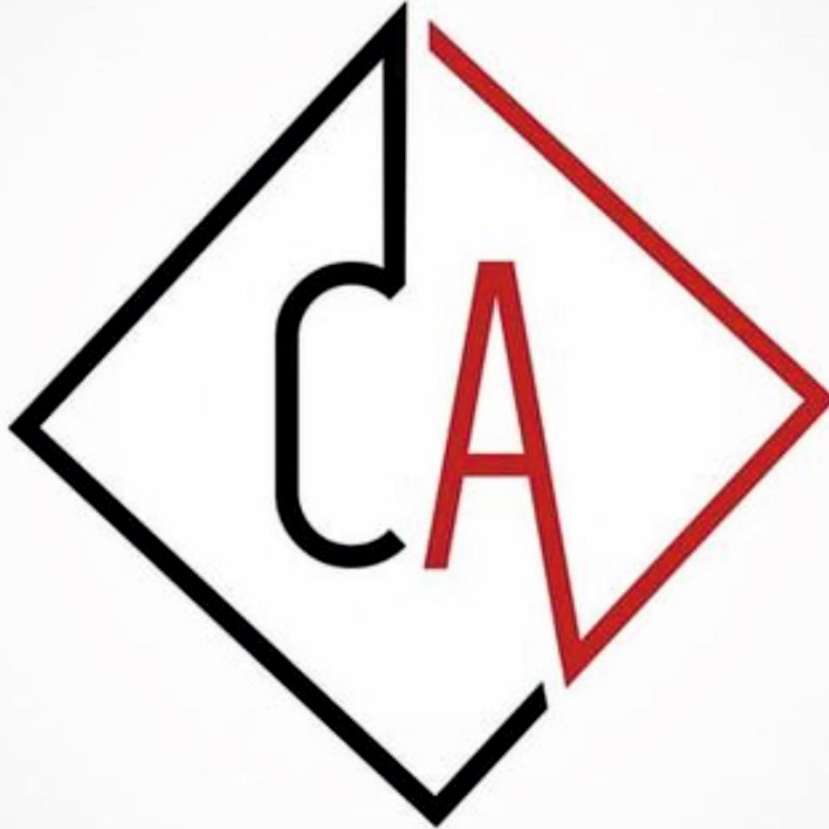


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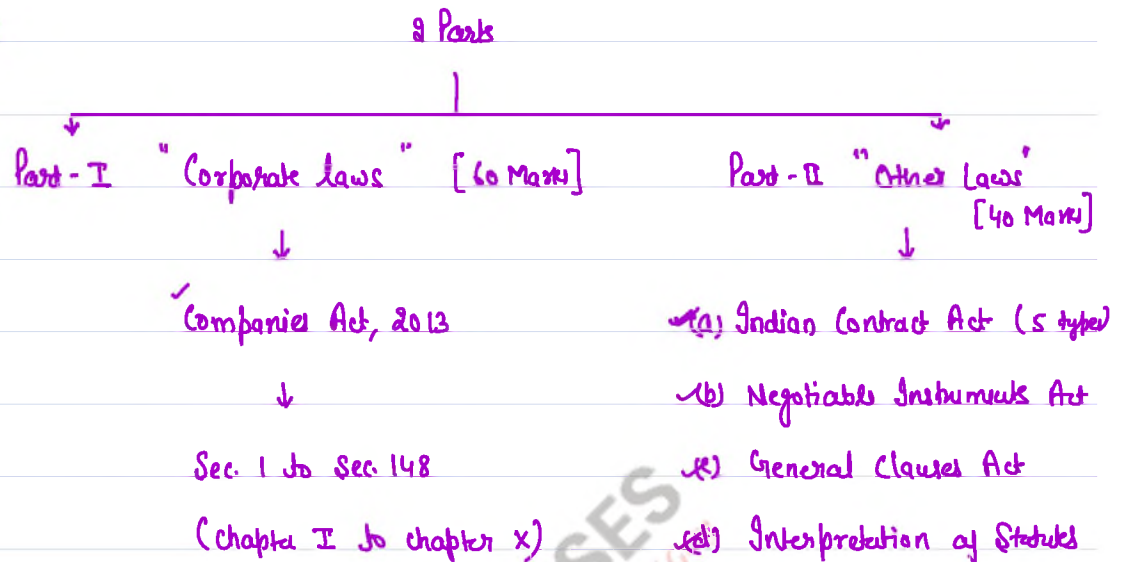
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@ACE_CAEXAMS

Inter-Law "Corporate and other Laws"

① Syllabus:



② Exam Pattern: (a) Descriptive Questions (70 Marks) - Theory Questions and Case Studies
(b) MCQ (30 Marks) - Individual MCQs and Integrated Case Studies

③ Books: (a) Main Book → Concepts + Questions
(b) Cracker → Q/A + MCQ + Integrated Case Studies

④ Sections, Subsection and clauses:

- Provisions of an Act are divided into various Parts and each such part is known as Section.
 - A Section may be divided into sub-sections or clauses, as the case may be.
- Ex. Sec. 2: Definitions | Interpretation:

Situation 1: Sec. 2: Interpretation

(1)
(2)

Sub-section
Chartered Accountants Act

Situation 2: Sec. 2: Definition: In this Act, unless context otherwise requires:

(1)

(2)

(3)

Clauses:
Companies Act, 2013

⑤ Section 1: Short title, Extent, Commencement and Application:

Explanation as to applicability:

Example:

X Ltd. (Trading Business)

Y Bank Ltd.

Z Electricity supply Ltd.

A Insurance Ltd.

B Ltd. (Telecom)

Incorporation

Companies Act ✓

"

"

"

"

Governing law

-

Banking Reg. Act. ✓

Electricity supply Act ✓

Insurance Act / IRDA ✓

Special Act. ✓

Note: In case of any inconsistency among provisions of Companies Act, 2013 and the Governing law, provisions of governing law shall prevail.

Example:

LIC of India - Incorporated under LIC India Act

GIC

-

"

GIC Act

SBI

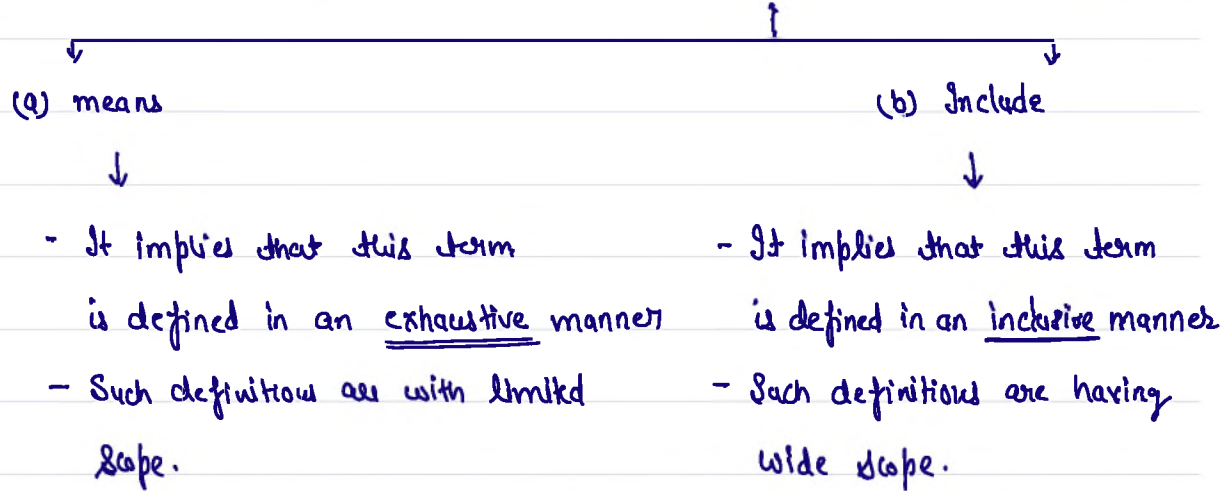
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"

SBI Act.

Body Corporates

⑥ Basics of Definitions: Terms as defined in an Act, generally starts with

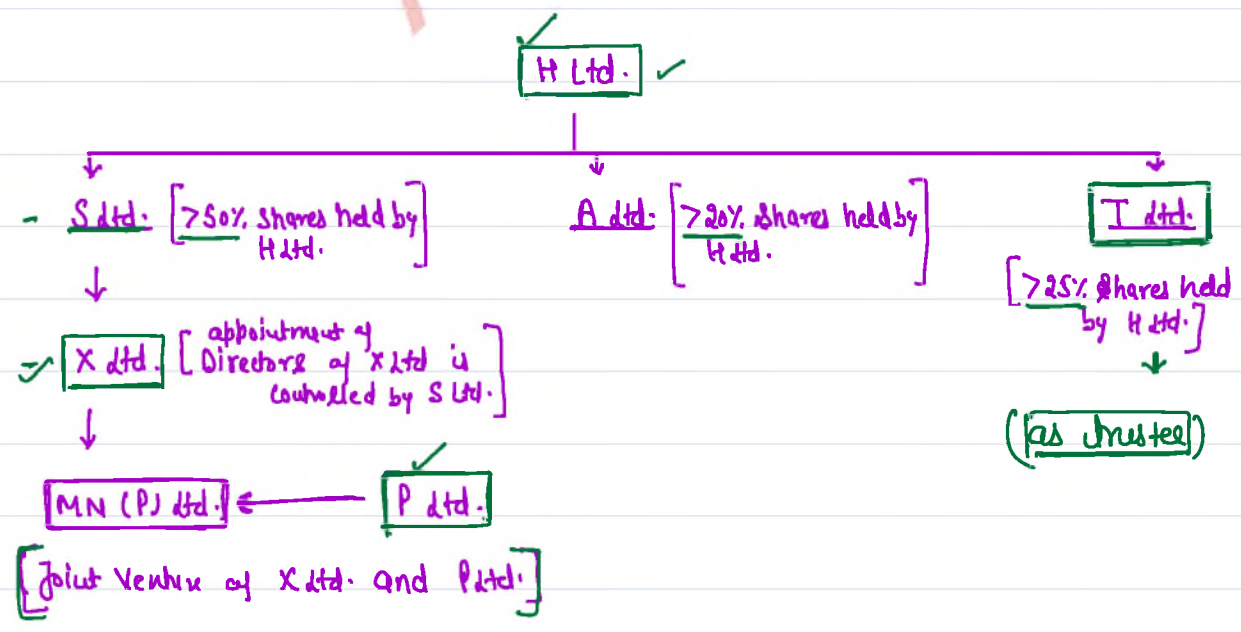


Ex: definition of "Chartered Accountant" under Companies Act, 2013

Ex: definition of "Books of Accounts" under Companies Act, 2013.

⑦ Definitions: (Sec. 2) - to be covered from main book -

(a) Associate Company, Holding Company and Joint Venture:



Relationship between H Ltd. and S Ltd. → Holding and Subsidiary

S Ltd. and X Ltd. → " and "

H Ltd. and X Ltd. → " and "

H Ltd. and A Ltd. → " and Associate

S Ltd. and A Ltd. → Related Party

X Ltd. and A Ltd. → " "

MN (Pvt. Ltd.) → Associate company of

X Ltd. and P Ltd.

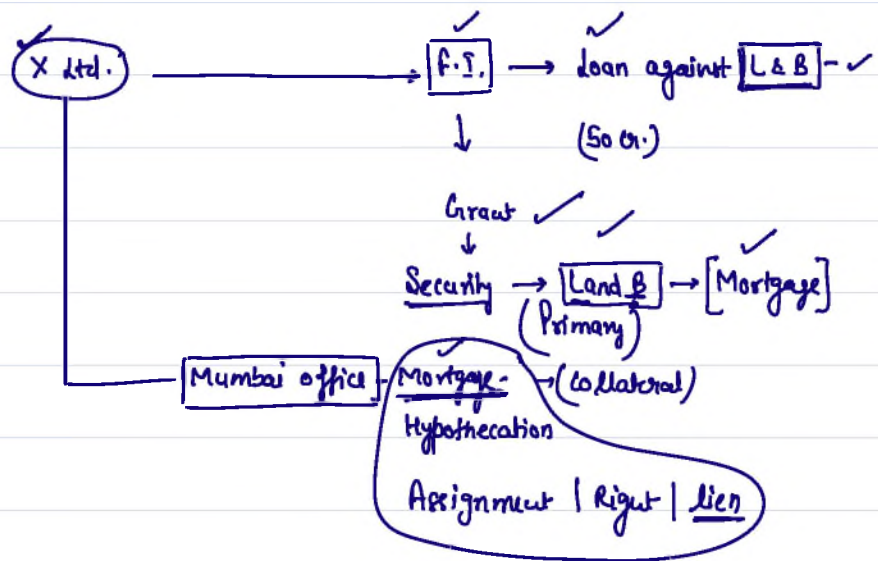
H Ltd. and T Ltd. → No relationship as

shares held by H Ltd.

in capacity of Trustee.

- (b) ✓ Authorised Capital → 10,00,000 × 10 = 1 Cr.
- ✓ Issued " → 5,00,000 × 10 = 50 Lakhs
- ✓ Subscribed " → 4,80,000 × 10 = 48 Lakhs
- ✓ Called-up " → 4,80,000 × 5 = 24 Lakhs
- ✓ Paid-up Capital → call in Arrears (4 Lakhs) = 20 Lakhs

(c) Charge:



- (d) Chartered Accountant - Membership - Employment or Statutory Audit
Company Secretary - " - " or Secretarial Audit
Cost Accountant - " - " or Cost Audit

(e) Company: means - Companies incorporated under this Act; and
" " " previous company law.

Note: Companies incorporated under the provisions of laws of other countries (i.e. foreign companies) are not considered as Company under Companies Act, 2013. Such companies are covered within the meaning of the term "Body Corporate".

(k) Books of A/c v. Financial Statement :

	Books of A/c	Financial Statement
(i)	Defined U/s <u>2(13)</u> .	Defined U/s <u>2(46)</u> .
(ii)	Comprises of records of : (a) Receipts and Payment (b) Sales and Purchases (c) Assets and Liabilities (d) Material, labour and other items of cost	Comprises of following statements (a) Balance Sheet (b) Profit & Loss A/c / G & E A/c / SPL (c) Cash flow statement (d) Statement of Changes in Equity (e) Explanatory Notes
(iii)	Provisions relating to Maintenance of A/c are covered U/s <u>128</u> .	Provisions relating to preparation of F.S. are covered U/s <u>129</u> .

(l) financial year: sec. 2(41) :

Date of Incorporation	First FY	<u>2nd FY</u> ↴
- 15.06.2022	15.06.2022 - 31.03.23	01.04.2023 - 31.03.2024
- 15.10.2022	15.10.2022 - 31.03.23	01.04.2023 - 31.03.2024
- 10.01.2023	10.01.2023 - 31.03.24	01.04.2024 - 31.03.2025
- 18.03.2023	18.03.2023 - 31.03.24	01.04.2024 - 31.03.2025

Q. : Whether first FY of a company can be less than or more than period of 12 months. (YES)

Ex. **X Inc.** is incorporated in India and is following the year from

01-Jan. to 31-Dec. as its financial year.

X Inc. is having a wholly owned subsidiary in India **S (P) Ltd.**
 For the purpose of consolidation of F.S. X Inc. required **S (P) Ltd.**
 to follow Jan - Dec. as its financial year.
 Comment whether it is feasible.

Ans: Yes, S (P) Ltd. is required to make an application to the Central Govt. to allow the company to follow Jan-Dec. as its financial year due to consolidation requirements of its holding company X Inc.

(c) Govt. Co. - Sec 2(195):

Any company

✓ In case $\geq 51\%$ of share held by

I

✓ which is a sub. of a

II

- C.G.

AND

Govt. company

($> 50\%$)

- One or more S.G.

- C.G. + one or more S.G.

Exe	C.G.	S.G.	Govt. Co.	Public	Remarks
A Ltd.	10%	-	-	30%	Govt. Co.
B Ltd.	40%	80%	10%	30%	'
C Ltd.	40%	-	30%	30%	Not a Govt. Co.
D Ltd.	-	-	55%	45%	Govt. Co.
E Ltd.	30%	80%	50%	-	Not a Govt. Co.
F Ltd.	30%	10%	55%	5%	Govt. Co.

Hint: - Written practice of two questions.

Analysis of definition of term "Officer" under the Companies Act, 2013

Sec. 2(59) - "Officer" includes any

director,
manager
or
key managerial personnel
or
any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

Meaning of Director	Meaning of Manager		Meaning of Key Managerial Personnel																			
<p>Sec. 2(34): "director" means a director <u>appointed</u> to the Board of a company</p> <p>Sec. 2(10): "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.</p>	<p>Sec. 2(53): "manager" means an <u>individual</u> who,</p> <p>⇒ subject to the superintendence, control and direction of the Board of Directors,</p> <p>⇒ has the <u>management of the whole, or substantially the whole</u>, of the affairs of a company,</p> <p style="text-align: center;">and</p> <p>⇒ includes a director, or</p> <p>⇒ any other person occupying the <u>position of a manager</u>, by whatever name called, whether under a contract of service or not.</p>		<p>Sec. 2(51): "key managerial personnel", in relation to a company, means—</p> <p>(i) the Chief Executive Officer or the managing director or the manager;</p> <p>(ii) the company secretary;</p> <p>(iii) the whole-time director;</p> <p>(iv) the Chief Financial Officer;</p> <p>(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</p> <p>(vi) such other officer as may be prescribed.</p>	<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Meaning of Terms used in definition of "KMP"</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #FFD700;">CEO</td> <td style="background-color: #FFD700;">Sec. 2(18)</td> <td style="background-color: #FFD700;">"Chief Executive Officer" means an officer of a company, who has been <u>designated</u> as such by it;</td> </tr> <tr> <td style="background-color: #FFD700;">Managing Director</td> <td style="background-color: #FFD700;">Sec. 2(54)</td> <td style="background-color: #FFD700;">"managing director" means a director who, by ⇒ virtue of the <u>articles</u> of a company or ⇒ an <u>agreement</u> with the company or ⇒ a <u>resolution</u> passed in its general meeting, or by its Board of Directors, is entrusted with <u>substantial powers of management</u> of the affairs of the company and includes a director occupying the <u>position of managing director</u>, by whatever name called.</td> </tr> <tr> <td style="background-color: #FFD700;">Manager</td> <td style="background-color: #FFD700;">Sec. 2(53)</td> <td style="background-color: #FFD700;">Already defined</td> </tr> <tr> <td style="background-color: #FFD700;">Company Secretary</td> <td style="background-color: #FFD700;">Sec. 2(24)</td> <td style="background-color: #FFD700;">"company secretary" or "secretary" means a company secretary as defined in Sec, 2(1) (c) of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.</td> </tr> <tr> <td style="background-color: #FFD700;">Whole Time Director</td> <td style="background-color: #FFD700;">Sec. 2(94)</td> <td style="background-color: #FFD700;">"whole-time director" <u>includes</u> a director in the whole-time employment of the company.</td> </tr> <tr> <td style="background-color: #FFD700;">Chief Financial officer</td> <td style="background-color: #FFD700;">Sec. 2(19)</td> <td style="background-color: #FFD700;">"Chief Financial Officer" means a person <u>appointed</u> as the Chief Financial Officer of a company.</td> </tr> </table>	CEO	Sec. 2(18)	"Chief Executive Officer" means an officer of a company, who has been <u>designated</u> as such by it;	Managing Director	Sec. 2(54)	"managing director" means a director who, by ⇒ virtue of the <u>articles</u> of a company or ⇒ an <u>agreement</u> with the company or ⇒ a <u>resolution</u> passed in its general meeting, or by its Board of Directors, is entrusted with <u>substantial powers of management</u> of the affairs of the company and includes a director occupying the <u>position of managing director</u> , by whatever name called.	Manager	Sec. 2(53)	Already defined	Company Secretary	Sec. 2(24)	"company secretary" or "secretary" means a company secretary as defined in Sec, 2(1) (c) of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.	Whole Time Director	Sec. 2(94)	"whole-time director" <u>includes</u> a director in the whole-time employment of the company.	Chief Financial officer	Sec. 2(19)	"Chief Financial Officer" means a person <u>appointed</u> as the Chief Financial Officer of a company.
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(K) Holding company: Sec. 2(46)

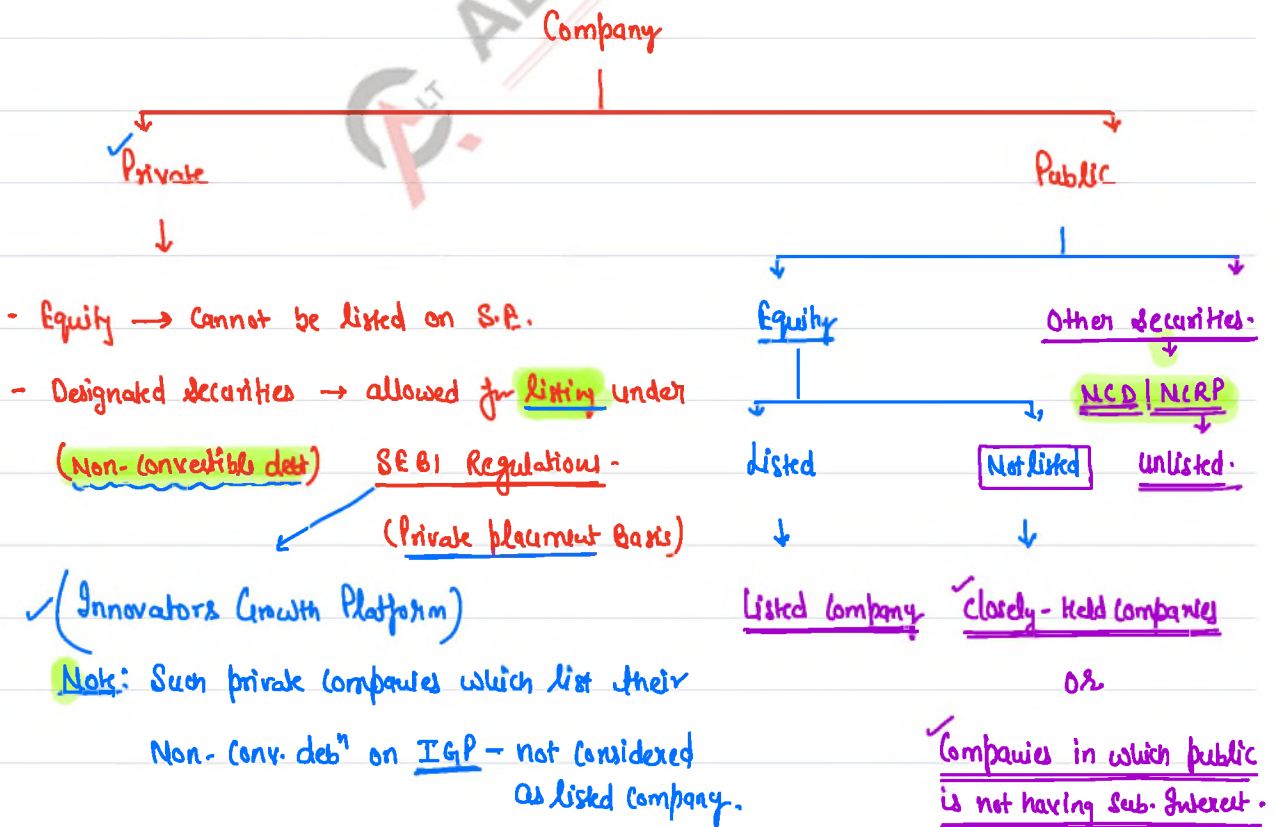
in relation to one or more companies → means → a company → of which such companies are subsidiaries company.
 * includes body corporate.
 a company Inc. under this Act or any previous company law.

Ex: X Inc. (foreign company) → > 90% share → ABC Ltd.

Q. Whether X Inc. can be considered as holding Co. under Companies Act, 2013?

Ans: Yes as X Inc. is a body corporate and for the purpose of Sec. 2(46), the term company includes body corporate.

(L) Listed Company:



<u>Ex.</u>	<u>Equity.</u>	<u>N.C.D.</u>	<u>N.C.R.P.</u>	<u>Remark.</u>
A Ltd.	listed on B.S.E.	listed on NSE	Not listed	Listed Company
B Ltd.	-	-	listed on NSE (GP)	Unlisted.
C Ltd.	listed on <u>NYS.E.</u>	-	-	Unlisted
D Ltd.	-	-	-	Unlisted
E Ltd.	listed on NSE.	Not listed	Not listed	Listed Company
✓ <u>F (P) Ltd.</u>	<u>NA</u>	[listed on NSE]	Not listed	Unlisted
✓ <u>G (P) Ltd.</u>	<u>NA</u>	Not listed	Not listed	Unlisted

Conclusion! Listed company: Public Company - Equity - listed on recognised stock exchange in India.

Q: A company which list its securities on a recognised stock exchange is considered as listed company. However, there are certain exceptions to this provision. Briefly Explain. (4 Marks)

(m) Members:

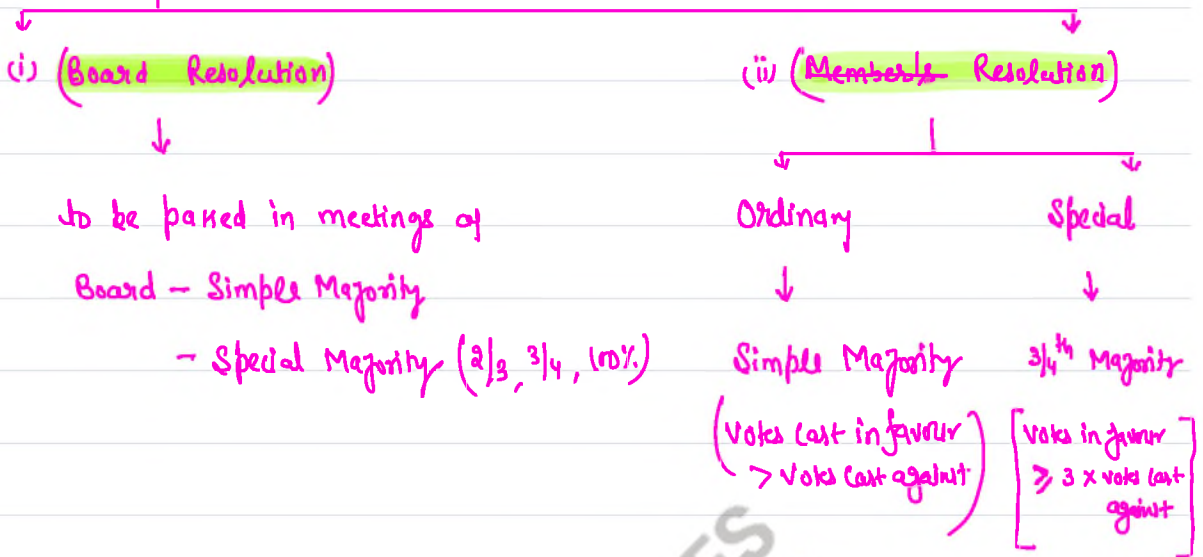
(i) Subscribers to Memorandum

↓
Even if sub. money not paid
(Subscribers)

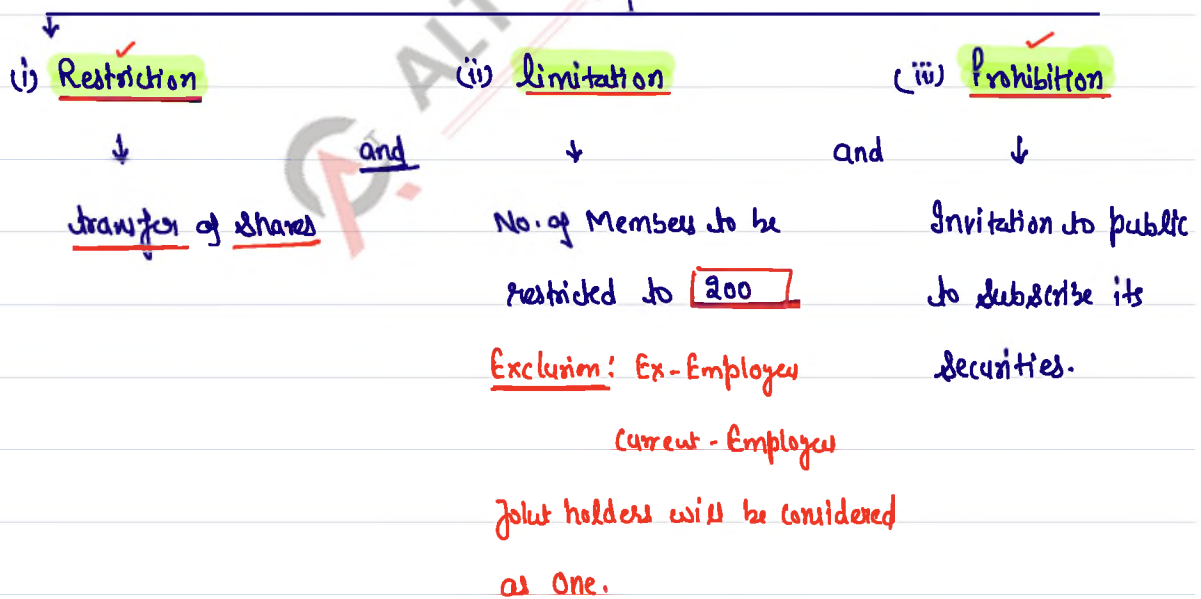
(ii) Persons who agree to become members of co and name entered in Register of Members (Applicants)

(iii) Persons who are beneficial holder of shares in demat form and name entered in Register maintained with depository.

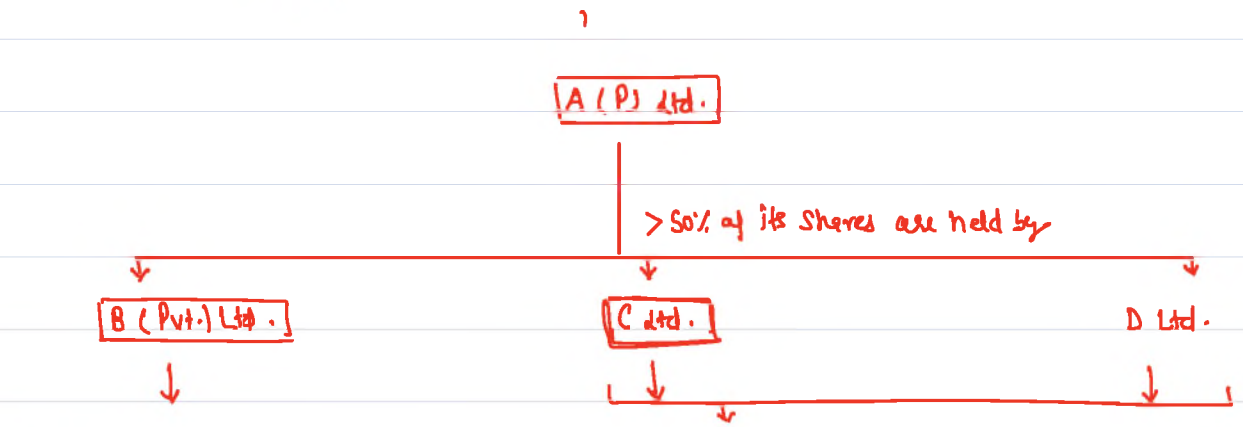
(n) Resolutions:



(o) Private Company: Minimum prescribed paid-up Capital [Not prescribed] and

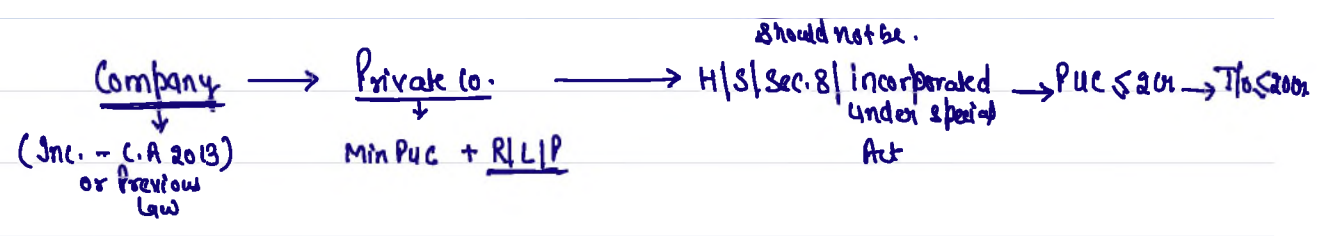
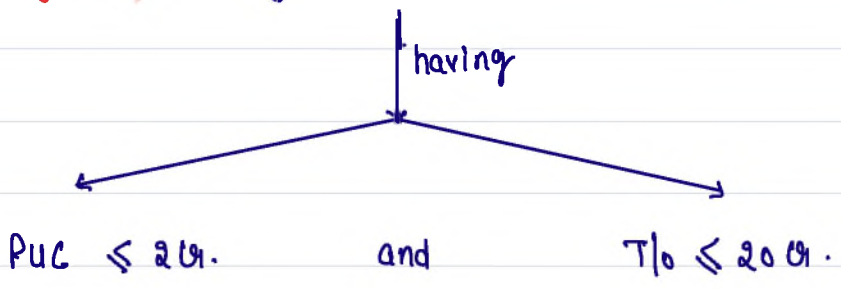


(b) Public Company:



- A (P) Ltd. will be sub. of B (P) Ltd.
- A (P) Ltd. will be considered as Private Co.
- A (P) Ltd. will be sub. of C Ltd.
- A (P) Ltd. will be considered as **deemed public company**.
- **Exemption** available to a **private Co.** will not be available to **A (Pvt) Ltd.**

(9) Small Company A company which is not a public Co.

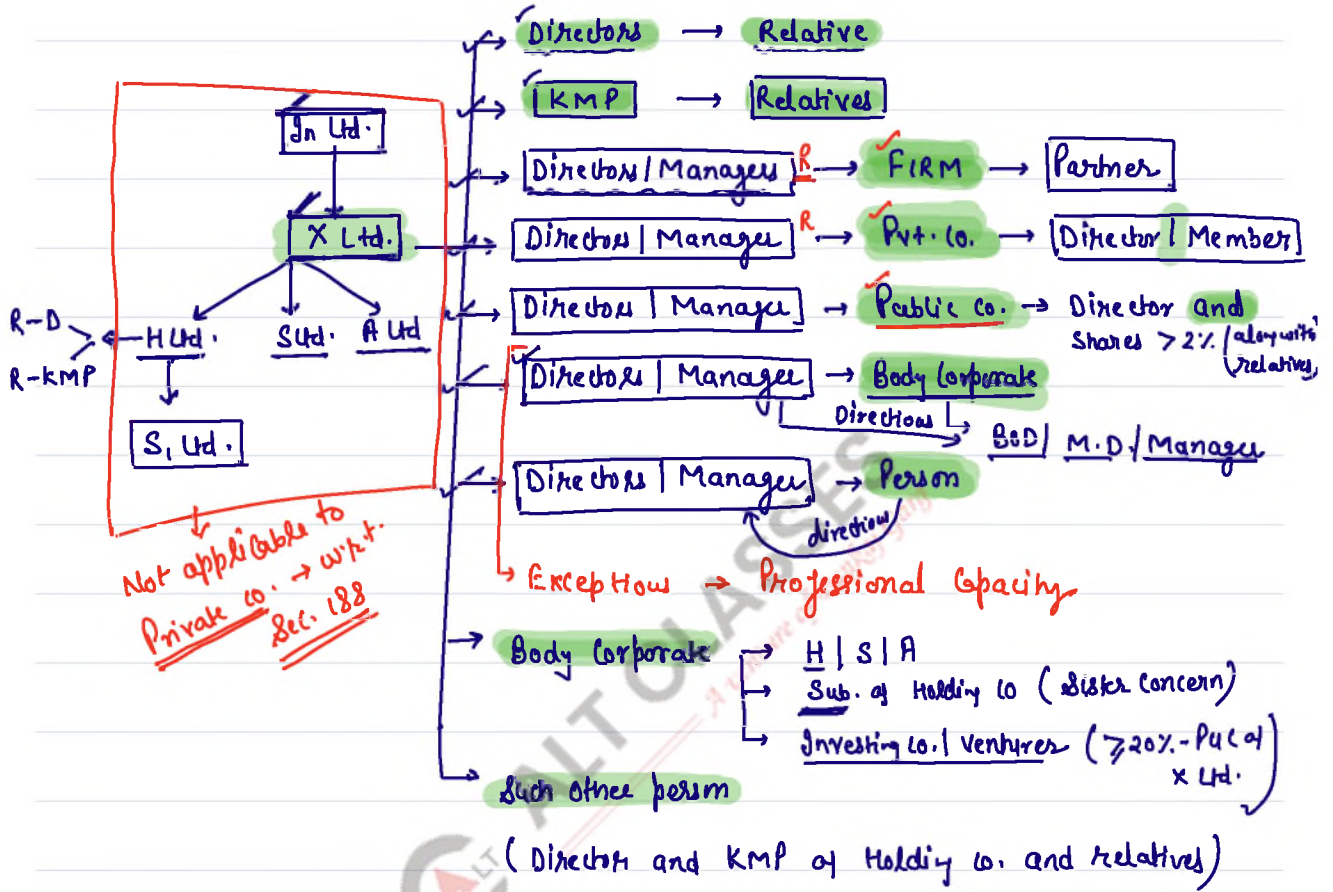


Ex.

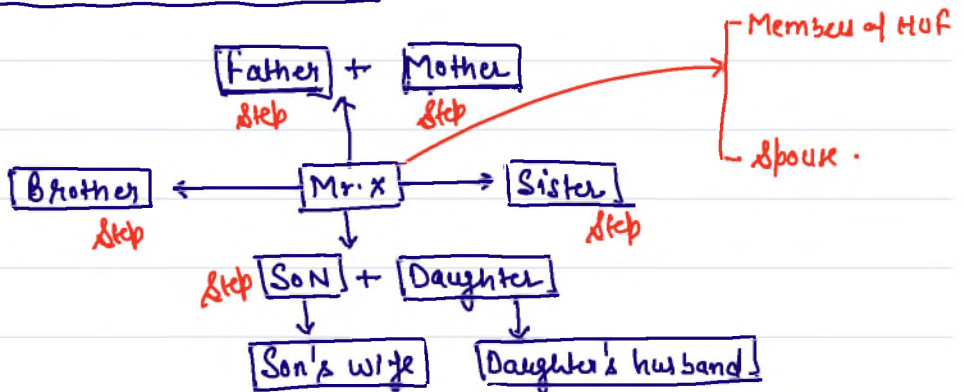
	<u>Hls.</u>	<u>Puc</u>	<u>T/o</u>	<u>Status</u>
<u>A Ltd.</u>	<u>No.</u>	<u>1 Cr.</u>	<u>5 Cr.</u>	Not a small Co.
B Ltd.	<u>YES.</u>	1.50 Cr.	18 Cr.	"
C Ltd.	<u>No.</u>	<u>2.50 Cr.</u>	<u>25 Cr.</u>	" (Public Co.)
D (P) Ltd.	No	1.50 Cr.	19.5 Cr.	Small Co.
E (P) Ltd.	YES.	1.50 Cr.	19.5 Cr.	Not a Small Co. (Being a Hls)
F (P) Ltd.	No	2.01 Cr.	2.00 Cr.	Not a Small Co. (Puc > 2 Cr.)
G (P) Ltd.	No	1.50 Cr.	21.00 Cr.	" (T/o > 20 Cr.)
H (P) Ltd.	No	2.50 Cr.	25.00 Cr.	" (Puc > 2 Cr. + T/o > 20 Cr.)

- (i) GD. → Remaining definitions
(ii) Revision of Entire chapter
(iii) written practice of 4-5 Questions ✓
(iv) Ch-1 MCQ

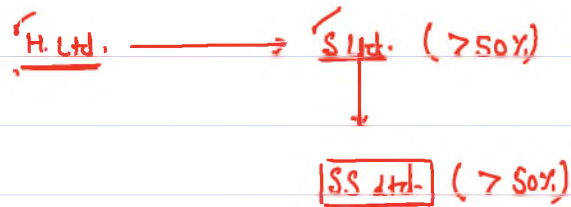
(2) Related Party : Sec. 2(76)



(3) Relative - Sec. 2(77) + Rule 4



(*) Sub. Company:



M Ltd. ($20\% \rightarrow$ H Ltd.
 $25\% \rightarrow$ S Ltd.
 $15\% \rightarrow$ SS Ltd.)

Q. Whether M Ltd. will be considered as subsidiary of H Ltd.

YES

Q.7

Saras (P) Ltd.

(No)

Piyush (P) Ltd. (Holding)

- Equity - 8 Lac shares

Jeevan

Judvir

(Sub.)

(Sub.)

3 Lac

0.50 Lac

3.50 Lac ✓

\rightarrow Prepⁿ for Chapter - 1

\rightarrow Concept Notes (Complete Understanding)

\rightarrow Question Bank (Learning)

\rightarrow Written Practice of 2-3 Questions.

Chapter - 2 "Incorporation of Company"

Chapter II of Companies Act, 2013
(Sec. 3 to Sec. 22)

Companies (Incorporation) Rules, 2014
(as amended)

Division

Part - I	Part - II	Part - III	Part - IV	Part - V	Misc.
<u>"Formation of a company"</u>	Incorporation of a company	Memorandum of a company	Articles of Association	<u>General Provisions</u> as to MoA + AoA	
↓	↓	↓	↓	↓	↓
✓ Sec. 3	- Sec. 7	Sec. 4	Sec. 5	Sec. 6	Sec. 18
✓ Sec. 3A	- Sec. 9			Sec. 10	Sec. 19
[- Sec. 8]	- Sec. 10A			Sec. 13/14/15	Sec. 20
	[Sec. 11 - Omitted]			Sec. 17	Sec. 21
				<u>Sec. 12 / Sec. 16</u>	Sec. 22

(1) Formation of a company: - A company may be formed for lawful purpose only.
(Sec. 3)

- Min. No. of Members (Subscribers to Memorandum):

Public co: 7 ; Private Company - 2 ; OPC - 1

- A company may be formed with

(a) limited liability (Shares / Guarantees)

(b) unlimited liability

(Sec. 3A) : Members severally liable in certain cases :

If at any time, number of members fall below statutory minimum,

↓ and

Company carries on business for a period > 6 Months

↓ and

remaining members are aware of this fact

↓

all such remaining members are severally liable for the
debt of the company for that period.

(2) Special provisions in case of OPC (Sec. 3) :

OPC : - Only One member - Individual,

- Indian Citizen

- Resident in India or otherwise

- MoA shall indicate the name of nominee.

- Nominee: Individual, Indian Citizen, Resident in India or otherwise

Not be a Minor.

Prior consent in writing to be obtained.

May withdraw his nomination, any time, by informing
to sole member and OPC.

- A member of OPC cannot be member of another OPC at
same time.

- A member of OPC can be a nominee in another OPC
not exceeding One, at the same time.

- An individual cannot be a nominee in more than one OPC at same time.

<u>Ex</u>		A (OPC)	B (OPC)	
I	Mr. A	Member	Member	x
II	Mr. A	Nominee	Nominee	x
III	Mr. A	Member	Nominee	✓
	Mr. B] ✓	Nominee	Member	✓

Ex 2: Mr. A is Sole Member of A (OPC) and also a nominee of B (OPC).

B (OPC) was formed by Mr. B as a sole member.

In an accident Mr. B dies and after his death Mr. A, becomes member of B (OPC). Comment.

Ans.: Mr. A is required to fulfill the eligibility criteria within a period of 182 days.

- Conversion of OPC into Other Company:

is permitted with an exception of Sec. 8 Company.

↓

Conversion may be at any time.

↓

Conversion should be in prescribed manner. (Rule 6)

(3) Sec. 8 Company:

- An Entity formed for the purposes of promotion of Commerce, art, science, Education, religion, research, society welfare, sports etc.

↓

may be incorporated under the Companies Act, 2013, subject to following

Conditions: (a) Specific objects (Promotion - - - - -)

(b) Funds to be applied for promotion of the objects.

(c) Prohibition over distribution of dividend among members.

- An application in this regard shall be made to C.G.

- C.G., if satisfied, grants a licence for regn. u/s 8.

- ROC shall register the company u/s 8.

Implications of Regn.:

(a) Company is not required to use the words "limited" or "Private limited" along with its name.

(b) Company is entitled for all privileges available to a Sec. 8 Company.

(c) Alteration of MoA/AOA needs approval of C.G. (ROC)

(d) Alteration of MoA as to conversion into other kind of company requires approval of Regional Director.

Benefits of Sec. 8 Company: (i) Provisions of Sec. 149 as to Max. no. of directors and independent directors, not applicable.

(ii) Notice period for meetings is 14 days instead of 21 days.

(iii) No requirement of Min. paid-up Capital.

Revocation of Licence: Licence granted by C.G. may be revoked:

(a) Contravention of provisions of sec. 8.

(b) " " Conditions subject to which licence was granted.

(c) if affairs are conducted in fraudulent manner.

(d) if affairs are being managed oppressive to objects of the company.

- However, before revocation of licence, C.G. must provide an opportunity of being heard.

- If licence is revoked, C.G. may pass the order as to

(a) dissolution/winding up of the company.

(b) Amalgamate with another Sec. 8 Co. which is engaged in similar activities.

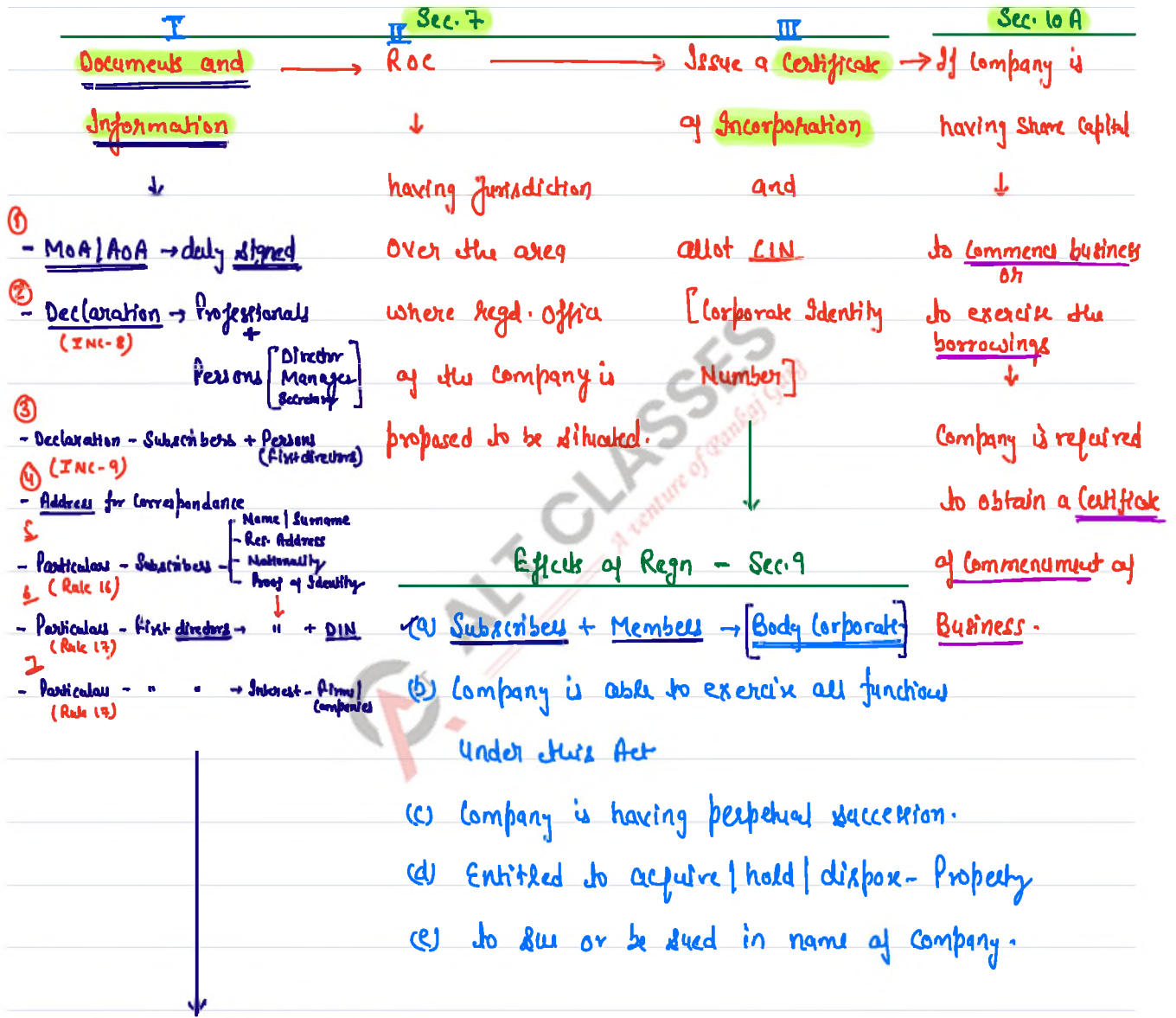
H.W.: - Revision of Sec. 3, 3A and 8

- learning of all Questions/answers

- written practice of 3-4

Chapter - 2 (Part II - Sec. 7, 9, 10 A)

(4) Incorporation of a Company:



IV. Company is required to maintain and preserve - all documents and information at its registered office - till its dissolution.

V. Consequences of furnishing false information:

- Person who furnishes → false/incorrect information → liable u/s 447.
└ suppress → Material information

- Promoters + Persons named as
first directors
+ Persons making
declarations

→ false/incorrect information
→ false/incorrect representations → liable u/s 447
→ suppress material facts
→ fraudulent activities.

VI. Tribunal Power: Tribunal, may on an application received by it as to irregularities in incorporation of a company, pass such order as it thinks fit including:

- (a) changes in MoA/AoA;
- (b) unlimited liability of members;
- (c) removal of name from Register of Companies;
- (d) winding-up order;
- (e) such other order as considered appropriate.



✓ H.W: To incorporate a company under the provisions of Companies Act, 2013 certain documents and information are to be furnished with Register of Companies.

List such documents and information to be furnished. [6 Marks]

MCD: To incorporate a company, a declaration is to be filed with the Registrar that [information contained in documents is correct, complete and true]. This declaration is to be given by:

- (a) Advocate or Company Secretary in Practice, CA or Cost Accountant
- (b) Each of the subscribers to the Memorandum
- (c) Director, Manager or Secretary named in the Articles
- (d) Both (a) and (c).

(5) Memorandum of Association: Sec. 4

(a) Meaning and Objects of MoA

(b) Contents of MoA
- Sec. 4(1)

(c) Provisions w.r.t. Name of a Company
- Sec. 4(2) to Sec. 4(5)

(d) Misc.
- Sec. 4(6)

- Doctrine of Ultra Vires

Meaning: Sec. 2(56): MoA → Originally framed and altered time to time.

- In general, Memorandum may be defined as Charter of the Company and provides the limitations over the powers of the Company.

Objects: Memorandum defines the scope of operation of a Company.

Memorandum enables the stakeholders to know the powers of the Company.

(b) Contents of MoA : Sec. 4(c)

(i) Name clause

(ii) Situation " (Registered office clause)

(iii) Object " (a) Main Objects (b) Other

✓ (iv) Liability "

(v) Capital "

(vi) Subscription "

(vii) Nomination " [applicable in case of OPC]

(c) Forms of MoA : Sec. 4(c)

↓
Schedule I

↓

✓ Table A → Company limited by shares

(a) Name (b) Regd. office (c) Object clause (d) Liability (shares) (e) Capital (f) Sub.

Table B → Company limited by Guarantee without having S.C.

(a) Name (b) Regd. office (c) Object clause (d) Liability (Guarantee) (e) ~~Capital~~ (f) Sub.

✓ Table C → Company limited by Guarantee having S.C.

(a) Name (b) Regd. office (c) Object clause (d) Liability (Guarantee) (e) Capital (f) Sub.

Table D → Unlimited Company without having share capital

(a) Name (b) Regd. office (c) Object clause (d) Unlimited liability (e) ~~Capital~~ (f) Sub.

✓ Table E → Unlimited Company having share capital

(a) Name (b) Regd. office (c) Object clause (d) Unlimited liability (e) Capital (f) Sub.

(X)
Present Member Contributory

- Mr. X acquires 5000 shares from Mr. Y on 15.06.2022.
- F.V. of share ₹ 10
- paid up value ₹ 6

Past Member Contributory

(Y) ✓

15.06.2021

Company wound-up on 18.09.2022

Liquidator = 5000 x 4 = 2,00,000 - from X



Y → In relation to debts

that exist on date of transfer (15.06.2022)

↓ Insolvent



ALT CLASSES
A world of knowledge

⑤ Memorandum of Association:

(d) Provisions w.r.t. Name of a Company: Sec. 4(2) to Sec. 4(5):

✓ Sec. 4(2): Applying for name of company (Rule 8A)

Identical
Resemble
Contravention
Undesirable

✓ Sec. 4(3): Registration of name of company (Rule 8B)

Sec. 4(4): Application for reservation of name of company

Sec. 4(5): Reservation of name of company

↓
ROC - Reserve the name - 20 days / 60 days

↓
If any wrong info. was provided while applying for reservation of name of company

↓ after providing an opportunity of being heard

ROC

↓
If company not incorporated

↓
Cancel the name and
Can impose fine on
the applicant which
may extend upto 1 Lakh.

↓
If company already been incorporated
↓ ROC

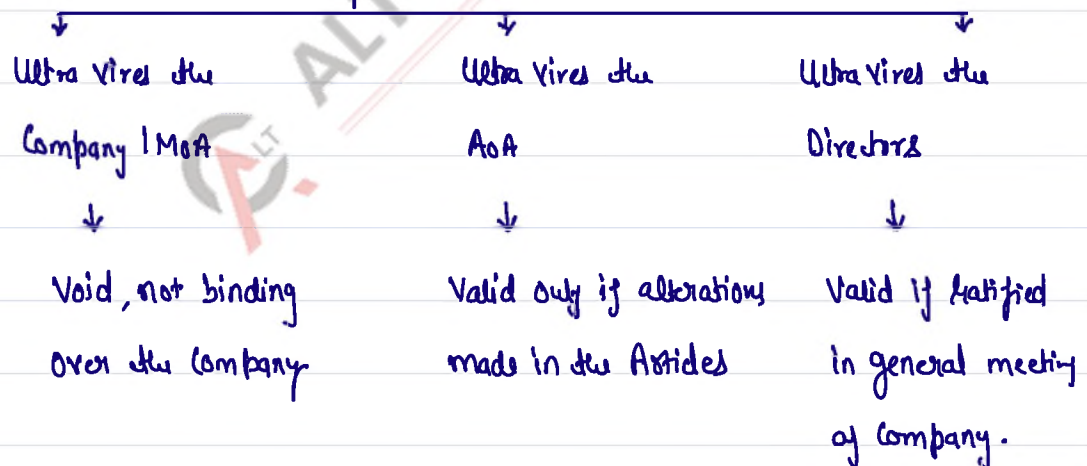
(a) direct the company to change its name within 3 Months.

(b) take action for striking off the name of Co. from Register of Companies

(c) file petition for winding-up of company.

(c) Doctrine of Ultra Vires:

- 'Ultra vires' implies beyond the powers.
- Powers of a company, incorporated under the provisions of Company law are prescribed under Object clause.
- Company and its officers needs to ensure that only the activities which are covered in the Memorandum, are to be carried out.
- Any act which is beyond the powers of a Company will be considered ultra vires and not binding over the Company.
- Types of Ultra Vires acts:



(iii) Articles may also include additional matters as considered necessary.

(iv) A company may adopt all or any of the regulations contained in the Model Articles.

(v) Provisions for Entrenchment:

- Entrenchment means to make something more protective.
- Need consent of all members in case of a private company.
- " special resolution in case of a public company.

(C) Doctrine of Constructive Notice:

- MoA and AOA are public documents and every person dealing with the company is presumed to have knowledge of MoA/AOA.
- This presumed knowledge of MoA/AOA is known as doctrine of Constructive notice.
- There exist a limitation to doctrine of constructive notice i.e. outsiders dealing with the company are entitled to assume that as far as the internal proceedings of the company are concerned, everything has been regularly done (i.e. doctrine of indoor management).

Doctrine of Indoor Management:

- Persons dealing with the company are not required to inquire whether internal proceedings relating to the contracts/transactions are followed correctly.
- Stakeholders are entitled to assume that the company had done all the proceedings in a regular manner.

- Exceptions:
- (a) Knowledge of Irregularity
 - (b) Forgery [cheating]
 - (c) Acts of Negligence

Note: Doctrine of Indoor Management is a safeguard against the possibility of abusing the doctrine of constructive notice.

Doctrine of Constructive notice protects a company against outsiders, whereas doctrine of indoor management protects outsiders against the action of a company.

(d) Alteration of Articles : Sec. 14

- (i) To alter the Articles, a special resolution need to be passed.
- (ii) Alteration includes alteration having effect of conversion of
 - (a) a private company into a public co.; Or
 - (b) a public company into a private co.

Note: Any alteration having effect of conversion of a public company into a private company shall not be valid unless approved by C.G.

Note: Any alteration in Articles of a private company having effect of removing restriction, limitation and prohibition applicable to a private company, results in ceasing the status of private company

- (iii) Every alteration and CG Order approving alteration shall be filed with ROC, together with a printed copy of altered Articles, within a period of 15 days, in prescribed manner. [Rule 33 - Form INC-27]

Lecture No. 5 of Chapter 2

(MoA + AoA)



① Alteration of MoA: (Sec. 13)

(a) MoA may be altered by Special Resolution.

(b) Alteration of Name clause:

(i) Requires approval of Central Govt. in writing.

(ii) However, to add or delete the word 'Private' along with the name, no approval is required.

(iii) Copy of special resolution and C.G. approval shall be filed with the RoC.

(iv) RoC shall enter new name in the Register of Companies in place of old name and issue fresh Certificate of Incorporation.

Note: As per Rule 29 of Companies (Incorporation) Rules, 2014, change shall not be allowed to a company which has:

(a) not filed ^(s. 92) annual returns or ^(s. 137) financial statements; or

(b) failed to pay matured deposits or debentures or interest thereon; till time such default continues.

(C) Alteration of Regd. office clause!

(i) Change in MoA will be required only when registered office shifts from one state to another.

Note: Alteration in MoA will not be required if Regd. office remains within same state.

(ii) For alteration in Regd. office clause in the MoA, approval of C.G. will be required. (Regional Director)

(iii) For this purpose, company shall make application to C.G. and C.G. shall dispose off the application within 60 days.

✓(iv) Before passing order for change, C.G. may satisfy itself that:

✓(a) Alteration has the consent of creditors, debenture holders, and other persons concerned with the company;

(b) Sufficient provision has been made for discharge of debts / obligations of the company;

(c) adequate security has been provided for discharge of debts of the company.

(v) Certified copies of SR and C.G. Order shall be filed by the company with the Registrar of each state.

(vi) Registrar of State where registered office is being shifted shall issue a fresh Certificate of incorporation indicating the alteration.

(D) Alteration of Object clause:

(i) Alteration of Object clause shall not be allowed if Company raised money from public through issue of prospectus and still has unutilised money, unless:

Object Edⁿ
Invest - Alt - R.C.

- (a) details of such change is published in newspaper (one in English language and another in Vernacular-local language) and shall also be placed on the website of the Company, if any; and
- (b) dissenting shareholders shall be given an opportunity to exit.
- (ii) Special Resolution shall be filed by the Company with ROC.
- (iii) ROC shall register the Alteration within 30 days.

(8) Registered office of Company: [Sec. 4, Sec. 12, Sec. 13]

Sec. 4(1): MoA shall state the State in which registered office of the Company is proposed to be situated.

Sec. 13(1): MoA may be altered with approval of members by a SR
[Alteration will be required only if reged. office shifts from one State to another].

Sec. 13(4): Alteration of MoA relating to place of reged. office from one State to another requires approval of CG (Regional Director).

