CORPORATE & OTHER LAWS

SUMMARISED CHARTS
(Applicable for Sep 24 & Jan 25)

About the faculty

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THE COMPANIES ACT, 2013

NATURE OF COMPANY (Chart 1.1)

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INTRODUCTION

- This Act repeals and replaces The Companies Act, 1956.
- Received the assent of President on **29th August, 2013.**
- **Sec 1 was notified on 30th Aug 2013.**Remaining sections were notified in phased manner on different dates
- Contains **470 sections** divided into **29 chapters** along with **7 schedules**

Short Title, Extent, Commencement and Application –

(1) This Act may be called the **Companies Act, 2013.**
(2) It extends to the **whole of India.**
(3) This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the CG may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions.
(4) The **provisions of this Act shall apply to—**
a) **companies incorporated under this Act** or **under any previous company law;**
b) **Insurance companies**, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;
c) **banking companies,** except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;
d) **companies engaged in the generation or supply of electricity,** except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;
e) **any other company governed by any special Act**, except in so far as the said provisions are inconsistent with the provisions of such special Act;
f) **such body corporate,** incorporated by any Act for the time being in force, **as the Central Government may, by notification, specify** in this behalf. Example: FCI, NHAI.

COMPANY-DEFINITION

STATUTORY DEFINITION:
As per **Sec 2(20)** of the Companies Act, 2013, 'company' means a company incorporated
- Under this Act or
- Any of the previous Companies laws

AS DEFINED BY PROFESSOR HANEY:
A company is an artificial person created by law having
- Separate identity
- Perpetual Succession
- Common seal (Now optional as per latest amendment)

BODY CORPORATE Sec 2(11)

GENERAL MEANING:
Body corporate or corporation means an association of persons having the **following characteristics:**
(a) It is incorporated under any law for the time being in force.
(b) It has a separate legal identity.
(c) It has perpetual succession.
(d) It has the capacity-to sue and own property in its own name, and similarly it can be sued in its own name.

STATUTORY MEANING [Sec 2(11)]
'Body corporate' or 'corporation' **includes a company incorporated outside India**, but **does not include –**
(i) a co-operative society registered under any law relating to co-operative societies; and
(ii) any other body corporate (not being a company as defined in this Act), which CG may, by notification, specify in this behalf.

CHARACTERISTICS/FEATURES OF COMPANY

- **TRANSFERABILITY OF SHARES: Shares are movable property transferable in the manner provided in the Articles (Sec. 44). In a Private company - the right to transfer the shares is restricted. In a Public company – shares are freely transferable.**
- **OWNERSHIP SEPARATE FROM MANAGEMENT:** Management of the company lies in the hands of elected representatives of members, commonly called as **Board of Directors, who are appointed as well as removed by members**
- **PERPETUAL SUCCESSION:** 'Members may come and go, but the company goes on forever'. **Death, insolvency, insanity** etc. of any members **does not affect the continuity of the Company**
- **COMMON SEAL:** Official signature of the Company. **Companies (Amendment) Act, 2015 has made the provisions related to common seal as optional.** In case a company does not have a common seal, the authorization shall be made by **two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.**
- **LIMITED LIABLITITY:** For the debts of the company, its creditors can sue it and not its members whose liability is **limited to the unpaid amount on shares held by them** or **the guarantees** provided by them to contribute on the winding up of the company, depending on the type of company.
- **ARTIFICIAL PERSON: not a natural person; not a fictitious person. A company exists only in eyes of law.** Can **own property, have banking account, raise loans, incur liabilities and enter into contracts. Can sue others and be sued in its own name**.
- **SEPARATE LEGAL ENTITY:** A company is a legal entity **separate from its members**. It is known by its own name has rights and liabilities of its own.
  Salomon v Salomon & Co. Ltd. ; Lee v Lee's Air Farming Ltd.
- **SEPARATE PROPERTY:** A Company can own and enjoy property in its own name. Members are not owners or co-owner of the company's property.**Members have no insurable interest in the property of the company (Macaura v. Northern Assurance Co. Ltd.)**
- **INCORPORATED ASSOCIATION: formed and registered** by complying with the prescribed formalities prescribed under the Act.

LIFTING/PIERCING OF CORPORATE VIEL

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- **Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.**
- **Lifting of corporate veil** means **ignoring the separate identity of a company.** It means **disregarding the corporate personality and looking behind the real persons who are in the control of the company.**
- Lifting of corporate veil is permissible only if it is **permitted by the statute**; or there is a **clear evidence of abuse of the device of incorporation .**Court has the **discretion** whether or not to lift the corporate veil.(Where the legal entity of a corporate body is **misused for fraudulent and dishonest purposes**)
- Under certain **exceptional circumstances** the **courts may disregard or pierce** the corporate veil of a company and **hold persons controlling the affairs of the company liable for the acts of the company**.

COMPANY - A CITIZEN OR NOT?

A company is not a citizen: Citizenship under the Citizenship Act is available only to an individual. Therefore, no company can be a citizen of India.

Can a company become partner in a partnership firm?

Company being a juristic person is capable of contracting in its own name.Since partnership, as per Sec 4 of the Partnership Act, 1932, is a contractual relationship between persons, there should be no objection to a partnership being created with or by a company. Since the liability of a partner being unlimited, can a limited liability company become a partner? It is the liability of the members of a limited company which is limited and not that of the company itself. Thus there should be **no objection to a limited liability company becoming a partner in the partnership firm. However, the MCA is of the opinion that company may become a partner only if MOA thereof specifically allows it.**

NATURE OF COMPANY (Chart 1.2)

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SOME MISCELLANEOUS DEFINITIONS

OFFICER WHO IS IN DEFAULT [Sec 2(60)]

Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

- **(i) whole-time director (WTD);**
- **(ii) key managerial personnel (KMP);**
- **(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;**
- **(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;**
- **(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;**
- **(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;**
- **(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.**

Example: In a company, a default was committed with respect to the allotment of shares by the officers. In company there were no managing director, whole time director, a manager, secretary, a person charged by the Board with the responsibility of complying with the provisions of the Act, and neither any director/directors specified by the board. Therefore, in such situation, all the directors of the company may be treated as officers in default.

RELATED PARTY [SEC 2(76)]

Related party, with reference to a company, means—

- **(i)** a **director** or his relative;
- **(ii)** a **key managerial personnel** or his relative;
- **(iii)** a **firm**, in which **a director, manager or his relative is a partner**;
- **(iv)** a **private company in which a director or manager or his relative is a member or director**;
- **(v)** a **public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;**
- **(vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;**
- **(vii) any person on whose advice, directions or instructions a director or manager is accustomed to act:**
  Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- **(viii) any body corporate which is-**
  - **A. a holding, subsidiary or an associate company of such company;**
  - **B. a subsidiary of a holding company to which it is also a subsidiary; or**
  - **C. an investing company or the venturer of the company;**

Exemption - This Clause (viii) shall not apply with respect to section 188 (Related Party transactions) to a private company vide Notification No. G.S.R. 464(E) dated 5th June, 2015.

Explanation- For the purpose of this clause, "the investing company or the venturer of a company" means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

- **(ix) such other person as may be prescribed;**

As per Rule 3 given in the *Companies (Specification of Definitions Details) Rules, 2014*, for the purposes of sub-clause (ix) of clause (76) of section 2 of the Act,

a director (other than an independent director) or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

'RELATIVE' - Sec 2(77)

'Relative', with reference to any person, means anyone who is related to another, if –

- (i) **they are members of a HUF;**
- (ii) **they are husband and wife;** or
- (iii) **one person is related to the other in such manner as may be prescribed.**

Prescribed Relationships [Rule 4 of the Companies (Specification of definitions details) 2014]

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-

- **(1) Father (including step-father)**
- **(2) Mother (including step-mother)**
- **(3) Son (including step-son)**
- **(4) Son's wife**
- **(5) Daughter**
- **(6) Daughter's husband**
- **(7) Brother (including step-brother)**
- **(8) Sister (includes step-sister)**

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KINDS OF COMPANIES (Chart 2.1)

ON THE BASIS OF MEMBERS

PUBLIC COMPANY [Sec 2(71)]

Public company means a company which -
(i) is **not a private company**; **and**
(ii) has a **minimum paid-up share capital, as may be prescribed**.
Provided that a company which is **a subsidiary of a company, not being a private company**, shall be deemed to be a public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

PRIVATE COMPANY [Sec 2(68)]

Private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, -
(i) **Restricts** the **right to transfer its shares**;
(ii) except in case of One Person Company, **Limits** the number of its members **to 200:**

EXCLUSIONS:
- **Joint Holders** to counted **as one**
- **Employees** to be excluded
- **Ex-employees** to be excluded

(iii) **Prohibits** any **invitation to the public** to subscribe for any **securities** of the company.

SMALL COMPANY - Sec 2(85)

OTHER THAN 'ONE PERSON COMPANY' AND 'SMALL COMPANY'

ONE PERSON COMPANY (OPC) - Sec 2(62)

ON THE BASIS OF LIABILITY

UNLIMITED COMPANY [Sec 2(92)]

LIMITED COMPANY

COMPANY LIMITED BY SHARES Sec 2(22)

COMPANY LIMITED BY GUARANTEE Sec 2(21)

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ON THE BASIS OF CONTROL

a) **Holding Company - Sec 2(46)**
b) **Subsidiary Company - Sec 2(87)**
c) **Associate Company - Sec 2(6)**

ON THE BASIS OF ACCESS TO CAPITAL

LISTED COMPANY Sec 2(52)

A company which has **any of its securities listed on any recognized stock exchange**.
Provided that **such class of companies**, which have listed or intend to list such class of securities, **as may be prescribed in consultation with the SEBI**, shall not be considered as listed companies

UNLISTED COMPANY
Company **other than listed company**

Rule 2A of Companies (Specification of definitions details) Rules, 2014

Following classes of companies shall not be considered as listed companies, namely:-
a) **Public companies which have not listed their equity shares on a recognized stock exchange but have listed** their –
   i. **non-convertible debt securities issued on private placement basis** in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
   ii. **non-convertible redeemable preference shares issued on private placement basis** in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
   iii. **both categories of (i) and (ii) above.**
b) **Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange** in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;
c) **Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in sub section (3) of section 23** of the Act."

OTHER COMPANIES

1) **Foreign company - Sec 2(42)**
2) **Government company - Sec 2(45)**
3) **Companies with charitable objects etc. (Non-profit companies) - Sec 8**
4) **Dormant company - Sec 455**
5) **Nidhi Companies - Sec 406(1)**
6) **Public financial Institutions - Sec 2(72)**

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KINDS OF COMPANIES (Chart 2.2)

ONE PERSON COMPANY (OPC) [Sec 2(62)]

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- 'One person company' means a company which has **only one person as a member**.
- Such a company is described **u/s 3(1)(c) as a private company. Thus all the provisions as are applicable to a private company shall also apply to "One Person Company".** However certain provisions of the Act and the rules are applicable only to 'OPC'and not to all private companies.

Specific provisions applicable to 'One Person Company'

- Memorandum must be **subscribed to by 1 person**.
- Memorandum shall state the **name of a person, who in the event of death of subscriber, shall become the member of the company.**
- The words **'One Person Company'** shall be mentioned in brackets **below the name**.
- Every **private company** shall have a minimum **of 2 members.** However 'OPC' shall have **1 member only.** The number of members shall exceed **200** in case of a private company .However in 'OPC' shall have **1 member only.**
- Every private company shall have a minimum of **2 directors**. However, every 'OPC' shall have a **minimum of 1 director.**

Provisions Relating To Incorporation of One Person Company

- **Memorandum of OPC** shall indicate the **name of the other person**, who shall, in the event of the **subscriber's death or his incapacity to contract, become the member** of the company.
- The other person whose name is given in the memorandum shall give **his prior written consent** in prescribed form and the **same shall be filed with ROC** at the time of incorporation.
- Such other person may be given the **right to withdraw his consent in such manner as may be prescribed**
- The member of OPC may at any time **change the name of such other person** by giving **notice to the company in such manner as may be prescribed** and **the company shall intimate the same to the Registrar. in such manner as may be prescribed**
- Any **such change** in the name of the person **shall not** be deemed to be **an alteration of the memorandum**.

Rule 3 of Company (Incorporation) Rules, 2014

- Only **a natural person** who is **an Indian citizen** ~~and resident in India~~ **whether resident in India or not** (person who has stayed in India for a period of not less than **120 days** during the **immediately preceding one financial year**) shall be eligible to **incorporate an OPC or be a nominee for the sole member of an OPC.**
- A natural person **shall not be member of more than OPC at any point of time and the said person shall not be a nominee of more than a OPC**
- Where a natural person being member in OPC becomes member in another such company by virtue of his being a nominee in that OPC, **such person shall meet the eligibility criteria (as given in point above) within a period of 180 days.**
- **No minor** shall become **member or nominee of the OPC** or can hold share with beneficial interest**.**
- Such Company **cannot be incorporated or converted into a company u/s 8** of the Act but can be converted to private or public co. **(Rule 6 & 7 of Chapter II)**
- **It cannot carry out Non-Banking Financial Investment activities** including **investment in securities of anybody corporate.**

Rule 4: Nomination by the Subscriber or Member of One Person Company

For the purposes of first proviso to sub-section (1) of **section 3-**

1) The **subscriber to the memorandum of a One person Company** shall **nominate a person**, after obtaining **prior written consent of such person,** who shall, in **the event of the subscriber's death or his incapacity to contract, become the member of that OPC.**
2) The **name of the person nominated under sub-rule (1)** shall be **mentioned in the memorandum** of One Person Company and **such nomination details along with consent of such nominee shall be filled in Form No. INC-32 (SPICe+) as a declaration** and the **said Form along with fee as provided** in the Companies (Registration offices and fees) Rules, 2014 shall **be filed with the Registrar at the time of incorporation** of the company **along with its e-memorandum and articles.**
3) **The person nominated** by the subscriber or member of a OPC may, **withdraw his consent by giving a notice in writing** to such **sole member and to the OPC .**
   Provided that the **sole member shall nominate another person as nominee** within **15 days of the receipt of the notice of withdrawal** and **shall send an intimation of such nomination in writing to the Company**, along **with the written consent** of such other person so nominated in **which shall be filed in form of a declaration in Form no.INC.4.**
4) The **company** shall **within 30 days of receipt** of the **notice of withdrawal of consent under sub-rule (3) file with the Registrar,** a **notice of such withdrawal of consent** and **the intimation of the name of another person nominated by the sole member in Form No INC.4** along with fee as provided in the **Companies (Registration offices and fees) Rules, 2014** and **the written consent of such another person so nominated in form of a declaration in Form No. INC-4.**
5) The **subscriber or member of a OPC** may, by **intimation in writing to the company**, **change the name** of the person nominated by him at any time **for any reason** including in case of death or incapacity to contract of nominee and **nominate another person after obtaining the consent of such another person and his declaration shall be filed in Form No. INC-4**
   Provided that the **company** shall, on the receipt of such intimation, file with the Registrar, a notice of such **change in Form No INC.4** along with **fee and with the written particulars of consent** of new nominee in **form of a declaration in Form No. INC- 4 within 30 days of receipt of intimation of the change.**
6) Where the **sole member of One Person Company ceases to be the member** in the event of **death or incapacity to contract** and **his nominee becomes the member of such One Person Company,** such new member **shall nominate within 15 days of becoming member,** a person who shall in the event of his death or his incapacity to contract become the member of such company, and **the company shall file with the Registrar an intimation of such cessation and nomination in Form No INC.4** along with the fee as provided in the **Companies (Registration offices and fees) Rules, 2014** within **30 days of the change in membership** and with the particulars of **consent of the person so nominated in form of declaration in Form No. INC-4.**

RULE 7A- Penalty: If a **OPC or any officer of such company** contravenes **any of the provisions of these rules,** the OPC or any officer of the such **Company shall be punishable** with fine which may extend to **five thousand rupees and with a further fine which may extend to five hundred rupees for every day** after the first offence during which such contravention continues

Relaxations available to an OPC

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- **Not required to prepare a cash-flow statement** with effect of section 2(40).
- **The annual return to furnished under section 92** can be **signed by the Director and not necessarily a Company Secretary**, even abridged annual return may be prescribed.
- Further, following the similar line, **section 134 provides it would suffice if one director signs the audited financial statements** and **abridged form of director report may be prescribed**.
- **Holding annual general meeting as required under section 96 is not necessary** in case of OPC. Moreover, certain specific provisions related to general meetings and extraordinary general meetings, specified under sections 100 to 111 not applicable
- Even **relaxation is also there in convening board meetings section 173** requires an OPC to **hold only one meeting of the Board of Directors in each half of a calendar year.**
- Vide section 137, the **OPC are allowed to file financial statements within six months from the close of the financial year** as **against 30 days.**

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KINDS OF COMPANIES (Chart 2.3)

SMALL COMPANY [Sec 2(85)]

Small company means a company, **other than a public company** which satisfies **both** the following conditions:

(i) **its paid-up share capital does not exceed**
- **Rs.50 lakhs**; or such higher amt as may be prescribed (**not being more than Rs.10 crore**). **[Prescribed amount 4 crores]**

(ii) Its **turnover(as per the profit and loss account for immediately preceding financial year) does not exceed**
- **Rs.2 crore** or such higher amt as may be prescribed (not being more than **Rs.100crore**). **[Prescribed amont-40 crores]**

Certain companies not to be "small companies"

A company **shall not be a small company**, if

(i) It is a **public company**; or

(ii) It is a **holding company** of any company; or

(iii) It is a **subsidiary company** of any company

(iv) It is a **company registered/s 8** (viz. it is **a non profit company**);or

(v) It is a **company or a body corporate governed by any special Act .**

Prescribed limits [Rule 2(1)(t) of Companies (Specification of Definitions Details) Rules, 2014]

For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed **Rs.4 crores** and **Rs.40 crores** respectively."

EXEMPTIONS/PRIVELEGES TO PRIVATE COMPANIES

- **Two or more persons** may form a private co. as **against 7 persons** in case of public co. [Sec 3(1)(b)].
- Private Co. **need not have more than 2 directors** as against **minimum 3 in case of a public co.** [Sec 149].
- Private Co. is **not required to have independent directors** [Sec 149 (4)].
- Private Co. is **exempt from the provisions of having an audit committee** constituted by the BOD[Sec 177(1)]
- Private Co. is **exempt from the constitution of a Nomination & Remuneration Committee** [Sec 178(1)], as well as **Stakeholders Relationship Committee** [Sec 178 (5)].

PRIVATE COMPANY vs. PUBLIC COMPANY

1. **Minimum number of members:** In case of a **private co.** minimum number of persons to form a company is **2** while it is **7 in case of a public co.**
2. **Maximum number of members:** In case of **private co**., maximum number must not **200** whereas there is **no such restriction** on the maximum number of members **in the case of a public co**.
3. **Transferability of Shares:** As per Sec 44, the shares of any member in a company shall be movable property transferable in the manner provided by the articles of the company. In case of **private company**, by its very definition, articles of a private company have to **contain restrictions on transferability of shares**.
4. **Prospectus:** A **private company cannot issue a prospectus** while a **public company** may, through prospectus; **invite the general public** to subscribe for its securities.
5. **Minimum number of Directors**: A **private company** must have atleast **2** directors, whereas a **public company** must have at least **3** directors.
6. **Public deposits:** A **public company is free to accept deposits** from public (subject, however, to the provisions of Sec 76). A **private company cannot accept deposits** from the public.
7. **Quorum:** Unless the articles of company provide for a larger number, **in case of a public co**., the quorum shall be
   - **(i) 5 members** personally present if the number of **members** as on the date of meeting is **not more than 1000**.
   - **(ii) 15 members** personally present if the number of **members** as on the date of meeting **is more than 1000 but upto 5000**.
   - **(iii) 30 members personally** present if the number of members as on the date of meeting **exceeds 5000.**

   In case of private company, unless the Articles provide for a higher number, **2 members personally present shall be the quorum for a meeting of the company.**

CLASSIFICATION ON BASIS OF CONTROL

HOLDING CO. Sec 2(46)

'Holding company', **in relation to one or more other companies,** means a company of which such companies **are subsidiary companies**

Explanation: For the purposes of this clause, the expression **"company" includes any 'body corporate;'**

Total voting power - Sec 2(89)

Means **total number of votes which may be cast in regard to that matter** on a poll at meeting of Co. if all members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes

SUBSIDIARY CO. Sec 2(87)

'Subsidiary company' or 'subsidiary', **in relation to any other company y** (that is to say the holding company), means a company **in which the holding company-**
- **controls** the **composition of** the **Board of Directors**; or
- **exercises** or **controls more than one-half of the total voting power** either **at its own or together with one or more of its subsidiary companies.**

Explanation: For the purposes of this clause,
- A company shall be deemed to be a subsidiary company of the **holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company**;
- the composition of a company's **Board of Directors shall be deemed to be controlled by another company** if that **other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.**
- **the expression 'company' includes any body corporate;**
- **'layer' in relation to a holding company means its subsidiary or subsidiaries.**

ASSOCIATE CO. Sec 2(6)

'Associate Company' **in relation to another company,** means a company in which that **other company has a significant influence**, but which **is not a subsidiary company of the company** having such influence and **includes a joint venture company**.

'Significant influence': The term "significant influence" means control of at **least 20% of total voting power**, or **control of or participation in business decisions under an agreement;**

Joint Venture:

The **expression "joint venture"** means **a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;**

Shares held in Fiduciary capacity: As per the notification dated 27th December 2013, Ministry clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining the holding –subsidiary relationship (or associate relationship) in terms of the provision of section 2(87) of the Companies Act, 2013.

Subsidiary company not to hold shares in its holding company

As per **Sec 19** of the Companies Act, 2013, **no company** shall, either by itself or through its nominees-

(i) **hold any shares in its holding company**, and

(ii) **no holding company shall allot or transfer its shares to any of its subsidiary companies**, - and any such allotment or transfer of shares of a company made to its subsidiary company, shall be void.

Exceptions -

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

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

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

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

KINDS OF COMPANIES (Chart 2.4)

CLASSIFICATION ON BASIS OF LIABILITY

UNLIMITED - Sec 2(92)

- A company **not having any limit on the liability of its members**. In such a company the liability of a member ceases when he ceases to be a member.
- **The liability of each member extends to the whole amount of the company's debts and liabilities but he will be entitled to claim contribution from other members.**
- In case the company has a share capital the AoA must state the amount of share capital and the amount of each share.
- So long as the company is a going concern the liability on the shares is the only liability which can be enforced by the company.

LIMITED

BY SHARES - Sec 2(22)

- When the liability of the members of a company is limited by its MOA to **the amount (if any) unpaid on the shares held by them,** it is known as a company limited by shares.
- Shareholder's separate property cannot be encompassed to meet the company's debt

BY GUARANTEE - Sec 2(21)

- Company having the liability of its members **limited by the memorandum to such amount as the members may respectively undertake by the memorandum to contribute to the assets of the company in the event of its being wound up**.
- Liability of the member of a guarantee company is limited upto a stipulated sum mentioned in the memorandum

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Similarities and differences between the Guarantee Company and the Company having share capital

Common features: legal personality and limited liability. Both of them have to state in their memorandum that the members' liability is limited.

Point of distinction: In **case of guarantee co**. the **members** may be **called upon to discharge their liability only after commencement of the winding up** and only subject to certain conditions; but **in case of co. having share capital, they may be called upon to do so at any time, either during the company's life-time or during its winding up.**

FOREIGN CO. - Sec 2(42)

Foreign company means any **company or body corporate incorporated outside India** which -

a) has a **place of business in India whether by itself or through an agent, physically or through electronic mode** and
b) **conducts any business activity in India** in any other manner.

Meaning of 'electronic mode'

carrying out electronically based**, whether main server is installed in India or not,** including, but not limited to-

i. B2B and B2C transactions, data interchange and other digital supply transactions;
ii. offering to accept deposits or inviting deposits or accepting deposits or subscriptions securities, in India or from citizens of India;
iii. financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
iv. online services such as telemarketing, education and telecommuting, telemedicine, information research; and
v. all related data communication services,

whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.

GOVERNMENT CO. - Sec 2(45)

Government Company means any company

a) in which not **less than 51%** of the **paid up share capital** is held —
   i. by **CG**; or
   ii. by any **SG or governments**; or
   iii. partly by CG and partly by 1 or more SGs
b) which is a **subsidiary of a Government Co**.

Explanation:- "paid up share capital" shall be construed as "**total voting power**", where **shares with differential voting rights have been issued.**

PUBLIC FINANCIAL INSTITUTIONS Sec 2(72)

the following institutions are to be regarded as public financial institutions:

i. the **Life Insurance Corporation of India**, established LIC Act, 1956;
ii. the **Infrastructure Development Finance Company Limited**,
iii. specified company referred to in the **Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;**
iv. institutions **notified by CG u/s 4A(2) of the Companies Act, 1956** so repealed u/s 465 of this Act;
v. such **other institution as may be notified by the CG in consultation with the RBI**

Provided that no institution shall be so notified unless-

a) it has been established or constituted by or under any Central or State Act; ***other than this Act or the previous company law;*** or
b) not less than 51% of the paid-up share capital is held or controlled by the CG or by any SG(s)or partly by the CG and partly by 1 or more SG

NIDHI - Sec 406

"Nidhi" or **"Mutual Benefit Society"** means a company **which CG may, by notification in the Official Gazette,** declare to be a Nidhi or Mutual Benefit Society.

DORMANT CO. - Sec 455

1) Application by a company to the registrar for obtaining the status of dormant company :

A **company may make an application to the Registrar** so as to obtain the status of a dormant company **in the following two cases**:

(i) It was **formed and registered under the Companies Act, 2013** for a **future project or to hold an asset or intellectual property** and it has **no significant accounting transaction**.
(ii) It is an **inactive company**.

2) 'Inactive company': means -

a) A company which has **not been carrying on any business or operation**; or
b) A company which has **not made any significant accounting transaction** during the **last 2 financial years**; or
c) A company which has **not filed financial statements and annual returns** during **the last 2 financial years**.

3) 'Significant accounting transaction': Any transaction other than —

a) payment of fees by company to Registrar;
b) payments made by it to fulfill the requirements of this Act or any other law;
c) allotment of shares to fulfill the requirements of this Act; and
d) payments for maintenance of its office and records.

4) Grant of status of dormant company by the Registrar: After considering the application Registrar shall allow the status of a dormant company to applicant company and **shall issue a certificate** in the prescribed form.

5) Compliance requirements for a dormant company: To retain its dormant status, a **dormant company** shall **have such minimum number of directors, file such documents and pay such annual fee** as may be prescribed. If dormant company **fails to comply with these requirements**, **Registrar shall strike off its name** from register of dormant co.

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INCORPORATION OF COMPANY (Chart 2.5)

PROHIBITION OF ASSOCIATION OR PARTNERSHIP OF PERSONS EXCEEDING CERTAIN NUMBER - Sec 464

Prohibition on large partnership

Section 464 prohibits carrying on of business by any association or partnerships **if the number of members of such association or partnership exceeds the prescribed number**.
The **prohibition** u/s 464 is **attracted** if the **following conditions are satisfied:**
(a) The association or partnership **consists of more than such number of persons as may be prescribed** (provided that the number of persons which may be prescribed, shall not exceed 100). The **number of members prescribed for this purpose is 50 (Rule 10 of the Companies (Miscellaneous) Rules, 2014).**
(b) The association or partnership is **formed for the purpose of carrying on any business**.
(c) The **object** of the association or partnership is the **acquisition of gain by the association or partnership or by the individual members** thereof.
(d) The association or partnership is **not registered as a company** under the Companies Act, 2013 and is **not formed under any law** for the time being in force.

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Consequences of contravention

Where an association or partnership carries on business in contravention of the provisions of this section, every member of such association or partnership —
(a) shall be punishable with **fine** which may **extend to Rs.1 lakh**; and (b) shall be **personally liable** for all liabilities incurred in such business.

Non-applicability

Prohibition shall not apply to —
(a) a **HUF carrying on any business**; or
(b) an **association or partnership**, if it is **formed by professionals** who are governed by special Acts.

Kumarswamy Chettiar vs. ITO :
Illegality or invalidity in the constitution of an association does not affect its liability to tax or its chargeability as a unit of assessment

PROMOTION OF A COMPANY

Meaning of Promotion

'Promotion' means all those **steps that are required to bring a company into existence**, and then to set it going.

DEFINITION OF PROMOTER

STATUTORY DEFINITION - Sec 2(69)

'Promoter' means a person -
(a) who has been **named as such in a prospectus or is identified by the company in the annual return**; or
(b) who **has control over the affairs of the company**, directly or indirectly whether **as a shareholder, director or otherwise**; or
(c) In accordance **with whose advice, directions or instructions the BOD of the company is accustomed to act**.
Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

DEFINITION GIVEN BY PALMER:
"Promoter is a person who **originates** a scheme for the formation of the company, **gets the memorandum and articles prepared**, executed and registered, and **find the first directors**, settle the terms of **preliminary contracts** and **prospectus**, and **makes arrangements for advertising and circulating the prospectus and placing the capital."**

FUNCTIONS OF PROMOTER

- **Generating the idea of a starting a business** and forming a company, i.e. which business to be started.
- **Making a feasibility study** so as to determine whether the proposed business is profitable or not.
- **Taking decisions** regarding some fundamental questions, like-
  a) **Whether to start** a new business or **to take over** an existing business by purchase of an existing undertaking.
  b) **Nature of company** to be formed - a public company or a private company/limited company or an unlimited company/liability of members shall be limited by shares or by guarantee or by both.
  c) Amount of **authorised capital** of the company.
  d) Preparation of **memorandum, articles and other documents**
  e) Arranging the **subscribers to memorandum**
  f) **Filing the required documents** with the registrar
  g) **Entering into negotiations** with the person who shall become the first directors of the company
  h) **Entering into pre-incorporation contracts** (for the purpose of business of the company) on behalf of the company.
  i) **Making arrangements for issue of shares**

POSITION OF PROMOTER

A promoter **is neither an agent nor a trustee of the company,** since the company has not yet come into existence. However, his position is similar to that of an agent and trustee. **A promoter stands in a fiduciary capacity towards the company**.

DUTIES OF PROMOTERS

- **Not to make secret profit: The promoters should not make a secret profit from the company.**
- **Full and fair disclosure of interest: A promoter must make full and fair disclosure of his interest in every transaction or contract with the company in which he is, directly or indirectly interested.**

REMEDIES AVAILABLE TO CO. AGAINST PROMOTER

Where a promoter makes a secret profit, and afterwards this fact becomes known to the company, the company will have the following remedies:
- **Rescission**
- **Recovery of secret profit**
- **Suit for breach of trust**

FORMATION OF COMPANY - Sec 3

(1) A company may be formed for any **lawful purpose** by—
a) **7 or more persons**, where the company to be formed is to be a **public company**;
b) **2 or more persons**, where the company to be formed is to be a **private company**; or
c) **1 person,** where the company to be formed is to be **One Person Company** that is to say, **a private company.**
by **subscribing their names or his name to a memorandum** and **complying with the requirements of this Act** in respect of registration.
(2) A company formed under sub-section (1) may be either—
a) a company **limited by shares;** or
b) a company **limited by guarantee**; or
c) an unlimited company.

MEMBER SEVERALLY LIABLE IN CERTAIN CASES (SEC 3A)

- If at any time the **number of members of a company is reduced below the minimum prescribed** and
- company **carries on business for more than 6 months** while the number of members is so reduced,
- then **every person who is a member** of the company **during the time that it so carries on business after those 6 months and is cognisant of the fact that it is carrying on business with less than 7 members or 2 members, as the case may be,**
- **shall be liable for the payment of the whole debts** of the company contracted during that time, **and may be severally sued therefor**

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INCORPORATION OF COMPANY (Chart 2.6)

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INCORPORATION OF COMPANY - Sec 7

Section 7 provides for the procedure to be followed for incorporation of a company. Majority of **steps are covered under sec 7** while **some other related to documents such as MOA and AOA governed by Sec 4 & 5 respectively**. Corresponding procedural aspects are described by **rule 12 to 18 of the Companies (Incorporation) Rules, 2014** and fees are notified through rule 12 of the Companies (Registration Offices and Fees) Rules

Sec 7(1): FILING OF DOCUMENTS & INFO WITH RoC

An **application** for **registration of a company** shall be **filed, with the Registrar within whose jurisdiction the registered office of the company is proposed to be situated**, in **SPICe+ (Simplified Proforma of Incorporating company Electronically Plus: INC – 32) along with the fee** as provided under companies (Registration offices and fees) Rules **accompanied by following documents and information; (Rule 12):**

1. **MoA in form no INC-33 & AoA in form no INC-34 of the company duly signed by all the subscribers to the memorandum in the manner prescribed by (Rule 13)**
2. **Address for correspondence till its RO is established;**
3. **Particulars (names, including surnames or family names, residential address, nationality) of every subscriber to the MoA along with proof of identity, as may be prescribed and in the case of a subscriber being a body corporate, such particulars as may be prescribed (Rule 16)**
4. **Particulars of the persons mentioned in the articles as the first directors of the company**
5. **Particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company.(DIR 12)(Rule 17)**

Rule 8 of Companies(Appointment and Qualification of Directors) Rules,2014

Every person who has been appointed to hold the office of a director shall on or before the appointment furnish **to the company a consent in writing to act as such** in **Form DIR-2:**

Provided that the company shall, within 30 days of the appointment of a director, file such consent with the Registrar in Form **DIR-12** along with the fee as provided

6. **A declaration that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with shall be be filled in Form No. INC-8 (Rule 14) by:**
   - **an advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company and**
   - **a person named in the articles as director, manager or secretary of the Co.**
7. **Declaration in Form No. INC-9 (Rule 15) from each of the subscribers to the MoA and from persons named as first directors, if any, in the articles** stating that -
   - **he is not convicted of any offence in connection with the promotion, formation or management of any company, or**
   - **he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years,**
   - **and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;**

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

- **In case any of the objects of a company requires registration or approval from sectoral regulators such as the RBI and SEBI, then such registration or approval shall be obtained by the proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation.**
- **In case of a Company being incorporated as a Nidhi, the declaration by the CG u/s 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Co.**

Sec 7(2): Registrar on the basis of documents and information filed, shall register all the documents and information in the register and issue a certificate of incorporation in the prescribed form

Rule 18: Certificate of Incorporation

The Certificate of Incorporation shall be issued by the Registrar in **Form No. INC-11** and the **Certificate of Incorporation shall mention PAN of the company where if it is issued by the IT Department**

Sec 7(3): Registrar shall allot to company a CIN, which shall be a distinct identity for the company and shall also be included in the certificate.

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

Sec 7(4): Co. shall **maintain and preserve at its RO copies of all documents and info. as originally filed, till its dissolution.**

Sec 7(5) & (6): Furnishing any false or incorrect particulars or suppressing any material information, punishable u/s 447

Sec 7(7): ORDER OF TRIBUNAL

Where a company got incorporated by furnishing false or incorrect info or by suppressing any material fact or info Tribunal may, on an application made to it, on being satisfied that the situation so warrants,—

a) **pass such orders, as it may think fit, for regulation of mgmt of Co. including changes, if any, in its MoA and articles, in public interest or in interest of company and its members and creditors; or**
b) **direct that liability of the members shall be unlimited; or**
c) **direct removal of the name of the company from the register of companies**; or
d) **pass an order for the winding up of company;**
e) **pass such other orders as it may deem fit**

Provided that before making any order,—

- Company shall be given a **reasonable opportunity of being heard** in the matter; &
- Tribunal shall **take into consideration transactions entered into by Co., including obligations**, contracted or **payment of any liability.**

Rule 13: Signing of Memorandum and Articles.

The Memorandum and Articles of Association of the company shall be signed in the following manner, namely:-

i. **Each subscriber shall add his name, address, description & occupation, if any**, in the presence of **at least one witness who shall attest the signature, shall sign and add his name, address, description and occupation, if any.**
ii. Where a **subscriber is illiterate**, he **shall affix his thumb impression or mark** which shall be **described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark** and **authenticate it by his own signature** and he shall also write against the name of the subscriber, **the number of shares taken by him.**
Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of association.
Explanation: For the purposes of sub-rule (1) and sub-rule (2), **the type written or printed particulars of the subscribers and witnesses shall be allowed as if it is written by the subscriber and witness respectively so long as the subscriber and the witness as the case may be appends his or her signature or thumb impression, as the case may be.**
iii. **Where the subscriber is a body corporate, the memorandum and articles association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors &**
iv. **Where the subscriber is a LLP,** it shall be **signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP provided that in either case (iii or iv), the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.**
v. **Where subscriber to the memorandum is a foreign national residing outside India in a country** in any part of the commonwealth, **his signatures and address on the memorandum and articles of association** and proof of identity shall be **notarized by a Notary (Public)** with a certificate.
vi. **Further, if such person residing in a country outside the Commonwealth or which is not a party to the Hague Apostille Convention, 1961, the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer.**
vii. **Where subscriber to the memorandum is a foreign national residing outside India and visited in India and intended to Incorporate a company, is such case the incorporation shall be allowed if, he/she is having a valid Business Visa. In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.**

INCORPORATION OF COMPANY (Chart 2.7)

Rule 16: Particulars of Every Subscriber to be filed with the Registrar at the Time of Incorporation

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

a) **Name (Including surname or family name) and recent Photograph affixed**
b) **Father's/Mother's name**
c) **Nationality, Proof of nationality in case the subscriber is foreign national**
d) **Date and Place of Birth (District and State)**
e) **Educational qualification and Occupation**
f) **Permanent Account Number**
g) **Email id and Phone number of Subscriber**
h) **Permanent residential address and also Present address**
i) **Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill, provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old**
j) **Proof of Identity (For Indian Nationals - Voter's identity card, Passport copy, Driving License copy, Unique Identification Number (UIN) & for Foreign nationals and Non Resident Indians – Passport)**
k) **If the subscriber is already a director or promoter of a company(s), the particulars relating to name of the company; Corporate Identity Number; whether interested as a director or promoter**

Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar

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

COMPANIES WITH CHARITABLE OBJECTS [Sec 8]

Compiled By: CA Sahil Grover

- **Conditions for formation of a non-profit company: A company may be formed u/s 8 if :**
  a) **Objects** of the company are to promote **commerce, art, science, sports, education research, social welfare, religion, charity, and protection of environment or such other object**.
  b) Company shall intend to **apply its profits in promoting its objects;**
  c) Company intends to **prohibit the payment of dividend to its members.**
- **Power of Central government to issue the license : Where it is proved to the satisfaction of the Central Government (power delegated to ROC) that a person or an association of persons proposed to be registered under this Act as a limited company fulfil the above conditions the Central Government (ROC) may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited".**
- **Registration of company using license: After granting licence, an application shall be made to registrar under for registration of company in the manner specified in Rule 19 of the Companies (Incorporation) Rules 2014.**
- **Privileges of Limited Company [Sec 8(2)]: On registration company shall enjoy same privileges and obligations as of a limited company.**
- **Firm to be member of company [Sec 8(3)]: A firm may be a member of the company registered u/s 8**
- **Alteration of Memorandum and Articles [Sec 8(4)(i)]:**
  A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government*
  ***Power delegated to Regional Director for alteration of MoA in case of conversion into another kind of company**
  ***Power delegated to ROC for alteration of its articles**
- **Conversion into any other company [Sec 8(4)(ii)]: A company registered u/s 8 may get itself converted into a company of any other kind by complying with such conditions as may be prescribed.[Rule 21 and 22].**
- **Revocation of license [Sec 8(6) to Sec 8(10)]: CG(RD) may, after giving opportunity of being heard to company, revoke the licence** of the company where
  – the company **contravenes any of the requirements or conditions of this sections** or
  – where the **affairs of the company are conducted fraudulently, or violative** of the **objects** of the company or prejudicial to public interest,
  On revocation **Limited or Private Limited to be added to name**.
  On revocation, CG may direct it to
  – **Convert its status and change its name**
  – **Wind-up**. (If on winding up **any asset remains**, they may be **transferred to another company** registered under this section and having similar objects, , or **may be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund)**
  – **Amalgamate with another company having similar object**
- **Penalty/ punishment in contravention [Sec 8(11)]: In case of default in complying under this section, company** shall, be punishable with fine varying from **Rs.10 lakh to Rs.1 crore** and the **directors and every officer** of the company who is in default shall be punishable with fine varying from **Rs.25000 to Rs.25 lakh**.
  And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for **action u/s 447.**

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Relaxations available to Sec 8 companies

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

Rule 19: License under Section 8 for New Companies with Charitable Objects etc.-

1. **Application for registration :**
   A person or an association of persons desirous of incorporating a company with limited liability under section 8(1), shall make an application to registrar in Form SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) along with the fee as provided.
2. **Filing of MoA and AoA:**
   The memorandum and articles of association of the proposed company shall be filed in the Form No. INC-13 and Form No. INC-31, respectively as attachments to SPICE+. (Rule 38)
3. **Supporting documents:**
   The application under sub-rule (1) shall be accompanied by the following documents, namely:
   a) the **memorandum and articles of association of the proposed company**;
   b) the **declaration** ~~[Form INC-14]~~ by an **Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice,** that
      - the **memorandum and articles of association** have been drawn up in **conformity with the provisions of section 8** and **rules made thereunder and**
      - **that all the requirements of the Act and the rules made thereunder relating to registration of the company under section 8 and matters incidental or supplemental thereto have been complied with;**
   c) an **estimate of the future annual income and expenditure of the company for next three years, specifying the sources of the income and the objects of the expenditure**;
   d) the **declaration by each of the persons making the application** in ~~Form INC-15~~

Rule 23: Intimation to Registrar of Revocation of Licence Issued Under Section 8

Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in Form No.INC.20 along with the fee to convert its status and change of name accordingly.

INCORPORATION OF COMPANY (Chart 2.8)

Rule 21: Conditions for Conversion of a Company Registered Under Section 8 into a Company of Any Other Kind

1. **A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.**
2. **The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion**
3. **A certified true copy of the special resolution along with a copy of the Notice convening the meeting including the explanatory statement shall be filed with the Registrar in Form No.MGT.14 along with the fee.**
4. **An intimation along with copy of the application with annexures as filed in Form no. INC.18 with the Regional Director shall also go to the registrar through MCA system.**

Rule 22: Other Conditions to be complied With by Companies Registered under Section 8 Seeking Conversion into Any Other Kind

5. **The company shall, within a week from the date of submitting the application** to the **Regional Director, publish a notice at its own expense**, and a **copy of the notice, as published, shall be sent forthwith to the Regional Director** and the said **notice shall be in Form No. INC.19** and **shall be published-**
   a) **at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district; and**
   b) **on the website of the company, if any, and as may be notified or directed by the CG**
6. **The company shall send a copy of the notice, simultaneously with its publication, together with a copy of the application** and **all attachments** by **registered post or hand delivery, to**:
   - **the Chief Commissioner of Income Tax having jurisdiction over the company,**
   - **Income Tax Officer who has jurisdiction over the company,**
   - **the Charity Commissioner,**
   - **the Chief Secretary of the State in which the registered office of the company is situated,**
   - **any organisation or Department of the Central Government or State Government or other authority under whose jurisdiction the company has been operating**

   If any of these **authorities wish to make any representation to Regional Director**, it shall do so **within sixty days** of the receipt of the notice, **after giving an opportunity to the Company**.
   The copy of proof of serving such notice shall be attached to the application.
7. **The company should have filed all its financial statements and Annual Returns upto the financial year preceding the submission of the application to the Regional Director and all other returns required to be filed under the Act up to the date of submitting the application to the Regional Director.**
   Note: In the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.
8. **The company shall attach with the application a certificate from practicing Chartered Accountant or Company Secretary in practice or Cost Accountant in practice certifying that the conditions laid down in the Act and these rules relating to conversion of a company registered under section 8 into any other kind of company, have been complied with.**
9. **On receipt of the application, and on being satisfied, the Regional Director shall issue an order approving the conversion of the company into a company of any other kind subject to such terms and conditions as may be imposed in the facts and circumstances of each case.**
10. **Before imposing the conditions or rejecting the application, the company shall be given a reasonable opportunity of being heard by the Regional Director.**
11. **On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association as required under the Act consequent to the conversion of the section 8 company into a company of any other kind;**
12. The Company shall thereafter **file these with the Registrar**
    a) **a certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form No.INC.20 along with the fee;**
    b) **amended e-Memorandum of Association of the company and amended e-Article of Association of the company.**
    c) **a declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with**
13. On receipt of the documents referred above, **the Registrar shall register the documents and issue the fresh Certificate of Incorporation**.

Compiled By: CA Sahil Grover

EFFECTS OF INCORPORATION [SEC 9]

1. **Date of incorporation: Date mentioned in the CoI** issued by Registrar, shall be; the **date of incorporation** of the company.
2. **Body corporate:** From the date mentioned in the CoI, **subscribers to MoA and all other persons**, as may, from time to time, **become members of company**, shall be a body corporate.
3. **Name:** The **name, as mentioned in the memorandum**, shall be the name of the company.
4. **Capacity to function:** The company shall become capable of exercising all the functions of an incorporated company.
5. **Perpetual succession:** The company shall have perpetual succession.
6. **Power to acquire:** The company shall have the **power to acquire, hold and dispose of the property of any property kind**, whether movable or immovable, tangible or intangible.
7. **Power to contract:** The company shall have the **power to contract in its own name**.
8. **Capacity to sue and be sued:** The company shall have the **power to sue in its own name, and the company can be sued in its own name.**

Compiled By: CA Sahil Grover

MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.1)

DEFINITION OF MOA

Statutory Definition - Sec 2(56)

'Memorandum' means the **memorandum of association** of a company as **originally framed or as altered from time to time** in pursuance of any previous company law or of this Act.

As given by Palmer:

Memorandum contains the objects for which the company is formed and therefore, **identifies the possible scope of its operations** beyond which its actions cannot go. **It defines as well as confines the powers of the company**.

IMPORTANCE OF MoA

Key document:

- It is a key document **containing vital details** about the company.
- **Most important** document **as regards incorporation of the company** is concerned.
- Most fundamental document **specifying most important information** relating to the company. Therefore, memorandum is also called as the **charter of the company.**

Public Document:

- It is a public document, i.e. **any person** (whether a member of document of the company or not**) can inspect it in the office of Registrar.**
- Every company **must have its own memorandum**.

Object of registering a MoA:

- **Contains the object for which the company is formed** and therefore **identifies the possible scope of its operations** beyond which its actions cannot go.
- **Enables shareholders, creditors and all those who deal with company to know what its powers are & what activities it can engage in.**
- **Shareholders must know purposes for which his money can be used** by company & what risks he is taking in making investment.
- Company **cannot depart from the provisions contained in the memorandum. If it does so, it would be ultra vires the company and void.**

FORM OF MEMORANDUM

Table A: Memorandum of a company **limited by shares**
Table B: Memorandum of a company **limited by guarantee and having no share Capital**
Table C: Memorandum of a **company limited by guarantee and having a share capital**
Table D: Memorandum of an **unlimited company having no share capital**
Table E: Memorandum of an **unlimited company having a share capital**

Compiled By: CA Sahil Grover

CONTENTS OF MoA - SEC 4

1) **Name Clause :**
   a) It shall **state the name of the company.**
   b) **Public company** - the word **'limited'** shall be last word.
   c) **Private company** - the words '**private limited'** shall be last word.
   d) The requirement to use the word 'limited' or 'private limited' **shall not apply to a company registered u/s 8.**
   e) **Govt. company -** the word **'limited'** shall be last word.
   f) For **companies u/s 8**, the **name shall include** the words **foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust** and the like etc.
2) **Situation Clause:** states the **name of the State** in which the **registered office** of the company is proposed to be situated.
3) **Objects Clause:** state the **objects** for which the company is proposed to be incorporated and **any matter considered necessary**.
4) **Liability Clause :**
   a) state as to **whether the liability of members of the company is limited or unlimited**.
   b) **company limited by shares -** it shall state that **liability of every member shall be limited to the amount unpaid on the shares**.
   c) **company limited by guarantee** - it shall state that liability of every member **shall be limited to the amount that he has undertaken to pay to the company, in the event of winding up of the company**.
      - Liability of member shall **arise only if company is wound up while he is a member or within 1 year of cessation of his membership.**
      - Liability of member shall be limited for payment of—
      (i) **debts**, as company had incurred before he ceased to be a member;
      (ii) **expenses**, **costs and charges** of winding up of the company; &
      (iii) adjustment of **rights of contributories** among themselves.
5) **Capital Clause :** In case of **a company having a share capital,** capital clause shall state the **amount of share capital with which the company is registered** (viz. the authorized Share Capital) & **the division** of the authorized share capital into shares of a fixed amount.
6) **Subscription (Association) Clause :** states the **no. of shares which the subscribers to the MoA agree to subscribe** which shall **not be less than 1 share**; & **the number of shares** each subscriber intends to take**, indicated opposite his name.**
7) **Nomination Clause:** In **case of OPC**, it shall state **name of person** who in event **of death** of subscriber shall **become member** of Co.

APPLYING FOR NAME OF COMPANY - SEC 4

Application for reservation of name:

a) **Any person may make an application** to the Registrar for reservation of name. Application shall be made in such **form and in such manner** as may **be prescribed** & shall be accompanied **with prescribed fees**.
b) The **application** may be made –
(i) for reservation of name **for a company proposed** to be incorporated; or
(ii) by a **company already in existence**, for the **purpose of changing its name** to a new name, viz. the name proposed to be reserved.

Rule 9: Reservation of name or change of name:

- **application** for reservation of name shall be made **through** the web service available at **www.mca.gov.in** by using web service **SPICe+** and
- for **change of name by using web service RUN** (**Reserve Unique Name**) along with fee
- which may **either be approved or rejected**, by the **Registrar, Central Registration Centre after allowing re-submission of such web form within 15 days** for rectification of the defects, if any

Reservation of name by the registrar

Registrar may reserve the name in case of-

- **company proposed to be incorporated** - for a period of **20 days from the date of approval** or **such other period as may be prescribed**
- **application for change of its name by existing company - for a period of 60 days from the date of approval.**

Rule 9A: Extension of reservation of name in certain cases

Registrar shall extend the period of a **name reserved under rule 9 by using web service SPICe+ upto:**

a) **40 days** from date of approval under rule 9, on payment of fees of **Rs.1000** made **before expiry of 20 days from date of approval under rule 9**;
b) **60 days** from date of approval under rule 9 on payment of fees of **Rs.2000** made **before the expiry of 40 days referred to in clause (a) above**;
c) **60 days** from date of approval under rule 9 on payment of fees of **Rs.3000** made **before the expiry of 20 days from date of approval under rule 9**.

Provided that Registrar shall have power to cancel reserved name in accordance with Sec 4(5).

Situation where a name is reserved by furnishing wrong information

If, **after a name is reserved by the registrar**, it is **found that applicant** had **furnished wrong or incorrect information**, then —

a) if the **company has not been incorporated**, then **reserved name shall be cancelled** and applicant shall be liable to a **penalty upto Rs.1 lakh**;
b) if the **company has been incorporated**, the Registrar may, **after giving an opportunity of being heard to the company**, —
(i) direct the company to **change its name**, **within 3 months by passing Ordinary Resolution**, or
(ii) **strike off the name** of the company **from the register of companies**; or
(iii) **present a petition for winding up** of the company.

MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.2)

LEGAL REQUIREMENTS WITH RESPECT TO NAME OF COMPANY -SEC 4

➢ **Name not to be identical or similar**

Name of a company -

a) **shall not be identical** with the name of an existing company.

b) **shall not resemble too nearly** to the name of an existing company.

➢ **Prohibitions on certain names**

a) Name shall not be such that **its use** by the company will **constitute an offence** under any law.

b) Name shall not be such that **its use** by Co. is **'undesirable', in opinion of CG.(delegated to ROC)**

c) Co. **shall not be registered by a name**, which **contains any word or expression** which is likely to **give an impression** that the **company is connected with, or has the patronage of CG/SG/local authority /any corporation or body constituted by CG or SG pursuant to any law.**

d) Co. **shall not be registered by a name**, which contains such word or expression as may be prescribed, **unless previous approval of CG is obtained.**

Rule 8: Names which resemble too nearly with name of existing company.

A name said to be 'resemble' when difference is only and only of

- **Plural or singular form** of words in one or both names (Green Technology Ltd. is same as Greens Technology Ltd. and Greens Technologies Ltd.)
- **Type and case of letters, spacing between letters, and punctuation marks** used in one or both names (ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.)
- **Use of different tenses in one or both names** (Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.)
- **Slight variation in the spelling of the two names** including a grammatical variation thereof (Disc Solutions Ltd. is same as Disk Solutions Ltd. but it is not same as Disco Solutions Ltd)
- **Use of different phonetic spellings** including use of **misspelled words** of an expression (Bee Kay Ltd is same as BK Ltd, Be Kay Ltd., B Kay Ltd., Bee K Ltd., B.K. Ltd. and Beee Kay Ltd)
- **Complete translation or transliteration**, and not part thereof, of an existing name, in **Hindi or in English** (National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.)
- **Use of host name such as 'www'** or a **domain extension such as .net'. org', 'dot' or 'com'** in one or both names (Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd. But Supreme Ultra Solutions Ltd. is not the same as Ultrasolutions.com Ltd.)
- The **order of words in the names** (Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.)
- **Use of the definite or indefinite article** in one or both names (Congenial Tours Ltd. is same as A Congenial Tours Ltd. and The Congenial Tours Ltd. But Isha Industries Limited is not the same as Anisha Industries Limited.)
- **Addition of the name of a place to an existing name**, which does not contain the name of any place; (If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd. But Retro Pharmaceuticals Ranchi Ltd. is not the same as Retro Pharmaceuticals Chennai Ltd.)
- **addition, deletion, or modification of numerals or expressions denoting numerals** in an existing name, unless the numeral represents any brand (Thunder Services Ltd is same as Thunder 11 Services Ltd and One Thunder Services Ltd.)

- As per Rule 8B: The following **words and combinations thereof shall not be** used unless **previous approval** of CG has been obtained - **Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; President, Rashtrapati, Small Scale Industries; Khadi and Village Industries Corporation ;Financial Corporation and the like; Municipal; Panchayat; Development Authority; Prime Minister or Chief Minister; Minister; Nation; Forest corporation; Development Scheme; Statute or Statutory; Court or Judiciary; Governor; Bureau**
- If proposed name include words such as **'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc**., declaration shall be submitted by applicant that **requirements mandated** by **respective regulator**, such as **IRDA, RBI, SEBI, MCA** etc. have been **complied** with.
- While allotting names, the RoC concerned should exercise **due care to ensure that the names are not** in contravention of the provisions of the ***Emblems and Names (Prevention of Improper Use) Act, 1950***. It is necessary that Registrars are fully familiar with the provisions of the said Act-**General Circular No. 29/2014, dated 11th July, 2014**

ARTICLES OF ASSOCIATION (AoA)

Statutory Definition - Sec 2(5)

'Articles' means **the articles of association of a company** as **originally framed or as altered from time to time** or applied in pursuance of any previous companies law or of this Act. These are rules & regulations framed by Co. for its own governance.

CONTENTS OF ARTICLES - Sec 5

1) Articles shall contain **regulations for management of Co**.
2) Articles shall also **contain such matters, as are prescribed** under the rules. However, a Co. may **also include such additional matters** in its articles as may be considered necessary for its management.
3) **Provisions for entrenchment :**
   a) Articles may contain provisions for entrenchment (to protect something), i.e. certain **specified provisions of articles can be altered** only **by complying with such conditions or procedures as are more restrictive than those as are applicable in case of SR.**
   b) Provisions for entrenchment shall only be made **either on formation of Co.,** or by **an amendment** in the articles agreed to by **all the members of Co. in the case of a private Co.** and by a **SR in the case of a public Co.**
   c) Where the **articles contain the provisions for entrenchment Co. shall give notice of such provisions to the Registrar** irrespective of the fact as to whether the provisions for entrenchment were contained in the articles at the time of formation of Co. or were included in the articles afterwards, by way of an amendment.

Rule 10: Where Articles Contains Entrenchment Provisions

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions

- in **SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32**) along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or
- in **case of existing companies**, in **Form No.MGT.14**, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014. **within thirty days from the date of entrenchment of the articles,**

4) **Form of articles :**
   Table F: Articles of Co. **limited by shares**
   Table G: Articles of Co**. limited by guarantee & having share capital**
   Table H: Articles of Co. **limited by guarantee & having no share capital**
   Table I: Articles of an **unlimited Co. having a share capital**
   Table J: Articles of an **unlimited Co. having no share capital**
5) **Co. may adopt all or any of the regulations contained in the model articles** applicable to such Co.
6) Co. **which is registered after commencement of this Act**, in so far as registered articles of such Co. **do not exclude or modify regulations contained in model articles** applicable to such Co., **those regulations shall, so far as applicable, be regulations** of that Co. in same manner and to extent **as if they were contained in the duly registered articles of Co.**
7) **Nothing in this section shall apply to articles of Co. registered under any previous company law, unless amended under this Act.**

Compiled By: CA Sahil Grover

MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.3)

Differences between the MOA and AOA

1) **Content- The memorandum contains the fundamental conditions as basis of incorporation. It lays down the parameters that define relation of company with outsiders. The Articles contain internal regulations of the company; hence regulate the relationship between company and the members and members inter se.**
2) **Supremacy- Memorandum cannot include any clause that is contrary to the provisions of the law, whereas the articles shall be subordinate to both the law and memorandum. Therefore, in case on conflict among the two, the MOA shall prevail.**
3) **Scope- Memorandum lays down the scope beyond which the activities of the company cannot go. An act done by a company beyond the scope of the memorandum are ultra vires and void. They cannot be ratified even by all the shareholders. Articles provide for regulations inside scope established by MOA, hence acts beyond the articles can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.**

ACT TO OVER-RIDE MoA, AoA, ETC. - Sec 6

- **'Save as otherwise expressly provided in this Ac,provisions of this Act shall have effect** notwithstanding anything to the contrary contained in the **MoA or AoA of Co.,** or in any **agreement** executed by it, or in any **resolution** passed by Co. in **GM** or by **its BOD.**
- **Any provision contained in MoA, AoA, agreement or resolution shall, to extent to which it is repugnant to the provisions of this Act, be void.**

Compiled By: CA Sahil Grover

BINDING FORCE OF MoA & AoA [Sec 10]

1) **MoA & AoA shall, when registered, bind the Co. and members thereof** to the same extent as if **they respectively had been signed by the Co. & by each member**, and **contained covenants** on its and his part **to observe all provisions of the MoA & AoA.**
2) All money payable by any **'member to the Co. under the MoA & AoA shall be a debt due from him** to Co.

Company is bound to members:

a) If a Co. deprives any of its members of rights under Act & Articles, **such a member can sue the Co. for enforcement of his rights**.
b) If a Co. is about **to commit a breach of any terms and conditions of MoA & AoA**, any member can obtain injunction from court thereby restraining Co. from committing such breach.
c) **If a Co. has committed breach of any terms and conditions of MoA or AoA,** any member can sue Co., directors & persons responsible for such breach.

Members are bound to company: Every member shall be **bound to comply with provisions contained in MoA & AoA**. In case of non-compliance, Co. may sue a member.

Members are not bound inter se (i.e., with each other): There is **no privity of contract between the members.** However, member may enforce his rights against another member through Co., but not directly.

Company is not bound to outsiders: MoA & AoA **don't bind Co. to outsiders. This is based on general rule of law that stranger to contract doesn't acquire any rights under contract.** Therefore, an outsider can't take help of the articles to establish a contract with Co.
[Eley v Positive Govt. Security Life Assurance Co.]

Compiled By: CA Sahil Grover

DOCTRINE OF ULTRA VIRES

MEANING

Ultra means **'beyond'** or 'in excess of' and vires means **'powers'**. Thus, ultra vires means an act or transaction beyond or in excess of the powers of the company.
An **act or transaction shall be ultra vires** if-

- it is **not permitted or authorised by Companies Act, 2013**
- it **falls outside the object clause** of memorandum; &
- its attainment is **not incidental/ancillary** to the attainment of main objects.

Effects of ultra vires transactions

- **Void-ab-initio :** An act which is **ultra vires the Co. is void** and **of no legal effect. Neither Co. nor other contracting party derives any right under an ultra vires contract.** Even ratification of an ultra vires contract by the whole body of shareholders doesn't make an ultra vires contract valid or enforceable.
- **No ratification or estoppel :** An ultra vires contract can never be made binding on Co. **It cannot become "Intravires" by reasons of estoppel, acquiescence, lapse of time, delay or ratification.**
- **Injunction against the company :** Any member **may obtain an injunction order from the Court, i.e., an order of the Court restraining the Co. from proceeding with the ultra vires contract.**
- **Personal liability of Directors :** If funds of the Co. are misapplied or wasted by entering into ultra vires transactions, **the directors shall be personally liable to the company for breach of trust.**
- **Ultra vires property :** If the Co. **acquires some property under an ultra vires transaction,** the Co. **has the right to hold that property** and protect it against damage by other parties. **[Ashbury Railway Carnage & Iron Company Ltd. V Richie]**

Effects of acts ultra vires the directors or articles

Acts ultra vires the directors or articles means those acts which are **beyond powers of directors or powers given under articles**. Such **acts are not altogether void & inoperative and may be ratified by the members.**

DOCTRINE OF CONSTRUCTIVE NOTICE

Applicability of doctrine

This doctrine operates in **favour of the Co., i.e., it creates a presumption in favour of the Co.** It operates against the persons dealing with the Co.

Effect of the doctrine

- Once registered the **MoA & AoA** become **public documents (Sec. 399). Sec 17 also contains provisions for inspection of MoA and AoA by members**
- Therefore, every person dealing with the Co. **is presumed to have read the MoA & AoA**. & also **understood the provisions** of MoA & AoA correctly**, i.e. in the right sense.**
- **Thus, it is required of every person to apprise himself with the requirements of the MoA & AoA, before entering into any contract with Co.**
- Doctrine **prevents any person dealing with Co. from alleging that he did not know the provisions contained in the AoA & MoA.**
- If a person enters into a contract with the Co. in contravention of the provisions of the MoA & AoA**, he cannot enforce such a contract.**

Leading Case Law: Kotla Venakataswamy vs. C Rammurthi

DOCTRINE OF INDOOR MANAGEMENT OR TURQUAND'S

Purpose of doctrine

This doctrine **operates in favour of the outsiders**, i.e., this doctrine creates a **presumption in favour of the outsiders**. The doctrine of Indoor Management is the **exception to the doctrine of constructive notice.**

Meaning of the doctrine

- As per this doctrine, **outsiders dealing with the Co. are not required to enquire into the internal management** of the Co.
- **Outsiders** dealing with the Co. **are entitled to assume** that as far as **internal proceedings of the Co.** are concerned, everything has been **done regularly.** It is a presumption and therefore rebuttable.
- Thus, the doctrine **protects an innocent outsider from any irregularity present in the working of the Co.**

Effect of the doctrine

If a **contract is entered into on behalf of the Co. by any director or officer of the Co.**, it is **enforceable** against the Co., **if provisions contained in the MoA & AoA** have been complied with, **even though** while entering into such a contract, **some internal irregularity had arisen of which the outsider was unaware**.
Leading Case law: Royal British Bank v Turquand

Exceptions to the doctrine of indoor management

1) **Knowledge of irregularity** : Persons dealing with the company have knowledge of an internal irregularity, then the benefit of doctrine of indoor management shall not be available in such a case. [Howard v Patent Ivory Manufacturing Company]
2) **Negligence -Suspicious circumstances or unusual magnitude of transactions :** If there are suspicious grounds surrounding a transaction, but the person dealing with Co. fails to make reasonable inquiry, the benefit of doctrine of indoor management will not be available. [Anand Bihari Lal v Dinshaw & company] [Underwood v Bank of Liverpool]
3) **Forgery** : The rule of indoor management does not extend to transactions involving forgery. In case of forgery it is not that there is absence of free consent but there is no consent at all. Since there is no consent at all there is no transaction. Consequently, it is not that the title of person is defective but there is no title at all. [Ruben v Great Fingall Consolidated Company]

MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.4)

COMMENCEMENT OF BUSINESS ETC. - Sec 10A

1) A Co. incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall **not commence any business or exercise any borrowing powers unless:**
   a) **DECLARATION** is **filed** by a **director** within a period of **180 days of the date of incorporation** of Co. **with the Registrar** that **every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and**
   b) Co. has **filed with the Registrar a verification of its registered office** as provided in **Sec 12(2).**
2) If any **default** is made in complying with the requirements of this section,
   – **Co.** shall be liable to **penalty of Rs.50,000**
   – **every officer** in default shall be liable to **penalty** of **Rs.1000 for each day** during which default continues but **not exceeding Rs.1 lakh.**
3) Where **no declaration** has been **filed** with the Registrar under clause (a) of sub-section (1) **within a period of 180 days** of the date of incorporation and **Registrar has reasonable cause to believe that Co. is not carrying on any business or operations**, he may, without prejudice to the provisions of sub-section (2), **initiate action for the removal of the name of the company** from the register of companies under Chapter XVIII

RULE 23A: Declaration at the time of commencement of business

Declaration u/s 10A by a director shall be in **FORM NO.INC-20A** and shall be **filed as provided in the Companies (Registration Offices and Fees) Rules, 2014** and **contents** of the said form shall be **verified by CS or CA or Cost Accountant, in practice**.
Provided that in case of **Co. pursuing objects requiring registration or approval from** any **sectoral regulators** such as RBI, SEBI, etc., **registration or approval**, as the case may be from such regulator **shall also be obtained and attached with the declaration**.

REGISTERED OFFICE (R.O.) OF COMPANY - SEC 12

Compiled By: CA Sahil Grover

Mandatory to have registered office - Sec 12(1)

- Every company is **mandatory required** to have its **R.O. within 30 days of incorporation** and at all times thereafter.
- All **communications and notices shall be sent at R.O.**

Verification of registered office - Sec 12(2)

Co. shall file with registrar, **verification of its R.O. within 30 days of incorporation** of Co. **in the prescribed manner.(** (INC-22).

As per **Rule 25**, verification shall be filed in **Form No. INC.22** along with the fee, & along with any of the following documents:
a) registered **document of title of premises of R.O.** in name o company or
b) **notarized copy of lease/rent agreement** in name of company along with copy of rent paid receipt **not older than 1 month** or
c) **authorization from the owner or authorized occupant of premises** along with proof of ownership or occupancy authorization to use the premises by company as it registered office and
d) proof of evidence of any utility service like telephone, gas, electricity, etc. depicting address of premises in the name of owner or document, **not older than 2 months.**

Display of name etc. outside place of business - Sec 12(3)

- **Name** of Co. & **address** of its R.O. **shall be painted or affixed outside every office or place where it carries on business** in a **conspicuous position** in legible letters and if the characters employed are not those of the language/s in general use in that locality, then also in the characters of that language/s.
- If the **Co. had changed its name within last 2 years**, the **former name**(s) **during last 2 years shall also be painted or affixed** in the above manner.
- In case of OPC, the **words 'One Person Company' shall be mentioned** in brackets below the name.
- Every Co. shall have its **name engraved in legible characters on its seal**, if any.
- On all the **business letters, billheads, letter papers and in all its notices and other official publications**, there **shall be printed Name of Co., Former Name**(s) during last 2 years (if the company had changed its name within last 2 years), **in case of OPC, the words 'One Person Company'** shall be mentioned in brackets below the name, **Address of its R.O., Corporate Identity Number (CIN), Telephone No, Fax No**, if any, **E-mail** and **Website Addresses**, if any.
- **Name of Co. shall be printed on hundies, promissory notes, bills of exchange** and such other documents as may be prescribed. (**In case of OPC, the words 'One Person Company' shall be mentioned in brackets below the name)**

Rule 26 : Publication of name by the company on its website

1. Every Company which has a **website for conducting online business or otherwise**, shall **disclose/ publish** its **name, address of its R.O., CIN, Tel No, Fax No. if any, email** and the **name of person who may be contacted in case of any queries or grievances** on the landing/homepage of website.
2. **The CG may as and when required, notify the other documents on which the name of the company shall be printed.**

Notice of change of registered office - Sec 12(4)

- **Notice** of every change in situation of the R.O. shall be given **to registrar within 30 days** of such change & verified in the prescribed manner.(INC-22)

Rule 27 Notice and Verification of Change of Situation of the Registered Office
The notice of change of the situation of the RO and verification thereof shall be filed in **Form No.INC.22** along with fee & shall be attached to the said form, the similar documents and manner of verification as are specified for verification of RO on incorporation under section 12(2)

Change of Registered Office - Sec 12(5) (6) (7)

- **Change of R.O. outside the city/town/village in same state** :
  Co. shall **not change its R.O. outside the local limits** of city, town or village in which the R.O. is situated, **except with the authority of a SR passed in GM. Copy of special resolution is to be filed with Registrar within 30 days.**
- **Change of R.O. from jurisdiction of one ROC to another ROC :**
  a) Co. shall **not change its R.O. from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State**, unless **SR is passed in GM** and **confirmation has been obtained of the Regional Director.**
  b) **For obtaining confirmation**, **application** shall be **made** in the prescribed manner **(INC 23 Rule 28), to the Regional Director**.
  c) **Regional Director** shall, **within 30 days, communicate** to the company **his confirmation**.
  d) **Co**. shall, **within 60 days, file with the Registrar**, the **confirmation** of the RD
  e) **Registrar** shall, **within 30 days, register the confirmation** and **issue a certificate of registration**.
  f) **Certificate of registration** issued by the registrar shall be the **conclusive evidence** that all requirements with respect to such change have been complied with. The **change of R.O.** shall take **effect** from the **date of the certificate issued by the Registrar**.

Punishment for default -Sec 12(8): Co. and every officer who is in default shall be liable to a penalty of **Rs.1000 for every day** during which the default continues but **not exceeding Rs.1L**

Removal of name by the Registrar - Sec 12(9)

- If **Registrar has reasonable cause to believe** that **Co. is not carrying on any business or operations**, may **cause a physical verification of the R.O.** and
- if **any default is found** to be made **in complying with the requirements of sub-section (1),**
- he may without prejudice to the provisions of sub-section (8), **initiate action for the removal of the name of Co. from the register of companies** under Chapter XVIII.

Rule 25B: Physical verification of the Registered Office of the company

1. The Registrar, based upon the information or documents made available on MCA 21, **shall visit at the address of the RO of the company and may cause the physical verification of the said RO** for the purposes sec 12(9), in presence of **two independent witness of the locality** in which the RO is situated & **may seek assistance of the local Police** for verification, if required.
2. The Registrar **shall carry the documents as filed on MCA 21** in support of the address of the RO of the company for the purposes of physical verification and **to check the authenticity of the same by cross verification with the copies of supporting documents of such address** collected during the said physical verification, duly authenticated from the occupant of the property whereat the said RO is situated.
3. The Registrar shall **take a photograph of the registered office** of the company while causing physical verification of the same and t**he report of the physical verification shall be prepared in the prescribed format.**
4. Where the **RO of the company is found to be not capable of receiving and acknowledging all communications and notices**, the Registrar shall **send a notice to the company and all the directors of the company,** of **his intention to remove the name of the company** from the register of companies and **requesting them to send their representations** along with copies of relevant documents, if any, within a period of **30 days from the date of the notice** before taking further actions in accordance with the provisions of **section 248 of the Act**.

MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.5)

Compiled By: CA Sahil Grover

ALTERATION OF MEMORANDUM- SEC 13

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

ALTERATION OF NAME CLAUSE

Provisions contained in the Act

Sec 13 provides Co. may **alter** the provisions of its MoA **with the approval of the members by SR.**

Alteration of name clause:

a) Co. **may change** its **name by passing SR**.

b) Change in name shall not have any effect unless the **approval of CG is obtained in writing**. (Power delegated to ROC) (Application in Form No. INC-24) (Rule 29)

c) **Approval of CG (RoC) is not required**, if only change in the name of Co. is -

(i) **deletion of the word 'private'**, consequent **upon conversion of a private co. into a public co**.; or

(ii) **addition of the word 'private'**, consequent **upon conversion of a public co. into a private co.**

d) Change in name shall be **subject to the provisions of Sec 4**

e) Co. shall **file with the registrar a copy of SR and a copy of the order of CG (RoC)** approving the change of name.

f) **Registrar** shall **enter the new name** of the Co. in the **register of companies** and **issue a fresh certificate of incorporation** to the Co. **(Form No.INC 25)(Rule 29)**

g) **Change in name** shall become **complete and effective from the date of issue of fresh certificate incorporation.**

Provisions contained in Rule 29

Change of name shall not be allowed to a Co. which has -

a) **not filed its annual returns or financial statements** due for filing with the Registrar; or

b) **failed in repayment of matured deposits or debentures or interest on deposits or debentures.**

Provided that change of name shall be allowed upon **filing necessary documents or payment or repayment of matured deposits or debentures or interest** thereon as the case may be.

RECTIFICATION OF NAME OF COMPANY - Sec 16

❖ **Where name is identical or similar to name of Co. already registered:**

CG (Power delegated to Regional Director) may direct Co. to **rectify its name within 3 months by passing OR.**

❖ **Where name is identical or similar to name of a registered trade mark**

- **Proprietor of registered trade** mark may make an **application to CG that name of Co. is identical with, or too nearly resembles**, the **registered trade** mark of which **he is proprietor within 3 years** of
  (i) registration of Co. by such name; or
  (ii) registration of Co. by such new name.
- On receipt of such an application, if **CG is of the opinion** that the name of a Co. is identical with, or too nearly resembles then **CG may direct Co. to rectify its name within 3 months by passing OR.**

❖ **Filing requirements :**

a) Within 15 days of passing OR, the Co. shall **file** with the Registrar **notice of rectification of name and copy of the order of CG (RD).**

b) Registrar shall make necessary **changes in MoA and the certificate of incorporation.**

❖ **Default in compliance with the direction:**

If a company is in default in complying with any direction given under sub-section (1), CG shall allot a new name to the company in such manner as may be prescribed & Registrar shall enter the new name in the register of companies in place of the old name and **issue a fresh certificate of incorporation with the new name which the company shall use thereafter.**

Provided that **nothing in this sub-section** shall **prevent a company from subsequently changing its name** in **accordance with provisions of Sec 13.**

Rule 33A: Allotment of new name to the existing company u/s 16(3)

(1) In case **Co. fails to change its name or new name**, , in accordance with the direction issued **u/s 16(1) within a period of 3 months** from the **date of issue of such direction**, the **letters "ORDNC"** ("**Order of Regional Director Not Complied"), year of passing of the direction, serial number and existing CIN** of the company **shall become the new name of the company** and **Registrar shall make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C.**

Provided that **nothing contained in sub-rule (1) shall apply** in case **e-form INC-24 filed by Co. is pending for disposal** at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

(2) **A Co. whose name has been changed under sub-rule (1)** shall at once **make necessary compliance with the provisions of Sec 12** of the Act and the **statement, "Order of Regional Director Not Complied shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved. Provided** that **no such statement** shall be **required** to be mentioned **in case Co. subsequently changes its name in accordance with the provisions of Sec 13 of the Act.**

ALTERATION OF SITUATION CLAUSE

- **Change of R.O. from one premises to another premises in the same city/village/town (Sec 12):**
  Co. can change its R.O. from one place to another within local limits of city, town or village where it is situated, **by passing a resolution of Board. The company should inform the Registrar the new address within 30 days of change who shall record the same**
- **Change of R.O. outside the city/ town/village in same state (Sec 12): Discussed in Sec 12**
- **Change of R.O. within same state from jurisdiction of one ROC to another ROC (Sec 12) : Discussed in Sec 12**
- **Change of registered office FROM ONE STATE TO ANOTHER (Sec 13) :**

a) Co. may change the place of its R.O. from one State to another State **by passing a SR.**

b) Such change shall not have any effect unless the **approval of CG (RD) is obtained.**

c) For obtaining the approval of CG (RD), Co. shall make an **application to CG in such form and in such manner as may be prescribed. (Form INC 23) (RULE 30)**

The application shall be accompanied by following documents namely: (Rule 30)

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

[Provided that the applicant need not to submit separate copy of application with the Registrar and an intimation of filing of application in Form no. INC-23 with the Regional Director shall be shared with the Registrar through MCA system.]

d) Advertisement in newspaper:(Rule 30)
The company shall, **not more than 30 days before the date of filing the application in Form No. INC.23** advertise in the **Form No.INC.26** in the **vernacular newspaper in the principal vernacular language** in the district & **in English language** in an English newspaper with wide circulation in the State in which the registered office of the company is situated:

e) CG(RD) shall dispose of the application within 60 days.

f) Before passing any order, CG(RD) shall satisfy itself that —

(i) creditors, debenture-holders and other persons concerned with the Co. have **consented to such alteration**; or

(ii) Co. has made **sufficient provision for the discharge of all ,its debts and obligations**; or

(iii) Co. has **provided adequate security for the discharge of all its debts and obligations.**

g) Co. shall **within 30 days of receipt of certified copy of order file with the registrar of each state in Form INC-28(Rule 31), a copy of the order of CG** approving the change.

h) Registrar shall register the documents filed by the Co.

i) Registrar of the State in which the R.O. of the Co. is to be shifted, shall issue a fresh certificate of incorporation indicating therein such alteration.

j) Change shall not be effective until it has been duly registered by the Registrar.

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MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.6)

ALTERATION OF OBJECT CLAUSE

- **Co. may alter its objects clause by passing a SR.**
  - **a) SR through postal ballot:** If a company has **raised money from the public by issue of a prospectus, and any part of such money remains unutilised with the Co,** then, the **Co. shall not alter** its objects for which it raised the money through prospectus **unless a SR through postal ballot is passed by company**
  - **b) Advertisement:**
    The **advertisement giving details of each resolution to be passed for change in objects, simultaneously to the dispatch of postal ballot notices to shareholders**; shall be
    - **Published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated** and
    - **Hosted on the website of the company, if any**
  - c) **Dissenting Shareholders:**
    The **dissenting shareholders have been given an exit opportunity** by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.
- **Co. shall file with the registrar a copy of SR.**
- **Registrar** shall, **within 30 days, register the alteration, and issue a certificate of registration.**
- **Alteration shall not be effective until it has been duly registered by Registrar.**

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Rule 32: Change of Objects for Which Money is raised through Prospectus.

