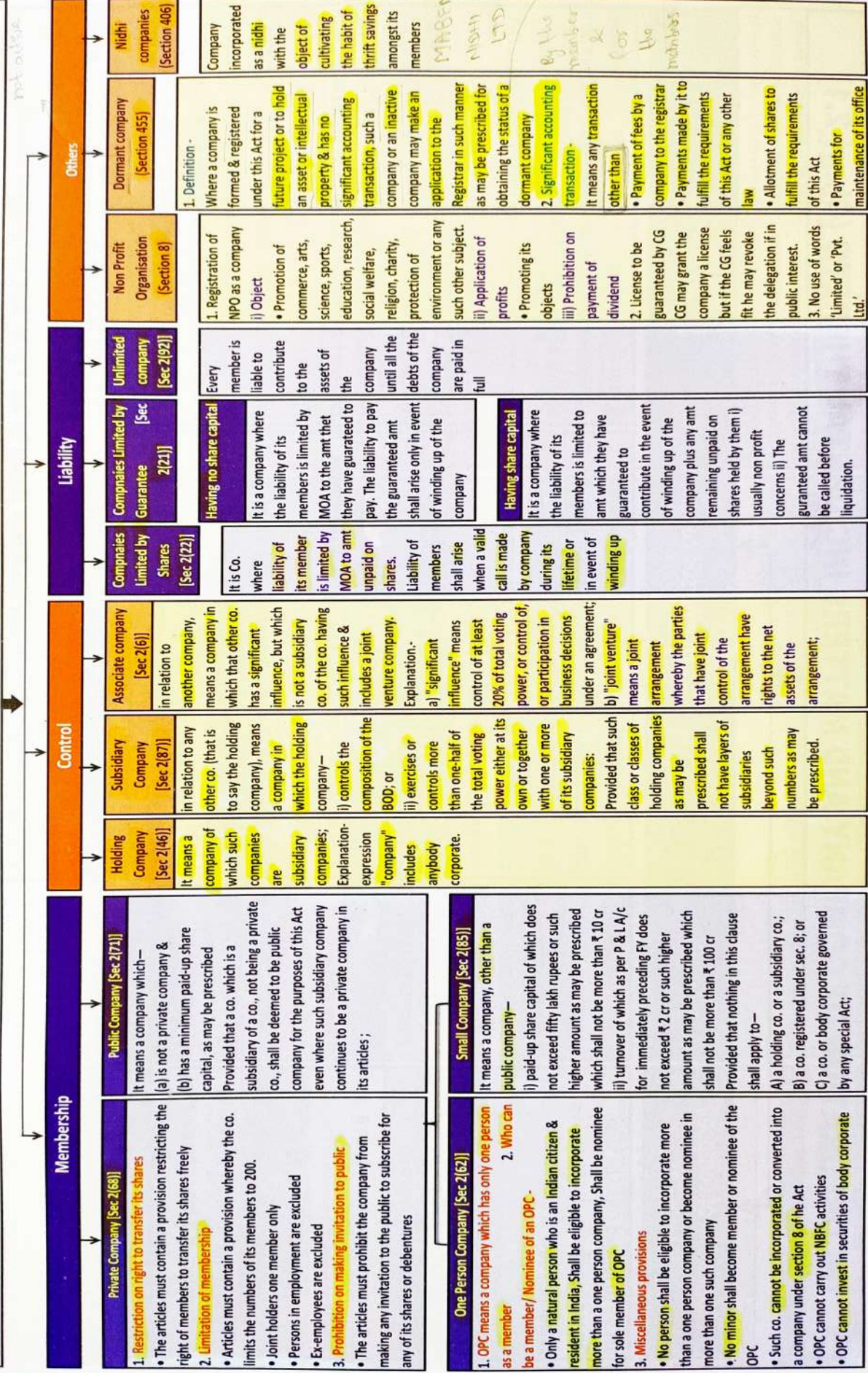
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FEATURES OF A COMPANY (Chart 1.1)

<p>Incorporated association</p>	<p>A company is a registered group of persons. Minimum 7 members are required in case of Public Company and 2 in case of Private Company</p>
<p>Artificial person</p>	<p>A company is artificial legal person created with the sanction of law. Thus a company is artificial person but not fictitious</p>
<p>Separate legal entity</p>	<p>Incorporation of a company renders it a separate legal entity. A company is legal person entirely distinct and independent from its members. It has its own rights and obligation</p> <ul style="list-style-type: none"> • Salomon v Salomon & company Ltd-1897 • Lee v Lee Air Farming Ltd, Case • Bacha F. Guzdar v Commissioner of Income Tax, Case
<p>Capacity to sue and to be sued</p>	<p>A company is a legal person with an independent existence. A company acts in its own name. Thus, a company can sue others and be sued in its own name. The creditors can make their claim only against the company and cannot proceed against the shareholders of the company.</p>
<p>Separate ownership & management</p>	<p>The members of a company do not participate in the day to day affairs of the company. The company is managed by elective representatives of the shareholders known as Board of Directors. The directors are appointed as well as removed by the shareholders</p>
<p>Transferability of shares</p>	<p>The shares of a company are transferable in the manner provided in the articles of the company. However, in case of Private Company there are certain restrictions but not prohibition on transfer of shares.</p>
<p>Perpetual succession</p>	<p>The term perpetual succession means continued existence. A company has a perpetual succession. Thus, death, insolvency or insanity of the members does not affect the existence of the company. Life of the company does not depend upon the life of its members.</p>
<p>Limited liability</p>	<p>1. Limited liability, Company limited by shares</p> <ul style="list-style-type: none"> • Limited to amount remaining unpaid on shares held by them <p>2. Company limited by Guarantee without share capital</p> <ul style="list-style-type: none"> • Limited to amount guaranteed by them. <p>3. Company limited by Guarantee having share capital</p> <ul style="list-style-type: none"> • Limited to aggregate of amount remaining unpaid on shares & amount guaranteed by them <p>4. Company with unlimited liability</p> <ul style="list-style-type: none"> • Unlimited, i.e. they have to contribute till entire debt of Co. is paid
<p>Common Seal</p>	<p>1. A company being an artificial person cannot sign a document as a natural person can do. The common seal is a substitute for a signature.</p> <p>2. own name engraved on it.</p> <p>3. binds the company on the document.</p> <p>4. Common seal has been made optional under companies Amendment Act 2015</p>
<p>Share capital</p>	<p>1. The entire capital of the company is divided into certain specified number of units of equal value and each such unit is called a share.</p> <p>2. The concept of share capital enables the investor to participate in the ownership capital of the company.</p> <p>3. Thus share capital enables the company to mobilize huge capital outlay from lakhs of investors, which would not be possible in any other form of business.</p>

TYPES OF COMPANY (Chart 1.2)



Membership

Private Company [Sec 2(68)]

- Restriction on right to transfer its shares**
 - The articles must contain a provision restricting the right of members to transfer its shares freely
- Limitation of membership**
 - Articles must contain a provision whereby the co. limits the numbers of its members to 200.
 - Joint holders one member only
 - Persons in employment are excluded
 - Ex-employees are excluded
- Prohibition on making invitation to public**
 - The articles must prohibit the company from making any invitation to the public to subscribe for any of its shares or debentures

Public Company [Sec 2(71)]

- It means a company which—
- is not a private company &
 - has a minimum paid-up share capital, as may be prescribed
- Provided that a co. which is a subsidiary of a co., not being a private co., shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles ;

One Person Company [Sec 2(62)]

- OPC means a company which has only one person as a member**
- Who can be a member/ Nominee of an OPC -**
 - Only a natural person who is an Indian citizen & resident in India, Shall be eligible to incorporate more than a one person company, Shall be nominee for sole member of OPC
- Miscellaneous provisions**
 - No person shall be eligible to incorporate more than a one person company or become nominee in more than one such company
 - No minor shall become member or nominee of the OPC
 - Such co. cannot be incorporated or converted into a company under section 8 of the Act
 - OPC cannot carry out NBFC activities
 - OPC cannot invest in securities of body corporate

Small Company [Sec 2(85)]

- It means a company, other than a public company—
- paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ₹ 10 cr
 - turnover of which as per P & L A/c for immediately preceding FY does not exceed ₹ 2 cr or such higher amount as may be prescribed which shall not be more than ₹ 100 cr
- Provided that nothing in this clause shall apply to—
- a holding co. or a subsidiary co.;
 - a co. registered under sec. 8; or
 - a co. or body corporate governed by any special Act;

Control

Holding Company [Sec 2(46)]

It means a company of which such companies are subsidiary companies; Explanation- expression "company" includes anybody corporate.

Subsidiary Company [Sec 2(87)]

in relation to any other co. (that is company), means a company in which the holding company—

- controls the composition of the BOD; or
- exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies;

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

Associate company [Sec 2(6)]

in relation to another company, means a company in which that other co. has a significant influence, but which is not a subsidiary of the co. having such influence & includes a joint venture company. Explanation- a "significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement; b) "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

Companies Limited by Shares [Sec 2(22)]

It is Co. where liability of its member is limited by MOA to amt unpaid on shares. Liability of members shall arise when a valid call is made by company during its lifetime or in event of winding up

Companies Limited by Guarantee [Sec 2(21)]

It is a company where the liability of its members is limited by MOA to the amt they have guaranteed to pay. The liability to pay the guaranteed amt shall arise only in event of winding up of the company

Unlimited company [Sec 2(92)]

Every member is liable to contribute to the assets of the company until all the debts of the company are paid in full

Liability

Non Profit Organisation [Section 8]

- Registration of NPO as a company
 - Object
 - Promotion of commerce, arts, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other subject.
 - Application of profits
 - Promoting its objects
 - Prohibition on payment of dividend
- License to be guaranteed by CG

Dormant company [Section 455]

1. Definition - Where a company is formed & registered under this Act for a future project or to hold an asset or intellectual property & has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company

2. Significant accounting transaction - It means any transaction other than—

- Payment of fees by a company to the registrar
- Payments made by it to fulfill the requirements of this Act or any other law
- Allotment of shares to fulfill the requirements of this Act
- Payments for maintenance of its office

Others

Nidhi companies [Section 406]

Company incorporated as a nidhi with the object of cultivating the habit of thrift savings amongst its members

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.1)

Formation of company (Section 3)

- a) Co's so formed could be with limited liability (by shares or guarantee) or with unlimited liability
- b) In case of a public company without limited liability any 7 or more persons can form a co.
- c) 2 or more persons can form a private company
- d) One person where co. to be formed is one person company.
- e) Persons who form co. are known as promoters. It is they who conceive idea of forming co. They take all necessary steps for its registration.

One person company (OPC)

- a) Memorandum of OPC shall indicate name of other person, who shall, in event of subscriber's death or his incapacity to contract, become member of co.
- b) Other person whose name is given in memorandum shall give his prior written consent
- c) other person may be given right to withdraw his consent
- d) member of OPC may at any time change name of such other person by giving notice to co. & co. shall intimate same to Registrar
- e) Any such change in name of person shall not be deemed to be an alteration of memorandum
- f) Only a natural person who is an Indian citizen & resident in India - shall be eligible to incorporate a OPC - shall be a nominee for sole member of a OPC.

- a) One Member company
- b) Private company in nature
- c) Encourages entrepreneurship & corporatization of business
- d) Procedural requirements are simplified through exemptions
- e) Separate Legal Entity
- f) Limited Liability

- g) natural person shall not be a member of more than a OPC at any point of time & said person shall not be a nominee of more than a OPC
- h) No minor shall become member or nominee of OPC
- i) Such Co. cannot be incorporated or converted into a co. under sec 8 of the Act.
- j) cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
- k) cannot convert voluntarily into any kind of co. unless 2 yrs have expired from date of incorporation except where paid up share capital is increased beyond ₹ 50L or its avg. annual turnover during relevant period exceeds ₹ 2cr.

Explanation I - "resident in India" means a person who has stayed in India for a period of not less than 182 days during immediately preceding FY.

Explanation II. - while

counting the number of days of stay of a director in India for the FY 2018- 2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.2)

Formation of companies with charitable objects, etc. (Section 8)

a) Object of formation of Sec 8 Co.:
 i) formation of companies which are formed to **promote charitable objects** of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
 ii) Intends to **apply its profit in promoting its objects & prohibiting payment of any dividend to its members.**

b) Power of CG to issue license
 i) CG to register such person or association of persons as a co. with **limited liability** without addition of words 'Limited' or 'Private limited' to its name
 ii) CG hereby delegates to ROC power & functions vested in it under the sec 8 (1), CG may also revoke such delegation of powers or may itself exercise powers & functions under said sections, if in its opinion, such course of action is necessary in public interest

c) Privileges of limited Company
 On registration co. shall enjoy same **privileges & obligations** as of a limited co.

d) firm may be a member of co. registered under sec 8

e) Alteration of Memorandum & Articles
 co. registered under this sec shall not alter provisions of its memorandum or articles **except with previous approval of CG**

f) Conversion into any other kind of Co.
 co. registered under sec 8 which intends to convert itself into a co. of any other kind shall **pass a SR at a GM for approving such conversion**

g) Revocation of license
 i) CG may by order revoke licence of co. where **affairs of co. are conducted fraudulently, or violative of objects of co. or prejudicial to public interest, & on revocation Registrar shall put 'Limited' or 'Private Limited'** against co's name in register
 ii) CG must give it a **written notice of its intention to revoke licence & opportunity to be heard in matter**
 iii) co. registered under this sec shall **amalgamate only with another co. registered under this sec & having similar objects**

h) Penalty/ punishment in contravention
 co. makes any default in complying with any of requirements laid down in this sec, co. shall, be punishable with **fine - Rs 10 Lakh to Rs. 1 Cr & directors & every officer of company who is in default shall be punishable with imprisonment for a term which may extend to 3 yrs or with fine - Rs 25,000 to Rs 25 Lakh, or with both**

i) Exceptions
 i) Can call its GM by giving a clear **14 days notice instead of 21 days**
 ii) Requirement of **minimum number of directors, independent directors etc. does not apply**
 iii) **Need not constitute Nomination & Remuneration Committee & Shareholders Relationship Committee**

Memorandum of Association - MOA (Section 4)

i) Sec 2(56) - memorandum means MOA of a co. as originally framed or as altered from time to time in pursuance of any previous company law or of this Act
 ii) It is base document for formation of co. & alongwith AOA is regarded as Constitution of Co.

A) Object of registering a memorandum of association
 i) It contains object for which co. is formed & therefore identifies possible scope of its operations beyond which its actions cannot go
 ii) It enables shareholders, creditors & all those who deal with co. to know what its powers are & what activities it can engage in
 iii) memorandum is a public document under Sec 399 of the Companies Act, 2013
 iv) A company cannot depart from provisions contained in memorandum however imperative may be necessity for departure
 v) It cannot enter into a contract or engage in any trade or business, which is beyond power conferred on it by memorandum

B) The memorandum of a company shall state:-
 i) name of co. with last word "Limited" in case of a public limited company, or last words "Private Limited" in case of a private limited co.
 Exception - This clause is not applicable on companies formed under sec 8 of the Act
 ii) State in which registered office of co. is to be situated
 iii) if any co. has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of 6 mths

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.3)

Memorandum of Association - MOA (Section 4)

C) Liability / Capital Clause	D) Name Clause	E) Domicile Clause
<p>i) This clause covers details on liability of members of co., whether limited or unlimited, & also state -</p> <ul style="list-style-type: none"> in case of a co. limited by shares, that liability of its members is limited to amt unpaid, if any, on shares held by them in case of a co. limited by guarantee, amt up to which each member undertakes to contribute - assets of co. in event of its being woundup to costs, charges & expenses of winding up & for adjustment of rights of contributories among themselves 	<p>i) Name stated in memorandum shall not</p> <ul style="list-style-type: none"> be identical with or resemble too nearly to name of an existing co. or be such that its use by co. will constitute an offence under any law or is undesirable in opinion of CG 	<p>Name of federal state is mentioned where registered office is to be situated</p>
<ul style="list-style-type: none"> in case of a co. limited by guarantee, amt up to which each member undertakes to contribute - assets of co. in event of its being woundup to costs, charges & expenses of winding up & for adjustment of rights of contributories among themselves 	<p>ii) Undesirable Names -</p> <p>co. shall not be registered with a name which contains-</p> <ul style="list-style-type: none"> any word or expression which is likely to give impression that co. is in any way connected with, or having patronage of, CG, any SG, or any local authority, corporation or body constituted by CG or SG 	<p>F) Object Clause</p> <p>Covers objects for which co. is proposed to be incorporated & any matter considered necessary in furtherance thereof</p>
<p>ii) in case of a co. having a share capital-</p> <ul style="list-style-type: none"> amt of share capital with which co. is to be registered & division thereof into shares of a fixed amt & number of shares which subscribers to memorandum agree to subscribe which shall not be less than 1 share & number of shares each subscriber to memorandum intends to take, indicated opposite his name; 	<p>iii) Reservation of Name -</p> <ul style="list-style-type: none"> A person may make an application to registrar - Name of the proposed co. or Name to which co. proposes to change its name. Registrar may reserve name for a period of 20 days from date of approval. provided in case of an application for reservation of name or for change of its name by an existing company, registrar may reserve name for a period of 60 days from date of approval <p><i>Application for reservation of name shall be made through web service available at www.mca.gov.in by using [form RUN] (Reserve Unique Name) along with fee as provided in Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected, as case may be, by Registrar, Central Registration Centre after allowing re--submission of such application within 15 days for rectification of defects, if any</i></p>	<p>G) Subscription Clause</p> <p>According to sec 7(1)(a) there shall be filed with Registrar within whose jurisdiction the registered office of a co. is proposed to be situated, memorandum & articles of co. duly signed by all subscribers to memorandum in such manner as may be prescribed in Rule 13 of the Companies (Incorporation) Rules, 2014</p>
<p>iii) Reservation of Name -</p> <ul style="list-style-type: none"> A person may make an application to registrar - Name of the proposed co. or Name to which co. proposes to change its name. Registrar may reserve name for a period of 20 days from date of approval. provided in case of an application for reservation of name or for change of its name by an existing company, registrar may reserve name for a period of 60 days from date of approval 	<p>iii) Cancelling name</p> <p>Where it is found that name was applied by furnishing wrong or incorrect information, then—</p> <ul style="list-style-type: none"> if co. has not been incorporated, reserved name shall be cancelled & person who has made application shall be liable to a penalty which may extend to 1 lakh Rs. if co. has been incorporated, Registrar may, after giving co. an opportunity of being heard : either direct co. to change its name within a period of 3 months, after passing an ordinary resolution. take action for striking off name of co. from register of companies make a petition for winding up of co. 	

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.4)

Articles of Association - AOA (Section 5)

Section 2(5) - articles means articles of association of a co. as originally framed or as altered from time to time or applied in pursuance of any previous co. law or of this Act

i) Contains regulations
articles of a co. shall contain regulations for management of co.

iii) Entrenchment
• Contain provisions for entrenchment: articles may contain provisions for entrenchment to effect that specified provisions of articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a SR, are met or complied with

ii) Inclusion of matters
articles shall also contain such matters, as are prescribed under rules. However, a co. may also include such additional matters in its articles as may be considered necessary for its management

• Manner of inclusion of entrenchment provision : provisions for entrenchment shall only be made either on formation of a co., or by an amendment in articles agreed to by all members of co. in case of a private co. & by a SR in case of a public co.

• Notice to registrar of entrenchment provision :
Where articles contain provisions for entrenchment, whether made on formation or by amendment, co. shall give notice to Registrar

iv) Co. registered after commencement of this Act
In case of any co., which is registered after commencement of this Act, in so far as the registered articles of such co. do not exclude or modify regulations contained in model articles applicable to such co.

v) Sec not apply on co. registered under any previous co. law:

Doctrine

Doctrine of Indoor Management

i) According to this doctrine, persons dealing with co. need not inquire whether internal proceedings relating to contract are followed correctly, once they are satisfied that transaction is in accordance with MOA & AOA.
ii) Stakeholders need not enquire whether necessary meeting was convened & held properly or whether necessary resolution was passed properly

iii) doctrine helps protect external members from co. & states that people are entitled to presume that internal proceedings are as per documents submitted with ROC.

iv) doctrine of indoor management evolved around 150 years ago in context of doctrine of constructive notice
v) doctrine of constructive notice protects a company against outsiders, doctrine of indoor management protects outsiders against actions of a co.

Exception to Doctrine of Indoor Management

i) Knowledge of irregularity :
In case this 'outsider' has actual knowledge of irregularity within co., benefit under rule of indoor management would no longer be available.

ii) Negligence :
If, with a minimum of effort, irregularities within a co. could be discovered, benefit of rule of indoor management would not apply

iii) Forgery :
Rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery

Doctrine of Ultra Vires

i) In case of a co. whatever is not stated in memorandum as objects or powers is prohibited by doctrine of ultra vires

ii) Act which is ultra vires is void, & does not bind co.
iii) co. cannot make it valid, even if every member assents to it

iv) act which is intra vires co. but outside authority of directors may be ratified by co. in proper form

v) rule is meant to protect shareholders & creditors of co.

vi) If act is ultra vires directors only, shareholders can ratify it. If it is ultra vires articles of association, co. can alter its articles in proper way

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.5)

Act to override

Memorandum, Articles etc. (Section 6)

Provisions of this Act shall have overriding effect on provisions contained in memorandum or articles or in an agreement or in resolution passed by Co. in GM or by its board of directors, whether they are registered, executed or passed before or after commencement of this Act

Incorporation of Company (Section 7)

i) Filing of documents & information with registrar

- a) memorandum & articles of company duly signed by all subscribers to memorandum.
- b) declaration by person who is engaged in formation of co.
- c) declaration from each of subscribers to memorandum & from persons named as first directors, if any, in articles stating that-
 - he is not convicted of any offence in connection with promotion, formation or management of any co., or
 - he has not been found guilty of any fraud or misfeasance or of any breach of duty to any co. under this Act or any previous co. law during last 5 yrs
 - & that all documents filed with Registrar for registration of co. contain information that is correct & complete & true
- d) address for correspondence
- e) particulars of every subscriber to memorandum along with proof of identity
- f) particulars of persons mentioned in articles as subscribers to Memorandum
- g) particulars of interests of persons mentioned in articles as first directors of co.

ii) Issue of certificate of incorporation on registration

Registrar on basis of documents & information filed, shall register all documents & information in register & issue a certificate of incorporation in prescribed form to effect that proposed co. is incorporated

iii) Allotment of Corporate Identity Number (CIN)

On & from date mentioned in certificate of incorporation, Registrar shall allot to co. a corporate identity number, which shall be a distinct identity for co. & which shall also be included in certificate

iv) Maintenance of copies of all documents & information

co. shall maintain & preserve at its registered office copies of all documents & information as originally filed, till its dissolution under this Act

v) Furnishing of false or incorrect information or suppression of material fact at time of incorporation (i.e. during incorporation process)

liable for action for fraud under section 447.

vi) Co. already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post incorporation)

persons named as first directors of co. & persons making declaration under this sec shall each be liable for action for fraud under sec 447

vii) Order of the Tribunal:

- a) pass such orders, as it may think fit, for regulation of management of co. including changes, if any, in its memorandum & articles, in public interest or in interest of co. & its members & creditors; or
- b) direct that liability of members shall be unlimited; or
- c) direct removal of name of co. from register of companies; or
- d) pass an order for winding up of co.; or
- e) pass such other orders as it may deem fit: Provided that before making any order,-
 - co. shall be given a reasonable opportunity of being heard in matter; &
 - Tribunal shall take into consideration transactions entered into by co., including obligations, if any, contracted or payment of any liability

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.6)

Effect of Registration (Section 9)	Effect of Memorandum & Articles (Section 10)	Commencement of business etc (Section 10A)	Registered Office of Company (Section 12)
<p>(i) From date of incorporation subscribers to memorandum & all other persons, who may from time to time become members of co., shall be body corporate by name contained in MOA</p> <p>(ii) registered co. shall be capable of exercising all functions & having perpetual succession with power to acquire, hold & dispose of property, both movable & immovable, tangible & intangible, to contract & to sue & be sued, by said name.</p> <p>(iii) From date of incorporation mentioned in certificate, co. becomes a legal person separate from incorporators</p> <p>(iv) under provisions of Act, co. may purchase shares of another co. & thus become controlling co.</p>	<p>(i) memorandum, bind Co. & members thereof to same extent as if they respectively had been signed by Co. & by each member</p> <p><i>It means that, on the basis of MOA and AOA -</i></p> <p>a) Co. is liable to members</p> <p>b) Members are liable to co.</p> <p>c) But normally members are not liable to each other</p> <p>iii) All monies payable by any member to Co. under memorandum or articles shall be a debt due from him to co.</p>	<p>1) A company incorporated after commencement of the Companies (Amendment) Act, 2019 & having share capital shall not commence any business or exercise any borrowing powers unless—</p> <p>a) declaration is filed by director within period of 180 days of date of incorporation of Co. in such form & verified in such manner as may be prescribed, with Registrar that every subscriber to memorandum has paid value of shares agreed to be taken by him on date of making of such declaration; &</p> <p>b) Co. has filed with Registrar verification of its registered office as provided in section 12(2)</p> <p>2) If any default is made in complying with requirements of this section, Co. shall be liable to penalty of Rs. 50,000/- & every officer in default shall be liable to penalty of Rs. 1000/- for each day during which such default continues but not exceeding amount of Rs. 1,00,000/-</p> <p>3) Where no declaration has been filed with Registrar under clause (a) of sub-section (1) within period of 180 days of date of incorporation of Co. Registrar has reasonable cause to believe that Co is not carrying on any business or operations, he may, without prejudice to provisions of sub-section (2), initiate action for removal of name of Co. from register of companies under Chapter XVIII</p>	Registered Office of Company (Section 12)
			<p>i) Registered office : From 30th day of its incorporation</p> <p>ii) Verification of registered office : Co. shall furnish to Registrar verification of its registered office within a period of 30 days of its incorporation</p> <p>iii) Labelling of company : • Every co. shall paint or affix its name, & address of its registered office on outside of every office or place in which its business is carried on</p> <p>• have its name engraved in legible characters on its seal, if any</p> <p>• get its name, address of its registered office & CIN along with telephone number, fax number, if any, e-mail & website addresses, if any, printed in all its business letters, billheads, letter papers & in all its notices & other official publications</p> <p>• have its name printed on hundies, promissory notes, bills of exchange & such other documents</p>
			<p>iv) Name change by the co. Where a co. has changed its name's during last 2 yrs, it shall paint or affix or print, along with its name, former name or names so changed during last 2 yrs</p> <p>v) In case of OPC : words "One Person Company" shall be mentioned in brackets below name of such co., wherever its name is printed, affixed or engraved</p> <p>vi) Notice of change to Registrar : Notice of every change of situation of registered office, verified in manner prescribed, after date of incorporation of co., shall be given to Registrar within 30 days of change, who shall record same</p> <p>vii) Change by passing of SR : • in case of an existing co., outside local limits of any city, town or village where such office is situated at commencement of this Act or where it may be situated later by virtue of a SR passed by Co.; &</p> <p>• in case of any other co., outside local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a SR passed by Co.</p> <p>viii) Communication & filing of confirmation • communicated within 30 days from date of receipt of application by Regional Director to Co., &</p> <p>• co. shall file confirmation with Registrar within a period of 60 days of date of confirmation who shall register same, &</p> <p>• certify registration within a period of 30 days from date of filing of such confirmation</p> <p>ix) Communication & filing of confirmation : • communicated within 30 days from date of receipt of application by Regional Director</p> <p>• co. shall file confirmation with Registrar within a period of 60 days</p>
			<p>x) In case of default : Co. & every officer who is in default shall be liable to penalty of 1000 Rs for every day during which default continues but not exceeding 1 Lakh Rs.</p> <p>If Registrar has reasonable cause to believe that co. is not carrying on any business or operations, he may cause physical verification of registered office of co. & if default is found to be made in complying with requirements of sub-section (1), he may without prejudice to provisions of subsection (8), initiate action for removal of name of Co. from register of companies under Chapter XVIII</p> <p>xi) Certificate, a conclusive evidence of compliance of</p>

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.7)

Alteration of Memorandum (Section 13)

i) Alteration by SR:

ii) Name change of Co.:

Any change in name of a co. shall be effected only with approval of CG in writing

iii) Entry in register of co's:

On any change in name of a co., the Registrar shall enter new name in register of companies in place of old name & issue a fresh certificate of incorporation with new name

v) Dispose of application of change of place of registered office:

CG shall dispose of application of change of place of registered office within a period of 60 days. Before passing of order, CG may satisfy itself that-

- alteration has consent of creditors, debenture-holders & other persons concerned with co.
- sufficient provision has been made by co. either for due discharge of all its debts & obligations, or
- adequate security has been provided for such discharge.

iv) Change in registered alteration of memorandum relating to place of registered office from one State to another shall not have any effect unless it is approved by CG

vi) Filing with Registrar:

Co. shall, in relation to any alteration of its memorandum, file with Registrar-

- SR passed by co.
- approval of CG

vii) Filing of the certified copy of order with registrar of states:

Where an alteration of memorandum results in transfer of registered office of a co. from one State to another, a certified copy of order of CG approving alteration shall be filed by Co. with Registrar of each of States

viii) Issue of fresh certificate of incorporation:

Registrar of State where registered office is being shifted to, shall issue a fresh certificate of incorporation indicating alteration

ix) Change in object of the co.:

co., which has raised money from public through prospectus & still has any unutilised amount out of money so raised, shall not change its objects for which it raised money through prospectus unless a SR through postal ballot is passed by Co.

x) Registrar to certify registration on the alteration of objects:

Registrar shall register any alteration of memorandum with respect to objects of co. & certify registration within a period of 30 days from date of filing of SR

xi) Alteration to be registered:

No alteration made under this section shall have any effect until it has been registered in accordance with provisions of this sec.

xii) Only member have a right to participate in divisible profits of Co.

Any alteration of memorandum, in the case of a co. limited by guarantee & not having a share capital, intending to give any person a right to participate in divisible profits of the co. otherwise than as a member, shall be void

Rectification of Name of Company (Section 16)

i) CG to issue direction:

CG is empowered to give direction to Co. to rectify its name within a period of 3 months, as case may be, from issue of such direction by passing an ordinary resolution

ii) Notice of change to the registrar:

Where a co. changes its name or obtains a new name, it shall within a period of 15 days from date of such change, give notice of change to Registrar along with order of CG

iii) Default in compliance with direction:

If a co. is in default in complying with any direction given under sub-sec. (1), CG shall allot a new name to co. in such manner as may be prescribed & Registrar shall enter new name in register of co's in place of old name & issue a fresh certificate of incorporation with new name, which co. shall use thereafter: Provided that nothing in this sub-sec shall prevent a co. from subsequently changing its name in accordance with provisions of section 13

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO (Chart 2.8)

Alteration of Articles (Section 14 & 15)

i) Alteration by SR
ii) Alteration to include conversion of companies
 Alteration of articles include alterations having effect of conversion of-
 • private co. into public co.; or
 • public co. into private co.
Provided further that any alteration having the effect of conversion of a public company into private company shall not be valid unless it is approved by order of CG on application made in prescribed form & manner
Provided also that application pending before Tribunal, on date of commencement of Companies (Amendment) Act, 2019, shall be disposed of by Tribunal as per provisions applicable before such commencement

iii) Filing of alteration with registrar:
 Every alteration of articles & a copy of order of Tribunal approving alteration, shall be filed with Registrar, together with a printed copy of altered articles, within a period of 15 days

iv) Any alteration made shall be valid:
 Any alteration of articles registered as above shall, subject to provisions of this Act, be valid as if it were originally contained in articles

Conversion of Companies already Registered (Section 18)

i) By alteration of MOA/ AOA
 A co. of any class registered under this Act may convert itself as a co. of other class under this Act by alteration of memorandum & articles of co. in accordance with provisions of this Chapter
ii) File an application to Registrar:
 Wherever such conversion of co's is required to be done, co. shall file an application to Registrar, who shall after satisfying himself that provisions applicable for registration of co's have been complied with, close former registration of Co.

iii) Issue a certificate of incorporation:
 After registering required documents, issue a certificate of incorporation in same manner as its first registration

iv) No effect on the debts, liabilities etc. incurred before conversion:
 registration of a co. under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of co. before conversion

Subsidiary company not to hold Shares in its Holding Company (Section 19)

• No co. shall, either by itself or through its nominees, hold any shares in its holding co. & no holding co. shall allot or transfer its shares to any of its subsidiary co.'s & any such allotment or transfer of shares of a co. to its subsidiary co. shall be void
 • Provided that nothing in this sub-section shall apply to a case-

i) where subsidiary co. holds such shares as legal representative of a deceased member of holding co. or
ii) where subsidiary co. holds such shares as a trustee; or
iii) where subsidiary co. is shareholder even before it became a subsidiary co. of holding co.

Service of Documents (Section 20)

It provides mode in which documents may be served on co., on members & also on registrars. Law with respect to service of documents is as follows-

i) Serving of document to co. -
 • registered post, or
 • speed post, or
 • courier service, or
 • leaving it at its registered office, or
 • means of such electronic or other mode as may be prescribed:

ii) Serving of document to registrar or member:
 • Post, or
 • registered post, or
 • speed post, or
 • courier, or
 • by delivering at his office or
 • by such electronic or other mode as may be prescribed

Authentication of documents, Proceedings & Contracts (Section 21)

i) Authentication of documents, proceedings & contracts As per Sec. 21
 these may be signed by any "key managerial personnel" or an officer or employee of Co. duly authorised by Board in this behalf

ii) As per Sec.2(51) key managerial personnel, in relation to a co., means
 • the Chief Executive Officer or the managing director or the manager;
 • the company secretary;
 • the whole-time director;
 • Chief Financial Officer; &
 v) such other officer as may be prescribed;

Execution of Bills of Exchange, Etc. (Section 22)

i) A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a co. if made, accepted, drawn, or endorsed in name of, or on behalf of or on account of, co. by any person acting under its authority, express or implied

ii) co. may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India

iii) A deed signed by such an attorney on behalf of the co. & under his seal shall bind Co.

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.1)

Public offer & Private Placement

- i) As per Sec 23 (1) A public co. may issue securities-
 - a) to public through prospectus
 - b) through private placement
 - c) through a rights issue or a bonus issue

- ii) As per Section 23(2), a private co. may issue securities-
 - a) by way of rights issue or bonus issue
 - b) through private placement

iii) Such class of public companies may issue such class of securities for purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

iv) The CG may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament."

