

Corporate & Other Laws



Compact

For CA-Intermediate

**CA
Harsh
Gupta**

4 Times All India
Rank Holder



- Presenting The First Of It's Kind, To Capture The Entire Syllabus Of Law In Our Minds.
- The Laws That Were Drafted And Amended Over Ages, Have Been Summarised In 50 Pages.
- Just An Hour It Will Need, To Revise The Entire Syllabus Effectively Indeed.

2025
JAN, MAY & SEP EXAMS



Let's Master The Art
Of Interpretation



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70
marks

30
marks

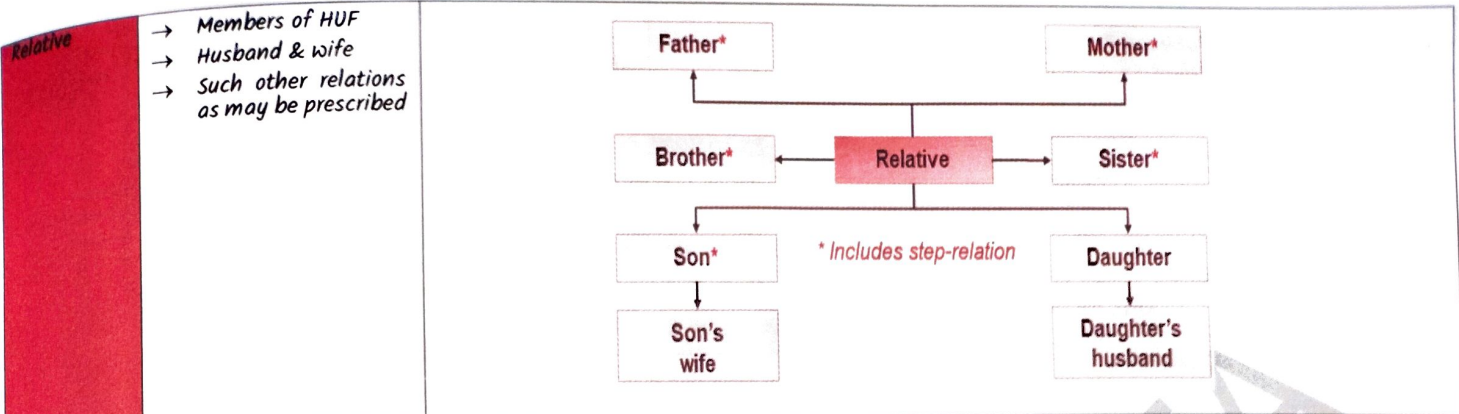


CORPORATE LAWS

70 MARKS

Section 1	<ul style="list-style-type: none"> Companies Act, 2013 extends to entire India Different provisions may be notified on different dates by CG 	<ul style="list-style-type: none"> Companies Act vs. special acts governing the companies like banking, insurance, electricity etc. - special acts will prevail CG can apply this Act to any Body Corporate by a notification 		
Meaning of Company	Company means a company incorporated under \Rightarrow			
Features of company	Incorporated association	Artificial person	Separate Legal entity	Perpetual succession
	Limited liability of members	Common seal (voluntary)	Separate Management	Separate property
	Transferability of shares	<ul style="list-style-type: none"> Private Co. - restriction Public Co. - freely 	Capacity to sue or be sued	Limitation of action-MOA
Principle of Separate Legal Entity	Salomon vs. Salomon Co. Ltd.	<ul style="list-style-type: none"> Salomon formed a company & transferred his shoes business to Salomon Co. Ltd. for £ 38,782 Co. gave him cash = £ 8,782; equity shares = £ 20,000; and secured debentures = £ 10,000 Subsequently there were unsecured trade creditors of £ 8,000 and was left with assets worth only £ 6,050 Court held that Salomon & Company being separate persons, Salomon will be entitled to those £ 6,050 being a secured debenture-holder 		
	Mrs. Bacha F. Guzdar	<ul style="list-style-type: none"> Company was carrying agricultural business and was exempt from tax A shareholder contended that dividend received by her was also exempt from tax The court held that the dividend received by the shareholder is not an agricultural income as company is a separate legal entity 		
Doctrine of Lifting of Corporate Veil	Meaning		Lifting of corporate veil under	
	<ul style="list-style-type: none"> Separate legal entity of company segregates insiders from the outsiders If someone misuses this, then corporate veil can be disregarded 	<div style="display: flex; justify-content: space-around; border: 1px solid black; padding: 5px;"> <div style="text-align: center;"> <p>Statutory Provisions</p> <p>↓</p> <p>Eg. Section 3A, 7(7)</p> </div> <div style="text-align: center;"> <p>Judicial precedents</p> <p>↓</p> <p>Refer cases below</p> </div> </div>		
	Protection of Revenue	Sir Dinshaw Manakjee Petit	<ul style="list-style-type: none"> Assessee made 4 private companies to split his income and save tax Income was passed to him as a pretended loan Held - Companies were formed to avoid tax and corporate veil was lifted 	
Prevention of fraud or improper conduct	Gilford Motor Ltd. vs. Horne	<ul style="list-style-type: none"> Employee entered into a contract for not soliciting away any clients of employer After leaving employment, Employee formed a company to solicit away clients Held that corporate veil will be lifted 		
Important Definitions				
Associate Company	<ul style="list-style-type: none"> Company in which other company has significant influence [control of $\geq 20\%$ Total Voting Power (TVP) or business decisions under an agreement] Excludes a subsidiary company, but includes a Joint Venture company 			
Body Corporate or Corporation	<ul style="list-style-type: none"> Includes a company incorporated outside India does NOT include <ul style="list-style-type: none"> Co-operative society body corporate (other than company) as CG may prescribe 			
Company	It means a company incorporated under this Act or under any previous company law			
Company limited by guarantee	Liability of member is limited to such amount as members may undertake to contribute to the assets of the company in the event of winding up			
Company limited by shares	Liability of member is limited to the amount unpaid, if any, on the shares held by them			
Financial Year	<ul style="list-style-type: none"> Period ending on 31st March But for a company incorporated on or after January 1 of a year, the period ending of 31st March of the following year 	Exception <ul style="list-style-type: none"> Co. which is Holding/ Subsidiary/ Associate of Co. incorporated outside India; and is required to follow a different financial year for consolidation outside India, such company may follow any period as its FY with approval of CG (power delegated to RD) 		
Free Reserves	Such reserves which are available for distribution of dividend	Note - Revaluation reserve is not a free reserve		

Government company	<p>≥ 51% of the paid-up capital (PSC)* is held by</p> <ul style="list-style-type: none"> CG State Govt(s) Partly by CG and partly by State Govt(s) Includes SUBSIDIARY of such company <p>*Note - In case Government company has issued DVR, then 51% of Total Voting Power must be seen</p>		<p>→ Employees of Govt companies are NOT Govt employees</p> <p>→ Within 3 months of AGM, CG must place an annual report of every Govt Company before both houses of Parliament</p> <p>→ Where State Govt is member, annual report is likewise placed before State Legislature</p>	
Holding company	In relation to other companies, means a company of which such companies are subsidiary			
KMP	CEO, MD or Manager	Company secretary		WTD
	CFO	Such officer, not more than one level below WTDs, designated as KMP by board		Other prescribed officers
Listed company	Any company which has any of its SECURITIES listed on a recognised stock exchange, EXCEPT the following			
	Public companies	Not listed their Equity shares	But listed their -	
			<ol style="list-style-type: none"> Non-convertible debt securities issued on Private Placement basis Non-convertible redeemable preference shares issued on Private Placement basis Both 1 and 2 	
	Private companies	Listed their non-convertible debt securities issued on Private Placement basis		
Public companies	Not listed equity shares on a recognized stock exchange but listed in a jurisdiction specified u/s 23(3)			
Net Worth	Paid-up share capital	+	<ul style="list-style-type: none"> Reserves created out of profits Securities Premium Profit & loss account 	(-)
				<ul style="list-style-type: none"> Accumulated losses Deferred expenditure Miscellaneous expenses not written off
	Note - Does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation			
Officer in Default	<ul style="list-style-type: none"> WTD KMP If no KMP, such director(s) as specified by Board in this behalf + has given his consent and if no such directors are specified, then ALL the directors 	<ul style="list-style-type: none"> Any person under immediate authority of Board or KMP, is charged with any responsibility Any person as per whose direction Board is accustomed to act (other than advise given in professional capacity) Every director aware of the contravention In respect of issue or transfer of shares - the share transfer agents, registrars and merchant bankers to the issue or transfer 		
OPC	Company which has only one person as its member			
Private company	Means a company having minimum paid-up capital as may be prescribed & which by its AOA	R	Restricts the right to transfer its shares	
		L	(Other than OPC), limits the number of its members to 200	
		P	Prohibits any invitation to the public to subscribe to any of its securities	
			→ Joint members are counted as ONE	
			→ Limit of 200 excludes -	
			<ul style="list-style-type: none"> Present employees; and Former employees, who were members while in that employment and continued to remain members after the employment ceased 	
Public company	<p>It means a company</p> <ul style="list-style-type: none"> which is not a private company; and has minimum paid-up capital as may be prescribed 	<p>Note - If a Private company is a subsidiary of a Public company, it is also deemed to be a Public company</p>		
Public Financial Institution	<ul style="list-style-type: none"> LIC IDFC UTI 	<ul style="list-style-type: none"> Institutions notified by CG under Companies Act, 1956 Such institutions as may be notified by CG 	<p>CG shall not notify an institution unless -</p> <ul style="list-style-type: none"> it is a statutory corporation; or is a Govt. company 	



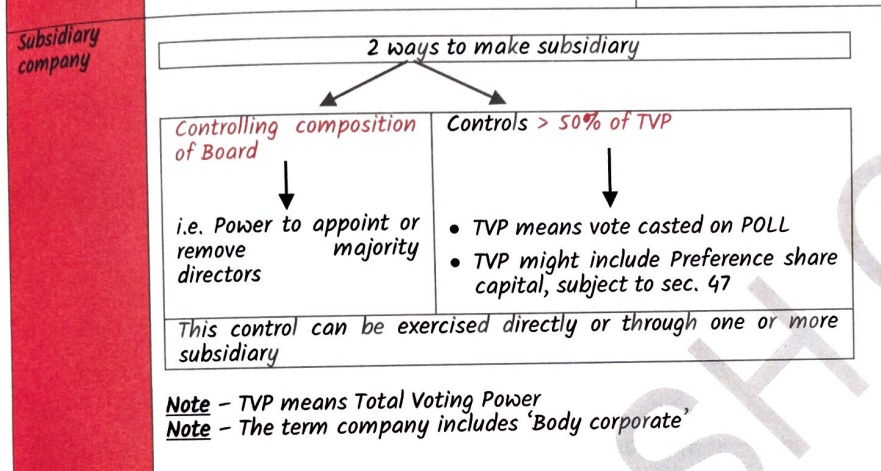
Small company

Private company whose

- PSC ≤ INR 4 crore; AND
- Turnover of preceding year ≤ INR 40 crore

Following companies can never be small

- Subsidiary or Holding
- Section 8
- Special Act



Layers of Subsidiary

- Prescribed companies cannot have more than 2 layers of subsidiaries
- However, if one layer is of WOS, such layer is not counted as layer

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

Total Voting Power

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

Unlimited company

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

Membership

Modes of becoming Member

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

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

Minimum number of members

- Public - 7
- Private - 2
- OPC (always 1)

Company can be classified as -

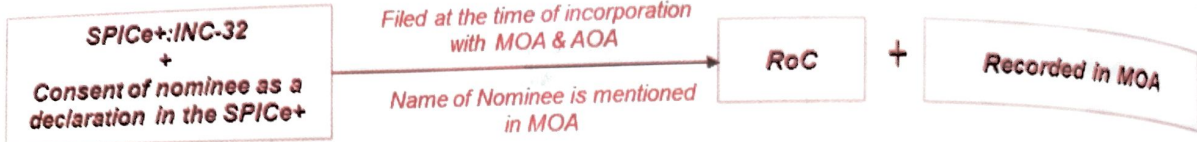
- Co. limited by shares
- Co. limited by guarantee
- Unlimited Co.

PROVISIONS RELATING TO OPC

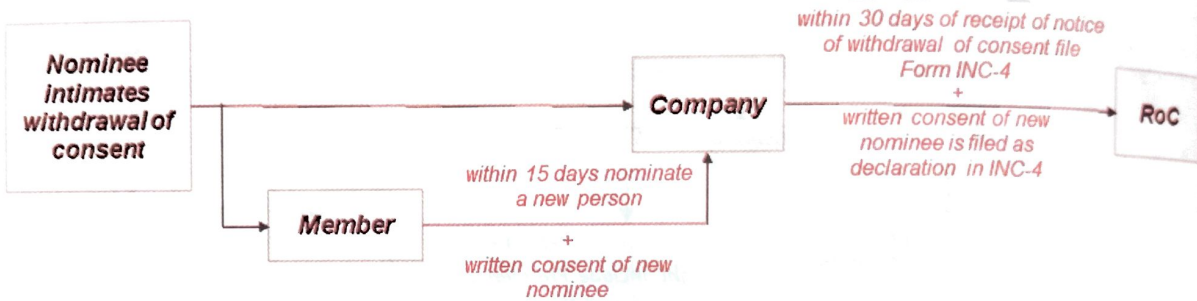
MOA must contain name of nominee

Nominee shall become member in case of subscriber's death or incapacity to contract

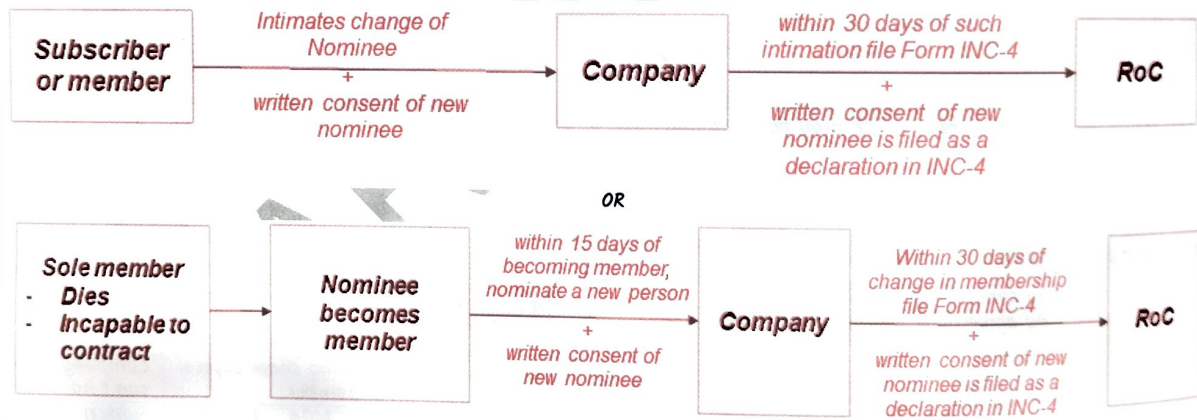
Filing for nominee



Withdrawal of consent



Change of nominee



Provisions relevant to OPC

- Only a natural person who is Indian citizen, whether resident or not, can be member or nominee in OPC
- Resident - person stayed in India for ≥ 120 days in preceding financial year
- A person can be a member of maximum 1 OPC
- A person can be a nominee of maximum 1 OPC
- But if a person is member in 1 OPC and nominee in another OPC and later on he becomes member in that other OPC, he shall correct this situation within 180 days

Three restrictions on OPC

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

Conversion of OPC

- OPC may be converted into Private or Public company by
- Passing resolution as per section 122
 - Increasing the members & directors
 - Complying with section 18
 - Filing Form INC-6

Voluntary conversion of Private company into OPC

Private company, other than section 8 company, may convert into OPC

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

Section 3A
(Members
severally liable)

If members are reduced below -
7 - in case of Public Co.
2 - in case of Private Co.

after 6 months →

Members who are cognisant of the fact will be severally liable for whole debts of the company contracted during that time

Section 4
(MOA)

Clauses of MoA

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

DOCTRINE OF ULTRA VIRES

- Ultra Vires acts means acts beyond the powers
- These contracts are void-ab-initio
- Directors will become personally liable for them

Ashbury Railway Carriage & Iron Company Limited vs. Richie

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

Provisions relating to Name clause

- Not be identical
- Not offensive under any law
- Undesirable in opinion of CG
- Use of some specified words requires CG approval

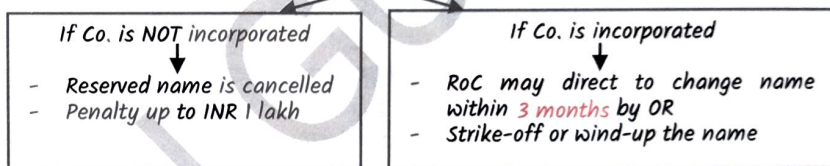
(Refer Rule 8, 8A & 8B)

- Reservation of the name of new company is done using SPICE+
- Name for a new company is reserved for 20 days from date of APPROVAL
- Name can be reserved for longer period by paying fees as follows

Upto 40 days from date of approval	₹ 1,000 paid before expiry of 20 days
Upto 60 days from date of approval	₹ 2,000 paid before expiry of 40 days
Upto 90 days from date of approval	₹ 3,000 paid before expiry of 20 days

- Reservation of the name in case of change of name by an existing company is done using RUN portal
- In the case of Change of name, the name is reserved for 60 days
- 15 days re-submission period

Name reserved by furnishing incorrect information



Section 5
(AOA)

- Contains internal rules & regulations for management

Model AOA

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

Provision for ENTRENCHMENT

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

Doctrine of Constructive Notice →

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

Griffith vs. Paget

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

Doctrine of Indoor Management →

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

Royal British Bank vs. Turquand

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

Exceptions to the Doctrine of Indoor Management

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

Section 6
(Act to override MOA & AOA)

The provisions of the Act will override -
→ MOA → AOA → Agreements → Any resolution

Section 7
(Incorporation)

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

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

- RoC verifies the documents and issues Certificate of Incorporation in Form INC-11
- RoC also allots CIN number
- **Incorporation documents** are to be preserved permanently
- Persons concerned will be liable u/s 447 if any false information is furnished
- Further if Co. incorporated by furnishing false information, **NCLT** may pass an order -
 - for regulation of Co or changes in MOA or AOA
 - that liability of member is unlimited
 - removal of name of company
 - winding up
 - other orders as it may deem fit

Section 8

- This Co. has in its objects the promotion of commerce, art, science etc.
 - Prohibits payment of dividend
 - Applies its profits in promotion of its objects
- CG may REVOKE LICENSE** if -
- contravenes section 8 or license
 - affairs conducted fraudulently
 - affairs violative of objects
 - affairs prejudicial to interest

- Incorporated without the words 'Limited' or 'Private Limited'
 - Incorporated after taking a license from CG
 - A firm may be its member
 - Even an existing company can be converted into section 8 by taking license from CG
- Where the license is revoked, CG may further
- by order provide for **AMALGAMATION** with another section 8 company with similar objects
 - apply for **WINDING UP** (any surplus asset is transferred to another Section 8 Co. or may be sold and proceeds credited to Insolvency & Bankruptcy Fund)

- Its MOA or AOA shall not be altered without CG's approval
- Section 8 company can be converted into any other company by passing SR along with the approval of RD

Section 9
(Effects of Registration)

- From date of incorporation
- subscribers become members
 - company is body corporate
- perpetual succession
 - power to acquire property
 - power to contract
 - power to sue or be sued by its name

Section 10
(Effect of MOA and AOA)

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

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

Section 10A
(Commencement of Business, etc.)