The **notice in respect of the resolution** for altering the objects shall contain the f**ollowing particulars:**

- the **total money received**;
- the **total money utilized** for the objects stated in the prospectus;
- the **unutilized amount out of the money** so raised through prospectus,
- the **particulars of the proposed alteration** or change in the objects;
- the **justification for the alteration or change** in the objects;
- the **amount proposed to be utilised** for the new objects;
- the **estimated financial impact of the proposed alteration on the earnings** and cash flow of the company;
- the **other relevant information** which is necessary for the members to take an informed decision on the proposed resolution;
- **Place from where any interested person may obtain a copy of the notice of resolution to be passed.**

ALTERATION IN CAPITAL CLAUSE - Sec 61

- **Applicability** :
  Sec 61 applies to all limited companies having a share capital.
- **Nature of alterations in capital clause**
  - a) **Increase its authorized share capital** by such amount as it may think fit.
  - b) **Consolidate and divide its share capital into shares of a larger amount** than its existing shares. Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application [Proviso to Clause (b) of Sec 61(1)].
  - c) **Convert its fully paid up shares into stock, and reconvert stock into fully paid-up shares of any denomination**.
  - d) **Sub-divide its shares into shares of smaller amount** subject to the condition that, after such alteration, the proportion of the amount paid up on shares and the amount remaining unpaid on shares shall remain same as was before such alteration.
  - e) **Cancel shares which have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled**. Cancellation of shares shall not be deemed to be a reduction of share capital.
- **Requirements for alteration of capital** :
  - a) **Authorisation is required in the articles**.
  - b) **OR** is required to be **passed in the GM**.
  - c) **Notice of alteration** of share capital is to be **given to ROC within 30 days** in the prescribed form **(SH-7)** along with a copy of altered MoA. **(Sec 64)**

Alteration of capital does not require confirmation by the Court, CG, CLB, Tribunal or any other authority.

ALTERATION ARTICLES (Sec 14)

- **Alteration to be subject to the Act and memorandum - Sec 14(1)**
  Every alteration of articles shall be subject to the provisions contained in the Act and the MoA.
- **Resolution required - Sec 14(1)**
  Every alteration of articles requires a SR, including alteration of articles for the purpose of -
  - a) **conversion of a private company into a public company**; and
  - b) **conversion of a public company into a private company**.
- **Conversion of a private company into a public company - 1st Proviso to Sec 14(1)**
  - a) **Private Co. may get converted into a public Co, by altering its articles (by passing SR) such that its articles no longer include the restrictions and limitations required to be included in the articles of a private Co. as per Sec 2(68).**
  - b) **Conversion from private Co. into a public Co. shall take effect from the date of alteration of articles.**

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- **Conversion of a public company into a private company - 2nd Proviso to Sec 14(1)**
  - **a)** Public Co. may get converted into a private Co, by altering its articles **(by passing SR)** so as to include therein the restrictions and limitations required to be included in the articles of a private Co. as per Sec 2(68) **and obtaining approval of CG (Power delegated to Regional Director)** by making an application to CG.
  - **b) For obtaining the approval of RD, the company shall make an application to Regional Director in e-form No RD--1.**
  - **c) RD may make such order as it may deem fit.**

  Provided also that **any application pending before the Tribunal**, as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be **disposed of** by the Tribunal in **accordance with the provisions applicable to it before such commencement.**
- **Filing Requirements [Sec 14(2)]:**
  Co. shall file with Registrar, **printed copy of altered articles and order of CG** [in case of conversion of a public company into private company] **within 15 days** in the **prescribed manner (INC-27)(Rule 33)** and **registrar shall register the documents filed with him.**
- **Effect of Alteration :**
  Every alteration of articles shall be as valid as if it were originally contained in the articles.

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Rule 33-Alteration of Articles

1. For **effecting the conversion of a private company into a public company or vice versa,** the application shall be filed in **Form No.INC.27** with fee**.**
2. Subject to the **provisions of sub-rule (1),** for effecting the **conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD- 1, pertaining to order of the Regional Director approving the alteration**, shall be **mentioned** in **Form No. INC-27 to be filed with Registrar** along with fee together with the altered **e-Memorandum of Association and e-Article of Association** within **fifteen days from the date of receipt of the order from the Regional Director.**

Rule 41-Coversion of public company to private company:

An application under the second proviso to sub-section (1) of section 14 for the conversion of a public company into a private company, shall, within sixty days from the date of passing of special resolution, be filed with Regional Director in e-Form No. RD-l along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 and shall be accompanied by the following documents, namely:-

- **a) e-Memorandum of Association and e-Articles of Association, with proposed alterations including the alterations pursuant to sub-section (68) of section 2;**
- **b) Copy of the minutes of the general meeting at which the special resolution authorising such alteration was passed together with details of votes cast in favour and or against with names of dissenters;**
- **c) Copy of Board resolution or Power of Attorney dated not earlier than thirty days, as the case may be, authorising to file application for such conversion;**
- **d) Declaration by a key managerial personnel that pursuant to the provisions of sub-section (68) of section 2, the company limits the number of its members to two hundred and also stating that no deposit has been accepted by the. company in violation of the Act and rules made thereunder;**
- **e) Declaration by a key managerial personnel regarding the compliance under difference section of the Act and rules made there under**

MEMORANDUM OF ASSOCIATION (MOA) & ARTICLES OF ASSOCIATION (AOA) (Chart 3.7)

ALTERATION OF MoA or AoA TO BE NOTED IN EVERY COPY Sec 15

a) **Every alteration of MoA or AoA shall be noted in every copy.** Co. shall **not issue any copy of MoA or AoA unless it contains every alteration** made therein.

b) **Co. and every officer who is in default shall be liable to a penalty** of **Rs.1,000 for every copy of MoA or AoA issued without containing any alteration.**

COPIES OF MoA, AoA, ETC., TO BE GIVEN TO MEMBERS Sec 17

- **Any member of Co**. may **demand** from the Co,
  - a copy of **MoA or AoA** and
  - every **agreement & resolution referred to u/s 117**, which is not embodied in the MoA or AoA.
- **Co. shall furnish to the member, the documents demanded by him within 7 days of the request if the member pays the prescribed fees.**
- **In case of default, the Co. and every officer who is in default shall be liable for each default, to a penalty of Rs.1000 for each day during which such default continues or Rs.1 lakh, whichever is less.**

Rule 34: Copies of Memorandum and Articles, etc. to be given to Members on Request Being Made by Them

A company shall on payment of fee, send a copy of each of the following documents to a member within seven days of the request being made by him-

1) **the memorandum;**
2) **the articles;**
3) **every agreement and every resolution referred to sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.**

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CONVERSION OF COMPANIES FROM ONE CLASS TO ANOTHER CLASS – (Sec 18)

- **Legal requirements for conversion: Co. of any class registered under the Companies Act, 2013 may convert itself into a Co. of other class by alteration of its MoA & AoA and complying with the provisions of Chapter II.**
- **File an application to the Registrar : Co. shall file an application to the Registrar,**
- **Issue of fresh certificate of incorporation**
  Registrar on being satisfied that the provisions of Chapter II with respect to registration of companies have been complied with by Co, it shall –
  a) **close the former registration of the Co;**
  b) **register the documents filed with it, and**
  c) **issue a fresh certificate of incorporation in the same manner as if it is the first registration of the Co.**
- **Effects of fresh registration: Fresh registration shall not affect any debts, liabilities, obligations or contracts incurred or entered into by the Co. prior to such conversion, and may be enforced in same manner as if fresh registration had not been done.**

AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS [Sec 21]

A document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by –
(i) any **key managerial personnel**, or
(ii) an **officer or employee** of the company duly **authorised by the Board** in this behalf.

KMP - Sec 2(51):
KMP in relation to a company, means -

i. **the Chief Executive Officer or the managing director or the manager;**
ii. **the company secretary;**
iii. **the whole-time director;**
iv. **the Chief Financial Officer;**
v. **such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and**
vi. **such other officer as may be prescribed.**

EXECUTION OF BILLS OF EXCHANGE, ETC. - Sec 22

1. Negotiable instruments -When binding?
A bill of exchange, hundi or promissory note shall be deemed to have been made accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

2. Authorisation by a company to execute deeds:
A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.
"Provided that in case a company does not have a common seal, the authorisation under this sub-section shall be made by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary."

3. Deeds, when binding on the company:
A deed signed by such an attorney on behalf of the company and under his seal shall bind the company.

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SERVICE OF DOCUMENTS - Sec 20

Serving of document to Company Sec 20(1)

Document may be served on a Co. or an officer at the R.O. of the company **by**
- **Registered Post or**
- **Speed Post or**
- **Courier Service or**
- **Leaving it at its R.O. or**
- **means of such Electronic or other mode as may be prescribed.**

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

Serving of document to Registrar or Member - Sec 20(2)

Document may be served **on Registrar or any member by sending it to him:**
- **Post, or**
- **Registered Post or**
- **Speed Post or**
- **Courier or**
- **by delivering at his Office/ Address or**
- **by such Electronic or other mode as may be prescribed.**

However, **a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the Co. in its AGM.**
Explanation—For the purposes of this section, the term *"courier"* means a person or agency which delivers the document and provides proof of its delivery.

Exemption:
Sec 20 (2) shall apply to a Nidhi Company, subject to the modification that the document may be served only on members who hold shares of more than Rs.1,000 in face value or more than 1% of the total paid-up share capital of the Nidhi whichever is less.
For other shareholders, document may be served by a public notice in newspaper circulated in the district where the R.O. of the Nidhi is situated and publication of the same on the notice board of the Nidhi.

As per Rule 35 of Companies (Incorporation) Rules, 2014

The term, *"electronic transmission"* means a communication that creates a record that is **capable of retention, retrieval (recovery) and review,** and which may thereafter be **rendered into clearly legible tangible form**. It may be made by-
- **facsimile(duplicate) telecommunication or electronic mail, which the Co. or the officer has provided from time to time for sending communications,**
- **posting of an electronic message board or network that the Co. or the officer has designated for such communications, or**
- **other means of electronic communication, in respect of which the Co. or the officer has put in place reasonable systems to verify that the sender is the person contending to send the transmission,**

In case of **delivery by post**, such service shall be deemed to have been effected:
(i) in the **case of a notice of a meeting**, at the **expiration of 48 hours after the letter containing the same is posted**; and
(ii) in **any other case**, at the **time at which the letter would be delivered in the ordinary course of post.**

PROSPECTUS (Chart 4.1)

PROSPECTUS-Sec 2(70)

Prospectus means -

- **any document described or issued as a prospectus; and includes**
- **shelf prospectus [Sec 31];** or
- **red herring prospectus [Sec 32];** or
- **any notice, circular, advertisement or other document inviting offers from public for subscription or purchase of any securities of a body corporate.**

OTHER POINTS:

- **It is not an offer in itself but an invitation to make an offer.**
- **It must be in writing. Television or film advertisement cannot be treated as prospectus.**
- **It is the basic document on the basis of which the intending investors decide whether or not they should subscribe to the shares or debentures.**
- **It is therefore essential that information statutorily needing disclosure is stated fully and precisely so that the investing public may get all the information which is likely to affect the public mind.**
- **To protect the members of public against their being misguided by half-truths or falsehoods that the law casts a liability on various persons connected with the issue of prospectus to compensate every person (who subscribes on the faith of the prospectus) for any loss or damage he may have sustained because of the inclusion of any untrue statements in the prospectus [Sec 35].**

ISSUE OF SECURITIES BY COMPANY

Modes of issue of securities by a Public Company - Sec 23(1)

Public Co. may issue securities

a) to public **through prospectus (herein referred to as 'public offer');** or

b) by way of **private placement**; or

c) by way of **rights issue or bonus issue**

Definition of 'public offer':

'Public Offer' includes **initial public offer** or **further public offer** of **securities to the public by a Co,** or an **offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.**

Modes of issue of securities by a Private Company - Sec 23(2)

Private Co. may issue securities -

- **by way of private placement or**
- **by way of rights issue or bonus issue in accordance with the provisions of this Act.**

Listing on permitted stock exchanges in permissible foreign jurisdictions- Sec 23(3)

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

Prior to Amendments of 2020,(w.e.f 28th September 2020) Indian companies can access the overseas equity markets only through depository receipts (e.g. American Depository Receipts (ADRs) or Global Depository Receipts (GDRs) or by listing their debt securities (such as, foreign currency convertible bonds, masala bonds, etc.) on foreign markets.

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

The CG in exercise of the powers conferred by sub-section (3) of section 23 has prescribed **Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024. (w.e.f. 24th January, 2024)**

Exemption by Central Government [Sec 23(4)]

Section 23(4) of the Act empowers the **Central Government** to exempt **any class or classes of public companies from complying with the provisions of Chapter III (Prospectus and Allotment of Securities), Chapter IV (Share Capital and Debentures), section 89 (Declaration in respect of a beneficial interest in any share), section 90 (Register of significant beneficial owners in a company) or section 127 (Punishment for failure to distribute dividends) of the Act, by issuing notification.**

MATTERS TO BE STATED IN THE PROSPECTUS - Sec 26

- Every prospectus shall be **dated and signed.** It shall **state such information** and **set out such reports on financial information** as may be **specified by the SEBI in consultation with CG. Provided that until the SEBI specifies the information and reports on financial info under this sub-section, the regulations made by the SEBI under the SEBI Act, 1992, in respect of such financial information or reports on financial information shall apply.**
- **Declaration** shall **be included in the prospectus regarding compliance of the provisions of Companies Act, 2013 and** a **statement** to the effect that nothing in the prospectus is contrary to the provisions of the **Companies Act, 2013**, the **SCRA, 1956 and the SEBI Act, 1992 and the rules and regulations made thereunder.**

LEGAL RULES AS TO PROSPECTUS

1) **Non-applicability of Sec 26(1) :**
Provisions relating to disclosure of information, reports and declaration required to be included **as per Sec 26(1) shall not apply in the following cases:**
a) Where a **prospectus** or form of application is **issued to the existing members or debenture-holders, whether an applicant has a right to renounce the shares or not in favour of any other person as per Sec 62.**
b) **Where a prospectus or form of application is issued,** if **such shares or debentures are in all respects uniform with shares or debentures previously issued** and for the time being **dealt in or quoted on a recognized stock exchange.**
Except the exceptions, the **provisions of sub-section (1) shall apply** to a **prospectus** or a form of application, **whether issued on or with reference to the formation of a Co. or subsequently.**

2) **Date of prospectus: Date indicated in the prospectus** shall be deemed to be the date of its publication.

3) **Delivery of copy of prospectus to the registrar:** No prospectus shall be issued unless a copy of the same has been **delivered to Registrar for filing, signed** by **every person who is named therein as a director or proposed director** of the company or by his **duly authorized attorney.**

4) **Mention compliances of the formalities :**
Every prospectus issued under sub-section (1) shall, on the face of it, state that a **copy has been delivered for filing to the Registrar** and **specify** any **documents required to be attached** to the copy so delivered or refer to **statements included in the prospectus** which specify these documents.

5) **Time limit for issue of prospectus: No prospectus shall be valid** if it is issued **more than 90 days** after the date on which copy thereof is delivered to Registrar.

6) **Expert's statement in prospectus :**
Prospectus shall not include a statement purporting to be made by an expert unless –
a) expert is a person who is **not**, and has not been, **engaged or interested** in the formation or promotion or management of Co;
b) expert has **given his written consent** to the issue of the prospectus; and
c) expert has **not withdrawn his consent** before the delivery of a copy of prospectus to the Registrar for filing; and
d) statement is **included in the prospectus** that expert has given his written consent & has not withdrawn such consent.

Definition of "expert" [sec. 2(38)]

"Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

7) **Contravention of the provision :**
Co. and every person who is knowingly a party to the issue of such prospectus shall be **punishable with fine** varying from **Rs.50,000 to Rs.3 lakh.**

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.2)

POWER OF SEBI TO REGULATE ISSUE AND TRANSFER OF SECURITIES, ETC. [Sec 24]

- **Administration of provisions of Act by CG and SEBI :** **Provisions** contained in **Chapter III (Prospectus and Allotment of Securities), Chapter IV (Share Capital and Debentures) and in Sec 127 (Punishment for failure to distribute dividends)** shall, in so far as they **relate to issue and transfer of securities-and non-payment of dividend,** be administered by :
  1) **SEBI** in case of :
     a) listed companies
     b) companies which intend to get listed
  2) **CG** in any other case
- **Powers w.r.t. other matters** :
  All **powers relating to prospectus, return of allotment, redemption of preference shares and any other matter** specifically provided in this Act **shall be exercised by CG, the Tribunal or the Registrar**.

VARIATION IN TERMS OF CONTRACT OR OBJECTS IN PROSPECTUS [Sec 27]

(A) Provisions contained in the Act

1) **Legal requirements for variation in terms of contract or objects :**
Co. shall not **vary the terms of any contract** referred in prospectus or **vary the objects** for which the prospectus was issued unless —
(i) **SR is passed in the GM**; and
(ii) prescribed details of the **notice of GM (indicating clearly the justification for such variation)** are **published in 2 newspapers(eng + vernacular) circulating in city in which R.O. of Co. is situated.**

2) **Restriction on use :** *Compiled By: CA Sahil Grover*
Co. shall **not use the amount** raised through issue of prospectus **for buying, trading or otherwise dealing in the equity shares of any other listed Co**.

3) **Exit offer to the dissenting shareholders :**
a) Dissenting shareholders shall be given an **exit offer** by promoters or controlling shareholders.
b) **exit price** and the manner and conditions of the exit offer shall be such **as may be specified by SEBI** by making Regulations.

(B) Provisions contained in Rule 7 of the Companies (Prospectus and Allotment of Securities) Rules 2014

1) **Requirements for passing SR :**
Where the company has **raised money from public** through prospectus and **has any unutilized amount** out of the money so raised, Co. shall not vary the terms of contracts referred to in the prospectus or objects for which the prospectus was issued **except by passing SR through postal ballot** and **notice** of the proposed SR **shall contain the following particulars**:
a) original purpose or object of the Issue;
b) total money raised;
c) money utilised for the objects of Co. stated in prospectus;
d) extent of achievement of proposed objects (i.e. 50%, 60% etc.);
e) unutilised amt. out of the money so raised through prospectus;
f) particulars of proposed variation in terms of contracts referred in the prospectus or objects for which prospectus was issued;
g) reason and justification for seeking variation;
h) proposed time limit within which proposed varied objects would be achieved;
i) clause-wise details as specified in Rule 3(3) as was required with respect to originally proposed objects of the issue;
j) risk factors pertaining to the new objects; and
k) other relevant information which is necessary for members to take an informed decision on the proposed resolution.

2) **Advertisement to be in Specified Form :**
Advertisement of the notice for getting the resolution passed for varying the terms shall be in **Form PAS-1** and such advertisement **shall be published simultaneously with dispatch of Postal Ballot Notices** to Shareholders.

3) **Placing of notice on the website :**
Notice of GM shall also be placed on the **website of the Co**, if any.

DEEMED PROSPECTUS - Sec 25

1) **Meaning of deemed prospectus :**
- Where a Co. allots or agrees to allot any securities of Co.
- with a view to all or any of those securities being offered for sale to the public, **any document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by Co.** and
- all enactments & rules of law as to the contents of prospectus & liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with modifications specified in subsections (3) & (4) and shall have effect accordingly,
- as if the securities had been offered to public for subscription and as if persons accepting offer in respect of any securities were subscribers for those securities,
- but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

2) **Presumption as to deemed prospectus :**
Unless contrary is proved, it shall be presumed that allotment or agreement to allot the securities was made with a view to the securities being offered for sale to the public if it is shown -
a) that the **offer for sale** to the public **was made within 6 months** of allotment or agreement to allot; or
b) that the **whole consideration had not been received** by Co. at the date when offer to the public was made.

3) **Effects of deemed prospectus :**
a) All enactments and rules of law as to the **contents of prospectus** shall apply to deemed prospectus.
b) All enactments and rules of law as to **liability in respect of mis-statement in prospectus** shall apply to deemed prospectus.
c) It shall be deemed that the **persons by whom the offer to the public is made** were **named in the prospectus as the directors** of Co.

4) **Contents of deemed prospectus :**
It requires a prospectus to state in addition to the matters required by that section to be stated in a prospectus—
i. **Net consideration** received or to be received by Co. in respect of the securities to which the offer relates.
ii. **Time & place for inspection of contract** where under the securities have been allotted or to be allotted.

5) **Signing of deemed prospectus :** *Compiled By: CA Sahil Grover*
Deemed prospectus must be signed by -
(i) in case offer is made by ***company*** - **2 directors** of Co;
(ii) in case offer is made by ***firm*** - **not less than one-half of the partners** in the firm.

ADVERTISEMENT OF PROSPECTUS - Sec 30

Advertisement of any prospectus in any manner shall **contain the following particulars**:
- **Contents of** its **memorandum** as regards -
  a) **objects of the company**;
  b) **liability of members**; and
  c) **amount of share capital,**
- **Names of the signatories to the memorandum and the number of shares subscribed for by them**; and
- **Capital structure of the company.**

OFFER OF SALE OF SHARES BY CERTAIN MEMBERS OF COMPANY - Sec 28

1) **Offer of sale to be as per the procedure prescribed :**
Sec 28 applies, where in accordance with the provisions of any law **certain members of a Co. propose to offer for sale to public, shares held by them in consultation with BOD.**

2) **Document for offer for sale deemed to be prospectus :**
Any document by which the offer of sale to public is made shall be **deemed to be prospectus** and **all laws and rules with respect to the contents of the prospectus; and** liability **in case of mis-statement in prospectus shall apply as if such document were a prospectus issued by the company**

3) **Members to authorise the company to act on their behalf :**
Members, whose share are proposed to be offered to public shall —
a) **collectively authorise the Co. to take all actions** in respect of offer of sale for and on their behalf; and
b) **reimburse the Co. all expenses** incurred by the Co.

Rule 8 of Companies (Prospectus and Allotment of Securities) Rules, 2014

Relevent Rule: As regards offer of sale of shares by certain members of the company **Rule 8 of the Companies (Prospectus and Allotment of securities) Rules, 2014** , contains guiding provisions which are stated as under

Exceptions to certain Matters:

As per **Rule 8 (1),** provisions of Part I of Chapter III namely "Prospectus and Allotment of Securities" and rules made thereunder shall be applicable to an **offer of sale** (Sec 28) **except** for the following, namely:-
a) provisions relating to **minimum subscription & minimum application value;**
b) provisions requiring any **statement to be made by BOD in respect of the utilization of money**; and
c) **any other provision or information** which can't be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.

Disclosures:

As per **Rule 8 (2),** prospectus issued u/s 28 shall **disclose the name of person(s) or entity bearing the cost of making the offer of sale** along with reasons.

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.3)

SHELF PROSPECTUS AND INFORMATION MEMORANDUM Sec 31

(1) Meaning of shelf prospectus :
It means a **prospectus in** respect of **which** the **securities or class of securities** included therein **are issued for subscription in** one or more issues over a certain period **without the issue of a further prospectus**.

(2) Applicability :
Sec 31 shall **apply to any class or classes of companies**, as the SEBI may provide by regulations in this behalf.

(3) Procedure for issue of securities under shelf prospectus :

a) Filing of shelf prospectus:
Shelf prospectus may be filled with the Registrar **at the stage of the first offer of securities specified in the shelf prospectus.**

b) Validity-period of shelf prospectus:
- Shelf prospectus shall indicate a period **not exceeding 1 year as the period of validity** of such prospectus.
- Period of 1 year shall **commence from the date of opening of the first offer of securities** under shelf prospectus.
- With **respect to second or any subsequent offer** of such securities issued during the period of validity of shelf prospectus, **no further prospectus shall be required.**

c) Information memorandum:
- Prior to the **issue of a second or subsequent offer under shelf prospectus,** Co. shall be required to **file an information memorandum with the Registrar** within such time as may be prescribed.
- **Information memorandum** shall contain all material facts relating to
  - ➢ **new charges created**;
  - ➢ **changes in the financial position of the Co.** as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities; and
  - ➢ **such other changes** as may be prescribed.

(4) Intimation of variations and opportunity to withdraw applications
- Where a Co. or any other person has **received applications** for the allotment of securities along with advance payments of subscription **before the making of any such change**,
- Co. or other person **shall intimate the changes to such applicants** and if they **express a desire to withdraw their application**,
- Co. or other person shall **refund all the monies received as subscription within 15 days thereof.**

(5) Shelf prospectus with information memorandum deemed to be prospectus :
Where an information memorandum is filed, every time an offer of securities is made, the information memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Rule 10 of Companies (Prospectus and Allotment of securities) Rules, 2014

Information memorandum shall be prepared in **Form PAS-2** and **filed with the Registrar** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 **within 1 month prior to the issue of a second or subsequent offer** of securities under the shelf prospectus.

RED HERRING PROSPECTUS - Sec 32

***'Red herring prospectus'* means a prospectus which does not include complete particulars of the quantum or price of the securities** included therein.

– **Issue a red herring prospectus prior to the issue of a prospectus:**
Co. proposing to make an offer of securities **may issue a red herring prospectus prior to the issue of a prospectus.**

– **Filing with the registrar:**
Co. shall **file red herring prospectus with the Registrar at least 3 days prior to the opening of the subscription list and the offer.**

– **Same obligation:**
Red herring prospectus shall carry the **same obligations** as are **applicable to a prospectus** and **any variation** between the red herring prospectus and a prospectus shall be **highlighted as variations in the prospectus.**

– **Filing of red herring prospectus with registrar and SEBI upon closing of offer:**
Upon closing of offer of securities under this section, the prospectus stating therein
i. **total capital raised**, whether by way of debt or share capital, and
ii. **closing price of the securities** and
iii. any **other details as are not included** in the red herring prospectus
shall be filed with the Registrar and the SEBI.

Compiled By:CA Sahil Grover

ISSUE OF APPLICATION FORMS FOR SECURITIES/ABRIDGED PROSPECTUS - Sec 2(1) & 33

- **Meaning of abridged prospectus :**
'Abridged prospectus' means a **memorandum containing** such **salient features of prospectus** as may be specified by SEBI by making regulations in this behalf [Sec 2(1) of the Companies Act. 2013].
Sec 33 deals with ***"abridged" prospectus*** means **short or edited prospectus** in the prescribed manner **which accompanies the application form for securities.**
- **Abridged prospectus must be attached to application forms :**
No form of application for the purchase of any of the securities of Co. **shall be issued unless** such **form is accompanied by an abridged prospectus.**
- **Furnishing of prospectus on demand :**
Copy of prospectus shall, on a **request** being made by any person **before the closing of the subscription list and offer, be furnished to him.**
- **When is abridged prospectus not required ?**
(i) Where an application **form is issued** in connection with a bona fide invitation to a person **to enter into** an **underwriting agreement** with respect to such securities.
(ii) Where an application **form is issued in relation to securities which are not offered to the public**.
- **Penalty for default :**
Co. shall be liable to penalty of **Rs.50,000 for each default.**

PUBLIC OFFER OF SECURITIES TO BE IN DEMATERIALIZED FORM Sec 29

(i) Mandatory dematerialization:
1) **Every Co. making public offer**; and such other **class or classes of companies** as may be prescribed **under Rule** 9 of the Companies (PAS) Rules, 2014 **shall issue the securities only in demat form**.
1A) **In case of** such class/classes of **unlisted companies** as may be prescribed, the **securities shall be held or transferred only in demat form**.

(ii) Optional dematerialisation
Any other company may convert its securities **into demat form**; or **issue** its securities **in physical form** in accordance with the provisions of this Act; or issue its securities **in demat form.**
Securities could be **held in physical or demat form**. However **public offer of securities has to be mandatorily in demat form.**

Rule 9 of Companies (Prospectus & Allotment of Securities) Rules

1. **Promoters of every public co.** making **a public offer of any convertible securities** may **hold** such securities **only in demat form.**
Provided that **entire holding of convertible securities** of Co. **by promoters held in physical form** up to the date of the initial public offer **shall be converted into demat form** before such offer is made and thereafter such promoter shareholding shall be held in demat form only.

2. **Every public Co. which issued share warrants prior to commencement of the Companies Act, 2013 & not converted into shares shall, -**
a) within a period of three months of the commencement of the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023(27th October, 2023) inform the Registrar about the details of such share warrants in Form PAS-7; and
b) within a period of 6 months of the commencement require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper(Eng+Vernacular)
c) In case any bearer of share warrant does not surrender the share warrants within the period prescribed, the company shall convert such share warrants into dematerialised form and transfer the same to the IEPF established u/s 125 of the Act.

Compiled By:CA Sahil Grover

Rule 9A-Issue of securities in demat form by Unlisted Public Co.

1) **Every unlisted public co (excluding a Nidhi, Govt. Co. and a wholly owned subsidiary**) shall **Issue the securities only in demat form** and **Facilitate dematerialisation of all its existing securities.**
2) **Conversion of securities in dematerialized form: Every unlisted public co. making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, KMP has been dematerialised.**
3) **Responsibility of every holder of securities of an unlisted public company:** Every **holder of securities** of an unlisted public co,
– who intends to **transfer such securities on or after 2nd Oct, 2018, shall** get such securities **dematerialised before the transfer**; or
– who **subscribes to any securities** of an unlisted public co (whether by way of private placement or bonus shares or rights offer) **on or after 2nd October, 2018**
shall **ensure** that all his **existing securities are held in demat form before such subscription**.

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.4)

6) **Application to the depository:** Every unlisted public co shall **facilitate dematerialisation of all its existing securities** by making necessary application to a depository as defined in Sec 2(1) (e) of the Depositories Act, 1996 **and** shall **secure International Security Identification Number (ISIN)** for each type of security and shall inform all its existing security holders about such facility.

7) **Obligations of every unlisted public company:**
Every **unlisted public co** shall ensure that -
- it makes **timely payment of fees** (admission as well as annual) to the depository and registrar to an issue and share transfer agent;
- it **maintains security deposit**, at all times, **of not less than 2 years' fees** with the depository and registrar to an issue and share transfer agent; and
- it **complies with regulations or directions or guidelines or circulars**, if any, **issued by SEBI or Depository** with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto.

8) **Prohibition on defaulting unlisted public company: No unlisted public co which has defaulted in sub-rule (5) shall make offer** of any **securities or buyback or issue any bonus or right shares** till the payments to depositories or registrar to an issue and share transfer agent are made

7) **Application of certain provisions:** Except as provided in sub-rule (8), the provisions of **Depositories Act, 1996, SEBI (Depositories and Participants) Regulations, 2018 and SEBI (Registrars to an Issue and Share Transfer Agents) Regulations, 1993** shall **apply mutatis mutandis to dematerialisation** of securities of unlisted public co.

8) **Filing with the Registrar:** Every unlisted public co. governed by Rule 9A shall **submit Form PAS-6 to the Registrar** with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 **within 60 days from the conclusion of each half year** duly **certified by a CS or CA in practice**.

9) **Reporting of difference:** Co. shall immediately **bring to the notice of the depositories** any **difference observed in its issued capital and the capital held in demat form.**

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

11) **Initiation of action by IEPF Authority:** IEPF Authority shall **initiate any action against a depository or participant or registrar to an issue and share transfer agent** after prior consultation with SEBI.

Rule 9B- Issue of securities in demat form by Private Company

1) Every **private company, other than a small company, shall within the period referred to in sub-rule (2) -**
   a) **issue the securities only in dematerialised form; and**
   b) **facilitate dematerialisation of all its securities, in accordance with provisions of the Depositories Act, 1996 (22 of 1996) and regulations made thereunder.**
2) **A private company, which as on last day of a financial year, ending on or after 31st March, 2023, is not a small company as per audited financial statements for such FY, shall, within 18 months of closure of such financial year, comply with the provisions of this rule.**
3) **Every private company referred to in sub-rule (2) making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer, after the date when it is required to comply with this rule, shall ensure that before making such offer, entire holding of securities of its promoters, directors, KMP has been dematerialised.**
4) **Every holder of securities of the private company referred to in sub-rule (2),-**
   a) **who intends to transfer such securities on or after the date when the company is required to comply with this rule, shall get such securities dematerialised before the transfer; or**
   b) **who subscribes to any securities of the concerned private company whether by way of private placement or bonus shares or rights offer on or after the date when the company is required to comply with this rule shall ensure that all his securities are held in dematerialised form before such subscription.**
5) **The provisions of sub-rules (4) to (10) of rule 9A shall, mutatis mutandis, apply to the dematerialisation of securities under this rule.**
6) **The provisions of this rule shall not apply in case of a Government company.**

GOLDEN RULE FOR FRAMING THE PROSPECTUS

Prospective shareholders are **entitled to true and faithful disclosures** in the prospectus. The persons issuing the prospectus are **bound to state everything accurately and not to omit material facts.**

Meaning of 'untrue statement' and 'prospectus containing untrue statement'

- Statement included in a prospectus shall be **deemed to be untrue, if the statement is misleading in the form and context in which it is included** (Sec.34).
- Similarly, if the **omission from a prospectus of any matter** is calculated **to mislead the investors**, the prospectus is **deemed to be** a prospectus in which an **untrue statement** is included (Sec. 34).

Golden Rule for framing the prospectus

- **Prospectus must present** the **whole picture of the company**.
- Prospectus must **disclose all material facts truly, honestly and accurately.**
- All **facts** which are **likely to influence the decision** regarding applying for shares **must be disclosed**.
- Prospectus should **not contain any untrue or misleading statement**.
- **No fact should be omitted**, the existence of which might, in any degree, **affect the nature or quality of privileges and advantages disclosed by the prospectus** (Rex v .Kylsant).
- **Suppression of a fact**, howsoever remote, will **make a prospectus 'misleading prospectus'**, if inclusion of such fact might have affected investor's decision to subscribe for the shares.

Some of landmark judicial pronouncements
(only for reference and better understanding)

Mislead through false Statement (on prima-facie of facts) - Henderson v. Lacon

It was stated in the prospectus, 'the directors and their friends have subscribed a large portion of the capital and they now offer to the public the remaining shares.' Whereas in actually each of director had subscribed only 10 shares. It was held that such a statement is misleading one.

Misled by hiding truth through superficial statement- Rex v. Kylsant

In the prospectus, it is stated that the company had regularly paid dividends, in actual company has been incurring substantial losses during all those years. Company used to write back some of the past provisions to the credit of the profit and loss account. It was held that the prospectus did not disclose the true picture of the company.

Misled through ambiguous statement – Smith v. Chadwick

The prospectus of a manufacturing company contain, 'the present value of turnover is £1million sterling per annum,' the statement was true only if production capacity is considered but untrue if it meant the present production level (capacity in utilisation). It was held that, such a statement which director knew may bear multiple meaning out of which any can be false to their knowledge, considered to be furnishing of misleading statement.

REMEDIES FOR MIS-STATEMENT IN A PROSPECTUS

a) **Against the company**
   i. **Rescission** ii .**Damages**
b) **Against the Company & Others**
   i. **Civil Liability (Compensation)**
c) **Against the persons authorized to issue prospectus**
   i. **Criminal Liability** ii.**Damages for Deceit**

REMEDIES UNDER CONTRACT ACT & COMPANIES ACT

Remedy of Rescission, Damages and Deceit are not specified under this Act, they are available under the Indian Contract Act 1872 read with relevant provisions of Specific Relief Act 1963.
Whereas Criminal and Civil Liability is provided under section 34 and 35 respectively of this Act.
Since remedies specified above are alternative courses, hence all of these remedies are not available simultaneously, whereas appropriate combination of these can be claimed.
To illustrate, claim for compensation under section 35 (civil liability) of this act (being special statute where jurisdictional power vested in NCLT) shall not be moved simultaneously with claim for Damages (under general provisions).

RIGHT OF RESCISSION

When to seek recession?

A person who has purchased shares from the company on the basis of the prospectus containing untrue and misleading statement of material facts is entitled to apply to the court for the rescission of the contract, under the relevant provisions of the Indian Contract Act 1872.

Effect of rescission

The agreement to take up shares is voidable at the option of the subscriber to the shares, it will remain valid unless he actually rescinds it. If the court accepts his application for the repudiation of the contract, company will remove his name from the register of members and return his money with interest and other incident cost.

Entitlement to compensation for any damages which he sustained through the non- fulfilment of the contract arise under section 75 of the Indian Contract Act 1872

Exceptions – When right of recession is not available?

a. Right to rescind allotment of shares **will not be available to the subsequent purchasers of shares** from the market
b. A subscriber to the **Memorandum of Association cannot also seek any relief, as the company cannot he considered to be in existence at the time when he appended his signatures to the Memorandum of Association, he cannot be said to have been influenced by any statement in the prospectus.**

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.5)

REMEDIES FOR MIS-STATEMENT IN A PROSPECTUS [COMPANIES ACT, 2013]

A. Criminal liability for misstatements in prospectus (Sec 34)

1) **Mis-statement in prospectus:** Where a prospectus is issued, circulated or distributed, and it includes:
   a) any **statement which is untrue or misleading** in form or context in which it is included, or
   b) where **any inclusion or omission of any** matter is likely to mislead,

   then **every person who authorizes the issue** of such prospectus shall be **liable under Sec 447.**

2) **Exemption from the criminal liability:**

This section shall not apply to a person if he proves that-
   a) such statement or omission was immaterial, or
   b) he had reasonable grounds to believe, and did up to the time of the issue of the prospectus believe, that the **statement was true or the inclusion or omission was necessary.**

B. Civil liability for misstatements in prospectus (Sec 35)

1) **Persons liable for the mis-statement:** Where a **person has subscribed for securities** of a Co. **acting on any statement** included, or **the inclusion or omission of any matter**, in the prospectus **which is misleading** and **has sustained any loss or damage**, the **Co. and every person who —**
   a) is a **director** of Co. at the time of the issue of the prospectus;
   b) has **authorised himself to be named and is named in the prospectus as a director** of the Co., **or has agreed to become such director**,
   c) is a **promoter** of the Co;
   d) has **authorised the issue of the prospectus**; and
   e) is an **expert referred in Sec 26**,

shall, without prejudice to any punishment u/s 36, **be liable to pay compensation to every person who has sustained such loss or damage.**

2) **Exemptions from the liability:**

No person shall be liable for mis-statement, if he proves that—
   a. **Withdrawn his consent before the issue of prospectus-**
   Where a **person** having **consented to become a director** of the Co, **withdrew his consent before the issue of the prospectus**, and that **it was issued without his authority or consent**; or
   b. **Prospectus issued without his knowledge/consent-**
   Where the **prospectus was issued without the knowledge or consent** of a person, and that **on becoming aware of its issue**, he forthwith **gave a reasonable public notice that it was issued without his knowledge or consent**.
   c. **Relied on a misleading statement made by an expert-**
   If such **person(s) has relied on a misleading statement made by an expert** and he **had reasonable ground to believe** and did up to the time of the issue of the prospectus believe, that the **person making the statement was competent to make it** and that the **said person had given the consent required by Sec 26(5) to the issue of the prospectus and had not withdrawn it.**

3) **Prospectus issued with intent to defraud or for any fraudulent purpose [Unlimited Liability]**

Where it is proved that a **prospectus has been issued with intent to defraud** the **applicant**s for the securities of a Co. **or any other person or for any fraudulent purpose**, **every person** referred in this section shall be **personally responsible**, **without any limitation of liability**, for all or any of the losses/damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

PUNISHMENT FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY (Sec 36)

If a person, either knowingly or recklessly **makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts**, so as to induce another person to enter into, or to offer to enter into,
a) **any agreement, to acquiring, disposing of, subscribing for, or underwriting securities**; or
b) **any agreement**, the purpose or the pretended purpose of which is **to secure a profit** to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
c) **any agreement, to obtaining credit facilities from any bank or financial institution**

such person shall be **liable for action u/s 447.**

ACTION BY AFFECTED PERSONS (Sec 37)

Suit may be filed **or** any other **action may be taken u/s 34 or 35 or 36** by any person, group of persons or any AOP affected by any misleading statement or the inclusion or omission of any matter in the prospectus. Thus, **Sec 37, not only provides for individual action but also for class action.**

CLASS ACTIONS:

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

PUNISHMENT FOR PERSONATION FOR ACQUISITION, ETC., OF SECURITIES - Sec 38

- **When is Sec 38 attracted?**
  a) A person **makes or abets in making an application for securities in a fictitious name.**
  b) A person **makes or abets in making of multiple applications for securities in different names or in different combinations of his name or surname.**
  c) A person **induces a company to allot the securities or register the transfer of securities to him or any other person in a fictitious name.**
- **Punishment:**
  Any person who **contravenes Sec 38 shall be liable for action u/s 447.**
- **Disclosure requirement:**
  Prohibitions stated u/s 38 and the **punishment for contravention of Sec 38** shall be prominently **reproduced in**:
  a) **every prospectus; and**
  b) **every application form.**
- **Disgorgement:**
  Where a **person** has been **convicted u/s 38**, the **Court** may also **order disgorgement of gain**, if any, made by, and **seizure and disposal of the securities in possession of, such person**. The **amount received through disgorgement or disposal of securities** shall be **credited to the Investor Education and Protection Fund.**

PUNISHMENT FOR FRAUD - Sec 447

Punishment u/s 447	Where any person is found guilty of **fraud involving an amount of at least Rs.10 lakh or 1 % of the turnover of the company, whichever is lower :**		
		Fraud involves public interest	***Any other case***
	Min. Imprisonment	**3 years**	**6 months**
	Max. Imprisonment	**10 years**	**10 years**
	Min. Fine	**Amount involved in the fraud**	**Amount involved in the fraud**
	Max. Fine	**3 times the amount involved in the fraud**	**3 times the amount involved in the fraud**
	Where the fraud involves an amount less than 10 lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest: Any person guilty of such fraud shall be **punishable with imprisonment** for a term **which may extend to 5 years or** with **fine which may extend to Rs.50 lakh or with both.**		
Other liabilities to remain unaffected	Person liable u/s 447 shall **continue to be liable for any other liability under this Act or any other law for the time being in force (including repayment of any debt).**		

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.6)

ALLOTMENT OF SECURITIES BY A COMPANY [Sec 39]

***"Allotment"* means the appropriation out of previously un-appropriated capital of a Co., of a certain number of shares to a person. Till such allotment, the shares do not exist as such. It is on allotment that the shares come into existence**.

Legal Provisions governing Allotment

1) Condition w.r.t. minimum subscription:

Where a company makes an offer to the public for subscription of its securities **no allotment of any securities shall be made unless the following 2 conditions are satisfied:**

(i) **Amount stated in the prospectus as** the **minimum subscription is subscribed.**

(ii) **Sum payable on application in respect of minimum subscription is received by the company by cheque or other instrument.**

2) Amount of application money:

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Application money on every security **shall not be less than –**

(i) **5% of the nominal amount of the security**; or

(ii) **such other percentage or amount, as may be specified by SEBI.**

3) Time limits for minimum subscription:

The amount stated in the prospectus as the minimum subscription must be subscribed and sum payable on application in respect of minimum subscription must be received by the Co. within -

(i) **30 days of issue of prospectus**; or

(ii) **Such other period as may be specified by SEBI**.

Otherwise, all moneys received by the Co. shall be returned within such time and manner as may be prescribed.

Rule 11 of the Companies (Prospectus and Allotment of Securities) Rules, 2014

1. **Time period for repayment and consequences of non-payment:**

a) If minimum amount has not been subscribed and the sum payable on application is not received within the period specified therein, then the **application money** shall be **repaid within a period of 15 days from the closure of the issue.**

b) If any **such money is not so repaid within such period**, the **directors in default shall jointly and severally be liable to repay that money with interest @ 15% p.a.**

2. **Manner of repayment:**

Application money **to be refunded shall be credited only to the bank account** from which the subscription was remitted.

4) Filing of return of allotment:

Co. making allotment of securities, **shall file with the Registrar a return of allotment as may be prescribed**

Rule 12 of the Companies (Prospectus and Allotment of Securities) Rules 2014

Co. shall, **within 30 days** thereafter, **file with the Registrar a return of allotment in Form PAS – 3, along with the fee.**

Attachments and inclusions in Form PAS-3:

a) A **list of allottees which states their names, address, occupation, if any, and number of securities allotted** to each duly certified by the signatory of the **Form PAS-3** as being complete and correct as per the records of the Co.

b) In **case of securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash**, along with Form PAS-3 **attach** a **copy of the contract**, duly stamped, pursuant to which the securities have been allotted **together with copy of any contract of sale if relating to a property or an asset, or a contract for services or other consideration.**

A **report of a registered valuer** in respect of valuation of the consideration shall also be attached along with the contract.

~~c) In **case of issue of bonus shares**, a **copy of the resolution** passed in GM authorizing the issue of such shares shall be attached.~~

5) Penalty in contravention of the provisions:

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In **case of default**, the **Co. and its officer** in default, shall be **liable** to a penalty, **for each default, of Rs.1000 for each day during which such default continues or Rs.1 lakh, whichever is less.**

SECURITIES TO BE DEALT WITH IN STOCK EXCHANGE [Sec 40]

1) Application for permission for listing:

Every Co. before making public offer, shall make an application to one or more recognized stock exchange(s) and obtain permission for the securities to be dealt with in such **stock exchange(s).**

2) Disclosures in prospectus:

- Prospectus shall **state the name(s) of** the **stock exchange in which the securities shall be dealt with**.
- If the **permission** has **not** been **granted by any one of** the several **stock exchanges named in the prospectus for listing of the shares, the consequence is to render the entire allotment void and the grant of permission by one or more of them is inconsequential.**
- Where an **appeal is preferred against the decision of the stock exchange**, the **entire allotment shall not be void till the appeal has been disposed of**.

3) Application moneys to be kept in separate bank account:

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

a) for adjustment against allotment of securities; or

b) for the repayment of monies within time specified by SEBI , where the Co. is for any reason unable to allot securities.

4) No waiver:

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

5) Punishment:

(i) **Co.** - Fine not less than **Rs.5 lakh** which may extend **to Rs.50 lakhs** , and

(ii) **Every officer in default** - Fine not less than **Rs.50,000** which may extend **to Rs.3 lakh.**

UNDERWRITING COMMISSION [Sec 40]

Underwriting: is an **expression used in Co. matters signifying a contract by which a person (known as underwriter) agrees (usually for a commission**) that **if the shares, debentures, etc** about to be offered for subscription or some specified proportion thereof **are not taken up by the public, he will himself take them up and pay** for what the public do not take up or some specified portion thereof. Underwriting is thus in the **nature of an insurance against the possibility of inadequate subscription.**

Underwriter: means an **intermediary who** undertakes to **subscribe to the securities offered** by the Co. **in case these are not fully subscribed by the public,** in case of an underwritten issue.

Provisions contained in the Act

A **Co. may pay commission to any person in connection with the subscription to its securities** subject to such conditions as may be prescribed. **(Sec 40)**

Provisions contained in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014

a) Authorized by the Articles:

Payment of underwriting commission shall be authorized by the articles of the Co.

b) Paid out of the proceeds of the issue/profit:

Underwriting commission **may be paid out of proceeds of the issue or out of the profit** of the Co. **or both.**

c) Rate of Commission:

Rate of commission shall not exceed, —

(i) in the **case of shares**, **5% of the price at which the shares are issued or the rate authorised by the articles, whichever is less**;

(ii) in the **case of debentures, 2.5% of the price at which the debentures are issued or the rate authorised by the articles, whichever is less**.

d) Disclosure of the particulars:

Prospectus shall disclose the following particulars:

(i) **Name of the underwriters.**

(ii) **Rate and amount of the commission payable to the underwriters.**

(iii) **Number of securities to be underwritten by the underwriters, whether absolutely or conditionally.**

e) No payment of commission:

No underwriting commission shall be paid **on securities** which are **not offered to the public** for subscription.

f) Copy of the contract to be delivered to the Registrar:

A copy of the underwriting agreement shall be delivered to the Registrar at the time of delivery of the prospectus for registration.

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.7)

GLOBAL DEPOSITORY RECEIPTS [SECTOPN 41]

- A global depository receipt is a general name for a depository receipt where a certificate issued by a depository bank, which purchases shares of foreign companies, creates a security on a local exchange backed by those shares.
- GDR as per section 2(44) of this Act means any instrument in the form of a depository receipt, by whatever name called , created by a foreign depository outside India & authorized by a co. making an issue of such depository receipts.
- Sec 41 provides company may issue depository receipts in any foreign country after passing a special resolution in its general meeting and subject to such conditions as may be prescribed in Companies (Issue of Global Depository Receipts) Rules, 2014 (as further amended in 2020).

MANNER AND FORM OF DEPOSITORY RECEIPTS

- The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.
- The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or RBI may prescribe or specify from time to time.
- The underlying shares shall be allotted in the name of the overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank.
- The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.
- The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting
- The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.

VOTING RIGHT

- A holder of depository receipts may become a member of the company and shall be entitled to vote as such only on conversion of the depository receipts into underlying shares after following the procedure provided in the Scheme and the provisions of this Act.
- Until the conversion of depository receipts, the overseas depository shall be entitled to vote on behalf of the holders of depository receipts in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

NON APPLICABILITY OF CERTAIN PROVISIONS

- The provisions of the Act and any rules issued thereunder insofar as they relate to public issue of shares or debentures shall not apply to issue of DRs
- The offer document, by whatever name called and if prepared for the issue of depository receipts, shall not be treated as a prospectus or an offer document within the meaning of this Act and all the provisions as applicable to a prospectus or an offer document shall not apply to a depository receipts offer document.
- Notwithstanding anything contained under section 88 of the Act, until the redemption of depository receipts, the name of the overseas depository bank shall be entered in the Register of Members of the company.

OFFER OR INVITATION FOR SUBSCRIPTION OF SECURITIES ON PRIVATE PLACEMENT [SEC 42]

"Private placement" means **any offer or invitation to subscribe or issue** of securities **to a select group of persons** by a Co. (other than by way of public offer) **through private placement offer-cum-application**, which **satisfies the conditions specified in this section. It is a way of raising capital that involves the sale of securities to a relatively small number of select investors.**

CONDITIONS FOR PRIVATE PLACEMENT

1) Offer/ invitation to number of persons:

- Private Placement shall be **made only to a select group of persons** who have been **identified by the Board**('identified persons'), whose **number shall not exceed 50** (or such higher number as may be prescribed).
- As per **Rule 14(2)** of the **Companies (prospectus and Allotment of securities) Rules, 2018**, **higher number prescribed is 200 persons in the aggregate in a financial year.**
- **Restrictions aforesaid** would be **reckoned individually for each kind of security** that is equity share, preference share or debenture.
- However this **does not include :**
  a) **qualified institutional buyers** and
  b) **employees of the Co.** being offered securities **under a scheme of employees stock option** as per provisions of Sec 62(1)(b).

2) Issue through private placement offer cum application:

- Co. shall **issue Private Placement Offer and Application** in prescribed form **to identified persons**.
- Co. shall **record the names and addresses** of the identified person in prescribed manner.
- The **Private Placement offer and application shall not carry any Right of renunciation**.

3) Offer/ invitation made to more than the prescribed number of persons: the same shall be **deemed to be an offer to the public** and shall **accordingly be governed by the provisions related to public offer of this Chapter.**

4) No issue of fresh offer/ invitation:

No fresh offer or invitation shall be made, unless

- **allotments** with respect to any offer or invitation **made earlier have been completed**, or
- **that offer or invitation has been withdrawn**, or
- **abandoned by the Co**.

[**Provided** that, subject to the maximum number of identified persons under sub-section (2), a **Co. may, at any time, make more than one issue of securities to such class of identified persons** as may be prescribed.]

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5) Payment of amount:

- Every identified person shall **pay the subscription money either by cheque or Demand Draft or other banking Channel and not by cash**.
- Co. **shall not utilize monies raised through Private Placement unless allotments is made and the return of allotment is filed with the ROC** in accordance with sub-section (8).

6) Time for allotment of securities:

Co. shall allot its securities **within 60 days from the date of receipt of the application money** for such securities.

7) Default in allotment of securities:

If securities are not allotted within stated period, it shall **repay the application money to the subscribers within 15 days from the date of completion of 60 days** and if Co. **fails to repay the application money within the aforesaid period**, it shall be **liable to repay that money with interest @ of 12 % p.a. from the expiry of the 60th day.**

8) Separate Bank Account:

Monies received on application **shall be kept in a separate bank account in a scheduled bank and shall be utilised only for adjustment against allotment** of securities **or for repayment of monies** where Co. is unable to allot securities.

9) No publicity required:

Co. **shall not publish any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.**

10) Filing of Return of Allotment with the registrar:

- Co. shall **file the ROC a return of allotment (in form PAS-3) within 15 days from the date of allotment**.
- The return of allotment shall **include** a **complete list of allottees, with their full names, addresses, number of securities allotted and such other relevant information** as may be prescribed.

11) Default in filing return of allotment:

If the Co. defaults in filing the return of allotment within the period, the **company, its promoters and directors shall be liable to a penalty for each default of Rs.1000 for each day during which such default continues but not exceeding Rs.25 lacs**.

12) In contravention of the section:

If a **Co. makes an offer or accepts monies in contravention** of this section, —

(i) the **company, its promoters and directors** shall be **liable for penalty upto**
  a) **amount involved in the offer or invitation; or**
  b) **Rs.2 crore;**
  whichever is lower,

(ii) the **company shall also refund all monies alongwith interest to the subscribers within 30 days of the order imposing the penalty**.

13) Offer to be treated as public offer:

Any private placement issue not made in compliance of the provisions of the **Section 42** of **the Act shall be deemed to be a 'public offer' and all the provisions of the companies Act and the Securities Contracts (Regulation) Act, 1956 and SEBI Act, 1992 shall be applicable.**

PROSPECTUS & ALLOTMENT OF SECURITIES (Chart 4.8)

Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014

1) Previous approval of shareholder:

A Co. shall not make a private placement of its securities, unless the proposed **offer** of securities **or invitation** to subscribe securities has been **previously approved by the shareholders** of the Co., **by a SR, for each of the Offers or Invitations**. Provided that in the **explanatory statement** annexed to the notice for shareholders' approval, the **following disclosure** shall be made:-

a) **particulars of the offer including date of passing of BR**;
b) **kinds of securities offered and the price at which security is being offered**:
c) **basis or justification for the price** (including premium, if any) at which the offer or invitation is being made;
d) **name and address of valuer** who performed valuation;
e) **amount which the Co. intends to raise** by way of such securities;
f) **material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution** being **made by the promoters or directors** either as part of the offer or separately in furtherance of objects; **principle terms of assets charged as securities**.

- **Non-convertible debentures:**
  This sub-rule shall not apply in case of offer or invitation for non-convertible debentures, where the **proposed amount to be raised** through such offer or invitation **does not exceed the limit as specified in Sec 180(1)(c) and in such cases relevant Board resolution u/s 179(3)(c) would be adequate.**
  In case the limit exceeds as specified in Sec 180(1)(c), it shall be **sufficient if** the **Co. passes a previous SR only once in a year** for all the offers or invitations for such debentures during the year.
- **Qualified institutional buyers (QIB):**
  I**n case of offer or invitation** of any securities **to qualified institutional buyers**, it shall be **sufficient if the Co. passes a previous SR only once in a year** for all the allotments to such buyers during the year.
- **Foreign Nationals:**
  Provided also that no offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Govt approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.

2) Offer/invitation to the number of persons:

- Such offer or invitation shall be made to **not more than 200 persons in the aggregate in a financial year**.
- Provided that any offer or invitation made to **QIB, or to employees** of Co. under a scheme of **employees stock option** as per provisions of Sec 62(1)(b) **shall not be considered while calculating the limit of 200 persons.**
- **Restrictions aforesaid would be reckoned individually for each kind of security** that is equity share, preference share or debenture.

3) Private placement offer cum application letter:

- Private placement offer cum application letter shall be in the form of an application in **Form PAS-4 serially numbered** and **addressed specifically** to the person to whom the offer is made and shall be **sent to him, either in writing or in electronic mode, within 30 days of recording the name of such person** pursuant to Sec 42(3).
- **No person other than the person so addressed** in offer **shall be allowed to apply** through such application form and **any application not conforming to this condition shall be treated as invalid.**

4) Record of private placement offers:

The Co. shall maintain a complete record of private placement offers in **Form PAS-5.**

5) Company to maintain record of bank account:

- Payment for subscription shall be **made from the bank account of the person subscribing** to such securities and **Co. shall keep the record of the bank account from where such payments have been received**.
- In **case of joint holders** it **shall be paid from the bank account of the person whose name appears first in the application.**
- **Provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash.**

6) Return of allotment of securities:

Return of allotment of securities u/s 42 shall be filed with the Registrar within 15 days of allotment in Form PAS-3 and with the fee as provided in **the Companies (Registration offices and Fees) Rules, 2014** along with a complete list of all the allottees containing **the particulars like the full name, address, permanent Account Number and E-mail ID** of such security holder; the class of security held; the date of allotment of security.

7) Non Applicability of Provisions:

Provisions of **sub-rule (2) shall not be applicable to NBFC & Housing Finance Co.** if they are **complying with regulations made by RBI or National Housing Bank** in respect of offer or invitation to be issued on private placement basis.
Provided that such companies shall comply with sub-rule (2) in case RBI or National Housing Bank have not specified similar regulations.

8) Filings before issuing Private placement cum application letter:

Co. shall issue private placement offer cum application letter only after the relevant **SR or BR has been filed in the Registry**. Provided that private companies shall file with the Registry copy of the BR or SR with respect to approval under u/s 179(3)(c).

IRREGULAR ALLOMENT

Reason for irregular allotment	Consequences (Effects of irregular allotment)
(1) Public offer of securities by a Co. **without issuing a prospectus** in contravention of **Sec 23.**	**No punishment prescribed u/s 23.** As per **Sec 450,Co. and every officer in default** shall be punishable with **fine up to Rs.10,000**, and where the **contravention is continuing, with a further fine upto Rs.1,000 for every day** during which the contravention continues subject to a **maximum of Rs.2 lakh in case of a Co.** and **Rs.50,000 in case of an officer**.
(2) Prospectus issued by Co. **is misleading or does not contain the matters required to be included** there in contravention of **Sec 26**. **(3) Prospectus is issued** to the public **without first delivering to the registrar a copy of the prospectus** in contravention of **Sec 26**.	a) ***Company*** - Minimum fine: **Rs.50,000,** Maximum fine: **Rs.3,00,000** **b)** ***Every person who is knowingly a party to be the issue of such prospectus*** **-** Minimum fine: **Rs.50,000**, Maximum fine: **Rs.3,00,000**.
(4) Minimum subscription is not received not allotment of securities is made by Co. in contravention of Sec 39. **(5) Application money payable** on securities **is less than 5% of the nominal value** of the security or such other percentage or amount as may be specified by SEBI in contravention of **Sec 39.** **(6) Return of allotment is not filed with the registrar** after making allotment of securities in contravention of **Sec 39**.	**Company and every offer** who is in default shall be liable to a penalty, **for each default, of Rs.1,000 for each day during which such default continues or Rs.1 lakh whichever is less.**
(7) Public offer is made by Co. **without first obtaining the permission for listing of securities from any stock exchange** in contravention of **Sec 40**. **(8) Moneys received on application are not kept in a separate bank account** in a scheduled bank in contravention of **Sec 40.**	**a)** ***Company*** **-** Minimum fine: **Rs.5,00,000**; Maximum fine: **Rs.50,00,000** **b)** ***Every officer of the company who is in default*** - • Minimum fine: **Rs. 50,000**, Maximum fine: **Rs.3,00,000**; or • **Both**

REGISTERS AND RETURNS (Chart 5.1)

REGISTER OF MEMBERS [Sec 88]

(A) Provisions contained in the Act

1) **Applicability of Sec 88:** Sec 88 **applies to every Co., whether public or private, whether having a share capital** or not.
2) **Legal requirements:**
Every Co. shall keep and maintain the following registers:
(i) **Register of Members** (separately indicating holding of each class of equity and preference shares held by every member, whether residing in India or outside India)
(ii) **Register of Debenture-holders**
(iii) **Register of any other security holders.**
3) **Form and manner of maintenance of registers:**
All the aforesaid registers shall be maintained in such form and manner, **as may be prescribed by CG.**
4) **Index of names to be a part of registers:**
All the aforesaid registers shall **contain an index of the names** included therein.
5) **Register and index in case of dematerialization:**
Register and index of beneficial owners **maintained by a depository** under the Depositories Act 1996 shall be **deemed to be the registers maintained by Co**.
6) **Foreign registers:**
- Co. **may keep outside India, a part of the registers** required to be maintained under this section (termed as **'foreign register').**
- Foreign register shall **contain the names and particulars of members, debenture-holders or other security holders residing outside India**.
- Foreign register **can be maintained only if the company is so authorised by its articles**.
- Foreign register shall be **maintained in such manner, as may be prescribed by CG.**

7) **Failure to maintain the registers:**
If a Co. does not maintain a register or fails to maintain them in accordance with the provisions of sub-section (1) or (2), **Co**. shall be **liable** to a **penalty** of **Rs.3 lakh** and **every officer** in default shall be **liable to a penalty of Rs.50,000**.
8) **Nature of offence:** The offence under this section is **compoundable offence u/s 441** of the Act.

(B) Provisions contained in the Companies (Management and Administration) Rules,2014

1) **Form:** (Rule 3)
Every **Co. limited by shares shall maintain register of members in Form No.MGT-1.**
2) **Time limits for maintenance of register of members**: (Rule 3)
Register of members shall be **maintained from the date of registration of Co.**
3) **Particulars to be contained in register of members in case of a company having no share capital:** (Rule 3)
With respect to each member -
a) his **name and address** (R.O. address in case the member is a body corporate); **e-mail** address; **PAN or CIN**; **Unique Identification Number**, if any; **Father's/Mother's/Spouse 's name; Occupation; Status; Nationality**; in case **member is a minor, name of the guardian & date of birth of the member; name and address of nominee;**
b) **date of becoming member;**
c) **date of cessation;**
d) **amount of guarantee,** if any;
e) **any other interest** if any;
f) **instructions**, if any, given by the member with regard to sending of notices etc.
4) **Particulars to be contained in other registers:** (Rule 4)
Every Co. which issues or allots debentures or any other security **shall maintain a separate register of debenture holders or security holders**, for each type of debentures or other securities **in Form No. MGT-2.**

5) **Manner of maintenance of registers :** (Rule 5)
a) **Time limit for making entries:**
Entries in the registers shall be made **within 7 days** after BOD or its duly constituted committee **approves the allotment or transfer** of shares, debentures or any other securities.
b) **Place of keeping registers:**
Registers shall be maintained **at the R.O. unless a SR is passed in GM** authorising the keeping of the register at any **other place within the city, town or village in which the R.O. is situated or any other place in India in which more than 1/10th of the total members entered in the register of members reside**.
c) **Entries of change in registers due to forfeiture, buy-back etc.: Consequent upon any forfeiture, buy-back, reduction, transmission etc. entry shall be made within 7 days** after approval by the Board or committee, in the register of members or in the respective registers.
d) **Entries in registers due to death, insolvency etc.: If any change occurs** in the status of a member/ debenture holder/any other security holder whether **due to death or insolvency or change of name or due to transfer to IEPF or due to any other reason, entries thereof explaining change shall be made in respective register.**
e) **Registers to include references of rectification:**
If **any rectification is made** in the registers **pursuant to any order** passed by any competent authority, the **necessary reference of such order shall be indicated in the respective register**.
f) **Orders of SEBI, Tribunal etc.:**
If **any order is passed by any judicial or revenue authority or by SEBI or Tribunal** attaching the shares, debentures or other securities and giving directions for remittance of dividend or interest, **necessary reference of such order shall be indicated in the respective register**.
g) **Entries of charges etc. in case of listed companies:**
In case of listed companies in or outside India, the **particulars of any pledge, charge, lien or hypothecation created by promoters** in respect of any securities held by promoter including the names of pledgee/pawnee and any revocation therein **shall be entered in register within 15 days from such event.**
h) **Entries of charges etc. in case of Joint venture Co.:**
If **promoters of any listed Co., has formed J.V.** with another Co. have pledged or hypothecated or created charge or lien in respect of any security of listed Co. in connection with such J.V., the particulars of such pledge, hypothecation, charge and lien **shall be entered in register members of listed Co. within 15 days from such an event.**

6) **Index of names to be included in Registers: (Rule 6)**
a) Every register maintained u/s 88 **shall include an index of the names entered in respective registers** and index shall, in respect of each folio, contain sufficient indication to enable entries relating to that folio register to be readily found.
b) **Index shall not be necessary in case the number of members is less than 50**.
c) Co. shall **make the necessary entries in the index simultaneously with the entry for allotment or transfer of any security in such Register.**

7) **Foreign Registers** : (Rule 7)
a) **Authorisation of Articles: If Co. has members** or debenture-holders or other security holders **outside India**, it **may keep the foreign register in that country, if authorised by the AoA**.
b) **Filing of notice of the situation of the office: Within 30 days** of opening of any foreign register, **Co. shall file with Registrar** (in **Form No. MGT-3**) **notice of location of office** where such foreign register is kept..
c) **Filing of notice in case of change or discontinuance:** In the event of **any change in the location of such office or of its discontinuance**, Co. shall, **within 30 days of such change or discontinuance, file with the Registrar, a notice in Form No. MGT-3.**
d) **Foreign Register part of company's register: Foreign register shall be deemed to be part of the company's register** (hereinafter referred to as the 'principal register') of members or of debenture holders or of any other security holders or beneficial owners, as the case may be.
e) **Format of Foreign Register:** Foreign register **shall be maintained in the same format as the principal register**.
f) **Inspection, etc. of Foreign Register:** Foreign register **shall be open to inspection and may be closed, and extracts and copies may be taken** thereof, in the same manner, as is applicable to the principal register, except that the **advertisement before closing the register shall be inserted in at least 2 newspapers circulating in the place wherein the foreign register is kept.**
g) **Decision of the appropriate competent authority binding in regard to the rectification:** Where a foreign register is kept by a company, the **decision of the appropriate competent authority** in regard to the **rectification of the register shall be binding**.
h) **Marking of Entries in Foreign Register:** Entries in foreign register **shall be made simultaneously after BOD or its duly constituted committee approves the allotment or transfer** of shares, debentures or any other securities.
i) **Transmission of a copy every entry: Within 15 days of any entry** made in any foreign register, the Co. shall **transmit a copy of such entry to its R.O. in India.**
j) **Keeping of Duplicates Foreign Register at Registered Office:** Co. **shall keep at its R.O. a duplicate register of every foreign register**. All entries made in foreign register shall be duly entered in such duplicate register

REGISTERS AND RETURNS (Chart 5.2)

REGISTER OF MEMBERS Sec 88

h) **Duplicate Foreign Register to be part of Principal Register: Every duplicate register shall be deemed to be part of principal register.**

i) **Transaction not to be registered in any other Register: No transaction** with respect to any shares or debentures or any other security, registered in a foreign register shall, **during the continuance of such foreign register, be registered in any other register.**

j) **Transfer of Entries on discontinuation**: Co. may **discontinue the keeping of any foreign register**; and thereupon **all entries in that register** shall be **transferred to some other foreign register** kept by Co. outside India **or to principal register.**

8) Authentication: (Rule 8)

a) **Entries** in registers **and index** included therein **shall be authenticated by CS or by any other person authorised by Board**, and **date of BR authorising the same shall be mentioned.**

b) **Entries in foreign register shall be authenticated by CS or person authorised by Board by appending his signature to each entry.**

9) Details of Nominations in the register:

Form MGT -1 and MGT -2 require **details of nomination** as **referred to in Sec 72 of the Act, read with Rule 19 of the Companies (Share Capital and Debentures)** Rules, 2014 **to be entered in Register** of members and debenture-holders or other security as the case may be.

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN SHARES - Sec 89

1) Declaration by registered holder of shares:

- If **name of a person is entered in register** of members as a holder of any shares, **but he does not hold any beneficial interest** in such shares,
- then he **shall file a declaration** with the Co. **in such form as may prescribed (Form No. MGT- 4 within 30 days** from the date on which his name is entered in register.) **[Rule 9] specifying the name and other particulars** of the person who **holds beneficial interest** in such shares.

2) Declaration by person holding beneficial interest in shares:

- If a **person is not the registered holder** of any shares, **but holds beneficial interest** in such shares,
- then he **shall file a declaration** with the Co. in such form and manner as may be prescribed (**MGT -5 within 30 days** after acquiring such beneficial interest in shares) **[Rule 9] specifying —**

a) **nature of his interest;**
b) **particulars of person in whose name shares have been registered; and**
c) **other prescribed particulars.**

3) Declaration in case of change in beneficial interest:

If **any change occurs in the beneficial interest** in any shares in respect of which a declaration had been filed u/s 89, **then, within 30 days of such change**, a **declaration (MGT 4 or MGT 5) shall be filed** with the Co. **by**

a) **the person in whose name the shares have been registered; and**
b) **the person holding beneficial interest in such shares.**

4) Filing of return by the company with the registrar:

Where **any declaration is filed with a Co. u/s 89**, the Co. shall **make a note of such declaration in relevant register and within 30 days, file a return** in the prescribed form **with registrar. (MGT 6)**

5) Consequences of non-filing :

Where **any declaration is to be filed u/s 89**, but it has **not been filed** by beneficial owner, **then, any right with respect to such shares** shall **not be enforceable** by beneficial owner or any person claiming through him.

6) Company's duty to pay dividend not affected:

a) **Nothing** contained in this section **shall prejudice the obligation of Co. to pay dividend** to its members.
b) **On payment of dividend**, company's **obligation shall stand discharged.**

7) Meaning of beneficial interest:

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

(i) **exercise** or cause to be exercised any or all of **rights attached to such share**; or
(ii) **receive or participate in any dividend or other distribution in respect of such share.**

8) Penalty for default:

- **Related to persons required to make a declaration:** If **any person fails to make a declaration** as required under sub-section (1) or (2) or (3), he **shall be liable to a penalty of Rs.50,000 and in case of continuing failure**, with a further **penalty of Rs.200 for each day** after the first during which such failure continues, subject to a **maximum of Rs.5L**
- **Related to company:** If a **Co. required to file a return under sub-section (6), fails to do so before the expiry of the time** specified therein, the **Co. and every officer in default** shall be **liable to a penalty of Rs.1000 for each day** during which such failure continues, subject to a **maximum of Rs.5L in the case of a Co.** and **Rs.2L in case of an officer who is in default.**

9) Exception:

- **Sec 89 shall not apply to a Govt Co.** which has **not committed a default in filing its financial statements u/s 137 or annual return u/s 92 with the Registrar.**
- **The CG may, by notification, exempt any class or classes of persons from complying with any of the requirements** of this section, if it is considered necessary to grant exemption in the **public interest** and any **such exemption may be granted either unconditionally** or subject to such conditions as may be specified in the notification.

Rule 9: Declaration in Respect of Beneficial Interest in Any Shares (Sub rule 4 to 8) –added w.e.f 27th Oct 2023

- **Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company.**
- **For the purpose of sub-rule(4), the company may designate a CS , if there is a requirement of appointment of such CS under the Act and the rules made thereunder; or a KMP, other than the CS; or every director, if there is no CS or KMP**
- **Until such a person is designated the following persons shall be deemed to have been designated person;**

i. **CS, if there is a requirement of appointment of such CS under the Act and the rules made thereunder; or**
ii. **every MD or Manager, in case a CS has not been appointed; or**
iii. **every director, if there is no CS or a MD or Manager**

- **Every company shall inform the details of the designated person in Annual return.**
- **If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.**

Rule 9 shall not apply to a trust which is created to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by SEBI.

POWER TO CLOSE REGISTER OF MEMBERS OR DEBENTUREHOLDERS OR OTHER SECURITY HOLDERS - Sec 91

1) Meaning of closure of register:

The period during which the Co. **lawfully refuses to accept the application for transfer of shares or debentures** or other securities.

2) Maximum period of closure:

(a) **Maximum - 45 days** - in a year.
(b) **Maximum - 30 days - at any one time.**

3) Notice of closure:

Previous notice of the closure of **register shall be given by Co. at least 7 days (before the first day of closure)** or such lesser period as may be specified by SEBI for listed companies. The notice shall be given in such manner as may be prescribed.

4) Penalty for contravention:

For every day during which the register is kept closed in contravention of Sec 91, the **Co. and every officer in default** shall be **liable to a penalty of Rs.5,000** subject to a **maximum of Rs.1 Lakh.** However, the **offence is a compoundable offence u/s 441** of Co. Act, 2013.

Rule 10 of the Companies (Management and Administration) Rules, 2014

1) Manner of giving notice in case of a Private Co:

Private Co. shall serve the notice of closure on all the members not less than 7 days prior to closure of register of members or debenture holders or other security holders.

2) Manner of giving notice in case of any other Co. (Public Co.-Listed or intending to get listed):

a) Co. closing the register of members or debenture holders or other security holders **shall give at least 7 days previous notice.**

b) At least 7 days previous notice shall be given by advertisement :

(i) **at least once in a vernacular newspaper** in the principal vernacular language of the district and having a wide circulation in the place where the RO of the company is situated; and
(ii) **at least once in English language in an English newspaper** circulating in that district and having wide circulation in the place where the registered office of the company is situated.

c) Notice shall also be published on website, if any, **of Co; and on website, as may be notified by CG.**

Note: Private Co. has been exempted from issuing public notice in newspapers, provided it issues 7 days' notice to its members before effecting closure of registers.

REGISTERS, ETC. TO BE EVIDENCE - Sec 95

Registers & indices (u/s 88) and **copies of AR** (filed u/s 92) shall be **prima facie evidence** of any matter directed or authorised by the Act to be inserted therein.

REGISTERS AND RETURNS (Chart 5.3)

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY [SECTION 90]

1) Meaning of Significant Beneficial Owners (SBO):

"**Every individual**, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, **holds beneficial interests, of not less than 25%, or such other percentage as may be prescribed**, in shares of a Co. **or the right to exercise, or the actual exercising of significant influence or control** as defined in Sec 2(27) of Act."

Definition as per Rules:

- ***'Significant Beneficial Owner' (SBO):*** **Rule 2(1) (h) of the Companies(SBO) Rules**, defines SBO, as an **individual who** -
  - i. **acting alone or together**, or
  - ii. **through one or more persons or trust**,

  Possess one or more of the following rights or entitlements in the Reporting Co. (i.e. the Co. in respect of which SBO declaration is required to be filed):
    - (i) **holds indirectly, or together with any direct holdings, not less than 10% of the shares/voting rights** in the shares;
    - (ii) **has the right to receive or participate in not less than 10% of the total distributable dividend**, or any other distribution, in a F/Y through indirect holdings alone, or together with any direct holdings;
    - (iii) **has right to exercise, or actually exercises, significant influence or control**, in any manner other than through direct holdings alone.

  If an individual does not hold any indirect right or entitlement as mentioned in (i) or (ii) above, he will not be considered to be a SBO.
- **Significant influence:** means the **power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting Co. but is not control or joint control of those policies.**
- **Indirect holding:** For the purpose of this clause, **an individual shall be considered to hold a right or entitlement indirectly in the reporting company,** if he satisfies any of the following criteria, in respect of a member of the reporting company, namely: -
  - i. where the **member of the reporting company is a body corporate** (whether registered in India or abroad), other than a limited liability partnership, & the individual,-
    - a) **holds majority stake** in that member; or
    - b) **holds majority stake in the ultimate holding company** (whether incorporated or registered in India or abroad) of that member;
  - ii. where the **member of the reporting company is a HUF (*through karta*),** and the individual **is the *karta* of the HUF**;
  - iii. **where the member of the reporting company is a partnership entity** (through itself or a partner), and the individual,-
    - **a) is a partner; or**
    - b) **holds majority stake in the body corporate** which is a partner of the partnership entity; or
    - **c) holds majority stake in the ultimate holding company of the body corporate which is a partner of the partnership entity.**
- **Majority stake**: "Majority Stake" means:
  - i. **holding more than one-half of the equity share capital in the body corporate;** or
  - ii. **holding more than one-half of the voting rights in the body corporate;** or
  - iii. **having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate**.

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2) Declaration of beneficial interest by SBO:

SBO **shall make a declaration** to the Co. **specifying the nature of his interest and any change** thereof.

Declaration by SBO [Rule 3]

a) **Every individual who is a SBO**, as **on the date of commencement of Amendment Rules**, is **required to file a declaration with Reporting Co. in Form BEN-1 within 90 days from such commencement**. In turn, **Reporting Co.** will be **required to file the said disclosure with Registrar within 30 days of receiving it from the SBO**.

b) **Any individual**, who subsequently **becomes a SBO** in **or whose significant beneficial ownership undergoes any change**, is **required to file a declaration with Reporting Co. in Form BEN-1 within 30 days of such acquisition or change.**

3) Register of SBO in a company:

Every Co. **shall maintain Register of interest declared by individuals and changes therein** which shall **include the name of individual, his date of birth, address, details of ownership in Co**. Register shall be **open to inspection** by any member.

Register of SBO [Rule 5]

1) Co. shall **maintain a register** of SBO **in Form No. BEN-3**.

2) Register shall be **open for inspection during business hours**, at such reasonable time **of not less than 2 hours, on every working day** as the board may decide, **by any member on payment of fee not exceeding Rs.50 for each inspection.**

4) Filing of return of SBO:

Every Co. **shall file a return of SBO** of the Co. **and changes therein with the ROC**. The return shall **contain the names, address and other details as may be prescribed**.

Return of SBO in shares [Rule 4]

Upon receipt of declaration under rule 3, Reporting Co. **shall file a return in Form No. BEN-2 with the Registrar** in respect of such declaration, **within 30 days from the date of receipt of such declaration**, along with fees as may be prescribed.

5) Steps to identify who is a SBO:

Every Co. **shall take necessary steps to identify an individual who is a SBO** in relation to Co. **and require him to comply with provisions.**

Duty of reporting Co. [Rule 2A]

1) Every Reporting Co. **shall take necessary steps to find out if there is any individual who is a SBO**, and if so, **identify him and cause such individual to make a declaration in Form No. BEN-1**.

