

AoA → SR

1

Something that is difficult to change ^{MoA 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

Entrenchment provisions may be made:
While incorporating, or Later by amendment to AoA. How? ②

①

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

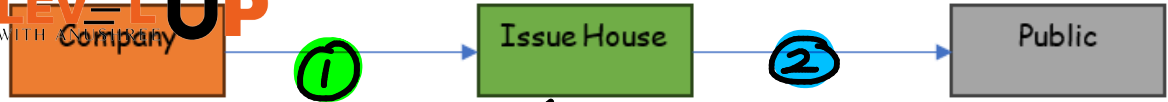
ROC to be notified of such entrenchment provision.
If the provision was inserted @ incorporation: ROC to be notified at the time of incorporation.
If the provision was inserted after incorporation: ROC to be notified within 30 days

CA Anu Shree Agrawal

2

DEEMED PROSPECTUS: DOCUMENTS CONTAINING OFFER OF SECURITIES FOR SALE S. 25

LEVEL UP WITH Company



Here, the company allots/agrees to allot securities to a person with a view that those securities will be offered for sale to the public

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

6cr

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

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

Limit does not include:

- qualified institutional buyers
- employees being offered ESOPs

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

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:

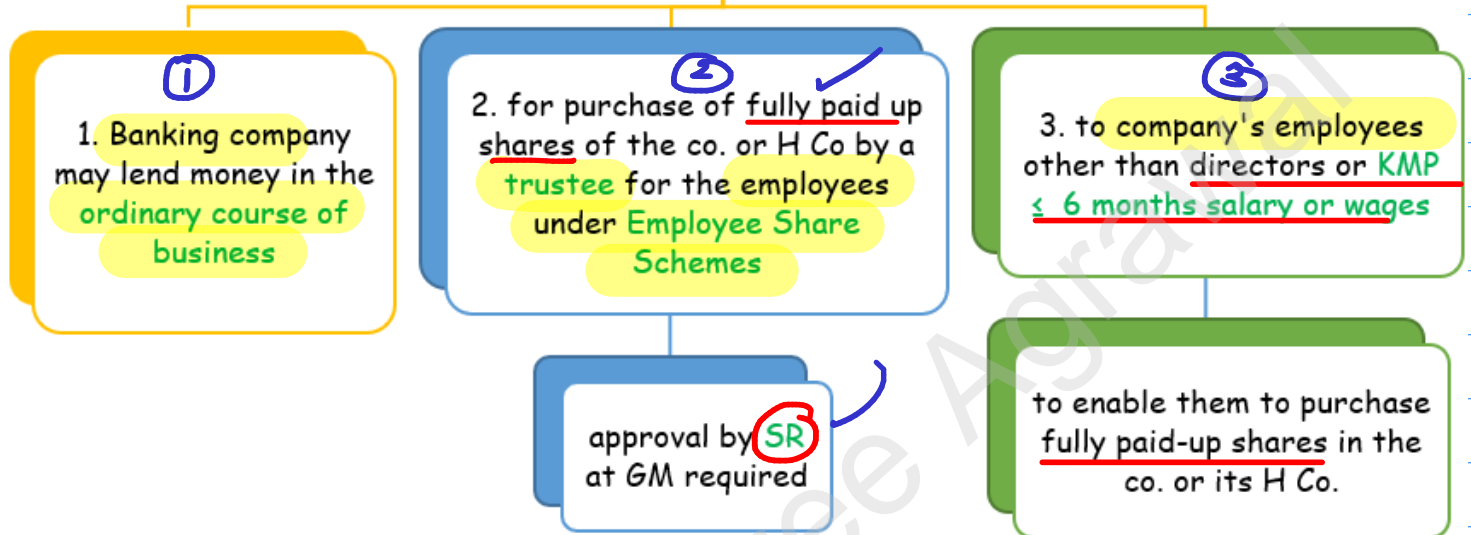
- new CHARGES created,
- change in the FINANCIAL POSITION between the first offer of securities or the previous offer of securities and the succeeding offer of securities and
- such other changes as may be PRESCRIBED

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

pub co → loan → ?

EXCEPTIONS:

Financial Assistance may be provided in the foll. cases:



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 ≤ 5% of (PUSC + FR)

General Rule → Prohibition

Exceptions:

- ① Banking co + OCAB
- ② Co → Trustee (ee)
 - (C1) SR
 - (C2) fully pd
 - (C3) ≤ 5% (PUSC + FR)
- ③ Co → ee of co.
 - (C1) fully pd up
 - (C2) Max ≤ 6 mths sal/w
 - (C3) x dir x KMP

① AoA

② SR → (X) 1) ≤ 10% ✓

2) BR ✓

AUTHORISATIONS REQUIRED:

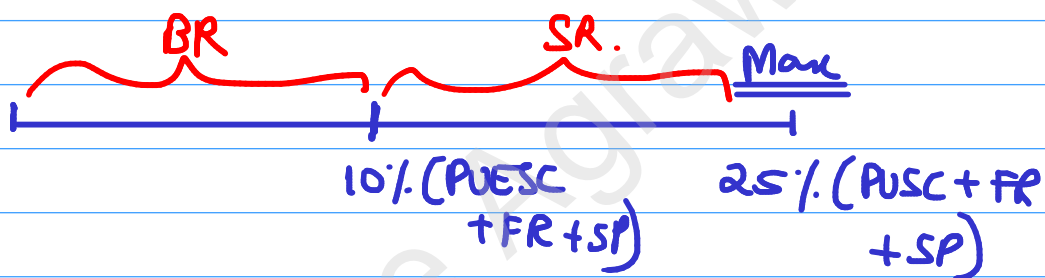
- Should be authorised by **AoA**
- **SR** authorising the buy-back to be passed in a GM. **EXCEPTIONS:**
 - o buy-back is ≤ 10% of the total **paid-up equity capital** + **free reserves** and
 - o **BR** has been passed

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 ≤ 25% of aggregate of **(PUSC + free reserves)**



$$25\% (50 + 100 + 0) = \frac{37.54}{\text{SR}}$$

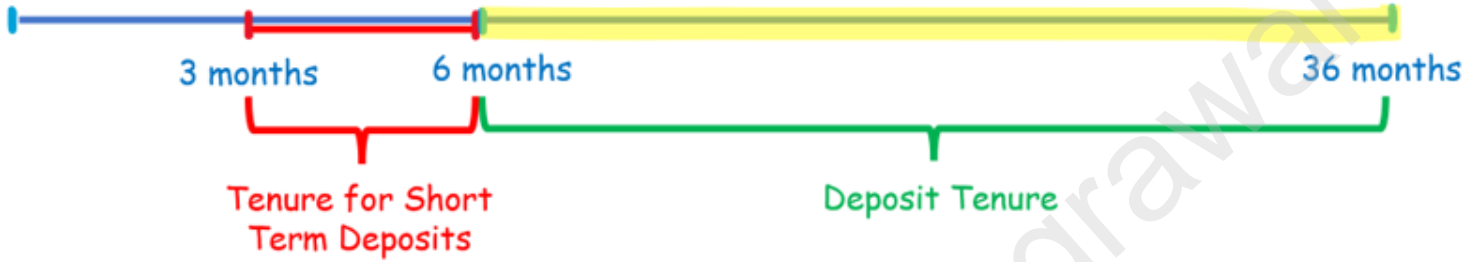
7

- Bonus sh
- Buy back
- Prem → Red → Pref / sh
- Previ cap
- Sh issue cap

general 6mth - 36mth
ST → 3mth - 6mth
10% (PUSC + FR + SP)

