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CORPORATE & OTHER LAWS

SEP 2025 & JAN 2026 Exams



Concept Book

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Corporate & Other Laws

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About the Book

नमस्कार दोस्तों, राधे राधे !!

This Concept Book is prepared by **CA Madhav Heda (AIR 8)**. He completed his articleship with **Deloitte Haskins & Sells LLP** in Statutory Audit Domain and **KPMG** in Deal Advisory - M&A Tax and Private Equity Domain. After qualifying, he also turned down an offer from **BCG** to follow his passion for teaching.

This Concept Book contains all provisions of CA Inter Corporate and Other Laws in **169 pages**. This Concept Book is **fully amended** for Sep 25 & Jan 26 Exams. It contains 70+ examples for better understanding of provisions.







This book is fully prepared as per **ICAI Syllabus**. All special points relating to ICAI Questions are also covered in this book.

This book has been prepared for those **learning the subject for the first time as well as for last day revision before the exam**. On first time reading, refer this book along with lectures or revision videos. On last day before exam, you can refer only keywords marked in **RED** in this book.

Best wishes

CA Madhav Heda

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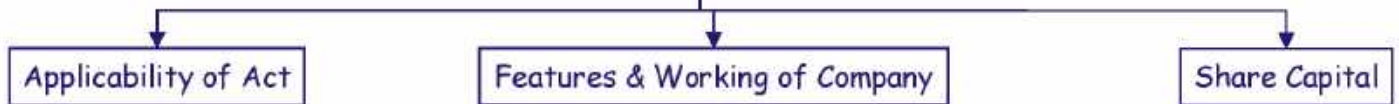
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PRELIMINARY



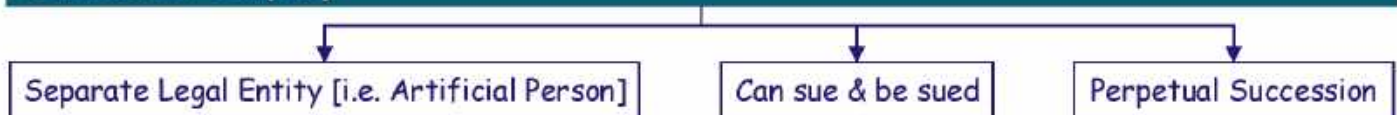
Topics Covered



Applicability of Companies Act, 2013 [Section 1]

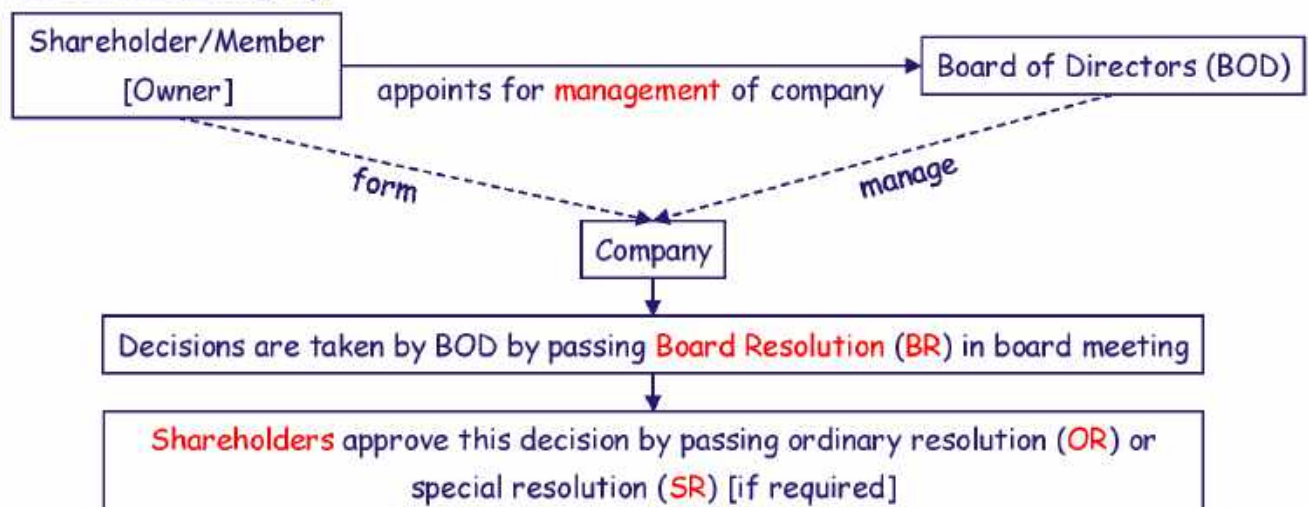
Applicability	<ul style="list-style-type: none">▪ All companies incorporated in India (under this act or any previous company law).▪ Special act companies (except provisions which are inconsistent with such act). Note: Special act company means a company formed by any act other than Companies Act, 2013 [Example: Banking company established under Banking Regulation Act, 1949].▪ Body corporate notified by CG.
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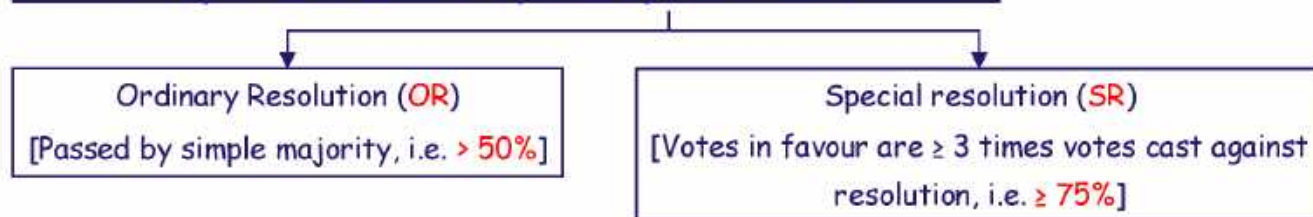
Features of Company



Working of Company

(1) Structure of company



(2) Instruction by OR/SR [Resolutions passed by shareholders/members](3) Members of company

- Person holding **shares** of company [i.e. shareholder].
- Person who had **subscribed** to Memorandum of Association (MOA).

(4) Directors and Board of Directors (BOD)

Directors (only individuals) direct & oversee affairs of company and collectively they form BOD.

(5) Promoters

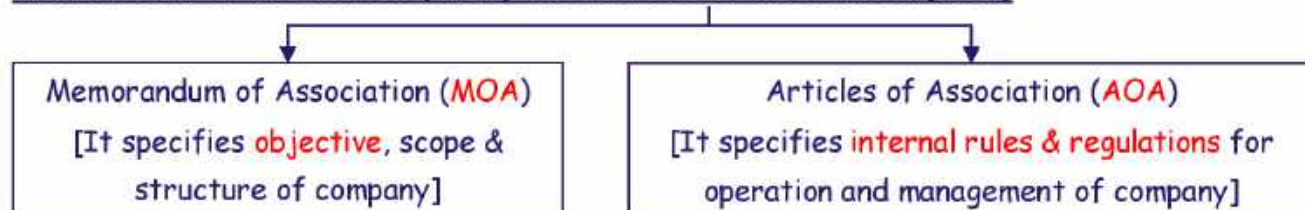
- Person having **control** over affairs of company whether as shareholder, director or otherwise,
- Person **named** as such in prospectus or is identified by company in annual return, or
- As per whose advice, directions or instructions BOD of company is **accustomed to act** [not merely acting in **professional capacity**].

(6) Meetings

- Annual General Meeting (AGM): Shareholders' meeting held annually for specific decision.
- Extraordinary General Meeting: Shareholders' meeting held for deciding urgent matters.
- Board Meeting: Meeting held by BOD for any business decisions.
- Class Meeting: Meeting of particular class of persons [such as creditors, security holders].

(7) Notice of Meeting, Explanatory Statement and Minutes of Meeting

- Notice of Meeting: Formal communication to inform date, time, venue & agenda of meeting.
- Explanatory Statement: Statement explaining reasons & material facts of resolution.
- Minutes of Meeting: Record of discussions, decisions & resolutions made during a meeting.

(8) Memorandum of Association (MOA) and Articles of Association (AOA)(9) Registrar of Companies (ROC)

(10) Regional Director (RD)

Officer of Ministry of Corporate Affairs who supervises working of ROC in a particular region.

(11) National Company Law Tribunal (NCLT): Deals with matters related to companies under Companies Act, 2013.**Share Capital**

Authorised Share Capital [Section 2(18)]	Capital authorised by MOA as maximum share capital
Issued Share Capital [Section 2(50)]	Capital which is issued for subscription
Subscribed Capital [Section 2(86)]	Part of capital which is subscribed by members
Called up share capital [Section 2(15)]	Part of capital which is called for payment
Paid-up share capital (PUSC) [Section 2(64)]	Amount received as paid-up for issued shares

Note: If [subscribed capital > issued capital], issue is termed as oversubscribed & excess amount is refunded to applicants. But if [subscribed capital < issued capital], issue is termed as under subscribed.

Example

ABC Ltd. was registered with authorised capital of ₹ 2 crores where each share is of ₹ 10. Company received applications for 10 lakh shares but actually issued 7 lakh shares, on which it called ₹ 8 per share. All calls have been met, except 3 shareholders who still owe ₹ 2 on their 6000 shares.

Solution

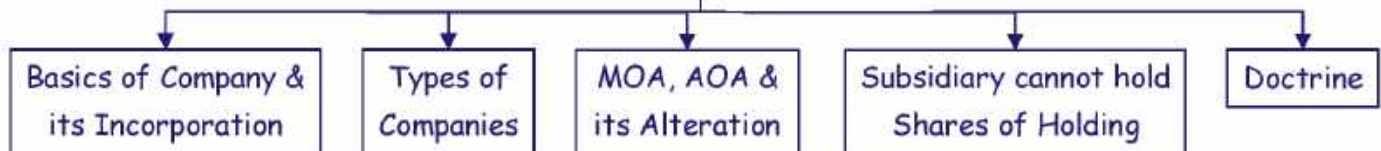
Authorized share capital	-	₹ 2,00,00,000
Issued capital	7,00,000 × ₹ 10	₹ 70,00,000
Subscribed capital	10,00,000 × ₹ 10	₹ 1,00,00,000
Called-up capital	7,00,000 × ₹ 8	₹ 56,00,000
Paid-up capital	₹ 56,00,000 - (6000 × ₹ 2)	₹ 55,88,000

Note: Remaining Definitions of this Chapter are covered in Relevant Chapters.

INCORPORATION OF COMPANY & MATTERS INCIDENTAL THERETO



Topics Covered



Incorporation of Company [Section 7]

(1) **SPICe+** [Simplified Proforma for Incorporating Company electronically (i.e. form INC-32)] application shall be filed with ROC (in whose jurisdiction registered office of company is to be situated) for registration of company along with following documents:

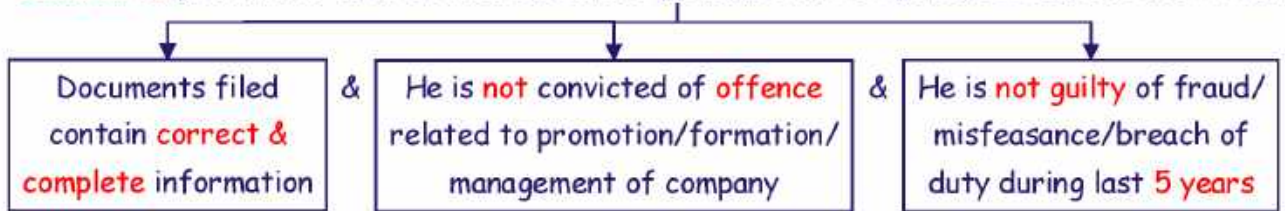
- **e-MOA** (Form INC-33) and **e-AOA** (Form INC-34) duly signed by **all subscribers** to MOA:

Subscriber	Remarks
Ordinary cases	Subscriber shall add his name, address, description & occupation, in presence of atleast 1 witness who shall sign & add his details as above.
Illiterate	Affix his thumb impression or mark described to be of person and person writing for him shall write subscriber's name against/below such mark & authenticate it by his own sign & also write number of shares taken by such subscriber.
Body corporate	Signed by director/officer/employee [authorized by BR]
Limited Liability Partnership (LLP)	Signed by partner of LLP [authorized by resolution approved by all partners of LLP]
Foreign national residing outside India	His signature, address & proof of identity shall be notarized by notary public with a certificate. Note: If such person is residing in a country outside Commonwealth (such as Netherlands) or which is not a party to Hague Apostille Convention, certificate of Notary Public shall be authenticated by Diplomatic or Consular Officer .
Foreign national residing outside India & visited India to incorporate company	Allowed if he has a valid business visa [Not applicable if person is of indian origin/overseas citizen of India]

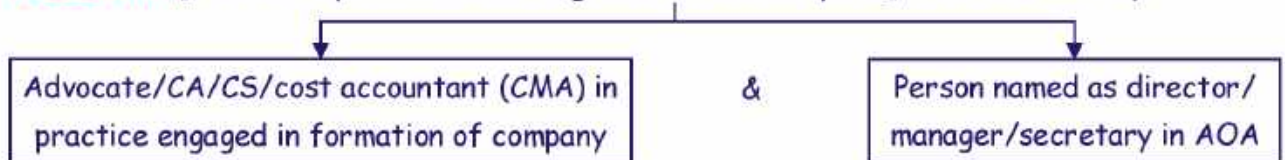
- **Particulars** [name, address, nationality, etc.] of:
 - Subscribers to MOA, and

➤ **First director** [as named in AOA] & his interest in other firm/body corporate & his consent (form DIR-2) to act as director shall be filed in form DIR-12.

- **Declaration** [Form INC-9] from first directors [as named in AOA] & subscribers to MOA that



- Address for **correspondence** till its registered office is established.
- **Declaration** [that all requirements for registration are complied] in Form INC-8 by:



Note:

- (i) In case of **nidhi** company, a **declaration** shall be obtained from **CG** before commencing business & declaration (that **CG's** declaration is received) shall be submitted to **ROC** at incorporation stage.
- (ii) If objects of company require approval from **sectoral regulators** (SEBI, RBI, etc.), it shall be obtained & **declaration** for its receipt shall be submitted to **ROC** at incorporation stage.
- (iii) Company shall maintain and **preserve copies** of filed documents & information at its **registered office** until its dissolution.

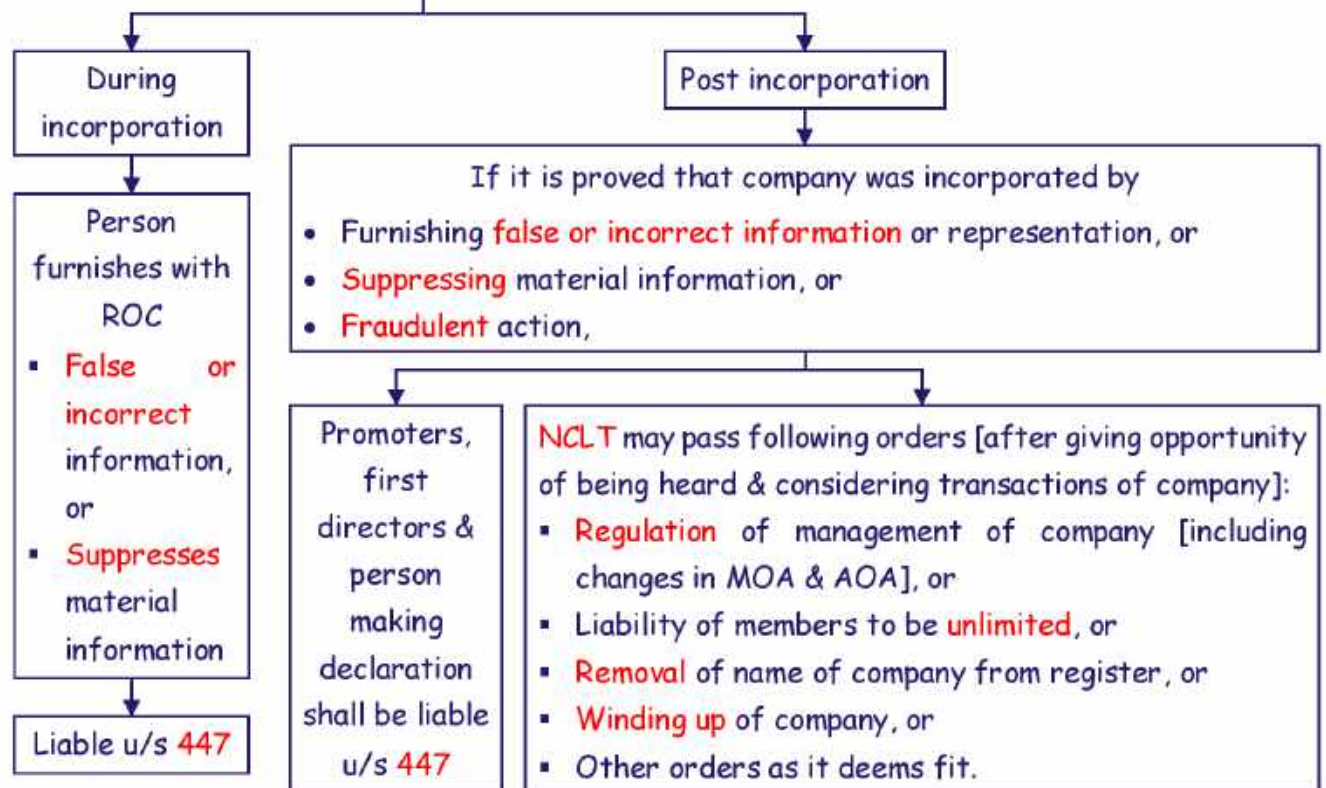
(2) Certificate of Incorporation and Corporate Identity Number (CIN)

- **ROC** shall issue **certificate** of incorporation in Form INC-11 [containing name of company, date of issue, **CIN**, signature of **ROC** with seal & **PAN** of company] after registering documents.

Note: Certificate is **not** a conclusive proof of incorporation being in compliance.

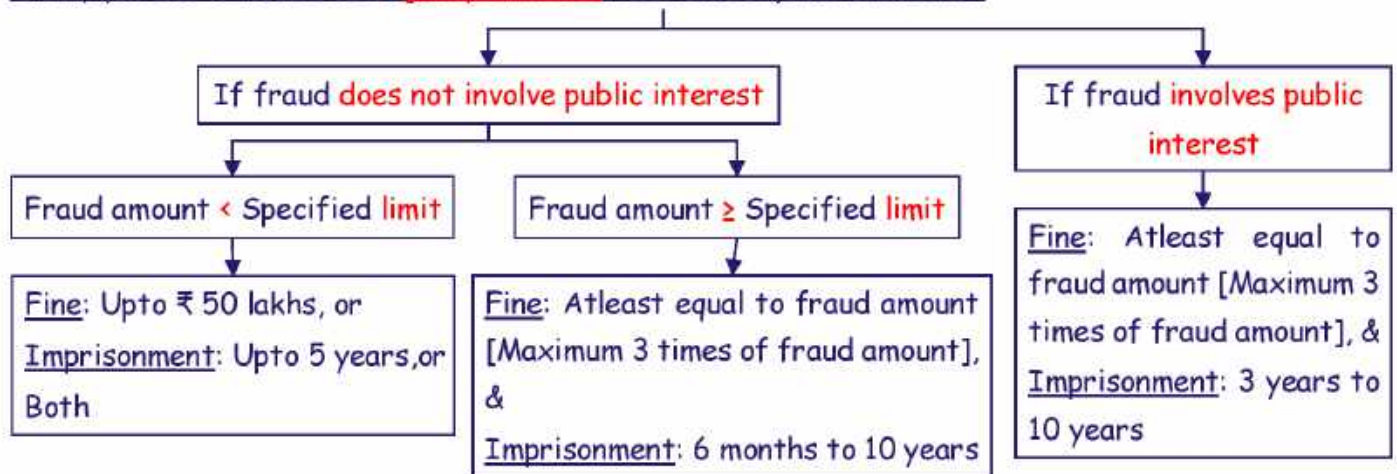
- **ROC** shall allot **CIN** (distinct identity for company) on date of issue of certificate.

(3) Punishment in case of default



Punishment for Fraud [Section 447]

If any person is found to be **guilty of fraud**, he shall be punishable with

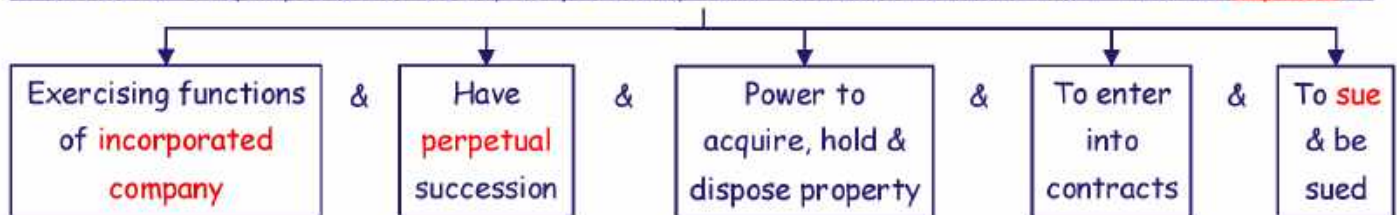


Note:

- (i) Specified **limit**: **Lower** of ₹ 10 lakh or 1% of **turnover** of company.
- (ii) Fraud includes any act, omission, concealment or abuse of position by a person with an intent to deceive, gain undue advantage or injure interests of any person, whether there is:
 - Wrongful gain [gain by unlawful means to which person is not legally entitled] or
 - Wrongful loss [loss by unlawful means to which person losing is legally entitled].

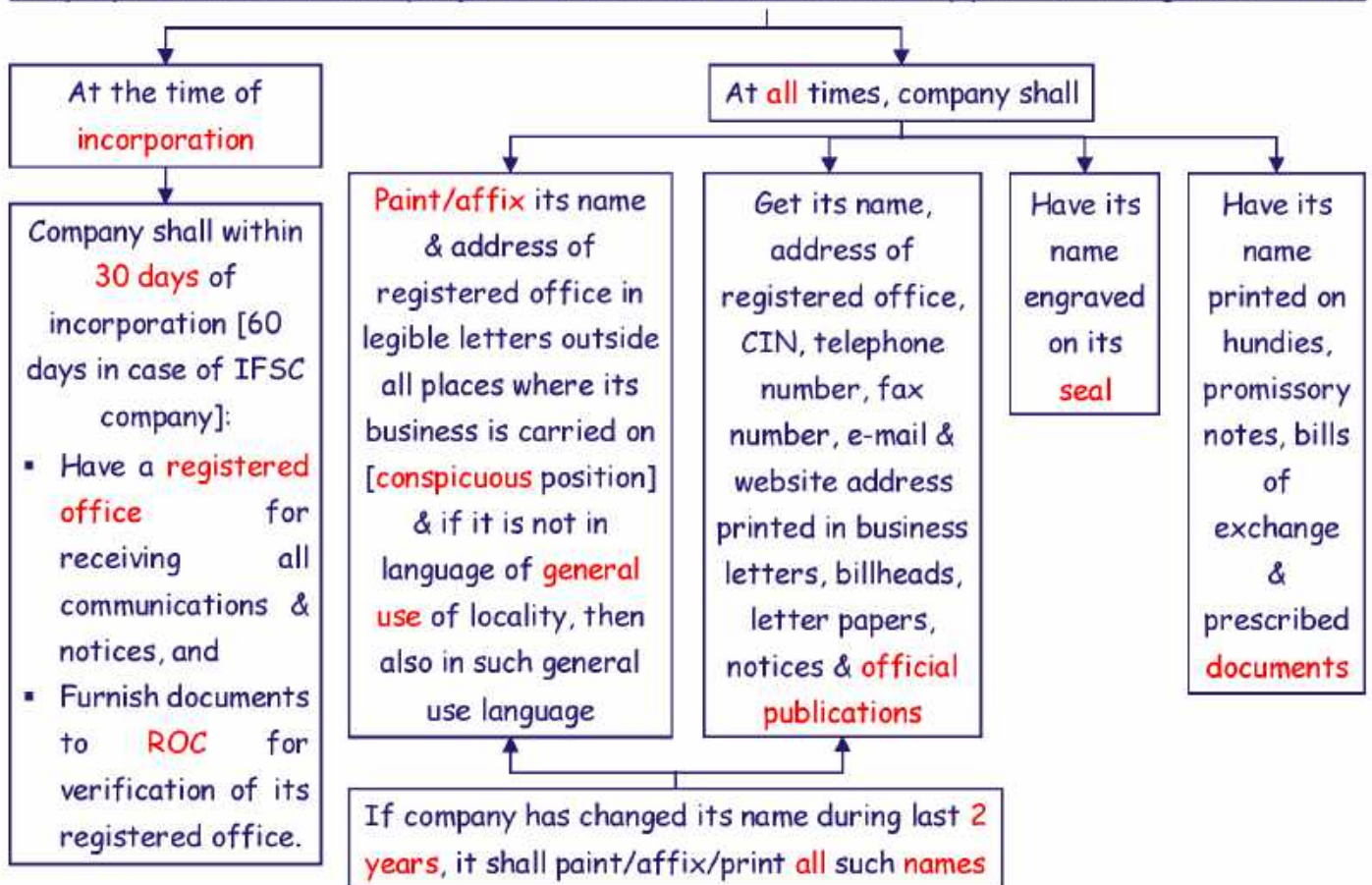
Effect of Registration [Section 9]

From date of incorporation (as specified in certificate of incorporation), subscribers to MOA & other members of company shall be a body corporate by name contained in MOA and it shall be **capable** of



Registered Office of Company [Section 12 and 13]

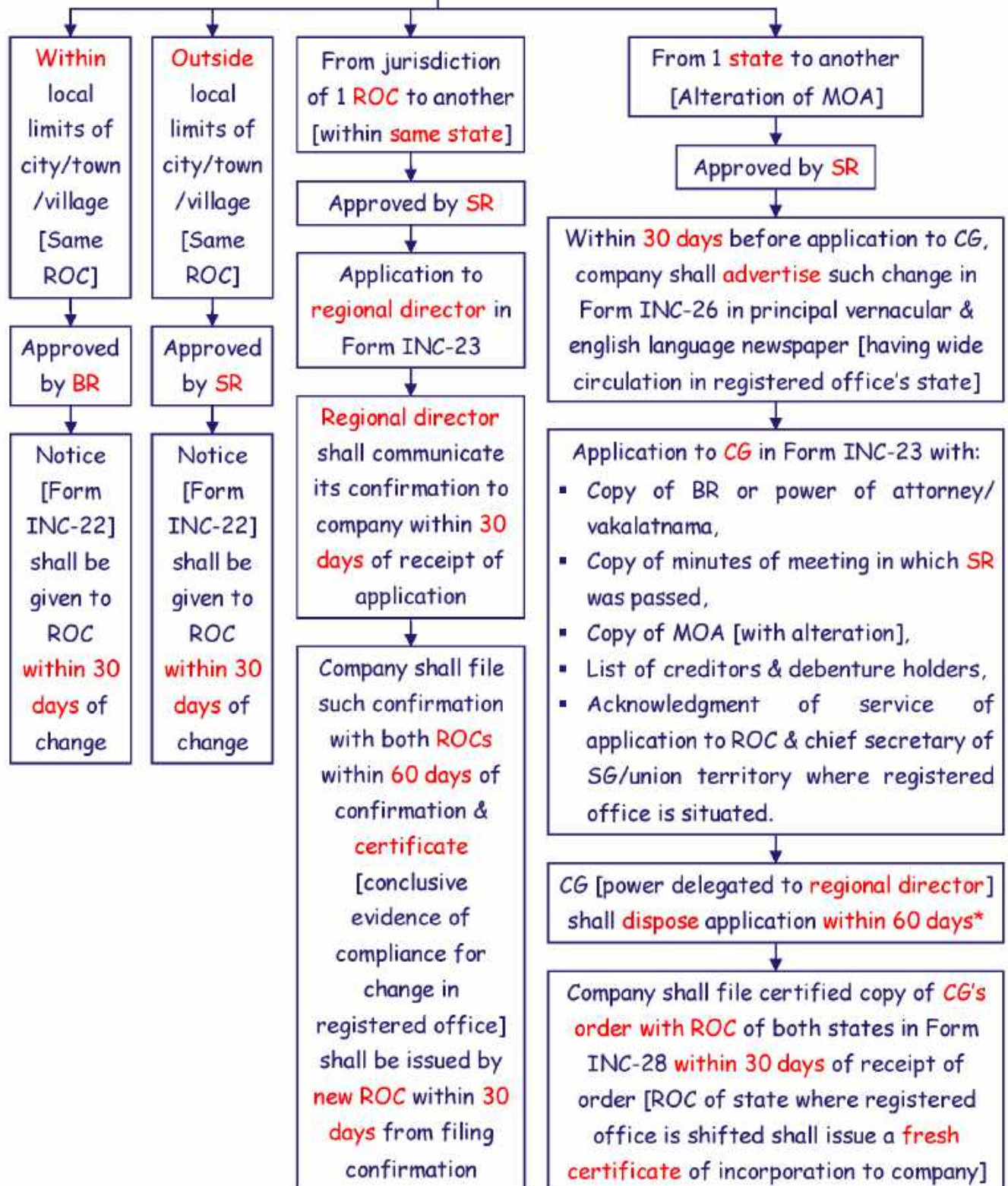
Company's domicile, nationality & jurisdiction of court is determined by place of its registered office



Note:

- Registered office **cannot** be a **P.O. box**.
- Registered office can be **different** from **head office or corporate office**.
- In case of One Person Company (**OPC**), words "One Person Company" shall be mentioned in brackets below name of company, wherever it is printed/affixed/engraved.

(iv) **Change of registered office of company**



* Before passing order, CG may satisfy that:

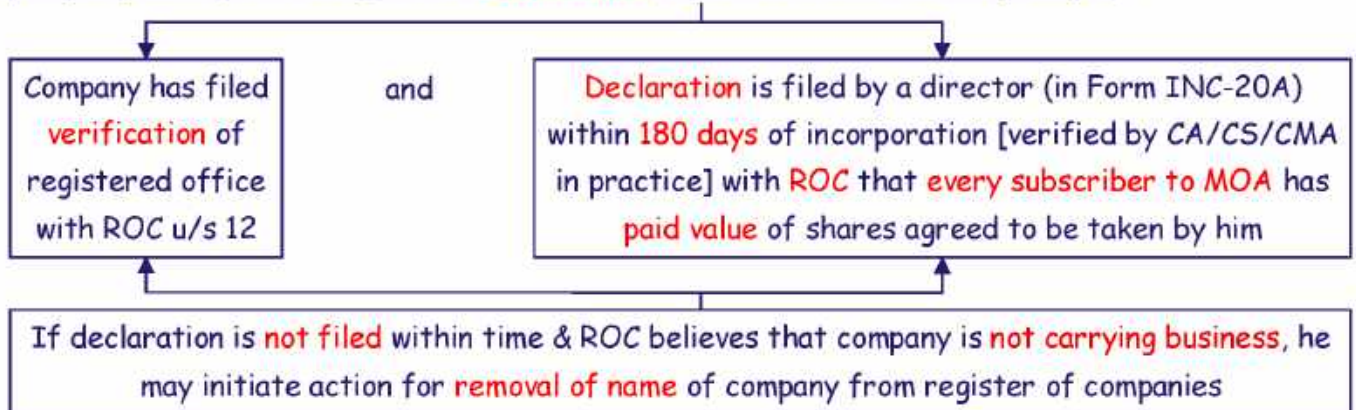
- Alteration is made with consent of persons concerned with company, &
- Sufficient provision is made for discharge of its debts & obligations.

Penalty in case of default

Company & officer in default: Penalty of ₹ 1,000 per day during which default continues [but ≤ ₹ 1 lakh]

Commencement of Business [Section 10A]

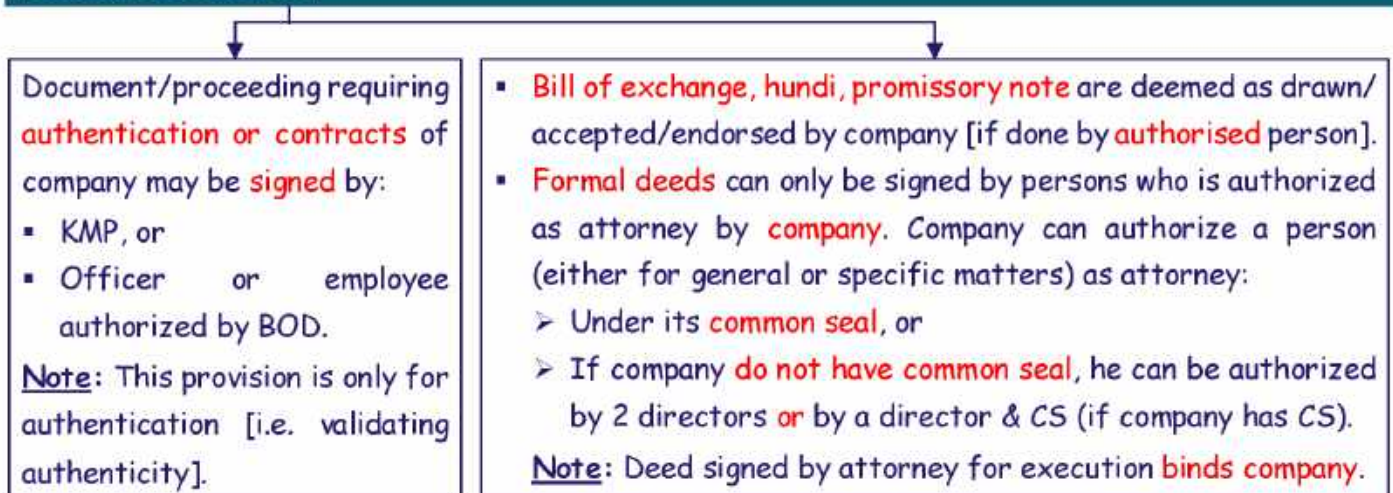
- Company having share capital can **commence** business or borrow money only if:



- Penalty in case of default in filing declaration or verification with ROC

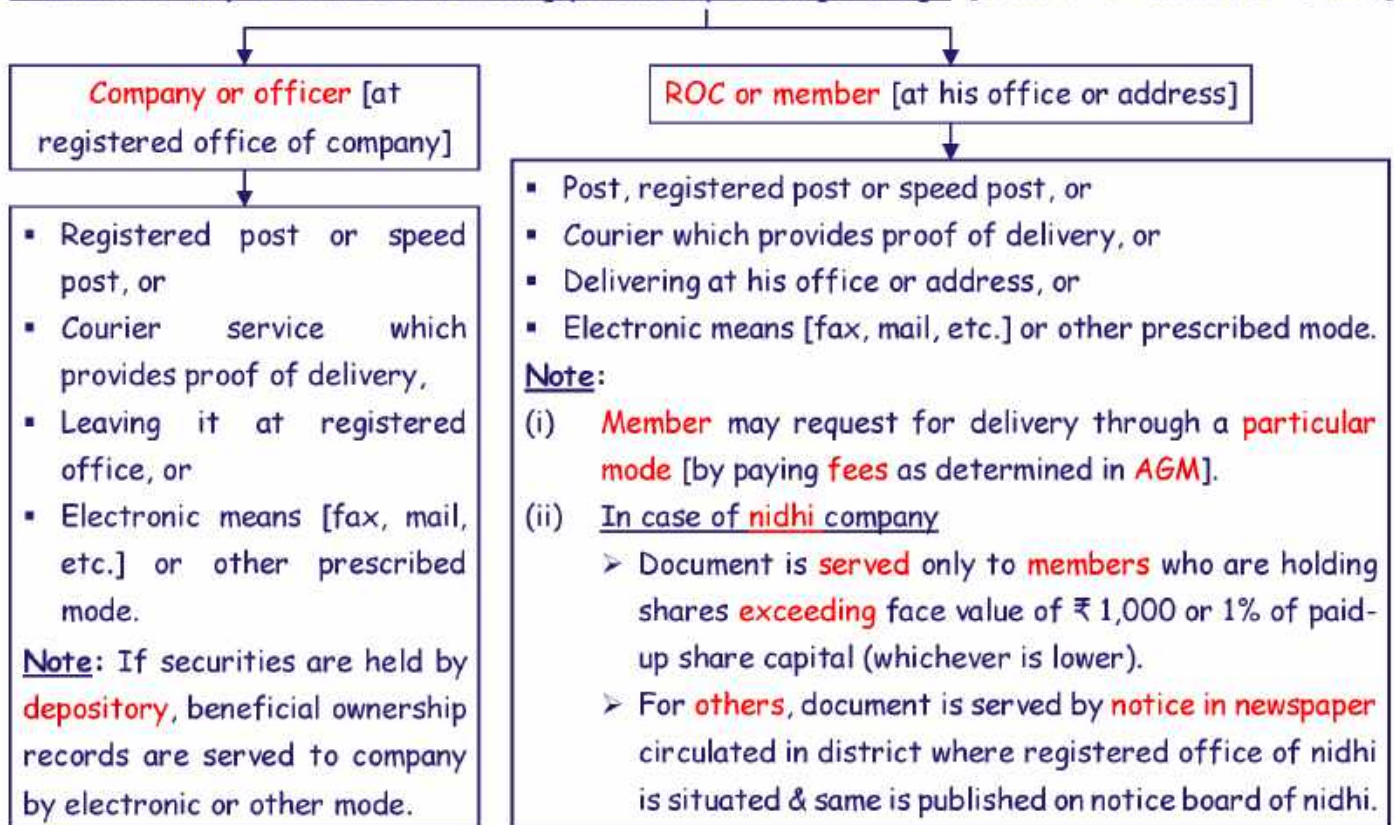
- Company: ₹ 50,000, &
- Officer in default: ₹ 1,000 for each day during which default continues [but ≤ ₹ 1 lakh].

Authentication of Documents, Proceedings & Contracts and Execution of Bills of Exchange [Section 21 and 22]



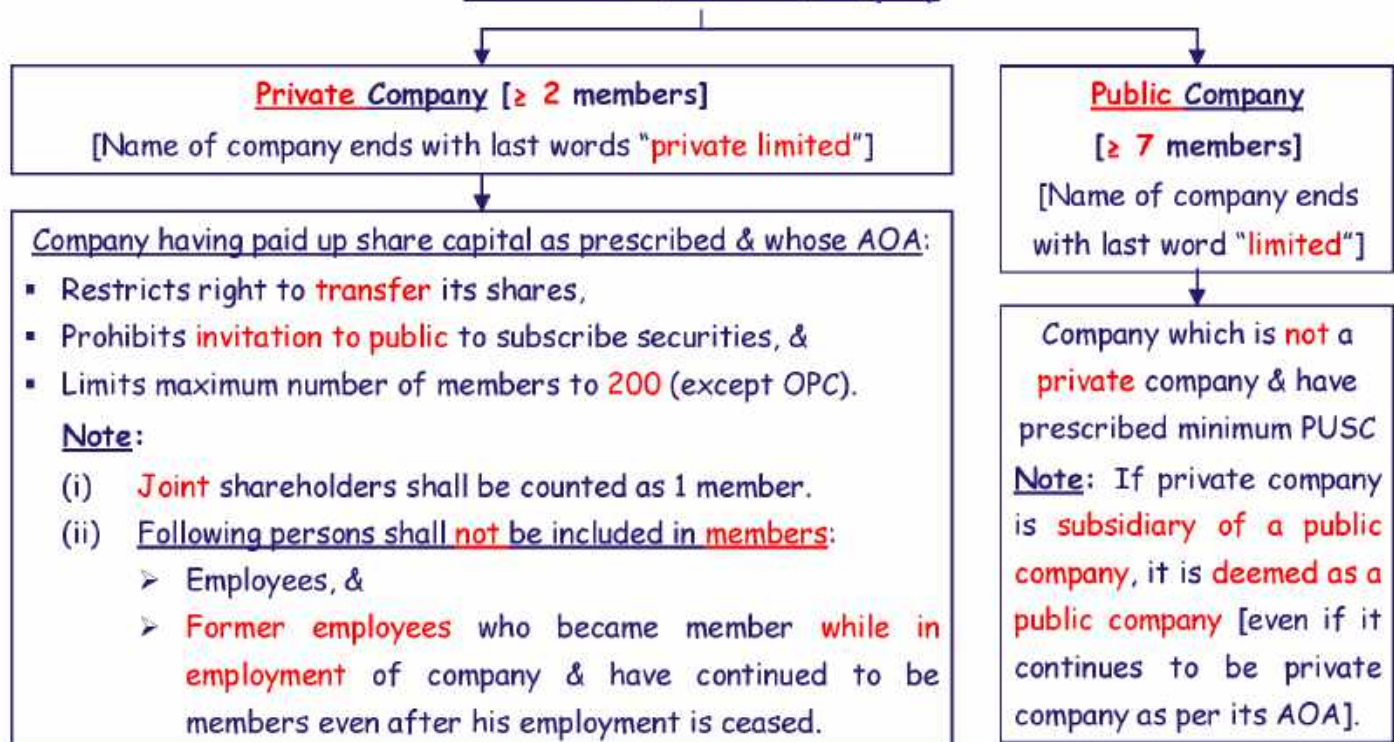
Service of Documents [Section 20]

A document may be served to following persons by sending through: [Even if AOA states otherwise]



Types of Companies

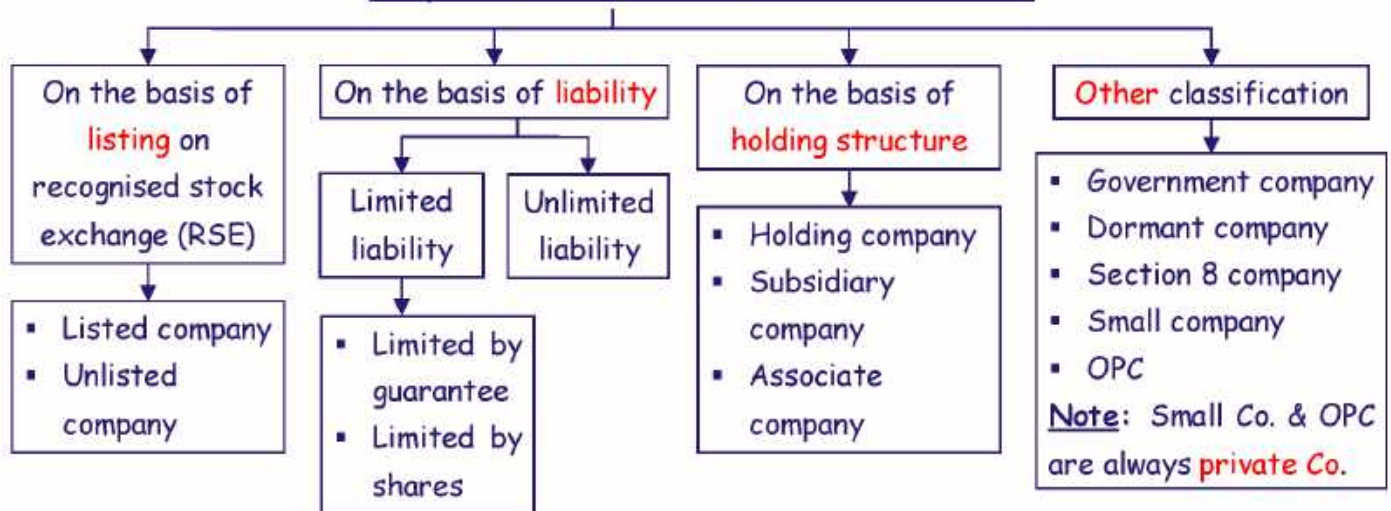
General classification of company



Example

A Pvt. Ltd. is wholly owned subsidiary of AB Ltd. (public company). A Pvt. Ltd. wants to avail exemption provided to private companies. But since A Pvt. Ltd. is subsidiary of AB Ltd., A Pvt. Ltd. is deemed as a public company & not allowed to avail exemptions provided to a private company.

Companies can be further classified as follows



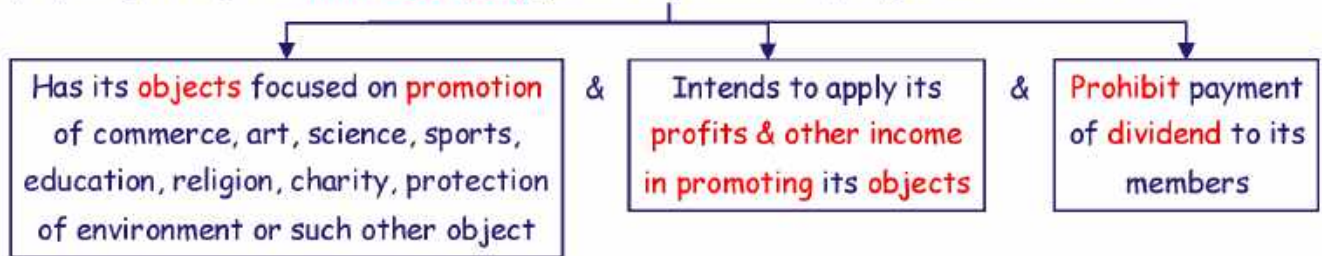
Listed Company	<p>Company which has its securities listed on recognised stock exchange (RSE) except</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p>Public companies which have not listed its equity on RSE but have listed:</p> <ul style="list-style-type: none"> ▪ Non-convertible debt securities or redeemable preference shares issued on private placement basis, or ▪ Equity shares on stock exchange in foreign jurisdiction. </div> <div style="width: 35%;"> <p>& Private companies which have listed non-convertible debt securities on private placement</p> </div> </div>
Unlisted Co.	Company which is not a listed company.
Company limited by guarantee	<p>Company in which members' liability is limited by MOA to an amount that they have agreed to contribute to company's assets in case of winding up.</p> <p>Note: Co. limited by guarantee (not having share capital) cannot allow any person (except members) to participate in its profit. In case of contradiction, it shall be void.</p>
Co. limited by shares	Company in which members' liability is limited by MOA to amount unpaid on shares held by them.
Unlimited Co.	Company in which members' liability is not limited .
Holding & Subsidiary Company [2(46) & 2(87)]	<p align="center">Company in which other company [Holding company] controls</p> <div style="display: flex; justify-content: space-around;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>Composition of Board of Directors (BOD) [i.e. Can appoint/remove atleast majority of the directors at its discretion]</p> </div> <div style="width: 10%; align-self: center;">or</div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <p>More than 1/2th voting power [either on its own or with its subsidiaries]</p> </div> </div>

	<p>Note:</p> <p>(i) Control held by company in fiduciary capacity [i.e. holding assets for other person as trustee] is not considered for holding-subsidary relationship.</p> <p>(ii) Company is deemed as holding company of a company which is controlled by such holding company through its other subsidiary.</p> <p>Example</p> <p>1) A Ltd issued 1,000 shares, out of which X Ltd holds 350 shares & Y Ltd holds 250 shares. M Ltd controls composition of BOD of X Ltd & Y Ltd [Hence, X & Y Ltd are subsidiaries of M Ltd]. Also, A Ltd is deemed as subsidiary of M Ltd since M Ltd controls A Ltd through its other subsidiaries (i.e. X Ltd & Y Ltd).</p> <p>2) What is the relation of A Ltd. with X Ltd. & Y Ltd.? A Ltd. is an associate company of X Ltd. & Y Ltd. Also, since all are subsidiaries of M Ltd., they are fellow subsidiaries (subsidiary of same holding company).</p>
Associate Company	<ul style="list-style-type: none"> Company in which another company has significant influence [i.e. $\geq 20\%$ voting power or participation in business decisions] or is a joint venture [i.e. joint arrangement where parties having joint control]. Does not include a subsidiary company. <p>Note: Shares held by company in fiduciary capacity [i.e. holding assets for other person as trustee] is not considered for determining associate company relationship.</p> <p>Example</p> <p>Shyam Ltd. holds 32% voting power in Karan Ltd. but do not have control over it. As Shyam Ltd. has significant influence over Karan Ltd., Karan Ltd. is an associate company of Shyam Ltd. & Shyam Ltd. is investing/venturer company of Karan Ltd.</p>
Small Company	<ul style="list-style-type: none"> Company other than public company [i.e. Private Company] having: <ul style="list-style-type: none"> Paid-up share capital \leq ₹ 4 crores, and Turnover \leq ₹ 40 crores [as per P&L of immediately preceding financial year]. Public company, section 8 company, special act company, holding company or subsidiary company cannot be a small company.
Government Company	<ul style="list-style-type: none"> Company in which $\geq 51\%$ of paid up share capital is held by Central Government (CG) or State Government (SG) or both, or Subsidiary of such government company. <p>Example</p> <p>X Ltd. is a company in which 25% is held by CG & 25% is held by UP Govt. X Ltd. is not a Govt. Company as holding of $\geq 51\%$ paid-up capital by CG, SG or both is not met.</p>
Dormant Company	<p>Inactive company which does not enter into significant accounting transactions [i.e. Company is not actively carrying on its business].</p>

Formation of Companies with Charitable Objects, etc. [Section 8]

(1) License u/s 8

CG (power delegated to ROC) may grant license to such company if it is proved that person proposing to register **limited company** (public or private company) under this section

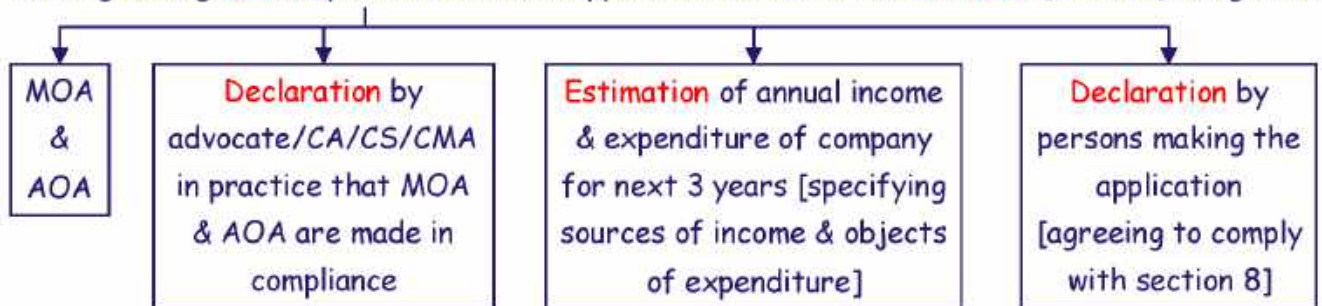


Note:

- (i) A **firm can be a member** of section 8 company [Generally, firms are not allowed to become members of company as they are not a separate legal entity].
- (ii) Words 'limited' or 'private limited' shall **not** be **added** to its name.

(2) Registration of Company using license

After granting **license**, person shall make application to ROC in form **SPICe+** (INC-32) along with:



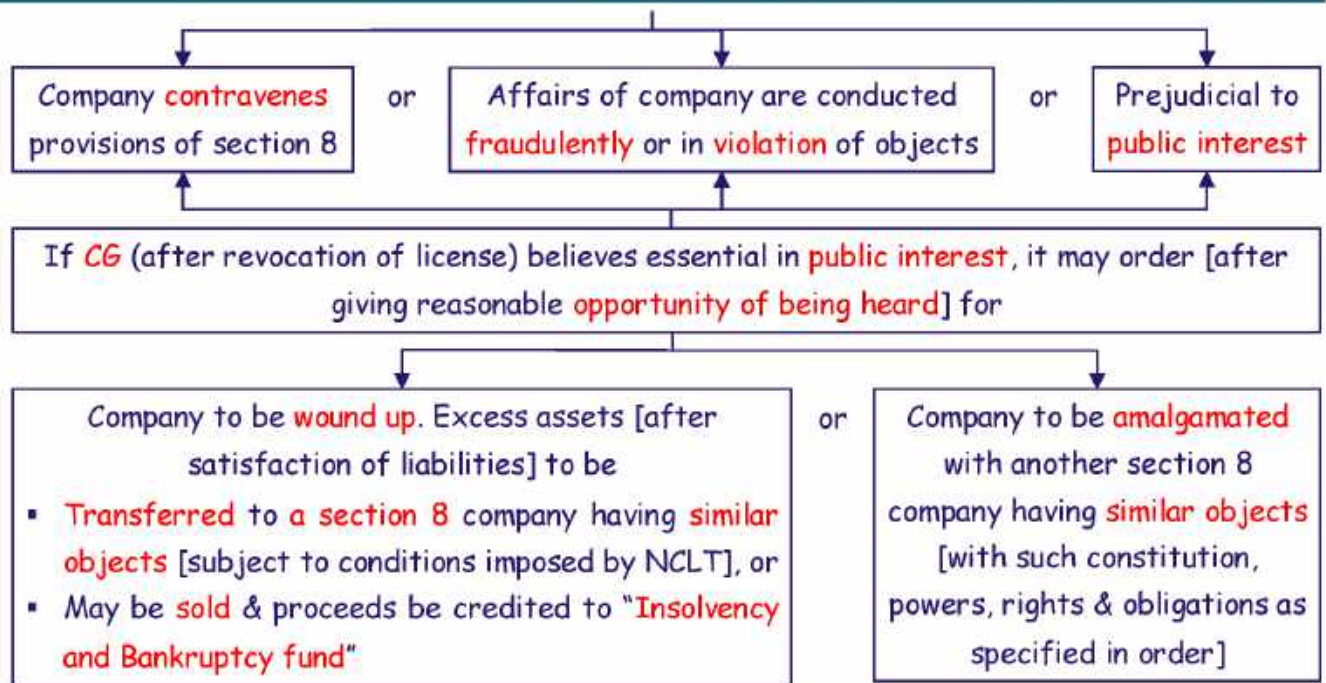
(3) Alteration of MOA & AOA of Section 8 Company

- Alteration of MOA: **Prior** permission of **CG** (power delegated to **Regional Director**) is required.
- Alteration of AOA: **Prior** permission of **CG** (power delegated to **ROC**) is required,

(4) Revocation of License

CG (power delegated to regional director) may **revoke** license of company [after giving **written notice & opportunity to be heard** to company] if:

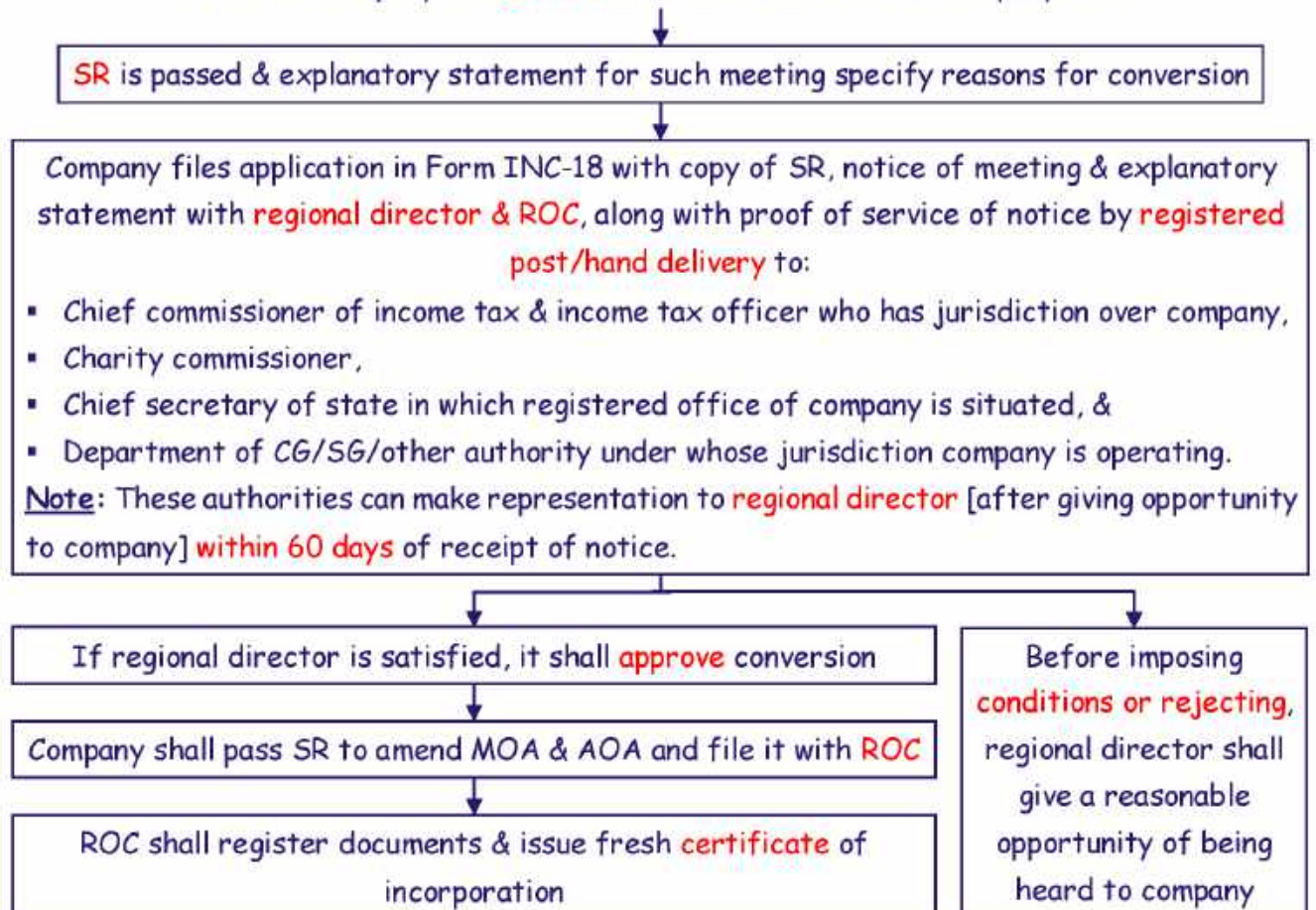
Incorporation of Company & Matters incidental thereto



Note: On revocation, ROC puts "limited" or "private limited" against company's name in register.

(5) Conversion into any other kind of Company

Section 8 company can **convert** itself into other kind of company after



Note:

- (i) Within a **week** of submitting application, company shall **publish notice** in Form INC-19 in atleast 1 english & 1 vernacular **newspaper** and on **website** of company [copy of such published notice shall be sent to regional director].
- (ii) Company should have filed all **financial statements (FS)**, **annual returns & other returns** upto submission of application to **regional director**.
- (iii) If application is submitted after 3 months from end of last financial year (FY), a **statement of financial position** certified by CA [which is made **upto 30 days before filing** application] shall be submitted along with application.

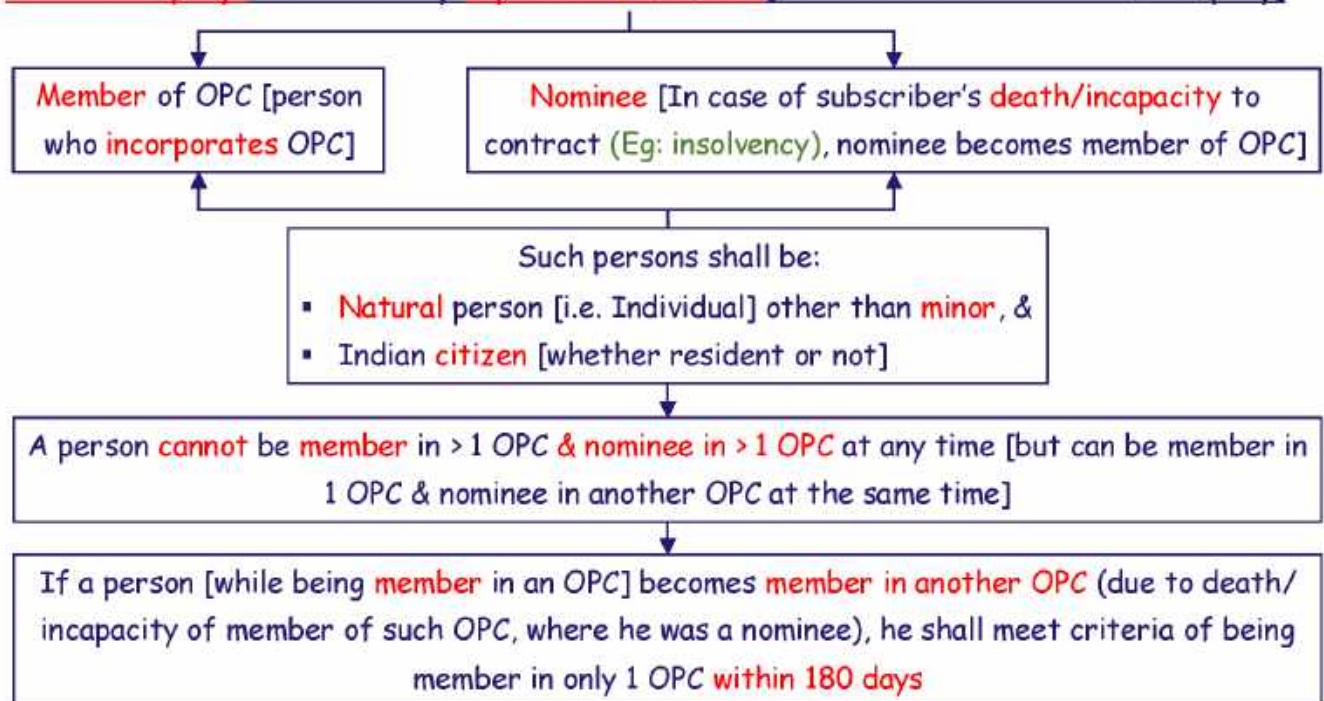
(6) Penalty in case of default

- Company: Fine of ₹ 10 lakh to ₹ 1 crore.
- Directors & officer in default: Fine of ₹ 25,000 to ₹ 25 lakhs.

Note: If affairs of company were conducted **fraudulently**, officer in default is liable u/s **447**.

One Person Company (OPC) [Section 3 and Rule 3 & 4 of Companies (Incorporation) Rules]

- (1) **Private company** which has only **1 person as member** [i.e. shareholder/owner of company]



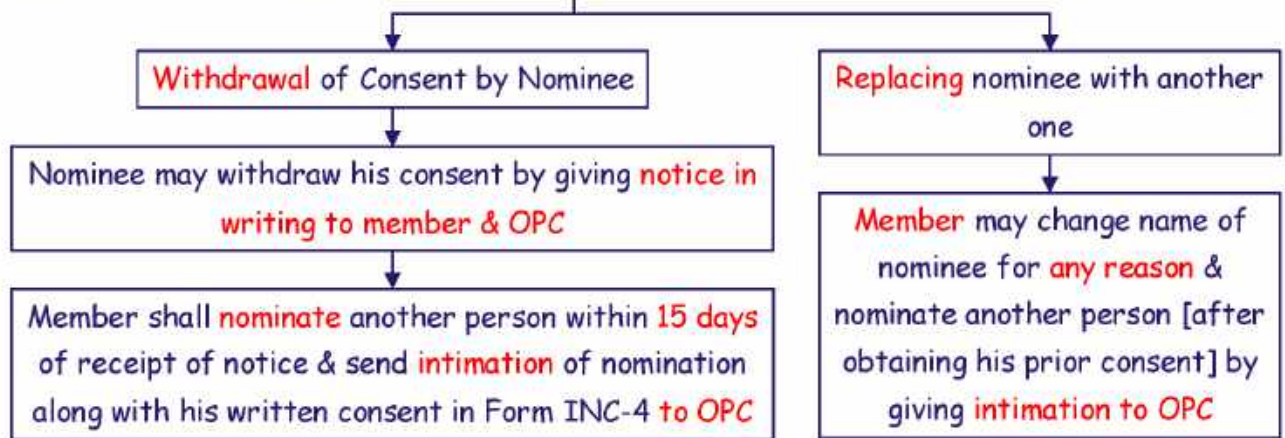
Note:

- (i) OPC **cannot** be incorporated/converted into a **section 8** company.
- (ii) OPC **cannot** carry **non-banking financial investment** activities.

(2) Nominee of OPC

- Name of **nominee** in Form INC-32 (SPICe) along with his prior written **consent** in Form INC-4 shall be filed with **ROC** along with MOA & AOA at the time of incorporation [MOA shall also **indicate name of nominee**].

- Withdrawal of consent/Replacing nominee



Note: Any such change in name of nominee shall **not** be deemed as alteration of MOA.

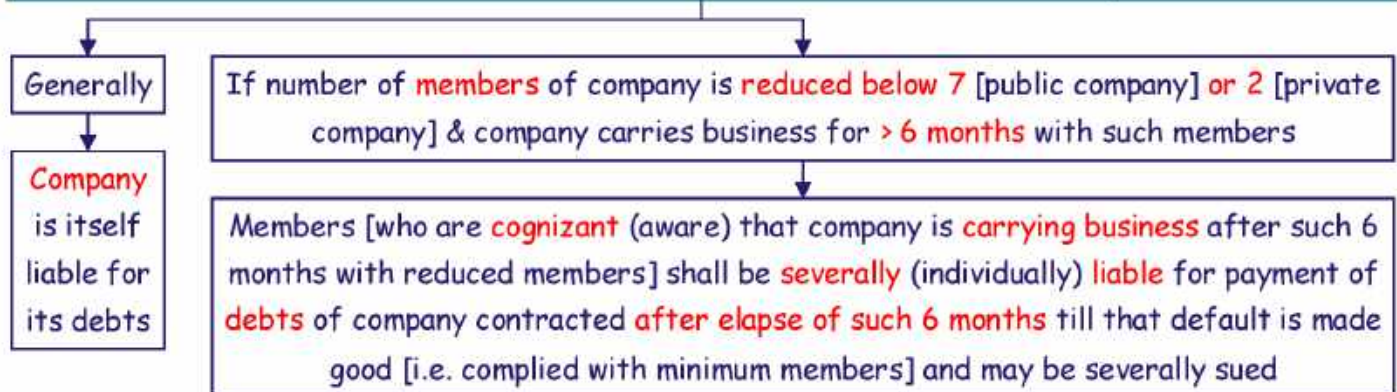
- Nominee becomes Member

Such person shall nominate new nominee within **15 days** of becoming member.

(3) Notice of change to Registrar

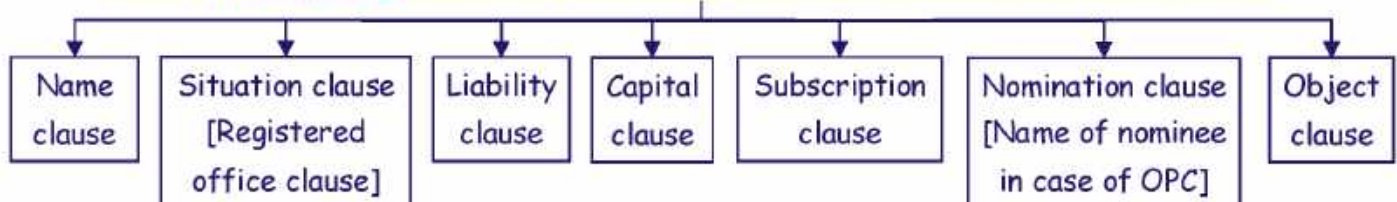
In case of withdrawal of consent/replacing nominee or when nominee becomes member, OPC shall file notice with **ROC** within **30 days** of receipt of such notice & **intimate name** of person (new nominee) in Form INC-4 along with his written consent.