Prospectus

As per Sec 2(70) of the Companies Act, 2013, prospectus means any document described or issued as a prospectus & includes a red herring prospectus referred to in sec 32 or shelf prospectus referred to in sec 31 or any notice, circular, advertisement or other document inviting offers from public for subscription or purchase of any securities of body corporate

i) Deemed Prospectus (Section 25)

- i) Documents which deemed to be a prospectus:
 - a) where a co. allots or agrees to allot any securities of Co. with a view to all or any of those securities being offered for sale to public, any document by which offer for sale to public is made shall, for all purposes, be deemed to be a prospectus
 - b) all enactments & rules of law as to contents of prospectus & as to liability in respect of mis-statements, in & omissions from, prospectus, or otherwise relating to prospectus, shall apply.

- ii) Securities offered for sale to public :
 - a) unless contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to securities being offered for sale to public if it is shown-
 - a) that an offer of securities or of any of them for sale to public was made within 6 months after allotment or agreement to allot; or
 - b) that at date when offer was made, whole consideration to be received by Co. in respect of securities had not been received by it.

- iii) Person making an offer is a co. or a firm :
 - Disclosure to be made in Deemed Prospectus-
 - a) net amt of consideration received or to be received by Co. in respect of securities to which offer relates; &
 - b) time & place at which contract where under said securities have been or are to be allotted may be inspected

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.2)

Prospectus

II) Shelf prospectus (Section 31)

It means a prospectus in respect of which securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus

i) Filing of shelf prospectus with registrar : any class or classes of companies, as Securities & Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with Registrar at stage-

a) of first offer of securities included therein which shall indicate a period not exceeding 1 yr as period of validity of such prospectus which shall commence from date of opening of first offer of securities under that prospectus, &

b) in respect of a second or subsequent offer of such securities issued during period of validity of that prospectus, no further prospectus is required

ii) Filing of Information memorandum with shelf prospectus :

A co. filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in financial position of co. as have occurred between first offer of securities or previous offer of securities & succeeding offer of securities & such other changes as may be prescribed, with Registrar within prescribed time, prior to issue of a second or subsequent offer of securities under shelf prospectus

Provided that where a co. has received applications for allotment of securities along with advance payments of subscription before making of any such change, co. shall intimate changes to such applicants & if they express a desire to withdraw their application, Co. shall refund all monies received as subscription within 15 days.

iii) Memorandum together with shelf prospectus shall be deemed to be a prospectus :

Where an information memorandum is filed, every time an offer of securities is made under sub-sec (2), such memorandum together with shelf prospectus shall be deemed to be a prospectus

III) Red Herring Prospectus (Section 32)

It means a prospectus which does not include complete particulars of quantum or price of securities

i) Issue a red herring prospectus prior to issue of a Co. may issue a red herring prospectus prior to issue of a prospectus.

ii) Filing with the registrar :

Co. proposing to issue a red herring prospectus shall file it with Registrar at least 3 days prior to opening of subscription list & offer.

iii) Same obligation :

A red herring prospectus shall carry same obligations as are applicable to a prospectus & any variation between red herring prospectus & a prospectus shall be highlighted as variations in prospectus

iv) Filing of red herring prospectus with registrar & SEBI upon closing of offer :

Upon closing of offer of securities under this sec, prospectus stating therein total capital raised, whether by way of debt or share capital, & closing price of securities & any other details as are not included in red herring prospectus shall be filed with Registrar & Securities and Exchange Board

IV) Abridged prospectus (Section 33)

It means a memorandum containing such salient features of a prospectus as may be specified by Securities & Exchange Board by making regulations in this behalf.

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.3)

Public offer of securities to be in dematerialised form

1) Section 29(1) states that every Co. making public offer; & such other class or classes of companies as may be prescribed under Rule 9 shall issue securities only in dematerialised form by complying with provisions of Depositories Act, 1996 & regulations made thereunder

In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in manner laid down in Depositories Act, 1996 & regulations made thereunder

2) Any Co, other than co. mentioned in sub-section (1), may convert its securities into dematerialised form or issue its securities in physical form in accordance with the provisions of this Act or in dematerialised form in accordance with provisions of Depositories Act, 1996 & regulations made thereunder.

Securities could be held in physical or dematerialised form. However public offer of securities has to be mandatorily in demat form in accordance with Depositories Act, 1996. Demat ensures fool proof control over issue, sale, purchase, pledge, extinguishment of securities lending transparency & credibility to entire process & securities markets

Securities to be Dealt with in Stock Exchanges

i) Filing of an application with recognised stock exchange

every co. making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges & obtain permission for securities to be dealt with in such stock exchange or exchanges

ii) Prospectus to state name of stock exchange :

prospectus shall also state name or names of stock exchange in which securities shall be dealt with

iii) To maintain separate bank account :

All monies received on application from the public shall be kept in a separate bank account in a scheduled bank & shall not be utilised for any purpose other than-

- for adjustment against allotment of securities
- for Repayment of monies within time specified by SEBI

iv) Condition purporting to waive compliance shall Any condition purporting to require or bind any applicant for securities to waive compliance with any of requirements of this section shall be void

v) In case of default :

- Company = fine - 5L to 50L
- Officer = imprisonment upto 1 year or fine - 50K to 3L or both

vi) Payment of commission :

Conditions for payment of commission:
 a) payment of such commission shall be authorized in Co's articles of association
 b) commission may be paid out of proceeds of issue or profit of Co. or both
 c) Rate of commission -

Shares

- shall not exceed 5% of price at which shares are issued or rate authorised by articles
- Whichever is less

Debentures

- shall not exceed 2.5% of price at which debentures are issued or as specified by co's article
- Whichever is less

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.4)

Allotment of Securities by Company (Section 39)

i) Allotment of securities

- Minimum amount subscribed, & application money have been paid & received by Co.
- application money shall not be less than 5% or such other percentage or amt as specified by SEBI

ii) Minimum amount not subscribed & application money not received

within 30 days from date of issue of prospectus, or Such other period as specified by SEBI

iii) Amt received shall be returned within 15 days from closure of issue

iv) Where co. makes an allotment of securities shall file a return of allotment with the registrar

v) In case of default

Co. shall pay penalty of ₹ 1000 for each day during which such default continues, or 1 lac - which ever is less

Misstatements in Prospectus

i) Criminal liability (Section 34)

• every person who authorises issue of such prospectus shall be liable under sec 447:

- nothing in this sec shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, & did up to time of issue of prospectus believe, that statement was true or inclusion or omission was necessary.

ii) Civil liability (Section 35)

a) Liabilities of persons:

where a person has subscribed for securities of a co. acting on any statement included, or inclusion or omission of any matter, in prospectus which is misleading & has sustained any loss or damage as a consequence thereof, Co. & every person who-
 • is a director of Co. at time of issue of prospectus
 • has authorised himself to be named & is named in prospectus as a director
 • promoter of Co.
 • authorised issue of prospectus; &
 • is an expert referred to in sub-section (5) of section 26,

b) Exceptions : No person shall be liable if he proves-

- withdrew his consent to become director before issue of prospectus
- Prospectus issued without his knowledge
- Statement made by Expert

iii) Liability on defraud

Where it is proved that a prospectus has been issued with intent to defraud applicants for securities of a co. or any other person or for any fraudulent purpose, every person referred to in subsec. (1) shall be personally responsible, without any limitation of liability, for all or any of losses or damages that may have been incurred by any person who subscribed to securities on basis of such prospectus

Punishment for Fraudulently Inducing Persons to Invest Money (Section 36)

i) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or

ii) any agreement, purpose or pretended purpose of which is to secure a profit to any of parties from yield of securities or by reference to fluctuations in value of securities; or

iii) any agreement for, or with a view to obtaining credit facilities from any bank or financial institution,

shall be liable for action under section 447.

PROSPECTUS AND ALLOTMENT OF SECURITIES (Chart 3.6)

Private Placement - Offer or Invitation for Subscription of Securities on Private Placement (Section 42)

It means any offer of securities or invitation to subscribe securities to select group of persons by co. (other than by way of public offer) through issue of private placement offer letter.

<p>ii) A private placement shall be made only to a select group of persons who have been identified by Board (herein referred to as "identified persons", whose number shall not exceed 50 or such higher number as may be prescribed (excluding QIB & employees of company being offered securities under a scheme of employees stock option), in FY.</p>	<p>iv) Every identified person willing to subscribe to private placement issue shall apply in private placement & application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel & not by cash</p> <p>Provided that a company shall not utilize monies raised through private placement unless allotment is made & return of allotment is filed with Registrar in accordance with sub-section (8).</p>	<p>vi) A company making an offer or invitation under this sec. shall allot its securities within 60 days from date of receipt of application money for such securities & if company is not able to allot securities within that period, it shall repay application money to subscribers within 15 days from expiry of 60 days & if company fails to repay application money within aforesaid period, it shall be liable to repay that money with interest at rate of 12% p.a. from expiry of 16th day.</p> <p>Provided that monies received on application under this sec. shall be kept in a separate bank account in a scheduled bank & shall not be utilized for any purpose other than-</p> <p>a) for adjustment against allotment of securities; or</p> <p>b) for repayment of monies where company is unable to allot securities.</p>	<p>xi) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act & the Securities Contracts (Regulation) Act, 1956 & the Securities and Exchange Board of India Act, 1992 shall be applicable.</p>
<p>iii) A company making private placement shall issue private placement offer & application in such form & manner as may be prescribed to identified persons, whose names & addresses are recorded by company in such manner as may be prescribed</p> <p>Provided that private placement offer and application shall not carry any right of renunciation.</p>	<p>v) No fresh offer or invitation under this section shall be made unless allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:</p> <p>Provided that, subject to maximum number of identified persons under sub-sec (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.</p>	<p>vii) No co. issuing securities under this sec. shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform public at large about such an issue</p> <p>viii) A company making any allotment of securities under this sec., shall file with Registrar a return of allotment within 15 days from date of allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted & such other relevant info. as may be prescribed</p> <p>ix) If a company defaults in filing return of allotment within period prescribed under sub-sec (8), company, its promoters & directors shall be liable to a penalty for each default of 1000 rupees for each day during which such default continues but not exceeding 25 lakh rupees</p>	
		<p>x) Subject to sub-sec (11), if a co. makes an offer or accepts monies in contravention of this section, company, its promoters & directors shall be liable for a penalty which may extend to amount raised through the private placement or 2 crore Rs., whichever is lower, & co. shall also refund all monies with interest as specified in sub-sec. (6) to subscribers within a period of 30 days of order imposing penalty</p>	

SHARE CAPITAL AND DEBENTURES (Chart 4.1)

Share Capital - Types (Section 43)

Section 2(84) of the Companies Act, 2013 defines share as a share in share capital of a co. & includes stock.

A) Preference share capital.

It is an instrument which have preferential right to dividend payment (absolute/fixed or advalorem / %) & preferential repayment during winding up of co. These shareholders could also participate in equity pool post preferential entitlements

B) Equity share capital

- i) Shares which are not preference shares are termed as equity shares.
- ii) Equity shares are further classified as plain vanilla (same voting rights) or Differential equity shares (with differences w.r.t. dividend or voting rights or otherwise)
- iii) Conditions for issue of equity shares with differential rights :-

a) AOA of co. authorizes issue of shares with differential rights

b) issue of shares is authorized by an ordinary resolution passed at a GM of share holders

c) Voting power in respect of shares with differential rights of co. shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time;

d) co. having consistent track record of distributable profits for last 3 years

e) co. has not defaulted in filing financial statements & annual returns for 3 FY immediately preceding FY in which it is decided to issue such shares

f) co. has no subsisting default in payment of a declared dividend to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures

g) co. has not defaulted in payment of dividend on pref. shares or repayment of any term loan or interest payable thereon or dues with respect to statutory payments relating to its employees to any authority or default in crediting amount in Investor Education & Protection Fund to CG

h) co. has not been penalized by Court or Tribunal during the last 3 years

iv) Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights :
co. shall not convert its existing eq. share capital with voting rights into eq. share capital carrying differential voting rights & vice-versa

v) Rights to holders of equity shares with differential rights :
holders of equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc

vi) Particulars of shares to be maintained in register of members :

Where a co. issues eq. shares with differential rights, Register of Members maintained under section 88 shall contain all relevant particulars of shares so issued along with details of shareholders

SHARE CAPITAL AND DEBENTURES (Chart 4.2)

Basic Requirement (Section 45 & 46)

Physical entitlement to a particular portion of share capital is prima facie evidenced by way of a share certificate which has to be

- i) Distinctively numbered; &
- ii) To be issued under common seal of Co. or signed by two directors or by a director & CS, wherever Co. has appointed a CS.

Demat

- i) At present there are 2 depositories in India: NSDL & CDSL with various depository participants (DPs) linked to them
- ii) Dematerialised securities are held by investors in their respective accounts with DP. DP keeps a track of transfer, transmission, charge creation etc
- iii) share certificate issues by a co. could be in a way compared to currency notes issued by Central Bank.
- iv) wrongdoer co. is punishable with monetary penalty of 5 to 10 times of face value of shares involved or Rs. 10 cr whichever is higher.
- v) every officer in default is liable to imprisonment ranging from 6 months to 10 yrs along with monetary penalty of 3 times fraud (Sec 447)

Voting rights of members (Section 47)

Subject to the provisions of section 43, section 50(2) & section 188(1),—

- i) Voting right of member holding equity share capital :
Every member of a co. limited by shares who is holding eq. share capital, shall have a right to vote on every resolution placed before Co.; and his voting right on a poll shall be in proportion to his share in paid-up eq. share capital of Co.
- ii) Voting right of member holding preference share capital :
Every member of a co. limited by shares who is holding any preference share capital shall, in respect of such capital, have-
 - a) a right to vote only on resolutions placed before Co.
 - b) any resolution for winding up of Co.
 - c) for repayment or reduction of its equity or preference share capital & his voting right on a poll shall be in proportion to his share in the paid-up preference share capital of Co.
- iii) Proportion of voting rights :
 - a) proportion of voting rights of eq. shareholders to voting rights of preference shareholders shall be in same proportion as paid-up capital
 - b) Where dividend in respect of a class of preference shares has not been paid for a period of 2 yrs or more, there such class of preference shareholders shall have a right to vote on all resolutions placed before Co.
 - c) in case of equity shares other than equity shares with differential voting rights, each shareholder is entitled to vote on any resolution placed before Co.
 - d) In a meeting of pref. shareholders, preference voting rights are proportionate to one's pref. share investment to total nominal pref. share capital in Co.
 - e) For other shareholder's meeting, preference shareholder could vote only on below resolutions placed before members where resolution in question :
 - directly affects rights as pre. shareholder
 - involves winding up of Co.
 - involves repayment or reduction of equity or preference share capital.

Variations of shareholders' rights (Section 48)

- i) Variation in rights of shareholders with consent :
Where a share capital of Co. is divided into different classes of shares, rights attached to shares of any class may be varied with consent in writing of holders of not less than 3/4th of issued shares of that class or by means of a SR passed at a separate meeting of holders
- ii) No consent for variation :
Where holders of not less than 10 % of issued shares of a class did not consent to such variation or vote in favour of SR for variation, they may apply to Tribunal to have variation cancelled, & where any such application is made, variation shall not have effect unless & until it is confirmed by tribunal.
Application shall be made within 21 days.
- iii) Binding decision of tribunal :
decision of Tribunal on any application shall be binding on share- holders
- iv) Filing copy of order with Registrar :
Co. shall, within 30 days of date of order of Tribunal, file a copy thereof with Registrar.

SHARE CAPITAL AND DEBENTURES (Chart 4.3)

Calls & Incidental Matters (Section 49 to Section 51)

- i) Calls are made by Co. on security holders to pay amount called up in respect of partly paid up securities
- ii) As per Sec 49, these calls have to uniformly made & there should be no differentiation for a given class of security holders
- iii) The provision is not applicable in case where different amounts are paid for a same class for security.
- iv) As per Sec. 50, if authorised by articles, a co. can keep advance subscription or call money received in advance
- v) Co. could pay proportionate dividends in proportion to amount paid on each share, if authorised by articles (Sec 51).
- vi) advance payment will never lead to increased voting rights but delayed payment of call money could be reason of decreased voting rights.

Application of premiums received on issue of shares (Section 52)

- i) Where a co. issues shares at a premium, whether for cash or otherwise, a sum equal to aggregate amt of premium received on those shares shall be transferred to a securities premium account
- ii) Application of securities premium account-
 - a) towards issue of Bonus shares
 - b) In writing off preliminary expenses
 - c) In writing off expenses of, or commission paid or discount allowed on, any issue of shares or debentures
 - d) In providing for premium payable on redemption of any redeemable preference shares or of any debentures
 - e) for purchase of its own shares under sec 68.

iii) Who may apply the securities premium account -

- a) in paying up unissued eq. shares of Co. to be issued to members of Co. as fully paid bonus shares; or
- b) in writing off expenses of or commission paid or discount allowed on any issue of eq shares of co.; or
- c) for purchase of its own shares under section 68.

Prohibition on issue of shares at discount (Section 53)

- i) Co. shall not issue shares at a discount, except in the case of an issue of sweat equity shares
- ii) Any share issued by a co. at a discount shall be void
- iii) Fine for Contravention -
Company - Rs. 1 Lakh to Rs. 5 Lakh
Officer - Imprisonment - upto 6 mnths or - Fine - Rs. 1 Lakh to Rs. 5 Lakh or Both
- iv) Notwithstanding anything contained in sub-sec. (1) & (2), a co. may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by RBI under the RBI Act, 1934 or Banking (Regulation) Act, 1949].
Where any Co. fails to comply with provisions of this section, such company & every officer in default shall be liable to penalty which may extend to an amount equal to amount raised through issue of shares at discount or Rs. 5,00,000/-, whichever is less, & Co. shall also be liable to refund all monies received with interest @ 12% per annum from date of issue of such shares to persons to whom such shares have been issued

SHARE CAPITAL AND DEBENTURES (Chart 4.4)

Issue of Sweat equity shares (Section 54)

i) Section 2(88) - sweat equity shares means such eq. shares as are issued by a co. to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in nature of intellectual property rights or value additions, by whatever name called;

ii) Section 2 (37) - employees' stock option means option given to directors, officers or employees of a co. or of its holding co. or subsidiary co. or co's, if any, which gives such directors, officers or employees, benefit or right to purchase, or to subscribe for, shares of Co. at a future date at a pre-determined price

iii) Conditions-
 a) issue is authorised by a SR
 b) resolution specifies number of shares, current market price, consideration, if any, & class or classes of directors or employees to whom such equity shares are to be issued
 c) where eq. shares of co. are listed on a recognised stock exchange, sweat eq. shares are issued in accordance with regulations made by Securities & Exchange Board in this behalf & if they are not so listed, sweat eq. shares are issued in accordance rules as prescribed under Rule

i) Co. to issue redeemable pref. No Co. limited by shares shall issue any preference shares which are irredeemable

ii) Period for redeem of pref shares : pref shares are liable to be redeemed within a period not exceeding 20 years

iii) Shares to be redeemed out of profits only : No such shares shall be redeemed except out of profits of Co. which would other-wise be available for dividend or out of proceeds of a fresh issue of shares made for purposes of such redemption

Preference shares - Issue and redemption [Section 55]

iv) Redeemed shares to be fully paid : no such shares shall be redeemed unless they are fully paid;

v) Proposed shares to be redeemed shall be transferred to CRR account : a sum equal to nominal amount of shares to be redeemed, to a reserve, to be called Capital Redemption Reserve(CRR) Account

vi) Class of co's whose financial statement complies with Accounting standards : Premium, if any, payable on redemption shall be provided for out of profits of co., before shares are redeemed

vii) In case of unredeemed pref shares :
 Co. May -
 a) with consent of holders of 3/4th in value of such pref. shares, &
 b) with approval of Tribunal on a petition made by it in this behalf
 c) issue further redeemable pref. shares equal to amount due, including dividend thereon

viii) Paying of unissued shares to members : CRR account may, be applied by Co., in paying up unissued shares of Co. to be issued to members of Co. as fully paid bonus shares.

SHARE CAPITAL AND DEBENTURES (Chart 4.5)

Transfer and Transmission of Securities or Interest of a Member in the Company (Section 56)

Punishment for personation of shareholder (Section 57)

If any person deceitfully personates as—

- an owner of any security or interest in a co., or
- of any share warrant or coupon issued in pursuance of this Act, &

iii) thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or

iv) receives or attempts to receive any money due to any such owner,

Punishment -

Imprisonment - 1 yr to 3 yrs Fine - 1 Lakh Rs. to 5 Lakh Rs.

j) Requirement for registering transfer of securities

Co. shall not register a transfer of securities of Co., or interest of a member in Co. in case of a co. having no share capital, unless a proper instrument of transfer, duly stamped, dated & executed by or on behalf of transferor & transferee specifying name, address & occupation, if any, of transferee, has been delivered to Co. by transferor or transferee within a period of 60 days from date of execution, along with certificate relating to securities, or if no such certificate is in existence, along with letter of allotment of securities.

ii) Instrument of transfer lost/ not delivered :

Co. may register transfer on such terms as to indemnity as Board may think fit.

iv) Transmission of securities on an application of transferor alone :

Where an application is made by transferor alone & relates to partly paid shares, transfer shall not be registered, unless co. gives notice of application, in such manner as may be prescribed, to transferee & transferee gives no objection to transfer within 2 weeks from receipt of notice

vi) Transfer of security of deceased :

Transfer of any security or other interest of a deceased person in a co. made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been holder at time of execution of instrument of transfer

iii) Power of Co. to register :

Power of co. to register shall not be effected by above provision on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

v) Co. delivering certificate :

Different conditions

Period of the delivering the certificates

In the case of subscribers to the memorandum;	Within 2 months from the date of in- corporation
In the case of any allotment of any of its shares	Within a period of two months from the date of allotment
In the case of a transfer or transmission of securities	Within a period of one month from the date of receipt by the company of the instrument of transfer or the intimation of transmission
In the case of any allotment of debenture	Within a period of six months from the date of allotment

vii) Default in compliance of provisions :

Company - 25,000 Rs. to 5 lakh Rs.
officer - 10,000 Rs. to 1 one lakh Rs.

viii) Liability of depository :

Where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section

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SHARE CAPITAL AND DEBENTURES (Chart 4.6)

Refusal of registration and appeal against refusal [Section 58]

i) If a private co. limited by shares refuses, to register transfer of, or transmission of right to any securities or interest of a member in Co., then co. shall **send notice of refusal to transferor & transferee** or to person giving intimation of such transmission, **within a period of 30 days**

ii) Transferee may appeal to Tribunal against refusal within a **period of 30 days**

iii) If a public co. **without sufficient cause** refuses to register transfer of securities **within a period of 30 days**, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from Co., within 90 days appeal to Tribunal.

iv) Tribunal, while dealing with an appeal may, after hearing parties, either **dismiss appeal, or by order—**
 a) direct that transfer or transmission shall be registered by Co. & Co. shall comply with such order within a **period of 10 days of receipt of order; or**

b) **direct rectification of register** & also direct Co. to pay damages, if any, sustained by any party aggrieved.

v) If a person contravenes order of Tribunal -
Imprisonment - 1yr to 3yrs
Fine - 1Lakh to 3Lakhs

Rectification of register of member [Section 59]

i) **Remedy to aggrieved for not carrying changes in register of members :**
 may appeal in such form as may be prescribed, to Tribunal, or to a competent court outside India, specified by CG by notification, in respect of **foreign members or debenture holders residing outside India, for rectification of register.**

ii) **Order of the Tribunal :**
 either dismiss appeal or direct that transfer or transmission shall be registered by Co. **within a period of 10 days of receipt of order**, or direct rectification of records of depository or register & in latter case, direct co. to pay damages, if any, **sustained by party aggrieved**

iii) Provisions of this section shall not restrict **right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless voting rights have been suspended by an order of Tribunal**

iv) **Where transfer of securities is in contravention of any of provisions of the Securities Contracts (Regulation) Act, 1956, the Securities & Exchange Board of India Act, 1992 :**

direct any co. or a depository to set right **contravention & rectify its register or records concerned.**

v) **Default in complying with the order :**
 Company - Fine - 1Lakh to 5Lakh
 Officer - Imprisonment - upto 1 yr or
 - Fine - 1Lakh to 3Lakh or both

SHARE CAPITAL AND DEBENTURES (Chart 4.7)

Alteration of share capital [Section 61]

- i) a limited co. having a share capital may, if so authorised by its articles, alter its memorandum in its GM to—
 - a) increase its authorised share capital
 - b) consolidate & divide all or any of its share capital into shares of a larger amt than its existing shares
 - c) convert all or any of its fully paid-up shares into stock, & reconvert that stock into fully paid-up shares of any denomination;
 - d) sub-divide its shares, or any of them, into shares of smaller amt than is fixed by memorandum
 - e) cancel shares which, at date of passing of resolution in that behalf, have not been taken or agreed to be taken by any person,
 - ii) cancellation of shares shall not be deemed to be a reduction of share capital.

Further issue of share capital – Rights Issue; Preferential Allotment [Section 62]

- i) A rights issue involves pre-emptive subscription rights to buy additional securities in a co. offered to the co's existing security holders. It is a non-dilutive pro rata way to raise capital.
 - ii) a co. having a share capital proposes to increase its subscribed capital by issue of further shares, such shares shall be offered—
 - a) to persons who, at date of offer, are holders of equity shares of Co. in proportion, to paid-up share capital
 - b) to employees under a scheme of employees' stock option, subject to SR passed by co.
 - c) to any persons, if it is authorised by a SR, whether or not those persons include persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if price of such shares is determined by valuation report of a registered valuer, subject to compliance with applicable provisions of Chap. III & any other conditions as may be prescribed

- iii) Notice of offer of shares shall be despatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all existing shareholders at least 30 days before opening of issue
 - iv) Exception - section shall not apply to increase of subscribed capital of a co. caused by exercise of an option attached to debentures issued or loan raised by Co. to convert such debentures or loans into shares in Co.
 - v) Conversion of debentures/loan into shares : on such terms & conditions as appear to Government to be reasonable in circumstances of case even if terms of issue of such debentures or raising of such loans do not include a term for providing for an option for such conversion.
 - vi) Term of conversion not acceptable to Co.: Co. may, within 60 days from date of communication of such order, appeal to Tribunal which shall after hearing co. & Government pass such order as it deems fit.

- vii) Points to be taken into consideration for term of conversion: In determining terms & conditions of conversion, Government shall have due regard to financial position of Co.
 - viii) When memorandum of co. stand altered & increases authorized share capital : Where Government has, by an order directed that any debenture or loan or any part thereof shall be converted into shares in a co. & where no appeal has been preferred to Tribunal or where such appeal has been dismissed, then memorandum of co. shall, by such order having effect of increasing authorised share capital of Co., stand altered & authorised share capital of such co. shall stand increased by an amount equal to amount of value of shares which such debentures or loans or part thereof has been converted into.

Issue of bonus shares [Section 63]

Bonus shares are shares issued proportionately by a co. to its current shareholders as fully paid shares free of any cost.

- i) co. may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of -
 - a) its free reserves;
 - b) securities premium account; or
 - c) CRR account
- Provided that no issue of bonus shares shall be made by capitalising reserves created by revaluation of assets.

- ii) No co. shall capitalise its profits or reserves for purpose of issuing fully paid-up bonus shares unless-
 - a) it is authorised by its articles;
 - b) it has on recommendation of Board, been authorised in GM of Co.;
 - c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
 - d) it has not defaulted in respect of payment of statutory dues of employees, such as, contribution to provident fund, gratuity & bonus;
 - e) partly paid-up shares, if any outstanding on date of allotment, are made fully paid-up;
 - f) it complies with such conditions as may be prescribed.

- iii) The bonus shares shall not be issued in lieu of dividend.

SHARE CAPITAL AND DEBENTURES (Chart 4.8)

Notice to be given to Registrar for Alteration of Share Capital (Section 64)

- i) Where—**
- a) a co. alters its share capital in any manner specified in sec 61(1)
 - b) an order made by Government under sec 62(4) read with 62(6) has the effect of increasing authorised capital of a co.; or
 - c) a co. redeems any redeemable preference shares,
- ii) co. shall file a notice in prescribed form with Registrar within a period of 30 days of such alteration or increase or redemption

iii) Default -
Where any company fails to comply with provisions of sub-section (1), such company & every officer who is in default shall be liable to penalty of ₹1,000/- for each day during

i) Reduction of share capital by SR:

Subject to confirmation by Tribunal on an application by Co., a co. limited by shares or limited by guarantee & having a share capital may, by a SR, reduce share capital in any manner & in particular, may -

- a) Extinguish or reduce liability on any of its shares in respect of share capital not paid-up; or
- b) either with or without extinguishing or reducing liability on any of its shares, -
 - cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - pay off any paid-up share capital which is in excess of wants of Co., alter its memorandum by reducing amount of its share capital & of its shares accordingly :

ii) Issue of Notice from the Tribunal

iii) Order of tribunal :

Tribunal may, if it is satisfied that debt or claim of every creditor of co. has been discharged or determined or has been secured or his consent is obtained, make an order confirming reduction of share capital on such terms & conditions as it deems fit

iv) Publishing of order of confirmation of tribunal :

- v) Delivery of certified copy of order to registrar :
- a) amount of share capital;
 - b) number of shares into which it is to be divided;
 - c) amount of each share; &
 - d) amount, if any, at date of registration deemed to be paid-up on each share, to Registrar within 30 days of receipt of copy of order, who shall register same & issue a certificate to that effect.

Reduction of share capital [Section 66]

vi) Nothing in this section shall apply to buy-back of its own securities by a co. under section 68.

vii) No liability of member: member of co., past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding amount of difference, if any, between amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, & amount of share as fixed by order of reduction

viii) In case where creditor is entitled to object :
Where name of any creditor entitled to object to reduction of share capital under this sec is, by reason of his ignorance of proceedings for reduction or of their nature & effect with respect to his debt or claim, not entered on list of creditors, & after such reduction, co. commits a default, within the meaning of section 6 of Insolvency & Bankruptcy Code, 2016,

ix) Liability of officer : If any officer of the co.-
a) knowingly conceals name of any creditor entitled to object to reduction
b) knowingly misrepresents nature or amount of debt or claim of any creditor; or
c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under sec 447.

x) In case of failure to publish order of confirmation of reduction of shares :
Company - Fine - 5Lakh to 25Lakh

SHARE CAPITAL AND DEBENTURES (Chart 4.9)

Restriction on purchase by company or giving of loans by it for purchase of its shares (Section 67)

i) A fundamental principle of Company Law was that a Co. cannot buy its own shares

ii) no co. limited by shares or by guarantee & having a share capital shall have power to buy its own shares unless consequent reduction of share capital is effected

iii) No public co. shall give, whether directly or indirectly & whether by means of a loan, guarantee, provision of security or otherwise, any financial assistance for purpose of, or in connection with, a purchase or subscription made or to be made, by any person or for any shares in Co. or in its holding co.

iv) Exceptions :

a) lending of money by a banking co. in ordinary course of its business;

b) provision is made by a co. for lending of money in accordance with any scheme approved by co. through SR

c) giving of loans by a co. to persons in employment of Co. other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of 6 months

v) Contavention -
Company - Fine - 1Lakh to 25Lakh
officer - Imprisonment - Upto 3 years & Fine - 1Lakh to 25Lakhs

a) Sources of funds for buy-back of shares

- free reserves; or
- securities premium account; or
- proceeds of issue of any shares or other specified securities.

buy-back of any kind of shares or other specified securities cannot be made out of proceeds of an earlier issue of same kind of shares

b) Conditions for buy-back :

- buy-back is authorised by its articles;
- SR at GM of Company

Except - Buy-back is, 10% or less of total paid-up equity capital & free reserves of Co.; & such buy-back has been authorised by Board by means of a resolution passed at its meeting

- buy-back is 25% or less of aggregate of paid-up capital & free reserves of Co.
- Debt equity ratio is not more than 2:1
- All shares are fully paid - up
- listed on any recognised stock exchange is in accordance with regulations made by SEBI

c) no offer of buy-back, shall be made within a period of 1 year from date of closure of preceding offer of buy-back, if any.

d) Procedure before buy-back :

notice of meeting at which SR is proposed to be passed shall be accompanied by an explanatory statement stating -

- a full & complete disclosure of all material facts;
- necessity for buy-back;
- class of shares or securities intended to be purchased under buy back;
- amount to be invested under buy-back; &
- time limit for completion of buy-back

e) Time limit for completion of buy-back :

within 12 months from date of passing SR

f) Buy-Back from Whom? :

- from existing share holders or security holders on a proportionate basis; or
- from open market; or
- by purchasing securities issued under scheme of stock option or sweat equity

Buy back of securities (Sections 68-70)

Buy back is the re-acquisition by a co. of its own securities. It is a way of returning money to its investors.

j) Power of co. to purchase its own securities (Section 68)

g) Declaration of Solvency : before making buy-back, file with Registrar & the Securities & Exchange Board of India a declaration of solvency in form as may be prescribed & verified by an affidavit to the effect that Board has made a full inquiry into affairs of Co.

h) Extinguishment of Securities: Co. shall extinguish & physically destroy shares or securities so bought-back within 7 days of last date of completion of buy-back.

i) Cooling Period : Where a co. completes a buy-back of its shares or other specified securities under this section, it shall not make further issue of same kind of shares within a period of 6 months

j) Register of Buy Back :

Co shall maintain a register of shares or securities so bought, consideration paid for shares or securities bought-back, date of cancellation of shares or securities, date of extinguishing & physically destroying

k) Filing of Buy-back Return : File a return with Registrar and the Securities and Exchange Board of India, within 30 days

l) Penalty for Default :
Company- 1 lakh to 3 Lakh
Officer - Imprisonment - upto 3 years or
Fine - 1 Lakh to 3 Lakh or Both

ii) Transfer of certain sums to CRR account (Section 69)

a) Where a co. purchases its own shares out of free reserves or securities premium account, then a sum equal to nominal value of share so purchased shall be transferred to CRR account & details of such transfer shall be disclosed in balance sheet.

b) CRR Account may be utilized for payment of bonus shares

iii) Prohibition for buy-back in certain circumstances (Section 70)

a) No co. shall directly or indirectly purchase its own shares or other specified securities-

- Through any subsidiary co. including its own subsidiary co's; or
- Through any investment co. or group of investment co's; or

if a default, is made by co., in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend or repayment of term loan or interest payable to any financial institutions or banking co.;

SHARE CAPITAL AND DEBENTURES (Chart 4.10)

Debentures (Sections 71)

As per Section 2(30), debenture includes debenture stock, bonds or any other instrument of company evidencing debt, whether constituting charge on assets of company or not

Provided that:

- a) Instruments referred to in Chapter III-D of RBI Act, 1934; and
- b) such other instrument, as may be prescribed by CG in consultation with RBI, issued by company, shall not be treated as debenture

Companies (Share Capital & Debentures) Rules, 2014

The co. shall comply with requirements with regard to DRR & investment or deposit of sum in respect of debentures maturing during year ending on the 31st day of March of next year, in accordance with the conditions given below:-

(C) in unencumbered securities mentioned in sub-clause (a) to (d) & (ee) of section 20 of the Indian Trusts Act, 1882; in unencumbered bonds issued by any other co. which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882: Provided that the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.

i) Issue of debentures with an option to convert: co. may issue debentures with an option to convert such debentures into shares, either wholly or partly at time of redemption

vi) Debenture trustee to protect interest of debenture holders

x) On failure to redeem debentures/ to pay interest on debentures:

ii) No Co. shall issue any debentures carrying any voting rights.

vii) Liability of debenture trustee: Any provision contained in a trust deed for securing issue of debentures, or in any contract with debenture-holders secured by a trust deed, shall be void in so far as it would have effect of exempting a trustee thereof from, or indemnifying him against, any liability for breach of trust, where he fails to show degree of care & due diligence required of him as a trustee, having regard to provisions of trust deed conferring on him any power, authority or discretion

(a) DRR shall be created out of profits of the co. available for payment of dividend;

(b) Limits with respect to adequacy of DRR & investment or deposits, as the case may be, shall be as under:-

(i) DRR is not required for debentures issued by All India Financial Institutions regulated by RBI & Banking Companies for both public as well as privately placed debentures;

(ii) For other Financial Institutions within the meaning of clause (72) of section 2 of the Companies Act, 2013, DRR shall be as applicable to NBFC registered with RBI

(iii) For listed companies (other than All India Financial Institutions and Banking Companies as specified in sub-clause (i)), DRR is not required in the following cases-

(A) in case of public issue of debentures - A. for NBFCs registered with RBI under section 45-IA of the RBI Act, 1934 & for Housing Finance Companies registered with National Housing Bank;

B. for other listed companies;

(B) in case of privately placed debentures, for co's specified in sub-items A & B.

