

इवॉरवॉइफ

Last Mile Referencer for

COMPANY LAW



The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Board of Studies (Academic)

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Saransh – Last Mile Referencer for Company Law

While due care has been taken in preparing this booklet, if any errors or omissions are noticed, the same may be brought to the notice of the Director, BoS. The Council of the Institute is not responsible in any way for the correctness or otherwise of the matter published herein.

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The Institute of Chartered Accountants of India

'ICAI Bhawan' A-29, Sector-62,

Noida 201 309

BOS (Academic), the student wing of the Institute, does not leave any stone unturned in providing best-in-class services to its students. It imparts quality academic education through its value added study materials, wherein concepts are explained in lucid language. Examples and Test Your Knowledge Questions contained therein facilitate enhanced understanding and application of concepts learnt. Booklet on MCQs & Case Scenarios contain a rich bank of MCQs and Case Scenarios to hone the analytical skills of students, by applying the concepts learnt in problem solving. Revision Test Papers contain updates and Q & A to help students update themselves with the latest developments before each examination and revise the concepts and provisions by solving questions contained therein. Suggested Answers containing the ideal manner of answering questions set at examination also helps students revise for the forthcoming examination. Mock Test Papers help students assess their level of preparedness before each examination. BoS (Academic) also conducts live Learning classes through eminent faculty for its students across the length and breadth of the country.

To reach out to its students, the BoS (Academic) has also been publishing subject-specific capsules in its monthly Students' Journal "The Chartered Accountant Student" since the year 2017 for facilitating effective revision of concepts dealt with in different topics of each subject at the Foundation, Intermediate and Final levels of the chartered accountancy course. Each issue of the journal includes a capsule relating to specific topic(s) in one subject at each of the three levels. In these capsules, the concepts and provisions are presented in attractive colours in the form of tables, diagrams and flow charts for facilitating easy retention and quick revision of topics.

The BoS (Academic) is now coming out with a comprehensive booklet 'Saransh - Last Mile Referencer for Company Law' wherein, the significant provisions of the Companies Act, 2013 forming part of CA curriculum are highlighted. The Companies Act, 2013 regulates the functioning of Companies in India. This legislation empowers the Central Government to regulate the formation, financing, functioning and winding up of companies. In order to give students a bird eye view of the Act, the important concepts of Companies Act, 2013 have been explained precisely in this booklet. Students would understand these concepts quickly with the help of this booklet.

Happy Reading!

Message of Key ICAI Office Bearers



CA. Aniket S. Talati

President, ICAI

In order to equip students with a robust foundation of knowledge, skills, and professional values, the Board of Studies (Academic) has been actively engaged in various initiatives to cater to their learning requirements. In continuation to the earlier publications, namely, Accounting, Auditing & Cost Management and Strategic Decision Making in this series of **Saransh – Last Mile Referencer**, publications for these subjects, Financial Management, Strategic Management and Company Law have been added. It presents a concise summary of essential concepts from each chapter, which not only serves as a handy guide for students but also assists Members in their professional pursuits.



CA. Ranjeet Kumar Agarwal

Vice President, ICAI

ICAI consistently strives to provide exceptional educational content that empowers students in their pursuit of goals. **Saransh – Last Mile Referencer** is a meticulously crafted compilation of booklets, each dedicated to a specific subject of the Chartered Accountancy Course. These concise capsules serve as a valuable tool for revision of concepts before examinations in each subject. Whether you are a CA student or a Member, this series of booklets will serve as a referencer.



CA. Vishal Doshi

Chairman, Board of Studies (Academic)

We are thrilled to introduce the next round of **Saransh – Last Mile Referencer**, an invaluable resource for students aspiring to embark on the esteemed path of becoming a Chartered Accountant. These booklets encapsulate the vital topics of the CA curriculum across Intermediate, and Final levels. Presented in a condensed format, they effectively convey the concepts and provisions through tables, diagrams, and flow charts, making them an indispensable tool for anyone pursuing a career in this field.



CA. Dayaniwas Sharma

Vice-Chairman, Board of Studies (Academic)

For years, the Board has served as the guiding force and mentor to countless aspiring CA students, offering support in meeting their evolving learning needs. The **Saransh – Last Mile Referencer** booklets are an exciting addition to our esteemed collection of insightful books. These invaluable referencers provide indispensable guidance for students pursuing the Chartered Accountancy Course. The booklets in concise form will foster active learning and strengthening students' comprehension and confidence in the subjects.



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COMPANIES ACT, 2013

PRELIMINARY

Title

Companies Act, 2013

Extent

Whole of India

Commencement

Section 1 came into force at once and the remaining provisions on different dates through Notifications.

Application

1. Companies
2. Insurance companies
3. Banking companies
4. Companies producing /supplying electricity
5. Company regulated by special Act
6. Entities as notified by Central Government

A BRIEF INTRODUCTION ABOUT COMPANY AND ITS TYPES

What is a Company: Company means a company incorporated under this Act or under any previous Company Law [Section 2(20)].

A company is an incorporated association, which is an artificial person created by law, having a separate entity, with a perpetual succession.

TYPES OF COMPANIES**1. On the basis of liability****Company Limited by shares [Section 2(22)]**

- Liability of the members of a company is limited by its Memorandum of Association (MOA) to the amount (if any) unpaid on the shares held by them

Company Limited by Guarantee [Section 2(21)]

- Liability of its members is limited by the Memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up
- Members cannot be called upon to contribute beyond that stipulated sum

Unlimited Company [Section 2(92)]

- No limit on the liability of members
- The liability ceases when he ceases to be a member

2. On the basis of members**One Person company (OPC) [Section 2(62)]**

- Only one person as member.
- Minimum paid up capital – no limit prescribed
- The MOA shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company
- The member of OPC may at any time change the name of nominee by giving notice to the company and the company shall intimate the same to the Registrar
- No person shall be eligible to incorporate more than one OPC
- No minor shall become member of the OPC
- 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
- Such Company cannot carry out NBFC activities including investment in securities of any body corporate
- Here, the member can be the sole member and director

Private Company [Section 2(68)]

- No minimum paid-up capital requirement
- Minimum number of members – 2 (except if private company is an OPC, where it will be 1)
- Maximum number of members – 200, excluding present employee-cum-members and erstwhile employee-cum-members
- Right to transfer shares restricted
- Prohibition on invitation to subscribe to securities of the company
- Small company is a private company
- OPC can be formed only as a private company

Public Company [Section 2(71)]

- Is not a private company (Articles do not have the restricting clauses).
- Shares freely transferable
- No minimum paid up capital requirement
- Minimum number of members – 7
- Maximum numbers of members – No limit
- Subsidiary of a public company is deemed to be a public company

3. On the basis of control

Holding and Subsidiary company

Holding company [Section 2(46)]: Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary company [Section 2(87)]: means a company in which the holding company—

- controls the composition of the Board of Directors; or
- 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.

However, prescribed class or classes of holding companies shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Associate Company [Section 2(6)]

In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

“Significant influence” means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement.

“Joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

“Total voting power”, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

4. On the basis of access to capital

Listed company [Section 2(52)]

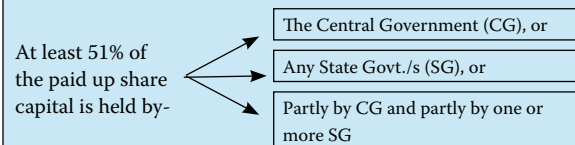
Which has any of its securities listed on any recognised stock exchange

Here, such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.

Unlisted company - company other than listed company

5. Other companies

Government company (GC) [Section 2(45)]



Here, the “paid up share capital” shall be construed as “total voting power”, where shares with differential voting rights have been issued.

Includes a company which is a subsidiary company of such Government company.

Small Company [Section 2(85)]

- A private company
- Paid up capital – not more than ₹4 crore or such higher amount as may be prescribed which shall not be more than 10 crore rupees; **and**
Turnover (as per P&L A/c of immediate preceding FY) – not more than ₹ 40 crores or such higher amount as may be prescribed which shall not be more than 100 crore rupees.
- **Should not be** – Section 8 company
– Holding or a Subsidiary company
– a company or body corporate governed by any special Act

Foreign company [Section 2(42)]

Any company or body corporate incorporated outside India which—

- has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- conducts any business activity in India in any other manner

Formation of companies with charitable objects etc. [Section 8]

- Formed for the promotion of commerce, art, science, religion, charity, protection of environment, sports, etc.
- Uses its profits for the promotion of the objective for which formed
- Does not declare dividend to members
- Operates under a special licence from Central Government
- Need not use the word Ltd./ Pvt. Ltd. in its name and adopt a more suitable name such as club, chambers of commerce etc.
- Enjoy same privileges and obligations as of a limited company
- Licence revoked if conditions contravened
- Can call its general meeting by giving a clear 14 days notice instead of 21 days
- Requirement of minimum number of directors, independent directors etc. does not apply

Nidhi Company (Section 406)