Members Liable in Certain Cases i.e. Reduction in Minimum Membership [Section 3A]

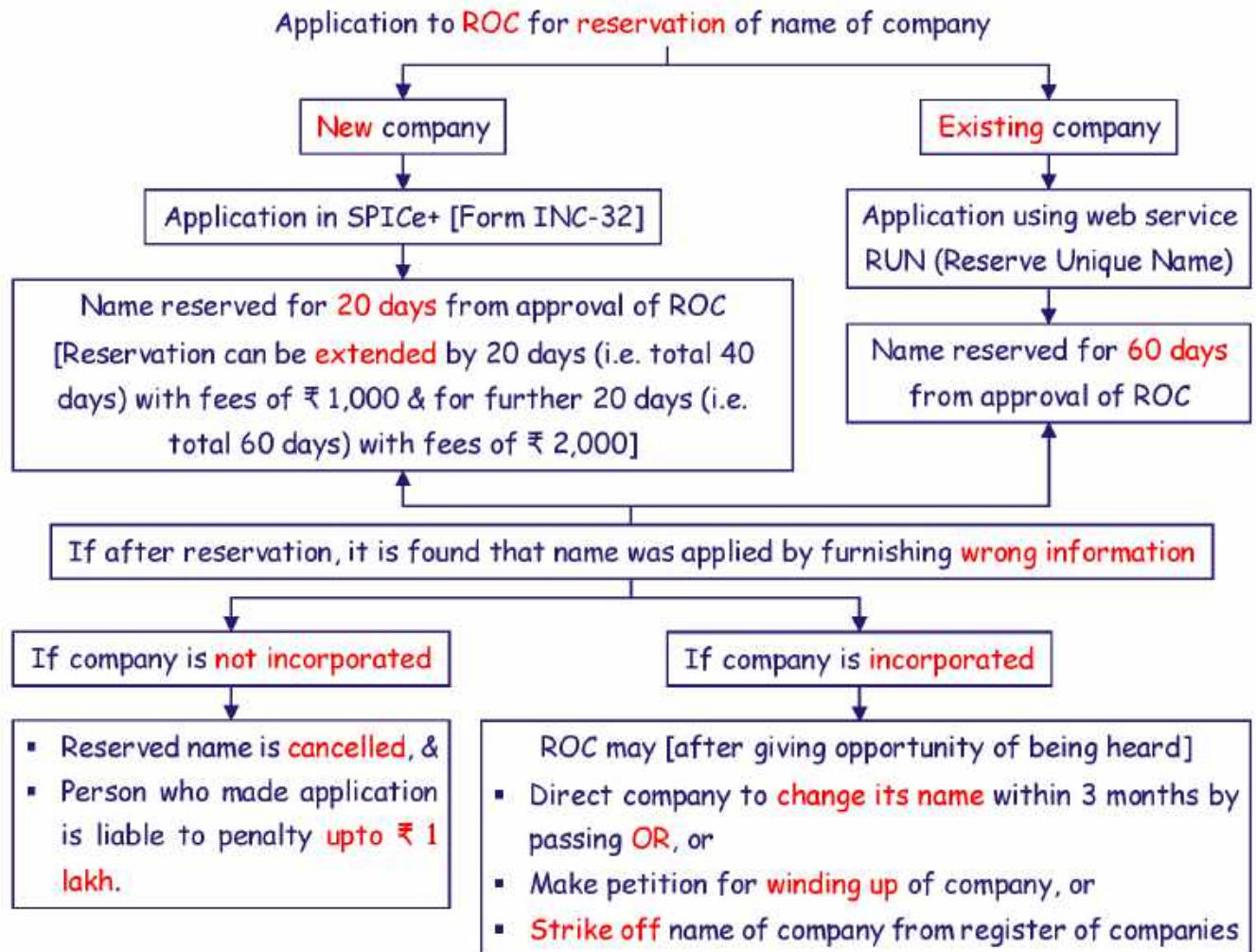


Memorandum of Association (MOA) [Section 4]

MOA is **fundamental** document for formation of company. It contains following clauses:



(1) Name Clause



Note:

(i) Application can be **resubmitted** to ROC (**within 15 days**) for rectification of defect.

(ii) Restriction regarding names and use of words & expressions

Name in MOA shall **not** be

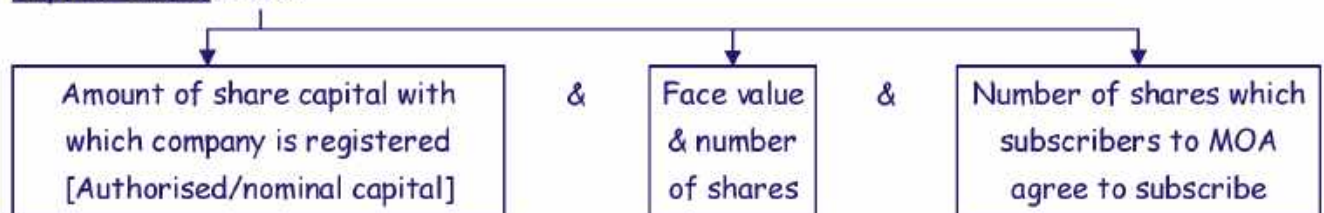
- **Identical/resemble** too nearly to an existing company of India, or
- Use of which is **undesirable** in opinion of **CG** or constitutes as **offence**, or
- Contains word which gives impression that company is connected or **have patronage** of **CG/SG**/local authority or body constituted by **CG/SG**, or
- Includes words such as board, commission, authority, undertaking, national, union, central, federal, republic, president, rashtrapati, small scale industries, khadi & village industries corporation, financial corporation, municipal, development authority, prime minister/chief minister, minister, nation, forest corporation, development scheme, statute/statutory, court/judiciary, governor, bureau and scheme [with name of government, state, india, bharat or government authority or resembling with schemes launched by **CG/SG**/local authorities].

(2) Situation Clause: Name of **state** where **registered office** of company is situated.

(3) Liability Clause states



(4) Capital Clause states



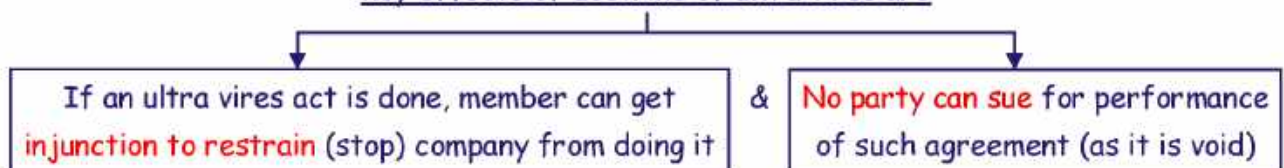
(5) Subscription Clause: Number of shares each subscriber to MOA intends to take.

(6) Object Clause & Doctrine of Ultra Vires

- State **objects** for which company is incorporated.
- Doctrine of Ultra Vires

Acts done beyond such stated objects is **ultra vires** (& void) and it cannot be ratified even by approval of all the shareholders.

Key effects of doctrine of ultra vires are



Note: Acts which are **ultra vires to directors' authority or AOA** can be **ratified** by shareholders [if it is not ultra vires to MOA].

Articles of Association (AOA) [Section 5]

- AOA is complementary to MOA, and together they are considered as constitution of company.
- It contains **regulations** & matters as considered necessary for management of company.
- Company may adopt **model articles** [i.e. pre-drafted rules & regulations] unless it chooses to modify, exclude or replace them. If company does not have its AOA, model articles are deemed as its AOA.
- In case of conflict between MOA & AOA, **MOA shall always prevail**.

Forms of MOA & AOA

Schedule I	Company limited by shares	Company limited by guarantee		Unlimited company	
		Not having share capital	Having share capital	Not having share capital	Having share capital
MOA	Table A	Table B	Table C	Table D	Table E
AOA	Table F	Table H	Table G	Table J	Table I

Alteration of Memorandum (MOA) [Section 13 and 16]

Company can alter MOA by passing **SR** & shall **file it with ROC** [In case of **Section 8 company**, prior permission from **CG** (power delegated to regional directors) would also be required to alter MOA].

(1) Name Clause

- Change of name of company

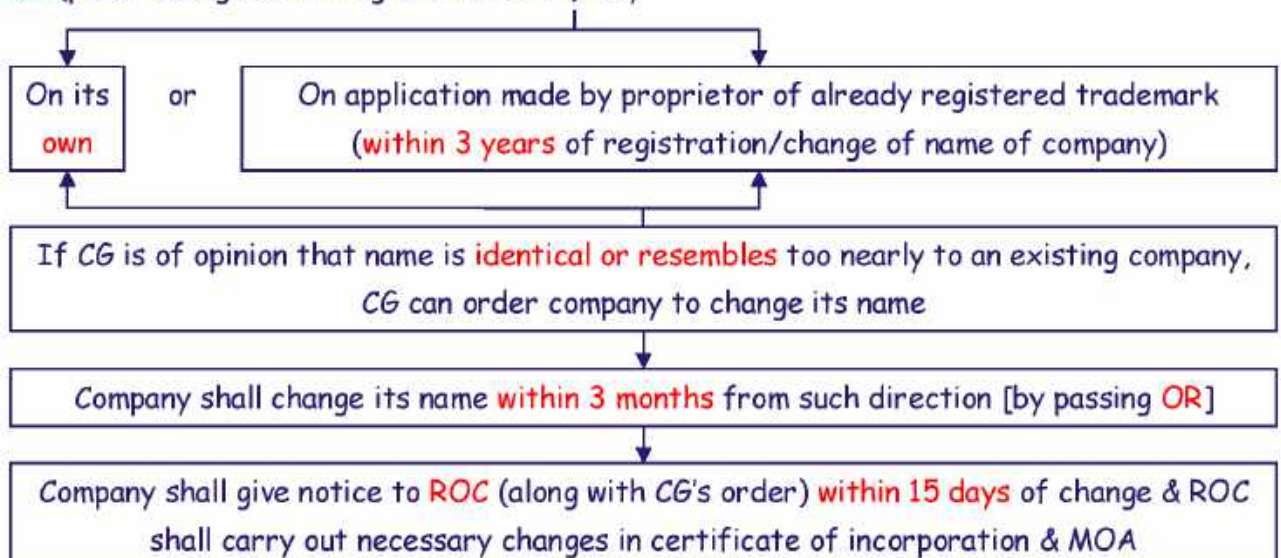
- Pass **SR**.
- It can be changed with approval of **CG** (power delegated to ROC) in Form INC-24.
- ROC shall enter new name in register of companies & issue fresh **certificate** of incorporation in Form INC-25.

Note:

- (i) If change only relates to word "private" [i.e. conversion of company], **CG approval** is **not** required for alteration of MOA.
- (ii) Name cannot be changed if company has **not filed** annual returns or FS or has failed to pay deposits/debentures/interest [but shall be allowed once default is made good].

- Rectification of Name of Company [Section 16]

CG (power delegated to regional director) may



Note: If company **defaults**, **CG** shall allot new name to company & **ROC** shall enter such name

in register of companies & issue a fresh certificate of incorporation with the new name.

(2) Object Clause

- Company shall file copy of SR with ROC and he shall register alteration of objects & certify registration within 30 days of filing SR.
- If company has raised money from public through prospectus and has unutilised amount of money so raised, it can change objects for such unutilised amount of money by complying with following requirements:
 - Pass SR through postal ballot,
 - Notice for such SR shall contain specified details [such as total money received, money utilized, unutilized amount, proposed alteration, etc.],
 - Advertisement of details of resolution shall be
 - Published in 1 english & 1 vernacular language newspaper [which is in circulation at place where registered office is situated], and
 - Placed on website of company
 - Dissenting shareholders are given an opportunity to exit by promoters & shareholders.

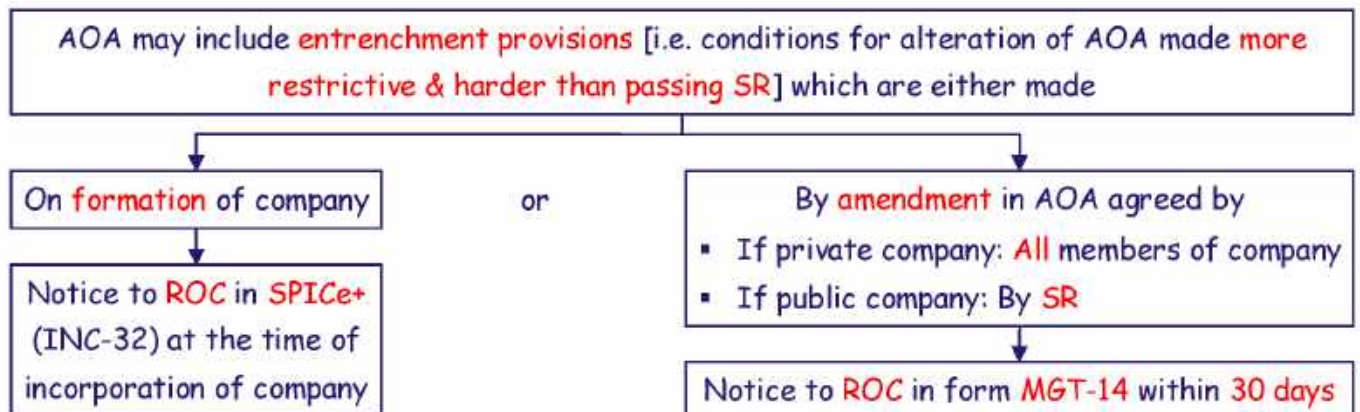
Example

X Ltd. raised ₹ 100 crores from public through prospectus for its CCTV business but now wants to divert unutilised funds for mobile app business. To alter object clause of MOA for unutilised money, company shall pass SR (subject to other conditions) and file a copy of SR with ROC.

(3) Alteration will be effective only after issue of certificate by ROC.

Alteration of Articles (AOA) [Section 5 and 14]

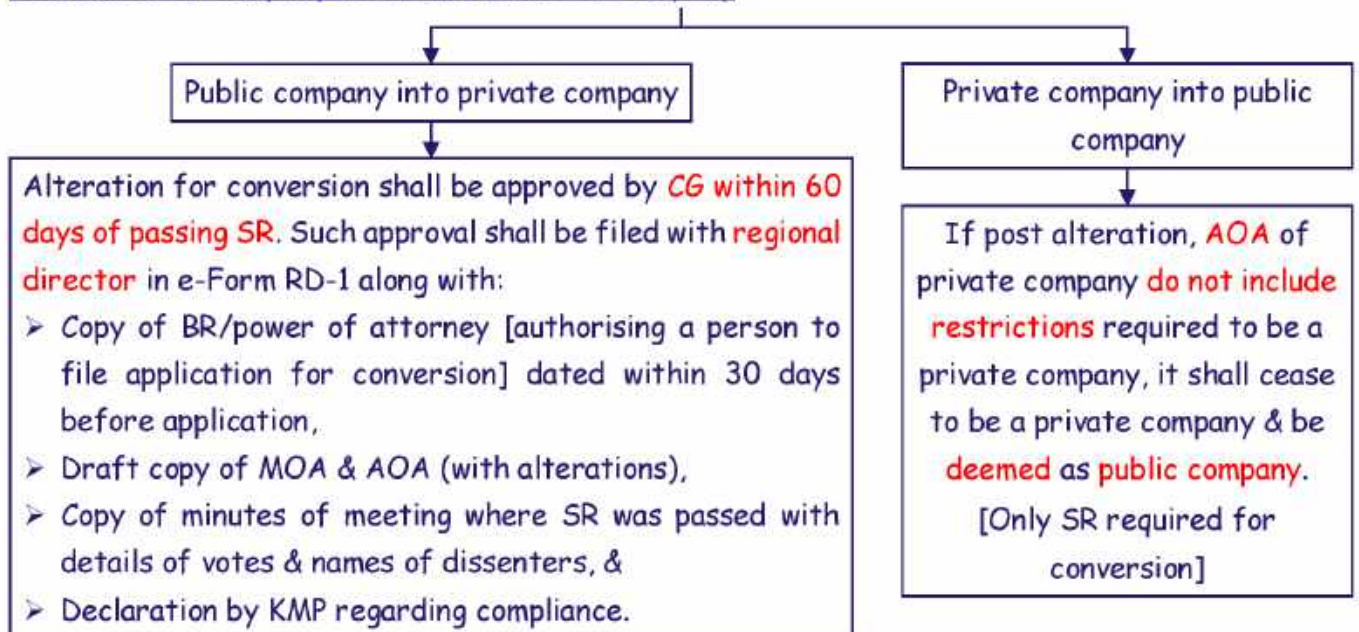
- Company can alter AOA by SR & shall file it with ROC [In case of Section 8 company, prior permission from CG (power delegated to regional directors) would also be required to alter AOA].
- Provision for Entrenchment [Section 5]



Example

While drafting AOA of Shyam Pvt. Ltd., it was included in AOA that Shyamlal will be a director of company for lifetime. But he was worried that such provision in AOA can be amended by SR in future. Hence, he adds an entrenchment provision [by amendment in AOA with consent of all members] to make alteration of such provision in AOA harder.

• **Conversion of company to another kind of company**



- Alteration of AOA & approval of CG (if required) is filed with ROC along with copy of altered AOA within 15 days of alteration in Form INC-27 and ROC shall register the same.
- Alteration registered as above shall be valid as if it was originally contained in AOA.

Other Provisions related to MOA and AOA [Section 6, 10 and 15]

• **Effect of MOA & AOA [section 10]**

- MOA & AOA (when registered) become legally binding on company & members. However, AOA cannot bind company & members to an outsider to give effect to provisions of AOA.
- All monies payable by member to company under MOA/AOA is a debt due from him to company.

• **Act to override MOA, AOA, etc. [section 6]**

- Provisions of this act shall have overriding effect on MOA/AOA, agreement or resolution passed [i.e. provision in MOA/AOA, agreement or resolution which are conflicting to this act is void].
- But if any other section says that MOA, AOA, agreement or resolution will be superior, then such MOA, AOA, agreement or resolution will prevail.

• **Alteration of MOA/AOA to be noted in every copy [Section 15]**

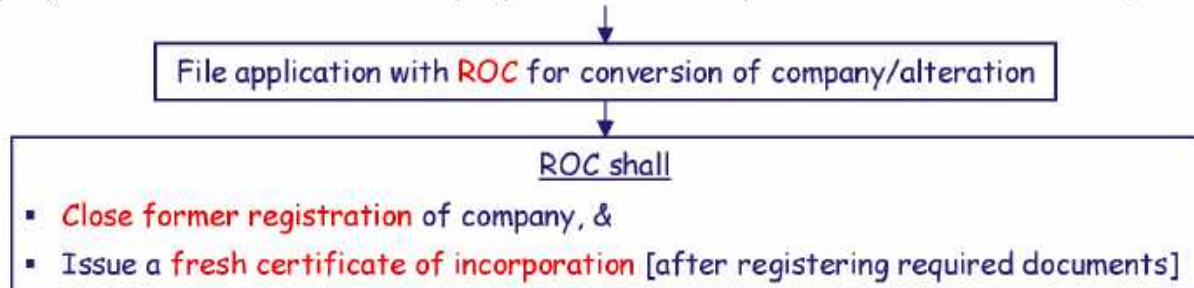
Alteration in MOA & AOA shall be noted in every copy. If company makes default, company & officer in default are liable to fine of ₹ 1,000 for every copy issued without alteration.

Copies of Memorandum, Articles, etc., to be given to Members [Section 17]

- Company shall **send copy** of MOA, AOA, agreement and resolution (which are not included in MOA & AOA) to **member within 7 days of request** being made.
- In case of default, company & officer in default are liable to fine of ₹ 1,000 for each day during which default continues or ₹ 1 lakh, whichever is less.

Conversion of Companies already Registered [Section 18]

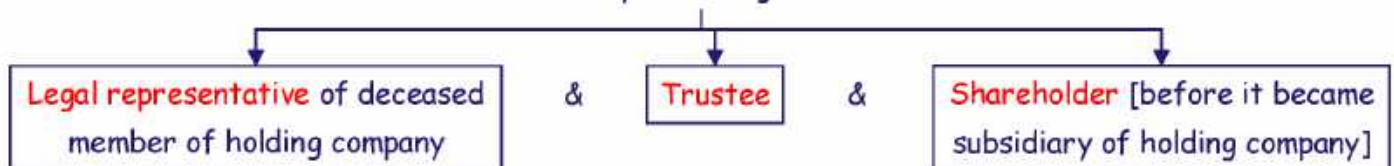
A company can **convert** itself into a company of other class by **alteration of MOA & AOA** (if required)



Note: Registration shall not affect liabilities, obligations or contracts of company that existed before conversion.

Subsidiary Company not to hold shares in its Holding Company [Section 19]

Subsidiary **cannot** hold shares of **holding** company (either itself or through nominees) **except** if subsidiary is holding shares as



Note:

- Right to **vote** at meeting of holding company is only for shares held as **legal representative or as trustee** [i.e. not as a shareholder].
- Subsidiary can buy shares of holding company as part of **scheme** of amalgamation sanctioned by court/NCLT.
- Allotment/transfer of shares** of holding company to its subsidiary shall be **void** [except as bonus shares]. However, subsidiary can reduce its shareholding anytime.

Doctrine of Constructive Notice and Doctrine of Indoor Management

Doctrine of Constructive Notice

[Protects company (i.e. Liability of **outsider** to be aware of what is stated in MOA & AOA)]

- MOA & AOA are **public documents** & hence, every person dealing with company are **deemed to be aware** of what is stated in them. Ignorance of MOA & AOA cannot be an excuse to claim relief for outsiders.
- But this doctrine is an **unreal doctrine** as people know company through its officers & not documents and hence it causes inconvenience.
- 'Doctrine of **Indoor Management**' or 'Turquand's Rule' is an **exception** to constructive notice.

Example

AOA states that cheque < ₹ 1 lakh will be signed by single director but if exceeds, it shall be signed by ≥ 2 directors. Vendor accepts cheque of ₹ 2 lakh signed by a single director. As per doctrine, such vendor has no right to claim if cheque is returned without payment by bank.

Doctrine of Indoor Management

[Protects **outsider** from internal irregularity]

- People dealing with company **need not enquire** and are entitled to **presume** that internal **proceeding & requirement** of company are **duly met** [if transaction is in line with MOA & AOA].
- Basis** for doctrine of indoor management
 - What happens internally is **not a matter of public knowledge**. An outsider can only presume intentions of company, but cannot know information he is not privy (access) to.
 - Without doctrine, company **could escape creditors** by denying payment on basis that such officials did not had authority to act on its behalf.

Example

AOA states that directors can borrow after passing resolution. Members did not pass resolution & loan was taken without authority but lender (being external person) need not enquire if resolution was passed & hence, company is bound to repay loan.

• Exceptions to doctrine of indoor management/Applicability of doctrine of constructive notice

Relief under 'indoor management' is not available to outsider in following cases:

- **Knowledge of irregularity**: If outsider has knowledge of irregularity within company.
- **Negligence**: If with minimum efforts, irregularities of a company could be discovered. Also, if any circumstances are suspicious that invite inquiry & such outsider does not make proper inquiry.
- **Forgery**: Rule do not apply if person relies upon forged document as nothing can validate forgery.
- If question is in regard to existence of an agency [i.e. official of company acts beyond their usual or apparent authority].
- Act done is **ultra vires** the company.

Other Relevant Definitions

Related Party of Company	<ul style="list-style-type: none"> • Director of company (Our director) or director of holding company & their relatives. • Our KMP or KMP of holding company & their relatives. • Firm or private company in which our director, manager or their relative is a partner, member or director. • Public company in which our director or manager is a director and holds [along with relatives] more than 2% of paid up share capital. • Our holding, subsidiary or associate company. • Other subsidiaries of our holding company. • Our investing or venturer company [company for which our company is associate]. • Body corporate which is accustomed to act as per directions of director or manager of our company [except if directions are given in a professional capacity]. • Person on whose directions, director or manager of our company is accustomed to act [except if directions are given in a professional capacity]. <p>Note: Relative of individual means members of HUF, spouse, father, mother, brother, sister, son, son's wife, daughter, daughter's husband [Include step father, mother, brother, sister, son].</p> <p>Example</p> <p>X Pvt. Ltd. has 2 subsidiaries, Y Pvt. Ltd. & Z Pvt. Ltd. Hence, Y Pvt. Ltd & Z Pvt. Ltd. are related party.</p>
Officer of Company who is in Default	<ul style="list-style-type: none"> • Whole-time director (WTD) & Key managerial personnel (KMP) • If no KMP, then directors (specified by BOD in this behalf) who have given their consent to BOD [If no director is specified, then all directors]. • Person (under authority of BOD/KMP) who is charged with responsibility. • Person as per whose advice, directions or instructions BOD is accustomed to act (other than person who gives advice to BOD in professional capacity). • Director who is aware of contravention through BOD proceedings without objecting to it or if contravention had taken place with his consent.
Key Managerial Personnel (KMP)	<p>KMP means Managing Director (MD), Manager, WTD, CEO, CS & CFO.</p>

PROSPECTUS AND ALLOTMENT OF SECURITIES

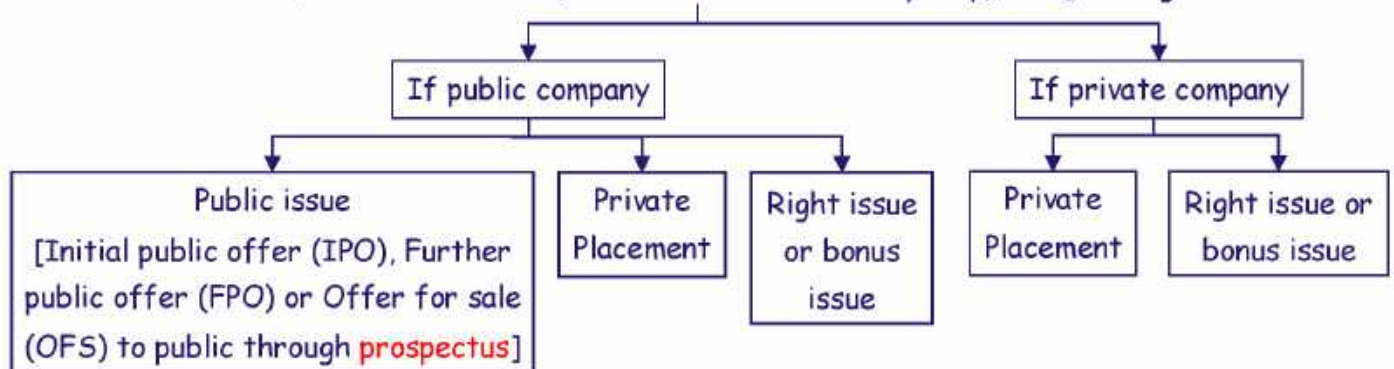


Topics Covered



Public Offer and Private Placement [Section 23]

Company may issue **securities** [equity share, preference share, debenture, derivative, actionable claims, mutual fund units (not unit linked insurance policy), etc.] through



Regulation of Issue and Transfer of Securities etc. [Section 24]

Administration of provisions under chapter III and IV



Prospectus [Section 25 to 28 and 30 to 33]

(1) Prospectus **means**:

- Document **described or issued** as prospectus &
- **Includes** red herring prospectus, shelf prospectus and any document that **invites offers from public** to subscribe securities of body corporate.

(2) Matters to be stated in Prospectus [Section 26]

- (i) Every prospectus issued by/on behalf of public company shall be:

- Dated & signed,
- State such **information** & include such reports on **financial information** as specified by **SEBI** in consultation with **CG** [Until SEBI specifies such information & reports under this section, regulations made by SEBI shall apply].
- **Declaration** affirming compliance of act, &
- Statement that prospectus is **not in contravention** to Companies Act, Securities Contract (Regulation) Act, SEBI Act and rules & regulations of such acts.

Above provision is not applicable if prospectus

Issued to **existing** member/
debenture holders of company

Relates to share/debenture **uniform** with previously
issued securities & are listed on RSE

Note: Date indicated in prospectus shall be **deemed as date of its publication**.

- (ii) A copy of **prospectus signed** by **every** person who is named as **director** in such prospectus (or their authorised attorney) shall be **delivered to ROC**. In case of violation, prospectus shall be **void**.

Note: Prospectus shall be valid for **90 days** from delivery of copy of prospectus to ROC.

- (iii) **Prospectus** shall specify on the **face** of it
- That a copy of prospectus is **delivered to ROC**, &
 - List of documents required to be **attached** to copy of prospectus delivered to ROC (or refer to statement in prospectus which specify such list of documents).
- (iv) Prospectus shall not include an **expert statement**, if such expert:

Is engaged/interested in
formation, promotion or
management of company

or

Has **not given written
consent** to the issue
of prospectus

or

Has **withdrawn** consent
before delivery of copy
to ROC

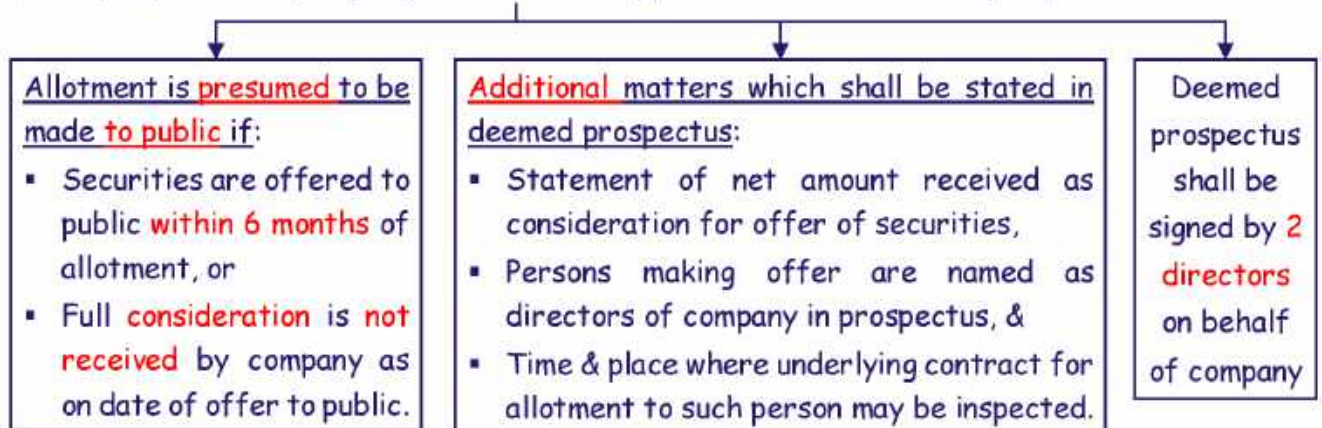
Note:

- Expert includes engineer, valuer, CA, CS, CMA & any person having authority to issue certificate under any law.
 - If an expert's statement is included, a **statement of non-existence** of above mentioned conditions shall also be included.
- (v) **Punishment if prospectus is issued in contravention**
- Company & person who is knowingly a party to such issue: Fine of ₹ 50,000 to ₹ 3 lakhs.
 - Company will have to refund entire money received and allotment shall be void.

(3) **Deemed Prospectus [Section 25]**

Document by which company **allots or agrees to allot** its securities to any person [with a **view**

that such securities will be **offered to public**] shall be **deemed** as a **prospectus** issued by company. Hence, all provisions for prospectus shall be applicable to such deemed prospectus.



Note:

- Right issue** made to members with right to renounce to others (if others > **50 persons**) is deemed as offer made to public.
- If a person applies for shares on basis of document sent to him by company's officer & document was marked 'strictly private & **confidential**' and did not contain all material facts of prospectus, such private communication is **not open offer** to public & document will **not be deemed as prospectus**. Any suit filed for compensation of loss will be dismissed.

Example

A Ltd. allots shares to intermediary by private placement, who offers them to public

- Within 6 months of allotment.
- After 8 months, but no consideration is received by A Ltd. as on date of offer to public.

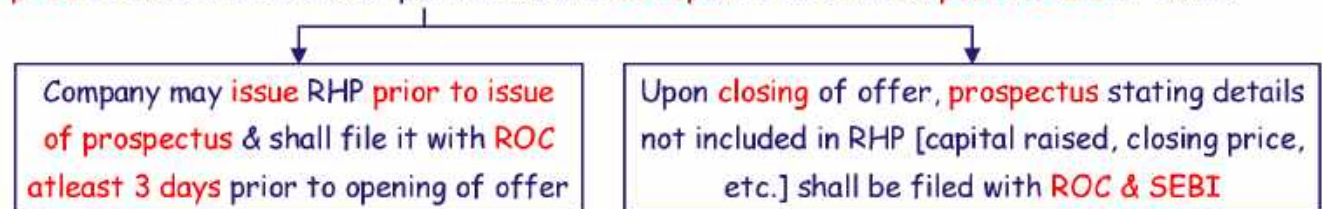
In both the above cases, document used by intermediary is treated as deemed prospectus & issue is treated as public offer made by A Ltd.

(4) Offer of Sale of shares by certain Members of company [Section 28]

- **Members** [who offers their shares to **public** in consultation with BOD] shall **authorise company** to take all actions on their behalf & shall **reimburse company** for all expenses incurred by it.
- Document for offer of such shares to public is treated as **prospectus** issued by company.

(5) Red Herring Prospectus (RHP) [Section 32]

Prospectus which does **not include** complete particulars of **quantum** (number of securities) or **price** of securities and such particulars are **left open** to be decided **post closure** of issue.



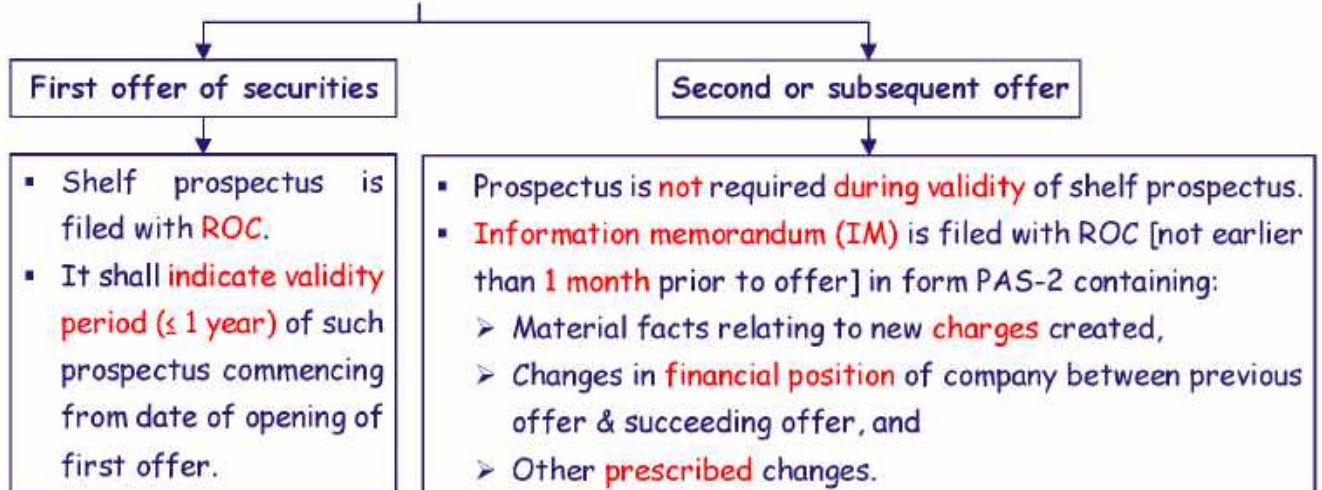
Note: RHP shall carry **same obligations** as applicable to a prospectus and any variation in RHP & prospectus shall be **highlighted as variations** in prospectus.

Example

XYZ Ltd. filed a RHP for an IPO where final price is yet to be decided. After completing the process, company finalized issue price at ₹250 per share & filed final prospectus with ROC.

(6) Shelf Prospectus [Section 31]

Prospectus that allows securities to be issued for subscription in 1 or more issues over a certain period without issuing further prospectus

**Note:**

- (i) When offer of security is made, IM along with shelf prospectus is deemed as prospectus.
- (ii) If applications are received with advance payment [before making changes], company (or other person) shall intimate changes to applicants & if they desire to withdraw application, money received as subscription shall be refunded to them within 15 days.

Example

Karan Ltd. filed a shelf prospectus with SEBI to raise ₹5,000 crores through multiple issues over 1 year. For each such issue, a separate information memorandum is filed before the offer.

(7) Abridged Prospectus [Section 33]

- Memorandum containing salient features of prospectus as specified by SEBI [i.e. summarized form of actual prospectus].

Note: Full prospectus is made available to any person who requests for it before closing of subscription and offer.

- Application form for securities shall be sent along with abridged prospectus except if



- Penalty in case of default

Company: Penalty of ₹ 50,000 for each default.

(8) Advertisement of Prospectus [Section 30]

If **advertisement** of prospectus is published, following **contents of MOA** of company shall also be specified in such advertisement:



(9) Variation in terms of Contract or Objects stated in Prospectus [Section 27]

- Terms of contract & objects of prospectus can be **varied** by passing **SR** through postal ballot.
Note: Dissenting shareholders shall be given an **exit offer** by promoters/controlling shareholders at an exit price specified by SEBI.
- Prescribed details of **notice of meeting & justification** for variation shall be **published** in form PAS-1 in 1 english & 1 vernacular language **newspaper** [circulating in city where registered office of company is situated]. Notice of meeting shall also be placed on **website** of company.
- Variation **cannot** be made to **use amount raised** through prospectus for buying, trading or otherwise **dealing in equity shares of other listed company**.

Example

Z Ltd. wants to make variation in object of prospectus due to industry dynamics. It shall authorise changes by SR and copy of notice & justification shall be published in newspapers.

Mis-Statements in Prospectus [Section 34 to 37]

- A contract of shares is a contract of **uberrimae fides** [i.e. utmost good faith].
- If prospectus includes any **misstatement** [i.e. false/inaccurate statement or omits material facts which gives a wrong impression], it is said to be a misleading prospectus.
- In case of misleading prospectus, aggrieved shareholder has following **remedies**



Right of Rescission	<p>Agreement to purchase shares is voidable at the option of person who purchased such shares directly from company on the basis of misleading prospectus.</p> <p>Note: This right is not available to: [Exception of rescission]</p> <p>(i) Subscriber to MOA [as company was not in existence when he signed MOA].</p> <p>(ii) Subsequent purchasers of shares from market.</p>
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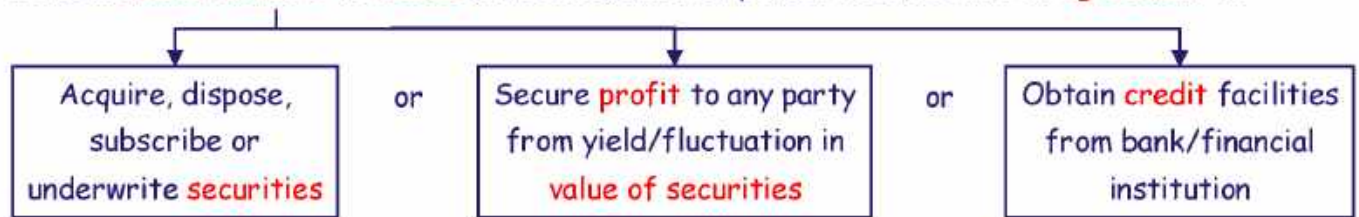
Right of action for Damages	If a person has suffered damages upon acting on the basis of material fact stated in prospectus which was misrepresented (with an intent of fraud), he has right for damages against company [available even after company is liquidated].
Civil Liability [Section 35]	<p>➤ If a person has sustained loss/damage by acting on basis of inclusion/omission of any matter in misleading prospectus, following persons shall be liable to compensate loss/damage to such persons: [Irrespective of intention of fraud]</p> <p>(i) Company, and</p> <p>(ii) Every person who is/was</p> <ul style="list-style-type: none"> ▪ Director at the time of issue of prospectus, ▪ Authorised himself & is named as director in prospectus, ▪ Promoter & Expert, and ▪ Authorised issue of prospectus. <p>➤ However, such person shall not be held guilty, if he proves that he: [Exception]</p> <ul style="list-style-type: none"> ▪ Withdrew his consent as director & prospectus was issued without his consent. ▪ Gave public notice that prospectus was issued without his knowledge & consent. ▪ Misleading statement was made by expert or was contained in copy/extract of expert report and it was correct representation of such statement/report. He had reasonable ground to believe [& did upto issue of prospectus believe] that person making statement was competent, had given expert consent & had not withdrawn it before filing copy of prospectus with ROC. ▪ Statement included in prospectus was not made by him in capacity of expert. <p>Note: If prospectus is proved to be issued with intent to defraud or fraudulent purpose, above mentioned persons shall be personally liable for loss/damage.</p>
Criminal Liability [Section 34]	<p>If prospectus is issued/circulated that includes untrue/misleading statement or inclusion/omission of matter likely to mislead, every person who authorises such issue shall be liable u/s 447 [Loss from misstatement is not essential].</p> <p>Note: Such persons shall not be held guilty, if he proves that: [Exception]</p> <ul style="list-style-type: none"> ▪ Such misstatement or omission was immaterial, or ▪ He had reasonable ground to believe [& did upto issue of prospectus] that statement was true or inclusion/omission was necessary.
Damages for Deceit	If original allottee who had seen prospectus (containing fraudulent misstatement) is deceived , this remedy shall be available to him [even if right of rescission is lost against company or company goes into liquidation]. This remedy will only be available to a person who has purchased shares on basis of prospectus [Peek v. Gurney].

Note:

- (i) In case of fraud: Section 35 (Compensation of loss) & Section 34 (Penalty u/s 447).
- (ii) Other than fraud: Only Section 35 (Compensation of loss).

• **Punishment for Fraudulently Inducing Persons to Invest Money [Section 36]**

A person shall be liable u/s 447 if he makes statement/forecast which is **misleading** or **deliberately** conceals **material facts** to **induce** (influence) another person to enter into an **agreement** to



Note: This section is **not only limited to fraud by misleading prospectus**.

Example

Mr. A, brother of director of XYZ Pvt. Ltd., falsely claims that company is building a luxury resort & asks people to invest, promising double returns in a year. In reality, there is no land or project, just fake claims. Mr. A is liable u/s 447 as per section 36 for fraudulently inducing investment.

• **Action by Affected Persons [Section 37]**

Suit may be filed or any other action may be taken u/s 34, 35 or 36 by a person, **group** of persons or association of persons [if **affected** by misleading **prospectus**].

Example

Z Ltd. issues a prospectus to raise funds. It falsely claims that it has ₹ 500 cr. government contract. Mr. Aman reads this, invest money & loses ₹10 lakhs. Later, he discovers that contract never existed.

Solution

Section 34	Person who authorised issue is criminally liable u/s 34 for publishing false statement
Section 35	Mr. Aman can sue such mentioned persons for compensation of ₹ 10 lakhs due to loss from relying on false prospectus
Section 36	If proved that company or its directors intentionally made false claim to fraudulently induce investment, then fraud charges under this section will also apply

If both section 34 & 36 gets invoked on a person (such as director), punishment u/s 447 will not be multiplied (since both sections create liability u/s 447) but can be on higher side within section 447.

Securities to be Dealt with in Stock Exchanges [Section 40]

• Before making public offer, every company shall make application to 1 or more RSE & obtain **permission from all such RSE (where it has applied)** for its securities to be dealt in such RSE. Prospectus shall also state names of RSE where securities of the company will be dealt with.

• **Punishment for default**

- Company: Fine of ₹ 5 lakhs to ₹ 50 lakhs, and
- Officer in default: Fine of ₹ 50,000 to ₹ 3 lakhs.

Payment of Commission [Section 40(6)]

A company may pay commission to any person for subscription of securities [if authorized by AOA]. Note: Commission shall not be paid to underwriter for securities which are not offered to public .	
Source	Commission may be paid out of proceeds of issue or profit of the company or both.
Rate of commission	<ul style="list-style-type: none"> In case of shares: Lower of 5% of issue price or rate authorised by AOA. In case of debentures: Lower of 2.5% of issue price or rate authorised by AOA.
Payment	No prohibition [i.e. can be paid in cash or kind].
Disclosure regarding underwriting in prospectus	Prospectus shall disclose : <ul style="list-style-type: none"> Name of underwriters, Rate & amount of commission payable to underwriter, & Number of securities to be underwritten by underwriter.
Contract to ROC	Copy of contract for payment of commission is delivered to ROC at the time of delivery of prospectus for filling.
Default	Punishment same as above u/s 40 as above.

Allotment of Securities by Company [Section 38, 39 and 40(3)]

- Allotment is appropriation out of previously unappropriated capital (i.e. Authorised - Issued capital) of company [i.e. Acceptance of application of shares offered by company].
- Pre-requisites for valid allotment [Section 39]**

No allotment can be made unless

Minimum Subscription

Amount of minimum subscription is

- Stated** in **prospectus**, and
- Subscribed** by public, and
- Application money is **received** by company by cheque/other instrument.

If minimum subscription amount is **not subscribed** & application money is **not received** within **30 days** of issue of prospectus (or period specified by SEBI), application money shall be **refunded within 15 days** of closure of issue to the same bank account from which money was received

Note: Minimum Subscription provisions not applicable in case of OFS.

In case of **default to refund** within time, directors & other officers in default shall be jointly & severally liable to refund with interest **@15% p.a.**

Amount payable on application

Not less than 5% of nominal amount (face value) of security or such percentage/ amount specified by SEBI

Note: Full issue price in case of OFS.

• **Maintaining of Separate Bank Account [Section 40(3)]**

Application money for subscription of securities shall be kept in a **separate bank account in a scheduled bank** & shall **not** be utilised for any **purpose other than**:

- (i) **Adjustment** against allotment of securities [if securities are allotted], or
- (ii) **Repayment** of monies [if company is unable to allot securities].

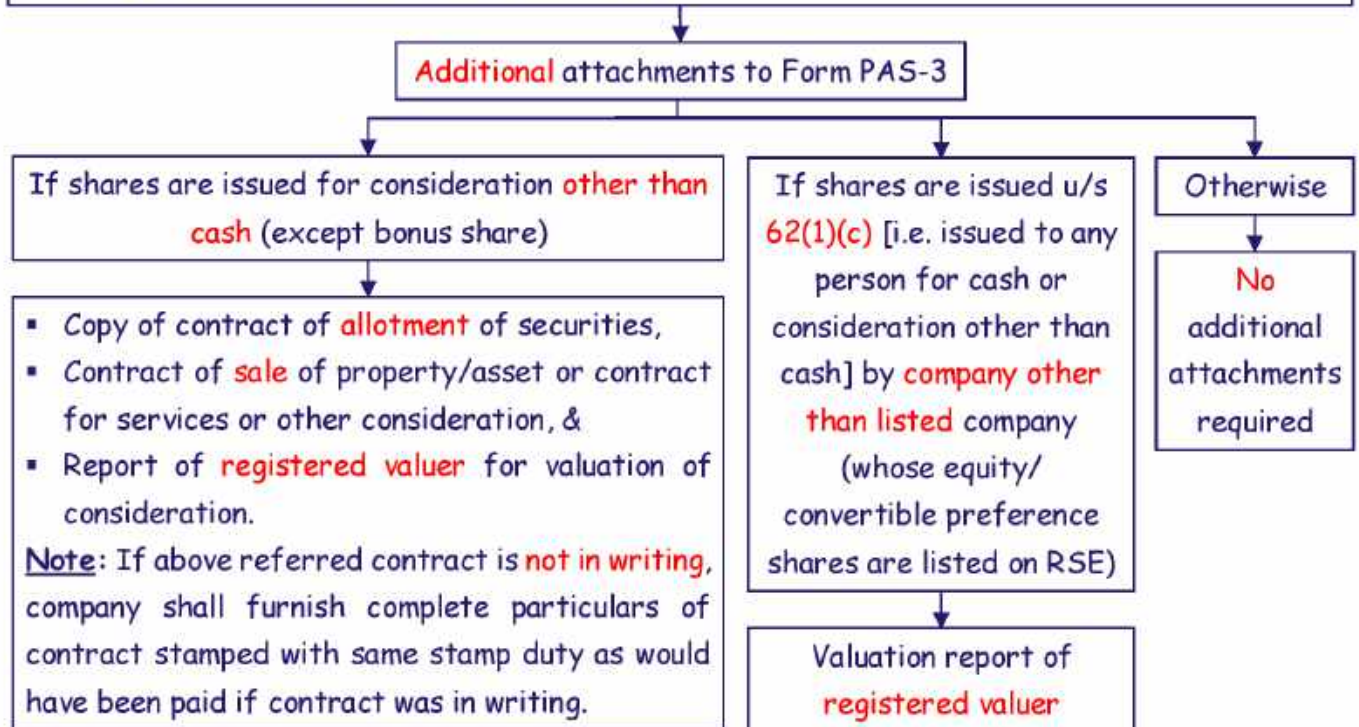
Note: If company defaults in complying with the provision [i.e. Section 40(3)]:

- Company: Fine of ₹ 5 lakhs to ₹ 50 lakhs, and
- Officer in default: Fine of ₹ 50,000 to ₹ 3 lakhs.

• **Return of allotment [Section 39(4)]**

If company makes allotment of security, it shall file **return of allotment** with **ROC within 30 days** in Form PAS-3 along with following particulars (duly certified by signatory of PAS-3):

- List of allottees stating their names, address & occupation, and
- Number of securities allotted to each allottee.

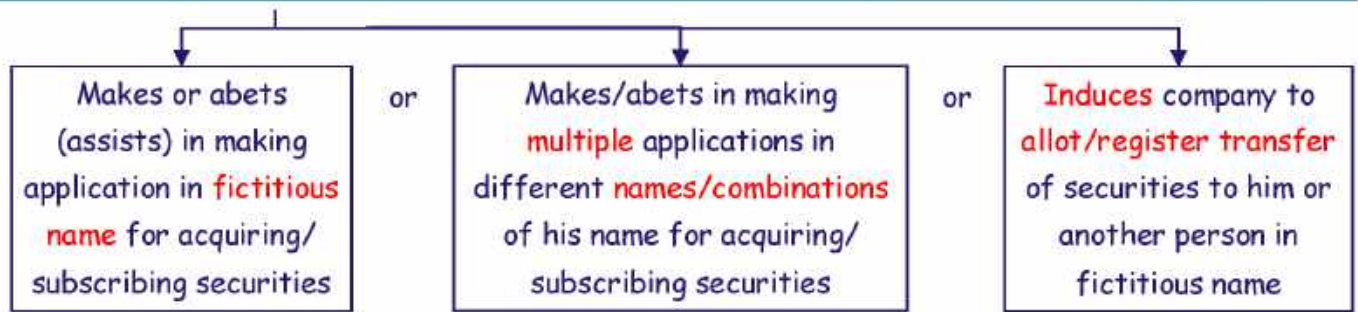


• **Punishment for default [Section 39(5)]**

In company defaults in "Filing of Return of allotment" or "Where minimum subscription was not received, either fails to refund application money within time or fails to pay interest @15% p.a.", **company & its officer in default** are liable to penalty of ₹ 1,000 per day during which default continues (for each default) or ₹ 1 lakh, whichever is less.

• **Punishment for Personation (i.e. Illegally pretending to be another person) for Acquisition, etc., of Securities [Section 38]**

Person shall be liable **u/s 447** if he



Note:

- (i) If a person is convicted under this section, court may order **disgorgement** of gain (return money made illegally) & such amount is credited to **Investor Education & Protection Fund (IEPF)**. Order may also include **seizure & disposal** of securities found in his possession.
- (ii) Company shall **state** provisions of this section **in prospectus & application** form for securities.

Public Offer of Securities to be in Dematerialised Form [Section 29]



Note: Company shall comply with Depositories Act, 1996 (& its regulations) and following rules of Companies (Prospectus and Allotment of Securities) Rules, 2014:

- Dematerialisation of securities: Rule 9, and
- Issue of securities in dematerialised form by unlisted public companies: Rule 9A.

Issue of Security in Foreign Jurisdiction and Global Depository Receipt [Section 23 & 41]

- Notified public companies may list its notified securities on permitted **stock exchanges** of **foreign** jurisdictions or other prescribed jurisdictions.
- **CG** may exempt such notified public company from specified provisions & a copy of every notification of exemption shall be laid before both Houses of Parliament.
- **Global Depository Receipt (GDR) [Section 41]**

Meaning	GDR is a certificate issued by overseas depository bank (who purchases shares of Indian company) in their local stock exchange which is backed by those shares.
Requirement	After passing SR & complying with prescribed conditions.

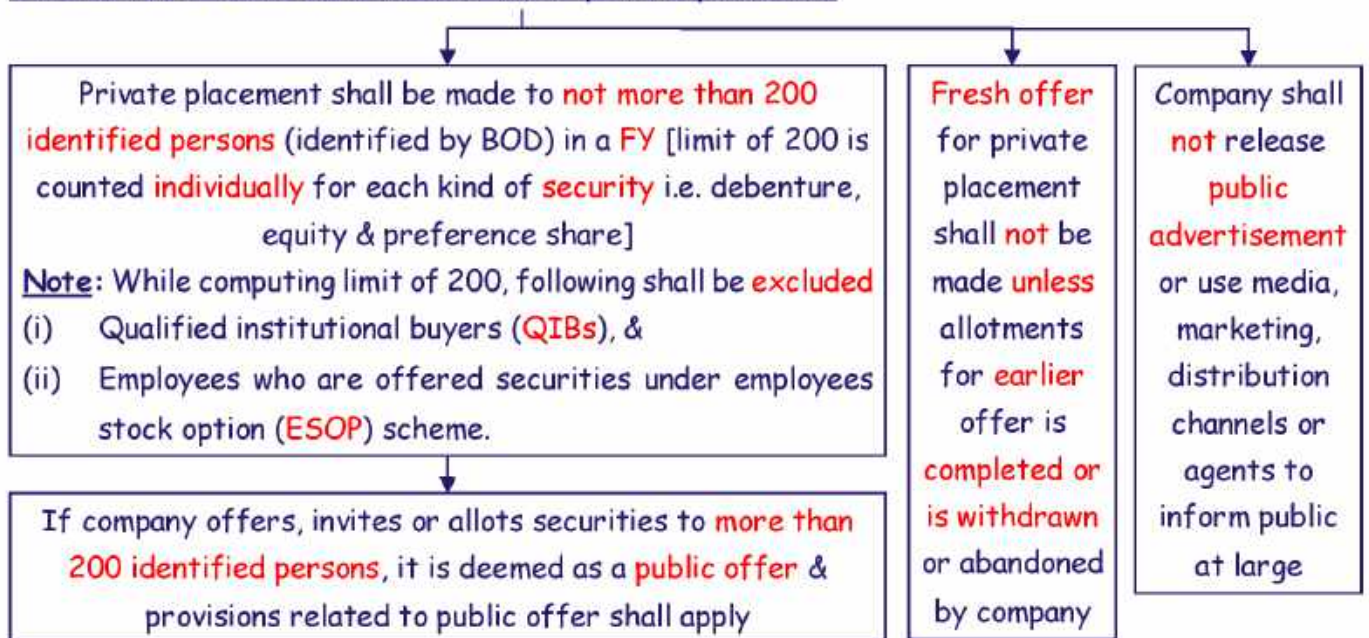
Manner and Form of Depository Receipts	<ul style="list-style-type: none"> GDR can be issued by way of public offer, private placement or other manner prevalent in foreign jurisdiction & may be listed/traded in such jurisdiction. GDR may be issued against new shares or sponsored against existing shares held by shareholders [as per conditions prescribed by CG/RBI]. Underlying shares are allotted in the name of overseas depository bank & GDR are issued by overseas depository bank against such shares.
Voting Right	<ul style="list-style-type: none"> GDR holder may become member of company but they are entitled to vote only after conversion of such GDR into underlying shares. Until conversion, overseas depository bank is entitled to vote on behalf of GDR holders as per the agreement between them.

Example

Infosys issues new shares which are held by Deutsche bank London (overseas depository bank) & against such shares, Deutsche bank London issues GDRs that are traded on London Stock Exchange. This allows foreign investors to invest in Infosys without directly buying Indian shares.

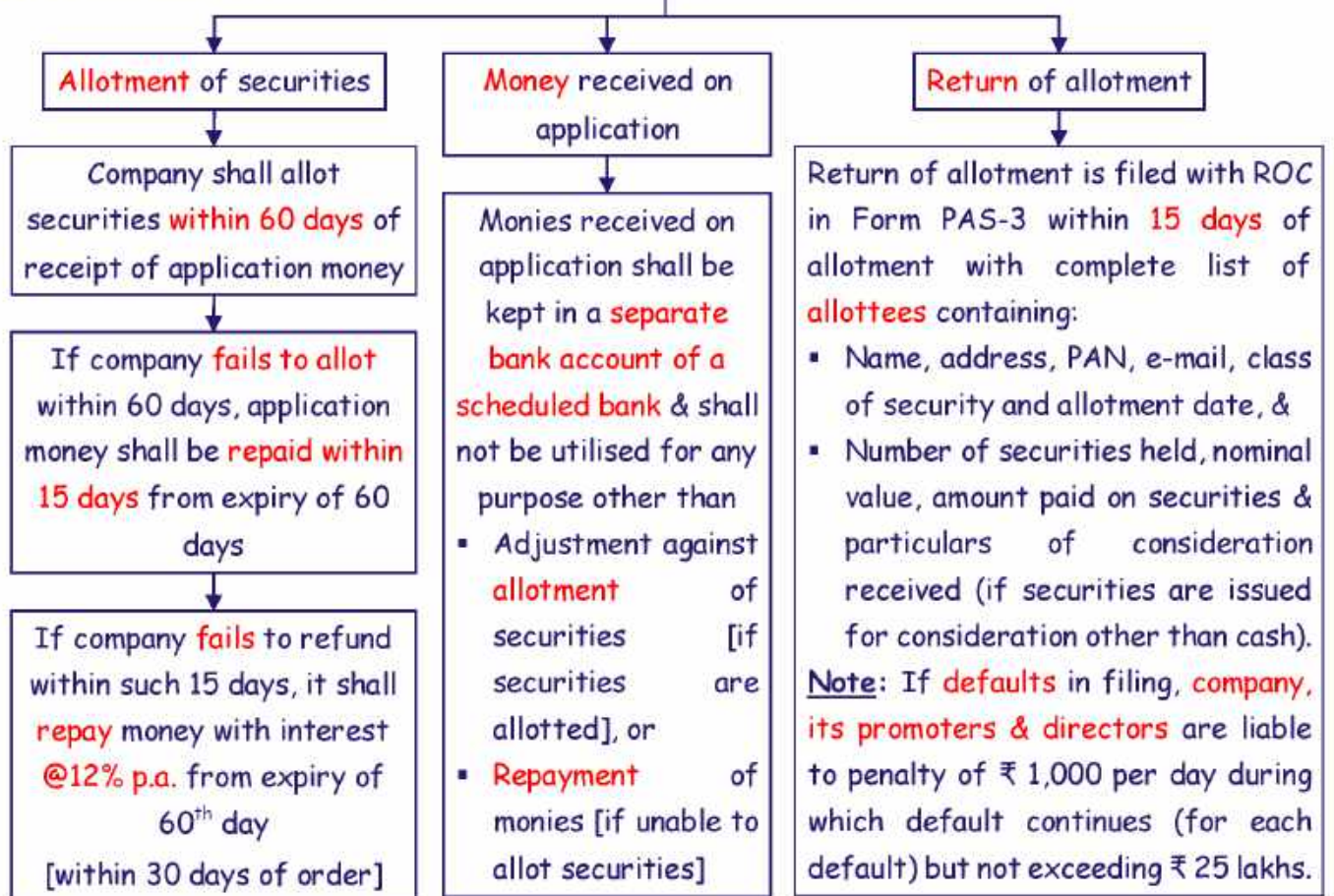
Private Placement [Section 42]

- Offer or invitation to subscribe securities to a **selected group** of persons by a company (other than by public offer) through private placement offer-cum-application.
- Conditions for offer or invitation under private placement



Note: If Non-banking financial company (NBFCs) registered with RBI & housing finance company (HFCs) registered with National Housing Bank (NHB) are complying with regulations made by RBI/NHB for offer/invitation issued on private placement basis, rule 14(2) [i.e. offer to ≤ 200 identified persons] is not applicable to them.

• Provisions after offer or invitation under private placements



Note: Company shall not **utilise money** raised through private placement **unless allotment** is made & return of allotment is filed with **ROC**.

• Manner of Issuing and Subscribing Private Placement

- Company shall **issue** private placement offer-cum-application [**not** carrying right of **renunciation**] to identified persons & such persons can **apply** through same letter along with subscription **money** [paid by cheque, demand draft or other banking channel].

Note:

- Offer can be made to a body corporate incorporated in (or national of) a country which **shares land border** with India only if **government approval** under FEMA is obtained & same has been attached with private placement offer-cum-application.
 - Payment shall be made by a **bank account** [company shall keep record of such bank account]:
 - In case of **joint** holders: Bank account of person whose name **appears first** in application.
 - Otherwise: Bank account of person subscribing to securities.
- Private placement offer-cum-application shall be issued in Form PAS-4, serially numbered, addressed to identified person and shall be sent either in writing or electronic mode **within 30 days** of recording name of such person.
 - Every private placement offer requires prior approval by **SR & explanatory statement** to notice

of meeting shall disclose:

- Particulars of offer [including date of passing BR], kind of securities offered, price at which security is offered and justification for such price,
- Amount which company intends to raise from such securities, material terms of raising securities, proposed time schedule, purpose of offer, contribution by promoter/director as part of such offer or separately and principle terms of assets charged as securities, &
- Name & address of valuer who performed valuation.

Note:

- (i) BR is sufficient for offer/invitation of **non-convertible debentures** [if amount to be raised **do not exceed limit u/s 180(1)(c)**].

Limit u/s 180(1)(c): [Money to be borrowed + already borrowed] > [Paid-up share capital + Free reserve + Securities premium]

*Borrowing do not include temporary loan [i.e. loan repayable on demand or within 6 months (such as cash credit arrangements) & is not raised for capital expenditure] obtained from bank in ordinary course.

- (ii) If offer/invitation of **non-convertible debenture exceeds limit u/s 180(1)(c)**, company shall pass **SR only once a year** for all offers/invitations for such debentures during the year.

- (iii) **SR only once a year** for all offers/invitations to QIB during the year shall be sufficient.

- **Copy of BR & SR** shall be filed to **ROC** prior to issue of private placement offer-cum-application.
- Company shall maintain **complete record** of private placement offers in Form PAS-5.

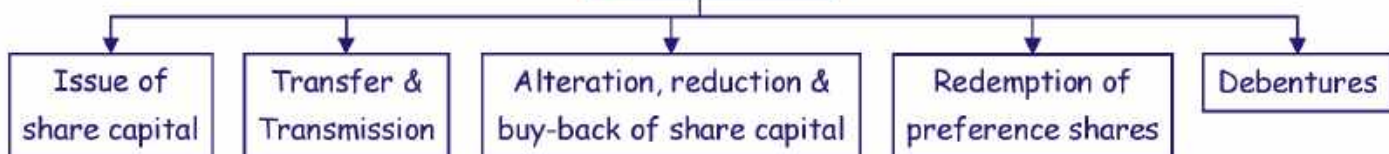
• **Punishment for default**

- Company: Refund money with interest @12% p.a. within 30 days of order [as discussed above].
- Company, promoters & directors: Fine of lower of ₹ 2 crores or amount raised through private placement.

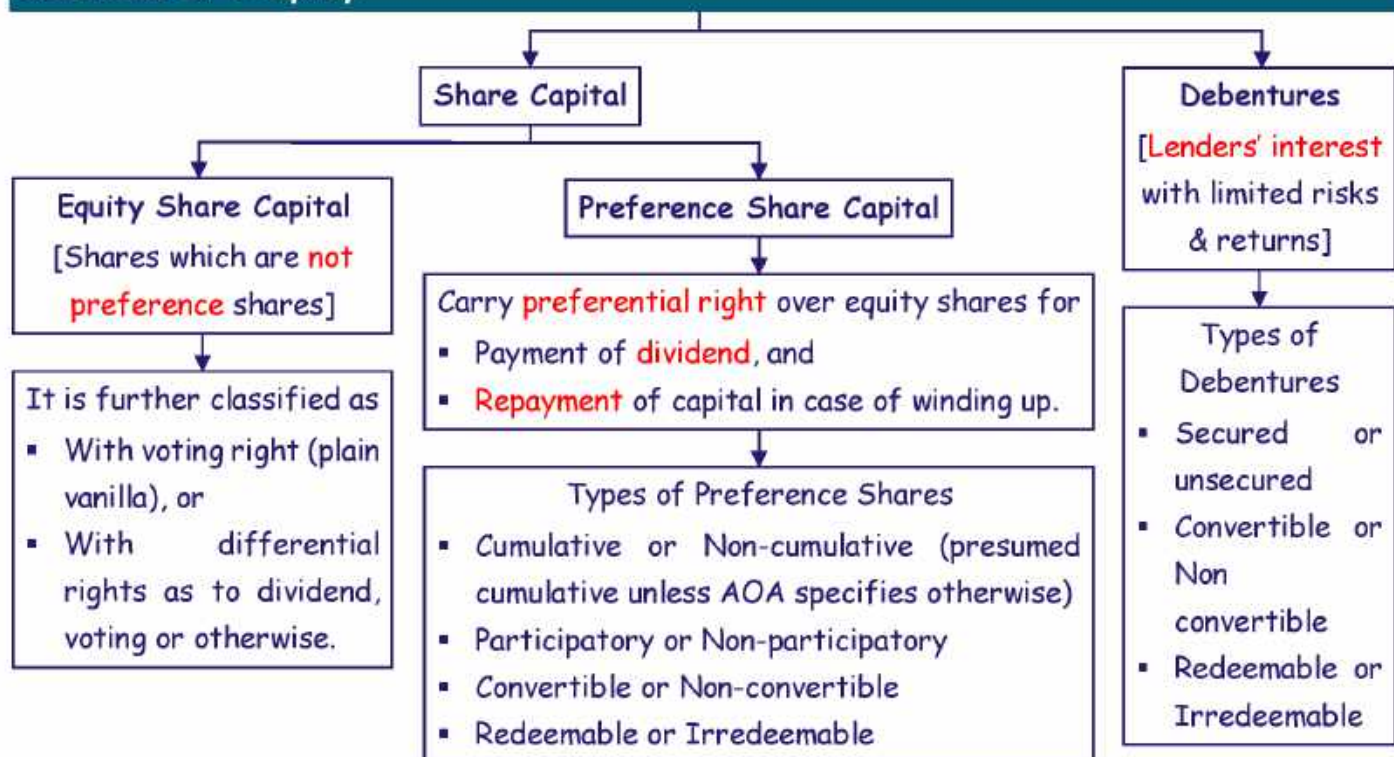
SHARE CAPITAL AND DEBENTURES



Topics Covered



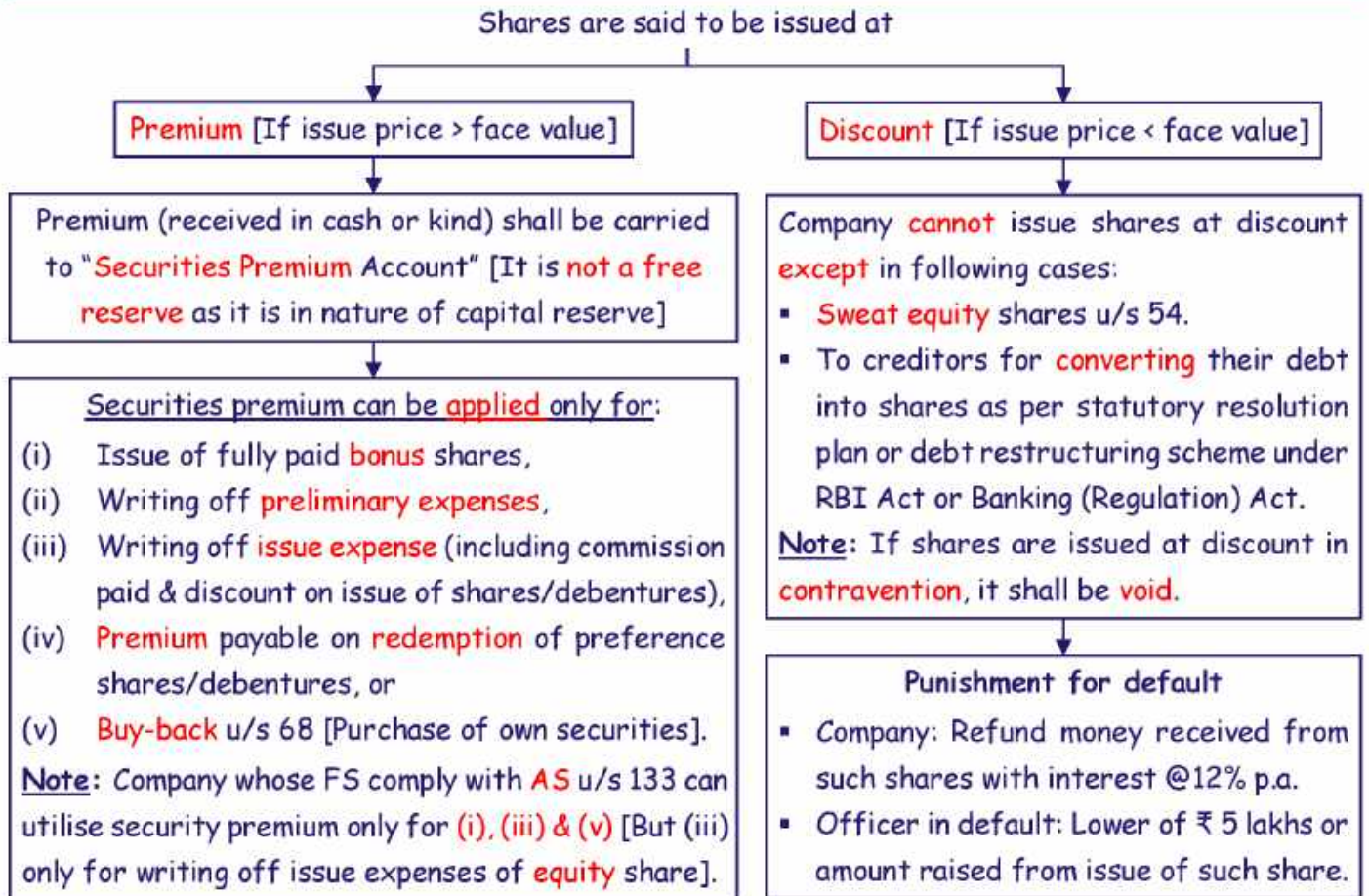
Securities of Company



Note:

- (i) Cumulative preference share: Dividend is **accumulated** & arrears of dividend (due to insufficient profits during current year) is payable from **profits of later years**. Until dividend on such shares is paid, no dividend is payable on equity shares.
- (ii) Non-cumulative preference share: Dividend is payable only in year of profit & **no accumulation** is done as in cumulative preference shares. If dividend is not declared, right to receive dividend for that year **lapses** & holder is not entitled to be paid arrears of dividend.
- (iii) Securities are considered as **movable** property.
- (iv) Company may have only equity share capital but it **cannot have only preference share capital** because preference shareholders have certain 'preferential rights' over equity shareholders and in absence of equity, there cannot be preferential share capital.

