

1

AoA → SR

Something that is difficult to change AoA and AoA

ENTRENCHMENT PROVISIONS:

AoA may contain ENTRENCHMENT PROVISIONS:

Generally, an AoA may be altered by passing an SR

But AoA may contain provisions for entrenchment
i.e. To alter specified provisions of AoA- procedures MORE restrictive than SR to be met

TIMING

While incorporating, or

(1)

Entrenchment provisions may be made:

Later by amendment to AoA. How? (2)

- If private company - unanimous resolution (agreed by all members) (100%).
- If public company - SR

ROC to be notified of such entrenchment provision.

If the provision was inserted @ incorporation: ROC to be notified at the time of incorporation.

If the provision was inserted after incorporation: ROC to be notified within 30 days



DOCUMENT BY WHICH THE OFFER OF SALE IS MADE TO THE PUBLIC shall be DEEMED to be a PROSPECTUS (issued by the company)

ALLOTMENT IS PRESUMED TO HAVE BEEN MADE 'WITH A VIEW' THAT THOSE SECURITIES WILL BE OFFERED FOR SALE TO THE PUBLIC WHERE EITHER OF THE TWO CONDITIONS ARE SATISFIED:

i.e. if any of the following conditions are fulfilled, then, the issuing document will be deemed to be prospectus.

Securities are offered to the public within 6 MONTHS after the date of allotment, OR

X FULL CONSIDERATION NOT RECEIVED by the company at the date of offer to the public

any 1)

Signing of the deemed prospectus

If the person making the offer is a company ↓	If the person making the offer is a firm ↓
To be signed by 2 directors	To be signed ≥ half of the partners

Full consideration pd by date of offer to public

Sridha Bookmarks Ltd ----> ZFG & Associates -- offer doc
4cr. (PF)

Date of allotment --> 1.4.2024

10.10.2024

6
30.9.2024

↓
Invalid

Full consideration pd by date of offer to public

Sridha Bookmarks Ltd ----> Bull Investments Ltd -- offer doc
2cr. (Co)

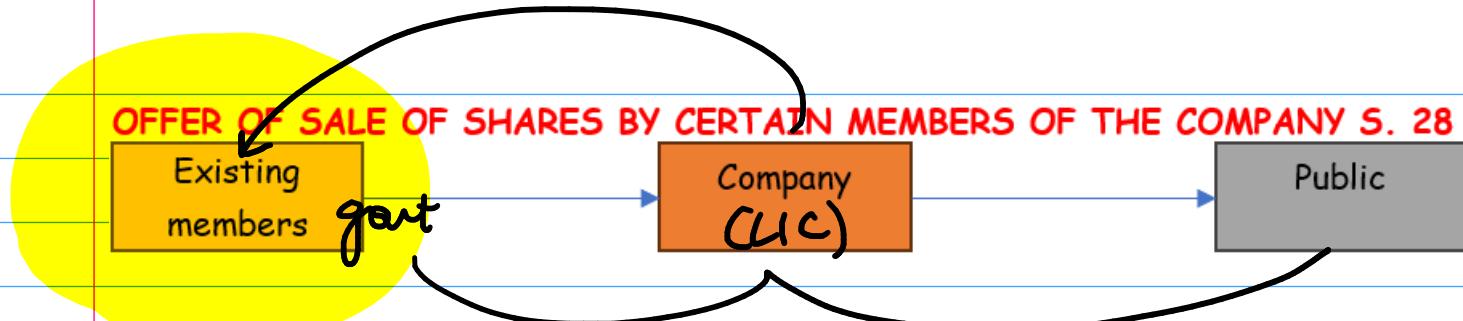
Date of allotment --> 1.4.2024

25.9.2024

(Signed by only 1 director)

Invalid

OFFER OF SALE OF SHARES BY CERTAIN MEMBERS OF THE COMPANY S. 28



WHAT IS IT?

- Certain members propose to OFFER to the public
- whole or part of their SHAREHOLDING

} In consultation with the BoD

DEEMED PROSPECTUS: Document containing offer of securities for sale to the public is DEEMED TO BE A PROSPECTUS. Hence, all provisions will apply accordingly.

Such deemed prospectus shall also disclose the name of the person/ entity bearing the cost of making the offer of sale along with reasons

The offer/invitation may be made max to **50 persons** in a FY or such higher number as may be prescribed

Limit does not include:

- qualified institutional buyers
- employees being offered ESOPs

If violated, it will be deemed to be a public offer

200 persons as per Companies (prospectus and Allotment of Securities) Rules 2014.

Limit is for **EACH KIND OF SECURITY**, i.e., equity share, preference share, debenture

Limit is **NA** to **NBFCs** and **Housing Finance Companies**

If the offer/ invitation is made to **more than 200 identified persons**, the offer/ invitation will be **DEEMED TO BE A PUBLIC OFFER** and **SCRA** and **SEBI** provisions will also have to be complied with.
Also a penalty can be imposed.

	Max	Already offered	Further can be offered to:
Equity Shares	200	190	10
Debentures	200	50	150

DEFINITION: Shelf prospectus means a prospectus in respect of which:

- the securities included therein are issued for subscription in ONE OR MORE ISSUES
- over a CERTAIN PERIOD
- WITHOUT issue of FURTHER PROSPECTUS

Validity

- 1 year from the date of opening of the first offer of securities under the prospectus.
- Wrt subsequent offers during the period of validity of the prospectus, no further prospectus is required.

For all subsequent issues, Information Memorandum together with the Shelf Prospectus shall be deemed to be the prospectus

CONTENTS OF INFORMATION MEMORANDUM (IM) Form PAS-2: IM shall contain **ALL MATERIAL FACTS** in relation to:

- new CHARGES created,
- change in the FINANCIAL POSITION between the first offer of securities or the previous offer of securities and the succeeding offer of securities and
- such other changes as may be PRESCRIBED

Also, no public company shall give **FINANCIAL ASSISTANCE** for purchase/ subscription of its shares, or shares of its holding company

Pub Co $\xrightarrow{\text{loan}}$ Person

EXCEPTIONS:

Financial Assistance may be provided in the foll. cases:

1

1. Banking company may lend money in the **ordinary course of business**

2

2. for purchase of **fully paid up shares** of the co. or H Co by a **trustee** for the employees under **Employee Share Schemes**

3

3. to company's employees other than **directors or KMP** ≤ 6 months salary or wages

approval by **SR** at GM required

to enable them to purchase **fully paid-up shares** in the co. or its H Co.

EXTRA POINTS FOR EXCEPTION 2 ABOVE:

- **IF THE SHARES ARE LISTED:** Purchase of shares shall be through RSE (not through private offers or arrangements)
- **IF THE SHARES ARE UNLISTED:** Valuation at which shares are to be purchased shall be made by a REGISTERED VALUER
- Shares so purchased shall be $\leq 5\%$ of **(PUSC + FR)**

General Rule \rightarrow Prohibition

Exception

① Banking co + OCB
② Co \longrightarrow Trustee
(ee)

(c1) SR

(c2) fully pd

(c3) $\leq 5\% \text{ (PUSC + FR)}$

③ Co \longrightarrow ee of co.

(c1) fully pd up

(c2) Max ≤ 6 month sal/wr

(c3) x dir x KMP

AUTHORISATIONS REQUIRED:

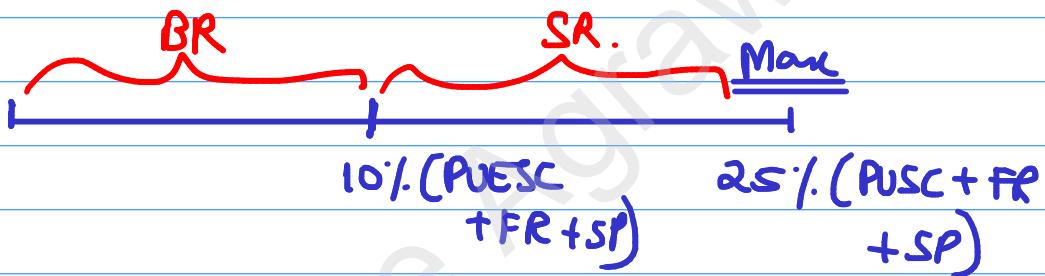
- Should be authorised by **AoA**
- **SR** authorising the buy-back to be passed in a GM. EXCEPTIONS:
 - o **buy-back is $\leq 10\%$ of the total paid-up equity capital + free reserves** and
 - o **BR** has been passed

For buy-back, Free reserves
incl. securities premium

For buy-back, Free reserves
incl. securities premium

LIMITS TO BE FOLLOWED:

- Amount involved in buy-back is $\leq 25\%$ of aggregate of **(PUSC + free reserves)**



$$25\% (50 + 100UR + 0) = 37.5UR$$

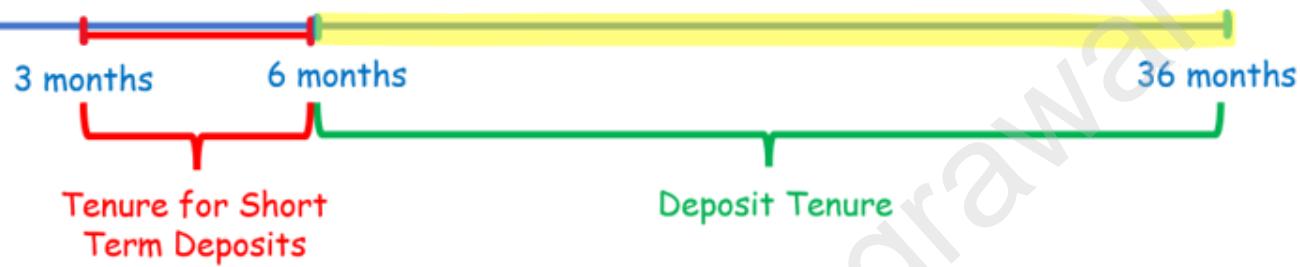
SR

- Bonus sh
- Buy back
- Premium → Red → pref / sh
- Premium cap
- Sh. Issue cap

general $6\text{mth} - 36\text{mth}$
ST \rightarrow $3\text{mth} - 6\text{mth}$
 \downarrow
 $10\% \cdot (\text{PUSC} + \text{FR} + \text{SP})$

