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CMA INTER CORPORATE LAW REVISION NOTES			
Most Important Topics/Questions			
The Companies Act,2013 (Corporate Law)			
Part A – Section 1 to 122			
Chapter 1 & 2 - Preliminary & Incorporation of Company			
Small Company [Section 2(85)] – Recent Amendment [5 Marks – Dec 18]			
<p>Small Company means a company, other than a public company—</p> <ul style="list-style-type: none"> <li>paid-up share capital of which does not exceed four crore rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees and</li> <li>turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:</li> </ul>			
Limits	Till 31st March, 2021	1st April 2021 till 14th September, 2022	15th September 2022 onwards
Paid-up share capital	Maximum paid-up share capital can be Rs. 50 Lakhs	Maximum paid-up share capital is increased to Rs. 2 Crores	Maximum paid-up share capital is increased to Rs. 4 Crores
Turnover (In the immediately preceding financial year)	Maximum turnover for qualifying as a Small Company was Rs. 2 Crores	Maximum turnover for qualifying as a Small Company is increased to Rs. 20 Crores	Maximum turnover for qualifying as a Small Company is increased to Rs. 40 Crores
<p>Provided that nothing in this clause shall apply to—</p> <p>(A) a holding company or a subsidiary company;</p> <p>(B) a company registered under section 8; or</p> <p>(C) a company or body corporate governed by any special Act.</p>			

**Question 1:**

What is meant by Lifting of Corporate Veil? In which circumstances the corporate veil can be lifted by court? [8 Marks – June 19]

**Answer:**

In the following circumstances, different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of the company

**Protection of Revenue:** The Court may ignore the Separate Legal Entity status of a Company, where it is used for tax invasion or circumventing tax obligation.

**Determination of enemy character of the Company:** Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy. This is due to the reason that though a company enjoys Separate Legal Entity but its affairs are run by individuals.

**Prevention of fraud:** Where a Company is used for committing frauds or improper conduct, the Court may lift the corporate veil and look at the realities of the situation.

**Protection of public policy:** The Court shall lift the Corporate Veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.

**Company mere sham or cloak:** Where the Company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the Court shall lift the Corporate Veil.

**Where a Company acts as an agent of its shareholders:** If there is an arrangement between the shareholders and a Company to the effect that the Company will act as agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability.

**Avoidance of Welfare Legislation:** Where a Company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture.

**To punish for contempt of Court:** Company being an artificial person cannot disobey the orders of the Court. Therefore, the persons at fault should be identified.

**Question 2:**

What are the features of companies registered under section 8 of the Companies Act, 2013? [7 Marks – Dec 18] [5 Marks – MTP June 23 Syllabus 2016]

**Answer:**

Section 8 of companies Act 2013 These companies intend to promote art, commerce, sports, safety, science, research, healthcare, social welfare, religion, protection of the environment etc.

The following are the features of companies registered under Section 8 of the Companies Act, 2013;

1. has its **objects the promotion** of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
2. intends to **apply its profit**, if any, or other income in **promoting its objects**; and
3. intends to **prohibit the payment of any dividend** to its members;
4. the company registered under this Section shall **enjoy all the privileges** and be subject to all the **obligations** of the **limited company**;
5. a **firm may be a member** of the company registered under this section ;
6. a company registered under this Section shall not alter the provisions of its memorandum and articles except with the previous approval of the Central Government.
7. a company registered under this section **may convert** itself into a company of any other kind only after complying with such conditions as may be prescribed.

**Question 3:**

Describe the provisions relating to registration of an Association not for profit under Sec 8 of the Companies Act 2013 [7 Marks – MQP Set 2 Syllabus 22]

**Answer:**

Rule 19 of Companies (Incorporation) Rules, 2014 provides that a person or an association of persons desirous of incorporating a company with limited liability without the addition to its name of the word.

"Limited" or as the case may be "Private Limited" shall make an **application in Form No. INC-12** along with the fee. The **memorandum of association** of the proposed company shall be in **Form No. INC-13**.

The application shall be accompanied by the following documents:

- the draft memorandum and articles of association of the proposed company;
- the **declaration in Form No. INC - 14** by an **Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice**, that the draft memorandum and articles of association have been drawn up in conformity with the provisions of Section 8 and rules made there under and that all the requirements of the Act and the rules made there under relating to registration of the company under Section 8 and matter incidental or supplemental thereto have been complied with;
- an **estimate of the future annual income and expenditure** of the company for **next three years**, specifying the sources of the income and objects of the expenditure;
- the **declaration** by each of the **persons making the application** in **Form No. INC-15**.

If it is proved to the satisfaction of the Central Government that the proposed company has its objects as enshrined in Section 8 may, by licence issued in the prescribed form on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company without the addition to its name of the word 'Limited' or 'private limited'. Thereupon the Registrar shall, on application in the prescribed form register such person or association of persons as a company under Section 8.

**Question 4:**

Write Short Notes on Revocation of license under Section 8(6) of Companies Act. [5 Marks – Dec 21] [6 Marks – Dec 22] [June 17 – 5 Marks]

or

Elaborate the actions that may be taken by the Central Government on revocation of licence and documents required for application for such licence of Section 8 companies [10 Marks – MQP June 23 Set 2]

Answer:

Revocation of License:

Section 8(6) provides that the Central Government may, by order, revoke the license granted to the company registered under this section-

- if the company **contravenes any of the requirements** of this section; or
- any of the conditions subject to which a license is issued; or
- the **affairs of the company are conducted fraudulently** or in a manner violative of the objects of the company or **prejudicial to public interest**.

The Central Government shall **direct** the company to **convert its status** and **change its name** to add the words "Limited" or "Private Limited" to its name.

No such order will not be passed without giving **opportunity** to the company of being heard.

A **copy** of such order shall be given to the **Registrar**.

The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

### One Person Company

- One Person Company is defined under Section 2(62) of the Act which has only one person as a member.
- Section 3 of the Act indicates that OPC is a private limited company.

#### Eligibility

Only a natural person who is an Indian citizen **WHETHER RESIDENT IN INDIA** (person who stayed in India for a period of not less than 120 days during immediately preceding financial year) **OR OTHERWISE**

- shall be eligible to incorporate a OPC;
- shall be a nominee for the sole member of a OPC.

#### Rules regarding its membership

- Only one person as member.
- The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
- The other person whose name is given in the memorandum shall give his prior written consent in INC-3 and the same shall be filed with Registrar of companies at the time of incorporation.
- Such other person may be given the right to withdraw his consent.
- The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar in INC-4.
- Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
- No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company.
- Where a natural person, being a member of OPC in accordance with this rule becomes a member in another such company by virtue of his being a nominee in that OPC, such person shall meet the eligibility criteria within a period of 180 days
- No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
- Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases

**Question 5:**

What are the benefits of One Person Company? [6 Marks – Dec 21]

**Answer:**

Benefits of One Person Company

- The concept of One Person Company is quite revolutionary. It gives the individual entrepreneurs all the benefits of a company, which means they will get
  - credit,
  - bank loans, and
  - access to market,
  - limited liability, and
  - legal protection available to companies.
- Prior to the new Companies Act, 2013 coming into effect, at least two shareholders were required to start a company. But now the concept of One Person Company would provide tremendous opportunities for small businessmen and traders, including those working in areas like handloom, handicrafts and pottery.
- Further, the amount of compliance by a one person company is much lesser in terms of filing returns, balance sheets, audit etc. Also, rather than the middlemen usurping profits, the one person company will have direct access to the market and the wholesale retailers. The new concept would also boost the confidence of small entrepreneurs.

**Question 6:**

N Ltd. has a paid up share - capital of 80 crores. M Ltd. holds a total of 50 crores of N Ltd. Now, N Ltd. is making huge profits and wants to expand its business and is aiming at investing in M Ltd. N Ltd. has approached you to analyse whether as per the provisions of the Companies Act, 2013, they can hold 1/10th of the share capital of M Ltd. [RTP Dec 18]

**Answer:**

In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company -

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one - half of the total voting power either at its own or together with one or more of its subsidiary companies:

Since, M Ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of N Ltd., it (M Ltd.) is holding of N Ltd.

Further, as per the provisions of section 19 of the Companies Act, 2013, No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

Provided that nothing in this sub - section shall apply to a case -

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, N Ltd. cannot acquire the shares of M Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

### Section 7 Incorporation of Company

#### Steps for Incorporation of Companies

Question 7:

Describe the procedure to be followed for the incorporations of a company. [MTP June 20 – 10 Marks]  
[June 23 Syllabus 2022 – 9 Marks]

Answer:

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for the incorporations of a company. The promotor of the company shall submit the following documents to the Registrar of companies within whose jurisdiction the registered office of the company is proposed to be situated for registration.

- (a) Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
- (b) A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of the Act and rules made thereunder in respect of registration;
- (c) A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that -(Form No. INC-9)
  - (1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or
  - (2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years and
  - (3) that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- (d) The address for correspondence till registered office is established;
- (e) All particulars of every subscriber to the memorandum along with the proof of identity;
- (f) The particulars of the persons mentioned in the articles as the first directors of the company;



(g) The consent to act as directors of company in such form as may be prescribed. The memorandum of association and articles of association are the basic essential documents of the company.

A new section (10A) has been introduced with the introduction of Companies Amendment Ordinance. It provides that every company, incorporated after the notification of the ordinance, shall not commence business, unless the directors file a declaration within 180 days of incorporation that every subscriber has paid for the shares as agreed and the registered office has been verified by filing necessary returns.

Under 12A (new in section) the name of the company may be struck off if no office is found on physical verification.