(iv) For unlisted companies, [other than All India Financial Institutions & Banking Companies as specified in sub-clause (i)] -

iii) Issue of secured debentures: Secured debentures may be issued by a co. subject to such terms & conditions as may be prescribed in Rule 18

viii) To pay interest & redeem debentures: A co. shall pay interest & redeem debentures in accordance with terms & conditions of their issue

(c) available for payment of dividend;

(d) in case of co. is covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by a company covered in item (A) or item (B) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), invest or deposit, as the case may be, a sum which shall not be less than 15% of the amt. of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi);

Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on 31st day of March of that year.

(v) for the purpose of sub-clause (v), the methods of deposits or investments, as the case may be, are as follows:-

(A) in deposits with any scheduled bank, free from any charge or lien;

(B) in unencumbered securities of the CG or any State Government;

iv) Creation of debenture redemption reserve (DRR) account: Co. shall create a DRR account out of profits of co. available for payment of dividend & amount credited to such account shall not be utilised by Co. except for redemption of debentures.

ix) Filing of petition before Tribunal by debenture trustee: Where at any time debenture trustee comes to a conclusion that assets of co. are insufficient or are likely to become insufficient to discharge principal amount as & when it becomes due, debenture trustee may file a petition before Tribunal. Tribunal may impose such restrictions on incurring of any further liabilities by co. as it may consider necessary in interests of debenture-holders.

xii) Specific performance of contract: A contract with co. to take up & pay for any debentures of Co. may be enforced by a decree for specific performance.

xiii) Procedure to be prescribed by CG: CG may prescribe procedure, for securing the issue of debentures, form of debenture trust deed, procedure for debenture-holders to inspect trust deed & to obtain copies thereof, quantum of debenture redemption reserve required to be created & such other matters.

v) Limitation on issue of prospectus/ offer / invitation to public: No co. shall issue a prospectus or make an offer or invitation to public or to its members exceeding 500 for subscription of its debentures, unless Co. has, before such issue or offer, appointed 1 or more debenture trustees & conditions governing appointment of such trustees shall be such as may be prescribed.

(v) For the purpose of sub-clause (v), the methods of deposits or investments, as the case may be, are as follows:-

(A) in deposits with any scheduled bank, free from any charge or lien;

(B) in unencumbered securities of the CG or any State Government;

(d) the amount credited to DRR shall not be utilized by the company except for the purpose of redemption of debentures."

ACCEPTANCE OF DEPOSITS BY COMPANIES (Chart 5.1)

Deposit

i) section 2(31) of the Companies Act, 2013, term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a co., but does not include such categories of amount as may be prescribed in consultation with RBI.

ii) following categories of amount may not be considered as deposit—

- a) Any amt received from CG or SG, or from any other source whose repayment is guaranteed by CG or a State Government, or any amt received from a local authority, or any amt received from a statutory authority constituted under an Act of Parliament or a State Legislature
- b) Any amount received from foreign Governments, foreign international banks, multilateral financial institutions etc
- c) amt received as a loan or facility from any banking co.
- d) amt received as a loan or financial assistance from Public Financial Institutions
- e) amt received against issue of commercial paper or any other instruments issued in accordance with guidelines by RBI
- f) amt received by a co. from any other co.
- g) amt received & held pursuant to an offer made in accordance with provisions of Act towards subscription to any securities so long as such amt is appropriated only against amt due on allotment of securities applied for

- h) any amt received from a person who, at time of receipt of amt, was a director of co.
- i) amt raised by issue of bonds or debentures secured by a first charge or a charge ranking pari passu with first charge on any assets, excluding intangible assets of Co. or bonds or debentures compulsorily convertible into shares of co. within 10 years
- j) Amt raised by issue of non-convertible debenture not constituting a charge on assets of Co. & listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
- k) amt received from an employee of co. not exceeding his annual salary under a contract of employment with co. in nature of non-interest bearing security deposit;
- l) non-interest bearing amt received or held in trust;
- m) Amt received in course of, or for purposes of, business of co. – as an advance for supply of goods or provision of services accounted for, as advance

- n) amt brought in by promoters of co. by way of unsecured loan in pursuance of stipulation of any lending financial institution or a bank
- o) amt accepted by a Nidhi co. in accordance with section 406 of the Act.
- p) amt received by way of subscription in respect of a chit under the Chit Fund Act, 1982
- q) amt received by co. under any collective investment scheme in compliance with regulations framed by SEBI.
- r) amt of 25L Rs. or more received by a start-up co., by way of a convertible note in a single tranche, from a person.
- s) amt received by a co. from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts & Mutual Funds registered with Securities & Exchange Board of India in accordance with regulations made by it.

ACCEPTANCE OF DEPOSITS BY COMPANIES (Chart 5.2)

Meaning of Depositor

It means -

- a) any member of co. who has made a deposit with co. in accordance with provisions of sub-section (2) of section 73 of the Act, or
- b) any person who has made a deposit with a public co. in accordance with provisions of section 76 of the Act.

Meaning of Eligible Company

It means a public co., having a net worth of not less than 100 cr Rs. or a turnover of not less than 500 cr Rs. & which has obtained prior consent of co. in GM by means of a SR & also filed said resolution with Registrar of Co's before making any invitation to Public for acceptance of deposits.

Prohibition on Acceptance of Deposits from Public (Section 73)

i) Restriction on acceptance of deposits from public :

- Exception -
- a) banking company,
 - b) Non-banking financial company
 - c) Housing Finance Company
 - d) other co. as CG may specify, after consultation with RBI

iii) Repayment of deposit :

Every deposit accepted by a co. shall be repaid with interest in accordance with terms & conditions of agreement.

iv) Failure on repayment of deposit :

depositor concerned may apply to Tribunal for an order directing co. to pay sum due or for any loss or damage incurred by him as a result of such non-payment & for such other orders as Tribunal may deem fit.

v) Application of amt of deposit repayment reserve account:

deposit repayment reserve account shall not be used by Co. for any purpose other than repayment of deposits

• Conditions:-

a) issuance of a circular to its members including therein a statement showing financial position of Co., credit rating obtained, total number of depositors & amt due towards deposits in respect of any previous deposits accepted by Co.

b) filing a copy of circular along with such statement with Registrar within 30 days before date of issue of circular;

c) depositing, on or before the 30th day of April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account

d) Certifying that co. has not committed any default in repayment of deposits accepted either before or after commencement of this Act or payment of interest on such deposits & where a default had occurred, company made good default & a period of 5 years had lapsed since date of making good default;

e) providing security, if any for due repayment of amt of deposit or interest thereon including creation of such charge on property or assets of Co.

• Exception :

a) which accepts from its members monies not exceeding 100% of aggregate of paid up share capital, free reserves & securities premium account; or

b) which is a startup, for 5 yrs from date of its incorporation; or

c) which fulfils all of following conditions, namely:-

- which is not an associate or a subsidiary co. of any other co.;
- if borrowings of such a co. from banks or financial institutions or any body corporate is less than twice of its paid up share capital or 50 cr Rs., whichever is lower; &

• such a co. has not defaulted in repayment of such borrowings subsisting at time of accepting deposits under this section:

Provided that company referred to in clauses (A), (B) or (C) shall file details of monies accepted to Registrar in such manner as may be specified.

ACCEPTANCE OF DEPOSITS BY COMPANIES (Chart 5.3)

According to the Companies (Acceptance of Deposits) Rules, 2014 :

Rule 3- Terms & Conditions of Acceptance of Deposits by Companies

i) On & from commencement of these rules,-

a) no co. shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice within period of less than 6 months or more than 36 months from date of acceptance or renewal of such deposit

b) such deposits shall not exceed 10% of aggregate of Paid- up share capital, free Reserves & securities premium account of Co. &

c) such deposits are repayable not earlier than 3 months from date of such deposits or renewal thereof.

ii) Where depositors so desire, deposits may be accepted in joint names not exceeding 3, with or without any of clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".

iii) No co. referred to in sub-section (2) of section 73 shall accept or renew any deposit from its members, if amt of such deposits together with amt of other deposits outstanding as on date of acceptance or renewal of such deposits exceeds 35 % of aggregate of Paid-up share capital, free Reserves & securities premium account of Co.

iv) No eligible co. shall accept or renew-

a) any deposit from its members, if amt of such deposit together with amt of deposits outstanding as on date of acceptance or renewal of such deposits from members exceeds 10% of aggregate of Paid-up share capital, free Reserves & securities premium account of co.

b) any other deposit, if amt of such deposit together with amt of such other deposits, other than deposit referred to in clause (a), outstanding on date of acceptance or renewal exceeds 25% of aggregate of PSC, free Reserves & securities premium account of Co.

v) No Government co. eligible to accept deposits under sec 76 shall accept or renew any deposit, if amt of such deposits together with amt of other deposits outstanding as on date of acceptance or renewal exceeds 35% of aggregate of its Paid-up share capital, free Reserves & securities premium account of Co.

vi) No co. referred to in sub-section (2) of section 73 or any eligible co. shall invite or accept or renew any deposit in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding maximum rate of interest or brokerage prescribed by RBI for acceptance of deposits by NBFC

vii) co. shall not reserve to itself either directly or indirectly a right to alter, to prejudice or disadvantage of depositor, any of terms & conditions of deposit, deposit trust deed & deposit insurance contract after circular or circular in form of advertisement is issued & deposits are accepted.

viii) a) Every eligible co. shall obtain, at least once in a year, credit rating for deposits accepted by it & a copy of rating shall be sent to ROC along with return of deposits in Form DPT-3.
b) credit rating shall not be below minimum investment grade rating or other specified credit rating for fixed deposits

Rule 6- Creation of security

i) For purposes of providing security, every co. referred to in sub-section (2) of section 73 & every eligible co. inviting secured deposits shall provide for security by way of a charge on its assets, excluding intangible assets of co. for due repayment of amt of deposit & interest thereon for an amt which shall not be less than amt remaining unsecured by deposit insurance :

ii) Security (not being in the nature of a pledge) for deposits shall be created in favour of a trustee for depositors on:
a) specific movable property of co., or
b) specific immovable property of co. wherever situated, or any interest therein.

ACCEPTANCE OF DEPOSITS BY COMPANIES (Chart 5.4)

Companies (Acceptance of Deposits) Rules, 2014

Rule 7- Appointment of Trustee for Depositors

i) No co. referred to in sub-sec (2) of sec 73 or any eligible co. shall issue a circular or advertisement inviting secured deposits unless co. has appointed one or more trustees for depositors for creating security for deposits : a written consent shall be obtained from trustee for depositors before their appointment & a statement shall appear in circular

ii) Co. shall execute a deposit trust deed in Form DPT-2 at least 7 days before issuing circular

iii) No person including a co. that is in business of providing trusteeship services shall be appointed as a trustee for depositors, if proposed trustee-

- a) is a director, KMP or any other officer or employee of co. or of its holding, subsidiary or associate co. or a depositor in co.;
- b) is indebted to Co., or its subsidiary or its holding or associate co. or a subsidiary of such holding co.;
- c) has material pecuniary relationship with co.;
- d) has entered into any guarantee arrangement in respect of principal debts secured by deposits or interest thereon

iv) No trustee for depositors shall be removed from office after issue of circular or advertisement & before expiry of his term except with consent of all directors present at a meeting of board.

Rule 14- Register of Deposits

i) Every co. accepting deposits shall maintain at its registered office one or more separate registers for deposits accepted or renewed, in which there shall be entered separately in case of each depositor following particulars, namely :

- a) name, address and PAN of depositor/s;
- b) particulars of guardian, in case of a minor;
- c) particulars of nominee;
- d) deposit receipt number;
- e) date & amount of each deposit;
- f) duration of deposit & date on which each deposit is repayable;
- g) rate of interest or such deposits to be payable to depositor;
- h) due date for payment of interest;

- i) mandate & instructions for payment of interest & for non-deduction of tax at source, if any
- j) date or dates on which payment of interest shall be made;

- k) details of deposit-insurance including extent of deposit-insurance-
- l) particulars of security or charge created for repayment of deposits

ii) entries specified in sub-rule (1) shall be made within 7 days from date of issuance of receipt duly authenticated by a director or secretary of company or by any other officer authorised by Board for this purpose.

iii) register referred to in sub-rule (1) shall be preserved in good order for a period of not less than 8 years from financial year in which latest entry is made in register.

Rule 16- Return of deposits to be filed with the Registrar

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

Rule 16A- Disclosures in the financial statement

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

Rule 17- Penal rate of interest

Every co. shall pay a penal rate of interest of 18% p.a. for overdue period in case of deposits, whether secured or unsecured, matured & claimed but remaining unpaid.

Rules 19- Applicability of section 73 and 74 to eligible companies

Pursuant to provisions of sub-sec (2) of sec 76 of Act, provisions of sections 73 & 74 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible co's

Rule 21- Punishment for contravention

Co. & every officer in default shall be punishable with fine which may extend to 5000 Rs. & where contravention is a continuing one, with a further fine which may extend to 500 Rs. for every day after first day during which contravention continues.

ACCEPTANCE OF DEPOSITS BY COMPANIES

(Chart 5.5)

Repayment of Deposits, Etc, Accepted Before Commencement of this Act (Section 74)

i) company shall-

a) file, within a period of 3 months from such commencement or from date on which such payments, are due, with Registrar a statement of all deposits accepted by co. & sums remaining unpaid on such amt with interest payable thereon along with arrangements made for such repayment

b) repay within 1 year from such commencement or from date on which such payments are due, whichever is earlier.

ii) Tribunal may on an application made by Co., after considering financial condition of Co., amt of deposit or part thereof & interest payable thereon & such other matters, allow further time as considered reasonable to Co. to repay deposit

iii) If a co. fails to repay deposit:-
co. shall, in addition to payment of amt of deposit or part thereof & interest due, be punishable with fine - 1 Cr Rs. to 10 Cr. Rs. & every officer shall be punishable with imprisonment which may extend to 7 yrs or with fine 25 Lakh Rs. to 2 Cr. Rs., or with both.

Acceptance of Deposits from Public by Certain Companies (Section 75)

i) a public co., having such net worth of not less than 100 cr. Rs. or turnover of not less than 500 cr. Rs., may accept deposits from persons
ii) provisions of this Chapter shall, mutatis mutandis, apply to the acceptance of deposits from public under this section.

Punishment for Contravention of Section 73 or Section 76 (Section 76A)

i) co. shall, in addition to payment of amt of deposit or part thereof & interest due, be punishable with fine which shall not be less than 1 Cr. Rs. but which may extend to 10 Cr. Rs.; &

ii) every officer in default shall be punishable with imprisonment which may extend to 7 years or with fine which shall not be less than 25 lakh Rs. but which may extend to 2 crore Rs., or with both

REGISTRATION OF CHARGE (Chart 6.1)

<p>Meaning of Charge section 2(16) - "charge" has been defined as an interest or lien created on property or assets of a co. or any of its undertakings or both as security & includes a mortgage.</p>	<p style="text-align: center;">Duty to Register Charges, Etc. (Section 77)</p> <p>1) It shall be duty of Co. creating charge within/outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, & situated in/outside India, to register particulars of charge signed by Co. & charge-holder together with instruments, if any, creating such charge in such form, on payment of such fees & in prescribed manner, with Registrar within 30 days of its creation: Provided that Registrar may, on application by Co, allow such registration to be made</p> <p>(a) in case of charges created before the commencement of Companies (Amendment) Act, 2019, within period of 300 days of such creation; or</p> <p>(b) in case of charges created on or after commencement of Companies (Amendment) Act, 2019, within period of 20 days of such creation, on payment of such additional fees as may be prescribed: Provided further that if reg. is not made within period specified</p> <p>(a) in clause (a) to first proviso, registration of charge shall be made within 6 months from date of commencement of Companies (Amendment) Act, 2019, on payment of such additional fees as may be prescribed & different fees may be prescribed for different classes of companies;</p> <p>(b) in clause (b) to first proviso, Registrar may, on an application, allow such registration to be made within further period of 60 days after payment of such advalorem fees as may be prescribed. Provided also that any subsequent registration of charge shall not prejudice any right acquired in respect of any property before charge is actually registered.</p> <p>Provided also that this section shall not apply to such charges as may be prescribed in consultation with RBI</p>	<p style="text-align: center;">Application for Registration of Charge (Section 78)</p> <p>where co. fails to register charge within period 30 days, person in whose favour charge is created may apply to Registrar for registration of charge along with instrument created for charge, & Registrar may, on application, within period of 14 days after giving notice to co., unless co. itself registers charge or shows sufficient cause why such charge should not be registered, allow such registration on payment of such fees, as may be prescribed</p>	<p style="text-align: center;">Section 77 to Apply in Certain Matters (Section 79)</p> <p>i) Modification of charge : It includes variation of terms of agreement including variation of rate of interest which may be by mutual agreement or by operation of law. Even if rights of charge holder are assigned to 3rd party, it will be regarded as modification</p> <p>ii) Examples of modification- a) where charge is modified by varying any terms & conditions of existing charge by agreement; b) where modification is in pursuance of an agreement for enhancing or decreasing limits; c) where modification is by ceding a pari passu charge; d) change in rate of interest e) change in repayment schedule of loan f) partial release of charge on a particular asset or property.</p>
	<p>2) Where charge is registered with the Registrar under sub-section (1), he shall issue certificate of registration of such charge in such form & in such manner as may be prescribed to Co, &, as case may be, to person in whose favour charge is created</p> <p>3) No charge created by Co. shall be taken into account by the liquidator appointed under this Act or IBC 2016, as case may be, or any other creditor unless it is duly registered under sub-section (1) & certificate of registration of charge is given by Registrar under sub-section (2)</p> <p>4) Nothing in sub-section (3) shall prejudice contract or obligation for repayment of money secured by charge</p> <p>• For purposes of 1st proviso & clause (b) of 2nd proviso to section 77(1), Registrar may, on being satisfied that Co. had sufficient cause for not filing particulars & instrument of charge, if any, within 30 days of date of creation of charge including modification thereto, allow registration of same after 30 days but within period specified in said provisos, on payment of fee, additional fee or advalorem fee, as may be applicable Rules</p> <p>• Application under sub-rule (1) shall be made in Form No.CHG-1 & Form No.CHG-9 supported by declaration from Co. signed by its CS or director that such belated filing shall not adversely affect rights of any other intervening creditors of Co.</p>	<p>iii) Sec 79 of the Companies Act, 2013, says that section 77 relating to registration of charges shall, so far as may be, apply to-</p> <p>a) a co. acquiring any property subject to a charge within meaning of that section; or</p> <p>b) any modification in terms or conditions or extent or operation of any charge registered under that sec.</p>	

REGISTRATION OF CHARGE (Chart 6.2)

Date of Notice of Charge (Section 80)

where any charge on any property or assets of a co. or any of its undertakings is registered under sec 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of charge from date of such registration.

Company to Report Satisfaction of Charge (Section 82)

i) Co. to intimate registrar on satisfaction of charge :

a co. shall give intimation to Registrar in prescribed form [Form CHG 1], of payment or satisfaction in full of any charge registered under this Chapter within a period of 30 days from date of such payment or satisfaction

Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed

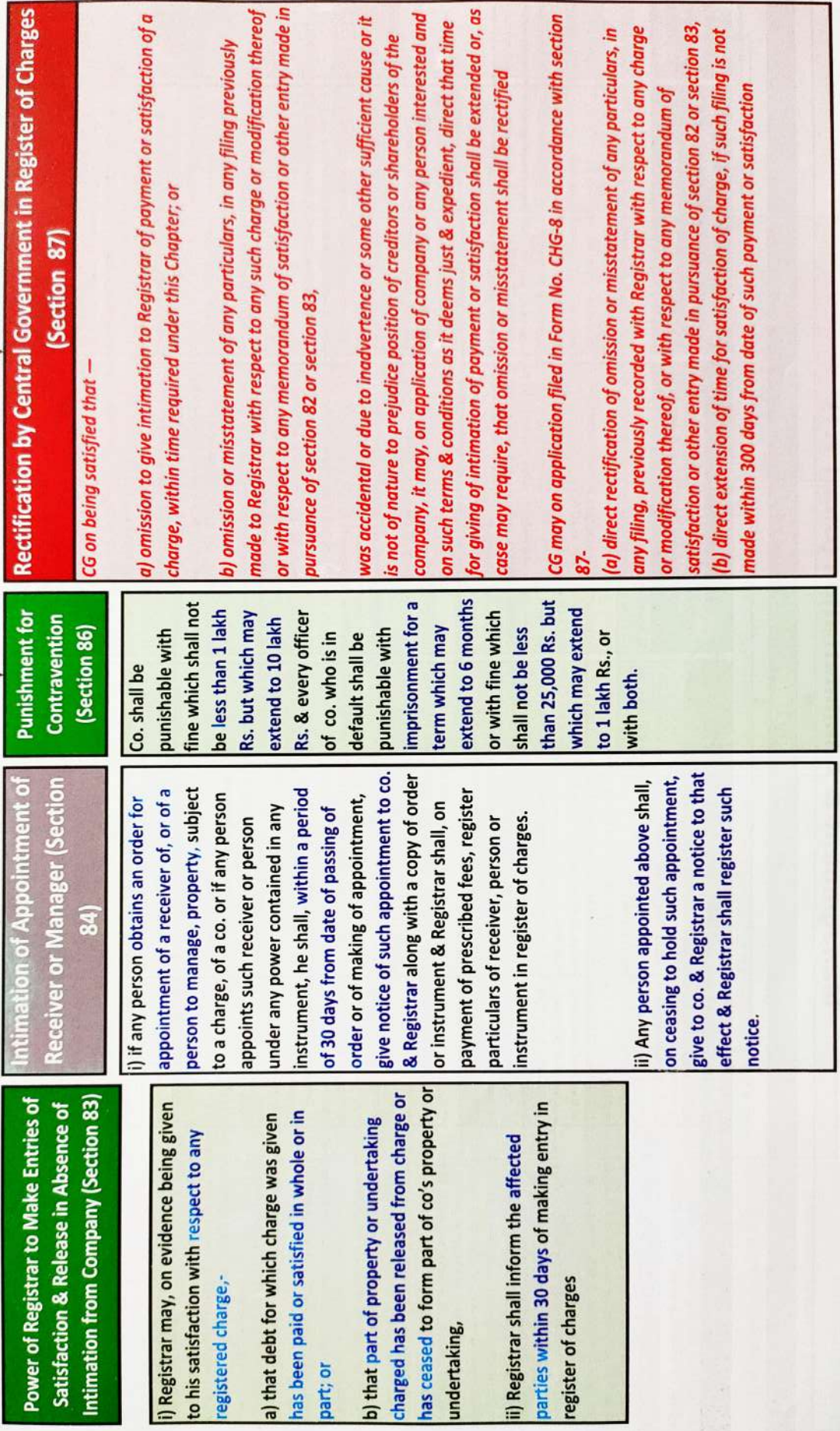
ii) Notice to holder of charge by registrar :

Registrar shall, on receipt of intimation, cause a notice to be sent to holder of charge calling upon him to show cause within such time not exceeding 14 days

iii) If any cause is shown, Registrar shall record a note to that effect in the register of charges & shall inform co.

iv) No effect of this section on powers of Registrar :

REGISTRATION OF CHARGE (Chart 6.3)



Power of Registrar to Make Entries of Satisfaction & Release in Absence of Intimation from Company (Section 83)

- i) Registrar may, on evidence being given to his satisfaction with respect to any registered charge,
 - a) that debt for which charge was given has been paid or satisfied in whole or in part; or
 - b) that part of property or undertaking charged has been released from charge or has ceased to form part of co's property or undertaking,
- ii) Registrar shall inform the affected parties within 30 days of making entry in register of charges

Intimation of Appointment of Receiver or Manager (Section 84)

- i) if any person obtains an order for appointment of a receiver of, or of a person to manage, property, subject to a charge, of a co. or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of 30 days from date of passing of order or of making of appointment, give notice of such appointment to co. & Registrar along with a copy of order or instrument & Registrar shall, on payment of prescribed fees, register particulars of receiver, person or instrument in register of charges.
- ii) Any person appointed above shall, on ceasing to hold such appointment, give to co. & Registrar a notice to that effect & Registrar shall register such notice.

Punishment for Contravention (Section 86)

Co. shall be punishable with fine which shall not be less than 1 lakh Rs. but which may extend to 10 lakh Rs. & every officer of co. who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than 25,000 Rs. but which may extend to 1 lakh Rs., or with both.

Rectification by Central Government in Register of Charges (Section 87)

- CG on being satisfied that --
- a) omission to give intimation to Registrar of payment or satisfaction of a charge, within time required under this Chapter; or
 - b) omission or misstatement of any particulars, in any filing previously made to Registrar with respect to any such charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,
- was accidental or due to inadvertence or some other sufficient cause or it is not of nature to prejudice position of creditors or shareholders of the company, it may, on application of company or any person interested and on such terms & conditions as it deems just & expedient, direct that time for giving of intimation of payment or satisfaction shall be extended or, as case may require, that omission or misstatement shall be rectified
- CG may on application filed in Form No. CHG-8 in accordance with section 87-
- (a) direct rectification of omission or misstatement of any particulars, in any filing, previously recorded with Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,
 - (b) direct extension of time for satisfaction of charge, if such filing is not made within 300 days from date of such payment or satisfaction

Management & Administration (Chart 7.1)

Registers

Section 88 – Register of members

Update	Section 88(4) - Foreign Register (Rule 7*)
<p>1) Changes relating to status of member be effectively captured & updated in relevant register</p> <p>2) Change in status due to death or insolvency or change of name or due to any other reason shall be made in respective registers</p> <p>Section 88(2)</p> <p>1) Register maintained shall include index of names included therein</p> <p>2) Rule 6 - Maintenance of index is not necessary where number of members is less than 50</p> <p>3) Company shall make necessary entries in index simultaneously with entry for allotment or transfer of any security in such Register</p> <p>Section 88(3)</p> <p>Register & index of beneficial owners maintained by depository under section 11 of Depositories Act, 1996, shall be deemed to be corresponding register & index for purposes of this Act</p>	<p>1) Company which has share capital/ issued debentures/ other security may keep in any country outside India, part of register if authorised by its articles</p> <p>2) Company shall, within 30 days from date of opening of any foreign register, file with ROC notice of situation of office in Form MGT- 3 along with fee</p> <p>3) In event of any change in situation of office/ discontinuance within 30 days file notice with ROC of such change or discontinuance</p> <p>4) Foreign register be deemed to be part of company's principal register, be maintained in same format</p> <p>5) It shall be open to inspection & extracts may be taken & copies thereof may be required</p> <p>6) Advertisement before closing register be inserted in at least two newspapers circulating in place wherein foreign register is kept</p> <p>7) If foreign register is kept by Co. outside India, decision of appropriate competent authority in regard to rectification of register shall be binding</p> <p>8) The Co. shall-</p> <ul style="list-style-type: none"> - Transmit to its registered office in India, copy of every entry in foreign register within 15 days after entry is made; & - Keep at such office duplicate register for purposes of this Act, be deemed to part of principal register - Shares/ debentures/ other security, registered in any other security, registered in foreign register shall be distinguished from shares/ debentures/ other security, registered in principal register & in every other foreign register; & no transaction with respect to any shares or as case may be, debentures or any security, registered, be registered in any other register - Co. may discontinue keeping of any foreign register & all entries in that register be transferred to other foreign register kept by company outside India or to principal register
<p>Co. shall maintain register of members, debenture-holders & other security holders</p> <p>Register of Members</p> <p>1) Holding of each class of equity & preference shares by each member residing in / outside India to be shown separately in register of members</p> <p>2) Rule 5* - Entries to be done within 7 days of date of approval by Board or Committee by approving allotment or transfer</p> <p>3) Registers be maintained at registered office of company unless special resolution is passed in GM authorising keeping of register at any other registered office is situated or any other place in India in which more than 1/10th of total members entered in register of members reside</p> <p>4) Order passed by authority attaching shares or relating to dividends & hypothecation & pledge of shares required to be entered in register of members</p> <p>5) Rule 3 - Every company limited by shares shall from date of its registration, maintain register of its members in Form MGT - 1</p> <p>6) In case of company not limited by shares, register shall contain following particulars, in respect of each member:</p> <ul style="list-style-type: none"> - Name of member, address, email address; PAN/ CIN; Nationality; in case member is minor - name of his guardian & date of birth of member, name & address of nominee; - Date of becoming member; - Date of cessation; - Amount of guarantee, if any; - Any other interest, if any, & - Instructions, if any, given by member with regard to sending of notices, etc. <p>Register of Debenture-holders</p> <p>Co. which issues or allots debentures or any other security shall maintain separate register for debenture holder or security holder in Form- MGT-2</p>	<p>Section 88(4) - Foreign Register (Rule 7*)</p> <p>1) Company which has share capital/ issued debentures/ other security may keep in any country outside India, part of register if authorised by its articles</p> <p>2) Company shall, within 30 days from date of opening of any foreign register, file with ROC notice of situation of office in Form MGT- 3 along with fee</p> <p>3) In event of any change in situation of office/ discontinuance within 30 days file notice with ROC of such change or discontinuance</p> <p>4) Foreign register be deemed to be part of company's principal register, be maintained in same format</p> <p>5) It shall be open to inspection & extracts may be taken & copies thereof may be required</p> <p>6) Advertisement before closing register be inserted in at least two newspapers circulating in place wherein foreign register is kept</p> <p>7) If foreign register is kept by Co. outside India, decision of appropriate competent authority in regard to rectification of register shall be binding</p> <p>8) The Co. shall-</p> <ul style="list-style-type: none"> - Transmit to its registered office in India, copy of every entry in foreign register within 15 days after entry is made; & - Keep at such office duplicate register for purposes of this Act, be deemed to part of principal register - Shares/ debentures/ other security, registered in any other security, registered in foreign register shall be distinguished from shares/ debentures/ other security, registered in principal register & in every other foreign register; & no transaction with respect to any shares or as case may be, debentures or any security, registered, be registered in any other register - Co. may discontinue keeping of any foreign register & all entries in that register be transferred to other foreign register kept by company outside India or to principal register

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

- 1) Member not holding beneficial interest in Co., any person holding beneficial interest in shares shall file declaration to company of beneficial interest within 30 days & company file return to ROC in 30 days
- 2) Any Changes in beneficial interest also to be declared
- 3) Co. shall make note of above incidents, as & when they occur & intimate to RoC
- 4) Rule 9 -
 - Person whose name is entered in register of members of company as holder of shares but does not hold beneficial interest in such share, shall file declaration in Form MGT - 4, in duplicate, within 30 days from date on which name is entered in register of members
 - Change in beneficial interest of same be intimated to company within 30 days in Form MGT - 4, in duplicate
 - Every person holding & exempted from furnishing declaration or acquiring beneficial interest in shares of co, not registered in his name, shall file declaration in Form MGT - 5 in duplicate, within 30 days after acquiring beneficial interest in shares of Co.
 - Where declaration is received by Co. u/s 89, Co. shall make note of such declaration in register of members & file return in Form MGT - 6 with RoC in respect of such declaration, within period of 30 days from date of receipt of declaration with required fee
 - For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to - i) exercise or cause to be exercised any or all of the rights attached to such share; or ii) receive or participate in any dividend or other distribution in respect of such share.

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

- 1) Co. may close register of members, debenture-holders & other security holders by giving minimum 7 days' notice or such lesser period as specified by SEBI
- 2) Registers may be closed for period not exceeding 30 days at any one time & for aggregate period of 45 days in one year
- 3) Register is closed without giving notice or after giving shorter notice or for continuous period or aggregate period in excess of limits specified company & every officer in default be liable to penalty of Rs. 5,000 per day subject to maximum of Rs. 1,00,000 during which register is kept closed
- 4) Offence is compoundable offence u/s 441
- 5) Private companies are exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of registers
- 6) Rule 10 - Co. closing register of members or debenture holders or other security holders shall give at least 7 days previous notice & in such manner, as may be specified by SEBI; if such company is listed company or intends to get its securities listed, by advertisement at least once in vernacular newspaper in principal vernacular language of district & having wide circulation in place where registered office of company is situated & at least once in English language in English newspaper circulating in that district & having wide circulation in place where registered office of company is situated & published notice on website as may be notified by CG & on website, if any, of Co.