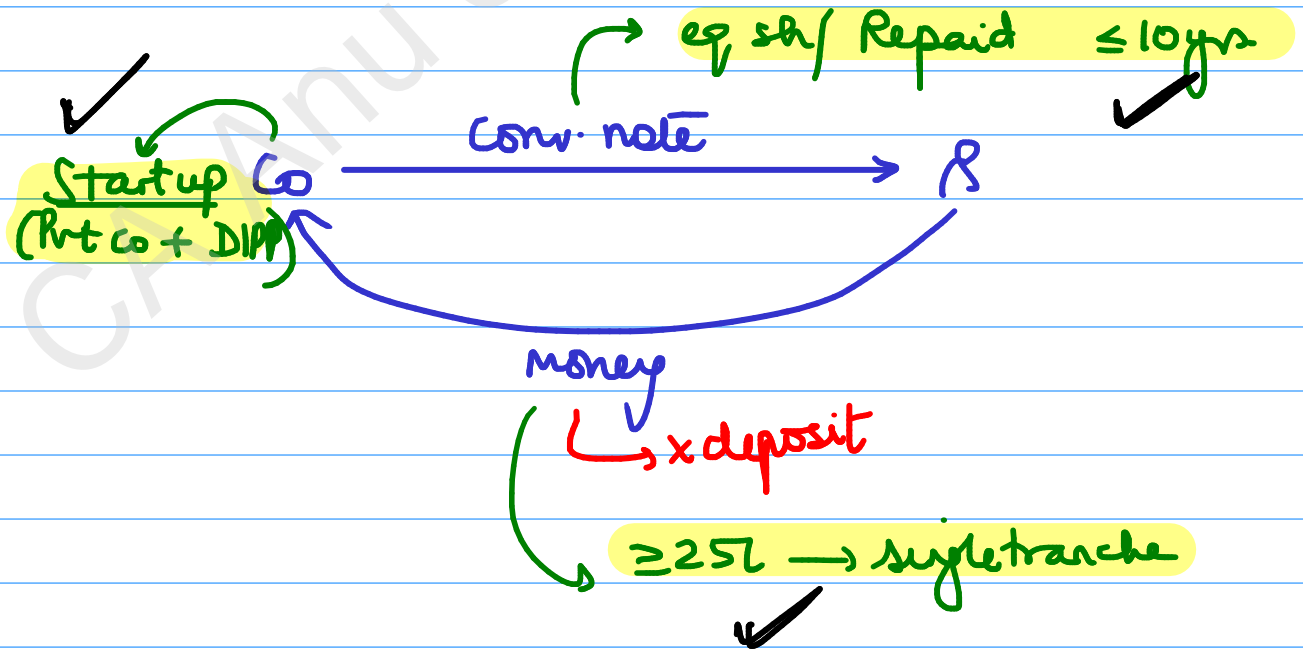
TENURE OF DEPOSITS:

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

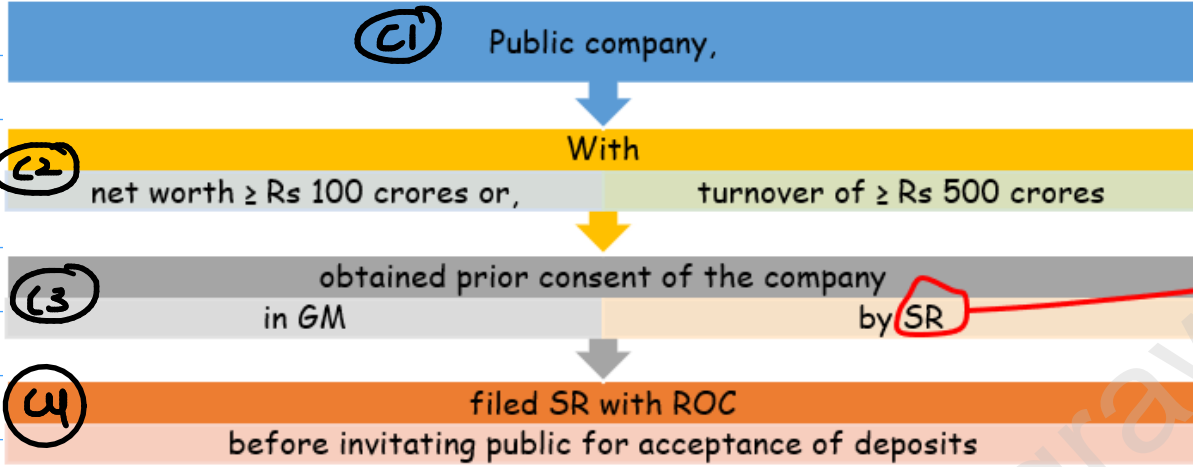


Members → Pvt Co / Pub Co
Public → Eligible Co.

ACCEPTANCE OF DEPOSITS FROM PUBLIC

WHO CAN ACCEPT DEPOSITS FROM PUBLIC? Only ELIGIBLE companies

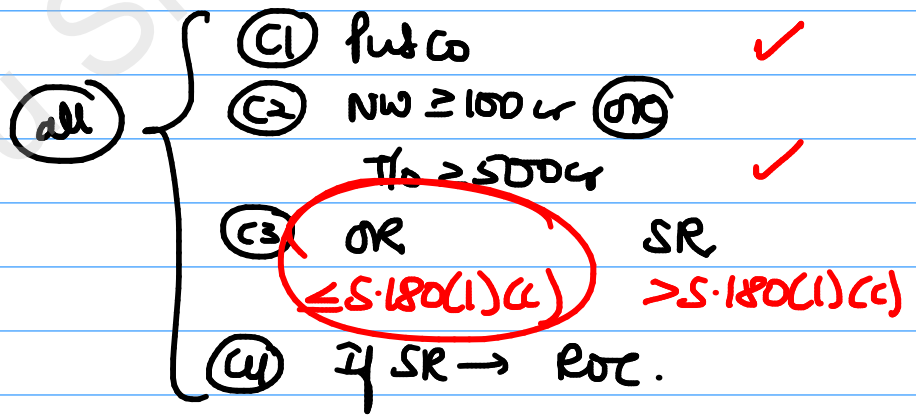
ELIGIBLE COMPANY



Ordinary Resolution is enough if deposits are within S. 180(1)(c) limits

EXTRA GYAAN

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



ST Rep

3 mths - 6 mths

- ✓ (1) ≥ 3 mths ✓
- ✓ (2) Max 10% (PUSC + FE + SP) 10% (20 + 30 + 10 cr) 6 cr. ✓