Step 1- Selection of type of Company

Step 2- The promoter has to select a name for the company. [Fill in the blanks – Dec 22]

Step 3- Filing of Forms INC 32 (Spice +) with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated within Next 20 Days after Reservation of name

INC -22 -A company may furnish verification of its registered office:

- In form INC 32 (Spice +) at the time of Incorporation
- In form INC 22 within 30 days of Incorporation [June 17 – FIB]

Step 4- Issue of Certificate of Incorporation by Registrar in Form No. INC-11 [Dec 19 | June 18 – MTB]

### Alteration of Memorandum – Section 13

Question 8:

Discuss the procedure of alteration of memorandum of association as per the companies Act, 2013. [June 17 – 10 Marks] [7 Marks – MQP Set 1 Syllabus 2022] [10 Marks – MQP]

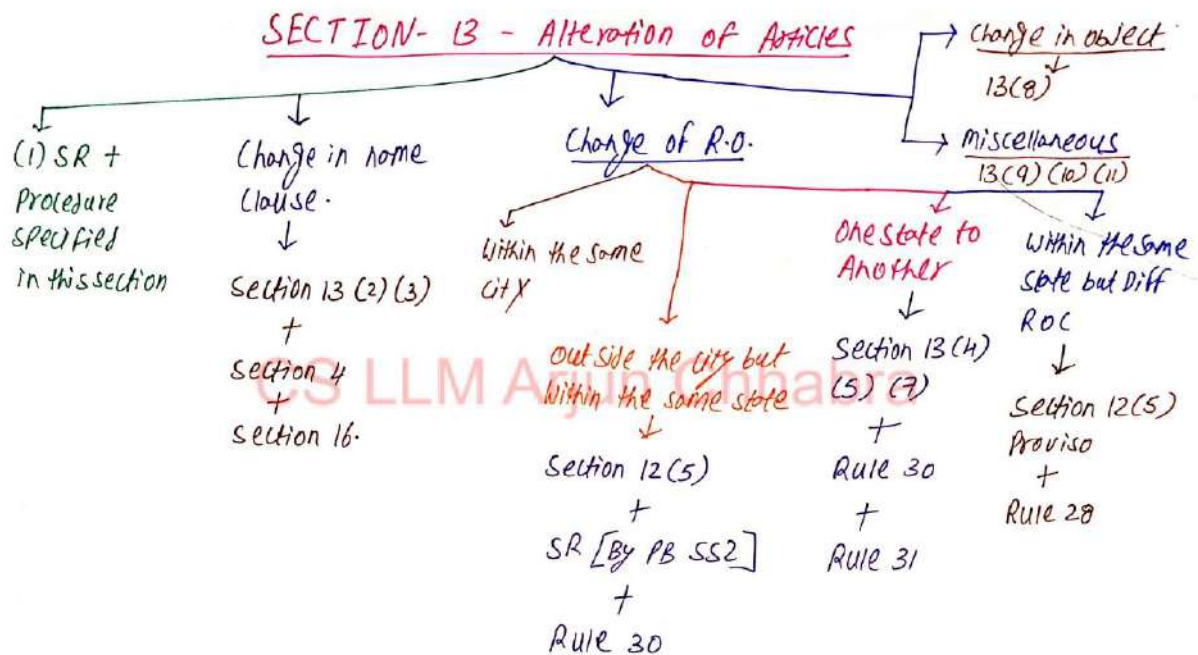
State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013. [7 Marks – June 19]

Discuss the shifting of registered office within the same state. [5 Marks – Dec 17]

Restrictions in alteration of Memorandum. Comment. [RTP Dec 18]

The management of Ambika Properties Ltd., has decided to take up the business of chemical processing activity because of the downward trend in real estate business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause in the light of Companies Act, 2013. [7 Marks – MQP Set 1 Syllabus 22]

Answer:



### 1. Alteration of name clause:

- (a) A company may change its name by passing a **special resolution**.
- (b) The change in name shall not have any effect unless the **approval of CG** is obtained.
- (c) The **approval of CG is not required**, if the only change in the name of the company is -
- deletion of the word 'private', consequent upon conversion of a private company into a public company; or
  - addition of the word 'private', consequent upon conversion of a public company into a private company.
- (d) The change in name shall be subject to the provisions of Sec. 4 (viz. the name shall not be undesirable).
- (e) The **company shall file with the Registrar** -
- a copy of the special resolution; and
  - a copy of the order of CG approving the change of name.
- (f) The Registrar shall -
- enter the new name of the company in the register of companies; and
  - issue a **fresh certificate** of incorporation to the company.
- (g) The change in name shall become complete and effective from the date of issue of fresh certificate of incorporation.

**Question 9:**

'XYZ Ltd.' is a new company which has registered its name and its Trade Mark. After two months from name registration, it comes to the notice of the Managing Director of XYZ Ltd. that the name of the company and its trade mark are identical with the already registered name and trade mark of another company 'XYZ Pvt. Ltd.', but the Managing Director does not take any steps to rectify the name or the trade mark.

(A) State the provisions relating to Name Rectification of a XYZ Ltd., when:

- (i) The Central Government is of the opinion that the name of XYZ Ltd. is identical with XYZ Pvt. Ltd.
- (ii) Registered proprietor of the trade mark of XYZ Pvt. Ltd. makes an application to the Central Government that the trade mark of XYZ Ltd. is identical with their trade mark.

(B) Mention the procedures to be followed if XYZ Ltd. changes its name or obtains a new name.

(C) What will be the consequences if XYZ Ltd. defaults in complying with any directions given by Central Government? [MTP June 23 – 4 +1 + 2 Marks]

**Answer:**

(A) (i)

- As per Section 16(1)(a) of the Companies Act, 2013,
- if through inadvertence or otherwise,
- XYZ Ltd. on its first registration or on its registration by a new name,
- is registered by a name
- which in the opinion of the Central Government
- is identical with or too nearly resembles the name
- by which a company in existence had been previously registered
- i.e., XYZ Pvt. Ltd., whether under this Act or any previous Company laws,
- it may direct XYZ Ltd. to change its name or new name
- within a period of three months from the issue of such direction,
- after adopting an ordinary resolution for this purpose.

(ii) As per Section 16(1)(b) of the Companies Act, 2013,

- on an application by a registered proprietor of a trade mark for XYZ Pvt. Ltd.
- that the name is identical with or too nearly resembles to a registered trade mark of XYZ Ltd. under the Trade Marks Act, 1999,
- made to the Central Government within three years of incorporation or registration or change of name of XYZ Ltd.,
- if in the opinion of the Central Government

- is identical with or too nearly resembles to an existing trade mark of XYZ Pvt. Ltd.,
- it may direct XYZ Ltd. to change its name or new name within a period of three months from the issue of such direction
- after adopting an ordinary resolution for this purpose.

(B) As per Section 16(2), where XYZ Ltd. changes its name or obtains a new name, it shall within 15 days from the date of such change give notice of the change to the Registrar along with the order of the Central Government. The Registrar shall carry out necessary changes in the certificate of incorporation and the memorandum.

(C) According to Section 16(3), if XYZ Ltd. is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to XYZ Ltd. in such manner as may be prescribed and the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name, which the company shall use thereafter.

Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

## 2. Alteration of situation clause: [Dec 21 MCQ]

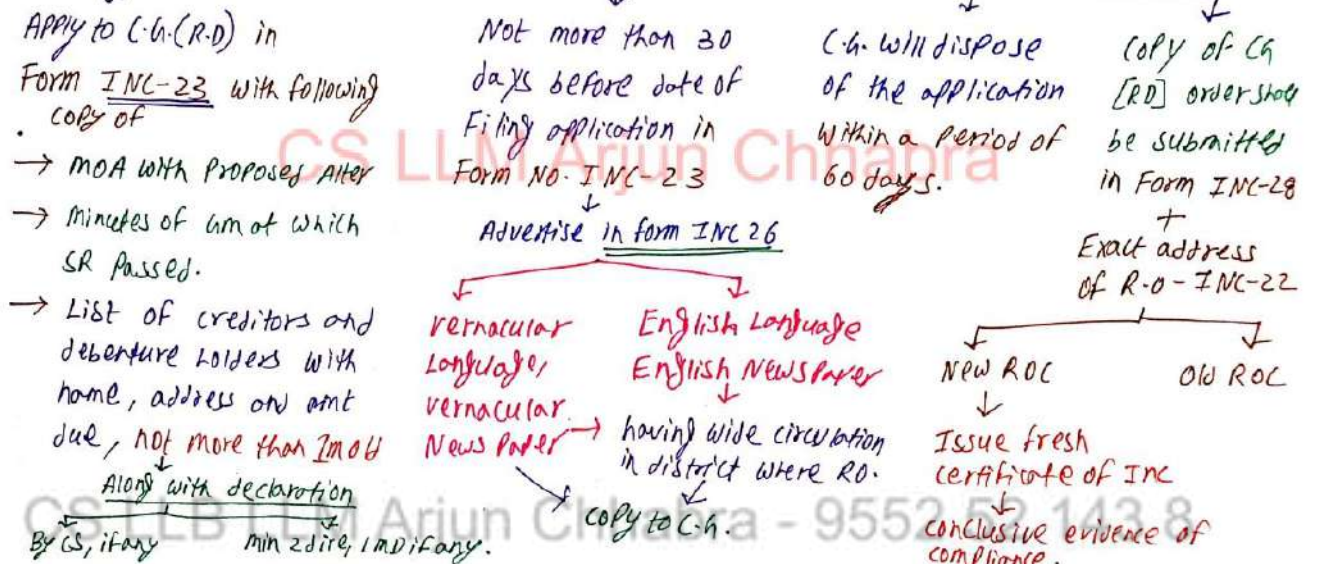
Change of Registered Office			
Within the same city	Outside the city but within the same state [Section 12 (5)]	One state to another state [Section 13(4)] [Rule 30]	Within same state but different ROC i.e from the jurisdiction of one Registrar to the jurisdiction of another Registrar [Section 12 (5) Proviso] [Rule 28] [Possible only in Tamil Nadu & Maharashtra]
BR at BM	SR [By postal Ballot as per SS2]	SR [By postal Ballot as per SS2]	SR in GM [By postal Ballot as per SS2]
	MGT – 14 to ROC Within 30 days of Passing SR [Section 117 (3)]	MGT – 14 to ROC Within 30 days of Passing SR [Section 117 (3)]	MGT – 14 to ROC Within 30 days of Passing SR [Section 117 (3)]
INC – 22 to ROC Within 30 days of change [Section 12 (4) read with Rule 27]	Application to RD in Form INC 23		Application to RD in Form INC 23
	Form INC – 26 – Advertisement		Form INC – 28
	Form INC – 28		
	Form INC -22 to both old and new ROC	Form INC -22 to both old and new ROC	

## Change of Registered office

One state to another state

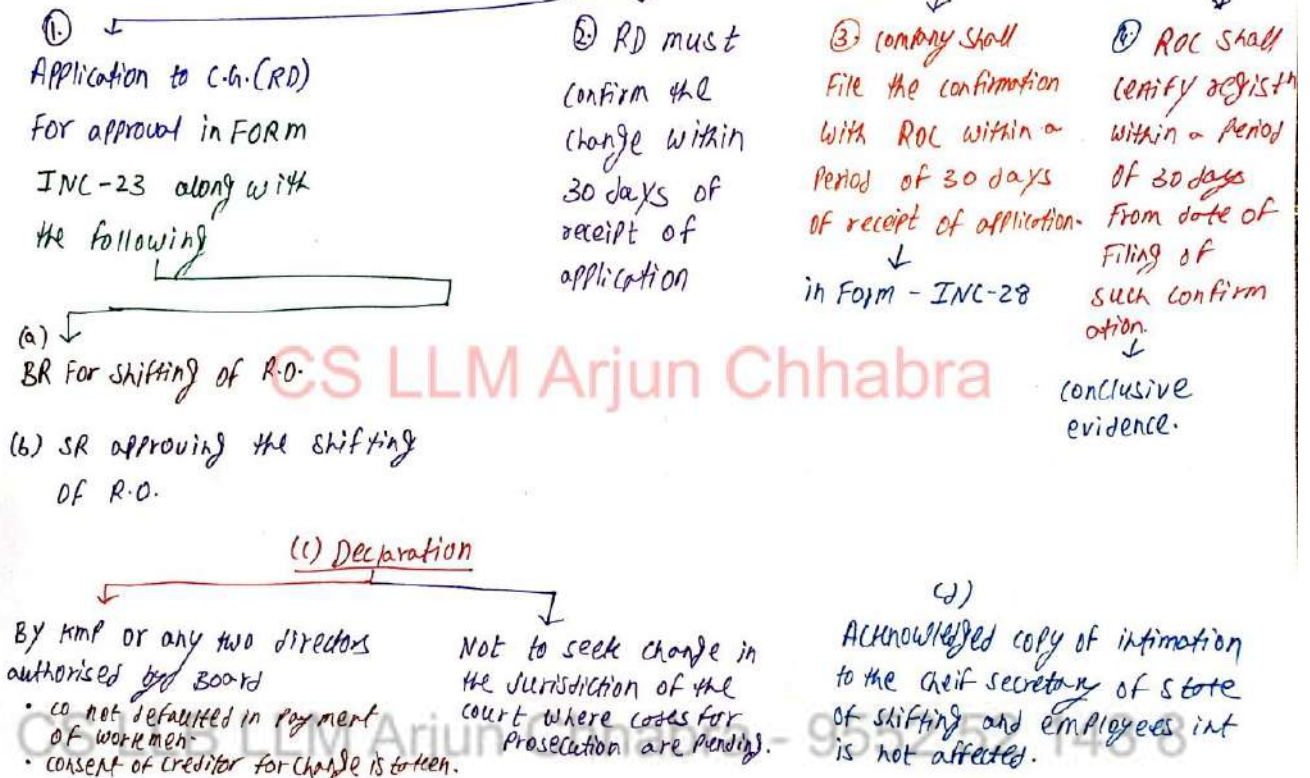
Within same state but different ROC.

