

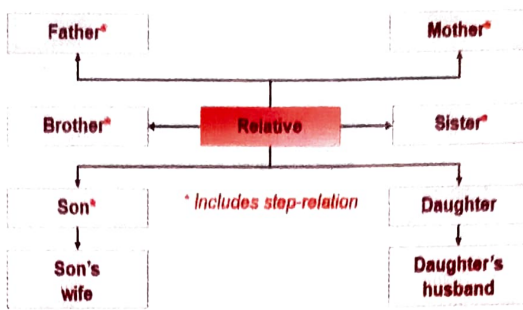
Section 1	<ul style="list-style-type: none"> Companies Act, 2013 extends to entire India Different provisions may be notified on different dates by CG 	<ul style="list-style-type: none"> Companies Act vs. special acts governing the companies like banking, insurance, electricity etc. - special acts will prevail 			
Meaning of company	Company means a company incorporated under \Rightarrow <ul style="list-style-type: none"> Companies Act, 2013; or any previous company law 				
Features of company	Incorporated association Limited liability of members Transferability of shares	Artificial person Common seal (voluntary) Separate Management	Separate Legal entity Not a citizen, but is a resident Capacity to sue or be sued Perpetual succession Separate property Limitation of action-MOA		
Principle of separate Legal Entity	Solomon vs. Solomon Co. Ltd. Lee vs. Lee Air Farming Ltd. Re. Kandoli Tea Estate Ltd. Mrs. Bacha F. Guzdar	<ul style="list-style-type: none"> \rightarrow Solomon formed a company & transferred his shoes manufacturing business to Solomon Co. Ltd. for £ 38,782 \rightarrow Co. gave him cash = £ 8,782; equity shares = £ 20,000; and secured debentures = £ 10,000 \rightarrow Subsequently there were unsecured trade creditors of £ 8,000 and was left with assets worth only £ 6,050 \rightarrow Court held that Solomon & Company being separate persons, Solomon will be entitled to those £ 6,050 being a secured debenture-holder <ul style="list-style-type: none"> \rightarrow Lee formed a company Lee Air Farming Ltd. \rightarrow Lee was a shareholder, MD and employee of the Co. \rightarrow Lee died and his widow demanded the compensation \rightarrow Court held that Lee and Co. being separate legal entity, employer and employee are different and widow is entitled to compensation <ul style="list-style-type: none"> \rightarrow A person transferred his tea estates to a company formed by him \rightarrow Held that he will be liable to pay ad-valorem duty on the same <ul style="list-style-type: none"> \rightarrow Company was carrying agricultural business and was exempt from tax \rightarrow A shareholder contended that dividend received by her was also exempt from tax \rightarrow The court held that the dividend received by the shareholder is not an agricultural income as company is a separate legal entity 			
Doctrine of Lifting of Corporate Veil	<p><u>Meaning</u></p> <ul style="list-style-type: none"> Separate legal entity of company segregates insiders from the outsiders If someone misuses this, then corporate veil can be disregarded 	<p style="text-align: center;">Lifting of corporate veil under</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td style="width: 50%;"> Statutory Provisions \downarrow Eg. Section 3A, 7(7), 251(1) </td> <td style="width: 50%;"> Judicial precedents \downarrow Refer cases below </td> </tr> </table>		Statutory Provisions \downarrow Eg. Section 3A, 7(7), 251(1)	Judicial precedents \downarrow Refer cases below
Statutory Provisions \downarrow Eg. Section 3A, 7(7), 251(1)	Judicial precedents \downarrow Refer cases below				
Protection of Revenue	Sir Dinshaw Manakjee Petit	<ul style="list-style-type: none"> \rightarrow Assessee made 4 private companies to split his income and save tax \rightarrow Income was passed to him as a pretended loan \rightarrow Held - Companies were formed to avoid tax and corporate veil was lifted 			
Prevention of fraud or improper conduct	Gilford Motor Ltd. vs. Home	<ul style="list-style-type: none"> \rightarrow Employee entered into a contract for not soliciting away any clients of employer \rightarrow After leaving employment, Employee formed a company to solicit away clients \rightarrow Held that corporate veil will be lifted 			
Prevent conflict of public policy	Connors Bors. Vs. Connors Daimler Co. Ltd.	<ul style="list-style-type: none"> \rightarrow If a company is controlled from an enemy country \rightarrow Separate legal entity will be disregarded and corporate veil will be lifted 			
Avoidance of welfare legislation	Associated Rubber Industries Ltd.	<ul style="list-style-type: none"> \rightarrow Corporate veil will be lifted if companies are formed to split profits and avoid Bonus Act 			
Section 464 (Illegal Association)	An association or partnership can have maximum 50 members	If still formed, every member will be personally liable + liable to fine up to INR 1 lakh	<p style="text-align: center;"><u>2 exceptions</u></p> <ul style="list-style-type: none"> - HUF; - Association formed by professionals governed by a special act (Note - Benefit is not available to a combination of 2 HUFs) 		
Important Definitions					
Associate Company	<ul style="list-style-type: none"> \rightarrow Company in which other company has significant influence [control of $\geq 20\%$ Total Voting Power (TVP) or business decisions under an agreement] \rightarrow Includes a JV 				
Body Corporate or Corporation	<ul style="list-style-type: none"> \rightarrow Includes a company incorporated outside India \rightarrow does NOT include <ul style="list-style-type: none"> • Co-operative society • body corporate (other than company) as CG may prescribe 				
Company	It means a company incorporated under this Act or under any previous company law				
Company limited by guarantee	Liability of member is limited to such amount as members may undertake to contribute to the assets of the company in the event of winding up				



Company limited by shares		Liability of member is limited to the amount unpaid, if any, on the shares held by them							
Financial Year	<ul style="list-style-type: none"> Means period ending on 31st March of every year But for a company incorporated on or after January 1 of a year, the period ending of 31st March of the following year 	Exception	<ul style="list-style-type: none"> Co. which is Holding/ Subsidiary/ Associate of Co. incorporated outside India; and is required to follow a different financial year for consolidation outside India, such company may follow any period as its FY with approval of CG (power delegated to RD) 						
Foreign company	<div style="border: 1px solid black; padding: 5px;">Means a company or body corporate incorporated outside India</div>	<ul style="list-style-type: none"> which has a place of business in India, whether by itself or through an agent, physically or through electronic mode; & conducts any business activity in India in any other manner 	<p style="text-align: right;">Electronic Mode</p> <table border="1"> <tr> <td>T</td> <td>Telemarketing, telecommuting, education & information research, telemedicine,</td> </tr> <tr> <td>D</td> <td> <ul style="list-style-type: none"> Deposits or subscription in securities. In India or from Citizens of India Data communication services </td> </tr> <tr> <td>S</td> <td>Supply chain management, financial settlements, web-based marketing etc.</td> </tr> </table> <p>On B2B & B2C transactions</p>	T	Telemarketing, telecommuting, education & information research, telemedicine,	D	<ul style="list-style-type: none"> Deposits or subscription in securities. In India or from Citizens of India Data communication services 	S	Supply chain management, financial settlements, web-based marketing etc.
			T	Telemarketing, telecommuting, education & information research, telemedicine,					
D	<ul style="list-style-type: none"> Deposits or subscription in securities. In India or from Citizens of India Data communication services 								
S	Supply chain management, financial settlements, web-based marketing etc.								
<p>Note - "Place of business" includes a share transfer or registration office</p>									
Free Reserves	Such reserves which are available for distribution of dividend	Note - Revaluation reserve is not a free reserve							
Government company	<ul style="list-style-type: none"> > 51% of the paid-up capital (PSC)* is held by CG State Govt(s) Partly by CG and partly by State Govt(s) Includes SUBSIDIARY of such company <p>*Note - In case Government company has issued DVR, then 51% of Total Voting Power is checked</p>	<ul style="list-style-type: none"> Employees of Govt companies are NOT Govt employees Within 3 months of AGM, CG must place an annual report of every Govt Company before both houses of Parliament Where State Govt is member, annual report is likewise placed before State Legislature 							
Holding company	In relation to other companies, means a company of which such companies are subsidiary								
KMP	CEO, MD or Manager	Company secretary	WTD						
	CFO	Such officer, not more than one level below WTDs, designated as KMP by board	Other prescribed officers						
Listed company	Any company which has any of its SECURITIES listed on a recognised stock exchange								
Net Worth	<table border="0"> <tr> <td>Paid-up share capital</td> <td>+</td> <td> <ul style="list-style-type: none"> Reserves created out of profits Securities Premium Profit & loss account </td> <td>(-)</td> <td> <ul style="list-style-type: none"> Accumulated losses Deferred expenditure Miscellaneous expenses not written off </td> </tr> </table>	Paid-up share capital	+	<ul style="list-style-type: none"> Reserves created out of profits Securities Premium Profit & loss account 	(-)	<ul style="list-style-type: none"> Accumulated losses Deferred expenditure Miscellaneous expenses not written off 	<p>Note - Does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation</p>		
Paid-up share capital	+	<ul style="list-style-type: none"> Reserves created out of profits Securities Premium Profit & loss account 	(-)	<ul style="list-style-type: none"> Accumulated losses Deferred expenditure Miscellaneous expenses not written off 					
Officer in Default	<ul style="list-style-type: none"> WTD KMP If no KMP, such director(s) as specified by Board in this behalf + has given his consent 	<ul style="list-style-type: none"> Any person under immediate authority of Board or KMP, is charged with any responsibility Any person as per whose direction Board is accustomed to act (other than advise given in professional capacity) Every director aware of the contravention In respect of issue or transfer of shares - the share transfer agents, registrars and merchant bankers to the issue or transfer 							
OPC	→ Company which has only one person as its member								
Private company	Means a company having minimum paid-up capital as may be prescribed & which by its AOA	R	Restricts the right to transfer its shares						
		L	(Other than OPC), limits the number of its members to 200						
			→ Joint members are counted as ONE						
			→ Limit of 200 excludes -						
			<ul style="list-style-type: none"> Present employees; and Former employees, who were members while in that employment and continued to remain members after the employment ceased 						
		P	Prohibits any invitation to the public to subscribe to any of its securities						
Public company	It means a company	<p>Note - If a Private company is a subsidiary of a Public company, it is also deemed to be a Public company</p>							
	<ul style="list-style-type: none"> which is not a private company; and has minimum paid-up capital as may be prescribed 								
Public Financial Institution	<ul style="list-style-type: none"> LIC IDFC UTI 	<ul style="list-style-type: none"> Institutions notified by CG under Companies Act, 1956 Such institutions as may be notified by CG 	<ul style="list-style-type: none"> CG shall not notify an institution unless - it is a statutory corporation; or is a Govt. company 						



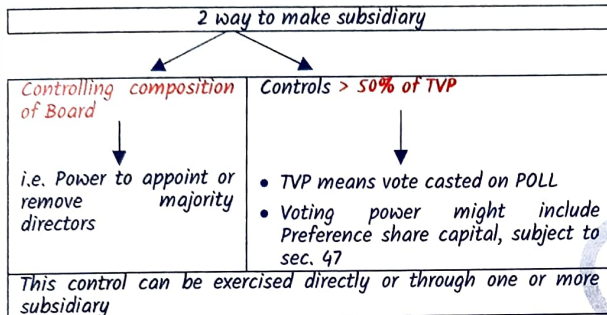
- Members of HUF
- Husband & wife
- Such other relations as may be prescribed



- Private company whose
- PSC ≤ INR 50 lakh; AND
 - Turnover of preceding year ≤ INR 2 crore

Following companies can never be small

- Subsidiary or Holding
- Section 8
- Special Act



Note - The term company includes 'Body corporate'

Layers of Subsidiary

- Prescribed companies can't have more than 2 layers of subsidiaries
- However, if one layer is of WOS, such layer is not counted as layer
- Existing companies can continue their existing layers
- However existing companies, can't increase their layers beyond 2
- Even if layers are subsequently reduced, existing companies can't increase the layers beyond the
 - layers after reduction; or
 - 2 layers

whichever is more

Note - Provisions not applicable to Banks, NBFC, Insurance & Govt companies

→ Total votes which may be casted on POLL at a general meeting

- Not having any limit on liability of members
- But creditors of company can't directly sue the members but can only do through company

Modes of becoming Member

By subscribing to MOA	
By agreeing in writing	<ul style="list-style-type: none"> • Allotment • Transfer • Transmission • Estoppel
By becoming beneficial owner in records of depository	

Member	Shareholder
Defined u/s 2(55)	Not defined
Means person whose name is entered in Register of members	Means a person holding the share
Company not having share capital can have only member	Company not having share capital can't have shareholder
Subscriber to MOA becomes member from date of incorporation	Subscriber to MOA becomes shareholder from date of allotment
Transferor remains member till name is not removed from register	Transferor ceases to be shareholder when share is handed over to transferee

Capacity to become member

Company	→ Yes, can become member but subject to MOA and section 19
Firm	→ Yes, but can hold shares in name of ALL the partners
	→ If shares are hold in the name of few partner, filing of section 89 needs to be done
LLP	→ Yes, being a body corporate can hold shares in its own name
Foreigners	→ Yes, subject to FEMA
	→ Can't exercise any rights during the course of war
Minor	→ Yes, can hold shares in name of guardian
	→ However, company can deny him membership if shares are partly paid
Insolvent	→ Yes, until shares are disclaimed by official assignee
Pawnee	→ No, since he just has possession and not the title to the shares



Section 3 (Formation of a company)

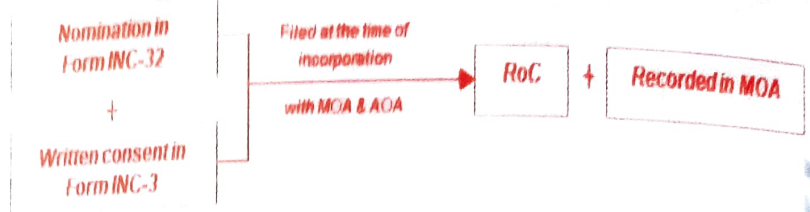
- Minimum number of members
- Public - 7
 - Private - 2
 - OPC (always 1)

- Company can be classified as -
- Co. limited by shares
 - Co. limited by guarantee
 - Unlimited Co.

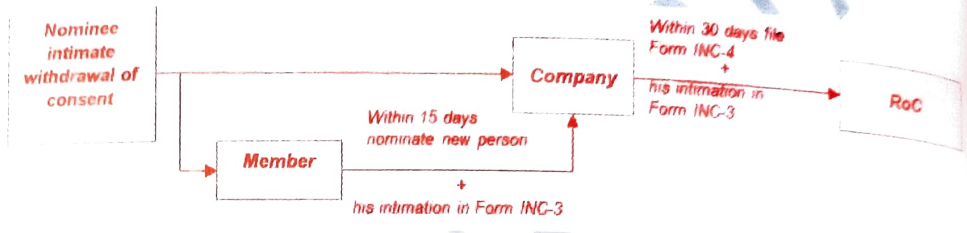
PROVISIONS RELATING TO OPC

MOA must contain name of nominee | Nominee shall become member in case of subscriber's death or incapacity to contract

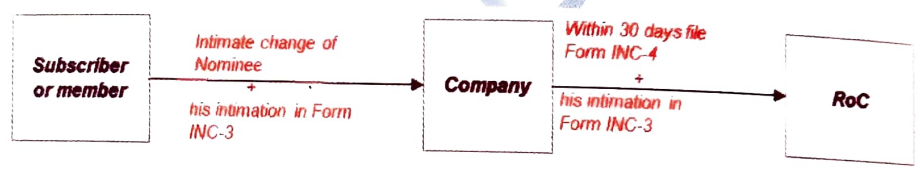
Filing for nominee



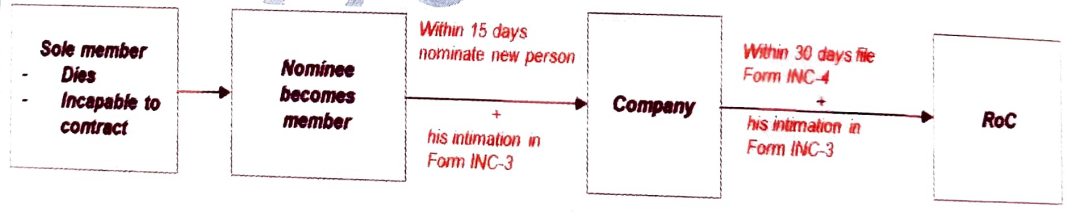
Withdrawal of consent



Change of nominee



OR



Provisions relevant to OPC

- Only a natural person who is Indian citizen & resident can be member or nominee in OPC
- Resident - person stayed in India for ≥ 182 days in preceding financial year

Four restrictions on OPC

1. Minor can't be member, nominee or hold beneficial interest
2. OPC can't be Sec. 8 company
3. Can't carry out NBFC activities
4. Can't voluntarily convert before 2 years

Mandatory conversion of OPC, if

- PSC > INR 50 lakh; or
 - Average Turnover in last 3 years > INR 2 crore
- Note** - Filing INC-5 with RoC within 60 days & comply with section 18 to convert within 6 months

Voluntary conversion of Private company into OPC

Private company may convert into OPC if its PSC and turnover within the limits

SR \rightarrow NOC from members & creditors \rightarrow File INC-6 with RoC

Section 3A (Members severally liable)

if members are reduced below -

- 7 - in case of Public Co.
- 2 - in case of Private Co.

after 6 months \rightarrow

Members who are cognisant of the fact will be severally liable for whole debts of the company

Clauses of MoA

1. Name clause
2. Situation clause (name of State)
3. Object clause
4. Liability clause
5. Capital clause
6. Subscription clause
7. Nomination clause (in OPC)

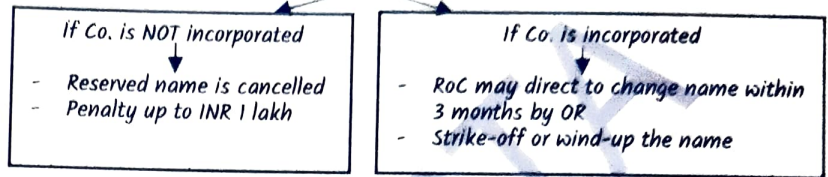
Provisions relating to Name clause

- Not be identical
- Not offensive under any law
- Undesirable in opinion of CG
- Use of some specified words requires CG approval
(Refer Rule 8, 8A & 8B)
- Reservation of the name of a new company is done using SPICE+: INC-32
- RoC will reserve the name for 20 days from date of APPROVAL in case of reservation of name by a new company
- For change of name, web service RUN (Reserve Unique Name) is to be used
- RoC reserves the name for 60 days from the date of approval in case of change of name
- 15 days re-submission period is allowed in case of defects

DOCTRINE OF ULTRA VIRES

- Ultra Vires acts means acts beyond the powers
- These contracts are void-ab-initio
- Directors will become personally liable for them
Ashbury Railway Carriage & Iron Company Limited vs. Richie

Name reserved by furnishing incorrect information



Note - However, certain powers are implied from the objects of the company

- Contains internal rules & regulations for management

Provision for ENTRENCHMENT

- AOA is altered by SR u/s 14
- However, company may provide that its AOA will be altered only if a condition more restrictive than SR is complied with
- This provision can
 - originally be there in the AOA or
 - inserted by amendment in AOA agreed by
 - ALL members - Private company
 - SR - Public company
- Notice of provision for entrenchment needs to be given to RoC

Model AOA

- Company may adopt ALL or any of the regulations of model AOA
- But if any regulation of model AOA is neither excluded nor modified, then it will automatically apply to a company

Griffith vs. Paget

- AOA of a company said only 2 directors can borrow money
- Thus, company is not liable to pay if the creditor gave loan on the bond signed by only 1 director

Royal British Bank vs. Turquand

- As per AOA, directors could borrow money if authorised by OR
- Directors borrowed money without OR
- Held that Turquand could sue the company and he could assume that OR was passed

- It is presumed that outsiders dealing with the company have read the MOA and AOA
- Works in favour of the company and against the outsider

- Outsiders dealing with the company are not required to enquire into the internal management of the company
- Works in favour of the outsiders and against the company

Exceptions to the Doctrine of Indoor Management

Knowledge of Irregularity	Howard vs. Patent Ivory	→ AOA said directors need authorisation by OR to raise loan > £ 1,000 → One director himself gave £ 3,500 loan to company → Held - he can just recover £ 1,000
Forgery	Rouben vs. Great Fingal Consolidated	→ Share certificate was signed by secretary and he also forged signatures of 2 directors → Held - forgery is nullity & transferee can't claim benefit of indoor management
Negligence & Suspicious transaction	Underwood vs. Bank of Liverpool	→ Bank couldn't assume that a director was authorised to get Company's cheque credited in his personal account
Ultra vires or illegal transactions		→ No benefit of Indoor Management for ultra vires or illegal transactions.

The provisions of the Act will override -

- MOA
- AOA
- Agreements
- Any resolution

Section 4 (MOA)

Section 5 (AOA)

Doctrine of constructive notice

Doctrine of indoor management

Section 6 (to override MOA & AOA)

SPICe+ INC-32 is filed along with following documents -

Section 7
(Incorporation)

M	MOA
A	AOA
D	→ Declaration from Advocate or CA or CS or Cost Accountant that provisions complied
	→ Declaration from subscriber & first directors that not convicted or guilty of fraud since 5 years
A	Address for correspondence till registered office is established
P	→ Particulars of subscribers → Particulars of first directors → Particulars of interest of first directors

- RoC verifies the documents and issues Certificate Incorporation in Form INC-11
- RoC also allots CIN number
- Certificate of incorporation is conclusive evidence (Jubilee Cotton Mills Ltd)
- Certificate is valid even if signed by a guardian of 5 members (Moosa vs. Ebrahim)
- Incorporation documents are to be preserved permanently
- Persons concerned will be liable u/s 447 if any false information is furnished
- Further if Co. incorporated by furnishing false information NCLT may pass an order-
 - for regulation of Co or changes in MOA or AOA
 - that liability of member is unlimited
 - removal of name of company
 - winding up
 - other orders as it may deem fit

Section 8

- This Co. has in its objects the promotion of commerce, art, science etc.
- Prohibits payment of dividend
- Applies its profits in promotion of its objects

- Incorporated without the words 'Limited' or 'Private Limited'
- Incorporated after taking a license from CG
- A firm may be its member
- Even an existing company can be converted into section 8 by taking license from CG

- Its MOA or AOA shall not be altered without CG's approval
- Section 8 company can be converted into any other company by conditions prescribed (Refer Rule 21 + 22 from main book)

- CG may **REVOKE LICENSE** if -
- contravenes section 8 or license
 - affairs conducted fraudulently
 - affairs violative of objects
 - affairs prejudicial to interest

- Where the license is revoked, CG may further
- by order provide for **AMALGAMATION** with another section 8 company with similar objects
 - apply for **WINDING UP** (any surplus asset is transferred to another Section 8 Co or may be sold and proceeds credited to Insolvency & Bankruptcy Fund)

Section 9
(Effects of Registration)

- From date of incorporation
- subscribers become members
 - company is body corporate

- perpetual succession
- power to acquire property

- power to contract
- power to sue or be sued by its name

Section 10
(Effect of MOA and AOA)

MOA and AOA once registered bind the company & members as if they have been signed by them

All moneys payable by any member to the company under the MOA or AOA shall be a debt due from him to the company

Section 10A
(Commencement of Business, etc.)

- Company incorporated after Nov 2, 2018 & having share capital shall not commence business or exercise borrowing power, unless
- declaration filed by director within 180 days of incorporation that every subscriber has paid the value of the shares, and
 - company has filed verification of registered office u/s 12(2)
- Note** - If not done, RoC may initiate the action for removal of the name

Section 11

--- Omitted ---

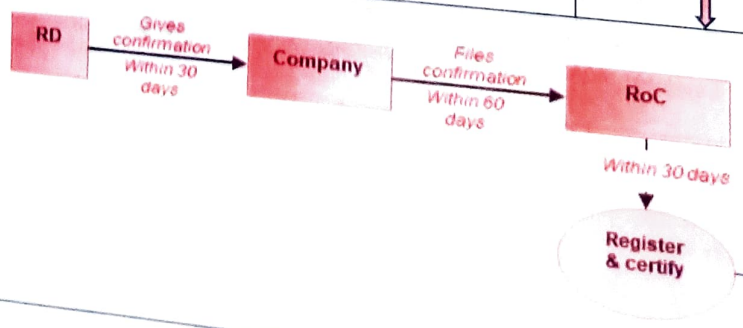
Section 12
(Registered office of the company)

- Every company must have a registered office within 30 days of its incorporation
- Company shall also furnish verification of its registered office to RoC
- Company needs to label its name at the specified places
- In case of change of name during last 2 years, former name(s) shall be affixed with the new one
- In case of OPC, the words "One Person Company" shall be mentioned in brackets below the name

Note - If RoC has reasons to believe that company is not carrying on any business, he may cause physical verification conducted and remove the name of the company

Change of Registered Office

Within CTV	Board resolution
Outside CTV	→ Board resolution → SR
Within same state from one RoC to another	→ Board resolution → SR → Approval of RD



CA HARSH GUPTA

Incorporation & matters incid

Section 13
(Alteration of MOA)

Section 14
(Alteration of AOA)

Section 15

Section 16
(Rectification of Name)

Section 17

Section 18
(Conversion of Company)

Section 19
(Subsidiary not to hold shares holding)

Section 20
(Service of document)

Section 21
(Authentication documents)

Section 22
(Execution of etc.)