Issue of Shares at a Premium or Discount [Section 52 and 53]



Issue of Equity Share Capital [Section 43 and 54]

1) Issue of Sweat Equity Shares [Section 54]

Shares issued by company to its directors/employees at **discount** or for **consideration other than cash** for providing their **know-how**, intellectual property rights (IPR) or value addition.

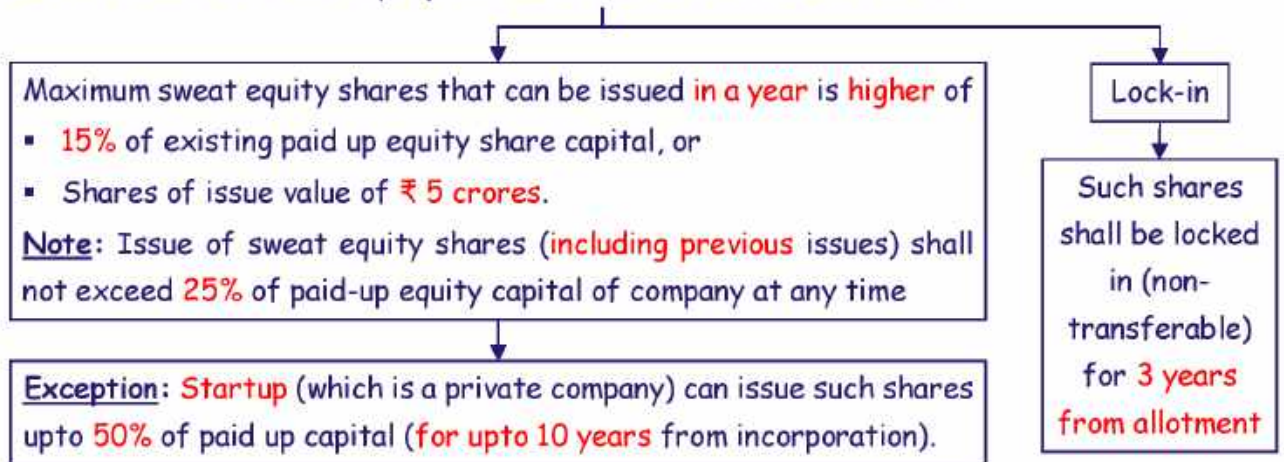
Note: Employee means director or **permanent** employee of **company or its holding or subsidiary**.

• Prior Conditions for Issue of Sweat Equity Shares

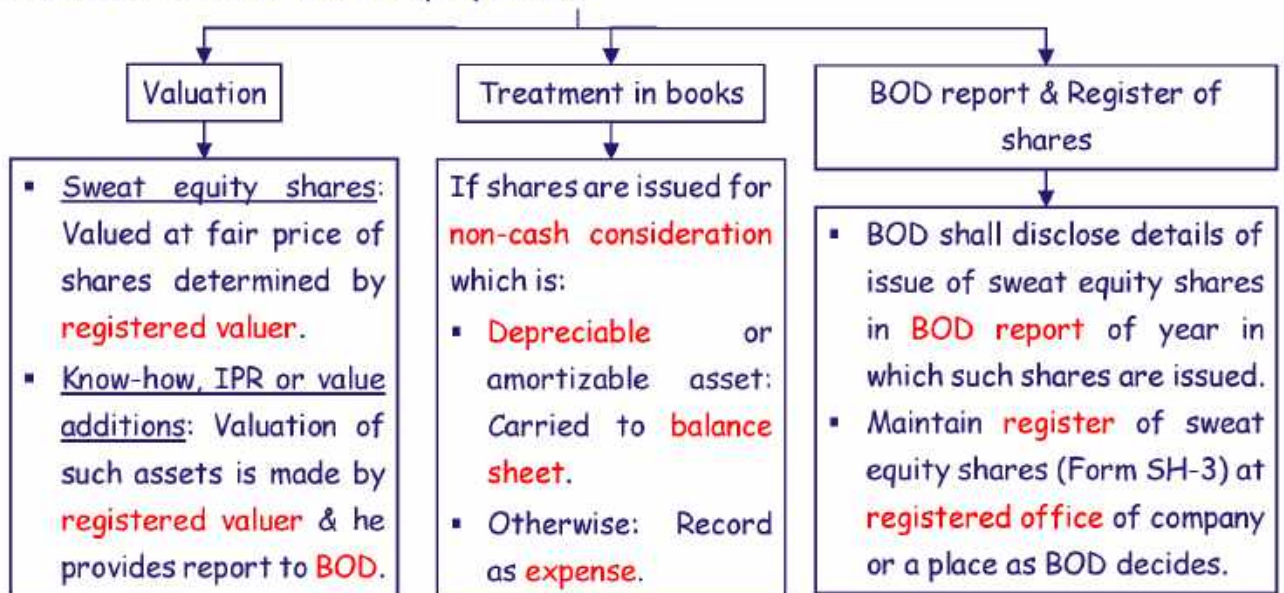


Note: Rights, limitations, restrictions & provisions of equity shares shall apply as it is to sweat equity shares and holders of such shares shall **rank pari passu** with other equity shareholders.

- Limit on issue of sweat equity shares and Lock-in on such shares



- Other Provisions of Sweat Equity Shares



Example

XYZ Tech Ltd has paid up equity share capital of ₹ 20 crores and plans to issue sweat equity shares worth ₹4 crores to reward its key employees for developing software.

Company shall pass SR specifying no. of shares, market price, consideration & director/employee to whom share is to be issued. But during a year, company can issue such shares upto higher of:

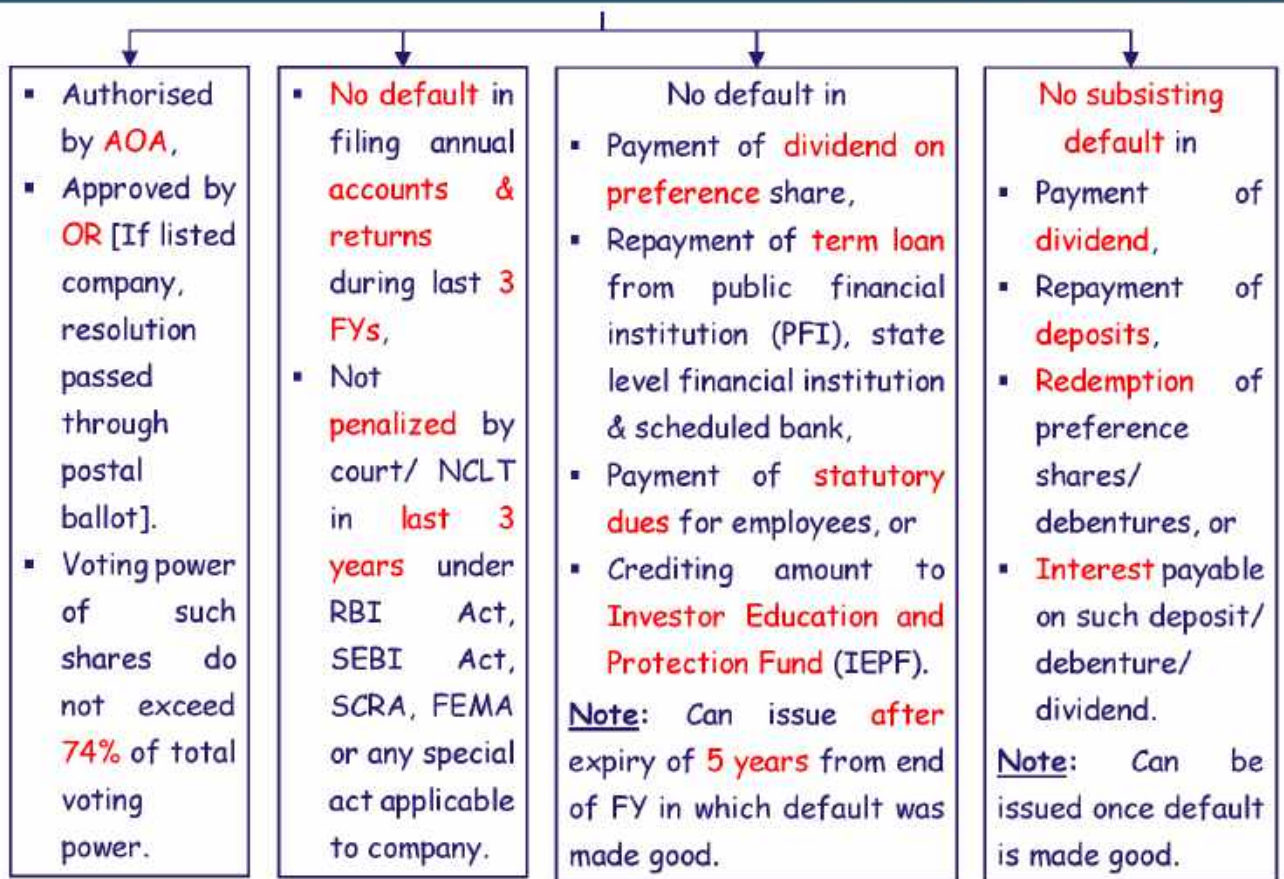
- 15% of paid-up equity share capital, i.e. ₹3 crores [15% of ₹20 crores], or
- Shares of issue value of ₹5 crores.

Here, higher limit of ₹5 crore applies. Also, total issuance (including past issues) must not exceed 25% of paid-up equity capital, which is ₹5 crores [25% of ₹20 crores].

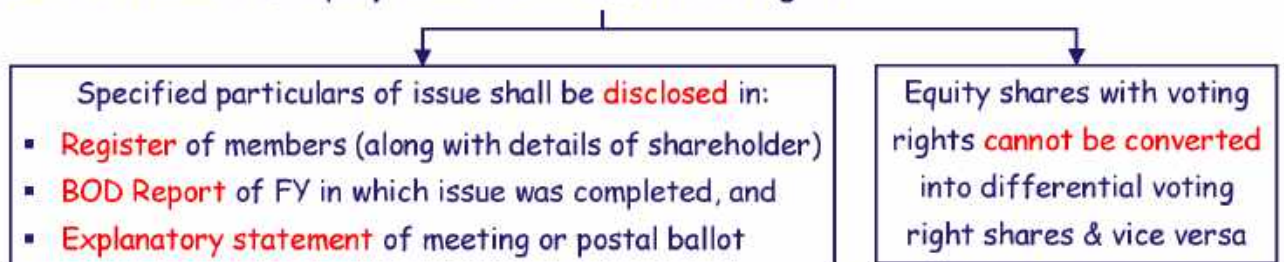
Since ₹ 4 crores is within limits, company is eligible to proceed for issue but allotment shall be completed within 12 months of passing SR.

2) Equity Shares with Differential Rights [Section 43]

- Conditions to issue shares with differential rights (as to dividend, voting or otherwise):



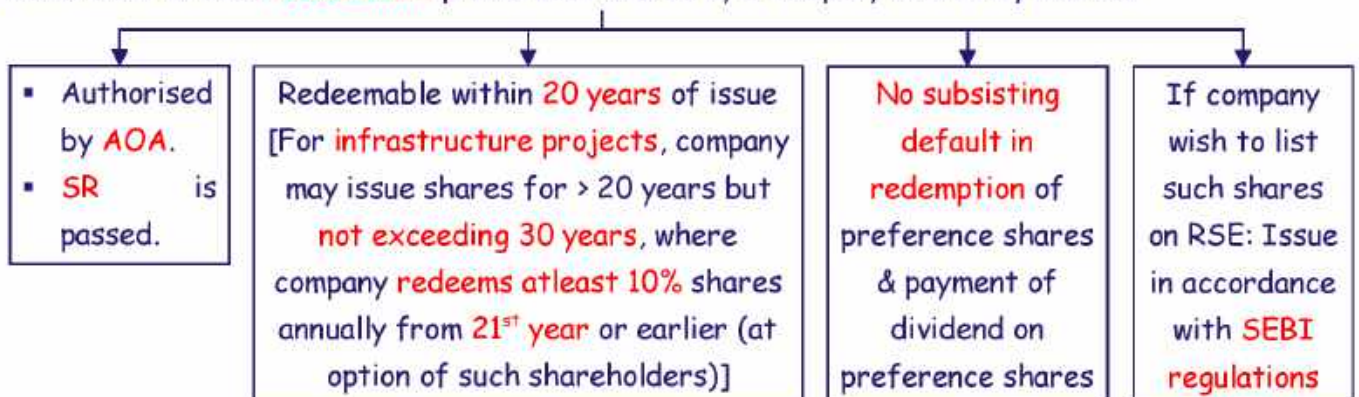
• Other Provisions of Equity Shares with differential rights:



Note: This section is not applicable to private company (if MOA & AOA provides).

Issue of Preference Shares [Section 55]

• Conditions to issue redeemable preference shares by a company limited by shares:



- Company **cannot issue irredeemable** preference shares.
- Company maintains **register** of members (containing particulars of preference shareholders).

Note: If company is **unable to redeem** preference shares **or pay dividend** on such unredeemed shares, it may **issue further redeemable** preference shares (equal to **amount due including dividend**) to holders of such shares after obtaining **consent** of holder of **3/4th value** of such shares **& NCLT approval** [while giving approval, NCLT shall order **redemption** for shareholders who have **not consented** to issue]. In such case, unredeemed preference shares are **deemed** to have been **redeemed**.

Issue of Share Capital [Section 62 and 63]

1) Further Issue of Share Capital - Rights Issue, Preferential Allotment [Section 62]

If company wants to increase its subscribed capital by issue of shares, they shall be offered to

Existing equity shareholders as **right shares** (in **proportion to paid-up** capital held by them) by sending an offer letter (notice) which shall specify:

- Number of shares offered,
- Time period within which offer must be accepted [which shall not be less than **7 days** but **not exceeding 30 days** from date of offer],
Note: **Shorter period** may be allowed for **private company** & specified **IFSC** public company [if **90% of members (in number)** give their consent].
- If offer is not accepted within time, it is **deemed** to have been **declined**, &
- Members have a right to **renounce** such shares (unless **AOA** provides otherwise).

- Offer letter (notice) shall be dispatched at least **3 days before opening of issue** by registered post, speed post, courier, electronic mode or any mode with proof of delivery [**shorter period** (<3 days) may be allowed to **private company** if **90% of members (in number)** give their consent].
- On expiry of time to exercise right or intimation of decline by member, BOD shall **dispose** shares in manner **not dis-advantageous** to shareholders & company.

Employees under scheme of **ESOP** (subject to **SR** & other prescribed conditions)

Note:

- **ESOP** means option given to **director, officer or employees** of company (or its holding or subsidiary) to purchase shares of company at a pre-determined price on a future date.
- **OR** is sufficient in case of **private company** (which has not defaulted u/s 92 & 137) and specified **IFSC** public company.

Any person (if authorised by **SR**) for **cash or consideration other than cash**

Note: In case of **non-cash** consideration, price is determined by **valuation report of registered valuer** & other prescribed conditions.

Note:

- (i) This section is **not applicable to Nidhi Company**.
- (ii) In case of offering shares to existing equity holders, company cannot ignore a section of shareholders and must offer shares to them in proportion of their holdings.

2) Compulsorily conversion of Debentures/Loan from government into Shares [Section 62]

- Where company issues **debentures or takes loan** from government, **government** can order **conversion** of such debentures/loan **into shares** of company (if necessary in public interest) on terms and conditions it considers reasonable [even if debenture/loan were not convertible].

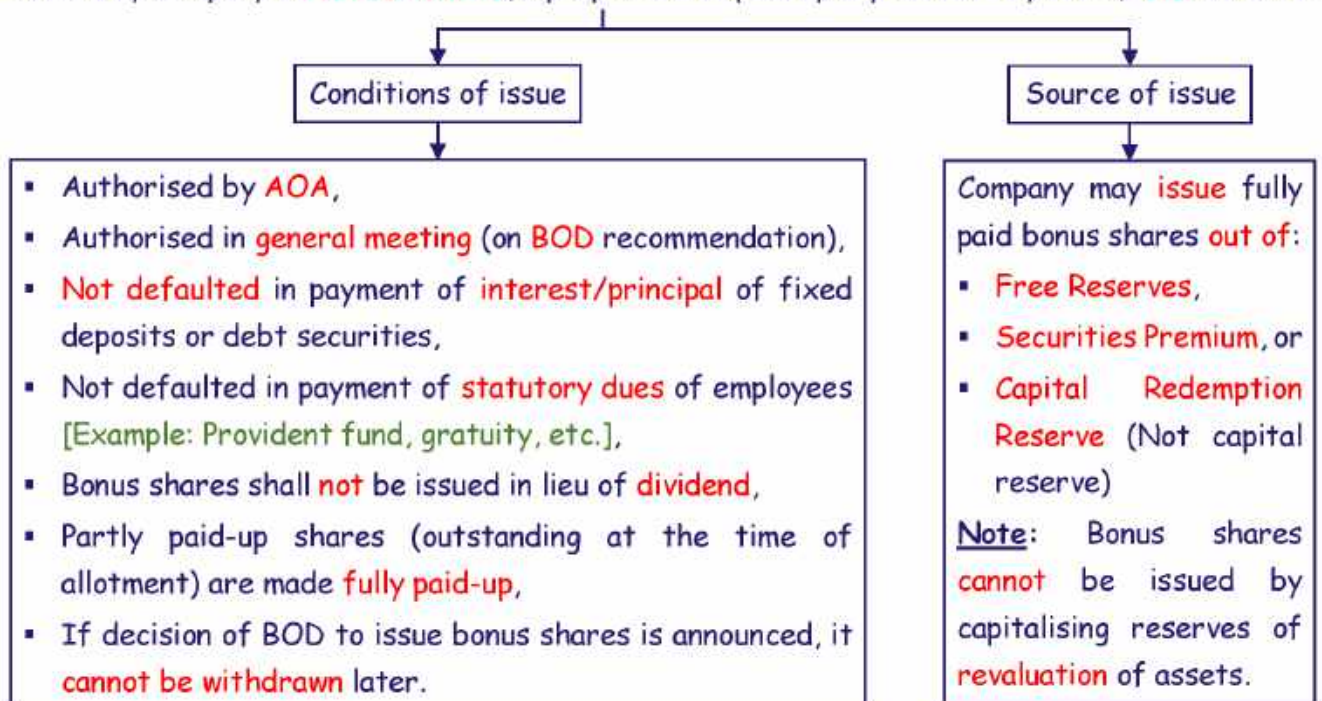
Note: Authorised capital of company stands increased by an amount equal to value of shares issued under conversion & MOA shall also stand altered.

- Government shall **consider** financial position of company, terms of issue of debenture/loan, interest rate payable & other matters while determining terms and conditions of conversion.
- If terms and conditions of conversion are **not acceptable** to company, it may **appeal to NCLT** within **60 days** of communication of order & NCLT shall pass order as it deems fit.

Note: This section is not applicable to Nidhi Company.

3) Issue of Bonus Shares [Section 63]

Issued by company to **shareholders** (in proportion to paid up capital held by them) **free** of cost.

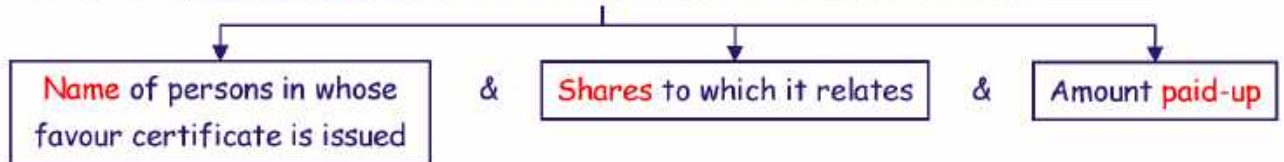
**Certificate and Duplicate or Renewed Certificate of Shares [Section 46]****1) Certificate of Shares**

- Share Certificate is **prima facie evidence of title** of person to shares [if held in depository

form, record of depository is prima facie evidence of beneficial ownership] if issued:



- Share certificates shall be issued on surrender of letter of allotment or fractional coupons [except if issue is under letter of acceptance/renunciation (right shares) or bonus shares] after passing **BOD resolution**. Share Certificate [Form SH-1] shall specify:

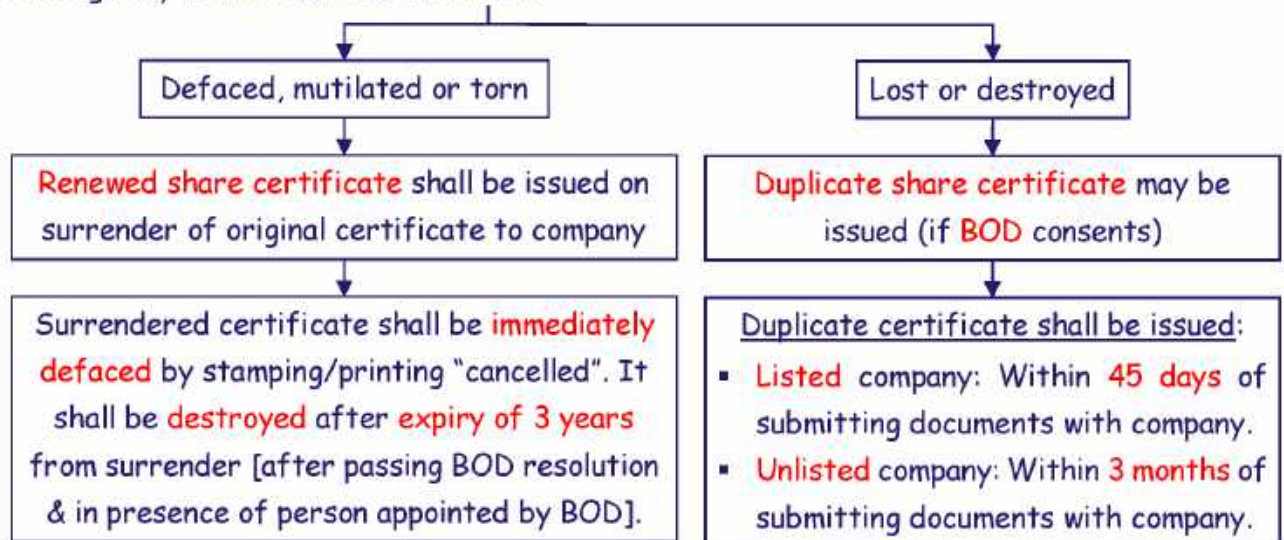


Note:

- Blank forms of share certificate are **printed** after passing BOD resolution & are kept in custody of CS or person authorised by BOD.
- Company shall issue only **1 share certificate** where shares are held **jointly** by more than 1 person & its delivery to any 1 of them will be considered as delivery to all of them.

2) Issue of Renewed/Duplicate Share Certificate

- If originally issued share certificate is



Note:

- Company may replace existing certificates without surrender of old certificates in case of sub-division/consolidation of shares, merger, demerger or reconstitution.
- Company may charge **fees** for certificate as BOD thinks fit [but ≤ ₹ 50 per certificate] & no fee shall be charged in case of scheme of arrangement sanctioned by high court/CG.
- Register of Renewed & Duplicate Certificate:**
 - Maintain register of renewed & duplicate certificate in Form SH-2 at **registered**

office of company or place where register of members is kept.

➤ **Preserved permanently** in custody of CS of company or person authorized by BOD.

➤ All entries in register shall be authenticated by CS or person authorised by BOD.

(iv) All other books pertaining to record of share certificate shall be preserved for not less than **30 years** [In case of **dispute**, they shall be preserved **permanently**].

• **Punishment for Issuing Duplicate Certificate of Shares with Intent to Defraud**

➤ Officer in default: Liable u/s 447, and

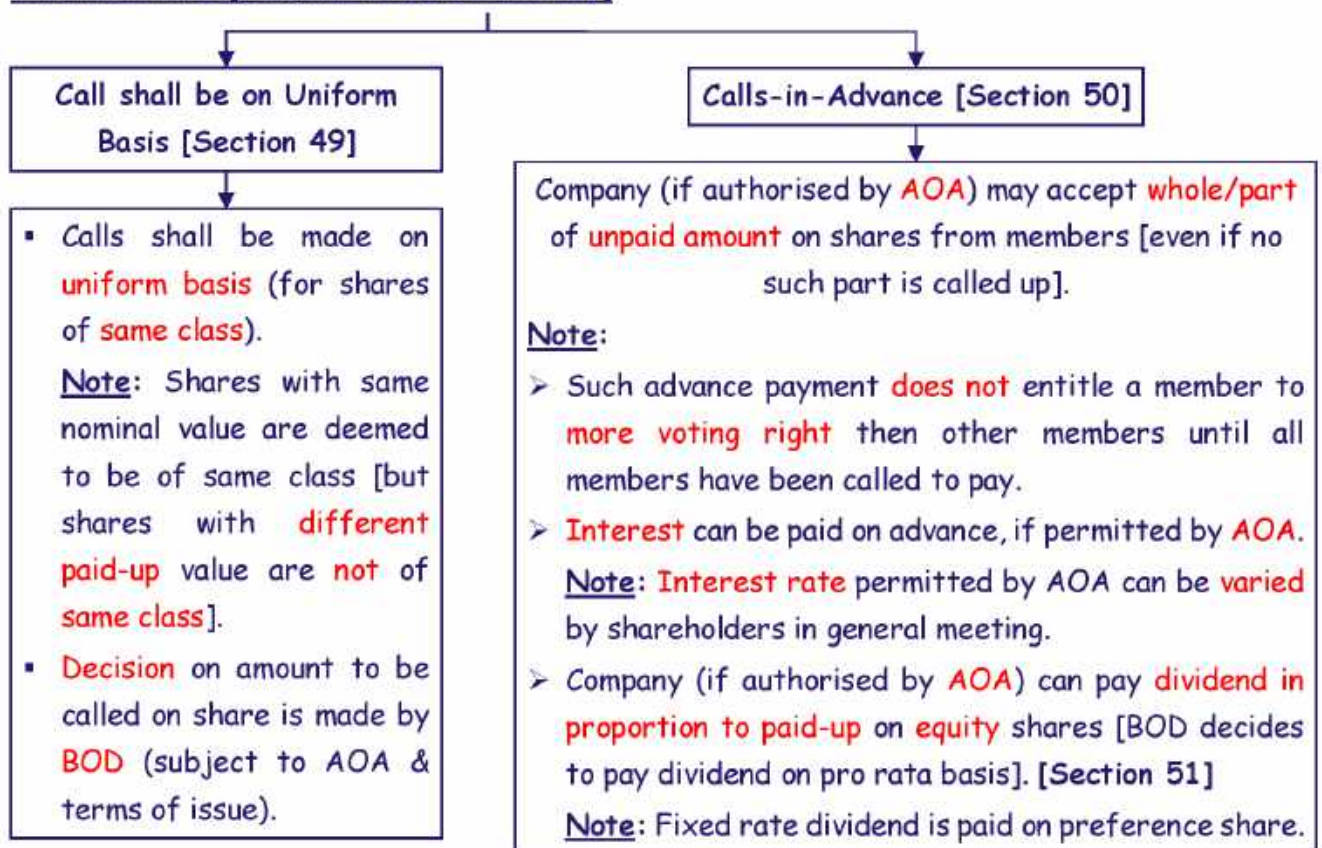
➤ Company:

✓ Minimum Fine: 5 times the face value of shares involved, &

✓ Maximum Fine: Higher of 10 times the face value of shares or ₹ 10 crores.

Calls and Voting Rights of Shareholder [Section 47 to 51]

1) Calls on Share [Section 49 to Section 51]

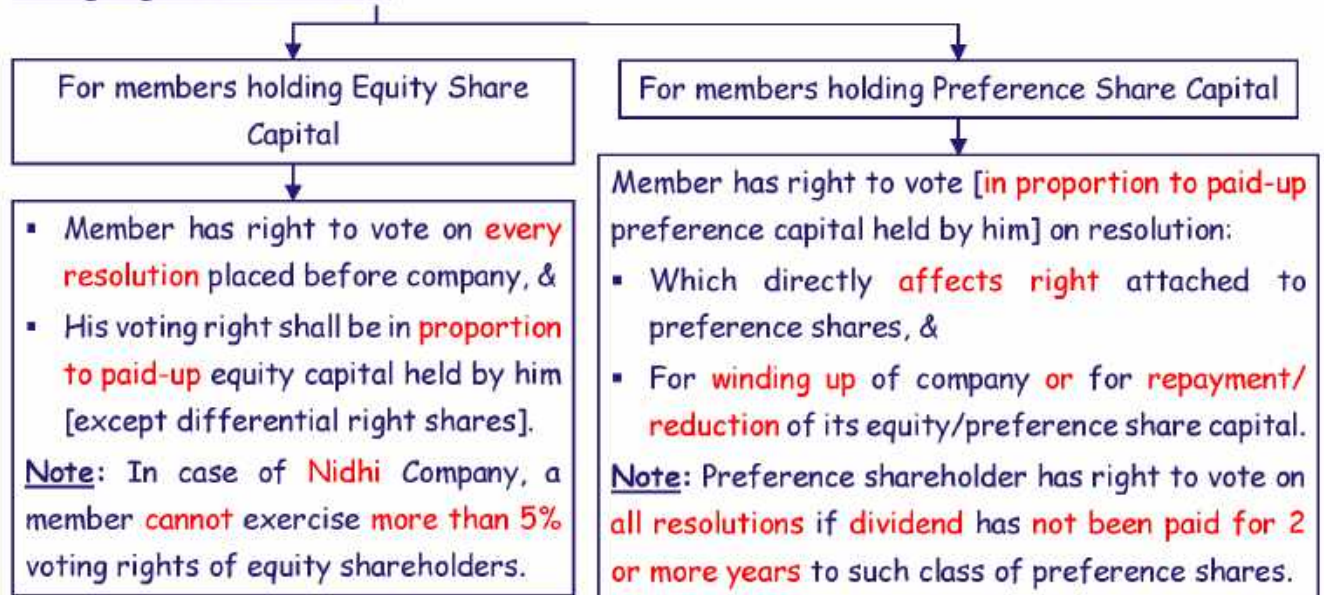


Example

S Ltd issued equity share of ₹ 100 each (partly paid at ₹ 50) & made ₹ 30 call on such shares.

➤ X, holding 500 shares, didn't pay ₹ 30 call & company demanded entire unpaid amount from him: Selective demand is invalid, calls must be made uniformly across same class.

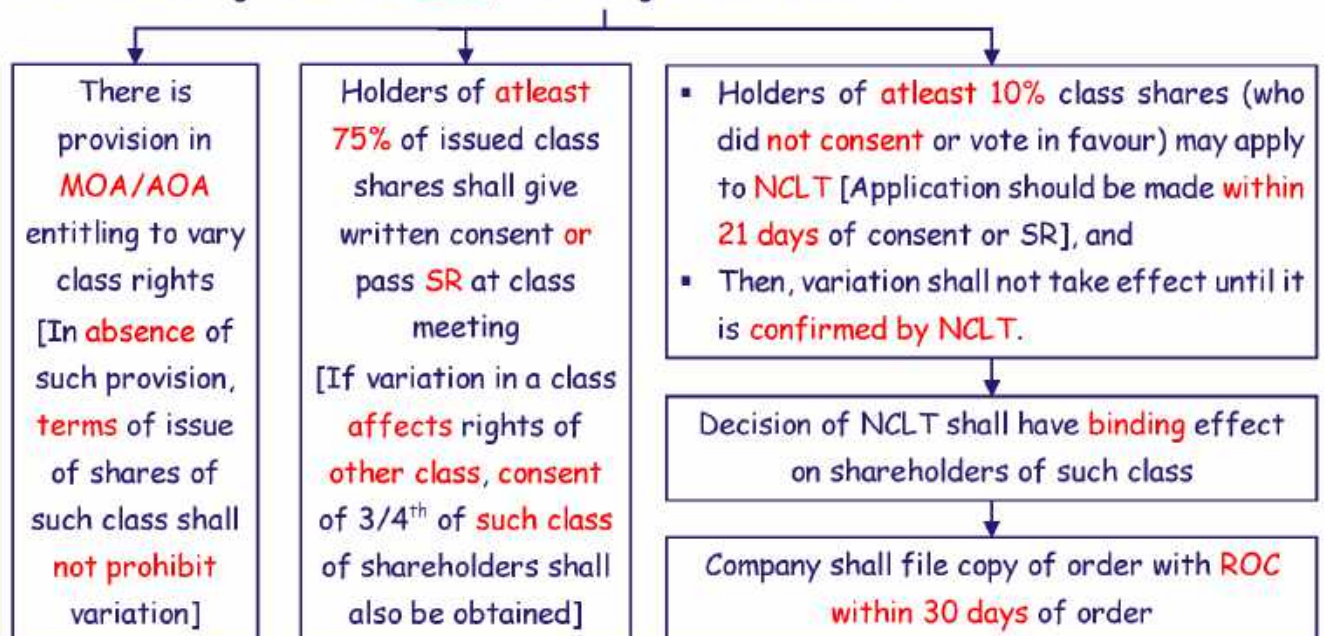
➤ Y, holding 100 shares, paid entire unpaid of ₹ 50 in advance: This is valid if AOA permit & he may also earn interest on advance. He can also claim dividend in proportion to amount paid-up.

2) Voting Rights [Section 47]Note:

- For resolutions where both equity & preference shareholders are entitled to vote, proportion of voting rights of equity holders to preference holders shall be in same proportion as paid-up capital of equity shares to paid-up capital of preference shares.
- This section is not applicable to private & IFSC public company (if MOA/AOA provides).

3) Variation of Shareholders' Rights [Section 48]

Shareholders' rights can be **varied**, if following conditions are met:



Note: Cancellation of shares & reduction of capital do not amount to variation of class rights.

Example

Company issued 50,000 class 1 equity shares where 5 shares hold 1 voting right. Company wants

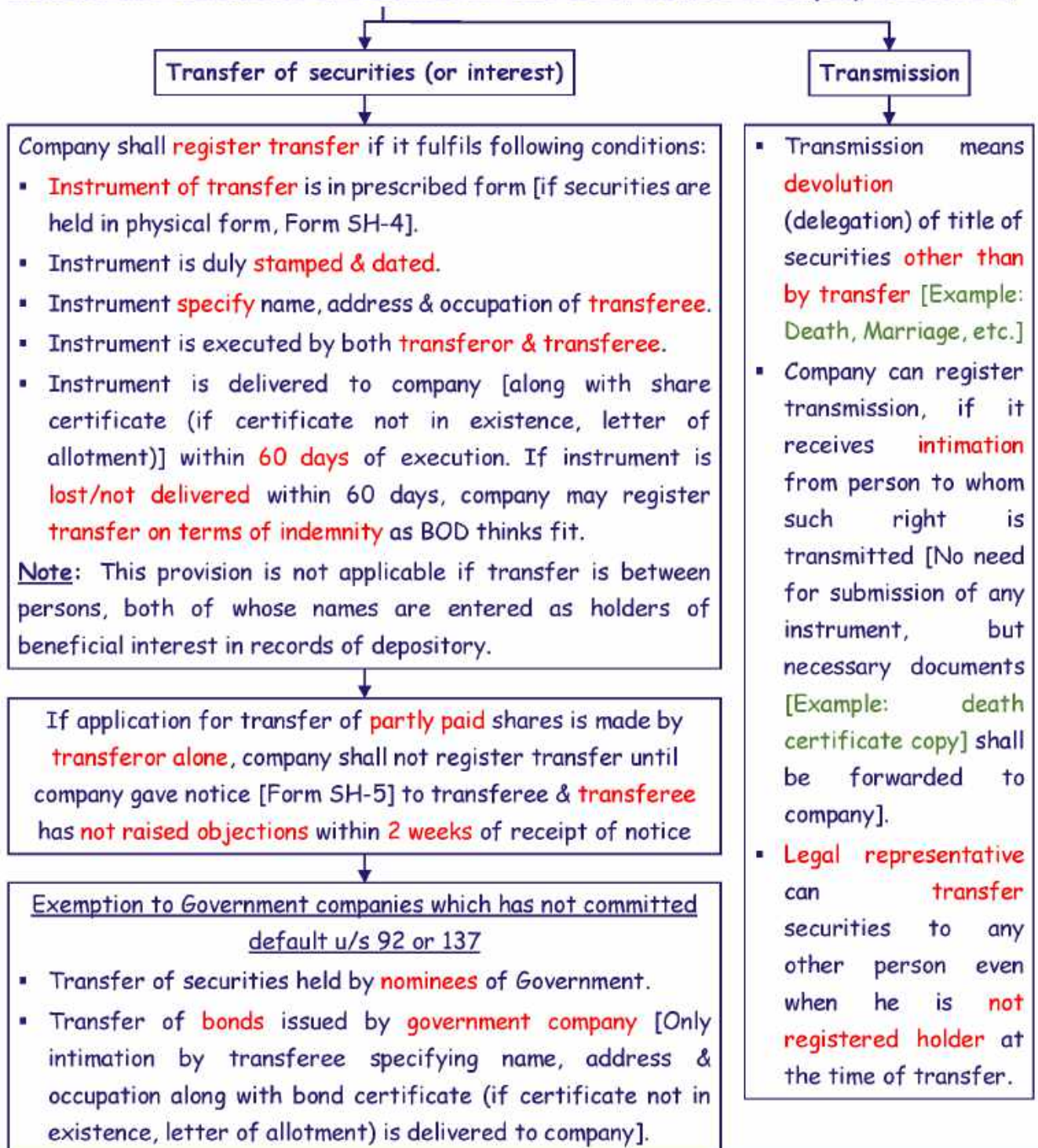
to vary voting rights of such shares to 1 voting right for 10 shares. Whose consent is required?

Solution

- Holders of $\geq 75\%$ class shares [i.e. 37,500 shares] shall consent to such variation.
- But holders of $\geq 10\%$ class shares [i.e. 5,000 shares] who did not consent can apply to NCLT.

Transfer and Transmission of Securities [Section 56 and 58]

1) Transfer and Transmission of Securities or Interest of Member in Company [Section 56]



- Time Period for Delivery of certificates of securities

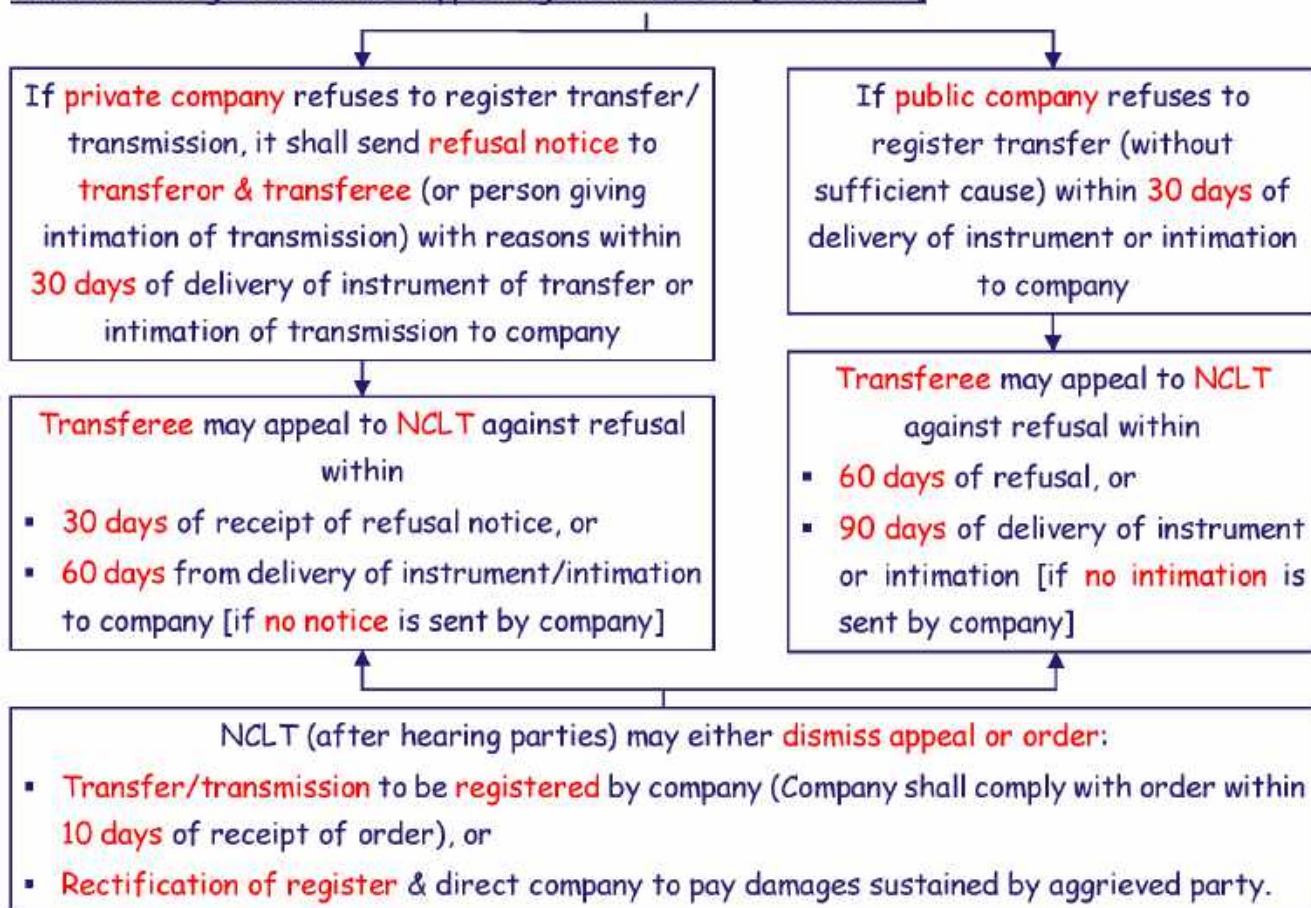
Deliver to	Time period
Subscribers to MOA	Within 2 months of incorporation
Allottees in case of allotment of: <ul style="list-style-type: none"> Shares by company Debenture 	Within: <ul style="list-style-type: none"> 2 months of allotment 6 months of allotment
Transferee in case of: <ul style="list-style-type: none"> Transfer of securities Transmission of securities 	Within 1 month of receipt by company of: <ul style="list-style-type: none"> Instrument of transfer Intimation of transmission
In case of all securities by specified IFSC public & private company	Within 60 days of incorporation, allotment, transfer or transmission

- Punishment for default

Company and Officer in default: Fine of ₹ 50,000

Note: If depository/depository participant transferred shares with intent to defraud a person, it shall be liable u/s 447 along with other liability under Depositories Act, 1996.

2) Refusal of Registration and Appeal against Refusal [Section 58]



Note: Shares of public company are freely transferable whereas private company restricts rights of members to transfer shares.

Punishment for default: If a person contravenes NCLT's order:

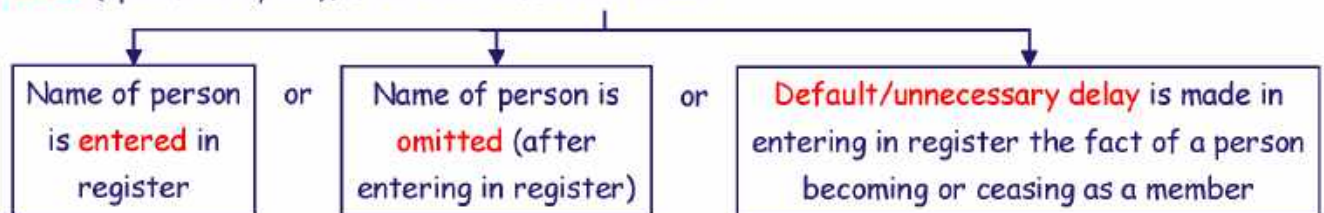
- Imprisonment: Not less than 1 year but may extend to 3 years, and
- Fine: Not less than ₹ 1 lakh but may extend to ₹ 5 lakhs.

Forged transfer

- If company effects transfer on basis of instrument having **forged signatures of transferor**, it is referred as forged transfer.
- It is a **nullity** (void-ab-initio), not legally binding & **does not give transferee title** of such shares.
- If such transferee transfer shares to other person who is acting on **good faith** [i.e. bona-fide buyer] and company registers transfer & endorses share certificate, company cannot deny ownership of bona-fide buyer [but he **cannot get good title** because his title is only as good as that of seller].
- Also, company cannot deny ownership of original shareholder because '**forged transfer**' is **void ab-initio** & hence, company has to **restore** his name & pay him any dividend he ought to have received.
- While restoring name of original shareholder, company can also be asked to **compensate bona-fide buyer**. But company may get itself indemnified by transferee who used forged instrument.

Rectification of Register of Members [Section 59]

- 1) **Aggrieved person, member or company** itself may appeal to **NCLT or competent court outside India** (specified by CG), if without sufficient cause:



- 2) NCLT may either **dismiss** appeal or **order** that:
 - **Rectification** of depository records/register & direct company to pay damages sustained by aggrieved party, or
 - Company shall **register** transfer/transmission **within 10 days** of receipt of order.

Note: Even on application by depository, depository participant, company, security holder or SEBI, **NCLT** may direct company/depository to set right its contravention & rectify register/records.

Alteration and Reduction of Share Capital [Section 61 and 66]

- 1) **Power of Limited Company to Alter its Share Capital [Section 61]**

Limited company can **alter capital clause** of MOA (if authorised by **AOA**) in following ways:

- **Increase** its authorised capital, or
- **Consolidate & divide** share capital (whole or part) into shares of larger amount [**NCLT approval**]

is required only if there is change in voting % of shareholders], or

- Convert fully paid up shares into **stock** or vice-versa of any denomination, or
- **Sub-divide** share capital (whole/part) into shares of smaller amount fixed by MOA [Proportion between amount paid & unpaid on smaller amount share shall be same as original share], or
- **Cancel shares not taken up** & reduce capital accordingly [Not deemed as reduction of capital].

Note: Capital clause of MOA can be altered by passing **OR** for this provision.

2) Reduction of Share Capital [Section 66]

Company limited by shares/guarantee (having share capital) may reduce share capital by:

- **Extinguish** or reduce liability on **share capital not paid-up**, or
- **Cancel paid-up share capital** which is lost or is unrepresented by assets, or
- **Pay off paid-up share capital** in excess of wants of company.

Note: Conditions for reduction of share capital:

- Pass **SR** in general meeting,
- Alter MOA** (by reducing share capital & shares), and
- No arrears in **repayment** of deposits accepted by it or interest thereon.

Company will make an application for reduction of share capital to **NCLT**

NCLT shall give notice of application to **CG** (power delegated to regional director), **ROC**, **SEBI** (if listed company) & **creditors**

Note: NCLT shall consider **representations** made by them within **3 months** of receipt of notice [If no representation received within 3 months, it is presumed that they have no objection].

NCLT may make **order** confirming reduction on terms & conditions it deems fit if:

- Debt of **creditor** is either **discharged, determined, secured or their consent** is obtained.
- Accounting treatment proposed by company is in conformity with accounting standards (**AS**) **specified u/s 133** [i.e. certificate by company's **auditor** to that effect is filed with NCLT].

Order of confirmation by NCLT shall be **published** by company in manner as NCLT directs

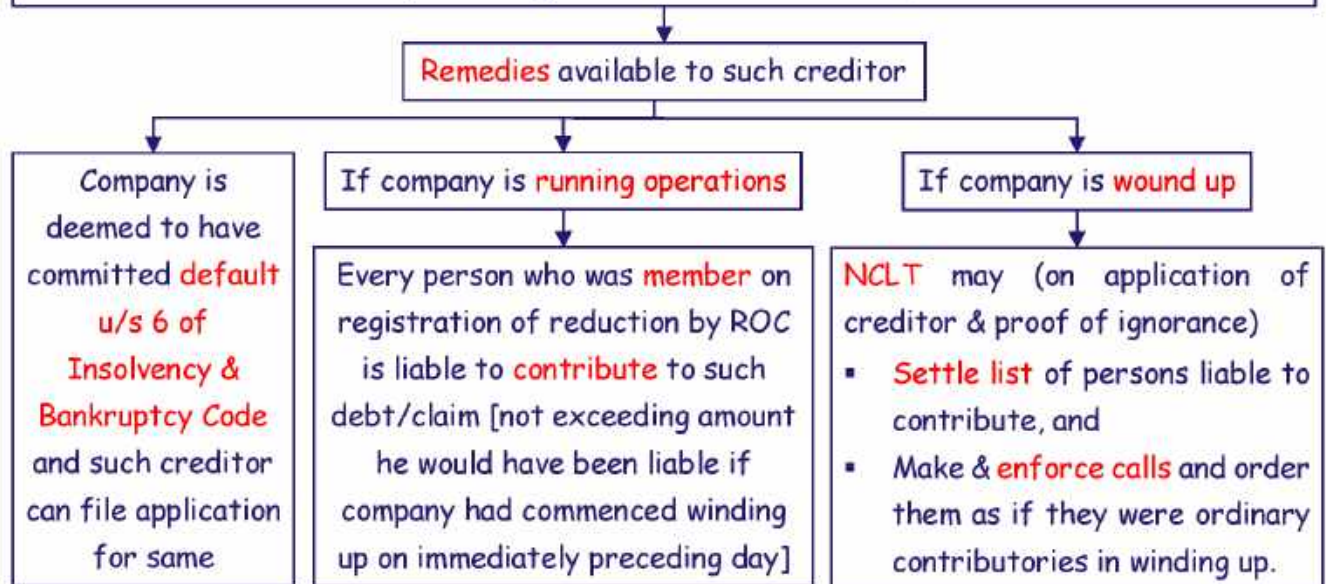
- Within **30 days** of receipt of order, company shall deliver certified copy of NCLT order & minutes (containing SR) approved by NCLT, **to ROC**.
- On receipt, ROC shall register the same & issue a **certificate** to that effect.

Note:

- This section is not applicable to buy back of securities by a company u/s 68.
- Member shall be liable to pay amount maximum upto difference between amount paid-up & nominal value of reduced shares.

3) Creditor entitled to object to reduction was not included in list of Creditors [Section 66]

If **reduction** took place and name & interest (debt/claim) of a **creditor** [entitled to object to reduction] was **not entered** in list of creditors (either because of his ignorance of reduction proceedings or nature of his interest)



Note: Officer of company shall be liable u/s **447**, if he knowingly (or abets or is privy to):

- **Concealment** of name of creditor entitled to object to reduction, or
- **Misrepresentation** of nature/amount of debt of creditor.

Buy-back of Shares or Specified Securities [Section 68 and 70]• Power of Company to Purchase its own Securities (Buy-Back) [Section 68]

Company may purchase its own shares or specified securities (ESOP or security notified by CG).

Methods of buy-back	Buy-back may be from: <ul style="list-style-type: none"> ▪ Existing security holders on proportionate basis, or ▪ Open market, or ▪ Securities issued to employees of company under ESOP or sweat equity.
Source	Purchase should be made out of: <ul style="list-style-type: none"> ▪ Free reserves, or ▪ Securities premium, or ▪ Proceeds of issue of shares or other specified securities. <p>Note: Buy-back cannot be made from proceeds of securities of same kind.</p>
Conditions	<ul style="list-style-type: none"> ▪ Authorised by AOA, ▪ SR is passed [BR is sufficient if buy-back do not exceed 10% of paid-up equity capital & free reserves of company],

	<ul style="list-style-type: none"> Securities for buy-back shall be fully paid-up, Amount used for buyback do not exceed 25% of paid-up capital & free reserves. In case of equity shares, maximum 25% of paid-up equity capital can be bought back in a FY. Ratio between debt is not more than twice of paid-up capital & free reserves after buyback (CG may prescribe higher ratio for a class of company). Buy-back is in compliance with: <ul style="list-style-type: none"> ➤ In case of listed shares or specified securities: SEBI Regulations. ➤ Otherwise: Rule 17 of Companies (Share capital & Debentures) rules, 2014. <p>Note: For this section, free reserves shall include securities premium account.</p>
Explanatory Statement	<p>Notice of meeting (where SR is proposed) shall be accompanied by explanatory statement stating:</p> <ul style="list-style-type: none"> Full & complete disclosure of material facts, Necessity for buy-back, Class of securities to be purchased under buy-back, Amount to be invested under buy-back, and Time limit for completion of buy-back.
Declaration of solvency	<ul style="list-style-type: none"> Declaration of solvency shall be filed (before buy-back) with SEBI (if shares are listed on RSE) & ROC in Form SH-9. Such declaration (verified by affidavit) shall state that BODs have made full inquiry into affairs of company & found that it is capable of meeting all its liabilities (& will not become insolvent) within 12 months from declaration. Declaration has to be signed by atleast 2 directors (1 should be MD, if any).
Procedure for buy-back	<ul style="list-style-type: none"> Before buy-back, company shall file letter of offer (Form SH-8) with ROC. Such letter shall be dispatched to security holders within 21 days of filing with ROC. Offer shall remain open for atleast 15 days but not exceeding 30 days from dispatch of letter of offer [if all members of company agree, offer may remain open for less than 15 days]. If number of securities offered by security holders are more than those to be bought back, acceptance per shareholder shall be on proportionate basis. Company shall complete verification of offers received within 15 days of closure of offer and all other securities shall be deemed as accepted unless communication of rejection is made within 21 days of closure of offer. Company shall make payment within 7 days of verification to security holders whose securities are accepted and return share certificate to security holders whose securities have not been accepted (fully/partially).
Completion	Buy-back shall be completed within 12 months of passing SR/BR.

Extinguish shares	Company shall extinguish & physically destroy securities bought-back within 7 days of last date of completion of buy-back.
Cooling Period	<ul style="list-style-type: none"> After completion of buy-back, company shall not make further issue of same kind of shares or specified securities within 6 months. <u>Exception</u>: Company may make bonus issue & discharge its existing obligations (like conversion of warrants/preference share/debenture, ESOP, sweat equity). New buy-back offer shall not be made within 1 year of closure of preceding buy-back offer.
Register of securities bought-back	<p>Company shall maintain such register (Form SH-10) containing details of:</p> <ul style="list-style-type: none"> Shares or securities bought back, Consideration paid for shares or securities bought-back, Date of cancellation of shares or securities, Date of extinguishing & physically destroying shares or securities, and Such other particulars as may be prescribed. <p><u>Note</u>: Register shall be maintained at registered office in custody of CS of company or person authorized by BOD. Also, entries in register shall be authenticated by CS of company or person authorized by BOD.</p>
Return of buy-back	<ul style="list-style-type: none"> Return of buy-back (Form SH-11) shall be filed with SEBI (if shares are listed on RSE) & ROC containing particulars of buyback within 30 days of completion. Certificate (Form SH-15) signed by 2 directors (including MD, if any) certifying that buy-back is made in compliance shall also be filed with return.
Punishment for default	If company defaults u/s 68 or SEBI regulations for section 68, company and officer in default are liable to fine not less than ₹ 1 lakh but which may extend to ₹ 3 lakhs.

• **Prohibition for Buy-Back in certain circumstances [Section 70]**

Company shall **not** purchase its own securities (**buy-back**):

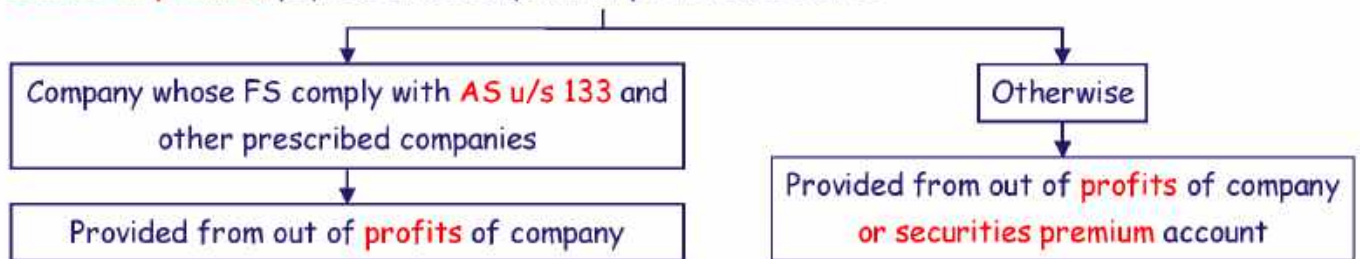
- Through **subsidiary** company, or
- Through **investment** company, or
- If **default** is made by company (during **last 3 years**) in repayment of deposits or interest thereon, repayment of term loan or interest thereon to financial institution/banking company, redemption of debentures/preference shares or payment of dividend, or

Note: Buy-back can be made if 3 years are lapsed after default ceases to subsist (rectified).

- If company has **not complied** with Section 92 (Annual Report), 123 (Declaration & payment of dividend), 127 (Punishment for failure to distribute dividend) & 129 (Financial Statement).

Redemption of Preference Shares [Section 55]

- Preference shares shall be redeemed out of:
 - **Profits** of company (which would otherwise be available for dividend) or
 - Proceeds of **fresh issue of shares** (equity/preference) made for redemption.
- If shares are redeemed out of **profits** of company, sum equal to **nominal amount** of shares redeemed shall be transferred to **CRR**.
- **Source of premium** payable at redemption of preference shares



- Shares to be redeemed shall be **fully paid**.

Transfer of Certain Sums to Capital Redemption Reserve (CRR) Account [Section 69]

- If company purchases its own shares (**buyback**) out of **free reserves/securities premium** or **redeems preference** shares out of **profits** of company:
 - Sum equal to **nominal value** (face value) of such shares shall be transferred to CRR, &
 - Details of such transfer shall be **disclosed** in balance sheet.
- CRR can be applied to issue **fully paid bonus** shares to members of company.

Notice to be given to Registrar for Alteration of Share Capital [Section 64]

- Company shall file notice with **ROC** in Form **SH-7** (along with altered MOA) within **30 days** of:
 - **Alteration** of capital u/s 61,
 - **Government order** for conversion having effect of increasing authorised capital u/s 62, or
 - **Redemption** of redeemable **preference** shares.
- **Punishment for default**
 Company & every officer in default is liable to penalty of ₹ 500 per day during which such default continues [maximum ₹ 5 lakhs in case of company and ₹ 1 lakh in case of officer in default].

Punishment for Personation of Shareholder [Section 57]

If a person **deceitfully personates** as owner of security or interest in company or owner of share warrant/coupon and obtains (or attempts to obtain) such security, interest, share warrant or coupon, or receives (or attempts to receive) money due to actual owner, he shall be **punishable** with:

- Imprisonment: Term not less than 1 year but may extend to 3 years, and

- Fine: Not less than ₹ 1 lakh but may extend to ₹ 5 lakhs.

Restriction on Purchasing/Giving Loans by Company to Purchase its Shares [Section 67]

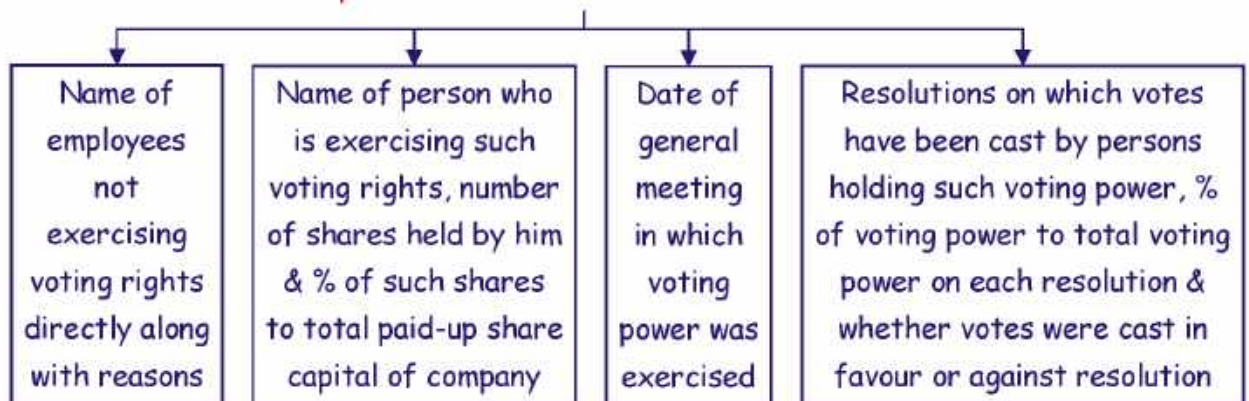
- Company limited by shares or guarantee having share capital shall **not buy its own shares** except in case of reduction of share capital.
- **Public company** shall **not** give **financial assistance** (directly/indirectly) to any person either by loan, guarantee, security or otherwise for purchase of shares of **company or its holding company**.

Exception: Company may provide financial assistance in following cases:

- Lending of money by **banking** company in **ordinary course** of business.
- To **trustee** for purchase of **fully paid** shares of company or its holding company for benefit of employees under scheme approved by SR.

Note:

- If shares are **listed**: Purchase shall be made from RSE & not by private offer.
- If shares are **unlisted**: Valuation for purchase of shares shall be made by registered valuer.
- Value of shares to be purchased shall **not exceed 5%** of paid up capital & free reserves.
- Disclosures** of **voting rights not exercised directly** by employees for shares under scheme shall be made in **BOD report** of relevant FY:

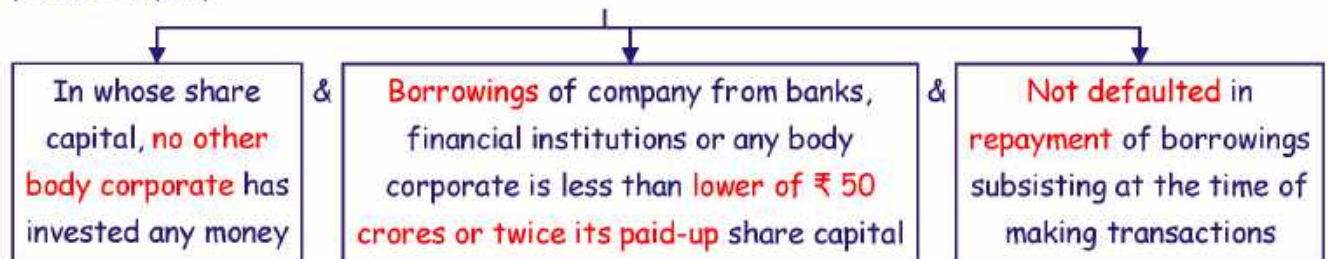


- Lending money to **employee of company** (other than director & KMP) not exceeding their **6 month salary** to buy **fully paid** shares of **company or its holding** company & hold them as beneficial owner.
- **Punishment for Contravention**
 - Company: Fine not less than ₹ 1 lakh but may extend to ₹ 25 lakhs.
 - Officer in default: Imprisonment term may extend to 3 years AND Fine not less than ₹ 1 lakh but may extend to ₹ 25 lakhs.

Note:

- This section shall not affect right of company to redeem preference shares.
- This section shall **not** apply to **Nidhi Company**, if shares are purchased by company from a member **on ceasing** as depositor/borrower & shall not be considered as reduction of capital u/s 66.

