J.K. SHAH®
CLASSES
a Veranda Enterprise

Foundation → Intermediate → Final CA ↗

CA INTER

CORPORATE & OTHER LAWS

THEORY

Head Office

Shraddha, 4th Floor, Old Nagardas Road,
Near Chinai College, Andheri (E), Mumbai - 400 069.

022 - 2683 66 66

/officialjksc jkshahclasses.com

J.K. SHAH CLASSES
a Veranda Enterprise

INDEX

CORPORATE LAW THEORY

J.K. SHAH CLASSES
a Veranda Enterprise

INDEX

OTHER LAW THEORY

J.K. SHAH CLASSES
a Veranda Enterprise

MESSAGE TO STUDENTS

ABOUT THE BOOK

This book has been compiled to help students for their Law paper. To make studying the subject easier, the study material of this subject has been organized into two exhaustive volumes, ensuring students will not have to refer to any other books while preparing for the subject.

THEORY BOOK

Contents of the book

- Chapter wise distribution of marks of previous examinations from May 2018 onwards (1st attempt of CA Inter).
- Comprehensive explanation of all concepts and topics to be covered based on the ICAI study material. (ICAI theory is fully covered here)
- Chapter summary at the end of each chapter, highlighting the key points in the topic.
- List of Case Laws, Latin terms at the end of each chapter – provided for quick reference during study.

Note: The book does not cover May 2024 & Nov'22 Mock Test papers & RTP Question paper & ICAI Suggested Answer as these materials are issued by the ICAI subsequent to the printing of this book. Students are advised to download such materials from the ICAI website www.icai.org as and when it becomes available.

How to use this book

- In the lecture, the faculty will follow this book during concept and topic explanation. Hence, it is mandatory for students to bring this book to class with them during the relevant lectures.
- This book is to be thoroughly read and revised at home for preparing the subject.
- Once the explanation is complete in class, the faculty will discuss the chapter based questions at length in class. (Question and Answers)
- Students will be solving the question in the class and the faculty will also provide detailed inputs on how the questions must be answered as per the ICAI guidelines.

J.K. SHAH CLASSES
a Veranda Enterprise

IMPORTANCE OF WRITING PRACTICE

You will hear your JKSC teachers repeat this regularly in the class, yet we must make this point here:

If you wish to score your best marks in this subject, you will have to invest time and effort in writing practice.

READING THE NOTES OR THE BOOKS TEN TIMES OVER IS NOT A REPLACEMENT FOR WRITING PRACTICE.

The law subject, when discussed and taught in class, is easy to understand and students enjoy the subject quite a bit. This gives them the false confidence that they will find the subject easy to prepare for the exam – all they have to do is read and they will remember everything.

The fact is each topic in this subject is vast and has to be attempted with certain parameters. The information that you have about the topic must fit a predefined framework to help the examiner realize that you know your subject well. You cannot merely string together whatever facts you can remember while writing, in some random order.

This knowledge and understanding of how the answers are to be presented, what ICAI is expecting of you from this paper, and how much of the topic you actually know can only come when you PHYSICALLY WRITE the practice papers.

HOW TO STUDY EFFECTIVELY FOR THE EXAM?

- Once the theory of chapter has been completed and the faculty has discussed the Q&A, it is time for you to study the theory, go through the notes and start doing writing practice.
- Do not make pointers or charts or short forms of the notes. These have already been provided in the book and the summary of the chapter is already provided at the end of every chapter. Practicing a chapter like this will not help you answer the questions in the final exam. Make sure you write the answers in the descriptive format just like you are expected to write in the finals. This will help you understand what you are forgetting, how to organize your content and help you manage your time, while attempting the paper.
- How to learn Latin Terms
  - These terms are well highlighted in the content of the chapters and a list of such terms used in a given chapter is printed at the end of each chapter for your reference.
  - Students are advised to write the page number where the term appears in the chapter alongside this quick reference list.
  - This will make it easy to check the context of the technical term during revisions.

J.K. SHAH CLASSES
a Veranda Enterprise

TYPES OF QUESTIONS ASKED IN EXAM & HOW TO ANSWER THEM?

- The paper is divided in 2 parts: 30 Marks Multiple Choice Questions and 70 Marks Descriptive Questions.
- The descriptive questions in the exam can either be of theoretical or practical nature. While there are multiple ways / approaches in which both types of questions can be answered, the following approach is considered ideal:
  - For theory questions: Students must write the answer in point format to make it easy for the examiner to rapidly scan the answer.
  - For practical / case study questions: It is recommended that students write these answers in 3 paragraph formats. The flow of content in these answers should be as follows:
    - 1st paragraph: Write the relevant law and case law (if any)
    - 2nd paragraph: Write the situation in the question and how it is related to the legal provision.
    - 3rd paragraph: Write the final conclusion.
- Presenting your answers in these formats enables the examiner to understand how much you know and your clarity of thought, at a glance. A comprehensive answer that is well structured and presented can only be written in the final paper if you have practiced the same - in writing, regularly during your study time.
- What is expected in your answers

  1) Concept explanation of the topic with all relevant content

  2) You must quote Case Laws in the exam, use Legal and Latin Terms – this is imperative for scoring good marks.
- Students must note that endlessly repeating one point in different words is not going to help them get the desired marks. Only thorough preparation perfected by writing practice and self-evaluation will help students in achieving the scores they want.

In conclusion, these books have everything you need to prepare for the CA Inter Corporate & Other Laws paper. You do not need anything further in terms of reference material or additional paper samples. We hope you will make the best use of this carefully compiled study material and achieve success in your endeavours.

We wish you a very happy study time.

BEST OF LUCK!

JKSC

J.K. SHAH CLASSES
a Veranda Enterprise

Chapter-wise marks distribution of Previous Exams

	Topic Name	May' 18	Nov' 18	May' 19	Nov' 19	Nov' 20	Jan' 21	July' 21	Dec' 21	May' 22	Nov' 22	May' 23
1.	Part I: The Companies Act, 2013											
	1: Preliminary 2: Incorporation of Company and other Matters Incidental thereto	6	16	9	9	18	5	10	5	17	16	5
	3: Prospectus and Allotment of Securities	6	17	6	4		10	8	8	5	5	5
	4: Share Capital and Debentures	13	2	5	10	8	10	3	7	3	6	11
	5: Acceptance of Deposits by Company	6	6	2	6	6	7	4	5	2	4	5
	6: Registration of Charges	6	6	2	5	4		-	-	4	5	5
	7: Management & Administration	19	14	16	4	4	8	9	15	7	4	4
	8: Declaration and Payment of Dividend	6	10	7	5	8	5	3	2	2	6	6
	9: Accounts of Companies	10	7	7	8	6	3	12	6	3	5	9
	10: Audit and Auditors	6	6	3	6	6	6	8	9	9	6	7
	11: Companies Incorporated Outside India	0	0	0	0	0	0	0	0	0	0	0
	12: The Limited Liability Partnership Act, 2008	0	0	0	0	0	0	0	0	0	0	0
		78	84	57	57	57	54	57	57	52	57	57
	Part II: Other Laws											
1.	The General Clauses Act, 1897	10	10	5	7	8	7	7	7	7	7	7
2.	Interpretation of Statutes	10	10	6	6	6	6	6	6	6	6	6
3.	The Foreign Exchange Management Act, 1999	0	0	0	0	0	0	0	0	0	0	0
		20	20	11	13	14	13	13	13	13	13	13

CORPORATE LAW

The Companies Act, 2013

Introduction

- The Companies Act, 2013 was enacted to consolidate and amend the law relating to the companies. The Companies Act, 2013 was preceded by the Companies Act, 1956.
- Due to changes in the national and international economic environment and to facilitate expansion and growth of our economy, the Central Government decided to replace the Companies Act, 1956 with a new law. The Companies Act, 2013 contains 470 sections and seven schedules. The entire Act has been divided into 29 chapters. The Companies Act, 2013 aims to improve corporate governance, simplify regulations, and strengthen the interests of minority investors. Thus, this enactment seeks to make our corporate regulations more contemporary.

- But at Inter CA level, we are going to study following 10 units:

1	Preliminary	
2	Incorporation of Company and Matters Incidental Thereto	Section 3 to 22
3	Prospectus and Allotment of Securities	Section 23 to 42
4	Share Capital and Debentures	Section 43 to 72
5	Acceptance of Deposits by Companies	Section 73 to 76A
6	Registration of Charges	Section 77 to 87
7	Management & Administration	Section 88 to 122
8	Declaration and Payment of Dividend	Section 123 to 127
9	Accounts of Companies	Section 128 to 138
10	Audit and Auditors	Section 139 to 148
11	Companies Incorporated Outside India	Section 379 to 393

I PRELIMINARY

1.1 Definition of Company

The term 'company' has been defined under Section 2(20) of the Companies Act, 2013. As per this, 'company' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.

1.2 Formation of Company [Section 3]

A company may be formed for any lawful purpose by–

(a) 7 or more persons, where the company to be formed is to be a public company;

(b) 2 or more persons, where the company to be formed is to be a private company; or

(c) 1 person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

1.3 Act applicable to:

The provisions of this Act shall apply to-

1. Companies incorporated under this Act or under any previous company law.
2. Insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
3. Banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
4. Companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
5. Any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act , and
6. Such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf. Example: Food Corporation of India (FCI), National Highway Authority of India (NHAI) etc.

1.4 Characteristics of Company

1. Separate legal entity: A company is an artificial person having a personality which is distinct from the members constituting it. Thus, a company has got an entity which is separate from its members.

2. Limited liability: A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.
3. Perpetual Succession: An incorporated company never dies. Perpetual succession, therefore, means that the membership of a company may keep changing from time to time but does not affect its continuity.
4. Separate Property: No member can claim himself to be the owner of the company's properties either during its existence or in its winding up. A member does not even have an insurable interest in the property of the company.
5. Transferability of Shares: The capital of a company is divided into parts called shares. The shares are said to be movable property and subject to certain conditions, freely transferable for that. No shareholder is permanently or necessarily wedded to a company. It may be noted that this right of shareholder is restricted in the case of a private company.
6. Common Seal: Since a company has no physical existence, it must act through its agents. All the important documents of a company must be under the seal of the company. The common seal, thus, acts as the official signature of a company.
   The Companies (Amendment) Act, 2015 has made the common seal optional. The documents which need to be authenticated by a common seal will be required to be so done, only if the company opts to have a common seal. In case a company does not have a common seal, the authorization shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.
7. Capacity to sue and be sued: A company, being a body corporate, can sue and be sued in its own name.
8. Separate Management: The members of a company may derive profits without being burdened with the management of the company. The company is administered and managed by its own managerial personnel.
9. Voluntary Association for Profit: A company is a voluntary association for profit. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its shareholders.

1.5 Is Company a Citizen?

Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

1.6 Does a Company have Nationality and Residence?

It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

1.7 Lifting or Piercing the Corporate Veil

- Corporate veil: It refers to a separate legal existence enjoyed by the company which is distinct from people who own & manage it.
  It is an artificial curtain created by law which separates the company from the people who own and manage it.
- Effect of corporate veil: Only Company is liable for the acts/defaults done in name of company, even though directors/employees acted on behalf of company.
- Lifting of corporate veil: : It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts shall lift the corporate veil.

1.8 Classification of Company

CLASSIFICATION OF COMPANIES

Based on Liability	Based on Members	Based on Control	Based on Capital	Other Companies
- Company limited by shares Section 2(22)	- One person company Section 2(62)	- Holding & Subsidiary company Section 2(87)	- Listed Section 2(52)	- Government Section 2(45)
- Company limited by guarantee Section 2(21)	- Private company Section 2(68)	- Associate company Section 2(6)	- Unlisted	- Foreign Section 2(42)
- Unlimited liability company Section 2(92)	- Public Section 2(71)			- Non profit Section 8
	- Small company Section 2(85)			- Dormant
				- Nidhi Section 406

A. BASED ON LIABILTY

1. **Company limited by shares:** As per Section 2(22), A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. The unpaid amount can be called anytime. If his shares are fully paid - up, he has nothing more to pay.

2. **Company limited by guarantee:**
   - As per Section 2(21), a company limited by guarantee or a "guarantee company" is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company in the event of its being wound up.
   - A special feature of this type of company is that the liability of members to pay their guaranteed amounts arises only when the company has gone into liquidation and not when it is a going concern.
   - Clubs, trade associations and societies for promoting different objects are examples of companies limited by guarantee.
   - A guarantee company without share capital does not obtain its initial and working funds, from its members, but from some other source or sources e.g. grants, endowments, fees, subscriptions and· the like.
   - But a guarantee company having a share capital raises its initial capital from its members, while the normal working funds would be provided from other sources, such as fees, charges, subscriptions.

     If a guarantee company has share capital, the shareholders have two-fold liability; to pay the amount which remains unpaid on their share whenever called upon to pay, and secondly, to pay the amount payable under the guarantee when the company goes into liquidation.

3. **Unlimited Company:**
   - As per Section 2(92), unlimited company is a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
   - Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.

- The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

B. BASED ON MEMBERS

1. Private Company:

- As per Section 2(68), private company is a company which by its articles,–
  - (i) Restricts the right to transfer its shares;
  - (ii) Limits the number of its members to two hundred (except in case of One Person Company):

    The clause provides that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member: However following shall not be included in the number of members:
    - ♦ Persons who are in the employment of the company; and
    - ♦ Persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.
  - (iii) Prohibits any invitation to the public to subscribe for any securities of the company.
- There should be at least two persons to form a private company i.e., the minimum number of members in a private company is 2. A private company should have at least 2 directors. The name of a private limited company must end with the words "Private Limited".

2. Public Company:

- As per Section 2(71),public company is a company which-
  - ♦ is not a private company and
  - ♦ Seven or more members are required to form the company.
  - ♦ a private company which is a subsidiary of a public company shall also be deemed to be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles (three restrictions).
- Example: A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. A Pvt. Ltd. wanted to avail exemptions as provided to private companies. In this

case since A Pvt. Ltd.is subsidiary of AB Ltd., which is a public company, therefore A Pvt. Ltd. will be deemed to be a public company and will be not allowed to avail exemptions provided to a private company.

- There should be at least 7 persons to form a public company i.e., the minimum no. of members in a public company is 7. A public company should have at least 3 directors. The name of a public limited company must end with the word "Limited".
- Insertion of a new Section 3A as per Notification dated 3rd Jan, 2018:

If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business

for more than 6 months

while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued there for."

3. One Person Company:

- Definition: As per Section 2(62),one person company is a company which-

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

It is basically a private company with some unique features.

As regards the name of a One Person Company, the Act provides that the words "One Person Company" or 'OPC' shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved.

- Logic and Advantages of New Concept OPC: To encourage unorganized proprietorship business to enter into organized corporate world, the concept of "one person company" 'OPC') was recommended by J.J. Irani Committee. As the name suggests, it means a company which has only one person as member. The concept is widely accepted in countries like China, Pakistan, Singapore, US. In the case of India, if you wish to set up a private company, minimum two shareholders are required. In many cases, because of this legal requirement a second shareholder is forcefully roped in. This second shareholder at times takes advantage of his position. Having recognized this problem the concept of OPC has been introduced.
- Relaxation for OPC:
  a) An OPC is primarily a private company. However, certain provisions which are applicable to a private company will not apply to an OPC. For instance, only one director is sufficient (as against two in the case of private company).
  b) OPC is not required to hold annual general meeting.
  c) Information to be provided in the directors' report has been significantly reduced (as compared to a private company).
  d) Annual return in other companies shall be signed by director and company secretary and in case of no company secretary by a practicing company secretary whereas in the case of OPC annual return shall be signed by company secretary and in case of his absence it will be signed by director of the company.
  e) The requirement of a minimum number of Board meetings to be convened shall not apply to an OPC having one director. However, in case of OPC having more than one director, the OPC shall hold at least one meeting of the Board of directors in each half of calendar year and the gap between two meetings is not less than ninety days.
  f) One Person Company need not have a Cash Flow Statement.
- Law with respect to formation of OPC provides that–
  ✓ The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company Form No. INC-3.
- Who can form one person company?
  ✓ Only a natural person, other than minor; who is an Indian citizen and whether resident in India or otherwise shall be eligible to incorporate

a One Person Company.

Resident in India means a person who has stayed in India for a period of not less than one hundred and twenty days during the immediately preceding financial year.

- Indicate Name & Consent Nominee
  - ✓ The memorandum of One Person Company shall also indicate the name of the natural person, other than minor; who is an Indian citizen, whether resident in India or otherwise (as nominee), along with his prior written consent in the Form No. INC-3, who shall, in the event of the subscriber's death or his incapacity to contract become the member of the company.

    Note: This provision is to ensure perpetual succession of legal existence of OPC.
  - ✓ The name of such nominated person in Form No. INC-32 (SPICe) along with consent of such nominee obtained in Form No. INC-3 and fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its memorandum and articles.
  - ✓ Where a natural person, being member in One Person Company in accordance with this rule becomes a member in another such Company by virtue of his being a nominee in that One Person Company, such person shall meet the above specified criteria (can be member of only one OPC) within a period of one hundred and eighty days.
- Withdraw of Consent by Nominee
  - ✓ Such other person (nominee) may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company In this case, the sole member shall nominate another person as nominee within fifteen days of the receipt of the notice of withdrawal and shall send an intimation of such nomination in writing to the Company, along with the written consent of such other person so nominated in Form No. INC-3.
- Replacing Nominee with another one
  - ✓ The member may change the name of the person nominated by him at any time for any reason including in case of death or incapacity to contract of nominee and nominate another person (new nominee) after obtaining the prior consent of such another person in Form No.

INC-3. Member can do so by intimation in writing to the company.

- ✓ This is not specified, either in Act or rules whether intimation shall be prior to making change or can be made afterward, but if we consider reasonable construction the intimation shall be 'Prior Intimation'.
- ✓ Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.

• When Nominee become Member

- ✓ Where the sole member ceases to be the member and nominee become new member, then such new member shall nominate within fifteen days of becoming member, a person (new nominee) who shall in the event of his death or his incapacity to contract become the member of such company.

• Notice of change to Registrar

- ✓ In all the three case of change discussed above (Withdraw of Consent by Nominee, Replacing Nominee with another one and When Nominee become Member) the company within thirty days of receipt of notice of withdrawal of consent by nominee, intimation of change of nominee from member, or cessation; shall file the notice with the Registrar of such withdrawal of consent, change or cessation respectively and intimate the name of such another person (new nominee) in Form No. INC-4 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 along with the prior written consent of such another person.
- ✓ Only a natural person who is an Indian citizen and whether resident in India or otherwise (person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year)-
  a) Shall be eligible to incorporate a OPC;
  b) Shall be a nominee for the sole member of a OPC.
- ✓ A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
- ✓ No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- ✓ Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private

or public companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of the Chapter II.

✓ Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.

Example 1: Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

4. Small Company:

- Definition: As per Section 2(85),small company means a company, other than a public company,-

(i) Paid-up share capital of which does not exceed 4 crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees;

and

(ii) Turnover of which as per as per profit and loss account for the immediately preceding financial year does not exceed 40 crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

- Provided that nothing in this clause shall apply to-

(i) a holding company or a subsidiary company;

(ii) a company registered under section 8; or

(iii) a company or body corporate governed by any special Act.

It is basically a private company meeting prescribed threshold.

- Logic and Advantages of New Concept Small Company: The 2013 Act provides for a new entity in the form of Small Company, empowering the Central Government to provide for a simpler compliance regime for small companies.

Because of their size, they cannot be burdened with the same level of compliance requirements. The small companies have to be enabled to take quick decisions, be adaptable in the changing economic environment,

yet be encouraged to comply with the essential requirements of the law through low cost of compliance cost.

- Following are some of the important relaxations provided to a small company:
  - (i) Financial statements of small company may not include the cash flow statement.
  - (ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.
  - (iii) Merger or amalgamations between two or more small companies have been simplified without the requirement of court process.

C. BASED ON CONTROL

1. Holding & Subsidiary Company

- As per Section 2(87) provides that a company shall be a subsidiary of another, if any of the following conditions are satisfied :-
  - (a) That other controls the composition of its Board of Directors;
    For the purpose of clause (a) above, the control of the composition of the Board of directors of a company means that the holding company has power, at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.
  - (b) That other exercises or-controls more than one-half of the total voting power either on its own or together with one or more of its subsidiary companies; or
  - (c) The first-mentioned company is a subsidiary of any company which is that other's subsidiary.
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- It should be noted that holding and subsidiary companies are incorporated companies and each is a separate legal entity.
- For the purpose of this clause, the term 'company' includes any body corporate. Thus, holding and subsidiary relationship can be established between an Indian Company and a Foreign Company.

- As per Section 2(46), 'Holding Company', in relation to one or more other companies, means a company of which such companies are subsidiary companies.
- Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
- Example 1: A will be subsidiary of B, if B controls the composition of the Board of Directors of A, i.e., if B can, without the consent or approval of any other person, appoint or remove a majority of directors of A.

  Example 2: A will be subsidiary of B, if B holds more than 50% of the share capital of A.

  Example 3: B is a subsidiary of A and C is a subsidiary of B. In such a case, C will be the subsidiary of A.
- Subsidiary company not to hold shares in its holding company: Section 19 deals with the restrictions on the subsidiary company with respect to holding of shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiaries companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

  Following are the exceptions -

  (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or

  (b) where the subsidiary company holds such shares as a trustee; or

  (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

  The subsidiary company referred to in the above exceptions shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said exceptions.

2. Associate company

- As per Section 2(6), In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
- The expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business

decisions under an agreement;

- The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;
- This is a new definition inserted in the 2013 Act.

D. BASED ON CAPITAL

1. Listed company:

As per the definition given in the Section 2(52), it is a company which has any of its securities listed on any recognised stock exchange.

Following classes of companies shall not be considered as listed companies, namely:-

(a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

(i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or

(ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or

(iii) both categories of (i) and (ii) above.

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

(c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) of the Act.".

2. Unlisted company: Means a company other than listed company.

E. OTHER COMPANIES

1. Government Company

- As per Section 2(45), government company means any company in which not less than fifty- one per cent. of the paid-up share capital is held by-

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments,

- And the section includes a company which is a subsidiary company of such a Government company
- "Paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

2. Foreign Company

As per Section 2(42), foreign company means any company or body corporate incorporated outside India which-

(i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(ii) conducts any business activity in India in any other manner

Note : Detailed explanation to be given under Chapter Companies Incorporated Outside India

3. Company not for profit/Non-Profit companies

- Object of formation of Section 8 Company :Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Restrictions on such company:
  (i) Such company is prohibited from declaring any dividend to its members
  (ii) Such company has to apply its surplus only in promoting its objects
- Power of Central government to issue the license :
  - ✓ This section allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit. The registrar shall on application register such person or association of persons as a company under this section.
  - ✓ Central Government has delegated its powers to the ROC. The Central Government may revoke such delegation of powers or may itself exercise the powers & functions, if in its opinion, such course of action is necessary in the public interest.
- Privileges of Limited Company: On registration the company shall enjoy same privileges and obligations as of a limited company.
- A firm may be a member of the company registered under section 8.
- Alteration of Memorandum and Articles: A company registered under this section shall not alter the provisions of its memorandum or articles

except with the previous approval of the Central Government.

- Conversion into any other kind of Company: A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed. A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

- A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.
- Application for registration

  A person or an association of persons desirous of incorporating a company with limited liability under section 8(1), shall make an application to registrar in Form SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC- 32) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.
- Supporting document along with Application

  The application furnished as specified above shall be accompanied by the following documents;

  a. The memorandum and articles of association of the proposed company in the Form No. INC-13 and Form No. INC-31, respectively;
  b. An estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure;
  c. The declaration in by an Advocate, a Chartered Accountant, cost accountant or Company Secretary in practice Form No. INC-14 and by each of the persons making the application in Form No. INC-15, that;
     - the memorandum and articles of association have been drawn up in conformity with the provisions of section 8 and rules made thereunder and
     - all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;

- Conversion into any other kind of Company

A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed in rule 21 and 22 of the Companies (Incorporation) Rule 2014 as described below;

a. A company shall pass a special resolution at a general meeting for approving such conversion

b. An explanatory statement to notice of such general meeting must contain the details on reason of such conversion.

c. The company shall file an application in Form No. INC-18 with the Regional Director with the fee along with a certified true copy of the special resolution and a copy of the Notice convening the meeting including the explanatory statement for approval for conversion.

Also attach the proof of serving of the notice served by registered post or hand delivery, to:

- the Chief Commissioner of Income Tax having jurisdiction over the company,
- Income Tax Officer who has jurisdiction over the company,
- the Charity Commissioner,
- the Chief Secretary of the State in which the registered office of the company is situated,
- any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating.

Note: If any of these authorities wish to make any representation to Regional Director, it shall do so within sixty days of the receipt of the notice, after giving an opportunity to the Company.

d. A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

e. The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice at its own expense, and a copy of the notice, as published, shall be sent forthwith to the Regional Director and the said notice shall be in Form No. INC-19 and shall be published;

- at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the

company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and

- on the website of the company, if any, and as may be notified or directed by the Central Government.

f. The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director

Note: In the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

g. On receipt of the application, and on being satisfied , the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case.

h. Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director

i. On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association and the Company shall thereafter file these with the Registrar (with declaration to adhere conditions if any, imposed by Regional Director)

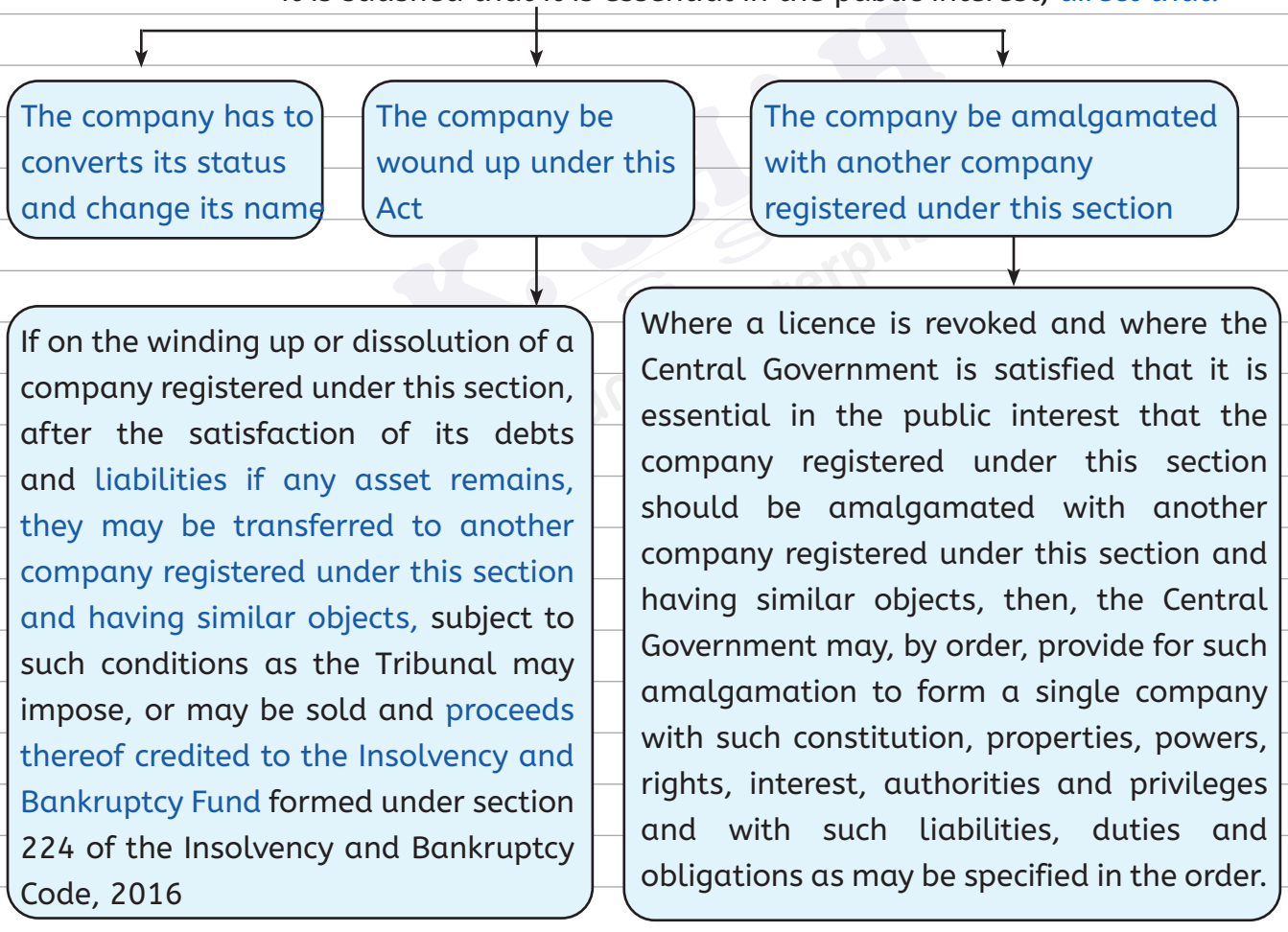
j. On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

- Revocation of license:

✓ The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest,

and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

- ✓ But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- ✓ The Central Govt. has delegate to the Regional Directors, subject to the condition that the Central Govt. may revoke such delegation of powers or may itself exercise the powers & functions under this section if in its opinion, such course of action is necessary in the public interest.
- ✓ Such order shall be made only after the company is given a reasonable opportunity of being heard
- ✓ Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that:



- Penalty/ punishment in contravention: If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with

  Fine: Minimum 10 lakhs upto 1 crore

  and

  The directors and every officer of the company who is in default shall be punishable with:

  Fine: Minimum 25000 upto 25 lakhs rupees,

  And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.

- Exceptions :
  - ✓ Can call its general meeting by giving a clear 14 days' notice instead of 21 days.
  - ✓ Requirement of minimum number of directors, independent directors etc. does not apply.
  - ✓ Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.

4. Dormant company:

- Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and 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.
- "Significant accounting transaction" means any transaction other than–
  - (i) payment of fees by a company to the Registrar;
  - (ii) payments made by it to fulfil the requirements of this Act or any other law;
  - (iii) allotment of shares to fulfil the requirements of this Act; and
  - (iv) payments for maintenance of its office and records.

5. Nidhi company:

As per Section 406, a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their

mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

6. Public financial institutions

As per Section 2(72), following institutions are to be regarded as public financial institutions.

(i) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

(ii) The Infrastructure Development Finance Company Limited,

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

(iv) Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;

(v) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless–

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

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments

1.9 Conversions of Companies

- Private company into Public Company and vice versa (section 18)

Conversion of a Private Company into a Public Company:

1. Pass special resolution for alteration of its articles thereby deleting the three restrictions of a private company
2. Pass special resolution for alteration of its memorandum for changing its name thereby deleting the word 'private' from its name
3. File following documents with ROC within 15 days:
   (i) Copy of altered Articles
   (ii) Copy of altered Memorandum
4. File copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT. 14.
5. The Registrar of Companies shall register and issue fresh certificate of incorporation
6. Further, if the number of members is below 7, steps should be taken to increase the number of members to atleast 7 and that the number of directors should be increased to atleast 3, if they are only 2 directors.

Conversion of a Public Company into a Private Company:

1. Pass special resolution for alteration of its articles thereby adding the three restrictions of a private company + Obtain Central Government (CG) Approval
2. Pass special resolution for alteration of its memorandum for changing its name thereby adding the word 'private' from its name
3. File following documents with ROC:
   (i) Copy of altered Articles
   (ii) Copy of altered Memorandum
   (iii) Copy of CG Approval
4. File copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT. 14.
5. Registrar of Companies shall register and issue fresh certificate of incorporation
6. Further, if the number of members exceeds 200 then steps should be taken to reduce the number of members to 200.

- Conversion Of OPC To Private/ Public Company (Section 18)

↓

1. OPC can get itself converted into a Private or Public company after increasing the minimum number of members to 2/7 and directors to 2/3 as the case may be.
2. Pass resolutions for alteration of memorandum and articles
3. File an application to the Registrar
4. The Registrar, who shall after satisfying himself that the provisions applicable for registration of companies have been complied with, close the former registration of the company and issue fresh certificate of incorporation

- Conversion of Private Company to OPC (Section 18)

1. A private company other than a company registered under section 8 (non-profit company) of the Act may convert itself into one person company by passing a special resolution in the general meeting.
2. Obtain No objection in writing from members and creditors.
3. File copy of the special resolution with the Registrar of Companies within 30 days from the date of passing such resolution in Form No. MGT. 14.
4. The company shall file an application in Form No. INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
   - The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and Creditors of the company have given their consent for conversion,
   - The list of members and list of creditors;
   - The latest Audited Balance Sheet and the Profit and Loss Account; and
   - The copy of No Objection letter of secured creditors.
5. On being satisfied and complied with requirements stated herein the Registrar shall issue the Revised Certificate of Incorporation, mentioning that now it has become a One Person Company.

List of Sections

SR. NO	SECTION NUMBER	NAME OF SECTION	PAGE NUMBER (To be filled by students)
1.1	2(20)	Definition of company	
1.2	3	Formation of Company	
1.3		Applicability of the Act	
1.4	-	Characteristics of company	
1.5	-	Company's Citizenship	
1.6		Company's Nationality & Residence	
1.7	-	Lifting/Piercing the corporate veil	
1.8		Classification of Companies	
	2(22)	Company limited by shares	
	2(21)	Company limited by guarantee	
	2(92)	Unlimited company	
	2(68)	Private company	
	2(71)	Public company	
	3A	Effects of number of members falling below minimum	
	2(62)	One Person Company	
	2(85)	Small Company	
	2(87)	Subsidiary Company	
	2(46)	Holding Company	
	19	Restriction on Subsidiary company to be a member of Holding Company	
	2(6)	Associate Company	
	2(52)	Listed Company	
	2(45)	Government Company	
	2(42)	Foreign Company	
	8	Non-Profit Company	
	406	Nidhi Company	
	2(72)	Public Financial Institutions	
1.9	18	Conversion of Companies	
		Private company into Public Company and vice versa	
		Conversion Of OPC To Private/ Public Company	
		Conversion of Private Company to OPC	

SUMMARY

1. Meaning of Company. Association of persons contributing money to a common stock and employ it in business and share the profit, thereof.

2. Definition – Company: Company means a Company incorporated under this Act or any previous Company Law.

3. Characteristics of Company: Artificial Person, Separate Legal Entity, Perpetual Succession, Separate Property, Common Seal (if any), Capacity to Sue, Transferability of Shares, Management, Limitation of Action, Limited Liability

4. Lifting of Corporate Veil - "Veil of Incorporation": Principle: Company is distinctly separate from its Members. Where there is a dishonest and fraudulent intention to utilise the facility of incorporation the law can remove the Corporate Veil and identify the persons behind the Company Fraud, hold such persons personally liable.

5. Lifting of Corporate Veil under Statutory Provision
   - Mis-statement in Prospectus
   - Failure to Refund Application Money
   - Fraud with respect to Deposits
   - Holding - Subsidiary Co.
   - Protection of revenue
   - Investigation of Ownership
   - Fraudulent Conduct
   - Liability under other Statues
   - Ultra Vires Acts

6. Kinds of Company: Incorporation - (a) Chartered Companies; (b) Statutory Companies; (c) Registered Companies
   Ownership - (a) Government Companies (b) Registered Companies
   Membership - (a) Public; (b) Private;(c) One Person Company
   Control- (a) Holding; (b) Subsidiary;(c) Associate Company
   Liability - (a) Limited by shares / guarantee; (b) Unlimited Companies
   Share Capital - (a) With Capital; (b) Without Share Capital
   Others - (a) Foreign Companies; (b) Listed Companies; (c) Non- Profit Association; (d) Small Company

7. Public Financial Institution: The following are PFI's: LIC; IDFC; UTI; institution already notified companies act 1956; institution notified by CG in consultation with RBI. Any Other institution can be notified by CG after consulting RBI, if any of the following conditions are satisfied - (a) Established under Central or State Act or (b) not less than 51% of paid up capital is held or controlled by CG or SG or partly by CG and partly by SG.

8. Government Company: Any Company in which not less than 51% of the paid-up share capital held by CG or SG or partly by CG and partly by SG. It includes Subsidiary of Government Company.

9. Holding Company: Deemed to be the Holding Company if other Company is its Subsidiary.

10. Subsidiary Company: Deemed to be subsidiary (S) of Holding (H) - (a) H Controls the composition of Board of Directors of S, (b) H exercises or controls more than 50% of the Total Voting right (together with all its subsidiary), (c) Subsidiary's Subsidiary (SS) (deemed to be subsidiary of Holding)

Subsidiary Company not to hold shares in its Holding Company. EXCEPTION(S.19)

a. Subsidiary company acting as a trustee
b. Subsidiary company holds share, prior to holding subsidiary relationship.
c. It acts as legal representative of a deceased member of its holding Company.

11. Associate Company: Company in which, other Company has significant influence i.e. control of at least 20% of Total Voting right or of business decision under an agreement

12. Liability of Companies:

Limited by Share - Liable only for the amount unpaid on Shares

Limited by Guarantee - Liability only for amount undertaken in MOA

Unlimited Company - Liability extends to the entire debt of the Company, in the ratio of their interest in the Company.

13. Foreign Company: Company or body corporate incorporated outside India having place of business in India has having business activity in India.

14. Listed Company : Company, any of its securities listed in a Recognized Stock Exchange.

15. Small Company

- Company other than Public Company
- Paid-up share Capital does not exceed 4 Crores or higher prescribed amount (which shall not exceed 10 Crores), and
- Turnover as per its last P&L not exceed 40 Crores or higher prescribed amount (which shall not exceed 100 Crores)
- Not applicable for company which is a holding, subsidiary, NPO, governed under special Act

16. Private Company:

(a) Minimum Paid-Up Capital - Prescribed Amount.
(b) Restriction in AOA: Right to transfer its shares / number of members to 200 (excluding present and past employee members)
(c) Prohibition in AOA: Invitation to public for subscription of Securities of the Company

18. Public Company:

(a) Not a private company (Not subject to restrictions I prohibitions)
(b) Minimum Paid-Up Capital - Prescribed Amount.
(c) It includes a Private Company which is a subsidiary of a Public Company.

19. One Person Company

(a) Formed by one person subscribing his name to MOA
(b) One person shall appoint a nominee
(c) Qualification for Member I Nominee: Natural Person, Indian Citizen, resident in India, Not a Minor.
(d) One Person = One OPC I Nominee in 1 OPC
(e) Nominee becomes member, pursuant to death or incapacity, intimation to ROC.
(g) Nominee Details to be furnished in respective form.
(h) Prior consent of nominee required.

10 Conversion of Private to Public company.

SR + intimate ROC in prescribed manner within 15 days + follow the provision of Public Company

11 Conversion of Public to Private Company:

SR + Approval from CG (RD) + Intimate ROC within 15 days of approval in prescribed manner + follow 2(68) provision.

II INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

2.1 Promoter

- Meaning: A promoter is a one (i.e. individual firm, company etc.) who performs the preliminary duties necessary to bring the company into being and float it, i.e. who brings the company into existence. He conceives the idea, develops it and induces others to join the enterprise.

  The promoter originates the scheme for the formation of a company, gets together the subscribers to the memorandum, gets the memorandum and articles prepared, executed and registered; finds the bankers, brokers and legal advisers, finds the first directors, settles the terms of preliminary contracts with vendors and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital.
- Definition: The term "Promoter" under section 2(69) means a person–
  - (a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or
  - (b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
  - (c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.
- A person who merely acts in a professional capacity on behalf of the promoter, such as a solicitor or an accountant and who is paid by him is not a promoter.

2.2 Pre – Incorporation / Preliminary / Promoters' Contract

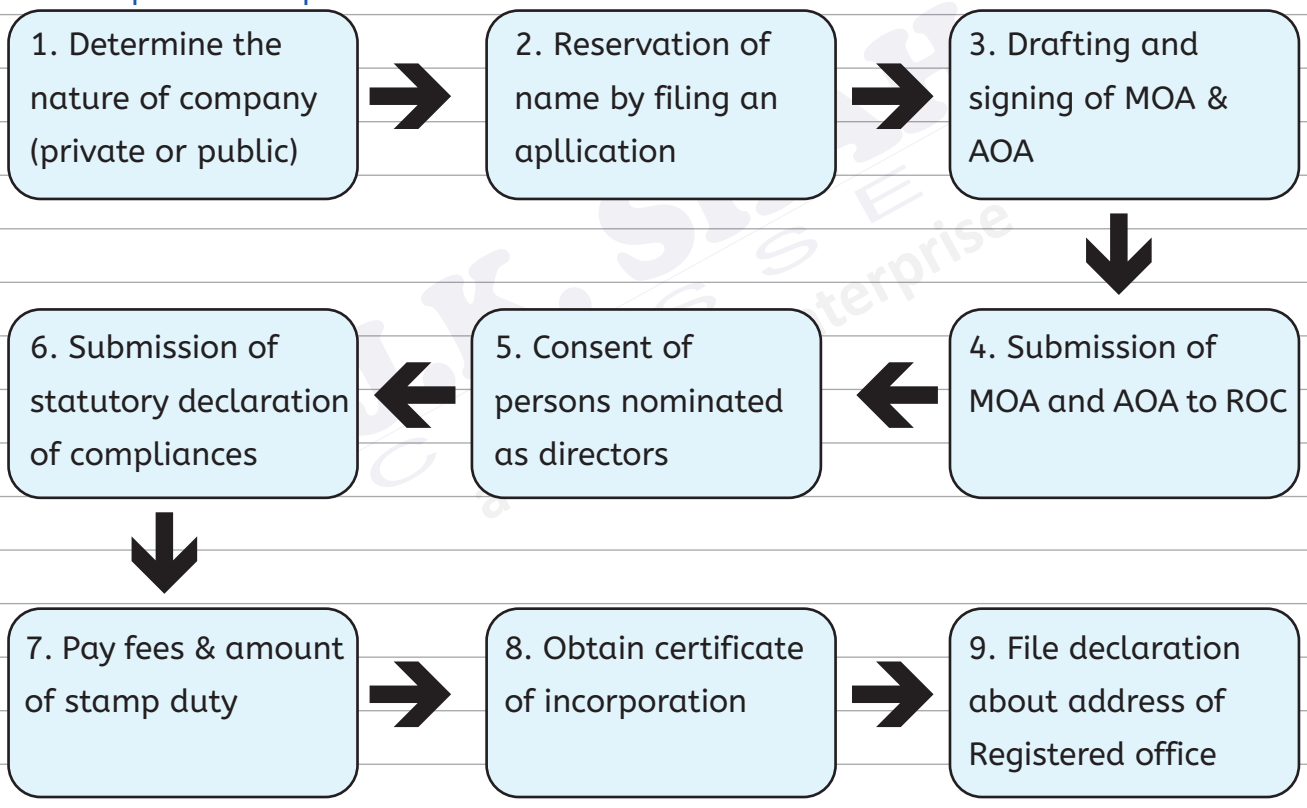
- Pre-incorporation Contracts are contracts intended to be made on behalf of a company before its incorporation. Before incorporation, a company is non-existent and has no capacity to contract. Hence, the pre-incorporation contracts are entered by a promoter on behalf of the company.
- Hence a contract, by a promoter purporting to act on behalf of a company prior to its incorporation, never binds the company because at the time the contract was concluded, the company was not in existence. The promoters alone, therefore,

remain personally liable for any contract they intend to make on behalf of the company unless company adopts the contract after its incorporation.

2.3 Incorporation of Companies (Section 7)

Section 7 of the Act provides for the procedure to be followed for incorporation of a company. The steps involved in the process of incorporation are enumerated in Figure shown below (Steps for Incorporation). Majority of steps are covered under section 7 while some other related to documents such as MOA and AOA governed by section 4 and 5 respectively. Corresponding procedural aspects are described by rule 12 to 18 of the Companies (Incorporation) Rules, 2014 and Fees are notified through rule 12 of the Companies (Registration Offices and Fees) Rules, 2014.

Steps for Incorporation



Note: Now, it is also required to submit a declaration that all the subscribers have paid the value of shares agreed to be taken by him apart from filling of verification of registered office before the commencement of business.

FILING OF THE DOCUMENTS AND INFORMATION WITH THE REGISTRAR [SUB-SECTION 1]

An application for registration of a company shall be filed, with the Registrar within

whose jurisdiction the registered office of the company is proposed to be situated, in SPICe+(Simplified Proforma for Incorporating company Electronically Plus: INC- 32) along with the fee as provided under the Companies (Registration offices and fees) Rules, 2014 accompanied by following documents and information;

The duly signed memorandum of association and articles of association

The memorandum (e-MOA in Form No. INC-33) and article (e-AOA in Form No. INC-34) of company so furnished shall be duly signed by all the subscribers to the memorandum in the manner prescribed by rule 13 of the Companies (Incorporation) Rules, 2014 as stated below:

a. Each subscriber shall add his name, address, description & occupation, if any, in the presence of at least one witness who shall attest the signature, shall sign and add his name, address, description and occupation, if any.

b. Where a subscriber is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.

c. Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors.

d. Where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

Note: In either case c or d stated above, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

e. Where subscriber to the memorandum is a foreign national residing outside India his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) with a certificate. Further, if such person residing in a country outside the Commonwealth or which is not a party to the Hague Apostille Convention, 1961, the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer.

f. Where subscriber to the memorandum is a foreign national residing outside India and visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa. In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa

shall not be applicable

Practical Insight / Illustration

Extracts from Memorandum of Association of Infosys Limited (Corporate Identification Number: L85110KA1981PLC013115)

We the several persons whose names and addresses are subscribed below are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the Capital of the Company set opposite to our respective names.

Signature, Name, Address, description and occupation of Subscribers	Number of Equity Shares taken by Subscriber	Signature, Name, Address, description and occupation of Witness
Nagavara Ramarao Narayana Murthy (Son of Nagavara Ramarao) Flat 6, Padmanabhan Apartment, 1126/2, Shivajinagar, Pune - 411 016 Consultant	1 (One equity)	VIPUL DEVENDRA KINKHABWALA (S/o. Devendra Vithaldas Kinkhabwala) 14, Thakurdwar Road, Zaveri Building, Bombay - 400 002. Service
Nadathur Srinivasa Raghavan (Son of N. Sarangapani) 5, "Ravikripa", Station Road, Matunga (C. R.), Bombay- 400019. Consultant	1 (One equity)	
Senapathy Gopalakrishnan (Son of P. G. Senapathy) Krishna Vihar, Kalapalayam Lane, Pathenchanthai, Trivandrum - 695 001. Consultant	1 (One equity)	
Nandan Mohan Nilekani (Son of M. R. Nilekani) 37, Saraswatput, Dharwar - 580 002. KARNATAKA Consultant	1 (One equity)	
	4 (Four equity)	

Dated this 15th day of June 1981. Amended on August 23, 2018

Declaration of Compliance by Professional & Director, Manager or Secretary of company

A declaration that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with shall be be filled in Form No. INC-8 by:

a. an advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company and

b. a person named in the articles as director, manager or secretary of the company.

Declaration by subscribers to the memorandum and persons named as the first directors

A declaration in Form No. INC-9 from each of the subscribers to the memorandum and from persons named as the first directors (if any) in the articles, stating that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief

a. He is not convicted of any offence in connection with the promotion, formation or management of any company, or

b. He has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,

Address for correspondence

The address for correspondence till its registered office is established.

Particulars of persons named as the first directors

The particulars i.e name, including surname or family name, the Director Identification Number (DIN), residential address, nationality and such other particulars including proof of identity of each person mentioned in the articles as first director of the company and his interest in other firms or bodies corporate along with his consent (Form No. DIR-2) to act as director of the company shall be filed in Form No. DIR-12 along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Particulars of subscribers to the memorandum

The following particulars of every subscriber to the memorandum shall be filled;

a. Name (including surname or family name) and recent Photograph affixed

b. Father's/Mother's name

c. Nationality, Proof of nationality in case the subscriber is a foreign national

d. Date and Place of Birth (District and State)

e. Educational qualification and Occupation

f. Permanent Account Number

g. Email id and Phone number of Subscriber

h. Permanent residential address and also Present address

i. Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill, provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old

j. Proof of Identity (For Indian Nationals - Voter's identity card, Passport copy, Driving License copy, Unique Identification Number (UIN) & for Foreign nationals and Non Resident Indians – Passport)

k. If the subscriber is already a director or promoter of a company(s), the particulars relating to name of the company; Corporate Identity Number; Whether interested as a director or promoter Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar

   a. The name of the body corporate and Corporate Identity Number of the Company or Registration number of the body corporate, if any
   b. GLN, if any
   c. The registered office address or principal place of business
   d. E-mail Id
   e. If the body corporate is a company, certified true copy of the board resolution specifying inter-alia the authorization to subscribe to the MOA
   f. If the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the MOA
   g. In case of foreign bodies corporate, the details relating to the copy of certificate of incorporation of the foreign body corporate; & the registered office address.

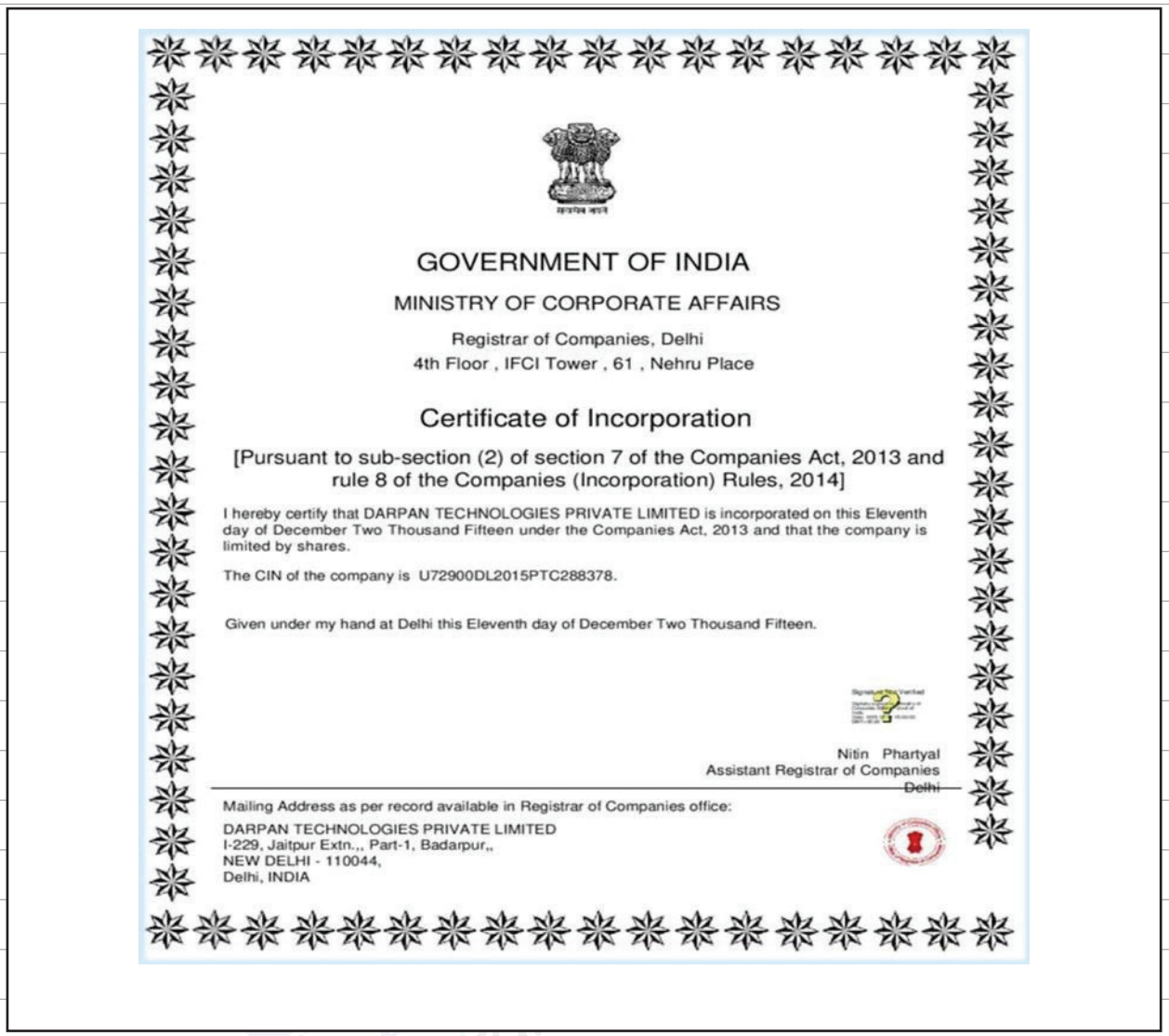
As per rule 12 of the Companies *(Incorporation) Rules, 2014*

In case any of the objects of a company requires registration or approval from sectoral regulators such as the RBI and SEBI, then such registration or approval shall be obtained by the proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation.

In case of a Company being incorporated as a Nidhi, the declaration by the Central Government under Section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Company.

ISSUE OF CERTIFICATE OF INCORPORATION ON REGISTRATION

The Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the Form No. INC-11 to the effect that the proposed company is incorporated under this Act. Certificate of Incorporation shall mention permanent account number of the company where if it is issued by the Income-tax Department.



GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Registrar of Companies, Delhi
4th Floor , IFCI Tower , 61 , Nehru Place

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]

I hereby certify that DARPAN TECHNOLOGIES PRIVATE LIMITED is incorporated on this Eleventh day of December Two Thousand Fifteen under the Companies Act, 2013 and that the company is limited by shares.

The CIN of the company is U72900DL2015PTC288378.

Given under my hand at Delhi this Eleventh day of December Two Thousand Fifteen.

Nitin Phartyal
Assistant Registrar of Companies
Delhi

Mailing Address as per record available in Registrar of Companies office:

DARPAN TECHNOLOGIES PRIVATE LIMITED
I-229, Jaitpur Extn.,, Part-1, Badarpur,,
NEW DELHI - 110044,
Delhi, INDIA

ALLOTMENT OF CORPORATE IDENTITY NUMBER (CIN)

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

CIN is a 21 alpha-numeric digit based unique identification number, comprising data sections/elements that reveals the basis aspects about company.

Example - Decode the CIN

- ✓ CIN of Infosys Limited is L85110KA1981PLC013115
- ✓ The first character – L (reveals listing status, L for listed and U for unlisted, for instance Infosys is Listed one)
- ✓ The next five digits – 85110

- ✓ The next two letters – KA (reveals the Indian state where the company is registered, for instance KA is for Karnataka)
- ✓ The next four digits – 1981 (reveals the year of incorporation of a company)
- ✓ The next three characters – PLC (reveals the company classification - PLC for public, PTC for private, FTC for foreign, and GOI for government)
- ✓ The last six digits – 013115 (reveals registration number with concerned ROC)

MAINTENANCE OF COPIES OF ALL DOCUMENTS AND INFORMATION

The company shall maintain and preserve copies of all the documents and information as originally filed at its registered office, till its dissolution under this Act.

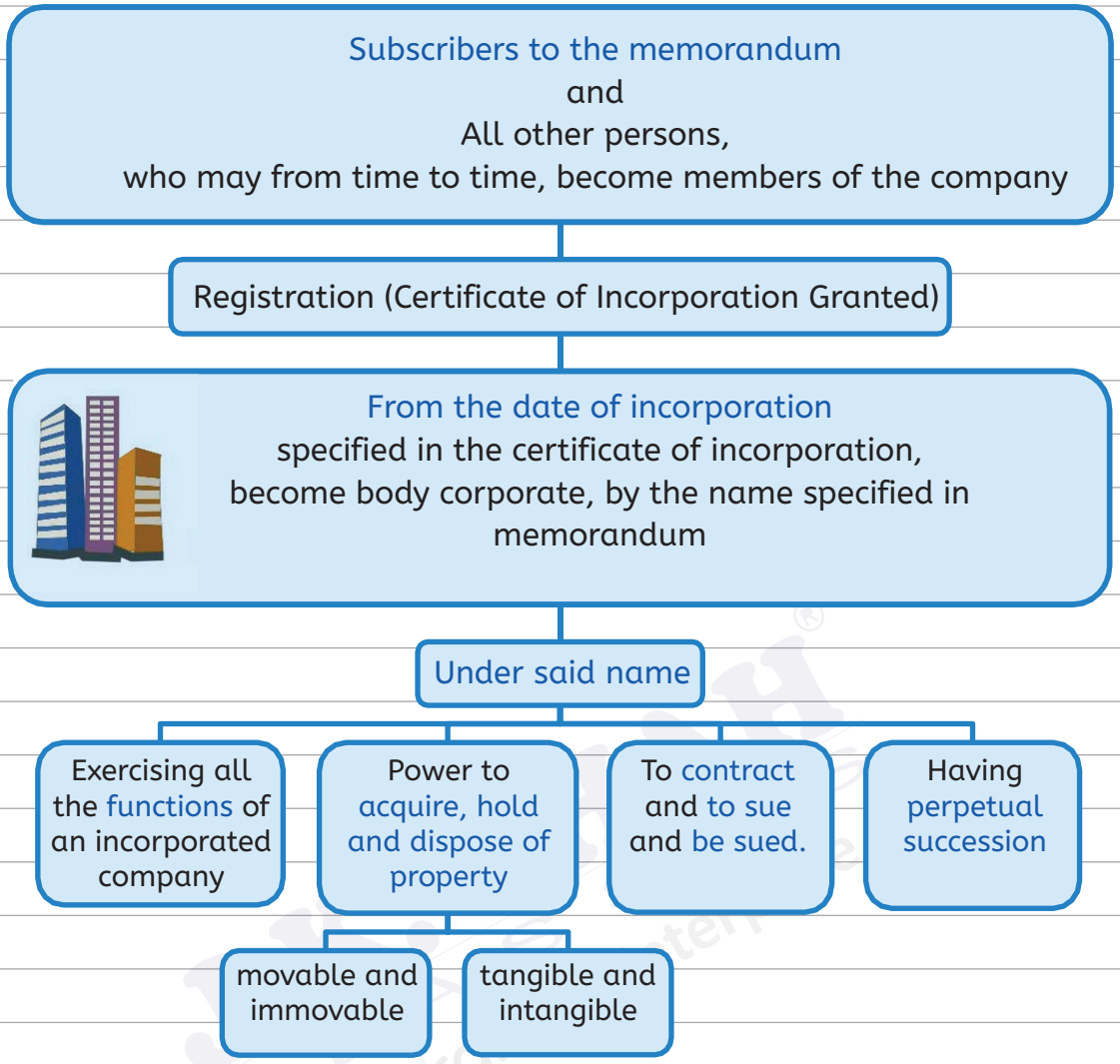
VII. Effect of Registration (Section 9):

- ✓ Section 9 of the Act provides for the effect of registration of a company, it states;
- ✓ From the date of incorporation specified in the certificate of incorporation, the subscribers to the memorandum and all other persons, who may become members of such company, shall be a body corporate by the name as contained in the memorandum

  Thereafter such body corporate, by the said name; shall be capable of;

  a. Exercising all the functions of an incorporated company under this Act and
  b. Having perpetual succession
  c. Power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible,
  d. To contract and to sue and be sued.

SUMMARY OF SECTION 9



VIII. Commencement of Business (Section 10A):

- A company (both public and private) having a share capital shall not commence any business or exercise any borrowing powers, unless the following documents are filed with the ROC:
  - (i) A declaration by a director in the prescribed form within 180 days that every subscriber to the memorandum has paid the value of shares taken by him. The declaration in prescribed form with prescribed fees and the contents of the said form shall be verified by a Company Secretary or a Chartered Accountant or a Cost Accountant, in practice.
    and
  - (ii) The verification of its registered office (e-Form INC22).
- If any default is made in complying with the requirements of this section, the company shall be liable to pay penalty of ₹50,000 and every officer in default

shall be liable to a penalty of ₹1000 for each day during which such default continues but not exceeding an amount of ₹100,000.

- Where no declaration has been filed with the Registrar within a period of 180 days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on business or operations, he may remove the name of the company from the register of companies.

2.4 Effect of furnishing of false or incorrect information or suppression of material fact

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

↓

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

Furnishing of false or incorrect information or suppression of material factor representation or by suppressing any material fact (i.e. post incorporation)

↓

1. The promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

2. Order of the Tribunal:
   The Tribunal may, on an application made to it, on being satisfied that the situation so warrants–
   (i) Pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
   (ii) Direct that liability of the members shall be unlimited; or
   (iii) Direct removal of the name of the company from the register of companies; or
   (iv) Pass an order for the winding up of the company; or
   (v) Pass such other orders as it may deem fit:
   Provided that before making any order,–
   (i) The company shall be given a reasonable opportunity of being heard in the matter; and
   (ii) The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

2.6 Memorandum of Association

Meaning:	The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers of the company with which it has been established under the Act. It is the very foundation on which the whole base of the company is built.
Object of registering a Memorandum of Association:	1. It contains the object for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go. 2. It enables shareholders, creditors and all those who deal with company to know what its powers are and what activities it can engage in. A memorandum is a public document under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein. 3. The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.
	4. A company cannot go beyond the provisions contained in the memorandum however necessary it might be. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires (i.e. beyond the powers)the company and void.
Form of Memorandum (Section 4):	As per Section 4, Memorandum of a company shall be drawn up in such form as is given in Tables A, B, C, D and E in Schedule I of the Companies Act, 2013. • Table A is applicable to companies limited by shares;

	• Table B is applicable to companies limited by guarantee and not having a share capital; • Table C is applicable to the companies limited by guarantee and having a share capital; • Table D is applicable to unlimited companies and not having a share capital; • Table E is applicable to unlimited companies and having a share capital.
Rules for Memorandum:	• The memorandum must be printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons (two in the case of a private company and one in the case of One Person Company) in the presence of at least one witness, who will attest the signatures. • The particulars about the signatories to the memorandum as well as the witness, as to their address, description, occupation etc., must also be entered. • It is to be noted that a company being a legal person can through its agent, subscribe to the memorandum. However, a minor cannot be a signatory to the memorandum as he is not competent to contract. The guardian of a minor, who subscribes to the memorandum on his behalf, will be deemed to have subscribed in his personal capacity. • The Memorandum of Association of a company cannot contain anything contrary to the provisions of the Companies Act. If it does, the same shall be devoid of any legal effect. Similarly, all other documents of the company must comply with the provisions of the Memorandum.
Contents of Memorandum:	Section 4 of the Companies Act provides that the memorandum of association of every company must contain the following clauses:- 1. Name Clause 2. Situation or Registered Office Clause 3. Objects Clause 4. Liability Clause 5. Capital Clause (only in the case of a company having a share capital) 6. Association Clause/Subscription Clause 7. Succession Clause (only in the case of OPC)

2.7 Name Clause

What is written in this clause?	The first clause in the memorandum must state the name by which a company is known.
Rules for name of Company	• It may be noted that the name of a company shall not be identical with or too nearly resembles the name of an existing company. (Instances for resemble of name of company can be referred in summary notes) • It further provides that no company shall have a name which, in the opinion of the Central Government, is undesirable. • The name should not be such that its use by the company will constitute an offence under any law. • The object is to prevent the use of name likely to mislead the public. For example, a company will not be allowed to use a name, which is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950. • Unless the previous approval of the Central Government is obtained, a company shall not be registered with a name which contains any word or expression which suggest of any connection with Government or of State patronage or which contain such word or expression, as may be prescribed. • The following words and combinations thereof shall not be used in the name of a company unless the previous approval of the Central Government has been obtained for the use of any such word or expression-Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; President; Rashtrapati; Small Scale Industries; Khadi and Village Industries Corporation; Financial Corporation and the like; Municipal;; Development Authority; Prime Minister or Chief Minister; Minister; Nation; Forest corporation; Development Scheme; Statute or Statutory; Court or Judiciary; Governor; Bureau; and the use of word Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities.

	• If the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant.
Reservation of Name:	NAME CLAUSE [SECTION 4 (1) (a) READ WITH SUB-SECTION 2 TO 5] The name of the company with the last word "Limited" in the case of a public limited company, or "Private Limited" in the case of a private limited company. The above clause is not applicable in case of section 8 companies. In case of Specified IFSC Public Company & IFSC Private Company, name shall have the suffix, "International Financial Service Company" or "IFSC". Application for reserving name for proposed company [sub-section 4] A person may make an application in SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) accompanied by fee, as provided in the Companies (Registration Offices and Fees) Rules, 2014, to the Registrar for reservation of a name set out in the application as name of the proposed company. Resubmission shall be allowed within 15 days, for rectification of defect, if any. Application for reserving the name for the changing name of existing company [sub-section 4] A person may make an application, using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, to the Registrar for the reservation of a name set out in the application as the name to which the company proposes to change its name. Resubmission shall be allowed within 15 days, for rectification of defect, if any.

Cancellation of Name:	Where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then– (i) If the company has not been incorporated, the reserved name shall be cancelled and the person who has made the application shall be liable to a penalty which may extend to one lakh rupees;
	(ii) If the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard– (1) Either direct the company to change its name within a period of 3 months, after passing an ordinary resolution; (2) Take action for striking off the name of the company from the register of companies; or (3) Make a petition for winding up of the company.
Alteration of Name (Section 13):	• The name of the company can be changed by a special resolution and with the written approval of the Central Government. • The powers of the Central Government for approving change in the name have been delegated to the Registrar of Companies. • Approval of the Central Government is not necessary if the change relates to the addition/ deletion of the word 'private' to the name.
	• Form MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Further, a copy of the approval of the Central Government shall also be filed with ROC. • On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate. • Any change in the name shall be subject to the following: (i) The name of a company shall not be identical with or too nearly resembles the name of an existing company. It further provides that no company shall have a name which, in the opinion of the Central Government, is undesirable. The name should not be such that its use by the company will constitute an offence under any law.

	(ii) Unless the previous approval of the Central Government is obtained, a company shall not be have a name which contains any word or expression which suggest of any connection with Government or of State patronage or which contain such word or expression, as may be prescribed. ✓ Because of the aforesaid reasons, for adopting the new name, the company shall have to follow the same procedure as is applicable for reservation of name at the time of incorporation of a company. [Application to be made to the ROC for reservation of name in [e-Form No. RUN(Reserve Unique Name)] ✓ In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of 60 days from the date of approval
Rectification of Name (Section 16):	• Rectification of Name (Sec. 16) : Central Government gives directions to the company suomoto to rectify its name if in its opinion, the name registered is identical with or too nearly resembles the name, by which a company ↓ CO shall change its name within 3 months from the date of notice of CG by passing ordinary resolution. The registered proprietor of a trade mark that the name is identical with or too nearly resembles to an existing trade mark makes an application to Central Government. ↓ Central Government gives directions to company to rectify the name on the basis of application received ↓ CO shall change its name within 3 months from the date of notice of CG by passing ordinary resolution. ↓ The registered proprietor of a trade mark can apply the central government within 3 years of incorporation or change of name of the company

	Where a company changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum. • If a company makes default in complying with any direction given sub section, the central government shall allot a new name to the company in such manner as may be prescribe & the registrar shall enter the new name in the register of companions in list of the old name and issue a fresh certificate of incorporation with the new name, with the company shall use their after. • However company can subsequently change its name section 13. • If a company makes default in complying with any directions for rectification; a. company shall be punishable with fine of ₹ 1,000 for every day during which the default continues and b. every officer who is in default shall be punishable with fine which shall not be less than ` 5000 but which may extend to ₹ 1,00,000.
Effect of change of name	✓ The change of name will not affect any rights and obligations of the company, or legal proceedings commenced under the old name. However, where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not competent. In spite of a change in name, the entity of the company continues. The company is neither dissolved nor does any new company come into existence. ✓ Name change by the company: Where a company has changed its name/s during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

2.8 Situation or Registered Office Clause

- The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.
- This address cannot be a P.O. Box but must be a physical location where someone is present, to receive service of legal documents during normal business hours. It could be different from a Head Office or Corporate office.
- The domicile and the nationality of a company is determined by the place of its registered officer.
- As per Section 12, a company shall, on and from the 30th day of its incorporation, shall have a registered office.
- The company shall furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation.
- Labelling of company: Every company shall–
  - ✓ paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed are not those of the language/s in general use in that locality, then also in the characters of that language/s.
  - ✓ have its name engraved in legible characters on its seal, if any;
  - ✓ get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
  - ✓ have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed

- Methods of shifting of Registered Office within same state:

Change within the local limits of same 'town [Section 12]:

A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a Board Resolution.

↓

☻ This change of registered office does not involve alteration of memorandum.

Change from one city to another within the same State and which does not involve the change of jurisdiction of Registrar of Companies, [Sec. 12]:

↓

A special resolution has to be passed in the general meeting of the company. The special Resolution shall be passed by Postal Ballot in case of public company.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

↓

- This change of registered office also does not involve alteration of memorandum.

Change from one city to another within the same State involving change of jurisdiction of Registrar of Companies [Sec. 12]:

A special resolution has to be passed in the general meeting of the company.

Apply to Regional Director for approval

↓

Regional Director shall communicate within a period of 30 days from the date of receipt of application

↓

The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation

↓

ROC shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

↓

- This change of registered office also does not involve alteration of memorandum.
- This provision is applicable only in those states where there is more than one office of Registrar of Companies. At present there are two states, where there are more than one office of ROCs. They are Maharashtra and Tamil Nadu. In Maharashtra, the two offices of ROCs are located at Mumbai and Pune; whereas in Tamil Nadu, the two offices of ROCs are located at Chennai and Coimbatore.

Note ;- Notice of every change of the situation of the registered office after the date of incorporation of the company, verified in the Form No. INC-22, along with fee as prescribed shall be given to the Registrar within 30 days of the change, who shall record the same. In case of specified IFSC public & IFSC private company word "thirty days" will be read as 60 days

Note :- PENALTIES IN CASE OF DEFAULTS [SUB-SECTION 8]

If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not 100,000/-

- Change from one State to another State (Section 13)

A special resolution has to be passed in the general meeting of the company.

↓

Apply to Central Government for approval. Now Central Government has delegated the power to Regional Director.

↓

Central Government shall communicate within a period of 60 days from the date of receipt of application

The Central Government, before passing its order, may satisfy itself that:

✓ The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or

✓ That the sufficient provision has been made by the company either for the due discharge of all its debt and obligations or

✓ That adequate security has been provided for such discharge.

↓

File following documents with Registrar of both states:

a) A certified copy of the order of the Central Government approving the alteration for change.

b) Altered copy of MOA

↓

The ROC of the State where the registered office is being shifted to, shall issue a fresh certifcate of incorporation indication the alteration.

↓

Also Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Also within 30 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. INC 22. (In case of specified IFSC public & IFSC private company word "thirty days" will be read as "sixty days".)

☻ A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would

have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.

- It was held that employees' union, which is a registered body and which represents quite a number of the employees employed at a registered office of the company, has the right to appear and to oppose the application made to the Central Government under Section 13 on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by the Central Government.

- Application [sub-section 4]

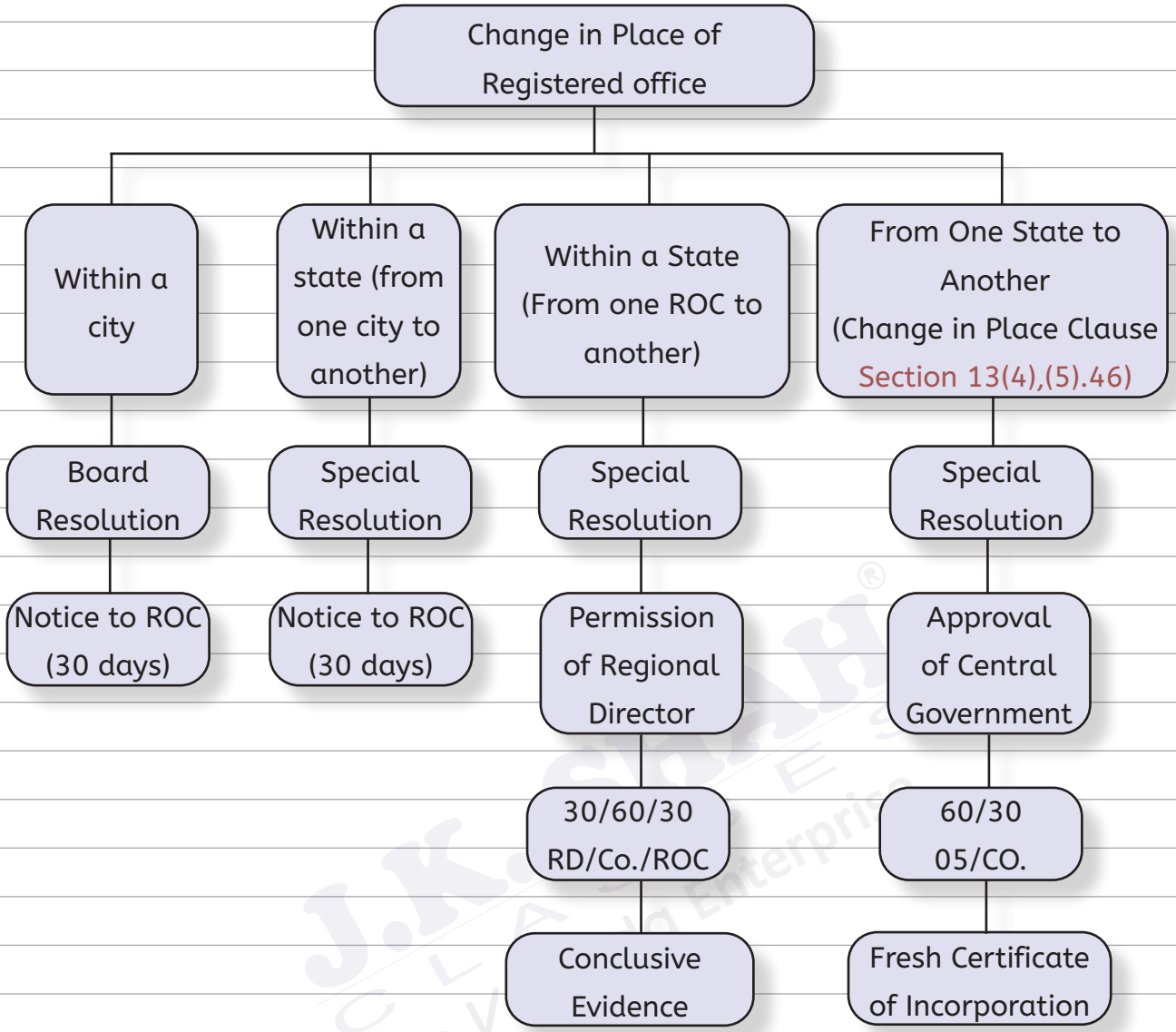
The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government (power delegated to Regional Director by Central Government) on an application in Form No. INC-23 along with the fee and shall be accompanied by the following documents, namely;

a. Copy of Memorandum of Association, with proposed alterations;
b. Copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;
c. Copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.
d. List of creditors and debenture holders
e. Acknowledgment of service of a copy of the application with complete annexures to the Registrar and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.

Advertisement in Newspapers

The Company not more than thirty days before the date of filing the above application, shall advertise in the Form No. INC-26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with wide circulation in the state in which the registered office of the company is situated.

☻ This change of registered office INVOLVES alteration of memorandum.



2.9 Object Clause

- It determines the purpose and the capacity of the company. It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities.
- The object clause of memorandum shall state "the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof".
- The subscribers to the memorandum of association enjoy almost unrestricted freedom to choose the objects. The only restriction is that objects should not be illegal and against the provisions of the Companies Act, 2013.
- Alteration of Object Clause (Section 13)

  A special resolution has to be passed in the general meeting of the company. The

special Resolution shall be passed by Postal Ballot in case of public company.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution + Altered Memorandum

↓

The ROC shall register the same and certify the registration under his hand within 30 days from the date of filing of such documents. The effective date of alteration of object clause is the date when the Registrar of Companies registers the alteration.

- To protect the minority interest, restriction has been imposed on the change of object clause. Now a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its object for which it raised the money through prospectus unless:
  - (i) a special resolution is passed by the company,
  - (ii) An exit option is given to the dissenting shareholders in terms of the regulations prescribed by SEBI and
  - (iii) Prescribed details are published in one english and one vernacular language newspapers which is in circulation at a place where registered office of the company is situated and also placed on company's website indicating justification for such change.
- Change in the object of the company [Sub-section 8 and 9]

  Who can make change in object clause & How? [Sub-section 8]

  Where the company has raised money from public through prospectus and has any un-utilised amount out of the money so raised, can change the objects for which the money so raised is to be applied only after passing a special resolution through postal ballot and the notice in respect of the resolution for altering the objects shall contain the following particulars, namely;
  - a. Total money received;
  - b. Total money utilized for the objects stated in the prospectus;
  - c. Un-utilized amount out of the money so raised through prospectus,
  - d. Particulars of the proposed alteration or change in the objects;
  - e. Justification for the alteration or change in the objects;
  - f. Amount proposed to be utilised for the new objects;
  - g. Estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
  - h. Other relevant information which is necessary for the members to take an

informed decision on the proposed resolution;

i. Place from where any interested person may obtain a copy of the notice of resolution to be passed.

☺ Advertisement [Sub-section 8]

The advertisement giving details of each resolution to be passed for change in objects, simultaneously to the dispatch of postal ballot notices to shareholders; shall be:

a. Published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and

b. Hosted on the website of the company, if any.

Dissenting shareholders to change of object [Sub-section 8]

The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board of India.

Registrar to certify the registration on alteration of the objects [sub-section 9]

The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution under clause (a) to sub-section 6 of this section.

Sub-section 10 provides that alteration made under this section (section 13) shall have effect only after it has been registered in accordance with provisions of section.

Sub-section 11 states any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. This provision is confirming and extending provision to Section 4(7).

2.10 Liability Clause

- The fourth clause of memorandum of every company must state whether the liability of its members is limited by shares or limited by guarantee or is unlimited.
- In a company limited by shares, no member can be called upon to pay more than what remains unpaid. If his shares are fully paid-up, his liability is nil.
- In a company limited by guarantee, the liability clause will state the amount, which

each member should undertake to contribute to the assets of the company in the event of liquidation of the company. He cannot be called upon to pay anything before the company goes into liquidation.

- In an unlimited company, the clause shall specify that the liability of members is unlimited and can extend to personal assets of the members.

- Alteration of Liability Clause
  - ✓ In general, liability clause of a company cannot be altered.
  - ✓ However, Section 18 permits a company of any class registered under this Act to convert itself in some other class of company by altering its memorandum and articles of association.
  - ✓ ~~By using these provisions, if an unlimited company gets converted into a limited company or vice-versa, the liability of the members will be changed and thereby leading to alteration of liability Clause of memorandum~~ (Section 65 This section is excluded from syllabus as per ICAI Notification).

2.11 Capital Clause

- Only companies having Share Capital will have this clause in their Memorandum.
- This clause must state the amount of the capital with which the company is registered.
- The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share.
- The capital is variously described as "nominal", "authorised" or "registered".
- Alteration of Capital Clause (Section 61)

  All clauses of Memorandum of Association except capital clause are altered as per procedure given in Section 13.

  Section 61 of the Companies Act, 2013 provides that a limited company having a share capital may, by passing an ordinary resolution in a general meeting, alter the capital clause of its memorandum; provided authority to alter is given to it by its articles of association. A notice of alteration is required to be filed with the ROC in Form No. SH 7 within 30 days.

  Capital Clause can be altered in any of the following ways:

  a) By increasing its authorized share capital by such amount as the company requires;

  b) By consolidating existing shares into shares of larger denomination;

  c) By converting fully - paid shares into stock or vice - versa;

d) By sub-dividing its existing shares into shares of smaller denomination; and

e) By cancelling shares which have not been taken up or agreed to be taken up and diminishing the amount of its share capital by the amount of the shares cancelled. Such cancellation is known as diminution of share capital and shall not, however, be deemed as reduction of share capital within the meaning of Sec. 66.

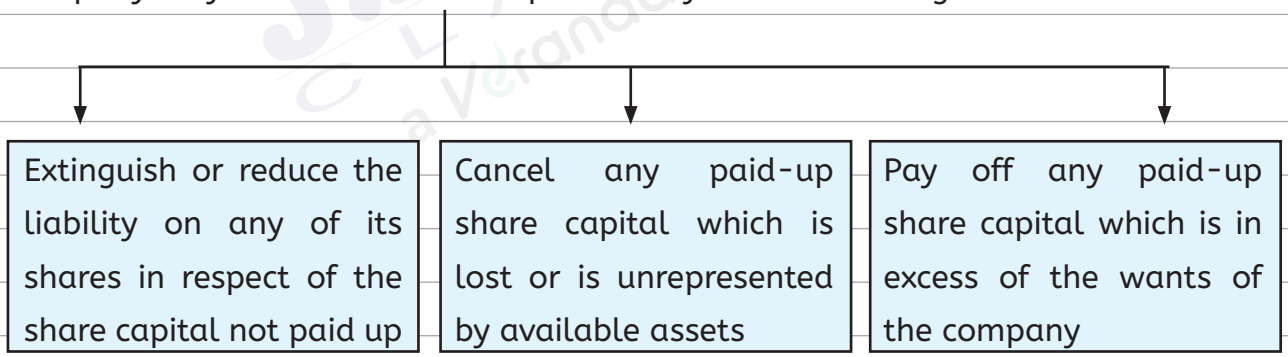
However no consolidation and division which results in changes in the voting percentage of shareholders shall take effect, unless it is approved by the NCLT on an application made in the prescribed manner.

- Section 64 of the Companies Act, 2013 seeks to provide for the companies to give notice to the registrar of alteration or increase of share capital along with an altered memorandum.

Where any company fails to comply with the provisions,
the company shall be liable to a penalty of 500 for each day during which such default continues or ₹500,000 whichever is less.
In case of an officer who is in default, he shall be liable to pay penalty of 100,000

- Reduction of share capital (Section 66)

Company may reduce the share capital in any of the following manner:



✓ Procedure for reduction of share capital:

(i) A special resolution has to be passed in the general meeting of the company

(ii) Obtain NCLT approval

(iii) The Tribunal shall give notice of every application made to it to the Central Government (now power is delegated to Regional Director), Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the

Securities and Exchange Board and the creditors within a period of 3 months from the date of receipt of the notice.

If no representation has been received within the above period, it shall be presumed that they have no objection to the reduction.

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

(v) The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

(vi) The company shall deliver following documents with Registrar within 30 days:

1) A certified copy of the order of the Tribunal
2) A minute approved by the Tribunal showing–
   (a) The amount of share capital;
   (b) The number of shares into which it is to be divided;
   (c) The amount of each share; and
   (d) The amount, if any, at the date of registration deemed to be paid-up on each share

(vii) Registrar shall register the same and issue a certificate to that effect.

- Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon.
- No application for reduction of share capital shall be sanctioned by the Tribunal unless the accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in section 133 or any other provision of this Act and a certificate to that effect by the company's auditor has been filed with the Tribunal.

✓ Effects of reduction of share capital:

(i) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount.

(ii) Where any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company is unable to pay the amount of his debt or claim, every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be personally liable to contribute to the payment of that debt or claim.

(iii) The Balance Sheet of the Company after reduction must end with words "And reduced"

✓ Difference between diminution of share capital and reduction of share capital

Diminution of share capital(Sec 61)	Reduction of share capital (Sec 66)
1. Affects Authorised share capital	1. Affects Paid up share capital
2. Ordinary Resolution	2. Special Resolution
3. No NCLT Approval required	3. NCLT Approval required
4. Balance Sheet is not affected	4. Balance Sheet is affected
5. Interest of creditors is not affected	5. Interest of creditors is affected
6. The words "And reduced" are not be used	6. The words "And reduced" are to be used

2.12 Association/Subscription Clause

- In this clause, the persons (includes a body corporate) subscribing to the memorandum declare their desire to be formed into a company and agree to take the shares indicated opposite their respective names.
- Following are the statutory requirements regarding subscription of memorandum:-
  - (i) The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signatures;
  - (ii) Each subscriber must take at least one share; if any and
  - (iii) Each subscriber must write opposite his name the number of shares (if any) which he agrees to take.

2.13 Succession Clause

- Only One Person Company shall have this clause in its Memorandum of Association.

- This clause shall state the name of the person who, in the event of the death of the subscriber, shall become the member of the company.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum as the whole process of alteration of memorandum as per Section 13 is not required to be followed. Only notice of changed nominee is to be given to Registrar.
- The above clauses are compulsory and are designated by the Companies Act as "conditions", on the basis of which alone a company is incorporated

Alteration of Memorandum (Section 13)

Please Note: We have already covered this section by splitting in alteration of different clauses. But in case the whole alteration of Memorandum i.e. entire Section 13 is asked in exam, we have printed the whole section at 1 place for student's convenience.

As per Section 2(3)-alter or -alteration includes the making of additions, omissions and substitutions.

I. Procedure of alteration of memorandum: Section 13 of the Companies Act, 2013 provides the provisions that deal with the alteration of the memorandum. The provision says that–

(1) Alteration by special resolution: Company may alter the provisions of its memorandum with the approval of the members by a special resolution.

(2) Name change of the company: Any change in the name of a company shall be effected only with the approval of the Central Government (Power delegated to ROC now) in writing: However, no such approval shall be necessary where the change in the name of the company is only the addition/deletion of the word "Private", on the conversion of any one class of companies to another class in accordance with the provisions of the Act. According to the Companies (Incorporation) Rules, 2014: The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon: Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

(3) Entry in register of companies: On any change in the name of a company, the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of

such a certificate.

(4) Change in the registered office: The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government (Power delegated to Regional Director now) on an application in such form and manner as may be prescribed.

(5) Dispose of the application of change of place of the registered office: The Central Government (Power delegated to Regional Director now) shall dispose of the application of change of place of the registered office within a period of 60 days. Before passing of order, Central Government may satisfy itself that-

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

(6) Filing with Registrar: A company shall, in relation to any alteration of its memorandum, file with the Registrar–

- ✓ the special resolution passed by the company under sub-section (1);
- ✓ the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Filing of the certified copy of the order with the registrar of the states: Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same.

(8) Issue of fresh certificate of incorporation: The Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

(9) Change in the object of the company: A company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and–

- ✓ the details, in respect of such resolution shall also be published in the

newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change;

- ✓ the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(10) Registrar to certify the registration on the alteration of the objects: The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution.

(11) Alteration to be registered: No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(12) Only member have a right to participate in the divisible profits of the company: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

II. Alteration noted in every copy: Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of ₹1000 for every copy of the memorandum or articles issued without such alteration. (Section 15)

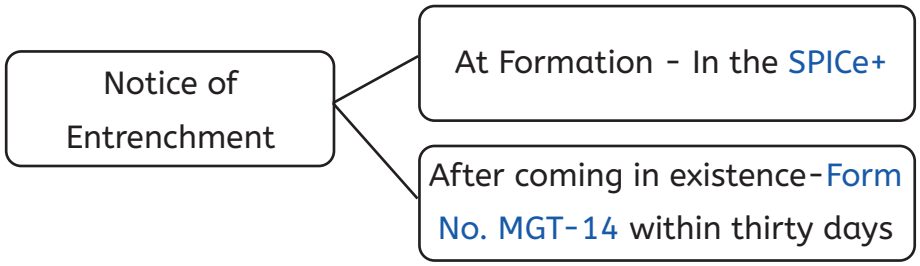
2.14 Articles of Association

Meaning:	• The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the memorandum contains the fundamental conditions upon which the company is allowed to be incorporated, so also the articles are the internal regulations of the company. It regulates domestic management of a company and creates certain rights and obligations between the members and the company. • The articles play a part subsidiary to memorandum of association. They accept the memorandum as the charter of incorporation.
Definition:	Section 2(5) of the Companies Act, 2013: 'Articles' means the articles of association of a company as originally framed or as altered from time to time in pursuance of any previous companies' law or of this Act.
Contents and model of articles of association: (Section 5)	(1) Contains regulations: The articles of a company shall contain the regulations for management of the company. (2) Inclusion of matters: The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management. (3) Forms of articles: The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company. (4) Model articles: A company may adopt all or any of the regulations contained in the model articles applicable to such company. (5) Company registered after the commencement of this Act: A company may adopt all or any of the regulations of the aforesaid Model Articles. If duly registered articles of a company do not expressly exclude or modify the regulations contained in applicable model articles, such regulations shall apply as if they were contained in the duly registered articles of a company.

Entrenchment Provision	• Entrenchment: Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective. (Entrenchment is the chronic or deep-rooted fact of an attitude, habit, or belief that is firmly established or accustomed, therefore it become difficult or unlikely to change. To illustrate – Men don't cry Entrenchment may be possible for processes, as well as procedures in both way; that processes are so well established, it become difficult to change them or make process of change so rigid that process become well established. Students, here we are studying the word entrenchment with sense of making the process of alteration in articles more difficult, in order to enhance the protection.) • Contain provisions for entrenchment: The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. • Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. • Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed. • The company shall give notice to the Registrar of entrenchment provisions included in article a. In the SPICe+(Simplified Proforma for Incorporating company Electronically Plus: INC-32), along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company, and

b. In case of existing companies, in Form No. MGT-14 within thirty days from the date of entrenchment of the articles, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Summary of Section 5(5) and Rule 10



- Example: Mr. Vishal promoted an education start up and got it registered as a private limited company. Initially he and his family are holding all shares in the company. In the article of association of company it is written that Mr. Vishal will remain director of the company for lifetime. But he has a fear that tomorrow if 75% or more shares in the company are held by non family members then by passing a special resolution article may be changed and he may be removed from the post of director.

  Therefore, it was also written in the article that he can be removed from the post of director only if 95% votes are cast in favour of the resolution. This is entrenchment.

  Example: If PQR Company subscribes 20% shares of XYZ, a Private Ltd. company. Remaining 80% shares are held by promoters and family. Tomorrow if XYZ private limited approaches any Bank for a loan, the bank officials would read the Articles & would ask to get the consent of PQR Company. Now, if there is no entrenchment provision, then 'XYZ' may, after passing a special resolution remove the minority right and can borrow beyond the limit.
- In order to control it, the entrenchment provisions are usually compelled by the minority to make the majority responsible and the minority in these provisions can get incorporated a clause saying that borrowing beyond a particular limit or issuances of shares is to be done only after the requisite consent of minority has been obtained.

Alteration of articles of association (Section 14)	• ALTERATION BY SPECIAL RESOLUTION [SUB-SECTION 1] A company may alter its articles by a special resolution, subject to the provisions of this Act and the conditions contained in its memorandum. Alteration of articles include alterations having the effect of conversion of a private company into a public company or vice-versa, Any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made within sixty days from the date of passing of special resolution, be filed with Regional Director in e-Form No. RD-1 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely; a. Draft copy of Memorandum of Association and Articles of Association, with proposed alterations; b. Copy of the minutes of the general meeting at which the special resolution authorising such alteration was passed together with details of votes cast in favour and or against with names of dissenters; c. Copy of Board resolution or Power of Attorney dated not earlier than thirty days, as the case may be, authorising to file application for such conversion; d. Declaration by a key managerial personnel regarding the compliance under difference section of the Act and rules made there under; In case of a private company, where post alteration the articles no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, then such company shall cease to be a private company, from the date of such alteration. • Filing of Alteration with the registrar [SUB-SECTION 2] Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in Form No. INC 27 along with fee, who (Registrar) shall register the same. Sub-section 3 provides that alteration made under sub-section 1 and registered under sub-section 2 subject to provision of this, shall be valid and have effect as if it were originally contained in the Articles.

	• Limitation on Alteration of Articles : Following are some of the limitation on power to alter articles of association :- 1. The articles must not exceed the powers given by the memorandum or conflict with its provisions. 2. It must not be inconsistent with any of the provisions of the Companies Act, 2013 or any other Statue/ Law. 3. The alteration must be bona fide for the benefit of the company as a whole. 4. The altered articles must not contain anything illegal or against public policy. 5. The articles cannot be altered in a way providing for expulsion of a member. • Alteration noted in every copy: Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of ₹1000 for every copy of the articles issued without such alteration. (Section 15)
Act to override Memorandum, Articles, etc. (Section 6):	• Section 6 provides that the provisions of the sections of Companies Act, 2013 shall have overriding effect over the provisions contained in memorandum and articles of the company, unless a particular section expressly provides otherwise. Any provision, contained in the memorandum or articles, which is contrary to the provisions of the Act, shall be void. • It may, however, be noted that the provisions of the articles will prevail over the provisions of the Act, provided they are more stringent or more strict than what is specified in the Act and that there is no inconsistency with the provisions of the Act. • For example, where the Act specifies that for a particular act an ordinary resolution is to be passed, but the articles specify for a special resolution, in such a case, provision of the articles will prevail.

2.15 Effect of Memorandum and Articles of Association (Section 10)

- Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
- It means that, on the basis of MOA and AOA:

  a) Company is liable to members

  b) Members are liable to company

  c) But normally members are not liable to each other

  d) But the memorandum and articles do not bind the company to the outsiders.
- All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Example (Member to the Company)

The articles of association of the Steel Bros & Co Ltd contained clauses to the effect that on the bankruptcy of a member his shares would be sold to a person and at a price fixed by the directors. Borland, a shareholder, was adjudicated bankrupt. His trustee in bankruptcy claimed that he (Borland) was not bound by these provisions and should be at liberty to sell the shares at their true value. But it was held that contracts contained in the articles of association is one of the original incidents of the shares. Shares having been purchased on those terms and conditions, it is impossible to say that those terms and conditions are not to be observed.

Example (Company to the Member)

The articles of the Odessa Waterworks Co provided that "the directors may, with the sanction of the company at general meeting, declare a dividend to be paid to the members". Instead of paying the dividend in cash to the shareholders a resolution was passed to give them debenture bonds. In an action by Mr. Wood, a member to restrain the directors from acting on the resolution, it was held that "The question is whether that which is proposed to be done in the present case is in accordance with the articles of association of the company. Those articles provide that the directors may, with the sanction of a general meeting, declare a dividend to be paid to shareholders. Prima facie that means to be paid in cash. The debenture bonds proposed to be issued are not a payment in cash."

Example (Member to the Member)

Mr. Rayfield was a shareholder in a company. Clause 11 of the articles of company required him to inform the directors of his intention to transfer his shares in the company and which provided that the directors will take the said shares equally between them at a fair value. In accordance with this provision the Mr. Rayfield so notified the directors (who are members as well), who contended that they were not bound to take and pay for the shares. They said, articles could not impose such obligation upon them in their capacity as directors. Their argument was set aside by the court by treating those directors as members. Accordingly, the directors (being members) were compelled to take the Mr. Rayfield's shares at a fair value.

2.16 Copies of Memorandum, Articles, Etc., To Be Given To Members (Section 17)

According to section 17 every company on being so requested by a member, shall send copies of the following documents within seven days of the request on the payment of fees–

(a) The memorandum;

(b) The articles; and

(c) Every agreement and every resolution referred in section 117 (Resolutions and agreements to be filed), if and in so far as they have not been embodied in the memorandum or articles.

In case of default, the company and every officer who is in default shall be liable for each default, to a penalty of ₹1000 for each day during which such default continues or ₹1lakh, whichever is less.

2.17 Doctrine of Ultra Vires

- The meaning of the term 'ultra vires' is 'beyond the powers of. Anything which is outside the specified objects and powers of the object clause of memorandum of association is ultra vires the company and therefore is null and void.
- An act which is ultra vires memorandum, the company cannot ratify even by the unanimous consent of all the shareholders.
- No rights and liabilities, on the part of the company, arise out of such transactions and it remains nullity even if every member assents to it.
- Consequently, an act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.
- But, an act which is ultra vires the powers of directors, but intravires (i.e. within the powers) Memorandum can be ratified by the members of the company through a

resolution passed at a general meeting.

- Similarly if an act is ultra vires the Articles but intravires Memorandum, can be ratified by altering the Articles by a Special Resolution at a general meeting.

Case law: Ashbury Railway Carriage and Iron Company Limited v. Riche-(1875).