Company incorporated after Nov 2, 2018 & having share capital shall not commence business or exercise borrowing power, unless

- declaration filed by director within **180 days** of incorporation that every subscriber has paid the value of the shares, and
- company has filed verification of registered office u/s 12(2)

Note - In case of non-compliance, RoC may initiate the action for removal of the name

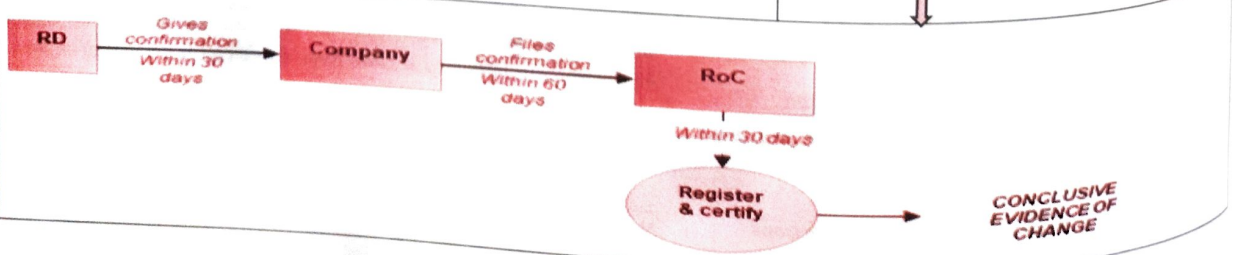
Section 11

Section 12
(Registered office of the company)

- Omitted ---
- Every company must have a registered office within **30 days** of its incorporation
 - Company shall also furnish verification of its registered office to RoC
 - Company needs to label its name at the specified places
 - In case of change of name during last **2 years**, former name(s) shall be affixed with the new one
 - In case of **OPC**, the words "One Person Company" shall be mentioned in brackets below the name
- Note** - if RoC has reasons to believe that company is not carrying on any business, he may cause physical verification conducted and remove the name of the company

Change of Registered Office

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



**Section 13
(Alteration of MOA)**

- Except capital clause (altered u/s 61 by OR), A company needs to pass SR to alter the other clauses of its MOA
- A copy of SR shall also be file with RoC
- Additional points to remember

Name clause	<ul style="list-style-type: none"> - Approval of CG also required - No approval if the only change is addition or deletion of the word 'Private' - Copy of CG approval shall also be filed with the RoC
Situation clause	<ul style="list-style-type: none"> - Approval of CG is also required, CG shall dispose the application within 60 days - Before giving approval, CG will make sure that consent of creditors and other persons concerned is obtained or they are discharged or are provided with the security - Copy of CG approval shall be filed with the RoC of both the states
Objects clause	<p>If company has raised money from public through prospectus & it is still unutilized</p> <ul style="list-style-type: none"> - Copy of SR needs to be published in 2 newspapers, and - Exit opportunity shall be given to the dissenting shareholders in accordance with SEBI's regulations - RoC to register alteration of objects within 30 days from date of filing of SR

**Section 14
(Alteration of AOA)**

Subject to the provision of entrenchment, SR is required for alteration of AOA

In case of conversion of Public company into Private, approval shall also be required from CG

Section 15

Every alteration made in the MOA or AOA shall be noted in every copy

**Section 16
(Rectification of Name)**

By CG suo-moto	<ul style="list-style-type: none"> - If the name of a company is identical or too nearly resembles name of another company; - CG may direct to change the name; and - Company shall change the name within 3 months by passing OR
On application of registered proprietor of a trademark	<ul style="list-style-type: none"> - Proprietor of the trademark shall give an application to the CG within 3 years; - If CG finds the name of the company identical or resembling with the name of the trademark; - CG may direct the company to change the name; and - Company shall change the name within 3 months by passing OR
Note - Company shall give notice to RoC within 15 days of the change of the name.	
Allotment of new name by CG	<ul style="list-style-type: none"> - If company fails to change its name within 3 months - The new name of company shall automatically be = ORDNC + Year of passing of direction + serial number + CIN number - However, this will not apply to a case where application is pending with RD for disposal at the expiry of 3 months) <p>Note - Company can subsequently change its name u/s 13.</p>

Section 17

If requested by member, Company shall within 7 days furnish a copy of the MOA, AOA or any resolution or agreement mention u/s 117(1)

**Section 18
(Conversion of Company)**

A company may convert itself into any other class of company by altering its MOA or AOA

After making sure all the formalities are complied with, RoC shall close the former registration and issue a fresh certificate of incorporation

**Section 19
(Subsidiary not to hold shares in holding)**

No company shall hold shares in its Holding company and any such allotment of shares shall be void

3 exceptions -

Holding shares as legal representative of deceased member	Voting power ✓
Holding shares as trustee	Voting power ✓
Shares were acquired before becoming subsidiary	Voting power ✗

**Section 20
(Service of document)**

Document may be served on company at its registered office by sending via.

- Registered post
- Speed post
- Courier service
- Leaving at office
- E-means

A document may be served on RoC or any member via.

- Post
- Registered post
- Speed post
- Courier
- Delivering it at his office or address
- E-means

In case of delivery by post, such service is deemed to be effected

- in case of notice of meeting, within 48 hours of dispatch;
- in any other case, in ordinary course of post

**Section 21
(Authentication of documents)**

Documents requiring authentication by company or contracts made by company may be signed by

- KMP; or
- Officer or employee duly authorised by the Board

**Section 22
(Execution of Bills etc.)**

Any bill of exchange, promissory note etc. can be made, accepted or endorsed on behalf of company by any person acting under its authority

A company may authorise any person, as its attorney to execute other deeds, by

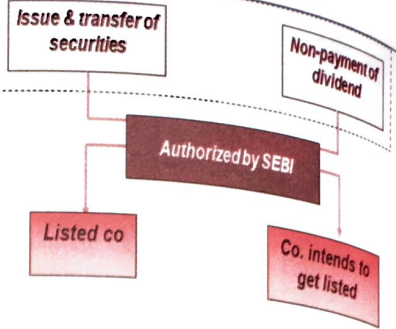
- Common seal; or
- By 2 directors or Director + CS

Section 23 (Public offer & Private Placement)

- Public company
- Public issue (IPO, FPO, OFS)
 - Private Placement
 - Rights Issue
 - Bonus Issue

- Private Company
- Private Placement
 - Rights Issue
 - Bonus Issue

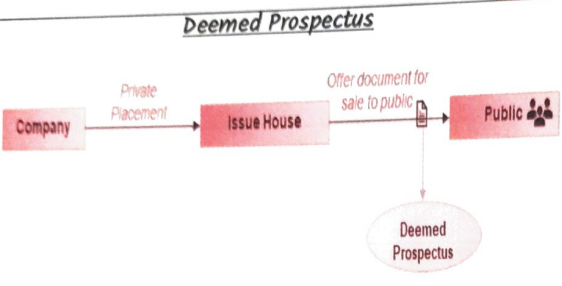
Section 24 (Power of SEBI)



Prescribed public companies may list securities in permissible foreign jurisdictions (IFSC) on permissible stock exchanges -

- Indian International Exchange, NSE &
- International exchange

Section 25 (Deemed Prospectus)



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

Presumptions as to deemed OFS

- Unless contrary is proved, allotment of securities is deemed OFS if
- OFS is made within 6 months of allotment
 - When OFS was made, whole consideration was not received

Contents of Deemed Prospectus

- In addition to matters specified in section 26, shall also disclose -
- Net amount of consideration received,
 - Time & place at which the contract wherein the securities are allotted may be inspected

Signing of Deemed Prospectus

- Where person making OFS is
- Company - signed by 2 directors
 - Firm - minimum one-half of the partners

Section 26 (Matters to be stated in prospectus)

Every prospectus shall be dated & signed and shall contain

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

Exceptions

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

Other key points

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

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

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

Section 27 (Variation in prospectus)

- For variation of objects for which prospectus was issued -
- SR needs to be passed
 - Notice of such SR needs to be published in 2 newspapers

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

Section 28 (OFS)

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

Provisions of prospectus not applicable to OFS

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

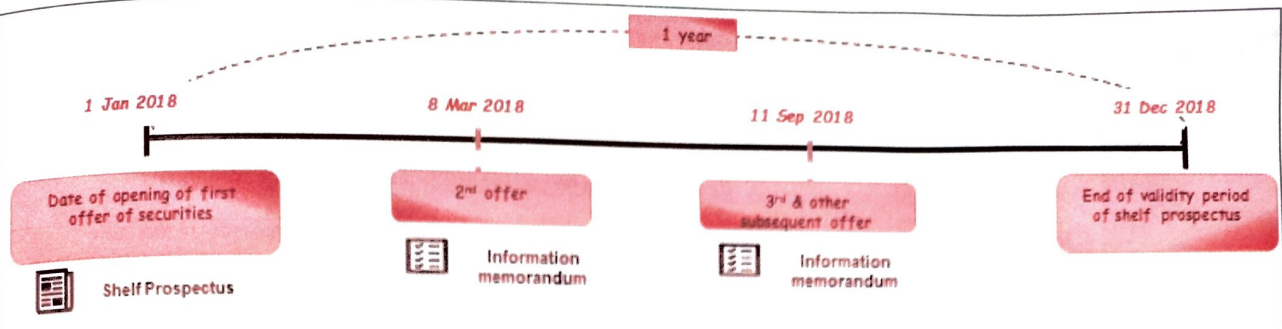
Section 29 (Dematerialization)

- Public offer of securities SHALL only be in dematerialized form
- As per Rule 9A - every unlisted public company shall also opt for demat (except Nidhi, Govt & WOS)
- As per Rule 9B - every private company shall also opt for demat (except small & Govt)

Section 30 (Advertisement of prospectus)

- In any advertisement of prospectus, it is necessary to specify -
- objects
 - name of signatories to MOA
 - liability of members
 - shares subscribed by them
 - share capital
 - capital structure

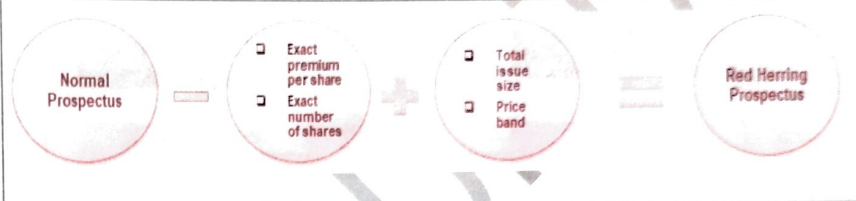
**Section 31
(Shelf Prospectus)**



- Shelf prospectus is valid for 1 year from the date of opening of first offer of securities
- Information memorandum contains material facts relating to new charges created & changes in financial position since the first/ previous offer of securities
- Shelf Prospectus + Information memorandum = Prospectus

**Section 32
(Red-Herring Prospectus)**

- Use in case of **book-built issue** (do not include complete particulars of quantum or price)
- RHP is filed with RoC 3 days prior to opening of issue
- Upon issue closing, final prospectus is filed with RoC & SEBI



**Section 33
(Abridged prospectus)**

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

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

**Section 34
(Criminal liability for misstatement)**

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

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

**Section 35
(Civil Liability for Misstatement)**

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

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

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

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

Section 36

Person liable u/s 447 if he fraudulently induces another to

- enter into underwriting agreement
- enter into agreement to secure profit to any of the parties
- enter into agreement for obtaining credit facilities

Section 37 A suit may be filed or action may be taken u/s 34, 35 or 36 by any person or group of persons affected by misstatement

**Section 38
(Punishment for personation)**

A person shall be liable u/s 447, if

- makes an application in **fictitious name**
- makes multiple applications in different names
- induces a company to allot shares in fictitious name

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

**Section 39
(Allotment of securities)**

Minimum subscription

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

Minimum application value

- 5% of nominal value

SEBI has specified the following limits -

- 25% of issue price
- 100% for OFS

If minimum subscription not received?

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

Return of Allotment

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

Section 40 (Listing)

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

Moneys received on application shall be kept in a separate account & shall not be utilised for purpose other than -
 → Adjustment against allotment
 → Repayment of monies if unable to allot

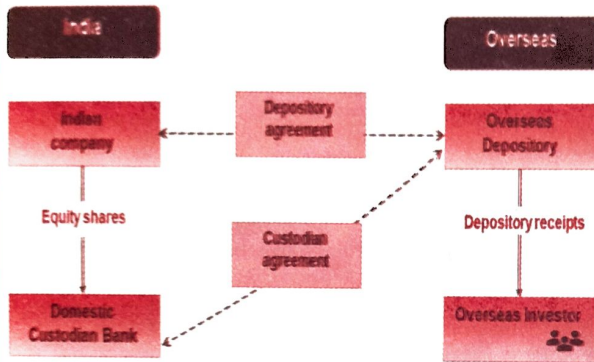
Underwriting commission - Conditions

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

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

Section 41 (GDR)

SR is required to issue GDRs



Conditions

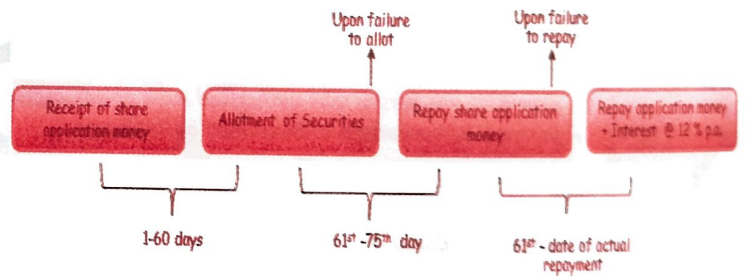
- Board Resolution + SR
- GDR issued by Overseas Depository Bank and underlying shares are kept in the custody of domestic custodian
- Company to comply with GDR scheme + other regulations of RBI
- Obtain compliance report from a professional

Section 42 (Private Placement)

Points to Ponder

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

Time for allotment of securities



Money received shall be kept in separate bank account & not utilised for purpose other than
 - adjustment against allotment, or
 - refund where company is unable to allot

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

- As per Rule 14, SR also needs to be passed for private placement.
- However, in case of NCD, BR shall be sufficient if within the limit of section 180(1)(c)
- Further, if NCD > limit of 180(1)(c), SR once in a year is sufficient
- Also, SR once in a year is sufficient for all the allotment to QIBs during the year
- If offer is made to a body corporate incorporated in or a national of, a county which shares a land border with India, unless such body corporate or national has obtained Government approval

<p>Section 43 (Kinds of share capital)</p>	<p>2 kinds of share capital viz.</p> <ol style="list-style-type: none"> Equity share capital <ul style="list-style-type: none"> With voting rights With DVR Preference share capital <p>Note - Preference capital has preference over equity regarding payment of dividend and repayment of capital</p> <p>Note - Equity shares with DVR cannot be converted into equity shares without DVR and vice-versa.</p> <p>Note - This section is exempt for a Private company if the AOA or MOA so provides</p>	<p style="text-align: center;">Conditions for issuing shares with DVR</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 25%;">Power in AOA</td> <td style="width: 25%;">(if listed - postal ballot) OR</td> <td style="width: 50%;">Voting rights on DVR ≤ 74% of Total Voting Power</td> </tr> <tr> <td colspan="3">During the last 3 years</td> </tr> <tr> <td colspan="3"> <ul style="list-style-type: none"> Not defaulted in filing of financial statements & annual return Not been penalised under RBI, SEBI, SCRA, FEMA or other special act </td> </tr> <tr> <td colspan="2">No subsisting default in 3DP</td> <td>No default in past 5 years in payment of</td> </tr> <tr> <td>D - Dividend</td> <td></td> <td>- Preference dividend</td> </tr> <tr> <td>D - Deposits</td> <td></td> <td>- Term loan from banks or FI</td> </tr> <tr> <td>D - Debentures</td> <td></td> <td>- Statutory payments of employees</td> </tr> <tr> <td>P - Preference shares</td> <td></td> <td>- IEPF</td> </tr> </table>				Power in AOA	(if listed - postal ballot) OR	Voting rights on DVR ≤ 74% of Total Voting Power	During the last 3 years			<ul style="list-style-type: none"> Not defaulted in filing of financial statements & annual return Not been penalised under RBI, SEBI, SCRA, FEMA or other special act 			No subsisting default in 3DP		No default in past 5 years in payment of	D - Dividend		- Preference dividend	D - Deposits		- Term loan from banks or FI	D - Debentures		- Statutory payments of employees	P - Preference shares		- IEPF
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<p>Section 44 (Nature of Shares and debentures)</p>	<ul style="list-style-type: none"> Movable property Transferable in manner provided by AOA 	<p>Section 45 (Numbering of shares)</p>	<ul style="list-style-type: none"> Every share shall have a distinct number Not applicable to shares held in demat form 																										
<p>Section 46 (Share certificate)</p>	<p>Issued</p> <ul style="list-style-type: none"> under common seal of the company, or signed by 2 directors, or by a director + CS wherever appointed In OPC, signed by director + CS/ any other authorised person <p>Prima facie evidence of the title</p>	<p>Duplicate may be issued at ₹ 50 per certificate if original is</p> <ul style="list-style-type: none"> lost or destroyed defaced, mutilated or torn + surrendered <p>Duplicate certificate to be issued within</p> <ul style="list-style-type: none"> 3 months - unlisted company 45 days - listed company 	<ul style="list-style-type: none"> Blank forms are preserved for 30 years Old surrendered share certificates are preserved for 3 years In disputed cases, preserved permanently 																										
<p>Section 47 (Voting rights)</p> <p>↓</p> <p>This section is exempt for a Private company if the AOA or MOA so provides</p>	<p style="text-align: center;">EQUITY SHARES</p> <ul style="list-style-type: none"> Every member has a right to vote on EVERY resolution In case of poll - voting in proportion to the paid-up equity capital 		<p style="text-align: center;">PREFERENCE SHARES</p> <ul style="list-style-type: none"> Voting rights on following resolutions only - <ul style="list-style-type: none"> Resolution directly affecting their rights Resolution for winding up Repayment or reduction of share capital ALL the resolutions if dividend not paid for 2 or more years In case of poll $\frac{\text{Voting rights of equity shareholders}}{\text{Voting rights of preference shareholders}} = \frac{\text{Paid-up equity share capital}}{\text{Paid-up preference share capital}}$																										
<p>Section 48 (Variation of rights)</p>	<p>Rights of a class may be varied by</p> <ul style="list-style-type: none"> Written consent of ≥ 3/4th value of shares of that class, or SR of that class <p>If variation of one class affects another class; similar approval required from other class as well</p>	<p>The provision of variation should be</p> <ul style="list-style-type: none"> Contained in MOA or AOA; or In absence, should not be prohibited by terms of issue of shares of that class 	<p style="text-align: center;">Appeal</p> <ul style="list-style-type: none"> Right of appeal to NCLT - Holders holding ≥ 10% issued shares of that class & not consented to variation earlier Appeal shall be made within 21 days Decision of NCLT is binding on shareholders NCLT's order will be filed with Registrar 																										
<p>Section 49 (Calls on uniform basis)</p>	<p>Calls to be made on uniform basis on all the shares of same class</p>	<p style="text-align: center;">Requisites of a valid call (Table F)</p> <ul style="list-style-type: none"> Board resolution Gap of 1 month between 2 calls Board can revoke or postpone calls made Interest on calls in arrear : 10% p.a. Interest on calls in advance : 12% p.a. ≤ 25% of nominal value of share 14 days' notice 																											
<p>Section 50 (Calls in advance)</p>	<ul style="list-style-type: none"> Company can accept Calls in advance, if authorised by AOA However, NO voting rights against calls in advance 																												
<p>Section 51</p>	<ul style="list-style-type: none"> If authorised by AOA, company may pay dividend in proportion to paid-up capital 																												
<p>Section 52 (Use of Securities Premium)</p>	<p>Bonus issue</p>	<p>Writing off preliminary expenses</p>	<p>Writing off commission or discount on issue of shares/ debentures</p>	<p>Premium on redemption of preference shares or debenture</p>	<p>Buy-back</p>																								

Exceptions

- Section 53 (Issue of shares at discount)
 - A share cannot be issued at discount
 - Else will be liable to penalty and will have to refund the amount with 12% p.a. interest
- Section 54 (Sweat Equity Shares)
 - Sweat equity shares means equity shares issued to Directors or employees
 - at discount or
 - for consideration, other than cash
 - for providing know-how or making available rights in the nature of IPR

- Section 54 (sweat equity shares)
- Shares can be issued at discount when a debt is converted into shares pursuant to statutory resolution plan or debt restructuring scheme of RBI

Conditions prescribed in Rules for unlisted company (Rule 8)

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

- Conditions**
- S - SR
 - E - Explain in resolution
 - S - SEBI : if listed
 - Rules : if unlisted

- Section 55 (Redemption of preference shares)
 - Irredeemable preference shares can't be issued, or
 - Max tenure = 20 years
 - Exception -**
 - For infrastructure companies, tenure can be upto 30 years with a condition that at least 10% shall be redeemed every year from 21st year onwards

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

What if company is not able to redeem or pay dividend?
 Company may issue further redeemable preference shares with consent of -
 - 3/4th value of preference shares &
 - NCLT

- Section 56 (Transfer & transmission)

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

Time limit for delivery of share certificate

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

Transfer vs. Transmission

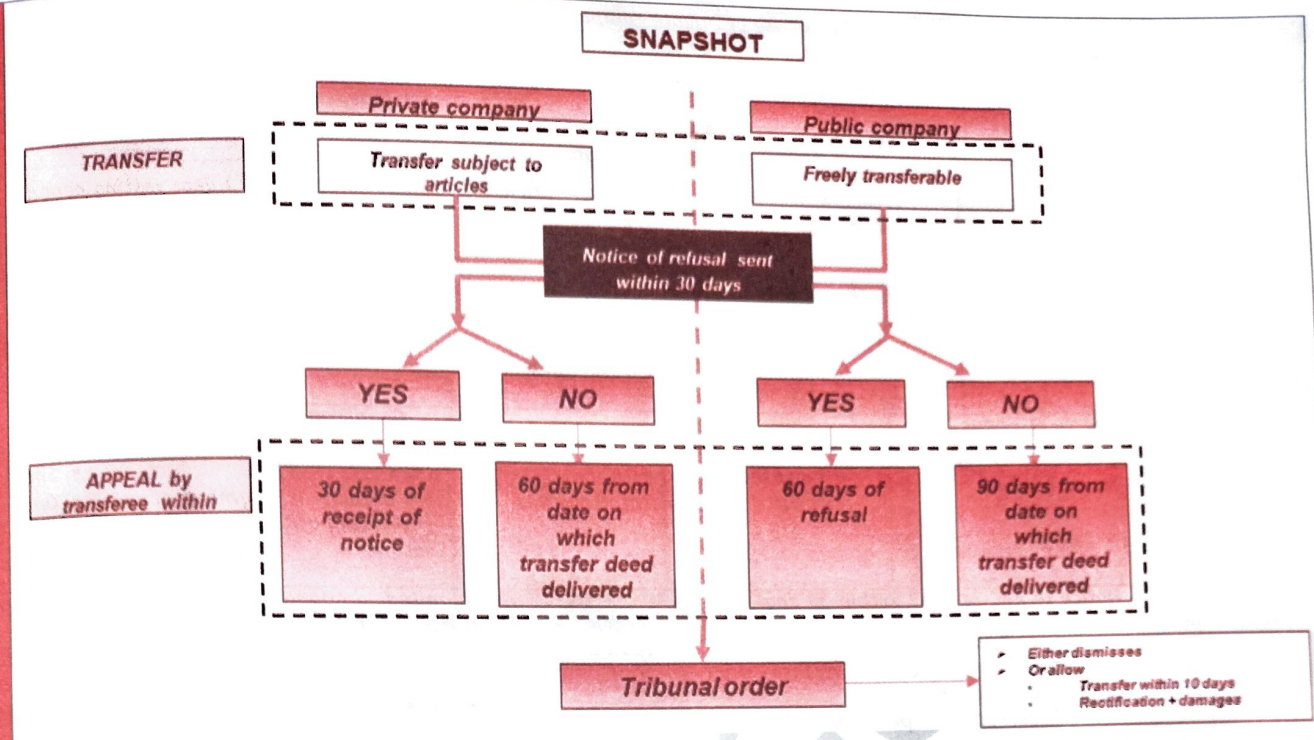
Basis	Transfer	Transmission
Voluntary act	Voluntary act of the parties by way of a contract.	Result of the operation of law e.g. due to death.
Transfer deed	Required	Not required
Nature of act	Transfer is a normal course of transferring property.	It takes place on death or insolvency of a holder of securities.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

- Section 57 (Punishment for personation)

Who is liable?