- (iii) This section shall not apply to **private company** (not defaulted u/s 92 & 137) & specified IFSC public company:



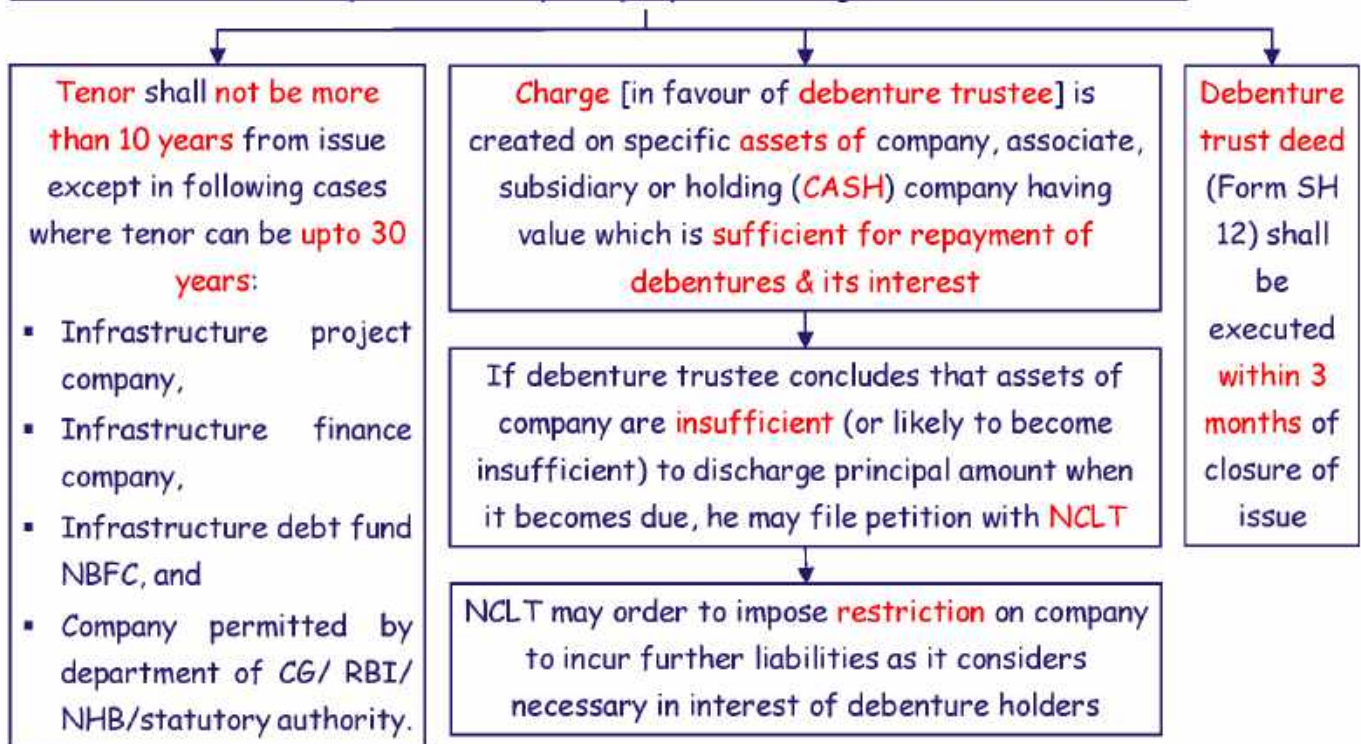
Debenture [Section 71]

- Debenture includes debenture stock, bonds or any instrument evidencing debt but does **not include**:
 - Instruments referred in Chapter III-D of RBI Act, 1934, and
 - Instrument of company prescribed by CG in consultation with RBI.
- Debenture certificate** is issued by company under common seal or signature of 2 directors or a director & CS.
- Debenture Trustee**: Protects the interest of debenture holders

Appointment	Company issuing prospectus or making offer/invitation for subscription of debentures to public/members exceeding 500 shall appoint debenture trustee prior to issue of prospectus or offer/invitation.
Consent	Name of debenture trustees shall be stated in offer letter, notice or other communications. Written consent (before appointment) must be obtained & statement to that effect shall be included in offer letter.
Eligibility criteria	Following persons shall not be appointed as a debenture trustee : <ul style="list-style-type: none"> ▪ Beneficial holder of shares in company (not necessarily registered holder), ▪ Promoter, director, KMP or any officer/employee of CASH, ▪ Relative of promoter, director or KMP of company, ▪ Beneficially entitled to money from company (except remuneration as debenture trustee), ▪ Indebted to CASH or subsidiary of holding company, ▪ Furnished guarantee for principal debts secured by debentures or interest, ▪ Pecuniary relationship with company of lower of (during last 2 FYs & current FY) <ul style="list-style-type: none"> ➤ 2% or more of gross turnover or total income, or ➤ ₹ 50 lakhs (or higher prescribed amount).
Duties	<ul style="list-style-type: none"> ▪ Take steps to protect interest of debenture holders & redress their grievances. ▪ Convene meeting of debenture holders on: <ul style="list-style-type: none"> ➤ Request from debenture holders holding atleast 1/10th value of debentures

	➤ Happening of an event, which constitutes breach, default or which in opinion of debenture trustee affects interest of debenture holders.
Liability	<ul style="list-style-type: none"> ▪ If debenture trustee fails to show care & due diligence, any provision in trust deed or contract with debenture holders that exempt/indemnify him from liability for breach of trust is void. ▪ Above exemption to debenture trustee shall be valid if it is agreed by debenture holders holding atleast 75% value of debentures at time of meeting.
Removal	Debenture trustee may be removed before expiry of his term if it is approved by holders of not less than 3/4th value of debentures outstanding.
Filling of Vacancy	<ul style="list-style-type: none"> ▪ Casual Vacancy: BOD themselves fills casual vacancy ▪ Caused by resignation: With written consent of majority of debenture holders.

- Secured debentures may be issued by company if following conditions are fulfilled:



Note: For debentures issued by government company [secured by guarantee given by CG, SG or both], requirement for creation of charge do **not apply**.

- Amount & method of Investment or deposits for debentures

By **30th April**, required companies shall invest/deposit amount equal to **15% of debentures maturing during FY** in following deposits/investments:

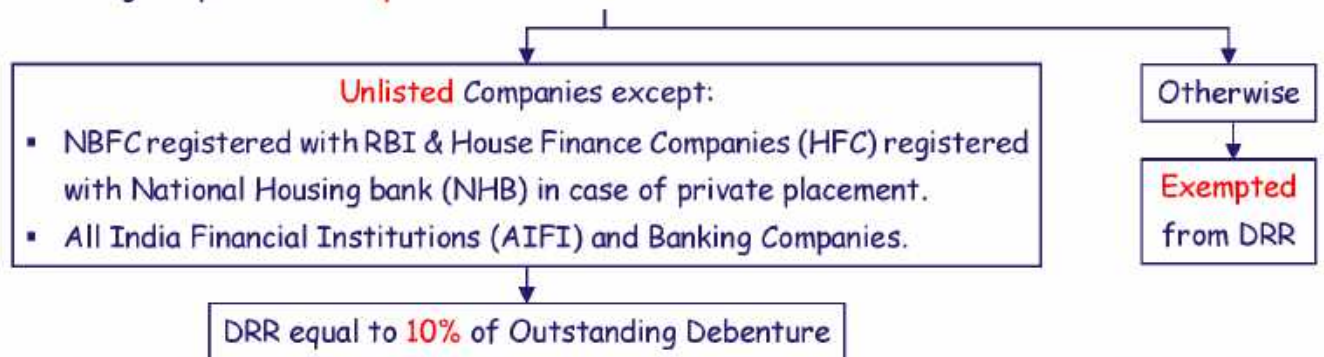
- Deposits with scheduled bank, free from any charge or lien,
- Unencumbered securities of CG/SG,
- Unencumbered securities issued by any company as specified under Indian Trusts Act, 1882

Note: Required companies to **invest/deposit** are:



• Creation of Debenture Redemption Reserve (DRR) Account

- Companies shall create DRR account **out of profits** of company (available for payment of dividend) & amount credited to DRR shall **not be utilised except for redemption** of debentures.
- Following companies are **required to create DRR**



Note: For **partly convertible** debentures, DRR shall be created only for **non-convertible** portion.

• Other Provisions

- **NCLT** may (on application of debenture holders or debenture trustee) order company to **redeem debentures** forthwith on payment of principal & interest [if company fails to redeem debentures on maturity date or fails to pay interest on due date].
- Company shall file **return of allotment** (Form PAS-3) with **ROC** within **30 days** of allotment of debenture.

Note:

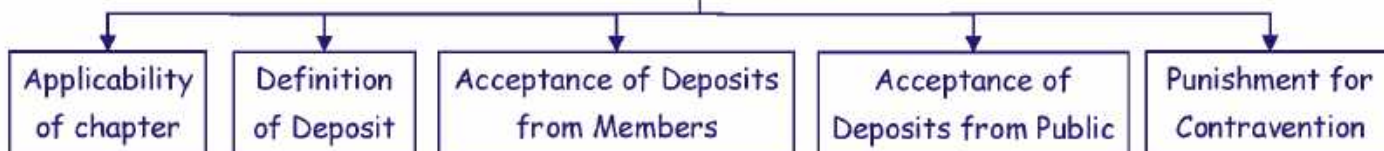
- Company **cannot** issue debentures with **voting rights**.
- Company may issue debentures (with an **option to convert**) only if authorised by **SR**.
- **BR** is sufficient for **non-convertible debentures** [if amount to be raised is **within limit u/s 180(1)(c)**].
 - **Limit u/s 180(1)(c):** [Money to be borrowed + already borrowed] > [Paid-up share capital + Free reserve + Securities premium]
 - *Borrowing do not include temporary loan [i.e. loan repayable on demand or within 6 months (such as cash credit arrangement) & is not raised for capital expenditure] obtained from bank in ordinary course.
 - If **limit exceeds**, company shall pass **SR only once a year** for offer/invitation of such debentures during the year.

#Provision of resolution for **non-convertible debentures** is not applicable to private company.

ACCEPTANCE OF DEPOSITS BY COMPANIES



Topics Covered



Applicability of this Chapter [Section 73(1)]

- 'Deposit provisions' are **not applicable** to following companies:



- Deposit provisions only regulate acceptance of deposits by **non-banking non-financial companies** (i.e. manufacturing companies, trading companies, etc.).

Deposit [Section 2(31) and Rule 2(1)(c)]

Deposit includes receipt of money by company as deposit, loan or any form but does not include amount prescribed in consultation with RBI.

Following amounts are excluded from definition of deposit

Related to government	<ul style="list-style-type: none"> Received from CG, SG, local authority, statutory authority (established by act of parliament/state legislature) or a source whose repayment is guaranteed by CG/SG. Received (subject to FEMA) from foreign government, international bank, foreign government owned development financial institution, foreign export credit agencies, multilateral financial institution, foreign collaborator, foreign body corporate, foreign citizen or authorities/person resident outside India.
Received from person related to company	<ul style="list-style-type: none"> Received from person, who at the time of receipt was: <ul style="list-style-type: none"> ➤ In case of public company: Director of company, or ➤ In case of private company: Director or relative of director. Note: Director/relative shall furnish declaration that such amount is not given out of borrowed funds & company shall disclose details of money in BOD report. Received from employee of company (upto his annual salary) as non-interest bearing security deposit. Non-interest bearing amount received by company & held in trust of another person. Brought by promoters (or their relatives or both) as unsecured loan due to

	<p>stipulation imposed by lending institution to contribute such finance.</p> <p><u>Note:</u> Exemption is available till financial institution loan is repaid.</p>
Received from entity	<ul style="list-style-type: none"> Received as loan/facility from banking company, PFI or insurance company. Received from other company [Inter Company Deposit (ICD)] Start-up company (private company) received ₹ 25 lakhs or more in a single tranche by way of convertible note (convertible into equity shares on occurrence of an event or are repayable within 10 years of issue). Received from Alternate Investment Funds (AIFs), Domestic Venture Capital Funds, Infrastructure Investment Trust (InVITs), Real Estate Investment Trust (REITs) & Mutual Funds registered with SEBI.
Received from public	<ul style="list-style-type: none"> Received against commercial paper (or any instrument issued as per RBI). Received for subscription of securities & is appropriated against allotment of securities [However, if securities are not allotted within 60 days of receipt of money, such money shall be refunded within 15 days of completion of such 60 days. If company fails to refund, it is treated as deposit from end of such 15th day]. <p><u>Note:</u> Adjustment of amount for other purpose is not treated as refund.</p> <ul style="list-style-type: none"> Raised by issue of non-convertible debenture (not creating charge on assets) which is listed on RSE. Raised by issue of: <ul style="list-style-type: none"> Bonds/debentures secured by first charge (i.e. Lender has first right to sell asset & recover loan if company defaults) or charge ranking pari passu with first charge on tangible assets or Bonds/debentures compulsorily convertible into shares within 10 years. <p><u>Note:</u> Amount of bonds/debentures shall not exceed market value of assets assessed by registered valuer.</p>
Other points	<p>Amount received in course of business of company as:</p> <ol style="list-style-type: none"> Advance for supply of goods/service where such supply is to be made within 365 days of acceptance of such advance [If advance is subject matter of legal proceeding, 365 days limit do not apply]. Advance for immovable property which is adjusted against such property. Advance under long term projects for supply of capital goods except (b) above. Security deposit for performance of contract of supply of goods/services. Advance for providing future services (in form of warranty or maintenance contract), if period for providing such services does not exceed lower of period under common business practice or 5 years from acceptance of such service. Advance received & allowed by sectoral regulator or as per directions of CG/SG. Advance for subscription towards publication (print/electronic).

Note: If amount under (a), (b) & (c) becomes **refundable** because company accepting money **does not have permission** to deal in such goods/property/services, then amount received is deemed as deposit from expiry of **15 days** of it becoming refundable.

Provisions regarding Acceptance of Deposits from Members [Section 73]

Company may accept/renew deposits from its **members** as per following provisions:

Conditions prior to accepting deposits	<ul style="list-style-type: none"> Pass OR. Company can accept/renew deposit from members (including outstanding deposits) maximum upto 35% of paid-up share capital, free reserves and securities premium. <p>Exception:</p> <ul style="list-style-type: none"> ➤ Specified IFSC public company & private company may accept deposits upto 100% of paid-up share capital, free reserves and securities premium from its members. ➤ Limit for deposits from members do not apply to following private company: <ol style="list-style-type: none"> Start-up (for 10 years from incorporation), or Fulfil all the following conditions: <ol style="list-style-type: none"> Not an associate/subsidiary company of other company, Borrowings from banks/financial institution/body corporate is less than lower of twice of paid-up share capital or ₹ 50 crores, and Not defaulted in repayment of borrowings. <p>Note: Company shall file details of monies accepted with ROC in Form DPT-3.</p>
Issuance of circular for acceptance of deposits	<ul style="list-style-type: none"> Company is required to issue circular in Form DPT-1 to its members (by registered post with acknowledgement due, speed post or electronic mode) including: <ul style="list-style-type: none"> ➤ Statement showing financial position of company, credit rating, number of depositors, amount of deposits due & other prescribed particulars. ➤ Certificate of statutory auditor of company stating that company has not committed default in repayment of deposits or payment of interest [If default was made, certificate shall state that company had made the default good & 5 years has lapsed since making the default good]. Circular may be published in english & vernacular language newspaper having wide circulation in state where registered office of company is situated. Company shall file copy of circular with ROC within 30 days before issue of circular. Effective date of issue of circular shall be date on which circular was dispatched. It is authorised by BOD & shall remain valid for accepting deposits till earlier of: <ul style="list-style-type: none"> ➤ 6 months from closure of FY in which it is issued, or ➤ Date on which FS are laid before AGM (if AGM is not held, last day by which AGM should have been held). <p>Note: Fresh circular shall be issued in each FY for inviting deposits during that FY.</p>

Deposit Repayment Reserve	<p>Company is required to deposit (on or before 30th April) atleast 20% of deposits maturing during next FY and keep it in scheduled bank in a separate bank account as deposit repayment reserve account (which shall not be utilised for any purpose other than repayment of deposits).</p> <p>Note: Such deposited amount shall not fall below 20% of deposits maturing during FY.</p>
Exemption from "Issuance of circular" & "Deposit Repayment Reserve"	<p>Provisions of "Issuance of circular for acceptance of deposit" and "Deposit Repayment Reserve" shall not apply to private company which:</p> <ul style="list-style-type: none"> (i) Accepts money from members not exceeding 100% of paid-up share capital, free reserves and securities premium, or (ii) Start-up (for 5 years from its incorporation), or (iii) Fulfils all the following conditions: <ul style="list-style-type: none"> ➤ Not associate/subsidiary company of any other company, ➤ Borrowings of such company from bank/financial institution/body corporate is less than lower of ₹ 50 crores or twice its paid up share capital, and ➤ Not defaulted in repayment of borrowings. <p>Note: Such company shall also file details of monies accepted to ROC in Form DPT-3.</p>
Trustees for depositors	<ul style="list-style-type: none"> ▪ Trustee need to be appointed for creating security for deposits. ▪ Company shall execute a Deposit Trust Deed (Form DPT-2) atleast 7 days before issuing circular/advertisement. ▪ Written consent shall be obtained from trustee before their appointment & a statement shall appear in circular/advertisement with reasonable prominence that trustees have given their consent to company. ▪ A person shall not be appointed as trustee if he: <ul style="list-style-type: none"> ➤ Is director, KMP or officer/employee of CASH [or is related to such person], ➤ Is Depositor in company [or is related to such person], ➤ Is indebted to CASH or subsidiary of holding company, ➤ Has material pecuniary relationship with company, ➤ Has entered into guarantee arrangement for principal debt secured by deposits or interest thereon. ▪ Trustee for depositors shall call meeting of all depositors in following cases: <ul style="list-style-type: none"> ➤ On receipt of requisition in writing signed by atleast 1/10th depositors in value, ➤ On happening of event which constitutes default or affects interest of depositors in the opinion of trustee. ▪ Trustee cannot be removed after issue of circular/advertisement (& before expiry of his term) except with consent of all directors present at BOD meeting [If company is required to have independent directors, atleast 1 independent director shall be present in such BOD meeting].
Provisions applicable	<ul style="list-style-type: none"> ▪ Company shall accept (or renew) deposit only when application is submitted by intending depositor. Application shall contain a declaration that deposit is not being

while accepting deposits	<p>made out of money borrowed by him from any other person.</p> <ul style="list-style-type: none"> Deposits may be accepted in joint names not exceeding 3. A joint deposit may be accepted with or without clauses (which shall operate on maturity of deposits) "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". Depositor may nominate a person at any time. Company is permitted to invite/accept deposit at any interest rate & brokerage but it shall not exceed maximum interest rate/brokerage prescribed by RBI for NBFCs for acceptance of deposits. <p>Note: Brokerage shall only be paid to person who is authorised in writing by company to solicit deposits & through whom deposits are actually procured.</p>
Secured/ Unsecured Deposits	<p>Company may provide security for repayment of deposit & interest and take steps for creation of charge on property or assets of company.</p> <p>Note: If company does not secure deposits (or secures partially), it is termed as 'unsecured deposits' & shall be quoted in every circular, form, advertisement or document for invitation/acceptance of deposits.</p>
Tenure of deposits	<p>Company is not permitted to accept/renew deposits repayable on demand or in less than 6 months [Also, maximum period of deposit cannot exceed 36 months].</p> <p>Exception: For short-term requirement of funds, company may accept/renew deposits for repayment earlier than 6 months if such deposits:</p> <ul style="list-style-type: none"> ➤ Repayable on or after 3 months from date of deposit or renewal, and ➤ Do not exceed 10% of paid up share capital, free reserves & securities premium.
Premature repayment of deposits and Renewal of Deposit	<ul style="list-style-type: none"> After expiry of 6 months (but before maturity), if depositor request for premature repayment, interest rate payable shall be 1% less than interest rate payable for period for which deposit has actually run. <p>Note:</p> <ul style="list-style-type: none"> ➤ Reduction of interest rate is not applicable if deposit is prematurely repaid to: <ul style="list-style-type: none"> (i) Bring total deposits within limits, or (ii) Provide for war risk or other related benefits to personnel of naval, military or air forces or to their families during emergency period. ➤ If period for which deposit has run contain part of year < 6 months, it is excluded but, if part is ≥ 6 months, it is taken as 1 year for determining interest rate. <p>Example</p> <p>Y deposited ₹ 10 lakhs with ABC Ltd on 1st May 2021 for 36 months (Interest for 12 months deposit was 10%, 24 months deposit was 12% and 36 months was 15%).</p> <ul style="list-style-type: none"> ➤ Case 1: Y requests repayment on 1st June 2022: Company can repay but interest shall be reduced by 1% and ABC Ltd can repay deposit with interest @ 9% p.a. [i.e. 10% - 1%] for 13 months.

	<p>➤ Case 2: Y requests repayment on 1st March 2023: Company can repay but interest shall be reduced by 1% and ABC Ltd can repay deposit with interest @ 11% p.a. [i.e. 12% - 1%] for 22 months.</p> <ul style="list-style-type: none"> Company shall pay higher interest rate, if deposit is renewed (before maturity) for period longer than unexpired period of deposit.
Deposit Receipt, Return of Deposits and Alteration of deposit documents	<ul style="list-style-type: none"> Within 21 days of receipt of money or renewal, company shall furnish deposit receipt to depositor (or his agent) which shall be signed by officer authorised by BOD. It shall contain details such as date of deposit, name and address of depositor, amount of deposit, interest rate & maturity date. Every company (except government company) shall file audited return of deposits (Form DPT-3) containing particulars of deposits & transactions not considered as deposits (as on 31st March) with ROC on or before 30th June of that year and declaration to that effect shall be submitted by auditor with return in DPT-3. Company cannot alter terms & conditions of deposit, deposit trust deed and deposit insurance contract in manner disadvantageous to interest of depositors after circular/advertisement is issued and deposits are accepted.
Register of Deposits	<ul style="list-style-type: none"> Company accepting deposits shall maintain register for deposits accepted/renewed at its registered office. Particulars for each depositor shall be entered separately in register [such as name, address, PAN of depositors, particulars of guardian (if minor), nominee and other relevant particulars]. Entries shall be made within 7 days of issuance of receipt, duly authenticated by director, CS of company or any other officer authorised by BOD. Register is preserved for atleast 8 years from FY in which last entry was made.
Disclosure	Public company shall disclose money received from its directors in FS whereas private company shall disclose money received from directors or their relatives .
Repayment of Deposits	Deposit shall be repaid with interest as per terms & conditions of agreement, but if company fails to repay deposit/interest, depositor may apply to NCLT who shall order company to pay sum dues, damages incurred & such orders as it deems fit.
Penal Provisions	If company fails to repay deposits on maturity, after they are claimed, it shall pay penal rate of interest @18% p.a. for overdue period.

Provisions regarding Acceptance of Deposits from Public by Eligible Company [Section 76]

Section 73 shall mutatis mutandis apply for acceptance of deposits from public by eligible companies. In case of conflicting provisions, provisions of Section 76 shall be considered for deposits from public.

- Only 'eligible companies' are permitted to **accept deposits from public & members**.
- Eligible Company:** **Public** company having **net worth** not less than **₹ 100 crores** or **turnover** not less than **₹ 500 crores**.

<p>Conditions prior to inviting deposits from public</p>	<ul style="list-style-type: none"> Pass SR & file it with ROC before making invitation to public. If eligible company is accepting deposits within limits u/s 180(1)(c), it may accept deposits by passing OR. Eligible company can accept/renew deposits: <ul style="list-style-type: none"> ➤ From members: Deposit (along with outstanding deposit) from members can be maximum upto 10% of paid-up share capital, free reserves & securities premium, ➤ From persons other than members: Deposits along with outstanding deposits (excluding deposits from members) can be maximum upto 25% of paid-up share capital, free reserves & securities premium. Note: Eligible government company can accept/renew deposit (including outstanding deposits) upto 35% of paid-up share capital, free reserves & securities premium. Credit Rating <ul style="list-style-type: none"> ➤ Eligible company shall obtain credit rating (including net-worth, liquidity & ability to pay deposits) from a recognised credit rating agency as specified for NBFCs. Rating ensuring 'adequate safety' shall be informed to public at the time of invitation of deposits. ➤ Rating shall be obtained every year during tenure of deposits & copy of such credit rating shall be sent to ROC along with Return of Deposits in Form DPT-3. Note: Credit rating shall not be below minimum investment grade rating or other specified credit rating for fixed deposits.
<p>Issuance of circular for inviting deposits</p>	<ul style="list-style-type: none"> Eligible company is required to issue circular in form of advertisement in DPT-1. Advertisement shall be published in english & vernacular language newspaper having wide circulation in state where registered office of company is situated. If company has its website, circular shall also be placed on website. Atleast 30 days before issue of advertisement, a copy signed by majority of directors (or their duly authorised agent) shall be delivered to ROC for registration. Note: Date on which advertisement appears in newspaper shall be taken as date of issue of advertisement. It is issued on authority of BOD & remain valid for accepting deposits till earlier of: <ul style="list-style-type: none"> ➤ 6 months from closure of FY in which it is issued, or ➤ Date on which FS are laid before AGM (if AGM is not held, last day by which AGM should have been held). Note: Fresh advertisement is issued in each FY for inviting deposits during that FY.
<p>Secured deposits</p>	<p>Company accepting secured deposits from public shall create charge on its tangible assets (specific movable & immovable property) within 30 days of acceptance.</p> <p>Note:</p> <ul style="list-style-type: none"> ➤ Company cannot create charge on intangible assets.

	<ul style="list-style-type: none"> ➤ Value of security shall not be less than amount of deposits accepted & interest payable thereon. ➤ Market value of assets subject to charge shall be assessed by registered valuer. ➤ Security shall be created in favour of trustee for depositors or deposit holders.
Disclosure	Public company shall disclose money received from its directors in its FS .

Note:

- (i) **Net worth:** Aggregate of **paid-up share capital, reserves** created out of profits & **securities premium** account after deducting accumulated losses, deferred expenditure & miscellaneous expenditure not written off as per audited balance sheet [but does **not** include reserves created out of **revaluation**, write-back of depreciation and amalgamation].
- (ii) **Limit u/s 180(1)(c):** [Money to be borrowed + already borrowed] > [Paid-up share capital + Free reserve + Securities premium]
 - *Borrowings do **not include temporary loan** [i.e. loan repayable on demand or within 6 months (such as cash credit arrangements) & is not raised for capital expenditure] obtained from bank in ordinary course.
- (iii) Provisions for "Deposit Repayment Reserve", "Trustees for depositors", "Provisions applicable while accepting deposits", "Deposit Receipt", "Return of Deposits" and "Alteration of deposit documents", "Tenure of Deposits", "Premature repayment of deposits and Renewal of Deposit", "Register of Deposits" and "Penal Provisions" shall be **same as covered in Section 73**.

Punishment for Contravention of Section 73 or Section 76 [Section 76A]

If company accepts, invites or allows any person to accept/invite on its behalf deposit in **contravention** or if company fails to repay deposit/interest within time or further time allowed by NCLT, then:

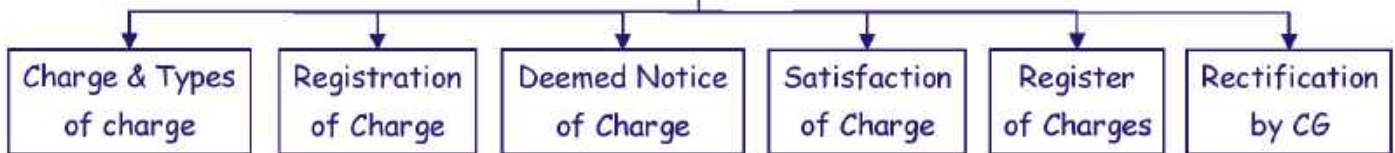
- **Company:** In addition to repayment of deposit & interest, fine not less than lower of (₹ 1 crore or twice the amount of deposit accepted by company) but which may extend to ₹ 10 crores, and
- **Officer in default:** Imprisonment extendable to 7 years and fine not less than ₹ 25 lakhs but extendable to ₹ 2 crores.

Note: If officer has contravened provisions **knowingly/wilfully** with intention to deceive company, shareholders, depositors, creditors or tax authorities, he shall be liable u/s **447**.

REGISTRATION OF CHARGES



Topics Covered



Definition of Charge and Types of charges [Section 2(16)]

- Charge is an **interest/lien** created on property/assets, undertakings of company or both as **security** and includes mortgage.
- There are 2 types of charges

Fixed Charge

- Fixed Charge is charge on **specific assets** of company. Such assets are of **permanent** nature [like land & building, machinery] and are identified at the time of creation of charge.
- Such charge is created by mortgage or deposit of title deeds.
- Borrowing company is **not** permitted to **sell** such assets during period of charge **except** with **consent** of charge holder (but it **may use** them).
- Charge is **vacated** when borrowed money is repaid.

Floating Charge

- Floating Charge is created on assets of **fluctuating or changing nature** [like raw material, stock, debtors, etc.]
- Assets** under charge **keep on changing** as company is **permitted to use** them in **ordinary course** of business.
- Buyer** of such assets gets **good title & free of charge**.

Crystallization of Floating Charge

- Floating charge remains **dormant** (inactive) **until** it is **crystallized or fixed**. On crystallization, **security becomes fixed** & is available for **realization** by lender.
- Floating charge gets **crystallized** in following cases:
 - When creditor **enforces security** due to **breach** of terms & conditions of floating charge,
 - Company **ceases to continue its business**, or
 - Company goes into **liquidation**.

Example

XYZ Ltd. takes loan from Bank A and gives:

- Fixed charge on its machinery, which it cannot sell without bank's consent.
- Floating charge on raw material which company is free to use in ordinary course. When XYZ defaults on repayment, floating charge crystallises & becomes fixed charge on stock present at that time.

In case of default by XYZ Ltd., Bank A can sell both machinery & crystallised stock to recover dues.

Duty to Register Charges, etc. [Section 77]

- It is duty of **company creating charge** on property, assets or undertakings (tangible or intangible) situated in or outside India, to **register particulars** of charge [along with copy of instrument of charge signed by company & charge holder] **with ROC within 30 days of creation of charge** with fee

If charge was **not** registered within 30 days

Company shall make **application to ROC** for **extension** [along with declaration from company signed by CS/director that belated filing shall not adversely affect rights of other creditors]

If ROC is satisfied that company had sufficient cause for not filing charge within 30 days, it may allow registration to be made **within 60 days of creation** of charge [i.e. extend by another 30 days] on payment of additional fees

If charge is **not registered** within such extended period, company shall make application to ROC, who may allow registration to be made within **further 60 days** on payment of **ad-valorem fees**

Note: Particulars of charge are filed with ROC in Form CHG-1 [Form CHG-9 in case of debentures].

- Instrument** creating (or modifying) charge which is to be filed with ROC shall be **verified by**:
 - Instrument relates to **property situated in India** (wholly or partly): Copy shall be verified by certificate issued under hand of **director/CS** of company or **authorised officer** of charge holder.
 - Instrument relates solely to **property situated outside India**: Copy shall be verified by certificate issued under **seal** of company, or under hand of **director/CS** of company, **authorised officer** of charge-holder or any person other than company **interested** in charge.

Note: Not applicable for charge created/modified by banking company in favour of RBI.

- If charge is registered, ROC issues **certificate** of registration in Form CHG-2 & certificate shall be **conclusive evidence** that all provisions of this act & rules are complied with.

Consequences of Non-Registration of Charge [Section 77(3) & (4)]

Charge becomes **void** and is **not taken into account** by liquidator or any creditor unless it is duly registered

At the time of winding up, creditor whose charge is not registered would be treated as **unsecured creditor**

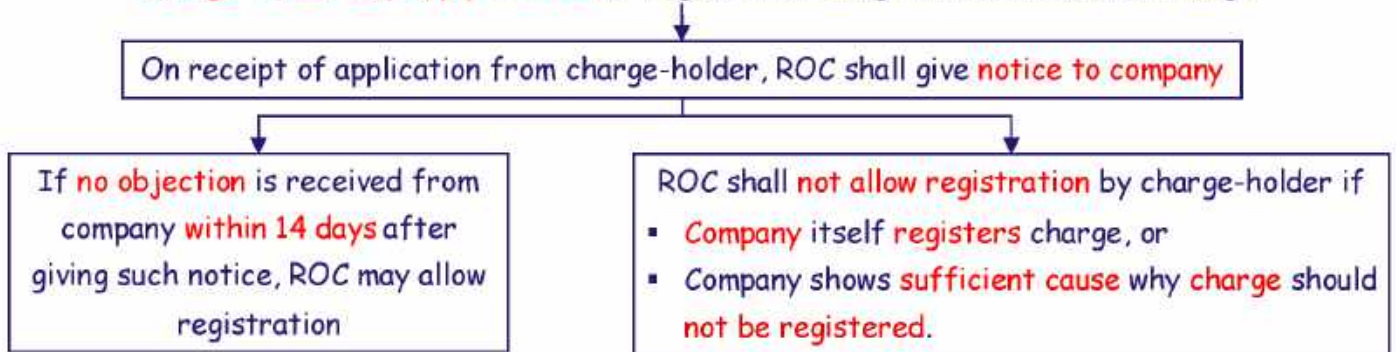
Charge-holder
loses
priority

Failure to register
charge create
liability on
company **u/s 86**

Note: Non-registration of charge **does not prejudice obligation** of company for repayment of money [i.e. debt is valid & may be enforced through courts (but security is lost)]. Also, **subsequent registration** of charge cannot prejudice rights acquired on asset before such charge is registered.

Application for Registration of Charge by Charge-holder [Section 78]

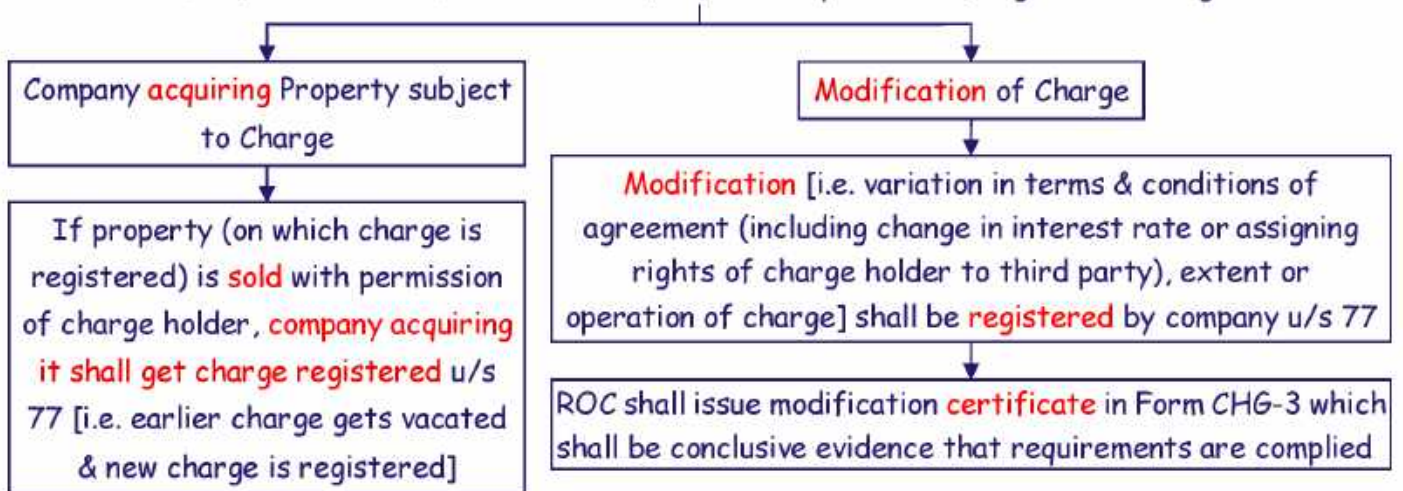
If charge is created but **company fails to register** it with ROC within original period of 30 days, **charge-holder may apply to ROC** for registration along with instrument of charge



Note: If registration is effected on application from charge holder, he shall be entitled to **recover fees** or additional fees paid by him (to ROC) from company.

Acquisition of Property subject to Charge and Modification of Charge [Section 79]

Section 77 (Registration of charges) shall apply to company **acquiring** property subject to charge **or modification** in terms or conditions, extent or operation of registered charge

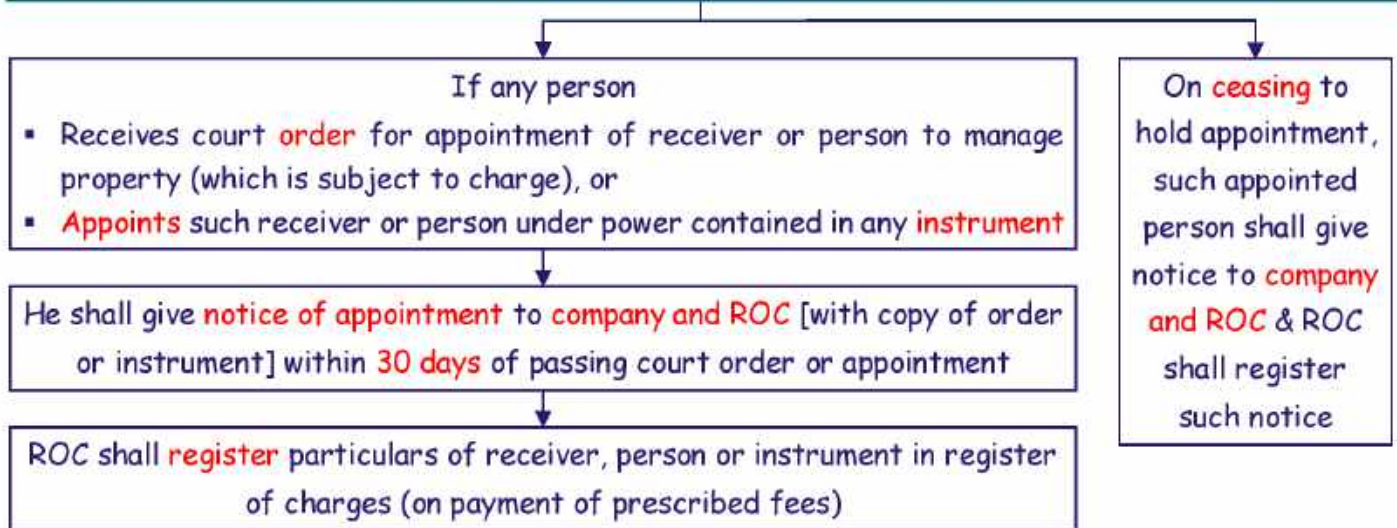
**Deemed Notice of Charge [Section 80]**

- All charges registered with ROC are public documents & any person can refer to Ministry of Corporate Affairs (MCA) portal to find out charge created on asset.
- If charge is **registered u/s 77**, any **person acquiring** such property, assets or undertaking is **deemed** to have **notice of charge** from date of such registration.
- Any document filed with ROC for registration acts as **constructive notice** [i.e. even though third party has not referred to such document, he would be deemed to have seen it].

Example

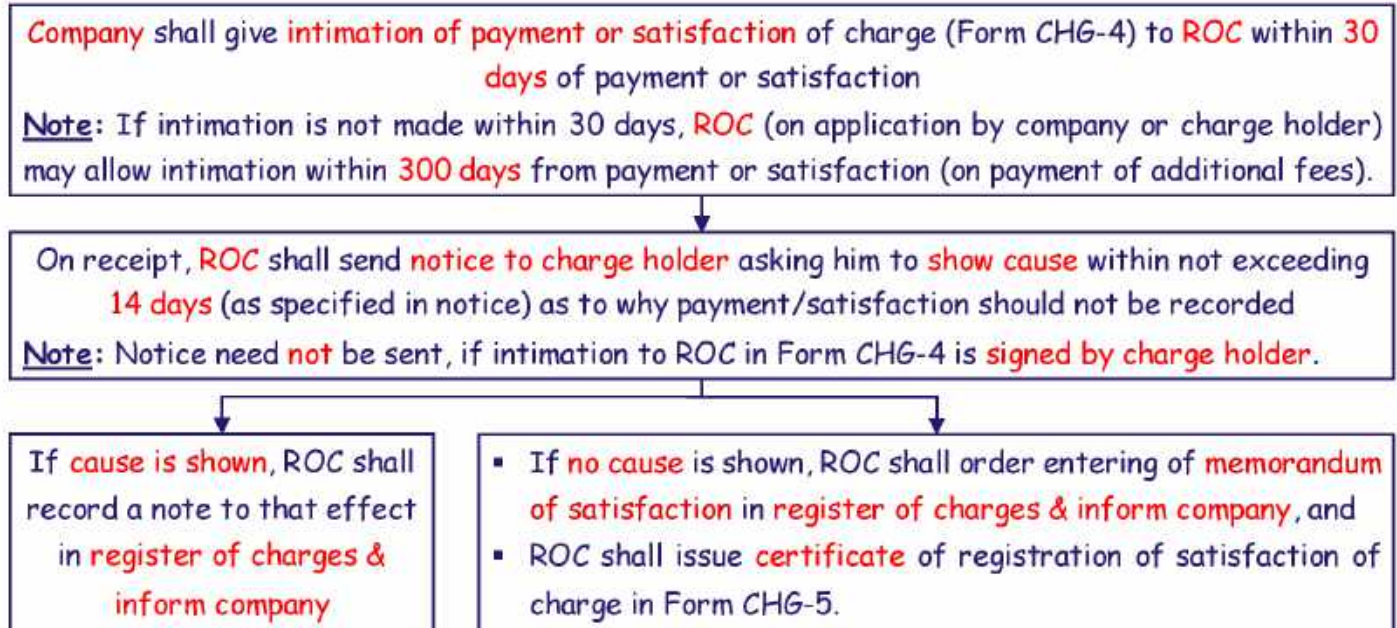
Mr. X bought a property from N Ltd. & later discovered an existing charge on it. But he is deemed to have notice of this charge from date of its registration & cannot take any action against it.

Intimation of Appointment of Receiver or Manager [Section 84]



Note: Notice of **appointment or cessation** shall be filed in Form CHG-6.

Company to Report Satisfaction of Charge [Section 82]

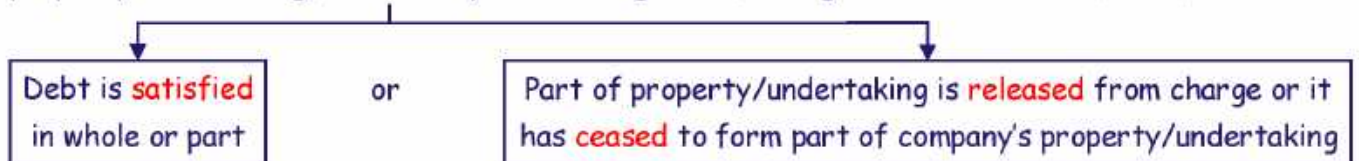


Example

N Ltd. repaid its loan and requested no-dues letter from bank but bank did not respond. Company must intimate ROC about satisfaction of charge within 30 days (extendable upto 300 days). On intimation, ROC issues notice to bank giving them upto 14 days to respond. If no cause is shown, ROC will record satisfaction of charge & inform company.

Power of Registrar to make Entries of Satisfaction and Release in Absence of Intimation from Company [Section 83]

- This section empowers **ROC** to make entry for **satisfaction & release of charge** even if **no intimation** is received from company.
- If **evidence** is shown to satisfaction of **ROC** that debt secured by charge is paid or that a part of property/undertaking is released from charge or that it has ceased to form part of company's property/undertaking, then he may enter in register of charges a **memorandum of satisfaction** that:



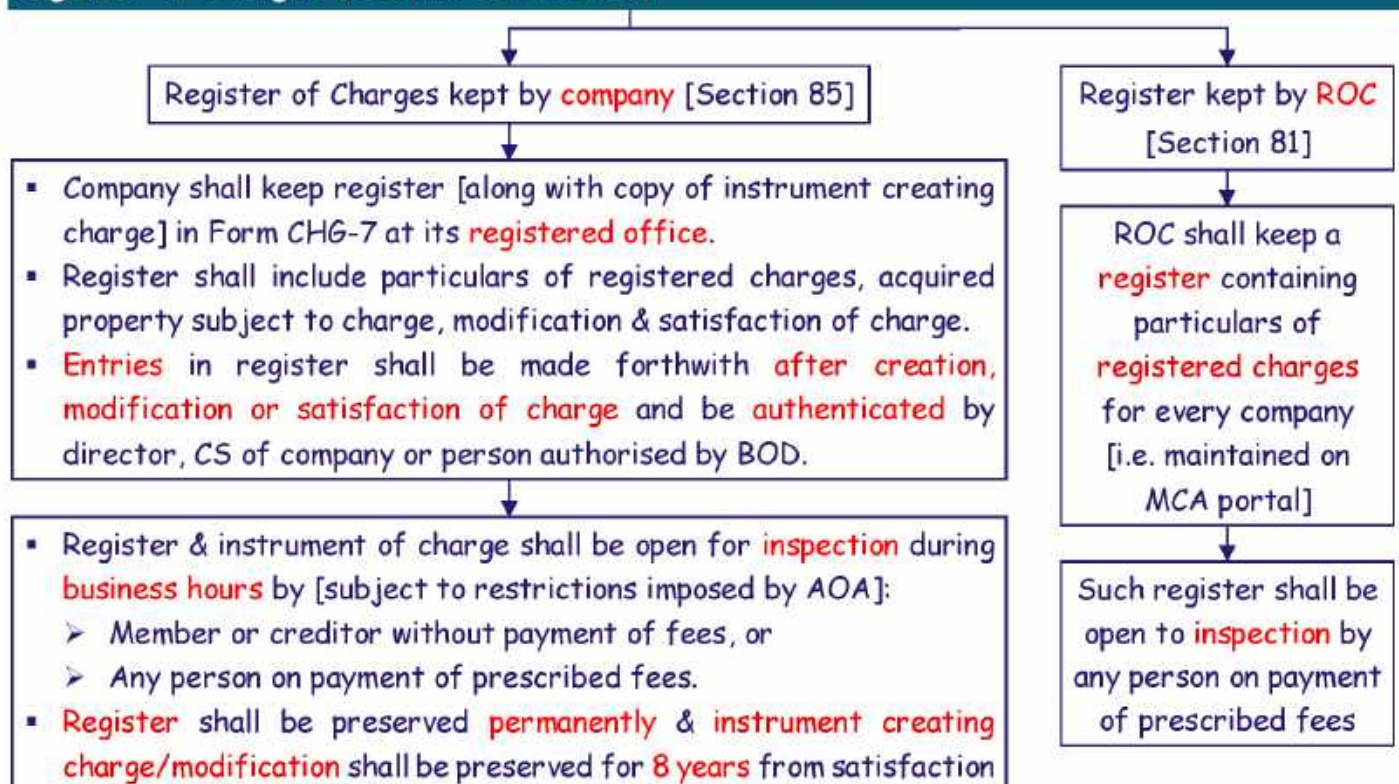
Note: ROC shall issue **certificate of registration of satisfaction** of charge in Form CHG-5.

- ROC shall **inform affected parties within 30 days** of making entry in register of charges.

Example

A company sells charged property to third party after repaying loan, but fails to file satisfaction of charge with ROC. Therefore, buyer can apply to ROC to update records and remove the charge.

Register of Charges [Section 81 and 85]



Rectification by Central Government in Register of Charges [Section 87]

- This section empowers **CG** to **order rectification** of register of charges in following cases:
 - **Omission** in giving intimation to ROC for **payment or satisfaction** of charge within specified time.
 - **Omission or mis-statement** of particulars in any filing made **to ROC** [such as filing for charge, modification or entry u/s 82 (satisfaction of charge) or 83 (ROC enters satisfaction)].

Note: Before such order, **CG** shall be satisfied that default was **accidental** or due to inadvertence or because of some sufficient cause or it did not prejudice position of creditors or shareholders.
- **CG** may (on **application** filed by company or interested person in Form CHG-8) direct:
 - **Rectification** of omission or misstatement of particulars recorded with ROC, or
 - **Extension** of time for **satisfaction** of charge.
- Order of rectification shall be made by **CG** on terms & conditions as it deems just and expedient.

Punishment for Contravention [Section 86]

- If company **defaults** in complying with **any provisions** of this Chapter:
 - Company: Penalty of ₹ 5 lakhs, and
 - Officer in default: Penalty of ₹ 50,000.
- Any person who **wilfully** furnishes false/incorrect information or **knowingly** suppresses material information required to be registered u/s 77 shall be liable **u/s 447**.



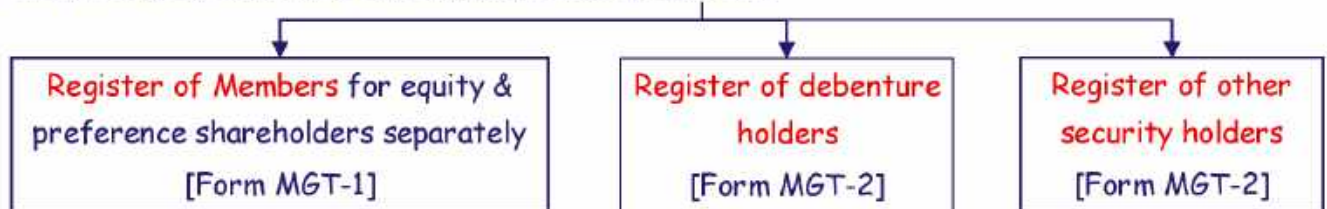
Topics Covered



Register of Security Holders [Section 88 to 91, 94 and 95]

(1) Register of Members, Debenture-holders and other security holders [Section 88]

Every company shall keep & maintain following registers:



Time of making entry in Register	Entry shall be made within 7 days of approval by BOD or Committee (for allotment, transfer/transmission, duplicate share certificate, buyback, etc.). Note: Company whose securities are listed (in or outside India) shall enter particular of pledge, charge, lien or hypothecation created by promoters on securities held by them in register within 15 days of such event.
Place to keep register [Section 88 & 94]	<ul style="list-style-type: none"> ▪ Registered office of company, or ▪ Other place (by passing SR): <ul style="list-style-type: none"> ➢ Within city, town or village (where registered office is situated), or ➢ Any place in India where > 1/10th of total members as in register resides.
Order of Authority	Reference of order (for attaching security, remittance of dividend/interest or rectification) by judicial or revenue authority, SEBI or any competent authority shall be made in register.
Index of Register	Register shall include index of names included in it [not required if number of members < 50] and entry in index shall be made simultaneously with register.
Authentication of entries	Entry in registers (including foreign register) & index shall be authenticated by CS of company or person authorised by BOD .
Provision for Company not having share capital	For company not having share capital , register shall contain following particulars of each member: <ul style="list-style-type: none"> ▪ Name, address [registered office (if body corporate)], email, PAN or CIN, nationality and name & address of nominee. ▪ Date of becoming member and cessation. ▪ Guarantee amount, instruction by member to send notice & other interest.

Inspection, Extracts and Copies [Section 94]	<ul style="list-style-type: none"> Registers & index shall be open for inspection during business hours as BOD decides (but not < 2 hours) on every working day by: <ul style="list-style-type: none"> Member, debenture holder, other security holder or beneficial owner (without fees). Any person on payment of fee specified in AOA (but $\leq ₹50$ per inspection) Such persons can also take extracts (without fee), or copy with fees $\leq ₹10$ per page (copy shall be supplied within 7 days of deposit of fee). <p>Note:</p> <ol style="list-style-type: none"> Address, email, PAN or Unique Identification Number of member in register/index shall not be made available for inspection, extract or copy. If inspection, extract or copy is refused, company and officer in default shall be liable to penalty of ₹ 1,000 per day during which failure continues (for each default) subject to maximum ₹ 1 lakh. CG (power delegated to RD) may direct immediate inspection or direct that extract shall be allowed to be taken by person requiring it.
Other Provisions	<p>Register shall include (along with other required details):</p> <ul style="list-style-type: none"> Name of all joint holders [Can request to enter names in certain order]. If member is minor, name of minor shall be entered only if details of guardian is available and name of such guardian is also entered in register.
Punishment for default	<ul style="list-style-type: none"> Company: Penalty of ₹ 3 lakhs, and Officer in default: Penalty of ₹ 50,000.

(2) Power to Close Register of Member, Debenture holder or other security holder [Section 91]

- Register may be **closed** by giving **minimum 7 days' notice** by:
 - Advertisement** in atleast 1 english and 1 vernacular language newspaper having wide circulation in place where registered office of company is situated, and
 - Publish notice on website** of company & website notified by **CG**.

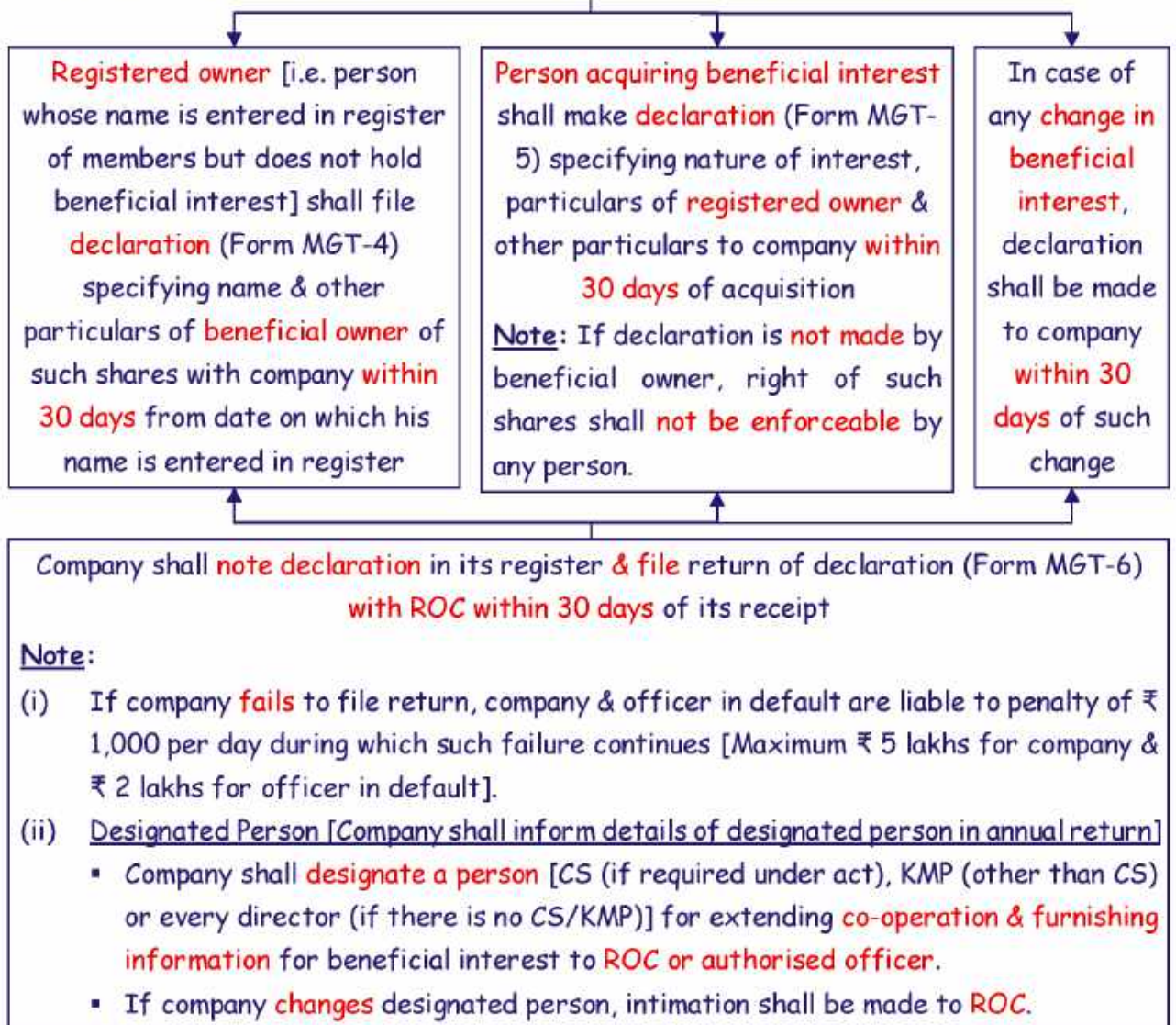
Note:

- SEBI may specify period < 7 days for **listed company** or company intending to get listed.
 - Private company** is **exempted** from issuing public notice in newspaper but it shall issue **minimum 7 days' notice to members**.
- A company may close its register of members, debenture holders or other security holders for **aggregate period of 45 days in a year (but not exceeding 30 days at a time)**.
 - Punishment for Default**
Company and officer in default: Penalty of ₹ 5,000 per day during which register is kept closed [subject to maximum ₹ 1 lakh].

(3) Beneficial Interest and Register of Significant Beneficial Owners (SBO) [Section 89 & 90]

- Beneficial Interest in share includes (directly or indirectly) **right/entitlement** of a person to:
 - Exercise rights** attached to such share, or
 - Receive **dividend or other distribution** of such share.

• Declaration of Beneficial Interest of shares of company [Section 89]



Note:

- This section is **not applicable** to Government Company (if no default u/s 92 & 137) and trust set up by Mutual Fund, Venture Capital Fund or fund approved by SEBI and any person exempted by CG.
- If person **fails** to make declaration, he shall be liable to penalty ₹ 50,000 & further penalty ₹ 200 per day after first during which failure continues subject to maximum ₹ 5 lakhs.

• Register of Significant Beneficial Owners (SBO) in a Company [Section 90]

Significant Beneficial Owner (SBO) definition	<p>Individual who either indirectly or both directly & indirectly exercises rights in reporting company (either alone or together with other persons/trust) by:</p> <ul style="list-style-type: none"> ▪ Holding not less than 10% shares, or ▪ Holding not less than 10% voting rights, or ▪ Has right to receive 10% dividend, or ▪ Has right to exercises significant influence (power to participate in financial & operating policy decisions).
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	<p>Note:</p> <ul style="list-style-type: none"> ➤ Direct Holding: If a person is directly holding shares in his name or has declared himself as beneficial owner u/s 89 [If individual has only direct holding, he cannot be considered as SBO]. ➤ Individual should hold shares [indirectly] or [directly + indirectly] to be considered as SBO (i.e. SBO shall mandatorily hold shares indirectly).
Reporting company to identify SBO	<ul style="list-style-type: none"> ▪ It is duty of company to identify SBO & cause him to make declaration. ▪ <u>Notice by company to identify SBO</u> Company shall give notice in Form BEN-4 to person who is not registered as SBO and whom company knows or believes to be: <ul style="list-style-type: none"> ➤ SBO, or ➤ Having knowledge of identity of SBO or another person likely to have such knowledge, or ➤ Have been SBO during 3 years preceding date on which notice is issued. <p>Note: Such person shall provide information within 30 days of notice.</p>
Application to NCLT for failure	<ul style="list-style-type: none"> ▪ If person fails to give information or if information is not satisfactory, company shall apply to NCLT within 15 days of expiry of period in notice. ▪ NCLT (after giving opportunity of being heard) may make order within 60 days of receipt of application directing restriction on transfer of shares, suspension of rights of shares (such as dividend & voting rights) and other prescribed matters. ▪ Company/person aggrieved by such order may make application to NCLT for relaxation or lifting of restrictions within 1 year of order. <p>Note: If application is not filed within 1 year of order, shares shall be transferred to IEPF.</p>
Declaration filed with ROC	<ul style="list-style-type: none"> ▪ Individual (who becomes SBO or whose SBO undergoes change) shall file declaration in Form BEN-1 with reporting company within 30 days of acquisition or change. ▪ Company shall file return of declaration of SBO (Form BEN-2) with ROC within 30 days of receipt of declaration. <p>Note: This provision [i.e. Companies (SBO) Rules, 2018] is not applicable if shares of reporting company are held by:</p> <ul style="list-style-type: none"> ➤ Holding company (if details of holding company is reported in Form BEN-2). ➤ CG, SG or local authority. ➤ Reporting company, body corporate or entity controlled by CG/SG. ➤ IEPF. ➤ Investment vehicle such as Mutual Fund, AIF, REITs and InVITs registered with SEBI. ➤ Investment vehicle regulated by RBI, Insurance Regulatory & Development Authority of India or Pension Fund Regulatory & Development Authority.
Register of SBO and	<ul style="list-style-type: none"> ▪ Company shall maintain register of SBO (Form BEN-3). ▪ Such register shall be open for inspection by any member during business

Inspection	hours as BOD decides (but not < 2 hours) on every working day on payment of fee specified by company (not > ₹ 50 for each inspection).
Punishment for default	<ul style="list-style-type: none"> If SBO fails to make declaration, he shall be liable to penalty of ₹ 50,000 and further penalty of ₹ 1,000 per day after first during which such failure continues subject to maximum ₹ 2 lakhs. If company fails to maintain register, file information with ROC, take steps to identify SBO or denies inspection: <ul style="list-style-type: none"> Company: Penalty of ₹ 1 lakh & further penalty of ₹ 500 per day after first during which such failure continues subject to maximum ₹ 5 lakhs. Officer in default: Penalty ₹ 25,000 & further penalty of ₹ 200 per day after first during which failure continues subject to maximum ₹ 1 lakh. <p>Note: If person wilfully furnishes false/incorrect information or suppresses material information in declaration, he shall be liable for punishment u/s 447.</p>

Note: This section is not applicable to Government Company (if no default u/s 92 & 137).

(4) Foreign Register [Section 88(4)]

Foreign Register	Company (if authorised by AOA) may keep part of register in country outside India where its security holders are resident [containing details of such securityholders]
Situation of Office	Company shall file notice of situation (location) of office where register is kept in Form MGT-3 to ROC within 30 days of opening such foreign register. Note: In case of change in situation of office or its discontinuance, company shall file notice in Form MGT-3 to ROC within 30 days of such change or discontinuance.
Duplicate Register	<ul style="list-style-type: none"> Company shall keep a duplicate register of foreign register at registered office. Every duplicate foreign register is deemed to be part of principal register.
Entry in foreign register	<ul style="list-style-type: none"> Entries in foreign register shall be made after BOD or duly constituted committee approves allotment or transfer. Company shall transmit copy of every entry made in foreign register within 15 days to its registered office in India.
Discontinue register	Company may discontinue foreign register but all entries in that register shall be transferred to principal register or some other foreign register.
Other Provisions	<ul style="list-style-type: none"> Decision of appropriate competent authority for rectification is binding. Foreign register may be closed, be open to inspection, extracts may be taken & copies may be required in same manner as principal register. <p>Note: However, advertisement before closing of such register shall be inserted in at least 2 newspapers circulating in place where foreign register is kept.</p>

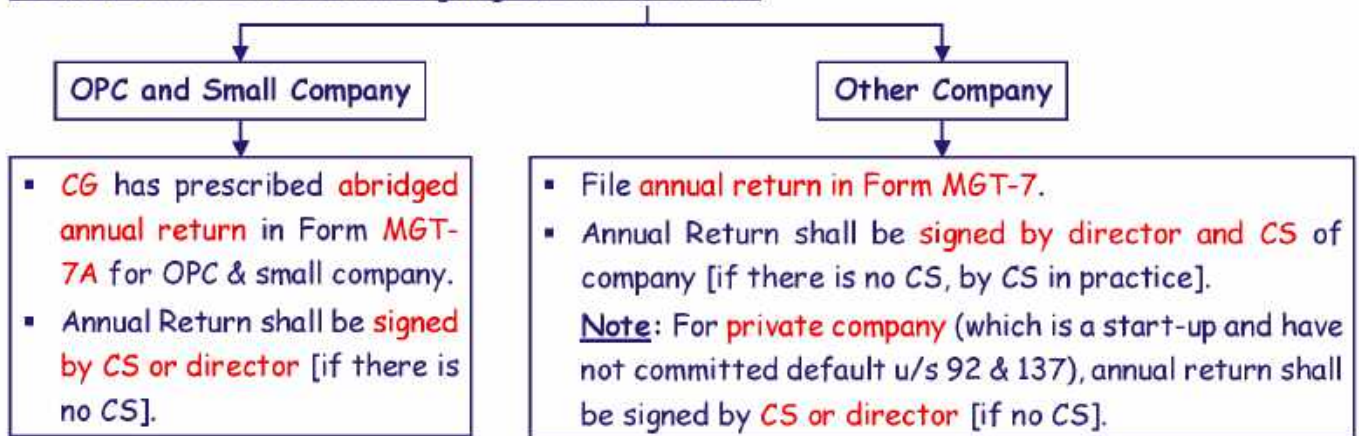
(5) Preservation and Custody of Register [Section 94]

- Register of members** (including foreign register) and index shall be preserved **permanently**.
- Register of debenture-holder or other security holder** (including foreign register) and index shall be preserved for **8 years** from redemption.

Note: Such Register shall be kept in **custody of CS or person authorized by BOD**.

Annual Return [Section 92 and 94]

• Form of Annual Return and Signing of Annual Return



• Annual Return shall contain following particulars as at close of FY:

- Its registered office, principal business activities and particulars of holding, subsidiary & associate companies,
- Its shares, debentures & other securities and shareholding pattern,
- Details of shares held by or on behalf of Foreign Institutional Investors,
- Its members, debenture-holders, promoters, directors & KMP (along with changes since last FY),
- Remuneration of directors & KMP,
- Meetings of members, BOD and various committees (along with attendance details),
- Punishment imposed on company, directors or officers and details of compounding of offences and appeals made against punishment,
- Matters relating to certification of compliances and prescribed disclosures, and
- Other prescribed matters.

• Place of keeping Return and Preservation Period of Return [Section 94]

- Copies of Annual Return shall be kept at:
 - Registered office, or
 - Other place in India where > 1/10th of members as in register resides (if approved by SR).
- Copies of all annual returns and certificates & documents annexed to it shall be preserved for 8 years from filing with ROC.

• Certification and placing on website & BOD Report

- Annual Return filed by listed company or company having paid-up share capital of ≥ ₹ 10 crores or turnover of ≥ ₹ 50 crores shall be certified by CS in practice (in Form MGT-8) stating that annual return discloses facts correctly & adequately and company has complied with all provisions.
- Company shall place copy of annual return on its website and web-link of such annual return shall be disclosed in BOD report.

• Annual Return filed with ROC

Copy of annual return shall be filed with ROC within 60 days of AGM [If AGM not held, filed within

60 days from date by which AGM should have been held, along with reasons for not holding AGM].

• Inspection, Extract and Copies of Annual Return [Section 94]

- Copies of all returns shall be open for inspection during business hours as BOD decides (but not < 2 hours) on every working day by:
 - Member, debenture holder, other security holder or beneficial owner (without fees), and
 - Any other person on payment of fees specified in AOA (but ≤ ₹ 50 for each inspection).
- Such persons can also take extracts (without fee), or copy with fees ≤ ₹ 10 per page (copy shall be supplied within 7 days of deposit of fee).

Note:

- (i) If inspection, extract or copy is refused, company & officer in default is liable to penalty ₹ 1,000 per day during which failure continues (for each default) subject to maximum ₹ 1 lakh.
- (ii) CG (power delegated to RD) may direct immediate inspection or direct that extract shall be allowed to be taken by person requiring it.

• Punishment for default

- If company fails to file annual return with ROC
Company and Officer in Default: Penalty of ₹ 10,000 & further penalty ₹100 per day during which failure continues [subject to maximum ₹ 2 lakhs for company & ₹ 50,000 for officer in default].
- If CS in practice defaults in certifying annual return, he shall be liable to penalty of ₹ 2 lakhs.

General Meetings [Section 96 to 100, 102 and 121]

(1) Annual General Meeting (AGM) [Section 96, 97 and 121]

Every company (except OPC) shall hold AGM once every year (except year of incorporation).