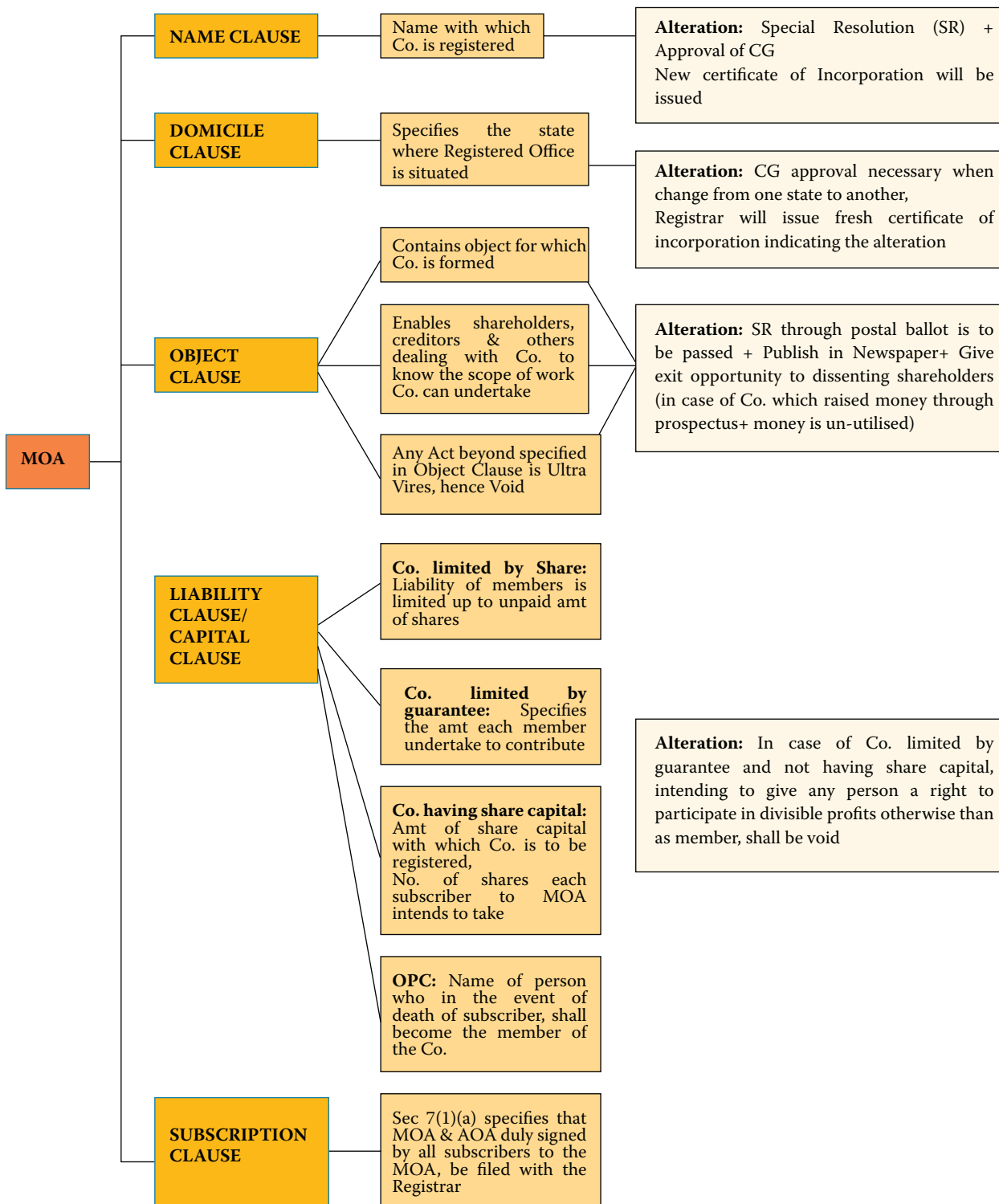
Nidhi” or “Mutual Benefit Society” means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

Dormant Company [Section 455]

- Where a company is formed and registered under this Act
 - for a future project; or
 - to hold an asset or intellectual property and
 - has no significant accounting transaction
- Such a company or an inactive company may make an application to the Registrar as prescribed under the relevant rules for obtaining the status of a dormant company.
- Registrar on consideration of application allow the status of a dormant co. to an applicant and issue certificate
- In case of a company which has not filed financial statements or annual returns for two financial years consecutively, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
- Inactive company
 - which has not been carrying on any business or operation, or
 - has not made any significant accounting transaction during the last two financial years, or
 - has not filed financial statements and annual returns during the last two financial years;
- “Significant accounting transaction” is any transaction other than
 - payment of fees by a company to the Registrar;
 - payments made by it to fulfil the requirements of this Act or any other law;
 - allotment of shares to fulfil the requirements of this Act; and
 - payments for maintenance of its office and records.

INCORPORATION OF COMPANIES

I. MEMORANDUM OF ASSOCIATION (MOA)



II. ARTICLES OF ASSOCIATION (AOA)



ALTERATION OF AOA

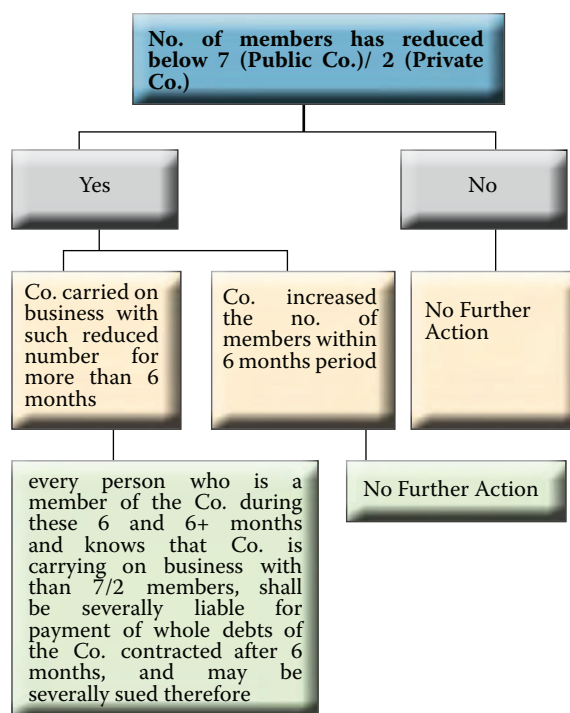
(i) Alteration is effected by SR
(ii) Alteration of AOA may include the Conversion of Pvt Co. to Public Co. and Vice versa. However, when Public Co. is converted into Pvt. Co., approval of CG is necessary.
(iii) Alteration of AOA+ Approval of CG (if any) to be filed with ROC within 15 days
(iv) Alterations once registered will be valid as if it were originally contained in AOA

III. STEPS FOR INCORPORATION OF COMPANY

1	Reservation of name by filing e-application
2	Drafting & signing of MOA & AOA and its submission to ROC. These documents have to be e- filed and e- stamped
3	Consent of persons nominated as directors to act as directors to be submitted electronically
4	Submission of 'statutory declaration of compliance' and other declarations
5	Pay fees
6	Obtain certificate of incorporation digitally signed by ROC
7	File declaration about address of Registered office

Note: New requirement of submitting declaration that 'all subscribers have paid the value of shares agreed to be taken by him' and 'verification of Registered office has been filed' has been inserted vide section 10A. This requirement is needed to be complied with before the commencement of business.

IV. COMPANY TO MAINTAIN MINIMUM NUMBER OF MEMBERS [Section 3A]



V. COMMENCEMENT OF BUSINESS ETC [Section 10 A]

Co. incorporated after the commencement of the Companies (Amendment) Act, 2019 + having a share capital shall not commence any business or exercise any borrowing powers unless—

1. Declaration is filed by director

- within 180 days of the date of incorporation with the Registrar
- that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration

2. The Co. has filed with the Registrar a verification of its registered office

3. If no declaration has been filed with the Registrar within a period of said 180 days and the Registrar has reasonable cause to believe that the Co. is not carrying on any business or operations,

- Registrar may, initiate action for the removal of the name of Co. from the register of companies under Chapter XVIII.

VI. REGISTERED OFFICE (RO) OF COMPANY [Section 12]

1.

Need for RO

- It is a **physical office**, capable of receiving & acknowledging all communication and notices.
- Domicile & nationality of Co.** is determined by the place of RO

Time Limit

- A Co. within 30 days of its incorporation and at all times thereafter, have RO

Verification of RO

- Within 30 days of incorporation furnish to ROC verification of RO

Labeling of company: Every company shall—

- Paint/** affix its **name, address** of RO on the **outside of every office** / place of business, in a conspicuous position, in legible letters, and if the characters employed are not those of the **language/s in general use in that locality**, then **also** in the characters of that language/s.
- have its **name** engraved in legible characters on its **seal**, if any;
- get its **name, address** of RO and the CIN along with Ph no., fax no., if any, e-mail and website addresses, if any, printed in **all** its business letters, billheads, letter papers and in all its notices and other official publications; and
- have its **name** printed on hundies, promissory notes, bills of exchange and other prescribed **documents**

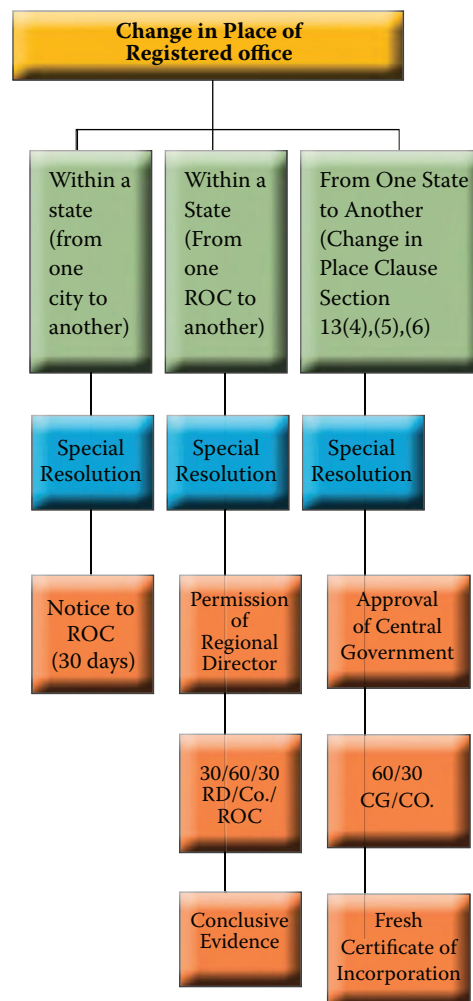
Name change by the company during the last two years

- Co. shall **paint** or **affix** or **print**, along with its name, the **former name** or **names so changed** during the last two years.

In case of OPC

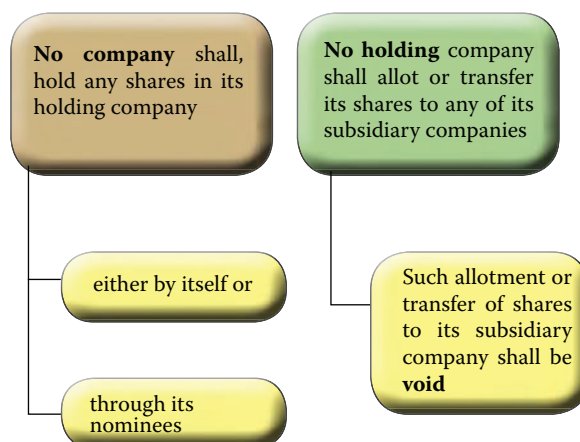
- The words **“One Person Company”** shall be mentioned **in brackets** below the name of such company, wherever its name is printed, affixed or engraved.

2.



VII. SUBSIDIARY COMPANY NOT TO HOLD SHARES IN ITS HOLDING COMPANY [Section 19]

1.