The facts of the case are:

The main objects of a company were:

(a) To make, sell or lend on hire, railway carriages and wagons;

(b) To carry on the business of mechanical engineers and general contractors.

(c) To purchase, lease, sell and work mines.

(d) To purchase and sell as merchants or agents, coal, timber, metals etc.

The directors of the company entered into a contract with Riche, for financing the construction of a railway line in Belgium, and the company further ratified this act of the directors by passing a special resolution. The company however, repudiated the contract as being ultra-vires. And Riche brought an action for damages for breach of contract. His contention was that the contract was well within the meaning of the word general contractors and hence within its powers. Moreover it had been ratified by a majority of shareholders.

However, it was held by the Court that the contract was null and void. It said that the terms 'general contractors' was associated with mechanical engineers, i.e. it had to be read in connection with the company's main business. If, the term general contractors' was not so interpreted, it would authorize the making of contracts of any kind.

2.18 Doctrine of Constructive Notice

- When the memorandum and articles of association of a company areregistered, they become public documents and are open to inspection by anyone on payment of nominal fee. Hence, every person dealing with the company is under an obligation to know the contents of these documents.
- Doctrine of "constructive notice" protects the company against the outsiders
- This Doctrine operates as dark cloud for the outsiders

2.19 Doctrine of Indoor Management

- While persons dealing with a company are presumed to have read the public documents and understood their contents and ascertain that the transaction is not inconsistent therewith, they are entitled to assume that the PROVISIONS of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see how the company carries out its own internal proceedings or indoor management. He can assume that all is being done regularly.
- The doctrine of indoor management, thus, imposes an important restriction on the scope of doctrine of constructive "notice. While the doctrine of "constructive notice" seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.

Case law: The Royal British Bank vs. Turquand

Mr.Turquand was the official manager (liquidator) of the insolvent Cameron's Coalbrook Steam, Coal and Swansea and Loughor Railway Company. It was incorporated under the Joint Stock Companies Act, 1844. The company had given a bond for £ 2,000 to the Royal British Bank, which secured the company's drawings units current account. The bond was under the company's seal, signed by two directors and the secretary. When the company was sued, it alleged that under its registered deed of settlement (the articles of association), directors only had power to borrow up to an amount authorized by a company resolution. A resolution had been passed but not specifying how much the directors could borrow.

Held, it was decided that the bond was valid, so the Royal British Bank could enforce the terms. He said the bank was deemed to be aware that the directors could borrow only up to the amount resolutions allowed. Articles of association were registered with Companies House, so there was constructive notice. But the bank could not be deemed to know which ordinary resolutions passed, because these were not registrable. The bond was valid because there was no requirement to look into the company's internal workings. This is the indoor management rule, that the company's indoor affairs are the company's problem.

- Exceptions: The doctrine of indoor management is subject to the following exceptions or limitations:-
  1. Actual or constructive knowledge of irregularity: The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.
  2. Suspicion of Irregularity: Where the person dealing with the company is put upon an inquiry, for example, where the transaction is unusual or nothing the ordinary course of business, it is the duty of the outsider to make the necessary enquiry.
  3. Forgery: The doctrine of indoor management applies only to irregularities which might otherwise affect a transaction but it cannot apply to forgery which must be regarded as nullity.

2.20 Service of Documents (Section 20)

Section 20 of the Companies Act, 2013, provides the mode in which documents may be served on the company, on the members and also on the registrars. Law with respect to the service of documents is as follows–

Serving document to company:

Document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

- ✓ 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.

However, where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Note : For the purposes of this section, the term "courier" means a person or agency which delivers the document and provides proof of its delivery.

The term "electronic transmission" means a communication that creates a record that is capable of retention, retrieval (recovery) and review, and which may thereafter be rendered into clearly legible tangible form. It may be made by

- Facsimile telecommunication (fax) or electronic mail (email), which the company or the officer has provided from time to time for sending communications,
- Posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting, or
- Other means of electronic communication, in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission.

Further sub-section 2 provides, in case of delivery by post, such service shall be deemed to have been effected:

a. In the case of a notice of a meeting, at the expiration of 48 hours after the letter containing the same is posted; and
b. In any other case, at the time at which the letter would be delivered in the ordinary course of post.

Serving document to Registrar or Member:

Document may be served on Registrar or any member by sending it to him by-

- ✓ Post/ Registered post, or
- ✓ Speed post, or
- ✓ Courier service, or
- ✓ By delivering at his office or address or
- ✓ Means of such electronic or other mode as may be prescribed.

However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Exception: In case of a Nidhi company, the document may be served only on members who hold shares of more than ₹ 1,000 in face value or more than 1%, of the total paid-up share capital of the Nidhis whichever is less. For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi.

2.21 Authentication of Documents, Proceedings and Contracts (Section 21)

As per section 21 of the Companies Act, 2013, a document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by–

(1) Any key managerial personnel, or

As per Sec 2(51), key managerial personnel, in relation to a company, means

(i) The Chief Executive Officer or the managing director or the manager;

(ii) The company secretary;

(iii) The whole-time director;

(iv) The Chief Financial Officer;

(v) Such other officer not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) Such other officer ass may be prescribed.

(2) An officer or employee of the company duly authorised by the Board in this behalf.

2.22 Execution of Bills of Exchange, etc. (Section 22)

1. In case of a bill of exchange, hundi or promissory note of a company, it shall be dealt with by any person acting under its authority, express or implied given by the company.
2. A company 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.
3. However, in case a company does not have a common seal, the above authorisation shall be made by 2 directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary. But if company decides to have a common seal then it has to affix the same for specified matters, execution of deeds on behalf of the company.
4. A deed signed by such an attorney on behalf of the company and under his seal shall bind the company

List of Sections

SR. NO	SECTION NUMBER	NAME OF SECTION	PAGE NUMBER (To be filled by students)
2.1	2(69)	Promoter	
2.2		Pre – incorporation / preliminary / promoters' contract	
2.3	7	Incorporation of companies	
	9	Effect of Registration	
	10A	Commencement of Business	
2.4		Effect of furnishing of false or incorrect information or suppression of material fact	
2.5		Simplified Proforma for Incorporating Company electronically (SPICE)	
2.6	2(56)	Memorandum of association	
	4	Contents & Form of Memorandum	
2.7	13,16	Name Clause , its alteration and its Rectification	
2.8	12,13	Situation or Registered Office Clause & shifting of registered office	
2.9	13	Object Clause & its alteration	
2.10		Liability Clause	
	65	~~Conversion of Limited Liability company to Unlimited Liability Company and vice-versa~~	
2.11		Capital Clause	
	61	Alteration of share capital	
	64	Notice to be given to registrar for alteration of share capital	
	66	Reduction of Share Capital	
2.12		Association/Subscription Clause	
2.13		Succession Clause	
	13	Alteration of Memorandum of Association (Change of name, Shifting of registered office from 1 state to another, alteration of object clause)	
	15	Alteration noted in every copy	
2.14	2(5)	Articles of association	

	5	New provisions in Articles of Association	
	6	Act to override Memorandum, Articles, etc.	
	14	Alteration of articles of association	
2.15	10	Effect of memorandum and articles of association effect of memorandum and articles of association	
2.16	17	Copies of memorandum, articles, etc., to be given to members	
2.17	-	Doctrine of Ultra Vires	
2.18	-	Doctrine of constructive notice	
2.19	-	Doctrine of indoor management	
2.20	20	Service of documents	
2.21	21	Authentication of documents, proceedings and contracts	
2.22	22	Execution of bills of exchange, etc	

LIST OF CASE LAWS

SR. NO.	CASE LAW	PAGE NUMBER (to be filled by students)
1.	State Trading Corporation of India vs. Commercial Tax Officer	
2.	Spencer & Co. Ltd. Madras vs. CWT Madras	
3	Heavy Electrical Union vs. State of Bihar	
4.	Ashbury Railway Carriage and Iron Company Limited v. Riche	
5.	The Royal British Bank vs. Turquand	

SUMMARY

1. Promoter Definition 2(69)

Named in the prospectus, (b) identified in the Annual Return, (c) person who has a control over the affairs of the company, (d) person with whose advice, direction the BOD is accustomed to act (other than in professional capacity).

2. Formation of Company:(S.3)

(a) Person - 7 for public; 2 for private; 1 for OPC, (b) Associated for Lawful purpose, (c) Shall subscribe their name to MOA, (d) Incorporate a Company with or without limited Liability.

3. Members liable(S.3A)

If number of member reduce below 2 /7 in case of private or public company, member aware of fact does not take required step to make it in statutory limit within 6 months shall be liable for the liability contracted during that period after 6 months.

4. Meaning.(S.4)

MOA of a Company is its charter and defines the limitations of the powers of a Company

5. Contents of MOA:

(a) Name Clause, (b) Situation Clause, (c) Object Clause (Main objects / incidental & ancillary objects / other objects), (d) Liability Clause, (e) Capital Clause, (f) Association Clause

6. Name Approval

Application for name approval using RUN. Validity for name reservation for New company 20 days and existing company 60 days.

7. Wrong Information

Company not incorporated- name cancelled/penalty up to 1 lakh.

Company incorporated- direction for change name within 3 month/take action to strike off/file petition for winding up.

8. AOA Meaning: (S.5)

AOA is bye laws of the Company which lays down the rules and regulation for internal management.

9. General of contents AOA:

(a) Regulations for management, (b) Such matters as may be prescribed, (c) Additional matters if considered necessary for its management.

12 Entrenchment provision in AOA

It shall be made be made either on formation of company or amendment in AOA by all members.in case of Private Company and special passing Resolution in case of Public Company

Intimate ROC within 30 days in case of existing Company

13 Overriding effect (S.6)

Provision of Act override MOA &AOA

14 Effect of Registration(S.9)

Company becomes Body corporate, Company enjoy all function of corporate law, gets perpetual succession,power to acquire property and can sue.

15 Not for Profit Companies(S.8)

Object is to promote Commerce, Art, Science, Sports, Education, Social Welfare; (b) Intends to apply its profits for promotion of main objects and (c) Prohibits payment of Dividend.

16 GROUNDS OF REVOCATIONS:

Contravention with the requirements of Sec.8

Contravention with the Condition subject to Licence issued

Fraudulent conduct

Conduct affairs prejudicial to public interest

17 Effect of MOA & AOA(S.10)

It binds the company and members.

18 Commencement of business(S.10A)

A company having share capital shall commence business or can borrow after filing declaration in form by Director to ROC stating every subscriber to Memorandum has paid the value of shares.

ROC can take action for the removal of the name of the company from the register, if company has not filed declaration within 180 days of incorporation and if the company not carrying on any business or operation.

19 Registered office.(S.12)

A company on incorporation, within 30 days requires fix place of business as registered office.

20 Change of registered office

a. Within same City/town/village – Require BR + intimate ROC form INC-22 within 30 days+ obtain fresh COI.

b. One city to another without changing Roc – Require BR + SR + Intimate ROC by filing INC-22 (30 days) + obtain fresh COI.

c. One ROC to another within the same state – BR +SR + Application to RD+RD approval must be within 30 days + Company to intimate ROC within 60 days + file INC 22 (30 days) + obtain fresh COI.

NOTE: NO Alteration of MOA is required in all the above case

21 Change of Name Clause(S.13)

BR + SR + name approval (RUN) + File forms to ROC within 60 days +obtain fresh COI (No approval is required from CG for the addition and deletion of word Pvt/LTD.

22 Change of Situation Clause:

From one State to another – BR + SR + application to CG + approval certificate within 60 days (consideration of Creditors, Debenture etc.) + Intimate Roc in prescribed manner with approval certificate within 30 days (INC 22) + obtain fresh COI.

NOTE: (a) State Government cannot make any restriction for change of situation clause. (b) Employee has a right to oppose.

23 Change of object Clause:

BR + SR + Application to CG + File ROC Within 30 days with prescribed forms in required manner.

NOTE: dissenting Minority Shareholder must be given an exit route.

24 Alteration Of Articles(S.14)

SR + Intimation to ROC in prescribed manner

25 Condition for alteration of AOA

a. Not to be inconsistent with Statute/MOA
b. Only for bonafide interest of company.
c. Alteration benefits company as a whole
d. Not to be illegal/opposed to public policy.
e. Should not increase liability of members
f. Not to constitute fraud.

26 Alteration of MAO & AOA in every Copy:(S.15)

If Contravene penalty Rs.1000 per day on Company and its officer.

27 Rectification of name of Company:(S.16)

a. CG suo-moto order company to change its name within 3 months by passing OR in GM.
b. CG on application received from existing company order new company to change its name within 3 months by passing OR in GM. And intimate ROC in prescribed manner.

28 Copies of MOA & AOA to Members:(S.17)

On request of members and required fees, company shall send copy of MOA, AOA, Agreement to member within 7 days. If default penalty of Rs. 1000/day. Or Rs. 1,00,000 whichever is less.

29 Doctrine of Ultra Vires: Any purported activity beyond the powers conferred by MOA is ultra vires acts. Ultra means “beyond” and Vires means “powers”.

30 Effect of Ultra vires Acts

(a) Void-ab-intio, (b) Injunction can be issued against performance of ultra vires acts,

(c) Personal Liability of Directors, (d) Criminal action for deliberate misapplication

33. Exceptions to the Doctrine of Ultra Vires
    (a) Ultra Vires Directors but Intra Vires AOA and MOA - SH can ratify.
    (b) Ultra Vires AOA intra vires MOA - SH can ratify by AOA amendment.
    (c) Ultra Vires statute - Cannot be ratified. Null and Void
    (d) Company money used to acquire ultra vires property will be secured

34. Doctrine of Constructive Notice: MOA and AOA are public documents. Third party dealing with Company has means of ascertaining and is presumed to know the powers and the extent to which they have been delegated to Directors

35. Doctrine of Indoor Management: Persons dealing with the Company can safely presume that internal proceedings have been observed properly or complied with. They need not inquire into the regularity of internal proceedings.

36. Exceptions to Doctrine of Indoor Management: (a) Knowledge of irregularity, (b) Forgery / Void Contracts I Illegal Contracts, (d) Not to protect the person who act negligently

37. A name is said to 'resemble' when difference is only and only of
    a. Plural or singular form of words in one or both names (Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.)
    b. Type and case of letters, spacing between letters, and punctuation marks used in one or both names (ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.)
    c. Use of different tenses in one or both names (Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.)
    d. Slight variation in the spelling of the two names including a grammatical variation thereof (Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd)
    e. Use of different phonetic spellings including use of misspelled words of an expression (Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd)
    f. Complete translation or transliteration, and not part thereof, of an existing name, in Hindi or in English (National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.)

g. Use of host name such as 'www' or a domain extension such as .net'. org', 'dot' or 'com' in one or both names (Ultra Solutions Ltd. is same as Ultrasolutions. com Ltd. But Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions. com Ltd.)

h. The order of words in the names (Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.)

i. Use of the definite or indefinite article in one or both names (Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd. But Isha Industries Limited is not the same as Anisha Industries Limited.)

j. Addition of the name of a place to an existing name, which does not contain the name of any place; (If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd. But Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.)

k. addition, deletion, or modification of numerals or expressions denoting numerals in an existing name, unless the numeral represents any brand (Thunder Services Ltd is same as Thunder 11 Services Ltd and One Thunder Services Ltd.)

Students may also refer to 23 instances specified in rule 8A of the Companies (Incorporation) Rules 2014 that tantamount to "undesirable names"

III PROSPECTUS AND ALLOTMENT OF SECURITIES

3.1 Issue of Securities by the Company

Issue of securities by public company	Issue of securities by private company
(a) 'Public offer' through issue of prospectus. It includes: (i) Initial Public Offer (IPO) (ii) Further Public Offer (FPO) (iii) Offer for Sale (OFS) by an existing shareholder, through issue of a prospectus (Section 23 to 41)	(a) Private placement (Section 42)
(b) Private placement (Section 42)	(b) Rights Issue (c) Bonus Issue In accordance with the provisions of the Companies Act.
(c) Rights Issue (d) Bonus Issue In accordance with the provisions of the Companies Act and the SEBI Act, 1992.	

- As per Section 23 (1), a public company may issue securities–
  - a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or
  - b) through private placement by complying with the provisions of Part II of this Chapter; or
  - c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made there under
- As per Section 23(2), a private company may issue securities–
  - a) By way of rights issue or bonus issue in accordance with the provisions of this Act; or

b) Through private placement by complying with the provisions of Part II of this Chapter.

- In the above provisions, securities is defined in Section 2(81)

As per Section 2 (81)-securities means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956

"Securities" include–

a) Shares, scripts, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(i) Derivative;

(ii) Units or any other instruments issued by any collective investment scheme to the investors in such schemes;

(iii) Security receipt as defined in section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

(iv) Units or any other such instrument issued to the investors under any mutual fund scheme.

(v) Securities however, shall not include any unit linked insurance policy or scripts or any such instrument or unit, by whatever name called, which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer referred to section 2 of the Insurance Act, 1938.

(vi) Any certificate or instrument (by whatever name called), issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be;

b) Government securities; such other instruments as may be declared by the Central Government to be securities; and

c) rights or interests in securities;

To bring ease to doing business for corporates, Sub-section 3 and 4 to section 23 of the Act inserted vide, the Companies (Amendment) Act, 2020 (enforced w.e.f 28th September 2020)

Prior to Amendments of 2020, Indian companies can access the overseas equity markets only through depository receipts (e.g. American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) or by listing their debt securities (such as, foreign currency convertible bonds, masala bonds, etc.) on foreign markets.

Since more and more businesses are going global & capital raised from across the border is cost effective, hence section 23(3) is inserted to open ways of overseas direct listing for notified class of public companies by allowing them to issue notified securities for the purpose of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions as may be prescribed.

Note: How overseas direct listing is different from ADRs/GRDs?

In a direct listing, a domestic company can enlist itself with the stock exchanges of other countries without an intermediary. Unlike American Depositary Receipts (ADRs) and Global Depositary Receipts (GDRs), the Indian company can directly offer their shares in foreign markets instead of giving them to a foreign depository bank. Direct listing excludes intermediaries, decreases the overall transaction cost, and increases transparency.

REGULATION OF ISSUE AND TRANSFER OF SECURITIES ETC. [SECTION 24]

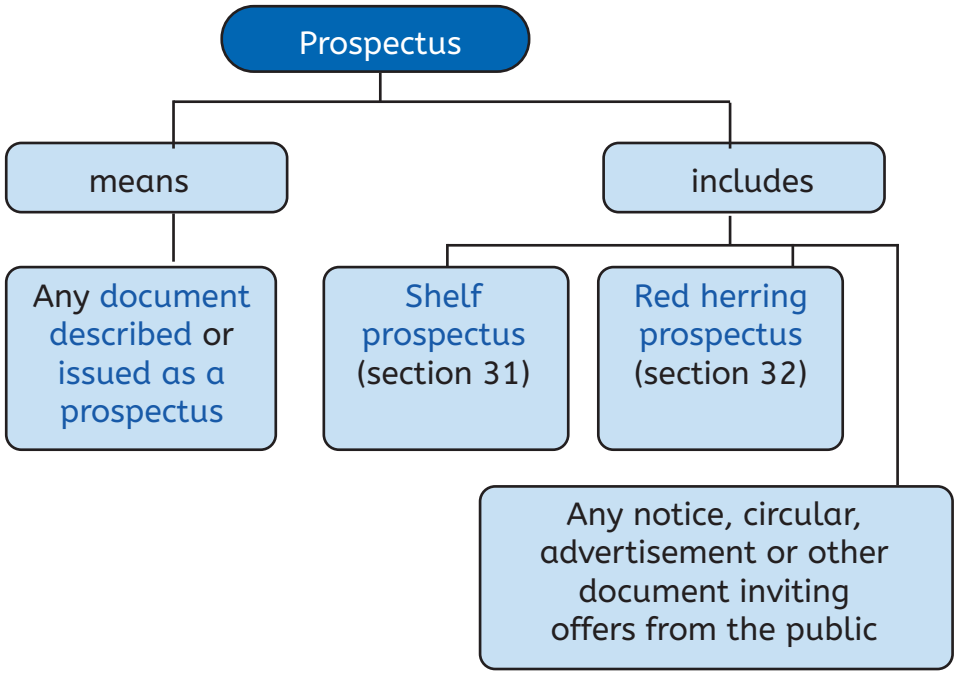
Securities and Exchange Board of India is empower to administer those provisions under chapter III and IV of the Act, which pertains to issue & transfer of securities and non-payment of dividend; by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, by making regulations in this behalf.

All other matters (including matters relating to prospectus, return of allotment, redemption of preference shares) specifically provided in this Act, shall be administered by the Central Government, Tribunal or the Registrar, as the case may be.

3.2 Prospectus

Definition:

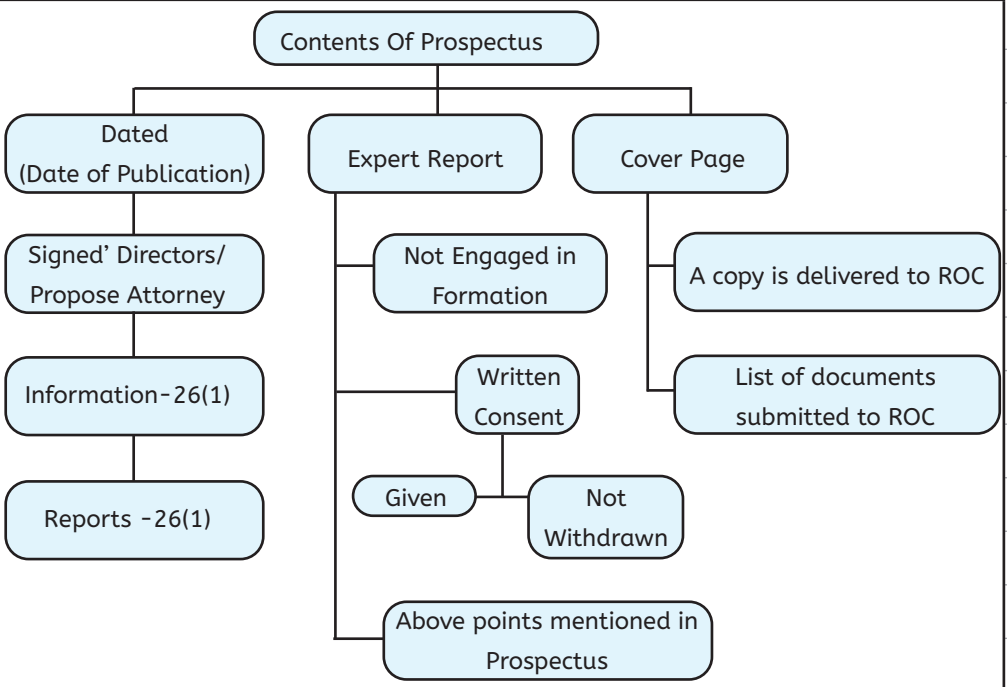
- Section 2(70) of the Companies Act, 2013 defines a prospectus as "any document described or issued as a prospectus and includes a red herring prospectus, shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate".



- According to the above definition, following points emerge in relation to prospectus:
  - (i) Prospectus is any document described or issued as a prospectus. Thus, any document which is described as a prospectus or issued as a prospectus is to called prospectus.
  - (ii) A prospectus shall include a red herring prospectus or shelf prospectus.
  - (iii) A prospectus shall also include any notice, circular, advertisement or other document which intends to invite offers from the public for the subscription of any securities or purchase of any securities of a body corporate.

- In this context, prospectus is not an offer in itself but an invitation to make an offer, signifying thereby that on acceptance of such an invitation by any member of the public, no binding contract between him and the company comes into being. Application for purchase of shares or debentures or for making a deposit constitutes an offer by the subscriber to the company and it is only on its acceptance by the company that a binding contract comes into existence.
- The prospectus must be in writing. An oral invitation to subscribe for shares will not be considered prospectus. Television or film advertisement cannot be treated as prospectus.
- A document is deemed to be issued to the public, if the invitation to subscribe for share capital is such as to be open to anyone who brings his money and applies on prescribed form, whether the prospectus was addressed to him or not. The test is not who receives the document, but who can apply for shares in response to the invitation contained in it.

Contents of Prospectus (Section 26):



(1) Dated: Every prospectus must be dated. The date appearing on the prospectus is deemed to be date of publishing prospectus

(2) Registered: The prospectus must be filed with ROC on or before issue of prospectus to public

(3) Issued: The prospectus must be issued to public within 90 days of filing with ROC. Any issue of securities under the prospectus which is issued beyond 90 days shall be deemed to be an issue without a prospectus.

(4) Main Contents:

a) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person, who is or has been engaged or interested in the formation of a public company, shall be dated and signed.

b) It shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:

c) Till the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.

d) It shall make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made there under.

Exceptions: The above provisions a) to d) are not applicable to:

1. To the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company.
2. To the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

Statement made by Experts (Section 26):	A prospectus issued shall not include a statement: (1) Made by an expert who is engaged or interested in the formation or promotion or management, of the company or (2) Made by an expert whose written consent is not obtained or (3) Made by an expert whose written consent is obtained but he has withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for filing. As per Section 2(38) -expert includes an engineer, a valuer, a Chartered Accountant, a Company Secretary, a Cost Accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force;
Mention compliances of the formalities (Section 26):	Every prospectus issued shall, on the face of it– (a) State that a copy has been filed with the Registrar as required; and (b) Specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.
Punishment in case of contravention:	A prospectus is issued in contravention of the provisions of this section, the company shall be punishable with: Fine : Min 50,000 upto 3 lacs
Variation in terms of contract or objects in prospectus (Section 27)	Once funds are raised through a given prospectus, the principles of "doctrine of ultra vires" (mutatis mutandis) comes into play i.e., the company has to use the funds strictly in accordance with the prospectus. Deviations are required to be pre-approved by the investors and recall option to be given to dissenting investors. Deviation regarding use of issue proceeds for buying, trading or otherwise dealing in equity shares of any other listed company is not permitted. Accordingly, the section states that: (1) Vary by special resolution: A company shall vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, only by way of special resolution by postal ballot. (2) Notice of resolution to shareholders: The details of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of the company is situated indicating clearly the justification for such variation.

	(3) Exit offer to dissenting shareholders: The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

3.3 Types of Prospectus

Shelf Prospectus (Section 31)	Need for shelf prospectus: If any company has multiple issues of securities frequently in the same year, they will have to file a prospectus every time it issues a new series of securities. In this case, concept of shelf prospectus comes into play. Literally, it means prospectus with a given shelf life. Any number of issues could be made during the tenure of the shelf prospectus. The only thing is to supplement the shelf prospectus by an "information memorandum" containing key updates or changes Definition: The Companies Act, 2013 defines the term "shelf prospectus" which means a prospectus in respect of which the 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. Section 31 of the Companies Act, 2013 state the following law regarding the issue of the shelf prospectus: 1. Filing of shelf prospectus with registrar: Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar. 2. Filing of shelf prospectus: It can be filed- (i) At the stage of the first offer of securities included therein, which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and (ii) In respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.

	3. Filing of an information memorandum containing all material facts with the registrar- A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to: (i) new charges created, (ii) changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities, and (iii) such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus. 4. Intimation of changes to the applicants: Where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within 15 days thereof. 5. Shelf prospectus with information memorandum deemed to be prospectus: Where an information memorandum is filed, every time an offer of securities is made with all the material facts with the registrar, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.
Red Herring Prospectus (Section 32)	The expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. Red Herring Prospectus' concept has been introduced to facilitate Book Building method for public issue of securities. The law relating to the red herring prospectus given under Section 32 is as follows: (1) Issue of red herring prospectus prior to prospectus: Company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. (2) Filing with the registrar: A company proposing to issue a red herring prospectus shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

	(3) Obligation and any variation in the red herring prospectus is same as that of prospectus: A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus. (4) Prospectus with the details not included in the red herring prospectus: Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.
Abridged Prospectus	CONCEPT OF ABRIDGED PROSPECTUS - ISSUE OF APPLICATION FORMS FOR SECURITIES [SECTION 33] Meaning of Abridged Prospectus [Section 2(1)] Abridged Prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf. Need of Abridged Prospectus In fact, 'Abridged Prospectus' is a summarized form of actual prospectus, containing the salient features of a prospectus to cut the cost involved in the publication of large number of prospectus which has to accompany the application forms for shares or debentures in case of public offer. Abridged Prospectus accompany the application form [Sub-section 1] Section 33(1) provides that every application form for shares or debentures has to be accompanied with the abridged prospectus. Proviso to sub-section 1 provides exceptions, when the requirement of abridged prospectus does not apply; a. When application form is issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to shares or debentures: b. In relation to shares or debentures which were not offered to the public; or

	c. Where offer is made only to existing members of the company Right to receive prospectus [Sub-section 2] Sub-section 2 provides that a prospectus (full prospectus) is to be made available to any person who request for it before the closing of the subscription list and the offer. Penalty [Sub-section 3] A company who makes any default in complying with the provisions of section 33, shall be liable to a penalty of fifty thousand rupees for each default.
Deemed Prospectus or Prospectus by Implication (Section 25)	Section 25 of the Companies Act, 2013 seeks to provide that any document by which the offer for sale of shares or debentures to the public is made shall for all purpose be treated as prospectus issued by the company. Act lays down the following provisions- (i) Document by which offer for sale to the public is made: According to the given provision where a company allots or agrees to allot any securities of the company to all or any of those securities being offered for sale to the public, then any document by which the offer for sale to the public is made- shall be deemed to be a prospectus issued by the company. (ii) Contents of prospectus and the liability: All enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from prospectus, or otherwise relating to prospectus. 

(iii) Securities must be offered for sale to the public: For the purposes of this Act, it shall be evident that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown–

(a) That an offer of the securities or of any of them for sale to the public was made within 6 months after the allotment or agreement to allot; or

(b) That at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(iv) Effect of application of section 26 on this section: Section 26 relating to the matters stated in the prospectus, as applied by this section shall have effect, as if

(I) It required a prospectus to state in addition to the matters required by that section to be stated in a prospectus–

(a) The net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and

(b) The time and place at which the contract where under the said securities have been or are to be allotted may be inspected;

(II) the persons making the offer were persons named in a prospectus as directors of a company.

(v) Person making an offer is a company or firm: Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document, that is deemed to be prospectus, is signed on behalf of the company or firm by-

(i) two directors of the company, or

(ii) by not less than one-half of the partners in the firm, as the case may be.

Since the provisions of the Act relating to prospectus and the penal provisions are attracted only when the prospectus (including deemed prospectus) has been issued. "Issued" means issued to the public.

Hence In context of 'Invitation to Public' 'Inviting offer from the Public' or 'Offer of securities for sale to Public' two valid questions arise here:

1. What constitute as 'Public'? Does only 'Public at large' constitute as Public?

The term public is not restricted to the public at large. It includes any section of the public, it is immaterial howsoever such section is selected. Public connotes persons not personally known to the promoter as distinguished from his own friends, relatives, connections and acquaintances.

Re, South of England Natural Gas and Petroleum Co. Ltd

Facts – 3000 copies of a document which was offered for subscription of shares in a company and which was headed "For Private Circulation only," circulated to the members of certain number of gas companies only.

Legal Question – Was this a prospectus? Should it contain the particulars required by the Act?

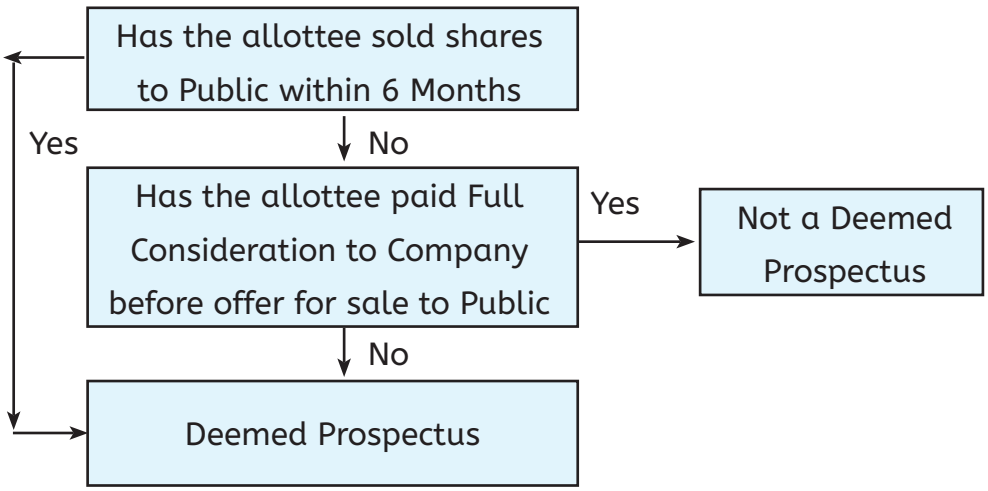
Decision – It was decided that though the offer was only to limited class, it was not less than an offer to the public in any sense, because those persons from limited class were nonetheless the public. Hence, the distribution of a document entitled, "For Private Circulation only" offering the company shares was an offer to the public and their document was a prospectus. Therefore, it must contain the particulars required by the Act.

2. Whether a single private communication tantamount to issue; can it be construe to a prospectus to attract the provisions of the Act?

The term "issue" is not satisfied by a single private communication. There must be some measure of publicity, however modest. A private communication is not thus open and does not construe to be a prospectus, hence not attracting the provisions of the Act.

Nash Vs Lynde

Facts – Nash applied for certain shares in a company on the basis of a document sent to him by Lynde, the managing director of the company. The document was marked 'strictly private and confidential'. The document did not contain all the material facts required by the Act to be disclosed. Nash filed a suit for compensation for loss suffered by him by reason of the Omissions.
Decision – Suit was dismissed.
Viscount Summer's landmark dictum in this case is worth to consider here as basis of above answer. "The public in the definition is of course a general word, no particular number are prescribed. Anything from two to infinity may serve, perhaps even one if he is intended to be the first of a series of subscribers but made further proceedings needless by himself subscribing the whole. The point is that the offer is such as to be opened to anyone who brings his money and applies in due from, whether the prospectus was addressed to him on behalf of the company or not. A private communication is not thus open and does not construe to be a prospectus."



3.4 Offer of sale of shares by certain members of company (Section 28)

(1) Where certain members of a company propose, in consultation with the Board of directors to offer, in accordance with the provisions of any law, whole or part of their holding of shares to the public, they can do so in accordance as the prescribed procedure.

(2) Any document by which the offer of sale to the public is made shall, for all purposes,

be deemed to be a prospectus issued by the company and all laws and rules made there under as to the contents of the prospectus and as to liability in respect of mis-statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.

(3) The members, whether individuals or bodies corporate or both, whose shares are proposed to be offered to the public, shall collectively authorise the company, whose shares are offered for sale to the public, to take all actions in respect of offer of sale for and on their behalf and they shall reimburse the company all expenses incurred by it on this matter.

(4) Exceptions to certain Matters: The provisions Chapter III-"Prospectus and Allotment of Securities" and rules made thereunder shall be applicable to an offer of sale referred to in section 28 except for the following, namely:-

(a) the provisions relating to minimum subscription;

(b) the provisions for minimum application value;

(c) the provisions requiring any statement to be made by the Board of directors in respect of the utilization of money; and

(d) any other provision or information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.

3.5 Public offer of securities to be in dematerialized form (Section 29)

Every company making public offer and such other class or classes of companies as may be prescribed shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

Any other company, 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 the provisions of the Depositories Act, 1996.

- The promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialised form.
- The entire holding of convertible securities of the company by the promoters held

in physical form up to the date of the initial public offer shall be converted into dematerialised form before such offer is made and thereafter such promoter shareholding shall be held in dematerialised form only.

- Issue of securities in dematerialised form by unlisted public companies:

1. Every unlisted public company (excluding a Nidhi, a Government company and a wholly owned subsidiary) shall issue the securities only in dematerialised form and also facilitate dematerialisation of all its existing securities in accordance with provisions of the Depositories Act, 1996.
2. Conversion of securities in dematerialised form: Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialised in accordance with provisions of the Depositories Act, 1996
3. Responsibility of every holder of securities of an unlisted public company: Every holder of securities of an unlisted public company:
   (a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or
   (b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018

   shall ensure that all his existing securities are held in dematerialized form before such subscription.
4. Application to the depository: Every unlisted public company shall facilitate dematerialisation of all its existing securities by making necessary application to a depository and shall secure International Security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.
5. Obligations of every unlisted public company: Every unlisted public company shall ensure that -
   (a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
   (b) it maintains security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and
   (c) it complies with the regulations or directions or guidelines or circulars, if any,

issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

6. Unlisted public company which has defaulted shall not make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.

7. Filing with the Registrar: Every unlisted public company governed by these rules shall submit Form PAS-6 to the Registrar with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 within 60 days from the conclusion of each half year duly certified by a company secretary in practice or chartered accountant in practice.

8. Reporting of difference: The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialised form.

9. Grievances redressal mechanism: The grievances, if any, of security holders of unlisted public companies under Rule 9A shall be filed before the Investor Education and Protection Fund Authority (IEPF).

10. Initiation of action by IEPF Authority: Investor Education and Protection Fund Authority shall initiate any action against a depository or participant or registrar to an issue and share transfer agent only after prior consultation with the Securities and Exchange Board of India

3.6 Advertisement of Prospectus (Section 30)

According to Section 30, where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the contents of its memorandum as regards the following:

(i) the objects,

(ii) the liability of members and the amount of share capital of the company,

(iii) the names of the signatories to the memorandum,

(iv) the number of shares subscribed for by the signatories, and

(v) the capital structure of the company.

3.7 Remedies for Misrepresentation in the Prospectus

Remedies against Company

1. Rescind the contract.
2. A person, who takes shares on the faith of a prospectus containing false statements, may apply to the Court for the contract to be set aside, and his name to be struck off from the register of members.
3. He may also claim his money back.
4. Sue the company for damages for deceit.

- But the allottee must act within reasonable time, before any proceedings to wind up the company have been commenced. He will lose his right to rescind if he attempts to sell the shares or attends a general meeting of the company, or receives dividends.
- This right is available only those persons who subscribe the shares. The word 'subscribed' denotes that the shares were acquired directly from the company by allotment.

A subsequent purchase of shares in the open market has no remedy against the company or the directors or promoters.

Remedies against Directors/ Promoters/Expert:

- **Criminal Liability for mis-statement in prospectus**
  - Mens rea (guilty mind) is an essential condition
  - Criminal Procedure Code, 1973 applicable
  - Offence is regarded committed against the state
- **Civil Liability for mis-statement in prospectus**
  - Loss or damage is an essential condition
  - Civil Procedure Code, 1908 applicable
  - Offence against the counterparty

Explained in depth on next page

Remedies against Directors/ Promoters/Expert:

Criminal Liability for mis-statement in prospectus (Section 34):

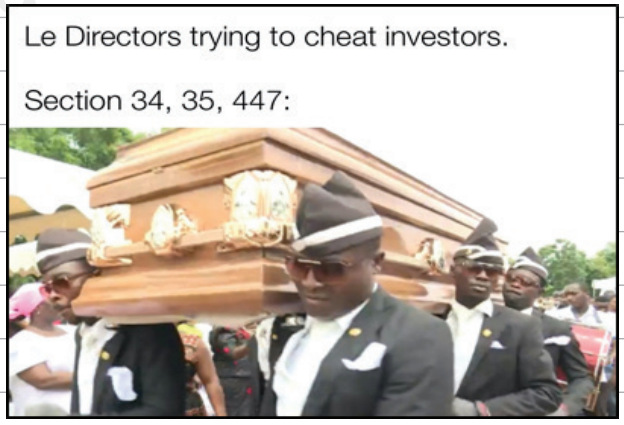
Section 34 fastens criminal liability for mis-statements in prospectus. Where a prospectus, issued, circulated or distributed, includes any statement which is untrue or misleading, every person who has authorised the issue of such prospectus shall be held guilty for fraud. Section 447 provides the penalty for fraud

	Fine		Imprisonment
Fraud of less than 10 lakh rupees or 1% of turnover whichever is less	Upto 50 Lakhs	or	Upto 5 years
Fraud of equal to or more than 10 lakh rupees or 1% of turnover whichever is less	Min: amount of fraud Max: (amount of fraud) x 3	and	Min: 6 months Max: 10 Years
Involving Public Interest	Min: amount of fraud Max: (amount of fraud) x 3	and	Min: 3 years Max: 10 Years

However, if the proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary then he shall not be liable.

Civil Liability for mis-statement in prospectus (Section 35):

I. Section 35 makes the following persons liable to pay compensation for loss or damage sustained by reason of mis-statement/untrue statement or inclusion or omission of any matter in the prospectus:-



1. Every person who is a director of the company at the time of issue of prospectus;
2. Every person who has authorized himself to be named and is named in the prospectus as a director [proposed directors];
3. Every person who is a promoter of the company;
4. Every person who has authorized the issue of the prospectus; and
5. Every person who is named in the prospectus as an expert.

Liability on defraud: Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred above shall be personally responsible, without any limitation of liability, for all or any of the

losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

II. Exemptions from the liability: No person shall be liable for the mis-statement, where such person proves that–

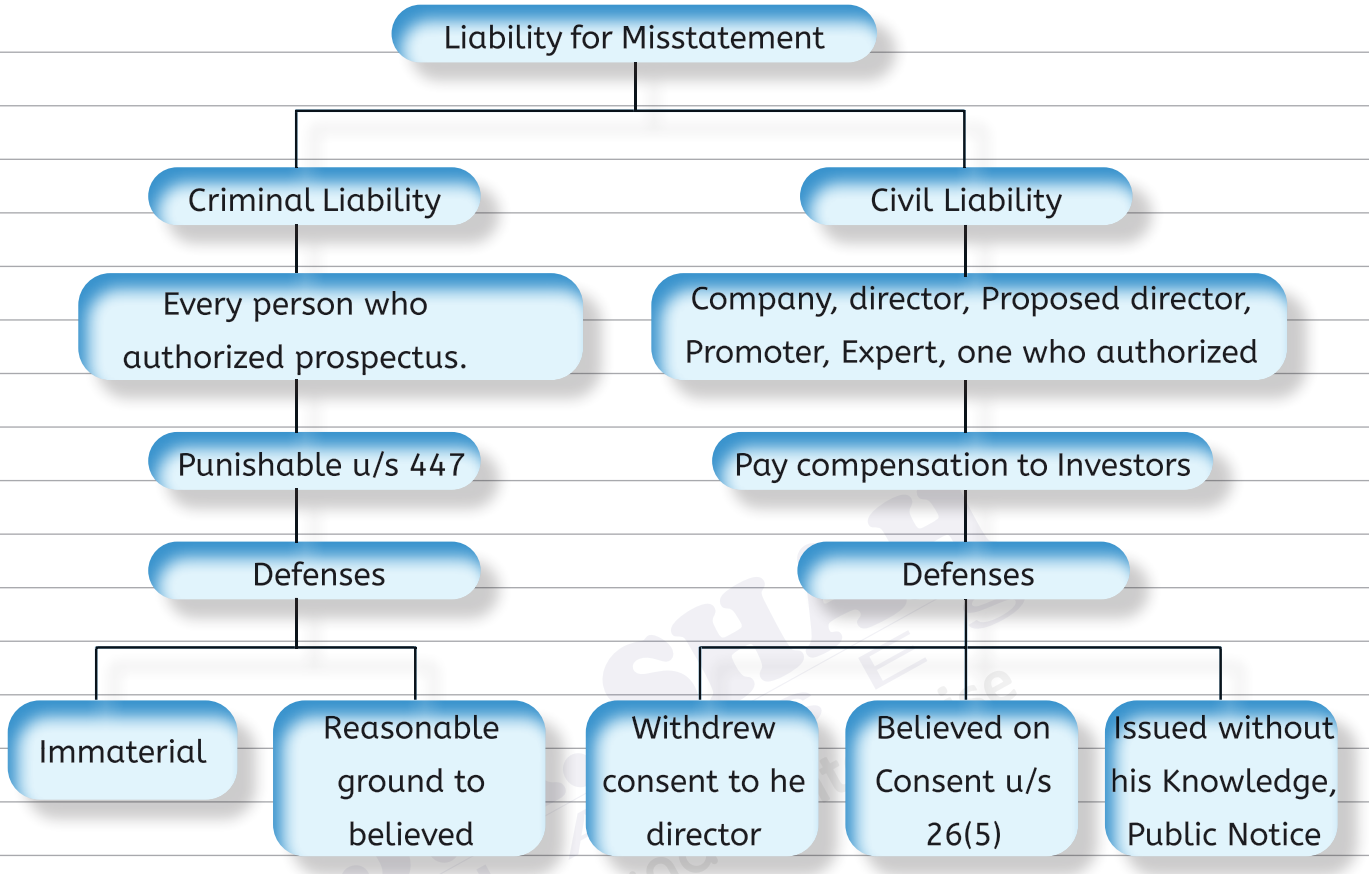
1. Withdrawn his consent before the issue of prospectus- Where a person having consented to become a director of the company, withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
2. Prospectus issued without his knowledge/ consent- Where the prospectus was issued without the knowledge or consent of a person, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge
3. If the misleading statement in doubt is made by an expert or the misleading statement is contained in copy of or an extract from a report or valuation of an expert, and according to expert it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26 to the issue of the prospectus and had not withdrawn that consent before filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment there under.

Meaning of certain words:

1. Fraud: "Fraud" in relation to affairs of a company or any body corporate, includes-
   - ♦ any act,
   - ♦ omission,
   - ♦ concealment of any fact, or
   - ♦ abuse of position committed by any person, or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

2. "Wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

3. "Wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.



- PUNISHMENT FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY [SECTION 36]

  Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into:

  a. any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
  b. any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
  c. 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.

- Action by affected Persons [Section 37]: Section 37 enables any person, group of persons or any association of persons who have been affected by any misleading statement or the inclusion or omission of any matter in the prospectus to file a suit or initiate any other action under section 34, 35 or 36 of the Act.

Class Action Suit

- ✓ Class action suit is for a group of people filing a suit against a defendant who has caused common harm to the entire group or class. This is not like a common litigation method where one defendant files a case against another defendant while both the parties are available in court.
- ✓ In the case of class action suit, the class or the group of people filing the case need not be present in the court and can be represented by one petitioner.
- ✓ The benefit of these type of suits is that if several people have been injured by one defendant, each one of the injured people need not file a case separately but all of the people can file one single case together against the defendant.

- PUNISHMENT FOR PERSONATION FOR ACQUISITION, ETC., OF SECURITIES [SECTION 38]

The purpose of the section is to prevent allotment of shares in fictitious names.

Sub-section 1 provides, any person shall be liable for punishment under section 447, if:

a. He makes or abets the making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or

b. He makes or abets the making of multiple applications in different names or different combinations of his name or surname for acquiring or subscribing for its securities; or

c. otherwise induces, directly or indirectly a company to allot or register any transfer of any securities to him or to any other person in a fictitious name.

Sub-section 2, provides that every company which issues a prospectus is required to reproduce prominently the provisions of the sub- section (1) in the prospectus and every form of application for securities.

Note:

A person who gets shares allotted in a fictitious name becomes liable as a shareholder. Thus, where a person carried on business under an assumed name and took shares in that name, his trustee in bankruptcy of the said person, could not avoid liability.

Sub-section 3 provides, where a person has been convicted under the section, the court may order disgorgement of any gain made by such person. The order may also include seizure and disposal of securities which may be found in his possession.

The amount received through disgorgement or disposal of securities under subsection (3), is to be credited to the Investor Education and Protection Fund. [Sub section (4)]

3.7 Allotment of Securities

Meaning:	Allotment of securities means an act of appropriation by the Board of directors of the company out of the previously un-appropriated capital of a company of a certain number of securities to persons who have made applications for securities. It is on allotment that securities come into existence.
General Principles regarding Allotment:	With regard to the allotment-of securities, the following general principles should be observed in addition to the statutory provisions : (1) The allotment should be made by proper authority i.e., the Board of directors of the company, or a committee authorized to allot securities on behalf of the Board. Allotment made without proper authority will be invalid.
	(2) Allotment of securities must be made within a reasonable time. An applicant may refuse to take securities, if the allotment is made after a long time. (3) The allotment should be absolute and unconditional. (4) The allotment must be communicated. Posting of letter of allotment will be taken as a valid communication-even if the letter is lost in transit or delayed in transit.

	(5) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.
Statutory Provisions regarding Allotment (Sections 39 & 40)	The Companies Act, 2013 lays down the following conditions to be fulfilled before a company proceeds to allot securities :- (1) Application Money: The company must have received in cash the amount payable on application, which must atleast 5% of the nominal value of the securities or such other amount or percent as may be specified by SEBI. (2) Escrow Account: The application money received should be deposited in a separate account (Escrow Account) in a Scheduled Bank before making any allotment. Such money can be utilized only for the following two purposes: ♦ For adjustment against allotment of securities, where listing is permitted; or ♦ For repayment of money, where the company is for any other reason unable to allot securities. (3) Minimum Subscription: The minimum subscription as provided in the prospectus must have been received within 30 days from the date of issue of the prospectus or such other period as may be specified by SEBI. In case of non-compliance, the issue will fail and the entire amount is to be repaid, without interest, within 15 days from the date of closure of issue. Beyond 15 days, the directors of the company, who are officers in default, become liable to repay the money with an interest of 15% p.a. (4) Listing Permission: Every company making public offer shall, before making such offer, make an application to one or more recognized stock exchange and obtain permission for the securities to be dealt with in such stock exchange or exchanges. Where a prospectus states that such a application has been made, the name of the stock exchange has to be mentioned where the securities are to be dealt with. Any allotment without permission of the stock exchange shall be void.

Defaulter	Minimum Fine	Maximum Fine
Company	5,00,000	50,00,000
Defaulting Officer	50,000	3,00,000

(5) Waiver of condition not permitted: Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

Return of Allotment:

Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in manner as prescribed in the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Time Limit for filing Return of Allotment

According to Rule 12 (1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the company shall file a return of allotment with Registrar in Form PAS-3 within 30 days along with the fee as specified in the Companies (Registration Offices and Fees) Rules, 2014.

Attachments to Form PAS-3

According to Rule 12 (2) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, lists of following particulars (duly certified by the signatory of the Form PAS-3 for completeness and correctness) shall accompany:

a. A list of allottees stating their names, address, occupation, if any, and

b. Number of securities allotted to each of the allottees.

Additional attachments to Form PAS-3 – In case share issued for consideration other than cash.

Rule 12 (3) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, provides, in the case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash, then following documents shall also be attached;

a. A copy of the contract, duly stamped, pursuant to which the securities have been allotted

b. Any contract of sale if relating to a property or an asset, or a contract for services or other consideration.

	Further Rule 12 (4) states that where a contract referred above is not reduced to writing, the company shall furnish complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing and same shall deemed to be an instrument within the meaning of the Indian Stamp Act, 1899. Rule 12 (5), requires a report of a registered valuer in respect of valuation of the consideration if either of rule 12(3) or 12(4) applicable. Attachments to Form PAS-3 – In case share issued in pursuance of Section 62(1)(c) Rule 12 (7) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, states that in case the shares have been issued in pursuance of clause (c) of subsection (1) of section 62 by a company other than a listed company whose equity shares or convertible preference shares are listed on any recognised stock exchange, there shall be attached to Form PAS-3, the valuation report of the registered valuer.
Penalty:	In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

3.8 Underwriting Commission

- When securities are offered to the public, a company would naturally like to ensure success of the issue. It may, therefore, make an agreement with financial institutions, bank, etc., who in consideration of a commission, agree to subscribe for the securities to the extent to which the securities are not taken by the public.
  The commission so referred to is known as underwriting commission. Thus, underwriting is an insurance against under-subscription.
- Section 40 of the Companies Act, 2013 permits a company to pay commission (including underwriting commission), to any person who, subscribes or agrees to subscribe; or procures or agrees to procure subscription for any securities or debentures of the company, on the fulfilment of certain conditions.
- The conditions, which must be fulfilled for the payment of underwriting commission,

are as follows:-

(a) The payment of the commission must be authorized by the articles of the company.

(b) Rate of commission: Following is the rate of commission to be paid to the person:

In case of Shares	In case of debentures
shall not exceed 5% of the price at which the shares are issued, or a rate authorised by the articles, whichever is less	shall not exceed 2.5% of the price at which the debentures are issued, or as specified in the company's articles, whichever is less

(c) Underwriting commission shall not be paid on those securities which are not offered to the public for subscription;

(d) Commission may be paid out of the proceeds of issue or profits of the company or both;

(e) The name of the underwriter and rate of commission must be disclosed in the prospectus;

(f) The prospectus should also indicate the number of securities or debentures which have been underwritten; and

(g) A copy of underwriting agreement should be delivered to the Registrar along with the prospectus.

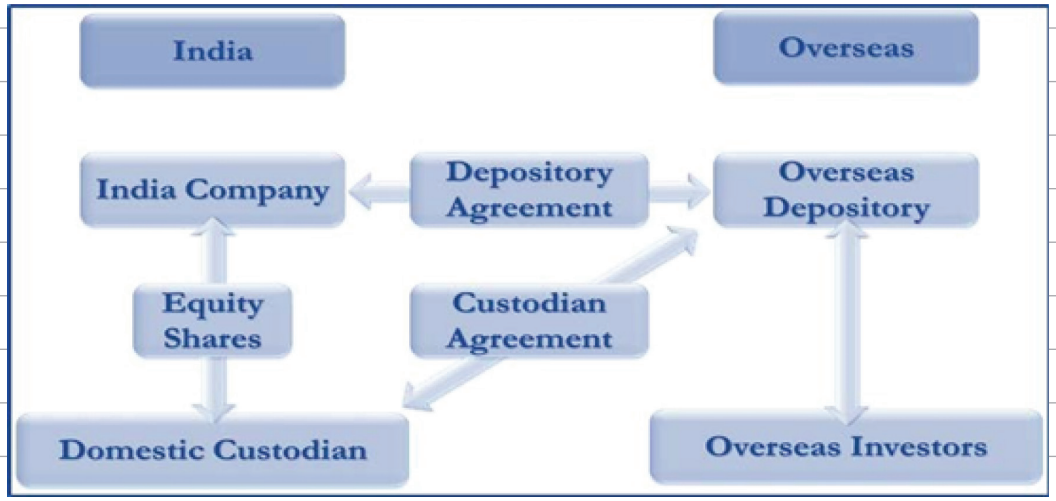
3.9 GLOBAL DEPOSITORY RECEIPT [SECTION 41]

A global depository receipt is a general name for a depository receipt where a certificate issued by a depository bank, which purchases shares of foreign companies, creates a security on a local exchange backed by those shares.

GDR as per section 2(44) of this Act means any instrument in the form of a depository receipt, by whatever name called , created by a foreign depository outside India & authorized by a company making an issue of such depository receipts.

Section 41 provides, company may issue depository receipts in any foreign country after passing a special resolution in its general meeting and subject to such conditions as may be prescribed in the Companies (Issue of Global Depository Receipts) Rules, 2014 (as further amended in 2020).

HOW GDR OPERATES?



- **MANNER AND FORM OF DEPOSITORY RECEIPTS**

The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.

The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify from time to time.

The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank.

- **VOTING RIGHT**

A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.

Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

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

- Definition of Private Placement: Private Placement' means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the specified conditions.
- Important Provisions: Following are the key provisions relating to private placement:

1. The proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations Form No. PAS 4: The explanatory statement should be attached to the notice which will be sent for the meeting of shareholders. Following disclosure shall be made in it:
   (a) Particulars of the offer including date of passing of Board resolution;
   (b) Kinds of securities offered and the price at which security is being offered:
   (c) Basis or justification for the price (including premium, if any) at which the offer or invitation is being made;
   (d) Name and address of valuer who performed valuation;
   (e) Amount which the company intends to raise by way of such securities;
   (f) material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities
2. A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option, in a financial year subject to such conditions as may be prescribe.

   But as per Rule 14 of Companies *(Prospectus and Allotment of Securities)* Rules, 2014, an offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in the aggregate in a financial year

   Explanation: Section 42 mentions a private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed 50 or such higher number

as may be prescribed.

Since higher number 200 is prescribed, we take the maximum number as 200.

3. A company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed but the number should not exceed 50 or such higher amount as may be prescribed.
4. A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed.
5. The private placement offer and application shall not carry any right of renunciation.
6. If a company, listed or unlisted, makes an offer to allot or invites subscription to more than the prescribed number of persons, it shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of this Chapter.
7. Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash.
8. A company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar.
9. No fresh offer or invitation under this section shall be made unless the 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.
10. A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 6ty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% p.a from the expiry of the 6tieth day.
11. The monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than–
    (a) For adjustment against allotment of securities; or
    (b) For the repayment of monies where the company is unable to allot securities.

12. Company issuing securities under this section shall not release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.
13. Penalty: If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty: Amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified to subscribers within a period of 30 days of the order imposing the penalty.
14. Section 42(8) read with Rule 14 (6) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 provides, a return of allotment in form PAS-3 (along-with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014) shall be filed with the Registrar within fifteen days from the date of the allotment under section 42, with a complete list of all the allottees containing;
    a. the full name, address, Permanent Account Number and E-mail ID of such security holder;
    b. the class of security held;
    c. the date of allotment of security;
    d. the number of securities held, nominal value and amount paid on such securities, and particulars of consideration received if the securities were issued for consideration other than cash.

DEFAULT IN FILING THE RETURN OF ALLOTMENT [SUB-SECTION 9]

For defaults in filing the return of allotment, the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

Comparison of Public Offer & Private Placement:

	Public Offer	Private Placement
Offer to:	Public at large	Max 50 identified people
Allotment within:	30 days	60 days
Refund within:	15 days	15 days
Interest in case of delay:	15%	12%
Return of Allotment	Within 30 days	Within 15 days

LIST OF LATIN TERMS

SR. NO.	LATIN TERM	MEANING	PG NO.
1.	mutatis mutandis	Used when comparing two or more cases or situations- making necessary alterations while not affecting the main point at issue.	

LIST OF SECTIONS

SR. NO	SECTION NUMBER	NAME OF SECTION	PAGE NUMBER (To be filled by students)
3.1	23	Issue of securities by public company & private company	
	2(81)	Securities	
	24	This section is excluded as per ICAI Notification	
3.2	2(70)	Prospectus	
	26	Matters to be stated in prospectus	
	27	Variation in terms of contract or objects in prospectus	
3.3		Types of Prospectus	
	31	Shelf Prospectus	
	32	Red Herring Prospectus	
	25	Deemed Prospectus	
3.4	28	Offer for Sale	
3.5	29	Public offer of securities to be in dematerialized form	
3.6		Remedies for Misrepresentation in the Prospectus	
	34	Remedies against Directors/ Promoters/ Expert- Criminal Liability	
	35	Remedies against Directors/ Promoters/ Expert- Civil Liability	
	447	Penalty for Fraud	
	36	Punishment for any person who fraudulently induces persons to invest money by making statement	

	37	Action by affected Persons	
	38	This section is excluded as per ICAI Notification	
3.7	39	Allotment of securities	
3.8	40	Underwriting Commission	
3.9	42	Private Placement	
	41	~~GDR- This section is excluded as per ICAI Notification~~	

Summary

1. **Prospectus :**

Document described or issued as prospectus and includes RHP, shelf prospectus, notice, circular, advertisement and other documents.

2. **Purpose :**

For inviting offers from public for subscription of securities.

3. **Elements :**

- Invitation to public at large.
- Open to any person.
- be issued by company or on its behalf.
- Invitation to specific group of persons more than 200.

4. **Prospectus Not required :**

- Private communication to friends and relative.
- Invitation to specific group less than or equal to 200.
- Offer for exchange of shares by company to another company.
- Right issue
- Invitation to underwriter

5. **Expert :**

It includes an engineer, valuer, Accountant, or such other person having authority to make statement.

Liability → Damages and compensation.

Immunity → Withdrew his consent by serving public notice.

6. **Registration of Prospectus :**

- Draft prospectus to be approved
- Date of prospectus deemed to be date of publication
- Submission to SEBI and registered with ROC
- Signed by Directors, Validity of 90 days from the date of registration

7. **Variation in terms or object of prospectus :**

- SR in GM

- Advertisement of variation
- Exit option to investor

8. Shelf Prospectus :
   - Class of companies specified by SEBI may issue shelf prospectus
   - Validity period of one year.
   - Changes between two offers is required to be updated using information memorandum.

9. Red Herring Prospectus :
   - Prospectus which does not have complete particulars on price and quantity.

10. Deemed Prospectus (Sec.25)

Company allots share to one or more intermediaries and they transfer share to public. The statement used by them to make offer is deemed to be prospectus issued by company.

11. Deemed Prospectus (Sec.28)

Members of the company may propose to sole their holding in consultation of BOD and in accordance of law. Any document by which offer is made shall be deemed to be prospectus issued by company.

12. Mis-statement in Prospectus :
   - Content of prospectus are misleading in form and context or omissions of matter to defraud investor
   - Such allotment becomes voidable at the option of the investor
   - Company and authorised personnel shall be liable for damages.

13. Criminal Liability :
   - Every person authorised the issue of prospectus containing misleading information shall be held liable. U/s. 447.

14. Immunity from liability :
   - Withdrew consent before prospectus was issued.
   - Prospectus was issued without the consent and a public notice given for such.

15. Minimum subscription :

- to be received within 30 days from the date of issue of prospectus, if not received, refund within 15 days. After 15 days 15% p.a.

16. Minimum Application Money :

Not less than 5% of nominal amount of security.

17. Separate Bank Account :

All application money to be kept in separate bank account in a scheduled bank and shall not be utilised for any purpose other than refund or adjustment with allotment amount.

18. Listing permission on Stock Exchange :

Before making public offer, company shall take an approval from one or more required stock exchange for listing its security.

19. Return of Allotment :

Within 30 days to ROC in prescribed manner.

20. Underwriting Commission :

- On share maximum 5%.
- On Debenture maximum 2.5%
- Authorised by AoA
- Only on public offer
- Commission cannot be more than 5%/2.5%, AoA may provide lower rate.
- BOD have no authority to pay beyond AoA.

21. Private Placement :

- Invitation to subscribe securities to a select group of person.
- Pass SR for Private placement.
- Private placement offer letter in form PAS-4 to be issued.
- Invitation cannot be for more than 200 persons in a financial year.
- It excludes employee stock option and QIB.
- Allotment to be made within 60 days from the date of receipt of application money.
- If allotment not made, refund within 15 days.
- Failure to refund 12% p.a. interest charged from the expiry of 60 days.

IV SHARE CAPITAL AND DEBENTURES

Introduction

Chapter IV	Consists of sections 43 to 72 as well as the Companies (Share Capital and Debentures) Rules, 2014.

Finance, the lifeblood for running the affairs of a company, can be raised, inter-alia, by issuing shares and debentures. In fact, shares and debentures are financial instruments which help in arranging funds for the company.

Shares represent ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lenders' interest in the company with limited risks and returns.

Sometimes, after the issue of capital, a company may either alter or reduce the share capital depending upon the exigencies of the situation. The company has to follow the requisite provisions for alteration or reduction of share capital.

Both the shares and debentures are presented in the Balance Sheet on the liabilities side of the issuer company and on the assets side of the investor and lender respectively.
Legal provisions relating to these instruments are covered under Chapter IV of the Companies Act, 2013 (comprising sections 43 to 72) and the Companies (Share Capital & Debentures) Rules, 2014 as amended from time to time along with endorsement in the company formation documents or approved at the suitable company forum, wherever necessary.

SHARE CAPITAL-TYPES

WHAT ARE SHARE AND STOCK?

Share – Definition & Description

Section 2(84) of the Act defines share as a share in the share capital of a company

and includes stock.

Capital of a company is termed as share capital, which is divided into units; having a certain face value. Each such unit is termed as share.

New London & Brazilian Bank v. Brockle Bank1

A share is not a sum of money..., but is an interest measured in a sum of money, and made up of various rights, contained in the contract, including the right to a sum of money of a more or less amount.

Around two decade later, J. Farwell in landmark case of Borland's Trustee v Steel Brothers & Co Ltd[2] place his trust in the opinion stated above, and observe that share is the interest of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place and of interest in the second, and also consists of a series of mutual covenants entered into by all the shareholders inter se in accordance with the provisions of the Companies Act and the Articles of Association.

Note: Company limited by share or those which having share capital has to quote in their memorandum - The share capital of the capital is _ _ _ _ _ rupees, divided into _ _ _ _ _ shares of _ _ _ rupees each.

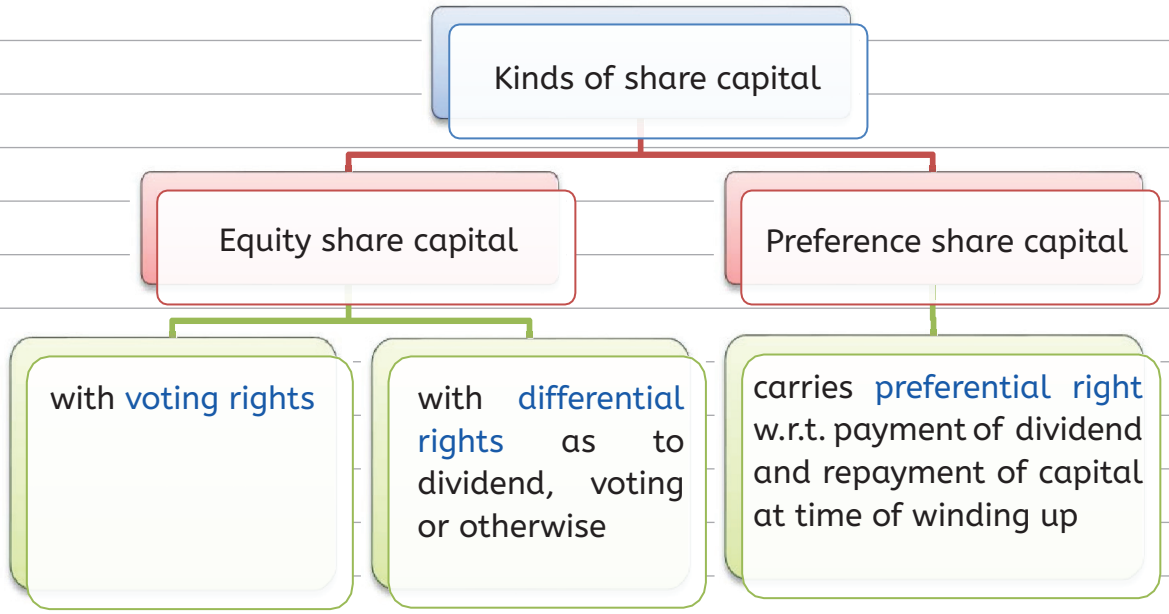
Stock - Description

The definition of 'share' states that the term 'share' includes 'stock'. If a company undertakes to aggregate the fully paid up shares of various members as per their requests and merge those shares into one fund, then such fund is called 'stock'. In more simple words we can say that 'stock' is a collection or bundle of fully paidup shares.

Section 61 (1) (c) of the Act, empower a limited company having a share capital to convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination.

KINDS OF SHARE CAPITAL [SECTION 43]

Broadly, there are two kinds of share capital of a company limited by shares; Equity share capital and Preference share capital. Equity Share capital can be further segregated into two categories based upon rights. Following diagram depicts kinds of share capital;



Preference Share Capital [section 43]

Preference share capital is that part of issued share capital of any company limited by shares which carries preferential right in respect to;

a. Payment of dividend, may be absolute amount or at fixed rate (which may either be free of or subject to income-tax); and

b. Repayment of capital, in the case of winding up or repayment of capital.

This preference exists only up to amount paid up or deemed to have been paid up on the shares, unless there is an agreement in contrary to this.

Note:

1. Nothing contained in this Act shall affect the rights of the preference shareholders who are entitled to participate in the proceeds of winding up before the commencement of this Act.
2. Preference shareholders may also participate in equity pool post the preferential entitlements.

But to find out their rights of participation we must look within the four corners of the articles of association and the terms of the issue.

If the right to participate in the surplus is not specified in the terms of the issue, preference shares are presumed to be not participating. This was affirmed by the House of Lords in Scottish Insurance Corpn Ltd vs. Wilsons & Clyde Coal Co Ltd

3. Preference shares are always presumed to be cumulative and the accumulation of dividend can be excluded only by a clear provision in the articles of association

Illustration – Q&A

Can a company have only preference share capital?

Answer – It may be noted that while a company may have only equity share capital but it cannot have only preference share capital. This is because preference shareholders have certain 'preferential rights' over the equity shareholders.

Thus, in the absence of equity share capital, there cannot be preferential share capital

Equity Share Capital [Section 43(a) read with explanation I to section 43]

Shares capital which are not preference shares capital are termed as equity shares capital. Equity share capital are further classified as;

a. Equity share with voting right (Plain vanilla, because equitable/same voting rights) or
b. Equity share with differential rights with respect to dividend or voting rights or otherwise in accordance with Rule

Equity shares are often referred as to ordinary share and sometime as common share

Equity Shares with Differential Rights [Rule 4 of the Companies (Share capital and Debenture) Rules, 2014]

I. Conditions to issue shares with differential rights

A company limited by shares may issue equity shares with differential rights as to dividend, voting or otherwise, if it complies with the following conditions:

a. The articles of association of the company authorizes the issue of these shares.
b. Approval of the shareholders is obtained by passing of ordinary resolution at the general meeting. A listed public company is required to pass the resolution through postal ballot
c. The voting power in respect of shares with differential rights of the company shall not exceed Seventy Four percent of total voting power at any point of time
d. The company has not defaulted in filing annual accounts and annual returns for the 3 financial years preceding the year in which it was decided to issue such shares
e. The company has not defaulted in the payment of declared dividend, interest, or coupon; redemption of preference shares or debenture; or repayment of matured deposits.
f. The company has not defaulted in the

1. Payment of dividend on preference shares, or
2. Payment of interest or Repayment of any term loan from a Public Financial Institution (PFI) or State-level Financial Institution (SFI) or Scheduled Bank.
3. Repayment of any term loan from a PFI or SFI or Scheduled Bank.
4. Statutory dues relating to its employees
5. Crediting the amount in Investor Education and Protection Fund

Note:

A company may issue equity shares with differential rights upon expiry of five years from the end of the financial year in which default mentioned in point f stated above, was made good

g. the company has not been penalized by Court or Tribunal during the last three years of any offence under
   1. Reserve Bank of India Act, 19348,
   2. Securities and Exchange Board of India Act, 19929,
   3. Securities Contracts Regulation Act, 195610,
   4. Foreign Exchange Management Act, 199911 or
   5. Any other special Act, under which such companies being regulated by sectoral regulators.

Note:

1. Equity shares with differential rights issued by any company under the provisions of the Companies Act, 195612 and the rules made thereunder, shall continue to be regulated under such provisions and rules.
2. Here it is also worth noting that; before the amendment made in year 2000, to the Companies Act 195614, the shares with differential voting rights were not permitted to be issued. Though such differential voting rights existed prior to the enactment of the Companies Act 1956

II. Contents of Explanatory statement (annexed to notice)

The explanatory statement annexed to the notice of the general meeting or of a postal ballot shall contains various matters like particulars of the issue including its size, details of differential rights, etc.

III. Prohibition on Conversion

Prohibit the conversion of existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice versa.

IV. Disclosure in the Board's Report

Requires, the Board of Directors to disclose the specified particulars, in the Board's Report for the financial year in which the issue of equity shares with differential rights was completed.

V. Rights to the holders of the equity shares with differential rights

States that subject to the differential rights, the holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares, etc., which the holders of equity shares are entitled to.

VI. Particulars of shares to be maintained in the register of members

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

Section 43 shall not apply to:

1. Specified IFSC Public Company, where memorandum of association or articles of association of such company provides for it.
2. Private company, where memorandum or articles of association of the private company so provides; however, this exemption shall be available to only that private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.

CERTIFICATE OF SHARES [SECTION 46]

PRIMA FACIE EVIDENCE OF TITLE

Shares Issued and held in physical form

As per 46(1), a certificate specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares if issued;

a. Under the common seal if any of the company or

b. Signed by two directors or

c. Signed by a director and the Company Secretary, wherever the company has appointed a Company Secretary

Note:

1. Since w.e.f. 29-05-2015 though Companies Amendment Act 2015, requirement to have common seal is optional for companies, hence physical share certificate issued under sign of two director or of one director along with company secretary is valid.
2. If the composition of the Board permits of it, at least one of the aforesaid two directors shall be a person other than the managing or whole-time director
3. A director shall be deemed to have signed the share certificate if his signature is printed thereon as a facsimile signature by means of any machine, equipment or other mechanical means such as engraving in metal or lithography, or digitally signed, but not by means of a rubber stamp, provided that the director shall be personally responsible for permitting the affixation of his signature thus and the safe custody of any machine, equipment or other material used for the purpose.

Shares held in Depository Form

As per Section 46(4), where a share is held in depository form, the record of the depository is the prima facie evidence of the interest of the beneficial owner.

Students are advised to take note:

Requirement regarding securities issued in Dematerialised form, can be referred in Rule 9 and Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Rule 9A was inserted by the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018, w.e.f. 2-10-2018 and requires every unlisted public company to issue the securities only in dematerialised form and also facilitate dematerialisation of all its existing securities.

ISSUE OF RENEWED/DUPLICATE SHARE CERTIFICATE [SUB-SECTION 2 READ WITH RULE 6 OF THE COMPANIES (SHARES AND DEBENTURES) RULES, 2014]

Issue of renewed certificate

A case wherein originally issued share certificate has been defaced, mutilated or torn, a renewed share certificate in replacement shall be issued, in lieu of surrender of such original certificate, to the company.

Note:

1. A company may replace all the existing certificates by new certificates upon sub-division or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered
2. On renewed certificate it shall be stated that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation"
3. Company may charge such a fee as board may think fit, but not exceeding ₹ 50 per certificate; and no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court, Central Government or Tribunal

Issue of duplicate certificate

A case wherein share certificate originally issue has been lost or destroyed, a share certificate in duplicate may be issued if board is consented for the same based upon evidences produced.

Students are advised to take note;

1. Company may charge fees as the Board thinks fit, not exceeding rupees fifty per certificate
2. On the face of duplicate certificate, it shall be stated prominently that it is "duplicate issued in lieu of share certificate No....." and the word "duplicate" shall be stamped or printed prominently
3. In case unlisted companies, the duplicate share certificates shall be issued within a period of three months and in case of listed companies such certificate shall be issued within fifteen days, from the date of submission of complete documents with the company respectively.

Record of renewed and duplicate certificate to be maintained

Particulars of every renewed and duplicate share certificates maintained in from SH2

Such register shall be kept at registered officer or any other place where register of members in custody of company secretary or such other person as may be authorised by the Board.

All entries made in such register shall be authenticated by the company secretary or such other person as may be authorised by the Board.

MANNER OF ISSUE OF CERTIFICATES/DUPLICATE CERTIFICATES

The issue of a certificate of shares or the duplicate thereof, the particulars to be entered

in the register of members and other matters shall be in manner and form as prescribed in rule

Rule 5 of the Companies (Shares and Debentures) Rules, 2014 applies, where shares are not in demat form

Share certificate is in vogue in case of shares which are held in the physical form, not in the demat form (under the depository mode). Hence provisions contained in rule 5 of the Companies (Shares and Debentures) Rules, 2014 pertaining to share certificate applicable where shares are not in demat form.

Pre-requisites for issue of share certificate

Share Certificate shall be issued on surrender of letter of allotment or fractional coupons of requisite value (save in cases of issues against letters of acceptance or of renunciation, or in cases of issue of bonus shares); in pursuance of a resolution passed by the Board.

Form of share certificate

Certificate of share shall be in Form SH 1 or as near thereto as possible and shall specify;

a. The name(s) of the person(s) in whose favor the certificate is issued,
b. The shares to which it relates and
c. The amount paid-up thereon.

Recording of particulars stated in share certificate

The particulars of every share certificate issued in accordance with sub-rule (1) shall be entered in the Register of Members maintained in accordance with the provisions of section 88 along with the name(s) of person(s) to whom it has been issued, indicating the date of issue.

Maintenance of share certificate forms and related books and documents (Rule 7 of the Companies (Shares and Debentures) Rules, 2014)

All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and these shall be consecutively machine-numbered. Such forms shall be kept in the custody of the secretary or such other person as the Board may authorise for the purpose.

All books pertain to record of share certificates shall be preserved in good order not less than thirty years and in case of disputed cases, shall be preserved permanently.

All certificates surrendered to a company shall immediately be defaced by stamping

or printing the word "cancelled" in bold letters and may be destroyed after the expiry of three years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf.

Note:

1. Share Certificate is not a negotiable instrument.
2. Company shall issue only one share certificate in all those cases where shares are held by more than one person jointly with others and delivery of share certificate to any one of them will amount to delivery to all of them.

PUNISHMENT FOR ISSUING DUPLICATE CERTIFICATE OF SHARES WITH INTENT TO DEFRAUD [Sub-section 5]

If a company with intent to defraud issues a duplicate certificate of shares, the punishment shall be as specified in table;

Liable	Minimum Fine	Maximum Fine
Company	Five times the face value of the shares involved	Higher of: Ten times the face value of such shares or Rupees ten crores
And		
Every officer of the company who is in default		Liable for action under section 447 Note – Provisions of Section 447 already explained as separate topic under chapter 3 of this module.

VOTING RIGHTS [SECTION 47]

VOTING RIGHTS OF MEMBERS HOLDING EQUITY SHARE CAPITAL [SUBSECTION 1]

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

a. Every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and

b. His voting right on a poll shall be in proportion to his share in the paid-up equity share capital of the company. But in case of Nidhi Company, no member shall

exercise voting rights on poll in excess of five per cent, of total voting rights of equity shareholders

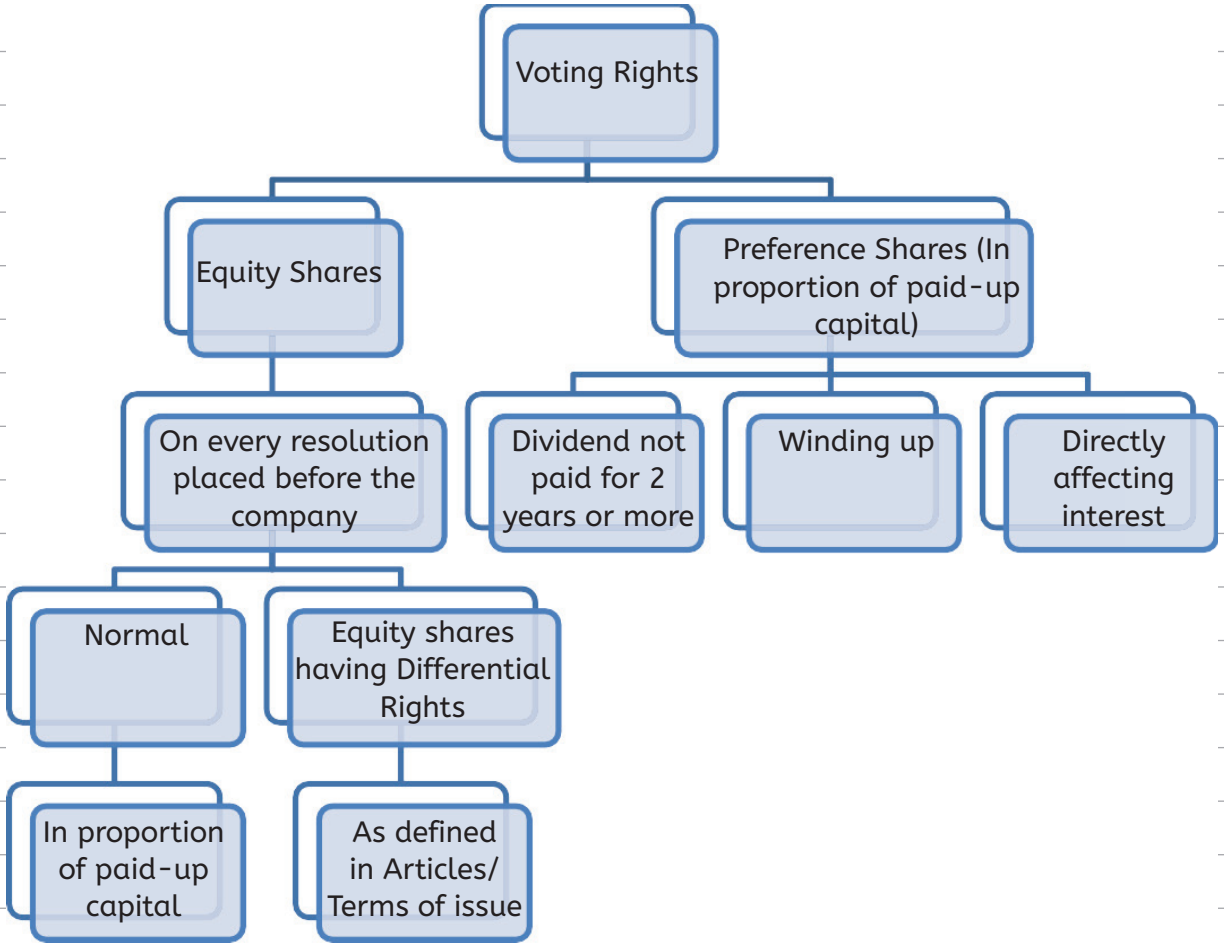
VOTING RIGHTS OF MEMBERS HOLDING PREFERENCE SHARE CAPITAL [SUB-SECTION 2]

Every member of a company limited by shares who is holding any preference share capital shall, in respect of such capital, have a right to vote on resolution;

a. Which directly affect the rights attached to his preference shares, and

b. For the winding up of the company, or for the repayment or reduction of its equity or preference share capital.

Summary of section 47



Section 47 shall not apply to;

1. A Specified IFSC Public Company, where memorandum of association or articles of association of such company provides for it.19
2. A private company, where memorandum or articles of association of the private company so provides, however, this exemption shall be avaible to only that private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.20

VARIATION OF SHAREHOLDERS' RIGHTS [SECTION 48]

1. First - There should be a provision in the memorandum or articles of the company entitling it to vary such class rights, in absence of same; the terms of issue of the shares of that class not prohibiting such a variation.

2. Second - The holders of at-least 75% of the issued shares of that class must have given their consent in writing or pass a special resolution sanctioning the variation at a separate class meeting.

3. Proviso to sub-section 1, provides if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained and the provisions of this section shall apply to such variation.

4. Third - The holders of at least 10 per cent of the shares of that class who did not consent to or vote in favour of the resolution may apply to the Tribunal and then variation shall not take effect unless and until it is confirmed by the Tribunal

5. Procedural Aspects for confirmation from tribunal
   An application should be made within 21 days of the date of consent or resolution. It can be made by one (or more of their number) as they may appoint in writing; on behalf of the shareholders entitled to make the application.

6. The decision of the Tribunal have binding effect upon shareholders of the class. Further sub-section 4 requires the company to file a copy of the order with the Registrar within 30 days of the date of the order.

CALLS ON SHARE [SECTION 49 TO SECTION 51]

1. The liability of a shareholder to pay the full value of the shares held by him, which is currently partly paid-up is enforced by making "calls" for payment.
2. It is worth noting here that every shareholder is under a statutory liability to pay the full amount of his shares as Section 10(2) declares that "all money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company".

3. But the liability to pay this debt arises only when a valid call has been made. Section 49 lay down the principle of uniformity, whereas section 50 deals with calls in advance and section 51 contains the provisions regarding dividend rights on paidup amount.

CALL SHALL BE ON UNIFORM BASIS [SECTION 49]

1. Calls shall be made on a uniform basis on all shares that are falling under the same class.
2. Usually share with same nominal value are considered as same class, but shares of the same nominal value on which different sums have been paid shall not be deemed, for this purpose, to fall under the same class.
3. A shareholder on whom a regular call for payment has been served may choose to pay only a part of the sum due.
   Here it is important to consider the debt (of calls made) is not an entire and indivisible debt, therefore, the company may be bound to accept the amount tendered by the shareholder
4. How much to call on partly-paid share?
   This will be the decision of board, subject to clauses to Article and terms of issue.

CALLS-IN-ADVANCE [SECTION 50]

1. As per Section 50, a company may, if so authorised by its articles, accept from any member the whole or a part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.
2. Such advance payment will not entitle the member to more voting rights as compared with other members until all have been called upon to pay.
3. Interest can be paid on such advance, if permitted by article. Here it is worth nothing that, where the rate of interest is permitted by the articles on such advance payment, same could be varied by shareholders in general meeting. To illustrate; a rate 6 percent may increase to 10% by shareholders.

PAYMENT OF DIVIDEND IN PROPORTION TO PAID-UP AMOUNT [SECTION 51]

The company if so authorised by article, may be permitted to pay dividends in proportion to the amount paid-up on each share.

The Board of Directors of a company may decide to pay dividends on pro rata basis if all the equity shares of the company are not equally paid-up. However, in the case of preference shares, dividend is always paid at a fixed rate.

PAYMENT OF DIVIDEND IN PROPORTION TO PAID-UP AMOUNT [SECTION 51]

ISSUE OF SHARES AT A PREMIUM & APPLICATION OF PREMIUM [SECTION 52]

1. Since there is no restriction imposed by the Act on the sale of shares at a premium, hence if the market exists, a company may issue its shares at a price higher than their face/nominal value.
2. The power to issue shares at premium need not be specifically provided by AOA.
3. SEBI guidelines have to be observed by listed entities, as regulations indicate when an issue has to be at par and when premium is chargeable.
4. When a company issues shares at a price higher than their face value, the shares are said to be issued at premium and the differential amount is termed as premium.

Transfer of premium to Securities Premium Account

principles that shall be observed in regards to premium;

a. Premium may be received in cash or in kind.
b. The amount of premium so received, whether in cash or kind, shall be carried to a separate account to be known as the Securities Premium Account.
c. The amount to the credit of share premium account has to be maintained with the same sanctity as paid-up share capital
d. It can be reduced only in the manner of paid-up share capital can be reduced under this act. Liberty is, however, given to use the fund in the subsection 2 and 3.

Note:

1. The amount to the credit of the share premium account has to be shown as a separate item in the Balance-sheet under Schedule III, Part B of the Act and if it was disposed of either wholly or partly, then disclosure shall be made 'how it was disposed'?
2. The DCA was of opinion that the amount of premium can't be treated as a free reserve as it is in the nature of a capital reserve.
3. A reduction of the premium account was allowed under a scheme which experts had approved as fair, just and proper.

Application of Premium received on Issue of Shares [sub-section 2 & 3]

The companies to apply securities premium account for;

a. Issue of fully paid bonus shares;
b. Writing off the preliminary expenses;

c. Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares or debentures);

d. Premium payable on the redemption (of any preference shares or of any debentures); or

e. Buy-back (purchase of its own shares or other securities under section 68).

Sub-section 3 has overriding effect over sub-section 1 and 2. It restricts the application of Securities Premium Account in case of;

Such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under Section 133

For the purpose of;

a. Issue of fully paid bonus shares;

b. Writing off the issue expenses (expenses including commission paid or discount allowed on any issue of shares);

c. Buy-back (purchase of its own shares or other securities under section 68).

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT [SECTION 53]

Where the issue price is lower than the face value of the shares, such issue of shares is regarded as being issued at discount and the differential amount is known as discount.

Exception →

1. Can be issued at discount in case of sweet equity.
2. the company to issue shares at discount to its creditors as result of converting their debt on company into shares as a result of;
   a. Statutory resolution plan or
   b. Debt restructuring scheme

   In accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.

   Sub-section 3 provides the penalties that can be imposed where any company fails to comply with the provisions of Section 53;

Liable	Penalty
Every officer who is in default	Upto an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less

Company	Refund all monies received with interest at the rate of twelve percent per annum from the date of issue of such shares

ISSUE OF SWEAT EQUITY SHARES [SECTION 54]

MEANING OF 'SWEAT EQUITY SHARES' [SECTION 2(88)]

1. The term 'sweat equity shares' means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash
2. For providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
3. Hence one can say, sweat equity shares are issued to keep the employees of a company motivated by making them partner in the growth of the company.
4. Mind it, Sweat equity shares is a different concept from Employee stock option in multiple ways.
5. Section 54 lists out the conditions that shall be fulfilled by company prior to issue of sweat equity share apart from designates these at equal footing to equity shares.

STATUS OF SWEAT EQUITY SHARES AND HOLDER THEREOF [SECTION 54(2)]

a. The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under section 54 of the Act
b. The holders of sweat equity shares shall rank pari-passu with other equity shareholders.

Pari-passu is a Latin phrase that means "on equal footing"

CONDITIONS FOR ISSUE OF SWEAT EQUITY SHARES [SECTION 54(1)]

According to Section 54 (1), a company may issue sweat equity shares if all of the following conditions are fulfilled;

a. Share of that class must be already issued
b. Issue is authorised by a special resolution passed by the company;
c. Resolution specifies the details regarding the number of shares, the current market

price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;

d. The issue of sweat equity shares must be in accordance with regulations/rules as state in table;

Company	Applicable Provisions/Regulations
Listed on Recognised Stock Exchange	Regulations made by the Securities and Exchange Board in this behalf
Other than above	Rule 8 of the Companies (Share and Debentures) Rules, 2014

Imp. definition

Meaning of Employee

Employee means

a. a permanent employee of the company who has been working in India or outside India; or

b. a director of the company, whether a whole-time director or not; or

c. an employee or a director as defined above, either of subsidiary or holding company of concerned company; in India or outside India

Meaning of 'Value additions (Explanation II to sub-rule 1)

The expression 'Value additions' means;

a. Actual or anticipated economic benefits derived or to be derived by the company from an expert or a professional

b. For providing know-how or making available rights in the nature of intellectual property rights,

c. By such person to whom sweat equity is being issued

d. For which the consideration is not paid or included in the normal remuneration payable under the contract of employment (in the case of an employee).

Validity of Special Resolution (Sub-rule 3)

The special resolution authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing.

Limit on issue of Sweat Equity Shares (Sub-rule 4)

During a year, the maximum amount/limit for which sweat equity shares can be issued is higher of;

a. Fifteen percent of the existing paid up equity share capital or

b. Shares of the issue value of rupees five crore.

The issuance of sweat equity shares (cumulative, including all previous issues, if any) shall not exceed twenty five percent, of the paid-up equity capital of the Company at any time. This limit for Startup companies is fifty percent of paid up capital upto ten years from the date of its incorporation or registration.

Lock-in Period [Sub-rule 5]

Sweat equity shares issued to directors or employees shall be locked in/non- transferable for a period of three years from the date of allotment.

Valuation of Sweat Equity Shares [Sub-rule 6]

Sweat equity shares to be issued shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.

Quoted market prices in an active market are the best evidence of fair value and should be used, where they exist, to measure the financial instrument.

Valuation of IPR/know-how/value additions [Sub-rule 7]

The valuation of intellectual property rights or of know how or value additions for which sweat equity shares are to be issued, shall be carried out by a registered valuer, who shall provide a proper report addressed to the Board of directors with justification for such valuation.

Treatment of non-cash consideration [Sub-rule 9]

Where the sweat equity shares are issued for a non-cash consideration on the basis of a valuation report in respect thereof obtained from the registered valuer, such non- cash consideration shall be treated in the following manner in the books of account of the company:

Form of Non-cash consideration	Treatment
Depreciable or amortizable asset	Carried to the balance sheet
Other than above	Shall be recorded as expense

Disclosure in the Directors' Report [Sub-rule 13]

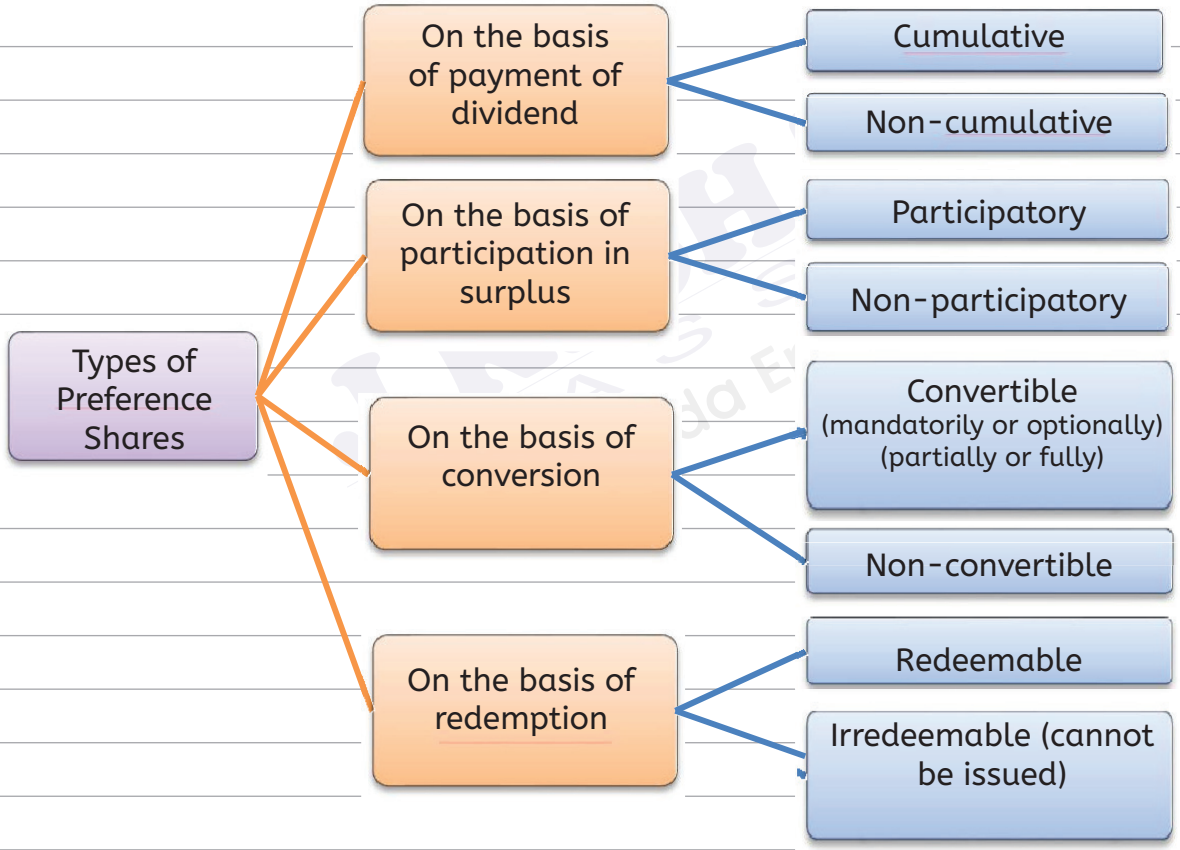
The Board of Directors shall, inter alia, disclose in the Directors' Report for the year in which such shares are issued, the specified details of issue of sweat equity shares.

Maintenance of Register [Sub-rule 14]

The company shall maintain a Register of Sweat Equity Shares in Form No. SH. 3. It shall be maintained at the registered office of the company or such other place as the Board may decide.

ISSUE AND REDEMPTION OF PREFERENCE SHARES [SECTION 55]

Following diagram depicts the types of preference shares:



PROHIBITION ON ISSUE OF IRREDEEMABLE PREFERENCE SHARES

A company limited by shares shall not issue any preference shares which are irredeemable.

ISSUE AND REDEMPTION OF REDEEMABLE PREFERENCE SHARE

From the sub-section 1, it can be constructed reasonably that only redeemable preference

shares can be issued by company limited by shares, sub-section 2 provides for conditions as applicable to the issue and redemption of redeemable preference shares.

Authorised by Article of Association

A company limited by shares may issue redeemable preference shares only if so authorised by its articles.

Maximum Tenor of redeemable Preference Shares and exception thereto

Sub-section 2 also provides preference shares shall be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions.

Maximum Tenor of redeemable Preference Shares and exception thereto

Sub-section 2 also provides preference shares shall be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions

These conditions are;

a. A **special resolution in the general meeting** of the company shall be passed
b. At the time of such issue of preference shares, the company should not have subsisting default in the;
    i. Redemption of preference shares or
    ii. Payment of dividend due on any preference shares.