Co Advance &
 ↳ xdeposit

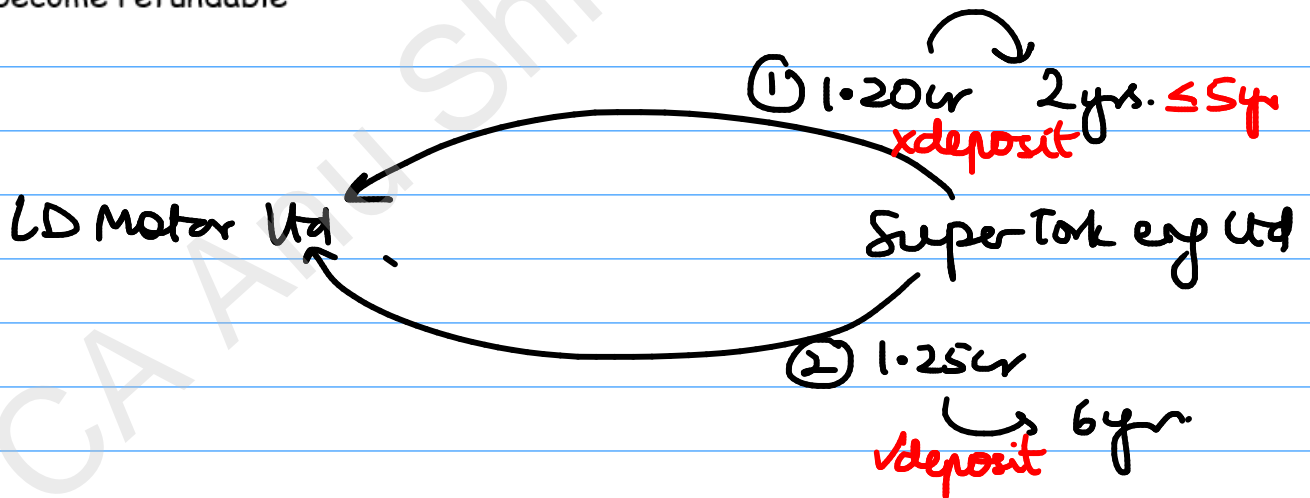
Any amount received as:

- 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 \leq 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

- 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.
- The advance shall be deemed to be deposit after 15 days from the date on which the advance become refundable



Advance →
 (xdeposit)

period \leq 7 yrs 2w.e.l
 (5 yrs)



Particulars of charge + instrument
creating charge



16.2.2025

+ 60 days

17.4.2025

Feb = 12

Mar = 31

Apr = 17

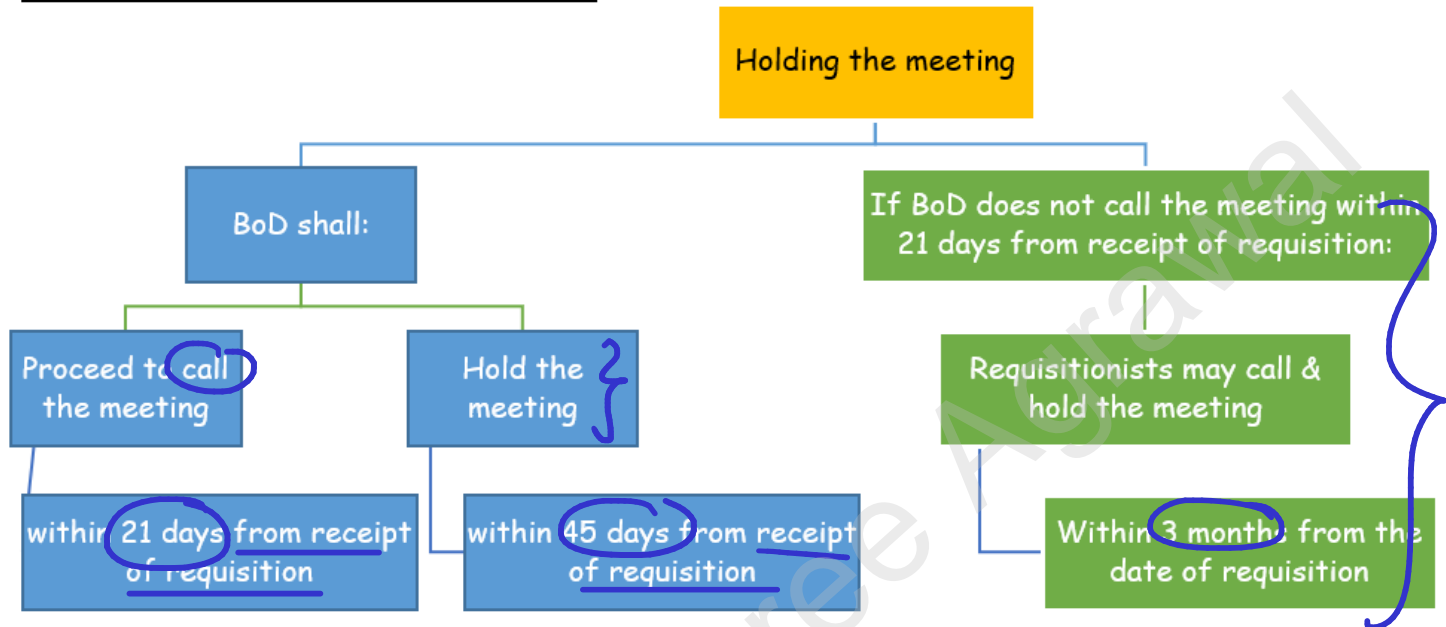
60

CA Anu Shree Agrawal

BoD $\left\{ \begin{array}{l} \text{own} \\ \text{upon requisition} \end{array} \right.$

✓ 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 BOB 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 BOB 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

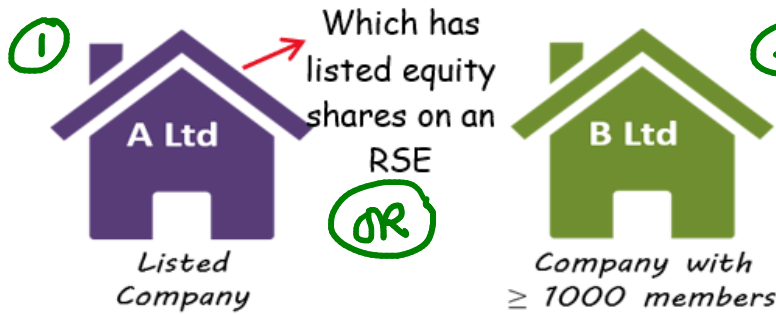
1.7.24

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

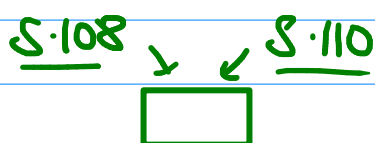
ITEMS WRT WHICH VOTING SHALL HAPPEN BY POSTAL BALLOT:

- 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 in the rights</u> 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 undertaking</u>
change in <u>objects</u> for which a company has <u>raised money</u> from public through <u>prospectus</u> and remaining unutilized		alteration of <u>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.