2. Exceptions to point (1)

where the subsidiary company holds such shares as the **legal representative** of a deceased member of the holding company; or

where the subsidiary company holds such shares as a trustee; or

where the subsidiary company is a shareholder even **before it became a subsidiary** company of the holding company:

VIII. AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS [Section 21]

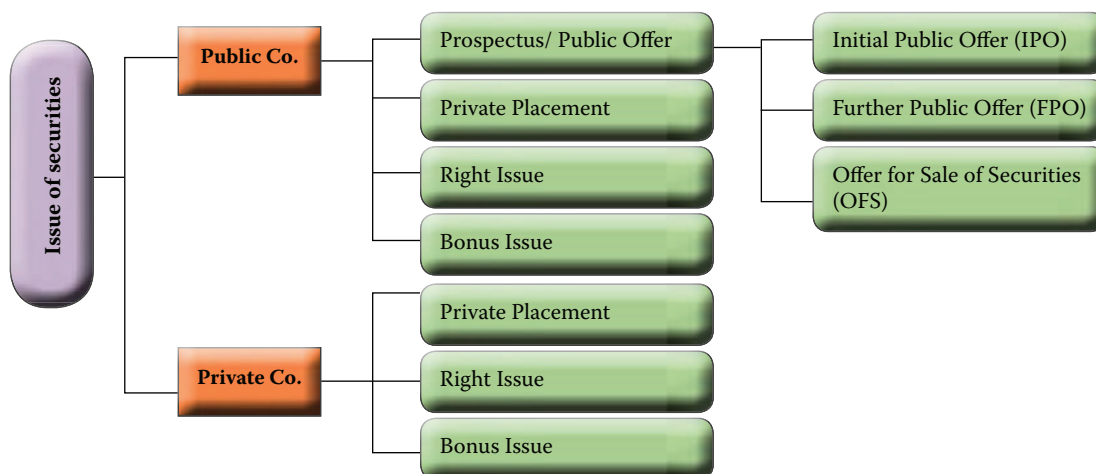
Authentication of documents, proceedings and contracts

As per Sec.21 these may be signed by any "key managerial personnel" or an officer or employee of the company duly authorised by the Board in this behalf.

As per Sec.2(51)-Key managerial personnel, in relation to a company, means—
 (i) the CEO or the MD or the manager;
 (ii) the company secretary;
 (iii) the whole-time director;
 (iv) the CFO;
 (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
 (vi) such other officer as may be prescribed;

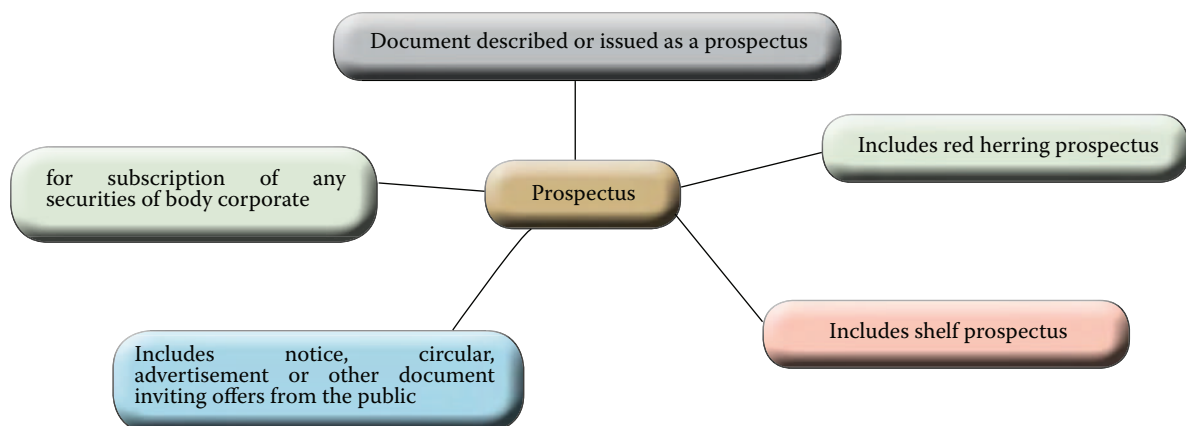
PROSPECTUS AND ALLOTMENT OF SECURITIES AND PRIVATE PLACEMENT

I. ISSUE OF SECURITIES

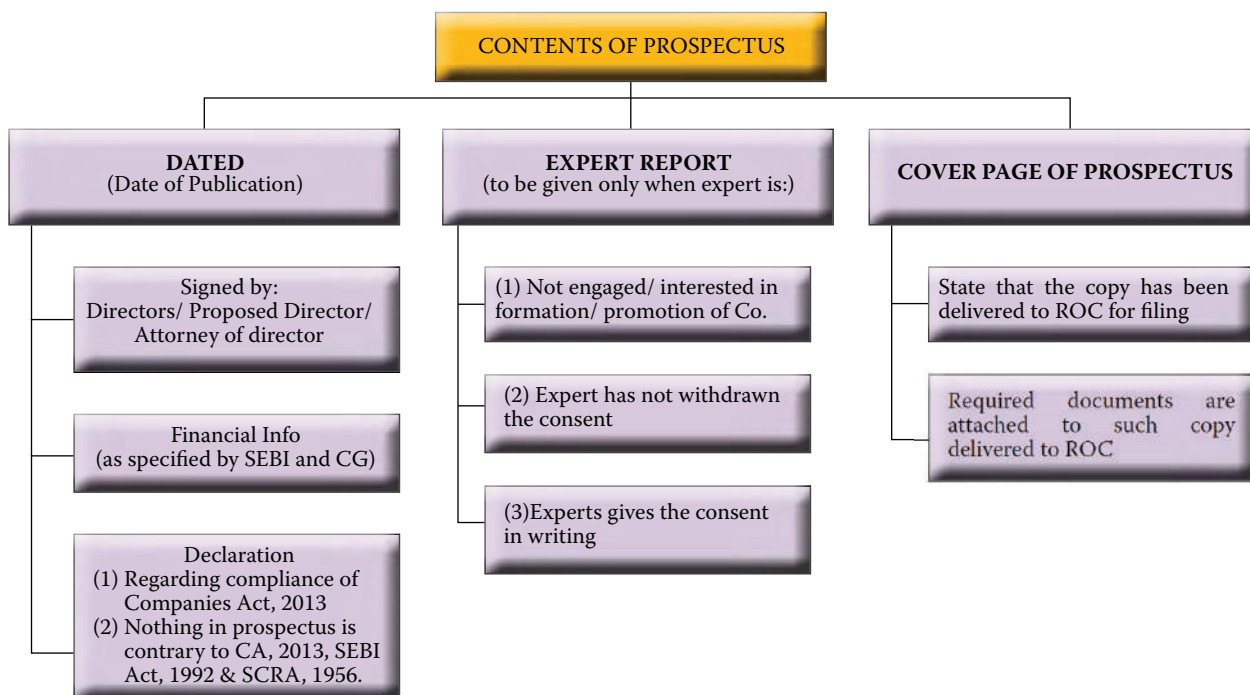


II. PROSPECTUS

(1) WHAT IS PROSPECTUS? [Section 2(70)]



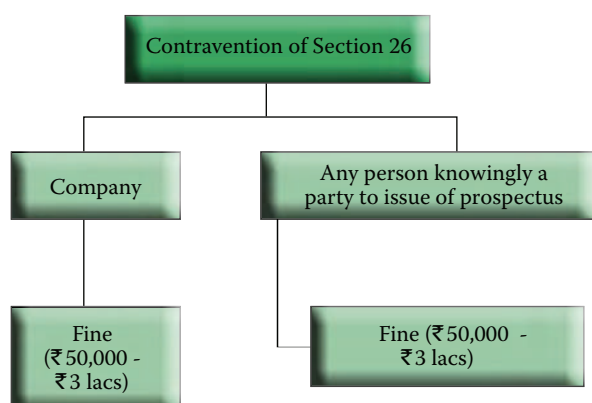
(2) CONTENTS OF PROSPECTUS [Section 26]



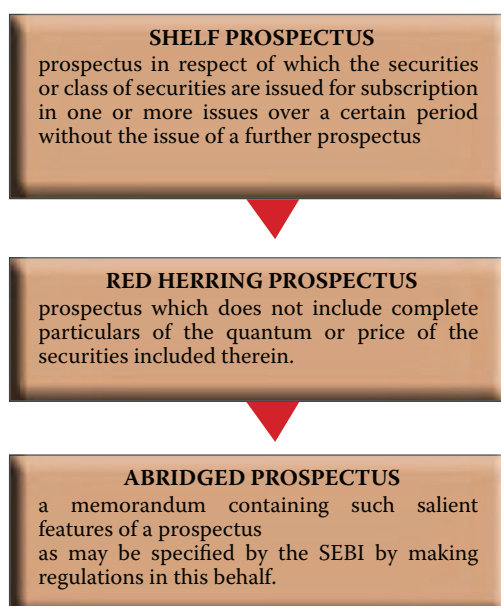
(3) PROCESS FOR VARIATION IN TERMS OF CONTRACT OF PROSPECTUS [Section 27]



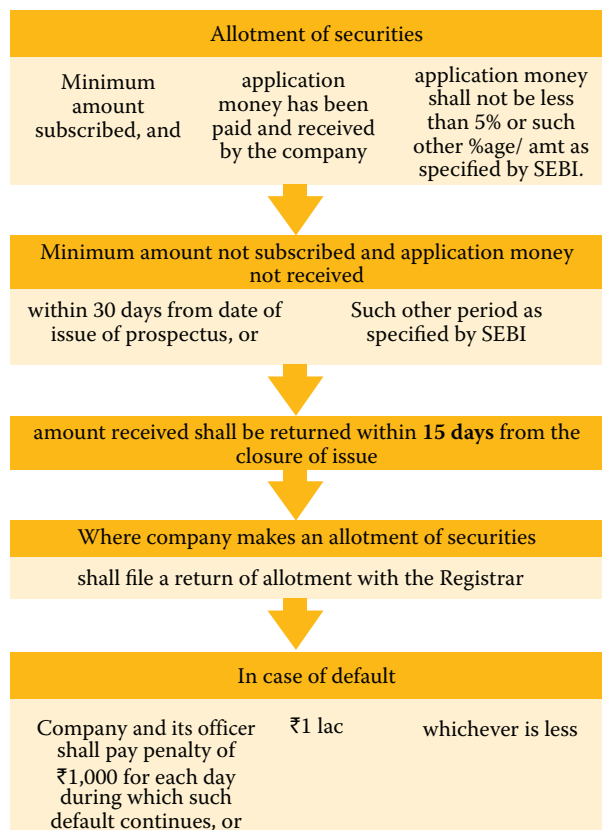
(4) PENALTY FOR CONTRAVENTION OF SECTION 26