The matters to be specified in resolution and explanatory statement to be annexed to the notice of such general meeting in which resolution has to be passed respectively.

A company that issues preference shares, to maintain a Register of Members under Section 88, which shall contain the particulars in respect of such preference shareholder(s).

If company wish to list its preference shares on a recognized stock exchange, shall issue such shares in accordance with the regulations made by the SEBI in this behalf.

Exception to maximum tenor limit of twenty years

For infrastructure projects specified in schedule VI of this Act, a company may issue preference shares for a period exceeding twenty years but not exceeding thirty years subject to the redemption of at least 10% of such preference shares annually, beginning from 21st year onwards or earlier, on proportionate basis, at the option of preferential shareholders.

Redemption of Preference Shares [Second proviso to section 55(2)]

provide conditions for redemption and payment of premium on redemption, if any

a. Preference shares shall be redeemed out of;
   1. Profits of the company which would otherwise be available for dividend
      or
   2. Proceeds of a fresh issue of shares made for the purposes of such redemption.

b. Shares to be redeemed shall be fully paid.

c. Where such shares are proposed to be redeemed out of the profits of the company;
   1. A sum equal to the nominal amount of the shares to be redeemed, out of such profits (profit & free reserves, which otherwise is available for dividend), shall be transferred to a reserve, called Capital Redemption Reserve
   2. The amount to the credit of Capital Redemption Reserve has to be maintained with the same sanctity as paid-up share capital
   3. Capital Redemption Reserve can be reduced only in the manner of paid-up share capital can be reduced under this Act.

d. Source of premium, if any; payable at redemption of preference shares

In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed for such class of companies under section 133, the premium, if any, payable on redemption shall be provided for out of the profits of the company, before the shares are redeemed.

Provided also that premium, if any, payable on redemption of any preference shares issued on or before the commencement of this Act by any such company shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

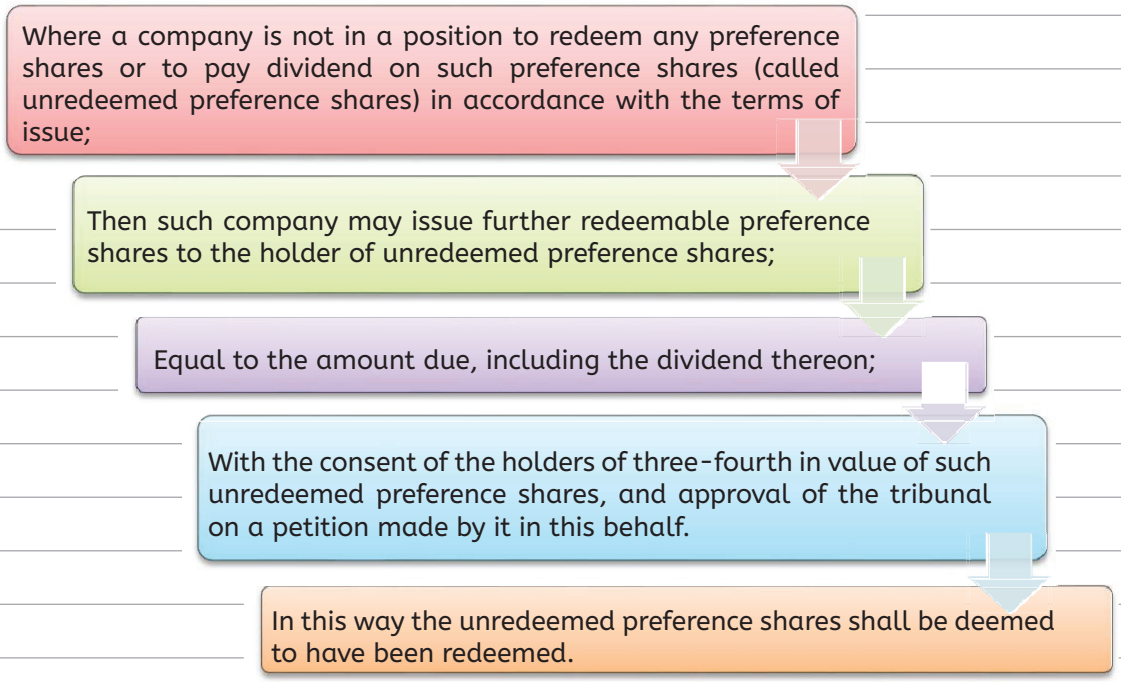
In a case not falling under above scenario, the premium, if any, payable on redemption shall be provided for out of the profits of the company or out of the company's securities premium account, before such shares are redeemed.

Issue of further Redeemable Preference Shares (if a Company is unable to redeem existing preference shares or pay dividend) [Sub-section 3]

Where a company is not in a position to redeem any preference shares or to pay dividend

on such preference shares (called unredeemed preference shares) in accordance with the terms of issue; then such company may issue further redeemable preference shares to the holder of unredeemed preference shares; equal to the amount due, including the dividend thereon; with the consent of the holders of three-fourth in value of such unredeemed preference shares, and approval of the tribunal on a petition made by it in this behalf.

In this way the unredeemed preference shares shall be deemed to have been redeemed.



In regards to preference shares held by shareholder who have not consented to the issue of further redeemable preference shares, the tribunal shall order the redemption forthwith; while giving approval under section 55(3)

Utilisation of CRR Account

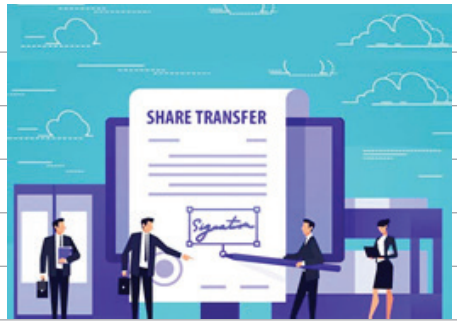
The capital redemption reserve account may be applied in paying up unissued shares of the company to be issued to the members as fully paid bonus shares

TRANSFER AND TRANSMISSION OF SECURITIES AND THE ALLIED PROVISIONS [SECTION 56 TO SECTION 59]

The procedures and formalities for the transfer of the securities as laid down by sections 56-59 are largely applicable to securities that are in other form than demat form.

TRANSFER AND TRANSMISSION OF SECURITIES OR INTEREST OF MEMBER IN COMPANY [SECTION 56]

4.17 Transfer of Shares (Section 56 to 58)



- Section 44 states that the shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.
- Section 56 of the Companies Act, 2013 deals with the transfer and transmission of securities or interest of a member in the company.
- Meaning: Transfer of shares means the voluntary conveyance of the rights and possibly, the duties of a member (as represented in a share in the company) from a shareholder who wishes to cease to be a member to a person desirous of becoming a member. Thus, shares in a company are transferable like any other moveable property in the absence of express restrictions under the articles.
- Company delivering the certificate: Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted:

Different conditions	Period of the delivering the certificates
In the case of subscribers to the memorandum;	Within 2 months from the date of incorporation
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 6 months from the date of allotment

- Procedure:
  1. A proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee (except where the shares are in Demat form), specifying the name, address and occupation, if any, of the transferee, has been delivered to the

company by the transferor or the transferee within a period of 60 days from the date of execution,

(+)

The certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities.

2. In case a company has partly –paid shares and where the company has received any instrument of transfer of such shares from transferor, the company shall give a notice by registered post to the transferee and shall register the transfer only when no objection is received from the transferee within 2 weeks from the date of receipt of notice.
3. Where the instrument of transfer has been lost or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.
4. What company will do?

Company may register the transfer	Company may refuse to register the transfer
↓	↓
Company shall issue share certificate within 1 month of registering the transfer	Refusal of Registration (Section 58)

Refusal of Registration (Section 58)

Private company refuses to register the transfer of shares

The Board of Directors of a private company can refuse to register transfer of shares in favour of any person in terms of the provisions of Articles of Association of the Company. However while refusing to transfer shares; the power must be exercised by the Board bona fide and in the best interests of the company.

- ✓ Company shall within a period of 30 days from the date on which the instrument of transfer was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.
- ✓ Transferee may appeal to the NCLT against the refusal within a period of 30 days from the date of receipt of the refusal notice. In case no notice has been sent by the company, then appeal may be made within a period of 60 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

Public company refuses to register the transfer of shares

The shares or debentures and any interest therein of a company shall be freely transferable.

The Board of Directors and the concerned depository has no discretion to refuse or withhold transfer of any security on any ground, except on the ground of sufficient cause.

- ✓ Company shall within a period of 30 days from the date on which the instrument of transfer was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.
- ✓ Transferee may appeal to the NCLT against the refusal within a period of 60 days from the date of receipt of the refusal notice. In case no notice has been sent by the company, then appeal may be made within a period of 90 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

↓

Power of National Company Law Tribunal (NCLT):

The tribunal, while dealing with an appeal both in respect of private and public company, may, after hearing the parties, either:

OR

Dismiss the appeal	(a)	Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or
	(b)	Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

- Punishment for Impersonation of Shareholder [Section 57]: If any person deceitfully personates as an owner of any security or interest in a company and thereby obtains or attempts to obtain any such security or interest or receives or attempts to receive any money due to any such owner, he shall be punishable with:
  Imprisonment: Minimum 1 year upto 3 years
  And
  Fine: Minimum ₹1 lakh upto ₹5 lakhs.

  Example: 'A' commits forgery and thereby obtains a certificate of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to 'B'. In this case company is right to refuse to do the transfer of the shares in the name of the transferee B without any liability as a forged transfer is a nullity in law and does not give the transferee concerned any title to the shares. Whereas A incurs a criminal liability under the Indian Penal Code punishable both by imprisonment and also being liable to compensate both the Company and B for losses suffered by them.

4.18 Transmission of Shares

- Meaning: Transmission of shares takes place when a registered shareholder dies or becomes lunatic or is adjudicated insolvent or if the shareholder, being a company, goes into liquidation i.e., which is known as a transfer of shares by operation of law.
  - ✓ On the death or lunacy of the original shareholder, his shares vest in his legal representative and his estate remains liable for the unpaid amount. His representative can sell the shares without being registered, subject to -the provisions of the articles. He is also entitled to be put on the register of members if he so desires.

- ✓ On the insolvency of a shareholder, his shares vest in the Official Assignee or Receiver, who may get himself registered as holder of these shares, or dispose them of. He can also disclaim partly – paid shares or fully – paid shares which are subject to mortgage or other encumbrance.
- ✓ No formal instrument of transfer is required since the owner is not capable of executing the same as transferor. Moreover, there is no consideration involved and no stamp duty etc. is required for registration of transmission of shares.

- Procedure for Transmission of Shares: While transfer of shares is between living persons or between or with corporate bodies, transmission of shares is the process by which the title over shares is passed on from one person to another by the operation of law. In such cases, there is no need for an instrument of transfer. The articles of association of a company contain the procedure, which the company will follow for transmission of shares.

  Generally, the following documents are required for transmission of shares:

  (i) An application for transmission of shares;

  (ii) A letter of indemnity;

  (iii) A probate (attested copy of will) or letter of administration;

  (iv) No-objection certificate, in case of more than one claimants

- Refusal of Registration

  Same as transfer of shares

- Distinction between Transfer and Transmission

  (1) Transfer is a voluntary act of a member while transmission is by operation of law.

  (2) There is always consideration involved in transfer whereas in transmission, there is no question of consideration, hence no stamp duty, etc.

  (3) Transfer is affected as transfer of property when a member intends to sell it whereas transmission takes place only on the death, bankruptcy and lunacy of the member.

  (4) In case of transfer, the member has to execute a valid instrument of transfer whereas in case of transmission, it is not so possible.

4.19 Rectification of Register of Members on transfer of Securities (Section 59)

This provides the procedure for the rectification of register of members after the transfer of securities. The provision states that-

- If the name of any person is, without sufficient cause, entered in the register of members of a company, or
- after having been entered in the register, is, omitted there from, or
- if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member,

the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

↓

The Tribunal may, after hearing the parties to the appeal by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

Transmission (vis-à-vis transfer).

The word 'transmission' means devolution of title to securities otherwise than by transfer, for example, devolution by death, succession, inheritance, bankruptcy, marriage, etc. On registration of the transmission of securities, the person entitled to transmission of securities becomes the holder and is entitled to all rights and subject to all liabilities arising therefrom.

While transfer of shares is brought about by delivery of a proper instrument of transfer (viz, transfer deed) duly stamped and executed, transmission of shares is done by forwarding the necessary documents (such as a notarised copy of death certificate) to the company.

Few cases of transmission for better understanding - In the following cases (mind it this list is not exhaustive, only illustrative), transmission of shares shall take place;

1. **Death:** When a shareholder expires, his shares need to be transmitted to his legal representative.
2. **Insolvency:** When a shareholder becomes insolvent, his shares are to be transmitted to his Official Receiver.
3. **Lunacy:** When a shareholder becomes lunatic, his shares are to be transmitted to his administrator appointed by the Court.

Transfer of Security of the Deceased Person by his Legal Representative [Sub- section 5]

The transfer of any security (or other interest in company) made by legal representative of a deceased person, shall be valid as if such legal representative is holder at the time of the execution of the instrument of transfer; even if, in actual such legal representative is not a registered holder.

This sub-section is basically bringing ease to legal heir with deeming effect of being holder of security or other interest in company of a deceased person.

Example 14 - Richa Daniel, after having obtained succession certificate, succeeded to 7,000 shares of ₹ 100 each allotted to her late father Alexender Daniel by Speed Software Limited. To pay off the debt of her cousin Stesley, she wants to transfer whole of the 7,000 shares to her on the basis of a duly stamped instrument of transfer which has been signed by her as well as Stesley. Accordingly, she has delivered the required documents to the company for transfer of shares.

In terms of Section 56 (5), the company, on receipt of duly stamped instrument of transfer along with requisite share certificates and succession certificate, shall transfer the shares in favour of Stesley. Thus, even though Richa Daniel, the legal representative of Alexender Daniel, is not a holder of 7,000 shares as per the Register of Members of the company, the transfer effected by her in favour of her cousin Stesley is a valid transfer as if she had been the holder of securities at the time of executing the transfer deed.

Note - As an alternative, Richa Daniel may choose to get herself registered as holder of the 7,000 shares in which case, she will make an application to Speed Software Limited. Such application shall be accompanied with share certificates and succession certificate. There is no need to submit instrument of transfer or transfer deed in such a case of transmission. This is so because transfer deed cannot be signed by the deceased person as transferor.

On receipt of these documents, the company will scrutinize them and if found in order, it shall proceed to enter the name of Richa Daniel in the Register of Members. Consequently, the name of the deceased person i.e. Alexender Daniel shall be deleted. Further, new share certificates will be issued in the name of Richa Daniel, the legal representative of Alexender Daniel.

Time Period for Delivery of certificates

Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted;

Particulars	Time Period for delivering the Certificates
In the case of subscribers to the memorandum.	Within a period of two months from the date of incorporation.
In the case of any allotment of any of its shares by a company.	Within a period of two months from the date of allotment.

In the case of a transfer of securities.	Within a period of one month from the date of receipt of the instrument of transfer by the company
In the case of a transmission of securities.	Within a period of one month from the date of receipt of the intimation of transmission by the company
In the case of any allotment of debenture.	Within a period of six months from the date of allotment.
In the case of all securities by specified IFSC public and private company	Within a period of sixty days after incorporation, allotment, transfer or transmission. days

Note:

In case where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities

Penalty

Liable	Default	Penalty
Company and every officer of the company who is in default	In complying with the provisions of sub-sections (1) to (5) to section 56	₹ 50,000

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 447 along with the liability mentioned under the Depositories Act, 1996.

Note:

1. With the dematerialisation process becoming a necessity in case of unlisted public companies i.e. they are required to dematerialise all of their securities as per Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014 , the chances of forgery are very thin or almost negligible.
2. The provisions contained in Section 447 which describe 'punishment for fraud' are stated in the earlier Chapter 3 relating to 'Prospectus and Allotment of Securities'.

PUNISHMENT FOR PERSONATION OF SHAREHOLDER [SECTION 57]

If any person deceitfully personates;

a. as an owner of any security or

b. interest in a company, or

c. as an owner of any share warrant or coupon issued in pursuance of this Act,

And, thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner,

Such person shall be punishable with;

a. Imprisonment for a term which shall not be less than one year but which may extend to three years and

b. Fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Penalty	Minimum	Maximum up to
Imprisonment	One year	Three years
And		
Fine	One Lakh	Five lakh

Note:

Personation for acquisition of securities is offence under section 38 punishable under section 447. Mind it section 447 is general provision.

Gravity of offence committed by personation under section 38 and section 57 may be considered while imposing penalty out of range provided.

It is worth noting, offence of cheating by personation under section 416 of Indian Penal Code, 1860 is punishable under section 419 of code, with punishment of either description which may extend upto three year or with fine or with both.

Student may refer section 38 and section 447, both covered under chapter 3 of this module.

Additional Reading on Forged Transfer

A forged transfer is a 'nullity' and is not legally binding. Forged transfer takes place when a company effects transfer of shares on the basis of an instrument of transfer containing forged signatures of transferor. Is it possible for a transferee of 'forged transfer' to acquire ownership of shares contained in the instrument of transfer? The answer is 'NO'. At the same time, the transferor who is the real owner continues to be

the shareholder and accordingly, the company can be forced by him to delete the name of the transferee and to restore his name as owner of shares in the Register of Members. What will happen if the transferee of 'forged transfer' transfers the shares to another buyer who does not know about the forgery and the company also registers the transfer in the name of new buyer and endorses the share certificates. In fact, the company cannot deny the ownership rights of new genuine buyer but it can also not deny the ownership rights of original shareholder because 'forged transfer' is void ab-initio and therefore, the company has to restore his name. While restoring the name of the original shareholder, the company may be asked to compensate the new genuine buyer who exercised good faith in purchasing the shares. As a remedy, the company may get itself indemnified by the first transferee who used the forged instrument of transfer to get the shares transferred in his name.

REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

Shares are movable property, hence can be transferred by the shareholders in the manner prescribed by the Articles. The right to transfer shares is absolute in nature and inherently vested with the ownership of the shares. In no case Articles can take away the rights of members to transfer shares in absolute, by making shares nontransferable.

Shares of a public company are freely transferable, whereas a private company is required under section 2(68)(i) to restrict the right of the members to transfer the shares. The articles of association of private companies contain certain kind of restrictions on the transferability of shares. Generally, the restriction put by a private company is that of pre-emption whereby the members are required to offer their shares first to the existing members of the company before offering them to the outsiders.

Section 58 contains the procedure which needs to be followed by a company while refusing to register the transfer of securities. It also contains process of filing appeal against such refusal.

Order of Tribunal [Sub-section 5]

The Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order direct;

a. Transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

b. Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

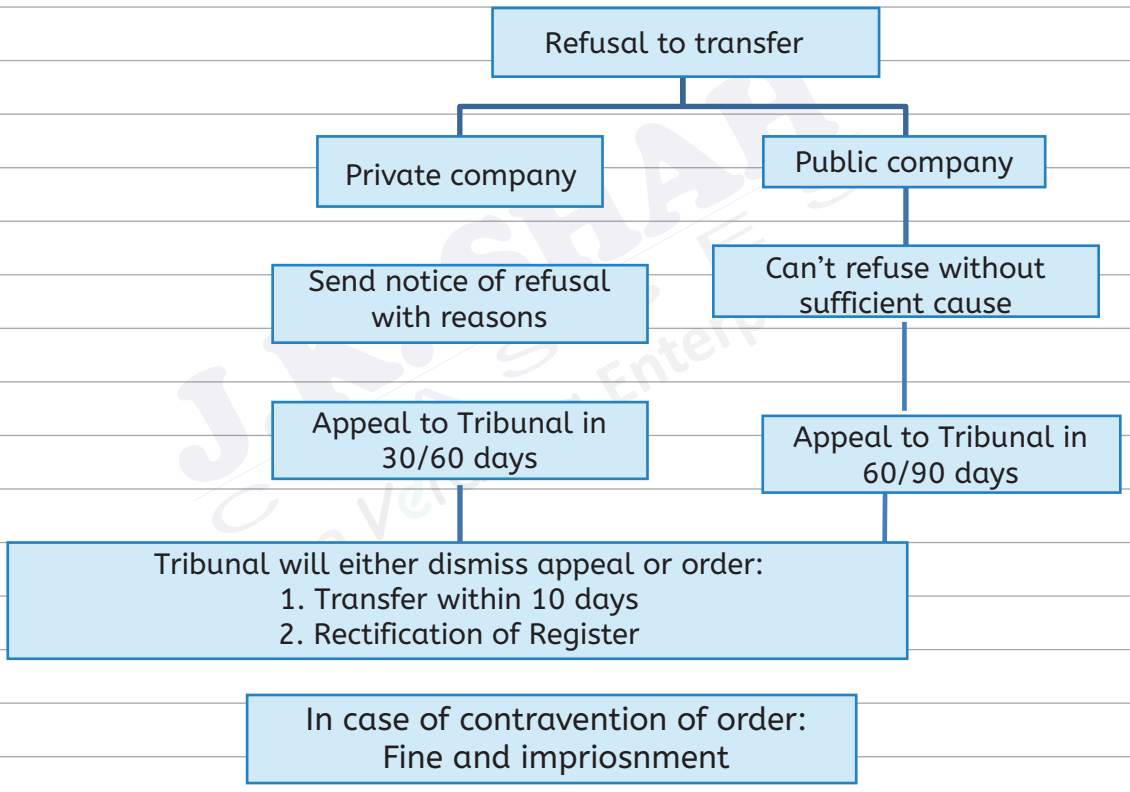
Contravention of the Order of the Tribunal [Sub-section 6]

If a person contravenes the order of the Tribunal, he shall be punishable with imprisonment for a term not less than one year but may extend to three years and with fine not less than one lakh rupees which may extend to five lakh rupees.

Summary of penalty

Penalty	Minimum	Maximum up to
Imprisonment	One year	Three years
And		
Fine	One Lakh	Five lakh

Summary of section 58



RECTIFICATION OF REGISTER OF MEMBERS [SECTION 59]

It is the duty of the company to keep the register up to date so as to give at all times the accurate and correct position as to particulars of shareholding, because If a person's name appears in the register of members, he is presumed to be the shareholder or member, even if, in fact, he is not so. Contrarily, if a person's name is absent from the register, apparently he is not a member, although he may have done everything to entitle him to become one.

Section 59 entrust right to appeal with aggrieved person, apart from vesting power in tribunal to order for rectification of register of members.

Appeal by Aggrieved Person [Sub-section 1]

An aggrieved person, member of company or company may appeal to tribunal or to a competent court (outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India), for rectification of the register if without sufficient cause,

a. the name of any person is entered in the register of members of a company, or
b. the name of any person is omitted, after having been entered in the register, or
c. if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member.

Note:

The words "unnecessary delay" have not been defined in the Act and, therefore, it becomes a question of evidence to be decided on the facts of each case. A failure to register a transfer within one month of the application, which was contrary to the listing agreement, was held to be an unreasonable delay.

Every shareholder has an interest in the proper maintenance of the company's register of members. Any member can make an application without showing any injury or prejudice to him. Personal grievance is not necessary for locus standi.

Order of the Tribunal [Sub-section 2]

Tribunal may, after hearing the parties to the appeal either dismiss the appeal or by order;

a. Direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order, or
b. Direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

Rights of holder is protected

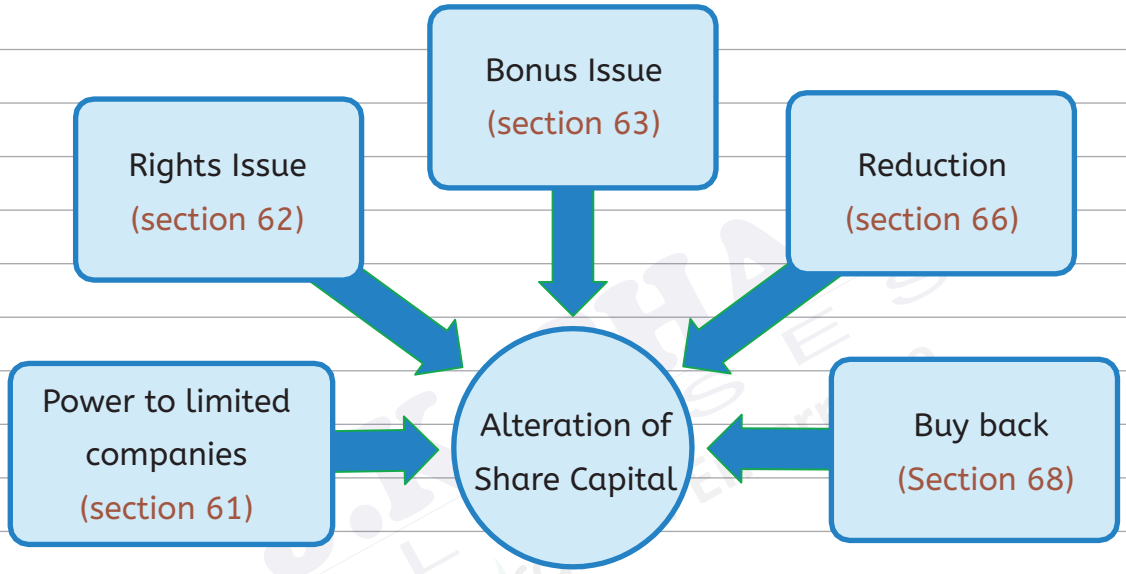
Act 3 protects the right of a holder of securities, to transfer such securities. Further, any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.

Transfer of Securities contravenes certain Acts and Direction of Tribunal

Tribunal may, on an application (made by the depository, depository participant, company, the holder of the securities or the Securities and Exchange Board), direct any company or a depository to set right the contravention and rectify its register or records concerned, where the transfer of securities is in contravention of any of the provisions of the;

a. The Securities Contracts (Regulation) Act, 1956
b. The Securities and Exchange Board of India Act, 1992
c. The Companies Act, 2013 or
d. Any other law for the time being in force

ALTERATION OF SHARE CAPITAL [SECTIONS 61-70]



POWER OF LIMITED COMPANY TO ALTER ITS SHARE CAPITAL [SECTION 61]

A limited company with a share capital can alter the capital clause of its memorandum of association in any of the following ways, provided authority to alter is given by the articles.

a. It may increase its authorised capital by such amount as it thinks expedient.
b. Consolidate and divide the whole or any part of its share capital into shares of larger amount.
c. Convert all and any of its fully paid up shares into stock or vice-versa into any denomination.
d. Sub-divide the whole or any part of its share capital into shares of smaller amount. The proportion between the amount paid and unpaid (if any) on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

e. Cancel those shares which have not been taken up and reduce its capital accordingly.

f. Any of the above things can be done by the company by passing a resolution at a general meeting.

g. Approval of the National Company Law Tribunal requires only in the case wherein consolidation and division [suggested in point (b)] results in changes in the voting percentage of shareholders.

h. Within 30 days of alteration, a notice must be given in Form SH-7 to the Registrar who will record the same and make necessary alteration in the company's memorandum. (Section 64 read with Rule 15 of the Companies *(Share Capital and Debentures) Rules, 2014).*

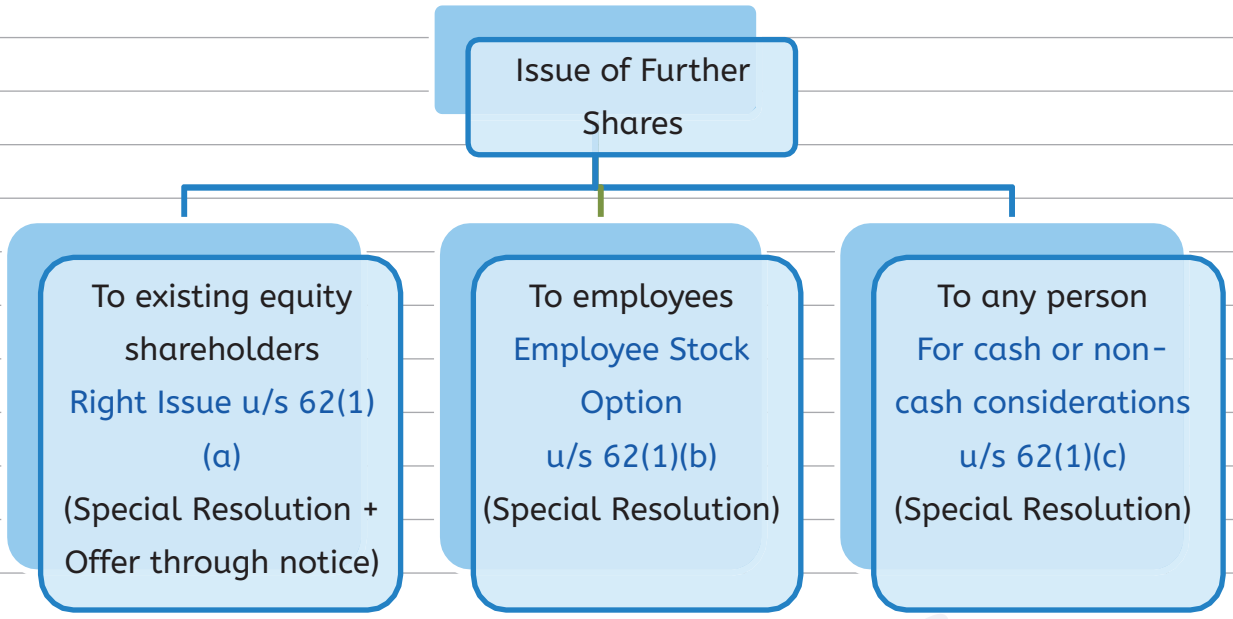
i. Further sub-section 2 provides that the cancellation of shares shall not be deemed to be a reduction of share capital. Mind it, reduction of capital covered under section 66 of the Act.

FURTHER ISSUE OF SHARE CAPITAL – RIGHTS ISSUE; PREFERENTIAL ALLOTMENT [SECTION 62]

A rights issue involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders. It is a non-dilutive prorata way to raise capital.

Class of companies	Power to Right Issue	Applicable Provisions
Listed companies or companies intended to get its securities listed	23(1)(c)	Provisions of the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder
Public companies not covered above		Provisions of this Act and rules made thereunder
Private companies not covered above	23(2)(a)	

Offering of issue of further Shares [Sub-section 1]



Whenever a company having a share capital, proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered;

a. To persons who are holders of equity shares (existing on date of such offer),
   1. in proportion to the paid-up capital on those shares held by them;
   2. by sending a letter of offer in form of notice, such notice shall specify;
      i. Specify the number of shares to be offered
      ii. Specify the time period within which the offer must be accepted. The time period should not be less than 15 days or such lesser number of days as may be prescribed but not exceeding 30 days from the date of the offer

Note – Rule 12A inserted in the Companies (Share Capital and Debentures) Rules, 2014, that provides the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer

      iii. Specify, if the offer is not accepted within the specified time, it shall be deemed to have been declined.
      iv. Confirm the right to renounce all or any of shares to existing holders, in favour of some other person; unless article otherwise provided.

Note:

1. If offer declined by existing holder, then at intimation of such decline or after expiry of the specified time given to him for exercise the right, the Board of Directors may

dispose of them (such shares, in regard to which offer is declined) in such manner which is not dis-advantageous to the shareholders and the company.

2. While determining/checking proportion, then as nearly as the circumstances admits shall be acceptable.
3. In case of a Private Company and Specified IFSC Public Company, any shorter time periods to accept the offer may be provided, if ninety percent of the members have given their consent in writing or in electronic mode for such shorter period

b. To employees under a scheme of employees' stock option, subject to:
   1. Special resolution passed by company, and
   2. Conditions as may be prescribed in Rule 12 of the Companies (*Share Capital and Debentures) Rules, 2014*.

Note:

1. The term 'employees' stock option' means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price (Section 2(37)
2. Instead of special resolution, ordinary resolution will be sufficient, in following cases;
   a. Private company which has not defaulted in filing its financial statements under Section 137 or Annual Return under Section 92.
   b. Specified IFSC Public Company.
3. In case of a listed company, conditions prescribed by SEBI (Share Based Employee Benefits) Regulations, 2014 shall be observed.

c. To any persons, if so authorised by a special resolution even if they are not within the two categories mentioned above.

Note:

1. Where further shares are offered through manner specified in point iii above, then such offer can be for cash or for a consideration other than cash.
2. Further, in case of non-cash consideration, price to be determined by valuation report of a registered valuer subject to such conditions as may be prescribed in Rule

13 of the Companies *(Share Capital and Debentures) Rules, 2014.*

Example 21 - A company, listed at Bombay Stock Exchange, intends to offer its further shares to the non-members. The existing members of the company consider such offer as invalid in view of the provisions contained in Section 62 (1) (a). However, the company is not prohibited in absolute terms while offering new shares to the non-members. It can do so after passing a special resolution as required in Section 62 (1) (c). Thus, new shares of a company limited by shares may be issued to non-members under certain circumstances.

Illustration– Q&A

What shall be length of period specified by notice of offer of further issue for giving acceptance?

Answer – Notice of offer of further shares shall specify the time period within which the offer must be accepted. The time period should not be less than 15 days or such lesser number of days as may be prescribed but not exceeding 30 days from the date of the offer

Note – Rule 12A inserted in *the Companies (Share Capital and Debentures)* Rules, 2014, provides the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer.

Dispatch of Notice to the existing Shareholders [sub-section 2]

Notice referred in sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue.

In case of a Private Company any shorter length (less than 3 days) of notice period shall also be acceptable, if ninety percent of the members have given their consent in writing or in electronic mode for such shorter period.

Exception – Section 62 shall not be applicable on conversion of debenture or loan into equity shares [Sub-section 3]

Conversion of debenture (pursuant to conditions of issue) or loan (pursuant to conditions of grant of loan) into equity shares leads to increase in the subscribed capital of a company.

Sub-section 3 states section 62 shall not be applicable to such increase in subscribed capital provided;

a. Those terms and conditions under which such conversion took place,
b. Must be approved by company in general meeting through special resolution,
c. Prior to issue of debenture and grant of loan.

Compulsorily conversion of Debentures/Loan from government into Shares

Sub-section 4 empowers the government to direct by order;

a. Conversion of debentures (issued to government) or loans (issued by government) to company, either full or in part thereof into shares of such company,
b. If that Government considers it necessary in the public interest so to do,
c. on such terms and conditions as appear to the Government to be reasonable in the circumstances of the case,
d. even if terms of the issue of such debentures or the raising of such loans do not providing for an option for such conversion.

Proviso to sub-section 4 provides remedy to company against hostile conversion.
Where the terms and conditions of such conversion are not acceptable to the company, it may appeal to the Tribunal, within sixty days from the date of communication of such order.
Tribunal after hearing the company and the Government shall pass such order as it deems fit.

Sub-section 5 requires, government shall consider following while determining the terms and conditions of conversion;

a. the financial position of the company,
b. the terms of issue of debentures or loans, as the case may be,
c. the rate of interest payable on such debentures or loans, and
d. such other matters as it may consider necessary.

Sub-section 6 states pursuant to order of government for conversion of debenture and loan into equity shares, under sub-section 4, the authorised share capital of such company shall stand increased by an amount equal to the amount of the value of shares which such debentures or loans or part thereof has been converted into and memorandum shall stand altered.

Section 62 shall not apply to Nidhi Company. While complying with such exception, the Nidhi Companies shall ensure that the interests of their shareholders are protected.

ISSUE OF BONUS SHARES [SECTION 63]

The term bonus share is not defined anywhere in the Companies Act 2013. However, the characteristics of bonus shares along with condition and manner of issue of fully paid-up bonus share by a company to its member highlighted by section 63.

In commercial parlance, the bonus shares are shares issued proportionately by a company to its current shareholders as fully paid-up shares free of cost.

Example 23 – If a company decided to issue bonus share in ratio of 1:2 (one for every two shares held), then the holder of 100 shares of a company will get 50 bonus share without making any payment. There his holding of shares will now be 150 instead of 100.

Status of Bonus Shares from lens of the Judiciary

Hon'ble Supreme Court in case of **Standard Chartered Bank v Custodian**

Bonus share is an accretion. A bonus share is issued when the company capitalises its profits by transferring an amount equal to the face value of the share from its reserve to the nominal capital.

In other words, the undistributed profit of the company is retained by the company under the head of capital against the issue of further shares to its shareholders. Bonus shares have, therefore, been described as a distribution of capitalised undivided profit.

In the case of issue of bonus share there is an increase in the capital of the company by transferring of an amount from its reserve to the capital account and thereby resulting in additional shares being issued to the shareholders.

A bonus share is a property which comes into existence with an identity and value of its own and capable of being bought and sold as such.

Sources for issue of Bonus Share [Sub-section 1]

A company may issue **fully paid-up bonus shares** to its members out of;

a. its free reserves (other than revaluation reserve);
b. the securities premium account; or
c. the capital redemption reserve account.

Bonus shares shall not be issued by capitalising reserves created by the revaluation of assets [Proviso to section 63(1)]

Bonus shares may be issued from	Bonus shares shall not be issued from
Free Reserves	Revaluation Reserve
Securities Premium Reserve	
Capital Redemption Reserve	

Pre-requisites for issue of bonus shares [Sub-section 2]

No company may capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, if;

a. it is authorised by its Articles,

b. it has on the recommendation of the Board, been authorised in the general meeting of the company;

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 the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;

e. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

f. it complies with such conditions as prescribed by Rule 14 of the Companies (Share capital and debenture) Rules, 2014, that a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

g The bonus shares shall not be issued in lieu of dividend (Sub-section 3 to section 63)

h. Proviso to sub-section 5 to section 123 of this act carries confirmatory provisions to those contained in section 63.

i. According to the proviso to Section 123(5) of the Act, it is permissible for a company to capitalise its profits or reserves for the purpose of issuing fully paid up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company.

NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL [SECTION 64]

As and when, there is an alteration (including increase and decrease) of share capital, the company concerned shall notify the registrar. The provisions in this respect are contained in Section 64.

Filing of Prescribed Notice [sub-section 1]

Company shall file a notice in the Form No. SH-7 as per Rule 15 of *the Companies (Share Capital and Debentures)* Rules, 2014 with the Registrar, along with an altered memorandum; within thirty days of alteration (including increase or decrease) to its capital in case of;

a. Alternation of capital in manner specified in section 61 (1),
b. Order made by the Government under section 62(4) read with 62(6) has the effect of increasing authorised capital of a company; or
c. Redemption of any redeemable preference shares,

Penalty for Default in Filing of Notice [Sub-section 2]

Where any company fails to file notice as manner prescribed in sub-section 1 then such company and every officer who is in default shall be liable to a penalty of five hundred rupees for each day during which such default continues, subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.

Summary of penalty

Liable	Penalty
Company	Five hundred rupees for each day during which such default continues, subject to a maximum of five lakh rupees
Every officer who is in default	Five hundred rupees for each day during which such default continues, subject to a maximum of one lakh rupees

REDUCTION OF SHARE CAPITAL [SECTION 66]

Conservation of capital is one of the main principles of company law, because any reduction of capital diminishes the fund; out of which creditor and other debt holders are to be paid, therefore it adversely impact them. But sometimes it may become necessary for the company to bring about a reduction in its capital.

Therefore, closely fenced power is given by Section 66.

Reduction of Share Capital by Special Resolution to be confirmed by Tribunal

A company being 'company limited by shares' or 'company limited by guarantee and having a share capital' may reduce the share capital in any manner and in particular manners as state below -

a. Extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
b. Cancel any paid-up share capital which is lost or is unrepresented by any available assets; or
c. Pay off any paid-up share capital which is in excess of the wants of the company
    a. Subject to Passing a special resolution; and
    b. Alter its memorandum by reducing the amount of its share capital and of its shares accordingly; and
    c. Repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon shall not be in arrear.

Issue of Notice by the Tribunal [Sub-section 2]

The Tribunal shall give notice of every application made to it;

a. to the Central Government (power delegated to Regional Directors)
b. to the Registrar and
c. to the Securities and Exchange Board, in the case of listed companies, and
d. the creditors of the company

Tribunal shall consider the representations (if any) made by them within a period of three months from the date of receipt of the notice.

Note:

1. Where no representation has been received within the said period of three months, it shall be presumed that they have no objection to the reduction.
2. Considering representations is statutorily required, not admitting it in full.

Order of Tribunal [Sub-section 3]

The Tribunal may make an order confirming the reduction of share capital on such terms and conditions as it deems fit only if it is satisfied that -

a. The debt or claim of every creditor of the company has been either
    i. Discharged or
    ii. Determined or

iii. Has been secured or

iv. His consent is obtained.

b. The accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in Section 133 or any other provision of this Act.

> How tribunal determine that, 'whether accounting treatment, proposed by the company for such reduction is in conformity with the accounting standards specified in Section 133 or not'?
> While making an application, a certificate to that effect by the company's auditor has been filed with the Tribunal.

Publication of Order of Confirmation of Tribunal

The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct.

Delivery of Certified Copy of Order of Tribunal to Registrar

Within thirty days of the receipt of the copy of the order, the company shall deliver; to the Registrar, a certified copy of the tribunal order and minutes (containing special resolution) approved by the Tribunal showing;

a. the amount of share capital;

b. the number of shares into which it is to be divided;

c. the amount of each share; and

d. the amount, if any, at the date of registration deemed to be paid-up on each share,

Registrar on receipt, shall register the same and issue a certificate to that effect.

Exemption to Buy-Back

Nothing in this section shall apply to buy-back of its own securities by a company under Section 68.

No Liability of Members

A member (whether in past or present) shall be liable to pay the amount (call or contribution) maximum upto difference (if any) between the amount deemed to have been paid on his shares and the nominal value of the reduced shares.

Deemed to have been paid' here signify reduced amount against the amount that have been actually paid on the share.

In case where Creditor is entitled to object but was not included in the list of Creditors

If a reduction of share capital took place; and where a creditor is entitled to object to a reduction of share capital, but his name and interest (his debt or claim on company) not entered on the list of creditors, either because of:

a. His ignorance of the proceedings for reduction or
b. Nature of his interest (debt or claim)

Then in respect of his interest, company commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016.

Action to make claim of creditor good (Remedy available to such unpaid creditor)

If company is running its operation

a. Every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar,
b. Shall be liable to contribute to the payment of such debt or claim,
c. But not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date.

If company is wound up

The Tribunal may, on the application of any such creditor and proof of his ignorance as aforesaid, if it thinks fit,

a. Settle a list of persons so liable to contribute, and
b. Make and enforce calls and orders on the contributories settled on the list, as if they were ordinary contributories in a winding up.

Note:

Period of limitation is a maximum period set by statute within which a legal action can be brought or a right enforced. The Limitation Act 1963 governing the provisions regarding period of limitation.

Rights of Contributories not affected

Sub-section 9 is overriding provision that prevent the rights of contributories inter-se. Nothing in sub-section 8 shall affect the rights of the contributories among themselves.

Liability of Officers

Officer of the company shall be liable for punishment under section 447, if he:

a. Knowingly conceals the name of any creditor entitled to object to the reduction or abets or is privy to any such concealment; or

b. Knowingly misrepresents the nature or amount of the debt or claim of any creditor or abets or is privy to any such misrepresentation

Note:

1. Abet means to encourage or incite another to commit a crime
2. Privy signify a coparticipant; one who has an interest in a matter
3. The provisions contained in Section 447 which describe 'punishment for fraud' are stated in the earlier Chapter 3 relating to 'Prospectus and Allotment of Securities'.

RESTRICTION ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES [SECTION 67]

Conservation of capital is one of the main principles of company law, because the share capital of a company is the only security on which the creditors rely.

Therefore, a company cannot buy its own shares because reduction of capital, results in diminishing of the fund out of which creditor are to be paid; hence adversely affect the creditors. However, this restriction is not absolute.

Reduction according to the applicable Provisions [Sub-section 1]

'Company limited by shares' or 'company by guarantee that having a share capital' shall not buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

Restriction on giving Loan, Guarantee or provision of Security, etc. [Sub-section 2]

Public company shall not give any financial assistance;

a. Whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise

b. For the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

Exceptions [Sub-section 3]

Company may provide the financial assistance, in following case;

a. Lending of money by a banking company in the ordinary course of its business;

Note:

1. The words "lending in the ordinary course of business" are not defined
2. Banks have to make loans in the ordinary course of their business and they can hardly supervise the purpose for which the borrower uses the loan money. Hence if a borrower from a bank uses the money for purchasing the bank's shares, the bank and its officers will be protected from liability.
3. An English court held that where money is given for the very purpose of purchasing the bank's shares that would not be lending in the ordinary course of business, then the provision would said to be violated.

b. The provision of money for the purchase of fully paid shares in the company or its holding company by trustees for and on behalf of the company's employees in accordance with any scheme (Employee share schemes) approved by company through special resolution with such requirements as may be prescribed in Rule 16 of the Companies (Share Capital and *Debentures) Rules, 2014,*

Note:

1. In case the shares of the company are listed - Such purchase of shares shall be made only through a recognized stock exchange and not by way of private offers or arrangements.
2. Where shares of a company are not listed - the valuation at which shares are to be purchased shall be made by a registered valuer.
3. The value of shares to be purchased or subscribed in the aggregate shall not exceed five percent of the aggregate of paid up capital and free reserves of the company;
4. Disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report for the relevant financial year, namely:
   (a) Names of the employees who have not exercised the voting rights directly;
   (b) Reasons for not voting directly;
   (c) Name of the person who is exercising such voting rights;
   (d) Number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;
   (e) Date of the general meeting in which such voting power was exercised;
   (f) Resolutions on which votes have been cast by persons holding such voting power;
   (g) Percentage of such voting power to the total voting power on each resolution;

(h) Whether the votes were cast in favour of or against the resolution.

c. Lending money by a company to its employees (other than its directors or key managerial personnel), not exceeding six month salary of the employees to enable them to buy or subscribe fully paid shares in the company or its holding company and to hold them by way of beneficial ownership.

Redemption of Preference Shares Permitted [Sub-section 4]

Nothing in Section 67 shall affect the right of a company to redeem any preference shares issued under this Act or under any previous company law.

Punishment for Contravention [Sub-section 5]

If a company contravenes the provisions of this section, the punishment shall be;

Liable	Penalty		
Company	Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees		
Every officer of the company who is in default	Imprisonment for a term which may extend to three years	and	Fine which shall not be less than one lakh rupees but may extend to twenty-five lakh rupees.

1. Section 67 shall not apply to private companies (if not defaulted in filing its financial statements under Section 137 and Annual Return under Section 92) and Specified IFSC Public Company in whose case all of following 3 condition fulfilled;
   a. in whose share capital no other body corporate has invested any money;
   b. if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice its paid-up share capital or fifty crore rupees, whichever is lower; and
   c. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

2. Section 67 (1) shall not apply to Nidhi Companies, when shares are purchased by the company from a member on his ceasing to be a depositor or borrower and it shall not be considered as reduction of capital under Section 66 of the Companies Act, 2013. While complying with such exception, the Nidhi Companies shall ensure that the interests of their shareholders are protected.

POWER OF COMPANY TO PURCHASE ITS OWN SECURITIES [SECTION 68] - BUY BACK OF SECURITIES

Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors. Section 68 contains provisions which describe the power of a company to purchase its own securities subject to the applicable conditions. Recently L&T announced Buyback of securities.

Sources of Funds for Buy-Back of Shares [Sub-section 1]

A company may purchase its own shares or other specified securities. The purchase should be made out of its:

a. Free reserves; or
b. Securities premium account; or
c. Proceeds of the issue of any shares or other specified securities.

However, buy-back of shares or other specified securities cannot be made out of the proceeds of earlier issued shares or other specified securities of same kind.

Specified securities includes employees' stock option or other securities as may be notified by the Central Government from time to time

Conditions for Buy-Back

A company may purchase its own shares or other specified securities, if met with following conditions, namely;

a. The buy-back is authorised by its articles;
b. A special resolution authorising the buy-back is passed in general meeting of the company;

A special resolution is not necessary where:

1. The buy-back is, not exceeding ten percent of the total paid-up equity capital and free reserves of the company; and
2. Such buy-back has been authorised by the Board resolution passed at its meeting;

c. The amount involved in buy-back should not be more 25% of the aggregate of paid-up capital and free reserves of the company; further in case of buyback of equity shares, the maximum limit is 25% of its total paid-up equity capital in any financial year.

d. After the buyback, the ratio between the debts (secured and unsecured) owed by the company should not be more than twice the paid-up capital and free resources of the company (Central Government may prescribe a higher ratio for a class or classes of companies). (ie. - 2:1)

e. Shares or other specified securities for buy-back shall be fully paid-up;

f. The buy-back should be in accordance with the Rule 17 of the Companies (Share Capital and Debentures), Rules, 2014; but in case of listed shares or other specified securities should be in accordance with regulations made by the Securities and Exchange Board of India in this behalf.

No offer of buy-back shall be made within one year reckoned from the date of the closure of the preceding offer of buy back [Proviso to section 68(2)]
Free reserves includes securities premium account (Explanation II to section 68)

Procedure before Buy-Back

The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating -

a. a full and complete disclosure of all the material facts;

b. the necessity for the buy-back;

c. the class of shares or securities intended to be purchased under the buy back;

d. the amount to be invested under the buy-back; and

e. the time limit for completion of buy-back.

Rule 17(1) of the Companies (Share Capital and Debentures), Rules, 2014 specify list of 14 matters, regarding which particulars shall be stated in explanatory statement.

Securities to be purchased under 'Buy-Back' [Sub-section 5]

Question : buy-back may be from;?

Ans :

a. the existing shareholders or security holders on a proportionate basis; or

b. the open market; or

c. the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

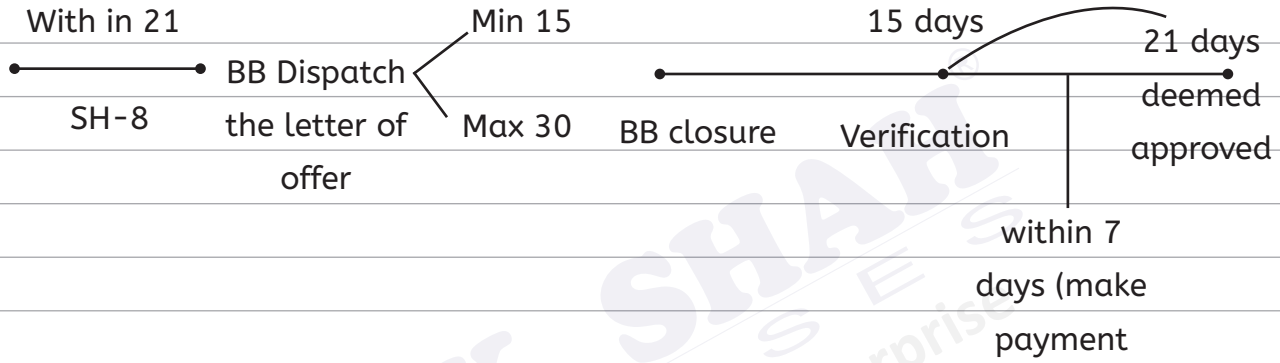
Declaration of Solvency (SH-9)

Declaration of solvency has to be on a Form SH-9 and verified by an affidavit, stating that the Board of directors has made a full inquiry into the affairs of the company and have found that it is capable of meeting all its liabilities and will not be rendered insolvent for a period of 12 months from the date of the declaration.

It has to be signed by at least two directors of the company, one of whom should be the managing director, if any

Time limit for Completion of Buy-Back [Sub-section 4]

Every buy-back shall be completed within twelve months from the date of passing the special resolution or board resolution authorising the buy-back.



Extinguishment of Securities

Where a company buy's back its own securities or other specified securities, it shall extinguish and physically destroy the shares or securities so bought-back within seven days of the last date of completion of buy-back.

Cooling Period – No fresh Issue

Where a company completes a buy-back of its shares or other specified securities, it shall not make further issue of same kind of shares or other specified securities within a period of six months.

It may, however, make a bonus issue and discharge its existing obligations such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

Note: This restriction applies only to the type of securities bought back. The company is free to issue other types of security.

Register of Buy Back

The company, shall maintain a register of shares or other securities which have been bought-back in Form No. SH.10 containing details of;

a. Shares or securities so bought,
b. Consideration paid for the shares or securities bought-back,
c. Date of cancellation of shares or securities,
d. Date of extinguishing and physically destroying the shares or securities and
e. Such other particulars as may be prescribed.

Note:

1. This register shall be maintained at the registered office in the custody of the secretary of the company or any other person authorized by the board in this behalf.
2. The entries in the register shall be authenticated by the secretary of the company or by any other person authorized by the Board for the purpose.

Filing of Return of Buy-back [Sub-section 10]

A return of buy-back in Form No. SH.11 along with the fee shall be filled with;

a. The Registrar and also SEBI, if shares of company are listed on any recognised stock exchange
b. Containing such particulars relating to the buy-back
c. Within thirty days of such completion.
d. Along with return, a certificate in Form No. SH.15 signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder

Penalty for Default [Sub-section 11]

If a company makes default in complying with the provisions of this section or any regulations made by Securities Exchange Board of India specified for the purposes of section 68(2)(f), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Summary of punishment

Liable	Minimum Fine	Maximum Fine
Company	One lakh rupee	Upto three lakh rupee
Every officer of the company who is in default		

TRANSFER OF CERTAIN SUMS TO CAPITAL REDEMPTION RESERVE ACCOUNT [SECTION 69]

Section 69 requires certain amount to be transferred to the capital redemption reserve (CRR) account in case a company buys back its own shares.

Amount to be transferred to CRR Account [Sub-section 1]

Where a company purchases its own shares out of free reserves or securities premium account, then;

a. Sum equal to the nominal value of the share so purchased shall be transferred to the capital redemption reserve account; and

b. Details of such transfer shall be disclosed in the balance sheet.

Application of CRR Account [Section 2]

The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Similar use of CRR is also specified under-section 55(4) of this Act, that created when preference shares redeemed out of profit, as provided under section 55(2)(c).

Illustration – True/False

CRR can be used to issue partly paid bonus shares or finance discount portion of sweat equity shares.

Answer - False, the capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

PROHIBITION FOR BUY-BACK IN CERTAIN CIRCUMSTANCES [SECTION 70]

states no company shall directly or indirectly purchase its own shares or other specified securities;

a. Through any subsidiary company including its own subsidiary companies; or

b. Through any investment company or group of investment companies; or
c. If a default, is made by the company, in
   i. repayment of deposits or interest thereon, or
   ii. redemption of debentures, or
   iii. redemption of preference shares or
   iv. payment of dividend to any shareholder or
   v. repayment of any term loan or interest thereon to any financial institutions or banking company

Note:

1. Specified securities includes employees' stock option or other securities as may be notified by the Central Government from time to time (Explanation I to section 68)
2. Where the default is remedied and a period of three years has lapsed after such default ceased to subsist, such buy-back is not prohibited.

Further prohibit the company from directly or indirectly to purchase its own shares or other specified securities in case such company has not complied with provisions of

a. Section 92 (Annual Report),
b. Section 123 (Declaration and Payment of Dividend),
c. Section 127 (Punishment for failure to distribute dividends), and
d. Section 129 (Financial Statement).

DEBENTURE [SECTIONS 71]

DEFINITION AND FEATURES OF DEBENTURE

Definition [Section 2(30)]

Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not
Provided that following shall not be treated as debenture

a. the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and
b. such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company,

Debenture Includes	Debenture Excludes
Debenture stock Bonds Any other instrument of a company evidencing a debt Whether constituting a charge on the assets of the company or not	Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 and Such other instrument, as may be prescribed by the Central Government

Features of Debentures

a. A debenture is the smallest unit of a sizeable amount of loan.

b. When debentures are issued, the applicants are given certificates representing the money they have lent to the company.

c. A debenture certificate is issued by the company under its common seal, if any, or under the signatures of two directors or a director and the company secretary, if he has been appointed.

d. The company pays periodic interest on the amount raised by issuing debentures till they are fully redeemed.

e. A debenture is generally pre-fixed with the rate of interest which the company intends to pay.

f. Voting rights are not available in case of debentures as section 71 (2) of the Act, clearly states that no company shall issue any debentures carrying any voting rights.

g. As per section 44 of the Act, a debenture is in the nature of movable property which is transferable as per the provisions contained in the Articles of the company issuing the debentures.

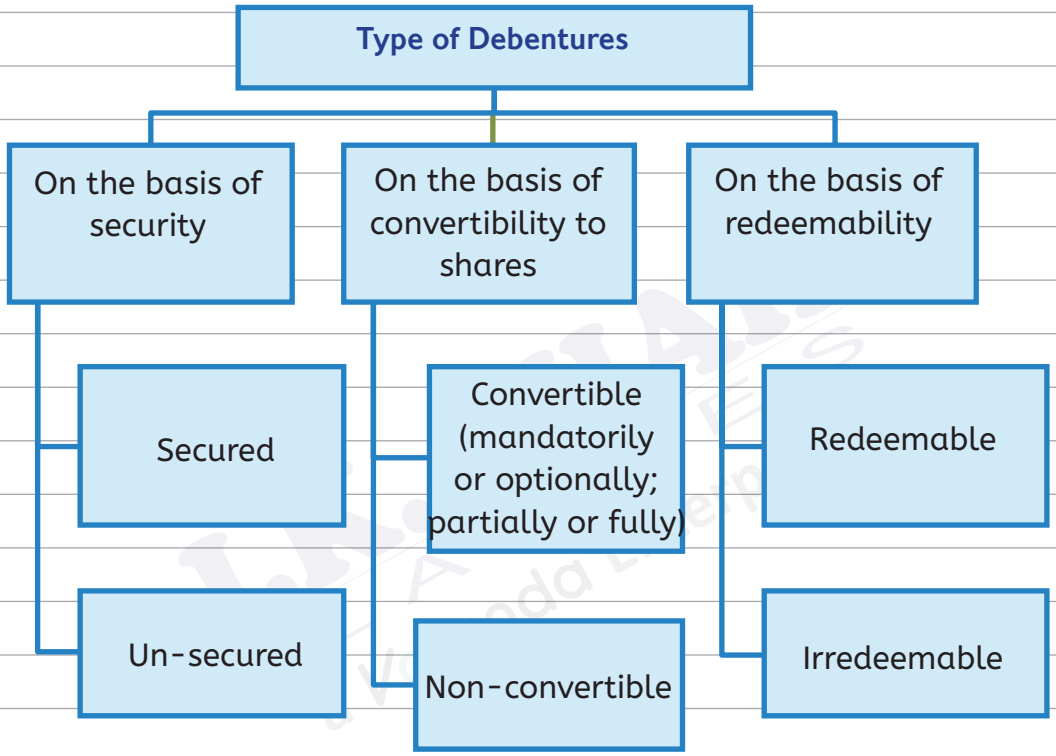
h. A debenture may be secured or unsecured. In case of secured debentures, a charge is created on the assets of the company in favour of debenture trustee.

i. As per the terms of the issue of debentures, they may be redeemed (i.e. repaid) at the end of full term or in installments, say yearly or bi-yearly or any other period like in two installments.

j. The terms of issue may also provide for conversion of debentures at maturity into equity shares at the option of the debenture holders.

k. The debenture certificates are required to be delivered within a period of six months under section 56(4)(d) of the Act, from the date of allotment of debentures, unless the company is prohibited by any provision of law or any order of Court, Tribunal or any other authority.

In other words, 'issue of debentures' is the most convenient way of borrowing large sums of money and at the same time the debenture holders do not exert any influence over the ownership and working of the company unless their interest is jeopardized by certain decisions



MANNER OF ISSUE OF DEBENTURES AND APPLICABLE [SECTION 71]

Issue of Debentures with an Option to Convert

A company if authorised by passing special resolution at general meeting, then it may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption

1. Issue of debentures with an option to convert: A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption. Provided that the issue of debentures with an option to convert such debentures into shares, wholly or partly, shall be approved by a special resolution passed at a general meeting.

2. Unsecured/Naked Debentures: Where they are not secured by any mortgage or charge on any property of the company, they are said to be naked or unsecured.
3. Secured Debentures: Where debentures are secured by a mortgage or a charge on the property of the company. They are called secured debentures. The Central Government may prescribe the procedure, for securing the issue of debentures, the form of debenture trust deed, the procedure for the debenture-holders to inspect the trust deed and to obtain copies thereof, quantum of debenture redemption reserve required to be created and such other matters.

No Voting Rights [Sub-section 2]

No company shall issue any debentures carrying any voting rights.

Issue of Secured Debentures [Sub-Section 3]

Secured debentures may be issued by a company subject to such terms and conditions as are prescribed in Rule 18 (1) of the *Companies (Share Capital and Debentures) Rules, 2014; which are explained below;*

a. Maximum Period of Secured Debenture

The tenor of secured debenture shall not be more than 10 years from the date of issue, except in following cases where tenor can be upto 30 years

i. Companies engaged in setting up of infrastructure projects;
ii. Infrastructure Finance Companies as defined in clause (viia) of sub direction (1) of direction 2 of Non-Banking Financial (Non-deposit accepting or holding) Companies Prudential Norms (Reserve Bank) Directions, 2007;
iii. Infrastructure Debt Fund NBFCs' as defined in clause (b) of direction 3 of Infrastructure Debt Fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011;
iv. Companies permitted by a Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory authority to issue debentures for a period exceeding ten years.

b. Appointment of Debenture Trustee

Debenture trustee shall be appointed by company before the issue of prospectus or letter of offer for subscription of its debentures.

c. Security by Creation of Charge

Security for the debenture can be provided by way of creating a charge or mortgage in favour of debenture trustee, on;

i. Specified movable of the company or its subsidiaries or its holding company or its associates companies, or

ii. Specified immovable properties wherever situate, or any interest therein.

Note:

1. Value of such assets or properties upon which charge is created shall be sufficient for the due repayment of the amount of debentures and interest thereon.
2. In case of NBFCs, the charge or mortgage may be created on any movable property.
3. In case of any issue of debentures by a Government company which is fully secured by the guarantee, given by the Central Government or one or more State Government or by both, as per the requirement for creation of charge under rule 18(1) of the Companies (Share Capital and Debentures) Rules, 2014 shall not apply.

d. Debenture Trust Deed

Debenture trust deed shall be executed in Form SH-12 to protect the interest of the debenture holders, within three months of closure of the issue or offer.

Creation of Debenture Redemption Reserve (DRR) Account [Sub-section 4 read with Rule 18 (7) of the Companies (Share Capital and Debentures) Rules, 2014]

Company shall create a debenture redemption reserve (DRR) account out of the profits of the company available for payment of dividend.

The amount credited to such DRR account shall not be utilised by the company except for the redemption of debentures.

a. Requirement of DRR

Category	Publicly placed debenture	Privately places debenture
All India Financial Institutions (regulated by RBI)	Exempted	Exempted
Banking Companies	Exempted	Exempted
Listed companies (other than All India Financial Institutions and Banking	Exempted except NBFCs not registered	Exempted except NBFCs not registered

Companies covered above)	with RBI u/s 45IA of RBI Act, and for House Finance companies not registered with National Housing bank	with RBI u/s 45IA of RBI Act, House Finance companies not registered with National Housing bank
Unlisted Companies (other than All India Financial Institutions and Banking Companies covered above)	DRR equal to 10% of Outstanding Debenture	DRR equal to 10% of Outstanding Debenture Except NBFCs registered with RBI u/s 45IA of RBI House Finance Companies registered with National Housing bank

Note:

1. The main purpose of these relaxations was introduced by the MCA for the reduction of the cost of borrowings incurred by companies.
2. Other Financial Institution covered under 2(72) of the Companies Act 2013 for purpose of creating and maintaining DRR shall be dealt in manner as Non– Banking Finance Companies registered with Reserve Bank of India
3. In case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture

b. Amount and methods of Investment or deposits for debentures maturing during the fiscal

By 30th April of each year, the in case of;

Company	In case of
Listed Company, other than All India Financial Institutions and Banking Companies	Publicly placed debenture
Unlisted companies, other than All India Financial Institutions, Banking Companies	Publicly placed debenture & Privately placed debenture (other than those by NBFCs registered with RBI u/s 45IA of RBI and House Finance companies registered with National Housing bank)

An amount equal to 15% of its debentures maturing during the financial year, ending on the 31st day of March of the next year, shall be invested or deposited in any of following methods of deposits or investments, namely;

a. Deposits with any scheduled bank, free from any charge or lien;
b. Unencumbered securities of the Central Government or any State Government;
c. Unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 or unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882

The amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent of the amount of the debentures maturing during the year ending on 31st day of March of that year. Meaning thereby that amount shall be invested or deposited by 30th April and maintained there after till end of financial year (or till maturity if fall earlier).

Restrictions on the Issue of Prospectus/Offer/Invitation to the public [Sub- section 5]

Prior to issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, the company shall appoint one or more debenture trustees. Except in case of public offer of debenture, in all other cases appointment and removal of debenture trustee governed by provisions prescribed in Rule 18 (2) of the Companies (Share Capital and Debentures) Rules, 2014; namely;

a. Name and Consent of Denture Trustee

The names of the debenture trustees shall be stated in offer related letters and notices or subsequent thereto.

Written consent before the appointment of debenture trustee must be obtain and statement to that effect shall appear in the letter of offer.

b. Who can be denture trustee?

Following persons shall not be appointed as a debenture trustee,

i. A beneficiary holders of shares in the company;
ii. A promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
iii. Relative of any promoter, director or key managerial personnel of the company;
iv. A beneficiary entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;

V ACCEPTANCE OF DEPOSITS BY COMPANIES

5.1 Introduction

- Deposit/Public Deposit/Fixed Deposit is a kind of borrowing made by the companies. It may be noted that deposits may be secured or unsecured borrowings. Sections 73 and 76 of the Companies Act, 2013 and Companies (Acceptance of Deposits) Rules, 2014 are the relevant provisions relating to concept of Public Deposits. These Sections and Rules provide for the limits up to which, the manner in which and the conditions subject to which the deposits can be invited and/or accepted by Non-Banking Non-Financial companies (e.g., trading companies, manufacturing companies, etc.).
- Sections 73 and 76 are not applicable to acceptance of deposits by:
  - (i) Banking Companies,
  - (ii) Non-Banking Financial Companies (NBFCs),
  - (iii) Housing Finance Companies
  - (iv) Such other class of companies as may be notified by the Central Government from time to time. The acceptance of deposits by the aforesaid companies is governed by different norms

5.2 Definition of Deposit [Rule 2(1)(c)]

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

(i) The above definition of 'deposit' is inclusive one.

(ii) It includes any money received by way of:
- ✓ deposit; or
- ✓ loan; or
- ✓ in any other form.

(iii) Repayment of 'deposit' is time-bound.

(iv) It can be secured or unsecured.

(v) A private company can accept deposits from its members only.

(vi) A public company can accept deposits from its members and also from the public if

it fulfils certain parameters.

(vii) Amounts received by private companies from their members, directors or their relatives before 1st April, 2014 – whether to be considered as deposits or not under the Companies Act, 2013?

Such amounts received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' subject to the condition that relevant private company shall disclose in the notes to its financial statement the figure of such amounts and the accounting head in which such amounts have been shown. However, any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall be in accordance with the Companies Act, 2013 and the rules made there under.

AMOUNTS NOT CONSIDERED AS DEPOSIT

Following categories of amounts are not considered as deposit [Rule 2 (1) (c)]:

(i) Any amount received from:

- the Central Government; or
- a state Government; or
- any other source whose repayment is guaranteed by the Central Government or a State Government; or
- local authority; or
- a statutory authority constituted under an Act of Parliament or a State Legislature;

(ii) Any amount received from:

- foreign Governments,
- foreign or international banks,
- multilateral financial institutions (including, but not limited to, International Finance Corporation, Asian Development Bank, Commonwealth Development Corporation, and International Bank for Industrial and Financial Reconstruction),
- foreign Governments owned development financial institutions,
- foreign export credit agencies,
- foreign collaborators,
- foreign bodies corporate and foreign citizens,

- foreign authorities or persons resident outside India;

The receipt of funds shall be subject to the provisions of Foreign Exchange Management Act, 1999 and rules and regulations made thereunder;

(iii) Any amount received as a loan or facility from:

- any banking company, or
- State Bank of India or its subsidiary banks, or
- a notified banking institution, or
- a corresponding new bank (as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980), or
- any co-operative bank;

(iv) Any amount received as a loan or financial assistance from:

- 1Public Financial Institutions, or
- any regional financial institutions, or
- Insurance companies, or
- Scheduled banks (as defined in Reserve bank of India Act, 1934;

(v) Any amount received against issue of commercial paper or any other instruments issued in accordance with the guidelines or notification issued by the Reserve Bank of India;

(vi) Any amount received by a company from any other company (Mainly known as Inter Company Deposit (ICD));

(vii) Any amount received and held towards subscription to any securities (including share application money or advance towards allotment of securities, pending allotment), so long as such amount is appropriated only against the amount due on allotment of the securities applied for;

Notes:

(a) It is clarified by way of Explanation that if the securities for which application money or advance for such securities was received cannot be allotted within 60 days from the date of receipt of the application money or advance for such securities and such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit under these rules.

(b) Further, it is clarified that any adjustment of the amount for any other purpose shall not be treated as refund.

(viii) Any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company; However, the director of the company or relative of the director of the private company, as the case may be, from whom money is received, is required to furnish to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;

(ix) Any amount raised by the issue of:

- bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III2 of the Companies Act, 2013 excluding intangible assets of the company, or
- bonds or debentures compulsorily convertible into shares of the company within 10 years;

However, if such bonds or debentures are secured by the charge of any assets referred to in Schedule III of the Companies Act, 2013, excluding intangible assets, the amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer.

(ixa) Any amount raised by issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India;

Example 1: Soorya Ltd. has raised ₹20,00,000 through issue of non-convertible debentures (20,000 NCDs of ₹ 100 each) not constituting a charge on the assets of the company. The NCDs are listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India. The said amount will not be considered as deposit in terms of the rule stated above [Sub-clause (ixa)]

(x) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit;

Example 2: Ratnakar was appointed as Supervisor by Siddhi Transporters and Logistics Limited on an annual salary of ₹ 6,00,000. He was required to deposit a sum of ₹ 6,50,000 under the contract of employment with the company as security deposit on which no interest was payable to him.

In the above case, the amount so received by Siddhi Transporters and Logistics Limited from Ratnakar under the contract of employment with the company being non-interest bearing security deposit, will be considered as deposit in terms of sub-clause (x), since the amount is more than his annual salary. Had the amount of non-interest bearing security deposit received by the company under the contract of employment been limited to ₹ 6,00,000 or less, it would not have been considered as deposit.

(xi) Any non-interest bearing amount received and held in trust;

(xii) Any amount received in the course of, or for the purposes of, the business of the company–

(a) as an advance for the supply of goods or provision of services accounted for in any manner whatsoever provided that such advance is appropriated against supply of goods or provision of services within three hundred and sixty-five days from the date of acceptance of such advance:
However, in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of three hundred and sixty-five days shall not apply.

(b) as advance, accounted for in any manner whatsoever, received in connection with consideration for an immovable property under an agreement or arrangement, provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement;

(c) as security deposit for the performance of the contract for supply of goods or provision of services;

(d) as advance received under long term projects for supply of capital goods except those covered under item (b) above;

(e) as an advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less;

(f) as an advance received and as allowed by any sectoral regulator or in accordance with directions of Central or State Government;

(g) as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications;

However, it is clarified that if the amount received under items (a), (b) and (d) above becomes refundable (with or without interest) due to the reasons that the company accepting the money does not have necessary permission or approval, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules.

Further, by way of Explanation it is clarified that for the purposes of this sub- clause the amount shall be deemed to be deposits on the expiry of fifteen days from the date they become due for refund.

(xiii) any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:

(a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;

(b) the loan is provided by the promoters themselves or by their relatives or by both; and

(c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

(xiv) any amount accepted by a Nidhi company in accordance with the rules made under section 406 of the Act;

(xv) any amount received by way of subscription in respect of a chit under the Chit Fund Act, 1982;

(xvi) any amount received by the company under any collective investment scheme in compliance with regulations framed by the Securities and Exchange Board of India;

(xvii) an amount of twenty-five lakh rupees or more received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding ten years from the date of issue) in a single tranche, from a person;

By way of Explanation it is clarified that:

1. "Start-up company" means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with Notification Number G.S.R. 127 (E), dated 19-02- 2019 issued by the Department for Promotion of Industry and Internal Trade ;
2. "Convertible note" means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

Example 3: Greedwood limited ('the company) which is register as start-up company register under Companies Act, 2013 has received an amount of ₹ 20 lacs and ₹ 10 lakh on different date by way of a convertible note. Though the company has received an amount of twenty-five lakh rupees or more, the said amount will be considered as deposit since the aggregate amount has not received in single tranche in terms of the rule stated above Sub-clause (xvii)].

any amount received by a company from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts 3 and Mutual Funds registered with the Securities and Exchange Board of India in accordance with regulations made by it.

Note:

Clarification regarding amounts received by private companies from their members, directors or their relatives before 1st April, 2014 – whether to be considered as deposits or not under the Companies Act, 2013 (General Circular No. 5/2015, dated 30-03-2015)

It is clarified that such amounts received by private companies prior to 1st April, 2014 shall not be treated as 'deposits' subject to the condition that relevant private company shall disclose in the notes to its financial statement the figure of such amounts and the accounting head in which such amounts have been shown.

However, any renewal or acceptance of fresh deposits on or after 1st April, 2014 shall be in accordance with the Companies Act, 2013 and the rules made thereunder.

5.3 Definition of Depositor [Rule 2(1)(d)]

"Depositor" means:

- Any member of the company who has made a deposit with the company in accordance with the provisions of section 73 of the Companies Act; or
- Any person who has made a deposit with an eligible company in accordance with the provisions of section 76 of the Companies Act.

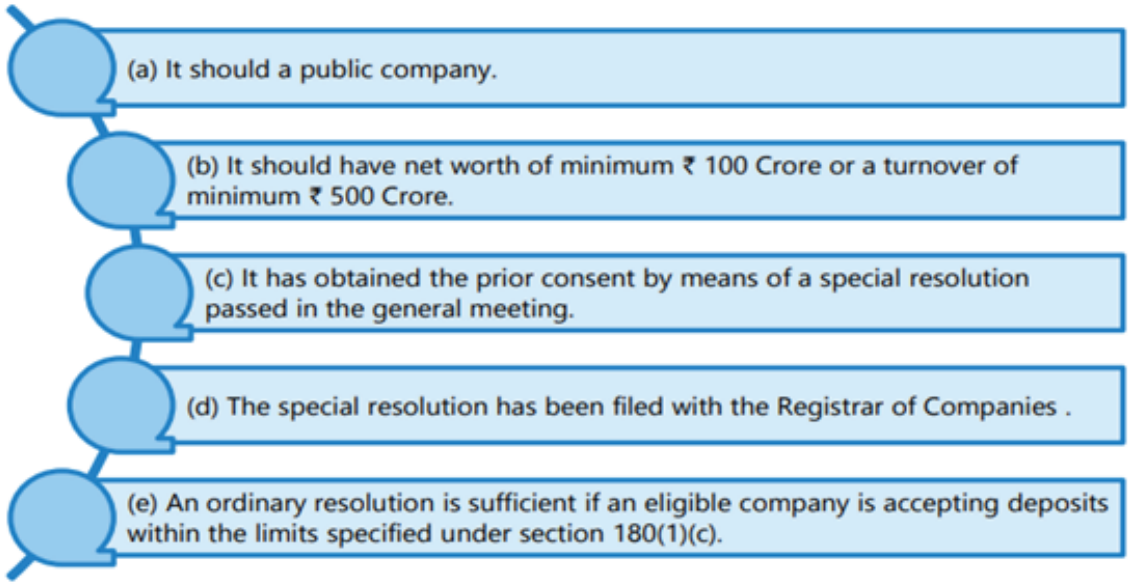
5.4 Definition of Eligible company –

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

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

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

Accordingly,



5.4 Kinds Of Deposit

Acceptance of deposit from Members (Section 73)

Private or public company can accept deposits from its members

Acceptance of deposits from the Public (Section 76)

- Only Eligible company can accept deposits from public
- Eligible Company [Rule 2(1)(e)]: Public company having Net worth ≥ 100 crores
  Or
  Turnover ≥ 500 crores
- Pass Special Resolution in general meeting
  However, if
  (Proposed deposits from the public together with the existing borrowings of the company) ≤ (Paid-up share capital + Free Reserves + Securities Premium), then
  an eligible company may accept deposits by means of an ordinary resolution.
- The 'eligible company' shall be required to obtain the credit rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency. The rating shall be obtained for every year
- Every company which accepts secured deposits from the public shall within 30 days of such acceptance, create a charge on its assets.

When Company may accept Deposit from its Members

1. A company may, after passing resolution in general meeting and complying with such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely–
   a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of anyprevious

deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

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

c) Depositing such sum by 30th April each year 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 as deposit repayment reserve account;

d) Certifying that the company has not committed any default in last 5 years in repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits;

e) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company :

Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Exception: Points (a) to (d) above shall not apply to private Companies:

A. Which accepts from its members upto 100%, of aggregate of the Net worth, and such company files the details of monies so accepted to the Registrar in prescribed manner , OR

B. Which is a start-up, for 5 years from the date of its incorporation; OR

C. Which fulfils all of the following conditions, namely

(i) Which is not an associate or a subsidiary company of any other Company

(ii) If the (borrowings of such a company from banks or financial institutions/ Body corporate) < [2 (Paid up share capital) or ₹50 crores, whichever is lower]

(iii) Such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section

However, such a company [as referred to in clauses (A), (B) or (C)] shall file the details of monies accepted to the Registrar in the specified manner (i.e. in Form DPT-3)

2. Repayment of deposit: Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement.

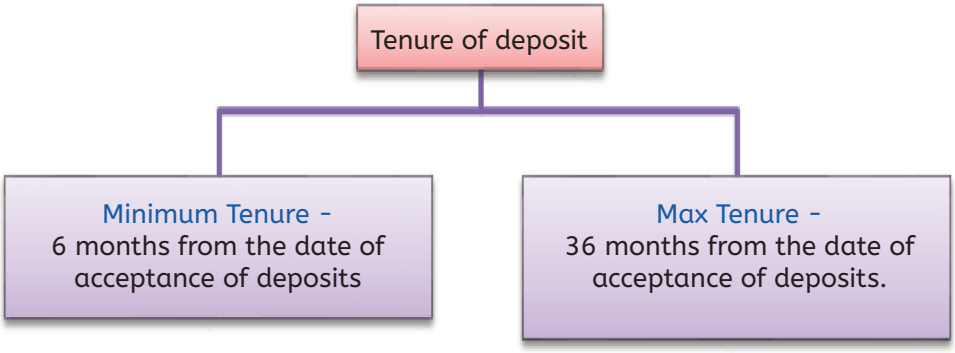
3. Failure on the repayment of deposit: Where a company fails to repay the deposit

or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

4. Application of the amount of deposit repayment reserve account: The deposit repayment reserve account shall be used by the company only for the purpose of repayment of deposits.

5.6 Terms and Conditions of Acceptance of Deposits by Companies

(Following Rules are applicable to Deposits from Members as well as Public)

<table>
<tr>
<td>Periods of Acceptance of Deposits [Rule 3(1)(a)]</td>
<td>


However, company can accept deposit for a period less than 6 months subject to following conditions –
a) Minimum tenure of such deposit= 3 months from date of acceptance of deposits.
b) Maximum amount of such deposit= 10% [PUSC+FR+ SP]
</td>
</tr>
<tr>
<td>Joint Depositors [Rule 3(2)]</td>
<td>Where depositors so desire, deposits may be accepted in joint names, but not exceeding 3, with or without any of the clauses, namely, “Jointly”, “Either or Survivor”, “First named or Survivor”, “Anyone or Survivor”.</td>
</tr>
</table>

Ceiling limits for acceptance of Deposits [Rule 3(3), (4)&(5)]

Type of Company	Acceptance of deposits from members	Acceptance of deposits from public
	(% of PUSC + FR+ Securities Premium)	
Eligible company	10%	25%
Private company	100%	
But following private companies: 1. Which is a start-up, for ten years from the date of its incorporation; or 2. Which fulfils all of the following conditions: (i) which is not an associate or a subsidiary company of any other company (ii) if the borrowings of such a company is less than twice of its paid up share capital or 50 crore rupees, whichever is lower; and (iii) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section	The limit of 100 % is not applicable; they will accept upto the limits prescribed. Limits shall be prescribed by CG	
Specified IFSC Public Company	100%	
Other than Eligible Company	35%	
Government Eligible Company	35%	

Ceiling on Rate of Interest and Brokerage [Rule 3(6)]	Company shall accept/renew deposits at a rate of interest and brokerage not exceeding the maximum rate of interest prescribed by RBI that the NBFCs can pay on their public deposits.
No alteration in terms and conditions permitted [Rule 3(7)]	The company shall not reserve any right to alter, to the prejudice or disadvantage of the depositor, any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract after circular or circular in the form of advertisement is issued and deposits are accepted.
Credit Rating [Rule 3(8)]	• Every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies along with the return of deposits in Form DPT-3. • The credit rating shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits, from any one of the approved credit rating agencies as specified.

Issuance of Circular [Rule 4]	For company, other than an Eligible Company • The company accepting deposits from members, shall issue such circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1. • The circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated. • Certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted. In case a company had committed a default in the repayment of deposits accepted, the company had made good the default and a period of 5 years has lapsed since the date of making good the default. • Such Circular shall be issued on the authority and in the Filing with the Registrar: At least 30 days before the issue of the advertisement, its copy duly signed by a majority of the directors who approved the advertisement or otherwise signed by their duly authorised agents is required to be delivered to the Registrar of Companies for registration.

((b) The date on which the financial statements are laid before the company at the Annual General Meeting (AGM), or in case no AGM has been held, the latest day on which the AGM should have been held as per the relevant statutory provisions.

A fresh circular shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

For Eligible Company

- Issuance of Circular in the Form of Advertisement: An 'eligible company' intending to invite deposits is required to issue a circular in the form of an advertisement in DPT-1.
- Such advertisement shall be published in English in an English newspaper and in vernacular language in a vernacular newspaper. Both newspapers should have wide circulation in the State in which the registered office of the company is situated.
- If the company has its website, the circular shall also be placed on the website.
- Such advertisement shall be issued on the authority and in the name of Board of Directors of the company.
- Filing with the Registrar: At least 30 days before the issue of the advertisement, its copy duly signed by a majority of the directors who approved the advertisement or otherwise signed by their duly authorised agents is required to be delivered to the Registrar of Companies for registration.
- Validity of the Advertisement: The advertisement shall remain valid till the earliest of the following dates:
  (a) up to 6 months from the closure of the financial year in which it is issued; or
  (b) the date on which the financial statements are laid before the company at the Annual General Meeting (AGM), or in case no AGM has been held, the latest day on which the AGM should have been held as per the relevant statutory provisions.
- Fresh Advertisement: A fresh advertisement shall be issued, in each succeeding financial year, for inviting deposits during

	• Issue and Effective dates: The date on which the advertisement appeared in the newspaper shall be taken as the date of the issue of advertisement. Further, the effective date of issue of circular shall be the date on which the circular was dispatched.
Creation of Security [Rule 6]	➢ Every company inviting secured deposits shall, within 30 days from the date of acceptance, provide for security by way of a charge on its assets, by way of either mortgage or hypothecation only. ➢ It may be noted that the company shall ensure that the total value of the security either by way of deposit insurance or by way of charge or by both on company's assets shall not be less than the amount of deposits accepted and the interest payable thereon.
Appointment of Trustee for Depositors, etc. [Rules 7]	• Every company, inviting secured deposits, shall appoint one or mere trustees for depositors for creating security for the deposits. • The company shall execute a deposit trust deed in Form DPT-2 at least 7 days before issuing the circular or circular in the form of advertisement. • The duties and functions of depositor trustee shall generally be: (i) To protect the interest of holders of depositors (including creation of securities within the stipulated time); and (ii) To redress the grievances of holders of depositors effectively. • Disqualification: No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee– a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company; b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;

	c) has any material pecuniary relationship with the company; d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon; e) is related to any person specified above. • No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.
Filling of Application Form for making Deposits [Rule 10]	• A company shall accept or renew any deposit, whether secured or unsecured, only when an application, as specified by the company, is submitted by the intending depositor for the acceptance of deposit. • The application shall contain a declaration made by the intending depositor to the effect that the deposit is not being made out of any money borrowed by him from any other person.
Nomination [Rule 11]	Every depositor may nominate any person at any time. The nominee shall be the person to whom his deposits shall vest in the event of his death.
Deposit Receipt [Rule 12]	Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a receipt for the amount received by the company, within a period of 21 days from the date of receipt of money or realisation of cheque or date of renewal, as the case may be.
Maintenance of Liquid Assets [Rule 13]	• As specified in Section 73, the company shall deposit atleast 20% of the amount of its deposits maturing during the following financial year by 30th April each year in a scheduled bank in a separate bank account to be called as deposit repayment reserve account. • Rule 13 states that such amount shall not at any time fall below 20% of the amount of deposits maturing during the financial year. • The deposit repayment reserve account shall not be used by the company for any purpose other than repayment of deposits.

Deposit repayment reserve -

A) Every eligible company and every company other than eligible company shall on or before 30th April of every year deposit minimum 20% of its amount of deposit maturing during the following financial year (immediate next year) and such amount shall be kept in a separate bank account to be called as 'Deposit Repayment Reserve A/c' in a schedule bank and such amount shall not be utilized for any other purpose other than for the repayment of deposit.

However, the amount remaining deposited shall not at any time fall below 20% of the amount of deposit maturing during the financial year (current FY).

Example -

FY in which deposit is accepted	Date of which Date of acceptance of deposit	Amount of deposit accepted	Tenure of deposit	Repayment value of deposit	Redemption date of deposit	FY in which deposit being redeem
2017-18	1-1-18	100cr.	2 years	150cr.	1-1-2020	2019-20
2018-19	1-10-18	200cr.	2 years	300cr.	1-10-2020	2020-21
2019-20	1-4-19	300cr.	2 years	400cr.	1-4-2021	2021-22

Calculation -

Calculation of 20% of following year (next year)	Calculation of 20% of current year	Minimum amount to be kept in DRR
By 30-4-2018 20% (deposit maturing during 2019-20] = 20% [150cr.] =30cr.	20% (deposit maturing in 2018-19] = 20% [NIL] = NIL	30cr.
By 30-4-2019 20% [deposit maturing during 2020-21] =20%[300cr.] =60cr.	20% [deposit maturing in 2019-20] =20% [150cr.] =30cr.	60cr.
By 30-4-2020 20% [deposit maturity during 2021-22] = 20% [400cr.] =80cr.	20% [deposit maturing in 2020-21] =20% [300cr.] =60cr.	80cr.
By 30-4-2021 =20% [deposit maturing during 2022-23] = 20% [NIL] =NIL	20% [deposit maturing in 2021-22] =20% [400cr.] =80cr.	80cr.

Register of Deposits [Rule 14]	• Every company accepting deposits shall keep, at its registered office, one or more registers in which there shall be entered, separately in case of each depositor, the fo1lowing particulars, namely:- (i) Name, address and PAN of the depositor/s; (ii) Particulars of guardian, in case of a minor; (iii) Particulars of the nominee; (iv) Deposit receipt number; (v) Date and the amount of each deposit; (vi) Duration of the deposit and the date on which each deposit is repayable; (vii) Rate of interest or such deposits to be payable to the depositor; (viii) Due date for payment of interest; (ix) Mandate and instructions for payment of interest and for non-deduction of tax at source, if any; (x) Date or dates on which the payment of interest shall be made; (xi) Particulars of security or charge created for repayment of deposits; (xii) Any other relevant particulars; • The entries specified above shall be made within 7 days from the date of issuance of the receipt duly authenticated by a director or secretary of the company or by any other officer authorised by the Board for this purpose. • The register or registers must be preserved in good order for a period of not less than 8 calendar years from the financial year in which the latest entry is made in the register.
Meeting of Depositors	The trustee for depositors shall call a meeting of all the depositors on- (a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding; (b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

Premature surrender of Deposits (Rule 15)	• Rule 15 provides that if a company makes repayment of any deposit after the expiry of 6 months from the date of such deposit but before. the maturity date of deposit, it should, reduce the interest on such deposit by 1 % from the rate which the company would have paid, had the deposit been accepted for the period for which such deposit had run; and the company should not pay interest at a rate higher than the rate so reduced. • Where the period for which the deposit had run contains any part of year, then if such part is 6 months or more, it should be reckoned as one year for the purpose of this Rule. • Reduction of rate of interest is not applicable in the following cases: 1. Where the deposit is prematurely repaid to comply with Rule 3 i.e. premature repayment made in order to reduce the total amount of deposits to bring it within the permissible limits; or 2. Where the deposit is prematurely repaid to provide for war risk or other related benefits to the personnel of naval, military or air forces or to their families during the period of emergency declared under Article 352 of the constitution. • Premature Closure of Deposit to Earn Higher Rate of Interest: In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.
Return of Deposits to be Filed With the Registrar.	1. Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as may be prescribed as on the 31st day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in Form DPT-3. 2. It is hereby clarified that Form DPT-3 shall be used for filing return of deposit or particulars of transaction not considered as deposit or both by every company other than Government company

Penal rate of interest [Rule 17]	A penal rate of interest of 18% per annum shall be paid for the overdue period, in case of public deposits, whether secured or unsecured, matured and claimed but remaining unpaid.
Applicability of section 73 and	➢ In case of a company which had accepted or invited public deposits under the relevant provisions of the Companies Act,
Punishment for contravention of any of the Rules [Rule 21]	If any company inviting deposits or any other person contravenes any provision of these rules for which no punishment is provided in the Act, the company and every officer of the company who is in default shall be punishable with: (i) Fine which may extend to ₹5000 and (ii) Where the contravention is a continuing one, with a further fine which may extend to ₹500 for every day after the first day during which the contravention continues.

5.7 Repayment of Deposits, etc, accepted before commencement of this Act (Section 74)

According to section 74 of the Companies Act, 2013,

(i) If any company has accepted Deposits as per Old Companies act, 1956 and the amount of such deposit or part thereof or any interest due thereon still remains unpaid, the company shall–

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

b) Repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier. Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made there under.

(ii) On an application made by the company, the Tribunal may after considering the financial condition of the company, the amount of deposit or part thereof and the interest payable thereon and such other matters, allow further time as considered reasonable to the company to repay the deposit.

(iii) Punishment: If a company fails to repay the deposit or part thereof or any interest thereon within the time specified or such further time as may be allowed by the Tribunal,

✓ The company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with: Fine: Minimum ₹1 crore upto ₹10 crores

✓ Every officer of the company who is in default shall be punishable with:

Fine: Minimum ₹25 lacs upto ₹2 crores

OR

Imprisonment: Upto 7 years OR

Both

Damages for Fraud (Section 75)

This Section is removed from syllabus as per ICAI Notification.

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

Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73:

Upon Company	Upon every officer in default
Fine – a) Minimum – 1 crore or twice the amount of deposit accepted (whichever is less). b) Maximum – 10 crores	Imprisonment – • up to 7 years; and Fine – • Minimum – 25 lakhs • Maximum – 2 crores. If it has been established that the officer in default has contravened the provisions knowingly or with fully with the intention to deceive the company/its shareholders/ depositor/creditors/taxation authorities then penalty shall be under section 447.

List of Sections

	Rule 16	Return of Deposits	
	Rule 16A	Disclosures in the financial statement	
	Rule 17	Penal rate of interest	
	Rule 19	Applicability of section 73 and 74 to eligible companies	
	Rule 21	Punishment for contravention of any of the Rules	
5.6	Section 74	Repayment of Deposits, etc, accepted before commencement of this Act	
	~~Section 75~~	~~Damages for Fraud~~	
5.7	Section 76A	Punishment for Contravention of Section 73 or Section 76	

SUMMARY

1. Deposit Meaning :

It includes any receipt of money by way of deposit or loan or in any other form, but does not include such amount as prescribed under Rules.

2. Acceptance of Deposit

Acceptance of Deposit

Acceptance from member (Sec.73)

By

Private Company

Condition

- AOA authorised
- OR is passed
- Compliance of Rules, RBI73(2)(a) Issuance of Circular to member
  - (b) File Circular to ROC within 30 days in DPT-1
  - (c) Create DRRA before 30/4, with 20% amount maturing during following F.Y.
  - (e) Company must not be default in the repayment of deposit in last 5 years.
  - (f) Secured deposit (if any) create charge on asset of company in form CHG-1 within 30 days

Public Company

Condition

- AOA authorised
- If existing borrowing with proposed borrowing exceed (PUC + FR + SP), required SR, otherwise

OR

- Comply with sec. 73(a), (b), (c), (d) & (f)
- Credit rating from credit

Acceptance from public (Sec.76)

Public Eligible Company

i.e., net worth $\geq$ 100 crore

or

Turnover $\geq$ 1500 crore

Condition

- AOA authorised
- If existing borrowing with proposed borrowing exceed (PUC + FR + SP), required SR, otherwise

OR

- Comply with sec. 73(a), (b), (c), (d) & (f)
- Credit rating from credit

↓

Repayment of Deposit with the terms and conditions

↓

Application to Tribunal on the failure to repay deposit or interest

↓

Application of DRRA only for Repayment of Deposit

3. Exemption to Private Company :

- Sec. 73(2)(a),(b),(c),(e) & (f) are not applicable to private company if ;
  - (a) it's a start-up company (up to 10 years)
  - (b) No investment by any other body corporate and
    - Borrowing amount is not more than (2 x PUC or `50 crore) lower and
    - Not defaulted in repayment of any borrowing.
  - (c) Other Private Company, not accepting deposit more than 100% of (PUC + FR + SP).

4. Not Applicable :

Following companies.

- Banking company
- NBFC
- HFC
- Such other company notified by Central Government

5. Amount of Deposit [% of (PUC + FR + SP)]

- Public Eligible Company, 10% from member and 25% from public, total = 35%.
- Public Non-Eligible Company, 35% from member only.
- Government eligible company, 35% including both member and public.
- Private company, maximum 100% from members.
- Exempted Private Company, such amount as prescribed by Central Government.

6. Time Period :

- Minimum maturity = 6 month.
- Maximum maturity = 36 month.
- Exception – short term fund requirement, less than 6 months but greater than 3 m, provided amount cannot be more than 10% (PUC + FR + SP).

7. Joint Depositor :

- Maximum 3 members.

8. Interest on Deposit :

Maximum interest as prescribed to NBFC by RBI.

9. Brokerage on Deposit :

Maximum brokerage as provided to NBFC by RBI.

10. Penalty Interest :

18% p.a.

11. Credit rating :

To be obtained every year and submitted to ROC in form DPT-3.

12. Register of Deposit :

- To be preserved for 8 years.
- to be updated within 7 days of approval of BOD.

13. Return of Deposit :

To be submitted to ROC before 30th June of year end 31st March in DPT-3.

14. Alteration :

Once deposit is accepted through circular, it cannot be altered.

15. Secured Deposit :

- Appoint depositor trustee.
- Draft trust deed.
- Intimate ROC, within 7 days in form DPT-2.
- Circular must have details of depositor trustee.

16. Disqualification of Trustee :

(a) Director, Key Managerial Personnel Officer and Employee of Company, its Holding, Subsidiary or Associate company.
(b) Indebted to company /group company.
(c) Provided guarantee to company for depositor.
(d) Pecuniary relationship with company.
(e) Related to person mentioned in point (a) above.

17. Premature repayment of deposits :

Interest rate shall be reduced by 1%.