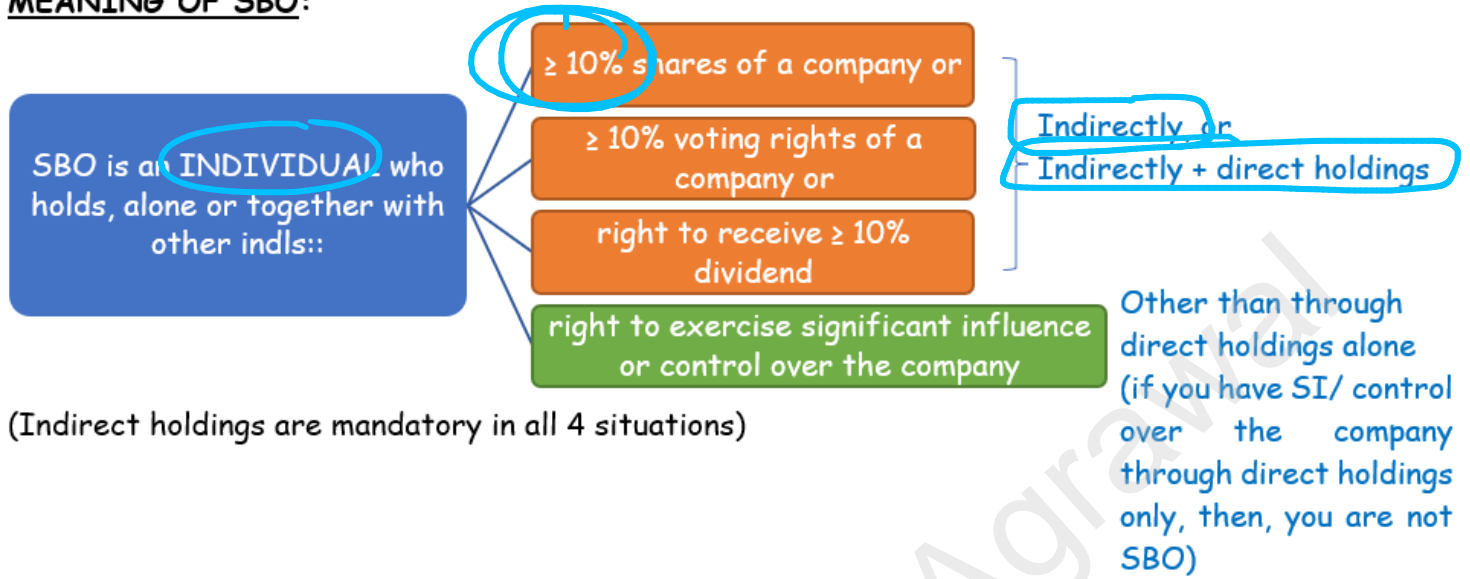


<u>S108</u>	<u>S.110</u>
• Remote e-voting	Postal Ballot
• GM	GM

$\geq 10\%$

- Idt
- Idt + dt

MEANING OF SBO:



(Indirect holdings are mandatory in all 4 situations)

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 \longrightarrow Co
 BEN-1

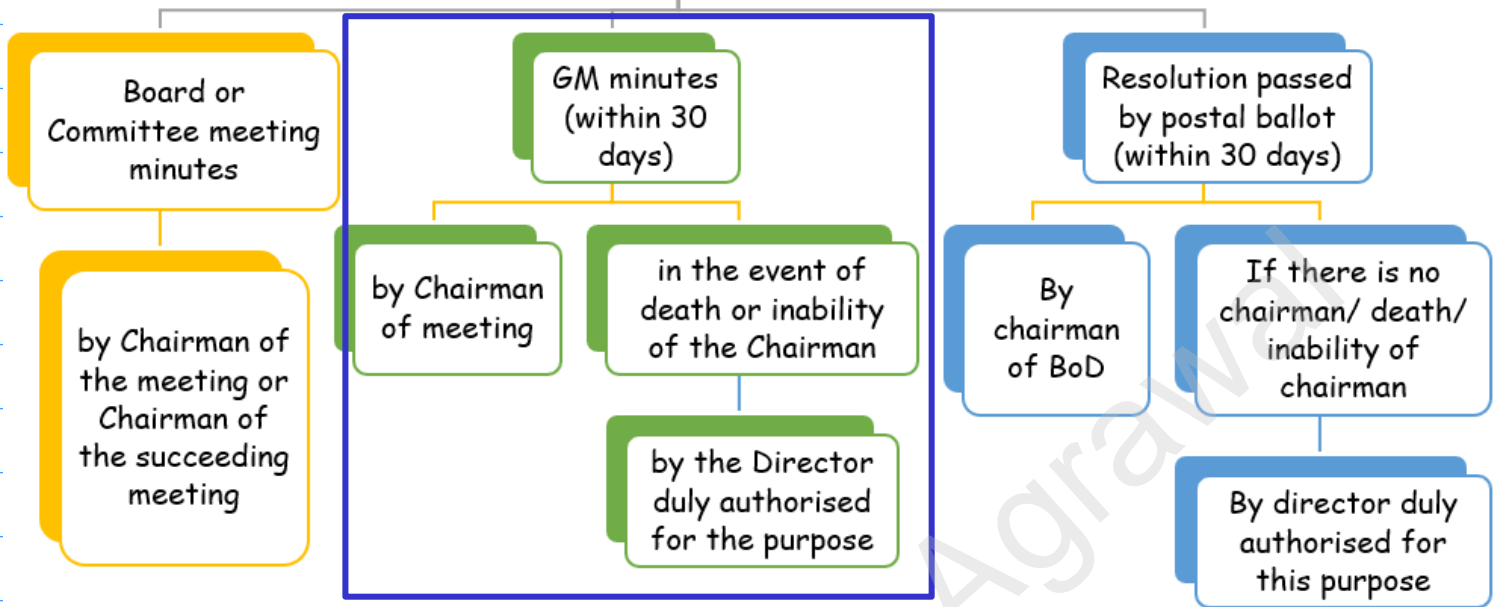
Requisitionists → A, B (Joint)
5000 sh.

✓✓✓

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

CA Anu Shree Agrawal

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
 \leq 31.12.2023 ✓

- SUBSEQUENT AGMs:

① Max time gap between 2 AGMs = 15 months

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

EARLIEST of these 3 dates

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

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 + 15 months = 1.8.24 ✓✓

② FY23-24 → end 31.3.24 + 6 months = 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)

$$3000 \geq 3 \times 1200$$

$$3000 \geq 3600$$

✗

~~SR~~

CA Anu Shree Agrawal

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

FY 24-25

Profit	April - June	} Profit
Profit	July - Sept	
loss	Oct - Dec	} Profit
loss	Jan - March	
<u>loss</u>		31.10.2024

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

CA Anu Shree Agrawal

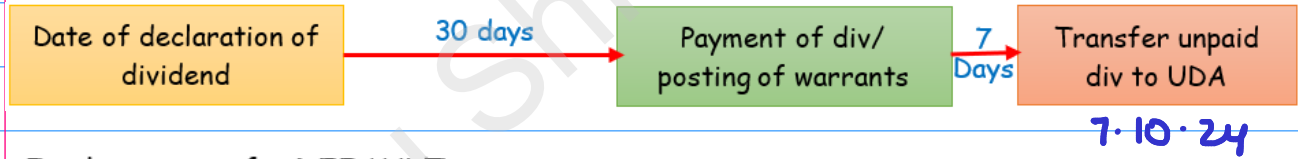
Shareholders cannot insist on DECLARATION of dividend or INCREASE the rate recommended by the BoD. They may however LOWER the rate recommended by the BoD.

Final Dividend	Interim Dividend
Recommended by BoD, approved by shareholders at the AGM	Declared by BoD

OR

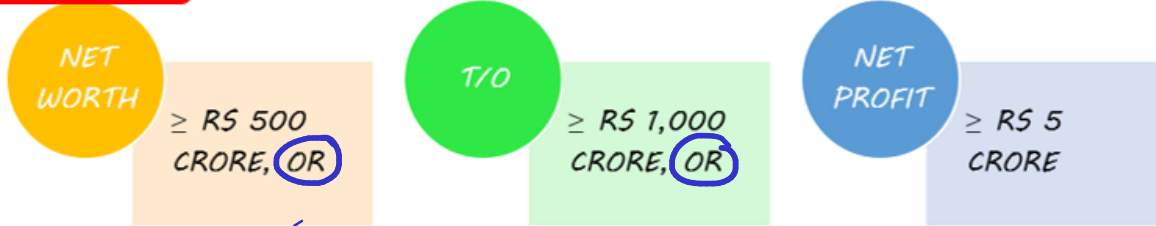


31.8.24



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:


S. 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 cr **OR** (Prec. FY)
 T/O \geq 1000 cr **OR** ✗
 NP \geq 5 cr ✓

② Any 1 ✓ \rightarrow BoD ensure co spends on CSR

A

Min = 2% of Avg NP of 3 Prec FYs

③ Any 1 ✓ \rightarrow CSR C'ee

④ A \leq 50L \rightarrow ~~CSR C'ee~~
 \hookrightarrow executed by BoD

① NP in Prec FY 24-25 \rightarrow 17cr \geq 5cr
 \therefore CSR C'ee \checkmark

② Amt. ^{to be} spent on CSR \leq 50L

2% x Avg NP of 3 Prec FYs

2% x 15cr \rightarrow 30,00,000 ₹

\leq 50L

~~CSR C'ee~~

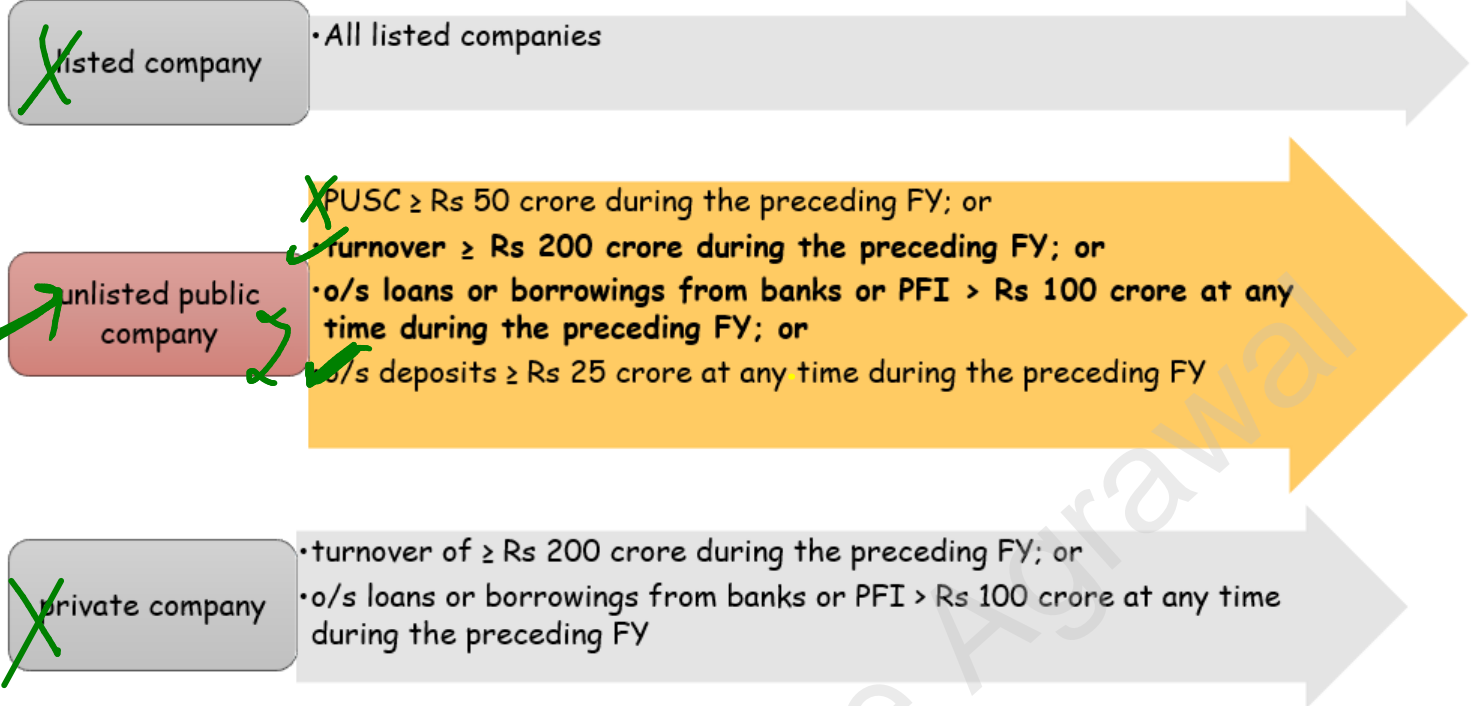
\rightarrow BOD

- 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.**

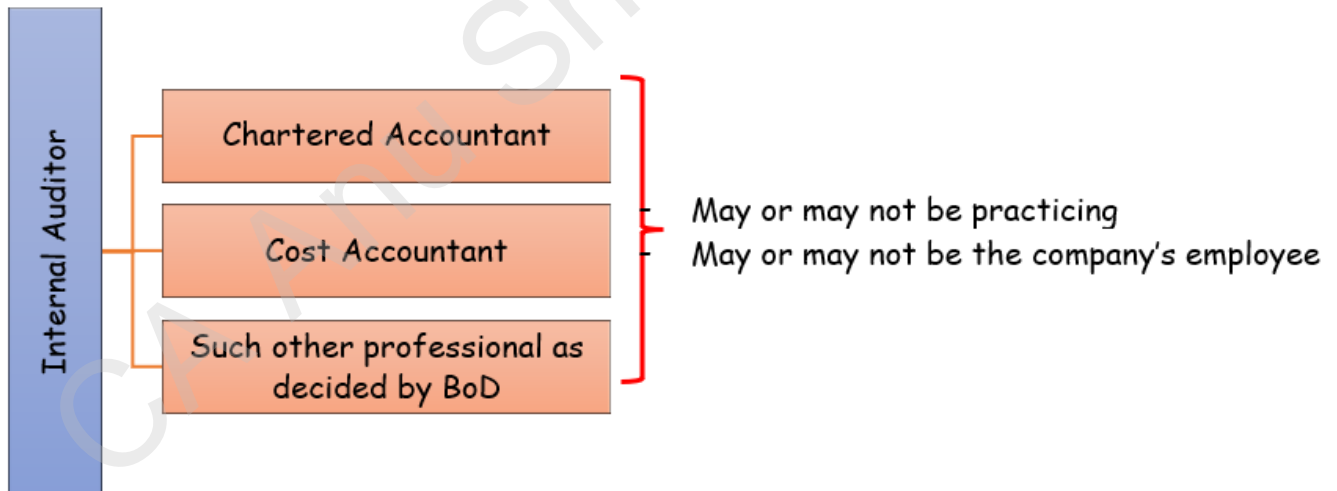
IF PROFESSIONAL/ OTHER MISCONDUCT IS PROVED: NFRA has the power to:

	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 of any company & performing valuation u/s 247</u>		6 months - 10 years

- COMPANIES REQUIRED TO APPOINT INTERNAL AUDITOR:



- WHO CAN BE APPOINTED AS AN INTERNAL AUDITOR?