Sec. 12(1): within 30 days of incorporation of company and at all times thereafter, Company shall have a registered office.

Sec. 12(2): Verification of regd. office is to be furnished to ROC within 30 days of incorporation.

[Rule 25 LSA → INC 22/22A]

Sec. 12(3): Labelling of Name, regd. office and Contact details of the Co.

[Business location | Common Seal | Stationary | Negotiable Inst.]
↳ Name + Regd. office ↳ Name ↳ Name ↳ Name
Regd. office. Regd. office. website Other Contact details

Sec. 12(4): Notice of change of regd. office shall be given to ROC within 30 days.

Sec. 12(5): - Change of regd. office within the City - OR

- Change from one City to another - SR

(No change in ROC Jurisdiction)

- Change from one City to another - SR + approval

(Change in ROC Jurisdiction) (Mumbai-Pune) from R.O.

12(6)

Company files an application with RD

30 days

Confirmation by RD to Company

60 days

Filing of Confirmation with ROC

30 days

ROC will

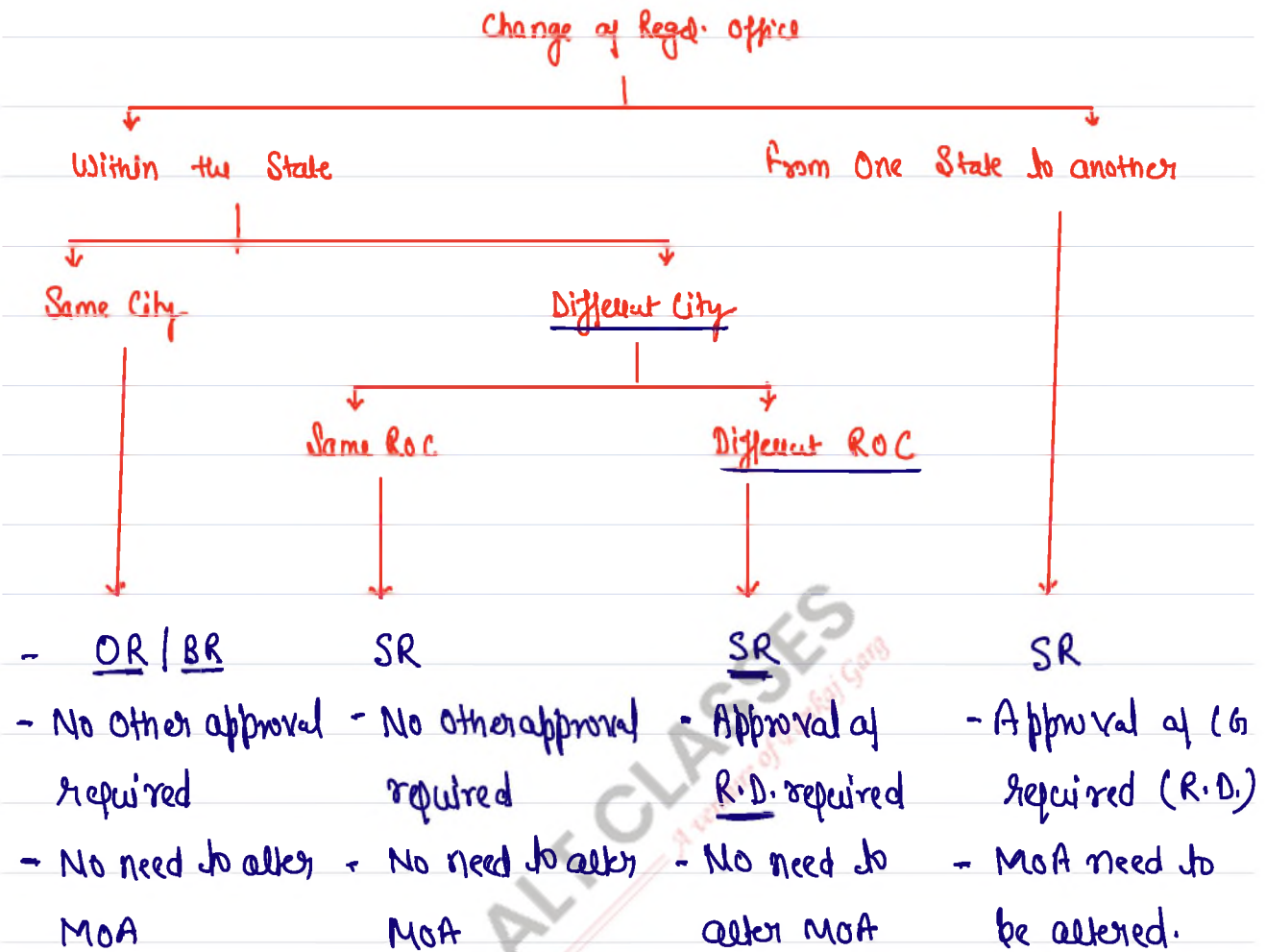
certify the change

Sec. 12(7): Certificate issued by ROC shall be conclusive evidence.

Sec. 12(8): Penalties for contravention

Sec. 12(9): Physical verification of regd. office by Registrar

[Rule 25B]



⑨ Rectification of Name of Company: [Sec. 16]

(Consolidated provisions of Sec. 4, Sec. 13 and Sec. 16)

Sec. 4(1): MoA shall state the name of the company.

Sec. 4(2): Name of company shall not be identical with or resemble too nearly with the name of an existing company.

Sec. 4(3): Name of a company should not contain any word or expression which is likely to give impression that company is in any way connected with G/SG.

Sec. 4(4): Application for reservation of name to be filed in prescribed form with the Registrar.

Sec. 4(5): Where after reservation, it is found that name was applied by furnishing wrong information, that ROC shall:

- (a) Cancel the reserved name, if company not yet incorporated, or
- (b) direct the company to change its name within 3 months through OR, if company already been incorporated.

Sec. 13(1): MOA shall be altered with approval of members by SR.

Sec. 13(2): To change the name of company, CG approval in writing is required.

No approval required for addition/deletion of the word 'Private' in name of company.

✓ Sec. 16(1): If through inadvertence or otherwise, a company is registered by a name which in the opinion of C.G.

↓

is identical with or too nearly resembles with the name of an existing company

↓

C.G. may direct the company to change its name within 3 months through OR.

✓ Sec. 16(1): If name resembles with the trade mark of any person

↓

C.G. may on an application recd. within 3 years of incorporation of such company,

↓

direct the company to change its name within 3 months through OR.

Sec. 16(3) : If a company defaults in complying with the directions given by C.G.,



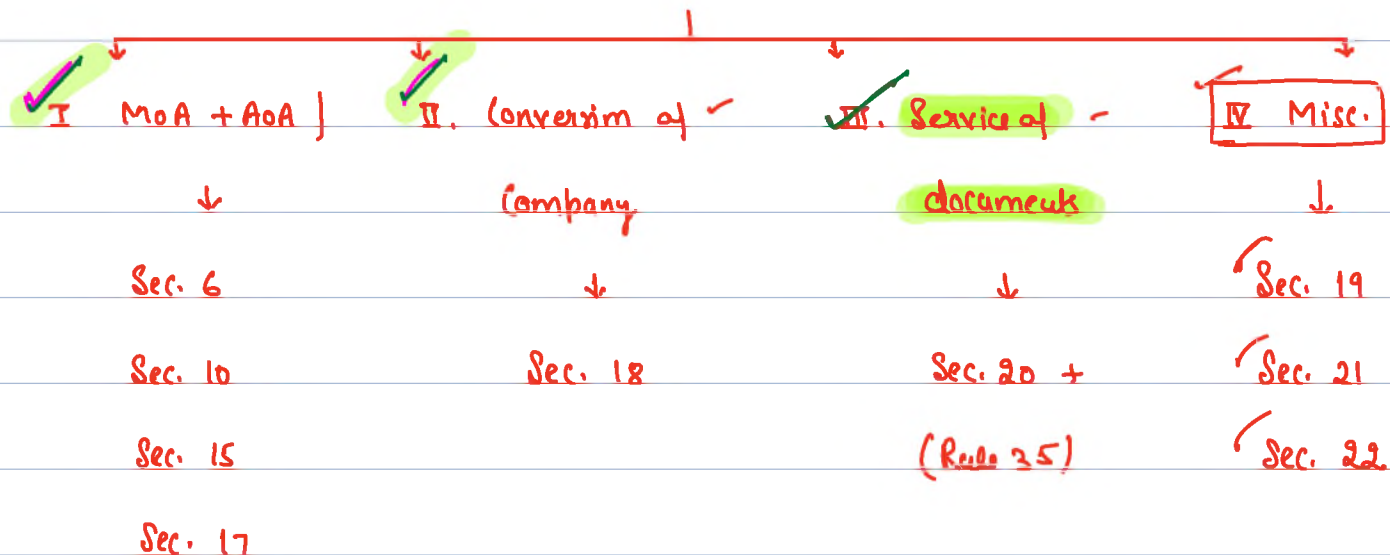
the C.G. shall allot a new name to the company



Registrar shall enter the new name in the Register of Companies in place of old name.



Lecture No. 6 - Chapter No. 2



(i) Common Provisions as to the MoA and AoA:

(A) Sec. 6: (i) Provisions of Companies Act, 2013 shall have Overriding effect on provisions contained in

- Memorandum or Articles
- any agreement entered into by the Company;
- any resolution passed in General Meeting or Board Meeting.

(ii) Any provision contained in these documents shall be Void to the extent to which it is inconsistent to the provisions of Companies Act, 2013.

(B) Sec. 10: - Memorandum and Articles when Regd. shall bind the Company and the members.

- Members are bound to observe all the provisions of the Memorandum and Articles.

- All monies payable by members to the Company under the MoA/AoA shall be a debt due from him to the Company.

(C) Sec. 15: - Every alteration made in the MoA and AoA shall be noted in Every copy of the MoA and AoA-

- Penalty for default:

Company and Every Officer in default are liable to a penalty of ₹ 1,000 for every copy issued without such alteration.

(D) Sec. 17: - On request of a member, Company shall send within 7 days a copy of - MoA

- AoA

- Every agreement and resolution, if not embodied in the MoA/AoA

on payment of prescribed fees.

- Penalty for default:

Company and Every Officer in default are liable to a penalty of ₹ 1,000 per day during which such default continues, not exceeding ₹ 1 Lakh, in aggregate.

(ii) Conversion of Companies: Sec. 18

(1) A Company of any class may convert itself into any other class of Company subject to provisions of this Act.

For Example: Sec. 3 → OPC cannot be converted into Sec. 8 Company.

(2) Conversion of company from one class to another requires alteration of MoA/AoA.

(3) Company shall apply to Registrar for conversion in prescribed manner.

(4) Registrar, after satisfying himself that provisions applicable for registration have been complied with, shall:

- Register the required documents;
- close the former regn; and
- issued a fresh Certificate of Incorporation.

Note: Registration u/s 18 shall not affect any debt, liability, obligations or contracts incurred or entered into by the company before conversion.

(iii) Service of Documents: (Sec. 20)

↓
To the Company or its Officers
↓

Documents may be served by sending at regd. office by - Regd. Post

- Speed Post
- Courier
- leaving at regd. office.
- Electronic or other Mode

↓
To the Registrar or Members
↓

- Documents may be served by sending it by - Post / Regd. Post / Speed Post

- Courier
- delivery at office / address
- Electronic or other Mode.

Note: A member may request the company for delivery of any document through a particular mode, on payment of such fees as determined by company.

Note: As per Rule 35 of Company (Incorporation) Rules, 2014, delivery by post shall be deemed to have been effected

↓
✓ at Expiry of 48 hrs. of post

↓
In case of Notice of any meeting.

↓
at the time at which the letter would be delivered in

Ordinary Course of Post

↓
in Other Cases.

Example : Nidhi Company!

I Paid up Capital = $\frac{25 \text{ Lacs}}{2.5 \text{ Lacs Shares of ₹ 10 each.}}$

1% of Paid up Capital = $\boxed{25000}$ [or 1000]

Mr. X : 70 shares of ₹ 10 each : $\boxed{700}$ → No.
as < 1000

II Paid up Capital = 80000/-
8000 shares of ₹ 10 each.

1% of Paid up Capital = $\boxed{800/-}$ (80 Shares of ₹ 10)

Mr. X. = 82 shares : F.V. = $\boxed{820}$ → Yes

$\boxed{\text{as } > 800}$

(H.W. : Written Practice - Case Study - Nov. 20 RTP)

(iv) Miscellaneous : (Sec. 19, 21, 22)

(A) Sec. 19 : Subsidiary Co. not to hold shares in holding company:

(i) No company shall by itself or through its nominee

↓

hold any shares in the holding company.

(ii) No holding Co shall allot or transfer its shares to any of its subsidiary and any such allotment or transfer shall be considered void.

Exception! (i) Sub. Co. can hold shares of holding Co. as legal rep. of deceased member of holding Co.

Ex: Mr. X is a director of S Ltd. and hold 20% shares in H Ltd. Mr. X dies and after death of Mr. X shares of H Ltd. transfer to S Ltd. as Mr. X appoint S Ltd. as its legal rep through will. S Ltd. is sub. Co. of H Ltd.

(ii) Sub. Co. can hold shares of holding company, as a trustee.

(iii) Sub. Co. is a shareholder even before it became a sub. Co. of Holding Co.

Ex: S Ltd. holds 15% shares of H Ltd. as on 31.03.2020.

H Ltd. acquired 70% shares of S Ltd. in the year 20-21.]

Can S Ltd. hold shares in H Ltd. → YES

Note:
Voting Rights available
only in (i) and (ii)

(B) Authentication of documents, proceedings and contracts: (Sec. 21)

A document or proceedings requiring authentication by a Company

or

Contracts made by or on behalf of a Company

↓

may be signed by

|

↓
any KMP
[Sec. 2(51)]

or

↓
an officer - Sec. 2(59)

or

Employee of Co.

↓

duly authorised by Board in
his behalf.

H.W. - Revision of Definition of
Joint Officer - 2(59)

(C) Sec. 22: Execution of Bills of Exchange, deeds etc.

- (i) Bills of Exchange, Hundi or Promissory Notes shall be deemed to
have been made, accepted, drawn or endorsed on behalf of Co.

↓

if made, accepted, drawn or endorsed in name of Co.

or on behalf of Company

↓

by a person acting under its authority (Express or implied)

✓(ii) A company may by writing under its common seal, if any

↓

authorise any person, either generally or in respect of a specified

↓

matter

as its attorney to execute Other deeds.

(whether in India or outs India)

(iii) In case, company does not have a common seal, authentication shall be made by → two directors

Or

a director and Company Secretary (if appointed)

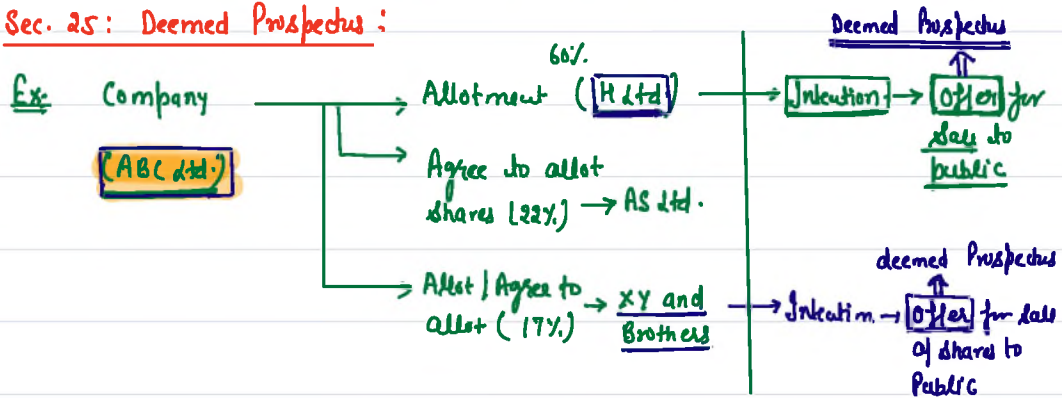
Note! A deed signed by attorney shall bind the company.



ALT CLASSES
A venture of Gauri Garg

(3) Types of Prospectus: (sec. 25, 28, 31 and 32)

(A) Sec. 25: Deemed Prospectus:



Meaning: Where a company allot or agree to allot any securities



with a view that all or any of such securities shall be offered for sale to public

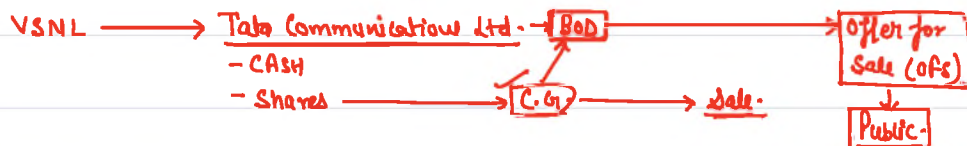


any document by which the offer for sale to the public is made, shall be deemed to be a prospectus issued by the company.

Statutory Provisions:

— to be covered from book —

(B) Sec. 28: Offer document for sale of shares by Members:



Meaning: Any document by which the offer of sale to the public is made by certain members of the company, such document will be deemed to be a prospectus issued by the company.

Statutory Provisions:

— to be covered from book —

(C) Shelf Prospectus (Sec. 31):

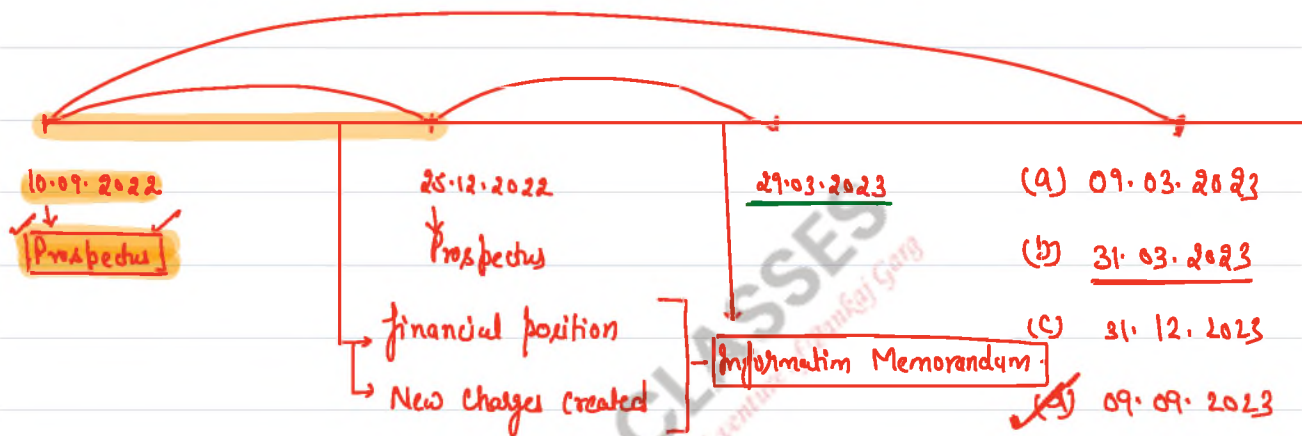
X dtd.

✓ 10.09.2022 Issue → Shares (Type-I) - Prospectus required

25.12.2022 Issue → Shares (Type-I) - Prospectus not required (Sec. 26)

✓ 25.12.2022 Issue → Shares (Type-II) - Prospectus required

✓ 29.03.2023 Issue → debⁿ (Type-I) - " "



Meaning: A prospectus in respect of which the securities or class of securities specified therein are issued for subscription in one or more issues over a certain period without issue of further prospectus is known as Shelf Prospectus.

Statutory requirements:

- (i) Any class or classes of Company, as specified by SEBI, may file a shelf prospectus with the Registrar at the time of first offer of securities included therein. (10.09.2022)
- (ii) Shelf prospectus shall indicate a period not exceeding One year as its validity, which shall commence from the date of opening of first offer of securities under this prospectus.

10.09.2022

→ 09.09.2023

(iii) In respect of 2nd or subsequent offer of securities issued during the validity period of shelf prospectus, no further prospectus is required.

(iv) A Company filing shelf prospectus shall be required to file an information memorandum, containing material facts relating to:

29.03.2023

(a) 10.09.22 - 29.03.23

(b) Changes in financial position

(b) 10.09.22 - 25.12.22

as occurred between the first offer | previous offer and

10.09.2022

(c) 25.12.22 - 29.03.23

subsequent offer, with the Registrar prior to issue of 25.12.2022 2nd or subsequent offer of securities under Shelf Prospectus.

(v) Information memorandum shall be in form PAS-2 and filed with the Registrar within one month prior to issue of 2nd or subsequent offer of securities under the Shelf Prospectus.

(D) Red herring Prospectus (Sec. 32)

X Ltd. → Public Issue → Not Suk. → Qty to be offered.
↓ Price to be offered.

Prospectus → Incomplete info. → application → Share.
Price (Price Bond)

Meaning: A prospectus which does not include complete particulars of the (a) Quantum; or (b) price of securities included therein, shall be known as red herring prospectus.

Statutory Provision: — to be covered from book —

IV ^{Imp.} Liability for Misstatements / Omissions in Prospectus:

✓ (A) Criminal liabilities (fines / Imprisonment)

- Sec. 34



Where any prospectus is issued /
Circulated / distributed



which includes any statement which
is untrue or misleading or any
material fact is omitted



Every person who authorises the
issue of such prospectus shall be
liable u/s 447 (Fraud).

(B) Civil liabilities (Compensation)

- Sec. 35



Where a person has subscribed for
securities of a company, acting on any
statement included in the prospectus
which is misleading or any material
fact is omitted in the prospectus

↓ and

has sustained any loss or damages



Company and Every person (director,
proposed director, promoter, Experts)
shall be liable to pay

Compensation.

Exceptions: liability shall not arise if

✓ (a) such statement or omission
was immaterial.

(b) such person had reasonable
grounds to believe and did upto
the time of issue of prospectus
believe that the statement was
true or omission was necessary.

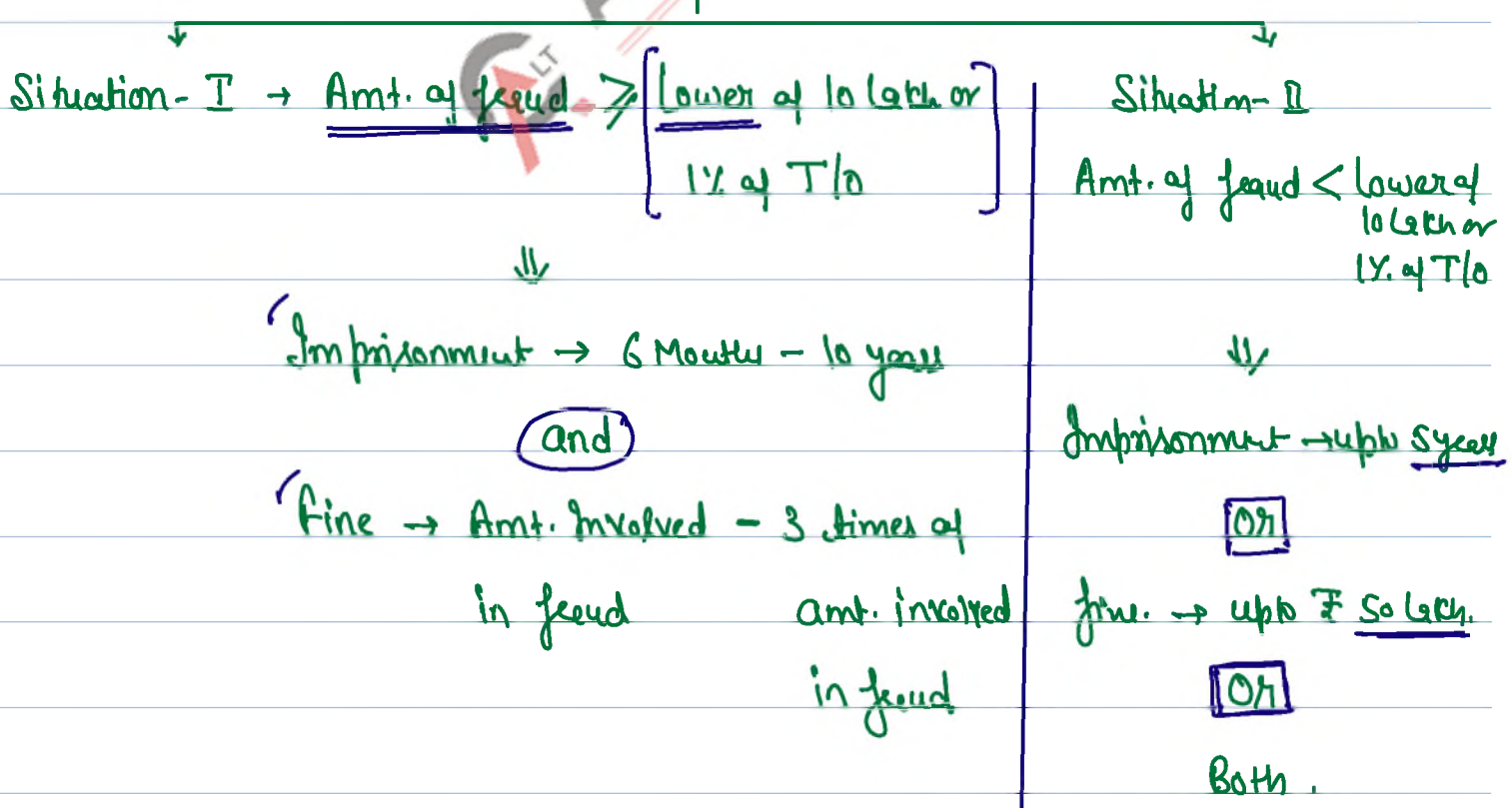
Exceptions: liability shall not arise
if the person proves that -

(a) he withdrew his consent before
issue of prospectus or the prospectus
was issued without his consent.

(b) Reasonable ^{public} Notice was issued that
prospectus was issued without his consent.

(c) Every misleading statement purported to be made by an Expert was a Correct and fair presentation of the statement and he had reasonable grounds to believe and did up to the time of issue of prospectus believe that the person making the statement was competent to make it and consent had been given U/s 26 and not withdrawn before filing of prospectus with the Registrar.

Sec. 447: Punishment for fraud:



Example: Turnover : 5 cr. 1% of T/o 5 Lakh.

Lower of 10 lakh or 1% of T/o = 5 Lakh.

Fraud : 6 Lakh → Situation I shall apply

= 4 Lakh. → Situation II shall apply

Turnover = 20 cr 1% of T/o = 20 Lakh.

Lower of 10 lakh or 1% of T/o = 10 Lakh

Fraud = 12 Lakh → Situation I shall apply

Fraud = 9 Lakh → " II " "

Sec. 37: Action by affected persons:

A suit may be filed or any other action may be taken

by any person, group of persons or association of persons.

who have been affected by any misleading statement or
Omission of any material fact.

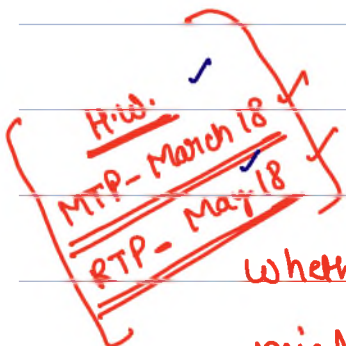
Ex: X Ltd. → Prospectus (Misleading info. / omission of material fact)

Mr. A → subscribe 1000 shares of Co. based on prospectus.

Mr. B → acquire 500 shares of Co. from Mr. A

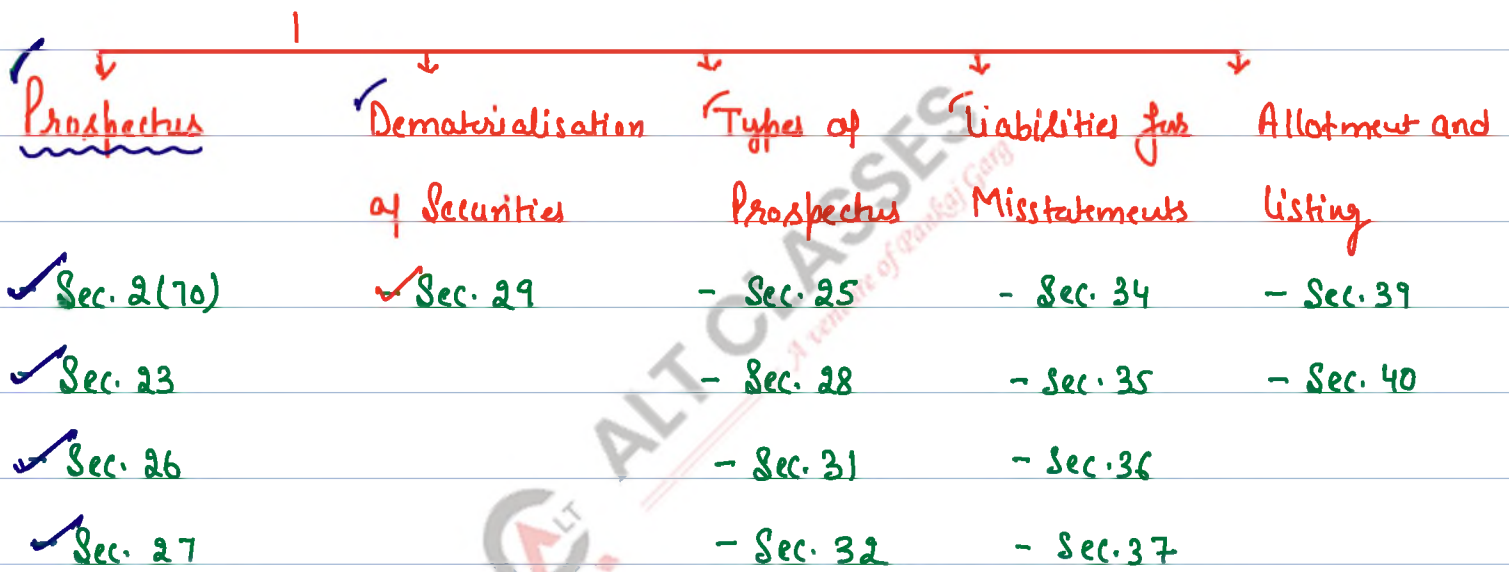
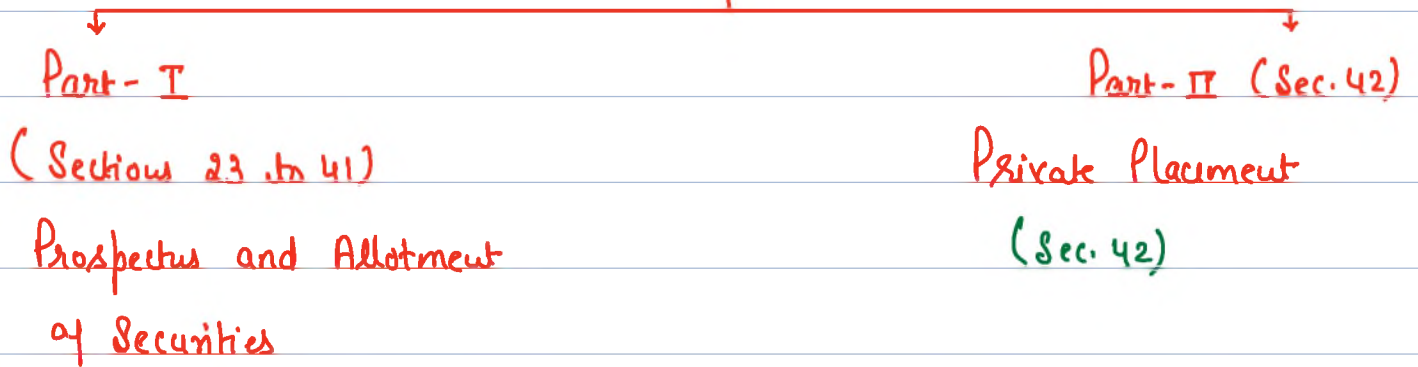
whether Mr. B can take action against the company based on
misleading information in Prospectus. → No.

→ DO PRACTICE - Questions on Sec. 34 and 35



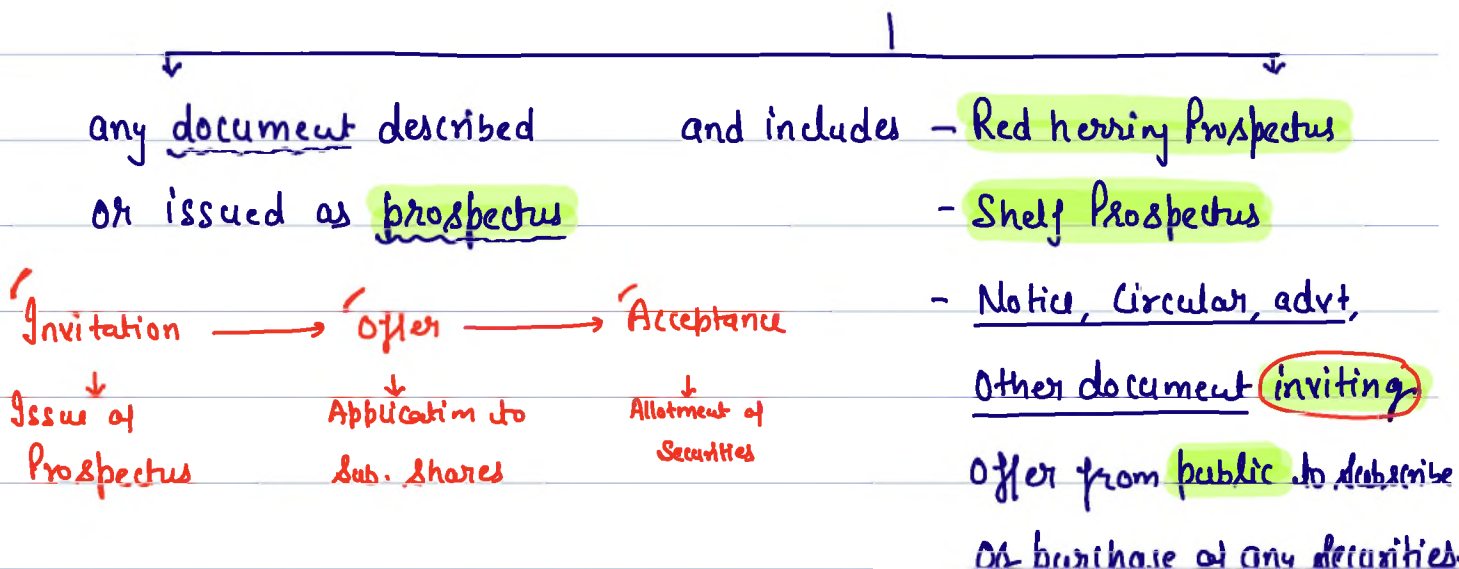
Chapter - 3 Prospectus and Allotment of Securities

Chapter III of Companies Act, 2013



I. Prospectus: Meaning and Statutory Provisions (Sec. 23, 26, 27)

(A) Meaning: As per Sec. 2(70), prospectus means



(B) Statutory Provisions: (Sec. 23, 26 and 27)

Sec. 23: Public offer and Private Placement:

Manner for Issue of Securities

↓
Public Companies



- Public Issue through Prospectus (IPO/FPO)
- Private Placement (Sec. 42)
- Right Issues (Sec. 62)
- Bonus Issues (Sec. 63)

↓
Private Companies



- Private Placement (Sec. 42)
- Right Issue (Sec. 62)
- Bonus Issue (Sec. 63)

Sec. 26: Matters to be stated in Prospectus:

(i) Every prospectus shall be dated and signed.

(date of its publication)

(ii) Prospectus shall state such information and set out such reports on financial information as specified by SEBI in consultation with C.G.

Until SEBI specifies such information, provisions as covered under the SEBI Regulations shall apply.

(iii) Prospectus shall make a declaration about the compliance.

(iv) Prospectus shall not be required in following cases:

(a) Issue of shares by a private company

(b) " " " or deb^m by a public company through private placement.

(c) Bonafide invitation to a person under underwriting agreement.

(v) A signed copy of prospectus shall be delivered to Registrar for filing, on or before date of publication.

(vi) Prospectus shall not be valid if it is issued more than 90 days after its delivery to Registrar.

Sec. 26(5): Statement by Experts:

Expert statement can be included in prospectus, if

(a) he is not engaged or interested in promotion, formation or management of the company.

(b) he has given written consent to issue of prospectus and has not withdrawn such consent before delivery of a copy of prospectus with the Registrar.

(c) a statement to that effect is included in the prospectus

Sec. 26(9): Penalty for contravention of Sec. 26:

↓
Company

and Person knowingly a party to the
Issue of Prospectus

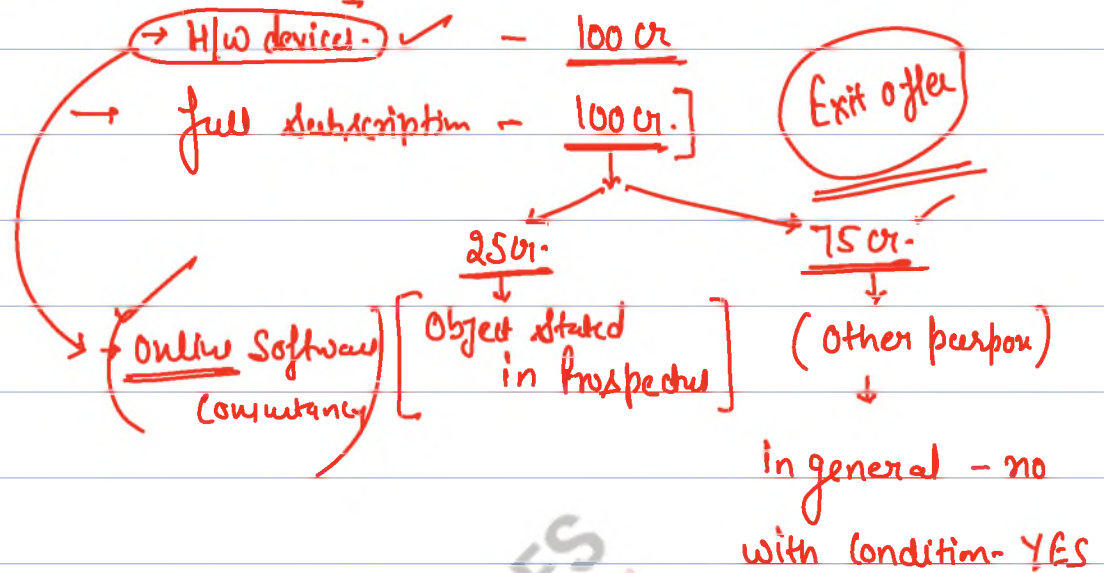
↓
Fine ₹ 50,000 to ₹ 3lac

↓
₹ 50000 to ₹ 3lac

Sec. 27: Variation in Terms of the Contract or Object in Prospectus:

(Read with Rule 7 of Companies (PAS) Rules, 2014)

X Ltd. → Offer (Prospectus) - 1 cr shares - 10 each + 90



- (i) Terms of the contracts referred to in the Prospectus can be varied by way of Special Resolution through Postal Ballot.
- (ii) Details of such notice of such resolution shall be published in two newspapers.
- (iii) Advertisement of notice shall in form No PAS-1
- (iv) Notice shall also be placed on website of company.
- (v) Company shall not use the amount raised through prospectus for buying, trading or otherwise dealing in equity shares of other listed companies.
- (vi) Dissenting shareholders shall be given an Exit offer by promoters or controlling shareholders at such exit price and in such manner as specified by SEBI.

II. Dematerialisation of Securities: Sec. 29 along with Rule 9A of Companies (PAS) Rules, 2014 ^{9 and}

(Reading from Notes)

Unlisted Public Companies

On or after 02.10.2018

↓
Company

↓
Existing security holder

→ Shall facilitate the dematerialisation.

→ Cannot transfer securities in Physical form.

→ " apply to depository

→ " ensure timely payment of fees

→ Cannot apply for securities

- " " security deposits

offered by co. / buyback of securities / bonus issue / Right

- " Inform security holder

- " not issue any security / buy-back /

Issue.

Bonus Issue / Right Issue

H.W.: Write short note on:

(a) Conditions to be fulfilled for including Expert's Statement in the Prospectus. (3 Marks)

(b) Cases in which Prospectus is not required to be issued. (3 Marks)



V. Allotment of Securities : Section 39 [Rule 11 of Companies (PAS) Rules, 2014]

Meaning of Allotment:

Invitation to offer → offer → Acceptance.
 Prospectus Application Allotment

- acceptance by the company of offer to take the shares.
- Appropriation out of previously unappropriated capital of the company.

Requirements of Section 39:

(i) Minimum Subscription [Sec. 39(1)]:

Allotment cannot be made unless:

- (a) Amount stated in the prospectus as minimum amount has been subscribed
- and
- (b) application money for the amount so stated received by the company.

Example: Issue = 50000 shares of ₹10 each @ 80% -

Min. application: 40000 shares as stated in prospectus.

Application Money = 80% of Issue Price = ₹40/-

Case - I : Subscription = 30000 shares = 1.20 Cr. - X

Q : " = 390000 " = 1.50 Cr. - X

D : " = 420000 " = 1.68 Cr. - ✓

D : " = 400000 " = 1.59 Cr. - X

✓ (ii) Minimum Application Money [Sec. 39(2)]:

5% of Nominal amount of the security or such other %age as specified by SEBI.

MCQ: X Ltd. 1 Lac shares. F.V. = ₹ 100, Issue Price 150.

Min. app. Money as per provisions of Sec. 39(2) will be.

(a) ₹ 100

(b) ₹ 150

(c) ₹ 5 ✓

(d) ₹ 7.50

✓ (iii) Refund of application Money [Sec. 39(3) and Rule 11]

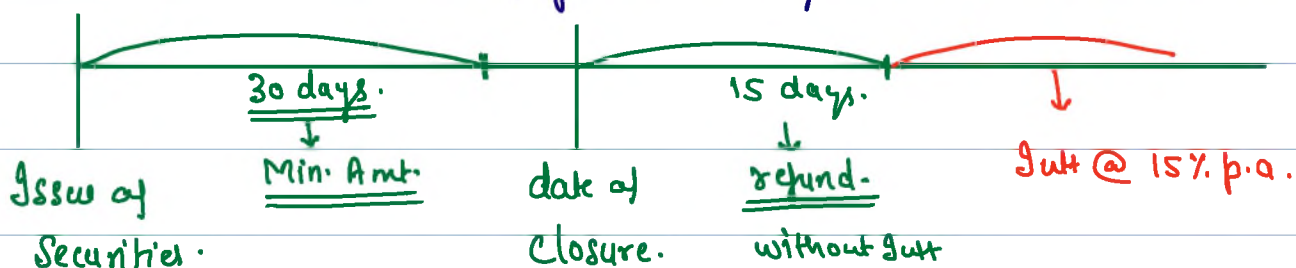
If minimum amount has not been subscribed and application money not recd. within 30 days from date of issue.

↓

Amount received shall be repaid within 15 days from the closure of the Issue, to the Bank A/c from which subscription was remitted

↓

If not paid, directors who are Officers in default, are liable to repay the money with Interest @ 15% p.a.



(iv) Return of Allotment: [Sec. 39(4) and Rule 12]

- to be filed with Registrar
- within 30 days of allotment
- in Form PAS-3
- along with list of allottees (including their name, address and occupation)
 - No. of securities allotted.
- List of allottee shall be certified by signatory to Form PAS-3

(v) Penalty for non-compliance: [Sec. 39(5)]

- Default :- Refund of application Money
 - Filing of return of allotment
- To whom - Company and officer in default
- Quantum - ₹ 1000 per day during which such default continues
OR
₹ 1 lac, whichever is less.

Homework: Explain the provisions of Companies Act, 2013 w.r.t. filing of return of allotment w.r.t. public issue of securities and the consequences if return of allotment not filed with the Registrar.

VI. Securities to be dealt with in Stock Exchange: Sec. 40 + Rule 13

Imp.

(A) Listing of Securities: Sec. 40(1) and 40(2)

- (i) Every company making public offer, before making of public offer, shall make an application to ≥ 1 recognised stock exchange, to obtain permission for listing.
- (ii) Prospectus shall state the name of stock exchange to which application is made.
- (iii) Allotment made without permission shall be void.

(B) Use of application money: Sec. 40(3)

Money received on application shall be kept in a separate bank account and shall be utilised for

- ↓
- | | |
|--|--|
| (i) adjustment against allotment of securities | (ii) Refund / repayment (if company is not able to allot the securities) |
|--|--|

(C) Penalty: Sec. 40(5)

(i) Default: Non compliance of Sec. 40

(ii) Quantum: Company: ₹ 5 Lakh to ₹ 50 Lakh

Officer in: ₹ 50,000 to ₹ 3 Lakh. ✓
default

Imp:
(d)

Underwriting Commission: Sec. 40(6) and Rule 13

- A company may pay underwriting commission subject to Conditions as stated in Rule 13.
- Conditions as stated in Rule 13 of Companies (PAs) Rules, 2014 are:

(a) Payment of such commission is authorised by AOA.

(b) Commission may be paid out of { Proceeds of the Issue
Profit of the Company.

(c) Rate of Commission:

(i) Shares: 5% of Issue Price or rate authorised by Articles, whichever is lower.

(ii) Debⁿ: 2.5% of Issue Price or rate authorised by Articles, whichever is lower.

(d) Disclosure: Prospectus shall disclose the following:

(i) Name of Underwriter

(ii) No. of securities to be underwritten or

subscribed by the underwriters.

(iii) Rate and commission payable to underwriters.

(e) Commission shall not be payable on securities which are not offered to public.

(f) Copy of contract for payment of commission is to be delivered to Registrar at the time of filing of prospectus for registration.

Ex.

Rate of Underwriting Commission

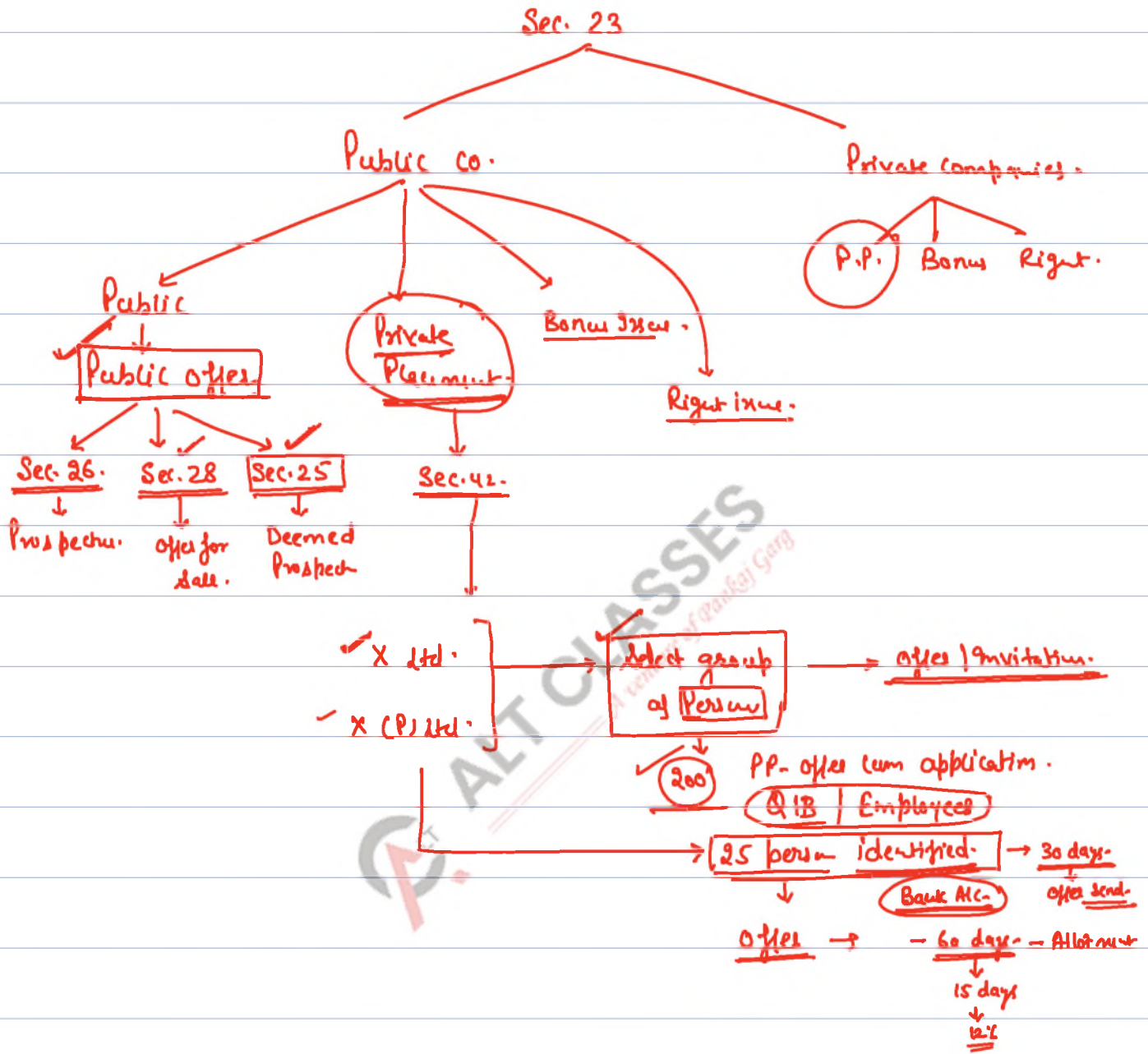
	Contract	Articles	Allowed
Case - I	5% of Issue Price (Shares)	3% of Issue Price (Shares)	3%
Case - II	3% of Issue Price (Share)	5% of Issue Price (Shares)	3%
Case - III	6% of Issue Price (Share)	6% of Issue Price (Share)	<u>5%</u> [Articles - ultra vires]
Case - IV	3% of Issue Price (deb ⁿ)	1% of Issue Price (deb ⁿ)	1%

Conclusion:

	Shares	Deb ⁿ
Lower of →	[% specified in Articles]	
→	% in Contract	
→	5% (Share)	2.5% (deb ⁿ)

Home work: Revision of Sec. 39 and 40.

VII. Private Placement: Sec. 42 of Companies Act, 2013 and Rule 14 of Companies (PA) Rules, 2014



Meaning of Private Placement: Any offer or invitation to subscribe securities

↓
to a select group of persons (identified persons)

↓
through issue of a Private Placement offer cum application which satisfies the conditions specified in Sec. 42.

Conditions for Private Placement: [Sec. 42 read with Rule 14]

(i) Special Resolution: Proposal for private placement has been approved by the shareholders by a Special Resolution.

Note: Notice for special resolution shall provide the details as prescribed under Rule 14.

Imp.

(ii) No. of Person:

- Private placement offer shall be made to not more than 200 persons in aggregate in a financial year.
- Offer made to QIB and Employees under ESOP shall not be considered in limit of 200 persons.
- Limit of 200 persons would be considered individually for each kind of security. (Equity, preference, debⁿ)

Note: Offer made to > 200 persons will be deemed to be a public offer.

Examples:

(i) X Ltd. offers its equity shares to a group of 205 persons, out of which 2 are QIB and 5 are employees to whom shares are offered under ESOP. Determine the no. of persons for the purpose of limit u/c 42. ✓

(a) 205 (b) 203 (c) 200 (d) 198

(ii) X Ltd. makes a private placement offer to 50 persons to subscribe for its Equity shares. On allotment of these shares, Company offers its debⁿ under private placement offer to 160 persons. Is it a valid offer? Valid

(iii) Manner of Issuing Private Placement Offer:

- Private placement offer cum application shall be in form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent within 30 days of recording of name of such person.
- Private Placement Offer shall not carry right of renunciation (i.e. Offer can be accepted only by the person to whom the offer was made)

(iv) Payment of amount:

- Payment shall be from bank account of the person subscribing the securities.
- Company shall keep the record of bank A/c from where payment for subscription has been received.
- In case of Joint holders, amount shall be paid from the bank account of the person whose name appears first in the application.

Imp-

(v) Limit on fresh offer:

- No fresh offer u/s 42 shall be made unless the earlier allotment have been completed or offer has been withdrawn or abandoned.
- Company may, at any time, make more than one issue of securities subject to maximum no. of identified persons.

Example: Determine the validity of the following private placement (PP) offers by X Ltd. during FY 2021-22:

- (i) On 10.04.2021, PP offer for equity shares made to 70 persons. - Valid provided no pending PP allotment / offer
- (ii) On 15.07.2021, PP offer for debⁿ made to 105 persons. - Valid provided no pending PP allotment / offer
- (iii) On 30.10.2021, PP offer for P. shares made to 90 persons. - Valid provided no pending PP allotment / offer
- (iv) On 10.01.2021, PP offer for equity shares made to 180 persons (including 15 employees) - deemed to be a public offer
- (v) On 15.02.2021, PP offer for P. shares made to 105 persons - Valid (provided no pending PP offer)
- (vi) On 05.03.2021 PP offer for debⁿ made to 20 persons. [allotment of PP offer dated 15.02.2021 not yet completed] - Invalid

(vi) Allotment:

- Company shall allot securities within 60 days of receipt of application money.
- If not allotted, Company shall repay application money within 15 days from expiry of 60 days.
- If not repaid, Company shall be liable to repay the money with interest @ 12% p.a. from expiry of 60th day.

(vii) Use of application money:

- Money recd. on application shall be kept in a scheduled bank A/c.

- Money shall be utilised for

(a) adjustment against allotment of securities

or (b) Repayment

(if company is unable to allot the securities)

(viii) Public Advt.: not permitted

(ix) Return of allotment:

- to be filed with the ROC

- in form No PAS-3

- within 15 days from the date of allotment

- Return shall be filed along with a complete list of allottees

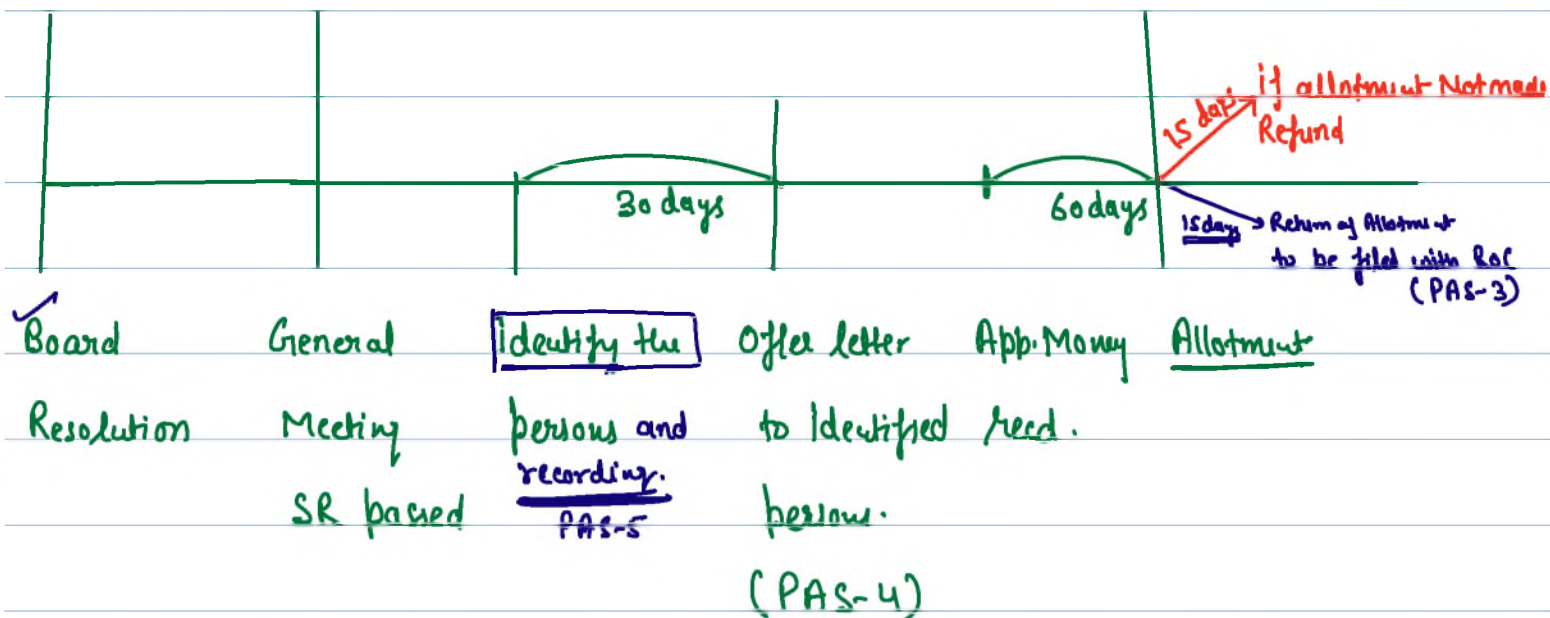
containing - Name, address, PAN, E-mail id of security holder

- class of security held

- date of allotment of security

- no. of securities held, nominal value and amount paid; and

- particulars of consideration recd. if entire securities are offered for consideration other than cash.



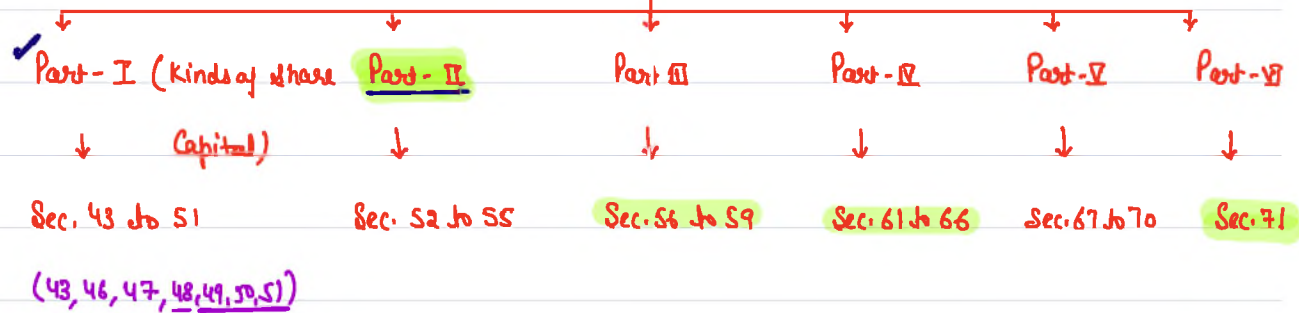
Note: Company shall maintain record of the private placements made in Form No. PAS-5.

- Forms:
- ✓ PAS-1 Sec. 27 (Rule 7): Advt. of Notice for Varying the terms of Contract or Objects in Prospectus
 - ✓ PAS-2 Sec. 31 (Rule 10): Information Memorandum
 - ✓ PAS-3 Sec. 39 (Rule 12): Return of Allotment (Public offer)
 - Sec. 42 (Rule 14): " " " (P.P.)
 - ✓ PAS-4 Sec. 42 (Rule 14): P.P. offer cum application
 - PAS-5 Sec. 42 (Rule 14): Record of P.P. offers
 - PAS-6 Sec. 29 (Rule 9A): Reconciliation of share Capital.

Consequences of Non-compliance: - Covered from book. -

Home-work: Complete Revision of Chapter-3

Chapter - 4 "Share Capital and Debentures" (Sec. 43 to 72)



PART - I (Sec. 43 to 51)

(i) Kinds of Share Capital: (Sec. 43)

(a) Equity Share Capital

- All share capital which is not preference share capital.
- Equity share capital may be of two types:

With voting rights

with differential rights as to

- (a) dividend;
- (b) Voting; or
- (c) otherwise

In accordance with Rule 4 of Companies (Share Capital and Debentures) Rules, 2014
(Rule 4 - to be covered from book)

(b) Preference Share Capital

- that part of issued share capital which carries preferential rights as to:
- (i) payment of dividend.
 - (ii) repayment of capital in case of winding up of the company.