2) Without prejudice to sub-rule (1), every reporting Co. shall in all cases **where its member (other than an individual), holds not less than 10% of its shares/voting rights, or right to receive or participate in the dividend or any other distribution payable** in a F/Y, **give notice to such member, seeking information** in accordance with Sec 90(5), **in Form No. BEN-4**.

6) Notice seeking information about SBOs:

Co. **shall give notice, in a prescribed manner [Rule 6: BEN-4]** , **to any person (whether or not member) whom the Co. knows or has reasons, cause to believe**:-

a) to be a **SBO** of the company,

b) to be **having knowledge of the identify of a SBO or another person likely to have such knowledge**,

c) to **have been a SBO at any time during 3 years immediately preceding the date on which the notice is issued, and who is not registered as a SBO with the Co.**

7) Information to be provided by concerned person:

Info required by Notice shall be given by the concerned person **within a period not exceeding 30 days of the date of the notice.**

8) Application to Tribunal:

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- The company shall,—
  - a) where **person fails to give the Co. the information** required by notice within time specified therein; or
  - b) where **info. given is not satisfactory**,

  apply to Tribunal within 15 days of expiry of period specified in the notice, **for an order directing that shares in question** be subject to **restrictions with regard to transfer of interest, suspension of all rights attached to the shares**.
- Tribunal may, after giving an opportunity of being heard, **make such order restricting the rights attached** with the shares **within 60 days of receipt of application**.
- Co. or the person **aggrieved by the order** of Tribunal **may make an application to the Tribunal for relaxation or lifting of restrictions** placed **within 1 year from the date of such order.**
- **If no such application has been filed within 1 year** from the date of order under sub-section (8), **such shares shall be transferred, without any restrictions, to the authority constituted u/s 125(5).**

Rule7.Application to the Tribunal

The reporting company shall apply to the Tribunal, for order directing that the shares in question be subject to restrictions, including

a) **restrictions on the transfer of interest attached to the shares in question;**

b) **suspension of the right to receive dividend or any other distribution in relation to the shares in question;**

c) **suspension of voting rights in relation to the shares in question;**

d) **any other restriction on all or any of the rights attached with the shares in question**

9) Penalties:

(i) Failure to make declaration by SBO: If any person fails to make a declaration required under sub-section (1), shall be **liable to a penalty of Rs.50,000** and in case of **continuing failure, with a further penalty of Rs.1,000 for each day subject to a maximum of Rs.2L. Contravention by SBO** of **provisions of Sec 90 and SBO Rules is compoundable**.

(ii) Failure by Co. to maintain register, file information or allow inspection: If **Co, required to maintain register** under sub-section (2) **and file the information** under sub-section (4) **or required to take necessary steps** under sub-section (4A), **fails to do so or denies inspection**, shall be **liable to a penalty of Rs.1L** and in **case of continuing failure, with a further penalty of Rs.500 for each day**, subject to a **maximum of Rs.5L** and **every officer in default** shall be **liable to a penalty of Rs.25,000** and in **case of continuing failure, with a further penalty of Rs.200 for each day**, subject to a **maximum of Rs.1L. Contravention by Co. and Officer** in Default of provisions of Sec 90 and SBO Rules **is compoundable.**

(iii) Furnishing false or incorrect information: If **any person wilfully furnishes any false or incorrect information or suppresses any material information** of which he is aware in the declaration made under this section, he shall be liable to action u/s 447.

10) Exemption to Govt Co.: Sec 90 shall not apply to Govt. Co. which has **not committed a default in filing its FS u/s 137 or AR u/s 92 with the Registrar.**

REGISTERS AND RETURNS (Chart 5.4)

ANNUAL RETURN [SEC 92]

(A) Provisions contained in the Act

1) Material date for Annual Return:
Every Co. **shall prepare AR in prescribed form (Form MGT- 7, MGT 7A) & shall contain the particulars as they stood on the close of F/Y.**

2) Contents of AR:
a) **Address of R.O.**, its principal business activities, and the particulars of its holding, subsidiary and associate Co.
b) Its **shares, debentures and other securities and shareholding pattern**
c) Its **members and debenture-holders**, and changes in the members and debenture-holders since the close of the previous F/Y
d) Its **promoters, directors and KMP, and changes** in promoters, directors and KMP since the close of the previous F/Y
e) **Meetings** of members or a class thereof, Board and its various committees, and attendance details
f) **Remuneration** of directors & KMP
g) **Penalty or punishment** imposed on Co, directors or officers and details of compounding of offences and appeals made
h) **matters relating to certification** of compliances, disclosures as may be prescribed
i) **Details in respect of shares** held by or on behalf of the FII
j) Such **other matters as may be prescribed.**

3) Signing of AR:
a) AR shall be **signed by a director and the CS** (if there is **no CS, then, by a CS in practice**).
b) In the **case of OPC and Small Co. and Private Co.** (if such private Co. is a start up), it shall be **signed by the CS** or if there is **no CS, then, by one director**.

4) Abridged form of AR:
CG may prescribe abridged form of AR for "OPC, Small Co. and such other class of companies prescribed."

5) Certification of Annual Return:
a) Annual Return shall be **certified by a CS in practice, in case of a listed Co. or any Co. having paid up capital and turnover of such amt.** as may he prescribed
b) It shall be stated by way of **certification that the AR discloses the facts correctly and adequately** and **the Co. has complied with all the provisions** of this Act.

Signing of AR and certification in case of listed companies:
- Sec 92(2) provides for **certification of AR by a CS in practice**.
- As per **Rule 11 of the Companies** (Management & Administration) Rules, 2014, **every Co. shall prepare its AR in Form MGT – 7** and **in respect of the specified listed Co.** as mentioned above, **AR shall be certified by a CS in practice in Form MGT – 8.**

6) Time limit for filing:
a) **AR shall be filed with the registrar within 60 days of the date on which AGM is held.**
b) If the **AGM for any year is not held, AR shall be filed within 60 days of the last date AGM' ought to have been held,** together with a Statement specifying the reasons for not holding the AGM.

7) Copy on website and web link in Board Report: Every Co. **shall place a copy of AR on the website of Co**, if any, and the **web-link of such AR shall be disclosed in the Board's report.**

8) Failure to file AR:
If any **Co. fails to file its AR before expiry** of the specified period, **Co. and its every officer in default** shall be **liable to penalty of Rs.10,000** and in **case of continuing failure, with further penalty of Rs.100 for each day** during which such failure continues, subject to a **maximum of Rs.2 lakh in case of Co.** and **Rs.50000 in case of an officer** who is in default.

9) Certification otherwise than in conformity with the requirements of this section:
If a **CS in practice certifies the AR otherwise than in conformity with the requirements of this section or rules** made thereunder, he **shall be liable to a penalty of Rs.2L.**

(B) Provisions contained in Rule 11 and 12 of the Companies (Management and Administration) Rules, 2014

1) Form of AR:
Every Co. shall prepare its AR in **Form No. MGT-7 except OPC and Small Co. OPC and Small Co.** shall file AR from F/Y 2020-2021 onwards in **Form No.MGT-7A.**

2) Companies prescribed certification of AR:
AR shall be **certified by CS in practice**, if
a) **paid-up share capital is Rs.10 crore or more**; or
b) **turnover is Rs.50 crore or more**.

3) Form of certification of AR
Where AR is to be certified by a CS in practice, the **CS in practice shall issue the certificate in Form No. MGT-8.**

4) Filing of Annual return with Registrar:
A **copy of AR shall be filed with Registrar**.

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PLACE OF KEEPING AND INSPECTION OF REGISTERS, RETURNS, ETC - Sec 94

(A) Provisions contained in the Act

1) Place of keeping registers & returns: Registers & Indices (Sec 88) and **copies of AR** (Sec 92) **shall be kept at —**
a) the **R.O.** of the Co; or
b) **any other place in India, if –**
(i) **more than 10% of the total number of Members** entered in register of members **reside at such place;**
(ii) **SR is passed in the GM**;

2) Period of maintenance:
Registers, indices and copies of AR shall be kept for **such period as may be prescribed by CG. (Rule 15)**

3) Inspection:
a) Registers, indices and copies of AR **shall be open for inspection during business hours by –**
(i) **any member or debenture-holder, other security-holder or beneficial owner, without any fees;**
(ii) **any other person, on payment of prescribed fees.**
b) **No inspection** can be made **when registers and indices are closed u/s 91.**

4) Extracts and copies:
Any person may take extracts from registers, indices and AR, **without payment** of **any fees** and **copies on payment of prescribed fees.**
Any person may require a copy of the registers, indices and annual return**, on payment of prescribed fees.**

5) Effects of refusal by Co:
- If any **inspection or making of any extract or copy** required **is refused, Co. and every officer in defaul**t shall be **liable,** for each such default, to **penalty of Rs.1000 for every day** subject to a **maximum of Rs.1L** during which the refusal or default continues.
- **CG** may, by order, **direct an immediate inspection or direct that extract** required shall be **allowed to be taken** by person requiring it.

(B) Provisions contained in Rule 14 and 15 of the Companies (Management and Administration) Rules, 2014

1) Time period of inspection:
Inspection may be made on **every working day during business hours at such reasonable time as the board may decide, subject to the condition that at least 2 hours on every working day shall be allowed for inspection.**

2) Fees for inspection:
Inspection may be made –
a) **by any member, debenture holder, other security holder or beneficial owner without payment of any fees**;
b) **by any other person on payment of fee** specified in the articles but **not exceeding Rs.50 for each inspection**.

3) Fees for copies:
a) **Any person may require a copy of the registers, indices and AR**, on payment of such fee specified in the articles but **not exceeding Rs. 10 per page**.
b) Such **copy shall be supplied by Co. within 7 days** of payment of such fee.

4) Particulars not to be made available:
The following particulars of the register or index or return **shall not be made available** for any inspection or for taking extracts or copies under section 94, namely:-**address or registered address (in case of a body corporate); e-mail ID; Unique Identification Number; PAN Number.]**

5) Period of maintenance (Rule 15):
a) **Register & index of members** shall be **preserved permanently** and ;
Register of debenture holders or any other security holders and **their indices** shall be **preserved for 8 years** from date of redemption of debentures/securities & **kept in the custody of CS** of the Co. **or any other person authorized by Board**.
b) **Copies of all AR** u/s 92 and **all certificates and documents annexed** thereto shall be **preserved for 8 years** from the date of filing with the Registrar.
c) **Foreign register of members** shall be **preserved permanently, unless discontinued**. and all the entries are transferred to any other foreign register or to the principal register.
d) **Foreign register of debenture holders or any other security holders** shall be **preserved for 8 years** from the date of redemption of such debentures or securities.
a) **Foreign registers** shall be **kept in custody of CS** of the Co. **or any other person authorized by Board**.

GENERAL MEETINGS (Chart 6.1)

ANNUAL GENERAL MEETING (AGM) - Sec 96

- **Applicability of Sec 96:**
  Sec 96 **applies to all companies except OPC**. It is mandatory for all companies, except OPC, to hold AGM
- **Legal requirement w.r.t. notice of AGM:**
  Notice of AGM shall **comply with the requirements of Sec 101** & **shall specify that the meeting is Annual General Meeting** (AGM).
- **Time limit for holding 1st AGM:**
  1st AGM is to be held **within 9 months of close of 1st F/Y**. If **1st AGM is so held**, there is **no need to hold AGM in the year of incorporation.**
- **No extension:**
  Registrar has no discretion to grant any extension for holding 1st AGM.
- **Last date for holding any other AGM, viz. subsequent AGM:**
  (i) AGM is to be **held within 6 months of close of relevant F/Y**.
  (ii) **Not more than 15 months shall elapse between the date of one AGM and the next**, i.e. **AGM is to be held within 15 months of last AGM**.
  (iii) AGM is to be **held in each calendar year**.
  The **three time limits given above are cumulative.**Thus, the **last date for holding AGM shall be the earliest of the above three time limits.**
- **Extension (subsequent AGM):**
  Registrar may, for **any special reason, extend the time for holding the AGM** by any period **not exceeding 3 months**.

- **Time, Place and Day of AGM [Sec 96(2)]:**
  a) AGM shall be **called during business hours**, i.e. between 9 am and 6 pm.
  b) AGM shall be **called for a day** which is **not a National holiday**.
  c) AGM shall be **held at the R.O. or some other place** within the city, town or village in which the R.O. is situated.
  d) **AGM of unlisted Co.** may be held **at any place in India** if **consent is given in writing or by electronic mode** by all the members in advance.
  e) **CG may exempt any Co. from the provisions contained in Sec 96(2)** subject to such conditions as CG may think fit to impose.

  EXEMPTION to Govt. Co.
  All the provisions of Sec 96(2) shall apply to a Govt. Co. with the following amendments:
  Place of AGM **shall include such other place as CG may approve** in this behalf.
  The above mentioned modification shall be applicable to Govt. Co. which has not committed a default in filing of its financial statements u/s 137 or annual return u/s 92 with the Registrar.

  EXEMPTION to Sec 8 Co.
  Following proviso shall be applicable only to a Sec 8 Co:
  Provided further that the **time, date and place of each AGM are decided upon beforehand by the BOD** having regard to the directions, if any, given in this regard by the Co. in its GM.

FINANCIAL YEAR [Sec 2(41)]
Period **ending on 31st day of March every year**.
In case of a company incorporated on or after 1st day of January, financial year means the period ending on 31st day of March of the following year.

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POWER OF TRIBUNAL TO CALL AGM - Sec 97

1) **Applicability:**
   Sec 97 **applies where default is made in holding AGM** in accordance with the provisions of Sec 96.
2) **Right of member to apply to Tribunal:**
   If **AGM is not held** as per the provisions of Sec 96, **any member may make an application to Tribunal.**
3) **Powers of the Tribunal:**
   a) Tribunal **may call a GM or direct the calling of a GM**, which **shall be deemed to be an AGM** of Co.
   b) Tribunal **may give such ancillary or consequential directions** as it may think fit, including a direction **that 1 member present in person or proxy shall be the quorum.**
   A GM held in pursuance of Sec 97(1) shall, subject to any directions of the Tribunal, be deemed to be AGM.

EXTRAORDINARY GENERAL MEETING - Sec 100

1) **When board may call EGM:**
   Board **may**, whenever it deems fit, call an EGM.
   "Provided that an EGM of the Co. **other than of the wholly owned subsidiary** of a Co. **incorporated outside India, shall be held at a place within India."**
2) **Board on requisition of members:**
   Board **shall, at the requisition made by**,—
   a) **in case of a Co. having a share capital:**
   such no. of members who **hold**, on the date of receipt of requisition, **not less than 1/10th of paid-up share capital** as on that date **carries the right of voting**;
   b) **in the case of a Co. not having a share capital:**
   such no. of members who **have**, on the date of receipt of the requisition, **not less than 1/10th of the total voting power** of all the members having on the said date a right to vote,
   call an EGM within the period specified in subsection (4).
3) **Matter set out for consideration in requisition:**
   Requisition made as above, **shall set out** the **matters for the consideration** of which the meeting is to be called and **shall be signed by the requisitionists** and **sent to the R.O.** of the Co.
4) **Time period for calling the meeting:**
   Board is required to proceed to **call a meeting within 21 days** from the date of receipt of requisition, **to convene a meeting** which should be **held within 45 days** of such deposit of the requisition with the Co.
5) **Requisitionists to call the meeting on the failure of the Board:**
   If **Board fails to call the EGM in** the **time period provided** then the **requisitionists may call an EGM themselves within 3 months from the date of requisition**.
6) **Meeting to be held in same manner as that called by Board:**
   Meeting by the requisitionists **shall be called and held** in the **same manner in which** the **meeting is called and held by the Board.**
7) **Reimbursment of expenses in calling a meeting:**
   Any **reasonable expenses incurred by the requisitionists** in calling a meeting, **shall be reimbursed** to the requisitionists by the Co. **and the sums so paid shall be deducted from any fee or other remuneration payable** (u/s 197) **to such of the directors who were in default in calling the meeting.**

CALLING OF EGM BY REQUISITIONIST- Rule 17

1) **Requisition for convening of EGM by members:**
   Members may requisition convening of EGM by providing such **requisition in writing or through electronic mode at least 21 days prior to the proposed date of such EGM.**
2) **Notice with details as to the place, date etc.:**
   Notice shall **specify the place, date, day and hour of the meeting** and **shall contain the business to be transacted** at meeting.
   Explanation-
   Requisitionists should **convene meeting at R.O. or in the same city or town** where R.O. is situated **on any day except a national holiday.**
3) **Notice for Special Resolution:**
   If the **resolution is to be proposed as SR**, the **notice shall be given as required u/s 114(2).**
4) **Notice to be signed:**
   Notice shall be **signed by** -
   (i) **all the requisitionists** or
   (ii) **by a requisitionist duly authorised** in **writing by all other requisitionists on their behalf** or by sending an electronic request attaching therewith a **scanned copy of such duly signed requisition.**
5) **No explanatory statement annexed to the notice:**
   No explanatory statement u/s 102 need to be **annexed to notice** of an EGM convened by the requisitionists and the requisitionists **may disclose the reasons for the resolution(s) which they propose to move** at the meeting.
6) **Serving of notice of the meeting:**
   Notice of the meeting **shall be given to those members whose names appear in the Register of members within 3 days** on which requisitionists deposit with the Co. a valid requisition for calling an EGM.
7) **No meeting convened:**
   Where **meeting is not convened**, requisitionists shall have a **right to receive list of members together with their registered address and no. of shares held** and Co. concerned is bound to give a list **made as on 21st day** from the date of receipt of valid requisition together with such changes, if any, **before the expiry of 45 days** from the date of receipt of a valid requisition.
8) **Mode of giving notice:**
   Notice of meeting shall be **given by speed post or registered post or through electronic mode**.
   Any **accidental omission to give notice** to, or the **non-receipt of such notice** by, any member **shall not invalidate the proceedings of the meeting.**

GENERAL MEETINGS (Chart 6.2)

POWER OF TRIBUNAL TO CALL EGM - Sec 98

1) If it becomes **impracticable to call or hold or conduct an EGM**, **Tribunal may order an EGM to be called, held and conducted** in such manner as it thinks fit.
2) Tribunal **may give such ancillary or consequential directions** as it thinks fit (including direction that 1 member present in person or proxy shall be the quorum).
3) Tribunal **may exercise such power -**
   a) on the **application of a member**; or
   b) on the **application of a director**; or
   c) **suo motu**.

Any meeting **called, held and conducted in accordance with any order made under sub-section (1) shall**, for all purposes, be deemed **to be a meeting of the Co. duly called, held and conducted.**

PENALTY FOR DEFAULT IN HOLDING AGM - Sec 99

If any **default is made in holding a meeting** of the Co. **in accordance with Sec 96 or 97 or 98 or in complying with any directions of the Tribunal**, the **Co. and every officer in default** shall be **liable** to a **fine up to Rs.1 lakh** & **in case of a continuing default with a further fine up to Rs.5000 per day** during which the default continues.

CLASS MEETINGS

- Meetings of members of a Co. fall into **2 broad divisions**, namely, **general meetings and class meetings**.
- ***Class meetings*** are **meeting of shareholders, holding a particular class of share** which is **held to pass resolution which will bind only the members of the class concerned**.
- Only members of the class concerned **may attend and vote at meeting**.
- Usually the **rules to voting apply to class meetings** as **they govern voting at general meetings**.
- These class meetings **must be convened whenever it is necessary to alter or change the rights or privileges of that class** as provided by the articles. For **effecting such changes**, it is necessary that these are **approved at a separate meeting** of the holders of those shares **and supported by a SR**. **(For eg. Sec 48)**

REQUISITES OF A VALID GM

- **Properly called:**
  a) Meeting must be **called by a proper authority**; and
  b) **Proper notice must be served** in the manner specified under the Act **(Sec 101 and 102).**
- **Properly convened:**
  a) **Proper quorum must be present** in the GM **(Sec 103)**.
  b) **Proper chairman must preside** the meeting **(Sec 104)**.
- **Properly conducted**
  a) **Business must be validly transacted at the meeting** (i.e. resolutions must be properly moved and passed, and voting by show of hands and on poll must be proper) **(Sec 105, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117 and 121)**.
  b) Proper minutes of the meeting **must be prepared (Sec 118 and 119).**

PROPER AUTHORITY TO CALL A GM

1) Board:
- Board has **power** at common law **to call any GM** (viz. **AGM as well as EGM**). Sec 100 confers an express power on the Board to call an EGM, whenever the Board may deem fit.
- An **individual director has no power to call a GM**.
- **Notice** of a GM **given by a secretary or a director is invalid if** it is **given without the sanction of the Board**. However, the **notice may be ratified by Board**.

2) Members:
- Members **who fulfil the requirements of Sec 100 are eligible to requisition an EGM**.
- In case of **failure of Board to call EGM within the time limits** given u/s 100, the **members may themselves call an EGM** as per the provisions of Sec 100.

3) Tribunal:
- An **AGM may be called by Tribunal u/s 97**.
- An **EGM may be called by Tribunal u/s 98**.

ORDINARY BUSINESS AND SPECIAL BUSINESS - Sec 102

1) Ordinary business

I. At an AGM [Sec 102(2)(a)]:
Following business shall be ordinary business:
a) **Consideration of financial statements, Board's Report and Auditors Report**
b) **Declaration of dividend**
c) **Retirement of directors and appointment of directors** in the place of those retiring
d) **Retirement of auditors and appointment of auditors** in the place of those retiring, and **fixing of remuneration of auditors**

II. At any other GM: No business shall be deemed as ordinary business.

III. Explanatory statement: Explanatory statement is **not required for transacting any item of ordinary business**.

2) Special business

I. At an AGM:
All business **except that specified u/s 102(2)(a) shall be deemed as special business**.

II. At any other GM:
All business shall be deemed as special business.

❖ **Full text of the resolution:**
Full text of the resolution **must be given in the notice for transacting every item of special business**.

❖ **Explanatory statement:**
Explanatory statement **must be annexed to the notice for transacting each item of special business.**

❖ **Contents of explanatory statement:**
a) Material facts
b) **Nature of concern or interest** (financial or otherwise) **of** -
   (i) **every director and manager;**
   (ii) **every other KMP;**
   (iii) **relatives of every director, manager and KMP**.
c) **Any other information and facts** that may **enable members** to **understand** the **meaning, scope and implications of the items of business and to take decision** thereon.
d) If **special business relates to, or affects, any other Co**, the extent of **shareholding in that other Co. of every promoter, director, manager and every other KMP shall be disclosed, if shareholding** is **2% or more of the paid up share capital** of that other Co.
e) If **special business refers to any document** which is **to be considered at the GM**, the **time and place where such document can be inspected shall be specified** in Explanatory Statement.

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❖ **Effects of non-disclosure:** Due to non-disclosure or insufficient disclosure in Explanatory Statement, if **any benefit accrues** to a promoter, director, manager or KMP or their relatives, **such person shall hold such benefit in trust for the Co, and shall compensate the Co. to the extent of benefit derived by him.**

3) Default in compliance:
If any default is made in complying with the provisions of this section, **every promoter, director, manager or KMP in default** shall be **punishable with penalty** which may extend to **Rs.50000 or five times the amount of benefit** accruing to the promoter, director, manager or other KMP or any of his relatives, **whichever is more.**

4) Applicability of Sec 102 to Private companies:
- Sec 102 **shall apply unless otherwise specified in respective sections or the articles** of the company provide otherwise. This exception shall be **applicable to a private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar.**

GENERAL MEETINGS (Chart 6.3)

NOTICE OF MEETING - Sec 101

1) Notice by Whom?

Notice **must be given by the proper summoning authority**, normally be the **BOD**. If a **notice** has been **issued without authority**, the **requisite authority may be given by ratification** by the proper summoning authority before the meeting is held and notice may thus become good

2) Length of notice:

- Any GM may be **called by giving at least 21 clear days' notice**.
- **Part of the day on which the notice is deemed to be served** on the member **cannot be added to the part of the day upto the time of the GM so as to make it one day**. Each of the **21 days must be full/ complete days**.
- **Day on which the notice is** deemed to be **served** on the member**, and the day of the GM have to be in addition to the 21 days**.
- **Co. cannot curtail by its AoA the requirement of 21 clear days.**
- In case of **Sec 8 Company**, a **GM** of a Co. **may be called by giving not less than clear 14 days' notice either in writing or through electronic mode.**

3) Manner of giving notice:

Notice shall be given in **writing or by electronic mode**, in such manner as may be prescribed**. (Rule 18)**

4) Shorter notice:

- Shorter notice **is sufficient if consent is given** for such shorter notice..
  - In case of an AGM **- by at least 95% of the members entitled to vote** at such GM.
  - In case of any other GM:
    - ➢ If Co. has share capital **- by members** of the Co. **holding majority in no. of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital** as gives a right to vote at the meeting; or
    - ➢ If Co. has no share capital **- by members** of the Co. **having not less than 95% of the total voting power exercisable at that meeting.**

Provided that where any member of a Co. is entitled to vote only on some resolution(s) to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution(s) and not in respect of the latter.

- The **consent may be given** by the members **in writing or by electronic mode.**

5) Deemed delivery of notice of GM:

Where a **notice** of a meeting **is sent by post**, it shall be **deemed to be served at the expiration of 48 hours after the letter** containing the same **is posted**.

6) Contents of notice:

The notice shall **specify** -

(i) **place, date, day and hour of GM**; and

(ii) **business to be transacted at the GM (i.e. agenda).**

7) Notice to whom?

- Notice **shall be given to** -
  - (i) **every director;**
  - (ii) **every member;**
  - (iii) **legal representatives of the deceased member;**
  - (iv) **official assignee of the insolvent member; and**
  - (v) **auditor or auditors**
- A **private Co**, which is **not, a subsidiary of a public Co.** may **prescribe, by its Articles, persons to whom the notice should be given.**

8) Effect of omission to give notice:

- **Accidental omission to give notice** of GM or **Non-receipt of notic**e by any person entitled to receive notice of GM **shall not invalidate the proceedings of GM**.
- **If a meeting is called without notice to a shareholder the omission not being accidental, it is invalid and all proceedings therein are also invalid**
- **Omission to serve notice** of meeting **on a member on the mistaken ground that he is not a shareholder cannot be said to be an accidental omission**
- **Failure to send notice** to a member, **under a belief that it will not reach him at the address mentioned in the register** of members **is deliberate and not accidental**, even if the belief is based on a mistaken impression.
- **The onus is on the company to prove that the omission was not deliberate**
- ***'Accidental omission'* means that the omission must be not only designed but also not deliberate**

9) Service of notice:

- When a **notice is advertised in a news paper** circulating in the neighbourhood of the R.O. of the Co, it is **regarded as having been served on day on which the advt. appears,** on every member having no registered address in India and who has not supplied to Co. an address within India for giving notice to him.
- Notice may be **served personally or sent through post** to the registered add. of the members and in absence of any registered office in India, to the **address, within India** furnished by him **or through electronic mode**.
- **Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. Service** of notice shall be **deemed to have been effected in the case of notice of meeting on the expiry of 48 hours since the posting of the same**.
- If, a **member wants the notice to be served** on him **under a certificate or by registered post with or without acknowledgment due** and **has deposited money with the Co. to defray the incidental expenditure**, the **notice must be served accordingly; otherwise service will not be deemed have been effected.**
- **Service on the joint holder** may be **made by serving** it **on the one whose name appears first in the register of members.**

10) Procedure for notice given by electronic mode (Rule 18):

- **'Electronic mode'** means **any communication sent by a Co. through its authorized and secured computer programme** which is **capable of producing confirmation and keeping record** of such communication addressed to the person entitled to receive such communication at the last E-mail address provided by the member.

Procedure for notice given by e-mail (Rule 18):

(i) **Modes permitted for sending notice:**
A notice may be sent -
a) **by e-mail as a text or as an attachment to e-mail;** or
b) **as a notification providing electronic link or URL** accessing such notice.

(ii) **E-mail to whom?**
E-mail **shall be addressed to the-person entitled to receive such e-mail as per the records of the Co; or as provided by the depository.**

(iii) **Opportunity to members to register and update e-mail addresses:**
Co. **shall provide an advance opportunity at least once in a financial year**, to the members **to register & update their e-mail addresses.**

(iv) **Subject line in e-mail:**
The subject line in e-mail shall state — **name of company**; **notice of the type of meeting, place and date on which the meeting is scheduled**.

(v) **Opportunity to members to download software:**
If notice is **sent in the form of a non-editable attachment to e-mail**, such **attachment shall be in the PDF or in a non-editable format** together **with a 'link or instructions'** for recipient **for downloading relevant version of the software**.

(vi) **Maintenance of records by the Co:**
- Co. **should use system which produces –**
  a) **confirmation of the total number of recipients e-mailed**; and
  b) **a record of each recipient to whom the notice has been sent**.
- A **copy of such record and any notices of any failed transmissions** and **subsequent re-sending shall be retained** by the Co. **as "proof of sending".**

(vii) **Failure in transmission not to affect companies obligation:**
- **Co's obligation shall be satisfied when it transmits the e-mail.**
- Co. **shall not be held responsible for a failure in transmission beyond its control**.
- If a **member fails to provide or update relevant e-mail** address **to the Co, or to the depository participant** as the case may be, the **Co. shall not be in default for not delivering notice via e-mail.**

(viii) **E-mails through in-house facility or outsourcing:**
Co. may send e-mail **through — in-house facility; or its registrar and transfer agent; or any third party agency** providing bulk e-mail facility as may be authorised by Co.

(ix) **Notice to be placed on the website:**
Notice of GM shall be simultaneously **placed on the website of the Co, if any and such website as may be notified by CG**.

11) Applicability of Sec 101 to Private Co:

Sec 101 shall **apply, unless otherwise specified in respective sections or the articles of the Co. provide otherwise**. This **exception shall be applicable to a private Co. which has not committed a default in filing its financial statements u/s 137 or annual return u/s 92 of the Act, with the Registrar.**

GENERAL MEETINGS (Chart 6.4)

QUORUM - Sec 103

- **Meaning:**
  Quorum means the **minimum no. of members who must be present in order to constitute a meeting and transact business**.
  Where the articles of the Co. do not provide for a larger number, there the **quorum shall depend on no. of members as on date of a meeting:**

a) **in case of a Public Co.** -

Case	*No. of members as on the date of meeting*	*Required quorum*
I	Up to 1,000	5 members personally present
II	More than1,000 but up to 5,000	15 members personally present
III	Exceeds 5,000	30 members personally present

b) **in case of a Private Co.** -
2 members personally present, shall be the quorum for a meeting of the Co.

- **Consequences of no quorum:**
If the **quorum is not present within half-an-hour** from the time appointed for holding a meeting -
a) **meeting shall stand adjourned to the same day in the next week at the same time and place**, or
b) **to such other date & such other time and place as the Board may determine**; or
c) **meeting, if called by requisitionists** (u/s 100), **shall stand cancelled**.

- **Notice of an adjourned meeting:**
Where the **meeting stands adjourned, to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine** the **Co. shall give at least 3 days notice to the members either individually or by publishing an advertisement in the newspapers** (one in English and one in vernacular language).

- **No quorum in an adjourned meeting:**
If **at the adjourned meeting** also, a **quorum is not present within half-an-hour** from the time appointed for holding meeting, the **members present shall be the quorum.**

- **Other points:**
  - The **words, personally present exclude proxies**.
  - **Representative of a body corporate appointed u/s 113** or **representative of the President or a Governor of a State u/s 112 is a member 'personally present' for purpose of counting a quorum**
  - **In case 2 or more corporate bodies** who **are members of a Co**. are **represented by single individual, each of the bodies corporate** will be **treated as personally present** by the individual representing it.
  - **One individual may count as more than one member if he attends the meeting in more than one capacity.**
  - In the **case of joint holders any one** of them **may be counted in a quorum.**

- **When quorum is immaterial:**
  - If **all the members are present**, it is **immaterial that the quorum required is more than the total number of members**.
    If, for example, the articles of a private company provide that 4 members personally present shall be a quorum, and the number of members is reduced to 3 then the question of quorum will not arise when all the 3 members attend a meeting.

- **Effect of failure of a quorum:**
  - **If no quorum is present**, then **there is no meeting and the proceedings are invalid**
  - **However acts done creating rights in favour of third parties** at a meeting **without a quorum** being present **would not affect the rights of such third parties, provided they had no notice of the irregularity e.g. debentures issued at a meeting of directors where there was an insufficient quorum.**

The following points have been prescribed by Secretarial Standard – 2:

1) Quorum shall be **present not only at the time of commencement of the Meeting but also while transacting business.**
2) **Members who have voted by Remote e-voting have the right to attend the General Meeting** and accordingly **their presence shall be counted for the purpose of Quorum.**
3) A Member who is not entitled to vote on any particular item of business **being a related party,** if present, shall be counted for the purpose of Quorum.
4) The stipulation regarding **the presence of a Quorum does not** apply with respect to items of business transacted through postal ballot.
5) One person can be an authorised representative **of more than one body corporate**. In such a case, he is treated as more than one Member present in person for the purpose of Quorum. **However, to constitute a meeting, at least two individuals shall be present in person. Thus, in case of a public company having not more than one thousand members with a Quorum requirement of five members, an authorised representative of five bodies corporate cannot form a Quorum by himself but can do so if at least one more member is personally present**.

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CHAIRMAN OF GENERAL MEETING - Sec 104

1) **Election by show of hands:**
Unless the articles of the Co. otherwise provide, the **members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands**.

2) **Poll for election of chairman:**
- If a **poll is demanded on the election of the Chairman, it shall be taken forthwith** and
- **Chairman elected on a show of hands** shall **continue to be the Chairman** of the meeting
- **until some other person is elected as Chairman as a result of the poll**, and
- **such other person shall be the Chairman for the rest of the meeting**.

3) **Powers of chairman:**
Chairman has **authority to decide all questions which arise at a meeting and which require decision at the time**. In order to fulfill his duty properly, he **must observe strict impartiality**, even though **he must be personally strongly opposed to any matter.**

4) **Right to cast casting vote :**
A casting vote means that in event of the equality of vote on a particular business being transacted at the meeting, the Chairman of the meeting shall have a right to cast a second vote. Chairman **has a casting vote (second vote) in BM and GM, if specifically empowered by the articles.** If there is **no provision in the articles for a casting vote**, an **OR on which there is equality of votes is deemed to be dropped**.

5) **Exemption to Private Co:**
Sec 104 shall apply to Private Co, unless otherwise specified in respective sections or the articles.
This exception shall be applicable to a private Co. which has not committed a default in filing its financial statements u/s 137 or annual return u/s 92 of the Act, with the Registrar.

RESTRICTIONS ON VOTING RIGHT OF MEMBERS [Sec 106]

- **Manner of imposing restrictions:**
Express provision in the articles is required **to restrict the voting rights** of members.
- **Grounds imposing restrictions:**
(i) **Calls on shares or any other sum** presently payable by the member **has not been paid**.
(ii) The **Co. has exercised, any right of lien on shares**.
- **Any other ground:**
A **Co. shall not prohibit any member from exercising his voting right on any other ground.**

USE OF VOTES DIFFERENTLY

On a poll taken at a meeting of a Co, a **member entitled to more than one vote, or his proxy, where allowed, or other person entitled to vote for him**, as the case may be, **need not, if he votes,**
- use all his votes or
- cast in the same way all the votes he uses.

NOTE:
- **Where the articles do not contain any provision restricting the exercise of voting right** of member, a **member cannot be prevented from voting**, even though, **calls or other sum have not been paid or the Co. has exercised any right of lien** over his shares.
- But, **where the articles contain any such provision**, and the **shares forfeited for non-payment of calls have been re-allotted**, the **new allottee** being liable for the balance remained unpaid on the shares **will not be entitled to vote so long as any calls presently payable on the shares remain unpaid.** *Compiled By: CA Sahil Grover*

Joint Holders:
In case **of joint shareholders, they must concur in voting unless the articles provide to the contrary.**
Regulation 52 of Table F states as under:
i. **In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.**
ii. **For this purpose, seniority shall be determined by the order in which the names stand in the register of members.**

GENERAL MEETINGS (Chart 6.5)

PROXIES - Sec 105

- **Meaning of Proxy:**
  A proxy is an **instrument in writing executed by a shareholder authorising another person to attend a meeting** and to **vote** thereat **on his behalf and in his absence. The term is also applied to the person so appointed.**
- **Who can appoint a proxy?**
  As per Sec 105 "Any member of a Co. **entitled to attend and vote** at a meeting **shall be entitled to appoint another person** (whether a member or not) **as his proxy** to attend and vote instead of himself."
- **Law relating to proxy:**
  1) **Any member** entitled to attend and vote at a meeting **shall be entitled to appoint proxy**.
  2) A **proxy shall not have the right to speak** at such meeting and **shall not be entitled to vote except on a poll**.
  3) Unless the articles otherwise provide, **appointment of proxy shall not apply in the case of a Co. not having a share capital**.
  4) **CG may prescribe a class or classes of Co's whose members shall not be entitled to appoint another person as a proxy**.
  5) A **person appointed as proxy shall act on behalf of such member or no. of members not exceeding 50 and such no. of shares as may be prescribed** (holding in aggregate not more than **10% of total share capital of the Co. carrying voting rights**.).

- **Procedure of appointment of proxy:**
  1) **In every notice calling a meeting** of a Co. **which has a share capital**, or the articles of which provide for voting by proxy, **there shall appear, a statement that** a **member** who is entitled to attend and vote **is entitled to appoint a proxy**, or, where that is allowed, 1 or more proxies, to attend and vote instead of himself, **and that a proxy need not be a member. However in case of a Sec 8 Co. only a member can be a proxy. [Sec 105(2)]**
  2) If **default** is made **in complying calling of meeting, every officer in default** shall be **punishable with penalty which may extend to Rs.5,000. [Sec 105(3)]**
  3) **Any provision contained in the articles which specifies or requires a longer period than 48 hours before a meeting, for depositing with the Co. any instrument appointing a proxy, shall have effect as if a period of 48 hours had been specified in or required by such provision for such deposit.**
  4) **Appointment of proxy shall be in the Form MGT – 11. [Rule 19(3)]**
  5) The **instrument appointing a proxy shall** be **in writing** and be **signed by the appointer or his attorney** duly authorised in writing or, if the appointer is a **body corporate**, **be under its seal or be signed by an officer or an attorney duly authorised by it.**
  6) An **instrument appointing a proxy in MGT-11, shall not be questioned on the ground that it fails to comply with any special requirements** specified for such instrument **by the articles of a Co.**
  7) **Every member entitled to vote** at a meeting, or on any resolution to be moved thereat, **shall be entitled during the period beginning 24 hours** before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, **to inspect the proxies lodged, at any time during the business hours** of the Co, **provided not less than 3 days' notice in writing** of the intention so **to inspect is given to Co**.

- **Restrictions with respect to appointment of proxies [Rule 19 Companies (Management and Administration) rules, 2014]:**
  1) A **member** of a Co. **registered under Sec 8 shall not be entitled to appoint** any other person as **his proxy unless such other person is also a member of such Co.**
  2) A **person can act as proxy on behalf of members not exceeding 50 and holding in the aggregate not more than 10% of the total share capital** of the Co. carrying voting rights.
     Provided that a **member holding more than 10%**, of the total share capital of the Co. carrying voting rights **may appoint a single person as proxy and such person shall not act as proxy for any other person or shareholder**.
- **Penalty for default:**
  - ***Failure to state in notice of meeting that a member is entitled to appoint proxy who need not be a member*** - **every officer of Co. in default** shall be **punishable with penalty which may extend to Rs.5,000**.
  - ***For refusing the inspection to members at any time during the business hours*** -the **Co. and every officer who is in default**, shall be **punishable with fine upto Rs.10,000** and where the **contravention is a continuing** one, **with a further fine upto Rs.1,000 per day of default.**
  - **Offences under this section are compoundable u/s 441** of the Act.

- **Rights of proxy:**
  - A proxy has the **right to attend the meeting.**
  - A proxy **can vote on a poll.**
  - A proxy **can demand a poll u/s 109** of the Companies Act, 2013.
- **Disabilities of proxy:**
  - A proxy has **no right to speak** at the meeting.
  - A proxy **cannot vote on a show of hands**.
  - A proxy is **not counted for the purpose of quorum.**
- **Revocation of proxy:**
  - If **after appointment of proxy**, the **member himself attends the meeting**, it **would amount to automatic revocation of proxy**.
  - **Once the proxy has voted, it cannot be revoked**.
- **Exemption to Private Co:**
  Sec 105 shall apply to private Co, unless otherwise specified in respective sections or the articles of the Co. provide otherwise. This **exception** shall be **applicable to a private Co. which has not committed a default in filing its financial statements u/s 137 or annual return u/s 92 of the Act, with the Registrar.**

REPRESENTATIONS OF CORPORATIONS AT MEETINGS OF COMPANIES & CREDITORS - Sec 113

1) **Appointment of a representative by a body corporate:**
   A **body corporate**, whether **a company within the meaning of this Act or not**, may, —
   a) **if it is a member of a Co** *Compiled By: CA Sahil Grover* **by resolution of its BOD or other governing body, authorise** such **person as it thinks fit to act as its representative at any meeting** of the Co, or at any meeting of any class of members of the Co,
   b) **if it is a creditor, including a holder of debentures, of a Co - by resolution of its directors or other governing body, authorise** such **person as it thinks fit to act as its representative at any meeting of any creditors** of the Co.

2) **Powers and rights of an authorised person:**
   A **person authorised by resolution as above**, shall be **entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents** as that body could exercise if it were an individual member, creditor or holder of debentures of the Co.

REPRESENTATION OF THE PRESIDENT AND GOVERNORS IN MEETING OF COMPANIES TO WHICH THEY ARE MEMBERS - Sec 112

The **President of India or the Governor of a State**,
- if he **is a member of a Co**,
- **may appoint such person as he thinks fit to act as his representative at any meeting** and
- **such person shall be entitled to exercise the same rights and powers including the right to vote by proxy and postal ballot**, as the **President or, as the case may be, the Governor could exercise as a member of the Co**.

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GENERAL MEETINGS (Chart 6.6)

VOTING BY SHOW OF HANDS - Sec 107

- At GM, a **resolution shall be decided on a show of hands, unless**
  - **A poll is demanded u/s 109**
  - **voting is carried out electronically u/s 108.**
- **A declaration of the result of a resolution** (that the resolution has been passed or failed, as the case may be) **on a show of hands by the chairman and an entry to that effect in the minutes book shall be conclusive evidence of such fact.**
- **No proof of number of votes cast in favour of and against the resolution is required.**

VOTING THROUGH ELECTRONIC MEANS - Sec 108

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1) Applicability:

Sec 108 shall apply to -

(i) **all Co's whose equity shares are listed** on a recognized stock exchange; and

(ii) **all Co's having 1,000 or more members.**

However, Sec 108 shall not apply to

- **Nidhi**
- **an enterprise or institutional investor referred to in Chapter XB or Chapter XC of the SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009.**

2) Legal requirements:

A Co. **shall provide to its members facility to exercise their right to vote** on resolutions proposed at GMs **by electronic means.**

3) Meaning of certain terms:

- **Electronic voting system:** means a **secured system based process** of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, **in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate cyber security.**
- **Remote e-voting:** means the **facility of casting vote** by a member **using an electronic voting system from a place other than venue of a GM.**
- **Voting by electronic means:** **includes remote e-voting and voting at GM through an electronic voting system** which may be the **same as used for remote e-voting.**
- ***Secured system:*** means **computer hardware, software, and procedure that**
  - a) are **reasonably secure from unauthorized access and misuse;**
  - b) **provide a reasonable level of reliability and correct operation;**
  - c) are **reasonably suited to perform the intended functions;** and
  - d) **adhere to generally accepted security procedures.**
- ***Cut-off date:*** means a **date not earlier than 7 days before the date of GM for determining the eligibility to vote by electronic means or in GM.**

4) Notice of GM:

Notice **shall be sent to all the members, directors and auditors** of the Co. either-

a) **By registered post or speed post.**
b) **Through electronic means, namely, registered e-mail ID of the recipient.**
c) **By courier service.**

5) Display of notice at website:

Notice of GM **shall also be placed on the website**, if any, **of the Co**, forthwith, after it is sent to the members.

6) Disclosures in notice sent to the members by the Co:

Notice shall **clearly state** that

a) **Co. is providing facility for voting by electronic means and the business may be transacted through such voting.**
b) **Facility for voting, either through electronic voting system or ballot or polling paper shall also be made available** at the meeting and **members who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;**
c) **Members who have cast their vote by remote e-voting prior to the meeting** may also attend the meeting but **shall not be entitled to cast their vote again.**

7) Additional disclosures in notice sent to the members by the Co:

Notice shall -

a) **indicate the process and manner for voting by electronic means;**
b) **indicate the time schedule** including the time period **during which the votes may be cast by remote e-voting;**
c) **provide the details about the login ID;**
d) **specify the process and manner for generating or receiving the password** and **for casting of vote** in a secure manner.

8) Public notice by way of advertisement:

a) Co. shall cause a **public notice by way of an advt. to be published, immediately on completion of dispatch of notice of GM.**
b) Public notice **shall be published at least 21 days before date of GM.**
c) Public notice **shall be published at least once in a vernacular newspaper and at least once in English newspaper.**
d) Public notice **shall specify the following matters:**
   (i) A **statement that the business may be transacted through voting by electronic means**
   (ii) **Date and time of commencement & end of remote e-voting**
   (iii) **Cut-off date**
   (iv) **Manner in which persons who have acquired shares and become members** of the Co. **after the dispatch of notice, may obtain the login ID and password**
   (v) A statement that –
      A. **remote e-voting shall not be allowed beyond the said date and time;**
      B. **manner in which the Co. shall provide for voting** by members present at the GM; and
      C. a **member may participate in the GM even after exercising his right to vote through remote e-voting but shall not be allowed to vote again** in the GM; and
      D. a **person whose name is recorded in the register of members or of beneficial owners** maintained by the depositories **as on the cut-off date only shall be entitled to avail the facility of remote e-voting as well as voting in GM.**
   (vi) **Website address of the Co**, if any, **where notice of GM is displayed**
   (vii) **Name, designation, address, email id and phone no. of the person responsible to address the grievances** connected with facility for voting by electronic means.

   Provided the **public notice shall be placed on the website** of the Co. if any.

9) Remote e-voting:

a) **Facility** for remote e-voting **shall remain open for not less than 3 days and shall close at 5.00 p.m. on the date preceding the date of GM.**
b) **During the period when facility** for **remote e-voting is provided**, the **members** holding shares either in physical or demat form, **as on the cut-off date, may opt for remote e-voting.**
c) **Once a member has cast his vote**, he **shall not be allowed to change it or cast the vote again.**
d) **A member may participate in GM even after exercising his right to vote** through remote e-voting, **but shall not be allowed to vote again.**
e) **At the end of the remote e-voting period**, the **facility** for remote e-voting **shall forthwith be blocked.**

Provided that **if a Co. opts to provide the same electronic voting system as used during remote e-voting** during the GM, the **said facility shall be in operation till all the resolutions are considered and voted upon** and **may be used for voting only by the members attending the meeting and who have not exercised their right to vote through remote e- voting.**

10) Appointment of scrutinizer:

a) **BOD shall appoint one or more scrutinizers.**
b) **Scrutinizer(s) may be CA/Cost Accountant/CS in practice or Advocate, or any other person not in employment of the Co and is a person of repute who, in the opinion of the Board can scrutinize the voting and remote e-voting process in a fair and transparent manner.**
c) Scrutinizer(s) **may take assistance of a person who is not in employment of the Co. and who is well-versed with the electronic voting system.**
d) **The scrutinizer shall be willing to be appointed & shall be available for the purpose of ascertaining the requisite majority.**

GENERAL MEETINGS (Chart 6.7)

VOTING THROUGH ELECTRONIC MEANS - Sec 108

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11) Voting at GM:

a) During GM, a Co. **may opt to provide the same electronic voting system as used during remote e-voting. The members attending the GM and who have not exercised their right to vote through remote e-voting, shall be entitled to vote using the electronic voting system.**

b) After conclusion of discussion at GM, **Chairman shall**, with the assistance of scrutinizer(s), **allow voting** on the resolutions, **by use of polling paper or electronic voting system**.

c) **For the purpose of ensuring that members who have cast their votes through remote e-voting do not vote again** at GM, **scrutiniser shall have access**, after the closure of period for remote e-voting and before the start of GM, **to details relating to members and such other information that the scrutiniser may require**.

d) Scrutiniser **shall maintain a register either manually or electronically to record the assent or dissent received.**

e) **Register and all other papers relating to voting by electronic means shall remain in the safe custody of the scrutinizer**(s) **until the Chairman considers, approves and signs the minutes** and thereafter, the scrutinizer(s) shall hand over the register and other related papers to the Co.

12) Declaration of result of voting:

a) Scrutinizer(s) **shall, after the conclusion of voting** at the GM, **first count the votes cast** and **thereafter shall unblock the votes cast through remote e-voting in the presence of at least 2 witnesses not in the employment of the Co.**

b) Scrutinizer(s) **shall make, not later than 3 days of conclusion of the GM, a consolidated scrutinizer's report** to the Chairman or a person authorised by him who shall countersign the same. The **report shall contain the total votes cast in favour of, and against, the resolution.**

c) Chairman or the person authorised by him **shall declare the result of the voting**.

d) **Manner in which members have cast their votes**, i.e. affirming or negating the resolution, **shall remain secret and shall not be available to the Chairman, Scrutinizer or any other person** till the votes are cast in the GM.

e) If the **requisite no. of votes are cast in favour**, the **resolution shall be deemed to be passed on the date of the relevant GM.**

f) **Result declared along with the report of the scrutinizer shall be placed on the website of the Co**, after the result is declared by the Chairman.

g) In **case of listed Co**, the **Co. shall forward the results to the concerned stock exchange**(s) and such stock exchange(s) **shall place the results on its or their website.**

13) Resolution not to be withdrawn:

A resolution proposed to be considered through voting by electronic means shall not be withdrawn.

VOTING BY DEMAND OF POLL - Sec 109

1) Order of demand for poll by the chairman of meeting:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll

- **may** be ordered to be taken by the Chairman of the meeting on his own motion, and
- **shall** be ordered to be taken by him on a demand made in that behalf,—

a) In case a Co. having a share capital,
   - **by the members present in person or by proxy**, where allowed, and
   - **having not less than 1/10th of the total voting power or holding shares on which an aggregate sum of not less than Rs.5 lakh** or such higher amount as may be prescribed **has been paid-up**; and

b) In the case of any other Co,
   - **by any member or members present in person or by proxy**, where allowed, and **having not less than 1/10th of the total voting power**.

2) Withdrawal of the demand: The **demand for a poll may be withdrawn at any time by the persons who made the demand.**

3) A **poll demanded for adjournment** of the meeting **or appointment of Chairman** of the meeting **shall be taken forthwith.**

4) A **poll demanded on any question** other than adjournment of the meeting or appointment of Chairman **shall be taken at such time, not being later than 48 hours from the time when the demand was made**, as the Chairman of the meeting may direct.

5) Appointment of persons to scrutinize the poll process:

Where a poll is to be taken, the **Chairman** of the meeting **shall appoint such number of persons**, as he deems necessary, **to scrutinise the poll process and votes given on the poll and to report** thereon to him.

The **duties of a scrutinizer** shall be as follows –

- To **ensure proper conduct of the polling process**;
- To **maintain proper records of the poll**;
- To **submit a report** to Chairman of meeting **which shall contain the details of votes cast in the favour & against the resolution**; and
- To **ensure that the compliance of the provisions of Sec 109 and Rule 21.**

6) Chairman to regulate the conduct of poll:

Subject to the provisions of this section, Chairman of the meeting **shall have power to regulate the manner in which the poll shall be taken.**

7) Manner in which poll process shall be scrutinised (Rule 21):

Chairman of the meeting shall ensure that –

- Scrutinizers are **provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.**
- Scrutinizers are **provided with all the documents received by the Co. pursuant to Sec 105, 112 and 113.**
- Scrutinizers shall **arrange for Polling papers and distribute them to the members and proxies** present at the meeting; **in case of joint shareholders, to the first named holder or in his absence to the joint holder** attending the meeting as appearing in the chronological order in the folio and the **Polling paper shall be in Form No. MGT.12**.
- Scrutinizers shall **keep a record of the polling papers received in response to poll**, by **initialling it.**
- Scrutinizers shall **lock and seal an empty polling box in the presence of the members and proxies.**
- Scrutinizers **shall open the Polling box in the presence of 2 persons as witnesses** after the voting process is over.
- **In case of ambiguity about the validity of a proxy, Scrutinizers** shall **decide the validity in consultation with the Chairman.**
- Scrutinizers shall **ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded**.
- Scrutinizers shall **count the votes cast on poll and prepare a report** thereon addressed to the Chairman.
- Where **voting is conducted by electronic means** u/s 108 and rules made thereunder, the **Co. shall provide all the necessary support, technical and otherwise, to the Scrutinizers** in orderly conduct of the voting and counting the result thereof.
- **Scrutinizers' report shall state total votes cast, valid votes, votes in favour and against the resolution** including the details of invalid polling papers and votes comprised therein.
- Scrutinizers shall **submit the Report to the Chairman who shall counter-sign the same**.
- **Chairman shall declare the result of Voting on poll** either **by him or a person authorized by him in writing**.

Scrutinizers shall **submit a report to the Chairman** of the meeting **in Form No. MGT.13** and the **report shall be signed by the scrutinizer** and, **in case there is more than one scrutinizer by all the scrutinizer**, **within 7 days from the date the poll** is taken.

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8) Poll deemed to be the decision of the meeting:

The **result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.**

9) Applicability of Sec 109 to Private Companies -

Sec 109 shall apply unless otherwise specified in respective sections or the articles of the Co. provide otherwise.

This **exception shall be applicable to a private Co. which has not committed a default in filing its financial statements u/s 137 or annual return u/s 92 of the Act, with the Registrar.**

GENERAL MEETINGS (Chart 6.8)

PASSING OF RESOLUTIONS BY POSTAL BALLOT - Sec 110

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- According to the section,

1) A company—

a) **shall, in respect of such items of business as CG may**, by notification, **declare to be transacted only by means of postal ballot;** and

b) **may,** in respect of any item of business, **other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot**, instead of transacting such business at a GM.

Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a GM which is required to provide the facility to members **to vote by electronic means** u/s 108.

2) If a **resolution is assented to by the requisite majority** of the shareholders **by means of postal ballot, it shall be deemed to have been duly passed at a GM** convened in that behalf.

- **"Postal ballot"** includes **voting by shareholders by postal or electronic mode instead of voting personally** by presenting for transacting businesses in a GM.
- **"Requisite majority"**
  - **with regard to SR** means **votes cast in favour** of the business **is 3 times more than the votes cast against,**
  - **with regard to OR, votes cast in favour is more than the votes cast against.**

Procedure to be followed for conducting business through postal ballot - Rule 22

1) Notice to all shareholders:
Where a **Co. is required or decides to pass any resolution by way of postal ballot**, it **shall send**
- **a notice** to all shareholders either, **by Registered Post or speed post**, or through **electronic means** like registered **e-mail id** or through **courier service**
- **along with a draft resolution** explaining the reasons therefore and
- **requesting them to send their assent or dissent** in writing on a postal ballot **within 30 days** from the date of dispatch of the notice.

2) Publishing of an advertisement:
An **advt. shall be published at least once in a vernacular newspaper and English newspaper** about having dispatched the ballot papers and specifying therein, *inter alia*, the **following matters, namely:-**

a) a statement to the effect that the business is to be transacted by postal ballot which includes voting by electronic means;
b) the date of completion of dispatch of notices;
c) the date of commencement and end of voting;
d) the statement that any postal ballot received from the member beyond the said date will not be valid.
e) a statement to the effect that members, who have not received postal ballot forms may apply tocthe company and obtain a duplicate thereof;
f) contact details of the person responsible to address the grievances connected with the voting by postal ballot including voting by electronic means.

3) Notice also be placed on the website:
Notice of the postal ballot **shall also be placed on website of Co.** and it **shall remain on such website till the last date for receipt of the postal ballots** from the members.

4) Appointment of scrutinizer:
BOD shall appoint one scrutinizer, who is not in employment of the Co. and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

5) Assent by the requisite majority to the resolution:
If a **resolution is assented to by the requisite majority** of shareholders **by means of postal ballot** including voting by electronic means, it **shall be deemed to have been duly passed at a GM** convened in that behalf.

6) Postal ballot received to be kept under safe custody:
Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, **no person shall deface or destroy the ballot paper or declare the identity of the shareholder**.

7) Submission of report of the scrutinizer:
Scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but **not later than 7 days thereof.**

8) Maintenance of register by the Scrutinizer:
Scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of the shareholder and details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

9) Preservation of postal ballots:
Postal ballot and all other papers relating to postal ballot including voting by electronic means, **shall be under the safe custody of the scrutinizer** till the chairman considers, approves and signs the minutes and thereafter, the **scrutinizer shall return the ballot papers** and other related papers or register **to the Co.** who shall preserve such ballot papers and other related papers or register safely.

10) Reply from members:
Assent or dissent received after 30 days from the date of issue of notice **shall be treated as if reply from the member has not been received**.

11) Declaration of result:
Co. shall place on its website result of postal ballot and scrutinizer's report.

12) Provisions of Rule 20 to apply:
Provisions of Rule 20 regarding voting by electronic means shall apply, with the necessary changes to this rule in respect of the voting by electronic means.

13) Transaction of business through postal ballot: Following items of business shall be transacted only by means of voting through a postal ballot:

a) **alteration of the objects clause of the MoA** and in the case of Co. in existence immediately before the commencement of the Act, **alteration of the main objects of the MoA**;
b) **alteration of AoA in relation to insertion or removal of provisions which, u/s 2(68),** are required **in order to constitute a private Co**;
c) **change in place of R.O. outside the local limits** of any city, town or village as specified in Sec 12(5);
d) **change in objects for which a company has raised money from public** through prospectus **and still has any unutilized amt.** out of the money so raised u/s 13(8);
e) **issue of shares with differential rights** as to voting or dividend or otherwise u/s 43(a)(ii);
f) **variation in rights attached to a class of shares/debentures/other securities** u/s 48;
g) **buy-back of shares** u/s 68(1);
h) **election of Small Shareholder Director** u/s 151;
i) **sale of the whole or substantially the whole of an undertaking** of a Co. u/s 180(1)(a);
j) **giving loans or extending guarantee or providing security in excess of the limit** specified u/s 186(3)

Provided that **any aforesaid items of business, required to be transacted by means of postal ballot, may be transacted at a GM** which is **required to provide the facility to vote by electronic means** u/s 108.

14) Exemption: **OPC & All other companies having members upto 200 are not required to transact any business through postal ballot.**

CIRCULATION OF MEMBERS' RESOLUTIONS Sec 111

1) Notice to members:
Co. **shall, on requisition in writing of such number of members**, as required in Sec 100 (Calling of EGM),
- **give notice to members of any resolution** which may properly be moved and is intended to be moved at a meeting; and
- **circulate to members any statement** with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.

2) Exemption from serving notice:
Co. **shall not be bound to give notice of any resolution or to circulate any statement, unless—**

a) a **copy of the requisition signed by the requisitionists is deposited at the R.O.** of the Co,—
   i. **in the case of a requisition requiring notice of a resolution, not less than 6 weeks** before the meeting;
   ii. **in the case of any other requisition, not less than 2 weeks** before the meeting; and
b) **there is deposited or tendered** with the requisition, **a sum reasonably sufficient to meet the Co's expenses**.

If AGM is called on a date within 6 weeks after the copy has been deposited, the copy, although not deposited within the time required, shall be deemed to have been properly deposited

3) Exception from circulation of any statement: Co. **shall not be bound to circulate any statement**, if **on the application** either on behalf **of Co. or of any other person** who claims to be **aggrieved**, then **CG, by order, declares that the rights conferred are being abused** to secure needless publicity for defamatory matter.

4) Order to bear the cost: An **order** made may also **direct that the cost incurred** by the Co. **shall be paid to the Co. by the requisitionists**, notwithstanding that they are not parties to the application.

5) Default in contravention of the provision:
Co. and every officer in default shall be **liable to a penalty of Rs.25,000**.

GENERAL MEETINGS (Chart 6.9)

ORDINARY AND SPECIAL RESOLUTIONS Sec 114

1) Ordinary resolution - Conditions:

a) **Notice of the GM** has been duly **given**.
b) **Votes cast in favour** of the resolution are required to **exceed the votes cast against** the resolution.

2) Special resolution - Conditions:

a) **Notice of the GM** has been duly **given**.
b) **Intention to propose** the **resolution as a SR** has been duly **specified in the notice** of GM **or other intimation given to the members.**
c) **Votes cast in favour** of the resolution are required to be **not less than 3 times the votes cast against** the resolution.

3) Manner of casting votes:

- Votes may be cast by way of -
  a) **show of hands;**
  b) **poll;**
  c) **electronically; or**
  d) **postal ballot**.
- Votes may be cast by -
  a) **members present in person; or**
  b) **proxies** (where proxies are allowed)
- Votes cast **shall include the Casting vote of the Chairman**, if any.

4) Filing of SR:

A **copy of every SR** (together with explanatory statement) is **to be filed with Registrar within 30 days of passing SR** *(Sec 117).*

5) Notice of meeting with explanatory statement:

- **Notice** convening the meeting at which a SR is to be considered **must set out the actual wording of resolution**, and **also annex an explanatory statement** as required u/s 102.
- **Printed or typewritten copy of SR** (together with explanatory statement) duly **certified under the signature of an officer** of the Co. **must be filed with ROC within 30 days of its being passed** *(Sec 117)*.

6) Acts for which SR are required:

- Some **matters** may be so **important and outside the ordinary course** of Co's business, such as any important constitutional changes, **that safeguards should be imposed to ensure that a larger majority than a simple majority** of the members **approve** of them before they are given effect to.
- In addition to the requirements of the Act, a **Co's own articles may prescribe for SR where under the Act only an OR is necessary**.
- However, **where the Act specifies for a SR, the articles cannot provide for the different kind of resolution**.

RESOLUTIONS REQUIRING SPECIAL NOTICE Sec 115

1) When is special notice required?

- Any **provision contained in the Act or in the articles** may provide that special notice shall be required to move a resolution at a GM.
- Any provision contained in the articles of a company may provide that special notice shall be required to move a resolution at a GM.

2) Legal requirement for special notice:

- If special notice is required to move a resolution at a GM, then, **notice of the intention to move such a resolution shall be** given to the Co. **by such no. of members** -
  a) **holding not less than 1% of total voting power**; or
  b) **holding shares on which such aggregate sum not less than Rs.5 Lakh has been paid-up** on the date of notice.
- Such **notice shall be given to Co. (Rule 23)** -
  a) **not earlier than 3 months before the date of GM but at least 14 days before the GM** (excluding the day on which notice is given & day of GM);
  b) **signed by -**
    (i) **member(s) holding not less than 1 % of total voting power**; or
    (ii) **member(s) holding paid up share capital of not less than Rs.5 lakh.**

3) Notice to be given to the members (Rule23):

a) **Co. shall give notice of the intention** to move resolution, **to all its members at least 7 days before the date of GM** (excluding the day on which such notice is given and the day of GM).
b) **Notice shall be given in the same manner in which the Co. gives notices of GM**.
c) If it is **not practicable to give the notice in the same manner**, then,-
  (a) **notice shall be published** -
    - **at least 7 days before the date of GM** (excluding the day of publication of notice and the day of GM);
    - **in English newspaper, and vernacular newspaper**,
    - **both having wide circulation** in the State where the R.O. of the Co. is situated; and
  (b) **such notice shall also be placed on the website, if any, of the Co.**

4) Provisions contained in the Act requiring special notice:

a) **To appoint as auditor a person other than a retiring auditor** *(Sec 140).*
b) **Resolution at an AGM to provide that a retiring auditor shall not be re-appointed.**
c) **Resolution to remove a director before expiry of his period of office** *[Sec 169(2)].*
d) **Resolution to appoint another director in place of the removed director** *[(Sec 169(5)].*

Further, the articles may provide for additional matters which may require special resolution

RESOLUTION PASSED AT ADJOURNED MEETING (Sec 116)

Where a resolution is passed at an adjourned meeting of—

a) **company** or
b) **holders of any class of shares** in a Co; or
c) **Board of Directors** of a Co,

then, the **resolution shall, for all purposes, be treated as** having been **passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.**

RESOLUTIONS & AGREEMENTS TO BE FILED Sec 117

1) Filing of copy of resolution/ any agreement:

- A **copy of every resolution or any agreement**, in respect of matters specified in sub-section (3) **together with the explanatory statement** u/s 102, **shall be filed with Registrar within 30 days of the passing or making thereof.**
- **Provided** that **copy of every resolution which has effect of altering articles** and **copy of every agreement** referred above **shall be embodied in or annexed to every copy of the articles** issued after passing of resolution or making of the agreement.
- **According to Rule 24 of the *Companies (Management and Administration) Rules, 2014*, a copy of every resolution or any agreement required to be filed, together with the explanatory statement**

2) Failure to file the resolution/ the agreement:

- If any **Co. fails to file resolution/agreement before the expiry of the period**, such **Co. and every Officer in default including liquidator, if any, shall be liable to penalty of Rs.10,000** and
- in case of **continuing failure**, with further **penalty of Rs.100 for each day** subject to a **maximum of Rs.2L in case of Co. and Rs.50,000 in case of officer.**

3) Applicability:

Following resolutions and agreements **shall be filed with the RoC in Form MGT – 14 within 30 days** of its passing

a) **Special Resolutions;**
b) **Unanimous Resolutions;**
c) **any resolution of BOD or agreement executed by a Co, relating** to the appointment, re-appointment or renewal of the appointment, or variation of the terms of **appointment, of a MD**;
d) **Resolution of class of shareholders**;
e) **Resolutions requiring a Co. to be wound up voluntarily** passed in pursuance of Sec 59 of the IBC, 2016.
f) **Resolutions passed in pursuance of Sec 179(3);** Provided that **no person shall be entitled u/s 399 to inspect & obtain copies such resolution**,

[Provided further that **nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans** u/s 179(3)(f) **in the ordinary course of its business by, a Banking Co, NBFC, Housing Finance Co.]**

g) **Any other resolution or agreement as may be prescribed and place in the public domain.**

GENERAL MEETINGS (Chart 6.10)

Compiled By: CA Sahil Grover

MINUTES - Sec 118

Meaning of Minutes:

Minutes **represent a written record of business transacted at a meeting**.

Provisions contained in Act:

1) Preparation of the minutes of the proceedings of meetings:

- Every **Co. shall cause minutes of proceedings of every GM, of meeting of any class of shareholders, of meeting of any class of creditors, of meeting of BOD, of meeting of any committee of the Board and of every resolution passed by postal ballot**.
- Minutes **shall be prepared and signed within 30 days** of the conclusion of the meeting or passing of the resolution by postal ballot.

2) Contain fair and correct summary:

Minutes of each meeting **shall contain a fair and correct summary of proceedings.**

3) Appointments to be included in the minutes:

All **appointments made at any of the meetings** aforesaid **shall be included in the minutes**.

4) Other details:

In the **case of a meeting of the BOD or of a committee of the Board**, the **minutes shall also contain—**

a) the **names of the directors present at the meeting**; and

b) In the **case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution**.

5) Exemptions to matters from inclusion in the minutes:

There **shall not be included in the minutes, any matter which, in the opinion of the Chairman** of meeting,—

a) is or could **reasonably be regarded as defamatory of any person**; or

b) is **irrelevant or immaterial to the proceedings**; or

c) is **detrimental to the interests of the Co**.

6) Absolute discretion of chairman:

Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5).

7) Considered as evidence of the proceedings:

Minutes shall be evidence of the proceedings recorded therein.

8) Minutes signifies the validity of the procedure:

Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved,

- **meeting shall be deemed to have been duly called and held**, and
- **all proceedings thereat to have duly taken place**, and
- **resolutions passed by postal ballot to have been duly passed** and
- **all appointments of directors, KMP, auditors or CS in practice, shall be deemed to be valid**.

9) Matter contained in the minutes shall be circulated:

No document purporting to be a report of the proceedings of any GM of a Co. **shall be circulated or advertised at the expense of Co, unless it includes the matters required** by this section to be contained in minutes.

10) Adherence of secretarial standards by Co.:

Every **Co. shall observe secretarial standards with respect to GM & BM** specified by the ICSI.

11) Default in compliance:

If **any default is made in complying with the provisions** of this section in respect of any meeting, **the Co. shall be liable to a penalty of Rs.25,000** and **every officer of the Co. in default shall be liable to a penalty of Rs.5,000.**

12) Tampering with the minutes:

If a **person is found guilty of tampering with the minutes**, he **shall be punishable with imprisonment** for a term **which may extend to 2 years & with fine which shall not be less than Rs.25,000** but which **may extend to Rs. 1 Lakh**.

Rule 25 of the Companies (Management and administration) Rules. 2014

a) A distinct **minute book shall be maintained for**:

(i) **GM of the members**

(ii) **meetings of the creditors**

(iii) **meetings of the Board and**

(iv) **meetings of each of the committees of the Board**.

Explanation: **Resolutions passed by postal ballot shall be recorded in the minute book** of GM **as if it has been deemed to be passed in GM**.

b) Minutes **shall be entered in the books** maintained for that purpose **along with the date of such entry within 30 days of the conclusion of the meeting**.

c) In **case of every resolution passed by postal ballot**,

- a **brief report on the postal ballot conducted including the resolution proposed**,
- **result of the voting thereon** and
- **summary of the scrutinizer's report**

shall be entered in the minutes book of GM along with the date of such entry **within 30 days from the date of passing of resolution**.

d) Each page of every such book shall be initialled or signed and the **last page** of the record of proceedings of each meeting or each report in such books **shall be dated and signed –**

(i) in the case of minutes of proceedings of a meeting of the Board or of a committee thereof - **by the chairman of the said meeting or the chairman of the next succeeding meeting**

(ii) in case of minutes of proceedings of a GM -**by the chairman of the same meeting** within 30 days or in event **of death or inability of that chairman** within that period- **by a director** duly authorized by the Board for the purpose.

(iii) in case of every resolution passed by postal ballot: **by the chairman of the Board** within the aforesaid period of thirty days or in the event of **there being no chairman of the Board or the death or inability of that chairman** within that period- **by a director duly authorized by the Board for the purpose.**

e) Minute books shall be kept at the R.O. and **shall be preserved permanently** and **kept in the custody of the CS or any director** duly authorised by the board.

f) The minutes book of the Board and committee meetings shall be preserved permanently and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose and shall be kept in the registered office or such place as Board may decide.

INSPECTION OF MINUTES OF GM - Sec 119

1) Maintenance of minutes books and its inspection:

The **books containing the minutes** of any GM or of a resolution passed by postal ballot, shall—

a) **be kept at the R.O.** of the Co; and

b) be open, during business hours, to the inspection by any member without charge subject to such reasonable restrictions as the company may, by its articles or in general meeting, impose, so, however, that not less than 2 hours in each business day are allowed for inspection.

2) Issue of copy of minutes to the member:

Any member shall be entitled to be furnished, within 7 working days after he has made a request in that behalf to the Co. and on payment of such fees as may be prescribed, **with a copy of any minutes** referred to in sub-section (1).

3) Refusal of inspection or furnishing of copy of minutes:

If **any inspection under subsection (1) is refused**, or if **any copy required under sub-section (2) is not furnished** within the time specified therein, the **Co. shall be liable to a penalty of Rs.25,000 and every officer of Co. in default shall be liable to a penalty of Rs.5,000 for each such refusal or default**, as the case may be.

4) In case of default:

In the **case of any such refusal or default**, the **Tribunal may, without prejudice to any action being taken under sub-section (3), by order, direct an immediate inspection** of the minute-books **or direct that the copy required** shall forthwith **be sent to the person requiring it.**

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Copy of minute book of GM - Rule 26

- **Any member shall be entitled to be furnished, within 7 working days** after he has made a request in that behalf to Co, **with a copy of any minutes** of any GM, **on payment of such sum as may be specified in the AoA** of the Co, **but not exceeding a sum of Rs.10 for each page or part** of any page.

- Provided that **a member who has made a request for provision of soft copy** in respect **of minutes of any previous GM held during a period immediately preceding 3 F/Y's shall be entitled to be furnished, with the same at free of cost.**

Exemption to Section 8 companies:

In case of section 8 companies, section 118 shall not apply as a whole except that minutes may be recorded within 30 days of the conclusion of every meeting in case of companies where articles of association provide for confirmation of minutes by circulation]

The exceptions, modifications and adaptations, shall be applicable to a section 8 company which has not committed a default in filing its financial statements under 137 or Annual Return under section 92 with the Registrar. Notification dated 13th June, 2017.

GENERAL MEETINGS (Chart 6.11)

Maintenance and Inspection of Documents in Electronic Form Sec 120

Provisions contained in Act:

Where **any document, record, register, minutes**, etc.,—

a) **required to be kept by a Co**; or

b) **allowed to be inspected or copies to be given to any person** by a Co.

may be kept or inspected or copies given as the case may be, in electronic form in **such form and manner as may be prescribed** ***(Rule 27,28,29)***

Provisions contained in the Rules:

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1) Companies required to maintain the documents in electronic form:

- Every **listed Co.** or
- a **Co. having not less than 1000 shareholders, debenture holders and other security holders**,

may maintain its records in electronic form.

Explanation:- In **case of existing Co's, data may be converted from physical mode to electronic mode within 6 months from the date of notification** of provisions of Sec 120.

2) Maintenance of records according to the BOD:

Records in electronic form **shall be maintained in such manner as the BOD may think fit**, Provided that the -

a) **records are maintained in the same formats** and in accordance with all other requirements **as provided in the Act or the rules** made there under;

b) **information as required under the provisions of the Act or the rules** made there under **should be adequately recorded for future reference;**

c) **records must be capable of being readable, retrievable and reproducible in printed form**;

d) **records are capable of being dated and signed digitally**;

e) **records**, once dated and signed digitally, **shall not be capable of being edited or altered**;

f) **records shall be capable of being updated**, according to the provisions of the Act or the rules made there under, and the **date of updating shall be capable of being recorded on every updating**.

Explanation: ***"Records"*** means any **register, index, agreement, memorandum, minutes or any other document** required by the Act or the rules made there under **to be kept by a Co.**

Rule 28: sets out the security of records maintained in electronic forms and mentions that the **MD, CS or any other director or officer of the Co. as the Board may decide shall be responsible for the maintenance and security of electronic records.**

The person who is responsible for the maintenance and security of electronic records shall-

(a) provide adequate protection against unauthorized access, alteration or tampering of records;
(b) ensure against loss of the records as a result of damage to, or failure of the media on which the records are maintained;
(c) ensure that the signatory of electronic records does not repudiate the signed record as not genuine;
(d) ensure that computer systems, software and hardware are adequately secured and validated to ensure their accuracy, reliability and consistent intended performance;
(e) ensure that the computer systems can discern invalid and altered records;
(f) ensure that records are accurate, accessible, and capable of being reproduced for reference later;
(g) ensure that the records are at all times capable of being retrieved to a readable and printable form;
(h) ensure that records are kept in a non-rewritable and non-erasable format like .pdf version or some other version which cannot be altered or tampered;
(i) ensure that at least one backup, taken at a periodicity of not exceeding one day, are kept of the updated records kept in electronic form, every backup is authenticated and dated and such backups shall be securely kept at such places as may be decided by the Board;
(j) limit the access to the records to the managing director, company secretary or any other director or officer or persons performing work of the company as may be authorized by the Board in this behalf;
(k) ensure that any reproduction of non-electronic original records in electronic form is complete, authentic, true and legible when retrieved;
(l) arrange and index the records in a way that permits easy location, access and retrieval of any particular record; and
(m) take necessary steps to ensure security, integrity and confidentiality of records.

Rule 29: states that where a Co. maintains its records in electronic form, any duty imposed by the Act or rules made there under to make those records available for inspection or to provide copies of the whole or a part of those records, **shall be construed as a duty to make the records available for inspection in electronic form or to provide copies of those records containing a clear reproduction of the whole or part thereof, as the case may be on payment of not exceeding 10 rupees per page**

REPORT ON AGM- Sec 121

1) Report to be prepared by the listed public company:

Every listed public Co. **shall prepare in the prescribed manner (Form MGT- 15) a report on each AGM** including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

2) Filing of the report with the registrar:

The Co. **shall file with the Registrar a copy of the report within 30 days of the conclusion of the AGM** with such fees as may be prescribed, or with such additional fees as may be prescribed.

3) Default in filing of the report:

If the **Co. fails to file the report** under sub-section (2) **before the expiry of the period** specified therein,

- such **Co. shall be liable to a penalty of Rs.1 lakh** and in **case of continuing failure**, with further **penalty of Rs.500 for each day** after the first during which such failure continues, subject to a **maximum of Rs.5 lakhs** and
- **every officer** of the Co. who is **in default shall be liable to a penalty which shall not be less than Rs.25,000** and in **case of continuing failure,** with further **penalty of Rs.500 for each day** after the first during which such failure continues, subject to a **maximum of Rs.1 lakh**.

Rule 31 of Companies (Management & Administration) Rules, 2014:

1) The report shall be prepared in the following manner, namely:-
- a) the **report shall be prepared in addition to the minutes of the GM**;
- b) the **report shall be signed and dated by the Chairman** of the meeting or **in case of his inability to sign, by any two directors** of the Co, **one of whom shall be the MD**, if there is one **and CS** of the Co.;
- c) the **report shall contain the details** in respect of the following, namely:-
  - (i) the **day, date, hour and venue of the AGM**;
  - (ii) **confirmation with respect to appointment of Chairman** of the meeting;
  - (iii) **number of members attending the meeting**;
  - (iv) **confirmation of quorum**;
  - (v) **confirmation with respect to compliance of the Act and the Rules, secretarial standards** made there under **with respect to calling, convening and conducting the meeting**;
  - (vi) **business transacted at the meeting and result** thereof;
  - (vii) **particulars with respect to any adjournment, postponement of meeting, change in venue**; and
  - (viii) **any other points relevant for inclusion in the report**.
- d) the **report shall contain fair and correct summary of the proceedings of the meeting**.