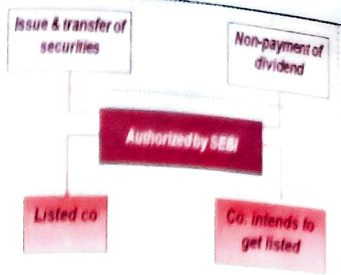
<p>Section 13 (Alteration of MOA)</p>	<ul style="list-style-type: none"> Except capital clause (altered u/s 61 by OR), A company needs to pass SR to alter the other clauses of its MOA A copy of SR shall also be file with RoC Additional points to remember <table border="1"> <tr> <td data-bbox="267 157 385 241">Name clause</td> <td data-bbox="385 157 1451 241"> <ul style="list-style-type: none"> Approval of CG also required No approval if the only change is addition or deletion of the word 'Private' Copy of CG approval shall also be filed with the RoC </td> </tr> <tr> <td data-bbox="267 241 385 346">Situation clause</td> <td data-bbox="385 241 1451 346"> <ul style="list-style-type: none"> Approval of CG also required, CG shall dispose off the application within 60 days Before giving approval, CG will make sure that consent of creditors and other persons concerned is obtained or they are discharged or are provided with the security Copy of CG approval shall be filed with the RoC of both the states </td> </tr> <tr> <td data-bbox="267 346 385 493">Objects clause</td> <td data-bbox="385 346 1451 493"> <ul style="list-style-type: none"> If company has raised money from public through prospectus & it is still unutilized Copy of SR needs to be published in a newspaper, and Exit opportunity shall be given to the dissenting shareholders in accordance with SEBI's regulations RoC to register alteration of objects within 30 days from date of filing of SR </td> </tr> </table>	Name clause	<ul style="list-style-type: none"> Approval of CG also required No approval if the only change is addition or deletion of the word 'Private' Copy of CG approval shall also be filed with the RoC 	Situation clause	<ul style="list-style-type: none"> Approval of CG also required, CG shall dispose off the application within 60 days Before giving approval, CG will make sure that consent of creditors and other persons concerned is obtained or they are discharged or are provided with the security Copy of CG approval shall be filed with the RoC of both the states 	Objects clause	<ul style="list-style-type: none"> If company has raised money from public through prospectus & it is still unutilized Copy of SR needs to be published in a newspaper, and Exit opportunity shall be given to the dissenting shareholders in accordance with SEBI's regulations RoC to register alteration of objects within 30 days from date of filing of SR
Name clause	<ul style="list-style-type: none"> Approval of CG also required No approval if the only change is addition or deletion of the word 'Private' Copy of CG approval shall also be filed with the RoC 						
Situation clause	<ul style="list-style-type: none"> Approval of CG also required, CG shall dispose off the application within 60 days Before giving approval, CG will make sure that consent of creditors and other persons concerned is obtained or they are discharged or are provided with the security Copy of CG approval shall be filed with the RoC of both the states 						
Objects clause	<ul style="list-style-type: none"> If company has raised money from public through prospectus & it is still unutilized Copy of SR needs to be published in a newspaper, and Exit opportunity shall be given to the dissenting shareholders in accordance with SEBI's regulations RoC to register alteration of objects within 30 days from date of filing of SR 						
<p>Section 14 (Alteration of AOA)</p>	<p>Subject to the provision of entrenchment, SR is required for alteration of AOA</p> <p>In case of conversion of Public company into Private, approval shall also be required from CG</p> <p>Note - Applications pending before Nov 2, 2018 shall be disposed of by NCLT</p>						
<p>Section 15</p>	<p>Every alteration made in the MOA or AOA shall be noted in every copy</p>						
<p>Section 16 (Rectification of name)</p>	<table border="1"> <tr> <td data-bbox="230 682 422 766">By CG suo-moto</td> <td data-bbox="422 682 1451 766"> <ul style="list-style-type: none"> If the name of a company is identical or too nearly resembles name of another company; CG may direct to change the name; and Company shall change the name within 3 months by passing OR </td> </tr> <tr> <td data-bbox="230 766 422 892">On application of registered proprietor of a trademark</td> <td data-bbox="422 766 1451 892"> <ul style="list-style-type: none"> Proprietor of the trademark shall give an application to the CG within 3 years; If CG finds the name of the company identical or resembling with the name of the trademark; CG may direct the company to change the name; and Company shall change the name within 6 months by passing OR </td> </tr> </table> <p>Note - Company shall give notice to RoC within 15 days of the change of the name.</p>	By CG suo-moto	<ul style="list-style-type: none"> If the name of a company is identical or too nearly resembles name of another company; CG may direct to change the name; and Company shall change the name within 3 months by passing OR 	On application of registered proprietor of a trademark	<ul style="list-style-type: none"> Proprietor of the trademark shall give an application to the CG within 3 years; If CG finds the name of the company identical or resembling with the name of the trademark; CG may direct the company to change the name; and Company shall change the name within 6 months by passing OR 		
By CG suo-moto	<ul style="list-style-type: none"> If the name of a company is identical or too nearly resembles name of another company; CG may direct to change the name; and Company shall change the name within 3 months by passing OR 						
On application of registered proprietor of a trademark	<ul style="list-style-type: none"> Proprietor of the trademark shall give an application to the CG within 3 years; If CG finds the name of the company identical or resembling with the name of the trademark; CG may direct the company to change the name; and Company shall change the name within 6 months by passing OR 						
<p>Section 17</p>	<p>If requested by member, Company shall within 7 days furnish a copy of the MOA, AOA or any resolution or agreement mention u/s 117(1)</p>						
<p>Section 18 (Conversion of Company)</p>	<p>A company may convert itself into any other class of company by altering its MOA or AOA</p> <p>After making sure all the formalities are complied with, RoC shall close the former registration and issue a fresh certificate of incorporation</p>						
<p>Section 19 (Subsidiary not to hold shares in holding)</p>	<p>No company shall hold shares in its Holding company and any such allotment of shares shall be void</p> <p>3 exception -</p> <table border="1"> <tr> <td data-bbox="601 1102 1179 1144">Holding shares as legal representative of deceased member</td> <td data-bbox="1179 1102 1451 1144">Voting power ✓</td> </tr> <tr> <td data-bbox="601 1144 1179 1186">Holding shares as trustee</td> <td data-bbox="1179 1144 1451 1186">Voting power ✓</td> </tr> <tr> <td data-bbox="601 1186 1179 1228">Where subsidiary acquired shares</td> <td data-bbox="1179 1186 1451 1228">Voting power ✗</td> </tr> </table>	Holding shares as legal representative of deceased member	Voting power ✓	Holding shares as trustee	Voting power ✓	Where subsidiary acquired shares	Voting power ✗
Holding shares as legal representative of deceased member	Voting power ✓						
Holding shares as trustee	Voting power ✓						
Where subsidiary acquired shares	Voting power ✗						
<p>Section 20 (Service of document)</p>	<table border="1"> <tr> <td data-bbox="222 1260 593 1459"> <p>Document may be served on company at its registered office by sending via.</p> <ul style="list-style-type: none"> Registered post Speed post Courier service Leaving at office E-means </td> <td data-bbox="593 1260 1068 1459"> <p>A document may be served on RoC or any member via.</p> <ul style="list-style-type: none"> Post Registered post Speed post Courier Delivering it at his office or address E-means </td> <td data-bbox="1068 1260 1451 1459"> <p>In case of delivery by post, such service is deemed to be effected</p> <ul style="list-style-type: none"> in case of notice of meeting, within 48 hours of dispatch; in any other case, in ordinary course of post </td> </tr> </table>	<p>Document may be served on company at its registered office by sending via.</p> <ul style="list-style-type: none"> Registered post Speed post Courier service Leaving at office E-means 	<p>A document may be served on RoC or any member via.</p> <ul style="list-style-type: none"> Post Registered post Speed post Courier Delivering it at his office or address E-means 	<p>In case of delivery by post, such service is deemed to be effected</p> <ul style="list-style-type: none"> in case of notice of meeting, within 48 hours of dispatch; in any other case, in ordinary course of post 			
<p>Document may be served on company at its registered office by sending via.</p> <ul style="list-style-type: none"> Registered post Speed post Courier service Leaving at office E-means 	<p>A document may be served on RoC or any member via.</p> <ul style="list-style-type: none"> Post Registered post Speed post Courier Delivering it at his office or address E-means 	<p>In case of delivery by post, such service is deemed to be effected</p> <ul style="list-style-type: none"> in case of notice of meeting, within 48 hours of dispatch; in any other case, in ordinary course of post 					
<p>Section 21 (Authentication of documents)</p>	<p>Documents requiring authentication by company or contracts made by company may be signed by</p> <ul style="list-style-type: none"> KMP; or Officer or employee duly authorised by the Board 						
<p>Section 22 (Execution of Bills etc.)</p>	<p>Any bill of exchange, promissory note etc. can be made, accepted or endorsed on behalf of company by any person acting under its authority</p> <p>A company may authorise any person, as its attorney to execute other deeds, by</p> <ul style="list-style-type: none"> Common seal; or By 2 directors or Director + CS 						



Section 23 (Public offer & Private Placement)

Public company	Private Company
<ul style="list-style-type: none"> - Public issue (IPO, FPO, OFS) - Private Placement - Rights Issue - Bonus Issue 	<ul style="list-style-type: none"> - Private Placement - Rights Issue - Bonus Issue

Section 24 (Power of SEBI)



Section 25 (Deemed Prospectus)

Deemed Prospectus

```

    graph TD
      A[Company] --> B[Public Prospectus]
      B --> C[Issue House]
      C --> D[Public App]
      D --> E[Deemed Prospectus]
  
```

- Document by which OFS is made is deemed to be prospectus
- Persons accepting the offer are deemed to be subscriber

Presumptions as to deemed OFS

Unless contrary is proved, allotment of securities is deemed OFS if

- OFS is made within 6 months of allotment
- When OFS was made, whole consideration had not been received

Contents of Deemed Prospectus

In addition to matters specified in section 26, shall also disclose -

- Net amount of consideration received,
- Time & place at which the contract wherein the securities are allotted may be inspected

Signing of Deemed Prospectus

Where person making OFS is

- **Company** - signed by 2 directors
- **Firm** - minimum one-half of the partners

Section 26 (Matters to be stated in prospectus)

Every prospectus shall be dated & signed and shall contain

- Information & reports specified by SEBI
- Declaration about compliance with governing Acts

Exceptions

- Issue to existing members or debenture holders
- Issue relating to shares & debentures which are uniform in all respects with previous listed issue

Other key points

- Date indicated in the prospectus is deemed to be date of publication
- Prospectus must be registered with RoC on or before the date of publication
- Prospectus must be issued within 90 days of registration with RoC
- Prospectus shall not include an expert statement unless the expert is not engaged or interested in promotion of management of the company + has given his written consent
- RoC will register the prospectus if all the requirements are complied with
- Prospectus shall state on the face of it that a copy had been delivered to RoC

Note - Prospectus must be truthful in all respects (Golden Rule or Golden Legacy laid down by Kinderseley in the case of New Brunswick & Canada Railway Co)

Note - Non-disclosure of the fact that dividends were paid out of capital profits also amounts to prospectus being misleading (Rex vs. Kylsant)

Section 27 (Variation in prospectus)

For variation of objects for which prospectus was issued -

- SR needs to be passed
- Notice of such SR needs to be published in 2 newspapers

Exit offer shall also be given to the dissenting shareholders by promoters or controlling shareholders

Section 28 (OFS)

- Where certain members propose to offer their shareholding to the public, any document issued by the company for OFS is deemed to be prospectus
- Members whose shares are proposed for OFS shall collectively authorise the company to take all requisite actions for OFS

Provisions of prospectus not applicable to OFS

- Minimum subscription
- Minimum application value
- Statement by Board regarding utilisation of the money
- any other provision that can't be complied with

Section 29 (Dematerialization)

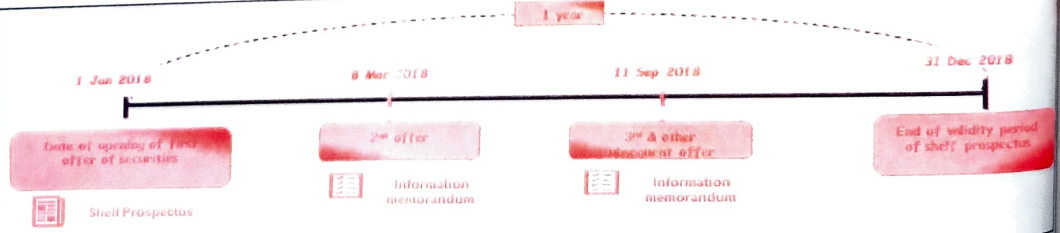
- Public offer of securities SHALL only be in dematerialized form
- Any other offer MAY also be in dematerialized form or a company MAY convert existing shares into demat
- As per Rule 9A - every unlisted public company must also opt for demat

Section 30 (Advertisement of prospectus)

In any advertisement of prospectus, it is necessary to specify -

→ objects	→ liability of members	→ share capital
→ name of signatories to MOA	→ shares subscribed by them	→ capital structure

Section 31 (Shelf Prospectus)



- Information memorandum contains material facts relating to new charges created & changes in financial position since the first/ previous offer of securities
- Shelf Prospectus + Information memorandum = Prospectus

Section 32 (Red-Herring Prospectus)

- Use in case of book-built issue
- RHP is filed with RoC 3 days prior to opening of issue
- Upon issue closing, final prospectus is filed with RoC & SEBI



Section 33 (Abridged prospectus)

Every share application form must be accompanied by abridged prospectus
 Note - If request by shareholder, copy of prospectus must be offered to him

- Exceptions -**
- Invitation to person for entering into underwriting agreement
 - Securities not offered to public

Section 34 (Criminal liability for misstatement)

Where prospectus includes misleading statements or any omission likely to mislead, every person who authorises the issue is liable u/s 447

- 2 safeguards**
- Misstatement was immaterial
 - He had reasonable grounds to believe that the statement was true or omission was necessary

Section 35 (Civil Liability for Misstatement)

Where a SUBSCRIBER has suffered a LOSS due to misstatement in prospectus, he is liable to get compensation from

- director → promoter
- expert → person who authorised issue of prospectus
- person who authorised to be named as a director

Note - In case of fraud, these persons will have unlimited liability
Note - Person who purchased shares from secondary market, is not entitled to damages under this section (Peek vs. Gurney)

- 3 safeguards**
- Having consented to become director, he withdrew his consent before the issue
 - Prospectus was issued without his knowledge & on becoming aware he gave a reasonable public notice
 - His statement was an extract or a copy of expert's statement & he believed the competence of the expert

Section 36

- Person liable u/s 447 if he fraudulently induces another to
- enter into underwriting agreement
 - enter into agreement to secure profit to any of the parties
 - enter into agreement for obtaining credit facilities

Section 37

A suit may be filed or action may be taken u/s 34, 35 or 36 by any person or group of persons affected by misstatement

Section 38 (Punishment for personation)

- A person shall be liable u/s 447, if
- makes an application in fictitious name
 - makes multiple applications in different names
 - induces a company to allot shares in fictitious name

- This punishment shall be reproduced in every prospectus
- Where a person is convicted, Court may order disgorgement of his gain or seizure or disposal of his securities
- Amount so received shall be credited to IEPF

Section 39 (Allotment of securities)

Minimum subscription

- As states in prospectus
- SEBI has specified 90%
- Not applicable to OFS

Minimum application value

- 5% of nominal value
- 25% of issue price as per SEBI
- 100% for OFS

If minimum subscription not received?

- If not received within 30 days of date of issue of prospectus,
- amount shall be refunded within 15 days from closure of issue,
- else, officers in default are liable to repay that money with 15% p.a. interest

Return of Allotment

To be filed within 30 days from allotment in form PAS-3

Section 40 (Listing)

- Every company making public issue, must obtained in-principle listing approval from stock exchange(s)
- The name of stock exchange(s) must be disclosed in prospectus

Moneys received on application shall be kept in a separate account & shall not be utilised for purpose other than -

- Adjustment against allotment
- Repayment of monies if unable to allot

Underwriting commission - Conditions

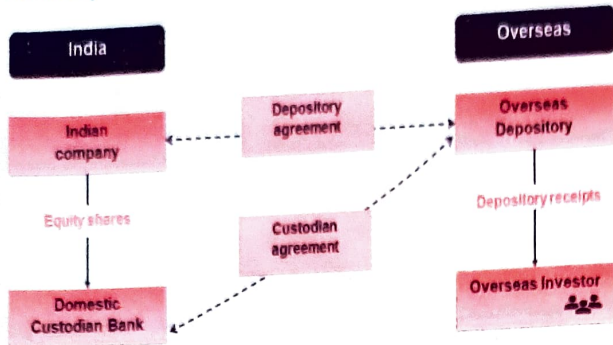
N	Not paid on the shares not offered to public
C	Contract with underwriter filed with RoC
D	Disclosure in prospectus

P	Paid out of profits or proceeds of the issue
A	Authorised by AOA
R	Rate shall be lower of - Shares: 5% of issue price OR rate in AOA - Debentures: 2.5% of issue price OR rate in AOA



Section 41 (GDR)

SR is required to issue GDRs



Conditions

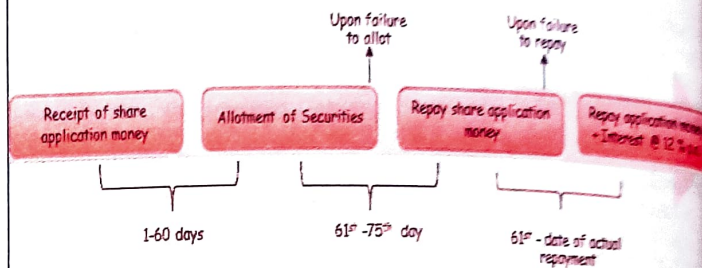
- BR + SR
- GDR issued by Overseas Depository Bank and underlying shares are kept in the custody of domestic custodian
- Company to comply with GDR scheme + other regulations of RBI
- Obtain compliance report from a professional

Section 42 (Private Placement)

Points to Ponder

- Made to only selected group of IDENTIFIED PERSONS
- Private Placement Offer & Application has to be a specific offer with no right of renunciation
- Maximum to 200 persons in a FY
- Limit of 200 excludes QIBs and ESOPs
- Offer to more than 200 persons is deemed as Public offer
- Limit of 200 is reckoned individually for each kind of security i.e. equity, preference & debentures
- Payment shall be accepted only by banking channels & not by cash
- No new private placement unless the earlier issue is completed or withdrawn
- Complete prohibition on marketing or public advertisements
- If company contravenes any provision, company shall refund all monies with 12% interest within 30 days

Time for allotment of securities



Money received shall be kept in separate bank account & not utilised for purpose other than

- adjustment against allotment, or
- refund where company is unable to allot

Note - If allotted, return of allotment filed within RoC within 15 days

- As per Rule 14, SR also needs to be passed for private placement.
- However, in case of NCD, BR shall be sufficient if within the limit of section 180(1)(c)
- Further, if NCD > limit of 180(1)(c), SR once in a year is sufficient
- Also, SR once in a year is sufficient for all the allotment to QIBs during the year

<p>Section 43 (Kinds of share capital)</p>	<p>2 kinds of share capital viz.</p> <ol style="list-style-type: none"> Equity share capital <ul style="list-style-type: none"> With voting rights With DVR Preference share capital <p><u>Note</u> - Preference capital has preference over equity regarding payment of dividend and repayment of capital</p> <p><u>Note</u> - Equity shares with DVR cannot be converted into equity shares without DVR and vice-versa.</p>	<p align="center"><u>Conditions for issuing shares with DVR</u></p> <table border="1"> <tr> <td>Power in AOA</td> <td>OR (if listed - postal ballot)</td> <td colspan="2">Voting rights on DVR \leq 74% of Total Voting Power</td> </tr> <tr> <td colspan="4">During the last 3 years</td> </tr> <tr> <td colspan="4"> <ul style="list-style-type: none"> Not defaulted in filing of financial statements & annual return Not been penalised under RBI, SEBI, SCRA, FEMA or other special act </td> </tr> <tr> <td colspan="2">No subsisting default in 3DP</td> <td colspan="2">No default in past 5 years in payment of</td> </tr> <tr> <td>D - Dividend</td> <td></td> <td>- Preference dividend</td> <td></td> </tr> <tr> <td>D - Deposits</td> <td></td> <td>- Term loan from banks or FI</td> <td></td> </tr> <tr> <td>D - Debentures</td> <td></td> <td>- Statutory payments of employees</td> <td></td> </tr> <tr> <td>P - Preference shares</td> <td></td> <td>- IEPF</td> <td></td> </tr> </table>				Power in AOA	OR (if listed - postal ballot)	Voting rights on DVR \leq 74% of Total Voting Power		During the last 3 years				<ul style="list-style-type: none"> Not defaulted in filing of financial statements & annual return Not been penalised under RBI, SEBI, SCRA, FEMA or other special act 				No subsisting default in 3DP		No default in past 5 years in payment of		D - Dividend		- Preference dividend		D - Deposits		- Term loan from banks or FI		D - Debentures		- Statutory payments of employees		P - Preference shares		- IEPF	
Power in AOA	OR (if listed - postal ballot)	Voting rights on DVR \leq 74% of Total Voting Power																																			
During the last 3 years																																					
<ul style="list-style-type: none"> Not defaulted in filing of financial statements & annual return Not been penalised under RBI, SEBI, SCRA, FEMA or other special act 																																					
No subsisting default in 3DP		No default in past 5 years in payment of																																			
D - Dividend		- Preference dividend																																			
D - Deposits		- Term loan from banks or FI																																			
D - Debentures		- Statutory payments of employees																																			
P - Preference shares		- IEPF																																			
<p>Section 44 (Nature of shares and debentures)</p>	<ul style="list-style-type: none"> Movable property Transferable in manner provided by AOA 	<p>Section 45 (Numbering of shares)</p>	<ul style="list-style-type: none"> Every share shall have a distinct number Not applicable to shares held in demat form 																																		
<p>Section 46 (Share certificate)</p>	<p>Issued</p> <ul style="list-style-type: none"> under common seal of the company, or signed by 2 directors, or by a director + CS wherever appointed in OPC: by director or CS/ person authorised by Board <p>Prima facie evidence of the title</p>	<p>Duplicate may be issued if original is</p> <ul style="list-style-type: none"> lost or destroyed defaced, mutilated or torn + surrendered <p>Duplicate certificate to be issued within</p> <ul style="list-style-type: none"> 3 months - unlisted company 45 days - listed company <p><u>Note</u> - Share certificate is not an official publication</p>																																			
<p>Section 47 (Voting rights)</p>	<p align="center">EQUITY SHARES</p> <ul style="list-style-type: none"> Every member has a right to vote on EVERY resolution In case of poll - voting in proportion to the paid-up equity capital 		<p align="center">PREFERENCE SHARES</p> <ul style="list-style-type: none"> Voting rights on following resolutions only - <ul style="list-style-type: none"> Resolution directly affecting their rights Resolution for winding up Repayment or reduction of share capital ALL the resolutions if dividend not paid for 2 or more years In case of poll $\frac{\text{Voting rights of equity shareholders}}{\text{Voting rights of preference shareholders}} = \frac{\text{Paid-up equity share capital}}{\text{Paid-up preference share capital}}$																																		
<p>Section 48 (Variation of rights)</p>	<p>Rights of a class may be varied by</p> <ul style="list-style-type: none"> Writing consent of $\geq 3/4^{\text{th}}$ value of shares of that class, or SR of that class <p>If variation of one class affects another class; similar approval required from other class as well</p>	<p>The provision of variation should be</p> <ul style="list-style-type: none"> Contained in MOA or AOA; or In absence, should not be prohibited by terms of issue of shares of that class 	<p><u>Appeal</u></p> <ul style="list-style-type: none"> Right of appeal to NCLT - Holders holding $\geq 10\%$ issued shares of that class Appeal shall be made within 21 days Decision of NCLT is binding on shareholders NCLT's order will be filed with Registrar 																																		
<p>Section 49 (Calls on uniform basis)</p>	<p>Calls to be made on uniform basis on all the shares of same class</p>		<p align="center"><u>Requisites of a valid call (Table F)</u></p> <ul style="list-style-type: none"> Board resolution Gap of 1 month between 2 calls Board can revoke or postpone calls made Interest on calls in arrear : 10% p.a. Interest on calls in advance : 12% p.a. $\leq 25\%$ of nominal value of share 14 days' notice 																																		
<p>Section 50 (Calls in advance)</p>	<ul style="list-style-type: none"> Company can accept Calls in advance, if authorised by AOA However, NO voting rights against calls in advance 																																				
<p>Section 51</p>	<ul style="list-style-type: none"> If authorised by AOA, company may pay dividend in proportion to paid-up capital 																																				
<p>Section 52 (Use of Securities Premium)</p>	<p>Bonus issue</p>	<p>Writing off preliminary expenses</p>	<p>Writing off commission or discount on issue of shares/ debentures</p>	<p>Premium on redemption of preference shares or debenture</p>	<p>Buy-back</p>																																
<p>Section 53 (Issue of shares at discount)</p>	<ul style="list-style-type: none"> A share cannot be issued at discount Else will be liable to penalty and will have to refund the amount with 12% p.a. interest 		<p align="center"><u>Exceptions</u></p> <ol style="list-style-type: none"> Section 54 (sweat equity shares) Shares can be issued at discount when a debt is converted into shares pursuant to statutory resolution plan or debt restructuring scheme of RBI 																																		

Section 78
(Sweat Equity Shares)

Sweat equity shares means equity shares issued to directors or employees

- at discount or
- for consideration, other than cash

for providing know-how or making available rights in the nature of IPR

Conditions

S - SR

E - Explain in resolution

S - SEBI : if listed
Rules : if unlisted

Conditions prescribed in Rules for unlisted company (Rule 8)

- Employee means a permanent employee
- Employees and director of holding and subsidiary also included
- Adequate disclosures in explanatory statement is required
- SR is valid only for 12 months for making allotment
- Following LIMITS shall apply on issue

15% of the existing paid-up equity share capital IN A YEAR or	}	whichever is higher
shares of the issue value of INR 5 crore		

- 25% of paid-up equity capital AT ANY TIME
 - For start-up; 50% of paid-up capital up to 10 years from the date of incorporation
- Lock-in period of 3 years

Section 81
(Redemption of preference shares)

- Irredeemable preference shares can't be issued, or
 - Max tenure = 20 years
- Exception -**
- For infrastructure companies, tenure can be upto 30 years with a condition that at least 10% shall be redeemed every year from 21st year onwards

Conditions for redemption

- Redemption only out of
 - Profits, or
 - Proceed of fresh issue
- Shares shall be fully paid
- In redeemed out of profits, transfer nominal value to CRR
- Premium on redemption shall be out of profits or securities

Note - CRR can be used only for issue of fully paid bonus shares

What if company is not able to redeem or pay dividend?