TENURE OF DEPOSITS:

- MIN TENURE: 6 months
- MAX TENURE: 36 months
- PAYABLE ON DEMAND: Prohibited
- FOR SHORT TERM REQUIREMENTS: Tenure can be EVEN < 6 MONTHS if:
 - such deposits are $\leq 10\%$ of PUSC + free reserves + securities premium, AND
 - Min Tenure: 3 months



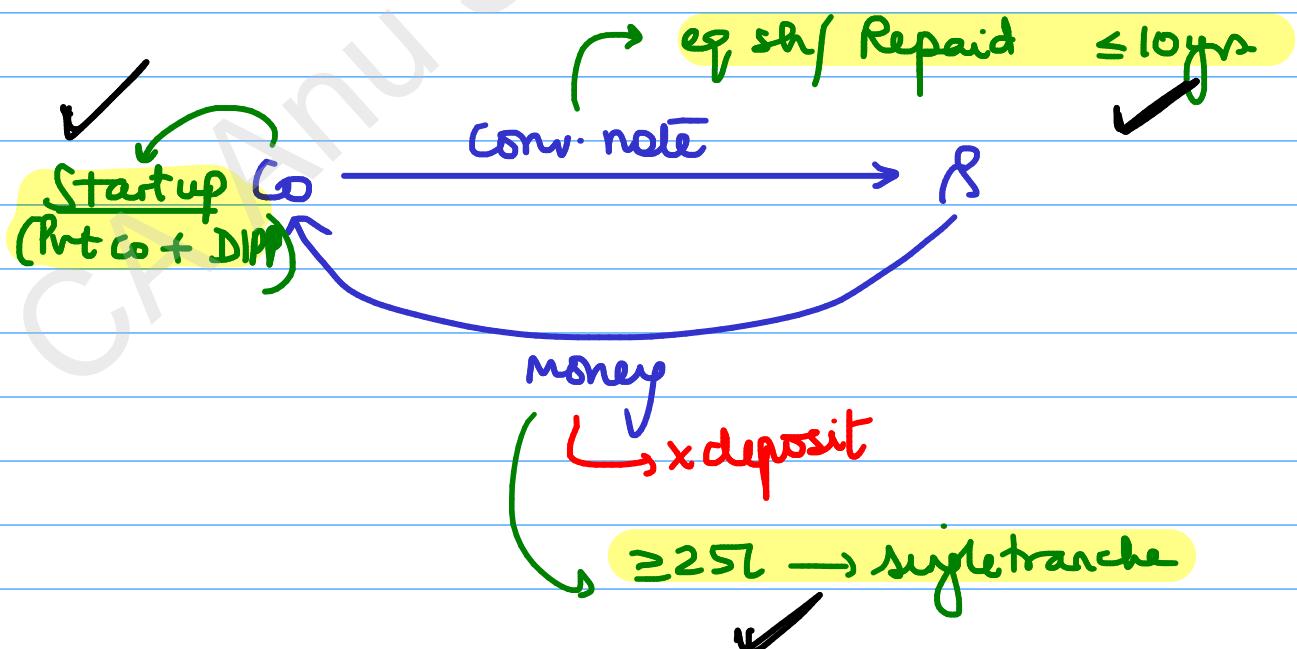
Amount received:

By way of a convertible note

C1: By a start-up company (PRIVATE COMPANY recognised by Department of Industrial Policy and Promotion)

C2: \geq Rs 25 lacs, in a single tranche

C3: convertible into equity shares, or repayable within 10 years from date of issue



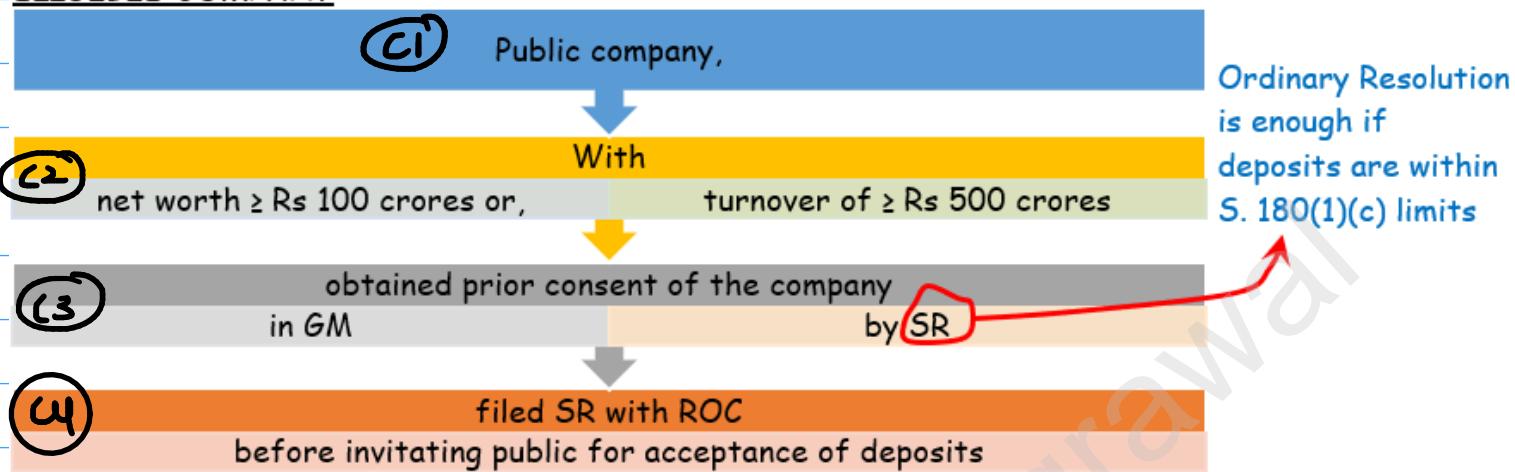


ACCEPTANCE OF DEPOSITS FROM PUBLIC

WHO CAN ACCEPT DEPOSITS FROM PUBLIC? Only ELIGIBLE companies

Members → Pvt Co / Pub Co
Public → Eligible Co.

ELIGIBLE COMPANY



EXTRA GYAAN

DEPOSITS ACCEPTED ARE:	ALLOWED?	RESOLUTION REQUIRED:
≤ S. 180(1)(c) limit	Yes	Ordinary Resolution
> S. 180(1)(c) limit	Yes	Special Resolution

all

C1 Pub Co ✓
 C2 NW ≥ 100 or (10) ✓
 Tn ≥ 500 Cr ✓
 C3 OR SR
 ≤ S. 180(1)(c) > S. 180(1)(c)
 C4 If SR → ROC.

ST Rep 3 mth - 6 mth

C1 ≥ 3 mth ✓
 C2 Max 10% (PUSC + Fe + Sp)
 10% (20 + 30 + 10) 6 cr. ✓

Any amount received as:

A Advance for supply of goods/ provision of services in the course of company's business

C1: Advance to be adjusted against supply of goods or provision of services within 365 days from the date of receipt
C2: The limit of 365 days shall not apply if the advance is subject matter of any legal proceedings

B Advance in connection with an immovable property (later adjusted against the consideration for such property)

C Security deposit for performance under a contract for supply of goods/ provision of services

D Advance under a long-term project for supply of capital goods (eg. Heavy P&M)

E Advance for providing warranty/ maintenance services in the future. Period for providing such services ≤ lower of:

period as per common business practice 5 years

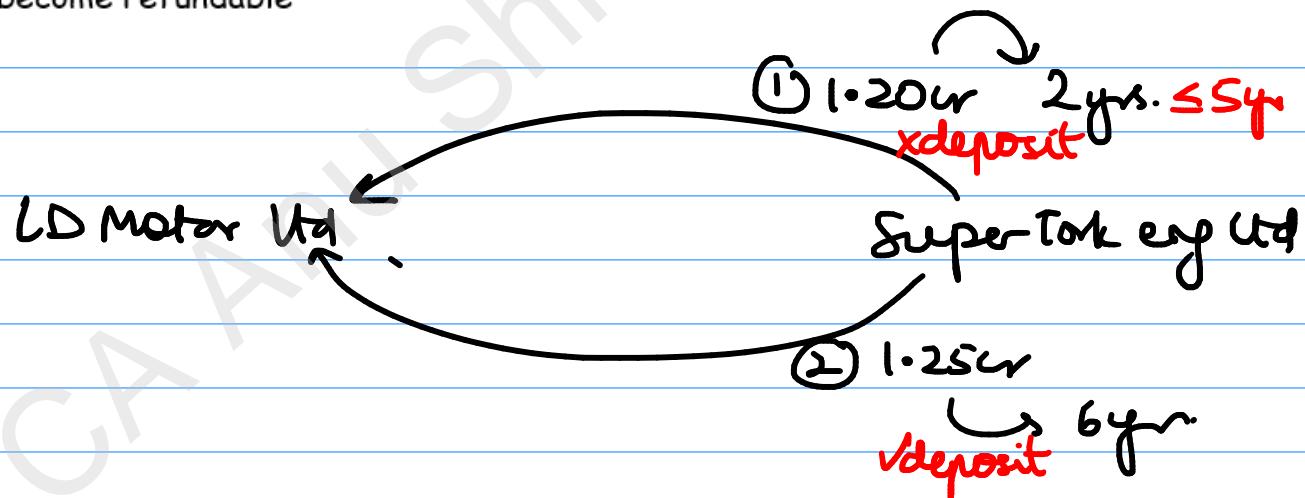
F Advance under the directions of CG/ SG

G Advance for subscription of a publication, to be adjusted against receipt of such publications

Note:

→ a, b, d

- o If the advance later becomes refundable because the company did not have approval, to deal in the goods/ property/ services, then the advance shall be deemed to be a deposit.
- o The advance shall be deemed to be deposit after 15 days from the date on which the advance become refundable



Advance → period ≤ 7 yrs. I.W.E.L
(deposit) 5 yrs



Particulars of charge + instrument
creating charge



(X) fees

30 days

ROC

60 days Add'l fee

Date of creation of charge

16.2.2025

60 days + 60 days

Ad Valorem
fee.