Period to hold AGM	<ul style="list-style-type: none"> ▪ <u>First AGM</u>: Should be held within 9 months from closing of 1st FY [No extension can be granted]. ▪ <u>Subsequent AGM</u>: Should be held within 6 months from closing of FY [ROC may extend (for special reasons) by period not exceeding 3 months]. <p><u>Note</u>: Gap between 2 AGMs should not be more than 15 months.</p>
Time & Place for calling AGM	<ul style="list-style-type: none"> ▪ AGM shall be called during business hours (i.e. between 9 AM & 6 PM) on any day other than national holiday [i.e. day declared as national holiday by CG (like 2nd October)] and shall be held either at registered office of company or other place within city, town or village where registered office is situated. ▪ <u>Exception for following companies</u> <ul style="list-style-type: none"> ➤ <u>Unlisted Company</u>: AGM may be held at any place in India if prior consent is given by all members in writing or electronic mode. ➤ <u>Government company which has not committed default u/s 92 & 137</u>: AGM can be held at such other place as CG approves. ➤ <u>Section 8 company (if not committed default u/s 92 & 137)</u>: Time, date & place are decided by BOD as per directions given in general meeting.
NCLT calls	If company defaults in holding AGM, NCLT may call AGM (on application by

AGM [Section 97]	member) and give directions as it thinks expedient (including direction that 1 member present in person or by proxy can constitute meeting).
Report on AGM [Section 121]	<ul style="list-style-type: none"> ▪ Listed company shall prepare report on AGM (including confirmation that meeting was convened & conducted as per provisions) in addition to minutes. ▪ Report shall contain details of AGM [such as day, date, hour & venue of AGM, appointment of chairman, quorum, adjournment, change in venue, etc.] ▪ Such report shall be signed & dated by: <ul style="list-style-type: none"> ➢ Chairman of meeting, or ➢ 2 directors (1 shall be MD) & CS of company [If chairman is unable to sign] ▪ Copy of such report shall be filed with ROC in Form MGT-15 within 30 days of conclusion of AGM. ▪ If company fails to file report with ROC within 30 days of conclusion of AGM: <ul style="list-style-type: none"> ➢ Company: Penalty of ₹ 1 lakh and in case of continuing failure, further penalty of ₹ 500 per day after first during which failure continues [subject to maximum ₹ 5 lakhs], and ➢ Officer in default: Penalty not less than ₹ 25,000 and in case of continuing failure, further penalty of ₹ 500 per day after first during which failure continues [subject to maximum ₹ 1 lakh].

(2) **Extra-Ordinary General Meetings (EGM) [Section 100]**

- All general meetings **other than AGM** are called extra-ordinary general meetings (EGMs).
- Extra-Ordinary General Meetings (EGM) can be called by:
 - (i) **BOD on its own (when it deems fit)**
EGM shall be held at a place **within India** [except for **wholly owned subsidiary** of company incorporated outside India, i.e. EGM can be held outside India for such company].
 - (ii) **On requisition by members, BOD shall (within 21 days of receipt of requisition) proceed to call EGM within 45 days of receipt of requisition, if requisition is received from:**
 - Company having share capital: Members holding at least **1/10th of paid-up share capital** (carrying right to vote) as on date of requisition.
 - Company not having share capital: Members holding at least **1/10th voting power** as on date of requisition.

Note: Requisition shall **specify matters** for which meeting is called & be **signed** by all requisitionists and sent to **registered office** of company.
 - (iii) **If BOD do not proceed (within 21 days of receipt of requisition) to call meeting within 45 days of receipt of requisition, meeting may be called by requisitionists themselves (in same manner as BOD) within 3 months of receipt of requisition made to BOD:**
 - **Notice and Explanatory Statement of meeting**
 - Notice shall be given to those members whose name appear in Register of members within **3 days** of deposit of requisition with company.
 - Requisitionists have right to receive list of members, registered address & number

of shares held and company is bound to give list as on 21st day of receipt of requisition along with changes before expiry of 45 days from receipt of requisition.

- Members shall provide notice atleast 21 clear days prior to proposed date of EGM.
 - Notice shall specify place, date, day & hour of meeting and business to be transacted at meeting. It shall be signed by all requisitionists or by a requisitionist authorised by all (In case of joint holders, it shall be signed by all joint holders).
 - Notice shall be sent by speed post, registered post or electronic mode. Accidental omission to send notice or non-receipt by any member do not invalidate meeting.
 - Explanatory statement need not be annexed to notice but requisitionists may disclose reasons for resolutions proposed to be moved at meeting.
- **Place & Time to convene meeting:** At Registered Office or within city/town where Registered office is situated on any day other than National Holiday.

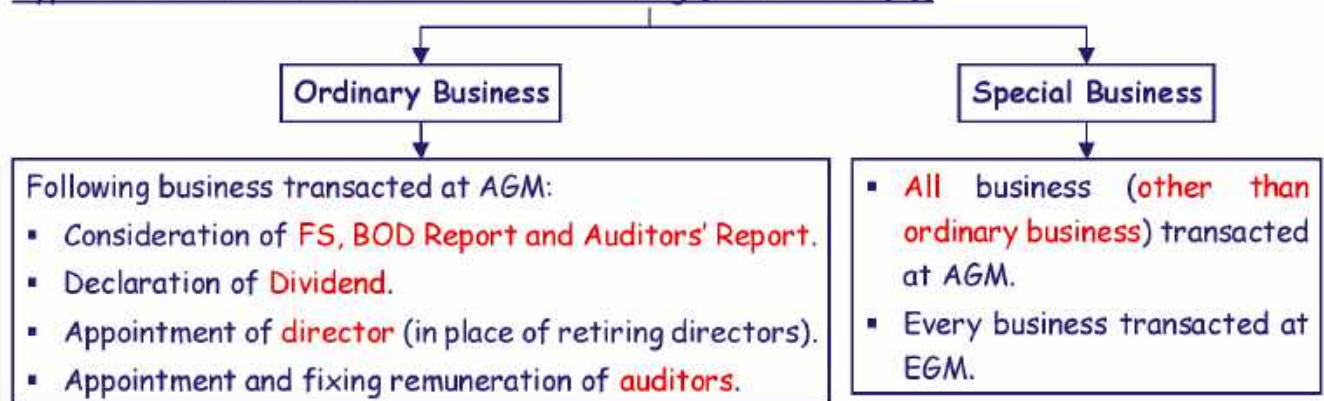
Note: Reasonable expenses incurred by requisitionists for calling meeting shall be reimbursed by company and is deducted from remuneration of directors in default.

(iv) Power of Tribunal to Call Meetings of Members, etc. [Section 98]

If impracticable to call EGM, NCLT may suo motu or on application of director/member:

- Order meeting to be called, held & conducted (in manner as NCLT thinks fit), and
- Give directions as it thinks expedient (including direction that 1 member present in person or by proxy be deemed to constitute meeting).

(3) Types of business to be transacted at Meeting [Section 102(2)]



(4) Punishment for Default in complying with provisions of Section 96 to 98 [Section 99]

If default is made in holding meeting u/s 96, 97 or 98 or in complying with directions of NCLT, then company and officer in default shall be punishable with fine extendable upto ₹ 1 lakh and further fine extendable upto ₹ 5,000 per day during which default continues.

Pre-Requisites of a Meeting [Section 101 and 102]

(1) Notice of Meeting [Section 101]

Notice for General Meeting	<p>General Meeting (i.e. AGM/EGM) may be called by BOD by giving notice of at least 21 clear days (writing/electronically) [Delay in giving of notice cannot be condoned]</p> <p>Note:</p> <ul style="list-style-type: none"> ➤ 21 clear days: Date of service of notice & date of meeting are excluded from calculation of 21 days. ➤ If notice is sent by post: Deemed as served at expiry of 48 hours after posting.
Shorter notice of less than 21 days	<p>Meeting may be called by notice shorter than 21 days, if consent received from:</p> <ul style="list-style-type: none"> ➤ For AGM: Not less than 95% members (in number), and ➤ For other meeting (i.e. EGM): <ul style="list-style-type: none"> ▪ Company having share capital: Majority number of members holding not less than 95% of paid-up share capital. ▪ Company not having share capital: Members holding not less than 95% of voting power. <p>Note: Member who is entitled to vote on some resolutions (to be moved at meeting) shall be taken into account only for such resolutions (& not others).</p>
BOD calls meeting	<p>General meeting is called by BODs [Individual director cannot call meeting]. Notice given without sanction of BOD resolution is invalid, but it can be ratified by BOD.</p>
Service of Notice	<p>Notice shall be given to:</p> <ul style="list-style-type: none"> ➤ All members, legal representative of deceased & assignee of insolvent member ➤ Auditor of company, and ➤ All directors of company.
Notice by electronic means	<ul style="list-style-type: none"> ▪ Notice may be sent through e-mail as text, attachment to mail, notification with electronic link or Uniform Resource Locator (URL) to access such notice. ▪ Email shall be addressed to person entitled to receive it as per records of company (as provided by depository). ▪ Company shall provide opportunity to member atleast once a FY to register their e-mail & changes [Request may be made only by members whose mail is not registered or who needs to update their mail (not by members whose mail is already registered)]. ▪ If member fails to provide/update mail, company shall not be in default for not delivering notice via e-mail. ▪ Company's obligation is satisfied when it transmits e-mail (cannot be held responsible for failure in transmission beyond its control). ▪ Notice shall be placed on website of company and on website notified by CG.
Other Provisions	<ul style="list-style-type: none"> ▪ Accidental omission to send notice or non-receipt of notice do not invalidate meeting [Onus is on company to prove that omission was not deliberate]. If deliberate, such meeting & resolutions passed in such meeting shall be void. ▪ Notice shall state place, date, day & hour of meeting and statement of business to be transacted at meeting.

Example

M Ltd. posts notice on 16th August 2024 for a meeting on 7th September 2024. Is notice valid?

Solution

21 clear days' notice is required (excluding date of service & meeting) for a meeting. As post is deemed delivered after 48 hours, notice is deemed effective from 18th August, hence, only 19 clear days' notice is served. Therefore, notice is not valid and such delay cannot be condoned.

(2) Explanatory Statement to be Annexed to Notice [Section 102]

Requirement	If any special business is to be transacted at company's general meeting, Explanatory Statement shall be annexed to notice of such meeting. Note: Explanatory Statement is not required for ordinary business .
Details specified in Explanatory Statement	Explanatory Statement for special business must specify material facts of: <ul style="list-style-type: none"> ➤ Nature of concern or interest in each business item of <ul style="list-style-type: none"> ▪ Director & manager and their relatives, and ▪ Other KMP and their relatives. ➤ Other information that enables members to understand meaning, scope & implications of items of business and take decision thereon.
Other details to be disclosed	<ul style="list-style-type: none"> ➤ If special business relates or affects any other company where promoter, director, manager & other KMP holds ≥ 2% of paid-up share capital of that company, their shareholding in such company shall be disclosed. ➤ If any document is to be considered at meeting, time & place where it can be inspected shall be specified in explanatory statement.
Punishment for Default	<ul style="list-style-type: none"> ➤ <u>Promoter, director, manager or other KMP in default:</u> Penalty of higher of ₹ 50,000 or 5 times amount of benefit accruing to such person or his relatives. ➤ If benefit accrues to promoter, director, manager, other KMP or their relatives due to non-disclosure or insufficient disclosure in explanatory statement, such person shall hold such benefit in trust of company and be liable to compensate company for the benefit received by him.

Members attending General Meeting of Company [Section 103, 105, 112, 113 and 116]

(1) Representation of Members to attend Meeting [Section 112 and 113]

- If **President of India or Governor of State** is member of a company, he may appoint a person to act as his **representative** at meeting and such person can exercise **same rights & powers** (including vote by proxy) as President or Governor could exercise as member.
- If a **body corporate** is member, debenture holder or creditor of a company and authorises any person as its **representative** for meeting of company, then he can exercise **same rights & powers** (including vote by proxy & postal ballot) as body corporate could exercise as member.

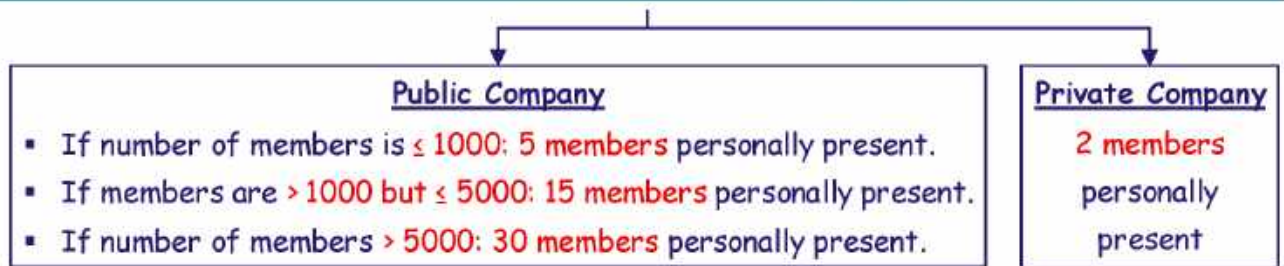
Note: A person can be authorised representative for > 1 body corporate and be treated as > 1 Member for quorum (but atleast 1 more member shall be personally present to form quorum).

(2) Proxies [Section 105]

Proxy is instrument executed by member authorizing a person to attend & vote on his behalf .	
Statement in notice	<p>A statement shall appear in notice of meeting that a member entitled to attend & vote at meeting can appoint another person as proxy to attend & vote on his behalf (person appointed as proxy need not necessarily be a member).</p> <p>Note: In case of default in making such statement, officer in default is liable to penalty of ₹ 5,000.</p>
Rights	<ul style="list-style-type: none"> Proxies do not have right to speak at meeting & cannot vote (except on poll). Members can revoke rights of proxy by voting himself before proxy votes but once proxy has voted, member cannot retract his authority.
Appointment of Proxy	<ul style="list-style-type: none"> Instrument appointing proxy shall be in writing (Form MGT-11) which shall be signed by appointer (or his duly authorised attorney). Note: If appointer is body corporate, such instrument shall be under its seal or is signed by its officer (or duly authorised attorney of body corporate). If instrument appointing proxy is in prescribed form, it cannot be questioned that it fails to comply with special requirements specified in AOA. Proxy form received by company atleast 48 hours before meeting shall be valid (even if AOA provides longer period). A person can act as proxy for ≤ 50 members holding (in aggregate) not more than 10% of share capital (carrying voting rights). Note: Member holding > 10% of share capital may appoint a single person as proxy and such person shall not act as proxy for any other person.
Inspection of Proxy	<p>Member entitled to vote can inspect proxies during period beginning 24 hours before commencement of meeting & ending with conclusion of meeting (during business hours) but only after giving not less than 3 days' notice of intention to inspect proxy to company.</p>
Punishment for default	<p>If invitation is issued to members to appoint a person as proxy at company's expense, officer of company (who issues invitation or permits issue) shall be liable to penalty of ₹ 50,000.</p> <p>Note: Officer shall not be liable if list of persons willing to act as proxy or form of appointment with name of proxy is issued at the request of member.</p>
Exceptions	<ul style="list-style-type: none"> Member of section 8 company can appoint only such person as proxy who is also a member of such section 8 company. This section does not apply to company not having share capital (unless AOA state otherwise). CG may prescribe company whose members are not entitled to appoint proxy.

(3) Quorum for Meetings [Section 103]

- Quorum: **Minimum number of members** to be **personally present** to constitute a valid meeting.
- Quorum shall be present both at **commencement** of meeting & **also while transacting business**. If quorum is not present while transacting a business, it **cannot be transacted** & is a **nullity**.
- Quorum for meeting of public & private company shall be



Note:

- (i) AOA may provide for a larger number for quorum.
- (ii) Members personally present means members entitled to vote in meeting [i.e. Proxy shall not be included but authorised representatives of company & President of India or Governor of State shall be included for calculation of quorum].
- (iii) If 2 or more companies appoint a single person as representative, then each company is counted for quorum [i.e. such single person shall be counted multiple times for quorum].
- (iv) Member (not entitled to vote due to it being related party) shall be counted for quorum.

Example

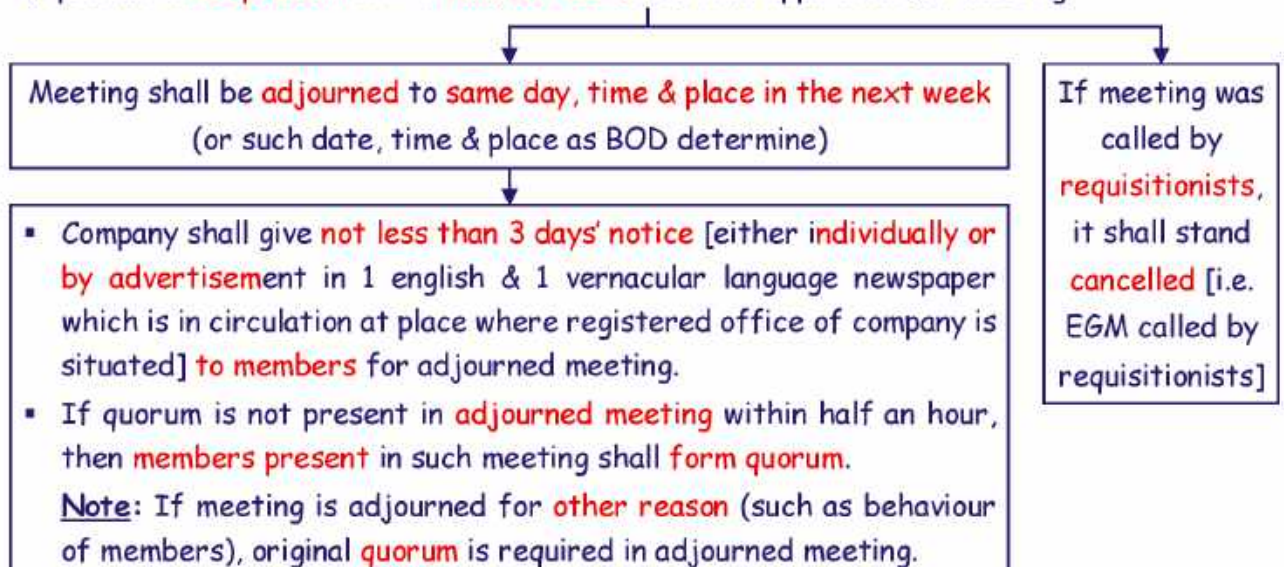
D Ltd. has 965 members. Its AOA requires 7 members to be personally present for quorum. Following attended the meeting: A (Governor's representative), B & C (preference shareholders), D (representing Y Ltd. & Z Ltd.), and E, F & H (proxies). Is quorum present?

Solution

Only members entitled to vote and personally present is counted for quorum. A count. D counts as 2 (for Y Ltd. & Z Ltd.). B & C are excluded as preference shareholders (not entitled to vote). Proxy E, F & H are not counted. Total = 3. Quorum of 7 is not met and Meeting is invalid.

• **Adjournment of Meeting for want of Quorum**

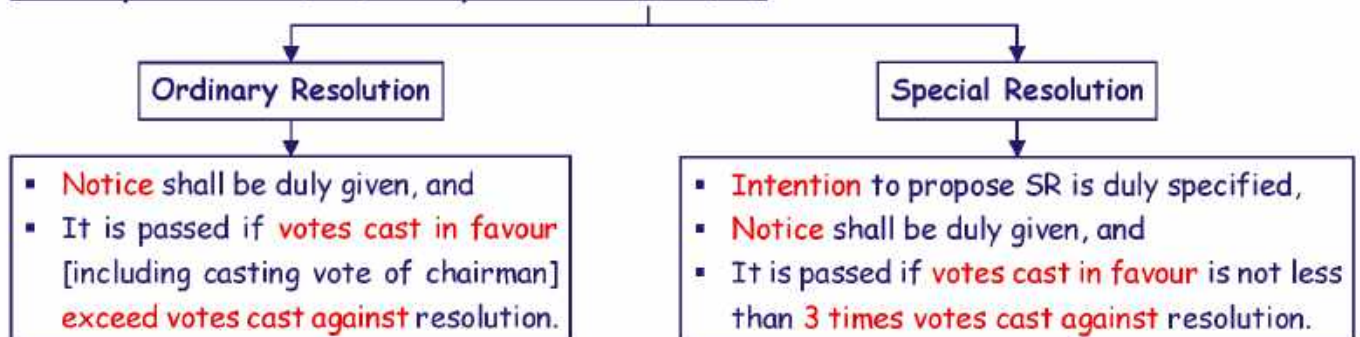
If quorum is not present within half an hour from time appointed for meeting



- If a resolution is passed at adjourned meeting of members, resolution is treated as passed on adjourned meeting date (and not original meeting date). [Section 116]

Resolutions [Section 114]

- A motion is a proposal which becomes resolution if it obtains necessary votes [i.e. Where a proposal (motion) is put for consideration at meeting, if it gets passed, it is considered as resolution].
- Ordinary Resolution (OR) and Special Resolution (SR)



Note: Casting vote is an additional vote given to chairman in case of equal votes in favour & against.

- **Multiple resolutions** can be **moved together** (unless member demands it to be voted separately or a poll is demanded). But, **appointment of each director** shall only be made by a **separate resolution**.

Resolution raised by Members [Section 111 and 115]

(1) Circulation of Members' Resolutions [Section 111]

Generally, **BOD** set agenda of meeting but members can propose resolutions at general meeting:

- **Members** required to make **requisition** to propose a resolution is same as Section 100(2):
 - Company having share capital: Members holding **atleast 1/10th paid-up share capital**.
 - Company not having share capital: Members holding **atleast 1/10th voting power**.
- Company shall on requisition of required members: [i.e. Types of requisition]
 - Give to members **notice** of Resolution intended to be moved at meeting, and
 - Circulate to members a **statement** for matters of business to be dealt at meeting.
- 2 or more copies of requisition signed by all requisitionists shall be deposited at registered office of company within:
 - For requisition requiring notice of resolution: Not less than **6 weeks** before meeting.
 - For other requisition (i.e. Statement): Not less than **2 weeks** before meeting.

Note:

- Time period need not be complied if AGM is **called within 6 weeks** after copy is delivered.
 - Company need not circulate statement, if **CG** (on application by company or aggrieved person) declares that rights are abused to secure needless publicity for **defamatory matter** [CG may also direct that cost incurred by company to be paid by requisitionists].
- **Sum** sufficient to meet company's expenses shall be **deposited** with company.
 - **Punishment for default:** Company and officer in default is liable to penalty of ₹ 25,000.

(2) Resolutions requiring Special Notice [Section 115]

- Special notice is required in following cases (AOA may provide additional matters):
 - **Section 140:** Resolution to be passed at AGM for **appointment of auditor** other than retiring auditor **or** providing expressly that retiring auditor shall **not be re-appointed**.
 - **Section 169:** Resolution to **remove a director** before expiry of his office **or to appoint another person as director** in place of removed director at meeting at which he is removed.
- Special notice required to be given to company shall be signed by members holding:
 - Not less than **1% of total voting power**, or
 - Shares on which sum not less than **₹ 5 lakhs is paid-up**.
- Procedure of Special Notice
 - (i) Special notice shall be given to company **atleast 14 days but not earlier than 3 months** before meeting where resolution is to be moved (excluding day on which notice is given & day of meeting).
 - (ii) Company shall give **notice to members atleast 7 days** before meeting (excluding day of dispatch of notice & day of meeting) in same manner as notice of general meeting.

Note: If it is **not practicable** to give notice, it shall be **published atleast 7 days** before meeting (excluding day of publication & meeting) in english & vernacular language **newspaper** having wide circulation in state where registered office of company is situated and shall also be posted on **website** of company.

Voting [Section 106 to 110]

(1) Restriction on Voting Rights [Section 106]

AOA may provide that **member cannot exercise voting** right on a share:

- On which **calls** (or any sums payable to company) are **not paid**, or
- For which company has exercised **right of lien** (generally when shareholder owes money).

Note:

- (i) Such member cannot sign requisition for EGM.
- (ii) Company cannot prohibit voting rights on any other ground.

(2) Voting in case of joint shareholders

Joint shareholders must concur in voting (unless AOA provide otherwise).

Voting is done in **order of seniority** either in person or by proxy [i.e. vote of senior is accepted].

Note: Seniority is determined by **order in which name appears in register** of members.

(3) Voting by Show of Hands [Section 107]

- Voting shall be done by **show of hands** (unless demanded by way of poll or electronic means).
- **Declaration** by chairman of meeting of passing of resolution by show of hands and an entry of same in **minutes books** shall be conclusive evidence that resolution is passed.
- A person can vote by show of hands as long as he **remains member in register** [even if insolvent]

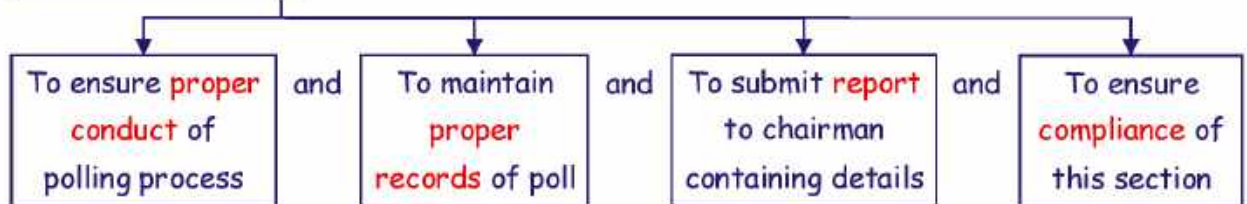
(4) Demand for Poll [Section 109]

- Poll may be ordered by **chairman** of meeting (on his **own or on demand by members**) on or before declaration of result of voting by show of hands.
- Members who can demand for poll:
 - Company having share capital: **Members** (present in person or proxy) having $\geq 1/10^{\text{th}}$ voting power or holding shares on which not less than ₹ 5 lakhs is paid-up.
 - Other company: **Member** (present in person or proxy) having $\geq 1/10^{\text{th}}$ of voting power.

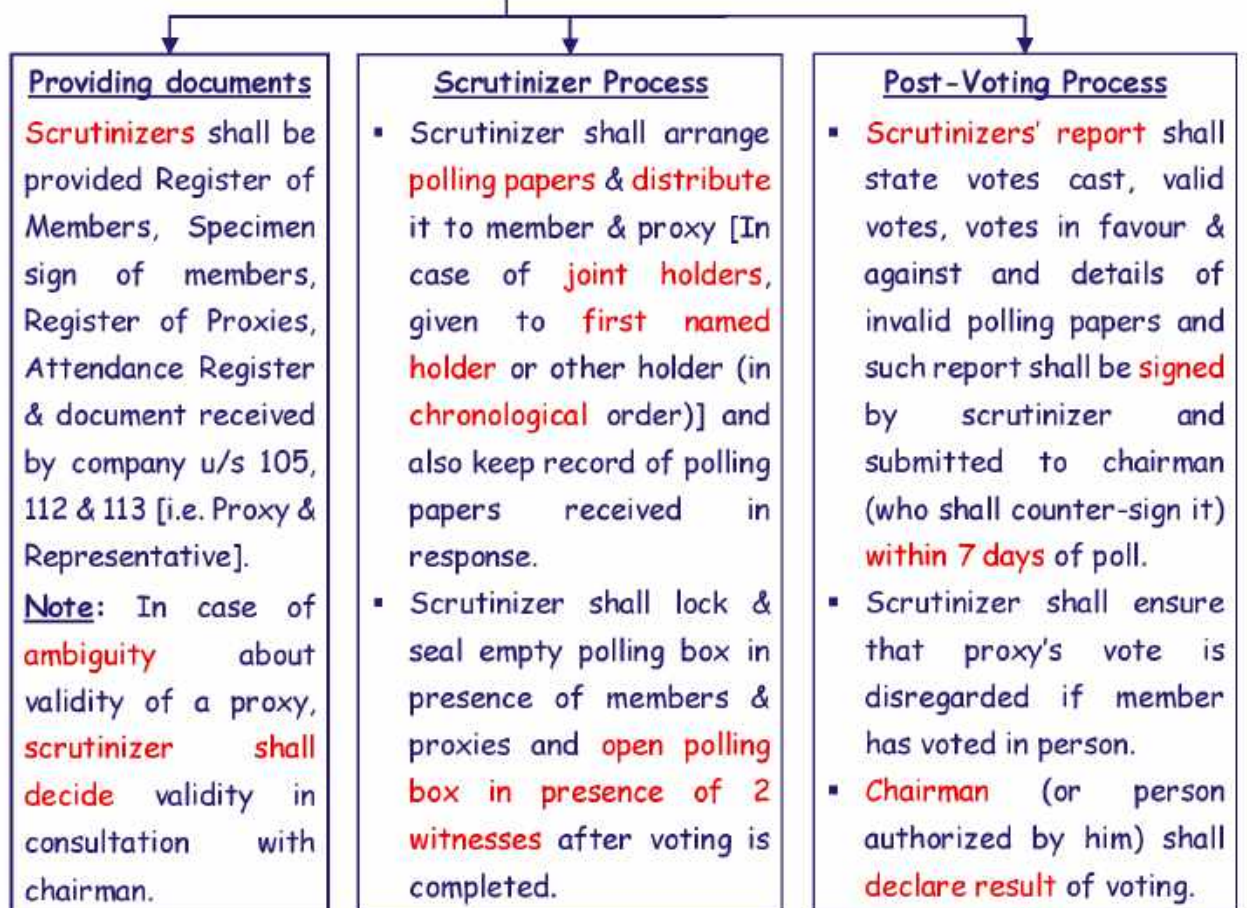
Note: Demand for poll may be **withdrawn** at any time by persons who made the demand.

- Poll demanded shall be taken within **48 hours** of demand [But poll demanded for adjournment of meeting or appointment of chairman of meeting shall be taken **immediately**].
- Scrutinizer for Poll
 - **Chairman** of meeting shall appoint scrutinizers for poll.

- Duties of scrutinizer:



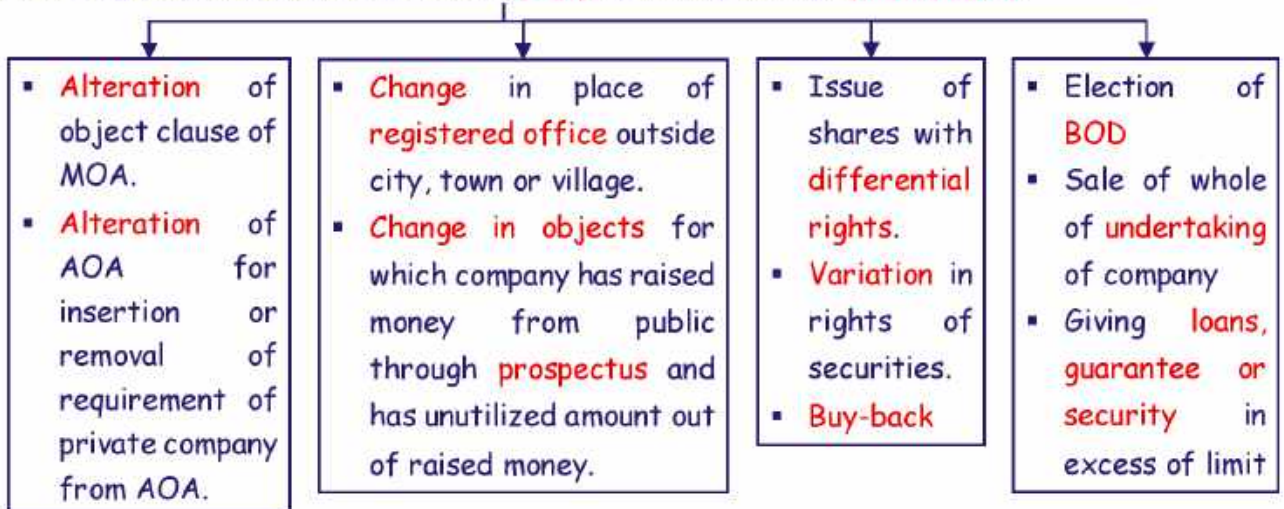
- Chairman of meeting shall ensure that



Note: In case of poll, member (or proxy) having >1 vote need not cast all votes in same way.

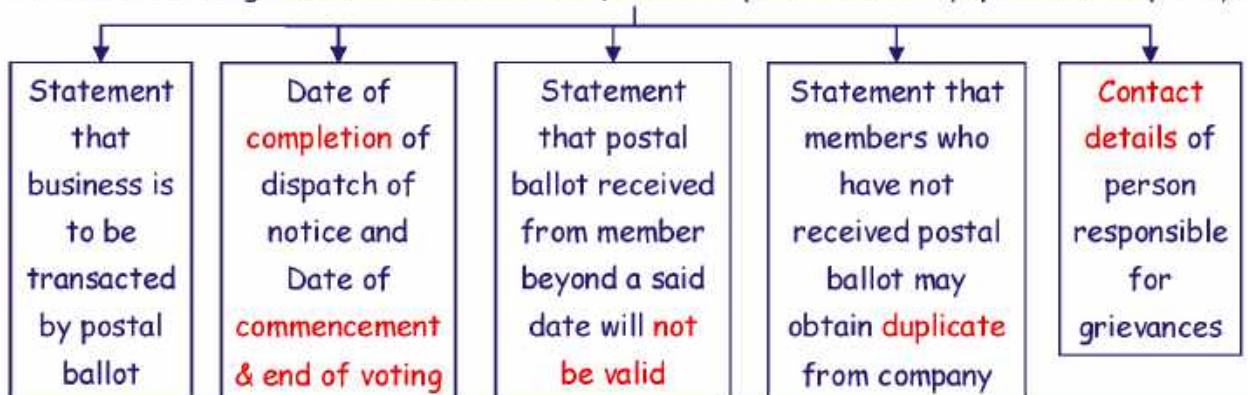
(5) **Postal Ballot [Section 110]**

- Postal Ballot means voting by **post** or through **electronic** mode.
- Postal Ballot may be used for any **item of business** (except ordinary businesses and business where directors or auditors have right to be heard).
- Following business shall be transacted **only** by voting through **postal ballot**:



Note:

- Above businesses may be transacted at **general meeting** but company shall provide facility to members to vote by electronic means u/s 108.
 - Company having **≤ 200 members** and **OPC** are **not** required to transact business through postal ballot.
- **Notice and Advertisement of Postal Ballot**
 - Company shall send **notice of postal ballot** (along with draft resolution & reasons) to shareholders by registered post, speed post, electronic means or courier and **requesting** them to send **assent or dissent within 30 days** of dispatch of notice.
 - Notice shall also be placed on **website** of company after sending it to members and shall remain on website till last date of receipt of postal ballots from members.
 - **Advertisement** is published in 1 english & 1 vernacular newspaper (having wide circulation in district where registered office is situated) about dispatch of ballot papers & also specify:



- **Scrutinizer for Postal Ballot**

- BOD shall appoint a scrutinizer (who is not an employee of company).
- Postal ballot received from shareholder is kept in **custody of scrutinizer** till chairman sign minutes & then, scrutinizer shall return papers & register to company to preserve them.
- No person shall deface/destroy received ballot paper or declare identity of shareholder.
- Scrutinizer shall submit his **report within 7 days** from last date of receipt of postal ballots.

- Results are declared by placing it (along with scrutinizer's report) on **website** of company.

- Scrutinizer maintains **register** to record name, assent/dissent, number of shares held, nominal value of shares, whether shares have differential voting rights, details of defaced postal ballots received and invalid postal ballots.

- **Other Provisions**

- Resolution passed by postal ballot is deemed to be passed at general meeting.
- Member need not use all his votes in same way by voting through postal ballot.

(6) **Voting through Electronic Means [Section 108]**

- Following company shall provide facility of right to vote by electronic means to members:

- Company which has **listed its equity shares** on RSE, or
- Company which has **not less than 1,000 members**.

Note:

- Nidhi** Company is **not required** to provide facility to vote by electronic means.
- Resolution proposed to be passed via voting by electronic means **cannot be withdrawn**.

- **Notice of meeting and Advertisement**

- Company shall send **notice** of meeting to **members, auditors & directors** by registered post, speed post, electronic means or courier service.
- Notice shall also be placed on **website of company & agency** after it is sent to members.
- Notice of meeting shall state & indicate that:

- Company is providing voting by electronic means.
- Facility for voting will also be made **available at meeting** to members who have not cast their vote by remote e-voting.
- Members who have cast their vote by remote e-voting **may attend** meeting (not permitted to appoint proxy) **but cannot cast vote again** but are counted for quorum.

- Process & **manner** for voting by electronic means.
- **Time period** during which votes may be cast by remote e-voting.
- Details about **login ID and** process for receiving **password** & casting vote.

- Company shall issue **advertisement at least 21 days** before meeting in 1 english & 1 vernacular newspaper stating all matters included in notice & **following additional** matters:

- **Cut-off date** [within **7 days** before meeting to determine member eligible to vote].

- Statement that person whose name appears in register of members (or beneficial owner) as on cut-off date can **avail facility** of remote e-voting and voting in general meeting.
- **Website** of company & agency where notice is displayed, and
- Name, designation, address, e-mail id & phone number of **person responsible to address grievances** for voting by electronic means.

• **Remote e-voting period**

It shall remain **open** for **not less than 3 days** and shall **close at 5 PM on date preceding** the date of **general meeting** [At the end of remote e-voting, such facility shall be blocked].

Note: If company opts to provide same e-voting system at meeting, facility shall be in operation till all resolutions are considered & voted in meeting.

• **Scrutinizer for Voting by Electronic Means**

- **BOD** shall appoint scrutinizer (who is not an employee of company). He may take assistance of person who is not an employee of company & is well-versed with electronic voting system.
- At the end of discussion on resolutions, **chairman** shall allow voting at general meeting with **assistance of scrutinizer** by use of ballot, polling paper or electronic voting system.
- After **conclusion** of voting, **scrutinizer** counts votes cast at meeting and unblock votes cast by remote e-voting (in presence of **≥ 2 witness** who are **not employee** of company) & make a **consolidated scrutinizer's report** of total votes cast in favour or against to **chairman or person authorized** by him (to countersign report) **within 3 days** of conclusion of meeting.

• **Register for Voting by Electronic Means**

- Scrutiniser shall maintain **register** to record name, assent/dissent, number of shares held, nominal value of shares and whether shares have differential voting rights.
- Register & all papers related to voting by electronic means is kept in **custody of scrutiniser till chairman sign** minutes & then, scrutiniser shall hand over register & papers to company.

• **Result on Resolution**

- **Chairman** or person authorized shall **declare** result of voting.
- Results declared (along with scrutiniser's report) is placed on **website** of company & agency.
- For companies whose equity shares are listed on RSE, company shall forward results to **RSE** and it shall place results on their **website**.

• **Other Provisions**

- **Manner** in which members have cast their votes shall remain secret & shall not be available to any person until votes are cast in meeting.
- Scrutiniser shall have access (after closure of remote e-voting but before meeting starts) to details of **members who had cast their vote by remote e-voting (not manner of voting)** to ensure that such members do not vote again at meeting.

Chairman of Meeting [Section 104]

- Members personally present shall elect **chairman** among themselves on **show of hands** (unless AOA provides otherwise).
- If **poll** is demanded for election of chairman, chairman elected by show of hands shall **continue** until other person is elected as per poll & such person shall be chairman for rest of the meeting.
- Chairman has **casting vote** in BOD meeting & general meetings (if allowed by AOA).
Note: Casting Vote refers to right given to chairman to cast **2nd vote in case of equal votes** on business transacted at meeting [If there is no provision in AOA for casting vote, OR on which there are equal votes is dropped].
- Chairman **manages meetings**, ensures that its decorum is maintained & executes minutes of meeting.

Note: This section is not applicable to Private Company (unless AOA provides).

Exemption to Private Company

If **AOA of Private Company** (which has not committed default u/s 92 & 137) provides, it is **exempted** from Section **101 to 107 and 109**.

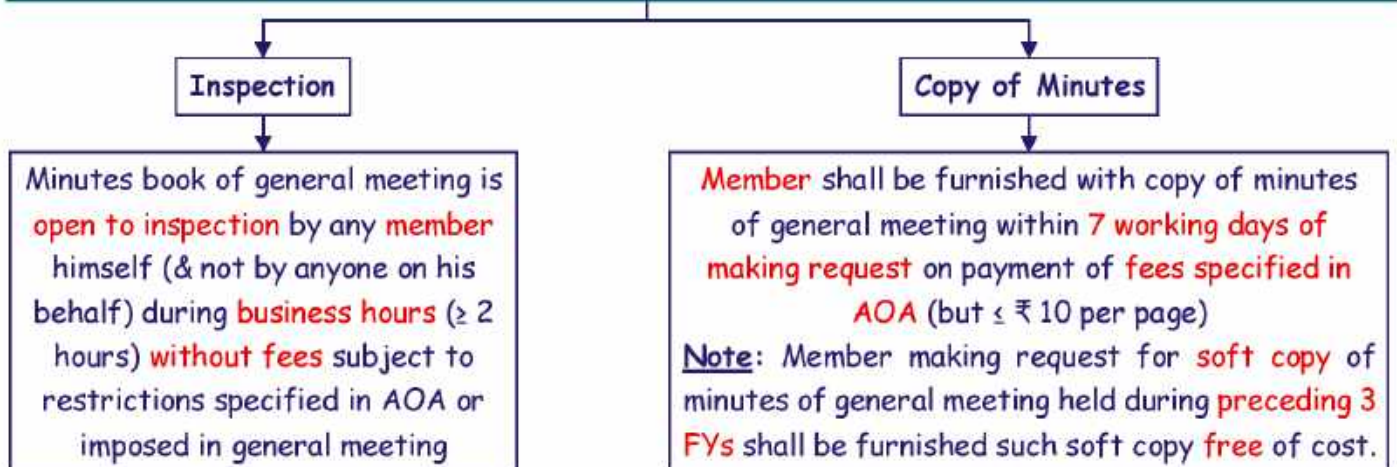
Resolutions and Agreements to be Filed [Section 117]

- Copy of **resolution or agreement** (along with explanatory statement) for following matters shall be filed with **ROC** in Form MGT-14 **within 30 days** of passing/making it:
 - Special Resolution (**SR**)
 - Resolution agreed by **all members** (where SR was required)
 - Resolutions or agreements agreed by a **class of members** (which would not have been effective unless passed by specified majority), and all resolutions or agreements which **bind such members** even though not agreed by all those members.
 - BOD Resolution or agreement for appointment, re-appointment, renewal or variation of terms of appointment of **MD**.
 - Resolutions requiring company to be **wound up voluntarily**.
 - Resolutions passed u/s section **179(3)** [i.e. Resolution to be passed at **BOD Meeting**].
Note: No person can inspect or obtain copy of such resolution.
 - Other prescribed resolution or agreement placed in public domain.
- **Punishment for Default**
 - Company: Penalty of ₹ 10,000 and further penalty of ₹ 100 per day after first during which failure continues [subject to maximum ₹ 2 lakhs], and
 - Officer in default (including liquidator of company): Penalty of ₹ 10,000 and further penalty of ₹ 100 per day after first during which failure continues [subject to maximum ₹ 50,000].

Minutes [Section 118]

Matters to be included in Minutes	<ul style="list-style-type: none"> Minutes of meeting shall contain fair & correct summary of proceeding of meeting. In case of BOD Meeting, minutes shall also contain: <ul style="list-style-type: none"> ➤ Name of directors present at meeting, and ➤ For each resolution passed, name of directors dissenting with resolution.
Matters not to be included in Minutes	<p>Matter shall not be included in minutes, if in the opinion of chairman of meeting it is:</p> <ul style="list-style-type: none"> ➤ Regarded as defamatory of any person, or ➤ Irrelevant or immaterial to proceedings, or ➤ Detrimental to interests of company. <p>Note: Matter to be included or excluded is at absolute discretion of chairman.</p>
Maintenance of Minutes	<ul style="list-style-type: none"> Company shall prepare, sign & enter minutes of meeting of shareholder, creditor or BOD (& resolution passed by postal ballot) in minute books within 30 days of conclusion of meeting. A distinct minute book shall be maintained for each type of meeting. In case of resolution passed by postal ballot, brief report on postal ballot [including resolution proposed, result of voting & summary of scrutinizers' report] shall be entered in minutes book of general meeting (as if it is passed at general meeting) along with date of entry within 30 days of passing resolution.
Signing of Minutes	<p>Each page of minutes book is signed & last page of minutes shall be dated & signed:</p> <ul style="list-style-type: none"> <u>Minutes of general meeting</u>: By chairman of meeting within 30 days or director authorised by BOD (in case of death or inability of chairman to sign). <u>Minutes of BOD meeting or meetings of committee of BOD</u>: By chairman of meeting or chairman of next succeeding meeting. <u>Resolution passed by postal ballot</u>: By chairman of BOD within 30 days or director authorized by BOD (in case of no chairman or his death or inability).
Preservation and Custody	<ul style="list-style-type: none"> Minutes book of general meetings shall be kept at registered office and be preserved permanently & kept in custody of CS or director authorised by BOD. Minutes book of BOD & committee of BOD meetings shall be kept at registered office or place as BOD decides and be preserved permanently & kept in custody of CS of company or director authorised by BOD.
Other Provisions	<ul style="list-style-type: none"> If minutes are kept in accordance, meeting is deemed as duly called & held. Company shall observe secretarial standards for general & BOD meetings.
Punishment for Default	<ul style="list-style-type: none"> If any default is made in complying with this section: <ul style="list-style-type: none"> ➤ Company: Penalty of ₹ 25,000 and ➤ Officer in Default: Penalty of ₹ 5,000. If any person is found guilty of tampering with minutes, he is punishable with fine not less than ₹ 25,000 but extendable upto ₹ 1 lakh and imprisonment upto 2 years.
Exemption	<p>This section is not applicable to Section 8 company which has not committed default u/s 92 & 137 [except that minutes may be recorded within 30 days of conclusion of meeting if AOA provides for confirmation of minutes by circulation].</p>

Inspection of Minutes Books of General Meeting [Section 119]



Note: Punishment for default

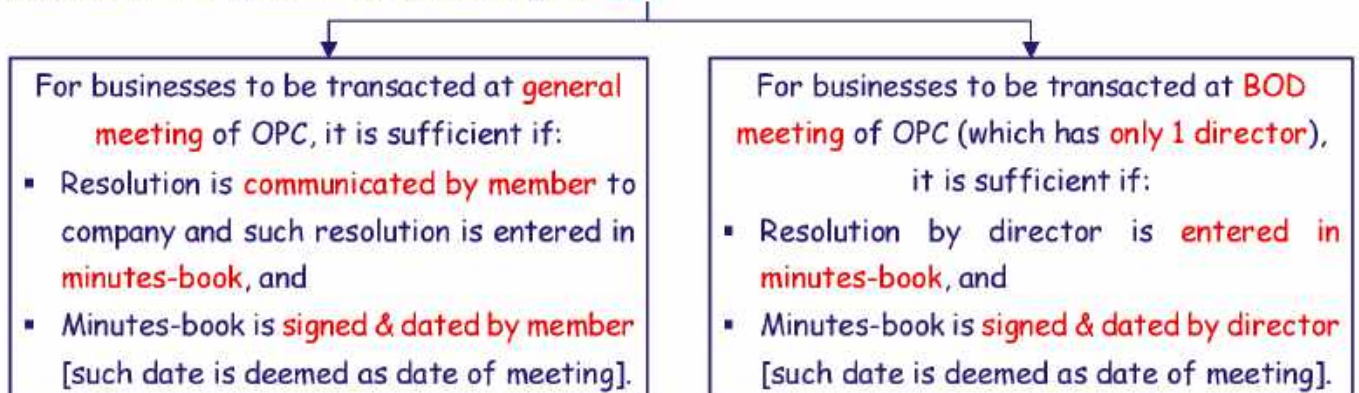
- If inspection is refused to member or if copy is not furnished within time:
 - Company: Penalty of ₹ 25,000 for each default, and
 - Officer in default: Penalty of ₹ 5,000 for each default.
- In case of any such refusal or default, NCLT may direct immediate inspection of minute-books or that copy shall immediately be sent to person requiring it.

Maintenance and Inspection of Documents in Electronic Form [Section 120]

- Listed company or company having ≥ 1000 security holders may maintain records in electronic form.
- Document, record, register, minute, etc. may be kept, inspected or copy be given in electronic form.
- MD, CS or other director/officer as BOD decides shall be responsible for maintenance & security of electronic records.
- Records maintained in electronic form shall be made available for inspection in electronic form. Copies of records maintained in electronic form shall be provided on payment of ≤ ₹ 10 per page.

Applicability of This Chapter to One Person Company [Section 122]

- Business to be transacted at meeting of OPC



- **Punishment for Default**

Company and officer or other person in default: Fine extendable upto ₹ 5,000 and further fine upto ₹ 500 per day after first during which contravention continues.

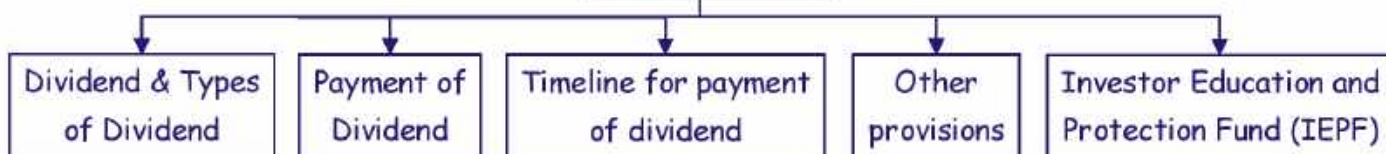
- **Section 98 and Section 100 to 111 shall not apply to OPC:**

Section 98: Power of Tribunal to call meetings (EGM)	
Section 100: Calling of EGM	Section 101: Notice of meeting
Section 102: Explanatory Statement	Section 103: Quorum
Section 104: Chairman of meetings	Section 105: Proxies
Section 106: Restrictions on voting rights	Section 107: Voting by show of hands
Section 108: Voting by electronic means	Section 109: Demand for poll
Section 110: Postal ballot	Section 111: Circulation of Members' Resolution

DECLARATION AND PAYMENT OF DIVIDEND

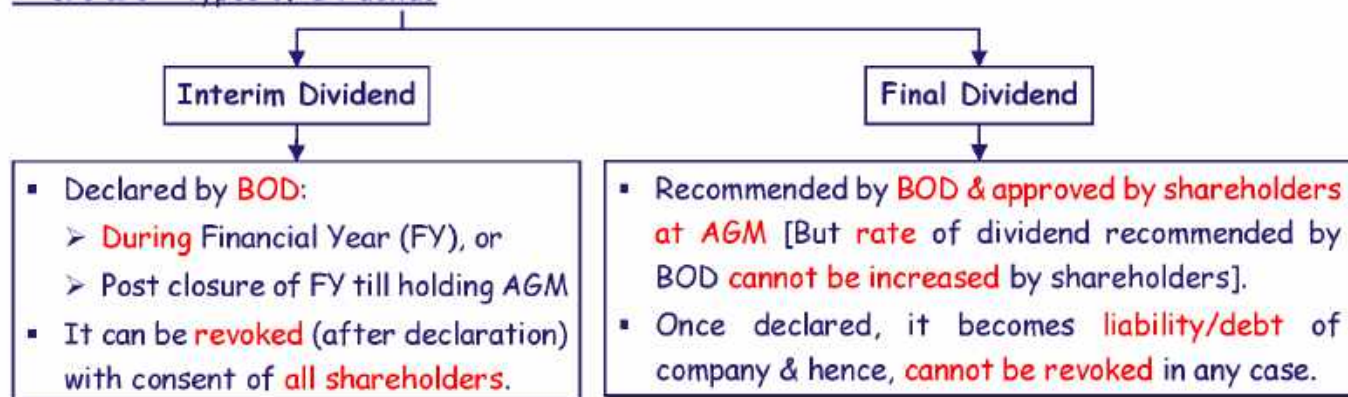


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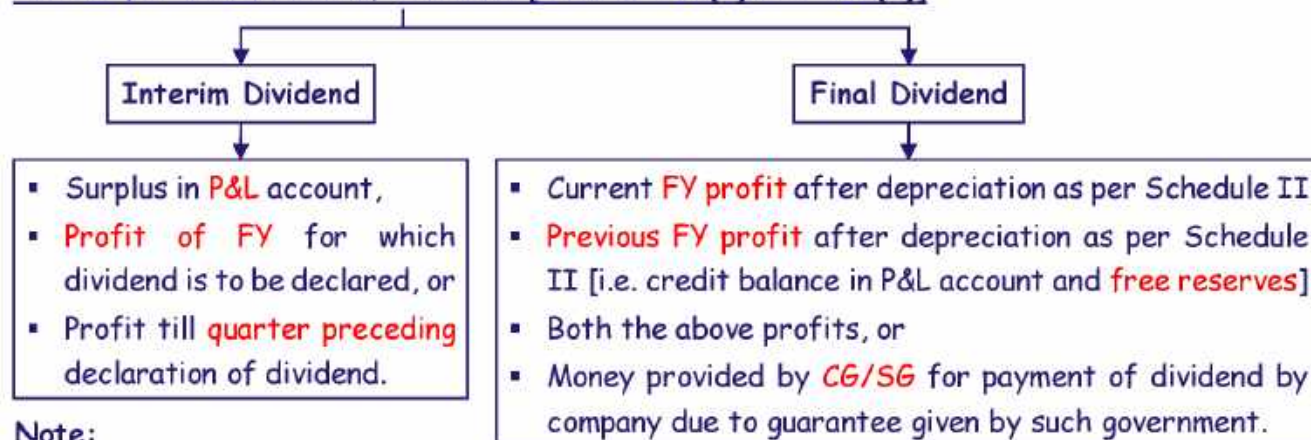
Definition of Dividend and Types of Dividend [Section 2(35)]

- Dividend includes interim dividend.
- Dividend is declared as a **proportion of Nominal** or Face Value of share.
- There are 2 types of dividends



Provisions regarding Payment of Dividend [Section 123 and 126]

(1) Source for Declaration of Dividend [Section 123(1) and 123(3)]



Note:

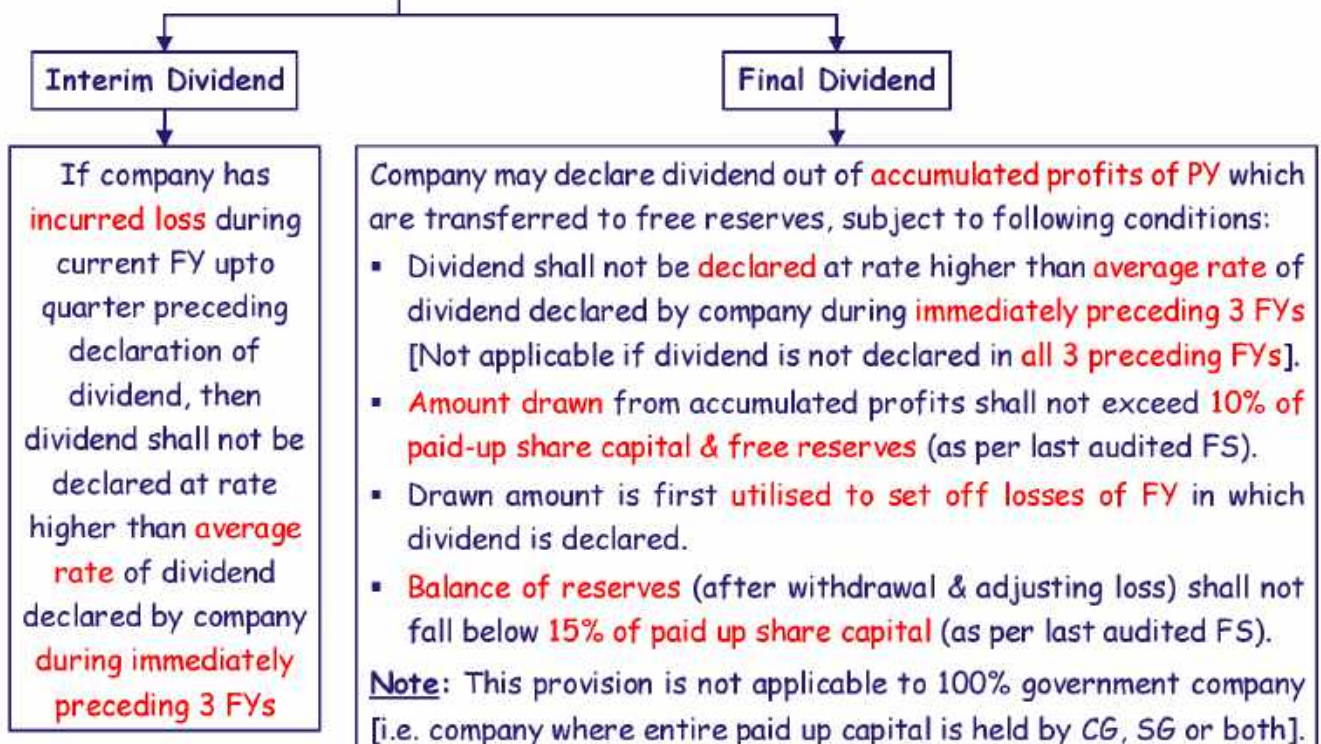
- (i) Free reserves are reserves **available for distribution as dividend** (as per last audited balance sheet). But following reserves are **not** treated as **free reserves**:
 - Unrealised gain, notional gain, revaluation reserve and capital reserve.
 - Change in carrying amount of asset/liability which is recognised in equity.

- (ii) Before declaration of dividend, **previous year (PY) losses & depreciation** which were not provided in such years are **set off** against current year profit.

(2) **Payment of Dividend [Section 123(5)]**



(3) **Declaration of Dividend when there is inadequacy or absence of Profits [Section 123(1)]**



Note: If year to which free reserves relate is given, it is assumed that current year loss (if any) is already adjusted. Otherwise, current year loss has to be adjusted from free reserves.

Example

C Ltd. has paid-up capital of ₹ 200 lakhs & free reserve of ₹ 240 lakhs. It incurred loss of ₹ 30 lakhs during FY but want to declare dividend. In 3 PYs, it declared dividend @ 9%, 10% and 12%.

Solution

- Average dividend declared during last 3 FY is 10.33% (which is maximum permissible rate).
- Amount upto 10% of (paid-up capital & Reserves) can be withdrawn = 10% of ₹ 440 lakhs = ₹ 44 lakhs and after adjusting ₹ 30 lakhs loss = Only ₹ 14 lakhs can be withdrawn.
- Balance reserve is ₹ 196 lakhs [i.e. after withdrawal & adjustment of loss (₹ 240 - 30 - 14 lakhs)], which is more than 15% of paid-up capital.

Hence, company can declare dividend upto ₹14 lakh, i.e., 7% of ₹ 200 lakh paid-up capital.

(4) Right of Dividend, Rights Shares and Bonus Shares to be held in abeyance pending registration of transfer of shares [Section 126]

If instrument of transfer is delivered but is not registered by company, company shall:

- Transfer dividend on such shares to Unpaid Dividend Account [except if authorised by registered holder of shares in writing to pay dividend to transferee], and
- Keep in abeyance offer of rights shares & bonus shares on such transferred shares.

Timeline for Payment of Dividend [Section 124 and 127]

Dividend is deposited in a separate bank account maintained with scheduled bank within 5 days of declaration

Dividend must be paid or dividend warrant must be posted to shareholders within 30 days from declaration of dividend [Non-receipt of dividend warrant within time do not attract punishment]

If dividend is not paid/claimed within 30 days, company shall transfer unpaid/unclaimed dividend to Unpaid Dividend Account (maintained in scheduled bank) within 7 days from expiry of such 30 days

Note: If default is made in transferring amount to Unpaid Dividend Account (UDA), company shall pay interest @12% p.a. on such amount (from date of default) to members.

Within 90 days of transferring money to UDA: Company shall prepare a statement containing name, last known address & unpaid dividend amount and place it on company's website & website as approved by CG

- If money in UDA remain unpaid/unclaimed for 7 years from transfer: It is transferred to Investor Education & Protection Fund (IEPF) along with interest.
- Company shall send statement containing details of transfer to IEPF Authority and authority shall issue receipt to company as evidence of such transfer.

Note:

- (i) Shares for which dividend is not paid/claimed for 7 consecutive years is transferred to IEPF by company along with statement containing prescribed details [But if dividend is paid/claimed for any year during such 7 years, such shares are not transferred].
- (ii) If company fails to comply with above requirements:
 - Company: Penalty of ₹ 1 lakh and in case of continuing failure, further penalty of ₹ 500 per day after first during which failure continues [subject to maximum ₹ 10 lakhs], and
 - Officer in default: Penalty of ₹ 25,000 and in case of continuing failure, further penalty of ₹ 100 per day after first during which failure continues [subject to maximum ₹ 2 lakhs].
- (iii) Person entitled to money in UDA may apply to company to claim it and person entitled to shares & dividend in IEPF can reclaim it from IEPF as per prescribed procedure (online application).

Example

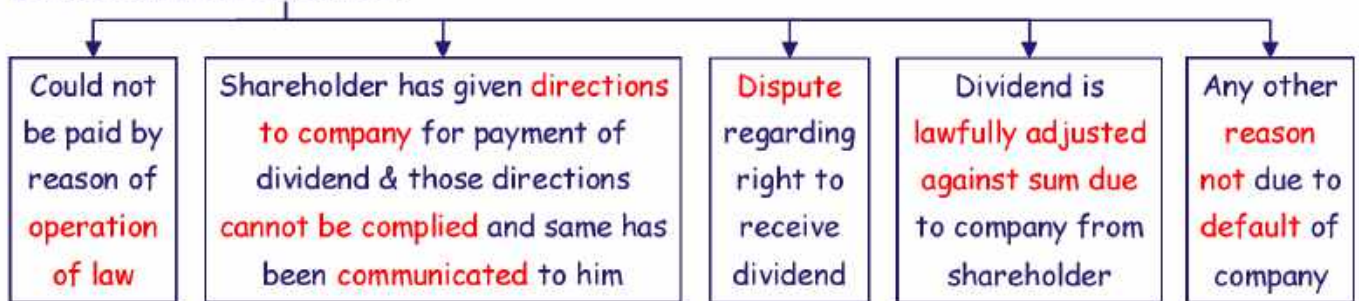
R Ltd. declared dividend in AGM, but some shareholders didn't claim it within 30 days. So, company transferred such amount to UDA within prescribed time. However, company did not publish statement containing required details within 90 days of transferring money to UDA making it liable u/s 124.

Punishment for Failure to Distribute Dividends within 30 days [Section 127]

- If company **fails to pay** declared dividend **or post dividend warrants within 30 days** of declaration:
 - Company: Simple interest **@18% p.a.** for period during which default continues [i.e. post 30 days].
 - Director who is knowingly a party to default: Imprisonment upto 2 years and Fine of ₹ 1,000 per day during which such default continues.

Note: In case of **Nidhi company**, if **dividend payable to a member is ₹ 100 or less**, it is sufficient if declaration of dividend is announced in **1 local language newspaper** & displayed on **notice board** of Nidhi for **atleast 3 months**.

Exemption from Punishment



Example

- Mr. X instruct company to pay dividend to his bank account but transaction fails due to incorrect details and company doesn't inform X about it. Hence, company shall be penalized u/s 127.
- H Ltd. declares dividend, including ₹ 1.2 lakh payable to A who has defaulted in call money of ₹ 1 lakh. Here, company can lawfully adjust dividend against call money & pay balance ₹ 20,000 to A.
- S Ltd. withheld ₹ 50,000 dividend due to court order on family dispute over succession. Hence, no offence is committed by company if payment of dividend is withheld due to operation of law.

Other Provisions related to Dividend [Section 8 and 123]

(1) Prohibition on Declaration of Dividend [Section 8 and 123(6)]



(2) Transfer to Reserves [Section 123(1)]

Transfer of profit to reserves [before declaration of dividend] is left to the **discretion of company**. It may also decide **not to transfer** any amount to reserves.

Investor Education and Protection Fund (IEPF) [Section 125]• **Amount credited and utilized from IEPF**

Credit to Fund	Utilization of Fund
<ul style="list-style-type: none"> ▪ Grants by CG (after appropriation by Parliament). ▪ Donations by CG, SG, any company or institution. ▪ UDA transferred to IEPF. ▪ Amount remaining unclaimed & unpaid for 7 years from date it became due (and interest thereon): <ul style="list-style-type: none"> ➤ Application money (received for allotment) due for refund ➤ Matured deposits with company (except banking company) ➤ Matured debentures ▪ Amount remaining unpaid & unclaimed for 7 years: <ul style="list-style-type: none"> ➤ Sale proceeds of fractional shares (arising by issue of bonus shares or merger & amalgamation), or ➤ Redemption amount of preference shares, or ➤ Shares whose dividend is not claimed/paid (& its benefits) ▪ Amount of disgorgement & disposal of security seized from person convicted for personation for acquisition of security. ▪ Amount in General Revenue Account of CG remaining unpaid/unclaimed as on commencement of Companies Act, 2013. ▪ Interest & other income from investment made from IEPF. ▪ Sum received by IEPF authority from source decided by CG. 	<ul style="list-style-type: none"> ▪ Refund of unclaimed dividend, matured deposit, matured debentures, application money due for refund & interest thereon. ▪ Promotion of investors' education, awareness & protection. ▪ Distribution of disgorged amount (as per court's order) to eligible & identified person who has suffered loss due to wrong action of a person. ▪ Reimbursement of legal expenses (if sanctioned by NCLT) of class action suits by member, debenture-holder or depositor. ▪ Other incidental purpose.

• **Authority for Administration of Fund**

- Authority shall **administer** fund and **maintain accounts & records** of IEPF in form prescribed after consultation with Comptroller and Auditor General of India (CAG).
- **Constitution of Authority**:
 - (i) **Secretary, MCA** [ex-officio Chairperson of Authority],
 - (ii) **Chief Executive Officer** (Convenor of authority), and
 - (iii) **6 or 7 members**.
- Accounts of Fund shall be **audited by CAG** (at such intervals as specified by him).
- Audited accounts along with audit report shall be **forwarded annually** by authority **to CG**.
- Authority shall prepare **annual report** of FY (giving account of its activities during FY) & **forward** copy **to CG** who shall **lay down annual report and audit report** before each **House of Parliament**.