Company may issue further redeemable preference shares with consent of -

- 3/4th value of preference shares &
- NCLT

Section 86
(Transfer & transmission)

- Conditions**
- Share certificate +
 - Transfer deed (SH-4) duly stamped, dated & executed by transferor and transferee
- Delivered to company within 60 days of execution
- Note -** If transfer deed lost, company may still register the transfer after taking indemnity
- Note -** In case transfer of PARTLY PAID shares, if transfer deed is logged by transferor alone, take no objection from transferee by giving him 2 weeks' notice
- Note -** Company may register transmission by operation of law without complying with above conditions.

Time limit for delivery of share certificate

In the case of subscribers to the memorandum	2 months from the date of incorporation
In the case of any allotment of any of its shares	2 months from the date of allotment;
In case of any allotment of debentures	6 months from the date of allotment
In case of transfer or transmission of securities	within 1 month of receipt of transfer deed or intimation of transmission

Transfer vs. Transmission

Basis	Transfer	Transmission
Voluntary act	Voluntary act of the parties by way of a contract.	Result of the operation of law e.g. due to death.
Transfer deed	Required	Not required
Nature of act	Transfer is a normal course of transferring property.	It takes place on death or insolvency of a holder of securities.
Consideration	Generally made for some consideration.	Generally made without any consideration.
Stamp duty	Payable	Not payable

Section 59
(Punishment for personation)

Who is liable?	Imprisonment	Minimum	Maximum
Person who deceitfully personates as an owner	1 year - 3 years, AND	INR 1 lakh	INR 5 lakh

**Section 54
(Sweat Equity Shares)**

Sweat equity shares means equity shares issued to Directors or employees

- at discount or
- for consideration, other than cash

for providing know-how or making available rights in the nature of IPR

Conditions

S - SR

E - Explain in resolution

S - SEBI : if listed
Rules : if unlisted

Conditions prescribed in Rules for unlisted company (Rule 8)

- Employee means a permanent employee
- Employees and director of holding and subsidiary also included
- Adequate disclosures in explanatory statement is required
- SR is valid only for 12 months for making allotment
- Following LIMITS shall apply on issue
 - 15% of the existing paid-up equity share capital IN A YEAR or shares of the issue value of INR 5 crore } whichever is higher
 - 25% of paid-up equity capital AT ANY TIME
 - For start-up; 50% of paid-up capital up to 10 years from the date of incorporation
- Lock-in period of 3 years

**Section 55
(Redemption of preference shares)**

- Irredeemable preference shares can't be issued, or
 - Max tenure = 20 years
- Exception -**
- For infrastructure companies, tenure can be upto 30 years with a condition that at least 10% shall be redeemed every year from 21st year onwards

Conditions for redemption

- Redemption only out of
 - Profits, or
 - Proceed of fresh issue
 - Shares shall be fully paid
 - In redeemed out of profits, transfer nominal value to CRR
 - Premium on redemption shall be out of profits or securities premium
- Note - CRR can be used only for issue of fully paid bonus shares

What if company is not able to redeem or pay dividend?

Company may issue further redeemable preference shares with consent of -

- 3/4th value of preference shares &
- NCLT

**Section 56
(Transfer & transmission)**

- Conditions**
- Share certificate +
 - Transfer deed (SH-4) duly stamped, dated & executed by transferor and transferee

Delivered to company within 60 days of execution

Note - If transfer deed lost, company may still register the transfer after taking indemnity

Note - In case transfer of PARTLY PAID shares, if transfer deed is logged by transferor alone, take no objection from transferee by giving him 2 weeks' notice

Note - Company may register transmission by operation of law without complying with above conditions.

Time limit for delivery of share certificate

In the case of subscribers to the memorandum	2 months from the date of incorporation
In the case of any allotment of any of its shares	2 months from the date of allotment;
In case of any allotment of debentures	6 months from the date of allotment
In case of transfer or transmission of securities	within 1 month of receipt of transfer deed or intimation of transmission

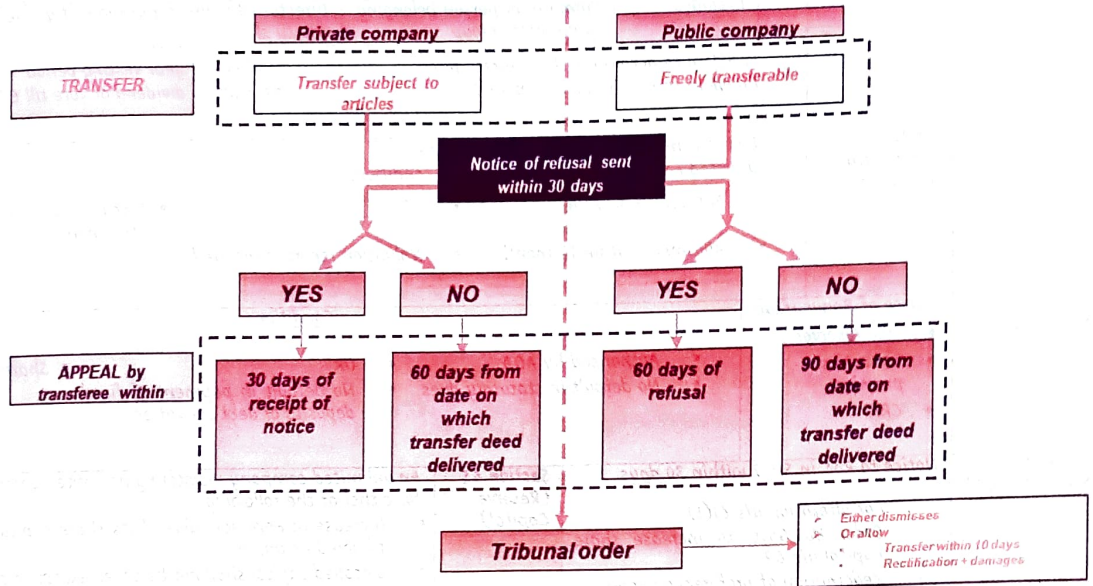
Transfer vs. Transmission

Basis	Transfer	Transmission
Voluntary act	Voluntary act of the parties by way of a contract.	Result of the operation of law e.g. due to death.
Transfer deed	Required	Not required
Nature of act	Transfer is a normal course of transferring property.	It takes place on death or insolvency of a holder of securities.
Consideration	Generally made for some consideration.	Generally made without any consideration.
Stamp duty	Payable	Not payable

**Section 57
(Punishment for personation)**

Who is liable?	Imprisonment	Minimum	Maximum
Person who deceitfully personates as an owner	1 year - 3 years, AND	INR 1 lakh	INR 5 lakh

SNAPSHOT



Section 59 (Rectification of Register of members)
 Rectification can be done in case name of any person, without sufficient cause -

- Entered in or omitted from register of members, or
- Delay in entering the name

Appeal by whom

- Person aggrieved;
- Member; or
- company

Appeal to whom - NCLT

Order by NCLT -

- dismiss the appeal, or
- direct transfer/ transmission within 10 days

Section 60 If authorised capital is published, the subscribed and paid-up capital shall also be published along with.

Section 61 (Alteration of share capital)

Methods of alteration

- Increasing authorised share capital
- Consolidating shares into larger amount
- Converting shares into stock & vice-versa
- Sub-dividing shares into smaller amount
- Cancelling the unsubscribed capital i.e. Diminution of share capital

Conditions

- Authorised by AOA; and
- OR

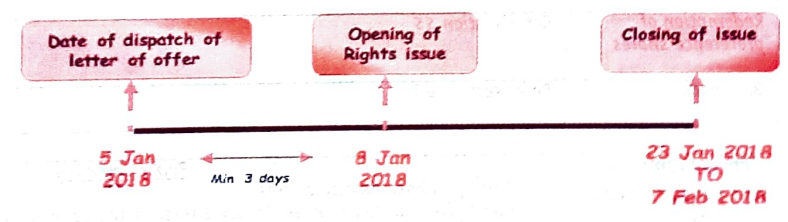
Share vs. Stock

SHARE	STOCK
Shares in physical form bear distinct numbers	Stocks are the consolidated value of share capital
May or may not be fully paid-up	Always fully paid-up
Have a nominal value	Does not have any nominal value
All shares are of equal denomination	Denomination of stocks varies
It is not possible to transfer shares into fraction	Possible
Shares comes into existence before the stock and it is issued initially	Stock comes into existence after conversion of shares into stock and on conversion of shares into stock

Section 62 (Further issue of shares)

62(1)(a) Rights Issue

- Issue of shares proportionately to existing shareholders
- Notice must be dispatched at least 3 days before the opening of issue
- Issue to remain open for 15 to 30 days
- In Private company, lesser period may apply, if consent of 90% members is obtained
- If AOA authorise, it includes Rights of renunciation in favour of any other person
- If shareholder doesn't subscribe or renounce → Board may dispose off those shares



Exception to Right issue -

- Conversion of debentures or loan having option to be converted into shares (Provided they were issued after taking approval by way of SR)
- Conversion of a Government loan into shares in pursuance to an order from Government (if terms unacceptable, company may appeal to NCLT within 60 days) - This is also called AUTOMATIC INCREASE IN SHARE CAPITAL



62(1)(b) ESOP	SR Employee		Director excluding independent	Employee or director of subsidiary or holding
	Includes	Permanent employee	Director who directly or indirectly holds > 10% of equity shares	
	Excludes	Promoter or person belonging to promoter group		
			- Minimum 1 year vesting period	
			- No right to dividend or vote till ESOP exercised	

- 62(1)(c) Preferential allotment
- Listed company - comply SEBI regulations
 - Unlisted company - comply following conditions -
 - Authorised by AOA
 - Allotment within 12 months
 - SR
 - Valuation report is required
 - Disclosures in explanatory statement

Section 63 (Bonus Issue)

- Source of Bonus Issue
- Free reserves
 - Securities premium
 - CRR
- Conditions
- Authorised by AOA
 - No default in statutory dues
 - OR
 - No default in payment of fixed deposits or debt securities
 - Shares fully paid-up

Section 64 (Notice to RoC)

- Notice to RoC in SH-7 within 30 days
- For alteration u/s 61(1)
 - Order by Govt. to increase share capital u/s 62
 - Redemption of preference shares
- Section 65 (Reserve Capital)
- An unlimited company registering as limited company may provide for either of the following
- Increase in nominal value of its share capital and reserving it till winding up; or
 - Uncalled capital shall not be called except in case of winding up

Section 66 (Capital Reduction)

Methods of Capital reduction		Conditions	
i	Extinguish or reduce liability on amount not paid up	- SR	
ii	With or without extinguishing liability	- NCLT's approval	
	<ul style="list-style-type: none"> Canelling lost capital, or Paying-off excess capital 	<ul style="list-style-type: none"> NCLT give notice to regulatory authorities to give representations within 3 months Take care of creditor's interest 	
		Then NCLT pass the order for capital reduction	
		NCLT's order is then filed with RoC within 30 days	

ALTERATION OF SHARE CAPITAL	REDUCTION OF SHARE CAPITAL
section 61	section 66
OR	SR
No approval of NCLT	NCLT's approval required
Creditors not affected	creditors affected
5 methods prescribed u/s 61 which includes DIMUNITION as well	Methods prescribed u/s 66

Reduction of capital without NCLT's approval

Forfeiture of shares	<ul style="list-style-type: none"> Forfeiture of shares means taking back of shares if calls are not paid Explicit power of forfeiture needs to be contained in the Articles Conditions under Table F (model AOA) <ul style="list-style-type: none"> ☺ Authorisation in AOA ☺ Board resolution ☺ 14 days' notice to be allowed for paying the calls ☺ Power of forfeiture must be exercise bona-fide and for the benefit of the company. Board is empowered to cancel such forfeiture and claim the amount due with interest.
Surrender of shares	Means surrendering of the shares voluntarily by the shareholder. AOA must authorise the same and it is possible where <ol style="list-style-type: none"> forfeiture is justified; or Surrendered in exchange for new shares of same nominal value.
Redemption of preference shares	Refer section 55
Buy-back	Refer section 68

Section 67 (Restriction on purchase of own shares)

- | | |
|-----------------|--|
| Private company | Can't purchase its own shares |
| Public company | <ol style="list-style-type: none"> Can't purchase its own shares Can't give loan to purchase its own shares or shares of the holding However, can give loan if given <ul style="list-style-type: none"> By banking company in ordinary Course of business Pursuant to scheme approved by SR for the shares to be held by trustee for benefit of employees To employees (other than directors/ KMP) ≤ 6 months' salary for purchasing FULLY paid-up shares |

→ Authorised by AOA

→ ≤ 10% of paid-up equity capital + free reserves (including securities premium) Board resolution at Meeting	→ ≤ 25% of paid-up capital + free reserves (including securities premium) & ≤ 25% of paid-up equity in any FY Special Resolution
---	--

→ Post buy-back debt equity ratio - Max. 2:1	→ Shares to be fully paid-up
→ Unlisted company - Comply with Rules hereunder Listed company - Comply with SEBI regulations	→ Buy-back can be done from <ul style="list-style-type: none"> ▪ Exiting shareholders on proportionate basis ▪ Open market ▪ Employees
→ Gap of at least 1 year between 2 buy-backs	→ Buy-back to be completed within 1 year from the date of resolution
→ Before buy-back file a Declaration of Solvency	→ Physically destroy the share certificates within 7 days
→ NO further issue of similar kind of securities within 6 months, EXCEPT <ul style="list-style-type: none"> ▪ Bonus issue, or ▪ To meet statutory obligations 	→ Buy-back register should be kept → Buy-back return needs to be filed within 30 days of completion

Section 69 (CRR)

- Where buy-back out of Free reserves or securities premium, create CRR = nominal value of shares bought back
- CRR can be used only to issued fully paid bonus shares

Section 70 (Prohibition on buy-back)

A company shall not purchase its shares

- Through any subsidiary or investment company
- If default is made in last 3 years in repayment of Deposits; debentures; dividend; Preference shares; term loan
- If default in section 92, 123, 127 & 129

Section 71 (Debentures)

- If optionally convertible debentures - SR required
- If prospectus is issued or invitation to public or member ≥ 500 - appointment of Debenture trustee is mandatory

Conditions to issue SECURED DEBENTURES

1. Tenure - max. 10 years; but can extend up to 30 years for infrastructure companies
2. Charge - debentures to be secured by charge on assets of company/ holding/ subsidiary/ associate
3. Debenture Trustee - mandatory
4. Type of Charge - fixed charge

DISQUALIFICATIONS OF DEBENTURE TRUSTEE

No person eligible to be appointed as debenture trustee if -

Shareholder	Relative of any promoter	Indebted to CASH*
Promoter, Director, KMP or employee of CASH*	Given a guarantee	Has pecuniary relationship of lower of -
Entitled to money other than remuneration		<ul style="list-style-type: none"> ▪ 2% of turnover; or ▪ INR 50 lakh

*CASH means (Cash, Associate, Subsidiary & Holding)

Creation of DRR and DRI

Type of Company	DRR	DRI
Listed Company		
1. AIFI + Banks	NIL	NIL
2. PFIs	NIL	NIL
3. Remaining listed companies		
a. Public Issue		
• NBFC + Housing Finance Co.	NIL	15%
• Other listed companies	NIL	15%
b. Private Placement	NIL	NIL
Unlisted Company		
1. AIFI + Banks	NIL	NIL
2. PFIs	NIL	NIL
3. Remaining unlisted companies		
a. NBFC + Housing Finance Co.	NIL	NIL
b. Other unlisted companies	10%	15%

- DRR is created out of profits
- DRI shall be created on or before 30th April of each year for Debentures maturing on 31st March of next year

Section 72 (Nomination)

- Any person holding securities may appoint a nominee to whom shares will vest on his death
- Nominee will be entitled to the shares on death of holder of security irrespective of any other law or will
- Minor can also be a nominee



Section 73 (Deposits from Members)

Conditions for accepting deposits from members

- OR
- Comply with Rules
- Comply with following conditions

D	Deposit Repayment Reserve	Up to 30 th April amounting to 20% of deposits maturing in following year
S	Security	Deposits shall be secured. If unsecured or partly secured, 'Unsecured deposits' shall be specifically mentioned
C		<ul style="list-style-type: none"> - Circular shall be issued to members - Copy of circular filed with RoC within 30 days - Certify that no default in repayment of deposits since last 5 years

Note - Requirement of deposit insurance no longer there

Note - In case of default, a depositor may approach NCLT for an order directing the company to repay deposits

Exemption - Private Company

Following private companies can accept deposits without complying with conditions 'b' and 'c' -

1. Accepting deposits \leq 100% of (PSC+FR+SP)
2. Start-up for 5 years
3. Which satisfies all the conditions -
 - a. Not an associate or subsidiary
 - b. Borrowings from banks, FI or Body corporate is less than

Twice of PSC	}	whichever is lower
INR 50 crore		
 - c. Not defaulted in repayment of such borrowings

Exemption - IFSC Public Company

Conditions 'b' and 'c' shall not apply to an IFSC Public company accepting deposits \leq 100% (PSC+FR)

Section 74 (Repayment of Deposits accepted before this Act)

In respect of deposits accepted before the commencement of this Act & remains unpaid, Company shall

Note - NCLT may, on application, allow further time.

1. File a statement with RoC within 3 months about the sums remaining unpaid
2. Repay the same within 3 years, or on or before their maturity date - whichever is earlier

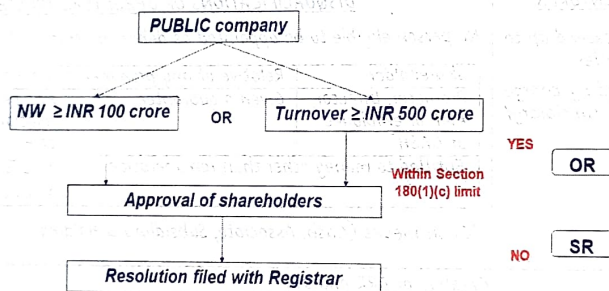
Section 75 (Damages for Fraud)

Where deposits mentioned in Section 74 are not repaid with intent to defraud, every officer responsible shall also be liable u/s 447 without any limitation on the liability

Section 76 (Deposits from Public)

Only an ELIGIBLE company can accept PUBLIC deposits

Meaning of ELIGIBLE COMPANY



Conditions for accepting PUBLIC DEPOSITS

- All conditions laid down in Section 73
- Obtaining credit rating from a recognised credit rating agency
- In case of secured deposits, charge shall be created within 30 days

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

Who is liable	Imprisonment, and	Fine	
		Min.	Max.
Company	NA	<ul style="list-style-type: none"> • 1 crore; or • Twice the amount of deposit accepted, whichever is lower 	10 crore
Every officer in default	Upto 7 years	INR 25 lakh	2 crore

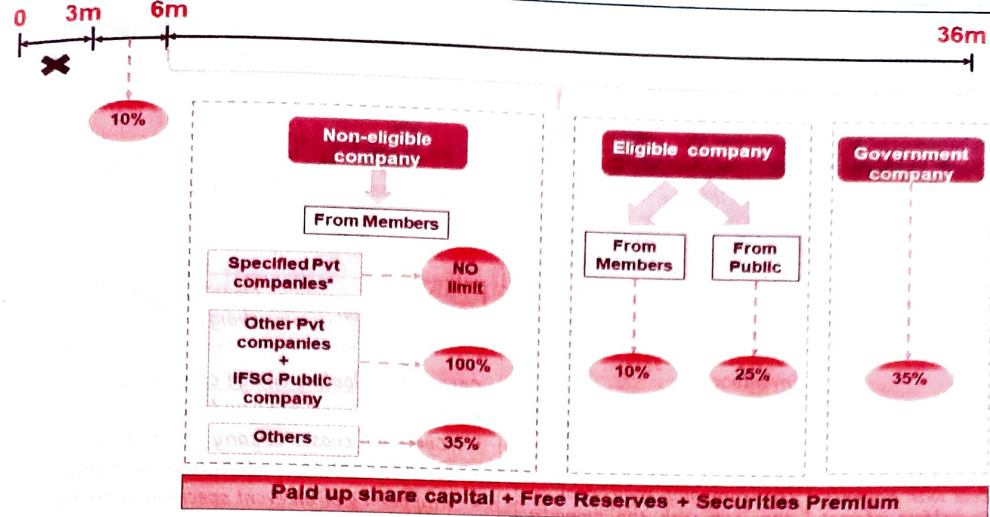
If defaulted with the intention to deceive, also liable u/s 447

Important Provisions of Rules

Meaning of Deposits

Deposit means any receipt of money, excluding -

Institutions	Instruments	Other exclusions
<ol style="list-style-type: none"> 1. Government 2. as per FEMA 3. Bank 4. PFI 5. Inter-corporate loans 	<ol style="list-style-type: none"> 6. Commercial papers, etc. 7. Subscription for securities as per Act 8. Secured Bonds/ debentures or CCD \leq 10 years 9. Listed NCD 	<ol style="list-style-type: none"> 10. Nidhi company 11. Chit fund 12. Convertible note \geq ₹ 25 lakh by Start-up for 10 years 13. CIS 14. AIF/ MF/ VCF/ InvTs/ Reits
<p><u>Persons</u></p> <ol style="list-style-type: none"> 15. Loan from Directors (also Relative of director in Private Co.) + Declaration that not given out of borrowings 16. Loans from employee \leq annual salary (non-interest bearing security deposit) 17. Loan from promoter as per Bank's stipulation 		<p><u>In course of business</u></p> <ol style="list-style-type: none"> 18. Non-interest bearing amount held in trust 19. Trade advances \leq 365 days; advance against immovable property etc.



- *Specified Pvt companies are -
1. Start-up for 10 years
 2. Which satisfies all the conditions -
 - a. Not an associate or subsidiary
 - b. Borrowings from banks, FI or Body corporate is less than

Twice of PSC	}	whichever is lower
INR 50 crore		
 - c. Not defaulted in repayment of such borrowings

Deposit Trustees	<p>A company accepting secured deposits shall appoint Deposit trustee by executing a deposit trust deed at least 7 days before issuing circular</p> <p>Trustee can be removed only by Unanimous resolution of the directors present at the meeting (with at least 1 independent director present)</p>	<p style="text-align: center;"><u>Disqualifications of Deposit Trustee</u></p> <p>Following persons can't be appointed as deposit trustee -</p> <ul style="list-style-type: none"> • Director, KMP or officer/ employee of CASH (Co., Associate, Holding, Subsidiary) or Related to them • Indebted to CASH • Having material pecuniary relation with the company • Give guarantee for debts secured by deposits <p style="text-align: center;"><u>Duties of Deposit Trustee</u></p> <ul style="list-style-type: none"> - Assets on which charge is there is sufficient - Circular shouldn't contain any inconsistent information - Company doesn't commit any breach of covenant - Reasonable steps for any breach of covenant by company - Call meeting of deposit-holders as and when required - Supervise creation of security - Take necessary steps to enforce security <p>Note - Trustee shall call meeting when requisitioned by $\geq 10\%$ of depositors by value or on happening of any event affects the interest of depositors</p>
Pre-mature payment of deposits	<p>Company may repay deposits on a pre-mature basis (only after 6 months) but the rate of interest on such deposits shall be reduced by 1% from the rate which company would have paid had the deposits been accepted for that period</p>	
Return of Deposits	<p>Every company (other than Government company) shall on or before 30th June of every year, file with RoC, a return of deposits or particulars of transactions not considered as deposit or both in form DPT-3</p>	
Penal rate of interest	<p>There is a penal rate of interest of 18% p.a. for overdue period in case on deposits remaining unpaid.</p>	



Consequences of Non-registration of charge

Charge
Charge means an interest or lien created on property or assets of company as security & includes mortgage

- The charge is void as against the liquidator
- During liquidation, charge-holder assumes the status of unsecured creditor
- Subsequent charge-holder gets a better title
- Company shall be liable u/s 86
- Company is however good against the company & the amount is payable by the company.

Need for Registration of Charge

Once registered, it becomes public information and acts as guide to know as to how much company has borrowed against its assets & from whom.

Crystallisation of Floating charge



Fixed vs. Floating Charge

Fixed Charge	Floating Charge
Cover assets which are ascertained & definite	Created on property of a fluctuating type. Eg - inventory
Charge is identifiable with respect to the property & vice-versa	The property is NOT identifiable with respect to floating charge
Company can deal with property such that charge-holders interest is not affected	The company may deal in any way with the property that has been charged.