2) The **copy of the report shall be filed with the Registrar in prescribed Form (MGT-15) within 30 days of the conclusion of the AGM** along with the fee.

APPLICABILITY OF CHAPTER VII TO OPC

1) Non-applicability of certain sections:

The provisions of **Sec 98** of the Companies Act, 2013 and **Sec. 100** to 111 of the Companies Act, 2013 (both inclusive) **shall not apply to OPC**.

2) Manner of passing resolutions:

a) In case of OPC, **for the purpose of transacting any business** (whether ordinary or special) at any GM (whether AGM or EGM) **by means of any resolution** (whether ordinary or special), it **shall be sufficient if-**
- (i) the **resolution is communicated by the member to the Co**;
- (ii) the **resolution is entered in the minutes-book**; and
- (iii) the **minutes books is signed and dated by the member**.

b) The **date of signing the minutes-book by the member shall be deemed to be the date of the meeting** for all the purposes under this Act.

3) Manner of transacting business required to be transacted in BM:

a) In **case there is only one director** in OPC, **any business which is required to be transacted at a BM, it shall be sufficient if-**
- (i) the **resolution is entered in the minutes-book**; and
- (ii) the **minutes book is signed and dated by such director**.

b) The **date of signing the minutes-book by the director shall be deemed to be the date of the meeting** for all the purposes under this Act.

MEMBERSHIP (Chart 7.1)

DEFINITION OF 'MEMBER' - Sec 2(55)

'Member', in relation to a Co, means -

(i) **The subscriber to the memorandum of the Co. who shall be deemed to have agreed to become member of the Co, and on its registration, shall be entered as member in its register of members; (Subscriber to MoA)**

(ii) **Every other person who agrees in writing to become a member of the Co. and whose name is entered in the register of members of the Co; (Person named in the register of members)**

(iii) **Every person holding shares of the Co. and whose name is entered as a beneficial owner in the records of a depository. (Beneficial owner of shares)**

MODES OF ACQUIRING MEMBERSHIP/ HOW TO BECOME A MEMBER

1) By subscribing to memorandum (MoA):

- The fact that a **person is a subscriber to MoA** is **sufficient to constitute such person a member** of the Co. **Subscribers** to MoA **become members by the fact of subscription** (i.e. signing on the MoA), and **not by reason of allotment of shares**.
- All the **subscribers to MoA become the members** of the Co. immediately **on incorporation of the Co. No application in writing is required** from a subscriber to MoA.
- It is **immaterial as to whether the shares have actually been allotted** to him or not.
- **No entry in the register of members** is **required** to constitute him a member.
- Subscribers to MoA are **called as 'founder members'/ 'deferred shares'**.

2) By allotment of shares:

Where shares are allotted to an **applicant** he **becomes a holder of shares**. However, he **becomes a member only when his name is entered in the register of members**.

3) By transfer:

Transferee of shares becomes a member only **when the transfer** of shares is **registered by the Co**, and the **name of the transferee is entered in the register of members**.

4) By transmission:

A **person entitled to the shares** of a member, **as a consequence of transmission**, **becomes a member when he gives a notice of fact of transmission to the Co, and his name is entered in the register of members**.

5) By becoming a beneficial owner of shares:

When the **shares are held in demat form**, a **beneficial owner** of shares **whose name is entered in the records of the depository is called as a member**.

6) By Estoppel or acquiescence:

A person, who knowingly permits entering his name in the register of members, becomes a member by estoppel or acquiescence. In other words, if the name of a person is entered in the register of members, although he is not a member, but such person does not object to it (i.e., he does not apply for rectification of register of members), he becomes a member by estoppel.

DISTINCTION BETWEEN MEMBER AND SHAREHOLDER

Basis of distinction	Member	Shareholder
Definition	'Member' is **defined u/s 2(55)** of the Companies Act, 2013.	'Shareholder' has **not been defined under the Companies Act**.
Meaning	'Member' generally means a **person whose name is entered in the register of members.**	'Shareholder' means a **person who holds shares in a Co**.
Nature of company	Every Co. **shall have the minimum no. of members**, whether it is limited by share capital or guarantee.	Only a **Co. having a share capital can have shareholders**. A Co. limited by **guarantee and having no share capital** does not have any shareholders.
Signatory to MoA	A **person** who signs the memorandum is a **deemed to be a member from the date of registration of the Co**.	A **person** who signs the memorandum **becomes a shareholder only when the shares are actually allotted** to him.
Transferor of shares until change in the register	A **transferor** of shares **continues to be a member until his name is removed from the register** of members, although he may not be a shareholder	Where a **person transfers his shares**, he immediately **ceases to be a shareholder**, even **though his name continues to appear in the register** of members.

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CAPACITY TO BECOME A MEMBER (WHO CAN BECOME A MEMBER)

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(1) MINOR:

It has been held in **Mohri Bibi vs. Dharmodas Ghose** that since a **minor has no contractual capacity, the agreement with a minor is void**. Therefore, a **minor or a lunatic cannot** enter into an agreement to **become a member**.

Consequences where a company allots shares to a minor:

(i) **Minor shall not be liable to pay any calls remaining unpaid** on shares held by him.

(ii) **Guardian can't be compelled to pay the calls due** on the shares held by a minor.

(iii) **Minor can repudiate the allotment made to him. Minor** shall be **entitled to receive back the money paid** by him.

(iv) **Co. can repudiate the allotment made to the minor. Minor** shall be **entitled to receive back the money paid** by him.

Consequences where minor attains majority:

(i) **On attaining majority**, minor **does not automatically become a member** in Co.

(ii) If **on attaining majority**, the minor **does anything which shows** that **he has accepted the membership**, the **minor shall be deemed to be a member**.

A minor can hold fully paid shares:

- There is **no legal bar on minor becoming a member** of a Co, **provided minor acquires the shares by way of transfer** and the **shares are fully paid up**, and **no further obligation or liability is attached to such shares.**
- Minor can become a member provided **4 conditions** are **fulfilled:**
  - **Company must be a Co. Ltd. by shares.**
  - **Shares are fully paid up.**
  - **Application for transfer is made on behalf of minor by lawful guardian.**
  - **Transfer is manifestly for the benefit of the minor.**

This was also confirmed in ***S.L. Bagree v. Britannia Industries.***

(2) COMPANY:

- Co. **can become a member of any other Co.** only **if authorised by MoA to purchase shares of any other Co**.
- **Subsidiary Co. cannot become a member of its holding Co.** ***(Sec 19)***

(3) CO-OPERATIVE SOCIETY:

- A **cooperative society is a legal person**, and so it **has power to hold property** & therefore, **can become a member** in a Co.
- A **society when registered under the Societies Registration Act, 1860 is a legal person,** and so **it can become a member** in a Co.

(4) TRADE UNION:

Trade Union registered under the Trade Unions Act, 1926 is legal person capable of holding property & therefore, **can become a member** in a Co.

(5) PARTNERSHIP FIRM:

- A firm is **not a legal person**. It **cannot hold property in its own name** and therefore, it **cannot become a member** in a Co.
- A firm **may be a member of a Co. incorporated u/s 8**.

(6) HUF:

- HUF is **not a separate legal person** & therefore **cannot become a member** in a Co. in its own name.
- HUF **can be a shareholder of a Co. through the name of Karta.**

(7) JOINT HOLDERS:

2 or more persons may hold the shares in a Co. in their joint names.

(8) FOREIGNER:

- A foreigner **can become a member** in a Co. **by complying with the requirements of FEMA, 1999**.
- **In case a war breaks out** with such foreign country, **the foreigner cannot enforce any right available to the members**.

(9) GOVERNMENT: CG or SG can become a member in a body corporate.

(10) INSOLVENT:

- The shares of the insolvent **vest in the official assignee or the official receiver**, as the case may be. However, an **insolvent continues as a member until his shares are sold by the official assignee or the official receiver**, as the case may be.
- **Until an insolvent is discharged, he cannot become a member.**

SHARES CAPITAL AND DEBENTURES (Chart 8.1)

CONCEPT OF CAPITAL

- **In relation to a company limited by shares, the word capital means share-capital, *i.e.*, the capital or figure in terms of so many rupees divided into shares of fixed amount.**
- **In other words, the contributions of persons to the common stock of the company form the capital of the company.**
- **The proportion of the capital to which each member is entitled, is his share.**

TYPES OF CAPITAL

a) Nominal or Authorised or Registered Capital [Sec 2(8)]:
- means **such capital as is authorised by the MoA** of a Co. **to be the maximum amt of share capital** of Co.
- **At the time of registration** of the Co, the **Co. has to pay fees to CG which is calculated with respect to authorised capital.**
- **At the time of increasing the authorised capital**, the **Co. has to pay fees to CG** which is **calculated as difference between the increased and existing authorised capital.**

b) Issued Capital [Sec2(50)]:
- means **such capital as the Co. issues from time to time for subscription.**
- **It is that part of authorised capital which is offered by the Co. for subscription and includes the shares allotted for consideration other than cash.**
- **Schedule III** of the Companies Act, 2013, **makes it obligatory for a Co. to disclose its issued capital in the balance sheet.**

c) Subscribed Capital [Sec 2(86)]:
- means **such part of the capital which is for the time being subscribed by the members** of a Co;
- It is the **nominal amt of shares taken up by public.**
- **Where any notice, advertisement or other official communication or any business letter, bill head or letter paper of a Co. states the authorised capital, the subscribed and paid-up capital must also be stated in equally conspicuous characters.**
- **A default in this regard will make the Co. and every officer in default liable to pay penalty extending Rs.10,000 and Rs.5,000 respectively. [Sec 60]**

d) Called-up Capital [Sec 2(15)]:
- means **such part of the capital, which has been called for payment;**
- **It is the total amt called up on the shares issued.**

e) Paid- up Capital:
- means the **total amt paid or credited as paid up on shares issued.**
- **It is equal to called up capital less calls in arrears.**

KINDS OF SHARE CAPITAL (SEC. 43)

1) Kinds of share capital:
Share capital shall be of **2 kinds**, namely:
a) **Preference share capital (PSC)**; and
b) **Equity share capital (ESC)**
(i) **with voting rights** [Plain vanilla (same voting rights)]; or
(ii) **with differential rights** as to **dividend, voting or otherwise.**

2) Preference share capital:
Share capital carrying a preferential right with respect to dividend and repayment of capital is termed as PSC.

(i) Preferential right as to payment of dividend:
- In a case, **where a dividend is declared** by the Co, the preference shareholders **shall have a preferential right to payment of dividend.**
- Such **preferential right may be —**
  a) **with respect to a fixed rate**; or
  b) **with respect to a fixed amount**;(which may be either free or subject to income tax)

(ii) Preferential right as to repayment of capital:
- In the **case of winding up** of the Co. **or** of **repayment of capital**, the preference shareholders **shall have a preferential right to the repayment of the amt of share capital paid up.**
- **Share capital shall be deemed to be PSC whether or not it is entitled to either or both of the following rights:**
  a) **Participation in surplus profits:**
  Right to participate with the ESC, **in the surplus profits in the case of payment of dividend.**
  b) **Participation in surplus assets:**
  Right to participate with the ESC, **in any surplus which may remain after the entire share capital is repaid in case of a winding up.**

3) Equity share capital:
Share capital which is not preference share capital is termed as Equity share capital

4) Applicability:
Sec 43 **applies to all companies, whether public or private.** Provisions of Sec 43 **shall not apply to a private whose MoA or AoA so provide.**

Note:

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1. Preference shareholders **may also participate in equity pool post the preferential entitlements. But to find out their rights of participation we must look within the four corners of the AoA and the terms of the issue. If the right to participate in the surplus is not specified in the terms of the issue, preference shares are presumed to be not participating. This was affirmed by the House of Lords in Scottish Insurance Corpn Ltd vs. Wilsons & Clyde Coal Co Ltd.**
2. Preference shares are **always presumed to be cumulative** and **the accumulation of dividend can be excluded only by a clear provision in the articles**

Condition for the issue of equity shares with differential right - Rule 4

1) Legal requirements for issue of shares with differential rights:
a) Issue of shares with differential rights **must be authorized by the articles.**
b) Issue of shares with differential rights **must be authorized by passing 'OR'.**
Where the **equity shares are listed, 'OR' shall be passed by postal ballot.**
c) **Voting power** in respect of shares **with differential rights shall not exceed 74 % of total voting power including** voting power in respect of **equity shares with differential rights issued at any point of time.**
d) Co. has **not defaulted in filing financial statements and annual returns for immediately preceding 3 F/Y's.**
e) Co. has **no subsisting default** with respect to -
(i) **payment of declared dividend**; or
(ii) **repayment of matured deposits or interest on deposits**; or
(iii) **redemption of debentures or interest on debentures**; or
(iv) **redemption of preference share**
f) Co. has **not defaulted in-**
(i) **payment of the dividend on preference shares**
(ii) **repayment of any term loan** from a public financial institution or State level financial institution or scheduled bank **or interest payable thereon**; or
(iii) **dues with respect to statutory payments relating to its employees**; or
(iv) **crediting the amt in IEPF.**
"Provided that **Co. may issue equity shares with differential rights upon expiry of 5 years** from the end of the F/Y in which such default was made good."
g) Co. **has not been penalized by Court or Tribunal during the last 3 years**, of any offence under -
(i) **RBI Act, 1934; or**
(ii) **SEBI Act, 1992; or**
(iii) **SCRA, 1956; or**
(iv) **FEMA, 1999; or**
(v) **any other special Act, under which such Co. is being regulated by any sectoral regulator.**

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2) Contents of Explanatory statement:
Explanatory statement to be annexed to the notice of GM or of a postal ballot shall **contain various matters like particulars of issue including its size, details of differential rights, etc.**

3) No conversion:
Co. **shall not convert its existing ESC with voting rights into ESC carrying differential voting rights and vice-versa.**

4) Disclosure in the Board's Report:
BOD **shall disclose the specified particulars in the Board's Report for the F/Y in which the issue of equity shares with differential rights was completed.**

5) Rights to the holders of the equity shares with differential rights:
Holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.

6) Particulars of shares to be maintained in Register of Members:
Where a Co. issues equity shares with differential rights the **Register of Members** maintained u/s 88 **shall contain all the relevant particulars of the shares with differential rights issued along with details of the shareholders.**

7) Shares issued under the Companies Act, 1956:
Equity shares with differential rights issued by any Co. **under the Companies Act, 1956** and rules made thereunder **shall continue to be regulated under such provisions and rules.**

Exemption: Section 43 shall not apply to private company, where memorandum or articles of association of the private company so provides. However, this exemption shall be available to only that private company which has not committed a default in filing its financial statements under section 137 or annual return under section 92 with the Registrar

NATURE OF SHARES - Sec 44

Shares & debentures shall be movable property and transferable in the manner provided by the articles of the Co.

NUMBERING OF SHARES - Sec 45

- Every share **shall be distinguished by its distinctive number.**
- **Exception** - Shares **held in depository system shall not have distinctive numbers.**

SHARES CAPITAL AND DEBENTURES (Chart 8.2)

SHARE CERTIFICATE - Sec 46

1) Share Certificate is prima facie evidence of title:

- A **certificate, issued** under the **common seal, if any, of the Co**. or **signed by 2 directors** or **by a director and the CS, wherever the Co. has appointed a CS, specifying the shares held by any person**,
- **shall be prima facie evidence of the title of the person to such shares**.

According to **Sec 46 (4)**, where a **share is held in depository form**, the **record of the depository is the prima facie evidence** of the **interest of the beneficial owner.**

2) Duplicate share certificate [Sec 46(2)]:

Co. **may issue a duplicate certificate of shares if** -

- it is **proved to have been lost or destroyed** or
- **having been defaced, mutilated or torn, and is surrendered to the Co**.

3) Manner of Issue of Certificates/Duplicate certificates:

Notwithstanding anything contained in articles of a Co.-

a) **manner of issue of a certificate of shares or the duplicate** thereof,
b) **form of such certificate**;
c) **particulars to be entered in the register of members**; and
d) **other matters**

shall be such as may be prescribed.(Rule 5,6,7)

4) Punishment for issuing Duplicate Certificate of Shares with intent to Defraud:

- If a Co. with intent to **defraud issues a duplicate certificate of shares,**
- ***Company*** **- fine which shall not be less than 5 times the face value of the shares involved in the issue of the duplicate certificate** but **which may extend to 10 times the face value of such shares or Rs.10 crores whichever is higher** and
- ***Every officer in default*** **- liable for action u/s 447**.

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Note:

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

Rule 5: Certificate of Shares (Where Shares are Not in Demat Form)

1. Where a company issues any share capital, **no certificate of any share or shares held in the company shall be issued, except**
   - in pursuance of a resolution **passed by the Board and**
   - **on surrender to the company of the letter of allotment or fractional coupons of requisite value,** save in cases of issues **against letters of acceptance or of renunciation, or in cases of issue of bonus shares:**

   Provided that if the letter of allotment is **lost or destroyed**, the Board may impose **such reasonable terms,** if any, as to seek **supporting evidence and indemnity** and the **payment of out-of-pocket expenses** incurred by the company in investigating evidence, as it may think fit.
2. **Form of share certificate:**

   Certificate of share or shares shall be in **Form No. SH.1** or as near thereto as possible and shall **specify the name(s) of the person(s) in whose favor the certificate is issued, the shares to which it relates and the amount paid-up thereon.**
3. **Every certificate shall be signed by two directors or by a director and the company secretary, wherever the company has appointed company secretary.**

   Provided that in case the company **has a common seal it shall be affixed in the presence of persons required to sign the certificate.**

Explanation. - For the purposes of this sub-rule, it is hereby clarified that,-

   a) in case of **an OPC**, it shall be sufficient if the **certificate is signed by a director and the company secretary or any other person authorised by the Board for the purpose.**
   b) a director or company secretary **shall be deemed to have signed the share certificate if his signature is printed thereon as facsimile signature** by means of **any machine, equipment or other mechanical means** such as **engraving in metal or lithography or digitally signed, but not by means of rubber stamp, provided that the director or company secretary** shall be **personally responsible for permitting the affixation** of his signature thus **and the safe custody of any machine, equipment or other material used for the purpose.**

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

Rule 6: Issue of Renewed or Duplicate Share Certificate

Issue of renewed certificate:

1. The certificate of any share or shares shall not be issued **in exchange for those defaced, mutilated, torn or old, worn out, or where the pages on the reverse for recording transfers have been duly utilized, unless the certificate in lieu of which it is issued is surrendered to the company**
2. Company may charge such **a fee as board may think fit**, but **not exceeding Rs. 50 per certificate;** and no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government.
3. On renewed certificate it **shall be stated that it is "Issued in lieu of share certificate No..... sub-divided/replaced/on consolidation"**

Issue of duplicate certificate:

1. The duplicate share certificate shall be not issued in **lieu of those that are lost or destroyed, without the prior consent of the Board and on such reasonable terms, such as furnishing supporting evidence and indemnity.**
2. **Company may charge fees as the Board thinks fit, not exceeding Rs.50 per certificate**
3. On the face of **duplicate certificate**, it shall be stated prominently that it **is "duplicate issued in lieu of share certificate No....."** and the **word "duplicate" shall be stamped or printed prominently.**
4. In case **unlisted companies,** the duplicate share certificates shall be issued within a period of **three months** and **in case of listed companies** such certificate shall **be issued within 45 days(earlier fifteen), from the date of submission of complete documents with the company respectively**.

Record of renewed and duplicate certificate to be maintained:

1. Particulars of every renewed and duplicate share certificates shall be entered forthwith in **a Register of Renewed and Duplicate Share Certificates** maintained in **Form No.SH.2**
2. The register shall be kept **at the registered office of the company or at such other place where the Register of Members is kept** and it shall be **preserved permanently** and shall be kept **in the custody of the company secretary of the company or any other person authorized by the Board for the purpose.**

Rule 7: Maintenance of share certificate forms and related books and documents

1.

- **All blank forms to be used for issue of share certificates shall be printed and the printing shall be done only on the authority of a resolution of the Board and the blank form shall be consecutively machine-numbered**
- The **forms and the blocks, engravings, facsimiles and hues relating to the printing of such forms** shall be kept in the **custody of the secretary or such other person as the Board may authorise** for the purpose;
- the **company secretary or other person** aforesaid shall be **responsible for rendering an account of these forms to the Board.**

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2. The **following persons shall be responsible** for the **maintenance, preservation and safe custody of all books and documents relating to the issue of share certificates, including the blank forms** of share certificates referred to in sub-rule (1), namely:—

   a) **the committee of the Board, if so authorized by the Board or where the company has a company secretary, the company secretary; or**
   b) **where the company has no company secretary, a Director specifically authorised by the Board for such purpose.**

3.

- **All books referred to in sub-rule (2)** shall **be preserved in good order not less than 30 years and in case of disputed cases, shall be preserved permanently, and**
- all **certificates surrendered to a company** shall **immediately be defaced by stamping or printing the word "cancelled" in bold letters and may be destroyed after the expiry of 3 years from the date on which they are surrendered, under the authority of a resolution of the Board and in the presence of a person duly appointed by the Board in this behalf**

SHARES CAPITAL AND DEBENTURES (Chart 8.3)

VOTING RIGHTS OF SHAREHOLDERS - Sec 47

1) Voting rights of equity shareholders:
- Every equity shareholder **shall have a right to vote on every resolution** placed before the Co.
- On a **poll, the voting right** of every equity shareholder **shall be in proportion to his share in the paid up ESC** of the Co.

2) Voting rights of preference shareholders:
- Every preference shareholder **shall have a right to vote-**
  a) on such **resolutions which directly affect his rights**;
  b) on any **resolution for the winding up of the Co**; and
  c) on any **resolution for the repayment or reduction of share capital (whether equity or preference).**
- On a **poll, the voting right** of **every preference shareholder shall be in proportion to his share in the paid up preference share capital** of the Co.

3) Earned voting rights (Second Proviso to section 47 (2)):
If the **dividend on any class of preference shares is not paid for 2 years or more**, then, **every preference shareholder of such class shall have a right to vote on every resolution** placed before the company

4) Proportion of voting rights (First Proviso to section 47 (2)):
If the equity as well as preference shareholders **have a right to vote on any resolution, then**, the **voting rights of equity and preference shareholders shall be in the same proportion which the paid up Equity SC bears to the paid up Preference SC**.

5) Applicability:
Sec 47 **applies to all companies, whether public or private**.
However it **shall not apply to a private Co. whose memorandum or articles so provide** provided such private Co. has not committed a default in filing its **FS u/s 137 or annual return u/s 92 with the Registrar**.

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Note:
1. **As per section 2(93) Voting right** means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.
2. **Section 106 specify provisions regarding restriction on voting rights.**
3. **Section 43 has overriding effect on section 47,** hence holders of equity share capital with differential **rights will exercise voting right as per clauses of article of association or terms of issue; rather on proportional basis**

VARIATION OF SHAREHOLDERS' RIGHTS - Sec 48

1) Variation in shareholders' rights with consent:
Rights attached to the shares of any class **may be varied with the consent in writing of the holders of not less than 3/4th of the issued shares** of that class **or by means of SR** passed by the shareholders of such class,-
  a) If **provision** w.r.t to **variation is contained in the MoA or AoA**; or
  b) In the **absence of any such provision**, then such **variation is not prohibited by the terms of issue of the shares of that class**:
Provided that if **variation by one class of shareholders affects the rights of any other class** of shareholders, the **consent of 3/4th** of such other class of shareholders **shall also be obtained and the provisions of this section shall apply to such variation.**

2) No consent to such variation:
- Where the **holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of SR**, they **may apply to the Tribunal to have the variation cancelled**.
- Where any such application is made, the **variation shall not have effect unless and until it is confirmed by the Tribunal.**
- **Application shall be made within 21 days after the date on which the consent was given or the resolution was passed** and **may be made on behalf of the shareholders entitled to make the application** by **all or 1 or more of the authorised persons.**

3) Decision shall be binding on shareholders:
Decision of the Tribunal on any application **shall be binding on the shareholders**.

4) Filing of order copy with the registrar:
Co. **shall, within 30 days of the date of the order** of the Tribunal, **file a copy with the Registrar**.

Crux of some of landmark judgements – to better understand the 'variation'
- New issue of preference shares ranking pari-passu with the existing shares does not amount to variation so as to require the consent of preference shareholders.**(White v Bristol Aeroplane Co Ltd)**
- Cancellation of shares and reduction of capital also do not amount to variation of class rights.**(Essar Steel Ltd, re, (2005))**

CALLS ON SHARES OF SAME CLASS TO BE MADE ON UNIFORM BASIS - Sec 49

- **'Call'** may be defined as a **demand made** by a Co. **on its shareholders to pay the whole or a part of the balance, remaining unpaid on each share** at any time during the continuance of a Co.
- Where any **calls are made on the shares of a class**, **such calls shall be made on a uniform basis on all shares falling under that class.**
- **Shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class**. Thus the provision is not applicable in case where **different amounts are paid for a same class for security.**

PAYMENT OF DIVIDEND IN PROPORTION TO AMOUNT PAID UP - Sec 51

- Generally, **dividend is paid as a proportion of nominal value** of a share.
- However, the **articles may provide** that the **dividend shall be paid in proportion to the amount paid-up** on each share.
- However**, in the case of preference shares, dividend is always paid at a fixed rate.**
- Thus **advance payment will never lead to increased voting rights** but **delayed payment** of call money **could be the reason of decreased voting rights**.

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CALLS IN ADVANCE- Sec 50

- Co. may, **if so authorised by the articles, accept** from any member the **whole or a part of the amount remaining unpaid** of any shares **although no part of that amt has been called up.**
- Amount so received or accepted is **described as payment in advance of calls**.
- **Consequences on receiving payment in advance of calls:**
  (i) Shareholder is **not entitled to voting rights in respect of the moneys so paid** by him **until the same** would **become presently payable**.
  (ii) **Shareholder's liability in respect of the call for which the amount is paid is extinguished**.
  (iii) Shareholder is **entitled to claim interest on the amount of the call** to **the extent payable according to AoA**. If there are **no profits, it must be paid out of capital, because shareholder becomes the creditor of the Co. in respect of this amt.**
  (iv) **Amount received in advance of calls is not refundable**.
  (v) In the **event of winding up,** the **shareholder ranks after the creditors, but must be paid his amount with interest**, if any before the other shareholders are paid off.
  (vi) **Power to receive the payment in advance** of calls **must be exercised in the general interest and for the benefit of the Co.**

SHARES CAPITAL AND DEBENTURES (Chart 8.4)

ISSUE OF SHARES AT PREMIUM - Sec 52

When a **security** of a given face value **is issued at price higher than its face value**, the issue is **called as issue at premium and the differential amt as premium**.

- **No condition for issue of securities at premium:**
  - **No provision is required in the articles** to issue the shares at premium.
  - The Companies Act, 2013 **does not prescribe any restriction or condition regarding issue of shares at premium**. Premium may be **received in cash or in kind.**
  - Where a Co. issues any shares at a premium, the **amt of premium received shall be transferred to the 'Securities Premium Account'**.
  - Provisions of this Act relating to reduction of share capital shall, except as provided in this section, **apply as if the securities premium account were the paid-up share capital of Co.**
- **Utilisation of premium:**

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a) **Issuing fully paid bonus shares** to the members.
b) **Writing off the preliminary expenses**.
c) **Writing off the expenses of, or commission paid, or discount allowed** on, issue of shares or debentures.
d) **Providing for the premium payable on the redemption of any redeemable preference shares or debentures**.
e) **For buy back of shares u/s 68**.

- **Who may apply the securities premium account?**

In case of such class of companies, as may be prescribed and whose financial statement comply with the AS prescribed for such class of companies u/s 133, the **'Securities Premium Account'** can be used for the following purposes:
a) **Issuing fully paid bonus shares** to the members.
b) **Writing off the expenses of, or commission paid, or discount allowed** on, issue of equity shares.
c) **For buy back of shares u/s 68**.

- **Utilisation of premium for other purposes:**

Where **'Securities Premium Account' is used for any purpose other than the purposes permitted** under the Act, then, the **provisions of the Act as are applicable to reduction of share capital shall apply, as if the 'Securities Premium Account' were the paid up share capital** of the Co

- **Issue of securities for cash or otherwise, is immaterial:**

Provisions w.r.t. transfer of premium received **to 'Securities Premium Account' and utilisation of 'Securities Premium Account' shall apply irrespective** of the fact that the **securities have been issued for cash or for consideration other than cash.**

Note: The amount of premium can't be treated as a free reserve as it is in the nature of a capital reserve

PROHIBITION ON ISSUE OF SHARES AT DISCOUNT [Sec 53]

1) **Prohibition:**
   - Issue of shares at a discount is **prohibited**.
   - The prohibition **applies to all companies, whether public or private**.
2) **Issue to be void:**
   Any **issue of shares at a discount** shall be **void**.
3) **Punishment for contravention:**
   Where any **Co. fails to comply with provisions** of this section, -
   - such **Co. and every officer who is in default** shall be **liable to a penalty** which may extend to an **amt equal to amt raised through the issue of shares at a discount or Rs.5 lakh, whichever is less**, and
   - the **Co. shall also be liable to refund all monies received with interest @ 12% p.a.** from the date of issue of such shares to the **persons to whom such shares have been issued**
4) **Exceptions:**
   a) **No prohibition on issue of sweat equity shares:**
      - Issue of sweat equity shares **does not fall within the purview of Sec 53**.
      - A **Co. may issue** sweat equity shares in **accordance with provisions of Sec 54**.
   b) **Issue of shares to creditors:**
      Co's are allowed to issue shares at a discount to its creditors **when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme** in accordance with any guidelines or **directions or regulations specified by RBI under the Banking Regulation Act, 1949 or RBI Act, 1934**.

ISSUE OF SWEAT EQUITY SHARES - Sec 2(88) & Sec 54

Definition of Sweat Equity Shares [Sec 2(88)]: means such **equity shares** as are **issued by a Co. to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights(IPR) or value additions**.

Conditions for issue of sweat equity shares (Sec 54):

A Co. **may issue sweat equity shares of a class of shares already issued**, if the **following conditions are fulfilled, namely**:
a) the **issue is authorised by a SR** passed by the Co;
b) the resolution **specifies the no. of shares, current market price, consideration, if any, and the class of directors or employees to whom such equity shares are to be issued**;
c) ***In case of listed shares*** - the sweat equity shares **are issued in accordance with the regulations made by the SEBI** and
In case of unlisted shares - the sweat equity shares are **issued in accordance with Rule 8.**

Rights, limitations, restrictions and provisions as are **applicable to equity shares shall be applicable to the sweat equity shares** and the **holders of such shares shall rank pari passu with other equity shareholders. [Sec 54(2)]**

Rule 8 of the Companies (Share and Debentures) Rules, 2014

1) **Authorised by Special Resolution:**
   A **Co. other than a listed Co, shall not issue sweat equity shares unless the issue authorised by SR** passed in GM.
   Meaning of 'Employee': means -
   (a) a **permanent employee** of the Co. who has been **working in India or outside India**; or
   (b) a **director** of the Co, whether a **WTD or not**; or
   (c) an **employee or a director as defined (a) or (b) above of a subsidiary, in or outside India, or of a holding Co. of the company**.
2) **Prescribed Particulars in Explanatory Statement:**
   Explanatory statement to be annexed to the notice of the GM **shall contain particulars like** the **date of the BM** at which the proposal for issue of sweat equity shares was approved, the **reasons or justification for the issue**, the **class of shares under which sweat equity shares are intended to be issued, the total no. of shares to be issued as sweat equity, the price at which the sweat equity shares are proposed to be issued, etc.**
3) **Validity of Special Resolution:**
   SR **shall be valid for making the allotment within a period of not more than 12 months from the date of passing of SR.**
4) **Limit on issue of Sweat Equity Shares:**
   - Co. **shall not issue sweat equity shares for more than 15% of the existing paid up ESC in a year or shares of the issue value of Rs.5 crores, whichever is higher**.
   - **Issuance of sweat equity shares in Co.(cumulative, including all previous issues, if any)shall not exceed 25% of the paid-up ESC** of the Co. **at any time**.
   - **Startup Co, may issue sweat equity shares not exceeding 50 % of its paid up capital upto 10 years from the date of its incorporation or registration.**
5) **Lock-in Period:**
   Sweat equity shares **shall be locked in/non-transferable for 3 years from the date of allotment.**
6) **Valuation of Sweat Equity Shares:**
   Sweat equity shares **shall be valued at a price determined by a registered valuer as the fair price giving justification for such valuation.**
7) **Valuation of IPR/know-how/value additions to be done by a Registered Valuer:**
   Valuation of IPR/know how/ value additions shall be carried out by a registered valuer, who shall **provide a proper report addressed to the BOD** with justification for such valuation.
8) **Valuation Reports to be sent to shareholders:**
   A **copy of gist along with critical elements of the valuation report** obtained under **clause (6) and clause (7) shall be sent to the shareholders** with the **notice of the GM**.
9) **Treatment of non-cash consideration:**
   Sweat equity shares issued for a non-cash consideration shall be treated in the following manner in the books of account:
   a) where the **non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet** or
   b) where **clause (a) is not applicable, it shall be expensed.**
10) **Disclosure in the Directors' Report:**
    BOD **shall disclose** in the Directors' Report **for the year in which such shares are issued, the specified details of issue of sweat equity shares.**
11) **Maintenance of Register:**
    - Co. **shall maintain a Register of Sweat Equity Shares in Form No.-SH.3 at the R.O.** of the company **or such other place as the Board may decide**.
    - The **entries in the register shall be authenticated by the CS** of the Co. **or by any other person authorized by the Board** for the purpose.

SHARES CAPITAL AND DEBENTURES (Chart 8.5)

PREFERNCE SHARES - ISSUE & REDEMPTION (Sec 55)

Conditions for Issue of Redeemable Preference Shares

1) Term of preference shares:
- Issue of **irredeemable preference shares is prohibited**.
- The **term** of preference shares **shall not exceed 20 years**.
- The **term** of preference shares **may exceed 20 years(but not exceeding 30 years)**, subject to the following **conditions**:
  a) Such **preference shares are issued for Infrastructure project** as **specified under Schedule VI**.
  b) The Co. **shall redeem, at the option of such preference shareholders, on an annual basis**, such percentage of preference shares as may be prescribed.(**10% of shares** starting from 21st year till 30th year.)

2) Power in articles:
Authorisation in the articles is required to issue the preference shares.

3) Compliance of Rules:
Conditions prescribed by CG under the Companies (Share Capital and Debentures) Rules, 2014 **must be complied with**.

Provisions contained in the Rule 9:

1) Conditions for issue of preference shares:
a) The **issue** of preference shares **must be authorized by passing 'SR' in GM**.
b) At the time of such issue of preference shares, **there must not be any subsisting default** with respect to –
  (i) the **redemption of preference shares** (whether issued before or after the commencement of this Act); or
  (ii) **payment of dividend** due on any preference shares.

2) Particulars to be entered in Register of Members:
Where a Co. issues preference shares, the **Register of Members maintained u/s 88 shall contain the particulars in respect of such preference share holder(s)**.

3) Compliance with SEBI Regulations:
Co. intending to list its preference shares on a recognized stock exchange **shall issue the preference shares in accordance with the relevant regulations made by SEBI**.

Conditions for Redemption of Preference Shares

1) Fully paid shares:
Preference shares **can be redeemed only if they are fully paid up**.

2) Sources of redemption:
- Out of the **profits available for dividend**.
- Out of a **fresh issue of shares** made for the purpose of such redemption.

3) Premium payable on redemption:
- **In case of prescribed class of companies whose financial statement comply with AS prescribed u/s 133 -**
  (i) Premium payable on redemption **shall be provided for out of the profits** of the Co;
  (ii) In **case of PSC issued before the commencement of this Act,** premium payable on redemption **may be provided** –
    a) **out of the profits** of the Co; or
    b) **out of securities premium account**.
- **In any other case -**
  Premium payable on redemption **may be provided for —**
    a) **out of profits** of Co; or
    b) **out of securities premium account**.

4) Creation of CRR:
a) Creation of CRR is **mandatory, if the preference shares are redeemed out of profits**.
b) **Amt to be transferred to CRR out of profits** = **Nominal value** of preference shares **proposed to be redeemed out of profits**.

5) Utilisation of CRR:
- CRR may be **utilised only for the purpose of issuing fully paid bonus shares** to the members.
- All the **provisions** of the Act **relating to reduction of share capital shall apply to CRR, as if CRR were the paid up capital** of the Co.

6) Notice to registrar: (Sec 64)
Notice of redemption of preference shares **is to be given to ROC within 30 days in the prescribed form (SH 7).**

7) Unredeemed Preference shares (Co. not in position to redeem any preference shares or to pay dividend):
- Company may -
  - with the **consent of the holders of ¾ in value of such preference shares**, and
  - with the **approval of the Tribunal on a petition made by it in this behalf**,

  issue further redeemable preference shares equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and **such unredeemed preference shares shall be deemed to have been redeemed.**
- **Tribunal shall**, while giving approval, **order the redemption** forthwith **of preference shares held by such persons who have not consented to the issue of further redeemable preference shares**.
- The **issue of further redeemable preference shares or the redemption of preference shares** under this section **shall not be deemed to be an increase or a reduction, in the share capital** of the Co.

DIFFERENCES BETWEEN PREFERENCE SHARES AND EQUITY SHARES

Basis of distinction	Preference shares	Equity shares
Definition	Shares **which carry a preferential right as to payment of dividend and repayment of capital** are called as preference shares.	Shares **other than preference shares** are called as equity shares.
Time of payment of dividend	Dividend on preference shares is **paid in priority to equity shares**.	Dividend on equity shares is **paid only when dividend has been paid on preference shares**.
Amount or rate of dividend	Dividend on preference shares is **paid at a fixed rate, or a fixed amount** is paid as dividend.	The **whole of the profits of the Co. after payment of preference dividend belong to the equity shareholders**. Thus, the dividend on equity shares varies with amount of profits.
Time of repayment of capital	In winding up, **repayment of preference capital is first made**, i.e., in priority to repayment of equity capital.	In winding up, **equity capital is repaid only after preference capital** has been fully repaid.
Voting rights	Holders of preference shares have **no right to vote in any GM**, except in certain cases.	Holders of equity shares **have a right to vote in every GM.**
Redemption of shares	Preference shares are **always redeemable**. No company can issue irredeemable preference shares.	Equity shares are **always irredeemable**, i.e., **no company can redeem the equity shares during its lifetime.**
Accumulation of arrears of dividend	**If dividend is not declared in a particular year**, such **dividend gets accumulated and is to be paid in future year(s), except in case of non-cumulative preference shares**.	**If dividend is not declared in an year, such dividend lapses**, and therefore **the equity shareholder has no right to receive to the dividend not declared in any past year.**

SHARES CAPITAL AND DEBENTURES (Chart 8.6)

TRANSFER AND TRANSISSION OF SHARES

TRANSFER OF SHARES

- Transfer of shares means the **voluntary conveyance of the rights and** possibly, the **duties of a member** (as represented in a share in the Co.) **from a shareholder who wishes to cease to be a member to a person desirous of becoming a member**.
- Sec 44 **empowers every shareholder to transfer his shares** in the manner laid down in the Articles and in accordance with the various provisions of law.
- **Shares in a public Co. are freely transferable**.
- A **private Co. may impose reasonable restrictions** on transferability of shares. However, a private Co. **cannot impose absolute prohibition** on transferability of shares.

TRANSMISSION OF SHARES

- When **a person becomes entitled to shares by operation of law**, it is termed as transmission.
- In the following cases, transmission of shares takes place:
  - **a) Death:** When a **shareholder expires**, his **shares** need to be **transmitted to his legal representative**.
  - **b) Insolvency:** When a **shareholder becomes insolvent**, his **shares** are to be **transmitted to his Official Receiver.**
  - **c) Lunacy:** When a **shareholder becomes lunatic**, his **shares** are to be **transmitted to his administrator appointed by Court**.
  - **d) Liquidation:** Where the **shareholder is a Co. & it goes into liquidation.**
- However, the **executors or administrators may decline to be registered as members** for various reasons. In that event the **legal representatives, shall be entitled to transfer the shares of the deceased by executing a transfer deed irrespective of whether they are partly paid or fully paid. Similarly, the official assignee has the statutory power to transfer the shares.**
- In case **legal representative elects to become a member, he must send a written and signed notice to the Co. notifying his decision**.

DIFFERENCE BETWEEN TRANSFER AND TRANSMISSION OF SHARES

Basis	Transfer of shares	Transmission of shares
Voluntary act or not	Transfer **is a voluntary act** of parties.	Transmission **takes place because of operation of law**. (Death, insolvency, etc)
Execution of transfer deed	Execution of a valid **transfer deed is necessary**.	**No transfer deed is required** to be executed if the person entitled to such shares agrees to become a member of the Co.
Payment of stamp duty	Stamp duty is **payable on transfer**.	**No Stamp duty is payable** in case of transmission.
Consideration	**Transfer** of shares is generally **made for some consideration**.	**Transmission** of shares **takes place without any consideration**.
Liabilities	As soon as the transfer is complete, the **liability of the transferor ceases.**	**Shares continue to be subject to the original liabilities**.

REQUIREMENTS FOR TRANSFER OR TRANSMISSION OF SECURITIES - Sec 56

1) Transfer deed:
- **Application** for transfer of securities **must be made in the Form No. SH-4**.[Rule 11]
- This form is **called as 'instrument of transfer' or 'transfer deed' or 'transfer form'.**

2) Execution of transfer deed: *Compiled By: CA Sahil Grover*
- Transfer deed **shall be stamped and dated**.
- Transfer deed **shall be executed (viz. signed) by or on behalf of the transferor and the transferee**.
- Transfer deed **shall specify the name, address and occupation, if any, of transferee**.

3) Submission of documents:
- Transfer deed (after stamping, dating and signing) **shall be submitted to the Co. within 60 days of execution**.
- **Certificate relating to the securities shall also be submitted** along with the transfer deed. However, **if the certificate is not in existence, then, the letter of allotment shall be submitted**.
- Transfer deed **may be submitted to the Co. by the transferor or transferee.**

4) Situation where transfer deed is lost or delivered after 60 days:
In case the **transfer deed is lost or delivered** to the Co. **after 60 days of its execution,** the **Co. may register the transfer of shares after obtaining such indemnity** as the Board may deem fit.

5) Instrument of Transfer not required in case of Bonds issued by a Govt Co:
- **Requirements of instrument of transfer shall not apply with respect to bonds issued by a Govt Co, provided that** an **intimation by the transferee** specifying his name, address, and occupation, if any, **has been delivered to the Co. along with the certificate relating to the bond**; and if **no such certificate is in existence, along with the letter of allotment of the bond.**
- **Provisions of this sub-section shall not apply to a Govt Co. in respect of the securities held by nominees of the govt.**

Note: The above exceptions are applicable to **a Govt. Co, which has not committed a default in filing its financial statements u/s 137 or Annual Return u/s 92 with the Registrar.**

6) Procedure for Transfer of partly paid Shares on an application of transferor alone [Sec 56(2)]: *Compiled By: CA Sahil Grover*

When is notice required?
- Co. is **required to give notice to the transferee** only **if both the following conditions are satisfied**:
  - a) Transfer deed is **presented to Co. by the transferor**.
  - b) **Shares are partly paid up**.
- **Notice shall be given by the Co. to the transferee.(Form no.SH 5) [Rule 11]**

Rights of transferee:
Transferee has the **right to object to the proposed transfer within 2 weeks from receipt of notice**.

Registration of transfer:
If the, **transferee fails to state his objections within 2 weeks, the Co. may thereafter register the transfer**.

7) Provisions w.r.t. shares held in demat form:
- **No transfer deed is required** for transfer of shares, **where the shares are held in demat form**.
- If any **transfer of shares is affected by any depository or depository participant with an intention to defraud any person, it shall, be liable u/s 447**.

8) Power of Co. to Register Transmission of Shares not affected by Sec 56(1):
- **According to Sec 56(2)** power of Co. to register shall not be affected by the provision contained in Sec 56 (1).
- Where **any person acquires any right to securities by operation of any law**, the **Co. may register the transmission of shares in favour of such person if the Co. receives intimation of transmission** from such person, **and no transfer deed shall be necessary**.

9) Transfer of securities by legal representative [Sec 56(5)]:
In case of death of holder of any security, transfer of such security **by the legal representative** of deceased **shall be valid** -
- even **though the legal representative is not the holder** of such security;
- **as if the legal representative were the holder** of such security.

10) Time limits for delivery of certificate relating to securities:
- **In case of allotment of securities to the subscribers to MoA- within 2 months of incorporation**
- **In case of any allotment of shares - within 2 months of allotment**
- **In case of any allotment of debentures - within 6 months of allotment**
- **In case of transfer or transmission of securities - within 1 month of receipt of transfer deed or intimation of transmission.**

Where securities are issued by a company in dematerialized form, the company shall intimate the details of allotment to the depository, immediately after allotment.

11) Default in compliance of provisions:
Where any default is made in complying with the provisions of sub-sections (1) to (5), the **Co. and every officer of the Co. in default shall be liable to a penalty of Rs.50,000.**

SHARES CAPITAL AND DEBENTURES (Chart 8.7)

PUNISHMENT ON PERSONATION OF SHAREHOLDER - Sec 57

1) **Prohibition on personation:**
   - If **any person deceitfully personates** as **an owner of** any **security or interest** in a Co, or of any **share warrant or coupon** issued in pursuance of this Act
   - and **thereby obtains** or attempts to obtain **any such security or interest or any such share warrant or coupon**, **or receives** or attempts to receive **any money due to any such owner**, he **shall be punishable u/s 57**.
2) **Punishment for contravention:**
   - **Imprisonment:** Minimum: **1 year** , Maximum: **3 years**
   - **Fine:** Minimum: **Rs.1 lakh** ,Maximum: **Rs.5 lakh**

Refusal to register transfer or transmission of securities by a Private co. & appeal against refusal - Sec 58

- **Refusal to register the transfer or transmission by Private Co. [Sec 58(1)]:**
  Compulsory issue of notice :
  Where a **private Co. refuses to register** the **transfer or transmission of any securities**, it **shall give a notice of such refusal**.
  Notice to whom?
  Notice shall be given **to transferor and the transferee or person giving intimation of transmission**.
  Time limit for sending notice:
  Notice shall be given **within 30 days** from the date on which the **transfer deed or the intimation** of transmission **was delivered to the Co.**
  Contents of notice: Notice shall **contain the reasons for refusal** to register the transfer or transmission.
- **Appeal against refusal [Sec 58(3)]:**
  - **Transferee may appeal to the Tribunal against the refusal within 30 days** of **receipt of notice of refusal.**
  - In case, **no notice of refusal** is sent by the Co, the **appeal must be filed within 60 days of delivery of the transfer deed or the intimation of transmission**.
- **Order of Tribunal [Sec 58(5)]:**
  Tribunal **shall hear the parties** to the appeal and **may either dismiss the appeal or may, by order**,
  - **direct that the transfer or transmission shall be registered** by the Co. and the **Co. shall comply with such order within 10 days of receipt of order** of Tribunal or
  - **direct rectification of register** and also **direct the Co. to pay damages, if any**, sustained by any party aggrieved.
- **Punishment for contravention [Sec 58(6)]:**
  Contravention of order of Tribunal is punishable with -
  - **Imprisonment:** Minimum- **1 year**; Maximum- **3 years**; and
  - **Fine:** Minimum- **Rs.1 Lakh**; Maximum- **Rs.5 Lakh**.

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Free transferability of securities in a Public co. & appeal against refusal

- **Free transferability of securities [Sec 58(2)]:** Securities in a public Co. shall be **freely transferable**. **Any contract or arrangement** between 2 or more persons in respect of transfer of securities **shall be enforceable as a contract**.
- **Appeal against refusal [Sec 58(4)]:**
  If a **public Co. without sufficient cause refuses to register the transfer of securities** within 30 days from the date on which the instrument of transfer or intimation of transmission, is delivered to the Co, the **transferee may, appeal to the Tribunal against the refusal within**
  - **60 days of such refusal or**
  - where **no intimation has been received** from the Co, **within 90 days of the delivery of the instrument of transfer or intimation of transmission**,
- **Order of Tribunal [Sec 58(5)]:** Same as discussed above
- **Punishment for contravention [Sec 58(6)]:** Same as discussed above

RECTIFICATION OF REGISTER OF MEMBERS -Sec 59

- **Right to appeal for rectification of register of members [Sec 59(1)]:**
  Grounds for appeal by aggrieved person: Without sufficient cause -
  - the **name of any person is entered in or omitted from the register of members**; or
  - **default or unnecessary delay is being made in entering in the register of members**, the **fact of any person having become a member or ceased to be member**.
  Who may appeal?
  - The **person aggrieved**; or **any member** of the Co; or the **company**.
  Appeal to whom?
  - The appeal **shall be filed with the Tribunal**.
  - **In case of foreign members or debenture holders residing outside India**, the appeal **shall be filed in a competent court outside India** as may be **specified by CG by notification.**
- **Order of Tribunal [Sec 59(2)]:**
  Tribunal may, **after hearing the parties to the appeal by order**,
  - either **dismiss the appeal,** or
  - **direct that the transfer or transmission shall be registered** by Co. **within 10 days of receipt of order** or
  - **direct rectification of the records of the depository or the register of members and in latter case, direct the Co. to pay damages,** if any, **sustained by any party aggrieved.**
- **Right to transfer/vote not restricted [Sec 59(3)]:**
  - Sec 59 **shall not restrict the right of a holder of securities, to transfer such securities**.
  - Any **person acquiring such securities shall be entitled to voting rights unless** the voting rights have been **suspended by an order of Tribunal**.
- **Application to Tribunal to set right the contravention of any law [Sec 59(4)]:**
  Applicability of Sec 59(4):
  Sec 59(4) is attracted **where the transfer of securities is in contravention** of any of the provisions of the **Companies Act, 2013;** or **SCRA, 1956;** or **SEBI Act, 1992;** or **any other law** for the time being in force.
  Right conferred u/s 59(4):
  Right to make an **application for rectification of registers and records, and to set right the contravention.**
  Application by whom?
  - **Company**
  - **Depository**
  - **Depository Participant**
  - **SEBI**
  - **Holder of the securities**

  Application to whom?
  The application shall be made to the **Tribunal** and Tribunal **may direct the Co. or the depository to set right the contravention and rectify its register or records**.

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FORGED TRANSFER

- **Meaning of forged transfer :**
  It means **transfer of shares made on the basis of a transfer deed on which the transferor's signatures are forged**.
- **Forged transfer is void ab initio:**
  A **forged transfer is a nullity** (i.e. **without any legal effect**).
- **Rights of parties:**
  a) **Transferee is not legally entitled to continue as a member.**
  b) **Original owner continues to be the member**.
  c) Where a **Co. has registered the transferee as a member on the basis of a forged transfer, following consequences** shall follow:
     - **Original owner can compel the Co. to restore his name on the register of members**
     - **Co. shall cancel the share certificate issued to the transferee**, and consequently transferee's name shall be struck off from register of members,
     - Where the **transferee has already transferred the shares to an innocent purchaser**, the position will be as follows: -
       - **Co. shall refuse to register the new purchaser** of shares, **as a member**.
       - **New purchaser of shares shall have a right to claim damages** from the Co.
       - **Co. shall have a right to recover damages (i.e. indemnity) from the person who had lodged the forged transfer deed**.

ALTERATION OF SHARE CAPITAL - Sec 61

- **Limited Co. having a share capital** may, if so **authorised by its articles, alter its MoA** in its GM to -
  a) **increase its authorised share capital** by such amt as it thinks expedient.
  b) **consolidate and divide all or any of its share capital** into shares of a larger amt than its existing shares. However, **no consolidation and division will result in changes in the voting %** of shareholders **unless it is approved by the Tribunal.**
  c) **convert all or any of its fully paid-up shares into stock**, and **reconvert that stock into fully paid-up shares of any denomination**.
  d) sub-divide its shares, into shares of smaller amt than is fixed by the MoA. However, the **proportion between the amt paid and amt, if any, unpaid** on each reduced share **shall be the same as it was in the case of the share from which the reduced share is derived**.
  e) cancel shares which, at the date of passing of resolution in that behalf, have not been taken or agreed to be taken by any person, and **diminish the amt of its share capital by the amt of shares so cancelled**.
- The **cancellation of shares shall not be deemed to be a reduction of share capital**.
- **Within 30 days** of the shares **having been consolidated, converted, sub-divided, redeemed, or cancelled or the stock having been reconverted, notice should be given to the Registrar in Form SH 7 along with an altered MoA [Sec 64].**

SHARES CAPITAL AND DEBENTURES (Chart 8.8)

STOCK

- **Meaning:**
  Stock means a **bundle of shares expressed in a lump sum**. It means the **aggregate of fully paid up shares** of a member **merged into one fund**.
- **Original issue of stock is not permissible:**
  - A Co. **cannot make an original issue of stock**. **Sec 61 authorises** a Co. **to convert its fully paid shares into stock**.
- **Conditions for conversion of shares into stock:**
  a) Co. is **authorised by the articles** in this behalf.
  b) Co. **passes an OR**.
  c) As per Sec 64, **notice of conversion of shares into stock is to be given to ROC within 30 days**, in the prescribed form along with a copy of altered MoA.
- **Effects of conversion of shares into stock:**
  - **'Share' includes stock** except where a distinction between stock & shares is expressed or implied.
  - **Register of members shall show the amt of stock held by each member** instead of the shares previously held by each member.
  - **Conversion** of shares into stock **does not affect in anyway the rights of a member**.
  - **Stock can be transferred in the same way as the shares can be transferred** with the only difference that **stock can be transferred in fractions**.
- **Reconversion of stock into shares:**
  For **reconversion of stock into shares**, the **Co. shall comply with the same conditions as required to be complied with at time of conversion of shares into stock**.

DISTINCTION BETWEEN SHARES AND STOCK

Basis	Shares	Stock
Nature	Share **represents the smallest unit into which the capital** of the Co. **is divided**.	Stock means a **bundle of shares expressed in a lump sum**. It means the aggregate of fully paid up shares of a member merged into one fund.
Time of issue	Shares **can be issued in the first instance**, i.e., an **original issue** of shares **can be made**.	Co. **cannot issue the stock** i.e. a Co. **cannot make an original issue of stock**. Shares, if fully paid, may be converted into stock.
Paid up value	Shares **may be fully paid or partly paid**.	Stock shall **always be fully paid**.
Nominal value	Share **has a nominal value**.	Stock **has no nominal value**.
Transfer in fractions	Shares **cannot be transferred in fractional amount.**	Stock **can be transferred in fractional amounts.**
Distinctive number	**Every share has a distinctive number (except in depository system)**.	Stock **has no distinctive numbers.**
Authorisa-tion for issue	**No authorisa-tion in the articles is required** for issue of shares.	**Co. may convert** its fully paid up shares into stock **only if authorised by the articles.**

RIGHT SHARES OR RIGHT OF PRE-EMPTION OR FURTHER ISSUE OF SHARES - Sec 62

1) Applicability of Sec 62:
- Sec 62 **applies to all Co. having a share capital**.
- Sec 62 **applies when a Co. proposes to issue further shares**.

2) Offer of further shares to existing shareholders (i.e. Right Shares):
- Further shares shall be offered to the existing equity shareholders **in proportion to the paid up share capital held by them**.
- Every **existing shareholder shall have a right to**
  a) **accept/decline the offer**; or
  b) **renounce the shares in favour of any other person** (unless articles restrict such right).

3) Letter of offer:
- **Further shares shall be offered to the existing shareholders by sending to each of them, a letter of offer.**
- Letter of offer **shall be dispatched** to all the existing shareholders **by registered post or speed post or electronic mode or courier or any other mode having proof of delivery at least 3 days before the opening of the issue**.
- Letter of offer **shall specify** -
  a) **No. of shares offered**;
  b) **The time** (Min. 15 days or **such lesser no. of days as may be prescribed (7 days from date of offer)] [Rule 12A]** , and **Max. 30 days) within which the offer may be accepted;**
  c) **statement** that if the **offer is not accepted with time specified**, the offer **shall be deemed to have been declined**; and
  d) **statement** that every **shareholder has a right to renounce** (unless the articles restrict such right).

Notwithstanding anything contained in this sub clause and subsection (2), **in case 90% of the members of a private Co. have given their consent** in writing or in electronic mode, **periods lesser than those specified in the said sub clause or subsection shall apply**.

4) Disposal of shares, if offer is not accepted [Sec 62(1)(a)(iii)]:
If **after the expiry of the time specified in the notice** aforesaid, **or on receipt of earlier intimation** from the **person** to whom such notice is given that he **declines to accept the offer**, the **BOD may dispose of them in such manner which is not disadvantageous to the shareholders and the Co.**

5) Offer of further shares to employees [Sec 62(1)(b)]: Further shares **may be offered to the employees**, if offered –
- under **Employees' Stock Option Scheme**;
- under an authority of **SR passed by the Co**. ; and
- by **complying with such conditions** as may be prescribed.**{Rule 12}**

In case of private Co. instead of 'SR' an 'OR' shall be sufficient.

6) Offer of further shares to any person [Sec 62(1)(c)] :
Further shares **may be offered to any persons** (whether or not those persons include the existing shareholders or employees, and whether these shares are issued for cash or for consideration other than cash), **if** -
a) the **price of such shares is determined by the valuation report of a registered valuer**; subject to compliance with provisions of Chapter III and any other conditions as may be prescribed.
b) it is **authorised by SR** passed by the Co; and
c) **conditions as may be prescribed, are complied with**.

This clause **authorises Co. to issue shares to persons other than its existing shareholders and to employees under ESOP**. However, the process to issue those shares is provided under Sec 42 (Private placement).

Exceptions:

➢ **Allotment of shares on account of conversion of loans or debenture into shares [Sec 62(3)]:**
Nothing in Sec 62 **shall restrict** the power of the **Co. to allot shares on account of conversion of loans or debentures into shares**, if -
(a) the **terms of issue** of **such debentures or the terms of raising such loan contained a term regarding** conversion of debentures or loans into shares and
(b) **terms were approved**, before the issue of such debentures or raising loans, **by passing SR.**

➢ **Allotment of shares on account of conversion of loans or debentures into shares consequent to order of Govt [Sec 62(4) to 62(6)]:**
a) **CG may make an order** that-
   - **debentures issued to the Govt** by a Co; or
   - **loans obtained from the Govt** by a Co.

   shall be converted into shares in the Co.
b) **Order shall be final and conclusive except** to the extent that the Co. may prefer an appeal to the Tribunal alleging that the **terms and conditions of conversion are not acceptable to the Co**.
c) CG may make such an **order even if the terms of issue of such debentures or loans do not contain any provision for conversion.**
d) **Order** for conversion can be given **only if CG is of the opinion that it is necessary in the public interest** to make an order of conversion.
e) **Terms of conversion** of such debentures or loans **shall be such as appear reasonable to CG**.
f) In determining the terms and conditions of conversion, the **Govt shall have due regard to** -
   - **financial position of Co**,
   - **terms of issue of debentures or loans**,
   - **rate of interest payable** on such debentures or loans and
   - **such other matters** as it may consider necessary.

Appeal by the Co. to the Tribunal:
a) If the **terms and conditions** of such conversion **are not acceptable to the Co**, the Co. **may prefer an appeal to the Tribunal within 60 days from the date of communication of such order**.
b) **Tribunal** shall **after hearing the Co. and the Govt pass such order as it deems fit.**

If required, MoA needs to be altered to accommodate increased share capital [Sec 62(6)]:
- Where the **Govt has, by an order directed that any debenture or loan or any part thereof shall be converted into shares** in a Co. and
- where **no appeal has been preferred to the Tribunal or** where such appeal has been **dismissed**,

then the **MoA** of Co. **shall stand altered** and the **authorised share capital** of such Co. **shall stand increased by an amount equal to the value of shares which such debentures or loans or part thereof has been converted into.**

SHARES CAPITAL AND DEBENTURES (Chart 8.9)

ISSUE OF EMPLOYEE STOCK OPTIONS [ESOPs]

As per **Sec 2(37)**, 'employees' stock option' **means** -

- the **option given to the directors, officers or employees of a Co. or of its holding Co. or subsidiary Co.(s)**,if any, **which gives** such directors, officers or employees, the **benefit or right to purchase, or to subscribe for, the shares** of the Co. **at a future date at a predetermined price.**

Legal Provisions

- A **listed Co.** while issuing shares under ESOP Scheme **shall follow the provisions of SEBI (Share Based Employee Benefits) Regulations, 2014**. In case an **unlisted Co.** desires to issue shares under ESOP Scheme to its directors, officers or employees, **Rule 12 of the Companies (Shares and Debentures) Rules, 2014 requires certain conditions to be fulfilled**. Some of the important provisions are discussed hereunder:

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1) Passing of SR [Rule 12(1)]:

Issue of ESOP **shall be approved by the shareholders** of the Co. **by passing SR**.

Meaning of Employee:

"Employee" means-

a) a **permanent employee** of the Co. who has been **working in India or outside India**; or

b) a **director** of the Co, **whether a whole time director or not** but **excluding an independent director**; or

c) an **employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding Co.** of the company but **does not include**-

i. an **employee who is a promoter or a person belonging to the promoter group**; or

ii. a **director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares** of the Co.

Provided that **in case of a startup Co. the conditions mentioned in sub-clauses (i) and (ii) shall not apply up to 10 years from the date of its incorporation or registration.**

2) Disclosures in the explanatory statement [Rule 12(2)]:

Co. **shall make the specified disclosures in the explanatory statement** annexed to the notice for passing of the resolution.

3) Determination of the exercise price [Rule 12(3)]:

Co's granting option to its employees under ESOP will have the **freedom to determine the exercise price** in conformity with the applicable accounting policies, if any.

4) Approval by way of separate resolution:

Approval of shareholders by **way of separate resolution shall be obtained by the Co. in case of** -

a) **grant of option to employees of subsidiary or holding Co**; or

b) **grant of option to identified employees**, during any one year, **equal to or exceeding 1% of the issued capital** (excluding outstanding warrants and conversions) **of the Co. at the time of grant of option.**

5) Requirements with respect to minimum time period and lock in period [Rule 12(6)]:

a) There shall be a **minimum period of 1 year between the grant of options and vesting of option.**
Provided that in a case **where options are granted by merged or amalgamated Co.** in lieu of options held by the same person under merging or amalgamating Co, the **period during which the options granted by the merging or amalgamating Co. were held** by him **shall be adjusted against the minimum vesting period.**

b) Co. shall have the **freedom to specify the lock-in period** for the shares issued under option.

c) Employees **shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of shareholder** in respect of option granted to them, **till shares are issued**.

6) Refund or Forfeiture of price paid at time of grant of option [Rule 12(7)]:

The **amount, if any, payable by the employees, at the time of grant of option-**

a) may be **forfeited** by the Co. **if the option is not exercised by the employees within the exercise period**; or

b) **amount may be refunded to employees if the options are not vested due to non-fulfillment of conditions** relating to vesting of option.

7) Other conditions [Rule 12(8)]:

a) The option granted to employees **shall not be transferable** to any other person.

b) The option granted to the employees **shall not be pledged, hypothecated, mortgaged or otherwise encumbered or alienated** in any other manner.

c) Subject to clause (d), **no person other than the employees** to whom the option is granted **shall be entitled to exercise option**.

d) In the event of the **death of employee** while in employment, all the **options granted to him** till such date **shall vest in the legal heirs or nominees** of the deceased employee.

e) In case the employee suffers a **permanent incapacity** while in employment, all the **options granted to him** as on the date of permanent incapacitation, **shall vest in him on that day**.

f) In the event of **resignation or termination** of employment, all **options not vested in the employee as on that day shall expire**. However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

8) Register of Employee Stock Option:

- Co. **shall maintain a Register of Employee Stock Options in Form No. SH.6** and shall forthwith enter therein the particulars of option granted u/s 62(1)(b).
- Register **shall be maintained at the R.O. of the Co. or such other place as the Board may decide**.
- **Entries** in the register **shall be authenticated by the CS of the Co. or by any other person authorized by the Board.**

BONUS SHARES - Sec 63

Meaning of Bonus Shares:

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

Condition and the manner of issue of Bonus Shares:

1) Co. **may issue fully paid-up bonus shares** to its members, **out of** -

(i) its **free reserves**;

(ii) the **securities premium account**; or

(iii) the **CRR account**

Provided that **no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets**.

2) No Co. shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares **unless** -

a) **authorised by its articles**;

b) it has, **on recommendation of the Board**, been **authorised in the GM** of Co;

c) it has **not defaulted in payment of interest or principal in respect of fixed deposits or debt securities** issued by it;

d) it has **not defaulted in respect of the payment of statutory dues of the employees**, such as, contribution to provident fund, gratuity and bonus;

e) the **partly paid-up shares, if any** outstanding on the date of allotment, **are made fully paid-up**;

f) it **complies with such conditions** as may be prescribed.**(Rule 14)**

Co. which has **once announced** the decision of its Board **recommending a bonus issue, shall not subsequently withdraw the same [Rule 14].**

3) Bonus shares **shall not be issued in lieu of dividend**.

NOTICE TO BE GIVEN TO REGISTRAR FOR ALTERATION OF SHARE CAPITAL, ETC. - Sec 64

- **When is notice required?**

Co. shall give notice to ROC **in case of-** *Compiled By: CA Sahil Grover*

- **alteration of share capital** as per Sec 61;
- **increase in the authorised share capital consequent to the order of the Govt as per Sec 62;**
- **redemption of preference shares** as per Sec 55.
- **company not having share capital increases number of its members (Rule 15)**

- **Procedure for giving notice:**

a) Notice shall be **given to ROC within 30 days**.

b) Notice shall be **given in the prescribed form.[SH 7]**

c) A **copy of altered MoA shall also be filed** with ROC.

- **Punishment in contravention of the provision:**

Where any Co. fails to comply with the provisions of sub-section (1), such **Co. and every officer who is in default shall be liable to a penalty of Rs.500 for each day** during which such default continues, subject to a **maximum of Rs.5L in case of a Co.** and **Rs.1L in case of an officer** who is in default.

SHARES CAPITAL AND DEBENTURES (Chart 8.10)

REDUCTION OF SHARE CAPITAL - Sec 66

1) Reduction of share capital by SR to be confirmed by Tribunal:
Subject to **confirmation by the Tribunal** on an application by the Co, a **Co. limited by shares or limited by guarantee and having a share capital** may, **by a SR, reduce the share capital** and may-
a) **extinguish or reduce the liability** on any of its shares **in respect of the share capital not paid-up**; or
b) either **with or without extinguishing or reducing liability on any of its shares**,-
   i. **cancel any paid-up share capital which is lost or is unrepresented by available assets**; or
   ii. **pay off any paid-up share capital** which is **in excess of the wants of the Co**,
alter its MoA by reducing the amt of its share capital and of its shares accordingly.

No reduction shall be made: if the Co. is in **arrears in the repayment of any deposits accepted** by it, **or the interest payable** thereon.

2) Issue of Notice from the Tribunal:
Tribunal **shall give notice of every application** made to it under sub-section (1) to the -
- **CG** (Power delegated to **Regional Director**),
- **Registrar** and
- **SEBI, in case of listed Co**, and
- **Creditors** of the Co. and

shall **take into consideration** the **representations** if any made by CG, Registrar, SEBI, Creditors, **within a period of 3 months from the date of receipt of the notice.**
Provided that **where no representation** has been **received within the said period**, it **shall be presumed that they have no objection to the reduction.**

3) Order of tribunal:
Tribunal may, if it is satisfied that -
- the **debt or claim of every creditor** of the Co. **has been discharged or determined or secured or his consent is obtained**,
- **make an order confirming the reduction of share capital** on such terms and conditions as it deems fit.

Provided that **no application** for reduction of share capital **shall be sanctioned by the Tribunal unless**:
- the **accounting treatment, proposed** by the Co. for such reduction **is in conformity with the AS specified u/s 133 or any other provision** of this Act and
- a **certificate to that effect by the company's auditor has been filed with the Tribunal**.

4) Publishing of order of confirmation of tribunal:
The **order of confirmation** of the reduction of share capital by the Tribunal under sub-section (3) **shall be published by the Co.** in such manner as the Tribunal may direct.

5) Delivery of certified copy of order to the registrar:
Co. shall **deliver a certified copy of the order** of the Tribunal under subsection (3) **and of a minute approved by the Tribunal showing** -
a) the **amount of share capital**;
b) the **number of shares into which it is to be divided**;
c) the **amount of each share**; and
d) the **amount**, if any, at the date of registration **deemed to be paid-up on each share**,
to the Registrar within 30 days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

6) Exemption to Buy-Back:
Nothing in this section **shall apply to buy-back** of its **own securities by a Co. u/s 68**.

7) No liability of member:
A **member** of the Co, past or present, **shall not be liable to any call or contribution in respect of any share** held by him **exceeding the amt of difference**, if any, **between** the **amt paid on the share, or reduced amt**, if any, which is to be deemed to have been paid thereon, as the case may be, **and the amt of the share as fixed by the order of reduction**.

8) In case where creditor is entitled to object but was not included in the list of Creditors:
Where the **name of any creditor entitled to object to the reduction of share capital not entered on the list of creditors**, and after such reduction, the **Co. is unable**, within the meaning of Sec 6 of the IBC 2016, **to pay the amt of his debt or claim**-
a) **every person, who was a member** of Co. on the date of the registration of the order for reduction by the Registrar, **shall be liable to contribute an amt not exceeding** the **amt which he would have been liable to contribute if the Co. had commenced winding up on the day immediately before the said date**; and
b) **if** the **Co. is wound up**, the **Tribunal may, on the application of any such creditor and proof of his ignorance**, if it thinks fit, **settle a list of persons so liable to contribute**, and make and **enforce calls and orders on the contributories** settled on the list, **as if they were ordinary contributories in a winding up**.

Nothing in sub-section (8) shall affect the rights of the contributories among themselves.

9) Liability of officer:
If **any officer** of the Co. -
- **knowingly conceals the name of any creditor entitled to object** to the reduction;
- **knowingly misrepresents the nature or amt of the debt or claim of any creditor**; or
- **abets or is privy to any such concealment or misrepresentation** as aforesaid,

he **shall be liable u/s 447**.

RESTRICTION ON PURCHASE BY COMPANY OR GIVING OF LOANS BY IT FOR PURCHASE OF ITS SHARES - Sec 67

- **Prohibition on buying own shares:**
  - **No Co**. (whether public or private) **shall buy its own shares unless the consequent reduction of share capital is effected** under provisions of this Act. However, the **right of the Co. to redeem the preference shares shall not be affected** by this section.
- **Giving financial assistance for purchases of shares:**
  - **No public Co. shall give financial assistance** for the purchase of its own shares or of its holding Co.
  - **Financial assistance** may be, **direct or indirect**, and **by way of a loan, guarantee, provision of security or otherwise**.
- **Exceptions (Financial assistance permitted):**
  a) **Lending of money by a banking Co.** in **the ordinary course of its business.**
  b) **Provision** by a Co. **of money in accordance with any scheme approved by Co. through SR & in accordance with such requirements as may be prescribed, for the purchase of, or subscription for, fully paid up shares** in the **Co. or its holding Co.** being a purchase of, or the subscription for, the shares **by trustees for the benefit of the employees.(Rule 16)**
  c) **Giving of loans** by a Co. **to persons in the employment** of the Co. **other than its directors or KMP for an amt not exceeding their salary or wages for a period of 6 months** with a view to enabling them to **purchase or subscribe for fully paid-up shares in the Co**. or **its holding Co**. to be held by them by way of beneficial ownership.
- **Exemption to Private Co.:**
  This section **shall not apply to private companies** -
  i. In **whose share capital no other body corporate has invested any money**;
  ii. If the **borrowings** of such Co. **from banks/financial institutions/anybody corporate is less than twice its paid up share capital/Rs.50 crore, whichever is lower**; and
  iii. Such Co. **has no default in repayment of such borrowings** subsisting at the time of making transactions under this section.
- **KMP [Sec 2(51)]:** KMP in relation to Co, **means** -
  CEO or MD or manager; Company Secretary, Whole time director, Chief Financial Officer; and such other **officer, not more than one level below the directors who is in whole-time employment, designated as KMP by the Board**;& **such other officer as may be prescribed**.
- **CONTRAVENTION: On contravention of the above**, punishment on **Company: Fine (Rs.1 L -Rs.25 L)**
  Every **officer in default: Imprisonment upto 3 years** and **Fine (Rs.1 L - Rs.25 L).**

Rule 16: Provision of Money by Company for Purchase of its Own Shares by Employees or by Trustees for the Benefit of Employees

1. In case the shares of the company are **listed** - Such purchase of shares shall be **made only through a recognized stock exchange and not by way of private offers or arrangements.**
2. Where shares of a company are **not listed** - the **valuation at which** shares are to be purchased shall be made by a **registered valuer**.
3. The **value of shares** to be purchased or subscribed in the aggregate **shall not exceed five percent** of the aggregate of **paid up capital and free reserves of the company**;
4. Disclosures in respect of **voting rights not exercised directly** by the employees in respect of shares to which the scheme relates shall be made in the Board's **report for the relevant financial year, namely:**
   a. Names of the employees who have not exercised the voting rights directly;
   b. Reasons for not voting directly;
   c. Name of the person who is exercising such voting rights;
   d. Number of shares held by or in favour of, such employees and the percentage of such shares to the total paid up share capital of the company;
   e. Date of the general meeting in which such voting power was exercised;
   f. Resolutions on which votes have been cast by persons holding such voting power;
   g. Percentage of such voting power to the total voting power on each resolution;
   h. Whether the votes were cast in favour of or against the resolution.

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SHARES CAPITAL AND DEBENTURES (Chart 8.11)

BUY-BACK OF SECURITIES - Sec 68 to 70

1) Power in articles:
Authorization in articles is required **for buy-back.**

2) Sources of funds for buy-back:
a) **Free reserves**; or
b) **Securities premium account**; or
c) **Proceeds of fresh issue** of shares or **other specified securities.**

However, buyback **shall not be made out of the proceeds of an earlier issue of same kind of shares or other specified securities**.

3) Resolution for buyback:
Case 1: Buyback is authorized by passing SR -
- Buyback **shall not exceed 25% of (paid-up capital + free reserves+ Securities Premium)**.
- Buyback of equity shares in any FY **shall not exceed 25% of total paid up equity capital in that F.Y.**

Case2: Buyback is authorized by passing a resolution in BM-
Buyback **shall not exceed 10% of the total (paid-up equity capital + free reserve+ Securities premium).**

4) Notice of GM:
Notice of GM, in which SR is to be passed **shall be accompanied by an explanatory statement**, stating-
a) a **full and complete disclosure of** all the **material facts**;
b) **necessity for buy-back**;
c) **class of securities to be bought-back**;
d) **amount to be invested under the buy-back**;
e) **time limit for completion of buy-back.**

6) Debt-equity ratio:
- Ratio of debt (secured as well as unsecured debt) owed by the Co. **must not be more than twice the (paid up capital + free reserves) after such buy-back**.
- **CG** may, by order, **notify a higher ratio** for any class or classes of companies.
- "Free reserves" **includes securities premium** A/c.

7) Fully paid shares:
All the **securities** for buy-back **must be fully paid-up.**

8) Time limit for completion of buyback:
Buyback **shall be completed within 12 months of passing the resolution** for buyback **(SR or BR).**

9) Buyback from whom?
The buy-back may be -
a) from the **existing shareholders on a proportionate basis**; or
b) from the **open market**; or
c) by **purchasing the shares issued to employees** by way of stock option or sweat equity.

5) Declaration of solvency:
- Co. **shall file with the Registrar a declaration of solvency (Form SH 9)** (verified by an affidavit) to the effect that it **will not be rendered insolvent within a period of 1 year** of the date of declaration adopted by the Board,
- Declaration **shall be signed by at least 2 directors, one of whom shall be the MD**.
- In **case of a listed Co**, **declaration** of solvency **shall also be filed with SEBI.**

10) Extinction of shares bought back: Co. shall **extinguish and physically destroy the shares bought back within 7 days of completion of buyback.**

11) Prohibition on further buyback:
Further offer of buyback **shall not be given within 1 year of closure of preceding offer of buyback**.

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12) Cooling Period:
Co. **shall not make further issue of same kind of securities within next 6 months, except** -
a) **bonus shares**; or
b) **issue of shares in discharge of subsisting obligations** such as conversion of warrants, stock option schemes, sweat equity or conversion of preference shares or debentures into equity shares.

13) Register of shares bought back:
Co. **shall maintain a register (Form SH 10)** containing particulars:
a) **securities bought back**
b) **consideration paid** for securities bought back
c) **date of cancellation of securities**
d) **date of extinguishing and physically destroying the securities**
e) **Any other particulars**, as may be prescribed.

Rule 17
- The register of shares or securities bought-back shall be maintained at **the RO of the company** and shall be kept in **the custody of the secretary of the company** or any **other person authorized by the board in this behalf.**
- The entries in the register **shall be authenticated** by the **secretary of the company or by any other person authorized by the Board for the purpose.**

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14) Other compliances:
Listed Co. - shall comply **regulations made by SEBI.**
Unlisted Co. - shall comply **rules prescribed by CG**.

15) Return of buyback:
After completion of buy-back, the Co. **shall, within 30 days, file a return (Form SH-11)** with the -
- **ROC** - In case of Unlisted Co.
- **ROC & SEBI** - In case of Listed Co.

containing such particulars relating to **buyback as may be prescribed.**

Rule 17:
There shall be declaration with the return filed with the Registrar in Form No. SH.11, signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

16) Penalty for Default: Co. & every officer in default with a fine (Rs.1L - Rs.3L).