Note: There is no preferential requirement for preference shareholders in relation to:

- (a) distribution of surplus remains after payment of dividend; or
- (b) distribution of surplus remains after repayment of capital in case of winding up.

(ii) Certificate of Shares (Sec. 46):

(a) Meaning of Share Certificate: Document of title issued by the company declaring that the person named therein is the owner of specified number of shares in the capital of the company.

(b) Statutory Provisions:

Sec. 46 (1): Share Certificate shall be prima facie evidence of the title of the person named therein.

Share Certificate to be issued under Common Seal of the

Company, if any, (or) to be signed by — 2 directors
(or)
one director (and)
CS (if employed)

Sec. 46 (2): Issue of duplicate share Certificate:

Duplicate Share Certificate may be issued by a company, if

(a) It is proved that Certificate have been lost or destroyed

or

(b) Certificate has been defaced, mutilated and surrendered to the company.

Penalty for issuing duplicate share Certificate with intent to fraud:

Sec. 46 (5):

Company: liable for fine

Officer in default: liable for action

(a) Min: 5 times of F.V. of shares involved

u/s 447.

(b) Max: Higher of (a) ₹ 10 Crores ;

(b) 10 times of F.V. of shares involved.

(iii) Voting Rights (Sec. 47):

Company limited by shares

Equity Shareholders

Preference Shareholders

- Every member shall have a right to vote on every resolution placed before the company/Meeting.
- Voting rights on a poll will be in proportion of his share in paid up equity share capital.

- Preference shareholders shall have a right to vote on following resolutions:
 - (a) which directly affect their rights;
 - (b) winding up of company;
 - (c) repayment/reduction of equity or preference share capital.

Note: In case of Nidhi companies, no member can exercise voting rights on a poll in excess of 5% of total voting rights.

- Voting rights shall be in proportion to his share in paid-up preference share capital.

Ex: Equity Capital = 90 lakh ✓
Preference " = 70 lakh ✓

160 (56.25%)
(43.75%)

Mr. P hold Equity Capital - 15 lakh and
Preference Capital - 10 lakh

Note:

Preference shareholders shall have a right to vote on all resolutions, if their dividend not paid for ≥ 2 years.

Determine Voting rights of Mr. P on following resolution:

(i) Appointment of director. Sol. (i) $15/90 = 16.67\%$

(ii) Winding up of company.

$$(ii) \left(\frac{15}{90} \times \frac{90}{160} \right) + \left(\frac{10}{70} \times \frac{70}{160} \right) = \frac{25}{160} = 15.625\%$$

(iv) Variation of shareholder's rights (Sec. 48):

(a) Conditions to be satisfied:

(i) Holders of not less than 75% of issued shares of the class whose rights are to be varied must give their consent in writing.

Or

Special resolution passed at a separate meeting of such shareholders.

(ii) Provision for such variation contained in MoA/AOA.

Or

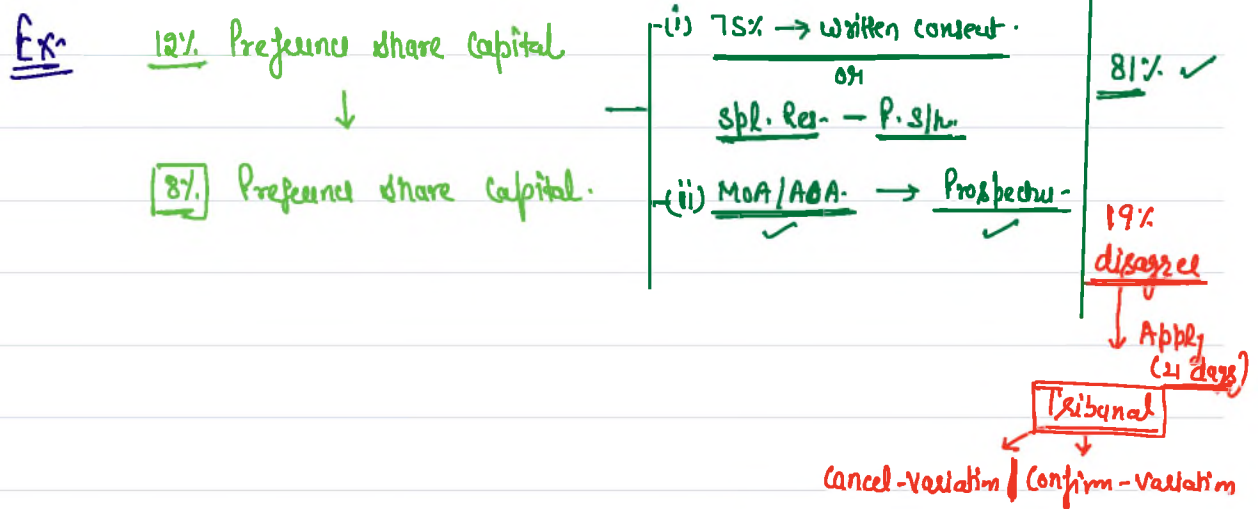
Such variation shall not be prohibited by the terms of issue of such shares.

Note: If such variation affects the right of any other class of shareholders, consent of $\frac{3}{4}$ th of that class shall also be obtained.

Ex: Preference shares \rightarrow (Non-convertible) 80% \rightarrow (Convertible) \rightarrow 85% ✓
Equity affect - $\frac{3}{4}$ th consent \rightarrow 75% ✓

(b) Rights of dissentient shareholders:

- Dissentient shareholders holding $\geq 10\%$ of issued shares of that class may apply to Tribunal (NCLT) for cancellation of variation.
- Application shall be made within 21 days on which consent was given or resolution was passed.
- Decision of Tribunal shall be binding on the shareholders.
- Copy of Tribunal order is to be filed with ROC within 30 days of order of Tribunal.



(V) calls on shares / dividend on shares (Sec. 49, 50, and 51):

(i) Sec. 49: Calls to be made on a uniform basis.

(ii) Sec. 50: - Calls in advance may be accepted if authorised by Articles.
- Members shall not be entitled to any voting rights until the amount has been called-up.

(iii) Sec. 51: Dividend on paid-up capital:

If authorised by Articles, company may pay dividend in proportion of paid-up amount on each share.

Part - II of Ch-4 "Share Capital and debentures"

Sec. 52 to 55

Sec. 52 : Application of premium recd. on issue of shares

Sec. 53 : Prohibition on issue of shares at discount

Sec. 54 : Issue of Sweat Equity Shares

Sec. 55 : Issue and Redemption of Preference Shares

(vi) Application of premium recd. on issue of shares (Sec. 52):

(a) Premium received on issue of securities shall be credited to "Securities Premium A/c".

(b) "Securities Premium A/c" can be utilized for:

(i) Issue of unissued shares of company to members as fully paid bonus shares.

(ii) Writing off the preliminary expenses of the company.

(iii) Writing off the expenses of commission paid or discount allowed on issue of any shares/debentures of the company.

(iv) Providing premium payable on redemption of preference shares or debentures of the company.

(v) purchase of its own shares or debentures u/s 68.

(viii) Prohibition on issue of shares at discount (Sec. 53):

(a) Company shall not issue shares at a discount except in case of issue of sweat equity shares u/s 54.

(b) Any share issued by a company at a discount shall be Void.

(c) Penalty for contravention:

- Company and officer in default shall be liable to a penalty which may extend to amount equal to the amount raised through the issue of shares at a discount or ₹ 5 lakh, whichever is less.
- Company shall be liable to refund all monies received with interest @ 12% p.a. from the date of issue of such shares to the persons to whom such shares have been issued.

(ix) Issue of Sweat Equity Shares (Sec. 54):

(a) Meaning of Sweat Equity Shares:

Equity shares issued by a company to its directors/employees:

- at a discount; or
- for a consideration (other than cash) for providing their know-how or other IPR or other value addition, by whatever name called.

(b) Conditions to be fulfilled:

- Sweat Equity shares must belong to a class of shares already issued.
- Issue of sweat equity shares is authorised by a special resolution.
- Resolution must specify:
 - No. of shares
 - Current market price
 - Consideration, if any
 - Class of director/employees, to whom such shares are to be issued.

(iv) If shares are listed on a recognised stock exchange, issue of sweat equity shares shall be made in accordance with S.E.B.I. Regulations.

(v) In case of unlisted equity shares, issue of sweat equity shares shall be in accordance with prescribed rules (Rule 8).

Rule 8 of Companies (Share Capital and Debentures) Rules, 2014: (for Unlisted Companies)

(i) Issue is authorised by special resolution.

(ii) Special resolution shall be valid for making allotment within a period of 12 Months.

(iii) Limit: Issue of sweat equity shares in a year shall not exceed 15% of the paid-up ESC or ₹ 5 Crores, whichever is higher.

Issue at any time shall not exceed 25% of paid-up ESC

Ex: Paid-up ESC: 50 Crores ✓

Year 2022-23: 7 Crores

Year 2023-24: 5.5 Crores

$(25\% \text{ of } 50 \text{ Cr} - 7 \text{ Cr}) = 5.5 \text{ Crores}$

$\text{Higher of } 5 \text{ Crores or } 15\% \text{ of } 50 \text{ Crores} = 7.5 \text{ Cr}$

- (a) ₹ 5 crore.
- (b) ₹ 7.5 crore.
- (c) ₹ 5.5 crore. ✓
- (d) ₹ 8.55 crore.

Note: In case of a start-up company, issue of sweat equity shares is allowed to the extent of 60% of paid-up capital, for a period upto 10 years of incorporation.

(iv) lock in period: 3 years from the date of allotment.

(v) Other provisions: — heading from book —

(ix) Issue and Redemption of Preference Shares (Sec. 55):

(A) Issue of Irredeemable Preference shares : Not allowed

(B) " " Redeemable Preference shares : is allowed subject to following conditions:

(1) Issue is authorised by AOA.

(2) Maturity period of preference shares shall not exceed 20 years.

[Note: 30 years allowed if company is dealing in Infrastructural projects provided redemption of ≥ 10% of preference shares per year is made from 21st year onwards or earlier.

(3) Issue is authorised by special resolution.

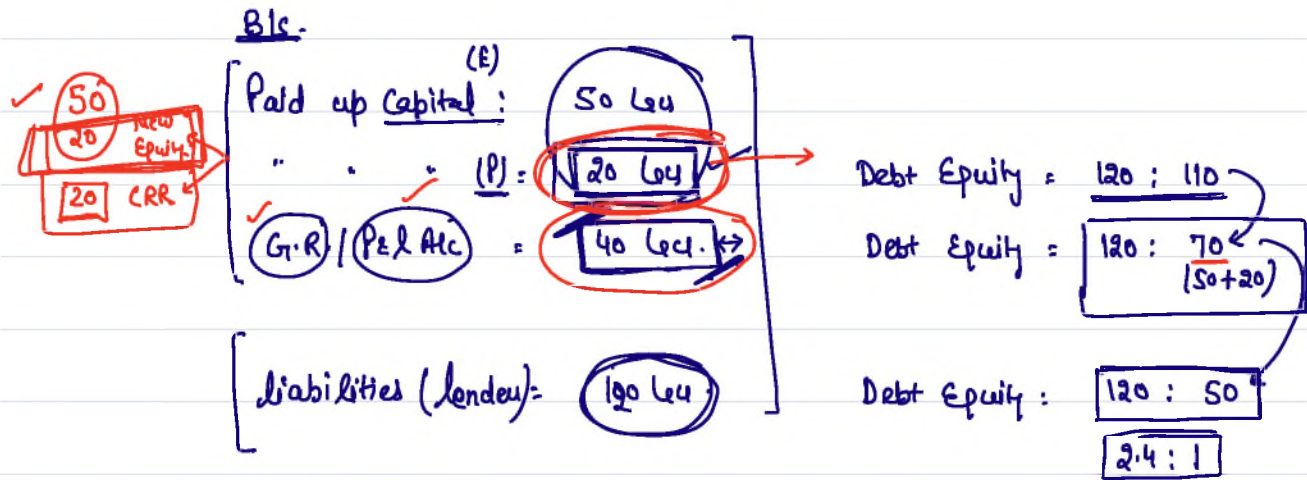
(4) Company has no subsisting default in redemption of preference shares issued earlier or in payment of dividend due on any preference shares.

(c) Redemption of Preference Shares :

(i) Redemption can be made out of profits available for distribution as dividend or out of proceeds of fresh issue made for this purpose.

(ii) Only fully paid up shares shall be redeemed.

(iii) If shares are redeemed out of profits, a sum equal to nominal amount of shares redeemed be transferred to CRR A/c. [Purpose of CRR is to keep the Capital intact]



(iv) Premium, if any payable on redemption shall be provided out of profits of the company or out of securities premium a/c.

(D) Remedies available if company not able to redeem the P. shares:

- Company may with the consent of holders of $\frac{3}{4}$ th in value of such preference shares and

with the approval of Tribunal on a petition

made do it in this behalf



- Issue further preference shares
- equal to amount due for redemption
- Including dividend thereon, in respect of unredeemed preference shares.

- On Issue of such further preference shares, the unredeemed preference shares shall be deemed to have been redeemed.
- In respect of persons who have not consented to issue of further preference shares, Tribunal shall order for the redemption forthwith.

Example: Preference shares due for redemption = 20,00,000
 Dividend = 2,00,000
 Company not able to redeem.

- ✓ (i) Tribunal approval.
- (ii) Preference shareholders holding not less than 75% value - consent given by 30 P.S/h holding 18,00,000 value.
- (iii) New P. shares issued for 90% of outstanding = 19,80,000
 (18,00,000 + 1,80,000)
- (iv) Remaining S/h - get the red^m Amount in cash.

Chapter - 4 : Share Capital and debentures "

Part III - Sec. 56 to 59

(X) Transfer and Transmission of Securities : Sec. 56 :

(a) Meaning of transfer and transmission:

- Transfer means voluntary conveyance of the rights and duties of member to another person desirous of becoming a member, for a consideration involved.
- Transmission means transfer of shares under operation of law.
It takes place under various circumstances like:

- death of shareholder;
- when shareholder becomes lunatic or declared insolvent.
- In case shareholder is a company, it goes into liquidation.

(b) Registration of transfer of securities : Sec. 56(1)

A company shall not register a transfer of securities unless following conditions complied with:

- (1) Proper instrument of transfer (transfer deed) delivered to company within 60 days of execution;
- (2) Instrument of transfer may be delivered by transferor or transferee.
- (3) Instrument of transfer must be duly stamped, dated and executed by or on behalf of transferor and transferee

(4) Instrument must specify the name, address and occupation of the transferee.

(5) Instrument must be accompanied by Share Certificate/Letter of allotment.

Note: If instrument of transfer is lost or not been delivered within specified time, company may register transfer on such terms as to indemnity as the Board may think fit.

(c) Registration of transmission: Sec. 56(2)

A company may register, on receipt of intimation of transmission of any right to securities by operation of law from any person to whom such rights has been transmitted.

(d) Transfer of partly paid shares: Sec. 56(3)

If application is made by transferor for partly paid shares, transfer shall not be registered, unless:

- (i) Company gives the notice of application in form No. SH-5 to transferee; and
- (ii) No objection is received from transferee within 2 weeks.

(e) Time period for delivery of share certificate: Sec. 56(4)

- (i) Subscribers to MoA : within 2 Months from date of Incorporation of Co.
- (ii) Allotment of shares : within 2 Months from date of allotment.
- (iii) Allotment of debⁿ : within 6 Months from date of allotment.
- (iv) Transfer / Transmission : within 1 Month of receipt of instrument of transfer or intimation of transmission.

(f) Transfer by legal representative : Sec. 56(5)

Transfer of any security or other interest of a deceased person in a company, made by his legal representative

↓

shall be valid

↓

as if he had been the holder of the shares at the time of execution of transfer.

(9) Other Provisions:

(i) Penalty for default: If any default is made in complying with the provisions of Sec. 56(1) to 56(5), then the company and every officer in default shall be liable to a



penalty of ₹ 50,000 .

(ii) Transfer and transmission of Securities:

- to be learned from book -

(iii) Forged transfers:

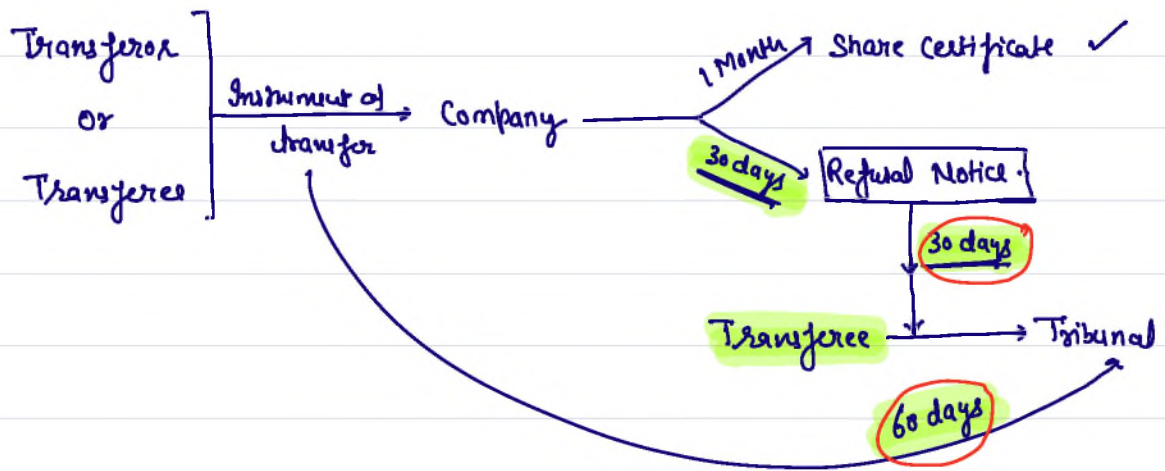
- to be learned from book -

(xi) Refusal to register the transfer and appeal against refusal (Sec. 58):

(a) Private Company: Sec. 58(1) and 58(3)

✓ Company shall send notice of refusal to transferor and transferee/ person giving intimation of transmission within 30 days from the date on which instrument of transfer/ intimation of transmission was delivered to the company.

✓ Transferee may appeal to Tribunal within 30 days of receipt of notice; Or in case no notice has been sent by the company, then appeal may be made within 60 days from the date on which the instrument of transfer or intimation of transmission was delivered to the company.



(b) Public Company: Sec. 58(2) and 58(4)

- ✓ Securities of a public company are freely transferable.
- ✓ If public company without sufficient cause refuses to register the transfer of securities within 30 days from the date on which instrument of transfer or intimation of transmission was delivered to the company



Transferee may within 60 days from date of refusal or where no intimation received from the company, within 90 days of delivery of instrument of transfer or intimation of transmission, appeal to Tribunal.

(c) Powers of Tribunal: Sec. 58(5)

Tribunal, may after hearing the parties either dismiss the appeal or by Order (a) directing the company to register the transfer/transmission of securities within 10 days of receipt of order.

Or

(b) direct rectification of register

and

direct the Company to pay damages, if any, sustained by aggrieved party.

Note: If any person contravenes Order of Tribunal, he shall be punishable with imprisonment for a term (1 year to 3 years)

and

with fine (₹ 1 Lac to ₹ 5 Lac)

(xii) Sec. 57 and Sec. 59: - Heading from book -



ALT CLASSES

A venture of Pankaj Garg

Chapter - 4 "Share Capital and debentures"

Part - IV (Sec. 61 to 66)

I. Further Issue of Shares (Sec. 62)

II. Alteration and Reduction of Capital (Sec. 61, 64, 65)

III. Issue of Bonus Shares (Sec. 63)

(xiii) Persons to whom offer shall be made of further issue of shares (Sec. 62):

(a) Existing Shareholders

(b) Employees

(c) Others

- Where at any time, a company having share capital proposes to increase its subscribed capital by issue of further shares, such shares shall be offered to existing shareholders in proportion to existing paid-up share capital, by sending a letter of offer, subject to following conditions:

(i) Offer shall be made by a notice specifying no. of shares offered and limiting a time not less than 15 days and not exceeding 30 days from date of offer within which offer, if not accepted, shall be deemed to have been declined.

(ii) Unless Articles provide otherwise, offer shall be deemed to include a right to renounce two shares in favour of any other person.

(iii) BOD may dispose the shares in following cases :

(a) Existing s/h does not respond within the specified time; OR

(b) on receipt of earlier intimation from the existing shareholder that he declines to accept the offer.

(b) Offer to Employees:

Further shares shall be offered to employees under ESOP subject to Special Resolution passed at general meeting of the company and such conditions as prescribed.

(Refer Rule 12 from the book)

* Ordinary resolution

(for reading purpose)

required in case of private company.

✓ (c) Offer to Others: Further shares shall be offered to any person, if it is authorised by special resolution

↓

either for cash or for consideration

Other than cash

↓

if the price of such shares is determined by the Valuation Report of a regd. Valuer.

Other provisions of Sec. 62: - Reading from Book -

(xiv) Alteration of Share Capital : (Sec. 61 and 64)

(A) Sec. 61 : A limited company, having share capital, if authorised by Articles, alter its MoA to:

- (a) increase its authorised share capital;
- (b) Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares; [10 shares x ₹1 → 1 share x ₹10]
- (c) Convert all or any of its paid up Capital into stock and reconvert stock into fully paid shares
- (d) sub-divide its shares into shares of smaller amount; [1 share x ₹10 → 10 shares x ₹1]
- (e) Cancel the shares that have not been taken by any person and diminish the share capital by amount of shares so cancelled.

[Authorised Capital : 50 Lacs.]	- 46 Lacs.
Issued = 50 Lacs ✓	- 46 Lacs
Subscribed Capital : 46 Lacs ✓	- 46 Lacs

(B) Sec. 64:

- Where a company alter its share capital, in any of the manner specified in 61, company shall file a notice in form SH-7 along with altered MoA, with the Registrar

↓

within 30 days of such alteration.

- If SH-7 not filed with the Registrar, the company and every officer of the company in default, shall be liable to a penalty of ₹ 500 for each day during which such default continues, subject to a maximum of

$\xrightarrow{\hspace{10em}}$
 ₹ 5 lakhs in case of Company and ₹ 1 lakh in case of Officer in default

(xv) Reduction of Share Capital: Sec. 66

A company limited by shares, may reduce its share capital in any manner and in particular, may:

- (a) Extinguish or reduce the liability on any of its shares in respect of unpaid share capital

$$\left[\text{For Ex: } \underline{\text{₹ 10 (f.v.)}} - \underline{\text{₹ 6 (paid up)}} - \underline{\text{₹ 4 (unpaid)}} \right]$$

$$\text{Alt-I: } \underline{\text{₹ 6 (fully paid up)}} - \underline{\text{₹ 6 (f.v.)}}$$

$$\text{Alt-II: } \underline{\text{₹ 8 (f.v.)}} - \underline{\text{₹ 5 (paid-up)}} - \underline{\text{₹ 3 (unpaid)}}$$

$$\text{Alt-III: } \underline{\text{₹ 5 (f.v.)}} - \underline{\text{₹ 3 (paid-up)}} - \underline{\text{₹ 2 (unpaid)}}$$

- (b) Cancel any paid up share capital which is lost or is unrepresented by available assets.

$$\text{B/s = Assets } 50 \text{ Lac } \left[\begin{array}{l} \text{Over} \\ \text{valued} \\ \text{₹ 30 Lac} \end{array} \right]$$

- (c) pay off any paid up share capital which is in excess of the requirements of company.

$$\left[\begin{array}{l} \text{Capital rec. A/c Dr } 30 \text{ Lac} \\ \text{To Asset A/c } 30 \text{ Lac} \end{array} \right]$$

Procedure for Reduction of Share Capital:

- (i) Company is required to pass a special resolution in general meeting of the company and an application is to be made to Tribunal in this regard.
- (ii) Tribunal shall give notice of every such application to the C.G., ROC and Creditors of the company
and
shall take into consideration, the representation, if any made to it, by them within a period of 9 months from date of receipt of notice.
- (iii) Tribunal, if satisfied as to ~~settlement~~ satisfaction of claims of creditors, may make an order confirming the reduction of share capital on such terms and conditions as it considers fit.
- (iv) Tribunal's order shall be published by the company in such manner as directed by Tribunal.
- (v) A certified copy of Tribunal order shall be delivered to ROC within 30 days of receipt of copy of order, who shall register the same and issue a certificate to that effect.

v. imp.
(xvi) - Issue of Bonus Shares (Sec. 63)

→ (Noting of entire Sec. 63 in Notebook) - (H.W.)

✓ Bonus shares - Unissued share capital $\xrightarrow{\text{II}}$ Issued share capital.
(without consideration)

↓ through

Capitalisation of Reserves

✓ free reserves, securities premium a/c, CRR

Note: Revaluation reserves → not permitted

✓ Conditions: → Articles / Board Resolution / fully paid up share / no default.

Chapter - 4 " Share Capital and Debentures "

Part - V (Secs. 67 to 70)



(xvii) Restrictions on giving loans, etc. (Sec. 67) :

(a) No public company is allowed, to give directly or indirectly
and

whether by means of a loan, guarantee or security

↓

any financial assistance for the purpose of or in connection with

↓

purchase or subscription, by any person of any shares in it or
its holding company.

(b) Restriction as mentioned above, shall not apply to :

(i) lending of money by a banking company in ordinary course
of business.

v. Imp.
→ (ii)

giving of loans to the employees (other than directors or KMP)
for an amount not exceeding their salary or wages for a
period of 6 months, so as to enable them to purchase or
subscribe fully paid shares in the company or its holding
company to be held by them by way of beneficial ownership.

(c) Penalty for Contravention:

(i) Company: fine ranging from ₹ 1 lakh to ₹ 25 lakhs.

(ii) Officer in default: Imprisonment upto 3 years
and

fine ranging from ₹ 1 lakh to ₹ 25 lakhs.

(xviii) Buy back of Securities: [Sec. 68 to 70]

✓(a) Sources of Buyback: A company may purchase its own shares or specified securities, out of:

- its free reserves;
- securities premium a/c; or
- proceeds of issue of any share or other specified securities.

Note: Buyback out of proceeds of earlier issue of same kind of shares/securities is not allowed

Issue	Buy back	
S ₁	S ₂	✓
S ₂	S ₂	X

✓(b) Conditions for buy back:

(i) Buyback is authorised by the Articles of Association.

(ii) Special Resolution passed in the general meeting of the company.

Note: Buyback upto 10% of PUEC and free reserves is allowed by authorisation of Board resolution passed at Board meeting.

(iii) Buy back cannot exceed 25% of PUC and free reserves.

However, in a financial year, buy back of equity shares cannot exceed 25% of total PUC.

Example: Paid up Equity Capital = ₹ 50 crores
" " Pre. " = ₹ 30 crores.
Free Reserves = ₹ 20 crores.

Q. Permitted buyback of Equity in a FY = 25% of 50 crores
= ₹ 12.5 crores

Q. Permitted Overall buyback = 25% of 100 crores
= ₹ 25 crores

Q. Permitted buyback through Board Resolution = 10% of 70 crores
= ₹ 7 crores

(iv) Debt-Equity ratio shall not exceed 2:1 after buyback.

(v) Shares / securities for buyback are fully paid-up.

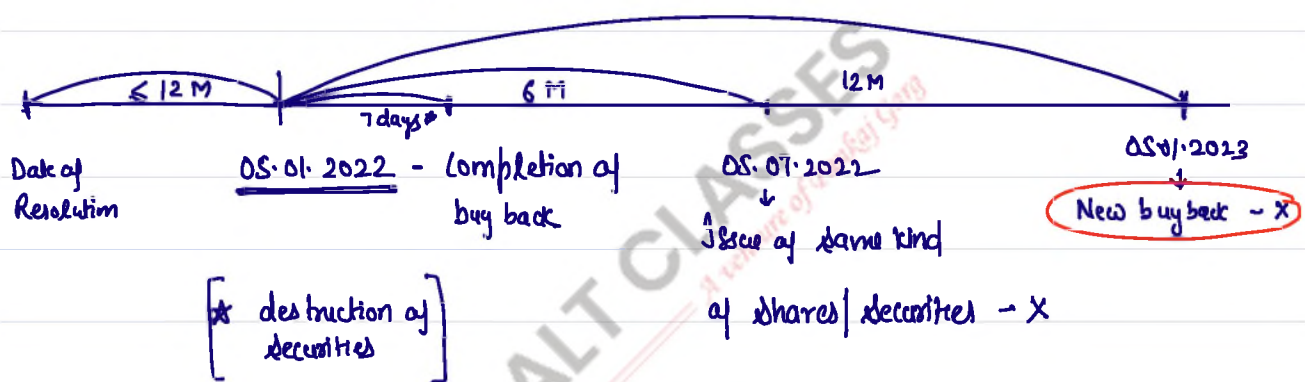
(vi) Buy back of listed securities shall be in accordance with the SEBI Regulations; Buy back of Other securities shall be in accordance with the prescribed rules.

(c) No offer of buyback shall be made within a period of One year from the date of closure of preceding offer of buy-back.



(d) Every buy-back shall be completed within a period of 12 months from the date of passing of Board Resolution / Special Resolution, as the case may be.

(e) Company shall not make further issue of same kind of shares / securities within 6 months except by way of bonus issue or conversion of warrants and other subsisting obligations.



(f) If buyback is made out of free reserves or securities premium a/c, then an amount equal to nominal value of shares so purchased, shall be transferred to CRR A/c. [Sec. 69]

(g) Other provisions: - to be covered from book -

H.W.: Do written practice of two Questions:

(a) Declaration of solvency

(b) Prohibition for buy back of securities (Sec. 70)

(xix) Debentures (Sec. 71): - to be covered from book -

Chapter - 4 "Share Capital and Debentures"

Part VI - Debentures (Sec. 71)

(Xix) Debentures:

(A) Debenture Redemption Reserve: (DRR)

(1) DRR is not required for both **public** and **privately placed** debentures in case of following:

- Debentures issued by All India Financial Institutions regulated by RBI and Banking Companies.
- Debentures issued by Listed NBFCs regul. with RBI, listed housing finance Companies regul. with NHB and other listed Companies.

(2) DRR is not required for privately placed debentures in case of unlisted NBFC regul. with RBI and unlisted HFC regul. with NHB.

(3) In case of other unlisted Companies, DRR is required for privately placed debⁿ @ 10% of value of O/S debⁿ

	Public Issue	Privately Placed	B
(i) AIFI / Banking Cos.	- Not required -	- Not required -	X
(ii) Listed NBFC / HFC / others	- Not required -	- Not required -	✓
(iii) Unlisted Companies			
(a) NBFC / HFC	- Not applicable -	- Not required -	X
(b) Other Companies	- Not applicable -	10% of O/S deb ⁿ	✓

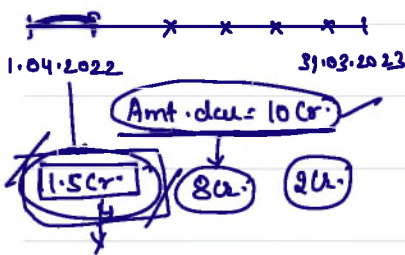
(B) Requirement of deposits / Investments in specified methods:

(i) Applicability:

- (a) All listed NBFCs Regd. with RBI.
- (b) All " HFCs " " " NHB.
- (c) " Other listed companies (other than All India FIs and Banking companies)
- (d) All Unlisted companies which are not NBFCs and HFCs

(ii) Requirement:

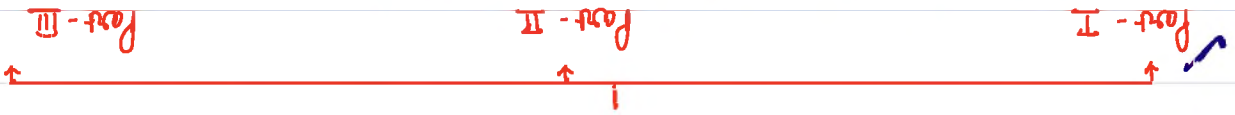
- (a) All companies specified above, shall on or before 30th day of April in each year, in respect of debentures issued, deposit or invest, a sum \geq 15% of amount of debentures maturing during the year ending on 31st March of the Next year, in specified methods of deposits or investments.



- (b) The amount so deposited or invested, should not be utilised for any purpose other than for redemption of debentures maturing during the year.
- (c) Amount remaining deposited or invested, shall not at any time fall below 15% of amount of debentures maturing during the year ending on 31st day of March of that year.

Chapter - 5 "Acceptance of Deposits"

[Chapter V of Companies Act, 2013 - Sec. 73-76A]
+ Companies (Acceptance of Deposits) Rules, 2014



Meaning of Deposits and

Depositors

Members (Sec. 73 + Rules)

from Public + Misc.

Acceptance of Deposits from

Acceptance of deposits

(Sec. 76, 76A)

(i) Meaning of Deposit: Sec. 2(31)



Includes any receipts of money

by way of

Deposit

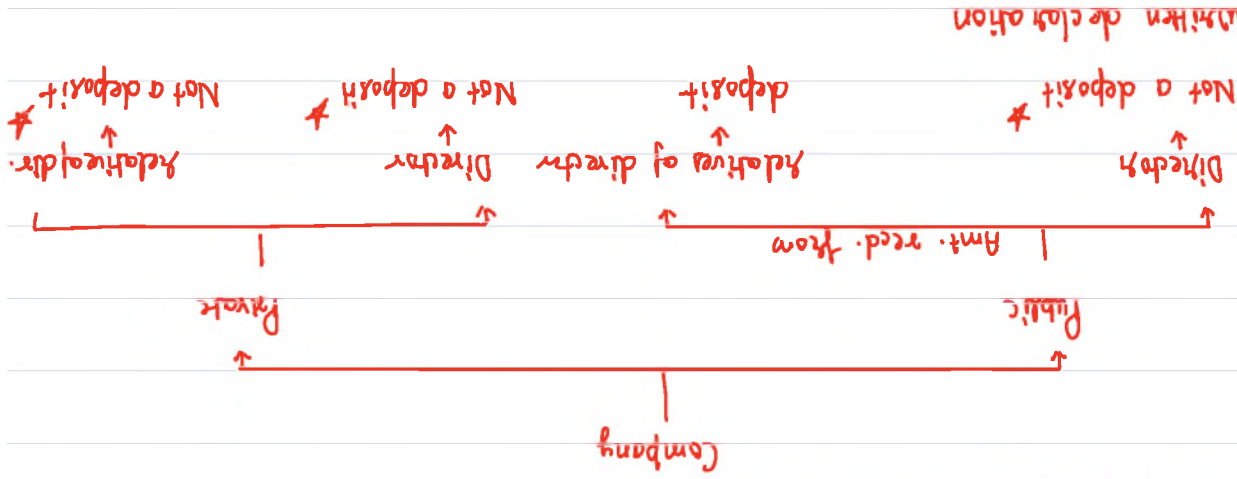
any other form

but does not include such categories as prescribed under Rules.

[Refer Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014]

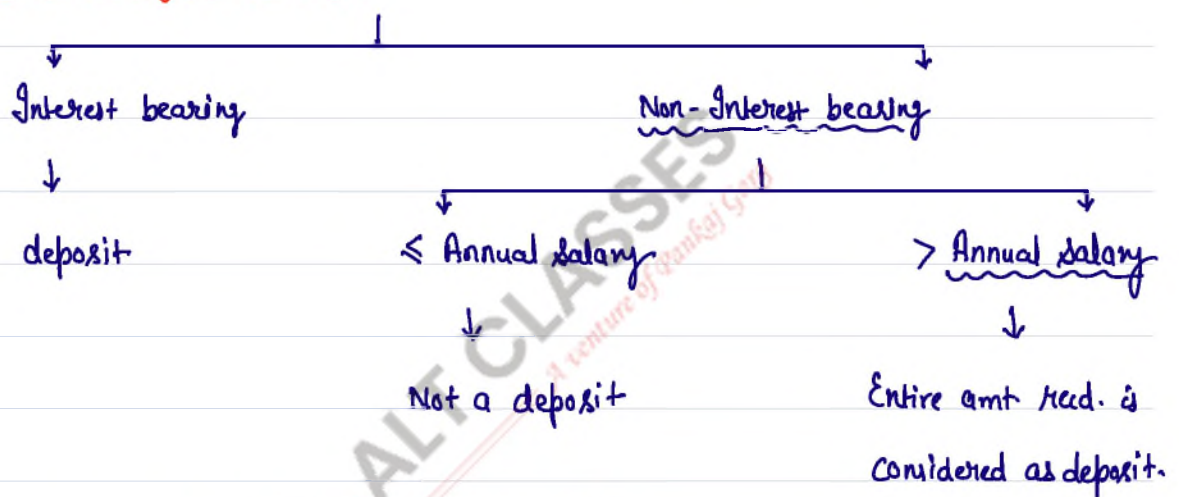
- to be covered from book -

Deposits from Directors / Relatives:

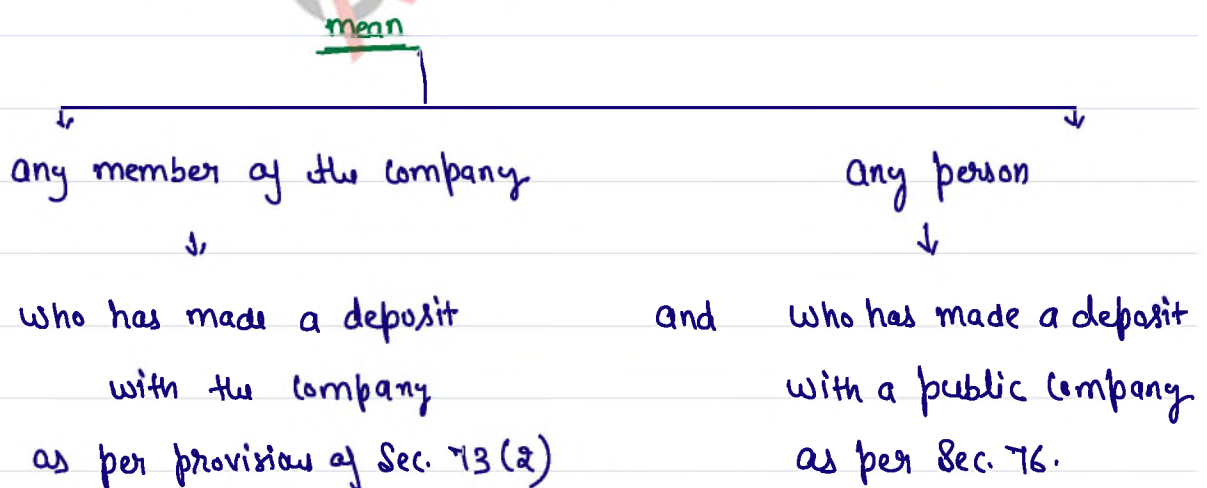


- Debⁿ / Bonds:
- (i) Secured debⁿ → first charge / Pari passu charge on assets of Co.
 - (ii) Convertible debⁿ → within 10 years.
 - (iii) Non convertible debⁿ, no charge, but listed on recognised S.E.
- are not considered as deposits.

Security deposit from Employees:



(ii) Meaning of Depositor: [Rule 2(1)(d)]



H.w.: written practice of Questions asked in Nov. 19 and July 21.

(iii) Acceptance of deposits from the members: (Sec. 73)

Sec. 73 (1): - No company shall accept or renew deposits from the public except in the manner as provided under the Act. [Refer Sec. 76]

- This prohibition is not applicable over:

- ✓ (a) Banking Companies
- ✓ (b) NBFC
- ✓ (c) HFC regd. with NHB.
- ✓ (d) Other specified Companies.

✓ Sec. 73 (2): Condition for accepting deposits from members:

- ✓ (i) A resolution is passed in the general meeting of the company.
- ✓ (ii) A Circular is issued to members including therein a statement showing specified particulars. [Refer Rule 4]
- (iii) A copy of the circular shall be filed with ROC within 30 days before the date of issue of circular.
- ✓ (iv) $\geq 20\%$ of deposits maturing during the year should be deposited in a scheduled bank in Deposit Repayment Reserve (DRR) A/c, on or before 30th April of each FY.
- (v) Company shall certify that company has not committed any default in repayment of deposits or payment of interest on such deposits or both, at any time.

Note: In case of any default, company shall make good the default and 5 years elapsed since the date of making good the default.

(vi) Security may be provided for due repayment of deposits or interest thereon by creation of charge on the assets of the company.

Exception: Condition as stated above shall not be applicable over a private co.

✓ (a) If deposits \leq Aggregate of PUC + Free reserves + securities premium a/c.

(b) Which is a start up, for five years from the date of incorporation.

(c) which fulfills 3 conditions:

(i) Not a subsidiary or associate of other company; (+)

(ii) Borrowings from banks / financial institutions or body corporates are less than the lower of following: (a) twice of PUC (+) (b) ₹ 50 Crores.

(iii) No default in repayment of any subsisting borrowings.

Note: Such private companies shall file the details of money accepted to the Registrar in form No. DPT-3.

Sec. 73(3): Deposits accepted shall be repaid with interest as per terms and conditions on which deposited were accepted.

Sec. 73(4): If company fails to repay the deposit or part thereof or any interest thereon

↓

depositor may apply to Tribunal for an order directing the company - to pay the sum due or for any loss or damage incurred on such order as Tribunal may deem fit.

Sec. 73(5): ORR A/c shall not be used by the company for any purpose other than the repayment of deposits.

(iv) Companies (Acceptance of Deposits) Rules, 2014:

Rule 3(1): Tenure for deposits:

- A company is not permitted to accept or renew the deposits, which are repayable: - On demand; or
 - within a period less than 6 months or more than 36 months from date of acceptance or renewal of such deposits.
- However, to meet any short-term requirements, a company may accept or renew the deposits which is repayable within a period less than 6 months, subject to the following conditions:
 - (a) Deposit shall not exceed 10% of aggregate of PUSC, free reserves and securities premium.
and
 - (b) Deposits are repaid not earlier than 3 months from the date of acceptance of such deposits or renewal.

Rule 3(2): Joint deposits:

Deposits may be accepted in joint names, but not exceeding '3'.

✓ Rule 3 (3): Maximum amount:

= 35% of Aggregate of PUSC, free reserves and securities premium.

Exceptions:

(i) Specified IFSC Public Company and Private Companies may accept deposits upto 100% of aggregate of PUSC, free reserves and securities premium.

(ii) Maximum limit shall not apply over the private companies which:

(a) is a start-up company for 10 years from the date of incorporation.

(b) satisfies 3 conditions:

✓ (i) not an Associate or subsidiary of other company;

✓ (ii) borrowings from banks / F.I. body corporates are less than twice of PUSC or ₹ 50 Crores, whichever is lower; and

✓ (iii) no default in repayment of subsisting borrowings.

Note: Companies accepting deposits shall file the details of deposits with the Registrar in form No. DPT-3.

Rule 3(6): Rate of Interest and brokerage:

shall not exceed maximum rate as prescribed by RBI.

Rule 3(7): Right to alteration:

Company shall not reserve for itself, directly or indirectly, a right to alter any terms or condition of deposit, deposit trust deed which may prove detrimental to interests of depositors

↓

after circular is issued and deposits are accepted.

Rule 4: Circular to be issued before accepting deposits: already covered

Rule 5: Deposit Insurance: Not in syllabus

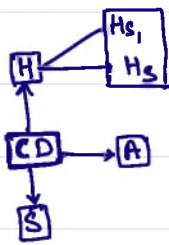
Rule 6: Creation of charge:

- W.r.t. Secured deposits, a charge shall be created on tangible assets (movable or immovable) of the company in favour of deposit trustee.
- Charge cannot be created on intangible assets, like goodwill, trade mark etc.
- Total value of security shall not be lower than the amount of deposits accepted and interest payable thereon.

Imp:

Rule 7 : Appointment of deposit trustee:

- (i) For creating security of deposits, one or more trustees for depositors, shall be appointed.
- (ii) Before appointment, a written consent shall be obtained.
- (iii) Statement of consent shall appear in the circular with reasonable prominence.
- (iv) Deposit trust deed shall be executed at least 7 days before date of issue of circular in form No. DPT-2.
- (v) Following persons cannot be appointed as trustee:



- (a) Directors, KMPs, officers or employees of the company, its holding co, subsidiary co, associate co. or depositor; or relatives of such directors, KMPs, officers or employees ^{depositor}.
- (b) A person who is indebted to C/H/S/A subsidiary of holding company.
- (c) A person who has material pecuniary relationship with the company.
- (d) A person who has given any guarantee in respect of deposits or interest thereon.

- (vi) A trustee cannot be removed before expiry of his tenure except with consent of all directors present in the meeting.

In case company is required to have independent directors, at least one independent director shall be present in the meeting.

Rule 8: Duties of Trustees

Rule 9: Meetings of Depositors

Not covered in syllabus.

Rule 10: Filing of Application Form:

Rule 11: Nomination:

Rule 12: Deposit Receipt: to be issued within 21 days.

Rule 13: Deposit Repayment Reserve: already covered

Rule 14: Register of Deposit:

- to be maintained at Regd. office of the company
- must incorporate the specified particulars
- preserved for at least 8 years from the end of FY in which latest entry is made in the Register.
- Entries shall be made within 7 days of issue of deposit receipt.

Rule 15: Premature payments:

- In case of premature payments rate of interest payable will be 1% lower than the rate payable for the period for which deposit has actually run.
- period of 6 months or more will be considered as one year.
- period less than 6 months to be ignored.
 - $\geq 6 \text{ months} - < 1 \text{ year } 6 \text{ Months} = \boxed{1 \text{ year}}$
 - $\geq 1 \text{ yr. } 6 \text{ M} - < 2 \text{ year } 6 \text{ Month} = 2 \text{ years}$
 - $\geq 2 \text{ year } 6 \text{ M} - = 3 \text{ year}$

Ex: Mr. A - deposit ₹ 3 Lakh @ 10% for 3 years]
 [8% for 2 years]
 [6% for 1 year]

Situation - I : 4 Mouth = Not allowed

- 9 Mouth = $3,00,000 \times 5\% \times \frac{9}{12}$
- 15 Mouth = $3,00,000 \times 5\% \times \frac{15}{12}$
- 25 Mouth = $3,00,000 \times 7\% \times \frac{25}{12}$
- 34 Mouth = $3,00,000 \times 9\% \times \frac{34}{12}$

Rule 16: Filing of return of deposits with the Registrar:

Return to be filed for every financial year in form DPT-3, with the Registrar, by 30th June of following year.

Rule 16A: Disclosures in the financial statements:

Public Company - Money recd. from the directors.
 Private " - " " " " " and their relatives.

Rule 17: Penal rate of interest: @ 18% p.a. for overdue period.

Rule 18: Powers of C.G.

Rule 19: Applicability of Sec. 73 / Sec. 74 over Eligible Co.

Rule 20: Transitional Provision

Rule 21: Punishment for contravention: If no penalty is provided in the Act - - - - -

Not in syllabus

[Sec 76A of Companies Act, 2013 prescribes the penalties]

Hw
MTP - March 21



(v) Acceptance of deposits from public : Sec. 76

(a) An eligible company having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members, subject to compliance of requirements as stated in sec. 73(2) and rules prescribed by C.G.

Eligible company: As per Rule 2(1)(e), eligible company means

↓
a public company, having net worth \geq 100 Cr.

Or

turnover \geq 500 Cr

AND

having obtained prior consent in general meeting

by means of a special resolution

and

filed the resolution with ROC before inviting public for acceptance of deposits.

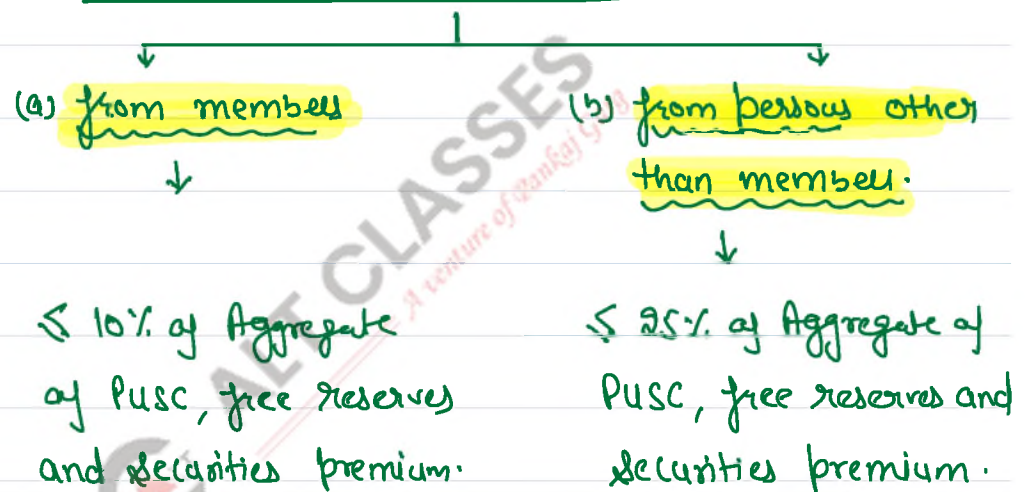
(b) Such a company shall obtain credit rating from a recognised credit rating agency, for informing the public, the rating given to the company.

[Refer 3(8)].

(c) w.r.t. secured deposits, charge shall be created within 30 days of acceptance of deposits, of an amount not less than the amount of deposits accepted, in favour of debenture holders. [Refer Rule 6]

Companies (Acceptance of Deposits) Rules, 2014:

Rule 3(4): Maximum amount of deposit:



Rule 3(5): In case of eligible government companies, limit is upto 35% of PUSC, free reserves and securities premium.

Rule 3(8): Credit rating

Rule 4(2): Issuance of circular in the form of advertisement.

- from book -

Chapter - 6 "Registration of Charges"

[Chapter VI of Companies Act, 2013 - Secs. 77 to 87]



✓ (i) Meaning and Types of Charges:

Sec. 2(16) : Interest or Lien

↓ created on

the property or assets of a company or any of its undertaking or both

↓

as security

↓

and includes Mortgage

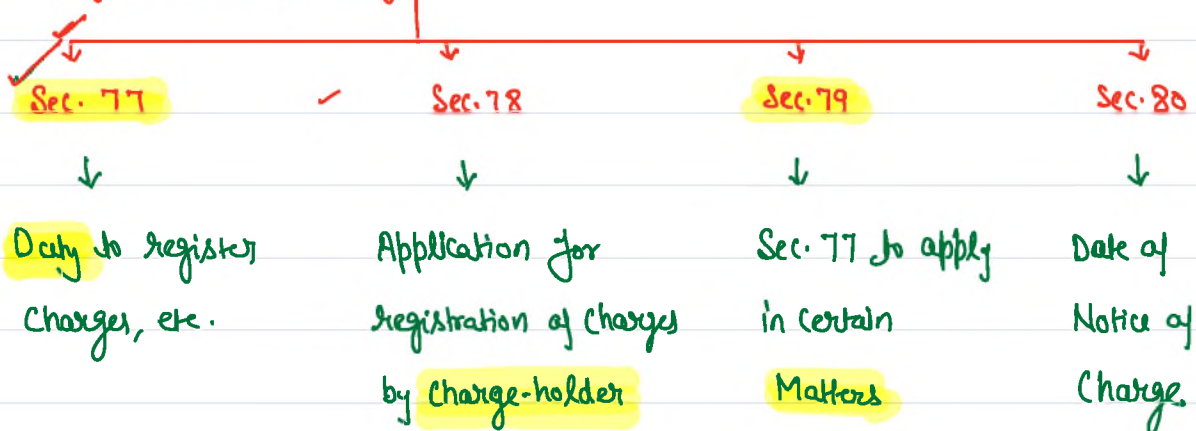
Types of charges:

- (a) fixed charge
- (b) floating charge

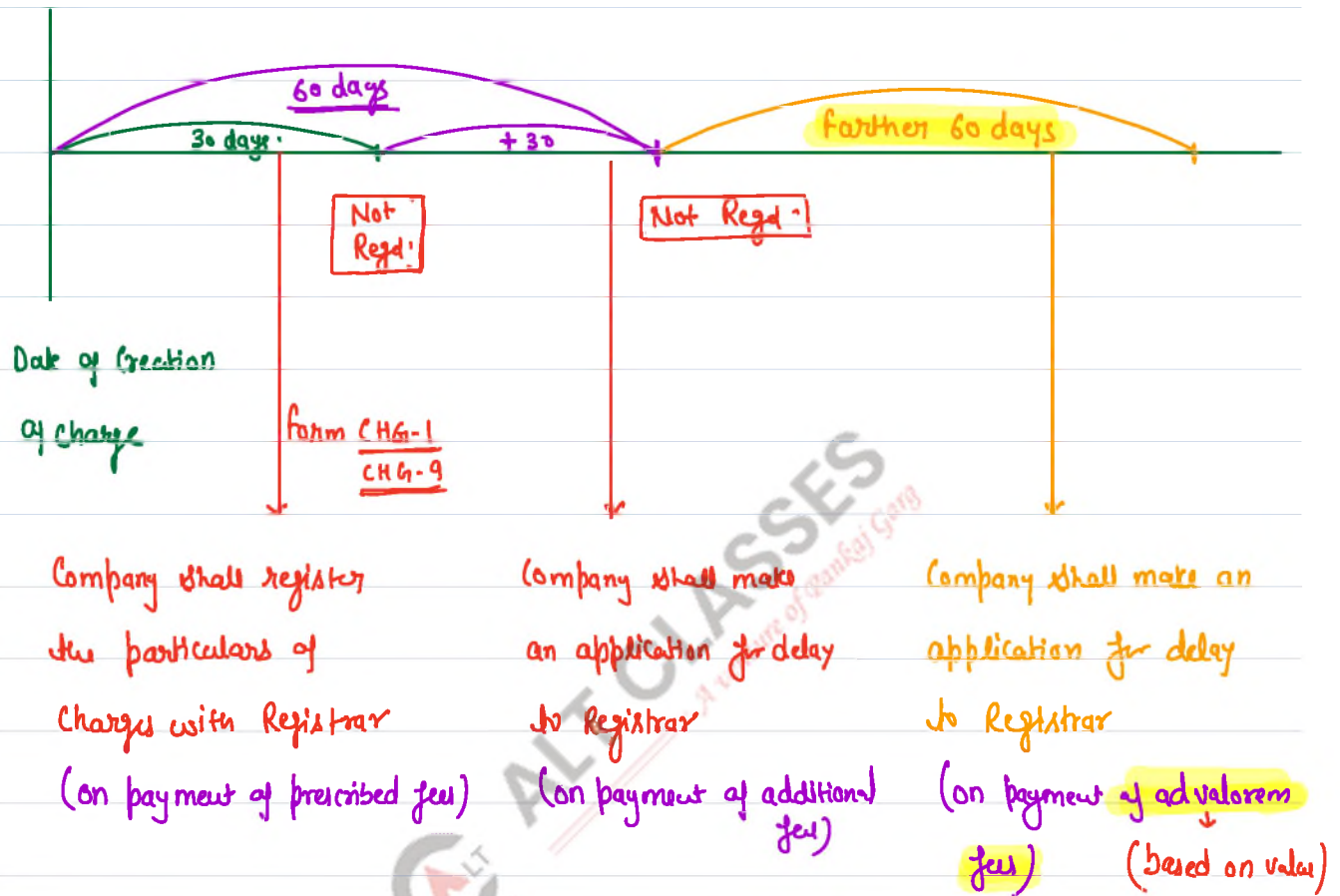
- (a) Fixed charge: - Charge created on specific assets of permanent nature, identified at the time of creation of charge.
- Borrowing company is not permitted to sell such assets except with permission of chargeholder.
 - Charge is vacated/released on repayment of borrowings.

- (b) Floating Charge: - Charge created on assets of fluctuating nature like inventory, debtors, etc.
- Assets under floating charge keeps on changing due to use of these assets for trading or producing final goods etc.
 - Floating charge crystallizes under following conditions:
 - (i) Violation of terms and conditions;
 - (ii) Cessation of company's business;
 - (iii) Liquidation of company; or
 - (iv) Default in repayment of principal or payment of interest.

civ Registration of Charges:



(a) Duty to register charges etc. (Sec. 77)



Company shall register the particulars of charges with Registrar (on payment of prescribed fee)

Company shall make an application for delay to Registrar (on payment of additional fee)

Company shall make an application for delay to Registrar (on payment of ad valorem fee) (based on value)

(a) If charge registered: - Registrar shall issue a certificate of registration of charge in Form No. CHG-2.
- Certificate is a conclusive evidence that all requirements of this Chapter has been complied with.

(b) If charge not regd.: Charge becomes void against the creditor.

Note: It implies that creditor will be treated unsecured at the time of liquidation of company. Debt against the company remains valid.

(b) Application for registration of charge by Chargeholder : Sec. 78

If Company fails to register the charge within 30 days → Chargeholder may apply to Registrar for registration of charge → Registrar shall issue notice to the company and within 14 days allow the

Note: If the regn. is affected on application of Chargeholder, he shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar.

Chargeholder to register the charges
↓ if
Company itself not register the charge, or show-cause the reasons for non registration.

(c) Sec. 77 to apply in certain matters (Sec. 79):

(a) In the case of a company acquiring any property, subject to charge, with the permission of Charge-holder.

OR

(b) Any modification in - terms and conditions - extent or operation
↓

of any existing charge regd. u/s 77.

Note: As per Rule 6, Registrar is required to issue certificate in form CHG-2, and certificate so issued shall be conclusive evidence of the matter that all requirements as to the provisions of this chapter are complied with.

(d) Date of Notice of Charge: Sec. 80

Where any person acquiring any property, asset or undertaking covered by a charge registered u/s 77



it shall be deemed that he had notice of charge

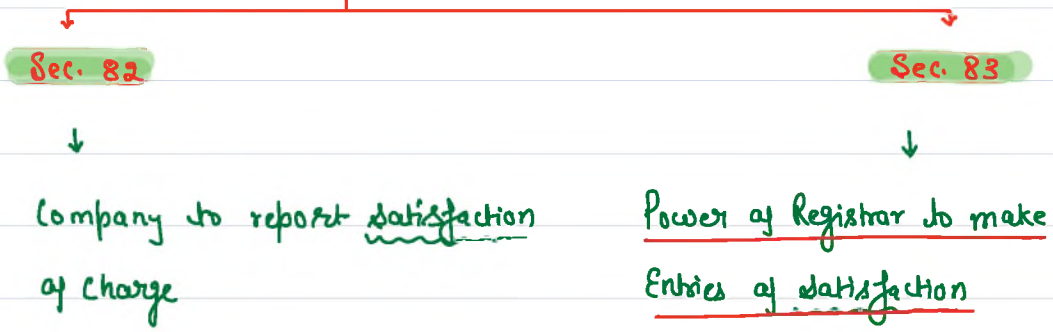


from the date of registration.

H.W.: Written Practice of Questions: (i) Nov. 20 Exam (Sec. 77)
(ii) Nov. 21 MTP (Sec. 80)



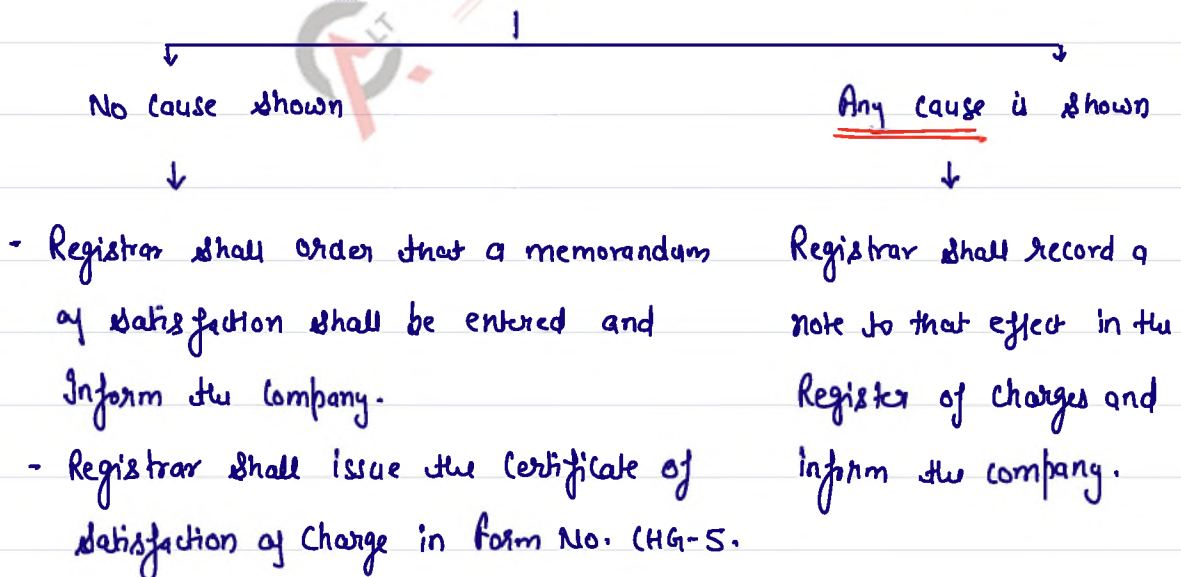
(iii) Satisfaction of Charge:



(a) Company to report satisfaction of charge (Sec. 82):

Within 30 days of full payment, company shall give intimation to the Registrar (Note 1)

Registrar shall cause a notice to the chargeholder calling upon him to show cause within such time not exceeding 14 days, as to why the payment shall not be recorded. (Note 2)



Note 1: Registrar may allow such intimation of payment within 300 days of payment, on an application by the company or chargeholder and payment of prescribed additional fees.

