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CA-Inter LAW



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DEFINITIONS

PRIVATE COMPANY [SEC 2(68)] :-Share Capital:-No Limit and Articles shall provide that a) Transfer of Shares is Restricted b) Public Offer is Prohibited c) Maximum Members can be 200 . While counting the number of 200, the present & past employees who are members shall be excluded and Joint shareholders will be counted as one member
PUBLIC COMPANY [SEC 2(71)] :-Share Capital:-No Limit and which is not a private company . Subsidiary Company of Public Company will always be considered as Public Company
SUBSIDIARY COMPANY [SEC 2(87)] A Body Corporate in which Holding Company:- a) Exercises or controls more than half of the total voting power ; or b) Controls the composition of Board of Directors
ASSOCIATE COMPANY [SEC 2(6)] :-It means a company in which any Company is having “Significant Influence” (holding 20% or more of total voting power) and It includes a Joint Venture Company
HOLDING COMPANY [SEC 2(46)] :-Any Company of whose other Companies are Subsidiary or Associate Companies
GOVERNMENT COMPANY [SEC 2(45)] :-It means any company in which not less than fifty one per cent of the paid-up share capital is held by CG/SG/CG+SG It also includes a company which is a subsidiary company of such a Government company.
FOREIGN COMPANY [SEC 2(42)] :-Any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent (physically/e-mode) and conduct any business activity in India
SMALL COMPANY [SEC 2(85)] :-Any company other than public company whose a) Max. Paid-up Capital is 4 crores ; and b) Max.Turnover is 40 Crores Small Company shall not include any Subsidiary /Holding/Section 8 company/Company formed under Special Act
LISTED COMPANY 2(52) :-Shall not include:-a) Public company whose NCPS are listed on PP basis b)Public/private company whose NCD are listed on PP basis c)Public company whose equity shares are listed in foreign jurisdiction
PUBLIC FINANCIAL INSTITUTION [SEC 2(72)] :-LIC, IDFC LTD., Specified Company as per UTI Act, 2002 and Institution notified by CG. CG can notify if Institution established under Central/State Act or whose 51% capital is held by CG/SG/CG+SG.

INCORPORATION OF COMPANY (+MOA/AOA)

Section 3 :-Minimum subscribers shall be 1-OPC, 2-Private, 7-Public and object must be lawful
Section 4 :- MOA shall contain a)Name of Company, b)State in which the registered office of the company is to be situated c)objects, d)Liability of Members, e)amount of share capital f)number of shares which the subscribers to the memorandum agree to subscribe & g)name of nominee in OPC
Section 5 :- AOA is a document which contains Rules and regulations of Company and it may contain provisions of entrenchment so that amendment can only be possible if conditions restrictive than SR are met with . EC can be added by passing SR in public company or Unanimous resolution in private company
Section 6 :- Act shall prevail over MOA, AOA, Agreement or resolution (MAAR)
Section 7 :-To incorporate a company, Subscribers must file 1.MOA, 2.AOA, 3.details of subscribers and directors, 4.address for correspondence, 5.compliance declaration, 6.declaration that they are not guilty for formation/management and fraud in last 5 years with and ROC will issue a certificate of Incorporation and allot CIN In case of false disclosure, person shall be liable u/s 447 and NCLT can direct change in MOA/AOA, Can declare Member's liability Unlimited, Can ask ROC to remove name of the Company, Can Pass Winding-up order
Section 8 :-Three basic conditions must be satisfied:- 1.The object is to promote art, science , commerce, sports, research, charity, religion or protection of environment 2.Profit or other income of the company shall be utilized in promotion of their objects 3.Dividend to members is prohibited . CG can revoke the license if Company violates object, provisions, acted against object, done fraud or acted against public interest. After revocation, CG can order conversion, Amalgamation or Winding up of Company.
Section 9 :- On incorporation of company, subscribers will become members and company will become body corporate, can form contract in its own name, can hold property, can sue and be sued, will have perpetual succession.
Section 10 :-On incorporation of company, MOA & AOA will create a binding effect of Company and members and vice-versa but company is not bound to outsiders
Section 10A :-For commencement of business, a) director shall declare within 180 days from incorporation that all subscriber have paid the requisite amount agreed by subscribers b) Company has filed verification of R.O.
Section 12 & 13 :- Company shall pass SR to alter MOA while changing name, situation, object of company. For change in R.O., approval of RD is required to shift R.O. within different ROCs in same state but for shifting outside state, approval of CG is obtained. If company intends to utilise money raised from public towards new object, company shall pass SR, give public notice and exit route to dissenting shareholders