ACCOUNTS OF COMPANIES

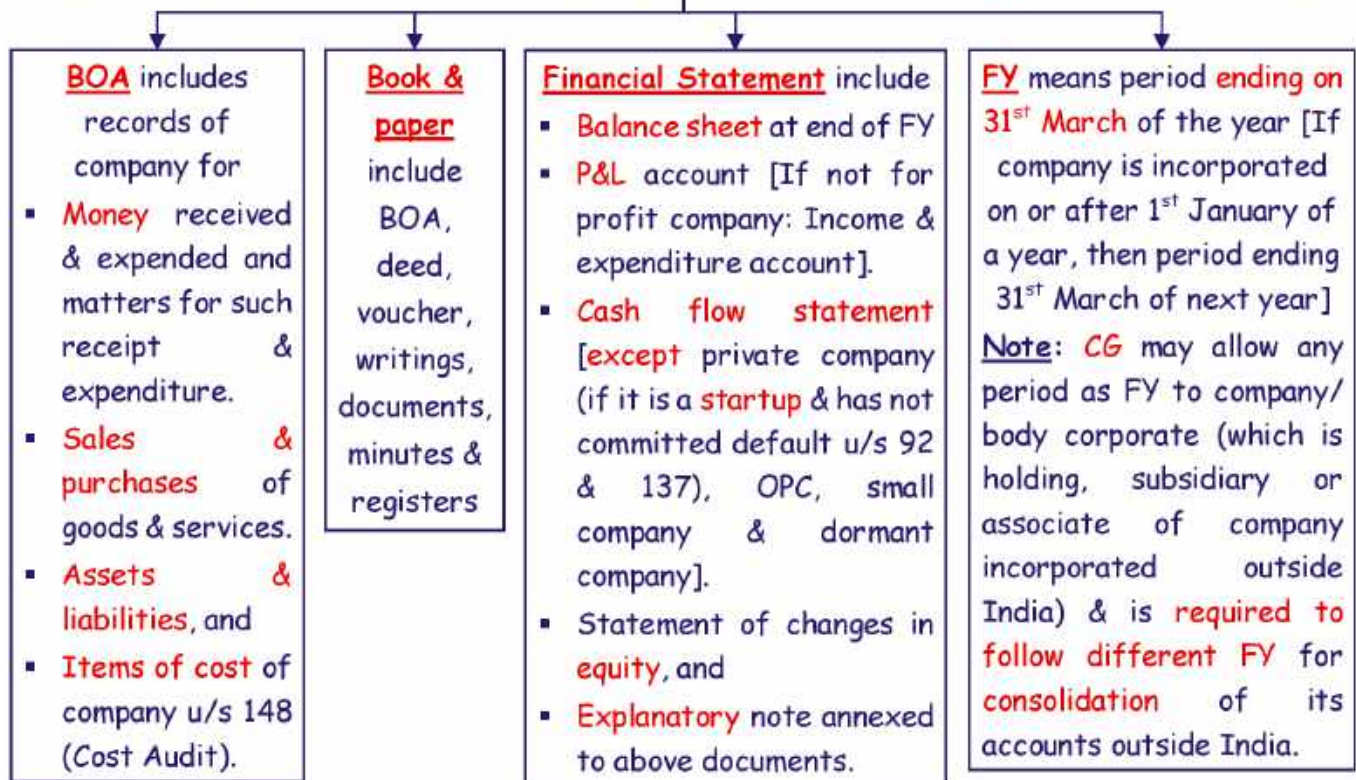


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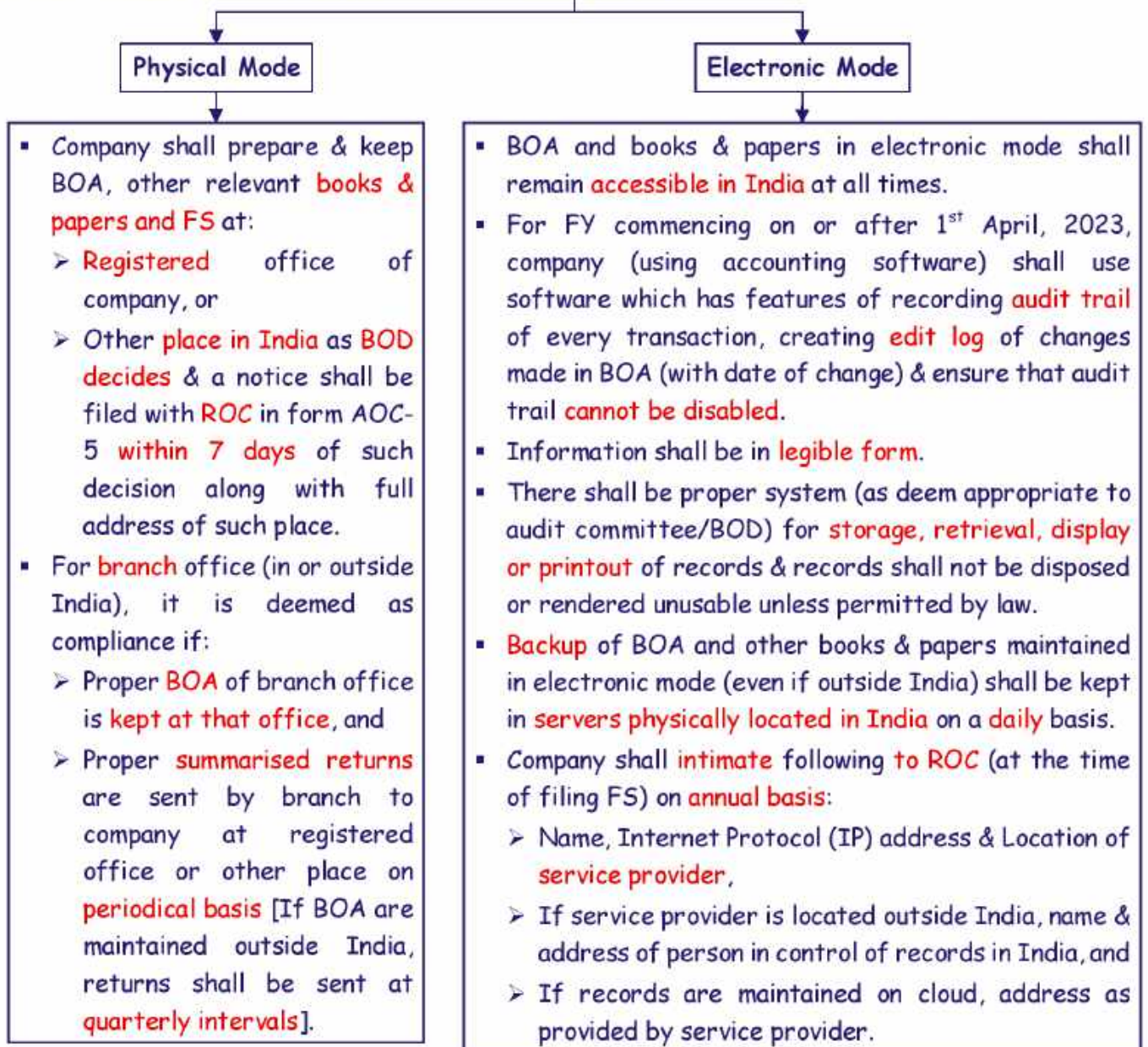
Books of Account, etc., to be kept by Company [Section 128]

- Company shall prepare **Books of Account** (BOA), other relevant **books & papers** and **FS** for every **FY**



- Such BOA shall:
 - Give a **true & fair view** of state of affairs of company & branch office,
 - **Explain transactions** effected at registered office & branches, and
 - Be kept on **accrual basis** and as per **double entry** system of accounting.

• Maintenance of Records in Physical or Electronic mode



• Director can himself (and not through his power of attorney, agent or representative) inspect BOA and other books & papers maintained at

- India: Can inspect during business hours.
- Outside India: Request company with details of financial information & period of information sought and company shall produce it within 15 days of request.

Note:

- Officers & employees of company shall give assistance to directors while making inspection.
- BOA of subsidiary can be inspected only if authorised by BR of holding company.

• Period for Preservation of Books

BOA (along with relevant vouchers) shall be preserved by company for not less than 8 years immediately preceding relevant FY except if:

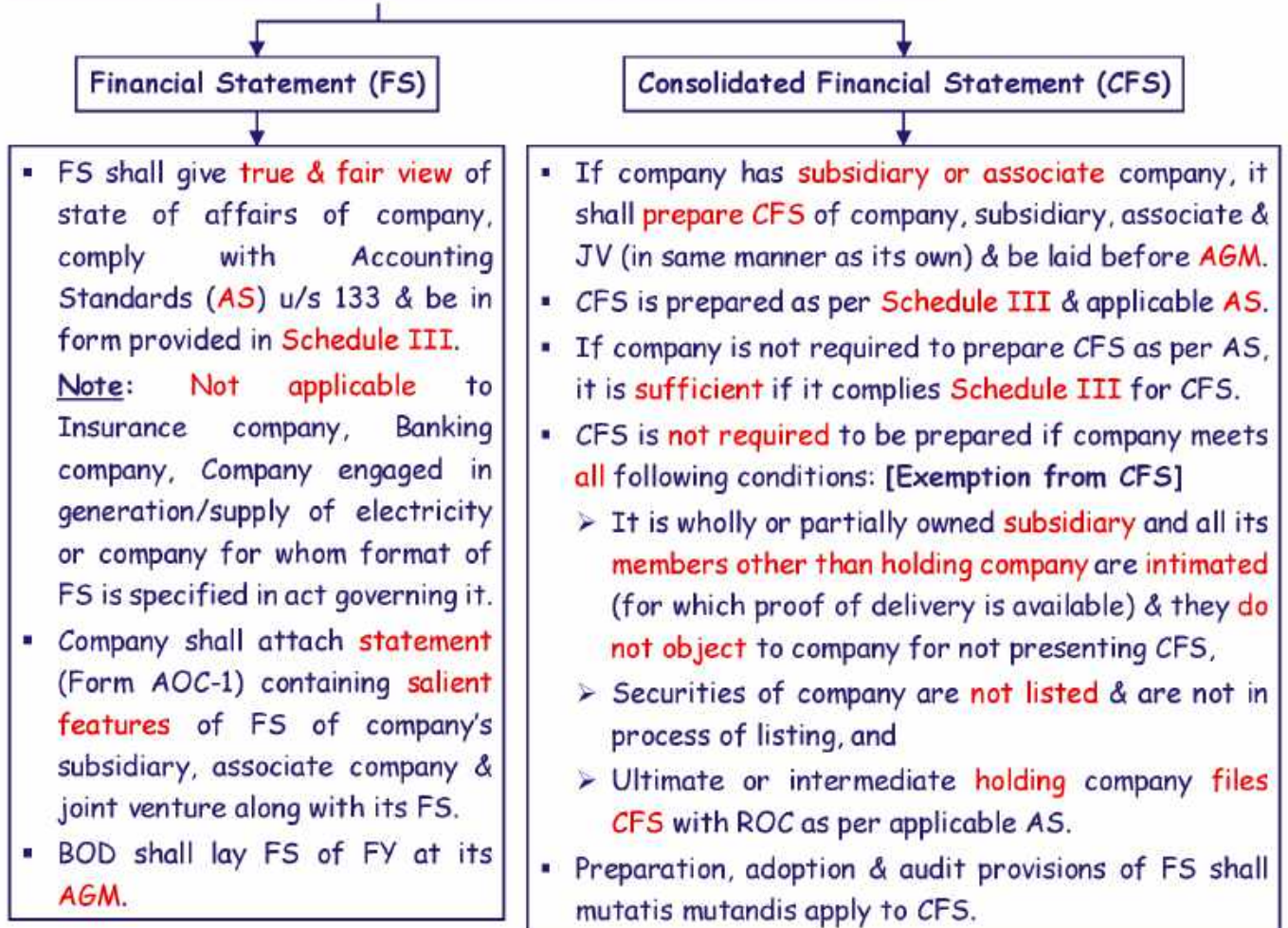
- Company incorporated **less than 8 years** before FY [BOA preserved for entire period before FY].
- **Investigation** is ordered on company [CG may direct BOA to be kept for more than 8 years].
- **Responsibility for Compliance and Punishment for Default**
 - Managing Director (MD), Whole Time Director (WTD) in charge of finance, Chief Financial Officer (CFO) or person charged by BOD shall be **responsible for compliance u/s 128**.
 - In case of **contravention**, above mentioned person shall be punishable with fine not less than ₹ 50,000 which is extendable upto ₹ 5 lakhs.

Example

B Ltd., having registered office in a remote area, wishes to maintain its BOA at its Mumbai office for convenience. BOD may do so by informing ROC within 7 days of such decision.

Financial Statement [Section 129]

- **Financial Statement (FS) and consolidated financial statement (CFS)**



Note: Schedule III is divided into 2 divisions: Division I (For FS of company which are required to comply with AS) and Division II (For FS of company which are required to comply Ind AS).

- If FS **do not comply with AS**, it shall **disclose** deviation from AS, reasons for deviation & financial effects from such deviation.

- If case of **contravention** of this section, **MD, WTD in charge of finance, CFO or person charged for compliance by BOD [in absence of any, all directors]** shall be punishable with imprisonment for term extendable upto 1 year or fine not less than ₹ 50,000 but extendable upto ₹ 5 lakhs, or both.

Periodical Financial Results [Section 129A]

CG may require prescribed **unlisted** companies to:



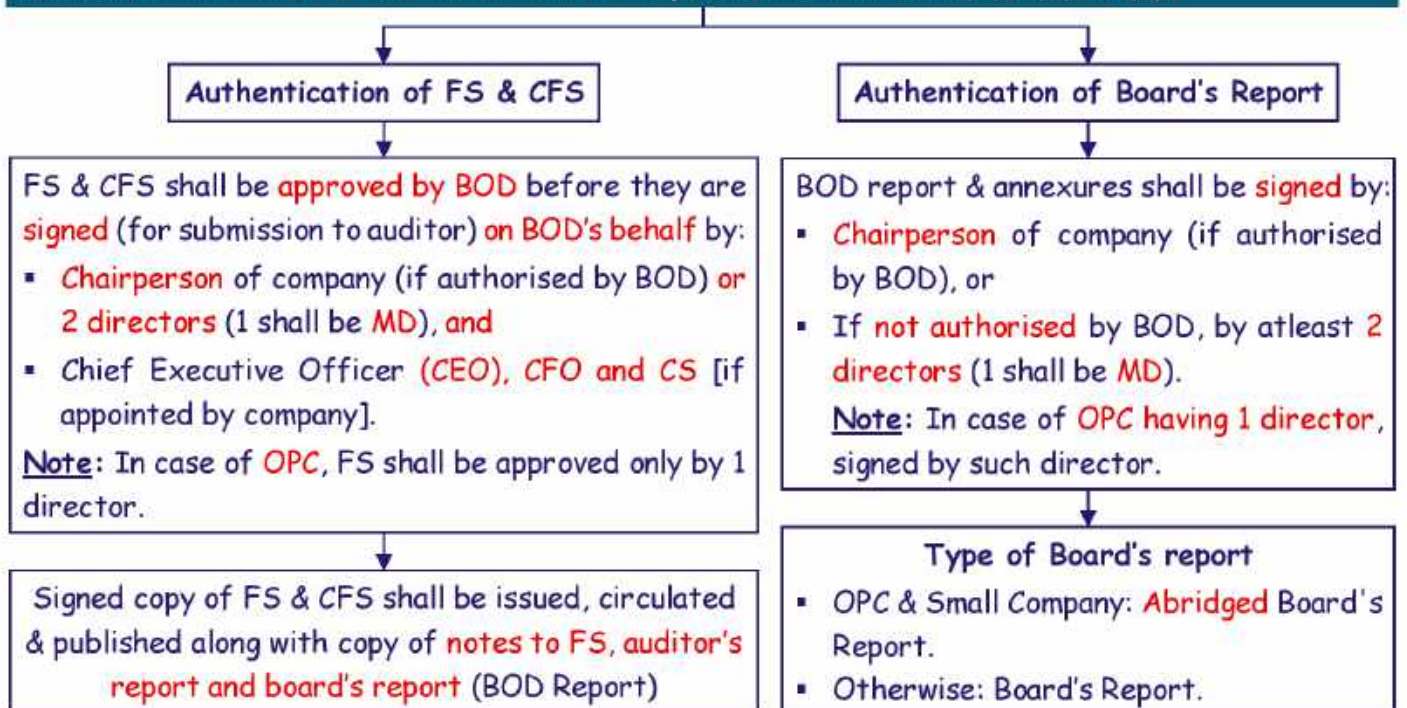
Content of Board's Report, Abridged Board's Report and Directors' Responsibility Statement [Section 134 (3), (3A), (4) & (5)]

BOD Report is prepared as per **standalone FS** and reports performance of subsidiary, associate & JV and it is annexed to FS of company.

Content to be included in BOD Report and Abridged BOD Report	<ul style="list-style-type: none"> ➤ Web address where annual return is placed, ➤ Number of BOD meetings, ➤ Directors' Responsibility Statement, ➤ Directors appointed or resigned during year, ➤ State of company's affairs, ➤ Financial summary or highlights, ➤ Material change affecting financial position of company (due to event that occurred between end of FY to which FS relate and date of report), ➤ Frauds reported by auditors (except those reportable to CG), ➤ Explanation/comment by BOD on qualification, reservation, adverse remark or disclaimer by auditor in his report or by CS in practice in secretarial audit report, ➤ Significant orders passed by regulators, courts or NCLT impacting going concern, ➤ Related Party Transactions.
Additional Content to be included in BOD Report	<ul style="list-style-type: none"> ➤ Statement indicating manner of evaluation of performance of BOD & committee [For listed company or public company having paid-up capital of ≥ ₹ 25 crores as at end of preceding FY]. Exception: Government company which has not committed default u/s 92 & 137. ➤ Statement of compliance with Internal Complaints Committee under Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, ➤ Amount BOD recommends as dividend, and ➤ Other matters as prescribed under Companies Act, 2013 and Rule 8 of Companies (Accounts) Rules, 2014 such as change in nature of business, details of deposits (including those not in compliance), applicability of cost records, companies which became/ceased as subsidiary, associate or JV during year, etc.

Directors' Responsibility Statement	<ul style="list-style-type: none"> ➤ Directors had prepared annual accounts on going concern basis, ➤ Applicable AS are followed for preparation of annual accounts (along with proper explanation of material departures), ➤ Directors had selected & applied accounting policies consistently and made estimates reasonable & prudent to give true & fair view of company, ➤ Directors took proper & sufficient care for maintenance of accounts, safeguarding assets and preventing & detecting fraud and other irregularities, ➤ For listed company, directors have laid down internal financial controls to be followed and such controls are adequate & operating effectively, and ➤ Directors had devised proper systems to ensure compliance with applicable laws and that such systems were adequate & operating effectively.
Punishment for default	<ul style="list-style-type: none"> ➤ Company: Penalty of ₹ 3 lakhs, and ➤ Officer in default: Penalty of ₹ 50,000.

Authentication of FS, CFS and Board's Report [Section 134 (1), (6) & (7)]



Note: Punishment for default

- Company: Penalty of ₹ 3 lakhs, and
- Officer in default: Penalty of ₹ 50,000.

Example

A Ltd. has 4 directors (W, X, Y, Z), a MD (Mr. D), and a CS (Mr. A). Hence, FS and BOD Report must be signed by MD, 1 director and CS. If MD or CS does not sign, authentication shall not be valid.

Right of Members to Copies of Audited Financial Statement [Section 136]

• Serving of documents to entitled persons

- Copy of **FS, CFS, auditor's report and document** required to be attached to FS to be laid down at general meeting shall be sent atleast **21 days** before meeting [14 days in case of Section 8 company] to every **member** of company, **trustee** of debenture-holder & all other **entitled persons**.

Note: Company shall provide copy of separate FS of subsidiary (audited or unaudited) to member who asks for it.

- Documents can be sent **less than 21 days** before meeting if agreed by:

Company having share capital: Majority number of members holding atleast **95%** of paid-up share capital (& voting power) of company

or

Company having no share capital: Members holding atleast **95% voting power** at meeting

- **Listed Company:** Deemed complied with above requirements if atleast **21 days** before meeting:

Copy of documents are available for **inspection** at registered office during working hours

and

Statement of **salient features** of documents in Form AOC-3 or copy of documents is **sent to members & trustees** (unless shareholder ask for full FS)

- **Nidhi Company:** Deemed complied with **notice of AGM** & above requirements even if **notice is not served to members** holding shares (individually or jointly) upto **lower** of face value of **₹ 1,000** or **1%** of paid-up share capital but:

Intimation is given by public notice in **newspaper** (circulated in district where registered office is situated) stating date, time & venue of AGM

and

FS (with enclosure) can be **inspected** at registered office and are affixed on **notice board** of company

• Manner of sending FS to members of company

- **Listed Company**, and
- **Public company** having **net worth > ₹ 1 crore** and **turnover > ₹ 10 crore**.

- **Electronic Mode** to members having shares in:
 - Dematerialized format whose email is registered with depository.
 - Not in dematerialized format but consented to receive by electronic mode.
- Other cases: Dispatch of **physical** copies by recognised mode of delivery u/s 20.

Otherwise

Sent as per section 20

• Accounts to be placed on Website

Listed company shall place its FS & CFS, separate audited accounts of all subsidiary and other documents required to be attached to them on its **website**.

Note: Accounts of **subsidiary incorporated outside India** (i.e. foreign subsidiary) which is to be placed on website shall be as per Companies Act [If not possible, statement indicating reasons for **deviation** may be placed with accounts]. Also:

- If foreign subsidiary is required to prepare **CFS**, such **CFS** shall be placed on website.
- If foreign subsidiary is **not required** to get **FS audited**, **unaudited FS** shall be placed on website [If FS is in language other than English, **translated copy of FS in English** shall also be placed].

• Inspection

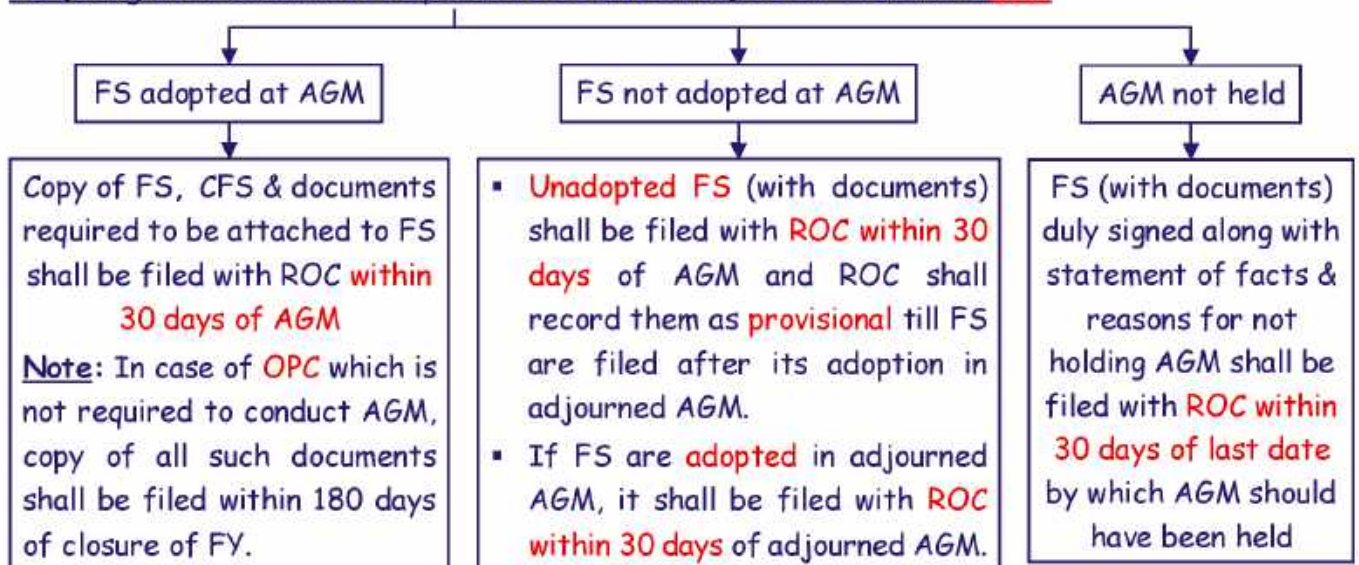
Company shall allow every member or trustee of debenture-holder to **inspect** above documents at its registered office during business hours.

• Punishment for default

- Company: Penalty of ₹ 25,000, and
- Officer in default: Penalty of ₹ 5,000.

Copy of Financial Statement to be Filed with Registrar [Section 137]

• FS (along with documents required to be attached) to be filed with **ROC**



Example

S Ltd. held AGM but did not adopt accounts in such AGM and adopted accounts in adjourned AGM & is filed with ROC within 30 days of such adjourned AGM, but as company failed to file unadopted FS within 30 days of original AGM, company has violated Section 137.

- Company (along with FS) shall attach accounts of its **subsidiary** which is **incorporated outside India** and does **not** have established **place of business in India**.
 - **Format** of foreign subsidiary accounts shall be as per Companies Act [If not possible, statement indicating reasons for **deviation** may be placed with accounts].
 - If foreign subsidiary is **not** required to get **FS audited**, **unaudited FS** shall be filed along with declaration to this effect and get it aligned as per company's accounting policies [But if FS is in language other than English, **translated copy of FS in English** shall also be filed].

• Form of filing FS with ROC

Company	FS	CFS
NBFC required to comply with Ind AS	Form AOC-4 NBFC	Form AOC-4 CFS NBFC
Other company	Form AOC-4	Form AOC-4 CFS
Companies required to file FS & other documents in e-form AOC-4 XBRL (Extensible Business Reporting Language) [Once company starts reporting in XBRL, it shall continue to report in XBRL in succeeding years also, even if criteria is not met in such years]	<ul style="list-style-type: none"> ▪ Listed Company & their Indian subsidiaries, ▪ Companies having paid up capital of ≥ ₹ 5 crores, ▪ Companies having turnover of ≥ ₹ 100 crores, & ▪ Companies required to prepare FS as per Ind AS. <p>Note: NBFC, Housing Finance Company (HFC) and companies engaged in banking & insurance business are exempted from XBRL.</p>	
Company on which Corporate Social Responsibility (CSR) is applicable	Furnish report on CSR in Form CSR-2 to ROC for last FY as addendum to above forms	

• Punishment for default

Liability	Penalty
Company	Penalty of ₹ 10,000 & in case of continuing failure, further penalty of ₹ 100 per day during which such failure continues [subject to maximum ₹ 2 lakhs]
<ul style="list-style-type: none"> ▪ MD & CFO of company, or ▪ If no MD & CFO, any director held responsible by BOD to comply, or ▪ If no such director, all directors 	Penalty of ₹ 10,000 & in case of continuing failure, further penalty of ₹ 100 per day after first during which such failure continues [subject to maximum ₹ 50,000]

Re-opening of Accounts on Court's or Tribunal's Orders [Section 130]

- Company shall not **re-open BOA & recast FS** unless application is made by **CG, Income tax authority, SEBI, statutory regulatory body or any concerned person** and order is made by **court or NCLT** that:
 - Such earlier accounts were prepared in **fraudulent** manner, or
 - Affairs of company were **mismanaged** (creating doubt on **reliability of FS**).

Note: Court/NCLT shall give **notice** to **CG, Income tax authority, SEBI, statutory regulatory body & concerned person** and take **representation** made by them into consideration before passing order.
- Order for reopening of BOA can only relate to **8 FYs preceding current FY** [But if **CG** issued direction to keep BOA for longer than 8 years, BOA of such **longer period** can be re-opened].
- Such revised or re-casted accounts shall be **final**.

Example

In 2024-25, SEBI filed application with NCLT to reopen C Ltd.'s accounts of FY 2012-13, but since it falls beyond 8 years, NCLT cannot allow such reopening (even if fraud or mismanagement is suspected).

Voluntary Revision of Financial Statements or Board's Report [Section 131]

- Procedure for revision of Financial Statements or BOD Report**

If it appears to **directors** that **FS or BOD report** of any of **preceding 3 FYs** does not comply with section 129 or 134 respectively



Company may **voluntarily** make application to **NCLT** in Form NCLT-1 within **14 days of decision by BOD** to prepare revised FS or BOD Report of any of **preceding 3 FYs**

Note:

- Company shall advertise such application **atleast 14 days** before NCLT hearing.
- Detailed **reasons** for revision shall be **disclosed in BOD report** of FY in which revision is made.



- NCLT shall take into consideration **representations** made by **CG**, Income tax authority & auditor before passing any order.
- If approved, certified copy of **NCLT order** shall be filed with **ROC within 30 days** of its receipt.



- On receipt of NCLT approval, general meeting may be called & **notice** of such meeting (along with reasons for change) may be published in **english & vernacular language newspaper**.
- Revised FS and statement of directors & auditors shall be approved in general meeting.
- On receipt of such approval, revised FS (along with auditor statement) or BOD report shall be filed with **ROC within 30 days** of approval.
- Such revised FS or BOD report shall **not be prepared or filed more than once in a FY**.

- If **previous FS/BOD report** are sent to members, ROC or laid in AGM, revision shall be confined to:
 - **Correction** of such part of FS or BOD report **which do not comply** with section 129 or 134, and
 - Making necessary **consequential alternation**.
- **CG** may make rules for revised FS or BOD report such as:
 - Presentation of FS or BOD report, i.e. replaced completely or supplemented by a document indicating corrections.
 - Functions of auditor in case of revised FS or BOD report.
 - Steps required to be taken by directors.

Central Government to prescribe Accounting Standards [Section 133]

- **CG** may prescribe Accounting Standards (AS) **recommended by ICAI** in consultation with & after examination of recommendation by **National Financial Reporting Authority (NFRA)**.
- Until NFRA was constituted, **CG** may prescribe AS recommended by ICAI in consultation with & after examination of recommendation by **National Advisory Committee on Accounting Standards**.

National Financial Reporting Authority (NFRA) [Section 132]

CG may constitute NFRA to provide for matters relating to accounting & auditing standards.

Applicability of Section 132	<ul style="list-style-type: none"> Companies whose securities are listed in or outside India, Unlisted public company having (as at end of preceding FY): <ul style="list-style-type: none"> ➤ Paid-up capital \geq ₹ 500 crores, or ➤ Turnover \geq ₹ 1,000 crores, or ➤ Outstanding loans, debentures & deposits \geq ₹ 500 crores Insurance company, banking company, electricity company or special act company, Person (on reference made by CG in public interest), and Body corporate incorporated outside India (which is subsidiary/associate of Indian company on which NFRA is applicable) whose income or net worth > 20% of consolidated income or net worth of company. <p>Note: NFRA shall continue to be applicable to company or body corporate for 3 years after it ceases to fall in applicability criteria.</p>
Composition of NFRA	<ul style="list-style-type: none"> CG shall appoint Chairperson & other members \leq 15 (part-time or full time). Chairperson & full-time members shall not be associated with any audit firm (during appointment & 2 years after ceasing to hold appointment). Chairperson & members shall make a declaration to CG for no conflict of interest or lack of independence in their appointment. Executive body consisting chairperson & full-time members is responsible for efficient discharge of functions of NFRA.
Part-time members of NFRA	<ul style="list-style-type: none"> Ex-officio member of MCA (not below rank of Joint Secretary), Ex-officio CAG member (not below Accountant General or Principal Director rank), Ex-officio member of RBI and SEBI (not below rank of Executive Director) President of ICAI (ex-officio), Chairperson of Accounting Standards Board, ICAI (ex-officio), Chairperson of Auditing and Assurance Standards Board, ICAI (ex-officio), and 2 experts from field of accountancy, auditing, finance or law.
Functions and Duties of NFRA	<p>NFRA protects interests of public, investors, creditors & others by establishing accounting & auditing standards and effective oversight of functions performed.</p> <ul style="list-style-type: none"> Maintain details of auditors in company & body corporate governed by NFRA. Recommend AS and auditing standards (SA) for approval by CG. Monitor & enforce compliance with AS & SA (May direct for further information). Promote awareness of compliance of AS and SA. Oversee quality of service of professionals for compliance with standards and suggest measures for improvement in quality. Co-operate with national & international organisation of independent audit regulators to establish & oversee adherence to AS and SA. Perform such other functions & duties as necessary.
Power to	NFRA have power to investigate matters of professional or other misconduct of member or firm of CA (either suo moto or on reference by CG).

Investigate	Note: No institute or body shall initiate or continue proceedings for matters where NFRA has initiated investigation.
Powers vested in civil court	NFRA shall have same powers as vested in civil court while trying suit: <ul style="list-style-type: none"> Discovery & production of BOA & documents (at place & time specified by NFRA), Summoning & enforcing attendance of persons and examining them on oath, Inspection of books, registers and documents of person summoned, and Issuing commissions for examination of witnesses or documents.
If misconduct is proved	If misconduct is proved, NFRA have power to order for: <ul style="list-style-type: none"> Imposing penalty: <ul style="list-style-type: none"> Individual: Penalty between ₹ 1 lakh and 5 times of fees received. Firms: Penalty between ₹ 5 lakh and 10 times of fees received. Debarring member or firm to be appointed as auditor, internal auditor or performing valuation for 6 months to 10 years. Note: Person aggrieved by NFRA order may appeal to Appellate Tribunal.
Other provisions	<ul style="list-style-type: none"> NFRA shall maintain books in manner as CG prescribe (in consultation with CAG). Accounts shall be audited by CAG at intervals specified by him. Accounts along with audit report shall be forwarded annually by NFRA to CG. NFRA shall prepare annual report of activities during the FY & forward it to CG who shall lay annual report & audit report before each House of Parliament.
Punishment for Default	If company, officer, auditor or any person contravenes NFRA Rules, then company, officer in default, auditor or person shall be punishable u/s 450.

Corporate Social Responsibility [Section 135]

(1) Applicability of CSR

Company (including foreign company having branch in India) shall constitute CSR Committee if it meets any of the following criteria during immediately preceding FY:

- Net worth of ₹ 500 crores or more, or
- Turnover of ₹ 1,000 crores or more, or
- Net profit (before tax) of ₹ 5 crores or more.

Note:

- (i) Net worth means aggregate of paid-up share capital, reserves (created out of profits) & securities premium after reducing accumulated losses, deferred expenditure & miscellaneous expenditure not written off as per audited balance sheet [but does not include reserves created from revaluation, write-back of depreciation and amalgamation].
- (ii) Net profit is calculated as per Section 198, but shall not include:
 - Profit from overseas branch, and
 - Dividend received from Indian company (on which CSR is applicable).
- (iii) If amount to be spent on CSR ≤ ₹ 50 lakhs, CSR Committee is not required [and functions

of committee shall be discharged by BOD].

(iv) Company having amount in Unspent CSR Account shall constitute CSR Committee.

(2) Amount of CSR

CSR spend	<p>BOD shall ensure that company spends at least 2% of average net profits of preceding 3 FYs or lesser period (if company has not completed 3 FYs).</p> <p>Note:</p> <ul style="list-style-type: none"> ▪ Surplus from CSR activities [Example: Nominal fees charged by Hospital which was opened under CSR activity] is not treated as profit and shall be used for same project or shall be transferred (within 6 months from expiry of FY) to Unspent CSR Account or fund specified in Schedule VII. ▪ Expense incurred by foreign holding company for CSR in India qualifies as CSR of Indian subsidiary (if routed through Indian subsidiary).
Excess Spend	<p>If company spends in excess of requirement (excess does not include surplus), it can set off excess against immediately succeeding 3 FYs if BOD resolution is passed.</p>
Fails to spend CSR	<p>BOD shall specify reasons for not spending minimum CSR in BOD report</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <p>If amount remaining unspent relates to ongoing project, it is transferred to Unspent CSR Account within 30 days of end of FY</p> <p>Sum transferred to Unspent CSR Account shall be spent as per CSR Policy within 3 FYs of transfer</p> <p>If company fails to spend amount in Unspent CSR Account within 3 FYs, company shall transfer it to fund specified in Schedule VII within 30 days of completion of 3rd FY</p> </div> <div style="width: 45%;"> <p>If unspent amount relates to project other than ongoing project, it is transferred (within 6 months of expiry of FY) to fund specified in Schedule VII</p> </div> </div> <p>Note: Ongoing Project means project (not exceeding 3 years excluding FY of commencement) for CSR obligation.</p>
CSR on Capital asset	<p>CSR may be spent for creation/acquisition of capital asset, which shall be held by section 8 company, Registered Public Trust or Society (having charitable objects & CSR Registration Number), beneficiaries of CSR project or public authority.</p>
Admin expense	<p>BOD ensure that administrative overhead shall not exceed 5% of CSR expense of FY.</p> <p>Note: Administrative overhead does not include expenses incurred directly for designing, implementation, monitoring & evaluation of CSR project.</p>
Penal provision	<p>If company defaults in compliance:</p> <ul style="list-style-type: none"> ▪ Company: Penalty of lower of "twice the amount required to be transferred to fund specified in Schedule VII/Unspent CSR Account" or "₹ 1 crore", and ▪ Officer in default: Penalty of lower of "1/10th of amount required to be transferred to fund specified in Schedule VII/Unspent CSR A/c" or "₹ 2 lakhs".

Example

S Ltd. incorporated on 01.04.19. Its net profit before tax for FY 19-20 and 20-21 was ₹5 crore and ₹7 crore. Hence, company must spend 2% of average net profits of the last 2 years (since incorporated for 2 years only), i.e., 2% of ₹ 6 crores = ₹ 12 lakhs, on CSR activities.

(3) CSR Committee

Composition of CSR Committee	<p>3 or more directors [1 of whom shall be independent director].</p> <p>Note:</p> <ul style="list-style-type: none"> ➤ If company is not required to appoint independent director, committee shall have 2 or more directors (without any independent director). ➤ Private company having 2 directors, its committee shall have such 2 directors. ➤ In case of foreign company, CSR committee shall consist of 2 persons [1 shall be person authorised to accept notice on behalf of company & other shall be nominated by foreign company].
Duties of CSR Committee	<ul style="list-style-type: none"> ▪ Formulate & recommend CSR Policy (indicating activities to be undertaken in areas specified in Schedule VII) to BOD, ▪ Recommend amount to be incurred on CSR, and ▪ Monitor CSR policy of company.
Annual Action Plan	<p>CSR Committee shall recommend annual action plan (as per CSR policy) to BOD, which shall include:</p> <ul style="list-style-type: none"> ▪ List of projects approved to be undertaken in areas specified in Schedule VII, ▪ Manner of execution of projects (itself or through section 8 company, etc.), ▪ Utilisation of funds & implementation schedules for projects, ▪ Monitoring & reporting mechanism for projects, and ▪ Details of need & impact assessment for projects. <p>Note: BOD may alter plan at any time (as per recommendations of Committee).</p>
Duty of BOD	<p>After considering recommendations of CSR Committee, BOD shall approve CSR policy, disclose it in BOD report and place it (along with composition of committee & approved project) on company's website.</p>

(4) Activities of CSR

- **Schedule VII** includes activities like promoting gender equality, sports, employment, health, education, Har Ghar Tiranga Campaign; eradicating hunger, poverty; contribution to university, Swach Bharat Kosh, PM National Relief Fund, PM CARES Fund or fund setup by CG; Slum area development; Rural development; Disaster Management; Benefit of armed force veteran, etc.
- CSR shall **not include** following:
 - Activity undertaken in pursuance of **normal course of business**,
 - Activity undertaken by company **outside India** (except training of Indian sports personnel representing State or Union territory at national level or India at international level),
 - Contribution to **political party** (directly or indirectly),
 - Activities benefitting **employees** of company,

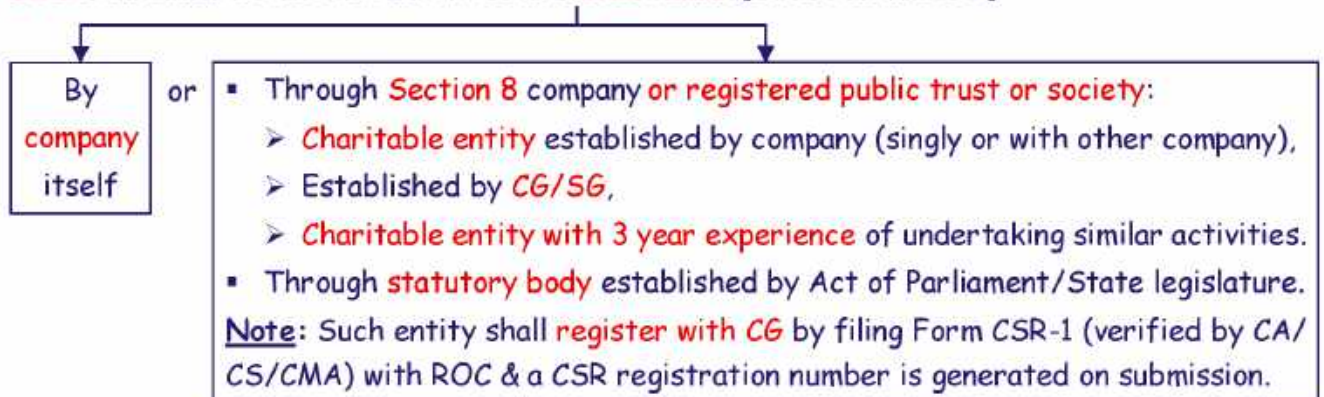
- Activities supported on **sponsorship** basis to derive **marketing** of its products or services,
- Activities for fulfilment of other **statutory obligations**.
- Company shall give **preference to local area** where it operates for spending CSR.

Example

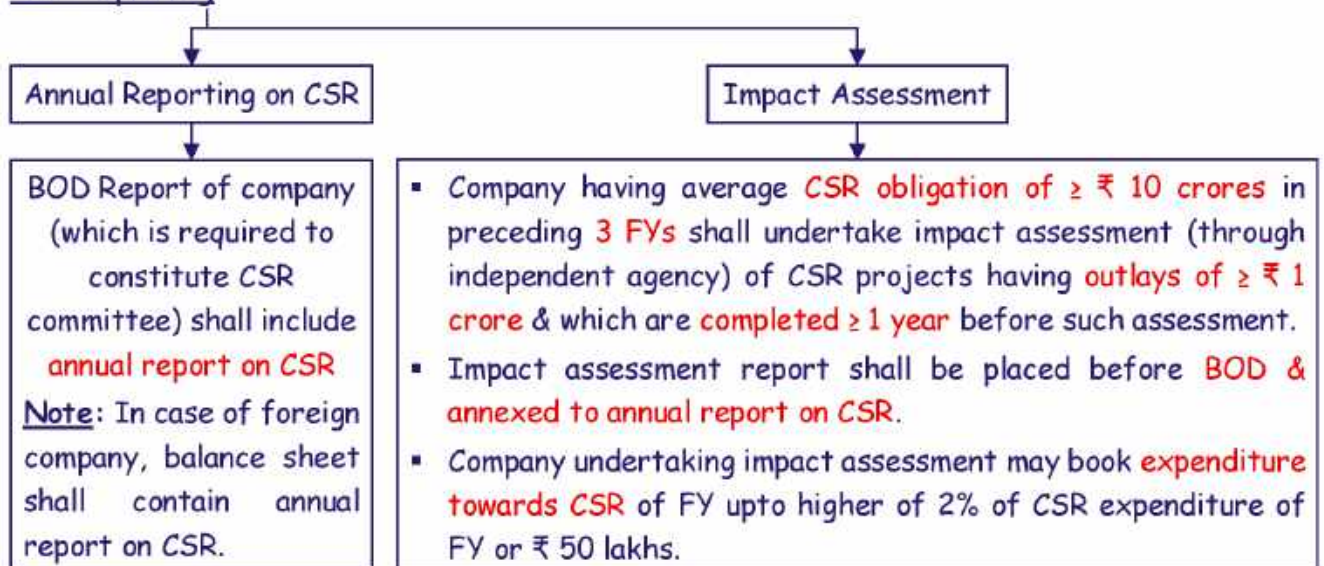
A Ltd. sponsors school fees of employees' children as part of its CSR welfare initiative. But since activity benefits its employees, it does not qualify as CSR.

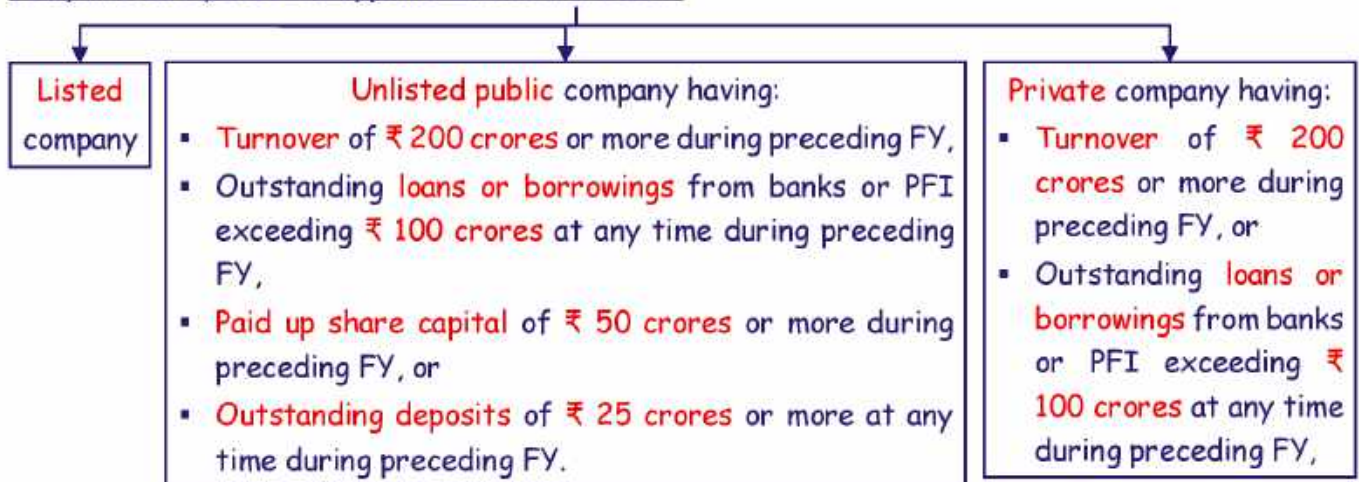
(5) CSR Implementation

BOD shall ensure that CSR activities are **undertaken** [Onus lies on BOD]

**Note:**

- (i) Company may **collaborate** with other companies for undertaking CSR activity [provided CSR committee of each company is in position to **report separately** on projects/programmes].
- (ii) CSR activities should be undertaken in project or programme mode [One-off events like marathon, charitable contribution, etc. do **not qualify as CSR**].
- (iii) Company may engage **international organisation** only for designing, monitoring & evaluation of CSR projects/programmes as per CSR policy and capacity building of own personnel for CSR.

(6) CSR Reporting

Internal Audit [Section 138]• Companies required to appoint Internal Auditor• Qualifications of Internal Auditor

Internal auditor shall either be a CA, CMA or such professional (whether engaged in practice or not) as decided by BOD. Also, Internal auditor may or may not be an employee of company.

• Other Provisions

- Internal auditor may be either an individual, partnership firm or body corporate.
- Audit Committee or BOD (in consultation with Internal Auditor) shall formulate scope, functioning, periodicity and methodology of conducting internal audit.

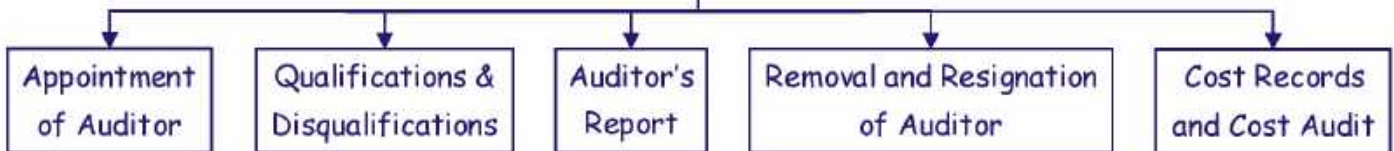
Example

P Pvt. Ltd. had outstanding loan of ₹ 75 crores at end of last FY out of total ₹ 110 crores loan availed during last FY. As it crossed ₹100 crore limit at any time during last FY, it shall appoint internal auditor.

AUDIT AND AUDITORS



Topics Covered



Eligibility, Qualifications and Disqualifications of Auditors [Section 141]

(1) Qualifications or Eligibility of Auditor [i.e. Who can be an Auditor?]



(2) Disqualifications of Auditor [Section 141(3)]

- Body Corporate [other than limited liability partnership (LLP)].
 - **Officer or employee** of company [or **partner or employee of officer/employee** of company].
 - Person whose **relative is director or KMP**.
 - If person **himself**, his **relative** or his **partner** [in aggregate]
 - Holds **security or interest** in Company, Associate, Subsidiary, Holding or Any subsidiary of holding company (CASHA).
- Note:
- (i) All **relatives** of person together may hold security or interest in such companies of **face value not exceeding ₹ 1 lakh**.
 - (ii) If relative acquires security exceeding ₹ 1 lakh after appointment as auditor, **corrective action** shall be taken by auditor **within 60 days** of acquisition.
 - **Indebted** in excess of **₹ 5 lakhs** to CASHA.
 - Give **guarantee/security** for indebtedness of third person in excess of **₹ 1 lakh** to CASHA.
- Person/firm has **business relationship** with CASHA.
- Note: Business Relationship means **transaction for commercial purpose except:**
- Transactions in nature of **professional services** given by auditor.
 - Transactions in **ordinary course** of business of company at **arm's length price**.
- Person/partner of firm who is auditor (as on date of appointment) in **more than 20 companies**.

Note:

- Appointment as auditor in **private company having paid-up share capital < ₹ 100 crores** (& not defaulted u/s 92 & 137), dormant company, OPC and small company shall **not be considered** within limit of 20 companies.
- In case of firm, limit of 20 audits is **per person** but if a person is partner in multiple firms, all such firms in which he is a partner will together be entitled to 20 audits on his account.
- Person who is in **full time employment** elsewhere.
- Person is **convicted by court** for offence involving fraud and **10 years** has not elapsed from such conviction.
- Person renders **service u/s 144** (directly or indirectly) to company or its holding or subsidiary.

(3) Vacation of Office by Auditor

If auditor incurs any **disqualification after his appointment**, he shall vacate his office as auditor and such vacation shall be deemed as **casual vacancy**.

Example

- (i) ABC & Co. have Mr. A, B and C as partners, who are auditors in 4, 6, & 10 companies respectively. What is maximum number of audits ABC & Co. and Mr. A, B and C individually can accept?
- (ii) M Ltd. is appointing new auditor Mr. X but Mr. Y (his partner) has loan of ₹4 Lakh from subsidiary of M Ltd. & X's relative owes ₹2 Lakhs to associate of M Ltd. Can Mr. X be appointed as auditor?

Solution

- (i) As per Section 141(3), a CA cannot be appointed as auditor in more than 20 companies.
 → Total limit for firm = $3 \times 20 = 60$ → Audits already held = $4 + 6 + 10 = 20$
 Hence, ABC & Co. can accept 40 more audits and Mr. A: 16 audits, B: 14 audits & C: 10 audits.
- (ii) A person is disqualified to be appointed as auditor if he, his relative or partner is indebted to CASHA for more than ₹5 Lakhs.
 Here, Mr. X's partner owes ₹4 Lakhs to subsidiary & relative owes ₹2 Lakhs to associate of M Ltd. which totals to ₹6 Lakhs. Hence, Mr. X is disqualified as auditor of M Ltd.

Auditor not to Render Certain Services [Section 144]

Auditor shall provide services to company which are **approved by BOD or audit committee** but it shall **not** include following services (directly or indirectly) to **company or its holding or subsidiary company**:

(i) Investment banking services	(v) Investment advisory services
(ii) Actuarial services	(vi) Rendering of outsourced financial services
(iii) Design and implementation of financial information system	(vii) Internal audit
	(viii) Accounting and book keeping services
(iv) Management services	(ix) Other prescribed services

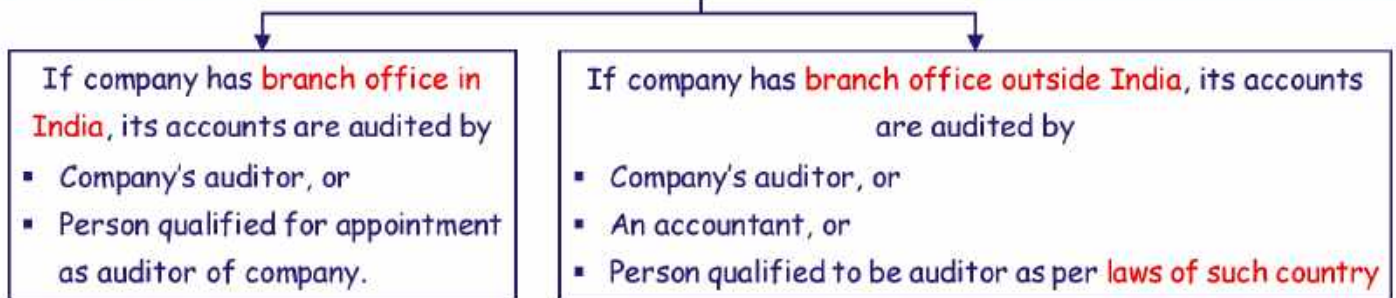
Note: Directly or indirectly includes [i.e. following person can also not render above services]:

- If auditor is individual: Himself or through his relative or person connected with him or through

entity in which he has significant influence, or whose name, trademark or brand is used by individual.

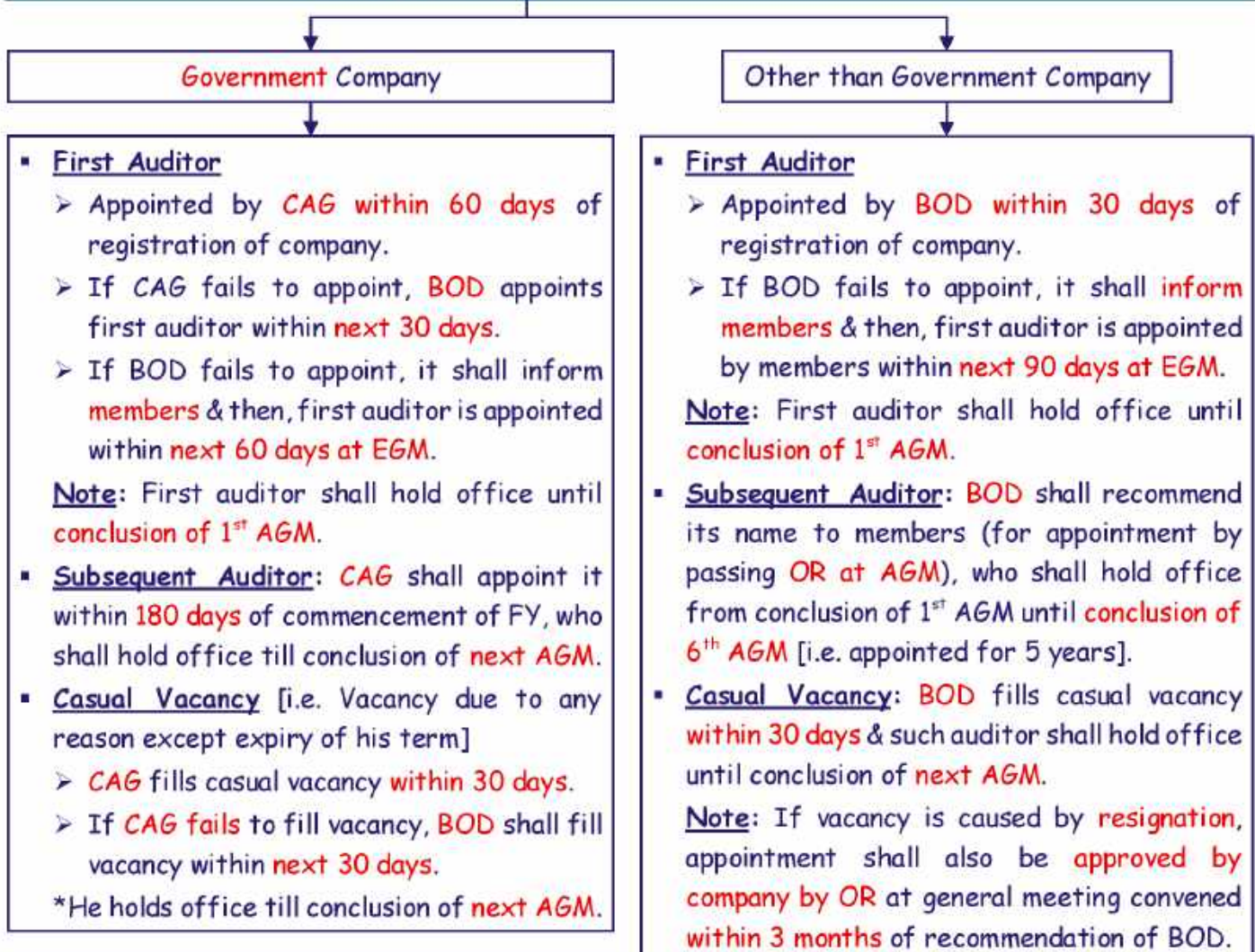
- If auditor is audit firm: Itself or through its partners or its parent, subsidiary or associate entity or other entity in which firm or its partner has significant influence, or whose name, trademark or brand is used by firm or its partner.

Audit of Accounts of Branch Office of Company [Section 143]



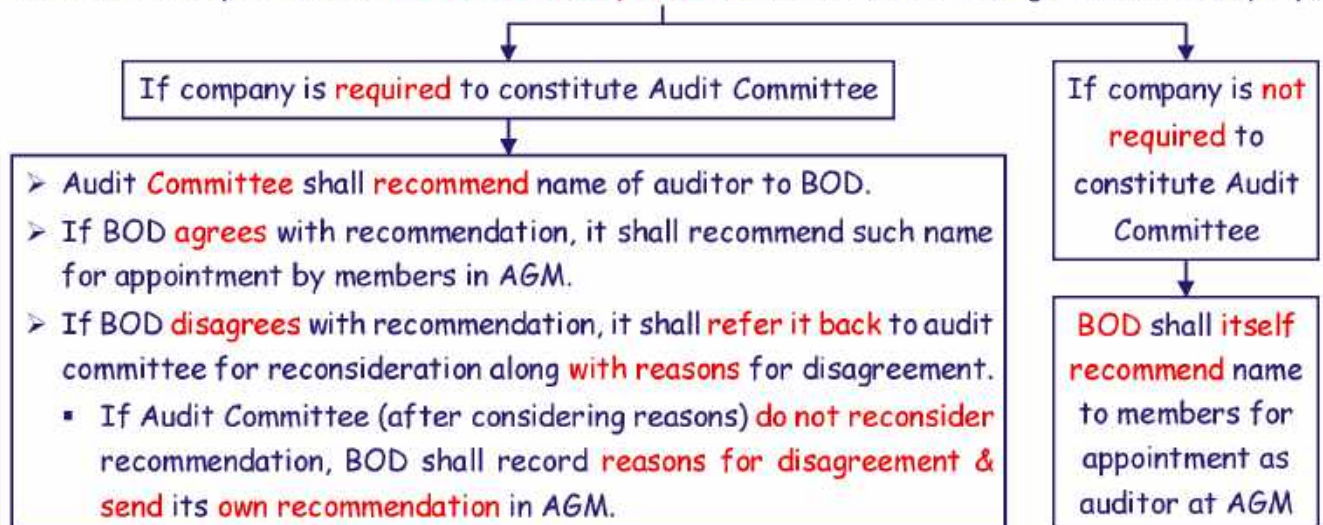
Note: Branch auditor shall **submit his report** to company's auditor.

Appointment of Auditors [Section 139]



Note:

- (i) **Audit Committee or BOD** (if Audit Committee is not required to be constituted) shall consider:
- Qualifications & experience,
 - Professional matters of conduct of proposed auditor, and
 - If such proposed auditor is commensurate with size & requirements of company.
- (ii) Name of subsequent auditor **recommended by BOD** to member [other than government company]



(iii) **Companies required to constitute audit committee: [Section 177]**

- **Listed** public company and
 - **Unlisted** Public company having (as on date of last audited FS):
 - ✓ Paid up capital of ≥ ₹ 10 crores, or
 - ✓ Turnover of ≥ ₹ 100 crores, or
 - ✓ Aggregate outstanding loan, borrowing, debenture & deposit > ₹ 50 crores.
 - *A company is **exempted** from constituting committee, if it was earlier required to constitute committee but **ceases** to fulfil above **conditions for 3 consecutive years**.
- (iv) If company is required to constitute Audit Committee, all appointments (including casual vacancy) shall be made after taking into account **recommendations of committee**.
- (v) If **Audit committee is not required** but it is constituted voluntarily, then committee shall recommend name in place of incumbent (outgoing) auditor to BOD but **BOD may or may not consider** such recommendation.
- (vi) **Provisions required to be considered before Appointment of Auditor**
- Before appointment of auditor, **written consent** shall be obtained from him.
 - **Certificate** shall also be obtained from auditor stating that:
 - It is **eligible** for appointment as auditor & is **not disqualified**,
 - Appointment is as per **term** provided under Act,
 - Appointment is within **limits** laid down,
 - List of **proceedings** against auditor or partner of audit firm for professional matters of

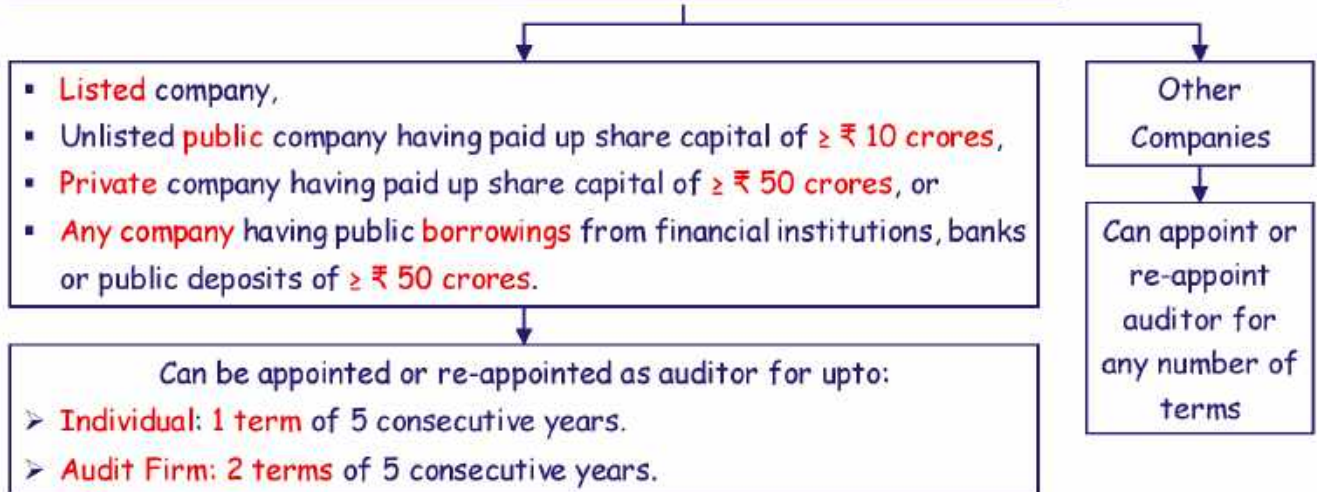
conduct is **disclosed** in certificate and is true & correct, and

- Indicate if auditor **satisfies** criteria **u/s 141**.

(vii) Company shall **inform auditor** about its appointment and also file notice of appointment in Form ADT-1 with **ROC within 15 days** of meeting where such auditor is appointed.

Term, Cooling Period, Rotation and Remuneration of Auditors [Section 139 and 142]

(1) Term of Auditor [i.e. Period for which individual or firm can hold office]



Note: Period as **first auditor is not to be considered** while his appointment as **subsequent auditor**.

Example

M Ltd. (listed company) appoint X as its first auditor, who held office till conclusion of 1st AGM & then, at such AGM, X was re-appointed as auditor till conclusion of 6th AGM. This is valid as period of appointment as first auditor is not considered for appointment as subsequent auditor.

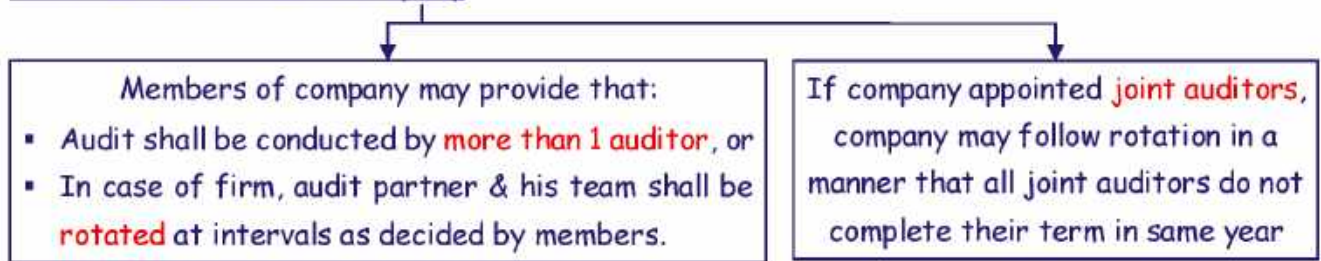
(2) Cooling Period

Individual or audit firm which has completed their term as auditor shall not be eligible for re-appointment in same company as statutory auditor for **5 years from completion of their term**.

Note:

- On the date of appointment of an audit firm as auditor, it shall not have any **common partner** (who are or were partner in audit firm whose **tenure has expired** in immediately preceding FY). If there are common partners, such firm have to serve cooling period of 5 years.
- If a partner (who certifies FS) **retires** from an audit firm (which has completed its term) & **joins another** firm, such other firm shall **also** become **ineligible** to be appointed as auditor for 5 years.
- A person shall not be eligible to be appointed as auditor if it is associated with outgoing auditor under **same network** [Same network includes firms operating under same brand name, trade name or common control].
- Cooling off period for a company do **not apply for any other company** [Example: Such auditor can audit company's subsidiary] or for any **service except statutory audit**.

(3) Rotation of Auditor of Company



(4) Remuneration of Auditors [Section 142]

- Remuneration of auditors is fixed by:
 - For **first auditor** who is **appointed by BOD**: **BOD** shall fix remuneration.
 - Otherwise: Fixed in **general meeting** or in manner determined in general meeting.
- Remuneration (in addition to fee payable to auditor) includes **expenses** incurred by him for audit of company [i.e. out of pocket expenses] & any **facility** extended to him, but **excludes** remuneration paid for any other **service** rendered by him **at the request of company**.

Powers and Duties of Auditors [Section 143 and 146]

(1) Powers of Auditors of Company



(2) Duties of Auditors

Auditor shall inquire into following matters:

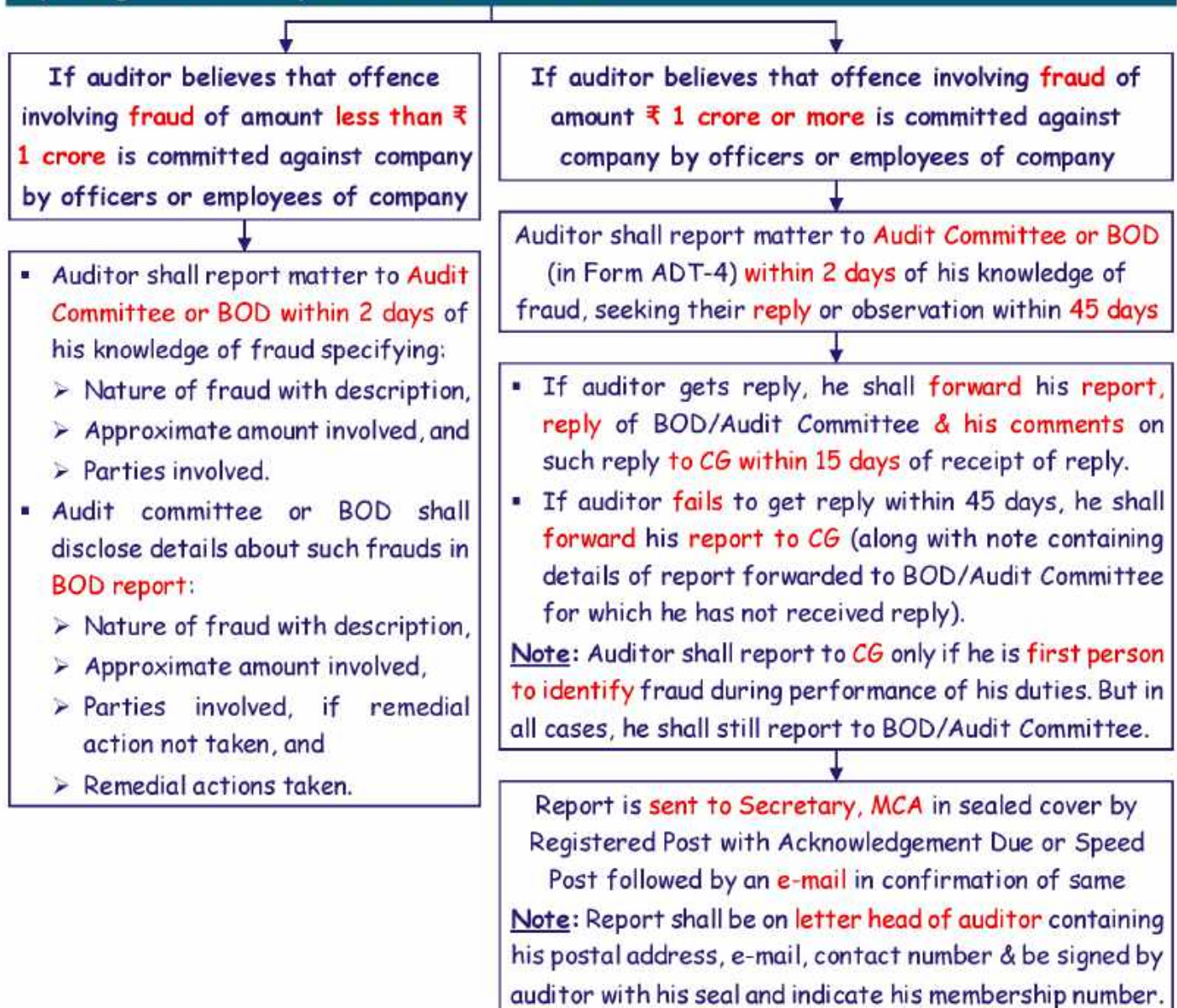
- Whether **loans & advances** given by company are properly **secured** and whether terms of loans & advances are **prejudicial** to interests of company or its members,
- Whether transaction merely represented by **book entry** are prejudicial to interest of company
- Whether **assets of company** (not being investment company or banking company) consisting of **securities** are sold at price **less than purchase price**,
- Whether loans & advances given by company are **shown as deposits**,
- Whether **personal expenses** are charged to revenue account,
- If books & documents state that **shares** are **allotted for cash**:
 - Whether cash is received on allotment, and
 - If cash is not received, whether book & balance sheet are correct, regular & not misleading.