Note 2: No notice shall be required to be sent, in case the intimation to Registrar is in specified form and signed by the chargeholder.

(b) Power of Registrar to make entries of satisfaction and release in the absence of intimation from the company (Sec. 83):

- Registrar, may on evidence being provided to his satisfaction w.r.t. any registered charge that

(a) debt has been paid or satisfied in whole or in part
OR

(b) part of the property/ undertaking charged has been released OR company ceased to retain the property/ undertaking

enter in the Register of charges, a memorandum of satisfaction OR the fact that part of property/ undertaking has been released from the charge

↓

despite the fact that no intimation has been received by the Registrar from the company.

- Registrar shall inform, affected parties within 30 days of Entry in Register of Charges.

(iv) Miscellaneous:

↓
Sec. 84

↓
Intimation of
appointment of
Receiver or

Manager

↓
Sec. 86

↓
Punishment for
Contravention

↓
Sec. 87

↓
Rectification by C.G.
in Register of Charges

===== To be covered from book =====

H.W: Complete Revision of Chapter 5 and 6.

Chapter - 7 "Management and Administration"

[Chapter VII - Secs. 88 to 122]

Part - I	Part - II	Part - III	Part - IV
<u>Registers and Returns</u>	General Meetings	Conduct of General Meetings	Miscellaneous
↓	↓	↓	↓
Secs. 88 to 95	Secs 96 to 100	Secs 101 to 119	Secs. 120 to 122

PART - I Registers and Returns [Secs. 88 to 95]

- | | | |
|---|--|---|
| ✓ (i) Register of Members etc. (Sec. 88) | ✓ (iii) Declaration of Beneficial Interest in Shares [Sec. 89] | (v) Annual Returns (Sec. 92) |
| ✓ (ii) Power to close Register of Members, etc. (Sec. 91) | ✓ (iv) Register of <u>SBO</u> in a Company [Sec. 90] | (vi) Place of Keeping and Inspection of Registers, Returns etc. (Sec. 94) |
| | | (vii) Registers etc. to be evidence (Sec. 95) |

(i) Register of Members: [Sec. 88 and Rules 3, 4, 5, 6, 7, 8]

— to be covered from book —

Sec. 88(1): Register - Members | debenture holder | other security holder

Rule 3 - Members - (a) - limited by Shares - MGT-1
 " - Not " " " - prescribed particulars

Rule - 4 - Debentures | other security - MGT-2

Rule - 5 - Entries in Register - 7 days of approval

- Place - Regd. office

- City - Regd. office. | Other City - 1/10th - S.R.

- Change in status of any Member, d/h, Other security holder → should be entered
- Other info - Order - Authority | SEBI | Tribunal.

Sec. 88(2): Register - shall include an index
 ↓
 Not required - No. of Members
 (Rule 6) < 50

Sec. 88(3): Register and Index - Beneficial Owners - maintained by Depository.

Sec. 88(4): Foreign Register:

If Articles of Association → Co. "Foreign Register"
 of India → Name and particulars of Members etc.

Rule 7 30 days - Opening of Register - Notice of
 situation (MGT-3)
 ↓
 to Roc

: In case of any

- Change in situation
 - discontinuation
-]- Notice to Roc - 30 days.

- Company - transmit to regd. office in India a copy of every entry - 15 days.
- Company shall keep a duplication register of every foreign register.

Sec. 88(5): Contravention: fine - Company - ₹ 3 lakh.

- Officer in default - ₹ 50,000.

Rule 8: Authentication: CS of company or any person authorized by the Board of Directors.

(ii) Power to close Register of Members, etc: (Sec. 91)

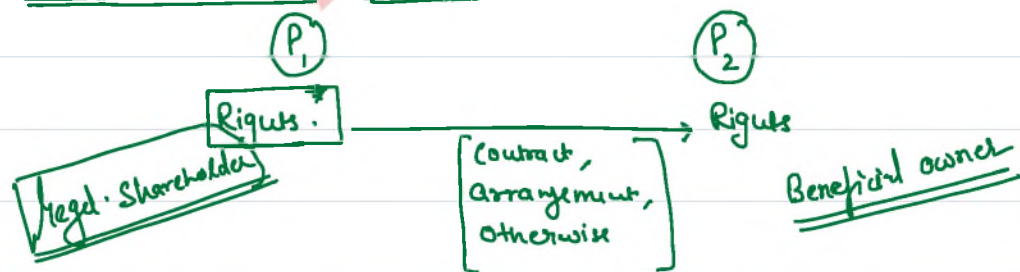
Company - may close - Register of M/DH/OS - ≤ 45 days in a year and ≤ 30 days at any time

is required to give notice $\rightarrow \geq 7$ days previous notice [Advt. - 2 Newspapers]
(This requirement is not applicable in case of Pvt. Company if Notice served to all Members)

Penalty: Company + officers in default \rightarrow ₹ 5,000 per day of default (subject to a max. of ₹ 1 lakh)

(iii) Declaration in respect of beneficial interest in any share (Sec. 89):

Beneficial Interest: 89(10)



* to exercise rights related to shares (voting)
to receive dividend ✓

(a) Declaration: Regd. SH → within 30 days from the date on which his name is entered in Register of Members shall - declaration → MGT-4

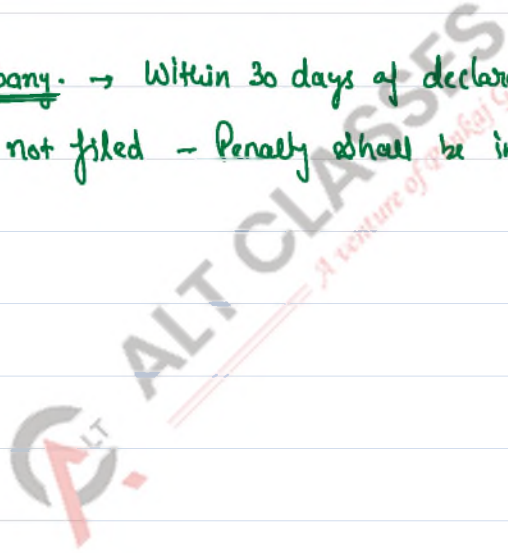
Beneficial Owner → within 30 days of acquiring beneficial interest - declaration → MGT-5

change in Beneficial interest → Regd. SH + Beneficial owner → declaration :- 30 days

If declaration not filed - Penalty shall be imposed

(b) Return: Company → Within 30 days of declaration → Return MGT-6

If not filed - Penalty shall be imposed.



(iv) Register of Significant Beneficial Owners in a Company: Sec. 90

Meaning of SBO:

An Individual

Who holds

$\geq 10\%$ of shares

who holds.

$\geq 10\%$ of Voting rights
in shares

Who has right of

$\geq 10\%$ of distributable
dividend in a FY

who has right to

exercise significant
influence or control

Requirements of Sec. 90:

① SBO → submit a declaration (BEN-1) → specifying
to the company
↓
within 30 days of acquiring such
SBO or any changes therein

- nature of interest
- Other particulars as prescribed.

✓ ② Company - maintain a register of interest declared - specifying
by individuals, of SBO
↓
in form BEN-3

- name of individual
- date of birth
- address
- details of ownership
- Other.

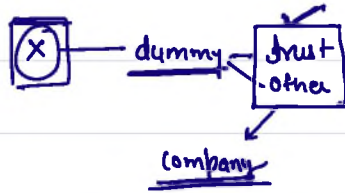
③ Members - may inspect register of SBO on payment of prescribed fees.
($\leq ₹ 50$).

✓ Company shall allow inspection during business hours at such reasonable
time of not less than 2 hrs. on every working day as decided by Board.

✓ ④ Company - file a return of SBO with Registrar - in prescribed form and manner.

✓ ⑤ Company - take necessary steps to identify an individual who is a SBO and require him to comply with provisions of this section.

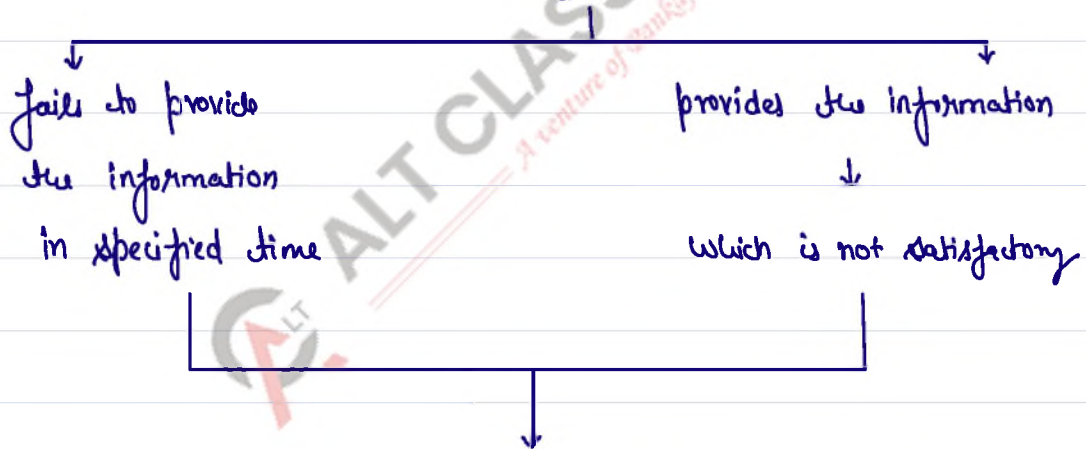
⑥ Company - give notice (BEN-4) to any person whom the company knows - to be a SBO



- to be having knowledge of identity of SBO.

- to have been a SBO at any time during the preceding three years.

⑦ If the person to whom notice was given



Company shall apply to Tribunal within period of 15 days of expiry of period specified in notice

requesting it to pass an order directing that the related shares be put to restrictions

(transfer of shares, dividend rights, voting rights etc.)

Tribunal after giving an opportunity of being heard, make such order within 60 days of receipt of application.



Application for lifting of restrictions may be filed within one year from the date of order, to the Tribunal.

⑧ Penalty for Contravention!

SBO → ₹ 50000 + ₹ 1000 per day of default after the first → Max. of ₹ 2 lakh

Company → ₹ 1,00,000 + ₹ 500 per day of default after the first → Max. of 5 lakh.

Officer in default → ₹ 25000 + ₹ 200 per day → Max. of 1 lakh. of default after the first

(v) Annual Return : (Sec. 92)

Company other than OPC and Small Company → MGT-7 → signed by director of the company and CS [if CS is not appointed, then by CS in practice]

OPC and Small Company → MGT-7A → signed by CS [if CS is not appointed, then by director of company]

Annual return must contain the specified particulars.

Listed Co. and Unlisted Co. having PUSC ≥ 100 cr. " " having T/O ≥ 500 cr.	} Annual return shall be certified by CS in practice [<u>MGT-8</u>]

Annual return shall be filed with ROC

↓
within 60 days from the date on which AGM is held

↓
or where no AGM is held in any year, within 60 days from the date on which AGM should have been held.

Penalty: Company and officer in default:

→ ₹ 10000 + ₹ 100 per day of default. } subject to a maximum of
2,00,000 (in case of company)
50,000 (in case of officer
in default)

→ Company Secretary in Practice: ₹ 2 lakh for wrong certification

H.W.: Written practice of Questions over Sec. 92 asked in May 18 Exam

(vi) Place of Keeping and Inspection of Registers, Returns, etc. (Sec. 94)

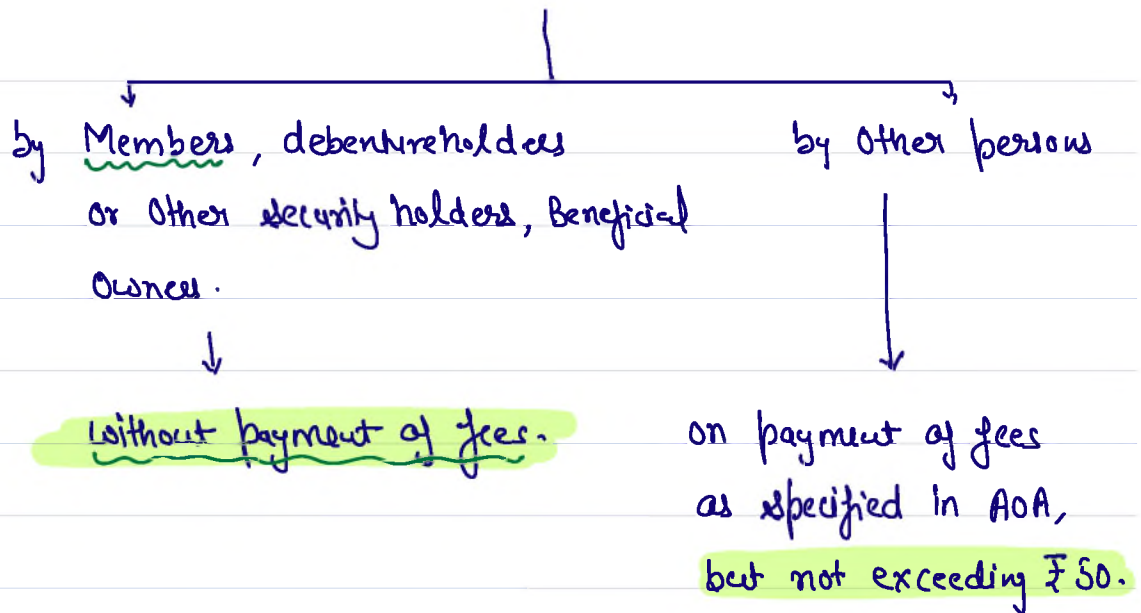
Sec. 94(1): Registers maintained u/s 88 and Annual Returns filed u/s 92, shall be kept at the registered office of the Company.

However, such registers and returns may also be kept at any other place in India, where > 10% of total number of members resides, if approved by Special Resolution.

✓ Sec. 94(2): Inspection:

+ Rule 14

Registers and Returns shall be open for inspection during business hrs, for not less than 2 hrs. on every working day as decided by Board →



✓ Sec. 94(3) : Extracts of and copies of Registers and Returns:

+ Rule 14

- Extracts from any register, index or return may be taken by any person, without payment of fees.
- Copy of such registers or entries therein or returns may be required from the company on payment of fees as specified in AOA but not exceeding ₹ 10 per page.
- Copy shall be supplied within 7 days of deposit of fees.

✓ Sec. 94(4): On refusal of any inspection or denial of company to allow a person to take extracts or providing copy of registers and returns, under this section

↓

Company and every officer in default are liable for a penalty of ₹ 1000 per day of default subject to a maximum of ₹ 1 lakh.

Sec. 94(5): C.G. may order for an immediate inspection of documents or direct the company to allow any person to take any extracts required.

Rule 15

	Time Period	Custody
1. Register of Members and Index	<u>Permanently</u>	CS of company or other person authorised by Board.
2. Register of <u>debenture holders</u> or other <u>security holders and Index</u>	8 years from date of redemption	"
3. Annual Return.	8 years from the date of filing with Registrar	—
4. Foreign Registers (a) <u>Members</u> .	Permanently unless discontinued	CS of company or other

(b) Debenture holders
and other
security holders

8 years from the date
of Redemption

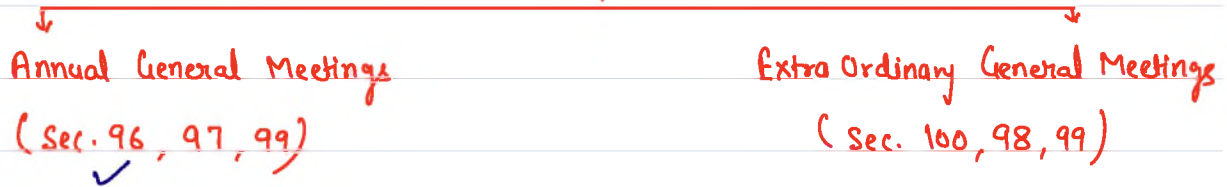
person authorized
by Board



H.W. Revision of Sec. 94 from book.

Chapter - 7 "Management and Administration"

Part - II "General Meetings" (Secs. 96 to 100)



(A) Annual General Meetings:

- Every Company (except OPC) shall hold its AGM in each year.
- First AGM: To be held within 9 months from the date of closing of first financial year.

Examples:

Date of Inc.	First FY - 2(41)	<u>Last date</u> by which first AGM to be held
01.08.2021	01.08.21 - 31.03.22	<u>31.12.2022</u>
01.02.2022	01.02.22 - 31.03.23	<u>31.12.2023</u>

Note: If the first AGM is held within 9 months from the end of first FY, there is no need to hold AGM in the year of incorporation.

[Registrar has no discretion to allow any extension in case of first AGM]

- Subsequent AGM: - To be held within 15 months from date of last AGM.
 - To be held within 6 months from date of closing of financial year.
 - Registrar has discretion to grant extension up to 3 months for special reasons.

Examples: For the year 2022:

Date of Last AGM	Date of closing of FY	Last date by which AGM is to be held
<u>15.09.2021</u>	<u>31.03.2022</u>	15.12.2022 <u>30.09.2022</u> 31.12.2022
18.05.2021	31.03.2022	<u>18.08.2022</u> 30.09.2022 31.12.2022
20.06.2021	31.03.2022	<u>20.09.2022</u> 30.09.2022 31.12.2022
05.07.2021	31.03.2022	05.10.2022 <u>30.09.2022</u> 31.12.2022

- Time, day and Place of AGM:

- AGM shall be called during business hours.
- AGM shall be called on any day which is not a national holiday.
- AGM shall be held either at registered office of the company or at some other place within the city, town or village in which registered office of the company is situated.
- However, in case of unlisted companies, AGM may be held at any place in India

↓

if consent given by all members in writing; or by electronic mode.

Powers of Tribunal to call AGM (Sec. 97):

If any default is made in holding AGM u/s 96

↓

Tribunal may, on application of any member

↓

Call or direct the calling of an AGM

and

give such consequential directions as it thinks expedient.

(Note: Directions given by Tribunal may include that one member present in the meeting in person or by proxy shall be deemed to constitute a meeting).

Penalty (Sec. 99): If any default is made in holding a meeting u/s 96, 97 or 98, or in complying with any directions of the Tribunal,

↓

Company and every officer in default are

punishable with fine upto ₹ 1 lakh and

further fine upto ₹ 5,000 for every day

during which default continues.

(B) Extraordinary General Meetings (EGM - Secs. 100, 98, 99):

- ✓ Board may call an EGM of the Company, when it deems fit.
- ✓ EGM shall be held at any place within India.

Exception: Wholly owned subsidiary of a Company incorporated Outside India.

Example: X Ltd. is a wholly owned subsidiary of Y Inc. (a Company incorporated in USA).

EGM of X Ltd. may be held o/s India.

Calling of EGM on Request of Members:

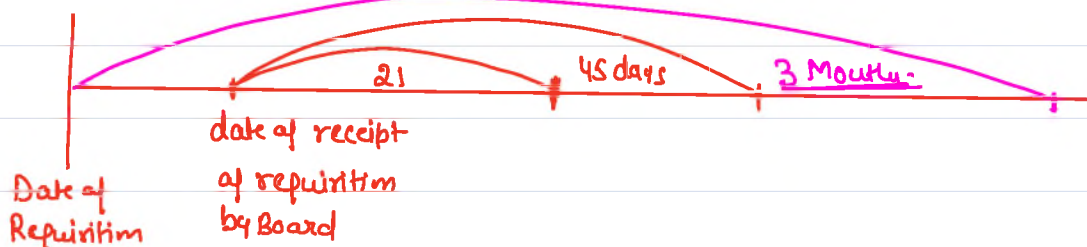
Specified no. of Members (holding $\frac{1}{10}^{\text{th}}$ of PUC or $\frac{1}{10}^{\text{th}}$ of Voting power) shall submit a requisition for EGM

↓

Board shall within 21 days of receipt of requisition proceed to call an EGM, to be held within 45 days of receipt of requisition.

↓

If Board fails to call an EGM, it may be called by the requisitionists themselves - within 3 months of date of requisition
- In same manner in which a meeting is called and held by the Board.



Requirements of Requisition:

- (i) Requisition shall specify the matter for consideration of which EGM is to be called.
- (ii) Requisition shall be signed by all requisitionists.
- (iii) Requisition shall be sent at the registered office of the company.
- (iv) Requisition may be provided in writing or through electronic mode at least 21 days prior to proposed date of meeting.

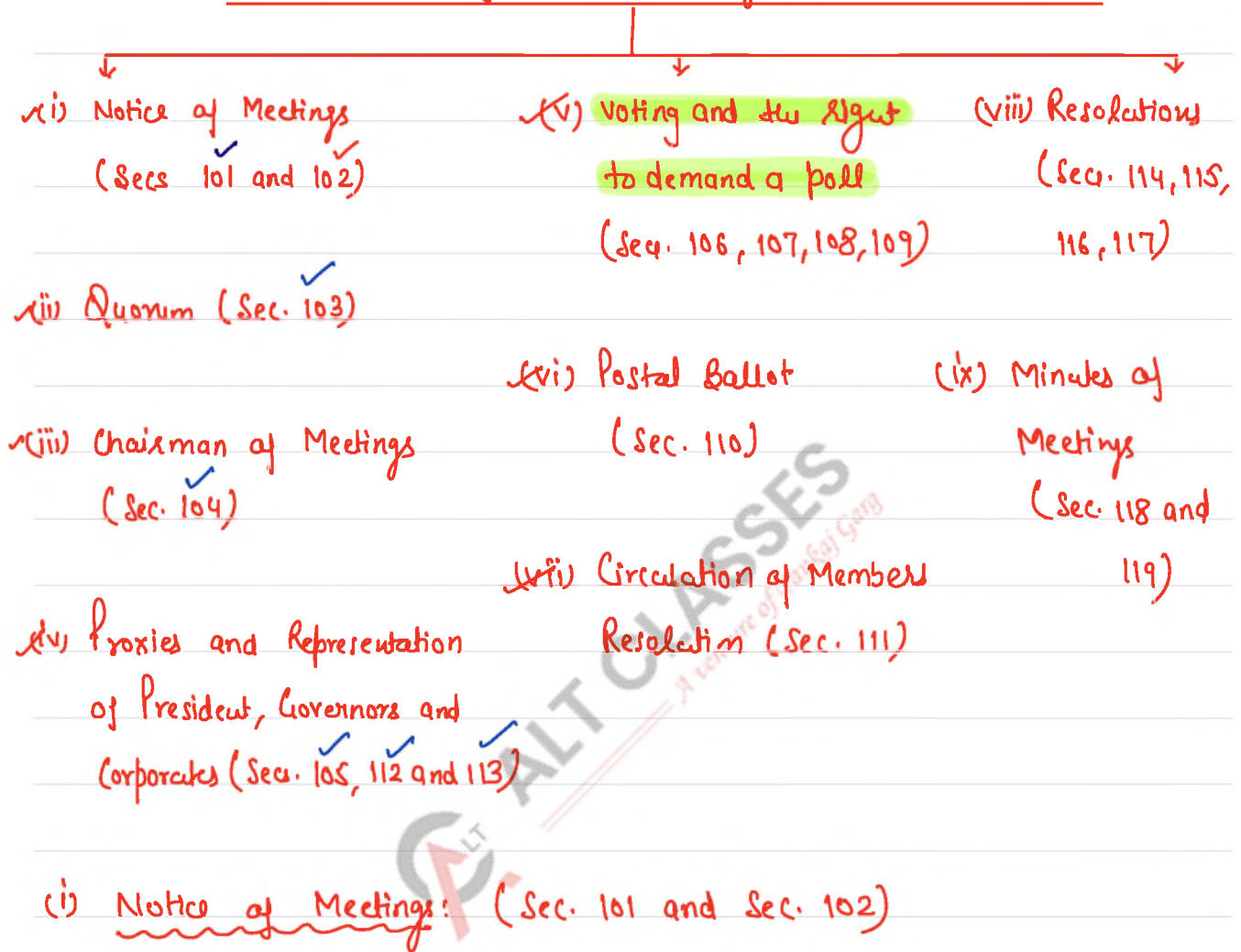
✓ - Provisions related with notice of AGM called by requisitionists (Rule 17)

- to be covered from book -
- Power of Tribunal to call EGM (Sec. 98)] to be covered from book.
- Penalty for default (Sec. 99)

H.W. : Do written practice of any two questions.

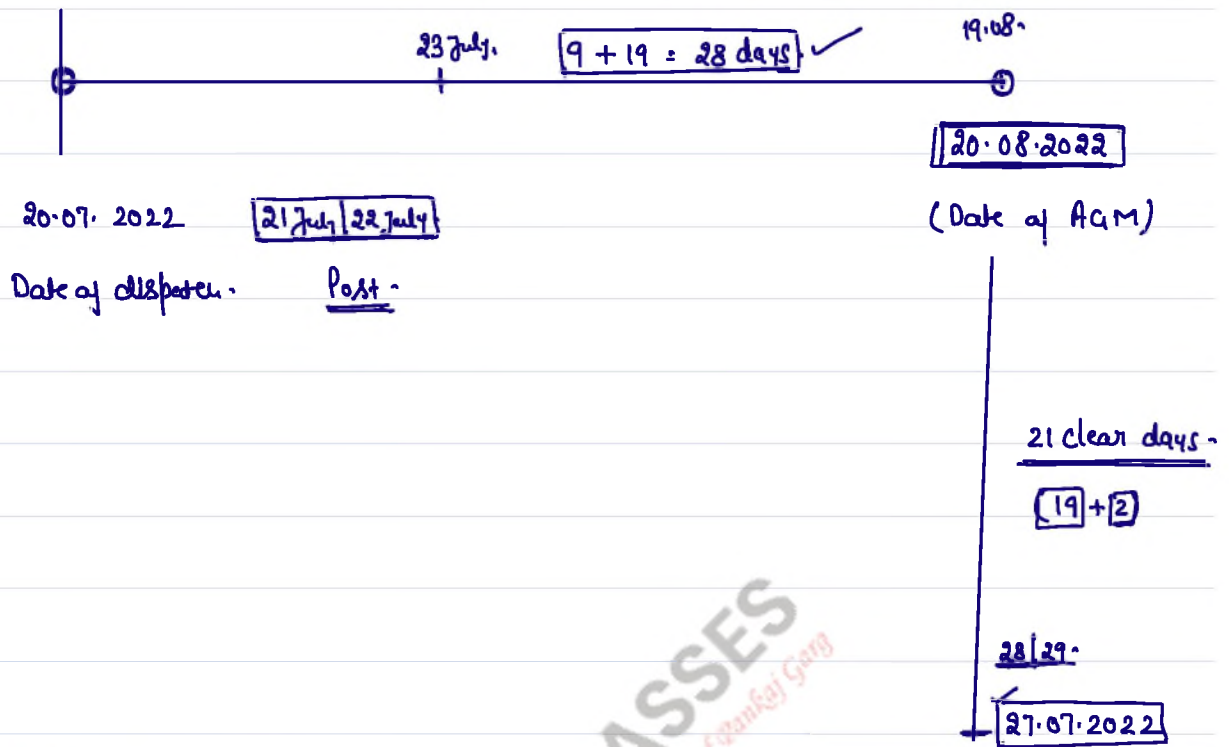
Chapter - 7 "Management and Administration"

Part - III - Conduct of General Meetings - Secs. 101 to 119

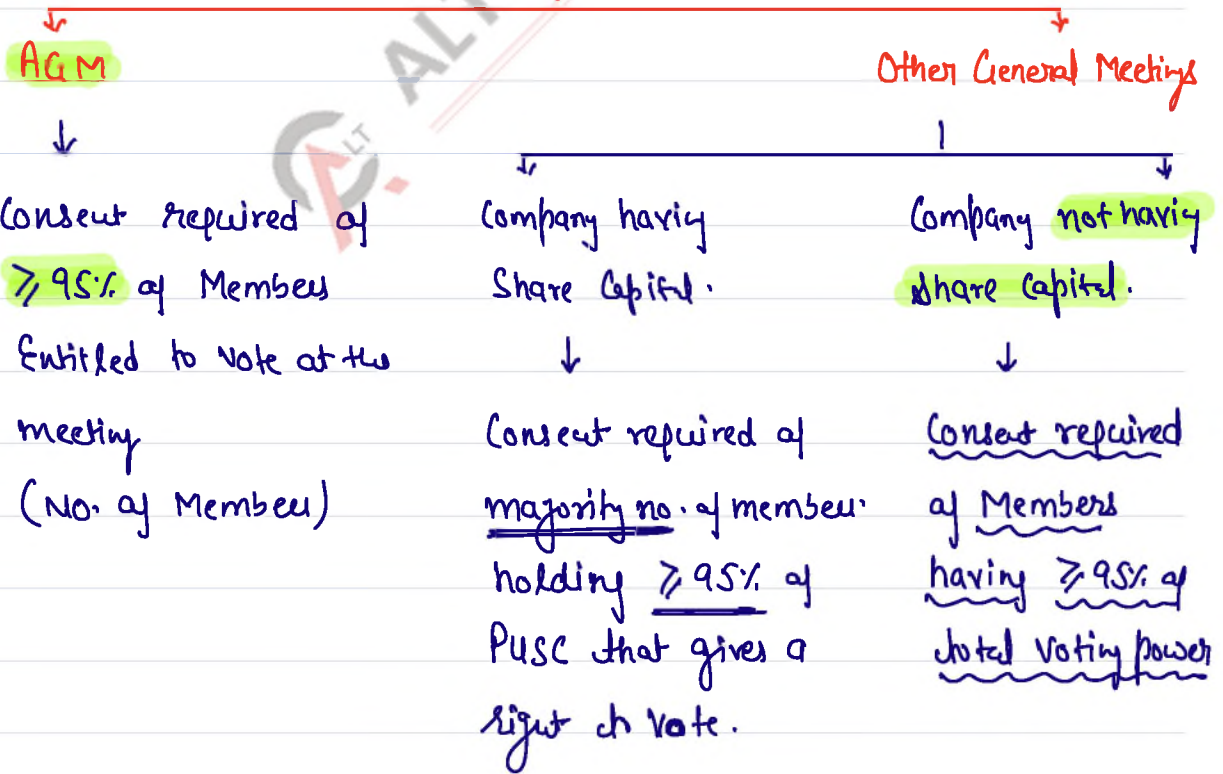


Length of Notice : - 21 clear days (14 clear days in case of Sec. 8 Co.)
[Sec. 101(1)]

- date of which notice is served and date of meeting is to be excluded.
- notice shall be deemed to be served at expiry of 48 hours of posting (if served by post).



Meeting called on shorter notice:



Modes of serving notice: Notice may be served either in writing or through Electronic mode in prescribed manner. (Rule 18)

Content of Notice : - Place, date, day and hour of the meeting.
[Sec. 101(2)] - Statement of business to be transacted at such meeting.

To whom notice is to be served:
[Sec. 101(3)]

- Every member of the company,
- legal representative of deceased member,
- assignee of insolvent member,
- Every director of the company,
- Every auditor of the company.

Omission to give notice : Proceedings of the meeting shall remain valid in case of:
[Sec. 101(4)]

- (a) accidental omission to give notice;
- (b) non-receipt of notice by any member.

Statement to be annexed to notice [Sec. 102]:

For every item of "special business", to be transacted at general meeting of the company, a statement shall be annexed to notice, setting out the following:

(a) Nature of concern or interest, if any, in respect of each item of business, of:

- Every director and manager, if any,
- Every other KMP; and
- Relatives of above mentioned persons.

(for example - Investment decision in a J.V. in which director's son is having substantial stake)

(b) Other relevant information and facts to enable the members to understand items of business.

Special Business:

(a) In case of AGM: All items of business, except:

- (i) Consideration of financial statements and Board's Report.
- (ii) Declaration of Dividend.
- (iii) Appointment of directors in place of retiring ones.
- (iv) Appointment of auditors and fixing their remuneration.

(b) In case of Other general meetings: All business items to be considered as special business.

(ii) Quorum (Sec. 103):

(a) <u>Public Co.:</u>	No. of Members as on date of Meeting	Quorum
	≤ 1000	5 <u>Members</u> personally present*
	$> 1000 - \leq 5000$	15 " " "
	$> 5,000$	30 " " "

(b) Private company: 2 Members personally present

* Members entitled to vote on the resolutions

* Articles may provide a larger quorum than prescribed by the Act.

(c) Other provisions:

Quorum is to be present within half an hour of the meeting

↓
Present
↓
O.K.

↓
Not present
↓

[Quorum shall also be present, when any business is to be transacted at meeting]

↓ Meeting was called by requisitionists

↓ Meeting was not called by requisitionists

Ex: Time of Meeting = 11:00 a.m.

[Total = 900] No. of Members = 6 (valid Quorum)

Till 1:00 p.m. 2 agenda item discussed

After 1:00 p.m. 2 members leave the meeting and remaining agenda items were

decided by remaining 4 Members.

Decisions taken by 4 Members are not valid.

↓
Meeting stands cancelled.

↓
Meeting stands cancelled.

Meeting stands adjourned to same day in next week at same time and place or such other date, time and place as Board may determine. → Company shall give at least 3 days notice either individually or through advertisement in newspapers (1+1)

Quorum not present within half an hour in adjourned meeting.

Members present shall form the quorum.

(iii) Chairman of the meeting (Sec. 104): - To be covered from book -

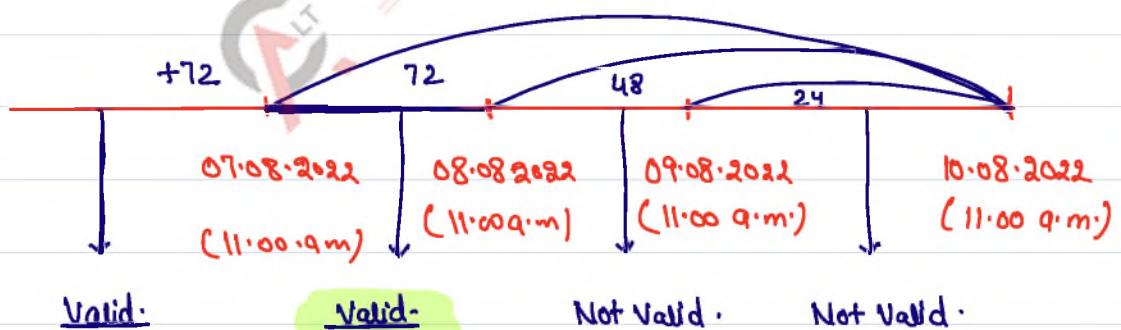
(iv) Proxies, Representation of President, Governors and Body Corporates:
(Sec. 105) (Sec. 112) (Sec. 113)

(A) Proxies (Sec. 105):

- A proxy is an instrument in writing, executed by a member authorising another person to attend a meeting and to vote thereat on his behalf and in his absence.
- Any member who is entitled to attend and vote at the meeting, shall be entitled to appoint proxy.

- Proxies shall not have the right to speak at such meetings and shall not be entitled to vote except on a poll.
- In case of section 8 Companies, proxies shall be members of the Company.
- A proxy can represent upto 50 Members (aggregate share holding \leq 10% of total share capital).
However, a proxy appointed by a member holding $>$ 10% of total share capital shall not act as proxy for other person.
- Appointment of proxy shall in Form No. MGT-11.
- Imp - A proxy received 48 hours before meeting will be valid even if Articles provide for a longer period.

Ex- Articles provides that proxies shall be deposited 72 hr. before the meeting.



- Inspection of proxy forms is allowed to a member during the period beginning 24 hrs. before the time fixed for commencement of meeting and ending with conclusion of meeting, during the business hours, provided not less than 3 days notice given to Company.

(B) Sec. 112 :

H.w.

(C) Sec. 113 :

H.w.

— Do written practice of any 2 Questions. —

(V) Voting and the rights to demand a poll: [Sec. 106, 107, 108 and 109]

(A) Restriction on voting rights (Sec. 106):

- A company may restrict voting rights of a member, only if provided by **Articles of Company** and in following situations:
 - ✓ (i) If member has not paid any call money or other sum payable by him; or
 - ✓ (ii) If company has exercised any right of lien.
- If a member is entitled for more than one vote, he can use his votes differently.

(B) Voting on show of hands: (Sec. 107)

At any general meeting of a company, unless a **poll is demanded** or voting is carried out **electronically**,



a resolution is to be decided on a **show of hands**.

(C) Voting through electronic mode (Sec. 108):

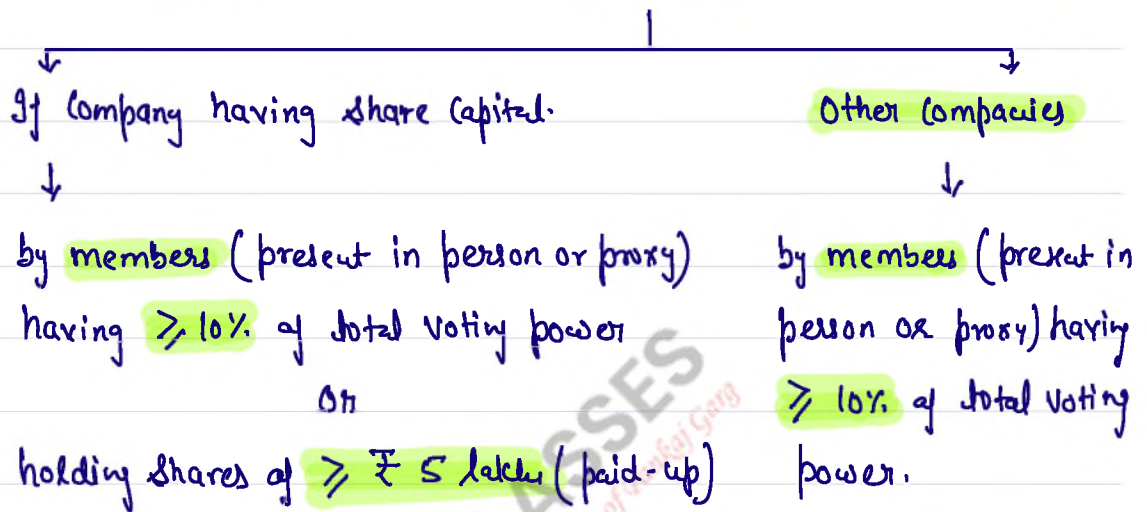
C.G. may prescribe the manner in which a member may exercise his right to vote by electronic means.

[Rule 20 of Companies (Management and Administration) Rules, 2014 provides the details w.r.t. Voting by electronic means - to be covered from book]

(D) Demand for poll (Sec. 109):

(i) Order of Poll:

A poll may be ordered by Chairman on his own motion and shall be ordered on a demand



(ii) Withdrawal of demand: Demand for poll may be withdrawn at any time by the persons who made the demand.

(iii) Timing of poll: - A poll demanded for adjournment of meeting or - appointment of chairman

shall be taken forthwith.

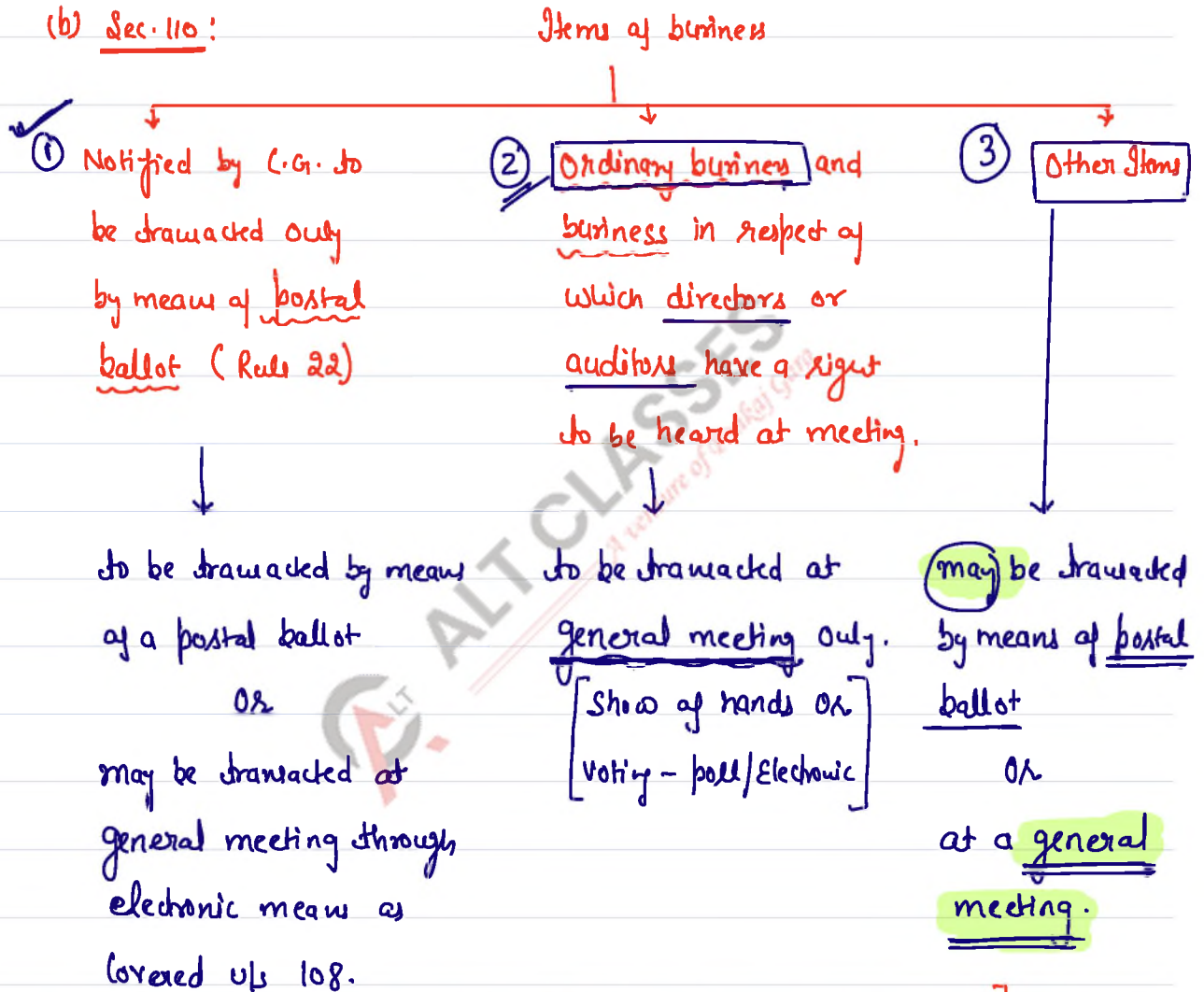
- For other matters, poll shall be taken at such time not being later than 48 hours from the time when the demand was made.

(iv) Other provisions w.r.t. demand for a poll: - to be covered from book -

(vi) Postal Ballot:

(a) Meaning - Sec. 2(65): Postal ballot means (voting by post) or through (Electronic mean)

(b) Sec. 110:



- Matters notified by CG to be drawn through postal ballot
 - Procedure for conducting the business through postal ballot
- from book -

(vii) Circulation of Member's Resolution (Sec. 111):

- from book -

(viii) Resolutions: (Sec. 114, 115, 116, and 117)

(A) Ordinary and Special Resolution (Sec. 114):

Ordinary Resolution: A resolution shall be an ordinary resolution, if

- ✓ (a) Notice required under this Act has been duly given;
- ✓ (b) it is required to be passed by the votes cast in favour exceed the votes cast against it.

Ex: In AGM of X Ltd, 100 members were personally present. On a resolution to declare dividend, 46 members cast vote in favour and 44 votes cast against the resolution, 5 votes are invalid and remaining 5 members abstained from voting.

Ordinary resolution passed as votes cast in favour (46) are more than the votes cast against the resolution (44).

Special Resolution: A resolution shall be a special resolution when:

- ✓ (a) intention to propose the resolution as a special resolution has been duly specified in the notice.
- ✓ (b) notice required under this Act has been duly given.
- ✓ (c) votes cast in favour of the resolution are required to be not less than three times the votes, if any cast against the resolution.

✓ Ex: In a general meeting of X Ltd. having 1000 members, a resolution to appoint the auditor in place of retiring auditor is proposed to be passed as a special resolution. Members present in the meeting are 450. Votes cast in favour of resolution are 300 and votes cast against the resolution are 105.

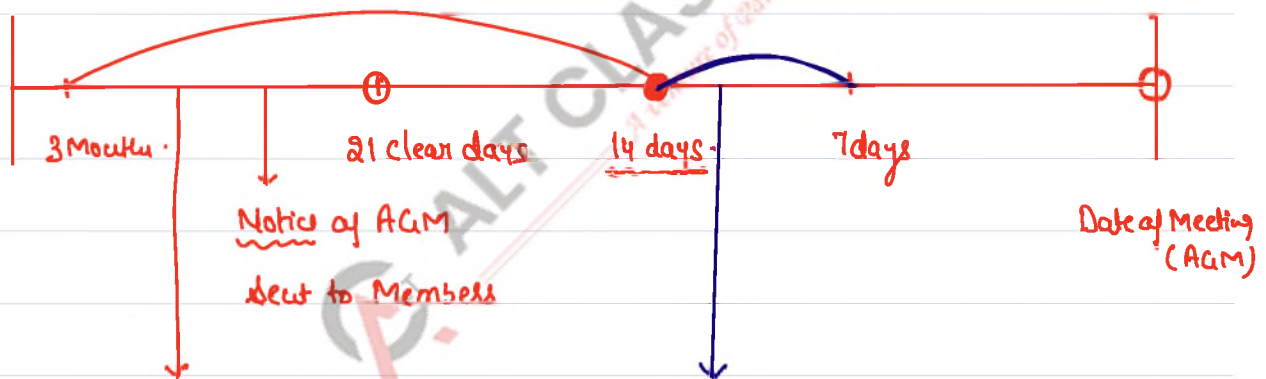
Special resolution not passed as votes cast in favour are not 3 times the votes cast against the resolution. ↑

(B) Resolutions requiring special notice: (Sec. 115)

Where any provisions of Companies Act, 2013 or Articles of the Company specifically require that a special notice is required for passing an resolution, then the notice of intention to move such resolution shall be given by the members holding

↓
≥ 1% of total voting power or shares of not less than ₹ 5 lakh paid-up.

- Company shall give its members notice of the resolution in the prescribed manner (Rule 23)



Special notice shall be sent by members not earlier than 3 months but at least 14 days before the date of meeting.

- Company shall give its members notice of the resolution at least 7 days before the meeting in same manner, as it gives notice of general meeting.
- If not practicable, notice shall be published in newspaper (1+1)

Matters in respect of which special notice is required: - to be learned from book -

(C) Resolutions passed at adjourned meeting (Sec. 116)

↓

- shall be treated as having been passed on the date on which it was in fact passed; and
- shall not be deemed to have been passed on any earlier date.

(D) Resolution and Agreements to be filed (Sec. 117):

Sec. 117(1): A copy of every resolution or any agreement in respect of matters covered U/s 117(3) together with explanatory statement U/s 102, if any, annexed to the notice of the meeting, shall be filed with Registrar

↓

within 30 days of passing the resolution or making of agreement in prescribed manner (Rule 24)

Sec. 117(2): Penalty for contravention:

(a) Company: ₹ 10000 + ₹ 100 for each day subject to a
after the first day → maximum of ₹ 2 lakhs
which failure continues

(b) Officer in default: ₹ 10000 + " → Max of ₹ 50,000.

Sec. 117(3): - to be learned from book -

(ix) Minutes of proceedings of General Meetings, Board Meetings and Other Meetings: (Sec. 118)

- (1) Minutes of proceedings of each meeting shall be prepared within 30 days of conclusion of each such meeting.
- (2) Minutes shall contain fair and correct summary of the proceedings.
- (3) Chairman shall exercise absolute discretion as to inclusion or non-inclusion of any matter in the minutes.
- (4) There shall not be included in the minutes, any matter which in the opinion of Chairman of meeting:
 - (a) is or could reasonably be regarded as defamatory to any person; or
 - (b) is irrelevant or immaterial; or
 - (c) is detrimental to interests of the company.
- (5) Each page of minute book of general meetings shall be signed by Chairman of same meeting within 30 days and in the event or inability of that Chairman, by a director duly authorised by the Board.
- (6) Minute book 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.

Inspection of Minutes Books (Sec. 119):

(i) Minutes of general meetings shall be open for inspection by any member, without charge, for not less than 2 hrs. on each business day.

(ii) Members may also request for a copy of minute of general meetings on payment of such sum as specified in the Articles (not exceeding ₹ 10 per page).

(iii) Company shall furnish the copy within ^{working} 7 days of request.

(iv) Soft copy of minutes of general meeting held in immediate preceding three financial years, shall be provided free of cost, on a request made by members.

(v) Penalty for contravention:

Company : ₹ 25000 for each refusal or default.

Officer in : ₹ 5000 " " " " " " .
default

(vi) In case of any refusal, Tribunal may by order,
- direct an immediate inspection of minute books

or

- direct that the copy required shall be sent.



Part-IV Miscellaneous [Sec. 120 to 122]

(i) Maintenance and Inspection of documents in electronic form:

[Sec. 120 + Rule 27, 28, 29]:

Rule 27: Every listed company or a company having \geq 1000 shareholders, debentureholders or other security holders

↓

shall maintain its records in electronic form.

Rule 28: MD, CS or other director/officer of company as decided by the Board shall be responsible for

↓

maintenance and security of electronic records.

Rule 29: Records maintained in electronic form shall be made available for inspection.

Copies of records maintained in e-form should be provided on payment of not exceeding ₹ 10 per page.

(ii) Report on AGM: (Sec. 121 + Rule 31)

(1) Every listed company shall prepare a report on each AGM including the confirmation to the effect that meeting was convened, held and conducted as per the provisions of this Act and Rules made thereunder.

(2) Copy of the report shall be filed with the Registrar in Form No. MGT-15 within 30 days of conclusion of AGM with fees.

(3) If report not filed within the specified period:

- Company shall be liable to a penalty of ₹ 1 lakh + ₹ 500 for each day of default after the first subject to a maximum of ₹ 5 lakh.

- Officer in default shall be liable to a penalty of ₹ 25,000 + ₹ 500 for each day of default after the first subject to a maximum of ₹ 1 lakh.

(iii) Applicability of Chapter VII [Sec. 88 to 122] to OPC: Sec. 122

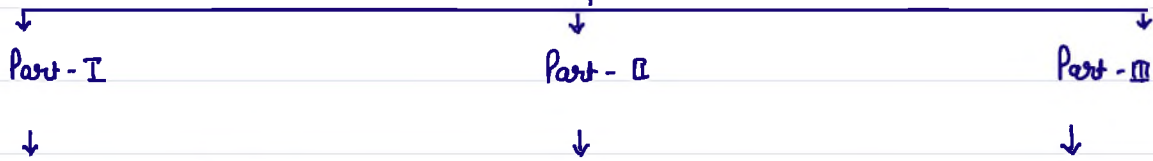
(i) Sec. 98, Secs. 100 to 111 - Not applicable.

(ii) Sec. 114 - OR + SR → Resolution - Communicate - Company
↓
Entry - Minute book maintained U/s 118
↓
Sign + date.
date - date of Meeting.

(iii) OPC = if 1 director (1 Member) : Board Meeting - Resolution - Communication to co.
↓
Entry - Minute book.
↓
Sign + date.
↓
date of Board Meeting.

Ch. - 7 - Revise. - [MCQ practice] + [Descriptive Questions (Cracker)]
↓
(Main Book + Notes)

Chapter - 8 "Declaration and Payment of Dividend"



- | | | |
|---|--|---------------------------------------|
| <p>✓ (i) Meaning and Types of dividend</p> | <p>(iii) Unpaid dividend A/c (Sec. 124)</p> | <p>(v) Sec. 126
(vi) Sec. 127</p> |
| <p>✓ (ii) Declaration and Payment of dividend (Sec. 123 and Rule 3)</p> | <p>(iv) Investor Education and Protection Fund (IEPF) (Sec. 125)</p> | |

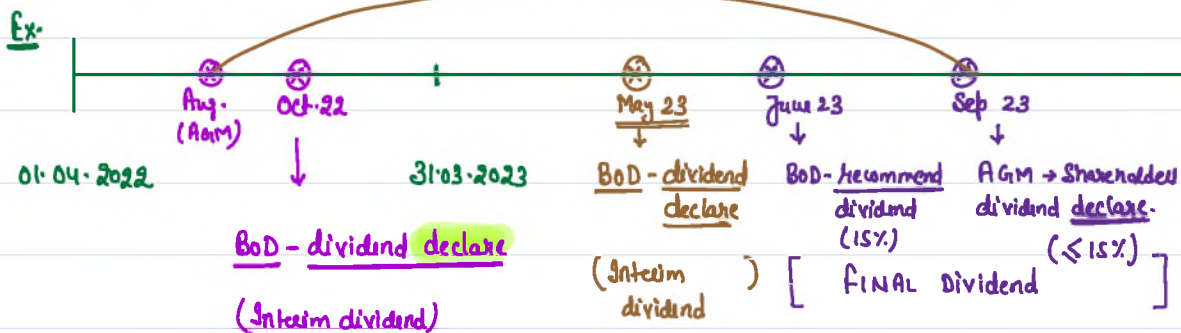
(i) Meaning and Types of dividend:

As per Sec. 2(35) of Companies Act, 2013, dividend includes interim dividend.

(a) Interim dividend: Dividend declared by Board of Directors in between two AGMs is known as Interim dividend.

Provisions related with interim dividend are covered u/s 123(3) and 123(4) of Companies Act, 2013.

(b) Final dividend: - Dividend declared by shareholders at AGM of the company.
- Dividend declared should not be more than the dividend recommended by the Board.



(ii) Declaration of dividend (Sec. 123):

(1) Sources of dividend: Dividend can be declared or paid for any FY, out of:

(a) Profits of that FY arrived at after providing depⁿ;

Ex: PBDT = 10 Cr. ✓

dep: Depⁿ = 12 Cr.

PBT = (2 Cr.)

dep: Tax = Nil.

(b) Profits of previous FYs arrived at after providing depⁿ and remaining undistributed;

(c) both (a) and (b) above;

(d) money provided by C.G. or any S.G. in pursuance of any guarantee.

[P&L A/c Dr
To Proposed dividend]
Proposed dividend A/c Dr
To Bank A/c

Note: While computing profits, any unrealised gain or revaluation profits, should be excluded.

(2) Transfer to Reserves: Before declaration of any dividend in any FY, a company may transfer such percentage of profits for that FY as it may consider appropriate, to the reserves of the company.

Note: It is at the discretion of the company, whether to transfer a part of the profit to reserves or not.

(3) Dividend out of reserves: In case of any inadequacy or absence of profits in any FY, a company may declare dividend out of free reserves, in accordance with Rule 3 of the Companies (Declaration and Payment of Dividend) Rules 2014.

Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014:

Dividend out of free reserves can be declared subject to the following conditions:

Condition-1: Rate of dividend \leq Avg. rate of dividend of preceding 3 years

Note: This condition shall not apply if company has not declared any dividend in each of the three preceding FYs.

Condition-2: Amount to be withdrawn from reserves \leq 10% of aggregate of Paid-up share capital and free reserves.

✓ Condition-3: Amount withdrawn from reserves is to be first utilised to set-off the losses incurred in current FY in which dividend is to be declared.

Condition-4: Balance of reserves after withdrawal \geq 15% of paid-up share capital.

Example 1: PUC = 50 lakh
Free reserves = 50 lakh
Avg. dividend rate of last 3 years = 10%
Current year loss = 4 lakh

Determine the Max. dividend payable out of free reserves.

<u>Sol</u> :	Amt. to be withdrawn from FR	Dividend
Condition - 1 & 3	<u>₹ 9 lakh</u>	<u>5 lakh</u>
	(₹ 5 lakh + ₹ 4 lakh)	(10% of ₹ 50 lakh)
Condition - 2 & 3	₹ 10 lakh	6 lakh
	(10% of 50 lakh + 50 lakh)	(₹ 10 lakh - ₹ 4 lakh)
Condition - 4 & 3	₹ 42.50 lakh	₹ 38.50
	(₹ 50 lakh - 15% of PUC)	(₹ 42.50 lakh - ₹ 4 lakh)

Example 2:

PUSC = 80 lakh

Free reserves = 20 lakh

Avg. rate of dividend of 3 years = 20%

Current year loss = 4 lakh

Determine the maximum dividend payable out of free reserves.

Sol.:

	Amt. to be withdrawn from FR	Dividend
Condition 1 and 3	20,00,000	16,00,000
	(16,00,000 + 4,00,000)	(20% of 80 lakh)
Condition 2 and 3	10,00,000	6,00,000
	(10% of 80 lakh + 20 lakh)	(10,00,000 - 4,00,000)
Condition 4 and 3	8,00,000	4,00,000
	(20,00,000 - 15% of 80,00,000)	(8,00,000 - 4,00,000)

Example 3:

PUSC = 50 lakh

Free Reserves = 20 lakh

Avg. rate of dividend of 3 years = 20%

CY loss = 3 lakh

Determine the maximum dividend payable out of free reserves.

Sol.:

	Amt. to be withdrawn from FR	Dividend
Condition 1 and 3	13 lakh	10 lakh
	(10 lakh + 3 lakh)	20% of 50 lakh.
Condition 2 and 3	7 lakh	4 lakh
	(10% of 50 lakh + 20 lakh)	(7 lakh - 3 lakh)
Condition 4 and 3	12.50 lakh.	9.50 lakh
	(20 lakh - 15% of 50 lakh)	(12.50 lakh - 3 lakh)

(4) Other Provisions:

(i) Dividend cannot be declared unless carried over previous losses and [depreciation not provided in previous years] are set-off against the profits of the company for current financial year.

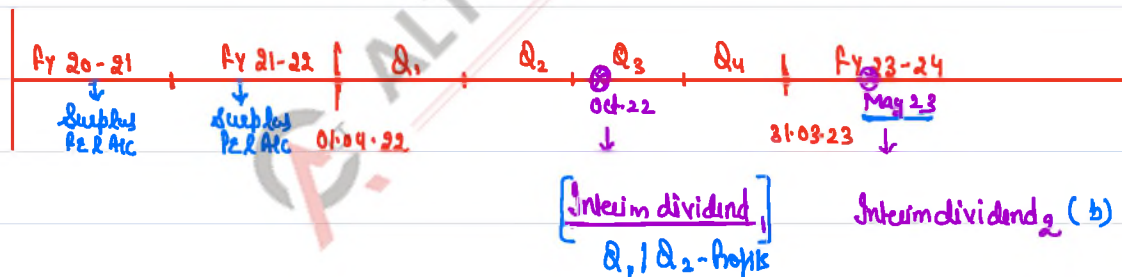
(ii) Depreciation shall be provided in accordance with Schedule II.