Cases when floating charge crystallises -

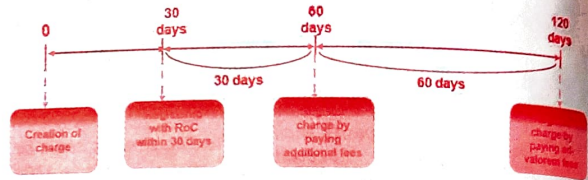
- Company goes into liquidation
- Company ceases to carry on business
- Creditors take steps to enforce their security
- Happening of an event specified in the deed

Section 77
(Duty to register Charge)

Company to register charges created before November 2, 2018

1. Within 30 days of creation
2. For charges created before Co. (Amd) Act, 2019 i.e. November 2, 2018 - within 300 days of creation by paying additional fees
3. Else, within 6 months from commencement of Co. (Amd) Act, 2019 by paying additional fees

Company to register charges created on or after November 2, 2018



- RoC shall issue a certificate of registration in Form CHG-2
- Liquidator or any other creditor shall not take into account any unregistered charge

Section 78
(Application for registration of charge)

- If company fails to register charge within 30 days, charge-holder may himself apply for registration of the charge
- RoC shall give a 14 days' notice to company before registering such charge
- Charge-holder will be entitled to recover the fees paid for charge registration from company

Section 79

The provisions of section 77 shall be applicable to
 a. company acquiring property subject to charge; and
 b. modification of any charge
Note - change of base rate in case of fluctuating rate loans is not a modification

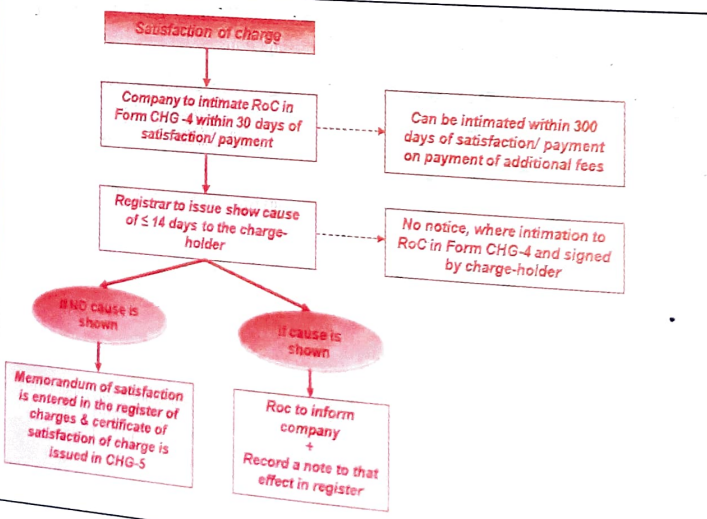
Section 80

Where a charge is registered, any person shall be deemed to have a notice of the charge from the date of such REGISTRATION

Section 81

RoC shall keep a register of charges
 It shall be open to inspection by any person on payment of fees

Section 82
(Satisfaction of Charge)



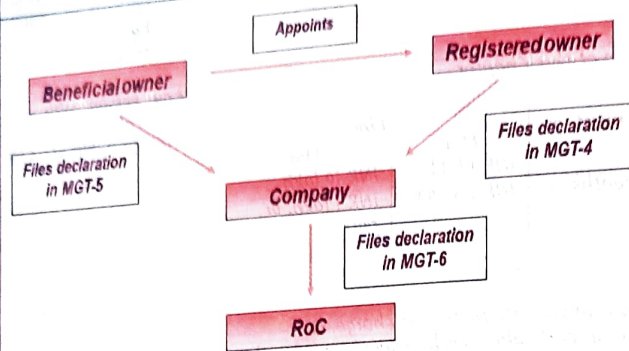
Note - If the fact of satisfaction or payment is not intimated even within 300 days, the delay could still be recorded after the getting the delay condoned by CG. CG has the power to condone indefinite delay. (Section 87)

Section 83 (RoC to record satisfaction)	RoC may on receiving any evidence, may report the satisfaction notwithstanding that no intimation is received from the company	RoC shall inform the affected parties within 30 days														
Section 84 (Appointment of Receiver or Manager)	If a person appoints a receiver or obtains any order for appointment of receiver, then he shall give notice of such appointment & the registrar within 30 days	Any person so appointed, on ceasing to hold appointment, shall give notice to the company and RoC														
Section 85 (Company's Register of charges)	<p>→ Company shall also keep a Register of charges</p> <p>→ Entries in the register shall be authenticated by a director or secretary or any person authorised by the Board</p>	<p>The register shall be open to inspection</p> <ul style="list-style-type: none"> - by any member or creditor without any payment of fees; or - by any person on payment of fees 														
Section 86 (Punishment)	<p>If a company contravenes any provision of this Chapter</p> <table border="1" data-bbox="200 514 986 661"> <thead> <tr> <th rowspan="2">Who is liable</th> <th rowspan="2">Imprisonment, or</th> <th colspan="2">Fine</th> </tr> <tr> <th>Min.</th> <th>Max.</th> </tr> </thead> <tbody> <tr> <td>Company</td> <td>NA</td> <td>INR 1 lakh</td> <td>INR 10 lakh</td> </tr> <tr> <td>Every officer in default</td> <td>Upto 6 months, or</td> <td>INR 25,000</td> <td>INR 1 lakh, or both</td> </tr> </tbody> </table>	Who is liable	Imprisonment, or	Fine		Min.	Max.	Company	NA	INR 1 lakh	INR 10 lakh	Every officer in default	Upto 6 months, or	INR 25,000	INR 1 lakh, or both	Any person who wilfully furnishes any false or incorrect information shall be liable u/s 447
Who is liable	Imprisonment, or			Fine												
		Min.	Max.													
Company	NA	INR 1 lakh	INR 10 lakh													
Every officer in default	Upto 6 months, or	INR 25,000	INR 1 lakh, or both													
Section 87 (Rectification by CG)	<p>CG on being satisfied that</p> <ol style="list-style-type: none"> 1. omission to give intimation to RoC about satisfaction of charge, or 2. omission or misstatement of any particulars with respect to any charge, modification or satisfaction 	<p>→ was accidental, due to inadvertence or some other sufficient cause</p> <p>→ CG may condone such delay</p>														

**Section 88
(Register of Members)**

- Every company shall maintain register of its security-holders
- Register shall also entail an INDEX in case number of members ≥ 50
- Entries in register shall be made within 7 days
- Register shall be maintained AT THE REGISTERED OFFICE, unless SR is passed to keep register at any other place
 - within CTV of the registered office; or
 - any other place in India where $> 1/10^{\text{th}}$ members reside
- Authorised by CS or person authorised

**Section 89
(Declaration of Beneficial interest)**



**Section 90
(Register of SBO)**

SBO means an INDIVIDUAL holding $\geq 10\%$ of beneficial interest, but whose name is not entered in the register of members
In case of persons other than individuals,

Declaration of SBO	in Form BEN-1
Register of SBO	Company shall maintain in BEN-3 It is open to inspection by any member
Return of SBO	Company shall file in BEN-2

**Section 91
(Power to close Registers)**

A company may close the register of security-holders for

Maximum	45 days	in a year
Maximum	30 days	At any one time



by giving previous notice of

- at least 7 days; or
- manner prescribed by SEBI for listed companies

**Section 92
(Annual Return)**

Particulars of Annual return in MGT-7

Registered office, principal business, details of Holding, subsidiaries & associates	shares, debentures & other securities	Indebtedness
	Members, debenture holders & changes since last year	meetings of members or class thereof
Promoters, directors, KMP & changes	Prescribed details of shares held by FIIs	Penalty, punishment imposed
Remuneration of directors & KMP	Matters relating to certification of compliances & other matters prescribed	
Total remuneration in case of private companies		

Signed by -

- director + CS (if no CS, then CS in practice);
- in case of OPC, small or start-up company - signed by CS (if no CS, then by any director)

Section 93

Foreign Register

- If authorised by AOA, a company may keep part of its register outside India for residents of that country
- File with RoC Form MGT-3 within 30 days
- It is part of the principal register
- A copy of foreign register must be transmitted to India within 15 days after entry is made
- Authenticated by CS or person authorised

- All filings are done within 30 days
- If declaration is not made, any right in respect of those shares shall not be enforceable
- This section is not applicable in case of disputes as to the legal title of the shares or in case of gifts

MEANING OF BENEFICIAL OWNERSHIP

Beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right of a person alone or together with any other person to

- exercise any right attached to the share, or
- receive or participate in dividend or any other distribution in respect of such shares

Notice to identify SBO

1. Company shall give notice in BEN-4 to the person whom company believes to be
 - SBO
 - having knowledge of SBO
 - have been SBO in last 3 years
2. Concerned person shall give required information within 30 days
3. Where he fails to give, company may apply to NCLT within 15 days
4. NCLT may restrict the rights attached with shares
5. Person aggrieved may apply to NCLT to relax or lift restrictions within 1 year
6. If no such application has been filed, his shares shall be transferred to IEPF

Certification of Annual Return in MGT-8

Following companies need to certify their annual return from CS in practice -

Listed companies; or
Companies having
- PSC \geq INR 10 crore; or
- Turnover \geq INR 50 crore

If the company has website, the web-link of annual return shall be given in Board's report, else extract of annual return shall be given in MGT-9

Filing of Annual Return

- Annual return shall be filed with RoC within 45 days of AGM
- In case no AGM is held - within 60 days from the date on which AGM should have been held

--- Omitted ---

- Registers u/s 88 and copies of annual return u/s 92 shall be kept at registered office
- It may be kept at any other place in India where > 1/10th of total members reside, if approved by SR
- It shall be open for inspection by

Member, debenture-holder, security-holder, beneficial owner during business hours (not less than 2)	without any fees
any other person	on payment of fees ≤ INR 50 per inspection
- They are also entitled to take extracts without any fees or require a copy to be produced to them within 7 days for fees ≤ INR 10/ page

Time period of preservation

Register of members	Permanently
Register of debenture or other security-holder	8 years
Annual return	8 years
Foreign register of members	Permanently
Foreign register of debenture or other security-holder	8 years

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

First AGM	Subsequent AGM
<ul style="list-style-type: none"> within 9 months from the end of FY Not necessary to hold AGM in year of incorporation 	<ul style="list-style-type: none"> Within 6 months of the closure of FY Not more than 15 months shall elapse between 2 AGMs AGM to be held in each calendar year
RoC has no power to grant extension for first AGM	RoC may, for special reason, grant extension by a period ≤ 3 months.

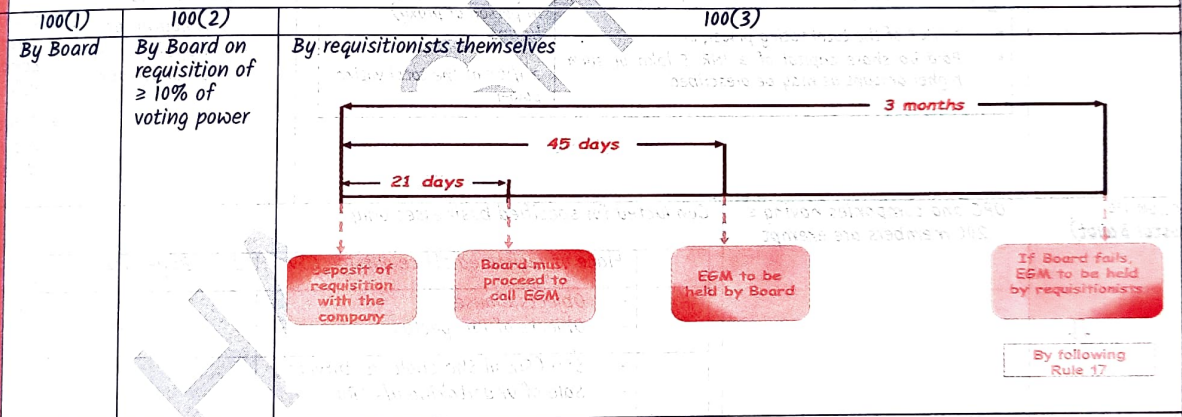
- During business hours (9 a.m. to 6 p.m.)
- Not on a National Holiday
- At registered office or within CTV of Registered office
- AGM of unlisted company at any place in India with consent of ALL members
- AGM must be concluded in most stringent time limit
(Bejoy Kr. Karnani)

- At member's request
- Regulated by NCLT
- 1 member quorum also possible

Section 98 (EGM by NCLT)

- At member's request OR director's request OR suo-moto
- Regulated by NCLT
- 1 member quorum also possible

- the company & every officer in default
 - if continuing one
- Up to INR 1 lakh
Further fine up to INR 5,000/ day



- Section 101 (Notice)**
- 21 clear days
 - 14 days for Sec. 8 Co.
 - Shorter notice by consent of ≥ 95% of members

- Exclude:**
- Date of dispatch
 - Date of meeting
 - 48 hours in case of POST

- Notice to -**
- Members; legal representative; assignee
 - Directors & Debenture trustee
 - Auditors (including secretarial auditor)

- Section 102 (Explanatory statement)**
- Ordinary business - Only these 4 business at AGM
- Financial statement, director's & auditor's report
 - Dividend
 - Appointment of director in place of retiring
 - Appointment of auditor

- Special business
- Rest all businesses at AGM
 - All business at EGM
- Note** - Explanatory statement + Full text of resolution required only for special business

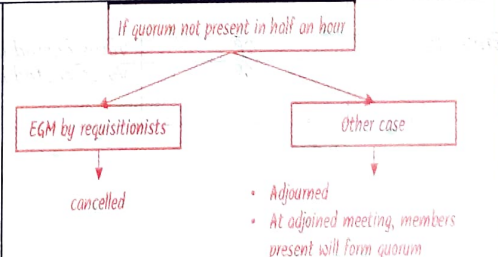
- Explanatory Statement
- Interest of director, manager, KMP + their relatives
 - Other information & facts
 - ≥ 2% shareholding in other company

Section 103 (Quorum)

Private Co	Public Co	
2 members personally present	Number of members	Members personally present
	≤ 1,000	5
	> 1,000 but ≤ 5,000	15
	> 5,000	30

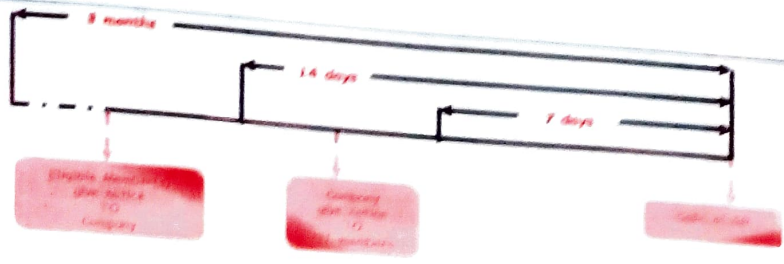
Articles may provide for LARGER quorum

- Proxy is NOT counted for quorum
- Authorised representative is counted
- Quorum shall be present throughout

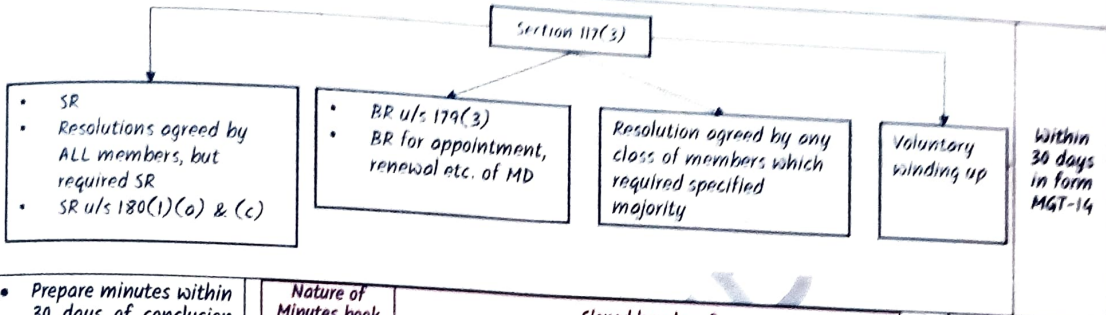


Section 104 (Chairman)	<ul style="list-style-type: none"> Members present choose Chairman on show of hands But it is subject to any provision in AOA 	If a poll is demanded for appointment of Chairman it shall be taken forthwith																								
Section 105 (Proxy)	<ul style="list-style-type: none"> Member may appoint proxy Proxy need not be a member (except in case of Sec. 8 Co.) Proxy cannot vote on show of hands 	<p style="text-align: center;"><u>Proxy can represent</u></p> <p>Maximum 50 members, but having \leq 10% of total share capital</p>	<p style="text-align: center;"><u>Deposit of Proxy form</u></p> <ul style="list-style-type: none"> Proxy form must be deposited 48 hours before the meeting Company cannot increase the limit of 48 hours 																							
Section 106 (Restriction on Voting)	If AOA provides, member will not be entitled to vote in case any call or other sum is not paid by him		Member need not use all his votes in same way in case of Poll																							
Section 107 (Show of Hands)	<p>A resolution is decided on show of hands, unless</p> <ul style="list-style-type: none"> Poll is demanded, OR E-voting 																									
Section 108 (E-voting)	<p>Mandatory for</p> <ul style="list-style-type: none"> Listed company, or Every company having \geq 1,000 members 	<p>Both facilities need to be given viz.</p> <ul style="list-style-type: none"> Remote e-voting Voting at the meeting 	<p>Important Points to Ponder -</p> <ol style="list-style-type: none"> Co. needs to appoint a scrutinizer The company shall announce a cut-off date which shall be within maximum 7 days before the GM Remote e-voting shall start after cut-off date + kept open for minimum 3 days It shall conclude at 5:00 P.M. one day before GM Voting at both meetings will be counted and consolidated report will be made by scrutinizer within 3 days Person, who has voted through remote e-voting, shall not be debarred from participating in GM, but can't vote again 																							
Section 109 (Poll)	<p>Demand of poll by</p> <table border="1" style="width: 100%;"> <tr> <th style="width: 50%;">In case of a company having share capital</th> <th style="width: 50%;">In case of any other company</th> </tr> <tr> <td>Any member(s) (present in person or proxy) holding</td> <td>Any member(s) (present in person or proxy) having</td> </tr> <tr> <td> <ul style="list-style-type: none"> \geq 1/10th of the total voting power, or Paid up share capital of \geq INR 5 lakh or such higher amount as may be prescribed </td> <td> <ul style="list-style-type: none"> \geq 1/10th of the total voting power </td> </tr> </table>		In case of a company having share capital	In case of any other company	Any member(s) (present in person or proxy) holding	Any member(s) (present in person or proxy) having	<ul style="list-style-type: none"> \geq 1/10th of the total voting power, or Paid up share capital of \geq INR 5 lakh or such higher amount as may be prescribed 	<ul style="list-style-type: none"> \geq 1/10th of the total voting power 	<ul style="list-style-type: none"> Poll to be taken within 48 hours But, to be taken forthwith in case of <ul style="list-style-type: none"> Adjournment Appointment of Chairman Poll may be taken using polling papers or by Electronic means Chairman appoints scrutiniser who conducts the entire poll Scrutiniser submits his report within 7 days 																	
In case of a company having share capital	In case of any other company																									
Any member(s) (present in person or proxy) holding	Any member(s) (present in person or proxy) having																									
<ul style="list-style-type: none"> \geq 1/10th of the total voting power, or Paid up share capital of \geq INR 5 lakh or such higher amount as may be prescribed 	<ul style="list-style-type: none"> \geq 1/10th of the total voting power 																									
Section 110 (Postal Ballot)	<p>OPC and companies having \leq 200 members are exempt</p>	<p>Conducted for specified businesses only</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 10%;">P</td> <td style="width: 50%;">Place of registered office outside CTV</td> <td style="width: 10%;">B</td> <td style="width: 30%;">Buy-back</td> </tr> <tr> <td>O</td> <td> <ul style="list-style-type: none"> Objects Clause Objects of Prospectus </td> <td colspan="2" rowspan="2" style="text-align: center; vertical-align: middle;">Variation</td> </tr> <tr> <td>S</td> <td> <ul style="list-style-type: none"> SSD (Small Shareholders' Director) Sale of undertaking u/s 180 </td> </tr> <tr> <td>T</td> <td>DVR</td> <td colspan="2"></td> </tr> <tr> <td>A</td> <td>AOA u/s 2(68)</td> <td colspan="2"></td> </tr> <tr> <td>L</td> <td>LGS (Loan, Guarantee, Security) > 186(3)</td> <td colspan="2"></td> </tr> </table>		P	Place of registered office outside CTV	B	Buy-back	O	<ul style="list-style-type: none"> Objects Clause Objects of Prospectus 	Variation		S	<ul style="list-style-type: none"> SSD (Small Shareholders' Director) Sale of undertaking u/s 180 	T	DVR			A	AOA u/s 2(68)			L	LGS (Loan, Guarantee, Security) > 186(3)			<p>It can be conducted by POST or ELECTRONIC MEANS</p>
P	Place of registered office outside CTV	B	Buy-back																							
O	<ul style="list-style-type: none"> Objects Clause Objects of Prospectus 	Variation																								
S	<ul style="list-style-type: none"> SSD (Small Shareholders' Director) Sale of undertaking u/s 180 																									
T	DVR																									
A	AOA u/s 2(68)																									
L	LGS (Loan, Guarantee, Security) > 186(3)																									
Section 111 (Circulation of members' resolution)	<p>On requisition in writing of members holding \geq 10% of voting power, Company shall</p> <ul style="list-style-type: none"> Give notice of any resolution to members (provided requisition received at least 6 weeks before meeting) Circulate any statement (provided requisition received at least 2 weeks before meeting) <p>Note - No need to circulate statement, if CG (RD) is satisfied that it is for needless publicity for defamatory matters.</p>																									
Section 112 Section 113	<p>Authorised representative of President or Governor of India Authorised representative of Body corporate</p>	<p>They are as good as members and also have right to appoint proxy</p>																								
Section 114	<p>OR SR</p>	<p>Votes casted in favour > Votes casted in favour \geq</p>	<p>Votes casted against 3 times of votes casted against</p>																							

- Eligible members**
- Holding $\geq 1\%$ voting power; or
 - Shares of INR 5 lakh
- Special notice for**
- Specified sections in Act (140, 169); or
 - As provided by AOA



Resolution passed at Adjourned meeting, deemed to be passed on that date only. It does not have a retrospective effect.



- Prepare minutes within 30 days of conclusion of meeting
- Any matter may be excluded from minutes by Chairman if
 - Irrelevant or immaterial
 - Defamatory
 - Detrimental to company

Nature of Minutes book Meetings of Board or Committee	Signed by whom?	
	General meeting	<ul style="list-style-type: none"> • chairman of the said meeting or • the chairman of the next succeeding meeting;
Resolution passed by Postal Ballot	<ul style="list-style-type: none"> • chairman of the same meeting within the aforesaid period of 30 days or • in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose; 	
	<ul style="list-style-type: none"> • chairman of the Board within the aforesaid period of 30 days or • in the event of there being no chairman of the Board or the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose. 	

- May be inspected by member during business hours (not less than 2 hours) without any charge
- Member also entitled to get copies within 7 working days

Any document, record, return, minutes etc. under this chapter may be kept in electronic form

Report on AGM by Listed Public company

In form MGT 15 within 30 days

How member's resolution is passed?

- Communicated by member
- Entered in minutes book
- Signed & dated
- Deemed to be passed on such date

How Board's resolution is passed in case of 1 director?

- Entered in minutes book
- Signed & dated
- Deemed to be passed on such date



Basics of Dividend

- Dividend is distribution of company's earning to shareholders
- As per Section 2(35), dividend includes interim dividend
- Declaration of dividend is an ordinary business

- Shareholders can reduce the rate of dividend proposed by Board but can't increase the same
- Dividend once declared becomes a debt and can't be revoked
- Dividend can be declared in very exceptional circumstances with approval of shareholders - this was laid down in the case of *Kishinchand Chellavam* (but as an *Obiter Dicta*)

Section 123 (Declaration of Dividend)

Sources of dividend

- Profits of current year
- Profits of past year(s)
- Money provided by Govt(s) in pursuance of any guarantee

Note - Depreciation & previous year losses are adjusted against profits before distributing dividend

Declaration of dividend out of accumulated profits transferred to reserves - in case of inadequate profits

1. Rate of dividend \leq average of past 3 years' dividend rate (this condition NA if no dividend declared in any of 3 years)
2. Amount drawn \leq 10% (PSC + free reserves)
3. Losses set-off against amount so drawn
4. Balance of reserves \geq 15% of PSC

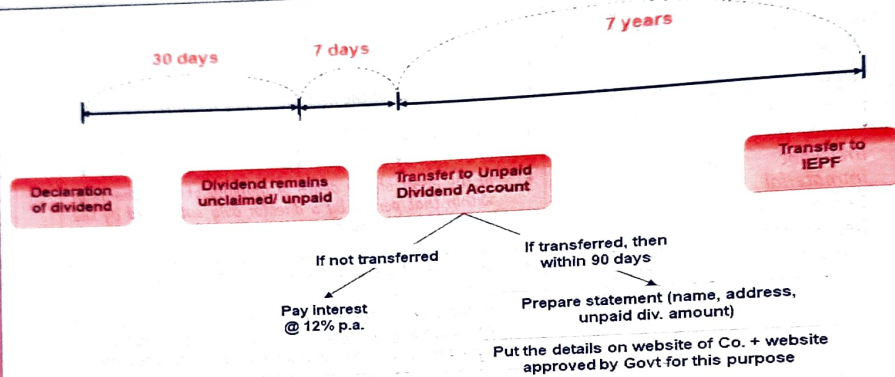
Other aspects

- Amount of dividend is deposited in separate bank a/c within 5 days from declaration
- Dividend is payable only in cash (cash includes cheque, warrant, electronic mode)
- No dividend can be paid if default of section 73 and 74
- Section 8 company can't distribute dividend

Interim Dividend

- It can be declared out of surplus in P&L or out of profits of current FY
- In case of losses during current FY upto last quarter, rate of interim dividend \leq average of last 3 years' dividend

Section 124 (Unpaid Dividend Account)



Section 125 (IEPF)

Composition of IEPF

- Grants & Donation for IEPF
- Amount transferred from Unpaid Dividend Account
- IEPF of Companies Act, 1956
- Interest on Investments made out of fund
- Amount disgorged u/s 38(4)
- Sale proceeds of fractional shares for \geq 7 years
- Redemption amount of preference shares unpaid for \geq 7 years

• Application money due for refund	unpaid for \geq 7 years + Interest accrued
• Matured deposits	
• Matured debentures	

Utilisation of IEPF

- Refund of unclaimed dividends, deposits, debentures, application money due for refund
- Investors' education & protection
- Distribution of disgorged amount to identifiable person
- Reimbursement of legal expenses for class action suit
- Other incidental purpose

Section 126 (Keeping dividend in abeyance)

- Where transfer deed is delivered for registration, and the transfer has not been registered

- transfer the dividend to unpaid dividend account unless authorised by transferor to pay dividend to the transferee
- keep in abeyance any offer of rights issue or bonus issue

Section 127 (Punishment for failure to distribute dividend)

If the declared dividend is not paid within 30 days then

- every director, if knowingly a party to default - liable to imprisonment upto 2 years and minimum fine of INR 1,000/ day
- company is liable to pay interest @ 18% p.a.