16.2.2025 *

Feb = 12

+ 60 days

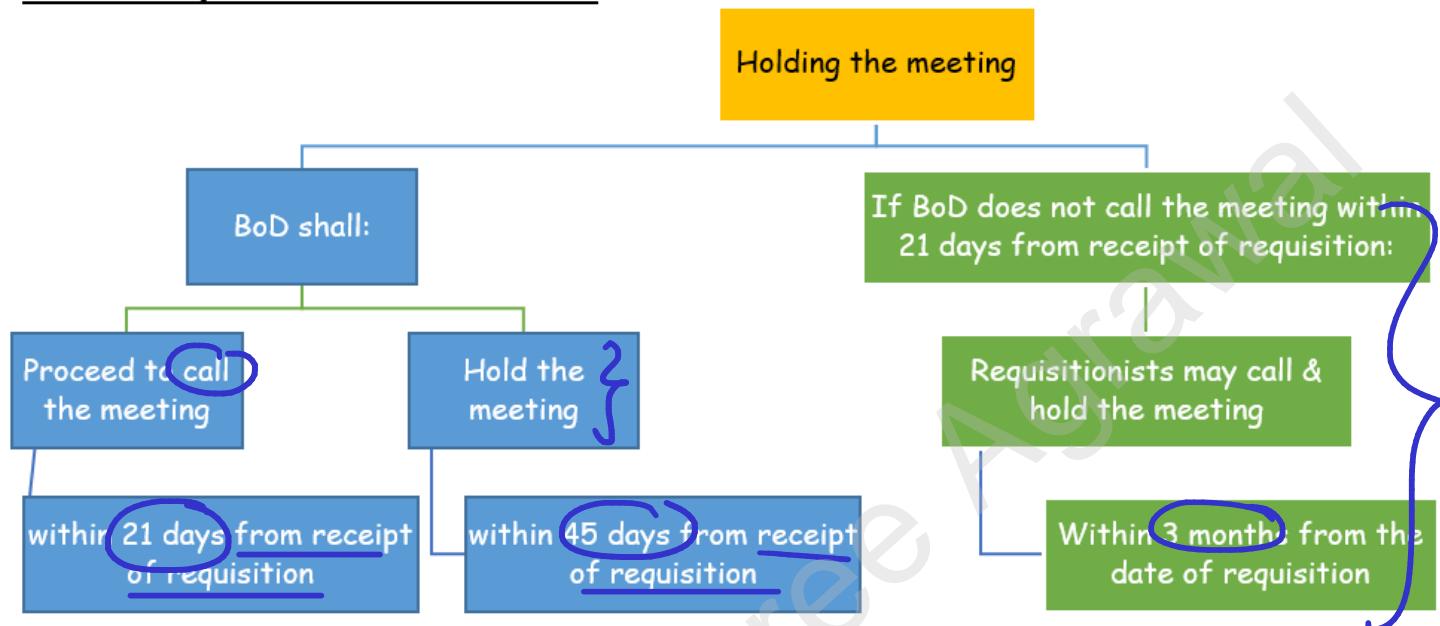
Mar = 31

17.4.2025

Apr 17
60

✓ Requisition made by members holding at least 1/10th of PUSC

EGM ON REQUISITION OF MEMBERS:



IF NOTICE RELATES TO AN EGM BEING CALLED BY REQUISITIONISTS BECAUSE THE BOD DID NOT CALL THE MEETING WITHIN PRESCRIBED TIME LIMITS:

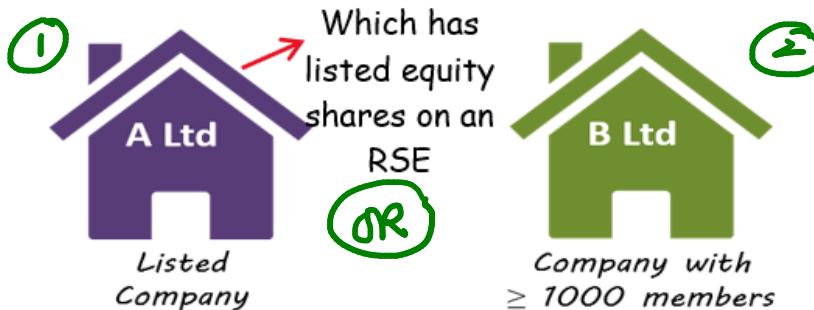
- Notice shall be SIGNED BY:
 - o all the requisitionists or
 - o a requisitionists authorised in writing by other requisitionists on their behalf
- EXPLANATORY STATEMENT need not be annexed to the notice. Requisitionists may disclose the reasons for proposed resolutions.
- MODE:
 - o Speed post
 - o Registered post
 - o Electronically (e.g., by e-mail)
- NOTICE TO BE SENT TO WHOM?
 - o **IF THE EGM IS BEING CALLED BY BOD ON THE REQUISITION OF MEMBERS:** to members whose names appear in the Register of members of the company within 3 days from the date of receipt of requisition

1.7.24

3
4.7.2024

VOTING BY ELECTRONIC MEANS S. 108

COMPANIES THAT SHALL PROVIDE MEMBERS RIGHT TO VOTE BY ELECTRONIC MEANS:



① e-voting
② GM

- Members attending the meeting WHO HAVE NOT ALREADY CAST THEIR VOTE by remote e-voting may vote at the meeting
- Members WHO HAVE CAST THEIR VOTE already by remote e-voting may also attend the meeting. But they CANNOT vote again

VOTING BY POSTAL BALLOT S. 110

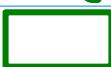
ITEMS WRT WHICH VOTING SHALL HAPPEN BY POSTAL BALLOT:

- Items DECLARED BY THE CG which shall be transacted by the company ONLY by postal ballot
10 matters

alteration of <u>objects</u> clause of MoA	Election of <u>directors</u> u/s 151 (Small shareholders' director)	change in <u>place of RO</u> outside the local limits of any city, town or village	<u>buy-back</u> of shares
issue of shares with <u>differential rights</u> as to voting/ dividend or otherwise	<u>variation</u> in the rights attached to shares/ debentures/ other securities	giving <u>loans/ guarantee/ security</u> > limit specified u/s 186	sale of whole/ substantially whole of a <u>company's</u> <u>undertaking</u>
<u>change in objects</u> for which a company has <u>raised money</u> from public through <u>prospectus</u> and remaining unutilized		<u>alteration of AoA</u> in relation to insertion or removal of the 3 restrictive clauses (to convert a public company into private company and vice versa)	

If S. 108 is applicable to the company, the company can transact the 10 businesses either as per S. 108 or as per S. 110.

S.108 S.110



S.108

- Remote e-voting
- GM

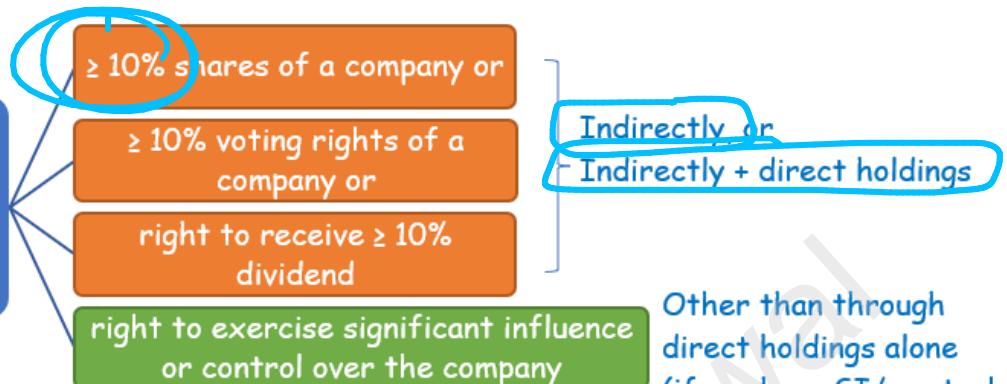
S.110

- Postal Ballot
- GM

- Indt
- Indt + dt

MEANING OF SBO:

SBO is an **INDIVIDUAL** who holds, alone or together with other indls::



(Indirect holdings are mandatory in all 4 situations)

Other than through direct holdings alone
 (if you have SI/ control over the company through direct holdings only, then, you are not SBO)

SBO RULES ARE NOT APPLICABLE TO SHARES HELD BY:

- IEPF
- The company's holding company
- CG/ SG/ LA
- Investment vehicles (Mutual Funds, Alternative Investment Funds (AIFs), Real Estate Investment Trusts (REITs), Infrastructure Investment Trusts (InVITs))
- Investment vehicles regulated by RBI, IRDA, Pension Fund Regulatory and Development Authority.