(iii) Interim dividend may be declared by Board out of:

(a) Surplus in P&L A/c;

(b) Profits of FY in which interim dividend is sought to be declared;

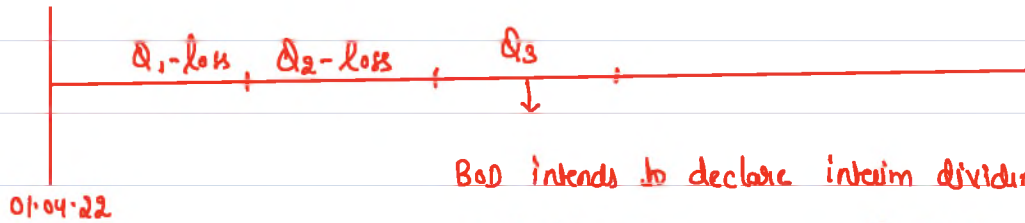
(c) Profits generated in financial year till the quarter preceding the date of declaration of interim dividend.



(iv) In case, company has incurred loss during the current financial year, upto the end of the quarter immediately preceding the date of declaration of interim dividend



Such interim dividend shall not be more than the average rate of immediate preceding 3 financial years.



BOD intends to declare interim dividend out of surplus of FY 20-21 or FY 21-22.

Sol.: BOD can declare Interim dividend but rate of such dividend \leq Avg. rate of preceding 3 financial years.

(v) Amount of dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within 5 days of declaration of dividend.

(vi) Dividend shall be payable only in cash and to the registered shareholder or to his order or to his banker, by cheque or warrant or other electronic mode.

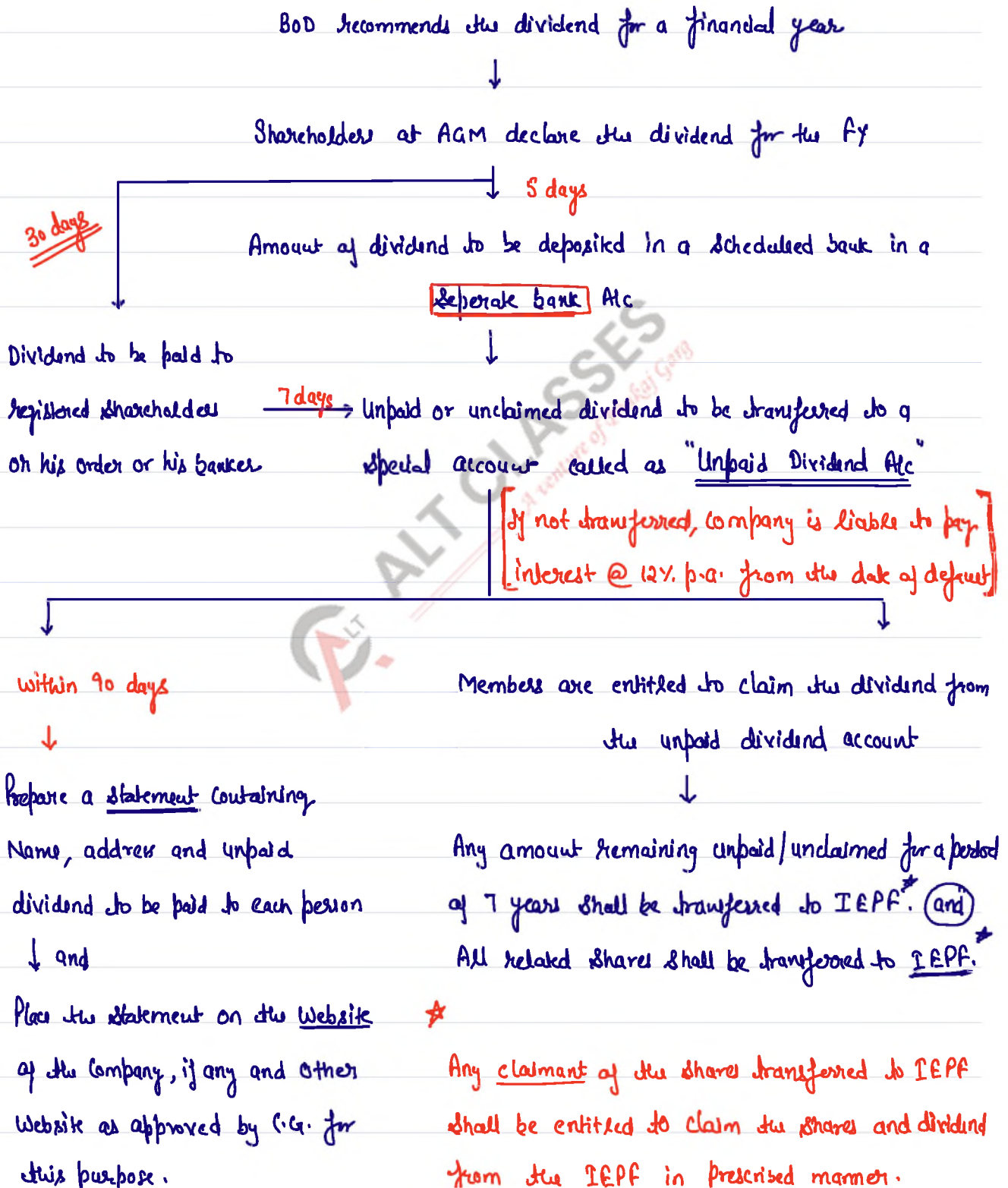
(vii) A company which fails to comply with the provisions of Sec. 73 and 74, shall not, as long as such failure continues, declare any dividend on its equity shares.

(viii) A company having licence uls 8 of Companies Act, 2013, is prohibited from paying any dividend to its members.

(ix) Dividend once declared becomes a debt against the company and cannot be revoked in general.

Chapter - 8 "Declaration and Payment of Dividend"

(iii) Unpaid dividend A/c (Sec. 124):



Ex. 01.07.2022 - BOD recommend $100000 \times 25 = 25,00,000$

15.09.2022 - AOM dividend declared : $1,00,000 \times 20 = 20,00,000$ Current A/c
↓
20.09.2022 → Co. - deposit/transfer - 20,00,000 → Dividend A/c
15.10.2022 → Co. - pay the dividend - 18,50,000
22.10.2022 → Co. → unpaid dividend A/c - 1,50,000
↓
20.01.2023 → Co. → strn. N/A/unpaid dividend ✓
22.10.2023 → Co. → Balance amt. - IEPF A/c
+ Share

default →
↓
22.11.2022
Intt @ 12% p.a.

(9+30+31+20)

Penalty for non-compliance of Sec. 124:

(a) Company: ₹ 1 lakh + ₹ 500 per day of default after the first
subject to a maximum of ₹ 10 lakh.

(b) Officer in default: ₹ 25,000 + ₹ 100 per day of default after the first
subject to a maximum of ₹ 2 lakh.

Inv Investor Education and Protection Fund: - To be covered from the book -

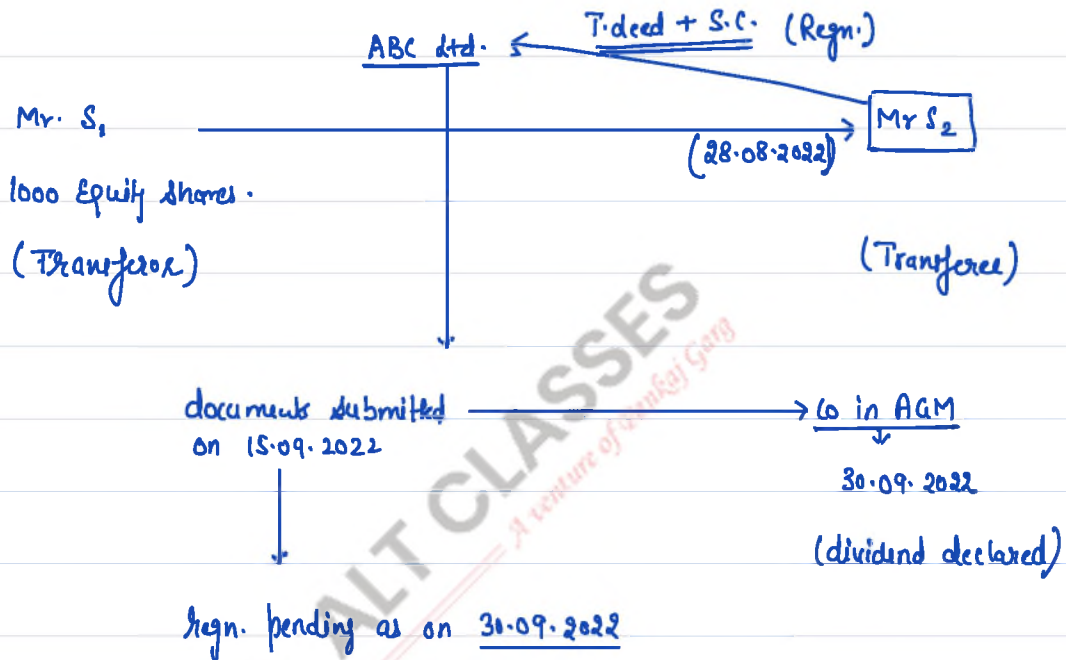
Home work: ✓ Q.1: Mention any six amounts that are to be transferred
to IEPF.

✓ Q.2: Mention the purposes for which the amount lying in
IEPF can be utilised.



Chapter - 8 " Declaration and Payment of Dividend "

(v) Right of dividend, right shares and bonus shares to held in abeyance pending registration of transfer of shares (Sec. 126) : ↓
(put on hold)



Where any instrument of transfer of shares has been delivered to the company for registration and transfer has not been registered by the company, the company

shall

transfer the dividend in

unpaid dividend A/c

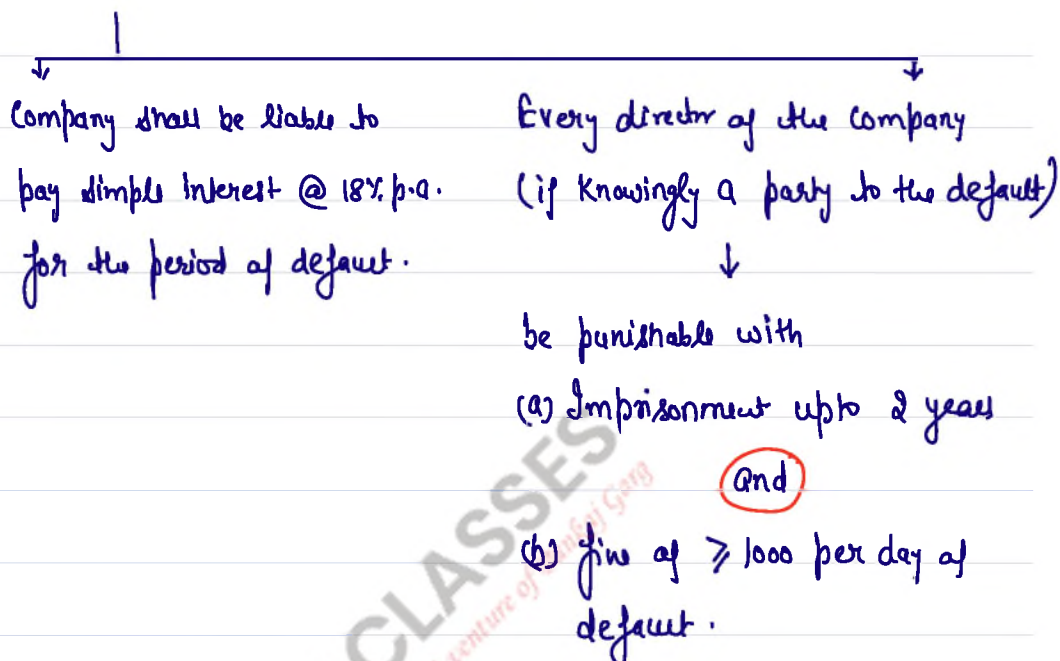
↓
Unless registered shareholder authorises the company, in writing to pay such dividend to transferee.

also keep in abeyance

↓
any offer of right shares and issue of fully paid bonus shares, in respect of such shares, which have not been registered.

(vi) Punishment for failure to distribute dividend (Sec. 127):

(a) Penalty: If the dividend is not paid within 30 days of declaration of dividend

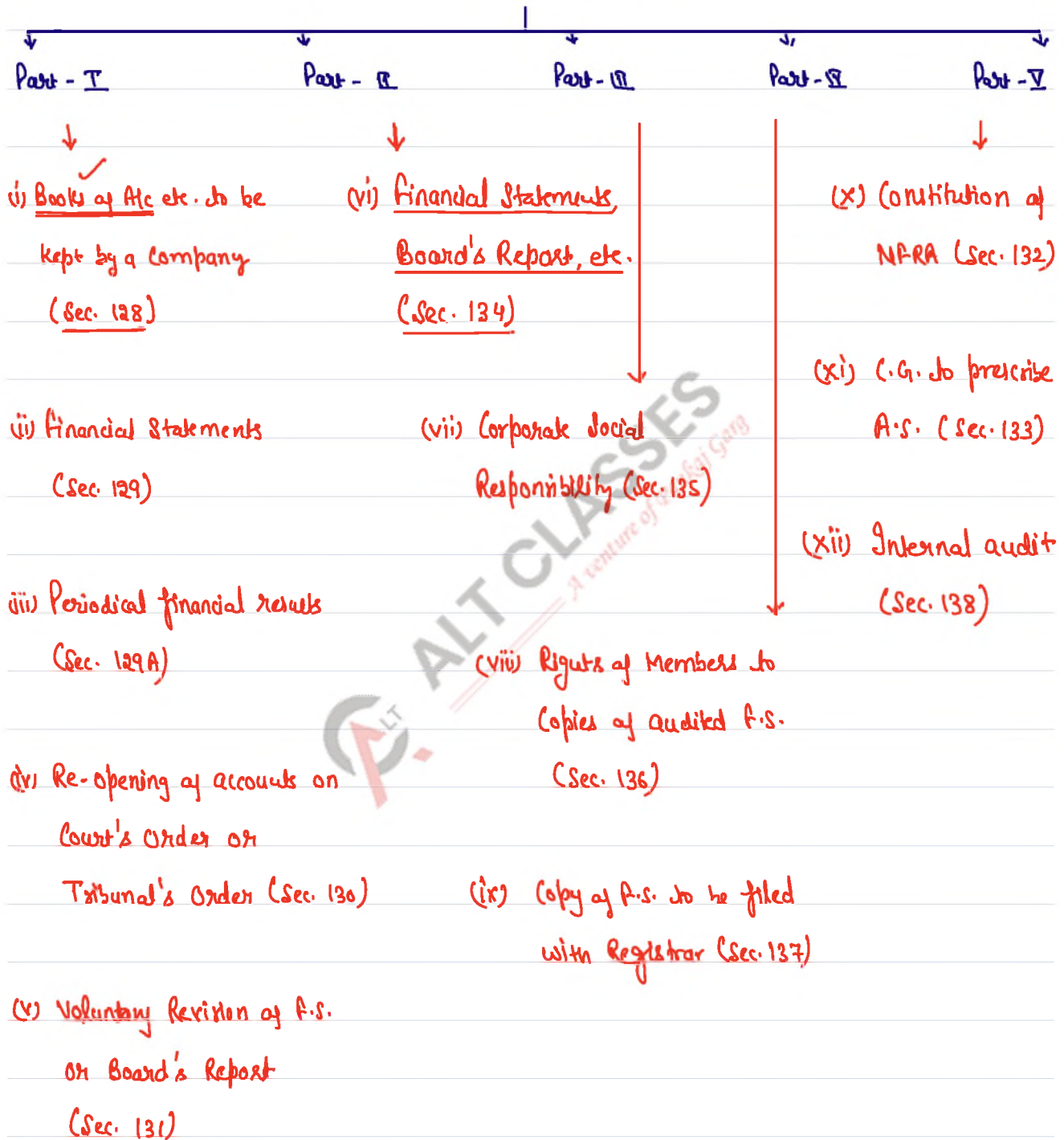


(b) Exceptions: No offence under this section shall be deemed to have been committed, if:

- (i) dividend could not be paid by reason of operation of law.
- (ii) shareholder has given certain direction to the company regarding payment and those directions cannot be complied with and the same has been communicated to the shareholder.
- (iii) there is a dispute regarding payment of dividend.
- ✓ (iv) dividend has been lawfully adjusted against any sum due from shareholders.
- (v) failure to pay dividend was not due to any default on the part of the company.

Chapter - 9 "Accounts of Companies"

[Chapter IX of Companies Act, 2013 - Secs. 128 - 138]



(i) Books of A/c etc. to be kept by the company (Sec. 128):

✓ Sec. 128 (1): ^{Sec. 2(13)} Books of A/c, ^{Sec. 2(12)} relevant books and papers and ^{Sec. 2(40)} financial statements for every ^{Sec. 2(41)} financial year, which gives a true and fair view of state of affairs of company including that of the branch office (if any)

↓

shall be kept at the registered office of the company.

- All or any of books of account and other relevant papers

↓

may be kept at such other place in India, as decided by BOD.

[Company shall within 7 days of such decision, file with Registrar a notice in writing (Form No. AOC-S) giving the full address of that place.]

- Books of A/c shall be kept on Accrual Basis and according to double entry system of accounting.

- Company may keep such books of account or other relevant papers in electronic mode in prescribed manner.

[Rule 3 of Companies (Accounts) Rules, 2014 prescribed the requirements w.r.t. maintaining books of A/c in Electronic mode]

Sec. 128(2): Where a company has a branch office in India or outside India



proper books of account relating to transactions effected at the branch office, may be kept at that place.

Note: Proper summarised returns are required to be sent periodically by branch office to the company at regd. office or other place as decided by BoD.

Sec. 128(3): Inspection of books of A/c:

- Books of A/c and other books and papers maintained within India shall be open for inspection, at the regd. office of the company or at such other place in India, by any director, during business hours.
- In case of financial information, if any, maintained outside India, copies of such financial information shall be maintained and produced for inspection, by any director, subject to prescribed conditions.

[Rule 4 provides the provisions relating to inspection of books of A/c and financial information].

- Inspection in respect of subsidiary of the company shall be done only by a person authorised by Board's Resolution.

Sec. 128(4): Where an inspection is made, officers and employees of the company shall give, the person making the inspection, all assistance in connection with the inspection which the company may reasonably be expected to provide.

Sec. 128(5): Preservation of Books of A/c:

Books of A/c (together with relevant vouchers)

shall be kept in good order

for a period \geq 8 financial years immediately preceding a financial year.

for all preceding years
if company had been in
existence for $<$ 8 years.

Note: Where an investigation has been ordered in respect of a company, C.G. may direct that books of A/c shall be kept for a longer period as it deem fit.

Sec. 128(6): Person responsible for compliance:

- (i) Managing Director
- (ii) whole time director in charge of finance
- (iii) chief financial officer
- (iv) Any other person charged by the Board with the duty of complying with the provisions of this section.

Penalty for non-compliance: ₹ 50,000 - ₹ 5,00,000

for each offence.

How Q: XYZ Ltd. is willing to maintain its books of account in Electronic Mode.

Secretary of the company is of the opinion that there is no provision to maintain books in Electronic form. Briefly comment whether the opinion of Secretary is correct. If not, state the related provision. (5 Marks)

Lechure No. 2 of Chapter No. 9 (Sec. 129, 129A, 130 and 131)

(ii) Financial Statements: (Sec. 129)

Sec. 129(1): Form of financial statements:

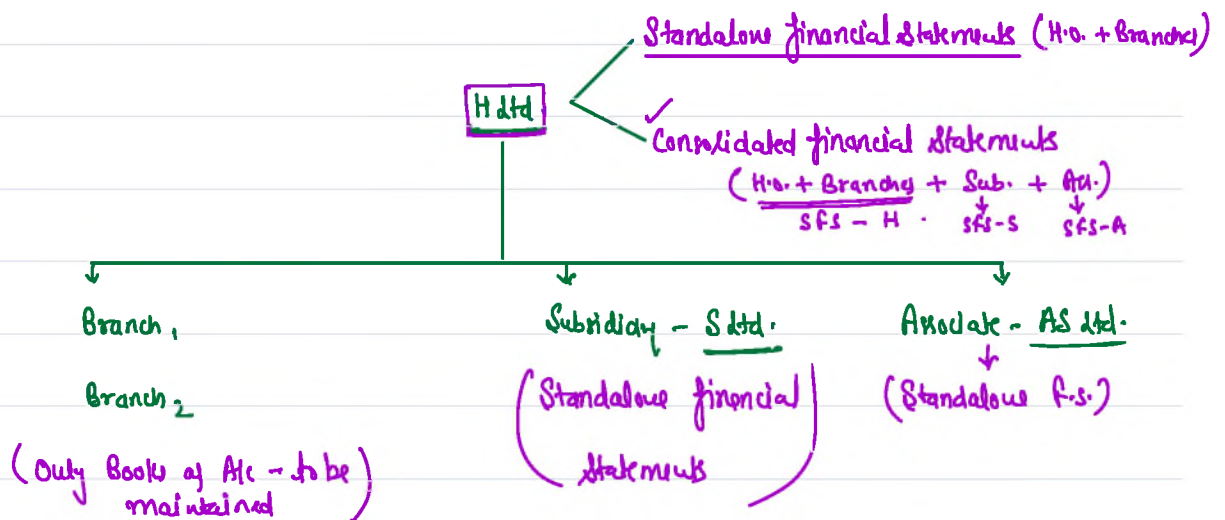
Financial statements shall:

- (a) give a true and fair view of state of affairs;
- (b) comply with ASs notified u/s 133; and
- (c) be in the form as set out in Schedule III.

Note: In case of Banking / Insurance / Electricity / Other companies for which form of financial statements has been specified in or under the governing law, these provisions shall not apply.

Sec. 129(2): At every AGM of company, BOD shall lay before such meeting, financial statements for the financial year.

Sec. 129(3): Consolidated financial statements:



- If a company has one or more subsidiary or associate company, it shall also prepare a consolidated F.S. in same form and manner as that of its own, in accordance with applicable ASs.
- A separate statement containing salient features of financial statements of its subsidiaries shall also be annexed with financial statements of holding company in form No. AOC-1.
- Consolidation shall be in the prescribed manner. (Rule 6)

✓ Sec. 129(4): Provisions relating to preparation, adoption and audit of F.S. of a holding company shall mutatis mutandis apply to consolidated financial statements. (subject to necessary changes)

Rule 6 of Companies (Accounts) Rules, 2014:

(i) Consolidation shall be in accordance with the provisions of Schedule III and applicable ASs.

(ii) If a company is not required to prepare CFS under the requirements of applicable ASs, it shall be sufficient compliance if company complies with the requirements as stated in Schedule III.

AS 21 ←
and AS 110 - Inv.

(iii) CFS not required to be prepared by a company, if:

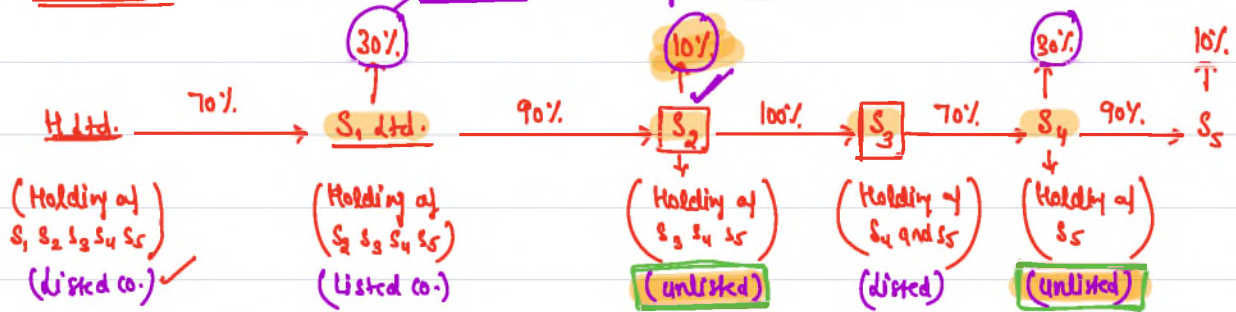
(a) It is a wholly owned ^(100%) or partially owned ^(< 100%) subsidiary of another company, and all of its other members having been intimated in writing, do not object to the company not presenting CFS.

(b) Securities of such company are not listed in India or outside India;

(c) its ultimate or any intermediate holding company files CFS with the Registrar, which are in compliance with the applicable ASs.

Example:

Justified in writing - No objection



H Ltd. is required to prepare CFS of $(H + S_1 + S_2 + S_3 + S_4 + S_5)$

S_1 Ltd. " " " " " " $(S_1 + S_2 + S_3 + S_4 + S_5)$

S_2 Ltd. is exempted from prepⁿ of CFS

S_3 Ltd. is required to prepare CFS of $(S_3 + S_4 + S_5)$.

S_4 Ltd. is exempted from prepⁿ of CFS.

Sec. 129(5): Deviation from Accounting Standards:

If F.S. do not comply with ASs (notified u/s 133), Company shall disclose in the financial statements, the following:

- Deviation from the AS;
- Reasons for such deviation; and
- financial effects, if any, arising from such deviation.

Sec. 129(6): C.G. may exempt any class of companies from compliance with the requirements of this section.

Sec. 129(7): Persons responsible for compliance:

- Managing director;
- Whole time director in charge of finance;
- CA; or

(iv) Any other person charged by Board with the duty of complying with the requirements of this section.

Note: In the absence of any of the officers mentioned above, all directors will be responsible.

Penalty for Non-compliance: Imprisonment upto one year

Or

fine ranging from ₹ 50,000 - ₹ 5,00,000

Or

Both.

(iii) Periodical financial results (Sec. 129A):

Company

↓
Listed Companies

↓

Companies Act, 2013 +

SEBI Regulations

↓

Quarterly financial results

- learning from book -

↓
Unlisted Companies

↓

Companies Act, 2013

↓

Periodical financial results

required - U/s 129A

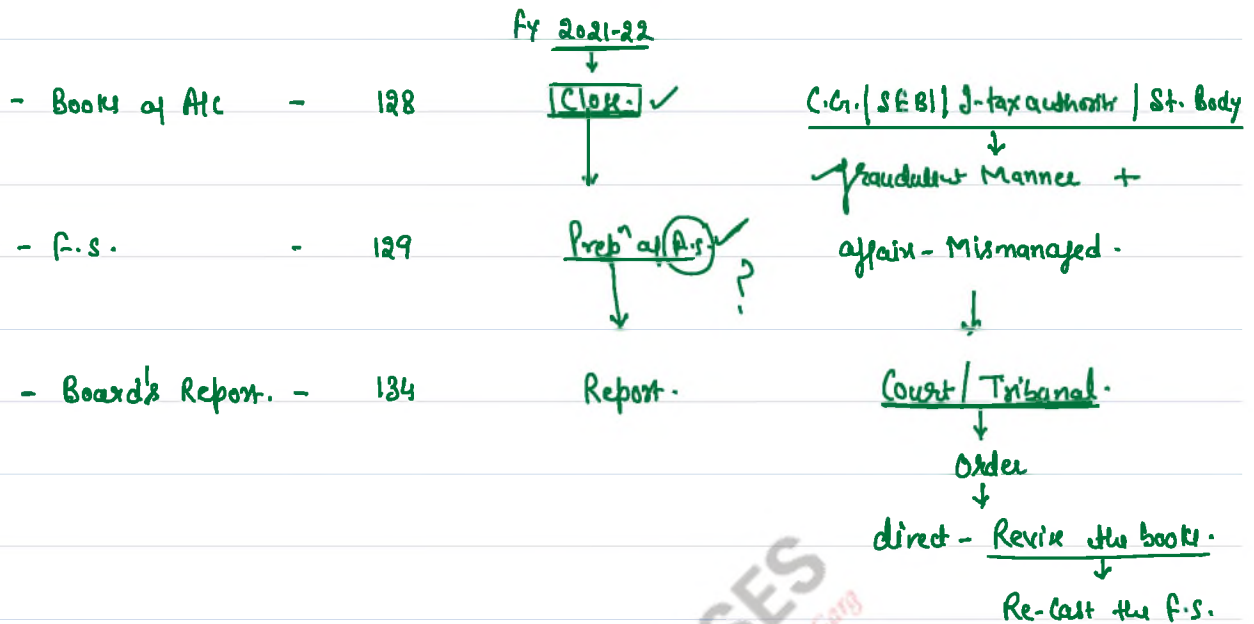
- C.G. - Notify class of Companies

- Prepⁿ

- Audit / Limited Review

- Filing with RoC

✓ (iv) Re-opening of A/c on Court's or Tribunal Order (Sec. 130):



- A Company shall not re-open its books of account and not re-cast its F.S. unless:

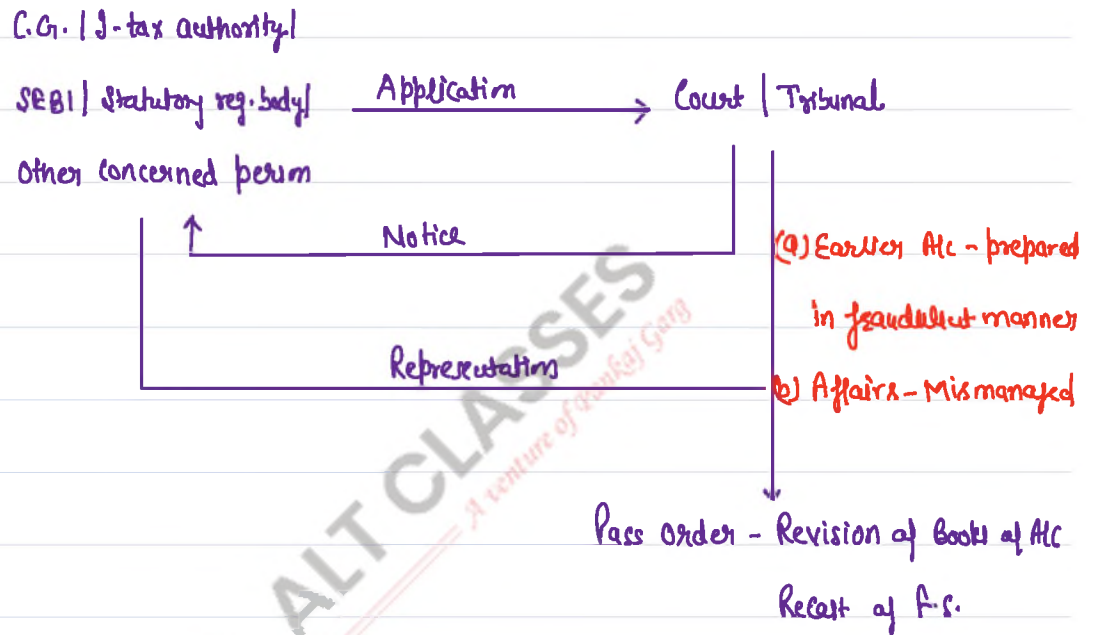
- (i) An application in this regard is made by C.G., SEBI, J-tax authority, other statutory regulatory body or any person concerned;
- (ii) Order is made by Court of competent jurisdiction or Tribunal to the effect that:
 - (a) Earlier accounts were prepared in a fraudulent manner;
 - (b) affairs of the company were mismanaged casting a doubt on the reliability of F.S.

- Court or Tribunal, shall give notice to C.G., J-tax authority, SEBI and other statutory regulatory body or any other person concerned and shall consider the representation, if any, made by such person.

- Accounts so revised or recast shall be final.

- No order shall be made for opening of books of account relating to period earlier than 8 financial years immediately preceding current financial year.

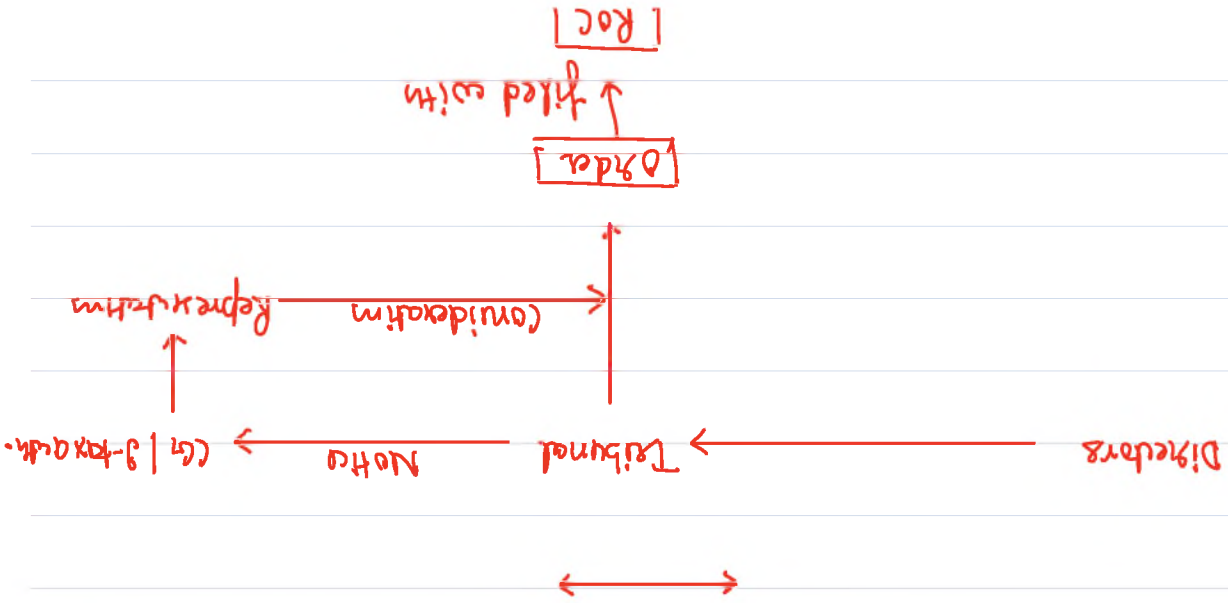
Note: However, where a direction has been issued by the C.G. U/s 128(S) for keeping the books for a period longer than 8 years, the books of A/c may be ordered to be reopened within such longer period.



(V) Voluntary Revision of F.S. or Board's Report (Sec. 131):

Sec. 131(1): (i) Directors of a company may apply to Tribunal in prescribed manner, if it appears to them that F.S. of the company or Board's Report, is not in compliance with the provisions of Sec. 129 or 134 respectively.

Note: Application shall be made only in respect of F.S. or Board's Report for any of the preceding three financial years.



- written practice (a question)
- QIA

(ii) Sec. 129, 129A, 130, 131, 134 - Reading

H.L. (i) Sec. 134 - Video

Sec. 131(2) and 131(3) ; - Reading from book -

- (ii) Revision is allowed only once in a financial year.
- (iv) Detailed reasons for revision shall also be disclosed in Board's report in the relevant financial year in which such revision is being made.

Note: Copy of order passed by Tribunal shall also be filed with the Registrar.

(ii) Tribunal shall give notice to C.G. and J-tax authorities and J-tax authorities before passing an order.

Consider the recommendation, if any, made by the C.G. or

(vi) Financial Statements, Board's Report, etc.: (Sec. 134)

Sec. 134(1): (i) F.S., including CFS, if any, shall be approved by BoD before they are being signed.

(ii) F.S., including CFS, shall be signed, on behalf of the Board, by:

(a) Chairperson of the company (if authorised by Board); or
2 directors (including M.D., if any)

and

(b) CEO, CFO and CS of the company, wherever they are appointed.

Note: In case of OPC, F.S. shall be signed only by one director.

Sec. 134(2): Auditor's report shall be attached to every F.S.

Sec. 134(3): Board's Report:

Sec. 134(3A): Abridged Board's Report:

Sec. 134(4): Board's Report in case of OPC:

reading from book

Imp. Sec. 134(5): Director's Responsibility Statement: To be learned from book

Sec. 134(6): Signing of Board's Report:

Board's report shall be signed by:

(a) Chairperson of the company (if authorised by Board); or

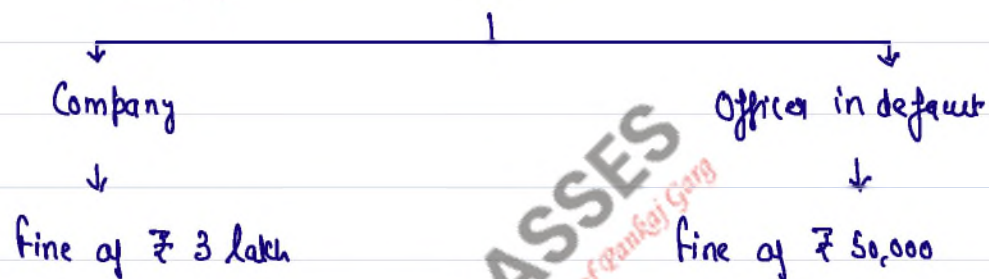
Two directors including MD, if any (if chairperson is not so authorised)

(b) director, where there is only one director.

Sec. 134(7): Signed copy of f.s, including CFS, if any, shall be issued, circulated, or published along with a copy of:

- ✓ (a) Notes forming part of financial statements;
- ✓ (b) Auditor's Report; and
- ✓ (c) Board's Report.

Sec. 134(8): Penalty for non-compliance of Sec. 134:



H.W. Do written practice of May 18, Jan. 21 Exam.
↓ ↓
DRS signature of f.s.

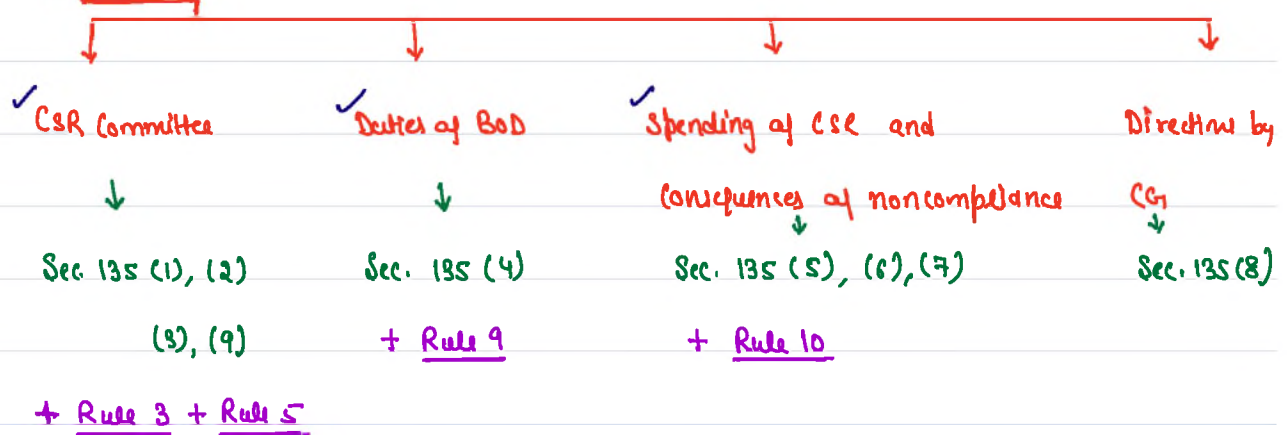
Lecture No. 3 of Chapter 9

(vii) Corporate Social Responsibility: Sec. 135 of Companies Act, 2013 and Companies (CSR Policy) Rules, 2014

(a) Meaning of CSR: Rule 2(1)(d) defines the term "CSR" so as to mean the activities undertaken by a company in pursuance of its statutory obligations u/s 135 of Companies Act, 2013, but shall not include the following:

- (i) Activities undertaken in pursuance of Ordinary Course of business;
- (ii) Activities undertaken by a company Outside India except for training of sports personnel.
- (iii) Contribution of any amount to a political party u/s 182.
- (iv) activities undertaken for the benefit of employees of company;
- (v) activities on sponsorship basis for deriving marketing benefits;
- (vi) activities which are carried out for the fulfillment of Other statutory obligations.

(b) Sec. 135:



(C) Other Provisions :

(i) CSR Implementation : Rule 4

(ii) CSR Expenditure : Rule 7

(iii) CSR Reporting : Rule 8

CSR Committee :

Sec. 135 (1): Every company having ✓ Net worth \geq 500 Cr ; OR

✓ Turnover \geq 1000 Cr ; OR

✓ Net Profit \geq 5 Cr.

↓

during Immediate preceding financial year

↓

shall constitute a CSR Committee of its Board.

Sec. 135 (4): If amount to be spent is \leq 50 lakh

↓ (2% of average NP of Immediate preceding 3 FYs)

Requirement of constitution of CSR Committee shall not be applicable and

↓

function of CSR Committee shall be discharged by BOD.

Rule 3: Every company including its holding, subsidiary and a foreign company which fulfills the criteria specified in 135 (1)

↓

shall comply with the provisions of Sec. 135 of the Act and these Rules.

Example 1:

	NW	T/O	NP
FY 2019-20	750 Cr.	1050 Cr.	40 Cr.

2020-21 725 Cr. 1040 Cr. 30 Cr.

2021-22	650 Cr.	920 Cr.	20 Cr.
---------	---------	---------	--------

Q.1 How much amount is to be spent for CSR activities in FY 2022-23.

Ans.: 2% of $\left[\frac{40 \text{ Cr.} + 30 \text{ Cr.} + 20 \text{ Cr.}}{3} \right] = 60 \text{ lakh}$

Q.2: whether the company is required to constitute CSR Committee and comply with the provisions of sec. 135

Ans.: Company is required to constitute CSR Committee as it satisfy the criteria of NW ($\geq 500 \text{ Cr.}$) and NP ($\geq 50 \text{ Cr.}$) during the immediate preceding financial year.

Sec. 135(9) shall not be applicable as amount to be spent $> 50 \text{ lakh}$.

Example 2:

	NW	T/O	NP
2019-20	750 Cr.	1050 Cr.	80.

2020-21 725 Cr. 1040 Cr. 100. 2% of $\left(\frac{80 + 100 + 120}{3} \right)$

2021-22 650 Cr. 920 Cr. 120. = 20 lakh.

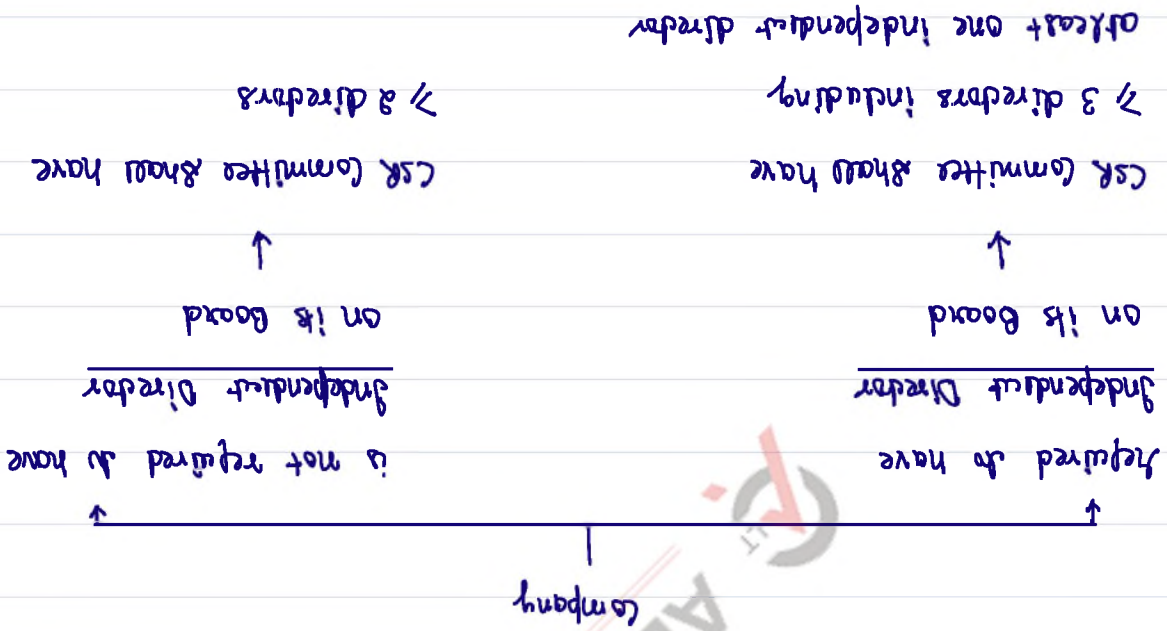
✓ Q.1 whether the company is required to constitute CSR Committee.

Q.2: whether the company is required to comply with the provisions of sec. 135

Q.3: what is the amount, company is required to spend for CSR activities.

Ans.: Q.1: Though NW of the company during immediate preceding FY is $\geq 500 \text{ Cr.}$, but the amt. to be spent towards CSR is $< 50 \text{ lakh}$, hence company is not required to constitute CSR Committee. functions of CSR Committee in this case shall be discharged by BOD.

Duties of CSR Committee and Board of Directors: - to be covered from book -



Composition of CSR Committee:

Q.1: whether the company is required to ensure compliance of sec. 135 as it does not fall under any of the criteria specified in 135(1).

Ans: company is not required to ensure compliance of sec. 135 as it does not fall under any of the criteria specified in 135(1).

for Answer 3

Year	Turnover	Net Profit	NP
2019-20	100 Cr.	500 Cr.	200 Cr.
2020-21	600 Cr.	1500 Cr.	30 Cr.
2021-22	400 Cr.	900 Cr.	4 Cr.

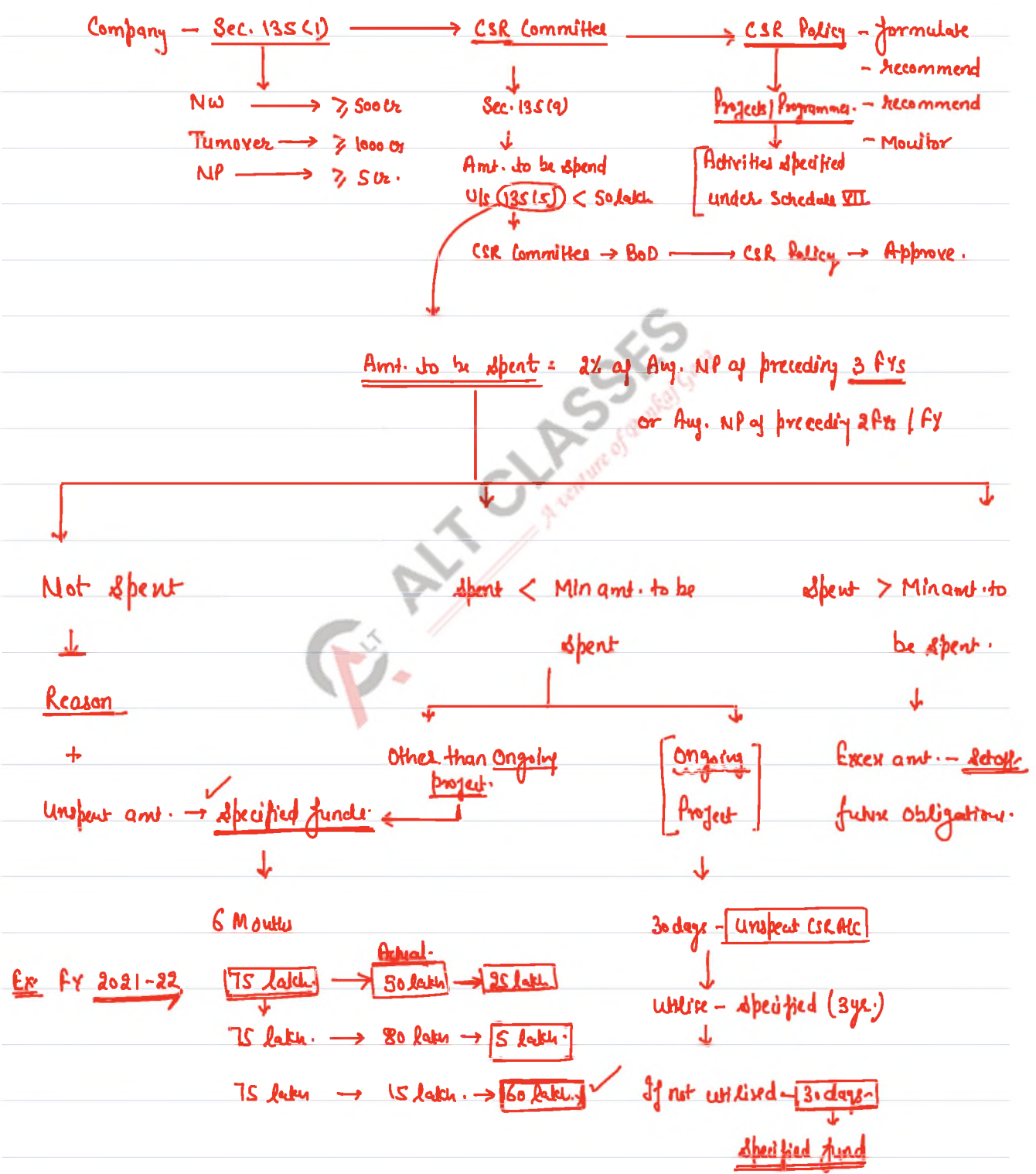
AV: = 156 Cr.
Avg = 78 Cr.

Example:

- Q.2: company is required to ensure compliance of sec. 135 of the Companies Act, 2013.
- Q.3: ₹ 20 Lakh.

Lecture No. 4 of Chapter NO. 9

(vii) Corporate Social Responsibility:



Spending of CSR and consequences of non-compliance: Sec. 135(5) and 135(6)

Board of the company on which provisions of sec. 135 are applicable, shall ensure that the company spends in every financial year at least 2% of average net profit of immediate preceding three financial years; or where the company has not completed three financial years since its incorporation, during such immediate preceding financial years, in pursuance of its CSR Policy.

Consequences of non-spending or short/excess spending:

Amount not spent

or

Amount spent < 2% of Avg NP

(Other than ongoing project)



Board shall specify the reasons

and

transfer the unspent amount to specified funds within

6 Months from the end of financial year.

Amount not spent or short spent pursuant to ongoing project



Transfer the unspent amount to a special account opened in a scheduled bank (Unspent CSR A/c) within 30 days from the end of FY

and

spend within 3 FYs in pursuance of its obligations.



If not spent within 3 FYs, Unspent amount to be transferred within 30 days from the expiry of 3rd year.

Amount spent in excess of obligations



Excess amount is allowed to be set-off against the requirements of succeeding 3 FYs.

Example 1: FY 2019-20 Net Profit = 10 Cr.

FY 2020-21 " " = 18 Cr.

FY 2021-22 " " = 32 Cr.

Q.1: What is the amount to be spent for CSR activities for FY 2022-23.

Ans.: (a) 20 lakh (b) 4 lakh (c) 64 lakh (d) 40 lakh

$$2\% \text{ of } \left(\frac{10 \text{ Cr} + 18 \text{ Cr} + 32 \text{ Cr}}{3} \right) = 40 \text{ lakh}$$

Q.2: If actual amount spent is 25 lakh and there is no ongoing project, what will be obligations of the company.

Sol.: (a) No obligation

(b) Deficit of 15 lakh to be utilised in FY 2023-24.

(c) Deficit of 15 lakh to be transferred to unspent CSR A/c.

✓(d) Deficit of 15 lakh to be transferred to specified funds.

Q.3: If actual amount spent is 45 lakh, whether company is entitled to set-off the excess amount spent.

Sol.: (a) No

(b) Yes, set off allowed against CSR obligations of immediate succeeding 2 FYs.

✓(c) Yes, set-off allowed against CSR obligations of immediate succeeding 3 FYs.

(d) Yes, set-off allowed against CSR obligations of immediate succeeding 5 FYs.

Q.4: If actual amount spent is ₹ 8 lakh and an Ongoing project exists, what will be the obligations of the company.

Sol.: (a) Unspent amt. of ₹ 8 lakh to be transferred within 30 days to specified funds.

✓ (b) Unspent amt. of ₹ 8 lakh to be transferred within 30 days to unspent CSR A/c.

(c) Unspent amt. of ₹ 8 lakh to be transferred within 6 months to specified fund.

(d) Unspent amt. of ₹ 8 lakh to be transferred within 6 months to unspent CSR A/c.

Penalty provisions for non-compliance of Sec. 135(s) and 135(c): Sec. 135(7)



(a) twice the amount to be transferred to specified fund or unspent CSR A/c

or

(b) ₹ 1 crore, whichever is lower.

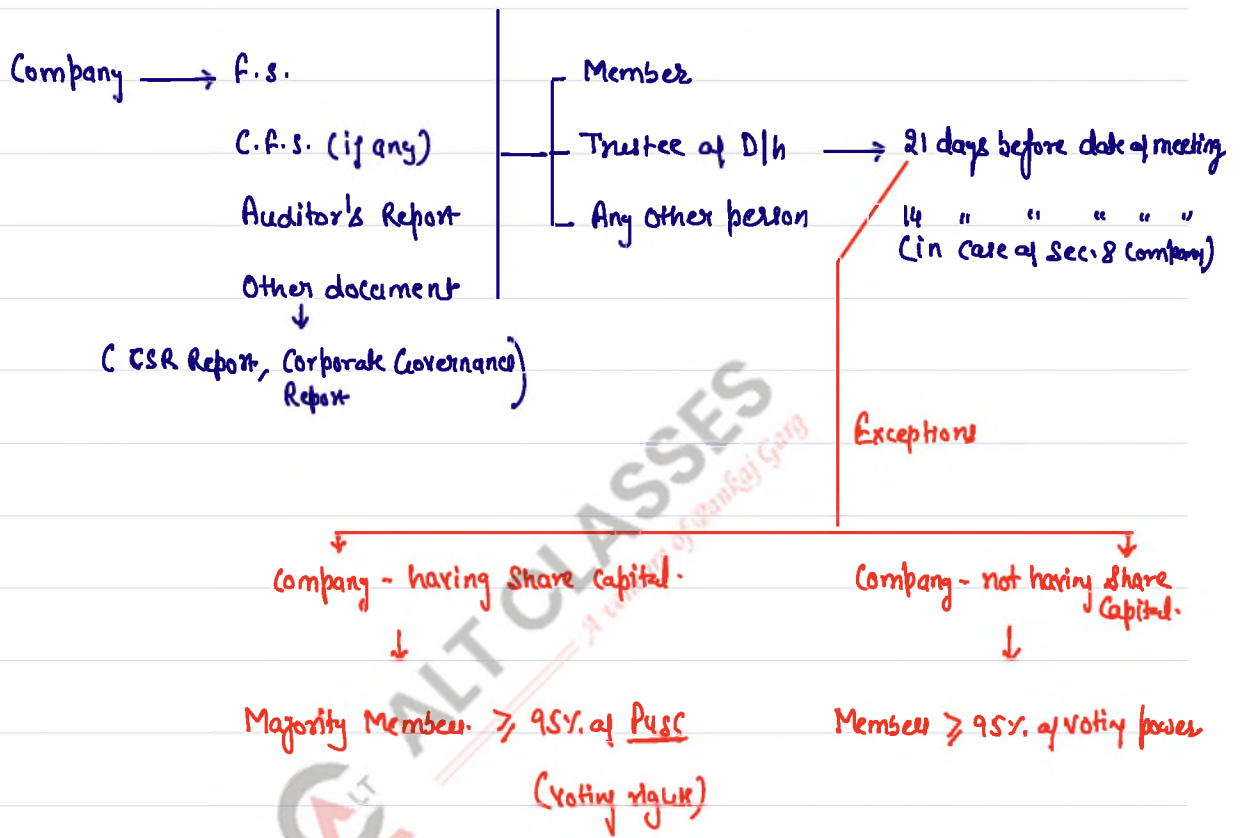
(a) $\frac{1}{10}$ th of amount to be transferred to specified fund or unspent CSR A/c

or

(b) ₹ 2 lakh whichever is lower.

(viii) Rights of Members to copies of Audited financial statements (Sec. 136):

- to be covered from book -



Circulation: Demat shares. → Electronically
Other than demat → " (consent in writing)

Abridged financial statements: Listed Company → Abridged F.S. (AOC-3 / AOC-3A)

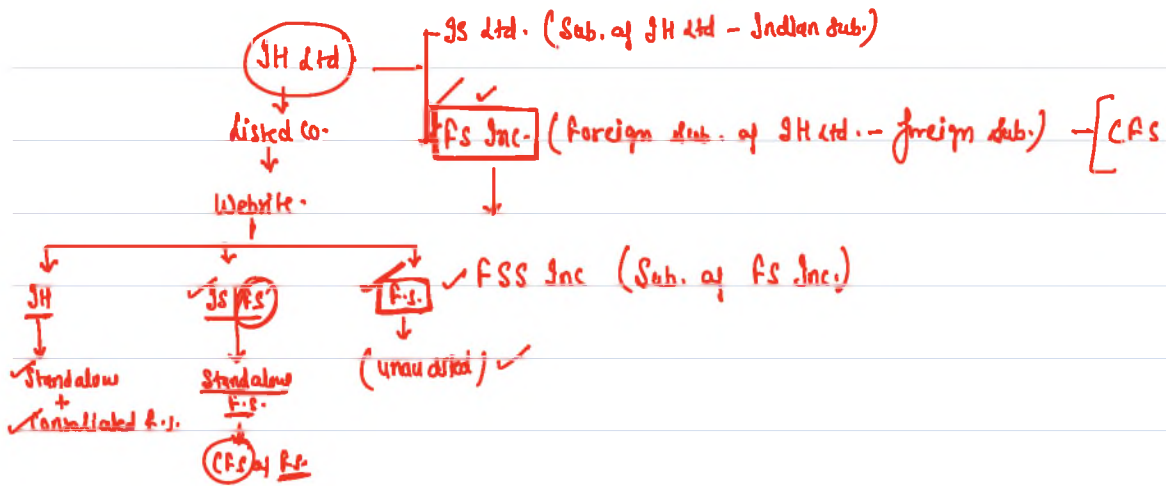
↳ Full financial statement - Inspection - regd. office

during working hours - 21 days

Obligations: Listed Companies - F.S. + CFS - Website. ✓

- Subsidiaries / Associates → F.S. - Website. ✓

- Foreign subsidiaries → F.S. - audited ✓
F.S. - unaudited ✓ → CFS
unaudited F.S. + Translation



Nidhi Companies → Sec. 136(1) → F.S. - Notes Board affix

Meeting Notice Circulate - Area.