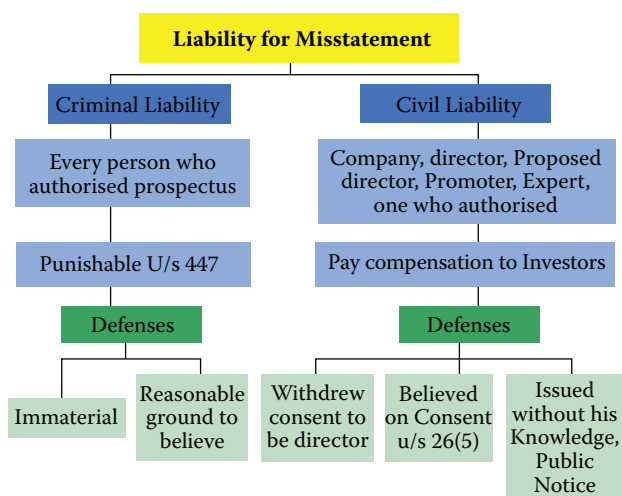
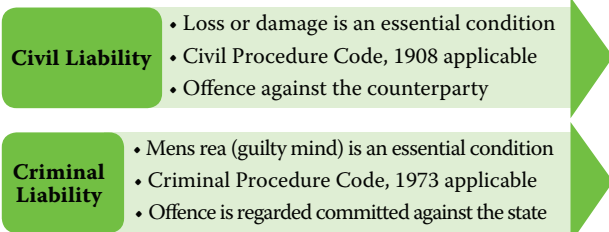
(5) SHELF PROSPECTUS, RED HERRING PROSPECTUS AND ABRIDGED PROSPECTUS



III. ALLOTMENT OF SECURITIES [Section 39]



IV. LIABILITY IN CASE OF MIS- STATEMENTS IN PROSPECTUS

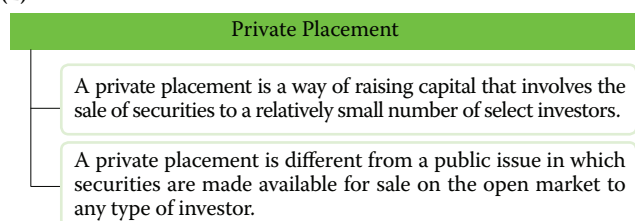


V. PRIVATE PLACEMENT

(1)



(2)



PRIVATE PLACEMENT [Section 42]

- any offer or invitation to subscribe or issue of securities
- to a select group of persons by a company (other than by way of public offer)
- through private placement offer-cum-application

To whom can the private placement be made?

- only to a select group of persons
- identified by the Board ("identified persons")

Maximum No. of persons to whom offer can be made

- not more than 200 in the aggregate in a financial year

Exclusions from the list of 200 members

- qualified institutional buyers, or
- employees of the company under a scheme of employees stock option [Sec 62(1)(b)]

Application for Private Placement

- Identified person may subscribe to the private placement issue shall apply in the private placement
- application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash

Utilisation of Money received in private placement

- Co. shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar

Return of allotment

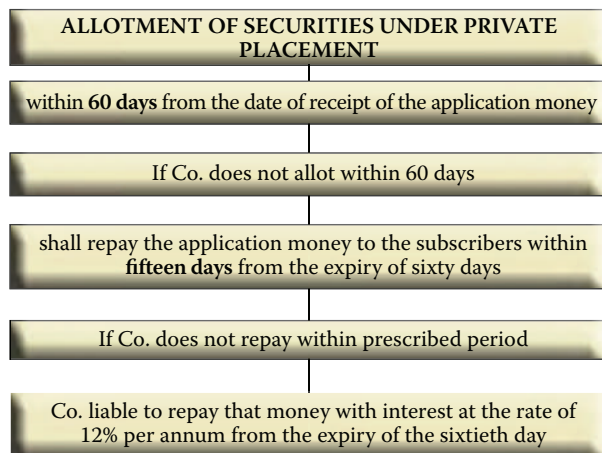
- Co. shall file with the Registrar a return of allotment within 15 days from the date of the allotment

Co. shall issue private placement offer cum application letter only after the relevant special resolution or Board resolution has been filed in the Registry

- Private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under 179(3)(c)

Any private placement issue not made in compliance of the provisions shall be deemed to be a public offer

(3)



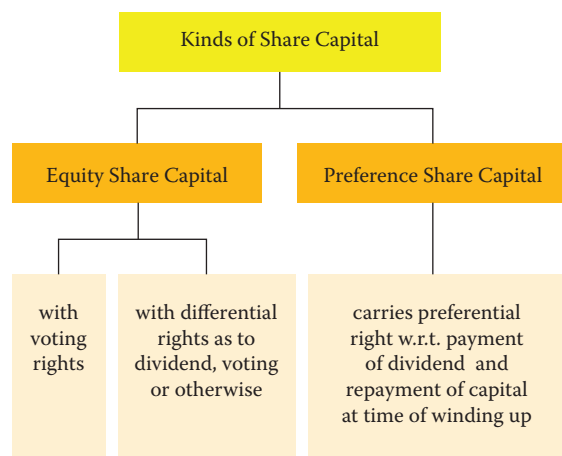
SHARE CAPITAL AND DEBENTURES

I. SHARE – DEFINITION & DESCRIPTION

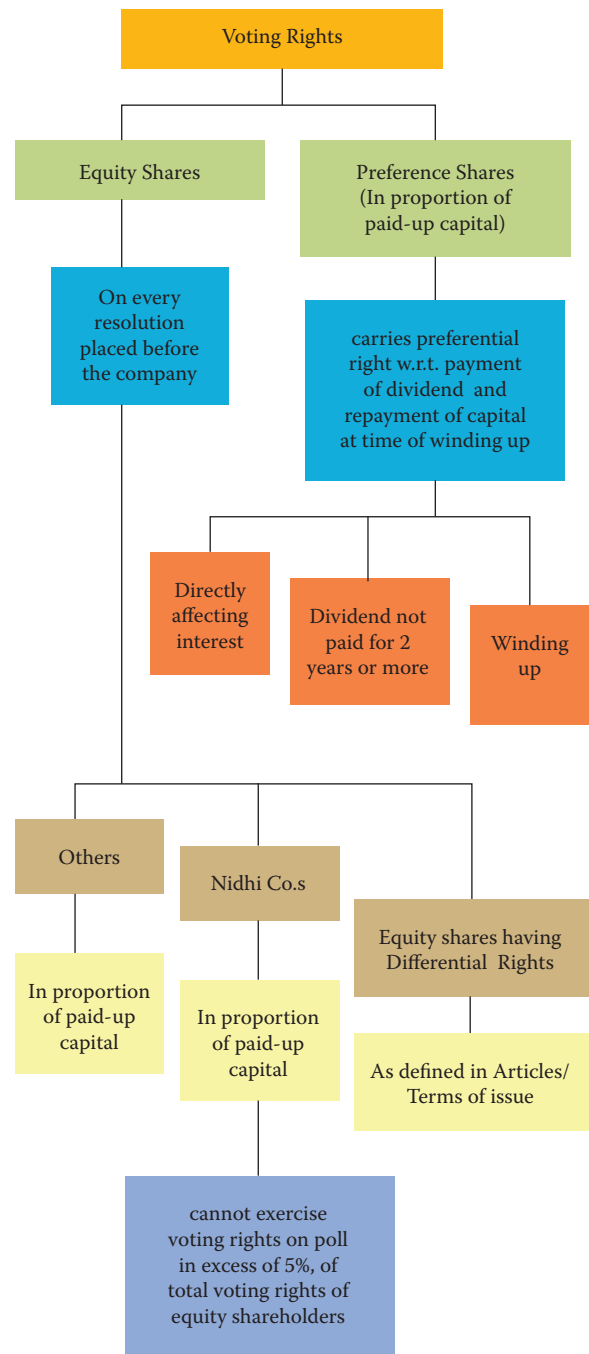
Section 2(84)- Share means a share in the share capital of a company and includes stock.

Capital of a company is termed as share capital, which is divided into units; having a certain face value. Each such unit is termed as share.

II. KINDS OF SHARE CAPITAL [SECTION 43]

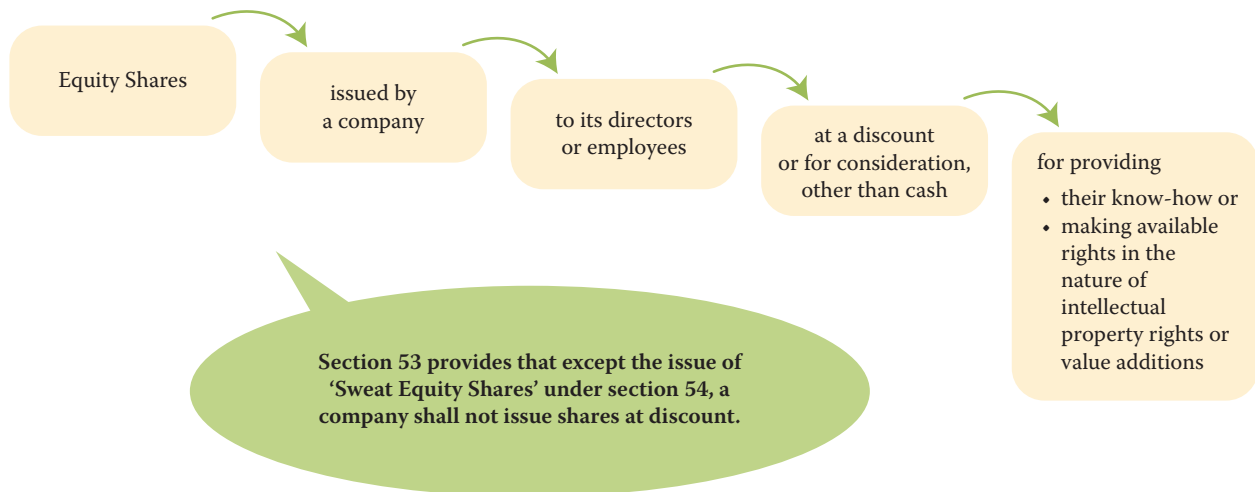


III. VOTING RIGHTS [SECTION 47]



IV. ISSUE OF SWEAT EQUITY SHARES [Section 54]

1. Meaning of 'Sweat Equity Shares' [Section 2(88)]



2. Conditions for issue of Sweat Equity Shares [Section 54(1)]

Company may issue Sweat Equity shares of that class

which are already issued

Issue is authorised by a special resolution passed by the company

- In case of co. whose shares are not listed- SR authorising the issue is valid for making the allotment within a period of not more than twelve months from the date of passing