Section 14 and 18:- For conversion of private company into public company or vice-versa,; I.MOA & AOA must be altered. 2. SR must be passed. 3. Approval of CG (to convert public company to private company)
4.Resolution and approval must be filed with ROC within 15 days 5.ROC will issue a fresh certificate of Incorporation 6.The Rights, liabilities of company will not be affected after conversion.
Section 15:- Alteration shall be noted in every copy of MOA/AOA . Otherwise, penalty of Rs. 1000/copy shall apply
Section 16:- If name of company is undesirable, CG will order rectification of name of company within 3 months. Company shall pass OR and shall file with ROC within 15 days and ROC will issue a fresh COI. If name of company is identical to registered Trademark, TM owner can apply to CG within 3 months for rectification.
Section 17:- Company will deliver copy of MAAR to members within 7 days of his request. Otherwise, fine of Rs. 1000/day shall apply which shall not exceed 1 lac.
Section 19:- Subsidiary company cannot hold shares of the holding company unless a)subsidiary company is holding shares even before it became subsidiary b) subsidiary acting as LR of deceased member of holding company c) if subsidiary company acting as trustee. But, subsidiary company can only vote as LR/Trustee.
Section 20:- Documents can be delivered to company at R.O. by Registered post/Speed Post/Courier/hand delivery/E-mode and to member or ROC by post under certificate of posting/ by Registered post/Speed Post/Courier/hand delivery/E-mode. Although member can request delivery by particular mode on payment of fees as decided in AGM
Section 21:- Contract of company can be signed by KMP/Officer, employee (if authorised)
Section 22:- Negotiable Instrument of company can signed by person by person authorised expressly or impliedly but deeds can be signed by the person authorised in writing by common seal/ 2 directors/1 director + secretary
ONE PERSON COMPANY:- A person can become Member and Nominee if he is a Natural Person, a major, should be a Resident or otherwise & citizen of India . Nominee can withdraw his consent by giving notice to member and OPC, in that case, new nominee shall be appointed within 15 days . The name of nominee must be stated in MOA . In case of penalty, Penalty of Rs. 1000/day shall apply (maxmimum-1 lac)
DOCTRINE OF ULTRA VIRES:- Ultra means beyond or in excess of and vires means powers . Thus ultra vires means an act or transaction beyond or in excess of the powers of the company. An act which is ultra vires the company is void and of no legal effect. Neither the company nor the other contracting party derives any right under an ultra vires contract. (Ashbury railway carriage & Iron Company Ltd v Richie)
DOCTRINE OF CONSTRUCTIVE NOTICE:- Once registered the memorandum and articles become public documents. Therefore, every person dealing with the company is presumed to have read the memorandum and articles. Further, it is presumed that he has understood the provisions of memorandum and articles correctly i.e. the right sense.
DOCTRINE OF INDOOR MANAGEMENT:- As per this doctrine, outsiders dealing with the company are not required to enquire into internal management of the company. (Royal British Bank v Turquand). The Benefit of this doctrine will be available only if outsider have read the Memorandum and Articles and outsider have acted in good faith and made a reasonable inquiry and transaction is intra vires 'the company'

PROSPECTUS

SECTION 23:- Public Company can issue shares as Public issue, PP, Bonus, Right whereas Private company can only issue by means of PP, Bonus, Right.
SECTION 24:- SEBI can exercise right wrt payment of dividend and issue/transfer of shares and in rest of cases, CG
SECTION 25:- Company makes an agreement/allotment with the Issue house(IH), at that time company has not received 100% consideration and then IH offers securities on behalf of company within 6 months by means of deemed prospectus which shall be signed by 2 Directors or ½ Partners.
SECTION 26:- Prospectus must be dated, signed by director/consented to become director and shall contain particulars specified by SEBI. Prospectus is valid for 60 days from delivery. In case of expert statement, it shall be stated that he has not withdrawn his consent.
SECTION 27:- If company intends to utilise money raised from public towards new object, company shall pass SR, give public notice and exit route to dissenting shareholders
SECTION 28:- Board can make offer of sale on behalf of members (if authorised) by means of deemed prospectus and expenses of board shall be reimbursed by members. Requirement of Minimum Subscription and Minimum application money not applies
SECTION 29:- Public Company can issue shares by means of Public issue, PP, Bonus, sweat equity, can allow transfer or buyback only in de-mat form. For this, existing shares must be converted into de-mat form by making application to deposit, payment of fees, compliance of SEBI guidelines , filing SH-6 half-yearly with ROC.
SECTION 30:- Company can make advertisement of prospectus in PAS-I which contains name, details of R.O., capital and Object

Section 31:- Shelf prospectus can be filed by Companies prescribed by SEBI which is valid for 1 year but for change in Financial position, information memorandum shall be filed with ROC in PAS-2 within 1 month prior to subsequent offer.
Section 32:- Prospectus not containing complete details of price & quantity of securities filed with ROC before 3 days opening of subscription list & issued prior to issue of prospectus and variations shall be highlighted in prospectus.
Section 33:- Application form can only be issued only with abridged prospectus except in PP, underwriting agreement. If person demands prospectus, company shall provide it, otherwise, penalty of 50K shall apply for each default
Section 34:- In case of untrue prospectus, person who has authorised its issue shall be liable for fraud except when statement/omission was immaterial or he believes the information to be true (BTIT)
Section 35:- In case of untrue prospectus, Company, promoter, director, expert, person who has authorised its issue shall be liable to compensate the loss of every person who has subscribed for securities on basis of Prospectus and suffered loss . Exception:- Director has not consented, withdrawn consent, expert has acted BTIT
Section 36:- If a person induce other to invest money, to agree for subscribing/disposing securities, agrees to yield money by fluctuation in value of securities, agrees to obtain loan from Bank/FI shall be liable for fraud u/s 447 .
Section 37:- Person/group of person/Association of person aggrieved by untrue prospectus can file a suit/other action against company
Section 38:- If person applies for securities in fictitious/multiple names, company shall forfeit the amount and deposit it into IEPF
Section 39:- Amount of application money (AM) shall be minimum 5% of face value which shall be deposited into SBA of Scheduled Bank and can only be utilised towards adjustment/refund. Minimum Subscription (as stated in Prospectus) shall be received within 30 days of issue of P/P, otherwise AM shall be refunded within 15 days of closure of issue , failure of which cause the directors liable to refund AM along with interest @ 15% P.a. Underwriting commission shall not exceed 5% of issue price in shares/2.5% in debentures out of profits/proceeds /both However, AOA can reduce the rate. Copy of U/W agreement shall be delivered along with P/P to ROC.
Section 40:- In public issue, before making offer, company shall apply to atleast 1 SE and company can only make the allotment if all the SEs to which application was made has provided its approval
Section 41:- Overseas depository will issue GDRs for which company issues underlying shares to OD which is physically held by Domestic Custodian Bank. To issue GDR, company shall pass BR, SR, appoint merchant banker . GDR holder cannot receive dividend or cannot exercise voting rights directly
Section 42:- Company shall pass SR for PP of shares/convertible debentures. For NCD, within PUSC+FR+SP, no SR is required and beyond limit, SR is to be passed which is valid for 1 year. Company shall provide offer by PPOCAL in PAS-4 to persons not exceeding 200 (each security) (employees & QIB not counted) in FY and company shall not make public announcement of it. New offer can be made only after prior is completed/withdrawn. Amount of application money (AM) shall be deposited into SBA of Scheduled Bank and can only be utilised towards adjustment/refund. Company shall allot securities within 60 days from receipt of AM, otherwise it shall be refunded in next 15 days, failure of which cause the company liable to refund AM with interest @ 12% P.a. (after 60 th day)