Rule 17: Buy-back of Shares or Other Securities

i. The company which has been authorized by a special resolution shall, **before the buy-back of shares, file with the Registrar of Companies a letter of offer in Form No. SH.8,** along with the fee.
ii. Such letter of offer shall be **dated and signed on behalf of the Board of directors** of the company by **not less than two directors** of the company, **one of whom shall be the managing director**, where there is one.
iii. The letter of offer shall be **dispatched to the shareholders** or **security holders** immediately after filing the same with the Registrar of Companies but **not later than 20 days from its filing with the ROC**
iv. The offer for buy-back shall remain open for **a period of not less than fifteen days** and **not exceeding thirty days** from the date of dispatch of the letter of offer.
Provided that where all members of a **company agree, the offer for buy-back may remain open for a period less than 15 days.**
v. In case the **number of shares or other specified securities offered by the shareholders or security holders** is **more than the total number of shares or securities** to be bought back by the company, the acceptance per shareholder shall be on **proportionate basis** out of the total shares offered for being bought back.
vi. The company **shall complete the verifications of the offers** received **within 15 days** from the date of closure of the offer and the **shares or other securities lodged** shall be **deemed to be accepted unless a communication of rejection is made within 21 days** from the date of closure of the offer.
vii. The company shall immediately **after the date of closure of the offer**, open **a separate bank account** and deposit therein, such **sum, as would make up the entire sum due and payable as consideration** for the shares tendered for buy-back in terms of these rules.
viii. The company shall **make payment within seven days of verification process make payment** in cash to those shareholders or security holders whose securities have been accepted; and **return the share certificates** to **the shareholders or security holders whose securities have not been accepted** at all or the balance of securities in case of part acceptance.

TRANSFER OF CERTAIN SUMS TO CAPITAL REDEMPTION RESERVE ACCOUNT [Sec 69]

- Where a **Co. purchases its own shares out of free reserves or securities premium account,** then a sum equal to the **nominal value of the share so purchased shall be transferred to the CRR account** and details of such transfer shall be **disclosed in the balance sheet**.
- CRR may be applied by the company, in **paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares**.

PROHIBITION OF BUY-BACK IN CERTAIN CIRCUMSTANCES [Sec. 70]

- **Prohibition in case of defaults in payments [Sec 70(1)]:**
No Co. shall directly or indirectly **buyback** its own shares or other specified securities, **if default is made in** -
a) **repayment of deposits or interest** payable thereon
b) **redemption of debentures** or
c) **redemption of preference shares**
d) **payment of dividend** to any shareholder.
e) **repayment of any term loan or interest** payable thereon **to any financial institution or bank**.
However, the **buyback is not prohibited, if the default is remedied and a period of 3 years has lapsed** after such default ceased to subsist.
- **Other prohibitions [Sec 70(1)]:**
No Co. shall directly or indirectly **buyback** its own shares or other specified securities-
a) **through any subsidiary Co.** including its own subsidiary Co; or
b) **through any investment Co. or group of investment Co**.
- **Prohibition in case of non-compliances [Sec 70(2)]: No Co. shall**, directly or indirectly, **buyback** its own shares or other specified securities **if it has not complied with the provisions of**-
a) **Sec 92** (Filing of annual return);
b) **Sec 123** (Provisions relating to declaration of dividend); or
c) **Sec 127** (payment of dividend within 30 days) or
d) **Sec 129** (provisions relating to financial statement).

SHARES CAPITAL AND DEBENTURES (Chart 8.12)

DEBENTURES (Sec 71 read with Rule 18)

DEFINITION

- 'Debenture' **includes debenture stock, bonds or any other instrument** of a Co. **evidencing a debt, whether constituting a charge on the assets of Co. or not** [Sec 2(30)].
- "Debenture is a **name applied to certain types of documents evidencing an indebted-ness which is normally but not necessarily secured by a charge over property**."
- Debentures are **bonds issued in return of borrowed fund**.
- Debentures are **generally secured upon Co's property or undertaking**.

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CHARACTERISTICS OF DEBENTURES

- **Debenture holders are the creditors of Co**.
- **No** debenture **can carry any voting right**.
- A debenture is **acknowledgement of indebtedness of the Co**. The debenture specifies the payment of a specified sum payable at a certain specified rate of interest.
- When debentures are issued, the **applicants are given certificates representing the money they have lent to the Co**.
- A **debenture certificate is issued** by the Co. **under its common seal**, if any, **or under the signatures of two directors or a director and the CS**, if he has been appointed.
- The **debenture certificates are required to be delivered within a period of 6 months from the date of allotment** of debentures, unless the Co. is prohibited by any provision of law or any order of Court, Tribunal or any other authority.**[Sec 56]**
- Co. **pays periodic interest** on the amount raised by issuing debentures **till they are fully redeemed**.
- A **debenture is in the nature of movable property which is transferable as per the provisions contained in the Articles of the Co. issuing the debentures.[Sec 44]**
- **Debentures are** generally **secured**. The debenture holders are given a charge on certain assets of the Co. However, it is **possible to issue unsecured debentures**.
- As per the terms of the issue of **debentures**, they **may be redeemed (i.e. repaid) at the end of full term or in instalments**, say yearly or bi-yearly or any other period like in 2 instalments.
- The terms of issue **may also provide for conversion of debentures at maturity into equity shares** at the option of the debenture holders.

1) Issue of convertible debentures:

Co. **may issue debentures with an option to convert them** either wholly or in part into shares, **by passing SR** in the GM.

2) No voting rights:

No Co. shall issue any **debentures carrying** any **voting rights**.

3) Issue of secured debentures:

Co. may issue **secured debentures** by complying with such terms and conditions as may be prescribed.

Conditions for issue of secured debentures (Rule 18)

a) The **date of redemption** of secured debentures **shall not exceed 10 years from the date of issue**. However, the following classes of Co's **may issue secured debentures for a period exceeding 10 years but upto 30 years**:

(i) Companies **engaged in setting up of infrastructure projects**.
(ii) **'Infrastructure Finance Company'**.
(iii) **'Infrastructure Debt Fund NBFC'**.
(iv) Companies **permitted by Ministry or Department of the CG or by RBI or by the National Housing Bank or by any other statutory body** to issue debentures exceeding 10 years.

b) Creation of Charge: Security for the debenture can be provided by way of creating a charge or mortgage in favour of debenture trustee, on;

(i) Specified movable property of the company or its subsidiaries or its holding company or its associates companies, or

(ii) Specified immovable properties wherever situated, or any interest therein.

Note:

1. **Value of such assets or properties upon which charge is created shall be sufficient for the due repayment of the amount of debentures and interest thereon.**
2. **In case of NBFCs, the charge or mortgage may be created on any movable property.**
3. **In case of any issue of debentures by a Govt company which is fully secured by the guarantee given by the CG or one or more SG or by both, the requirement for creation of charge under rule 18(1) of *the Companies (Share Capital and Debentures) Rules, 2014* shall not apply.**
4. **In case of any loan taken by a subsidiary company from any bank or financial institution the charge or mortgage under this sub-rule may also be created on the properties or assets of the holding company**

c) Appointment of Debenture Trustee:

Co. shall appoint a debenture trustee **before the issue of prospectus or letter of offer for subscription of its debentures**. Further **within 3 months after allotment of debentures, execute a debenture trust deed (Form SH-12)** to protect the interest of debenture holders.

4) Mandatory creation of DRR:

- Every Co. issuing the debentures **shall create DRR Account**.
- DRR shall be created **out of the profits available for distribution of dividend**.
- DRR **shall be utilised only for** the purpose of **redemption of debentures**.

Provisions contained in Rule 18:

a) DRR shall be **created out of the profits** available for payment of dividend.

b) **Limits** with respect to adequacy of DRR and investment or deposits, shall be as under –

(i) DRR is **NOT required for debentures issued by All India Financial Institutions** regulated **by RBI** & **Banking Co's** for both public as well as privately placed debentures;

(ii) For **other Financial Institutions** within the meaning of Sec 2(72), **DRR shall be as applicable to NBFCs registered with RBI.**

(iii) For **LISTED CO.** (other than All India Financial Institutions and Banking Companiesin sub-clause (i)), **DRR is NOT required** in following cases -

(A) in case of **public issue** of debentures –
  A. for **NBFCs** registered with RBI and **Housing Finance Co.** registered with National Housing Bank;
  B. **for other listed Co;**

(B) in case of **privately placed debentures**, for companies specified in sub-items A & B.

(ii) for **UNLISTED CO**, (other than All India Financial Institution and Banking Companiesin sub-clause (i)) –

(A) for **NBFCs** registered with RBI and for **Housing Finance Co.** registered with National Housing Bank, DRR is **not required in case of privately placed debentures.**

(B) for **other unlisted Co**, DRR shall be **10% of the value of outstanding debentures**;

c) in case of **partly convertible debentures**, DRR **shall be created in respect of non-convertible portion of debenture** issue.

d) Deposit / investment in 'specified securities':

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

(ii) for the purpose of sub clause (v), the **methods of deposits or investments**, as the case may be, are as follows:
- **deposits with any scheduled bank**, free from any charge or lien;
- **unencumbered securities of CG or SG**;
- **unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of Sec 20 of the Indian Trusts Act, 1882**;
- **unencumbered bonds issued by any other Co. which is notified u/s 20(f) of Indian Trusts Act, 1882**.

(iii) The **amount invested or deposited, shall not at any time fall below 15% of the amount of debentures maturing upto 31st March** of that year.

(iv) Amount so invested or deposited **shall not be used for any purpose other than for redemption of debenture**.

5) Appointment of debenture trustee(s):

- Appointment of **1 or more** debenture trustee is **mandatory, if the Co.-**
  a) **issues a prospectus**; or
  b) **makes an offer or invitation to the public**; or makes **an offer to its members exceeding 500.**
- Appointment of debenture trustee(s) **shall be made** -
  a) **before issue of prospectus or before making such offer or invitation**; and
  b) by **complying with such terms and conditions** prescribed in Rule 18(2).

Terms and Conditions prescribed in Rule 18(2)

a) **Names of debenture trustees shall be stated in letter of offer** inviting subscription for debentures and **also in all the subsequent notices or other communications** sent to the debenture holders;

b) **before** the appointment of debenture trustee(s), a **written consent shall be obtained from** such **debenture trustee(s) proposed to be appointed** and a statement to that effect shall appear in the letter of offer.

c) A **person shall not be appointed as a debenture trustee, if** he-

(i) **Beneficially holds shares** in the Co;
(ii) Is a **promoter, director or KMP or any other officer or an employee** of the Co. or its holding, subsidiary or associate Co;
(iii) Is **beneficially entitled to moneys which are to be paid** by the Co. **otherwise than as remuneration** payable to the debenture trustee;
(iv) Is **indebted** to the Co, or its subsidiary or holding or associate Co. or a subsidiary of such holding Co;
(v) Has **furnished any guarantee** in respect of the principal debts secured by the debentures or interest thereon;
(vi) Has any **pecuniary relationship** with the Co. **amounting to 2% or more of its gross turnover or total income or Rs.50 Lacs or such higher amt as may be prescribed, whichever is lower, during the two immediately preceding F/Y or during the current F/Y;**
(vii) is a **relative of any promoter or any person who is in the employment** of the Co. **as a director or KMP;**

d) **Casual Vacancy: Board may fill any casual vacancy** in the office of the trustee but while any such vacancy continues, the **remaining trustee, if any, may act**. Provided that where such **vacancy is caused by the resignation** of the debenture trustee, the vacancy **shall only be filled with the written consent of the majority of the debenture holders**.

e) **Removal:** Any **debenture trustee may be removed** from office **before the expiry** of his term only **if it is approved by the holders of not less than three fourth in value of the debentures** outstanding, at their meeting.

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SHARES CAPITAL AND DEBENTURES (Chart 8.13)

6) Duties and functions of debenture trustee(s):

- Section 71 (6) requires that a debenture trustee **shall take steps to protect the interests of the debenture-holders and redress their grievances**.
- To protect the interest of debenture holders, **Rule 18(4) provides for the convening of the meeting of debenture-holders**.
- Meeting **shall be convened on**:
  a) **requisition in writing signed by debenture holders holding at least 1/10th in value of the debentures outstanding**;
  b) the **happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders**.

7) Liability of debenture trustee(s):

- If the **debenture trustee is guilty of breach of trust**; or **fails to show the degree of care and diligence** expected out of him then the **debenture trustee shall be liable for damages**.
- Any **provision which has the effect of exempting or indemnifying** the debenture trustee(s) **against any liability shall be void**, whether such provision is contained in the trust deed or in any contract.
- However, the debenture trustee(s) **may be provided with such exemption(s)** as may be agreed upon **by a majority of debenture-holders holding not less than 3/4th in value of total debentures** at a meeting held for the purpose.

8) Duty to make payments:

Every Co. **shall pay the interest and redeem the debentures** in accordance with the terms and conditions of such debentures.

9) Filing of petition before the Tribunal by the debenture trustee:

- Where at any time the debenture trustee comes to a conclusion that
- the **assets of the Co. are insufficient or are likely to become insufficient to discharge the principal amt** as and when it becomes due,
- the debenture trustee **may file a petition before the Tribunal** and
- the **Tribunal may**, after hearing the Co. and any other person interested in the matter, **by order, impose such restrictions on the incurring of any further liabilities by the Co**. as the **Tribunal may consider necessary in the interests of the debenture-holders.**

10) Default in payment by the Co.:

- Where a Co. **fails to redeem the debentures on the date of their maturity or fails to pay interest** on the debentures when it is due,
- the **Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee** and, after hearing the parties concerned,
- **direct, by order, the Co. to redeem the debentures forthwith on payment of principal and interest** due thereon.

11) Limit on Borrowings through Debentures:

- **Before the issue of debentures**, the **BOD** of the Co. **shall obtain approval of the shareholders through SR,**
- If the **borrowings by issuing debentures together with the amt already borrowed exceed the aggregate of company's paid-up share capital, free reserves and securities premium amt**. **(Sec 180(1)(c) not applicable to a private Co.).**
- **Temporary loans** obtained from the company's bankers in the ordinary course of business **are not to be included in the borrowings.**

12) Return of Allotment:

If a **Co. having share capital makes allotment of any debentures** (falls within the definition of 'securities'), it is **required to file with the jurisdictional Registrar a Return of Allotment (Form No. PAS-3) within 30 days of such allotment**. (Rule 12(1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.)

DISTINCTION BETWEEN 'SHARES' AND 'DEBENTURES'

S. No.	SHARES	DEBENTURES
1.	Shares are a **part of the capital.**	Debentures **constitute a loan.**
2.	**Shareholders are** the **owners** of the Co.	**Debenture holders are creditors.**
3.	**Shareholders** generally **enjoy voting right.**	**Debenture holders do not have any voting right.**
4.	**Dividends can be paid** to shareholders **only out of the profits** of the Co.	**Interest on debenture** is **payable even if there are no profits.**
5.	Shares **do not carry any charge on the assets.**	Debentures generally **have a charge on the assets** of the Co.
6.	**Dividend may vary from year to year** in case shares.	**Rate of interest is fixed** in the case of debentures.
7.	**No priority** of dividend payment.	**Fixed amt of interest** on debentures **gets priority over dividend** on shares.
8.	Issue of shares at **discount is prohibited**.	**No restriction** or condition for issue of debentures at discount.
9.	Shares **cannot be converted into any other security**.	Debentures **may be converted into shares**, if the terms of issue of debentures so provide, i.e., in case of convertible debentures.
10.	**No priority over debentures** in the matter of repayment in the event of liquidation.	Debentures get **priority over shares in the matter of repayment in the event of liquidation** of the Co.

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TERMS OF ISSUE OF DEBENTURES

Debentures with pari-passu clause:

- The term 'pari-passu' means **'ranking equally amongst themselves'**.
- Every holder of debentures issued with pari passu clause shall be **entitled to share the proceeds of the security realised**, even though these debentures were issued at different points of time.

Debentures without a pari- passu clause:

- The debentures shall **rank according to the dates of issue of debentures**, i.e., a debenture issued first shall have priority over the debentures issued afterwards.
- If some debentures are issued on the same date, then the **priority shall be determined according to the serial number of the debentures issued**.

Restrictions on powers of the company:

A Co. is **not entitled to issue a new series of debentures-**

- **having priority over an earlier series** of debentures; or
- **ranking pari passu with an earlier series** of debentures

unless such right is expressly reserved under the terms and conditions of earlier series of debentures.

DEBENTURES WITH VOTING RIGHTS NOT PERMISSIBLE

- **No Co. can issue any debentures carrying voting rights** at any meeting of the Co, whether generally or in respect of any particular classes of business **[Sec 71(2)].**
- The idea behind prohibition of issue of debentures with voting rights is **to ensure that debenture holders are not placed in a much more advantageous position than the holders of equity shares** and are **not in a position to influence the policy of the company in a manner detrimental to the interest of** the general body of **shareholders.**

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ACCEPTANCE OF DEPOSITS (Chart 9.1)

'DEPOSIT' - Sec 2(31)

'Deposit' **includes any receipt of money** by a company **by way of Deposit or Loan or in any other form. 'Deposit' does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.**

What is not a 'Deposit' as per Rule 2(1) of the Companies (Acceptance of Deposits) Rules, 2014?

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1) **Amount received from govt etc.:**
Any amount **received from –**
a) **Central Government ,State Government** ;or
b) Any **local authority** ;or
c) A **statutory authority constituted under an Act of parliament or a state Legislature** ;or
d) Any **source whose repayment is guaranteed by CG or SG.**

2) **Amount received from foreign govt etc.:**
Any amt **received in accordance with the provisions of FEMA,1999** from-
a) **Foreign Government** ;or
b) **Foreign or international banks** ;or **multilateral financial institutions**
c) **Foreign Governments owned development financial institutions** ;or
d) **Foreign collaborators** ;or
e) **Foreign bodies corporate and foreign citizens**.
f) **Foreign authorities or persons resident outside India**.

3) **Loan from a bank:**
Any amount **received as a loan or facility from any banking Co. or from SBI or its subsidiary banks or from a notified baking institution or from any co-operative bank**;

4) **Loan from financial institutions:**
Any amount **received as a loan or financial assistance from Public Financial Institutions** or **any regional financial institutions, or insurance companies.**

5) **Amt received by issue of commercial paper:**
Any amount **received against issue of commercial paper or any other instruments** issued in accordance with the guidelines or notification by the RBI.

6) **Amt received from another Co:** Any amount **received by a Co. from any other Co**.

7) **Amt received as application money:**
- Any amt **received and held pursuant to an offer made towards subscription to any securities** (including share application money or advance towards allotment of securities, pending allotment),
- If the securities **cannot be allotted within 60 days** from the date of receipt of the application money or advance and such **application money or advance is not refunded within 15 days** from the date of completion of 60 days, such **amt shall be treated as deposit**.
- **Note: Any adjustment of the amount for any other purpose shall not be treated as refund.**

8) **Amt received from a director:**
Any amt **received from the person who, at the time of the receipt** of the amount, **was a director of the Co. or a relative of the director of private Co.**
Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report;

9) **Amt raised by issue of secured debentures:**
Any amount **raised by the issue of bonds or debentures secured by a first charge or a charge ranking pari- passu with the first charge or any assets referred to in schedule III** of the Act **excluding intangible assets** of Co. **or bonds or debentures compulsorily convertible into shares within 10 years**.

10) **Amt raised by issue of listed non-covertible debenture not constituting a charge on the assets of the Co:** Any amt **raised by issue of non-convertible debenture not constituting a charge on the assets** of the Co. **and listed on a recognised stock exchange.**

11) **Securities deposit from an employee:**
Any amt **received from an employee** of the Co. **not exceeding his annual salary** under a contract of employment with the Co. **in the nature of non-interest bearing security deposit**.

12) **Amt held in trust:**
Any **non-interest bearing amt received and held in trust**.

13) **Amt received in the course of business:**
a) as an advance for the **supply of goods or provision of services; provided that such advance is appropriated against supply of goods or provision of services within a period of 365 days from the date of acceptance of such advance:**
However, in case of any advance which is subject matter of any legal proceedings before any court of law, the said time limit of 365 days shall not apply.
b) as advance received in connection with **consideration for an immovable property** under an agreement or arrangement; provided that such advance is adjusted against such property in accordance with the terms of agreement or arrangement;
c) as **security deposit** for the performance of the contract for supply of goods or provision of services;
d) as advance received under **long term projects for supply of capital goods** except those covered under item (b) above;
e) as an advance towards consideration for providing **future services** in the form of a warranty or maintenance contract**; if the period for providing such services does not exceed the period prevalent as per common business practice or 5 years, from the date of acceptance of such service whichever is less;**
f) as an advance received and as allowed by any **sectoral regulator or in accordance with directions of CG/SG**;
g) as an advance for **subscription towards publication**, whether in print or in electronic to be adjusted against receipt of such publications.

Note: Amount **received under items (a), (b) and (d) above** becomes **refundable** (with or without interest) due to the reasons that the company accepting the money does not have necessary **permission or approval**, wherever required, to deal in the goods or properties or services for which the money is taken, then the amount received shall be deemed to be a deposit under these rules **on the expiry of 15 days from the date they become due for refund.**

14) **Amt brought by promoters:** Any amt **received** in the **by the promoters** of the Co. **by way of unsecured loan** in pursuance of the stipulation of any lending financial instruction or a bank. the loan may be provided by the **promoters themselves or by their relatives or by both;** and the **exemption** under this sub-clause shall be **available only till the loans of FI or** bank are repaid and not thereafter;

15) **Amt accepted by Nidhi Co:** Any amt **accepted by a Nidhi Co. in acc. with the rules u/s 406**.

16) **Subscription in respect of a chit under the Chit Fund Act, 1982:**
Any amt **received by way of subscription in respect of a chit** under the Chit Fund Act, 1982.

17) **Amt received by the Co. under any collective investment scheme:** in compliance with regulations framed by SEBI.

18) **Amt received by a start-up Co.:**
An amt of **Rs.25 L or more received by a start-up Co, by way of a convertible note** (convertible into equity shares or repayable within a period not **exceeding 10 years** from the date of issue) **in a single tranche, from a person.**

19) **Amt received by a Co. from Alternate Investment Funds, Domestic Venture Capital Funds, Infrastructure Investment Trusts, Real Estate Investment Trusts and Mutual Funds:** registered with the SEBI in accordance with regulations made by it.

DEPOSITOR

"Depositor" [Rule 2(1)(d)] means,
(i) **any member** of the Co. **who has made a deposit with the Co.** in accordance with the provisions of Sec 73(2) of the Act, or
(ii) **any person who has made a deposit with a public Co.** in accordance with the provisions of Sec 76 of the Act.

ELIGIBLE COMPANY

"Eligible company" means -
- a **public Co.** as referred to in Sec 76(1),
- **having a net worth of not less than Rs.100 crore or a turnover of not less than Rs.500 crore** and
- which **has obtained the prior consent of the Co. in GM by means of a SR** and
- also **filed the said resolution with the ROC**
- **before making any invitation to the Public** for acceptance of deposits.

However, an **eligible Co**, which is **accepting deposits within the limits specified u/s 180(1)(c), may accept deposits by means of an OR**.

Sec 180(1)(c) states that:
BOD shall exercise the following power only with the consent of the Co. by a **SR:**
c) to borrow money, where the **money to be borrowed, together with the money already borrowed** by the Co. will **exceed aggregate of its paid-up share capital and free reserves and securities premium** , apart from temporary loans obtained from the company's bankers in the ordinary course of business.

ACCEPTANCE OF DEPOSITS (Chart 9.2)

ACCEPTANCE OF DEPOSITS FROM MEMBERS - Sec 73

(1) Prohibition on acceptance of deposits from public:

No Co. shall invite, accept or renew deposits under this Act from the public **except in a manner provided under this Chapter of the Act**.

Exception: Acceptance of deposit from public **shall not apply to the following Co**:

(i) **Banking Co**, (ii) **NBFC** as defined in the RBI Act, 1934,

(ii) **Housing finance Co.** registered with the National Housing Bank established under the National Housing Bank Act, 1987 ,and

(iii) **Such other Co. as the CG may specify**, after consultation with the RBI.

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(2) When Co. may accept deposit from its members:

A Co. may **subject to the passing of a resolution in GM** and **rules as may be prescribed in consultation with the RBI, accept deposits from its members** subject to the fulfilment of the conditions.

Provisions for acceptance of deposits from members:

1) Issuance of a Circular containing Statement:

Co. **shall issue a circular to the members inviting deposits** from them. The circular shall include a statement containing:

(a) **Financial position of the Co**; (b) **Credit rating** obtained by the Co;

(c) Total no. of depositors and amt due towards deposits in respect of any previous deposit accepted by the Co.

(d) Such other particulars.

2) Filling of circular:

Circular, along with the statement, **shall be filed** by the Co. **with the registrar at least 30 days prior to issue of circular to members.**

3) Requirement of Deposit Repayment Reserve Account:

a) Co. shall, **on or before the 30th April each year**, **deposit** in a schedule bank in a separate bank A/c a **sum not less than 20% of the amt of deposits** maturing during following F/Y.

b) Such account shall be **called as** the **"deposit repayment reserve account"** and

c) **shall not be utilized for the purpose ,except for the repayment of deposits**.

Proviso to Rule 13 states that such **amt shall not at any time fall below 20% of the amt of deposits** maturing during F/Y.

4) Certification of 'no default':

Co. shall **certify that it has not defaulted in repayment of any deposit or interest** there on and where a default had occurred, the Co. made good the default and a period of 5 yrs had lapsed since the date of making good the default.

5) Provision of Security:

a) Co. may **provide security for the due repayment of deposit and interest** payable thereon, **and create a charge on its assets** for the purpose.

b) If the Co. **does not secure the deposits or secures them partially**, then such deposits **shall be termed as' unsecured deposits'** in every circular, form, advt. or document through which the deposits are invited or accepted.

EXEMPTION TO PRIVATE CO.:

"**Provisions related to prohibition** on acceptance of deposits from members **u/s 73(2)(a) to (c) and (e) shall not apply to a private Co.-**

(A) which **accepts from its members monies not exceeding 100% of (paid up share capital+ free reserves+ securities premium)**; or

(B) which is a **start-up, for 5 years from the date of its incorporation**; or

(C) which **fulfils all of the following conditions**,:

a) which is **not an associate or a subsidiary** of any other Co;

b) if the **borrowings** of such a Co. **from banks or financial institutions or any body- corporate is less than twice of its paid up share capital or Rs.50 crores, whichever is lower**; and

c) such a Co. **has not defaulted in the repayment of such borrowings** subsisting at the time of accepting deposits.

3) Repayment of deposits [Sec 73(3)]:

Co. shall **repay the deposits** accepted by it, **and interest thereon, in accordance with the terms and conditions** of deposit.

4) Application to Tribunal if the Co. fails to repay [Sec 73(4)]:

Where a Co**. fails to repay the deposit or part thereof or any interest** thereon, the **depositor concerned may apply to the Tribunal** for an order **directing the Co. to pay the sum due or for any loss or damage** incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

ACCEPTANCE OF DEPOSITS FROM PUBLIC BY CERTAIN COMPANIES [Sec 76]

1) Net Worth/Turnover Criterion:

A public Co, having **net worth of not less than Rs.100 crore or turnover of not less than Rs.500 crore**, may accept deposits from persons other than its members. Such type of public Co. is known as **'eligible Co'**.

2) Passing of Special Resolution:

- 'Eligible Co' is **required to obtain the prior consent by means of a SR in GM** and also **file the said resolution with the ROC** before making any invitation to the public for acceptance of deposits.
- However, an **'eligible Co'**, which is **accepting deposits within the limits specified u/s 180(1)(c), may accept deposits by means of an OR**.

3) Obtaining of Credit Rating:

- 'Eligible Co' shall be **required to obtain the rating** (including its net-worth, liquidity and ability to pay its deposits on due date) **from a recognised credit rating agency**.
- Rating shall be **obtained for every year during the tenure of deposits**.
- As per **Rule 3(8), copy of the credit rating** which is being obtained at least once in a year **shall be sent to the ROC along with the return of deposits in Form DPT-3**.
- Credit rating **shall not be below the minimum investment grade rating or other specified credit rating for fixed deposits**, from any one of the approved credit rating agencies as specified for NBFC.

4) Charge creation on assets necessary if the deposits are secured:

- Every Co. which accepts secured deposits from the public shall **within 30 days of such acceptance, create a charge on its assets**.
- The **amount of charge shall not be less than the amount of deposits accepted**.
- The charge shall be **created in favour of the deposit holders**.
- Rule 6 states that the **Co. accepting secured deposits shall create security by way of charge on its tangible assets only**.

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5) Applicability of Chapter V:

All the provisions of Chapter V i.e. the provisions of **Sec 73 to 75 shall also apply to the acceptance of deposits u/s 76**.

CREATION OF SECURITY-RULE 6

- **The company cannot create charge on intangible assets *(i.e. goodwill, trademarks, etc.).***
- **Total value of security should not be less than the amount of deposits accepted and interest payable thereon.**
- **The market value of assets subject to charge shall be assessed by a registered valuer.**
- **The security shall be created in favour of a trustee for the depositors on specific movable and immovable property of the company.**

PUNISHMENT FOR CONTRAVENTION OF SEC 73/76 [SEC 76A]

- Where a Co. **accepts or invites** or allows or causes any other person to accept or invite on its behalf any **deposit in contravention of Sec 73 or 76** or **rules made** thereunder; or if a Co. **fails to repay the deposit or part thereof or any interest** due thereon **within the time specified u/s 73 or 76** or rules made thereunder or such further time as may be allowed by the Tribunal u/s 73, then

- the **COMPANY** shall, in **addition to the payment of the amt of deposit** or part thereof and the interest due, be **punishable with fine which shall not be less than Rs.1 crore or twice the amt of deposit accepted by the Co, whichever is lower but which may extend to Rs.10 crore**; and

- **EVERY OFFICER** of the Co. who is **in default shall be punishable with imprisonment which may extend to 7 years and with fine which shall not be less than Rs.25 lakh but which may extend to Rs.2 crore,**
- Provided that if it is **proved that the officer** of the Co. who is **in default, has contravened such provisions knowingly or wilfully with the intention to deceive the Co. or its shareholders or depositors or creditors or tax authorities, he shall be liable for action u/s 447."**

ACCEPTANCE OF DEPOSITS (Chart 9.3)

PROVISIONS CONTAINED IN COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014

RULE 4: FORM & PARTICULARS OF ADVERTISEMNT OR CIRCULARS

- Co. **shall issue such circular to all its members by registered post with acknowledgement due or speed post or by electronic mode in Form DPT-1**.
- Circular may be **published in an English and vernacular newspaper** having wide circulation in the State in which the R.O. of the Co. is situated.
- A **certificate of the statutory auditor** of the Co. **shall be attached in Form DPT-1, stating that the Co. has not committed default in the repayment of deposits or interest on such deposits.**
- **In case a company had committed a default a certificate of the statutory auditor of the company shall be attached in Form DPT-1, stating that the company had made good the default and a period of five years has lapsed since the date of making good the default as the case may be.**
- **Such Circular shall be issued on the authority and in the name of BOD of the company.**
- No circular or a circular in the form of advertisement shall be issued by or on behalf of a company unless, **not less than 30 days before the date of such issue,** there has been delivered to the Registrar for registration **a copy thereof signed by a majority of the directors of the company or their agents, duly authorised by them in writing.**

The circular or advertisement shall remain valid till the earliest of the following dates:

a) up to **six months** from the **closure of the financial year in which it is issued**; or

b) the **date on which the financial statements are laid before the company at the Annual General Meeting (AGM),** or in **case no AGM has been held, the latest day on which the AGM should have been held** as per the relevant statutory provisions.

A fresh circular shall be issued, in each succeeding financial year, for inviting deposits during that financial year.

Issuance of Circular in the Form of Advertisement

- **'Eligible Co'** is **required to issue a circular in the form of an advt. in DPT-1**. Such advt. shall be **published in English newspaper and in vernacular newspaper** having wide circulation in the State in which the R.O. of the Co. is situated. Circular shall also be **placed on the website of the Co. (if any).**
- Such advt. shall be **issued on the authority and in the name of BOD** of the Co.
- **At least 30 days before the issue of the advt, its copy duly signed by a majority of the directors is required to be delivered to the ROC for registration.**
- **Advt. shall remain valid till the earliest of following dates:**
  a) **upto 6 months from the closure of the F/Y in which it is issued; or**
  b) **the date on which the financial statements are laid before the Co. at the AGM, or in case no AGM has been held, the latest day on which the AGM should have been held.**
- **A fresh advt. shall be issued, in each succeeding F/Y, for inviting deposits during that F/Y.**
- **The date on which the advt. appeared in the newspaper shall be taken as the date of the issue of advt. Further, the effective date of issue of circular shall be the date on which the circular was dispatched.**

RULE 3 OF COMPANIES (ACCEPTANCE OF DEPOSITS) RULE, 2014

1) Tenure for which Deposits can be Accepted (Rule 3(1)): Co. is **not permitted to accept or renew deposits** (whether secured or unsecured) which is **repayable on demand or in less than 6 months**. Further, the **maximum period** of acceptance of deposit **cannot exceed 36 months**.

Exception to the rule of tenure of 6 months:

Co. may **accept or renew deposits for repayment earlier than 6 months** subject to the condition that:

(i) such **deposits shall not exceed 10% of (paid-up share capital + free reserves + securities premium)**; and

(ii) such **deposits are repayable only on or after 3 months from the date of such deposits or renewal.**

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2) Deposits in Joint Names (Rule 3(2)):

- In case the depositors so desire, **deposits may be accepted in joint names not exceeding 3**.
- A joint deposit may be accepted with or without any of the clauses, namely, "**Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".** These clauses operate on maturity.

3) Maximum Amount of Deposits from Members: (non-eligible company)

Co. is **permitted to accept or renew any deposit** from its members including other such deposits outstanding as on the date of acceptance or renewal **maximum up to 35% of the (paid-up share capital + free reserves +securities premium).**

Exemption to Private Companies: Provided a private company may accept from its members monies not exceeding **100 % of aggregate** of the **paid up share capital, free reserves and securities premium account** and such company shall file the details of monies so accepted to the Registrar in Form DPT-3.

Exemption to Specified Private Companies: Provided further that the maximum limit in respect of deposits to be accepted from members shall not apply to following classes of private companies, namely:-

i. a private company which is a start-up, for 10 years from the date of its incorporation;

ii. a private company which fulfils all of the following conditions, namely: -

a) which is not an associate or a subsidiary company of any other company;

b) the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is less ; and

c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under section 73:

Provided also that all the companies accepting deposits shall file the details of monies so accepted to the Registrar in Form DpT-3."

4) Maximum amount of deposits for eligible company

No eligible Co. shall accept or renew -

(a) any **deposit from its members**, if the amt of such deposit together with the amt of deposits outstanding as on the date of acceptance or renewal of such deposits from members **exceeds** 10% of the (Paid-up share capital + free reserves + securities premium account);

(b) **any other deposit** (i.e. from persons other than members), if the amt of such deposit together with the amt of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal **exceeds 25%** of the (Paid-up share capital + free reserves + securities premium account).

5) Maximum amount of acceptable deposit in case of an Eligible Govt. Co:

No Govt. Co. eligible to accept deposits u/s 76 **shall accept or renew any deposit**, if the amt of such deposits together with the amt of other deposits outstanding as on the date of acceptance or renewal **exceeds 35% of the (Paid-up share capital + free reserves + securities premium account).**

6) Ceiling on Rate of Interest and Brokerage Payable on Deposits: Co. is permitted to invite or accept or renew any deposit at **any rate of interest or pay any amt of brokerage but in no case, it shall exceed the maximum rate of interest or brokerage prescribed by the RBI in case of NBFCs** for acceptance of deposits.

7) No Right to Alter (Rule 3(7)): Co. has **no right to alter any of the terms and conditions of the deposit, deposit trust deed and deposit insurance contract** which may **prove detrimental to the interest of the depositors** after circular or circular in the form of advt. is issued and deposits are accepted.

Rule 7-Appointment of Trustee for Depositors:

- **One or more trustees** for depositors need **to be appointed by the Co.** for creating security for the deposits.
- A **written consent shall be obtained from trustee** before their appointment.
- A **statement shall appear in the circular or advt. to the effect that the trustees for depositors have given their consent** to the Co. **for such appointment.**
- **Co. shall execute a deposit trust deed in Form DPT-2 at least 7 days** before issuing the circular or circular in the form of advt.
- **No person including a Co.** that is **in the business of providing trusteeship services shall be appointed as a trustee for the depositors**, if the proposed trustee:

a) **is a director, KMP or any other officer or an employee of the Co. or of its holding, subsidiary or associate Co. or a depositor in the Co;**

b) **is indebted to the Co, or its subsidiary or holding or associate Co. or a subsidiary of such holding Co;**

c) **has any material pecuniary relationship with the Co;**

d) **has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;**

e) **is related to any person specified in clause (a) above.**

- **No trustee** for depositors **shall be removed from office after the issue of circular or advt. and before the expiry of his term** except with the consent of all the directors present at a meeting of the board. In case the **Co. is required to have independent directors, at least one independent director shall be present in such meeting** of the Board.

ACCEPTANCE OF DEPOSITS (Chart 9.4)

PROVISIONS CONTAINED IN COMPANIES (ACCEPTANCE OF DEPOSITS) RULES, 2014

Rule 8: Duties of Trustees It shall be the duty of every trustee for depositors to-

a) ensure that the **assets of the company on which charge** is created together with the amount of deposit insurance are **sufficient to cover the repayment** of the principal amount of secured deposits outstanding and interest accrued thereon;
b) **satisfy himself** that the **circular or advertisement** inviting deposits **does not** contain any **information which is inconsistent** with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;
c) ensure that the **company does not commit any breach of covenants** and provisions of the trust deed;
d) take such **reasonable steps as may be necessary to procure a remedy** for any breach of covenants of the trust deed or the terms of invitation of deposits;
e) take **steps to call a meeting of the holders of depositors** as and when such meeting is required to be held;
f) **supervise the implementation of the conditions** regarding creation of security for deposits and the terms of deposit insurance;
g) **do such acts as are necessary** in the event the security becomes enforceable;
h) **carry out such acts as are necessary** for the protection of the interest of depositors and to resolve their grievances.

Rule 9: Meeting of Depositors The trustee shall call a meeting of all the depositors on-

a) requisition in writing **signed by at least one-tenth** of the depositors in value for the time being outstanding;
b) **the happening of any event**, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors

Rule 10: Filling of Application Form for making Deposits

- Co. shall **accept or renew any deposit**, whether secured or unsecured, only **when an application**, as specified by the Co**, is submitted by the intending depositor** for the acceptance of deposit.
- The application **shall contain a declaration** made by the intending depositor **to the effect that the deposit is not being made out of any money borrowed by him from any other person**.

Rule 11: Power to Nominate: Every depositor **may nominate any person (nominee) at any time to whom his deposits shall vest in the event of his death.**

Rule 12: Deposit Receipt: Within a period of 21 days from the date of receipt of money or realization of cheque or date of renewal, **Co. is required to furnish a deposit receipt to the depositor or his agent**. The receipt shall be **signed by the duly authorised officer** and state the date of deposit, the name and address of the depositor, the amt of deposit, the rate of interest and maturity date

Rule 14: Register of Deposits:

- Every Co. accepting deposits **shall maintain one or more separate registers for deposits** accepted or renewed at its R.O.
- Following **particulars** shall be entered separately in the case of each depositor:
  a) name, address and PAN of the depositor/s;
  b) particulars of the guardian, in case of a minor;
  c) particulars of the nominee;
  d) deposit receipt number;
  e) date and amt of each deposit;
  f) duration of the deposit and the date on which each deposit is repayable;
  g) rate of interest on such deposits to be payable to the depositor;
  h) due date for payment of interest;
  i) mandate & instructions for payment of interest & non deduction of tax at source, if any;
  j) date or dates on which the payment of interest shall be made;
  k) particulars of security or charge created for repayment of deposits;
  l) any other relevant particulars.
- The **entries shall be made within 7 days from the date of issuance of the receipt** duly authenticated by a director or secretary of the Co. or by any other officer authorised by the Board for this purpose.
- Register shall be **preserved in good order for a period of not less than 8 years** from the F/Y in which the latest entry is made in the register.

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Rule 15: Premature Repayment of Deposits:

- **After the expiry of 6 months but before the actual date of maturity**, if a depositor requests for premature repayment, the **rate of interest payable shall be 1% less than the rate which would be payable for the period for which the deposit has actually run**.
- **Explanation: The period for which the deposit has run, if it contains any part of the year which is less than six months then it shall be excluded; otherwise if that part is six months or more it shall be taken as one year.**
- **Reduction of rate** of interest is **not applicable** in the following cases:
  – Where the **deposit is prematurely repaid to comply with Rule 3** i.e. premature repayment made in order to reduce the total amt of deposits to bring it within the permissible limits; or
  – Where the **deposit is prematurely repaid to provide for war risk** or other related **benefits to the personnel of naval, military or air forces or to their families during the period of emergency** declared under Article 352 of the constitution.

Rule 15: Premature Closure of Deposit to Earn Higher Rate of Interest:

In case a **depositor desires to avail higher rate of interest** by renewing the deposit **before its actual maturity** date, the **Co. shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period** of deposit.

Rule 16: Filing of Return of Deposits with Registrar:

Audited return of deposits in DPT-3 (containing particulars as on 31st March of every year**) shall be filed with the ROC by the company** along with requisite fee **on or before the 30th June** of that year.**The return shall be audited by the auditor of the company** and **declaration to that effect shall be submitted by the auditor in Form DPT-3**.

It is clarified by way of Explanation that DPT-3 shall be used to include particulars of deposits or particulars of transactions not considered as deposits or both by every company (other than a Government company).

Rule 16A: Disclosures in Financial Statements

A **public Co. shall disclose in its financial statements** by way of note **about the money received from its directors**. In case of a **private Co.** it **shall disclose in its financial statements** by way of note **about the money received from the directors or the relatives of directors**.

As a onetime measure, every company (other than a Govt co.) shall file a onetime return of outstanding receipt of money or loan by a co. not considered **as deposits from 1st April 2014 till 31st March, 2019** in **Form DPT-3 with the ROC within 90 days from 31st March, 2019** along with requisite fee.

Rule 17: Penal Rate of Interest

In case the Co. **fails to repay deposits** (both secured and unsecured) **on maturity**, after they are claimed, it **shall pay penal rate of interest of 18% p.a.** for the overdue period.

Rule 19: Applicability of Sec 73 and 74 to Eligible Companies:

Provisions of **Sec 73 and 74 shall, mutatis mutandis, apply to acceptance of deposits from public by eligible Co**. Provided further that the fresh deposits by every eligible Co. shall have to be in accordance with the provisions of Chapter V of the Act and these rules.

REPAYMENT OF DEPOSITS, ETC, ACCEPTED BEFORE COMMENCEMENT OF ACT - Sec 74

Filling of statement and repayment of deposit:

If a Co. had **accepted any deposit before the commencement of the Companies Act,2013**(i.e. before 1.4.2014) and **remains unpaid as on such commencement** ,then the Co. shall -

a) **File a statement (in form DPT-4) with the registrar** –
   - **within 3 months** of such commencement.
   - The statement shall **contain** -
     – the **particulars of deposit accepted** by the Co,
     – **deposit and interest remaining unpaid** and
     – **arrangements made for repayment of deposits**.
b) **Repay such deposit , within 3 years** from such commencement **or on or before expiry of the period for which the deposits were accepted, whichever is earlier**. Provided that **renewal** of any such deposits **shall be done in accordance with the provisions of Chapter V** and the rules made thereunder.
   Note: As per Explanation to Rule 19 if the company has been repaying such deposits and interest thereon without any default on due dates for the remaining period of such deposit in accordance with the terms and conditions, point (b) above shall be deemed to have been complied with

Extension of time for repayment:

a) A Co. may make an **application to the Tribunal seeking extension of time for repayment of any deposit** accepted before the commencement of the Companies Act, 2013.
b) The **tribunal may allow such further time** for repayment of deposits, **as it may deem fit**. Before passing any order, the Tribunal shall **consider the financial position of the Co, the amt of deposits and interest payable** thereon and other relevant factors.

Penalty: If a Co. **fails to repay the deposits or interest** thereon in accordance **with the time allowed** (including further time, if any allowed by the Tribunal) under the section, then –

a) The **Co.** shall be liable to fine:
   Minimum- **Rs.1 crore**; Maximum- **Rs.10 crore**.
b) **Every officer in default** shall be liable to –
   (i) **Imprisonment upto 7 years** ;or
   (ii) **Fine**: Minimum- **Rs.25 lakhs** ;
   Maximum- **Rs.2 crore** ; or
   (iii) **Both**

DAMAGES FOR FRAUD - Sec 75

1) **Personal liability of officers:** Where a Co. **fails to repay the deposit or any interest thereon** referred to **in Sec 74 within the time specified in sub-section (1) & (2)** of that section, and it is **proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose**, **every officer** of the Co. who was **responsible for the acceptance of such deposit shall,** without effecting to the provisions contained in sub-section (3) of that section and liability u/s 447, **be personally responsible, without any limitation of liability**, for all or any of the losses or damages that may have been incurred by the depositors.
2) **Action by Whom?:** Any suit, proceedings or other action may be taken **by any person, group of persons or any association of persons who had incurred any loss** as a result of the failure of the Co. to repay the deposits or part thereof or any interest thereon.

REGISTRATION OF CHARGES (Chart 10.1)

DEFINITION OF CHARGE Sec 2(16)

- 'Charge' means an **interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage**.
- Charge is **compulsorily registrable** under the provisions of the Companies Act, 2013 in accordance with Chapter VI and the rules made in this regard. All charges registered with the registrar are **public documents**. This means that **any person who wishes to lend money to the company against the security** of such property **or buy it can refer to the MCA Portal** and **find out if there is any charge created on that asset**.

LEGAL PROVISIONS RELATING TO REGISTRATION OF CHARGE BY THE COMPANY

A. Duty of the Co. to register charges:

a) Where a Co. creates a charge on any of its assets, property or undertaking, it shall be the **duty of the Co. to register such charge**.

b) Sec 77 requires registration **of every charge** created on **any property of the Co**, whether such property is –

(i) **movable or immovable**;

(ii) **tangible or intangible**;

(iii) **Situated in India or outside India**.

c) The charge shall be **registered with the Registrar within 30 days of its creation**.

d) The charge shall be **registered in such form, in such manner and on payment of such fees, as may be prescribed**.(As per Rule 3, **Form CHG-1 or Form CHG-9 (in case of debentures)** is to be filled.)

e) The prescribed **form shall be signed by the Co. and the charge-holder**.

f) **The instrument creating the charge, if any, shall also be filed with the Registrar.**

B. Extension of Time Limit (Condonation of delay by Registrar for non-filing):

The original period within which a **charge needs to be registered is 30 days from the date of creation of charge**. **The Companies (Amendment) Second Ordinance, 2019** (w.e.f. 02-11-2018) has **amended provisions relating to extension of time limit as under:**

I. Charges created before 02-11-2018:

- Where charge was **created before 02-11-2018** but was not registered within the **original period of 30 days**, the **Registrar** may, on an application by the Co**, allow such registration to be made within a period of 300 days of such creation**.
- Further, if the **registration is not made within the extended period** of 300 days, it **shall be made within 6 months from 02-11-2018** on payment of additional fees.

II. Charges created on or after 02-11-2018:

- Where charge was created on or **after 02-11-2018 but the registration of charge not effected within the original period of 30 days), Registrar** may, on application by the Co, **allow such registration to be made within a period of 60 days of such creation** on payment of additional fees.
- Further, if the **registration is not made within the extended period** as above, the company shall make an application and the Registrar is empowered to allow such registration to be madeit **shall be made within a further period of 60 days** on payment of advalorem fees.

C. Procedure for Extension of Time Limit (Rule 4 of Companies (Registration of Charges) Rules, 2014):

- For seeking **extension of time, the Co. is required to make an application to the Registrar** in the **prescribed form.[Form CHG-1 or CHG-9** (in case of debentures)]
- It should be **supported by a declaration** from the Co. **signed by its CS or a director** that such belated filing shall not adversely affect the rights of any other intervening creditors of the Co.
- The **application** so made **must satisfy the Registrar that the CO. had sufficient cause for not filing** the particulars and the instrument of charge, if any, **within the original period of 30 days**.
- Further, **requisite additional fee or advalorem fee**, as applicable, **must also be paid.**

D. Verification of Instrument of Charge (Rule 3):

a) In case of property situated outside India:

Copy shall be **verified by a certificate issued either-**

- under the **seal, if any, of the company**, or
- under the **hand of any director or CS** of the Co, **or** an **authorised officer of the charge holder**, or
- under the **hand of some person other than the Co. who is interested in the mortgage or charge**;

b) In case of property situated in India (whether wholly or partly):

Copy shall be **verified** by a certificate issued **under the hand of any director or CS of the Co. or an authorised officer of the charge holder**.

E. Certificate of registration:

a) On registration of a charge, the **Registrar shall issue a certificate of registration** of charge**.(Form CHG 2)**

b) **Certificate** shall be **issued to the Co. & charge-holder**.

c) The **certificate** so issued by the Registrar shall be **conclusive evidence** that the **requirements** of Chapter VI of the Act and the rules made thereunder **as to registration of creation of charge have been complied with**.

F. Effects of non-registration:

a) A **charge shall not be taken into account** by **the liquidator or any creditor** of the Co, **unless it is duly registered, and a certificate of registration of charge is issued** by the registrar. This means that the charge will become void against the liquidator and other creditors of the company.

b) However, the **obligation to repay the amount secured by the charge shall remain unaffected**. This means that the debt is valid and may be enforced against the company through the courts by filing a suit, but the security is lost. Further the company shall have to face penalty for offence under Chapter VI

G. Effect of subsequent registration:

- Where a **charge is not registered within 30 days** of its creation, **but is registered subsequently**, any such **subsequent registration shall not prejudice any right acquired** by any person **before the charge is actually registered**, in respect of the property which is the subject matter of charge.
- Important consequence of non-registration is that the **charge-holder loses priority**.

H. Exception:

This **section shall not apply to** such **charges as may be prescribed in consultation with the RBI**.

Nothing contained in this rule 3 shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the RBI when any loan or advance has been made to it under Sec 17(4)(d) of the RBI Act, 1934.

APPLICABILITY OF SEC 77 IN CERTAIN CASES (Sec 79)

Sec 79 says that Sec 77 relating to **registration of charges** shall, so far as may be, **apply to** -

(a) a Co. acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

A. Company acquiring any Property subject to Charge [Sec 79(a)]:

- In case of a property where charge is already registered **and if it is sold with the permission of the holder of charge,** it shall be the **duty of the Co. acquiring it to get the charge registered in accordance with Sec 77**.
- In other words, the **earlier charge should get vacated** and, **in its place**, **new charge should get registered** by **the Co. which has acquired it.**

B. Modification of Charge when there is Change in Terms and Conditions, etc. [Sec 79 (b)]:

- Sec 79 (b) requires **any modification in charge** (i.e. change in terms and conditions or change in extent of any charge, etc.) **to be registered by the Co. in accordance with Sec 77.Thus the provisions applicable to the registration of a charge u/s 77 shall apply to modification of the charge."**
- **'Modification'** includes **variation in any of the terms and conditions** of the agreement **including change in rate of interest** which may be by mutual agreement or by operation of law.

Some **examples** of modification are as under:

1. where the **charge is modified by varying** any terms and conditions of the existing charge by agreement;
2. where the modification is in pursuance of an **agreement for enhancing or decreasing the limits;**
3. where the modification is by **ceding a *pari passu* charge;**
4. **change in rate of interest (other than bank rate)**
5. change in **repayment schedule** of loan; (this is not applicable in working loans which are repayable on demand) and
6. **partial release of the charge** on a particular asset or property

C. Issue of Certificate of Modification:

- **As per Rule 6**, where the particulars of modification of charge is registered u/s 79, the **Registrar shall issue a certificate of modification of charge in Form CHG-3**.
- The **certificate** so issued by the Registrar **shall be conclusive evidence that the requirements** of Chapter VI of the Act and the rules made thereunder **as to registration of modification of charge have been complied with.**

REGISTRATION OF CHARGES (Chart 10.2)

REGISTRATION OF CHARGE BY THE CHARGEHOLDER [Sec 78]

a) Where a **Co. fails to register any charge within 30 days of its creation**, the **charge-holder may make an application to the registrar for registration of charge** along with the instrument of charge.
b) The **application shall be made in** such form, in such manner, and within such time, as may be prescribed.(As per Rule 3, **Form CHG-1 or Form CHG-9 (in case of debentures)** is to be filled.)
c) On receipt of application from the charge-holder the **Registrar shall give notice of such application to the Co**.
d) If **no objection is received**, the **Registrar may, within 14 days, allow the registration of the charge**, on payment of such fees as may be prescribed.
e) The **Registrar shall not allow the application** of the charge-holder, if -
   (i) the **Co. itself registers the charge**; or
   (ii) the **Co. shows sufficient cause that the charge should not be registered**.

Recovery of fees paid:
Where a **charge is registered by the Registrar** on an application made by the charge-holder, the **chargeholder shall be entitled to recover from the company the fees paid by him to the registrar** for the purpose of registration of charge.

DEEMED NOTICE OF CHARGE [Sec 80]

- Where any charge on any property or assets of a Co. or any of its undertakings is registered u/s 77, **any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration.**
- In case **any person enters into the transaction without making any enquiry** and **later on suffers loss because of charge,** he **cannot succeed against the Co. for incurring loss**, for it shall be deemed that he had notice of charge.

CO. TO REPORT SATISFACTION OF CHARGE [Sec 82]

- **Manner of giving intimation:**
  (a) **Where a registered charge is paid or satisfied** (i.e. when the amt is not repaid but an asset of equal value is offered in the place of the property being released from charge) **in full, the Co. shall give an intimation to the registrar**.
  (b) Intimation shall be **given**, **within 30 days**, in the prescribed form **(CHG-4)**. However **Registrar may**, on an application by the Co. or the charge holder, **allow such intimation of payment or satisfaction to be made within a period of 300 days** of **such payment or satisfaction on payment of such additional fees as may be prescribed.(Rule 8)**
- **Procedure adopted by Registrar:**
  (a) On receipt of such intimation, the. **Registrar shall issue a notice to the charge-holder requiring him to show cause** as to why the payment or satisfaction of charge should not be recorded.
  (b) **If the charge-holder does not show any cause** within the time specified in notice **(not being more than 14 days), registrar shall-**
     i. **record the satisfaction of charge in the register of charges** maintained by him; &
     ii. **inform the Co. that the satisfaction of charge has been recorded**.
  (c) **Notice to the charge-holder is not required** where intimation to the Registrar is given in **the prescribed form (CHG-4) and is signed by the charge-holder**.
  (d) Where **any cause is shown by the charge-holder**, **Registrar shall-**
     i. **record a note to that effect in the register of charges maintained** by him;
     ii. **inform the Co. regarding the cause shown by the charge-holder**.
- **Issue of Certificate:**
  As per Rule 8 (2), in case the **Registrar** enters a memorandum of satisfaction of charge in full, he **shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.**
- **Preservation of Records:**
  The **instrument** creating a charge or modification thereon **shall be preserved for a period of 8 years from the date of satisfaction of charge** by the Co.
- **Power of registrar to record satisfaction in other cases:**
  The **power** of the Registrar to record satisfaction of charges u/s 82 **shall not affect-**
  (i) the **power** of the registrar **to record satisfaction of charges u/s 83**; or
  (ii) the **power** of the registrar **to record satisfaction of charges otherwise than on receipt of any intimation from the Co**.

POWER OF ROC TO RECORD SATISFACTION OF CHARGE & RELEASE IN ABSENCE OF INTIMATION FROM CO. Sec 83

- **Cases where Registrar may record satisfaction of charge in the absence of intimation from the Co.-**
  If the Registrar is satisfied (on the basis of evidence produced before him) that in relation to a registered charge-
  (a) the **debt has been repaid in full**; or
  (b) the **property charged has been released from charge**; or
  (c) the **property charged has ceased to be the property of the Co.**
  then the **Registrar may record the satisfaction of charge in the register of charges** maintained by him **notwithstanding the fact that no intimation of satisfaction of charge has been given to him by the Co**.

- **Notice to parties:**
  Within 30 days of recording satisfaction of charge in the register of charges, the **registrar shall inform the affected parties regarding recording of satisfaction of charge**.
- **Issue of Certificate:**
  Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall **issue a certificate of registration of satisfaction of charge in Form No. CHG-5**.

APPOINTMENT OF RECEIVER OR MANAGER - Sec 84

- **Notice of appointment of receiver or manager:**
  If -
  (a) **any person obtains an order to appoint; or**
  (b) **any person, by virtue of any power contained in any instrument appoints**
  a person as a **receiver or manager of any property** of the Co, **which is subject to charge,**
  then **such person shall, within 30 days, give a notice to the Co. and the registrar** along with a copy of such order or such instrument, and the **registrar shall**, on payment of prescribed fees, **register the same**.

- **Notice of cessation:**
  If the **person appointed as a receiver or manager ceases to hold his office**, he **shall give a notice of such fact to the Co. and the registrar**, and the registrar shall register the same.
- **Intimation of appointment of Receiver or Manager:**
  The **notice of appointment or cessation** of a receiver or manager of the property **shall be filed with the Registrar in Form No. CHG-6 along with fee.**

REGISTER OF CHARGES TO BE KEPT BY REGISTRAR- Sec 81

a) **Registrar shall keep a register of charges** in such form and manner as may be prescribed.
b) The register **shall be kept with respect to every Co**, and **shall contain the particulars of all the charges** registered with the registrar.
c) **Any person** may, **on payment of prescribed fees, inspect the register of charges** maintained by the registrar.
d) **Particulars of charges maintained on the MCA portal** (www.mca.gov.in/MCA21) **shall be deemed to be the register of charges** to be maintained by the Registrar u/s 81.

COMPANY'S REGISTER OF CHARGES - Sec 85

- **Manner of maintenance of register:**
  (a) Every Co. shall **keep a register of charges** in such form and in such manner as may be prescribed.
  (b) Register shall **contain such particulars** as may be prescribed, **with respect to every charge created** by the Co.
  (c) **Register & instruments creating the charges shall be kept at the R.O.** of the Co.
- **Inspection of the register:**
  (a) Register of charges and instruments creating the charges shall be **open for inspection during business hours —**
     i. **by any member or creditor, without any fees**; and
     ii. **by any other person, on payment of prescribed fees**.
  (b) Co. may **impose such reasonable restrictions on the inspection**, **as** maybe **contained in the articles** of Co.

Provisions contained in Rule 10 of the Companies (Registration of Charges) Rules, 2014

Company's register of charges (Rule 10):
(a) Every Co. shall **keep at its R.O. a register of charges in Form No CHG-7** and **enter** therein **particulars of all the charges registered with the Registrar** and the **particulars of any property acquired subject to charges** as well as **particulars of any modification and satisfaction of charge**.
(b) **Entries** in the register of charges maintained by the company **shall be made forthwith after the creation, modification or satisfaction of charge**, as the case may be.
(c) Entries shall be **authenticated by a director or the secretary of the Co. or any other person authorised by the Board** for the purpose.
(d) **Register of charges shall be preserved permanently** and the **instrument creating a charge or modification** thereon **shall be preserved for a period of 8 years** from the date of satisfaction of charge by the Co.

REGISTRATION OF CHARGES (Chart 10.3)

PUNISHMENT FOR CONTRAVENTION [Sec 86]

1) If any Co. contravenes any provision of this Chapter, then the **Co. shall be liable to a penalty of Rs.5L** and **every officer in default shall be liable to a penalty of Rs.50,000** and
2) If any person **wilfully furnishes any false or incorrect information** or **knowingly suppresses any material information**, **shall be liable for action u/s 447.**

POWER OF CG TO CONDONE THE DELAY AND ORDER RECTIFICATION OF REGISTER OF CHARGES - Sec 87

Provisions contained in Sec 87:

CG on being satisfied that -

a) the **omission to give intimation to the Registrar** of the PAYMENT or SATISFACTION of a charge, **within the time required** under this Chapter; or
b) the **omission or misstatement of any particulars** with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of Sec 82 or 83,

– **was accidental** or
– **due to inadvertence** or
– some **other sufficient cause** or
– it is **not of a nature to prejudice the position of creditors or shareholders** of the Co,

it may,

– on the application of the Co. or any person interested and
– **direct** that the **time for the giving of intimation of payment or satisfaction shall be extended** or,
– as the case may **require, that the omission or misstatement shall be rectified.**

Provisions contained in Rule 12 of the Companies (Registration of Charges) Rules, 2014:

CG may **on** an **application filed in Form No. CHG-8** in accordance with Sec 87–

a) **direct rectification** of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of Sec 82 or 83,
b) **direct extension of time for satisfaction of charge**, if such filing is not made within a period of **300 days from the date of such payment or satisfaction**.

TYPES OF CHARGES

FIXED CHARGE

- 'Fixed charge' is a **charge which attaches specific assets of the borrowing Co**.
- These assets are of **permanent nature** like L&B, office premises, machinery installed by the Co, etc. and are **identified at the time of creation of charge**.
- When a charge is created on such assets, the **charge remains 'fixed' and the borrowing Co. is not permitted to sell such assets** though it may use them.
- A fixed charge is **created by way of mortgage or deposit of title deeds**.
- **Assets** under fixed charge **can be sold only with the permission of the charge-holder**.
- A fixed charge is **vacated when the money borrowed against the assets subject to fixed charge is repaid in full**.

FLOATING CHARGE

- 'Floating charge' is **created on assets** or a class of assets **which are of fluctuating nature** like raw material, Stock in trade, debtors, etc.
- The **assets under floating charge keep on changing because the borrowing Co. is permitted to use them for producing final goods for sale.** *e.g.* in case of a company which manufactures leather goods, the raw material in the form of leather, which is subject matter of floating charge, shall be used to manufacture leather goods without seeking any permission from the lender.
- The **Co. is free to deal with the assets which are under floating charge according to its own choice**.
- When the **creditor enforces the security or the company goes into liquidation, the floating charge will become a fixed charge** on all the assets available on that date and which may come into existence thereafter. **This is called crystallization of a floating charge**.
- A floating charge **remains dormant until it becomes fixed or crystallises. On crystallisation, the security (i.e. raw material, SIT, etc.) becomes fixed and is available for realization so that borrowed money is repaid**.
- Crystallisation of floating charge may occur when the terms and conditions of floating charge are violated or the company ceases to continue its business or the company goes into liquidation or the creditors enforce the security covered by the floating charge, etc.

Compiled By: CA Sahil Grover

DIFFERENCE BETWEEN FIXED AND FLOATING CHARGE

Fixed charge or Specific charge	Floating charge
It is **created on some identifiable** (i.e., specific) **property** of the Co.	It is **created on a class of assets, present as well as future**.
Without obtaining the consent of the charge holder, the **Co. cannot deal in such asset** in the ordinary course of business, i.e., • Co. cannot sell such an asset • Co. cannot create a subsequent charge having priority over such charge.	Without obtaining the consent of the charge holder, the **Co. can deal in such an asset** in the ordinary course of business.
Fixed charge is generally **created on fixed assets**, like land and building, plant and machinery.	Floating charge is generally **created on such assets as are always circulating**, e.g., stock, debtors, etc.
Fixed charge has always **priority over floating charge**.	**Ambulatory and shifting** in character

CRYSTALLISATION OF A FLOATING CHARGE

Meaning of crystallisation:

'Crystallisation' means that the **right of the Co. to deal in the assets, which are subject of floating charge, comes to an end.**

Cases in which crystallisation takes place:

- Where the **Co. is** ordered to be **wound up.**
- Where the **Co. ceases to carry on business**.
- Where a **receiver is appointed**.
- Where the **Co. makes a default in payment of interest or repayment of principal to the charge holder** in accordance with the terms of the change, and the **charge holder brings an action to enforce his security**.

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DECLARATION AND PAYMENT OF DIVIDEND (Chart 11.1)

MEANING OF DIVIDEND

- A dividend is a **payment made by a Co. to its shareholders**, usually as a distribution of profits i.e. a portion of profits earned and allocated as payable to the shareholders yearly or whenever declared.
- A dividend is **allocated as a fixed amount (generally in %) per share**, with shareholders receiving a dividend.
- Dividend is a **return on the investment of shareholders** in a Co. **Only profits can be distributed as dividend**.
- Dividend means the **portion of profits a Co. which is distributed to its shareholders**.
- **Sec 2(35)** of the Companies Act, 2013, simply states that **"dividend" includes any interim dividend**.
- Therefore **all provisions applicable to final dividend shall apply to interim dividend**.
- The **ICAI has defined dividend as "a distribution to shareholders out of profits or reserves available for this purpose"**(Vide-Guidance note on terms used in financial statements)

TYPES OF DIVIDEND

I. Dividend payable on the basis of Time (When declared):

(i) Interim Dividend:

- When the **BOD declare dividend between two AGM** of the Co, such dividend is **known as Interim dividend**.
- A part of profits may be distributed before the accounts are finally passed and the declaration of dividend sanctioned in the AGM. Such dividends are called 'Interim Dividend'.

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(ii) Final Dividend:

When the **dividend is declared at the AGM** of the Co, it is **known as Final dividend**. All the provisions applicable on dividend are also applicable on interim dividend.

II. Dividend payable on the basis of Nature of shares:

(i) Preference Shares:

- According to Sec 43 of the Companies Act, 2013 **persons holding preference shares, called preference shareholders, are assured of a preferential dividend at a fixed rate** during the life of the Co.
- Preference dividend **unless otherwise agreed is Non-cumulative** in nature and **need not be paid in any year where there is deficiency of profits**.

Types of Preference Shares on the basis of payment of dividend:

a) Cumulative Preference Shares:

- Cumulative preference share is **one that carries the right to a fixed amount of dividend or dividend at a fixed** rate. Such a dividend is **payable even out of future profit if current year's profits are insufficient** for the purpose.
- This means that **dividend on these shares accumulates unless it is paid in full** and, therefore; the shares are called **Cumulative Preference Shares**.
- **If the profits available for dividend in one year are insufficient to pay the preference dividend in full, the unpaid balance of dividend is carried forward and is payable out of the profits of later years.**
- **No dividend may be paid on the equity shares or the junior classes of preference shares** until the preference dividends for all past years and the current year have been paid in full to the preference shareholders having a prior claim.

b) Non-cumulative Preference Shares:

- A non-cumulative preference share is one **where the dividend is payable only in a year of profit**. There is **no accumulation of profit** as in the case of cumulative preference shares.
- In case **no dividend is declared** in a year due to any reason, the **unpaid balance of dividend of that year is not carried forward** and thus the right to receive such dividend for that year expires.
- It implies that **holder of such a share is not entitled to arrears of dividend in future**.

(ii) Equity shares:

- Equity shares are those **shares, which are not preference shares**.
- It means that they **do not enjoy any preferential rights in the matter of payment of dividend or repayment of capital**.
- The **rate of dividend on equity shares is recommended by the BOD and may vary from year to year**. Rate of dividend depends upon the dividend policy and the availability of profits after satisfying the rights of preference shareholders.

DECLARATION OF DIVIDEND

- Dividend is **recommended by BOD** in the Board's Report and **approved by Shareholders at the AGM.**
- The **power to declare dividend rests with the members**, but the members **can exercise such power only if the dividend is proposed by the Board**.
- The **rate of dividend proposed by the Board may be reduced by the members** but **cannot be increased** by the members
- **Any provision in the articles**, which authorises the members **to declare dividend higher than the rate recommended by the board, is void**.
- Dividend is generally **declared at an AGM**. The declaration of dividend at an AGM is an **item of ordinary business**. (Sec 102)
- Dividend is **not a liability unless it is declared by the shareholders** at a validly constituted GM **by passing an OR**.
- Dividend is **declared as a proportion of Nominal or Face Value** of a share.
- A Co. **may pay dividend in proportion to the amount paid up** on the shares, **if authorised by its articles**. (Sec 51)

CONDITIONS FOR DECLARATION AND PAYMENT OF DIVIDEND [Sec 123]

(i) Sources of Dividend [Sec 123(1)]: Dividend shall be **declared or paid** by a Co. for any FY **only** -

a) **out of the profits** of the Co. **for that year** arrived at after providing for depreciation in accordance with the provisions of Sec 123(2), or

b) **out of the profits** of the Co. **for any previous F/Y(s)** arrived at after providing for depreciation in accordance with provisions of 123(2) and remaining undistributed, or

c) **out of both (a) and (b);** or

d) **out of money provided by the CG or SG** for the payment of dividend by Co. in pursuance of guarantee given by that Govt.

Note:

- In computing profits - **unrealized gains, notional gains or revaluation of assets** and any **change in carrying of an asset or of a liability** on measurement of the asset or the liability at fair value **shall be excluded**.

(ii) Transfer to reserves (1st Proviso to Sec 123(1)):

- A Co. may, before the declaration of any dividend in any financial year, **transfer such percentage of its profits for that F/Y as it may consider appropriate to the reserves**.
- Such **transfer is not mandatory** and the % to be transferred to reserves is to be decided at the discretion of Co.

(iii) Declaration of dividend out of accumulated profits: [2nd Proviso to Sec 123(1)]

- Where a **Co, owing to inadequacy or absence of profits** in any F/Y,
- **proposes to declare dividend out of the accumulated profits** earned by it in previous years and **transferred by the Co. to the free reserves,**
- such **declaration of dividend shall be made only in accordance with prescribed rules.(Rule 3)**
- **Exemption:**
  The **above proviso shall not apply to a Govt. Co.** in which the entire paid up share capital is held by the CG, or SG or by CG and one or more SG.
- **Utilisation of credit balance of P&L A/c for declaration of dividend:**
  If a Co. **does not transfer the profits to reserves** and instead **carry forward such profits**, such **credit balance in the P&L A/c may be utilised for declaration of dividend without fulfilling any conditions**. Such utilisation of profits does not amount to withdrawal of profits from reserves and thus, **2nd proviso to Sec 123(1) and Rule 3 shall not apply in this case.**

(iv) Declaration of dividend from free reserves:

Dividend shall be **declared or paid by a Co. only from its free reserves.** No other reserve can be utilized for the purposes of declaration of such dividend. **[3rd Proviso to Sec 123(1)].**

(v) Declaration of dividend by set off of previous losses and depreciation against the profit of the Co. for the current year:

No Company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years **are set off against profit of the company for the current year. [4th Proviso to Sec 123(1)].**

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DECLARATION AND PAYMENT OF DIVIDEND (Chart 11.2)

CONDITIONS FOR DECLARATION AND PAYMENT OF DIVIDEND [Sec 123]

Conditions to be fulfilled before declaring dividend out of reserves [Rule 3]

a) Rate of dividend declared shall not exceed the **Avg. of the rates** at which dividend was declared by it **in the 3 years immediately preceding that year**. However, **this rule will not apply if a Co. has not declared any dividend in each of the 3 preceding F/Y.**

b) Total amt to be drawn from such accumulated profits shall not exceed 1/10th of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement. The amt so drawn shall first be utilised to set off the losses incurred in the F/Y in which dividend is declared before any dividend in respect of equity shares is declared.

c) The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

Rule 3 is not applicable to a Govt. Co. in which the entire paid up share capital is held by the CG, or SG or by CG and one or more SG.

(vi) Depositing of amount of dividend [Sec 123(4)]:

Amt of the dividend, including interim dividend, **shall be deposited in a scheduled bank in a separate account within 5 days from the date of declaration** of such dividend

Exemption: This sub-section **shall not apply to a Govt. Co.** in which **the entire paid up share capital is held by the CG, or SG or by the CG and one or more SG or by one or more Govt. Co.**

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(vii) Interim Dividend [Sec 123(3)]:

- **BOD may declare interim dividend** during any F/Y or at any time during the period from closure of F/Y till holding of AGM **out of** :
  - **surplus in the P/L A/c** or
  - **profits of the F/Y in which such interim dividend is sought to be declared** or
  - **profits generated in the F/Y till the quarter preceding the date of declaration of the interim dividend**.
- Declaration of interim dividend **shall be ratified at ensuing AGM by the members**.
- It is the **discretion of the board whether to declare interim dividend or not**.
- Past **accumulated profits** in P/L A/c **may be used for declaring interim dividend**. However, **profits transferred to reserves cannot be used for declaring interim dividend**.
- **In case the Co. has incurred loss during the current FY up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the Avg. dividends declared by the Co. during the immediately preceding 3 FYs.**

(viii) Payment of dividend [Sec 123(5)]:

(a) Dividends are **payable in cash**. Dividends that are payable to the shareholder in cash **may be paid by cheque or warrant or in any electronic mode**.
(b) Dividend shall be **payable only to the registered shareholder of the share or to his order or to his banker**.
(c) In case a shareholder informs the Co. to pay **dividend to** a particular **banker** and if the payment is so made by the Co, then it **shall be deemed to be made to the shareholder himself**.
(d) In **case of joint holder**, the **dividend shall be paid to the joint holder, who is first named in the register of members**.
(e) This sub-section **shall apply to the Nidhis Co**, subject to **that any dividend payable in cash may be paid by crediting the same to the account of the member**, if the dividend is not claimed within 30 days from the date of declaration of dividend.
(f) **Nothing** in this sub-section, **shall prohibit the capitalization of profits or reserves** of a Co. **for the purpose of issuing fully paid- up bonus shares or paying up any amount for the time being unpaid on any shares** held by members.
(g) **Issue of bonus share in lieu of dividend is not permissible**

(ix) Prohibition on declaration of dividend:

Sec 123(6) provides that a **Co. which fails to comply with the provisions of Sec 73 and Sec 74 shall not**, so long as such failure continues, **declare any dividend** on its equity shares.

(x) Prohibition on Sec-8 companies:

Companies having licence u/s 8 (Formation of companies with Charitable Objects, etc.] **are prohibited from paying any dividend to its members**. Their profits are intended to be applied only in promoting the objects of the Co.

UNPAID DIVIDEND ACCOUNT - Sec 124

1) Declared dividend not paid or claimed to be transferred to the special account:

Where a dividend has been **declared** by a Co. **but has not been paid or claimed within 30 days from the date of the declaration** to any shareholder, the Co. shall, **within 7 days from the date of expiry of the said period of 30 days, transfer the total amt of dividend which remains unpaid or unclaimed to a special account** in any scheduled bank to be called the **Unpaid Dividend Account**.

2) Preparing of statement of particulars of the unpaid dividend:

Co. shall, **within a period of 90 days of making any transfer** under sub section (1), **prepare a statement containing the names, their last known addresses and the unpaid dividend** to be paid to each person and **place it on the website of the Co**, if any, and also on **any other web-site approved by the CG** for this purpose.

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3) Default in transferring of amount:

If any **default is made in transferring the amt referred in Sec 124(1)** it shall **pay, from the date of such default, interest on the amt as has not been transferred** to the said account, **@ 12% p.a.** & the interest accruing on such amount shall ensure i.e. available to the benefit of the members of the company in proportion to the amount remaining unpaid.

4) Apply for payment of claimed amount:

Any **person claiming to be entitled to any money transferred u/s 124(1)** to the Unpaid Dividend Account of the Co. **may apply to the company for payment of the money claimed**.

5) Transfer of unclaimed amount to Investor Education and Protection Fund (IEPF):

- **Any money transferred to Unpaid Dividend A/c which remains unpaid or unclaimed for a period of 7 years** from the date of such transfer **shall be transferred** by the Co. **along with interest accrued, if any, thereon to the Fund established u/s 125(1)**.
- Co. **shall send a statement in the prescribed form (IEPF-1)** of the details of such transfer to the authority which administers the said Fund and that **authority shall issue a receipt to the Co. acknowledging the transfer of money in the fund**. This receipt shall be evidence of such transfer.

6) Transfer of shares to IEPF:

- **All shares in respect of which dividend has not been paid or claimed for 7 consecutive years or more shall be transferred** by the Co. **in the name of IEPF** along with a statement containing such details as may be prescribed.
- Provided that **any claimant of shares transferred above shall be entitled to claim the transfer of shares from IEPF.**

Explanation - In case **any dividend is paid or claimed for any year during the said period of 7 years, the share shall not be transferred to IEPF.**

7) In case of contravention:

If a **Co. fails to comply with any of the requirements of this section**,

- **Co. shall be liable to a penalty of Rs.1 lakh** and in case of **continuing failure, with a further penalty of Rs.500 for each day** after the first during which such failure continues, subject to a **maximum of Rs.10L** and
- **Every officer** of the Co. who is **in default** shall be **liable to a penalty of Rs.25000** and in case of **continuing failure, with a further penalty of Rs.100 for each day** after the first during which such failure continues, subject to a **maximum of Rs.2L.**

DECLARATION AND PAYMENT OF DIVIDEND (Chart 11.3)

INVESTOR EDUCATION AND PROTECTION FUND (Sec 125)

1) **Establishment of Fund:**
CG shall establish a Fund to be called the **Investor Education and Protection Fund** (herein after referred to as the Fund.)

2) **Credit of amount to the Fund:**
There shall be credited to the Fund the following amounts -
(a) Amt given by CG by way of grants.
(b) Donations given to the Fund by the CG, SG, companies or any other institution.
(c) Amt in the Unpaid Dividend A/c transferred to the Fund u/s 124(5).
(d) Amt in the general revenue account of the CG which had been transferred to that account u/s 205A(5) of Companies Act, 1956.
(e) Amt lying in IEPF u/s 205C of the Companies Act, 1956.
(f) Interest or other income recd out of investments made fromFund.
(g) Amt received u/s 38(4) i.e. amt received through disgorgement or disposal of securities u/s 38(3).
(h) Application money due for refund and remaining unpaid for 7 years from the date it became due for payment.
(i) Matured deposits with Co. other than banking Co. remaining unpaid for 7 years.
(j) Matured debentures with Co. remaining unpaid for 7 years.
(k) Interest accrued on the amounts referred in clauses (h) to (j).
(l) Sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 or more years.
(m) Redemption amt of preference shares remaining unpaid or unclaimed for 7 years.
(n) Other amount as prescribed [Rule 3].

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3) **Utilization of the Fund:**
a) Refund in respect of unclaimed dividends, matured deposits & debentures, application money due for refund and interest thereon;
b) Promotion of investors' education, awareness and protection;
c) Distribution of any disgorged amt in accordance with the orders made by the Court.
d) Reimbursement of legal expenses incurred in pursuing class action suits u/s 37 and 245.
e) Any other purpose incidental thereto.