### Change of Registered office From one state to Another





### Change of Registered office within the same state but different ROC.



### 3. Alteration of objects clause:

(a) A company may alter its objects clause by passing SR.

(b) If a company has raised money from the public by issue of a prospectus,

AND

any part of such money remains unutilised with the company, then, the company shall not alter its objects for which it raised the money through prospectus unless -

(i) the company has published the prescribed details and justification for such alteration in 2 newspapers (one English newspaper and one newspaper in vernacular language) circulating at the place where the registered office of the company is situated;

(ii) the prescribed details and justification for such change have been placed on the website of the company, if any; and

(iii) the dissenting shareholders have been given an exit opportunity by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

(c) The company shall, within 30 days, file with the Registrar a copy of SR.

(d) The Registrar shall, within 30 days, register the alteration, and issue a certificate of registration.

(e) The alteration shall not be effective until it has been duly registered by the Registrar.

**Doctrine Of Ultra Vires [5 Marks – MTP Dec 23 Syllabus 16]**

Meaning and effect of the doctrine

- 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. [Dec 22 MCQ]
- An act or transaction shall be ultra vires if -
  - it is not permitted or authorised by the Companies Act, 2013; and
  - it falls outside the object clause of memorandum.

Effects of ultra vires transactions:

1. The transaction is void ab initio
2. No ratification or estoppel
3. Injunction against the company
4. Personal liability of directors

**Question 10:**

Explain the provisions of the Companies Act, 2013 relating to the „Service of Documents“ on a company and the members of the company. [RTP Dec 18]

Prem, a member in a public company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, and under certificate of posting. Prem did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013,

- (i) whether the contention of Prem is valid?
- (ii) Would your answer be still the same in case Prem remained outside India for two months (when such notices were given and meetings held). [RTP Dec 18]

**Answer:**

**Service of documents on the members [Sec. 20(2)]**

- (a) Sec. 20(2) applies where any document is to be served on any member.
- (b) The document shall be sent by -
  - (i) registered post; or
  - (ii) speed post; or
  - (iii) courier; or
  - (iv) post; or
  - (v) delivering at the address of the member; or
  - (vi) such electronic or other mode, as may be prescribed.

(c) A member may request the company to deliver to him any document by a particular mode. For this purpose, he shall have to pay such fees as may be determined by the members in the AGM.

If, however, a member wants the notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under:

- (i) The contention of Prem shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.
- (ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Prem at the address outside India. Therefore, answer in the second case shall differ from the first one.

**Question 11:**

Discuss the procedure for conversion of private company into One Person Company. [7 Marks – June 18]  
[8 Marks MQP – Set 2 – June 23]

**Answer:**

- Rule 7 provides the procedure for conversion of private company into OPC.
- Rule 7(1) provides that a private company other than Section 8 company, may convert itself into OPC by passing a **special resolution** in the general meeting.
- Before passing such resolution the company shall obtain '**No Objection Certificate**' in writing from the **members and creditors**.
- The OPC shall file copy of the **resolution** with the Registrar of Companies **within 30 days** from the date of passing such resolution in **Form No. MGT-14**.
- The company shall file an application in **Form No. INC-6** for its conversion into OPC along with fees. The following documents are to be attached:
  - the directors of the company shall give a declaration by way of **affidavit** duly sworn in confirming that **all members and creditors** of the company have given their consent for conversion.
  - the **list of members and creditors**;
  - the **latest Audited Balance sheet and the Profit and Loss Account**;
  - the **copy of No objection letter of secured creditors**.
- On being satisfied and complied with the requirements the Registrar shall issue the certificate.



### Chapter 3 Prospectus And Allotment Of Securities

#### Legal Rules As To Prospectus (Sec. 26)

1. Dating and signing of prospectus
2. Filing of a copy of the prospectus with the Registrar
3. Time limit for issue of prospectus: A prospectus shall not be valid if it is issued more than 90 days after the date on which a copy of the prospectus is filed with the Registrar. [Dec 21 MCQ]

#### **Red Herring Prospectus [June 19 – 5 Marks Short Notes] [MTP Syllabus 2016 Dec 23 – 10 Marks]**

1. **Definition:** The expression 'red herring prospectus' means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.
2. **Procedure for issue of securities under red herring prospectus:**
  - (a) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.
  - (b) A company proposing to issue a red herring prospectus shall file it with the Registrar at least 3 days prior to the opening of the offer.
  - (c) Upon the closing of the offer of securities, the prospectus shall be filed with the Registrar and SEBI.
  - (d) Any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
  - (e) The prospectus shall state -
    - (i) the total capital raised, whether by way of debt or share capital;
    - (ii) the closing price of the securities; and
    - (iii) any other details as were not included in the red herring prospectus.

#### **Shelf Prospectus And Information Memorandum (Sec. 31) [June 23 Syllabus 22 – 6 Marks]**

**Definition:** 'Shelf prospectus' means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

**Filing of shelf prospectus:** Any class or classes of companies, as SEBI may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage of the first offer of securities specified in the shelf prospectus.

**Validity period of shelf prospectus:**

- The shelf prospectus shall indicate a period not exceeding 1 year as the period of validity of such prospectus.

- The period of 1 year shall commence from the date of opening of the first offer of securities under the shelf prospectus.
- With respect to second or any subsequent offer of such securities issued during the period of validity of shelf prospectus, no further prospectus shall be required.

**Information memorandum:**

- Prior to the issue of a second or subsequent offer of securities under the shelf prospectus, the company shall be required to file an information memorandum with the Registrar.
- The information memorandum shall be filed with the Registrar within such time as may be prescribed.
- The information memorandum shall contain all material facts relating to -
  - new charges created;
  - changes in the financial position of the company as have occurred 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.

**Intimation of changes and opportunity to withdraw applications.**

**Information memorandum shall be deemed to be a prospectus.**

**Question 12:**

Ascertain the financial information which are to be stated in a Prospectus for IPO [MQP – 5 Marks]

Section 26 – Matters to be Stated in Prospectus	
Dating and signing of prospectus	(a) Every prospectus issued by or on behalf of a public company shall be dated and signed. (b) The date indicated in the prospectus shall be deemed to be the date of its publication.
Filing of a copy of the prospectus with the Registrar	A prospectus may be issued by a company only if the following 2 conditions are satisfied: (a) A copy of the prospectus has been filed with the Registrar, on or before the date of publication of the prospectus. (b) Such copy of the prospectus is signed by every person who is named in the prospectus as a director or proposed director of the company or by his duly authorised attorney.
Example	Ms. Sarika, executive director of leading Fintech Company has to fly to Davos to attend World Economic Forum meet.  While company secretary of the company intended to file a copy of prospectus with registrar upcoming, Ms. Sarika authorised in writing, Mr. Gautam for signing of such copy on her behalf.
Time limit for issue of prospectus	A prospectus shall not be valid if it is issued more than 90 days after the date on which a copy of the prospectus is filed with the Registrar.
Inclusion of expert's	A statement purporting to be made by an expert may be included in the prospectus, only if all

statement in the prospectus	<p>the following conditions are satisfied:</p> <p>(a) The expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management of the company.</p> <p>(b) The expert has given his written consent to the issue of the prospectus.</p> <p>(c) The expert has not withdrawn his consent before the date of filing of a copy of the prospectus with the Registrar.</p> <p>(d) A statement is included in the prospectus that the expert has given his written consent and has not withdrawn such consent.</p>
Definition of 'expert' [Sec. 2(38)]	'Expert' includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.
Punishment for issue of prospectus in contravention of Sec. 26	<p>The company and every person who is knowingly a party to the issue of a prospectus issued in contravention of Sec. 26, shall be liable to -</p> <p>(a) minimum fine of Rs. 50,000; and</p> <p>(b) maximum fine of Rs. 3 lakh.</p>
Matters to be stated in prospectus [Sec. 26(1)]	<p>(a) The prospectus shall contain such information and reports on financial information as may be specified by SEBI in consultation with CG.</p> <p>(b) Until SEBI specifies the information and reports on financial information, the regulations made by SEBI under SEBI Act, 1992, in respect of such financial information or reports on financial information shall apply.</p> <p>(c) A declaration shall be included in the prospectus. The declaration shall state that -</p> <p>(i) the company has complied with the provisions of the Companies Act, 2013; and</p> <p>(ii) nothing in the prospectus is contrary to the provisions contained in the Companies Act, 2013, the Securities Contracts (Regulation) Act, 1956 and SEBI Act, 1992 and the Rules and Regulations made thereunder.</p> <p>(d) Every prospectus shall contain the following disclosures:</p> <p>(i) A statement that a copy of the prospectus has been filed with the Registrar.</p> <p>(ii) A list of all such documents as are required to be attached with the prospectus.</p>
Non-applicability of Sec. 26(1)	<p>The provisions contained in Sec. 26(1) shall not apply in the following cases:</p> <p>(a) Where a prospectus or form of application relating to shares or debentures is issued to the existing members or debenture-holders of a company, whether or not an applicant has a right to renounce the shares in favour of any other person as per Sec. 62.</p>

	(b) Where a prospectus or form of application relating to shares or debentures is issued, if such shares or debentures are in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognized stock exchange.
<b>Punishment for issue of prospectus in contravention of Sec. 26</b>	The company and every person who is knowingly a party to the issue of a prospectus issued in contravention of Sec. 26, shall be liable to - (a) minimum fine of Rs. 50,000; and (b) maximum fine of Rs. 3 lakh.
<b>Example</b>	The Board of Directors of a Pharmaceutical Limited has allotted shares to the public by issuing a prospectus that is not filed with the Registrar of Companies. In this regard, it is to be noted that a public company can issue securities to the public only by issuing a prospectus, under section 23(1)(a) of the Act. Further section 26(4) requires that no prospectus shall be issued unless, a duly signed copy of the prospectus forwarded to Registrar for filing. In the given case, the company has issued the prospectus in violation of the provisions of section 26. Hence, company as well as the person who is knowingly a party to this, will be punishable with penalty under section 26 (9) of the Act.
<b>Statement</b>	The copy of prospectus submitted with registrar for filing need to be duly signed by majority of directors.  <b>Answer: False</b>  Under section 26(4) of the Act, the copy of prospectus submitted with registrar for filing shall be signed by every person who is named as either director or proposed director in such prospectus. Duly authorised attorney can sign in representative capacity.