18. Repayment of Existing Deposit :

- File form DPT-4 within 3 months of Companies Act, 2013.
- Repay deposit amount earlier of the following :
  - Within 3 years of commencement of this Act or
  - maturity of deposit
- Contravention :
  - Refund deposit with interest
  - Fine on company = 1 crore to 10 crores.
  - On officer of fine 25 L to 2 crores.

    or
  - Imprisonment up to 7 years

    or

    both

19. Penalties for contravention of Sec. 73 or Sec.76.

- Refund of deposit with interest

  +
- Company – Fine = (1 Crore or 2 x amount of deposit) lower to maximum 10 crores
- Officer – fine = 25 L to 2 crores AND up to 7 year of imprisonment.
- If knowingly contravenes, then further Sec.447.

VI REGISTRATION OF CHARGES

6.1 Definition of Charge

- According to Section 2(16) of the Companies Act, 2013 "charge" has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.
- Whenever a company obtains term loans or working capital loans from financial institutions or banks by offering its property or assets, etc. as security it is required to create a charge on such property or assets in favour of the lender. The security may be provided either by way of mortgage, hypothecation or pledge.
- Thus, charge is a general concept and it covers each and every mode of creating the security on the assets of a company, for the purpose of securing the repayment of any debt due by a company.
- Whenever any charge is created, it has to be registered with Registrar of Companies

6. 2 Kinds of Charge

Fixed or Specific Charge

- A charge is fixed or specific when it is made specifically to cover assets, which are ascertained and definite or are capable of being ascertained and defined, at the time of creating charge e.g., land, buildings, or heavy machinery.
- A fixed charge is against security of certain specific property.
- The company loses the right-to dispose off that property

Floating Charge

- A floating charge is a charge on a class of assets present and future, which in the ordinary course of business is changing from time to time.
- A floating charge is not attached to any definite property but covers property of a fluctuating type e.g. stock - in - trade, debtors, etc.
- The company free to deal with the property as it sees fit until the holders of charge take steps to

↓

A floating charge remains dormant until it becomes fixed or crystallises.

On crystallisation, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.

Crystallisation of floating charge may occur in following cases –

- When the company goes into liquidation
- When the company ceases to carry out its business activity
- When a receiver is appointed
- When the company has made default in repayment of loan and the creditor/ debenture holder has appointed a receiver to take possession of the property which is subject to charge in order to enforce their security
- On happening of any event as specified in deed (Loan agreement) whereby parties have consented that the charge shall be crystallized.

6.3 Filing of Particulars of Creation of Charge (Section 77)

Registration of Charges	It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge. In each case when charge is created it must be registered by the company.
How to Register Charge	For the purpose of registration of charge by the company, the particulars of charge in Form CHG-1 or Form CHG-9 (in case of debentures) together with a copy of the instrument, if any, creating the charge duly signed by the company and the charge holder, shall be filed with the Registrar within 30 days of creation of charge along with the prescribed fee. The application of Section 77 shall not be made to certain charges which are prescribed in consultation with the Reserve Bank of India. The instrument creating a charge or modification thereon shall be preserved for a period of 8 years from the date of satisfaction of charge by the company.

Verification of Instrument of Charge

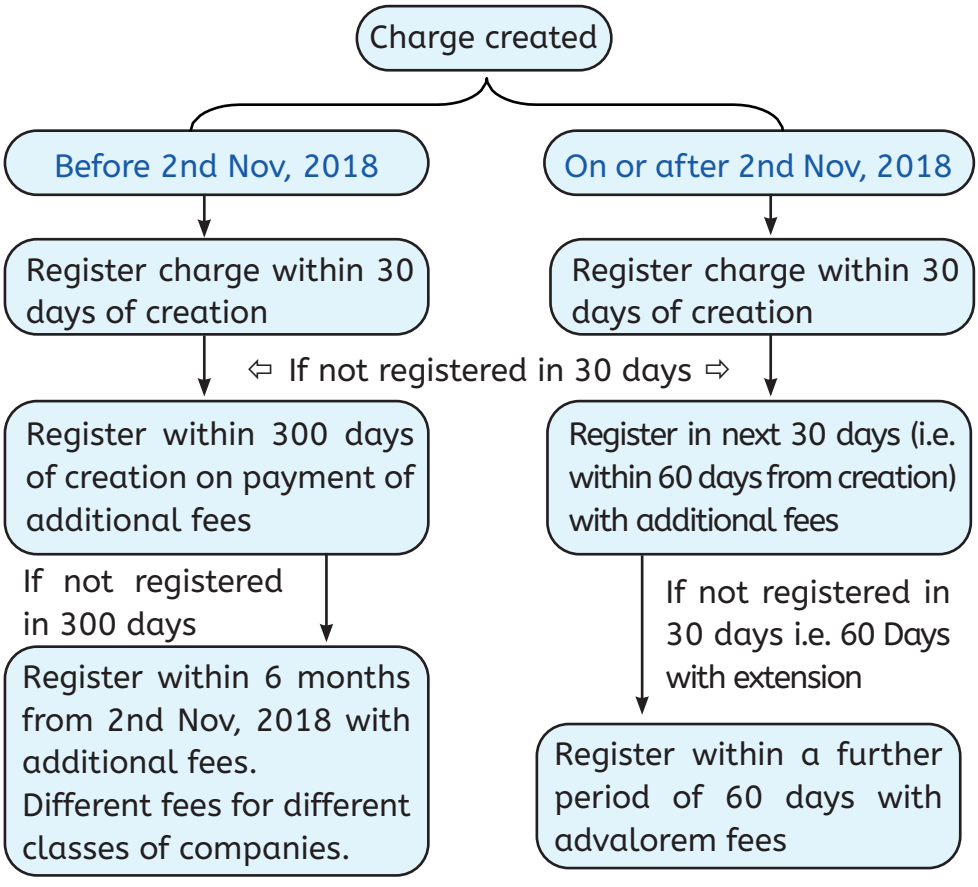
A copy of every instrument creating (or modifying) any charge and required to be filed with the Registrar, shall be verified as follows:

In case of property situated in India (whether wholly or partly)
The copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

In case of property situated outside India
The copy shall be verified by a certificate issued either-
- ✓ under the seal, if any, of the company, or
- ✓ under the hand of any director or company secretary of the company, or an authorised officer of the charge holder, or
- ✓ under the hand of some person other than the company who is interested in the mortgage or charge

Nothing in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favuor of reserve bank of india when any loan or advance has been made to it under Reserve Bank of India Act 1934

Extension of Time Limit



- The original period within which a charge needs to be registered is 30 days from the date of creation of charge.
- The Companies (Amendment) Second Ordinance, 2019 (w.r.e.f. 02-11-2018) has amended the provisions relating to extension of time limit as under:

(i) Charges created before 02-11-2018 (i.e. before the commencement of the Companies (Amendment) Second Ordinance, 2019)5:

In such cases, where charge was created before 02-11-2018 but was not registered within the original period of 30 days, the Registrar may, on an application by the company, allow such registration to be made within a period of 300 days of such creation.

Further, if the registration is not made within the extended period of 300 days, it shall be made within 6 months from 02-11-2018 on payment of prescribed additional fees. It is provided that different fees may be prescribed for different classes of companies.

(ii) Charges created on or after 02-11-2018 : According to another relaxation, if the registration is not made within the extended period as above, the company shall make an application and the Registrar is empowered to allow such registration to be made within a further period of 60 days after payment of prescribed advalorem fees

In such cases (i.e. charge was created on or after 02-11-2018 but the registration of charge not effected within the original period of 30 days), the Registrar may, on an application by the company, allow such registration to be made within a period of 60 days of such creation (i.e. another 30 days are granted after the expiry of original 30 days), on payment of additional fees as prescribed.

Procedure for Extension of Time Limit

For seeking extension of time:

1. The company is required to make an application to the Registrar in Form CHG-1 or CHG-9 (in case of debentures).
2. It should be supported by a declaration from the company signed by its company secretary or a director that such belated filing shall not adversely affect the rights of any other intervening creditors of the company.
3. Requisite additional fee or ad valorem fee, as applicable, must also be paid.

The application so made must satisfy the Registrar that the company had sufficient cause for not filing the particulars and the instrument of charge, if any, within the original period of 30 days. Only then he will allow registration of charge within the extended period.

Rights of the lender or charge-holder shall not get affected and shall remain as they were before the actual registration (i.e. rights acquired from the date of creation of charge) even if the charge is actually registered within the extended period.

What is ad valorem fee?

Ad valorem is a latin word which means 'according to the value'. Ad valorem fee is % of the amount secured by the charge. Hence, ad valorem fee is according to the value.

For Student's understanding:

Steps	Particulars	Time Period	Days	Fees
1st Step	Registration of charge with ROCs	Within 30 days of creation of charge	30	Normal Fees
2nd Step	If fails to file within 30 days	Within a period of 60 days of such creation	30+30=60	Normal Fees + Additional Fees
3rd Step	If fails to file within 6 0 days	Registrar may, on an application, allow such registration to be made within a further period of 60 days	30+30+ 60=120	Normal Fees + Additional Fees +Ad valorem Fees

Issue of Certificate of Registration	If a charge is registered with the Registrar, a certificate of registration of such charge shall be issued in Form CHG-2 to the company and, as the case may be, to the person in whose favour the charge is created. The certificate so issued by the Registrar shall be conclusive evidence that the requirements of Chapter VI of the Act and the rules made there under as to registration of creation of charge have been complied with.

6.4 Application for Registration of Charge by Charge- Holder (Section 78)

- The person in whose favour the charge is created (i.e. charge-holder) may apply to the Registrar for registration of the charge along with the instrument of charge within the prescribed time, form and manner.
- On receipt of application from the charge-holder, the Registrar shall give a notice to the company and if no objection is received, allow such registration within a period of 14 days after giving notice to the company on payment of the prescribed fees. However, the Registrar shall not allow such registration by the charge-holder, if the company itself registers the charge or shows sufficient cause why such charge should not be registered.
- Recovery of fees: In case registration is affected on application made by the holder of charge, such person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

6.5 Consequences of Non – Registration

If a charge, which requires registration under Section 77, is not registered, the consequences are as follows:-

(a) The security becomes void by non - registration but it is not void from the beginning. It can be made valid by subsequent registration.

(b) During liquidation, a creditor with an unregistered charge assumes the status of an unsecured creditor.

(c) Although, the security becomes void by non - registration but it does not affect the contract or obligation of the company to repay the money thereby secured as contract is still valid.

6.6 Modification of Charge (Section 79)

- When is Section 79 applicable?

Acquisition of any property already subject to charge by a company [Section 79(a)]:

In case of a property where charge is already registered and if it is sold with the permission of the holder of charge, it shall be the duty of the company acquiring it to get the charge registered in accordance with Section 77. The earlier charge should get vacated and, in its place, new charge should get registered by the company which has acquired it.

Modification in the terms and conditions or modification in the extent of any charge already registered [Section 79(b)]:

Any modification in charge (i.e. change in terms and conditions or change in extent of any charge, etc.) is to be registered by the company in accordance with Section 77

↓

What is treated as modification?

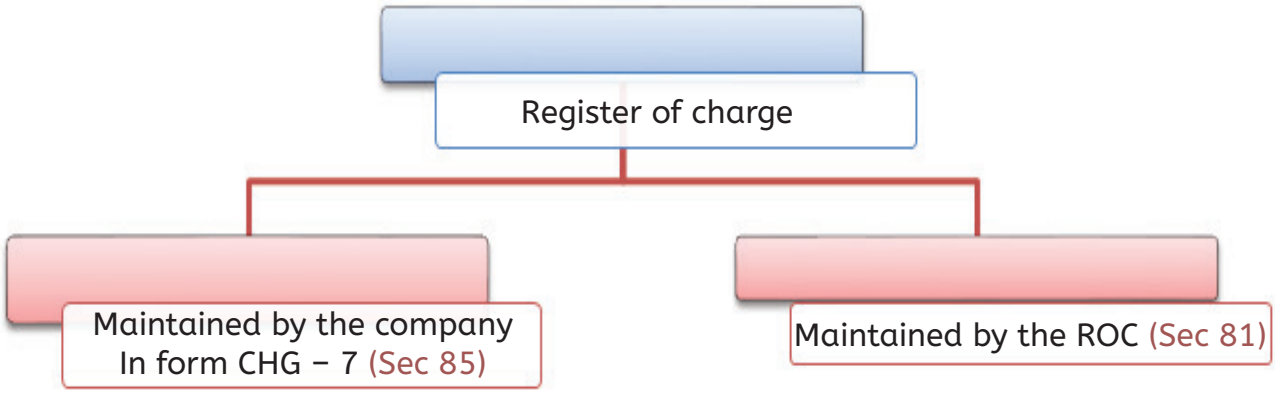
- Modification' includes variation in any of the terms and conditions of the agreement including change in rate of interest which may be by mutual agreement or by operation of law. Variation in extent or operation of any charge is also a kind of modification. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.
- Some other examples of 'modification' are as under:
  - ✓ Where the charge is modified by varying any terms and conditions of the existing charge through an agreement;
  - ✓ Where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
  - ✓ Where the modification is by ceding a pari passu charge;
  - ✓ Where there is change in rate of interest (other than bank rate);
  - ✓ Where there is change in repayment schedule of loan; (not applicable in case of working loans which are repayable on demand); and
  - ✓ Where there is partial release of the charge on a particular asset or property.
- Issue of Certificate of Modification: Where the particulars of modification of charge are registered under section 79, the Registrar shall issue a certificate of modification of charge in Form CHG-3. The certificate so issued by the Registrar shall be conclusive

evidence that the requirements of Chapter VI of the Act and the rules made there under as to registration of modification of charge have been complied with.

6.7 Deemed Notice of Charge (Section 80)

- Where any charge on any property or assets of a company or any of its undertakings is registered under section 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.
- Thus, every person needs to be cautious or careful when he desires to acquire any asset or property of a company and must enquire whether such asset or property is subject to any charge by going through the record of charges maintained at the office of Registrar of Companies before entering into the transaction. He shall be deemed to have notice of charge from the date of its registration. In case he enters into the transaction without making any enquiry and later on suffers loss because of charge, he cannot succeed against the company for incurring loss, for it shall be deemed that he had notice of charge.
- Example: Manas Products Limited obtained a term loan of ₹40 lacs from Paisa Commercial Bank Limited by creating a charge on one of its office buildings and the charge was duly registered. Later on, if the building is sold to Vishal, he is deemed to have notice of such charge. In other words, it is presumed that Vishal knew beforehand that the building was mortgaged to the bank for obtaining a loan. He cannot plead against such presumption by contending that he did not know about the charge if he suffers any loss at a later date because of the mortgage.

Register of Charges



Register of charges maintained by the company –

- Shall be preserved permanently.
- Shall kept at the registered office of the company.
- Can be maintained in physical form or electronic form.
- Entry in the register need to be made in chronological order within 7 days of Transaction.
- Shall be preserved under the custody Of CS or a person appointed by director
- Shall be authenticated by CS or person Appointed by director.
- Shall be available for inspection to the Member free of cost and for non-member on payment of prescribed fees.
- Copy/extract of register can be obtained on payment of prescribed fees which Shall not be more than Rs 10 per page.
- The instrument creating charge need to be preserved for a period of 8 years from the satisfaction of charge.

Register of Charges maintained by ROC –

- Registrar shall, keep a register containing particulars of the charges registered.
- Particulars of charges maintained on the Ministry of Corporate Affairs portal (www.mca.gov.in) shall be deemed to be register of charges for the purposes of Section 81.

6.8 Satisfaction of Charges (Section 82)

- Company has to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the Form CHG-4.
- The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction In case of a specified IFSC public company, the intimation needs to be given within a period of 300 days from the date of such payment or satisfaction
- Section 82 also extends the period of intimation from 30 days to 300 days. Accordingly, it is 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 300 days of such payment or satisfaction on payment of prescribed additional fees

- On receipt of intimation, the Registrar shall send a notice to the holder of the charge calling upon him to show cause within 14 days, as to why payment or satisfaction in full should not be recorded.

If no cause is shown by the charge-holder	If any cause is shown by the charge-holder
The Registrar shall order entering of a memorandum of satisfaction in the register of charges kept by him and accordingly, he shall inform the company of having done so.	The Registrar shall record a note to that effect in the register of charges and inform the company.
However, no notice is required to be sent, in case the intimation to the Registrar in this regard is in Form CHG-4 and signed by the holder of charge.	

In case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

6.9 Power of Registrar to make entries of Satisfaction and release in absence of intimation from Company (Section 83)

- Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.
- Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that:
  1. the debt secured by charge has been paid or satisfied in whole or in part or
  2. that the part of the property or undertaking charged has been released from the charge or
  3. has ceased to form part of the company's property or undertaking,

  then he may enter in the register of charges a memorandum of satisfaction that:
  1. the debt has been satisfied in whole or in part; or
  2. the part of the property or undertaking has been released from the charge Or

3. has ceased to form part of the company's property or undertaking.

- Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
- Issue Certificate: In case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG5.

6.10 Intimation of appointment of Receiver or Manager to the Company and the Registrar (Section 84)

- Section 84 of the Act of 2013 is about the appointment of a receiver or manager and of giving intimation thereof to the company and the Registrar.
- Accordingly,
  - ✓ if any person obtains an order for the appointment of a receiver or a person to manage the property which is subject to a charge, or
  - ✓ if any person appoints such receiver or person under any power contained in any instrument,

he shall give notice of such appointment to the company and the Registrar along with a copy of the order or instrument within 30 days from the passing of the order or making of the appointment.

The Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

The person appointed as above shall give a notice in form CHG-6 on being appointed as well as on ceasing to hold such appointment to the company and registrar. In turn, the registrar shall resister such notice.

Company's Register of Charges (Section 85)

This Section is removed from syllabus as per ICAI Notification.

6.11 Punishment for Contravention (Section 86)

If a company contravenes any of the provisions relating to the registration of charges or modification or satisfaction of charges, the punishment shall be as under:

(i) For Company: Fine: 5 lakhs

(ii) Every officer of the company who is in default shall be punishable with: Fine: `50,000

+

He will also be liable under Section 447 if any person wilfully furnishes:

- ✓ any false or incorrect information; or
- ✓ knowingly suppresses any material information; which is required to be registered under Section 77

6.12 Rectification by Central Government of the Register of Charges (Section 87)

- Section 87 of the Act of 2013 empowers the Central Government (now power delegated to Regional Director) to order rectification of Register of Charges in the following cases of default:
  1. when there was omission in giving intimation to the Registrar with respect to payment or satisfaction of charge within the specified time;
  2. when there was omission or mis-statement of any particulars in any filing previously made to the Registrar.

  Such filing may relate to any charge or any modification of charge or with respect to any memorandum of satisfaction or other entry made under Section 82 or Section 83.
- Only if the Central Government is satisfied: -
  (a) That the omission to do so within the prescribed time: -
    (i) is accidental; or
    (ii) is due to inadvertence; or
    (iii) is not of a nature, as to prejudice the position of creditors /shareholders,
  (b) That it is just and equitable to grant relief on other grounds.
- The application in Form CHG-8 shall be filed by the company or any interested person and order of rectification shall be made by the Central Government on such terms and conditions as it deems just and expedient.
- "According to Rule 12 of the Companies (Registration of Charges) Rules, 2014:

  The Central Government may on an application filed in Form No. CHG-8 in accordance with section 87-
  (a) direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the 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 a period of 300 days from the date of such payment or satisfaction."

List of Sections

SUMMARY

1. Charge:

Registration of Security for loan.

2. Types of charge:

Fixed:

(i) Charge against specific property

(ii) No dealing of charge asset without permission

Floating:

(i) Charge against fluctuating purpose

(ii) Dealing are permissible in the ordinary course of business.

3. Registration of charge:

- Duty of company
- by submitting CHG-1 or 9 (for debentures)
- Within 30 days of creation of charge

4. Time Limit for registration

Charge created before 02.11.2018

↓

Register charge within 30 days of creation

↓

If not registered in 30 days

↓

Register within 300 days of creation on payment of additional fees

↓

If not registered in 300 days

↓

Register within 6 months from 2.11.2018 with additional fees.

Charge Created on or after 2.11.2018

↓

Register charge within 30 days of creation

↓

If not register in 30 days

↓

Register in next 30 days (i.e. within 60 days from Creation) with additional fees

↓

If not registered in next 30 days

↓

Register within a further period of 60 days with ad valorem fees.

5. Certificate and effect of registration :

Certificate of registration in Form CHG-2, consider as conclusive evidence.

6. Registration by charge holder :

- If company fails to register charge holder may apply to ROC.
- ROC send notice to company, allowing 14 days, no response ROC allow registration.

7. Satisfaction of Charge :

- On payment of charge in full, company intimate ROC in form CHG-4 within 30 days.
- An extension can be given to maximum 300 days of satisfaction.
- ROC will provide 14 days to charge holder, if no objection received ROC shall issue certificate in form CHG-5.
- Further, if no intimation received from company ROC shall inform party within 30 days and issue certificate in form CHG-5.

8. Appointment of receiver or Manager :

- Appointment

  As per order or agreement.
- Notice given to company and ROC in form CHG-6.

9. Consequence of Non-Registration :

- Charge is void and treated as unsecured creditor.
- Penalty:

  For Company: Fine: 5 lakhs

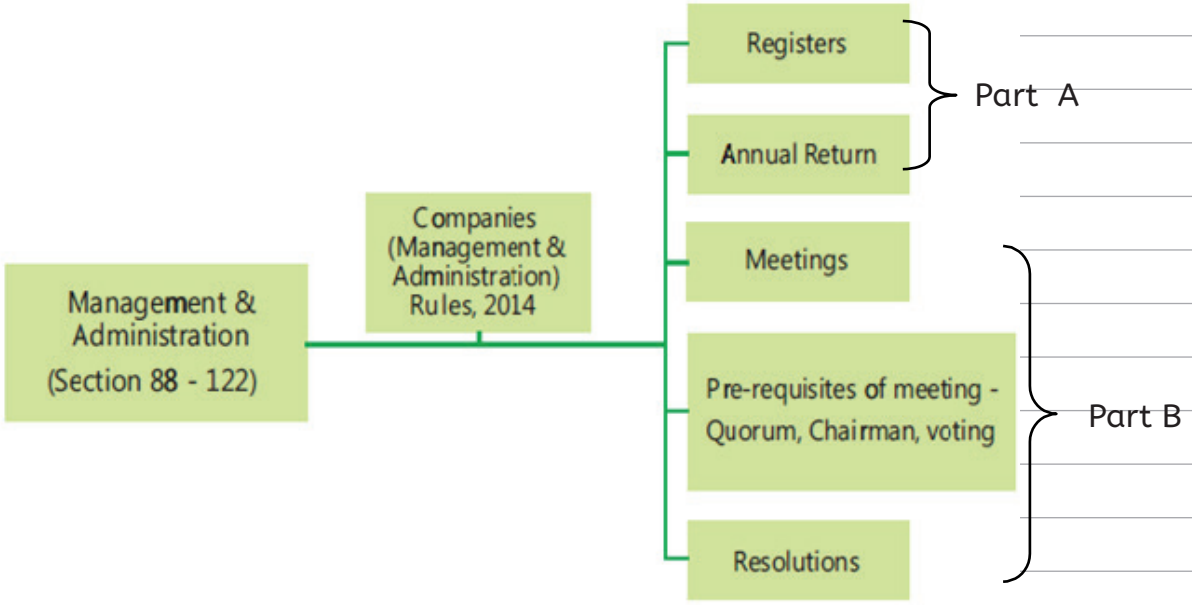
  Every officer of the company who is in default shall be punishable with:

  Fine: ₹50,000

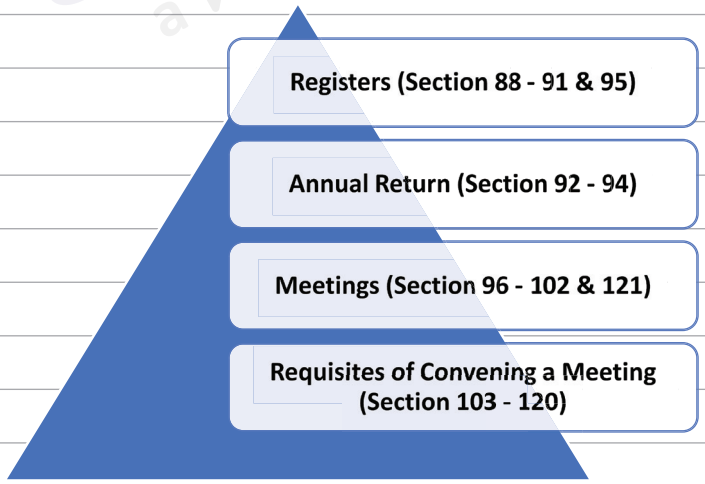
  +

  He will also be liable under Section 447 if any person wilfully furnishes:

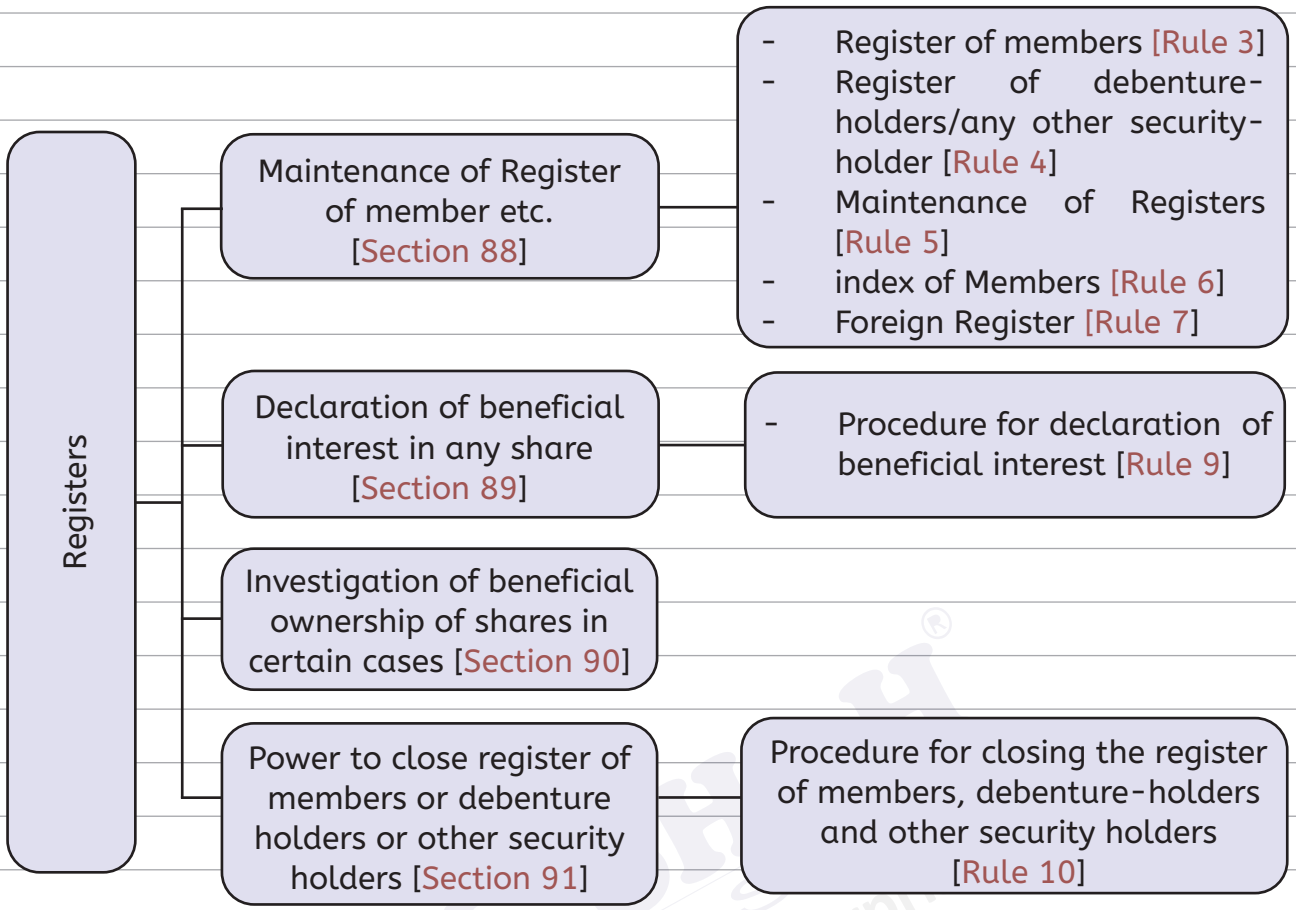
VII MANAGEMENT AND ADMINISTRATION



Let us understand the structure of this Chapter of Companies Act, 2013 which deals with the provisions related to Management & Administration of Company. It runs from Section 88 to 122 and is divided under the following headings–



PART A: MAINTENANCE OF REGISTERS AND RETURNS



7.1 Register of members (Section 88):

Rule 3	Particular in register of members: Section 88(1)(a) requires a register of members to be maintained and that the holding of each class of equity and preference shares by each member residing in or outside India will have to be shown separately in the register of members.  Every company limited by shares, shall, from the date of its registration, maintain a register of its members in Form MGT – 1. In case of a company not limited by shares, the register shall contain the following particulars, in respect of each member– 1. Name of the member, address (registered office address in case the member is a body corporate); email address; Permanent Account Number or Corporate Identity Number ('CIN'); Nationality;, name and address of the nominee;

	2. Date of becoming the member; 3. Date of cessation; 4. Amount of guarantee, if any; 5. Any other interest, if any; and o Instructions, if any, given by the member with regard to sending of notices, etc. 6. Any order passed by the authority attaching the shares or relating to dividends is also required to be referred in the register of members. 7. Hypothecation and pledge of shares
Rule 4	Particular in register of debenture holder/any other security holder: Every company which issues or allots debentures or any other security shall maintain a separate register for debenture holder or security holder in Form MGT–2.
Rule 5	1. Time period for entries in register: As per Rule 5, entries have to be made in the Register within 7 days of the date of approval by the Board or Committee thereof by approving the allotment or transfer as the case may be. 2. Place where register shall be maintained: Rule 5 also states that the registers shall be maintained at: • Registered office of the company • Any other place within the city, town or village in which the registered office is situated, by passing special resolution in the general meeting. • Any other place in India in which more than 1/10thof the total members entered in the register of members reside, after by passing special resolution in the general meeting. 3. Updating of rewards of members: Rule 5 also states that the changes relating to the status of the member should be effectively captured and updated accordingly in the relevant register. If any change occur in the status of a member or debenture-holder or any other security holder whether due to death or insolvency or change of name or due to transfer to Investor Education Protection Fund or due to any other reason, entries shall be made in the respective registers.

Rule 6	Index of names: The maintenance of index is not necessary where the number of members is less than 50. It also states that the company shall make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register. Register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.
Rule 7	Foreign Register: ✓ A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register, called foreign register containing the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India. ✓ The company shall, within 30 days from the date of the opening of any foreign register, file with the Registrar of Companies notice of the situation of the office in the prescribed from Form No. MGT – 3 along with the fee where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within 30 days from the date of such change or discontinuance, as the case may be, file notice with the ROC of such change or discontinuance. ✓ A foreign register shall be deemed to be part of the company's register ('principal register') of members or of debenture-holders or of any other security holders or beneficial owners, as the case may be. The foreign register shall be maintained in the same format as the principal register. ✓ Entries in the foreign register shall be made after the Board of Directors or its duly constituted committee approved the allotment or transfer of shares, debentures or any other securities, as the case may be ✓ The company shall – 1. Transmit to its registered office in India, a copy of every entry in any foreign register within 15 days after the entry is made; and 2. Keep at such office a duplicate register for all the purposes of this Act, be deemed to part of the principal register.

Penalty	The company shall be punishable with: Fine: ₹300,000 and every officer of the company who is in default shall be punishable with: Fine: ₹50,000 The offence under this section is a compoundable offence

7.2 Declaration in respect of beneficial interest in any share (Section 89)

What do you mean by beneficial interest?	• A beneficial interest is the right to receive benefits on shares held by another party. Beneficial interest is often referred to in matters concerning trusts, whereby one has a vested interest in the trust's assets. • A beneficial owner is a person who enjoys the benefits of ownership even though the title to some form of property is in another name
What does Section 89 specify?	• A declaration is to be given to the company by any person who is a member but not holding the beneficial interest in such shares. Further the person holding beneficial interest shall declare the nature of his interest and other particulars on those shares to the company. • Any changes in the beneficial interest are also to be declared. • 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. • The Central Government may, by notification, exempt any class or classes of persons from complying with any of the requirements of this section, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.".

	• Exemption to Government Company- In case of Government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar - Section 89 shall not apply • The section also provides that the company shall make note of all the above incidents, as and when they occur and intimate the same to ROC within the time and manner as prescribed in Rule 9 of the Companies (Management & Administration) Rules, 2014.
Rule 9	Rule 9 prescribes the procedure to be followed in case of declaration in respect of beneficial interest in any shares – 1. A person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest such share, shall file with the company, a declaration to that effect in Form MGT – 4, within 30 days from the date on which his name is entered in the register of members of such company. In case of an unlisted public company and private company which is licensed to operate from the IFSC, for the word "30 days" read as "60 days". 2. Any change in the beneficial interest of the same shall be intimated to the company within 30 days in Form MGT – 4. 3. Every person holding and exempted from furnishing declaration or acquiring a beneficial interest in shares of a company not registered in his name, shall file with the company, a declaration disclosing such interest in Form MGT – 5, within 30 days after acquiring such beneficial interest in the shares of the company. 4. Where any declaration is received by the company under section 89, the company shall make note of such declaration in the register of members and shall file, within a period of 30 days from the date of receipt of declaration by it, a return in Form MGT – 6 with the ROC in respect of such declaration with the required fee.

Penalty for default under section 89	Two kinds of penal provisions are included under section 89 – Related to persons required to make a declaration: Those who are required to make a declaration, but fail to do so. The penalty for their failure, without any reasonable explanation, is fine which extends upto ₹50,000 and additionally ₹200 per day during which the failure continues subject to a maximum of ₹500,000. • Related to company: The Company which fails to comply with the provisions of section 89 makes punishable the company and every officer of the company who is in default shall be liable to a penalty of ₹1,000 for each day during which such failure continues, subject to a maximum of ₹500,000 in the case of a company and ₹200,000 in case of an officer who is in default.

7.3 Investigation of beneficial ownership of shares in certain cases (Section 90)

(Amended as per Companies (Significant Beneficial Owners) Amendment Rules, 2019)

1. Declaration by SBO:
   - i. Every individual who is a Significant Beneficial Owner' (SBO) in the Reporting Company, , is required to file a declaration with the Reporting Company in Form BEN-1 within 90 days from such commencement. In turn, the Reporting Company will be required to file the said disclosure with the Registrar within 30 days of receiving it from the SBO.

   - ii. Any individual, who subsequently becomes a significant beneficial owner in the Reporting Company or whose significant beneficial ownership undergoes any change, is required to file a declaration with the Reporting Company in Form BEN-1 within 30 days of such acquisition or change.
   - iii. If an individual becomes a significant beneficial owner in the Reporting Company or her significant beneficial ownership undergoes any change within 90 days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of 90 days from the date of commencement of said rules, and the period of 30 days for filing will be reckoned accordingly.
   - 'Significant Beneficial Owner' (SBO) is defined as an individual who–

i. acting alone or together, or

ii. through one or more persons or trust,

Possess one or more of the following rights or entitlements in the Reporting Company (i.e. the company in respect of which SBO declaration is required to be filed)–:

i. holds indirectly, or together with any direct holdings, not less than 10% of the shares;

ii. holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;

iii. has the right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;

iv. Has the right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

- "Significant influence" means the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

2. Direct and Indirect shareholding: When an individual holds any rights or entitlement directly in the reporting company, the said individual shall not be considered as SBO. An individual will be considered to hold a right or entitlement directly in the Relevant Company, if he satisfies any of the following criteria:

1. the shares in the Relevant Company representing such right or entitlement are held in the name of such individual;
2. the individual holds or acquires a beneficial interest in the shares of the Relevant Company under section 89, and has made a declaration in this regard to the Relevant Company.

Indirect shareholding is, when a shareholder is a (a) Body corporate; (b) Hindu Undivided Family(c) Partnership (d) Trust (e) Pooled investment vehicle.

3. Onus on the reporting company: The duty is on the reporting company to identify a SBO and cause such SBO to make a declaration in the prescribed Form. Every reporting company shall give notice in the Form BEN- 4 to any person whom the company knows or has reasonable cause to believe-

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or

another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued, and who is not registered as a significant beneficial owner with the company as required under this section.

4. Every company shall maintain a register of significant beneficial owners in Form No. BEN-3 which shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding 50 rupees for each inspection.

5. Application to Tribunal: The company shall,–

(a) Where that person fails to give the company the information required by the notice in form no. BEN4 within 30 days of date of notice; or

(b) Where the information given is not satisfactory,

↓

Apply to the Tribunal within a period of 15 days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of the right to receive dividend or any other distribution in relation to the shares in question; suspension of voting rights in relation to the shares in question; any other restriction on all or any of the rights attached with the shares in question.

↓

The Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of 60 days of receipt of application or such other period as may be prescribed.

↓

The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed within a period of 1 year from the 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 such shares shall be transferred, without any restrictions, to the authority constituted under section 125, in such manner as may be prescribed

6. NON-APPLICABILITY:

The amended Rules will not be applicable where the shares of the Relevant Company are held by:

(a) the Investor Education and Protection Fund Authority;

(b) its holding company which has complied with section 90 of CA 2013 and the Rules, provided that the details of such holding company are reported in Form BEN-2;

(c) the Central Government, any State Government or any local authority;

(d) an entity/ body corporate controlled wholly or partly by the Central Government and/ or State Government(s);

(e) investment vehicles such as mutual funds, alternative investment funds (AIFs), Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InVITs) registered with and regulated by the Securities and Exchange Board of India; and

(f) investment vehicles regulated by the Reserve Bank of India, Insurance Regulatory and Development Authority of India or Pension Fund Regulatory and Development Authority.

7. Penalty:

Offence	Penalty
Any person fails to make a declaration as required	Fine: ₹50,000 + upto ₹1000 per day where the failure is a continuing one upto maximum ₹200,000
Any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made	he shall be liable to action under section 447
If a company, fails to maintain register and file the information or denies inspection as	The company shall be liable to a penalty of ₹100,000 + upto ₹500 per day where the failure is a continuing one upto maximum ₹500,000. Every officer of the company who is in default shall be liable to a penalty of ₹25,000 + upto ₹200 per day where the failure is a continuing one upto maximum ₹100,000.

8. Exemption to Government Company- In case of Government Company - Section 90 shall not apply. The exemption shall be applicable to a government company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.

7.4 Power to close register of members or debenture-holders or other security holders (Section 91)

- Company may close the register of members or the register of debenture-holders or the register of other security holders for any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any one time, subject to giving of previous notice of at least 7 days.
- Notice of 7 days has to be given in the manner specified in Rule 10:

  If such company is a listed company or intends to get its securities listed:

  ✓ By advertisement at least once in a vernacular newspaper in the principal vernacular language of the district and having a wide circulation in the place where the registered office of the company is situated, and

  ✓ at least once in English language in an English newspaper circulating in that district and having wide circulation in the place where the registered office of the company is situated and

  ✓ publish the notice on the website as may be notified by the Central Government and on the website.

  The private companies have been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of the registers.
- As per Rule 7, a foreign register shall be open to inspection and may be closed, and extracts may be taken there from and copies thereof may be required, in the same manner, as is applicable to the principal register, except that the advertisement before closing the register shall be inserted in at least two newspapers circulating in the place where in the foreign register is kept.
- Penalty: If the registers is closed without giving the notice as prescribed, or after giving a shorter notice than that so provided, or for a continuous period or an aggregate period in excess of the limits specified,

  Fine: ₹5,000 per day subject to a maximum of ₹1,00,000 during which the register is kept closed.

  However, the offence is a compoundable offence under section 441 of the Companies Act, 2013.

7.5 Annual Return (Section 92)

Every company is required to file in with the ROC, the annual return as prescribed section 92, in Form MGT– 7 as except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A.

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

- The Central Government may prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.
- Signing Annual return:
  - ✓ Annual Return has to be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice.
  - ✓ However, in relation to One Person Company and small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

- The annual return, filed by:

(i) A listed company or (ii) A company having paid-up share capital of 10 crore or more; or a turnover of 50 crore or more,	Shall be certified by a Company Secretary in practice and the certificate shall be in Form MGT – 8. It must state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act.

- The extract of annual return shall be attached with the Board's Report in Form MGT – 9.
- A copy of annual return shall be filed with the RoC within 60 days from the date on which the Annual General Meeting ('AGM') is held or where no annual general meeting is held in any year within 60 days from the date on which the annual general meeting should have been held, along with the reasons for not holding the AGM.
- As per Rule 15, copies of annual return along with the copy of certificates and the documents required to be annexed thereto shall be preserved for a period of 8 years from the date of filing of the annual return.
- Penalty for contravention–

Offence	Penalty
If any company fails to file its annual return before the expiry of the period specified	Such company and its every officer who is in default shall be liable to a penalty: Fine: ₹10,000 ₹100 per day during which such failure continues, subject to a maximum of ₹2,00,000. Every officer of the company who is in default shall be liable to a penalty of ₹50,000
If a company secretary in practice, certifies the annual return otherwise than in accordance with this section and the rules	He shall be punishable with fine of ₹200,000

Section 93: Omitted as per Notification dated 3rd Jan, 2018

7.6 Place of keeping and inspection of registers, returns, etc (Section 94)

- Place where register shall be maintained: Rule 5 also states that the registers shall be maintained at:

Registered office of the company	Any other place in India in which more than 1/10th of the total members entered in the register of members reside, after by passing special resolution in the general meeting.

- As per Rule 14, the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours, at such reasonable time on every working day as the board may decide without payment of any fees any other person on payment of such fees as may be specified in the articles of association of the company but not exceeding 50 for each inspection

- Any such member, debenture-holder, other security holder or beneficial owner or any other person may–
  (a) Take extracts from any register, or index or return without payment of any fee; or
  (b) Require a copy of any such register or entries therein or return on payment of such fees not exceeding ₹10 for each page. Such copies or entries or return shall be supplied within 7 days of deposit of fee.

  Such particulars of the register or index or return as may be prescribed shall not be available for inspection or for taking extracts or copies.

- The following particulars of the register or index or return in respect of the member of a company shall not be made available for any inspection or for taking extracts or copies under section 94, namely:-
  (I) address or registered address (in case of a body corporate);
  (ii) e-mail ID
  (iii) Unique Identification Number
  (iv) PAN Number

- Penalty for refusing the inspection or making any extract or copy required –

  Such company and its every officer who is in default shall be liable to a penalty:

  Fine: ₹1000 per day during which the refusal or default continues, subject to a maximum of ₹1,00,000.

  The Central Government may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

- Preservation of register of members etc. and annual return– (Rule 15)

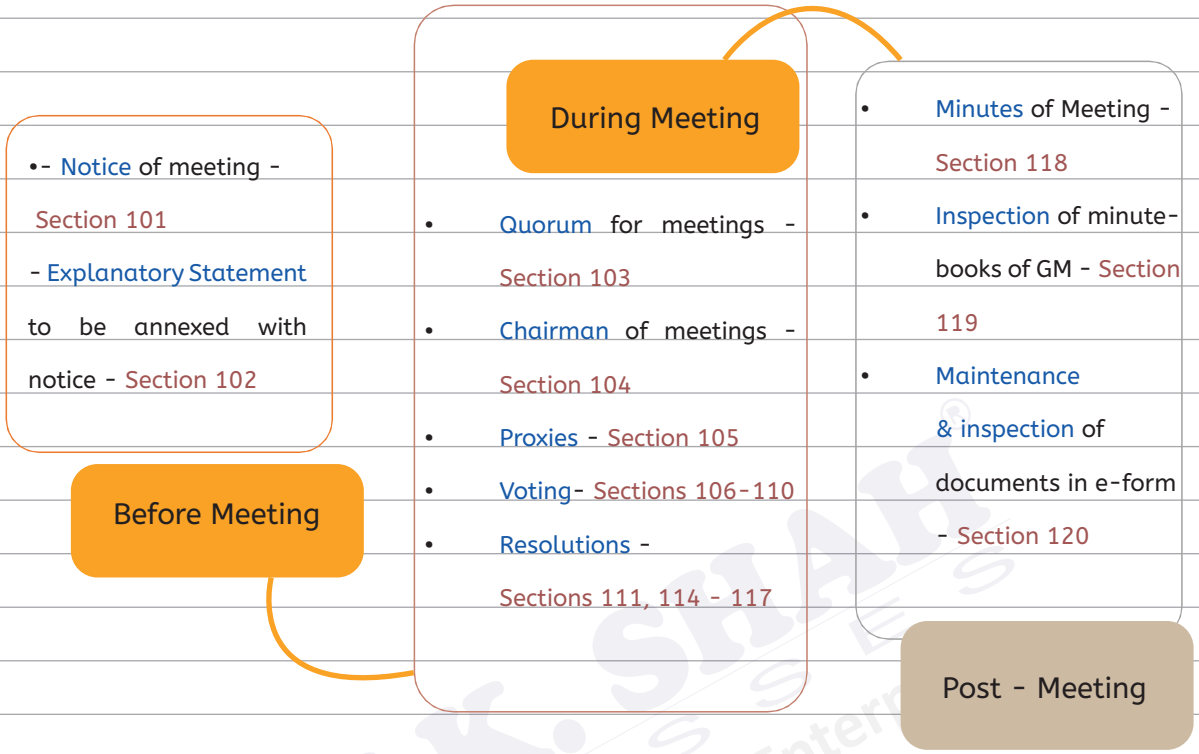
Following shall be preserved permanently:	Following shall be preserved for 8 Years:
1. The register of members along with the index	1. Register of debenture holders/ other security holders
2. Foreign Register	2. Copies of documents filled with ROC

7.7 Registers, etc., to be evidence (Section 95)

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act

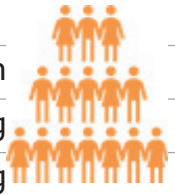
PART B: PRE-REQUISITES OF A MEETING

Before we move on to our next concept of types of meetings and the procedure to convene them as per the Companies Act, 2013, let us understand the terms which are important to know for convening a meeting.



Key terms:

a) **General Meeting:** It is the meeting of the shareholders of a company to be held as per the provisions of the Act. The general meeting can be an Annual General Meeting (AGM) or an Extraordinary General Meeting (EGM). An annual general meeting (AGM) is a mandatory yearly gathering of a company's shareholders. The objective of holding an AGM is to provide an opportunity to members to discuss the functioning of the company and take steps to protect their interests. They can discuss any matter relating to the conduct of the affairs of the company. An Extraordinary General Meeting (EGM) can be defined as a meeting of shareholders which is not an AGM. The objective of holding an EGM is to discuss any matter of urgent importance which cannot be postponed till the next Annual General Meeting.



(b) **Board Meeting:** It is the meeting of the Board of Directors of a company.

c) Class Meeting: It is the meeting of particular class of persons, like, creditors, preference shareholders, debenture- holders, etc

The pre-requisites of the meetings are, in general, applicable to all kinds of meetings, although the time limits may differ and there might be a specific mention of a certain type of meeting in the respective section.

NOTICE OF A MEETING [SECTION 101]

Section 101 (1) of the Companies Act, 2013 states that in order to properly call a general meeting, a notice of at least 21 clear days is required to be given either in writing or through electronic mode in such manner as may be prescribed.

In case of Specified IFSC Public Company - Section 101 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.

In case of section 8 company, in clause (1) of Sub-section (1) of Section 101 for the words "21 days", the words "14 days" shall be substituted. This exception shall be applicable to a section 8 company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.

Contents of the Notice [Section 101(2)]

Every notice of a meeting must state the place, date, day and the hour of the meeting and shall contain a statement of business to be transacted at that meeting.

Persons entitled to receive the Notice of the General Meeting [Section 101(3)]

Notice needs to be served to

* Members
* Legal representative of the deceased member
* Assignee of the insolvent member
* Auditor/auditors of the company
* Every director of the company

Meaning of 21 clear days:

The term '21 clear days' means that the date on which notice is served and the date of meeting are excluded while sending the notice of a meeting. A company cannot curtail the requirement of 21 clear days through its Articles of Association.

Note: Where a notice of a meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted

Sending of notices through electronic mode has been statutorily recognized. Accordingly, it is permitted for a company to give notice through electronic mode.

The expression "electronic mode" shall mean any communication sent by a company through its authorized and secured computer programme which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

- A notice may be sent through e-mail as a–
  - Text; or
  - As an attachment to e-mail; or
  - As a notification providing electronic link; or
  - Uniform Resource Locator for accessing such notice.

- Rule 18(3)
  - The e-mail shall be addressed to the person entitled to receive such e-mail as per the records of the company as provided by the depository.
    It is to be noted that the company shall provide an advance opportunity at least once in a financial year, to the member to register his e-mail address and the changes therein and such request may be made by only those members who have not got their e-mail ID recorded or to update a fresh e-mail ID and not from the members whose e-mail ids are already registered.
  - The subject line in e-mail shall state the name of the company, notice of the type of meeting, place and the date on which the meeting is scheduled.
  - If notice is sent in the form of a non-editable attachment to e-mail, such attachment shall be in the Portable Document Format or in a non-editable format together with a 'link or instructions' for recipient for downloading relevant version of the software.
  - The company's obligation shall be satisfied when it transmits the e- mail and the company shall not be held responsible for a failure in transmission beyond its control.

- If a member entitled to receive notice fails to provide or update relevant e-mail address to the company, or to the depository participant as the case may be, the company shall not be in default for not delivering notice via e-mail.
- The company may send e-mail through in-house facility or its registrar and transfer agent or authorise any third-party agency providing bulk e-mail facility.
- The notice shall be placed simultaneously on the website of the Company, if any, and on the website as may be notified by Central Government.

Non-receipt of Notice: According to Section 101(4) any accidental omission to give notice to or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting. The onus is on the company to prove that the omission was not deliberate.

Shorter notice of less than 21 days

As noted earlier, usually general meetings need to be called by giving at least a notice of 21 clear days.

However, a general meeting may be called after giving shorter notice than that specified in sub-section (1) of Section 101, if consent, in writing or by electronic mode, is accorded thereto–

(i) in the case of an annual general meeting, by not less than ninety-five percent. of the members entitled to vote thereat; and

(ii) in the case of any other general meeting, by members of the company–

(a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than ninety-five percent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, not less than ninety-five percent. of the total voting power exercisable at that meeting.

Where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of sub section (1) of section 101 in respect of the former resolution or resolutions and not in respect of the latter.

Authority to call a General Meeting

A general meeting (AGM or EGM) has to be called by the Board of Directors. An individual director does not have the authority to call a General Meeting. Any notice of General Meeting given without the sanction of the Board is invalid; however, the same can be ratified by the Board. For calling a General Meeting, the Board passes a Board Resolution.

EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE [SECTION 102]6

Section 102 of the Companies Act, 2013 mentions that where any special business is to be transacted at the company's general meeting, then an 'Explanatory Statement' shall be annexed to the notice calling such general meeting. The 'Explanatory Statement' must specify,

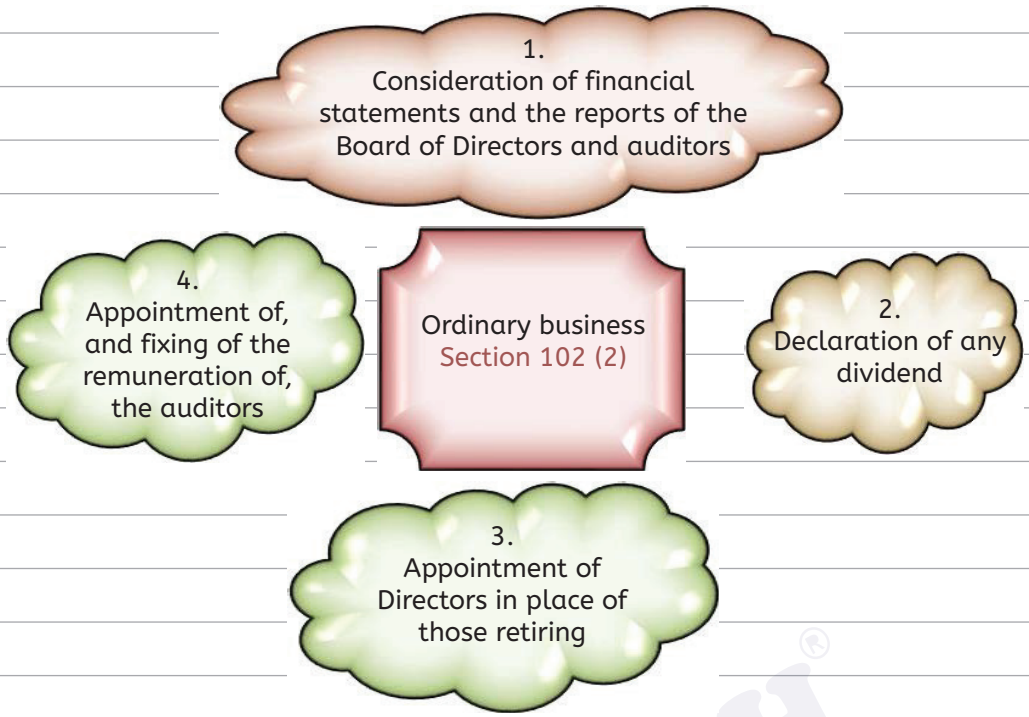
(a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of–
   (i) every director and the manager, if any;
   (ii) every other key managerial personnel; and
   (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);

(b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Ordinary business and Special business: Companies Act, 2013 sets out two types of businesses as under:

- Ordinary business (OB)
- Special business. (SB)

Ordinary business includes the following business



- In the case of AGM, all business to be transacted thereat except the ones stated above are special business. At the EGM, every business transacted is a special business. Explanatory statement is not required for transacting Ordinary Business.

- Proviso to section 102 (2) sets out that if any item of special business relates to, or affects, any other company, the extent of shareholding in that other company of every promoter, director, manager and of every other KMP shall be disclosed, if the extent of shareholding is 2% or more of the paid-up share capital of that other company.

- In case any item of business refers to any document which is to be considered at the meeting, then the time and place where such document can be inspected should also be specified in the explanatory statement.

- Effect of non-disclosure/insufficient disclosure in Explanatory Statement [Section 102(4)]: If as a result of non-disclosure or insufficient disclosure in explanatory statement, any benefit accrues to a promoter, director, manager, other key managerial personnel or their relatives, such person shall hold such benefit in trust for the company, and shall, without prejudice to any other action being taken against him under this Act or under any other law for the time being in force, be liable to compensate the company to the extent of the benefit received by him.

Penalty for contravention of the provisions of section 102

Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher. [Section 102 (5)]

QUORUM FOR MEETINGS [SECTION 103]

Quorum means the minimum number of members who must be personally present in order to constitute a valid meeting. Section 103 of the Companies Act, 2013 states that unless the articles of the company provide for a larger number, the quorum for the meeting shall be as follows–

Public Company	Private Company
If number of members is not more than 1000, quorum shall be 5 members personally present. if the number of members is more than 1000 but upto 5000, then the quorum shall be 15 members personally present If the number of members exceed 5000, then quorum shall be 30 members personally present.	Two members personally present shall be the Quorum.

It is to be noted that the term 'members personally present' as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Adjournment of Meeting for want of Quorum [Section 103 (2) and (3)]

If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company–

(a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or

(b) the meeting, if called by requisitionists under section 100, shall stand cancelled:

Provided that in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not less than three days' notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.

Quorum not present at the adjourned meeting also: Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Note:

The following points have been prescribed by Secretarial Standard – 2:

1. One person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one Member present in person for the purpose of Quorum. However, to constitute a meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than one thousand members with a Quorum requirement of five members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more member is personally present.
2. Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.
3. Members who have voted by Remote e-voting have the right to attend the General Meeting and accordingly their presence shall be counted for the purpose of Quorum.
4. A Member who is not entitled to vote on any particular item of business being a related party, if present, shall be counted for the purpose of Quorum.
5. The stipulation regarding the presence of a Quorum does not apply with respect to items of business transacted through postal ballot.

CHAIRMAN OF MEETING [SECTION 104]8

Election of Chairman by Members: Section 104 of the Companies Act, 2013 seeks to provide that unless the Articles of Association of the Company otherwise provide, the members, personally present, shall elect among themselves to be the Chairman on a show of hands.

Demand for Poll: The section further provides that if a poll is demanded on the election of

the Chairman, the Chairman elected by show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll, and such other elected person shall be the Chairman for rest of the meeting.

Powers of Chairman: Chairman of the meeting is the person who manages the meetings and ensures that the required decorum of the meeting is maintained at all times, till the meeting is concluded and post that, executes the minutes of the meeting. The Chairman has prima facie authority to decide all questions which arise at a meeting and which require decision at that time. In order to fulfil his duty properly, he must observe strict impartiality.

Chairman to have 'casting vote' if so provided in the Articles: The Chairman has a casting vote in Board Meetings and general meetings, if specifically empowered by the articles of the company. The term 'casting vote' means that in the event of equality of vote on a particular business being transacted at the meeting, the Chairman of the meeting shall have a right to cast a second vote. If there is no provision in the articles for a casting vote, an ordinary resolution on which there is equality of votes is deemed to be dropped.

Exemption to a Private Company- In case of a private company - Section 104 shall apply, unless otherwise specified in respective section or the articles of the company provide otherwise.
This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar.

PROXIES [SECTION 105]

Section 105 of the Companies Act, 2013 read with Rule 19 of the Companies (Management & Administration) Rules, 2014 contain provisions relating to the proxies.

- Appointment of a proxy is an important right of a member of the company. Section 105 (1) provides that any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

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

- Applicability of the sub-section (1) – Unless the articles of a company otherwise provide, this sub-section shall not apply to a company not having a share capital. The Central Government may also prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

According to Rule 19, a member of a company registered under section 8 (companies formed with charitable objects, etc.) shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.

A person can act as proxy on behalf of members not exceeding fifty and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights.

However, a member who is holding more than 10 per cent of the total share capital of the company carrying voting rights may appoint a single person as a proxy and such person shall not act as proxy for any other person or shareholder.

- As a compliance requirement, in every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting, there shall appear with reasonable prominence a statement that a member entitled to attend and vote is entitled to appoint a proxy, or, where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member. [Section 105 (2)]
- The appointment of proxy shall be in Form No. MGT-11.
- If the instrument appointing a proxy is in the prescribed Form, it shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company. [Section 105 (7)]
- The instrument appointing a proxy shall be in writing and signed by the appointer or his attorney duly authorised in writing. If the appointer is a body corporate, the instrument shall be under its seal or be signed by an officer or an attorney duly authorised by the body corporate. [Section 105 (6)]
- Section 105 (4) provides that a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.
- Section 105 (8) provides that every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting,

to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

- **Penalty for default–**
  - ♦ If default is made in complying with section 105 (2), every officer of the company who is in default shall be liable to penalty of five thousand rupees. [Section 105(3)]

  - ♦ If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees.

    Provided that an officer shall not be liable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy. [Section 105(5)]

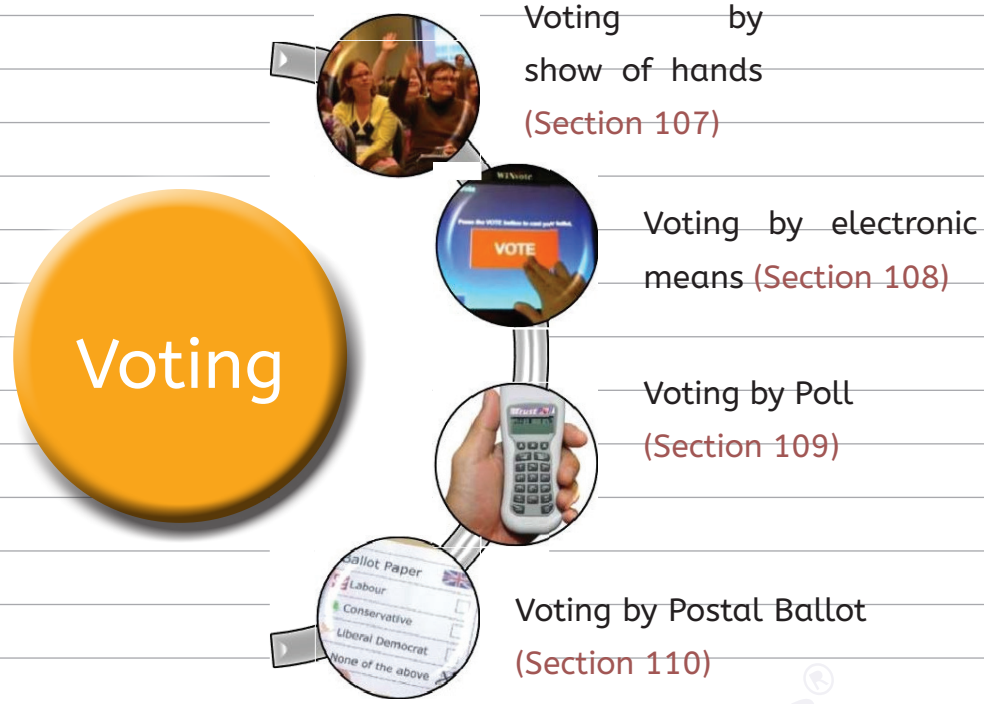
VOTING [SECTION 106-109]

The votes cast by the shareholders play decisive role in the business proposed in General Meetings of a company.

An equity shareholder has the right to vote for every motion. However, as per the Section 47 of the Companies Act, 2013 preference shareholder is entitled to vote only for a resolution pertaining to his rights.

The various modes through which a shareholder can cast his vote are as follows:

- Voting by show of hands – (section 107);
- Voting by electronic means – (section 108);
- Voting by demand of poll – (section 109);
- Voting by Postal Ballot – (section 110).



The right to vote is a personal right of a shareholder and he may use it as he likes it. He may split his vote for and against the resolution.

RESTRICTION ON VOTING RIGHTS [SECTION – 106]

Section 106 (1) indicates the supremacy of Articles of Association and specifies that the Articles of a company 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 presently payable by him to the company have not been paid, or
- in regard to which the company has exercised any right of lien.

Section 106 (2) requires that a company shall not prohibit any member from exercising his voting rights on any other ground except the grounds mentioned as above.

On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him, as the case may be, need not, if he votes, use all his votes or cast in the same way all the votes he uses. [Section 106 (3)]

In other words, on a poll being taken at a meeting of a company, a member having more than one vote or his proxy, need not use all his votes or cast in the same way all the votes he uses.

Also, such member cannot sign a requisition for an extra-ordinary general meeting.

In case of joint shareholders, they must concur in voting unless the articles provide to the

contrary. Regulation 52 of Table F states as under:

(i) In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

(ii) For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

In case of Specified IFSC Public Company - Section 106 shall apply in case of a Specified IFSC public company, unless otherwise specified in the articles of the company.

Note:

Where the articles of the company do not contain any provision restricting the exercise of voting rights of members, then a member cannot be prevented from voting, even though, calls or other sums payable by him have not been paid or the company has exercised any right of lien over his shares. But, where the articles contain any such provision, and the shares forfeited for non-payment of calls have been re-allotted, the new allottee being liable for the balance, if any, remaining unpaid on the shares would not be entitled to vote so long as any calls presently payable on the shares remain unpaid.

VOTING BY SHOW OF HANDS [SECTION 107]11

- According to section 107 (1) of the Companies Act, 2013, unless the voting is demanded by way of poll or by electronic means, the voting shall be done by way of show of hands in the first instance.
- Section 107(2) states that the declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the minutes books shall be conclusive evidence that the resolution has been passed.

VOTING THROUGH ELECTRONIC MEANS [SECTION 108]

Section 108 of the Companies Act, 2013 has introduced the facility of e-voting in respect of prescribed classes of companies. Accordingly, the members of such companies may exercise their right to vote by electronic means.

Rule 20 of the Companies (Management & Administration) Rules, 2014 provides a detailed procedure for electronic voting.

Rule 20 (1) states that "voting through electronic means" shall apply in respect of the

general meetings for which notices are issued on or after the date of commencement of Rule 20.

Companies required to provide its members the facility of exercising right to vote by electronic means

Every company which:

- has listed its equity shares on a recognised stock exchange; and
- has not less than one thousand members;

shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

Exempted entity: However, a Nidhi, or an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Explanation-I.- For the purpose of this sub-rule, "Nidhi" means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Explanation-II.- For the purposes of this rule, the expression-

- ✓ 'cut-off date' means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting. [Explanation II (ii) to Rule 20(2)]
- ✓ 'cyber security' means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction;
- ✓ 'electronic voting system' means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security. [Explanation II(iv) to Rule 20(2)]
- ✓ 'remote e-voting' means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting. [Explanation II(v) to Rule 20(2)]
- ✓ 'secured system' means computer hardware, software, and procedure that -

(a) are reasonably secure from unauthorised access and misuse;
(b) provide a reasonable level of reliability and correct operation;
(c) are reasonably suited to performing the intended functions; and
(d) adhere to generally accepted security procedures; [Explanation II (vi) to Rule 20(2)]

✓ 'voting by electronic mean' includes "remote e-voting and voting" at the general meeting through an electronic voting system which may be the same as used for remote e-voting. [Explanation II (vii) to Rule 20(2)]

Exercise of right to vote through voting by electronic means by a member: A member may exercise his right to vote through voting by electronic means on resolutions and the company shall pass such resolutions in accordance with the provisions of this rule.

A company which provides the facility to its members to exercise voting by electronic means shall comply with the following procedure:

(i) Notice of meeting: The notice of the meeting shall be sent to all the members, directors and auditors of the company either-
(a) by registered post or speed post; or
(b) through electronic means, namely, registered e-mail ID of the recipient; or
(c) by courier service;

(ii) Placing of Notice on website: The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;

(iii) Particulars contained in Notice: The notice of the meeting shall clearly state -
(a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
(b) that the facility for voting, either through electronic voting system or ballot or polling paper shall also be made available at the meeting and members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
(c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;

(iv) The Notice shall:
(a) indicate the process and manner for voting by electronic means;
(b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;

(c) provide the details about the login ID;

(d) specify the process and manner for generating or receiving the password and for casting of vote in a secure manner.

(v) Publication of notice:

The company shall cause a public notice by way of an advertisement to be published, immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4) but at least twenty-one days before the date of general meeting, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having country- wide circulation, and specifying in the said advertisement, inter alia, the following matters, namely:-

(a) statement that the business may be transacted through voting by electronic means;

(b) the date and time of commencement of remote e-voting;

(c) the date and time of end of remote e-voting;

(d) cut-off date;

(e) The manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;

(f) the statement that-

(A) remote e-voting shall not be allowed beyond the said date and time;

(B) the manner in which the company shall provide for voting by members present at the meeting;

(C) a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again in the meeting; and

(D) a person whose name is recorded in the register of members or in the register of beneficial owners maintained by the depositories as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in the general meeting;

(g) website address of the company, if any, and of the agency where notice of the meeting is displayed; and

(h) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by

electronic means:

Provided that the public notice shall be placed on the website of the company, if any, and of the agency;

(vi) Time for opening of e-voting: The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting;

(vii) Option for remote e-voting: During the period when facility for remote e-voting is provided, the members of the company, holding shares either in physical form or in dematerialized form, as on the cut-off date, may opt for remote e-voting.

Provided that once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again:

Provided further that a member may participate in the general meeting even after exercising his right to vote through remote e-voting but shall not be allowed to vote again;

(viii) When to block facility: At the end of the remote e-voting period, the facility shall forthwith be blocked:

Provided that if a company opts to provide the same electronic voting system as used during remote e-voting during the general meeting, the said facility shall be in operation till all the resolutions are considered and voted upon in the meeting and may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e-voting.

(ix) Appointment of scrutinizer(s): The Board of Directors shall appoint one or more scrutinizer, who may be Chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an Advocate, or any other person who is not in employment of the company and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.

Provided that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the electronic voting system;

(x) Willingness of scrutinizer for appointment: the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

(xi) Role of Chairman: The Chairman shall, at the general meeting, at the end of discussion on the resolutions on which voting is to be held, allow voting, as provided in clauses (a) to (h) of sub-rule (1) of rule 21, as applicable, with the assistance of scrutinizer, by use of ballot or polling paper or by using an electronic voting system for all those members who are present at the general meeting but have not cast their votes by availing the remote e- voting facility.

(xii) Counting of votes: The scrutinizer shall, immediately after the conclusion of voting at the general meeting, first count the votes cast at the meeting, thereafter unblock the votes cast through remote e-voting in the presence of at least two witnesses not in the employment of the company and make, not later than three days of conclusion of the meeting, a consolidated scrutinizer's report of the total votes cast in favour or against, if any, to the Chairman or a person authorized by him in writing who shall countersign the same:

Provided that the Chairman or a person authorized by him in writing shall declare the result of the voting forthwith;

Explanation: It is hereby clarified that the manner in which members have cast their votes, that is, affirming or negating the resolution, shall remain secret and not available to the Chairman, Scrutiniser or any other person till the votes are cast in the meeting.

(xiii) Scrutinisers to have access to details relating to members: For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again at the general meeting, the scrutiniser shall have access, after the closure of period for remote e-voting and before the start of general meeting, to details relating to members, such as their names, folios, number of shares held and such other information that the scrutiniser may require, who have cast votes through remote e-voting but not the manner in which they have cast their votes:

(xiv) Maintenance of Register by scrutinisers: The scrutiniser shall maintain a register

either manually or electronically to record the assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the members, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;

(xv) Safe Custody of register: The register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutiniser until the Chairman considers, approves and signs the minutes and thereafter, the scrutiniser shall hand over the register and other related papers to the company.

(xvi) Results along with the report of the scrutiniser to be placed on websites: The results declared along with the report of the scrutiniser shall be placed on the website of the company, if any, and on the website of the agency immediately after the result is declared by the Chairman:

Provided that in case of companies whose equity shares are listed on a recognised stock exchange, the company shall, simultaneously, forward the results to the concerned stock exchange or exchanges where its equity shares are listed and such stock exchange or exchanges shall place the results on its or their website.

(xvii) Date when resolution shall be deemed to be passed: Subject to receipt of requisite number of votes, the resolution shall be deemed to be passed on the date of the relevant general meeting.

Explanation: For the purposes of this clause, the requisite number of votes shall be the votes required to pass the resolution as the 'ordinary resolution' or the 'special resolution', as the case may be, under section 114 of the Companies Act, 2013.

(xviii) Resolution not to be withdrawn: A resolution proposed to be considered through voting by electronic means shall not be withdrawn

DEMAND FOR POLL [SECTION 109]

Section 109 provides that before or on the declaration of result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion or on a demand made by the 'specified' members in that behalf.

- Members who can demand for poll:
  - In case of a company having a share capital, by the members present in person or proxy, where allowed, and having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than ₹ 5,00,000 or such higher amount as may be prescribed has been paid-up.
  - In case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than 1/10th of the total voting power.

- Withdrawal of demand for poll: The demand for a poll may be withdrawn at any time by the persons who made the demand.

- To take forthwith poll demanded for adjournment of meeting or appointment of Chairman: A poll demanded for adjournment of the meeting or appointment of Chairman of the meeting shall be taken forthwith.

- When to take poll demanded on any other question: A poll demanded on any question other than adjournment of the meeting or appointment of Chairman shall be taken at such time, not being later than 48 hours from the time when the demand was made, as the Chairman of the meeting may direct.

- Appointment of sufficient number of scrutinizers: Where a poll is to be taken, the Chairman of the meeting shall appoint sufficient number of scrutinizers to scrutinize the poll process and votes given on poll and to report thereon to him.

- Duties of scrutinizer: The duties of a scrutinizer shall be as follows-
  - To ensure proper conduct of the polling process;
  - To maintain proper records of the poll;
  - To submit a report to the Chairman of the meeting which shall contain the details of votes cast in the favour and against the resolution; and
  - To ensure the compliance of the provisions of section 109 and Rule 21.

- Power of Chairman to regulate: The Chairman of the meeting shall have the power to regulate the manner in which the poll shall be taken.
- Rule 21 lays down the procedure describing the manner in which the Chairman shall get the poll process scrutinized-

- According to Rule 21 (1), the Chairman of the meeting shall ensure that –
  - The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
  - The Scrutinizers are provided with all the documents received by the Company pursuant to sections 105, 112 and section 113.
  - The Scrutinizers shall arrange for Polling papers and distribute them to the members and proxies present at the meeting; in case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio and the Polling paper shall be in Form No. MGT-12.
  - The Scrutinizers shall keep a record of the polling papers received in response to poll, by initialling it.
  - The Scrutinizers shall lock and seal an empty polling box in the presence of the members and proxies.
  - The Scrutinizers shall open the Polling box in the presence of two persons as witnesses after the voting process is over.
  - In case of ambiguity about the validity of a proxy, the Scrutinizers shall decide the validity in consultation with the Chairman.
  - The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
  - The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to the Chairman.
  - Where voting is conducted by electronic means under the provisions of section 108 and rules made thereunder, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting the result thereof.
  - The Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
  - The Scrutinizers shall submit the Report to the Chairman who shall counter-sign the same.
  - The Chairman shall declare the result of voting on poll. The result may either be announced by him or a person authorized by him in writing.
- The scrutinizers appointed for the poll, shall submit a report to the Chairman of the meeting in Form No. MGT-13. The report shall be signed by the scrutinizer

and, in case there is more than one scrutinizer by all the scrutinizers, and the same shall be submitted by them to the Chairman of the meeting within seven days from the date the poll is taken. [Rule 21 (2)]

Applicability of section 101 to 107 and 109 to Private companies- Section 101 to 107 and 109 shall apply unless otherwise specified in respective sections or the articles of the company provide otherwise. This exception shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 of the Act, with the Registrar.

POSTAL BALLOT [SECTION 110]

Section 2(65) defines the term "postal ballot" to mean voting by post or through any electronic mode.

The provisions relating to passing of resolutions by means of 'postal ballot' are contained in Section 110.

Further, Rule 22 of the Companies (Management and Administration) Rules, 2014 contains the provisions relating to procedure to be followed for conducting business through postal ballot.

Extract of Section 110 of the Companies Act, 2013

"(1) Notwithstanding anything contained in this Act, a company–

(a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and

(b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

in such manner as may be prescribed, instead of transacting such business at a general meeting.

Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

(2) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf."

- Section 110 seeks to provide that the Central Government may declare certain

items of business that can be transacted only by postal ballot. In addition, in respect of any other item of business (except ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting) postal ballot may be used.

- Sub-section (2) of Section 110 makes a deeming provision that if a resolution is assented by requisite majority of shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.
- Manner in which postal ballot shall be conducted is prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. The same is described as under:
  - Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their assent or dissent in writing on a postal ballot because postal ballot means voting by post or through electronic means within a period of thirty days from the date of dispatch of the notice.
  - The notice shall be sent either:
    (a) by Registered Post or speed post, or
    (b) through electronic means like registered e-mail id or
    (c) through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days.
  - An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters, namely:-
    (a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
    (b) the date of completion of dispatch of notices;
    (c) the date of commencement of voting;
    (d) the date of end of voting;
    (e) the statement that any postal ballot received from the member

beyond the said date will not be valid and voting whether by post or by electronic means shall not be allowed beyond the said date;

(f) a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and

(g) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

- The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
- The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.
- The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
- Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
- The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.
- The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.
- The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

- The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
- The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.
- The provisions of rule 20 regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis to this rule in respect of the voting by electronic means.
- pursuant to clause (a) of sub-section (1) of section 110, the following items of business shall be transacted only by means of voting through a postal ballot–
  - (a) alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum;
  - (b) alteration of articles of association in relation to insertion or removal of provisions which, under sub-section (68) of section 2, are required to be included in the articles of a company in order to constitute it a private company;
  - (c) change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12;
  - (d) change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised under sub-section (8) of section 13;
  - (e) issue of shares with differential rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 43;
  - (f) variation in the rights attached to a class of shares or debentures or other securities as specified under section 48;
  - (g) buy-back of shares by a company under sub-section (1) of section 68;
  - (h) election of a director under section 151 of the Act;
  - (i) sale of the whole or substantially the whole of an undertaking of a company as specified under sub-clause (a) of sub-section (1) of section 180;
  - (j) giving loans or extending guarantee or providing security in excess of the limit specified under sub-section (3) of section 186:

Provided that any aforesaid items of business under this sub-rule, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to

vote by electronic means under section 108, in the manner provided in that section.

Provided further that One Person Companies and other companies having members upto two hundred are not required to transact any business through postal ballot.

How does the counting happen at the time of postal ballot?

It is important to know here that, a member who is voting by way of postal ballot, has votes in proportion to his share in the paid-up share capital of the company. And in this regard, he need not use all his votes in the same way. Therefore, following types of postal ballots may be received from the shareholders–

(i) Ballots which contain assents;

(ii) Ballots which contain dissents;

(iii) Ballots wherein the member has voted partially assenting, partially dissenting or using not all his shares in any particular way; and

(iv) Invalid ballots (due to absence/mismatch of signature, overwriting, etc.)

The postal ballots shall be segregated as per the above criteria and resolution shall be deemed as passed if assents are greater in number.

CIRCULATION OF MEMBERS' RESOLUTIONS [SECTION 111]

Circulation of members' resolution and statements: While the board enjoys the primacy in setting the agenda of the meetings, the members are given a right under section 111 to propose resolutions for consideration at the general meetings. The number of members required to make a requisition under sub-section (1) of this section are as required to requisition a general meeting in sub-section (2) of section 100.

(1) Prerequisites of a valid Requisition: The prerequisites for a valid requisition prescribed in sub-section (2) of section 111 are as under:

(a) Requisition must be made in writing and signed

(i) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;

(ii) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than

one-tenth of the total voting power of all the members having on the said date a right to vote.

(b) Two or more copies of the said requisition are required to contain signatures of all the requisitionists.

(c) The requisition must be deposited at the registered office of the company not less than six weeks before the meeting in the case of a requisition requiring notice of a resolution. In case of other resolutions, the same is to be deposited not less than two weeks before the meeting.

(d) A sum reasonably sufficient to meet the company's expenses in giving effect to proposing the resolution is deposited or tendered. When the money is tendered, no payment is made but an unconditional offer is made to pay money.

The proviso to sub-section (2) of section 111 provides that the time period provided above need not be complied with in case an annual general meeting is called on a date within six weeks after the copy has been deposited. The copy of requisition, in such a case, shall be deemed to have been properly deposited for the purposes thereof although not deposited within the time required by this sub-section. The company is not duty bound to circulate the notice of the resolution when the prerequisites are not complied with.

(2) Notice to members: As per section 111 of the Companies Act, 2013, a 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 and is intended to be moved at a meeting; and circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

(3) Exemption from circulation of any statement: The Company shall not be bound to circulate any statement, if on the application either on behalf of the company or of any other person who claims to be aggrieved, the 13Central Government, by order, declares that the rights conferred are being abused to secure needless publicity for defamatory matter.

(4) Order to bear the cost: An order made as above by the Central Government may also direct that the cost incurred by the company shall be paid to the company by the requisitionists, notwithstanding that they are not parties to the application.

(5) Default in complying with the provisions: If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees.

REPRESENTATION OF THE PRESIDENT & GOVERNORS IN MEETING OF COMPANIES TO WHICH THEY ARE MEMBER [SECTION 112]

Section 112 of the Companies Act, 2013 provides that the President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting and such other person shall be entitled to exercise the same rights and powers including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

REPRESENTATIONS OF CORPORATIONS MEETING OF COMPANIES AND CREDITORS [SECTION 113]

Section 113 of the Companies Act, 2013 seeks to provide that where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents.

RESOLUTIONS [SECTION 114–117]

In lay man's language, a resolution is the formal decision of an organization while transacting a business at a meeting. A motion which has obtained the necessary majority vote in its favour becomes a resolution. When a resolution is passed, a company is bound by it.

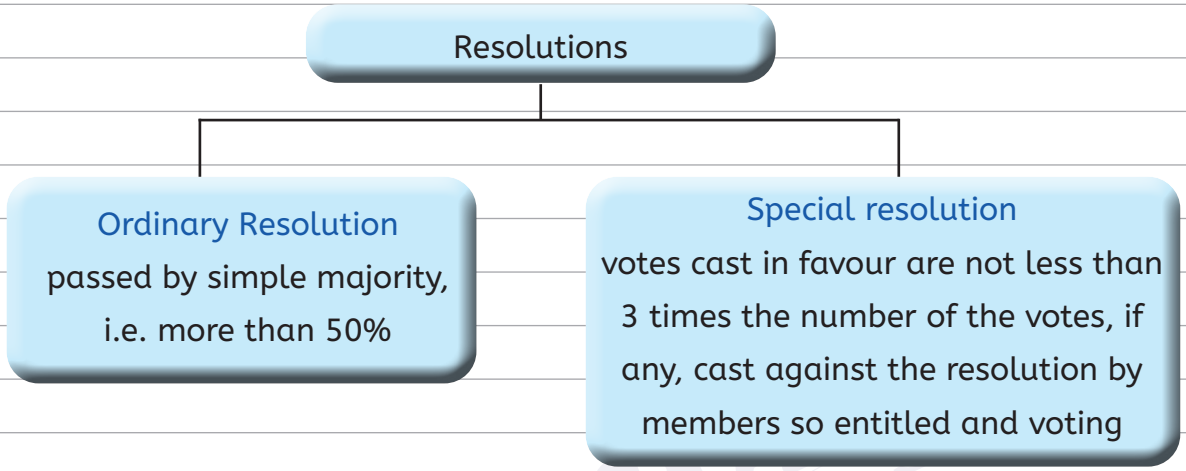
Difference between Motion and Resolution–

- Most matters come before a meeting by way of a motion recommending that the meeting may express approval or disapproval or take certain action or order something to be done.
- A motion is a proposal, and a resolution is the adoption of a motion duly made and seconded. But every motion need not be followed by a resolution,
  e.g. where a motion is made for the adjournment of the meeting.
- A motion whether it is passed for the closure of discussion or adjournment, etc.

can be passed by an ordinary resolution unless there is a specific provision in the articles.

As per the Companies Act, 2013, resolutions are of two types–

- Ordinary Resolutions – which are passed by simple majority; and
- Special Resolutions – votes cast in favour are not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting



Section 114 of the Companies Act, 2013 states as to what constitutes an Ordinary Resolution and a Special Resolution.

Ordinary Resolution

Section 114(1) states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution by any mode of voting should exceed the votes cast against it.

Special Resolution

As per Section 114(2) of the Act, a resolution shall be a special resolution, when–

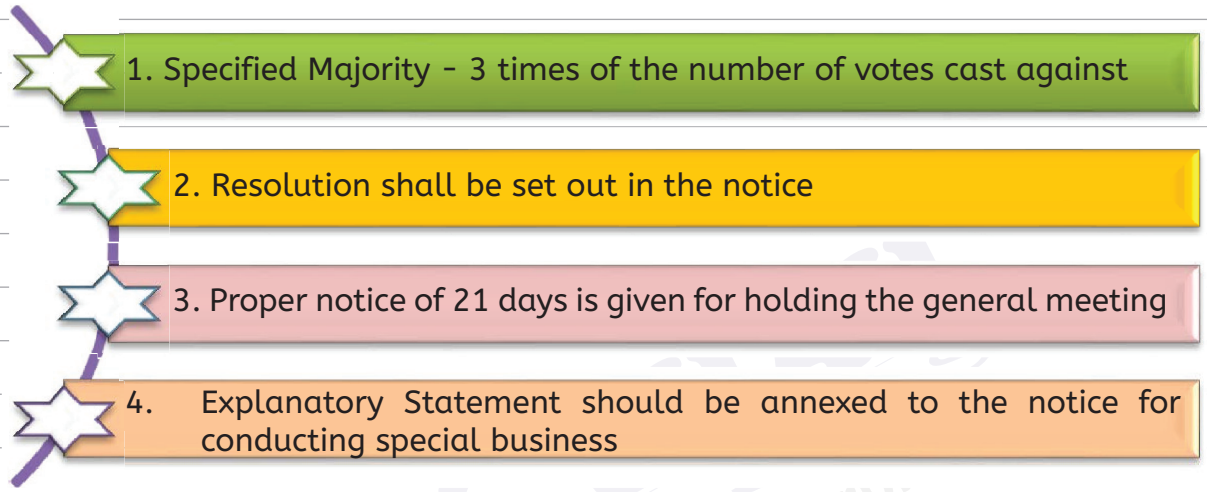
(a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members

of the resolution;

(b) The notice required under this Act has been duly given; and

(c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Characteristics of Special Resolution–



RESOLUTIONS REQUIRING SPECIAL NOTICE [SECTION 115]

Section 115 of the Companies Act, 2013 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice

According to Section 115 where, by any provision contained in this Act or in the Articles of a company, special notice is required for passing any resolution, then the notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up.

Special notice for passing a resolution is required in the following cases –

(a) Resolution for appointment of an auditor other than the retiring auditor at an annual general meeting. [Section 140 (4)]

(b) Resolution at an annual general meeting providing expressly that a retiring auditor shall not be re-appointed. [Section 140 (4)]

(c) Resolution to remove a director before the expiry of his period of office. [Section 169

(2)]

(d) Resolution to appoint another person as director in place of the removed director at the meeting at which he is removed. [(Section 169 (2)]

Further, the articles may provide for certain additional matters which require special notice.

Rule 23 specifies the procedure to be followed in respect of Special Notice as under:

1. A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than one percent of total voting power or holding shares on which an aggregate sum of not less than 5,00,000 rupees has been paid up on the date of the notice.
2. The afore-mentioned notice shall be sent by members to the company not earlier than 3 months but at least 14 days before the date of meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.
3. The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings.
4. Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company.
5. The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

RESOLUTIONS PASSED AT ADJOURNED MEETING [SECTION 116]

As per Section 116 of the Companies act, 2013, where a resolution is passed at an adjourned meeting of:

(a) a company; or

(b) the holders of any class of shares in a company; or

(c) the Board of Directors of a company,

the resolution shall be treated as having been passed on the day on which it was actually passed and not on any earlier date.

Example

The extra-ordinary general meeting of the company, Purple Cosmetics Private Limited was due to be held on Thursday, 23rd June, 2022. However, due to want of quorum, the meeting was adjourned to a later date on Thursday, 30th June, 2022 and two resolutions were passed on that date.

According to section 116 of the Companies Act, 2013, the said two resolutions shall be deemed to have been passed on the adjourned date of meeting, i.e. Thursday, 30th June, 2022 and not on the earlier date.

RESOLUTIONS AND AGREEMENTS TO BE FILED [SECTION 117]

Section 117 of the Companies Act, 2013 provides that a copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed.

Provided that the copy of every resolution which has the effect of altering the articles and the copy of every agreement referred to in sub-section (3) shall be

In case of Specified IFSC Public Company - Sub-section (1) of section 117, for the words "thirty days" read as "sixty days".

In case of Specified IFSC Private Company - Sub-section (1) of section 117, for the words "thirty days" read as "sixty days".

embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

According to Rule 24 of the Companies (Management and Administration) Rules, 2014, a copy of every resolution or any agreement required to be filed, together with the explanatory statement under section 102, if any, shall be filed with the Registrar in Form No. MGT-14 along with the fee.

Resolutions and agreements to be filed with the Registrar as per Section 117 (3) are as under: –

- Special Resolutions

- Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- Any resolution of the Board of Directors of a company or agreement executed by a company, relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director;
- 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 a specified majority or otherwise in some particular manner; and all resolutions or agreements which effectively bind such class of members though not agreed to by all those members.
- Resolutions requiring a company to be wound up voluntarily passed in pursuance of section 59 of the Insolvency and Bankruptcy Code, 2016.
- [16 & 17] Resolutions passed in pursuance of sub-section (3) of section 179.

In case of a private company - clause (g) of Sub-section 3 of Section 117 shall not apply.
The above mentioned exemption shall be applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.
In case of Specified IFSC Public Company - Clause (g) of sub-section (3) of section 117 shall not apply.

Provided that no person shall be entitled under section 399 to inspect or obtain copies of such resolutions;

Provided further that nothing contained in this clause shall apply in respect of a 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 the ordinary course of its business by,–

(a) a banking company;

(b) any class of non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;

(c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; and

- any other resolution or agreement as may be prescribed and placed in the public domain.

Penalty for contravention [Section 117(2)]

If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.

MINUTES (SECTION 118)

- Section 118 of the Companies Act, 2013, states that every company shall prepare, sign and keep minutes of every general meeting of any class of shareholders or creditors, including the meeting called by the requisitionists, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, within 30 days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered. [Sub-section (1)]
- The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting.
- All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
- In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain–
  - the names of the directors present at the meeting; and
  - in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
- There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting–
  - is or could reasonably be regarded as defamatory of any person; or
  - is irrelevant or immaterial to the proceedings; or
  - is detrimental to the interests of the company.
- The matter to be included or excluded in the minutes of the meetings on the afore-

said grounds shall be at the absolute discretion of the Chairman of the meeting.

In case of Specified IFSC Public Company - In Sub-section (1) of section 118, the following proviso shall be inserted, namely:-
"Provided that in case of a Specified IFSC public company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose.".-

In case of Specified IFSC Private Company - In Sub-section (1) of section 118, the following proviso shall be inserted, namely:-
"Provided that in case of a Specified IFSC private company, the minutes of every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in the manner as may be prescribed under sub section (1) at or before the next Board or committee meeting, as the case may be and kept in books kept for that purpose.".-

- The minutes kept in accordance with the provisions of Section 118 shall serve as the evidence of the proceedings recorded therein.
- Where the minutes have been kept in accordance with Section 118 (1), then until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.
- No document, purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters requires by this section to be contained in the minutes of the proceedings of such meeting.
- Every company shall observe Secretarial Standards with respect to general and Board meetings, specified by the Institute of Company Secretaries of India and approved as such by the Central Government.20 & 21 [Section 118 (10)]
- Penalty for contravention–
  - If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of ₹ 25,000 and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000.

- If a person is found guilty of tampering with the minutes of the proceedings of the meeting, he shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 1,00,000.

Rule 25 of the Companies (Management & Administration) Rules, 2014 prescribes the procedure for maintenance of minutes of proceedings of general meeting, meeting of Board of Directors and other meetings and resolutions passed by postal ballot as follows–

- Distinct minute books to be maintained for each type of meeting: A distinct minute book shall be maintained for each type of meeting namely:
  (i) general meetings of the members;
  (ii) meetings of the creditors
  (iii) meetings of the Board; and
  (iv) meetings of each of the committees of the Board.

  Note: Resolutions passed by postal ballot shall be recorded in the minute book of general meetings as if it has been deemed to be passed in the general meeting.
- Maximum time allowed for entering minutes of proceedings: The minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry within thirty days of the conclusion of the meeting.
- Data to be entered when a resolution is passed by Postal Ballot: In case of every resolution passed by postal ballot, a brief report on the postal ballot conducted including the resolution proposed, the result of the voting thereon and the summary of the scrutinizer's report shall be entered in the minutes book of general meetings along with the date of such entry within thirty days from the date of passing of resolution.
- Signing of Minute Books: Each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed–
  (i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof, by the chairman of the said meeting or the Chairman of the next succeeding meeting;
  (ii) in the case of minutes of proceedings of a general meeting, by the Chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that Chairman within that period, by a

director duly authorised by the Board for the purpose;

(iii) In case of every resolution passed by postal ballot, by the Chairman of the Board within the aforesaid period of thirty days or in the event of there being no Chairman of the Board or the death or inability of that Chairman within that period, by a director duly authorized by the Board for the purpose.

- Place of keeping minute books of general meetings and their preservation: The minute books of general meetings shall be kept at the registered office of the company and shall be preserved permanently and kept in the custody of the company secretary or any director duly authorised by the board.
- Place of keeping minute books of Board and committee meetings and their preservation: The minute books of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

Exemption to Section 8 companies: In case of section 8 companies (companies formed with charitable objects, etc.), section 118 shall not apply as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where the articles of association provide for confirmation of minutes by circulation.
The exceptions, modifications and adaptations, shall be applicable to a section 8 company which has not committed a default in filing its financial statements under 137 or Annual Return under section 92 with the Registrar.

INSPECTION OF MINUTES-BOOKS OF GENERAL MEETING [SECTION 119]

Section 119 of the Companies Act, 2013 contains the provisions in respect of inspection of minute-books of general meeting.
Accordingly, the books containing the minutes of the proceedings of any general meeting of a company shall–

- ♦ be kept at the registered office of the company; and
- ♦ be open for inspection, during business hours, by any member, without charge, subject to such reasonable restrictions as specified in the articles of the company or as imposed in the general meeting. However, at least 2 hours in each business day shall be allowed for inspection [Section 119 (1)].

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, and on payment of such fees as may be prescribed, with a copy of any minutes. [Section 119 (2)].

In other words, within 7 working days of making a request along with the requisite fees, the member shall be furnished with a copy of any minutes.

Penalty for contravention [Section 119 (3)]

If any inspection under sub-section (1), is refused by the company to the member, or if the copy of minute-book is not furnished within the time specified under sub- section (2), then the company shall be liable to a penalty of ₹ 25,000 and every officer of the company who is in default shall be liable to a penalty of ₹ 5,000 for each such refusal or default, as the case may be.

Power of Tribunal to order inspection [Section 119 (4)]

In case of any such refusal or default, the Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection of the minute-books or direct that the copy required shall forthwith be sent to the person requiring it.

Copy of minute book of general meeting [Rule 26]

Any member shall be entitled to be furnished, within seven working days after he has made a request in that behalf to the company, with a copy of any minutes of any general meeting, on payment of such sum as may be specified in the articles of association of the company, but not exceeding a sum of ten rupees for each page or part of any page:

Provided that a member who has made a request for provision of soft copy in respect of minutes of any previous general meetings held during a period immediately preceding three financial years shall be entitled to be furnished, with the same free of cost.

MAINTENANCE AND INSPECTION OF DOCUMENTS IN ELECTRONIC FORM [SECTION 120]

Section 120 of the Companies Act, 2013 seeks to provide that any document, record, register or minute, etc., required to be kept by a company or allowed to be inspected or copies given to any person by a company under this Act, may be kept or inspected or

copies given, as the case may be, in electronic form in such form and manner as may be prescribed.

Provisions prescribed in Rules 27, 28 and 29 of the Companies (Management and Administration) Rules, 2014 are relevant in this respect. Rule 30 states the penalty in case of contravention.

Companies which may maintain records in electronic form: Rule 27 of the Companies (Management and Administration) Rules, 2014 states as under:

- Every listed company or a company having at least 1000 shareholders, debenture-holders and other security holders, may maintain its records, as required to be maintained under the Act or rules made thereunder, in electronic form.

  Explanation.- For the purposes of this sub- rule, it is hereby clarified that in case of existing companies, data 1[may] be converted from physical mode to electronic mode within six months from the date of notification of provisions of section 120 of the Act.
- The records in electronic form shall be maintained in such manner as the Board of directors may think fit:

  Provided that -

  (a) the records are maintained in the same formats and in accordance with all other requirements as provided in the Act or the rules made thereunder;

  (b) the information as required under the provisions of the Act or the rules made thereunder should be adequately recorded for future reference;

  (c) the records must be capable of being readable, retrievable and reproducible in printed form;

  (d) the records are capable of being dated and signed digitally wherever it is required under the provisions of the Act or the rules made thereunder;

  (e) the records, once dated and signed digitally, shall not be capable of being edited or altered;

  (f) the records shall be capable of being updated, according to the provisions of the Act or the rules made thereunder, and the date of updating shall be capable of being recorded on every updating.

- Explanation:- For the purpose of this rule, the term "records" means any register, index, agreement, memorandum, minutes or any other document required by the Act or the rules made thereunder to be kept by a company.

Who is responsible for the maintenance and security of electronic records: Rule 28 sets out that the Managing Director, Company Secretary or any other director or officer of the company as the Board may decide shall be responsible for the maintenance and security of electronic records.