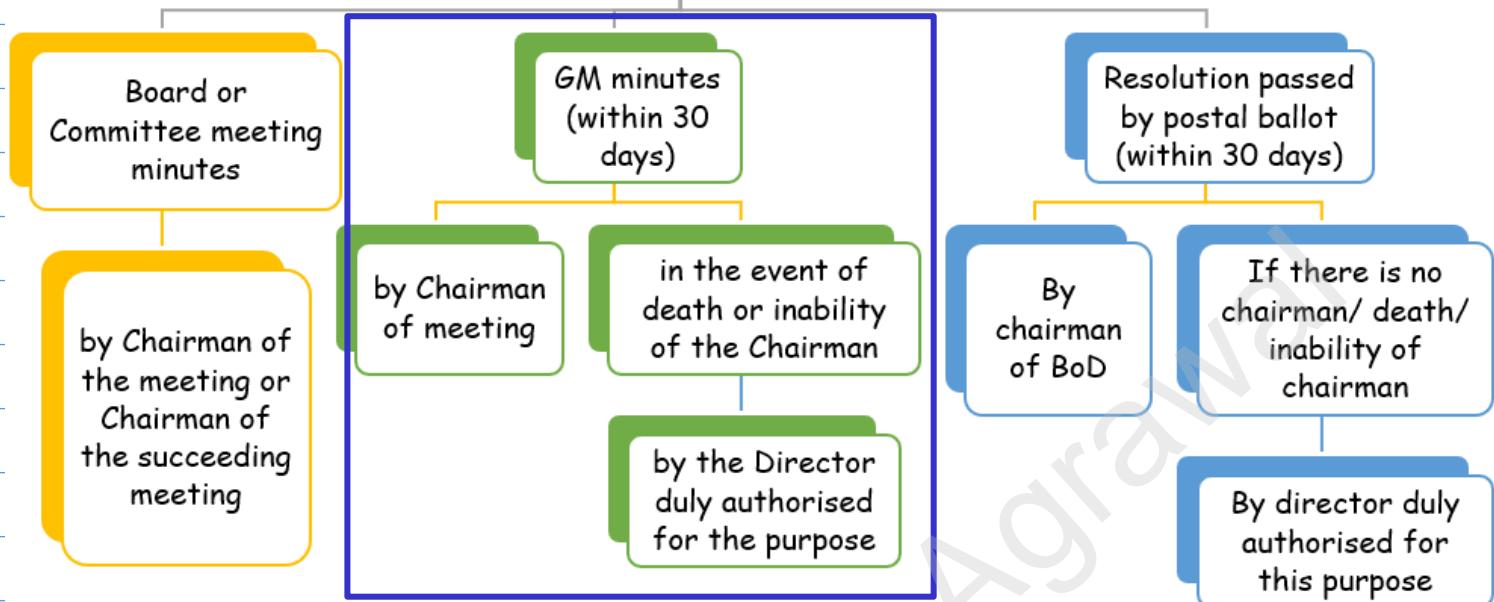
SBO → C
 BEN-1

Requisitionists \rightarrow A, B (Joint)
 $\underbrace{5000}$ sh.

✓✓✓

$$40000 \times 1/10 = 4000 \text{ sh.}$$

Each page should be **initialled or signed** and the last page shall be **dated and signed**



- FIRST AGM:

First AGM to be held within 9 months from the date of closing of the first FY

If first AGM is held as above, no need to hold an AGM in the year of incorporation

ROC cannot provide extension for First AGM.

Dol = 1.11.2022

1st FY end → 31.3.2023

9 months

≤ 31.12.2023



- SUBSEQUENT AGMs:

1 Max time gap between 2 AGMs = 15 months

2 AGM should be held within 6months from the date of closing of FY

3 There must be at least 1 AGM in each calendar year

EARLIEST of these 3 dates

For special reasons, ROC may extend time for holding AGM. Max extension: 3 months.

ROC cannot provide extension for First AGM.

①

1.5.23 + 15mth = 1.8.24 ✓✓

②

FY 23-24 → end 31.3.24 + 6mth = 30.9.24

③

2024 → 31.12.2024

last date = 1.8.2024

Actual = 5.8.2024

delay → 4 days

100000 + (500 × 4)

= 120000

SPECIAL RESOLUTIONS (SR)

$$3000 \geq 3 \times 1200 \cdot$$

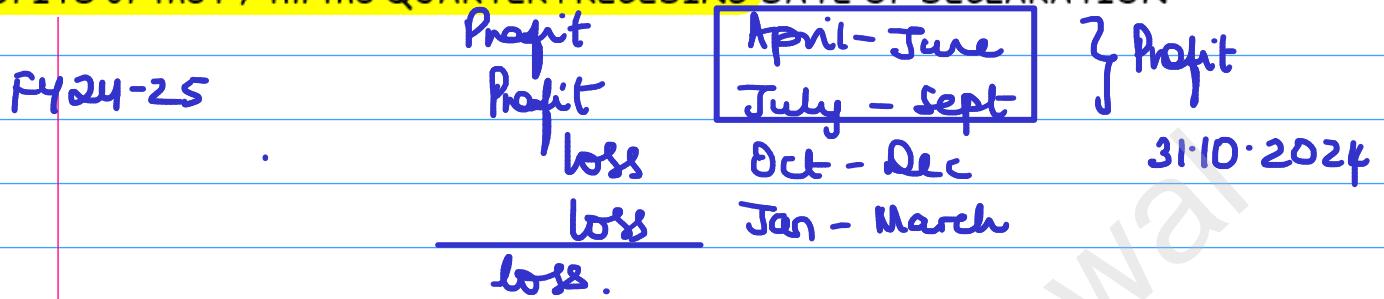
$$3000 \geq 3600$$

X

~~✓~~

SPECIAL POINTS WRT INTERIM DIVIDEND: Interim dividend maybe declared out of:

- SURPLUS in P&L a/c, OR
- PROFITS OF THE FY for which interim dividend is sought to be declared, OR
- PROFITS of the FY till the QUARTER PRECEDING DATE OF DECLARATION



MAXIMUM RATE OF INTERIM DIVIDEND = AVERAGE DIVIDEND declared by the company during the IMMEDIATELY PRECEDING 3 FYs.

NOTE: This maximum rate limit is applicable ONLY if the company has incurred LOSS IN THE CURRENT FY, up to end of the quarter immediately preceding the date of declaration of interim dividend

Company shall set off carried over previous LOSSES and DEPRECIATION not provided in previous years against profit of the company for the current year. Only then, company shall declare dividend.

TRANSFER TO RESERVES BEFORE DECLARING DIVIDEND

transfer to reserves

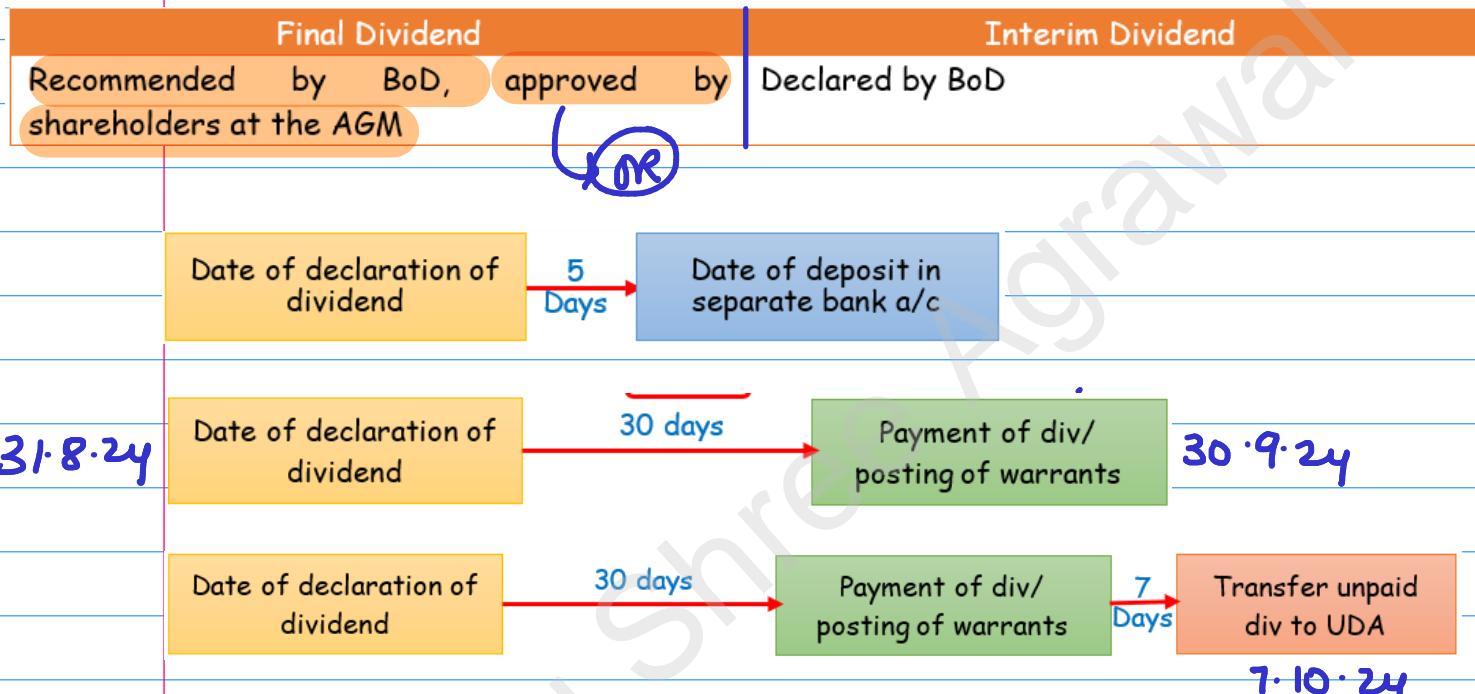
Declare dividend

Before declaring dividend, company may transfer an appropriate % of profits of that year to reserves. But this is TRANSFER IS NOT MANDATORY

Should profit be transferred to the reserve?
How much should be transferred?