**Question 13:**

Critically examine the provisions for payment of commission in connection with subscription to the securities, by a public limited company. [5 Marks MQP June 23 Set 2]

Answer: (A) Provisions contained in Sec. 40 of the Companies Act, 2013.

<b>1. Meaning of underwriter</b>	Underwriter means an intermediary who undertakes to subscribe to the securities offered by the company in case these are not subscribed by the public, in case of an underwritten issue.	
<b>2. Conditions for payment</b>	A company may pay commission to any person in connection with the subscription to its securities (whether absolute or conditional) subject to such conditions as may be prescribed.	
<b>3. Punishment for contravention</b>	<b>Fine on the company</b>	Minimum fine of Rs. 5 lakhs Maximum fine of Rs. 50 lakh
	<b>Fine on every officer of the company who is in default</b>	Minimum fine of Rs. 50,000

		Maximum fine of Rs. 3 lakh
(B) Provisions contained in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.		
Conditions prescribed under the Rules for payment of underwriting commission	(a) (b) (c)	The payment of underwriting commission shall be authorised by the articles of the company. The underwriting commission may be paid out of proceeds of the issue or out of the profits of the company or both.  The rate of underwriting commission shall be as follows:
	<b>Nature of securities issued</b>	<b>Rate of underwriting commission</b>
	<b>Shares (whether equity or preference)</b>	Lower of - (i) 5% of issue price of shares; or (ii) rate authorised by the articles
	<b>Debentures</b>	Lower of- (i) 2.5% of issue price of debentures; or (ii) rate authorised by the articles
	(d) The prospectus of the company shall disclose the following particulars: (i) The names of the underwriters. (ii) The rate and amount of the commission payable to the underwriters. (iii) The number of securities underwritten by the underwriters, whether absolutely or conditionally. (e) No underwriting commission shall be paid on securities which are not offered to the public for subscription. (f) A copy of the underwriting agreement shall be delivered to the Registrar at the time of filing of a copy of the prospectus with the Registrar.	

## Chapter 4 Share Capital And Debentures

**Question 14:**

Write short notes on Alteration of Share Capital [5 Marks – June 18]

**Answer:**

<b>Applicability</b>	Sec. 61 applies to all limited companies having a share capital.
<b>Nature of alterations in capital clause</b>	<p>(a) Increase its authorised share capital by such amount as it may think fit.</p> <p>(b) Consolidate and divide its share capital into shares of a larger amount than its existing shares. However, if the consolidation and division results in changes in the voting percentage of shareholders, the approval of the Tribunal shall be required.</p> <p>(c) Convert its fully paid up shares into stock, and reconvert stock into fully paid-up shares of any denomination.</p> <p>(d) Sub-divide its shares into shares of smaller amount subject to the condition that, after such alteration, the proportion of the amount paid up on shares and the amount remaining unpaid on shares shall remain same as was before such alteration.</p> <p>(e) Cancel shares which have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.</p>
<b>Requirements for alteration of capital</b>	<p>(a) Authorisation is required in the articles.</p> <p>(b) OR is required to be passed in the GM.</p> <p>(c) The notice of alteration of share capital is to be given to ROC -</p> <ul style="list-style-type: none"> <li>- within 30 days;</li> <li>- in form SH-7;</li> <li>- along with a copy of altered memorandum [Sec. 64]</li> </ul>
	It must be noted that alteration of capital does not require confirmation by the Court, CG, Tribunal or any other authority.

**Question 15:**

What is the procedure for issue of renewed share certificate under Companies Act, 2013? [6 Marks – Dec 21]

**Answer:**

### Issue of renewed share certificate

Rule 6 provides that the certificate of any share(s) shall not be issued either

- in exchange for those which are sub-divided or
- consolidated or
- in replacement of those which are defaced, mutilated, torn or old, decrepit, worn out or
- where the pages on the reverse for recording transfers have been duly utilized,

unless the certificate in lieu of which it is issued is surrendered to the company.

The company may charge such fees as the Board thinks fit, not exceeding Rs.50/- per certificate issued on splitting or consolidation of share certificate(s) or in replacement of share certificate(s) that are defaced, mutilated, torn or old, decrepit or worn out. In such cases it shall be stated on the face of the share that it is "Issued in lieu of Share Certificate No...sub-divided/replaced/on consolidation" and also that no fee shall be payable pursuant to scheme of arrangement sanctioned by the High Court or Central Government.

A company may replace all the existing certificates by new certificates upon subdivision or consolidation of shares or merger or demerger or any reconstitution without requiring old certificates to be surrendered. The details of such nature are to be entered in the Register maintained for this purpose.

**Question 16:**

Sweat equity shares are issued to directors or employees at a discount or for consideration other than cash. Discuss under the provisions of the Companies Act, 2013. [8 Marks – Dec 19]

**Answer:**

Section 2(88) defines the expression 'sweat equity shares' as

- such equity shares as are issued by a company
- to its directors or employees at a discount or for consideration, other than cash,
- for providing their know-how or making available rights in the nature of intellectual property rights or value additions,
- by whatever name called.

For this purpose the term 'employee' means-

- a permanent employee of the company who has been working in India or outside India; or
- a director of the company, whether a whole time director or not; or
- an employee or a director as defined above of a subsidiary, in India or outside India, or of holding company of the company.

Section 54 provides that a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

- the issue is authorized by a special resolution passed by the company;
- the resolution specifies
  - the number of shares,
  - the current market price,
  - consideration, if any, and
  - the class or classes of directors or employees to whom such equity shares are to be issued;
- where the equity shares of the company are listed on a recognized stock exchange, the sweat equity shares are issued in accordance with the regulations made by SEBI in this behalf.
- If they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.



**Time limit for making allotment:** SR authorising the issue of sweat equity shares shall be valid for making the allotment within a period of not more than 12 months from the date of passing SR.

**Lock in period:** The sweat equity shares issued to directors or employees shall be locked in/non-transferable for a period of 3 years from the date of allotment, and the fact that the share certificates are under lock-in and the period of expiry of lock in shall be stamped in bold or mentioned in any other prominent manner on the share certificate. [June 18 MCQ]

**Limits on sweat equity shares:**

(a) The company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in one FY or shares of the issue value of Rs. 5 crore, whichever is higher:

(b) At any time, the sweat equity shares shall not exceed 25% of the paid up equity capital of the company.

(c) A startup company, may issue sweat equity shares not exceeding 50% of its paid up capital upto 10 years from the date of its incorporation or registration.

**Question 17:**

Discuss the provisions of the Companies Act, 2013 regarding issue of bonus shares. [8 Marks – Dec 18] [9 Marks – Dec 22]

**Answer:**  
Issue Of Bonus Shares - Legal Requirements (Sec. 63)

1. Power in articles	Authorisation in the articles is required to issue the bonus shares.
2. Recommendation of the Board	<ul style="list-style-type: none"><li>Bonus shares can be issued only if the Board recommends such an issue.</li><li>A company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same (Rule 7 of the Companies (Share Capital and Debentures) Rules, 2014).</li></ul>
3. Ordinary resolution	Issue of bonus shares is possible only if the authorisation to issue the bonus shares is obtained by passing an OR in the GM.
4. Sources of issue	<ul style="list-style-type: none"><li>Bonus shares may be issued out of-<ul style="list-style-type: none"><li>(a) the free reserves; or</li><li>(b) the Securities Premium Account; or</li><li>(c) the Capital Redemption Reserve Account.</li></ul></li><li>Bonus shares shall not be issued by capitalising the reserves created by the revaluation of assets.</li></ul>



5. No default in debts	Bonus shares can be issued only if the company has not defaulted in payment of principal sum or interest on the fixed deposits or debt securities issued by it.
6. No default in statutory dues	Bonus shares can be issued only if the company has not defaulted in payment of statutory dues of the employees, such as contribution to provident fund, gratuity and bonus.
7. Compliance with prescribed conditions	Conditions prescribed by CG in respect of issue of bonus shares must be complied w'ith.
8. Issued to existing members	Bonus shares can be issued only to the existing members of the company.
9. Fully paid shares	Bonus shares must be fully paid up.
10. Existing shares to be fully paid up	If there are any partly paid shares, they must be made fully paid up before the issue of bonus shares.
11. Not to be in lieu of dividend	Bonus shares shall not be issued in lieu of dividend.

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**Question 18:**

Explain transfer and transmission of shares. [MTP June 20 – Marks]

**Answer:**

**1. Transfer deed:**

- The application for transfer of securities must be made in the form prescribed for this purpose (Form No. SH-4).
- This form is called as 'instrument of transfer' or 'transfer deed' or 'transfer form'.

**2. Execution of transfer deed:**

- The transfer deed shall be stamped and dated.
- The transfer deed shall be executed {viz. Signed} by the transferor and the transferee.

**3. Submission of documents:**

- The transfer deed (after stamping, dating and signing) shall be submitted to the company within 60 days of execution.
- Certificate relating to the securities shall also be submitted along with the transfer deed. However, if the certificate relating to the securities is not in existence, then, the letter of allotment shall be submitted.
- The transfer deed may be submitted to the company by -  
(a) the transferor; or  
(b) the transferee.

**4. Situation where transfer deed is lost or delivered after 60 days:**

In case the transfer deed is –

- lost; or
- delivered to the company after 60 days of its execution, the company may register the transfer of shares after obtaining such indemnity as the Board may deem fit.

**5. Right of the transferee to object to the transfer:**

**When is notice required?**

- The company is required to give notice to the transferee only if both the following conditions are satisfied:  
(a) The transfer deed is submitted to the company by the transferor.  
(b) The shares are partly paid up.
- The notice shall be given by the company to the transferee in the manner prescribed (In Form No. SH-5).

**Rights of transferee:**

The transferee has the right to object to the proposed transfer within 2 weeks.

**Registration of transfer:**

If the transferee fails to state his objections within 2 weeks, the company may thereafter register the transfer.

**6. Transfer of securities by legal representative:**

- In case of death of holder of any security, the transfer of such security by the legal representative of the deceased shall be valid -
  - even though the legal representative is not the holder of such security;
  - as if the legal representative were the holder of such security.
- Thus, on receipt of a transfer deed signed by the legal representative, the company is required to register the transfer of shares in the name of the transferee named in the transfer deed.