Person who deceitfully personates as an owner	Imprisonment 1 year - 3 years, AND	Minimum INR 1 lakh	Maximum INR 5 lakh
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Section 58
(Refusal of registration and appeal)



Section 59 (Rectification of Register of members)

Rectification can be done in case name of any person, without sufficient cause -

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

Appeal by whom

- Person aggrieved;
- Member; or
- company

Appeal to whom - NCLT

Order by NCLT

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

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

Section 61 (Alteration of Share capital)		Share vs. Stock															
<p>Methods of alteration</p> <ol style="list-style-type: none"> Increasing authorised share capital Consolidating shares into larger amount Converting shares into stock & vice-versa Sub-dividing shares into smaller amount Cancelling the unsubscribed capital i.e. Diminution of share capital 		<table border="1"> <thead> <tr> <th>SHARE</th> <th>STOCK</th> </tr> </thead> <tbody> <tr> <td>Shares in physical form bear distinct numbers</td> <td>Stocks are the consolidated value of share capital</td> </tr> <tr> <td>May or may not be fully paid-up</td> <td>Always fully paid-up</td> </tr> <tr> <td>Have a nominal value</td> <td>Does not have any nominal value</td> </tr> <tr> <td>All shares are of equal denomination</td> <td>Denomination of stocks varies</td> </tr> <tr> <td>It is not possible to transfer shares into fraction</td> <td>Possible</td> </tr> <tr> <td>Shares comes into existence before the stock and it is issued initially</td> <td>Stock comes into existence after conversion of shares into stock and on conversion of shares into stock</td> </tr> </tbody> </table>		SHARE	STOCK	Shares in physical form bear distinct numbers	Stocks are the consolidated value of share capital	May or may not be fully paid-up	Always fully paid-up	Have a nominal value	Does not have any nominal value	All shares are of equal denomination	Denomination of stocks varies	It is not possible to transfer shares into fraction	Possible	Shares comes into existence before the stock and it is issued initially	Stock comes into existence after conversion of shares into stock and on conversion of shares into stock
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<p>Conditions</p> <ul style="list-style-type: none"> Authorised by AOA; and OR 																	

Section 62 (Further issue of shares)

62(1)(a) Rights Issue

- Issue of shares proportionately to existing shareholders
- Notice must be dispatched at least 3 days before the opening of issue
- Issue to remain open for 7 to 30 days
- In Private company, lesser period may apply, if consent of 90% members is obtained
- If AOA authorise, it includes Rights of renunciation in favour of any other person
- If shareholder doesn't subscribe or renounce → Board may dispose off those shares

Exception to Right issue -

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

	62(1)(b) ESOP	SR (OR in case of Private company) Employee		Director excluding independent	Employee or director of subsidiary or holding												
		Includes	Permanent employee	Director who directly or indirectly holds > 10% of equity shares													
		Excludes	Promoter or person belonging to promoter group														
		Freedom to determine the exercise price Freedom to specify lock-in period		- Minimum 1 year vesting period - No right to dividend or vote till ESOP exercised													
	62(1)(c) Preferential allotment	Allot further shares to any person by complying with the following conditions - - SR - Valuation report from a registered valuer - Comply with section 42 and the rules															
Section 63 (Bonus issue)	Source of Bonus issue	Conditions <ul style="list-style-type: none"> Free reserves Securities premium CRR 															
		<ul style="list-style-type: none"> Authorised by AOA No default in statutory dues 	<ul style="list-style-type: none"> OR No default in payment of fixed deposits or debt securities 	<ul style="list-style-type: none"> Shares fully paid-up Once declared cannot be revoked 													
Section 64 (Notice to RoC)	Notice to RoC in SH-7 within 30 days	Section 65 (Reserve Capital)	An unlimited company registering as limited company may provide for either of the following														
	<ul style="list-style-type: none"> For alteration u/s 61(i) Order by Govt. to increase share capital u/s 62 Redemption of preference shares 		<ul style="list-style-type: none"> Increase in nominal value of its share capital and reserving it till winding up; or Uncalled capital shall not be called except in case of winding up 														
Section 66 (Capital Reduction)	Methods of Capital reduction	Conditions	<table border="1"> <thead> <tr> <th>ALTERATION OF SHARE CAPITAL</th> <th>REDUCTION OF SHARE CAPITAL</th> </tr> </thead> <tbody> <tr> <td>section 61</td> <td>section 66</td> </tr> <tr> <td>OR</td> <td>SR</td> </tr> <tr> <td>No approval of NCLT</td> <td>NCLT's approval required</td> </tr> <tr> <td>Creditors not affected</td> <td>creditors affected</td> </tr> <tr> <td>5 methods prescribed u/s 61 which includes DIMINUTION as well</td> <td>Methods prescribed u/s 66</td> </tr> </tbody> </table>			ALTERATION OF SHARE CAPITAL	REDUCTION OF SHARE CAPITAL	section 61	section 66	OR	SR	No approval of NCLT	NCLT's approval required	Creditors not affected	creditors affected	5 methods prescribed u/s 61 which includes DIMINUTION as well	Methods prescribed u/s 66
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	i Extinguish or reduce liability on amount not paid up ii With or without extinguishing liability <ul style="list-style-type: none"> Canceling lost capital, or Paying-off excess capital 	<ul style="list-style-type: none"> SR NCLT's approval <ul style="list-style-type: none"> NCLT give notice to regulatory authorities to give representations within 3 months Take care of creditor's interest Then NCLT pass the order for capital reduction NCLT's order is then filed with RoC within 30 days															
	Reduction of capital without NCLT's approval																
	Forfeiture of shares	→ Forfeiture of shares means taking back of shares if calls are not paid → Explicit power of forfeiture needs to be contained in the Articles → Conditions under Table F (model AOA) <ul style="list-style-type: none"> ☺ Authorisation in AOA ☺ Board resolution ☺ 14 days' notice to be allowed for paying the calls ☺ Power of forfeiture must be exercise bona-fide and for the benefit of the company. → Board is empowered to cancel such forfeiture and claim the amount due with interest.															
	Surrender of shares	Means surrendering of the shares voluntarily by the shareholder. AOA must authorise the same and it is possible															
	Redemption of preference shares	Refer section 55															
	Buy-back	Refer section 68															
Section 67 (Restriction on purchase of own shares)	Private company Can't purchase its own shares	Public company i Can't purchase its own shares ii Can't give loan to purchase its own shares or shares of the holding															
		Exceptions - <ul style="list-style-type: none"> By banking company in ordinary Course of business Pursuant to scheme approved by SR for the purchase of FULLY paid-up shares to be held by trustee for the benefit of employees To employees (other than directors/ KMP) ≤ 6 months' salary for purchasing FULLY paid-up shares 															

Section 68
(Buy-back)

Sources of Buy-Back	<ul style="list-style-type: none"> Free Reserves Securities Premium 	<ul style="list-style-type: none"> Proceeds of issue of any shares or other specified securities but not out of an earlier issue of SAME KIND of shares or specified securities
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→ Authorised by AOA

<p>→ $\leq 10\%$ of paid-up equity capital + free reserves (including securities premium)</p> <p>Board resolution at Meeting</p>	<p>→ $\leq 25\%$ of paid-up capital + free reserves (including securities premium) & $\leq 25\%$ of paid-up equity in any FY</p> <p>Special Resolution</p>
--	---

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

Section 69
(CRR)

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

Section 70
(Prohibition on buy-back)

- A company shall not purchase its shares
- Through any subsidiary or investment company
 - If default is made in last 3 years in repayment of Deposits; debentures; dividend; Preference shares; term loan
 - If default in section 92, 123, 127 & 129

Section 71
(Debentures)

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

Conditions to issue SECURED DEBENTURES

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

DISQUALIFICATIONS OF DEBENTURE TRUSTEE

No person eligible to be appointed as debenture trustee if -

Beneficially holds shares	Relative of any promoter, director or KMP	Indebted to CASH* or co-subsidiary
Promoter, Director, KMP or employee of CASH*	Given any guarantee	Has pecuniary relationship in last 2 years of current year of lower of - <ul style="list-style-type: none"> 2% of turnover; or INR 50 lakh
Entitled to money other than remuneration		

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

Creation of DRR and DRI

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

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

Section 72
(Nomination)

Any person holding securities may appoint a nominee to whom shares will vest on his death

Nominee will be entitled to the shares on death of holder of security irrespective of any other law or will

Acceptance of Deposit

2 Section 73 (Deposits from Members)

Conditions for accepting deposits from members

OR

- Comply with Rules
- Comply with following conditions

D	<u>Deposit Repayment Reserve</u>	Up to 30 th April amounting to 20% of deposits maturing in following year
S	<u>Security</u>	Deposits shall be secured. If unsecured or partly secured, 'unsecured deposits' shall be specifically mentioned
C	Circular shall be issued to members Copy of circular filed with RoC within 30 days Certify that no default in repayment of deposits since last 5 years	

Note - Requirement of deposit insurance no longer there

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

Exemption - Private Company

Following private companies can accept deposits without complying with conditions 'D' and 'C' -

1. Accepting deposits $\leq 100\%$ of (PSC+FR+SP)
2. Start-up for 5 years 10 year
3. Which satisfies all the conditions -
 - a. Not an associate or subsidiary
 - b. Borrowings from banks, FI or Body corporate is less than

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

Exemption - IFSC Public Company

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

X Section 74 (Repayment of Deposits accepted before this Act)

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

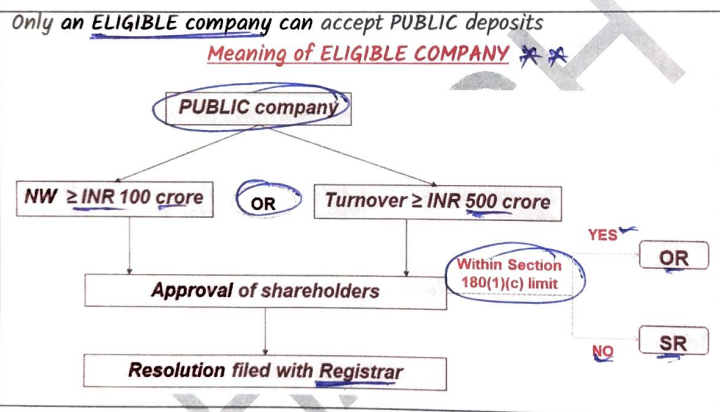
Note - NCLT may, on application, allow further time.

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

X Section 75 (Damages for Fraud)

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

3 Section 76 (Deposits from Public)
Eligible Company



Conditions for accepting PUBLIC DEPOSITS

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

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

Who is liable	Imprisonment, and	Fine		if defaulted with the intention to deceive, also liable u/s 447
		Min.	Max.	
Company	NA	<ul style="list-style-type: none"> • 1 crore; or • Twice the amount of deposit accepted whichever is lower 	10 crore	
Every officer in default	Upto 7 years	INR 25 lakh	2 crore	

Meaning of Deposits

Deposit means any receipt of money, excluding -

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

Acceptance of Deposits

Tenure & Amount of deposits							
	<p>10% of (PSC + FR + SP)</p>	<p>Non-eligible company</p> <ul style="list-style-type: none"> From Members Specified Pvt companies* → NO limit Other Pvt companies → 100% IFSC Public company Others → 35% 	<p>Eligible company</p> <ul style="list-style-type: none"> From Members → 10% From Public → 25% <p>Government company</p> <ul style="list-style-type: none"> → 35% 				
	<p>*Specified Pvt companies are -</p>	<p>Start-up for 10 years</p> <p>2. Which satisfies all the conditions -</p> <ol style="list-style-type: none"> Not an associate or subsidiary Borrowings from banks, FI or Body corporate is less than <table border="1" data-bbox="548 766 1105 840"> <tr> <td>Twice of PSC ✓</td> <td rowspan="2">}</td> <td rowspan="2">whichever is lower</td> </tr> <tr> <td>INR 50 crore ✓</td> </tr> </table> Not defaulted in repayment of such borrowings 	Twice of PSC ✓	}	whichever is lower	INR 50 crore ✓	<p>Deposits can be accepted in joint-names not exceeding 3</p>
Twice of PSC ✓	}	whichever is lower					
INR 50 crore ✓							
<p>Validity of circular</p>	<p>Circular shall remain valid for</p> <ul style="list-style-type: none"> until expiry of 6 months from closure of FY; or until the date of AGM <p>whichever is earlier</p>	<p>Creation of security</p>	<p>Market value of security created on tangible assets \geq Amount of deposits + Interest thereon</p>				
<p>Deposit Trustees</p>	<p>A company accepting secured deposits shall appoint Deposit trustee by executing a deposit trust deed at least 7 days before issuing circular</p> <p>Trustee can be removed only by <u>Unanimous resolution</u> of the directors present at the meeting (with at least 1 independent director present)</p>	<p><u>Disqualifications of Deposit Trustee</u></p> <p>Following persons can't be appointed as deposit trustee -</p> <ul style="list-style-type: none"> Director, KMP or officer/ employee of CASH (Co., Associate, Holding, Subsidiary) or Related to them Indebted to CASH Having material pecuniary relation with the company Give guarantee for debts secured by deposits <p><u>Duties of Deposit Trustee</u></p> <ul style="list-style-type: none"> Assets on which charge is there is sufficient Circular shouldn't contain any inconsistent information Company doesn't commit any breach of covenant Reasonable steps for any breach of covenant by company Call meeting of deposit-holders as and when required Supervise creation of security Take necessary steps to enforce security <p>Note - Trustee shall call meeting when requisitioned by $\geq 10\%$ of depositors by value or on happening of any event affects the interest of depositors</p>					
<p>Register of Deposits</p>	<p>→ Entries shall be made within 7 days from the date of issuance of deposit receipt</p> <p>→ Register shall be preserved for 8 years</p>						
<p>Pre-mature payment of deposits</p>	<p>→ Company may repay deposits on a pre-mature basis (only after 6 months) but the rate of interest on such deposits shall be reduced by 1% from the rate which company would have paid had the deposits been accepted for that period</p> <p>→ Where a company permits a depositor to renew his deposit before maturity, for availing of a higher rate of interest, the company shall pay interest to such depositor at the higher rate if such deposit is renewed for a period longer than the unexpired period of the deposit.</p>						
<p>Return of Deposits</p>	<p>Every company (other than Government company) shall on or before 30th June of every year, file with RoC, a return of deposits or particulars of transactions not considered as deposit or both in form DPT-3</p>						
<p>Penal rate of interest</p>	<p>There is a penal rate of interest of 18% p.a. for overdue period in case on deposits remaining unpaid.</p>						

Registration of Charges

Consequences of Non-registration of charge

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

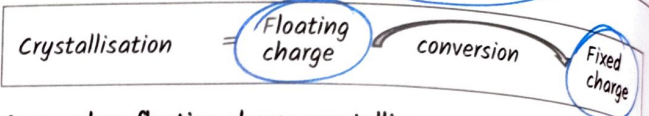
Need for Registration of Charge
 Once registered, it becomes public information and acts as guide to know as to how much company has borrowed against its assets & from whom.

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

Fixed vs. Floating Charge

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

Crystallisation of Floating charge



Cases when floating charge crystallises -

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

2 Section 77 (Duty to register Charge)

3 Section 78 (Application for registration of charge)

4 Section 79

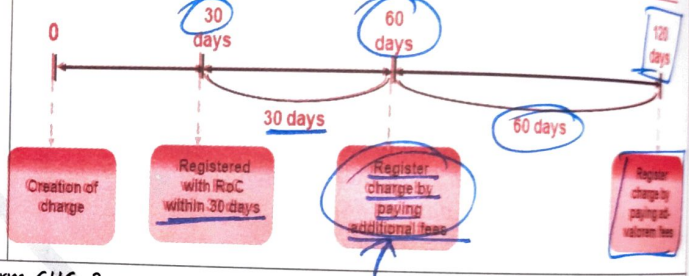
5 Section 80

6 Section 81

Company to register charges created before November 2, 2018

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

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



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

- If company fails to register charge within 30 days, charge-holder may himself apply for registration of the charge
- RoC may, within 14 days after giving notice to the company, allow such registration
- Charge-holder will be entitled to recover the fees paid for charge registration from company

The provisions of section 77 shall be applicable to

- company acquiring property subject to charge; and
- modification of any charge

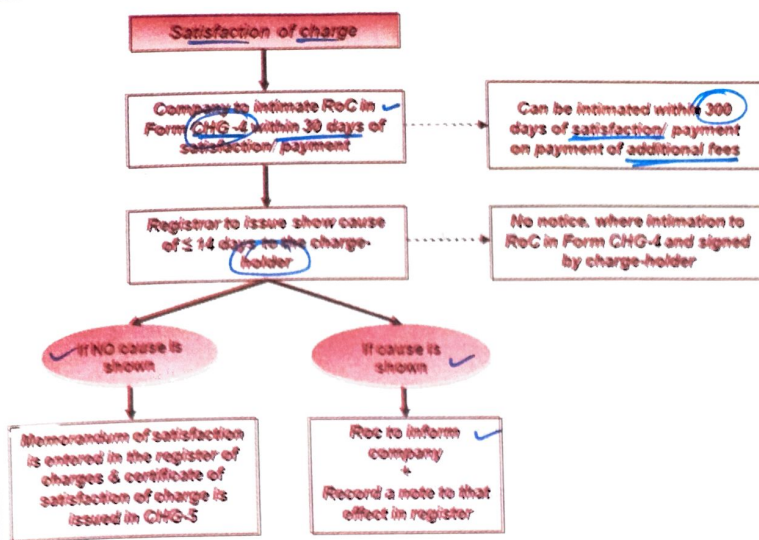
Note - change of base rate in case of fluctuating rate loans is not a modification

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

RoC shall keep a register of charges

It shall be open to inspection by any person on payment of fees ✓

Section 82
(Satisfaction of charge)



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

Section 83
(RoC to record satisfaction)

RoC may on receiving any evidence, may report the satisfaction notwithstanding that no intimation is received from the company

RoC shall inform the affected parties within 30 days

Section 84
(Appointment of Receiver or Manager)

If a person appoints a receiver or obtains any order for appointment of receiver, then he shall give notice of such appointment & the registrar within 60 days

Any person so appointed, on ceasing to hold appointment, shall give notice to the company and RoC

Section 85
(Company's Register of charges)

- Company shall also keep a Register of charges
- Entries in the register shall be authenticated by a director or secretary or any person authorised by the Board
- The register of charges is preserved permanently
- Instrument creating charge is preserved for 8 years from the date of satisfaction

The register shall be open to inspection
 - by any member or creditor without any payment of fees; or
 - by any person on payment of fees

Section 86
(Punishment)

If a company contravenes any provision of this Chapter

Any person who wilfully furnishes any false or incorrect information shall be liable u/s 447

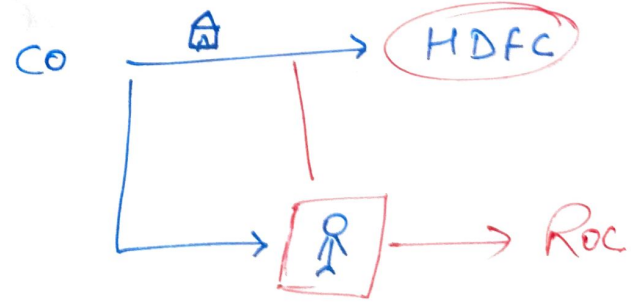
Who is liable	Penalty
Company	INR 5 lakh
Every officer in default	INR 50,000

Section 87
(Rectification by CG)

- CG on being satisfied that
1. omission to give intimation to RoC about satisfaction of charge, or
 2. omission or misstatement of any particulars with respect to any charge, modification or satisfaction

→ was accidental, due to inadvertence or some other sufficient cause
 → CG may condone such delay

- ① creation
- ② modification
- ③ App. Arset
- ④ Satisfaction



Management and Administration

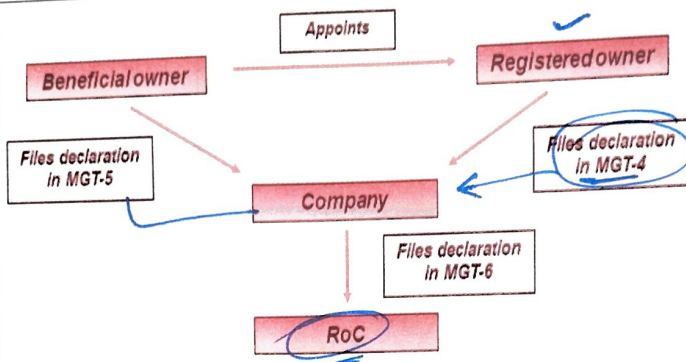
Section 88 (Register of Members)

- Every company shall maintain register of its security-holders
- Register shall also entail an **INDEX** in case number of **members ≥ 50**
- Entries in register shall be made **within 7 days**
- Entries of **pledge** by promoter to be made **within 15 days**
- Register shall be maintained **AT THE REGISTERED OFFICE**, unless SR is passed to keep register at any other place
 - within **CTV** of the registered office; or
 - any other place in India **where $> 1/10^{\text{th}}$ members reside**
- Authorised by **CS** or person authorised

Foreign Register

- If authorised by **AOA**, a company may keep part of its register **outside India** for residents of that country
- File with **RoC Form MGT-3** within **60 days**
- It is part of the **principal register**
- A **copy of foreign register** must be transmitted to India **within 15 days** after entry is made
- Authenticated by **CS** or person authorised

Section 89 (Declaration of Beneficial interest)



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

MEANING OF BENEFICIAL OWNERSHIP

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

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

Section 90 (Register of SBO)

SBO means an **INDIVIDUAL** holding **$\geq 10\%$** of beneficial interest, but whose name is not entered in the register of members

In case of persons other than individuals,

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

Not applicable to

- IEPF authority
- Holding reporting company (details already filed in **BEN-2**)
- CG, State Govt or local authority
 - Reporting company, body corporate or entity controlled by CG or State Govt
 - Investment vehicles regulated by **SEBI, RBI, IRDA or PFRDA**

Notice to identify SBO

Company shall give notice in **BEN-4** to the person whom company believes to be

- SBO
- having knowledge of SBO
- have been SBO in last 3 years

Concerned person shall give required information within **30 days**

Where he fails to give, company may apply to **NCLT** within **15 days**

NCLT may restrict the rights attached with shares

Person aggrieved may apply to NCLT to relax or lift restrictions within **1 year**

If no such application has been filed, his shares shall be transferred to **IEPF**

Section 91 (Power to close Registers)

A company may close the register of security-holders for

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

by giving previous notice of

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

Section 92 (Annual Return)

Particulars of Annual return in **MGT-7**

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

Signed by -

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

Note - Abridged form of Annual return in Form **MGT-7A** has been prescribed for **OPC** and Small company

Certification of Annual Return in **MGT-8**

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

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

The annual return shall be placed on the website, if any, and the web-link shall be disclosed in Board's report

Filing of Annual Return

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

--- Omitted ---

Section 93 X
Section 94
(Place of keeping registers etc.)