SHARE AND SHARE CAPITAL

SECTION 2(84):- Share means share in the share capital of company and includes stock
SECTION 43: Share are Equity (with equal rights or with differential rights) or Preference. Preference shares will provide preferential rights as to a) payment of dividend b) repayment of capital (during winding up). To issue shares with differential right, company shall a) pass OR b) be authorised in AOA c) ensure voting power shall not exceed 74% of total voting power d) not defaulted in filing FS/AR (last 3 years) e) not existing default in repayment of Dep/int/deb/int/dividend f) not defaulted in last 5 years wrt repayment of Term loan/interest/employee due/IEPF g) not defaulted in compliance of SEBI Act/RBI Act/SCRA, 1956 in the last 3 years
SECTION 44:- The Shares or Debentures or other interest in a company shall be movable property
SECTION 45:- Every share in a company having a share capital shall be distinguished by its distinctive number
SECTION 46:- Share certificate is issued in SH-1 and is conclusive evidence of ownership which is signed by 2 Directors or 1 Director+CS . Duplicate SC can be issued (Within 45days/3months in Listed/UL) in case of lost/destruction for which company shall BR and obtain fees of Rs. 50/DSC. Register of SC shall be preserved for 30 years. Shares surrendered shall be cancelled immediately and be destroyed after 3 years.
SECTION 47:- Equity SH can always vote and PSH can only vote if matter affect his interest or dividend is unpaid for 2 years and Voting power of ESH & PSH will be in same proportion of paid-up capital
SECTION 48:- Public Company can issue shares by means of Public issue, PP, Bonus, sweat equity, can allow transfer or buyback only in de-mat form. For this, existing shares must be converted into de-mat form by making application to deposit, payment of fees, compliance of SEBI guidelines , filing SH-6 half-yearly with ROC.
SECTION 49:- Where any calls for further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class

SECTION 50:- A company may, if so authorised by its articles, accept from any member unpaid calls but voting power cannot be exercised until these calls are due.
SECTION 51:- Company may, if so authorised by AOA, pay dividends in proportion to paid-up amount
SECTION 52:- The amount of premium shall be transferred to Securities Premium Account . Securities premium can be utilised towards a)Issue of Bonus share b)Writing off preliminary expenses c)writing off Discount, expense, commission d)In payment of premium on redemption of PS/Debentures e)in Buy-back of securities
SECTION 53:- Shares cannot be issued at discount. If issued, a)issue is void b) refund with interest @ 12% p.a. c)penalty of 5 lacs/amount raised (lower). Exceptions are sweat equity shares/to creditor against repayment of loan
SECTION 54:- sweat equity share by a)authorised in AOA b)passing SR c) SR is valid for 12 months d)max:-15% of PUSC or 5 crores (higher). Old and new:-25% of PUSC, 50% in start-ups e)lock-in period:- 3 years f) valuation of shares g)valuation of IPR
SECTION 55:- Conditions can be issued for Preference share a)authorisation of AOA b) fully paid up c)max. redemption period:- 20 years (infra-30 years) d)redeemed out of profits/proceeds of issue/Securities premium account (in case of redemption at premium) e)can issue FRPS with consent of PSH holding 1/4 in value and NCLT .
SECTION 56:- Company can transfer securities by preparing instrument of transfer and sending it to the company within 60 days and company shall register the transfer and issue new Share Certificate within 1 month
SECTION 57:- If person impersonates as owner of securities, then he will liable for imprisonment (1-3 years) and fine (1-5 lacs)
SECTION 58:- If company has not registered transfer, then company shall provide notice of refusal within 30 days. Transferee can file an appeal with NCLT within 30/60 days (private company) or 60/90 days (public company)
SECTION 59:- If company has without valid reasons entered/removed name from ROM or delayed in entering/removing the name , then person can file an appeal with NCLT/Competent court outside India
SECTION 60:- If Company discloses authorised capital, then it shall also disclose paid-up and subscribed capital
SECTION 61:- Company can alter share capital if authorised by AOA by alteration of MOA after resolution in GM a)increasing authorised capital b)subdivide into shares of smaller amount c)consolidation into shares of larger amount d)conversion of shares into stock/reconversion e)dimunition of share capital
SECTION 62:- Company can make right offer to existing member by providing letter 3 days before opening of offer. Member can accept offer within time limit (15-30 days) (15 days can be reduced to 7 days with consent of 90% members in private/IFSC public company) or can transfer to any person (need not be a member). To issue shares under ESOP but shall a) pass SR(public)/OR(private) b)maintain register of ESOP in SH-6 . For preferential allotment, company shall a)pass SR which is valid for 12 months b) valuation of shares c)authorised in AOA
SECTION 63:- Bonus share can be issued out of a)Free Reserve b)Securities Premium Account c)CRR. Conditions:- a)Authorisation in AOA b) Recommended by Board c) Resolution in GM d) not defaulted in repayment of deposit/dues of employees e) cannot be paid in lieu of dividend
SECTION 64:- Company shall file a)alteration u/s 61 b)redemption u/s 55 with ROC within 30 days
SECTION 65:- In case of conversion of unlimited capital to limited capital, it can create reserve capital by a)not calling uncalled capital except in winding up b)increasing the nominal value and not demanding increased capital except in winding up
SECTION 66:- Company can reduce its capital (if authorised by AOA) by a) passing SR b)Notice to ROC/Creditor/CG/SEBI which can raise objection within 3months c) approval of NCLT which shall be published as directed by NCLT and be filed with ROC within 30 days d)ROC will issue a certificate of registration. In case of concealment/false disclosure, person shall be liable us/ 447 .
SECTION 67:- Company cannot purchase its own shares neither public company can assist anyone by loan/guarantee to purchase its shares except a)Banking company in OCB b) money to trustee by SR for purchase of shares for employees c) loan (max-6 months salary) to employee (not a director/KMP) for fully paid shares
SECTION 68:- Conditions for Buy-back a)Authorisation by AOA b) SR (BR is upto 10% of PUSC+FR) c) SR/BR is valid for 12 months d)physically extinguished within 7 days e)debt equity ratio shall not exceed 2:1 f)new buyback cannot within 1 year g)share cannot be issued within 6 months (except in bonus/buy-back/ESOP/conversion of PS, Debentures, Share warrant) h)provide letter of offer (SH-8) along with declaration of solvency i) shall file return in SH-11 along with compliance declaration) with ROC & SEBI j)penalty:-1-3 lacs
SECTION 69:- CRR must be created if free reserves or Securities premium is utilised to buy-back the securities
SECTION 70:- Company cannot buyback a)through its subsidiary company b)if default existing in repayment of deposits/interest/debenture/preference share c)if defaulted in payment of Dividend/employees/EPF/Term loan/Interest and 5 years have not elapsed
SECTION 71:- For convertible debentures, SR must be passed. For issue of Secured Debentures a)max redemption period: 10 years (30 in infra) b)secured by charge c)make trust deed. Debenture trustee must be appointed within shall not be holding beneficial ownership/debt/guarantee/pecuniary relationship/PKDO/Relative of PKD. Debenture trustee can be removed by DH holding 1/4 in value DRR must be created in case of unlisted company 10% of debentures and shall be maintained @15% of debentures redeeming.