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**Question 19:**

Mr Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal? [RTP Dec 18]

**Answer:**

**Section 58 - Refusal of Registration and Appeal Against Refusal**

In case a company refuses to register:

- the transfer of, or
- the transmission of,

any securities or interest of a member in the company, it shall within a period of thirty days from the date on which the instrument of transfer, or the intimation of such transmission, as the case may be, was delivered to the company, send notice of the refusal to the transferor and the transferee or to the person giving intimation of such transmission, as the case may be, giving reasons for such refusal.

**Appeal to NCLT** - The transferee is entitled to appeal to the NCLT against any refusal

**If refusal Notice is**

	Sent		Not Sent	
	Pvt co	Pub co	Pvt co	Pub co
An appeal herein shall be made within	30days of such refusal	60days from the date on which the instrument of transfer was delivered to the Company	sixty days of such refusal	ninety days of the delivery of the instrument of transfer or intimation of transmission

**Power of Tribunal** - after hearing the parties, either dismiss the appeal, or by order —

- Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

**If a person Contravenes the order of the Tribunal**

Imprisonment	Fine
Min 1 yr. Max 3 yrs.	Min 1 Lakh Max 5 Lakh

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

**Question 20:**  
 Further issue of shares

**Answer:**

1. Applicability of Sec. 62	<ul style="list-style-type: none"> <li>• Sec. 62 applies to all companies having a share capital.</li> <li>• Sec. 62 applies when a company proposes to issue further shares.</li> </ul>	
2. Offer of further shares to existing shareholders (i.e. Right Shares)	Nature of right	<ul style="list-style-type: none"> <li>• Further shares shall be offered to the existing equity shareholders in proportion to the paid up share capital held by them.</li> <li>• Every existing shareholder shall have a right to -               <ul style="list-style-type: none"> <li>(a) <b>accept</b> the offer of shares offered to him; or</li> <li>(b) <b>decline</b> the offer of shares offered to him; or</li> <li>(c) <b>renounce</b> the shares offered to him in favour of any other person {unless the articles restrict such right}.</li> </ul> </li> </ul>
	Letter of offer	<ul style="list-style-type: none"> <li>• Further shares shall be offered to the existing shareholders by sending to each of them, a letter of offer.</li> <li>• The letter of offer shall be despatched to all the existing shareholders by-               <ul style="list-style-type: none"> <li>(a) registered post; or</li> <li>(b) speed post; or</li> <li>(c) electronic mode; or</li> <li>(d) courier; or</li> <li>(e) any other mode having proof of delivery.</li> </ul> </li> </ul>
		<ul style="list-style-type: none"> <li>• The letter of offer shall be despatched to all the existing shareholders at least 3 days before the opening of the issue.</li> <li>• The letter of offer shall specify -               <ul style="list-style-type: none"> <li>(a) the number of shares offered;</li> <li>(b) the time (minimum 15 days, and maximum 30 days) within which the offer may be accepted (however, in case of a private company, if 90% of the members give their consent in writing or in electronic mode, the periods lesser than 'minimum 15 days' and 'maximum 30 days' shall apply, as per Notification No. G.S.R. 464(E) dated 5th June, 2015);</li> </ul> </li> </ul>

		<p>(c) a statement that if the offer is not accepted with the time specified in the letter of offer, the offer shall be deemed to have been declined; and</p> <p>(d) a statement that every shareholder has a right to renounce the shares offered to him to any other person (unless the articles restrict such right).</p>
	Disposal of shares, if offer is not accepted	The shares which remain unsubscribed by the existing shareholders, may be disposed off by the Board of directors in such manner which is not disadvantageous to the shareholders and the company.
<b>3. Offer of further shares to employees</b>	<p>Further shares may be offered to the employees, if such further shares are offered -</p> <p>(a) under Employees' Stock Option Scheme;</p> <p>(b) under an authority of SR passed by the company; and</p> <p>(c) by complying with such conditions as may be prescribed.</p> <p>However, in case of a private company, instead of 'SR', an 'OR' shall be sufficient [Notification No. G.S.R. 464(E) dated 5th June, 2015],</p>	
<b>4. Offer of further shares to any person</b>	<p>Further shares may be offered to any persons (whether of not those persons include the existing shareholders or employees, and whether these shares are issued for cash or for consideration other than cash), <b>if it is authorised by SR passed</b> by the company; and</p>	
<b>5. Allotment of shares on account of conversion of loans or debenture into shares</b>	<p>Nothing in Sec. 62 shall restrict the power of the company to allot shares on account of conversion of loans or debentures into shares, provided that —</p> <p>(a) the terms of issue of such debentures or the terms of raising such loan <b>contained a term regarding conversion</b> of debentures or loans into shares; and</p> <p>(b) the terms of issue of such debentures or the terms of raising such loan were approved, before the issue of such debentures or raising loan, <b>by passing SR.</b></p>	
<b>6. Allotment of shares on account of conversion of loans or debentures into shares</b>	Order of the Government directing conversion	<p>Any Government may make an order that -</p> <ul style="list-style-type: none"> <li>• debentures issued to that Government by a company; or</li> <li>• loans obtained from that Government by a company shall be converted into shares in the company.</li> </ul>

consequent upon order of the Government	Terms of conversion	(a) The Government may make such an order even if the terms of issue of such debentures or loans do not contain any provision for conversion. (b) The terms of conversion of such debentures or loans shall be such as may appear reasonable to the Government. (c) In determining the terms and conditions of conversion, the Government shall have due regard to the financial position of the company;
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## Section 68 - Power of Company to Purchase its Own Securities

Question 21:

Critically assess the conditions for Buy back of Shares by listed company in India with an example. [7 Marks MQP June 23]

Critically assess the conditions for Buy back of Shares by listed company in India with an example. [MQP 7 Marks]

**1.Source:** Company may purchase its own shares or other specified securities out of;

- (i) Its free reserves;
- (ii) The securities premium account; or
- (iii) The proceeds of an earlier issue of shares or other specified securities.

**Restriction:** However, no buy-back can be done out of proceeds of an earlier issue of same kind of shares/securities.

### 2. Conditions for Buy Back – Before Buy Back

- (i) Buy-back is authorized by the articles of association of the Company.
- (ii) A company may buy – back by

Board Resolution	Special Resolution
<ul style="list-style-type: none"> <li>✓ up to 10% of the aggregate of paid-up equity capital and free reserves (includes securities premium account only for the purpose of this section).</li> <li>✓ This Board resolution must be passed at a Board Meeting only and not by circulation.</li> </ul>	<ul style="list-style-type: none"> <li>✓ more than 10% of the aggregate of paid-up equity capital and free reserves but up to 25% of the aggregate of the paid-up capital (equity &amp; preference) and free reserves.</li> </ul>

**Buy- back of equity shares:** The buy-back in any financial year shall not exceed 25% of its total paid-up equity capital in that financial year.

(iii) All the shares for buy-back are fully paid-up.

(iv) **Offer Period:** The buy-back offer shall remain open for min 15 days & max 30 days from the date of dispatch of Letter of Offer.

Provided that where all members of a Company agree, the offer for buy back may remain open for a period less than 15 days.

(v) The Companies will have to make full and complete disclosure of all material facts in the notice of the meeting at which special resolution is proposed to be passed. These disclosures will include the necessity for buy-back; the time limit for completion of the buy-back; class of securities intended to be purchased; and amount to be invested for buy - back.

(vi) The buy-back may be from the



- ✓ existing holders on a proportionate basis;
- ✓ open market; or
- ✓ employees of the company to whom shares/securities have been issued under a scheme of stock option or as sweat equity.

(vii) After passing the special resolution or board resolution and before making buy - back, the company is required to file 'a declaration of solvency' signed by at least two directors of the company, one of whom shall be the managing director, if any in Form No. SH.9 with the ROC and also with SEBI, if listed, to the effect that the Board has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration of solvency adopted by the Board.

(viii) After buy-back, the debt equity ratio shall 2:1 i.e., the debt should not be more than twice the equity after buy-back. Here 'debt' means secured as well as unsecured debts; and 'equity' means paid-up share capital and free reserves.

Govt company engaged in NBFC or housing finance business, the debt equity ration can be 6: 1

### 3. Conditions for Buy Back – After Buy Back

Company shall

extinguish and physically destroy the shares/securities bought- back within 7 days of buy-back.	not make any issue of same kind of shares/securities (including rights shares) within a period of 6 months from the date of completion of buy-back. Exceptions are: (i) Bonus issue; (ii) Conversion of warrants; (iii) Stock option scheme; (iv) Sweat equity; and (v) Conversion of preference shares/debentures into equity shares.	shall not make any buy back offer within a period of one year from the date of the closure of the preceding offer of buy-back, if any.	Complete Buy Back within one year from the date of passing the Special-Resolution or Board Resolution, as the case may be.
Maintain a register of shares bought back in Form No. SH – 10 giving the following details: — (i) The consideration paid; (ii) The date of cancellation;		File with the ROC and also with SEBI, if listed, a return in Form No. SH. 11 certified in Form No. SH.15 signed by two directors of the company including the managing director, if any within 30 days of such completion.	

(iii)The date of extinguishment and physical destruction; and	
(iv)Such other particulars as may be prescribed.	
<b>Penal Provision</b>	
Company	Officer in default
Fine = Min = 1 lakh, Max = 3 lakh	Fine = Min = 1 lakh, Max = 3 lakh
<p><b>Example:</b> Both the Companies Act and SEBI guidelines made provisions for companies to buy back their own shares. Indian regulations require companies to cancel the shares that it buys back unlike in some other countries where it's allowed to keep those shares alive on its own balance sheet. The concept of share buybacks is also common in India. Several companies announce buybacks in order to improve shareholder value. For example, in Oct-2022, Bajaj Auto announced a share buyback of about 64 lakh number shares from the public.</p> <p>Let's say company ABC has Rs. 20,00,000 in cash and 1,00,000 shares in issue, trading at a price of Rs. 10 per share. If ABC buys back 150,000 shares, using Rs. 1,50,000 in cash, it's left with Rs.18,50,000 shares in circulation and Rs. 18,50,000 in cash.</p>	
<p><b>Question 22:</b> Elucidate the circumstances in which a company cannot buy-back its own shares as per the provisions of the Companies Act, 2013. [Dec 17 – 6 Marks] [June 23 Syllabus 2016 – 5 Marks]</p>	
<p><b>Answer:</b></p> <p><b>Prohibition in case of defaults in payments:</b> No company shall directly or indirectly buy-back its own shares or other specified securities, if default is made by the company in - -</p> <ul style="list-style-type: none"> <li>(a) repayment of deposits or interest payable thereon</li> <li>(b) redemption of debentures</li> <li>(c) redemption of preference shares</li> <li>(d) payment of dividend to any shareholder</li> <li>(e) repayment of any term loan or interest payable thereon to any financial institution or bank.</li> </ul> <p>However, the buy-back is not prohibited, if the default is remedied and a period of 3 years has lapsed after such default ceased to subsist.</p> <p><b>Other prohibitions:</b> No company shall directly or indirectly buy-back its own shares or other specified securities -</p> <ul style="list-style-type: none"> <li>(a) through any subsidiary company including its own subsidiary companies; or</li> <li>(b) through any investment company or group of investment companies.</li> </ul> <p><b>Prohibition in case of non-compliances:</b> No company shall, directly or indirectly, buy-back its own shares or other specified securities if it has not complied with the provisions of-</p> <ul style="list-style-type: none"> <li>(a) Sec. 92 (Filing of annual return);</li> </ul>	

- (b) Sec. 123 (Provisions relating to declaration of dividend); or
- (c) Sec. 127 (Payment of dividend within 30 days); or
- (d) Sec. 129 (Provisions relating to financial statement).