It has been left to the discretion of the
company

Shareholders cannot insist on DECLARATION of dividend or INCREASE the rate recommended by the BoD. They may however LOWER the rate recommended by the BoD.



In the event of a **DEFAULT**,
interest @ 12% p.a.
on amount not transferred
to be charged from the date of default
to be given to the members proportionate to the amt remaining unpaid to them.



WHICH COMPANY IS REQUIRED TO CONSTITUTE CSR COMMITTEE?**EVERY COMPANY** HAVING IN THE PRECEDING FY:NET
WORTH \geq RS 500
CRORE, OR

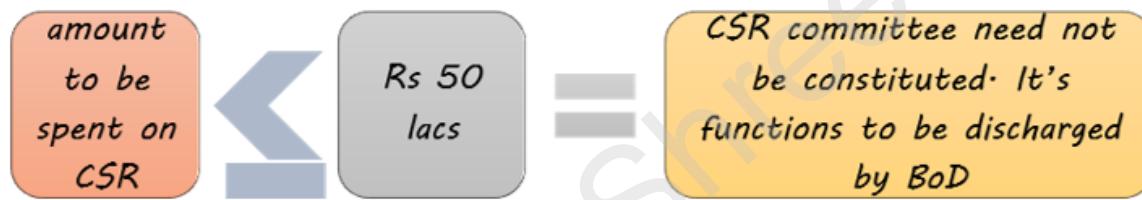
T/O

 \geq RS 1,000
CRORE, ORNET
PROFIT \geq RS 5
CRORE→ 5. 8 Company also? Foreign company also? Yes. **EVERY** Company.**MINIMUM AMOUNT TO BE SPENT ON CSR BY THE COMPANY:**

BoD of every company which fulfils any of the 3 criteria for constitution of CSR committee, shall ensure that the company spends every year $\geq 2\%$ of the **AVERAGE NET PROFITS** of the company made during **3 immediately preceding FYs**

NOTE: If CSR amount to be spent \leq Rs 50 lacs, CSR committee NEED NOT be constituted.

Functions of the committee shall be discharged by **BoD** in such cases



① $NW \geq 500\text{cr}$ (✓) (Prec. FY) .

$T/O \geq 1000\text{cr}$ (✗)

$NP \geq 5\text{cr}$ ✓

② Any 1 ✓ → BoD ensure co spends on CSR

Min = 2% of Avg
NP of 3 Pre
Fys .

③ Any 1 ✓ → CSR Cee

④ $A \leq 50L$ → ~~CSR Cee~~

↳ executed by BoD .

① NP in Pre Fy 24-25 \rightarrow 17 Cr \geq 5 Cr
 \therefore CSR C'ee \leq 50 L

② Amt ^{to be}
spent on CSR \leq 50 L

2% x Avg NP of 3 Pre Fys
2% x 15 Cr \rightarrow 30,00,000 \leq 50 L

CSR C'ee
 \hookrightarrow 50 L

- ① NFRA shall maintain **DETAILS OF AUDITORS** appointed in the companies governed by NFRA
- ② NFRA SHALL RECOMMEND ACCOUNTING and AUDITING STANDARDS FOR APPROVAL BY CG.
- ③ NFRA SHALL MONITOR AND ENFORCE COMPLIANCE of **ACCOUNTING STANDARDS**.
- ④ NFRA SHALL MONITOR AND ENFORCE COMPLIANCE of **AUDITING STANDARDS**.

IF PROFESSIONAL/ OTHER MISCONDUCT IS PROVED: NFRA has the power to:

	Individuals	Firms
Impose Penalty	Rs 1 lac - Max 5 times of fee recd	Rs 5 lac - Max 10 times of fee recd
Debar from being appointed as <u>auditor/ internal auditor</u> of any company & performing valuation u/s 247		6 months - 10 years

- COMPANIES REQUIRED TO APPOINT INTERNAL AUDITOR:

~~listed company~~

- All listed companies

~~unlisted public company~~

- PUSC \geq Rs 50 crore during the preceding FY; or
- turnover \geq Rs 200 crore during the preceding FY; or
- o/s loans or borrowings from banks or PFI $>$ Rs 100 crore at any time during the preceding FY; or
- o/s deposits \geq Rs 25 crore at any time during the preceding FY

~~private company~~

- turnover of \geq Rs 200 crore during the preceding FY; or
- o/s loans or borrowings from banks or PFI $>$ Rs 100 crore at any time during the preceding FY

- WHO CAN BE APPOINTED AS AN INTERNAL AUDITOR?

Internal Auditor

Chartered Accountant

Cost Accountant

Such other professional as decided by BoD

May or may not be practicing
May or may not be the company's employee

- **COMPANIES REQUIRED TO APPOINT INTERNAL AUDITOR:**

listed company

- All listed companies

unlisted public company

- PUSC \geq Rs 50 crore during the preceding FY; or
- turnover \geq Rs 200 crore during the preceding FY; or
- o/s loans or borrowings from banks or PFI $>$ Rs 100 crore at any time during the preceding FY; or
- o/s deposits \geq Rs 25 crore at any time during the preceding FY

private company

- turnover of \geq Rs 200 crore during the preceding FY; or
- o/s loans or borrowings from banks or PFI $>$ Rs 100 crore at any time during the preceding FY

Filing with ROC

- A copy of FS + CFS + all the docs attached to FS + FS of foreign subsidiaries (subsidiaries incorporated outside India and don't have a place of business in India)
- duly adopted at AGM
- with applicable form and fees
- To be filed with ROC **WITHIN 30 DAYS** from the date of AGM with fees

prepared
 approved
 signed
 audited
 Circulated
 adopted
 Filed → ROC

WHAT IF FINANCIALS ARE NOT ADOPTED AT AGM/ ADJOURNED AGM?

Unadopted FS + other specified docs to be filed with ROC within 30 days from AGM

ROC shall take them in his records as provisional.

Once FS are adopted in adjourned AGM, they shall be filed with ROC within 30 days from such adjourned AGM with fees

(1)

AGM

30 days

(2)

X Adopted

→

AGM

30 days

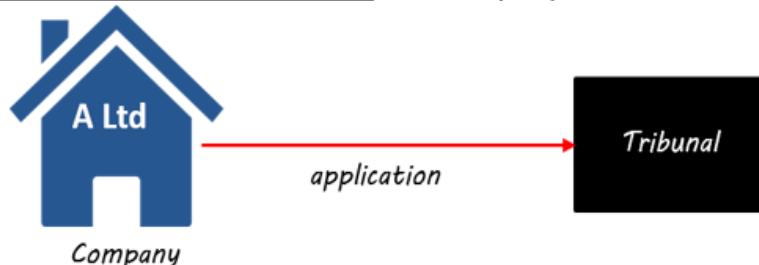
(Unadopted)
provisional

Adjourned AGM
↓
adopted

- **APPLICATION TO BE MADE TO:** The Tribunal
- **APPLICATION MADE BY:** The company

S.130

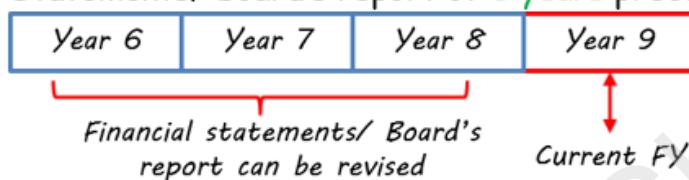
S.131



(1) BR
 (2) 14 days NCLT 1
 Co → NCLT

- **APPLICATION TO BE MADE IN:** Form NCLT 1
- **WHEN SHOULD THE APPLICATION BE MADE TO THE TRIBUNAL BY THE COMPANY?**
 Within 14 days from the date on which the decision to revise is taken by the BoD

TIME-LIMIT FOR REVISING FINANCIAL STATEMENTS/ BOARD'S REPORT: Financial Statements/ board's report of 3 years preceding the current financial year can be revised



24-25
 23-24
 22-23

S.130
S.131
 8 yrs.
 3 yrs.

April-March
A Ltd (SG)
(India Co)

XYZ Inc
HCo (US).
Jan-Dec.

The company/body corporate is a H Co/ S Co/ A Co of a company incorporated o/s India

And is required to follow a different FY for consolidation of its accounts o/s India

Application may be made by aforementioned company/ body corporate to NCLT CG

CG if satisfied, may allow any period as its FY, whether or not that period is a year.