The person who is responsible for the maintenance and security of electronic records shall-

(a) provide adequate protection against unauthorized access, alteration or tampering of records;

(b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;

(c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;

(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;

(e) ensure that the computer systems can discern invalid and altered records;

(f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;

(g) ensure that the records are at all times capable of being retrieved to a readable and printable form;

(h) ensure that records are kept in a non-rewritable and non-erasable format like pdf. version or some other version which cannot be altered or tampered;

(i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;

(j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;

(k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;

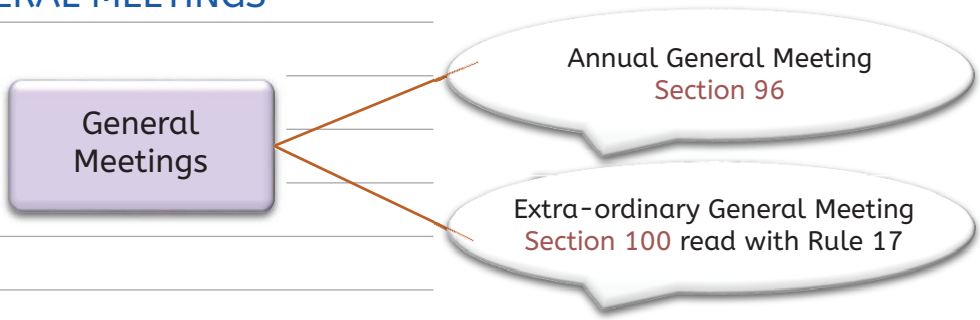
(l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and

(m) take necessary steps to ensure security, integrity and confidentiality of records.

Inspection and copies of records maintained in electronic form: Rule 29 states that the

records maintained in electronic form shall be made available for inspection by the company in electronic form. Copies of the records maintained in electronic form, containing a clear reproduction of the whole or part thereof, shall be provided on payment of not exceeding ₹ 10 per page.

GENERAL MEETINGS



ANNUAL GENERAL MEETING (AGM) [SECTION 96]

- Section 96(1) of the Companies Act, 2013 states that every company, whether public or private, except One Person Company, shall hold an annual general meeting every year and that the gap between two AGMs shall not be more than 15 months.
- The company shall specify the meeting as such [i.e. Annual General Meeting (AGM)] in the notices calling it.

Holding of Annual General Meeting (AGM)

- Annual general meeting should be held once every year.
- First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
- Subsequent annual general meetings of the company should be held within 6 months from the closing of the financial year.
- The gap between two annual general meetings should not exceed 15 months.

Extension of validity period of AGM

In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time within which any annual general meeting shall be held. Such extension can be for a period not exceeding 3 months. No such extension of time can be granted by the Registrar for the holding of the first annual general meeting.

Time and place for holding an annual general meeting: Section 96 (2) states that every

annual general meeting shall be called during business hours, i.e., between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company 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. 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.

Explanation—For the purposes of this sub-section, "National Holiday" means and includes a day declared as National Holiday by the Central Government.

Exemption to Section 8 companies:

In case of Section 8 company- In Sub-section (2) of Section 96 after the proviso and before the explanation the following proviso shall be inserted;

Provided further that the time, date and place of each annual general meeting are decided upon before-hand by the board of directors having regard to the directions, if any, given in this regard by the company in its general meeting.

The above-mentioned exception shall be applicable to a section 8 company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar.

Exemption to Government companies:

In case of Government company, section 96(2) shall be read as:

'Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall be held either at the registered office of the company or at such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf. The above-mentioned exception/ modification/ adaptation shall be applicable to Government company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 with the Registrar.

POWER OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING [SECTION 97]

In case a company defaults in holding Annual General Meeting, then Section 97 of the Companies Act, 2013 empowers Tribunal to call AGM. The provisions of Section 97 are as under:

(1) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

POWER OF TRIBUNAL TO CALL MEETINGS OF MEMBERS, ETC. [SECTION 98]

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo motu or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

PUNISHMENT FOR DEFAULT IN COMPLYING WITH THE PROVISIONS OF SECTION 96 TO 98 [SECTION 99]

Section 99 lists out the punishment for contravention of section 96 to 98.

Accordingly, if any default is made in holding a meeting of the company in accordance with section 96 (i.e. AGM) or section 97 (i.e. AGM called by Tribunal) or section 97 (a meeting of members other than AGM called by Tribunal) or in complying with any the directions issued by the Tribunal, then the company and every officer of the company who is in default shall be punishable with fine which may extend to ₹ 1,00,000 and in the case of a continuing default, with a further fine which may extend to ₹ 5,000 for every day during which the default continues.

REPORT ON ANNUAL GENERAL MEETING [SECTION 121]

According to Section 121 of the Companies Act, 2013, every listed public company shall prepare a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of the Act and the rules made thereunder.

A copy of the report is to be filed with the Registrar in Form No. MGT-15 within thirty days of the conclusion of AGM along with the prescribed fee. According to Rule 31 of the Companies (Management and Administration) Rules, 2014, the report shall be prepared in the following manner:

(a) the report under this section shall be prepared in addition to the minutes of the general meeting;

(b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing Director, if there is one and company secretary of the company;

(c) the report shall contain the details in respect of the following, namely:-

- (i) the day, date, hour and venue of the AGM;
- (ii) confirmation with respect to appointment of Chairman of the meeting;
- (iii) number of members attending the meeting;
- (iv) confirmation of Quorum;
- (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made thereunder with respect to calling, convening and conducting the meeting;
- (vi) business transacted at the meeting and result thereof;
- (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and

(viii) any other points relevant for inclusion in the report.

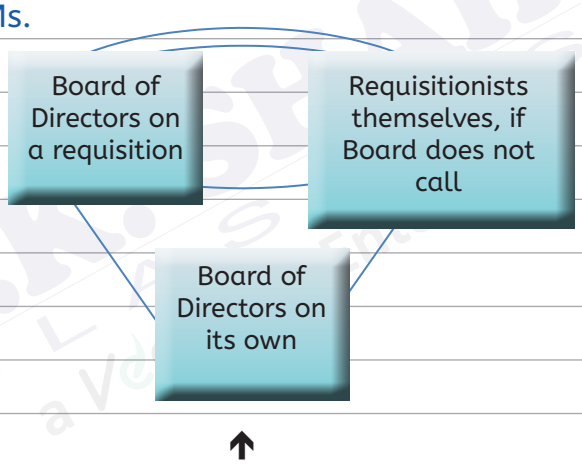
(d) the report shall contain fair and correct summary of the proceedings of the meeting.

Penalty for default : If the company fails to file the report within 30 days of conclusion of AGM, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.

EXTRA-ORDINARY GENERAL MEETINGS [SECTION 100]

All general meetings other than annual general meetings are called extra-ordinary general meetings (EGMs). Section 100 of the Companies Act, 2013 contains provisions regarding the calling of EGMs.

Calling of EGM



Who can call EGM

1. By Board of Directors on its own -

The Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India. [Section 100 (1)]

2. By the Board of Directors at the requisition of –

(a) In the case of company having a share capital, such number of members who hold, on the date of receipt of requisition, at least 1/10th of such paid-up share capital of the company as on that date carries the right of voting;

(b) In the case of company not having a share capital, such number of members who have, on the date of receipt of requisition, at least 1/10th of total voting power of all the members having on the said date a right to vote. [Section 100 (2)]

The requisition shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company. [Section 100 (3)]

Note: The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.

3. By requisitionists themselves: If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition. [Section 100 (4)]

A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board. [Section 100 (5)]

Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100 (6)]

Rule 17 of the Companies (Management and Administration) Rules, 2014 contain provisions with regard to calling of EGM by requisitionists as under:

(1) The members may requisition convening of an extraordinary general meeting in accordance with sub-section (4) of section 100, by providing such requisition in writing or through electronic mode at least clear twenty- one days prior to the proposed date of such extraordinary general meeting.

(2) The notice shall specify the place, date, day and hour of the meeting and shall contain the business to be transacted at the meeting.-

Explanation.- For the purposes of this sub-rule, it is hereby clarified that requisitionists should convene meeting at Registered Office or in the same city or town where Registered office is situated and such meeting should be convened on

any day except National Holiday.

(3) If the resolution is to be proposed as a special resolution, the notice shall be given as required by sub-section (2) of section 114.

(4) The notice shall be signed by all the requisitionists or by a requisitionist duly authorised in writing by all other requisitionists on their behalf or by sending an electronic request attaching therewith a scanned copy of such duly signed requisition.

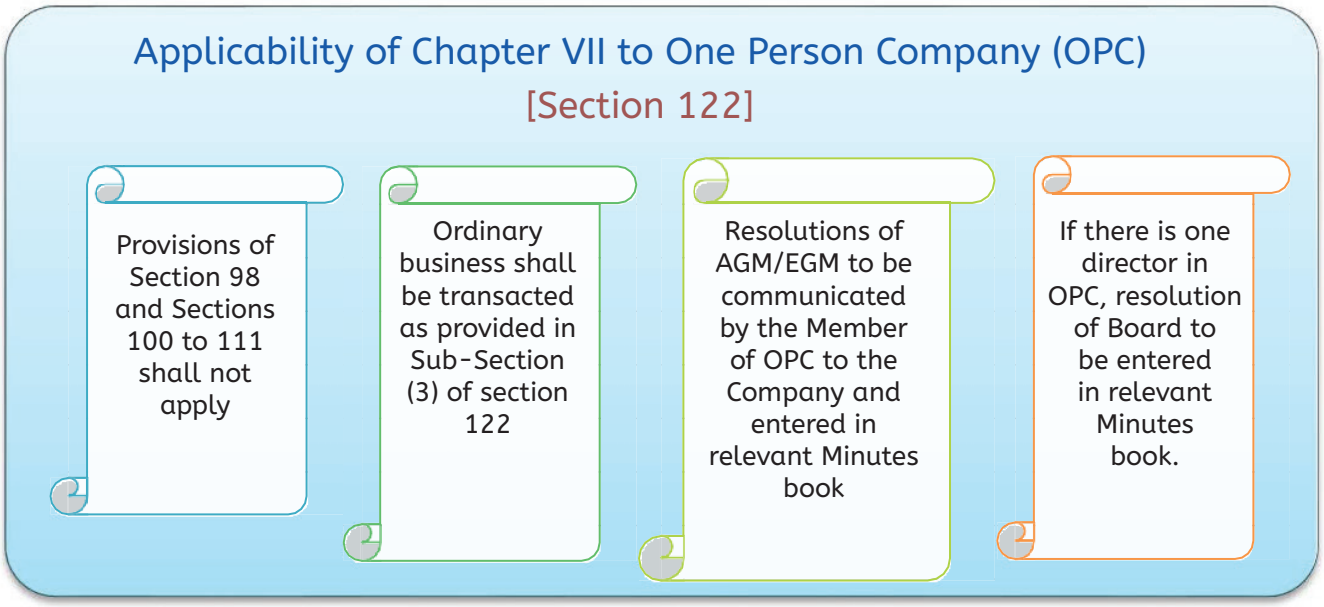
(5) No explanatory statement as required under section 102 need be annexed to the notice of an extraordinary general meeting convened by the requisitionists and the requisitionists may disclose the reasons for the resolution(s) which they propose to move at the meeting.

(6) The notice of the meeting shall be given to those members whose names appear in the Register of members of the company within three days on which the requisitionists deposit with the Company a valid requisition for calling an extraordinary general meeting.

(7) Where the meeting is not convened, the requisitionists shall have a right to receive list of members together with their registered address and number of shares held and the company concerned is bound to give a list of members together with their registered address made as on twenty first day from the date of receipt of valid requisition together with such changes, if any, before the expiry of the forty-five days from the date of receipt of a valid requisition.

(8) The notice of the meeting shall be given by speed post or registered post or through electronic mode. Any accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting.

APPLICABILITY OF THIS CHAPTER TO ONE PERSON COMPANY [SECTION 122]



1. Section 122 (1) of the Companies Act, 2013 states that the provisions of section 98 and section 100 to 111 shall not apply to a One Person Company (OPC). An overview of these sections is as under:

Section No.	Heading of Section
Section 98	Power of Tribunal to call meetings of members, etc.
Section 100	Calling of EGM
Section 101	Notice of meeting
Section 102	Statement to be annexed to notice
Section 103	Quorum for meetings
Section 104	Chairman of meetings
Section 105	Proxies
Section 106	Restrictions on voting rights
Section 107	Voting by show of hands
Section 108	Voting through electronic means
Section 109	Demand for poll
Section 110	Postal ballot
Section 111	Circulation of Members' Resolution

(2) The ordinary businesses as mentioned under section 102 (2) (a), which a company is required to transact at an AGM, shall be transacted in the case of One Person Company, as provided in sub-section (3). [Section 122 (2)]

(3) For the purposes of section 114, any business which is required to be transacted at an annual general meeting or other general meeting of a company by means of an ordinary or special resolution, it shall be sufficient if, in case of One Person Company, the resolution is communicated by the member to the company and entered in the minutes-book required to be maintained under section 118 and signed and dated by the member and such date shall be deemed to be the date of the meeting for all the purposes under this Act. [Section 122 (3)]

In other words, following procedure shall be adopted for any business to be transacted at an AGM or any other meeting (i.e. EGM) of OPC:

(i) The resolution of AGM or EGM shall be communicated by the member to the company;

(ii) The said resolution shall be entered in the relevant minutes book.

(iii) The minutes book shall be signed and dated by the member.

Note: The date on which the minutes book is signed by the member shall be deemed to be the date of the meeting for all the purposes.

(4) Notwithstanding anything in this Act, where there is only one director on the Board of Director of a One Person Company, any business which is required to be transacted at the meeting of the Board of Directors of a company, it shall be sufficient if, in case of such One Person Company, the resolution by such director is entered in the minutes book required to be maintained under section 118 and signed and dated by such director and such date shall be deemed to be the date of the meeting of the Board of Directors for all the purposes under this Act. [Section 122 (4)]

Simply stated, in case OPC has only one director, following procedure shall be adopted for any business to be transacted at the meeting of Board of Directors:

(i) The resolution by such director shall be entered in the relevant minutes book.

(ii) The minutes book shall be signed and dated by such director.

Note: The date on which the minutes book is signed by the director shall be deemed to be the date of the meeting for all the purposes.

Penalty

If any default is made in compliance with any of the provisions of this rule, the company and every officer or such other person who is in default shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues. [Rule 30]

List of Sections

SR. NO	SECTION NUMBER	NAME OF SECTION	PAGE NUMBER (To be filled by students)
PART A: MAINTENANCE OF REGISTERS AND RETURNS			
7.1	88	Register of Members	
	Rule 3	Particular in register of members	
	Rule 4	Particular in register of debenture holder/any other security holder	
	Rule 5	Time period and place for Register	
	Rule 6	Index of Names	
	Rule 7	Foreign Register	
7.2	89	Declaration in respect of beneficial interest in any share	
	Rule 9	Procedure in case of declaration in respect of beneficial interest in any shares	
7.3	90	Investigation of beneficial ownership of shares in certain cases	
7.4	91	Power to close register of members or debenture-holders or other security holders	
	Rule 10	Procedure to be followed for closing the register of members/ debenture-holders/ other security holders	
7.5	92	Annual Returns	
	Rule 11	Particulars of Annual Returns	
	93	Omitted	
7.6	94	Place of keeping and inspection of registers, returns, etc.	
	Rule 14	Inspection of annual returns	
	Rule 15	Preservation of Annual Returns	
7.7	95	Registers, etc., to be evidence	
PART B: MEETINGS			
7.8	96	Annual General Meeting	
	97	Power of NCLT to call AGM	
	99	Punishment for default in complying with provisions of section 96 to 98	

	121 & Rule 31	Report on Annual General Meeting	
7.9	100	Extraordinary General Meeting	
	Rule 17	Calling of Extraordinary general meeting by requistionists	
	98	Power of NCLT to call EGM	
7.10		Procedure for convening and conduct of General Meetings	
7.11	101 & 102	Notice and Explanatory Statement	
	Rule 18	Mode of sending the notice	
7.12	103	Quorum of general meeting	
7.13	104	Chairman	
7.14	105	Proxy	
	Rule 19	Appointment of Proxy in Form MGT-11	
7.15	106 to 110	Voting	
	106	Restriction on voting rights	
	107	Voting by show of hands	
	108 & Rule 20	Voting by electronic means	
	109 & Rule 21	Voting by demand of poll	
	110 & Rule 22	Voting by Postal Ballot	
7.16	111	Circulation of member's resolution	
7.17	112 & 113	Representations of various persons	
	112	Representation of the President and Governors in meeting of companies to which they are members	
	113	Representations of corporations at meetings of companies and creditors	
7.18	114 to 117	Resolutions	
	114	Ordinary and Special resolutions	
	115 & Rule 23	Resolution requiring Special Notice	
	116	Resolution passed at Adjourned Meeting	

	117 & Rule 24	Registration of certain resolutions and agreement	
	118, 119, Rule 25 & 26	Minutes of proceedings of meetings	
	120, Rule 27 to 29	Maintenance and inspection of documents in electronic form	
	122	Applicability of chapter vii [sections 88 to 121] to one person company	

SUMMARY

Part A: Registers & Returns	
Register of Member (Section 88)	(a) Contents: Name, address and occupation, Shares held, Date of entry/removal, PAN, CIN, Name of Father/mother/spouse, occupation, status, nationality, nominee etc. (b) Register of members in MGT-1, register of Debenture holders in MGT-2, (c) Place of maintenance : Registered office. Any other place by passing SR in GM within same village or town where RO is situated and by giving notice to ROC. Time of entry: generally within 7 days form board approval, in case of any event,, within 15 days from such event. (d) It shall be authenticated by CS. (e) Max Closure: periods not exceeding 45 days in a year but not exceeding 30 days at one time (f) Notice for Closure: not less than 7 days prior notice by advertisement (g) Inspection: By not giving less than 2 hours per day notice. Members / Debenture holders - No fees. Non-members - after payment of prescribed fee
Index of Register of Members	(a) Applicable: Company having More than 50 Members, (b) Alteration in ROM: within 14days alter Index of ROM also, (c) Place: place when ROM is maintained.
Foreign Register	(a) In respect of members outside the Country (b) Notice to ROC: within 30 days from the date of opening of any Foreign Register in FormMGT3. (c) Company shall transmit to RO, copy of every entry in foreign register within 15 days. (d) Duplicate register to be kept m RO. (e) Entry shall be distinguished between principle and foreign register. (f) Rectification can be done with consent of proper authority

Register of shares in the name not having any beneficial interest	Person having beneficial interest to give notice to Company within 30 days. Company to file declaration to ROC within 30 days in Form MGT 6. For IF5C Public/ Private Co return shall be filed within 60 days. [Return not required for Trust created to set up a Mutual Fund, Venture Capital Fund or other Fund, approved by SEBI.]
Register of Significant Beneficial owners	(a) Meaning: Every Individual in relation to a reporting Company, who acting atone or together, or through one or more persons or Trust, including a Trust and Non-Resident, holds Beneficial Interests, of not less than 10% (or other prescribed %}, in Shares of a Company or the right to exercise, or the actual exercising of significant influence or control, over the Company. (b) SBO shall file a declaration to the reporting Company in Form No. BEN-1. (c) Every Company shall file return in Form No. BEN-2 with ROC within 30 days from the date of receipt of declaration and maintain a Register of the Interest in Form No. BEN-3 declared by Individuals.
Annual Return [Sec 92]	• Every company shall prepare annual return in Form MGT-7 and shall be signed by a director and company secretary. • For OPC, Small Co, Private Co being start-up shall be signed by Company secretary appointed if any, else by director. • Certification by company secretary: applicable to listed company or company having paid-up capital 10 Crores or turn over 50 Crores in Form MGT 8 • Every Company except 1FSC Public & Private Company shall place a copy of the Annual Return on the Website of the Company, if any • An extract of annual return in Form MGT-9 and relevant web- link shall form part of Board's report • To be filed with ROC within 60 days of AGM.
Inspection of Registers	Members / DH – no fees, Non–members – Max ₹50 per Inspection. Take extracts without fee.

Time for preservation	(a) Member's register and Index, foreign register – Permanently, (b) DH register (foreign register), annual returns – 8 years immediately preceding the current financial year.
Meaning of Meetings :	Getting together of a number of persons transacting any lawful business in compliance with provision of companies act / rules
Part B: Meetings	
Kinds of Meeting	Shareholders' Meetings: AGM / EGM
	Directors' Meetings: (a) Board Meetings, (b) Meetings of the Committees of Board
	Other Meetings: Debenture-holders meeting etc.
Requisites of Valid Meeting	(a) Authority, (b) Notice, (c) Chairman, (d) Quorum, (e) Conduct, (f) Compliance
Ordinary Resolution :	An Ordinary Resolution is one passed by simple majority.
	Example: (a) Consideration of Directors' Report, (b) Election of Directors, (c) Declaration of Dividends, (d) Increase, Consolidation, Conversion or Sub-Division of Share Capital,
Special Resolution	Members present in person or by proxy are not less than 3 times the number of votes cast against the resolution.
	Condition: (a) Intention to pass SR specified in notice, (b) 21 Clear Days' Notice, (c) Form MGT 14 - within 30 to ROC.
	Examples: (a) Alteration of Memorandum or Articles of the Company, (b) Further issue of shares to persons other than existing Shareholders, (c) Creation of Reserve Liability on Capital, (d) Reduction of Share Capital, (e) Variation of Shareholder's Rights.
Special Notice	(a) Member(s) - 14 days' notice to the Company stating his intention to move a resolution at the General Meeting, (b) Board to give other Members at least 7 days' notice, (c) Matter is considered at the General Meeting.
	Circumstances: (a) Appointment of a person as Auditor, other than the Retiring Auditor at an AGM, (b) Resolution that the Retiring Auditor shall not be re-appointed, (c) Removal of a Director before the expiry of his period of office (d) Appointment of another Director in place of Director removed before expiry of his period of office, (e) Matters for which Articles of a Company provide for giving of a Special Notice.

Annual General Meeting	Applicable: Annual meeting of the body of the Members applicable for all Companies, whether Public or Private excluding OPC. CG may also exempt any class of companies.
	Responsibility to call: Board of Directors.
	Time Limit: See below
	Place: Every Co. ONLY at Registered office other place within same place or town where RO is situated), For Govt. Co.-Registered office or other place as the CG shall approve, For unlisted Co. any place within India with consent of all members in advance.
	Day: other than National Holiday.
	Time: During business hours (9 am to 6 pm)
	Ordinary Business: Adoption of books, declaration of dividend, appointment / reappointment of Directors, appointment / re appointment of Auditors
	Special Business: All other than ordinary. Explanatory statement u/s 102(1) to be provided.
	Failure: CG may call AGM with relaxation including 1 man Quorum and Fine
Time Limit for holding AGM	Find AGM (Earlier): 9 Months from the end of its First Financial Year
	Second and Subsequent AGM (Earlier): (a) One each in every calendar year, (b) Gap between 2 AGMs <=15 months, (c) 6 months from the end of the F.Yr. ROC can extend upto3 mts.
Report on AGM	(a)Every listed Company, (b) Report in MGT 15 within 30 days of conclusion of AGM, (c) It shall contain summary of proceedings, confirmation that meeting was convened, business transacted, adjournment etc, and any other relevant point, (d) Signed by Chairman if not 2 directors(one should be a MD) and Company Secretary,

Extraordinary General Meeting	Meaning: All General Meetings other than the Annual General Meeting (AGM)
	Nature of Business: always Special,
	Day: on any day except National Holiday.
	Place: A Company other than of the wholly owned Subsidiary of a Company incorporated outside India, EGM shall be held at a place within India.
	Authority: Directors, BOD on requisition of Members, Requisitionists themselves Tribunal
EGM by Directors Suo- moto	(a) By passing Board Resolution, (b) giving 21 days notice (short notice if consent is obtained from Members holding 95%), (c) exceptional cases: any Director (where Quorum is not available because of other Directors' absence from India) or any Two Members of the Company may convene an EGM.
EGM by requisitionists (BOD Conducts)	Power to Call: (a) 1/ 10th of Paid Up Capital or Total Voting Power, for that matter, (b) More than one matter - Eligibility to be met independently, (c) Concurrence of one of the Joint Holder = Concurrence by All,
	Board Responsibility: 1. Board should within 21 days of its receipt, call the Meeting giving at least 21 days Notice. 2. The date of Meeting shall be such that it lies within 45 days of the receipt of Requisition.
EGM by requisitionists (BOD fails)	If BOD fails the requisitionists can call the meeting in the same manner as may be called by the Board, and held within 3 months from the date of deposit of requisition.
	All expenses to be reimbursed, if not - retained by company out of sum due to directors.
EGM by Tribunal	If is impracticable to (a) call a meeting of a Company, other than the AGM, in any manner IN which Meetings are to be called, or (b) hold or conduct the meeting of the Company, IN the manner prescribed in the Act & AOA. Tribunal may order a Meeting with ancillary or consequential directions including one Quorum.
Class Meetings	Class Meetings are meetings of Shareholders holding a particular class of Shares. Each class of shares may carry different rights as to dividend, voting, otherwise.

Requirement as to Notice	Form: Reasonable Form, Length: 21 clear Days, Clear Days: Full calendar day. Date of service and date of Meeting is excluded, Despatch: To all entitled, Contents: Place, date. Time, Agenda, Proxy appointment right, Enclosures: Audited Accounts, Balance Sheet Directors Report, Auditors Report, Proxy Form.
Clear Days And Service Of Notice	Meaning: full or complete calendar days.
	Days of service of notice and meeting is excluded.
	Mode: If in person - date of actual service shall be considered. If thru post- 1 day posting+ 2 days postal transit+ 21 clear days+ Meeting day
	Shorter Notice: For AGM, it is valid only if consent, in writing or by electronic mode, is accorded thereto by not less than 95% of the Members entitled to vote thereat
Service of notice through electronic means	Notice may be sent thru e-mail as text, attachment, notification, URL.
	Company to provide Proper address as per the records of company.
	Subject line shall state company name, type of notice, place of date of meeting.
	System shall produce confirmation, record of recipients, copy of record, failed transmissions, re-sending.
Quorum requirements	Meaning: minimum number of Members who must be present at a Meeting
	Number: Public Company - (a)<1000= 5, () >1000and< 5000 = 15, (c) >5000 = 30. AOAcan provide larger limit.
	Included: Members physically present, representative of corporate member, joint holders counted as one, members in dual capacity, each such capacity so represented shall be counted, person appointed by president or governor of state
	Excluded: Preference Shareholder (included if they exercise voting), Proxy
	Single Representative representing more than one company each counted separately for quorum.

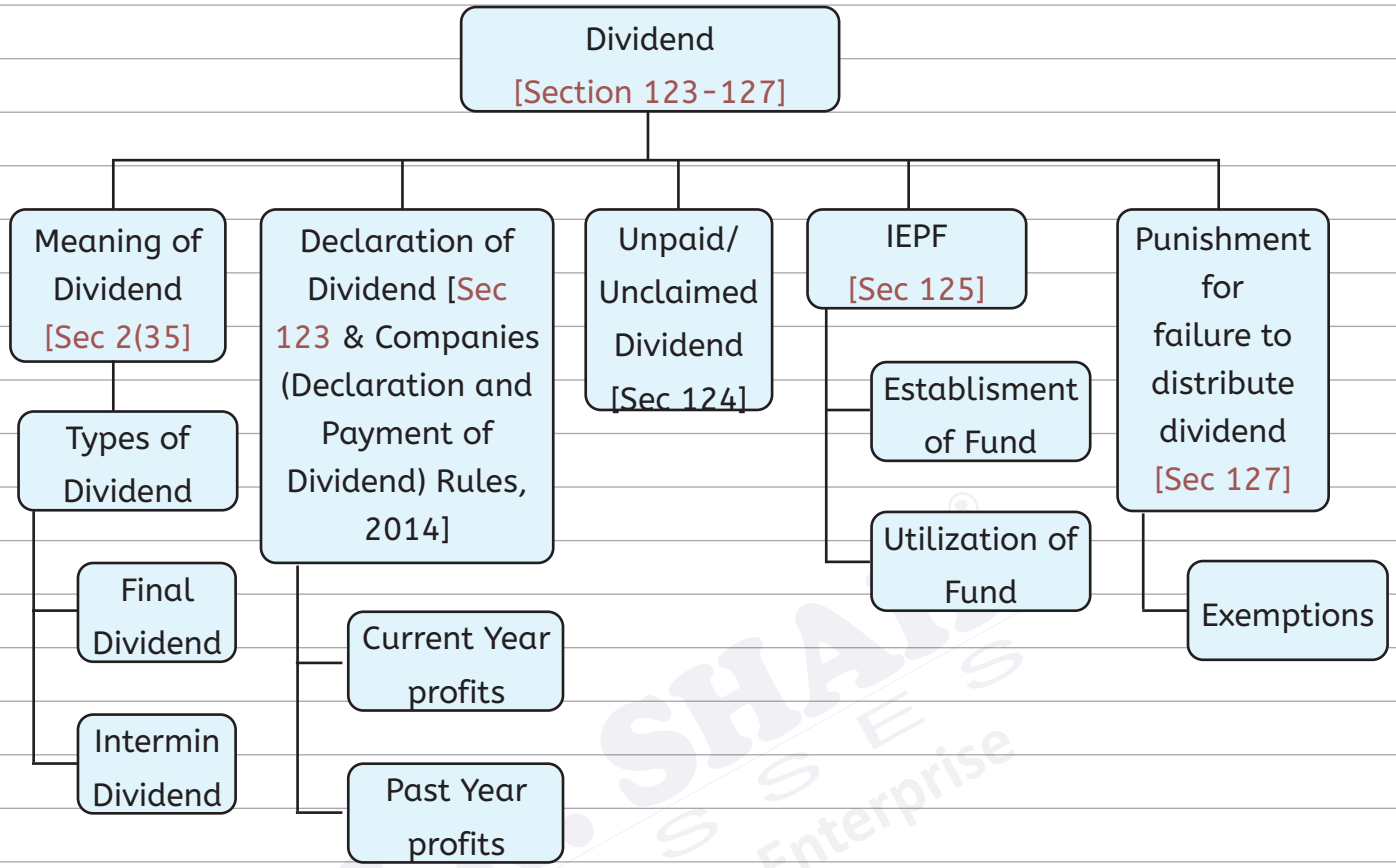
No Quorum in meeting	Requisites Meeting (EGM by members) - Cancelled
	AGM / EGM by directors adjourn to same day, place next week or other as determined.
	Adjourned meeting: members present shall be the Quorum.
	In case of Adjourned meeting company shall give not less than 3 days notice to members.
Chairman of the Meeting	Designated or elected to preside over and conduct the proceedings
	Generally - First Chairman - as named in AOA or Chairman of Board of Directors presidesover General Meetings.
	Board Meeting - one among the board elect chairman: no Chairman is designated beforehand he is not present within 15 minutes, is unwilling to act as Chairman No Director is willing, No Director is present within 15 minutes
	Poll is demanded on election of Chairman, it must be taken forthwith (Otherwise determined by show of hands)
Appointment of Proxy	1.Proxy need not be a Member, 2. Each meeting = Separate Proxy, 3. Max as proxy for 50 members or for a member holding aggregate not more than 10% of the total share capital of the Company carrying voting rights, 4. Sec. 8 Company = only Member Proxy, 4. Vote only on a poll, 5. No right to speak, 6. Form: MGT 11, 7. Deposit within 48 hours before the meeting, 8. Not apply to a Company having no Share Capital, 9. Inspection of proxy register 3 days notice in writing to the Company so as to inspect only from a period beginning 24 hours before commencement of Meeting, 10. No invitation shall be issued, 11. Proxy may be revoked, 12. Proxy appointed valid for adjourned meeting, 13. Two Proxy instruments submitted by the same, 14. Proxy submitted by the second in time will be counted.
Rules in respect of Voting by Members	Equity shareholders: All matters /Vote proportionately
	Preference shareholder: Right to Vote on matters affecting their rights only, Vote on ail matters if no dividend is paid, Vote proportional to value of holding.

Demand of Poll	Who? Specified members or Chairman
	When? Before or after declaration of results through show of hands etc
	Specified persons: (a) Company having share capital - > 1/10th of the total voting Power or holding aggregate sum of not less than ₹5,00,000, (b) Any other company - > 1/10th of the total voting Power
	Time of taking: for deciding Adjournment - Forthwith, other matter - within 48 hours
Voting through electronic means	Applicability: All Listed Company [other than Company referred in Chap XB/XC of SEBI], or a Company having > 1,000 Shareholders.
	Above Company shall provide facility for Members to vote by electronic
	Notice shall be given to all members, directors, Auditors and to be placed in the Website.
	Resolution to be considered through e-voting shall not be withdrawn.
	Notice shall clearly indicate that the facility for voting by e-means is provided, members already voted by remote e-voting may also attend the Meeting, process and manner of voting and time schedule and any login, password etc. Advertisement/ Public Notice at least 21 days before the Meeting in a Local Language Newspaper and a English Newspaper and in the Company's Website.
	Remote e-voting shall remain open for not less than 3 days and shall dose at 5 pm on the date preceding to the date of the General Meeting.
	Voting Process: (a) During the remote e-voting period Shareholders may opt for remote e-voting, (b) Once the vote on a resolution is cast by the Member, he is not allowed to change it subsequently, or cast the vote again, (c) At the end of the remote e-voting period, the facility shall forthwith be blocked.
	Scrutinizers shall be appointed who may be a CA, cost accountant, CS or Advocate and shall not be an employee of company.
	Duties of Scrutinizes: Counting the votes, Reporting to Chairman, maintaining Register, Safe Custody of all Papers, declaring results in website after approval by Chairman

Resolutions through Postal Ballot (S.192A)	(a) Meaning: Ascertaining the views of the Members through post or electronic means within 30 days of dispatch of notice.
	(b) Mandatory for 1. Object Clause alteration, 2. AOA alteration for defining private company, 3.Change in place of Registered Office outside local limits of any city, town, or village as specified, 4.change of objects for which a company has raised money from public through prospectus, 5 Issue of DVR Shares. 6. Variation in the rights attached to a class of Shares /Debentures / Securities, 7 Buy-back of own Shares. 8. Election of Director, 9. Sate of whole or substantially the whole of Company's undertaking specified, 10. Giving loans or extending guarantee or providing security in excess of limit prescribed. Optional for any business otherthan ordinary business and business requiring directors or auditors have right to be heard atmeeting. [OPC and other companies having members upto 200 not mandatory]
	(c) Issue of Notice; (a) sent to all Shareholder, (b) mode -Registered Post Acknowledgement or Certificate of Posting, (c) Advertisement in English newspaper andplacing in website, (d) Members are required to send their assent or dissent within a period of 30 days, (e) Notice is a prepaid postage envelope.
Procedure for Postal Ballot	(a) Issue Notice, (b) Appointment of a Scrutinizer, (c) Register to record the consent(d)Scrutinizer shall submit his Report within days.
Circulation of Member's Resolution	1. Purpose: Machinery of the Company, by Members who (a) want to propose a resolution at the Company's next AGM, or (b) desire to circulate to Members any statement on any matters referred to in any proposed resolution or any business to be dealt with at any GM.
	2. Deposit of requisition at the registered office (a) if required issue of notice – atleast6 weeks before meeting, (b) Others - atleast 2 weeks before meeting
	3. Circulation only at the expense of Requisitionists
	4. Company to circulate the notice (excused if company make application seeking it is made by a person for needless publicity for defamatory matter, and in case of banking companies where is injures the companies interest),

Special issues in Adjournment	Adjournment provisions are contained in AOA. Chairman may adjourn when quorum is not presented or if essential to take poll. No new notice to be given except if provided in articles. Notice to be given if meeting adjourned for 30 days or more or if new business is be transacted, notice shall be given. Date of Adjourned meeting = actual date of resolution
Minutes	Purpose: record maintained by a Company of the proceedings in the meeting
	Time: within 30 days of the conclusion of every meeting, Place: Registered Office
	Signing: (a) For Board or Committee Meeting - Chairman of the same or next succeeding Meeting, and (b) For General Meeting - Chairman of the same meeting within 30 days erf Meeting, or in the event of death or inability of the Chairman, by a Director duly authorised by the Board for the purpose.
	Minutes if maintained in Loose Leaves are required to be bound up at a reasonable interval not exceeding 6 months.
	Board Meeting: Not open for inspection
Inspection of Minutes Book of Meetings	General Meeting (inch resolutions thru postal ballot): Open for inspection [Sec 119] members can inspect without charge and get hard copies within 7 days of request and get soft copies of Minutes for Immediately preceding 3 FYs free of cost. Refusal to permit inspection results in penalty upto ₹ 25,000 for company and ₹5000 to Officer in default. Tribunal can also direct the company in case of refusal or default.

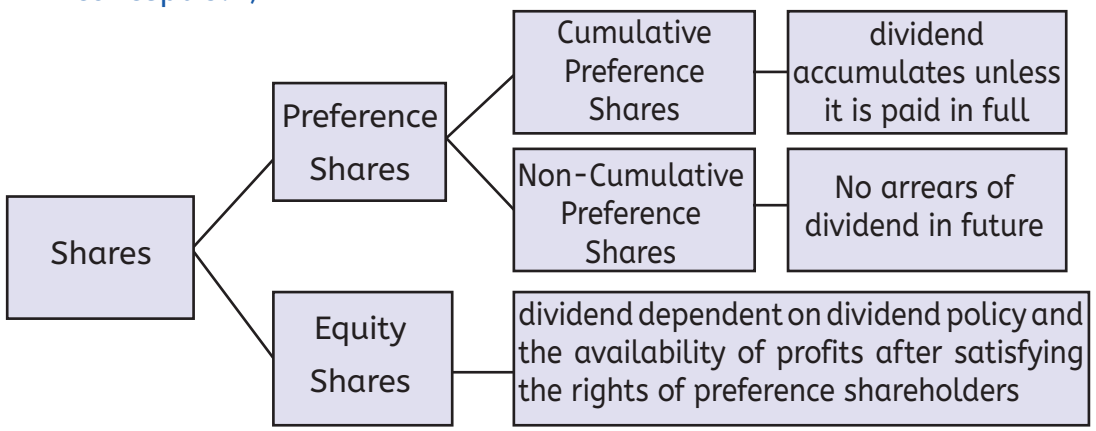
VIII DECLARATION AND PAYMENT OF DIVIDEND



8.1 Meaning and Types of Dividend

Meaning	A dividend is a payment made by a company to its shareholders, usually as a distribution of profits i.e. a portion of profits earned and allocated as payable to the shareholders yearly or whenever declared. Section 2(35) of the Companies Act, 2013, simply states that "dividend" includes any interim dividend.
Types	I. Dividend payable on the basis of Time (When declared) 1. Interim Dividend: When the Board of Directors declare dividend between two annual general meetings of the company, such dividend is known as Interim dividend (Explained in concept 8.2). 2. Final Dividend: When the dividend is declared at the annual general meeting of the company, it is known as Final dividend. All the provisions applicable on dividend are also applicable on interim dividend (Explained in concept 8.3).

II. Dividend payable on the basis of Nature of shares (Explained in concept 8.4)



8.2 Interim Dividend

1) Interim dividend is declared by the Board of Directors.
2) It can be declared during any financial year.
3) Further, it can be declared at any time during the period from closure of the financial year till holding of the Annual General Meeting (AGM).
4) The declaration of interim dividend is done out of profits before the final passing of the accounts and therefore, effectively, interim dividend is said to be declared and paid between two AGMs.
5) The sources for declaring interim dividend include:
   - Surplus in the profit and loss account; or
   - Profits of the financial year in which such dividend is sought to be declared; or
   - Profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.
6) Declaration of interim dividend is regularized at the ensuing AGM by the members.
7) If the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.
   Example: If a company declared dividend at the rate of 16% during the immediately preceding three financial years, then in case the company incurs loss in the current financial year, it is permitted to declare interim dividend at a rate which is not higher than 16%.
8) The amount of the dividend, including interim dividend, shall be deposited in a separate account maintained with a scheduled bank within five days from the date of declaration.

9) All provisions which are applicable to the payment of dividend shall also apply in case of interim dividend.

8.3 Final Dividend

1) When the dividend is declared at the Annual General Meeting of the company, it is known as 'final dividend'.
2) The rate at which dividend needs to be declared and paid shall be recommended by the Board of Directors in the Directors' Report1. However, such rate (or a lower rate) is required to be approved by the members at the Annual General Meeting by passing an ordinary resolution since declaration of dividend is an ordinary business.
3) The rate of dividend recommended by the Board cannot be increased by the members.

The table given below provides a quick summary of the above concepts of Interim Dividend and Final Dividend.

BASIS FOR COMPARISON	INTERIM DIVIDEND	FINAL DIVIDEND
Definition	Interim dividend is declared and paid during an accounting year, i.e. before the finalization of accounts for the year.	Finaldividend is the dividend recommended by the board of directors, and approved by shareholders at the company's Annual General Meeting, after the close of financial year.
Announcement	Announced by Board of Directors.	Recommended by Board of Directors and approved by shareholders.
Time of Declaration	Before preparation of financial statements.	After preparation of financial statements.
Revocation	It can be revoked with the consent of all shareholders.	It cannot be revoked.
Provision in Articles of Association	It is declared only when the articles specifically permits the declaration.	It does not require any specific provision in the articles.

8.4 Dividend payable on the basis of Nature of shares

Shares can be classified into two categories i.e. preference shares and equity shares.

The manner of payment of dividend is dependent upon the nature of shares.

1) Preference Shares: According to Section 43 of the Companies Act, 2013, shareholders holding preference shares are assured of a preferential dividend at a fixed rate during the life of the company.

Dividend is generally cumulative in nature and need not be paid every year in case of deficiency of profits.

Types of Preference Shares on the basis of payment of dividend

Classification of preference shares on the basis of payment of dividend is as follows:

(a) Cumulative Preference Shares: A cumulative preference share is one that carries the right to a fixed amount of dividend or dividend at a fixed rate. Such a dividend gets accumulated and its arrears are payable from the profits earned in the later years if the profits of current year are insufficient for payment of dividend. Until and unless dividend on cumulative preference shares is paid in full, including arrears, if any, no dividend is payable on equity shares.

(b) Non-cumulative Preference Shares: A non-cumulative preference share carries with it the right to a fixed amount of dividend. In case no dividend is declared in a year due to any reason, the right to receive such dividend for that year expires. It implies that holder of such a share is not entitled to arrears of dividend in future.

2) Equity Shares: Equity shares are those shares, which are not preference shares. It means that they do not enjoy any preferential rights in the matter of payment of dividend or repayment of capital. The rate of dividend on equity shares is recommended by the Board of Directors and may vary from year to year. Rate of dividend depends upon the dividend policy and the availability of profits after satisfying the rights of preference shareholders.

8.5 Declaration of Dividend (Section 123)

Dividend shall be declared or paid by a company for any financial year –	(a) Out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of section 123(2), Or (b) Out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, Or (c) Out of both (a) and (b); Or (d) Out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government. • Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded.
Need for providing for depreciation out of profits before declaring dividend	Dividend is an apportionment from revenue profits. Therefore, dividend should never be declared out of capital. This is also the reason for prohibition on issue of shares at a discount which you studied in the topic Share Capital and Debentures. "Depreciation" is a notional estimate of the reduction in the value of an asset due to i. wear and tear, ii. efflux of time, iii. improvements in technology etc. If depreciation is not provided for there will be two consequences: i. The value of the asset will be overstated in Balance Sheet ii. The profits of the current year will be overstated. Let us take a hypothetical case where a company declares all the profits earned during any year as dividend.

	At the time of winding up of the company the value of assets appearing in the Balance-sheet would appear to be sufficient to repay the capital of the shareholders but the actual realizable value thereof will be a paltry sum which may not be sufficient even to meet the expenses of winding up. This is because the company has failed to retain the amount of wear and tear in the value of the asset by way of provision for depreciation. In a way the company would have declared dividend out of capital, which is prohibited. Hence the law mandates provision for depreciation out of profits before declaration of dividend.
Transfer to reserves	A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the free reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is to be decided at the discretion of the company.
Declaration of dividend from free reserves	Dividend shall be declared or paid by a company only from its free reserves. No other reserve can be utilized for the purposes of declaration of such dividend.
Declaration of Dividend when there is Inadequacy or Absence of Profits	in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions: 1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding 3 years. Rate of Dividend $\leq$ (RD1 +RD2 + RD3)/3 Where, RD1, RD2, RD3 are rates at which dividend was declared by the company in the immediately preceding three years. However, this condition shall not apply if the company has not declared any dividend in each of the three preceding financial year.

2) The total amount to be drawn from such accumulated profits shall not exceed 10% of its paid-up share capital and free reserves as appearing in the latest audited financial statement. In other words: Total amount that can be drawn ≤ 10% of (paid up share capital + from accumulated profits free reserves)

3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.

4) The balance of reserves after such withdrawal shall not fall below 15% of its paid-up share capital as appearing in the latest audited financial statement.

Example: Capricorn Industries Limited has a paid-up capital of ₹ 00 lakhs and accumulated Reserves of 240 lakhs. Loss for the year ending 31st March 2020 is 30 Lakhs. Dividend was declared at the following rates during the three years immediately preceding.

Year 1 9%
Year 2 10%
Year 3 12%

What is the maximum rate at which the company can declare dividend for the current year.

Answer: In the given case, Capricorn Industries Limited has not made adequate profits during the current year ending on 31st March, 2020, but it still wants to declare dividend. Let us apply the conditions:

Condition I:

(9+10+12)/3 Average rate = 10.3%

Therefore, the rate of dividend shall not exceed 10.3%.

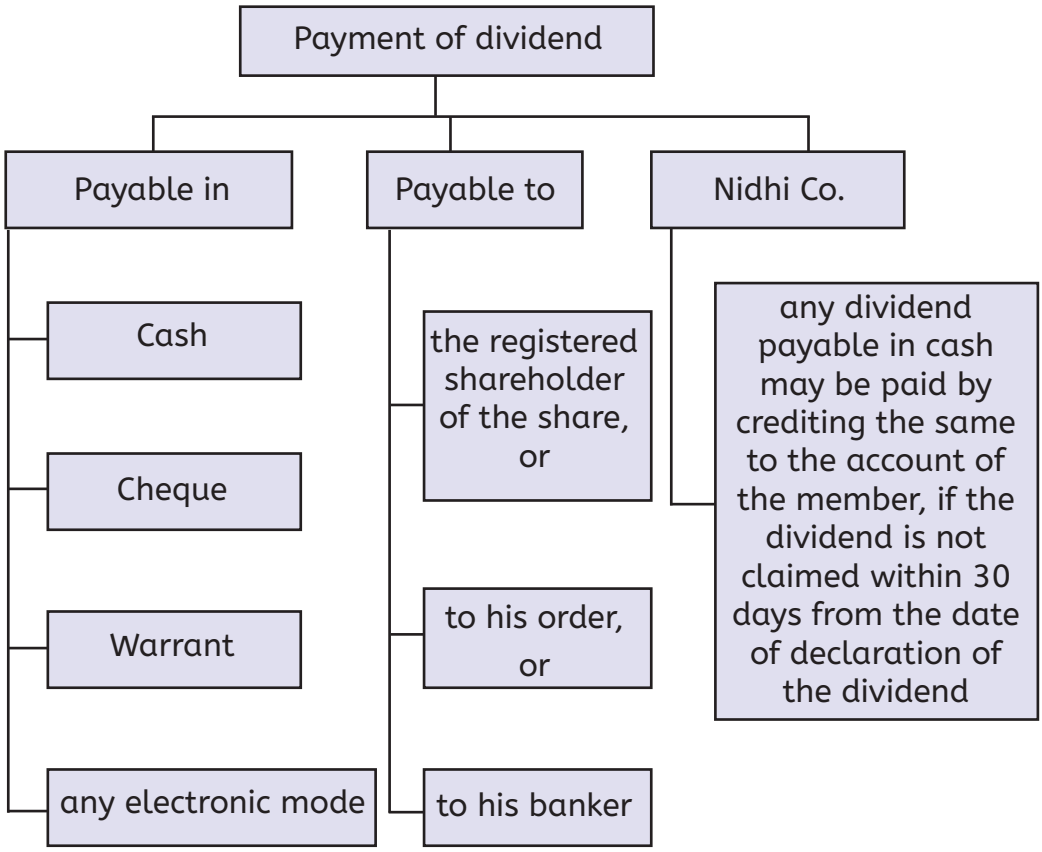
i.e. 10.3% of Paid up Capital i.e. 200 lakhs = 20.6 lakhs

Condition II:

Paid-up capital + Free reserves	=	(200+240) Lakhs
(Assuming all reserves are free)=		₹ 440 Lakhs
10% thereof	=	₹ 44 Lakhs
Less: loss for the year	=	₹ 30 Lakhs
Amount available	=	₹ 14 Lakhs

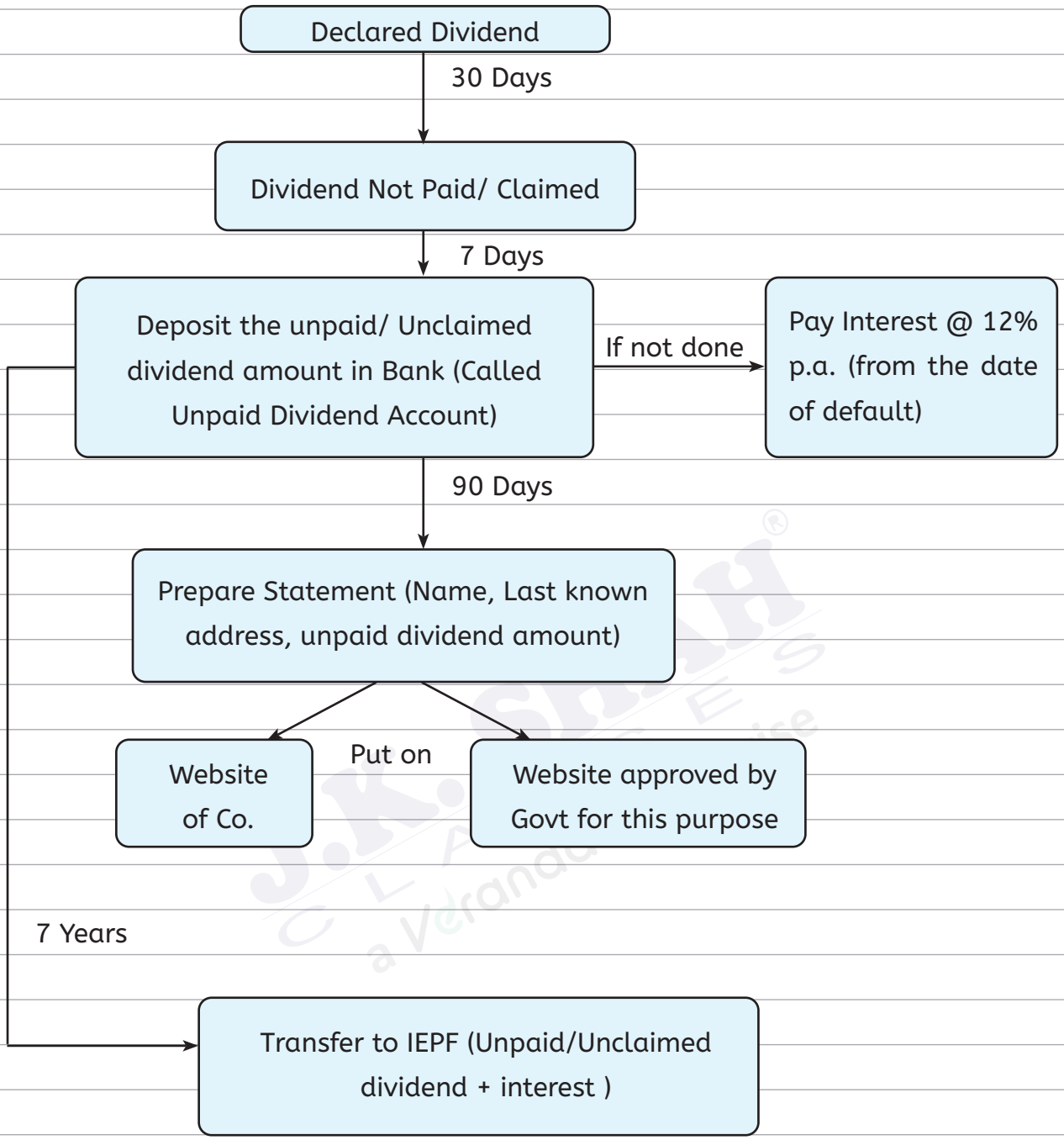
Hence the quantum of dividend is further restricted to 14 lakhs.

	Condition III: Accumulated Reserves ₹ 240 Lakhs Proposed withdrawal declaration of dividend ₹ 14 Lakhs Balance of Reserves ₹ 226 Lakhs This is more than 15% of paid-up capital (i.e 15% of 200 Lakhs) i.e. 30 lakhs. Thus, the company can declare a dividend of 14 lakhs i.e. at a rate of 7% on its paid-up capital of 200 lakhs.
Depositing of amount of dividend	The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration of such dividend. This sub-section shall not apply to a Government Company.
Interim Dividend	The Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. However, in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

<table>
<tr>
<td>Payment of dividend</td>
<td>


In case a shareholder informs the company to pay dividend to a particular banker and if the payment is so made by the company, then it shall be deemed to be made to the shareholder himself.
A purchaser of shares whose name is not registered in the Register of Members cannot claim payment of dividend to him though he might have made full payment to the seller of shares.
</td>
</tr>
<tr>
<td>Prohibition on declaration of dividend</td>
<td>A company which fails to comply with the provisions of section 73 and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.</td>
</tr>
<tr>
<td>Prohibition on section 8 companies</td>
<td>Companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.] of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the company.</td>
</tr>
</table>

8.6 Unpaid Dividend Account (Section 124)



- Where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.
- The company shall, within a period of 90 days of making any transfer of an amount to the Unpaid Dividend Account, prepare a statement containing the names, their

last known addresses and the unpaid dividend to be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government for this purpose, in such form, manner and other particulars as may be prescribed.

- If any default is made in transferring the total amount referred to the Unpaid Dividend Account of the company, it shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of 12 % per annum and the interest accruing on such amount shall endure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.
- Any person claiming to be entitled to any money to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.
- Any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of 7 years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under section 125 and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.
- All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred by the company in the name of Investor Education and Protection Fund along with a statement containing such details as may be prescribed.
  - ✓ Any claimant of shares transferred above shall be entitled to claim the transfer of shares from Investor Education and Protection Fund in accordance with such procedure and on submission of such documents as may be prescribed.
  - ✓ In case any dividend is paid or claimed for any year during the said period of 7 consecutive years, the share shall not be transferred to Investor Education and Protection Fund.
- If a company fails to comply with any of the requirements of this section,

The company shall be punishable with:

Fine: ₹1 lakh and additionally ₹500 per day during which the failure continues subject to a maximum of ₹10,00,000.

Every officer of the company who is in default:

Fine: ₹25,000 and additionally ₹100 per day during which the failure continues subject to a maximum of ₹2,00,000.

8.7 Investor Education And Protection Fund (Section 125)

Section 125 of the Act along with various Rules framed including Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 deal with the Investor Education and Protection Fund (IEPF).

This fund, being established by the Central Government, shall be credited with specified amounts and utilized for refund of unclaimed and unpaid amounts, promotion of investors' awareness and protection of the interests of investors, etc.

Credit of Specified Amounts to the Fund:	1. Amount given by the Central Government- The amount given by the Central Government by way of grants after due appropriation made by Parliament; 2. Donations by the Central Government- Donations given by the Central Government, State Governments, companies or any other institution for the purposes of the Fund; 3. (Amount lying in the Unpaid Dividend Account- The amount lying in the Unpaid Dividend Account of companies transferred to the Fund under section 124 i.e. remaining unpaid and unclaimed for a period of 7 years; 4. Amount in the General Revenue Account of the Central Government- The amount in the General Revenue Account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of the Act of 2013; 5. Amount in IEPF- The amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956; 6. Income from Investments- The interest or other income received out of investments made from the Fund; 7. Amount received through disgorgement or disposal of Securities- The amount received under section 38(4) i.e. amount received through disgorgement or disposal of securities seized from a person who has been convicted for personation for acquisition of securities as provided in section 38(3);

- Disgorgement is the legally enforced repayment of ill-gotten gains imposed on wrongdoers by the courts. Funds that were received through illegal or unethical business transactions are disgorged, or paid back, often with interest and/or penalties to those affected by the action.

8. Application Money- The application money received by companies for allotment of any securities and due for refund (only if such amount has remained unclaimed and unpaid for a period of 7years from the date it became due for payment);
9. Matured Deposits- Matured deposits with companies other than banking companies (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment);
10. Matured Debentures- Matured debentures with companies (only if such amount has remained unclaimed and unpaid for a period of 7 years from the date it became due for payment);
11. Interest- Interest accrued on the amounts referred to in points 8 to 10 above;
12. Amount received from Sale Proceeds- Amount received from sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 or more years;
13. Redemption Amount- Redemption amount of preference shares remaining unpaid or unclaimed for 7 or more years; and
14. Other Amounts- Such other amounts as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016. They are as under:
    (i) All amounts payable as mentioned in points 1 to 14 above of section 125;
    (ii) All shares in accordance with section 124 i.e. all those shares in whose case dividends have not been claimed or paid for 7 consecutive years or more;
    (iii) All the resultant benefits arising out of shares held by the Authority under point 2 above;
    (iv) All grants, fees and charges received by the Authority under these rules;

	(v) All sums received by the Authority from such other sources as may be decided upon by the Central Government; (vi) All income earned by the Authority in any year; (vii) All shares held by the authority in accordance with section 90 of the Act and all the resultant benefits arising out of such shares, without any restrictions. (viii) All amounts payable as mentioned in section 10B (3) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and section 10B of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; and (iX) All other sums of money collected by the Authority as envisaged in the Act. (X) All shares held by Authority in accordance with proviso of sub section (a) of section 90 of the Act and all resultant benefits arising out of such shares without restrictions. Further, according to Rule 3, in case of term deposits and debentures of companies, due unpaid or unclaimed interest shall be transferred to the Fund along with the transfer of the matured amount of such term deposits and debentures.
Utilization of the Fund:	According to section 125 (3) the Fund shall be utilized for: 1. Refund of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon; 2. Promotion of investors' education, awareness and protection; 3. Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement; 4. Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and 5. Any other purpose incidental thereto in accordance with the rules framed under the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

Application to the Authority for payment:	Any person claiming to be entitled to the amount referred in section 125 (2) may apply to the Authority constituted under section 125 (5) for the payment of the money claimed.
Other Provisions governing the IEPF	1. Constitution of the Authority for Administration of Fund- An Authority is being constituted for the administration and maintenance of accounts as well as other relevant records of the Fund. 2. Composition of the Authority: (i) The Secretary, Ministry of Corporate Affairs shall be the ex-officio Chairperson of the Authority. (ii) There shall be 6 members (maximum limit 7) (iii) Chief Executive Officer who shall be the convenor of the Authority. 3. Provision of required Resources by the Central Government for Administration of the Fund- The Central Government may provide to the Authority such offices, officers, employees and other resources in accordance with the Rules. 4. Authority to work in consultation with CAG of India- The Authority shall administer the Fund and maintain separate accounts and other relevant records in relation to the Fund in such form as may be prescribed after consultation with the Comptroller and Auditor-General of India. 5. Spending of Money- The Authority shall be competent to spend money out of the Fund for carrying out the objects specified in section 125 (3) i.e. purposes for which the fund shall be utilized. 6. Audit of the Fund- The accounts of the Fund shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him. Such audited accounts together with the audit report thereon shall be forwarded annually by the Authority to the Central Government. 7. Preparation of Annual Report by the Authority- For each financial year, the Authority shall prepare in the prescribed form and at prescribed time its annual report giving full account of its activities during the financial year. 8. Forward the copy to Central Government: The Authority shall forward a copy of Annual Report to the Central Government. 9. Lay the reports before each House of Parliament: In turn, the Central Government shall cause the annual report and the audit report given by the Comptroller and Auditor- General of India to be laid before each House of Parliament.

8.8 Right to Dividend, Rights shares and Bonus shares to be held in abeyance pending Registration of Transfer of shares (Section 126)

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall:

(a) transfer the dividend in relation to such shares to the Unpaid Dividend Account referred to in section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and

(b) keep in abeyance in relation to such shares, any offer of rights shares under section 62 and any issue of fully paid-up bonus shares in pursuance of section 123.

8.9 Punishment for failure to distribute Dividends (Section 127)

- Time Limit to pay Dividend:
  - ✓ In case a company declares dividend, it must be paid or the dividend warrant thereof must be posted within 30 days from the date of declaration of dividend to the entitled shareholders.
  - ✓ If the Company posts the warrant within 30 days, the Company is not liable even if the shareholder does not receive it within 30 days.
- Punishment for Failure:

  In case a company fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration, following punishments are applicable:

  1) Every director of the company shall be punishable with:

     Imprisonment: Up to 2 years (if he is knowingly a party to the default)

     +

     Fine: Minimum ₹1,000 for every day during which such default continues

  2) The company shall be liable to pay: Simple interest at the rate of 18% p.a. during the period for which such default continues.
- Exemption from above punishment:

  Under the following cases where the company has failed to pay declared dividend within 30 days of declaration, no offence shall be deemed to have been committed and therefore, no punishment is attracted:

  (a) Where the dividend could not be paid by reason of the operation of any law;

(b) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;

(c) Where there is a dispute regarding the right to receive the dividend;

(d) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or

(e) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

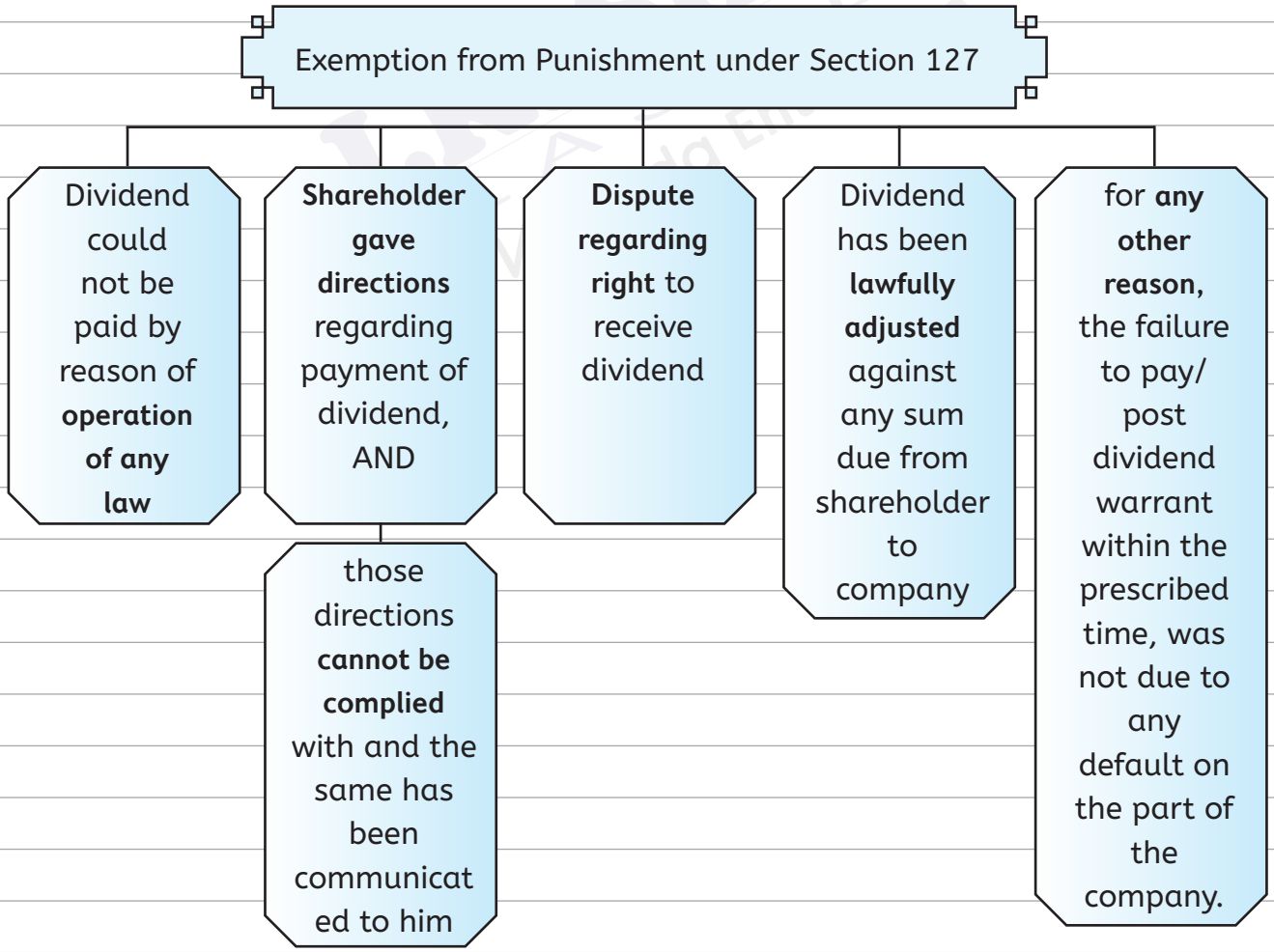
- Applicability of Section 127 to Nidhis:

Where the dividend payable to a member is ≤ ₹100, the Nidhi Company need not credit the dividend directly to the shareholder's Account or post the dividend warrant thereof.

They just have to:

(i) Publish declaration of dividend in the local language in one local newspaper of wide circulation and

(ii) Display the declaration on the notice board of the Nidhis for at least 3 months.



List of Sections

SR. NO	SECTION NUMBER	NAME OF SECTION	PAGE NUMBER (To be filled by students)
8.1	2(35)	Meaning and Types of Dividend	
8.2		Interim Dividend	
8.3		Final Dividend	
8.4		Dividend payable on the basis of Nature of shares	
8.5	123	Declaration of Dividend	
8.6	124	Unpaid Dividend Account	
8.7	125	Investor Education And Protection Fund	
8.8	126	Right to Dividend, Rights shares and Bonus shares to be held in abeyance pending Registration of Transfer of shares	
8.9	127	Punishment for failure to distribute Dividends	

SUMMARY

1. Basic Concept :
   - Dividend is a distribution of divisible profit of a company among the members.
   - It is approved by shareholder in general meeting, as recommended by BOD.
   - Rate of Dividend recommended by BOD cannot be increased by members.

2. Interim Dividend (ID) :
   - Dividend paid by BOD, between two AGM.
   - All conditions applicable to final dividend, are applicable to interim dividend also.
   - If company has incurred loss during the year up to the end of quarter immediately, ID shall not more than Average Dividend, if any, of 3 immediately preceding years.

2. Sources of Dividend :
   - Current year profit or
   - Past year profit or
   - Both current past
   - Central Government / State government under government guarantee

3. Mode of Payment :
   - Cash including cheque or warrant or Electronic mode.
   - Dividend to be paid only to Registered shareholder.
   - Dividend amount deposited in separate account in Scheduled Bank within 5 days.
   - Dividend to be paid within 30 days of declaration.

4. Prohibition on payment of Dividend :
   - Company default on the payment amount of deposit u/s. 73 &74.
   - Sec.8 company (NPO)

5. Transfer to reserve is not compulsory before approval of dividend in the General Meeting.

6. Declared Dividend

↓ 30 days

Dividend Not paid / claimed

↓ 7 days

Deposit the unpaid / unclaimed dividend amount in Scheduled Bank (called Unpaid Dividend account) — If Not done → Pay interest @ 12% p.a. from the date of default

↓ 90 days

Prepare Statement (Name, Last known address, unpaid dividend amount)

Company Website Put on Website approved by Government for this purpose

After the expiry of 7 years

Transfer to IEPF (Unpaid / Unclaimed Dividend + Interest)

Contravention :

Company = 5 Lakh to 25 lakh

Officer = 1 lakh to 5 lakh.

7. Investor Education and Protection Fund :

- Amount credited – Central Government, UDA, UDA as per Companies Act, 1956, amount as per IEPF U/s.205C, amount U/s. 38(4), application money due for refund, matured deposit, mature debenture, interest accrued on above, Redemption amount of preference share remaining unpaid for 7 years, other's prescribe amount.

- Application of IEPF :
  - (a) Refund in respect of unclaimed dividend, matured deposits, mature debentures, application money due to refund.
  - (b) Promotion of investor's Education Awareness and protection.
  - (c) Distribution of any disgorged amount as per court order.
  - (d) Reimbursement of legal expenses as per class action suit.
  - (e) Just and equitable purpose.

8. IEPF Authority :

- It consists of a chairperson, not more than 7 member and CEO.

- Its accounts are audited by C&AG and sent to the Central Government & laid down in both the houses of parliament.

9. Punishment for failure to distribute dividend :

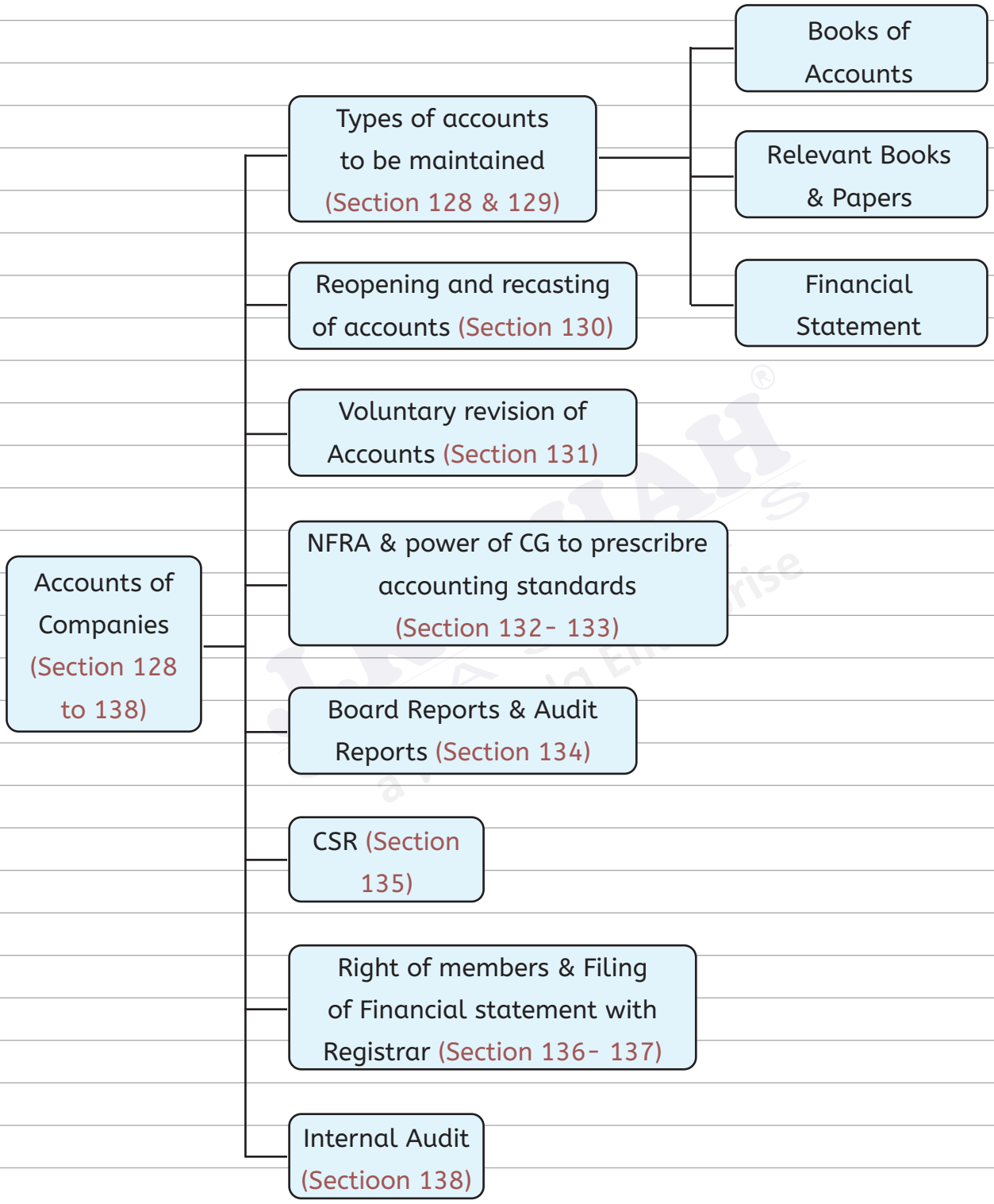
- Dividend not paid within 30 days.
- Every Director knowingly part to default liable to Rs.1,000/day and imprisonment up to 2 years.
- Company liable to pay 18% p.a. interest.

10. Exception :

Non-Payment of Dividend is due to

Operation of Law	Shareholder gave direction to pay dividend → Direction cannot be complied and communicated to him	Dispute regarding right to receive dividend	Lawfully adjusted	Any other reason was not due to any default of the company

IX ACCOUNTS OF COMPANIES



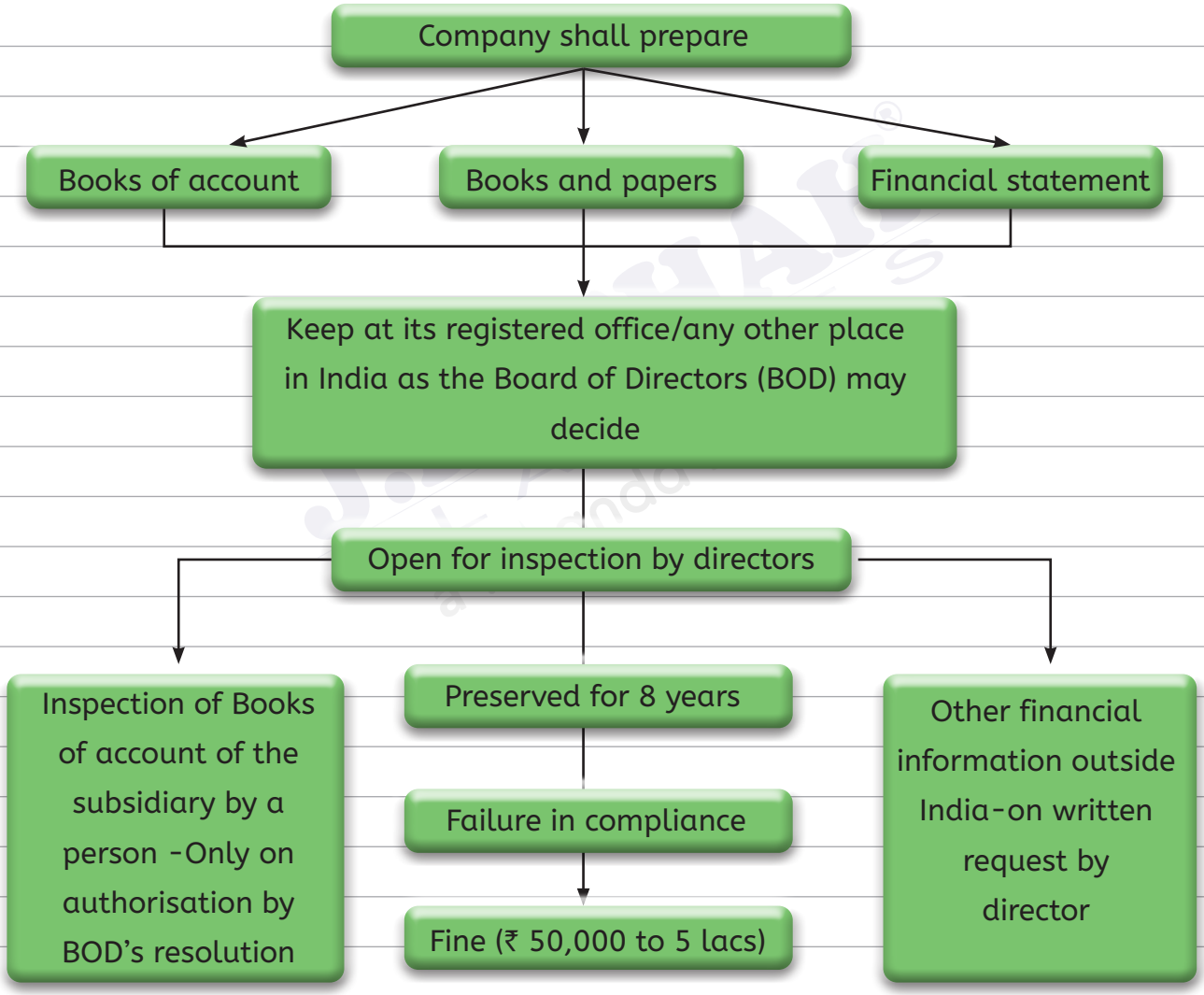
9.1 Books of Account, etc., to be kept by Company (Section 128)

General requirement	• Every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. • These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of accounts must be kept on accrual basis and according to the double entry system of accounting. • Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid. • Double entry book-keeping is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt and credit and therefore, needs to be recorded in at least two accounts. • Company have the option of keeping such books of account or other relevant papers in electronic mode.
Definitions	• "Books of account" as defined in Section 2(13) includes records maintained in respect of– (i) All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) All sales and purchases of goods and services by the company; (iii) The assets and liabilities of the company; and (iv) The items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section. • "Book and paper" and "book or paper" as defined in Section 2(12) include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form;

Place of Keeping Books of Account	• Every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. • All or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. Where such a decision is taken by the Board the company shall within 7 days thereof file with the registrar a notice in writing giving full address of that other place.
Maintenance of books of account in electronic form	A company has an option of keeping books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. Rule 3 lays down the manner of books of account to be kept in electronic mode. 1. Such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference. 2. The information contained in the records shall be retained completely in the format in which they were originally generated, sent or received, and the information contained in the electronic records shall remain complete and unaltered. 3. The information received from branch offices shall not be altered and shall be kept in a manner where it shall depict what was originally received from the branches. 4. Audit trail and edit log [Proviso to Rule 3(1)] In order to ensure audit trial, in case of company which uses accounting software for maintaining its books of account, the proviso to rule 3(1) requires that: a. For the financial year commencing on or after the 1st day of April, 2023, b. Every such company (which uses accounting software) shall use only such accounting software, c. Which has a feature of recording audit trail of each and every transaction, d. Creating an edit log of each change made in books of account along with the date when such changes were made and e. Ensuring that the audit trail cannot be disabled.

	5. The information in the electronic record of the document shall be capable of being displayed in a legible form. 6. The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis. 7. The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement following relevant information related to service provider– a) the name of the service provider; b) the internet protocol address of service provider; c) the location of the service provider (wherever applicable); d) where the books of account and other books and papers are maintained on cloud, such address as provided by the service provider.
Books of Account - Branch Office	Proper books of account relating to the transactions effected at the branch office are to be kept at that office and proper summarized returns periodically are sent by the branch office to the company at its registered office and are kept open for inspection at the registered office of the company or at such other place in India by any director during business hours.
Inspection by directors	Any director can inspect the books of accounts and other books and papers of the company during business hours. The Director can seek the information only individually and not by or through his attorney holder or agent or representative with respect to financial information maintained outside the country
Period for preservation of books	The books of account of every company relating to a period of at least 8 financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order.

Persons responsible to maintain books	The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be : (i) Managing Director, (ii) Whole-Time Director, in charge of finance (iii) Chief Financial Officer (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.
Penalty provisions	Fine: Minimum 50,000 upto 500,000 rupees



9.2 Financial Statement [Section 129]

Definition of Financial Statement	As per section 2(40), financial statement in relation to a company, includes– (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company and start-up private company may not include the cash flow statement; Note: Students may note that 'Profit and Loss Account' may also be referred as 'Statement of Profit and Loss' under the Act at some places.
What is Financial Year?	• As per Section 2(41), 'Financial year' in relation to any company or body corporate, means the period ending on the 31st March every year. • Where the company or body corporate has been incorporated on or after the 1st January of a year, the period ending on the 31st March of the following year will be the financial year. • If an application is made by a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year. But such company or body corporate, existing on the commencement of this Act, shall, within a period of 2 years from such commencement, align its financial year as per the provisions of this clause.

<table>
<tr><td>True and Fair view</td><td>The financial statements shall give a true and fair view of the state of affairs of the company or companies. It shall comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in Schedule III.</td></tr>
<tr><td>Non Applicability</td><td>Nothing shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company
Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose–
<table>
<tr><th>Type of Company</th><th>Matters</th></tr>
<tr><td>Insurance Company</td><td>Matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999</td></tr>
<tr><td>Banking company</td><td>Matters which are not required to be disclosed by the Banking Regulation Act, 1949</td></tr>
<tr><td>Company engaged in the generation or supply of electricity</td><td>Matters which are not required to be disclosed by the Electricity Act, 2003</td></tr>
<tr><td>Company governed by any other law</td><td>Matters which are not required to be disclosed by that law</td></tr>
</table></td></tr>
<tr><td>Laying of financial Statements</td><td>At every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year.</td></tr>
<tr><td>Consolidation of financial statements</td><td>• Where a company has one or more subsidiaries or associate companies, it shall,
✓ in addition to financial statements provided
✓ prepare a consolidated financial statement (CFS) of the company and of all the subsidiaries and associate companies
✓ in the same form and manner as that of its own and
✓ in accordance with applicable accounting standards,</td></tr>
</table>

	✓ which shall also be laid before the annual general meeting of the company along with the laying of its financial statement. • The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in Form AOC-1 as per Rule 5 of the Companies (Accounts) Rules, 2014. • Manner of consolidation of Accounts: The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards. • The provisions applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, also apply to the consolidated financial statements.
Manner of consolidation of Accounts [Second proviso to Sub-section 3 read with rule 6]	Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed under Rule 6 of the Companies (Accounts) Rules, 2014, as explained below: Manner of consolidation of Accounts - The consolidation of financial statements of the company shall be made in accordance with the provisions of Schedule III of the Act and the applicable accounting standards. Exception to manner stated above 1. A company covered under sub-section (3) of section 129 which is not required to prepare consolidated financial statements under the Accounting Standards, it shall be sufficient if the company complies with provisions of consolidated financial statements provided in Schedule III of the Act. 2. For a company which does not have a subsidiary or subsidiaries but has one or more associate companies or Joint Ventures or both will not be required to comply with this rule of consolidation of financial statements in respect of associate companies or joint ventures or both, as the case may be, only for the financial year commencing from the 1st day of April, 2014 and ending on the 31st day of March, 2015.

	3. Nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India commencing on or after 1st April 2014.
Exemptions from preparation of CFS :	(i) It is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, having been intimated in writing do not object to the company not presenting consolidated financial statements (ii) It is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and (iii) Its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards.
Disclosure in Financial Statements in case of non-compliance with Accounting Standards.	Were the financial statements of a company do not comply with the accounting standards, the company shall disclose in its financial statements, the deviation from the accounting standards, the reasons for such deviation and the financial effects, if any, arising out of such deviation
Penal provisions	Company contravenes the provisions of section 129 Whether mentioned officers are present MD / WTD in charge of Finance / CFO / Any other person Yes → Mentioned Officers No (Absence → All directors Imprisonment (upto 1yr) Fine (50,000 to 5 lacs), Or Both

EXEMPTION BY CENTRAL GOVERNMENT IN PUBLIC INTEREST [SUBSECTION 6]	The Central Government may, on its own or on an application by a class or classes of companies, by notification, exempt any class or classes of companies from complying with any of the requirements of this section or the rules made thereunder, if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification. Section 129 shall not apply to the Government Companies engaged in defence production to the extent of application of relevant Accounting Standard on segment reporting The exceptions, modifications and adaptations provided above shall be applicable only to those Government Companies which has not committed a default in filing its financial statements under section 137 of the said act or annual return under section 92 of the said act with the registrar
Section 129A	The Central Government may, require such class or classes of unlisted companies, as may be prescribed,– (a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed; (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.
	At present there are over 11 lakh unlisted companies actively operating in India. Some of these are really large enough with widely-spread interests [to name top 10 as on Dec 2022 - Serum Institute of India (Valued at ₹ 2,19,700 cr), Byju's (₹ 1,82,000 cr), NSE (₹ 1,39,000 cr), Swiggy (₹ 88,600 cr), OYO (₹ 77,800 cr), Dream 11 (₹ 66,200 cr), Parle Products (₹ 62,600 cr), Razorpay (₹ 62,100 cr), Ola (₹ 60,500 cr), and Intas Pharma (₹ 59,300 cr)] that make corporate governance critical issue in case of such unlisted companies as well. Hence this new section inserted vide Amendment Act of 2020 aims to improve corporate governance of certain class or classes of unlisted companies by requiring them to prepare financial results on 'periodic' basis in addition to annual submission of financial reports. Mind it, no rule has been prescribed or notification has been made as on date (30.04.2023) under this recently inserted section.

9.3 Central Government to prescribe Accounting Standards (Section 133)

- Section 133 of the Companies Act, 2013 deals with the power of the Central Government to prescribe the accounting standards.
- The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the ICAI in consultation with and after examination of the recommendations made by the NFRA.
- Until the NFRA is constituted under section 132 of the Companies Act, 2013, the Central Government may prescribe the standards of accounting or any addendum (additional material) as recommended by the ICAI in consultation with and after examination of the recommendations made by the NACAS.

  The Central Government has notified NFRA from 1st October, 2018

9.4 Constitution of National Financial Reporting Authority (Section 132)

The Central Government may, by notification, constitute a National Financial Reporting Authority to provide for matters relating to accounting and auditing standards under this Act.

Duties of NFRA	1. Make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be. 2. Monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed. 3. Oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and 4. Perform such other related functions as maybe prescribed.

Composition of NFRA	1. Chairperson, who shall be a person of eminence and having expertise in accountancy, auditing, finance or law to be appointed by the Central Government and 2. Such other members not exceeding 15, consisting of part-time and full-time members as may be prescribed: • The terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed: • The chairperson and members shall make a declaration to the Central Government in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment. • The chairperson and members, who are in full-time employment with National Financial Reporting Authority shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment and two years after ceasing to hold such appointment. 3. Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson. 4. There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions.
Powers of NFRA	1. Power to investigate, either suo moto or on a reference made to it by the Central Government, for such class of bodies corporate or persons, in such manner as may be prescribed into the matters of professional or other misconduct committed by any member or firm of chartered accountants, registered under the Chartered Accountants Act,1949: No other institute or body shall initiate or continue any proceedings in such matters of misconduct where the National Financial Reporting Authority has initiated an investigation under this section; 2. NFRA shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:–

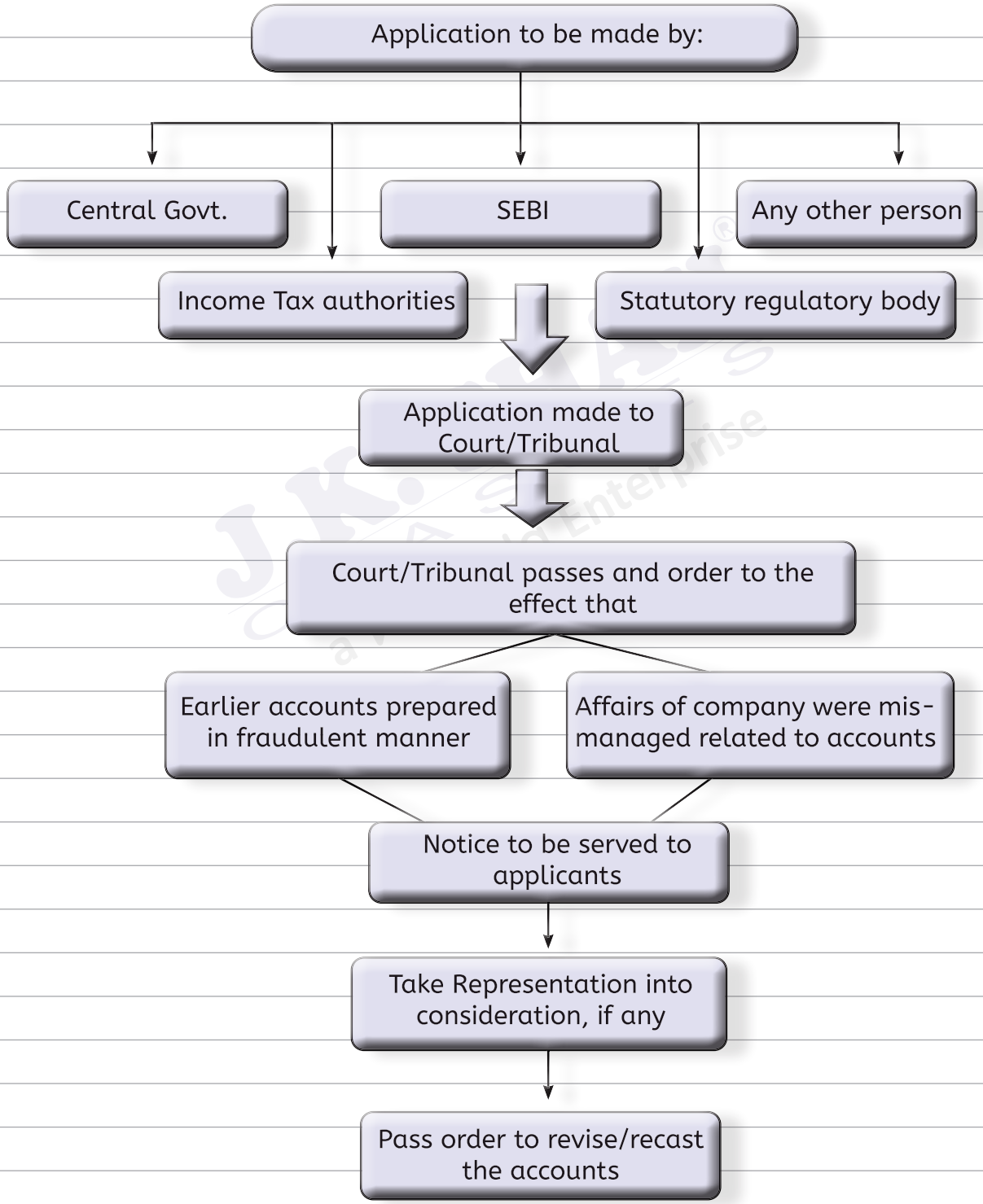
	(i) Discovery and production of books of account and other documents, at such place and at such time as may be specified by the National Financial Reporting Authority; (ii) Summoning and enforcing the attendance of persons and examining them on oath; (iii) Inspection of any books, registers and other documents of any person referred to at any place; (iv) Issuing commissions for examination of witnesses or documents; 3. Where professional or other misconduct is proved, have the power to make order for– (i) Imposing penalty of– In case of individuals: Minimum ₹1 lakh, but which may extend to 5 X (fees received), In case of Firms: Minimum ₹5 lakhs , but which may extend to 10 X (fees received) (ii) Debarring the member or the firm from– a) being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or b) performing any valuation as provided under section 247, for a minimum period of 6 months or such higher period not exceeding 10 years as may be determined by the National Financial Reporting Authority.
Remedy to aggrieved party by order of NFRA	Any person aggrieved by any order of the NFRA, may prefer an appeal before the National Company Law Appellate Tribunal (NCLAT) in such manner and on payment of such fee as may be prescribed.
NFRA Rules, 2018	As per NFRA rules, NFRA shall have power to monitor and enforce compliance with accounting standards and auditing standards, oversee the quality of service or undertake investigation of the auditors of the following class of companies and bodies corporate: 1. Companies whose securities are listed on any stock exchange in India or outside India.

	2. Unlisted public companies having Paid-up capital: ≥ ₹500 crores or Annual turnover: ≥ ₹1000 crores, Total outstanding loans, debentures and deposits: ≥ ₹500 crores as on the 31st March of immediately preceding financial year. 3. Insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special Act for the time being in force or bodies corporate incorporated by an Act in accordance with the Companies Act, 2013. 4. Any Body Corporate or company or person, or any class of bodies corporate or companies or persons, on a reference made to the NFRA by the Central Government in public interest; and 5. A body corporate incorporated or registered outside India, which is a subsidiary or associate company of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above, if the income or net worth of such subsidiary or associate company exceeds 20% of the consolidated income or consolidated net worth of such company or the body corporate, as the case may be, referred to in clauses (a) to (d) above. Every existing body corporate other than a company governed by these rules, shall inform the NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of these rules. A company or a body corporate other than a company governed under NFRA Rules shall continue to be governed by the NFRA for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein.

Recommending accounting standards (AS) and auditing standards (SA)	For the purpose of recommending AS or SA for approval by the Central Government, the NFRA - a) Shall receive recommendations from the ICAI on proposals for new AS or SA or for amendments to existing AS or SA; b) May seek additional information from the ICAI on the recommendations received under clause (a), if required. The NFRA shall consider the recommendations and additional information in such manner as it deems fit before making recommendations to the Central Government.
NFRA to maintain proper Books of Accounts	1. The National Financial Reporting Authority shall maintain such books of account and other books in relation to its accounts in such form and in such manner as the Central Government may, in consultation with the Comptroller and Auditor- General of India prescribe. 2. The accounts of the National Financial Reporting Authority shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and such accounts as certified by the Comptroller and Auditor General of India together with the audit report thereon shall be forwarded annually to the Central Government by the National Financial Reporting Authority. 3. The National Financial Reporting Authority shall prepare in such form and at such time for each financial year as may be prescribed its annual report giving a full account of its activities during the financial year and forward a copy thereof to the Central Government and the Central Government shall lay the annual report and the audit report given by the Comptroller and Auditor-General of India before each House of Parliament.
Miscellaneous points	1. The head office of the National Financial Reporting Authority shall be at New Delhi and the National Financial Reporting Authority may, meet at such other places in India as it deems fit. 2. The National Financial Reporting Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings in such manner as may be prescribed

	3. The Central Government may appoint a secretary and such other employees as it may consider necessary for the efficient performance of functions by the National Financial Reporting Authority under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.