**Question 23:**

Discuss the rules regarding Equity shares with differential rights. [RTP Dec 18]

**Answer:**

- (a) Issue of shares with differential rights must be
  - authorised by the articles.
  - by passing 'OR' [by postal ballot, if the provisions of Sec. 110 are applicable to the company.]
- (b) The voting power in respect of shares with differential rights of the company shall not exceed 74% of total voting power including voting power in respect of equity shares with differential rights issued at any point of time.
- (c) The company has not defaulted in filing financial statements and annual returns for immediately preceding 3 financial years.
- (d) The company has no subsisting default with respect to -
  - (i) payment of declared dividend; or
  - (ii) repayment of matured deposits or interest on deposits; or
  - (iii) redemption of debentures or interest on debentures; or
  - (iv) redemption of preference shares.
- (e) The company has not defaulted in -
  - (i) repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank or interest payable thereon; or
  - (ii) dues with respect to statutory payments relating to its employees; or
  - (iii) crediting the amount in Investor Education and Protection Fund.

However, a company may issue shares with differential rights upon expiry of 5 years from the end of FY in which such default was made good.
- (f) The company has not been penalized by Court or Tribunal during the last 3 years, of any offence under -
  - (i) the Reserve Bank of India Act, 1934; or
  - (ii) the Securities and Exchange Board of India Act, 1992; or
  - (iii) the Securities Contracts Regulation Act, 1956; or
  - (iv) the Foreign Exchange Management Act, 1999; or
  - (v) any other special Act, under which such company is being regulated by any sectoral regulator

(g) The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice-versa.

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### Legal Provisions With Respect To Debentures (Sec. 71)

1. Issue of convertible debentures: Provided such issue is approved by passing SR in the GM.
2. No voting rights
3. Issue of secured debentures:
  - (a) The date of redemption of secured debentures shall not exceed 10 years from the date of issue. However, the following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years:
    - (i) Companies engaged in setting up of infrastructure projects.
    - (ii) 'Infrastructure Finance Companies'.
    - (iii) 'Infrastructure Debt Fund Non-Banking Financial Companies'.
    - (iv) Companies permitted by a
      - Ministry or Department of the Central Government or
      - by Reserve Bank of India or
      - by the National Housing Bank or
      - by any other statutory authority to issue debentures for a period exceeding 10 years.
  - (b) The secured debentures shall be secured by the creation of a charge on the assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon.
  - (c) The company shall appoint a debenture trustee, and execute a debenture trust deed to protect the interest of the debenture holders.

**Trust deed [Dec 22 – 5 Marks Short Notes]**

1. **Time to execute trust deed:** A trust deed in Form No. SH-12 shall be executed by the company issuing debenture in favor of the debenture trustees within three months of closure of the issue of offer.
2. **Open for inspection:** A trust deed for securing any issue of debentures shall be open for inspection to any member of debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company.
3. **Copy of trust deed:** A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within 7 days of the making, on payment of fee.
4. **Mandatory creation of DRR:** shall be created out of the profits available for distribution of dividend.
5. **Appointment of debenture trustee(s):**  
  
Appointment of one or more debenture trustee is mandatory, if -  
(a) the company issues a prospectus; or  
(b) the company makes an offer or invitation to the public; or  
(c) the company makes an offer to its members exceeding 500 in number;  
(d) The appointment of debenture trustee(s) shall be made before issue of prospectus or before making such offer or invitation.
6. **Duties and functions of debenture trustee(s):** To protect the interests and redress the grievances of the debenture holders.

**Question 24**

**Describe the conditions to issue preference shares?**

**Answer**

Rule 9 of Companies (Share Capital and Debentures) Rules, 2014, provides that a company having a share capital may, if so authorized by articles, issue preference shares subject to the following conditions:

- the issue should be authorized by passing a special resolution in the general meeting of the company;
- the company, at the time of such issue of preference shares, has no subsisting default in the redemption of preference shares issued earlier either before or after the commencement of this Act or in payment of dividend due on any preference shares. In the resolution, the company shall set out the following:
  - the priority with respect to payment of dividend or repayment of capital vis-à-vis equity shares;
  - the participation in surplus fund;
  - the participation in surplus assets and profits, on winding up which may remain after the entire capital has been repaid;
  - the payment of dividend on cumulative or non-cumulative basis;
  - the conversion of preference shares into equity shares;
  - the voting rights;

- the redemption of preference shares. The explanatory statement to be annexed to the notice of the general meeting shall provide the complete material facts concerned with and relevant to the issue of such shares, including-
  - the size of the issue and number of preference shares to be issued and nominal value of each share;
  - the nature of such shares i.e., cumulative or non-cumulative, participating or non-participating, convertible or non-convertible;
  - the objectives of the issue;
  - the manner of issue of shares;
  - the price at which such shares are proposed to be issued;
  - the basis on which the price has been arrived at;
  - the terms of issue, including terms and rate of dividend on each share, etc.,
  - the terms of redemption, including the tenure of redemption, redemption of shares at premium and if the preference shares are convertible, the terms of conversion;
  - the manner and modes of redemption;
  - the current shareholding pattern of the company;
  - the expected dilution in equity share capital upon conversion of preference shares. The particulars of the issue of the preference shares shall be noted in the Register of Members. If a company wants to list its preference shares on a recognized stock exchange, it shall issue the preference shares in accordance with the regulations made by SEBI

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## Chapter 6 Registration of Charges

Legal provisions relating to registration of charge by the company:

- (a) Where a company creates a charge on any of its assets, property or undertaking, it shall be the duty of the company to register such charge.
- (b) Sec. 77 requires registration of every charge created on any property of the company, whether such property is -
  - (i) movable or immovable;
  - (ii) tangible or intangible;
  - (iii) situated in India or outside India.
- (c) The charge shall be registered with the Registrar within 30 days of its creation. [June 18 – FIB]
- (d) The charge shall be registered in Form No. CHG-1 (for deposits other than Debentures) or Form No. CHG- 9 (for debentures including rectification), in such manner and on payment of such fees, as may be prescribed.
- (e) The prescribed form containing the particulars of the charge shall be signed by the company and the charge-holder.
- (f) The instrument creating the charge, if any, shall also be filed with the Registrar.

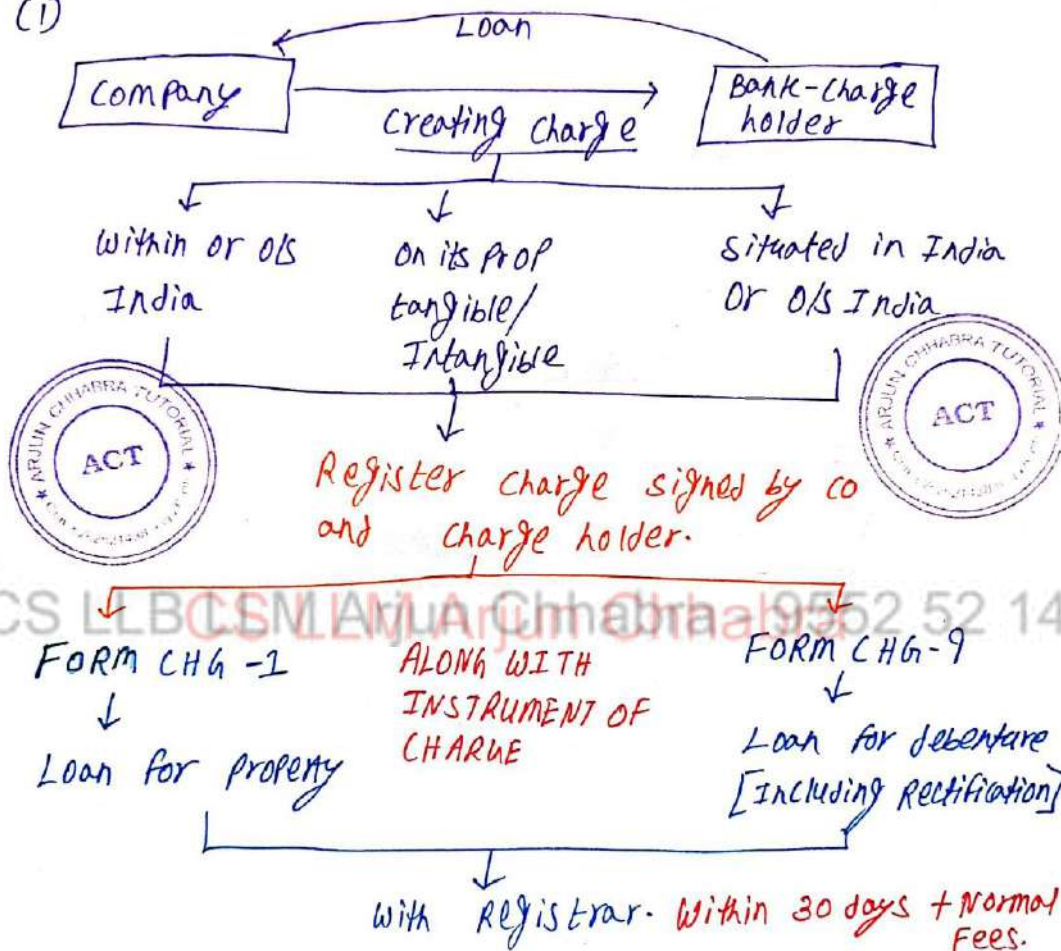
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Section 77 Read with Rule 3, 4 and 6.  
→ NOT applicable to charges prescribed by  
Ch. in consultation with  
RBI.

Duty to Register charges

(1)



What if not registered in said 30 days??

Ans:- ROC on application allow Reg within 60 day [next 30 days] + Additional fees

What if not registered in said 60 days??

Ans:- ROC on application allow Reg FURTHER PERIOD OF 60 DAYS [next 60 days] + Advalorem Fees.

What if not registered in said 120 days??

Ans:- condonation by C-h. U/S 87-2 CHG-8.

### Forms

1. CHG-1 Creating or modifying the charge (for other than Debentures).
2. CHG-2 Certificate of registration.
3. CHG-3 Certificate of modification of charge.
4. CHG-4 Intimation of the satisfaction to the Registrar.
5. CHG-5 Memorandum of satisfaction of charge.
6. CHG-6 Notice of appointment or cessation of receiver or manager.
7. CHG-7 Register of charges of Company.
8. CHG-8 Application for condonation of delay shall be filed with the Central Government.
9. CHG-9 Creating or modifying the charge in (for debentures).