SECTION 72:- Member can make nomination which can be altered/cancelled afterwards. Nominee can be for more and minor can also be nominee but share will be transferred when he becomes major

ACCEPTANCE OF DEPOSITS

SECTION 2(31):- Company shall maintain a ROM/ROD/ROSH separately since incorporation and shall also maintain index if persons are more than 50. Company can maintain a foreign register for members residing outside India, for this, company shall intimate ROC in MGT-3 within 30 days.

SECTION 73:- Company shall a) issue circular in DPT-1 to members b) create DRR by depositing 20% of deposits maturing in next FY c) shall provide certificate that it has not committed default or committed default and default rectified & 5 years have elapsed d) Minimum duration:- 6 months (3 months if upto 10% of PUSC+FR+SP) maximum is 36 months e) premature deposit can be done after 6 months but 1% reduction will be there f) in case of delay, company shall pay interest @ 18% p.a. g) Maximum limit:- eligible company (10%), Private/IFSC Company (100%), Public company (100%), Government company (35%) h) issue deposit receipt within 21 days i) pass OR j) maintain register

SECTION 74:- All earlier deposits shall be repaid within 3 years from applicability of this act and shall intimate ROC within 3 months in DPT-4

SECTION 75:- If repayment of earlier deposits is delayed, company shall be liable for 1cr/2*deposits (lower) which may extend to 10 crore and officer shall be liable for imprisonment (upto 7 years) or fine (25 lacs-2 crores) or both

SECTION 76:- Only eligible company can accept public deposits by passing SR and it shall not exceed 25% of PUSC+FR+SP and shall obtain credit rating from a recognized credit rating agency. Eligible company means public company whose net worth is 100 crore or more or turnover is 500 crore or more.

SECTION 76A:- In case of default, Company shall be liable for fine 1cr/2*deposits (lower) which may extend to 10 crore and officer shall be liable for imprisonment (upto 7 years) and fine (25 lacs-2 crores)

REGISTRATION OF CHARGES

SECTION 77:- Company shall file instrument of charge in CHG-1 with ROC within 30 days which can be extended for further 30 days on payment of additional fees and it can be further extended for 60 days on payment of advalorem fees. ROC can register the creation and will issue certificate in CHG-2.

SECTION 78:- If company fails to file creation within 30 days, Charge-holder can file creation with ROC but ROC will provide notice to Company which can raise objection within 14 days, no objection shall be deemed to be approval and expenses incurred by chargeholder shall be reimbursed by company

SECTION 79:- Modification of charge shall be filed in the same manner as provided in Section 77.

Modification can be when there is change in interest rate/terms, creating/removing asset, adding/ceding pari passu clause

SECTION 80:- Any person acquiring the asset subject to charge shall be deemed to have notice of charge from the date of such registration

SECTION 81:- ROC shall maintain register online at www.mca.gov.in and can be inspected by anyone on payment of fees

SECTION 82:- Company shall file satisfaction of charge in CHG-4 with ROC within 30 days (extended to 300 days). Then, company shall provide notice to charge-holder which can raise objection within 14 days. If no objection is raised, it shall be deemed to be approval. ROC will issue certificate in CHG-5.