Members → holding < down of 1% of PUC or ₹ 1000
500 or 1000 = 500

Nidhi = 50000 x ₹ 1 = 50000

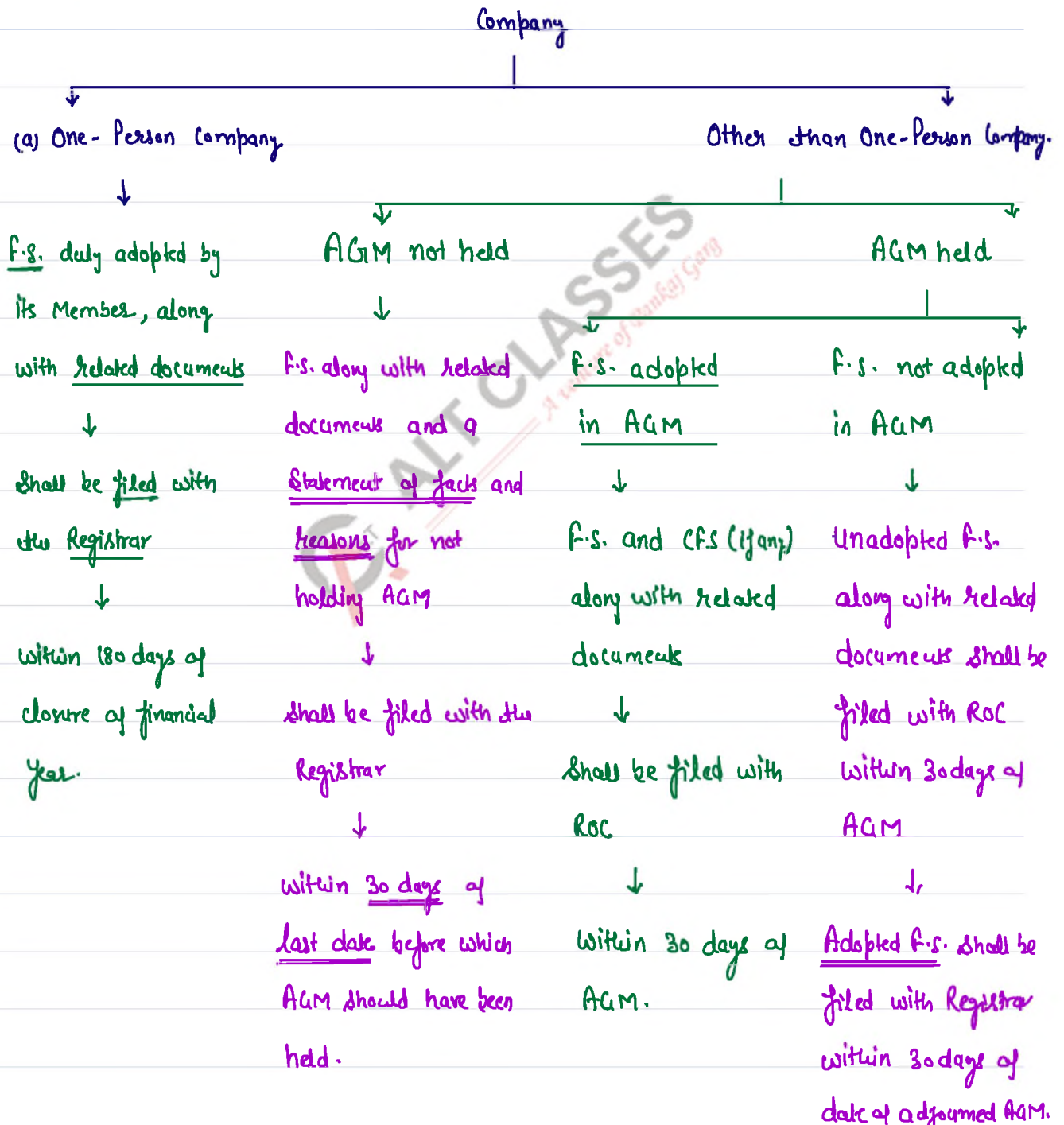
X = 700 -

Y = 400

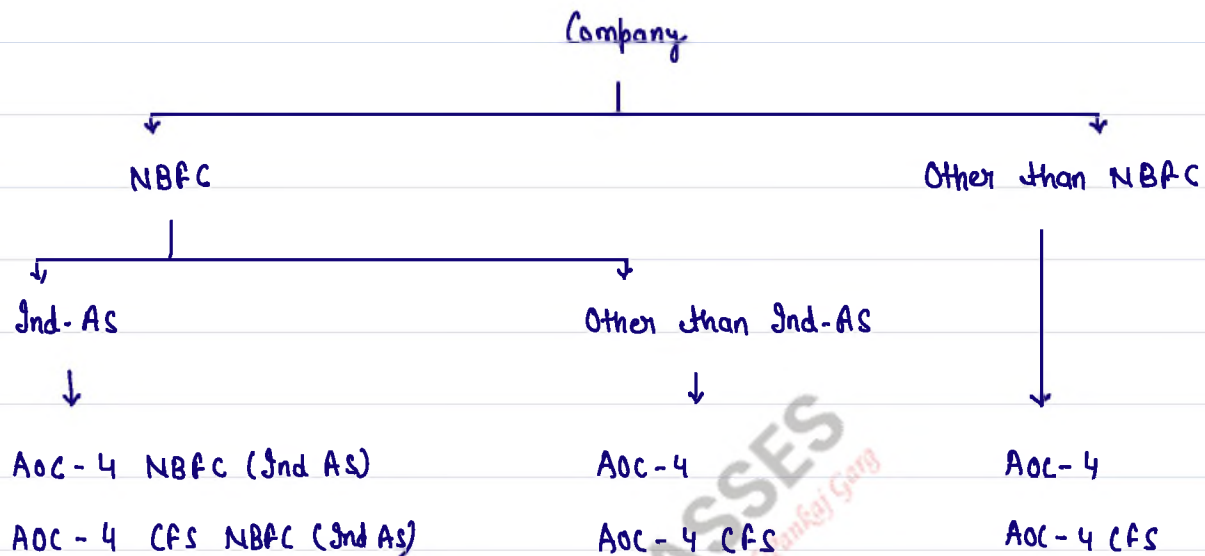
Lecture No. 5 of Chapter No. 9 (Accounts of Companies)

(ix) Copy of F.S. to be filed with Registrar (Sec. 197):

(a) Time limits within which F.S. are to be filed:



(b) Manner of filing of F.S. : (Rule 12 of Companies (Accounts) Rules, 2014)



Note: In case of certain companies, financial statements are to be filed in **XBRL** ^{*} (Extensible Business Reporting Language) format.

Companies requiring to file F.S. in XBRL format:

- (a) Companies listed in India and their Indian Subsidiaries; OR
- (b) Companies having PUC \geq 5 Cr; OR
- (c) " " Turnover \geq 100 Cr; OR
- (d) " preparing F.S. on Ind-AS;

Exceptions: NBFC, Housing finance companies, companies in banking or insurance sector.

^{*} Standardised language for communication in electronic form to express, or file financial statements.

(25) Internal Audit: Sec. 138 of Companies Act 2013 read with Rule 13 of Companies (Accounts) Rules, 2014:

(a) Requirement of Internal Audit:

- (i) Listed Companies → PUC \geq 50 cr. during preceding FY
- (ii) Unlisted public companies → Tlo \geq 200 cr. " " "
- O/s loan, borrowings from bank and F.I. $>$ 100 cr at any point of time during preceding FY
- O/s deposits \geq 25 cr. at any point of time during preceding FY
- (iii) Private companies → Tlo \geq 200 cr. during preceding FY
- O/s loan, borrowings from bank and F.I. $>$ 100 cr.

Examples:

	<u>Nature</u>	<u>Deposit</u>	<u>PUC</u>	<u>Tlo</u>	<u>Borrowing</u>	<u>Applicability of I. audit</u>
A Ltd.	Listed	20 cr.	45 cr.	90 cr.	90 cr.	Yes - Listed Co.
B "	<u>unlisted</u>	24 cr.	<u>51 cr.</u>	90 cr.	85 cr.	Yes - PUC \geq 50 cr.
C "	"	20 cr.	40 cr.	90 cr.	<u>101 cr.</u>	Yes - Borrowings $>$ 100 cr.
D "	"	21 cr.	39 cr.	<u>210 cr.</u>	90 cr.	Yes - Tlo \geq 200 cr.
E "	"	<u>28 cr.</u>	46 cr.	95 cr.	<u>110 cr.</u>	Yes - Deposits \geq 25 cr. Borrowings $>$ 100 cr.
F (P) Ltd.	"	Nil	90 cr.	95 cr.	96 cr.	No - Tlo $<$ 200 cr. Borrowings $<$ 100 cr.
G (P) Ltd.	"	Nil	100 cr.	<u>205 cr.</u>	85 cr.	Yes - Tlo \geq 200 cr.
H (P) Ltd.	"	Nil	150 cr.	96 cr.	80 cr.	No - Tlo $<$ 200 cr. and Borrowings $<$ 100 cr.

- Who can be Internal auditor:
- (a) Chartered Accountant (whether in practice or not)
 - (b) Cost Accountant
 - (c) Such other professional as decided by Board

Note: Internal auditor may or may not be an employee of the company.

Manner for Conducting Internal audit:

Audit Committee or the Board of Directors, shall formulate the



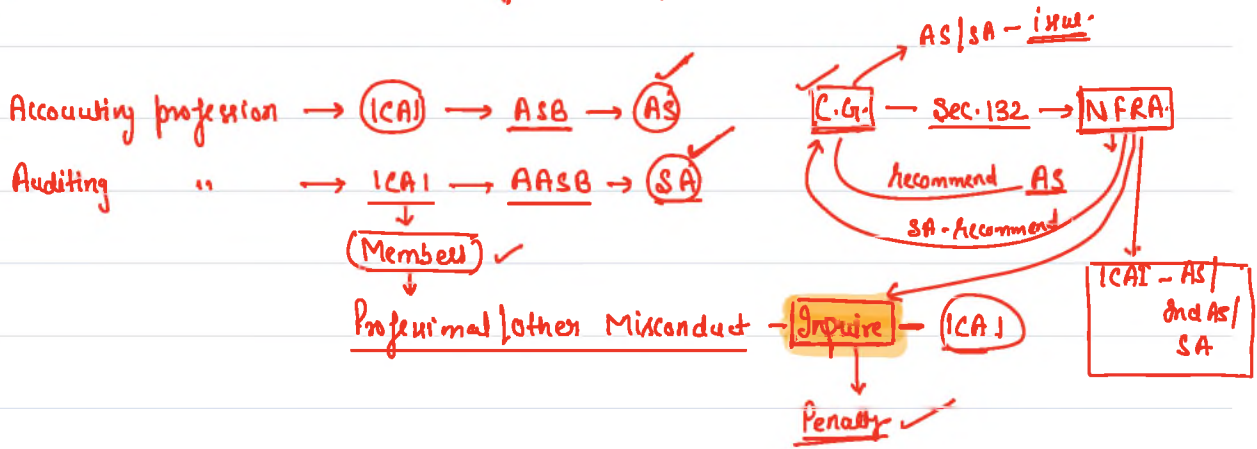
scope, functioning, periodicity and methodology for conducting internal audit



in consultation with _____

- (a) Statutory Auditor
- (b) Registrar of Companies
- ✓ (c) Internal Auditor
- (d) Central Government.

(xi) National financial reporting authority (NFRA) - Sec. 132:



— to be covered from book —

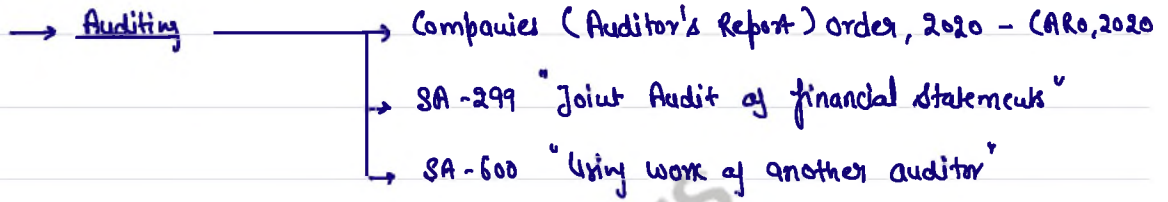
Chapter - 10 " Audit and Auditors " (Inter - Law + Audit)

Coverage → Law and Audit → Chapter - X of Companies Act, 2013

[Sec. 139 to Sec. 148]

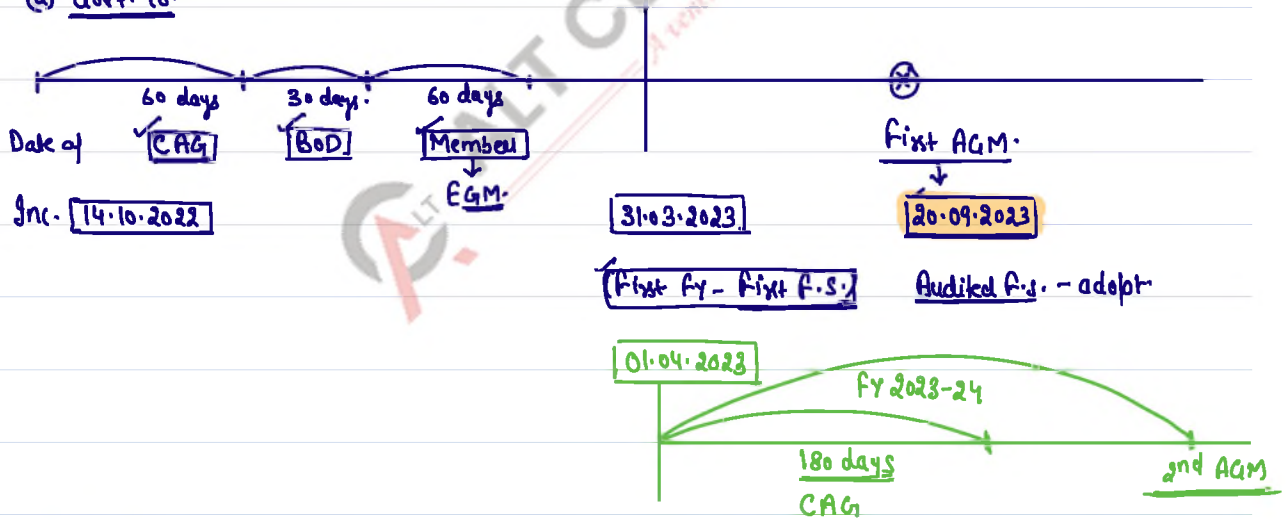
→ Companies (Audit and Auditor's) Rules, 2014

→ Companies (Cost Records and Audit) Rules, 2014

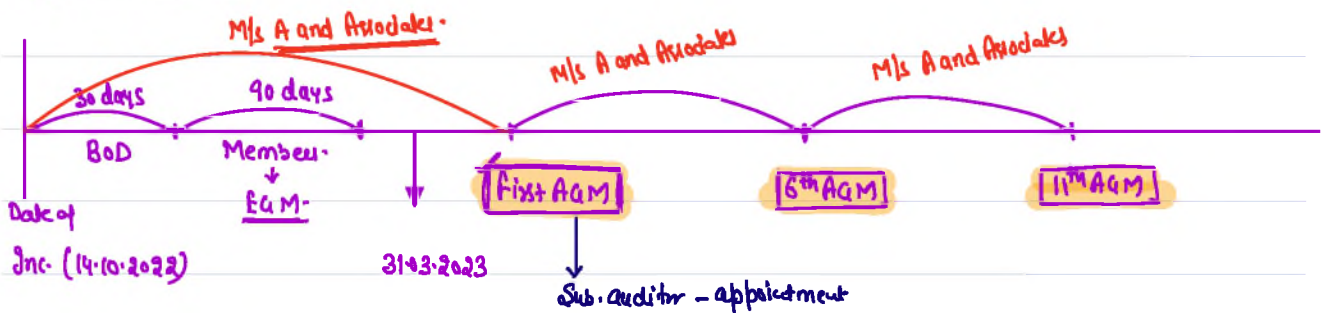


① Appointment of Auditor (Sec. 139):

(a) Govt. Co.



(b) Non-Govt. Co.



(A) First Auditor:

(i) Non-Govt. Co. - Sec. 139(6)

First auditor shall be appointed by Board of Directors within 30 days of registration of company.

If BOD fails, BOD shall inform the members and members shall appoint the first auditor in General Meeting (EGM) within 90 days.

Tenure: till conclusion of first AGM

(ii) Govt. Co. - Sec. 139(7)

First auditor shall be appointed by CAG within 60 days of registration of company.

If appointment not made by CAG within 60 days, BOD shall appoint the first auditor within next 30 days.

If BOD fails, BOD shall inform the members and members shall appoint the first auditor in General Meeting within 60 days.

Tenure: till conclusion of first AGM.

(B) Appointment of Subsequent Auditor:

(i) Govt. Co. : Sec. 139 (5)

- Subsequent auditor of a government company shall be appointed by CAG
- for each financial year;
 - within 180 days of commencement of each financial year.

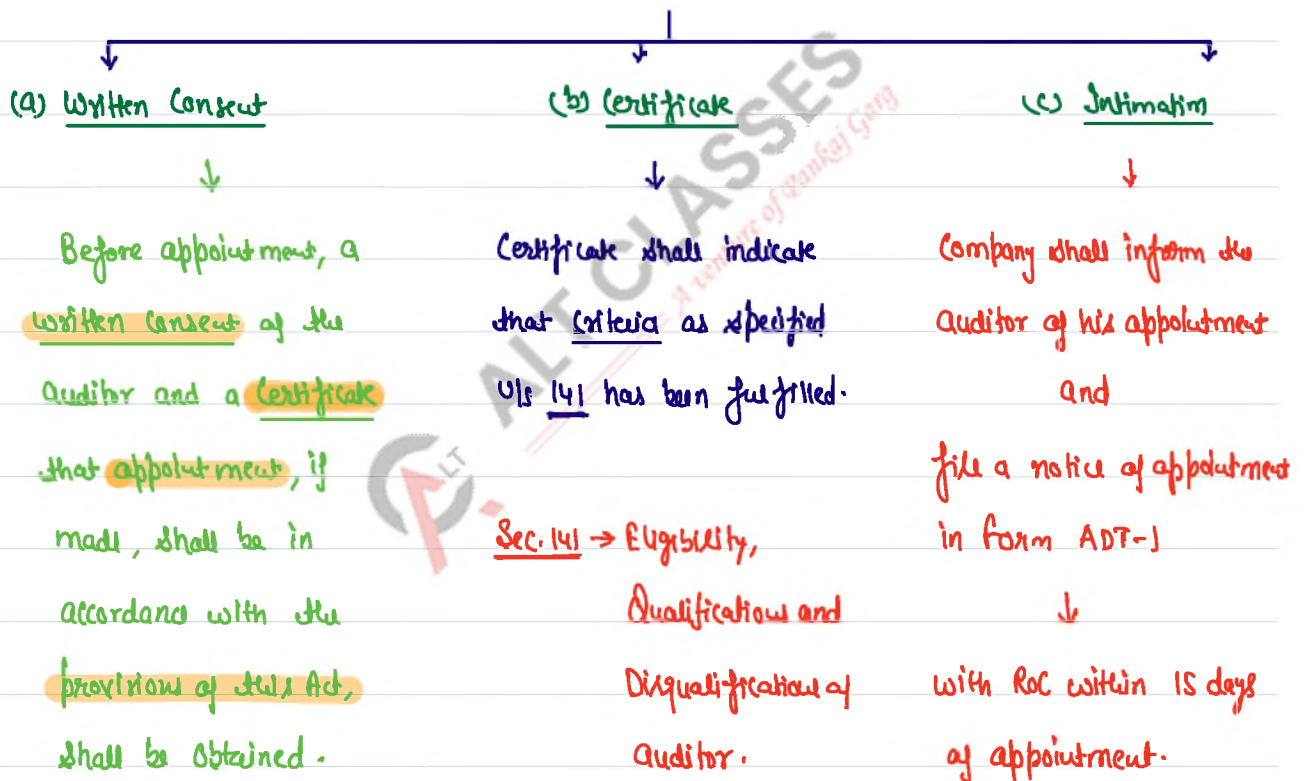
Tenure: till conclusion of AGM held immediately after the end of relevant financial year.

(ii) Non-Govt. Co [Sec. 139(1)]

Subsequent auditor of a non-govt. company shall be appointed at first AGM and thereafter at every 6th AGM.

Tenure: till conclusion of 6th AGM.

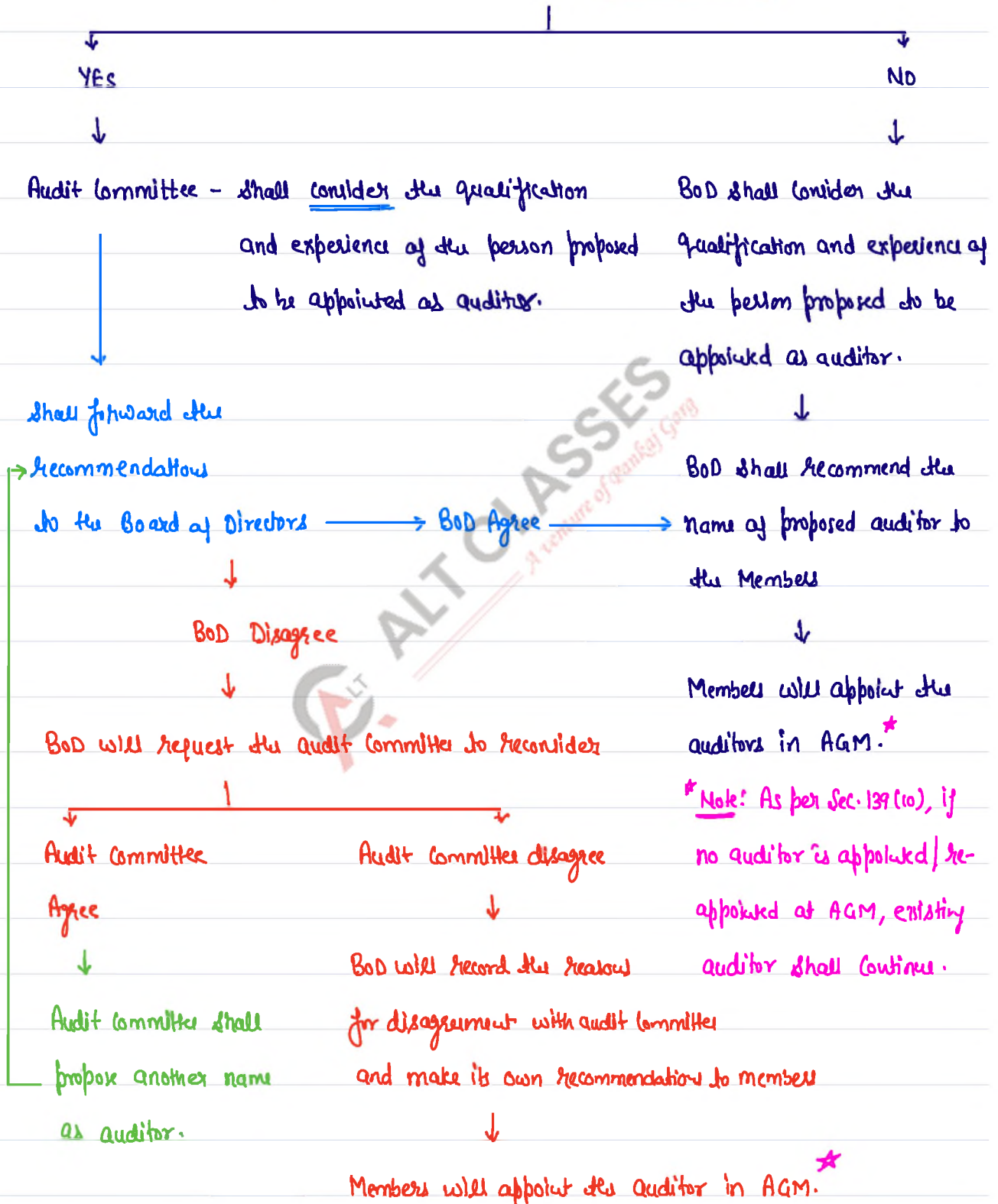
Appointment of subsequent auditor in Non-Govt. Co. shall be made in prescribed manner [Rule 3 of Companies (Audit and Auditor's) Rules, 2014] and shall be subject to following conditions:



Note: Contents of the certificate to be given by the auditor to the company are prescribed in Rule 4.

Rule 3 of CAAR, 2014 : Manner of selection and appointment of auditors:

Company is required to constitute audit committee U/s 177



(C) Companies required to have audit committee (Sec. 177):

- Every listed public company and
- Other unlisted public company which satisfied any of the following conditions : (a) Paid up capital ≥ 100 cr.

or

(b) Turnover ≥ 100 cr

or

(c) Outstanding loan, borrowings, debentures and public deposits ≥ 50 cr

as on last day of latest audited financial statements, shall constitute an audit committee of directors.

<u>Example.</u>	<u>Nature</u>	<u>PUC</u>	<u>TA</u>	<u>Borrowing etc.</u>	<u>Requirement of audit committee.</u>
A Ltd.	Listed	70 cr.	90 cr.	40 cr.	
B Ltd.	unlisted	70 cr.	1050 cr.	40 cr.	(a) A Ltd. and F (P) Ltd.
C Ltd.	"	110 cr.	90 cr.	42 cr.	(b) A Ltd, B Ltd, C Ltd, D Ltd, E Ltd.
D Ltd.	"	50 cr.	850 cr.	510 cr.	(c) F (P) Ltd. and G (P) Ltd.
E Ltd.	"	90 cr.	99 cr.	49 cr. x	(d) A Ltd., B Ltd, C Ltd and D Ltd.
F (P) Ltd.	Listed	70 cr.	90 cr.	40 cr. x	
G (P) Ltd.	unlisted	110 cr.	110 cr.	60 cr. x	

(D) Contents of Certificate to be furnished by auditor to company: Rule 4 of CAAR, 2014

- Discussed from book -

② Rotation of Auditors:

(i) Sec. 139(2): Listed companies and other prescribed companies (Rule 5) shall not appoint:



(i) an individual - as auditor for more than one term of five consecutive years.



(ii) an audit firm - as auditor for more than 2 terms of five consecutive years each.

Rule 5 of CAAR, 2014: Companies (other than small companies and OPC) covered below:

- ✓ (a) Public unlisted companies having PUC \geq 10 crores;
- (b) Private companies having PUC $>$ 50 crores;
- ✓ (c) Companies not covered in (a) and (b) above, having borrowings from banks, financial institutions or public deposits \geq 50 crores.

Examples:

		<u>PUC</u>	<u>T/O</u>	<u>Borrowings</u>	<u>Rotation applicable or not</u>
A Ltd.	- <u>Listed</u>	5 cr.	-	42 cr.	Applicable (Listed)
B Ltd.	- <u>Listed</u>	15 cr.	-	90 cr.	" (")
C Ltd.	- <u>Unlisted</u>	<u>20 cr.</u>	-	25 cr.	" (PUC \geq 10 cr)
D Ltd.	"	6 cr.	-	46 cr.	Not applicable
E (P) Ltd.	"	10 cr.	-	46 cr.	" "
F (P) Ltd.	"	22 cr.	-	<u>51 cr.</u>	Applicable (Borrowing \geq 50)
G (P) Ltd.	"	<u>54 cr.</u>	-	42 cr.	Applicable (PUC \geq 50 cr)
H (P) Ltd.	"	<u>1.50 cr.</u>	<u>18 cr.</u>	<u>52 cr.</u>	Not applicable being a small company.

Provisions relating to rotation covered u/s 139(2):

(i) cooling off period: Individual auditor or firm auditor shall not be eligible for re-appointment for a period of 5 years in same company after completion of their respective tenures.

(ii) Disability of other firms having common partners:

Audit firms having common partners as on [date of appointment] with the firm whose tenure has just expired, shall not be eligible for appointment for a period of 5 years.

Example: XYZ Ltd. (listed company) is willing to appoint M/s ABC and Co. as their auditor. Its AGM to be held on 15.09.2022, in (PQR & Co.) which tenure of existing auditor expires.

Existing auditor (PQR and Co.) is having 3 Partners - P, Q and R

M/s ABC and Co. (Proposed auditor) is having 4 Partners - A, B, C and R

Q.1: whether ABC and Co. can be appointed as auditor in XYZ Ltd.

Ans: No, as Mr. R is a common partner as on date of appointment.

Q.2: Will your answer change, if ABC and Co. is having only three partners A, B and C.

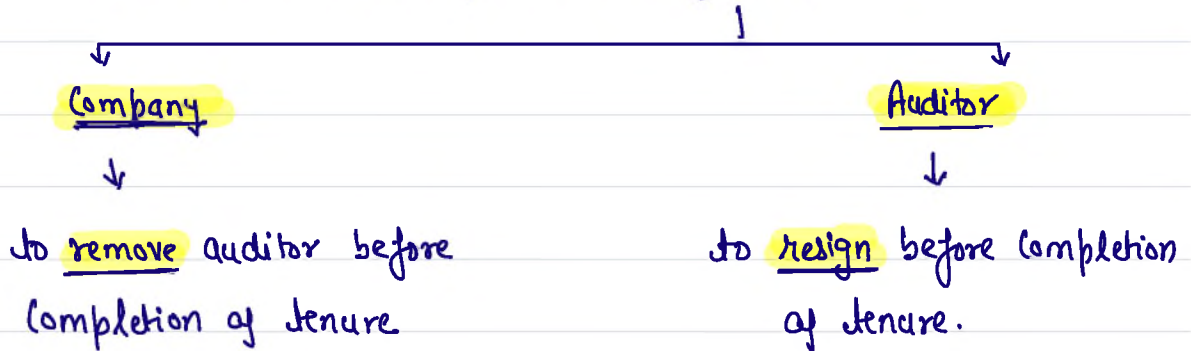
Ans: ABC and Co. can be appointed as auditor.

Q.3. Assuming that ABC and Co. is having 3 Partners A, B and C, and after their appointment as auditor in XYZ Ltd., Mr. R joins ABC and Co as a partner. Whether ABC and Co. need to vacate the office.

Ans: ABC and Co. is not required to vacate the office.

(iii) Implications of Sec 139(2):

Sec. 139(2) shall not prejudice the rights of



(iv) Sec. 139(3): Rotation among auditing partner and Joint Audit:

Members of the company may resolve the following:

- A, B, C
- a) Rotation of auditing partner and his team at prescribed interval. (as decided by members)
 - b) That the audit may be carried out by more than one auditor (i.e. Joint auditor).

Sy $\begin{bmatrix} 1-A \\ 2-A \\ 3-B \\ 4-B \\ 5-C \end{bmatrix}$

Note: If more than one auditors are appointed then provisions of SA-299 "Joint Audit of financial statements" shall apply.

(iii) Sec. 139(4): Powers of C.G.:

C.G. may prescribe the manner of rotation for the purposes of Sec. 139(2).

Note: Rule 6 prescribes the manner of rotation for the purposes of Sec. 139(2).

(iv) Rule 6 : Manner of Rotation :

(a) Audit Committee shall recommend to Board the name of auditor who replaces the existing auditor.

BoD shall consider the recommendations of audit committee and forward to members.

Members shall consider the recommendations in AGM.

(b) For the purpose of rotation, individual auditor or audit firm shall not be eligible for a period of 5 years, if it belongs to same network to which retiring auditor belongs to.

Example: A Ltd. (Listed Company) is willing to appoint M/s XYZ and Associates as its auditor on completion of two tenures of M/s ABC and Associates.

Q.1 Whether XYZ and Associates can be appointed as auditor, if XYZ and Associates and ABC and Associates are part of Network of KPMG.

Ans.: No, as both firms belong to same network. [Rule 6]

Q.2. Whether XYZ and Associates can be appointed as auditor, if Mr. Z is a partner in XYZ and Associates as well as ABC and Associates.

Ans.: No, as Mr. Z is a common partner as on date of appointment. [Sec. 139(2)]

Q.3. Whether XYZ and Associates can be appointed as Auditor, if there is no common partner and no common network.

Ans: Yes, as Sec. 139(2) and Rule 6 do not prohibit/restrict such appointment.

Q.4 What will be the consequences if in Q.3, after appointment of XYZ and Associates as auditor,

(a) a partner of ABC and Associates join XYZ and Associates as partner.

(b) XYZ and Associates becomes part of Network MN considering that ABC and Associates is already a part of Network MN.

Ans: (a) No consequences, XYZ and Associates need not to vacate the office. [Sec. 139(2)]

(b) XYZ and Associates disqualified and need to vacate the office. [Rule 6]

(c) Break in the term should be for a continuous period of 5 years.

(d) A partner in charge of audit firm, who certifies the financial statements of the company, if retires from the firm and joins another firm of Chartered Accountants, that other firm shall also be disqualified to be appointed as auditor of that company for a period of 5 years.

Example: M/s ABC and Associates, having partners A, B and C is auditor of PQR (P) Ltd, having PUC of ₹ 80 Crores.

Tenure of ABC and Associates is expiring in upcoming AGM to be held on 20.08.2022.

FY FY 2021-22, audit report and financial statements were signed/certified by Mr. A.

Mr. A resigns from ABC and Associates on 10.08.2022 and joins MN and Associates.

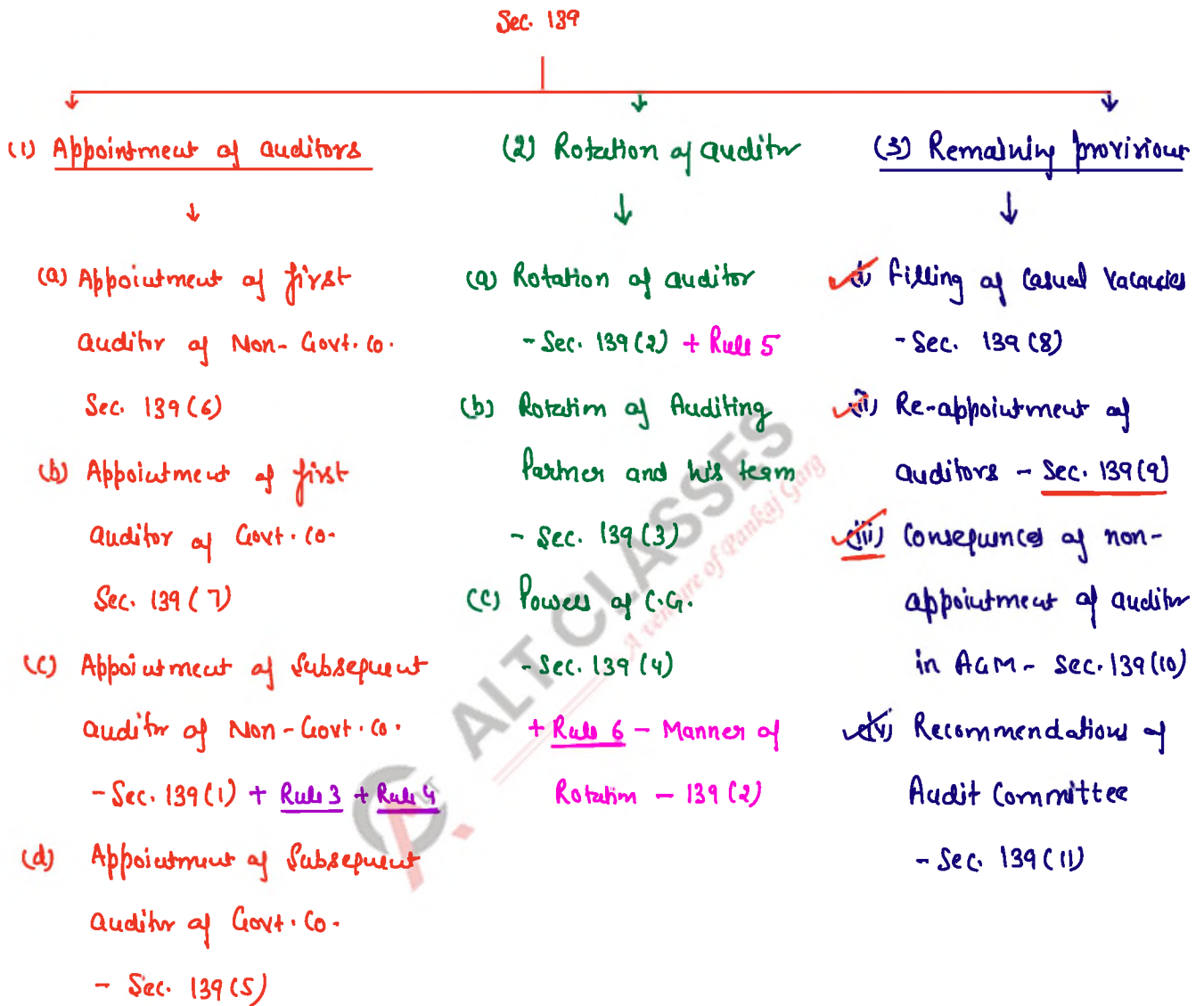
Q. Whether MN and Associates can be appointed as auditor in AGM of PQR (P) Ltd. on 20.08.2022.

A. No. as Mr. A, certifying partner of retiring firm, resigns from retiring firm and joins MN and Associates as auditor.

Q. What will be the answer if Mr. A joins MN and Associates on 15.09.2022.

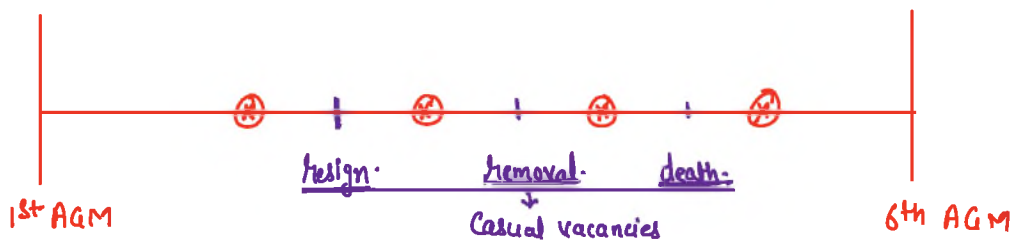
A. MN and Associates can be appointed as auditor in AGM to be held on 20.08.2022, but need to vacate the office on 15.09.2022, after being disqualified due to joining of Mr. A as partner.

Lecture No. 3 of Chapter - 10 "Audit and Auditors"



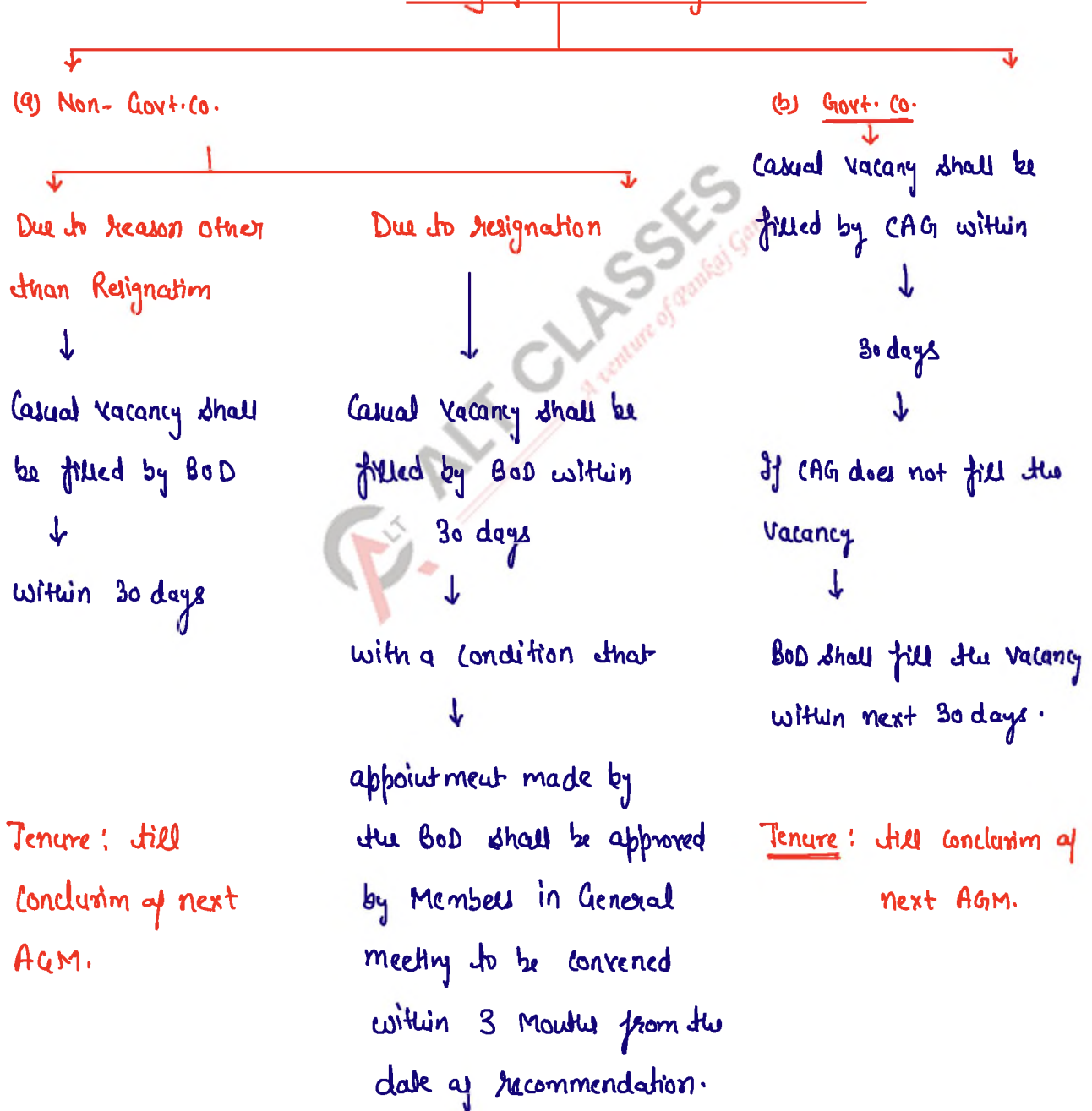
(3) Remaining provisions of Sec. 139:

(i) Filling of casual vacancy: Sec. 139(8)

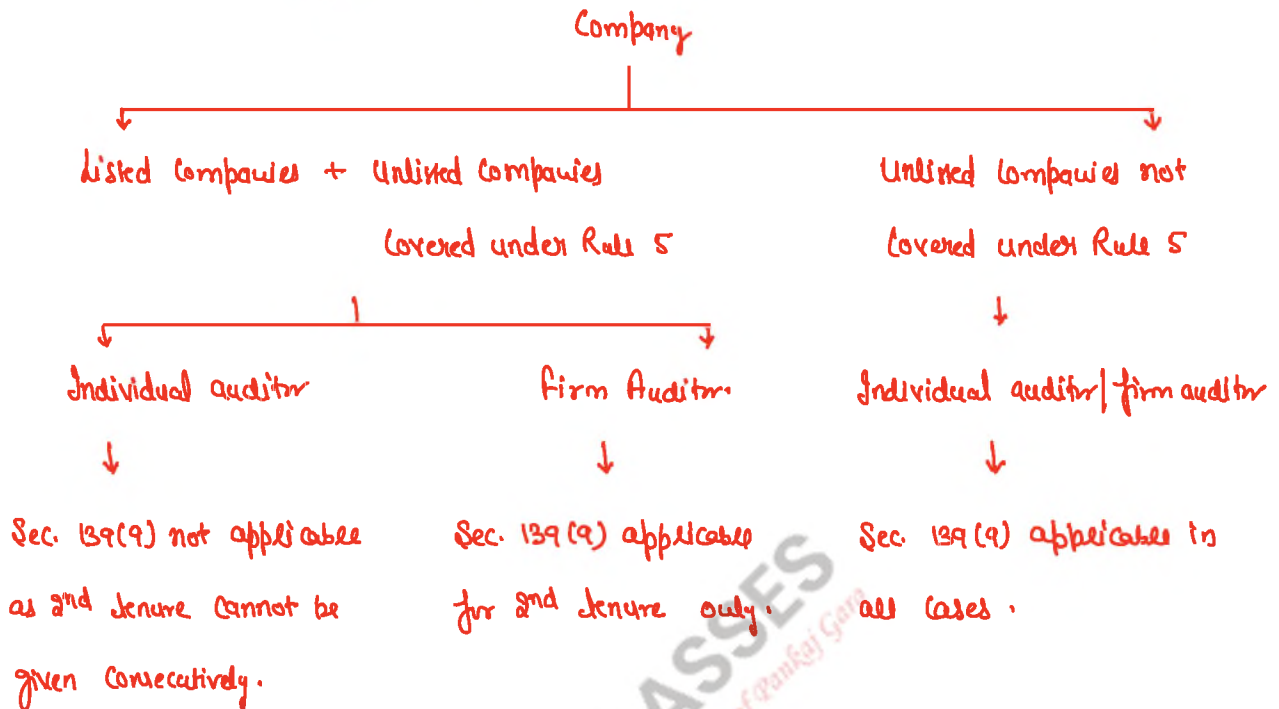


- Casual Vacancy is not defined anywhere in company law.
- It may be considered as any vacancy created after valid appointment, but before completion of tenure.
- It may arise due to resignation, removal, death, ineligibility etc. of the auditor.

Filling of Casual Vacancy - Sec. 139(2)



(ii) Re-appointment of auditors: Sec. 139(9)



As per Sec. 139(9) of Companies Act, 2013, retiring auditor may be re-appointed, if:

(a) he is not disqualified (i.e. qualified)

(b) he is not unwilling (i.e. willing)

(c) no special resolution was passed by the company w.r.t.

(i) appointing someone else as auditor;

OR

(ii) providing expressly that retiring auditor shall not be re-appointed.

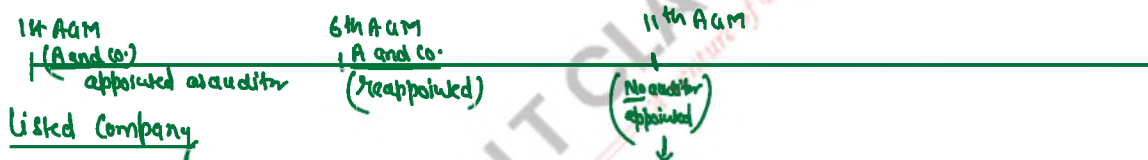
- ① First auditor appointed by BOD, reappointed as subsequent auditor in first AGM — OR
- ② Subsequent auditor appointed in first AGM, reappointed in 6th AGM — OR
- ③ New auditor appointed in AGM in place of retiring auditor — unwilling to continue — OR
- ④ New auditor appointed in AGM in place of retiring auditor, who was eligible, willing to continue and rotation provision not applicable. — SR

(iii) No auditor appointed / reappointed in AGM - Sec. 139(10)

As per Sec. 139(10) of Companies Act, 2013, if no auditor appointed/re-appointed in AGM, existing auditor shall continue.

Note: Sec. 139(10) can be applied, provided:

- (a) existing auditor is willing to continue.
- (b) existing auditor is not disqualified u/s 141.
- (c) existing auditor is not under cooling period.



(iv) Recommendations of Audit Committee - Sec. 139(11):

If a company is required to constitute audit committee u/s 177 of the Companies Act, 2013, all appointments of auditor including filling of casual vacancies, shall be made after considering the recommendations of audit committee.

④ Removal, Resignation and Requirement of Special Notice (Sec. 140):

(a) Removal before expiry of tenure [Sec. 140(U)]:

Auditor may be removed before expiry of tenure by:

(i) passing special resolution in general meeting

and

(ii) obtaining prior approval of C.G. in prescribed manner. (Rule 7)

✓ However, before taking any action, concerned auditor shall be given an opportunity of being heard.

Rule 7: Application to C.G. shall be made within 30 days of passing Board Resolution, in Form ADT-2.

Within 60 days of approval of C.G., Special Resolution to be passed in general meeting of the company.

Step-1: Opportunity of being heard



Step-2: Board Resolution to be passed

↓ 30 days

Step-3: Application to C.G. (ADT-02)

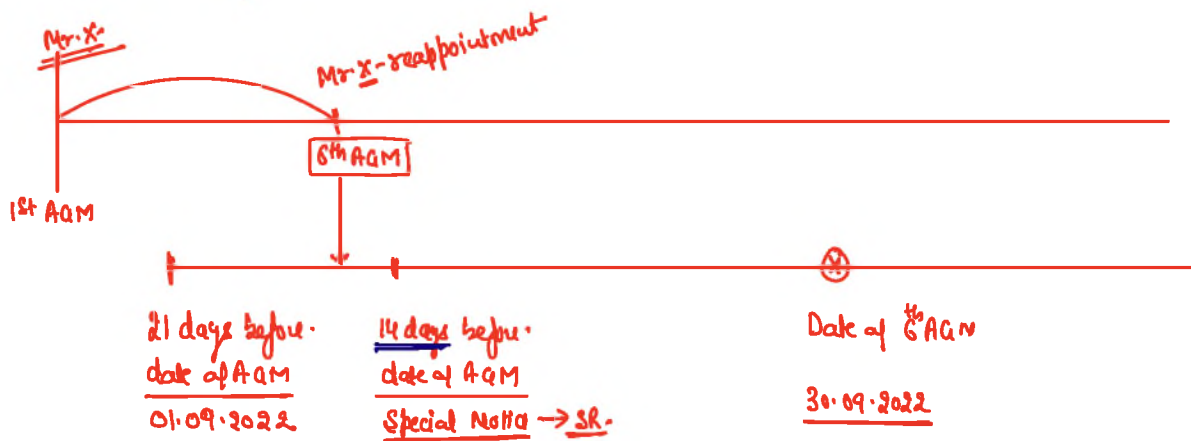


C.G. approval

↓ 60 days

Step-4: Convene General meeting to pass SR

(c) Requirement of Special Notice: Sec. 139(4)



- Special notice is required to pass SR for (a) appointing someone else as auditor

OR

(b) not to reappoint retiring auditor

↓
- Special notice shall be received by the company at least 14 days before date of AGM.

↓
- Company shall forward the notice immediately to retiring auditor

↓
- Auditor has a right to give representation of reasonable length.

↓
- Representation received should be sent to members along with a copy of special notice received from members.

↓
- However, if representation is received late, auditor may request the company to read out the representation in general meeting.

(In this case, copy of representation shall also be filed with ROC).

Note: If company or other person is of the opinion that auditor is using his right to secure needless publicity, a request may be made to Tribunal to pass an order for not sending the representation and not to read out the representation in general meeting.

v. Imp.
(d) Tribunal's direction for change of auditors: Sec. 140(5)

⊖ Tribunal may either deo motu, or on application of C.G. or other concerned person, by order, direct the company to change its auditors

↓

if Tribunal is of the opinion that auditor of the company is directly or indirectly, acted in a fraudulent manner.

⊖ Appointment of auditor by C.G.: If on an application of C.G., Tribunal is of the opinion that change of auditor is required,

Tribunal shall within 15 days of application direct that:

(a) he or it shall not function as auditor; and

(b) C.G. may appoint the auditor.

⊖ Consequences: Any individual or audit firm against whom any order has been passed by Tribunal u/s 140(5), will be disqualified to be appointed as auditor of any company for a period of 5 years; and - liable to be punished u/s 447 of Companies Act, 2013.



Lecture No. 4 of Company Audit

⑤ Eligibility, qualification and disqualifications of Auditors (Sec. 141):

(a) Sec. 141(1): A person shall be appointed as auditor only if he is a Chartered Accountant having CoP. (Individual Auditor)

A firm whereof majority partners are Chartered accountants practicing in India, can be appointed as auditor in firm's name.
(Firm Auditor)

(b) Sec. 141(2): A firm (including LLP), if appointed as auditor, only the partners, who are Chartered Accountants, are authorised to act and sign on behalf of the firm.

(c) Sec. 141(3): Following persons are disqualified to be appointed as auditor of the company:

(a) Body Corporate (other than LLP):

Ex.: Mr. X (Practising CA) incorporates XYZ (P) Ltd.

whether XYZ (P) Ltd. can be appointed as auditor of any Other Company.

Ans.: No

(b) Officers/Employee of the company

Ex. Mr. B (Practising CA) is also a director of AB (P) Ltd.

whether Mr. B can be appointed as auditor of AB (P) Ltd.

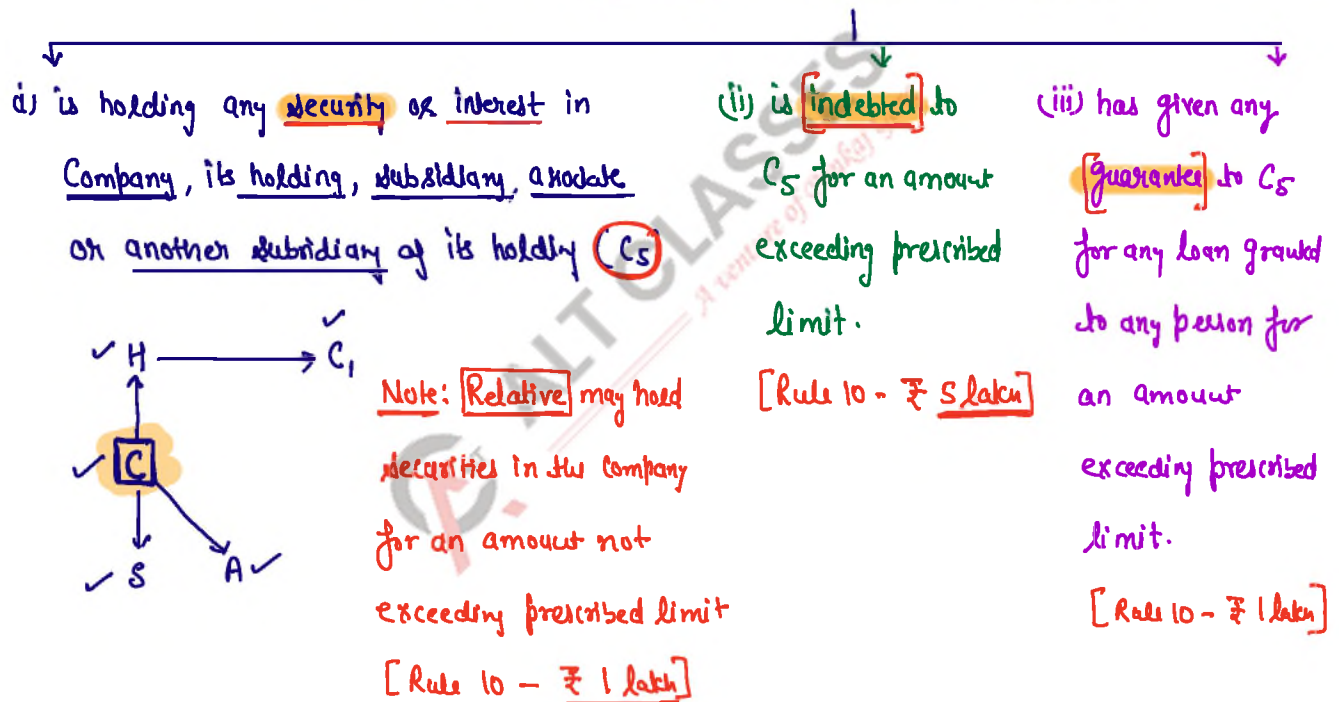
(c) Partner / Employee of officer / Employee of company :

Ex: Mr. R (Practicing CA) is a director of ABC Ltd. Mr. R is also a partner of RS and Associates (CA firm) having two partners (R and S).

Q. Whether Mr. S can be appointed as auditor of ABC Ltd.

Q. Whether Mr. K (Employee of RS and Associates) and also a practicing CA, can be appointed as auditor of ABC Ltd.

✓(d) a person, who himself or his partner or relative

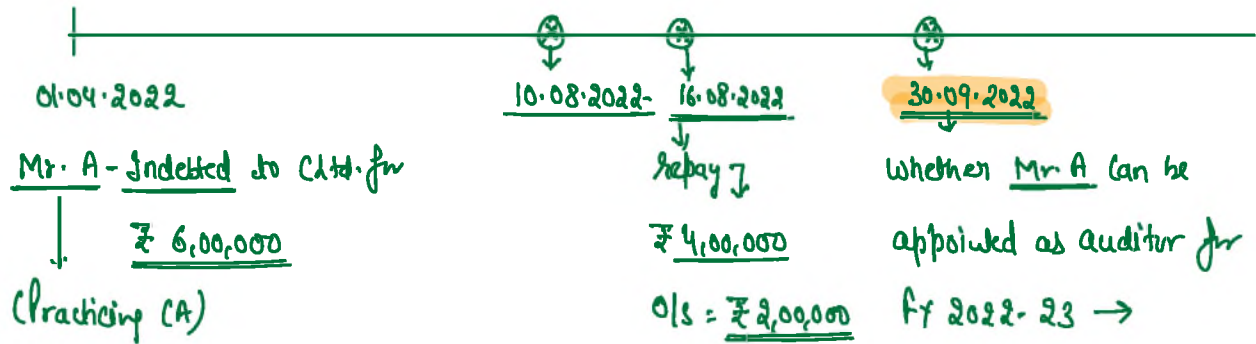


[Rule 10 - ₹ 5 lakh]

[Rule 10 - ₹ 1 lakh]

Note: These provisions need to be examined

↓
at the time of appointment



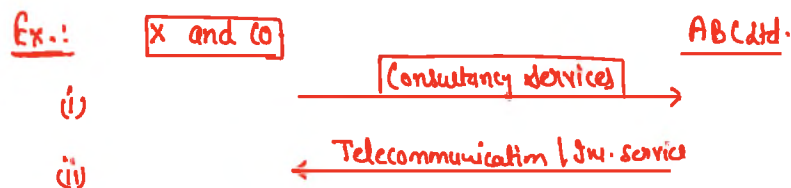
Ex. Mr. A appointed as Auditor of ABC Ltd. on 30.09.2022.

On 25.10.2022, Mr. A acquires shares of ABC Ltd. having F.Y. 1.05 Lakh (Market Value = ₹ 99,000). State the consequences.

Sol.: Mr. A is required to take corrective action within 60 days from 25.10.2022, so as to ensure that shareholding of Mr. A in ABC Ltd. does not exceed ₹ 1 Lakh.

However, if corrective action is not taken, Mr. A is required to vacate the office on expiry of 60 days from the date of acquisition.

(e) a person, or a firm, who directly or indirectly is having any business relationship with the company, its holding, subsidiary, associate or subsidiary of its holding or associate company.



(f) a person, whose relative is a director of the Company or in the Employment of the Company as a director or K.M.P.

Ex: Mr. X, brother of Mr. Y (Practising CA) is a director of ABC Ltd. whether Mr. Y can be appointed as auditor of ABC Ltd. - No

(g) A person who is in full-time employment elsewhere

Or

a person who is auditor of >20 companies excluding,

Note: Limit is applicable per partner basis, in case of firm.

(a) OPC ; (b) Small Company

(c) Dormant Company

(d) Pvt. Ltd. Co. having Puc < 100 Cr.

and Company has not committed any default in filing Annual Return and A.S. with the RoC)

Note: As per Council General Guidelines, 2008, a member of ICAI in practice can accept 30 audit assignments excluding OPC and Dormant Companies.

Example: ABC and Associates is having 3 partners. Mr. A is also in full time employment with MN Ltd.

ABC and Associates is having 50 audits comprising of

audit of OPC = 10 x

audit of Dormant Cos. = 5 x

audit of small Cos. = 2 x

Audit of Pvt. Ltd. Co. - Puc < 100 Cr. (no default in filing A.S.) = 3 x
" " " " " - Puc > 100 Cr. = (5) x

20

audit of public Companies = 25

Q.1: Compute Maximum no. of audit allowed to ABC and Associates

Q.2: Compute the no. of audits which ABC and Associates can accept in relation to public Companies.

Q.3: whether ABC and Associates can accept audit of 22 public Companies more.

Ans.: Q.1 = 20 audit x 2 = 40 audits

Q.2 = Existing audits covered under ceiling limit = 30
No. of audits that can be accepted in relation to public Companies = 10 (40-30)

Q.3 = No

(h) a person who is convicted by a court, of any offence involving fraud and a period of 10 years not elapsed since date of conviction.

(i) a person who directly or indirectly renders any services covered u/s 144 to the company, or its subsidiary or holding company.

(d) Sec. 141(4): Subsequent disqualification:

where a person attracts any disqualification referred u/s 141(3), after appointment as auditor, he shall vacate the office and such vacancy shall be treated as casual vacancy.

⑥ Auditor not to render certain services - Sec. 144

- (a) Auditor of a company can render only those services to the company as approved by Audit Committee or BoD, as the case may be.
- (b) However, auditor cannot render below-mentioned services, directly or indirectly, to the company, its holding or subsidiary company:
- (i) Accounting and Book-keeping
 - (ii) Internal Audit
 - (iii) Design and Implementation of financial info. system.
 - (iv) Actuarial services
 - (v) Investment advisory services
 - (vi) " banking "
 - (vii) Rendering of outsourced financial services
 - (viii) Mngt. services
 - (ix) Such other services as may be prescribed.

⑦ Remuneration of auditor: Sec. 142

- (a) Authority to fix remuneration: Remuneration of auditor shall be determined by members in general meeting; or general meeting may determine the manner in which remuneration may be fixed.

Note: However, in case of fixt auditors appointed by BoD, remuneration may be fixed by BoD.

- (b) Inclusion: Remuneration of auditor shall include all expenses incurred by the company in relation to audit.

(c) Exclusion: Auditor's remuneration shall not include any fees paid to Auditor for other services rendered by him.