FRAUDS < RS 1 CRORE

- o In case of a fraud involving < Rs 1 crore, auditor shall REPORT TO THE AUDIT COMMITTEE/ BOD immediately but not later than 2 days.
- o **HE SHALL REPORT SPECIFYING THE FOLLOWING:** (i) Nature of Fraud with description; (ii) Approximate amount involved; and (iii) Parties involved.
- o These details along with **REMEDIAL ACTION** taken to be DISCLOSED IN THE BOARD'S REPORT

FRAUDS ≥ RS 1 CRORE

while performing his duties, if auditor has reason to believe that fraud ≥ Rs. 1crore has been committed against the company by company's officers/ees

He shall report the matter to **BoD/ Audit Committee** immediately, not later than 2 days, seeking their reply within **45 days**

On receipt of reply, auditor shall forward his report + reply of BoD/ Audit Committee + his comments (on such reply) to the CG **within 15 days**

If auditor fails to get reply from BoD/ Audit Committee **within 45 days**, he shall forward his report to CG + note containing details of his report that was earlier forwarded to BoD/ Audit Committee

Report shall be in **Form ADT-4** sent to the Secretary, MCA in a sealed cover by Registered Post with Acknowledgement Due or by Speed Post followed by **an e-mail in confirmation**

Report shall be on the letter-head of the auditor containing address, e-mail address, contact number, signed by auditor + seal and shall indicate his Membership Number

Jan 26

< 1cr

≥ 1cr

1) Fraud Report (2 day)

→ BoD/AC

2) BR → Action

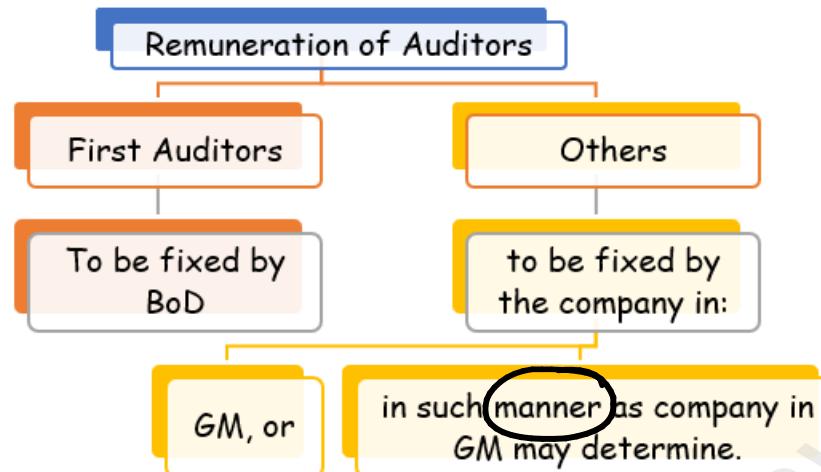
1) Fraud Report → 2 day

2) Response → 45 day

3) Audit → MCA

① Rep + Reply + Comm
(15 day)

REMUNERATION OF AUDITORS S. 142



fix → amt
→ manner

APPROVAL OF FINANCIAL STATEMENTS: Company's financial statements and CFS shall be approved by the **BOARD OF DIRECTORS**. Approval SHALL NOT BE DELEGATED to a committee of the board.

SIGNING OF FINANCIAL STATEMENTS: Then, it shall be signed on behalf of board by the

- ① **Chairperson** of the company, if authorised by Board, or, by **2 directors** (1 of whom shall be the managing director of the company) ②
- ② **CEO, CFO** and **Company Secretary** of the company ③

If a firm/ LLP is appointed,
only partners who are **CAs**
shall be authorised to act
and sign on behalf of the
firm.

Firm
Indi

CASUAL VACANCY IN NON-GOVERNMENT COMPANIES:

- **CASUAL VACANCY OTHER THAN RESIGNATION:** To be **FILLED BY BOD** within **30 days**
- **CASUAL VACANCY CAUSED BY RESIGNATION**
 - o To be **FILLED BY BOD** within **30 days**
 - o Such appointment shall also be **APPROVED BY THE COMPANY (RATIFICATION)**
 - ✓ at a **GM**
 - ✓ by passing an **ordinary resolution**
 - ✓ within **3 months** of the recommendation of BoD.

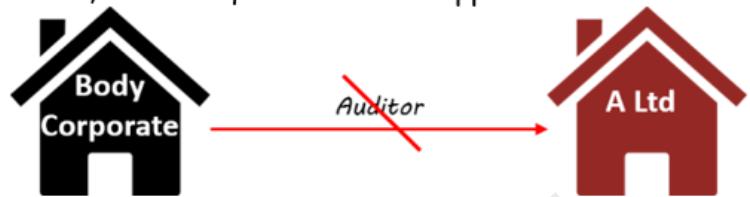
CASUAL VACANCY - GOVERNMENT COMPANIES, COMPANIES OWNED/ CONTROLLED BY GOVT.

- To be **FILLED BY C&AG** within **30 days**.
- If C&AG does not fill the vacancy, **BOD SHALL FILL THE VACANCY** within next **30 days**.
- No distinction for casual vacancy due to resignation

TERM OF APPOINTMENT: Till the **CONCLUSION OF THE NEXT AGM**

DISQUALIFICATIONS OF AN AUDITOR S. 141(3): The following persons are disqualified from being appointed as an auditor:

A **BODY CORPORATE** (But, LLP registered under LLP Act, 2008 is qualified to be appointed as an auditor)



DISPLAY OF NAME OF FOREIGN COMPANY S. 382

FOREIGN COMPANY SHALL CONSPICUOUSLY EXHIBIT:

Where?

outside every place of business in India

What?

Company's name

country of incorporation

whether the liability of members is limited

How? In legible letters in:

English, andThe language used in the locality in which place of business is situated

FOREIGN COMPANY SHALL STATE:

Where?

Business letters, bill-heads, letter paper, notices, other official publications

What?

Company's name

country of incorporation

whether the liability of members is limited

How? In legible letters in:

English, andThe language used in the locality in which place of business is situated

REGISTRATION OF PROSPECTUS S. 389

- Before any person issues, circulates or distributes a prospectus in India, offering to subscribe for securities of a company incorporated or to be incorporated outside India (which may or may not have a place of business in India):
 - o a copy of the prospectus shall be CERTIFIED by:
 - ✓ CHAIRPERSON of the company, and
 - ✓ 2 DIRECTORS of the company (directors authorized by resolution of the managing body)
 - o Such certified copy shall be delivered for registration to ROC (New Delhi)
 - o On the face of the prospectus, it must be stated that a copy has been so delivered
 - o To the copy, expert's consent u/s 388 should be attached
- DOCUMENTS TO BE ATTACHED TO THE PROSPECTUS:
 - o Expert's consent u/s 388
 - o Copy of contracts for appointment of MD/ manager
 - o Copy of any other material contracts entered into in last 2 years, but not in the ordinary course of business
 - o Copy of underwriting agreement
 - o Copy of power of attorney (required only if prospectus is signed by authorized agents of directors)

2

SPECIFIED CATEGORY OF FOREIGN COMPANIES TO WHICH WHOLE OF COMPANIES ACT

2013 IS APPLICABLE UP TO 9(2):

- C1: Company is a FOREIGN COMPANY, AND
- C2: $\geq 50\%$ of PUSC (just equity/ just preference/ both equity and preference) is held by:
 - o ≥ 1 Indian Citizen, or
 - o ≥ 1 Companies or Body Corporates incorporated in India, or
 - o Both

SINGLY or in the AGGREGATE

(e.g.: Jaguar Land Rover is a foreign company (UK) and $\geq 50\%$ of its PUSC is held by Tata Motors an Indian Company)

APPLICABILITY OF THE COMPANIES ACT 2013 TO SUCH FOREIGN COMPANIES:

- S. 380 to S. 393 (anyways applicable as it is a foreign company), and
- Additionally, other provisions of the Companies Act 2013, as may be prescribed, wrt its INDIAN BUSINESS as if it were a COMPANY INCORPORATED IN INDIA

FC \rightarrow Chapt XXII
380 - 393 .

FC
Chinese Co
H Co

Indian Co
S Co

→ FC \rightarrow %s
Place of B

A

CAN A SUBSIDIARY COMPANY ALSO HOLD SHARES IN A HOLDING COMPANY? S. 19

Normally, subsidiary CANNOT BE a member of holding company. ALLOTMENT OR TRANSFER of shares by holding company to its subsidiary companies subsequently will be VOID.

EXCEPTIONS WHEN S LTD CAN HOLD SHARES IN H LTD:

- Voting Rights ✓ - When S Ltd holds such shares as **LR of a deceased member** of the H Co
- Voting Rights X - Where S Ltd holds such shares as **TRUSTEES**
- Voting Rights X - When S Ltd was a shareholder of H Ltd even before it became a subsidiary of H Ltd

B

CONTENTS OF INFORMATION MEMORANDUM (IM) Form PAS-2: IM shall contain **ALL MATERIAL FACTS** in relation to:

- new **CHARGES** created,
- **change in the FINANCIAL POSITION** between the first offer of securities or the previous offer of securities and the succeeding offer of securities and
- such other changes as may be **PRESCRIBED**

C

S. 48

Pre-requisites for variation of rights

1

Call a **separate class meeting** of shareholders of that class

Or

2

Written consent ✓

Pass a **SR** (prior SR)

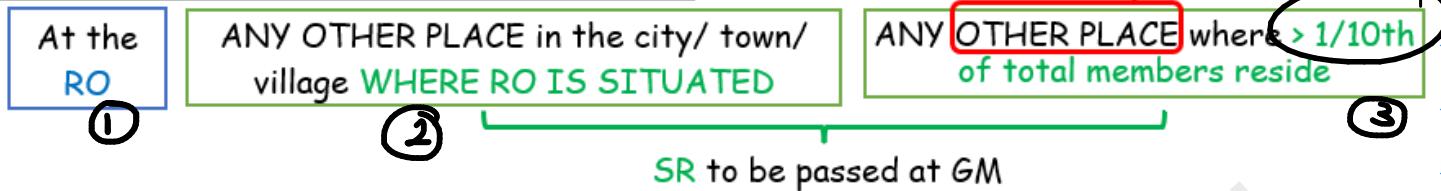
From $\geq 3/4^{\text{th}}$ of the issued shares of that class

WHAT IF THE VARIATION AFFECTS ANOTHER CLASS OF SHAREHOLDERS? If variation of rights of one class of shareholders **also affects the rights of another class**, consent of 3/4th of shareholders of **SUCH OTHER CLASS** shall also be obtained

P

EJ

REGISTER OF MEMBERS, DEBENTUREHOLDERS, ETC S. 88

WHERE SHOULD THE REGISTER BE KEPT?