9.5 Re-Opening of Accounts on Court's or Tribunal Orders (Section 130)



1. Apply to court for re-opening of accounts—A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by-
   (a) the Central Government,
   (b) the Income-tax authorities,
   (c) the Securities and Exchange Board of India (SEBI),
   (d) any other statutory regulatory body or authority or any person concerned

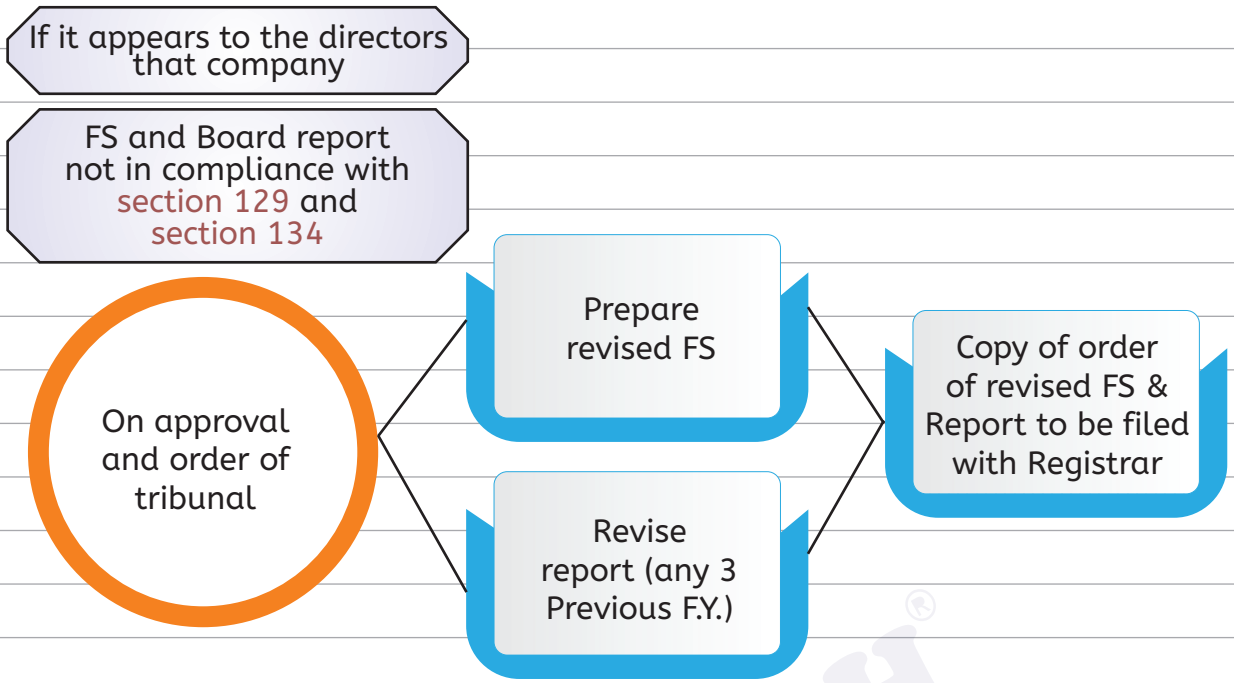
   and an order is made by a court of competent jurisdiction or the Tribunal to the effect that—
   (i) the relevant earlier accounts were prepared in a fraudulent manner; or
   (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements.
2. Serving of notice by the Court or Tribunal:

   The Court or the Tribunal, shall give notice to the CG, the Income-tax authorities, the SEBI or any other statutory regulatory body or authority concerned or any other person concerned and

   Shall take into consideration the representations, if any, made by these above Authorities.
3. Revised accounts shall be final: The accounts so revised or re-casted, shall be final.
4. Time Limit in respect of re-opening of books of account: No order shall be made in respect of re-opening of books of account relating to a period earlier than 8 financial years immediately preceding the current financial year:

   Where a direction has been issued by the Central Government for keeping of books of account for a period longer than 8 years, the books of account may be ordered to be re-opened within such longer period.

9.6 Voluntary Revision of Financial Statements or Board's Report (Section 131)



1. Preparation of revised financial statement or revised report on the approval of Tribunal: If it appears to the directors of a company that–

   (a) the financial statement of the company; or

   (b) the report of the Board,

   do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the 3 preceding financial years

   after obtaining approval of the Tribunal

   on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar.

2. Tribunal to serve the notice: Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section.

   Such revised financial statement or report shall not be prepared or filed more than once in a financial year.

   Reason for revision to be disclosed: The detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.

3. Limits of revisions: Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to–

a) The correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and

b) The making of any necessary consequential alternation.

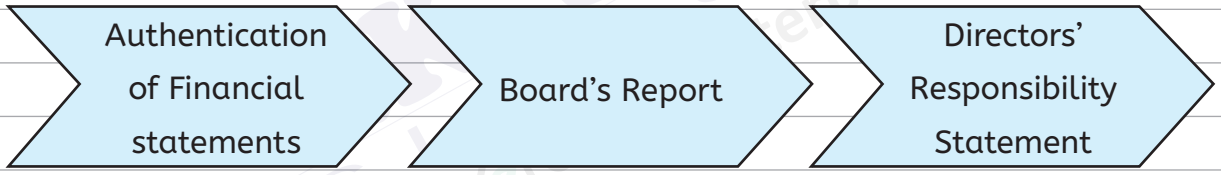
4. Framing of rules by the Central Government in relation to revised financial statement or director's report: The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular–

(a) Make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;

(b) Make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;

(c) Require the directors to take such steps as may be prescribed

9.7 Financial Statement, Board's Report, etc (Section 134)



I. Authentication of Financial statements:

(a) The financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the following:

(1) The chairperson of the company where he is authorised by the Board; or

(2) By 2 directors out of which one shall be managing director and

(3) The Chief Executive Officer, wherever he is appointed;

(4) The Chief Financial Officer, wherever he is appointed; and

(5) The company secretary of the company, wherever he is appointed.

In the case of a One Person Company, the financial statement shall be signed by only one director, for submission to the auditor for his report thereon.

(b) The auditors' report shall be attached to every financial statement.

(c) A signed copy of every financial statement, including consolidated financial

statement, if any, shall be issued, circulated or published along with a copy each of–

(1) Any notes annexed to or forming part of such financial statement;

(2) The auditor's report; and

(3) The Board's report.

II. Board's Report:

- According to Rule 8 of the Companies (Accounts) Rules, 2014, the Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.
- There shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include–

(Contents of Board Report)

1. The extract of annual return as provided under Section 92;
2. Number of meetings of the Board;
3. Directors' Responsibility Statement;
4. Details in respect of frauds reported by auditors section 143 other than those which are reportable to the Central Government;
5. Statement on declaration given by independent directors under section 149;
6. In case of a company covered Section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under section 178. But if the details are made available on company's website, if any, it shall be sufficient compliance of the requirements under such clause if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.
7. Explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made–

   (i) by the auditor in his report; and

   (ii) by the company secretary in practice in his secretarial audit report
8. Particulars of loans, guarantees or investments under section 186;
9. Particulars of contracts or arrangements with related parties referred to section 188 in the prescribed form;

10. The state of the company's affairs;
11. The amounts, if any, which it proposes to carry to any reserves;
12. The amount, if any, which it recommends should be paid by way of dividend;
13. Material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report;
14. The conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed;
15. A statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
16. The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.

    But if the details are made available on company's website, if any, it shall be sufficient compliance of the requirements under such clause if the salient features of the policy and any change therein are specified in brief in the Board's report and the web-address is indicated therein at which the complete policy is available.
17. In case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made;

    According to Rule 8(4), every listed company and every other public company having a paid up share capital of $\geq$ ₹ 25 Crores at the end of the preceding financial year shall include, in the report by its Board of directors, a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.

    Exemption to Government company- This clause shall not apply to the Government Company in case the directors are evaluated by the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government, as per its own evaluation methodology.
18. Such other matters as may be prescribed. Rule 8 of the Companies (Accounts) Rules, 2014 prescribes following:

    (i) the financial summary or highlights;

(ii) the change in the nature of business, if any;

(iii) the details of directors or key managerial personnel who were appointed or have resigned during the year;

(iv) Statement regarding opinion of the Board with regard to integrity, expertise and experience (including the proficiency) of the independent directors appointed during the year.

(v) the names of companies which have become or ceased to be its subsidiaries, joint ventures or associate companies during the year;

(vi) the details relating to deposits like-

(a) accepted during the year;

(b) remained unpaid or unclaimed as at the end of the year;

(c) whether there has been any default in repayment of deposits or payment of interest thereon during the year and if so, number of such cases and the total amount involved-

(1) at the beginning of the year;

(2) maximum during the year;

(3) at the end of the year;

(vii) the details of deposits which are not in compliance with the requirements of Chapter V of the Act;

(viii) the details of significant and material orders passed by the regulators or courts or tribunals impacting the going concern status and company's operations in future;

(ix) the details in respect of adequacy of internal financial controls with reference to the Financial Statements.

(x) a disclosure, as to whether maintenance of cost records as specified by the Central Government under section 148 of the Companies Act, 2013, is required by the Company and accordingly such accounts and records are made and maintained,

(xi) a statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(xii) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.

(xiii) the details of difference between amount of the valuation done at the

time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

- Non- applicability of Rule 8 of Companies (Accounts) Rules, 2014: This rule shall not apply to One Person Company or Small Company.
- The Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by One Person Company or small company
- Board's Report in case of OPC: In case of a One Person Company, the report of the Board of Directors to be attached to the financial statement under this section shall, mean a report containing explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report.
- Where disclosures referred to in this sub-section have been included in the financial statements, such disclosures shall be referred to instead of being repeated in the Board's report.
- Signing of Board's Report: The Board's report and any annexures thereto shall be signed by its:

  Chairperson of the company if he is authorised by the Board

  and

  Where he is not so authorised, shall be signed by at least 2 directors, 1 of whom shall be a managing director, or by the director where there is one director.

III. Directors' Responsibility Statement: The Directors' Responsibility Statement shall state that—

(1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;

(2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;

(3) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;

(4) the directors had prepared the annual accounts on a going concern basis; and

(5) the directors, in the case of a listed company, had laid down internal financial

controls to be followed by the company and that such internal financial controls are adequate and were operating effectively..

(6) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

IV. Contravention of Section 134:

Persons liable	Punishment for contravention of any provision of this section
Company	Fine: ₹300,000
Every officer of the company who is in default	Fine: ₹50,000

9.8 Corporate Social Responsibility (Section 135)

Introduction:	The Companies Act, 2013 lays down the provisions requiring corporate to mandatorily spend a prescribed percentage of their profits on certain specified areas of social upliftment in discharge of their social responsibilities. Broadly, CSR implies a concept, whereby companies decide voluntarily to contribute to a better society and a cleaner environment – a concept, whereby the companies integrate social and other useful concerns in their business operations for the betterment of its stakeholders and society in general in a voluntary way. 
Which Company is required to constitute CSR committee:	Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having (1) Net worth: ≥ ₹500 crores, or (2) Turnover: ≥ ₹1000 crores or (3) Net profit: ≥ ₹5 crore during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board. Any Company fulfilling the above criteria shall constitute a Corporate Social Responsibility Committee.

As per Section 2(57), "Net worth" means (Paid-up share capital + all reserves created out of the profits + securities premium account) – (Accumulated losses + deferred expenditure + miscellaneous expenditure not written off), as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

1. Here, "average net profit" shall be calculated in accordance with the provisions of section 198.

2. "Net profit" shall not include the following:
   a) Any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and
   b) Any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act.

However, net profits in respect of a financial year for which the relevant financial statements were prepared in accordance with the provisions of the Companies Act, 1956, shall not be required to be re-calculated in accordance with the provisions of the Act.

In case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of section 381 read with section 198 of the Act.

Amount of contribution towards CSR

BOD of every co. shall make sure that the co. spends ≥ 2% of Avg net profits of Proceeding 3 f.y

- While spending, co. should give preference to local areas
- If the co. fails to spend amounts then:-

If co. does not have ongoing CSR Project

- BOD shall disclose the reason for not spending
  +
- Such unspent amount shall be transferred to a fund in schedule vii within 6 months from the end of the FY

If co. has ongoing CSR Projects

- Unspent amount shall be transferred to "Unspent CSR A/c" Which is maintained with scheduled bank

↓

Within 30 days from the end of FY

↓

And such amount shall be spent within 3 FY from the date of transfer

↓

If co. fails to spent within 3 FY then it shall be transferred to fund in schedule vii within 30 days from the end of 3rd FY

Note:-

a) If co. spends excess amount, then it can set – off upto immediate succeeding 3 FY providing following conditions are satisfied:-

Condition 1

Excess amount available for set-off shall not include surplus arising out of CSR activities

Condition 2

BOD has passed Board resolution

b) If co. fails to transfer amount in fund under unspent CSR A/c, then

Penalty on company

2 (Amount to be transferred)
or
₹1 crore
Whichever is lower

Penalty on officers in default

1/10th of the amount to be transferred
or
₹2 lakhs
Whichever is lower

	A) The Central Government 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. B) Where the amount to be spent by a company does not exceed 50 lakh rupees, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company. C) Companies may build CSR capacities of their own personnel as well as those of implementing agencies through institutions with established track records of at least 3 financial years but such expenditure including expenditure on administrative overhead shall not exceed 5% of total CSR expenditure of the company in 1 financial year.
Composition of CSR Committee:	1. The CSR Committee shall be consisting of 3 or more directors, out of which at least 1 director shall be an independent director. 2. A company which is not required to appoint an independent director shall have its CSR Committee without such director. 3. A private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors. 4. With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company. 5. The Board's report under section 134 shall disclose the composition of the CSR Committee. 6. The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:- (a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act; (b) the manner of execution of such projects or programmes as specified;

	(c) the modalities of utilisation of funds and implementation schedules for the projects or programmes; (d) monitoring and reporting mechanism for the projects or programmes; and (e) details of need and impact assessment, if any, for the projects undertaken by the company: Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.
Duties of CSR Committee :	The CSR Committee shall,– a) Formulate and recommend to the Board, a CSR Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII; b) Recommend the amount of expenditure to be incurred on the activities referred to in the CSR Policy of the company from time to time. c) Monitor the CSR Policy of the company from time to time.
Duties of the Board in relation to CSR	The Board of every company fulfilling the above mentioned criteria– 1. After taking into account the recommendations made by the CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and 2. Ensure that the activities as are included in CSR Policy of the company are undertaken by the company.

CSR Activities (Rule 4 of the Companies (CSR Policy) Rules, 2014)	1. The CSR activities shall be taken by the company as per its CSR Policy, as projects or programmes or activities. 2. The Board of a company may decide to undertake its CSR activities approved by the CSR Committee, through (a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or (b) a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or (c) any entity established under an Act of Parliament or a State legislature; or (d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities. • Every entity, covered above, who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form CSR-1 electronically with the Registrar, with effect from the 1st day of April 2021. But these provisions shall not affect the CSR projects or programmes approved prior to the 01st day of April 2021. Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice. On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically. 3. A company may also collaborate with other companies for undertaking projects or programs or CSR activities in such manner that the CSR Committees of respective companies are in a position to report separately on such projects or programs in accordance with these rules.

4. Companies may build CSR capacities of their own personnel as well as those of implementing agencies through Institutions with established track records of at least three financial years but such expenditure including expenditure on administrative overhead shall not exceed 5% of total CSR expenditure of the company in one financial year.
5. Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the financial year.
6. Where a company spends an amount in excess of requirement provided under section 135 , such excess amount may be set off against the requirement to spend up to immediate succeeding three financial years subject to the conditions that –
   (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any.
   (ii) the Board of the company shall pass a resolution to that effect.
7. The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by -
   (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
   (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
   (c) a public authority:

   Any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of 180 days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than 90 days with the approval of the Board based on reasonable justification.

	8. Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act 9. Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to company's time/ hours spent specifically on CSR) can be factored into CSR project cost as part of the CSR expenditure. 10. Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per section 135 of the Act.
What will not be considered as CSR Activities? (Rule 4 of the Companies (CSR Policy) Rules, 2014)	1. The CSR projects or programs or activities undertaken outside India. 2. The CSR projects or programs or activities that benefit only the employees of the company and their families. 3. Contribution of any amount directly or indirectly to any political party under section 182 of the Act. 4. CSR activities should be undertaken by the companies in project/ programme mode. One-off events such as marathons/ awards/ charitable contribution/ advertisement/ sponsorships of TV programmes etc. would not be qualified as part of CSR expenditure. 5. Expenses incurred by companies for the fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) would not count as CSR expenditure under the Companies Act.

Activities specified under Schedule VII:	Activities which may be included by companies in their CSR Policies (i.e. Activities as specified under Schedule VII) are as follows: (1) Eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swach Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water; (2) Promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly, and the differently abled and livelihood enhancement projects; (3) Promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups; (4) Ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set up by the Central Government for rejuvenation of river Ganga; (5) Protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts; (6) Measures for the benefit of armed forces veterans, war widows and their dependents; (7) Training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports; (8) Contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) or any other -fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;

(9) Contribution to incubators funded by Central Government or State Government or any agency or Public Sector Undertaking of Central Government or State Government, and contributions to public funded Universities, Indian Institute of Technology (IITs), National Laboratories and Autonomous Bodies (established under the auspices of Indian Council of Agricultural Research (ICAR), Indian Council of Medical Research (ICMR), Council of Scientific and Industrial Research (CSIR), Department of Atomic Energy (DAE), Defence Research and Development Organisation (DRDO), Department of Biotechnology (DBT), Department of Science and Technology (DST), Ministry of Electronics and Information Technology) engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs)

(10) Rural development projects;

(11) Slum area development

(12) Disaster management, including relief, rehabilitation and reconstruction activities.

Note 1: Spending of CSR funds for COVID19 is an eligible CSR activity and spending of CSR funds for carrying out awareness campaigns/ programmes or public outreach campaigns on COVID-19 Vaccination programme, setting up makeshift hospitals and temporary COVID Care facilities is an eligible CSR activity under item no. (1),(2) and (12) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

Note 2: The Ministry of Corporate Affairs have made a clarification with respect to CSR:

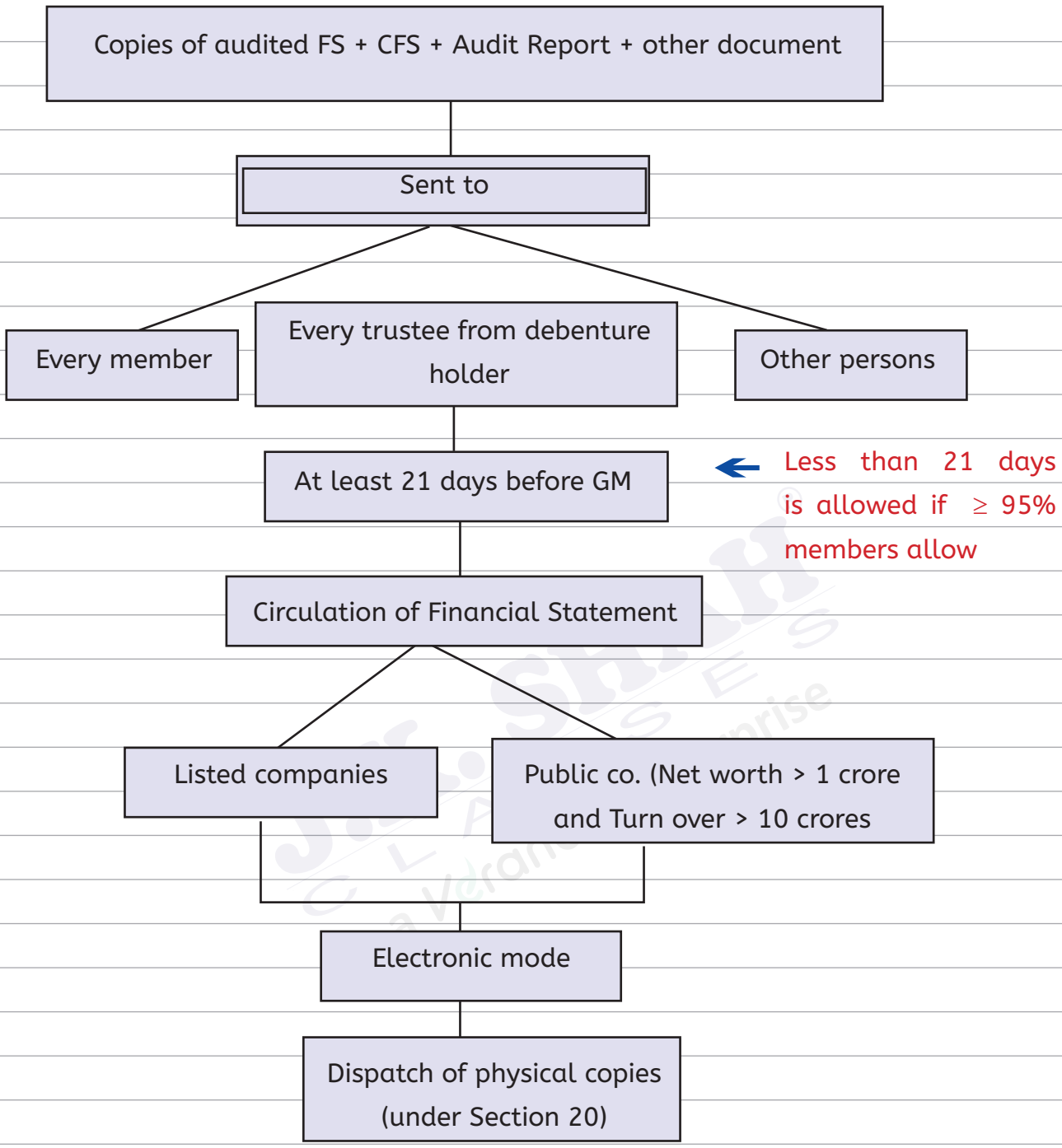
General Circular No. 09/2021 Dated 5th may, 2021

1. 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 'creating health infrastructure for COVID care', 'establishment of medical oxygen generation and storage plants', 'manufacturing and supply of Oxygen concentrators. ventilators, cylinders and other medical

	equipment for countering COVID-19' or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively. 2. Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities. 3. The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies. subject to fulfillment of Companies (CSR Policy) Rules, 2014 and the guidelines issued by this Ministry from time to time. General Circular 13/2021 dated 30th July, 2021 The Ministry of Corporate Affairs vide General Circular 10/2020 dated 23.03.2020 clarified that spending of CSR funds for COVID- 19 is an eligible CSR activity. In continuation to the said circular, it is further clarified that spending of CSR funds of COVID- 19 vaccination for persons other than the employees and their families, is an eligible CSR activity under item no. (i) of Schedule VII of the Companies Act, 2013 relating to promotion of health care including preventive health care and item no. (xii) relating to disaster management.
CSR Reporting (Rule 8):	(1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified. (2) In case of a foreign company, the balance sheet filed under section 381 of the Act, shall contain an annual report on CSR containing particulars specified.

	(3) (a) Every company having average CSR obligation of 10 crore rupees or more, in the 3 immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of 1 crore rupees or more, and which have been completed not less than 1 year before undertaking the impact study. (b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR. (c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed two percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher. (4) Display of CSR activities on its website. - The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.
Penalty:	The Companies Act requires that– 1. The Board's report shall disclose the composition of the Corporate Social Responsibility Committee as per Section 134; 2. If the company fails to spend such amount (i.e. at least two percent of the average net profit), the Board shall disclose and specify the reasons for not spending the amount in its report. As per section 134 of Companies Act, 2013 if the Company fails to disclose such information, it shall be punishable with: Fine: 3,00,000/- Every officer of the company who is in default shall be punishable with: Fine: 50,000/-

9.9 Right to Members to Copies of Audited Financial Statement (Section 136)



1. Who are entitled to audited financial statement?

- A copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements,

  which are to be laid before a company in its general meeting,

  shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons

other than such member or trustee, being the person so entitled,
at least 21 days before the date of the meeting.

- Less than 21 days is allowed if:

(a) members holding, if the company has a share capital, majority in number entitled to vote and who represent ≥ 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or

(b) having, if the company has no share capital, ≥ 95% of the total voting power exercisable at the meeting:.

- In case of Listed Company:

✓ Instead of sending the copies to members,
if the copies of the documents are made available for inspection at its registered office
during working hours for a period of 21 days (for Section 8 Company- 14 days) before the date of the meeting and
a statement containing the salient features of such documents in the prescribed form or copies of the documents, as the company may deem fit, is sent to every member of the company and to every trustee for the holders of any debentures issued by the company not less than twenty-one days before the date of the meeting
unless the shareholders ask for full financial statements.

✓ A listed company shall also place its financial statements including consolidated financial statements, if any, and all other documents required to be attached thereto, on its website, which is maintained by or on behalf of the company.

✓ Every listed company having a subsidiary or subsidiaries whether in India or outside India shall-

a) place separate audited accounts in respect of each of subsidiary on its website, if any;

b) provide a copy of separate audited financial statements in respect of each of its subsidiary, to any shareholder of the company who asks for it.

✓ Where foreign subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the 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.

- In case of Nidhi Company:

  For members who individually or jointly hold shares of ≤ ₹1000 in face value or ≤ 1% of the total paid-up share capital, whichever is less,

  Nidhi Company can just send an intimation by public notice in newspaper circulated in the district in which the Registered Office of the company is situated stating the date, time and venue of AGM and

  the financial statement with its enclosures can be inspected at the registered office of the company and the financial statement with enclosures are affixed in the notice board of the company and a member is entitled to vote either in person or through proxy.

2. Manner of circulation of financial statements in certain cases :

   In case of all listed companies and

   such public companies which have a net worth > ₹1 crores and turnover > ₹10 crores, the financial statements may be sent-

   (1) by electronic mode to such members whose shareholding is in dematerialized format and whose email Ids are registered with Depository for communication purposes;

   (2) where Shareholding is held otherwise than by dematerialized format, to such members who have positively consented in writing for receiving by electronic mode; and

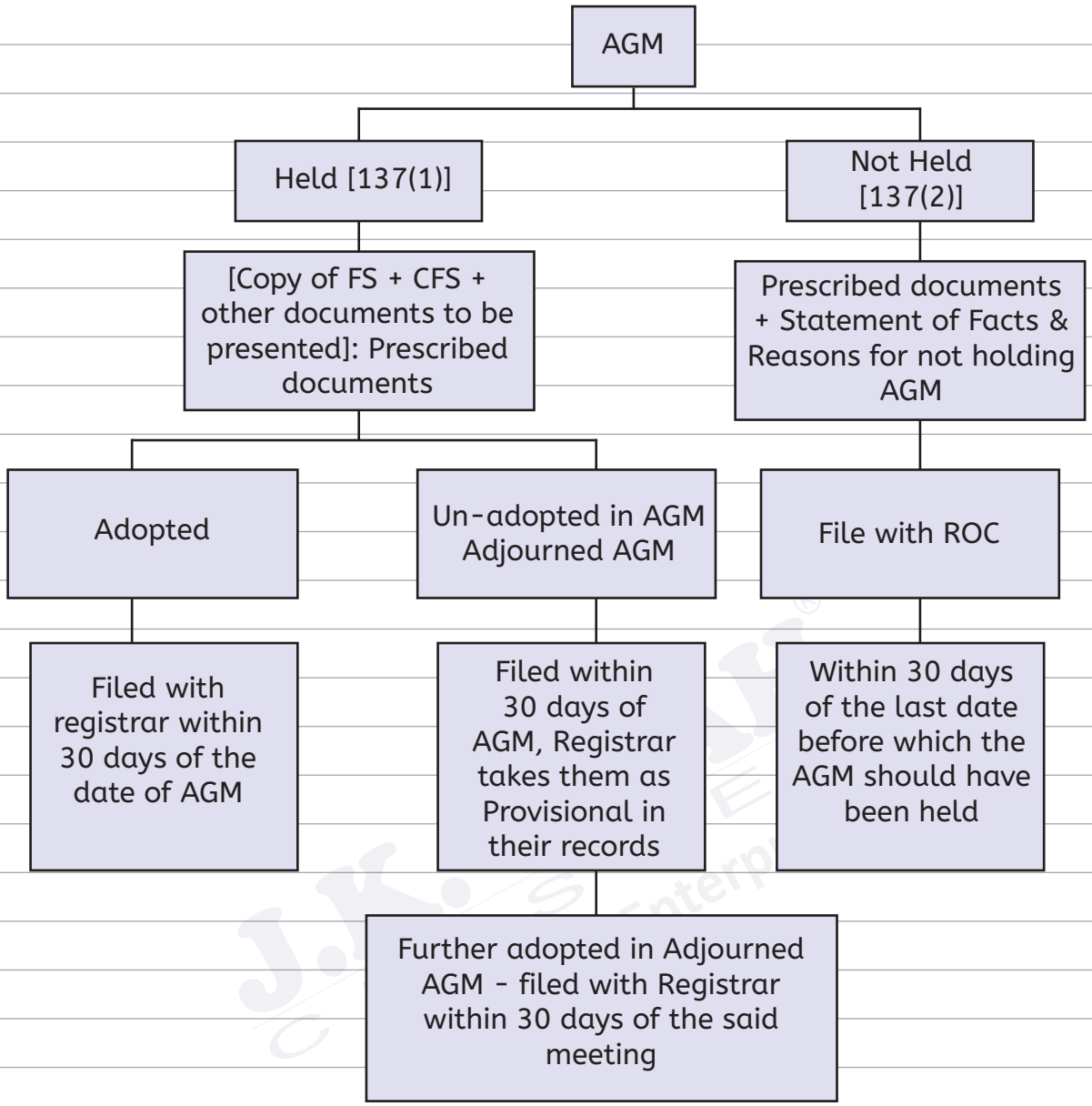
   (3) by despatch of physical copies through any recognised mode of delivery as specified under section 20 of the Act, in all other cases.

3. Penalty in case of contravention:

   (a) If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of ₹25,000.

   (b) Every officer of the company who is in default shall be liable to a penalty of ₹5,000.

9.10 Copy of Financial Statement to be filed with Registrar (Section 137)



1. Filing of financial statements

- A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the AGM of the company, shall be filed with the Registrar within 30 days of the date of AGM in such manner, with such fees or additional fees as may be prescribed.
- As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015-

  The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC- 4 XBRL:

(i) companies listed with stock exchanges in India and their Indian subsidiaries;

(ii) companies having paid up capital ≥ ₹5 crores;

(iii) companies having turnover of ≥ ₹100 crores;

(iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015.

The Banking Companies, lnsurance Companies, Power Sector Companies, Non-Banking Financial companies and Housing Finance companies are exempted from XBRL filing.

The companies which have filed their financial statements under Rule 3(1) of the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 and erstwhile rules (i.e., the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2011) shall continue to file their financial statements and other documents though they may not fall under the class of companies specified therein in succeeding years. Meaning thereby once company started reporting in XBRL format shall continue to report in XBRL format in succeeding years also, even if criteria mentioned above is not met in succeeding years.

2. If the financial statements are not adopted:

(a) Where the financial statements are not adopted at AGM or adjourned AGM, such unadopted financial statements along with the required documents shall be filed with the Registrar within 30 days of the date of AGM.

(b) The Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned AGM for that purpose.

(c) If the financial statements are adopted in the adjourned AGM, then they shall be filed with the Registrar within 30 days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed

3. Filing by One Person Company:

A One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within 180 days from the closure of the financial year.

4. Company having subsidiaries:

- A company shall, along with its financial statements to be filed with the

Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India

- In the case of a subsidiary which has been incorporated outside India, which is not required to get its financial statement audited under any law of the country, its holding Indian company can file such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

  The format of accounts of foreign subsidiaries should be, as far as possible, in accordance with requirements under the Companies Act, 2013. In case this is not possible, a statement indicating the reasons for deviation may be placed/ filed along with such accounts.

5. Annual General meeting not held:

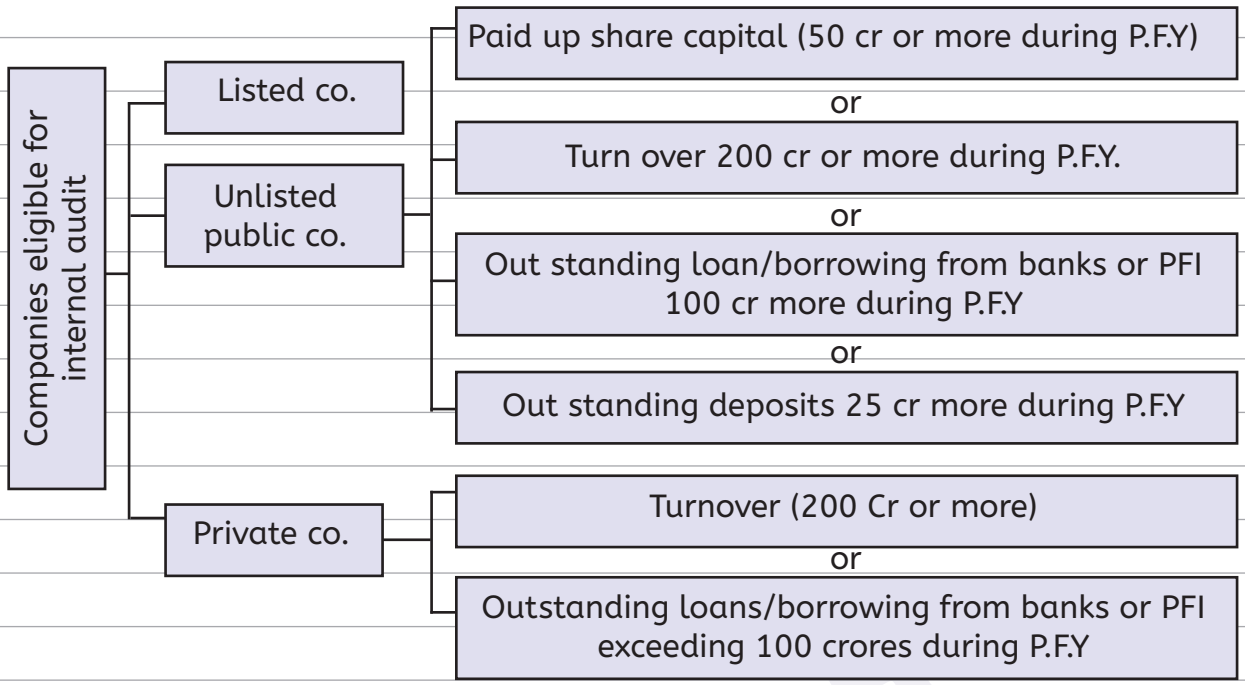
Where the AGM of a company for any year has not been held, the financial statements along with the documents required to be attached, duly signed along with the statement of facts and reasons for not holding the AGM shall be filed with the Registrar within 30 days of the last date before which the AGM should have been held and in such manner, with such fees or additional fees as may be prescribed.

6. Penalty:

Person Liable	Punishment for contravention of Section 137
Company	Liable to ₹10,000 penalty of ₹100 for every day during which the failure continues but maximum ₹2 Lacs,
Officers– Managing director and the Chief Financial Officer of the company, if any ↓ In their absence, any other director who is charged by the Board with the responsibility ↓ In its absence, all the directors of the company.	Shall be liable for penalty of ₹10,000 and in case of continuing failure, with a further penalty of ₹100 for each day for which the failure continues subject to maximum ₹ 50,000.

9.11 Internal Audit (Section 138)

1. Companies required to appoint Internal Auditor:

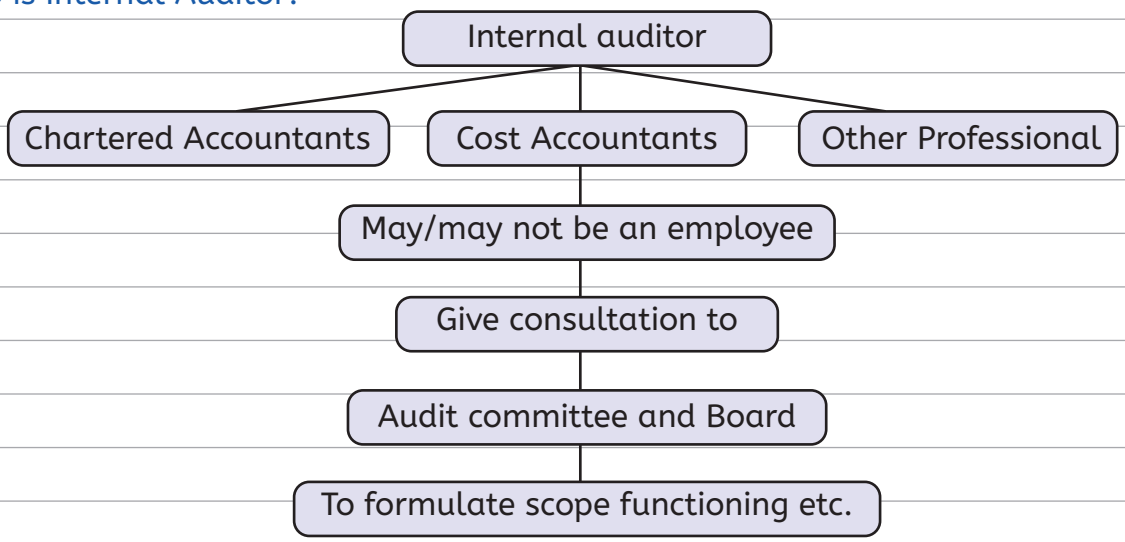


The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

2. Transitional period:

An existing company covered under any of the above criteria shall comply with the requirements of section 138 and this rule within 6 months of commencement of such section.

3. Who is Internal Auditor?



List of Sections

SUMMARY

1. Books of Accounts
    1. Items: Books of Accounts, Relevant Papers, Financial Statements of every financial year.
    2. Basic Conditions: True & Fair view, Accrual Basis, Double Entry System, to explain transactions.
    3. Place: Registered Office (or) any other place in India as BOD decides. (with notice to ROC)
    4. Branch Account: Proper Books of Account and Summarised returns.
    5. Period: 8 Preceding Financial years. (longer if investigation is ordered by CG)
    6. Non-Compliance: Imprisonment of Max 1 year or Fine Min ₹50,000, Max t 5,00,000 or both.

2. Financial Statements
    1. Financial Statement includes Balance Sheet, Profit and Loss A/c, Cash Flow Statements, Statement of Changes in Equity, any Explanatory Note.
    2. Basic Requirement: (a) To give a true and fair view, (b) comply with AS notified u/s 133, (c) Form as per Sch III, and (d) in accordance with AS.
    3. CG Exemption: CG may exempt Companies from Sec. 129 in Public Interest on its own or application by Companies.
    4. Non-Compliance: Imprisonment 1 year or Fine Min t 50,000, Max ₹5,00,000 or both.

3. FS Approval / Authentication:
    1. Financial Statements shall be approved by BOD before submission to Auditor.
    2. Signing: By Chairperson authorized by BOD or 2 Directors (out of which 1 is MD and CEO if he is Director, CFO, and CS if appointed.

4. No Re-opening/ Re-casting of
    Court Order: Re-opening of Books/ Re-casting of Financial Statements can be done only if an order is made by a Court or Tribunal.

5. Financial statements
    Grounds for Re-opening : (a) Earlier accounts prepared in a fraudulent manner, (b) Affairs of the Company were mis-managed, casting a doubt on the reliability of FS.

Time Limit : Order for Re-opening of Books can relate for maximum 8 financial years immediately preceding the current financial year. This time restriction is not applicable if CG has ordered for maintenance of Books of accounts for more than 8 years.

6. Voluntary Revision of FS

If it appears to the Directors of the Company that -

(a) The Financial Statement of the Company, or

(b) Board's Report

do not comply with the provisions of Sec. 129 or Sec. 134

Restrictions I Conditions for Revision

1. Revision can be in any of the 3 preceding financial years.
2. Revised FS or Report shall not be prepared or filed more than once in a Financial Year.
3. Reasons for revision shall also be disclosed in the Board's report

7. NFRA Duties (Sec.132)

(a) To protect the Public interest and the interests of investors, creditors and others associated with companies.

(b) To establish high quality Standards of Accounting and Auditing and

(c) Effective oversight of Accounting functions by the Companies and Auditing functions by auditors.

Role of NAFRA :

(a) Maintain details of auditors appointed for companies,

(b) Recommend accounting and auditing standards for approval by the CG,

(c) Monitor and enforce its compliance.

(d) Oversee the quality of service of the professions,

(e) Promote awareness in compliance of standards.

(f) Co-operate with National and International Organisations,

(g) Perform such other functions as may be necessary.

(h) Any other Functions or Powers of Central Govt. delegated to it.

8. Signing of Financial Statements :

1. FS and CFS shall be approved by the Board of Directors.

2. By Chairperson authorised by Board or By two Directors out of which one shall be MD if any, and
3. CEO, CFO, and Company Secretary of the Co. wherever they are appointed.

Board's Report

1. To the Statements laid before company in GM, a Report by BOD shall be attached -
   - Duly signed,
   - With prescribed contents,
   - With Director's Responsibility Statement,

2. The Central Government has prescribed an Abridged Board's Report, for the purpose of Sec.134 by OPC or Small Company.

3. Default:
   (a) For Company: Fine Min ₹50,000, Max ₹25,00,000
   (b) For every Officer in default: Imprisonment of Max 3 years, or Fine of Min ₹50,000, Max ₹5,00,000, or Both.

9. Corporate Social Responsibility (Sec.135) :

Every Company having - (a) Net Worth ≥ ₹500 Crores, or (b) Turnover ≥ ₹1,00 Crores, or (c) Net Profit ≥ ₹5 Crores during immediately preceding financial year shall constitute a CSR Committee and CSR Policy shall indicate the activities to be undertaken by the Company in areas or subject as specified in Schedule VII.

10. Right of Members to Copies of Audited Financial Statements.

1. Items to be circulated
   (a) Copy of the Financial Statements, including Consolidated Financial Statements, if any,
   (b) Auditor's Report, and
   (c) Documents required by law to be annexed / attached in its To Financial Statements
   - which are to be laid before a Company in its general meeting

2. Persons entitled to receive: Every Member of the Company, Every Trustee for the Debenture-holder, all other Persons who are entitled.
3. Time Limit: Not less than 21 days before the date of the Meeting.

4. Inspection: At Registered Office, during business hours.

11. Copy of Financial Statement to be filed with ROC

1. Documents to be filed with ROC : Copy of FS, including Consolidated Financial Statements and all other documents to be attached with such FS.
2. Time limit : Within 30 days of the date of AGM.
3. Manner : Fees / Additional Fees as may be prescribed within the time specified u/s. 403, shall be paid, Company shall file the Financial Statements along with Form AOC-4/Consolidated Financial Statements along with Form AOC-4 CFS with ROC.

Notes

X AUDIT AND AUDITORS

Introduction

Large business corporations are managed by the directors who represent the members who are the real owners of the company through board. In the absence of any check, the directors may mismanage the finances of the organisation. Thus, members appoint auditor/auditors to look into the true and fair view of the financial affairs of the company.
Large business corporations are managed by the directors, who act as fiduciaries. This is the reason that the board of directors is responsible for the preparation of the financial statement and laying it out at the general meeting of members.
Despite assuming a fiduciary role, in the absence of proper checks and balances, the directors may indulge in mismanagement of the finances and other assets of the corporation. Hence, financial statements prepared and laid down by the board need to be audited by an independent auditor.
Thus, members appoint auditors to have an independent professional opinion on the financial affairs of the company, who examine such financial statements to frame opinion to report; whether they reflect a true and fair view of financial position and performance or not.

APPOINTMENT & RE APPOINTMENT OF AUDITORS [SECTION 139]

Who can be appointed as Auditor and when?

Co. → Shall Appoint → { Individual / Firm/LLP }

Tenor of appointment as Auditor

The auditor shall hold office from the conclusion of 1stAGM (or the AGM in which he is appointed) till the conclusion of its 6th AGM (and thereafter till the conclusion of every sixth AGM).

conclusion of 1st AGM — conclusion of its 6th AGM

till

Manner and procedure of selection and appointment of auditors

The manner and procedure of selection of auditors by the members of the company at AGM has been prescribed under the Rule 3 of the Companies (Audit and Auditors) Rules, 2014; tabled and stated below.

Categories of Companies	Competent authority	Responsibility of the competent authority
A company which is required to constitute an Audit Committee under section 177	Audit Committee*	The competent authority shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and such qualifications and experience are commensurate with the size and requirements of the company. It shall have regard to any **order or pending proceeding relating to professional matters of conduct** against the proposed auditor before the Institute of Chartered Accountants of India (ICAI) or any competent authority or any Court. It may call for **such other information** from the proposed auditor as it may deem fit.
A Company which is not required to constitute an Audit Committee under section 177	Board of Directors	

* **Where competent authority is audit committee,** the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration; the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

If the Board agrees with the recommendation of the Audit Committee - It shall further recommend the appointment of an individual or a firm as auditor to the members in the annual general meeting.

If the Board disagrees with the recommendation of the Audit Committee - It shall refer back the recommendation to the committee for reconsideration citing reasons for such disagreement.

NOT IMPORTANT FOR EXAM

Companies that require to constitute an audit committee

Section 177 of the Act, read with rules Audit Committee shall be constituted by Board of directors in case of;

i. Every listed public companies and
ii. Those public companies which having:
a. Paid up capital of ten crore rupees or more; or
b. Turnover of one hundred crore rupees or more; or
c. Aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Consent of auditors (proposed/selected auditor) for appointment, certificate from such auditor and notice to Registrar

Written consent

Before the appointment is made, the written consent of the auditor to such appointment shall be obtained.

Certificate

A certificate shall be also obtained from the auditor stating that;

a. The individual or the firm (as the case may be to be, appointed as auditor) is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
b. The proposed appointment is as per the term provided under the Act;

c. The proposed appointment is within the limits laid down by or under the authority of the Act;

d. The list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

Note

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141

Co. $\xrightarrow[\text{Within}]{\text{Adt-1}}$ ROC

15 days of appointment

Students are advised to take note;

Intimation to NFRA under the National Financial Reporting Authority Rules, 2018 (here-in-after referred as to NFRA Rules)

As per Rule 3 (2) of NFRA Rules, every existing body corporate other than a company governed by NFRA rules, shall inform the National Financial Reporting Authority (NFRA) within 30 days of the commencement of the NFRA rules, in Form NFRA-1, the particulars of the auditor as on the date of commencement of the NFRA rules.

According to Rule 3(3) of NFRA Rules, every body corporate, other than a company as defined in clause (20) of section 2 of the Act, formed in India and governed under NFRA Rules shall, within 15 days of appointment of an auditor under sub-section (1) of section 139, inform the NFRA in Form NFRA-1, the particulars of the auditor appointed by such body corporate, provided that a body corporate governed under clause (e) of sub-rule (1) of NFRA Rules shall provide details of appointment of its auditor in Form NFRA-1.

TERM OF AUDITOR

Maximum terms and length thereof in case of individual and firm

Section 139(2) provides that:

i. Listed companies and

ii. All companies (excluding one person companies & small companies), which are

a. Unlisted public companies and having paid up share capital of rupees ten crore or more;
b. Private limited companies and having paid up share capital of rupees fifty crore or more;
c. Having public borrowings from financial institutions, banks or public deposits of rupees fifty crore or more.

Shall not appoint or re-appoint

i. An individual as auditor for more than one term of five consecutive years;
ii. An audit firm as auditor for more than two terms of five consecutive years

Students are advice to take note;
Noting contained in sub-section 2, shall prejudice the right of the; a. Company to remove an auditor or b. Auditor to resign from such office of the company.

Cooling Period (to ensure re-instatement of independence)

An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;

An audit firm which has completed its terms (i.e. two terms of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of second term.

Summary

Auditor	Appointed/Reappointed for	Not eligible for re-appointment
Individual	One term of five consecutive years (1st AGM to 6th AGM)	For five years from the completion of his term (till 11th AGM)
Firm	Two terms of five consecutive years (1st AGM to 11th AGM)	For five years from the completion of its second term (till 16th AGM)

Point to remember

On the date of appointment, an audit firm shall not have any partner or partners who are/were also the partner/s to the other audit firm, whose tenure has been expired in a

company immediately preceding the financial year.

It means, the audit firm with common partner/s shall not be appointed as succeeding auditor of same company after two terms of five consecutive years.

Transitional period

Every company, existing on or before the commencement of this Act which is required to comply with the provisions as mentioned in above mentioned points (a) to (d) (i.e. provisions of this sub-section), shall comply with those provisions within a period which shall not be later than the date of the first AGM of the company held, within the period specified under sub-section (1) of section 96, after three years from the date of commencement of this Act.

ROTATION OF AUDITOR [SUB-SECTION 3 AND 4 READ WITH RULE 6 OF COMPANIES (AUDIT & AUDITORS) RULES, 2014]

Power to Members [Sub-section 3]

Members of a company may resolve to provide that;

a. In the audit firm appointed by them, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

b. The audit shall be conducted by more than one auditor.

Manner of rotation of auditors by the companies on expiry of their term

The Central Government may, by rules, prescribe the manner in which the companies shall rotate their auditors. The manner of rotation of auditors by the companies on expiry of their term as provided under Rule 6 of the *Companies (Audit and Auditors) Rules, 2014*, as stated below;

a. Where a company is required to constitute an Audit Committee

   i. Such Audit Committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent

   ii. The Board shall consider the recommendation of such committee, and make its recommendation for appointment of the next auditor by the members in annual general meeting.

b. In other cases, the Board shall itself consider the matter of rotation of auditors and make its recommendation for appointment of the next auditor by the members in annual general meeting.

Note

Most of provisions of Rule 6 are either complementary, or in confirmation/ conformance to Rule 3.

In case where Audit committee is not required to be constituted under section 177, but constituted by the company voluntarily, then such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of such committee.

Manner of rotation in case of auditors appointed prior to commencement of this Act and continuing after such commencement

For the purpose of the rotation of auditors in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years or ten consecutive years, as the case may be.

Example for explaining rotation in case of individual auditor

Number of consecutive years for which an individual auditor has been functioning as auditor in the same company [till the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which he may be appointed in the same company (including transitional period)	Aggregate period which the auditor would complete in the same company in view of column I and II
I	II	III
5 years (or more than 5 years)	3 years	8 years or more
4 years	3 years	7 years
3 years	3 years	6 years
2 years	3 years	5 years
1 year	4 years	5 years

Here,

a. Individual auditor shall include other individuals or firms whose name or trademark or brand is used by such individual, if any.

b. Consecutive years shall mean all the preceding financial years for which the individual auditor has been the auditor until there has been a break by five years or more.

Example explaining rotation in case of audit firm

Number of consecutive years for which an audit firm has been functioning as auditor in the same company [till the first AGM held after the commencement of provisions of section 139(2)]	Maximum number of consecutive years for which the firm may be appointed in the same company (including transitional period)	Aggregate period which the firm would complete in the same company in view of column I and II
I	II	III
10 years (or more than 10 years)	3 years	13 years or more
9 years	3 years	12 years
8 years	3 years	11 years
7 years	3 years	10 years
6 years	4 years	10 years
5 years	5 years	10 years
4 years	6 years	10 years
3 years	7 years	10 years
2 years	8 years	10 years
1 year	9 years	10 years

Here,

a. Audit Firm shall include other firms whose name or trade mark or brand is used by the firm or any of its partners.

b. Consecutive years shall mean all the preceding financial years for which the firm has been the auditor until there has been a break by five years or more.

Manner of rotation in case of same network and common partner

The incoming auditor or audit firm shall not be eligible if such auditor or audit firm is associated with the outgoing auditor or audit firm under the same network of audit firms. The term same network includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.

For the purpose of rotation of auditors, a break (cooling period) in the term for a continuous period of five years shall be considered as fulfilling the requirement of rotation. But if a partner (common partner), who is in charge of an audit firm and also certifies the financial statements of the company, retires from the said firm and joins another firm of chartered accountants, such other firm shall also be ineligible to be appointed for a period of five years i.e. cooling period.

Manner of rotation in case of joint auditors

Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year.

FIRST AUDITORS [SUB-SECTION 6]

The first auditor of a company, other than a Government Company, shall be;

a. Appointed by the Board of directors
b. Within 30 days of the date of registration of the company and
c. The auditor so appointed shall hold office until the conclusion of the first AGM.

AUDITOR OF GOVERNMENT COMPANY [SUB-SECTION 5 & 7]

First Auditor [Sub-section 7]

The first auditor is to be appointed by Comptroller and Auditor General of India (CAG) within 60 days from the date of registration of the company, who shall hold office till the conclusion of the first annual general meeting ; in case of:

i. A Government company or
ii. Any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments.

Note

If Comptroller and Auditor General of India fails in this respect, the Board is to appoint the auditor within next 30 days

Further if the Board also fails to do so, it has to inform the members of the company who have to make the appointment within 60 days at an extraordinary general meeting (EGM).

Mind it, even appointed by Board or by embers at EGM, the first auditor shall hold office till the conclusion of the first annual general meeting

Subsequent Auditor [Sub-section 5]

In respect of financial year, the Comptroller and Auditor General of India shall appoint a duly qualified auditor within 180 days from the commencement of the financial year, who shall hold office till conclusion of annual general meeting ; in case of:

a. A Government company or

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

FILLING UP CASUAL VACANCY [SUB-SECTION 8]

Other than company whose accounts are subject to audit by an auditor appointed by the CAG

The Board may fill any casual vacancy in the office of an auditor within 30 days. Any auditor appointed in a casual vacancy shall hold office until the conclusion of the next annual general meeting.

Note

Where such vacancy is caused by the resignation of an auditor, such appointment shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board

Company whose accounts are subject to audit by an auditor appointed by the CAG

Casual vacancy of an auditor shall be filled by the Comptroller and Auditor General of India within 30 days.

Further, in case the CAG does not fill the vacancy within the said period, the Board of Directors shall fill the vacancy within next 30 days.

Example : Kesari Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2022. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2022 for personal reasons. The Board of directors seeks advice for filling up the vacancy by appointment of Mr. Ajay Devgan as auditor.

In the present case, as the auditor has resigned, the casual vacancy so created can be filled up by the Board appointing Mr. Ajay Devgan. However, the appointment of Mr. Ajay Devgan must be approved by the company by passing of an ordinary resolution at a general meeting of the company which must be convened by the Board within 3 months

of the recommendation of the Board. Mr. Albert will be entitled to hold office till the conclusion of the next Annual General Meeting.

RE-APPOINTMENT OF RETIRING AUDITOR [SUB-SECTION 9 AND 10]

As per sub-section 9, a retiring auditor may be re-appointed at an AGM if;

a. He is not disqualified for re-appointment;
b. He has not given a notice in writing to the company of his unwillingness to be re-appointed; and
c. A special resolution has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed.

Further as per sub-section 10, where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

AUDIT COMMITTEE'S RECOMMENDATION [SUB-SECTION 11]

Sub-section 11 prescribes the confirming provision, that where a company is required to constitute an Audit Committee under section 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee

REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE [SECTION 140]

Section 140 of the Companies Act, 2013 provides for removal, resignation of auditor and giving of special notice. According to this section:

REMOVAL OF AUDITOR BEFORE HIS TERM

Manner and Procedure

The auditor appointed under section 139 may be removed from his office before the expiry of his term only by–

a. A special resolution of the company and
b. After obtaining the previous approval of the Central Government (powers are delegated to Regional Director) by making an application in Form ADT- 2 that shall be accompanied with the prescribed fees as provided for this purpose under the *Companies (Registration Offices and Fees) Rules, 2014* .

Note

The application shall be made to the Central Government within 30 days of the resolution passed by the Board.

The Company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.

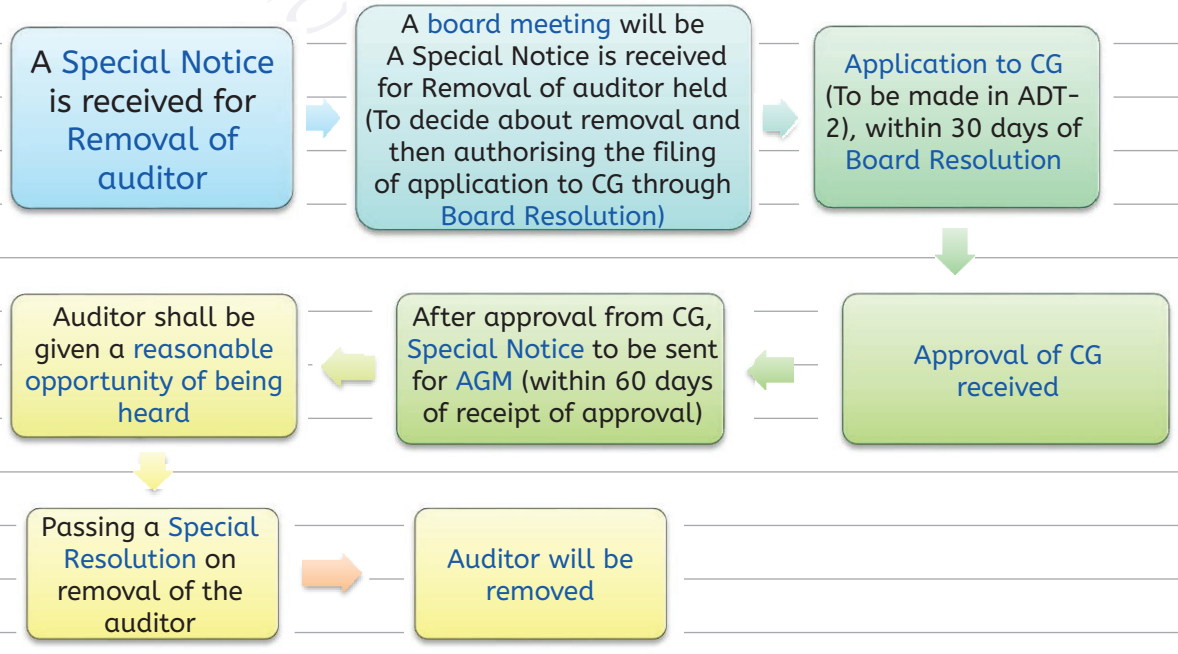
In case of a Specified IFSC public company and Specified IFSC private company, where, within a period of sixty days from the date of submission of the application to the Central Government under this sub-section, no decision is communicated by the Central Government to the company, it would be deemed that the Central Government has approved the application and the company shall appoint new auditor at a general meeting convened within three months from the date of expiry of sixty days period.

Giving opportunity of being heard (Audi Alteram Partem)

Before taking any action for removal of auditor before the expiry of his term, the auditor concerned shall be given a reasonable opportunity of being heard.

The Latin maxim, 'Audi Alteram Partem' is the principle of natural justice where every person gets a chance of being heard to respond to the charge, evidence or action against them.

Summary of steps for removal of auditor



RESIGNATION BY AUDITOR [SUB-SECTION 2 & 3 READ WITH RULE 8 OF COMPANIES (AUDIT AND AUDITORS) RULES, 2014]

File a statement

If the Auditor has resigned from the company, he shall file a statement in the form ADT-3 with the company and the Registrar within a period of 30 days from the date of such resignation.

The auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation, in the statement.

Statement to CAG in case of Government Company [Sub-section 2]

The auditor shall file such statement with the Comptroller and Auditor-General of India (CAG) along with the company and the Registrar indicating the reasons and other facts as may be relevant with regard to his resignation, in case if he is auditor of:

i. A Government company or

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

Summary

Particulars	In case of Government Co.	In other Cases
Form of statement	ADT-3	ADT-3
Time Period for filling	Within 30 days of resignation	Within 30 days of resignation
Statement filled with	Company, Registrar & CAG	Company and Registrar

Penalty for contravention [Sub-section 3]

If the auditor does not comply with aforesaid provision of filling statement then;

a. He or it shall be liable to a penalty of ₹ 50,000 or an amount equal to the remuneration of the auditor, whichever is less,

and

b. In case of continuing failure, with a further penalty of ₹ 500 for each day after the first during which such failure continues, subject to a maximum of ₹ 2 lakh.

APPOINTING AUDITOR OTHER THAN THE RETIRING AUDITOR [SUB- SECTION 4]

Special notice for resolution

If the retiring auditor has not completed a consecutive tenure of 5 years (or 10 years in case of firm, as the case may be), special notice shall be required for a resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or providing expressly that a retiring auditor shall not be re- appointed.

Copy of special notice to retiring auditor

On receipt of notice of such a resolution, the company shall forthwith send a copy thereof to the retiring auditor.

Representation of auditor

Where notice is given of such a resolution and the retiring auditor makes with respect thereto representation in writing to the company (not exceeding a reasonable length) and requests its notification to members of the company, the company shall, unless the representation is received by it too late for it to do so,

a. In any notice of the resolution given to members of the company, state the fact of the representation having been made; and

b. Send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after the receipt of the representation by the company.

If a copy of the representation is not sent to members

If a copy of representation is not sent to member as aforesaid,

- Either because it was received too late or of the company's default, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.
- A copy of such representation shall be filed with the Registrar.

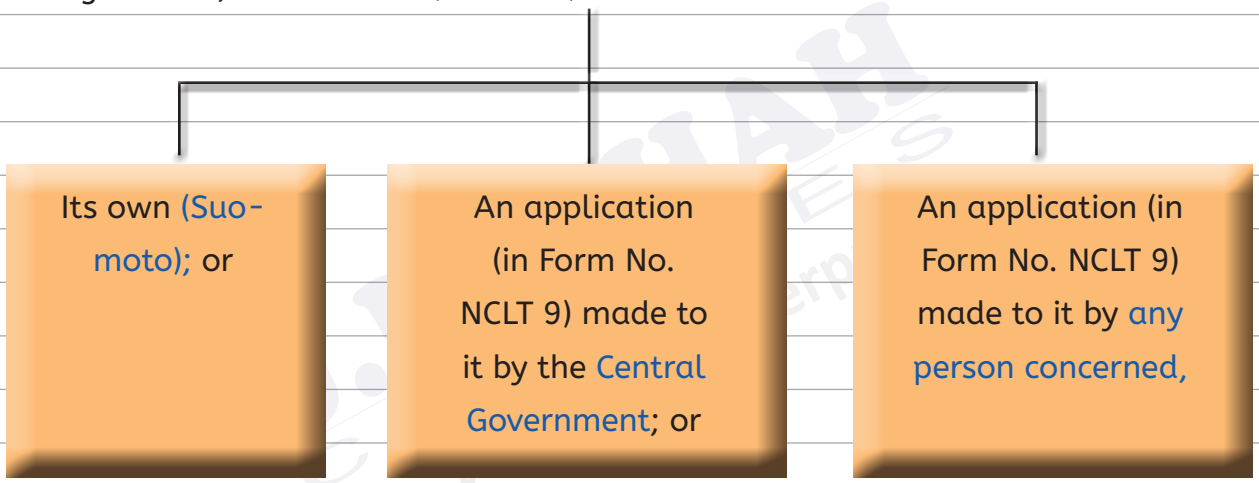
Second proviso to section 140(4) read with Rule 78 of the *National Company Law Tribunal Rules, 2016,* provides, if the Tribunal i.e. NCLT is satisfied;

a. On an application in Form No. NCLT. 1 may be filed by the director on behalf of the company or the aggrieved auditor to the Tribunal
b. That the rights conferred by the provisions of section 140 are being abused by the auditor,
c. Then, the copy of the representation need not be sent and the representation need not be read out at the meeting.

AUDITOR ACTS IN A FRAUDULENT MANNER OR ABETTED OR COLLUDED IN ANY FRAUD [SUB-SECTION 5]

Tribunal may order the company to change its auditor/s.

Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal (i.e. NCLT) either on



If it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.

Rule 78(3) of the National Company Law Tribunal Rules, 2016 provides exactly similar provision to what is stated as first proviso to Sub-section 5 of Section 140, if the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application make an order that the auditor shall not function as an auditor and the Central Government may appoint another auditor in his place.

Ineligibility of auditor to be appointed and criminal liability

An auditor, whether individual or firm, against whom final order has been passed by the Tribunal under section 140, shall;

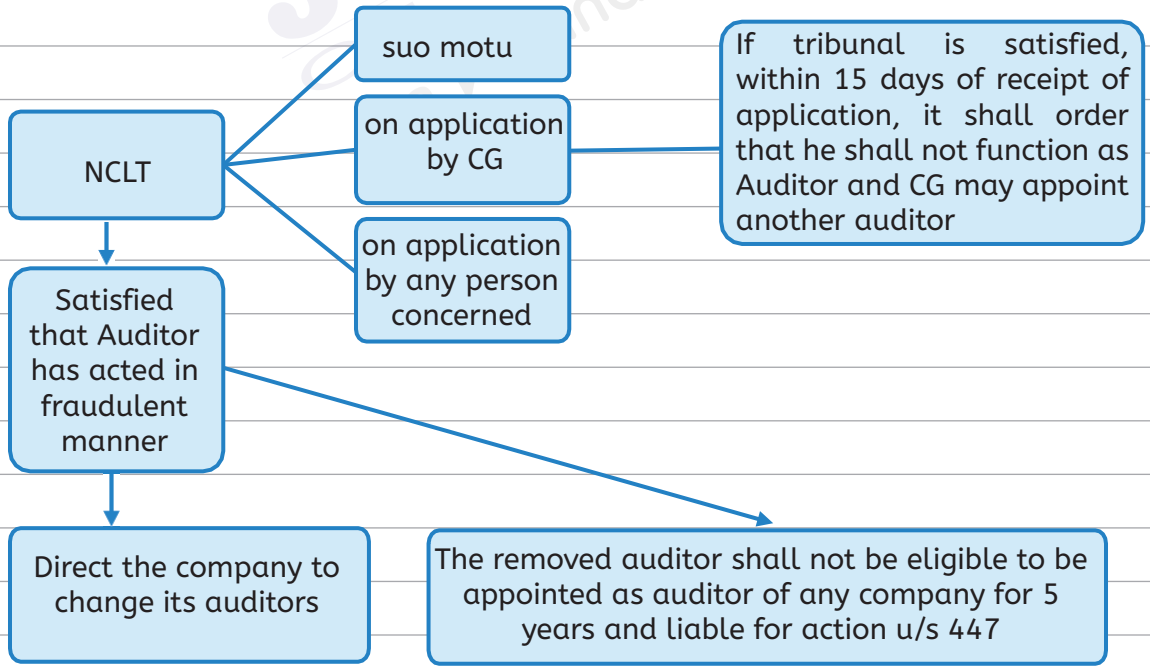
- Not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of passing of the order and
- Also be liable for action under section 447 of the Companies Act 2013.

Note

In case of a firm, the liability shall be of the firm and that of every partner or partners who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its director or officers.

The word "auditor" also includes a firm of auditors.

Summary of Sub-section 5



ELIGIBILITY, QUALIFICATIONS AND DISQUALIFICATIONS OF AUDITORS [SECTION 141]

Section 141 of the Companies Act, 2013 provides for eligibility, qualifications and disqualifications of auditors.

QUALIFICATION OF AN AUDITOR [SUB-SECTION 1 AND 2]

Auditor shall be CA in Practice [Sub-section 1]

A person shall be eligible to be appointed as an auditor of a company only if he is a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under sub-section (1) of section 6 of that Act.

Note

Since section 139 allows a firm also to be appointed as an auditor, hence proviso to section 141(1) prescribe clearly that only those firms wherein majority of partners practicing in India, are qualified for appointment by its firm name.

Who shall sign if firm appointed as Auditor [Sub-section 2]

Where a firm including a Limited Liability Partnership is appointed as an auditor of a company, only the partners who are Chartered Accountants shall be authorized to act and sign on behalf of the firm.

DISQUALIFICATIONS OF AUDITORS [SUB-SECTION 3]

Following persons shall not be qualified for appointment as auditor of a company

a. A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; (Except →LLP)
b. An officer or employee of the company;
c. A person who is a partner, or who is in the employment, of an officer or employee of the company;
d. A person who himself or his partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (i.e. fellow subsidiary) or his relative or partner

Note –

In earlier act i.e. Companies Act 1956 the holding securities of par value upto the limit of ₹ 1000 by auditor was not the disqualification criteria. Under current Act i.e. Companies Act 2013, not a single rupee of holding by auditor is allowed.

e. A person whose relative (defined u/s 2(77) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company (i.e. fellow subsidiary) of face value exceeding ₹ 1,00,000.

Though rule 10(1) says, a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh but here rather than a literal interpretation, reasonable construction is required. And holding of all the relatives together shall be checked against the threshold.

Further, even if relative of one of the partners of any firm hold securities or interests exceeding the threshold then, not only such partner even firm shall not be eligible to appointed as auditor.

The threshold condition specified above shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities.

If the relative acquires any security or interest above the prescribed threshold i.e. ₹ 1,00,000, the corrective action to maintain the limits as specified above shall be taken by the auditor within 60 days of such acquisition or interest.

f. A person who himself, or whose partner or relative is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 Lakh

g. A person who or whose relative or partner has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of one lakh rupees

h. A person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

The term "business relationship" shall be construed as any transaction entered into for a commercial purpose, but except–

- Commercial transactions which are in the nature of professional services

permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;

- Commercial transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor as customer by the companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

i. A person whose relative is a director or is in the employment of the company as a director (as defined u/s 2(34) or key managerial personnel (as defined u/s 2(51);

j. A person who is in full time employment elsewhere

k. A person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies.

- While calculating the ceiling limit of 20, the one person companies, small companies and private companies having paid-up share capital less than 100 crore rupees shall be excluded.
- The exceptions provided above shall be applicable onlyt to those Private Companies which has not committed a default in filing its financial statements under section 137 of the said act or annual return under section 92 of the said act with the registrar8
- Before appointment is given to any auditor, the company must obtain a certificate from him to the effect that the appointment, if made, will not result in an excess holding of company audit by the auditor concerned over the limit laid down in section141(3)(g) of the Companies Act, 2013.

l. a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction;

m. A person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company.

VACATION OF OFFICE BY AN AUDITOR [SUB-SECTION 4]

If a person appointed as an auditor of a company incurs any of the disqualifications specified in Section 141(3) after his appointment, he shall vacate his office as Auditor. Such vacation shall be deemed to be a casual vacancy in the office of the auditor.

REMUNERATION OF AUDITORS [SECTION 142]

Section 142 of the Companies Act, 2013 provides for remuneration of auditors.

WHO WILL FIX THE REMUNERATION?

Subsequent auditors

The remuneration of auditors has to be fixed by the company in general meeting or in such manner as the general meeting may determine.

First Auditor

While the remuneration of first auditor shall be fixed by the board, which appointed him.

INCLUSION AND EXCLUSIONS

Components

The remuneration so fixed is, in addition to the fee payable to an auditor to,

Includes

- The expenses, if any, incurred by him in connection with the audit of the company (i.e. out of pocket expense) and
- Any facility extended to him.

Exclusion

It is not to include any remuneration paid to him for any other service rendered by him at the request of the company.

POWERS AND DUTIES OF AUDITORS AND AUDITING STANDARDS [SECTION 143]

POWERS OF AUDITORS [SUB-SECTION 1]

Access to books of account and vouchers

Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.

Entitled to have necessary information and explanation

He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.

Access to record of all its subsidiaries

The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its financial statements with that of its subsidiaries and associate companies.

DUTIES OF AUDITORS

Matters of inquiry [Sub-section 1]

The auditor shall inquire into the following matters, namely

a. Whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are prejudicial to the interests of the company or its members;

b. Whether transactions of the company which are represented merely by book entries are prejudicial to the interests of the company;

c. Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company;

d. Whether loans and advances made by the company have been shown as deposits;

e. Whether personal expenses have been charged to revenue account;

f. Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such

allotment, and if no cash has actually been so received, whether the position as stated in the

g. account books and the balance sheet is correct, regular and not misleading.

Report to members [Sub-section 2 and 3]

The auditor shall make a report to the members of the company on the following;

a. On the accounts examined by him; and

b. On every financial statements which are required by or under this Act to be laid before the company in general meeting; and

Note

The auditor while making the report shall take into account the provisions of the Act, the accounting and auditing standards and matters which are required to be included in the audit report under the provisions of this Act or any rules made thereunder or under any order made under section 143(11).

The auditor shall express his opinion on the accounts and financial statements examined by him. He shall express an opinion, according to him and to the best of his information and knowledge, whether the said accounts/financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed.

Further, sub-section 3 requires, the auditors' report shall also state:

a. Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

b. Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

c. Whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

d. Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

e. Whether, in his opinion, the financial statements comply with the accounting standards;

f. The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

g. Whether any director is disqualified from being appointed as a director under sub section (2) of section 164;

h. Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;

i. Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;

j. Such other matters as may be prescribed

In context of clause j stated above, Rule 11 of the Companies (Audit & Auditors) Rules,2014 i.e. Other Matters to be Included in Auditors Report requires the auditor's report shall also include their views and comments on the following matters, namely:

(i) Whether the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statement;

(ii) Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts;

(iii) Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company.

(iv) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been;

1. Advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

2. Received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend

or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

3. Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) [i.e. pt 1] and (ii) [i.e. pt 2] contain any material mis-statement.

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

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

Note

As per sub-section 4 to section 143, where any of the matters is answered in the negative or with a qualification, the auditor's report shall state the reason for the same.

Clause (i) of Sub-Section (3) of Section 143 (i.e. Whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls) shall not apply9 to a private company,

i. which is a one person company or a small company; or

ii. Which has turnover less than rupees fifty crore as per latest audited financial statement and which has aggregate borrowings from banks or financial institutions or anybody corporate at any point of time during the financial year less than rupees 25 crore.

The aforesaid exceptions, modifications and adaptations shall be applicable to a Private company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.

Compliance with auditing standards [Sub-section 9 and 10]

Every auditor shall comply with the auditing standards.

The Central Government may prescribe the standards of auditing or any addendum

thereto, as recommended by the ICAI, in consultation with and after examination of the recommendations made by the National Financial Reporting Authority (NFRA).

It is further provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

Additional matters to be reported in case of specified companies [Sub-section 11]

In respect of such class or description of companies, as may be specified in the general or special order by the Central Government, may in consultation with the NFRA direct, the auditor's report shall also include a statement on such matters as may be specified therein

Note

CARO 2020 issued by MCA should be complied by the statutory auditor of every company, on which it applies.

REPORTING OF FRAUDS BY AUDITORS [SUB-SECTION 12, 13 AND 15 READ WITH RULE 13 OF THE COMPANIES (AUDIT AND AUDITORS) RULES, 2014]

Fraud involving amount of one crore or more

Notwithstanding anything contained in this section, if an auditor of a company, in the course of the performance of his duties as auditor,

a. Has reason to believe that an offence involving fraud
b. Which involves or is expected to involve individually an amount of rupees one crore or above
c. Is being or has been committed against the company by officers or employees of the company,
d. He shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

In this regards Rule 13(2) the auditor shall report the matter to the Central Government in following manner

a. The auditor shall report the matter to the Board or the Audit Committee, as the case may be, immediately but not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days;
b. On receipt of such reply or observations, the auditor shall forward his report and the

reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days from the date of receipt of such reply or observations;

c. In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations;

d. The report shall be sent to the Secretary, Ministry of Corporate Affairs (MCA) in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by an e-mail in confirmation of the same;

f. The report shall be in the form of a statement as specified in Form ADT-4

Fraud involving amount less than one crore

Report to Audit Committee or Board [First Proviso to Sub-section 12 read with Rule 13(3)]

In case of a fraud involving lesser than an amount of rupees one crore, the auditor shall report the matter to the audit committee (if constituted under section 177) or to the Board (in other cases) immediately but not later than two days of his knowledge of the fraud and he shall report the matter specifying the following;

a. Nature of Fraud with description;

b. Approximate amount involved; and

c. Parties involved.

Disclosure in Board's Report [Second Proviso to Sub-section 12 read with Rule 13(4)]

The audit committee or the Board shall disclose the following details about such frauds (reported to them, but not to the Central Government i.e. when amount involved is less than ₹ 1 crore), in the Board's report;

a. Nature of fraud with description;
b. Approximate amount involved;
c. Parties involved, if remedial action not taken; and
d. Remedial actions taken.

Exception of bonafide faith [Sub-section13]

No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred to in sub- section (12) if it is done in good faith.

Penalty for non-compliance of section 143(12) [Sub-section 15]

If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12), he shall

a. Be liable to a penalty of five lakh rupees in case of a listed company; and
b. Be liable to a penalty of one lakh rupees in case of any other company.

Summary of quantum of penalty

Liable	In case of	Quantum
auditor, cost accountant, or company secretary in practice does not comply with the provisions of section 143(12)	listed company	five lakh rupees
	any other company	one lakh rupees

AUDIT OF GOVERNMENT COMPANIES [SUB-SECTION 5, 6 & 7]

Powers vested with CAG [Sub-section 5]

Sub-section 5 provides, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State

Government or Governments, or partly by the Central Government and partly by one or more State Governments;

a. CAG shall appoint the auditor under section 139(5) or 139(7) and
b. Direct such auditor the manner in which the accounts of the Government company are required to be audited and
c. Thereupon the auditor so appointed shall submit a copy of the audit report to the CAG.

The audit report among other things, shall include the following

a. The directions, if any, issued by the CAG;
b. The action taken thereon; and
c. Its impact on the accounts and financial statement of the company.

Comment by CAG and Supplementary Audit [Sub-section 6]

Sub-section 6 provides that, the CAG shall within 60 days from the date of receipt of the audit report have a right to;

a. Conduct a supplementary audit of the financial statement of the company by such person or persons as he may authorize in this behalf; and for the purposes of such audit, require information or additional information to be furnished to any person or persons, so authorized, on such matters, by such person or persons, and in such form, as the CAG may direct; and
b. Comment upon or supplement such audit report.

Note

Any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements under section 136(1) and also be placed before the AGM of the company at the same time and in the same manner as the audit report.

Test Audit [Sub-section 7]

For Government Company or Company controlled by State Government or Central Government, the CAG may, if he considers necessary, by an order, cause test audit to be conducted of the accounts of such company, without prejudice to the provisions related to Audit and Auditors. The provisions of section 19A of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

AUDIT OF ACCOUNTS OF BRANCH OFFICE OF COMPANY [SUB- SECTION 8 READ WITH RULE 12 OF THE COMPANIES (AUDIT & AUDITORS) RULES, 2014]

Branch office in India	Branch office outside India
Where a company has a branch office, the accounts of that office shall be audited either by:	If the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by:
a. The company's auditor appointed under section 139, or	a. The company's auditor or
b. By any other person qualified for appointment as an auditor of the company under section 139.	b. By an accountant or
	c. By any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

Duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor [Rule 12 of the Companies (Audit & Auditors) Rules, 2014]

- The duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be as contained in sub-sections (1) to (4) of section 143.
- The branch auditor shall submit his report to the company's auditor.
- The provisions regarding reporting of fraud by the auditor shall also extend to such branch auditor to the extent it relates to the concerned branch.

APPLICATION OF PROVISIONS OF SECTION 143 TO COST ACCOUNTANTS AND COMPANY SECRETARY [SUB-SECTION 14]

The provisions of this section shall mutatis mutandis apply to:

a. The cost accountant conducting cost audit under section 148; or

b. The company secretary in practice conducting secretarial audit under section 204.

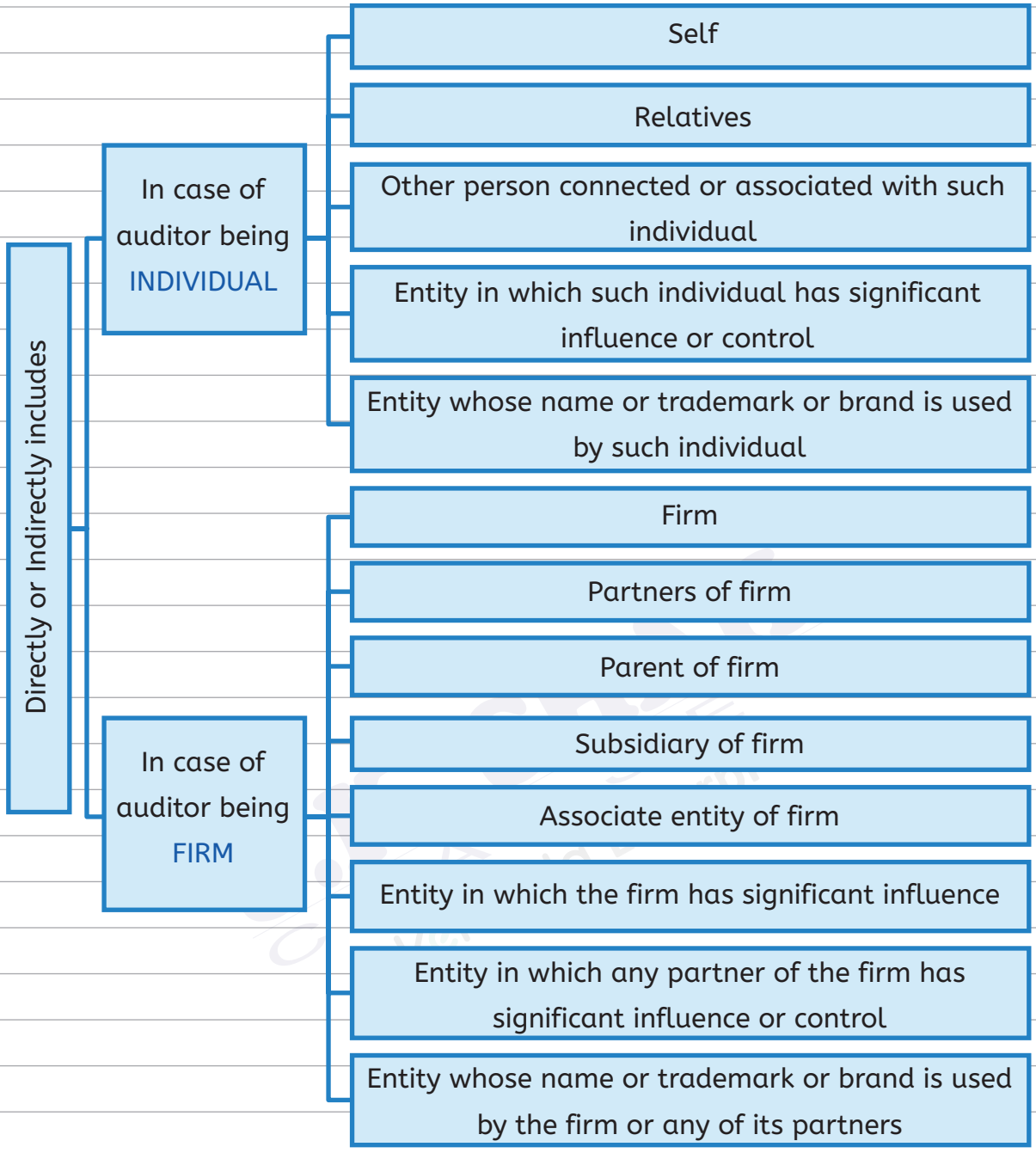
AUDITOR NOT TO RENDER CERTAIN SERVICES [SECTION 144]

An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely

Accounting and book keeping services	Investment advisory services	Investment banking services
Internal audit	Actuarial services	Management services
Rendering of outsourced financial services	Design and implementation of any financial information system	Any other kind of services as may be prescribed

Example 12: MNP Ltd is a medium-sized company engaged in the business of pharmaceuticals. For the year ended 31st March 2018, the company is looking for appointment of GST (Goods and Services Tax) auditor. The company wants to appoint somebody for this work who is familiar with the business of the company i.e. who would have worked with the company in the past so that lesser efforts are required to get the GST audit completed. The company has options of statutory auditors that can be appointed for this work for betterment of company.

what shall be included in directly and indirectly



AUDITORS TO SIGN AUDIT REPORTS, ETC. [SECTION 145]

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc.

The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP is appointed as an auditor of a company, only the partner who are Chartered Accountants shall be authorized to act and sign on behalf of the firm).

The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

AUDITORS TO ATTEND GENERAL MEETING [SECTION 146]

Serving notices of any General Me ting to auditor → Attend meeting either by himself or through his authorized representative → Right to be heard on business concerning him as auditor

Example 13

Modern Furniture Limited (MFL) convened its general meeting on 21st March 2023, the notice of same was not served at auditor. Since company is obligated under section 146 to forward a notice of general meeting to auditor as well, hence non- serving of notice to auditor by MFL is in contravention to section 146 and liable for penalty under section 147.

PUNISHMENT FOR CONTRAVENTION [SECTION 147]

Section 147 of the Companies Act, 2013 provides for punishment for contravention.

CONTRAVENTION BY COMPANY [SUB-SECTION 1]

Liable	Minimum (in ₹)	Maximum (in ₹)
Company	25,000	5,00,000
Every officer of the company who is in default	10,000	1,00,000

CONTRAVENTION BY AUDITOR [SUB-SECTION 2 AND 3]

Summary of quantum of penalty

Liable	Liable for	Minimum (in ₹)	Maximum (in ₹)
Auditor	Contravenes any of the provisions of section 139, 144 or 145, Company	25,000	Lower of i. 5,00,000 or ii. 4 times the remuneration

Summary of quantum of penalty

Liable	Liable for	Minimum (in ₹)	Maximum (in ₹)
Auditor	Knowing or willful contravenes any of the provisions of section 139, 144 or 145, Company	Fine of ₹ 25,000	Fine, Lower of ₹ 5,00,000 Or 8 times the remuneration
		and	
		Imprisonment for a term which may extend to 1 year	

Refund of remuneration and payment of damages [Sub-section 3]

Where an auditor has been convicted under sub-section 2, he shall be liable to;

a. Refund the remuneration received by him to the company; and

b. Pay for damages to the company, statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statements of particulars made in his audit report

Note:

For operation of sub-section 3, the sub-section 4 empowers the Central Government, to specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons, by notification.

Such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification.

CONTRAVENTION BY AUDIT FIRM [SUB-SECTION 5]

Where, in case of audit of a company being conducted by an audit firm,

It is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability,

Whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force,

For such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Note

1. In case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.
2. Since act constitute to fraud, hence shall also be liable under section 447. Provisions of section 447, explained and decoded under book chapter 3 i.e. 'Prospectus and allotment of securities' of this module. Students may refer the same.

CENTRAL GOVERNMENT TO SPECIFY AUDIT OF ITEMS OF COST IN RESPECT OF CERTAIN COMPANIES [SECTION 148]

Applicability for maintenance of Cost Records

- Domestic or Foreign Company
- Engaged in production of goods or providing services listed in table A (Regulated) or B (Non-Regulated) of Rule 3
- Overall turnover from all of its products and services ≥ ₹ 35 crore (immediately preceding financial year)

Note

Nothing contained in Rule 3 shall apply to a company which is classified as a micro enterprise or a small enterprise including as per the turnover criteria under sub-section (9) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.

Case	Turnover (Figures in Crore)					Applicability of Cost Records
	Table A Products	Table B Products	Table A+B Products	Other Products	Total	
1	10	10	20	10	30	
2	10	10	20	20	40	
3	0	10	10	30	40	
4	10	0	10	30	40	
5	20	20	40	0	40	
6	0*	0*	0	40	40	

* Not-engaged in the production of the goods or providing services, specified in the Table A (6 Regulated Sectors) and/or Table B (33 Non-Regulated Sector)

Form and manner of Cost Records [Rule 5]

Every company including all units and branches thereof, shall, in respect of each of its financial year maintain cost records in form CRA-1.

The cost records shall be maintained on regular basis in such manner as to facilitate calculation of per unit cost of production or cost of operations, cost of sales and margin for each of its products and activities for every financial year on monthly or quarterly or half-yearly or annual basis.

The cost records shall be maintained in such manner so as to enable the company to exercise, as far as possible, control over the various operations and costs to achieve optimum economies in utilisation of resources and these records shall also provide necessary data which is required to be furnished under these rules.

COST RECORDS AND AUDIT) RULES, 2014]

If the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered aforesaid (under sub-section 1 i.e. required to prepare cost records) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

As per sub-section 4, an audit conducted under this section (cost audit u/s 148) shall be in addition to the audit conducted under section 143.

The cost statements, including other statements to be annexed to the cost audit report, shall be approved by the Board of Directors before they are signed on behalf of the Board by any of the director authorised by the Board, for submission to the cost auditor to report thereon.

Sub-rule 1 to rule 4 provides every company specified in the item (A) of rule 3 shall be required to get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees fifty crore or more and the aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees twenty five crore or more.

Whereas sub rule 2 provides every company specified in item (B) of rule 3 shall get its cost records audited in accordance with these rules if the overall annual turnover of the company from all its products and services during the immediately preceding financial year is rupees one hundred crore or more and the aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees thirty five crore or more.

Further sub-rule 3 to rule 4 provides exception from cost audits. The requirement for cost audit shall not apply to a company which is covered in rule 3, and

a. Whose revenue from exports, in foreign exchange, exceeds seventy five percent of its total revenue; or
b. Which is operating from a special economic zone.
c. Which is engaged in generation of electricity for captive consumption through Captive Generating Plant. For this purpose, the term "Captive Generating Plant" shall have the same meaning as assigned in rule 3 of the Electricity Rules, 2005.

Case	Turnover (Figures in Crore)					Applicability of	
	Table A Products	Table B Products	Table A+B Products	Other Products	Total	Cost Records	Cost Audit
1	10	10	20	10	30	No	No
2	10	10	20	20	40	Yes	No
3	20	20	40	0	40	Yes	No
4	10	20	30	10	40	Yes	No
5	10	20	30	20	50	Yes	Yes, but only for table A
6	0	20	20	20	40	Yes	No
7	20	10	30	80	110	Yes	Only Table A Product
8	20	20	40	70	110	Yes	Both Tables A & B Products
9	10	10	20	80	100	Yes	No
10	15	15	30	10	40	Yes	No
11	20	20	40	8	48	Yes	No

Summary of Rule 4 i.e. Applicability of Cost Audit

<table>
<tr><th colspan="8">Companies that are covered under rule 3 and engaged in any of</th></tr>
<tr><th colspan="4">6 Regulatory Sectors (Table A)</th><th colspan="4">33 Non-Regulatory Sectors (Table B)</th></tr>
<tr><td>Overall annual turnover from all its products and services during the immediately preceding financial year is rupees fifty crore or more</td><td rowspan="2">Revenue from exports, in foreign exchange, exceeds 75%</td><td rowspan="2">Operating from a special economic zone</td><td rowspan="2">Engaged in generation of electricity for captive consumption.</td><td rowspan="2">Revenue from exports, in foreign exchange, exceeds 75%</td><td rowspan="2">Operating from a special economic zone</td><td rowspan="2">Engaged in generation of electricity for captive consumption.</td><td>Overall annual turnover from all its products and services during the immediately preceding financial year is rupees one hundred crore or more</td></tr>
<tr><td>Aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees twenty five crore or more</td><td>Aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3 is rupees thirty five crore or more</td></tr>
<tr><td>Cost Audit is required</td><td colspan="6">Rule 4 i.e. Cost Audit shall not apply; only Rule 3 i.e. Cost Records will apply</td><td>Cost Audit is required</td></tr>
</table>

COST AUDITOR [SUB-SECTION 3 AND 5]

Who can be appointed as cost auditor? [Sub-Section 3]

Only a Cost Accountant, as defined under section 2(28) of the Companies Act, 2013, can be appointed as a cost auditor.

First Proviso to sub-section 3 provides that person appointed under section 139 as an auditor of the company (i.e. company auditor) shall not be appointed for conducting the audit of cost records.

Qualifications, disqualifications, rights, duties and obligations of cost Auditor [Sub-section 5]

The qualifications, disqualifications, rights, duties and obligations applicable to auditors (i.e. applicable to company auditor) shall, so far as may be applicable, apply to a cost auditor appointed under section 148 and it shall be the duty of the company to give all assistance and facilities to the cost auditor appointed under this section for auditing the cost records of the company.

Note:

The provisions of sub-section (12) of section 143 of the Act and the relevant rules made thereunder shall apply mutatis mutandis to a cost auditor during performance of his functions under section 148 of the Act and rule notified thereunder.

Who shall appoint cost auditor?

Rule 14 of the Companies (Audit and Auditors) Rules, 2014 provides that in the case of companies which are required to constitute an audit committee

a. The Board shall appoint an individual, who is a cost accountant, or a firm of cost accountants in practice, as cost auditor on the recommendations of the Audit committee, which shall also recommend remuneration for such cost auditor;
b. The remuneration recommended by the Audit Committee under (A) shall be considered and approved by the Board of Directors and ratified subsequently by the shareholders.

Whereas in the case of other companies which are not required to constitute an audit committee, the Board shall appoint an individual who is a cost accountant or a firm of cost accountants in practice as cost auditor and the remuneration of such cost auditor shall be ratified by shareholders subsequently.

Manner and Procedure – Appointment, Removal and Resignation

Time Limit for appointment

Cost Auditor shall within one hundred and eighty days of the commencement of every financial year, appoint a cost auditor.

Written Consent and Certificate

Before such appointment is made, the written consent of the cost auditor to such appointment, and a certificate following shall be obtained from him or it.

a. The individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Cost and Works Accountants Act, 1959 and the rules or regulations made thereunder;

b. The individual or the firm, as the case may be, satisfies the criteria provided in section 141 of the Act, so far as may be applicable;

c. The proposed appointment is within the limits laid down by or under the authority of the Act; and

d. The list of proceedings against the cost auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

Notice of appointment

Appointment of cost auditor —File Notice→ CG — Within 30 days

OR

Within 180 days from commencement of F.Y. in CRAL

Tenure of appointment as cost auditor

Every cost auditor appointed as such shall continue in such capacity till the expiry of one hundred and eighty days from the closure of the financial year or till he submits the cost audit report, for the financial year for which he has been appointed.

Removal of cost Auditor

The cost auditor appointed under these rules may be removed from his office before the expiry of his term, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing.

Note:

Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect

Nothing shall prejudice the right of the cost auditor to resign from such office of the company.

Filling of casual vacancy in the office of a cost auditor

Any casual vacancy in the office of a cost auditor, whether due to resignation, death or removal, shall be filled by the Board of Directors within thirty days of occurrence of such vacancy and the company shall inform the Central Government in form CRA-2 within thirty days of such appointment of cost auditor

Cost auditor to comply with cost auditing standards

The auditor conducting the cost audit shall comply with the cost auditing standards. Here, the expression "cost auditing standards" mean such standards as are issued by the Institute of Cost Accountants of India (erstwhile ICWAI), constituted under the Cost and Works Accountants Act, 1959, with the approval of the Central Government.

COST AUDIT REPORT

Form and timing to submit cost audit report

The report on the audit of cost records shall be submitted by the cost accountant to the Board of Directors of the company.

Every cost auditor, who conducts an audit of the cost records of a company, shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in form CRA-3.

Every cost auditor shall forward his duly signed report within a period of one hundred and eighty days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report, particularly any reservation or qualification contained therein.

Note

The Companies which have got extension of time of holding Annual General Meeting under section 96 (1) of the Companies Act, 2013, may file form CRA-4 within resultant extended period of filing financial statements under section 137 of the Companies Act, 2013

Filing of cost audit report with Central Government

A company shall

a. Within 30 days from the date of receipt of a copy of the cost audit report

b. Furnish the Central Government with such report

c. Along with full information and explanation on every reservation or qualification contained therein.

Rule 4 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, provides a company which is required to furnish cost audit report and other documents to the Central Government shall file such report and other documents using the XBRL taxonomy for the financial year commencing on or after 1 April 2014 in e-form CRA-4 specified under the Companies (Cost Records and Audit) Rules, 2014.

If, after considering the cost audit report and the information and explanation furnished by the company, the Central Government is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation and the company shall furnish the same within such time as may be specified by that Government.

Summary of different form pertaining to cost records and cost audits

Form	Purpose
CRA-1	The manner in which cost records to be maintained
CRA-2	For intimation of appointment of cost auditor by company to the Central Government
CRA-3	Cost Audit Report
CRA-4	Filling of the cost audit report with the Central Government

CONTRAVENTION AND PUNISHMENT THEREOF [SUB-SECTION 8]

If any default is made in complying with the provisions of section 148 ;

a. The company and every officer of the company who is in default shall be punishable in the manner as provided in section 147(1);

b. The cost auditor of the company who is in default shall be punishable in the manner as provided in sub-sections (2) to (4) of section 147.

Note: The provision of the section 147 explained in details under heading 10, earlier in this chapter.

MONITORING AND ENFORCING COMPLIANCE WITH AUDITING STANDARDS

Rule 8 of The National Financial Reporting Authority Rules, 2018 empowers NFRA for the purpose of monitoring and enforcing compliance with auditing standards under the Act by a company or a body corporate governed under rule 3.

NFRA may;

a. Review working papers (including audit plan and other audit documents) and communications related to the audit;

b. Evaluate the sufficiency of the quality control system of the auditor and the manner of documentation of the system by the auditor; and

c. Perform such other testing of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary or appropriate.

NFRA may require:

1. Require an auditor to report on its governance practices and internal processes designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
2. Seek additional information or may require the personal presence of the auditor for seeking additional information or explanation in connection with the conduct of an audit.
3. Send a separate report containing proprietary or confidential information to the Central Government for its information.
4. Where the NFRA finds or has reason to believe that any law or professional or other standard has or may have been violated by an auditor, it may decide on the further course of investigation or enforcement action through its concerned Division.

NFRA shall;

1. Perform its monitoring and enforcement activities through its officers or experts with sufficient experience in audit of the relevant industry.
2. Publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.

NFRA shall not

Publish proprietary or confidential information, unless it has reasons to do so in the public interest and it records the reasons in writing.