Safeguards

- Not paid due to operation of law
- Lawfully adjusted against sums due to company
- Directions of shareholder couldn't be complied with + the same is communicated to him
- Dispute regarding right to receive dividend
- Failure not due to fault of the company

- Accrual basis + Double entry system + True & fair view
- Kept at the **REGISTERED OFFICE**
- Can be kept at **any other place** in INDIA - but give **notice to RoC** in Form AOC-5 within 7 days
- Books related to Branch may be kept at such branch office + periodical returns shall be sent to registered office
- Books shall be **preserved for 8 FY** unless a longer period directed by CG

Inspection by Director

- Director has right to inspect books during business hours
- Director can also inspect books of subsidiary after authorisation from Board
- Inspection of information at **FOREIGN BRANCH**
 - Branch to send quarterly returns to Registered office in India which can be inspected by directors
 - In case any other information is required
 - ✓ Director to furnish request (personally and NOT through any agent or legal representative)
 - ✓ Company will furnish the same within 15 days

Books of Accounts

Physical Form

To be maintained at the registered office; or any other place within India as may be decided by the Board and the same to be intimated to the Registrar of Companies by filing AOC-5 within 7 days from the date of passing such resolution

Electronic Form

Shall remain accessible in India so as to be usable for subsequent reference
The back up of such records maintained, including at a place outside India, shall be kept in servers physically located in India on a periodic basis

FST

B/S + P&L + Notes to accounts + Changes in equity + Cash Flow Statement

Cash flow not required for

- Small company
- OPC
- Dormant company
- Start-up

Requirements to prepare FST

- True & fair view
- Follow AS
- As per Schedule III

Note - If AS not followed: disclose the **DEVIATIONS; REASONS and FINANCIAL EFFECTS**

Consolidated FST (CFS)

- Every Holding company must also prepare CFS of Subsidiary + Associate + JV
- Exemption from preparing CFS if ALL of following conditions satisfied
 - Company is a subsidiary of another company + all other shareholders agree to not prepare CFS
 - The company is an unlisted company
 - Its ultimate/ intermediate holding company file CFS

Re-opening/ Revision of accounts

Section 130 - Under Tribunal/ Court order

- On application made by the CG, Income-tax authorities, SEBI, any other statutory/ regulatory body or any person concerned, Tribunal may pass order to the effect that:
 - Accounts were prepared in a fraudulent manner or
 - Company's affairs were mismanaged casting a doubt on reliability of financial statements
- Accounts can be re-opened for maximum immediately preceding 8 FYs, unless CG prescribed a longer period for maintenance of accounts
- If the order is passed, the company need to reopen its books and recast its financial statements.

Section 131 - Voluntary revision

- Voluntary revision of financial statements/ board report permitted for any of the 3 preceding financial years if they do not comply with Section 129 or Section 134
- Approval of Tribunal required to be obtained
- Tribunal will give notice to CG and IT authorities and consider their representation
- Detailed reasons for revision to be disclosed in the board report
- Revision can't be done more than once in a year
- Auditors and directors duties pursuant to revision prescribed in the rules.

Role of NFRA

- Making recommendations for accounting & auditing standards
- Monitoring compliance with standards
- Oversee and regulate professionals

Constitution of NFRA

- Chairperson to be nominated by CG + other members ≤ 15
- They will give a declaration of No conflict of interest
- Head office will be at New Delhi
- Accounts of NFRA to be audited by CAG

• National Financial Reporting Authority is a new regulatory authority under Companies Act, 2013

• It had replaced NACAS (National Advisory Committee for Accounting Standards) which was made under Companies Act, 1956

• CG to prescribe AS, recommended by ICAI, in consultation with NFRA

• Till NFRA is constituted, in consultation with NACAS

• As of today, 2 set of standards are in force

- AS and - Ind-AS

Ind-AS is followed by only the prescribed companies

FST for accounting period beginning from	Companies notified
April 1, 2015	Any company voluntarily
April 1, 2016	Listed having NW ≥ 500 cr Unlisted having NW ≥ 500 cr
April 1, 2017	Listed having NW < 500 cr Unlisted having NW ≥ 250 cr

Section 134
Board's Report)

Section 135
(CSR)

Manner of signing of financial statements

- Approved by Board resolution
- Signed by
 - Chairperson, if authorised by Board, else by 2 directors (1 shall be MD); and
 - CEO, CFO and company secretary where appointed;
 - In case of OPC - by 1 director

Manner of signing of Board's report

- Signed by
 - Chairperson, if authorised by Board, else by 2 directors (1 shall be MD); and
 - In case there is one director, by such director

Some Disclosures in Board Report

Board meeting	Annual return's web-link	Comments on remarks in audit report
RPT u/s 188	Dividend	Declaration by Independent Director
Reserves	Energy, Forex, Technology	Loan etc. u/s 186
Changes in material commitment	The state of affair	Risk management policy
CSR & NRC	Formal annual evaluation	Fraud < 1 cr

Director's Responsibility Statement

Accounting Standards followed	Accounting policies consistent
Accounting records maintained	Reasonable estimate
Safeguarding of assets	Internal Financial Control
Frauds	Following Laws & Going concern

Note - Summarised board report is prescribed for OPC and Small Co.

KEY SNAPSHOT

Board level CSR Committee:

- Comprising of 3 or more directors with at least 1 ID,
- If no requirement of ID, Committee can have 2 or more directors
- Composition to be disclosed in the annual Board of Directors' report

Responsibilities of the CSR Committee:

- Formulate and recommend a CSR Policy and amount of CSR expenditure
- Regular monitoring of the CSR initiatives

Annual spending on CSR by companies:

- ▶ Every financial year, at least 2% of the average net profits made during the 3 preceding financial years
- ▶ Schedule VII indicates activities that can be undertaken by a company.

Responsibilities of the company's Board:

- ❖ Approve and disclose CSR Policy in the annual Directors Report and on company website
- ❖ Ensure implementation of CSR activities as per the Policy
- ❖ Directors' Report to specify reasons in case the specified amount is not spent

Applicable to all companies that have either of the following in immediately preceding FY -

- Net worth ≥ INR 500 crore
- Turnover ≥ INR 1000 crore
- Net profit ≥ INR 5 crore

Schedule VII activities

- Eradicating hunger, poverty and contribution to Swachh Bharat Kosh
- Promoting Education
- Promoting gender equality, empowering women
- Ensuring environmental sustainability, contribution to Clean Ganga Fund
- Protection of National Heritage
- Benefit of armed forces veterans, war widows
- Promoting rural sports, Paralympic sports
- Contribution to PM National Relief Fund or PM Cares Fund
[Note - contribution to Chief Minister Relief Fund is not eligible]
- Contribution to incubators or Public Funded Universities
- Rural development projects
- Slum area development
- Disaster management

Note - Spending of CSR funds for Covid 19 is eligible CSR activity

Note - R&D activity of new vaccine related to Covid 19 for FY 2020-21, 2021-22 & 2022-23 is eligible CSR

Important CSR Rules

1. Net Profit shall NOT include
 - profit from overseas branches
 - dividend received from other companies India, which are covered u/s 135
2. Company may undertake CSR activity through section 8 company or registered trust or society established by company or by Central or State Government
3. CSR activity through any other section 8 company or trust or society is allowed only if they maintain track record of 3 years
4. Exclusions from CSR activity
 - Projects undertaken outside India
 - Projects for exclusive benefit of employees or their families
 - Contribution to political parties

Report

Comments on remarks on audit report

Declaration by Independent Director etc. u/s 186

Risk management policy

aud < 1 cr

Policies consistent

Climate

Financial Control

Going

Small Co.

Responsibilities of the Board:

disclose CSR

annual Directors

company

Information

as per

port to

ns in case

amount is

es

r companies in

5

tivity through

trust or society

entral or state

ion 8 company

y if they have

ia

f employees

- Annual Report to be sent to members + debenture trustee + other authorised persons at least 21 days before the meeting
- Section 8 company may send 14 days before the meeting

- Obligations of Listed company**
- Listed Co. need not entire annual report but can circulate a statement containing salient in AOC-3 or AOC-3A (in case of Ind-AS)
 - A Listed company must place its annual report + annual report of its subsidiaries on its website
 - In case of foreign subsidiaries, Listed Co. can keep CFS of its subsidiary and need not host annual report of all the step-down subsidiaries
 - If audit not required, Listed Co. can host unaudited financials of foreign subsidiary

Shorter Period of circulation

Co. having share capital	Approval by Majority in number of members having $\geq 95\%$ paid-up capital
Co. not having share capital	Approval by members having $\geq 95\%$ of total voting power

Manner of circulation

Listed companies	or	Public companies
-	-	Net worth > INR 1 crore, AND
-	-	Turnover > INR 10 crore

- FST may be sent-
- Demat form: By e-mail registered with Depository;
 - Other than Demat form: To members who have positively consented in writing for receiving by electronic mode;
 - Other cases: As per section 20

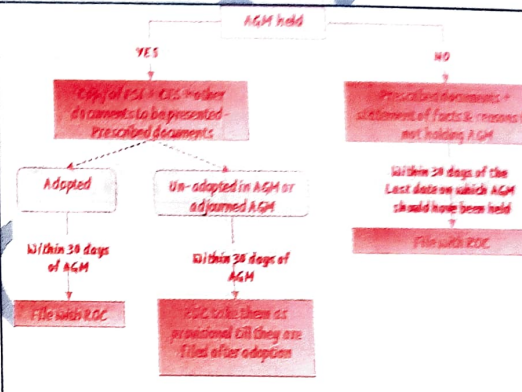
- Section 137 (Filing FST with AGM)
- File within 30 days of AGM -
 - Annual report + CFS
 - Accounts of foreign subsidiaries not having place of business in India
 - OPC can file within 180 days from end of FY
 - To be filed in Form AOC-4 and CFS in Form AOC-4 CFS.
 - However, some companies must file in XBRL format

XBRL Rules

The following companies shall file their annual report in XBRL

- Listed + their Indian subsidiaries, or
- Companies with paid up capital \geq INR 5 crore, or
- Companies with turnover \geq INR 100 crore, or
- Companies covered under Ind-AS

Exception - Banking, Insurance, NBFC and HFC



Section 138 (Internal audit)

Prescribed companies

		Public company	Private company
Listed or	O/S deposits	≥ 25 crore, or	-
	Paid-up capital	≥ 50 crore, or	-
	O/S borrowings	> 100 crore, or	> 100 crore, or
	Turnover	≥ 200 crore	≥ 200 crore

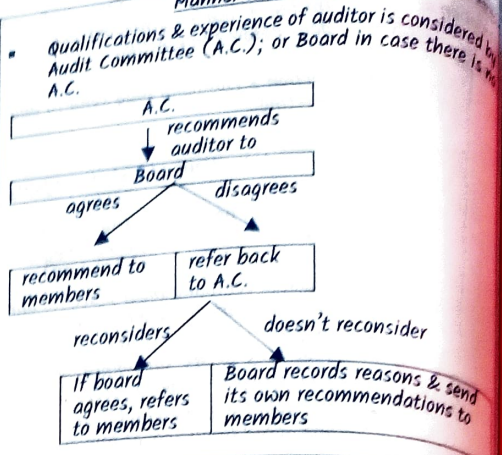
- Who can be Internal auditor?**
- Chartered Accountant; or
 - Cost Accountant; or
 - Other professional prescribed by Board (i.e. Company Secretary can be Internal auditor)

**Section 134
(Appointment of Auditors)**

Appointment of auditor till 6th AGM

- Every company shall appoint auditor in first AGM till conclusion of 6th AGM and thereafter till conclusion of every 6th AGM
- Before each appointment, auditor shall give his written consent & a CERTIFICATE containing the following details -
 - Not disqualified under Companies Act or Chartered Accountants Act
 - Appointment is as per term under Act
 - Appointment is within limits
 - List of proceedings related to professional misconduct
- Company shall give notice to RoC regarding appointment of auditor in form ADT-1

Manner of Selection



Rotation of auditors

Applicable only on -

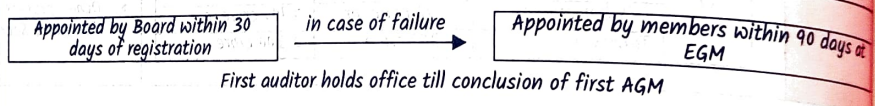
Listed Co.	or
Unlisted Public Co. - PSC ≥ INR 10 crore	
Private Co. - PSC ≥ INR 50 crore	
Any Co. - Loans + Public deposits ≥ INR 50 crore	

- Shall not appoint or re-appoint
 - individual - 1 term of 5 consecutive years
 - firm - 2 terms of 5 consecutive years
- Cooling-period of 5 years
- Audit firm with common partner also can't be appointed for 5 years
- Further if partner leaves & joins another firm, that other firm can also not be appointed
- Further incoming auditor shall not be from the same network firm
- Existing company has been given a transition period of 3 years
- Members may resolve to provide rotation of audit partner to appoint joint-auditor

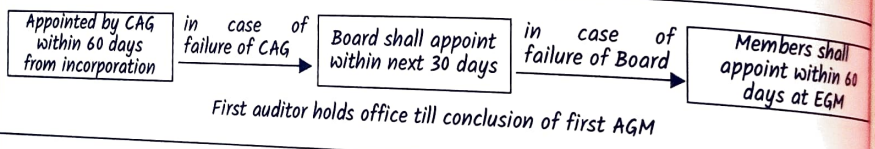
Appointment of Auditor in Govt Co.

- Auditor, duly qualified to be appointed, is appointed by CG for every FY
- Appointed within 180 days from commencement of FY

First Auditor (Other than Govt Co.)



First Auditor (Govt. Co.)



Filling of casual vacancy

In Govt. Co.	In any other Co.
→ Filled by CAG within 30 days, → Else, by Board within next 30 days	→ Filled by Board within 30 days → In case of RESIGNATION, also approved in GM within 3 months

Such auditor shall hold office till the conclusion of next AGM

Re-appointment of Retiring Auditor

Retiring auditor may be re-appointed at AGM, if

- Not disqualified
- Not given notice of his unwillingness
- SR not be passed appointing some other auditor or providing expressly that he shall not be reappointed

Note - If no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company

**Section 140
(Removal, Resignation of auditor)**

Removal of Auditor



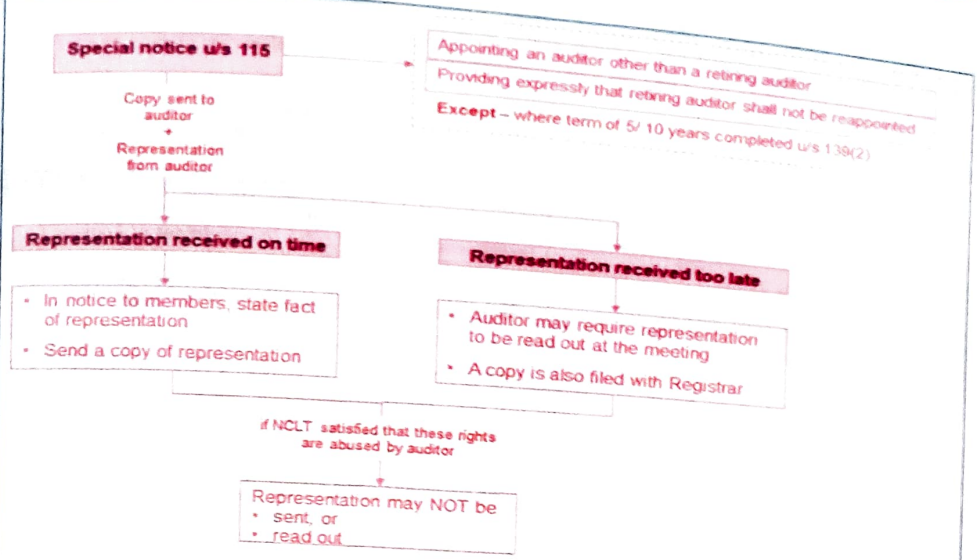
Resignation of Auditor

Auditor who has resigned shall within 30 days from date of resignation, a statement in ADT-3

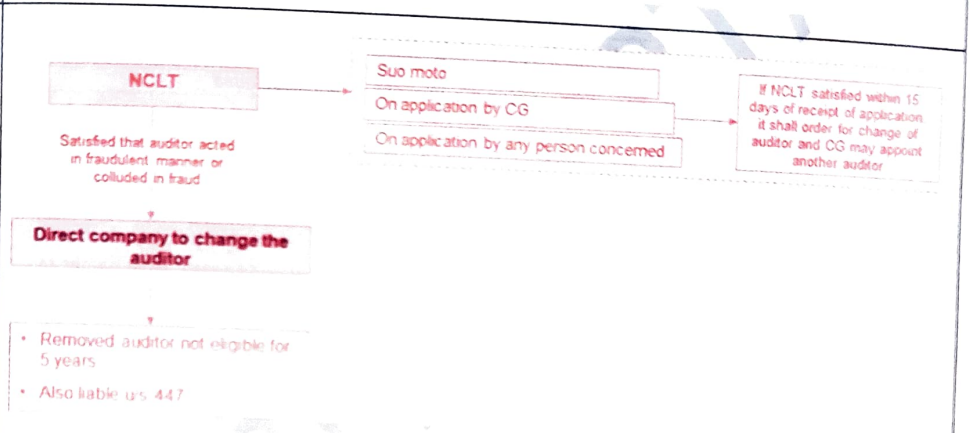
- In Govt Co. - with Co. + RoC + CAG
- In other Co. - with Co. + RoC

CA HARSH GUPTA

Special Notice for not reappointing retiring auditor



Power of NCLT to change auditor



Section 141 (Disqualifications of Auditor)

Qualifications →

- Only a Chartered Accountant can do audit
- A firm may also do audit, where majority of partners practising in India are CAs, but only partners who are CA may sign on behalf of firm

Disqualifications

- Body corporate (other than LLP)
- Officer or employee of Co.
- Partner or Employee of Officer or employee of the Co.
- Person, Relative or Partner

i. Holding SECURITY or interest in But relative may hold security in Co. of FACE VALUE ≤ INR 1 lakh Further, if holding exceeds INR 1 lakh, relative may take corrective action within 60 days	CASH or Co-subsidary
ii. INDEBTED for > INR 5 lakh	
iii. GUARANTEE or SECURITY > INR 1 lakh	
- Person or Firm who has business relationship with → CASH, Co-subsidary or Subsidiary of Associate Co.
Business relation means any transaction for commercial purpose, except -
 - Professional services
 - Transactions entered in the ordinary course of business at ALP
- Person whose relative is a director or KMP of the company
- Person who is in full time employment elsewhere
Partner of a firm if he is auditor of > 20 companies (OPC, Dormant, Small Co. & Private Co. having PSC < INR 100 crore are not counted in the limit of 20 companies)
- Person who is convicted by court for fraud & 10 years have not elapsed
- Person has directly or indirectly rendered services of section 144 to Co./ Holding/ Subsidiary

Note - When a disqualification is invoked after appointment, it will result in casual vacancy

Section 142 (Remuneration)

Remuneration of auditor is fixed

- in general meeting, or
- in such manner as may be prescribed

Note - Board may fix remuneration for first auditor appointed by it

In addition to fees, remuneration shall

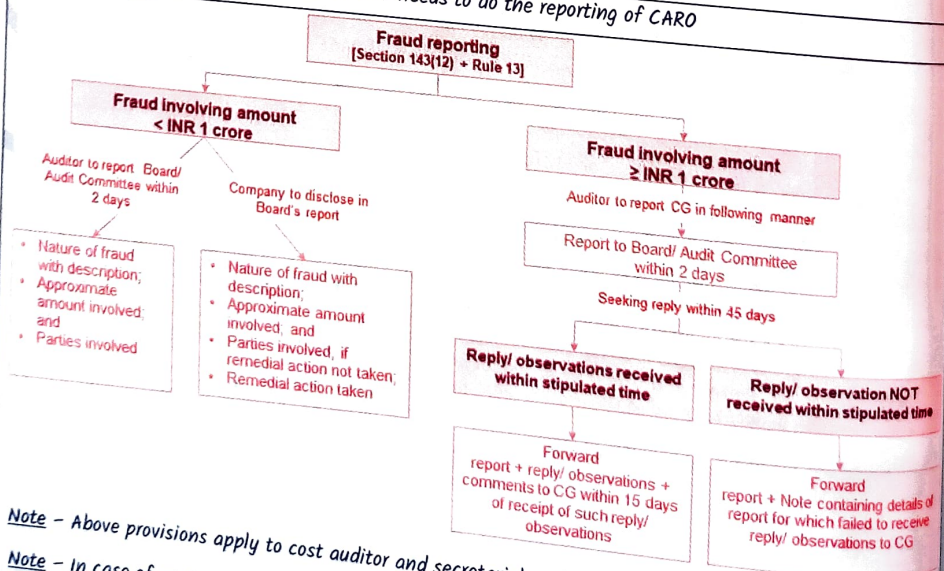
- include expenses incurred in connection with audit & facility extended to him
- but does not include, remuneration paid for any other services

Section 143 (Powers & Duties of Auditor)

- Rights of Auditor**
 - Right of access at all times the books of accounts
 - Entitled to such other information & explanation as may be necessary
- Duties regarding Inquiries**

Personal	Expenses not charged to revenue a/c
Loan	- Properly secured & not prejudicial to company - Not shown as deposits
S	Shares allotted for cash - cash actually received & if not, position stated is correct
B	Book entries not prejudicial
I	Investment (SP < Cost), NA to Investment or Banking Co.
- Duty to make report**
 - Make audit report to members regarding True & fair view
 - Report shall take provisions of Act, AS and SAs into account
 - In case of qualification in audit report, shall state reasons therefor
- Report on Principal Assertions**

Books	B/s	Branches	All information
↓	↓	↓	↓
Control	AS	Comment on functionality	<ul style="list-style-type: none"> - Directors disqualification u/s 164(2) - Qualification, adverse remark on maintenance of accounts
Other matters prescribed	P	Pending litigations	
	P	Provisions for material foreseeable losses on long term contracts	
	T	Transfer to IEPF - delayed	
	S	Specified Bank Notes	
- Powers of CAG in Govt Co.**
 - CAG shall direct auditor the manner in which audit should be done
 - Auditor shall submit a copy of his audit report to CAG, including actions taken for directions received
 - CAG shall within 60 days of receipt of audit report, have a right to
 - conduct supplementary audit by authorised person
 - comment upon or supplement audit report
 - CAG may cause test audit to be conducted
- Branch Audit**
 - Audit of branch shall be conducted by
 - Company's auditor; or
 - other person qualified to be auditor;
 - In case of foreign branch, company's auditor or competent person as per laws of that country
 - Branch auditor shall send his report to company's auditor
 - Duties & powers of branch auditor shall be similar to company's auditor
- SAs**
 - Every auditor shall comply with SAs
 - CG will prescribe SAs made by ICAI in consultation with NFRA
 - Until notified by CG, SAs of ICAI shall be applicable
- CARO**
 - For prescribed companies - auditor also needs to do the reporting of CARO
- Reporting of Fraud**



Note - Above provisions apply to cost auditor and secretarial auditor as well

Note - In case of contravention, auditor is punishable with fine of INR 1 lakh to INR 25 lakh

Auditor shall not render following services, directly or indirectly, to Co./ Holding/ Subsidiary

F	- Financial information system - Financial services outsourced	M	- Management services
I	- Internal Audit - Investment Advisory Services - Investment Banking Services	A	- Accounting & Book-keeping services - Actuarial Services

- Person appointed as auditor shall sign auditor's report
- Qualifications, observations or comments which have any adverse effect on functioning of company, shall be read in GM & shall be open for inspection by any member

- All notices of GM shall be forwarded to auditor
- Auditor shall attend meeting himself or through authorised representative (qualified to be an auditor)
 - Co. can exempt auditor from attending meeting
 - Auditor has right to be heard at meeting on any business which concerns him as auditor

If provisions of section 139 to 146 (both inclusive) are contravened

Co.	Implications on	Imprisonment, or	Fine or both	
			Min.	Max.
Officer in default		Upto 1 year	INR 25,000 INR 10,000	INR 5 lakh INR 1 lakh

If auditor contravenes section 139, 143, 144 or 145

Min. fine = INR 25,000
Max. fine = INR 5 lakh or 4 times the remuneration, whichever is less

If auditor contravened provisions with intent to deceive

Imprisonment = up to 1 year
Min. fine = INR 50,000
Max. fine = INR 25 lakh or 8 times the remuneration, whichever is less

Note - Auditor shall also be liable to refund remuneration to Co. & pay damages

Note - In case of firm, concerned partner and firm shall be jointly & several liable. But for imprisonment, only the partner(s) who acted in fraudulent manner shall be liable

Maintenance of Cost Records

- Companies (including Foreign Co.) engaged in production of specified goods or providing specified services, whose OVERALL turnover is \geq INR 35 crore, shall maintain cost records
- Nothing applies to Micro or small enterprise

Applicability of Cost Audit

Basis during preceding FY	Regulated sector	Non-regulated sector
Overall turnover	\geq INR 50 crore	\geq INR 100 crore
AND		
Aggregated turnover of specified goods & services	\geq INR 25 crore	\geq INR 35 crore

Nothing applies to a Co. -

- whose forex revenue from exports $>$ 75% of total revenue
- which is operating in SEZ
- which is generating electricity for captive consumption

Appointment of Cost Auditor

Appointed by	- Directors within 180 days of commencement of every financial year Note - Statutory auditor can't be appointed as cost auditor Note - Only cost accountant in practice can be appointed as cost auditor Note - He must comply with Cost accounting standards
Certificate from auditor	- Before such appointment, auditor shall give his written consent & a CERTIFICATE containing the following details - <ul style="list-style-type: none"> Not disqualified under Companies Act or Cost Accountants Act He satisfies section 141 Appointment is within limits List of proceedings related to professional misconduct
Inform auditor + Notice to CG	- Co. shall inform cost auditor of appointment - Co. shall file form CRA-2 with CG within earlier of the following limits <ul style="list-style-type: none"> 30 days of Board meeting in which appointed, or 180 days of commencement of FY
Tenure of Cost Auditor	- Cost auditor shall continue till expiry of earlier of the following <ul style="list-style-type: none"> 180 days from closure of FY Date of submission of his report
Removal of cost auditor	- Removed by Board - CG shall be intimated in Form CRA-2
Filing of Casual Vacancy	- Filled by Board within 30 days - Co. shall inform CG in Form CRA-2 within 30 days of appointment
Cost audit report to Board	- Cost auditor shall submit his report to Board within 180 days from closure of the FY
Report to CG	- Co. shall within 30 days of receipt, furnish a copy of the report to CG

Remuneration of Cost auditor	Companies required to constitute Audit Committee	Companies NOT required to constitute Audit Committee
	<ul style="list-style-type: none"> → Board shall appoint cost auditor on the recommendation of A.C. → The A.C. shall also recommend the remuneration for cost auditor → Such remuneration as recommended by the A.C. shall be considered and approved by the board → Then this remuneration subsequently to be ratified by the shareholders 	<ul style="list-style-type: none"> → Board shall appoint the cost auditor → The remuneration of such cost auditor shall be ratified by shareholders subsequently.

Note - Penal provisions of section 147 will apply in this section as well.