SECTION 83:- If company fails to intimate ROC, any other person can intimate ROC for registration of satisfaction of charge.

SECTION 84:- If Charge-holder appoints Manager/receiver, then it shall intimate Company and ROC about appointment/cessation in CHG-6 within 30 days

Section 85:- Company shall maintain a register of charges in CHG-7 at Registered office which can be inspected by member/creditor (without fees) or any other person (with fees). Entry shall be made forthwith and shall be authenticated by CS/Director/Person Authorised. Register shall be preserved permanently and Instrument be preserved for 8 years.

Section 86:- In case of default, Company shall be liable for fine (Rs. 5 lacs) and officer (50k) and in case of false disclosure or suppress material information will be liable for fraud u/s 447.

Section 87:- In case of delay in filing creation/modification/satisfaction with ROC or if false information is furnished, then CG can provide additional time if the delay was accidental or non-advertence of company

MANAGEMENT AND ADMINISTRATION (REGISTERS/RETURNS)

SECTION 88:- Company shall maintain a ROM/ROD/ROSH separately since incorporation and shall also maintain index if persons are more than 50. Company can maintain a foreign register for members residing outside India, for this, company shall intimate ROC in MGT-3 within 30 days.

SECTION 89:- A person holding beneficial interest in the shares of a company shall intimate the company about such **interest in Form No. MGT-4 or MGT-5**, as applicable, and thereafter, the company shall intimate the RoC about the interest of member within **30 days in Form No. MGT-6**.

SECTION 90:- A **significant beneficial owner (holding 10% or more of PUSC) to make a declaration to the company in BEN-1** and company shall intimate ROC in BEN-2 and shall maintain register in BEN-3 of SBOs and can require information through BEN-4. In case of no reply, person will be liable u/s 447 and his voting rights and dividend will be restricted and he can file an appeal with NCLT within 1 year

SECTION 91:- It states that the registers may be **closed for a maximum of 30 days at a time and 45 days in aggregate in a year**.

SECTION 92:- every company **shall file its Annual Return in Form No. MGT-7 and OPC and Small Company shall file abridged Annual Return in MGT-7A. AR shall be filed within 60 days from AGM/last day of AGM (if AGM not held)**. It shall contain name of subsidiary, associate, directors, promoters, GM & BM held, remuneration paid etc.

SECTION 94:- Registers and returns **shall be kept at R.O. or at any other place where >1/10th of the total members reside but the same should be approved by way of a special resolution**. Registers/returns can be inspected by anyone on payment of fees (50/inspection) except member, DH, OSH, BO. Copies will be provided by company and can charge fees as stated in AOA which shall not exceed Rs. 10/page. Entries in registers shall be made within 7 days of allotment.

SECTION 95:- registers, their indices and copies of annual returns maintained under sections 88 and **94 shall be prima facie evidence of any matter directed or authorised to be inserted**

SECTION 120:- Listed Company/other company having 1000 member, DH, OSH, BO shall maintain registers, return in e-form and MD & CS shall be responsible for its safe custody.

MANAGEMENT AND ADMINISTRATION (GM)

SECTION 96:- **Ist AGM shall be held within 9 months from end of FY and subsequent AGM be within 6 months which can be extended for further 3 months by ROC**. AGM shall be called within business hours on any day which is not a national holiday. Place can be R.O./Same city, town, village and in unlisted company, it can be convened at any place in India with consent of 100% members in advance in writing/e-form

SECTION 97:- **If company fails to convene AGM, NCLT can call AGM on application of member**. It can order meeting in presence of 1 member only and meeting held shall deemed to valid AGM.

SECTION 98:- **If company fails to convene EGM, NCLT can call EGM** suo motu/on application of member. It can order meeting in presence of 1 member only and meeting held shall deemed to valid meeting.

SECTION 99:- If company fails to convene AGM, company of OID shall be liable for fine of 5000/day (maximum 1 lac)

SECTION 100:- **Board can call EGM within 45 days on request of members who are holding 1/10 of PUSC/Voting power**. For this, members shall send requisition to company at R.O. and then Board will send notice to all members within 3 days. If board fails to convene EGM, members can themselves call EGM within 3 months. For this, company shall provide list of members and shall reimburse all the reasonable expense (deducted from director's remuneration)

SECTION 101:- **Company shall provide notice of GM atleast 21 (14 in section 8) clear days to Member, Auditor, Director, LR (death). Official assignee (Insolvency) by means of physical/e-mode. In case of post, it will take 48 hours for delivery.**

SECTION 102:- **Company shall explain basic information** of all the special business and interest of Promoter/Director/ KMP (if holding >2% in other company). Otherwise, company shall repay the benefits and shall be liable for fine (50000/5*amount of benefit, whichever is higher)

SECTION 103:- **Minimum Quorum shall be 2 members personally present in private company, 5 members in public company (upto 1000), 15 members (>1000 upto 5000), 30 Members (>5000)** and it shall be present within half an hour of scheduled time. Otherwise, meeting shall be adjourned to next week (same city, time and place) and if quorum is not present within half an hour of adjourned meeting, then members present will be the quorum.

SECTION 104:- Unless Articles provides otherwise, **Members will elect one of themselves as Chairman by show of hands** until some other person is appointed through poll

SECTION 105:- Member can appoint proxy who can attend the GM and vote on his behalf. **Proxy can be appointed by proxy form which shall be in MGT-11 and be deposited to R.O. 48 hours before commencement of GM. A person can become member for maximum 50 members whose aggregate shareholding does not exceed 10%**. In Section 8 Company, only a member can become proxy. Proxy form can be inspected by member 24 hours before commencement of GM till end of GM, for this, he shall provide 3 days prior notice to Company.