OVERSEEING THE QUALITY OF SERVICES AND SUGGESTING MEASURES FOR IMPROVEMENT

The National Financial Reporting Authority Rules, 2018 empowers NFRA for overseeing the quality of services and suggesting measures for improvement

a. On the basis of its review, the NFRA may direct an auditor to take measures for improvement of audit quality including changes in their audit processes, quality control, and audit reports and specify a detailed plan with time-limits.
b. It shall be the duty of the auditor to make the required improvements and send a report to the NFRA explaining how it has complied with the directions made by the NFRA.
c. The NFRA shall monitor the improvements made by the auditor and take such action as it deems fit depending on the progress made by the auditor.
d. The NFRA may refer cases with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 to the Quality Review Board constituted under the Chartered Accountants Act, 1949 or call for any report or information in respect of such auditors or companies or bodies corporate from such Board as it may deem appropriate.
e. The NFRA may take the assistance of experts for its oversight and monitoring activities.

FILLING OF RETURN WITH NFRA

every auditor of classes of companies and bodies corporate governed by the NFRA, shall file a return with the Authority i.e. NFRA on or before 30th November every year in Form NFRA-2.

SUMMARY

- First Auditor shall be appointed by Board of directors within thirty days from the date of registration of the company, who hold office till first annual general meeting. Thereafter every company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting and so on.

- Whereas, in case of Government Company or those controlled by Government (central or state or any combination thereof) auditor shall be appointed by CAG (Comptroller and Auditor-General of India).

- The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner

- Only a Chartered Accountants in practice can be appointed as auditor, where firm is appointed then only a Chartered Accountants in practice shall be authorised by the firm to act and sign on behalf of the firm. Section 141 (3) list out certain disqualifications that bar an individual or firm to appointed as auditor.

- The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Board may fix remuneration of the first auditor appointed by it.

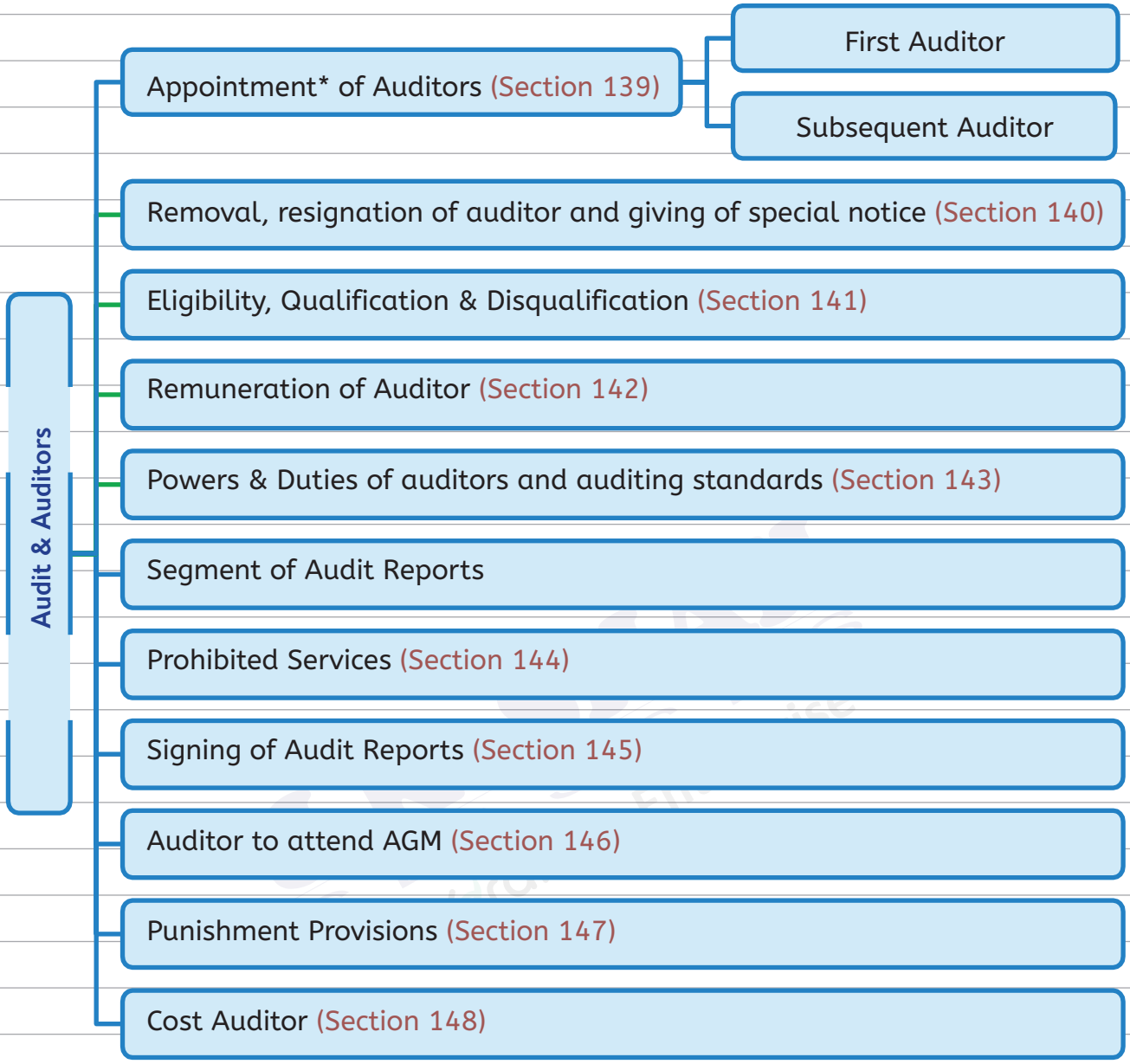
- Every auditor shall comply with the auditing standards. Rights and duties of auditor are prescribed in section 143. The person appointed as an auditor of the company shall sign the auditor's report.

- All notices of any general meeting shall be forwarded to the auditor of the company, and the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative. Auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

- An auditor appointed under this Act shall provide the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but certain services are specifically prohibited to render either directly or indirectly. These are; (a) accounting and book keeping services; (b) internal audit; (c) design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services; (f) investment banking services; (g) rendering of outsourced financial services; and (h) management services.

- Penalties for contravention of the applicable provisions by company, auditor, and audit firm is provided under section 147. In case, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers; then in addition to section 147, such offence is punishable under section 447; even liable for civil or criminal liability under any other law for the time being in force.

- Central Government may, by order, in respect of such class of companies engaged in the production of such goods or providing such services as may be prescribed, direct that particulars relating to the utilisation of material or labour or to such other items of cost as may be prescribed shall also be included in the books of account kept by such class of companies. Further if the Central Government is of the opinion, in relation to any such company, that it is necessary to do so, it may, by order, direct that the audit of cost records of such company shall be conducted in the manner specified therein.


Audit & Auditors
Appointment* of Auditors (Section 139)
First Auditor
Subsequent Auditor
Removal, resignation of auditor and giving of special notice (Section 140)
Eligibility, Qualification & Disqualification (Section 141)
Remuneration of Auditor (Section 142)
Powers & Duties of auditors and auditing standards (Section 143)
Segment of Audit Reports
Prohibited Services (Section 144)
Signing of Audit Reports (Section 145)
Auditor to attend AGM (Section 146)
Punishment Provisions (Section 147)
Cost Auditor (Section 148)

XI COMPANIES INCORPORATED OUTSIDE INDIA

Introduction

Regulatory Framework

↓

Section 379 to Section 393A + Companies (Registration of Foreign Companies) Rules, 2014

↓

Definition of Foreign Company – section 2(42)

'Foreign company' means any company or body corporate Incorporated outside India which –

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner

Therefore,

Section 2(42) = Incorporated outside India + place of business in India + any business activity in India

Itself or through agent physically or electronically mode

As per Rule 2(1)(c) of The Companies (Registration of foreign companies) Rules, 2014 and for the purposes of clause (42) of section 2 of the Act, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to –

(i) business to business and business to consumer transactions, data interchange and other digital supply transactions;
(ii) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
(iii) financial settlements, web-based marketing, advisory and transactional services, database services and products, supply chain management;
(iv) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
(v) all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise

↓

Examples –

Example 1: ABC Entertainment Limited (Indian Company) having foreign subsidiary UVW Limited rendering satellite service to the group will be covered under the definition of Foreign Company under the Companies Act, 2013.

Example 2: Airline companies who operate through their booking agents in India will be covered under the definition of Foreign Company under the Companies Act, 2013.

Example 3: Zakpak Ltd. is a shipping company incorporated in Japan. The Company has set up a branch office in India after obtaining necessary approvals from RBI. Branch Offices are generally considered as a reflection of the Parent Company's office. Thus, branch offices of a company incorporated outside India are considered as a place of business for conducting business activity in India and will be required to follow provisions of this chapter and such other provisions as may be specified elsewhere under Companies Act, 2013.

Application of Act to foreign companies – Section 379

A) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies. It means all the companies which falls under the definition of foreign company shall comply with this chapter.

B) Where not less than 50% or more of the paid-up share capital, whether equity or preference or partly equity and partly preference of a foreign company is held by –

a) one or more Indian citizens; or

b) one or more companies or bodies corporate incorporated in India; or

c) one or more Indian citizens and one or more bodies corporate incorporated in India,

whether singly or in the aggregate, such a foreign company shall also comply with provision of this Chapter and such other provisions of the Act as may be prescribed by the Central Government, as if it were a company incorporated in India.

Documents, etc., to be delivered to Registrar by foreign companies – Section 380

1) Documents to be submitted –

Every foreign company shall, within 30 days of the establishment of place of business in India, deliver to the Registrar for registration:

(a) A certified copy of the charter, statutes or memorandum and articles or other instrument defining the constitution of the company and if such instrument is not in the English language, a certified translation thereof in the English language;

(b) The full address of the registered office or principal office of the company.

(c) A list of the directors and secretary of the company containing such particulars as may be prescribed;

The list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:-

- personal name and surname in full;
- any former name or names and surname or surnames in Hill;
- father's name or mother's name or spouse's name;
- date of birth;
- residential address;
- nationality;
- if the present nationality is not the nationality of origin, his nationality of origin;
- passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
- income-tax permanent account number (PAN), if applicable;
- occupation, if any ;

- whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
- other directorship or directorships held by him;
- Membership Number (for Secretary only); and
- e-mail ID.

(d) The name and address or the names and address of persons resident in India authorised to accept on behalf of the company service of process and notices or other documents required to be served on the company;

(e) The full address of the office of the company in India which is deemed to be its the principal place of business in India.

(f) Particulars of opening and closing of a place of business in India on earlier occasion(s).

(g) Declaration that none of the directors of the company or the authorized Representative in India has ever been convicted or debarred from formation of companies and management in India or abroad.

(h) Any other information as may be prescribed.

2) Time, form and fees for submission of documents specified above –

- A foreign company shall file with the registrar Form FC-1 with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days of the establishment of its place of business in India, and with the documents required to be delivered for registration by a foreign company.
- The application shall also be supported with an attested copy of approval from the Reserve Bank of India under Foreign Exchange Management Act or Regulations, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or a declaration from the authorised representative of such foreign company that no such approval is required

3) Office Where Documents to be Delivered and Fee for Registration of Documents

- Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi.
- The fee to be paid to the Registrar for registering any document relating to

a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.

- If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

4) Transitional Provision – Section 380(2)

Every foreign company existing at the commencement of Companies Act, 2013 shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with the provisions of the Companies Act, 1956

5) Intimation of alterations to the registrar – Section 380(3)

Where any alteration is made in the documents delivered to the Registrar, the foreign company shall, within 30 days of such alteration, deliver to the Registrar for registration, a return containing the particulars of the alteration in the prescribed form.

Accounts of foreign company - Section 381

1) Section 381(1)- Preparation and filing of Balance Sheet and Profit and Loss Account

Every foreign company shall, in every calendar year, -

(a) Make out a balance sheet and profit and loss account containing such particulars as may be prescribed and including or having annexed or attached thereto such documents as may be prescribed; and

(b) deliver a copy of those documents to the Registrar in form FC-3

Note –

- Provided that, the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, these requirements shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.
- If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to

the Registrar shall cease, provided it has no other place of business in India.

2) Section 381(2)- certified translation in the English language –

If any such document as is mentioned in sub-section(1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

3) Section 381(3)-List of places of business in India –

Every foreign company shall send to the Registrar a copy of a list of all the places of Business established in India.

Rule 4 (Financial Statement of Foreign company) of the Companies (Registration of Foreign Companies) Rules, 2014 –

(1) Every foreign company shall prepare financial statement of its Indian business operations in accordance with Schedule III or as near thereto as may be possible for each financial year including-

i. documents required to be annexed thereto in accordance with the provisions of Chapter IX of the Act i.e. Accounts of Companies;

ii. documents relating to copies of latest consolidated financial statements of the parent foreign company, as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country

(2) Every foreign company shall, along with the financial statement required to be filed with the Registrar, attach thereto the following documents; namely:-

(a) Statement of related party transaction,

(b) Statement of repatriation of profits,

(c) Statement of transfer of funds (including dividends if any)

The documents referred to in this rule shall be delivered to the Registrar within a period Of six months of the close of the financial year of the foreign company to which the documents relate: Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

3) Audit of Accounts of Foreign Company –

- Every foreign company shall get its accounts pertaining to the Indian business operations prepared in accordance with the requirements of clause (a) of subsection (1) of section 381 and Rule 4, audited by a practicing Chartered

Accountant in India or a firm or limited liability partnership of practicing chartered accountants.

- The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, mutatis mutandis, to the foreign company

Display of name, etc. of foreign company – Section 382

1) Every foreign company shall exhibit –
   a) the name of the foreign company outside every office or place where it carries on business in India,
   b) the country of incorporation; and
   c) the fact that the liability of members is limited

   in letters easily legible in English characters and also in characters of the languages or one of the languages in general use in the locality in which the office or place is situated;

2) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and

3) if the liability of the members of the company is limited, cause notice of that fact–
   a) to be stated in every such prospectus issued and in all business letters, billheads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
   b) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Service of documents on foreign company – Section 383

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.

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

Debentures	The provisions of section 71(debentures) shall apply mutatis mutandis to a foreign company.
Annual Return	• The provisions of section92(annual return) shall apply to a foreign company as they apply to a company incorporated in India subject to such exceptions, modifications and adaptations as may be made. • Every foreign company shall prepare and file annual return in Form FC.4 within a period of sixty days from the last day of its financial year, to the Registrar along with such fees as may be prescribed.
CSR	The provisions of section 135 shall apply to a foreign company as they apply to a company incorporated in India subject to such exceptions, modifications and adaptations as may be made
Books of account	The provisions of section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in section 128, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India
Registration of Charges	The provisions of Chapter VI (consisting of sections 77 to 87 relating to registration of charges) shall apply mutatis mutandis to properties which is created or acquired by any foreign company.
Inspection, Inquiry and Investigation	The provisions of Chapter XIV (consisting of sections 206 to 229 relating to Inspection, Inquiry and Investigation) shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

Fee for registration of documents – Section 385

There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.

Interpretation – Section 386

Certified	The expression 'certified' means certified in the prescribed manner to be a true copy or a correct translation.
Director	The expression 'director', in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act.
Place of business	The expression 'place of business' includes a share transfer office or share registration office

Drafting of prospectus and particulars to be contained therein – Section 387

Section 387(1)-Prospectus to be dated and signed	No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated outside India, unless the prospectus is dated and signed, and – (a) contains particulars with respect to the following matters: (i) The instrument constituting or defining the constitution of the company; (ii) The enactment under which the company was incorporated; (iii) Address in India where the said instrument, enactment, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected; (iv) The date and the country of incorporation; and (v) Whether the company has established a place of business in India and. if so, the address of its principal office in India; and (b) states the matters specified under section 26 Provided that points (i), (ii), (iii) of point (a) above shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

Section 387(2) -Condition requiring waiver of compliances shall be void.	Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (1) shall be void
Section 387(3) -Application form to be accompanied with prospectus	No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388. Provided that this sub-section shall not apply if it is shown that the form of Application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.
Section387(4)	This section – (a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and (b) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognized stock exchange.
Section387(5)	Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section

Provisions as to expert's consent and allotment – Section 388

Section 388(1) -Expert's written consent in prospectus	No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India –

	(a) if, - where the prospectus includes a statement purporting to be made by an expert, he has not given his written consent, or - has withdrawn his written consent before delivery of the prospectus for registration to the issue of the prospectus with the statement included in the form and context in which it is included, or - there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.
Section 388(2) -Statement in any report deemed to be included in prospectus	For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Registration of prospectus – Section 389

1) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India,
   - a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and
   - the prospectus states on the face of it that a copy has been so delivered, and
   - there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

2) Documents to be annexed to prospectus as per Rule 11 of the Companies (Registration of Foreign Companies) Rules, 2014:

(a) Any consent to the issue of the prospectus required from any person as an expert.

(b) A copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof.

(c) A copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years.

(d) A copy of underwriting agreement.

(e) A copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

Offer of Indian Depository Receipts – Section 390

Meaning of IDRs –

IDRs means any instrument in the form of depository receipt created by Domestic Depository in India and authorized by a company incorporated outside India making and issue of such depository receipts.

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for–

(a) the offer of Indian Depository Receipts;

(b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(c) the manner in which the Indian Depository Receipts shall be dealt with in depository mode and by custodian and underwriters; and

(d) the manner of sale, transfer or transmission of Indian Depository Receipts by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

Application of sections 34 to 36 and Chapter XX – Section 391

1. The provisions of sections 34 to 36 (both inclusive) shall apply to

   (i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company.

   (j) the issue of Indian Depository Receipts by a foreign company.

2. The provisions of Chapter XX (viz- winding up) shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer

or issue of securities under this Chapter which have not been repaid or redeemed

Punishment for contravention – Section 392

If a foreign company contravenes the provisions of this Chapter –

- the foreign company shall be punishable with fine minimum 1,00,000 rupees but which may extend to 3,00,000 rupees and in the case of a continuing offence, with an additional fine which may extend to 50,000 rupees for every day after the first during which the contravention continues and
- every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than 25,000 rupees but which may extend to 5,00,000 rupees

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

Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Action for Improper Use or Description as Foreign Company – Rule 12

if any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

Exemptions under this chapter

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

(a) foreign companies:

(b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

in so far as they relate to the offering for subscription in the securities, requirements

related to the prospectus, and all matter incidental thereto in the International Financial Services Centres set up under section 18 of the Special Economics Zones Act, 2005.

Summary

Foreign Company Sec 2(42)

- Any company incorporated outside India

  AND

- Place of business in India

Directly / Indirectly / Physical /Electronically Through agent

And

Having Business Activity

Sec 379 to Sec 386 Applicable to all

Sec 392 to Sec 393 Foreign Company

Sec 387 to Sec 391 → Applicable when money raised in India through issue of IDR by company incorporated outside India

Sec 379 Foreign Company

↓

Atleast 50% share capital [equity / Pref]

Indian Citizen OR Company or Body corporate registered in India

Foreign Company

↓

Indian Business

↓

Deemed Indian Company

↓

Chapter XXII

+

Such Other provision as specified by CG

	S1	S2	S3
1. Company incorporated outside India	✓	✓	✓
2. Place of Business in India	No	✓	✓
3. Atleast 50% of SC held by Indian citizen / Indian Co. / Indian Body corporate	✓	No	✓
	-	Foreign Company	Deemed Indian Company

Sec 380 : Documents required to be filed by foreign Company

Given documents required to be filed with

ROC (New Delhi) → within 30 days

(form FCI / Form FC 2)

↓ ↓

(Incorporation) (Alteration)

1. Document defining Constitution / Charter / Statute /MOA
2. Name & Details of Director / Secretary
3. Address of Principle office outside India
4. Place of Business in India
5. Name of Address of one or more person to whom notice can be served on behalf of company (Indian representative)
6. Whether office is opened or closed in India before such date.
7. Director or Indian Representative should not be debarred to incorporate company any where
8. Any other information

Sec 381: Accounts of Foreign Company

1. It shall be prepared as per schedule III or in any format as near as possible
2. Document will be annexed as required in chapter IX.
3. Copies of latest consolidated FS will be submitted of a parent foreign company.
4. The above documents will be filed in certified English

Related Party Transaction.

1. It shall file name of person covered in section 2 (76)
2. Nature of Relationship
3. Nature of Transaction
4. Value of transaction
5. Declaration that it is at arm's length price

Repatriation of profit

It shall provide following details related to repatriation

1) Amount
2) Recipient
3) Form

4) Details
5) Mode

Transfer of funds

Full details related to transfer of fund shall be provided Date, amount, purpose, approval of RBI etc.

All the above document shall be filed to registrar within 6 months from the end of fy in form FC 3

Extension can given for more 3 months by registrar

Audit of accounts

Audit shall be conducted by

1) CA in practice / firm of practicing CA
2) Provisions of Chapter X – Audit & auditors shall be applicable to the foreign company mutatis mutandis as it is applicable to Indian co.

File FC-3 within 6 months

FC → ROC, New Delhi

of F.Y. end + Attachment

1) Indian Rupee (₹)
2) Codified English translated copy
3) Schedule III
4) AS/Ind AC
6) FS – Indian Business only
7) CFS – Global Business
8) Attachments

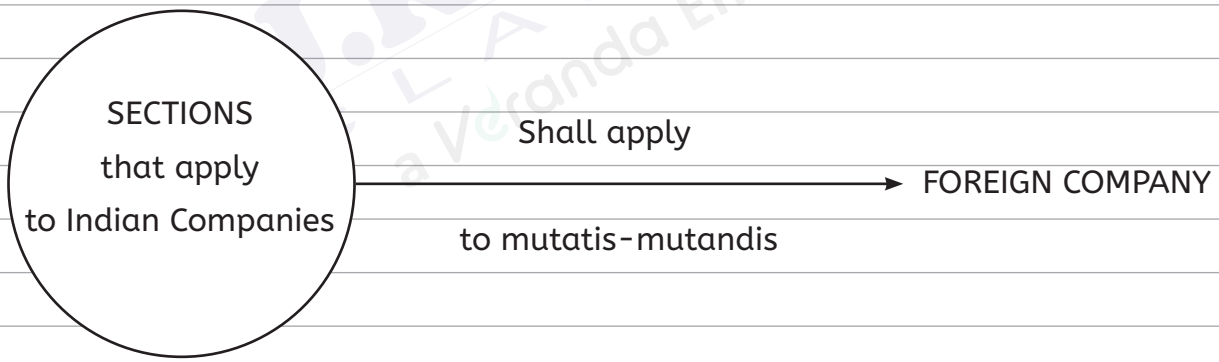
Section 382 Display of Name , etc. of a Foreign Company

Place of Business in India Conspicuously	Business bill letter head, Communication letter etc.	Prospectus
↓	↓	↓
1. Name of Company 2. Name of country of incorporation 3. Limited liability (if any)	1. Name of Company 2. Name of country of incorporation 3. Limited liability (if any)	Limited liability (if any)
↓	↓	
English and Vernacular	English	

Section 383 : Service of Notice to foreign Company

Any notice which is to be served to foreign Company can be sent to any person whose name is supplied to ROC (Indian representative) or place of Business in India. If Notice is served to such person or place then in will be deemed that notice is served to foreign Company.

Section 384 :



Two Annual Filings

Filing	Foreign Co.	Indian Co.
FS	FC-3 : 6 months [Sec. 381] from F.Y. end	AOC – 4 : 30 days of AGM (Sec. 137)
Annual Return	FC-4 : 60 days [Sec. 384] From F.Y. end	AOC – 4 : 30 days of AGM (Sec. 137)

The following section are applicable to a Foreign Company mutandis mutandis as applicable to Indian Company.

Sec 71 – Debenture

Sec 92 – Annual return

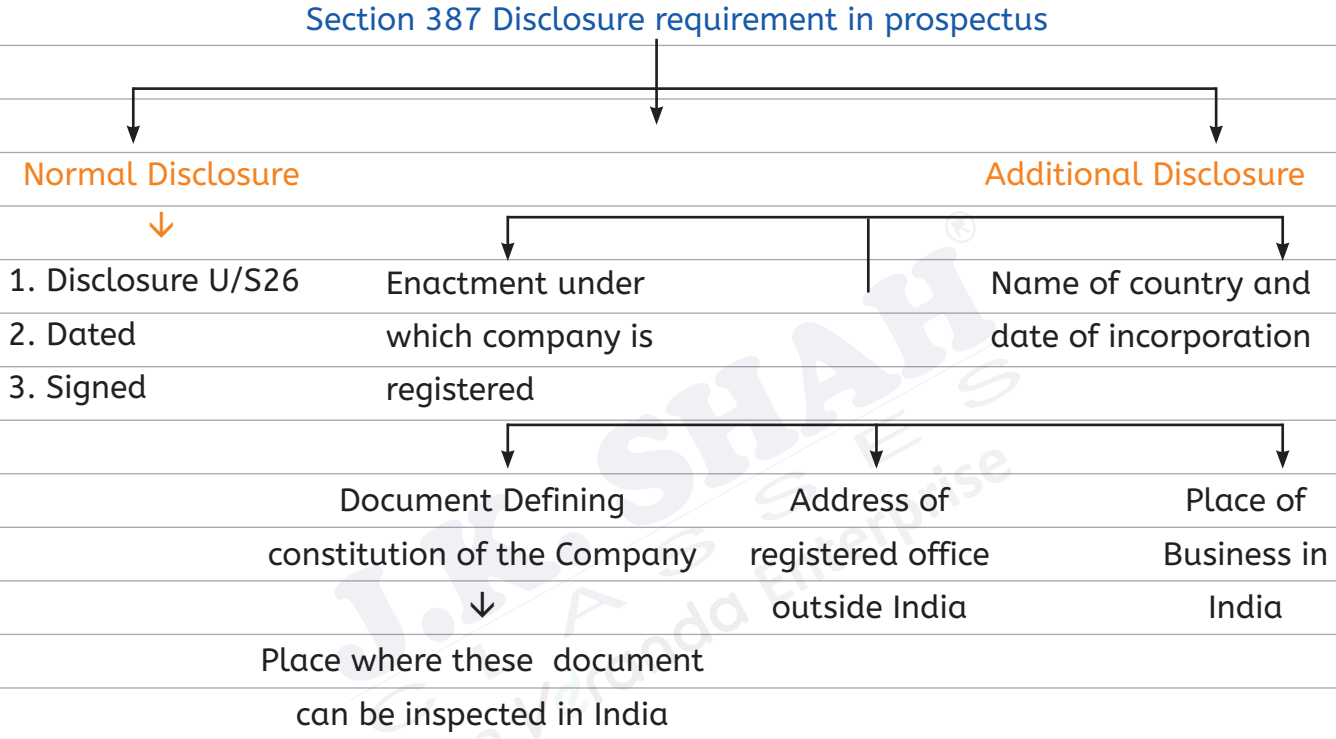
Chapter VI – Registration of charge

Section 28 – Books of Account

Chapter XIV – Inspection & investigation

Section – 135 CSR

Section 385 : Fees required to be paid for registering document to registrar, as be prescribed



Section 388 : Expert Consent

Any statement used in prospectus which is issued, circulated or distributed by Company incorporated outside India by way of reference or report or direct statement then approval of such statement is required by written consent.

Note : Company cannot use such statement if consent is written by such expert before registration of prospectus.

Section 389 Registration of prospectus

If Company is incorporated outside Indian and wants to issue, circulate or distribute any prospectus then it should be registered.

The following condition should be satisfied

a) It should be signed by atleast 2 directors and a chairperson

b) Following documents shall be enclosed / Annexed.

i. Expert's consent

ii. Copy of power of attorney if prospectus is signed by agent instead of director

iii. Copy of contract with MD or Manager

iv) Underwriting agreement.

v) Any other material contract in nature.

Section 390 : Indian Depositary Receipt (IDR)

CG can make rules for issue of IDR by Company incorporated outside India. On the following matters.

i. Offer of IDR

ii. Disclosure required in prospectus for issue of IDR

iii. Manner is which depository should deal with IDR

iv. Manner of transfer and transmission of IDR

Section 391 : Application of Section 34 to 36

Section 34 to 36 shall be applicable mutandis mutandis to a company incorporated outside India As if it is applicable to company incorporated in Indian Sec 34 – Criminal Liability for mis statement in prospectus

Sec 35 – Civil Liability

Sec 36 – Fraudulently Inducing someone to invest in Company

When company incorporated outside India has raised amount through issue of securities in India and not yet repaid or redeemed then to close its place of business in India it requires to satisfy section 376 (Applicable to Foreign Company) and chapter XX

Section 392 : Punishment of contravention

Foreign Company	Officer in Default
↓	↓
Min ₹ 1,00,000	Fine Min ₹ 25,000
Max ₹ 3,00,000	Mix ₹ 5,00,000
And	
₹ 50,000 per day (continuing offence)	

Section 393 : Company's failure to comply with provision

Company cannot sue but can be sued and it is not eligible for set-off

XII THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

INTRODUCTION

1. The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008. The President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008.
   Many of its sections got enforced from 31st March 2009.
2. This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected with LLPs
3. The LLP Act, 2008 has 81 sections and 4 schedules.
4. The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
5. The Second Schedule deals with conversion of a firm into LLP.
6. The Third Schedule deals with conversion of a private company into LLP.
7. The Fourth Schedule deals with conversion of unlisted public company into LLP.
8. The Ministry of Corporate Affairs (MCA) and the Registrar of Companies (ROC) are entrusted with the task of administrating the LLP Act, 2008. The Central Government has the authority to frame the Rules with regard to the LLP Act, 2008, and can amend them by notifications in the Official Gazette, from time to time.
9. Need of new form of Limited Liability Partnership:
   A need has been felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand and the statute-based governance structure of the limited liability company on the other hand, in order to enable professional expertise and entrepreneurial initiative to combine, organize and operate in flexible, innovative and efficient manner.
   It provides the benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement. The LLP form enables entrepreneurs, professionals and enterprises providing services of any kind or engaged in scientific and technical disciplines, to form commercially efficient vehicles suited to their requirements.

LLP- MEANING & CONCEPT

1. A LLP is a new form of legal business entity with limited liability.
2. The LLP is a separate legal entity and, while the LLP itself will be liable for the full extent of its assets, the liability of the partners will be limited.
3. Since LLP contains elements of both 'a corporate structure' as well as 'a partnership firm structure' LLP is called a hybrid between a company and a partnership.
4. Limited liability partnership [Section 2(n)]: Limited Liability Partnership means a partnership formed and registered under this Act

CHARACTERISTICS OF LLP

Following are the characteristics of a LLP:

1. LLP is a body corporate: Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

2. Perpetual Succession: The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

3. Separate Legal Entity: The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.

4. No mutual Agency: Further, no partner is liable on account of the 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. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts. Hence there is no mutual agency in LLP unlike a partnership firm.

5. LLP Agreement: Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

6. Artificial Legal Person: A LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry or get divorce nor can it practice a learned profession like CA or Medicine. A LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

7. Common Seal: A LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

8. Limited Liability: Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP.

9. Management of Business: The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

10. Minimum and 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: The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus LLP cannot be formed for charitable or non-economic.
    Business [Section 2(e)]: "Business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

12. Investigation: The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.

13. Compromise or Arrangement: Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

14. Conversion into LLP: A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

15. E-Filling of Documents: Every form or application of document required to be filed or delivered under the act and rules made thereunder, shall be filed in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature

SMALL LIMITED LIABILITY PARTNERSHIP [Section 2(ta)]

As per Section 2(ta), it means a limited liability partnership–

(i) the contribution of which, does not exceed ₹25,00,000 or such higher amount, not exceeding five crore rupees, as may be prescribed; and

(ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed ₹40,00,000 or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or

(iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

DEFINITIONS

1. Address [(Section 2(1)(a)]: "Address" in relation to a partner of a limited liability partnership, means–
   (i) if an individual, his usual residential address; and
   (ii) if a body corporate, the address of its registered office.

2. Body Corporate [(Section 2(1)(d)]: It means a company as defined in clause (20) of section 2 of the Companies Act, 2013 and includes–
   (i) a LLP registered under this Act;
   (ii) a LLP incorporated outside India; and
   (iii) a company incorporated outside India, but does not include–
      (i) a corporation sole;
      (ii) a co-operative society registered under any law for the time being in force; and
      (iii) any other body corporate (not being a company as defined in clause (20) of section 2 of the Companies Act, 2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Means
A company & includes - LLP, foreign LLP, foreign company,

Does not include –
corporation sole; cooperative society & any other body corporate notified by Central Government.

3. Business [Section 2(1)(e)]: "Business" includes every trade, profession, service and occupation except any activity which the Central Government may, by notification, exclude.

4. Chartered Accountant [Section 2(1)(f)]: means a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.

5. Entity [Section 2(1)(k)]: "Entity" means any body corporate and includes, for the purposes of sections 18, 46, 47, 48, 49, 50, 52 and 53, a firm setup under the Indian Partnership Act, 1932.

11. Name [Section 2(1)(p)]: in relation to a partner of a limited liability partnership, means–
(i) if an individual, his forename, middle name and surname; and
(ii) if a body corporate, its registered name;

13. Regional Director [Section 2(1)(ra)]: means a person appointed as such by the Central Government for the purpose of this Act or the Companies Act 2013, as the case may be.

14. Registrar [Section 2(1)(s)]: means a person appointed by Central Government as Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, for the purpose of this Act or the Companies Act, 2013, as the case may be.

PARTNER

- **Types of Partners**

Designated Partner (Section 7)
- Can manage the business of LLP
- Legal Compliances

Normal Partner
- Can only manage the business of LLP

- Every LLP shall have at least two designated partners and at least one of them shall be a resident in India.
- Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of at least 120 days during the immediately preceding one year.

Rules for becoming Designated Partner:

1. If the incorporation document
   (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
   (b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner.
2. Any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.
3. An individual shall become a designated partner in any limited liability partnership only after has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
4. Every limited liability partnership shall file with the Registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within 30 days of his appointment.
5. An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

6. Every designated partner of a limited liability partnership shall obtain a Designated Partners Identification Number (DPIN) from the Central Government.

- **Who can be a partner?**

Individual (Section 5)

Any individual or body corporate may be a partner in a LLP. However, an individual shall not be capable of becoming a partner of a LLP, if–

- he has been found to be of unsound mind by a Court of competent jurisdiction and he is still is of unsound mind;
- he is an undischarged insolvent; or
- he has applied to be adjudicated (declared) as an insolvent and his application is pending; or
- He is a minor

Body Corporate [Section 2(d)]

1. It means a company defined in section 2(20) of the Companies Act, 2013
2. Foreign Company
3. Indian LLP
4. Foreign LLP

but does not include—

- a corporation sole;
- a co-operative society registered under any law for the time being in force; and
- any other body corporate (not being a company as defined in section 2(20) of the Companies Act, 2013 or a limited liability partnership as defined in this Act), which the Central Government may, by notification in the Official Gazette, specify in this behalf.

At least two individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

- **Number of partners** (Section 6)
  - Every LLP shall have at least two partners. Maximum: No limit
  - If at any time the number of partners of a LLP is reduced below 2 and the LLP carries on the business for more than 6 months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those 6 months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP.

LIABILITIES OF DESIGNATED PARTNERS [Section 8]

Unless expressly provided otherwise in this Act, a designated partner shall be–

(a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

CHANGES IN DESIGNATED PARTNERS [Section 9]

A limited liability partnership may appoint a designated partner within 30 days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 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 a designated partner.

PUNISHMENT FOR CONTRAVENTION OF SECTIONS 7 AND 9 [Section 10]

1. If the LLP contravenes the provisions of sub-section (1) of section 7 (meaning that the number of designated partners are less than two or none of the designated partner is a resident in India), the LLP and its every partner shall be liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹1,00,000 for LLP and ₹50,000 for every partner of such LLP.

2. If the LLP contravenes the provisions of sub-section (4) of section 7 (failure to file the consent of appointment of designated partner within 30 days of his appointment), the LLP and its every designated partner shall be liable to a penalty of ₹5,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹50,000 for LLP and ₹25,000 for every designated partner.

3. If the LLP contravenes the provisions of sub-section (5) of section 7 or section 9, the LLP and its every partner shall be liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 per day subject to maximum ₹1,00,000 for LLP and ₹50,000 for every partner of such LLP.

FOREIGN LLP

- Foreign LLP [section 2(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.
- As per Section 59, the Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 2013 or such regulatory mechanism with such composition as may be prescribed.

LIMITED LIABILITY PARTNERSHIP AGREEMENT (Section 23)

- It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.
- It is **optional** for a LLP to have a LLP Agreement.
- In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the **First Schedule.**

FINANCIAL YEAR [Section 2(1)]

- "Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year.
- However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

  Example: If LLP is incorporated on 20th October, 2010 the first Financial Year will be 20th October,2010 to 31st March,2012

NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932 (SECTION 4)

Unless otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a LLP.

APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT, 2013 (Section 67)

- The provisions of Companies Act can be made applicable to LLPs only by notification in Official Gazette.
- The Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 2013 specified in the notification–

- shall apply to any LLP; or
- shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.

➢ However, before notifying the Central Government has to lay the notification proposed in draft before each House of Parliament, while it is in session.

➢ The Houses of Parliament have to finalise the draft proposed whether they approve it or disapprove it or approve it with modifications within a period of 30 days which may be comprised in one session or in two or more successive sessions

INCORPORATION OF LLP

Name Reservation

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
- Application has to file e-Form 1, for ascertained availability and reservation of the name of a LLP business.

Incorporated LLP

- After reservation a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP).
- e-Form 2 contains the detail of LLP proposal to be incorporated, partner's / designated partner's details and consent of the partners / designated partners to act as partners / designated partners.

LLP Agreement

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filled with the register in e-Form 3 within 30 days of incorporation of LLP.

Step 1: LLP Name

1. Name (Section 15):
    1. Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.
    2. LLP shall not be registered by a name which, in the opinion of the Central Government is–
        1. undesirable; or
        2. identical or too nearly resembles to that of any other limited liability partnership or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

2. Reservation of name (Section 16):
    1. A person has to apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as the name of a proposed LLP; or
    2. Upon receipt of an application and on payment of the prescribed fee, the Registrar may, if he is satisfied, reserve the name for a period of 3 months from the date of intimation by the Registrar.

Step 2: Incorporation Document (Section 11)

1. For a LLP to be incorporated:
    1. two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
    2. the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
    3. Statement to be filed:
        1. Along with the incorporation document, a statement in the prescribed form shall also be filed,
            1. made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the LLP and
            2. by anyone who subscribed his name to the incorporation document,
        2. that all the requirements of this Act and the rules made there under have been complied with,in respect of incorporation and matters related to it.

2. The incorporation document shall–
    1. be in a form as may be prescribed;
    2. state the name of the LLP;
    3. state the proposed business of the LLP;
    4. state the address of the registered office of the LLP;
    5. state the name and address of each of the persons who are to be partners of the LLP on incorporation;
    6. state the name and address of the persons who are to be designated partners of the LLP on incorporation;
    7. contain such other information concerning the proposed LLP as may be prescribed.

3. If a person makes a statement as discussed above which he knows to be false; or shall be punishable
   1. with imprisonment for a term which may extend to 2 years and
   2. with fine which shall not be less than ₹10,000 but which may extend to ₹5 Lakhs.

Step 3: Incorporation Registration (Section 12)

- When the requirements imposed by Section 11 have been complied with, the Registrar shall retain the incorporation document & accept the statement as mentioned above and, he shall, within a period of 14 days–
  - o register the incorporation document; and
  - o give a certificate that the LLP is incorporated by the name specified therein.
- The certificate issued shall be signed by the Registrar and authenticated by his official seal.
- The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

Step 4: Effect of registration (Section 14)

1. On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners .
2. On registration, a limited liability partnership shall, by its name, be capable of-
   1) suing and being sued;
   2) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible;
   3) having a common seal, if it decides to have one; and
   4) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer.

Step 5: LLP Agreement (Section 23)

- This step will come only if LLP chooses to have LLP Agreement.
- The LLP agreement, if made therein shall be filed with the Registrar in e-Form 3 within 30 days of incorporation of LLP and accompanied by such fees as may be prescribed.
- In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

REGISTERED OFFICE OF LLP AND CHANGE THEREIN (SECTION 13)

1. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.

2. If any document is to be sent to LLP or a partner or designated partner thereof by post or by any other manner, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.

3. A LLP may change the place of its registered office and file the notice of such change.

4. If any default is made in complying with the requirements of this section, the limited liability partnership and its every partner shall be liable to a penalty of ₹ 500 for each day during which the default continues, subject to a maximum of ₹ 50,000.

CHANGE OF NAME OF LLP (SECTION 17)

1. Where the Central Government is satisfied that a LLP has been registered (whether through inadvertence or otherwise and whether originally or by a change of name) under a name which –
   1. resembles the name of any other LLP or Company
   2. a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it, then on an application of such limited liability partnership or proprietor, the Central Government may direct that such limited liability partnership to change its name or new name within a period of 3 months from the date of issue of such direction.

2. But the above application of the proprietor of the registered trade marks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the limited liability partnership under this Act.

3. Where a LLP changes its name or obtains a new name, it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such limited liability partnership shall change its name in the limited liability partnership agreement.

4. If the LLP is in default in complying with any direction given, the Central Government shall allot a new name to the limited liability partnership in such manner as may be prescribed and the Registrar shall enter the new name in the register of limited liability partnerships in place of the old name and issue a fresh certificate of incorporation with new name, which the limited liability partnership shall use thereafter.
However, LLP can change the name subsequently in accordance with the provisions of section 16.

PARTNERS AND THEIR RELATIONS RELATION

Eligibility to be partners (Section 22):	On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.
Cessation of partnership interest (Section 24):	1. A person may cease to be a partner of a LLP in following ways: 1. Voluntarily by giving a notice in writing of not less than 30 days to the other partners of his intention to resign as partner 2. Resign as per the agreement (only if LLP has LLP Agreement) 3. On his death 4. Dissolution of the LLP 5. If he is declared to be of unsound mind by a competent court; 6. If he has applied to be declared as an insolvent 2. Even if a person as ceased to be a partner, he shall be still considered as a partner **unless:** 1. the person (outsider) has notice that the former (old) partner has ceased to be a partner of the LLP; or 2. Notice that the former partner has ceased to be a partner of the LLP has been delivered to the Registrar. 2. The cessation of a partner from the LLP does not by itself discharge the partner from any obligation to the LLP or to the other partners or to any other person which he incurred while being a partner.

	3. Where a partner of a LLP ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner/ legal representative (in case of death of partner) shall be entitled to receive from the LLP– 1. an **amount equal to the capital contribution** of the former partner actually made to the LLP; and 2. **his right to share in the accumulated profits of the LLP,** after the deduction of accumulated losses of the LLP, determined as at the date the former partner ceased to be a partner. 4. A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the LLP.
Registration of changes in partners (Section 25):	1. Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change. 2. A **LLP shall inform following to Registrar** within a period of 30 days 1. Where there is any change in the name or address of a partner, file a notice with the Registrar within 30 days of such change. 2. Where a person becomes a partner or ceases to be a partner. If it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed. 3. A notice filed with the Registrar– 1. shall be in such form and accompanied by such fees as may be prescribed; 2. shall be signed by the designated partner of the LLP and authenticated in a manner as may be prescribed. 4. Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and In case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice.

	However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section. 5. **Penalty:** If the LLP contravenes the provisions, the LLP and every designated partner of the LLP shall be punishable with fine of ₹10,000. If any partner contravenes the provisions, such partner shall be punishable with fine of ₹10,000.

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

Partner as agent (Section 26):	Every partner of a LLP is, for the purpose of the business of the LLP, the agent of the LLP, but not of other partners.
Extent of liability of LLP (Section 27):	1. The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority. 2. But if a partner acts beyond authority and the person knows that he has no authority or does not know or believe him to be a partner of the LLP - LLP is not bound by anything done by a partner in dealing with a person. 3. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP. The liabilities of the LLP shall be met out of the property of the LLP.
Extent of liability of partner (Section 28):	1. A partner is not personally liable, directly or indirectly for an obligation referred to in section 27 solely by reason of being a partner of the LLP. 2. But the partners are personally liable for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.

Holding out (Section 29):	1. Any person, who by words spoken or written or by conduct, **represents himself, or knowingly permits himself to be represented to be a partner in a LLP is liable** to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. However, where any credit is received by the LLP as a result of such representation, the LLP shall, be liable to the extent of credit received by it or any financial benefit derived thereon. 2. Where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.
Unlimited liability in case of fraud (Section 30):	1. In case of fraud: 1. In the event of an act carried out by a LLP, or any of its partners, 2. with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, 3. the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose 4. **shall be unlimited** for all or any of the debts or other liabilities of the LLP. However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless LLP proves that such act was without the knowledge or the authority of the LLP.

	2. Where any business is carried on with such intent or for such purpose as mentioned, **every person who was knowingly a party** to the carrying on of the business in the manner aforesaid shall be punishable with 1. Imprisonment for a term which may extend to **5 years** and 2. With fine which shall not be less than **₹50,000 but which may extend to ₹ 5 Lakhs.** 3. Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner, the LLP and 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 any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.
Whistle blowing (Section 31):	1. The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that– 1. Such partner or employee of a LLP has **provided useful information during investigation** of such LLP; or 2. When any **information given by any partner or employee leads to LLP or any partner or employee of such LLP being convicted** under this Act or any other Act. 2. **No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed** or in any other manner discriminated against the terms and conditions of his LLP or employment **merely because of his providing information.**

CONTRIBUTIONS

Form of contribution [Section 32]	(1) A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

	(2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.
Obligation to contribute [Section 33]	(1) The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement. (2) A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner.

FINANCIAL DISCLOSURES

Maintenance of books of account, other records and audit, etc. (Section 34):	1. PROPER BOOKS OF ACCOUNT: • The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence by following the principles of accounting and shall maintain the same at its registered office The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the Central Government may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this section. • Penalty: Any LLP which fails to comply with the provisions of this section shall be punishable with fine of ₹25,000 but which may extend to ₹5 Lakhs Every designated partner of such LLP shall be punishable 1. With fine which shall not be less than ₹ 10,000 but which may extend to ₹1 Lakh.

	2. STATEMENT OF ACCOUNT AND SOLVENCY: Every LLP shall, Within a period of 6 months from the end of each financial year, Prepare a Statement of Account and Solvency For the said financial year In such form as may be prescribed, and Such statement shall be signed by the designated partners of the LLP. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed. Penalty: Any LLP which fails to comply with the provisions of this section shall be punishable with fine of ₹100 for each day during which the failure continues, subject to maximum of ₹1 lakh for LLP and ₹50,000 for every designated partner.
Accounting and auditing standards (Section 34A)	The Central Government may, in consultation with the National Financial Reporting Authority constituted under section 132 of the Companies Act, 2013,– 1. prescribe the standards of accounting; and 2. prescribe the standards of auditing, as recommended by the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountants Act, 1949, for a class or classes of limited liability partnerships.]
Annual return (Section 35):	1. **Every LLP shall file an annual return** duly authenticated with the Registrar **within 60 days of closure of its financial year** in such form and manner and accompanied by such fee as may be prescribed. 2. Penalty: Any LLP which fails to comply with the provisions of this section shall be punishable with fine of ₹100 for each day during which the failure continues, subject to maximum of ₹1 lakh for LLP and ₹50,000 for every designated partner.

INSPECTION OF DOCUMENTS KEPT BY REGISTRAR [SECTION 36]

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

PENALTY FOR FALSE STATEMENT [SECTION 37]

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

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

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

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

POWER OF REGISTRAR TO OBTAIN INFORMATION [SECTION 38]

(1) In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.

(2) In case any person does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be.

(3) Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

COMPOUNDING OF OFFENCES [SECTION 39]

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.

(2) Nothing contained in sub-section (1) shall apply to an offence committed by a limited liability partnership or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.

Explanation.—For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.

(3) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.

(4) Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded.

(5) Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.

(6) Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.

(7) The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the LLP to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may

be specified in the order.

(8) Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the LLP who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under sub- section (7), the maximum amount of fine for the offence, which was under consideration Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

PARTNER'S TRANSFERABLE INTEREST [SECTION 42]

(1) The rights of a partner to a share of the profits and losses of the limited liability partnership and to receive distributions in accordance with the limited liability partnership agreement are transferable either wholly or in part.

(2) The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.

(3) The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership.

CONVERSION INTO LLP

Conversion from firm into LLP (Section 55):	**A firm may convert into a LLP** in accordance with the provisions of this Chapter and the **Second Schedule.**
Conversion from private company into LLP (Section 56):	A **private company may convert into a LLP** in accordance with the provisions of this Chapter and the **Third Schedule.**
Conversion from unlisted public company into LLP (Section 57):	An **unlisted public company** may convert into a LLP in accordance with the provisions of this Chapter and the **Fourth Schedule.**

Registration and effect of conversion (Section 58):	Registration: 1. The Registrar, on satisfying that a firm, private company or an unlisted public company, as the case may be, has complied with the provisions this Act and the rules made there under, register the documents issue a certificate of registration in such form as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under this Act.
	2. The LLP shall, within 15 days of the date of registration, inform the concerned Registrar of Firms or Registrar of Companies, as the case may be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 2013 as the case may be, about the conversion and of the particulars of the LLP in such form and manner as may be prescribed. 3. Upon such conversion, the partners of the firm, the shareholders of private company or unlisted public company, as the case may be, will become partners of the LLP to which such firm or such company has converted, and shall be bound by the provisions of the various Schedules, as the case may be, applicable to them. Effect of Registration: On and from the date of registration specified in the certificate of registration issued under the various Schedule, as the case may be,– 1. There shall be a LLP by the name specified in the certificate of registration registered under this Act; 2. All assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company, as the case may be, and the whole of the undertaking of the firm or the company, as the case may be, shall be **transferred to and shall vest in the limited liability partnership;** and 3. The firm or the company, as the case may be, shall be deemed to be dissolved and removed from the records of the Registrar of Firms or Registrar of Companies, as the case may be.

COMPROMINSE ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY

Compromise or arrangement of limited liability partnerships [Section 60]

(1) Where a compromise or arrangement is proposed–

(a) between a limited liability partnership and its creditors; or

(b) between a limited liability partnership and its partners, the Tribunal may, on the application of the limited liability partnership or of any creditor or partner of the limited liability partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or of the partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or as the Tribunal directs.

(2) If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:

Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the limited liability partnership, including the latest financial position of the limited liability partnership and the pendency of any investigation proceedings in relation to the limited liability partnership.

(3) An order made by the Tribunal under sub-section (2) shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order and shall have effect only after it is so filed.

(4) If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be 'liable to a penalty of ₹10,000 and in case of continuing default, with further penalty of ₹100 for each day after the first during which such default continues, subject to maximum ₹1,00,000 for LLP and ₹50,000 for every designated partner'.

(5) The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the limited liability partnership on such terms as the Tribunal thinks fit, until the application is finally disposed of.

Power of Tribunal to enforce compromise or arrangement (Section 61)

(1) Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it–

(a) shall have power to supervise the carrying out of the compromise or an arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of this Act.

Provisions for facilitating reconstruction or amalgamation of limited liability partnerships [Section 62]

(1) Where an application is made to the Tribunal under section 60 for sanctioning of a compromise or arrangement proposed between a limited liability partnership and any such persons as are mentioned in that section, and it is shown to the Tribunal that–

(a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any limited liability partnership or limited liability partnerships, or the amalgamation of any two or more limited liability partnerships; and

(b) under the scheme the whole or any part of the undertaking, property or liabilities of any limited liability partnership concerned in the scheme (in this section referred to as a "transferor limited liability partnership") is to be transferred to another limited liability partnership (in this section referred to as the "transferee limited liability partnership"), the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:–

(i) the transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership;

(ii) the continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;

(iii) the dissolution, without winding up, of any transferor limited liability partnership;

(iv) the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and

(v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a limited liability partnership, which is being wound up, with any other limited liability partnership or limited liability partnerships, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest:

Provided further that no order for the dissolution of any transferor limited liability partnership under clause (iii) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the limited liability partnership, made a report to the Tribunal that the affairs of the limited liability partnership have not been conducted in a manner prejudicial to the interests of its partners or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee limited liability partnership; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

(4) If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be 'liable to a penalty of ₹10,000 and in case of continuing contravention, with further penalty of ₹100 for each day after the first during which such default continues, subject to maximum ₹1,00,000 for LLP and ₹50,000 for every designated partner'.

Explanation: (i) In this section "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description.

(ii) a LLP shall not be amalgamated with a company.

WINDING UP AND DISSOLUTION (Section 63)

1 The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.

2 Circumstances in which LLP may be wound up by Tribunal (Section 64): A LLP may be wound up by the Tribunal:

1. if the LLP decides that LLP be wound up by the Tribunal;
2. if, for a period of more than six months, the number of partners of the LLP is reduced below two;
3. if the LLP is unable to pay its debts;
4. if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
5. if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
6. if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

3. Rules for winding up and dissolution (Section 65): The Central Government may make rules for the provisions in relation to winding up and dissolution of LLP.

MISCELLANEOUS

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

Electronic filing of documents (Section 68):	1. Any document required to be filed, recorded or registered under this Act may be filled, recorded or registered electronically subject to such conditions as may be prescribed. 2. A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.
Registration offices (Section 68A):	1. For the purpose of exercising such powers and discharging such functions as are conferred on the Central Government by or under this Act or under rules made thereunder and for the purpose of registration of LLPs under this Act, the Central Government shall, by notification, establish such number of registration offices at such places as it thinks fit, specifying their jurisdiction. 2. The Central Government may appoint such Registrars, Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars as it considers necessary, for registration of limited liability partnerships and discharge of various the functions under this Act. 3. The powers and duties of the Registrars and the terms and conditions of their service shall be such as may be prescribed. 4. The Central Government may direct the Registrar to prepare a seal or seals for the authentication of documents required for, or connected with the registration of limited liability partnerships.]
Payment of additional fee (Section 69):	Any document or return required to be filed or registered under this Act with the Registrar, if, is not filed or registered in time provided therein, may be filed or registered after that time may be registered or filed after that time, on payment of such additional fee as may be prescribed in addition to any fee as is payable for filing of such document or return:

	Such document or return shall be filed after the due date of filing, without affecting any other action or liability under this Act: A different fee or additional fee may be prescribed for different classes of limited liability partnerships or for different documents or returns required to be filed under this Act or rules made thereunder.
Enhanced Punishment [Section 70]	In case a limited liability partnership or any partner or designated partner of such limited liability partnership commits any offence, the limited liability partnership or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

1. Distinction between LLP and Partnership Firm: The points of distinction between a limited liability partnership and partnership firm are tabulated as follows:

	Basis	LLP	Partnership firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body corporate	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.

6.	Perpetual succession	The death, insanity, Retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave But its existence continues	The death, insanity, retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8.	Liability	Liability of each partner limited to the extent to agreed contribution except in case of wilful fraud.	Liability of each partner is unlimited. It can be extended upto the personal assets of the partners.
9.	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners.	Each partner can bind the firm as well as other partners by his own acts.
10.	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Indian 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 the compliances and penalties under this Act.	All partners are responsible for all the compliances and penalties under the Act.
13.	Annual filing documents	LLP is required to file: 1. Annual statement of accounts 2. Statement of solvency 3. Annual return with the registration of LLP every year.	Partnership firm is not required to file any annual document with the registrar of firms.

14.	Foreign partnership	Foreign nationals can become a partner in a LLP.	Foreign nationals cannot become a partner in a partnership firm.
15.	Minor as partner	Minor cannot be admitted to the benefits of LLP.	Minor can be admitted to the benefits of the partnership with the prior consent of the existing partners.

2. Distinction between LLP and Limited Liability Company (LLC)

	Basis	LLP	LLC
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members / Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Private company to contain the word "Private Limited'
5.	Number of members/ partners	Minimum - 2 members Maximum - No such limit on the members in the Act. The members of the LLP can be individuals /or body corporate through the nominees.	Private company: Minimum - 2 members Maximum - 200 members Public company: Minimum - 7 members Maximum - No such limit on the members.

6.	Liability of members/ partners	Liability of a partners is limited to the extent of agreed contribution except in case of wilful fraud.	Liability of a member is limited to the amount unpaid on the shares held by them.
7.	Management	The business of the company managed by the partners including the designated partners authorized in the agreement.	The affairs of the company are managed by board of directors elected shareholders.
8.	Minimum number of directors/ partners	Minimum 2 partners.	Private Co. - 2 directors Public Co. - 3 directors

SUMMARY

INTRODUCTION

- The Parliament passed the Limited Liability Partnership Bill on 12th December, 2008 and the President of India has assented the Bill on 7th January, 2009 and called as the Limited Liability Partnership Act, 2008, and many of its sections got enforced from 31st March 2009.
- The LLP Act, 2008 has 81 sections and 4 schedules.
- The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- The Second Schedule deals with conversion of a firm into LLP.
- The Third Schedule deals with conversion of a private company into LLP.
- The Fourth Schedule deals with conversion of unlisted public company into LLP.

LLP- MEANING & CONCEPT

CHARACTERISTICS OF LLP

SMALL LIMITED LIABILITY PARTNERSHIP [Section 2(ta)]

DEFINITIONS

PARTNER

LIABILITIES OF DESIGNATED PARTNERS [Section 8]

CHANGES IN DESIGNATED PARTNERS [Section 9]

PUNISHMENT FOR CONTRAVENTION OF SECTIONS 7 AND 9 [Section 10]

FOREIGN LLP

LLP AGREEMENT

FINANCIAL YEAR

NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932

APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT, 2013

INCORPORATION OF LLP

Step 1: LLP Name

- Name (Section 15)
- Reservation of name (Section 16)

Step 2: Incorporation Document (Section 11)

Step 3: Incorporation Registration (Section 12)

Step 4: Effect of registration (Section 14)

Step 5: LLP Agreement (Section 23)

REGISTERED OFFICE OF LLP AND CHANGE THEREIN (SECTION 13)

CHANGE OF NAME OF LLP (SECTION 17)

PARTNERS AND THEIR RELATIONS RELATION

- Eligibility to be partners (Section 22)
- LLP Agreement (Section 23)
- Cessation of partnership interest (Section 24)
- Registration of changes in partners (Section 25)

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

- Partner as agent (Section 26)
- Extent of liability of LLP (Section 27)
- Extent of liability of partner (Section 28)
- Holding out (Section 29)
- Unlimited liability in case of fraud (Section 30)
- Whistle blowing (Section 31)

CONTRIBUTIONS

- Form of contribution [Section 32]
- Obligation to contribute [Section 33]

FINANCIAL DISCLOSURES

- Maintenance of books of account, other records and audit, etc. (Section 34)
- Accounting and Auditing Standards (Section 34A)
- Annual return (Section 35)

INSPECTION OF DOCUMENTS KEPT BY REGISTRAR [SECTION 36]

PENALTY FOR FALSE STATEMENT [SECTION 37]

POWER OF REGISTRAR TO OBTAIN INFORMATION [SECTION 38]

COMPOUNDING OF OFFENCES [SECTION 39]

ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHTS

- PARTNER'S TRANSFERABLE INTEREST [SECTION 42]

CONVERSION INTO LLP

- Conversion from firm into LLP (Section 55)
- Conversion from private company into LLP (Section 56)
- Conversion from unlisted public company into LLP (Section 57)
- Registration and eff¬ect of conversion (Section 58)

COMPROMINSE ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY

- Compromise or arrangement of limited liability partnerships [Section 60]
- Power of Tribunal to enforce compromise or arrangement (Section 61)
- Provisions for facilitating reconstruction or amalgamation of limited liability partnerships [Section 62]

WINDING UP AND DISSOLUTION

- Winding up and dissolution (Section 63)
- Circumstances in which LLP may be wound up by Tribunal (Section 64)
- Rules for winding up and dissolution (Section 65)

MISCELLANEOUS

- Business transactions of partner with LLP (Section 66)
- Electronic filing of documents (Section 68)

- Registration Offices (Section 68A)
- Payment of additional fee (Section 69)
- Enhanced Punishment [Section 70]

DIFFERENCES WITH OTHER FORMS OF ORGANISATION

1) Distinction between LLP and Partnership Firm
2) Distinction between LLP and Limited Liability Company (LLC)

LIST OF LEGAL TERMS

SR. NO.	LEGAL WORD	MEANING	PAGE NUMBER (This column is to be filled by students)
1.	Hybrid	Mixture	
2.	Official Gazette	It is a periodical publication that has been authorised to publish public or legal notices.	
3.	Undischarged insolvent	Not declared as solvent	
4.	Conclusive evidence	Conclusive Evidence is evidence that cannot be contradicted by any other evidence. It is so strong as to overbear any other evidence to the contrary.	

OTHER LAW

Chapter 1

The General Clauses Act, 1897

Introduction

- This Act is an adaptation with modifications of Lord Brougham's Act which was passed in 1850. Then The General Clauses Act, 1868 was passed which was the earliest Act to be passed in India with the object of shortening the language of Acts of the Governor-General in Council. The General Clauses Act, 1887 supplemented the earlier Act by defining a few more words in common use and laying down certain new rules of construction. In the process of consolidating these two Acts, additions suggested by subsequent experience, the General Clauses Act, 1897, was drafted.
- The General Clauses Act, 1897 was enacted on 11th March, 1897.
- The General Clauses Act 1897 belongs to the class of Acts which may be called as interpretation Acts. It lays down the basic rules as to how courts should interpret the provisions of an Act of Parliament. It also defines certain words or expressions so that there is no unnecessary repetition of the definition of those words in other Acts.
- Object, purpose and importance of the General Clauses Act:
  (1) To shorten the language of Central Acts;
  (2) To provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use;
  (3) To state convenient rules for the construction and interpretation of central acts.
  (4) To guard against slips and oversights by importing into every act certain common form clauses, which otherwise ought to be inserted in every central act
- The Act has also been called as the "Law of all Laws".

1.1: Applicability

(1) The Act does not define any "territorial extent" clause.
(2) It shall apply to every territory where a Central Act is applicable and would apply in the construction of that Central Act.

1.2: Some Basic Understandings of Legislation

(1) Preamble:

Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act. Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to construction of the Act. It basically discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Preamble of the Negotiable Instruments Act, 1881 states - "An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques."

(2) How an 'Act' is formed?

Act is a Bill passed by both the houses of Parliament and assented by the President.

Whereas 'Bill' is a draft of a legislative proposal put in the proper form which, when passed by both houses of Parliament and assented to by the President becomes an Act.

On getting assent from President, an Act is notified on the Official Gazettes of India.

Example: Concept paper on the Companies Act, 2013 was placed on the website of MCA on 4-8-2004.

New Companies Bill, 2009 was introduced in Lok Sabha on 3-8-2009.

With recommended changes in the Companies Bill 2009, Companies Bill 2011 was introduced.

Companies Bill, 2012 was introduced and Passed by Lok Sabha on 18-12- 2012. It was then passed by Rajya Sabha on 8-8-2013.

Act received assent of President on 29- 8- 2013 as Companies Act, 2013. Notified in gazette on 30- 8- 2013.

(3) Definitions :

Every Act contains definitions for the purpose of that particular Act and those definitions are usually mentioned in the Section 2 of that Act but in some other Acts, they are also mentioned in Section 3 or in other initial sections.

Hence, definitions are defined in the Act itself.

However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.

"Means" and/or "include":

(i) Some definitions use the word "means". Such definitions are exhaustive definitions and exactly define the term:

Example: Definition of 'Company' as given in section 2(20) of the Companies Act, 2013. It states, "Company" means a company incorporated under this Act or under any previous company law.

(ii) Some definitions use the word "include". Such definitions do not define the word but are inclusive in nature. The word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example: Word 'debenture' defined in section 2(30) of the Companies Act, 2013 states that "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not". This is a definition of inclusive nature.

(4) "Shall" and "May"

The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something which is not mandatory but is only directory or enabling

Example: Section 3 of the Companies Act, 2013 states that "A company may be formed for any lawful purpose by....."

Here, the word used "may" shall be read as "shall". Usage of word 'may' here makes it mandatory' for a company for the compliance of section 3 for its formation.

1.3. Preliminary [Section 1]

Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc. The General Clauses Act contains only short title in the Preliminary part of the Act.

The "Short title" of the Act states 'This Act may be called the General Clauses Act, 1897'.

1.4. Definitions [Section 3]

1	Sec 3(2)	**Act** 'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions. Act can be positive act and even negative act (i.e. refraining from doing something which is required to be done)
2	Sec 3(3)	**Affidavit** 'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.
3	Sec 3(7)	**Central Act** 'Central Act' shall mean an Act of Parliament (i.e. Acts passed from 26th January,1950), and shall include- (a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution (i.e. Acts passed between the 15th August, 1947 and the 26th January, 1950) and (b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;
4	Sec 3(8)	**Central Government** 'Central Government' shall- (a) In relation to anything done before the commencement of the Constitution, mean the Governor General in Council, as the case may be; and shall include,: (i) In relation to functions entrusted to the Government of a Province, (ii) In relation to the administration of a Chief Commissioner's Province, AND (b) In relation to anything done or to be done after the commencement of the constitution of the Constitution, mean the President; and shall include: (i) In relation to function entrusted under the Constitution, to the

Government of a state, the State Government acting within the scope of the authority given to it under that clause;

(ii) In relation to the administration of a Part C state before the commencement of the Constitution (Seventh Amendment) Act, 1956 the Chief Commissioner or the Lieutenant Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him and in relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him.

(iii) In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;

The date of commencement of the Constitution (Seventh Amendment) Act, 1956 is 1st January, 1956.

The new Constitution of India, which came into force on 26th January 1950, made India a sovereign democratic republic. The new republic was also declared to be a "Union of States". Between 1947 and 1950 the territories of the princely states were politically integrated into the Indian Union. The constitution of 1950 distinguished between three main types of states and a class of territories:

Part A states, which were the former governors' provinces of British India, were ruled by a Governor appointed by the President and an elected state legislature. The nine Part A states were Assam, Bihar, Bombay, Madhya Pradesh (formerly Central Provinces and Berar), Madras, Orissa, Punjab (formerly East Punjab), Uttar Pradesh (formerly the United Provinces), and West Bengal.

Part B states, which were former princely states or groups of princely states, governed by a Rajpramukh, who was usually the ruler of a constituent state, and an elected legislature. The Rajpramukh was appointed by the President of India. The eight Part B states were Hyderabad, Jammu and Kashmir, Madhya Bharat, Mysore, Patiala and East Punjab States Union (PEPSU), Rajasthan, Saurashtra, and Travancore-Cochin.

		Part C states included both the former chief commissioners' provinces and some princely states, and each was governed by a chief commissioner appointed by the President of India. The ten Part C states were Ajmer, Bhopal, Bilaspur, Coorg, Delhi, Himachal Pradesh, Cutch, Manipur, Tripura, and Vindhya Pradesh. The sole Part D territory was the Andaman and Nicobar Islands, which were administered by a Lieutenant Governor appointed by the Central Government.
5	Sec 3(13)	Commencement 'Commencement' used with reference to an Act or Regulation, shall mean the say on which the Act or Regulation comes into force. Coming into force or entry into force (also called commencement) refers to the process by which legislation; regulations, treaties and other legal instruments come to have legal force and effect.
6	Sec 3(18)	Document 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter. For example, book, file, painting, inscription and even computer files are all documents.
7	Sec 3(19)	Enactment 'Enactment' shall include a Regulation or any Act (or a provision contained therein) made by the Union Parliament or the State Legislature.
8	Sec 3(21)	Financial year Financial year shall mean the year commencing on the first day of April. Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January.
9	Sec 3(22)	Good Faith 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. This definition of the good faith does not apply to that enactment which contains a special definition of the term "good faith" and there the definition given in that particular enactment has to be followed.

10	Sec 3(23)	Government 'Government' or 'the Government' shall include both the Central Government and State Government.
11	Sec 3(24)	Government securities 'Government securities' shall mean securities of the Central Government or of any State Government, but in any Act or Regulation made before the commencement of the Constitution shall not include securities of the Government of any Part B state.
12	Sec 3(26)	Immovable Property Immovable Property' shall include: i) Land, ii) Benefits to arise out of land, and iii) Things attached to the earth, or iv) Permanently fastened to anything attached to the earth. Example: Trees, any machinery fixed to the soil, standing crops are regarded as immovable property because they are attached to or rooted in the earth. Example: Whether the right to catch or carry fish is a movable or immovable property? "The Section 3 of Transfer of Property Act does not define the term except to say that immovable property does not include standing timber, growing crops or grass. As fish do not come under that category the definition in the General Clauses Act applies and as a profit a prendre is regarded as a benefit arising out of land it follows that it is immovable property within the meaning of the Transfer of Property Act." Thus, the court construed "right to catch or carry fish" as an immovable property. Example: Right of way to access from one place to another, may come within the definition of Immovable property whereas to right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897

13	Sec 3(27)	Imprisonment Imprisonment shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860) As per Section 53 of the Indian Penal Code, the punishment of imprisonment is of two descriptions, namely, rigorous, that is with hard labour and simple. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple
14	Sec 3(29)	Indian law 'Indian law' shall mean any Act, Ordinance, Regulation, rule, order, bye law or other instrument passed in India but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;.
15	Sec 3(35)	Month 'Month' shall mean a month reckoned according to the British calendar; The word "month occurring in Section 271 (l)(a)(i) of the Income-tax Act, 1961, was construed to mean a period of thirty days and not a month as defined in the General Clauses Act, 1897
16	Sec 3(36)	Movable Property 'Movable Property' shall mean property of every description, except immovable property.
17	Sec 3(37)	Oath 'Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
18	Sec 3(38)	Offence 'Offence' shall mean any act or omission made punishable by any law for the time being in force. Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.

19	Sec 3(39)	Official Gazette 'Official Gazette' or 'Gazette' shall mean: (i) The Gazette of India, or (ii) The Official Gazette of a state. Note: The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. The gazette is printed by the Government of India Press
20	Sec 3(42)	Person 'Person' shall include: (i) any company, or (ii) association, or (iii) body of individuals, whether incorporated or not
21	Sec 3(49)	Registered 'Registered' used with reference to a document, shall mean registered in India under the law for the time being force for the registration of documents.
22	Sec 3(51)	Rule 'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment.
23	Sec 3(52)	Schedule 'Schedule' shall mean a schedule to the Act or Regulation in which the word occurs.
24	Sec 3(54)	Section 'Section' shall mean a section of the Act or Regulation in which the word occurs.
25	Sec 3(61)	Sub-section 'Sub-section' shall mean a sub-section of the section in which the word occurs;

26	Sec 3(62)	Swear 'Swear', with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare. Note: The terms "Affidavit", "Oath" and "Swear" have the same definitions in the Act.
27	Sec 3(65)	Writing Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms;
28	Sec 3(66)	Year 'Year' shall mean a year reckoned according to the British calendar.

- Application to foregoing definitions to previous enactments [Section 4]-

  There are certain definitions in section 3 of the General Clauses Act, 1897 which would also apply to the Acts and Regulations made prior to 1897 i.e., on the previous enactments of 1868 and 1887. This provision is divided into two parts-

  (1) Application of terms/expressions to all [Central Acts] made after the 3rd January, 1868, and to all Regulations made on or after the 14th January, 1887-

  Here the given relevant definitions in section 3 of the following words and expressions, that is to say, 'affidavit', 'immovable property', 'imprisonment', "month', 'movable property', 'oath', 'person', 'section', 'and 'year' apply also, unless there is anything repugnant in the subject or context, to all [Central Acts] made after the 3rd January, 1868, and to all Regulations made on or after the 14th January, 1887.

  (2) Application of terms/expressions to all Central Acts and Regulations made on or after the 14th January, 1887- The relevant given definitions in the section 3 of the following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', schedule', 'sub-section' and 'writing' apply also, unless there is anything repugnant in the subject or context, to all Central Acts and Regulations made on or after the 14th January, 1887.

  Note: The dates 3rd January, 1868 and 14th January, 1887 are the dates of old General Clauses Act which was passed in 1868 and 1887. Since the definitions were added in each General Clauses Act, not all definitions were applicable to all laws.

- **Application of certain definitions to Indian Laws [Section 4A]**

  The definitions in section 3 of the expressions 'Central Act', 'Central Government', "Gazette', 'Government', 'Government Securities', 'Indian Law', and "Official Gazette', 'shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

1.5. General Rules of Construction (Section 5 to 13)

Section 5	**Coming into operation of enactment:** • Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date. • If no date of commencement is specified for any Central Act, then it shall be implemented from date on which it received assent from: a. Governor General – for Central Acts and /or b. President – for Act of Parliament • Where an Act empowers the government to bring any of the provisions into operation on any day which it deems fit, Court cannot issue a mandamus to compel the Government to bring the same into operation on particular day. However if a sufficient time has elapsed since an Act or any of its provisions has been passed and it has not been brought into force (operation) by the Government, the Court through a writ can direct the Government to consider the question as to when the same should begin to operate. • Also, law does not consider fraction of day, thus where an Act provides that it is to come into force on the first day of February, it will come into force on as soon as the clock has struck 12 on the night of 31st January. • All laws generally operate prospectively and only if there are express words specifying retrospective effect, then only it will have retrospective effect. Example: SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Here, this regulation shall come into force on 1st January, 2016 rather than the date of its notification in the gazette.

Section 6	Effect of Repeal

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, the repeal shall not:

(1) Revive anything not enforced or prevailed during the period at which repeal is effected or;

(2) Affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or

(3) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(4) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(5) Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

- Whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act.
- Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed. For the purpose of this section, the above distinction between the two is essential.

- Example: Companies Act, 1956 is repealed. But if any Director is appointed under this Act, even though the Act is repealed, it will not affect the director's appointment.

  Similarly, if some person is penalized under the Companies Act, 1956, the penalty is still valid even if the Act is repealed.

Section 6A	**Repeal of Act making textual amendment in Act or Regulation** Where any Central Act or Regulation repeals any Act by which the text of any other Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, 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. Example: Let's say, Companies Act, 1956 has amended some part of Securities Exchange Board of India Act. Now Companies Act, 1956 is repealed. But the amendment will not be affected.
Section 7	**Revival of repealed enactments** To revive a repealed statute, it is necessary to state the purpose to do so.
Section 8	**Construction of references to repealed enactments** Where any Act is repealed and re-enacted, 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 be construed as references to the provision so re-enacted unless specified otherwise. Example: Section 115 JB of the Income Tax Act, 1961, for calculation of book profits, the provisions of Companies Act, 1956 are required to be referred. With the introduction of Companies Act, 2013, the corresponding change has not been made in section 115 JB of the Income Tax Act, 1961. But applying this section 8 of the General Clauses Act, book profits to be calculated under section 115 JB of the Income Tax Act will be as per the Companies Act, 2013. Every Act has its own distinction. 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.

Section 9	**Commencement and termination of time** In any legislation or regulation the word "from" shall be used to exclude the first day and use the word "to" to include the last day. Example: If a company declares dividend for its shareholder in its Annual General Meeting held on 31/08/2019. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/09/2019 to 30/09/2019. In this series of 30 days, 31/08/2019 will be excluded and last 30th day i.e. 30/09/2019 will be included.
Section 10	**Computation of time** If any proceeding is to take place on a particular day or within a prescribed period and if the court or office is closed on that day or last day of the prescribed period then the proceeding shall be conducted on the next day afterwards when the court or office is open.
Section 11	**Measurement of Distances** In the measurement of any distance, for the purposes of any Central Act or Regulation made, distance shall be measured in a straight line on a horizontal plane unless specified otherwise. 
Section 12	**Duty to be taken pro rata in enactments** Where 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. Example: When a company pays dividends to its shareholders, each investor is paid according to their holdings. If a company has 100 shares outstanding, for example, and issues a dividend of 2 per share, the total amount of dividends paid will be 200. No matter how many shareholders there are, the total dividend payments cannot exceed this limit. In this case, 200 is the whole, and the pro rata calculation must be used to determine the appropriate portion of that whole due to each shareholder.

Section 13	Gender and number • In all legislations and Regulations, all words having masculine gender shall include feminine gender and all singular words shall include plural and vice versa. It means, wherever any lay specifies the pronoun 'he', it shall also include 'she'. • But this general rule is to be applied very carefully for interpreting laws dealing with matters of succession. Thus, the words "male descendants" were not interpreted to include female descendants. • Similarly if an Act is for a specific gender then only that specific gender is to be considered. For example, Maternity Benefits Act covers is made only for females. • Where a word for a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'

1.6: Powers and Functionaries (Section 14 to 19)

Section 14	Power conferred to be exercisable from time to time If any power is given by the Central Act or Regulation then the power shall be exercised from time to time as the occasion requires unless there is a different intention.
Section 15	Power to appoint to include power to appoint ex-officio If Legislation or Regulation gives any power to appoint, the appointment may be made by appointing ex-officio as well. Ex-officio is a Latin word which means by virtue of one's position or office. Example: As per Companies Act, 2013, Chairman of any General Meeting is Chairman of Board of Directors unless he chooses not to. Hence if anyone is Chairman of Board of Directors of any company, he is ex-officio Chairman of the Meeting. So if anyone has a power to appoint Chairman of Board of Directors, he has an implied power to appoint Chairman of Meeting.

Section 16	**Power to appoint to include power to suspend or dismiss** If the Legislation or Regulation gives any power to make appointments then it implies that Authority shall also have the power to suspend or dismiss any person appointed whether by itself or any other authority in exercise of that power. Example: The Constitution has given powers to the Chief Justice to appoint officers and servants of a High Court, he has implied power to suspend or dismiss them.
Section 17	**Substitution of functionaries** 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, the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed should be mentioned.
Section 18	**Successors** In any functionaries or of corporations having perpetual succession, the law of successors should be specified. Example: Companies Act, 2013 has specified as to what is to be done if the sole member of One Person Company dies as they want OPC to have perpetual succession.
Section 19	**Official Chiefs and subordinates** Any law that shall be applicable to the chief or superior shall apply to the deputies and subordinates who are performing the duties of that office in place of the superior.

1.7: Provision as to Orders, Rules Etc. made under Enactments (Section 20 to 24)

Section 20	**Construction of orders, etc., issued under enactments** Any expression used in the notification, order, scheme, rule, form, or by-law shall have the same meaning as in the Act or regulation unless otherwise mentioned. 'Notification' in common parlance means a formal announcement of a legally relevant fact and "notification publish in Official Gazette" means notification published by the authority of law. It is a formal declaration and should be in accordance with the declared policies or statute. Example: The Word "company" used in Rules of Companies Act will have the same meaning as given in Section 2(20) of Companies Act.

Section 21	**Power to issue, to include power to add, to amend, vary or rescind notifications, orders, rules or bye-laws** Any power given by the legislation or regulation to issue any notification, order, scheme, rule, form, or by-law shall include the power to add, to amend, vary or rescind notifications, orders, rules or bye-laws so issued.
Section 22	**Making of rules or bye-laws and issuing of orders between passing and commencement of enactment** Where any Central Act or Regulation passed but not commenced immediately gives any power 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 there under 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. Example: Indian Contract Act, 1872 was given an assent on 25th April, 1872 but it was introduced on 1st September, 1872. Between this period, if any bye-laws or orders are passed then they will take effect only from 1st September, 1872.
Section 23	**Provisions applicable to making of rules or bye-laws after previous publications** Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given, then the following provisions shall apply: 1. The authority having power to make the rules or bye-laws shall publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby. 2. The publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes.

	3. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration. 4. The authority having power to make the rules or bye-laws shall consider the objections and suggestions of the authority whose sanction, approval or concurrence is required with respect to the draft before the date so specified. 5. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made. It is a conclusive presumption that after the publication of the rules in the Official Gazette, it is to be concluded that the procedure for making the rules had been followed. Any irregularities in the publication of the draft cannot therefore be questioned.
Section 24	Continuation of orders etc, issued under enactments repealed and re-enacted Where any Central Act or Regulation is 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 provisions so re-enacted. Example: Companies Act, 1956 is repealed and now re-enacted as Companies Act, 2013. If there is any notification, order, scheme, rule, form as per the old Companies Act, then they shall continue even if the Act is repealed unless specified otherwise in the new Act. The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until specified otherwise.

1.8. Miscellaneous (Section 25 to 30)

Section 25	Recovery of Fines Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-laws, unless the Act, Regulation, rule or bye-law contains an express provision to the contrary.

Section 26	**Provision as to offence punishable under two or more enactments** Where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. Article 20(2) of the Constitution states that no person shall be prosecuted and punished for the same offence more than once. Provisions of Section 26 and Article 20(2) of the Constitution apply only when the two offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.
Section 27	**Meaning of Service by post** • Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by: 1. Properly addressing 2. Pre paying 3. Posting by registered post 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. • A notice when required under the statutory rules to be sent by 'registered post acknowledgement due' is instead sent by 'registered post' only, the person sending such notice cannot claim that notice is sent properly by 'registered post' under this section. As this Section is to be applied when any Act does not specify how the document is to be sent by post. • Where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served. • Where notice sent by registered post to person concerned at proper address is deemed to be served upon him in due course unless contrary is proved. Endorsement 'not claimed/not met' is sufficient to prove deemed service of notice.

Section 3 (28)	**Citation of enactments** • Citation is when you refer to, summarize, paraphrase, or quote from another source. • In any Act/Regulation/rule/bye law/instrument or document, made, any enactment may be cited by reference to the title or short title (if any) given thereon or by reference to the number and years thereof, or 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. In this case, the description or citation of a portion of another enactment shall be construed as including each word, section or other part mentioned or referred to unless mentioned otherwise.
Section 29	**Saving for previous enactments, rules and bye laws** When any Act, Regulation, rule or bye-law are amended, then the amendments will be considered as modifications or additions and the rest of the Act, Regulation, rule or bye-law shall still continue.
Section 30	**Application of Act to Ordinances** • What is an Ordinance? Ordinances are laws that are declared by the President of India (Indian Parliament) on the recommendation of the Union Cabinet, which will have the same effect as an Act of Parliament. They can only be issued when Parliament is not in session. They enable the Indian government to take immediate legislative action. Ordinances cease to operate either if Parliament does not approve of them within six weeks of reassembly, or if disapproving resolutions are passed by both Houses. It is also compulsory for a session of Parliament to be held within six months. • 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.

SUMMARY

Introduction

- The General Clauses Act, 1897 was enacted on 11th March, 1897.
- The Act lays down the basic rules as to how courts should interpret the provisions of an Act of Parliament. It also defines certain words or expressions so that there is no unnecessary repetition of the definition of those words in other Acts.
- The Act has also been called as the "Law of all Laws".

1.1: Applicability

The Act does not define any "territorial extent" clause. It shall apply to every territory where a Central Act is applicable and would apply in the construction of that Central Act.

1.2: Some Basic Understandings of Legislation

(1) Preamble:

Every Act has a preamble which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act.

(2) How an 'Act' is formed?

Act is a Bill passed by both the houses of Parliament and assented by the President. Whereas 'Bill' is a draft of a legislative proposal

(3) Definitions :

Every Act contains definitions which are usually mentioned in the Section 2 of that Act but in some other Acts; they are also mentioned in Section 3 or in other initial sections.

However, if there may be words which are not defined in the definitions of the Act, the meaning of such words may be taken from General Clauses Act, 1897.

"Means" and/or "include":

(i) Some definitions use the word "means". Such definitions are exhaustive definitions and exactly define the term:

(ii) Some definitions use the word "include". Such definitions do not define the word but are inclusive in nature.

(4) "Shall" and "May" :The word 'shall' is used to raise a presumption of something which is mandatory or imperative while the word 'may' is used to connote something

which is not mandatory but is only directory or enabling

1.3. Preliminary [Section 1]

Preliminary is the introductory part of any law which generally contains Short Title, extent, commencement, application etc.

3.4. Definitions [Section 3]

1. Section 3(2) Act
2. Section 3(3) Affidavit
3. Section 3(7) Central Act
4. Section 3(8) Central Government
5. Section 3(13) Commencement
6. Section 3(18) Document
7. Section 3 (19) Enactment
8. Section 3(21) Financial Year
9. Section 3 (22) Good faith
10. Section 3 (23) Government
11. Section 3(24) Government Securities
12. Section 3(26) Immovable Property
13. Section 3(27) Imprisonment
14. Section 3(29) Indian Law
15. Section 3(35) Month
16. Section 3(36) Movable Property
17. Section 3(37) Oath
18. Section 3(38) Offence
19. Section 3(39) Official Gazette
20. Section 3(42) Person
21. Section 3(49) Registered
22. Section 3(51) Rule
23. Section 3(52) Schedule
24. Section 3(54) Section
25. Section 3(61) Sub-section
26. Section 3(62) Swear
27. Section 3(65) Writing
28. Section 3(66) Year

- Application to foregoing definitions to previous enactments [Section 4]-

There are certain definitions in section 3 of the General Clauses Act, 1897 which would also apply to the Acts and Regulations made prior to 1897 i.e., on the previous enactments of 1868 and 1887. This provision is divided into two

Application of terms/expressions to all [Central Acts] made after the 3rd January, 1868, and to all Regulations made on or after the 14th January, 1887-	Application of terms/expressions to all Central Acts and Regulations made on or after the 14th January, 1887-
Following words and expressions, that is to say, 'affidavit', 'immovable property', 'imprisonment', "month', 'movable property', 'oath', 'person', 'section', 'and 'year' apply.	Following words and expressions, that is to say, 'commencement', 'financial year', 'offence', 'registered', schedule', 'sub-section' and 'writing' apply.

- Application of certain definitions to Indian Laws [Section 4A]

The expressions 'Central Act', 'Central Government', "Gazette', 'Government', 'Government Securities', 'Indian Law', and "Official Gazette', 'shall apply, unless there is anything repugnant in the subject or context, to all Indian laws.

1.5. General Rules of Construction (Section 5 to 13)

Section 5	Coming into operation of enactment: • Where, if any specific date of enforcement is prescribed in the Official Gazette, Act shall into enforcement from such date. • If no date of commencement is specified for any Central Act, then it shall be implemented from date on which it received assent.
Section 6	Effect of Repeal 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, the repeal shall not: (1) Revive anything not enforced or prevailed during the period at which repeal is effected or;

	(2) Affect the previous operation of any enactment so repealed or anything duly done or suffered there under; or (3) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or (4) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or (5) Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.
Section 6A	Repeal of Act making textual amendment in Act or Regulation Where any Central Act or Regulation repeals any Act by which the text of any other Central Act or Regulation was amended by the express omission, insertion or substitution of any matter, 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.
Section 7	Revival of repealed enactments To revive a repealed statute, it is necessary to state the purpose to do so.
Section 8	Construction of references to repealed enactments Where any Act is repealed and re-enacted, 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 be construed as references to the provision so re-enacted unless specified otherwise.
Section 9	Commencement and termination of time In any legislation or regulation the word "from" shall be used to exclude the first day and use the word "to" to include the last day.
Section 10	Computation of time If any proceeding is to take place on a particular day or within a prescribed period and if the court or office is closed on that day or last day of the prescribed period then the proceeding shall be conducted on the next day afterwards when the court or office is open.
Section 11	Measurement of Distances In the measurement of any distance, for the purposes of any Central Act or Regulation made, distance shall be measured in a straight line on a horizontal plane unless specified otherwise.

Section 12	Duty to be taken pro rata in enactments Where 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.
Section 13	Gender and number In all legislations and Regulations, all words having masculine gender shall include feminine gender and all singular words shall include plural and vice versa.

1.6: Powers and Functionaries (Section 14 to 19)

Section 14	Power conferred to be exercisable from time to time
Section 15	Power to appoint to include power to appoint ex-officio
Section 16	Power to appoint to include power to suspend or dismiss
Section 17	Substitution of functionaries For the purpose of indicating the application of a law to every person, the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed should be mentioned.
Section 18	Successors In any functionaries or of corporations having perpetual succession, the law of successors should be specified.
Section 19	Official Chiefs and subordinates Any law that shall be applicable to the chief or superior shall apply to the deputies and subordinates who are performing the duties of that office in place of the superior.

1.7: Provision as to Orders, Rules Etc. made under Enactments (Section 20 to 24)

Section 20	Construction of orders, etc., issued under enactments Any expression used in the notification, order, scheme, rule, form, or by-law shall have the same meaning as in the Act or regulation unless otherwise mentioned.
Section 21	Power to issue, to include power to add, to amend, vary or rescind notifications, orders, rules or bye-laws

Section 22	Making of rules or bye-laws and issuing of orders between passing and commencement of enactment Such rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.
Section 23	Provisions applicable to making of rules or bye-laws after previous publications 1. Publish a draft of the proposed rules 2. The publication shall be made in such manner as that authority deems to be sufficient. 3. A notice shall be published with the draft specifying a date on or after which the draft will be taken into consideration. 4. The authority having power to make the rules or bye-laws shall consider the objections and suggestions 5. The publication in the Official Gazette of a rule or bye-law shall be conclusive proof that the rule or bye-laws has been duly made.
Section 24	Continuation of orders etc, issued under enactments repealed and re-enacted 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 provisions so re-enacted.

1.8. Miscellaneous (Section 25 to 30)

Section 25	Recovery of Fines Section 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure shall apply to all fines imposed.
Section 26	Provision as to offence punishable under two or more enactments The offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.
Section 27	Meaning of Service by post Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by: 1. Properly addressing 2. Pre paying 3. Posting by registered post

Section 3 (28)	**Citation of enactments** In any Act/Regulation/rule/bye law/instrument or document, made, any enactment may be cited by reference to the title or section. In this case, the description or citation of a portion of another enactment shall be construed as including each word, section or other part mentioned or referred to unless mentioned otherwise.
Section 29	**Saving for previous enactments, rules and bye laws** When any Act, Regulation, rule or bye-law are amended, then the amendments will be considered as modifications or additions and the rest of the Act, Regulation, rule or bye-law shall still continue.
Section 30	**Application of Act to Ordinances** 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.

LIST OF LEGAL TERMS

SR. NO.	LATIN TERM	MEANING	PG NO. (This column is to be filled by students)
1.	Profit à prendre	A profit à prendre is a right to take from the land owned by another person part of the natural produce grown on that land or part of the soil, earth or rock comprising the land.	
1.	Mandamus	A judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty	
2.	Writ	A form of written command in the name of a court or other legal authority to act	
3.	Repeals the Act	Revokes/Annuls i.e. gets rid of the Act (law)	
4.	Obliterate	Make it disappear/ wipe out	

Chapter 2

Interpretation of Statutes, Deeds and Documents

SECTION-A: CONCEPTS

Introduction

- Even if the laws are drafted by legal experts, yet the language might be confusing or it might be misconstrued. Hence, many a times, the intention of the law is to be gathered not only from the language but the surrounding circumstances that prevailed at the time when that particular law was enacted.
- There are three wings of Government: Legislature, Executive and Judiciary. It is the legislature which lays down the laws and it is the Executive which executes those laws. But it is judiciary which settles the disputes after interpreting the law made by legislature. There arises need for the judges to ascertain the correct meaning of the law laid by the legislature. Here the rules of interpretation are used.

2.1: Meaning of 'Statute'

- To the common man the terms 'Statute' generally means the laws and regulations of every sort without considering from which source they come from.
- A statute has been defined as 'the written will of the legislature'. A Statute is a law established by the act of legislative power, i.e., an Act of legislature.
- The Constitution of India does not use the term 'Statute' but it uses the term 'law'. 'Law' includes any ordinance, order, bye-law, rule, regulations, notification, custom or usage having the force of law.

2.2: Meaning of 'Interpretation'

- Interpretation is the process of ascertaining the true meaning of the words used in a Statute.
- 'Interpretation' is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.

2.3: Importance of Interpretation

Interpretation is required in following situations:

(1) The ambiguity of the words used in the statute: If there are words that have more than one meaning, and it may not be clear which meaning is to be used, rules of interpretation can be applied.

(2) Change in the environment: Since society changes from time to time and there are new developments happening in a society which were not taken into consideration when the law was made, the rules of interpretation help in tackling this situation.

(3) Complexities of the statutes: Since statutes are complex and huge, it contains complicated words, jargons and some technical terms which are not easy to understand and this complexity may lead to confusion. Interpretation rules help in understanding them.

(4) When legislation doesn't cover a specific area: Every time when laws are out, it doesn't cover all the area, it leaves some grey areas and interpretation helps in bridging the gaps between.

(5) Drafting error: The draft may be made without sufficient knowledge of the subject. It may also happen due to the wrong use of words and incorrect grammar. This makes the draft unclear and creates ambiguity in the law.

(6) Incomplete rules: There are few implied rules and regulations and some implied powers and privileges which are not mentioned in the statute and when these are not defined properly in the statute this leads to ambiguity.

2.4: Classification of Interpretation

- Prof. H.F.Jolowicz, in his Lectures on Jurisprudence has classified interpretation as:

Legal
When there is an actual rule of law which binds the Judge to place a certain interpretation of the statute.

- **Authentic** — When rule of interpretation is derived from the legislator himself
- **Usual** — When it comes from some other source such as custom or case law.

Doctrinal
When its purpose is to discover 'real' and 'true' meaning of the statute.

- **Grammatical** — When the court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute.
- **Logical** — When the court goes beyond the words and tries to discover the intention of the statute in some other way

- According to Fitzerald, interpretation is of two kinds:

Literal	Functional
The literal interpretation is that which regards conclusively the verbal expression of the law. It does not look beyond the 'literaligis'.	It is that which departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature.

2.5: Meaning of important Terms

(1) Document:

- In common language, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form.
- Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

- Generally, documents comprise of following four elements :
  - (i) Matter—This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive. It is basically what matter is produced in the document.
  - (ii) Record—This second element must be certain mutual or mechanical device employed on the substance. It is basically the device by which matter is produced on substance. It must be by writing, expression or description. E.g. Pen, pencil etc
  - (iii) Substance—This is the third element on which a mental or intellectual elements comes to find a permanent form. It is the surface on which the matter is produced. E.g. Paper
  - (iv) Means—This represents fourth element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.

(2) Instrument:

- In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind,

such as an agreement, deed, charter or record, drawn up and executed in a technical form.

- It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it.

(3) Deed:

- 'Deed' as an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition.
- Simply stated deeds are instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and deeds.

2.6: Interpretation and Construction

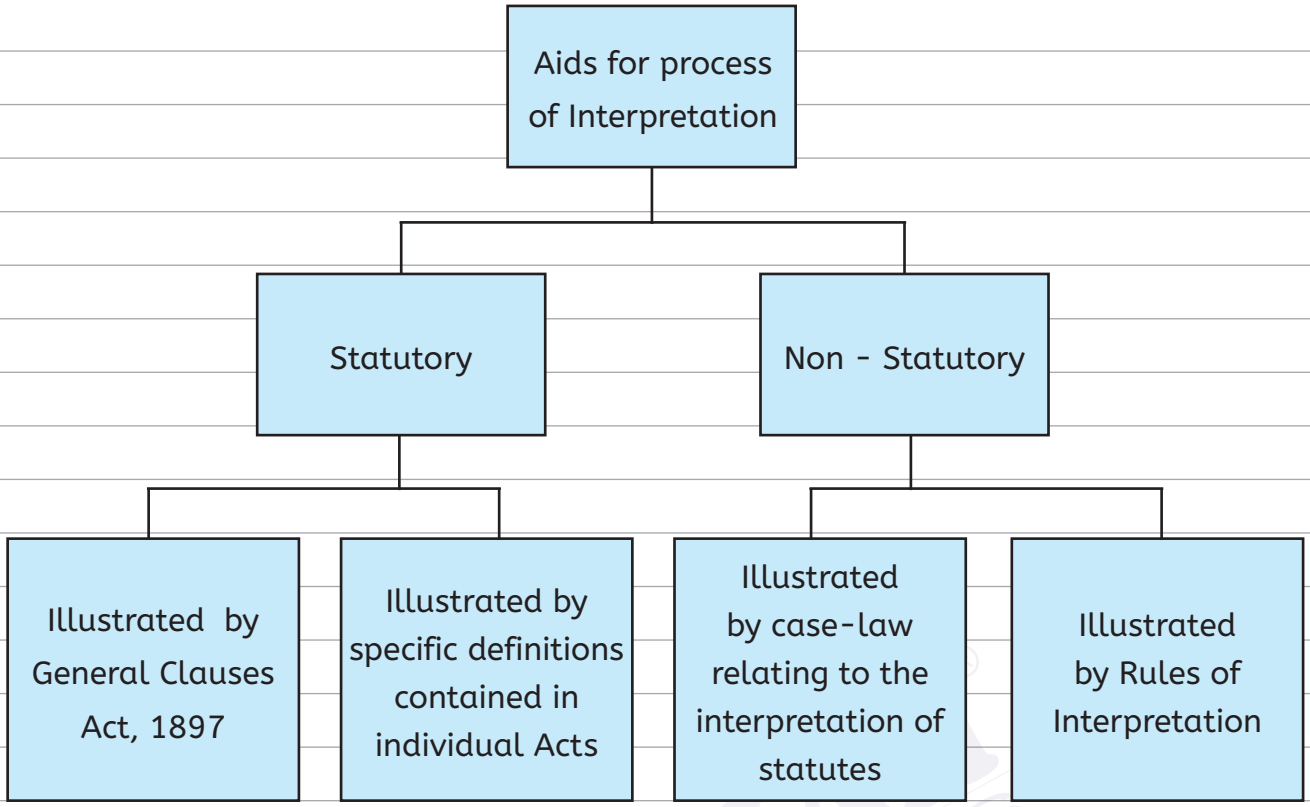
- Interpretation is the activity of identifying the meaning of a particular use of language in context.
- Construction is the activity of applying that meaning to particular factual circumstances.
- Difference between Interpretation and Construction:

Interpretation differs from construction. Interpretation is of finding out the true sense of any form and construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

Where the Court sticks to the plain meaning of the language used by the legislature, it would be 'interpretation' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court. Here the court would be doing 'construction'.