- 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

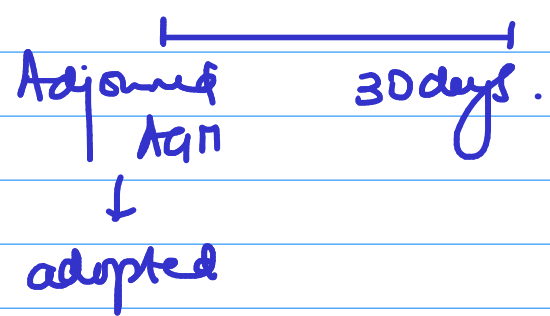
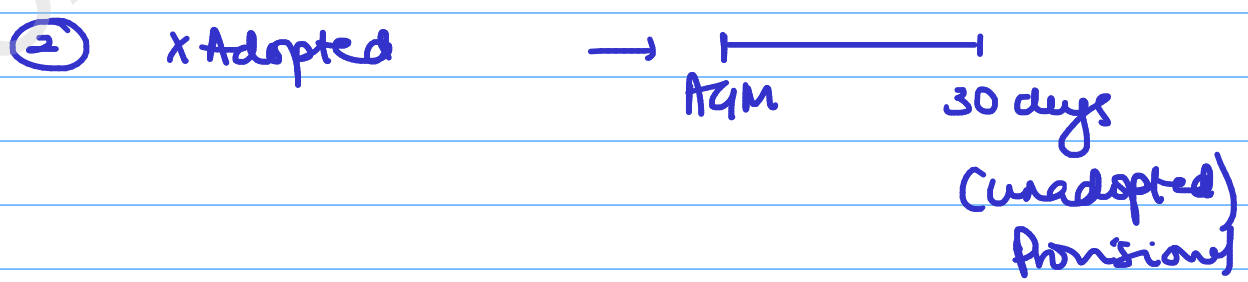
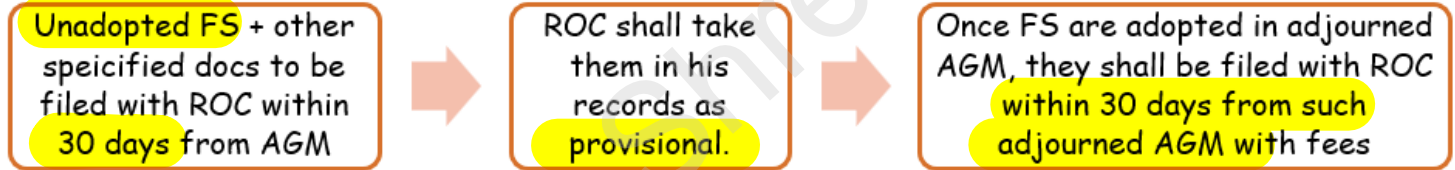
Filing with ROC

- 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?



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

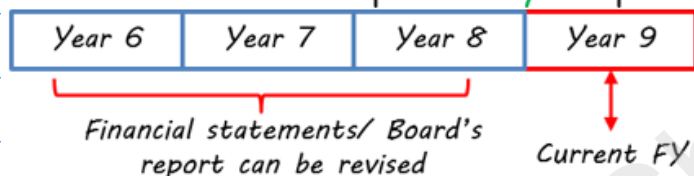


S.130 S.131

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 8 yrs.
S.131 3 yrs.

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

XYZ Inc
HG (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.

CA Anu Shree Agrawal

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

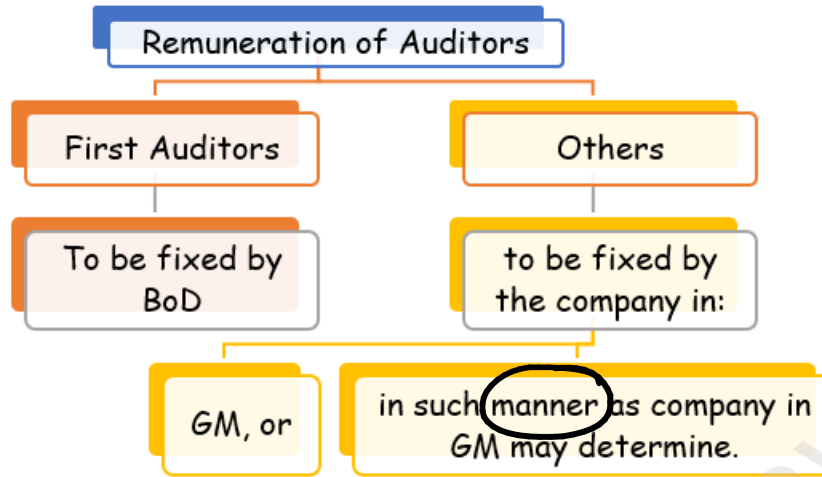
< 1cr

≥ 1cr

- 1) Fraud Report (2 day)
 - ↳ BoD/AC
- 2) BR → Action

- 1) Fraud Report → 2 day
- 2) Response → 45 day
- 3) Andr → MCA
 - ① Rep + Reply + cover (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 CEO, CFO and Company Secretary of the company
- ① ② 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
Indl

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.

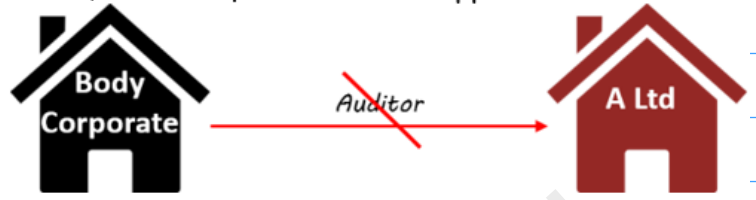
CASUAL VACANCY - GOVERNMENT COMPANIES, COMPANIES OWNED/ CONTROLLED BY GOVT.

- 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)



CA Anu Shree Agrawal

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, and

The 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, and

The 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)

SPECIFIED CATEGORY OF FOREIGN COMPANIES TO WHICH WHOLE OF COMPANIES ACT

2013 IS APPLICABLE UP TO 9(2):

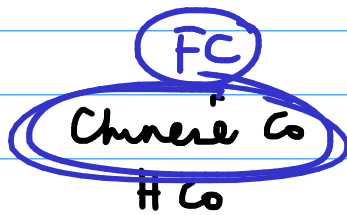
- C1: Company is a FOREIGN COMPANY, AND
 - C2: ≥ 50% of PUSC (just equity/ just preference/ both equity and preference) is held by:
 - o ≥ 1 Indian Citizen, or
 - o ≥ 1 Companies or Body Corporates incorporated in India, or
 - o Both
- SINGLY or in the AGGREGATE

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

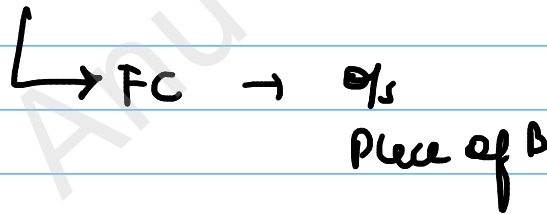
APPLICABILITY OF THE COMPANIES ACT 2013 TO SUCH FOREIGN COMPANIES:

- 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 → Chap XXII
380 - 393 .



Indian Co
S Co .



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 ✓ - Where S Ltd holds such shares as **TRUSTEES**
- Voting Rights ✗ - When S Ltd was a shareholder of H Ltd even before it became a subsidiary of H Ltd