(3) Auditor to attend General Meeting [Section 146]

- All **notice** & communication for general meeting shall be forwarded **to auditor**.

- Auditor shall **mandatorily attend** general meeting of company either by **himself** or through his **authorized representative** (who shall also be qualified to be an auditor).
- Auditor shall have **right to be heard** at such meetings on any part of business which **concerns him** as auditor.

Reporting of Frauds by Auditors [Section 143]



Note: If auditor, CS or CMA in practice fails to comply with above provision, he is liable to penalty:

- In case of listed company: ₹ 5 lakhs, and
- In case of any other company: ₹ 1 lakh.

Auditor's Report and Auditing Standards [Section 143 and 145]

- Auditor shall express **opinion** & make report to members **on accounts & FS** examined by him which are required to be laid before company in general meeting, as to whether it gives **a true & fair view** of state of affairs of company as at end of FY and other prescribed matters.

Note: Auditor is required to **audit FS & express opinion** on the same. Auditor does not audit additional information such as Directors report and Management Discussion and Analysis (MD&A).

- Auditors' report shall also state:
 - Whether he has all **obtained information & explanation** which were necessary for audit and if not, details & **effect** of such information on FS,
 - Whether proper **BOA** have been kept by company and proper **returns** adequate for audit have been received **from branches** not visited by him,
 - Whether **report** on accounts of **branch office** of company audited by person other than company's auditor has been sent to him and manner in which he has dealt with it in preparing his report,
 - Whether company's **balance sheet and P&L** account are **in agreement** with BOA and returns,
 - Whether FS comply with **AS**,
 - Qualification, reservation or adverse remark on maintenance of accounts and other matters,
 - Observation/comment of auditor **on financial transactions** or matters which have **adverse** effect on functioning of company,
 - Whether any director is **disqualified** from being appointed as a director u/s 164(2),
 - Whether company has adequate **internal financial controls** with reference to FS & operating effectiveness of such controls

[Not applicable to private company having turnover < ₹ 50 crores and borrowings from banks, financial institutions or corporate < ₹ 25 crores at any time during FY (if not defaulted u/s 92 & 137) or is incorporated as OPC or small company],

 - Such **other matters** as may be prescribed.

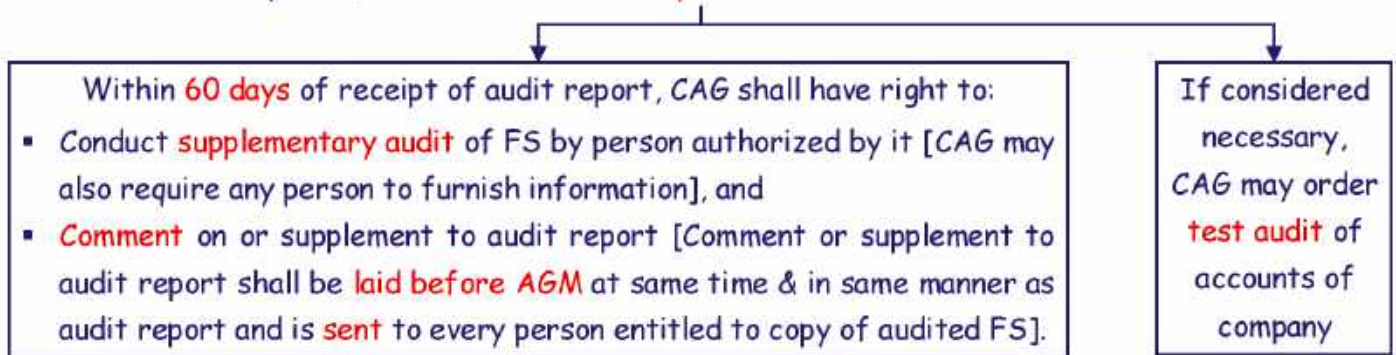
Note: If any of the above matter is answered in **negative** or with **qualification**, auditor's report shall state **reason** for same.

- **CARO 2020** should be complied by statutory auditor of every company on which it applies.
- Every auditor shall comply with **auditing standards**.
- **Signing of Auditor's Report [Section 145]**
 - Auditor shall **sign** auditor's report or sign/certify other documents of company.
 - **Qualifications, observations or comments** on financial transactions or matters having **adverse effect** on functioning of company (as mentioned in auditor's report) shall be **read at general meeting** and be open to **inspection** by any member of company.

Audit of Government Companies [Section 143]

In case of **government** company, **CAG** shall direct to the auditor **manner** in which accounts of company

shall be audited and then, auditor shall submit **copy of audit report** to CAG which shall **include directions** issued by CAG, **action taken** and its **impact** on accounts & FS



Removal, Resignation of Auditor and Giving of Special Notice [Section 139 and 140]

(1) Re-Appointment of Retiring Auditor [Section 139(9) & (10)]

- Retiring auditor may be **re-appointed** at AGM if:
 - He is **not disqualified** for re-appointment, and
 - He has **not** given notice in writing to company of his **unwillingness** to be re-appointed, and
 - **SR is not passed** to appoint other auditor or to provide that he shall not be re-appointed.
- But, if no auditor is appointed at AGM, **existing auditor** shall **continue** as auditor of company.

(2) Appointing Auditor other than the Retiring Auditor

- (i) If retiring auditor has **not completed his term**, **special notice** is required to pass resolution **at AGM** for appointing person other than retiring auditor or to provide that retiring auditor shall not be re-appointed.

Note: Special Notice shall be given by members holding $\geq 1\%$ voting power or shares on which $\geq ₹ 5$ lakhs is paid-up [Sent not earlier than 3 months but ≥ 14 days before meeting].

- (ii) On receipt of notice, company shall **send a copy** of notice **to retiring auditor**.
- (iii) If retiring auditor makes **representation** to company & requests its notification to members, company shall:
 - **State fact** of representation being made in notice given to members, and
 - **Send copy** of representation to every member to whom notice of meeting is sent.
- (iv) If representation is **not sent** (due to company's default or it being received late), auditor may require representation to be **read out at meeting** and a copy of representation shall be **filed with ROC**.

Note: If NCLT is satisfied (on an application made to it) that **rights** are being **abused by auditor**, then copy of representation **need not be sent & read out at meeting**.

(3) Removal of Auditor before his term

Auditor may be removed from his office **before expiry** of his term [after giving him a reasonable opportunity of being heard (i.e. Audi Alteram Partem)] by:

- (i) Pass **BR**, and

- (ii) **Application** (Form ADT-2) shall be made **to CG within 30 days** of passing BR and **approval** of CG shall be obtained, and
- (iii) **SR** shall be passed in general **meeting** which shall be held **within 60 days** of receipt of prior approval of CG.

(4) Resignation by Auditor

- If auditor has resigned from company, he shall file **statement** in Form ADT-3 (indicating reasons & other facts) **to company and ROC within 30 days** of resignation.

Note: In case of government company, auditor shall file statement with **CAG** as well.

- If auditor **defaults** in filling statement, he shall be liable to penalty of lower of ₹ 50,000 or amount equal to remuneration of auditor and in case of continuing failure, with further penalty of ₹ 500 per day after first during which failure continues [subject to maximum of ₹ 2 lakhs].

(5) Auditor acts in a Fraudulent Manner or Abetted or Colluded in any Fraud

- If **NCLT** is satisfied [either on its own (suo-moto) or on application by CG or any concerned person] that auditor has acted in **fraudulent** manner or abetted/colluded in fraud by company or its directors/officers, it may **direct company to change its auditors**.

Note: If application is made by **CG**, NCLT shall order (**within 15 days** of receipt of application) that such **auditor shall not function** as auditor and **CG** may **appoint** another auditor in his place.

- Auditor against whom final order is passed by NCLT **cannot be appointed** as auditor of **any company for 5 years** from passing of order and shall also be liable u/s 447.

Punishment for Contravention [Section 147]

<u>Contravention by Company u/s 139 to 146</u>	<u>Contravention by auditor u/s 139,144 & 145</u>	<u>Contravention by Audit Firm</u>
<ul style="list-style-type: none"> ➤ Company: Fine not less than ₹ 25,000 but extendable upto ₹ 5 lakhs. ➤ Officer in default: Fine not less than ₹ 10,000 but extendable upto ₹ 1 lakh. 	<ul style="list-style-type: none"> ➤ Auditor: Fine not less than ₹ 25,000 extendable upto "lower of ₹ 5 lakhs or 4 times remuneration of auditor". ➤ If contravention is made knowingly or wilfully with intention to deceive company, shareholders, creditors or tax authorities: <ul style="list-style-type: none"> ▪ Imprisonment upto 1 year, and ▪ Fine not less than ₹ 50,000 extendable upto "lower of ₹ 25 lakhs or 8 times remuneration of auditor", and ▪ Refund remuneration to company and pay damages to company, statutory body, members or creditors for loss arising due to incorrect or misleading statements in audit report. 	<ul style="list-style-type: none"> ➤ If partner of audit firm has acted in fraudulent manner or abetted or colluded with company, director or officer: Liability of such act (also liable u/s 447) shall be of concerned partners and firm jointly & severally. ➤ For criminal liability: Only concerned partners who acted fraudulently are liable for liability imprisonment.

Central Government to Specify Audit of items of Cost for Certain Companies [Section 148]

Companies required to maintain cost records	Company (including foreign company) engaged in goods/services specified in Table A or B and having turnover from all products & services \geq ₹ 35 crores during last FY shall include cost records in its BOA [i.e. particulars relating to utilisation of material, labour or other items of cost]. Note: Not applicable to company classified as micro enterprise or small enterprise .
Approval of cost statements	Cost statements (including statements annexed to cost audit report) shall be approved by BOD before it is signed on their behalf by director authorised by BOD (for submission to cost auditor).
Cost Auditor	Cost Accountant (CMA) holding certificate of practice can be appointed as cost auditor Note: Person appointed u/s 139 (i.e. auditor) cannot be appointed as cost auditor.
Cost Audit	CG may direct audit of cost records of company having prescribed net worth or turnover.
Cost Audit Report	<ul style="list-style-type: none"> Report on audit of cost records shall be submitted to BOD. Company (within 30 days of receipt of cost audit report) shall furnish CG with such report along with information & explanation on reservation/qualification in report. Note: CG may call for further information & explanation and company shall furnish it within time specified by CG.
Other Provisions	<ul style="list-style-type: none"> Cost auditor shall comply with cost auditing standards. Qualification, disqualification, rights, duties, obligation & fraud reporting provisions which are applicable to company auditor shall mutatis mutandis apply to cost auditor and it is duty of company to give all assistance & facilities to cost auditor.
Punishment for default	In case of default by company, officer or cost auditor, punishment shall be same as provided u/s 147.

NFRA [National Financial Reporting Authority] and Auditor

- Actions for auditor's oversight:** NFRA may



- Audit Reporting, Governance & Enforcement Measures:** NFRA may

- Auditor to report on **governance practices & internal processes** to promote audit quality, protect its reputation & reduce risk (like failure of auditor) and take necessary action on report.
- Additional information or personal presence of auditor for additional information or explanation.

Note: NFRA shall **not publish proprietary/confidential information** (except if it has reasons to do so in public interest and records reasons in writing).

- Sending separate report containing **proprietary/confidential information to CG**.
- If NFRA believes that any law, professional or standard is **violated** by auditor, it may decide on further course of investigation or enforcement action through its concerned division.

• **Monitoring & Enforcement:** NFRA shall



• **Overseeing quality of services and suggesting measures for improvement:**

- NFRA may direct auditor to take **measures for improvement of audit quality** including changes in audit processes, quality control & audit reports and specify a detailed plan with time-limits.
 - It is duty of auditor to **make required improvements and send report to NFRA** explaining how it has complied with directions made by NFRA.
 - NFRA shall **monitor improvements** made by auditor and take action as it deems fit.
 - NFRA may **refer cases** of overseeing quality of service of auditor **to Quality Review Board or call for report/information** of such auditor, company or body corporate from such Board.
 - NFRA may take assistance of experts for oversight & monitoring activities.
- Auditor of company governed by NFRA shall file **return with NFRA** on or before **30th November every year** in Form NFRA-2.

COMPANIES INCORPORATED OUTSIDE INDIA



Topics Covered



Foreign Company [Section 2(42), 379, 384 and 386]

- **Foreign company** means company **incorporated outside India** which:
 - Has **place of business in India** (itself or through agent) physically or through electronic mode [Place of business includes **branch office and share transfer or registration office**], and
 - Conducts **business activity** in India.

Note: Electronic mode means carrying electronically (whether server installed in India or not):

- ✓ Business to business & business to consumer transaction, data interchange and other digital supply transactions,
- ✓ Accepting deposits or subscription of security in India or from citizens of India,
- ✓ Financial settlements, web based marketing, advisory & transactional services, database services and products and supply chain management,
- ✓ Online services (such as telemarketing, telemedicine, education & information research), and
- ✓ All related data communication services.

Example

R Ltd. (incorporated in Japan) holds BOD meetings and takes business decisions in India. Mere holding BOD meeting & executing decisions in India is not termed as business activity or place of business in India and hence, R Ltd is not a foreign company.

- Provisions apply to Foreign Company with some modifications:
 - Section 128 [Keep BOA of Indian business at principal place of business **in India**].
 - Section 92 [File **annual return** (Form FC-4) **with ROC within 60 days** of last day of FY].
- If **not less than 50%** paid-up share capital of foreign company is held by **Indian citizens or company/body corporate incorporated in India or both**, such company [for **business carried on by it in India** (i.e. its Indian business)] shall **comply** with Chapter XXII and other prescribed provisions as if it is a company incorporated in India (**Indian company**) and is deemed to be an Indian company.

Documents, etc., to be Delivered to Registrar by Foreign Company [Section 380 and 383]

- Foreign company (within **30 days** of establishment of place of business in India) shall deliver following documents in Form FC-1 to **Registrar, Central Registration Centre** for registration:

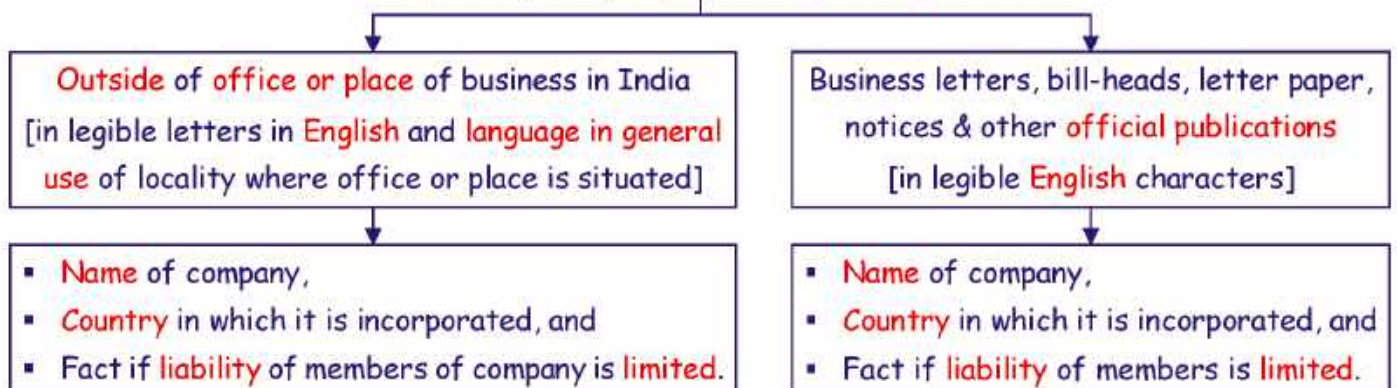


Note: Application shall be supported by **approval** of **RBI** (under FEMA) & other regulators to establish place of business in India [or **declaration** from authorised representative that **no such approval** is required].

- Any document (other than above mentioned registration documents) required to be delivered by foreign company shall be delivered to ROC having jurisdiction over **New Delhi**.
- If any **alteration** is made in documents delivered to ROC, return containing particulars of alteration (Form FC-2) shall be delivered to **ROC, New Delhi** for registration **within 30 days** of such alteration.
- Notice/**document** is **deemed as served on foreign company**, if it is left or sent by post/electronically to authorised representative (**person whose name & address is delivered to ROC**) [Section 383].

Display of Name, etc., of Foreign Company [Section 382]

Every foreign company shall **conspicuously exhibit**



Accounts of Foreign Company [Section 381]**• Preparation of FS of Indian Business of Foreign Company**

Foreign company shall prepare **FS of its Indian business** for each **FY** as per **Schedule III** along with:

- Documents required to be annexed under **Chapter IX** (Accounts of Company), and
- Latest **CFS of parent foreign company** submitted by it to authority in country of its incorporation

• Filing of FS with ROC

In every calendar year, foreign company shall:

- Prepare **balance sheet and P&L** account (along with prescribed annexed documents), and
- Deliver copy of those documents **to ROC** within **6 months** of close of **FY** of foreign company.

Note:

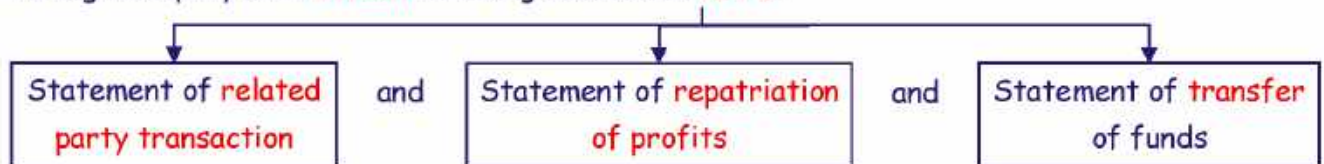
- (i) ROC may extend such period by **upto 3 months** on application made by foreign company.
- (ii) If specified documents are not in English, a **certified translation in English** shall be annexed.
- (iii) **CG** may direct that above requirements shall not apply or shall apply subject to exceptions.

• Documents to be filed along with FS to ROC (within 6 months of FY or extended period)

- Foreign company shall send copy of **list of all its places of business in India** (as on balance sheet date) to ROC in Form FC-3.

Note: If foreign company **ceases** to have place of business in India, it shall give **notice of such fact to ROC** and from such date, company's **obligation** to deliver any document to ROC **ceases** (if company has no other place of business in India).

- Foreign company shall **attach** following documents **to FS**:

**• Audit of accounts of foreign company**

- Foreign company shall get accounts (for **Indian business** operations) **audited** by CA, firm or LLP.
- Provisions of **Chapter X** (Audit and Auditors) shall mutatis mutandis apply to foreign company.

Offer of Indian Depository Receipts [Section 390]

- Indian Depository Receipts (IDR) means instrument created by Domestic Depository in India and authorized by company incorporated outside India issuing such depository receipts.
- Foreign company may merge into company incorporated under Companies Act, 2013 with **prior approval of RBI** and payment of consideration shall be made in cash, Depository Receipts or both.
- Chapter XV shall apply to **mergers & amalgamations** between company incorporated under Companies Act, 2013 and company incorporated in jurisdictions notified by **CG** [No RBI approval is required].
- Company incorporated outside India issuing **IDRs shall comply with** Rule 13 of Companies (Registration of Foreign Companies) Rules, 2014; SEBI (ICDR) Regulations, 2009 & RBI Directions.

Dating of Prospectus and Particulars to be Contained therein [Section 387]

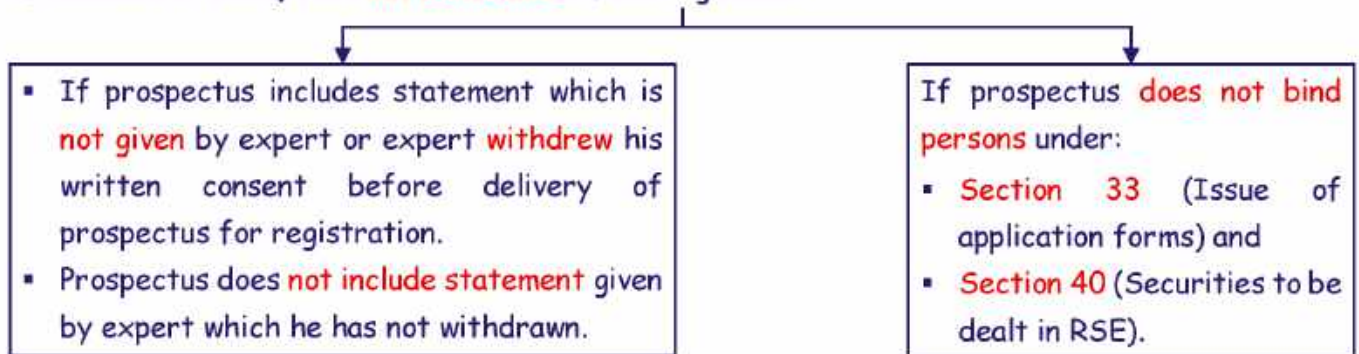
- **Prospectus** offering securities of company incorporated outside India (whether or not having place of business in India) can be issued in India only if:
 - Prospectus is **dated & signed**, and
 - States matter specified **u/s 26** (Matters to be stated in prospectus), and
 - Contains particulars of following matters:
 - (a) Instrument defining **constitution** of company,
 - (b) Enactments or provisions under which company is **incorporated**,
 - (c) **Address in India** where instrument and enactment/provisions or its copies can be **inspected** [if not in English, a certified translation in English language],
 - (d) **Date** of incorporation & **country** in which company was incorporated, and
 - (e) Whether company has **place of business in India** [If so, address of principal office in India].

Note:

- (a), (b) & (c) are **not required** if prospectus is issued **>2 years** after commencement of company.
 - Any condition requiring applicant to waive compliance with above provisions shall be **void**.
- **Form** of application for securities shall be issued along **with valid prospectus** [except for invitation to underwriter (i.e. Form can be issued to underwriter without prospectus)].
 - This section shall **not apply** to:
 - Issue to **existing members or debenture holders** of company, and
 - Issue of securities which are **uniform** with **previously issued** security and are quoted on **RSE** [but requirement of prospectus to be dated shall continue to apply].
 - **CG** may exempt any company from prospectus & other incidental matters for offer of securities in International Financial Services Centres (IFSC).

Provisions as to Expert's Consent and Allotment [Section 388]

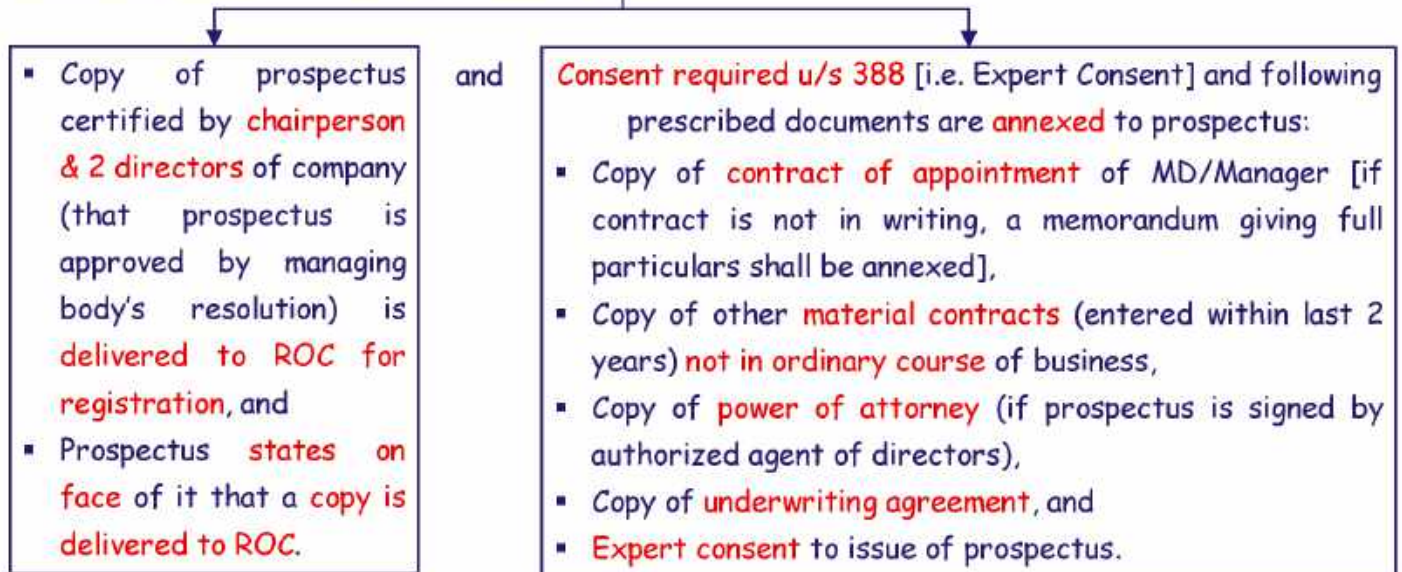
- **Prospectus** offering securities of company incorporated outside India (whether or not having place of business in India) shall **not be issued** in following cases:



- Expert statement is **deemed as included** in prospectus if it is contained in report/memorandum appearing on **face** of prospectus or by a **reference** in prospectus.

Registration of Prospectus [Section 389]

Prospectus offering securities of company incorporated outside India (whether or not having place of business in India) in India shall be issued only if:

**Application of Sections 34 to 36 and Chapter XX [Section 391]**

- Section 34 to 36 [Criminal & Civil Liability and Punishment for fraudulently inducing] shall apply to issue of **prospectus** by company incorporated outside India and issue of **IDR** by foreign company.
- If money raised from securities is not repaid, **Chapter XX (Winding up)** shall mutatis mutandis apply for closure of place of business in India (as if it is an Indian company).

Company's Failure to Comply with Provisions of this chapter [Section 392 and 393]

Note: If a person carries business as foreign company without getting registered as foreign company, he shall be liable for **investigation u/s 210** & consequent action.

THE LIMITED LIABILITY PARTNERSHIP ACT, 2008



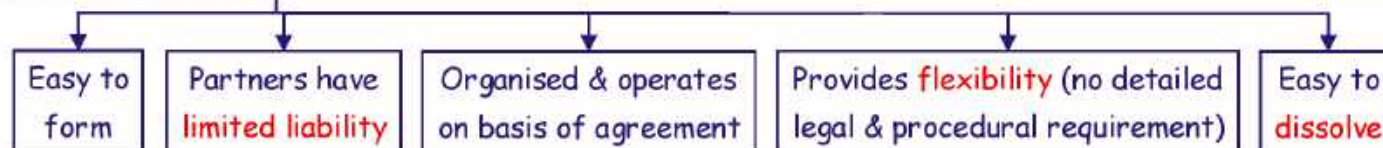
Topics Covered



Introduction [Section 1 and 4]

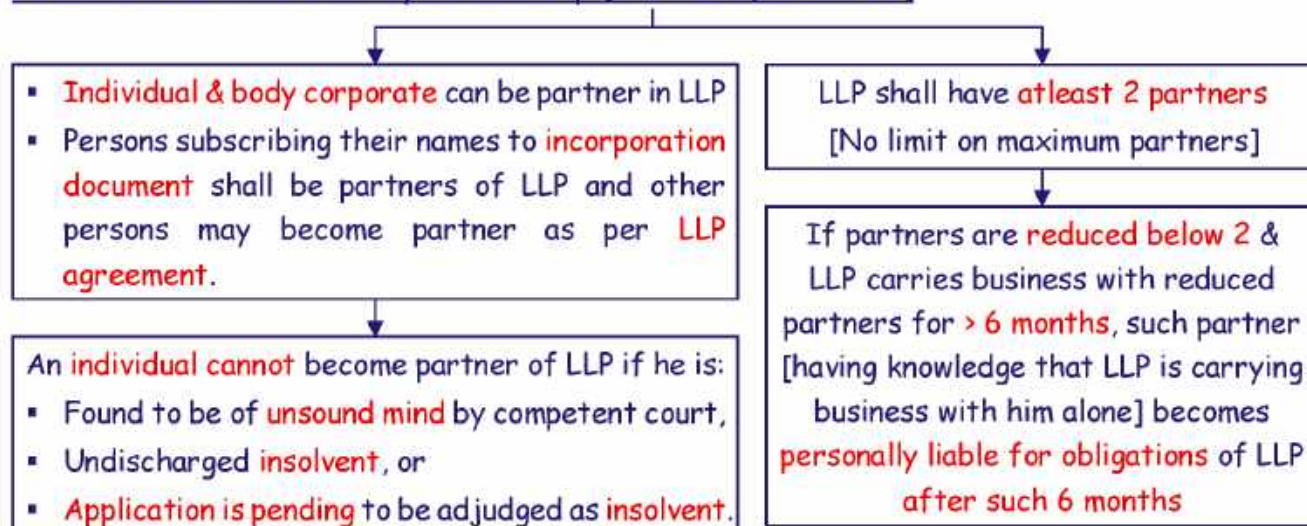
- The LLP Act, 2008 is applicable to whole of India.
Note: Indian Partnership Act, 1932 is not applicable to LLPs.
- LLP is alternative corporate business vehicle that gives **benefit of limited liability** at low compliance cost & allows flexibility to partners in organising their **internal structure as traditional partnership**.
- LLP is a suitable vehicle for small enterprises and for investment by venture capital.
- MCA & ROC** shall administrate LLP Act and **CG** has authority to frame rules & amend act.

Advantages of LLP



Partners and Designated Partners [Section 5 to 10 and 22]

(1) Partners of Limited Liability Partnership [Section 5, 6 and 22]



Note:

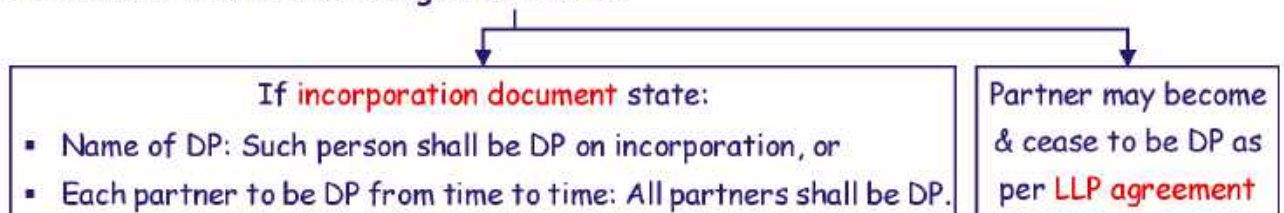
- (i) **Body corporate** means **company** under Companies Act or incorporated outside India and **LLP** under this Act or incorporated outside India [but **does not include** firm, co-operative society, **HUF** and other body corporate specified by **CG**].
- (ii) LLP agreement is an agreement between partners or between LLP & partners determining their **mutual rights & duties**.

(2) **Designated Partners (DP) [Section 7 to 10]**

- LLP shall have **atleast 2 individual partners as DP** [**atleast 1** of them shall be **resident in India**].

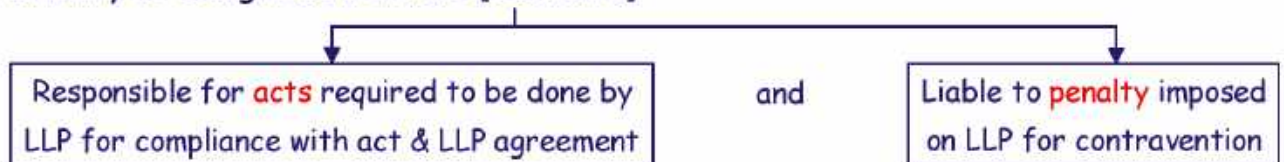
Note:

- (i) Resident in India means person who stayed in India for not less than **120 days** during FY.
- (ii) If all partners are body corporate or < 2 individuals are partners, **nominee of body corporate** shall become DP [i.e. Firstly individuals are appointed and then, remaining DPs shall be nominees].
- (iii) In case of **default**, LLP and every partner is liable to penalty of ₹ 10,000 & further penalty of ₹ 100 per day [subject to maximum ₹ 1 lakh for LLP & ₹ 50,000 for partner].
- Individual eligible to be DP shall satisfy **prescribed conditions**.
- Note:** In case of **default**, LLP and every partner is liable to penalty of ₹ 10,000 and further penalty of ₹ 100 per day [subject to maximum ₹ 1 lakh for LLP and ₹ 50,000 for partner].
- DP shall obtain a **Designated Partner Identification Number (DPIN)** from CG and Section 153 to 159 of Companies Act shall apply mutatis mutandis.
- Person who shall act as Designated Partner



- Individual shall give **prior consent** to LLP to act as DP.
- LLP shall file **particulars of DP with ROC** within **30 days** of his appointment.
- Note:** In case of **default**, LLP and every DP is liable to penalty of ₹ 5,000 and further penalty of ₹ 100 per day [subject to maximum ₹ 50,000 for LLP and ₹ 25,000 for every DP].

- **Liability of Designated Partners [Section 8]**



- **Changes in Designated Partners [Section 9]**

LLP may **appoint DP within 30 days of vacancy** & file particulars of new DP with **ROC** within 30 days. If DP is not appointed (or if there is only 1 DP), **all partners** are deemed as DP.

Note: In case of **default**, LLP and every partner is liable to penalty of ₹ 10,000 and further penalty of ₹ 100 per day [subject to maximum ₹ 1 lakh for LLP and ₹ 50,000 for partner].

Name of LLP [Section 15 to 17]

• Reservation of Name

- A person shall apply to **ROC** in e-Form RUNLLP for **reservation of name** of proposed LLP or name to which LLP proposes to change its name.

Note: LLP shall have words "limited liability partnership" or "LLP" as last words in name.

- Upon receipt of application, ROC may reserve name for **3 months** from intimation by ROC.

LLP shall **not** be registered by name which in **opinion of CG** is:

- **Undesirable**, or
- **Identical or too nearly resemble** to other **LLP, company or** registered **trademark** of another person.

If LLP is **registered** with name which is **identical or too nearly resembles** to other LLP, company or registered trade mark, then **CG** [on **application** by LLP, company or proprietor of trademark **within 3 years** of incorporation, registration or change of name of LLP] may direct LLP to **change** its name **within 3 months** of issue of direction

Note: If LLP fails to comply with **CG's** direction, **CG** shall allot new name to LLP and ROC shall enter new name in register of LLP & issue fresh certificate of incorporation.

- If LLP changes its name, it shall give **notice of change** (along with order of **CG**) to **ROC** **within 15 days** of change. ROC shall make changes in certificate of incorporation and **within 30 days** of such change in certificate, LLP shall change its name in **LLP agreement**.

Example

M/s Namo LLP incorporated on 1st May. A partner from M/s Namo (partnership firm) objected to LLP's name. Change not required as act applies if name resembles to company, LLP or trademark (& not firm).

Incorporation of LLP [Section 11 to 14]

(1) Incorporation Document [Section 11]

- 2 or more persons associated for **lawful business & to earn profit** shall subscribe their names to incorporation document.
- It shall state **name of LLP**, proposed **business**, **address** of registered office, name & address of partner & DP on incorporation and other prescribed information.

Note: Name & Address of partner of LLP is as follows, if it is:

- Individual: His forename, middle name & surname and residential address, and
- Body Corporate: Its registered name and address of registered office.
- It shall be filed with **ROC of state where registered office** of LLP is to be situated (now processed by Registrar, Central Registration Centre).
- Along with incorporation document, a **statement** indicating that requirements of incorporation are complied shall be filed which shall be made by:

- Advocate/CA/CS/CMA engaged in formation of LLP, and
- Anyone who **subscribed** to incorporation document.

Note: If person makes statement which he knows to be false, he shall be punishable with imprisonment upto 2 years and fine not less than ₹ 10,000 extendable upto ₹ 5 Lakhs.

(2) **Incorporation by Registration [Section 12]**

- Within **14 days** of filing, **ROC** shall register incorporation document and give **certificate** that LLP is incorporated by name specified in document.
- Certificate shall be **signed by ROC** & authenticated by his official seal. Such certificate shall be **conclusive evidence** that LLP is incorporated by name specified.

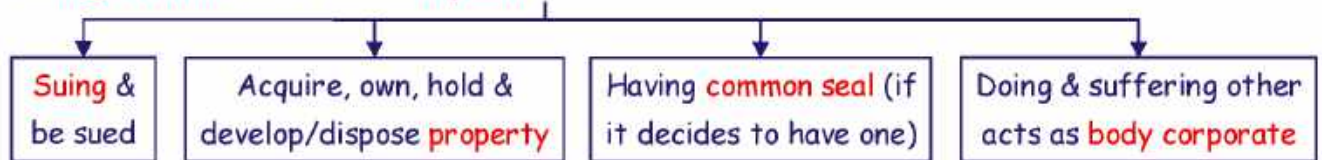
(3) LLP Agreement shall be **executed** & be **filed** in e-Form 3 **within 30 days of incorporation** of LLP.

(4) **Registered Office of LLP and Change therein [Section 13]**

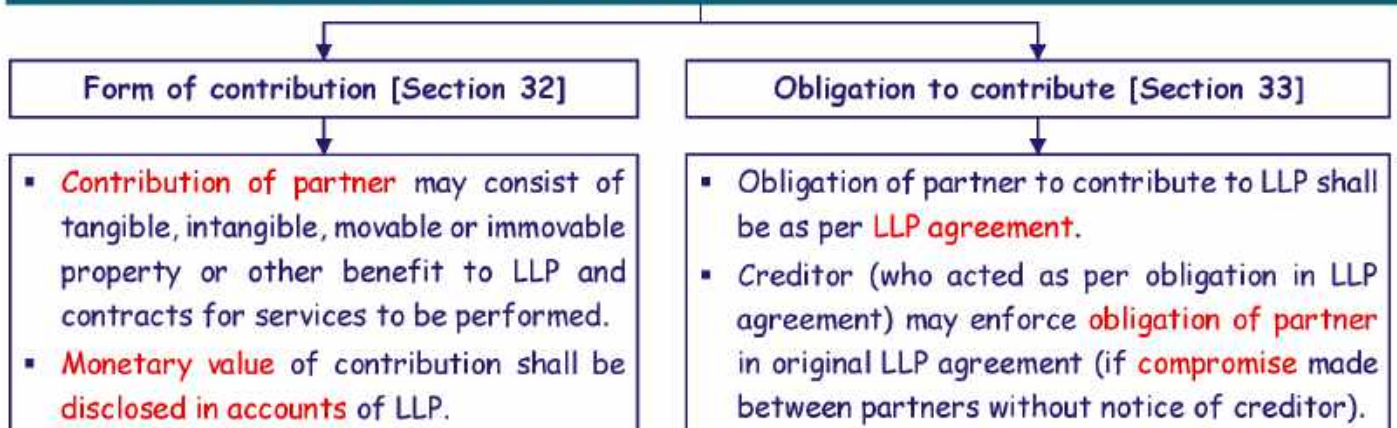
- LLP shall have a **registered office** where all communications & notices may be addressed.
- In case of change in registered office, LLP shall file **notice of such change with ROC** [Change shall take effect upon such filing].
- Document to be served on LLP, partner or DP may be served by **post, registered post** or other manner at **registered office & other address specifically declared** by LLP.
- In case of default, LLP and every partner are punishable with penalty of ₹ 500 per day [maximum ₹ 50,000].

(5) **Effect of registration [Section 14]**

On **registration**, LLP becomes **capable** of:



Contributions by Partners [Section 32 and 33]



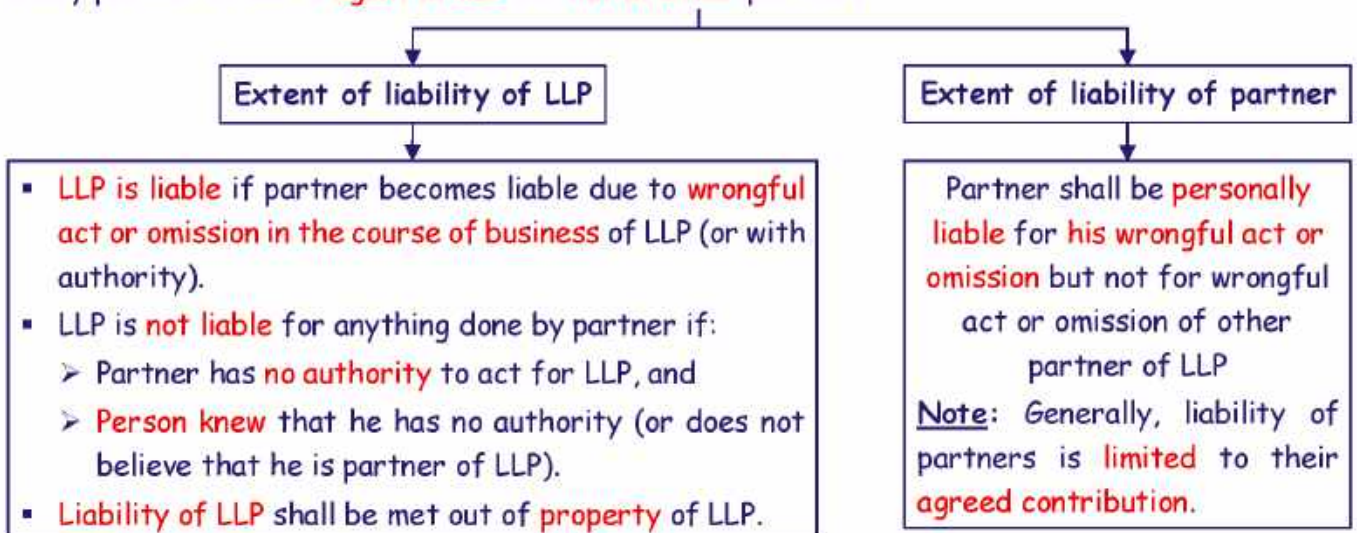
Relationship of Partners [Section 23]

- Mutual rights & duties of partners and LLP & its partners are governed by **LLP agreement**.
Note: In absence of agreement, mutual rights & duties are determined by **First Schedule**.
- LLP agreement and any changes in it shall be filed with **ROC**.
- Agreement made **before incorporation** between **persons who subscribe** their names to incorporation document may impose obligation on LLP (if ratified by **all partners** after incorporation).

Extent and Limitation of Liability of LLP and Partner [Section 26 to 30]

Extent of Liability [Section 26 to 28]

Every partner of LLP is **agent of LLP** but **not of other** partners



Holding Out [Section 29]

Person [who by **words or conduct** represents or knowingly permits to be **represented as partner** of LLP] is **liable** to person who gave **credit to LLP** on faith of such representation (whether or not person know that representation has reached to person giving credit).

Note: If LLP is continued in **same name after partner's death**, use of such name or deceased partner name **do not make** his legal representative or estate **liable** for acts of LLP done **after his death**.

Liability in case of Fraud [Section 30]

If an **act** is carried by LLP or partners for **fraudulent purpose or to defraud** creditor or any person:

- Liability of **LLP and such partners** shall be **unlimited** for all **debts/liabilities** of LLP.
- Person who are **knowingly a party** to carry such fraudulent business is punishable with imprisonment upto 5 years and fine not less than ₹ 50,000 but extendable upto ₹ 5 Lakhs.

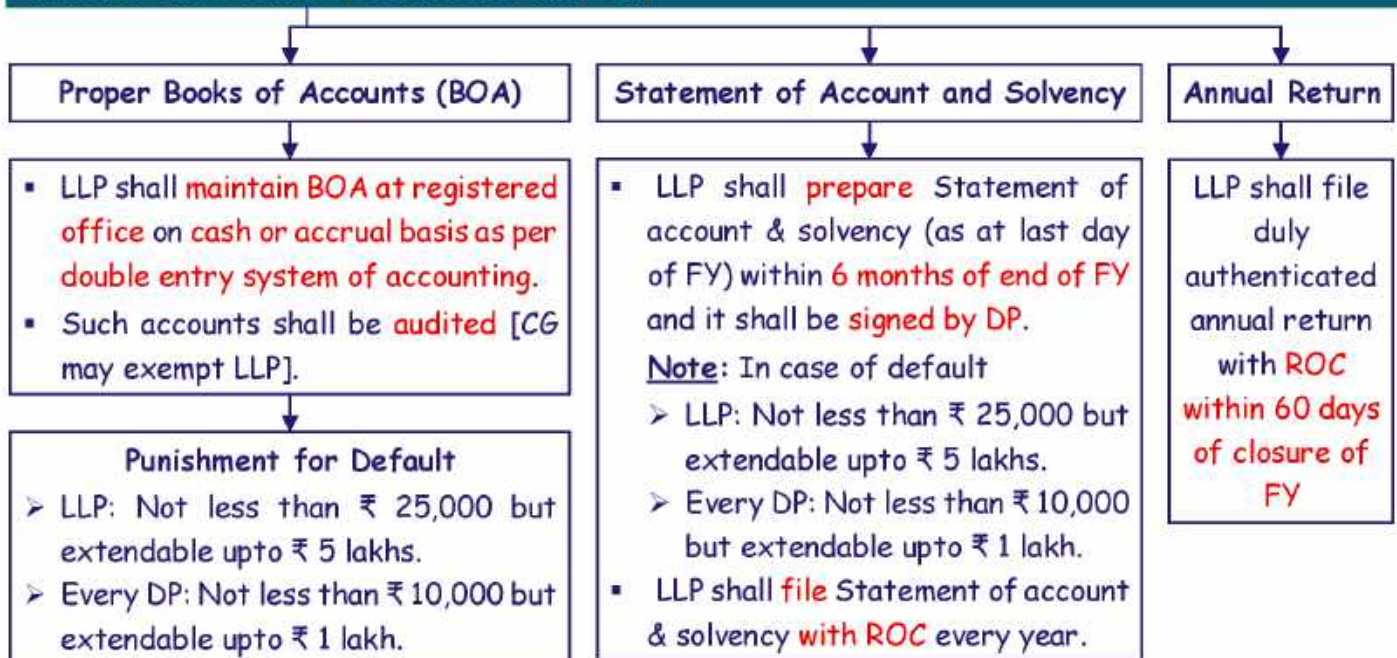
Note: LLP is **not liable** if such act was done by partner **without knowledge or authority** of LLP.

Compensation for Fraud [Section 30]

If LLP, partner, DP or employee of LLP has conducted affairs of LLP in **fraudulent** manner, then it shall be liable to pay **compensation** to person who has suffered loss/damage due to such conduct.

Note: LLP is **not liable** if partner, DP or employee acted fraudulently without knowledge of LLP.

Financial Disclosures [Section 34 and 35]



Note:

- In case of default in filing Statement of account & solvency or Annual Return with **ROC**:
 - LLP: ₹ 100 per day [Maximum ₹ 1 lakh].
 - Every DP: ₹ 100 per day [Maximum ₹ 50,000].
- Financial year (FY) means period from 1st April to 31st March of following year. However, FY for LLP **incorporated after 30th September** may end on **31st March of year next to following year.**

Power of Registrar to Obtain Information [Section 38]

- ROC** may require **any person** (including former partner) to answer question, make declaration or supply details/particulars as required by him within reasonable period.
- If person **does not reply** or if ROC is **not satisfied** with reply, ROC can **summon** such person to appear before him, inspector or any public officer whom ROC designates.
- Person who (without lawful excuse) **fails** to comply with requisition of ROC or summon is punishable with fine not less than ₹ 200 but extendable upto ₹ 25,000.

Inspection of Documents kept by Registrar [Section 36]

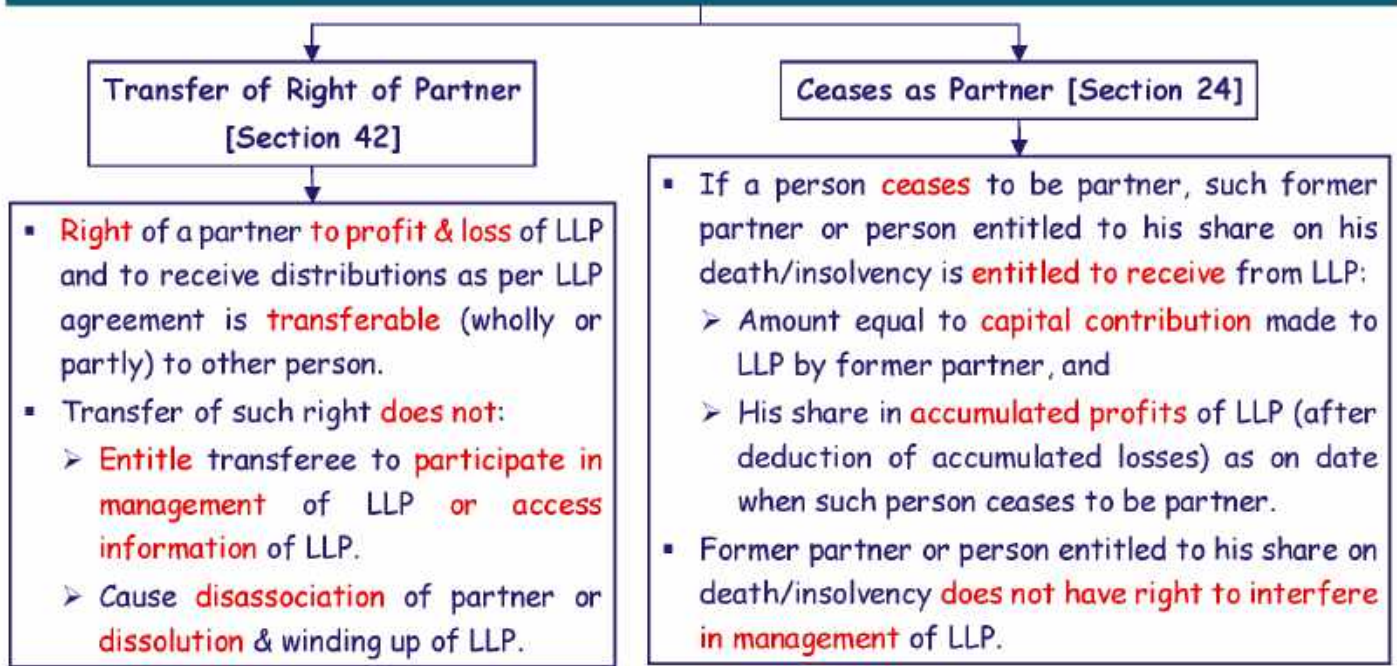
Incorporation Document, Name of partners & changes, Statement of account & solvency and Annual Return filed by LLP with ROC shall be available for **inspection by any person** in prescribed manner.

Whistle Blowing [Section 31]

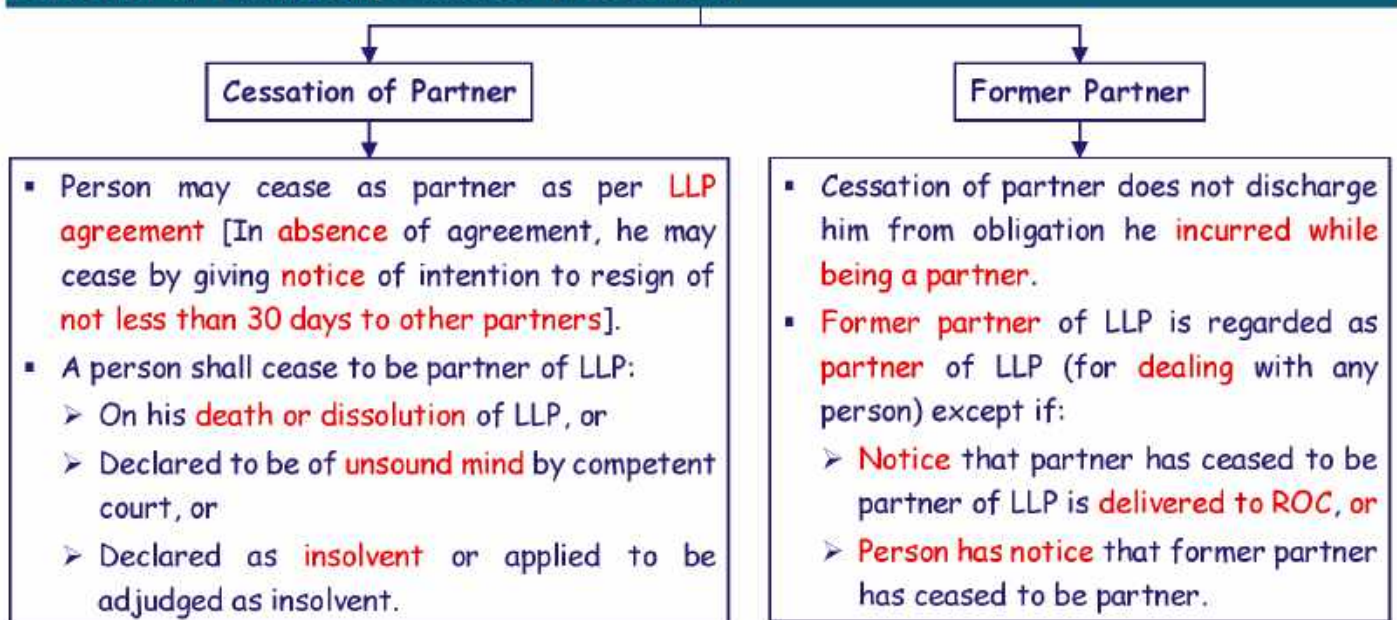
- Court or NCLT** may **reduce or waive penalty** against any partner or employee of LLP if:
 - He has provided useful **information during investigation** of LLP, or

- Information given by him **leads to** LLP, partner or employee being **convicted** in any act.
- Partner/employee shall **not** be discharged, demoted, suspended, **discriminated**, threatened or harassed against terms & conditions of LLP or employment because of providing such information.

Partner's Transferable Interest [Section 24 and 42]



Cessation of Partnership Interest [Section 24]



Registration of Changes in Particulars of Partners [Section 25]

- Partner shall **inform change** in his name or address **to LLP within 15 days** of change.

Note: If case of default, partner shall be liable to penalty of ₹ 10,000.

- LLP shall file notice with **ROC**:
 - Person **becomes or ceases as partner**: **Within 30 days** from becoming or ceasing as partner, and
 - **Change in name or address of partner**: **Within 30 days** of change (if partner intimates such change to LLP).
- Note**: In case of default, LLP and every DP shall be liable to penalty of ₹ 10,000.
- **Notice** filed with ROC shall be:
 - Signed by **DP** and authenticated in prescribed manner,
 - In prescribed form along with prescribed fees, and
 - If it relates to **incoming partner**, it shall contain statement by such partner (signed by him and authenticated in prescribed manner) that he **consents** to become partner.
- Person ceasing as partner may **himself file notice with ROC**, if he believes that LLP may not file notice and where notice is filed by partner, ROC shall obtain **confirmation from LLP** (except if LLP has also filed notice). If **no confirmation** is given by LLP within **15 days**, ROC shall **register notice** made by ceasing partner.

Compromise, Arrangement or Reconstruction of LLP [Section 60 to 62]

(1) Compromise or arrangement of limited liability partnerships [Section 60 and 61]

- On **application** made by LLP, creditor, partner or liquidator for compromise or arrangement proposed between **LLP & its creditors or LLP & its partners**, **NCLT** may order meeting of creditors/partners to be called, held & conducted.

Note: NCLT (after application made to it) may **stay** commencement or continuation of **suit or proceeding** against LLP until such application is disposed off.

- If **majority in number representing 3/4th value** of creditors or partners **present & voting** at meeting **agree** to compromise or arrangement and if sanctioned by NCLT, it becomes **binding** on all creditors, partners, LLP, liquidator and contributories of LLP.

Note:

- (i) NCLT shall sanction compromise or arrangement only if all **material facts** of LLP (including latest financial position & pending investigation proceeding) is **disclosed** to it.
 - (ii) NCLT order for sanction shall be filed by LLP with **ROC within 30 days** of making such order [Order shall have effect only after it is filed].
- If NCLT sanctions compromise or an arrangement of LLP, it may:
 - **Supervise** carrying out of compromise or arrangement, and
 - Give **directions** or make modifications for proper working of compromise or arrangement.
 - If NCLT is satisfied that **compromise or arrangement sanctioned cannot be worked**, it (either on its own or on application by interested person) may make order for **winding up** of LLP.
 - If case of **default**, LLP and every DP is liable to penalty of ₹ 10,000 and further penalty of ₹ 100 per day after first during which default continues [subject to maximum ₹ 1 lakh for LLP and ₹ 50,000 for DP].

(2) Provisions for facilitating reconstruction or amalgamation of LLP [Section 62]

- Order of NCLT in case of compromise or arrangement for **Reconstruction or Amalgamation**

If application made to NCLT u/s 60 for compromise or arrangement is proposed for:

- **Reconstruction** of LLP or **amalgamation** of 2 or more LLP, and
- Undertaking, property or liabilities of LLP is to be **transferred to another LLP**.



NCLT may make **provisions** for following matters:

- **Transfer** of undertaking, property or liabilities of transferor LLP to transferee LLP,
- Continuation of **legal proceedings** pending by/against transferor LLP for transferee LLP,
- **Dissolution of transferor LLP** (without winding up),
- Provision for person who **dissent** from compromise or arrangement, and
- **Incidental matters** necessary for reconstruction or amalgamation to be carried out.

- **Filing with ROC**

Within **30 days** of order, LLP shall file a certified copy with **ROC** for registration.

Note: In case of default, LLP and every DP shall be liable to penalty of ₹ 10,000 and further penalty of ₹ 100 per day after first during which default continues [subject to maximum ₹ 1 lakh for LLP and ₹ 50,000 for DP].

- **Other Provisions**

- If **NCLT order** provides, property transferred to transferee LLP shall be **free from charge**.
- LLP shall **not** be **amalgamated with a company**.
- NCLT shall **sanction** compromise or arrangement for amalgamation only if it has received a report from ROC that affairs of LLP are not conducted in manner prejudicial to interest of partners or public interest.
- NCLT shall **order for dissolution** of transferor LLP only if official liquidator has made a report to NCLT that affairs of LLP are not conducted in manner prejudicial to interest of partners or public interest.

Conversion Into LLP [Section 55 to 58]

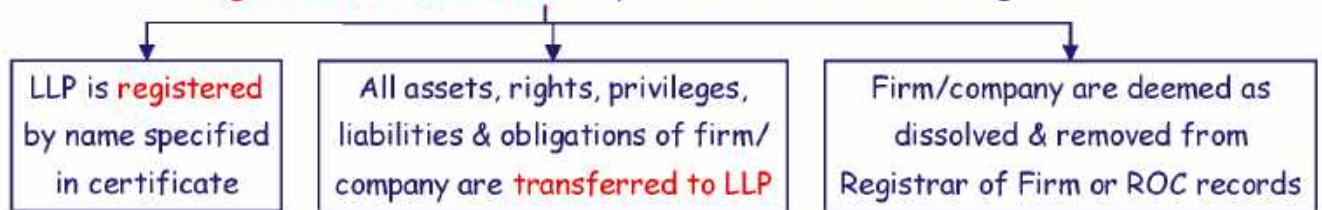
- Provisions for Conversion [Section 55, 56 and 57]

Conversion of firm into LLP	In accordance with this chapter & 2nd Schedule
Conversion of private company into LLP	In accordance with this chapter & 3rd Schedule
Conversion of unlisted public company into LLP	In accordance with this chapter & 4th Schedule

- Registration and Effect of Conversion [Section 58]

- If schedules & provisions are **complied**, **ROC** shall **register** submitted documents and issue certificate of registration stating that LLP is registered from date specified in certificate.
- Within **15 days** of registration, LLP shall inform **Registrar of Firms or ROC** about conversion and particulars of LLP.

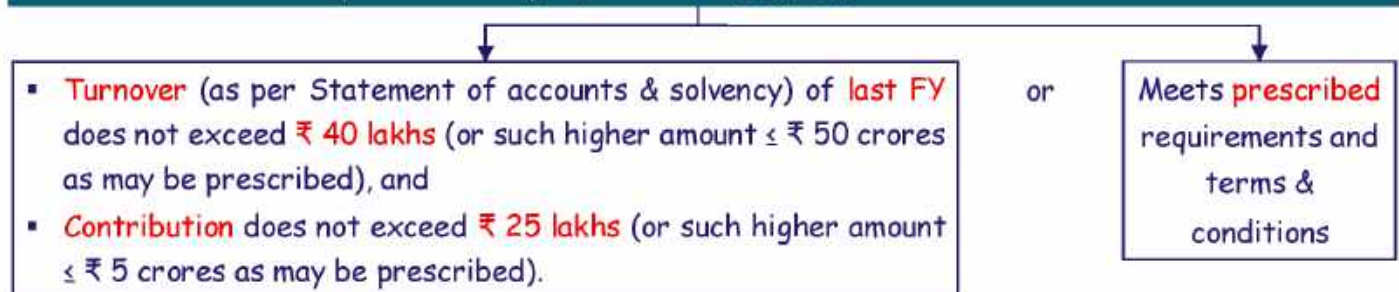
➤ From date of **registration of conversion** as specified in certificate of registration:



Foreign Limited Liability Partnerships [Section 59]

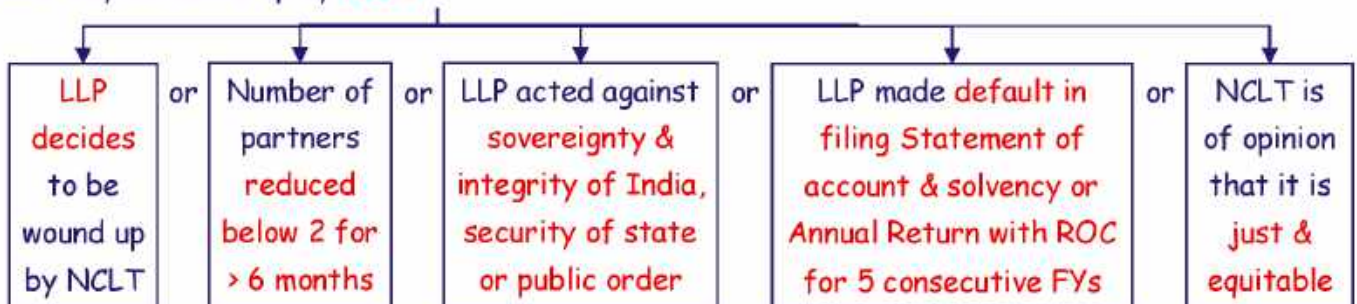
- Foreign LLP refers to LLP formed, incorporated or registered **outside India** which establishes **place of business within India**.
- CG** may make rules for establishment of place of business in India and carrying business by foreign LLP by applying Companies Act or other regulatory provisions with modifications.

Small Limited Liability Partnerships [Section 2(1)(ta)]



Winding Up and Dissolution [Section 63 to 65]

- Winding up of LLP may either be **voluntary or by NCLT** and such LLP may be **dissolved**.
- LLP may be wound up by **NCLT** if:



Note: **CG** may make rules for winding up and dissolution of LLP.

Penalty for False Statement [Section 37]

A person is punishable with **imprisonment upto 2 years** and **fine** not less than **₹ 1 lakh** but extendable upto **₹ 5 lakhs**, if he makes a **statement** in any document required under this act which is:

- **False** in material particulars (which he knows to be false), or
- **Omits** material fact (which he knows to be material).

Compounding of Offences [Section 39]

• Compounding Application and Intimation

- Application for **compounding** shall be made to **ROC** who shall forward it (along with his comments) to **Regional Director** or officer not below rank of Regional Director authorised by **CG**.
- Regional Director or authorised officer may **compound** any **offence punishable with fine only** by collecting not lower than **minimum but extendable upto maximum fine** for such offence.

Note: Offence committed by LLP, partner or DP **within 3 years** from compounding of its similar offence **cannot be compounded**.

- If an offence is compounded, **intimation** shall be given to **ROC within 7 days** of compounding.

• Prosecution on Compounded Offences

- If offence is compounded **before** institution of **prosecution**, prosecution shall not be instituted.
- If compounding is made **after** institution of prosecution, compounding shall be brought to notice of court (where prosecution is pending) by ROC and on such notice, offender is **discharged**.

• Other Provisions

Regional Director or authorised officer may direct partner, DP or employee of LLP to **file or register return, account or document** within time specified in order.

Note: If partner, DP or employee **fails** to comply with order, **maximum amount of fine** for offence will be **twice** the amount under section where punishment for such offence is provided.

Miscellaneous [Section 66 to 70]

- A partner may lend money & transact other business with LLP and have **same rights & obligations** as of a person who is not a partner.
- **CG** may direct (by notification in Official Gazette) that any provision of Companies Act shall apply to LLP with exception, modification and adaptation.

Note: Copy of notification proposed to be issued is laid in draft before each House of Parliament for **30 days** and if both Houses agree in making modification or disapproving, notification shall be issued in modified form agreed by both Houses or not be issued as agreed.

- If document/return required to be filed with ROC is **not filed in time**, it may be filed after that time along with payment of prescribed **additional fee**.
- If LLP, partner or DP commits any **offence for second or subsequent time**, it shall be punishable with imprisonment as provided but with **fine twice the amount** provided for such offence.

Characteristics of LLP

(i) Body Corporate	(ii) Perpetual Succession	(iii) Separate Legal Entity
(iv) Partners are entitled to manage business of LLP	(v) Artificial Legal Person	
(vi) Liability of partners is limited to their agreed contribution [LLP liable for full extent of its assets].	(vii) Business for profit only [Cannot be formed for charitable purpose].	

(viii) Mutual rights & duties of partners are governed by LLP agreement [In absence of agreement, governed by Schedule I].	(ix) Mutual Agency [No partner is liable for unauthorized actions of other partners].
(x) Documents to be filed shall be authenticated by partner or DP.	(xi) CG can investigate into affairs of LLP.
(xii) Common Seal [LLP may have common seal (if it decides to have) which shall remain under custody of responsible official and be affixed in presence of atleast 2 DPs].	