CA HARSH GUPTA

Meaning

Essentials of Contract of Indemnity

Rights of Indemnity Holder when sued

Meaning

CONTRACT OF INDEMNITY

Indemnifier



Contract of Indemnity

Indemnified or Indemnity Holder

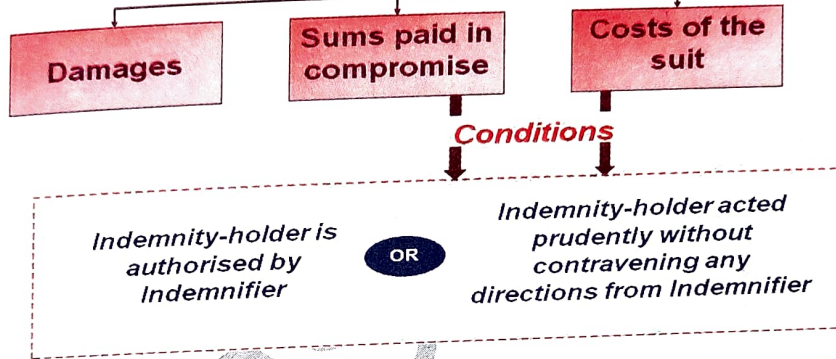


Party who is promised to be saved from loss

Party who promises to indemnify/ save other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. All essentials of a valid Contract must be present 2. Existence of loss | <ol style="list-style-type: none"> 3. Indemnity by Promisor 4. Reason for loss - conduct of promisor or any other person |
| <p>Modes of Entering into Contract of Indemnity →</p> <ul style="list-style-type: none"> ▪ Express contract ▪ Implied contract (e.g. transferee is impliedly bound to indemnify transferor against future calls) | |

Right to Recover



CONTRACT OF GUARANTEE

Surety



Person who gives the guarantee

Creditor



Person to whom guarantee is given

- Guarantee to -
- Perform the promise
 - Discharge the liability
- In case of default by -

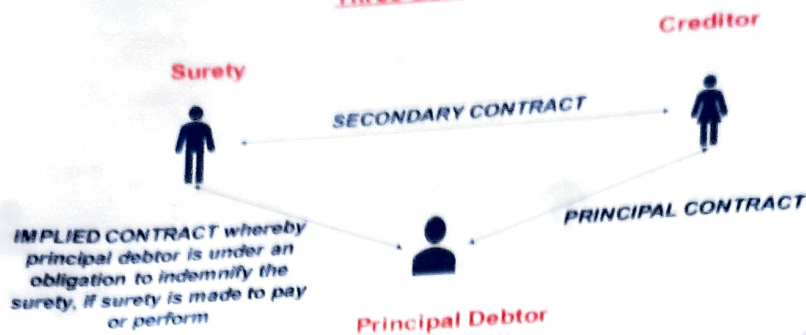
Principal Debtor



Person in respect of whose default guarantee is given



Three Contracts



Essentials of Contract of Guarantee

- All essentials of a valid contract must be present. Exception - Even if principal debtor is incompetent to contract, the guarantee is valid
- Existence of a liability, enforceable at law. (Guarantee for time barred debt is not good)
- Benefit to principal debtor is sufficient consideration. But past consideration is no consideration
- Guarantee obtained by misrepresentation or concealment of a material fact is invalid
- The guarantee is not valid if a condition is imposed that a co-surety must join and such person doesn't join
- Liability of surety is secondary (primary liability is of principal debtor) & conditional (crystallises on default by principal debtor)

Consideration for Guarantee

Anything done for Principal debtor
 Forbear to sue
 Past consideration
 Past consideration clubbed with fresh consideration

Sufficient consideration
 Also, a sufficient consideration
 Not valid
 Valid

Difference between Indemnity & Guarantee

Basis	Indemnity	Guarantee
Meaning	One party promises to make good the loss of other party	Contract to perform promise or discharge the liability of third person, in case of his default
Number of parties	2	3
Number of contracts	1	3
Nature of liability	Liability of indemnifier is primary and independent	Liability of surety is secondary and conditional
Time of liability	Liability of indemnifier arises only on happening of a contingency	Liability is already in existence but crystallises when principal debtor fails
Competency to contract	Both parties must be competent to contract	If principal debtor is incompetent, guarantee is still valid

Nature of Surety's Liability

Co-extensive	Unless there is a contract to the contrary, quantum of obligation of surety is the same as that of principal debtor
Nature	Surety's liability is Secondary + Conditional
Timing of liability	No need to first sue principal debtor

Continuing Guarantee

A guarantee which extends to a series of transactions

Eg - A guarantees payment to B, a tea-dealer, to the amount of \$ 100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of \$ 100, and C pays B for it. Afterwards B supplies C with tea to the value of \$ 200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of \$100.

Liability of surety will cease -

- On performance or discharge of all the transactions entered into
- Once guarantee is revoked, but only for future transactions
- On the death of the surety, but only in respect of future transactions

Discharge of Surety's Liability

BY REVOCATION OF THE CONTRACT OF GUARANTEE

Revocation of continuing guarantee	The continuing guarantee may at any time be revoked by the surety as to future transactions by notice to the creditors
Revocation of continuing guarantee on surety's death	The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions

By variance in terms of contract, without the consent of surety	Eg - A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.
By release or discharge of principal debtor	Eg - A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.
Discharge when creditor compounds with, gives time to, or agrees not to sue principal debtor	Eg - A guaranteed Z against trade debts to be contracted by B as a running balance of account to any amount not exceeding INR 8,000. B became indebted to Z for INR 10,000 and made a compromise with Z for 70 paise in the rupee, leaving a balance of INR 3,000 due to Z. Now Z is not entitled to recover the balance INR 3,000 from A because the liability of surety is discharged when a creditor in composition with principal debtor accepts a lesser amount in full satisfaction of his claim.
Surety NOT discharged when agreement is made with third person to give time to principal debtor	Eg - C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.
Creditor's forbearance to sue does not discharge surety	Eg - B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.
Release of one co-surety does not discharge the others	Where there are co-sureties, a release by creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties.
Discharge of surety by creditor's act or omission impairing surety's eventual remedy	Eg - A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see that M make up the cash. B omits to see this done as promised, and M embezzles. A is not liable to B on his guarantee.

BY INVALIDATION OF CONTRACT OF GUARANTEE

Guarantee obtained by misrepresentation is invalid	Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.
Guarantee obtained by concealment invalid	Eg - A engages B as a clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.
Guarantee on contract that creditor shall not act on it until co-surety joins	Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Rights against the PRINCIPAL DEBTOR

Rights of Subrogation	Upon payment of debt or performance of promise, Surety steps into the shoes of the creditor.
Rights of Indemnity	In contract of guarantee, there is an implied promise by principal debtor to indemnify surety. The surety is entitled to recover whatever he has rightfully paid under the guarantee, but no sums which have been paid wrongfully.

Rights against the CREDITOR

Surety's right to benefit of creditor's securities	A surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not. If the creditor loses, without the consent of the surety, the surety is discharged to the extent of the value of the security.
--	---

Rights against the CO-SURETIES

Co-sureties liable to contribute equally	Unless there is a contract to contrary (e.g. where they have defined their proportionate loss), all co-sureties are equally liable.
Liability of co-sureties bound in different sums	Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.



CONTRACT OF BAILMENT

Meaning

- Delivery of GOODS by one person to another for some purpose
- upon a contract, that the goods shall be returned or otherwise disposed of according to directions of the bailor
- when the purpose is accomplished

Example



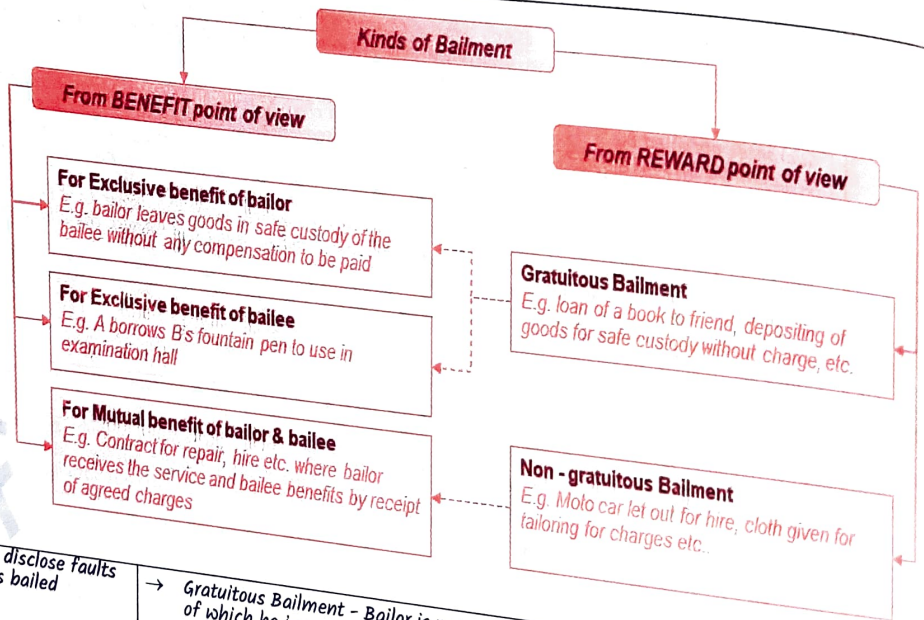
- Note** - Parking car at a parking lot, without giving keys is NOT bailment
- Note** - Seizure of goods by custom authorities is bailment
- Note** - Depositing ornaments in bank locker is NOT bailment
- Note** - Pledging cinema projector with a bank but retaining the same under a promise to hold it as trustee of banker is also a valid bailment

(Bank of Chittur Ltd. vs. Narasimhulu)

Essentials of Contract of Bailment

1. All essentials of a valid contract must be present.
2. Goods (immovable property or money is not good)
3. Delivery (Actual or constructive) of possession
4. Delivery for some purpose
5. Return of disposal of goods

Kinds of Bailment



Duties of Bailor

Duty to disclose faults in goods bailed	<ul style="list-style-type: none"> → Gratuitous Bailment - Bailor is responsible for damages if he fails to disclose the faults in goods of which he is aware → Bailment for Hire - Bailor is responsible for damages whether he was or was not aware of the fault
Repayment of necessary expenses	Gratuitous bailment for the benefit of the bailor - the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment
Indemnifying bailee against defective title	The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods
Receive back the goods	If bailor fails to receive back goods after the purpose is accomplished, he is responsible for any loss or damage to the goods incurred by the bailee for keeping the goods safely.

Rights of Bailor

Termination of Bailment	A contract of bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.
-------------------------	---

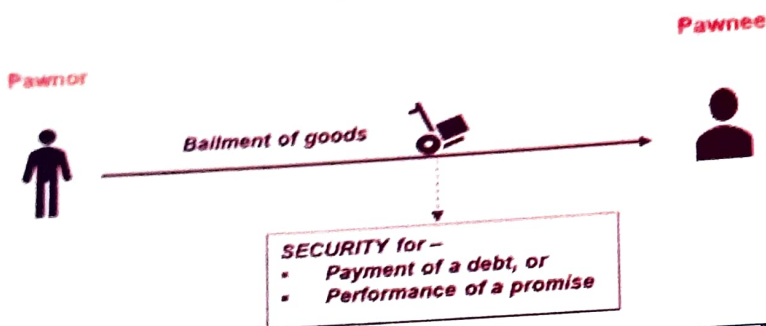
Compensation unauthorised use for	Eg - A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse	
Bailee not to mix goods	Goods are separable	Eg - A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark; A is entitled to have his 100 bales returned, and B is bound to bear all the expenses incurred in the separation of the bales, and any other incidental damage
	Goods are not separable	Eg - A bails a barrel of Cape flour worth INR 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only INR 25 a barrel. B must compensate A for the loss of his flour
Retention of goods lent gratuitously	<ul style="list-style-type: none"> In case of gratuitous bailment, the bailor may demand the goods back, even though he lent it for a specified time or purpose But if, on the faith of such bailment, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the bailment, the bailor must indemnify the borrower for the amount in which the loss exceeds the benefit so derived 	
Bailor entitled to any accretion to the goods	Eg - A leaves a cow in the custody of B to be taken care of. The cow has a calf, B is bound to deliver the calf as well as the cow to A.	
Duty to take reasonable care	Eg - If X bails his ornaments to 'Y' and 'Y' keeps these ornaments in his own locker at his house along with his own ornaments and if all the ornaments are lost/ stolen in a riot 'Y' will not be responsible for the loss to 'X'. If on the other hand 'X' specifically instructs 'Y' to keep them in a bank, but 'Y' keeps them at his residence, then 'Y' would be responsible for the loss [caused on account of riot]	
Duty to return goods	If, by the default of the bailee, the goods are not returned at the proper time, he is responsible to the bailor for any loss or deterioration of the goods from that time	
Right to deliver goods, in good faith, to bailor without title	If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery	
Right to lien	Bailee has right to exercise his 'right of lien'. This right of lien is a right to retain the goods and is exercisable where charges due in respect of goods retained have not been paid	
Right to recover expenses	<p>The finder of goods has NO right to sue the owner for compensation for trouble and expense voluntarily incurred by him</p> <ul style="list-style-type: none"> to preserve the goods and to find out the owner; <p>but he may retain the goods against the owner until he receives such compensation</p>	
Right to recover reward	<p>Where the owner has offered a specific reward for the return of goods lost, the finder</p> <ul style="list-style-type: none"> may sue for such reward, and may retain the goods until he receives it 	
Right to sell the goods	<p>Where the owner can't be found after reasonable search or if found, he refuses to pay the lawful charges, the finder may sell it -</p> <ul style="list-style-type: none"> → if goods are of perishing nature; or → lawful charges of finder \geq 2/3rd value of goods 	
General vs. Particular Lien	Particular Lien	Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, in the absence of a contract to the contrary, he has a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.
	General Lien	Only Bankers, factors, wharfingers, attorneys of a High Court and policy brokers may retain as a security for a general balance of account any goods bailed to them; But no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to the effect.
Termination of Bailment	Bailment for specified period	The bailment terminates as soon as the stipulated period expires
	Bailment for specified purpose	The bailment terminates as soon as the purpose is fulfilled
	Inconsistent act	If the bailee does any act which is inconsistent with the terms of bailment, the bailment may be terminated by the bailor
	Termination before expiry of fixed period	A gratuitous bailment can be terminated by the bailor even before expiry of the specified period, but he must indemnify the bailee for any loss in excess of the benefit derived by him
	Death of Bailor or Bailee	A gratuitous bailment is terminated by the death of bailor or bailee



CONTRACT OF PLEDGE

Meaning

PLEDGE



Essentials of Contract of Pledge

1. All essentials of a valid contract must be present.
2. Goods (immovable property or money is not good)
3. Delivery (Actual or constructive) of possession
4. Delivery as security for payment of a debt or performance of a promise
5. Return of disposal of goods

Rights of Pawnee

Right of Retainer	The pawnee may retain goods not for the payment of debt but for interest of the debt and necessary expenses incurred for preservation of goods pledged
Right of retention against subsequent debts	Unless there is a contract to the contrary, when the pawnee lends further money to the same debtor after the date of the pledge, it shall be presumed that the right of retainer over pledged goods extends even to subsequent advances
Right to extraordinary expenses	<ul style="list-style-type: none"> ▪ The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged. ▪ But in this case, he cannot retain the goods, if such expenses are not paid. He has only a right to sue the pawnor for extraordinary expenses.
Right where pawnor makes a default	If pawnor defaults, the pawnee may either file a suit or may sell the goods pledged after giving reasonable notice of sale to the pawnor If Sale proceeds < amount due = pawnor is still liable to pay the balance If Sale proceeds > amount due = pawnee shall pay over the surplus to pawnor
Pledge by person in possession under voidable contract	When the pawnor obtained possession of goods under a voidable contract, but the contract has not been rescinded, the pawnee acquires a good title if he acted in good faith and without notice of pawnor's defect of title

Duties of a Pawnee

- To take reasonable care of the goods pledged
- Not to make any unauthorized use of the goods pledged
- Not to mix the goods pledged with his own goods
- Not to do any act in violation of the terms of the contract
- To return the goods pledged on receipt of his full dues
- To return any accretion to the goods pledged

Rights of a Pawnor

Defaulting pawnor's right to redeem	If pawnor makes a default, he may redeem the goods pledged at any time before actual sale of them
Pledge where pawnor has only a limited interest	Eg - X delivers a suit to Y, the tailor master, for making a suit and agrees to pay INR 2,000 as sewing charges. Y pledges the suit with Z for INR 5,000. The pledge is valid to the extent of Y's interest in the suit, i.e. INR 2,000. A can, therefore, recover the suit only on paying INR 2,000 to Z, the pledgee.

Duties of a Pawnor

- To compensate the pawnee for any extraordinary expenses incurred by him
- To meet his obligation on stipulated date and comply with terms of the contract

Bailment vs. Pledge

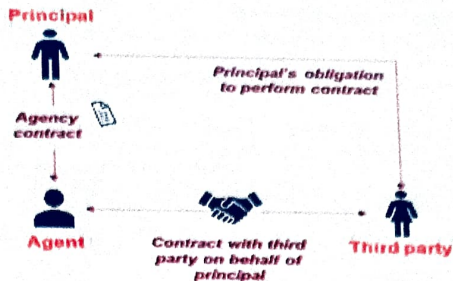
	Basis	Pledge	Bailment
Purpose		It is a kind of bailment where purpose is security for a loan or performance of promise	Here goods can be delivered for any purpose
Right of sale		Pawnee may sell the goods on default by pawnor	Bailee generally cannot sell the goods
Consideration		There is always a consideration	There may or may not be a consideration
Discharge of contract		On payment of debt or performance of promise	Discharged when purpose is accomplished
Return of goods on demand		Pawnee is not bound to return the goods unless the debt is repaid or promise is performed	In gratuitous bailment, bailee is bound to return the goods on demand by the bailor



CONTRACT OF AGENCY

Meaning

Contract of Agency



Note - An agent can establish privity of contract between Principal and third party
Note - Rule of agency is based on the maxim "Quit facit per alium, facit per se" i.e. he who acts through an agent is acting himself

Appointment & Authority of Agent

Who may employ an agent	Any person who is of the age of majority & is of sound mind can appoint an agent
Who may be an agent	Even a minor can be an agent. But a minor or a person of unsound mind, if appointed as an agent, shall not be responsible to his principal
Consideration not necessary	No consideration is necessary to create an agency

Agency by Express Agreement

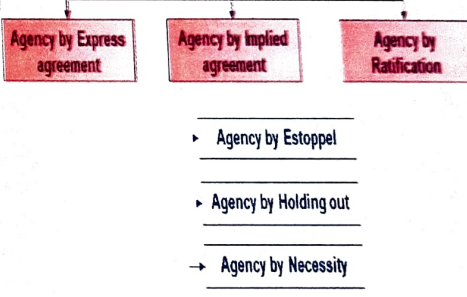
Eg - A is residing in Delhi and he has a house in Kolkata. A appoints B by a deed called the power of attorney, as a caretaker of his house. Agency is created by express agreement

Agency by Estoppel
 Eg - A and tells M in the presence of N that he (A) is N's agent. N does not contradict this statement and keeps quiet. N is bound by this transaction and he will be estopped from denying the existence of the agency, even though such an agency in fact does not in fact exist

Agency by Holding Out
 Eg - Where an employer has been accustomed to pay for goods bought on his behalf by his employee from P, the employer may be liable for a purchase made in the customary manner, even though it is made, by the employee fraudulently after he has left employment

Agency by Necessity (in case of emergency)
 → There should have been actual and definite commercial necessity for the agent to act promptly
 → It should be impossible to communicate with the principal within the time available
 → The alleged agent should act bona fide in the interests of the principal
 → The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case
 Eg - X consigns goods to Y at Delhi with directions to immediately send them to Panipat to Z; and Y, not able to communicate with X, finding the fruits are perishing rapidly, sells them at Delhi itself for best price obtainable. This sale will bind the principal and agent cannot be held liable for exceeding his authority as in present scenario there arises agency by necessity

Creation of agency



Agency by Implied Agreement

Agency by Ratification

Eg - A buys 5 bags of wheat on behalf of B. B did not appoint A as his agent. If B accepts it, the act is ratified and A becomes his agent with retrospective effect

Essentials of a valid Ratification

Expressed or Implied	Eg - A, without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made
Requisite knowledge for valid ratification	Eg - A has an authority from P to buy certain goods at the market rate. A buys at a higher rate, but P accepts the purchase. Afterwards P comes to know that the goods purchased by A for P belonged to A himself. The ratification is not binding on P.
Must not injure a third person	Eg - A holds a lease from B, terminable on 3 months' notice. C, an unauthorized person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A
Other conditions	<ul style="list-style-type: none"> → Whole transaction must be ratified → Within reasonable time → The act done by pretended agent on behalf of alleged principal only can be ratified → The act must be within principal's powers

Sub-Agent

- A sub-agent is a person employed by, and acting under the control of, the original agent
- A delegate cannot further delegate - thus, an agent doesn't have an implied power to appoint sub-agent

Exceptions i.e. Properly appointed sub-agent

- Where principal has expressly permitted
- Where principal has impliedly allowed such delegation of authority. Eg - where principal knows about sub-agent but he doesn't object
- It is custom of trade that sub-agent can be appointed. Eg - stock brokers appoint clerks
- In case of unforeseen emergency



Consequences of appointment of Sub-agent

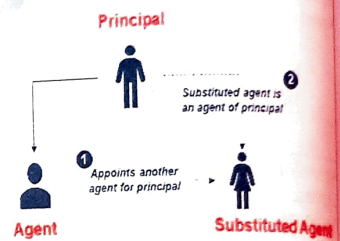
Particulars	Properly appointed sub-agent	Improperly appointed sub-agent
Who is liable towards third parties	Principal is liable	Agent is liable
Is agent responsible towards principal for acts of sub-agent	Yes	Yes
Is sub-agent responsible to agent	Yes	Yes
Is sub-agent liable towards principal	No, but will be liable in case of fraud or wilful wrong	Not at all

Substituted Agent

Substituted Agent is a person appointed by the agent to act for the principal, in the business of agency, with the knowledge and consent of the principal

Relationship between Principal & substituted agent

Where an agent, holding an authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him



Revocation of Authority

Termination of Agency	Agency is terminated by <ul style="list-style-type: none"> → Principal revoking his authority → Agent renouncing business of agency → Business of agency being completed → Principal or agent dying or becoming of unsound mind → Principal being adjudged as insolvent
Termination of Agency Coupled with Interest	Eg - A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself, out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.
Revocation where authority has been partly exercised	Eg - A authorizes B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton
Revocation may be expressed or implied	Eg - A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.
Effect of termination against agent & third persons	The termination of the authority of an agent does not, <ul style="list-style-type: none"> ▪ so far as regards the agent, take effect before it becomes known to him, or, ▪ so far as regards third persons, before it becomes known to them

Duties & Obligations of Agent

To conduct business of agency as per Principal's directions	An agent is bound to conduct the business of his principal <ul style="list-style-type: none"> ▪ according to the direction given by the principal, or, ▪ in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business Else he will be liable for the loss
Skill & Diligence required from agent	An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill Eg - A, an insurance-broker, employed by B to affect an insurance on a ship, omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B
Repudiation of transaction by principal	If agent deals on his own account, the principal may repudiate the transaction if he shows that <ul style="list-style-type: none"> → any material fact has been disclosed from him; or → dealings of the agent have been disadvantageous to him Eg - A directs B to sell A's estate. B, on looking over the estate before selling it, finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conceals the discovery of the mine. A allow B to buy, in ignorance of the existence of the mine. A, on discovering that B know of the mine at the time he bought the estate, may either repudiate or adopt the sale at his option

CA HARSH GUPTA

Not to deal on his own account	Eg - A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it	
Right to retain out of sums received on principal's account	This section empowers the agent to retain, out of any sums received on account of the principal in the business of the agency for the following payments - <ul style="list-style-type: none"> all moneys due to himself in respect of advances made in respect of expenses properly incurred by him in conducting such business such remuneration as may be payable to him for acting as agent 	
Right to Remuneration	The agent is entitled to remuneration as per contract. If contract is silent, he is entitled to remuneration as per customs	
Lien on Principal's property	An agent is entitled to retain the goods, properties and books for any remuneration, commission etc. due to him. The possession of such property should be however lawful	
Right of indemnification	Eg - Where P appoints A as his agent and directs him to sell certain goods which in fact turned out to be not those belonging to P and if third parties sue A for this act, A is entitled for reimbursement and indemnification for such act done in good faith.	
Principal's liability when agent exceeds his authority	Acts are separable	Eg - A, being owner of a ship and cargo, authorizes B to procure an insurance for INR 4,00,000 on the ship. B procures a policy for INR 4,00,000 on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.
	Acts are NOT separable	Eg - A authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of INR 6,00,000. A may repudiate the whole transaction
Consequences of notice given to agent	<ul style="list-style-type: none"> Any notice given to or information obtained by the agent, provided it is given or obtained in the course of the business transacted by him for the principal, shall, as between the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal 	
Liability in case of unnamed principal	Once it is disclosed by the agent that he is an agent, the contract made by the agent binds the principal and the agent drops out of the transaction despite the fact that the principal for whom he acted has not been named	
Liability in case of undisclosed principal	<ul style="list-style-type: none"> If principal remains undisclosed, agent is personally liable (can sue or be sued) If third party comes to know about principal before obtaining judgement against agent, he may sue either principal or agent or both Principal must allow the third party, benefits of all payments made to the agent If principal discloses himself before the completion of contract, third party may refuse to fulfil the contract, if he can show that had he known about the principal, he wouldn't have entered into the contract 	
Liability of Pretended Agent	<ul style="list-style-type: none"> Pretended agent is liable towards third party if his alleged principal doesn't ratify the acts In addition, he may be sued for fraud 	