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

Member, debenture-holder, security-holder, beneficial owner during business hours (not less than 2)	without any fees
any other person	on payment of fees ≤ INR 50 per inspection
- They are also entitled to take extracts without any fees or require a copy to be produced to them within 7 days for fees ≤ INR 10/ page
- But following information is not available for inspection or for taking extracts/ copies → address; email-ID; Unique Identification Number; PAN

Time period of preservation

Register of members	Permanently ✓
Register of debenture or other security-holder	8 years from date of redemption
Annual return	8 years from date of filing with Registrar
Foreign register of members	Permanently ✓
Foreign register of debenture or other security-holder	8 years from date of redemption ✓

Section 95

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

Section 96 (AGM)
 DND

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

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

Section 97 (AGM by NCLT)

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

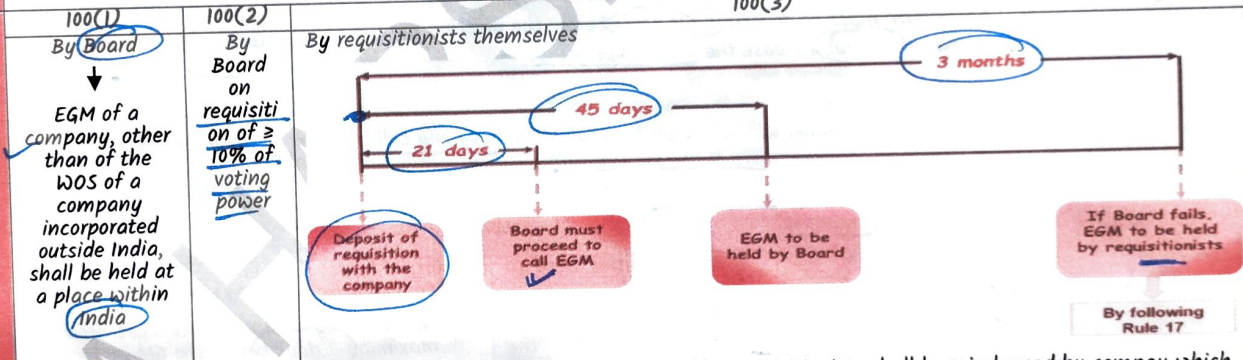
Section 98 (EGM by NCLT)
 P

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

Section 99 (Fine)

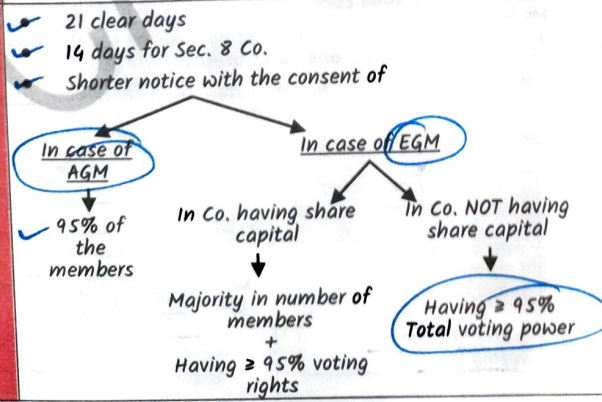
- the company & every officer in default
 - if continuing one
- Up to INR 1 lakh
Further fine up to INR 5,000/ day

Section 100 (EGM)



Note - The reasonable expenses incurred by requisitionists shall be reimbursed by company which shall later be deducted from the remuneration payable to directors in default

Section 101 (Notice)



Following days are excluded in service of notice -

- Date of dispatch
- Date of meeting
- 48 hours in case of POST

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

Note - Accidental omission (including transmission error of email which are beyond the control of the company) not to invalidate the meeting

<p>Section 102 (Explanatory statement)</p> <p>D D D A</p>	<p><u>Ordinary business - Only these 4 businesses at AGM</u></p> <ul style="list-style-type: none"> Financial statement, director's & auditor's report Dividend Appointment of <u>director</u> in place of retiring Appointment of <u>auditor</u> 	<p><u>Special business</u></p> <ul style="list-style-type: none"> Rest all businesses at AGM All business at <u>EGM</u> <p>Note - Explanatory statement + Full text of resolution required only for special business</p>	<p><u>Explanatory Statement</u></p> <ul style="list-style-type: none"> Interest of director, manager, KMP + their relatives Other information & facts <u>≥ 2% shareholding in other company</u> 								
<p>Section 103 (Quorum)</p>	<p><u>Private Co</u></p> <p><u>2 members personally present</u></p> <p><u>Public Co</u></p> <table border="1"> <thead> <tr> <th>Number of members</th> <th>Members personally present</th> </tr> </thead> <tbody> <tr> <td>≤ 1,000</td> <td>5</td> </tr> <tr> <td>> 1,000 but ≤ 5,000</td> <td>15</td> </tr> <tr> <td>> 5,000</td> <td>30</td> </tr> </tbody> </table> <p>Articles may provide for <u>LARGER quorum</u></p>	Number of members	Members personally present	≤ 1,000	5	> 1,000 but ≤ 5,000	15	> 5,000	30	<p>Proxy is NOT counted for quorum</p> <p>Authorised representative is counted</p> <p>Quorum shall be present throughout</p>	<p>If Quorum is not present <u>within half an hour</u></p> <ul style="list-style-type: none"> EGM called by requisitionists <ul style="list-style-type: none"> Cancelled Any other meeting <ul style="list-style-type: none"> Adjourned to such date, time & place as Board decide Else, adjourned to same day next week, same time & place 3 days' notice is given If quorum is again absent, members present (>1) shall be quorum
Number of members	Members personally present										
≤ 1,000	5										
> 1,000 but ≤ 5,000	15										
> 5,000	30										
<p>Section 104 (Chairman)</p>	<ul style="list-style-type: none"> Members present choose <u>Chairman on show of hands</u> But it is subject to any provision in AOA 	<p>If a poll is demanded for appointment of Chairman, it shall be taken forthwith</p>									
<p>Section 105 (Proxy)</p>	<ul style="list-style-type: none"> Member may appoint proxy Proxy need not be a member (except in case of <u>Sec. 8 Co.</u>) Proxy cannot speak at the meeting and cannot vote on <u>show of hands</u> Notice of the meeting must disclose member's right to appoint a proxy and that he <u>need not be a member</u> <p><u>Deposit of Proxy form</u></p> <ul style="list-style-type: none"> Proxy form shall be in writing in Form <u>MGT-11</u> Proxy form shall not be questioned on the ground that it fails to comply with any special requirements of the articles Proxy form must be deposited <u>48 hours</u> before the meeting Company cannot increase the <u>limit of 48 hours</u> 	<p><u>1 Proxy can represent</u></p> <p>Maximum <u>50 members</u>, but having <u>10% of total share capital</u></p> <p><u>Inspection of proxy forms</u></p> <ul style="list-style-type: none"> A member is entitled to inspect the proxies lodged by giving not less than <u>3 days notice</u> in writing Inspection period will begin <u>24 hours before the meeting time</u> and end with the conclusion of the meeting 									
<p>Section 106 (Restriction on Voting)</p>	<p>If AOA provides, member will not be entitled to vote in <u>case any call or other sum is not paid by him</u></p>	<p>Member need <u>not use all his votes</u> in same way in case of <u>Poll</u></p>									
<p>Section 107 (Show of Hands)</p>	<p>A resolution is decided on show of hands, unless</p> <ul style="list-style-type: none"> Poll is demanded, OR E-voting 										
<p>Section 108 (E-voting)</p>	<p>Mandatory for</p> <ul style="list-style-type: none"> Listed company, or Every company having <u>≥ 1,000 members</u> <p>Note - <u>Nidhi companies and companies listed on Innovators Growth Platform are exempted from E-voting</u></p>	<p>Both facilities need to be given viz.</p> <ul style="list-style-type: none"> Remote e-voting Voting at the meeting 	<p>Important Points to Ponder -</p> <ol style="list-style-type: none"> Co. needs to appoint a scrutiner The company shall announce a cut-off date which shall be within <u>maximum 7 days</u> before the GM Remote e-voting shall start after cut-off date + kept open for <u>minimum 3 days</u> It shall conclude at <u>5:00 P.M. one day before GM</u> Voting at both meetings will be counted and consolidated report will be made by scrutiner within <u>3 days</u> Person, who has voted through remote e-voting, shall not be <u>debarred from participating in GM, but can't vote again</u> 								
<p>Section 109 (Poll)</p>	<p>Demand of poll by</p> <table border="1"> <thead> <tr> <th>In case of a company having share capital</th> <th>In case of any other company</th> </tr> </thead> <tbody> <tr> <td>Any member(s) (present in person or proxy) holding -</td> <td>Any member(s) (present in person or proxy) having</td> </tr> <tr> <td> <ul style="list-style-type: none"> ≥ 1/10th of the total voting power, or Paid up share capital of <u>≥ INR 5 lakh</u> </td> <td> <ul style="list-style-type: none"> ≥ 1/10th of the total voting power </td> </tr> </tbody> </table>		In case of a company having share capital	In case of any other company	Any member(s) (present in person or proxy) holding -	Any member(s) (present in person or proxy) having	<ul style="list-style-type: none"> ≥ 1/10th of the total voting power, or Paid up share capital of <u>≥ INR 5 lakh</u> 	<ul style="list-style-type: none"> ≥ 1/10th of the total voting power 	<ul style="list-style-type: none"> Poll to be taken within <u>48 hours</u> But, to be taken forthwith in case of <ul style="list-style-type: none"> Adjournment Appointment of Chairman <p>Poll may be taken using polling papers or by Electronic means</p> <ul style="list-style-type: none"> Chairman appoints scrutiner who conducts the entire poll Scrutiner submits his report within <u>7 days</u> 		
In case of a company having share capital	In case of any other company										
Any member(s) (present in person or proxy) holding -	Any member(s) (present in person or proxy) having										
<ul style="list-style-type: none"> ≥ 1/10th of the total voting power, or Paid up share capital of <u>≥ INR 5 lakh</u> 	<ul style="list-style-type: none"> ≥ 1/10th of the total voting power 										

27 Section 110 (Postal Ballot)	OPC and companies having ≤ 200 members are exempt	Conducted for specified businesses only			
	It can be conducted by POST or ELECTRONIC MEANS	P	Place of registered office outside CTV	A	AOA u/s 2(68)
		O	- Objects Clause - Objects of Prospectus	L	LGS (Loan, Guarantee, Security) > 186(3)
		S	- SSD (Small Shareholders' Director) - Sale of undertaking u/s 180	B	Buy-Back
		T	DVR	Variation	

19
Section 111
(Circulation of members' resolution)

On requisition in writing of members holding $\geq 10\%$ of voting power, Company shall

- Give notice of any resolution to members (provided requisition received at least 6 weeks before meeting)
- Circulate any statement (provided requisition received at least 2 weeks before meeting)

Note - No need to circulate statement, if CG (RD) is satisfied that it is for needless publicity for defamatory matters.

Section 112
Section 113

Authorised representative of President or Governor of India
Authorised representative of Body corporate

They are as good as members and also have right to appoint proxy

12
Section 114

OR
SR

Votes casted in favour \geq Votes casted in favour

Votes casted against \geq 3 times of votes casted against

20
Section 115
(Special Notice)

Eligible members

- Holding $\geq 1\%$ voting power; or
- Holding shares of \geq INR 5 lakh

Special notice for

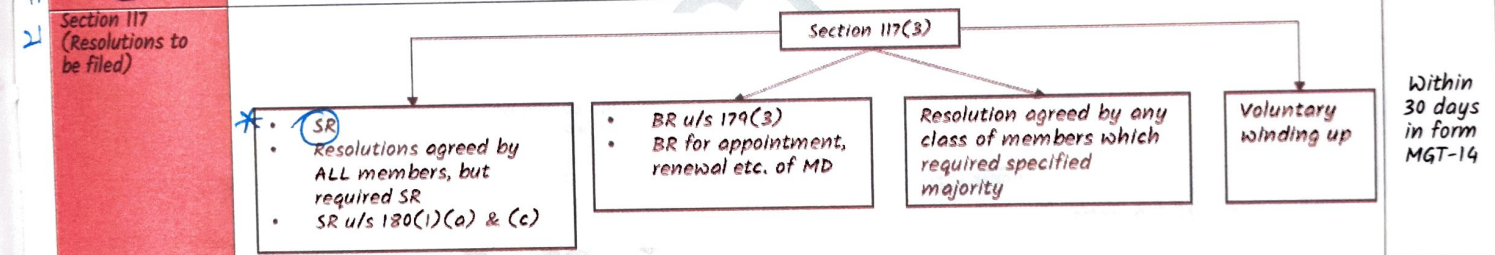
- Specified sections in Act (140, 169); or
- As provided by AOA