SECTION 106:- If AOA authorises, company **can restrict member from voting if calls of members are unpaid or lien is exercised**.

SECTION 107:- At any general meeting, a **resolution put to vote of the meeting shall be decided on a show of hands** except where a poll is demanded or the voting is carried out electronically.

SECTION 108:-Listed Company or company where members exceeds 1000 shall provide facility of e-voting. For this, company shall provide notice to members and advertisement in the newspaper and posting in website. Duration will be 3 days and will be open at AM & closed at 5 PM and effective date of resolution will be day of AGM. Scrutinizer will unlock the votes, count the votes, prepare and submit report to the Chairman. Scrutinizer should be a CA/CS/CMA/Advocate and will be appointed by Board after his prior consent.

SECTION 109:-Chairman will order poll wither suomtu or on request of members/proxy holding shares of 5 lacs/1/10 of voting power. Poll will be conducted 48 hours except election of chairman & adjournment of GM. Poll can be withdrawn also. Scrutineer will scrutinize the poll process, manage poll paper, count the votes, prepare the report and will submit the report to the chairman. The vote of proxy will be disregarded if member himself has cast the vote.

SECTION 110:-Company (except OPC and members upto 200) pass certain matter by postal ballot

a)Conversion of pvt company into public and vice-versa b)shifting of R.O. outside local limit c)change of object d) utilisation of remaining public proceeds towards new object e)variation of rights f)issue of DVR g)Buy-back h)appointment of SSD i)sale of undertaking j)LGSI more than the limits of Sec 186. In postal ballot, company will provide notice to members & they **can provide approval within 30 days. Company will appoint scrutinizer who will scrutinize the process and will submit the report to chairman.**

SECTION 111:- The members of a company have **a right to propose resolutions** for consideration at the general meetings.

SECTION 112:-President of India/Governor of State can appoint representative to attend GM and that representative shall deemed to be a Member

SECTION 113:- Body Corporate can appoint representative to attend GM and that representative shall deemed to be a Member

SECTION 114:-A resolution can be ordinary resolution or a special resolution. **Ordinary resolution can be passed by simple majority whereas special resolution requires minimum 75% majority for its passing.**

SECTION 115:-Members holding 1% of Voting power/capital of 5 lacs shall provide special notice to the company atleast 14 days prior to AGM for non-reappointing retiring auditor or appointing any person other than retiring auditor or removal of director. Thereafter, company shall provide notice to all members 7 days prior to AGM.

SECTION 116:- A resolution passed at an adjourned meeting shall be treated as having been passed on the day on which it was actually passed and not on any earlier date.

SECTION 117:- Copies of specified resolutions and agreements are required to be filed with ROC within 30 days in form MGT-14.

SECTION 118:-Company shall prepare minutes book within 30 days from day of AGM and be signed by Chairman or chairman of next meeting (BM)/Director authorised by board (GM). Minutes are the prima facie evidence for the matters included therein and shall be prepared as per SS. Chairman has the absolute discretion regarding contents of minutes and shall exclude any matter which is defamatory/immaterial/detrimental. Minutes book shall be preserved permanently at R.O. or any other place (BM)

SECTION 119:- Minutes book shall be open for inspection during business hours by any member, without charge, subject to restrictions (minimum 2 hours in business day). Company shall also provide copies within 7 days from demand.

SECTION 121:-Listed Company shall file a report on AGM with ROC within 30 days in MGT 15 which shall be signed by Chairman or 2 directors (1-MD) and CS.

SECTION 122:-For passing resolution in OPC, member shall provide notice to OPC, OPC will prepare minutes and then member will sign the minutes and as soon as minutes are signed, resolution shall deemed to be passed.

DECLARATION OF DIVIDEND

SECTION 123:-Company can pay dividend **out of Profits (after depreciation) of CY/PY/both** or money guaranteed by Government. Dividend can be paid from Free reserves and company can transfer money to FR as it deems fit. Company shall deposit amount of dividend to SBA **within 5 days of declaration and shall pay it within 30 days.** In case of absence/insufficient profits, rate of dividend shall not exceed average of IP3FYs and company cannot withdraw >1/10 of PUSC+FR and shall utilised withdrawal for setting of CY losses and balance in FR shall not fall below 15% of PUSC. Dividend shall be paid to member/order/banker

SECTION 124:-If dividend is unpaid/unclaimed for 30 days, then company **shall transfer it to Unpaid Dividend Account (UDA) in next 7 days, otherwise it shall pay interest @12%** and if unpaid/unclaimed for 7 years, it shall be deposited into IEPF and shares will also be transferred in the name of IEPF Authority.

Section 125:-IEPF will have credits from grant, donation, UDA of CA, 1956, IEPF of CA, 1956, unpaid dividend*, debentures/interest*, deposit/interest*, Preference shares*, application money*, sale proceeds from merger*. IEPF can be utilised towards investor awareness, expenses of class suit, refund of amount (*After 7 years). A claimant can get his amount and shares refunded by making an application in IEPF 5 to Authority and submission of docs to company.

SECTION 126:-If **transfer of shares is pending and company declares dividend, then it shall be credited to UDA** unless transferor requires it to be paid to transferee. Bonus and right shall also be kept in abeyance

SECTION 127:- Company shall pay dividend/post dividend warrant within 30 days, otherwise **director shall pay fine of 1000/day and imprisonment up to 2 years and company shall pay interest at the rate of 18% p.a.**

Exception:- Dispute, non-compliance of shareholder directions, operation of law, set-off, no fault of company

ACCOUNTS OF COMPANIES

SECTION 128:- Every company **shall prepare and keep at its R.O., BOA** and other relevant books and papers and FS for every FY and explain the transactions effected both at the registered office and its branches and such books shall be kept on **accrual basis and as per double entry system**. Director can inspect BOA and its agent can also check with respect to Indian Financial Information. BOA and vouchers shall be preserved for 8 years. MD, CFO, WTD(F), person authorised will be responsible for maintaining BOA.