Negotiable Instrument	Promissory Note		Bills of Exchange		Cheque			
	ORDER		or		BEARER			
Promissory Note Section - 4	Writing	Signed by Maker	Unconditional PROMISE		Pay CERTAIN sum of MONEY	To - Certain person - Order of certain person - Bearer	Excludes - Currency note	
	↓		↓		↓	↓		
	Note - It must be STAMPED as well		Conditional	Pay 'when able' or 'as soon as possible' or 'after marriage'	It is certain even if - ▪ Includes future interest	No person (other than RBI or CG) can issue	→ P-note expressed to be payable to BEARER	
Bills of Exchange Section - 5	↑		↑		↑	↑		
	Writing	Signed by maker	Unconditional ORDER		Pay CERTAIN sum of MONEY	To - Certain person - Order of certain person - Bearer		
	Note - It must be STAMPED as well		Not conditional	Pay after specified time or on happening of certain event (death)	▪ Payable at indicated rate of exchange	→ Bills of exchange payable to BEARER on DEMAND (except cheque)		
Cheque Section - 6	It is a Bill of Exchange		→ Drawn on a SPECIFIED BANKER → Always payable on Demand					
	It includes -				<ul style="list-style-type: none"> • In writing • Signed by drawer • Payable always on DEMAND 			
	Electronic cheque	Chequ drawn in electronic form by using computer resource				TO PAY certain sum of money on DEMAND		
	Truncated Cheque	When a physical cheque is truncated during the clearing process				PAYEE		
<p>Note - Validity of cheque is 3 months Note - NO need of STAMP</p>								

Classification of NI											
I. Payable to whom											
Payable to	<u>Order</u>	<u>Bearer</u>									
→ a particular person; → order of a particular person; or → particular person or his order		→ Expressly payable to bearer; or → Last endorsement is blank									
II. On the basis of MATURITY											
Demand	→ NO MATURITY date is specified; or → Expressly payable on demand	▪ Payable 'At sight' or 'on presentment' ▪ No days of grace									
Time	→ Specified maturity date for payment Note - Maturity is calculated after 3 days of grace	▪ Payable on specified day ▪ Certain period after sight ▪ Certain period after sight ▪ Certain period after happening of certain event									
<table border="1"> <thead> <tr> <th>Sl. No.</th> <th>Time at which instrument is payable</th> <th>Maturity date</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Payable on a specified day</td> <td></td> </tr> <tr> <td>2.</td> <td>Payable on stated number of DAYS i after date ii after sight</td> <td>Specified day + 3rd day i Date on which drawn + stated number of days + 3rd day ii Date on which presented for sight + stated number of days + 3rd day</td> </tr> </tbody> </table>			Sl. No.	Time at which instrument is payable	Maturity date	1.	Payable on a specified day		2.	Payable on stated number of DAYS i after date ii after sight	Specified day + 3 rd day i Date on which drawn + stated number of days + 3 rd day ii Date on which presented for sight + stated number of days + 3 rd day
Sl. No.	Time at which instrument is payable	Maturity date									
1.	Payable on a specified day										
2.	Payable on stated number of DAYS i after date ii after sight	Specified day + 3 rd day i Date on which drawn + stated number of days + 3 rd day ii Date on which presented for sight + stated number of days + 3 rd day									

CA HARSH GUPTA

iii	after happening of a certain event	iii	Date of happening of event + stated number of days + 3 rd day
Note: The day from which time begins to run is excluded.			
3.	Payable on stated number of MONTHS after date	i	Date on which drawn + stated number of months + 3 rd day
	ii after sight	ii	Date on which presented for sight + stated number of months + 3 rd day
	iii after happening of a certain event	iii	Date of happening of event + stated number of months + 3 rd day
Note: Corresponding day of the relevant month is taken into account			
Note: If there is no corresponding day, the last day of such month shall be taken			
Note - When date of maturity is a Public Holiday, maturity on immediately preceding business day			
Note - In case of emergency holiday, maturity shall be deemed on next succeeding day			


III. On the basis of ORIGIN

Inland Instrument	A promissory note, bill of exchange or cheque is an inland instrument if it is drawn or made in India AND	Example -			
	<table border="1"> <tr> <td>made payable in</td> <td>OR</td> <td>drawn upon any person resident in India</td> </tr> </table>	made payable in	OR	drawn upon any person resident in India	<ul style="list-style-type: none"> A promissory note made in Kolkata and payable in Mumbai A bill drawn in Varanasi on a person resident in Jodhpur (although it is stated to be payable in Singapore)
made payable in	OR	drawn upon any person resident in India			
Foreign Instrument	An instrument which is not an inland instrument, is deemed to be a foreign instrument.	Example -			
		<ul style="list-style-type: none"> Bills drawn outside India and made payable in or drawn upon any person resident in any country outside India, Bills drawn outside India and made payable in India, or drawn upon any person resident in India; Bills drawn in India made payable outside India or drawn upon any resident outside India, but not made payable in India are foreign bills. 			

IV. RESIDUARY classification

Ambiguous Instrument	→ Can be construed either as P-Note or B/E							
	Example - B/E drawn by agent on his Principal or B/E drawn by one branch of bank on another							
Inchoate Instrument (Section 20)	→ One person signs AND delivers a blank stamped instrument → Giving prima facie authority to fill the amount	Amount that can be recovered						
		<table border="1"> <tr> <td>1. Holder</td> <td>-</td> <td>Amount intended to be paid</td> </tr> <tr> <td>2. H-DC</td> <td>-</td> <td>Entire amount provided covered by stamp</td> </tr> </table>	1. Holder	-	Amount intended to be paid	2. H-DC	-	Entire amount provided covered by stamp
1. Holder	-	Amount intended to be paid						
2. H-DC	-	Entire amount provided covered by stamp						

Holder & H-DC

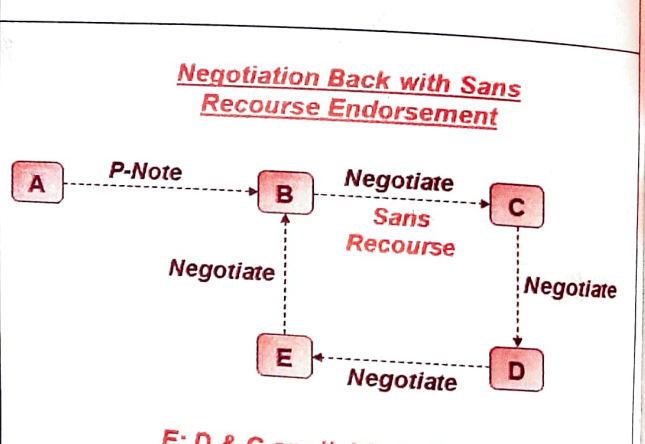
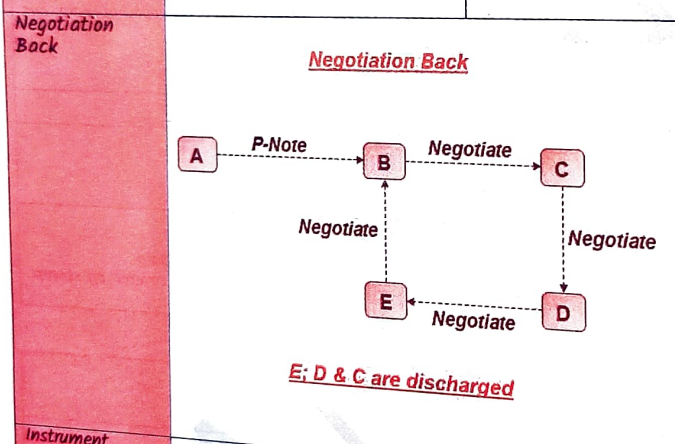
Holder Section - 8	Any person entitled in his own name → To possession of NI; and → To receive and recover the amount due thereon	Following persons are NOT holder -
		<ul style="list-style-type: none"> Thief  A person restrained by court to receive the amount
Holder in Due Course (H-DC) Section - 9	Any person who becomes holder	Note - Consideration need not be adequate
	<ol style="list-style-type: none"> For consideration Before maturity In good faith 	Note - In case of demand instrument, he must have taken the instrument within a reasonable time
Privileges of H-DC	Inchoate Instrument	H-DC can recover entire amount (even if it exceeds amount intended to be paid), provided it is covered by stamp
	Right to sue prior parties	→ A Holder can sue either Party primarily liable or his immediate endorser → H-DC can sue any of the party at his choice
	Holder deriving title from H-DC	A Holder deriving title from H-DC has same right of that H-DC
	Instrument made without consideration	A NI without consideration creates no obligation between the parties except to a Holder for consideration or Holder deriving title from him



Instrument obtained by unlawful means	→ H-DC gets a better title irrespective of that any prior party obtained it by fraud → However, in case of FORGERY, H-DC derives no title
Acceptance of Bill drawn in Fictitious Name	→ D draws a B/E using a fictitious name 'X' and drawee accepts it → It is payable to drawer's order → He endorsed it using the fictitious name 'X' only → Now acceptor is liable to H-DC irrespective that D used a fictitious name

Negotiation & Endorsement

Negotiation	Meaning	Modes of Negotiation	
		Transferring NI to any person to make that person the Holder <i>Note</i> - Tearing & posting one-half of NI is not a valid negotiation	Bearer NI
	Order NI	<u>Endorsement</u> + Delivery ↓ When maker or Holder of NI SIGNS the same	
Kinds of Endorsement	Blank or General Endorsement	Name of endorsee is missing	
	Full or Special Endorsement	Endorsement containing an order to pay to or to the order of a specified person	
	Restrictive Endorsement	Restricts the right of further negotiation	
	Partial Endorsement	Transfer to endorsee a part of the total amount only. This endorsement is invalid	
	Conditional Endorsement	Sans Recourse i.e. without remedy	Endorser will not be liable to endorsee or subsequent holders in case of dishonour
Contingent		Liability of endorser will depend upon happening of a specified event	
Facultative		Endorser expressly gives up some right like right to receive notice of dishonour	



Instrument obtained by unlawful means	→ Only H-DC gets a better title irrespective of that any prior party obtained it by fraud
	→ Further a Holder deriving title from H-DC has similar rights as that of H-DC, unless such holder is a PARTY to the fraud <i>Note</i> - He must not be a party to the fraud and accordingly mere knowledge of the fraud will not impact his rights
	→ However, in case of FORGERD endorsement, H-DC derives no title

Parties to NI

Capacity to make NI	Every person capable of contracting can be a party to NI	Even a MINOR may become a party to NI so as to bind all parties except himself
Liability of the Parties	Liability of DRAWER	Drawer is liable to compensate the Holder, provided notice of dishonour is given to him <i>Note</i> - Liability of drawer of B/E is secondary (primary liability of acceptor). But if acceptor does not accept the bill, the liability of drawer will become primary
	Liability of DRAWEE of CHEQUE i.e. BANKER	<i>Note</i> - Liability of drawer of CHEQUE is primary. Holder can't sue his banker in case of dishonour Banker is liable towards drawer when it defaulted in the payment against a cheque, even where there are sufficient funds

CA HARSH GUPTA

Negotiable Instruments Act

Liability of MAKER of P-NOTE or ACCEPTOR of B/E	Then liability is primary towards the Holder
Liability of ENDORSER	In case of dishonour, an endorser is liable to his subsequent endorsee, if <ul style="list-style-type: none"> NI is dishonoured by party primarily liable Notice of dishonour has been given to the endorser Endorser must not have done sans recourse endorsement Holder has not cancelled previous endorsements before the endorser
Liability of prior parties to H-DC	Every prior party is liable to H-DC until it is duly satisfied

Discharge of Endorser's liability

Acceptance of bill drawn in Fictitious Name	<ul style="list-style-type: none"> D draws a B/E using a fictitious name 'X' and drawee accepts it It is payable to drawer's order He endorsed it using the fictitious name 'X' only Now acceptor is liable to H-DC irrespective that D used a fictitious name
NI made without consideration	<ul style="list-style-type: none"> A NI made, accepted or endorsed without consideration → creates no obligation of payment between parties to the transaction Except when NI is endorsed to HOLDER FOR CONSIDERATION or every subsequent holder deriving title from him <p>Note - In accommodation bills, party for whose accommodation NI was made, if he has paid the amount thereof, cannot recover the amount from any person who became a party for his accommodation</p> <p>Note - Where consideration is partially absent, the amount which a Holder can recover is proportionately reduced</p>

Presentment			
Presentment for Acceptance of B/E	A B/E payable AFTER SIGHT must be presented to drawee for acceptance within a reasonable time + during business hours on business day (if no time or place is specified for acceptance)	A cheque is always payable on demand, so there is no need of acceptance	
	If so required by drawee, holder must allow <u>48 hours</u> (exclusive of public holidays) for acceptance	If drawee cannot be found after reasonable search, the bill is dishonoured for non-acceptance	
Presentment of P-Note payable after sight	P-Note payable AFTER SIGHT must be presented to the maker within a reasonable time + during business hours on a business day		
Presentment for Payment	<ul style="list-style-type: none"> NI must be presented for payment by or on behalf of Holder In case of default, the other parties thereto are not liable thereon to such holder 	Presentment of NI payable on Demand	Must be presented within a reasonable time
When Presentment is NOT necessary	<ol style="list-style-type: none"> Where any party has engaged to pay notwithstanding non-presentment Where after maturity, with knowledge that instrument has not been presented, the party makes the payment or part payment If maker or drawee intentionally prevents such presentment 		

Payment & Interest			
When interest is specifically mentioned	<ul style="list-style-type: none"> Interest is calculated at specified rate From the date of instrument till the payment thereof 	Interest when no rate is specified	<ul style="list-style-type: none"> Calculated @ 18% p.a. From the date at which the same ought to have been presented till the payment thereof



Discharge





Discharge of the Instrument	<ul style="list-style-type: none"> • Payment in due course by party primarily liable • Negotiation back to party primarily liable 	<ul style="list-style-type: none"> • When holder CANCELS name of the party primarily liable • Material alteration 	<ul style="list-style-type: none"> • Release of party primarily liable • Operation of law (e.g. time barred)
Discharge of One or more parties	<ul style="list-style-type: none"> • Payment in due course • Cancellation • Release • Negotiation Back 	} the party in respect of whom these event takes place and all subsequent parties are discharged	<ul style="list-style-type: none"> • Material alteration • Operation of law • Allowing more than 48 hours of acceptance without consent of any party, discharges that party • Not giving notice of dishonour • Non presentment for acceptance
	<ul style="list-style-type: none"> • Drawer is not liable if bank fails, when - <ul style="list-style-type: none"> → Drawer has sufficient funds when he issued cheque & when the cheque ought to be presented for payment → Holder fails to present cheque within reasonable time → Meanwhile the bank fails & drawer suffers actual damages 		<ul style="list-style-type: none"> • Qualified acceptance <div style="text-align: center; color: red; font-size: 2em;">↓</div>
Qualified / Conditional Acceptance	An acceptance is qualified when - <ol style="list-style-type: none"> 1. When PAYMENT is declared to be dependent on the happening of an event 2. It undertakes to pay PART OF THE SUM only 3. When NO PLACE is specified; it undertakes the payment at a specified place only 4. When a PLACE of payment is specified; it undertakes the payment at some other place only 5. It undertakes the payment at a TIME other than at which it is due 	Effect of Qualified Acceptance	
		If Holder objects to qualified acceptance <div style="text-align: center; color: red; font-size: 2em;">↓</div> B/E is deemed to be dishonoured by non-acceptance	If Holder gives his consent to qualified acceptance <div style="text-align: center; color: red; font-size: 2em;">↓</div> All prior parties, not consenting to it, are discharged
Material Alteration	An alteration is called material when it alters - <ul style="list-style-type: none"> → Character or operation (legal effect) of a NI → Rights and liabilities of any party to the NI Eg - Change in Time, Date, Place of payment or change in sum payable, rate of interest	Material Alterations authorised by the Act	
	<u>Legal Effect of Material Alteration</u> <ul style="list-style-type: none"> → Any material alteration renders NI void → against anyone who is a party thereto at the time of making such alteration and → does not consent to it, unless authorised by the act 	<ul style="list-style-type: none"> • Filling blanks of Inchoate instrument • Blank endorsement converted into Full • Crossing of uncrossed cheques • Converting General crossing into Special or Not Negotiable or A/c payee (but not vice-versa) • Converting Bearer into Order instrument by deleting the word 'Bearer' • Alteration of clerical error • Alteration done before NI is issued • Making Qualified Acceptance • Accidental alterations, e.g. mutilation by washing, document torn by a child etc. 	

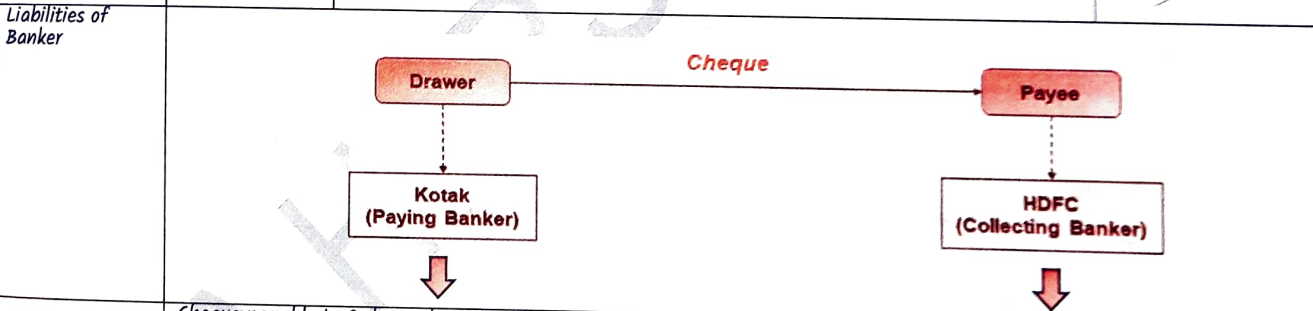
Dishonour

Dishonour by Non-Acceptance	→ B/E is not accepted within 48 hours	→ Drawee is a fictitious person	→ Drawee makes Qualified acceptance & Holder does not consent to it
	→ Drawee is incompetent to contract	→ Drawee cannot be found after reasonable search	→ Where there are 2 or more drawees (not being partners) & the bill is not accepted by all of them
Dishonour by Non-Payment	A NI shall be dishonoured by Non-payment if default is made by the following parties, in case of <ul style="list-style-type: none"> P-Note → Maker B/E → Acceptor (Drawee, in case bill does not require acceptance) Cheque → Bank 		
NOTICE of Dishonour	By Whom	Holder or any party liable thereto	
	To Whom	To all the parties whom the Holder wants to sue, except to maker of P-Note or Acceptor of the B/E	
	Contents of Notice	Disclose fact of dishonour	
<u>When Notice of Dishonour is NOT necessary</u> <ul style="list-style-type: none"> • When any party has dispensed with receiving notice • When party cannot be found after reasonable search • When a party couldn't give notice, without his own fault 			

	Effects of default	Party to whom notice is not given is discharged (except maker of P-Note or Acceptor of B/E)	<ul style="list-style-type: none"> When drawer has countermanded payment, notice to him is not necessary When party could not suffer damage for the want of notice (e.g. where holder can prove otherwise that party already knew about dishonour like cheque dishonoured due to insufficiency of funds)
Noting	<ul style="list-style-type: none"> Noting means RECORDING the fact of dishonour on the instrument or on a paper attached thereto by a Notary public It is not mandatory There is no need of crossing of cheques 	Protest	<ul style="list-style-type: none"> Protest is a formal CERTIFICATE of dishonour issued by Notary public It is mandatory to get FOREIGN B/E protested if required by law of the place where they are drawn
Protest for Better Security	<ul style="list-style-type: none"> When an acceptor of B/E, BEFORE MATURITY, becomes insolvent Holder may ask Notary Public to demand better security of the acceptor 	<ul style="list-style-type: none"> on being refused ↓ Cause such facts to be noted & certified 	<p>Note - However, Holder will have to wait till maturity to take any action</p> <p>Note - Protest for better security enables the bill to be accepted for honour</p>

Crossing & Bouncing of Cheques

Crossing	<ul style="list-style-type: none"> The payment of the cheque can't be received at the counter of the bank The cheque must be presented through the banker of the Holder 		
Types of Crossing	General	<ul style="list-style-type: none"> Two Parallel transverse lines across the face of the cheque 	
	Special	<ul style="list-style-type: none"> Cheque must contain name of a Banker on the face It is payable only to that banker 	
	Not Negotiable	<ul style="list-style-type: none"> Cheque must be crossed generally or specially + contain the words 'Not Negotiable' Cheque is nevertheless negotiable, but transferor can't transfer a better title 	
	A/C Payee	<ul style="list-style-type: none"> Cheque must be crossed generally or specially + contain the words 'A/C Payee' Cheque doesn't remain negotiable 	



Protection to Paying Banker	Cheque payable to Order	Paying banker is protected even if any ENDORSEMENT turned out to be forged	Protection to Collecting Banker
	Cheque crossed generally	When payment is made to any banker	
	Cheque crossed specially	When payment is made to the specified bank	
	When DRAWER'S signature is forged	Paying banker is NOT protected	
Liability of Paying Banker	Paying banker shall be liable for any loss to true owner of the cheque in case if		<ul style="list-style-type: none"> When banker received payment of a customer's cheque in good faith it shall not be liable to the true owner in case the title to the cheque proves defective
	<ul style="list-style-type: none"> Cheque crossed Generally - Paying banker pays amount otherwise to a banker Cheque crossed Specially - Paying banker pays the amount otherwise to the specified bank 		

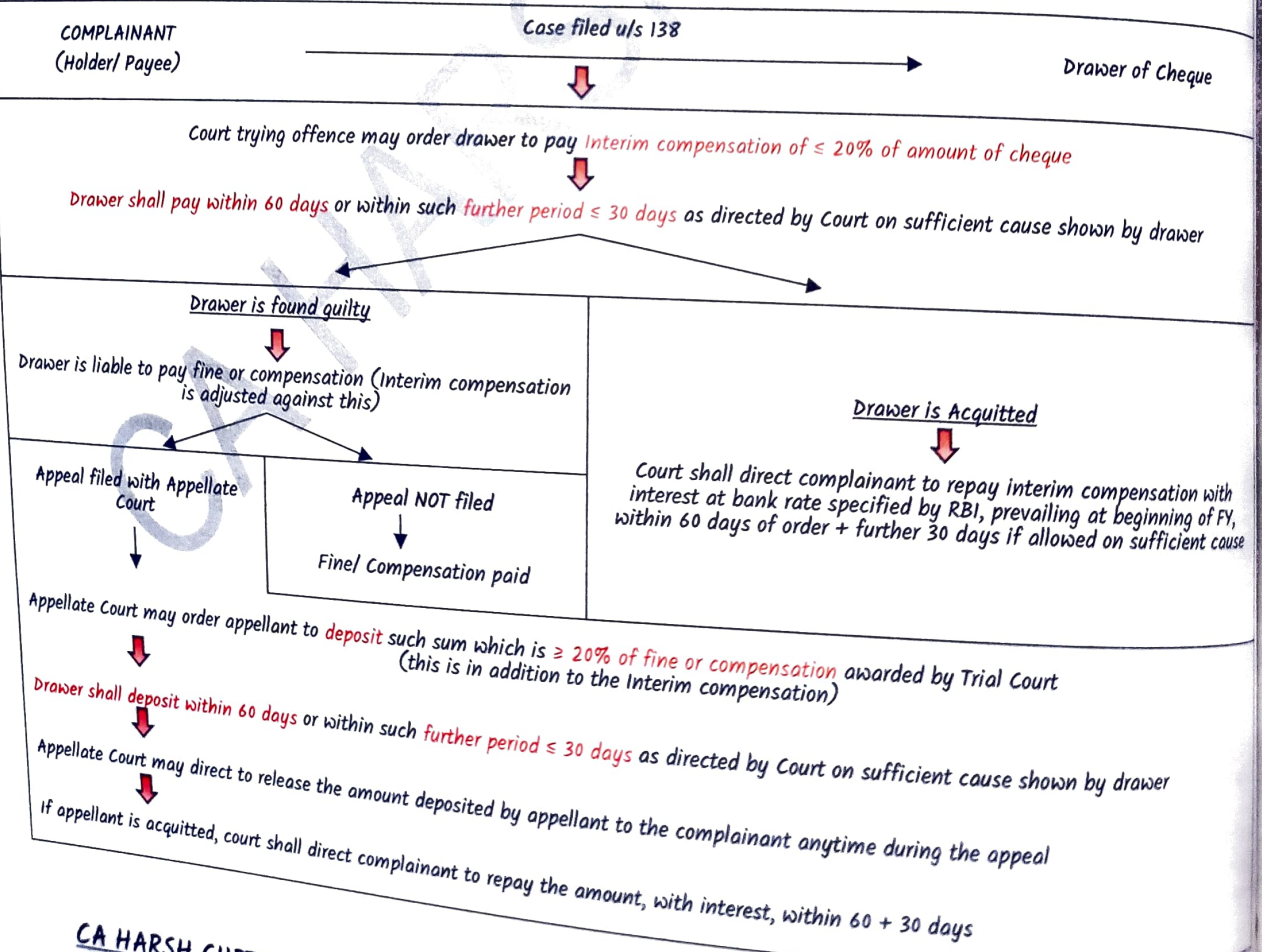


Refusal by Banker to honour customer's cheque	MUST refuse			MAY refuse		
	Stop Payment	Closure of A/C	Garnishee Order	Insufficient funds	Funds not properly available	Presentment after banking hours
	Stale Cheque	Death, insolvency of customer	Different signatures	Presented at different branch	When cheque is of doubtful validity	
	Post-dated cheque	Materially altered cheque	Undated cheque			
Loss of Cheque	Defective title of the party	Irregular endorsement				