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    graph TD
      A[Eligible Member(s) give notice TO Company] -- 3 months --> B[Company give notice TO ALL members]
      B -- 14 days --> C[Date of GM]
      B -- 7 days --> C
  
```

17
Section 116

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



22
Section 118
(Minutes)

Prepare minutes within 30 days of conclusion of meeting

Any matter may be excluded from minutes by Chairman if

- Irrelevant or immaterial
- Defamatory
- Detrimental to company

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

Every company needs to comply with Secretarial Standard on General meeting and Board meeting

23
Section 119
(Inspection of minutes)

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

24
Section 120
(Documents in electronic form)

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

Section 121
(Report on AGM)

- Report on AGM by Listed Public company
- In form MGT 15 within 30 days
- It is signed by Chairman, else by 2 directors (one shall be MD, if any,) + company secretary

25
Section 122
(OPC)

How member's resolution is passed?

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

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

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

Declaration of Payment of Dividend

Basics of Dividend

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

Shareholders can reduce the rate of dividend proposed by Board but can't increase the same
 Dividend once declared becomes a debt and can't be revoked
 Likewise, interim dividend also once declared becomes a debt and can't be revoked

Section 123 (Declaration of Dividend)

Sources of dividend

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

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

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

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

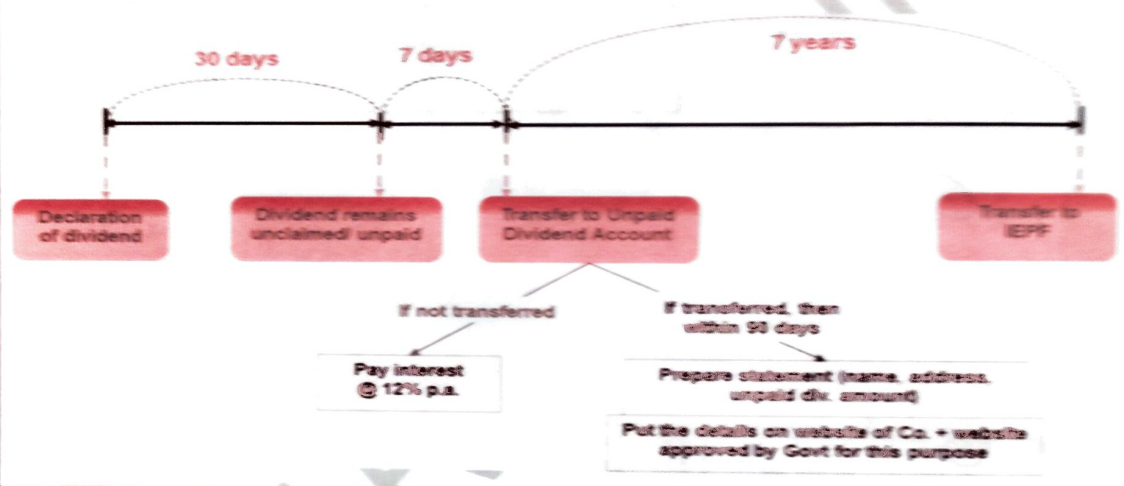
Interim Dividend

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

Other aspects

- Amount of dividend is deposited in separate bank a/c within 7 days from declaration
- Dividend is payable only in cash (cash includes cheque, warrant, electronic mode)
- No dividend can be paid if default of section 73 and 74
- Section 8 company can't distribute dividend

Section 124 (Unpaid Dividend Account)



Section 125 (IEPF)

Composition of IEPF

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

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

Utilisation of IEPF

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

Section 126 (Keeping dividend in abeyance)

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

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

Section 127 (Punishment for failure to distribute dividend)

If the declared dividend is not paid within 30 days then

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

Safeguards

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

Accounts of Company

Section 128
(Books of accounts)

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

Inspection by Director

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

Books of account in Electronic form

- Shall remain accessible in India for subsequent reference
- 1st April 2023 onwards accounting software shall have a feature of recording **AUDIT TRAIL** of each and every transaction creating an edit log of each change made
- Books of A/c to be retained in the format originally generated & unaltered
- Proper system of storage, retrieval, display or printout
- Backup shall be kept in servers physically located in India
- At the time of annual filing, intimate to RoC details of the Name, IP address & location of service provider where backup is kept

Persons responsible to maintain books of accounts

- MD
- Whole-time director in charge of finance
- CFO
- any other person of a company charged by the Board with the duty of complying with the provisions of this section

↓ In case of contravention

Min. fine = ₹ 50,000
Max. fine = ₹ 5 lakh

Section 129
(Financial Statement i.e. FST)

FST

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

Cash flow not required for

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

Requirements to prepare FST

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

Note – If AS not followed → disclose the **DEVIATIONS; REASONS and FINANCIAL EFFECTS**

Persons responsible to maintain books of accounts

- MD
- Whole-time director in charge of finance
- CFO
- any other person of a company charged by the Board with the duty of complying with the provisions of this section
- in absence of any of the officers, **ALL the directors**

↓ In case of contravention

Imprisonment = upto 1 year; or below mentioned fine or both
Min. fine = ₹ 50,000
Max. fine = ₹ 5 lakh

Consolidated FST (CFS)

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

Section 129A
(Periodical financial results)

CG may require prescribed unlisted companies to

- Prepare periodical financial results in prescribed manner
- Obtain approval of Board of directors & complete audit or limited review in prescribed manner
- File copy with Registrar within 30 days of completion of relevant period

Section 130 & Section 131

Re-opening/ Revision of accounts

Section 130 - Under Tribunal/ Court order

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

Section 131 - Voluntary revision

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

Section 132 (NFRA)

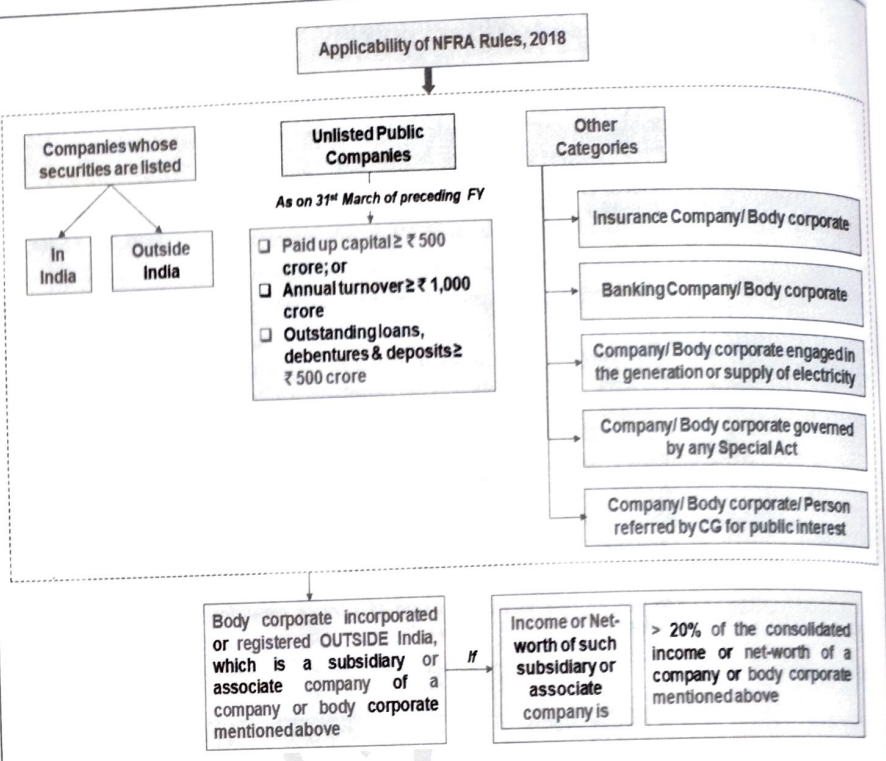
- National Financial Reporting Authority is a new regulatory authority under Companies Act, 2013
- It had replaced NACAS (National Advisory Committee for Accounting Standards) which was made under Companies Act, 1956

Role of NFRA

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

Constitution of NFRA

- Chairperson to be nominated by CG + other members ≤ 15
- They will give a declaration of No conflict of interest
- Chairperson & full-time members not be associated with any audit firm till 2 years after ceasing to hold appointment
- Head office will be at New Delhi
- Accounts of NFRA to be audited by CAG
- Appeal against NFRA to be filed at NCLAT



Section 133 (AS & Ind-AS)

- CG to prescribe AS, recommended by ICAI, in consultation with NFRA
- Till NFRA is constituted, in consultation with NACAS
- As of today, 2 set of standards are in force
 - AS and - Ind-AS

Ind-AS is followed by only the prescribed companies

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

Section 134 (Board's Report)

Manner of signing of financial statements

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

Manner of signing of Board's report

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

Some Disclosures in Board Report

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

Director's Responsibility Statement

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

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

KEY SNAPSHOT

CSR Committee

- Comprising of 3 or more directors with at least 1 ID,
- If no requirement of ID, Committee can have 2 or more directors

Exempt from constituting Committee, if amount to be spent on CSR \leq INR 50 lakh & functions of committee to be discharged by Board
But shall constitute Committee, if any amount in its Unspent CSR A/C

Functions of CSR Committee

- Formulate and recommend a CSR Policy as per Schedule VII
- Recommend the amount of CSR expenditure
- Regular monitoring of the CSR initiatives

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

- Net worth \geq INR 500 crore
- Turnover \geq INR 1000 crore
- Net profit \geq INR 5 crore

Annual spending on CSR by companies

- 2% of the average net profits of the 3 preceding financial years or 3 years are not completed since incorporation, during such lesser financial years
- In case of failure, disclose reasons in Board's report & transfer the unspent amount to a Fund of Schedule VII, within 6 months of expiry of FY
- If amount unspent pursuant to ONGOING PROJECT, transfer it to Unspent CSR A/c within 30 days from the end of FY \rightarrow spend it in within 3 years \rightarrow else transfer it to Schedule VII fund within 30 days of expiry of 3rd FY

"Net Profits" calculated as per sec. 198 but excludes -

- Profit arising from any overseas branch
- Dividend received from other companies in India, covered u/s 135

Punishment in case of failure to spend CSR amount or transferring unspent amount

- Co liable for twice the unspent amount or INR 1 crore, whichever is less
- Every officer in default liable for 1/10th of unspent amount or INR 2 lakh, whichever is less

Set-off of excess expenditure

Set-off allowed only upto succeeding 3 FYs, subject to condition that -

- It shall not include surplus arising from CSR activities
- Board resolution shall be passed

Schedule VII activities

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

Activities NOT eligible for CSR

- Activities undertaken in the normal course of business, but
 - Spending of CSR funds for Covid 19 is eligible CSR activity
 - R&D activity of new vaccine related to Covid 19 for FY 2020-21, 2021-22 & 2022-23 is eligible CSR
- Activities undertaken outside India, except for training sports personnel at national/ international level
- Contribution to political party
- Activities benefiting the employees
- Sponsorship activities for marketing benefits
- Fulfilment of statutory obligations

CSR Implementation

- CSR activities to be undertaken by Co. itself or through
 - A statutory corporation
 - Sec. 8 company, registered public trust or society registered under Income-tax,
 - established by the company; singly or with other company or
 - established by CG or State Government; or
 - established by an Act of Parliament or State Legislature
 - having an established track record of at least 3 years
- Such entities shall register itself with CG by filing Form CSR-1
- A Co. may engage international organisations or collaborate with other companies for CSR

Annual Action Plan for CSR

- List of CSR projects to be undertaken
- Manner of execution
- Modalities of utilisation of funds & implementation schedules
- Monitoring & reporting mechanism
- Impact assessment

CSR Expenditure

- Expenditure on administrative overheads shall not exceed 5% of total CSR expenditure
- Surplus from CSR activities not a part of business profits & shall be
 - Ploughed back to the same project; or
 - Transferred to Unspent CSR A/c; or
 - Transferred to the fund of Schedule VII
- CSR amount may be spent to acquire or create a Capital asset

CSR Reporting

- Board's report to include an annual report on CSR
- Co. having preceding 3 years' average CSR obligation of \geq 10 crore; shall undertake IMPACT ASSESSMENT through an independent agency
 - of CSR projects having outlays of \geq 1 crore; and
 - completed not less than 1 year before
- Expenditure on impact assessment may be booked towards CSR; which shall not exceed the higher of
 - 2% of CSR expenditure for that FY; or
 - INR 50 lakh

Section 136
(Circulation of FST to members)

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

Shorter Period of circulation

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

Obligations of Listed company

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

Manner of circulation

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

FST may be sent-

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

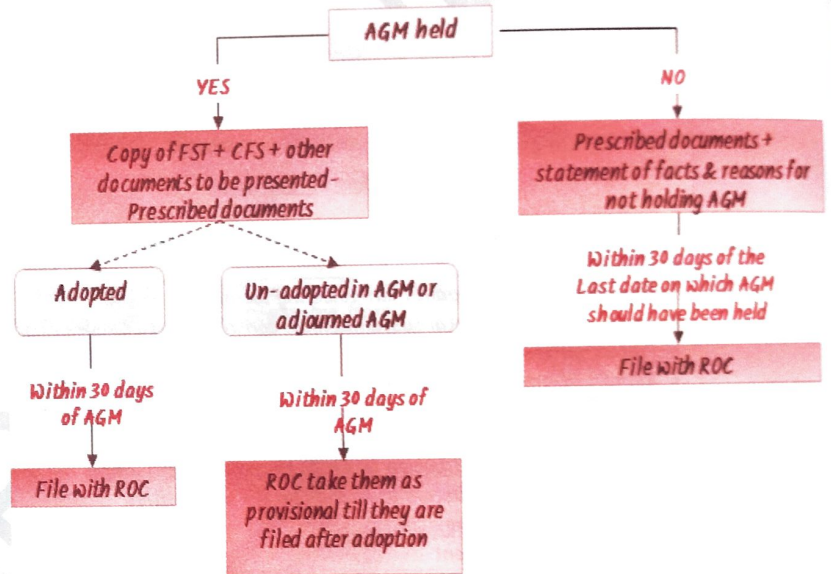
Section 137
(Filing FST with RoC)

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

XBRL Rules

- The following companies shall file their annual report in XBRL
- Listed + their Indian subsidiaries, or
 - Companies with paid up capital \geq INR 5 crore, or
 - Companies with turnover \geq INR 100 crore, or
 - Companies covered under Ind-AS

Exception - Banking, Insurance, NBFC and HFC



Section 138
(Internal audit)

Prescribed companies

	Public company	Private company
Outstanding deposits,	INR 25 crore or more at any point of time during the preceding FY	-
Paid up capital,	INR 50 crore or more during the preceding FY	-
Listed or Outstanding loans and borrowings from banks or PFIs	exceeding INR 100 crore or more at any point of time during the preceding FY	exceeding INR 100 crore or more at any point of time during the preceding FY
Turnover	INR 200 crore or more during the preceding FY	INR 200 crore or more during the preceding FY

Who can be Internal auditor?

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

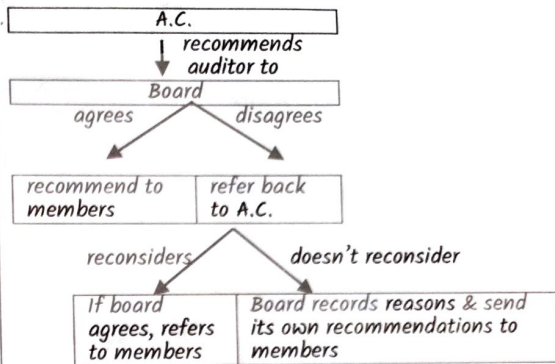
**Section 139
(Appointment of Auditors)**

Appointment of auditor till 6th AGM

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

Manner of Selection

- Qualifications & experience of auditor is considered by Audit Committee (A.C.); or Board in case there is no A.C.



Rotation of auditors

Applicable only on -

Listed Co.
or
<ul style="list-style-type: none"> ▪ Unlisted Public Co. - PSC ≥ INR 10 crore ▪ Private Co. - PSC ≥ INR 50 crore ▪ Any Co. - Loans + Public deposits ≥ INR 50 crore

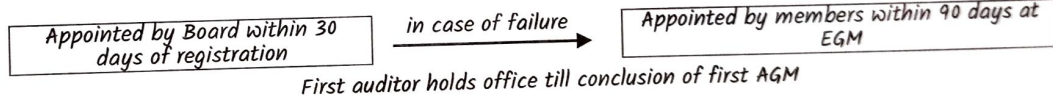
Note - Concept of rotation is not applicable to OPC and Small companies

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

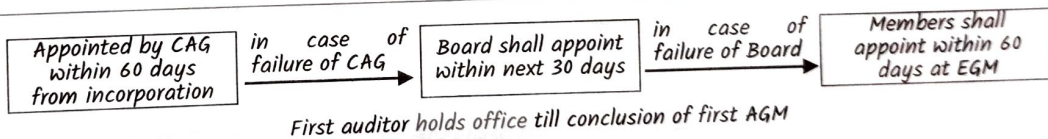
Appointment of Auditor in Govt Co.

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

First Auditor (other than Govt Co.)



First Auditor (Govt. Co.)



Filling of casual vacancy

In Govt. Co.	In any other Co.
<ul style="list-style-type: none"> → Filled by CAG within 30 days, → Else, by Board within next 30 days 	<ul style="list-style-type: none"> → Filled by Board within 30 days → In case of RESIGNATION, also approved in GM within 3 months

Such auditor shall hold office till the conclusion of next AGM

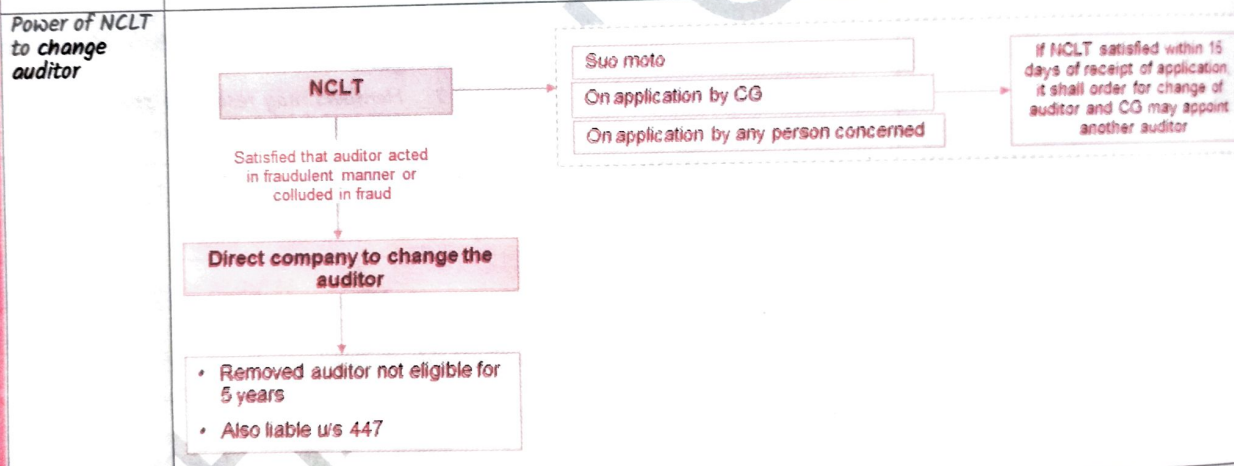
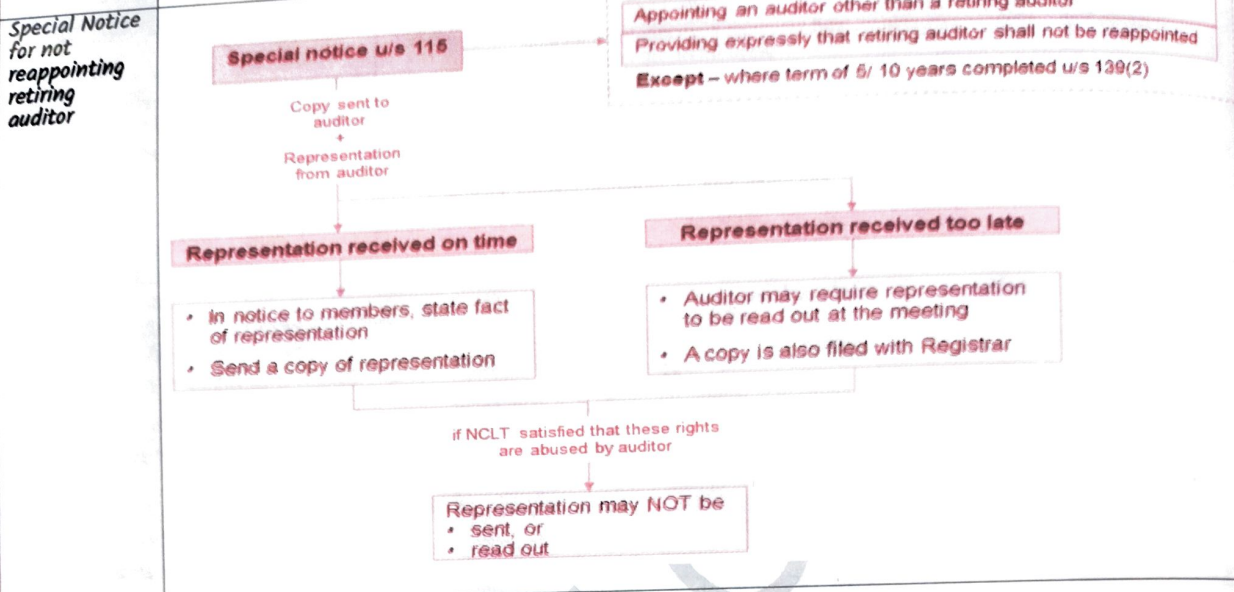
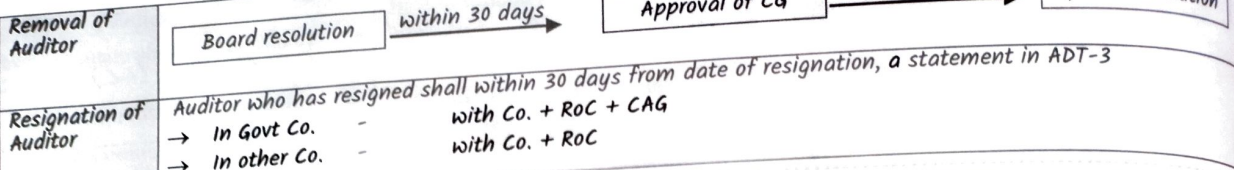
Re-appointment of Retiring Auditor

Retiring auditor may be re-appointed at AGM, if

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

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

Section 140
(Removal, Resignation of auditor)



Section 141
(Disqualifications of Auditor)

Qualifications →

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

Disqualifications

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

I. Holding SECURITY or interest in But relative may hold security in Co. of FACE VAUE ≤ INR 1 lakh Further, if holding exceeds INR 1 lakh, relative may take corrective action within 60 days	CASH or Co-subsidary
II. INDEBTED for > INR 5 lakh	
III. GUARANTEE or SECURITY > INR 1 lakh	

- Person or Firm who has business relationship with → CASH, Co-subsidary or Subsidiary of Associate Co.
Business relation means any transaction for commercial purpose, except -
 - Professional services
 - Transactions entered in the ordinary course of business at ALP
- Person whose relative is a director or KMP of the company

- g. Person who is in full time employment elsewhere
Partner of a firm if he is auditor of > 20 companies (OPC, Dormant, Small Co. & Private Co. having PSC < INR 100 crore are not counted in the limit of 20 companies)
- h. Person who is convicted by court for fraud & 10 years have not elapsed
- i. Person has directly or indirectly rendered services of section 144 to Co./ Holding/ Subsidiary

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

Note - CASH means Company, Associate, Subsidiary and Holding company

**Section 142
(Remuneration)**

Remuneration of auditor is fixed

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

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

In addition to fees, remuneration shall

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

**Section 143
(Powers & Duties of Auditor)**

Rights of Auditor

- Right of access at all times the books of accounts
- Entitled to such other information & explanation as may be necessary

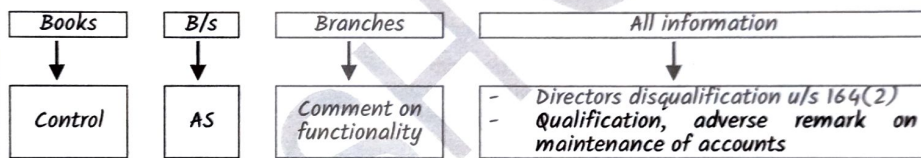
Duties regarding inquiries

Personal	Expenses not charged to revenue a/c
Loan	- Properly secured & not prejudicial to company - Not shown as deposits
S	Shares allotted for cash - cash actually received & if not, position stated is correct
B	Book entries not prejudicial
I	Investment (SP < Cost), NA to Investment or Banking Co.

Duty to make report

- Make audit report to members regarding True & fair view
- Report shall take provisions of Act, AS and SAs into account
- In case of qualification in audit report, shall state reasons therefor

Report on Principal Assertions



Other matters prescribed	T	Transfer to IEPF - delayed
	D	Dividend declared & paid as per section 123
	S	Company is using accounting software with audit trail (edit log) w.e.f. 1 st April, 2022
	P	Pending litigations Provisions for material foreseeable losses on long term contracts
	F	Funds have not been advanced to any intermediary or received by the company from other person; to lend or invest in Ultimate Beneficiaries

Powers of CAG in Govt Co.

- CAG shall direct auditor the manner in which audit should be done
- Auditor shall submit a copy of his audit report to CAG, including actions taken for directions received from CAG
- CAG shall within 60 days of receipt of audit report, have a right to
 - conduct supplementary audit by authorised person
 - comment upon or supplement audit report
- CAG may cause test audit to be conducted

Branch Audit

- Audit of branch shall be conducted by
 - Company's auditor; or
 - other person qualified to be auditor;
 - In case of foreign branch, company's auditor or competent person as per laws of that country
- Branch auditor shall send his report to company's auditor
- Duties & powers of branch auditor shall be similar to company's auditor

SAs

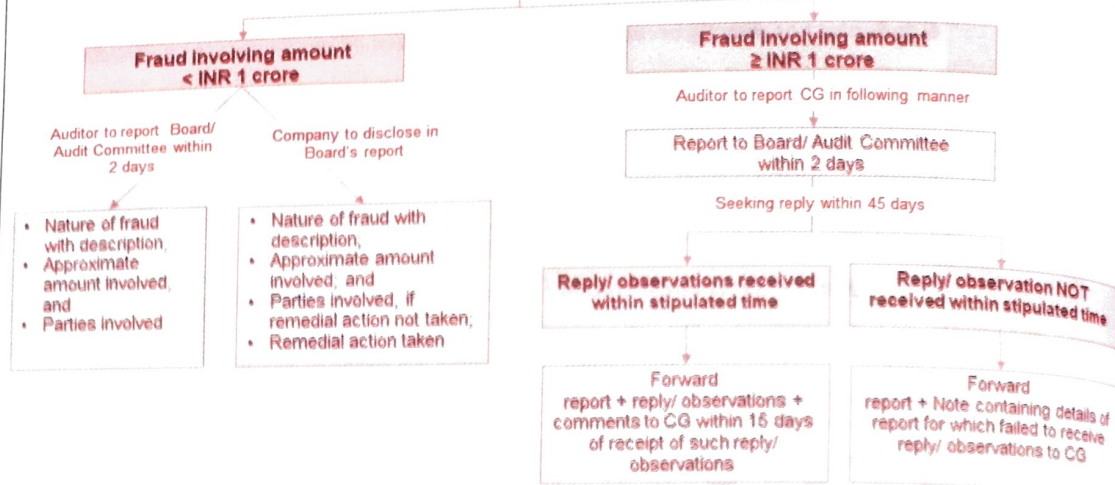
- Every auditor shall comply with SAs
- CG will prescribe SAs made by ICAI in consultation with NFRA
- Until notified by CG, SAs of ICAI shall be applicable

CARO

- For prescribed companies - auditor also needs to do the reporting of CARO

Reporting of Fraud

Fraud reporting [Section 143(12) + Rule 13]



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

Note - In case of contravention, auditor is punishable with penalty of INR 5 lakh - in case of listed company and of INR 1 lakh - in case of any other company

Section 144 (Auditor not to render certain services)

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

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

Section 145 (Auditor to sign audit report)

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

Section 146 (Auditors to attend GM)

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

Section 147 (Punishment for Contravention)

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

Implications on	Fine	
	Min.	Max.
Co.	INR 25,000	INR 5 lakh
Officer in default	INR 10,000	INR 1 lakh

If auditor contravenes section 139, 144 or 145

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

If auditor contravened provisions with intent to deceive

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

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

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

Section 148 (Cost Audit)

Maintenance of Cost Records

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

Applicability of Cost Audit

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

Nothing applies to a Co. -

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

Appointment of Cost Auditor

Appointed by	- Directors within 180 days of commencement of every financial year <u>Note</u> - Statutory auditor can't be appointed as cost auditor <u>Note</u> - Only cost accountant in practice can be appointed as cost auditor <u>Note</u> - He must comply with Cost accounting standards					
Certificate from auditor	- Before such appointment, auditor shall give his written consent & a CERTIFICATE containing the following details - <ul style="list-style-type: none"> • Not disqualified under Companies Act or Cost Accountants Act • He satisfies section 141 • Appointment is within limits • List of proceedings related to professional misconduct 					
Inform auditor + Notice to CG	- Co. shall inform cost auditor of appointment - Co. shall file form CRA-2 with CG within earlier of the following limits <ul style="list-style-type: none"> • 30 days of Board meeting in which appointed, or • 180 days of commencement of FY 					
Tenure of Cost Auditor	- Cost auditor shall continue till expiry of earlier of the following <ul style="list-style-type: none"> • 180 days from closure of FY • Date of submission of his report 					