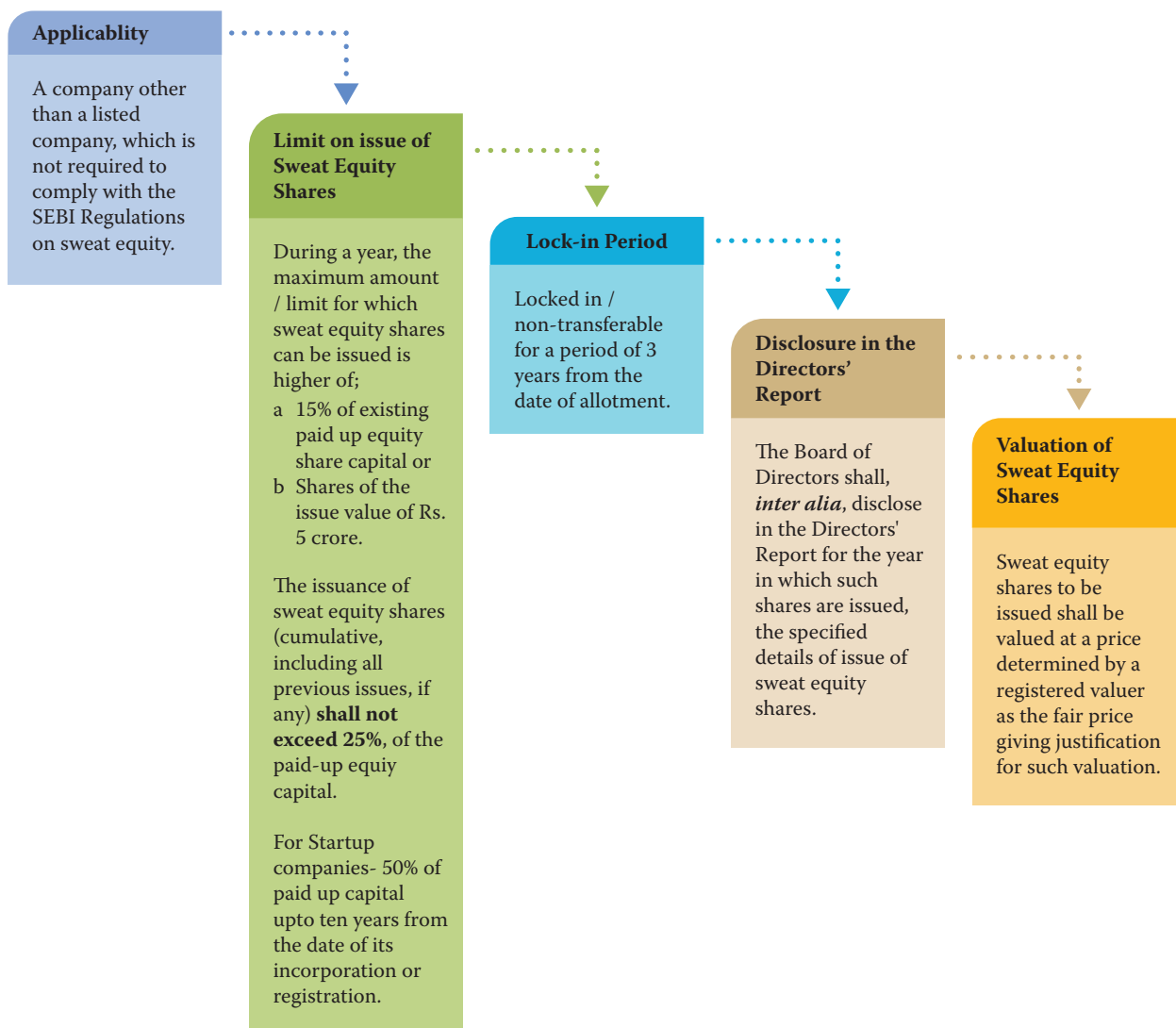
Resolution to specify the details regarding:

- No. of shares,
- current market price,
- consideration, if any, and
- class or classes of directors or employees to whom such equity shares are to be issued

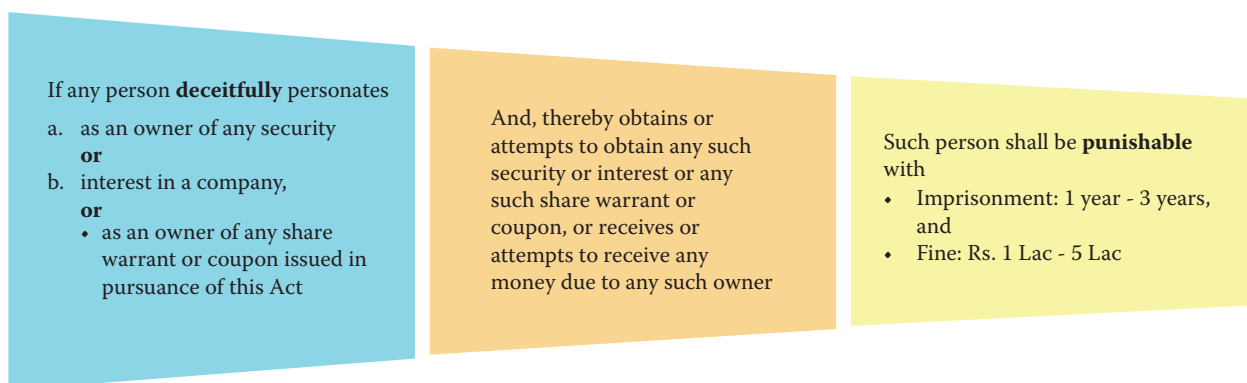
Issue of sweat equity shares must in accordance with regulations/rules

- When shares are Listed on Recognised Stock Exchange- by SEBI
- Other than above- Rule 8

3. Rule-8



V. PUNISHMENT FOR PERSONATION OF SHAREHOLDER [SECTION 57]



VI. REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL [SECTION 58]

It contains the procedure which needs to be followed by a company while refusing to register the transfer of securities. It also contains process of filing appeal against such refusal.

Refusal to transfer of shares/transmission of the right to any securities or interest of a member

Private Company

- Send notice of refusal with reasons
- Within 30 days from the date the instrument of transfer/the intimation of such transmission, delivered to the company
- **Appeal to Tribunal:**
 - Notice served - in 30 days
 - No notice - in 60 days

Public Company

- Can't refuse without sufficient cause
- may refuse to register the transfer within 30 days from the date the instrument of transfer / the intimation of transmission, delivered to the company
- **Appeal to Tribunal:**
 - in 60 days-of such refusal
 - in 90 days-of the delivery of the instrument of transfer /intimation of transmission

Tribunal will either dismiss appeal or order the following:

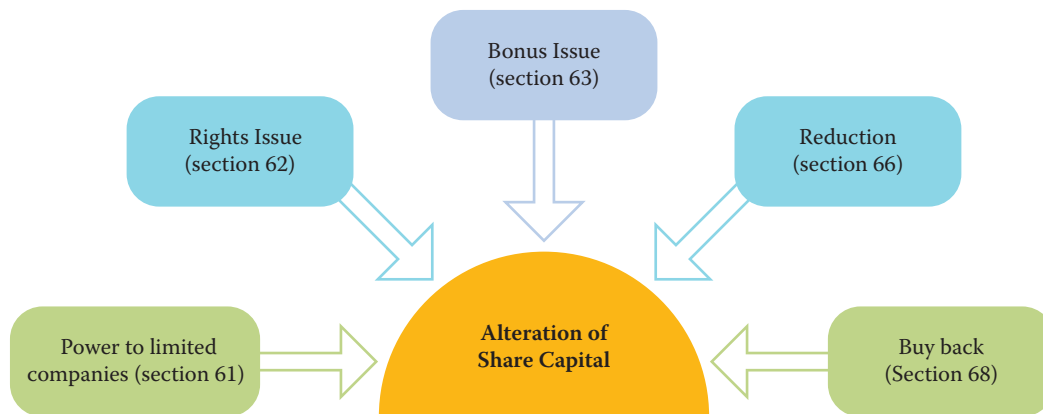
- Transfer/transmission to be registered by company within 10 days of the receipt of order
- Rectification of Register and also direct the company to pay damages, if any

In case of contravention of order:

- Fine and Imprisonment

Section 59 entrust right to appeal with aggrieved person, apart from vesting power in tribunal to order for rectification of register of members.

VII. ALTERATION OF SHARE CAPITAL [Sections 61-70]



1. Power of Limited Company to alter its share capital [Section 61]

A limited company with a share capital can alter the capital clause of its memorandum of association

Ltd. company with a share capital can alter the capital clause, provided authority to alter is given by the articles, in the following ways-

by **increasing**
its authorised
capital

by **consolidating**
and **dividing** the
whole / any part
of its share
capital into
shares of larger
amount

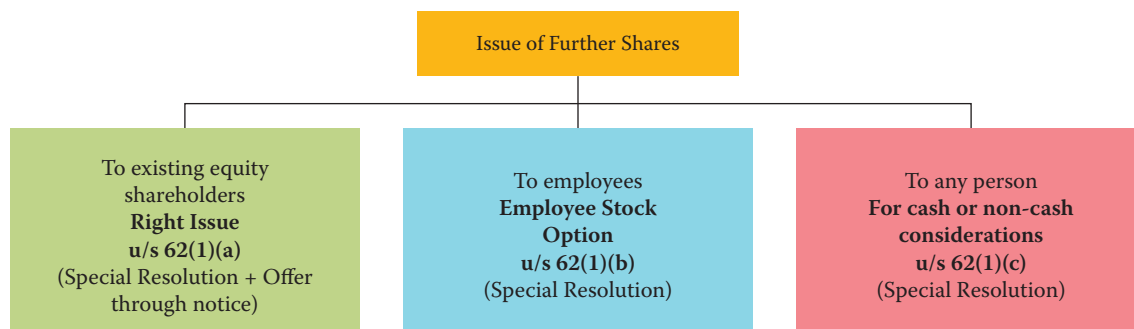
by **converting**
all & any of its
fully paid up
shares into
stock /vice-ver-
sa into any
denomination

by **sub-divid-**
ing the whole
/any part of its
share capital
into shares of
smaller amount

by **canceled**
those shares
which have not
been taken up &
reduce its
capital
accordingly

2. Further Issue of Share Capital – Rights Issue; Preferential Allotment [Section 62]

A rights issue involves pre-emptive subscription rights to buy additional securities in a company offered to the company's existing security holders.