Section 95 - Registers, etc. to be evidence

Registers, indices & copies of annual return shall be prima facie evidence of any matter

Management & Administration (Chart 7.2)

Section 90 - Investigation of beneficial ownership of shares in certain cases

1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust & persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or right to exercise, or actual exercising of significant influence or control as defined in clause (27) of section 2, over company (herein referred to as "significant beneficial owner"), shall make a declaration to company, specifying nature of his interest & other particulars, in such manner & within such period of acquisition of beneficial interest or rights & any change thereof, as may be prescribed

Provided that the CG may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

2) Every company shall maintain a register of interest declared by individuals under sub-section (1) & changes therein which shall include name of individual, his date of birth, address, details of ownership in company & such other prescribed details

3) The register maintained under sub-sec (2) shall be open to inspection by any member of company on payment of such fees as may be prescribed.

4) Every co. shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form & manner as may be prescribed.

(4A) Every co. shall take necessary steps to identify an individual who is a significant beneficial owner in relation to co. & require him to comply with provisions of this section.

5) A company shall give notice, in prescribed manner, to any person (whether or not a member of the company) whom the co. knows or has reasonable cause to believe -

- to be significant beneficial owner of co.
- to be having knowledge of identity of significant beneficial owner or another person likely to have such knowledge; or
- to have been a significant beneficial owner of company at any time during 3 years immediately preceding date on which notice is issued, & who is not registered as a significant beneficial owner with the company as required under this section

6) The information required by notice under sub-section (5) shall be given by concerned person within a period not exceeding 30 days of date of notice.

7) The company shall, -

- where that person fails to give company info. required by notice within time specified therein;
- or
- where information given is not satisfactory, apply to Tribunal within a period of 15 days of expiry of period specified in notice, for an order directing that shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to shares & such other matters as may be prescribed.

8) On any application made under sub-sec. (7), Tribunal may, after giving an opportunity of being heard to parties concerned, make such order restricting rights attached with shares within a period of 60 days of receipt of application or such other period as may be prescribed.

9) The company or person aggrieved by order of Tribunal may make an application to Tribunal for relaxation or lifting of restrictions placed under sub-section (8), within a period of 1 year from date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed

(9A) The CG may make rules for the purposes of this section

10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees 4 or with both and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

11) If a company, required to maintain register under sub-section (2) & file information under sub-section (4), or required to take necessary steps under sub-section (4A) fails to do so or denies inspection as provided therein, company & every officer in default shall be punishable with fine which shall not be less than 10L rupees but which may extend to 50L rupees & where failure is a continuing one, with a further fine which may extend to 1000 rupees for every day after first during which failure continues.

12) If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in declaration made under this section, he shall be liable to action under section 447

Annual Return

Section 92 - Annual Return

- 1) Company required to file with RoC, annual return as prescribed in section 92, in Form MGT - 8 containing particulars as they stood on close of financial year regarding -
 - a) its registered office, principal business activities, particulars of its holding, subsidiary & associate companies;
 - b) its shares, debentures & other securities & shareholding pattern;
 - c) its members & debenture-holders along with changes therein since close of previous financial year
 - d) its promoters, directors, KMP along with changes therein since close of previous financial year;
 - e) meetings of members or class thereof, Board & its various committee along with attendance details;
 - f) aggregate amount of remuneration drawn by directors;
 - g) penalty or punishment imposed on Co., its directors or officers & details of compounding of offences & appeals
 - h) matters relating to certification of compliances, disclosures as may be prescribed;
 - i) details, in respect of shares held by or on behalf of Foreign Institutional Investors; and
 - j) such other matters as may be prescribed & signed by director & CS, or company secretary in practice
- 2) In relation to OPC, small company & private company (if such private company is startup), annual return shall be signed by CS, or where there is no CS, by director of Co.

If any company fails to file its annual return under, before expiry of period specified therein, such Co. its every officer who is in default shall be liable to penalty of Rs. 50,000/- & in case of continuing failure, with further penalty of Rs. 100 for each day during which such failure continues, subject to maximum of Rs. 5,00,000/-

Section 94 – Place of keeping & inspection of registers, returns, etc

- 1) Registers required to be kept & maintained by company u/s 88 & copies of annual return filed u/s 92 shall be kept at registered office of Co.
- 2) Can also be kept at a place other registered office, where more than 1/10th of total members reside; if approved by Special Resolution
- 3) Registers & indices shall be open to inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours, except when they are closed under provisions of section 88, without payment of any fees & any other person on payment of fees
- 4) They shall be open for inspection during business hours, at such reasonable time on every working day as board may decide upon payment of fees as may be specified in articles of association of company, but which may not exceed Rs. 50 for each inspection. Also, reasonable time shall be not less than 2 hours on every working day for which inspection shall be open by Co.
- 5) Member, debenture-holder or security holder or beneficial owner can take extracts during any business without payment of any fee or can also get copies thereof with payment of fee not exceeding Rs. 10 for each page. Such copies or entries or return shall be supplied within 7 days of deposit of fee "Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or for taking extracts or copies under this sub-section"

Rule 15 – Preservation of register of members etc. & annual return

- 1) Register of members along with index shall be preserved permanently & be kept in custody of company secretary of company or any other person authorised by Board for such purpose
- 2) Register of debenture-holder or any other security holder along with index be preserved for period of 8 years from date of redemption of debentures or securities, as the case may be, & shall be kept in custody of CS or any other person authorized by Board
- 3) Copies of all annual returns prepared u/s 92 & copies of all certificates & documents annexed thereto be preserved for period of 8 years from date of filing with RoC
- 4) Foreign Register be preserved permanently, unless it is discontinued & all entries are transferred to any other foreign register or to principal register. Foreign register of debenture- holder or any other security holder shall be preserved for period of 8 years from date of redemption of debenture or securities 5) If any inspection or making of any extract or copy required under this section is refused, Co. & every officer in default, be liable for default, to penalty of Rs. 1,000 for every day subject to maximum of Rs. 1,00,000 during which refusal or default continues

Management & Administration (Chart 7.4)

Section 101 - Notice of a meeting

Meeting held at shorter notice:

- 1) GM may be called after giving shorter notice than that specified if consent, in writing or by electronic mode, is accorded thereto-
 - i) in case of annual general meeting, by not less than 95% of members entitled to vote thereat; &
 - ii) in case of any other general meeting, by members of company—
 - a) holding, if company has share capital, majority in number of members entitled to vote & who represent not less than 95% of such part of PSC of company as gives right to vote at meeting; or
 - b) having, if company has no share capital, not less than 95% of total voting power exercisable at that meeting
- 2) Where any member of company is entitled to vote only on some resolution or resolutions to be moved at meeting & not on others, those members shall be taken into account for purposes of this sub-section in respect of former resolution or resolutions & not in respect of later
- 3) Valid notice must state day, date, time & place of meeting & shall contain statement of business to be transacted in that meeting. It must be issued on authority of BOD under name of authorised official, any accidental omission to give notice to, or non-receipt of such notice to any member or other person who is entitled to such notice for any meeting shall not invalidate proceedings of meeting
- 4) This essentially means that omission must not be designed or deliberate
- 5) Failure to send notice to member, under belief that it will not reach him at address mentioned in register of members is deliberate & not accidental, even if belief is based on mistaken impression
- 6) Onus is on company to prove that omission was not deliberate

1) In order to properly call general meeting, notice should be sent at least 21 clear days before meeting, to all members, legal representative of any deceased member or assignee of insolvent members, auditors & directors, in writing or electronic mode

- Company cannot curtail by its articles of association requirement of 21 clear days
- 21 clear days mean that date on which notice is served & date of meeting are excluded for sending notice
- 2) Rule 18 - sending of notices through electronic mode has been statutorily recognized by Act
- Notice may be sent through e-mail as Text; or attachment to e-mail; or notification providing electronic link; or URL for accessing such notice
- e-mail shall be addressed to person entitled to receive such e-mail as per records of company as provided by depository

Section 102 - Explanatory Statement to be annexed to notice

- 1) Where special business to be transacted at company's general meeting, then 'Explanatory Statement' should be annexed to notice calling such general meeting, which must specify nature of concern or interest of every director or manager & every KMP & relatives of director/manager of company
- 2) Such statement shall also include relevant information & facts that may enable members to understand meaning, scope & implications of items of business & to take decision thereon
 - Ordinary business v/s Special business:
 - a) Consideration of financial statement & reports of BOD & auditors
 - b) Appointment of, & fixing of remuneration of auditors
 - c) Declaration of any dividend
 - d) Appointment of Directors in place of those retiring
- At AGM, all other businesses except ones stated above are special business
- At EGM, every business transacted is special business
- 3) Proviso to section 102(2) sets out that where item of special business which is to be transacted at meeting relates to or affects any other company, then extent of shareholding interest in that other company of every promoter, director, manager, & of every KMP of first mentioned company shall, if extent of such shareholding is not less than 2% of PSC of that company, shall also be set out in statement
- 4) In case business refers to document which is to be considered at meeting, then time & place where such document can be inspected should also be specified in explanatory statement
- 5) In case of non-disclosure or insufficient disclosure in any statement made by promoter, director, manager or other KMP which results into any benefit for themselves or their relatives, then same profit derived shall have to be compensated by him

Ratification of Statutory Auditor at every subsequent AGM is neither appointment nor re-appointment, since appointment has already been made in first AGM for next 5 years. Therefore, ratification of continuation will be ordinary business

If any default is made in complying with provisions of this section, every promoter, director, manager or other KMP of Co. in default be liable to penalty of Rs. 50,000/- or 5 times amount of benefit accruing to promoter, director, manager or other KMP or any of his relatives, whichever is higher

Section 103 - Quorum for meetings

Unless articles of company provide for larger number, quorum for meeting shall be as follows -

Public Company:

- a) If number of members is not more than 1000, quorum shall be 5 members personally present
- b) If number of members is not more than 1000, but up to 5000, then quorum shall be 15 members personally present
- c) If number of members exceeds 5000, then quorum shall be 30 members personally present

Private Company:

Quorum - 2 members personally present

- Adjourned Meeting due to want of Quorum-
- a) If required quorum is not present within half hour, meeting shall stand adjourned for next week at same time & place or such other time & place as decided by Board of Directors
- b) In case meeting was called by requisitionist u/s 100 of Act, then same shall stand cancelled
- c) In case of adjourned meeting or change of day, time or place of meeting u/s 103(2), company shall not less than 3 days' notice to members either individually or by publishing advertisement in newspaper

Where quorum is not present in adjourned meeting also within half hour, then members present shall form quorum

Section 104 - Chairman of meeting

- 1) Unless articles of Co. otherwise provide, members, personally present, shall elect among themselves to be Chairman by show of hands
- 2) If poll is demanded on election of Chairman, Chairman elected by show of hands shall continue to be Chairman of meeting until some other person is elected as Chairman as result of poll
- 3) Chairman of meeting, one who manages meetings and ensures that required decorum of meeting is maintained at all times, till meeting is concluded & post that, executes minutes of meeting
- 4) Chairman has prima facie authority to decide all questions which arise at meeting & which require decision at time. In order to fulfill his duty properly, he must observe strict impartiality, even though he must be personally strongly opposed to any matter
- 5) Chairman has casting vote in Board Meetings & general meetings, if specifically empowered by articles of Company

(casting vote means that in event of equality of vote on particular business being transacted at meeting, Chairman of meeting shall have right to cast second vote)

If there is no provision in articles for casting vote, ordinary resolution on which there is equality of votes is deemed to be dropped

Management & Administration (Chart 7.5)

Section 105 - Proxies

- 1) Member who is entitled to attend & vote at meeting of company shall be entitled to appoint another person as proxy to attend & vote at meeting on his behalf
However, proxy shall not have right to speak at such meeting & shall not be entitled to vote except on poll
- 2) Unless articles of Co. otherwise provide, this sub-section shall not apply to company not having share capital. CG may prescribe classes of companies whose members shall not be entitled to appoint another person as proxy
- 3) Person appointed as proxy shall act on behalf of such member or number of members not exceeding 50 & holding in aggregate not more than 10 % of total share capital of company carrying voting rights. However, member who is holding more than 10 per cent of total share capital of Company carrying voting rights may appoint single person as proxy & such person shall not act as proxy for any other person or shareholder
- 4) Rule 19 - appointment of proxy shall be in Form MGT - 11
Restriction on maximum number of members (50) & shareholding (10 percent) that proxy holder can represent
Only member can be proxy holder in company registered under section 8 of Companies Act, 2013
- 5) As compliance requirement, every notice calling meeting of company shall state statement with reasonable prominence that 'a member who is entitled to attend & vote at meeting, is entitled to appoint proxy, or where that is allowed, one or more proxies, & that proxy need not be member of company
6) Proxy received 48 hours before meeting will be valid even if articles provide for longer period
- 7) Rule 20 - Applicable to listed companies: Member who has cast his vote will not be entitled to vote at annual general meeting as once vote is cast member will not be entitled to change it subsequently.
Hence member who has cast his vote through electronic voting cannot be permitted to appoint proxy although member may personally attend meeting.
- 8) Inspection of proxies during meeting & 24 hours before meeting before its commencement, & inspection is to be given only during business hours. At least 3 days' notice in writing is required to be given to company for conducting inspection

Section 111 - Circulation of Member's Resolutions

- 1) Company shall, on requisition in writing of such number of members, as required in section 100 (Calling of EGM), give notice to members of any resolution which may properly be moved & is intended to be moved at meeting; & circulate to members any statement with respect to matters referred to in proposed resolution or business to be dealt with at that meeting
- 2) Co. shall not be bound under this section to give notice of any resolution or to circulate any statement, unless-
 - a) copy of requisition signed by requisitionists (or two or more copies which, between them, contain signatures of all requisitionists) is deposited at registered office of company,-
 - i) in case of requisition requiring notice of resolution, not less than six weeks before meeting;
 - ii) in case of any other requisition, not less than two weeks before meeting; and
- b) there is deposited or tendered with requisition, sum reasonably sufficient to meet company's expenses in giving effect thereto.
- 3) After copy of requisition requiring notice of resolution has been deposited at registered office. AGM is called on date within 6 weeks after copy has been deposited, copy, although not deposited within time required by this subsection, shall be deemed to have been properly deposited for purposes thereof
- 3) Co. shall not be bound to circulate any statement, if on application either on behalf of company or of any other person who claims to be aggrieved, then CG, by order, declares that rights conferred are being abused to secure needless publicity for defamatory matter
- 4) Order made may direct that cost incurred by Co. shall be paid to Co. by requisitionists, notwithstanding that they are not parties to application
- 5) If any default is made in complying with provisions of this section, company & every officer in default shall be liable to penalty of Rs. 25,000/-

Section 112 - Representation of President & Governors in Meeting of Companies to which they are Member

President of India or Governor of State, if he is member of company, may appoint such person as he thinks fit to act as his representative at any meeting & shall be entitled to exercise same rights & powers including right to vote to proxy & postal ballot, as President or, as case may be, Governor could exercise as member of company

Section 113 - Representations of Corporations Meeting of Companies & Creditors

- 1) Body corporate, whether company within meaning of this Act or not, may-
 - a) if it is member of company by resolution of its BOD or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of company, or meeting of any class of members of company;
 - b) if it is creditor, including holder of debentures, of company, by resolution of its directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of any creditors of Co.
- 2) Person authorized by resolution as above, shall be entitled to exercise same rights & powers, including right to vote by proxy & by postal ballot, on behalf of body corporate which he represents as that body could exercise if it were individual member, creditor or holder of debentures of Co.

Management & Administration (Chart 7.6)

Voting

Section 106 - Restriction on voting rights

- 1) It overrules whole of Companies Act, 2013 & provides that AOA may provide that no member shall exercise any voting right in respect of any share registered in his name on which any amount is due from him on calls or any other sums payable to Co., or in regard to which Co. has exercised right of lien
Also, such member can't sign requisition for EGM
- 2) Co. shall not prohibit any member from exercising his voting rights on any other ground except grounds mentioned in (1)
- 3) On poll taken at meeting, member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, need not use all his votes or cast in same way all votes he uses

Section 107 - Voting by show of hands

- 1) Unless voting is demanded by way of poll or by electronic means, voting should be by way of show of hands in first instance
- 2) Declaration by Chairman of meeting in minutes books shall be conclusive evidence that resolution is passed

Section 108 - Voting by electronic means

- 1) Every Listed Company & company having not less than 1000 members shall provide to its members facility to exercise their right to vote by electronic means
- 2) Notice of meeting shall be sent to all the members, directors & auditors of company
- 3) Notice also to be placed on website of the Co.
- 4) Notice shall clearly state:
 - Co. is providing facility of e-voting
 - Members who have not already cast their vote by remote e-voting be able to exercise their right at meeting
 - Process & manner for e-voting
 - Time schedule including time during which votes may be cast by remote e-voting
 - Details about login ID
 - Process & manner for generating or receiving password
- 5) Remote e-voting shall remain open for not less than three days & close at 5.00 p.m. on date preceding general meeting
- 6) At the end of remote e-voting period, facility shall forthwith be blocked
- 7) BOD shall appoint one/ more scrutinizer (CA/ CS/ Cost Accountant/ Advocate in practice)
- 8) Scrutinizer shall, immediately after conclusion of voting at GM, first count votes cast, thereafter unblock votes cast through remote e-voting in presence of at least 2 witnesses not in employment of Co.
- 9) He shall make consolidated scrutinizer's report of total votes cast in favour or against not later than 3 days of conclusion of meeting, to Chairman or a person authorized by him in writing who shall countersign same

Section 110 - Voting by Postal Ballot

- 1) Central Government may declare items of business that can be transacted only by postal ballot
 - 2) Any item of business required to be transacted by means of postal ballot may be transacted at general meeting by Co. which is required to provide facility to members to vote by electronic means u/s 108, in manner provided in that section
 - 3) Following items of business shall be transacted only by means of voting through postal ballot:
 - a) alteration of the objects clause of MOA
 - b) alteration of AOA
 - c) change in place of registered office outside the local limits
 - d) change in objects for which a company has raised money from public
 - e) issue of shares with differential rights as to voting or dividend
 - f) variation in the rights (g) buy-back of shares
 - h) election of Small Shareholder Director
 - i) sale of the whole or substantially the whole of an undertaking of Co.
 - j) giving loans or extending guarantee or providing security
 - Provided that aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, may be transacted at GM by Co. which is required to provide facility to members to vote by electronic means u/s 108, in manner provided in that section
- One Person Company & other companies having members up to 200 are not required to transact any business through postal ballot

Management & Administration (Chart 7.7)

Resolutions

Section 114 - Ordinary & Special Resolution	Section 115 - Resolutions requiring special notice	Section 116 - Resolutions passed at adjourned meeting	Section 117 - Resolutions & agreements to be filed
<p>• Ordinary Resolutions: Passed by simple majority. Votes cast in favour of resolution, by any mode of voting should exceed votes cast against it.</p> <p>• Special Resolutions: Passed by 75% majority. It is duly specified in notice, calling general meeting & votes cast in favour is 3 times votes cast against resolution.</p> <p>• Characteristics of Special Resolution:</p> <ol style="list-style-type: none"> 1) Specified Majority - 75% 2) Resolution shall be set out in notice 3) Notice must state that resolution is to be passed as SR & omission, would invalidate resolution 4) Proper notice of 21 days is given for holding meeting 5) Explanatory Statement should be annexed to notice for conducting special business 	<p>1) Where any provision of this Act specifically requires or AOA of Co. so require that special notice is required for passing any resolution, then notice of intention to move such resolution be given to Co. by such no. of members holding not less than 1% of total voting power, or holding shares on which such aggregate sum not exceeding 5,00,000 has been paid-up</p> <p>2) Special notice is required in following cases:</p> <ol style="list-style-type: none"> a) To appoint as auditor person other than retiring auditor – Section 140 of Act; b) To stand for directorship by person other than retiring director 14 days' notice is required u/s 160(1) of the Act; c) To remove director u/s 169(2) or to appoint person to fill vacancy caused by dismissal of director u/s 169 at same meeting; <p>3) Rule 23 : Special Notice</p> <ol style="list-style-type: none"> a) Special notice to be signed, either individually or collectively by above class of members b) Shall be sent by members to Co. not earlier than 3 months but at least 14 days before date of meeting at which resolution is to be moved, exclusive of day on which notice is given & day of meeting c) Co. shall immediately after receipt of notice, give its members notice of resolution at least 7 days before meeting, exclusive of day of dispatch of notice & day of meeting, in same manner as general meetings d) Where it is not practicable to give notice in same manner as general meetings, it shall be published in English language in English newspaper & in vernacular language in vernacular newspaper, both having wide circulation in State where RO of Co. is situated & it shall also be posted on website of Co. e) Notice shall be published at least 7 days before meeting, exclusive of day of publication of notice & day of meeting 	<p>Where resolution is passed at adjourned meeting of:</p> <ol style="list-style-type: none"> a) Company; or b) Holder of any class of shares in company; or c) Board of Directors of company, <p>resolution shall, for all purposes, be treated as having been passed on date on which it was in fact passed, & shall not be deemed to have been passed on any earlier date.</p>	<p>Following resolutions & agreement be filed with RoC in MGT14, within 30 days of its passing:</p> <ol style="list-style-type: none"> a) Special Resolutions (b) Unanimous Resolutions, i.e. resolutions agreed by all members of Co. but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as SR; <ul style="list-style-type: none"> • any resolution of BOD or agreement executed by Co, relating to appointment, re-appointment or renewal of appointment, or variation of terms of appointment, of MD; • resolutions or agreements which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by specified majority or otherwise in some particular manner; & all resolutions or agreements which effectively bind such class of members though not agreed to by all those members; • Resolutions requiring Co. to be wound up voluntarily passed in pursuance of section 59 of IBC 2016 • resolutions passed in pursuance of sub-section (3) of section 179 Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions; <p>Provided further that nothing contained in this clause shall apply to Banking Co. in respect of resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in ordinary course of its business; and.</p> <ul style="list-style-type: none"> • any other resolution or agreement as may be prescribed and placed in the public domain. • Applies only to resolutions of Board & agreements executed by Co. in Board Meeting • Not be applicable as regards passing of resolution for appointment of any director, including WTD or manager: <ol style="list-style-type: none"> c) Resolutions passed by Co. according to consent to exercise by its BOD of any of powers u/s 180(1)(c); d) Resolutions requiring Co. to be wound up voluntarily passed in pursuance of section 59 of IBC 2016 e) Resolutions passed in pursuance of section 179(3); provided that no person shall be entitled u/s 399 to inspect obtain copies such resolution <p>• Scope of this section has been widened by including section 179(3) which reads as under:</p> <p>BOD of Co. shall exercise following powers on behalf of Co. by means of resolutions passed at meetings of the Board, namely:</p> <ol style="list-style-type: none"> i) To make calls on shareholders in respect of money unpaid on their shares; ii) To authorise buy-back of securities u/s 68; iii) To issue securities, including debentures, whether in or outside India; iv) To borrow monies; (v) To invest funds of Co. vi) To grant loans or give guarantee or provide security in respect of loans; vii) To approve financial statement & Board's report; (viii) To diversify business of Co.; ix) To approve amalgamation, merger or reconstruction; & x) To take over Co. or acquire controlling or substantial stake in another Co. <p>f) Any other resolution or agreement as may be prescribed & place in public domain</p> <p><i>If any company fails to file resolution/ agreement before expiry of period specified therein, such company shall be liable to penalty of Rs. 1L & in case of continuing failure, with further penalty of Rs. 500 for each day after first during which such failure continues, subject to maximum of Rs. 25L & every officer in default of Co. including liquidator, if any, shall be liable to penalty of Rs. 50K & in case of continuing failure, with further penalty of Rs. 500 for each day after first during which such failure continues, subject to maximum of Rs. 5L</i></p>

Management & Administration (Chart 7.8)

Minutes

Section 118 - Minutes

- 1) Minutes be prepared as prescribed in Rule 29 & kept within 30 days of conclusion of every meeting concerned or passing of resolution by postal ballot in books
- 2) Minute book shall be consecutively numbered
- 3) Minutes of each meeting shall contain fair & correct summary of proceedings that took place at concerned meeting
- 4) All appointments made at meetings be included in minutes of meeting
- 5) In case of Board Meeting or meeting of committee of Board, minutes shall also contain:
 - Names of directors present at meeting; &
 - In case of each resolution passed at meeting, names of directors dissenting from, or not concurring with resolution
- 6) Any of following matter shall not be included in minutes of meeting, which in opinion of Chairman of meeting:
 - Is or could reasonably be regarded as defamatory of any person; or
 - Is irrelevant or immaterial to proceedings; or
 - Is detrimental to interests of company.
- 7) Matter included/ excluded in minutes be at absolute discretion of Chairman of meeting
- 8) Minutes kept in accordance with provisions shall serve as evidence of proceedings therein
- 9) Where minutes have been kept as per this section, until contrary is proved, meeting be deemed to have been duly called & held, & all proceedings to have duly taken place, & resolutions passed by postal ballot to have been duly passed & in particular, all appointments of directors, KMP, auditors or CS in practice, shall be deemed to be valid
- 10) Co. to observe Secretarial Standards by ICSI with respect to general & Board meetings

Rule 25 - Procedure for maintenance of minutes of proceedings of GM, meeting of BOD & other meetings & resolutions passed by postal ballot as follows:

- a) Distinct minute book be maintained for each type of meeting namely :
 - General meetings of members;
 - Meetings of creditors
 - Meetings of Board; &
 - Meetings of each of committees of Board
- b) Minutes of proceedings of each meeting be entered in books maintained for that purpose along with date of such entry within 30 days of conclusion of meeting
- c) In case of every resolution passed by postal ballot, brief report including resolution proposed, result of voting & summary of scrutiner's report be entered in minutes book of GM along with date of such entry within 30 days from date of passing of resolution
- d) Each page of every such book shall be initialled or signed & last page of record of be dated & signed:
 - in case of minutes of proceedings of meeting of Board or of committee, by chairman of said meeting or chairman of next succeeding meeting;
 - in case of minutes of proceedings of general meeting, by chairman of same meeting within 30 days or in event of death or inability of that chairman within that period, by director duly authorized by Board for purpose
- f) Minute books of general meetings, be kept at registered office & be preserved permanently & kept in custody of CS or director duly authorized by board
- g) Minute-books of Board & committee meetings shall be preserved permanently & kept in custody of CS of company or director duly authorized by Board for purpose & be kept in registered office or such place as Board may decide

Section 119 - Inspection of Minute-Books of General Meeting

- 1) Books containing minutes of proceedings of GM of Co. shall:
 - a) Be kept at registered office of Co.; &
 - b) Be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in AOA or as imposed in GM However, at least 2 hour in each business day shall be allowed for inspection
- 2) Inspection can be carried out only by member & not by any director or creditor or any other person
- 3) Member be entitled to be furnished with copy of minutes, within 7 working days of which he makes request in that behalf to company & on payment of fees
- 4) If inspection is refused by Co. to member, or if minute-book is not furnished within specified time, then Co. shall be liable to penalty of Rs. 25,000 & officer in default be liable to penalty of Rs. 5,000 for each such refusal or default

Section 120 - Maintenance & inspection of documents in electronic form

- 1) Any document, record, register or minute, etc., required to be kept or allowed to be inspected or copies given may be kept or inspected in electronic form
- 2) Rule 27 - Every Listed Co. or Co. having at least 1000 shareholders, debenture-holders & other security holders, shall maintain its records, as required to be maintained under Act or rules, in electronic form
- 3) Rule 28 - MD, CS or any other director or officer of company as Board may decide be responsible for maintenance & security of electronic records

Management & Administration (Chart 7.9)

Meetings

<p>Section 96 - Annual General Meeting</p> <p>1) Every Co. whether public or private, except OPC shall hold AGM every year & that gap between two AGMs shall not be more than 15 months</p> <p>2) First AGM be held within 9 months from date of closing of 1st F.Y.</p> <p>3) In other case, AGM shall be held within 6 months from date of closing F.Y.</p> <p>4) Where Co. holds its first AGM as aforesaid, it shall not be necessary for company to hold AGM in year of its incorporation</p> <p>5) Registrar may grant extension by 3 months, for holding AGM to Co. for special reasons, except in case of first AGM of Co.</p> <p>6) Every AGM be called during business hours, i.e. between 9 a.m. to 6 p.m. on any day which is not National Holiday & shall be held either at registered office or at some other place within city, town or village in which registered office of Co. is situated. • Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance</p> <p>• Provided further that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.</p> <p>7) In case of Government Company for words "Some other place..... is situate" words "such other place within city, town or village in which registered office of company is situate or such other place as Central Government may approve in this behalf" be substituted (Applicable only if Government Company has not committed default in filing of its financial statements u/s 137 or annual return u/s 92 with Registrar)</p> <p>8) Where in case of section 8 companies, proviso was inserted before explanation that time, date & place of each AGM are decided upon before hand by BOD on direction of company in its GM</p>	
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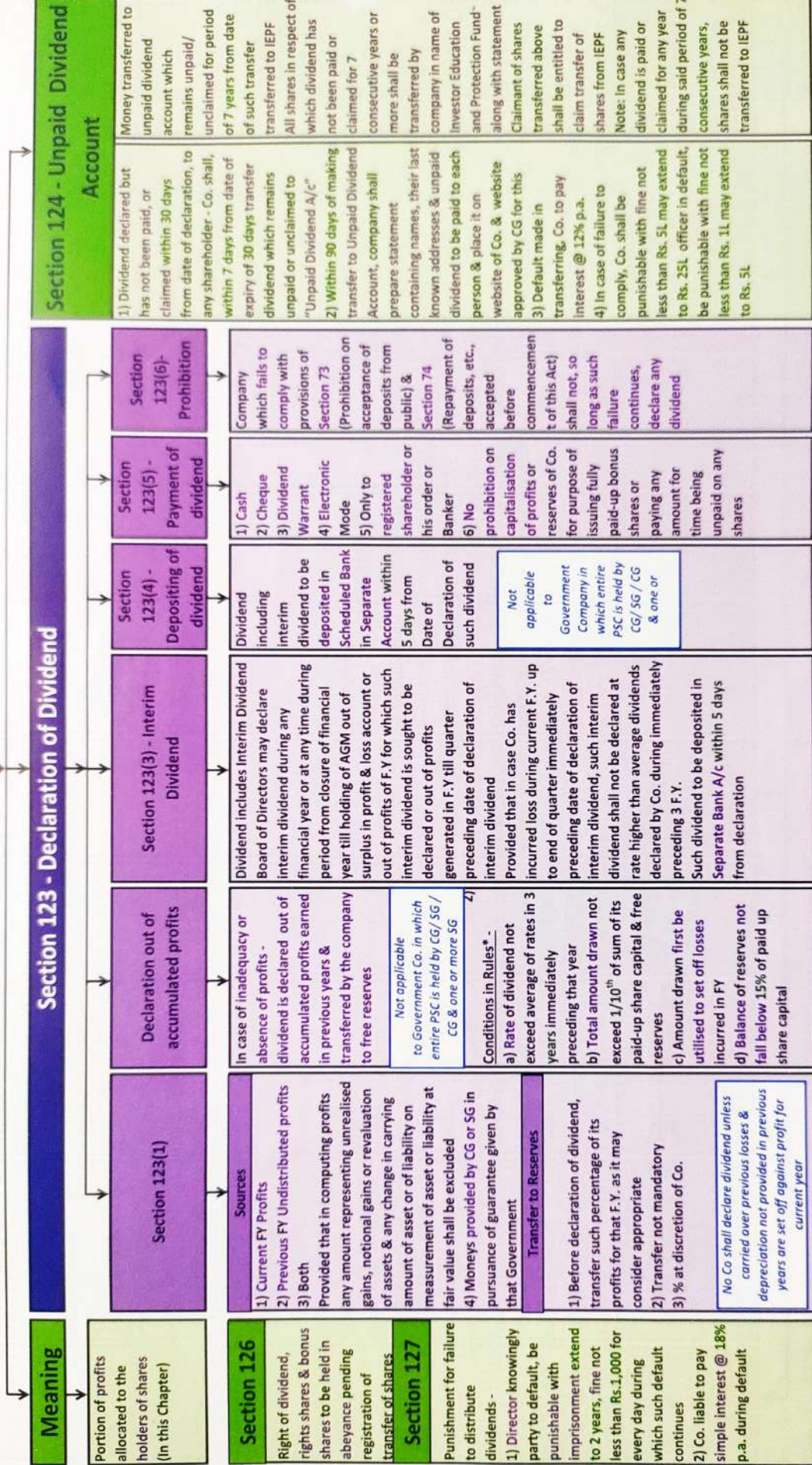
<p>Section 97 - Power of Tribunal to call AGM</p> <p>If any default is made in holding AGM of Co. u/s 96, Tribunal, i.e. NCLT may, on application of any member of Co., call or direct calling of AGM of Co. & give such ancillary or consequential directions as Tribunal thinks fit</p>	<p>Section 98 - Power of Tribunal to call meetings of members</p> <p>If for any reason, it is impracticable to call meeting of company other than AGM, Tribunal shall have power to order for calling meeting either suo motu (on its own) or on application of any director of company or of any member of company</p>
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<p>Section 121 - Report on Annual General Meeting</p>	<p>1) This section is applicable to listed public companies & states that they shall prepare report in Form MGT - 15 (Rule 31), on each AGM including confirmation to effect that meeting was convened, held & conducted as per provisions of this Act & rules made thereunder.</p> <p>2) If Co. fails to file report before expiry of period specified therein, Co. shall be liable to penalty of Rs. 1L & in case of continuing failure, with further penalty of Rs. 500 for each day after first during which such failure continues, subject to max of Rs.5L & every officer in default be liable to penalty which shall not be less than Rs. 25K & in case of continuing failure, with further penalty of Rs. 500 for each day after the first during which such failure continues, subject to max Rs. 1L</p>
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<p>Section 100 - Extra-ordinary General Meetings</p>	<p>1) BOD may, whenever it deems fit, call extraordinary general meeting of Co. EGM of Co., other than of wholly owned subsidiary of Co. incorporated outside India, be held at place within India</p> <p>2) Board to call EGM of Co. within specified period, on requisition of:</p> <p>a) Co. having share capital- such no. of members who hold, on date of receipt of requisition, at least 1/10th of PSC as on that date carries right of voting;</p> <p>b) Co. not having share capital- such no. of members who hold, on date of receipt of requisition, at least 1/10th of total voting power of all members having on said date right to vote</p> <p>3) Requisition shall set out matters for consideration of which meeting is to be called & shall be signed by requisitionists & sent to RO of Co.</p> <p>4) If Board does not call meeting within 21 days from date of receipt of requisition, then requisitionists may themselves call meeting within 3 months from date of requisition</p>
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<p>Section 122 - Applicability of this chapter to OPC</p>	<p>1) Provisions of section 98 & section 100 to 111 shall not apply to OPC</p> <p>2) Ordinary businesses as mentioned u/s 102(2)(a), which Co. is required to transact at AGM, be transacted in case of OPC as provided in Section 102(3)</p> <p>3) Where there is only one director on Board of OPC, any business which is required to be transacted at meeting of BOD of Co., it shall be sufficient if, in case of such OPC, resolution by such director is entered in minutes-book required to be maintained u/s 118 & signed & dated by such director & such date shall be deemed to be date of meeting of BOD for all purposes under Act</p>
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Declaration and Payment of Dividend (Chart 8.1)