TERM OF AUDITORS - S. 139(2)

Applicable to:	Maximum Term	Cooling Period
<ul style="list-style-type: none"> <u>Listed</u> companies <u>Unlisted</u> public companies with PUSC \geq Rs 10 crore <u>Private</u> limited companies with PUSC \geq Rs 50 crore Companies with <u>borrowings</u> from financial institutions + banks + public deposits \geq Rs 50 crore 	<ul style="list-style-type: none"> <u>Individual</u> - 1 term of 5 consecutive years <u>Audit firm</u> - 2 terms of 5 consecutive years each 	<ul style="list-style-type: none"> To ensure re-instatement of independence Individual/ Firm <u>shall not be re-appointed</u> in the same company for 5 years after completion of: <ul style="list-style-type: none"> <u>Individual</u> - 1 term <u>Audit firm</u> - 2 terms

ACCEPTANCE OF DEPOSITS FROM MEMBERS:

AUDITOR'S CERTIFICATE: To the circular, statutory auditor's certificate should be attached stating that:

- company has **NOT DEFAULTED** in repayment of deposits/ payment of interest
- If the company had defaulted, company had **MADE GOOD THE DEFAULT** and **5 years** have lapsed since the date of making good the default.

A

VOTING BY ELECTRONIC MEANS S. 108

OPENING AND CLOSING OF THE FACILITY:

- **MINIMUM PERIOD:** Facility for remote e-voting shall remain open for **at least 3 days**
- **CLOSING OF THE FACILITY:** It shall be **closed at 5.00 p.m.** on the date PRECEDING the date of GM

COUNTING OF VOTES:

- o Scrutiniser will first count the votes **CAST AT THE MEETING.**
- o Then, scrutiniser will **UNBLOCK** the votes **CAST THROUGH REMOTE E-VOTING**
 - ✓ In the presence of ≥ 2 witnesses
 - ✓ Who are **NOT** company's employees

PUBLIC NOTICE

- **ADVERTISEMENT TO BE MADE IN:**
 - o **1 VERNACULAR NEWSPAPER** having a wide circulation in the district in which RO is situated, AND
 - o **1 ENGLISH NEWSPAPER** having **country-wide** circulation
- **WHEN?**
 - o **AFTER DISPATCH** of notices to member, BUT
 - o at least **21 days** before the date of GM

① Dispatch S 101 notice

② Public Notice

③ GM .

B

CORPORATE SOCIAL RESPONSIBILITY S. 135 (CSR)

NET PROFIT: Net Profit refers to **Net Profit Before Tax**, before setting off of past losses, before capital payments/ receipts.

The following will be EXCLUDED from Net Profits:

- o profit arising from **OVERSEAS BRANCHES**
- o **DIVIDEND RECEIVED** from other **INDIAN COMPANIES**, which are complying with **CSR** provisions

WHAT IS AN ONGOING PROJECT:

- o An ongoing project is a **MULTI-YEAR PROJECT** undertaken by a Company to fulfil CSR obligations
- o **TIMELINE:** **≤ 3 YRS** (excl. FY of commencement. Therefore, 1+3 years)

③ 11.8.25

② 12.8.25

① 13.8.25 5PM

Scamimber
witness
assistant] → x ee.

→ S.67

→ OPC → (OPC)

Put up (OPC)

→ Nonie → wc
 └→ withdraw

15 days

↓

SWEAT EQUITY SHARES S. 54

CONDITIONS TO BE FULFILLED:

- Shares of that class must be already issued
- SR to be passed
- SR to specify number of shares, current MP, consideration, and the class of directors or
ees to whom the equity shares are to be issued
- Allotment shall be made within **12 months** from date of SR
- If the company is a listed company, **SEBI regulations** to be followed

LOCK - IN PERIOD: Shares shall be non-transferable for **3 years** from date of allotment

OTHER POINTS:

- Rights, limitations, restrictions for such shares are same as equity shares. Holders of such shares shall rank **pari passu (equal)** with other equity shareholders

immediately

AUDIT OF BRANCH OFFICES S. 143(8)

- **BRANCH OFFICES IN INDIA:** Accounts of the branch office shall be audited by:
 - company's auditor or
 - any other person qualified for appointment as an auditor of the company
- **BRANCH OFFICES OUTSIDE INDIA:** Accounts of the branch office shall be audited by:
 - company's auditor or
 - an accountant or any person duly qualified to act as an auditor of the branch office in accordance with the laws of that country.

PRIVATE PLACEMENT S. 42

Allotment shall be made within **60 days** from the date of receipt of application money. If the company is unable to do so, it shall REFUND within **15 days** from the expiry of 60 days

Otherwise, interest @ 12% p.a. to be paid (from the expiry of the 60th day)

Upon allotment, return of allotment (Form PAS-3) to be filed with ROC within **15 days**, with full names, addresses, number of securities allotted about each security holder.

Once the LLP is incorporated, **LLP AGREEMENT** shall be filed with the ROC (E-form 3) within **30 DAYS** of incorporation

CONTRIBUTION

- FORM OF CONTRIBUTION

Tangible or Intangible property	Movable or Immovable property	Money, Promissory notes	Agreement to contribute cash or property	Contracts for services performed or to be performed
---------------------------------	-------------------------------	-------------------------	--	---

- **MONETARY VALUE OF CONTRIBUTION** of each partner shall be **accounted for and disclosed** in the accounts of the LLP in the prescribed manner

- **OBLIGATION TO CONTRIBUTE:** Partner's obligation to make the contribution to the LLP will be **as per the LLP agreement**.

- THE FOLLOWING PERSONS CAN BECOME A PARTNER IN LLP:

- o **Individuals** (Resident/ Non-Resident/ Overseas Citizen of India/ Foreign Nationals)
- o **LLP** (incorporated in/ outside India)
- o **Foreign LLPs**
- o **Companies** (Indian companies/ Foreign companies)

- **CO-OPERATIVE SOCIETY** and **CORPORATION SOLE** **CANNOT BECOME A PARTNER** in LLP.

FINANCIAL YEAR

- It is the period that starts on 1st of April and ends on 31st of March of the following year.
- However, if the LLP is incorporated after 30TH SEPTEMBER, the first financial year **may** end on 31st March of the year next following that year (directory provision, not mandatory)
- Example: if the LLP is incorporated on 10th December 2022, the first financial year will be from 10.12.2022 to 31.3.2024.
- Therefore, the period for which the first accounts of the LLP is prepared can be maximum **18 months** long.

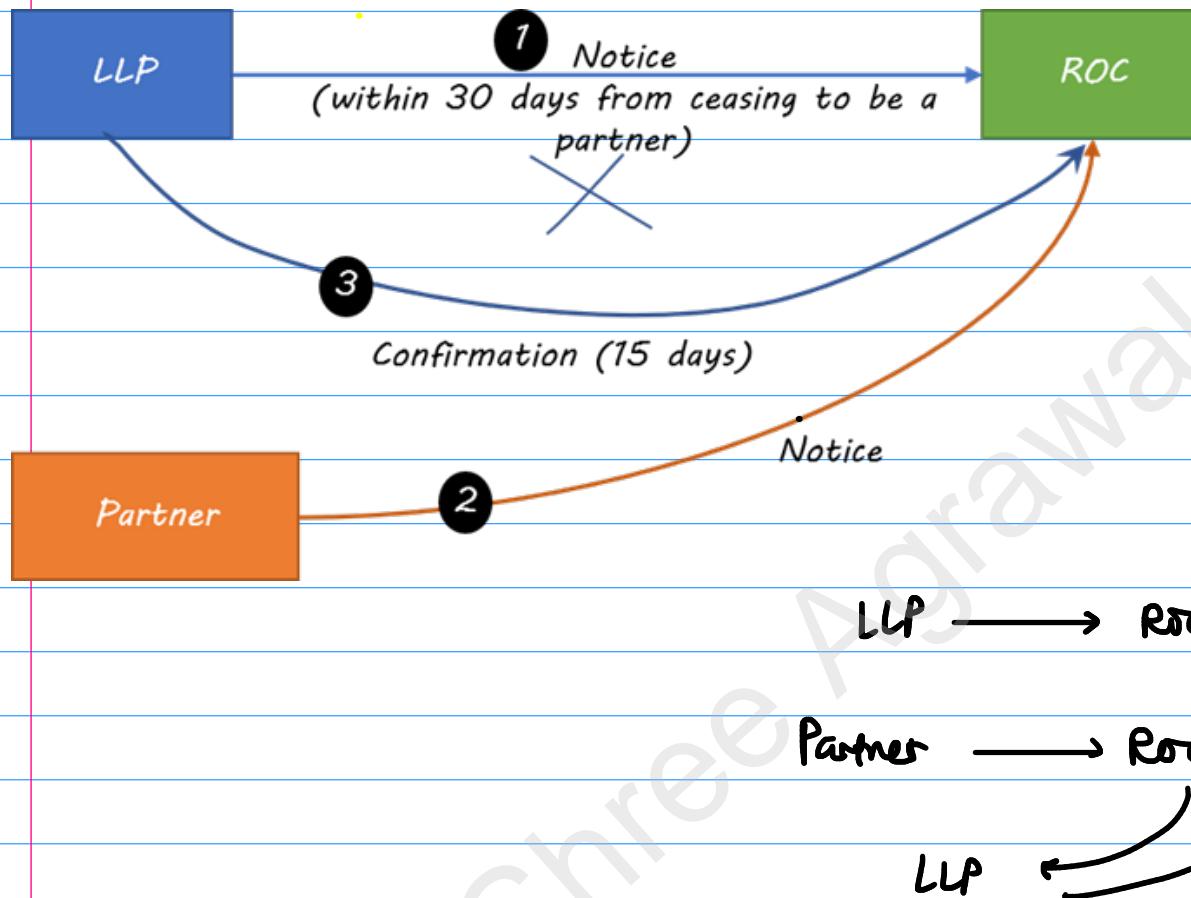
Oct - March



ASSIGNMENT AND TRANSFER PARTNERSHIP RIGHTS

- **THE FOLLOWING RIGHTS OF THE PARTNER CAN BE TRANSFERRED (wholly or partly):**
 - o Partner's Right to get a **SHARE IN THE PROFITS & LOSSES** of LLP
 - o Partner's Right to receive **DISTRIBUTIONS** as per the LLP agreement
- However, such transfer **DOES NOT RESULT IN:**
 - o **disassociation** of the partner (transferor/ assignor)
 - o **dissolution** of LLP
 - o **winding up** of LLP