BOUNCING or DISHONOUR of Cheque

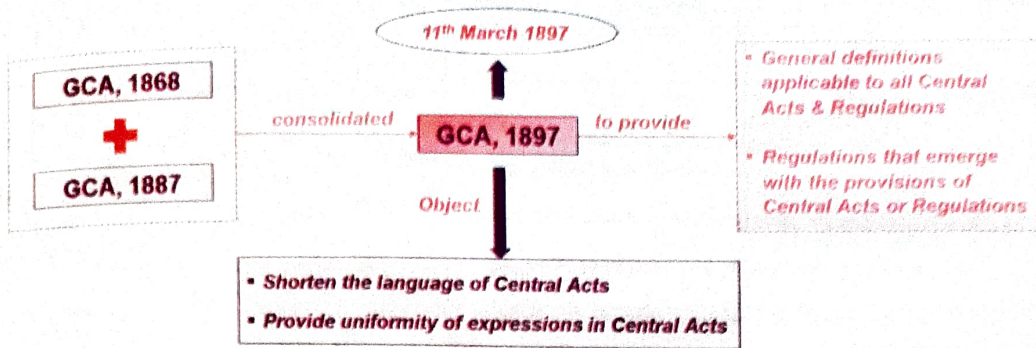
Nature of Liability	Imprisonment → upto 2 years; or Fine → upto 2 times the amount of cheque; or Both	<i>Note - Offence under this Act are compoundable</i>
Conditions for attracting liability on dishonour (Sec. 138)	<ol style="list-style-type: none"> Cheque must be issued to discharge any LEGALLY ENFORCEABLE DEBT (e.g. Gifts not covered) Cheque dishonoured due to INSUFFICIENCY OF FUNDS Cheque must be PRESENTED WITHIN VALIDITY period (i.e. 3 months) Holder must give a NOTICE within 30 days of the receipt of intimation from the bank regarding dishonour Drawer FAILED TO PAY within 15 days of the said notice Holder must FILE COMPLAINT with the court within next 1 month 	
Offence by Companies	→ When offence is committed by company, every person who is in charge of and responsible for the conduct of business of the company shall be deemed to be guilty → When it is proved that offence is committed with the consent of the director, manager or secretary or other officer, such person shall be punished accordingly <i>Note - Here company means Body corporate & includes a firm or other association of individuals</i>	
Sec. 143A	Power to Direct INTERIM Compensation	
Sec. 148	Power of APPELLATE TRIBUNAL	

Cheque Dishonoured



CA HARSH GUPTA

General Clauses Act, 1897



Territorial Jurisdiction	→ No territorial extent clause → Its application is based on other Central Acts	Scope of each section	Scope of each section depends upon the text of the particular section Note - GCA does not apply to State laws Note - As per Article 367, GCA can also be used for interpretation of the Constitution
--------------------------	--	-----------------------	--

Important Definitions

Act	→ Includes a series of acts	→ extend to illegal omissions	
Affidavit/ Oath/ Swear	Includes affirmation and declaration and in the case of persons by law allowed to affirm or declare instead of swearing		
Document	<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p style="text-align: center; background-color: #f08080; margin: 0;">Document comprise of FOUR elements</p> <ul style="list-style-type: none"> <li style="margin-bottom: 5px;"> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Matter</div> <div style="border: 1px solid black; padding: 2px;">This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive.</div> </div> <li style="margin-bottom: 5px;"> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Substance</div> <div style="border: 1px solid black; padding: 2px;">This is the second element on which the matter finds a permanent form.</div> </div> <li style="margin-bottom: 5px;"> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Means</div> <div style="border: 1px solid black; padding: 2px;">This represents third element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.</div> </div> <li style="margin-bottom: 5px;"> <div style="display: flex; align-items: center;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Record</div> <div style="border: 1px solid black; padding: 2px;">This last element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.</div> </div> </div>		
Father	where personal law permits include Adoptive father	Son	where personal law permits include Adoptive son
Financial Year	Means the year commencing on the first day of April	Year	Means a year reckoned according to British Calendar
Good Faith	→ a thing done honestly → whether it is done negligently or not	Good faith for Contract Act - <i>Maung Aung Pu vs. Maung si Maung</i> Nothing is said to be done in good faith which is done without due care and attention as is expected with a man of ordinary prudence	
Government	Includes both Central & State Government		
Immovable Properties	Shall include <ol style="list-style-type: none"> 1. Land 2. Benefits to arise out of land (e.g. Right to collect future rents; right to extract minerals; Right of way to access are immovable properties but right to arrears of rent is not immovable because this benefit has already arisen) 3. Things attached to earth (e.g. - Buildings, installation or erection of turbo alternator on platform is immovable property) (But standing timber, growing crops or grass though rooted in earth, have been excluded from the definition of immovable property by Transfer of Property Act, 1882) 4. Anything fastened to anything attached to earth 		
Imprisonment	It means imprisonment of either description (Rigorous or Simple) as defined in Indian Penal Code		
Month	Means a month reckoned according to the British Calendar		
Movable Property	Property of every description except immovable property		
Person	Includes → company → association → body of individuals, whether incorporated or not		



General Rules of Construction

Coming into force of an Act (Section 5)	→ Unless a particular date is mentioned, an Act comes into force on the day on which it receives the assent of the President	→ Act comes into force immediately on expiration of the day preceding its commencement
Effect of Repeal (Section 6)	Repeal shall NOT <ul style="list-style-type: none"> ▪ Revive anything not in force ▪ Affect previous operation of the Act repealed ▪ Affect any right, privilege, obligation or liability accrued under the repealed act ▪ Affect any penalty, forfeiture or punishment incurred under the repealed act ▪ Affect any investigation, legal proceeding or remedy 	Repeal vs. Deletion – Navrangpura Gam Dharmada Milkat v. Rmtuji Ramaji 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed
Repeal of Amendment Acts (Section 6A)	If any Amendment Act is repealed, then unless a different intention appears, the repeal will not affect the amendments done by that act. Eg - If Parliament repeals Companies (Amendment) Act, 2015; the amendments done by it in Companies Act, 2013 shall sustain	
Revival of Repealed Acts (Section 7)	It shall be necessary for the purpose of reviving any enactment, EXPRESSLY to state that purpose	
Reference to repealed enactments (Section 8)	If in any Act (say Sec. 9 of Depositories act, 1996) reference to any repealed act (say Sec. 187C Companies Act, 1956) is given; it will automatically be read construed as reference to provision so re-enacted (i.e. Sec. 89 of Companies Act, 2013)	
Commencement & Termination of Time (Section 9)	If any series of days starts with the word "From" then the first day in the series is EXCLUDED	If any series of days ends with the word "to" then the last day in the series is INCLUDED
Computation of Time (Section 10)	If the Court or Office is closed on the last day of the prescribed period, then act shall be considered to be done if it is done on the next day on which the court is open	This benefit is not applicable to the Indian Limitation Act, 1877
Measurement of distance (Section 11)	Distance shall be measured in a straight line on a horizontal plane	
Duty to be taken pro-rata (Section 12)	Where any duty of customs or excise is leviable on any given quantity, by weight, measure or value, then a like duty is leviable according to the same rate on any greater or lesser quantity	
Gender & Number (Section 13)	Words importing the masculine gender includes females	Singular words shall include plural and vice-versa

Powers & Functionaries

Power exercisable from time to time (Section 14)	Where any power is conferred, that power may be exercised from time to time	Power to appoint ex-officio (Section 15)	Where by any law, power to appoint any person is conferred, such appointment may be made either by name or by virtue of office
Power to suspend or dismiss (Section 16)	Power of appointment shall include power to suspend or dismiss any person	Substitution of functionaries (Section 17)	To apply a law to every person(s) for the time being executing the functions of an office, it shall be sufficient to mention the official title of the officer at present executing the functions
Successors (Section 18)	For indicating the relation of law to the successors of any corporations having perpetual succession, it is sufficient to express their relation to the corporation	Office chiefs and subordinates (Section 19)	To apply a law to the deputies or subordinates lawfully performing the duties, it shall be sufficient to prescribe the duty of the superior

Provisions as to Orders, Rules etc.

Construction of Rules etc. (Section 20)	Words used in any notification, order, scheme, rule, form or bye law shall have the same respective meaning as in the Act	Power to amend, rescind (Section 21)	Power to ISSUE notifications, rules, bye-laws etc. includes the power to ADD, AMEND, VARY or RESCIND
Making of rules before commencement of act (Section 22)	<ul style="list-style-type: none"> ▪ Rules may be made at any time after PASSING of Act ▪ But they will only be effective after the COMMENCEMENT of the Act 	Previous Publication (Section 23)	Where a power to make rules or bye-laws after previous publication is given then - <ol style="list-style-type: none"> 1. Publish a draft 2. Publication shall be done in such manner as authority deems to be sufficient 3. Specify a date on or after which draft will be taken into consideration 4. Consider any objections or suggestions which may be received 5. Rule or bye laws made after previous publication shall be conclusive
Continuation of Notifications, etc (Section 24)	<ul style="list-style-type: none"> ▪ Where any Act is repealed and re-enacted ▪ Any notification, order, scheme, rule etc. issued under the repealed act shall continue in force 		

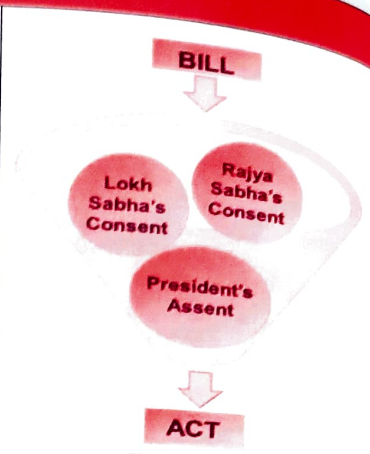
Miscellaneous

Recovery of Fines (Section 25)	Section 63 to 70 of Indian Penal Code + provisions of Code of Criminal Procedure shall apply	Offences under ≥ 2 acts (Section 26)	Offender shall be liable under either or any of those acts but shall not be punished twice for the same offence
Service by Post (Section 27)	Where any document needs to be SERVED by POST, the service shall deemed to be effective by <ul style="list-style-type: none"> ▪ Properly addressing ▪ Pre-paying ▪ Posting by registered post <p>Letter containing the document would be effected to be delivered in the ordinary course of post</p>		<ul style="list-style-type: none"> • If a notice needs to be served by 'Registered post acknowledgement due'; mere 'registered post' will not be sufficient <i>United Commercial Bank vs. Bhim Sain Makhija</i> • Endorsement of refusal is deemed service of notice <i>Jagdish Singh vs. Natthu Singh</i>
Citation of Enactments (Section 28)	<ul style="list-style-type: none"> ▪ In any Act, any other enactment may be cited by reference to the title, or short title or by number and years ▪ Any provision may be cited by reference to section or sub-section 		If section 63 to 70 of iPC is mentioned in section 25 of GCA then both section 63 as well as 70 are also included
Saving for previous repealed enactments (Section 29)	Provision of GCA shall not affect the construction of any previous enactment although it may be amended by an Act commenced after GCA	Application to Ordinances (Section 30)	The word 'Central Act', except in section 5 and the word 'Act' in clauses 9, 13, 25, 40, 43, 53, 54 of section 3 and in section 25 shall be deemed to include Ordinances

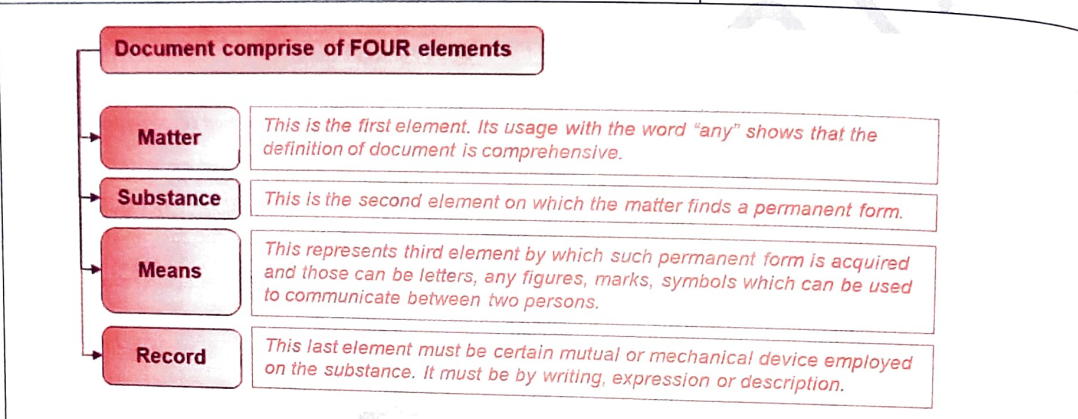


Basic Understanding of a Legislation

Preamble	<ul style="list-style-type: none"> → Defines the scope, object and purpose of the Act → Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to interpretation of the Act → However, the Preamble does not over-ride the plain provision of the Act 		
Definitions	<ul style="list-style-type: none"> → Usually mentioned in section 2 of the Act but can be mentioned in any other Act as well → Sometimes definitions of other Acts might also be used 		
Means and/ or includes	Means	→	exhaustive definition
	Includes	→	inclusive definition
	Means and includes	→	exhaustive definition
Shall and May	Shall	→	mandatory
	May	→	not mandatory
Statue	<ul style="list-style-type: none"> → Written will of the legislature → Generally means laws and regulations 		

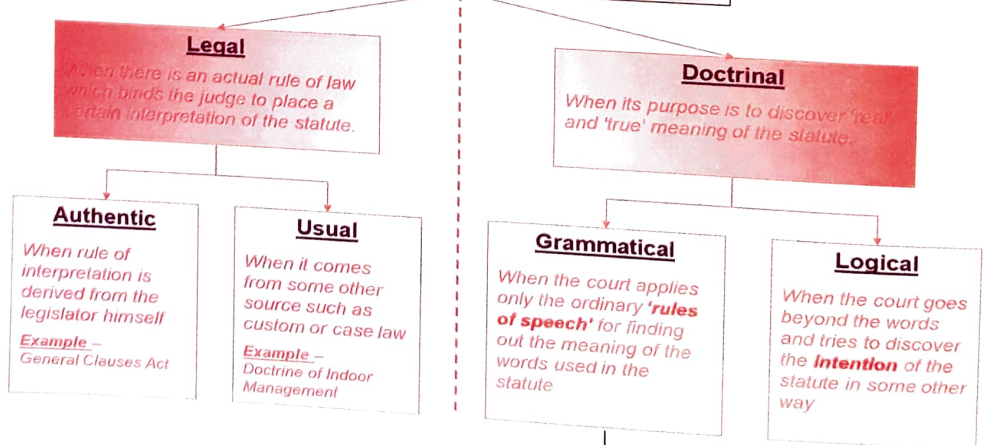


Document



Instrument	Section 2(14) of the Indian Stamp Act, 1899 → 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded
Deed	'Deed' as an instrument in writing purporting to effect some legal disposition. Example - Sale deed.

General Classification of Interpretation



Exceptions to Grammatical Interpretation	<ol style="list-style-type: none"> 1. Where letter of law is logically defective 2. If the text leads to an unreasonable result that it is self-evident that the legislature could not mean what it says
--	--

Kinds of Interpretation

Literal - The literal interpretation is that which regards conclusively the verbal expression of the law. It does not look beyond the literal sense. The duty of the Court is to ascertain the intention of the legislature and seek for that intent in every legitimate way, but first of all in the words and the language employed.

Functional - It departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature. In other words, it is necessary to determine the relative claims of the letters and the spirit of the enacted law

Interpretation vs. Construction

Going by the literal meaning	=	Interpretation
Going behind the spirit of the provision i.e. constructing the meaning	=	Construction

PRIMARY RULES OF INTERPRETATION

<p>Rule of Literal Construction</p>	<ul style="list-style-type: none"> Cardinal Rule Words should be understood in their natural and grammatical meaning Interpretation as per rules of grammar Choice between narrower and wider meaning – adopt a wider one 	<p><u>Words used in popular sense</u></p> <table border="1"> <tr> <td>In matters regarding the general public</td> <td>=</td> <td>Words are presumed to be used in their popular sense</td> </tr> <tr> <td>In dealing with particular business or transaction</td> <td>=</td> <td>Words are presumed to be used with their particular meaning in which they are used in the particular business</td> </tr> </table>	In matters regarding the general public	=	Words are presumed to be used in their popular sense	In dealing with particular business or transaction	=	Words are presumed to be used with their particular meaning in which they are used in the particular business
In matters regarding the general public	=	Words are presumed to be used in their popular sense						
In dealing with particular business or transaction	=	Words are presumed to be used with their particular meaning in which they are used in the particular business						
<p><u>4 key pointers</u></p> <div style="display: flex; flex-wrap: wrap; justify-content: space-around;"> <div style="border: 1px solid black; border-radius: 15px; padding: 5px; margin: 5px;">Natural and Grammatical meaning</div> <div style="border: 1px solid black; border-radius: 15px; padding: 5px; margin: 5px;">Explanation of the Rule</div> <div style="border: 1px solid black; border-radius: 15px; padding: 5px; margin: 5px;">Exact meaning preferred to loose meaning</div> <div style="border: 1px solid black; border-radius: 15px; padding: 5px; margin: 5px;">Technical words in technical sense</div> </div>		<ol style="list-style-type: none"> Natural & Grammatical Meaning Law should be first understood in their ordinary, natural and popular sense. If there is any absurdity, then only the grammatical sense must be modified Explanation of the Rule Words must be interpreted keeping in the mind the subject matter with reference to which and the context in which they are used in the law Exact meaning preferred to loose meaning Some words might have a loose meaning as well. In that case preference should be given to exact meaning over loose meaning. Eg – word ‘Holder’ in case of Negotiable Instruments Act Technical words Technical words should be interpreted in technical sense only Eg – ‘H-DC’ 						
<p>Rule of Reasonable Construction</p>	<ul style="list-style-type: none"> ‘<i>ut res magis valeat quam pereat</i>’ – words must be construed to lead to a sensible meaning At times 2 meaning are possible – one making statue vague and other leading to certainty – in such case later should be followed 	<ul style="list-style-type: none"> If literal meaning defeat the object of legislature, Court can depart from the dictionary meaning <p>Eg – ‘Implied powers’ in case of Objects clause of MOA of a company</p>						
<p>Rule of Harmonious Construction</p>	<ul style="list-style-type: none"> Statue must be read as a whole Avoid ‘head on clash’ between 2 sections Where 2 provisions can’t be reconciled, interpret in such a way that effect may be given to both 	<ul style="list-style-type: none"> If it is impossible to avoid inconsistency <ul style="list-style-type: none"> Provision enacted later in point of time must prevail If provisions are enacted at the same time, Provision appearing later in Act shall prevail 						
<p>Rule of Beneficial Construction or Heydon’s Rule or Purposive Interpretation or Mischief Rule</p>	<ul style="list-style-type: none"> In case of possibility of more than one interpretation, most firmly established one shall be followed Court must follow that construction which suppress the mischief and advance the remedy 	<p><u>4 key consideration</u></p> <ol style="list-style-type: none"> What was the law before making of the Act What was the mischief which the law did not provide What is the remedy the act has provided What is the true reason for the remedy 						
<p>Rule of Exceptional Construction</p>	<p>A. <u>Common sense rule</u></p> <p>General Rule → Full effect must be given to every word Exception → if no sensible meaning can be given to a word, that word should be eliminated</p>	<p>B. <u>‘Or’ and ‘And’</u></p> <table border="1"> <tr> <td>General Rule</td> <td>→</td> <td> <ul style="list-style-type: none"> The word ‘and’ is conjunctive. The word ‘or’ is disjunctive </td> </tr> <tr> <td>Exception</td> <td>→</td> <td> To give effect to the intention of the legislature <ul style="list-style-type: none"> Read ‘and’ as ‘or’; and Read ‘or’ as ‘and’ </td> </tr> </table>	General Rule	→	<ul style="list-style-type: none"> The word ‘and’ is conjunctive. The word ‘or’ is disjunctive 	Exception	→	To give effect to the intention of the legislature <ul style="list-style-type: none"> Read ‘and’ as ‘or’; and Read ‘or’ as ‘and’
General Rule	→	<ul style="list-style-type: none"> The word ‘and’ is conjunctive. The word ‘or’ is disjunctive 						
Exception	→	To give effect to the intention of the legislature <ul style="list-style-type: none"> Read ‘and’ as ‘or’; and Read ‘or’ as ‘and’ 						



C. 'May', 'must' and 'shall'

	<p>May - directory in nature <u>Some exceptions</u></p> <ul style="list-style-type: none"> Used as a matter of pure conventional courtesy Involves a discretion coupled with an obligation it confers a positive benefit to the general class of subjects, or a remedy would be advanced, and a mischief suppressed, or giving the word, a directory significance would defeat the very object of the Act 	<p>Shall & must- mandatory in nature <u>Some exceptions</u></p> <ul style="list-style-type: none"> used against the Government the intention of the legislature demands the same the mandatory interpretation leads to absurdity <p><i>Note - Where shall is used in a penalty provision, no discretion is left to the Court to determine whether such provision is directory or mandatory - it has to be taken as mandatory</i></p>
Rule of Eiusdem Generis	<p>The term 'Eiusdem Generis' means 'of the same kind or species'</p> <p><u>CONDITIONS to apply this rule -</u></p> <ul style="list-style-type: none"> The statute has used certain specific words, The specific words constitute a class, The class is not exhausted, A general term follows the specific words, and There is no indication of a different legislative intent 	<p><u>Meaning of the rule</u></p> <ul style="list-style-type: none"> → General words take their colour from the specific words → If specific words exhaust the category, then general words are to be construed as covering a larger category → If specific words are of different category, meaning of general words remains unaffected by those general words → Courts have discretion to apply this rule

SECONDARY RULES OF INTERPRETATION

Effect of Usage	<p>'Optima Legum Interpretest Consuetudo'</p> <p>↓</p> <p>the custom is the best interpreter of the law</p>	<p>Contempranea expositio est optima et fortissima in lege'</p> <p>↓</p> <p>the best way to interpret a document is to read it as it would have been read when made</p>
Noscitur a Sociis	<p>The meaning of a word is to be judged keeping in mind the associated words</p> <p>Eg - Plant & Machinery</p>	<p>It is a rule wider than the rule of Eiusdem Generis, rather Eiusdem Generis is only an application of the noscitur a sociis.</p>

Internal Aids to Interpretation

Title	<p>Short title - can't be used for interpretation</p> <p>Long title</p> <ul style="list-style-type: none"> It described the law It is admissible aid to interpretation However, it will not override clear meaning of law 	Preamble	<ul style="list-style-type: none"> Expresses the scope, object & purpose of the Act It can be used for interpreting the law However, it will not override the plain provision of the Act
Title of Chapter	<ul style="list-style-type: none"> Sections dealing with a common object are grouped together under a Chapter There are conflicting opinions regarding its use <ul style="list-style-type: none"> Heading is the KEY to interpret the clauses ranged under it It can only be used when words are ambiguous However, heading of one chapter can't be used to interpret another group 		
Marginal Notes	<ul style="list-style-type: none"> There is difference of opinion, but the generally held view is that marginal notes cannot be used for construing the sections However, many cases show that marginal notes may be referred in exceptional cases, like to remove an ambiguity <p><i>Note - Marginal notes appended to the Articles of the constitution are a part of the constitution and can be used for interpretation</i></p>		
Definitional sections	Restrictive & Extensive Definitions	<p>Definitions starting with</p> <p>Means → restrictive & exhaustive</p> <p>Includes → extensive</p> <p>Means & includes → exhaustive</p> <p>To apply to & includes → extensive</p> <p>Is deemed to include → extensive</p>	
	Ambiguous definitions	<ul style="list-style-type: none"> Interpreted in the light of other provisions of the Act Such definitions should not be read in isolation, it must be read in the context in which it is used 	
	Definitions subject to contrary context	<p>When a word is defined to bear a number of inclusive meanings, the sense in which the word is used</p> <ul style="list-style-type: none"> the context of the scheme of the Act, the language of the provision and the object intended to be served thereby 	



Illustrations	<ul style="list-style-type: none"> clarify the application of provision forms part of the statute in case of conflict, section will prevail 	Schedules	<ul style="list-style-type: none"> Part of the act & read together with the act But cannot control or prevail over the expression in the law 	
Explanation	<ul style="list-style-type: none"> Explain the meaning of the text of the section May also be used to include or exclude something It clears up the ambiguity But should not be construed as to widen the ambit of the section 	Read statute as a whole	<ul style="list-style-type: none"> Construction of a statute is to be made of all its parts taken together Each part must be interpreted in harmony with the others 	
Proviso	<ul style="list-style-type: none"> Carves out an exception to the main provision Ordinarily it does not state a general rule However, proviso may serve the following purpose <ul style="list-style-type: none"> Imposing conditions Giving clarifications Making substantive provisions 	<u>Difference between Proviso, Exception & Saving clause</u>		
		Exception	Proviso	Saving Clause
		'Exception' is intended to restrain the enacting clause to particular cases.	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

External Aids to Interpretation

Historical Setting	Historical Facts	<ul style="list-style-type: none"> Keep in mind the history of external circumstance which led to enactment of the law Also consider whether the statute was intended to alter the law or leave it where it stood before 	
	Parliamentary history	<ul style="list-style-type: none"> Speeches at the time of introduction of the bill Parliamentary discussions during the progress of the bill 	
	Report of Expert Committees	Report of expert committees which examined the bill and made recommendations to the Parliament	
Consolidating statutes & previous laws	<ul style="list-style-type: none"> In case of consolidating laws, court may presume that it is not intended to alter the law Previous laws may solve doubtful points in the present statute 		
Usage	<ul style="list-style-type: none"> The acts done under a statute provide quite often the key to the statute itself It is well known that where the meaning of the language in a statute is doubtful, usage - how that language has been interpreted and acted upon over a long period - may determine its true meaning 		
Earlier & Analogous Acts	<u>Interpreting one act with the language of another</u>		
	<ul style="list-style-type: none"> Where different acts are <i>pari-materia</i> (i.e. on same subject); they may be construed together as one system In case of discrepancy, act introduced later in point of time will prevail 	<u>Reference to repealed acts</u>	
Dictionary meaning	<ul style="list-style-type: none"> Refer the act in question to find a meaning Where a word is not defined in the act, we may refer to dictionaries We must always take into consideration the context For technical terms use technical dictionaries 	Foreign decisions	<ul style="list-style-type: none"> Foreign decisions following the same system of jurisprudence as ours may be referred However, prime importance is always given to Indian case laws

Rule of Interpretation of Deeds & Documents

Interpretation from point of view of a reasonable man	<ul style="list-style-type: none"> The first point is that one has to find out what a reasonable man, who has taken care to inform himself of the surrounding circumstances of a deed or a document, and of its scope and intendments, would understand by the words used in that deed or document 	Uniformity in meaning	<ul style="list-style-type: none"> It is inexpedient to construe the terms of one deed by reference to the terms of another Further, it is well established that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a rule
The Golden Rule	<ul style="list-style-type: none"> Ascertain intention of the parties Document shall be considered as a whole 		<ul style="list-style-type: none"> Status and training of the parties using the words have also to be taken into account
Earlier clause to override	In case of clash, earlier clause will override the later one	Effect of one invalid clause	<ul style="list-style-type: none"> One invalid clause does not makes the entire document void However, if the invalid clause is an integral part of the document so as to render it impossible to sever the good from bad, the whole document is void