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## Chapter 7 Management And Administration

### Register Of Members (Sec. 88)

**1. Legal requirements:** Every company shall keep and maintain the following registers:

- (i) Register of Members (separately indicating each class of equity and preference shares held by every member, whether residing in India or outside India) in **Form No. MGT-1**.
- (ii) Register of Debenture-holders in **Form No. MGT-2**.
- (iii) Register of any other security holders in **Form No. MGT-2**. [Dec 18 MCQ]

**2. Time limit for making entries:** The entries in the registers shall be made **within 7 days** after the Board of Directors or its duly constituted committee approves the allotment or transfer of shares, debentures or any other securities.

**3. Place of keeping the registers:** The registers shall be maintained at the registered office of the company unless SR is passed in GM authorising the keeping of the register at any other place within the city, town or village in which the registered office is situated or any other place in India in which more than 1/10th of the total number of members reside.

**4. Foreign registers:**

- A company may keep outside India, a part of the registers required to be maintained under this section (termed as 'foreign register').
- The foreign register shall contain the names and particulars of members, debenture-holders or other security holders residing outside India.
- The foreign register can be maintained only if the company is so authorised by its articles.
- The foreign register shall be maintained in such manner, as may be prescribed by CG.

### Power To Close Register of Members Or Debenture holders Or Other Security Holders (Sec. 91)

**1. Maximum period of closure:**

- (a) Maximum - 45 days - in a year.
- (b) Maximum — 30 days - at any one time.

**2. Notice of closure**

- (a) Previous notice of the closure of register shall be given by the company.
- (b) The notice shall be of -
  - (i) at least 7 days (i.e. at least 7 days before the first day of closure); or
  - (ii) such lesser period for listed companies as may be specified by SEBI.
- (c) The notice shall be given in such manner as may be prescribed.

### Annual Return (Sec. 92)

#### Question 25:

Indicate what are the particulars to be incorporated in the Annual Return? [MTP June 20 -10 June 20]

#### Answer:

1. Every company shall prepare an annual return in Form No. MGT-7. However, every OPC and every Small Company shall file the annual return in Form No. MGT-7A. [MCQ June 29]
2. Contents of annual return:
  - (a) The address of registered office of the company, its principal business activities, and the particulars of its holding, subsidiary and associate companies
  - (b) Its shares, debentures and other securities and shareholding pattern
  - ~~(c) Its indebtedness [Omitted]~~
  - (d) Its members and debenture-holders, and changes in the members and debenture-holders since the close of the previous FY
  - (e) Its promoters, directors and key managerial personnel, and changes in directors and key managerial personnel since the close of the previous FY
  - (f) Meetings of members or a class thereof, and of the Board and its various committees, and attendance details
  - (g) Remuneration of directors and key managerial personnel (In case of private companies, which are small companies, aggregate amount of remuneration drawn by directors is to be disclosed)
  - (h) Penalty or punishment imposed on the company, directors or officers and details of compounding of offences and appeals made
  - (i) Matters relating to certification of compliances and disclosures
  - (j) Details with respect to shares held by the Foreign Institutional Investors
  - (k) Such other matters as may be prescribed.
3. Signing of annual return:
  - (a) The annual return shall be signed by -
    - (i) the company secretary (if there is no company secretary, then, by a company secretary in practice); and
    - (ii) a director.
  - (b) In the case of OPC, Small Company and private company, if such private company is a start-up, the annual return shall be signed by – [Dec 21 MCQ] [Dec 19 MCQ]
    - (i) the company secretary; or

(ii) a director (if there is no company secretary).

**3. Certification of annual return:**

(a) The annual return shall be certified by a company secretary in practice, in case of-

(i) a listed company; or

(ii) a company having a paid-up share capital of Rs. 10 crore or more; or

(iii) a company having turnover of Rs. 50 crore or more.

(b) It shall be stated by way of certification that -

(i) the annual return discloses the facts correctly and adequately; and

(ii) the company has complied with all the provisions of this Act.

(c) The company secretary in practice shall issue a certificate in Form No. MGT-8.

**4. Time limit for filing:**

(a) The annual return shall be filed with the Registrar **within 60 days** of the date on which AGM is held.

(b) If the AGM for any year is not held, the annual return shall be filed within 60 days of the last date AGM ought to have been held, together with a statement specifying the reasons for not holding the AGM.

**Question 26:**

XYZ Ltd. issued Notice for holding of its Annual General Meeting on 30th September 2019. The notice was posted to the members on 7th September 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act. Referring to the provisions of the Act, decide.

(i) Whether the meeting has been validly called?

(ii) If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the delay in giving notice be condoned? [7 Marks – Dec 19] [MQP Set 2 Syllabus 2022]

**Answer:**

According to the Section 101(1) of the Companies Act, 2013, annual general Meeting of a company may be called **by giving not less than clear twenty-one days notice** either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that clear 21 days notice mean that **date of which notice is served** and the **date of meeting** are **excluded** for sending the notice.

**Shorter notice:** Any GM may be called by giving shorter notice, if consent, in writing or by electronic mode, is given – [Dec 21 MCQ]

(i) in the case of an AGM, by not less than 95% of the members entitled to vote thereat; and

(ii) in the case of EGM, by -

(a) majority in number of members holding not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting, in case of a company having a share capital; or

(b) members having not less than 95% of the total voting power, if the company has no share capital.

Further, Rule 35(6) of the Company (incorporation Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of the notice of meeting, at the expiration of forty eight hours after the letter containing the same is posted.

Hence, in the given question:

- (i) A 21 days clear notice must be given. In the given question, only 20 days notice is served (after excluding 48 hours from the time of its posting and day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls short by 1 day.
- (iii) The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence the delay in giving the notice calling the meeting cannot be condoned.



## Annual General Meeting (Sec. 96)

### Time limit for holding 1<sup>st</sup> AGM

- 1st AGM shall be held within 9 months of close of 1<sup>st</sup> financial year.
- If 1st AGM is so held, there is no need to hold AGM in the year of incorporation.

**No extension:** The Registrar has no discretion to grant any extension for holding the 1st AGM.

**Last date for holding any other AGM, viz. subsequent AGM:** [Dec 21 MCQ]

(i) AGM shall be held within 6 months of close of the relevant financial year.

(ii) Not more than 15 months shall elapse between the date of one AGM and that of the next, i.e. the gap between any two AGMs shall not exceed 15 months.

(iii) AGM shall be held in each calendar year.

**Extension:** The Registrar may, for any special reason, extend the time for holding the AGM by any period not exceeding 3 months.

**Time of AGM:** AGM shall be called during business hours, i.e. between 9 am and 6 pm.

**Day of AGM:** AGM shall be called for a day which is not a National holiday.

**Place of AGM:** AGM shall be held at –

- the registered office of the company; or
- some other place within the city, town or village in which the registered office is situated.

However, the AGM of an unlisted company may be held at any place in India if consent is given in advance either in writing or by electronic mode by all the members.

### Question 27:

Infotech Ltd. was incorporated on 1.4.2016. No General Meeting of the company has been held till 30.4.2018. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. [RTP Dec 18]

### Answer:

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the date of closing of its first financial year.

The first financial year of Infotech Ltd is for the period 1st April 2016 to 31st March 2017, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2017.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not

exceeding three months. Thus, the first AGM of Infotech should have been held on or before 31st December, 2017.

Further, the Registrar does not have the power to grant extension to time limit

**Question 28:**

What are the procedures of sending notice through electronic mode under the Companies Act, 2013? [8 Marks – June 18]

**Answer:**

The procedure of sending notice through electronic mode under the Companies Act, 2013 is discussed as detailed below:

- A notice may be sent through email as a text or as an attachment to email [PDF File] or as a notification providing electronic link or Uniform Resource Locator for accessing such notice; [Dec 18 – T & F | June 17 MCQ]
- The email shall be addressed to the person entitled to receive such email as per the records of the company or as provided by the depository;
- The subject shall state the name of the company, notice of the type of meeting, place and date on which the meeting is scheduled;
- The attachment shall in a PDF or in a non editable format together with a link or instructions for recipient for downloading relevant version of the software;
- The company is not responsible for the failure in transmission beyond its control;
- If a member fails to provide or update relevant email address to the company or to the depository participant, the company shall not be in default for not delivering notice via email;
- The company may send email through in house facility or its registrar and transfer agent or authorize any third party agency providing bulk email facility;
- The notice made through electronic mode shall be readable and the recipient should be able to obtain and retain copies and the company shall give the complete Uniform Resource Locator or address of the website and full details of how to access the document or information;
- The notice of the general meeting of the company shall be simultaneously placed on the website of the company, if any and on the website as may be notified by the Government.



### Quorum For Gm (Sec. 103)

#### Question 29:

Discuss the provisions relating to Quorum for meetings of a company. [MTP June 23 Syllabus – 8 Marks]

1. **Public company – Quorum: Number of members as on the date of meeting;**  
Upto 1000 – 5 members personally present  
More than 1,000 but upto 5,000 - 15 members personally present  
More than 5,000 - 30 members personally present
2. **Private company – Quorum: [MCQ June 19]**  
2 members personally present shall be the quorum.  
Articles may provide for a larger number as the quorum.
3. **Lack of quorum - Legal effect:**  
If the quorum is not present within half-an-hour from the time fixed for holding the GM, then –  
**EGM was called by requisitionists** - Meeting shall stand cancelled.  
**Any other case –**  
(i) The meeting shall adjourn to such day, time and place as may be determined by the Board.  
(ii) However, if the Board has not so determined the day, time and place, the meeting shall adjourn to same day, time and place in the next week.  
(iii) At least 3 days' notice of adjourned meeting shall be given to the members either individually or by publishing an advertisement in 2 newspapers (one in English and one in vernacular language).  
(iv) If at the adjourned meeting also, quorum is not present within half-an-hour from the time fixed for holding the GM, the members present shall be the quorum.
4. **Special Note:**
  - Quorum needs to be present only at the commencement of GM.
  - Thus, quorum is not required at the time of passing each and every resolution.

## Proxies (Sec. 105)

### Who is eligible to appoint proxy?

Any member of a company entitled to attend and vote at a meeting of the company

- shall be entitled to appoint another person (whether a member or not)
- as his proxy
- to attend and vote instead of himself.
- By depositing MGT -11 at least 48 hours before meeting. [Dec 21 MCQ]

### Restrictions:

- A member of a company registered u/s 8 (viz. 'Not for Profit Company') shall not be entitled to appoint any other person as his proxy unless such other person is also a member of such company.
- A person can act as proxy on behalf of members -
  - (i) not exceeding 50; and
  - (ii) holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.
- A member holding more than 10% of the total share capital of the company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.