*Companies (Declaration and Payment of Dividend) Rules, 2014



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- CA, CS, LLB, B.Com., CISA

- Expertise knowledge in ISCA, IT, SM, LAW

- Presence all over India at the age of 29

- Also known as the "Motivational Guru"

Charts can also be downloaded from :

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9011851796 / 9011854340

Declaration and Payment of Dividend (Chart 8.2)

Section 125 - Investor Education and Protection Fund

<p>125(1)- Establishment of IEPF</p>	<p>CG Shall Establish</p>
<p>125(2)- Deposit of fund <i>Deposited</i></p>	<p>a) Grands by CG b) Donation by CG c) Unpaid Dividend Account d) Amt in General Revenue a/c e) Amt lying in IEPF fund u/s 205C f) Interest or other income received out of investment made from fund g) Amt Received under sub section (4) h) Application money received by co i) Matured Deposits j) Matured Debentures k) Interest accrued l) Sale proceed of fractional shares m) Redemption amt of Preference shares</p>
<p>125(3)- Utilisation of Fund</p>	<p>a) Refund in respect of unclaimed dividends, matured deposits, matured debentures, application money due for refund & interest thereon b) Promotion of investors' education, awareness & protection c) Distribution of any disgorged amt among eligible & identifiable applicants d) Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 & 245 by members, debenture-holders or depositors as may be sanctioned by Tribunal</p>
<p>125(4)- Authority to claim funds</p>	<p>Any person claiming to be entitled to amt referred in sub-section (2) may apply to authority constituted under sub-section (5) for payment of money claimed</p>
<p>125(5)- Establishment of Authority for Refund of claims</p>	<p>CG can constitute authority with: 1 Chairman, Other members not exceeding 7 & CEO</p>
<p>125(6)- Management & Administration</p>	<p>CG have power to decide following things by making new rules a) Administration of Fund b) Appointment of chairperson c) Appointment of Members d) Appointment of CEO e) Holding of meetings of authority <i>CG Refund Authority</i></p>
<p>125(7)- Resources to Authority</p>	<p>CG have power to provide offices, officers, employees & resources to authority by making rules <i>Respective CG Dept</i></p>
<p>125(8)- Administration & Accounts of Fund</p>	<p>Authority Shall: a) Administer Fund b) Prepare & maintain records as needed as per CAG <i>Books of A/c</i></p>
<p>125(9)- Power of authority to expend fund for specific object of sec 125(3)</p>	<p>It shall be competent for authority constituted under sub-section (5) to spend money out of Fund for carrying out objects specified in sub-section (3) <i>5000 3000 Fund use 1000000000000</i></p>
<p>125(10)- Audit & Reporting</p>	<p>1) Audit of IEPF will be conducted by CAG 2) CAG will decide time, frequency & scope of audit 3) Audited accounts & audit report shall be forwarded by authority to CG annually or on demand</p>
<p>125(11)- Reporting to CG</p>	<p>Authority & CAG shall prepare following documents & reports before parliament of India a) Annual report b) Audit report by CAG</p>

Accounts of Companies (Chart 9.1)

Section 128 - Books of accounts, etc. to be kept by company						Section 129 - Financial Statement		Section 129A - Periodical Financial Results
Section 128(1) - Manner and Place of Maintenance	Section 128(2) - Books of Branch Office	Section 128(3), (4) - Persons who can inspect	Section 128(5) - Period of Maintenance	Section 128(6) - Persons Responsible & Penalty	Section 129(1) - Form of Financial Statements	Section 129(2) - Laying of Financial Statements	Section 129(5) - Deviations from Accounting Standards	Section 129A - Periodical Financial Results
<p>As per Rules* - Electronic form</p> <p>Books maintained in Electronic mode shall be-</p> <ol style="list-style-type: none"> 1) Accessible in India, usable for subsequent reference. Provided that for FY commencing on or after 1st day of April, 2021, every co. which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made & ensuring that audit trail cannot be disabled) 2) Retained in format originally generated, sent or received 3) Branch Office Information not be altered 4) Information displayed in legible form 5) Proper system for storage, retrieval, display or printout, not be disposed of unless permitted by law 6) Periodical Back-up of books in servers physically located in India 7) Annually intimate ROC, name, IP address, location, if maintained on cloud, its address 	<ol style="list-style-type: none"> 1) Proper books of transactions at branch office in or outside India be kept at that branch office 2) Summarised Returns periodically must be sent by branch office to Co at its registered office or other place decided by BOD 	<ol style="list-style-type: none"> 1) Books open for inspection by any director during business hours, at RO/other place 2) <u>Conditions in Rules* for Financial information outside country-</u> <ol style="list-style-type: none"> a) Summarised returns to registered office quarterly, kept open to directors for inspection b) Director furnish request with full details, period of information sought c) Co produce information to director within 15 days from receipt of written request d) Sought by director himself, not through power of attorney holder/agent/representative e) Inspection of Subsidiary co. by authorised person only f) Officers & other employees give assistance 	<ol style="list-style-type: none"> 1) Books of account with relevant vouchers be kept for minimum period of 8 FY immediately preceding FY 2) Co in existence less than 8 years, shall maintain books of all such preceding years 3) If Investigation has been ordered, CG may direct longer period as it may deem fit <p style="background-color: #e91e63; color: white; padding: 2px; text-align: center;">In Chapter IX, Section 129 - Shall not apply to companies engaged in defence production to extent of application of relevant AS on segment</p>	<ol style="list-style-type: none"> 1) MD, 2) WTD, 3) CFO, 4) Any other person charged by Board, contravenes provisions, they will be punishable with Fine Rs.50,000/- to Rs.5,00,000/- 	<ol style="list-style-type: none"> 1) FS shall - <ol style="list-style-type: none"> a) give true & fair view of state of affairs of Co b) comply with AS notified u/s 133 c) shall be in form as may be provided for different classes of Co in Schedule III 2) <u>Provisions relating to nature & content of FS</u> not apply to - <ol style="list-style-type: none"> a) Insurance Co b) Banking Co c) Co engaged in generation/ supply of electricity d) Other class of co for which form of FS has been specified under Act governing 	<p>At every AGM, BOD shall lay before Co, FS for FY</p> <p style="text-align: center;">Section 129(3), (4) - CFS</p> <ol style="list-style-type: none"> a) Where a company has one or more subsidiaries or associate companies, it shall, in addition to financial statements provided under sub-section (2), prepare a CFS of company & of all subsidiaries & associate companies. b) The company should prepare it in same form & manner as that of its own & in accordance with applicable AS, which shall also be laid before AGM of the company along with laying of its financial statement under sub-section (2); c) Provided that the company shall also attach along with its financial statement, a separate statement containing salient features of financial statement of its subsidiary or subsidiaries & associate company or companies in such form as may be prescribed; d) Provided further that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed e) CFS shall be made in accordance with Schedule III & AS f) If Co not required to prepare CFS under AS, compliance with Schedule III will be sufficient g) Provisions applicable to preparation, adoption & audit of FS of Holding Co shall apply to CFS h) Provided that nothing in this rule shall apply in respect of preparation of consolidated FS by a co. if it meets following conditions:- <ol style="list-style-type: none"> i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another co. & all its other members, having been intimated in writing & for which proof of delivery of such intimation is available with co. do not object to co. not presenting consolidated FS; ii) it is a co. whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; & iii) its ultimate or any intermediate holding company files consolidated financial statements with Registrar which are in compliance with applicable AS 	<p>Section 129(5) - Deviations from Accounting Standards</p> <p>If FS do not comply with AS, Co shall disclose following in FS:</p> <ol style="list-style-type: none"> 1) deviation from AS 2) reasons for such deviation & 3) financial effects, if any, arising out of such deviation <p style="text-align: center;">Section 129(6) - Exemptions</p> <p>CG may on its own or on application by Co, grant exemption from complying with requirements of this</p> <p style="text-align: center;">Section 129(7) - Contravention</p> <p>Explanation</p> <p>FS shall include any notes annexed to or forming part of such FS, giving information required to be given & allowed to be given in form of</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p style="font-size: small;">Sec 129 - Not applicable to Govt Co. engaged in defence production to the extent of application of AS on segment</p> </div>	<p>The CG may, require such class or classes of unlisted co's, as may be prescribed, -</p> <ol style="list-style-type: none"> a) to prepare financial results of co. on such periodical basis & 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; & 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."

* Companies (Accounts) Rules, 2014

Accounts of Companies (Chart 9.2)

Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders		Section 133 - CG to prescribe AS		Section 132 - Constitution of National Financial Reporting Authority.	
1) Co. shall not re-open its BOA & not re-cast its FS, unless application is made by - a) Central Govt, b) Income-tax authorities, c) Securities & Exchange Board, d) any other statutory regulatory body or authority or any person concerned & an order is made by court of competent jurisdiction or Tribunal to effect that - i) Relevant earlier accounts were prepared in a fraudulent manner; or ii) affairs of co. were mismanaged during relevant period, casting a doubt on reliability of FS 2) Court or Tribunal, shall give notice to CG, IT authorities, securities & Exchange Board or any other statutory regulatory body or authority concerned or any other person concerned & shall take into consideration representations made by them before passing any order under this section 3) Accounts so revised or re-cast shall be final 4) No order shall be made in respect of re-opening of books of account relating to period earlier than 8 F.Y.s immediately preceding current F.Y. 5) Where direction has been issued by CG under proviso to section 128(5) for keeping of books of account for period longer than 8	CG may prescribe Accounting Standards recommended by ICAI in consultation with & after examination of recommendations made by National Financial Reporting Authority (NFRA) Until National Financial Reporting Authority is constituted u/s 132, CG may prescribe standards of accounting or any addendum thereto, as recommended by ICAI in consultation with & after examination of recommendations made by NAC on AS constituted Note: NFRA not yet constituted u/s 132 of Companies Act, 2013 so AS given by National Advisory Committee under Companies Act, 1956 are still in force	3) NFRA shall consist of chairperson, who shall be a person of eminence & having expertise in accountancy, auditing, finance or law to be appointed by the CG & such other members not exceeding 15 consisting of part-time & full-time members as may be prescribed: • Terms & conditions & manner of appointment of chairperson & members shall be prescribed • Chairperson & members shall make declaration to CG in prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment • Chairperson & members, who are in full-time employment with NFRA shall not be associated with any audit firm (including related consultancy firms) during course of their appointment & 2 years after ceasing to hold such appointment 3A) Each division of NFRA shall be presided over by Chairperson or full-time Member authorised by Chairperson 3B) There shall be executive body of NFRA consisting of Chairperson & full-time Members of such Authority for efficient discharge of its functions	4) Notwithstanding anything contained in any other law for time immotio or on a reference made to it by CG, for such class of bodies corporate or persons, in such manner as may be prescribed into matters of professional or other misconduct committed by any member or firm of CA No other institute or body shall initiate or continue any proceedings in such matters of misconduct where NFRA has initiated an investigation under this section b) have same powers as are vested in a civil court under Code of Civil Procedure, 1908, while trying a suit, in respect of following matters, namely:— i) discovery & production of books of account & other documents, at such place & at such time as may be specified by the NFRA; ii) summoning & enforcing attendance of persons & examining them on oath; iii) inspection of any books, registers & other documents of any person referred to in clause (b) at any place; iv) issuing commissions for examination of witnesses or documents;	5) Any person aggrieved by any order of the NFRA issued under clause (c) of sub-section (4), may prefer appeal before Appellate Tribunal 10) NFRA shall meet at such times & places & shall observe such rules of procedure in regard to transaction of business at its meetings in such manner as may be prescribed 11) CG may appoint a secretary & such other employees as it may consider necessary for efficient performance of functions by NFRA under this Act & terms & conditions of service of secretary & employees shall be such as may be prescribed 13) NFRA shall cause to be maintained such books of account & other books in relation to its accounts in such form & in such manner as CG may, in consultation with the C&AG of India prescribe 14) Accounts of NFRA shall be audited by C&AG of India at such intervals as may be specified by him & be certified by C&AG together with audit report thereon shall be forwarded annually to CG by NFRA 15) NFRA shall prepare its annual report for each FY as may be prescribed its annual report giving a full account of its activities during the FY & forward a copy thereof to the CG & the CG shall cause the annual report and the audit report given by the C&AG of India to be laid before each House of Parliament.	
1) CG may, by notification, constitute a NFRA to provide for matters relating to accounting & auditing standards 1A) NFRA shall perform its functions through such divisions as may be prescribed	2) Notwithstanding anything contained in any other law for time being in force, NFRA shall: a) make recommendations to CG on formulation & laying down of accounting & auditing policies & standards for adoption by companies or class of companies or their auditors, as case may be; b) monitor & enforce compliance with AS & auditing standards in such manner as may be prescribed; c) oversee quality of service of professions associated with ensuring compliance with such standards, & suggest measures required for improvement in quality of service & such other related matters as may be prescribed; d) perform such other functions relating to clauses (a), (b) and (c)	1) CG may, by notification, constitute a NFRA to provide for matters relating to accounting & auditing standards 1A) NFRA shall perform its functions through such divisions as may be prescribed	3) NFRA shall consist of chairperson, who shall be a person of eminence & having expertise in accountancy, auditing, finance or law to be appointed by the CG & such other members not exceeding 15 consisting of part-time & full-time members as may be prescribed: • Terms & conditions & manner of appointment of chairperson & members shall be prescribed • Chairperson & members shall make declaration to CG in prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment • Chairperson & members, who are in full-time employment with NFRA shall not be associated with any audit firm (including related consultancy firms) during course of their appointment & 2 years after ceasing to hold such appointment 3A) Each division of NFRA shall be presided over by Chairperson or full-time Member authorised by Chairperson 3B) There shall be executive body of NFRA consisting of Chairperson & full-time Members of such Authority for efficient discharge of its functions	4) Notwithstanding anything contained in any other law for time immotio or on a reference made to it by CG, for such class of bodies corporate or persons, in such manner as may be prescribed into matters of professional or other misconduct committed by any member or firm of CA No other institute or body shall initiate or continue any proceedings in such matters of misconduct where NFRA has initiated an investigation under this section b) have same powers as are vested in a civil court under Code of Civil Procedure, 1908, while trying a suit, in respect of following matters, namely:— i) discovery & production of books of account & other documents, at such place & at such time as may be specified by the NFRA; ii) summoning & enforcing attendance of persons & examining them on oath; iii) inspection of any books, registers & other documents of any person referred to in clause (b) at any place; iv) issuing commissions for examination of witnesses or documents;	5) Any person aggrieved by any order of the NFRA issued under clause (c) of sub-section (4), may prefer appeal before Appellate Tribunal 10) NFRA shall meet at such times & places & shall observe such rules of procedure in regard to transaction of business at its meetings in such manner as may be prescribed 11) CG may appoint a secretary & such other employees as it may consider necessary for efficient performance of functions by NFRA under this Act & terms & conditions of service of secretary & employees shall be such as may be prescribed 13) NFRA shall cause to be maintained such books of account & other books in relation to its accounts in such form & in such manner as CG may, in consultation with the C&AG of India prescribe 14) Accounts of NFRA shall be audited by C&AG of India at such intervals as may be specified by him & be certified by C&AG together with audit report thereon shall be forwarded annually to CG by NFRA 15) NFRA shall prepare its annual report for each FY as may be prescribed its annual report giving a full account of its activities during the FY & forward a copy thereof to the CG & the CG shall cause the annual report and the audit report given by the C&AG of India to be laid before each House of Parliament.

Accounts of Companies (Chart 9.3)

Section 134 - Financial Statement, Board's report, etc

Section 136 - Right of member to copies of Audited Financial Statement

Section 137 - Copy of financial statement to be filed with Registrar

Section 134(i) - Authorization of FS	Board's report	Section 134(i) - Board's Report in case of OPC	Section 134(i) - Directors' Responsibility Statement	Section 134(i) - Contravention	Section 136(i) - Who are entitled?	Manner of circulation	Subsidiary Companies	Section 137(i) - Filing of FS	Section 137(ii) - AGM not held
<p>FS, including CS, if any, shall be approved by BOD before they are signed on behalf of Board at least by following:</p> <p>(i) Chairperson of Co where he is authorised by Board; or</p> <p>(ii) By 2 Directors out of which one shall be MD, if any, &</p> <p>(iii) CEO, wherever he is appointed</p> <p>(iv) CFO, wherever he is appointed</p> <p>(v) CS of company, wherever he is appointed, or</p> <p>(vi) In case of OPC, only by 1 director, for submission to auditor for his report thereon</p>	<p>Section 134(i) - Contents of Board Report</p> <p>Board's Report shall be prepared based on stand alone FS of co. & shall report on highlights of performance of subsidiaries, associates & joint venture companies & their contribution to overall performance of co. during period under report</p> <ol style="list-style-type: none"> Extract of annual return No. of Board meetings Directors' Responsibility Statement Details in respect of frauds reported by auditors under section 143(12) other than those which are reportable to CG Declaration by Independent Director <p>Not applicable to Government Company</p> <p>Section 134(i) - Policy</p> <p>7) Explanations/ Comments by Board on every qualification, reservation or adverse remark/ disclaimer made by Auditor & b) CS</p> <p>8) Auditor & b) CS</p> <p>9) Particulars of Loans, guarantees or investments u/s 186</p> <p>10) State of company's affairs</p> <p>11) Amounts of Reserves, Dividend</p> <p>12) Material changes & commitments, if any, affecting financial position</p> <p>13) CS (Not applicable to Government Co) report in producing Defence equipment</p> <p>14) Risk Management (CS Policy on CSR)</p> <p>15) Listed Co & Public Co. shall include in its annual report, in a separate section, a statement in which it shall disclose the following: (a) the manner in which it has evaluated the performance of Board, its Committees & of individual directors has been made</p> <p>Provided that where disclosures referred to in this sub-section have been included in FS such disclosures be referred to instead of being repeated in Board's report</p> <p>Provided further that where policy referred to in clause (e) or clause (f) is made available on company's website, if any, it shall be sufficient compliance of requirements under such clauses if salient features of policy & any change therein are specified in brief in Board's report & web-address is indicated therein at which complete policy is available</p> <p>CG may prescribe un-audited Board's report for purpose of compliance with this section by OPC or small company</p>	<p>Report containing explanations or comments by Board on every qualification, reservation or adverse remark or disclaimer made by auditor in his report shall be attached to FS</p> <p>Section 134(i) - Signing</p> <p>Board's Report & any annexures thereto shall be signed by its</p> <ol style="list-style-type: none"> Chairperson if he is authorised by Board & where he is not so authorised, shall be signed by at least 2 Directors, 1 of whom shall be MD, or by director where there is 1 director 	<ol style="list-style-type: none"> Company - Fine - Rs. 50,000 to Rs. 25 Lacs Every officer in default - imprisonment upto 3 years or fine - Rs. 50,000 to Rs. 5 Lacs or both 	<ol style="list-style-type: none"> CS, Auditor's Report & Other document required by law shall be annexed with FS which are laid in its GM It shall be sent to: <ol style="list-style-type: none"> member trustee for debenture-holder of any debentures issued by Co & persons entitled, other than member/ trustee atleast 21 days before meeting copies of documents are sent less than 21 days before date of meeting, they shall be deemed to have been duly sent if it is so agreed by members Company has share capital: Holding majority in number entitled to vote & who represent not less than 95% of such part of paid-up share capital of company as gives right to vote at meeting or Company has no share capital: Having not less than 95% of total voting power exercisable at meeting In case of Listed Co- above provisions shall be deemed to be complied with- <ol style="list-style-type: none"> if copies of documents are made available for inspection at its registered office during working hours for 21 days before meeting Statement of Salient Features in form AOC-3 or copies of documents, as Co may deem fit to send to every member of its debentures issued by Co atleast 21 days before meeting unless shareholders ask for full FS Co allow member or trustee of debenture holder to inspect audited FS at its registered office during business hrs <p>Every company having subsidiary or subsidiaries shall provide copy of separate audited or unaudited financial statements prepared in respect of each of its subsidiary to any member who asks for it</p>	<ol style="list-style-type: none"> Every listed company having subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any, incorporated outside India (foreign subsidiary) <ol style="list-style-type: none"> where such foreign subsidiary is statutorily required to prepare CS under any law of country of its incorporation, requirement of this provision shall be met if CS of such foreign subsidiary is placed on website of listed company; where such foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation & which does not get such financial statement audited, holding Indian listed company may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website <p>Section 136(i) - Contravention</p> <ol style="list-style-type: none"> Co liable to penalty of Rs. 25,000/- Officer in default liable to penalty of Rs. 5,000/- 	<ol style="list-style-type: none"> CS, including CS, if any, along with all documents which are required to be or attached to such FS under this Act, duly adopted at AGM of co, shall be filed with Registrar within 30 days of AGM in such manner, with fees or additional fees within time specified u/s 403 <p>Section 137(i) - FS are not adopted</p> <ol style="list-style-type: none"> Unadopted FS along with required documents be filed with Registrar within 30 days of AGM Registrar shall take them as provisional till FS filed with him after their adoption in a subsequent AGM FS adopted in a subsequent AGM shall be filed with Registrar within 30 days of adjourned AGM with fees <p>Section 137(i) - Co having subsidiaries</p> <p>Co shall, along with its FS to be filed with Registrar, attach accounts of its subsidiaries which have been incorporated outside India & which have not established their place of business in India</p>	<p>Where AGM has not been held for any FY, FS along with documents required to be attached, duly signed, with Statement of facts & reasons for not holding AGM shall be filed with Registrar within 30 days of last date before which AGM should have been held & with fees or additional fees within time specified u/s 403</p> <p>Section 137(i) - Penalty</p> <ol style="list-style-type: none"> Co punishable with fine - Rs. 1,000/- for every day during which failure continues but upto Rs. 10,00,000/- MD & CFO, in absence, director charged by Board shall be liable to penalty of Rs. 1 L & in case of continuing failure, with further penalty of Rs. 100 for each day after first during which such failure continues, subject to maximum Rs. 5 L 		

Companies in Banking, Insurance, Power Sector & Non-Banking Financial Commercial Companies & Housing Finance co. need not file the financial statements under this rule

For Section 8 Companies, "21 days" be substituted by "14 days"

Following companies shall file their FS & other documents u/s 137(i) with Registrar in Form "AOC-4 (BSC)" per FY: (commencing on or after 1st April, 2014 using IBS) (a) Co. listed with any stock exchanges in India & their Indian subsidiaries or (b) Co. having 25% of its CS or above or (c) Co. having turnover of Rs. 10 Cr or above or (d) Companies which were covered under Companies (Filing of Documents & Forms in Extractable Business Reporting Language) Public, 2011

Accounts of Companies (Chart 9.4)

Section 135 - Corporate Social Responsibility

<p>Section 135(1) Every co. having net worth of Rs. 500 cr or more, or turnover of Rs. 1000 cr or more or a net profit of Rs. 5 crore or more during immediately preceding FY shall constitute a CSR Committee of Board consisting of 3 or more directors, out of which at least 1 director shall be an independent director</p> <p>Provided that where a co. is not required to appoint an independent director under sub-sec (4) of sec 149, it shall have in its CSR Committee 2 or more directors</p>	<p>Section 135(3) CSR Committee shall, - a) formulate & recommend to Board, a CSR Policy which shall indicate activities to be undertaken by co. in areas or subject, specified in Sch. VII b) recommend amt of expenditure to be incurred on activities referred to in clause (a); & c) monitor CSR Policy of co. from time to time.</p>	<p>Section 135(5) Board of every co. referred to in sub-sec (1), shall ensure that co. spends, in every financial year, at least 2% of average net profits of co. made during 3 immediately preceding FY or where co. has not completed the period of 3 FY since its incorporation, during such immediately preceding FY, in pursuance of its CSR Policy: Provided that co. shall give preference to local area & areas around it where it operates, for spending amount earmarked for CSR activities: Provided further that if co. fails to spend such amount, Board shall, in its report made under clause (o) of sec 134(3), specify reasons for not spending amount &, unless unspent amount relates to any ongoing project referred to in sub-sec (6), transfer such unspent amount to a Fund specified in Sch VII, within a period of 6 months of the expiry of the FY. Provided also that if co. spends an amount in excess of requirements provided under this sub-sec, such co. may set off such excess amount against requirement to spend under this sub-sec for such number of succeeding FY & in such manner, as may be prescribed Explanation. - For purposes of this sec "net profit" shall not include such sums as may be prescribed, & shall be calculated in accordance with provisions of section 198.</p>	<p>Section 135(6) Any amount remaining unspent under sub-sec (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30 days from end of FY to a special account to be opened by co. in that behalf for that FY in any scheduled bank to be called Unspent CSR Account, & such amount shall be spent by co. in pursuance of its obligation towards CSR Policy within a period of 3 FY from date of such transfer, failing which, co. shall transfer same to a Fund specified in Sch. VII, within a period of 30 days from date of completion of the third FY</p>	<p>Section 135(7) If a co. is in default in complying with provisions of sub-sec. (5) or sub-sec. (6), co. shall be liable to a penalty of twice amount required to be transferred by the company to the Fund specified in Sch. VII or the Unspent CSR Account, as case may be, or 1 crore Rs, whichever is less, & every officer of co. who is in default shall be liable to a penalty of 1/10th of amount required to be transferred by co. to such Fund specified in Sch. VII, or Unspent CSR Account, as the case may be, or 2 lakh Rs, whichever is less</p>	<p>Section 135(8) CG may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such co. or class of companies shall comply with such directions</p>	<p>Section 135(9) Where amount to be spent by a co. under sub-sec (5) does not exceed 50 lakh Rs., requirement under sub-sec (1) for constitution of CSR Committee shall not be applicable & functions of such Committee provided under this section shall, in such cases, be discharged by Board of Directors of such company.</p>	<p>Section 135(2) Board's report under section 134(3) shall disclose composition of the CSR Committee.</p>	<p>Section 135(4) Board of every company referred to in sub-section (1) shall, - a) after taking into account recommendations made by the CSR Committee, approve the CSR Policy for the co. & disclose contents of such Policy in its report & also place it on co's website, if any, in such manner as may be prescribed; & b) ensure that activities as are included in CSR Policy of company are undertaken by the company</p>	<p>Section 135(9) Where amount to be spent by a co. under sub-sec (5) does not exceed 50 lakh Rs., requirement under sub-sec (1) for constitution of CSR Committee shall not be applicable & functions of such Committee provided under this section shall, in such cases, be discharged by Board of Directors of such company.</p>	<p>A clarification has been issued on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities. In continuation to this Ministry's General Circular No. 10/2020 dated 23.03.2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for setting up makeshift hospitals & temporary COVID Care facilities is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, & disaster management respectively.</p>
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Accounts of Companies (Chart 9.5)

Companies (Corporate Social Responsibility Policy) Rules, 2014

Corporate Social Responsibility	CSR Implementation	CSR Committees	CSR Expenditure	
<p>(1) Every company including its holding or subsidiary, & a foreign company defined under clause (42) of sec 2 of the Act having its branch office or project office in India, which fulfills the criteria specified in section 135(1) of Act shall comply with provisions of section 135 of the Act & these rules.</p> <p>Provided that net worth, turnover or net profit of a foreign co. of Act shall be computed in accordance with balance sheet & Profit & loss account of such co. prepared in accordance with the provisions of clause (a) of sec 381(1) & sec.198 of Act</p> <p>(2) Every co. which ceases to be a co. covered under section 135(1) of the Act for 3 consecutive FY shall not be required to -</p> <p>(a) constitute a CSR Committee; &</p> <p>(b) comply with provisions contained in sub-sec (2) to (6) of said section, till such time it meets criteria specified in section 135(1).</p>	<p>(1) Board shall ensure that CSR activities are undertaken by company itself or through-</p> <p>(a) a co. established under sec. 8 of Act, or a registered public trust or a registered society, registered under sec 12A & 80 G of Income Tax Act, 1961, established by co., either singly or along with any other co., or</p> <p>(b) a co. established under sec. 8 of Act or a registered trust or a registered society, established by CG or SG; or</p> <p>(c) any entity established under an Act of Parliament or a State legislature; or</p> <p>(d) a co. established under sec. 8 of Act, or a registered public trust or a registered society, registered under sec 12A & 80G of the Income Tax Act, 1961, & having an established track record of at least 3 years in undertaking similar activities</p> <p>(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the CG by filing the form CSR-1 electronically with Registrar, with effect from the 01st day of April 2021:</p> <p>Provided that provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to 1st day of April 2021.</p> <p>(b) Form CSR-1 shall be signed & submitted electronically by the entity and shall be verified digitally by a CA in practice or a CS in practice or a Cost Accountant in practice.</p> <p>(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.</p>	<p>(3) A co. may engage international organisations for designing, monitoring & evaluation of CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.</p> <p>(4) A co. may also collaborate with other co's for undertaking projects or programmes or CSR activities in such a manner that CSR committees of respective co's are in a position to report separately on such projects or programmes in accordance with these rules.</p> <p>(5) Board of a co. shall satisfy itself that funds so disbursed have been utilised for purposes & in manner as approved by it & CFO or person responsible for financial management shall certify to the effect.</p> <p>(6) In case of ongoing project, Board of a Co. shall monitor implementation of project with reference to approved timelines & year-wise allocation & shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period</p>	<p>(1) Companies mentioned in rule 3 shall constitute CSR Committee as under -</p> <p>(i) a company covered under section 135(1) which is not required to appoint an independent director pursuant to section 149(4) of Act, shall have its CSR Committee without such director ;</p> <p>(ii) a private co. having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors;</p> <p>(iii) with respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least 2 persons of which one person shall be as specified under clause (d) of section 380(1) of the Act & another person shall be nominated by foreign co.</p> <p>(2) CSR Committee shall formulate & recommend to Board, an annual action plan in pursuance of its CSR policy, which shall include following, namely:-</p> <p>(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Sch. VII of the Act;</p> <p>(b) manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;</p> <p>(c) modalities of utilisation of funds & implementation schedules for projects or programmes;</p> <p>(d) monitoring & reporting mechanism for projects or programmes; &</p> <p>(e) details of need & impact assessment, if any, for projects undertaken by company:</p> <p>Provided that Board may alter such plan at any time during FY, as per recommendation of its CSR Committee, based on reasonable justification to that effect."</p>	<p>(1) Board shall ensure that administrative overheads shall not exceed 5% of total CSR expenditure of co. for FY.</p> <p>(2) Any surplus arising out of CSR activities shall not form part of business profit of a co. & shall be ploughed back into same project or shall be transferred to Unspent CSR A/c & spent in pursuance of CSR policy & annual action plan of co. or transfer such surplus amount to a Fund specified in Sch. VII, within a period of 6 months of expiry of FY.</p> <p>(3) Where a co. spends an amt. in excess of requirement provided under section 135(5), such excess amount may be set off against requirement to spend under section 135(5) up to immediate succeeding 3 FY's subject to conditions that-</p> <p>(i) Excess amount available for set off shall not include surplus arising out of CSR activities, if any, in pursuance of sub-rule (2) of this rule.</p> <p>(ii) Board of company shall pass a resolution to that effect</p> <p>(4) CSR amount may be spent by a co. for creation or acquisition of a capital asset, which shall be held by -</p> <p>(a) a co. established under sec. 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects & CSR Registration Number under sub-rule (2) of rule 4; or</p> <p>(b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or</p> <p>(c) a public authority:</p> <p>Provided that any capital asset created by a co. prior to commencement of the Companies (CSR Policy) Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with requirement of this rule, which may be extended by a further period of not more than 90 days with approval of Board based on reasonable justification.</p>

Accounts of Companies (Chart 9.6)

Companies (Corporate Social Responsibility Policy) Rules, 2014

CSR Reporting

(1) Board's Report of a co. covered under these rules pertaining to any FY shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(2) In case of a foreign co., balance sheet filed under clause (b) of section 381(1) of Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(3) (a) Every co. having average CSR obligation of 10 cr Rs. or more in pursuance of sec. 135(5) of Act, in 3 immediately preceding FY's shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of 1 cr Rs or more, & which have been completed not less than 1 year before undertaking impact study.

(b) Impact assessment reports shall be placed before Board & shall be annexed to annual report on CSR.

(c) A Co. undertaking impact assessment may book expenditure towards CSR for that FY, which shall not exceed 5% of total CSR expenditure for that FY or 50 lakh Rs., whichever is less

1) If it appears to directors of a co that

i) Financial Statement of co; or

ii) report of Board, do not comply with provisions of sec 129 or sec 134, they may prepare revised FS or a revised report in respect of any of 3 preceding FY after obtaining approval of Tribunal on an application made by co in such form and manner as may be prescribed & a copy of order passed by Tribunal shall be filed with Registrar

2) Tribunal shall give notice to CG & IT authorities & shall take into consideration representations, if any, made by that Govt or authorities before passing any order under this section

3) Such revised FS or report shall not be prepared or filed more than once in a FY

4) Detailed reasons for revision of such FS or report shall also be disclosed in Board's report in relevant FY in which such revision is being made

Section 131- Voluntary Revision of Financial Statements or Boards Report

5) Where copies of the previous FS or report have been sent out to members or delivered to Registrar or laid before co. in general meeting, revisions must be confined to-

a) correction in respect of which previous FS or report do not comply with the provisions of sec 129 or sec 134; &

b) making of any necessary consequential alternation

6) Framing of rules by the CG in relation to revised financial statement or director's report

7) CG may make rules as to application of provisions of this Act in relation to revised FS or revised director's report & such rules may, in particular-

a) make different provisions according to which previous FS or report are replaced or are supplemented by a document indicating the corrections to be made;

b) make provisions with respect to functions of the company's auditor in relation to revised FS or report;

c) require directors to take such steps as may be prescribed

Section 138 - Internal Audit

Companies required to appoint Internal Auditor

1) Co required to appoint Internal Auditor which may be either an individual or a partnership firm or a body corporate

a) Listed Co

b) Unlisted Public Co having-
i) PSC Rs.50 Crore or more during preceding FY or
ii) Turnover Rs.200 Crore or more during preceding FY or
iii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 Crore or more at any time during preceding FY or
iv) Outstanding Deposits Rs. 25 Crore or more at any time during preceding FY &
c) Private Co having-
i) Turnover Rs.200 crore or more during preceding FY or
ii) Outstanding Loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any time during preceding FY

2) Audit Committee/ Board, in consultation with Internal Auditor, formulate scope, functioning, periodicity & methodology for conducting internal audit

Who is Internal Auditor?