Home Work: - Questions of Sec. 141
- class of Sec. 143



⑧ Rights of auditor:

(i) Right of access: Sec. 143(1)

Every auditor of the company shall have a right of access to the books of account and Vouchers, at all times, whether kept at the head. office or at any other place.

(ii) Right to obtain information and Explanation: Sec. 143(1)

Auditor has a right to obtain the necessary information and explanation for the purpose of audit, from the officers or employees of the company.

Note: If auditor is denied access to books of account or vouchers or necessary information or explanation has not been provided to him, auditor shall:

(a) Evaluate its effect on audit opinion (i.e. to determine the requirement of issuing modified opinion) - Qualified / Disclaimer and

(b) Report u/s 143(3) that all information and explanation required for the purpose of audit has not been provided.

(iii) Right of access to records of subsidiaries - Sec. 143(1)

Auditor of holding company has a right of access to records of subsidiaries and associate companies in relation to audit of Consolidated financial statements.

(iv) Right to resign before completion of tenure: Sec. 139(2)

(v) Right of opportunity of being heard: Sec. 140(1)

in relation to his removal before completion of tenure.

(vi) Right of representation - Sec. 140(4):

If special notice is received by the company from its members to pass special resolution w.r.t.

(a) appointing someone else as auditor

or

(b) providing expressly that retiring auditor shall not be re-appointed.

(vii) Rights in relation to general meetings: Sec. 146

(a) Right to receive notice of general meetings; and

(b) Right to be heard in general meetings.

Note: Auditor is required to attend general meetings (unless exempted by the company) either personally or through qualified representative.

(viii) Right to receive remuneration:

It is a contractual right established through letter of appointment and letter of engagement.

(ix) Right of lien:

It is a contractual right to retain the records, documents, books, etc. of client, in case of non-payment of audit fees.

Right of lien can be exercised subject to following conditions:

- (1) Lawful possession of records;
- (2) Non payment of fees; and
- (3) auditor has worked on these records, documents, etc.

Note: Due to legal requirements of sec. 128 of Companies Act, 2013, to exercise right of lien is practically, not feasible.

Further, Ethical Standard Board of ICAI recently decided that a practicing CA cannot exercise right of lien.

⑨ Auditor's duties and other incidental provisions: Sec. 143

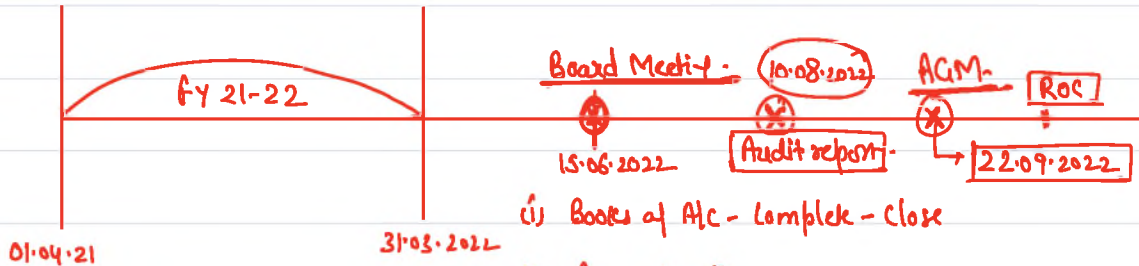
v.v. imp.
(i) Inquiry into propriety matters: Proviso to Sec. 143(1):

- to be learned from book -

(ii) Reporting on Books of account and financial statements: Sec. 143(2)

- Auditor is required to make a report to the members of the company, on the accounts examined by him and financial statements which are laid before the members in general meeting.

- Report shall state the auditor's opinion on true and false view of books of account and financial statements.

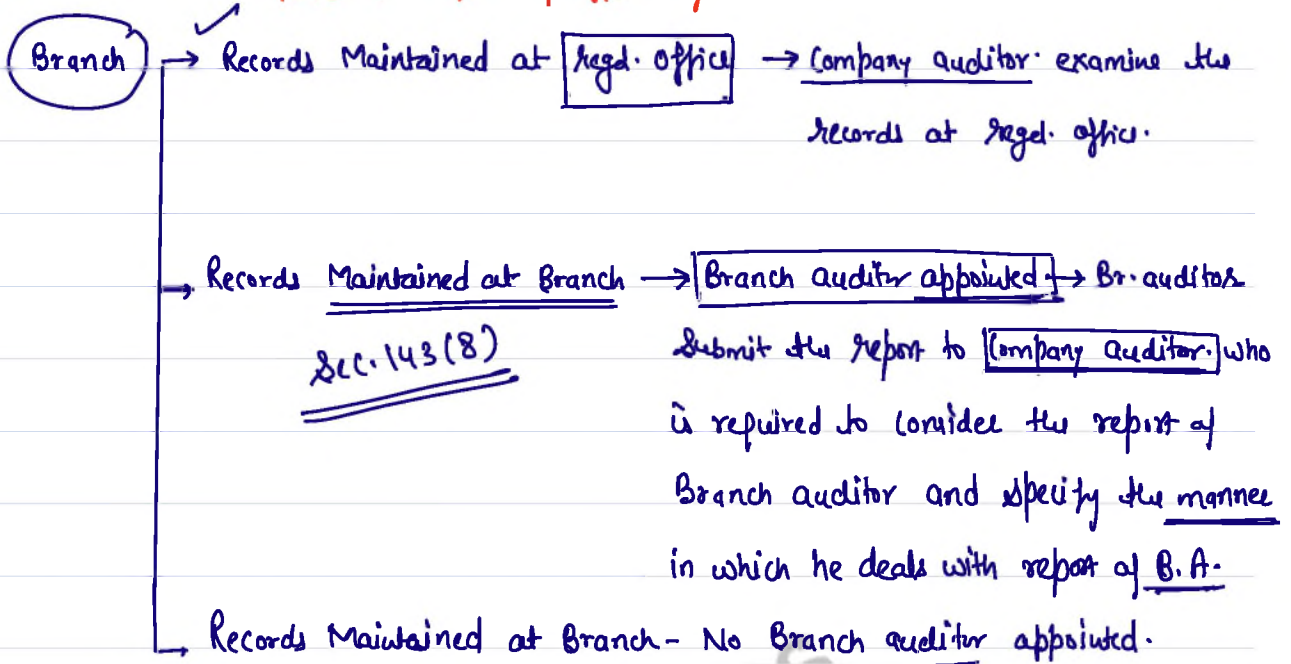


- (i) Books of A/c - Complete - Close
- (ii) F.s. - prepⁿ
- (iii) F.s. - BoB - Board meeting - approve
- (iv) F.s. - given to auditor
- (v) Auditor examine the f.s. and issue audit report.
- (vi) AGM - audited f.s. - adopt.

(iii) Reporting on other Matters : Sec. 143(3)

- to be learned from book -

- | | |
|--|---|
| (a) Info. and Explanation | (2) Such other matters <u>as prescribed</u> . |
| (b) Proper Books of A/c + Proper returns | ↓ (Rule 11) |
| (c) Report on accounts of Branch + Manner | (i) - Disclosure of Impact of pending litigations |
| (d) B/s + P&L A/c - agreement - books of A/c | (ii) - Provision for foreseeable losses - LIT contracts |
| (e) F.s. ———— Compliance with AS | (iii) - Delay - I&PF |
| (f) O/c → financial stress - adverse affect | (iv) - Mngt. Representation - <u>funds diversion</u> . |
| (g) Director - Disqualified U/s 164(2) | (v) - Dividend - U/s 123 |
| (h) Q/R/A - Maintenance of A/c | (vi) - A/ciy dofwau - <u>Audit Trail facility</u> |
| (i) IFC - F.s. - in place and operating effectively. | |

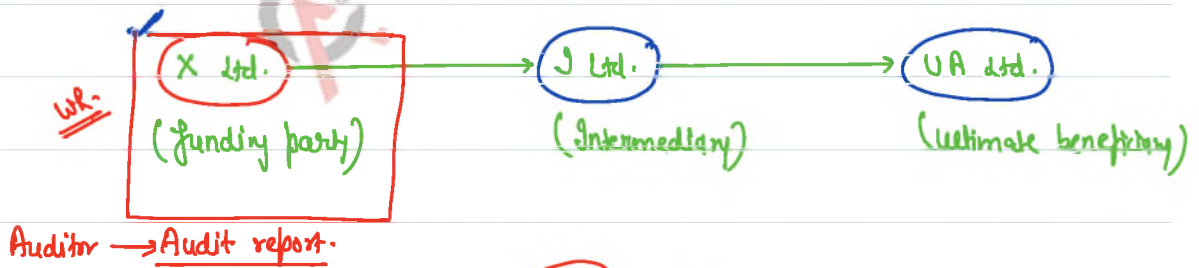


Company auditor may visit the branch to examine the records.

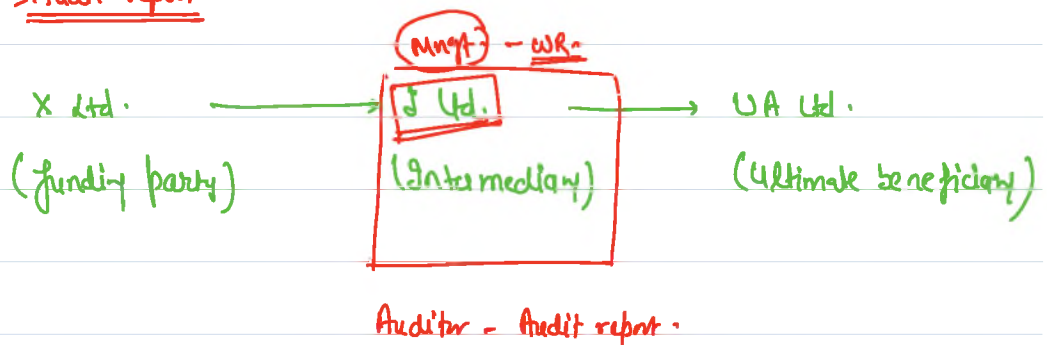
Co. Auditor may ask for the summarised return of the branch transactions, if branch not visited by him.

Rule 11

4 (1)



4 (2)

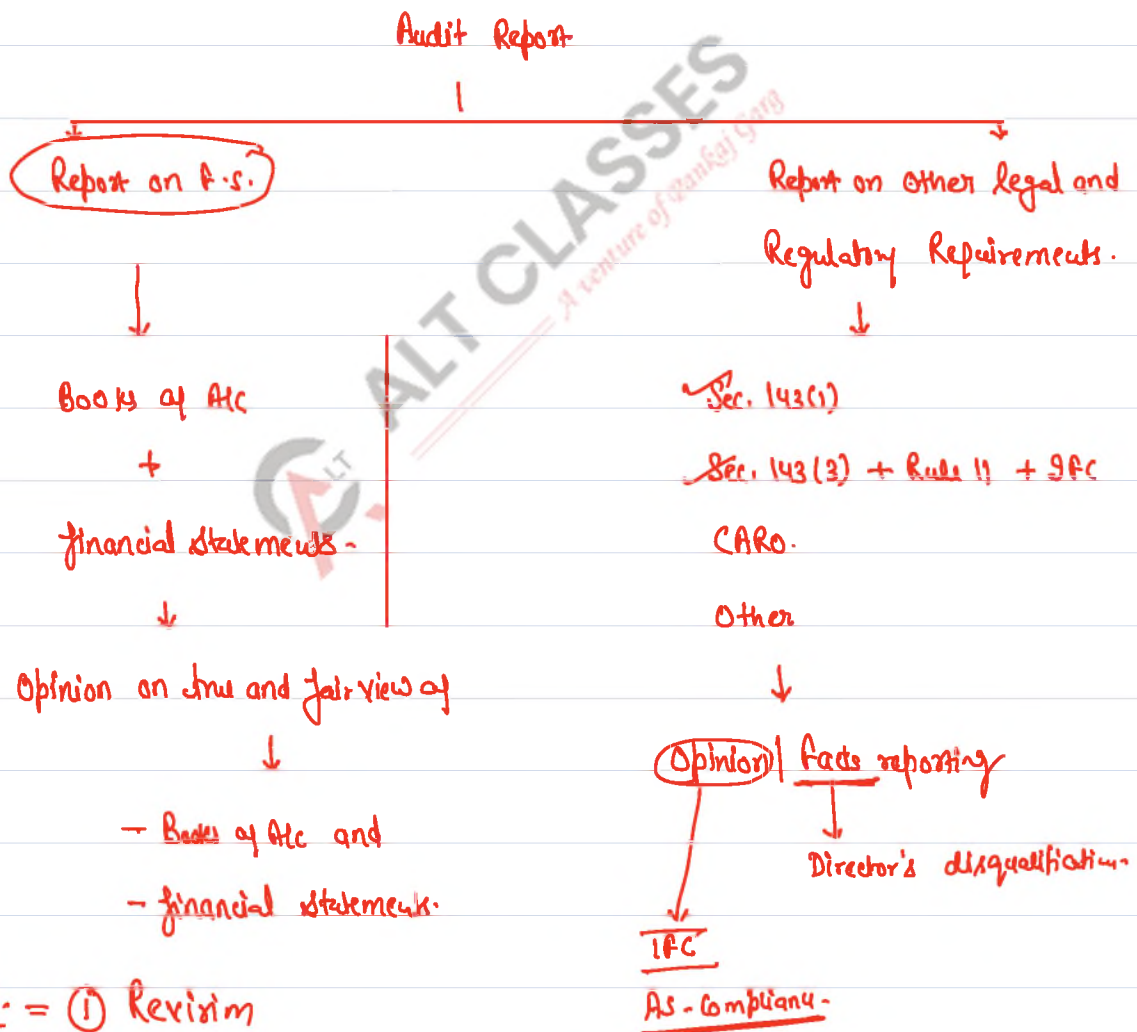


(iv) Reasons for adverse remarks: Sec. 143(4)

Where any of the matters covered U/s 143(3) is answered with negative or qualification remarks,



auditor is required to state the reasons.



HW. = ① Revision

② Learning.

③ Written Practice - few Questions.

(v) Provisions w.r.t. Government Companies :

(a) Sec. 143(5): Rights of CAG to give directions:

- In case of Govt. Companies, CAG appoints the auditor and may issue directions to such auditor as to the manner in which audit is to be carried out.
- Auditor of Govt. Co. in his report shall include the followings:
 - (a) Directions, if any, given by CAG.
 - (b) Actions taken thereon.
 - (c) Impact of such directions on financial statements.

(b) Sec. 143(6) : Supplementary Audit:

- CAG shall within 60 days of receipt of audit report, have a right to order the supplementary audit of financial statements of a government company, by a person authorised by him; and
- to comment upon or supplement audit report.

Note: Any comment or supplement so made by CAG shall be sent by the company to every person to whom financial statements are being sent U/s 136.



(C) Sec. 143(7) : Test Audit

In case of government companies, CAG may, if considered necessary, pass an order, causing the entity to get the accounts audited.

	<u>Supplementary Audit</u>	<u>Test Audit</u>
① Related sections	Sec. 143(6)	143(7)
② Authority by whom order is passed	CAG	CAG
③ Companies on which provisions are applicable	Govt. Companies	Govt. Companies
④ Subject Matter	financial statements	Books of Account
⑤ Pre-condition	Audit of A.S. has already been done	- N/A. -
⑥ Time-limit within which order is to be passed	within 60 days of receipt of audit report.	as and when considered necessary by CAG.

(vi) Branch Audit : Sec. 143(8) and Rule 12 : will be covered separately.

(vii) Compliance with Auditing Standards : Sec. 143(9) and 143(10)

- Every auditor shall comply with auditing standards.
- C.G. shall prescribe the auditing standards (as recommended by ICAI) in consultation with and after considering the recommendations of NFRA.

(viii) Reporting on matters prescribed under CARO: Sec. 143(11)

CARO 2020 - will be covered separately -

(ix) Reporting on Fraud: Secs. 143(12) to 143(15) and Rule 13

(a) Sec. 143(12): If auditor has reason to believe that an offence involving fraud of such amount as prescribed is being or has been committed, over the company, by the officer/employee of company

✓ D₁ - 70 lakh - Car -

✓ D₂ - 50 lakh - Inv -



auditor shall report that fraud to C.G. in prescribed manner. (Rule 13).

Note: If the amount of fraud is below threshold limit, auditor shall report the fraud to audit committee or BoD in prescribed manner.

(b) Sec. 143(13): It shall be deemed that auditor has not contravened^{*} any duty by reporting to C.G., if reporting is done in good faith. (* Breach of confidentiality).

(c) Sec. 143(14): Reporting requirement u/s 143(12) related to fraud also applicable, mutatis mutandis, over the:
i) Cost Accountant; and ii) Company Secretary.

(d) Sec. 143(15): In case of non-compliance of sec. 143(12), a fine shall be imposed over the auditor, cost accountant or company secretary - ₹ 5 lakh (in case of a listed company);
- ₹ 1 lakh (in case of other companies).

Rule 13 - Manner of Reporting

Auditor has reason to believe that fraud is being or has been committed over the company by the Officers/Employees of the company.

Amount of fraud \geq 1 Cr. (Individually)



Auditor shall within 2 days of his knowledge, report the fraud to the Audit Committee / Board seeking their reply within 45 days

Reply received



Within 15 days of reply

forward a report in

Form No. ADT-04

along with:

- ✓ (a) Original report
- ✓ (b) Reply of Audit Committee / Board
- ✓ (c) Comments over reply



to C.G. (Secretary, MCA)

through speed post / regd. post, in a

sealed envelope, followed by a E-mail

for confirmation, on letterhead having contact details.

Amount of fraud $<$ 1 Cr.



Auditor shall within 2 days of his knowledge, report the fraud to Audit Committee / Board

mentioning the following:

- (a) Nature of fraud
- (b) Approx. amt. involved
- (c) Parties involved



Board's Report shall

include the following:

- (a) Nature of fraud
- (b) Approx. amount
- (c) Parties involved (if action not taken)
- (d) Remedial action taken.

(10) Signing of Audit report: (Sec. 145)

- ✓ Signing of Audit report shall be in accordance with the provisions as stated in s 141(2).
- ✓ Qualification/Reservation/Comments w.r.t. financial transactions or matters that may have any adverse effect on the functioning of Company, shall be read out in the meeting.

(11) Auditor to attend general meetings (Sec. 146): - Already covered -

(12) Penalties for Contravention: ^(Sec. 147) - to be covered from book -

(a) Over the company: for contravention of - fine ranging from
Sec. 139 to Sec. 146 ₹ 25,000 to ₹ 5,00,000

(b) Over the officers: " - fine ranging from
in default: ₹ 10,000 to ₹ 1,00,000

(c) Over the auditor: for contravention of - Min fine: ₹ 25,000
Sec. 139, 144 and 145 Max. fine: ₹ 5,00,000 or
4 times of remuneration, whichever
is lower.

for willful default:

- Min. fine = ₹ 50,000
- Max. fine = ₹ 25,00,000 or 8 time of remuneration, whichever is lower
- AND** → Imprisonment upto 1 year.

Note: If auditor is convicted u/s 147

↓

he shall be liable to

(a) refund the remuneration

and

(b) pay the damages.

Sec. 147(5): - For civil liabilities and criminal liabilities - in relation to ^{fraud}
= Partner(s) + firm → jointly and severally
- For criminal liabilities other than fine → concerned Partner(s)
(i.e. imprisonment)

↔



ALT CLASSES
A venture of Zameer Group

(13) Branch Audit: Sec. 143(8), Rule 12 of CAAR, 2014 and **SA 600**

(a) Who can be appointed as Branch Auditor:

Accounts of a branch may be audited by:

(i) Company Auditor; or

(ii) any person qualified u/s 141 of Companies Act, 2013; or

(iii) in relation to a branch located outside India, by:

(a) Company Auditor; or

(b) Person qualified u/s 141 of Companies Act, 2013; or

(c) Person qualified under the laws of Country in which branch is situated.

(b) Duties of Branch Auditor:

- Branch Auditor shall prepare a report on accounts of the branch examined by him; and

✓ send it to the Company auditor, who shall deal the report in such manner as he considers appropriate.

(c) Rights and duties of Company auditor w.r.t. branches (Rule 12):

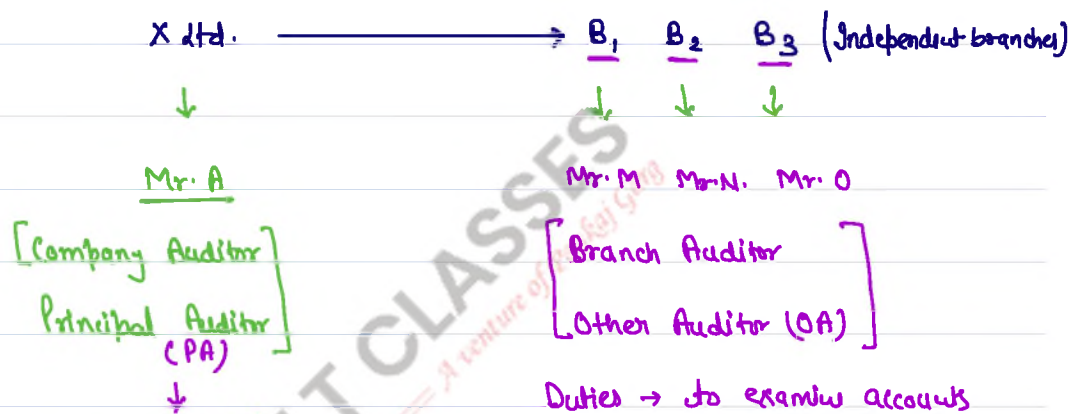
- Company Auditor's rights and duties w.r.t. branches are same as prescribed u/s 143(1) to 143(4).

- Branch Auditor shall submit his report to Company Auditor.

- However, provisions of Sec. 143(12) relating to reporting of frauds also extends to branch auditor.

Note! For the purpose of evaluation of work of branch auditor by statutory auditor (Company auditor/ Principal auditor) "SA-600 - Using the Work of Another Auditor" ^{*} prescribes the procedures to be performed by statutory auditor.

* Excluded from syllabus.



- Duties :- Evaluate competency of OA.
- to determine whether he can rely on work of OA.
 - to share time-table with OA
 - to discuss significant findings of OA
 - to visit the branches, if required
 - reference of OA report in Main audit report. [Other Matter Para - SA 706]
- to examine accounts maintained by branch
 - to report on accounts examined by him
 - to submit report to PA

(14) Cost Records and Cost Audit: - Sec. 148 of Companies Act, 2013

- Rule 14 of CAAR, 2014

↪ Companies (Cost Records and Audit) Rules, 2014

(A) Requirement of Maintenance of Cost Records:

Sec. 148(1): C.G. may by order, in respect of certain companies engaged in production of prescribed goods or rendering of prescribed services

↓

direct that particulars relating to material, labour and other items of cost shall be included in the books of account.

Rule 3 of Companies (CRA) Rules, 2014:

Companies (including foreign companies) engaged in production of goods or rendering of services, as specified (Regulated Sector | Non-Reg. Sector)

↓

shall include cost records in their books

↓

if Overall T/o from all products or services during preceding [FY ≥ 35 cr.]

✓ Regulated sector: Telecommunication, Industrial Alcohol, Sugars,
Fertilisers, Drugs and Pharma, Electricity and
Petroleum products.

✓ Non-regulated sector: Iron, Cement, Steel, etc.

Example: (ABC Ltd.)

	Business - A (Fertiliser - <u>Reg.</u>)	Business - B (Steel - <u>Non-Reg.</u>)	Business - C (Other than Reg+NR)	Total	Records
T/o	10 Cr.	20 Cr.	-	30 Cr.	X
T/o	20 Cr.	5 Cr.	7 Cr.	32 Cr.	X
T/o	30 Cr.	-	10 Cr.	40 Cr.	Reg. Business.
T/o	5 Cr.	10 Cr.	21 Cr.	<u>36 Cr.</u>	R+NR
T/o	-	45 Cr.	-	45 Cr.	NR

Note: Once the provisions become applicable over a company, it has to maintain the records forever (Once applicable, forever applicable)

(b) Requirement of Cost Audit:

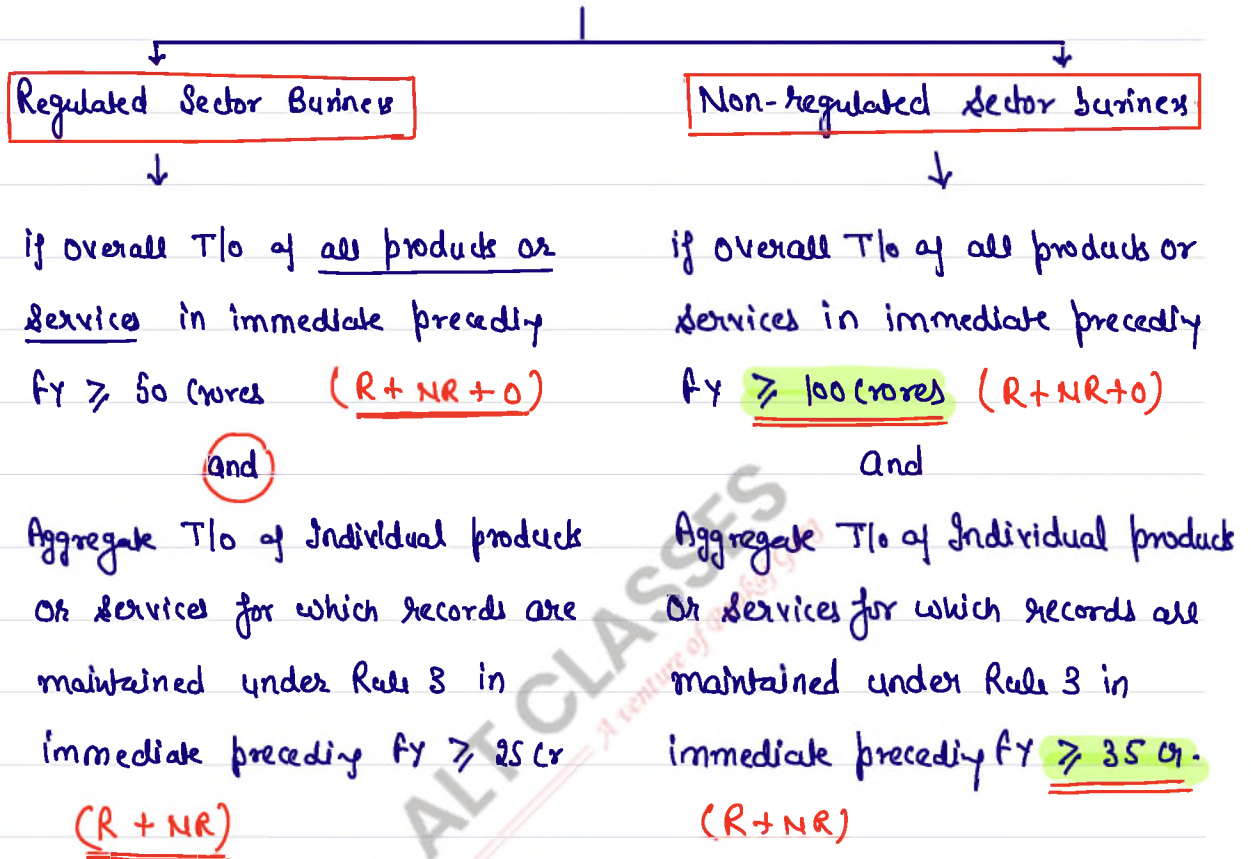
Sec. 148(2): C.G. may by order, direct that cost records of companies covered U/s 148(1) of Companies Act, 2013 having prescribed turnover or turnover

↓

need to be audited in prescribed manner.

Rule 4 of Companies (CRA) Rules, 2014 :

Cost records maintained under Rule 3 are required to be audited, in case of



Example.

Reg.	NR	Other	Total	<u>Rule 3</u> (Cost records)	<u>R + NR</u>	<u>Rule 4</u> (Cost Audit)
10 Cr.	25 Cr.	Nil	35 Cr.	✓ (R + NR)	35 Cr.	X
15 Cr.	25 Cr.	20 Cr.	60 Cr.	✓ (R + NR)	40 Cr.	R ✓ NR X
20 Cr.	40 Cr.	50 Cr.	<u>110 Cr.</u>	✓ (R + NR)	<u>60 Cr.</u>	R ✓ NR ✓
40 Cr.	-	70 Cr.	<u>110 Cr.</u>	✓ (R)	<u>40 Cr.</u>	R ✓ NR X
30 Cr.	90 Cr.	-	120 Cr.	✓ (R + NR)	120 Cr.	R ✓ NR ✓
-	30 Cr.	45 Cr.	<u>75 Cr.</u>	✓ (NR)	<u>30 Cr.</u>	R X NR X

Exemption from cost audit:

A company covered under Rule 3, is exempted from the requirements of audit of cost records, if:

- (a) Revenue from exports in foreign exchange $> 75\%$ of total revenues; or
- (b) Company is operating from a SEZ; or
- (c) Company is engaged in generation of electricity for capitex consumption.

(c) Provisions related to appointment / removal / rights and duties of cost auditors; cost audit Report etc.

Chapter No. 10 - Part I - Common - law and Audit

Part II - Exclusive to Audit Paper - (i) CA Ro, 2020

(ii) Joint audit -

Chapter - 11 " Indian Contract Act, 1872 "

Part-I " Basics - Secs 1 to 123 "

[Covered in CA-Foundation]

Part-II - Special Contracts

(Secs. 124 to 238)

(A) Contract of Indemnity and
Guarantee

(Secs. 124 to 147)

(B) Contract of Bailment and
Pledge

(Secs. 148 to 181)

(C) Contract of
Agency

(Secs. 182 to 238)

(A) Contract of Indemnity: Sec. 124 and 125

(i) Definition (Sec. 124):

(ii) Mode of Contract of Indemnity:

(iii) Rights of Indemnity holder when sued (Sec. 125)

(iv) Commencement of Indemnifier liability.

Example 1:

Mr. X (Insured) → "Car Insurance" Premium → ABC Insurance Co. Ltd. (Insurer) - Indemnifier

- Indemnity-holder/Indemnified.

Car Met with an accident and injures Mr. M

Mr. M sue Mr. X and court order Mr. X to pay ₹ 1 Lakh to Mr. M.

Mr. X also pay ₹ 10,000 to advocate for defending the case in court.

ABC Insurance Co. Ltd. is liable to indemnify Mr. X with ₹ 1,10,000

↓
Promise to indemnify Mr. X against any loss caused due to any accident due to negligence of Mr. X or other person.

(B) Contract of guarantee:

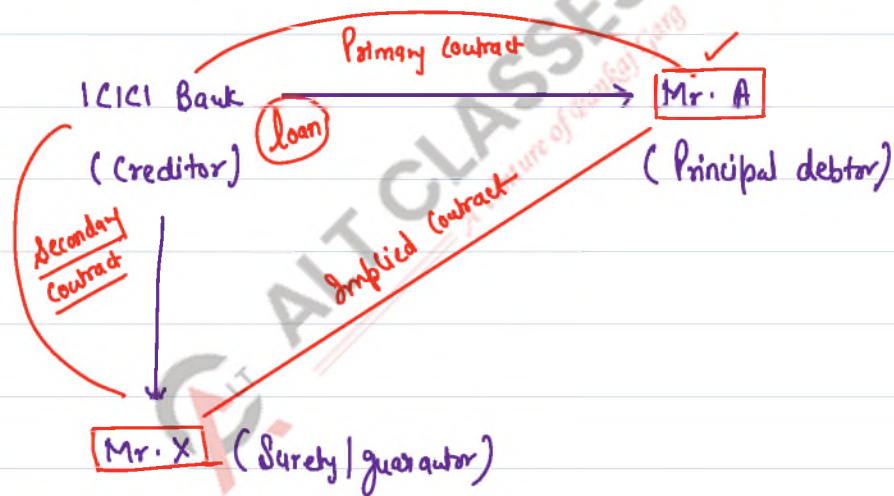
(i) Meaning of Contract of guarantee

(ii) Features of a valid guarantee

(iii) Types of guarantee -- (a) Specific (b) Continuing

(iv) Distinction between contract of indemnity and guarantee.

Example: A obtains a loan from ICICI Bank Ltd. on a guarantee of Mr. X that in the event of default in repayment of loan by Mr. A, amount of loan will be paid by Mr. X.



Example: A agree to sell goods from time to time to Mr. B (a Minor) guarantee for which is provided by Mr. B father.

(V) Discharge of Surety:

A surety is said to be discharged when his liability as surety comes to an end.

Modes of discharge of surety:

(a) Revocation of Contract of guarantee

- (i) Notice of Revocation in case of continuing Guarantee (Sec. 130)
- (ii) Death of surety in case of continuing guarantee (Sec. 131)
- (iii) Novation

(b) Conduct of Creditor

- (i) Variance in terms of Contract (Sec. 133)
- (ii) Release or discharge of Principal debtor (Sec. 134)
- (iii) Compounding with, or give time or agree not to sue the Principal debtor (Sec. 135)
- (iv) Creditors act that is inconsistent with rights of surety (Sec. 139)

(c) Invalidation of Contract of guarantee

- (i) Misrepresentation by Creditor (Sec. 141)
- (ii) Concealment of facts by Creditor while obtaining guarantee (Sec. 143)
- (iii) Co-surety not joined (Sec. 144)

(vi) Rights of a surety:

(a) Rights against Principal debtor

(i) Right of Subrogation (Sec. 140)

(ii) Right to be indemnified (Sec. 145)

(b) Rights against Creditor

(i) Benefit of Creditor's securities (Sec. 141)

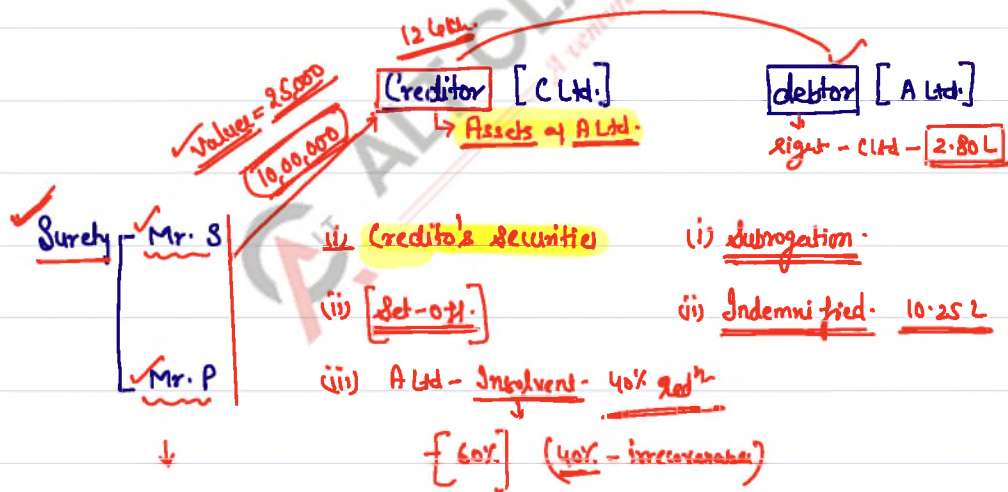
(ii) Right to set-off
(iii) Right to share redⁿ

(c) Rights against Co-sureties

(i) Equal contribution (Sec. 146)

(ii) Co-sureties bound in different sums (Sec. 147)

Ex:



S - full payment -

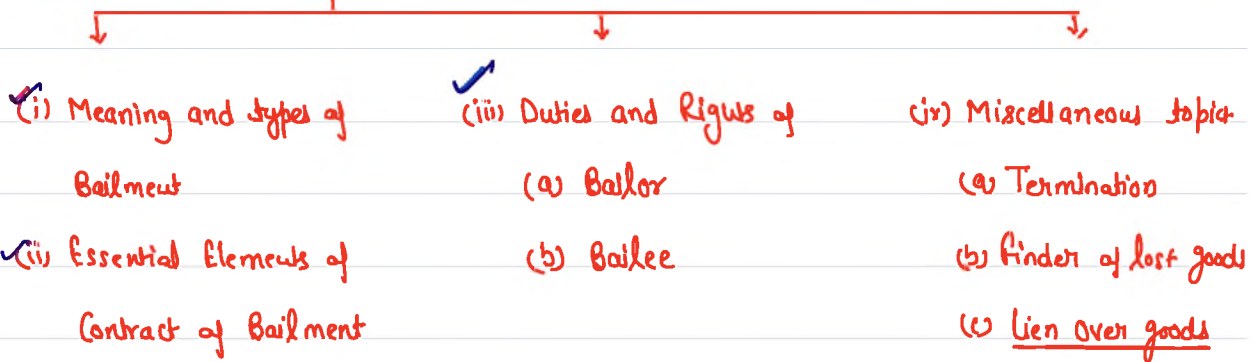
↓ Entitled 50% recovery from Mr. P

	(1L)	(2L)	(4L)
	S ₁	S ₂	S ₃
diff sum			
S - 5.00 lakh.	5		
P - 10.00 lakh.	5		
S - 4.00 lakh.	4		
P - 11.00 lakh.	6		
	L-1.50	L-3.00	L-5.00
	50000	1,00,000	1,00,000
	50000	1,00,000	1,00,000
	50000	2,00,000	2,00,000
	50000	1,00,000	1,50,000

H.w - Do written Practice of 2-3 Questions.

Part - II of Indian Contract Act, 1872 - Bailment and Pledge

(A) Contract of Bailment:



(i) Meaning and Types of Bailment:

Sec. 148: Delivery of goods by one person to another
(Actual or Constructive) (movables) ↓ (Bailor) (Bailee)
for some purpose under a contract
(Express/Implied) ↓ (Express/Implied)
that the goods, shall, when the purpose is accomplished be
Returned or otherwise disposed of as per the directions
of the person delivering them.
(Bailor)

same form →
altered form →

Bailment is of two types: (a) Gratuitous (b) Non-Gratuitous

(ii) Essential Elements of Contract of Bailment:

- (a) Existence of a contract (Express/Implied)
- (b) Delivery of goods (transfer of possession of goods - actual/constructive)
- (c) Change of possession of goods.
- (d) Purpose of delivery (Express/Implied)
- (e) Returned/disposed of (on accomplishment of purpose)

(iii) Duties and Rights of Bailor and Bailee:

↓ Duties

↓ Rights

↓

↓

(a) Bailor:

- (i) To disclose fault in goods (Sec. 150)
- (ii) To bear all necessary expenses (Sec. 158)
- (iii) To indemnify the bailee for premature termination. (Sec. 159)
- (iv) To indemnify bailee for loss suffered due to wrong acts of bailor (Sec. 164)
- (v) To receive back the goods when returned (Sec. 164)

(a) Bailee:

- (i) To claim compensation in case of faulty goods (Sec. 150)
- (ii) To claim necessary expenses (Sec. 158)
- (iii) Right to indemnity (Sec. 166)
- (iv) To deliver the goods to any of the joint bailors (Sec. 165)
- (v) To apply to the court to decide title of goods.

(b) Duties of Bailee:

- (i) To take reasonable care of the goods (Sec. 151 and 152)
- (ii) To return the goods (Sec. 160 and 161)
- (iii) Not to make inconsistent use of goods. (Sec. 153 and sec. 154)
- (iv) Not to mix the goods with goods of his own (Sec. 155, 156, and 157)
- (v) To return the accretion from the goods (Sec. 163)
- (vi) Not to set-up any adverse title.

(b) Rights of Bailor:

- (i) To terminate the bailment (Sec. 153)
- (ii) To demand back the goods [with accretion, if any] (Sec. 159)
- (iii) To claim compensation in case of inconsistent use of goods or unauthorised mixing of goods.
- (iv) To file a suit against wrong doer (Sec. 180 and 181)
- (v) To sue the bailee

H.W. - Written Practice of Questions asked in Exams.

(iv) Miscellaneous topics:

(a) Termination of Bailment:

Contract of bailment may be terminated in following circumstances:

- (i) On expiry of stipulated period;
- (ii) on fulfillment of purpose;
- (iii) serving notice of termination to bailor
 - (a) if bailor acts in a manner which is inconsistent with the terms of bailment;
 - (b) at any time, in case of gratuitous bailment.
- (iv) On death of bailor/bailee in case of gratuitous bailment
- (v) on destruction of subject matter of bailment.

(b) Position of finder of goods (Secs. 168 and 169):

Duty: To find the owner of goods and surrender the goods to him
To take reasonable care of goods.

Not to sell the goods except when allowed by law.

- Rights:
- (i) To claim compensation for expenses incurred, if any.
 - (ii) To claim reward, if being offered by owner.
 - (iii) To retain the goods, if compensation or reward not received.
 - (iv) To sue the owner for reward.
 - (v) To sell the goods, if:
 - (a) Goods are perishable in nature or losing the greatest part of its value.
 - (b) Lawful expenses incurred $\geq \frac{2}{3}$ of value of goods.

(c) General Lien and Particular Lien (Sec. 170 and 171)

Lien: to retain the possession -

Sec. 170 - (Particular Lien): Bailee has the right to retain the goods until he receives due remuneration for the services he has rendered in respect of these goods -

Sec. 171 (General Lien): Bankers, factors, wharfingers, attorneys of High Court, Policy brokers

↓
may retain for a general balance of account

↓
any goods bailed to them.

General Lien v/s Particular Lien:

Contract of Pledge:

- (a) Meaning: - Bailment of goods as security for payment of a debt or performance of a promise is called Pledge.
- Bailor is called as 'Pawnor' and Bailee is called as the 'Pawnee'.

- (b) Rights and duties of Pawnor and Pawnee: Similar to rights and duties of Bailor and bailee to a great extent.

(c) Pledge by Non-owner:

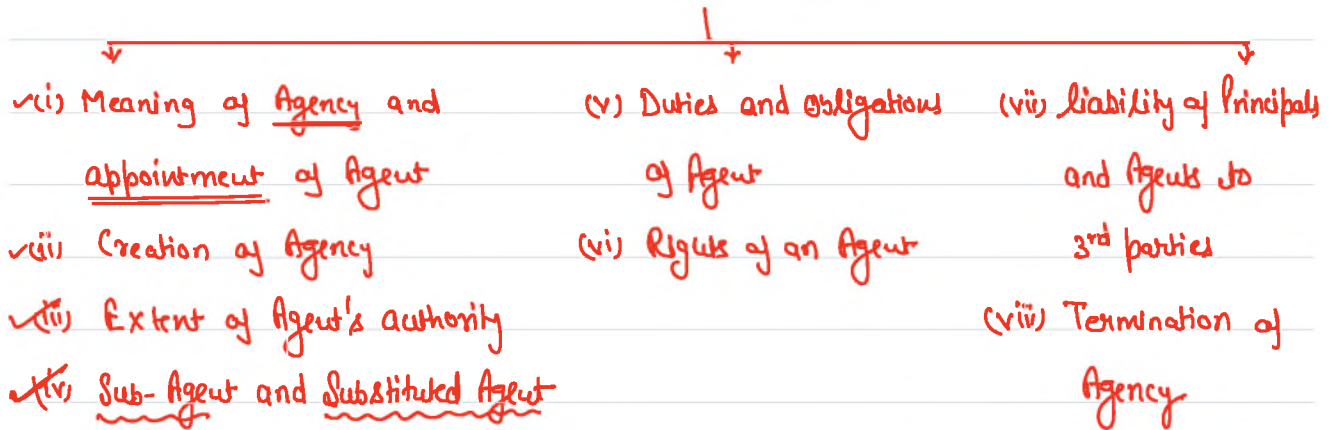
- (i) Pledge by Mercantile Agent (Sec. 178)
- (ii) Pledge by a person having possession of goods under a voidable contract (178A)
- (iii) Pledge by pawnor having limited interest in goods (Sec. 179)
- (iv) Pledge by co-owner having possession of goods.
- (v) Pledge by seller/buyer having possession of goods.

- (d) Distinction between Bailment and Pledge: from book

Home work: Do written practice of any 2-3 Questions.

Part-III of Indian Contract Act, 1872

"Contract of Agency"



(i) Meaning of Agency and appointment of Agent:

- Agency may be defined as relationship

↓ between

One person and another
(Agent) ↓ (Principal)

where the first mentioned person brings the second mentioned person into legal relations with others. (3rd parties)

- Relationship of agency is said to exist, if

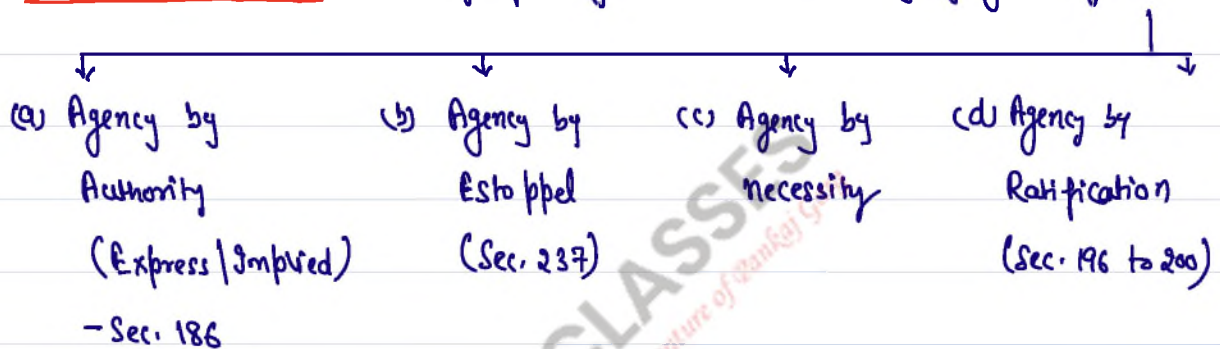
(a) person has the capacity to bind the Principal and make him answerable to 3rd parties;

and

(b) Privity of contract between Principal and 3rd parties can be established.

- Any person who has attained majority and is of sound mind, can employ an agent.
- A minor or a person of unsound mind may become an agent, but for any misconduct of such agent, principal shall not be able to proceed against him.

(ii) Creation of Agency: An agency may be created by any of following modes:



(iii) Extent of Agent's authority: (Sec. 188 - 189)

- Agent's authority means capacity to bind the principal to 3rd parties.
- It is determined by :

- ✓ (a) Nature of the act or the business for which he is appointed.
- ✓ (b) Things that are incidental to the business; and
- ✓ (c) Usage of the trade or business.

- Agent's authority includes authority to do:

(a) Every lawful thing necessary for the purpose;

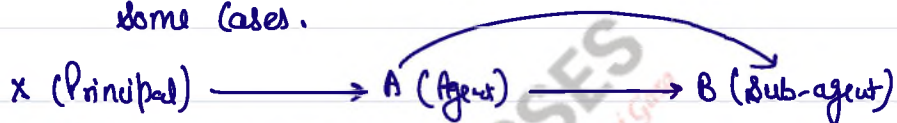
(b) " " " Justified by various customs of trade; and

(c) All necessary acts to protect the principal from loss, as would be done by a person of Ordinary prudence, in his own case.

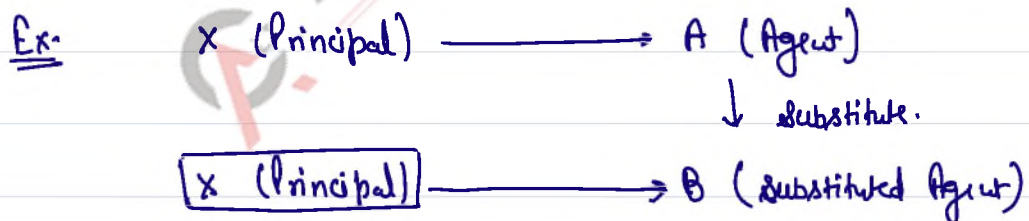
(iv) Sub Agent and Substituted Agent [Secs. 190-193 and Secs. 194-195]

Sub-Agent:- A person employed by and acting under the control of the original agent in business of agency is known as sub-agent.

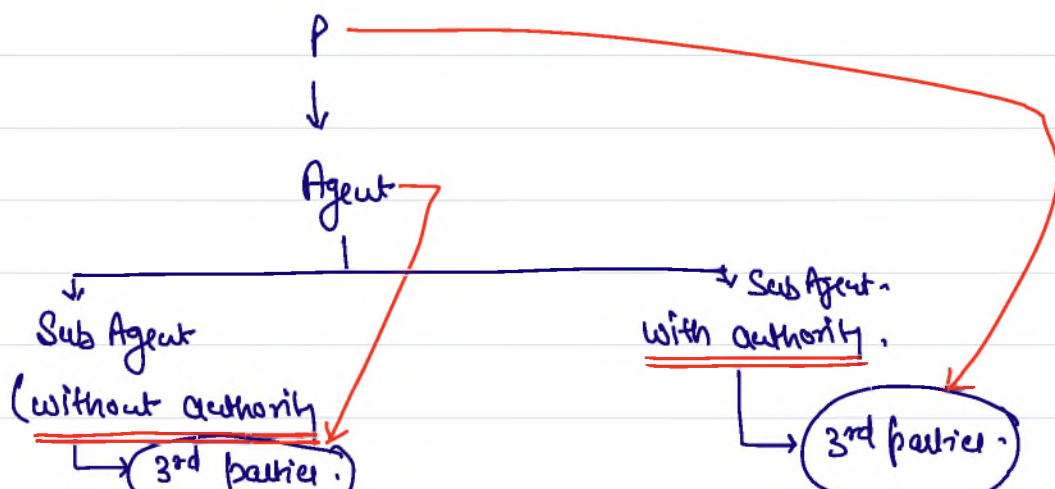
- Appointment of sub-agent is not lawful, except in some cases.



Substituted Agent: A person appointed by the Agent to act for the Principal, with the knowledge and consent of the Principal.



Ex.



(vii) Liability of Principal and Agents to 3rd parties:

(a) Liability of Principal:

- (i) For the acts of agent which are within the authority of agent (Sec. 226)
- (ii) For the acts of agent when agent exceeds authority (Sec. 227 and 228)
 - (a) separable acts: Principal is liable only for the part which is agent authority.
 - (b) Non-separable act: Principal is not liable unless ratified.
- (iii) For the Notice given to agents (Sec. 229):
- (iv) For the agent's fraud, misrepresentation or torts (Sec. 238)

(b) Personal liability of Agent to 3rd parties:

- (i) Sec. 230: In the absence of any contract to contrary, an agent cannot personally enforce contracts entered into by him on behalf of his Principal, nor he is personally bound by them.

(ii) Personal liability of Agents:

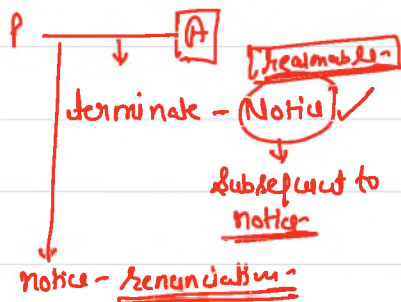
- (a) In case of foreign Principal.
- (b) " " " Undisclosed "
- (c) " " " non-existent or incompetent Principal
- (d) " " " pretended agency.
- (e) If agent exceeds his authority.

(c) Rights of 3rd parties:

- (i) Rights of parties to a contract made by undisclosed agent (Sec. 231)
- (ii) Performance of contracts with agents supposed to be principal (Sec. 232)
- (iii) Option to sue agent or the Principal (Sec. 233 and 234)

(viii) Termination of Agency: putting an end to the legal relationship between principal and agent.

(a) Modes of termination: Agency contract may be terminated on various aspects:



(i) Termination by revocation of authority
(Sec. 203 to 207)

(ii) Termination by renunciation of agency by agent
(Sec. 205 and 206)

(iii) Completion of business.

(iv) Death of Principal or Agent

(v) Termination due to incapacity of Principal or Agent.

(vi) Insolvency of Principal.

(vii) Expiry of time.

(b) When agency is irrevocable: Sec. 202

Agency becomes irrevocable when the agent is personally interested in subject matter of agency.

Ex: Mr. P → Mr. A to sell his land and out of sales value pay himself for the debts due to him from P

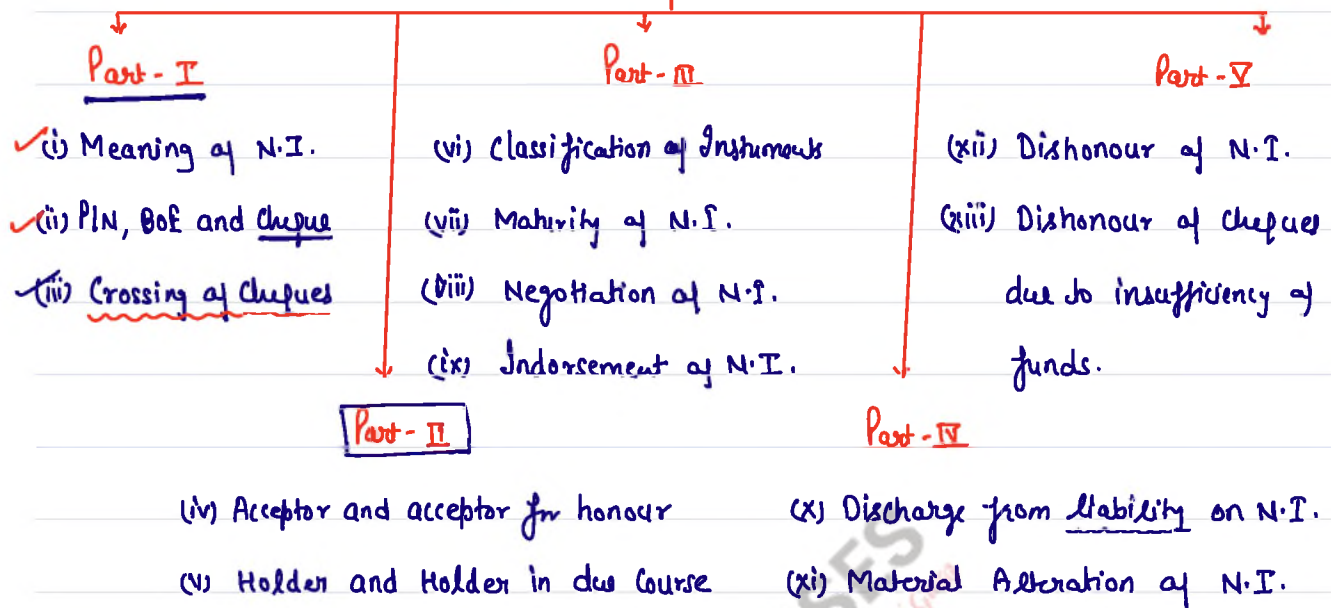
(c) Effects of termination: (Sec. 208 - 210)

(i) Effective date of termination (Sec. 208)

(ii) Agent's duty on termination of agency due to death of Principal (Sec. 209)

(iii) Termination of Sub-Agent's authority (Sec. 210).

Chapter - 12 "Negotiable Instruments Act, 1881"



(i) Meaning and Characteristics of N.I. :

- An instrument which is freely transferable from one person to another
→ by mere (delivery) or by (indorsement and delivery)
- As per sec. 13 of N.I. Act, 1881, 3 kinds of N.I. exists - P/N, BoE and Cheque.
- N.I. are payable either to order or bearer.

Essential Characteristics of N.I. : Written, Signed, freely transferable,
No defective title, unconditional promise or Order
Certainty as to sum, time and payee.
delivery.

- ✓ Presumptions as to N.I. : (sec. 118)
- | | | |
|----------------------|---------------------------|--------------------------|
| (i) Consideration | (ii) date | (iii) Time of acceptance |
| (iv) Time of drawing | (v) Order of indorsements | |
| (vi) Stamp | (vii) Holder. | |

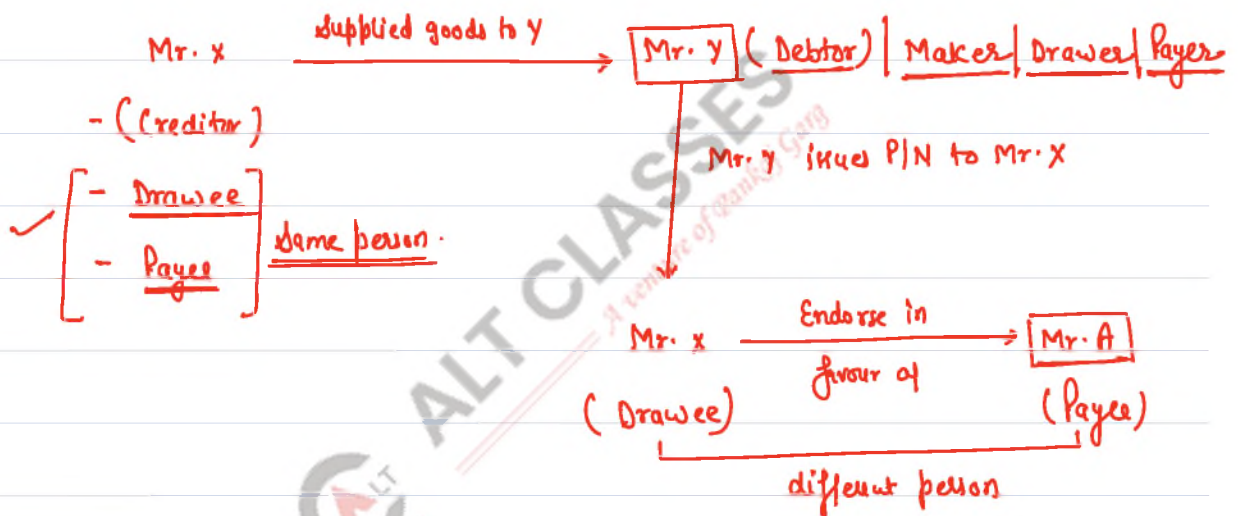
cii) P/N, BoE and Cheque:

(a) Promissory Note: (Sec.4)

An instrument in writing, containing an unconditional undertaking

↓
signed by maker to pay a certain sum of money

↓
Only to, or to the order of a certain person or to the bearer of this instrument.



Note: A promissory note payable to bearer can be made only by RBI or the C.G. (Sec. 31 of RBI Act, 1934) [i.e. Currency Note]

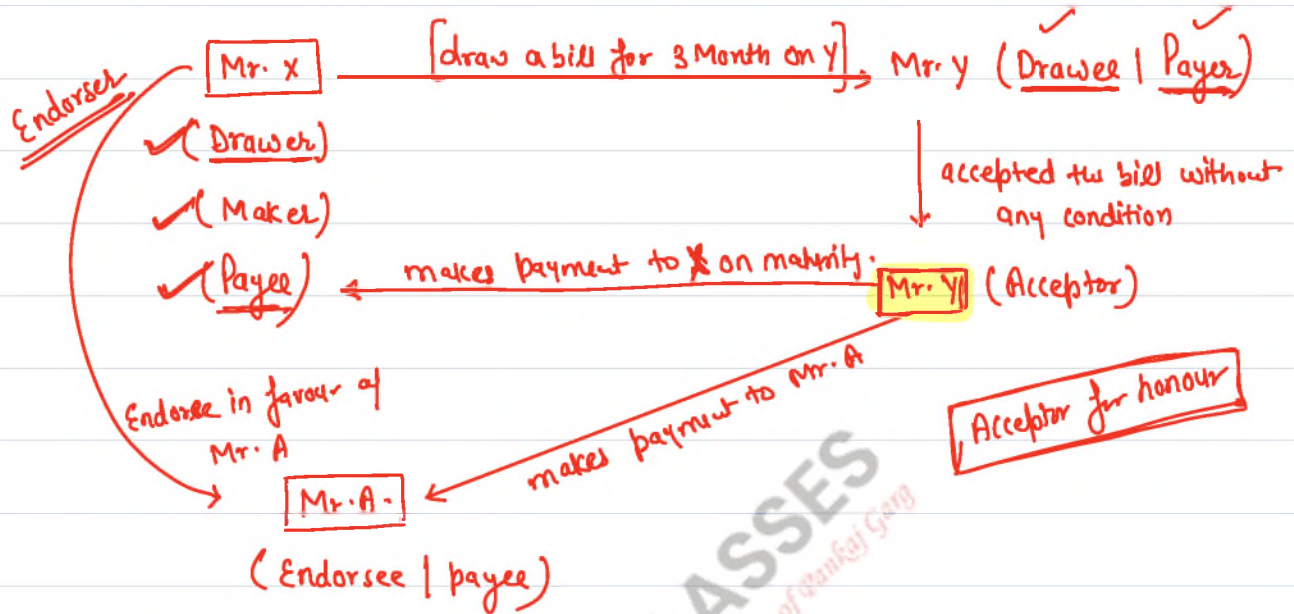
(b) Bills of Exchange (Sec.5):

An instrument in writing, containing an unconditional order

↓
signed by maker, directing a certain person to pay a certain sum of money

↓
Only to, or to the order of a certain person or to the bearer of the instrument.