Removal of cost auditor	- Removed by Board - CG shall be intimated in Form CRA-2					
Filing of Casual Vacancy	- Filled by Board within 30 days - Co. shall inform CG in Form CRA-2 within 30 days of appointment					
Cost audit report to Board	- Cost auditor shall submit his report to Board within 180 days from closure of the FY					
Report to CG	- Co. shall within 30 days of receipt, furnish a copy of the report to CG					
Remuneration of Cost auditor	<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: center;">Companies required to constitute Audit Committee</th> <th style="text-align: center;">Companies NOT required to constitute Audit Committee</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> → Board shall appoint cost auditor on the recommendation of A.C. → The A.C. shall also recommend the remuneration for cost auditor → Such remuneration as recommended by the A.C. shall be considered and approved by the board → Then this remuneration subsequently to be ratified by the shareholders </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> → Board shall appoint the cost auditor → The remuneration of such cost auditor shall be ratified by shareholders subsequently. </td> </tr> </tbody> </table>	Companies required to constitute Audit Committee	Companies NOT required to constitute Audit Committee	<ul style="list-style-type: none"> → Board shall appoint cost auditor on the recommendation of A.C. → The A.C. shall also recommend the remuneration for cost auditor → Such remuneration as recommended by the A.C. shall be considered and approved by the board → Then this remuneration subsequently to be ratified by the shareholders 	<ul style="list-style-type: none"> → Board shall appoint the cost auditor → The remuneration of such cost auditor shall be ratified by shareholders subsequently. 	
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Note - Penal provisions of section 147 will apply in this section as well.

Foreign Company

Electronic Mode

Means a company or body corporate incorporated outside India

- which has a place of business in India, whether by itself or through an agent, physically or through electronic mode; &
- conducts any business activity in India in any other manner

T	Telemarketing, telecommuting, telemedicine, education & information research
D	<ul style="list-style-type: none"> • Deposits or subscription in securities. In India or from Citizens of India • Data communication services
S	Supply chain management, financial settlements, web-based marketing etc.

On B2B & B2C transactions

Note - "Place of business" includes a share transfer or registration office

Note - Electronic mode excludes electronic based offering of securities in IFSC

Sec. 379 (Application of Act to Foreign Co.)

> 50% paid-up share capital (equity or preference)

Held by

- One or more Indian citizens
- One or more companies or bodies corporate incorporated in India
- One or more Indian citizens and one or more companies or body corporate incorporated in India

Such foreign company shall

comply with

- Chapter XXII of Companies Act, 2013, AND
- Such other provisions of Companies Act, 2013 as may be prescribed by CG in respect of its Indian business

Note - Remaining all foreign companies need to comply with section 380 to 386 and 392 and 393 of this Chapter.

Sec. 380 (Documents, etc. to be delivered to RoC)

Every foreign company

shall deliver to RoC
Form FC-1 along with following documents

Within 30 days of establishment of its place of business

a.	Instrument defining the constitution (e.g. MOA, AOA, statute)	→	Certified English translation
b.	Full address of	→	Registered or principal office
c.	Full address of	→	principle place of business in India
d.	Particulars of opening & closing of place of business in INDIA on earlier occasions		
e.	List of directors - prescribed particulars	→	Secretary - prescribed particulars
f.	Name(s) & address(es) of person(s) resident in India	→	authorised to accept notices or documents
g.	Declaration	→	No director or authorised representative ever been convicted or debarred from formation or management of companies
h.	Other information - prescribed		

Note - The document shall be delivered to RoC, New Delhi

Note - In case of alteration in any document, foreign company shall deliver Form FC-2 within 30 days

Note - All documents shall be in English language and if not, there shall be attached a translation thereof in English language and if such translation is made within India, it shall be authenticated by -

- an advocate, attorney or pleader entitled to appear before any High Court; or
- an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

Sec. 381
(Accounts of Foreign Co.)

Unless exempted by CG, every foreign company shall

Prepare Balance Sheet and Profit & Loss account for every Financial Year as per Schedule III along with prescribed documents

- Documents required to be annexed as per the Chapter of Accounts of Companies
- Documents relating to latest consolidated financial statements of the parent foreign company
- Statement of Related Party Transactions
- Statement of Repatriation of Profits
- Statement of Transfer of Funds (including dividends, if any)
- List of all places of business in India as at the date with reference to which the balance sheet is made in Form FC-3

Deliver to RoC a copy of those documents

- Within 6 months of close of FY of foreign company to which documents relate
- Extension up to 3 months can be granted by ROC

Note - If any such document is not in the English language, there shall be annexed to it a certified translation thereof in the English language

Audit of accounts	a. Scope of audit	- Accounts pertaining to Indian business operations
	b. by whom	- A practising CA or a firm of CA

Sec. 382
(Display of Name etc.)

Duty to exhibit its name etc. outside place of business

What?	<ul style="list-style-type: none"> • Name • Country of incorporation • Fact that liability is limited
Where?	Outside every place of business in India
How?	Conspicuously exhibited in <ul style="list-style-type: none"> - Legible characters in English - Legible characters in local language

Duty to exhibit its name etc. in bills, letters etc.

What?	<ul style="list-style-type: none"> • Name • Country of incorporation • Fact that liability is limited
Where?	<ul style="list-style-type: none"> • Business letters • Billheads • Notices • Official Publication
How?	• Legible characters in English

Sec. 383
(Service on Foreign Co.)

- Any 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

Sec. 384
(Applicability of other provisions of Act)

Sec. 71	Debentures	Applicable to foreign company (mutatis mutandis)
Sec. 92 Sec. 135	Annual Return CSR	Applicable to foreign company (subject to such modifications as are contained in Rules) Note - Every foreign company shall prepare and file to Registrar, within a period of 60 days from end of FY, ANNUAL RETURN in Form FC.4
Sec. 128	Books of account	Applicable to foreign companies, subject to following modifications - <ul style="list-style-type: none"> • Books of account shall be kept at principal place of business in India, • Books of account shall be kept with respect to monies received and spent, sales and purchases made and assets & liabilities, with respect to Indian business
Sec. 77 to 87	Registration of charges	Applicable to foreign companies (mutatis mutandis)
Sec. 206 to 229	Inspection, Inquiry & Investigation	Applicable to foreign companies (mutatis mutandis) with respect to Indian business

Sec. 385
(Fees)

There shall be paid to the Registrar for registering any document required by the provisions of this Chapter, prescribed fees.

Sec. 387 (Prospectus)	
1. No person shall issue in India any prospectus of a company incorporated outside India, unless the prospectus is dated and signed, and -	
a. contains the following particulars -	Not required in case prospectus is issued after 2 years from the date of commencement of business
<ul style="list-style-type: none"> the instrument defining the constitution of the company; the enactments under which the company was incorporated; address in India where the said instrument, enactments can be inspected; 	
<ul style="list-style-type: none"> the date on which and the country in which the company was incorporated; and 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	
2. No person shall issue to any person in India, securities application form of such a company, unless the form is issued with a prospectus	
Provided that this shall not apply in connection with an underwriting agreement	
Sec. 388 (Expert's consent & Allotment)	
No person shall issue any prospectus in India of a company incorporated outside India -	A statement shall be deemed to be included in a prospectus, if it is contained in any report appearing on the face thereof or by reference incorporated therein
a. containing an expert statement, only if	
<ul style="list-style-type: none"> he has given his written consent, and has not withdrawn his consent; or 	
b. if the prospectus does not have the effect of rendering all persons concerned bound by all the provisions of sections 33 and 40	
Sec. 389 (Registration of Prospectus)	
No person shall issue in India any prospectus of a company incorporated outside India,	<ul style="list-style-type: none"> a copy thereof 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 attached to the copy, Expert's consent to the issue of the prospectus and such documents as may be prescribed.
unless before such issue or circulation	
<ul style="list-style-type: none"> Consent of expert to the issue of prospectus Copy of contracts for appointment of MD or manager Copy of other material contracts entered in the preceding 2 years (not in ordinary course of business) 	<ul style="list-style-type: none"> Copy of underwriting agreement Copy of Power of Attorney, if prospectus is signed by authorized agent of director
Sec. 390 (IDR)	
CG may make rules applicable for -	
<ul style="list-style-type: none"> the offer of IDR; the requirement of disclosures in prospectus or letter of offer issued in connection with IDR; the manner in which the IDR shall be dealt with in a depository mode and by custodian and underwriters; and the manner of sale, transfer or transmission of IDR, 	by a company incorporated outside India, whether the company has or has not established any place of business in India
Sec. 391 (Application of Sec. 34 to 36 & Ch. XX)	
The provisions of sections 34 to 36 (both inclusive) shall apply to -	
a. the issue of a prospectus by a company incorporated outside India under section 389;	
b. the issue of IDR by a foreign company.	
Sec. 392 (Punishment)	
If a foreign company contravenes the provisions of this Chapter,	
Foreign company	Fine Min = INR 1 lakh Max = INR 3 lakh
In case of continuing offence, with an additional fine up to INR 50,000 for every day after the first during which the contravention continues	
Every officer in default	Fine = Min - INR 25,000 Max - INR 5 lakh
Sec. 393 (Validity of Contracts)	
→ Any failure by a company to comply with the provisions of this Chapter	
→ shall NOT affect the validity of any contract entered into by the company or its liability to be sued,	
→ BUT the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract,	
→ until the company has complied with the provisions of this Act.	
Section 393A (Exemptions under this Chapter)	
→ CG may exempt any class of foreign companies or companies incorporated outside India from any provision of this Chapter by a notification	CG has exempted foreign companies as well as company incorporate outside India from the provisions of Sec. 387 to 392, in so far, they relate to offering of securities in IFSC
→ Copy of the notification to be laid before both Houses of Parliament	

Section 1	<ul style="list-style-type: none"> LLP Act, 2008 extends to <i>entire India</i> 	<ul style="list-style-type: none"> CG, by notification, brings into force the provisions of this Act Different provisions may be notified on different dates by CG 		
Meaning of LLP	Means a partnership formed and registered under this Act			
Features of LLP	Body corporate	Perpetual succession	Separate Legal entity	No mutual agency
	Artificial legal person	Common seal (voluntary)	Limited Liability	Management of business
	<ul style="list-style-type: none"> Minimum 2 partners No limit on maximum partners 	<ul style="list-style-type: none"> Minimum 2 individuals as designated partners, one being resident of India 	<ul style="list-style-type: none"> Business for profit only CG can investigate Compromise & arrangement as per act 	<ul style="list-style-type: none"> Conversion into LLP E-filing of documents Foreign LLPs

IMPORTANT DEFINITIONS

Body Corporate	→ Means a company as defined in Companies Act, 2013 → and includes <ul style="list-style-type: none"> LLP registered in this Act LLP incorporated outside India Company incorporated outside India → does NOT include <ul style="list-style-type: none"> Corporation sole Co-operative society body corporate (other than company or LLP) as CG may prescribe 		
Designated partner	Means any partner designated as such pursuant to section 7		
Financial Year	Period from 1 st April to 31 st March of the following year	But for LLP incorporated after 30 th September, the financial year may end on 31 st March of the year next following that year	
Foreign LLP	Means LLP incorporated outside India	which establishes a place of business within India	
LLP	Means a partnership formed and registered under this Act		
LLP Agreement	means → any written agreement → between the partners of the LLP or → between the LLP and its partners <div style="display: inline-block; vertical-align: middle; margin-left: 20px;">⇒</div> which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP;		
Partner	Means any person who becomes a partner in the LLP in accordance with the LLP agreement		
Small LLP	LLP with → contribution ≤ INR 25 lakh; AND → Turnover of preceding year ≤ INR 40 lakh		

NATURE OF LLP

Section 3 (LLP to be body corporate)	→ LLP is a body corporate → Having a separate legal entity from its partners → Have perpetual succession → Change in partners will not affect LLP	Section 4	Indian Partnership Act, 1932 shall not apply to LLP
Section 5 (Partners)	An individual or body corporate may be partner in LLP	<u>Disqualifications of Partner</u> An individual cannot become a partner of LLP if - <ul style="list-style-type: none"> He is of unsound mind He is an undischarged insolvent He has applied to be adjudicated as insolvent and application is pending 	
Section 6 (Minimum number of partners)	LLP shall have at least 2 partners	If partners are reduced below 2 <div style="display: inline-block; vertical-align: middle; margin-left: 10px;">→ after 6 months →</div>	The only partner who has knowledge of the fact that LLP is carrying on business alone shall be personally liable for obligations of LLP

Section 7 (Designated Partners)

LLP shall have

- At least 2 designated partners who are individuals; and
- At least 1 of them shall be resident in India

Note - Resident in India means a person who has stayed in India for ≥ 120 days during the financial year

→ 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.

Note - Every designated partner shall have DPIN

Procedure of appointment

If incorporation document

- specifies who are designated partners, they shall be designated partner;
- or
- states that every partner shall be designated partner

- Any partner may become designated partner by LLP agreement
- and
- A partner may cease to be designated partner as per LLP agreement

Note - Prior written consent shall be obtained from Designated Partner

Note - LLP shall intimate Registrar within 30 days about appointment of the Designated Partner

Section 8 (Liabilities of Designated Partners)

Designated partner shall be

- responsible for all acts to be done by LLP in respect of compliance with this Act - including filing of document, return, statement etc.; and
- liable to all penalties imposed on LLP for contravention of those provisions

Section 9 (Change in Designated Partners)

- LLP may appoint a designated partner within 30 days of a vacancy and
- intimate Registrar within 30 days of appointment

→ If no designated partner is appointed; or
 → if only one designated partner is left

⇒ each partner shall be deemed to be designated partner

Section 10 (Punishment for contravention)

Section	Contravention of	Who is liable	Liability to a Penalty of	in case of continuing contravention, with a further penalty of
Section 7(1)	LLP to have at least 2 designated partners who are individuals and at least of them is resident in India	LLP and its every partner	₹ 10,000	₹ 100 for each day after the first during which such contravention continues, subject to a maximum of → ₹ 1 lakh for the LLP and → ₹ 50,000 for every partner of such LLP.
Section 7(4)	Non-filing of particulars of designated partner	LLP and its every partner	₹ 5,000	₹ 100 for each day after the first during which such contravention continues, subject to a maximum of → ₹ 50,000 for the LLP and → ₹ 25,000 for its every designated partner.
Section 7(5) or Section 9	Where the designated partner is disqualified or or vacancy in the office of the designated partner	LLP and its every partner	₹ 10,000	₹ 100 for each day after the first during which such contravention continues, subject to a maximum of → ₹ 1 lakh for the LLP and → ₹ 50,000 for its every partner.

INCORPORATION

Section 11 (Incorporation document)	Incorporation of LLP requires – → 2 or more persons for carrying on profitable business shall subscribe their name to an incorporation document → Incorporation document is filed in Form FiLLiP → Statement from Advocate or CA or CS or Cost Accountant and by any 1 subscriber that provisions complied ↓	Incorporation document shall – <ul style="list-style-type: none"> • state the NAME • state the proposed BUSINESS • state the ADDRESS of registered office • state the NAME & ADDRESS of partners • state the NAME & ADDRESS of designated partners • other prescribed information
Section 12 (Incorporation by Registration)	Registrar shall give the certificate of incorporation within 14 days	The certificate is signed by the Registrar and is conclusive evidence
Section 13 (Registered office of the LLP)	<ul style="list-style-type: none"> • Every LLP must have a registered office • A document may be served on LLP, partner or designated partner at the registered office or any other address specifically declared by LLP 	<ul style="list-style-type: none"> • LLP may shift the registered office and file the notice of such change with Registrar
Section 14 (Effect of registration)	LLP, shall by its name, be capable of → suing and being sued → acquiring and holding the property → having a common seal, if it decides to have one → doing acts as a body corporate	Section 15 (Name) → Name shall contain the words “Limited Liability Partnership” or “LLP” → In the opinion of CG, name shall not be <ul style="list-style-type: none"> • undesirable; or • identical to other LLP or trademark
Section 16 (Reservation of Name)	A person may apply for reservation of name in RUN-LLP	Registrar will reserve the name for 3 months
Section 17 (Rectification of Name)	If LLP is registered by name which is identical with other LLP or company or trademark → then on application of <ul style="list-style-type: none"> • such LLP; or • proprietor of trademark (application to be made within 3 years); or • company 	CG may direct to change the name within 3 months
Note – LLP shall give notice to Registrar within 15 days of the change of the name → Registrar shall issue certificate of incorporation → LLP shall change its name in LLP agreement within next 30 days		
Allotment of new name by CG → If LLP fails to change its name within 3 months → The new name of company shall automatically be = ORDNC + Year of passing of direction + serial number + LLPIN number → However, this does not apply to a case where application is pending with RD for disposal at the expiry of 3 months)		

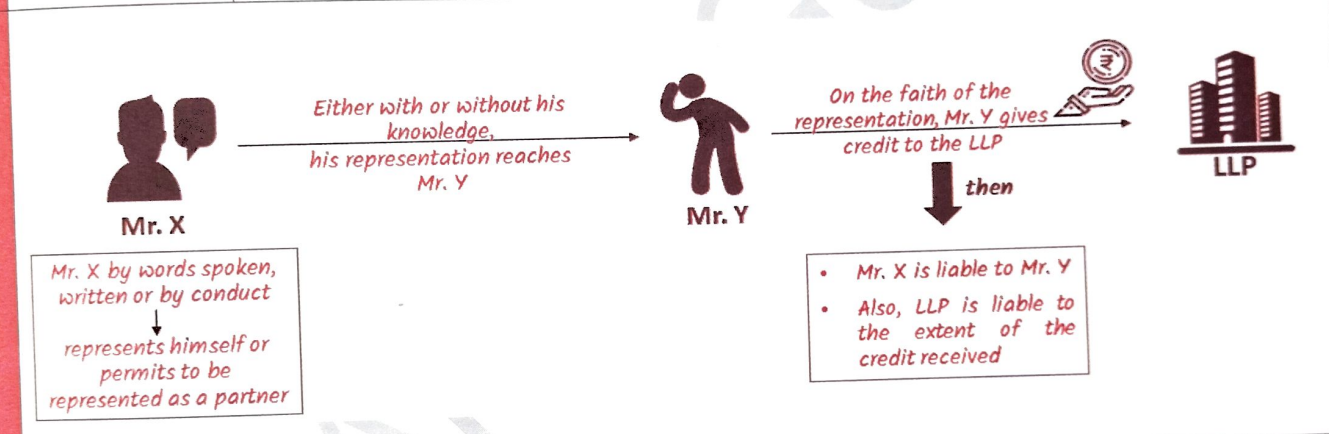
PARTNERS AND THEIR RELATIONS

Section 22 (Eligibility to be partners)	<ul style="list-style-type: none"> → On the incorporation of an 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.								