4) **Application to the authority for payment:**
Any person claiming to be entitled to the amt transferred to the fund **may apply to authority constituted u/s 125(5) for the payment of the money claimed**.

5) **Constitution of authority for administration of Fund:**
CG shall constitute, by notification, an **authority** for administration of the Fund **consisting of a chairperson (being the Secretary of MCA) and such other members, not exceeding 7 and a CEO**.As per rules **the Secretary, MCA shall be the ex-officio Chairperson of the Authority.** In addition, there shall be 6 members (maximum limit seven) and a CEO who shall be the convenor of the Authority.

6) **Handling of the Fund:** Manner of administration of the Fund, appointment of chairperson, members and CEO, holding of meetings of the authority shall be in accordance with such rules prescribed under the **IEPF Authority (Appointment of Chairperson &Members, holding of meetings and provision for offices and officers) Rules, 2016.**

7) **Providing of resources from CG to administer the Fund:** **CG may provide to the authority such offices, officers, employees and other resources** in accordance with the IEPF Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016.

8) **Authority to work in consultation with CAG of India:** The authority shall **administer the Fund and maintain separate accounts** and other relevant records in relation to the Fund in such form as may be prescribed **after consultation with the CAG of India**.

9) **Right of the authority to spend the money:** Authority is competent to **spend money out of the Fund for carrying out the objects specified in Sec 125(3)**.

10) **Audit of the Fund:** The **accounts** of the Fund **shall be audited by the CAG** of India at such intervals as may be specified by him and such **audited accounts** together with the **audit report shall be forwarded annually** by the authority **to the CG**.

11) **Preparation of the annual report by authority:**
- **Authority shall prepare its annual report** in such form and at such time for each F/Y. Annual report **shall give a full account of its activities** during the F/Y.
- **A copy of the annual report shall be forwarded to the CG.**
- **CG shall cause the annual report and audit report** given by the CAG **to be laid before each House of Parliament.**

RIGHT OF DIVIDEND, RIGHTS SHARES AND BONUS SHARES TO BE HELD IN ABEYANCE PENDING REGISTRATION OF TRANSFER OF SHARES [Sec 126]

1) Where any **instrument of transfer of shares has been delivered to any Co. for registration and the transfer of such shares has not been registered** by the Co, the Co. shall —

a) **transfer the dividend** in relation to such shares **to the Unpaid Dividend Account.** However, the **dividend shall not be transferred to the unpaid dividend account if the Co. is authorised by the registered holder** of such share **in writing to pay such dividend to the transferee** specified in such instrument of transfer; and

b) keep in abeyance in relation to such shares any offer of rights shares u/s 62(1)(a) and any issue of fully paid-up bonus shares.

2) **Sec 126 shall apply notwithstanding anything contained in any other provision of the Act.**

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PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS [Sec 127]

Punishment for Failure:
In case a Co. **fails to pay declared dividends or fails to post dividend warrants within 30 days of declaration**, then:
- **Every director** of the Co. shall, if he is knowingly a party to the default, be **punishable with imprisonment which may extend to 2 years** and **fine which shall not be less than Rs.1,000 for every day** during which such default continues.
- **Co.** shall also be **liable to pay simple interest @ 18% p.a.** during the period for which such default continues.

Exception (no offence deemed to have been committed):
a) where the **dividend could not be paid** by reason of the operation of any law;
b) where a **shareholder has given directions** to the Co. **regarding the payment of the dividend and those directions cannot be complied with** and the same has been communicated to him;
c) where there is a **dispute regarding the right to receive the dividend**;
d) where the **dividend has been lawfully adjusted** by the Co. **against any sum due to it from the shareholder**; or
e) where, for any other reason, the **failure to pay the dividend or to post the warrant within the period of 30 days was not due to any default on the part of the Co**.

Exemption:
This section shall **apply to the Nidhis Co**, subject to that **where the dividend payable to a member is Rs.100 or less**, it **shall be sufficient compliance** of the provisions of the section, **if the declaration of dividend is announced in the local newspaper and announcement of the said declaration is also displayed on the notice board of the nidhis for at least 3 months**.

Note: The provisions of Section 127 are equally applicable to interim dividend as they are applicable to final dividend.

INTERIM DIVIDEND vs FINAL DIVIDEND

BASIS	INTERIM DIVIDEND	FINAL DIVIDEND
Definition	Declared and paid during an accounting year, i.e. before the finalization of accounts for the year.	Dividend recommended by BOD and approved by shareholders at the company's AGM, after the close of F/Y.
Announce-ment	By BOD.	By BOD and approved by shareholders.
Time of Declaration	Before preparation of financial statements.	After preparation of financial statements.
Revocation	It can be revoked with the consent of all shareholders.	It cannot be revoked.
Provision in AoA	It is declared only when the articles specifically permits the declaration.	It does not require any specific provision in the articles.

ACCOUNTS OF COMPANIES (Chart 12.1)

BOOKS OF ACCOUNT, ETC., TO BE KEPT BY COMPANY – [Sec 128]

Books of Account [Sec 128(1)]

- Every company shall prepare **books of account** and **other relevant books and papers** and **financial statement** for **every financial year.**
- These books of accounts should give a **true and fair view** of the state of the affairs of the company, including that of its branch office(s), if any
- They should **explain the transactions** effected both at the **registered office and its branches.**
- These books of accounts must be kept on **accrual basis** and **according to the double entry system of accounting**
- **The books of account & other relevant books and papers shall be kept at Registered office of company.**
- Provided all or any of the books of accounts **may be kept at such other place in India as the BOD may decide**.
- Where such a decision is taken by the **Board the Co. shall within 7 days thereof file with the registrar a notice in writing in form AOC-5 (Rule 2A)** giving full address of that other place.
- **The company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.**

Maintenance of Books of account in electronic form - Rule 3

(1) Such books of accounts or other relevant books or papers maintained in electronic mode **shall remain accessible in India at all times so as to be usable for subsequent reference**.
[Provided that for the F/Y commencing **on or after the 1st day of April, 2023**, every Co. **which uses accounting software** for maintaining its books of account, **shall use only such accounting software which has a feature of recording audit trail** of each and every transaction, **creating an edit log of each change** made in books of account **along with the date when such changes were made and ensuring that the audit trail cannot be disabled.**]

(2) **Information** contained in the records **shall be retained completely in the format** in which they were **originally generated, sent or received,** or in a **format which shall present accurately the information generated, sent or received** and the information **shall remain complete and unaltered.**

(3) **Information received from branch offices shall not be altered** and **kept in a manner** where it shall **depict what was originally received from the branches**.

(4) Information **shall be capable of being displayed in legible form**.

(5) There shall be a **proper system for storage, retrieval, display or printout of the electronic records** and such **records shall not be disposed of or rendered unusable, unless permitted by law**.
Back-up of the books of account and other books and papers maintained in electronic mode, including at a place outside India, if any, **shall be kept in servers physically located in India on a daily basis**.

(6) Co. **shall intimate to the Registrar** on **an annual basis** at the time of filing of financial statement **following relevant information related to service provider -**
a) **name, internet protocol address & location of the service provider;**
b) **where** the books of account and other books and papers are **maintained on cloud, such address as provided by the service provider**.
c) **where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.**

Books of Account (Branch Office) Sec 128(2)

Where a Co. **has a branch office in India or outside India**, it shall be deemed to have complied with the provisions of sub-section (1) if **proper books of account relating to the transactions effected at the branch office are kept at that office** and proper **summarized returns periodically are sent** by the branch office to the Co. **at its R.O. or other place referred to in sub section (1)**

Inspection of books of account - Sec 128(3)

- The books of account and other books and papers **maintained in India shall be open for inspection by any director at the R.O. of the Co. or at such other place in India during business hours**.
- If any **financial information, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director** subject to such conditions **as may prescribed**
- **Inspection** in respect **of any subsidiary** shall be done only **by the person authorised by resolution of BOD**

Conditions Regarding Maintenance and Inspection of Certain Financial Information by Directors - Rule 4

1) **Summarised returns** of the books of account of the **kept and maintained outside India shall be sent to the R.O. at quarterly intervals**, which shall be kept and maintained at the R.O. of the Co. and kept open to directors for inspection.
2) Where any other **financial information maintained outside the country is required by a director**, the director **shall furnish a request to the Co.** setting out the full details of the financial information sought, the period for which such information is sought.
3) **Co. shall produce** such financial information **to the director within 15 days of the date of receipt of the written request.**
4) **Financial information required under sub-rules (2) and (3) shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.**

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Assistance by officers and Employees - Sec 128(4)

Where an inspection is made under sub-section (3), the officers and other employees of the Co. shall give to the person making such inspection all assistance in connection with the inspection which the Co. may reasonably be expected to give.

Preservation of books of account - Sec 128(5)

- Ever Co. **shall preserve in good order** the **books of account** together with the relevant vouchers **for a period** -
  a) **not less than 8 F/Y's immediately preceding the relevant F/Y**; or
  b) if Co. has been **in existence for less than 8 F/Y's, then, for the entire period of its existence.**
- Provided that **where an investigation has been ordered** in respect of the Co. **under Chapter XIV**, the **CG may direct** that **books of account may be kept for such longer period as it may deem fit.**

Persons responsible to maintain books - Sec 128(6)

- **MD, WTD (in charge of finance),**
- **CFO,**
- **Any other person** of a Co. **charged by the Board** with duty of complying with provisions of Sec 128.

Penalty provisions

In case the aforementioned persons referred to in sub-section (6) fail to take reasonable steps to secure compliance, they shall in respect of each offence, be punishable with **fine which shall not be less than Rs.50,000 but which may extend to Rs.5,00,000.**

DEFINITIONS

'Accrual basis of accounting' is an accounting assumption or an accounting concept followed in preparation of the financial statements. Accrual concept is one of the four principles or accounting concepts, which involves recording income and expenses as they accrue, as distinct from when they are received or paid.

'Double entry book-keeping' is a method of recording any transactions of a business in a set of accounts, in which every transaction has a dual aspect of debt and credit and therefore, needs to be recorded in at least two accounts. Double aspect enables effective control of business because all the books of accounts must balance.

True and fair view of the state of the affairs means that the financial statement are free from material misstatements and faithfully represents the financial performance and positioning of an entity.

"Books of account" as defined in Section 2(13) includes records maintained in respect of—
- **all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;**
- **all sales and purchases of goods and services by the company;**
- **the assets and liabilities of the company; and**
- **the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.**

"book and paper" and "book or paper" as defined in Section 2(12) include books of account, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form

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Financial statement [Sec 2(40)]:
'Financial statement' in relation to a company, includes —
i. **a balance sheet as at the end of the FY**
ii. **a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;**
iii. **cash flow statement for the financial year;**
iv. **a statement of changes in equity, if applicable; and**
v. **any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).**

In case of OPC, small company and dormant company and private company (if such private company is a start-up), the financial statements may not include the cash flow statement.

ACCOUNTS OF COMPANIES (Chart 12.2)

FINANCIAL STATEMENT [Sec 129]

True and Fair view [Sec 129(1)]

- Financial statements shall **give** a **true and fair view of the state of affairs** of the Co.
- It shall **comply with the AS notified u/s 133**.
- It **shall be in the form as may be provided** for different class of Co. **in Schedule III.**
- Provided further that **nothing** contained in sub-section (1) **shall apply to** any -
  - **insurance Co.**
  - **banking Co. or**
  - **Co. engaged in the generation or supply of electricity, or**
  - **other class of Co. for which a form of F.S. has been specified in or under the Act governing such class of Co.**
- Provided also that, F.S. **shall not be treated as not disclosing a true and fair view** of the state of affairs of the Co, **merely by reason of the fact that they do not disclose** -

a) ***In case of Insurance Co.-***
Matters which are not required to be disclosed by the **Insurance Act, 1938, or the IRDA Act, 1999**.

b) ***In case of Banking Co.-***
Matters which are not required to be disclosed by the **Banking Regulation Act, 1949.**

c) ***In case of Co. engaged in the generation or supply of electricity-***
Matters which are not required to be disclosed by the **Electricity Act, 2003**.

d) ***In case of Co. governed by any other law-***
Matters which are not required to be disclosed by that **law**.

Laying of financial Statements - Sec 129(2)

At every AGM of a Co, the BOD of the Co. shall lay before such meeting F.S. for the F/Y.

Consolidation of F.S. - Sec 129(3)

- Where a Co. **has one or more subsidiaries or associate Co**, it shall, in addition to its F.S. **prepare a consolidated financial statement** (CFS) **of the Co. and of all the subsidiaries and associate Co.**,
- **in the same form and manner as that of its own with applicable AS,**
- which **shall also be laid before the AGM of the Co. along with the laying of its F.S. under sub section 2.**
- Co. shall **also attach** along with its F.S., a **separate statement containing the salient features of the F.S. of its subsidiaries and associate Co. in Form AOC-1** as per **Rule 5 of the Companies (Accounts) Rules, 2014.**
- **CG may provide for the consolidation of accounts** of Co. in such manner as may be **prescribed under Rule 6**
- Provisions applicable to the preparation, adoption and audit of the F.S. of a holding Co. shall, **mutatis mutandis, also apply to the CFS. [Sec 129(4)]**

Manner of Consolidation of Accounts (Rule 6)

1) Consolidation of F.S. of the Co. **shall be made in accordance with** the provisions of **Sch III** of the Act **& the applicable A.S.**
2) In case of a **Co. covered u/s 129(3) which is not required to prepare CFS** under the A.S., it **shall be sufficient if the Co. complies with provisions on CFS provided in Schedule III** of the Act.
3) Nothing in this rule shall apply in respect of consolidation of financial statement by a company having subsidiary or subsidiaries incorporated outside India commencing on or after 1st April 2014.
4) Nothing in this rule **shall apply** in respect of preparation of CFS by a Co. **if it meets the following conditions**:-
(i) it is a **wholly owned subsidiary or partially owned subsidiary** of another Co. **and** all its other **members**, including those not otherwise entitled to vote having been **intimated in writing and for which the proof of delivery** of such intimation is available with the company, **do not object to the Co. not presenting CFS**;
(ii) it is a **Co. whose securities are not listed or are not in the process of listing** on any stock exchange, whether in India or outside India; and
(iii) its **ultimate or any intermediate holding Co. files CFS with the Registrar** which are in compliance with the applicable A.S.

Disclosures in case of non-compliance with A.S. [Sec 129(5)]

Where the F.S. of a Co. don't comply with the A.S. referred to in subsection (1), the Co. **shall disclose in its F.S.,**
(i) **the deviation from the A.S.,**
(ii) **the reasons for such deviation and**
(iii) **the financial effects, if any, arising out of such deviation.**

Exemption by CG - Sec 129(6)

CG may, **on its own or on an application** by a class of Co, **by notification, exempt** any class of Co. **from complying with any of the requirements of this section or rules made there under**, if it considered necessary to grant such exemption **in the public interest** and any such exemption may be granted **either unconditionally or subject to such conditions** as may be specified in the notification.

Penalty - Sec 129(7)

- If a **Co. contravenes the provisions** of this section, the **MD, WTD in charge of finance, CFO or any other person charged by the Board** with the duty of complying with the requirements of this section and in the **absence of any of the above officers, all the directors**
- shall be **punishable with Imprisonment** upto **1 year** or **Fine of Rs.50000** but which may extend **to Rs.5,00,000, or with both.**

PERIODICAL FINANCIAL RESULTS [Sec 129A]

CG may, **require such class or classes of unlisted companies**, as may be prescribed, -
a) to **prepare the financial results of the Co.** on **such periodical basis** and in such form as may be prescribed;
b) to **obtain approval of the BOD and complete audit or limited review of such periodical financial results** in such manner as may be prescribed; and
c) **file a copy with the Registrar within a period of 30 days of completion of the relevant period with such fees** as may be prescribed.

RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL ORDERS [Sec 130]

1) Apply to court for re-opening of accounts:
Co. shall not re-open its books of account and not recast its financial statements, unless an **application is made by the CG, Income-tax authorities, SEBI, any other statutory regulatory body or authority or any person concerned**.
2) Order by court/tribunal:
An order is made by a court of competent jurisdiction or the Tribunal to the effect that -
a) the relevant **earlier accounts were prepared in a fraudulent manner**; or
b) the **affairs of the Co. were mismanaged** during the relevant period, **casting a doubt on the reliability of financial statements**.
3) Notice and opportunity to make representations:
Court or the Tribunal, as the case may be, shall give notice to CG, IT authorities, SEBI or any **statutory regulatory body** or **authority** concerned or any other person concerned and shall **take into consideration the representations**, if any, made by authority specified in sub-section (1) **before passing any order under this section**.
4) Revised accounts shall be final:
Accounts so revised or re-cast, shall be final.
5) Period of accounts that could be reopened:
Order for reopening of accounts can be made for **upto 8 F/Y's preceding the current F/Y unless** there is a **specific direction u/s 128(5) from the CG that the books of accounts may be kept for longer period** in which case the books of account may be ordered to be reopened for a such longer period.

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VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT -Sec 131

1) Preparation of revised F.S. or revised report on the approval of Tribunal:
If it appears to the directors of a Co. that the **F.S. of the Co. or report of the Board, do not comply with the provisions of Sec 129 or 134,** they **may prepare revised F.S. or a revised report** in respect of any of the 3 preceding F/Y **after obtaining approval of the Tribunal** on an application made by the Co. **in such form and manner as may be prescribed** and a **copy of the order passed by the Tribunal shall be filed with the Registrar. (Rule 77 of National Company Law Tribunal Rules, 2016)**
2) Tribunal to serve the notice:
Tribunal **shall give notice to the CG and the Income tax authorities** and shall **take into consideration the representations**, if any, made by that Govt or the authorities **before passing any order**.
3) Number of times of revision and recast:
Revised F.S. or report **shall not be prepared or filed more than once in a F/Y.**
4) Reason for revision to be disclosed:
The **detailed reasons** for revision of such F.S. or report **shall also be disclosed in the Board's report in** the relevant **F/Y in which such revision is being made**.
5) Limits of revisions:
The **revisions of F.S. or report must be confined to** -
a) the **correction** in respect of which the previous F.S. or report do not comply with the provisions of Sec 129 or 134; and
b) the **making of any necessary consequential alternation**.
c) **require the directors to take such steps as may be prescribed**.

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ACCOUNTS OF COMPANIES (Chart 12.3)

Rule 77 of National Company Law Tribunal Rules, 2016

- Where it appears to the directors of a company that the financial statement of the company or the report of the Board do not comply with the provisions of section 129 or section 134, **the application shall be filed in Form No. NCLT-1 within 14 days of the decision taken by the Board.**
- The **application** shall **contain** the following particulars/details, namely:
  - **Financial year or period** to which such accounts relates;
  - The **name and contact details of the Managing Director, Chief Financial Officer, directors, Company Secretary and officer of the company responsible** for making and maintaining such books of account and financial statement;
  - Where such **accounts are audited, the name and contact details of the auditor** or any former auditor who audited such accounts;
  - **Copy of the Board resolution** passed by the Board of Directors;
  - **Grounds for seeking revision** of financial statement or Board's Report;
  - In case the **majority of the directors of company or the auditor of the company has been changed immediately** before the decision is taken to apply under section 131, the company shall disclose such facts in the application.
- The company shall **advertise the application** at least **fourteen days before the date of hearing as per Rule 35(vernacular and English newspaper)**
- The Tribunal shall issue **notice to the auditor** of the original financial statement and hear him.
- The Tribunal may pass **appropriate order** in the matter as may deem fit, after considering the application, hearing the auditor and/or any other person.
  Note – As per first proviso to section 131(1), the tribunal shall also give **notice to the Central Government and the Income tax authorities** and shall take into consideration the **representations**, if any, made by that Government or the authorities before passing any order under this section.
- A certified copy of the order of the Tribunal **shall be filed with the Registrar of Companies within thirty days of the date of receipt of the certified copy.**
- On receipt of approval from Tribunal a **general meeting** may be called and **notice of such general meeting** along with **reasons for change** in financial statements may be **published in newspaper in English and in vernacular language.**
  Note – As per third proviso to section 131(1), the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.
- In the general meeting, the **revised financial statements**, statement of directors and the statement of auditors may be **put up for consideration** before a decision is taken on **adoption of the revised financial statements**.
- On approval of the general meeting, the revised financial statements along with the statement of auditors or revised report of the Board, as the case may be, shall be filed with the **Registrar** of Companies **within thirty days** of the date of approval by the general meeting.

CG TO PRESCRIBE ACCOUNTING STANDARDS - Sec 133

CG shall prescribe the Standards of Accounting **as recommended by ICAI in consultation with and after examination of the recommendations made by NFRA** constituted u/s 132 of the Act.

Rule 7: Transitional Provisions in respect of A.S.

1) The standards of accounting as **specified under the Companies Act, 1956 (1 of 1956) shall be deemed to be the accounting standards** until accounting standards are specified by the CG u/s 133.
2) Till the NFRA is constituted u/s 132 , the CG may prescribe the AS or any addendum thereto, **as recommended by the ICAI in consultation with and after examination of the recommendations made by the National Advisory Committee on Accounting Standards** constituted u/s 210A of the Companies Act, 1956.

CONSTITUTION OF NATIONAL FINANCIAL REPORTING AUTHORITY - Sec 132

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1) CG to constitute NFRA:

- CG may, by notification, constitute a NFRA **to provide for matters relating to accounting and auditing standards**.
- **NFRA was constituted on 1st October 2018**.
- NFRA shall perform its functions through such divisions as may be prescribed. (Subsection 1A)

2) Role of NFRA:

NFRA shall:-

a) **make recommendations to the CG** on the **formulation and laying down of accounting and auditing policies and standards for adoption by Co. or their auditors;**
b) **monitor and enforce the compliance with accounting and auditing standards**;
c) **oversee the quality of service of the professions** associated with **ensuring compliance with such standards**, and **suggest measures required for improvement** in quality of service and such other related matters as may be prescribed; and
d) **perform such other functions relating to clauses (a), (b) and (c)** as may be prescribed.

3) Composition of NFRA:

NFRA shall **consist of a chairperson**, who shall be a person of eminence and having **expertise in accountancy, auditing, finance or law** to **be appointed by the CG** and **such other members not exceeding fifteen consisting of part-time and full-time members as may be prescribed** .The **terms and conditions and the manner of appointment of the chairperson and members shall be such as may be prescribed.**

3A) Each division of NFRA shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

3B) There shall be an executive body of NFRA consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).

The National Financial Reporting Authority (Manner of Appointment & other Terms & Conditions of Service of Chairperson & Members) Rules, 2018

Rule 4: Composition of Authority

- NFRA shall **consist of a chairperson, 3 full time members and 9 part time members**
- **Chairperson** & **full-time member shall be a person of eminence, ability, integrity & standing and having expertise & experience of not less than 25 & 20 years respectively** in field of accountancy, auditing, finance or law.
- **Chairperson and members** before being appointed **shall make a declaration to the CG** regarding **no conflict of interest or lack of independence** in respect of such appointment, failing which their appointment shall not be considered.
- **Chairperson and full-time members**, **shall not be associated with any audit firm** (including related consultancy firms) **during the course of their appointment and 2 years after ceasing to hold such appointment.**
- Part-time member shall be a person **who shall not, have any such financial or other interest as is likely to affect prejudicially his functions as a part-time member.**.

Rule 4: Manner of Appointment

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The Central Government shall appoint the **chairperson and a full time member** on the recommendation of a **search-cum-selection committee.**

Part Time Members: The following persons shall be appointed as part time members of the Authority namely:-

a) **one member to represent the Ministry of Corporate Affairs,** who shall be an officer not below the rank of Joint Secretary, *ex-officio*;
b) **one member to represent the Comptroller and Auditor General of India**, who shall be an officer not below the rank of Accountant General or Principal Director, *ex-officio;*
c) **one member to represent the RBI ,** who shall be an officer not below the rank of Executive Director, *ex-officio*;
d) **one member to represent the Securities and Exchange Board of India**, who shall be an officer not below the rank of Executive Director, *ex-officio*;
e) **President, Institute of Chartered Accountants of India,** *ex-officio*;
f) **Chairperson, Accounting Standards Board,** Institute of Chartered Accountants of India, *ex-officio*;
g) **Chairperson, Auditing and Assurance Standards Board**, Institute of Chartered Accountants of India, *ex-officio*; and
h) **two experts from the field of accountancy, auditing, finance or law**.

Term of Office

- **Term of office** of the **chairperson and a full time member shall be 3 years** from the date on which he enters upon his office **or till he attains the age of 65 years, whichever is earlier**, and he shall be **eligible for re- appointment for 1 more term**.
- **Part -time member shall hold office for a period, not exceeding 3 years**, as may be specified in the order of his appointment **or the period for which he holds the substantive post** by virtue of which he has been appointed as the part-time member, **whichever is earlier, but shall be eligible for re-appointment.**

ACCOUNTS OF COMPANIES (Chart 12.4)

4) POWERS OF NFRA:

a) **To investigate (either suo moto or on a reference made to it by the CG)** such class of bodies corporate or persons, **in such manner as may be prescribed matters of professional or other misconduct** committed by any member or firm of CA. **No other authority can initiate or continue proceedings where NFRA has initiated an investigation.**

b) Same powers as that of Civil Court in respect of a suit involving the following matters:
- **discovery and production of books of account and other documents**;
- **summoning and enforcing the attendance of persons and examining them on oath**;
- **inspection of any books, registers and other documents of any person referred to in clause (b)** at any place;
- **issuing commissions for examination of witnesses or documents;**

c) **where professional or other misconduct is proved power to make order for** -

A. **imposing penalty of** -
- not less than **Rs.1 Lacs**, which may extend **to 5 times of fees received, in case of individuals;** and
- not less than **Rs.5 Lacs**, which may extend **to 10 times of fees received, in case of firms**;

B. **debarring the member or the firm from** –
- **being appointed as an auditor or internal auditor or undertaking any audit** in respect of F.S. **or internal audit**; or
- **performing any valuation** u/s 247,

for a min. period of 6 months or such higher period not exceeding 10 years. as may be determined by NFRA

5) Appeal against the order: Any person aggrieved by any order issued under clause (c) of sub-section (4), **may prefer an appeal before the Appellate Tribunal**.

6) Appointment of secretary and other officers: CG may appoint a secretary and such other employees as it may consider necessary **for the efficient performance of functions by the NFRA. under this Act and the terms and conditions of service of the secretary and employees shall be such as may be prescribed.**

7) Books Of Accounts, Audit & Annual Report:
- NFRA shall cause to be **maintained such books of account and other books** in relation to its accounts **as the CG may, in consultation with the CAG of India prescribe**.
- The accounts of NFRA the **shall be audited by the CAG of India** at such intervals as may be specified by him and **such accounts as certified by the CAG of India together with the audit report** thereon **shall be forwarded annually to the CG** by the NFRA.
- NFRA **shall prepare its annual report** for each FY **giving a full account of its activities** during the FY and **forward a copy to the CG** and the CG shall cause the **annual report and audit report given by the CAG of India to be laid before each House of Parliament**.

8) Head office and meetings:
- The **head office** of the NFRA shall **be at New Delhi** and the NFRA may, **meet at such other places in India as it deems fit**.
- NFRA **shall meet at such times and places and shall observe such rules of procedure** in regard to the transaction of business at its meetings **in such manner as may be prescribed.**

National Financial Reporting Authority Rules, 2018 (NFRA Rules).

Rule 4: Functions and duties of the Authority

1) The Authority shall
- **protect the public interest** and the **interests of investors, creditors and others associated with the companies or bodies corporate governed under rule 3**
- by **establishing high quality standards of accounting and auditing** and
- exercising **effective oversight of accounting functions performed by the companies and bodies corporate** and **auditing functions performed by auditors.**

2) **In particular, and without prejudice to the generality of the foregoing**, the Authority shall:-
a) **maintain details of particulars of auditors** appointed in the companies and bodies corporate specified in rule 3;
b) **recommend accounting standards and auditing standards** for approval by the Central Government;
c) **monitor and enforce compliance** with accounting standards and auditing standards;
d) **oversee the quality of service of the professions** associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service;
e) **promote awareness** in relation to the compliance of accounting standards and auditing standards;
f) **co-operate with national and international organisations** of independent audit regulators in establishing and overseeing adherence to accounting standards and auditing standards; and
g) **perform such other functions and duties** as may be necessary or incidental to the aforesaid functions and duties.

3) The **Central Government may, by notification**, and subject to such conditions, limitations and restrictions as may be specified therein **delegate any of its powers or functions under the Act, other than the power to make rules, to the Authority**.

Rule 3 of NFRA Rules, 2018

NFRA shall have power to **monitor and enforce compliance with AS and SA**, oversee the quality of service u/s 132(2) or undertake investigation u/s 132(4) of the **auditors of the following class of Co. and bodies corporate:**
a) **Co.** whose securities are **listed on any stock exchange in India or outside India**;
b) **Unlisted Public Co.** having **paid-up capital** of not less than **Rs.500 crores** or **annual turnover** of not less than **Rs.1,000 crores** or **in aggregate, outstanding loans, debentures and deposits** of not less than **Rs.500 crores** as on the **31st March of immediately preceding F/Y;**
c) **Insurance Co, banking Co, companies engaged in the generation or supply of electricity, companies governed by any special Act** or **bodies corporate incorporated by an Act in accordance with clauses (b), (c), (d), (e) and (f) of Sec 1(4) of the Companies Act, 2013;**
d) **any body-corporate or Co. or person**, or any class of bodies corporate or Co. or persons, **on a reference made to the NFRA by the CG in public interest**; and
e) a **body corporate incorporated or registered outside India**, which is a **subsidiary or associate Co. of any company or body corporate incorporated or registered in India as referred to in clauses (a) to (d) above**, if the **income or networth of such subsidiary or associate Co. exceeds 20% of the consolidated income or consolidated networth** of **such Co. or the body corporate, referred to in clauses (a) to (d) above.**

Every body corporate, other than a company as defined in sec 2(20), formed in India and governed under this rule shall, within 15 days of appointment of an auditor under Sec 139(1), inform the Authority in Form NFRA-1, the particulars of the auditor appointed by such body corporate.

A company or a body corporate other than a company governed under NFRA Rules shall continue to be governed by the NFRA for a period of 3 years after it ceases to be listed or its paid-up capital or turnover or aggregate of loans, debentures and deposits falls below the limit stated therein (i.e. mentioned in points a to e above).

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Rule 5: Annual return

Every auditor referred to in rule 3 shall file a return with the Authority on or before 30th November every year in Form NFRA-2.

Rule 6: Recommending AS and SA

For the purpose of recommending AS or SA for approval by the Central Government, the NFRA
a) shall **receive recommendations from ICAI** on proposals for new AS or SA or for amendments to existing AS or SA;
b) may **seek additional information from the ICAI on the recommendations received under clause (a),** if required.
c) The **NFRA shall consider the recommendations and additional information** in such manner as it deems fit before making recommendations to the Central Government.

Rule 13: Punishment in case of non-compliance

Whoever contravenes any of the provisions of these rules, shall be punishable with fine not exceeding five thousand rupees, and where the contravention is a continuing one, with a further fine not exceeding five hundred rupees for every day after the first during which the contravention continues

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Note: Rule 7, 8 & 9 of NFRA Rules are covered in Chapter-Audit and Auditors

ACCOUNTS OF COMPANIES (Chart 12.5)

FINANCIAL STATEMENT, BOARD'S REPORT, ETC. - Sec 134

Authentication of F.S.-Sec 134(1), (2) & (7)]

a) **Approval of F.S.:**
The F.S., including CFS, if any, **shall be approved by the BOD** before they are signed on behalf of the Board.

b) **Signing of F.S.:**
The F.S., including CFS, if any, shall be signed on behalf of board at least by the following:
1) **Chairperson** of the Co. where he is authorised by the Board; **or**
By 2 directors out of which one shall be MD, if any ,and
2) **CEO**, wherever he is appointed; and
3) **CFO,w**herever he is appointed and
4) **CS** of the Co, wherever he is appointed.
In the **case of a OPC**, shall be signed by only **one director**, for submission to the auditor for his report thereon.

c) **Submission to the auditor:**
The F.S. (including CFS, if any) **shall be submitted to the auditor** after they have approved and signed.

d) **Attachment of auditor's report:** [Sec 134(2)]
The auditors' report **shall be attached to every F.S**.

e) **Issue ,circulation and publication: [Sec 134(7)]**
A signed copy of every F.S., including CFS, if any, shall be issued, circulated or published along with a copy each of **Any notes annexed to or forming part of such F.S., Auditor's report and Board's report**.

SIGNING OF BOARD'S REPORT -Sec 134(6)

Board's report and any annexures thereto **shall be signed by** -
- **chairperson** of the Co. **if he is authorised** by the Board
- where he is **not so authorised, shall be signed by at least 2 directors, one of whom shall be a MD,** or
- **In case there is only 1 director, shall be signed by such director**.

PENALTY FOR CONTRAVENTION - Sec 134(8)

If a Co. is in default in complying with the provisions of this section, the **Co. shall be liable to a penalty of Rs.3L** and **every officer** of the Co. **in default shall be liable to a penalty of Rs.50,000.**

BOARD'S REPORT -Sec 134(3) & (4)

1) **Scope of Board's report: (Sec 134(3) read with Rule 8)**
Board's Report shall be **prepared based on the stand alone F.S. of the Co.** and shall **report on the highlights of performance of subsidiaries, associates and J.V.** Co. and their **contribution to the overall performance of the Co.** during the period.

2) **Contents:**
Board's Report shall include:
a) **No. of meetings of Board**;
b) **Directors' Responsibility Statement**;
c) **state of the company's affairs**;
d) **web address**, if any, where annual return referred in Sec 92(3) has been placed.
e) **amounts proposed to carry to any reserves**;
f) **amount recommended to be paid by way of dividend**;
g) Details in respect of **frauds reported by auditors u/s 143(12)** other than those which are reportable to CG;
h) a **statement on declaration given by independent directors u/s 149(6)**;
i) **explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made -**
- **by the auditor** in his report; and
- **by the CS** in practice in his secretarial audit report;

j) **details about the policy developed and implemented by the Co. on CSR** initiatives taken during the year; including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company;
k) **As per Rule 8(3) report of the Board shall contain the following information and details, namely:**
(A) Conservation of energy -
- **steps taken or impact on conservation of energy**;
- **steps taken** by the Co. **for utilising alternate sources of energy**;
- **capital investment on energy conservation equipments**

(B) Technology absorption -
- **efforts made towards technology absorption**;
- **benefits derived like product improvement, cost reduction, product development or import substitution**;
- **in case of imported technology** (imported during the last 3 years reckoned from the beginning of F/Y):
  - **details of technology imported**;
  - **year of import**;
  - **whether the technology been fully absorbed**;
  - if not fully absorbed, **areas where absorption has not taken place, and the reasons thereof**; and
- **expenditure incurred on R&D**.

(C) Foreign exchange earnings and Outgo -
- Foreign Exchange **earned in terms of actual inflows during the year**
- Foreign Exchange **outgo during the year in terms of actual outflows**.

Requirement of furnishing information and details under this sub-rule **shall not apply to a Govt. Co. engaged in producing defence equipment**.

l) **statement indicating development and implementation of a risk management policy** for the Co.;
m) Every **listed Co. and every other public Co. having a paid up share capital of Rs.25 crore or more** calculated at the end of the preceding F/Y shall include, a **statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made".**
n) **Such other matters**[Rule 8(5)]:
- **disclosure, as to whether maintenance of cost records** as specified by CG u/s 148(1), is **required by the Co. and such accounts and records are made and maintained**;
- **statement that the Co. has complied with provisions relating to the constitution of Internal Complaints Committee** under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;
- **details of application made or any proceeding pending under the IBC, 2016** during the year along with their status as at the end of the F/Y.
- details of **difference between amount of valuation done at the time of one time settlement and while taking loan** from the Banks or Financial Institutions along with the reasons thereof.

Rule 8 **shall not apply to OPCs or Small companies.**

3) CG **may prescribe an abridged Board's report**, for the purpose of compliance with this section by **OPC or Small Co.** [Sec 134(3A)].[Rule 8A]

Directors' Responsibility Statement - Sec 134(5)

Directors' Responsibility Statement **shall state that** -
1) in the preparation of the annual accounts, the **applicable AS had been followed** along with proper explanation relating to material departures;
2) the directors had **selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent** so as to give a true and fair view of the state of affairs of the Co. at the end of the F/Y and of the P/L for that period;
3) the directors had **taken proper and sufficient care for the maintenance of adequate accounting records for safeguarding the assets** of the Co. and **for preventing and detecting fraud and other irregularities**;
4) the directors had **prepared the annual accounts on a going concern basis**; and
5) the directors, in the case of a listed Co, had **laid down internal financial controls** to be followed by the Co. and that such internal financial controls **are adequate and were operating effectively**.
6) the directors had **devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively**.

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ACCOUNTS OF COMPANIES (Chart 12.6)

CORPORATE SOCIAL RESPONSIBILITY - Sec 135

APPLICABILITY

Every Co, having -
1) **net worth of Rs.500 crore or more**, or
2) **turnover of Rs.1000 crore or more** or
3) **net profit of Rs.5 crore or more**

during immediately preceding F/Y shall constitute a CSR Committee of the Board.

As per Rule 3(1) of the Companies (Corporate Social Responsibility) Rules, 2014:

Every Co. including its holding or subsidiary, and a foreign Co. defined u/s 2(42) of the Act **having its branch office or project office in India**, which **fulfills the criteria specified in Sec 135(1) of the Act shall comply with the provisions of Sec 135** of the Act and these rules.

Provided further that a company having any amount in its Unspent Corporate Social Responsibility Account as per section 135(6) shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section."

Note: The provisions of **CSR apply to Sec 8 Co.** as well.

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Composition of CSR Committee

CSR Committee of the Board shall be consisting of **3 or more directors**, out of which **at least 1 director shall be an independent director**. [Provided that where a Co. is **not required to appoint an independent director u/s 149(4),** it **shall have** in its CSR Committee of **2 or more directors**.]

Rule 5(1) of the Companies (CSR) Rules, 2014:

Co. mentioned in the rule 3 shall constitute CSR Committee as under -

- **Co. which is not required to appoint an independent director** (as per Sec 149(4)) **shall have its CSR Committee without such director**.
- **Private Co. having only 2 directors** on its Board **shall constitute its CSR Committee with 2 such directors**.
- In **case of Foreign Co**, the CSR Committee shall comprise of **at least 2 persons of which 1 person shall be as specified u/s 380(1)(d)** and **another person shall be nominated by foreign Co**.

Disclosure of composition of CSR Committee: [Sec 135(2)]:

Board's report u/s 134(3) **shall disclose the composition of the CSR Committee**.

Exemption from constituting CSR Committee - Sec 135(9)

Where the **amount to be spent** by a Co. **under sub-section (5) does not exceed Rs.50 lakh,** the **requirement for constitution of the CSR Committee shall not be applicable** and the **functions of such Committee shall be discharged by the BOD.**

Duties of CSR Committee - Sec 135(3)

- **formulate & recommend to the Board, a CSR Policy**; which shall indicate the activities to be undertaken by the Co. in areas & subject specified in Schedule VII;
- **recommend the amount of expenditure to be incurred on the CSR activities**; and
- **monitor the CSR Policy** of the Co. from time to time.

Formulate and recommend annual action plan - Rule 5(2)

CSR Committee shall formulate & recommend to the Board, an **annual action plan** in pursuance of its CSR policy, which **shall include the following**:

- the **list of CSR projects or programmes** specified in Sch VII
- the **manner of execution of such projects or programmes** as specified in rule 4(1);
- the **modalities of utilisation of funds & implementation schedules for the projects or programmes**;
- **monitoring and reporting mechanism** for the projects or programmes;
- **details of need and impact assessment**, if any, for the projects undertaken by the Co.

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

CSR Policy (Rule 2(f) of the CSR Rules): CSR Policy means a statement containing;

a) The **approach** and **direction** given by the board of a company, taking into account the **recommendations of CSR Committee**, and
b) Includes **guiding principles** for selection, implementation and monitoring of activities as well as formulation of the annual action plan.

Duties of Board w.r.t CSR -Sec 135(4)

Board shall:

- **approve the CSR Policy** for the Co. and **disclose contents of such Policy in its report and also place it on the Co's website**, if any; and
- **ensure that the activities as are included in CSR Policy** of the Co. **are undertaken by the Co**.

Amount of contribution towards CSR - Sec 135(5)

a) Board shall ensure that the Co. spends, in every F/Y, **at least 2% of the average net profits** of the Co. **made during the 3 immediately preceding F/Y**, or **where the Co. has not completed the period of 3 F/Y since its incorporation, during such immediately preceding F/Y in pursuance of its CSR Policy.**
b) Co. shall **give preference to the local area and areas around it where it operates**, for spending the amount earmarked for CSR activities.
c) Board shall **ensure that the administrative overheads shall not exceed 5% of total CSR expenditure** of the Co. for the F/Y. **(Rule 7(1))**
d) If the Co. **fails to spend such amt**, the **Board shall, in its report** u/s 134(3), **specify the reasons for not spending the amt** and, unless the unspent amt relates to any ongoing project referred to in sub-section (6), **transfer such unspent amt to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the F/Y.**

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Amount Unspent doesn't relate to an ongoing project - Sec 135(5)

Board shall transfer such unspent amt to a Fund specified in Schedule VII, within a period of 6 months of the expiry of the F/Y.

Amount Unspent relating to an ongoing project - Sec 135(6)

- Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, **shall be transferred within a period of 30 days from the end of the F/Y to a special account** in **any scheduled bank** to be **called the "Unspent Corporate Social Responsibility Account**," and
- **such amount shall be spent** in pursuance of its obligation towards the CSR Policy **within a period of 3 FY from the date of such transfer**,
- **failing which**, the Co. **shall transfer the same to a Fund specified in Schedule VII, within a period of 30 days** from the date of completion of the third F/Y.

Rule 10: Transfer of unspent CSR amount

Until a fund is specified in Schedule VII for the purposes of subsection (5) and(6) of section 135 of the Act, the unspent CSR amount, if any, **shall be transferred by the company to any fund included in schedule VII of the**

Ongoing Project (Rule 2(i))

"Ongoing Project" means

- a **multi-year project undertaken by a Company in fulfilment** of its CSR obligation **having timelines not exceeding 3 years excluding the financial year in which it was commenced,**
- and **shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification**

Set off of excess amt. spent

Rule 7(3) of Companies (CSR Policy) Rules, 2014 provides that **where a Co. spends an amt in excess of requirement** provided u/s 135(5) , **such excess amt may be set off against the requirement to spend up to immediate succeeding 3 F/Y** subject to the conditions that –

- the **excess amt available for set off shall not include the surplus arising out of the CSR activities**, if any, in pursuance of sub-rule (2) of this rule and
- the **Board shall pass a resolution to that effect**.

Surplus from CSR activities: Sub rule 2 provides that any surplus arising out of the CSR activities **shall not form part of the business profit** of a Co. and **shall be ploughed back into the same project** or **shall be transferred to the Unspent CSR Account** or **transfer such surplus amt to a Fund specified in Schedule VII, within a period of 6 months of the expiry of F/Y.**

Penalty for Non Compliance - Sec 135(7)

If a Co. is in **default in complying with the provisions of sub-section (5) or (6)**,

- **Company:**
  - **twice the amt required to be transferred by the Co. to the Fund** specified in Schedule VII **or Unspent CSR Account**, or
  - **Rs.1 crore, whichever is less,**
- **Every officer of the Co. who is in default:**
  - **1/10th of the amt required to be transferred by the Co. to such Fund** specified in Schedule VII, **or Unspent CSR Account**, or
  - **Rs.2 lakh, whichever is less**.

Power of CG to give directions - Sec 135(8)

CG **may give general or special directions** to Co. or class of Cos **to ensure compliance of provisions of this section & such Co. shall comply with such directions**.

ACCOUNTS OF COMPANIES (Chart 12.7)

CORPORATE SOCIAL RESPONSIBILITY - Sec 135

Calculation of Net profit

- "Net Profit" shall be **calculated according to provisions of Sec 198**.
- "Net profit" **shall not include** the following:
  a) **Any profit arising from any overseas branch** of the Co, whether operated as a separate Co. or otherwise; and
  b) **Any dividend received from other Co's in India, which are covered under and complying with the provisions of Sec 135.**
- **In case of a foreign Co.**, net profit **means the net profit of such Co. as per P&L A/c prepared in terms of Sec 381(1)(a) read with Sec 198.**

Manner of implementing CSR Policy - Rule 4

1) Board shall **ensure that the CSR activities are undertaken by the Co. itself or through** –
   a) **Connected charitable entity**: A **Co. established u/s 8 of Act, or a registered public trust or a registered society**, exempted under sub-clauses (iv), (v), (vi) or (via) of **clause (23C) of section 10 or** registered u/s 12A and and approved under 80 G of the Income Tax Act, 1961, **established by the Co,** either singly or along with any other Co, or
   b) **Entity established by government**:-A **Co. established u/s 8** of the Act or a **registered trust** or a **registered society, established by the CG or SG**; or
   c) **Statutory entity: Any entity established under an Act of Parliament or a State legislature to undertake activities in Sch VII**; or
   d) **Any charitable entity with 3 years of experience:** A **Co. established u/s 8** of the Act, **or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or** registered u/s 12A and approved under 80G of the Income Tax Act, 1961, **and having an established track record of at least 3years in undertaking similar activities**.
2) Co. **may also collaborate with other companies** in such a manner that the **CSR committees of respective Co's are in a position to report separately** on such projects or programmes in accordance with these rules.
3) **Every entity**, covered under sub-rule (1), **who intends to undertake any CSR activity, shall register itself with the CG by filing the form CSR-1 electronically with the Registrar, with effect from** the **01st day of April 2021. (not applicable prior to this)**
   Form CSR-1 shall be signed and submitted electronically by the entity and shall be **verified digitally by a CA/CS/ Cost Accountant in practice.**
   On the submission of the Form CSR-1 on the portal, a **unique CSR Registration Number shall be generated** by the system automatically.
4) Co. **may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes** as per its CSR policy as well as **for capacity building of their own personnel for CSR**.
5) **Onus to ensure application fund lies on Board: The Board of a company shall satisfy itself that the funds** so disbursed **have been utilised** for the purposes and in the manner as **approved by it and the Chief Financial Officer** or the person responsible for financial management shall certify to the effect.
6) **Board shall monitor ongoing projects:** In case of **ongoing project,** the Board of a Co. shall monitor the implementation of the project with reference to the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

CSR Reporting - Rule 8

a) **Board's Report** of a Co. covered under these rules pertaining to any financial **shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II**, as applicable.
b) **In case of a foreign Co**, the **balance sheet** filed **u/s 381(1)(b) shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II**, as applicable.
c) **Impact Assessment:**
- Every Co. **having average CSR obligation of Rs.10 crore or more** in pursuance of Sec 135(5), **in the 3 immediately preceding F/Y, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of 1 crore rupees or more**, and **which have been completed not less than 1 year before undertaking the impact study**.
- The impact assessment reports **shall be placed before the Board and shall be annexed to the annual report on CSR**.
- Co. undertaking impact assessment **may book the expenditure towards CSR** for that F/Y, **which shall not exceed 2% of the total CSR expenditure for that F/Y or Rs.50 lakh, whichever is higher**

Display of CSR activities on its website - Rule 9

BOD of the Co. shall **mandatorily disclose on their website**, if any, for public access the **composition of the CSR Committee, CSR Policy and Projects approved by the Board.**

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Penal Provisions for non-disclosure in Board report

If the **Co. fails** -
- **to disclose the composition of the CSR Committee** in its Board's report; or
- **to disclose and specify the reasons for not spending the amt** (i.e. at least 2% of the average net profit) in its report as per Sec 134(3)(o),

then the **Co. shall be liable to a penalty of Rs.3 lakh** and **every officer** of the Co. who is **in default shall be liable to a penalty of Rs.50,000.**

Definition of CSR & exclusions therefrom-Rule 2(1)(d)

"CSR" means the **activities undertaken by a Co. in pursuance of its statutory obligation laid down in Sec 135** of the Act in accordance with the provisions contained in these rules, but **shall not include**:
- **activities undertaken in pursuance of normal course of business** of the Co:
  Provided that **any Co. engaged in R&D activity of new vaccine, drugs and medical devices** in their normal course of business **may undertake R&D activity of new vaccine, drugs and medical devices related to COVID-19** for F/Y 2020-21, 2021-22, 2022-23 subject to the conditions that-
  a) such **R&D activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII** to the Act;
  b) **details of such activity shall be disclosed separately in the Annual report on CSR** included in the Board's Report;
- any **activity undertaken by the Co. outside India except for training of Indian sports personnel** representing **any State or UT at national level or India at international level;**
- **contribution of any amt directly or indirectly to any political party** u/s 182;
- **activities benefitting employees of the Co.**
- **activities supported by the companies on sponsorship basis** for deriving marketing benefits for its products/services;
- **activities carried out for fulfilment of any other statutory obligations under any law** in force in India.

Activities specified under Schedule VII

- **eradicating hunger, poverty & malnutrition, promoting health care** including preventive health care & sanitation **including contribution to the Swach Bharat Kosh** set-up by CG;
- **promoting education**, including special education and **employment enhancing vocation skills** especially among children, women, elderly, and the differently abled and **livelihood enhancement projects**;
- **promoting gender equality, empowering women, setting up homes and hostels for women and orphans**; **setting up old age homes**, **day care centres** and such other facilities for senior citizens and **measures for reducing inequalities** faced by socially and economically backward groups;
- ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the **Clean Ganga Fund set up by the CG for rejuvenation of river Ganga;**
- **measures for the benefit of armed forces veterans, war widows & their dependents**;
- **training to promote rural sports, nationally recognised sports, paralympic sports and Olympic sports;**
- **contribution to the Prime Minister's National Relief Fund or PM CARES Fund** or any **other fund set** up by the CG for socio-economic development & relief & welfare of the SC, ST, OBC, minorities & women;
- **rural development projects; Slum area development;**
- **disaster management, including relief, rehabilitation and reconstruction activities**.

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INTERNAL AUDIT - Sec 138

- **Companies required to appoint Internal Auditor (Rule 13):**
  The following class of companies shall be **required to appoint an internal auditor which may be** either an **individual or a partnership firm or a body corporate**, namely:
  1) every **Listed Co**;
  2) every **Unlisted Public Co. having-**
     (A) **paid up share capital of Rs.50 crore or more** during the preceding F/Y; or
     (B) **turnover of Rs.200 crore or more** during the preceding F/Y; or
     (C) **outstanding loans or borrowings** from banks or public financial institutions **exceeding Rs.100 crore or more** at any point of time during the preceding F/Y; or
     (D) **outstanding deposits of Rs.25 crore or more** at any point of time during the preceding F/Y; and
  3) every **Private Co. having** -
     (A) **turnover of Rs.200 crore or more** during the preceding F/Y; or
     (B) **outstanding loans or borrowings** from banks or public financial institutions **exceeding Rs.100 crore or more** at any point of time during the preceding F/Y.
- **Qualifications of internal auditor:**
  a) The internal auditor **shall be a CA or a cost accountant or such other professional** as may be decided by the Board.
  b) The internal auditor **may or may not be an employee of the Co**.
  c) The internal auditor **may be an individual or a partnership firm or a body corporate**.
  d) A **'Chartered Accountant' or 'Cost Accountant' may be appointed as an intemal auditor whether or not he is engaged in practice.**
- **Manner and interval of internal audit:**
  a) CG may, by rules, **prescribe the manner and the intervals in which the internal audit shall be conducted and reported to the Board**.(Sec 139(2))
  b) The **Audit Committee** of the Co. **or the Board** shall, in consultation with the Internal Auditor, **formulate the scope, functioning, periodicity and methodology for conducting the internal audit.**

ACCOUNTS OF COMPANIES (Chart 12.8)

RIGHT TO MEMBERS TO COPIES OF AUDITED F.S. - Sec 136

- **Who are entitled for audited F.S.?**
  a) A copy of the F.S., which are to be laid before a Co. in its G.M., **shall be sent to**:
     1) **every member** of Co,
     2) **every trustee for the debenture-holder** of any debentures issued by the Co, and
     3) **all persons other than such member or trustee, being the person so entitled**. entitled.(eg.every director, the legal representative of deceased member, official assignee or receiver of insolvent member)
  b) **CFS** if any, **auditor's report and every other document** required by law to be annexed or attached to the F.S. (eg. Board's report) **shall be annexed with F.S**.
  c) F.S. **shall be sent in not less than 21 days before the date of the meeting**. (In case of a **Sec 8 Co., shall be sent within 14 days** before the date of AGM.)

Relaxation from condition of 21 days:

The copies of the documents **may be sent in less than 21 days if it is so agreed by-**

- **If the Co. has a share capital:** members holding **majority in no. entitled to vote** and **who represent not less than 95 % of such part of the paid-up share capital** of the Co. as gives a right to vote at the meeting; or
- **If the Co. has no share capital:** members holding **not less than 95% of the total voting power** exercisable at meeting.

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- **Circulation in case of Listed Co:**
  In the case of a listed Co. the above **provisions shall be deemed to be complied with, if**:
  a) the copies of the **F.S. and other documents are made available for inspection at its R.O. during working hours for a period0 of 21 days** before the date of the meeting.
  b) **statement containing the salient features** of such documents **in the Form AOC-3(form AOC-3A in case of co. which are required to comply with Companies (Indian Accounting standards) Rules,2015 or copies of the documents**, as the Co. may deem fit, **is sent to every member of the Co. and to every trustee** for the holders of any debentures issued by the Co.
  c) statement is to be **sent not less than 21 days (In case of a Sec 8 Co.-14 days)** before the date of the meeting unless the shareholders ask for full F.S.
- **Manner of circulation of F.S. in case of prescribed Co.(Rule 11):**
  – In case of **all listed Co.** and
  – such **public Co.** which have a **net worth of more than Rs.1 crore** and **turnover of more than Rs.10 crore**, the F.S. may be sent:
  1) **by electronic mode in following two cases:**
  - to such **members whose shareholding is in demat format and whose email Ids are registered with Depository** for communication purposes;
  - where Shareholding is held otherwise than by demat format, to such **members who have positively consented in writing for receiving by electronic mode**; and

  2) **by despatch of physical copies** through any recognised mode of delivery as specified u/s 20 of the Act, **in all other cases**.

- **Documents to be placed at the website of listed Co.:**
  A listed Co. shall also **place its F.S. including CFS**, if any, and **all other documents** required to be attached thereto, **on its website**, which is **maintained by or on behalf of the Co.**
- **Subsidiary Companies:**
  Every listed Co. having a subsidiary shall, -
  a) **place separate audited accounts in respect of each of its subsidiary on its website**, if any;
  b) **Foreign subsidiaries**:
  – If the foreign subsidiary is **statutorily required to prepare CFS, under any law of the country of its incorporation**, the **requirement of posting audited accounts of subsidiary shall be met if CFS of such foreign subsidiary is placed on the website of the listed Co**.
  – If the foreign subsidiary is **not required to get its F.S. audited under any law and does not get such F.S. audited**, the **holding Indian listed Co. may place such unaudited F.S. on its website**.
  – If such **F.S. is in a language other than English**, a **translated copy** of F.S. **in English shall also be placed on website**.
- **Inspection of F.S. and other documents:**
  – **Every Co. shall be under** an obligation to **allow every member or trustee of the debenture holder to inspect the F.S. and documents at its R.O. during business hours.**
  – In **case of listed Co**, copies of documents shall be available for **inspection at its R.O. during working hours for a period of 21 days before the date of meeting** & co. may send the salient features of FS to members and debenture trustees in prescribed form.
  – Every **Co. having a subsidiary provide a copy of separate audited or unaudited F.S.** as prepared in respect of each of its subsidiary, **to any member of the Co. who asks for it.**
- **Contravention:**
  a) If any default is made in complying with the provisions of this section, the **Co. shall be liable to a penalty of Rs.25,000**.
  b) **Every officer** of the Co. who is **in default shall be liable to a penalty of Rs.5,000.**

- **Exemption for Nidhi Company:**
  - In case of Nidhi company - Section 136 (1) shall apply, subject to the modification that, in the case of members **who do not individually or jointly hold shares of more than Rs.1000 in face value or more than 1 % , of the total paid-up share capital whichever is less,**
  - it shall be **sufficient compliance with the provisions** of the section if an **intimation is sent by public notice in newspaper** circulated in the district in which **the RO of the Nidhi** is situated stating the **date, time and venue of AGM and the FS with its enclosures can be inspected at the RO of the company,** and
  - the **FS with enclosures are affixed in the Notice Board** of the company and a member is entitled to vote either in person or through proxy.

COPY OF F.S. TOBE FILED WITH REGISTRAR - Sec 137

1) Where F.S. are adopted at the AGM:

a) **Documents to be filed:**
- **Financial Statements** (with form AOC-4)
- **CFS**, if any (with form AOC-4 CFS)
- The **accounts of its subsidiary** which have been **incorporated outside India and which have not established their place of business in India**.
- All the **documents which are required to be annexed or attached to the F.S**.

b) **Time limit for filing:**
F.S. and other documents **shall be filed with the Registrar within 30 days of the date of AGM**.

2) Where F.S. are not adopted at the AGM:

a) **Filing of unadopted documents:**
Where the F.S. **are not adopted at the AGM or adjourned AGM,** such unadopted F.S. and other documents **shall be filed with the Registrar within 30 days of the date of AGM**.

b) **Unadopted documents to be provisional:**
Registrar **shall take the unadopted F.S. and other documents in his records as provisional** till the FS are filed with him after their adoption in the adjourned AGM.

c) **Filing of adopted documents:**
F.S. and other documents **adopted in the adjourned AGM shall be filed with the Registrar within 30 days of the date of such adjourned AGM**.

3) Where AGM is not held:

a) **Filing of documents:**
- **F.S. and other documents**
- **Statement of facts and reasons for not holding the AGM**

b) **Time limit for filing:**
F.S. and other documents shall be filed with the Registrar **within 30 days of the last date upto which the AGM should have been held** with such fees or such additional fees as may be prescribed

4) Filing in case of OPC:
OPC shall file FS & other documents, **within 180 days of close of the F/Y**.

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5) Form and fees (Rule 12 of the Companies (Accounts) Rules, 2014):
- **F.S. shall be filed** together with **Form AOC-4**.
- **CFS,** if any, **shall be filed** together with **Form AOC-4 CFS**.
- Every **NBFC** that is **required to comply with Ind AS shall file the F.S. with Registrar together with Form AOC-4 NBFC (Ind AS)** and the **CFS,** if any, with **Form AOC-4 CFS NBFC (Ind AS)**.
- The class of companies as may be notified by the CG from time to time **shall mandatorily file their F.S. in Extensible Business Reporting Language (XBRL) format**.

Filing of Documents and forms in XBRL:

As per **Rule 3** of the Companies (Filing of Documents and forms in XBRL) Rules, 2015, **following class of companies shall file their F.S. and other documents** under this section **with the registrar in e-form AOC-4 XBRL** given in Annexure I **for the F/Y commencing on or after 1st April, 2014 using the XBRL taxonomy** namely :
1) All **companies listed with any stock exchange(s) in India and their Indian subsidiaries**, or
2) All **companies having paid up capital of Rs.5 crore or above**, or
3) All **companies having turnover of Rs.100 crore or above**, or
4) All **companies which are required to prepare their F.S. in accordance with Companies (Indian Accounting Standards) Rules, 2015**.

Provided that the companies in **banking sector, insurance sector, NBFC and housing finance companies need not file F.S. under this rule**.
The companies which have filed their F.S. under above rule **shall continue to file their F.S. and other documents though they may not fall under the class of companies specified therein in succeeding years**.

6) Report on CSR: [Rule 12(1B)]{Inserted from 11th Feb 2022}: Every **co. covered under the provisions Sec 135(1) shall furnish a report on CSR** in **Form CSR-2** to the ROC for the **preceding FY (2020-2021) and onwards** as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.**(For FY 2022-23 till 31st March 2024)**

7) Punishment for contravention: If a Co. **fails to file the copy of the F.S. under sub-section (1) or(2),before the expiry of the period specified** therein,
– the **COMPANY - liable to a penalty** of **Rs.10,000** & **in case of continuing failure, with a further penalty of Rs.100 for each day** during which failure continues, subject to a **maximum of Rs.2L** and
– the **MD and CFO** of the Co, if any, and, in their **absence, any other director who is charged** by the Board with the responsibility of complying with this section, and, **in the absence of any such director, all the directors of the Co**, shall be **liable to a penalty of Rs.10,000** & **in case of continuing failure, with further penalty of Rs.100 for each day** after the first during which such failure continues, subject to a **maximum of Rs.50,000.**

AUDIT & AUDITORS (Chart 13.1)

APPOINTMENT OF FIRST AUDITORS

APPOINTMENT OF FIRST AUDITORS IN CASE OF NON-GOVT COMPANIES [Sec 139(6)]

- Notwithstanding anything contained in sub-section (1), the **first auditor of a Co**, **other than a Govt Co**, **shall be appointed by the BOD within 30 days of the date of registration of the Co**.
- The auditor so appointed **shall hold office until the conclusion of the first AGM**.
- If the **Board fails to make appointment of first auditor, it shall inform the members** of the Co. and the **Co. may appoint the first auditor within 90 days at an EGM** and such auditor **shall hold office till the conclusion of the first AGM.**

APPOINTMENT OF FIRST AUDITORS IN CASE OF GOVT. CO. OR ANY OTHER CO. HAVING CONTROLLED BY SG/CG [Sec 139(7)

- First auditor **shall be appointed by the CAG of India within 60 days from the date of registration of the Co**.
- In case the **CAG** of India **does not appoint first auditor within 60 days**, the **BOD shall appoint** such auditor **within the next 30 days**.
- Further, in the case of **failure of the Board to appoint** such auditor **within the next 30 days**, it **shall inform the members** of the Co. **who shall appoint such auditor within the 60 days at an** EGM,
- The first auditor **shall hold office till the conclusion of the first AGM**

APPOINTMENT OF SUBSEQUENT AUDITORS IN CASE OF GOVT. CO. OR ANY OTHER CO. HAVING CONTROLLED BY SG OR CG [Sec 139(5)]

a) **CAG** of India **shall**, in **respect of a F/Y, appoint an auditor in the case of**:
   1) a **Government Co**; or
   2) any **other Co. owned or controlled, directly or indirectly, by the CG or SG, or partly by the CG and partly by one or more SG.**

b) The **auditor shall be appointed within a period of 180 days from the commencement of the F/Y**.

c) The auditor appointed **shall hold office till the conclusion of the AGM**.

APPOINTMENT OF SUBSEQUENT AUDITORS

APPOINTMENT OF AUDITOR - Sec 139(1)

a) Every Co. shall, at the **first AGM, appoint** **an individual or a firm** **as an auditor** of the Co.

b) The auditor **shall hold office from the conclusion** **of 1st AGM till the conclusion of its 6th AGM.**

c) After the 1st AGM, when **any appointment of auditor is made at any AGM**, the auditor so appointed **shall hold office till the conclusion of 6th AGM, with the AGM wherein such appointment has been made being counted as the first AGM.**

d) **Manner and procedure of selection of auditors (Rule 3):**

1) **Qualifications and experience of** the individual or the firm proposed to be appointed as **auditor shall be considered by the Board or** **Audit committee, in case the Co. is required to constitute Audit Committee.**
2) **While considering the appointment**, the Board/ Audit Committee shall have **due regard to** -
   - **any order of professional misconduct passed against** the proposed auditor; and
   - **any proceedings of professional misconduct pending** against the proposed auditor.
3) Board/Audit Committee **may call for such other information from the proposed auditor** as it may deem fit.
4) In case the Co. is **not required to constitute the Audit Committee**, the **Board shall consider and recommend an individual or a firm as auditor to the members** in the AGM for appointment.
5) In case the Co. **is required to constitute the Audit Committee, following procedure shall be adopted:**
   - **Audit committee shall recommend the name of an individual or a firm as auditor to the Board** for consideration.
   - **If the Board agrees** with the recommendation of the Audit Committee, it **shall further recommend such individual or firm** as auditor **to the members in the AGM** for appointment.
   - **If the Board disagrees**, it **shall refer back the recommendation to the Audit committee for reconsideration** citing reasons for such disagreement.
   - **If the Audit Committee**, after considering the reasons given by the Board, **decides not to reconsider its original recommendation**, and the **Board continues to disagree** with the recommendations of the Audit Committee, the **Board shall** -
     – **record reasons for its disagreement** with the committee;
     – **send its own recommendation** for consideration of the members **in the AGM**.
   - **If the Audit Committee, after considering the reasons given by the Board, decides not to reconsider its original recommendationand the Board agrees** with the recommendations of the Audit Committee, the **Board shall recommend the name of the individual or firm as recommended by the Audit Committee to the members** in the AGM for appointment.

Companies that require to constitute an audit committee
[Section 177 of the Act read with *Companies (Meetings of Board and its Powers) Rules, 2014*]

- Every **listed Co.;**
- All **public Co. with a paid up capital of Rs.10 crore or more**;
- All **public Co. having turnover of Rs.100 crore or more**;
- All **public Co. having** in aggregate, **outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore as existing on the date of last audited Financial Statements**

Note: It is also worth noting that where a **company ceases to fulfil any of three conditions laid down above for three consecutive years**, it shall not be required to comply with the provisions pertaining to audit committee until such time as it meets any of such conditions.

e) Before the appointment is made,
– the **written consent** of the auditor to such appointment, and
– a **certificate from him or it** that
   - the **appointment**, if made, **shall be in accordance with the conditions** as may be prescribed,
   - the **auditor satisfies the criteria provided in Sec 141**

shall be obtained from the auditor.

Certificate by Auditor (Rule 4):

Auditor appointed shall submit a certificate that–
- the **individual or the firm**, as the case may be, **is eligible for appointment and is not disqualified** for appointment; under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- the **proposed appointment is as per the term** provided under the Act;
- the **proposed appointment is within the limits laid down by or under the authority of the Act;**
- the **list of proceedings** against the auditor or audit firm or any partner of the audit firm **pending with respect to professional matters of conduct**, as disclosed in the certificate, **is true and correct.**

f) **Communication to Auditor :**
The Co. shall:
- **inform the auditor concerned of his or its appointment**, and
- **file a notice (in the Form ADT- 1)(Rule 4)** of such appointment **with the Registrar within 15 days of the meeting** in which the auditor is appointed.

Note:
- **"Appointment" includes reappointment**.
- **Firm shall include a LLP**

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AUDIT & AUDITORS (Chart 13.2)

Term and Rotation of Auditors - Sec 139(2) (3) & (4)

- **Section 139(2) provides that Listed Co. and other prescribed class of Co. (except OPC and Small Co.) shall not appoint or re-appoint**:
  1) an **individual as auditor for more than 1 term** of **5 consecutive years**; and
  2) an **audit firm as auditor for more than 2 terms** of **5 consecutive years.**

  Prescribed class of Co. (Rule 5):
  1) all **unlisted public Co.** having **paid up share capital of Rs.10 crore or more**;
  2) all **private limited Co.** having **paid up share capital of Rs.50 crore or more**;
  3) all **companies having paid up share capital of below threshold limit mentioned in (2) and (3)** above, **but having public borrowings from financial institutions, banks or public deposits of Rs.50 crores or more.**
- **Cooling off Period:**
  An **individual auditor/audit firm who has completed his/its term** (i.e. **1 term/2 term respectively of 5 consecutive years**) **shall not be eligible for re-appointment** as auditor **in the same Co. for 5 years** from the completion of such term.
- **Restriction on other audit firm(s) having common partner(s):**
  An **audit firm**, which on the date of appointment, **has 1 or more common partner to the other audit firm, whose tenure has expired, shall not be appointed as the auditor of the same Co.** for a **period of 5 years.**
- **Time period for compliance for existing Co.(Transitional Provision):**
  Every Co, existing on the commencement of this Act, **shall comply** with these requirements **within a period which shall not be later than the date of the first AGM** of the Co. held, within the period specified u/s 96. **after 3 years from the date of commencement of this Act**
- **Right of removal or resignation not affected:**
  Right of the Co. to remove an auditor or Right of the auditor to resign before expiry of one/two term(s) of 5 consecutive years **shall not be affected due to any provision contained in Sec 139(2).**
- **Strict provisions w.r.t. rotation may be imposed by members:[Sec 139(3)]**
  Members of a Co. **may resolve** to provide that-
  a) in the audit firm appointed by it, the **auditing partner and his team shall be 'rotated at such intervals** as may be resolved by members;
  b) the **audit shall be conducted by more than one auditor**.

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- **Rules for rotation of auditors: CG** may, by rules, **prescribe the manner of rotation of auditors** in pursuance of sub section 2
- **Manner of rotation of auditors (Rule 6):**
  1) **Audit Committee shall recommend to the Board**, the **name of** an individual **auditor** or of an audit firm **who may replace the incumbent auditor** on expiry of the term of such incumbent.
  2) Where a Co. is required to constitute an Audit Committee, the **Board shall consider the recommendation of such committee**, and in **other cases, the Board shall itself consider the matter of rotation and make its recommendation for appointment of the next auditor by the members in AGM.**
     Note: In case where Audit committee is not required to be constituted under section 177, but constituted by the company voluntarily, then such audit committee shall recommend to the Board, the name of an individual auditor or of an audit firm who may replace the incumbent auditor on expiry of the term of such incumbent; but in such cases board may or may not consider the recommendation of such committee
  3) **For the purpose of the rotation of auditors**
     a) the **period** for which the **individual or the firm has held office** as auditor **prior to the commencement of the Act shall be taken into account for calculating the period of 5 or 10 consecutive years**;
     b) the **incoming auditor or audit firm shall not be eligible if** such auditor or audit firm is **associated with the outgoing auditor or audit firm under the same network** of audit firms.
     Same network" includes the firms operating or functioning, hitherto or in future, under the same brand name, trade name or common control.
     c) a **break in the term for a continuous period of 5 years** shall be **considered as fulfilling the requirement of rotation**;
     d) if a **partner**, who is **in charge of an audit firm and also certifies the F.S.** of the Co, **retires** from the said firm **and joins another firm**, such **other firm shall also be ineligible** to be appointed **for a period of 5 years**.
     e) **Manner of rotation in case of joint auditors [Rule 6(4)]: Where a company has appointed two or more individuals or firms or a combination thereof as joint auditors, the company may follow the rotation of auditors in such a manner that both or all of the joint auditors, as the case may be, do not complete their term in the same year**

FILLING UP CASUAL VACANCY [Sec 139(8)]

NON-GOVT COMPANY

- **Board may fill any casual vacancy** in the office of an auditor **within 30 days**.
- Where such **vacancy is caused by the resignation** of an auditor, it **shall be filled by the BOD within 30 days** and such appointment **shall also be approved by the Co. at a GM** convened **within 3 months of the recommendation of the Board.**
- Any **auditor appointed** in a casual vacancy **shall hold office until the conclusion of the next AGM**.

GOVT COMPANY

- In the case of a **Co. whose accounts are subject to audit** by an auditor appointed by the **CAG of India**, **casual vacancy** of an auditor be **filled by the CAG of India within 30 days**.
- In case the **CAG of India do not fill the vacancy within the said period, the BOD shall fill the vacancy within next 30 days.**

RE-APPOINTMENT OF RETIRING AUDITOR- Sec 139(9) & (10)

- **At any AGM, a retiring auditor may be re-appointed**, if -
  1) **he is not disqualified for re-appointment**;
  2) he **has not given the Co. a notice in writing of his unwilling-ness to be re-appointed**; and
  3) a **SR has not been passed** at that meeting **appointing some other auditor or providing expressly that he shall not be re-appointed**.
- Where **at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue** to be the auditor of the Co.**[Sec 139(10)]**

AUDIT COMMITTEE'S RECOMMENDATION [SEC 139(11)]

Where a company is required to constitute an Audit Committee under Sec 177, all appointments, including the filling of a casual vacancy of an auditor under this section shall be made after taking into account the recommendations of such committee.

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Provisions Contained in NFRA Rules. 2018

Monitoring and enforcing compliance with AS - Rule 7

1. For the purpose of monitoring and enforcing compliance with accounting standards under the Act by a company or a body corporate governed under rule 3, **the Authority may review the financial statements** of such company or body corporate, as the case may be, **and if so required, direct** such company or body corporate or its auditor by a written notice**, to provide further info or explanation or any relevant documents** relating to such company or body corporate, **within such reasonable time** as may be specified in the notice.
2. **NFRA may require the personal presence of the officers of the co. or body corporate and its auditor** for seeking additional info. or explanation in connection with the review of the FS
3. NFRA shall **publish its findings relating to non-compliances on its website and in such other manner as it considers fit, unless it has reasons not to do so in the public interest and it records the reasons in writing.**
4. **Where NFRA finds or has reason to believe that any AS has or may have been violated, it may decide on the further course of investigation or enforcement action through its concerned Division.**

Monitoring and enforcing compliance with SA - Rule 8

- For the purpose of monitoring & enforcing compliance with auditing standards (SA) under the Act by a Co. or a body corporate governed under rule 3, the **NFRA may**:

a) **review working papers** (including audit plan and other audit documents) **and communications related to the audit**;
b) **evaluate the sufficiency of the quality control system of the auditor and the manner of documentation** of the system by the auditor; and
c) **perform such other testing** of the audit, supervisory, and quality control procedures of the auditor as may be considered necessary.

- NFRA may **require an auditor to report on its governance practices and internal processes** designed to promote audit quality, protect its reputation and reduce risks including risk of failure of the auditor and may take such action on the report as may be necessary.
- NFRA may **seek additional information or may require the personal presence of the auditor** for seeking additional info or explanation
- NFRA shall **perform its monitoring and enforcement activities through its officers or experts** with sufficient experience in audit of the relevant industry.
- NFRA shall **publish its findings relating to non-complainces on its website**.
- NFRA **shall not publish proprietary or confidential information**.
- NFRA may **send a separate report containing proprietary or confidential information to the CG** for its information.
- Where the NFRA finds or has **reason to believe that any law/professional/other standard has been violated by an auditor**, it **may decide on the further course of investigation or enforcement action** through its concerned Division.

Overseeing the quality of service & suggesting measures for improvement [Rule 9]

1) On the basis of its review, the NFRA may **direct an auditor to take measures for improvement of audit quality**.
2) It shall be the **duty of the auditor to make the required improvements and send a report to the NFRA** explaining how it has complied with the directions made by the NFRA.
3) NFRA shall **monitor the improvements made by the auditor and take such action** as it deems fit depending on the progress made by the auditor.
4) NFRA may **refer cases** with regard to overseeing the quality of service of auditors of companies or bodies corporate referred to in rule 3 **to the Quality Review Board or call for any report or information** in respect of such auditors or companies or bodies corporate **from such Board** as it may deem appropriate.
5) NFRA may **take the assistance of experts for its oversight and monitoring activities**.

AUDIT & AUDITORS (Chart 13.3)

REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE - Sec 140

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

- **Board resolution:** BR **shall be required for removal** of auditor **before the expiry of his term**.
- **Special Resolution:** The **auditor appointed u/s 139 may be removed** from his office **before the expiry of his term only by a SR**.
- **Approval of CG: Previous approval of the CG is to be obtained** in prescribed manner.**(Rule 7)**
  - **a)** An **application shall be made to the CG in Form ADT-2 within 30 days of BR** and shall be accompanied with the prescribed fees.
  - **b)** The **Co. shall hold the GM within 60 days of receipt of approval of the CG for passing the SR.**
- **Giving opportunity of being heard:** Before taking any action for removal of auditor, he **shall be given a reasonable opportunity of being heard**.

Resignation by Auditor Sec 140(2) & (3)

1) If the auditor has resigned from the Co, he shall **file within 30 days from the date of resignation, a statement in form ADT-3*(Rule 8)*** with **the Co. and Registrar & CAG (In case of Govt. Co. or Co. controlled by CG/SG)**
2) Auditor shall **indicate the reasons and other facts with regard to his resignation**, in the statement.
3) If the auditor **does not comply with aforesaid provision**, shall be **punishable** with
   - PENALTY of **Rs.50,000 or amt equal to the remuneration** of the auditor, **whichever is less** and
   - in case of **continuing failure**, with a **further penalty of Rs.500/day**, subject to a **maximum of Rs.2 lacs**.

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

a) If the retiring auditor has not completed a consecutive **tenure of 5 or 10 years** as provided u/s 139(2) **special notice shall be required**
   - for a resolution at AGM **appointing as auditor a person other than a retiring auditor**, or
   - **providing expressly that a retiring auditor shall not be re-appointed**.

b) On receipt of notice of such a resolution, the **Co. shall forthwith send a copy thereof to the retiring auditor**.

c) Where the **retiring auditor makes a representation in writing to the Co. (not exceeding a reasonable length)** and **requests its notification to members of the Co**, the Co. shall, **unless the representation is received by it too late for it to do so**:
   - in any notice of the resolution given to members of the Co, **state the fact of the representation having been made**; and
   - **send a copy of the representation to every member** of the Co. to **whom notice of the meeting is sent,** whether before or after the receipt of the representation by the Co.

d) If a **copy of the representation is not sent** because it was **received too late or because of the Co's default**, the **auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.**

e) However, if a **copy of representation is not sent as aforesaid, a copy thereof shall be filed with the RoC.**

f) If the **Tribunal is satisfied** on an application **(Form NCLT 1) either of the Co. or of any other aggrieved person that the rights** conferred by this sub-section **are being abused by the auditor, then, the copy of the representation may not be sent and need not be read out at the meeting**.

NOTE: Sec 140(4) **shall not apply where the retiring auditor has completed his tenure of 5/10 consecutive years**.