Ex: Mr. X $\xrightarrow{\text{Sell goods to Mr. Y}}$ Mr. Y
 ✓ (Creditor) 3M Credit (Debtor) ✓



(C) Cheque: (Sec. 6)

- A Bill of Exchange, drawn on a specified banker and not expressed to be payable otherwise than on demand (i.e. payable on demand)
- and includes - Electronic image of a truncated cheque and
- cheque in electronic form.



(iii) Crossing of Cheques:

(a) Meaning: Instruction to the drawee (bank) that the payment is not to be made at the counter, but through a bank

(b) Objects of crossing: (i) Crossing assures that only the rightful holder of the cheque gets payment.

(ii) Crossing does not affect the transferability.

(iii) Crossing is a material alteration that does not affect the right of a holder.

(c) Types of Crossing:



(d) Who may Cross:

(i) Drawer	→	generally		specialty		A/c Payee		Not Negotiable
(ii) Holder	→	"		"		"		"
(iii) Banker	→	"		"		"		"

(F) Protection of liability of Paying Bank and Collecting Bank:

(I) Paying Banker: Banker who makes the payment of a crossed cheque.

(Drawee) General Crossing → payment to any bank.

Special " → " to bank specified on the cheque.

Sec. 85: In case of a cheque payable to order, which purports to be endorsed by or on behalf of the payer, banker is discharged, if payment is made in due course.

If a cheque is payable to bearer, banker is discharged by payment in due course, to the holder of the cheque.

Sec. 128: In case of payment of a crossed cheque in due course, the banker paying the cheque and drawer thereof, be entitled to same rights and they be entitled to, if the cheque had been paid to true owner.

Sec. 129: If payment of a crossed cheque is made out of due course, paying banker shall be liable to true owner of the cheque for any loss he may sustain.

II Collecting Banker: Bank which receives payment of a crossed cheque

Sec. 131: on behalf of its customers.

↳ Collecting bank shall not incur any liability to true owner of a cheque, if collecting bank have acted in good faith and without negligence.

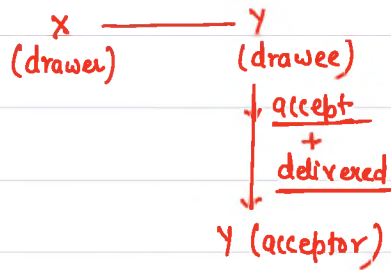


(iv) Acceptor and Acceptor for Honour (Sec. 7):

(a) Acceptor: A drawee of a bill is called 'acceptor'

- after he has signed his assent

(a) upon the bill



or

(b) if there are more parts thereof than one, upon

one of such parts

and

- delivered the same or given notice of such signing to the holder or to some person on his behalf.

(b) Acceptor for honour:

- When a bill of exchange is dishonoured by non-acceptance and any person accepts it for honour of the drawer or any of the indorsees, such person is called 'Acceptor for honour'.

- Such acceptance is also called 'acceptance supra protest'

Essentials of valid acceptance: Signed, written, before maturity of bill, for honour of drawer or any indorser, etc.

Rights and liabilities of acceptor for honour: (Sec. 111 and 112):

Acceptor for honour is liable to pay the amount to drawer / indorser on maturity of instrument and is entitled to recover the same from the drawee or any of the prior parties.

(v) Holder and holder in due course:

(a) Holder (Sec. 8): Holder of a P/N, BoE or cheque means any person entitled in his name:

(a) to the possession of the N.I.

And

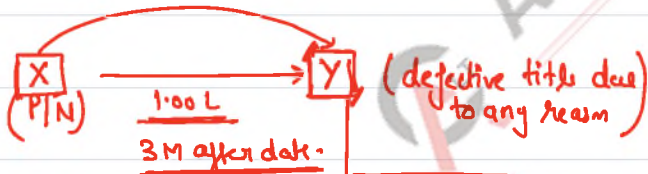
(b) to receive or recover the amount due thereon from the parties thereto.

Ex: X is having possession of a lost cheque. (Not a holder)

X cheque → favouring Y for ₹ 10000 drawn on SBI, for debt due to him from Y. but not delivered to Y. (Not a holder)

(b) Holder in [due course] (Sec. 9): means any person who for

consideration, became



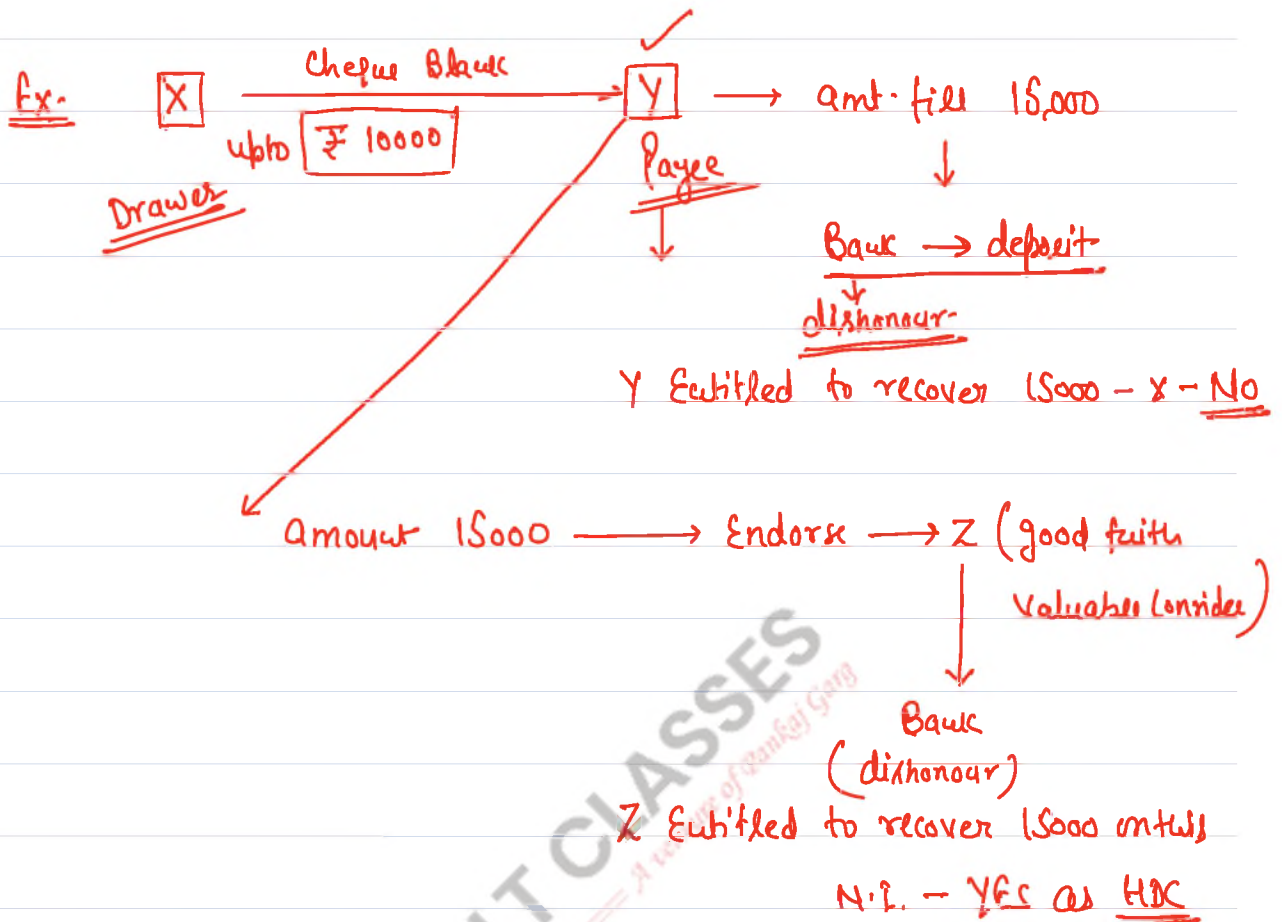
↓
the possessor of a P/N, BoE or Cheque (if payable to bearer)

OR

the payee or indorsee thereof (if payable to order)

↓
before the amount mentioned in it became payable and

without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.



Notes:

- (1) Holder and holder in due course of a forged instrument cannot enforce payment thereon.
- (2) In the event of payment of a forged instrument, payee cannot retain the money.
- (3) A HDC is protected when there is a defect in the title.
- (4) In case of a gifted instrument, transferee cannot be a HDC, though his title is good and bonafide. (as a holder)
- (5) A holder in due course is privileged to have a good title inspite of the fact that title of the transferor was defective.

(6) Payment in due course (Sec. 10):

means payment in accordance with apparent tenor of the instrument in good faith and without negligence



to any person having possession of the instrument

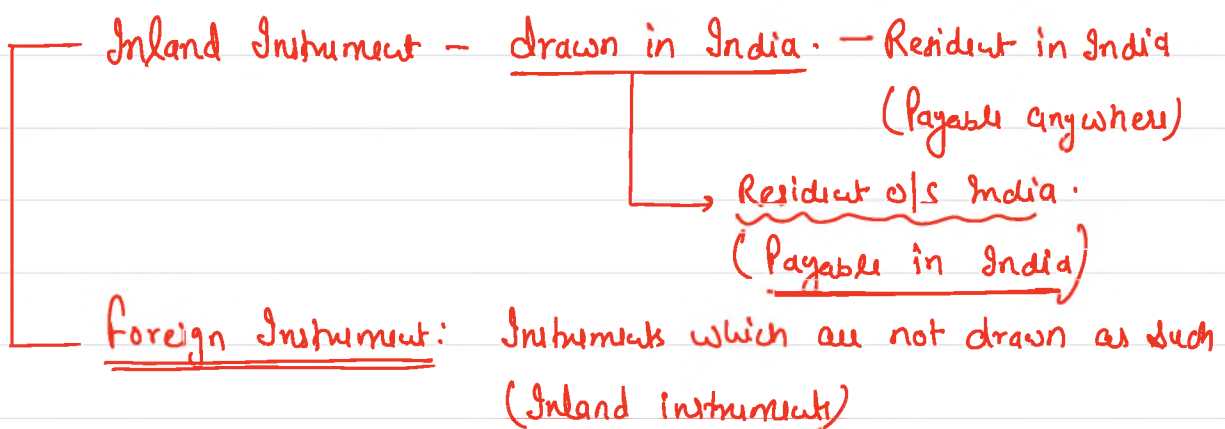
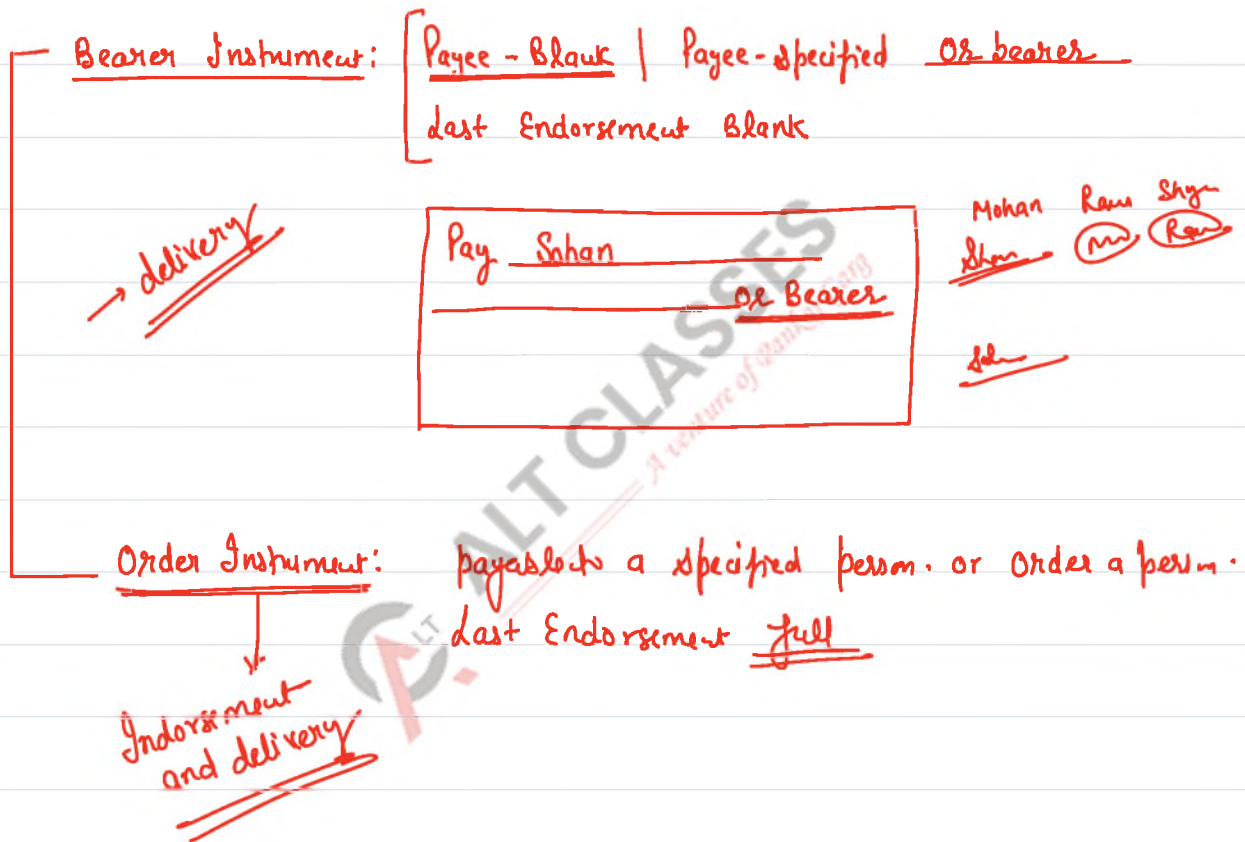


under circumstances which do not afford a reasonable ground for believing that the payee is not entitled to receive the payment.

H.W.: Written practice of 2 Questions. (Exam)

(vi) Classification of negotiable Instruments:

- (a) Bearer and Order Instruments
- ✓ (b) Inland and Foreign "
- (c) Inchoate and Ambiguous "
- (d) Demand and Time "

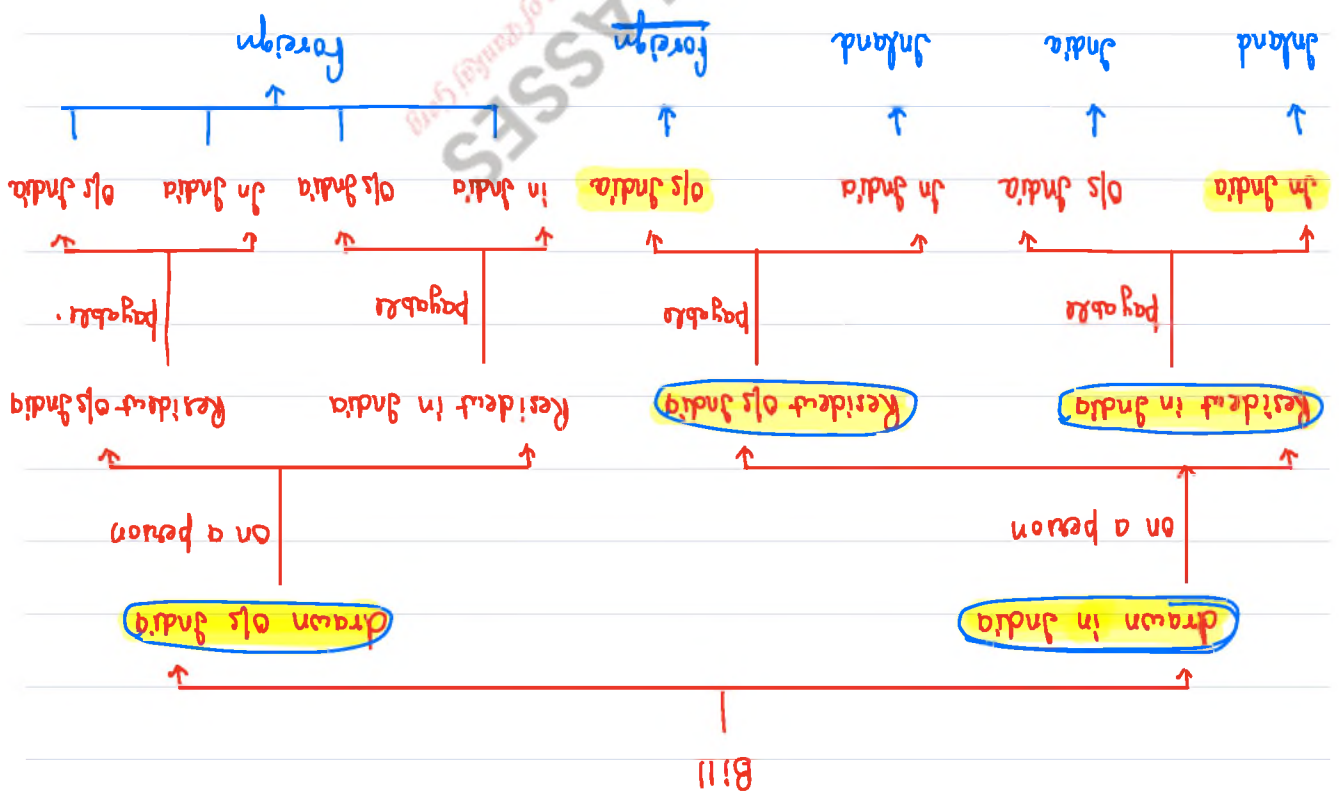


on a specified date
on happening of a certain event.

Time instrument: payable after a fixed period.
- on presentment
- at sight

Amalgam instrument: Name not defined - may P/N or G.O.
Holder - option - treat -
Amount not fixed up - drawer - authority - holder
do fill up certain limit (eg. 5000)

Indorse instrument: Section 85



(vii) Maturity of N.I. (Sec. 22-25) :

(a) Sec. 22: Maturity of a P/N or BoE is date at which it falls due.

P/N or Bill not payable on demand, at sight or presentment matures on \rightarrow 3rd day after the day on which it is expressed to be payable.
(i.e. Time Instruments)

Note: Grace period of 3 days not allowed in case of demand instruments.

(b) Sec. 23 :

- Bills payable at stated no. of months after date terminate on day of the month which corresponds with the day on which instrument is dated.

Ex: Bill payable 3 Months after date \rightarrow 15.07.2022 \rightarrow 18.07.2022
(15.04.2022) (Termination) (Maturity/due)

✓ Bills payable after a stated no. of months after sight terminate on day of the month which corresponds with the day on which it is presented for acceptance

OR

noted for non-acceptance

OR

protected for non-acceptance

Ex: Bill drawn on 10.04.2022 -- presented for acceptance \rightarrow 15.07.2022 \rightarrow 18.07.2022
payable 3 months after sight on 15.04.2022 (Termination) (Maturity)

- Bill payable a stated no. determines on day of the month which corresponds with the day on which the Event happens

Ex. Bill payable 3 months → 22.05.2022 → 22.08.2022 → 25.08.2022
 after delivery of goods (date of delivery of goods) (Termination) (Maturity)
 (drawn on 10.05.2022)

- Bills payable after a stated no. of determines on day of the month which corresponds with the day on which it is accepted.

Ex. Bill payable 3 Months → Not accepted by drawer (Non-acceptance) → Accepted by other party for honour of drawer (18.05.2022) → 18.08.2022 (Termination) → 21.08.2022 (Maturity)
 after sight, drawn on 10.05.2022

Note: If the Month in which the period terminates has no corresponding day, the period terminates on the last day of the month.

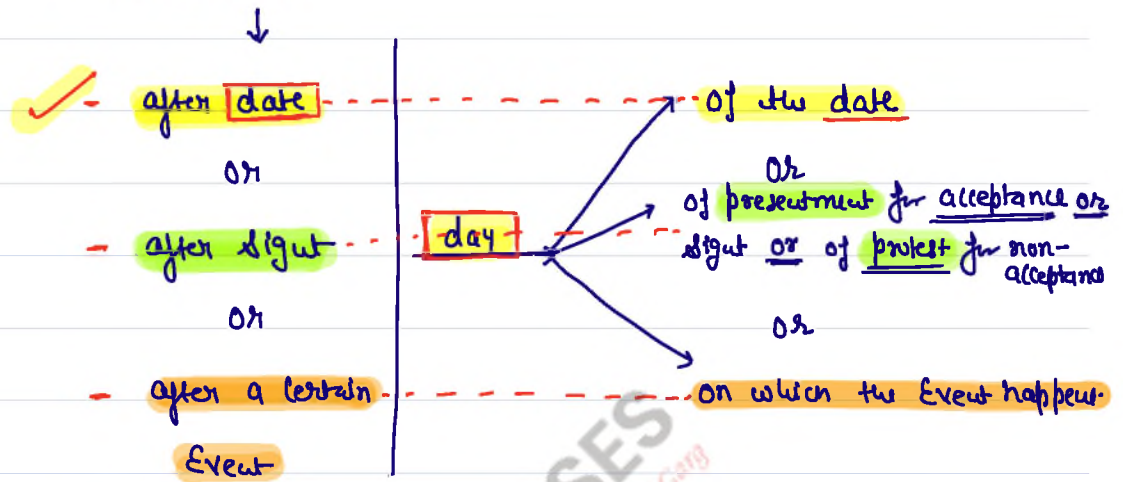
Ex: Bill payable 1 Month determines on 30.06.2022 [✓] Maturity: 03.07.2022
 after date, drawn on

- 31.05.2022

- 30.01.2022	}	→ 28.02.2022	→ 03.03.2022
→ 29.01.2022		→ 28.02.2022	→ 03.03.2022
→ 28.01.2022		→ 28.02.2022	→ 03.03.2022
→ 31.01.2022		→ 28.02.2022	→ 03.03.2022
→ 01.02.2022		→ 01.03.2022	→ 04.03.2022

(c) Sec. 24:

While calculating maturity date of PN or BoE, payable at certain no. of days



shall be excluded.

Ex: Bill payable 30 days ----- 30.05.2022 (termination) → 02.06.2022
after date - (drawn on 10.04.2022) (20 + 30)

(d) Sec. 25: If the day on which a PN or BoE is at maturity is a public holiday.



The instrument shall be deemed to be due on the next preceding business day.

Ex: Bill payable 100 days 05.05.2022 $\frac{(100 \text{ days})}{27+30+31+12}$ 12.08.2022
after sight (termination)

- drawn on 18.04.2022

- presented on 04.05.2022 for acceptance.

14.08.2022 ← 15.08.2022 (Maturity - Public Holiday)
(due date) ↓ 3 days

(viii) Negotiation of N.I.: (Sec. 14, Secs. 46-48)

Sec. 14: When a P/N, BoE or cheque is transferred to any person, so as to constitute that person, the holder thereof, the instrument is said to be negotiated.

Negotiation may be by mere delivery or by Indorsement and delivery. (Order Instrument) (Bearer Instrument)

✓ Sec. 46: (a) To give effect to negotiation, delivery of an instrument is essential whether the instrument is payable to bearer or order.

(b) Delivery must be voluntary.

(c) Delivery can be actual or constructive.

(d) Contract on a negotiable instrument is incomplete and revocable until delivery remains.

Sec. 47: Subject to provisions of Sec. 58, a P/N, BoE or cheque, payable to bearer, is negotiable by delivery thereof.

Sec. 48: Subject to provisions of Sec. 58, a P/N, BoE or cheque payable to order, is negotiable by the holder by Indorsement and delivery.

H.W.: Complete Revision and written practice of 2 Questions.



(ix) Indorsement of Negotiable Instruments (Sec. 15)

Sec. 15: An instrument is said to be indorsed, when the maker or holder of a N.I. -

- signs the same for the purpose of negotiation on the

(a) back, or

(b) face thereof or

(c) on a slip of paper annexed thereto,

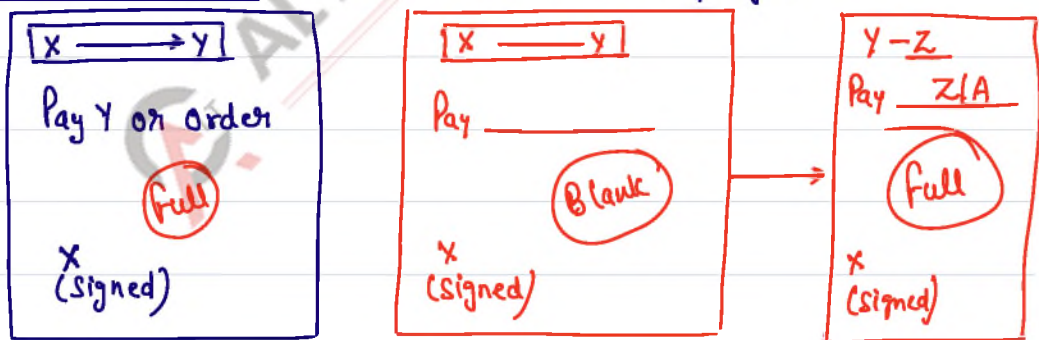
or

- do signs for the same purpose, a stamped paper intended to be completed as a N.I.

Types of Indorsement:

(i) Indorsement in Full: Indorsee name is specified.

(ii) Indorsement in Blank: Indorsee name is not specified.



Conversion of Blank Indorsement in Full: by specifying the name of indorsee (self or other person)

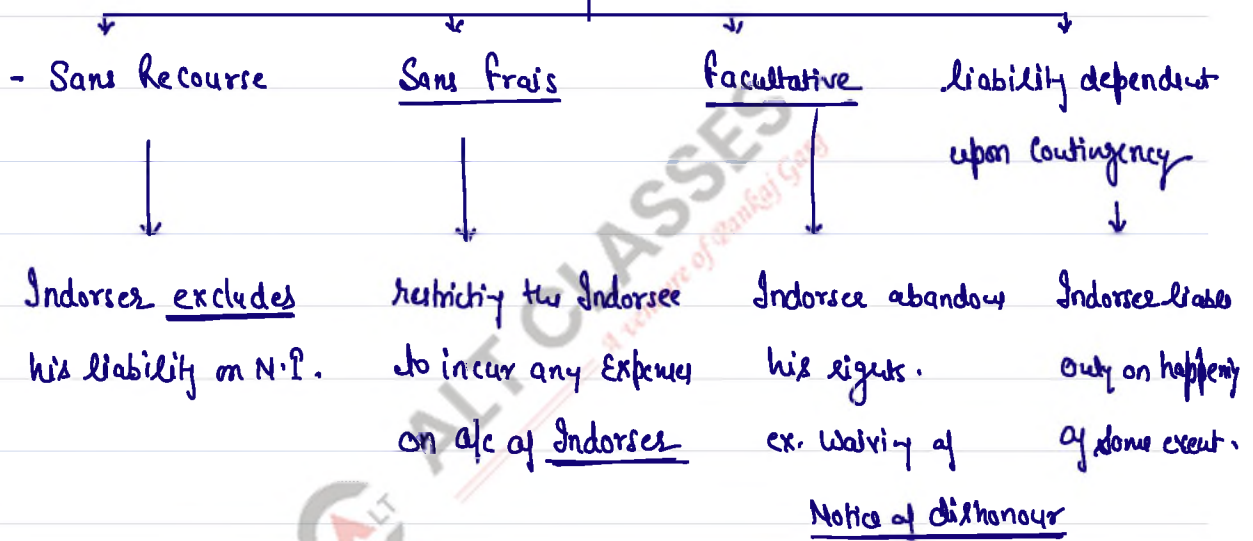
(iii) Partial Indorsement: Indorsement for a part of amount of the instrument.

As per Sec. 56, such indorsements are invalid in eyes of law.

(iv) Restrictive Indorsement: Indorsement that restricts further negotiability of N.I.

Ex. Pay the amount to 'A' only
Pay 'A' for my use.

(v) Conditional Indorsement (Sec. 52): Indorsement with some conditions, altering / restricting rights of indorsee.



Other provisions related to Indorsement: Self study from book.

H.w.: [Study of other provisions of Indorsement from book.]

(x) Discharge from liability on bills, Notes and cheques: (Secs. 82-90)

- When a party who is liable on a N.I., ceases to be liable, he is said to be discharged from liability. (e.g. Sans recourse Indorsement)
- When only some of the parties to an instrument are discharged from liability, but others continue to be liable thereon, it is only discharge of some of the parties from liability. (e.g. Negotiation back)
- When the rights against all the parties to an instrument comes to an end, the instrument is discharged.

Note: After the discharge of an instrument, no person even a holder in due course, can claim any amount of the instrument from any party thereto.

Modes of discharge from liability on instrument:

- Discharge by Cancellation
- " " Release
- " " Payment
- " " default of holder
- " " drawer not duly presenting a cheque for payment.
- " " Qualified or limited acceptance
- " " bill coming to acceptor's hand after maturity.
- " " Material Alteration.

H.w: Written practice of 1+1 Question.

(xi) Material Alteration and Its effect:

- Any alteration which alters the operation of the instrument and affect liabilities of parties thereto is material alteration.
- Alteration as to date, time, amount, place of payment, parties, are generally considered to be Material alteration.

Sec. 87: Effects of Material Alteration:

Any material alteration of a N.I. renders the same Void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto

↓

Unless it was made in order to carry out the common intention of original parties.

Note: Material alteration, if made by indorsee, will discharge the indorser from any liability on the instrument.

Examples of Material and Non-Material Alteration:

- to be covered (Self) from the book -

Permitted Alterations:

(i) Sec. 20: Incomplete Instrument can be filled up by the holder.

(ii) Sec. 49: Holder of an instrument in blank may convert it into full indorsement.

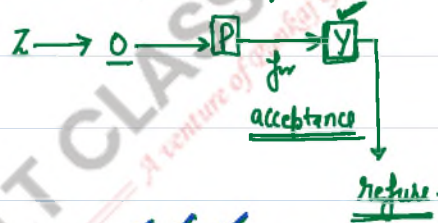
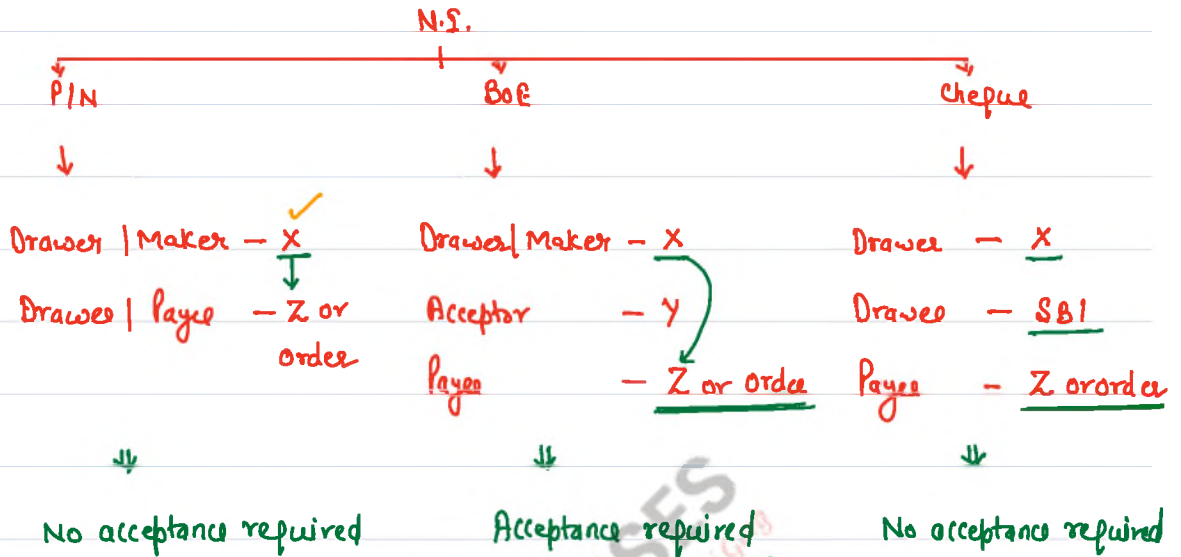
(iii) Sec. 125: Holder of an uncrossed cheque may cross it or may convert general crossing into special crossing or may make it not negotiable.

(iv) Sec. 89: Alteration which is not apparent on the face of the instrument.

Ex: an Instrument which is not specifically mention about the payment date, is altered so as to add the words, "on demand".

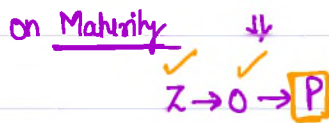
H.W: - Revision from the book -
- Understanding of the "Examples of Alterations" -

(xii) Dishonour of N.I.:



P rights \rightarrow O, Z, X

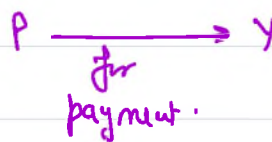
\rightarrow Notice of dishonour due to non-acceptance by Y.



↓
 refused by X
 ↓

dishonour due to

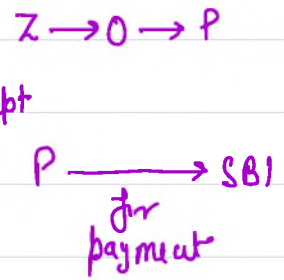
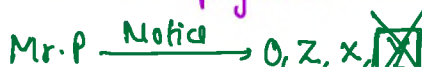
non-payment.



↓
 refused by Y
 ↓

dishonour due to

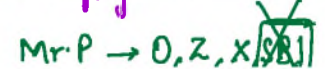
non-payment



↓
 refused by SBI
 ↓

dishonour due to

non-payment.



A negotiable instrument may be dishonoured by

(a) Non acceptance (In case of Bills) - Sec. 91

(b) Non-payment (Sec. 92)

- Bill presented for acceptance is refused by the drawee (within 48 hr. of presentment)
- Presentment is excused and bill not accepted.
- Drawee is incompetent to contract
- " " a fictitious person
- " " could not be found.
- Qualified acceptance by drawee.

- Default in payment by
- Maker of Note
 - Acceptor of BoE
 - Drawee of a cheque.

Notice of dis-honour: In case of dishonour of N.I., the holder thereof must give a notice of dishonour to the drawer or previous holder, in order to make them liable on instrument.

Holder of the Instrument

or

Party liable on the instrument

Notice of dishonour →

All parties except

(a) Maker of P/N

(b) acceptor of BoE

(c) drawee of cheque

- may be given to duly authorised agent / legal rep. / assignee
- oral / written (if written, to be sent by post)
- may be in any form; must be given within the reasonable time at place of business / residence.

Circumstances where notice of dishonour is not necessary! - to be covered from book -

(xiii) Dishonour of cheque due to insufficiency of funds (Sec. 138-140):

Sec. 138: (a) Drawer of a cheque shall be deemed to have committed an offence, if:

(i) Cheque was drawn for payment of any amount to another person for discharge of any debt or other liability.

(ii) Cheque was returned unpaid by the bank as the money standing to the credit of that account is insufficient to honour the cheque.

(b) Punishment for offence: Imprisonment upto 2 years

(Or)

Fine upto twice the amount of cheque

(Or)

Both

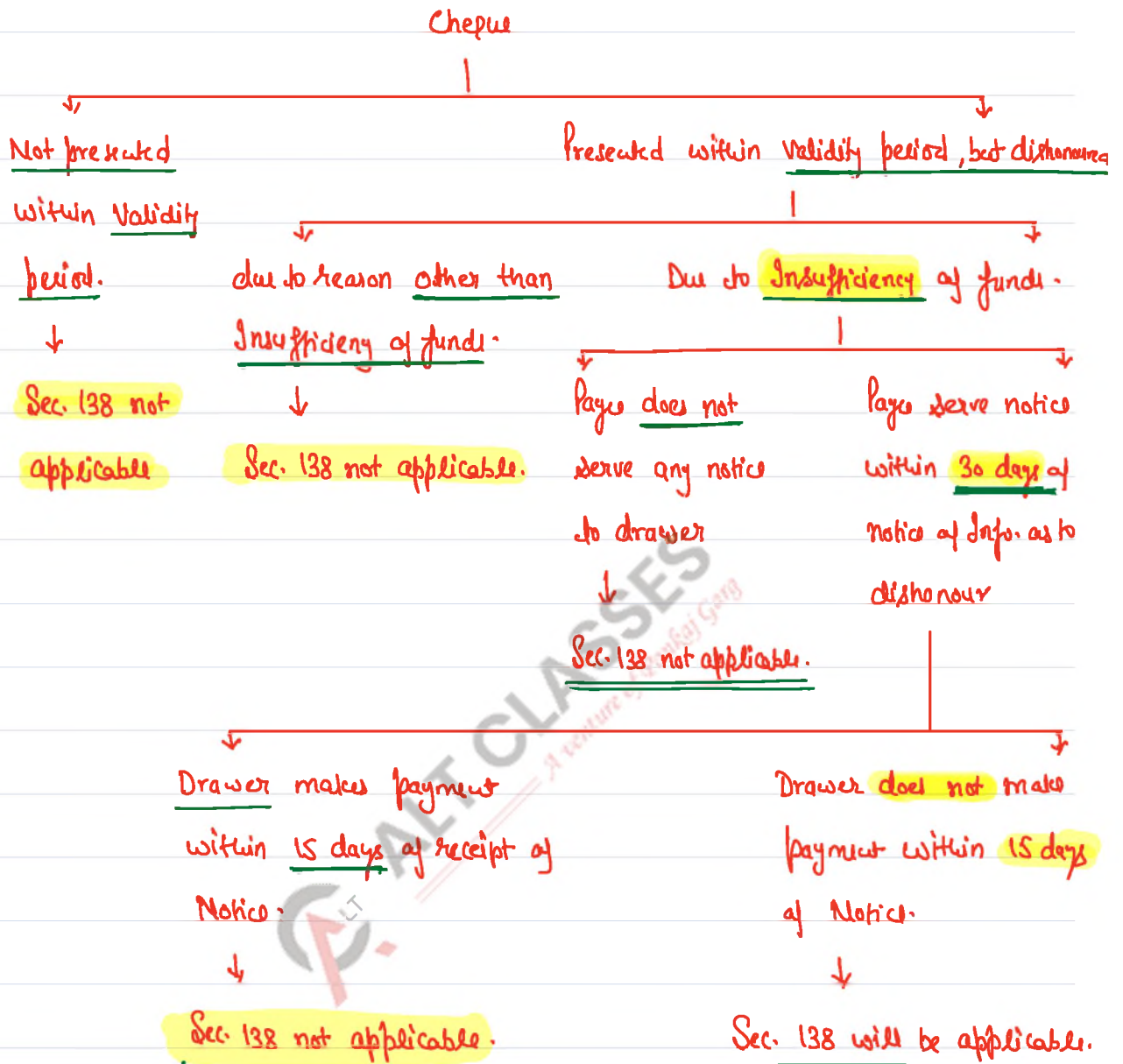
Compounding
offences

Note: Provisions of 138 shall be applicable if following conditions satisfied:

(a) Cheque presented within the validity period of 3 Months.

(b) Demand Notice is given by the payee, in writing, to drawer within 30 days of receipt of information as to return of cheque as unpaid.

(c) Drawer fails to make the payment within 15 days of receipt of Notice.



Sec. 139: Unless a contrary is proved, it shall be presumed that

holder of a cheque received the cheque of the nature referred to in Sec. 138, for the

discharge, in whole or in part, of any debt or other liability.

Sec. 140: In an prosecution u/s 138



it shall not be a defence that the drawer had no reason to believe, when he issued the cheque, that



the cheque may be dishonoured on presentment for the reason stated in that section.

Ex: X Ltd. - SBI - Current A/c [OD facility - 5 Laku] - o/s 4600
→ Y Ltd. - Cheque → 17000

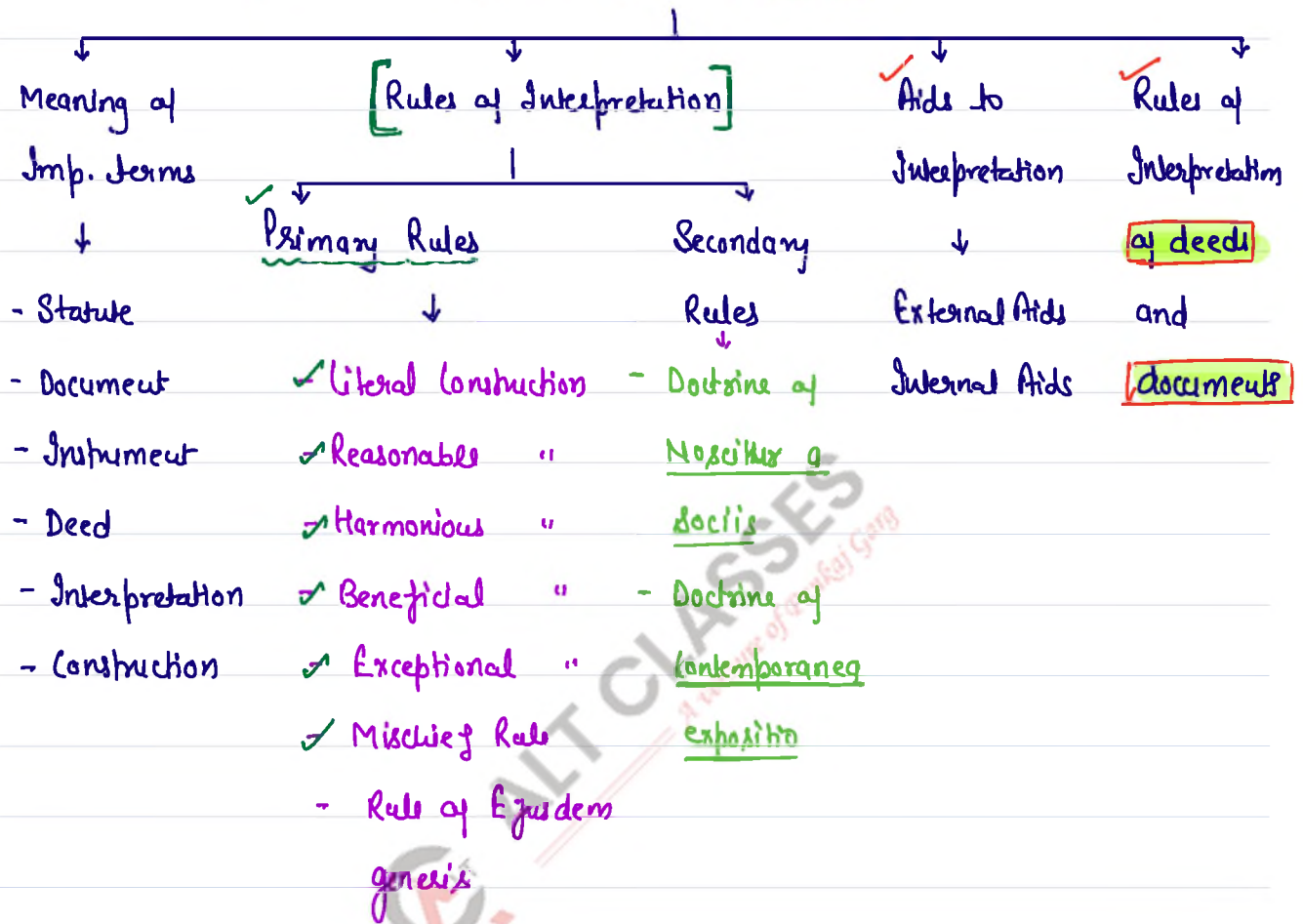
← →
(xiv) Miscellaneous Provisions:

- (i) Offences by Companies (Sec. 141)
- (ii) Cognizance of offences (Sec. 142)
- (iii) Power of Courts to try cases summarily (Sec. 143)
- (iv) Power to direct interim compensation (Sec. 143A)
- (v) Offences to be compoundable (Sec. 147)
- (vi) Powers of Appellate Court to order payment pending appeal against conviction (Sec. 148).



H.W: Revision of entire chapter and written practice of 2-3 Questions of Dishonour.

Chapter - 14 " Interpretation of Statutes "



(a) Meaning of Important Terms:

(i) Statute: Written law, established directly by the legislation.

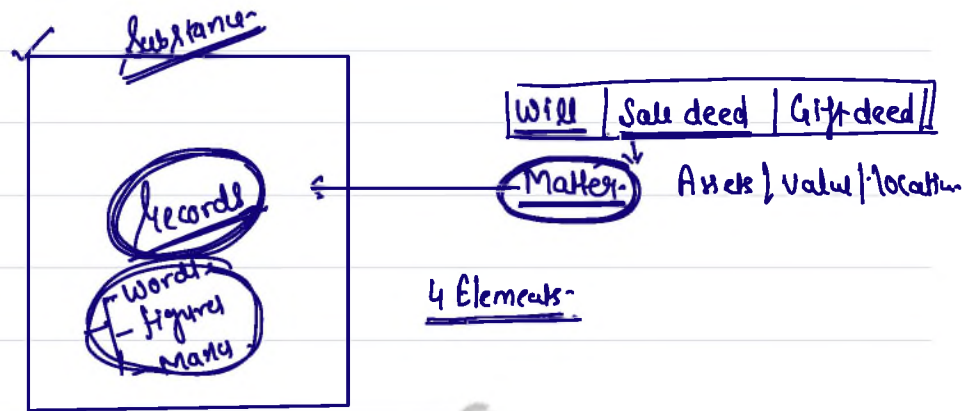
(ii) Document: Any ^① matter, expressed or described upon any ^② substance

↓ by means of

^③ letters, figures or marks or by more than one of those means

will

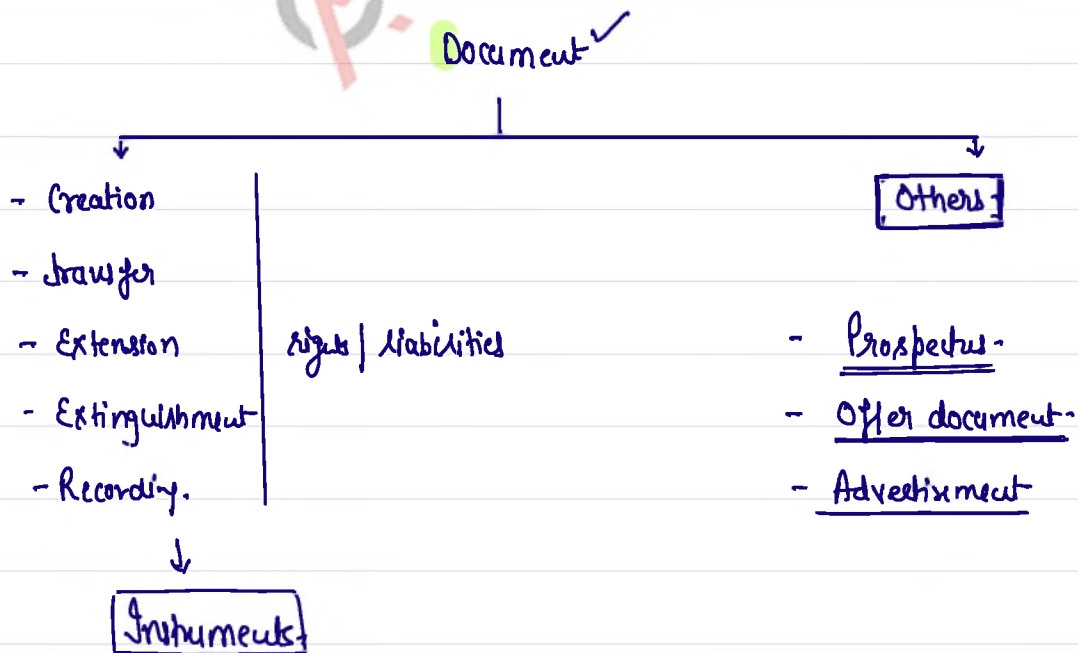
Intended to be used or which may be used for the purposes of recording that matter.



4 Elements-

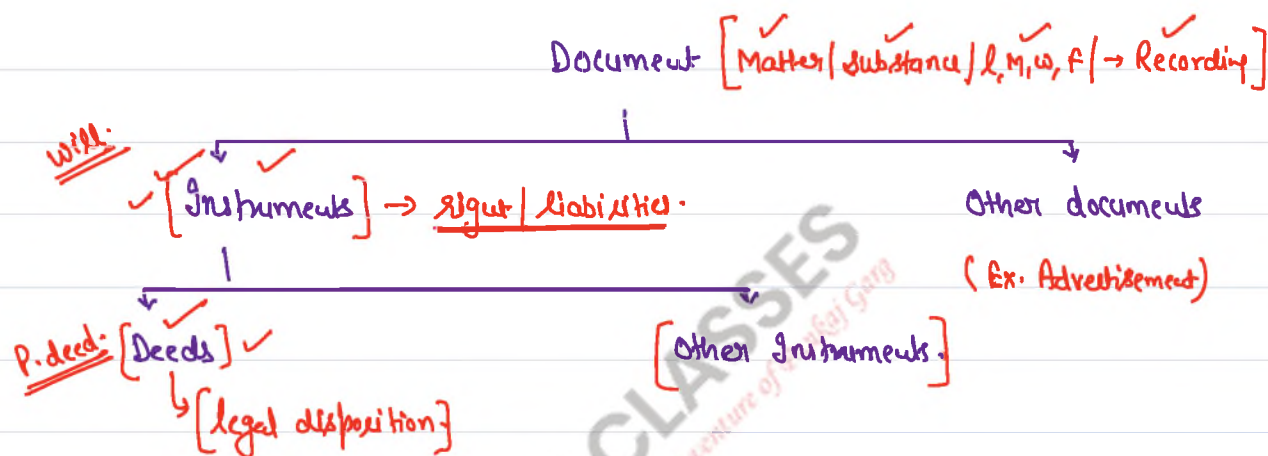
(iii) Instrument : Every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

Ex: Partnership deed / Conveyance deed / Settlement deed

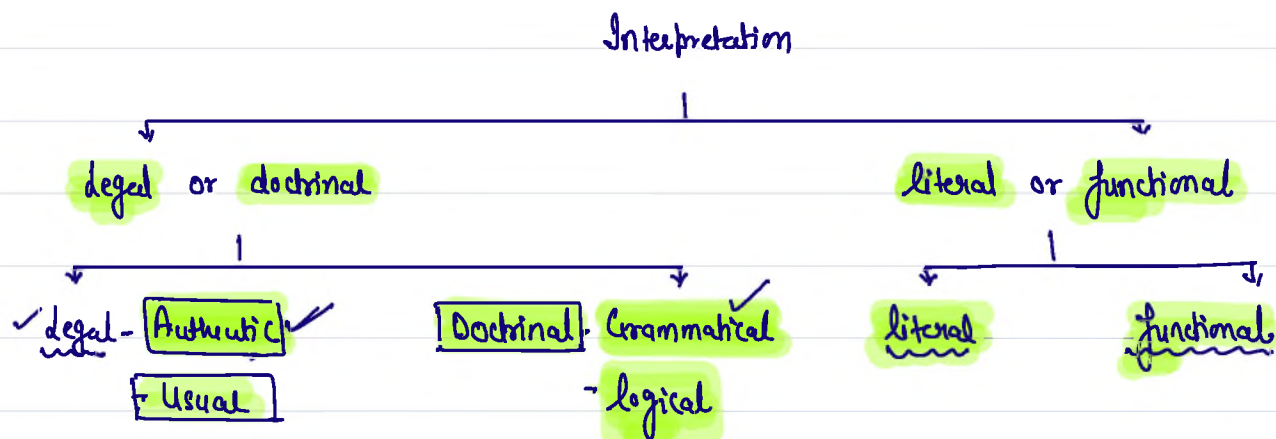


(iv) Deeds: Instrument in writing, purporting to effect some legal dispositions.

Note: All deeds are instruments, though all instruments may not be deeds.



(v) Interpretation: Process by which the Courts seek to ascertain the meaning of the legislature through the medium of the words in which it is expressed.



(vi) Construction: Drawing conclusions beyond the actual expressions used in the text.

This is done by referring to other parts of the enactment and the context in which the law was made.

Note: Construction includes interpretation and the two terms are frequently used interchangeably.



(b) Primary Rules of Interpretation:

(i) Literal Construction: - Words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude.

[Cardinal Rule of Construction]

- Words and phrases of technical nature should be used in their technical meaning.

(ii) Reasonable Construction: Words of a statute must be construed so as to lead to a sensible meaning.

(Golden Rule of Construction)

When grammatical interpretation leads to certain absurdity, it is permissible to depart therefrom, to the extent, it avoids such absurdity and no further.

(iii) Rule of Harmonious Construction:

- In case of any doubt about the meaning of the words of a statute, these should be understood in the sense in which they harmonise with the subject of the enactment and the object which the legislature had in view.
- This rule is applicable only when there is a real and not merely apparent conflict between the provisions of an Act.
- If after having construed their context, the words are capable of only a single meaning, this rule disappears and rule of literal construction will prevail.

Ex: Use of words like 'Subject to', 'Notwithstanding'; 'without prejudice'

(iv) Mischief Rule or Heyden's Case:

For the true interpretation of all statutes in general, four things are to be considered:

- (a) What was the law before making of the Act?
- (b) What was the defect, mischief or discrepancy caused by earlier law?
- (c) How does the Act of Parliament seek to resolve the mischief?
- (d) What are the true reasons for the remedy?

(v) Beneficial Construction!

When two constructions are reasonably possible, a liberal interpretation may be sought, which brings into effect the provisions



for improving condition of certain classes of people who are underprivileged or not treated fairly in the past.

(vi) Rule of Exceptional Construction!

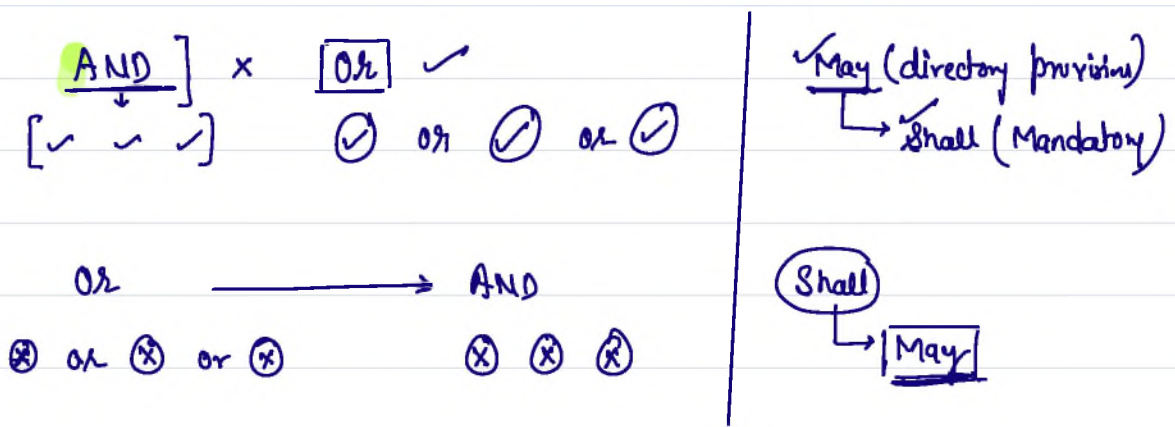
Notwithstanding the general rule that full effect must be given to every word, yet if no sensible meaning can be given to a word or phrase, or if it would defeat the real object of the enactment



it may or rather it should be eliminated.

or

may be construed exceptionally / differently.

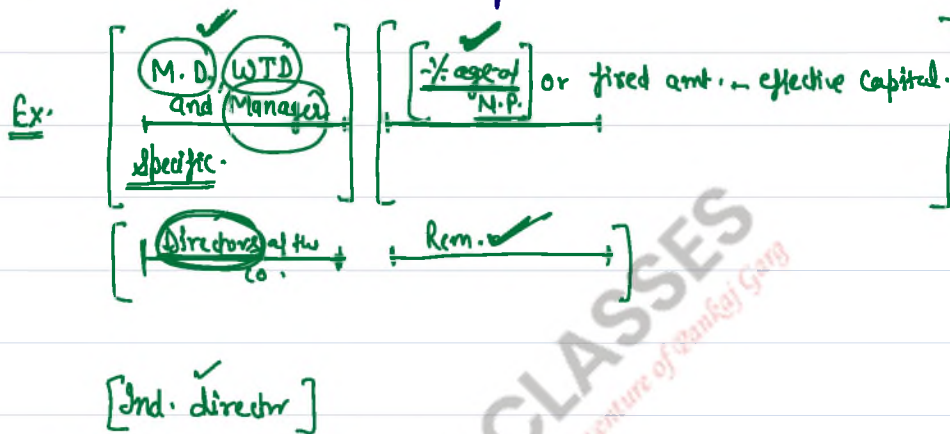


(vii) Rule of Ejusdem Generis :

when specific words pertaining to a class or category are followed by general words,



general words shall be construed as limited to the things of the same kind as those specified.



(C) Secondary Rules of Interpretation:

Noscitur a Sociis



If two or more words that are susceptible to analogous meaning are coupled together



they are to be understood in their cognate sense.

Contemporanea Expositio



- A statute or document is to be interpreted by referring to its exposition it has received from contemporary authority.

- A law should be understood in the sense in which it was understood at the time when it was enacted.

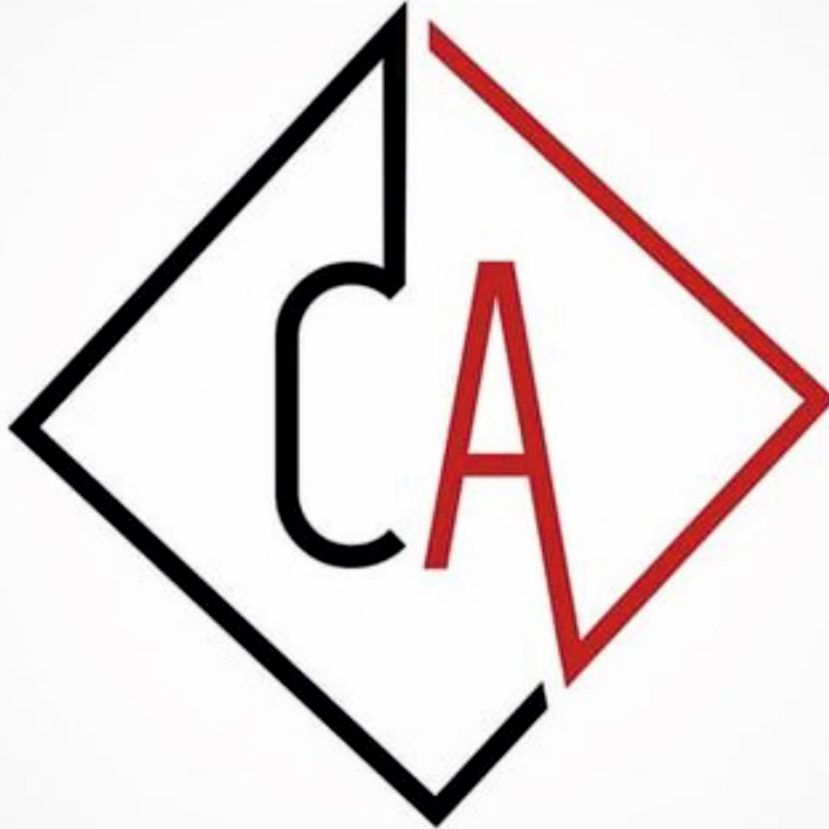
(d) Aids to Interpretation:



(e) Rules of Interpretation of deeds and documents:

- to be covered from book -

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