Section 23 (Relationship of Partners)	<ul style="list-style-type: none"> → Mutual rights between LLP and partners shall be governed by LLP agreement → LLP agreement and any changes shall be filed with Registrar within 30 days 		<ul style="list-style-type: none"> → Any pre-incorporation written agreement made between the subscribers can impose obligations on LLP if ratified by ALL the partners after the incorporation → In absence of agreement, mutual rights to be decided by First Schedule 								
Section 24 (Cessation of Partnership interest)	Voluntary cessation	A person may cease to be a partner of an LLP in accordance with an agreement with the other partners; or	in the absence of agreement with the other partners as to cessation of being a partner <div style="text-align: right; margin-top: 10px;"> → </div>								
	Compulsory cessation	A person shall cease to be a partner - <ul style="list-style-type: none"> → on his death or dissolution of the LLP → if he is declared to be of unsound mind by a competent court → if he has applied to be adjudged as an insolvent or declared as an insolvent 									
	Rights & Liabilities of former partners	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">Effective date of Cessation</td> <td> <ul style="list-style-type: none"> → 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 - • the person has notice that the former partner has ceased to be a partner; or • notice that he has ceased to be a partner of the LLP has been delivered to the Registrar </td> </tr> <tr> <td>Past obligations</td> <td>The cessation of a partner does not by itself discharge the partner from any obligation to the LLP or other partners or any other person which he incurred while being a partner</td> </tr> <tr> <td>Right to his capital contribution & share of profits</td> <td> Where a partner ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or his legal representative, shall be entitled to receive from the LLP - <ul style="list-style-type: none"> • capital contribution of the former partner made to the LLP; and • his right to share in the accumulated profits, after the deduction of accumulated losses, determined as at the date the former partner ceased to be a partner. </td> </tr> <tr> <td>No interference in the management</td> <td>A former partner or his legal representative shall not interfere in the management of the LLP</td> </tr> </table>		Effective date of Cessation	<ul style="list-style-type: none"> → 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 - • the person has notice that the former partner has ceased to be a partner; or • notice that he has ceased to be a partner of the LLP has been delivered to the Registrar 	Past obligations	The cessation of a partner does not by itself discharge the partner from any obligation to the LLP or other partners or any other person which he incurred while being a partner	Right to his capital contribution & share of profits	Where a partner ceases to be a partner, unless otherwise provided in the LLP agreement, the former partner or his legal representative, shall be entitled to receive from the LLP - <ul style="list-style-type: none"> • capital contribution of the former partner made to the LLP; and • his right to share in the accumulated profits, after the deduction of accumulated losses, determined as at the date the former partner ceased to be a partner.	No interference in the management	A former partner or his legal representative shall not interfere in the management of the LLP
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No interference in the management	A former partner or his legal representative shall not interfere in the management of the LLP										
Section 25 (Registration of changes in Partners)	Intimation of change by Partner	Every partner shall inform the LLP of any change in his name or address within a period of 15 days of such change									
	Intimation to Registrar by LLP	An LLP shall - <ul style="list-style-type: none"> → where a person becomes or ceases to be a partner, file a NOTICE with the Registrar within 30 days; and → where there is any change in the name or address of a partner, file a NOTICE with the Registrar within 30 days of such change. 									
		↓	If contravention, partner liable to a penalty of INR 10,000								
			If contravention, the LLP and its every designated partner liable to a penalty of INR 10,000.								
		The NOTICE filed with the Registrar in the prescribed form - <ul style="list-style-type: none"> • shall be signed by the designated partner of the LLP; and • if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner 									
	Filing of Notice by Former Partner	<ul style="list-style-type: none"> → Any person who ceases to be a partner → may himself file with the Registrar the notice → if he has reasonable cause to believe that the LLP may not file the notice with the Registrar and → in case of any such notice filed by a partner, → the Registrar shall obtain a confirmation to this effect from the LLP → unless the LLP has also filed such notice 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									

EXTENT AND LIMITATION OF LIABILITY OF LLP AND PARTNERS

Issue	LLP	Partnership firm
Whether a partner is an agent of the LLP/ firm	Yes	Yes
Whether a partner is an agent of other partners of the LLP/ firm	No	Yes

<p>Section 27 (Extent of liability of LLP)</p> <p>LLP is NOT LIABLE by anything done by a partner in dealing with a third person if -</p>	<p>→ the partner has no authority to act; and</p> <p>→ the third person</p> <ul style="list-style-type: none"> • knows that he has no authority or • does not know or believe him to be a partner of the LLP.
<p>LLP is LIABLE if</p>	<p>→ a partner is liable to any person as a result of a wrongful act or omission on his part during the business of the LLP or with its authority</p> <p>Note - Obligation of LLP is solely of LLP and shall be met out of property of the LLP</p>
<p>Section 28 (Extent of Liability of Partner)</p> <p>A partner is not personally liable for the obligations of the LLP</p>	<p>→ But this will not affect the personal liability of a partner for his own wrongful act or omission</p> <p>→ But a partner shall not be personally liable for wrongful act of other partners</p>



<p>Partner's liability after death</p>	<p>Where after a partner's death</p> <p>→ the business is continued in the same LLP name,</p> <p>→ the continued use of that name or of the deceased partner's name</p> <p>→ shall not make his legal representative or his estate liable for any act of the LLP done after his death</p>
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<p>Section 30 (Unlimited liability in case of fraud)</p> <p>→ If LLP, or any of its partners carries out an activity with intent to defraud any other person,</p> <p>→ their liability shall be UNLIMITED</p> <p>But in case any such act is carried out by a partner,</p> <p>→ the LLP is liable to the same extent as the partner</p> <p>→ unless it is established by the LLP that such act was without the knowledge or the authority of the LLP</p>	<p>Where any business is carried on with fraudulent intent,</p> <p>→ every person who was knowingly a party to the fraud shall be punishable with</p> <ul style="list-style-type: none"> • IMPRISONMENT upto 5 years and • FINE = INR 50,000 to INR 5 lakh. <p>Where an LLP or any partner or designated partner or employee of such LLP has conducted the affairs of the LLP in a fraudulent manner,</p> <p>→ then they shall be LIABLE TO PAY COMPENSATION to any person who has suffered any loss or damage by reason of such conduct</p> <p>Note - LLP shall not be liable if any such partner or designated partner or employee has acted fraudulently without knowledge of the LLP.</p>
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<p>Section 31 (Whistle blowing)</p> <p>Court or Tribunal may reduce or waive any penalty of any partner or employee, if it is satisfied that -</p> <ul style="list-style-type: none"> • he has provided useful information during investigation of such LLP; or • when any information given by him leads to LLP or any partner or employee being convicted 	<p>No partner or employee may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated merely because of providing information</p>
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CONTRIBUTIONS

Section 32 (Form of Contribution)	A contribution of a partner may consist of → tangible, movable or immovable or intangible property or other benefit to the LLP, → including money, promissory notes, other agreements to contribute cash or property, and → contracts for services performed or to be performed	The monetary value of contribution of each partner shall be disclosed in the accounts of the LLP
Section 33 (Obligation to contribute)	The obligation of a partner to contribute money or other property or other benefit or to perform services for an LLP shall be as per the LLP agreement.	A creditor of an LLP, → 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

Books of Accounts		Statement of Accounts & Solvency	
Section 34 (Books of Accounts)	→ The LLP shall maintain proper books of account relating to its affairs for each year → on cash basis or accrual basis and → according to double entry system of accounting and → shall maintain the same at its registered office and preserved for 8 years	Every LLP shall, → within a period of 6 months from the end of each financial year, → prepare a Statement of Account and Solvency and → signed by the designated partners of the LLP Every LLP shall file the Statement of Account and Solvency with the Registrar within 30 days from the end of 6 months of the financial year	
Audit Accounts of every LLP shall be audited		Exemption LLP whose <ul style="list-style-type: none"> • Turnover ≤ 40 lakh, and • Contribution ≤ 25 lakh 	
Section 34A (Standards)	CG, in consultation with NFRA, prescribed accounting and auditing standards as recommended by ICAI	Section 35 (Annual Return)	Every LLP shall file an annual return with Registrar within 60 days from the end of financial year
Section 36 (Public documents)	→ The incorporation document, names of partners and changes made therein, Statement of Account and Solvency and annual return → shall be available for inspection by any person on payment of such fee as may be prescribed	Section 37 (Penalty for False statement)	If in any return or document, any person knowingly makes a false statement or omits any material fact, then he is punishable with <ul style="list-style-type: none"> • Imprisonment ≤ 2 years; and • Fine = 1 lakh to 5 lakh
Section 38 (Power of Registrar to obtain information)	→ In order to obtain such information as the Registrar may consider necessary, → he may require any person including any present or former partner or designated partner or employee of an LLP → to answer any question or supply any details or particulars in writing to him	→ In case any person does not answer such question or supply such details or when the Registrar is not satisfied with the reply, → 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	
Section 39 (Compounding of offences)	→ Offences punishable with FINE only can be compounded → Compounding to be done by RD or officer authorised by CG → by a collecting a sum within the range of minimum and maximum fine provided for such offence Note - No compounding if the same offence is repeated within 3 years	→ Application for compounding is made to Registrar who shall forward it ahead → Once offence is compounded, intimation is given to Registrar within 7 days	
<div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Offence is compounded</div> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">Before institution of prosecution</div> <div style="border: 1px solid black; padding: 5px; width: 45%;">After institution of prosecution</div> </div> <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">No prosecution shall be instituted</div> <div style="border: 1px solid black; padding: 5px; width: 45%;">Compounding is brought to the notice of court by Registrar and the offender shall be discharged</div> </div>		<div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;">The compounding officer may direct any partner, designated partner or employee to file or register any document</div> <div style="border: 1px solid black; padding: 5px; width: 80%; margin: 0 auto;">In case of failure to comply with the order</div> <div style="border: 1px solid black; padding: 5px; width: 80%; margin: 0 auto;">twice the amount of maximum fine can be imposed</div>	

PARTNER'S TRANSFERABLE INTEREST

Section 42
(Partner's transferable interest)

- 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
- The transfer of such right by any partner does not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP

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 LLP, or access information concerning the transactions of the LLP

CONVERSION INTO LLP

Section	Conversion of	Conversion will be done in accordance with the provisions of this Chapter and the
55	Firm into LLP	SECOND SCHEDULE
56	Private company into LLP	THIRD SCHEDULE
57	Unlisted Public company into LLP	FOURTH SCHEDULE

Section 58
(Registration and effect of conversion)

- Registrar shall register the documents submitted under the schedule and issue a certificate of registration
 - LLP shall within 15 days inform the concerned Registrar of firms and Registrar of companies
- Note** – Upon conversion, LLP and partners shall be bound by the provisions of the schedule

Effect of conversion

- There shall be LLP by the name specified in the certificate of registration
- All property shall be transferred and vest in LLP
- Firm or company shall be deemed to be dissolved

FOREIGN LLP

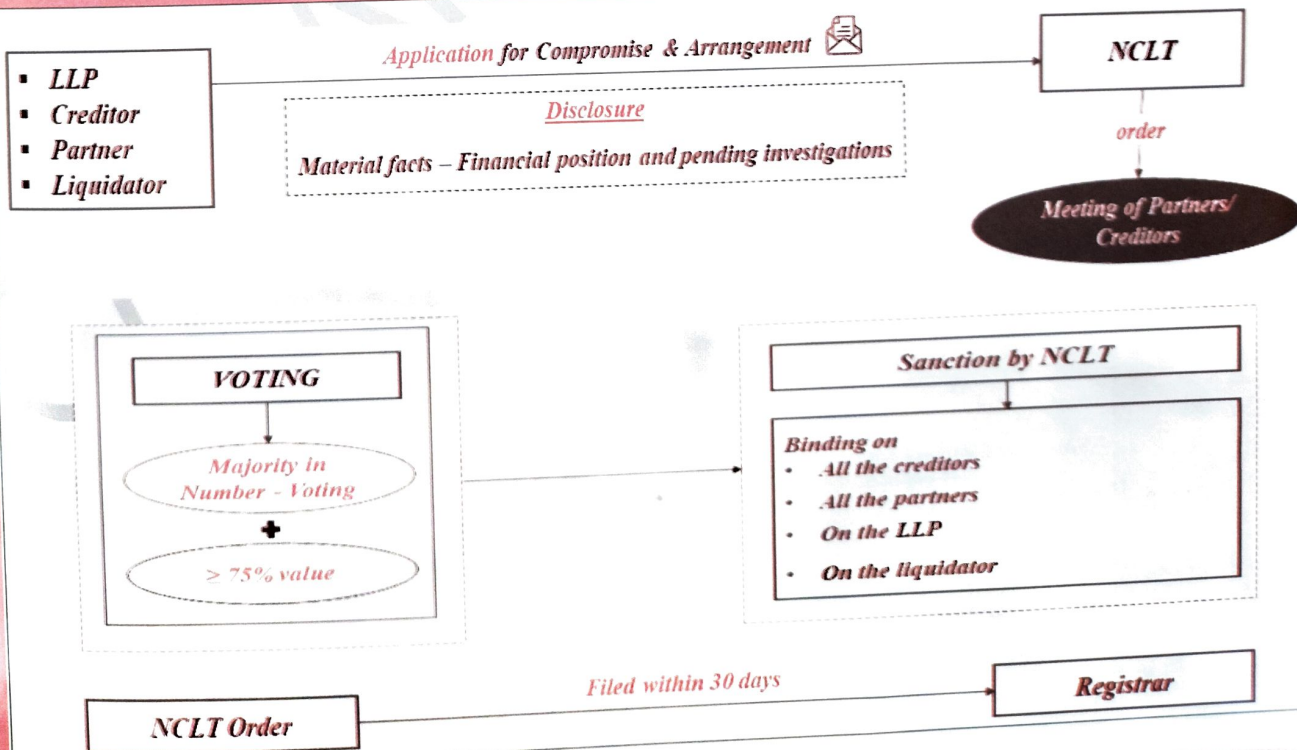
Section 59
(Foreign LLP)

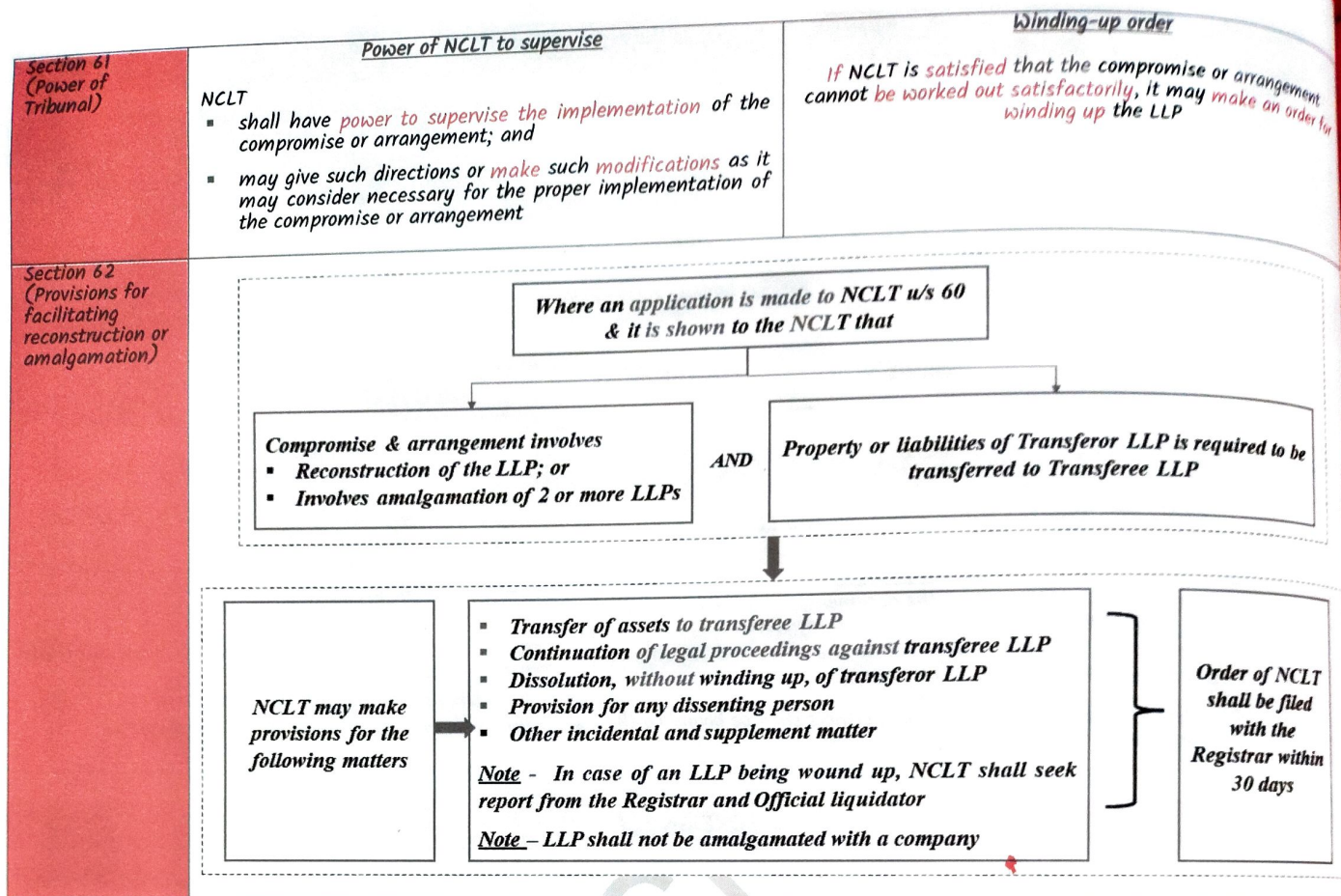
CG may make rules for provisions in relation to

- establishment of place of business by foreign LLPs within India and carrying on their business therein by applying the provisions of the Companies Act, 2013 or such regulatory mechanism with such composition as may be prescribed

COMPROMISE, ARRANGEMENT OR RECONSTRUCTION OF LLP

Section 60
(Compromise & arrangement of LLPs)





WINDING UP AND DISSOLUTION (Section 63, 64 and 65)

<p>→ The winding up of an LLP may be either voluntary or by the Tribunal and LLP, so wound up may be dissolved</p> <p>→ CG may make rules for winding up and dissolution</p>	<p>An LLP may be wound up by the Tribunal, -</p> <ol style="list-style-type: none"> if the LLP decides that LLP be wound up by the Tribunal; if, for a period of more than 6 months, the number of partners of the LLP is reduced below two; if the LLP has acted against the interests of the sovereignty and integrity of India, the security of the State or public order; 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 if the Tribunal is of the opinion that it is just and equitable that the LLP be wound up.
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MISCELLANEOUS

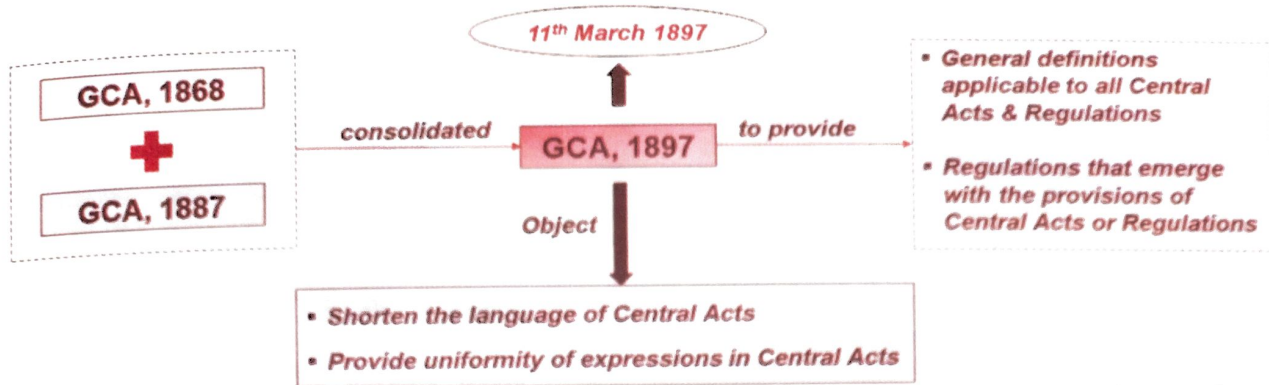
<p>Section 66 (Business of Partner with LLP)</p>	<p>A partner may lend money to and transact other business with the LLP and has the same rights and obligations as a person who is not a partner</p>	<p>Section 67 (Application of Companies Act)</p>	<p>→ CG may by notification apply the provisions of Companies Act, 2013 with LLP</p> <p>→ A copy of every such notification shall be laid before each house of parliament for 30 days</p>
<p>Section 69 (Additional fees)</p>	<p>→ Any document or return if not registered or filed in time,</p> <p>→ may be registered or filed after that time, on payment of such additional fee as may be prescribed</p>	<p>Section 70 (Enhanced punishment)</p>	<p>Second or subsequent offence is punishable with</p> <ul style="list-style-type: none"> imprisonment as provided, fine shall be twice the amount of fine for such offence



OTHER LAWS

30 MARKS

General Clauses Act, 1897



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

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

Month	Means a month reckoned according to the British Calendar	
Movable Property	Property of every description except immovable property	
Person	Includes → company	→ association → body of individuals, whether incorporated or not

General Rules of Construction

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

Powers & Functionaries

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

Provisions as to Orders, Rules etc.

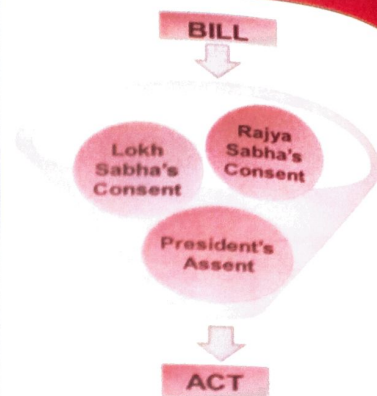
Construction of Rules etc. (Section 20)	Words used in any notification, order, scheme, rule, form or bye law shall have the same respective meaning as in the Act	Power to amend, rescind (Section 21)	Power to ISSUE notifications, rules, bye-laws etc. includes the power to ADD, AMEND, VARY or RESCIND
Making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

Miscellaneous

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

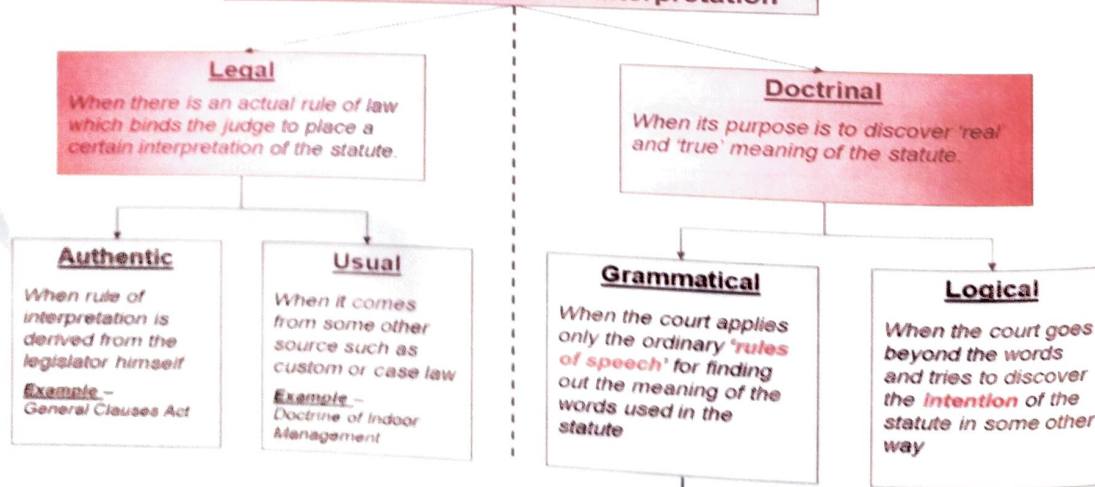
Basic Understanding of a Legislation

Preamble	<ul style="list-style-type: none"> → Defines the scope, object and purpose of the Act → Whenever there is ambiguity in understanding any provision of Act, Preamble is accepted as an aid to interpretation of the Act → However, the Preamble does not over-ride the plain provision of the Act 									
Definitions	<ul style="list-style-type: none"> → Usually mentioned in section 2 of the Act but can be mentioned in any other Act as well → Sometimes definitions of other Acts might also be used 									
Means and/ or includes	<table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">Means</td> <td style="width: 10%; text-align: center;">→</td> <td>exhaustive definition</td> </tr> <tr> <td>Includes</td> <td style="text-align: center;">→</td> <td>inclusive definition</td> </tr> <tr> <td>Means and includes</td> <td style="text-align: center;">→</td> <td>exhaustive definition</td> </tr> </table>	Means	→	exhaustive definition	Includes	→	inclusive definition	Means and includes	→	exhaustive definition
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Shall and May	<table style="width: 100%; border: none;"> <tr> <td style="width: 30%;">Shall</td> <td style="width: 10%; text-align: center;">→</td> <td>mandatory</td> </tr> <tr> <td>May</td> <td style="text-align: center;">→</td> <td>not mandatory</td> </tr> </table>	Shall	→	mandatory	May	→	not mandatory			
Shall	→	mandatory								
May	→	not mandatory								
Statute	<ul style="list-style-type: none"> → Written will of the legislature → It is synonymous with an Act of Parliament 									



Document	<div style="border: 1px solid black; padding: 5px; text-align: center;"> Document comprise of FOUR elements </div> <ul style="list-style-type: none"> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Matter</div> <div style="border: 1px solid black; padding: 2px;">This is the first element. Its usage with the word "any" shows that the definition of document is comprehensive.</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Substance</div> <div style="border: 1px solid black; padding: 2px;">This is the second element on which the matter finds a permanent form.</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Means</div> <div style="border: 1px solid black; padding: 2px;">This represents third element by which such permanent form is acquired and those can be letters, any figures, marks, symbols which can be used to communicate between two persons.</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="border: 1px solid black; padding: 2px 5px; margin-right: 5px;">Record</div> <div style="border: 1px solid black; padding: 2px;">This last element must be certain mutual or mechanical device employed on the substance. It must be by writing, expression or description.</div> </div> 	
Instrument	Section 2(14) of the Indian Stamp Act, 1899	→ 'Instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded
Deed	'Deed' as an instrument in writing purporting to effect some legal disposition. Example - Sale deed.	

General Classification of Interpretation



Exceptions to Grammatical Interpretation

1. Where letter of law is logically defective
2. If the text leads to an unreasonable result that it is self-evident that the legislature could not mean what it says

Kinds of Interpretation

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

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

Interpretation vs. Construction

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

PRIMARY RULES OF INTERPRETATION