1) Internal Auditor shall either be CA or Cost Accountant, or other professional decided by Board to conduct internal audit of functions & activities of Co

Here, term "Chartered Accountant" or "Cost Accountant" shall mean CA or cost accountant whether engaged in practice or not

2) Internal Auditor may or may not be employee of Co

Existing Co covered under any of above criteria comply with requirements of Section 138 & Co (Accounts) Rules, 2014 within 6 months of commencement of such section

Audit and Auditors (Chart 10.1)

Section 139 - Appointment of Auditors

<p>Section 139(1) - Appointment of Auditors</p> <p>1) Every Co, at 1st AGM, appoint individual/ firm as auditor of Co.</p> <p>2) Auditor shall hold office from conclusion of 1st AGM till conclusion of 6th AGM & thereafter till conclusion of every 6th AGM</p> <p>4) Before appointment, written consent & certificate that he satisfies criteria u/s 141</p> <p>5) Co shall inform auditor of his appointment & file notice in Form "ADT-1" with Registrar within 15 days of meeting in which auditor is appointed</p> <p>6) Explanation- Appointment includes Re-appointment</p>	<p>Manner and procedure of selection and appointment of auditors As per Rules*</p> <p>1) BOD/Audit Committee (if Section 177 applicable) shall-</p> <p>a) Consider qualifications & experience of individual/ firm proposed to be auditor</p> <p>b) Have regard to order/ pending proceeding relating to professional matters of conduct against proposed auditor</p> <p>c) Call for other information as it may deem fit</p> <p>2) In case Co is not required to constitute Audit Committee (AC) u/s 177, Board shall recommend Name of Individual/ Firm as Auditor to members</p> <p>3) In case Co is required to constitute AC-</p> <p>a) AC recommend to Board</p> <p>b) Board agrees, recommend to Members</p> <p>c) Board disagrees, refer back to AC for reconsideration with reasons</p> <p>d) AC decides, not to reconsider, Board shall record reasons & send its own recommendation to Members</p>	<p>Section 139(2) - Term of Auditor</p> <p>1) Following Co-</p> <p>a) Every listed Co.</p> <p>b) Unlisted Public Co having PSC of Rs.10 crore or more</p> <p>c) Private limited Co having PSC of Rs.50 crore or more</p> <p>d) All Co having PSC below limit mentioned above, having borrowings from FI/ banks/ public deposits of Rs.50 Cr or more</p> <p>shall not appoint or reappoint</p> <p>a) individual as auditor for more than 1 term of 5 consecutive years &</p> <p>b) firm as auditor for more than 2 terms of 5 consecutive years</p> <p>2) Individual/Firm who has completed his term shall not be eligible for re-appointment for 5 years from completion of his term</p> <p>3) Audit firm having common partner to other firm, whose tenure has expired shall not be appointed for 5Y</p> <p>4) Transition Period to existing co for compliance - 3 yrs</p> <p>Every co, existing on or before commencement of this Act which is required to comply with provisions of this sub-sec, shall comply with requirements of this sub-sec within a period which shall not be later than date of 1st annual general meeting of co held, within period specified under sub-sec (1) of sec 96, after 3 yrs from date of commencement of this Act</p>	<p>Section 139(3) & (4) - Rotation of auditor</p> <p>1) Members may resolve to provide that-</p> <p>a) in audit firm, auditing partner & team shall be rotated at intervals or</p> <p>b) audit shall be conducted by more than 1 auditor</p> <p>2) As per Rules*-</p> <p>a) Period for which individual/ firm has held office prior to commencement be considered for calculating 5/10 consecutive years</p> <p>b) Incoming auditor not be eligible if he is associated with outgoing auditor under same network (firms operating or functioning under same brand name, trade name or common control)</p> <p>c) Break in term for 5 continuous yrs be considered as fulfilling requirement of rotation</p>	<p>Section 139(6) - First auditors</p> <p>1st auditor of Government Co, Other than Government Co, shall be appointed by BOD within 30 days of date of registration of Co. & auditor so appointed shall hold office until conclusion of 1st AGM</p> <p>b) If Board fails to appoint, it shall inform members who shall appoint within 90 days at EGM</p> <p>auditor & such auditor shall hold office till conclusion of 1st AGM</p>	<p>Section 139(5) - Auditor of Govt Co</p> <p>1) C&AG shall appoint auditor in case of-</p> <p>a) Government Co or Government Controlled Co</p> <p>2) The auditor shall be appointed within 180 days from commencement of FY</p> <p>3) Auditor shall hold office till conclusion of AGM</p> <p>Section 139(7) - 1st Auditor of Govt Co</p> <p>1) 1st auditor to be appointed by C&AG within 60 days from date of registration</p> <p>2) If C&AG does not appoint Board shall appoint within next 30 days</p> <p>3) If failure by Board, it shall inform members who shall appoint within 60 days at EGM who shall hold office till conclusion of 1st AGM</p> <p><small>1) Filled by C&AG within 30 days</small></p> <p>Section 139(8) - Casual Vacancy</p> <p>within next 30 days</p>	<p>Section 139(8) - Filling up casual vacancy</p> <p>1) Board may fill casual vacancy in office of auditor within 30 days</p> <p>2) If vacancy caused by resignation, appointment shall be approved by company at GM convened within 3 months of recommendation of Board</p> <p>3) Auditor appointed in casual vacancy shall hold office until conclusion of next AGM</p> <p>Section 139(9)/(10) - Re-appointment of Retiring Auditor</p> <p>1) Retiring auditor may be re-appointed at AGM if-</p> <p>a) he is not disqualified</p> <p>b) he has not given notice in writing of unwillingness to be reappointed</p> <p>c) SR has not been passed appointing some other auditor or providing expressly that he shall not be re-appointed</p> <p>2) Where at AGM, no auditor is appointed/ re-appointed, existing auditor shall continue to be auditor</p>
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* Companies (Audit and Auditors) Rules, 2014

Audit and Auditors (Chart 10.2)

Section 140 - Removal, resignation of auditor and giving of special notice

Section 140(1) - Removal of auditor before expiry of his term

- 1) Requires Special Resolution
- 2) Previous approval of CG must be obtained by making application in Form ADT - 2 within 30 days of resolution passed by Board
- 3) Co shall hold GM within 60 days of receipt of approval of CG for passing SR
- 4) Before removal of auditor before expiry of his term, auditor concerned shall be given reasonable opportunity of being heard

Section 140(2) & (3) - Resignation by Auditor

- 1) When auditor resigns, he is required to file within 30 days, statement in ADT-3 with:
 - a) Company
 - b) Registrar
 - c) C & AG (in case of Govt Co)
- 2) Auditor shall indicate reasons & other facts with regard to resignation, in statement
- 3) If auditor does not comply with provisions of sub-section (2), he or it shall be liable to penalty of Rs. 50K or amount equal to remuneration of auditor, whichever is less, & in case of continuing failure, with further penalty of Rs. 500 for each day after first during which such failure continues, subject to maximum of Rs. 5L

Section 140(4) - Appointing Auditor other than the Retiring Auditor

- 1) At AGM, special notice shall be required for appointing as auditor person other than retiring auditor or
 - a) providing expressly that retiring auditor shall not be reappointed
 - 2) Special Notice shall not be required if retiring auditor has completed consecutive tenure of 5/10 yrs as provided u/s 139(2)
 - 3) Co shall send copy of notice to retiring auditor
 - 4) Retiring auditor makes representation in writing to company, requests its notification to members
 - 5) Co. shall, unless representation is received by it too late-
 - a) State fact of representation having been made & send copy of representation to every member
 - b) If copy is not sent because it was received too late or because of company's default, auditor may require to be read out at meeting
 - 7) Copy of representation shall be filed with Registrar
- On satisfaction of Tribunal that right deliberated to auditor are being abused if Tribunal is satisfied on application either of co or of any other aggrieved person that rights conferred by this sub-section are being abused by auditor, then copy of representation may not be sent & representation need not be read out at meeting

Section 140(5) - Auditor acts in a fraudulent manner or abetted or colluded in any fraud

- i) Tribunal either suomotu or on an application made to it by CG or by any person concerned, if it satisfied that auditor of a co. has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, co. or its directors or officers, it may, by order, direct co to change its auditors
- ii) If application is made by CG & Tribunal is satisfied that any change of auditor is required, it shall within 15 days of receipt of such application, make order that he shall not function as auditor & CG may appoint another auditor in his place
- iii) Auditor, whether individual or firm, against whom final order has been passed by Tribunal under this sec shall not be eligible to be appointed as an auditor of any co for a period of 5 yrs from date of passing of order and the auditor shall also be liable for action under section 447

Section 141 - Eligibility, qualifications and disqualifications of auditors

Section 141(1) & (2) - Qualifications of an auditor

- 1) Person shall be eligible to be appointed as auditor only if he is CA
- 2) Firm whereof majority of partners practising in India are qualified for appointment as aforesaid may be appointed by its firm name to be auditor of Co.
- 3) Where firm including LLP is appointed as auditor of Co, only partners who are CAs shall be authorised to act & sign on behalf of firm

Section 141(4) - Vacation of office by an auditor

- If auditor incurs any disqualifications u/s 141(3), he shall be deemed to have vacated his office, which shall be deemed to be casual vacancy

Section 141(3) - Disqualifications of auditors

- 1) Body Corporate, other than LLP
- 2) Officer or employee of Co
- 3) Person who is partner, or who is in employment, of officer/ employee of Co
- 4) Person who, or his relative or his partner-
 - a) is holding any security of or interest in Co or Subsidiary/ Holding/ Associate (S/H/A)/ Subsidiary of Holding
- 5) Provided that relative may hold security/ interest in Co of face value not exceeding Rs. 1,00,000/-
- 6) b) is indebted to Co/S/H/A/ Subsidiary of Holding, in excess of Rs. 5 Lacs
- 7) c) has given guarantee/ provided any security in connection with indebtedness of 3rd person to Co/ S/H/A/ Subsidiary of Holding, in excess of Rs.1 Lac
- 8) 5) Person/ Firm who, whether directly or indirectly, has business relationship with Co/ S/H/A/ Subsidiary of Holding or Associate
- 9) 6) Person whose relative is director or is in employment as director or KMP
- 10) 7) Person who is in full time employment elsewhere or Person/ partner holding appointment as its auditor, if he is holding appointment of more than 20 Co

Other than one person companies, small companies and private companies having paid-up share capital less than Rs. 100 Crores

- 11) 8) Person who has been convicted by court of offence involving fraud & 10 yrs have not elapsed from date of conviction
 - 12) 9) Person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.
- Explanation — For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in the Explanation to section 144

Section 142 - Remuneration of auditors

- 1) Remuneration of auditor shall be fixed by Co in GM or in manner decided therein
- 2) Remuneration of 1st Auditor may be fixed by Board
- 3) Remuneration include expenses, incurred by auditor in connection with audit & any facility extended to him but excludes any remuneration paid for other service rendered at request of Co

Audit and Auditors (Chart 10.3)

Section 143 - Powers & Duties of Auditors & Auditing Standards

Section 143(1) - Powers of Auditors	Section 143(2) - Duty to make Report	Section 143(3) - Matters included Auditors' Report	Other Matters in Auditors' Report (Rules*)	Section 143(4) - Reasons to be given	Section 143(5), (6), (7) - Audit of Government Companies	Section 143(8) - Audit of accounts of branch office
<p>1) Auditor has right to access books of accounts & vouchers kept at RO or other place</p> <p>2) He shall be entitled to information & explanations as he may consider necessary for performance of his duties as auditor</p> <p>3) <u>Matters of inquiry</u>-</p> <p>a) Whether loans & advances made on basis of security have been properly secured & whether its terms are prejudicial to interests of Co or its members</p> <p>b) Whether transactions represented by book entries are prejudicial to interests of Co</p> <p>c) Where Co not being investment or Banking Co, whether so much of assets of Co as consist of shares, debentures & other securities have been sold at price less than that at which they were purchased by Co</p> <p>d) Whether loans & advances made by Co have been shown as deposits</p> <p>e) Whether personal expenses have been charged to Revenue A/c</p> <p>f) Where it is stated in Books & documents that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, & if no cash has actually been so received, whether position as stated in account books & Balance Sheet is correct, regular & not misleading</p> <p>4) Auditor of Holding Co shall have right to access records of all its subsidiaries & associate companies in so far as it relates to CFS with that of its subsidiaries & associate companies</p>	<p>1) Auditor shall make report to members of Co on following:</p> <p>a) Accounts examined by him &</p> <p>b) Every FS which are required under this Act to be laid before Co in GM</p> <p>2) He while making report shall take into account:</p> <p>a) provisions of Act</p> <p>b) accounting & auditing standards &</p> <p>c) matters which are required to be included under provisions of this Act or any rules made thereunder</p> <p>3) He shall express his opinion on accounts & FS examined by him that to the best of his information & knowledge, said accounts, FS give true & fair view of state of company's affairs as at end of its FY & Profit or Loss & Cash Flow for year</p>	<p>a) whether he obtained all necessary information & explanations</p> <p>b) whether proper books of account as required by law have been kept</p> <p>c) whether report on Branch Accounts audited by another person has been sent to him</p> <p>d) whether Company's B/s & P&L A/c dealt with in report are in agreement with books of account & returns</p> <p>e) whether, FS comply with AS</p> <p>f) observations/ comments on financial transactions or matters which have adverse effect on functioning of Co</p> <p>g) whether any director is disqualified from being appointed u/s 164(2)</p> <p>h) any qualification/ adverse remark relating to maintenance of accounts</p> <p>i) Whether Co has adequate internal financial controls with reference to financial statements in place & operating effectiveness of such controls</p> <p>This clause shall not apply to private company-</p> <p>i) which is one person company or small company, or</p> <p>ii) which has turnover less than Rs. 50 Cr as per latest audited FS & which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during F.Y. less than Rs. 25 Crore</p> <p>Exception shall be applicable to Private Co. which has not committed default in filing of its FS u/s 137 or annual return u/s 92 of said Act with Registrar</p> <p>Report of Auditor shall state about existence of adequate internal financial controls system & its operating effectiveness</p> <p>Exemption shall be applicable for those audit reports in respect of FS pertaining to F.Y. commencing on or after 1st April, 2016, which are made on or after date of said notification</p> <p>j) such other matters</p>	<p>As per Rules*, Auditor's Report shall also include views & comments on following matters-</p> <p>a) whether Co has disclosed impact, of pending litigations on its financial position in its FS</p> <p>b) whether Co has made provision, as required under any law or AS, for material foreseeable losses, on long term contracts including derivative contracts</p> <p>c) whether there has been any delay in transferring amounts to IEPF</p> <p>(e) (i) Whether management has represented that, to best of its knowledge & belief, other than as disclosed in notes to accounts, no funds have been advanced or loaned or invested by the co. to or in any other person(s) or entity(ies), including foreign entities, with 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 co. or provide any guarantee, security or the like on behalf of Ultimate Beneficiaries;</p> <p>(ii) Whether management has represented, that, to best of its knowledge & belief, other than as disclosed in notes to a/c's, no funds have been received by co. from any person(s) or entity(ies), including foreign entities, with 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 or provide any guarantee, security or like on behalf of Ultimate Beneficiaries; &</p> <p>(iii) Based on such audit procedures that auditor has considered reasonable & appropriate in circumstances, nothing has come to their notice that has caused them to believe that representations under sub-clause (i) & (ii) contain any material mis-statement.</p> <p>(f) Whether the dividend declared or paid during the year by co. is in compliance with sec 123 of the Companies Act, 2013.</p> <p>(g) Whether the co. has used such accounting software for maintaining its books of account which has a feature of recording audit trail facility & same has been operated throughout year for all transactions recorded in software & audit trail feature has not been tampered with & audit trail has been preserved by co. as per statutory requirements for record retention.</p>	<p>Where any matters are answered in negative or with qualification, Auditor's Report shall state reason for answer</p> <p>1) Auditor of Government Co is appointed by C&AG of India u/s 139(5)/139(7) & direct manner in which accounts are required to be audited</p> <p>2) Auditor so appointed shall submit copy of Audit Report to C&AG</p> <p>3) Audit Report shall include following:</p> <p>a) directions issued by C&AG</p> <p>b) action taken thereon &</p> <p>c) its impact on accounts & FS</p> <p>4) C&AG shall within 60 days from date of receipt of audit report have right to-</p> <p>a) conduct supplementary audit by authorised person &</p> <p>b) comment upon or supplement such audit report</p> <p>5) Comments given by C&AG upon, or supplement to, Audit Report shall be sent by Co to every person entitled to copies of audited FS u/s 136(1) & also be placed before AGM at same time & manner as audit report</p> <p>6) For Government Co or Co controlled by SG/ CG, C&AG may, by order, if he considers necessary, cause test audit, without prejudice to provisions of Audit & Auditors</p>	<p>1) Accounts of Branch office shall be audited either by:</p> <p>a) Company's Auditor or</p> <p>b) by other person qualified for appointment as auditor</p> <p>2) If Branch Office is situated outside India, accounts shall be audited either by:</p> <p>a) Company's auditor or</p> <p>b) by an accountant or</p> <p>c) by any other person duly qualified to act as an auditor in accordance with laws of that country</p> <p>3) Duties & powers of Company's auditor with reference to audit of Branch & Branch Auditor shall be as contained in Section 143(1) to (4)</p> <p>4) Branch auditor shall prepare report on accounts of branch examined by him & send it to Company Auditor who shall deal with it in his report in such manner as he considers necessary</p> <p>5) Provisions regarding reporting of fraud by auditor shall also extend to Branch Auditor to extent it relates to concerned branch</p>	

Section 143(4) - Provisions of this section shall mutatis mutandis apply to - (a) Cost Accountant conducting cost audit u/s 148 or (b) CS in practice conducting secretarial audit u/s 204

* Companies (Audit and Auditors) Rules, 2014

Audit and Auditors (Chart 10.4)

Section 143(12) - Reporting of Frauds by Auditor	Section 143(9), (10), (11) - Compliance with Auditing Standards	Section 144 - Auditor not to render certain services	Section 145 - Auditors to sign audit report	Section 146 - Auditors to sign audit report	Section 147 - Punishment for contravention		
<p>performance of his duties, has reason to believe that offence of fraud involving such amt as may be prescribed, is being or has been committed in co. by its officers or employees, he shall report matter to CG Rule 13(1)*: Statutory auditor, has reason to believe that offence of fraud, which involves or is expected to involve individually amt of Rs. 1 cr or above, is being or has been committed against co. by its officers or employees, auditor shall report matter to CG Rule 13(2)*: Report matter to CG as under-</p> <p>a) Report to Board or Audit Committee, immediately but not later than 2 days seeking their reply or observations within 45 days</p> <p>b) Auditor shall forward his report & reply or observations of Board to CG within 15 days of receipt of reply from Board</p> <p>c) If Auditor fails to get reply, he shall forward his report to CG with note containing details that report was sent to AC/BOD for which reply not received</p> <p>d) Report shall be sent to Secretary, MCA, in sealed cover by Registered Post or by Speed Post followed by e-mail in confirmation</p> <p>e) On letter-head containing postal address, email address & contact no & signed seal & Membership No. f) In form of statement specified in Form ADT-4</p>	<p>1) Auditor shall comply with Auditing Standards</p> <p>2) CG may prescribe standards of auditing or any addendum thereto, as recommended by ICAI, in consultation with & after examination of recommendations made by NFRA</p> <p>3) Until any Auditing Standards are notified, standards of auditing specified by ICAI shall be deemed to be auditing standards</p> <p>4) CG in consultation with NFRA, may direct by General or Special Order, in respect of such class or description of companies, that Auditor's Report shall also include statement on matters as may be specified therein</p>	<p>Services Approved</p> <p>Auditor shall provide only such services as are approved by BOD or Audit Committee (if any)</p> <p>Prohibited Services</p> <p>Following services whether rendered directly or indirectly to Co. or its Holding/Subsidiary Co.)</p> <p>a) accounting & book keeping services</p> <p>b) internal audit</p> <p>c) design and implementation of any financial information system</p> <p>d) actuarial services</p> <p>e) investment advisory services</p> <p>f) investment banking services</p> <p>g) rendering of outsourced financial services</p> <p>h) management services & Section 144(2) - Discontinuation of existing non-audit services</p> <p>Before closure of 1st FY after date of commencement of section</p>	<p>1) Person appointed as auditor of Co. shall sign auditor's report</p> <p>2) Sign & certify other document of Co.</p> <p>3) Qualifications, observations or comments on financial transactions or matters, which have any adverse effect on functioning of Co. mentioned in auditor's report shall be read before Co in GM & shall be open to inspection by any member of Co</p>	<p>1) All notices of, & other communication relating to, any GM be forwarded to auditor</p> <p>2) He shall, unless otherwise exempted, attend any GM either- a) by himself or b) through his authorised representative, who shall also be qualified to be an auditor</p> <p>3) He shall have right to be heard at meeting on any part of business which concerns him as auditor</p>	<p>On Company</p> <p>Provisions of Section 139 to 146 is contravened:</p> <p>Fine: Minimum - Rs. 25/-</p> <p>Maximum - Rs. 5/-</p> <p>On Officer in Default</p> <p>Provisions of Section 139 to 146 is contravened:</p> <p>Fine: Minimum - Rs. 10,000/-</p> <p>Maximum - Rs. 1,00,000/-</p>	<p>On Auditor</p> <p>1) Provisions of Section 139, 144 or 145 is contravened:</p> <p>Fine - Minimum - Rs. 25,000/-</p> <p>Maximum - Rs. 5,00,000/-</p> <p>or four times the remuneration of the auditor, whichever is less</p> <p>2) If contravention is committed knowingly or willfully with intention to deceive company or shareholders or creditors or tax authorities:</p> <p>a) Imprisonment - Upto 1 year</p> <p>b) fine which shall not be less than Rs. 50,000 but which may extend to Rs. 25,00,000/- or 8 times remuneration of auditor, whichever is less</p> <p>3) Consequences of conviction:</p> <p>a) Refund of Remuneration</p> <p>b) Payment of Damages to the company, statutory bodies or authorities or to members or creditors of company for loss arising out of incorrect or misleading statements of particulars made in his audit report</p>	<p>Liability of Audit firm</p> <p>Where, in case of audit of company being conducted by audit firm, it is proved that partner or partners of audit firm has or have acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, company or its directors or officers, liability, whether civil or criminal as provided in Companies Act, 2013, or in any other law for time being in force, for such act shall be of partner or partners concerned of audit firm & of firm jointly & severally & shall also be liable u/s 447</p> <p>Provided that in case of criminal liability of audit firm, in respect of liability other than fine, concerned partner or partners, who acted in fraudulent manner or abetted or colluded in any fraud shall only be liable</p>

Audit and Auditors (Chart 10.5)

Section 148 - CG to specify audit of items of cost in respect of certain companies

<p>Section 148(1) - Order by CG for maintenance of Cost Records</p>	<p>CG may, by order, in respect of companies engaged in production of goods or providing services, direct that particulars relating to utilisation of material or labour or other items of cost as may be prescribed shall also be included in books of accounts kept u/s 128</p> <p>2) Before issuing such order in respect of companies regulated under special Act, CG shall consult regulatory body established under such Special Act</p>	<p>Section 148(2) - Order by CG for conduct of Cost Audit</p> <p>If CG is of opinion, that it is necessary to do so, it may, by order, direct audit of cost records of companies, which are covered aforesaid & which has prescribed net worth or prescribed turnover, shall be conducted in manner specified in order</p>	<p>Section 148(3) - Appointment of Cost Auditor by Board & Cost auditor to comply with cost auditing standards</p> <p>1) Cost audit shall be conducted by Cost Accountant appointed by Board on remuneration determined by members</p> <p>2) Companies (Audit and Auditors) Rules, 2014 provides that-</p> <p>a) In case of Co required to constitute Audit Committee- i) Board shall appoint an individual, who is Cost Accountant or Firm of Cost Accountants on recommendations of Audit committee, which shall also recommend remuneration for cost auditor</p> <p>ii) Remuneration shall be considered & approved by BOD & ratified subsequently by shareholders</p> <p>b) In case of Co not required to constitute Audit Committee, Board shall appoint Cost Accountant or Firm of Cost Accountants & remuneration be ratified by shareholders subsequently</p> <p>3) Person appointed u/s 139 as Company auditor shall not be appointed for conducting Cost Audit</p> <p>4) Auditor conducting cost audit shall comply with Cost Auditing Standards issued by Institute of Cost Accountants of India, with approval of CG</p>	<p>Section 148(4) - Audit conducted u/s 148 shall be in addition to audit conducted u/s 143</p>	<p>Section 148(5)</p> <p>1) Qualifications, disqualifications, rights, duties & obligations applicable to Company Auditor shall apply to Cost Auditor appointed u/s 148 & it shall be duty of Co to give all assistance & facilities to Cost Auditor for auditing cost records of Co</p> <p>2) Report on Cost Audit shall be submitted by Cost Accountant to BOD of Co</p>	<p>Section 148(6),(7) - Cost Audit Report</p> <p>1) Co shall within 30 days from date of receipt Cost Audit Report furnish it to CG along with full information & explanation on every reservation or qualification contained therein</p> <p>2) If, after considering Cost Audit Report & information & explanation furnished by, CG is of opinion that any further information or explanation is necessary, it may call for further information & explanation & Co shall furnish the same within time specified by CG</p>	<p>Section 148(8) - Contravention</p> <p>1) Co & every officer in default shall be punishable in manner provided in Section 147(1)</p> <p>2) Cost Auditor in default shall be punishable in manner as provided in Section 147(2) to (4)</p>
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SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICE)

a) application for incorporation of a co. under this rule shall be in FORM No. INC-32 (SPICE) along with e- Memorandum of Association (e-MOA) in Form No. INC-33 & e-Articles of Association (e-AOA) in Form no INC-34

Provided that in case of incorporation of a co. falling under sec. 8 of the Act, Form No. INC-32 (SPICE) shall be filed along with Form No. INC-31 (Memorandum of Association) & Form No. INC-31 (Articles of Association) as attachments.

b) application for allotment of DIN upto 3 Directors, reservation of a name, incorporation of co. & appointment of Directors of proposed for One Person Co., private co., public co. & a co. falling under section 8 of the Act, shall be filed in Form No. INC-32 (SPICE), with registrar, within whose jurisdiction registered office of co. is proposed to be situated along with fee of Rs. 500 in addition to registration fee as specified in Companies (Registration of Offices and Fees) Rules, 2014

Provided that where an application has applied for reservation of a name under Rule 9 & which has been approved therein, he may fill reserved name as proposed name of co.

c) For purpose of filing SPICE Form, particulars of maximum of 3 directors shall be allowed to be filled in Form No. INC-32 (SPICE), & allotment of DIN of maximum of 3 proposed directors shall be permitted in Form No INC-32 (SPICE) in case of proposed directors not having approved DIN

d) promoter or applicant of proposed co. shall propose only one name in Form No. INC-32 (SPICE).

e) promoter or applicant of proposed co. shall prepare Memorandum of Association (e- MOA) in Form No. INC-33 & Articles of Association (e-AOA) in Form No Inc-34 in accordance with rule 13

Provided that subscribers & witness or witnesses shall affix their digital signatures to the e- MOA & e-AOA.

f) Co. may furnish verification of its registered office by filing Form No. INC-32 (SPICE) in which case co. shall attach with such Form No. INC-32 (SPICE), any of documents referred to in sub-rule (2) of rule 25.

g) Form No. INC-22 shall not be required to be filed in case proposed co. maintains its registered office at given correspondence address.

h) (i) Where Registrar, on examining Form No. INC-32 (SPICE), finds that it is necessary to call for further info. or finds such application or document to be defective or incomplete in any respect, he shall give intimation to applicant to remove defects & re-submit e-form within 15 days from date of such intimation given by Registrar

ii) After resubmission of document, if registrar still finds that document is defective or incomplete in any respect, he shall give one or more opportunity of 15 days to remove such defects or deficiencies.

Provided that total period for resubmission of documents shall not exceed 30 days.

i) Certificate of Incorporation of co. shall be issued by Registrar in Form No. INC-11

Companies Incorporated Outside India (foreign Company) (Chart 11.1)

Section 2(42) - Definition of Foreign Co	Any Co or body corporate incorporated outside India which- a) Place of business in India whether by itself or through an agent, physically or through electronic mode & b) Conducts any business activity in India in any other manner
Section 379 - Application of Act to Foreign Co	1) Where not less than 50% PSC, equity or preference or partly equity & partly preference, of Foreign Co is held by - a) 1 or more citizens of India, or b) 1 or more Co/ Bodies Corporate incorporated in India, or c) 1 or more citizens of India & 1 or more Co/ bodies corporate incorporated in India, *whether singly or in aggregate
Section 380 - Documents to be delivered to Registrar by Foreign Co	1) Every Foreign Co is required to deliver to Registrar for registration a) Certified Copy of Charter, Statutes or Memorandum & Articles or Other Instrument defining constitution of Co, if instrument is not in English language, Certified Translation thereof in English Language b) Full address of registered or principal office of Co c) List of Directors & Secretary of Co d) Name & Address of 1 or more persons resident in India authorised to accept on behalf of Co service of process & any notices e) Full address of office of Co deemed to be its principal place of business in India f) Particulars of opening & closing of place of business in India on earlier occasions g) Declaration that none of directors have ever been convicted or debarred from formation of companies & management in India or abroad 2) Above informations be filed with Registrar within 30 days of establishment of its place of business in India, in form FC-1 along with prescribed fees
Section 381 - Accounts of Foreign Co	1) Every Foreign Co shall, in every calendar year - a) Make out Balance sheet & P & L A/c in such form, containing particulars as prescribed, & b) Deliver copy to Registrar 2) Foreign Co shall send to Registrar along with documents required to be delivered to him, copy of list of all places of business established by Co in India in prescribed form 3) As per Rules', a) Foreign Co shall prepare FS as per Sch III & along with FS to be filled with Registrar, attach following- i) Statement of RPT ii) Statement of repatriation of profits iii) Statement of transfer of funds (including dividends) b) All documents shall be delivered to Registrar within 6 months of close of FY of Foreign Co to which they relate c) Accounts of Foreign Co pertaining to Indian business operations prepared as per Section 381(1) & Rules thereunder, shall be audited by practicing CA in India or firm or LLP of practicing CAs
Section 382 - Display of name of Foreign Co	Every Foreign Co shall- 1) Exhibit on outside of every office or place where it carries on business in India, name of Co & country in which it is incorporated 2) Name of Co & country in which Co is incorporated, to be stated in legible English characters in all business letters, bills, heads & letter paper 3) State the fact that liability of members is limited
Section 383 - Service on Foreign Co	Any process, notice, or other document required to be served on Foreign Co shall be deemed to be sufficiently served, if addressed to any person whose name & address have been delivered to Registrar u/s 380 & left at, or sent by post, to address which has been so delivered to Registrar or by electronic mode
Section 387 - Dating of Prospectus and Particulars	1) Prospectus to be dated & signed [Section 387(1)]: Contains particulars with respect to following matters- a) Instrument constituting or defining constitution of Co b) Enactments or provisions by or under which incorporation of Co was affected c) Address in India where said instrument, enactments or provisions, or copies thereof, & if same are not in English language, certified translation thereof in English language can be inspected d) Date on which & country in which Co would be or was incorporated & e) Whether Co has established place of business in India &, if so, address of its principal office in India 2) Points (a), (b) & (c) above shall not apply in case of prospectus issued more than 2 years after date at which Co is entitled to commence business
Section 388 - Provision to Expert's Consent & Allotment	1) No prospectus offering for subscription in securities of Co incorporated or to be incorporated outside India or when formed will or will not establish, place of business in India a) Where prospectus includes statement purporting to be made by an expert, he has not given, or has before delivery of prospectus for registration withdrawn, his written consent b) If prospectus does not have effect 2) Statement shall be deemed to be included in prospectus, if it is contained in any report or memorandum appearing on face thereof or by reference incorporated therein or issued therewith
Section 389 - Registration of Prospectus	1) No prospectus can be issued unless it is certified by the chairperson and two other directors and also required to be register with ROC. Documents to be attached- -Consent from Expert Contract of MD or Manager Other material Contracts entered within preceding two years. Underwriting Agreement POA
Section 390 - Offer of IDR	CG may make rules applicable to offer of Indian Depository Receipts (IDR) & manner in which IDR shall be dealt with in depository mode & by custodian & underwriters (Refer SEBI for details)
Section 392 - Punishment for Contravention	1) Foreign Co shall be punishable with- a) Fine - Rs. 1,00,000/- to Rs. 3,00,000/- & b) Additional Fine extend to Rs. 50,000/- every day after first during which contravention continues in case of continuing offence 2) Officer in default shall be punishable with- a) Imprisonment upto 6 months, or b) Fine - Rs. 25,000/- to Rs. 5,00,000/- or c) Both
Section - 393	If Company fails to comply with the provisions of Chapter XXII then company

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.1)

LIMITED LIABILITY PARTNERSHIP

LLP is new form of legal business entity with limited liability. It is alternative corporate business vehicle that not only gives benefits of limited liability at low compliance cost but allows its partners flexibility of organising their internal structure as traditional partnership. LLP contains elements of both 'corporate structure' as well as 'partnership firm structure' so it is called hybrid between company & partnership. LLP is separate legal entity, LLP itself will be liable to full extent of its assets, liability of partners will be limited to their capital contribution

Introduction

- i) LLP Act, 2008 applicable to whole of India, enacted to make provisions for formation & regulation of LLP & for matters incidental thereto
- ii) Act has 81 Sections (Sec 81 is omitted wef 1st April 2022) & 4 Schedules - 1st - mutual rights & duties of partners & LLP, 2nd - conversion of firm into LLP, 3rd - conversion of private co. into LLP, 4th - conversion of unlisted public co. into LLP
- iii) Indian Partnership Act, 1932 is not applicable to LLPs

Need of new form of LLP

- i) Creation of LLP to meet growth of Indian economy
- ii) Alternative to traditional partnership with unlimited personal liability & statute-based governance structure of limited liability co.
- iii) Benefits of limited liability but allows its members flexibility of organizing their internal structure as partnership based on mutual agreement
- iv) Suitable vehicle for small enterprises & for investment by

Advantages of LLP

- i) Organised and operates on the basis of agreement
- ii) Provides flexibility without imposing detailed legal & procedural requirements
- iii) Easy to form
- iv) All partners enjoy limited liability
- v) Easy to dissolve

Characteristics of LLP

1. Body corporate: LLP is body corporate formed & incorporated under this Act & is legal entity separate from its partners
2. Perpetual Succession: LLP can continue existence irrespective of changes in partners. Death/ insanity/ retirement/ insolvency of partners has no impact on existence of LLP. It is capable of entering into contracts & holding property in its own name
3. Separate Legal Entity: LLP is a separate legal entity, is liable to full extent of its assets but liability of partners is limited to their agreed contribution in LLP
4. Mutual Agency: No partner is liable on account of independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct
5. LLP Agreement: Mutual rights and duties of the partners within LLP are governed by agreement between partners
6. Artificial Legal Person: LLP is artificial legal person because it is created by legal process & is clothed with all rights of individual. LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists
7. Common Seal: LLP being an artificial person can act through its partners & designated partners. LLP may have common seal, if it decides to have one
8. Limited Liability: Every partner of a LLP is, for purpose of business of LLP, agent of LLP. Liability of partners is limited to their agreed contribution in the LLP
9. Management of Business: Partners in LLP are entitled to manage business of LLP. But only designated partners are responsible for legal compliances partners
10. Minimum & Maximum number of Partners: Every LLP shall have least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP
11. Business for Profit Only: Essential requirement for forming LLP is carrying on lawful business with a view to earn profit. Thus LLP cannot be formed for charitable or non-economic purpose
12. Investigation: Central Government shall have powers to investigate affairs of LLP
13. Compromise or Arrangement: Any compromise or arrangement including merger & amalgamation of LLPs shall be in accordance with provisions of LLP Act, 2008
14. Conversion into LLP: Firm, private company or unlisted public company would be allowed to be converted into LLP
15. E-Filing of Documents: Every form or application of document required to be filed or delivered under act & rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov. in & authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.
16. Foreign LLPs: Limited liability partnership formed, incorporated, or registered outside India which established place of business within

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.2)

PARTNERS AND THEIR CONTRIBUTION

Section 5 - Partners

1) Individual or body corporate may be partner in LLP. However, individual shall not be capable of becoming partner of LLP, if-

- a) he has been found to be of unsound mind by Court
 - b) he is undischarged insolvent; or
 - c) he has applied to be adjudicated as insolvent & his application is pending
- 2) Following persons can become partner in LLP:

- i) Individuals (including NRIs, foreign nationals), ii) LLP, iii) Companies (including foreign companies), iv) Foreign LLP, v) LLP incorporated outside India, vi) Foreign Companies
- 3) Co-operative society &

Section 6 - Minimum number of partners

4) FDI compliances to be undertaken by LLP if foreign investment made

i) Every LLP shall have at least 2 partners

ii) If at any time, number of partners of LLP is reduced below 2 & LLP carries on business for more

Section 7 - Designated Partners

1) Every LLP shall have at least 2 designated partners who are individuals (1 of them be resident in India)

Provided, if in LLP, all partners are bodies corporate or in which one or more partners are individuals & bodies corporate, at least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

2) If incorporation document- a) specifies designated partners, such persons shall be designated partners on incorporation; or b) states that each of partners from time to time to be designated partners, every partner shall be designated partners,

Partner may become and cease to be designated partner in accordance with LLP Agreement

3) Prior consent from individual required to act designated partner

4) Particulars of every individual who has given his consent to act as designated partners to be filed with Registrar within 30 days of his appointment

5) Individual eligible to be designated partner shall satisfy prescribed conditions and requirements

Section 8 - Liabilities of Designated Partners

Unless expressly provided otherwise in this Act, designated partner shall be - a) responsible for doing of all acts, matters & things as are required to be done by LLP including filing of any document, return, statement & like report pursuant to provisions of this Act & as may be specified in LLP agreement; & b) liable to all penalties imposed on LLP for any contravention of those provisions

Section 9 - Changes in Designated Partners

LLP may appoint designated partner within 30 days of vacancy arising for any reason & provisions of Section 7(4) and 7(5) shall apply in respect of such new designated partner, provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be designated partner.