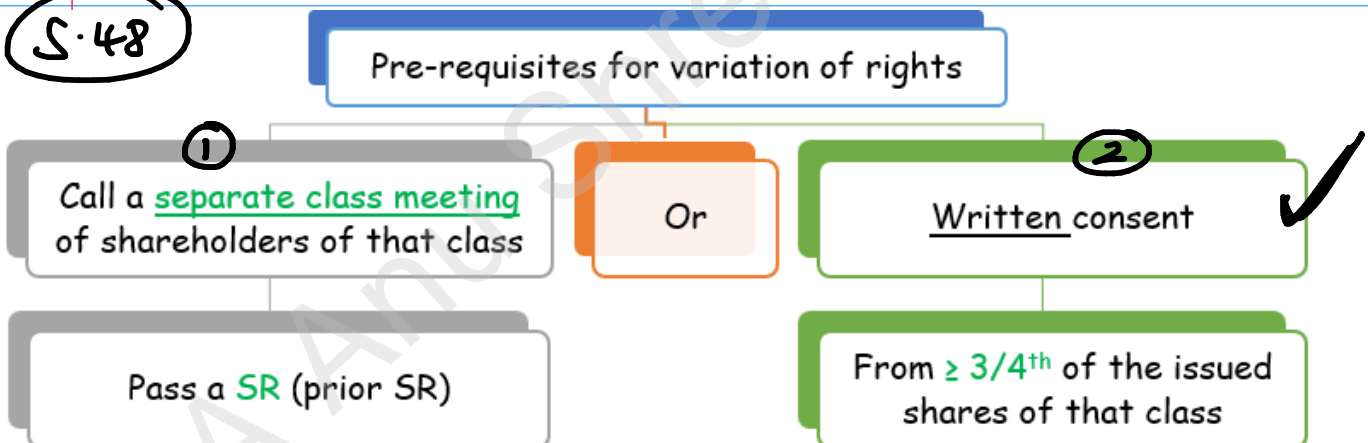
B

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

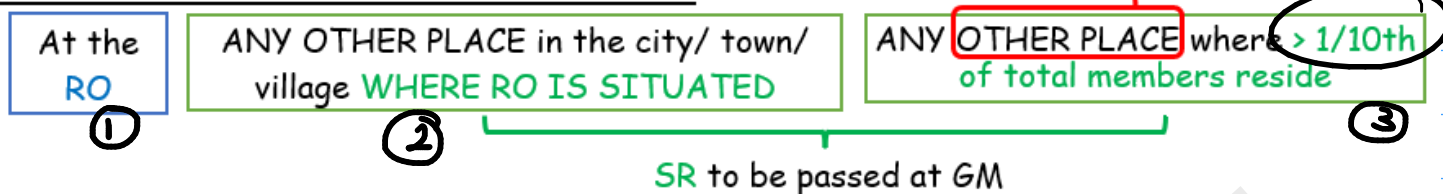
S. 48



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

E

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 <u>5 years</u> after completion of: • <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 of 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

Scrubuser
witness
assistant } → x (e).

CA Anu Shree Agrawal

→ S.67

→ OPC → (OPC)

Part Ltd (OPC)

→ Nominee → WC
↳ withdraw

15 days

→

CA Anu Shree Agrawal

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 officers 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:
 - o company's auditor or
 - o 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:
 - 1) company's auditor or
 - 2) an accountant or any person duly qualified to act as an auditor of the branch office in accordance with the laws of that country.
 - 3)

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.

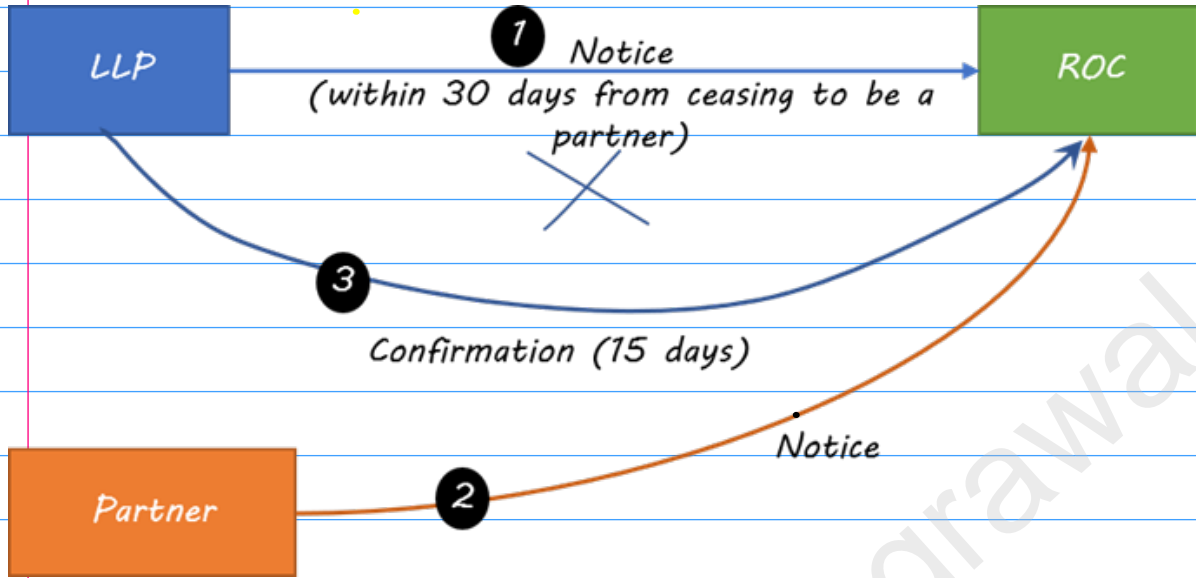
Oct - March



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



LLP → ROC

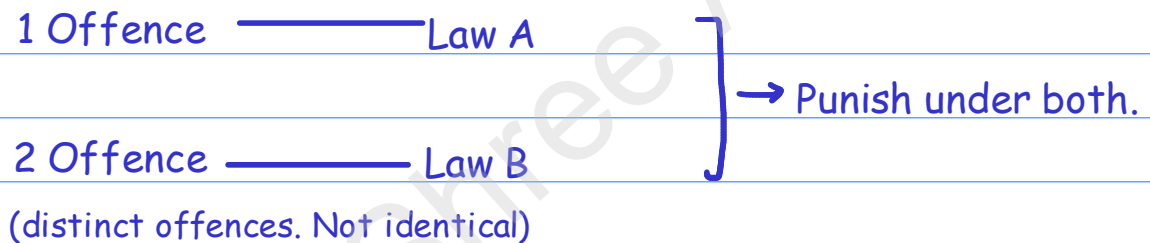
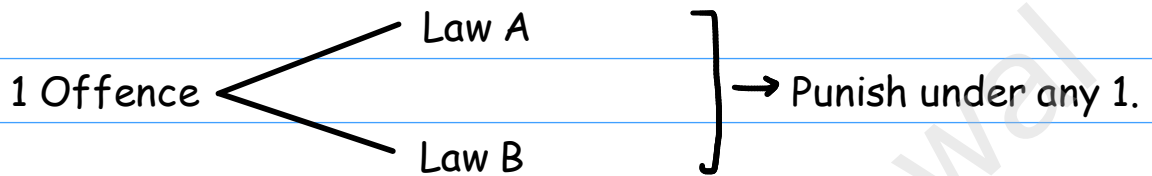
Partner → ROC

LLP → ROC

OFFENCE PUNISHABLE UNDER TWO OR MORE ENACTMENTS S. 26

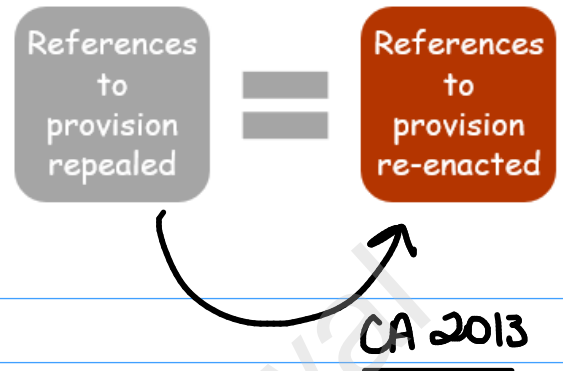
If the **SAME** act/ omission constitutes an offence under two or more enactments,

- 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.