But more often the two terms are used interchangeably

2.7: Process of Interpretation



2. 8: Rules of Interpretation/Construction

(A) Primary rules:

(1) Rule of Literal Construction
(2) Rule of Reasonable Construction
(3) Rule of Beneficial Construction
(4) Rule of Harmonious Construction
(5) Rule of Exceptional Construction
(6) Rule of Ejusdem Generis

(B) Secondary rules:

(1) Noncitur a Sociis,
(2) Expressio Unis Est Exclusio Alterius
(3) Contemporanea Expositio

(A) Primary rules:

(1) Rule of Literal Construction / Grammatical Construction	• Meaning of the word is clear: Where the words are clear, the language is plain, and only one meaning can be derived, then the words should be followed literally. The rule is called as 'literalegis', i.e., literal construction of law. The Court should adopt literal interpretation, unless the language is ambiguous, or literal sense would give rise to an abnormality or defeat the purpose of the Act. • Grammatical meaning: The language used in a Statute must be construed according to the rules of grammar unless the language is ambiguous or its literal sense gives rise to any abnormality. • Ordinary meaning: A Statute must be interpreted according to the clear words used. The words and sentences of a Statute must be given their ordinary and natural meaning. • Technical meaning: It is presumed that words and phrases in a technical legislation have a technical meaning and hence to be interpreted accordingly. However, if a word has no technical meaning, it is given the ordinary meaning. • Trade meaning: If a provision relates to a particular trade, the words used therein must be given that meaning which everybody conversant with that trade understands. Such meaning may differ from the ordinary or popular meaning. • Implications of the rule: (a) Every word to be given a meaning (b) Courts cannot legislate: If a matter has not been provided for in a Statute, it cannot be supplied by the Courts even if the Court finds that it should have been so provided. (c) No reference to legal decisions: Literal construction involves arriving at the meaning of the words without reference to legal decision. • The maxim 'absoluta sententia expositore non indiget' (which means a simple preposition needs no expositor i.e., when

		you have plain words capable of only one interpretation, no explanation to them is required) is applicable. • Example: In R v. Harriss, 1836, the defendant bit off the victim's nose. The statute says it is offence 'to stab cut or wound' a person. Here the court applied the literal rule, the act of biting did not come within the meaning of stab cut or wound as these words implied an instrument had to be used. Therefore the defendant's conviction was quashed. • Example: In a question before the court whether the sale of betel leaves was subject to sales tax. The Supreme Court held that betel leaves could not be given the dictionary, technical or botanical meaning when the ordinary and natural meaning is clear and unambiguous. Being the word of everyday use it must be understood in its popular sense by which people are conversant with it as also the meaning which the statute dealing with the matter would attribute to it. Therefore, the sale of betel leaves was liable to sale tax.
(2)	Rule of Reasonable construction/ Logical Construction	• Narrow interpretation fails to achieve the purpose: Where the words of a Statute appear to be prima facie clear and unambiguous, but on close scrutiny they may turn out to be deficient in carrying out the intention of the legislature, reasonable construction should be resorted. If the ordinary meaning contradicts with the apparent purpose of the Act, the Court may modify the meaning of the words and even the structure of the sentence • Giving effect to the intention of the legislature: While interpreting a Statute, it is the duty of the Court to find out the intention of the Statute. It has to look into the circumstances, which prevailed at the time when the Statute was passed and which necessitated the passing of the Statute. • Sensible meaning: The words of a statute must be constructed so as to lead to a rational, fair and sensible meaning. Ordinarily, the words of a Statute are given their ordinary and natural meaning. However, if the words are ambiguous, an attempt must be made to discover the intent of the legislature.

	• Reasonable construction follows the principle of 'Ut Res Magis Valeat Quam Pareat' which means when the interpretation of the statute is made it should be done in a meaningful and sensible manner. • Example: In R v Allen [1], the defendant was charged with the offence of bigamy under Sec 57 of the Offences against the Person Act, 1861. The statute states whosoever being married shall marry any other person during the lifetime of the former husband or wife is guilty of an offence. Under a literal interpretation of this section the offence would be impossible to commit since civil law will not recognize a second marriage any attempt to marry in such circumstances would not be recognized as a valid marriage. The court applied the rule of reasonable construction and held that the word 'marry' should be interpreted as 'to go through a marriage ceremony'. The defendant's conviction was upheld.

(3) Heydon's Rule of Interpretation or "The Mischief Rule" or Rule of Beneficial Construction of this rule/ Purposive Construction	• Ambiguous words: Haydon's Rule may be applied if the words used in a Statue are ambiguous and are capable of more than one meaning. • Literal interpretation defeats the object of the Act: If giving literal meaning to the words would defeat the object of the legislature, the Court may depart from the dictionary meaning and instead give it a meaning which will advance the remedy and suppress the mischief. • Extended meaning is required: If the object of a Statue is public safety, words can be given a more extended meaning as compared to their ordinary meaning to give effect to that object. • Essence of the rule/Methodology (i) Consideration of background of the statute: The Court shall consider the historical background of the Statute, common law before the Statute was enacted and the mischief, which the Statute intended to remedy. In particular, the Court shall consider the following four matters: (a) What was the law before making of the Act? (b) What was the mischief or defect, which the law did not provide? (c) What is the remedy that the Act has provided? (d) What is the reason for the remedy? (ii) Suppress the mischief and advance the remedy: After the Court has considered the above four matters, the rule requires the Court to adopt that construction which will suppress the mischief and advance the remedy. • Example: Application of this mischief rule is also well-found in the construction of section 2(d) of the Prize Competition Act, 1955. This section defines 'prize competition' as "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures". The issue was whether the Act applies to competitions which involve substantial skill and are not in the nature of gambling.

		Supreme Court, after referring to the previous state of law, to the mischief that continued under that law and to the resolutions of various states under Article 252(1) authorizing Parliament to pass the Act has stated as follows: "having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill." (RMD Chamarbaugwalla V. Union of India).
(4)	Rule of Harmonious Construction	• Basis of the Rule: When there is a conflict between two or more provisions, harmonious construction is to be adopted. • Essence of Harmonious Construction: 1. Provisions to be reconciled: Where two provisions relate to the same subject matter, these should be reconciled and effect must be given to both of them. Any inconsistency either within a section or between two different sections of a Statute must be avoided. 2. Act to be read as a whole • Harmonious construction - Methodology: 1. Harmonize the provisions: (a) Any head-on clash between them should be avoided. (b) If it is not possible to harmonize the two conflicting provisions, they should be so interpreted that effect is given to all of them. (c) One section shall not be allowed to defeat the other provisions of the Act unless it is impossible to harmonize them or to give effect to all the provisions. 2. Course of action if it is impossible to harmonize: If it is impossible to harmonize the two conflicting provisions, the recourse shall be as follows: (a) The provision enacted or amended later in point of time shall prevail.

(b) The Court shall find out which provision is more general and which is more specific. The more specific provision shall be so construed as to exclude the more general provision. principle is usually expressed by the maxim, "generalia specialibus non derogant"- It means a specific rule will override a general rule

- Example: Indian Contract Act specifies rules for minor and Indian Partnership Act, 1932 also specifies a rule if minor is admitted in the partnership firm. Partnership Contract is a contract and hence both Acts are applicable but if they contradict, then preference will be given to Indian Partnership Act as it is more specific.
- In some cases, the statute may give a clear indication as to which provision is subservient and which overrides. This is done by the use of the terms "subject to", "notwithstanding" and "without prejudice".
  - ✓ Subject to: The impact of the words "subject to" when used in a provision is that when the same subject matter is covered by that provision and by another provision or enactment subject to which it operates and there is a conflict between them, then the latter will prevail over the former. This limitation cannot operate, when the subject matter of the two provisions is not the same. Thus a clause that uses the words "subject to" is subservient to another.
  - ✓ Notwithstanding: A clause that begins with the words "notwithstanding anything contained" is called a non-obstante clause. Unlike the "subject to" clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein.

A notwithstanding clause can operate at four levels.

	Clause	Effect	Example
1.	Notwithstanding anything contained in another section or sub-section of that statute.	The clause will override such other section(s) / sub-section(s)	Notwithstanding anything contained in sub-sections (1) & (2)... (Section 297(3)) of the earlier Companies Act 1956.
2.	Notwithstanding anything contained in a statute.	The clause will override the entire enactment.	Notwithstanding anything contained in this Act, the Central Government May... (Section 408 (1) of the earlier Companies Act, 1956.
3.	Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in another statute.	The clause will prevail over the other enactment.	...and on such publication, the rules as approved by the Central government shall by the Central Government shall be deemed to have been validly made not withstanding anything contained in the companies Act, 1956, (Section 7A of the Securities Contracts (Regulation) Act, 1956

4.	Notwithstanding anything contained in any other law for the time being in force.	The clause will override all other laws.	...the rules so made are amended shall, notwithstanding anything to the contrary contained in the companies Act, 1956, or in any other law for the time being in force, have effect (Section 8 of the Securities Contracts (Regulation) Act, 1956.

✓ Without prejudice: When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions

(5) Rule of Exceptional Construction

The rule of exceptional construction may be studied under the following heads:

(i) Common Sense Rule
(ii) Construction of words 'and' and 'or'
(iii) Construction of the word 'may'
(iv) Construction of the word 'shall' or 'must'
(v) Judging a provision as mandatory or directory

(i) Common Sense Rule:

Full effect must be given to every word contained in a Statute. However, words in a Statute may be eliminated if no sensible meaning can be drawn.

(ii) Construction of words 'and' and 'or':

The word 'and' is normally conjunctive, i.e., if two provisions are separated by the conjunction 'and', requirements of both the provisions should be satisfied. If two clauses are separated by the word 'or', satisfying the requirements of any

of the two clauses would be sufficient.

(iii) Construction of the word 'may'

Directory force: The word 'may' is generally construed to have a directory force only.

Mandatory force: The word 'may' has a mandatory force in the following cases:

(a) Where the subject involves a discretion coupled with an obligation, i.e., when a power is given, there is duty to discharge the obligation.

(b) Where a remedy will be advanced and mischief will be suppressed.

(iv) Construction of the word 'shall' or 'must'

Mandatory force: The word 'shall' is ordinarily construed to have a mandatory force. Where a provision in the Statute provides for a specific penalty, the Court has no discretion to determine whether such provision is directory or mandatory. It is to be taken as mandatory provision.

Directory force: The word 'shall' has a directory force

(a) where it has been used against the Government, unless a contrary intention is manifest in the Statute; or

(b) where the intention of the legislature so demands; or

(c) where giving it a mandatory interpretation would result in absurd results.

(v) Judging a provision as mandatory or directory

Whether a provision is a mere direction or a mandatory command depends upon the purpose of the Act, the intention of the legislature and general inconvenience to the public. Following generalizations may be drawn:

(a) Prohibitory provisions (i.e., use of negative,, words in a provision) imply that the provision is mandatory.

(b) If the non-compliance of a provision results in penalty, it implies mandatory intention of the Statute.

(c) If a provision gives a power coupled with a duty, it is mandatory in nature.

(d) If no public policy is involved, the procedure is treated only as directory.

(e) Provisions enacted to prevent fraud and mischief is held as mandatory.

(6) Rule of Ejusdem Generis	• Meaning of the rule The term 'Ejusdem Generis' means of the same class or species'. The rule states that general words following specific words are to be construed with reference to the words preceding them. • Applicability of the Rule: For application of the rule, all the following conditions need to be satisfied: (a) There must be an enumeration of certain specific words. (b) The specific words contained in the enumeration must constitute a class or category. (c) The specific words must be of the same kind or nature. (d) The specific words must not exhaust the whole category. • Example: Where a Statute uses the words 'such as oxen, bulls, goat, cows, buffaloes, sheep, horses, etc.', the word 'etc' cannot include wild animals like lion and tiger. Also, all domestic animals would not be covered. The illustrations given relate to all four legged animals and hence other domestic animals like dogs, cats etc. can be included but not cock or hen has no similarity with the illustrations of other domestic animals given

(B) Secondary Rules:

(1) Expression Unius Est Exclusio Alterius	• Expression Unius Est Exclusio Alterius means that express mention of one thing implies the exclusion of another. • As per this maxim, if two or more things belonging to a particular class are mentioned, other members of that class are silently excluded. • Example: Where a Statute refers to 'lands, house and coal mines, other mines except coal mine are excluded and 'other mines' cannot be made to fall within the general term 'lands'.

(2) Noscitur A Sociis (Construction of associated words)	• The meaning of a word is derived from its associate words, i.e., the meaning of a word is to be judged by the company it keeps. The words in a Statute are construed with reference to the words found in immediate connection with them. • If two or more words which are capable of analogous (similar or parallel) meaning are grouped together, they should be understood in cognate sense, i.e., they take their colour from each other and are given a similar or related meaning. • Example: If some statute specifies 'plant & machinery', here plant refers to machines. But if some statute specifies "plant & trees', here plant refer to plant which grows in soil and not machine. Hence, what will be meaning of plant, will depend on its associated word.
(3) Effect of Usage	In this connection, we have to bear in mind two Latin maxims: (i) 'Optima Legum interpres est consuetude' (the custom is the best interpreter of the law); and (ii) 'Contempranea exposito est optima et fortissinia in lege' (i) 'Contempranea exposito est optima et fortissinia in lege' means best way to interpret a document is to read it as it would have been read when made. As per this rule, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. In simple words, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written. Expose the old laws to new circumstances and technology. (ii) Optima Legum interpres est consuetude' (the custom is the best interpreter of the law): If there is uniform notorious practice continued under an old statute and the Legislature has not amended the same, then the usage or practice receives judicial or legislative approval. Example: Indian Contract Act,1872, does not mention anything about electronic contracts as when the law was made, electronic contracts did not exist. But still electronic contracts like online shopping, booking online tickets are valid.

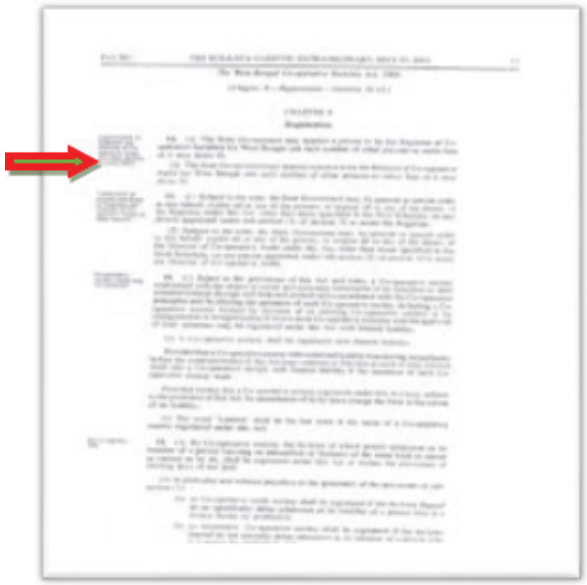
2.9: Aids of Interpretation

(A) Internal Aids:	(B) External Aids:
1. Title,	1. Historical setting
2. Preamble,	2. Consolidating Statutes and previous law.
3. Headings & title of chapter	3. Usage
4. Marginal notes	4. Earlier & Later Acts and Analogous Acts
5. Definitional Clauses	5. Dictionary Definitions
6. Illustrations	6. Use of Foreign Decisions
7. Proviso	
8. Explanation	
9. Schedules	
10. Read the Statute as a Whole	

Internal Aids of Interpretation

(1) Title	• An enactment would have what is known as a 'Short Title' and also a 'Long Title'. • The 'Short Title' merely identifies the enactment and is chosen merely for convenience, the 'Long Title' on the other hand, describes the enactment and does not merely identify it. Hence, long title can be used for interpretation. • The title of a statute is an important part of the Act and may be referred to for the purpose of ascertaining its general scope, although it cannot override the clear meaning of the enactment. • Example: Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court.
(2) Preamble	• The preamble expresses the (scope) and (object) of the Act. It is a part of the Act. It state the reasons for creation of the Act and the evil which it wants to suppress. • The Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

	• Example: Preamble of the Negotiable Instruments Act, 1881 states - "An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheque. • Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus...." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus
(3) Headings and title of a chapter	• A number of sections covering a particular subject are grouped together in the form of a chapter. Each chapter is given a heading, which represents the subject matter dealt with the chapter. • The headings may be referred to for the purpose of construction of the enactment or its parts. However, headings cannot restrict the clear meaning of an enactment. Further, heading to one group of sections cannot be used to interpret another group of sections. • There is a controversy regarding the weightage to be given to headings while interpreting a Statute. The position is as under: (a) According to one view, a heading is a preamble to the provisions following it and therefore the heading is treated as a key to interpretation of sections covered by it. (b) The other view considers that heading may be referred to only when the enacting words are ambiguous. • Example: Chapter contained in the Code of Criminal Procedure, 1973 read as 'Limitation for taking cognizance of certain offences', was not held to be controlling and it was held that a cumulative reading of various provisions in the said chapter clearly indicated that the limitation prescribed therein was only for the filing of the complaint or initiation of the prosecution and not for taking cognizance.

(4) Marginal notes	• Generally, marginal notes are printed at the left hand margin of the sections in an enactment. But, Acts published by private publishers show the marginal notes at the top of the section. Marginal notes are essentially a heading/title to the section. Marginal notes summarize the effect of a section. • In India, the Courts have given different views regarding the use of marginal notes in construction of a Statute. Many Courts have held that marginal notes cannot be referred to for the purpose of constructing a Statute. However, certain Courts have held that marginal notes may be used to understand the legislative intent, if the words of a Statute are ambiguous. But marginal notes cannot limit or restrict the meaning of clear words used in the section. • Example: 
(5) Definitional Clauses	• A definition clause performs the following two functions: (a) It acts as a key to proper interpretation and thus avoids ambiguities, (b) It shortens the language and avoids repetition. • Where the meaning of a word or expression is defined in a Statute, it is that meaning alone which must be given to it. The Court cannot ignore the statutory definition and speculate as to what should be the true meaning of the expression, unless there is anything repugnant in the context.

- A word defined in the Act bears the same meaning throughout the Act, unless by doing so any absurdity is created in the subject or context.
- Where the language used in the definition itself is ambiguous, the definition should be construed in the light of the purpose of the Act and having regard to the ordinary connotation of the word defined.
- Construction of definitions may understood under the following headings:
  (i) Restrictive and extensive definitions
  (ii) Ambiguous definitions

(i) Restrictive and extensive definitions: The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to 'mean' something, the definition is prima facie restrictive and exhaustive & the meaning of such word must be restricted to the meaning given in the definitional clause.

Example: Definition of 'Company' as given in section 2(20) of the Companies Act, 2013. It states, "Company" means a company incorporated under this Act or under any previous company law.

Where an expression is defined to 'include' something, the definition is prima facie extensive and its meaning can also include something else in addition to the meanin0g assigned to it in the definitional clause.

Example: Word 'debenture' defined in section 2(30) of the Companies Act, 2013 states that "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not". This is a definition of inclusive nature.

A definition in the form of 'is deemed to include' is an inclusive definition.

A definition in the form of 'to apply and to include' is an inclusive definition.

	(ii) Ambiguous definitions: Sometime the definition section may itself be ambiguous, and so it may have to be interpreted in the light of the other provisions of the Act. Such type of definition is not to be read in isolation. It must be read in the context of the phrase which it defines, realizing that the function of a definition is to give accuracy and certainty to a word or phrase which would otherwise be vague and uncertain but not to contradict. Example: Termination of service of a seasonal worker after the work was over does not amount to retrenchment as per the Industrial Disputes Act, 1947. But the termination of employment of a daily wager who is engaged in a project, on completion of the project will amount to retrenchment if the worker had not been told when employed that his employment will end on completion of the project.
(6) Illustrations	• Illustrations are examples added to a section. Illustrations are inserted to clarify the scope and object of the section. Illustrations follow the text of the Sections and, therefore, do not form a part of the Sections. However, illustrations do form a part of the statute and are considered to be of relevance and value in construing the text of the sections. • But illustrations cannot modify the section. Hence, if there is a conflict between the section and illustration, the section will prevail.
(7) Proviso	• The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. • Distinction between Proviso, exception and saving Clause ✓ 'Exception' is intended to restrain the enacting clause to particular cases.

Example:

28. Agreements in restraint of legal proceedings, void.—[2][Every agreement,—

(*a*) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or

(*b*) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights,

is void to the extent.]

Exception 1.—**Saving of contract to refer to arbitration dispute that may arise.**—This section shall not render illegal a contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

[3]* * * * *

Exception 2.—**Saving of contract to refer questions that have already arisen.**—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration[4].

✓ Proviso' is used to remove special cases from general enactment and provide for them specially.

Example:

68. Power of company to purchase its own securities.—(*1*) Notwithstanding anything contained i this Act, but subject to the provisions of sub-section (*2*), a company may purchase its own shares or othe specified securities (hereinafter referred to as buy-back) out of—

(*a*) its free reserves;

(*b*) the securities premium account; or

(*c*) the proceeds of the issue of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of th proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

(*2*) No company shall purchase its own shares or other specified securities under sub-section (*1*) unless—

(*a*) the buy-back is authorised by its articles;

(*b*) a special resolution has been passed at a general meeting of the company authorising the buy back:

Provided that nothing contained in this clause shall apply to a case where—

(*i*) the buy-back is, ten per cent. or less of the total paid-up equity capital and free reserves of th company; and

✓ 'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing. They are added in case of repeal and re-enactment of Acts to ensure the continuation of past rights

Example: Companies Act, 1956 gave certain rights to directors and auditors. Now that Act is repealed and a new Act is re-enacted as Companies Act, 2013. But the old rights given to auditors and directors still exist by virtue of saving clause provided.

(8) Explanation	• An explanation is generally a clarification of the legislative mind. It explains the meaning of the words contained in the section. • Object of an explanation: The purpose of explanation is to (a) include something within a section or to exclude something from it; or (b) clarify any ambiguity in the main section; or (c) explain the meaning the section; or (d) make the main section more meaningful and purposeful. • Example: (*10*) A company shall, after the completion of the buy-back under this section, file with the Registrar and the Securities and Exchange Board a return containing such particulars relating to the buy-back within thirty days of such completion, as may be prescribed: Provided that no return shall be filed with the Securities and Exchange Board by a company whose shares are not listed on any recognised stock exchange. (*11*) If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (*f*) of sub-section (*2*), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both. *Explanation I.*—For the purposes of this section and section 70, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time. *Explanation II.*—For the purposes of this section, "free reserves" includes securities premium account.
(9) Schedules	• The Schedules form part of an Act. Therefore, they must be read together with the Act for all purposes of construction. However, the expressions in the Schedule cannot control or prevail over the expression in the enactment. If there appears to be any inconsistency between the schedule and the enactment, the enactment shall always prevail. • Example: Schedules given in Income Tax Act, 1961.
(10) Read the Statute as a Whole	• It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into

	harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature. One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature,that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification. • Example: If one section of an Act requires 'notice' should be given, then a verbal notice would generally be sufficient. But, if another section provides that 'notice' should be 'served' on the person or 'left' with him, or in a particular manner or place, then it would obviously indicate that a written notice was intended.

External Aids of Interpretation

(1) Historical setting:	The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We can take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment.
(2) Consolidating Statutes & Previous Law	The Preambles to many statutes contain expressions such as "An Act to consolidate" the previous law, et(c) In such a case, the Courts may stick to the presumption that it is not intended to alter the law. Example: THE GENERAL CLAUSES ACT, 1897 ACT NO. 10 OF 1897[1] [11*th March*, 1897.] An Act to consolidate and extend the General Clauses Act, 1868 and 1887. WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 (1 of 1868) and 1887 (1 of 1887); it is hereby enacted as follows:—
(3) Usage :	Usage of trade is also sometimes taken into consideration in construing an Act. The acts done under a statute provide quite often the key to the statute itself. It is well known that where the meaning of the 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. Example: The term 'reasonable time' where not specifically defined in the Act, will be interpreted as per the day to day usage and customs.
(4) Earlier & Later Acts and Analogous Acts:	• Exposition of One Act by Language of Another : The general principle is that where there are different statutes in 'pari materia' (i.e.in an analogous case- i.e. comparable in certain respects), though made at different times, or even expired and not referring to each other, they shall be taken together as one system and as explanatory of each other.

	• Where a single section of one Act (say, Code of Criminal Procedure) is incorporated into another statute (say Negotiable Instruments Act), it must be read in the sense which it bore in the original Act from which it is taken consequently, all the rest of Code of Criminal Procedure should be referred, to ascertain what that Section means, though one Section alone is incorporated in the new Act (Negotiable Instruments Act). • Earlier Act Explained by the Later Act: If there is a later Act explaining the earlier one, then the later Act may be construed in the light of the earlier Act. Where the earlier statute contained a negative provision but the later one. Example: Suppose the earlier bye-law limited the appointment of the chairman of an organisation to a person possessed of certain qualifications and the later bye-law authorises the election of any person to be the chairman of the organisation. In such a case, the later bye-law would be so construed as to harmonise and not to conflict with the earlier bye-law: the expression 'any person' used in the later bye-law would be understood to mean only any eligible person who has the requisite qualifications as provided in the earlier bye-law. • Reference to Repealed Act: Where a part of an Act has been repealed, it loses its operative force. Nevertheless, such a repealed part of the Act may still be taken into account for construing the un-repealed part. This is so because it is part of the history of the new Act.
(5) Dictionary Definitions :	• If the particular word is defined in the act itself, then that specific meaning is to be followed. But where 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. • But, in selecting one out of the several meanings of a word, the context in which it is used in the Act must be taken into consideration.

(6) Use of Foreign Decisions:	• Foreign decisions of countries following the same system of jurisprudence (legal system) as ours and given on laws similar to ours can be legitimately used for construing our own Acts. • But, more importance is always to be given to the language of the Indian statute. Where guidance can be obtained from Indian decisions, reference to foreign decisions is not required. • Example: India and England has similar legal system and hence English judgements can be used for interpreting law. But using American judgements will be incorrect as they follow different legal system.

2.10: Rules of Interpretation/Construction of Deeds and Documents

(1) Whenever a document is written in a language which is clear and definite and no doubt arises in its application to the facts, there is no need to resort to the rules of interpretation.

(2) While interpreting any deed or document, the intention of the parties should be considered. To ascertain the intention of the parties, the document must be considered as a whole. It is from the whole of the document, coupled with the surrounding circumstances, that the general intention of the party or parties is to be ascertained. Attempt must be made to gather the intention of the parties from the exact words used in the deed.

(3) As far as possible, effect is to be given to all words used in a document.

(4) The same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule.

(5) The status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense.

(6) It may also happen that there is a conflict between two or more clauses of the same document. An effort must be made to resolve the conflict by interpreting the clauses so that all the clauses are given effect to. If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.

Similarly, if one part of the document is in conflict with another part, an attempt should always be made to read the two parts of the document harmoniously, if possible. If that is not possible, then the earlier part will prevail over the latter one which should, therefore, be disregarded.

SUMMARY

Introduction

Even if the laws are drafted by legal experts, yet the language might be confusing or it might be misconstrued. Hence, many a times, the intention of the law is to be gathered not only from the language but the surrounding circumstances that prevailed at the time when that particular law was enacted. Here the rules of interpretation are used.

2.1: Meaning of 'Statute'

A statute has been defined as 'the written will of the legislature'.

2.2: Meaning of 'Interpretation'

'Interpretation' is the process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.

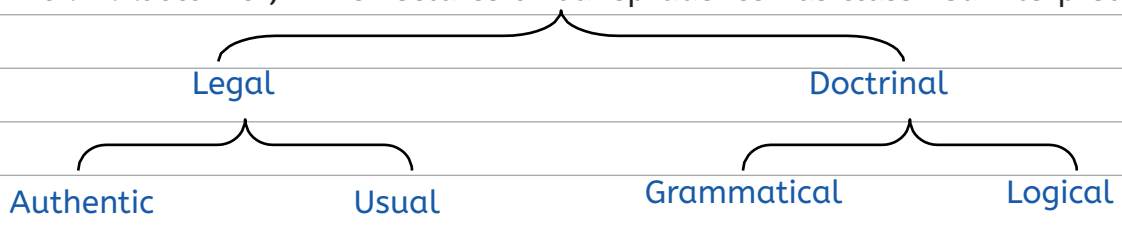
2.3: Importance of Interpretation

Interpretation is required in following situations:

(1) The ambiguity of the words used in the statute
(2) Change in the environment
(3) Complexities of the statutes
(4) When legislation doesn't cover a specific area
(5) Drafting error
(6) Incomplete rules

2.4: Classification of Interpretation

- Prof. H.F.Jolowicz, in his Lectures on Jurisprudence has classified interpretation



- According to Fitzerald, interpretation is of two kinds:

2.5: Meaning of important Terms

(1) Document: Section 3 of the Indian Evidence Act, 1872 states that 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

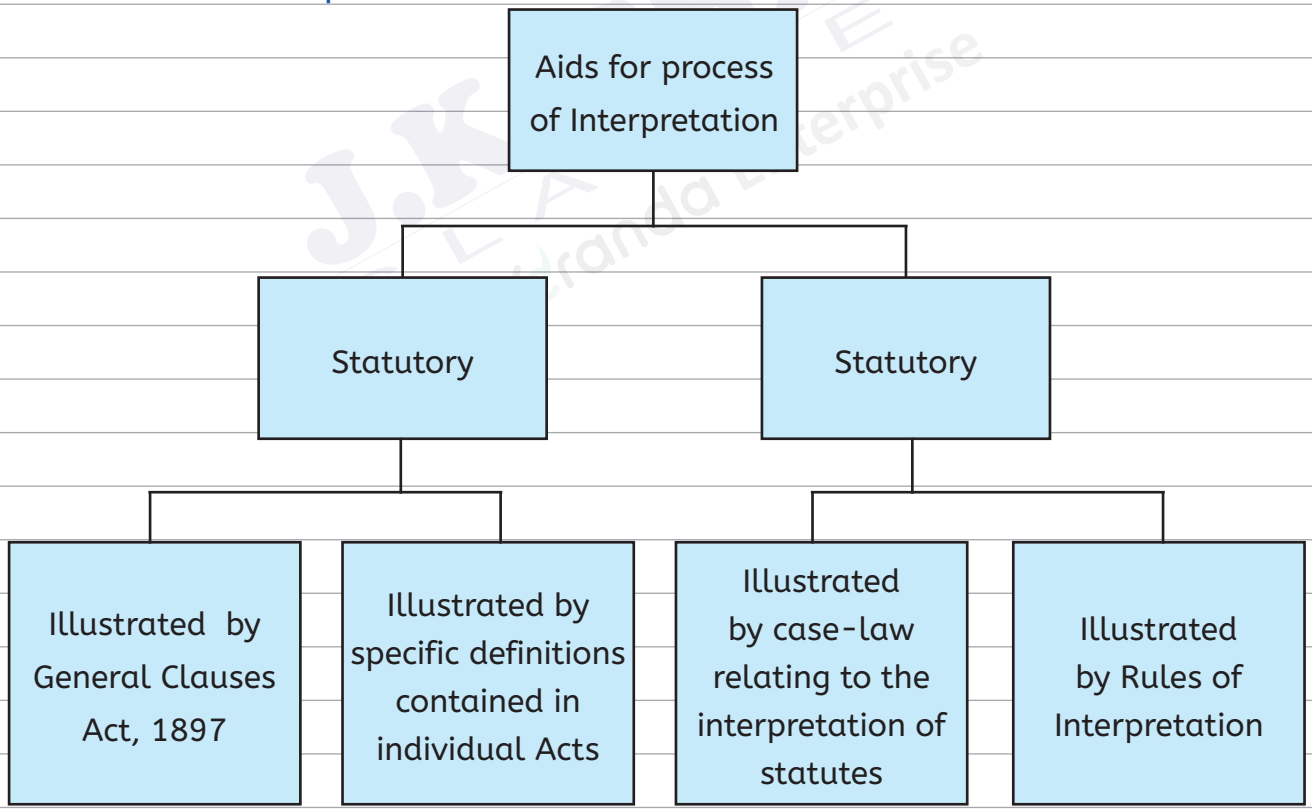
(2) Instrument: Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

(3) Deed: 'Deed' as an instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition.

1.6: Interpretation and Construction

Interpretation differs from construction. Interpretation is of finding out the true sense of any form and construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text.

2.7: Process of Interpretation



2.8: Rules of Interpretation/Construction

(A) Primary rules:

(1) Rule of Literal Construction
(2) Rule of Reasonable Construction
(3) Rule of Beneficial Construction
(4) Rule of Harmonious Construction
(5) Rule of Exceptional Construction
(6) Rule of Ejusdem Generis

(B) Secondary rules:

(1) Noncitur a Sociis,
(2) Expressio Unis Est Exclusio Alterius
(3) Contemporanea Expositio

4.9: Aids of Interpretation

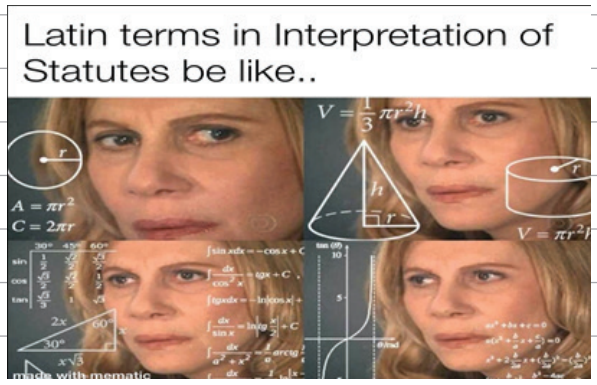
(A) Internal Aids:	(B) External Aids:
1. Title,	1. Historical setting
2. Preamble,	2. Consolidating Statutes and previous law.
3. Headings & title of chapter	3. Usage
4. Marginal notes	4. Earlier & Later Acts and Analogous Acts
5. Definitional Clauses	5. Dictionary Definitions
6. Illustrations	6. Use of Foreign Decisions
7. Proviso	
8. Explanation	
9. Schedules	
10. Read the Statute as a Whole	

4.10: Rules of Interpretation/Construction of Deeds and Documents

Firstly, for interpreting any deed or document, the intention of the parties should be considered. To ascertain the intention of the parties, the document must be considered as a whole. It is from the whole of the document, coupled with the surrounding circumstances, that the general intention of the party or parties is to be ascertained. Same words should be given same meaning unless it creates any abnormality.

LIST OF LATIN TERMS

S R . NO.	LATIN TERM	MEANING	PG NO. (This column is to be filled by students)
1.	Litera legis	Literal construction of law	
2.	Absoluta sententia expositore non indiget	Simple preposition needs no expositor i.e., when you have plain words capable of only one interpretation, no explanation to them is required	
3.	Ut Res Magis Valeat Quam Pareat	The interpretation of the statute is made it should be done in a meaningful and sensible manner	
4.	Generalia specialibus non derogant	A specific rule will override a general rule.	
5.	Ejusdem Generis	Same class or species	
6.	Expression Unius Est Exclusio Alterius	Express mention of one thing implies the exclusion of another	
7.	Noscitur A Sociis	Meaning of a word is derived from its associate words	
8.	Contempranea exposito est optima et fortissinia in lege'	Best way to interpret a document is to read it as it would have been read when made	
9.	Optima Legum interpres est consuetude'	The custom is the best interpreter of the law	
10.	Pari materia'	In an analogous case- i.e. comparable in certain respects	



Chapter 3

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

Introduction

Need for the Act –	Salient Features of the Act –
The change in the economic scenario, globalization of capital, free trade across the globe, necessitated the need for managing foreign exchange in the country in an orderly manner ↓ To facilitate cross border trade and 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 the 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). ↓ Government as part of its agenda of liberalisation of the Indian economy in 1991, permitted free movement of foreign exchange in connection trade related receipts and payments as well as Foreign Investment in various sectors. ↓	This Act provides for – 1. Regulation of transactions between residents and non-residents 2. Investments in India by non-residents and overseas investments by Indian residents 3. Freely permissible transactions on current account subject to reasonable restrictions that may be imposed 4. RBI and Central Government control over capital account transactions 5. Requirement for realisation of export proceeds and repatriation to India 6. Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/ Money Changer/Off-shore banking unit 7. Adjudication and Compounding of Offences 8. Investigation of offences by Directorate of Enforcement 9. Appeal provisions including Special Director (Appeals) and Appellate Tribunal

This increased the flow of foreign exchange to India and consequently foreign exchange reserves increased substantially. The Act has been made effective from 1st June, 2000.	
↓	
This Act enables management of foreign exchange reserves for the country	

Enforcement of FEMA:

Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate 'Directorate of Enforcement' formed for this purpose. [Section 36].

Broad Structure of FEMA Now let us have a glance at the broad structure the Act. The Act consists of 7 Chapters dealing with following areas –

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

PREAMBLE,EXTENT, APPLICATION AND COMMENCEMENT OF FEMA, 1999 –

Preamble	This Act aims to consolidate and amend the law relating to foreign exchange with the objective of – (i) facilitating external trade and payments and (ii) for promoting the orderly development and maintenance of foreign exchange market in India.
Extent and Application [Sections 1]	- FEMA, 1999 extends to the whole of India. - In addition, it shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies. - The scope of the Act has been extended to include branches, offices and agencies outside India. - The scope is thus wide enough because the emphasis is on the words "Owned or Controlled". Contravention of the FEMA committed outside India by a person to whom this Act applies will also be covered by FEMA.
Commencement	The Act, 1999 came into force with effect from 1stJune, 2000 vide Notification G.S.R. 371(E), dated 1.5.2000.

3.1: DEFINITIONS [SECTION 2] –

In this Act, unless the context otherwise requires –

1) "Authorised person" - [Section 2(c)]
Authorised person means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities;

2) "Capital Account Transaction" means a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liability in India of persons resident outside India, and includes transactions referred to in 1Section 6(3); [Section 2(e)]

3) "Currency" includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank. [Section 2(h)]

4) "Currency Notes" means and includes cash in the form of coins and bank notes; [Section 2(i)]

5) "Current Account Transaction" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,
   i. payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business.
   ii. payments due as interest on loans and as net income from investments.
   iii. remittances for living expenses of parents, spouse and children residing abroad, and
   iv. expenses in connection with foreign travel, education and medical care of parents, spouse and children; [Section 2(j)]

6) "Export", with its grammatical variations and cognate expressions means; (i) the taking out of India to a place outside India any goods. (ii) provision of services from India to any person outside India;[Section 2(l)]

7) "Foreign Currency" means any currency other than Indian currency; [Section 2(m)]

8) "Foreign Exchange" means foreign currency and includes: (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; [Section 2(n)]

9) "Foreign Security" means any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;[Section 2(o)]

10) "Import", with its grammatical variations and cognate expressions, means bringing into India any goods or services; [Section 2(p)]

11) "Person" includes: (i) an individual, (ii) a Hindu undivided family, (iii) a company, (iv) a firm, (v) an association of persons or a body of individuals, whether incorporated or not, (vi) every artificial juridical person, not falling within any of the preceding subclauses, and; (vii) any agency, office or branch owned or controlled by such person; [Section 2(u)]

12) "Person resident in India" means:

(i) a person residing in India for more than 182 days during the course of the preceding financial year but does not include–

A) a person who has gone out of India or who stays outside India, in either case–

a) for or on taking up employment outside India, or

b) for carrying on outside India a business or vocation outside India, or

c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

B) a person who has come to or stays in India, in either case, otherwise than:

a) for or on taking up employment in India, or

b) for carrying on in India a business or vocation in India, or

c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

(i) any person or body corporate registered or incorporated in India,

(ii) an office, branch or agency in India owned or controlled by a person resident outside India,

(iii) an office, branch or agency outside India owned or controlled by a person resident in India; [Section 2(v)]

13) "Person Resident Outside India" means a person who is not resident in India; [Section 2(w)]

14) "Transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. [Section 2(ze)]

Residential status under FEMA –

1) The definition of "person" is similar to the definition contained in the Income-tax Act, 1961.

2) The term 'person' includes entities such as –

a) companies,
b) firms,
c) individuals,
d) HUF,
e) Association of Persons (AOP),
f) artificial juridical persons
g) agencies, as well as offices and branches.

Agencies, offices and branches do not have independent status separate from their owners. Yet these have been considered as persons. Under FEMA such offices and branches are included in definition of Person Resident in India. Therefore they have been included in the definition of "Person".

The term 'person resident in India' means the following entities:

1. A person who resides in India for more than 182 days during the preceding financial year;

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

A) A person who has gone out of India or stays outside India for any of the three purposes given below,

B) A person who has come to or stays in India OTHERWISE THAN for any of the **three purposes**

Three Purposes

(i) For or on taking up Employment
(ii) For carrying on a business or Vocation
(iii) For any other purpose in such circumstances as would indicate stay for an uncertain period.

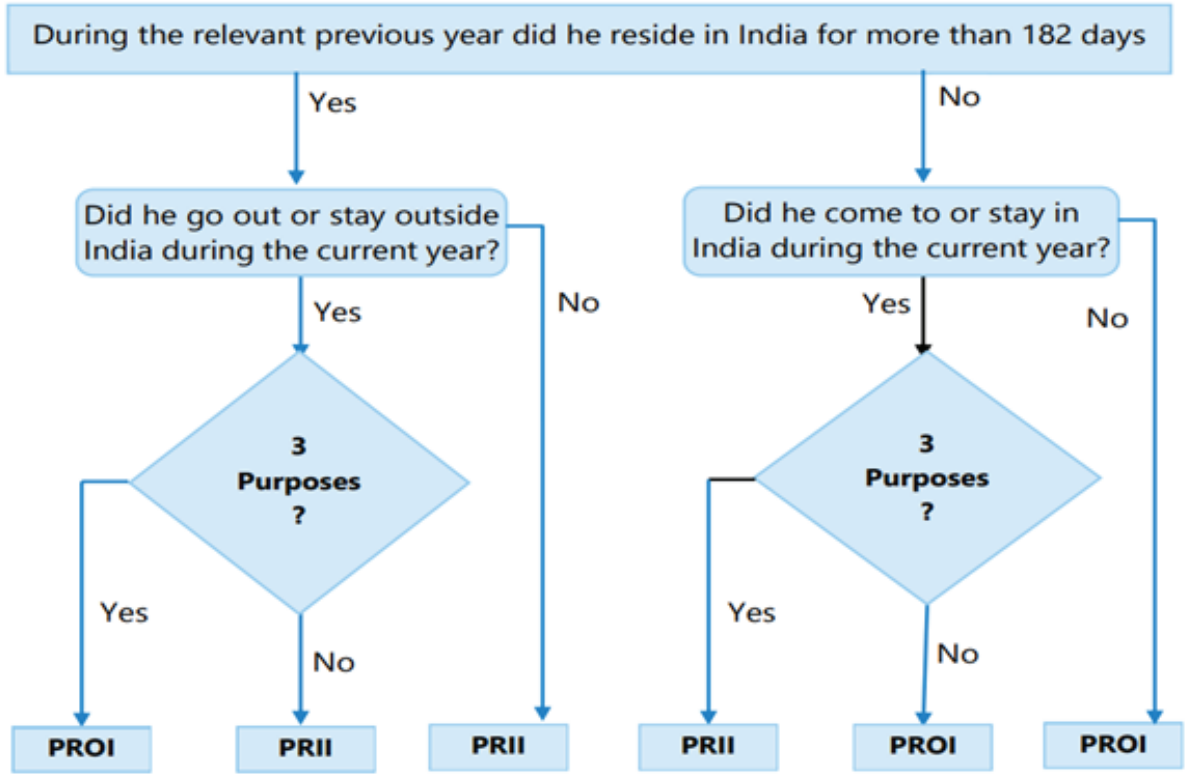
Note: Please refer to the diagram 1.1 for a summary of the provisions relating to residential status of Individuals under FEMA.

Note - A person who comes to India in a financial year, as a tourist or for other reasons where his stay is for a period which is certain, will not be considered as resident even if his stay in India is more than 182 days.

1. Any person or body corporate registered or incorporated in India;

2. An office, branch or agency in India owned or controlled by a person resident outside India;
3. An office, branch or agency outside India owned or controlled by a person resident in India.

Person resident outside India means a person who is not resident in India



As the definitions of Person Resident in India and Person Resident outside India are quite relevant for determining the applicability of the Act on an entity, let us analyse and understand it better

In the case of individuals, to be considered as "resident", the person should have resided in India in the preceding financial year for more than 182 days. Citizenship is not the criteria for determining whether or not a person is resident in India.

There are three limbs in the definition.

The first limb prescribes the number of days stay. Then there are two limbs which are exceptions to the first limb. First limb – It states that a person who is in India for more than 182 days in the "preceding year" will be a Person Resident in India. Thus, at the threshold or basic level, one has to consider the period of stay during the preceding year.

Example 4: If a person resides in India for more than 182 days during FY 2021-22, then for the FY 2022-23, the person will be an Indian resident. For FY 2021-22, one will have to consider residence during FY 2020-21, and so on

There are two exceptions provided in clauses (A) and (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 the main body of a section, even though they satisfy the criteria. This means that even if a person is an Indian resident based on the test provided in the first limb, the person will be a "Person Resident Outside India (PROI) if he falls within limb (A) or limb (B).
Clause (A) – second limb – It states that if a person leaves India in any of the THREE PURPOSES we saw above, he will not be a PRII. He will be a PROI.

- Thus, in the example given for the first limb above, if a person leaves India on 1st November 2022, he will be a non-resident from 2nd November 2021 – even though his number of days in India was more than 182 days in FY 2021-22.
- Similarly, if a person goes and stays out of India for carrying on any business, he will be a PROI from that date.
- For FY 2022-23 the person will be a PRII till 1st November 2021. He will then be a PROI.
- From 1st April 2023, the person will continue to be a PROI as long as he stays out of India for employment.

An example for clause (iii) can be a person who has a green card in the USA. The greencard entitles a person to stay in the USA and eventually become a US citizen. If a person goes abroad and starts staying in the USA, he will be a non-resident from that date as his stay abroad indicates that he is going to stay there for an uncertain period
Clause (B) – third limb – This is a complex clause as first limb read with third limb has two exceptions. Limb one uses the phrase "but does not include". Third limb uses the phrase "otherwise than". Use of two exceptions make it complex reading
It states that if a 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 a non-resident. This will be so even if the person has stayed in India for more than 182 days in the preceding year

For example, if a person comes to India on 1st June 2021 for visiting his parents. However, his parents fall sick and he stays till 31st March 2022. Thereafter he continues to stay in India. It is however certain that he will leave India in next 6 months when his parents recover. His stay in India is neither for employment, nor for business, nor for circumstances which show that he will stay in India for an uncertain period. In such a case, even if he has resided in India for more than 182 days in FY 2021-22, he will continue to be a non-resident from 1st April 2022 also. In FY 2021-22, he is of course a PROI as he did not reside in India for more than 182 in FY 2020-21.

If a person comes to India on 1st June 2021 for employment, business or circumstances which indicate his intention to stay in India for an uncertain period, he will be a PRII from 1st June 2021.

Residential status is not for a year. It is from a particular date. This is different from income-tax law. Under income-tax law, a person has to pay tax in respect of the income of the previous year. Therefore, it is possible to look at a complete year for determining residential status under the Income Tax Act, 1961. FEMA is a regulatory law. One has to know the person's status at the time of undertaking a transaction. If for example, a person comes to India for employment, and if his status can be known only when the year is completed, how will he and other people enter into commercial transactions with each other? If he is considered as a PROI till the year is over, then people will not be able to enter into transactions with him. This is the reason why the residential status is not for a year but from particular date.

It is understood that this condition applies only to individuals. It will not apply to HUF, AOP or artificial juridical person as they cannot get employed, cannot go out of India or come to India. Hence, they do not come within the ambit of the second and third limbs. These entities like HUF and AOP are not required to be registered or incorporated like corporate entities nor the definition can b e far stretched to cover by applying the criteria of 'owned or controlled'. Hence legally the definition for HUF, AOP, BOI fail. Practically if the HUF, AOP etc. are in India, they will be considered as Indian residents.

Person or Body corporate: Any person or body corporate registered or incorporated in India, will be considered a PRII. This definition too, does not apply to AOP, BOI etc.

Office, branch or agency: Any agency, branch or agency outside India but owned or controlled by PRII will be considered as person resident in India (PRII). Thus, one cannot set up a branch outside India and attempt to avoid FEMA provisions.

Any agency, branch or agency in India but owned or controlled by a person resident outside India (PROI) will be considered as a person resident in India. This is relevant as Indian residents can deal with such branch in India without considering FEMA. If such branch is considered as a PROI then it will be difficult to undertake several transactions.

Q)
Mr. A had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India again on April 1, 2020 for employment. Determine his residential status for the financial year 2020-2021?

Answer –
Mr. A had come to India for taking up employment. During the financial year 2019-2020, he was in India for less than 182 days. Since, he has not fulfilled the condition of staying in India for more than 182 days, Mr. A will normally not be considered as a PRII for the financial year 2020-2021. But, in this case, as he has come to India on 1stApril, 2020 for taking up employment he will be covered by the second limb and therefore he is a PRII from 1st April 2020

Q)
Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?

Answer –
As explained in the above example, Mr. X will be considered as a person resident in India' from 1st April 2020. As regards, financial year 2021- 2022, Mr. X would continue to be an Indian resident from 1st April 2021. If he leaves India for the purpose of taking up employment or for business/ vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, if he has not left India for any these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021

Q)
Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021-2022?

Answer:
Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of, or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies. For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

Q)
Toy Ltd. is a Japanese company having several business units all over the world. It has a robotic unit with its head quarters in Mumbai and has a branch in Singapore. The Headquarters at Mumbai controls the Singapore branch of the robotic unit. What would be the residential status of the robotic unit in Mumbai and that of the Singapore branch?

Answer:
Toy Ltd. being a Japanese company would be a person resident outside India. [Section 2(w)]. Section 2(u) defines 'person'. Under clause (viii) thereof person would include any agency, office or branch owned or controlled by such 'person'. The term such 'person' appears to refer to a person who is included in clauses (i) to (vi). Accordingly, robotic unit in Mumbai, being a branch of a company, would be a 'person'. Section 2(v) defines 'person resident in India'. Under clause (iii) thereof 'person resident in India' would include an office, branch or agency in India owned or controlled by a person resident outside India. Robotic unit in Mumbai is owned or controlled by a person 'resident outside India'. Hence, it would be 'person resident in India'. The robotic unit headquartered in Mumbai, which is a person resident in India as discussed above, controls the Singapore branch, Hence, the Singapore branch is a 'person resident in India'

Q)

Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?

Answer

Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India. If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

3.2: REGULATION AND MANAGEMENT OF FOREIGN EXCHANGE

Dealing in foreign exchange, etc. [Section 3]

No person shall-

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident India in any manner.

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

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

The above transactions may carried on

a. as otherwise provided in this Act; or

b. with the general or special permission of the Reserve Bank.

Explanation - For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

This section imposes blanket restrictions on the specified transactions. This section applies to PRRIIS and PROIS. The purpose of this section is to regulate inflow and outflow of Foreign Exchange through Authorised dealers and in a permitted manner.

Consider Following examples:

(i) Example pertaining to clause (a) - Dealing in foreign exchange - A PROI comes to India and would like to sell US$ 1,000 to his friend who is resident in India. The friend offers him a rate better than the banks. This cannot be done as it would amount to dealing in foreign exchange.

(ii) Example pertaining to clause (b) - A PROI has an insurance policy in India. He requests his brother in India to pay the insurance premium. This will amount to payment for the credit of non - resident. This is not permitted.

(iii) Example pertaining to clause (c) - A foreign tourist comes to India and he takes food at a restaurant. He would like to pay US$ 20 in cash to the restaurant. The restaurant cannot accept cash as it will be a receipt otherwise than through Authorised Person. The restaurant will have to take a money changers license to accept foreign currency.

(iv) Example pertaining to clause (d) - Transactions covered by this sub - section are known as Hawala transactions. An Indian resident gives ₹70,000 in cash to an Indian dealer. For this transaction, the brother in Dubai will get US$ 1,000 from a Dubai dealer. The two dealers may settle the transactions later. However, transaction is not permitted.

3.3 Holding of foreign exchange [Section 4]

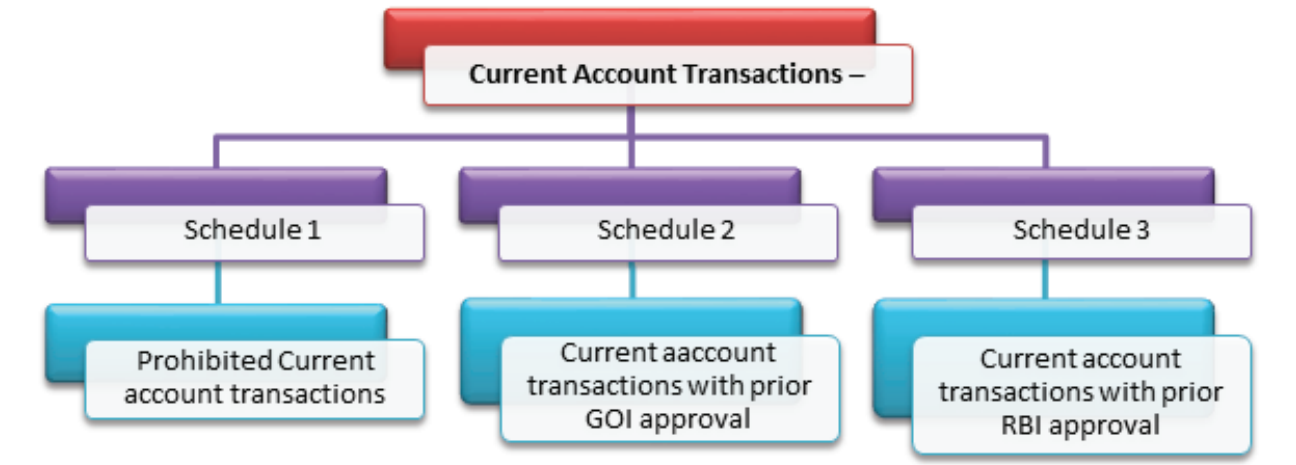
Except as provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

This section prevents India 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 and compliance rules.

Example 10: If an Indian resident receives bank balance of US$ 10,000 from his uncle in London, the Indian resident cannot hold on to the foreign funds. He is supposed to bring back the funds as provided in section 8.

3.4 Current account transactions [Section 5]

Current Account Transactions are governed by Foreign Exchange Management (Current Account Transactions) Rules, 2000



The term 'Current Account Transaction' is defined negatively by Section 2(j) of the Act. It means a transaction other than a capital account transaction and includes the following types of transactions:

(i) Payments in the course of ordinary course of foreign trade, other services such as short-term banking and credit facilities in the ordinary course of business etc.

(ii) Payments in the form of interest on loans or income from investments.

(iii) Remittances for living expenses of parents, spouse, or children living abroad

(iv) Expenses in connection with foreign travel, education etc.

Example –

An Indian resident imports machinery from a vendor in UK for installing in his factory. As per accounts and income-tax law, machinery is a "capital expenditure". However, under FEMA, it does not alter (create) an asset in India for the UK vendor. It does not create any liability to a UK vendor for the Indian importer. Once the payment is made, the Indian resident or the UK vendor neither owns nor is owed anything in the other country. Hence it is a Current Account Transaction.

Example –

An Indian resident imports machinery from a vendor in UK for installing in his factory on a credit period of 3 months. As per accounts and incometax law, for the credit period of 3 months, there is a liability of the Indian importer to the UK vendor. Technically under FEMA also, it is a liability outside India. However, under definition of Current Account Transaction [S. 2(j)(i)], "short -term banking and credit facilities in the ordinary course of business" are considered as a Current Account Transaction. Hence import of machinery on credit terms is Current Account Transaction.

Example –

A Person Resident in India transfers US$ 1,000 to his NRI brother in New York as "gift". The funds are sent from the PRII's Indian bank account to the NRI brother's bank account in New York. Under accounts and incometax law, gift is a "capital receipt". However, under FEMA, once the gift is accepted by the NRI, no one owns or owes anything to anyone in India or USA. The transaction is over. Hence it is a Current Account Transaction.

If gift is a current account transaction, why is there a restriction under Current Account regulations? It is because while there is no restriction on Current Account transactions, some reasonable restrictions can be imposed. Otherwise people may transfer funds abroad under the garb of current account transactions

If however the PRII gives a PROI a gift in India in Indian currency, for the PROI it will result in funds lying in India (alteration of Indian asset). For PRII, there is no creation of asset or a liability. As this transaction creates an asset in India for the PROI, it is a Capital Account transaction. (Under separate rules, giving a gift in India to an NRI is permitted subject to certain rules.

In a similar manner, if a PROI gives a gift to an PRII by remitting funds in India, there is

no restriction. However, if the PROI gives the funds abroad, the resident cannot keep it abroad. He has to bring it to India.

Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction

The Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as prescribed under the FEM (Current Account Transactions) Rules, 2000

The general rule to be understood is that Current Account transactions are freely permitted unless specifically prohibited and Capital Account transactions are prohibited unless specifically or generally permitted

Section 5 of the Act permits any person to sell or draw Foreign Exchange to or from an Authorised person to undertake any current account transaction. The Central Government has the power to impose reasonable restrictions, in consultation with the RBI and in public interest on current account transactions. The Central Government has in exercise of this power issued the Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Let us now see the various schedules to the Rules that lay down the restrictions:

3.6. 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 the requirement of dividend balancing is applicable.

(vi) Payment of commission on exports under Rupee State Credit Route, 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 Non-resident Special Rupee Scheme a/c.

II. SCHEDULE II –

Transactions, which require prior approval of the 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 the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs
Ministry of Finance, Department of Economic Affairs	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport by a 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-modaltransport operators making remittance to their agents abroad	Registration Certificate from the Director General of Shipping
Remittance of hiring charges of transponders by TV Channels Internet service providers	Ministry of Information and Broadcasting Ministry of Communication and Information Technology
Remittance of container detention charges exceeding the 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 a person other than International / National / State Level sports bodies, if the amount involved exceeds US $ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)
Remittance for membership of P & I Club	Ministry of Finance (Insurance Division)

SCHEDULE III –

1) Permissible Current Account Transactions by an individual –

Type of transaction	Limits
Private visit (other than Nepal & Bhutan)	• Resident individual can obtain foreign exchange up to an aggregate amount of USD 2,50,000, from an Authorised Dealer, in any one financial year • Number of visits does not matter
Gift or Donation	Any resident individual may remit up-to USD 2,50,000 in one Financial Year as gift to a person residing outside India or as donation to an organization outside India.
Going outside India for employment	A person going abroad for employment can draw foreign exchange up to USD 2,50,000 per Financial Year from any Authorised Dealer in India.
Emigration	A person wanting to emigrate can draw foreign exchange from AD Category I bank – Upto 2,50,000 USD Or Amount prescribed by the country of emigration ↓ Whichever is higher
Maintenance of close relatives abroad	A resident individual can remit up-to USD 2,50,000 per Financial Year towards maintenance of close relatives.
Business trip	• For business trips to foreign countries, resident individuals can avail of foreign exchange up to USD 2,50,000 in a Financial Year • Number of visits does not matter
Medical treatment abroad	• Authorised Dealers may release foreign exchange up to an amount of USD 2,50,000 without any estimation from the doctor. • In case of higher amount, authorised dealer may release amount after receiving estimation from doctor in India / foreign • amount up to USD 250,000 per financial year is allowed to attendant also.

Facilities available to students for pursuing their studies abroad	• AD may release foreign exchange up to USD 2,50,000 to resident individuals for studies abroad without any estimation from the foreign University • In case of higher amount, authorised dealer may release amount after receiving estimation from foreign university

1) Any additional remittance in excess of the said limit for the said purposes shall require prior approval of the Reserve Bank of India.
2) Further, if an individual remits any amount under the said Liberalised Remittance Scheme in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 (US Dollars Two Hundred and Fifty Thousand Only) by the amount so remitted.

Further, that for a person who is resident but not permanently resident in India and –

a) is a citizen of a foreign State other than Pakistan; or
b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed three years, is a resident but not permanently resident:

Further, a person other than an individual may also avail of foreign exchange facility, mutatis mutandis, within the limit prescribed under the said Liberalised Remittance Scheme for the purposes mentioned herein above.

2) Remittance Facilities to Persons Other Than Individuals –

Gift/donation –
Person other than individuals can remit by way of donation for creation of Chairs in reputed educational institutes.

Contribution can be made to –

1) creation of Chairs in reputed educational institutes,; and
2) funds (not being an investment fund) promoted by educational institutes; and
3) Technical institution or body or association in the field of activity of the donor Company.

↓

Limits of contribution –

1% (foreign exchange earnings during the previous 3 financial years)

or

USD 5,000,000

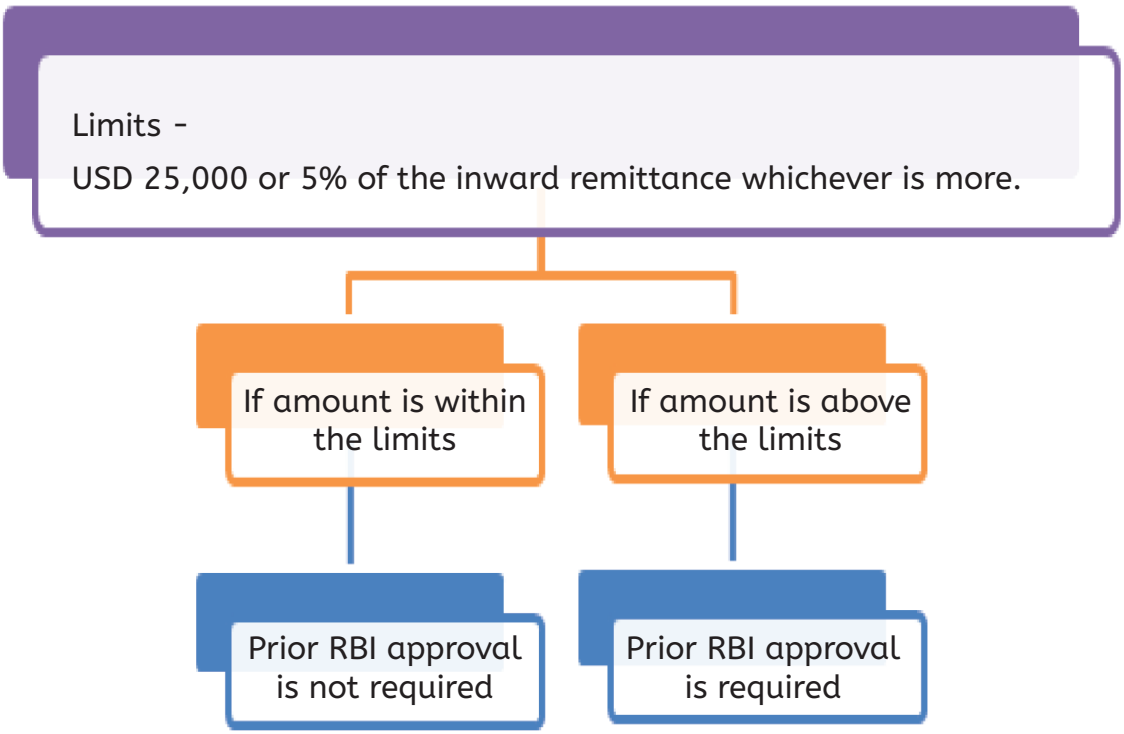
↓

Whichever is less

remittance in excess of the above limits shall require prior approval of the RBI.

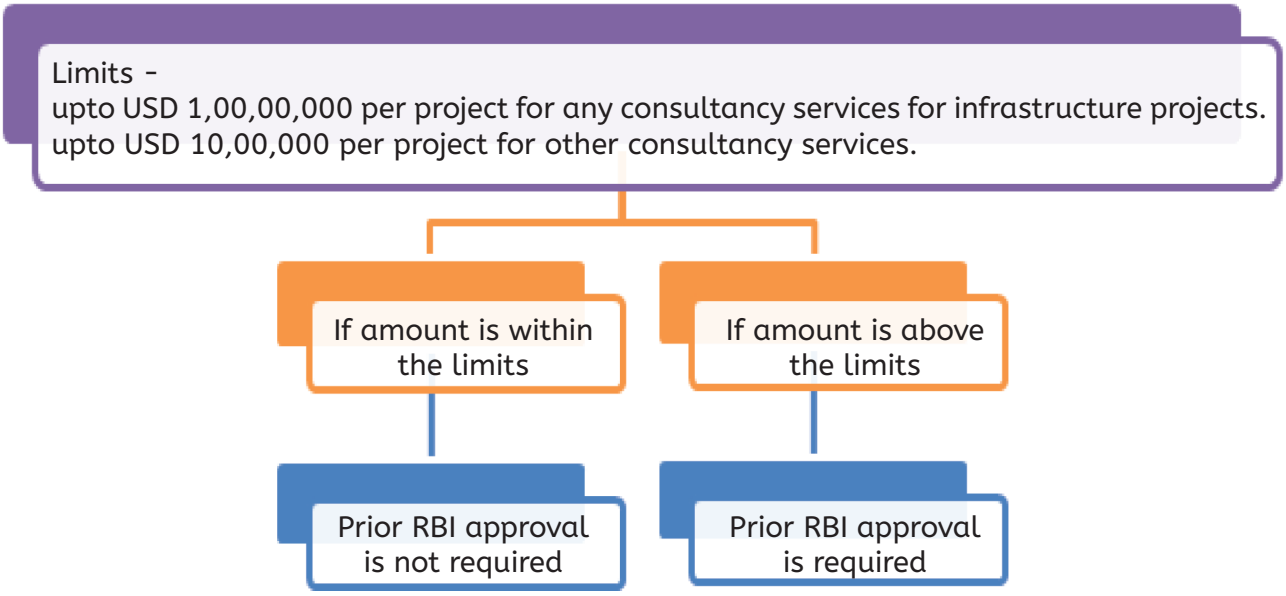
Commission to agents abroad for sale of residential flats or commercial plots in India –

Person other than Individuals can remit commission to agents abroad for sale of residential flats or commercial plots in India



Remittances towards consultancy services –

Person other than Individuals can remit consultancy services for consultancy services procured from outside India.



Remittances towards re-imbursement of pre-incorporation expenses –

- Remittances by persons other than individuals for reimbursement of pre-incorporation expenses , by an entity in India is allowed.
- If remittance exceed 5% of investment brought into India or USD 100,000 whichever is higher, the prior RBI approval is required.

3) Procedure–

a) The procedure for drawal or remittance of any foreign exchange under this schedule shall be the same as applicable for remitting any amount under the said Liberalised Remittance Scheme

b) If the transaction is not listed in any of the above three schedules, it can be freely undertaken.

c) Exemption for remittance from RFC Account –

No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from an RFC account.

d) Exemption for remittance from EEFC Account –

If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from EEFC account, then also no approval is required.

However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account –

- Remittance for membership of P & I Club
- Commission, per transaction, to agents abroad for sale of residential flats

or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses

e) Exemption for payment by International Credit Card while on a visit abroad – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card

Note: Liberalised Remittance Scheme (LRS): Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both. This is inclusive of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of Foreign Exchange Management (CAT) Amendment Rules 2015, dated May 26, 2015.

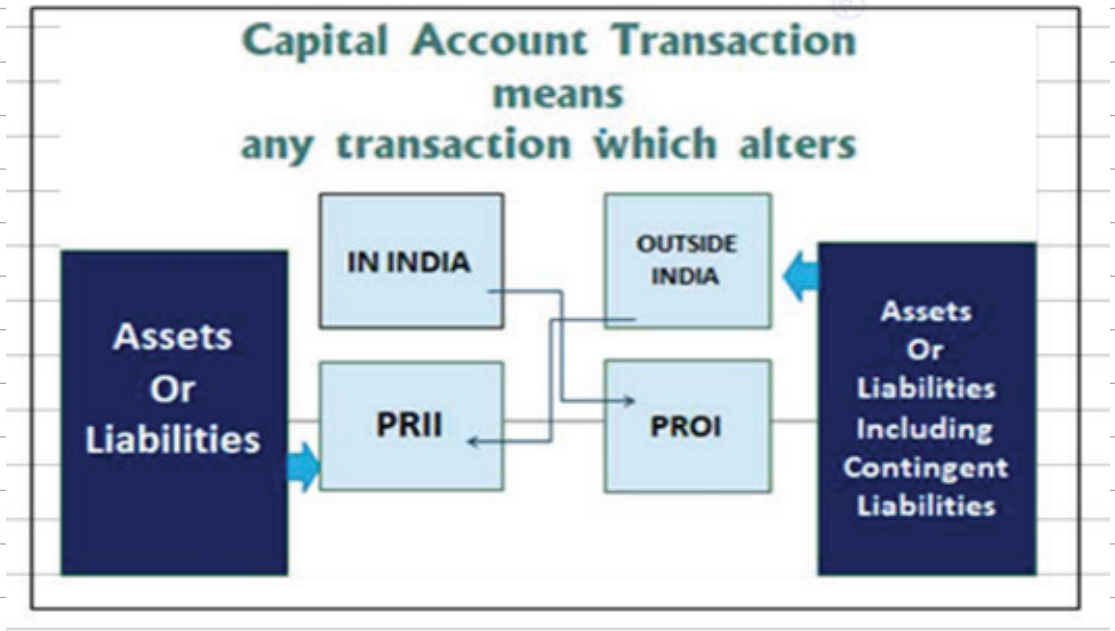
In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian. The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.

Consolidation of remittance of family members - Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.

Exception: Clubbing is **not permitted** by other family members for **capital account transactions** such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account/investment/property.

3.7 Capital account transactions [Section 6]

Capital Account Transactions means "A transaction which alters the assets or liabilities including contingent liabilities outside India of persons resident in India or assets or lia bilities in India of persons resident outside India would be a capital account transaction."



Capital Accounts Transaction in India can be carried out only to the extent permitted because Indian Rupee is not yet fully convertible. Capital and current account transactions are intended to be mutually exclusive. A transaction which alters the asset or liabilities in India of non-residents falls under the category of capital account. However, as far as residents are concerned transactions which alter the contingent liabilities outside India are also capital account transactions. The Reserve Bank of India 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) Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

2) Reserve Bank had the power to specify the Capital Account transactions which are permitted and the relevant limits, terms and conditions. By Finance Act 2015, powers for regulation of Capital Account Transactions for Non-debt instruments were transferred to Central Government. RBI continued to have powers to regulate debt instruments. The amendments have however been made effective from 15th October 2019. Now the regulations are as under:

The Reserve Bank may, in consultation with the Central Government, specify –

(a) any class or classes of capital account transactions, 5involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions;

(c) any conditions which may be placed on such transactions;

Provided that the Reserve Bank or the Central Government shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business

RBI has issued notification for Debt instruments specifying the terms and conditions. These regulations for foreign investment in debt instruments. For investment by Indian residents outside India, RBI continues to have power to regulate the transactions for equity and debt.

The Central Government may, in consultation with the Reserve Bank, prescribe–

(a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;

(b) the limit up to which foreign exchange shall be admissible for such transactions; and

(c) any conditions which may be placed on such transactions.

Central Government has issued notification for Non-debt instruments specifying the terms and conditions. RBI has issued notification for mode of payment and reporting of Non-debt instruments

3) Before 15th October 2019, S. 6(3) specified a list of capital account transactions which could be regulated by RBI [apart from the general powers which it had under S. 6(2)]. This list has now been deleted from 15th October 2019.

4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. The RBI vide A.P. (DIR Series) Circular No. 90 dated 9thJanuary, 2014 has issued a clarification on section 6(4) of the Act. This circular clarifies that section 6(4) of the Act covers the following transactions:

(i) Foreign currency accounts opened and maintained by such a person when he was resident outside India;

(ii) 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 a person was resident outside India;

(iii) Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in

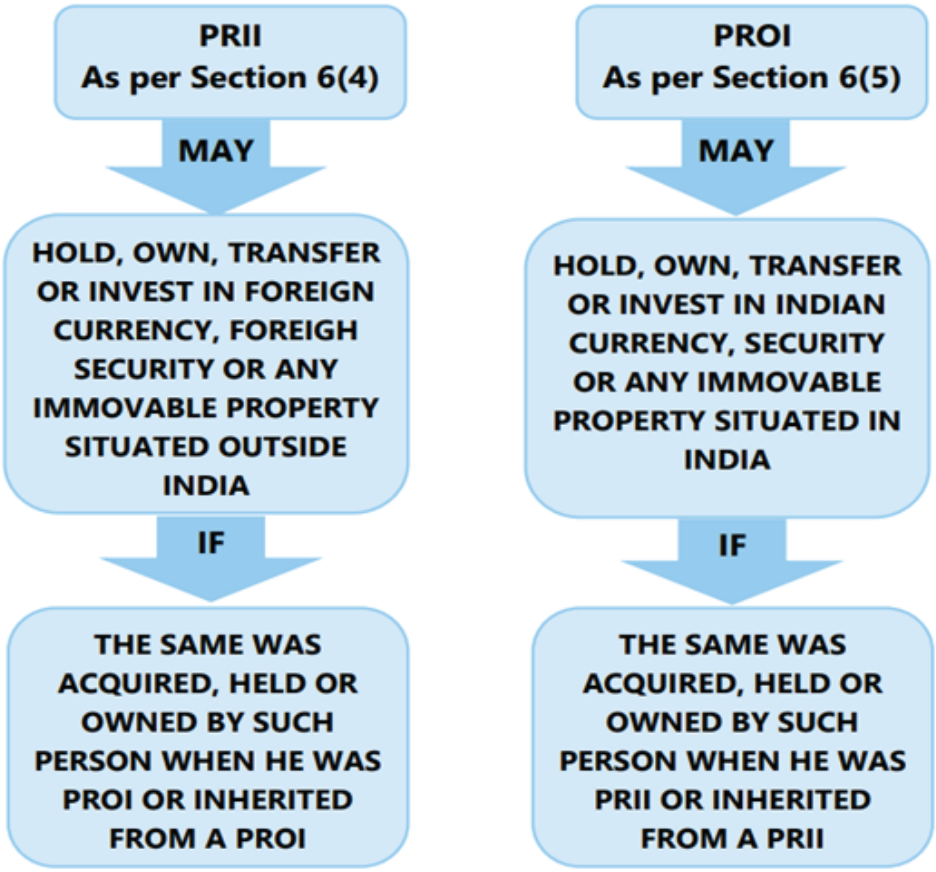
India acquired by way of inheritance from a person resident outside India.

(iv) A person resident in India 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 any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions.

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

6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business

Capital Account Transactions [Sec. 6(4) & 6(5)]



7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the Central Government in consultation with the Reserve Bank.

A capital account transaction as stated earlier is a transaction, which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or persons resident outside India. The section gives a liberty by providing that any person may sell or draw foreign exchange to or from an authorised person for capital account transactions. However, the liberty to do so is subject to the provisions of sub-section (2) and (2A), which states that the Reserve Bank and the Central Government may specify class or classes of capital account transactions, which are permissible limit upto, which the foreign exchange shall be admissible for such transactions and the conditions which may be placed on such transactions.

Capital account transaction is basically split into the following categories under Foreign Exchange Management (Permissible capital account transactions) Regulations, 200011 -:

(I) transaction, which are permissible in respect of persons resident in India and outside India.

(II) transaction on which restrictions cannot be imposed; and

(III) transactions, which are prohibited.

I. Permissible Transactions Under Section 6(2), the RBI has issued the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000. The Regulations specify the list of transaction, which are permissible in respect of persons resident in India in Schedule-I and the classes of capital account transactions of persons resident outside India in Schedule-II

Further, subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules; provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.

SCHEDULE I –

The list of permissible classes of transactions made by persons resident in India is:

(a) Investment by a person resident in India in foreign securities.
(b) Foreign currency loans raised in India and abroad by a person resident in India.
(c) Transfer of immovable property outside India by a person resident in India.
(d) Guarantees issued by a person resident in India in favour of a person resident outside India.
(e) Export, import and holding of currency/currency notes.
(f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
(g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
(h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
(i) Loans and overdrafts by a person resident in India to a person resident outside India.
(j) Remittance outside India of capital assets of a person resident in India.
(k) Undertake derivative contracts.

SCHEDULE II –

The list of permissible classes of transactions made by persons resident outside India is –

(a) Investment in India by a person resident outside India, that is to say, (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and (ii) investment by way of contribution by a person resident outside India to the capital o f a firm or a proprietorship concern or an association of a person in India.
(b) Acquisition and transfer of immovable property in India by a person resident outside India.
(c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
(d) Import and export of currency/currency notes into/from India by a person resident outside India.
(e) Deposits between a person resident in India and a person resident outside India.
(f) Foreign currency accounts in India of a person resident outside India.
(g) Remittance outside India of capital assets in India of a person resident outside India.
(h) Undertake derivative contracts

Transactions with no restriction –

(1) For amortisation of loan and

(2) For depreciation of direct investments in ordinary course of business.

Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments.

Prohibited Transactions –

On certain transactions, the Reserve Bank of India imposes prohibition.

(a) no person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction,

provided that –

i. subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule

Explanation: Drawal of foreign exchange as per item number 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above.

ii. Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds USD 250,000 per financial year, or as decided by Reserve Bank from time to time as the case may be, the l imit specified in the regulations relevant to the transaction shall apply with respect to such drawal.

Provided further that no part of the foreign exchange of USD 250,000, drawn under proviso (a shall be used for remittance directly or indirectly to countries notified as non co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the Reserve Bank of India to all concerned

(b) The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage –

- In the business of chit fund; 15[Registrar of Chits or an officer authorised by the state government in this behalf, may, in consultation with the State Government concerned, permit any chit fund to accept subscription from Nonresident Indians.

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

- As Nidhi company;
- In agricultural or plantation activities;
- In real estate business, or construction of farm houses or

Explanation: In "real estate business" the term shall not include development of townships, construction of residential /commercial premises, roads or bridges and

- In trading in Transferable Development Rights (TDRs).

Explanation –

(c) No person resident in India shall undertake any capital account transaction which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs, with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction.

(d) The existing investment transactions, with any person who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs shall be closed/ liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the Central Government to continue beyond that period."]

Thus, a capital account transaction is permitted only if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.

SUMMARY

Flow

1. Definition
2. Section 3 – Restriction in dealing with forex
3. Section 4 – Restriction on transfer, acquiring or holding immovable property outside India, foreign security and foreign currency
4. Capital account transaction
5. Current account transaction
6. Schedule I, II, III of current account transaction
7. Schedule I, II, III of capital account transaction
8. Adjudicating authority
9. Export
10. Authorized person
11. Penalty
12. Compounding of offences
13. Setting up of branch in India

I. DEFINITION

Currency : includes notes, coins, cheques, postal order, traveller's cheque, money order, ATM, Debit Card or credit card.

Foreign Currency : Any currency other than Indian currency.

Foreign Exchange :

1. BOE/Promissory note drawn in India payable outside India (e.g. destination)
2. BOE/Promissory note drawn outside India payable in India (e.g. source).
3. Bank balance maintained by NR in India (e.g. ownership)

Person

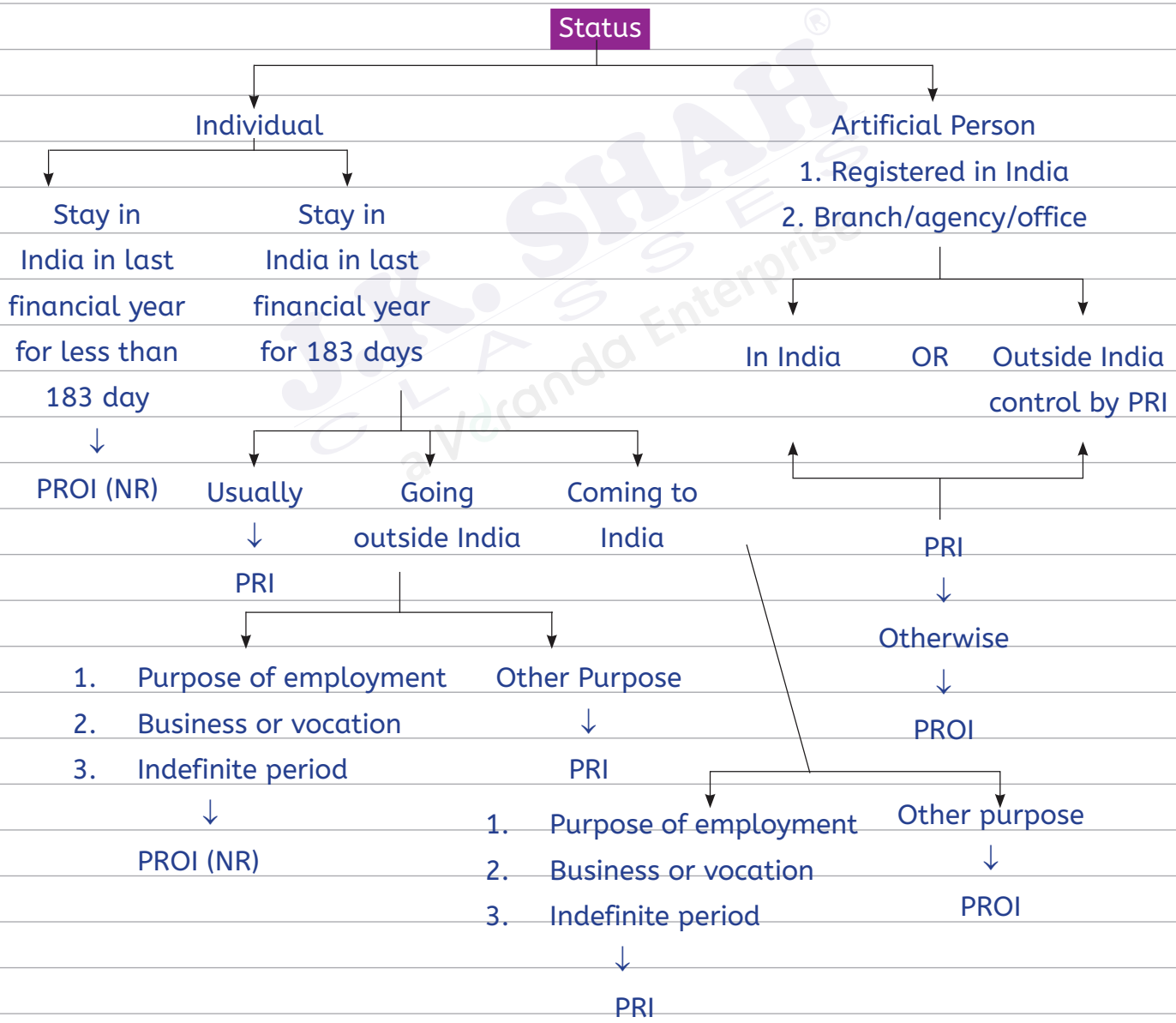
- Individual
- HUF
- Partnership firm
- Company
- Branch, agency, office
- AOP
- BOI
- Artificial judicial person
- LLP

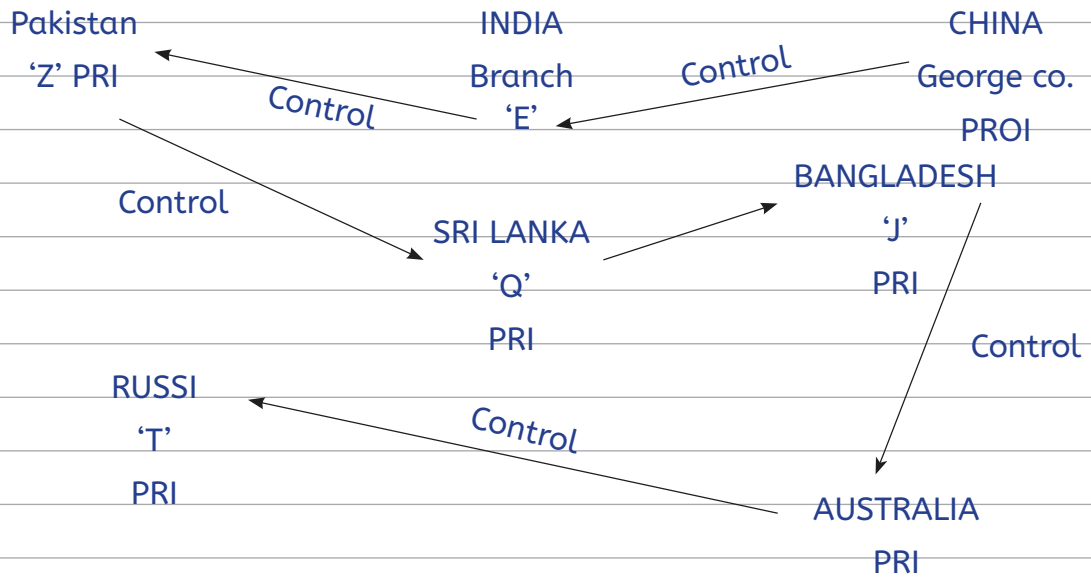
Foreign Security : Any security expressed in foreign currency is a foreign security.

	Preceding Year (FY 16-17)	Current Year (FY 17-18)	Status (FY 17-18)
1.	184 days	Going honeymoon (HM)	PRI
2.	180 days	Going HM	PROI
3.	184 days	Going employment	PROI
4.	180 days	Going HM	PROI
5.	184 days	-	PRI
6.	184 days	Coming employment	PRI
7.	184 days	Coming education	PROI
8.	180 days	Coming medical	PROI
9.	180 days	Coming employment	PROI

PROI – Person Resident Outside India

PRI – Person Resident in India





Sec. 3 - Restriction for dealing in forex

Sec. 3(a)	Sec. 3(b)	Sec. 3(C)	Sec. 3(d)
Restriction to deal in forex with any person other than authorised person	Restriction to make payment on behalf of PROI	Restriction to receipt on behalf of PROI	Enter into financial transaction (BOE/Promissory note) in India due to which Assets/Liabilities outside India get alter

*** Other Section**

Sec. 4: Restriction for Transfer / Acquired / Holding immovable property outside India / Foreign Security or Foreign Currency

Immovable property outside India	Foreign Security	Foreign Currency
Exception	Exception	Exception
1. Acq. when person was PROI (NR)	1. Acq. when person was PROI (NR)	1. Acq. on or before 8 July, 1947
2. Acq. by way of Gift / inheritance	2. Acq. by way of Gift / inheritance	2. Held by authorised person

3. Acq. out of Resident (RFC) Foreign Currency A/c	3. Acq. out of Resident (RFC) Foreign Currency A/c	3. Held in RFC/EEFC
4. Lease upto 5 years		4. Held as hobby
		5. Upto US $ 2000 from - Service rendered o/s India - Gift / inheritance - Honorarium - Unspent foreign travel

EEFC – Exchange Earner Foreign Currency Account

Capital Account Transaction:

Resident – Any transaction entered due to which assets / liability including contingent liability outside India get alter.

Non-Resident – Any transaction due to which Asset and Liability (does not include contingent liability) in India get alter.

Current Account Transaction

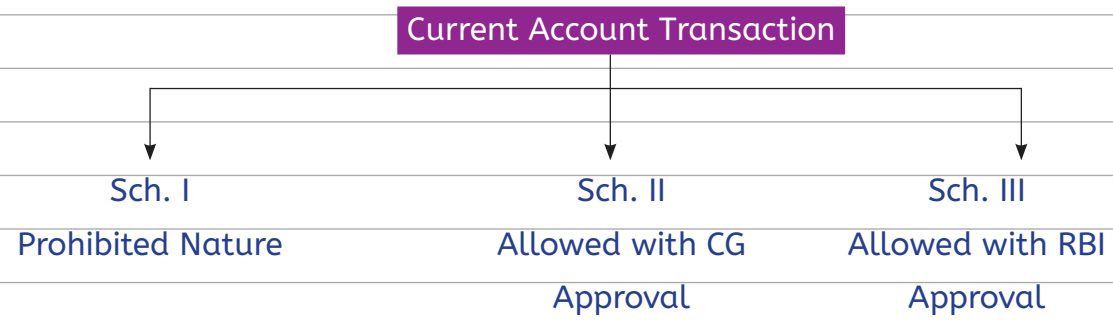
Any transaction other than capital account transaction

↓

Revenue Nature

E.g.

- Foreign trade payment, current service, etc.
- Short term credit facility, etc.
- Interest on loan
- Living expenses of parents, wife, children, etc.
- Expenses for foreign travel, etc.



If transaction does not fall in any of the above 3 categories then that transaction is freely

allowed.

Sch. I – Prohibited Transaction

1. Remittance out of lottery winning.
2. Remittance out of horse race, riding, etc. or any other hobby (casual income like camel race)
3. Remittance for purchase of lottery tickets, football, pool, sweepstake, banned or prescribed magazine, etc.
4. Payment of dividend where dividend balancing is required. (Dividend to foreign partner can be paid only upto the foreign earnings earned previously in foreign Exchnage.

Note: Clarification

In absence of any information dividend balancing is not applicable and can freely pay dividend.

5. Remittance for payment of commission on export made towards equity investment in joint venture or wholly owned subsidiary.
6. Payment of commission on export made under rupee state credit route.

Logic

E.g. Formers supply grains to Russia and India pays to farmer. Russia reduces liability of India Indian government pays to farmers in INR. It won't allow to pay commission as there is no receipt of foreign currency.

Exception

Except tea and tobacco upto 10% of invoice value.

7. Payment under call back services
8. Payment of interest on NRSR (Non Resident Special Rupee Account)

Sch. II – Transaction require approval of Central Government

1. Cultural tour / troupe
2. Advertisement in foreign print media
   Except tourism, international bidding, foreign investment, exceeding US $ 10,000
3. Remittance for freight of vessel chartered by PSU.
4. Remittance for import through ocean transport by government or PSU on CIF basis (i.e. other than FOB, FAS basis).
5. Payment of container detention charges exceeding rate given by Director General of

Shipping.

6. Remittance by multimodal transport operator to their agent abroad.
7. Remittance for prize money or sponsorship by person other than international, national or state sports level bodies, exceeding $ 100,000.
8. Remittance for payment of transponders by TV channel or internet service provider.
9. Remittance for membership of P & I Club.

Note

When payment made by RFC A/c, then approval not required.

Sch. III – RBI Approval

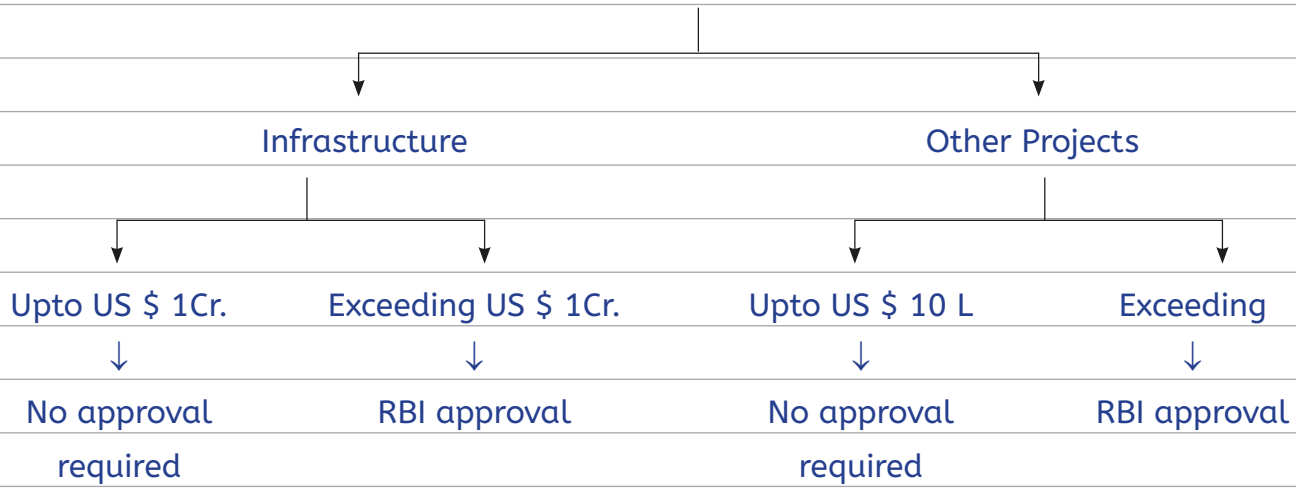
LRS - Liberalised Remittance Scheme
- Individual
- Upto US $ 250000 p.a. (per person per year) allowed without RBI approval

Individual

1. Gift
2. Private visit except for Nepal and Bhutan
3. Donation
4. Employment
5. Emigration / Education / Medical
   - Upto Estimation No Approval Req.
6. Family Maintenance Expense
   upto net salary (exceeding amount requires approval)
   Applicable to N-ROR
   Who stays in India upto 3 years as per this Act.
   Applicable to those who is in India for deputation (except Pakistan National)
7. Business conference / attendant expenses / patient maintenance expense.

Sch. III Person other than Individual

1. Consultancy charges



2. Corporate Donation

= Chair
= Educational institute
= Related to donor business
= Not Investment Fund

3. Commission on sale of plot in India

- 1) Upto 5% Foreign Exchange brought
- 2) US $ 25000 → No approval required
- Exceeding limit → RBI approval

Person other than individual

4. Pre Incorporation Expenses

- Upto 5% Inward Remittance US $ 100000 → No Approval
- Exceeding 5% → RBI Approval Require

Capital Account

Schedule I Permissible transaction for PRI with RBI approval		Schedule II Permissible transaction for PROI with RBI approval	
1. Foreign Security	In India or Outside India	1. Capital Asset	In India
2. Foreign Derivative		2. Immovable property	
3. Foreign currency loan		3. Investment	
4. Foreign Current Account (EEFC)		4. Foreign Current Account	
5. Capital Asset	Outside India	5. Deposits (given/taken)	PRI
6. Immovable property		6. Guarantee (favour)	
7. Commodity derivative		7. Currency/Import/Export/Hold	
8. Loan (given/taken)	With/from PROI		
9. Guarantee (favor)			
10. Currency/Import/Export/Hold			
11. Insurance from Insurance company outside India			

Transaction

Freely Allowed	Schedule III Prohibited for PROI
1. Amortisation of loan (Repayment of loan, Principal amount)	Investment in entity engaged in 1. Nidhi Co. 2. Chit Fund 3. Agricultural and plantation activities 4. Real estate 5. Trading in transferable development right (TDR) Real estate does not include - Development of township - Commercial or residential premises - Road and bridges
2. Depreciation in direct investment abroad	