Rule of Literal Construction	<ul style="list-style-type: none"> Cardinal Rule Words should be understood in their natural and grammatical meaning Interpretation as per rules of grammar Choice between narrower and wider meaning - adopt a wider one 	<p>This Rule can be summed up under the following headings -</p> <ol style="list-style-type: none"> Natural & Grammatical Meaning Law should be first understood in their ordinary, natural and popular sense. If there is any absurdity, then only the grammatical sense must be modified Technical words Technical words should be interpreted in technical sense only Eg - 'H-DC' 						
Rule of Reasonable Construction	<ul style="list-style-type: none"> '<i>Ut res magis valeat quam pereat</i>' - words must be construed to lead to a sensible meaning At times 2 meaning are possible - one making statute vague and other leading to certainty - in such case later should be followed 	<ul style="list-style-type: none"> If literal meaning defeat the object of legislature, Court can depart from the dictionary meaning Eg - 'implied powers' in case of Objects clause of MOA of a company 						
Rule of Harmonious Construction	<ul style="list-style-type: none"> Statute must be read as a whole Avoid 'head on clash' between 2 sections Where 2 provisions can't be reconciled, interpret in such a way that effect may be given to both 	<ul style="list-style-type: none"> In case of clash, A specific provision will override the general provision Also look for words like 'subject to', 'notwithstanding' & 'without prejudice' If it is impossible to avoid inconsistency <ul style="list-style-type: none"> Provision enacted later in point of time must prevail If provisions are enacted at the same time, Provision appearing later in Act shall prevail 						
Rule in Heydon's case or Mischief Rule	<ul style="list-style-type: none"> In case of possibility of more than one interpretation, most firmly established one shall be followed Court must follow that construction which suppress the mischief and advance the remedy 	<p>4 key considerations</p> <ol style="list-style-type: none"> What was the law before the making of the Act? What was the mischief or defect caused by the earlier law? How does the act of Parliament seek to resolve or cure the mischief or deficiency? and What are the true reasons for the remedy? 						
Rule of Beneficial Construction	<ul style="list-style-type: none"> 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 the past. 	<ul style="list-style-type: none"> 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 clear. 						
Rule of Exceptional Construction	<p>A. Common sense rule</p> <p>General Rule → Full effect must be given to every word Exception → if no sensible meaning can be given to a word, that word should be eliminated</p>	<p>B. 'Or' and 'And'</p> <table border="1"> <tr> <td>General Rule</td> <td>→</td> <td> <ul style="list-style-type: none"> The word 'and' is conjunctive The word 'or' is disjunctive </td> </tr> <tr> <td>Exception</td> <td>→</td> <td> To give effect to the intention of the legislature <ul style="list-style-type: none"> Read 'and' as 'or'; and Read 'or' as 'and' </td> </tr> </table>	General Rule	→	<ul style="list-style-type: none"> The word 'and' is conjunctive The word 'or' is disjunctive 	Exception	→	To give effect to the intention of the legislature <ul style="list-style-type: none"> Read 'and' as 'or'; and Read 'or' as 'and'
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C. 'May', 'must' and 'shall'

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

SECONDARY RULES OF INTERPRETATION

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

Internal Aids to Interpretation

Title	<p>Short title – can't be used for interpretation</p> <p>Long title -</p> <ul style="list-style-type: none"> It described the law It is admissible aid to interpretation However, it will not override clear meaning of law 	Preamble	<ul style="list-style-type: none"> Expresses the scope, object & purpose of the Act It can be used for interpreting the law However, it will not override the plain provision of the Act
Headings & Title of Chapter	<ul style="list-style-type: none"> Sections dealing with a common object are grouped together under a Chapter They may be referred for construing the enactment or its parts. However, they will not override the plain meaning of words of the enactment Also, they cannot control or override a section 		
Marginal Notes	<ul style="list-style-type: none"> There is difference of opinion, but the generally held view is that marginal notes cannot be used for construing the sections However, many cases show that marginal notes may be referred in exceptional cases, like to remove an ambiguity <p>Note – Marginal notes appended to the Articles of the constitution are a part of the constitution and can be used for interpretation</p>		
Definitional sections	<p>Restrictive & Extensive Definitions</p> <p>Definitions starting with</p> <p>Means → restrictive & exhaustive</p> <p>Includes → extensive</p> <p>Means & includes → exhaustive</p> <p>To apply to & includes → extensive</p> <p>Is deemed to include → extensive</p>	<ul style="list-style-type: none"> Interpreted in the light of other provisions of the Act Such definitions should not be read in isolation, it must be read in the context in which it is used 	
	Ambiguous definitions		

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

External Aids to Interpretation

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

Rule of Interpretation of Deeds & Documents

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

CA HARSH GUPTA

FEMA, 1999

This Act extends to Whole of India	It also applied to branches, offices & agencies outside India owned or controlled by a Person Resident in India	The expression "Foreign Currency" means any currency other than Indian currency
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Person Resident in India			
Person	It includes <ul style="list-style-type: none"> • Individual • Firm • Artificial juridical person 	<ul style="list-style-type: none"> • HUF • AOP or BOI, whether incorporated or not • Agency, office or branch controlled by such person • Company 	PROI Means a person who is not a PRI

Point 1 - It is used for an Individual

means

a person residing in India for MORE THAN 182 days during the course of the PRECEDING FY

does NOT include

Person who has gone out of India or stays out of India

for

- E - Employment
- B - Business or Vocation
- U - Uncertain period

Person who has come to India or stays in India

otherwise than for

- E - Employment
- B - Business or Vocation
- U - Uncertain period

- Any person or body corporate incorporated in India
- Any office, branch or agency in India controlled by PROI
- Any office, branch or agency outside India controlled by PROI

Note - Citizenship is not a relevant criterion

Note - Residential status is for a particular date & not for a year

CAPITAL ACCOUNT TRANSACTIONS (CAT) - Section 2(e) + Section 6

Definition	Means a transaction, which alters the assets or liabilities <ul style="list-style-type: none"> ▪ Outside India of PRI; or ▪ In India of PROI
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Regulation of CATs

Control over CAT	CAT that cannot be prohibited		
<div style="text-align: center; margin-bottom: 10px;"> <div style="border: 1px solid black; padding: 5px; display: inline-block;">CAT</div> </div> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Debt Instruments</div> <div style="font-size: small; color: red;">regulated by</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">RBI</div> </div> <div style="text-align: center;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">Non-Debt Instruments</div> <div style="font-size: small; color: red;">regulated by</div> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">CG</div> </div> </div>	Amortisation of loans etc. No restriction can be imposed for payment due on account of <ul style="list-style-type: none"> ▪ Amortisation of loans ▪ Depreciation of direct investments 	Assets acquired outside India when person was PROI PRI may continue to hold or transfer foreign exchange assets if they were acquired <ul style="list-style-type: none"> ▪ When he was PROI; or ▪ Inherited from a person who was PROI 	Assets acquired in India when person was PRI PROI may continue to hold or transfer foreign exchange assets if they were acquired <ul style="list-style-type: none"> ▪ When he was PRI; or ▪ Inherited from a person who was PRI

Permissible CAT	Permissible transactions by PRI	Permissible transactions by PROI
	<ul style="list-style-type: none"> ▪ Investment in foreign securities ▪ Foreign currency loans raised in India and abroad ▪ Transfer of immovable property outside India ▪ Guarantees issued by a PRI in favour of a PROI ▪ Export, import and holding of currency/currency notes 	<ul style="list-style-type: none"> ▪ Investment in India by a PROI, i.e. <ul style="list-style-type: none"> - issue of security by an entity in India and investment therein by a PROI; and - investment by way of contribution by a PROI to the capital of a firm or a proprietorship concern or an AOP in India ▪ Acquisition and transfer of immovable property in India by a PROI ▪ Guarantee by a PROI in favour of, or on behalf of, a PRI

	<ul style="list-style-type: none"> Loans and overdrafts by a PRI from a PROI or vice-versa Maintenance of foreign currency accounts in or outside India Taking out of insurance policy from an insurance company outside India Remittance outside India of capital assets of a PRI Undertake derivative contracts 	<ul style="list-style-type: none"> Import and export of currency/currency notes into/from India by a PROI Deposits between a PRI and a PROI Foreign currency accounts in India of a PROI Remittance outside India of capital assets in India of a PROI Undertake derivative contracts 					
	<p>A RESIDENT INDIVIDUAL may draw ≤ \$ 2,50,000 per FY for a CAT (Similar limit for CuAT shall be clubbed)</p> <p>For drawal > \$ 2,50,000; limit specified in relevant regulations to apply</p> <p>Note - This \$ 2,50,000 shall not be remitted to non-cooperative countries</p>						
Prohibited CAT	<p>a. No CAT is permitted, save as those provided in the Act, rules or regulations</p> <p>↓</p> <p>CATs are prohibited, unless permitted</p>	But →					
	<p>b. No PROI shall make investments in</p>	→	<table border="1"> <tr> <td> <ul style="list-style-type: none"> Chit fund business Agricultural or plantation activities </td> <td> <ul style="list-style-type: none"> Nidhi company Trading in Transferable Development Rights </td> </tr> <tr> <td colspan="2"> <ul style="list-style-type: none"> Real estate business or construction of farm houses <p>↓ does not include</p> <p>Development of township, construction of residential/commercial premises, roads, bridges & REITs</p> </td> </tr> </table>	<ul style="list-style-type: none"> Chit fund business Agricultural or plantation activities 	<ul style="list-style-type: none"> Nidhi company Trading in Transferable Development Rights 	<ul style="list-style-type: none"> Real estate business or construction of farm houses <p>↓ does not include</p> <p>Development of township, construction of residential/commercial premises, roads, bridges & REITs</p>	
	<ul style="list-style-type: none"> Chit fund business Agricultural or plantation activities 	<ul style="list-style-type: none"> Nidhi company Trading in Transferable Development Rights 					
	<ul style="list-style-type: none"> Real estate business or construction of farm houses <p>↓ does not include</p> <p>Development of township, construction of residential/commercial premises, roads, bridges & REITs</p>						
<p>c. No PRI shall undertake CAT with Democratic Republic of Korea, unless approved by CG - Order dated April 21, 2017</p>							
<p>d. Existing investment transactions with Korea, which is not permitted, shall be closed & settled within 180 days of the order</p>							

CURRENT ACCOUNT TRANSACTIONS (CuAT) - Section 2(j) + Section 5

Definition	<p>Means a transaction, other than CAT & includes</p> <ul style="list-style-type: none"> Payment due in connection with foreign trade & short-term credit facilities in ordinary course of business; Remittance for living expenses of parents, spouse & children residing abroad Payment of interest on loans & net income from investments Expenses in connection with foreign travel, education & medical care of parents, spouse & children 	
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Regulation of CuATs

- CuATs are always permitted unless prohibited
- CG has the power to impose restrictions on CuAT

Prohibited CuAT	<ol style="list-style-type: none"> Remittance out of lottery winnings Remittance of income from racing/ riding etc. or any other hobby Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc. Payment related to Call Back Services of telephones 	<ol style="list-style-type: none"> Payment of commission on equity investment in JV/ WOS abroad Payment of commission on exports under Rupee State Credit Route, EXCEPT upto 10% of invoice value of exports of Tea & Tobacco Remittance of dividend by a company to which dividend balancing is applicable Remittance of interest income on funds held in Non-Resident Special Rupee Scheme A/c
	<p>Transactions requiring prior approval of CG</p> <ol style="list-style-type: none"> Remittance of freight of vessel chartered by PSU Payment of import through ocean transport by a Govt Department or PSU on CIF basis (other than FOB and FAS basis) Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping Remittance of hiring charges of transponders by TV channels or Internet Service Providers. Multi-modal transport operators making remittance to agents abroad 	<ol style="list-style-type: none"> Cultural Tours Advertisement in foreign print media by State Govt and PSU exceeding \$ 10,000 Exception - No restriction if for promotion of tourism, foreign investments and international bidding Remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State Level Sports Bodies, if amount involved > \$ 1,00,000 Remittance of membership of P&I Club

Transactions requiring prior approval of RBI	Facilities for Individuals	<ul style="list-style-type: none"> → Individuals can avail foreign exchange upto \$ 2,50,000 in a FY for CuATs → For additional remittance, approval of RBI is required → For the following purposes, individuals may avail foreign exchange > \$ 2,50,000 if required by respective foreign country without RBI approval <ul style="list-style-type: none"> • Emigration • Expenses in connection with medical treatments abroad • Studies abroad → The limit of \$ 2,50,000 for CuAT shall be clubbed with LRS + CATs → Remittance up to net salary can be done by a Person who is resident but not permanently resident in India & <ul style="list-style-type: none"> • is a citizen of a foreign state other than Pakistan; or • is a citizen of India, who is on deputation to office or branch of a foreign company or subsidiary or JV in India of such foreign company <p>Note - 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</p>											
	Facilities for persons other than Individuals	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;"> Donations for <ul style="list-style-type: none"> • creation of Chairs in reputed educational institutes, • contribution to funds (not being an investment fund) promoted by educational institutes; and • contribution to a technical institution or body or association in the field of activity of the donor Company. </td> <td style="width: 30%;"> exceeding <ul style="list-style-type: none"> ▪ 1% of their foreign exchange earnings during the previous 3 FYs or ▪ USD 50,00,000 whichever is LESS </td> </tr> <tr> <td style="text-align: center;">b.</td> <td> Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India </td> <td> exceeding <ul style="list-style-type: none"> ▪ USD 25,000 or ▪ 5% of the inward remittance whichever is MORE </td> </tr> <tr> <td style="text-align: center;">c.</td> <td> Remittances <ul style="list-style-type: none"> ▪ for any consultancy services in respect of infrastructure projects ▪ for other consultancy services procured from outside India </td> <td> <ul style="list-style-type: none"> ▪ exceeding USD 1,00,00,000 per project ▪ exceeding USD 10,00,000 per project </td> </tr> <tr> <td style="text-align: center;">d.</td> <td> Remittances by an entity in India by way of reimbursement of pre-incorporation expenses. </td> <td> exceeding <ul style="list-style-type: none"> ▪ 5% of investment brought into India or ▪ USD 1,00,000 whichever is MORE </td> </tr> </table>	a.	Donations for <ul style="list-style-type: none"> • creation of Chairs in reputed educational institutes, • contribution to funds (not being an investment fund) promoted by educational institutes; and • contribution to a technical institution or body or association in the field of activity of the donor Company. 	exceeding <ul style="list-style-type: none"> ▪ 1% of their foreign exchange earnings during the previous 3 FYs or ▪ USD 50,00,000 whichever is LESS	b.	Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India	exceeding <ul style="list-style-type: none"> ▪ USD 25,000 or ▪ 5% of the inward remittance whichever is MORE	c.	Remittances <ul style="list-style-type: none"> ▪ for any consultancy services in respect of infrastructure projects ▪ for other consultancy services procured from outside India 	<ul style="list-style-type: none"> ▪ exceeding USD 1,00,00,000 per project ▪ exceeding USD 10,00,000 per project 	d.	Remittances by an entity in India by way of reimbursement of pre-incorporation expenses.
a.	Donations for <ul style="list-style-type: none"> • creation of Chairs in reputed educational institutes, • contribution to funds (not being an investment fund) promoted by educational institutes; and • contribution to a technical institution or body or association in the field of activity of the donor Company. 	exceeding <ul style="list-style-type: none"> ▪ 1% of their foreign exchange earnings during the previous 3 FYs or ▪ USD 50,00,000 whichever is LESS											
b.	Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India	exceeding <ul style="list-style-type: none"> ▪ USD 25,000 or ▪ 5% of the inward remittance whichever is MORE											
c.	Remittances <ul style="list-style-type: none"> ▪ for any consultancy services in respect of infrastructure projects ▪ for other consultancy services procured from outside India 	<ul style="list-style-type: none"> ▪ exceeding USD 1,00,00,000 per project ▪ exceeding USD 10,00,000 per project 											
d.	Remittances by an entity in India by way of reimbursement of pre-incorporation expenses.	exceeding <ul style="list-style-type: none"> ▪ 5% of investment brought into India or ▪ USD 1,00,000 whichever is MORE											

Remittance from RFC A/c	No approval from CG or RBI is required for any remittance out of RFC A/c
Remittance from EEFC A/c	No approval from CG or RBI is required for any remittance out of EEFC A/c However, approval is required for the following transactions <ul style="list-style-type: none"> - 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 5% of the inward remittance whichever is more. - Remittances exceeding 5% 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.
International Credit Card	If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

Regulation & Management of Foreign Exchange	
Dealing in Foreign Exchange (Sec. 3)	Save as otherwise provided, No person shall <ol style="list-style-type: none"> a. Deal in or transfer any foreign exchange or security to any person not being an AP b. Make any payment to or for the credit of any person resident outside India in any manner c. Receive any payment on behalf of Person resident outside India, otherwise than through AP d. Enter into any financial transaction in India as a consideration for transfer of a right to acquire any asset outside India by any person (Hawala)

Holding of Foreign Exchange (Sec. 4)

Save as otherwise provided in this Act,

- no PRI shall
- acquire, hold, own, possess or transfer
- any foreign exchange, foreign security or any immovable property situated outside India.

Enforcement Directorate

Directorate of Enforcement (Sec. 36)

- CG shall establish Directorate of Enforcement with a director & other prescribed officers of ED
- CG may authorise following officers to appoint officers of ED below the rank of Assistant Director of Enforcement
 - Director of Enforcement,
 - Additional Director of Enforcement
 - Special Director of Enforcement
 - Deputy Director of Enforcement

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