Section 10 - Punishment for contravention of Section 7 & 9

1) If LLP contravenes Section 7(1) (designated partners are less than two or none of designated partner is resident in India), LLP & its every partner be liable to a penalty of Rs. 10,000 & in case of continuing contravention, with further penalty of Rs. 100 per day subject to maximum Rs. 1,00,000 for LLP & Rs. 50,000 for every partner

2) If LLP contravenes Section 7(4) (failure to file consent of appointment of designated partner within 30 days of his appointment), LLP & its every designated partner be liable to penalty of Rs. 5,000 & for continuing contravention, further penalty of Rs. 100 per day subject to maximum Rs. 50,000 for LLP & Rs. 25,000 for every designated partner

3) If LLP contravenes Section 7(5) or Section 9, LLP & its every partner be liable for penalty of Rs. 10,000 & continuing contravention, further penalty of Rs. 100 per day subject to

Section 32 - Form of contribution

1) Contribution of partner may consist of tangible, movable or immovable or intangible property or other benefit to LLP, including money,

promissory notes, other agreements to contribute cash or property, & contracts for services performed or to be performed.

2) Monetary value of contribution of each

Section 33 - Obligation to contribute

1) Obligation of partner to contribute money or other property or other benefit or to perform services for LLP shall be as per LLP agreement

2) Creditor of LLP, which extends credit or otherwise acts in reliance on obligation described in that agreement, without notice of any compromise

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.3)

INCORPORATION OF LLP



Section 11 - Incorporation document	<p>1. For LLP to be incorporated:</p> <ol style="list-style-type: none"> 2 or more persons associated with carrying on lawful business with view to profit shall subscribe their names to incorporation document; incorporation document shall be filed in prescribed manner & fees, with Registrar of State in which registered office of LLP is to be situated (Incorporation documents are now processed electronically by Registrar, Central Registration Centre) & Statement to be filed: <ol style="list-style-type: none"> There shall be filed along with incorporation document, statement in prescribed form, made by either advocate, or CS or CA or CWA, who is engaged in formation of LLP & by any one who subscribed his name to incorporation document, that all requirements of this Act & rules made thereunder have been complied with, in respect of incorporation & matters precedent & incidental <p>2. Incorporation document shall:</p> <ol style="list-style-type: none"> be in prescribed form; state name of LLP; state proposed business of LLP; state address of registered office of LLP; state name & address of each of persons who are to be partners of LLP on incorporation; state name & address of persons who are to be designated partners of LLP on incorporation; contain such other information concerning proposed LLP as may be prescribed <p>3. If person makes statement as discussed above which he-</p> <ol style="list-style-type: none"> knows to be false; or does not believe to be true, shall be punishable with imprisonment upto 2 years & fine Rs. 10,000 to Rs. 5 Lakhs
Section 12 - Incorporation by registration	<ol style="list-style-type: none"> When requirements imposed by clauses (b) & (c) of section 11(1) have been complied with, Registrar shall retain incorporation document &, unless requirement imposed by clause (a) of that sub-section has not been complied with, he shall, within 14 days - <ol style="list-style-type: none"> register incorporation document; & give certificate that LLP is incorporated by name specified therein Registrar may accept statement delivered under clause (c) of section 11(1) as sufficient evidence that requirement imposed by clause (a) of that sub-section has been complied with Certificate issued under clause (b) of sub-section (1) shall be signed by Registrar & authenticated by his official seal Certificate shall be conclusive evidence that LLP is
Section 13 - Registered office of LLP and change therein	<ol style="list-style-type: none"> Every LLP shall have registered office to which all communications & notices may be addressed & where they shall be received Document may be served on LLP or partner or designated partner thereof by sending it by post under certificate of posting or by registered post or by other prescribed manner, at registered office & any other address specifically declared by LLP for purpose in prescribed form & manner LLP may change place of its registered office & file notice of change with Registrar in prescribed form & manner & such change shall take effect only upon such filing If LLP contravenes provisions of this section, LLP & its every partner be punishable with fine Rs. 500 per day upto Rs. 50,000/-
Section 14 - Effect of registration	<p>On Registration, LLP shall by its name, be capable of -</p> <ol style="list-style-type: none"> suing & being sued acquiring, owning, holding, & disposing of property, whether movable or immovable, tangible or intangible having common seal, if it decides to have one & doing and suffering such other acts & things as bodies corporate may lawfully do & suffer
Section 15 - Name	<ol style="list-style-type: none"> Every LLP shall have either words "limited liability partnership" or acronym "LLP" as last words of its name No LLP be registered by name which, in opinion of CG is - <ol style="list-style-type: none"> undesirable; or identical or too nearly resembles to other LLP or company or registered trademark of any other person under Trade Marks Act, 1999
Section 16 - Reservation of Name	<ol style="list-style-type: none"> Person may apply in prescribed form & manner with fee to Registrar for reservation of name set out in application as- <ol style="list-style-type: none"> name of proposed LLP; or name to which LLP proposes to change its name Upon receipt of application under sub-section (1) & on payment of prescribed fee, Registrar may, if he is satisfied, subject to rules prescribed by CG, that name to be reserved is not one which may be rejected on any ground referred to in section 15(2), reserve name for 3 months from date of intimation by
Section 17 - Rectification of name of LLP	<ol style="list-style-type: none"> If through inadvertence, or otherwise, LLP, on its first registration or on its registration by new name, is registered by name which is identical with or too nearly resembles to- <ol style="list-style-type: none"> any other LLP or a company; or registered trade mark of proprietor under Trade Marks Act, 1999 CG may direct such LLP to change its name within a period of 3 months from date of issue of such direction. Application of proprietor of registered trade marks shall be maintainable within period of 3 years from date of incorporation or registration or change of name of LLP under this Act. LLP shall within a period of 15 days from date of change, give notice of change to Registrar along with order of CG, who shall carry out necessary changes in certificate of incorporation & within 30 days of such change in certificate of incorporation, such LLP shall change its name in LLP agreement If LLP is in default in complying with any direction, CG shall allot new name & Registrar shall enter nit in register of LLP in place of old name & issue fresh certificate of incorporation. However,

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.4)

PARTNERS AND THEIR RELATIONS

Section 22 - Eligibility to be partners

On incorporation of LLP, persons who subscribed their names to incorporation document shall be its partners & other person may become partner of LLP as per LLP agreement

Section 23 - Relationship of partners

- 1) Mutual rights & duties of LLP & its partners be governed by LLP agreement between partners, or between LLP & its partners
- 2) LLP agreement & any changes be filed with Registrar in prescribed form, manner & accompanied by prescribed fees
- 3) Agreement in writing made before incorporation of LLP between persons who subscribe their names to incorporation document may impose obligations on LLP, provided such agreement is ratified by all partners after incorporation of LLP
- 4) In absence of agreement, mutual rights & duties of partners & mutual

Section 24 - Cessation of partnership interest

- 1) Person may cease to be partner of LLP in accordance with agreement, by giving notice in writing of not less than 30 days to other partners of his intention to resign as partner
- 2) Person shall cease to be partner of LLP:
 - a) on his death or dissolution of LLP; or
 - b) if he is declared to be of unsound mind by competent court; or
 - c) if he has applied to be adjudged as insolvent or declared insolvent
- 3) Former partner is to be regarded still being partner of LLP unless:
 - a) person has notice that former partner has ceased to be partner of LLP; or
 - b) notice that former partner has ceased to be partner of LLP has been delivered to Registrar.
- 4) Cessation of partner from LLP does not by itself discharge partner from any obligation to LLP or to other partners or to any other person which he incurred while being partner.
- 5) Where partner of LLP ceases to be partner, unless otherwise provided in LLP agreement, former partner or person entitled to his share in consequence of death or insolvency of former partner, shall be entitled to receive from LLP:
 - a) amount equal to capital contribution of former partner actually made to LLP; &
 - b) his right to share in accumulated profits of LLP, after deduction of accumulated losses of LLP, determined as at date former partner ceased to be partner.
- 6) Former partner or person entitled to his share in consequence of death or insolvency of former partner shall not have any right to

Section 25 - Registration of changes in partners

- 1) Every partner shall inform LLP, change in his name or address within 15 days
- 2) LLP shall:
 - a) where person becomes or ceases to be partner, file notice with Registrar within 30 days from date he becomes or ceases to be partner; &
 - b) where there is change in name or address of partner, file notice with Registrar within 30 days of change
- 3) Notice filed with Registrar:
 - a) shall be in prescribed form & accompanied by fees
 - b) shall be signed by designated partner of LLP & authenticated &
 - c) if it relates to incoming partner, shall contain statement by such partner that he consents to becoming partner, signed by him & authenticated in prescribed manner
- 4) If LLP contravenes provisions of sub-section (2), LLP & every designated partner of LLP be liable to penalty of Rs. 10,000/-
- 5) If any partner contravenes provisions of sub-section (1), such partner be liable to penalty Rs. 10,000
- 6) Person who ceases to be partner of LLP may himself file with Registrar notice referred to in sub-section (3) if he has reasonable cause to believe that LLP may not file notice with Registrar & Registrar shall obtain confirmation from LLP unless LLP has also filed such notice

However, where no confirmation is given by LLP within 15 days, registrar shall register notice made by person ceasing to be partner under this

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

Section 26 - Partner as agent

Every partner of LLP is, for purpose of business of LLP, agent of LLP, but not of other partners

Section 27 - Extent of liability of LLP

1) LLP is not bound by anything done by partner in dealing with person if:

- a) partner has no authority to act for LLP in doing particular act; &
- b) person knows that he has no authority or does not know or believe him to be partner of LLP

2) LLP is liable if partner of LLP is liable to any person as result of wrongful act or omission on his part in course of business of LLP or with its authority

3) Obligation of LLP whether arising in contract or otherwise, shall be solely obligation of LLP

4) Liabilities of LLP shall be met

Section 28 - Extent of liability of partner

1) Partner is not personally liable, directly or indirectly for obligation referred to Section 27(3) solely by reason of being partner of LLP.

2) Provisions of section 27(3) & Section 28(1) shall not affect personal liability of partner for his own wrongful act or omission, but partner shall not be personally liable for wrongful act or omission of any

partner of LLP.

Section 29 - Holding out

1) Person who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be partner in LLP is liable to any person who has on faith of any such representation given credit to LLP, whether person representing himself or represented to be partner does or does not know that representation has reached person so giving credit

However, where any credit is received by LLP as result of representation, LLP be liable to extent of credit received by it or any financial benefit derived thereon.

2) Where after partner's death business is continued in same LLP name, continued use of that name or of deceased partner's name as part thereof shall not of itself make his legal representative or his estate liable for any act of LLP done after his death

Section 30 - Unlimited liability in case of fraud

a) In event of act carried out by LLP, or its partners, with intent to defraud creditors of LLP or any other person, or for fraudulent purpose, liability of LLP & partners who acted with intent to defraud creditors or for any fraudulent purpose be unlimited for all debts or other liabilities of LLP

b) However, in case such act is carried out by partner, LLP is liable to same extent as partner unless it is established by LLP that such act was without knowledge or authority of LLP.

2) Where business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly party shall be punishable with imprisonment upto 5 years & fine Rs. 50,000 to Rs. 5 Lakhs

3) Where LLP or partner or designated partner or employee of such LLP has conducted affairs of LLP in fraudulent manner, then without prejudice to criminal proceedings which may arise under any law for time being in force, LLP & any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct.

However, such LLP shall not be liable if partner or designated partner or employee has acted fraudulently without knowledge of LLP

Section 31 - Whistle blowing

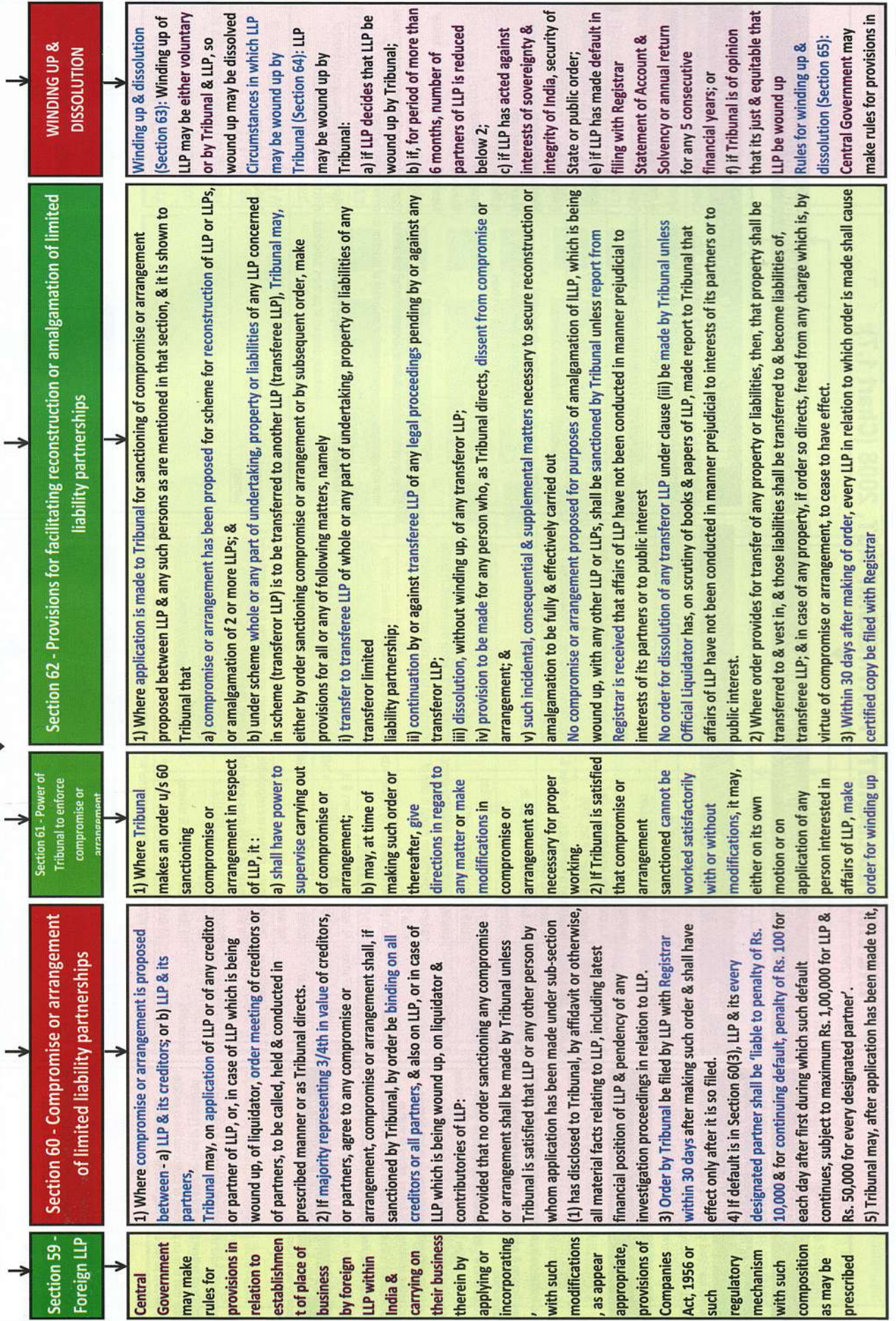
1) Court or Tribunal may reduce or waive penalty leviable against any partner or employee of a LLP, if such partner or employee of LLP has provided useful information during investigation; or when information given by partner or employee leads to LLP or any partner or employee of LLP being convicted under this Act or any other Act

2) No partner or employee of LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against terms & conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1)

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.5)

FINANCIAL DISCLOSURES	Section 39 - Compounding of Offences	Section 42 - Partner's Transferable Interest	CONVERSION INTO LLP
<p>Section 34 - Maintenance of books of account, other records & audit, etc.</p> <p>1) Proper Books of account: LLP shall maintain such proper books of account relating to its affairs for each year of its existence on cash basis or accrual basis & according to double entry system of accounting & shall maintain same at its registered office</p> <p>2) Statement of Account & Solvency: Every LLP shall, within period of 6 months from end of each financial year, prepare Statement of Account & Solvency for said financial year as at last day of said financial year in such form as may be prescribed, & such statement shall be signed by designated partners of LLP.</p> <p>3) Every LLP shall file Statement of Account & Solvency, prepared pursuant to sub-section (2) with Registrar every year in such form & manner & accompanied by such fees as may be prescribed</p> <p>4) Accounts of LLP be audited in accordance with prescribed rules. CG may, by notification in Official Gazette, exempt class of LLP from requirements of this sub-section</p> <p>5) Penalty for non-compliance 34(3)- LLP - Rs.100 per day subject to maximum Rs.1,00,000 Every Designated Partners - Rs. 100 per day subject to maximum Rs. 50,000.</p> <p>Section 35- Annual Return 34(1), (2) & (4), LLP- Rs. 25,000 to Rs. 5 Lakhs Every designated partner be punishable with penalty Rs. 10,000 to Rs. 1 Lakh</p> <p>1) Every LLP shall file annual return duly authenticated with Registrar within 60 days of closure of its financial year in prescribed</p>	<p>Section 36 - Inspection of Documents kept by Registrar</p> <p>Incorporation document, name of partners & changes, if any, made therein, Statement of Account & Solvency & annual return filed by each LLP with Registrar shall be available for inspection by any person in such manner &</p> <p>Section 37 - Penalty for false statement</p> <p>If in any return, statement or other document required by or for purposes of provisions of this Act, any person makes statement :</p> <p>a) which is false in any material particular, knowing it to be false; or</p> <p>b) which omits any material fact knowing it to be material,</p> <p>he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment upto 2 years, &</p> <p>Section 38 - Power of Registrar to obtain information</p> <p>1) In order to obtain information, Registrar may require any person including any present or former partner or designated partner or employee of LLP to answer any question or make any declaration or supply any details or particulars in writing to him within reasonable period.</p> <p>2) In case any person does not answer such question or make declaration or supply details or particulars asked for by Registrar within time given by Registrar or when Registrar is not satisfied with reply or declaration or details or particulars provided by such person, Registrar shall have power to summon that person to appear before him or inspector or other public officer whom Registrar may designate</p> <p>2) Documents to be submitted without lawful notice, failure to comply</p>	<p>1) RD or other officer not below rank of RD authorised by CG may compound any offence under this Act which is punishable with fine only, by collecting from person reasonably suspected of having committed offence, sum which may extend to amount of maximum fine provided for offence but shall not be lower than minimum amount provided for offence.</p> <p>2) Nothing contained in sub-section (1) shall apply to offence committed by LLP or its partner or its designated partner within period of 3 years from date on which similar offence committed by it or him was compounded under this section.</p> <p>3) Every application for compounding of offence shall be made to Registrar who shall forward same, together with his comments thereon, to RD or any other officer not below rank of RD authorised by CG.</p> <p>4) Where offence is compounded, whether before or after institution of any prosecution, intimation be given to Registrar within period of 7 days from date on which offence is so compounded.</p> <p>5) Where offence is compounded before institution of prosecution, no prosecution be instituted in relation to such offence.</p> <p>6) Where compounding of offence is made after institution of prosecution, compounding shall be brought by Registrar in writing, to notice of court in which prosecution is pending & on such notice of compounding of offence being given, offender in relation to which offence is so compounded shall be discharged.</p> <p>7) RD or any other officer not below rank of RD authorised by CG, while dealing with proposal for compounding of offence may, by order, direct any partner, designated partner or other employee of LLP to file or register, or on payment of fee or additional fee, return, account or other document within such time as may be specified in order.</p> <p>8) If partner or designated partner or other employee of LLP who fails to comply with order made by RD or any other officer not below rank of RD authorised by CG,</p>	<p>1) Rights of partner to share of profits & to losses of LLP & to receive distributions in accordance with LLP agreement are transferable either wholly or in part.</p> <p>2) Transfer of any right by any partner pursuant to sub-section (1) does not by itself cause disassociation of partner or dissolution & winding up of LLP.</p> <p>3) Transfer of right pursuant to this section does not, by itself, entitle transferee or assignee to participate in management or conduct of activities of LLP, or access information concerning transactions of LLP.</p>
<p>Section 34 - Maintenance of books of account, other records & audit, etc.</p> <p>1) Proper Books of account: LLP shall maintain such proper books of account relating to its affairs for each year of its existence on cash basis or accrual basis & according to double entry system of accounting & shall maintain same at its registered office</p> <p>2) Statement of Account & Solvency: Every LLP shall, within period of 6 months from end of each financial year, prepare Statement of Account & Solvency for said financial year as at last day of said financial year in such form as may be prescribed, & such statement shall be signed by designated partners of LLP.</p> <p>3) Every LLP shall file Statement of Account & Solvency, prepared pursuant to sub-section (2) with Registrar every year in such form & manner & accompanied by such fees as may be prescribed</p> <p>4) Accounts of LLP be audited in accordance with prescribed rules. CG may, by notification in Official Gazette, exempt class of LLP from requirements of this sub-section</p> <p>5) Penalty for non-compliance 34(3)- LLP - Rs.100 per day subject to maximum Rs.1,00,000 Every Designated Partners - Rs. 100 per day subject to maximum Rs. 50,000.</p> <p>Section 35- Annual Return 34(1), (2) & (4), LLP- Rs. 25,000 to Rs. 5 Lakhs Every designated partner be punishable with penalty Rs. 10,000 to Rs. 1 Lakh</p> <p>1) Every LLP shall file annual return duly authenticated with Registrar within 60 days of closure of its financial year in prescribed</p>	<p>Section 36 - Inspection of Documents kept by Registrar</p> <p>Incorporation document, name of partners & changes, if any, made therein, Statement of Account & Solvency & annual return filed by each LLP with Registrar shall be available for inspection by any person in such manner &</p> <p>Section 37 - Penalty for false statement</p> <p>If in any return, statement or other document required by or for purposes of provisions of this Act, any person makes statement :</p> <p>a) which is false in any material particular, knowing it to be false; or</p> <p>b) which omits any material fact knowing it to be material,</p> <p>he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment upto 2 years, &</p> <p>Section 38 - Power of Registrar to obtain information</p> <p>1) In order to obtain information, Registrar may require any person including any present or former partner or designated partner or employee of LLP to answer any question or make any declaration or supply any details or particulars in writing to him within reasonable period.</p> <p>2) In case any person does not answer such question or make declaration or supply details or particulars asked for by Registrar within time given by Registrar or when Registrar is not satisfied with reply or declaration or details or particulars provided by such person, Registrar shall have power to summon that person to appear before him or inspector or other public officer whom Registrar may designate</p> <p>2) Documents to be submitted without lawful notice, failure to comply</p>	<p>1) Rights of partner to share of profits & to losses of LLP & to receive distributions in accordance with LLP agreement are transferable either wholly or in part.</p> <p>2) Transfer of any right by any partner pursuant to sub-section (1) does not by itself cause disassociation of partner or dissolution & winding up of LLP.</p> <p>3) Transfer of right pursuant to this section does not, by itself, entitle transferee or assignee to participate in management or conduct of activities of LLP, or access information concerning transactions of LLP.</p>	<p>Section 55 - Conversion from firm into LLP</p> <p>Firm may convert into LLP in accordance with provisions of this Chapter & Second Schedule</p> <p>Section 56 - Conversion from private company into LLP</p> <p>Private company may convert into LLP in accordance with provisions of this Chapter & Third Schedule</p> <p>Section 57 - Conversion from unlisted public company into LLP</p> <p>Unlisted public company may convert into LLP in accordance with provisions of this Chapter & Fourth Schedule</p> <p>Section 58 - Registration & effect of conversion</p> <p>a) Registration: i) Registrar, on satisfying that firm/ Private Co./ Unlisted Public Co., complied with provisions of various Schedules, Act & rules, register documents, issue certificate of registration stating that LLP is registered under this Act from date specified in certificate ii) LLP within 15 days of date of registration, inform concerned Registrar of Firms/ Companies, with which it was registered under Indian Partnership Act, 1932 or Companies Act, 2013 about conversion & particulars of LLP iii) Upon such conversion, partners of firm/ shareholders of Private Co. or Unlisted Public Co. & LLP to which such firm or such Co. has converted, & partners of LLP be bound by provisions of Schedules applicable to them iv) Upon such conversion, on & from date of certificate of registration, effects of conversion shall be as specified in various schedules b) Effect of registration: On & from date of registration specified in certificate of registration issued under various Schedules, i) there shall be LLP by name specified in certificate of registration registered under this Act; ii) all tangible (movable or immovable) & intangible property vested in firm or company, all assets, interests, rights, privileges, liabilities, obligations relating to firm or Co, as case may be, & whole of undertaking of firm or company, shall be transferred to & shall vest in LLP without further assurance, act</p>

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.6)



THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.7)

MISCELLANEOUS

Section 66 - Business transactions of partner with LLP
Partner may lend money to & transact other business with LLP & has same rights & obligations with respect to loan or other transactions as person who is not

Section 67 - Application of provisions of Companies Act

1. CG may, by notification in Official Gazette, direct that any of provisions of Companies Act, 1956 specified in notification apply to LLP; or apply with such exception, modification & adaptation, as may be specified, in notification.

2. Copy of every notification proposed to be issued under sub-section (1) be laid in draft before each House of Parliament, while it is in session, for 30 days which may be comprised in one session or in two or more successive sessions, & if, before expiry of session immediately following session or successive sessions aforesaid, both Houses agree in disapproving issue or agree in making modification in notification,

Section 69 - Payment of additional fee
upon by both Houses.

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

However, such document or return may, without prejudice to any other action or liability under this Act,

Section 70 - Enhanced Punishment

returns required to be filed under this Act or rules made thereunder

In case LLP or any partner or designated partner of such LLP commits any offence, they shall, for second or

DISTINCTION BETWEEN LLP AND PARTNERSHIP FIRM

Basis	LLP	Partnership Firm
1. Regulating Act	Limited Liability Partnership Act, 2008	Indian Partnership Act, 1932
2. Body Corporate	Body corporate	Not Body corporate
3. Separate Legal Entity	It is legal entity separate from its members	It is group of persons with no separate legal entity
4. Creation	It is created by legal process called registration under LLP Act, 2008	It is created by agreement between partners
5. Registration	Registration is mandatory. LLP can sue & be used in its own name	Registration is voluntary. Only registered partnership firm can use third parties
6. Perpetual Succession	Members may join or leave but its existence continues forever	It has no perpetual succession
7. Name	Name of LLP to contain word limited liability partners (LLP) as suffix	No guidelines. partners can have any name as per their choice
8. Liability	Liability of each partner limited to extent to agreed contribution except in case of wilful fraud	Liability of each partner is unlimited. It can be extended up to personal assets of partners
9. Mutual Agency	Each partner can bind LLP by his own acts but not other partners	Each partner can bind firm as well as other partners by his own acts
10. Designated Partners	At least two designated partners & at least one of them shall be resident in India	There is no provision for such partners under Partnership Act, 1932
11. Common Seal	It may have its common seal as its official signatures	There is no such concept in partnership
12. Legal Compliances	Only designated partners are responsible for all compliances & penalties under this Act	All partners are responsible for all compliances & penalties under Act
13. Annual Filing of documents	LLP is required to file: (i) Statement of accounts & solvency (ii) Annual return with registration of LLP	Partnership firm is not required to file any annual document with registrar of firms
14. Foreign Partnership	Foreign nationals can become partner in LLP	Foreign nationals cannot become partner in partnership firm
15. Minor as Partner	Minor cannot be admitted to benefits of LLP	Minor can be admitted to benefits of partnership with prior consent of existing partners

DISTINCTION BETWEEN LLP AND LIMITED LIABILITY COMPANY

Basis	LLP	Limited Liability Company
1. Regulating Act	Limited Liability Partnership Act, 2008	Companies Act, 2013
2. Members/ Partners	Persons who contribute to LLP are known as partners	persons who invest money in shares are known as members of company
3. Internal governance structure	Governed by contract agreement between partners	Regulated by statute
4. Name	Contain word Limited Liability partnership or LLP as suffix	Limited & Pvt. Co. to contain word Private limited as suffix
5. No. of members/ partners	Minimum - 2 members Maximum - No such limit Members can be individuals or body corporate through nominees	Private company : Minimum - 2 members Maximum 200 members Public company: Minimum - 7 members Maximum - No such limit Members can be organizations, trusts, another business form or individuals
6. Liability of members/partners	Liability of partners is limited to extent of agreed contribution in case of intention is fraud	Liability of member is limited to amount unpaid on shares held by them
7. Management	Business is managed by partners including designated partners authorized in agreement	Affairs of company are managed by board of directors elected by shareholders
8. Minimum number of directors/ designated partners	Minimum 2 designated partners	Pvt. Co. - 2 directors Public co. - 3 directors

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (Chart 2.1)

Need for Act

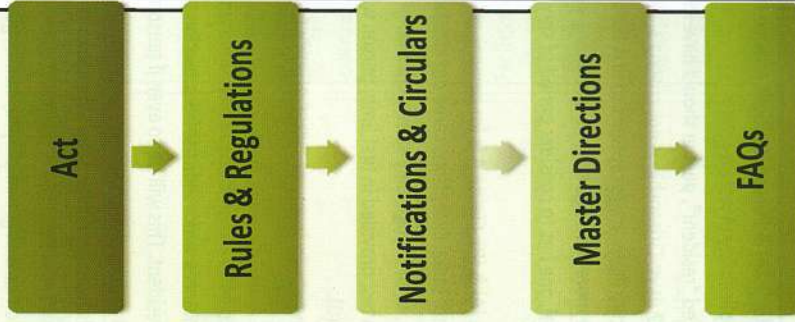
1. Change in economic scenario, globalization of capital, free trade across globe, necessitated need for managing foreign exchange in country in orderly manner. To facilitate cross border trade & cross border capital flows, exchange control law was required. Foreign exchange control led to introduction of exchange control law through Defense of India rules by Britishers in 1939. Subsequently, Foreign Exchange Regulation Act (FERA) was enacted in 1947 which was later replaced with 'the Foreign Exchange Regulation Act, 1973' (FERA).