Notice shall be dispatched to all the existing shareholders **at least 3 days before the opening of the issue.**

In case of a **Private Company**, shorter notice (less than 3 days) shall be served on **90% consent** of the members in writing / in electronic mode.

3. Issue Of Bonus Shares [Section 63]



Bonus shares **may** be issued from
Free Reserves
Securities Premium Reserve
Capital Redemption Reserve

Bonus shares **shall not** be issued from
Revaluation Reserve



Company may capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, in compliance with following conditions:

Authorised by its **articles**,

On the **recommendation of the Board**, been **authorised** in the GM of the company;

Not defaulted in payment of interest / principal in respect of fixed **deposits** / **debt** securities issued by it;

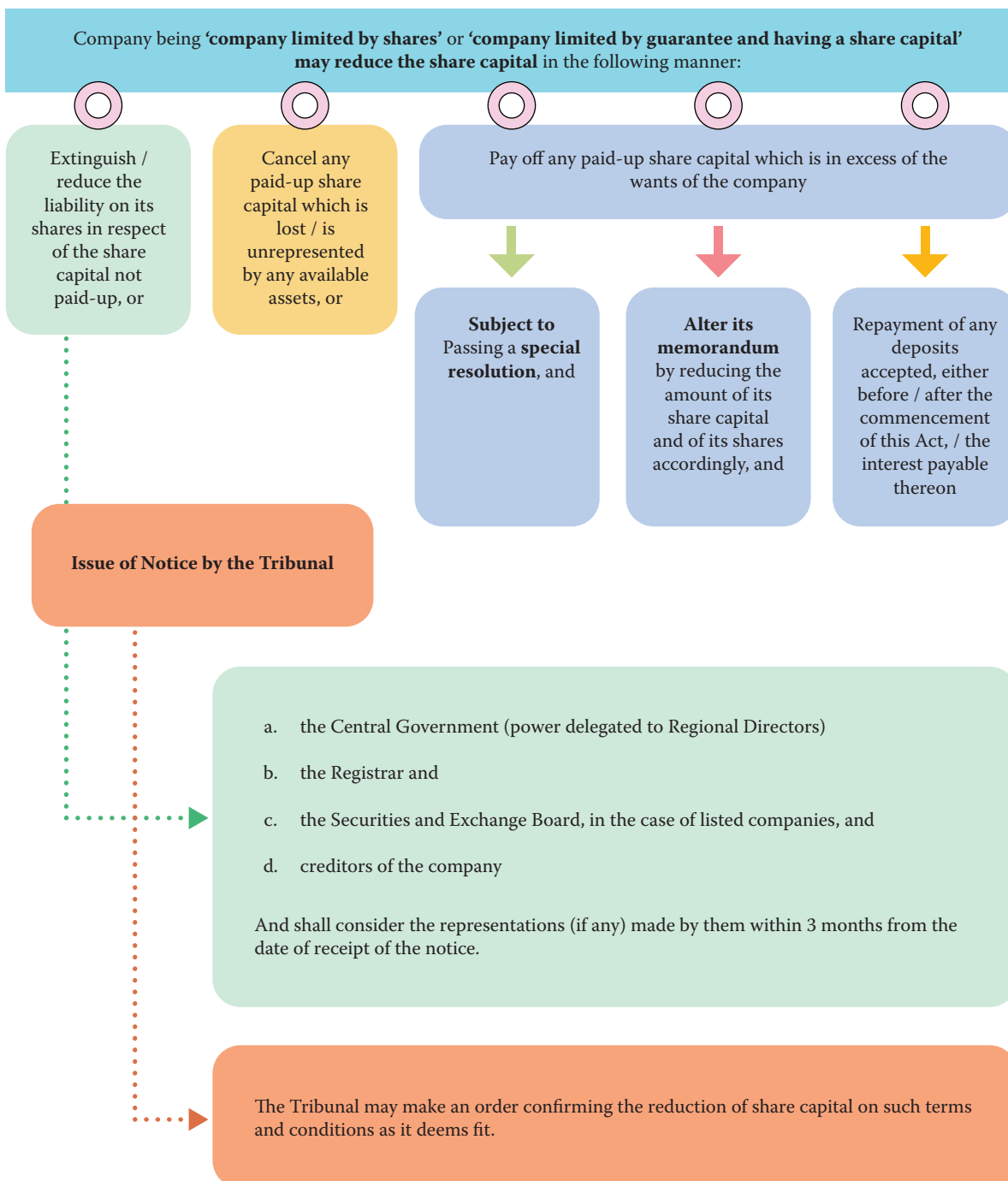
Not defaulted in payment of **statutory dues** of the employees

the outstanding **partly paid-up shares**, if any, on the date of allotment, are **made fully paid-up**;

Complies with Rule 14 of the *Companies (Share capital and debenture) Rules, 2014*, that a company which has once announced the decision of its Board recommending a bonus issue, **shall not subsequently withdraw** the same

4. Reduction of Share Capital [Section 66]

Maintenance of capital is one of the main principles of company law, because any reduction of capital diminishes the fund, out of which creditor and other debt holders are to be paid, therefore adversely impact them. But sometimes it may become necessary for the company to bring about a reduction in its capital.



5. Restriction on Purchase by Company or giving of Loans by it for Purchase of its Shares [Section 67]

A company cannot buy its own shares because reduction of capital, results in diminishing the fund out of which creditor are to be paid; hence adversely affect the creditors. However, this restriction is not absolute.

1

Reduction according to the applicable Provisions

- 'Company limited by shares/company by guarantee that having a share capital' shall not buy its own shares unless the consequent reduction of share capital is effected under the provisions of this Act.

2

Restriction on giving Loan, Guarantee or provision of Security, etc.

- **Public company** shall not give any financial assistance;
 - Whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise
 - For the purpose of, or in connection with, a purchase or subscription made or to be made, by any person of or for any shares in the company or in its holding company.

3

Exceptions

- Company may provide the financial assistance, in following case;
 - Lending of money by a banking company in the ordinary course of its business;
 - The provision of money for the purchase of fully paid shares in the company / its holding company by trustees for and on behalf of the company's employees in accordance with Employee share schemes approved by company through special resolution as per Rule 16 of the *Companies (Share Capital and Debentures) Rules, 2014*,
 - Lending money by a company to its employees, not exceeding six months salary of the employees to enable them to buy or subscribe fully paid shares in the company / its holding company and to hold them by way of beneficial ownership

Non-Applicability of section 67

- 1 Private companies** (if not defaulted in filing its financial statements under Section 137 and Annual Return under Section 92) in whose case all of following 3 conditions fulfilled;
 - a. in whose share capital no other body corporate has invested any money;
 - b. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice its paid-up share capital or fifty crore rupees, whichever is lower; and
 - c. such a company is not in default in repayment of such borrowings subsisting at the time of making transactions under this section.

- 2 Nidhi Companies**, when shares are purchased by the company from a member on his ceasing to be a depositor / borrower, shall not be considered as reduction of capital under Section 66.

6. Power of Company to Purchase its Own Securities [Section 68]

Buy back is the re-acquisition by a company of its own securities. It is a way of returning money to its investors. Section 68 contains provisions which describe the power a company to purchase its own securities subject to the applicable conditions.

Sources of Funds - purchase should be made out of its:

- Free reserves; or
- Securities premium account; or
- Proceeds of the issue of any shares / other specified securities.

Conditions for buy back

- authorised by its articles;
- SR authorising buy-back passed in GM of the company;
- The amount involved should not be more than 25% of the aggregate of paid-up capital + free reserves of the company;
- In case of buyback of equity shares, the maximum limit is 25% of its total paid-up equity capital in any FY
- After the buyback, the ratio between the debts (secured and unsecured) owed by the company should not be more than twice the paid-up capital and free reserves of the company (CG may prescribe a higher ratio).
- Shares / other specified securities for buy-back shall be fully paid-up
- The buy-back should be as per Rule 17 of the *Companies (Share Capital and Debentures), Rules, 2014*;
- In case of listed shares / other specified securities should be as per regulations made by the SEBI in this behalf

Procedure before Buy-Back -

- The notice of the meeting at which SR is proposed to be passed shall be accompanied by an explanatory statement stating the particulars related to Buy-Back

Securities to be purchased under 'Buy-Back' - The buy-back may be from;

- the existing shareholders / security holders on a proportionate basis; or
- the open market; or
- the securities issued to employees of the company pursuant to a scheme of stock option / sweat equity.

Time limit for Completion of Buy-Back

- shall be completed within 12 months from the date of passing the SR/ board resolution authorising the buy-back

Cooling Period on buy back -

- 6 months w.r.t. further issue of same kind of shares / other specified securities

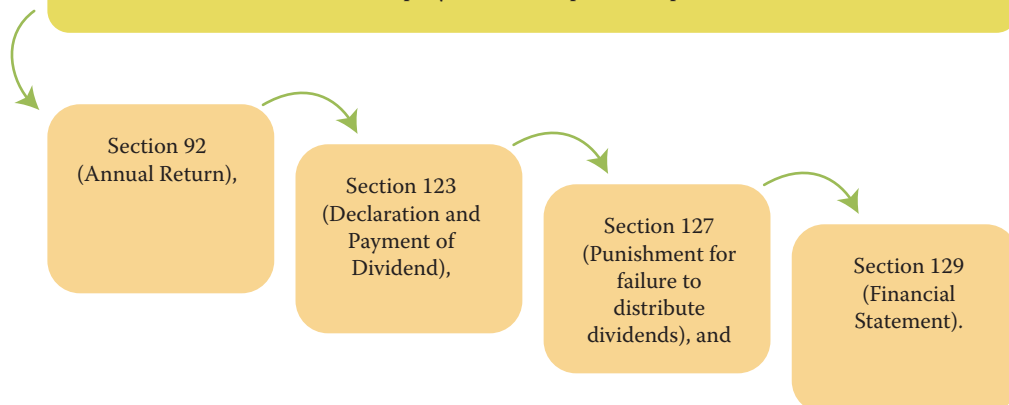
VIII. PROHIBITION FOR BUY-BACK IN CERTAIN CIRCUMSTANCES [Section 70]

No company shall directly or indirectly purchase its own shares or other specified securities under the specified circumstances.