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**Question 30**

Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. [RTP Dec 18]

**Answer:**

Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:

- (a) In the case of a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one - tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid - up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

**Withdrawal of the demand:** The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- The chairman cannot reject the demand for poll subject to provision in the articles of company.
- The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

**Question 31**

Discuss the procedure for conducting a poll in a meeting of a company. [Dec 17 – 9 Marks] [MQP June 23 – Set 2 – 7 Marks]

**Answer:**

Section 109 (5) provides that where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on the poll and to report thereon to him. Section 108(6) provides that the Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

Rule 21 provides that Chairman of a meeting shall, in the poll process, ensure that-

- The Scrutinizers are provided with the Register of Members, specimen signatures of the Members, Attendance Register and Register of proxies;
- The Scrutinizers are provided with all documents received by the company;
- The Scrutinizers shall arrange for polling papers and distribute them to the members and proxies present at the meeting;
- In case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio;
- The polling shall be in Form No. MGT-12;
- The Scrutinizers shall keep a record of the polling papers received in response to poll by initializing it;
- The Scrutinizers shall lock and seal and empty polling box in the presence of members and proxies;
- The Scrutinizers shall open the polling box in the presence of two persons as witnesses after the voting process is over;
- In case of ambiguity about the validity of a proxy, the Scrutinizer shall decide the validity in consultation with the Chairman;
- The Scrutinizers shall ensure that if a member who has appointed in a proxy, has voted in person, the proxy's vote shall be disregarded;
- The Scrutinizers shall count the votes cast on poll and prepare a report thereon addressed to Chairman;
- The Scrutinizer shall submit the report to the Chairman who shall countersign the same;
- The Chairman shall declare the result of voting on poll. The result may either be announced by him or a person authorized by him in writing.

The Scrutinizers shall submit a report to the Chairman of the meeting in Form No. MGT-13. The report shall be signed by the scrutinizers and the same shall be submitted by them to the Chairman within 7 days from the date of the poll is taken.

**Question 32:**

Explain the process of e-voting. [RTP Dec 18]

Answer:

PROCESS OF E-VOTING:

- (i) The notice of the meeting shall be sent to all the members, directors and auditors of the company either –
  - (a) by registered post or speed post; or
  - (b) through electronic means, namely, registered e-mail ID of the recipient; or
  - (c) by courier service;
- (ii) The notice shall also be placed on the website, if any, of the company and of the agency forthwith after it is sent to the members;
- (iii) The notice of the meeting shall clearly state –
  - (a) that the company is providing facility for voting by electronic means and the business may be transacted through such voting;
  - (b) members attending the meeting who have not already cast their vote by remote e-voting shall be able to exercise their right at the meeting;
  - (c) that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again;
- (iv) The notice shall -
  - (a) indicate the process and manner for voting by electronic means;
  - (b) indicate the time schedule including the time period during which the votes may be cast by remote e-voting;
  - (c) provide the details about the login ID;
  - (d) specify the process and manner for generating or receiving the password and forwarding of vote in a secure manner.
- (v)
  - The company shall cause a public notice by way of an advertisement to be published,
  - immediately on completion of dispatch of notices for the meeting under clause (i) of sub-rule (4)
  - but at least twenty-one days before the date of general meeting,
  - at least in one vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a

wide circulation in that district,

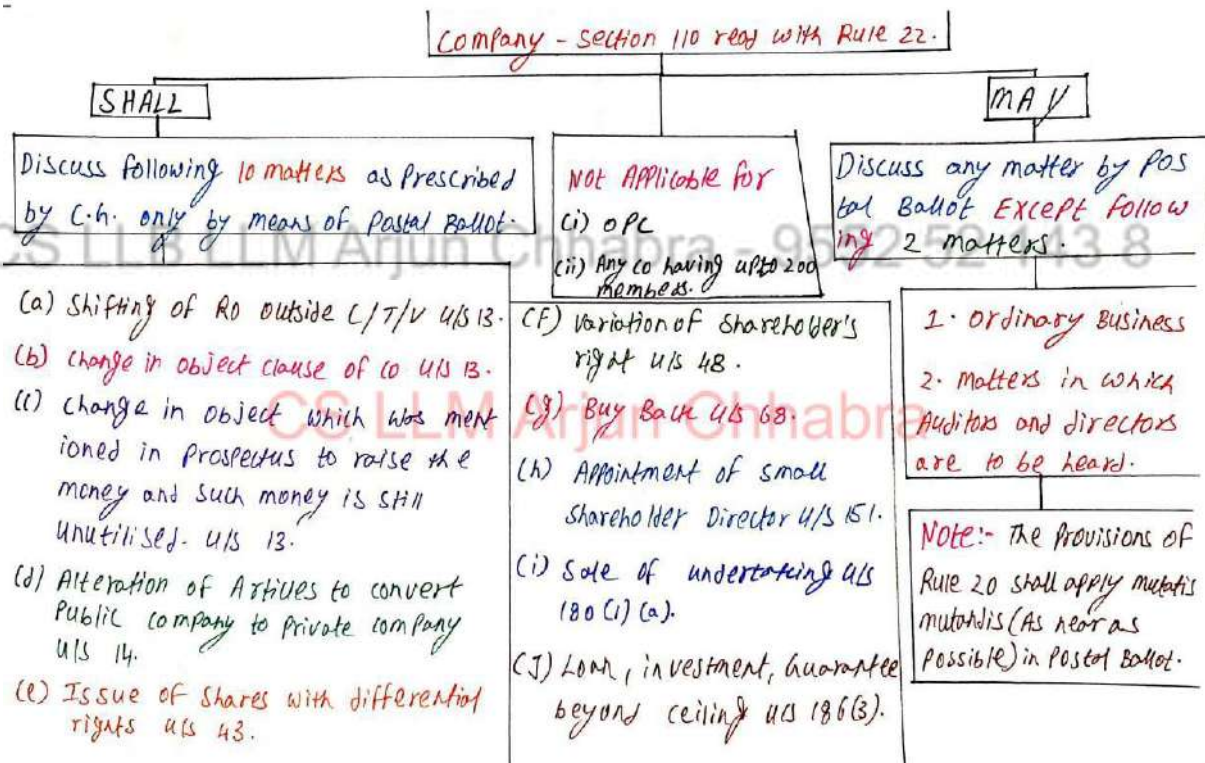
- and at least in **one English newspaper** having country-wide circulation,
- the following matters, namely:-
  - (a) statement that the business may be transacted through voting by electronic means;
  - (b) the date and time of commencement of remote e-voting;
  - (c) the date and time of end of remote e-voting;
  - (d) cut-off date;
  - (e) the manner in which persons who have acquired shares and become members of the company after the dispatch of notice may obtain the login ID and password;
  - (f) website address of the company, if any, and of the agency where notice of the meeting is displayed; and
  - (g) name, designation, address, email id and phone number of the person responsible to address the grievances connected with facility for voting by electronic means:

(vi) The facility for remote e-voting shall remain open for not less than three days and shall close at 5.00 p.m. on the date preceding the date of the general meeting; [Dec 22 MCQ]

(vii) At the end of the remote e-voting period, the facility shall forthwith be blocked.

## Postal Ballot (Section 110) [June 18 MCQ]

Postal Ballot - Section 110 read with Rule 22 - overriding section.  
means instead of transacting a business matter in general meeting, company will send a draft resolution of the matter to all the members giving them 30 days time to reply back with their assent or dissent through post or courier or email.



### Question 33:

In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013. [RTP Dec 18]

### Answer:

Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting any matter which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;



- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non - inclusion of any matter in the Minutes on the grounds specified in sub – section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

**Question34:**

Discuss the procedure of conversion from private limited company into limited liability partnership. [5 Marks – Dec 19]

**Answer:**

The procedure of conversion from private limited company into Limited Liability Partnership (LLP) is discussed as under:

Para 1(b) of the third schedule defines the term 'convert' in relation to a private company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the private company to the LLP in accordance with the third schedule.

A company may apply to convert itself into a LLP if and only if -

- there is **no security interest in its assets** subsisting or in force at the time of application; and
- the partners of the LLP to which it converts **comprise all the shareholders** of the company and no one else.

The company has to apply with the Registrar by filing the following documents:

- A **statement by all its shareholders in Form No. 18** and fees containing the following particulars
- The **name and registration** number of the company;
- The **date** on which the company was incorporated; and
- incorporation document and statement;

On the receipt of the above said documents, the Registrar shall register the documents subject to the provisions of the Act and the rules made there under. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate.

The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and of the particulars of LLP in Form along with the fees.

If the Registrar is not satisfied with the particulars or other information furnished the Registrar may refused to register. Against this order appeal may be made before the Tribunal.



### Conversion from unlisted public company into LLP

Para 1(b) of the fourth schedule defines the term 'convert' in relation to a company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the LLP in accordance with the provisions of the schedule.

Para 1(c) defines the term 'listed company' as defined in SEBI (Disclosure and Investor Protection) Guidelines, 2000 issued by SEBI under Section 11 of the SEBI Act, 1992 which defines as a company which has any of its securities offered through an offer document listed on a recognized stock exchange and also includes Public Sector Undertakings whose securities are listed on a recognized stockexchange.

Para 1(d) defines the term 'unlisted company' as a company which is not a listed company. A company may apply to convert into a LLP if and only if-

- there is **no security interest** in its assets subsisting or in force at the time of application; and
- the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

A company is also to file the following documents-

- A statement by all its shareholders in **Form No.18** along with fee containing the following particulars-
- the **name and registration number** of the company;
- the **date of which the company was incorporated**; and
- Incorporation document and statement;

On receipt of the above statements the Registrar shall register the documents, subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified as he considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act.

The LLP shall inform the concerned Registrar of Companies **within 15 days** of the date of registration about the conversion and the particulars of the LLP.

The Registrar, if he is not satisfied with the particulars or other information furnished, may refuse to register. Against this order an appeal may be filed before the Tribunal.

### Conversion of firm into LLP

Para 1(a) of the second schedule defines the term 'firm' as a firm as defined in Section 4 of the Indian Partnership Act, 1932. Para 1(b) defines the term 'convert' in relation to a firm converting into a LLP as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the firm to LLP.

A firm may convert into a LLP on the condition that the partners of the firm shall be bound by the provisions of the second schedule that are applicable to them. A firm may apply to convert into a LLP if and only if the partners of the LLP into which the firm is to be converted, comprise, all the partners of the firm. Except the partners in the partnership no other person will be allowed to be a partner in LLP after its conversion

A firm may apply to the Registrar by filing-

- A statement by all of its partners in Form No. 17 and accompanied by fee containing the following particulars-
  - the name and registration number, if applicable, of the firm; and
  - the date on which the firm was registered under the Indian Partnership Act, 1932 or under any other law, if applicable; and
- Incorporation document and statement.

On receipt of the above said documents, the Registrar shall register the documents and issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act. The Registrar may require the documents to be verified in such manner, as he considers fit. The LLP shall within 15 days of the date of the registration, inform the concerned Registrar of Firms with which it was registered under the provisions of Indian Partnership Act about the conversion and the particulars of the LLP.

The Registrar may refuse registration if he is not satisfied with the particulars or other information furnished. In such cases appeal may be filed before the Tribunal.

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