Power of the Tribunal to order change of auditor [Sec 140(5)

a) On satisfaction of Tribunal that the auditor of a Co. has acted in a fraudulent manner etc.:
Tribunal either **Suo motu or on application made to it by CG (Form no. NCLT-9) or by any person concerned (Form no. NCLT-9)** if it is satisfied that the auditor **has acted in a fraudulent manner** or **abetted or colluded** in any fraud by, or in relation to, the Co. or its directors or officers, it may, **by order, direct the Co. to change its auditors**.

b) Requirement for change of auditor:
If the **application is made by CG** and the **Tribunal is satisfied that any change of the auditor is required**, it shall **within 15 days of receipt of such application, make an order that he shall not function as an auditor** and **CG may appoint another auditor** in his place. **(Rule 78(3) of NCLT rules also provide exactly same provision)**

c) Ineligibility of auditor to be appointed:
An **auditor** against whom final order has been passed by the Tribunal under this section **shall not be eligible to be appointed as an auditor of any Co. for 5 years from the date of passing of the order and the auditor shall also be liable for action u/s 447.**

Explanation I.—It is hereby clarified that in the **case of a firm,** the **liability shall** be **of the firm and that of every partner or partners** who acted in **a fraudulent manner** or **abetted or colluded** in any fraud by, or in relation to, the company or its director or officers

ELIGIBILITY, QUALIFICATIONS & DISQUALIFICATIONS OF AUDITORS - Sec 141

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

a) A person shall be eligible to be appointed as auditor of a Co. only if **he is a CA (who holds a valid certificate of practice).**
b) A **firm whereof majority of partners practising in India are qualified for appointment** as aforesaid **may be appointed by its firm name** to be auditor of a Co.
c) Where a **firm including a LLP is appointed as an auditor** of a Co, only the **partners who are CA shall be authorised to act and sign on behalf of the firm.[Sec 141(2)]**

Disqualifications of auditors -Sec 141(3)

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a) **Body corporate other than a LLP**;
b) **Officer or employee of the Co**;
c) Person who is a **partner of an officer or employee** of the Co **or who is in the employment, of an officer or employee** of the Co **(Firm in which** an **officer or employee** of the Co. **is a partner**.)
d) Person **who, or his relative or partner**
   - **is holding any security of or interest in**
   - **the Co. or its subsidiary, or its holding or associate Co. or a subsidiary of such holding Co.**
     - Provided that the **relative may hold security or interest** in the Co. **of F.V. ≤ Rs.1 lac.**
     - **If the relative acquires any security or interest above the prescribed threshold corrective action** to maintain the limits as specified above **shall be taken by the auditor within 60 days of acquisition or interest**.

   Person who, or his relative or partner
   - **is indebted, in excess of the amt of Rs.5 lacs to**
   - **the Co. or its subsidiary, or its holding or associate Co. or a subsidiary of such holding Co.**

   Person who, or his relative or partner
   - **has given a guarantee or provided any security** in connection with the indebtness of any third person, **in excess of the amt of Rs.1 lac**, to
   - **the Co. or its subsidiary, or of its holding or associate Co. or subsidiary of such holding Co.**

   Note : Holding of all the relatives together shall be checked against the threshold. Further, even if relative of one of the partners of any firm hold securities or interests exceeding the threshold then, not only such partner even firm shall not be eligible to appointed as auditor.

e) **Person or a firm**
   - **who**, whether directly or indirectly, **has business relationship**
   - **with the Co. or its subsidiary, or of its holding or associate Co. or a subsidiary of such holding Co. or a subsidiary of such associate Co.**

   According to Rule 10 the term "business relationship" shall be construed as any transaction entered into for a commercial purpose, except–
   i. **commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the CA Act, 1949 .**
   ii. **Commercial transactions which are in the ordinary course of business of the company at arm's length price**

f) Person **whose relative is director** of the Co. **or is in the employment** of Co. **as a director or KMP**;
g) Person **who is in full time employment** elsewhere or **person or a partner of a firm** holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment **holding appointment as auditor of more than 20 companies (other than OPC, Small Co. and Private Co. having paid-up share capital less than Rs.100 crores).**
   Note: In case of a firm, the **limit** of 20 audits **shall be taken as 20 audits per person.**
l) Person **who has been convicted** by a court **of an offence involving fraud and a period of 10 years has not elapsed** from the date of such conviction;
m) Person **who, directly or indirectly, renders any service referred to in Sec 144** to the Co. or its holding or subsidiary Co.

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

- If a person appointed as an **auditor incurs any of the disqualifications** specified in Sec 141(3), he **shall be deemed to have vacated his office**. Such vacation shall be **deemed to be a casual vacancy** in the office of the auditor.

AUDIT & AUDITORS (Chart 13.4)

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POWERS OF AUDITORS - Sec 143

a) **Access to books of accounts and vouchers:** Every auditor of a Co. shall have a **right of access at all times to the books of accounts and vouchers** of the Co, whether **kept at the R.O. of the Co. or at any other place**.

b) **Entitled to have necessary information and explanation:** He shall be entitled to **require from the officers of the Co. such information and explanations as the auditor may consider necessary** for the performance of his duties as auditor.

c) **Access to record of all its subsidiaries or associate companies:**
The **auditor of holding company shall also have the right of access to the records of all its subsidiaries and associate companies** in so far as it relates to the consolidation of its financial statements with that of its subsidiaries or associate companies.

DUTIES OF AUDITORS - Sec 143

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(a) Matters of inquiry

The auditor shall inquire into the following matters, namely—

1) Whether **loans and advances have been properly secured** and whether the **terms on which they have been made are prejudicial to the interests of the Co. or its members**;
2) Whether **transactions which are represented merely by book entries are prejudicial to the interests of the Co**;
3) Where the Co. not being **an investment or banking Co,** whether **shares, debentures and other securities have been sold at a price less than that at which they were purchased**;
4) Whether **loans and advances have been shown as deposits**;
5) Whether **personal expenses have been charged to revenue account**;
6) Where **any shares have been allotted for cash, whether cash has actually been received** in respect of such allotment, and **if no cash has actually been so received, whether the position as stated in account books and B/S is correct, regular and not misleading.**

(b) Duty to make report

- The auditor shall **make a report to the members** of the Co. on the:
  1) **accounts examined by him**; and
  2) **every F.S.** which are required **to be laid before the Co. in GM**; and
- The auditor while making the report shall **take into account the provisions of the Act, A.S. & S.A. and matters which are required to be included in the audit report** under the provisions of this Act or any rules made thereunder or under any order made u/s 143(11).
- The auditor shall **express his opinion of the accounts and F.S. examined by him** that whether according to him and to the best of his information and knowledge, the said accounts, F.S. **give a true and fair view of**
  – the **state of the company's affairs** as at the end of its F/Y and
  – **profit or loss and cash flow for the year** and
  – **such other matters as may be prescribed.**

(c) Report on principal assertions

The auditors' report shall also state-

1) whether he has **sought and obtained all the information and explanations** necessary for the purpose of his audit and **if not, the details thereof and the effect of such info. on the F.S.**;
2) whether, in his opinion, **proper books of account as required by law have been kept by the Co.** and **proper returns** adequate for the purposes of his audit **have been received from branches not visited by him**;
3) whether the **report on the accounts of any branch office** of the Co. **audited by a person other than the Co's auditor has been sent to him**;
4) whether the **Co's B/S and P&L A/c dealt with in the report are in agreement with the books of account & returns**;
5) whether, in his opinion, the **F.S. comply with the A.S.**;
6) the **observations or comments of the auditors** on financial transactions or matters **which have any adverse effect** on the functioning of the Co;
7) whether **any director is disqualified from being appointed** u/s 164(2);
8) **any qualification, reservation or adverse remark relating to the maintenance of accounts** and other matters connected therewith;
9) whether the **Co. has adequate internal financial controls** with reference to F.S. **in place and the operating effectiveness of such control;**
10) **such other matters as may be prescribed**

Rule 10A for the purposes of point 9 mentioned above, for the FYs commencing on or after 1 April 2015, the report of the auditor shall state about existence of internal financial controls with reference to FS and its operating effectiveness:

Exemption to Private Co:

Sec 143(3)(i) **shall not apply to a private company**:-

- which **is a OPC or a small Co**; or
- which **has turnover less than Rs.50 crores** as per latest audited F.S. **and aggregate borrowings** from banks or financial institutions or any body corporate at any point of time during the F/Y **less than Rs.25 crore and**
- Such private Co. **has not committed a default in filing of F.S.** u/s 137 **or annual return** u/s 92 with the Registrar.

(e) Reasons to be given by auditor - Sec 143(4)

Where any of the **matters** is **answered in the negative or with a qualification**, the auditor's report shall **state the reason for the answer.**

(d) Other matters to be included in Auditor's report

Rule 11 provides that the auditor's report **shall also include their views and comments on the following:**

a) whether the Co. has **disclosed the impact**, if any, **of pending litigations** on its financial position in its F.S.;
b) whether the Co. has **made provision**, **for material foreseeable losses**, if any, **on long term contracts including derivative contracts**;
c) whether there has been any **delay in transferring amounts**, required to be transferred, **to IEPF** by Co.
d) Whether the **management has represented that, no funds have been advanced/loaned/invested** by the Co. to any other person or entity, including foreign entities **(Intermediaries) with the understanding, that the Intermediary shall, lend or invest** in other persons or entities **or provide any guarantee, security** on behalf of the Ultimate Beneficiaries;

Whether the **management has represented that, no funds have been received** by the Co. from any person or entity, including foreign entities (Funding Party) **with the understanding, that the Co. shall**, **lend or invest** in other persons or entities **or provide any guarantee, security** on behalf of the Ultimate Beneficiaries**;**

Based on audit procedures **nothing has come to their (auditor) notice** that has caused them to believe that the **representations under clause (d) and (e) contain any material mis-statement**.

e) Whether the **dividend declared or paid** during the year by the Co. **is in compliance with Sec 123.**
f) Whether the Co, in respect of F/Y commencing on or after the 1st April, 2022, has **used such accounting software** for maintaining its books of account **which has feature of recording audit trail facility. the same has been operated throughout the year for all transactions and the audit trail feature has not been tampered with and the audit trail has been preserved by the co. as per the statutory requirements for record retention.**

(f) Additional matters to be reported in case of specified Co. - Sec 143(11)

In respect of such class or description of Co's, as may be specified in general or special order **CG may, in consultation with NFRA, direct, the auditor's report shall also include a statement on such matters as may be specified therein.** ***(CARO 2020)***

AUDIT OF GOVERNMENT CO. - Sec 143(5), (6) & (7)

a) In the case of a Govt. Co. or any other Co. owned or controlled, directly or indirectly, by CG or SG, or partly by CG and partly by one or more SG,
   - the **CAG of India shall appoint the auditor** u/s 139(5) or 139(7) and
   - **direct such auditor the manner in which the accounts of the Govt. Co. are required to be audited** and thereupon the **auditor** so appointed **shall submit a copy of the audit report to the CAG of India**.

b) The **audit report** among other things shall **include the following**:
   - the **directions, if any, issued by the CAG of India**,
   - the **action taken thereon** and
   - its **impact on the accounts and F.S.** of the Co.

c) **Supplementary Audit:**
   - CAG of India **shall within 60 days from the date of receipt of the audit report have a right to**,-
     – **conduct a supplementary audit of the F.S.** of the Co. by such person as he may authorise in this behalf; and
     – for the purposes of such audit, **require information or additional information** to be furnished to any person, so authorised; as CAG may direct
     – **comment upon or supplement such audit report**.
   - Any **comments given by the CAG** of India **upon, or supplement to, the audit report shall be sent by the Co. to every person entitled to copies of audited F.S.** u/s 136(1) **and also be placed before the AGM** of the Co. at the same time and in the same manner as the audit report.

d) **Test Audit:**
For Govt. Co. or Co. controlled by SG or CG, the **CAG** of India may, if considers necessary, **by an order, cause test audit to be conducted of the accounts of such company**. The provisions of **Sec 19A of the CAG (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit**

AUDIT & AUDITORS (Chart 13.5)

AUDIT OF ACCOUNTS OF BRANCH OFFICE OF COMPANY- Sec 143(8)

a) **Branch office in India:**
Where a Co. has a branch office in India, the **accounts of that office shall be audited either by**:
- the **company's auditor** appointed u/s 139, or
- **any other person qualified for appointment as an auditor** of the Co. u/s 139.

b) **Branch office outside India:**
If the branch office is situated outside India, the **accounts of the branch office shall be audited either by**:
- the **company's auditor** or
- an **accountant** or
- **any other person duly qualified to act as an auditor** of the accounts of the branch office in accordance with the laws of that country.

c) The **duties and powers of the company's auditor** with reference to the audit of the branch and the **branch auditor, if any, shall be as contained in Sec 143(1) to (4)**.

d) The **provisions** regarding **reporting of fraud** by the auditor **shall also extend to such branch auditor to the extent it relates to the concerned branch**.

e) The branch auditor **shall prepare a report on the accounts of the branch** examined by him and **send it to the auditor of the Co. who shall deal with it in his report in such manner as he considers necessary.**

COMPLIANCE WITH AUDITING STANDARDS - Sec 143(9) & (10)

1) Every auditor **shall comply with the auditing standards**.
2) **CG may prescribe the standards of auditing** or any addendum thereto, **as recommended by the ICAI**, in consultation with and after examination of the recommendations made by the NFRA.
3) It is further provided that **until any auditing standards are notified, any standard of auditing specified by the ICAI shall be deemed to be the auditing standards**

REPORTING OF FRAUDS BY AUDITORS - Sec 143(12)

5) Reporting of Fraud involving Rs.1 crore or more:
If an auditor **has reason to believe** that an offence of **fraud** involving **individually amt of Rs.1 crore or above** is being or has been **committed in the Co. by its officers or employees**, the auditor shall report the matter to the **CG within such time and in such manner prescribed in Rule 13 which is** as under:
- auditor shall **report the matter to the Board or Audit Committee**, as the case may be, immediately but **not later than 2 days of his knowledge of the fraud, seeking their reply or observations within 45 days**;
- on receipt of such reply or observations, the **auditor shall forward his report and the reply or observations** of the Board or Audit Committee **along with his comments thereon to the CG within 15 days from the date of receipt of such reply** or observations;
- in case the **auditor fails to get any reply or observations within 45 days**, he **shall forward his report to the CG** along **with a note containing the details of his report that was earlier forwarded to the Board or Audit Committee for which he has not received any reply or observations**;
- **report shall be sent to the Secretary, MCA** in a sealed cover **by registered post with acknowledgement due or Speed Post** followed by an e-mail in confirmation of the same;
- **report shall be on the letter-head of the auditor containing postal address, e-mail address and contact telephone number or mobile number** and be **signed by the auditor with his seal and shall indicate his Memb.No.** and
- report shall be in the form of a statement **(Form ADT-4)**.

1) Reporting of Fraud involving less than Rs.1 crore:
- In case of a fraud involving less than Rs.1 crore, the auditor **shall report the matter to Audit Committee or Board** immediately but **not later than 2 days of his knowledge** of the fraud and he **shall report the matter** specifying the following :
  - **Nature of Fraud** with description;
  - **Approximate amount involved**; and
  - **Parties involved**.
- The **following details of each of the fraud** reported to the Audit Committee or Board during the year **shall be disclosed in the Board's Report** :
  - **Nature of Fraud** with description;
  - **Approximate Amount involved**;
  - **Parties involved**, if remedial action not taken; and
  - **Remedial actions taken**.

2) The **provision of this rule shall also apply, mutatis mutandis, to a Cost Auditor and Secretarial Auditor** during the performance of his duties u/s 148 and 204.**[Sec 143(14)]**

3) No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter referred above if it is done in good faith[Sec 143(13)]

4) Penalty for non-compliance:
If any **auditor, the cost accountant** conducting cost audit u/s 148 or **CS in practice** conducting secretarial audit u/s 204 **do not comply with the provisions of section 143(12)**, he shall
- **in case of a listed Co.:** be liable to a penalty of **Rs.5L**; and
- **in case of any other Co.:** be liable to a penalty of **Rs.1L**.

AUDITOR NOT TO RENDER CERTAIN SERVICES - Sec 144

(i) An auditor appointed under this Act shall **provide to the Co. only such other services as are approved by the BOD or audit committee**, as the case may be.

(ii) But such services **shall not include any of the following services (whether such services are rendered directly or indirectly to the Co. or its holding or subsidiary),** namely—
- **accounting and book keeping services**;
- **actuarial services**;
- **internal audit**;
- **design and implementation of any financial information system**
- **investment advisory services**;
- **investment banking services**;
- **rendering of outsourced financial services**;
- **management services**; and
- **any other kind of services** as may be prescribed.

Note: Tax audit has not been included in prohibited services while internal audit is a prohibited service.

(iii) Meaning of 'directly and indirectly':
The term "directly or indirectly" shall **include rendering of services by the auditor**,-

1) **In case of auditor being an individual, either himself or through his relative or any other person** connected or associated with such individual **or through any other entity**, whatsoever, **in which such individual has significant influence or control, or whose name or trade mark or brand is used by such individual**.

2) **In case of auditor being a firm, either itself or through any of its partners or through its parent, subsidiary or associate entity or through any other entity**, whatsoever, **in which the firm or any partner of the firm has significant influence or control, or whose name or trade mark or brand is used by the firm or any of its partners.**

REMUNERATION OF AUDITORS Sec 142

(i) Remuneration of auditors of a Co. **shall be fixed by the Co. in GM** or in **such manner as the company in GM may determine.**

(ii) In the **case of first auditor appointed by board**, remuneration **may be fixed by the Board**.

(iii) Remuneration mentioned aforesaid shall, in addition to the fee payable to an auditor shall **include the expenses, if any, incurred by the auditor in connection with the audit** of the Co. **and any facility extended to him**.
But the remuneration **does not include any remuneration paid to him for any other service** rendered by him at the request of the Co.

AUDITORS TO SIGN AUDIT REPORTS, ETC. - Sec 145

(i) The person appointed as an **auditor** of the Co. **shall sign the auditor's report or sign or certify any other document** of the Co. in accordance with the provisions of Sec 141(2) (i.e. **in case of firm including LLP, only CA are authorised to act and sign**).

(ii) The **qualifications, observations or comments** on financial transactions or matters, **which have any adverse effect on the functioning of the Co.** mentioned in the auditor's report **shall**
- **be read before the Co. in GM** and
- **be open to inspection by any member of the Co**.

Note: Entire audit report need not be read before company in general meeting.

AUDITORS TO ATTEND GENERAL MEETING - Sec 146

- All **notices** of, and other **communications relating to, any GM shall be forwarded to the auditor** of the Co.
- The **auditor shall, unless otherwise exempted by the Co, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any GM**.
- The auditor **shall have right to be heard at such meeting** on any part of the business which concerns him as the auditor.

AUDIT & AUDITORS (Chart 13.6)

PUNISHMENT FOR CONTRAVENTION - Sec 147

- **Penalty on Company [Sec 147(1)]:**
  If any of the provisions of **Sections 139 to 146 (both inclusive) is contravened**, the **company** shall be **punishable** with fine which shall not be less than **Rs.25,000 but which may extend to Rs.5 Lacs**.
- **Penalty on Officers [Sec 147(1)]:**
  If any of the provisions of **Sections 139 to 146 (both inclusive) is contravened**, **every officer** of the Co. who is **in default** shall be **punishable** with fine which shall not be less than **Rs.10,000 but which may extend to Rs.1 Lac**;
- **Penalty on Auditor [Sec 147(2) & (3)]:**
  a) If an auditor of a Co. **contravenes** any of the provisions of **Section 139, 144 or 145**, the **auditor** shall be **punishable** with fine
  – which shall not be less than **Rs.25,000 but which may extend to Rs.5 Lacs or**
  – **4 times the remuneration of auditor**,
  whichever is less.
  b) If an auditor has **contravened such provisions knowingly or willfully with the intention to deceive the Co. or its shareholders or creditors or tax authorities**, he **shall be punishable with**
  1) **Imprisonment:** for a term **which may extend to 1 year** and
  2) **Fine:**
  – which shall not be less than **Rs. 50000 but which may extend to Rs.25 Lacs or**
  – **8 times the remuneration of auditor,**
  whichever is less.

- **Consequences of conviction of Auditor:**
  Where an auditor has been convicted as above, he shall be **liable to—**
  1) **refund the remuneration received by him to the company**; and
  2) **pay for damages to the company, statutory bodies or authorities or to members or creditors** of the Co. for loss arising out of incorrect or misleading statements of particulars made in his audit report.
- **CG** shall, by notification, **specify any statutory body or authority or an officer for ensuring prompt payment of damages to the Co. or the persons**.
  Such body, authority or officer shall after payment of damages to such Co. or persons **file a report with the CG in respect of making such damages**. [Sec 147(4)]

Liability of Audit firm [Sec 147(5)]

- Where, in case of audit of a Co. being conducted by an audit firm, **it is proved that the partner(s) of the audit firm has acted in a fraudulent manner or abetted or colluded in any fraud** by, or **in relation to or by, the Co. or its directors or officers,**
- the **liability, whether civil or criminal for such act shall be of the partner(s) of the audit firm and of the firm jointly and severally and shall also be liable u/s 447.**
- "Provided that **in case of criminal liability** of an audit firm, in respect of liability **other than fine**, the **concerned partner(s), who acted in a fraudulent manner or abetted or, colluded in any fraud shall only be liable.".**

CG TO SPECIFY AUDIT OF ITEMS OF COST IN RESPECT OF CERTAIN COMPANIES - Sec 148

1) **CG** may, **by order, in respect of such class of companies -**
– **engaged in the production of such goods or providing such services** as may be prescribed,
– **direct that particulars relating to the utilisation of material or labour or to other items of cost** as may be prescribed
– **shall also be included in the books of account** kept u/s 128 by that class of companies.
Provided that CG shall, **before issuing such order i**n respect of **any class of companies regulated under a special Act, consult the regulatory body constituted or established under such special Act**.

2) If the CG is of the opinion, that it is necessary to do so, it may, **by order, direct that the audit of cost records of class of companies which are covered aforesaid and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.**

3) An **audit conducted under this section shall be in addition to the audit conducted u/s 143.**

4) The **cost audit shall be conducted by a Cost Accountant** who shall be **appointed by the Board** on such remuneration as may be determined by the members in such manner as may be prescribed.
Rule 14 of the Companies (Audit and Auditors) Rules, 2014 **provides that**
a) **in the case of companies which are required to constitute an audit committee:**
- **Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice**, as cost auditor **on the recommendations of the Audit committee**.
- **Audit committee shall also recommend remuneration** for cost auditor.
- **Remuneration** recommended by the Audit Committee **shall be considered and approved by the BOD** and **ratified subsequently by the shareholders.**

b) **in the case of other companies which are not required to constitute an audit committee:**
- **Board shall appoint an individual, who is a cost accountant in practice, or a firm of cost accountants in practice**, as cost auditor.
- **Remuneration** of such cost auditor **shall be ratified by shareholders subsequently.**

5) **No person appointed u/s 139** as an auditor of the Co. (i.e. company auditor) **shall be appointed for conducting the cost audit**. Cost auditor **shall comply with the cost auditing standards**

5) The **qualifications, disqualifications, rights, duties and obligations applicable to company auditors shall, so far as may be applicable, apply to a cost auditor** under section 148 and it shall be the **duty of the Co. to give all assistance and facilities to the cost auditor**.

6) The **cost audit report shall be submitted by cost auditor to the BoD** of the Co.

7) A company shall **within 30 days from the date of receipt of a copy of the cost audit report furnish the CG with such report** along with **full information and explanation on every reservation or qualification contained therein.**
Vide Notification dated 9th September, 2015 under the rule 4 of the Companies(Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, a company is required to furnish cost audit report and other documents to the CG u/s 148(6) and rules made thereunder, shall file such report and other documents using the XBRL taxonomy given in Annexure III for the FY commencing on or after 1st April, 2014 in e-form CRA-4 specified under the Companies(Cost Records and Audit) Rules, 2014.

8) If, after considering the cost audit report and the information and explanation furnished by the Co, the **CG is of the opinion that any further information or explanation is necessary, it may call for such further information and explanation** and the Co. shall furnish the same within such time as may be specified by CG.

9) If any **default is made in complying with the provisions** of Sec 148,-
a) The **company and every officer** of the Co. who is **in default shall be punishable** in the manner **as provided in Sec 147(1)**;
b) the **cost auditor** of the Co. who is **in default shall be punishable** in the manner **as provided in Sec 147(2) to (4)**.

10) The provisions of **section 143 shall mutatis mutandis apply to the cost accountant** in practice conducting cost audit u/s 148.

Sec 2(28): "Cost Accountant " means a cost accountant as defined in section 2(1)(d) of the Cost and Works Accountants Act, 1959 (23 of 1959), who holds a valid certificate of practice under section 6(1) of that Act and includes a firm or limited liability partnership of cost accountants.

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Rule 5. Maintenance of Records

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1) Every company **covered by rule 3** explained above under these rules including all units and branches thereof, shall, in respect of each of its financial year maintain cost records in **form CRA-1.**
2) The cost records shall be **maintained on regular basis** in such manner as to facilitate **calculation of per unit cost of production** or **cost of operations**, **cost of sales and margin for each of its products** and activities **for every financial year on monthly or quarterly or half-yearly or annual basis**.
3) The cost records shall be **maintained in such manner** so as to **enable the company** to exercise, as far as possible, **control over the various operations** and **costs to achieve optimum economies** in utilisation of resources and these records shall also provide necessary data which is required to be furnished under these rules.

AUDIT & AUDITORS (Chart 13.7)

Rule 3 of the Companies (Cost Records and Audit) Rules, 2014

- For the purposes of **sub-section (1) of section 148** of the Act the class of companies **including foreign companies** defined in clause (42) of section 2 of the Act engaged in the **production of the goods or providing services,** specified in the **Table A (6 Regulated Sectors**) and/or **Table B (33 Non-Regulated Sector),**
- having an **overall turnover from all its products and services of Rs. 35 crore or more during the immediately preceding financial year,** shall include cost records for such products or services in their books of account.

Table A:Regulated Sector	Table B:Non-Regulated Sector
- Telecommunication services - Generation, transmission, distribution and supply of electricity - Petroleum products; - Drugs and pharmaceuticals - Fertilizers - Sugar and industrial alcohol	- Machinery and mechanical appliances used in defence, space and atomic energy sectors - Turbo jets and turbo propellers; - Arms and ammunitions and Explosives; - Iron and Steel; - Rubber and allied products; - Coffee and tea; - Cement - Jute and Jute Products; - Edible Oil;

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Exception:

Nothing contained in Rule 3 shall apply to a company which is classified as a micro enterprise or a small enterprise including as per the turnover criteria under subsection (9) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006

Rule 4: Applicability for Cost Audit

1) Every company specified in **item (A) of rule 3**
   - shall get its **cost records audited** in accordance with these rules
   - **if the overall annual turnover of the company** from **all its products and services** during the immediately preceding financial year is rupees **50 crore or more** and
   - the **aggregate turnover of the individual product or products or services** for which cost records are required to be **maintained under rule 3** is rupees **25 crore or more**.

2) Every company specified **in item (B) of rule 3**
   - shall get its **cost records audited** in accordance with these rules
   - if the **overall annual turnover of the company from all its products and services** during the immediately preceding financial year is **rupees 100 crore or more**
   - and the **aggregate turnover of the individual product or products or service or services for which cost records are required to be maintained under rule 3** is rupees **35 crore or more.**

Exemption:

3) The requirement for **cost audit** under these rules **shall not apply** to a company which is covered in rule 3, and-
   i. **whose revenue from exports, in foreign exchange, exceeds 75 per cent of its total revenue; or**
   ii. Which is operating from **a special economic Zone.**
   iii. which is engaged **in generation of electricity for captive consumption** through Captive Generating Plant.
   [For this purpose, the term "Captive Generating Plant" shall have the same meaning as assigned in rule 3 of the Electricity Rules, 2005";]

(Note: Only cost audit is not required, cost records are required if covered under rule 3)

Rule 6 of Companies (Cost Records and Audit) Rules, 2014

- **Time Limit for appointment**
  Cost Auditor shall within **180 days of the commencement of every financial year**, appoint a cost auditor.
- **Written Consent and Certificate**
  Before such appointment is made, the **written consent of the cost auditor** to such appointment, and a certificate following shall be obtained from him or it:
  a) The individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Cost and Works Accountants Act, 1959 and the rules or regulations made thereunder;
  b) The individual or the firm, as the case may be, **satisfies the criteria provided in section 141 of the Act,** so far as may be applicable;
  c) The proposed appointment is **within the limits laid down by or under the authority** of the Act; and
  d) The **list of proceedings** against the **cost auditor or audit firm or any partner of the audit firm** pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.
- **Notice of appointment**
  - Every company shall inform the cost **auditor concerned of his or its appointment** as such
  - and file a notice of such appointment **with the Central Government**
  - within a period of **thirty days of the Board meeting** in which such appointment is made or **within a period of one hundred and eighty days of the commencement of the financial year, whichever is earlier,**
  - through electronic mode, **in form CRA-2,** along with the fee as specified in Companies (Registration Offices and Fees) Rules, 2014.
- **Tenure of appointment as cost auditor**
  Every cost auditor appointed as such shall continue in such capacity till the **expiry of one hundred and eighty days from the closure of the financial year** or **till he submits the cost audit report**, for the financial year for which he has been appointed.
- **Removal of cost Auditor**
  The cost auditor appointed under these rules may be **removed from his office before the expiry of his term**, through a board resolution after giving a reasonable opportunity of being heard to the Cost Auditor and recording the reasons for such removal in writing.
  Note:
  - Form CRA-2 to be filed with the Central Government for intimating appointment of another cost auditor shall enclose the relevant Board Resolution to the effect
  - Nothing shall prejudice the right of the cost auditor to resign from such office of the company.
- **Filling of casual vacancy in the office of a cost auditor**
  Any **casual vacancy** in the office of a cost auditor, whether **due to resignation, death or removal**, shall be filled by the Board of Directors within thirty days of occurrence of such vacancy and the company shall inform the Central Government in form CRA-2 within thirty days of such appointment of cost auditor
- **Cost statements to be approved and signed by Board**
  The cost statements, including other statements to be annexed to the cost audit report, **shall be approved by the Board of Directors** before they are **signed on behalf of the Board by any of the director authorised by the Board,** for **submission to the cost auditor to report thereon.**
- **Audit Report**
  - Every cost auditor, who conducts an audit of the cost records of a company, **shall submit the cost audit report** along **with his or its reservations or qualifications or observations or suggestions**, if any, in **Form CRA-3.**
  - Every cost auditor shall **forward his duly signed report to the Board of Directors** of the company within a **period of 180 days from the closure of the financial year** to which the report relates and **the Board** of Directors shall **consider and examine such report**, particularly **any reservation or qualification contained therein.**
  - Every **company** covered under these rules shall, within a **period of thirty days** from the date of **receipt of a copy of the cost audit report**, furnish the **Central Government** with such report alongwith full information and explanation on every reservation or qualification contained therein, in **Form CRA-4** in **Extensible Business Reporting Language format** in the manner as specified in the **Companies (Filing of Documents and Forms in Extensible Business Reporting language) Rules, 2015 along with fees specified in the Companies (Registration Offices and Fees) Rules, 2014**."
    Provided that the Companies which have **got extension of time of holding Annual General Meeting under section 96 (1)** of the Companies Act, 2013, **may file form CRA-4** within **resultant extended period** of filing financial statements **under section 137** of the Companies Act, 2013.
  - The **provisions of section 143(12)** and all relevant rules made thereunder shall **mutatis mutandis** apply to the cost accountant in practice conducting cost audit under section 148.

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COMPANIES INCORPORATED OUTSIDE INDIA (Chart 14.1)

Definition of Foreign Company [Sec 2(42)]

"Foreign company" means any company or body corporate **incorporated outside India** which-

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

b) **conducts any business activity in India in any other manner**

According to the **Rule 2(1)(c) of Companies (Registration of Foreign Companies) Rules, 2014**, **"electronic mode"** means carrying out electronically based, **whether main server is installed in India or not,** including, but not limited to:

a) B2B and B2C transactions, data interchange and other digital supply transactions;
b) offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
c) financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
d) online services such as telemarketing, telecommuting, telemedicine, education and information research; and
e) all related data communication services

Explanation: For the purposes of this clause, **electronic based offering of securities**, **subscription thereof** or **listing of securities** in the **International Financial Services Centres** set up under section 18 of the Special Economic Zones Act, 2005 **shall not be construed as 'electronic mode'** for the purpose of Sec 2(42) of the Act.

Note: Exactly similar definition of electronic mode is given in Rule 2(1)(h) of Companies(Specification of Definitions Details) Rule,2014.

APPLICATION OF ACT TO FOREIGN COMPANIES [SEC 379]

According to this section:

i. Applicability of this Chapter to foreign companies:
Sections 380 to 386 (both inclusive) and Sec 392 & 393 shall apply to all foreign companies. It implies that all companies which falls within the definition of foreign company as per section 2(42), shall comply with the provisions of this Chapter.

ii. Applicability on foreign companies with Indian holding of paid up share capital) [Sec 379(2)]:
Where not less than 50% of the paid-up share capital, whether equity or preference or partly equity and partly preference, of a foreign company incorporated outside India is held by:
- **i. one or more citizens of India; or**
- **ii. by one or more companies or bodies corporate incorporated in India; or**
- **iii. by one or more citizens of India and one or more companies or bodies corporate incorporated in India,**

whether singly or in the aggregate, such foreign company shall also comply with the provisions of Chapter XXII and such other provisions of this Act as may be prescribed with regard to the business carried on by it in India as if it were a company incorporated in India.

DOCUMENTS, ETC. TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES [SEC 380]

1. Every foreign company shall, within 30 days of the establishment of its place of business in India, deliver to the Registrar for registration:

a) a **certified copy of the charter, statutes or memorandum and articles**, of the company or other instrument constituting or **defining the constitution of the company**. If the instrument is **not in the English language**, a **certified translation thereof** in the English language
b) the **full address of the registered or principal office** of the company;
c) **a list of the directors and secretary** of the company **containing such particulars as may be prescribed (Rule 3)**

Rule 3 of Companies (Registration of Foreign Companies) Rules, 2014

The list of directors and secretary or equivalent (by whatever name called) of the foreign company shall contain the following particulars, for each of the persons included in such list, namely:-

1. personal name and surname in full;
2. any former name or names and surname or surnames in full;
3. **father's name or mother's name or spouse's name**; **date of birth**; **residential address;**
4. nationality;
5. if the present nationality is not the nationality of origin, his nationality of origin;
6. passport Number, date of issue and country of issue; (if a person holds more than one passport then details of all passports to be given)
7. income-tax permanent account number (PAN) , if applicable;
8. occupation, if any ;
9. whether directorship in any other Indian company, (Director Identification Number (DIN), Name and Corporate Identity Number (CIN) of the company in case of holding directorship);
10. other directorship or directorships held by him;
11. Membership Number (for Secretary only); and
12. e-mail ID.

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d) the **name and address or the names and addresses of one or more persons resident in India** authorised to **accept on behalf of the company** service of process and **any notices or other documents** required to be served on the company;
e) the **full address of the office of the company** in India which is deemed to be its principal place of business in India;
f) **particulars of opening and closing of a place of business in India** on **earlier occasion** or occasions;
g) **declaration** that none of the **directors of the company** or **the authorised representative** in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
h) **any other information as may be prescribed.(Rule 3)**

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Rule 3:

Form, procedure and time for making application and submission of prescribed documents

- A foreign company shall, within a period of **30 days of the establishment of its place of business in India**, file with the **registrar Form FC-1** with such fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and
- **with the documents** required to be delivered for registration by a foreign company in accordance with the provisions of **Sec 380**(1) and
- the application shall also be **supported with an attested copy of approval from the RBI** under Foreign Exchange Management Act or Regulations, and
- also from other regulators, if any, approval is required by such foreign company to establish a place of business in India or
- a declaration from the authorised representative of such foreign company that no such approval is required.

Sec 380(2): Existing Foreign Companies:
Every foreign company existing at the commencement of this Act shall, **if it has not delivered to the Registrar** before such commencement, the documents and particulars specified in Sec 592(1) of the Companies Act, 1956 **continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.**

Sec 380(3): Alteration in documents:
Where **any alteration** is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall**, within 30 days of such alteration,** deliver to the Registrar for registration, **a return** containing the **particulars of the alteration in the prescribed form.**

Rule 3:
Where any alteration is made or occurs in the document delivered to the Registrar for registration under Sec 380(1) , the foreign company shall file with the Registrar, a return in Form FC-2 along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 containing the particulars of the alteration, within a period of 30 days from the date on which the alteration was made or occurred

Rule 8: Office Where Documents to be Delivered and Fee for Registration of Documents

1. Any document which any foreign company is required to deliver to the Registrar **shall be delivered to the Registrar having jurisdiction over New Delhi,** and **references to the Registrar in Chapter XXII of the Act i.e. Companies Incorporated outside India and these rules shall be construed accordingly.**
2. The **fee to be paid to the Registrar for registering any document** relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules, 2014.
3. If any **foreign company ceases to have a place of business in India**, it shall **forthwith give notice of the fact to the Registrar**, and as **from the date on which notice is so given**, the **obligation of the company to deliver any document to the Registrar shall cease**, **provided it has no other place of business in India**

COMPANIES INCORPORATED OUTSIDE INDIA (Chart 14.2)

ACCOUNTS OF FOREIGN COMPANY [SECTION 381]

1. Every **foreign company** shall, in **every calendar year,—**
   a) make out a **balance sheet and profit and loss account** in **such form**, containing **such particulars** and including or having annexed or attached thereto **such documents as may be prescribed**; and
   b) **deliver a copy of those documents to the Registrar**

Provided that the Central Government may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

Rule 4 Financial Statement of Foreign company

1. Every foreign company shall **prepare financial statement of its Indian business operations** in accordance with **Schedule III or as near thereto as may be possible** for **each financial year including-**
   i. **documents required to be annexed** thereto in accordance with the provisions of **Chapter IX of the Act i.e. Accounts of Companies ;**
   ii. **documents relating to copies of latest consolidated financial statements of the parent foreign company** , as submitted by it to the prescribed authority in the country of its incorporation under the provisions of the law for the time being in force in that country:

   Provided that where such documents **are not in English language**, there shall be annexed to it a **certified translation thereof in the English language.**

2. Every foreign company shall, **along with the financial statement** required to be **filed with the Registrar**, attach thereto the following documents; namely:-
   i. **Statement of related party transaction**
   ii. **Statement of repatriation of profits**
   iii. **Statement of transfer of funds (including dividends, if any)**

   (The above statements shall include such other particulars as are prescribed)

3. **All these documents shall be delivered to the Registrar within a period of 6 months of the close of the financial year of the foreign company to which the documents relate.**

   Provided that the Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding three months.

   Provided further that where the Central Government has exempted or specified different documents for any foreign company or a class of foreign companies, then documents as specified shall be submitted

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2. **Translation of documents to English [Sec 381(2)]**
   If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.
3. **List of places of business in India[Sec 381(3)]**
   Every foreign company shall **send to the Registrar along with the documents** required to be delivered to him under sub-section (1), a copy of **a list in the prescribed form of all places of business established by the company in India** as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

Rule 6 : List of Places of Business of Foreign Company

Every foreign company shall file with the Registrar, **along with the financial statement, in Form FC.3** with such fee as provided under Companies (Registration Offices and Fees) Rules, 2014 **a list of all the places of business established by the foreign company in India as on the date of balance sheet.**

Rule 8(3)

If any **foreign company ceases to have a place of business in India**, it shall **forthwith give notice of the fact to the Registrar**, and as **from the date on which notice is so given**, the **obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.**

AUDIT OF ACCOUNTS OF FOREIGN COMPANY (Rule 5)

1. **Every foreign company shall get its accounts, pertaining to the Indian business operations prepared in accordance with section 381(1) and Rules thereunder, shall be audited by a practicing CA in India or a firm or limited liability partnership of practicing chartered accountants.**
2. **The provisions of Chapter X i.e. Audit and Auditors and rules made there under, as far as applicable, shall apply, *mutatis mutandis*, to the foreign company**

Definition of Financial Year [Sec 2(41)]

"Financial year", in relation to any company or body corporate, means

- the **period ending on the 31st day of March** every year, and
- where it has been **incorporated on or after the 1st day of January** of a year, the period ending on **the 31st day of March of the following year,**
- in respect whereof financial statement of the company or body corporate is made up

Provided that where **a company or body corporate,**

- which is a **holding company or a subsidiary or associate company** of a company incorporated outside India and
- is **required to follow a different financial year** for consolidation of its accounts outside India,
- the **CG (delegated to RD)** may, on an application made by that **company or body corporate** in such form and manner as may be prescribed,
- allow **any period as its financial year, whether or not that period is a year:**

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance,[2019], shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.

Thus it is important to note that a foreign company having its place of business in India may not necessarily follow a financial year ending on the 31st day of March every year provided it has obtained the requisite approvals from the CG for the same.

DISPLAY OF NAME, ETC., OF FOREIGN COMPANY [SEC 382]

Every foreign company shall—

a) **conspicuously exhibit on the outside of every office or place where it carries on business in India,**
   - **the name of the company and the country in which it is incorporated,**
   - **in letters easily legible in English characters, and**
   - **also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;**

b) **cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company; and**

c) **if the liability of the members of the company is limited, cause notice of that fact—**
   i. **to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and**
   ii. **to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situated.**

SERVICE ON FOREIGN COMPANY [SECTION 383]

- **Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served,**
- **if addressed to any person whose name and address have been delivered to the Registrar under section 380 and**
- **left at, or sent by post to, the address which has been so delivered to the Registrar or by electronic mode.**

FEE FOR REGISTRATION OF DOCUMENTS [SECTION 385]

There shall be paid to the Registrar for registering any document required by the provisions of this Chapter to be registered by him, such fee, as may be prescribed.
According to the Rule 8(2) the fees to be paid to the Registrar for registering any document relating to a foreign company shall be such as provided in the Companies (Registration Offices and Fees) Rules. 2014.

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INTERPRETATION [SECTION 386]

For the purposes of the foregoing provisions of this Chapter, the expression:

a) **"Certified" means certified in the prescribed manner to be a true copy or a correct translation;**
b) **"Director", in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act;**
c) **"Place of business" includes a share transfer or registration office.**

COMPANIES INCORPORATED OUTSIDE INDIA (Chart 14.3)

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

1. **Issue of Debentures:** The provisions of **section 71 (Issue of Debentures) shall apply mutatis mutandis** to a foreign company
2. **Annual Return and CSR:** The provisions of **section 92 (Preparation and filing of Annual return)** shall, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India.

Rule 7 Annual Return.
Every foreign company shall **prepare and file,** within a **period of 60 days from the last day of its financial year,** to the Registrar **annual return in Form FC.4** along with **such fee as provided** in the Companies (Registration Offices and Fees) Rules, 2014 **containing the particulars as they stood on the close of the financial year.**

As per **Rule 3 of the Companies (Corporate Social Responsibility Policy) Rules 2014**, a **foreign company which fulfils the criteria specified under Section 135(1)** of the Companies Act 2013 **is required to comply with Section 135 of the Companies Act, 2013**, subject to such exceptions, modifications and adaptations as may be made therein by rules made under this Act, apply to a foreign company as they apply to a company incorporated in India

3. **Books of account etc. to be kept by company:**
   - The provisions of **section 128 (**Books of account, etc., to be kept by company) shall apply to a foreign company
   - **to the extent of requiring it to keep at its principal place of business in India,**
   - **the books of account referred to in that section, with respect to**
     - **monies received and spent,**
     - **sales and purchases made, and**
     - **assets and liabilities, in the course of or in relation to its business in India.**
4. **Registration of charges:**
   The provisions of **Chapter VI (Registration of Charges)** shall apply ***mutatis mutandis*** **to charges** on properties which are created or acquired by any foreign company.
5. **Inspection, Inquiry and investigation:**
   The provisions of **Chapter XIV (Inspection, inquiry and investigation) shall apply *mutatis mutandis*** to the Indian business of a foreign company as they apply to a company incorporated in India

PUNISHMENT FOR CONTRAVENTION [SECTION 392]

Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of Chapter XXII of the Companies Act, 2013 (i.e. Chapter on Companies incorporated outside India), the foreign company shall be punishable with:

1) Fine on defaulting foreign company in the range of **1 lac rupees to 3 lac rupees**.
2) In case of continuing default an additional fine on the foreign company to the tune of **50,000 rupees per day** after the first during which the contravention continues.
3) **Punishment for every officer** of the foreign company who is in default shall be imposition of a fine of a **minimum amount of 25,000 rupees, but which may extend to 5,00,000 rupees**.

Company's Failure to Comply with Provisions of This Chapter Not to Affect Validity of Contracts, Etc [Sec 393]

- Any failure by a company to comply with the provisions of Chapter XXII of the Companies Act, 2013,
- **shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof.**
- However, **the company shall not be entitled to bring any suit, claim any set-off**, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of the Companies Act, 2013, applicable to it.

EXEMPTIONS UNDER THIS CHAPTER [SECTION 393A]

The Central Government may, by notification, **exempt any class of-**

a) foreign companies;
b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

in so far as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the **International Financial Services Centres** set up under **section 18 of the Special Economic Zones Act, 2005.**

ACTION FOR IMPROPER USE OR DESCRIPTION AS FOREIGN COMPANY [RULE 12]

It states that if any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the Act or the rules made thereunder, that person or each of those persons shall, unless duly registered as foreign company under the Act and rules made thereunder, shall be liable for investigation under section 210 of the Act and action consequent upon that investigation shall be taken against that person.

DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN [SECTION 387]

1. **Prospectus to be dated and signed [Section 387(1)]:**
   No person shall **issue, circulate or distribute in India** any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company **has or has not established, or when formed will or will not establish, a place of business in India,** unless the prospectus **is dated and signed**, and
   a) contains particulars with respect to the following matters, namely:—
      1) the **instrument constituting or defining the constitution** of the company;
      2) the **enactments or provisions** by or under which the incorporation of the company was effected;
      3) **address in India** where the **said instrument, enactments or provisions, or copies thereof,** and if the same **are not in the English language**, a **certified translation thereof** in the English language can be **inspected;**
      4) the **date on which** and the **country in which** the company **would be or was incorporated**; and
      5) **whether** the company has **established a place of business in India** and, **if so, the address of its principal office in India; and**
   b) states the matters specified under **section 26** (Matters to be stated in prospectus).

   Provided that points (1), (2) and (3) of point (a) above shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business.

2. **No waiver of compliance in prospectus [Section 387(2)]**
   Any condition requiring or binding an applicant for securities to **waive compliance** with any requirement imposed by virtue of section 387(1) or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.
   Thus section 387 (2) does not provides any exception with respect to the non-compliance of the requirements stated under section 387 (1) by any person responsible for issuing or circulating prospectus.
3. **Form of application for securities to be issued along with prospectus [Sec 387(3)]**
   No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in section 387(1), unless the form is issued with a prospectus which complies with the provisions of this Chapter (Chapter XXII) and such issue does not contravene the provisions of section 388
   Exception: If it is shown that the form of **application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement** with respect to securities.
4. **Non applicability of Section [Section 387(4)]**
   The provisions of section 387—
   a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and
   b) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognized stock exchange,
   but, subject as aforesaid, section 387 shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.
   Note: However, provisions relating to dating of prospectus shall continue to apply.

5. **Nothing in Section 387 shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under the Companies Act, 2013 apart from Section 387.**

COMPANIES INCORPORATED OUTSIDE INDIA (Chart 14.4)

PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT [SEC 388]

1. No person **shall issue, circulate or distribute in India** any prospectus offering for subscription in securities of a company **incorporated or to be incorporated outside India,** whether the company has or has not been established, or when formed will or will not establish, a place of business in India,—
   a) if, **where the prospectus includes a statement purporting to be made by an expert**,
      - he has **not given, or has before delivery of the prospectus** for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or
      - there **does not appear in the prospectus** a statement that **he has given and has not withdrawn his consent as aforesaid**; or
   b) if the **prospectus does not have the effect**, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of section 33 (Issue of application forms for securities) and section 40 (Securities to be dealt with in stock exchanges), so far as applicable
2. For the purposes of this section, **a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.**

REGISTRATION OF PROSPECTUS [SECTION 389]

According to this section:
No person shall **issue, circulate or distribute in India** any **prospectus** offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, **unless before the issue, circulation or distribution of the prospectus in India;**

- a **copy thereof certified by the chairperson of the company** and **two other directors of the company** as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and
- **the prospectus states on the face of it that a copy has been so delivered** and
- there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

Rule 11: Documents to be Annexed to Prospectus

The following documents shall be annexed to the prospectus, namely:-

a) **any consent** to the issue of the prospectus required from any person as an expert;
b) **a copy of contracts for appointment of managing director or manager** and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;
c) a copy of any other material contracts, **not entered in the ordinary course of business,** but entered within **preceding two years;**
d) a copy of **underwriting agreement**; and
e) a **copy of power of attorney**, if prospectus is signed through duly authorized agent of directors.

OFFER OF INDIAN DEPOSITORY RECEIPTS [SECTION 390]

For the **purposes of this section,** and according to **Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014, Indian Depository Receipts (IDR) means any instrument in the form of a depository receipt created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts**.

According to section 390, notwithstanding anything contained in any other law for the time being in force, **the Central Government** may make rules applicable for—

a) the offer of **Indian Depository Receipts (IDR);**
b) the **requirement of disclosures in prospectus or letter of offer** issued in connection with IDR;
c) the **manner in which the IDR shall be dealt with** in a depository mode and by custodian and underwriters; and
d) the **manner of sale, transfer or transmission of IDR,**

by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

According to Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014,

- no company incorporated or to be incorporated outside India,
- whether the company has or has not established, or may or may not establish, any place of business in India
- shall make an issue of Indian Depository Receipts (IDRs)
- unless it complies with the conditions mentioned under this rule, in addition to the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and any directions issued by the Reserve Bank of India.

The Rules relating to offer, disclosure requirements and manner of transfer, sale etc., related to IDR are contained in Companies (Registration of Foreign Companies) Rules, 2014

Application of Chapter XV (Compromises, Arrangements and Amalgamations)

Section 234 of the Companies Act, 2013 deals with **merger or amalgamation of company with foreign company.**

- **Section 234(1)** states that the **provisions of Chapter XV** unless otherwise provided under any other law for the time being in force,
- shall **apply *mutatis mutandis* to schemes or mergers and amalgamations** between **companies registered under this Act and companies incorporated in the jurisdictions of such countries** as may be notified from time to time by the Central Government.
- **Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section**.

Section 234(2) states that **subject to the provisions of any other law for the time being in force,**

- a foreign company, may with the prior approval of the **Reserve Bank of India,**
- **merge into a company registered under this Act** or vice versa and
- the terms and conditions of the scheme of merger may provide, among other things,
- for the **payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.**

Explanation: For the **purposes of sub-section (2)** above, the expression "**foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.**

APPLICATION OF SECTIONS 34 TO 36 AND CHAPTER XX [SECTION 391]

Section 391 of the Companies Act, 2013 provides for Application of sections 34 to 36 and Chapter XX.

According to sub-section (1), the provisions of sections 34 to 36 (both inclusive) shall apply to—

i. **the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;**
ii. **the issue of IDR by a foreign company.**

Sub-section (2) provides that, subject to the provisions of section 376 (Power to wind up Foreign companies although dissolved), the provisions of Chapter XX (i.e. Chapter on Winding up) shall apply *mutatis mutandis* for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed

Compiled By: CA Sahil Grover

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.1)

INTRODUCTION

- This Act extends to the **whole of India**
- The **Parliament passed the Limited Liability Partnership Bill on 12th December, 2008** and the **President has assented the Bill on 7th January, 2009.**
- **This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto**
- **Contains 85 sections and 4 schedules**
- **The First Schedule** deals with **mutual rights and duties of partners,** as well limited liability partnership and its partners where there **is absence of formal agreement with respect to them.**
- **The Second Schedule** deals with **conversion of a Firm into LLP.**
- **The Third Schedule** deals with **conversion of a private company into LLP.**
- **The Fourth Schedule** deals with **conversion of unlisted public company into LLP.**
- **MCA & ROC** are entrusted with the task of administrating the LLP Act, 2008.
- **The Indian Partnership Act, 1932 is not applicable to LLPs.[Section 4]**

DEFINITION & CONCEPT

- **Section 2(1)(n) defines LLP as "limited liability partnership means a partnership formed and registered under this Act."**
- **Section 3 gives a comprehensive definition of an LLP giving its main essentials as 'A limited liability partnership is a body corporate, which is an artificial person, having a separate legal entity, with a perpetual succession, a common seal and carrying limited liability'.**
- **LLP is a new form of business entity that enables professional expertise and entrepreneurial initiative to combine, organize and operate in an innovative and efficient manner.**
- **For a long time, a need has been felt to provide for a business format that would combine the advantages of limited liability of a company and the flexibility of organizing their internal management on the basis of mutually arrived agreement, as is the case in a partnership firm, at a low compliance cost.**
- **Consequently LLP concept was initiated as an alternative to the ' traditional partnership firm' on the one hand, where partners are exposed to unlimited personal liability, and 'incorporated company' on the other, which is burdened with statute based governance structure.**
- **LLP not only gives the benefits of limited liability at low compliance cost but allows its partners the flexibility of organising their internal structure as a traditional partnership.**
- **This form of business organization permits individual partners to be insulated from joint liability of any partner's business decision. The LLP enters into a contract in its name and the liability of its partners is limited to their agreed contribution in the LLP.**
- **Owing to flexibility in its structure and operation, the LLP is a suitable vehicle for small enterprises and for investment by venture capital.**
- Since LLP contains **elements of both 'a corporate structure' as well as 'a partnership firm structure'.LLP is called a hybrid between a company and a partnership.**

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SALIENT FEATURES OF LLP

1. LLP is a body corporate:
- **Section 2(1)(d) of the LLP Act, 2008 provides that a LLP is a body corporate formed and incorporated under this Act. Sec 3** of LLP Act provides that a **LLP is a body corporate formed and incorporated under this Act** and is a **legal entity separate** from that of its partners.
- An LLP is **formed by the registration of an incorporation document** with the **RoC of the State in** which the registered office of the LLP is to be situated.

2. Perpetual Succession:

'Death, insanity, retirement or insolvency of partners has no impact on the existence of LLP. Partners may come and go but the LLP can go on forever.

3. Separate Legal Entity:
- . The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP.
- It is **capable of entering into contracts** and **holding property in its own name.**
- It can **sue and be sued in its own name** by its partners as well as outsiders

4. Mutual Agency:
- **All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.**

5. LLP Agreement:
- **Mutual rights and duties of the partners** within a LLP are **governed by an agreement** between the partners.
- **In the absence of any such agreement**, the mutual rights and duties shall be **governed by the provisions of the LLP Act, 2008.**

6. Artificial Legal Person:
- A LLP is an artificial **legal person because it is created by a legal process and is clothed with all rights of an individual.**
- A LLP is **invisible, intangible, immortal** (it can be dissolved by law alone) but **not fictitious because it really exists.**

7. Common Seal:
- A LLP being an artificial person can act through its partners and designated partners.
- **LLP may have a common seal, if it decides to have one [Section 14(c)].[not mandatory]**
- It shall remain under the **custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.**

8. Limited Liability:
- Every partner of a LLP is, for the purpose of the business of LLP, **the agent of the LLP, but not of other partners (Section. 26).**
- The **liability of the partners will be limited to their agreed contribution in the LLP except in case of unauthorized acts, fraud and negligence**

9. Management of Business:
- The **partners in the LLP are entitled to manage the business of LLP.**
- **But only the designated partners are responsible for legal compliances.**

10. Minimum and Maximum number of Partners:

Every LLP shall have **least two partners** and shall also have at **least 2 individuals as designated partners, of whom at least one shall be resident in India**. There is **no maximum** limit on the partners in LLP.

11. Business for Profit Only:

The essential requirement for forming LLP is carrying on a **lawful business with a view to earn profit**. Thus LLP **cannot be formed for charitable or non-economic purpose.**

12. Foreign LLPs:
- **Section 2(1)(m)** defines foreign limited liability partnership "**as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India**".
- **Foreign LLP can become a partner in an Indian LLP.**

ADVANTAGES OF LLP

a) **LLP is organized and operates on the basis of an agreement.**
b) **It provides flexibility without imposing detailed legal and procedural requirements**
c) **It is easy to form**
d) **In LLP form, all partners enjoy limited liability**
e) **Flexible capital structure is there in this form**
f) **It is easy to dissolve**

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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.2)

SEC 3. LIMITED LIABILITY PARTNERSHIP TO BE BODY CORPORATE.

1. A LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.
2. A LLP shall have perpetual succession.
3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

SECTION 4: NON-APPLICABILITY OF THE INDIAN PARTNERSHIP ACT, 1932

Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

SECTION 5: PARTNERS

Any individual or body corporate may be a partner in a LLP.
However, an individual shall not be capable of becoming a partner of a LLP, if—

a) he has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force;
b) he is an undischarged insolvent; or
c) he has applied to be adjudicated as an insolvent and his application is pending.

The following persons can become partner in LLP:

- Individuals (Resident Indians including Non Resident Indians & Overseas Citizen of India as well as foreign nationals), LLP, Companies (including foreign companies), Foreign LLP, LLPs incorporated outside India, Foreign Companies,
- Co-operative society and corporation sole cannot become partner in a LLP.

SECTION 6: MINIMUM NUMBER OF PARTNERS

i. Every LLP shall have at least 2 partners.
ii. If at any time the number of partners of a LLP is reduced below two and the LLP carries on business for more than 6 months while the number is so reduced, the person, who is the only partner of the LLP during the time that it so carries on business after those 6 months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the LLP incurred during that period

SECTION 7: DESIGNATED PARTNERS

1. Every LLP shall have at least 2 designated partners who are individuals and at least one of them shall be a resident in India.

   Provided that in case of a LLP in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least 2 individuals who are partners of such LLP or nominees of such bodies corporate shall act as designated partners.

   Explanation: Resident in India: For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than 120 days during the financial year.

2. Subject to the provisions of sub-section (*1*),—
   i. if the incorporation document—
      (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
      (b) states that each of the partners from time to time of LLP is to be designated partner, every such partner shall be a designated partner;
   ii. any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

3. An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
4. Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and manner as may be prescribed within 30 days of his appointment.
5. An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.
6. Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of Sec 153 to 159 of Companies Act, 2013 shall apply *mutatis mutandis* for the said purpose.

SECTION 8: DESIGNATED PARTNERS

Unless expressly provided otherwise in the Act, a designated partner shall be:

a) responsible for doing all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of the Act including filing of any document, return, statement, report, etc., as may be specified in the Act and LLP agreement; and
b) liable to all penalties imposed on the limited liability partnership for any contravention of any provisions of the Act and LLP agreement.

CHANGES IN DESIGNATED PARTNERS (SECTION 9)

A limited liability partnership may appoint a designated partner within 30 days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner
Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

PUNISHMENT FOR CONTRAVENTION OF SEC 7, 8 & 9. (SEC 10)

1. If the LLP contravenes the provisions of sub-section (1) of section 7 (meaning that the number of designated partners are less than two or none of the designated partner is a resident in India), the LLP and its every partner shall be liable to a penalty of Rs.10,000 and in case of continuing contravention, with further penalty of Rs.100 per day subject to maximum Rs.1,00,000 for LLP and Rs.50,000 for every partner of such LLP.
2. If the LLP contravenes the provisions of sub-section (4) of section 7 (failure to file the consent of appointment of designated partner within 30 days of his appointment), the LLP and its every designated partner shall be liable to a penalty of Rs.5,000 and in case of continuing contravention, with further penalty of Rs.100 per day subject to maximum Rs.50,000 for LLP and Rs.25,000 for every designated partner.
3. If the LLP contravenes the provisions of sub-section (5) of section 7 or section 9, the LLP and its every partner shall be liable to a penalty of Rs.10,000 and in case of continuing contravention, with further penalty of Rs.100 per day subject to maximum Rs.1,00,000 for LLP and Rs.50,000 for every partner of such LLP.

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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.3)

SECTION 11: INCORPORATION DOCUMENT

1. For a LLP to be incorporated
   a) 2 or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;
   b) the incorporation document shall be filed in such manner and with such fees, as may be prescribed with the Registrar of the State in which the registered office of the LLP is to be situated; and
   c) Statement to be filed:
      – there shall be filed along with the incorporation document, a statement in the prescribed form,
      – made by either an advocate, or a CS or a CA or a Cost Accountant, who is engaged in the formation of the LLP and
      – by any 1 who subscribed his name to the incorporation document,
      – that all the requirements of this Act and the rules made there under have been complied with, in respect of incorporation and matters precedent and incidental thereto.

2. The incorporation document shall—
   a) be in a form as may be prescribed;
   b) state the name of the LLP;
   c) state the proposed business of the LLP;
   d) state the address of the registered office of the LLP;
   e) state the name and address of each of the persons who are to be partners of the LLP on incorporation;
   f) state the name and address of the persons who are to be designated partners of the LLP on incorporation;
   g) contain such other information concerning the proposed LLP as may be prescribed.

3. Punishment: If a person makes a statement as discussed above which he—
   a) knows to be false; or
   b) does not believe to be true, shall be punishable
      - with imprisonment for a term which may extend to 2 years and
      - with fine which shall not be less than Rs. 10,000 but which may extend to Rs.5 Lakhs

SECTION 12: INCORPORATION BY REGISTRATION

1. When the requirements imposed section 11 have been complied with the Registrar shall retain the incorporation document & within 14 days register the incorporation document; and give a certificate that the LLP is incorporated by the name specified therein.
2. The Registrar may accept the statement delivered under Sec 11(1)(c) as sufficient evidence that the requirement imposed by clause (a) of that sub-section has been complied with.
3. The certificate issued shall be signed by the Registrar and authenticated by his official seal.
4. The certificate shall be conclusive evidence that the LLP is incorporated by the name specified therein.

SECTION 13: REGISTERED OFFICE OF LLP AND CHANGE THEREIN

1. Every LLP shall have a registered office to which all communications and notices may be addressed and where they shall be received.
2. A document may be served on a LLP or a partner or designated partner thereof by sending it by post under certificate of posting or by registered post or by any other manner, as may be prescribed, at the registered office and any other address specifically declared by the LLP for the purpose in such form and manner as may be prescribed.
3. A LLP may change the place of its R.O. and file the notice of such change with the Registrar in such form and manner and subject to such conditions as may be prescribed and any such change shall take effect only upon such filing.
4. If default is made in complying with the requirements of this section, the LLP and its every partner shall be liable to a penalty of Rs.500 for each day during which the default continues, subject to a maximum of Rs.50,000 for the LLP and its every partner.

SEC 14: EFFECT OF REGISTRATION

On registration, a LLP shall, by its name, be capable of—
   a) suing and being sued;
   b) acquiring, owning, holding and developing or disposing of property, whether movable or immovable, tangible or intangible
   c) having a common seal, if it decides to have one; and
   d) doing and suffering such other acts and things as bodies corporate may lawfully do and suffer

SECTION 15: NAME

1. Every LLP shall have either the words "limited liability partnership" or the acronym LLP as the last words of its name.
2. No LLP shall be registered by a name which, in opinion of CG is—
   a) undesirable; or
   b) identical or too nearly resembles to that of any other LLP or a company or a registered trade mark of any other person under the Trade Marks Act, 1999.

SECTION 16: RESERVATION OF NAME

1. A person may apply in such form and manner and accompanied by such fee as may be prescribed to the Registrar for the reservation of a name set out in the application as—
   a) the name of a proposed LLP; or
   b) the name to which a LLP proposes to change its name.
2. Upon receipt of an application under sub-section (1) and on payment of the prescribed fee, the Registrar may, if he is satisfied, subject to the rules prescribed by the CG in the matter, that the name to be reserved is not one which may be rejected on any ground referred to in section 15(2), reserve the name for a period of 3 months from the date of intimation by the Registrar.

SECTION 17: RECTIFICATION OF NAME OF LLP

1. Notwithstanding anything contained in sections 15 and 16, , if through inadvertence or otherwise, a LLP, on its first registration or on its registration by a new name, is registered by a name which is identical with or too nearly resembles to—
   (a) that of any other LLP or a company; or
   (b) a registered trade mark of a proprietor under the Trade Marks Act, 1999, as is likely to be mistaken for it,
   then on an application of such LLP or proprietor or company, the CG may direct such LLP to change its name or new name within a period of 3 months from the date of issue of such direction
   Provided that an application of the proprietor of the registered trademarks shall be maintainable within a period of 3 years from the date of incorporation or registration or change of name of the LLP under this Act
2. Where a LLP changes its name or obtains a new name under sub-section (1), it shall within a period of 15 days from the date of such change, give notice of the change to Registrar along with the order of the CG, who shall carry out necessary changes in the certificate of incorporation and within 30 days of such change in the certificate of incorporation, such LLP shall change its name in the LLP agreement.
3. If the LLP is in default in complying with any direction given under sub-section (1), the CG shall allot a new name to the LLP in such manner as may be prescribed and the Registrar shall enter the new name in the register of LLPs in place of the old name and issue a fresh certificate of incorporation with new name, which the LLP shall use thereafter.
   Provided that nothing in this sub-section shall prevent a LLP from subsequently changing its name in accordance with the provisions of Sec 16.

STEPS TO INCORPORATE LLP

i. Name reservation: The first step to incorporate LLP is reservation of name of LLP. Applicant has to file e-Form RUNLLP, for ascertaining availability & reservation of the name of LLP business.
ii. Incorporate LLP: After reserving a name, user has to file form for incorporating a LLP. It contains details of LLP proposed to be incorporated, partners'/ designated partners' details & consent of partners/designated partners to act as partners/ designated partners.
iii. LLP Agreement: Execution of LLP Agreement is mandatory as per Sec 23 of the Act. LLP Agreement is required to be filed with the registrar in e- Form 3 within 30 days of incorporation of LLP

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.4)

PARTNERS AND THEIR RELATIONS

ELIGIBILITY TO BE PARTNERS (SEC 22)

On the incorporation of a LLP, the persons who subscribed their names to the incorporation document shall be its partners and any other person may become a partner of the LLP by and in accordance with the LLP agreement.

RELATIONSHIP OF PARTNERS (SEC 23)

1. Save as otherwise provided by this Act, the mutual rights and duties of the partners of a LLP, and the mutual rights and duties of a LLP and its partners, shall be governed by the LLP agreement between the partners, or between the LLP and its partners.
2. The LLP agreement and changes, if any, made therein shall be filed with the Registrar in prescribed form accompanied by prescribed fee.
3. An agreement in writing made before the incorporation of a LLP between the persons who subscribe their names to the incorporation document may impose obligations on the LLP, provided such agreement is ratified by all the partners after the incorporation of the LLP.
4. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the LLP and the partners shall be determined by the provisions relating to that matter as are set-out in the First Schedule.

CESSATION OF PARTNERSHIP INTEREST (SECTION 24)

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

Compiled By:CA Sahil Grover

REGISTRATION OF CHANGES IN PARTNERS (SECTION 25)

1. Every partner shall inform the LLP of any change in his name or address within 15 days of such change.
2. A LLP shall—
   a) where a person becomes or ceases to be a partner, file a notice with the Registrar within 30 days &
   b) where any change in name or address of partner, file notice with Registrar within 30 days of change
3. Notice filed with the Registrar shall be in prescribed form , signed by the designated partner of the LLP and authenticated in manner prescribed; & if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him & authenticated in manner prescribed.
4. If the LLP contravenes the provisions of sub-section (2), the LLP and every designated partner of the LLP shall be liable to a penalty of Rs.10,000.
5. If contravention referred to in sub-section (1) is made by any partner such partner shall be liable to a penalty of Rs.10,000.
6. Any person who ceases to be a partner of a LLP may himself file with the Registrar the notice referred to in sub section (3) if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the LLP unless the LLP has also filed such notice.
   However, where no confirmation is given by the LLP within 15 days, the registrar shall register the notice made by a person ceasing to be a partner under this section.

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNER

PARTNER AS AGENT (SECTION 26):

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

EXTENT OF LIABILITY OF LLP (SEC 27)

1. A LLP is not bound by anything done by a partner in dealing with a person if—
   a) the partner in fact has no authority to act for the LLP in doing a particular act; and
   b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP.
2. The LLP is liable if a partner of a LLP is liable to any person as a result of a wrongful act or omission on his part in the course of the business of the LLP or with its authority
3. An obligation of the LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP.
4. The liabilities of the LLP shall be met out of the property of the LLP.

EXTENT OF LIABILITY OF PARTNER (SECTION 28)

1. A partner is not personally liable, directly or indirectly for an obligation referred to in sub-section (3) of section 27 solely by reason of being a partner of the LLP.
2. The provisions of sub-section (3) of section 27 and sub-section (1) of this section shall not affect the personal liability of a partner for his own wrongful act or omission, but a partner shall not be personally liable for the wrongful act or omission of any other partner of the LLP.

HOLDING OUT (SECTION 29)

- Any person ,who by words spoken/written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP is liable to any person who has on the faith of any such representation given credit to the LLP.
- However, where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.
- Where after a partner's death the buss. is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

UNLIMITED LIABILITY IN CASE OF FRAUD (SECTION 30)

1. In case of fraud:
   - In the event of an act carried out by a LLP, or any of its partners, with intent to defraud creditors of the LLP or any other person, or for any fraudulent purpose, the liability of the LLP and partners who acted with intent to defraud creditors or for any fraudulent purpose shall be unlimited.
   - However, in case any such act is carried out by a partner, the LLP is liable to the same extent as the partner unless it is established by the LLP that such act was without the knowledge or the authority of the LLP.
2. Punishment: Where any business is carried on with such intent or for such purpose as mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid shall be punishable with imprisonment for a term which may extend to 5 years and with fine which shall not be less than Rs.50,000 but which may extend to Rs. 5 Lakhs.
3. Where a LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner then without prejudice to any criminal proceedings which may arise under any law for the time being in force, the LLP and any such partner or designated partner or employee shall be liable to pay compensation to any person who has suffered any loss or damage by reason of such conduct. Provided that such LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.

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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.5)

WHISTLE BLOWING (SECTION 31)

1. The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a LLP, if it is satisfied that—
   - such partner or employee of a LLP has provided useful information during investigation of such LLP; or
   - when any information given by any partner or employee (whether or not during investigation) leads to LLP or any partner or employee of such LLP being convicted under this Act or any other Act.
2. No partner or employee of any LLP may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms & conditions of his LLP or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

FORM OF CONTRIBUTION (SECTION 32)

1. A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed
2. The monetary value of contribution of each partner, if made in any form other than money shall be accounted for and disclosed in the accounts of the LLP in the manner as may be prescribed in the rules

OBLIGATION TO CONTRIBUTION (SECTION 33)

1. The obligation of a partner to contribute money or other property or other benefit or to perform services for a limited liability partnership shall be as per the limited liability partnership agreement.
2. A creditor of a limited liability partnership, which extends credit or otherwise acts in reliance on an obligation described in that agreement, without notice of any compromise between partners, may enforce the original obligation against such partner

FINANCIAL DISCLOSURES

MAINTENANCE OF BOOKS OF ACCOUNT, OTHER RECORDS AND AUDIT, ETC. (SECTION 34)

1. Proper Books of account:
   The LLP shall maintain such proper books of account as may be prescribed relating to its affairs for each year of its existence on cash basis or accrual basis and according to double entry system of accounting and shall maintain the same at its registered office for such period as may be prescribed.
2. Statement of Account & Solvency:
   Every LLP shall, within a period of 6 months from the end of each financial year, prepare a Statement of Account and Solvency for the said financial year as at the last day of the said FY in such form as may be prescribed, and such statement shall be signed by the designated partners of the LLP.
3. Every LLP shall file within the prescribed time, the Statement of Account and Solvency prepared pursuant to subsection (2) with the Registrar every year in such form and manner and accompanied by such fees as may be prescribed.
4. Audit of Accounts: The accounts of LLP shall be audited in accordance with such rules as may be prescribed. However, the CG may, by notification in the Official Gazette, exempt any class or classes of LLP from the requirements of this sub-section.
5. Any LLP which fails to comply with the provisions of this sub section (3),such LLP shall be liable to penalty of Rs 100 for each day during which failure continues subject to max of Rs.1L for LLP and Rs.50000 for every designated partner.
6. Any LLP which fails to comply with the provisions of sub-section (1), sub-section (2) and sub-section (4), such LLP shall be punishable with fine which shall not be less than Rs.25000, but may extend to Rs.5L and every designated partner shall be punishable with fine which shall not be less than Rs.10,000, but may extend to Rs.1 Lakh.

ACCOUNTING AND AUDITING STANDARDS (SECTION 34A)

The CG may, in consultation with the National Financial Reporting Authority constituted u/s 132 of the Companies Act, 2013 -
(a) prescribe the standards of accounting; and
(b) prescribe the standards of auditing, as recommended by the ICAI constituted u/s 3 of the Chartered Accountants Act, 1949 for a class /classes of

ANNUAL RETURN (SECTION 35)

1. Every LLP shall file an annual return duly authenticated with the Registrar within 60 days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.
2. If any LLP fails to file its annual return under subsection (1) before the expiry of the period specified therein, such LLP and its designated partners shall be liable to a penalty of Rs.100 for each day during which such failure continues, subject to a maximum of Rs.1L for the LLP and Rs.50,000 for designated partners.

INSPECTION OF DOCUMENTS KEPT BY REGISTRAR (SEC 36)

The incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return filed by each limited liability partnership with the Registrar shall be available for inspection by any person in such manner and on payment of such fee as may be prescribed.

PENALTY FOR FALSE STATEMENT (SEC 37)

If in any return, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement—
a) which is false in any material particular, knowing it to be false; or
b) which omits any material fact knowing it to be material,
he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to 2 years, and shall also be liable to fine which may extend to Rs.5 lakh but which shall not be less than Rs.1 lakh

POWER OF REGISTRAR TO OBTAIN INFORMATION (SEC 38)

1. In order to obtain such information as the Registrar may consider necessary for the purposes of carrying out the provisions of this Act, the Registrar may require any person including any present or former partner or designated partner or employee of a limited liability partnership to answer any question or make any declaration or supply any details or particulars in writing to him within a reasonable period.
2. In case any person referred to in sub-section (1) does not answer such question or make such declaration or supply such details or particulars asked for by the Registrar within a reasonable time or time given by the Registrar or when the Registrar is not satisfied with the reply or declaration or details or particulars provided by such person, the Registrar shall have power to summon that person to appear before him or an inspector or any other public officer whom the Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be
3. Any person who, without lawful excuse, fails to comply with any summons or requisition of the Registrar under this section shall be punishable with fine which shall not be less than Rs.2000 but which may extend to Rs.25000

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.6)

COMPOUNDING OF OFFENCES (SEC 39)

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine provided for the offence but shall not be lower than the minimum amount provided for the offence.
2. Nothing contained in sub-section (1) shall apply to an offence committed by a LLP or its partner or its designated partner within a period of three years from the date on which similar offence committed by it or him was compounded under this section.
   Explanation.—For the removal of doubts, it is hereby clarified that any second or subsequent offence committed after the expiry of the period of three years from the date on which the offence was previously compounded, shall be deemed to be the first offence.
3. Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, as the case may be.
4. Where any offence is compounded under this section, whether before or after the institution of any prosecution, intimation thereof shall be given to the Registrar within a period of seven days from the date on which the offence is so compounded
5. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.
6. Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, the notice of the court in which prosecution is pending and on such notice of the compounding of the offence being given, the offender in relation to which the offence is so compounded shall be discharged.
7. The Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, while dealing with the proposal for compounding of an offence may, by an order, direct any partner, designated partner or other employee of the LLP to file or register, or on payment of fee or additional fee as required to be paid under this Act, such return, account or other document within such time as may be specified in the order.
8. Notwithstanding anything contained in this section, if any partner or designated partner or other employee of the LLP who fails to comply with any order made by the Regional Director or any other officer not below the rank of Regional Director authorised by the Central Government, under subsection (7), the maximum amount of fine for the offence, which was under consideration Regional Director or such authorised officer for compounding under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.

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PARTNER'S TRNSFERABLE INTEREST (SEC 42)

1. The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part.
2. The transfer of any right by any partner pursuant to sub-section (1) does not by itself cause the disassociation of the partner or a dissolution and winding up of the limited liability partnership.
3. The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the limited liability partnership, or access information concerning the transactions of the limited liability partnership

CONVERSION INTO LLP

CONVERSION FROM FIRM INTO LLP (SEC 55): A firm may convert into a LLP in accordance with the **provisions of this Chapter & the Second Schedule**

CONVERSION FROM PRIVATE COMPANY INTO LLP (SEC 56): A private company may convert into a LLP in accordance with the **provisions of this Chapter and the Third Schedule.**

CONVERSION FROM UNLISTED PUBLIC COMPANY INTO LLP (SEC 57): An unlisted public company may convert into a LLP in accordance with the **provisions of this Chapter and the Fourth Schedule.**

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REGISTRATION & EFFECT OF CONVERSION (SEC 58)

REGISTRATION

1. The **Registrar**, on satisfying that **a firm, private company or an unlisted public company**, as the case may be, **has complied with the provisions of the various Schedules, provisions of this Act and the rules made thereunder, register the documents issue a certificate of registration** in such form as the Registrar may determine **stating that the LLP is, on and from the date specified in the certificate, registered under this Act**.
2. The **LLP shall, within 15 days** of the date of registration, **inform the concerned Registrar of Firms or Registrar of Companies, as the case may** be, with which it was registered under the provisions of the Indian Partnership Act, 1932 or the Companies Act, 1956 (Now Companies Act, 2013) as the case may **about the conversion and of the particulars of the LLP in such form and manner as may be prescribed.**
3. **Upon such conversion**, the **partners of the firm, the shareholders of private company or unlisted public company**, as the case may be, **the LLP to which such firm or such company has converted**, and the **partners of the LLP shall be bound** by the **provisions of the various Schedules**, as the case may be, applicable to them.
4. **Upon such conversion**, on and **from the date of certificate of registration**, the **effects of the conversion shall be such as specified in the various schedules, as the case may be.**

EFFECT OF REGISTRATION

Notwithstanding anything contained in any other law for the time being in force, on and **from the date of registration specified in the certificate of registration** issued under the various Schedule, as the case may be,—

a) there shall be **a LLP by the name specified in the certificate of registration registered under this Act;**

b) **all tangible** (**movable or immovable**) and **intangible property** vested in **the firm or the company**, as the case may be, **all assets, interests, rights, privileges, liabilities, obligations relating to the firm or the company,** as the case may be, and **the whole of the undertaking of the firm or the company,** as the case may be, **shall be transferred to and shall vest in the limited liability partnership without further assurance, act or deed; and**

c) **the firm or the company, as the case may be, shall be deemed to be dissolved** and **removed from the records of the Registrar of Firms or ROC** , as the case may be.