SECTION 129:- FS shall give a true and fair view of the state of affairs and shall **comply with AS and shall be in Schedule III** except Banking, Insurance and electricity company. Holding company shall also prepare Consolidated FS which is as per AS (unless exempted) and Schedule III and shall also be laid down in AGM. CFS shall include FS of holding, subsidiary, Associate, Firm, JV, LLP. AS provides exemption from preparing CFS if unlisted company has intimated to shareholders about his and its ultimate holding is preparing CFS

SECTION 130:- Tribunal/Court will **order re-opening of BOA or recasting of FS of IP8FYs** on an application made by CG, Income-tax authorities, SEBI, any other statutory body or any person concerned

SECTION 131:- Tribunal can order **revision of FS or Board Report of IP3FYs** on an application made by Board in case of non-compliance of Section 129/134. FS of one year cannot be revised more than once in a FY.

SECTION 132:- **NFRA can review quality of service of professions** associated of companies (Listed/PDT-500,500,1000, BIE, Specified company by CG, Material foreign subsidiary/Associate) and can also investigate the services of CA/CA Firm and can debar Auditor and impose penalty, if auditor found guilty. NFRA consists of Chairman, Full time and part time members not exceeding 15. NFRA will prepare accounts and C&AG will audit its accounts and accounts and report shall be laid down in parliament

SECTION 133:- **CG can prescribe AS** on recommendations of ICAI in consultation with and after examination of the recommendations made by NFRA.

SECTION 134:- **FS (+CFS) shall be approved by Board before they are signed by chairperson (if authorized) or by two directors (1-MD) and CEO/CFO/CS (if appointed)** or only by one director (in OPC). The auditors' report shall be attached to every financial statement. Every company shall prepare Board Report in MGT-7 and OPC & Small company shall prepare amended board report in MGT-7A. DRS shall contain responsibility of Board which is a) preparation of FS as per AS b) Maintenance of BOA c) preparation of Accounts on GC basis d) Detection of fraud e) safeguarding of asset f) designing of internal financial control g) compliance of law

SECTION 135:- Every company having **net worth of 500 crore or turnover of 1000 crore or a net profit of 5 crore in IPFY shall constitute a CSR Committee except if CSR Mandate is less than 50 lacs**. There must be 2 dir(pvt)/3 dir(public) (1 shall be independent). Company **shall spend at least 2%** of the average net profits IP3FYs. In case of shortfall, money shall be transferred to unspent CSR Account within 30 days, in case of ongoing projects. In case of extra expense, it shall be set-off in IS3FYs. Administrative overheads shall not **exceed 5% of total CSR expenditure**. CSR does not include political contribution, expense outside India, expense incurred only for employee, incurred in ordinary course of business, to gain marketing benefits

SECTION 136:- **FAB-3 shall be sent to member/Debenture-Trustee/persons entitled at least 21 days before** meeting by e-mode to persons holding shares in de-mat form/if requested. Shorter notice can also be provided if agreed by majority of members holding 95% of capital. Listed company shall post in its website audited financial statement of every subsidiary whether incorporated in/outside India unless it is exempted from audit.

SECTION 137:- **FAB-3 shall be filed with ROC in AOC-4 within 30 days from AGM/last day of AGM** (if not held). If Accounts are not adopted, then unadopted shall be filed with ROC and it will be considered provisional. There must be XBRL filing by listed companies and its subsidiaries, Company having PUSC of 5 crore or turnover of 100 crore except Banking, Insurance, Electricity and NBFC

SECTION 138:- Every listed company and public having **DPLT of 25/50/100/200 crore** or private company having L/T of 100/200 crore shall appoint an internal auditor, who shall either be a CA/CMA/Person authorized.

AUDIT AND AUDITORS

SECTION 139:- First Auditor shall be **appointed by Board within 30 days from registration** of company, who **hold office till first AGM**. Subsequent Auditor shall hold office from **1st AGM till 6th AGM**. Whereas, in case of **Government Company**, auditor **shall be appointed by CAG (within 60 days from registration)**, if not, then board (next 30 days), if not, then members (next 60 days).

Before appointment. Company **shall obtain written consent and certificate from Auditor and shall intimate Auditor and ROC within 15 days in ADT-1**. If Audit Committee's constitution is necessary, Board shall forward recommendations to member, otherwise, board shall itself make the recommendation

SECTION 140: The auditor may be **removed only by BR, SR and approval of CG. NCLT may order removal of Auditor if he has acted fraudulently/colluded in fraud**, then he will be disqualified to become Auditor for next 5 years and be liable for fraud u/s 447. Members shall provide special notice 14 days to company in case of non-reappointment of the retiring Auditor and company will provide notice to auditor who can provide his representation which shall be read at GMAuditor shall provide resignation to Company, ROC within 30 days in ADT-3

SECTION 141: Only a **CA in practice can be appointed as auditor**, in case of firm is appointed, then majority of the partners must be qualified. Some persons are disqualified to become Auditor such as Body Corporate, Officer/employee, partner or employee of officer/employee, **held security/interest in CASH, is indebted <5 lacs to CASH, provided guarantee >1 lac to CASH, providing prohibited services, having business relationship**, full time employee, holding audit of >20 companies (except OPC, dormant, Small, Private company which has PUSC <100 crore), convicted for fraud and 10 years have not elapsed. However relative can hold securities face value upto 1 lac.