Prohibition for
purchase of its
own shares-

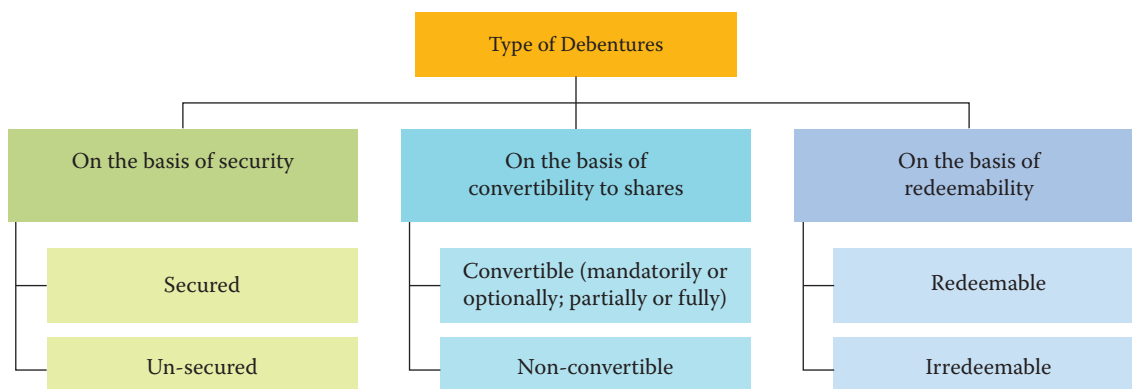
- Through any **subsidiary company** including its own; or
- Through any **investment company** / group of investment companies; or
- If a default, is made by the company, in-
 - repayment of deposits / interest thereon, or
 - redemption of debentures, or
 - redemption of preference shares or
 - payment of dividend to any shareholder or
 - repayment of any term loan / interest thereon to FI's or banking company

Also prohibition on the company to purchase its own shares or other specified securities in case such company has not complied with provisions of



IX. DEBENTURES [Section 71]

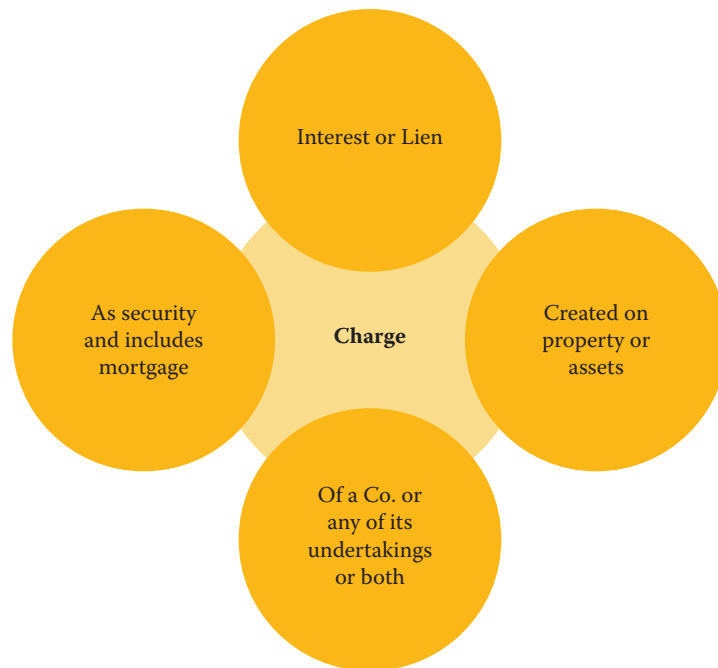
Debenture Includes	Debenture Excludes
Debenture stock* Bonds* Any other instrument of a company evidencing a debt* *Whether constituting a charge on the assets of the company or not	Instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934 and Such other instrument, as may be prescribed by the Central Government

**MANNER OF ISSUING DEBENTURES**

1. Authorised by SR at general meeting, then company may issue debentures with an option to convert such debentures into shares, at the time of redemption.
2. Secured debentures may be issued by a company as per Rule 18 (1) of the *Companies (Share Capital and Debentures) Rules, 2014*.
3. Maximum Period of Secured Debenture
 - shall not be more than 10 years from the date of issue, except in prescribed cases, can be upto 30 years
4. Appointment of Debenture Trustee
5. Appointed by company before the issue of prospectus / letter of offer for subscription of its debentures.
6. Security can be by way of -
 - Creation of Charge/mortgage in favour of debenture trustee on-
 - Specified movable properties of the company/its subsidiaries/its holding company/its associates companies, or
 - Specified immovable properties wherever situate, /any interest therein.
7. Debenture Trust Deed
 - shall be executed in Form SH-12 to protect the interest of the debenture holders,
 - within 3 months of closure of the issue / offer

REGISTRATION OF CHARGES

I. DEFINITION OF CHARGE [Section 2(16)]

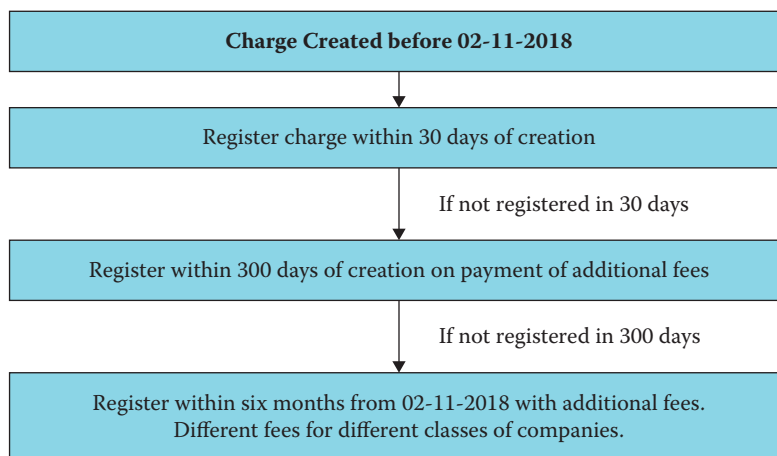


II. NOTICE OF CHARGE

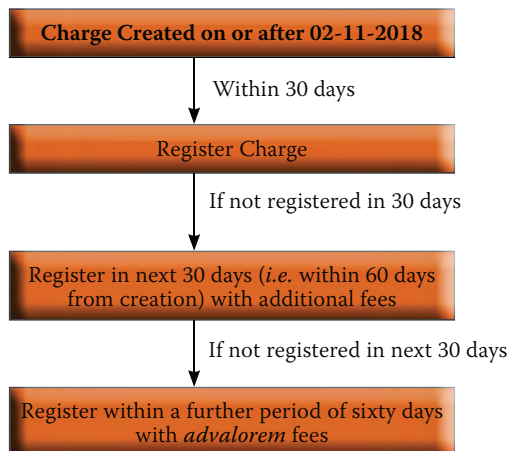


III. PROCESS OF REGISTRATION OF CHARGE

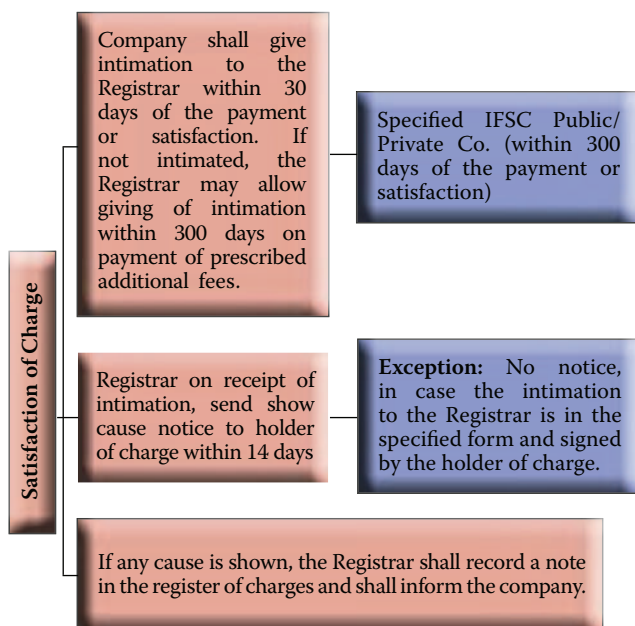
(1)



(2)

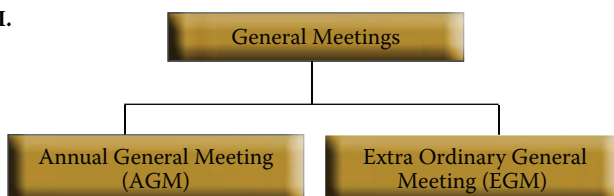


IV. SATISFACTION OF CHARGE

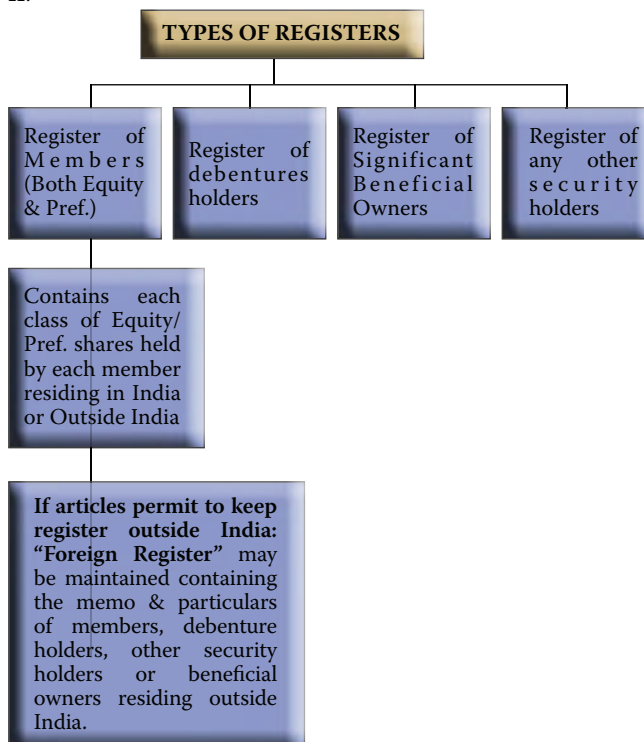


MANAGEMENT AND ADMINISTRATION

I.