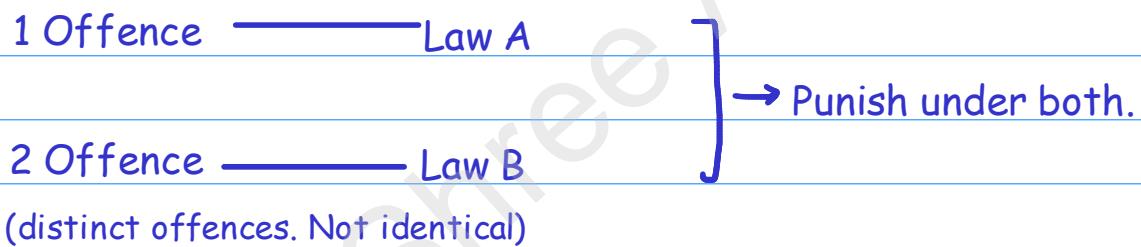
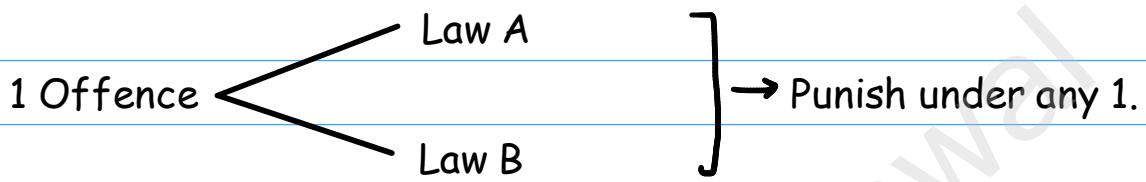
That is, even after such transfer, the transferor/ assignor continues as partner of the LLP, the LLP also does not come to an end.
- On the virtue of such transfer, the **TRANSFeree/ ASSIGNEE CANNOT PARTICIPATE** in the **management** of LLP, cannot access **information** wrt transactions of LLP



OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS S. 26

If the **SAME** act/ omission constitutes an offence under two or more enactments,

- then the offender shall be liable to be punished under **ANY OF THOSE ENACTMENTS**,
- but shall not be punished twice for the same offence



RE-ENACTING OF LAWS REPEALED S. 8

- If an Act is repealed and re-enacted,
- references in any other enactment to the provision so repealed
- shall be construed as
- references to the provision so re-enacted.

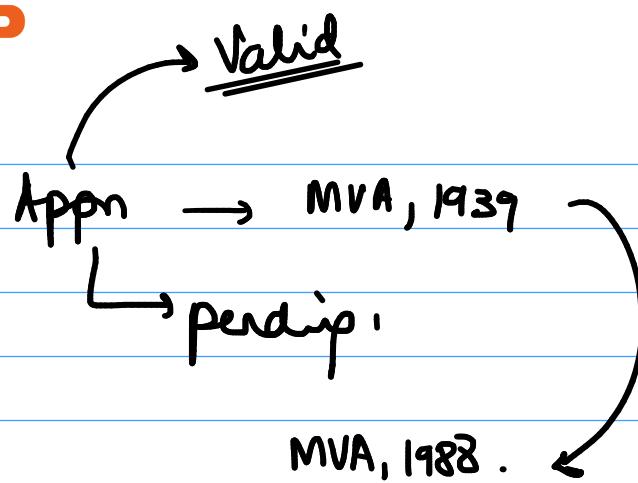
References
to
provision
repealed

References
to
provision
re-enacted

CA 1956

CA 2013

IT Act



C P R D

SERVICE BY POST S. 27

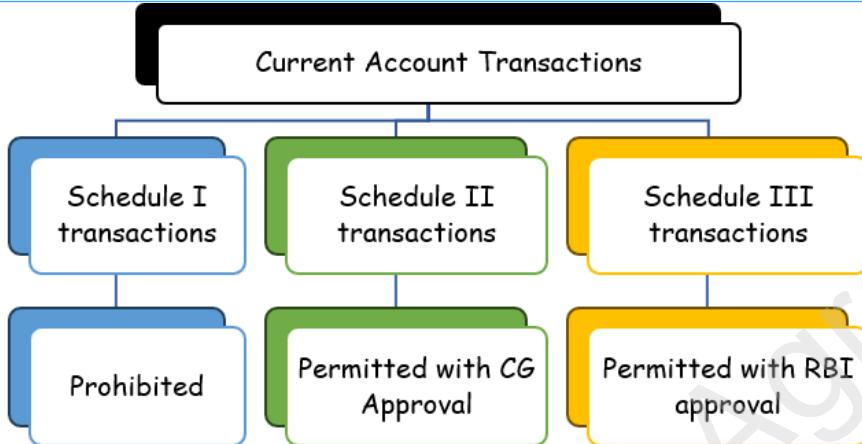
Unless a different intention appears, if a document is required to be served by post, service will be deemed to be affected by:

- properly addressing
- pre-paying, and
- posting by registered post.



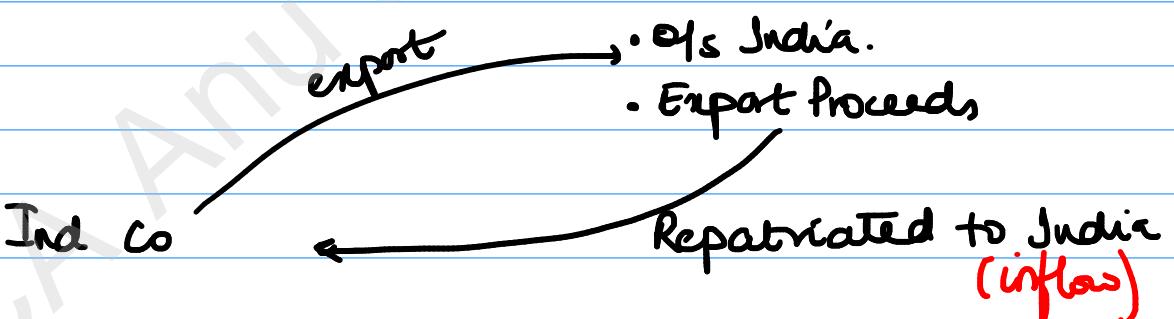
Aug.	7
Sept	30
Oct	31
Nov	<u>22</u>
	<u>90</u>

- taking out of India TO A PLACE OUTSIDE INDIA any goods,
- provision of services from India to any person outside India

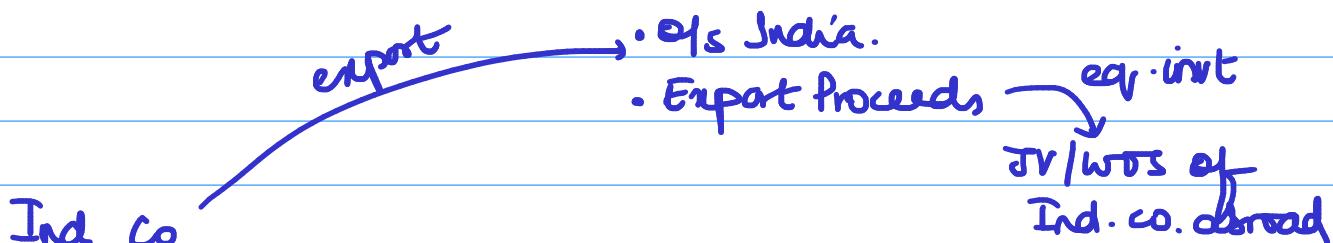
India
98%

SCHEDULE I: For the following current account transactions, drawal of forex is PROHIBITED:

Payment of **commission on exports** made towards **equity investment** in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.



Agent commission = Forex VV VV
(outflow)



Agent commission = Forex VV VV
(outflow) *

25 vehicles
for 350K \$

American Co
(WOS of an Indic
Co)

Heavy Loaders Ltd

Common → Foreign Co
Prohibited

FACILITIES FOR NON-INDIVIDUALS

- The following remittances by non-individuals require **prior RBI approval**:

Remittance for consultancy services procured from outside India:

Remittance for consultancy services
procured from outside India

Wrt infrastructure
projects

> \$ 10,000,000
per project

Others

> \$ 1,000,000 per
project

David

Ruby

Christopher

Sebastian

Alvare

—

PROI

—

PROI + lend (%)

—

PROI

PRI

H → hold

O → own

T → Transfer

I → Invest

/

/

/

/

CA Anu Shree Agrawal

CA Anu Shree Agrawal