Note: Words not defined in this act but defined in Companies act shall have meaning as per that act.

Difference between LLP and Partnership Firm

Basis	LLP	Partnership firm
Regulating Act	Limited Liability Partnership Act, 2008	The Indian Partnership Act, 1932
Body corporate	It is a body corporate.	It is not a body corporate.
Separate legal entity	It is a legal entity separate from its members.	It is a group of persons with no separate legal entity .
Registration	Registration is mandatory . LLP can sue & be sued in its own name.	Registration is voluntary . But only registered partnership can sue 3 rd party
Perpetual succession	Death/insanity/retirement/insolvency of partner do not affect existence of LLP. Members may join or leave but its existence continues forever	Death/insanity/retirement/insolvency of partners may affect its existence. It has no perpetual succession .
Name	Name of LLP contain word "Limited Liability Partnership" or "LLP" as suffix	No guidelines. Partners can have any name as per their choice.
Liability of each partner	Limited to their agreed contribution except in case of wilful fraud	Unlimited [Can be extended upto personal assets of partners].
Mutual agency	Each partner can bind LLP by his own acts but not other partners.	Each partner can bind firm as well as other partners by his own acts
Designated partners	Atleast 2 DPs and atleast 1 of them shall be resident in India.	No provision for such partners
Common seal	It may have its common seal as its official signatures.	No such concept in partnership
Foreign partnership	Foreign nationals can become a partner in LLP	Foreign nationals cannot become partner in partnership firm
Minor as partner	Minor cannot be admitted to benefits of LLP	Minor can be admitted to partnership with prior consent of existing partners

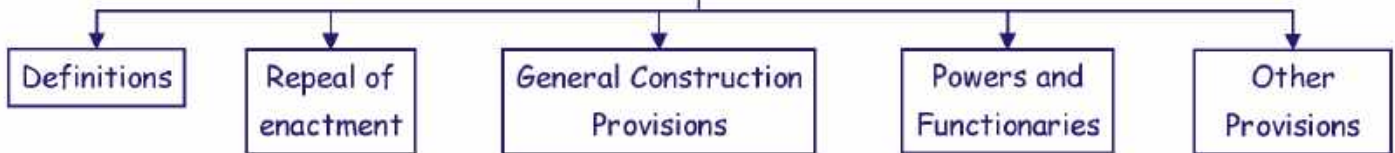
Difference between LLP and Limited Liability Company

Basis	LLP	Limited Liability Company
Regulating Act	Limited Liability Partnership Act, 2008	The Companies Act, 2013
Members/ Partners	Persons who contribute to LLP are known as partners of LLP.	Persons who invest money in shares are known as members of company.
Number of members/ partners	Members of LLP can be individuals/or body corporate through nominees. <ul style="list-style-type: none"> ▪ Minimum: 2 members ▪ Maximum: No such limit. 	Members can be organizations, trusts, another business form or individuals. <ul style="list-style-type: none"> ▪ Private company: Minimum 2 and Maximum 200 members. ▪ Public company: Minimum 7 members and no maximum limit.
Name	Name of LLP contain word "Limited Liability partnership" or "LLP" as suffix.	Name of public company to contain word "limited" and Pvt. Co. to contain word "Private limited" as suffix.
Liability of members/ partners	Limited to their agreed contribution except in case of fraud.	Limited to amount unpaid on shares held by them.
Management	Business of company is managed by partners & DP authorized in agreement.	Affairs of company are managed by BOD elected by shareholders
Minimum number of directors/DP	Minimum 2 DP	Private Company: 2 directors Public Company: 3 directors

THE GENERAL CLAUSES ACT, 1897

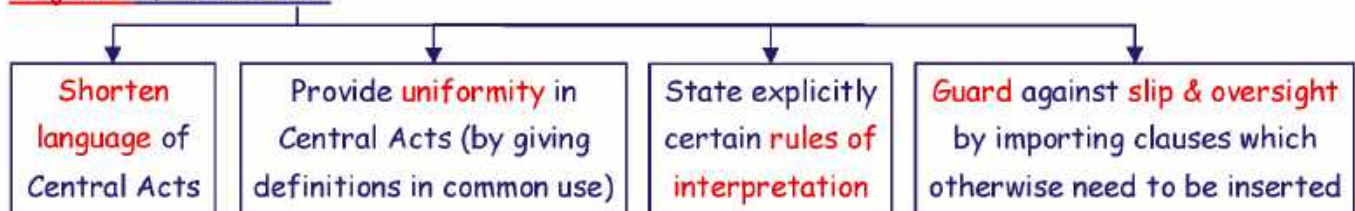


Topics Covered



Introduction

- The General Clauses Act, 1897 contain **definitions** of terms and general principles of **interpretation**.
- If any word is not defined in an Act, its meaning is taken from General Clauses Act, 1897.
- This Act **does not have territorial extent** & is applicable to territory where Central Act is extended.
- Objects of Act are to:**



Bill and Act

- 'Bill' is draft proposal which when passed by both houses and assented by President becomes Act.
- 'Act' or 'Statute' (also known as will of legislature) is a bill passed by both houses of Parliament [i.e. Lok Sabha & Rajya Sabha] & assented by President. On getting such assent, Act is notified on Official Gazettes of India.

Definitions [Section 3]

In absence of definition of a word in Central Act or Regulation, these **definitions are applicable** to such Acts & Regulations (unless repugnant/contradictory).

Government	Includes both Central Government and State Government .
Central Government	<ul style="list-style-type: none"> For anything done after commencement of constitution: President. For anything done before commencement: <i>Governor General in Council</i>.
Act	<p>Act (for offence or civil wrong) includes series of acts which extend to illegal omissions.</p> <p>Example</p> <p>Act by which A cause Z's death consists of series of acts like blows given to him & illegal omissions (wrongfully neglecting or refusing supply of food at proper time).</p>

Rule	Rule made in exercise of power conferred by enactment & includes regulation.
Commencement	For an Act/Regulation, it means day on which such Act/Regulation came into force . <u>Note:</u> Coming into force is process by which legislation, regulation, treaty & other legal instruments come to have legal force & effect.
Financial Year	Financial year mean year commencing on 1st day of April to the end of March .
Year	Year reckoned as per British calendar which is calendar year starting from January to December [i.e. starts from 1 st day of January].
Person	Includes company, association or body of individuals (whether incorporated or not). <u>Example:</u> Individual, Public Body, Idol (juristic person/legal entity), etc.
Immovable Property	Immovable Property includes: <ul style="list-style-type: none"> ▪ Land, ▪ Benefits to arise out of land, and ▪ Thing attached to earth or ▪ Permanently fastened to anything attached to earth. <u>Note:</u> <ol style="list-style-type: none"> If definition of immovable property in any enactment is in negative & not exhaustive, definition given under this Act shall apply. Right to access from one place to another [Road] come within definition of immovable property but right to drain of water is not immovable property.
Movable Property	Property which is not immovable property is movable property <u>Example:</u> Timber, Insurance policies covering immovable property, etc.
Document [as per this Act and Indian Evidence Act]	Document includes any matter written, expressed or described on substance by means of letters, figures or marks which is intended for recording that matter [does not include Indian currency notes]. <u>Example:</u> Power of Attorney, Cheque, etc.
Affidavit, Oath or Swear	It includes affirmation & declaration by persons allowed to affirm or declare instead of swearing [Can be used as evidence in court or any authority]. <u>Note:</u> "Affidavit", "Oath" and "Swear" have same definition.
Good Faith	<ul style="list-style-type: none"> ▪ A thing is deemed to be done in good faith if it is done honestly (whether negligently or not). Thus, anything done with due care & attention, which is not malafide is presumed to be done in good faith. ▪ "Good faith" is defined differently in different enactments. This definition does not apply to enactment which contain "good faith" definition & definition given in such enactment shall be followed (except if repugnant/contradictory). ▪ Question of good faith is determined as per facts & circumstances of each case. <u>Note:</u> As per Indian Contract Act, 1872 , act is not said to be done in good faith if

	it is done without due care & attention as expected from man of ordinary prudence.
Official Gazette	Official Gazette means: <ul style="list-style-type: none"> Gazette of India, or Official Gazette of state. Note: Gazette of India is authorised legal document of Government of India, published weekly by Department of Publication, Ministry of housing & urban affairs strictly as per Government policy and is printed by Government of India Press.
Imprisonment	Imprisonment of description as defined in Indian Penal Code [i.e. either rigorous (with hard labour) or simple]. Court decides imprisonment to be rigorous or simple.

Coming into Operation of Enactment [Section 5]

- If **specific date** of enforcement is **prescribed in Official Gazette**: Come into force from such date.
- If Central Act has **not mentioned a particular date** to come into force, it is implemented on the day on which it receives **assent of President** (in case of Act of Parliament) **or Governor General** (in case of central acts made before commencement of Indian Constitution).

Note:

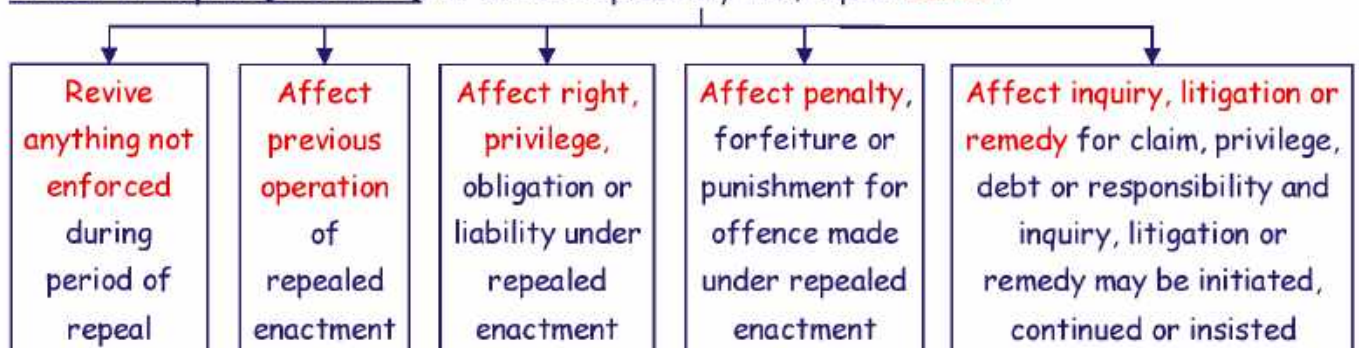
- If an Act empowers **government** to bring provisions into operation on a day it deems fit, **court cannot issue mandamus (order)** to government to bring it into operation on a particular day. But if sufficient time has elapsed since Act/provision is passed and is not brought into force, court through **writ** can direct government to consider question as to when it begins to operate.
- Law takes no cognizance of fraction of day **[Example: If act comes in force on 1st January, it will come into force as soon as clock strike 12 on night of 31st December]**.

Example

ANC Act was issued vide notification dated 14th May, 2024 with effect from 1st April, 2025. Since, specific date of enforcement is prescribed in Official Gazette, Act shall come into enforcement from 1st April, 2025 and not from date of its notification in Gazette.

Repeal Provisions [Section 6 to 8]

- Effect of Repeal [Section 6]:** If an Act repeals any Act, repeal **cannot**:



Note: Repeal is distinct from deletion:

- Repeal means **obliteration** (removal) of provision as if it **never existed** and affects rights & cause of action related to repealed provision.
- Deletion effects from **date of deletion** & is **not total wiping out** of provision as if it never existed.

Example

Companies Act, 1956 was repealed by Companies Act, 2013. But even after such repeal:

- A company incorporated in 2012 under the 1956 Act is still valid.
- Any penalty imposed in 2011 under the 1956 Act remains enforceable.
- If a case was filed in 2010 under the 1956 Act, it can still be continued in court.

• Other Provisions for Repeal [Section 6A, 7 and 8]

<ul style="list-style-type: none"> ▪ If an act repeals & re-enacts any provision of former act, then reference to repealed provision in any enactment is considered as reference to re-enacted provision. ▪ If act makes reference to other act, such law shall have effect along with amendments (unless saved by relevant provision). 	<p>If a Central Act or Regulation repeals an enactment by which any Central Act or Regulation was amended, then repeal shall not affect continuance of amendment made by repealed enactment</p>	<p>To revive a repealed enactment, it is necessary to state intention to do so</p>
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General Construction Provisions [Section 9 to 13]

Commencement and termination of time	<ul style="list-style-type: none"> ▪ <u>Use of word "from"</u>: For excluding first in a series of days, and ▪ <u>Use of word "to"</u>: For including last in a series of days. <p>Example K Ltd. declared dividend on 27.09.22. It shall be paid within 30 days from declaration. Such period will exclude 27.09 as first day & include 27.10 as last day making payment window as 28.09.22 to 27.10.22.</p>
Computation of time	<p>If an act/proceeding is to be done in court/office on a certain day (or within prescribed period), but if court/office is closed on that day (or last day of period), then such act/proceeding are considered to be done in time if it is done on next day whenever court/office opens.</p>
Measurement of Distance	<p>Measured in a straight line on horizontal plane.</p> <p>Example An act requires factories to be ≥ 5 km away from river. A Ltd. claims that factory's distance was 5.3 km by road but as distance is measured in straight line on horizontal plane, distance of A Ltd. is 4.5 km.</p>

Gender and number [Section 13]	<ul style="list-style-type: none"> Words denoting masculine gender are taken to include females, and Words in singular shall include plural and vice versa. <p>Note:</p> <p>(i) It shall be applied carefully while interpreting succession laws [Example: "Male descendant" in Chota Nagpur Tenancy Act, 1908 cannot be interpreted to include female descendant].</p> <p>(ii) If a word connoting common gender is available but word used conveys a specific gender, it is presumed that this provision does not apply [Example: Bullock cannot be interpreted to include cow].</p> <p>Example</p> <p>Section 203(3) of Companies Act states that KMP shall not hold office in more than 1 company except its subsidiary. Here, 'singular' word shall include 'plural' and KMP may hold office in > 1 subsidiary company.</p>
Duty to be taken pro rata in enactments	<ul style="list-style-type: none"> If any duty is leviable on a given quantity (weight, measure or value), then like duty is leviable as per same rate on greater/lower quantity. 'Pro rata' is a Latin term used to describe proportionate allocation.

Power and Functionaries [Section 14 to 19]

Power conferred to be exercisable	If any power is conferred, that power can be exercised whenever required.
Power to appoint include power to appoint ex-officio	If power to appoint a person is conferred, then appointment may be made either by name or by virtue of office (ex-officio).
Power to appoint to include power to suspend	Authority having power to make appointment shall also have power to suspend/dismiss any person appointed by itself or other authority.
Official Chiefs and subordinates	<p>A law applicable to chief/superior of office shall apply to deputies or subordinates performing duties in place of their superior.</p> <p>Example</p> <p>X, Director of DGCA, went on leave & during this time, Y (his deputy) handled his duties. Powers & duties assigned to X is validly extended to Y and all actions taken by Y would be valid.</p>
Substitution of functionaries	For indicating application of law to person executing functions of an office, it is sufficient to mention official title of officer executing functions or officer who commonly executes such functions.
Successors	For indicating application of law to successor of functionaries or corporations having perpetual succession, it is sufficient to express application to functionaries/corporations .

Provision as to Orders, Rules etc. made under Enactments [Section 20 to 24]

Provisions applicable to making of rules or bye-laws after previous publications [Section 23]	<p>If power to make rules or bye-laws is given (subject to it being made after previous publication), then:</p> <ul style="list-style-type: none"> ▪ Authority having power to make rules or bye-laws shall (before making them) publish a draft of proposed rules or bye-laws for information of persons likely to be affected. ▪ Along with draft a notice specifying date on or after which draft will be taken into consideration shall be published. ▪ Publication shall be made in manner as authority deems sufficient or as Government prescribes. ▪ Authority shall consider objection or suggestion received on such draft before specified date. ▪ Publication in official gazette shall be conclusive proof that rule or bye-law is duly made. <p><u>Note:</u> It is open to such authority to make changes in draft before finally publishing them. Also, it is not necessary to re-publish draft rules in amended form before final issue if changes are ancillary to earlier draft and cannot be regarded as foreign.</p>
Power to issue includes power to add, amend, vary or rescind	If power to issue notifications, orders, rules or bye-laws is conferred, then that power is exercisable to add, amend, vary or rescind any notifications, orders, rules or bye laws so issued.
Making rules, bye-laws and issuing order between passing & commencement of act	If a power is conferred on passing of Central Act or Regulation (which is not to come into force immediately) to make rules, bye-laws or orders for application of such Act or Regulation, such issued rules, bye-laws or orders cannot take effect until commencement of Act or Regulation .
Construction of orders, etc. issued under enactments	Any word used in notification, order, scheme, rule, form or bye-law issued shall have same meaning as in Act or regulation conferring power to issue it.
Continuation of orders etc., issued under enactments repealed and re-enacted	<p>If an act is repealed & re-enacted, then any appointment, notification, order, scheme, rule, form or bye-law issued under repealed Act is deemed as issued under re-enacted provisions.</p> <p><u>Note:</u> If Act/Regulation is extended to local area & then withdrawn from such area, Act/regulation is deemed as repealed & re-enacted in that area.</p>

Miscellaneous [Section 25 to 30]

<p>Meaning of Service by post [Section 27]</p>	<p>If legislation or regulation requires document to be served by post, then service is deemed to be effected if such post is:</p> <div style="text-align: center;"> <pre> graph TD A[Properly addressing] -- and --> B[Pre-paying] B -- and --> C[Posted by registered post] </pre> </div> <p>Note:</p> <ul style="list-style-type: none"> (i) A letter is considered as effected at time at which letter would be delivered in ordinary course of post. (ii) If a notice required to be sent by 'registered post acknowledgement due' is sent by 'registered post', presumption regarding serving of notice by 'registered post' under this section is not tenable. (iii) If notice is sent by registered post to person at proper address, it is deemed to be served in due course. Endorsement 'not claimed/not met' is sufficient to prove service of notice. (iv) If notice is sent to landlord by registered post and it is returned by tenant with endorsement of refusal, it is deemed that notice is served.
<p>Provision as to offence punishable under two or more enactments [Section 26]</p>	<ul style="list-style-type: none"> ▪ If an act or omission constitutes offence under 2 or more enactments, offender shall be prosecuted & punished under either of such enactments [i.e. Not punished twice for same offence]. ▪ Article 20(2) of Constitution states that no person shall be prosecuted & punished for same offence more than once. <p>Note:</p> <ul style="list-style-type: none"> (i) This provision applies only if subject of prosecution of offences is same. If offences are distinct (not identical), this provision does not apply. (ii) In case of 2 charges in same trial, if accused is acquitted from one charge, it does not bar his conviction on other.
<p>Recovery of fines</p>	<p>Section 63 to 70 of Indian Penal Code and provisions of Code of Criminal Procedure for issue & execution of warrants shall apply for fines imposed.</p>
<p>Citation of enactments</p>	<p>An enactment may be cited by reference to title, short title or number & years and provision may be cited by reference to section or sub-section of enactment.</p>
<p>Saving for previous enactments, rules and bye laws</p>	<p>Provisions of this Act are for construction of Acts, regulations, rules or bye-laws made after commencement of this Act and shall not affect construction of Act, regulation, rule or bye-law which are continued from before commencement of this Act or are amended after commencement of this Act.</p>

INTERPRETATION OF STATUTES



Topics Covered



Introduction

Instrument	<ul style="list-style-type: none">Formal legal document in writing which creates or confirms a right, liability or records a fact or as evidence.Instrument includes every document by which right or liability is created, transferred, extended, extinguished or recorded.
Deed	<ul style="list-style-type: none">Deed is instrument in writing to effect legal disposition (change in legal title, interest or right).All deeds are instruments but all instruments may not be deeds.
Interpretation	<ul style="list-style-type: none">Process to ascertain meaning of legislature by courts by words expressed in it.Real meaning of act (or document) and intention of legislature is ascertained.Resorted to resolve ambiguity in statute. <p><u>Importance of Interpretation:</u> Process of statute making & interpretation take place separately by 2 different agencies. It serves as bridge of understanding.</p>

Why Do We Need Interpretation/Construction?

- Legislators **cannot foresee all contingencies** at the time of passing of law.
- Words of statute can be **vague, ambiguous** or reasonably capable of more than one meaning.
- Interpretation has to be commensurate with **public benefit**.
- Fundamental rule is that statute should be expounded according to **intent** of those who made it.
- If 2 constructions are possible, where one is mechanical & based on grammar rules and other is vibrant & in line with **intention of Act**, then latter shall be preferred.
- If a statute levies penalty without mentioning recipient of penalty, then it goes to **coffers of State**.

Interpretation and Construction

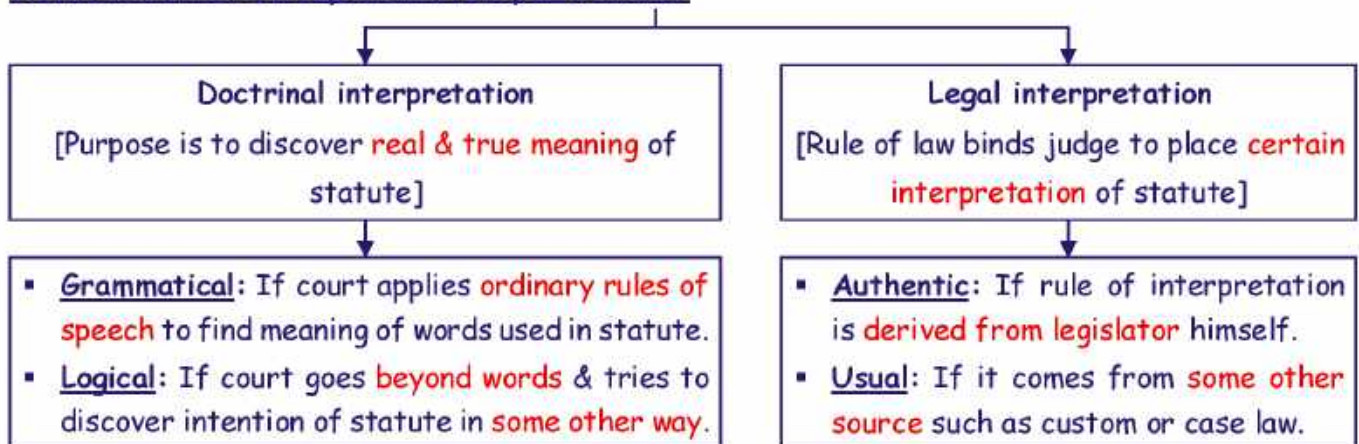
- Construction** of statute/document refers to determining **true meaning or intention of framers**. It involves drawing conclusions beyond actual expressions used and is done by referring to other parts of enactment & context in which law was made to ascertain intention of legislature.

• Difference between Interpretation and Construction:

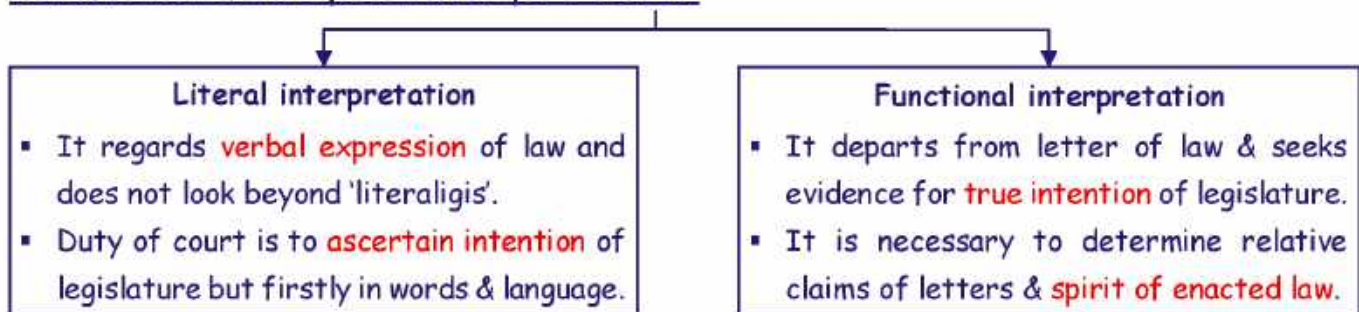
- These 2 terms are **used interchangeably** to denote process of courts to ascertain meaning of legislature but these 2 terms have **different connotation**.
- **Interpretation is art to ascertain meaning** of words & true sense in which author intended it to be understood.
- If court adheres to **plain meaning** of language used by legislature, it is **interpretation** of words, but where **meaning is not plain**, court has to decide whether wording covers situation before court. Here, court would resort to **construction**. Conclusions drawn by construction are within spirit though not necessarily within letter of law.
- In practice construction includes interpretation and terms are frequently used synonymously.

Classification of Interpretation

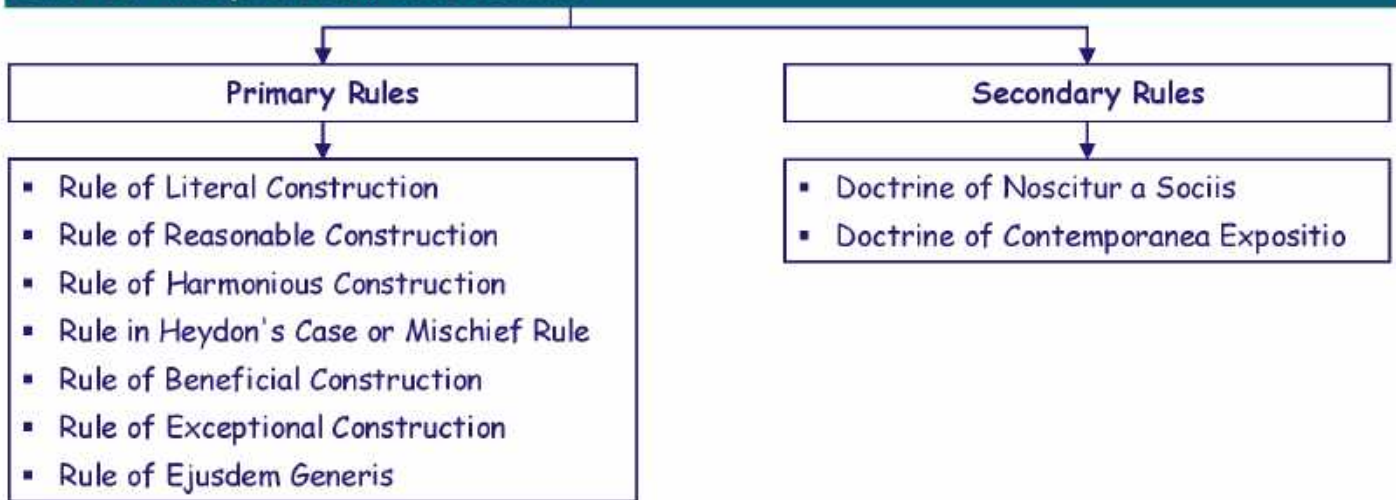
• Classification of Interpretation as per Jolowicz



• Classification of Interpretation as per Fitzgerald



Rules of Interpretation/Construction



(1) Primary Rules

• Rule of Literal Construction:

- It is a cardinal rule of construction where statute must be **construed literally and grammatically** giving words their **ordinary & natural meaning**.
- If words of statute are **clear & unambiguous**, it should be construed in natural & ordinary sense and court is **not open to adopt hypothetical construction**.
- This principle is contained in Latin maxim "**absoluta sententia expositore non indiget**" which means "an absolute sentence or preposition needs not an expositor", i.e. plain words require no explanation.
- Occasions may arise where choice is to be made between **narrower & wider interpretation**. If narrower interpretation fails to achieve purpose of legislation, **wider one** is adopted.

Example

Under Section 102, disclosure of concern/interest of director/manager is interpreted in broader sense where concern/interest includes any information that enables members to understand meaning, scope & implications of business and take decisions. A full disclosure of where relatives are concerned shall also be made. A restricted & narrow interpretation would defeat purpose of disclosure.

- This Rule can be understood under following headings:

- **Natural & grammatical meaning:** Statute shall be understood in **natural, ordinary or popular sense** and be construed as per its **plain, literal & grammatical meaning**. If there is **inconsistency** with intention of statute or it involves **absurdity or inconsistency**, grammatical sense must be **modified/extended** only to avoid inconvenience & not further.

Example

Supreme Court held that betel leave cannot be given dictionary, technical or botanical meaning if ordinary & natural meaning is clear & unambiguous.

- **Technical words** are to be understood in **technical sense**.

- Rule of Reasonable Construction:

- There is scope for interpretation/construction only if words are capable of ≥ 2 construction.
- If Court finds that giving plain meaning will not be fair or reasonable construction, it is duty of court to depart from dictionary meaning and adopt construction which **advances remedy & suppress the mischief** provided court does not have to resort to conjecture.
- Interpretation which **furtheres object** is preferred over which is likely to defeat object.
- If grammatical interpretation leads to **absurdity**, it is permissible to depart from it and interpret in manner avoiding that absurdity. This is called as Golden Rule of Interpretation.
- Words of statute are to be construed "**ut res magis valeat quam pereat**" meaning that words shall lead to **sensible meaning**.
- Words must be construed to give effect to enactment rather than reducing it to futility as contained in Latin maxim "**Interpretatio fienda est ut res magis valeat quam pereat**".

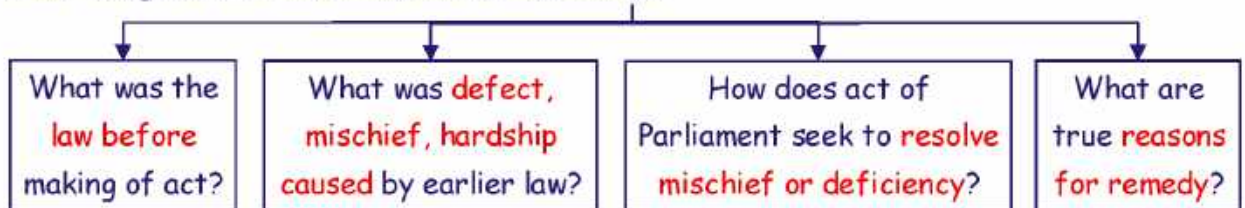
- Rule of Harmonious Construction:

- It is a basic rule of interpretation that if it is possible to **avoid conflict**, then it is duty of court to construe them in a manner that they are in **harmony with each other**.
- This rule is adopted only if there is a real & not apparent **conflict** between provisions or provisions & object but if words **admit only one meaning**, such meaning shall prevail.
- Statute must be **read as a whole** and every provision must be construed with **reference to context & other clauses** to make statute a consistent enactment & not reduce it to futility.
- If it is **not possible** to give effect to both provisions harmoniously, collision may be avoided by **holding that section in conflict** provides for **exception or specific rule** different from general rule and **specific rule will override general rule**. This principle is expressed by maxim "**generalia specialibus non derogant**".
- Statute may give indication as to which provision overrides by using "subject to", "notwithstanding" and "without prejudice".
 - Subject to: If **same subject matter** is covered by a provision & by another provision subject to which it operates, then **latter will prevail** in case of conflict between them. But if subject matter is **not same**, this limitation **cannot operate**.
 - Notwithstanding: Clause that begins with words 'notwithstanding anything contained' is called **non-obstante clause**. If this term is used, then that clause will **prevail over other provisions**. Notwithstanding clause can operate at 4 levels:
 - (i) Notwithstanding anything contained in another section or sub-section of that statute: Clause **overrides such section or sub-section**.
 - (ii) Notwithstanding anything contained in statute: Clause **overrides entire enactment**.
 - (iii) Notwithstanding anything contained in specific section, sub-section or all provisions contained in another statute: Clause **prevails over other enactment**.
 - (iv) Notwithstanding anything contained in any other law for time being in force: Clause **overrides all other laws**.

- Without prejudice: If it is stated that particular provisions are without prejudice to general provisions, **particular provisions would not restrict operation & generality of preceding provision** and operates in addition to that provision.

- The Rule in Heydon's Case or Mischief Rule:

- Intention of this rule is always to **suppress the mischief and advance the remedy** as per true intention of legislation.
- This rule can be applied only if there is **ambiguity in present law** and are capable of **more than one meaning**.
- Four things are to be discerned & considered:



- Courts shall look at **state of law at the time of passing** that enactment & **previous statutes**.

- Rule of Beneficial Construction:

Beneficial construction is for statutes which are for **improving** conditions of certain **class of people who are underprivileged or have not been treated fairly** in past. It is permissible to give **extended meaning** to word/clause in such enactments when 2 constructions are possible.

- Rule of Exceptional Construction:

If **no sensible meaning** can be given to word or it defeats object, it may be **eliminated**.

- **"And" and "Or"**

- Word **"and"** is **conjunctive** and signify that something is to followed **in addition**. Word **"or"** is **disjunctive** and marks **alternative** (similar to 'either' & 'either this or that').
- But sometimes "and" is read as "or" & vice versa to give effect to **intention** of legislature.
- If provision states **"and/or"**, it is to be read **either disjunctively or conjunctively**.

- **"May", "Must" and "Shall"**

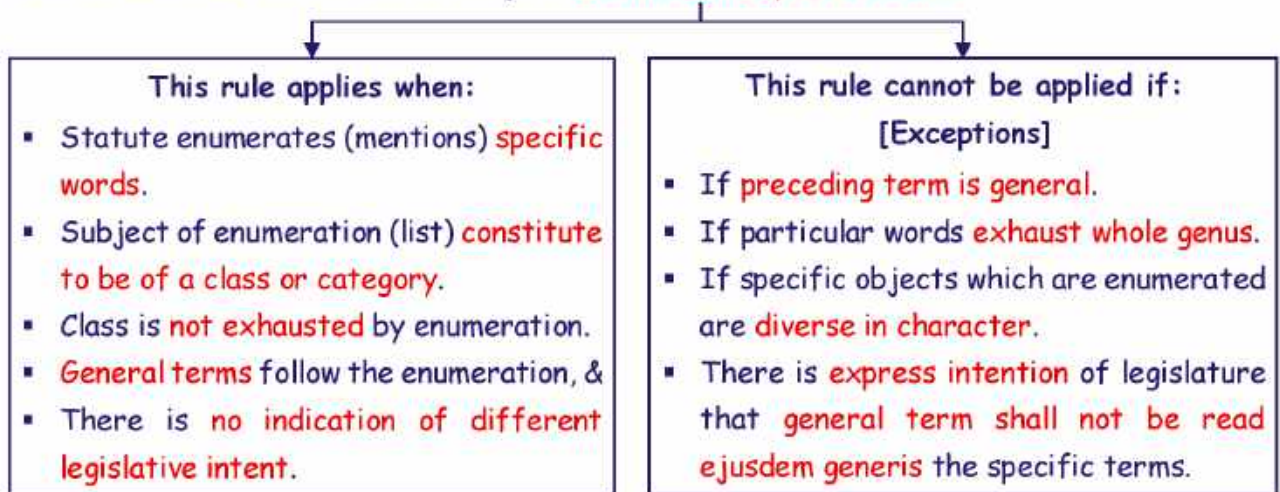
If provision prescribes action to be taken without option, provision is called **mandatory** and if authority is vested with discretion, choice or judgment, provision is called **directory**.

- 'May' signifies permission & that authority is allowed **discretion** & provision is **directory**.
- 'Shall' in normal sense imports **command** & provision is **mandatory**.
- 'Must' is doubtlessly a word of **command** & provision is **mandatory**.
- If normally terms lead to **absurd or unreasonable results**, it should be discarded and be read as per purpose for which requirement is enacted, context of other provisions of act and general scheme [i.e. words "may and shall" can be **interpreted interchangeably** depending on the intention of legislator.].

- Rule of Ejusdem Generis:

If **specific words** of a class, category or genus are **followed by general words**, general words

shall be construed as limited to things of **same kind as specific words**.



(2) Secondary Rules

• Doctrine of Noscitur a Sociis

If two or more **words coupled together** are susceptible of analogous (similar) meaning, they are to be understood in **cognate (related) sense** and shall take their **colour from each other**, i.e. meaning of more general words are restricted to sense of less general words. In short, meaning of a word is judged by **company it keeps**.

Example

Word 'fruit juices' in expression 'manufactured beverages including fruit juices, bottled water and syrups' should be construed as per preceding words and orange juice which is unsweetened & freshly pressed do not fall within the description of above expression.

• Doctrine of Contemporanea Expositio

- Statute or document shall be interpreted by referring to exposition it received from **contemporary authority**. Maxim "**Contemporanea Expositio est optima et fortissima in lege**" means "contemporaneous exposition is the best & strongest in law" which means that law should be understood in sense in which it was **understood at the time when it was passed**.
- Maxim "**optima legum interpret est consuetudo**" means "Custom is best interpreter of law". This maxim shall be applied only for construing **ancient statutes** (not modern Acts).

Internal Aids to Interpretation/Construction

• Preamble

- Preamble expresses **scope, object & purpose of Act** more comprehensively than Long Title. It may also state ground & cause of making statute and evil sought to be remedied by it.
- Preamble discloses **primary intention** of legislature & can be brought as aid to construction only if language of statute is not clear.
- Preamble is a **part of enactment** and can be **used for construing** it but **cannot override** plain provision of Act. But if words/phrase have > 1 meaning & wording gives rise to doubts, Preamble

can be referred to arrive at proper construction.

Example

Hindu Marriage Act, 1955 provides that "marriage may be solemnized between 2 Hindus...". Here, use of word 'may' be construed as mandatory that both parties of marriage must be Hindu. Marriage between Christian & Hindu under such act would be void. This result was reached having regard to preamble which reads: 'Act to amend and codify law relating to marriage among Hindus'.

• Long Title and Short Title

- An enactment would have 'Short Title' & 'Long Title'. **Short Title identifies enactment** and is merely for convenience, whereas **'Long Title' describes enactment**.
- Long Title is a **part of Act** and can be **referred to ascertain object, scope & purpose** of Act but **cannot override** clear meaning of enactment.

• Heading and Title of a Chapter

- A number of sections of an act referring to **particular subject are grouped together** as chapters, prefixed by headings & titles which can be **referred for construing** enactment.
- Heading can be referred to determine **sense of any doubtful expression** under particular heading.
- Headings may sometimes be referred to know scope of a section in same way as preamble.
- It **cannot control plain meaning** of words [i.e. cannot override a section] but be looked **along with preamble** if there is ambiguity in meaning of sections.

• Marginal Notes

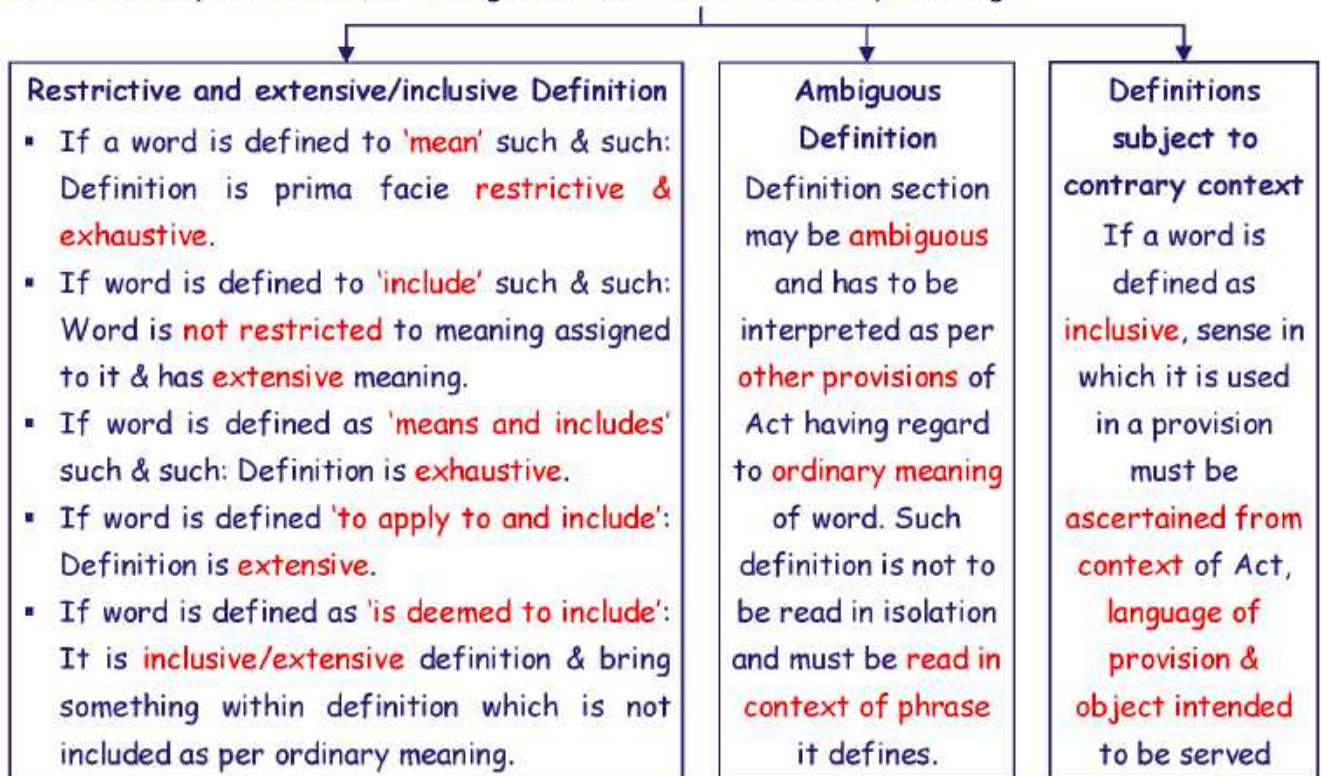
- Marginal notes are **summaries & side notes** found at the side of section to sum up the effect of that section. They are **not a part of enactment** as they were not present when Act was passed.
- Marginal notes **cannot be referred for construing** statute but many cases show that reference to marginal notes for construing statute is permissible in **exceptional cases**.
- Marginal notes appended to Articles of Constitution are considered as part of Constitution passed by Constituent Assembly and therefore, are **used in construing Articles**.

• Definitional Sections/Interpretation Clauses

- Legislature has power to **include 'definitions'** of words & expressions used in **body of statute**.
- If a word/phrase is defined as having a **particular meaning** in enactment, that meaning must be given to while interpreting section (unless repugnant/contradictory). Court cannot ignore an exhaustive statutory definition & extract what it considers to be true meaning.
- **Purpose of definition clause:**
 - Provides **proper interpretation** of enactment, and
 - **Shorten language** of enacting part by avoiding repetition of same words.

➤ **Construction** of definitions:

Definition may either be restricting or extensive of its ordinary meaning



• **Illustrations**

Some sections have illustrations which **follow text of sections** but they **do not form part of section**. However, it forms **part of statute** and considered to be of relevance & value in **construing sections**. Illustrations **cannot modify language of section** and cannot curtail/expand ambit of section.

• **Proviso**

- Function of proviso is to **except something out** of enactment **or to qualify** something stated in enactment. It is embedded in main body of section & begin with words "**provided that**".
- Proviso **carves out exception only to main provision** to which it is enacted as proviso.
- Effect of proviso is to qualify preceding enactment expressed in general terms.
- Distinction between Proviso, exception and saving clause:
 - 'Exception' is intended to **restrain enacting clause** to particular cases.
 - 'Proviso' is used to **remove special cases** from general enactment & provide for them specially.
 - 'Saving clause' is used to **preserve from destruction of existing** rights, remedies or privileges.

• **Explanation**

Explanation is appended to section to **explain meaning** of certain words/phrases used in it and may be added to **include/exclude something within section**. It should be read to **harmonise & clear ambiguity** in main section & shall **not** be construed to **widen ambit** of section.

• **Schedules**

- Schedules form **part of Act** & must be read together with act for construction. But expressions

in schedule **cannot prevail over** those in **enactment** [i.e. if inconsistency, **enactment shall prevail**].

➤ They generally contain details & forms for working out policy in sections of statute.

- Read the Statute as a Whole

➤ Construction is to be made of **all parts together & not of one part** only. Deed, Acts & Rules must be read as a whole to **ascertain true meaning** of several clauses and words of each clause should be interpreted to bring them into **harmony with other provisions**.

➤ For **construction** of general words, examine other **words of like import in same enactment** to see limitations on them. If number of expressions are subjected to same **limitation & qualification**, it forms strong argument for subjecting **expression in dispute to similar limitation & qualification**.

Example

If a section of Act requires 'notice' to be given, then verbal notice would generally be sufficient. But if another section provides that 'notice' should be 'served' or 'left' with person, then it indicates that a written notice was intended.

External Aids to Interpretation/Construction

Apart from statute, there are many matters which may be taken into account for interpreting/construing act when it is ambiguous. These matters are called external aids.

- Historical Setting

History of **external circumstances which led to enactment** is important in construing enactment. **All external/historical facts** necessary in understanding subject matter, scope & object of enactment shall be used for construing. History in general, Parliamentary history, Ancient statute, Contemporary or other authentic writings are relevant in interpreting & construing Act.

- Consolidating Statutes & Previous Law

In case of preambles which contain expression "**An Act to consolidate**" previous law, etc., courts presume that it is **not intended to alter law** & may solve doubtful points with aid of that presumption.

- Usage

If meaning of language in statute is doubtful, **usage** [i.e. how language is interpreted & acted upon over long period] may determine its **true meaning**. If doubtful meaning receives interpretation which is **generally acted upon by public**, courts should be unwilling to change that interpretation (unless reasons for doing so).

- Earlier & Later Acts and Analogous Acts

➤ Exposition of One Act by Language of Another

- If there are **different statutes in 'pari materia'** (i.e. for similar case) and are not referring to each other, they shall be **construed together** as explanatory for each other.
- If 2 Acts are to be read together, it is construed that they are **composite Act**. But if there is discrepancy, then later Act (in point of time) is deemed to modify the earlier one but it does not mean that every word in later Act is to be interpreted in same way as earlier Act.

➤ Earlier Act Explained by the Later Act

- Earlier act is referred for construing later act. But **later Act** also furnishes legislative interpretation of earlier one, if it is '**pari materia**' & if provisions of **earlier Act are ambiguous**.
- If earlier statute contained a negative provision but later one omits it, this does not by itself mean substantive affirmation. In such case, it is necessary to see how **law** would have stood **without original provision** and terms in which repealed sections are re-enacted.
- **Reference to Repealed Act**: If a part of Act is **repealed**, it loses operative force. But repealed part can be used for **construing un-repealed part** because it is part of history of new Act.
- **Dictionary Definitions**
 - Firstly, refer Act to find out if such word/expression is **defined** in it. If it is **not defined**, **dictionary** may be referred to find out **general sense** in which that word is commonly understood.
 - In selecting one out of several meanings, we must consider **context** in which it is used [i.e. meaning of words & expressions must **take their colour from context** in which they appear]. **Judicial decision** laying down meaning of words in '**pari materia**' will have greater weight than meaning in dictionary. However, for **technical terms** reference may be made to **technical dictionary**.
- **Use of Foreign Decisions**

Foreign decisions of country following **same system of jurisprudence as ours** & given on laws similar to ours can be used for construing acts but importance shall be given to **language of Indian statute**. If guidance can be obtained from **Indian decisions**, reference to foreign decision is unnecessary.

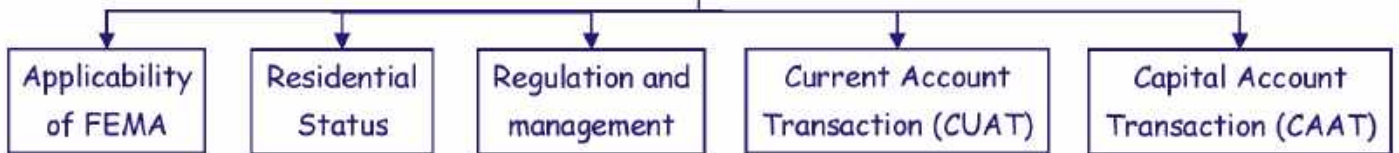
Rules of Interpretation/Construction of Deeds and Documents

- Principle of **construction of document & deed** do not differ much from statute.
- Endeavour is made to find how a **reasonable & well informed man would understand** by words used.
- Deed must be **read as a whole** to ascertain **true meaning** of clauses. Words of each clause should be interpreted to bring **harmony** (if it does no violence to naturally susceptible meaning).
- Golden rule of construction is to **ascertain intention** of parties after considering all words in **ordinary & natural sense**. To ascertain intention, court shall consider **document as a whole** and take circumstances under which particular words were used into account.
- Many words are used in **more than one sense** which differs in different circumstances and even if particular word has a clear & definite significance to a trained **conveyancer**, it may **not be reasonable & proper** to give **same strict interpretation** of word when used by one who is **not so equally skilled**. In some cases, **status & training** of parties also needs to be taken into consideration.
- Same word **cannot have 2 different meanings in same document**. Document must be read as whole & intention deduced as to what parties intended to agree.
- It is inexpedient (not required) to construe terms of one deed by **reference to terms of another**.
- If there is **conflict between two or more clauses** of same document, effort must be made to resolve conflict by interpreting **clauses harmoniously**. If **not possible**, **earlier clause** will **override** latter one.

THE FOREIGN EXCHANGE MANAGEMENT ACT, 1999

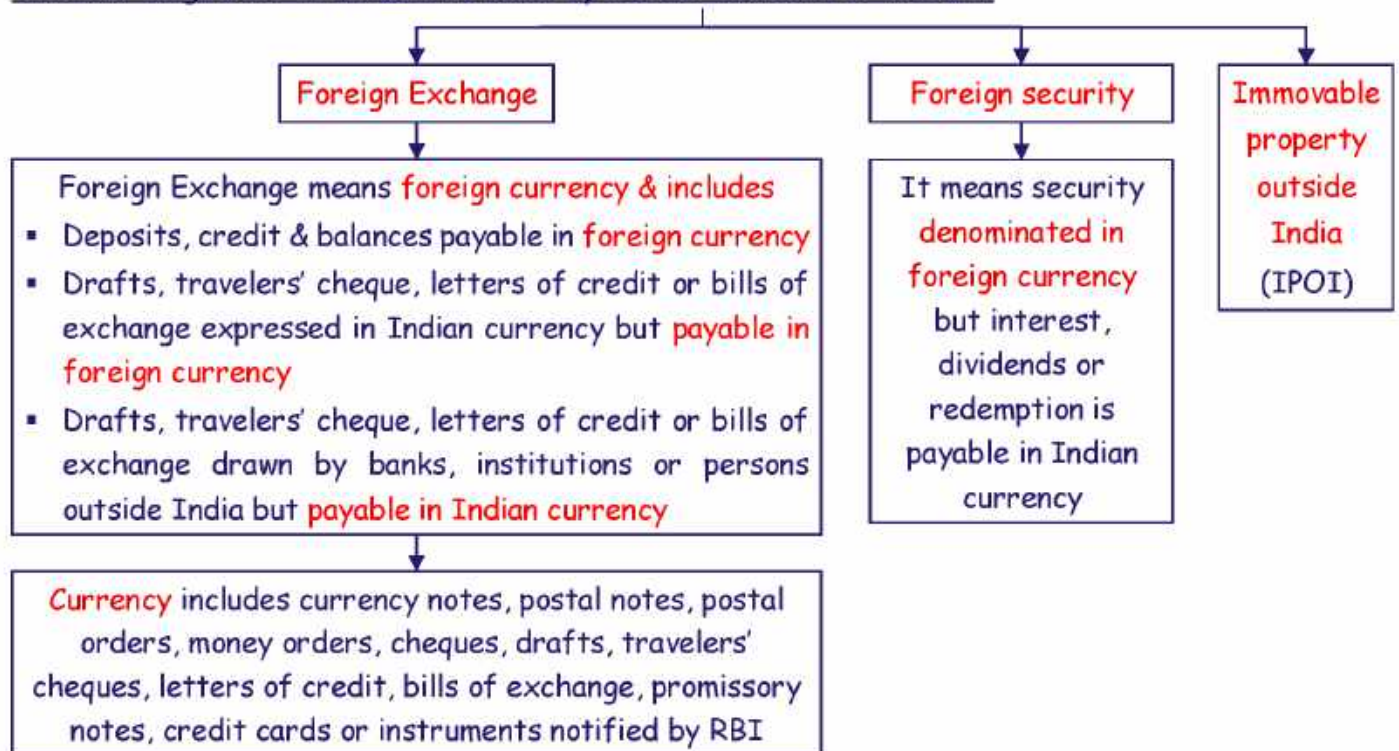


Topics Covered



Applicability of Foreign Exchange Management Act (FEMA)

This Act Regulates Transactions done by Person Resident in India in



Note: This act also regulates some transactions done by person resident outside India.

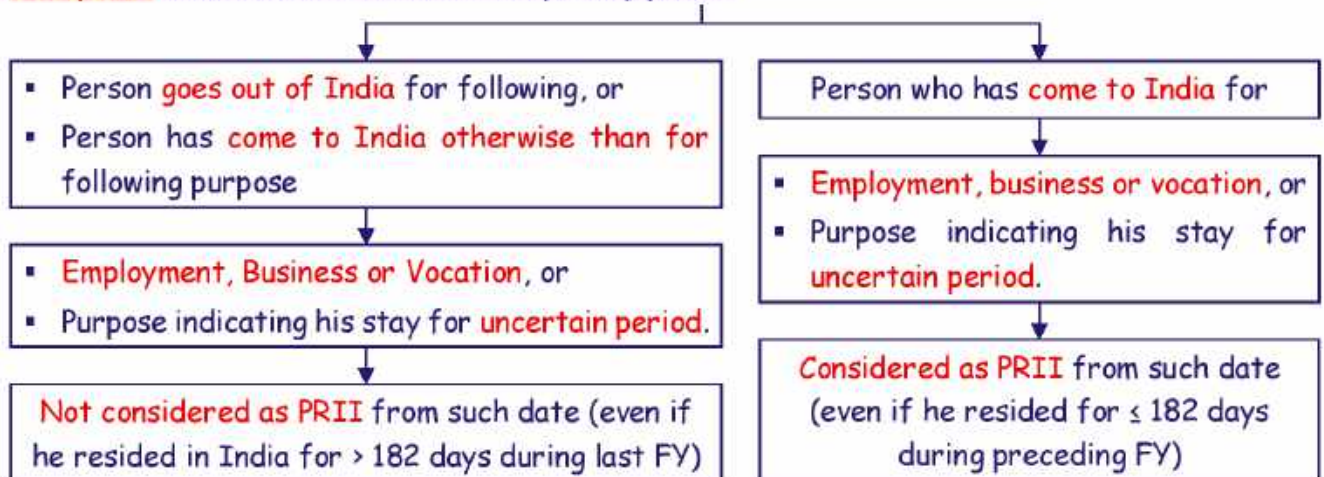
Residential Status under FEMA, 1999 [Section 2(u), 2(v) and 2(w)]

Person includes individual, Hindu undivided family, company, firms, Association of Persons (AOP), artificial juridical persons and agencies, offices & branches controlled by such person.

• Person Resident in India (PRII)

- Person who resides in India for **more than 182 days** during **preceding FY**.

Exception to above condition of 182 days stay period



Note: **Students** going abroad for **studies** are considered as **PROI** because they usually start working there to take care of their stay & cost of studies.

- **Office, branch or agency in India** owned or controlled by **PROI**.
- Office, branch or agency outside India **owned or controlled by PRII**.
- Any other person registered/**incorporated in India**.

Note: **Citizenship** is **not the criteria** for determining residential status under FEMA.

• Person resident outside India (PROI)

PROI means person who is **not PRII**.

Note: Unlike income tax, residential status under FEMA is not for a year, it is from a particular date.

Example

X came to India on 1st April 2020 to carry business. He planned to wind up business by 30th April 2021 and leave India on 30th June 2021. He was PRII for FY 2020-21 and remained so till 30th June 2021. If he left India for employment, business or indefinite stay, he became PROI from 1st July 2021.

Regulation and Management of Foreign Exchange

• A person shall not:

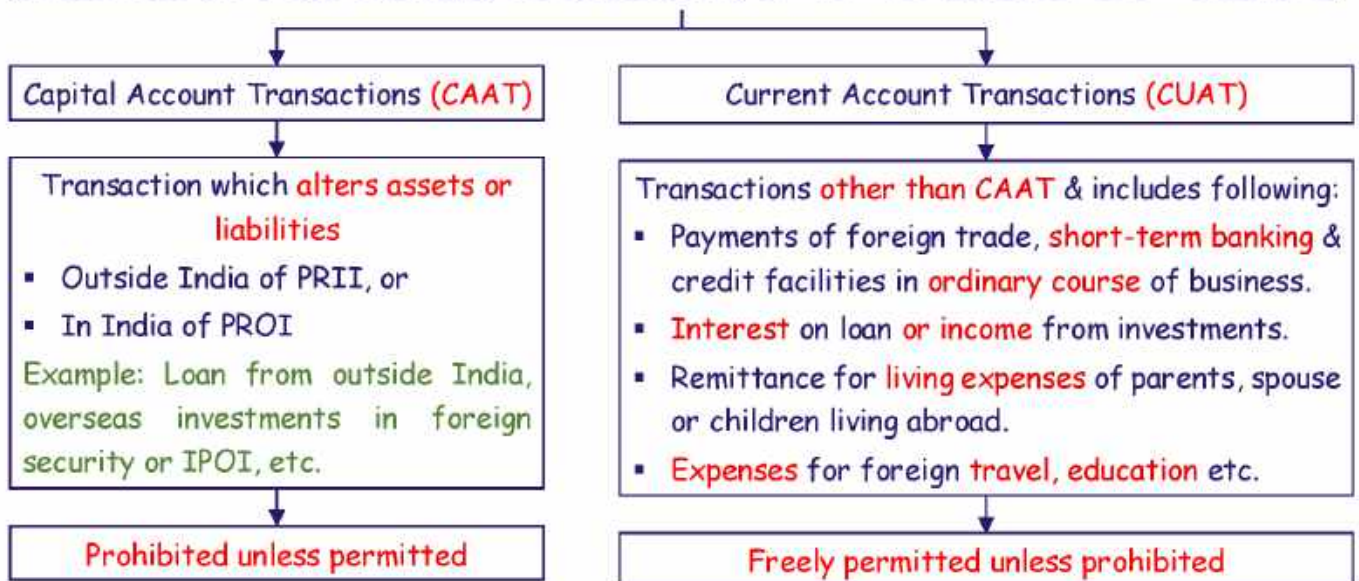
- **Deal** (buy/sell) in foreign exchange or foreign security [otherwise than through authorised person] with any person.
- **Receive payment** from (or on behalf of) **PROI** [otherwise than through authorised person].
- **Make payment** to (or for credit of) **PROI**.
- Enter into **financial transaction** in India (hawala transaction) as consideration for creation of

asset outside India.

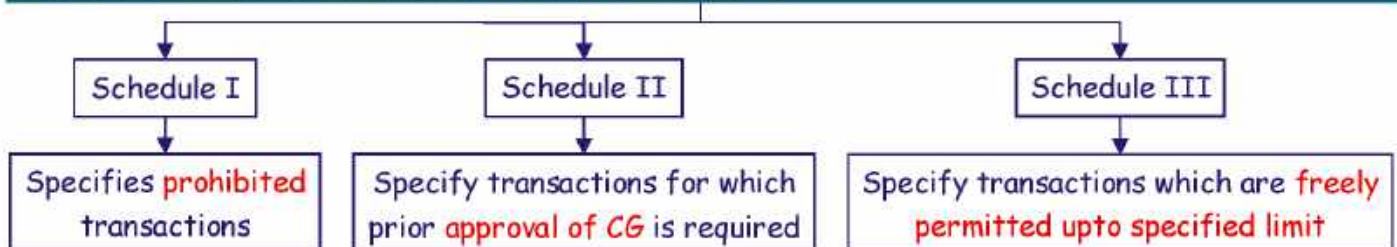
Note:

- (i) PRII shall not acquire, hold, own or transfer foreign exchange, foreign security or IPOI (except as provided and allowed under this Act).
- (ii) **Authorised person** means authorised dealer, money changer, off-shore banking unit or any person authorised to deal in foreign exchange.

• **Transactions in Foreign Exchange, Foreign Security or IPOI are Classified into 2 Categories**



Current Account Transactions (CUAT) [Section 5]



Foreign Exchange Management (Current Account Transactions) Rules, 2000

(1) **Schedule I: Transactions For which Drawal of Foreign Exchange is Prohibited**

- Remittance for purchasing **banned magazines, lottery** tickets/football pools/sweepstakes **etc.**
- Remittance out of lottery **winnings**, income from racing/riding or any other hobby.
- Remittance of dividend by company to which **dividend balancing** requirement is applicable.
- Remittance of interest income on funds held in **non-resident special rupee scheme a/c**.
- Payment of **commission** on export towards:
 - Equity investment in joint ventures or wholly owned subsidiaries abroad of Indian companies.
 - Rupee state credit route [**except commission upto 10%** of invoice value of exports of **tea & tobacco**].

Payment related to **call back services** of telephones.

Drawal for **private visit to Nepal & Bhutan**.

(2) **Schedule II: Transactions that Require Prior Approval of CG For Drawal of Foreign Exchange**

Remittance/Drawal for	Approving Ministry
Cultural tours Example: Sending cultural troupe on USA tour, Indian artist performs on Diwali or organize cultural programme in USA.	Human resource development (Department of education & culture)
Prize money/sponsorship of sports activity abroad [exceeding US\$ 1,00,000] by any person other than international, national or state level sports body	Human resource development (Department of youth affairs & sports)
Advertisement in foreign print media by SG & its Public Sector Undertaking (PSU) [exceeding US\$ 10,000] other than for promotion of tourism, foreign investment & international bidding	Finance (Department of economic affairs)
Membership of P & I club	Finance (Insurance division)
Hiring charges of transponders by TV channels	Information & broadcasting
Hiring charges of transponders by internet service providers	Communication & IT
Freight of vessel chartered by PSU	Surface transport (Chartering wing)
Import through ocean transport by government department or PSU on CIF basis [i.e. other than FOB & FAS basis]	
Container detention charges exceeding rate prescribed by director general of shipping	Surface transport (Director general of shipping)
Multi-modal transport operators making remittance to their agents abroad	Registration certificate from director general of shipping

(3) **Schedule III: Transactions For which Drawal of Foreign Exchange is Freely Permitted upto Specified Limit [Above that Limit, Prior Approval of RBI is Required]**

• **Remittance by Individual Persons**

Remittance/Drawal for	Freely Permitted Limit
Emigration, medical treatment & studies abroad [if required by country of emigration/medical institute/university]	No limit [i.e. Freely permitted]
Any other CUAT [Example: Business tour, gift, donation] by ▪ Person who is resident but not permanently resident in India [i.e. on deputation or specific job of duration upto 3 years] & citizen of:	Upto his net salary [Net salary means gross salary after deducting PF]

<ul style="list-style-type: none"> ➤ Foreign state other than Pakistan, or ➤ India [who is on deputation of foreign company or subsidiary/joint venture of such foreign company]. ▪ Any other person 	<p>contribution, tax, etc.]</p> <p>US\$ 2,50,000 in a FY [It can be consolidated with family members]</p>
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• **Remittance by Persons Other than Individual**

Remittance/Drawal for	Freely Permitted Limit
Donation for <ul style="list-style-type: none"> ▪ Creation of chairs in reputed educational institute ▪ Contribution to funds promoted by educational institutes [other than investment funds] ▪ Contribution to technical institution in field of activity of donor company 	<p><u>Lower of</u></p> <p>1% of foreign exchange earnings during previous 3 FYs or US\$ 50,00,000</p>
<p>Commission to agents abroad for sale of residential flats or commercial plots in India (per transaction)</p> <p>Note: Commission is paid in proportion to the amount received (i.e. remitted by PROI).</p>	<p><u>Higher of</u></p> <p>5% of inward remittance or US\$ 25,000</p>
Consultancy service procured from outside India for infrastructure projects (per project)	US\$ 1,00,00,000
Other consultancy service procured from outside India (per project)	US\$ 10,00,000
Reimbursement of pre-incorporation expenses by entity in India	<p><u>Higher of</u></p> <p>5% of investment brought in India or US\$ 1,00,000</p>
Any other CUAT	US\$ 2,50,000 in a FY

Note:

- If remitter is minor, Liberalised Remittance Scheme (LRS) declaration form must be signed by minor's natural guardian.
- If remittance is made from Resident Foreign Currency (**RFC**) **account**, then approval is **not required** for transactions mentioned in **Schedule II & III**.
- If remittance is made from Exchange Earners Foreign Currency (**EEFC**) **account**, then approval is **not required** for transactions mentioned in **Schedule II & III except** for following payments:
 - Membership of P & I club.

- Commission to agents abroad for sale of residential flats or commercial plots in India (per transaction) [in excess of above limit].
- Reimbursement of pre-incorporation expenses by entity in India [in excess of above limit].
- (iv) Amount remitted by individual under Schedule III (including amount for emigration, medical treatment & studies abroad) in a FY would be reduced from limit of \$2,50,000.
- (v) **No restriction on receipt** of foreign exchange for any CUAT.

Capital Account Transactions (CAAT) [Section 6]

All CAAT are Prohibited Except Following Transactions specified in Foreign Exchange Management (Permissible capital account transactions) Regulations, 2000:

(1) Schedule I: Permissible Transactions by PRII

Transactions	Limit
Hold, own, transfer or invest in foreign currency, foreign security or IPOI which was acquired, held or owned when such person was PROI or inherited from PROI	No limit/restriction [These assets, income on such assets & its sale proceeds can be freely utilised for any payment/investment outside India without RBI approval]
Payment for amortization of loan [Repayment of loan instalment]	Foreign exchange can be drawn without any limit/restriction
Payment for depreciation of direct investment in ordinary course of business	
Maintenance of foreign currency account	Can maintain such accounts that were opened & maintained by him when he was PROI
Sale or transfer of investments outside India	Subject to specific regulations
Loan taken from outside India	
Guarantee in favour of PROI	
Investment in foreign security	Subject to specific regulations Foreign exchange can be drawn upto US\$ 2,50,000 in a FY [or such higher limit as prescribed in their specific regulations]. ▪ Limit can be consolidated with family members, only if they are co-owner/partner . ▪ US\$ 2,50,000 is combined limit for these CAAT and CUAT mentioned in Schedule III.
Investment in IPOI	
Loan given to PROI	
Taking insurance policy from insurance company outside India	

Note:

- (i) Above permissible transactions **cannot be entered with countries & territories notified as non-cooperative** by Financial Action Task Force (FATF).
- (ii) PRII shall not undertake CAAT with citizen/resident of, or entity incorporated in Democratic People's Republic of Korea.

(2) Schedule II: Permissible Transactions by PROI

Hold, transfer or invest in Indian currency, Indian security or immovable property in India which was acquired, held or owned when such person was PRII or inherited from PRII	No limit/restriction
Acquisition & transfer of immovable property in India	Subject to specific regulations
Maintenance of foreign currency account in India	
Guarantee in favour of PRII	
Investment in India other than following prohibited businesses: <ul style="list-style-type: none"> ▪ Chit fund, Nidhi company ▪ Agriculture or plantation activities ▪ Real estate [except REIT & development/construction of township, premises, roads or bridges] ▪ Construction of farm houses ▪ Trading in transferable development rights (TDRs) Note: TDR means certificate issued by CG/SG for land acquired by them for public purpose without monetary compensation.	