Section 142: The **remuneration** of the auditor of a company **shall be fixed in its general meeting** or in such manner as may be determined therein. **Board** may fix remuneration of the **first auditor** appointed by it.

Section 143: Auditor **can access the BOA of the company** and subsidiary and ask information from officers. Auditor shall make and inquiry and prepare auditor's report which shall contain (a)compliance of AS; (b)proper BOA (c)consistency of IFC (d)Disqualification of Director; (e)information received (f)FS are as per BOA (g)delay in credits to IEPF (h)Provision for long terms contracts (i) Pending litigations (i) whether Accounting software has feature of Audit Trail (j) whether company is an ultimate beneficiary

If branch is in India, then **Company Auditor/Qualified person in India can become branch Auditor** and if branch is outside India, then Company Auditor/Qualified person outside India can become branch Auditor

In case of fraud >1 crore, then Auditor shall intimate CG in ADT-4 and otherwise, Board shall disclose it in Board report

SECTION 144: Auditor appointed **cannot render prohibited services**, which are (a)accounting & book keeping service (b) internal audit; (c)design and implementation of any financial information system; (d) actuarial services; (e) investment advisory services (f) investment banking services (g) rendering of outsourced financial services (h) management services.

Section 145 & 146: **All notices of any general meeting shall be forwarded to the auditor and auditor shall, unless otherwise exempted by the company, attend either by himself or through his representative. Auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor. Auditor shall sign the auditor's report/any other document**

Section 147: In case of default, Company and officer shall be liable for penalty and Auditor shall also be liable for fine and in case of fraud, he will be liable for imprisonment and fine

Section 148: **Companies whose turnover in IPFY is 35 crores and engaged in production of goods or providing service shall prepare cost records in CRA-1** except Micro and small enterprise whereas Company whose overall turnover from all of Products/services is 50 cr(A)/100 cr(B) or individual products/services is 25 cr(A)/35 cr(B) except where company operating from SEZ or revenue from exports is >75% of total revenue. Cost Auditor shall be appointed by BM within 180 days from start of FY and shall intimate CG in next 30 days and will continue till he submits report or 180 days from closure of FY, whichever is earlier. He shall submit cost audit report to company in CRA-3 and company shall forward it to CG within 30 days in CRA-4

COMPANIES INCORPORATED OUTSIDE INDIA

Foreign company" means any company or body corporate incorporated outside India which has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

SECTION 379: Where **minimum 51% of paid up capital is held by Indian Company/Indian Body corporate**, then foreign company shall comply with CA, 2013 as if it is registered in India

SECTION 380: Foreign company **shall file form FC-1 with ROC (Delhi) within 30 days from establishment of POB** along with a) certified copy of Charter/Statutes/MOA/AOA b)full address of the registered office c)list of directors & secretary d) name and address of PRI authorised to accept service of process. This must be translated in English which shall be certified by Attorney/Advocate/Pleader (in India) or Notary/knowledgeable person (outside India).Any alteration must be filed within 30 days in FC-2

SECTION 381: Every foreign company **shall, in every calendar year prepare BS & P&L a/c in nearby to Schedule III and get it audited by a CA/CA Firm** and deliver a copy of those documents to the ROC (Delhi) within 6 months from end of FY (+3 months). On cessation of office, Company shall intimate immediately to ROC. Further, along with FS, company shall annex statement of RPT, statement of repatriation of profits, statement of transfer of funds

Section 382: Every foreign company **shall disclose outside POB and every bill-head, letter paper, notice, the name of the company and the country in which it is incorporated** in English language and vernacular language (in case of POB). Further, it shall also disclose that liability of members is limited in POB (EL + VL), prospectus, notice, bill-head (EL)

Section 383: Any document required to be served on a foreign company may be served on the person authorised to accept service of notices on behalf of the company u/s 380.

SECTION 384:- The provisions of **section 71, Chapter VI, XIV shall apply mutatis mutandis** to a foreign company and it shall file Annual return in FC-4 within 60 days from closure of FY.

Section 385:- There shall be paid to the Registrar for registering any document required to be registered by him, such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Section 386:- "director", includes any person in accordance with whose directions or instructions the Board of company is accustomed to act; and "**POB**" **includes a share transfer or registration office.**

Section 387:- Prospectus shall annex a) Instrument defining the constitution of company b) **Enactments** under which company is incorporated c) **Address for Inspection** in India d) Date and country of incorporation e) Address of its principal office in India. **Application form can only be issued only with prospectus** except in PP, underwriting agreement.

Section 388:- Where a prospectus includes a statement made by an expert, then a) **He should have given his written consent before delivery of the prospectus for registration and should not have withdrawn** it b) The prospectus should contain a statement that he has given and not withdrawn his consent.

Section 389:- Prospects shall be a) **signed by chairperson and two directors** b) **delivered to ROC** c) **shall state that it is approved by resolution of the managing body** d) shall annex various consents required like expert's consent, underwriting agreement etc.

Section 390:- Domestic depository will issue IDRs for which company issues underlying shares to DD which is physically held by overseas Custodian Bank. To issue IDR, **company shall comply SEBI (ICDR) Guidelines, 2009 and RBI Directions**

Section 391:- The provisions of sections 34 to 36 shall apply to (i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company (ii) the issue of IDR

Section 392:- The **punishment will be on foreign company will be 1-3 lacs + 50000/day** and for officer 25k-5lacs

Section 393:- Any failure by a company to comply with the provisions **shall not affect the validity of any contract or its liability to be sued in respect thereof but the company** shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding against third party

Section 393A:- **CG may exempt foreign companies/companies incorporated outside India** from any of the provisions of this Chapter and a copy of every such notification shall be laid before both Houses of Parliament."