2. Government permitted free movement of foreign exchange in connection to trade related receipts & payments & Foreign Investment. This increased flow of foreign exchange to India & consequently foreign exchange reserves increased substantially. Foreign Exchange Management Act, 1999 was enacted & made effective from 1st June, 2000. This Act enables management of foreign exchange

Salient Features of Act

1. Regulation of transactions between residents & non-residents
2. Investments in India by non-residents & overseas investments by Indian residents
3. Freely permissible transactions on current account subject to reasonable restrictions that may be imposed
4. RBI & CG control over capital account transactions
5. Requirement for realisation of export proceeds & repatriation to India
6. Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/ Money Changer/ Off-shore banking unit
7. Adjudication & Compounding of Offences : Investigation of offences by Directorate of Enforcement. Appeal provisions including Special Director (Appeals) & Appellate Tribunal.
8. Enforcement of FEMA : Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to separate 'Directorate of Enforcement' formed for

How to Read FEMA



Structure of FEMA

Chapters	Matter	Section
I	Preliminary	1-2
II	Regulation & Management of Foreign Exchange	3-9
III	Authorised Person	10-12
IV	Contravention & Penalties	13-15
V	Adjudication & Appeal	16-35
VI	Directorate of Enforcement	36-38
VII	Miscellaneous	39-49

Preamble & Application of FEMA

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

- facilitating external trade & payments &
- for promoting orderly development & maintenance of foreign exchange market in India.

Extent & Application [Section 1] : FEMA, 1999 extends to whole of India. In addition, it shall also apply to all branches, offices & agencies outside India owned or controlled by person resident in India & also to any contravention there under committed outside India by any person to whom this Act applies.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (Chart 2.2)

Residential Status under FEMA

Definition of "person" is similar to definition contained in Income-tax Act, 1961. Person includes entities such as companies, firms, individuals, HUF, AOP, artificial juridical persons agencies, offices & branches. Agencies, offices & branches do not have independent status separate from their owners, these have been considered as persons & are included in definition of PRIL. Person resident in India means following entities :

1. Person who resides in India for more than 182 days during preceding FY;

Following persons are NOT persons resident, in India even though they may have resided in India for more than 182 days.

- A. Person who has gone out of India or stays outside India for any of three purposes given below,
- B. Person who has come to or stays in India OTHERWISE THAN for any of three purposes given below;
 - i) For or on taking up Employment
 - ii) For carrying on business or Vacation
 - iii) For any other purpose in such circumstances as would indicate stay for an uncertain period.

2. Any person or body corporate registered or incorporated in India;
3. Office, branch or agency in India owned or controlled by person resident outside India;
4. Office, branch or agency outside India owned or controlled by person resident in India

Person resident outside India means person who is

1. Definitions of Person Resident in India (PRII) & Person Resident outside India (PROI) are relevant for determining applicability of Act on entity
2. In case of individuals, to be considered "resident", person should have resided in India in preceding FY for more than 182 days. Citizenship is not criteria 3. First limb prescribes number of days stay. Then two limbs are exceptions to first limb.
4. First limb : Person who is in India for more than 182 days in "preceding year" will be PRII. Thus, at threshold or basic level, one has to consider period of stay during preceding year.
5. 2 exceptions are provided in clauses (A) & (B). Clause A is for persons going out of India, Clause B is for persons coming into India. Exceptions carve out situations that do not fall under main body of section, even though they satisfy criteria.
6. If person is Indian resident based on test provided in first limb, person will be PROI if he falls within limb (A) or limb (B).
7. Clause A: Second limb : If person leaves India in any of THREE PURPOSES, he will not be PRII. He will be PROI.
8. Clause B: Third limb : If person has come to India for any reason otherwise than for - employment, business or circumstances which indicate his intention to stay for uncertain period - he will be non-resident. This will be so even if person has stayed in India for more than 182 days in preceding year.
9. Residential status is not for year. It is from particular date. One has to know person's status at time of undertaking transaction.
10. HUF, AOP or artificial juridical person cannot get employed, cannot go out of India or come to India, they do not come within ambit of second & third limbs. If HUF, AOP etc. are in India, they will be considered as Indian residents.
11. Person or Body corporate : Person or body corporate registered or incorporated in India, will be considered PRII. This definition too, does not apply to AOP, BOI etc.
12. Office, branch or agency : Agency, branch or agency outside India but owned or controlled by PRII will be considered as PRII. Thus, one cannot set up branch outside India & attempt to avoid FEMA provisions.
13. Agency, branch or agency in India but owned or controlled by PROI will be considered as PRII.

Section 3 - Dealing in Foreign Exchange, etc.

No person shall :

- a) deal in or transfer any foreign exchange or foreign security to any person not being authorised person (AP);
- b) make any payment to or for credit of any person resident outside India in any manner;
- c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation - Where any person in, or resident in, India receives payment by order or on behalf of person resident outside India through other person (including authorised person) without corresponding inward remittance from place outside India, then, such person shall be deemed to have received such payment otherwise than through authorised person;

- d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of right to acquire, any asset outside India by any person.

Above transactions may be carried on with general or special permission of Reserve Bank.

Section imposes blanket restrictions on specified transactions. This section applies to PRIIs & PROIs. Purpose of this section is to regulate inflow & outflow of Foreign

Section 4 - Holding of foreign exchange

1. Except as provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.
2. This section prevents Indian residents to acquire, hold, own, possess or transfer any foreign exchange, foreign security or immovable property abroad. Then through separate notifications, acquisition of these assets has been permitted subject to certain conditions & compliance rules.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (Chart 2.3)

Current Account Transactions

Current Account Transaction [Section 2(i)] means transaction other than capital account transaction & includes,

- i) payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
- ii) payments due as interest on loans and as net income from investments. (iii) remittances for living expenses of parents, spouse and children residing abroad, and
- iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children

Section 5 - Current Account Transactions

Current Account transactions are freely permitted unless specifically prohibited & Capital Account transactions are prohibited unless specifically or generally permitted. Section 5 permits any person to sell or draw Foreign Exchange to or from Authorised person to undertake any current account transaction. CG has power to impose reasonable restrictions, in consultation with RBI & in public interest on current account transactions. CG issued Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Schedule I

Transactions for which drawal of foreign exchange is prohibited:

- i) Remittance out of lottery winnings.
- ii) Remittance of income from racing/riding, etc., or any other hobby.
- iii) Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- iv) Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- v) Remittance of dividend by any company to which requirement of dividend balancing is applicable.
- vi) Payment of commission on exports under Rupee State Credit Routs, except commission up to 10% of invoice value of exports of tea and tobacco.
- vii) Payment related to "Call Back Services" of telephones.
- viii) Remittance of interest income on funds held in Abn.

Schedule II

Transactions, which require prior approval of Government of India for drawal of foreign exchange:

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Advertisement in foreign print media for purposes other than promotion of tourism, foreign investments & international bidding (exceeding US\$ 10,000) by State Government & its Public Sector Undertakings	Ministry of Finance, Department of Economic Affairs
Remittance of freight of vessel chartered by PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (Chartering Wing)
Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from Director General of Shipping
Remittance of living charges of transponders by (a) TV Channels (b) internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
Remittance of container detention charges exceeding rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittance of prize money/ sponsorship of sports activity abroad by person other than International/ National/State level sports bodies, if amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs & Sports)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

Schedule III

Transactions which require RBI's prior approval for drawal of foreign exchange:

- 1. Facilities for individuals: Individuals can avail of foreign exchange facility for following purposes within limit of USD 250,000 only:
 - i) Private visits to any country (except Nepal and Bhutan) (ii) Gift or donation.
 - iii) Going abroad for employment (iv) Emigration
 - v) Maintenance of close relatives abroad
 - vi) Travel for business or attending conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to patient going abroad for medical treatment/ check-up.
 - vii) Expenses in connection with medical treatment abroad (viii) Studies abroad (ix) Other current account transaction
- Additional remittance in excess of said limit for said purposes shall require prior approval of RBI.
- For (iv), (vii) and (viii) above, individual may avail of exchange facility for amount in excess of limit prescribed under Liberalised Remittance Scheme as provided in regulation 4 to FEMA, if it is so required by country of emigration, medical institute offering treatment or university, respectively:
 - If individual remits any amount under LRS in FY, then applicable limit for such individual would be reduced from USD 250,000 by amount so remitted.
 - For person who is resident but not permanently resident in India and: (a) is citizen of foreign State other than Pakistan; or
 - (b) is citizen of India, who is on deputation to office or branch of foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions)
- 2. Facilities for persons other than individual:
 - i) Donations exceeding 1% of their foreign exchange earnings during previous 3 FYs or USD 5,000,000, whichever is less, for (a) creation of Chairs in reputed educational institutes, (b) contribution to funds (not being an investment fund) promoted by educational institutes; & (c) contribution to technical institution or body or association in field of activity of donor co.
 - ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of inward remittance whichever is more.
 - iii) Remittances exceeding USD 10,000,000 not availed for consultation/compliance in respect of infrastructure projects.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (Chart 2.4)

Capital Account Transactions

Capital Account Transaction [Section 2(e)] means transaction, which alters assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liability in India of persons resident outside India, & includes transactions referred to in Section 6(3)

Section 6 - Capital Account Transactions

Capital Accounts Transaction in India can be carried out only to extent permitted because Indian Rupee is not yet fully convertible. Capital & current account transactions are intended to be mutually exclusive. Transaction which alters asset or liabilities in India of non-residents falls under category of capital account. However, for residents, transactions which alter contingent liabilities outside India are also capital account transactions. RBI may by regulations place restrictions on various specified capital account transactions. In simple terms, cross border transactions pertaining to investments, loans, immovable property, transfer of assets are Capital Account Transactions.

1. Person may sell or draw foreign exchange to or from authorised person for capital account transaction.
2. Finance Act 2015 transferred powers for regulation of Capital Account Transactions for Non-debt instruments to CG. RBI continued to have powers to regulate debt instruments.

RBI may, in consultation with CG, specify:

- any class or classes of capital account transactions, involving debt instruments, which are permissible;
 - limit up to which foreign exchange shall be admissible;
 - any conditions which may be placed on such transactions
- RBI or CG shall not impose restrictions on drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in ordinary course of business.

2A) CG may, in consultation with RBI, prescribe:

- any class or classes of capital account transactions, not involving debt instruments, which are permissible
- limit up to which foreign exchange shall be admissible; &
- any conditions which may be placed on such transactions.

3. Foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from person who was resident outside India.

4. Section 6(4) of Act covers following transactions :

- Foreign currency accounts opened & maintained by such person when he was resident outside India;
- Income earned through employment or business or vocation outside India taken up or commenced which such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such person was resident outside India;
- Foreign exchange including any income arising there from, & conversion or replacement or accrual to same, held outside India by person resident in India acquired by way of inheritance from person resident outside India.
- PRI may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making payments or to make fresh investments abroad without approval of RBI

5) PRI may hold, own, transfer or invest in Indian currency, security or any immovable property situated in India if such currency, security or property was acquired, held or owned by such person when he was resident in India or inherited from person who was resident in India.

6) RBI may, by regulation, prohibit, restrict, or regulate establishment in India of branch, office or other place of

Permissible Transactions

RBI has issued Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 specifying list of transaction, which are permissible for PRI in Schedule I & classes of capital account transactions of PRI in Schedule II

Schedule I

List of permissible transactions made by PRI:

- Investment by person resident in India in foreign securities
- Foreign currency loans raised in India & abroad by person resident in India
- Transfer of immovable property outside India by person resident in India
- Guarantees issued by PRI in favour of PRI
- Export, import & holding of currency/currency notes
- Loans & overdrafts (borrowings) by person resident in India from PRI
- Maintenance of foreign currency accounts in India & outside India by PRI
- Taking out of insurance policy by person resident in India from insurance company outside India
- Loans & overdrafts by PRI to PRI
- Remittance outside India of capital assets of PRI

Schedule II

List of permissible transactions made by PRI:

- Investment in India by PRI:
- Issue of security by body corporate or entity in India & investment therein by PRI; &
- Investment by way of contribution by PRI to capital of firm or proprietorship concern or association of person in India.
- Acquisition & transfer of immovable property in India by PRI
- Guarantee by PRI in favour of, or on behalf of PRI
- Import & export of currency/currency notes into/from India by PRI
- Deposits between PRI & PRI
- Foreign currency accounts in India of PRI
- Remittance outside India of capital assets in India of PRI
- Undertake derivative contracts

Transactions with no restrictions

They are :

- For amortisation of loan &
 - For depreciation of direct investments in ordinary course of business.
- Also, restrictions cannot be imposed when drawal is of purpose of repayments of loan installments.

Prohibited Transactions

On certain transactions, RBI imposes prohibition:

- No person shall undertake or sell or draw foreign exchange to or from authorised person for any capital account transaction, provided that:
 - subject to provisions of Act or rules or regulations or directions or orders made or issued thereunder, resident individual may draw from authorized person foreign exchange not exceeding USD 250,000 per FY or such amount as decided by RBI from time to time for capital account transaction specified in Schedule I.
 - Where drawal of foreign exchange by resident for capital account transaction specified in Schedule I exceeds USD 250,000 per FY, or as decided by RBI from time to time, limit specified in regulations relevant to transaction shall apply with respect to such drawal.
- No part of foreign exchange of USD 250,000, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-operative countries & territories by Financial Action Task Force (FATF) from time to time & communicated by RBI to all concerned.
- PROI is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or entity whether incorporated or not which is engaged or proposes to engage:
 - In business of chit fund ;

Non-resident Indians shall be eligible to subscribe, through banking channel & on non-repatriation basis, to such chit funds, without limit subject to conditions stipulated by Reserve Bank of India from time to time

- As Nidhi company;
- In agricultural or plantation activities;
- In real estate business, or construction of farm houses or
- In trading in Transferable Development Rights (TDRs)

No person resident in India shall undertake capital account transaction which is not permissible, with person who is, citizen of or resident of Democratic People's Republic of Korea, or entity incorporated or otherwise, in Korea, until further orders, unless there is specific approval from CG to carry on any transaction.

- existing investment transactions, with any person who is, citizen of or resident of Korea, or entity incorporated or otherwise in Korea, or any existing representative office or other assets possessed in Korea, by person resident in India, which is not permissible shall be closed/ liquidated/ disposed/ settled within period of 180 days from date of issue of this Notification, unless there is

DEFINITIONS (SECTION 3)

AFFIDAVIT
SECTION 3(3)

SECTION 3(8)

SECTION 3(13)

SECTION 3 (18)

OATH
SECTION 3(37)

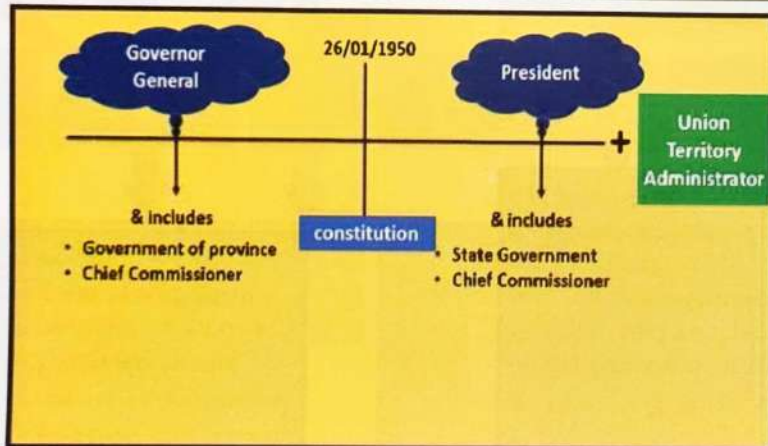
CENTRAL GOVERNMENT

COMMENCEMENT

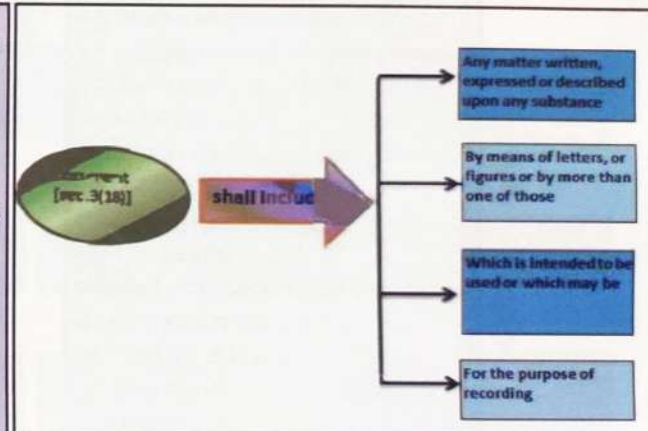
DOCUMENT

SWEAR
SECTION 3 (62)

1. Affidavit shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
2. The terms "Affidavit", "Oath", "Swear" have the same Definition in the Act.



1. The Day on which the Act or Regulation comes into force.
2. A Law cannot be said to be in force unless it is brought into operation by legislative enactment.



SEC 3(22)

SEC 3(21)

SECTION 3(42)

SECTION 3(66)

SECTION 3(26)

GOOD FAITH

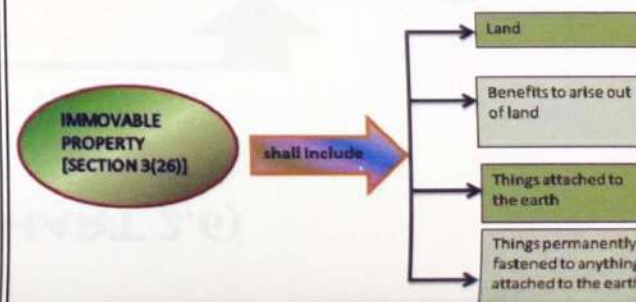
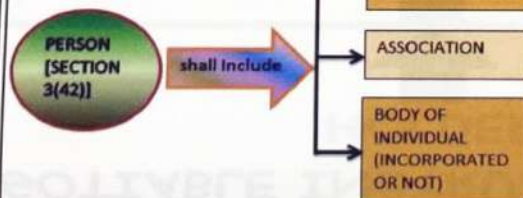
FINANCIAL YEAR

PERSON

YEAR

IMMOVABLE PROPERTY

A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not;



GENERAL RULES OF CONSTRUCTION (Chart 3.2)

SECTION 5	SECTION 6	SECTION 6A	SECTION 7	SECTION 8
COMING TO OPERATION OF ENACTMENT	EFFECT OF REPEAL	Repeal of Act making textual amendment in Act or Regulation	Revival of repealed enactments	Construction of references to repealed enactments
<p>1. BEFORE CONSTITUTION: Day on which it receives assent of Governor General.</p> <p>2. AFTER CONSTITUTION: Day on which it Receiver assent of President.</p>	<p>Where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists,</p> <ul style="list-style-type: none"> - Revive anything not enforced - Affect the prior management - Affect any claim, privilege, responsibility or debt obtained - Affect any punishment, forfeiture - Affect any inquiry, litigation or remedy 	<p>The repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.</p>	<p>In any Central Act or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose.</p>	<p>1. Where this Act or Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.</p> <p>2. If a later Act merely makes a reference to a former Act or existing law, it is only by reference and all amendments, repeals new law subsequently made will have effect unless its operation is saved by the relevant provision of the section of the Act.</p>
SECTION 9	SECTION 10	SECTION 11	SECTION 12	SECTION 13
COMMENCEMENT TERMINATION	COMPUTATION OF TIME	MRESUREMENT OF DISTANCE	DUTY	GENDER AND NUMBER
<p>In any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including he last in a series of days or any other period of time, to use the word "to".</p>	<p>Where by any legislation or regulation, any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, if the Court or office is closed on that day or last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.</p>	<p>In the measurement of any distance, for the purposes of any Central Act or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.</p>	<p>Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise, then a like duty is leviable according to the same rate on any gender or less quantity</p>	<p>1. Words importing the masculine gender shall be taken to include females, and</p> <p>2. Words in singular shall include the plural and vice versa.</p>

Swapnil Patni's Classes

CA IPCC Law Notes & Charts

By CA Ankita Patni



POWER AND FUNCTIONARIES (Chart 3.3)

SECTION 14

Power conferred to be exercisable from time to time

Where, by any Central Act or Regulation made after the commencement of this Act, **any power is conferred**, then unless a different intention appears that **power may be exercised from time to time as occasion requires**

SECTION 15

Power to appoint to include power to appoint in officio

Where by any legislation or regulation, a **power to appoint any person** to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any **such appointment, may be made either by name or by virtue of office**.
Ex-officio is a Latin word which means by virtue of one's position or office

SECTION 16

Power to appoint to include power to suspend

The **authority having for the time being power to make the appointment shall also have power to suspend** or dismiss any person appointed whether by itself or any other authority in exercise of that power

SECTION 17

Substitution of functionaries

In any Central Act or Regulation made after the commencement of this Act, **it shall be sufficient, for the purpose of indicating the application of a law to every person** or number of persons for the time being executing the functions of an office, to **mention the official title of the officer at present executing the functions**, or that of the officer by whom the functions are commonly executed

SECTION 18

Successors

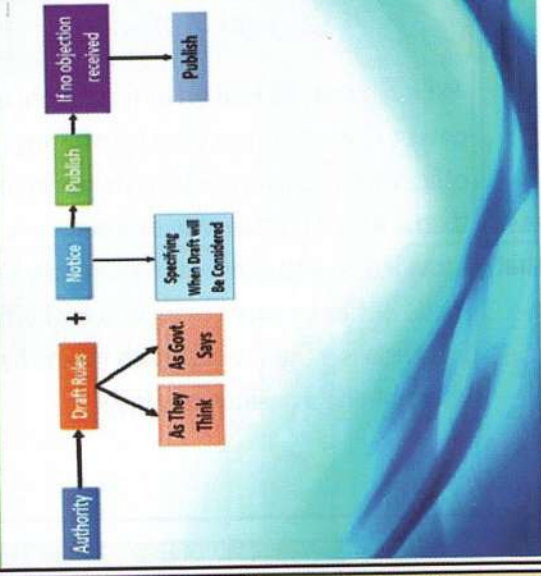
In any Central Act or Regulation made after the commencement of this Act, **it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession**, to express its relation to the functionaries or corporations

SECTION 19

Official Chiefs and subordinates

A **law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office** in the place of their superior, to prescribe the duty of the superior

PROVISION AS TO ORDERS, RULES ETC (Chart 3.4)

SECTION 20	SECTION 21	SECTION 22	SECTION 23	SECTION 24
<p>Construction of orders, etc., issued under enactments</p> <p>Where by any legislation or regulation, a power to issue any notification, order, scheme, rule, form, or by-law is conferred, then expression used in the notification, order, scheme, rule, form or bye-law, shall, unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or regulation conferring power</p>	<p>Power to issue, to include power to add to, amend, vary or rescind</p> <p>Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye laws so issued</p>	<p>Making of rules or bye-laws and issuing of orders between passing and commencement of enactment</p> <p>Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to the establishment of any Court or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.</p>	<p>Provisions applicable to making of rules or bye-laws</p> 	<p>Continuation of orders etc, issued under enactments repealed and re-enacted</p> <p>Where any Central Act or Regulation, is, after, the commencement of this Act, repealed and re-enacted with or without modification, then unless it is otherwise expressly provided any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, continue in force, and be deemed to have been made or issued under the notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted and when any Central Act</p>

MISCELLANEOUS (Chart 3.5)

SECTION 25

RECOVERY OF FINES

Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

SECTION 26

OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS

Where an act or omission constitutes an offence under two or more enactments, **then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be punished twice for the same offence.**

SECTION 27

MEANING OF SERVICE BY POST

1. Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the **service shall be deemed to be effected by:**

- a. properly addressing
- b. pre-paying, and
- c. posting by registered post.

2. A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

3. Must Refer case laws from Module 2 pg no:20

SECTION 28

CITATION OF ENACTMENT

Any **enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and years thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.**

SECTION 29

SAVING FOR PRVIOUS ENACTMENT, RULES AND BYE-LAWs

The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

SECTION 30

APPLICATION OF ACT OF ORDINANCE

In this Act the expression Central Act, wherever it occurs, except in **Section 5 and the word 'Act'** in clauses (9), (13), (25), (40), (43), (53) and (54) of section 3 and in section 25 **shall be deemed to include Ordinance made and promulgated by the Governor General** under section 23 of the Indian Councils Act, 1861 or section 72 of the Government of India Act, 1915, or section 42 of the Government of India Act, 1935 and an Ordinance promulgated by the President under article 123 of the Constitution

Interpretation of Statutes, Deeds and Documents (Chart 4.1)

DEFINITIONS

A) Statute: i) Written Will of legislature
 ii) Necessary to constitute it the law of State

B) Instrument: Document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded

C) Document: i) Proof or evidence of anything
 ii) Include any matter written, expressed or described upon any substance by means of letters, figures or marks which is intended to be used

D) Deed: Instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition

E) Interpretation:
 i) real meaning of an Act (or a document) and intention of the legislature in enacting it is ascertained
 ii) Signifies the meaning of abstruse words, writings, etc.

F) Interpretation & Construction: Process by which the Courts seek to ascertain the meaning of Legislature in which it is expressed. Generally interpretation & construction are used as synonymous terms.

Rules of Interpretation / Construction

PRIMARY RULES		SECONDARY RULES
<p>1) Rules of Literal Construction: i) Word, phrases & sentences of a statute are ordinarily to be understood in their natural, ordinary or popular & grammatical meaning ii) Cardinal rule of construction-Ordinary, natural & grammatical meaning iii) Provision is unambiguous & legislative intent is clear, other rules of construction of statutes need not be called into aid iv) Words & phrases of technical nature are 'prima facie' used in their technical meaning, otherwise in their ordinary popular meaning v) Narrower interpretation fails to achieve the manifest purpose of the legislation, then adopt the wider one vi) Non applicability: a) If Language is Ambiguous b) If the Literal interpretation gives absurd or unreasonable result c) If literal interpretation defeats intention of legislation</p> <p>2) Rule of Reasonable Construction: i) Sensible meaning ii) Applicability: a) If the Language is ambiguous. b) If the Literal interpretation gives absurd or unreasonable result. c) It defeats intention of legislation. iii) Non Applicability: Ordinary meaning is Clear iv) Narrower Interpretation would fail to achieve the main purpose of legislation, then such construction, should be avoided</p>	<p>3) Rule of Harmonious Construction: i) Doubt about meaning of words of a statute then harmonise with the subject of the enactment & object which legislature had in view. ii) two or more provisions cannot be reconciled with each other then interpret as to give effect to all of them. iii) Non Applicability Applicable only when there is a real & not merely apparent conflict between provisions of an Act & One Provision has been made subject to other.</p> <p>4) Rule of Beneficial Construction or the Heydon's Rule or Mischief Rule: i) Applicability: Language used in a statute is capable of more than one interpretation and the Rule of Literal Interpretation falls. ii) Background & Essence: Consider Historical set up of statute. a) What was the law before the making of the Act; b) What was the mischief or defect for which the law did not provide; c) What is the remedy that the Act has provided; & d) what is the reason for the remedy. iii) Adopt that construction which 'shall suppress mischief & advance remedy'. iv) Applicable only when words used are ambiguous & are reasonably capable of more than one meaning. eg "Untrue statement in Prospectus".</p>	<p>5) Rule of Exceptional Construction: i) No sensible meaning can be fixed to a word or phrase, or defeats the real object of the enactment, it should be eliminated then should a give a sensible meaning . ii) 'or' is normally disjunctive and 'and' is conjunctive. iii) They are read as vice versa only if literal reading of the words produces an unintelligible or absurd result. iv) Distinction between 'mandatory' & 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. v) Factors to be considered by Court a) The nature of the thing empowered, b) The object for which it is done, & c) The person for whose benefit the power is to be exercised</p> <p>6) Rule of Ejusdem Generis: i) 'Ejusdem generis' means 'of same kind or species'. This rule means specific words are used and after those specific words, some general words are used, the general words would take their colour from the specific words used earlier. ii) Non applicability: If general words following those specific words remains unaffected-those general words then would not take colour from the earlier specific words. Eg. a) Keeping of dogs, cats, cows, buffaloes and other animals, the expression 'other animals' would not include wild animals like lions and tigers, but would mean only domesticated animals like horses, etc. iii) Courts have a discretion whether to apply this rule or not.</p>
		<p>1) 'Optima Legum interpres consuetudo' -the custom is best interpreter of the law. 2) 'Contempranea expositio optima et fortissima in lege' - the best way to interpret a document is to read it as it would have been read when made. 3) Old statutes & documents should be interpreted as they would have been at time when they were enacted/ written. 4) NOSCITUR A SOCIIS- Associated Words to be Understood in Common Sense Manner. 5) Two or more words which are capable of analogous (similar or parallel) meaning are coupled together, then to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take their colour from each other, i.e. the more general is restricted to a sense analogous to the less general. 6) For example, term 'entertainment' would have a different meaning when used in expression 'houses for public refreshment, resort & entertainment' than its generally understood meaning of theatrical, musical or similar performance.</p>

Distinction between directory & mandatory provision :

- A) Mandatory:**
 a) Provision is mandatory.
 b) Non-compliance results in penalty.
 c) If a provision gives a power coupled with a duty.
 d) Provisions enacted to prevent fraud & mischief .
- B) Directory:**
 a) No public policy is involved.
 b) If the non-compliance of a provision does not results in penalty

Interpretation of Statutes, Deeds and Documents (Chart 4.2)

Internal Aids to Interpretation/Construction :

Title, Preamble, Heading, Marginal Notes, Definitional Sections/ Clauses, Illustrations etc helps in interpreting/construing enactment or any of its

- a) Long Title:** i) Short Title merely identifies enactment & is chosen merely for convenience, 'Long Title' describes enactment & does not merely identify it
ii) Long Title of an Act is a part of Act
iii) To ascertain the object, scope and purpose of the Act
- b) Preamble:** i) Expresses scope, object & purpose of the Act more comprehensively than Long Title.
ii) It does not over-ride plain provision of Act
iii) Recite ground & cause of making a statute & evil which is sought to be remedied by it.
- c) Heading & Title of a Chapter:**
i) Prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing enactment or its parts
ii) Regarded as giving key to interpretation of clauses
iii) Treated as 'preambles to the provisions following it
- d) Marginal Notes:**
i) MN appended to a Section cannot be used for construing the Section
ii) Part of Constitution as passed by the Constituent Assembly
- e) Illustrations:**
i) Illustrations follow text of Sections & do not form a part of the Sections
ii) Relevance & value in construing the text of the sections
iii) Can not have effect of modifying language of sec & can neither curtail nor expand ambit of section
- f) Proviso:**
i) Qualify preceding enactment
ii) Qualify or create an exception.
iii) Ordinarily a proviso is not interpreted as stating a general rule.
- g) Explanation:**
i) Explain meaning of the text of sec.
ii) Added to include something within sec or to exclude something from it.
- h) Schedules:** i) Forms part of an Act.
ii) Read together with the Act.
iii) Cannot control or prevail over expression in the enactment.
iv) Enactment shall always prevail if it conflicts with explanation.
- i) Definitional Sections/Clauses:**
i) Purpose of a definition clause is two-fold:
a) key to the proper interpretation of the enactment.
b) Shorten the language of the enacting part by avoiding repetition of the same words .
Inclusive definition: Definition is 'prima facie' extensive . Word defined is not restricted to it but has **extensive meaning.**
Exhaustive definition: Definition is 'prima facie' restrictive and exhaustive we must restrict the meaning of the word to that given in the definition section.

External Aids to Interpretation/Construction :

Society does not function in a void. Everything done has its reasons, its background, the particular circumstances prevailing at the time. These factors are of great help in interpreting/construing an Act and have been given the convenient nomenclature of 'External Aids to Interpretation'

a) Historical Setting:

- History of external circumstances which led to enactment.
 - External or historical facts which are necessary in understanding & comprehension & scope & object of enactment.
 - History in general & Parliamentary History in particular, ancient statutes, contemporary or other authentic works & writings all are relevant in interpreting & construing an Act.
- We have also to consider whether statute in question was intended to alter law or leave it where it stood before.

b) Consolidating Statutes & Previous Law:

- Presumption that it is not intended to alter law.
- They may solve doubtful points in statute with aid of such presumption in intention, rejecting literal construction.

c) Analogous Acts:

- Exposition of One Act by Language of Another.
- Different statutes in 'pari materia' (i.e. in an analogous case), though made at different times, or even expired and not referring to each other, they shall be taken and construed together as one system and as explanatory of each other.

d) Use of Foreign Decisions:

- Foreign decisions of countries following the same system of jurisprudence as ours.
- Prime importance is always to be given to the language of the Indian statute.

e) Reference to Repealed Act :

- Part of an Act has been repealed, it loses its operative force

f) Usage:

- Sometimes taken into consideration in construing Act.
 - where meaning of language in a statute is doubtful, usage how that language has been interpreted and acted upon over a long period & may determine its true meaning.
- g) Dictionary Definitions:**
i) Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood.
ii) Take into consideration the context in which it is used in the Act.
iii) Judicial decisions laying down meaning of words in construing statutes in 'pari materia' will have greater weight.

h) Earlier Act Explained by the Later Act:

- Where the earlier statute contained a negative provision but the later one merely omits that negative provision, necessary to see how the law would have stood without the original provision & terms in which repealed sections are re-enacted

Rules of Interpretation /Construction of Deeds and Documents

- To find out of its scope & intendments, would understand by words used in that deed or document.
- It is inexpedient to construe terms of one deed by reference to terms of another.
- Same word cannot have two different meanings in same document, unless context compels adoption of such a rule.
- Status & training of parties using words have also to be taken into account as same words may be used by an ordinary person in one sense & by a trained person or a specialist in quite another special sense.
- Words with double meaning : Word should be understood in the former and not latter sense.
- Conflict between two clauses
i) Effort must be made to resolve conflict by interpreting clauses so that all the clauses are given effect to.
ii) It is not possible to give effect to all of them, then it is earlier clause that will over-ride the latter one.

Interpretation of word without prejudice

- without prejudice to generality of provision : Indicates that anything containing in 'provision following such words is not intended to cut down generality of meaning of preceding provision.
- without prejudice to provisions of sec: Means that expression shall not affect anything done in pursuance of sec which follows such words.
- Subject to:
i) It gives an overriding effect to the other provision, it means other shall prevail over other provision in case of any inconsistency.
ii) effect of a provision containing word 'notwithstanding' is opposite to a provision containing words 'subject to'
- notwithstanding, i.e 'non obstante clause:
i) Notwithstanding anything contained in this ACT- Override entire Act.
ii) Notwithstanding anything contained in any forgoing Provision -Override only the forgoing provision.
iii) Notwithstanding anything contained in any other Law for te time being -Override entire Law