FOREIGN LIMITED LIABILITY PARTNERSHIPS (SEC 59)

The Central Government may make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating, with such modifications, as appear appropriate, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed.

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.7)

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LIMITED LIABILITY PARTNERSHIPS

COMPROMISE OR ARRANGEMENT OF LLPs (SECTION 60)

1. Where a compromise or arrangement is proposed—
   (a) between a LLP and its creditors; or
   (b) between a LLP and its partners,
   the Tribunal may, on the application of
   - the limited liability partnership or
   - of any creditor or partner of the LLP
   - or, in the case of a LLP which is being wound up, of the liquidator,

   order a meeting of the creditors or of the partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or as the Tribunal directs.
2. If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the LLP, or in the case of a LLP which is being wound up, on the liquidator and contributories of the LLP
   Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the LLP or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the LLP, including the latest financial position of the LLP and the pendency of any investigation proceedings in relation to the LLP.
3. An order made by the Tribunal under sub-section (2) shall be filed by the LLP with the Registrar within 30 days after making such an order and shall have effect only after it is so filed.
4. If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be liable to a penalty of Rs.10,000 and in case of continuing default, with further penalty of Rs.100 for each day after the first during which such default continues, subject to maximum Rs.1,00,000 for LLP and Rs.50,000 for every designated partner.
5. The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the LLP on such terms as the Tribunal thinks fit, until the application is finally disposed of.

POWER OF TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT (SECTION 61)

1. Where Tribunal makes an order under Sec 60 sanctioning a compromise or arrangement in respect of a LLP, it—
   a) shall have power to supervise the carrying out of the compromise or an arrangement; and
   b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.
2. If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the LLP, and such an order shall be deemed to be an order made under section 64 of this Act.

PROVISIONS FOR FACILITATING RECONSTRUCTION OR AMALGAMATION OF LLPs (SECTION 62)

1. Where an application is made to Tribunal under Sec 60 for sanctioning of a compromise or arrangement proposed between a LLP & any such persons as are mentioned in that section, and it is shown to the Tribunal that—
   a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any LLP or LLPs, or the amalgamation of any two or more LLP; and
   b) under the scheme the whole or any part of the undertaking, property or liabilities of any LLP concerned in the scheme (in this section referred to as a "transferor LLP") is to be transferred to another LLP (in this section referred to as the "transferee LLP"), the Tribunal may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provisions for all or any of the following matters, namely:-
      i. the transfer to the transferee limited liability partnership of the whole or any part of the undertaking, property or liabilities of any transferor limited liability partnership;
      ii. the continuation by or against the transferee limited liability partnership of any legal proceedings pending by or against any transferor limited liability partnership;
      iii. the dissolution, without winding up, of any transferor limited liability partnership;
      iv. the provision to be made for any person who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement; and
      v. such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out.

   Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of LLP, which is being wound up, with any other LLP or LLPs, shall be sanctioned by the Tribunal unless the Tribunal has received a report from the Registrar that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest

   Provided further that no order for the dissolution of any transferor LLP under clause (*iii*) shall be made by the Tribunal unless the Official Liquidator has, on scrutiny of the books and papers of the LLP, made a report to the Tribunal that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest

2. Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee limited liability partnership; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

3. Within 30 days after the making of an order under this section, every limited liability partnership in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.

4. If default is made in complying with the provisions of sub-section (3), the LLP and its every designated partner shall be liable to a penalty of Rs.10,000 and in case of continuing contravention, with further penalty of Rs.100 for each day after the first during which such default continues, subject to maximum Rs.1,00,000 for LLP and Rs.50,000 for every designated partner

Explanation:
   i. In this section "property" includes property, rights and powers of every description; and "liabilities" includes duties of every description.
   ii. a LLP shall not be amalgamated with a company.

WINDING UP AND DISSOLUTION

WINDING UP AND DISSOLUTION (SEC 63)

The winding up of a LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved.

CIRCUMSTANCES IN WHICH LLP MAY BE WOUND UP BY TRIBUNAL (SEC 64)

A LLP may be wound up by the Tribunal:

a) if the LLP decides that LLP be wound up by the Tribunal;
b) if, for a period of more than six months, the number of partners of the LLP is reduced below two;
c) if the LLP is unable to pay its debts;
d) if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
e) if the LLP has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any 5 consecutive financial years; or
f) if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

RULES FOR WINDING UP AND DISSOLUTION (SEC 65)

The CG may make rules for the provisions in relation to winding up and dissolution of LLP.

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.8)

MISCELLANEOUS

BUSINESS TRANSACTIONS OF PARTNER WITH LLP (SEC 66)

A partner may lend money to and transact other business with the LLP and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner.

APPLICATION OF THE PROVISIONS OF THE COMPANIES ACT (SEC 67)

1. The CG may, by notification in the Official Gazette, direct that any of the provisions of the Companies Act, 2013 specified in the notification shall apply to any LLP; or shall apply to any LLP with such exception, modification and adaptation, as may be specified, in the notification.
2. A copy of every notification proposed to be issued under sub-section (1) shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

ELECTRONIC FILING OF DOCUMENTS (SEC 68)

1. Any document required to be filed, recorded or registered under this Act may be filed, recorded or registered in such manner and subject to such conditions as may be prescribed.
2. A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature as per the IT Act, 2000 to be a true copy of or extract from such document shall, in any proceedings, be admissible in evidence as of equal validity with the original document.
3. Any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be a true extract from any document filed with or submitted to the Registrar shall, in any proceedings, be admissible in evidence and be presumed, unless evidence to the contrary is adduced, to be a true extract from such document

PAYMENT OF ADDITIONAL FEE (SEC 69)

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

Provided that such document or return shall be filed after the due date of filing, without prejudice to any other action or liability under this Act

Provided further that a different fee or additional fee may be prescribed for different classes of LLPs or for different documents or returns required to be filed under this Act or rules made thereunder

ENHANCED COMPENSATION (SEC 70)

In case a LLP or any partner or designated partner of such LLP commits any offence, the LLP or any partner or designated partner shall, for the second or subsequent offence, be punishable with imprisonment as provided, but in case of offences for which fine is prescribed either along with or exclusive of imprisonment, with fine which shall be twice the amount of fine for such offence.

IMPORTANT DEFINITIONS

1. Body Corporate [(Sec 2(1)(d)]: It means a company as defined in section 2(20) of Companies Act, 2013 and includes—
   i. a LLP registered under this Act;
   ii. a LLP incorporated outside India; and
   iii. a company incorporated outside India,

   but does not include—
   i. a corporation sole;
   ii. a co-operative society registered under any law for the time being in force; and
   iii. any other body corporate (not being a company as defined in section 2(20) of the Companies Act, 2013 or a LLP as defined in this Act), which the CG may, by notification in the OG specify in this behalf.

2. Business [Sec 2(1)(e)]: "Business" includes every trade, profession, service and occupation except any activity which the CG may by notification exclude.
3. Chartered Accountant [Section 2(1)(f)]: Chartered Accountant means a Chartered Accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act.
4. Designated Partner [Sec 2(1)(j)]: "Designated partner" means any partner designated as such pursuant to section 7.
5. Financial Year [Sec 2(1) (l)]: "Financial year", in relation to a LLP, means the period from the 1st day of April of a year to the 31st day of March of the following year. However, in the case of a LLP incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.
6. Foreign LLP [Sec 2(1)(m)]: It means a LLP formed, incorporated or registered outside India which establishes a place of business within India.
7. Limited liability partnership [Sec 2(1)(n)]: Limited Liability Partnership means a partnership formed and registered under this Act.
8. Limited Liability partnership agreement [Sec 2(1)(o)]: It means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.
9. Name [Section 2(1)(p)]: Name in relation to a partner of a limited liability partnership, means—
   i. if an individual, his forename, middle name and surname; and
   ii. if a body corporate, its registered name;
10. Partner [Section 2(1)(q)]: Partner, in relation to a LLP, means any person who becomes a partner in the LLP in accordance with the LLP agreement.
11. Small LLP[Section 2(1)(ta)]: It means a limited liability partnership—
    (i) the contribution of which, does not exceed 25 lakh rupees or such higher amount, not exceeding 5 crore rupees, as may be prescribed; and
    (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed 40 lakh rupees or such higher amount, not exceeding 50 crore rupees, as may be prescribed; or
    (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.

Applicability of the Companies Act, 2013: Words and expressions used and not defined in this Act but defined in the Companies Act, 2013 shall have the meanings respectively assigned to them in that Act. [Section 2(2)]

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THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 (Chart 1.9)

DIFFERENCES BETWEEN LLP & PARTNERSHIP FIRM

	Basis	LLP	Partnership Firm
1.	Regulating Act	The Limited Liability Partnership Act, 2008.	The Indian Partnership Act, 1932.
2.	Body	It is a body corporate.	It is not a body corporate.
3.	Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity.
4.	Creation	It is created by a legal process called registration under the LLP Act, 2008.	It is created by an agreement between the partners.
5.	Registration	Registration is mandatory. LLP can sue and be sued in its own name.	Registration is voluntary. Only the registered partnership firm can sue the third parties.
6.	Perpetual succession	The death, insanity, retirement or insolvency of the partner(s) does not affect its existence of LLP. Members may join or leave but its existence continues	The death, insanity retirement or insolvency of the partner(s) may affect its existence. It has no perpetual succession.
7.	Name	Name of the LLP to contain the word limited liability partners (LLP) as suffix.	No guidelines. The partners can have any name as per their choice.
8	Mutual agency	Each partner can bind the LLP by his own acts but not the other partners	Each partner can bind the firm as well as other partners by his own acts
9	Liability	Liability of each partner limited to the extent to agreed contribution except in case of willful fraud.	Liability of each partner is unlimited.
10	Designated partners	At least two designated partners and atleast one of them shall be resident in India.	There is no provision for such partners under the Indian partnership Act, 1932

DIFFERENCES BETWEEN LLP & COMPANY

	Basis	LLP	LLC
1.	Regulating Act	The LLP Act, 2008.	The Companies Act, 2013.
2.	Members /Partners	The persons who contribute to LLP are known as partners of the LLP.	The persons who invest the money in the shares are known as members of the company.
3.	Internal governance structure	The internal governance structure of a LLP is governed by agreement between the partners.	The internal governance structure of a company is regulated by statute (i.e., Companies Act, 2013).
4.	Name	Name of the LLP to contain the word "Limited Liability partnership" or "LLP" as suffix.	Name of the public company to contain the word "limited" and Private company to contain the word "Private limited" as suffix.
5	Minimum no. of directors/ designated partners	Minimum 2 designated partners.	Private Co. – 2 directors Public Co. – 3 directors
6.	Liability of partners/members	Limited to the extent of agreed contribution except in case of willful fraud.	Limited to the amount unpaid on the shares held by them.
7.	Number of members/ Partners	Minimum – 2 members Maximum – No such limit on the members in the Act. The members of the LLP can be individuals/or body corporate through the nominees	Private company: Minimum – 2 members, Maximum – 200 members Public company: Minimum – 7 members, Maximum – No such limit on the members. Members can be organizations, trusts, another business form or individuals.
8	Management	The business of the company managed by the partners including the designated partners authorized in the agreement	The affairs of the company are managed by board of directors elected by the shareholders.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (CHART 1.1)

INTRODUCTION

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PREAMBLE

This Act aims to consolidate and amend the law relating to foreign exchange with the objective of

i. facilitating external trade and payments and
ii. for promoting the orderly development and maintenance of foreign exchange market in India.

SHORT TITLE, EXTENT, APPLICATION & COMMENCEMENT (SEC 1)

1) This Act may be called the Foreign Exchange Management Act, 1999.
2) It extends to the whole of India.
3) It shall also apply to all branches, offices and agencies outside India owned or controlled by a person resident in India and also to any contravention thereunder committed outside India by any person to whom this Act applies
4) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint
Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.
(The Act came into force with effect from 1st June, 2000 vide Notification *G.S.R. 371(E), dated 1.5.2000.*)

NEED FOR THE ACT

- The change in the economic scenario, globalization of capital, free trade across the globe, necessitated the need for managing foreign exchange in the country in an orderly manner.
- To facilitate cross border trade and cross border capital flows, exchange control law was required.
- Foreign exchange control led to introduction of exchange control law through Defense of India rules by the Britishers in 1939.
- Subsequently, Foreign Exchange Regulation Act (FERA) was enacted in 1947 which was later replaced with The Foreign Exchange Regulation Act, 1973 (FERA).
- Government as part of its agenda of liberalization of the Indian economy in 1991, permitted free movement of foreign exchange in connection to trade related receipts and payments as well as Foreign Investment in various sectors. This increased the flow of foreign exchange to India and consequently foreign exchange reserves increased substantially.
- The Foreign Exchange Management Act, 1999 was enacted and made effective from 1st June, 2000. This Act enables management of foreign exchange reserves for the country

SALIENT FEATURES OF THE ACT

It provides for-

- Regulation of transactions between residents and non-residents.
- Investments in India by non-residents and overseas investments by Indian residents
- Freely permissible transactions on current account subject to reasonable restrictions that may be imposed
- Reserve Bank of India (RBI) and Central Government control over capital account transactions
- Requirement for realisation of export proceeds and repatriation to India
- Dealing in foreign exchange through 'Authorised Persons' like Authorised Dealer/ Money Changer/ Off-shore banking unit
- Adjudication and Compounding of Offences
- Investigation of offences by Directorate of Enforcement
- Appeal provisions including Special Director (Appeals) and Appellate Tribunal.

ENFORCEMENT OF FEMA

Though RBI exercises overall control over foreign exchange transactions, enforcement of FEMA has been entrusted to a separate 'Directorate of Enforcement' formed for this purpose. [Section 36].

RESIDENTIAL STATUS UNDER FEMA, 1999

Person resident in India" [Section 2(v)]

"Person resident in India" means:

i. a person residing in India for more than 182 days during the course of the preceding financial year but does not include-

(A) a person who has gone out of India or who stays outside India, in either case—
   a) for or on taking up employment outside India, or
   b) for carrying on outside India a business or vocation outside India, or
   c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

(B) a person who has come to or stays in India, in either case, otherwise than:
   a) for or on taking up employment in India, or
   b) for carrying on in India a business or vocation in India, or
   c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

ii. any person or body corporate registered or incorporated in India,

iii. an office, branch or agency in India owned or controlled by a person resident outside India

iv. an office, branch or agency outside India owned or controlled by a person resident in India;

"Person Resident Outside India" [Sec 2(w)]

"Person Resident outside India" means a person who is not resident in India;

ANALYSIS OF THE DEFINITION

I. In the case of individuals

To be considered as "resident", the person should have resided in India in the preceding financial year for more than 182 days. Citizenship is not the criteria for determining whether or not a person is resident in India. There are three limbs in the definition. The first limb prescribes the number of days stay. Then there are two limbs which are exceptions to the first limb.

First limb – It states that a person who is in India for more than 182 days in the "preceding year" will be a Person Resident in India. Thus, at the threshold or basic level, one has to consider the period of stay during the preceding year.

There are two exceptions provided in clauses (A) and (B).

- Clause (A) is for persons going out of India.
- Clause (B) is for persons coming into India

Exceptions carve out situations that do not fall under the main body of a section, even though they satisfy the criteria. This means that even if a person is an Indian resident based on the test provided in the first limb, the person will be a "Person Resident Outside India (PROI) if he falls within limb (A) or limb (B).

Clause (A) – second limb – It states that if a person leaves India in any of the THREE PURPOSES we saw above, he will not be a PRII. He will be a PROI.

Clause (B) – third limb – It states that if a person has come to India for any reason otherwise than for - employment, business or circumstances which indicate his intention to stay for uncertain period – he will be a non-resident. This will be so even if the person has stayed in India for more than 182 days in the preceding year.

Note: Residential status is not for a year. It is from a particular date

II. In case of HUF, AOP or artificial juridical person

It is understood that the above conditions apply only to individuals. It will not apply to HUF, AOP or artificial juridical person as they cannot get employed, cannot go out of India or come to India. Hence, they do not come within the ambit of the second and third limbs. These entities like HUF and AOP are not required to be registered or incorporated like corporate entities nor can the definition be far stretched to cover by applying the criteria of 'owned or controlled'. Hence legally the definition for HUF, AOP, BOI fail. Practically if the HUF, AOP etc. are in India, they will be considered as Indian residents.

III. Person or Body corporate

Any person or body corporate registered or incorporated in India, will be considered a PRII. This definition too, does not apply to AOP, BOI etc.

IV. Office, branch or agency

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i. Any agency, branch or agency outside India but owned or controlled by PRII will be considered as person resident in India (PRII). Thus, one cannot set up a branch outside India and attempt to avoid FEMA provisions.

ii. Any agency, branch or agency in India but owned or controlled by a person resident outside India (PROI) will be considered as a person resident in India. This is relevant as Indian residents can deal with such branch in India without considering FEMA. If such branch is considered as a PROI then it will be difficult to undertake several transactions

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (CHART 1.2)

CURRENT ACCOUNT TRANSACTIONS [SECTION 5]

MEANING OF CURRENT ACCOUNT TRANSACTION [Section 2(j)]

"*Current Account Transaction*" means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,

i. payments due in connection with
   - foreign trade,
   - other current business, services, and
   - short-term banking and
   - credit facilities
   - in the ordinary course of business.

ii. payments due as interest on loans and as net income from investments.

iii. remittances for living expenses of parents, spouse and children residing abroad, and

iv. expenses in connection with foreign travel, education and medical care of parents, spouse and children

CURRENT ACCOUNT TRANSACTIONS [SECTION 5]

- Any person may sell or draw foreign exchange to or from an authorised person if such sale or drawal is a current account transaction.
- Provided that the Central Government may, in public interest and in consultation with the Reserve Bank, impose such reasonable restrictions for current account transactions as may be prescribed. **[FEMA (Current Account Transactions) Rules, 2000.]**

Note: The general rule to be understood is that Current Account transactions are freely permitted unless specifically prohibited and Capital Account transactions are prohibited unless specifically or generally permitted.

Current Account Transactions are classified into three categories under Foreign Exchange Management (Current Account Transactions) Rules, 2000.

Rule 3: Prohibition on drawal of Foreign Exchange

Drawal of foreign exchange by any person for the following purpose is prohibited, namely:

a) transaction specified in the Schedule I; or
b) a travel to Nepal and / or Bhutan; or
c) a transaction with a person resident in Nepal or Bhutan

SCHEDULE I

((Transactions for which drawal of foreign exchange is prohibited)

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

Rule 4: Prior approval of Govt. of India

No person shall draw foreign exchange for a transaction included in the Schedule II without prior approval of the Government of India

Schedule II

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

Rule 5: Prior Approval of RBI

No person shall draw foreign exchange for a transaction included in the Schedule III without prior approval of the Reserve Bank

Schedule III

1) **Facilities for individuals:**

Individuals can avail of foreign exchange facility for the following purposes within the limit of USD 250,000 only. :

(i) Private visits to any country (except Nepal and Bhutan)
(ii) Gift or donation.
(iii) Going abroad for employment
(iv) Emigration
(v) Maintenance of close relatives abroad
(vi) Travel for business or attending a conference or specialised training or for meeting expenses for meeting medical expenses, or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/ check-up.
(vii) Expenses in connection with medical treatment abroad
(viii) Studies abroad
(ix) Any other current account transaction.

Any additional remittance in excess of the said limit for the said purposes shall require prior approval of the Reserve Bank of India.

Notes:

1) For the purposes mentioned at item numbers (iv), (vii) and (viii) above, the individual may avail of exchange facility for an amount in excess of the limit prescribed under the Liberalised Remittance Scheme (as provided in regulation 4 to FEMA Notification 1/2000-RB, dated the 3rd May, 2000) if it is so required by a country of emigration, medical institute offering treatment or the university, respectively.
2) If an individual remits any amount under the said LRS in a financial year, then the applicable limit for such individual would be reduced from USD 250,000 by the amount so remitted
3) **Resident but not permanently resident**
   Further, that for a person who is resident but not permanently resident in India and-
   a) is a citizen of a foreign State other than Pakistan; or
   b) is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company, may make remittance up to his net salary (after deduction of taxes, contribution to PF and other deductions).

   Explanation: For the purpose of this item, a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed 3 years, is a resident but not permanently resident
4) Further, a person other than an individual may also avail of foreign exchange facility, *mutatis mutandis*, within the limit prescribed under the said LRS for the purposes mentioned herein above.

(Continued in next chart)

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (CHART 1.3)

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Schedule III

2) Facilities for persons other than individual

The following remittances by persons other than individuals shall require prior approval of the Reserve Bank of India:

(i) Donations exceeding 1 % of their foreign exchange earnings during the previous three financial years or USD 5,000,000, whichever is less, for
- **a) creation of chairs in reputed educational institutes,**
- **b) contribution to funds (not being an investment fund) promoted by educational institutes; and**
- **c) contribution to a technical institution or body or association in the field of activity of the donor Company.**

(ii) Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5 % of the inward remittance whichever is more.

(iii) Remittances exceeding USD 10,000,000 per project for any consultancy services in respect of infrastructure projects and USD 1,000,000 per project, for other consultancy services procured from outside India.

Explanation—For the purposes of this sub-paragraph, the expression "**infrastructure' shall mean as defined in explanation to para 1(iv)(A)(a) of Schedule I of FEMA Notification 3/2000-RB, dated the May 3, 2000.**

(iv) Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.

If the transaction is not listed in any of the above three schedules, it can be freely undertaken.

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Exemptions

I. Exemption for remittance from RFC Account –
No approval is required where any remittance has to be made for the transactions listed in Schedule II and Schedule III above from a Resident Foreign Currency (RFC) account.

II. Exemption for remittance from EEFC Account (Rule 6) – If any remittance has to be made for the transactions listed in Schedule II and Schedule III above from Exchange Earners' Foreign Currency (EEFC) account, then also no approval is required. However, if payment has to be made for the following transactions, approval is required even if payment is from EEFC account:
- **Remittance for membership of P & I Club.**
- **Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or five per cent of the inward remittance whichever is more. Remittances exceeding five per cent of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre incorporation expenses.**

III. Exemption for payment by International Credit Card while on a visit abroad(Rule 7) –
If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

Liberalised Remittance Scheme (LRS)

- **Under the Liberalised Remittance Scheme (LRS), all resident individuals, including minors, are allowed to freely remit up to USD 250,000 per financial year (April – March) for any permissible current or capital account transaction or a combination of both.**
- **This is inclusive of foreign exchange facility for the purposes mentioned in Para 1 of Schedule III of Foreign Exchange Management (CAT) Amendment Rules 2015, dated May 26, 2015.**
- **In case of remitter being a minor, the LRS declaration form must be countersigned by the minor's natural guardian.**
- **The Scheme is not available to corporates, partnership firms, HUF, Trusts etc.**
- **Consolidation of remittance of family members - Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions.**
- **Exception: Clubbing is not permitted by other family members for capital account transactions such as opening a bank account/investment/purchase of property, if they are not the co-owners/co-partners of the overseas bank account / investment /property.**

CAPITAL ACCOUNT TRANSACTIONS [SECTION 6]

MEANING OF CAPITAL ACCOUNT TRANSACTION [Section 2(e)]

"Capital Account Transaction" means a transaction, which alters
- **the assets or liabilities, including contingent liabilities, outside India of persons resident in India or**
- **assets or liability in India of persons resident outside India & includes transactions referred to in Sec 6(3)**

CAPITAL ACCOUNT TRANSACTIONS (SECTION 6)

1. Subject to the provisions of sub-section (2), any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction.

2. The Reserve Bank may, in consultation with the Central Government, specify:
- **a) any class or classes of capital account transactions, involving debt instruments, which are permissible;**
- **b) the limit up to which foreign exchange shall be admissible for such transactions;**
- **c) any conditions which may be placed on such transactions**

Provided that the RBI or the CG shall not impose any restrictions on the drawal of foreign exchange for payment due on account of amortisation of loans or for depreciation of direct investments in the ordinary course of business.

2A) The Central Government may, in consultation with the Reserve Bank, prescribe
- **a) any class or classes of capital account transactions, not involving debt instruments, which are permissible;**
- **b) the limit up to which foreign exchange shall be admissible for such transactions; and**
- **c) any conditions which may be placed on such transactions**

Reserve Bank had the power to specify the Capital Account transactions which are permitted and the relevant limits, terms and conditions. By Finance Act 2015, powers for regulation of Capital Account Transactions for Non-debt instruments were transferred to Central Government. RBI continued to have powers to regulate debt instruments. The amendments have however been made effective from 15th October 2019

3. Before 15th October 2019, Section 6(3) specified a list of capital account transactions which could be regulated by RBI [apart from the general powers which it had under Section 6(2)]. This list has now been deleted from 15th October 2019.

4) A person resident in India may hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

The RBI vide A.P. (DIR Series) Circular No. 90 dated 9th Jan, 2014 has issued a clarification on Sec 6(4) .This circular clarifies that Sec 6(4) covers the following transactions:
- (i) Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- (ii) Income earned through employment or business or vocation outside India taken up or commenced which such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
- (iii) Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India
- **(iv)** A PRII may freely utilize all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of RBI, provided the cost of such investments and/or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transactions is not in contravention to extant FEMA provisions.

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

6) Without prejudice to the provisions of this section, the Reserve Bank may, by regulation, prohibit, restrict, or regulate establishment in India of a branch, office or other place of business by a person resident outside India, for carrying on any activity relating to such branch, office or other place of business.

7) For the purposes of this section, the term "debt instruments" shall mean, such instruments as may be determined by the CG in consultation with RBI.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (CHART 1.4)

FOREIGN EXCHANGE MANAGEMENT (PERMISSIBLE CAPITAL ACCOUNT TRANSACTIONS) REGULATIONS, 20006

Capital account transaction is basically split into the following categories under Foreign Exchange Management (Permissible capital account transactions) Regulations, 20006 -:

I. transaction, which are permissible in respect of persons resident in India and outside India. (Regulation 3)
II. transaction on which restrictions cannot be imposed; and
III. transactions, which are prohibited (Regulation 4)

Compiled By:CA Sahil Grover

I. Permissible Transactions

- The Regulations specify the list of transaction, which are permissible in respect of persons resident in India in Schedule-I and the classes of capital account transactions of persons resident outside India in Schedule-II.
- Further, subject to the provisions of the Act or the rules or regulations or direction or orders made or issued thereunder, any person may sell or draw foreign exchange to or from an authorised person for a capital account transaction specified in the Schedules; provided that the transaction is within the limit, if any, specified in the regulations relevant to the transaction.

SCHEDULE I [Regulation 3 (1) (A)]

The list of permissible classes of transactions made by persons resident in India is:

a) Investment by a person resident in India in foreign securities.
b) Foreign currency loans raised in India and abroad by a person resident in India.
c) Transfer of immovable property outside India by a person resident in India.
d) Guarantees issued by a person resident in India in favour of a person resident outside India.
e) Export, import and holding of currency/currency notes.
f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
i) Loans and overdrafts by a person resident in India to a person resident outside India.
j) Remittance outside India of capital assets of a person resident in India.
k) Undertake derivative contracts

SCHEDULE II [Regulation 3 (1) (B)]

The list of permissible classes of transactions made by persons resident outside India is:

a) Investment in India by a person resident outside India, that is to say,
   i. issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
   ii. investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of a person in India.
b) Acquisition and transfer of immovable property in India by a person resident outside India.
c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
d) Import and export of currency/currency notes into/from India by a person resident outside India.
e) Deposits between a person resident in India and a person resident outside India.
f) Foreign currency accounts in India of a person resident outside India.
g) Remittance outside India of capital assets in India of a person resident outside India.
h) Undertake derivative contracts

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II. Transaction on which restrictions cannot be imposed

They are:
(1) For amortisation of loan and
(2) For depreciation of direct investments in ordinary course of business.
Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan installments.

III. Prohibited transactions (Regulation 4)

a) No person shall undertake or sell or draw foreign exchange to or from an authorised person for any capital account transaction, provided that-
   i. subject to the provisions of the Act or the rules or regulations or directions or orders made or issued thereunder, a resident individual may, draw from an authorized person foreign exchange not exceeding USD 250,000 per financial year or such amount as decided by Reserve Bank from time to time for a capital account transaction specified in Schedule I.
   Explanation: Drawal of foreign exchange as per item number 1 of Schedule III to Foreign Exchange Management (Current Account Transactions) Rules, 2000 dated 3rd May 2000 as amended from time to time, shall be subsumed within the limit under proviso (a) above.
   ii. Where the drawal of foreign exchange by a resident individual for any capital account transaction specified in Schedule I exceeds $ 250,000 per FY, or as decided by RBI from time to time as the case may be, the limit specified in the regulations relevant to the transaction shall apply with respect to such drawal.
   Provided further that no part of the foreign exchange of USD 250,000, drawn under proviso (a) shall be used for remittance directly or indirectly to countries notified as non-co-operative countries and territories by Financial Action Task Force (FATF) from time to time and communicated by the RBI to all concerned.

b) The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engage:
   i. In the business of chit fund;
   (Registrar of Chits or an officer authorised by the SG in this behalf, may, in consultation with the SG concerned, permit any chit fund to accept subscription from Non-resident Indians. Non- resident Indians shall be eligible to subscribe, through banking channel and on non- repatriation basis, to such chit funds, without limit subject to the conditions stipulated by the RBI from time to time)
   ii. As Nidhi company
   iii. In agricultural or plantation activities;
   iv. In real estate business, or construction of farm houses
   Explanation: In "real estate business" the term shall not include development of townships, construction of residential/commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014.;
   v. In trading in Transferable Development Rights (TDRs).
   ('Transferable Development Rights' means certificates issued in respect of category of land acquired for public purpose either by CG or SG in consideration of surrender of land by the owner without monetary compensation, which are transferable in part or whole;)
c) No person resident in India shall undertake any capital account transaction which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017, as amended from time to time, of the Government of India, Ministry of External Affairs, with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the CG to carry on any transaction
d) The existing investment transactions, with any person who is, a citizen of or resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise in Democratic People's Republic of Korea, or any existing representative office or other assets possessed in Democratic People's Republic of Korea, by a person resident in India, which is not permissible in terms of Order S.O. 1549(E) dated April 21, 2017 shall be closed/ liquidated/disposed/settled within a period of 180 days from the date of issue of this Notification, unless there is specific approval from the CG to continue beyond that period."
   General Rule: (Capital account transaction is permitted only if it is specifically permitted under the regulations. If the transaction is not stated as generally permitted, a prior specific approval is required.)

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (CHART 1.5)

DEALING IN FOREIGN EXCHANGE, etc. [SECTION 3]

Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank

No person shall-

a) Dea l in or transfer any foreign exchange or foreign security to any person not being an authorised person (AP);

b) make any payment to or for the credit of any person resident outside India in any manner;

c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

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

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

Explanation - For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

Note:

This section imposes blanket restrictions on the specified transactions. This section applies to PRIIs and PROIs. The purpose of this section is to regulate inflow and outflow of Foreign Exchange through Authorised dealers and in a permitted manner

HOLDING OF FOREIGN EXCHANGE, etc. [SECTION 4]

Save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India.

Analysis:

This section prevents Indian residents to acquire, hold, own, possess or transfer any foreign exchange, foreign security or immovable property abroad. Then through separate notifications, acquisition of these assets has been permitted subject to certain conditions and compliance rules.

DEFINITIONS

1.	"Authorised person" [Sec 2(c)]	means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities
2	"Currency" [Sec 2(h)]	"Currency" includes all - currency notes, - postal notes, -postal orders, - money orders, - cheques, - drafts, -travelers' cheques, - letters of credit, - bills of exchange and promissory notes, - credit cards or - such other similar instruments, as may be notified by the Reserve Bank.
3	"Currency Notes" [Sec 2(i)]	"Currency Notes" means and includes cash in the form of coins and bank notes;
4	"Export" [Sec 2(l)]	"Export", with its grammatical variations and cognate expressions means; i. the taking out of India to a place outside India any goods. ii. provision of services from India to any person outside India
5	"Foreign Currency" [Sec 2(m)]	"Foreign Currency" means any currency other than Indian currency;
6	"Foreign Exchange" [Sec 2(n)]	Foreign Exchange" means foreign currency and includes: i. deposits, credits and balances payable in any foreign currency, ii. drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, iii. drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;
7	"Foreign Security" [Sec 2(o)]	"Foreign Security" means - any security, in the form of shares, stocks, bonds, debentures or any other instrument denominated or expressed in foreign currency and - includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends is payable in Indian currency;
8	Import" [Sec 2(p)]	"Import", with its grammatical variations and cognate expressions, means bringing into India any goods or services;
9	"Person" [Sec 2(u)]	"Person" includes: i. an individual, ii. a Hindu undivided family, iii. a company, iv. a firm, v. an association of persons or a body of individuals, whether incorporated or not, vi. every artificial juridical person, not falling within any of the preceding sub-clauses, and; vii. any agency, office or branch owned or controlled by such person; **NOTE:** *The definition of "person" is similar to the definition contained in the Income-tax Act, 1961. The term 'person' includes entities such as Companies, firms, individuals, HUF, Association of Persons (AOP), artificial juridical persons agencies, as well as offices and branches.* *Agencies, offices and branches do not have independent status separate from their owners. Yet these have been considered as persons.* *Under FEMA such offices and branches are included in definition of Person Resident in India. Therefore, they have been included in the definition of "Person".*
10	"Transfer" [Sec 2(ze)]	"Transfer" includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

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THE GENERAL CLAUSES ACT,1897

GENERAL CLAUSES ACT, 1897 (Chart 1.1)

The General Clauses Act, 1897 was enacted on 11th March, 1897.The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation. This is an Act to provide general definitions which shall be applicable to all Central Acts and Regulations where there is no definition in those Acts or regulations that emerge with the provisions of the Central Acts or regulations, unless there is anything repugnant in the subject or context.
The Act not defines any "territorial extent" clause. Its application is primarily with reference to all Central legislation and also to rules and regulations made under a Central Act. It is in a sense a part of every Central Acts or Regulations. In many countries, Legislatures similar to the General Clauses Act are called Interpretation Acts. The Act also serves as a model for State General Clauses Act.

The objects of the Act are several, namely:

i. **to shorten the language of Central Acts & to avoid the superfluity of language in a statute**
ii. **to provide, as far as possible, for uniformity of expression in Central Acts, by giving definitions of a series of terms in common use;**
iii. **To state explicitly certain convenient rules for the construction and interpretation of central acts.**
iv. **To guard against slips and oversights by importing into every act certain common form clauses, which otherwise ought to be inserted in every Central Act**

COMING INTO OPERATION OF ENACTMENT - Sec 5

1) Where **any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent**
   a) **of the Governor General in case of a Central Acts made before the commencement of the Indian Constitution** and
   b) of the **President in case of an Act of Parliament**.
2) Unless the contrary is expressed, a **Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement**.

Note: Where, **if any specific date of enforcement is prescribed in the Official Gazette**, Act **shall come into enforcement from such date**.

PRESUMPTION AGAINST RETROSPECTIVITY:
All laws which affect **substantive vested rights generally operate prospectively** and there is a presumption against their retrospectivity till there are **express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended**.

EFFECT OF REPEAL - Sec 6

Where **any Central legislation or any regulation** made after the commencement of this Act **repeals any Act made or yet to be made**, unless another purpose exists, **the repeal shall not**:

- **Revive anything not enforced or prevailed** during the period at which repeal is effected or;
- **Affect the previous operation of any enactment so repealed** or anything duly done or suffered thereunder; or;
- **Affect any claim, privilege, responsibility or debt** obtained, ensued or sustained under any legislation so repealed or;
- **Affect any punishment, forfeiture or penalty** sustained with regard to any offence committed as opposed to any legislation or
- **Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt** or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Notes:
The principle underlying section 6 is that whenever a statute is repealed and replaced by another statute, the rights accrued and the liabilities incurred under the old statute continue unless a contrary intention is manifest from the express language of the new Act or is necessarily deducible from it.

Consequences of repeal under the common law: Except as to transactions past and closed, a statute after its repeal is as completely obliterated as if it had never been enacted. The effect is to destroy all inchoate rights and all causes of action that may have arisen under the repealed statute.

Effect of Section 6: To prevent the obliteration of a statute inspite of its repeal to keep intact rights acquired or accrued and, liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for the enactment of such rights and liabilities.

Repeal vs. Deletion

Navrangpura Gam Dharmada Milkat Trust v. Rmtuji Ramaji:

'Repeal' of provision is in distinction from 'deletion' of provision. 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed, thereby affecting all 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. For the purpose of this section, the above distinction between the two is essential.

REPEAL OF ACT MAKING TEXTUAL AMENDMENT IN ACT OR REGULATION [Sec 6A]

Where any Central Act or Regulation repeals any enactment **by which the text of any Central Act or Regulation was amended,** then unless a different intention appears, the **repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal.**

REVIVAL OF REPEALED ENACTMENTS [Sec 7]

In any Central Act or Regulation made after the commencement of this Act, **it shall be necessary, for the purpose of reviving, either wholly or partially, any enactment wholly or partially repealed, expressed to state that purpose**.

Notes:
If one Act is repealed by a second which is again repealed by the third, the first Act is not revived unless the third Act makes an express provision to that effect. In other words, to revive a repealed statute, it is necessary to state an intention to do so.

CONTSRUCTION OF REFERENCES TO REPEALED ENACTMENTS [Sec 8]

Where this Act or Central Act or Regulation, repeals and re-enacts, any provision of a former enactment- then **references in any other enactment or in any instrument** to the provision so repealed shall, **be construed as references to the provision so re-enacted.**

COMMENCEMENT & TERMINATION OF TIME [Sec 9]

In any legislation or regulation, it shall be sufficient, **for the purpose of excluding the first in a series of days** or any other period of time to **use the word "from"** and **for the purpose of including the last in a series of days** or any other period of time, to **use the word "to".**

Notes:
Where an act is to done within a specified time from a certain date, the day of that date is to be excluded. Similarly when an act has to be done within so many days after a certain event, the date of such event is not to be counted.

COMPUTATION OF TIME [Sec 10]

Where by any legislation or regulation any act or proceeding is directed or allowed to be done or taken in any court or office on a certain day or within a prescribed period then, **if the Court or office is closed on that day or last day of the prescribed period**, the act or proceeding shall be **considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open**.

MEASUREMENT OF DISTANCES [Sec 11]

In the measurement of any distance, **that distance shall**, unless a different intention appears, **be measured in a straight line on a horizontal plane.**

DUTY TO BE TAKEN PRO RATA IN ENACTMENTS - Sec 12

Where **any duty of customs or excise or in the nature thereof,** is **leviable on any given quantity, by weight, measure or value of any goods or merchandise**, then a **like duty is leviable according to the same rate on any greater or less quantity.**

GENDER AND NUMBER [Sec 13]

In all legislations and regulations **unless there is anything repugnant in the subject or context** -

1) Words importing the masculine **gender shall be taken to include females**, and
2) Words in **singular shall include the plural & vice versa**.

Notes:

- **Where a word connoting a common gender is available but the word used conveys a specific gender, there is a presumption that the provisions of General Clauses Act, 1897 do not apply. Thus, the word 'bullocks' could not be interpreted to include 'cows'.**
- **Words 'male and female heirs' in Section 23 of the Hindus Succession Act, 1956 were interpreted to cover a case where there is single male heir.**
- **Power to appoint constitutional functionaries expressed in singular e.g. Attorney General of India, Advocate General of the State ,CAG,** cannot be read by recourse to **Sec 13 of General Clauses Act to authorise appointment of more than one person as Attorney General or CAG**

GENERAL CLAUSES ACT, 1897 (Chart 1.2)

POWER CONFERRED TO BE EXERCISABLE FROM TIME TO TIME – [Sec 14]

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

Notes: Compiled By:CA Sahil Grover

Section 14 authorises exercise of the power successively.

POWER TO APPOINT TO INCLUDE POWER TO APPOINT EX-OFFICIO [Sec 15]

Where by any legislation or regulation, a **power to appoint any person** to fill any office or execute any function is conferred, then unless it is otherwise expressly provided, any such appointment, **may be made either by name or by virtue of office**.

Notes:

Ex-officio is a Latin word which means by virtue of one's position or office. Provision under this section states that where there **is a power to appoint, the appointment may be made by appointing ex-officio as well**

POWER TO APPOINT TO INCLUDE POWER TO SUSPEND OR DISMISS [Sec 16]

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

SUBSTITUTION OF FUNCTIONARIES [Sec 17]

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

SUCCESSORS [Sec 18]

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

Eg: In ***K.G. Krishnayya v. State***, it was held that it is not essential that same statutory authority that initiated a scheme under the Road Transport Corporation Act 1950, should also implement it. **It is open to the successor authority to implement or continue the same**

OFFICIAL CHIEFS & SUBORDINATES [Sec 19]

In any Central Act or Regulation, **it shall be sufficient for the purpose of expressing that a law relating to chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior**.

CONSTRUCTION OF ORDERS ETC. ISSUED UNDER ENACTMENTS - Sec 20

Where by any legislation or regulation, a power to issue any notification, order, scheme, rule, form, or by-law is conferred, then **expression used in the notification, order, scheme, rule, form or bye-law, shall**, have **same respective meaning as in the Act or regulation conferring power**.

POWER TO ISSUE, TO INCLUDE POWER TO ADD TO, AMEND, VARY OR RESCIND NOTIFICATIONS, ORDERS, RULES OR BYE LAWS [Sec 21]

Where by any legislations or regulations a power to issue notifications, orders, rules or bye-laws is conferred, **then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add, to amend, vary or rescind any notifications, orders, rules or bye laws so issued**

MAKING OF RULES OR BYE-LAWS & ISSUING OF ORDERS BETWEEN PASSING AND COMMENCEMENT OF ENACTMENT [Sec 22]

Where, by **any Central Act or Regulation which is not to come into force immediately, on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders** with respect to the application of the Act or Regulation or with respect to the **establishment of any Court or the appointment of any Judge or officer thereunder**, etc. then **that power may be exercised at any time after passing of the Act or Regulation but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation**.

Notes: As explained by the Supreme Court, Sec 22 "**is an enabling provision, its intent and purpose being to facilitate the making of rules, bye-laws and orders before the date of commencement of an enactment in anticipation of its coming into force. In other words it validates rules, bye-laws and orders made before the enactment comes into force provided they are made after passing of the Act and are preparatory of the Act coming into force." Subordinate legislation so made comes into operation with the coming into operation of the Act.**

PROVISIONS APPLICABLE TO MAKING OF RULES OR BYE-LAWS AFTER PREVIOUS PUBLICATIONS [Sec 23]

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

1) **Publish of proposed draft rules/ bye - laws:** The authority having power to make the rules or bye-laws shall, before making them, **publish a draft of the proposed rules or bye-laws**.
2) **To publish in the prescribed manner:** The **publication shall be made in such manner as that authority deems to be sufficient, or**, if the condition with respect to previous publication so requires, in such manner **as the Govt. concerned prescribes**.
3) **Notice annexed with the published draft:** There shall be published with the draft a **notice specifying a date on or after which the draft will be taken into consideration**.
4) **Consideration on suggestions/objections received from other authorities: Authority having power to make the rules or bye-laws shall consider any objection or suggestion from any person with respect to the draft before the date so specified.**
5) **Notified in the official gazette**: The **publication in the Official Gazette** of a rule or bye-law **shall be conclusive proof that the rule or bye-laws has been duly made**. . Any irregularities in the publication of the draft cannot therefore be questioned.

Note: It is also open to the authority publishing the draft and entitled to make the rules to make suitable changes in the draft before finally publishing them. It is not necessary for that authority to re-publish the rules in the amended form before their final issue so long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof

CONTINUATION OF ORDERS ETC, ISSUED UNDER ENACTMENTS REPEALED & RE-ENACTED [Sec 24]

Where any Central Act or Regulation is **repealed and re-enacted with or without modification**, then **any appointment notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act, shall continue in force, and be deemed to have been made or issued under the provisions so re-enacted**, unless and until it is superseded **by any appointment, notification, order, etc. made or issued under the provisions so re-enacted.**

Eg:

A notification issued under Sec 5-A of the Prevention of Corruption Act, 1947 authorising a sub-inspector to investigate cases under the Act was held to continue because of Sec 24 of the General Clauses Act under the corresponding Sec 17 of the Prevention of Corruption Act, 1988.

RECOVERY OF FINES [Sec 25]

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

PROVISION AS TO OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS [Sec 26]

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

Notes:

Article 20(2) of the Constitution states that **no person shall be prosecuted and punished for the same offence more than once.**

Acc. to the SC, Sec 26 shows that **there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice** for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, **the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.**

GENERAL CLAUSES ACT, 1897 (Chart 1.3)

MEANING OF SERVICE BY POST [Sec 27]

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

(i) **properly addressing**
(ii) **pre-paying, and**
(iii) **posting by registered post,**

a letter containing the document, and, unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Notes:

- The words 'serve', 'give', and 'send' are used as interchangeable words. **When a notice is required to be 'served on or sent by registered post within a particular time, the notice, if it is to be served by post, must be posted at such a time that in the ordinary course of post, it will reach the person before the expiration of the particular time.**
- **If a letter properly directed is proved to have been put into post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed.**
- **When the addressee refuses to accept a letter sent to him by registered post, there is due service and he is imputed with knowledge of the contents of the letter by the effect of section 27 of the General Clauses Act. Similarly when the notice is returned with postal endorsements 'not available in the house', 'house locked' and 'shop closed' due service may be presumed.**
- In **United Commercial Bank v. Bhim Sain Makhija** - A notice when required under the statutory rules to be sent by **'registered post acknowledgement due'** is instead sent by **'registered post' only**, the protection of **presumption regarding serving of notice under 'registered post' under this section of the Act neither tenable not based upon sound exposition of law.**

CITATION OF ENACTMENTS [Sec 28]

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

SAVING FOR PREVIOUS ENACTMENTS, RULES AND BYE-LAWS [Sec 29]

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

APPLICATION OF ACT TO ORDINANCES [Sec 30]

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

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DEFINITIONS

"act" [Sec3(2)]	Act', used with reference to an offence or a civil wrong, **shall include a series of acts,** and words which refer to acts done extend also to **illegal omissions;** An act required to be done **cannot necessarily mean a positive act only** and may also **include acts which one is precluded from doing from decree. 'Act' includes illegal omissions as well** but it does not include an omission which is not illegal.
"Affidavit" [Sec 3(3)]	Affidavit' shall include **affirmation and declaration** in the case of persons by law allowed to affirm or declare instead of swearing. There are two important points derived from the above definition: 1. Affirmation and declaration, 2. In case of persons allowed affirming or declaring instead of swearing. The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.
"Central Act" [Sec 3(7)]	'Central Act' shall mean an **Act of Parliament**, and shall include- (a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution*, and (b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity; *The date of the commencement of the Constitution is 26th January, 1950.
"Commencement" [Sec 3(13)]	Commencement' used with reference to an Act or Regulation, shall mean **the day on which the Act or Regulation comes into force.**Coming into force or entry into force (also called commencement) **refers to the process by which legislation; regulations, treaties and other legal instruments come to have legal force and effect.**
"Document" [Sec 3(18)]	'Document' shall include **any matter written, expressed or described upon any substance** by means of **letters, figures or marks or by more than one** of those means which is intended to be **used or which may be used, for the purpose or recording that matter.** **For example, book, file, painting, inscription and even computer files are all documents**.
"Enactment" [Sec 2(19)]	'Enactment' shall include a Regulation (as hereinafter defined) and any Regulation of Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid; **It has been held that an "enactment" would include any Act (or a provision contained therein) made by the Union Parliament or the State Legislature. Rules and regulation are nothing but a species of legislation. The legislature instead of enacting the same itself delegates the power to other person. Whatever is enacted by the delegate of legislature is also enactment**
"Financial Year" [Sec 3(21)]:	**Financial year shall mean the year commencing on the first day of April.** **The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.** **Difference between Financial Year and Calendar Year: Financial year starts from first day of April but Calendar Year starts from first day of January**
"Good Faith" [Sec 3(22)]	A thing shall be deemed to be done in "good faith" **where it is in fact done honestly**, whether it is done negligently or not.**The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case**. Thus, anything done with **due care and attention**, which is not malafide is presumed to have been done in good faith. **The term "Good faith" has been defined differently in different enactments.** This definition may be applied only if there **is nothing repugnant in subject or context**, and if that is so, the definition is not applicable.
Government" [Sec 3(23)] :	**Government' or 'the Government' shall include both the Central Government and State Government.** Hence, wherever, the word 'Government' is used, it will include Central Government and State Government both.
Imprisonment" [Sec 3(27)]	Imprisonment' shall mean imprisonment of either description as defined in the Indian Penal Code (45 of 1860); By section 53 of the Indian Penal Code, the punishment to which offenders are liable under that Code are imprisonment which is of **two descriptions**, namely, **rigorous**, that is with hard labour and **simple**. So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple

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GENERAL CLAUSES ACT, 1897 (Chart 1.4)

DEFINITIONS

"Indian law" [Sec 3(29)]	'Indian law' shall mean any **Act, Ordinance, Regulation, rule, order, bye law or other instrument** which before the commencement of the Constitution, had the force of law in any Province of India or part thereof or thereafter has the force of law in any Part A or Part C State or part thereof, **but does not include** any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act;
"Month" [Sec 3(35)] :	'Month' shall mean a month reckoned according to the British calendar; The word "month occurring in s.271 (l)(a)(i) of the Income-tax Act, 1961, was construed to mean a period of thirty days and not a month as defined in the General Clauses Act;
"Immovable Property" [Sec 3(26)]	**'Immovable Property' shall include:** **i) Land,** **ii) Benefits to arise out of land, and** **iii) Things attached to the earth, or** iv) **permanently fastened to anything attached to the earth**. It is an inclusive definition. It contains four elements: 1. land, 2. benefits to arise out of land, 3. things attached to the earth and 4. things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment. **Example 1:** Trees are immovable property because trees are they are attached to or rooted in the earth.. However, timber is not immovable property as the same are not permanently attached to the earth. In the same manner, buildings are immovable property. The right to **grow new trees and to get leaves from trees that grow in further are all included in the term immovable property**. **Example 2:** Right of way to access from one place to another, may come within the definition of Immovable property whereas to right to drain of water is not immovable property. Any machinery fixed to the soil, standing crops can be held as immovable property according to the General Clauses Act, 1897. **Example 3 :** A claim of the **right to catch fish** came under the consideration of the court in ***Ananda Behera v. State of Orissa***. The court tended to decide whether the right to catch or carry fish is a movable or immovable property. **Thus, the court construed "right to catch or carry fish" as an immovable property.**
""Movable Property" [Sec 3(36)] :	Movable Property' shall **mean property of every description, except immovable property**. Thus, any property which is not immovable property is movable property. Debts, share, electricity are moveable property
"Oath" [Sec 3(37)]	**''Oath' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing**.
"Offence"[Sec 3(38)] :	''Offence' shall mean any act or omission made punishable by any law for the time being in force. Any act or omission which is if done, is punishable under any law for the time being in force, is called as offence.
"Official Gazette" [Section 3(39)] :	'Official Gazette' or 'Gazette' shall mean: **(i) The Gazette of India, or** **(ii) The Official Gazette of a state.** **The Gazette of India is a public journal and an authorised legal document of the Government of India, published weekly by the Department of Publication, Ministry of Housing and Urban Affairs. As a public journal, the Gazette prints official notices from the government. It is authentic in content, accurate and strictly in accordance with the Government policies and decisions. The gazette is printed by the Government of India Press**
"Person"[Sec (42)]:	"Person" shall include: **(i) any company, or** **(ii) association, or** (iii) **body of individuals, whether incorporated or not**
"Rule" [Sec 3(51)]	'Rule' shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;
"Swear" [Sec 3(62)]	"**Swear", with its grammatical variations and cognate expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing.** **Note :** The terms "Affidavit", "Oath" and "Swear" have the same definitions in the Act.
"Writing" [Section 3(65)] :	**Expressions referring to 'writing' shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible forms;**
"Year" [Sec 3(66)]	**'Year' shall mean a year reckoned according to the British calendar**.

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INTERPRETATION OF STATUTES,DEEDS AND DOCUMENTS

INTERPRETATION OF STATUTES, DEEDS & DOCUMENTS (Chart 1.1)

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STATUTE

- ***'Statute'*** has been defined as the **written will of the legislature solemnly expressed according to the forms necessary to constitute it the law of the State**
- Normally, the term denotes an Act enacted by the legislative authority (e.g. Parliament of India)
- ***Maxwell defines "statute"*** as the **will of the legislature**. In India 'statute' means an enacted law i.e. the law either enacted by the Parliament or by state legislature.
  In short **'statute' signifies written law in contradiction to unwritten law**

DOCUMENT

- ***Sec 3(18) of the General Clauses Act, 1897*** states that the term 'document' **shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording this matter.**
- Generally, documents comprise of following **four elements**:
  a) **Matter-** This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive.
  b) **Record-** This second element must be **certain manual or mechanical device employed on the substance**. It must be by writing, expression or description.
  c) **Substance-** This is the third element on which a **mental or intellectual elements** comes to find a permanent form.
  d) **Means-** This represents forth 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.**

INSTRUMENT

- **'Instrument'** means a **formal legal document which creates or confirms a right or records a fact**.
- It is a formal writing of any kind, such as an **agreement, deed, charter or record, drawn up** and **executed in a technical form**
- **Sec 2(14) of the Indian Stamp Act, 1899** states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

DEED

'Deed' is an **instrument in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition**.
Simply stated deeds are **instruments though all instruments may not be deeds. However, in India no distinction seems to be made between instruments and** deeds.

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INTERPRETATION

- ***Interpretation'*** is the **process by which the Courts seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed**.
- Simply stated, 'interpretation' is the **process by which the real meaning of an Act (or a document) and the intention of the legislature in enacting it (or of the parties executing the document) is ascertained.**
- Interpretation is **resorted to in order to resolve any ambiguity in the statute**. It is the art of finding out the true sense of words that is to say the sense in which their author intended to convey the subject matter

IMPORTANCE OF INTERPRETATION

- The **process of statute making and the process of interpretation of statutes take place separately from each other,** and two different agencies are concerned.
- **An interpretation of Act serves as the bridge of understanding between the two.**

CLASSIFICATION OF INTERPRETATION

- Interpretation is usually said to be either **'legal' or 'doctrinal'**.
- It is **'legal'** when there is an **actual rule of law which binds the Judge to place a certain interpretation of the statute.**
- It is **'doctrinal'** when its **purpose is to discover 'real' and 'true' meaning of the statute**
- **Legal' interpretation** is sub-divided into **'authentic' and 'usual'**.
  - It is **'authentic'** when **rule of interpretation is derived from the legislator** himself.
  - It is **'usual' when it comes from some other source** such **as custom or case law.**
- **Doctrinal' interpretation** may **again be divided into 'grammatical' & 'logical'.**
  - It is **'grammatical'** when the **court applies only the ordinary rules of speech for finding out the meaning of the words used in the statute.**
  - It is **'logical'** when the **court goes beyond the words and tries to discover the intention of the statute in some other way.**
- **According to Fitzerald**, interpretation is of two kinds – **'literal' and 'functional'**.
  - The **literal interpretation** is that which regards **conclusively the verbal expression of the law**. It does not look beyond the **'literaligis'. 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' interpretation** is that which **departs from the letter of the law and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature. In other words, it is necessary to determine the relative claims of the letters and the spirit of the enacted law.**

CONSTRUCTION

- Construction' as applied to a written statute or document means **to determine from its known elements its true meaning or the intention of its framers**.
- Construction **involves drawing conclusions beyond the actual expressions used in text**.
- This is done by **referring to other parts of the enactment and the context in which the law was made.** Thus when you construe a statute you are attempting to **ascertain the intention of the legislature**

INTERPRETATION vs CONSTRUCTION

- **Interpretation is of finding out the true sense of any form** and the **construction is the drawing of conclusion respecting subjects that lie beyond the direct expression of the text**.
- **Where the Court adheres to the plain meaning of the language used by the legislature**, it would be **'interpretation'** of the words. But **where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation before the court.** Here the court would be resorting to **'construction'.**
- **However, the two terms – 'interpretation' and 'construction' – overlap each other and it is rather difficult to state where 'interpretation' leaves off and 'construction' begins.**
- **In practice construction includes interpretation and the terms are frequently used synonymously.**

PROCESS OF INTERPRETATION

In this process of interpretation, **several aids are used**. They may be **statutory or non-statutory**.

- The ***statutory aids*** is **illustrated by** the **General Clauses Act, and by specific definitions contained in individual Acts.**
- The ***non-statutory aids*** is **illustrated by common law rules of interpretation, and also by case-law relating to the interpretation of statutes.**

RULES OF INTERPRETATION/ CONSTRUCTION

(A) PRIMARY RULES

1) Rule Of Literal Construction:

- The first and primary rule of construction is that the **intention of the legislature must be found in the words used by the legislature itself**.
- The **words and language used in a statute should be interpreted literally and without adding or subtracting anything into it**.
- **It is a cardinal rule of construction that a statute must be construed literally and grammatically giving the words their ordinary and natural meaning.**
- **When the language of a statute is plain and unambiguous it is not open to the courts to adopt any other hypothetical construction simply with a view to carrying out the supposed intention of the legislature.**
- It is the **primary duty of the court** to **interpret the words used in legislation according to their ordinary grammatical meaning in the absence of any ambiguity or doubt**.
- Sometimes, occasions may arise when a **choice has to be made between two interpretations – one narrower and the other wider or bolder**. In such a situation, **if the narrower interpretation would fail to achieve the manifest purpose of the legislation, one should rather adopt the wider one.**
- **Words Used In The Popular Sense-** Words in statutes are generally construed in their **popular meaning and not in their technical meaning** This Rule of literal interpretation **can be read and understood under the following headings:**
  a) **Natural and grammatical meaning: Statute are to be first understood in their natural, ordinary, or popular sense and must be construed according to their plain, literal and grammatical meaning. If there is an inconsistency with any express intention or declared purpose of the statute**, or **it inlvolves any absurdity, repugnancy, inconsistency**, the **grammatical sense must then be modified, extended or abridgd only to avoid such an inconvenience, but no further.**
  b) **Technical words in technical sense:** This point of literal construction is that **technical words are understood in the technical sense only**.

INTERPRETATION OF STATUTES, DEEDS & DOCUMENTS (Chart 1.2)

(A) PRIMARY RULES

2) Rule of Reasonable Construction

- **According to this Rule, the words of a statute must be construed 'ut res magis valeat quam pereat' meaning thereby that words of statute must be construed so as to lead to a sensible meaning.**
- **The legislature while enacting a statute has a specific purpose in mind and does not legislate for the sake of legislation only. And that is the reason, the courts while interpreting a law must give a reasonable and sensible meaning to the wordings of the statute so as to carry out the intention of the legislature.**
- **When grammatical interpretation leads to certain absurdity, it is permissible to depart there from and to interpret the provision of the statutes in a manner so as to avoid that absurdity. This departure from the grammatical construction is permissible only to the extent it avoids such absurdity and no further. This is also called the Golden Rule of Interpretation**
- **Thus, if the Court finds that giving a plain meaning to the words will not be a fair or reasonable construction**, then the **court shall depart from the dictionary meaning** and **adopt the construction which will advance the remedy and suppress the mischief provided the Court does not have to resort to conjecture or surmise.**

3) The HEYDON'S RULE OR Mischief Rule

- Where the **language used in a statute is capable of more than one interpretation,** the most firmly established rule for construction is the principle laid down in the ***Heydon's case***.The intention of this rule is always to **make such construction as shall suppress the mischief and advance the remedy according to the true intention of legislation**.
- The rule which is also known as **'purposive construction' or 'mischief rule'**, enables consideration of **four matters in construing an Act**:
  a) What was the **law before the making of the Act**;
  b) What was the **mischief, defect or hardship caused by earlier Act**;
  c) How does the **act of Parliament seek to resolve or cure the mischief or deficiency;**
  d) What are the **true reasons for remedy**?

  And then the courts shall make such construction as will suppress the mischief and advance the remedy and suppress the subtle inventions and evasions for the continuance of the mischief.
- The main **limitation is that this principle cannot be approached directly, as first literal rule has to be considered. Thus unless there is any such ambiguity or uncertainty, it would not open to the Court to depart from the normal rule of construction which is that the intention of the legislature should primarily be gathered from words which are used.**

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6) Rule of Beneficial Construction

- **This is strictly speaking not a rule but a method of interpreting a provision liberally so as to give effect to the declared intention of the legislation.**
- Beneficial construction will be given to a statute, **which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in past**.
- In such cases it is **permissible to give an extended meaning to words or clauses in enactments**.
- **But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unequivocal.**

5) Rule of Harmonious Construction

- This rule is applied when there is **a conflict between two provisions of statute. Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them.** This is known as ***Rule of Harmonious Construction***. **An effort should be made to interpret a statute in such a way as harmonises with the object of the statute.**
- **The doctrine enunciates that when two legal provisions are so placed that they are seemingly opposite to each other, then it is the duty of the Court to so harmonies both, as the effect could be given to both of them**.
- **The basis of this rule is that legislature never intended to contradict itself by enacting two contradictory provisions.**
- **It is the duty of the courts to avoid a 'head on clash' between two sections of the Act and to construe the provisions which appear to be in conflict with each other in such a manner as to harmonise them. The provisions of one section of the statute cannot be used to defeat the other provisions, unless the court inspite of its efforts finds it impossible to effect reconciliation between them.**
- **If it is impossible to avoid inconsistency, the provision which was enacted or amended later in point of time must prevail.**
- **A Specific rule will override a general rule. This principle is usually expressed by the maxim, "generalia specialibus non derogant".**
- This rule is **applicable only when there is a real and not merely apparent conflict between the provisions of an Act, and one of them has not been made subject to the other**.
- **In some cases, statute may give a clear indication as to which provision is subservient and which overrides.** This is done by the use of the terms **"subject to", "notwithstanding" & "without prejudice"**.

Subject to

The impact of the words "subject to" when used in a provision is that when the same subject matter is covered by that provision and by another provision or enactment subject to which it operates and there is a conflict between them, then the latter will prevail over the former. This limitation cannot operate, when the subject matter of the two provisions is not the same. Thus a clause that uses the words "subject to" is subservient to another.

Notwithstanding

A clause that begins with the words "notwithstanding anything contained" is called a *non-obstante* clause. Unlike the "subject to" clause, the notwithstanding clause has the effect of making the provision prevail over others. When this term is used then the clause will prevail over the other provision(s) mentioned therein

Without prejudice

When certain particular provisions follow general provisions and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the particular provisions shall operate in addition to and not in derogation of the general provisions

6) Rule of Ejusdem Generis

- **The term 'ejusdem generis' means 'of the same kind or species'.**
- **Simply stated, the rule means: Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified.**

This rule applies only when:

- **The statute enumerates the specific words**
- **The subjects of enumeration constitute a class or category.**
- **The class or category is not exhausted by the enumeration.**
- **The general terms follow the specific enumeration and**
- **There is no indication of a different legislative intent**

If the particular words used exhaust the whole genus (category), then the general words are to be construed as covering a larger genus

It is also to be noted that the courts have a discretion whether to apply the 'ejusdem generis' doctrine in particular case or not.

For example, the 'just and equitable' clause in the winding-up powers of the Courts is held to be not restricted by the first five situations in which the Court may wind up a company

Exceptions:

a) If the **preceding term is general**, as well as that which follows this rule cannot be applied.
b) Where the **particular words exhaust the whole genus**.
c) Where the **specific objects enumerated are essentially diverse in character**.
d) Where there is an **express intention of legislature that the general term shall not be read ejusdem generis the specific terms.**

7) Rule of Exceptional Construction

- **Maxwell goes to the extent of stating, "Notwithstanding the general rule that full effect must be given to every word, yet if no sensible meaning can be given to a word or phrase, or if it would defeat the real object of the enactment, it may, or rather it should, be eliminated."**
- The rule of exceptional construction stands for the **elimination of statutes and words in a statute which defeat the real objective of the statute or make no sense.**
- **It also stands for construction of words 'and', 'or', 'may', 'shall' & 'must'.**

"And" and "Or"

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- **"And" is a particle joining words and sentences and expressing the relation of connection or addition. The word "and" is normally conjunctive. In its conjunctive sense the word is used to conjoin words, clauses or sentences, signifying that something is to follow in addition to that, which precedes.**
- **The word "or" is a disjunctive particle that marks an alternative, generally corresponding to "either", as "either this or that"**

(Continued in next chart)

INTERPRETATION OF STATUTES, DEEDS & DOCUMENTS (Chart 1.3)

Can "and" be read as "or" and vice versa?

- **The word 'or' is normally disjunctive and 'and' is normally conjunctive. However, at times they are read as *vice versa* to give effect to the manifest intention of the legislature as disclosed from the context.**
- **This would be so where the literal reading of the words produces an unintelligible or absurd result. In such a case 'and' may be read for 'or' and 'or' for 'and'**

"And" may legitimately be construed as "or" when the intention of the legislature is clear and when any other construction would tend to defeat such intention

Example : In the Official Secrets Act, 1920, as per section 7 any person who attempts to commit any offence under the principal Act or this Act , or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence'. Here, the word 'and' in bold is to be read as 'or'. Reading 'and' as 'and' will result in unintelligible and absurd sense and against the clear intention of the Legislature

'May', 'must' and 'shall'

- **Before discussing this aspect, it would be worthwhile to note the terms 'mandatory' and 'directory'. Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with.**
- **Where the enactment or provision prescribes that the contemplated action be taken without any option or discretion, then such statute or provision or enactment will be called mandatory.**
- **Where, the acting authority is vested with discretion, choice or judgment, the statute or provision will be called directory**
  - **'May' signifies permission and implies that the authority has been allowed discretion.**
  - **"Shall" in the normal sense imports a command.**
  - **'Must' is doubtlessly a word of command.**

In all cases, however, the intention of the legislature will guide the interpreter in his search of meaning.

'May' to be read as 'shall'

- **"May" though permissive sometimes has compulsory force and is to be read as shall. Although it is well – settled that ordinarily the word 'may' is always used in a permissive sense, there may be circumstances where this word will have to be construed as having been used in a mandatory or compulsory sense.**
- **In some cases, the legislature may use the word 'may' as a matter of pure conventional courtesy and yet intend a mandatory force. Therefore, in order to interpret the legal import of the word 'may', we have to consider various factors, example the object and the scheme of the Act, the context or background against which the words have been used, the purpose and advantages of the Act sought to be achieved by use of this word and the like.**

"Shall" though mandatory is to be read as 'May'.

- **It is well – settled that the use of the word 'shall' does not always mean that the enactment is obligatory or mandatory; it depends upon the context in which the word 'shall' occurs and the other circumstances**
- **The use of the word shall would not of itself make a provision of the act mandatory. It has to be construed with reference to the context in which it is used. Thus, as against the Government the word 'shall' when used in statutes is to be construed as 'may' unless a contrary intention is manifest. Hence, a provision in a criminal statute that the offender shall be punished as prescribed in the statute is not necessarily to be taken as against the Government to direct prosecution under that provision rather than under some other applicable statute.**
- **Therefore, generally speaking when a statute uses the word 'shall' prima facie it is mandatory but it is sometimes not so interpreted if the context or intention of the legislature otherwise demands. Thus, under certain circumstances the expression 'shall' is construed as 'may'.**
- **The use of word 'shall' with respect to one matter and use of word 'may' with respect to another matter in the same section of at statute, will normally lead to the conclusion that the word 'shall' imposes an obligation, whereas word 'may 'confers a discretionary power (Labour Commr., M.P.V. Burhanpur Tapti Mill).**

(B) SECONDARY RULES OF INTERPRETATION

1) Effect of usage (Doctrine of Contemporanea Expositio)

- This doctrine is based on the concept that a **statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority**.
- In this connection, we have to bear in mind **two Latin maxims** :
  a) **"*Optima legum intrpres est consuetude*"** simply means, **"Custom is the best interpreter of law."**
  b) **"*Contemporanea Expositio est optima et fortissima in lege*"** means **"contemporaneous exposition is the best and strongest in the law."(i.e. the best way to interpret a document is to read it as it would have been read when made).**
- **The maxim "*optima legum intrpres est consuetude*" simply means, "Custom is the best interpreter of law". Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.**
- **This maxim is to be applied for construing ancient statutes, but not to acts that are comparatively modern.**

2) Associated Words to be Understood in Common Sense Manner (Doctrine of Noscitur a Sociis)

- **When two words or expressions are coupled together one of which generally excludes the other, obviously the more general term is used in a meaning excluding the specific one.**
- ***'Noscitur A Sociis'* ('it is known by its associates'),** that is to say **'the meaning of a word is to be judged by the company it keeps'. The rule of 'noscitur a sociis' is based on the maxim: 'A man is known by the company he keeps'. The rule says that words used in an Act of Parliament derive their meaning with reference to words found in immediate connection with them.**
- **Maxwell in *'Interpretation of statutes'* says that-"When two or more words which are capable of analogous (similar or parallel) meaning are coupled together, they are to be understood in their cognate sense (i.e. akin in origin, nature or quality). They take, as it were, their colour from each other, i.e., the more general is restricted to a sense analogous to the less general**

Diff between Noscitur rule & ejusdum generis rule:

- It is a rule **wider than the rule of ejusdem generis**, rather **ejusdem generis is only an application of the noscitur a sociis**.
- While applying *noscitur a sociis rule*, the **meaning of more general words takes colour from the associated words or words preceding or following whereas as per *ejusdem generis rule*** the **preceding words must form a 'genus' or a 'class' or 'category' and they must be specific**.
- **Formation of 'class' or 'category' of the preceding or succeeding specific words is not necessary in the noscitur rule**.

INTERNAL AIDS TO INTERPRETATION/CONSTRUCTION

Every enactment has its Title, Preamble, Heading, Marginal Notes, Definitional Sections/ Clauses, Illustrations etc. They are known as 'internal aids to construction' & can be of immense help in interpreting/construing the enactment or any of its parts.

a) Long Title

- An enactment would have what is known as a **'Short Title'** and also a **'Long Title'**. The ***'Short Title'*** merely **identifies the enactment and is chosen merely for convenience**; the ***'Long Title'*** on the other hand, **describes the enactment and does not merely identify it.**
- **Example: Section 1 of the Negotiable Instruments Act 1881: "This Act may be called the Negotiable Instruments Act,1881" whereas the long title of the Act is "An act to define and amend the law relating to Promissory Notes, Bills of Exchange, Cheques".**
- **Long Title of an Act is a part of the Act**. We can, therefore, **refer to it to ascertain the object, scope and purpose of the Act and so is admissible as an aid to its construction.**

b) Preamble

- It **expresses the scope, object and purpose of the Act more comprehensively than the Long Title**.
- It may **recite the ground and the cause of making a statute and the evil which is sought to be remedied by it**.
- It is a **part of the enactment and can legitimately be used for construing it**.
- It **discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear.** However, it **cannot override the provisions of the enactment.**

c) Heading and Title of a Chapter

- Heading and Titles **prefixed to sections or groups of sections can legitimately be referred to for the purpose of construing the enactment or its parts.**
- The **headings of different portions of a Statute can be referred to determine the sense of any doubtful expression** in a section ranged under any particular heading.
- They **cannot control the plain meaning of the words of the enactment**.
- It may be noted that **headings may sometimes be referred to know the scope of a section in the same way as the preamble**. But a **heading cannot control or override a section.**

INTERPRETATION OF STATUTES, DEEDS & DOCUMENTS (Chart 1.4)

INTERNAL AIDS TO INTERPRETATION/CONSTRUCTION

d) Marginal Notes:

- It mean those **notes which are printed at the side of section of an Act, which summarises the effect of the Section**. They are **not a part of the enactment, for they were not present when the Act was passed in Parliament, but inserted after the act has been so passed.** Hence they are **not an aid to construction**.
- **Although there is difference of opinion regarding resort to Marginal Notes for construing an enactment, the generally held view is that the Marginal Notes appended to a Section cannot be used for construing the Section**
- Marginal notes **appended to Articles of the Constitution have been held to be part of the Constitution**.

e) Definitional Sections/ Interpretation Clauses:

- When a **word or phrase is defined as having a particular meaning in the enactment, it is that meaning alone which must be given to it in interpreting a Section of the Act unless there be anything repugnant in the context. The Court cannot ignore the statutory definition and try and extract what it considers to be the true meaning of the expression independently of it.**
- The purpose of a definition clause is **two-fold**:
  - (i) to **provide a key to the proper interpretation of the enactment**, and
  - (ii) to **shorten the language of the enacting part** by avoiding repetition of the same words contained in the definition part.

Construction of definitions may be understood under the following headings

1) Restrictive and extensive definitions:

When a word is defined to:

- **'mean'**-definition is **restrictive and exhaustive;**
- **'include'-** definition is **extensive;**
- **'means and includes'**- definition is **exhaustive**;
- **'to apply to and include'**- definition is **extensive;**
- **'is deemed to include'-** definition is **inclusive or extensive.**

2) Ambiguous definitions:

- Sometime we may find that the **definition section may itself be ambiguous**, and **so it may have to be interpreted in the light of the other provisions of the Act and having regard to the ordinary meaning of the word defined.**
- **Such types of definition is not to be read in isolation.**
- **It must be read in the context of the phrase which it defines.**

3) Definitions subject to a contrary context:

When a **word is defined to bear a number of inclusive meanings**, the **sense in which the word is used** in a particular provision **must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby**.

f) Illustrations:

- Illustrations **follow the text of the Sections** and, therefore, **do not form a part of the Sections**.
- Illustrations do **form a part of the statute** and are **considered to be of relevance and value in construing the text of the sections**.
- Illustrations **cannot have the effect of modifying the language of the section and can neither curtail nor expand the ambit of the section**.

g) Proviso:

- **The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.**
- As a general rule, a **proviso is added to an enactment to qualify or create an exception to what is in the enactment**. Ordinarily a proviso is **not interpreted as stating a general rule**.
- It **carves out an exception to the main provision** to which it has been enacted as a proviso and to no other.

Distinction between Proviso, exception and saving Clause

- **Exception is intended to restrain the enacting clause to particular cases**.
- **Proviso is used to remove special cases from the particular cases.**
- **Saving clause is used to preserve from destruction certain rights, remedies or privileges already existing**.

h) Explanation:

- An Explanation is **appended to a section to explain the meaning of the text** of the section.
- An Explanation may be **added to include something** within the section **or to exclude something** from it.
- An Explanation **should normally be so read as to harmonise with and clear up any ambiguity** in the main section.
- **Thus explanations are inserted with the purpose of explaining the meaning of particular provision and to remove doubts which might creep up if the explanation has not been inserted.**

i) Schedules:

- Schedules **form part of an Act**. Therefore, they must be **read together with the Act for all purposes of construction**.
- If there appears to be **any inconsistency between the schedule and the enactment, the enactment shall always prevail**.
- Schedules are **added towards the end and often contain details and forms for working out the policy underlying the sections of the statute**.

j) 'Read The Statute As A Whole':

- It means that an **individual section must be construed in light of the whole Act and must be compared with other parts of the Act and the setting in which it is fitted by the law makers**.
- **In other words, to ascertain the meaning of a clause in a statute, one must look at the whole statute, at what precedes and at what succeeds and not merely at the clause itself.**

EXTERNAL AIDS TO INTERPRETATION/CONSTRUCTION

a) Historical Setting:

- The **history of the external circumstances which led to the enactment in question is of much significance in construing any enactment**.
- **History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings** all are relevant in interpreting and construing an Act.

b) Consolidating Statutes & Previous Law:

- Preambles to **many statutes contain expressions such as "An Act to consolidate"** the previous law, etc. In such case, **Courts may stick to presumption that it is not intended to alter law. They may solve doubtful points in the statute with the aid of such presumption in intention, rejecting the literal construction.**

c) Usage:

- Usage is **also sometimes taken into consideration in construing an Act.**
- 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**.
- It has been emphasized that when **a legislative measure of doubtful meaning has, for several years, received an interpretation which has generally been acted upon by the public**, the Courts should be very unwilling to change that interpretation, unless they see cogent reasons for doing so.

d) Earlier & Later Acts and Analogous Acts:

- The general principle is that **where there are different statutes in 'pari materia', though made at different times, or even expired & not referring to each other they shall be taken & construed together as one system & as explanatory of each other**.
- If **two Acts are to be read together then every part of each Act has to construed as if contained in one composite Act**.
- Where a **single section of one Act** (say, Act 'A') **is incorporated into another statute** (say Act 'B'), **it must be read in the sense which it bore in the original Act from which it is taken consequently.**

e) Dictionary Definitions: In order **to determine the meaning of a word first we have to refer to the Act** in question. Where we find that a **word is not defined in the Act** itself, we may **refer to dictionaries** to find out the general sense in which that word is commonly understood. **However, for technical terms reference may be made to technical dictionaries**

f) Use of Foreign Decisions: Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary

Rules of Interpretation/Construction of Deeds & Documents

- The first and foremost point that has to be borne in mind is that **one has to find out what a reasonable man would understand by the words used in that deed or document**.
- It is **inexpedient (not necessary) to construe the terms of one deed by reference to the terms of another.**
- Golden Rule is to **ascertain the intention of the parties to the instrument after considering all the words in the document/deed concerned in their ordinary, natural sense. For this purpose, the relevant portions of the document have to be considered as a whole.**
- It may happen that there is a **conflict between two or more clauses of the same document**. An **effort must be made to resolve the conflict** by interpreting the clauses so that all the clauses are given effect to. **If, however, it is not possible to give effect to all of them, then it is the earlier clause that will over-ride the latter one.**
- **Very often, the status and training of the parties using the words have also to be taken into account as the same words may be used by an ordinary person in one sense and by a trained person or a specialist in quite another special sense.**
- **The circumstances in which the particular words had been used have also to be taken into account**.