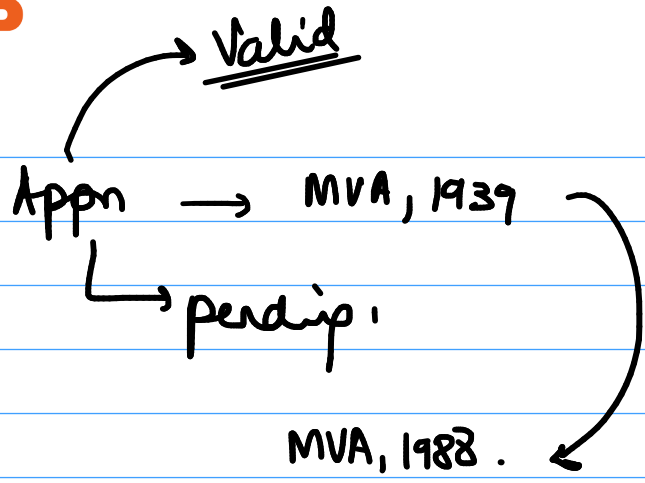


CA 1956

CA 2013

IT Act

CA Anu Shree Agrawal



Reject
Invalid

C P R D

CA Anu Shree Agrawal

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:

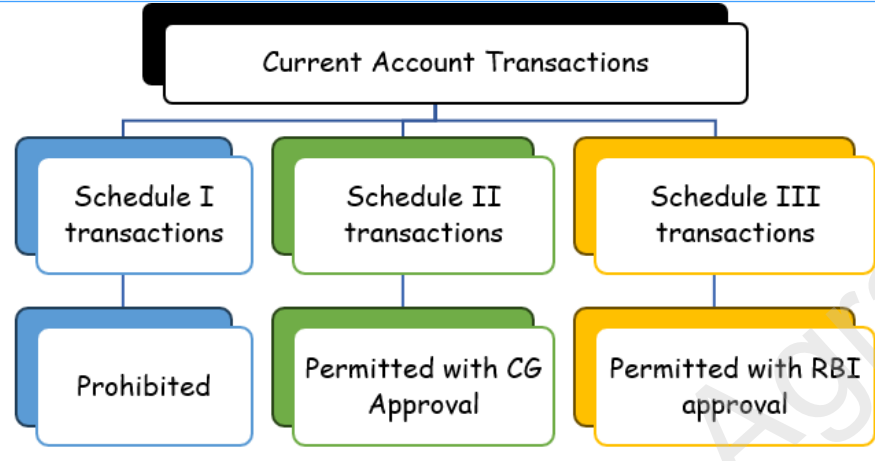
- properly addressing
- pre-paying, and
- posting by registered post.



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

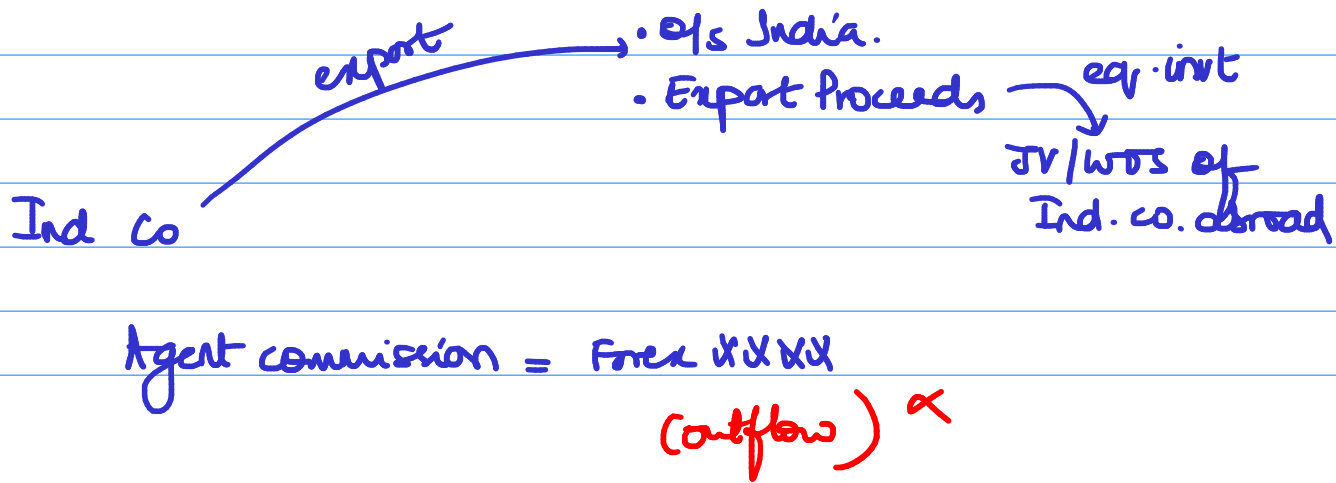
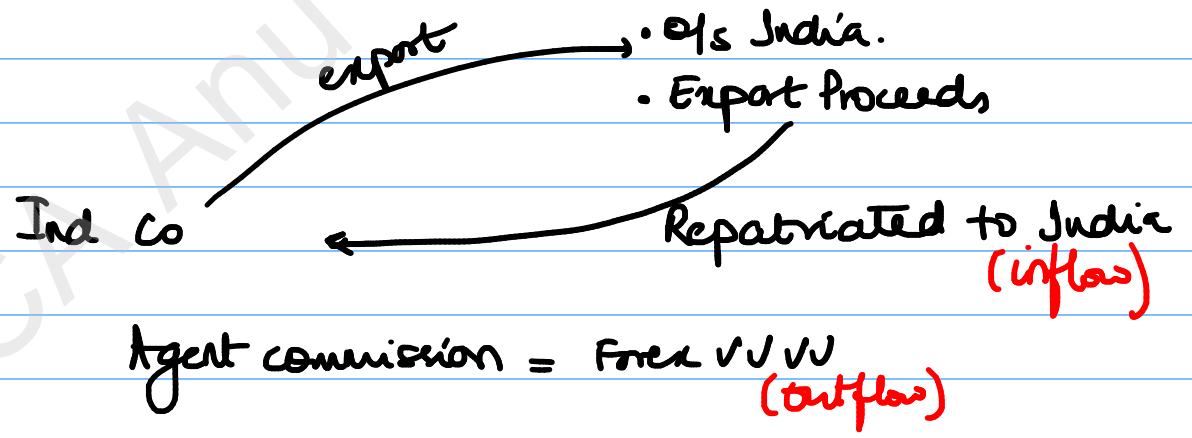
Export means:

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



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.



25 vehicle
for 350K \$

Americo
(was of an India
Co)

Heavy loaders Ltd

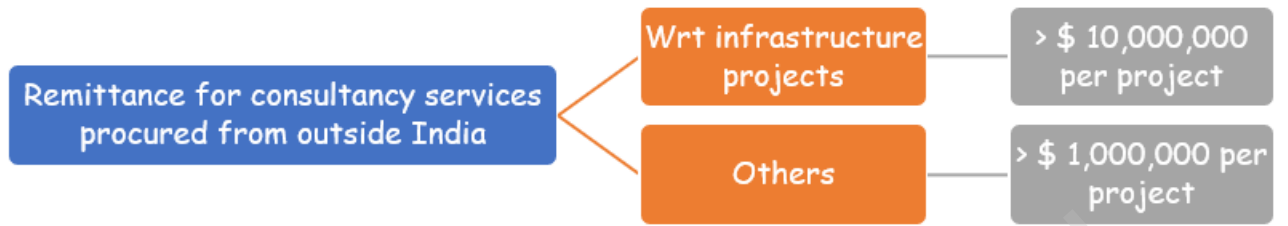
Comm → Forex & Co

Prohibited

CA Anu Shree Agrawal

FACILITIES FOR NON-INDIVIDUALS

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

Remittance for consultancy services procured from outside India:

CA Anu Shree Agrawal



David

Ruby — PROI

Christopher

Sebastian — PROI + lend (01s) PRI

Aliane — PROI

H → hold ✓
O → own ✓
T → Transfer ✓
I → Invest ✓



CA Anu Shree Agrawal

CA Anu Shree Agrawal