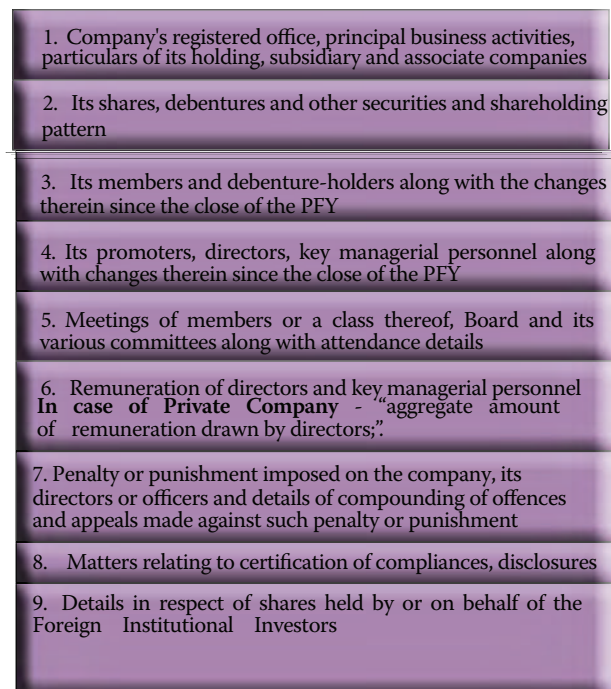


II.

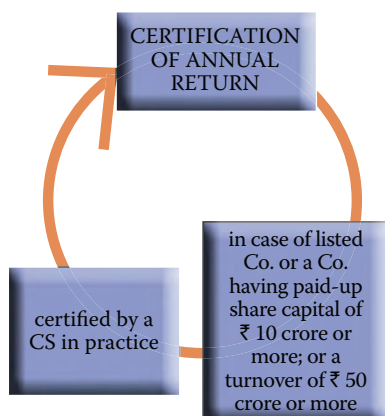
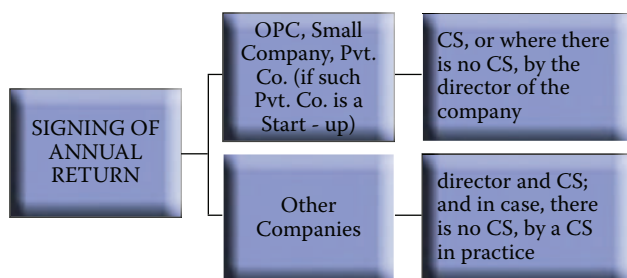


III. ANNUAL RETURN [Section 92]

(1) PARTICULARS TO BE CONTAINED IN THE ANNUAL RETURN AS THEY STOOD ON CLOSE OF FINANCIAL YEAR



(2) SIGNING OF ANNUAL RETURN



(3) FILING OF ANNUAL RETURN



When no AGM is held in any year

- within 60 days from the date on which AGM should have been held,
- along with the reasons for not holding the AGM

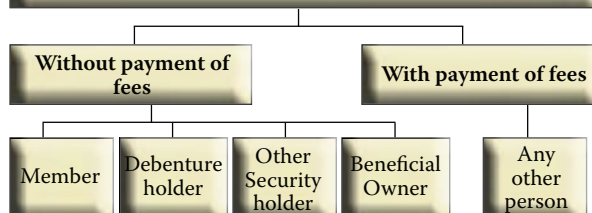
IV. PLACE OF KEEPING OF REGISTERS AND ANNUAL RETURNS [Section 94]

Question	Answer
What is the Place of keeping of Registers and Annual Returns?	Registered Office (RO)
Can the Registers and Annual Returns be kept at any other place in India?	Yes



V. INSPECTION

Persons Who Can Inspect Register & Their Indices & Annual Return (During Business Hours)

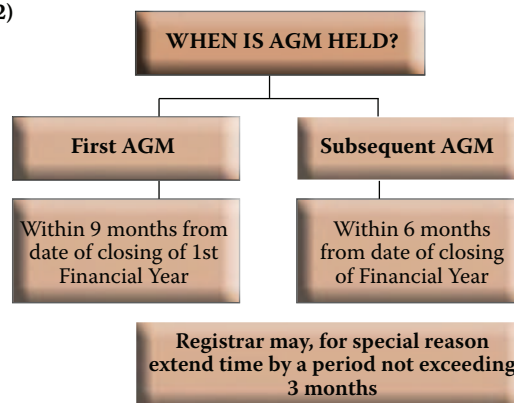


VI. MEETINGS OF MEMBERS

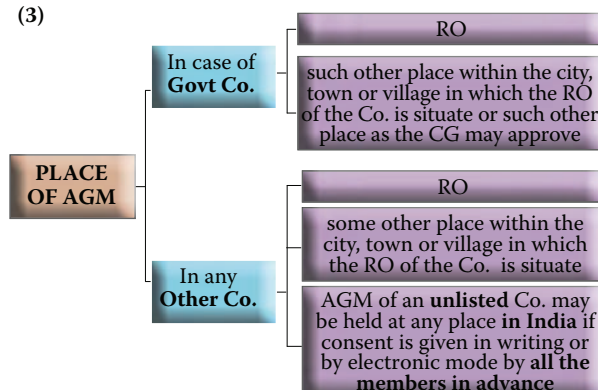
(1) AGM [Section 96]

Question	Answer
Maximum time duration between two AGMs	15 months + 3 months (for special reasons)
Date of AGM	Any day except National Holiday

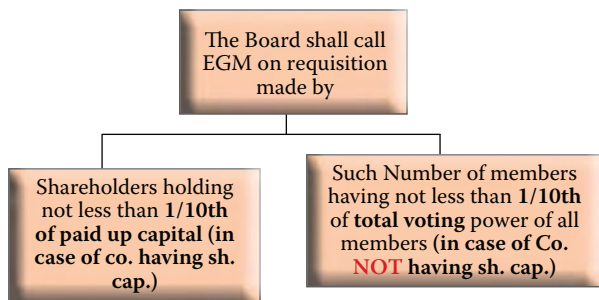
(2)



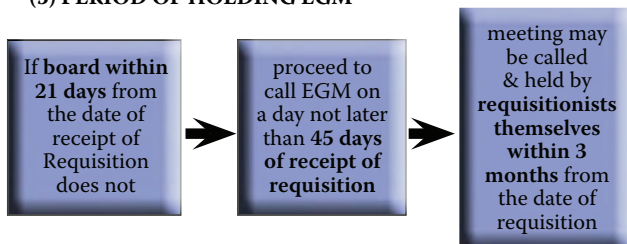
(3)



(4) CALLING OF EGM [Section 100]



(5) PERIOD OF HOLDING EGM

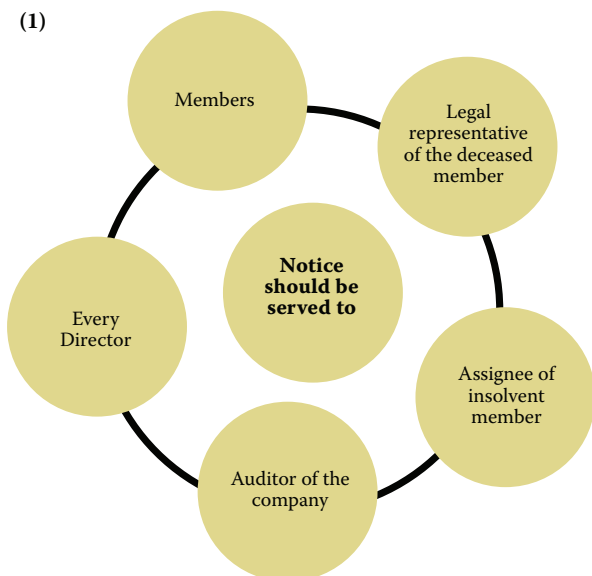


(6) PLACE OF HOLDING EGM

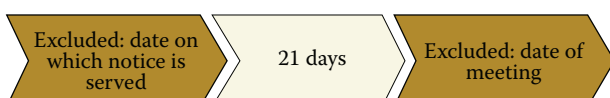
EGM of the company, other than of the wholly owned subsidiary of a Co. incorporated outside India, shall be held at a place within India

VII. NOTICE OF MEETING [Section 101]

(1)

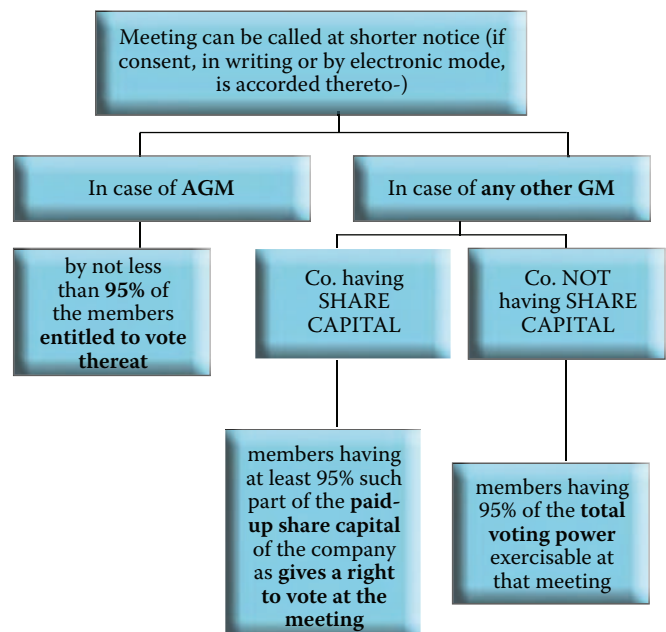


(2) LENGTH OF SERVING OF NOTICE- 21 clear days'



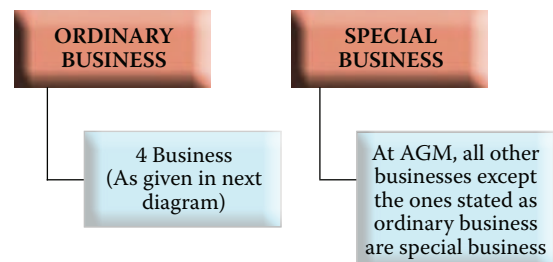
As per Rule 35 of Companies (Incorporation) Rules, 2014, in case of notice of a meeting (when delivery is by post), such service shall be deemed to have been effected at the expiration of 48 hours after the letter containing the same is posted.

(3) MEETINGS HELD AT SHORTER NOTICE- Less than 21 clear days'

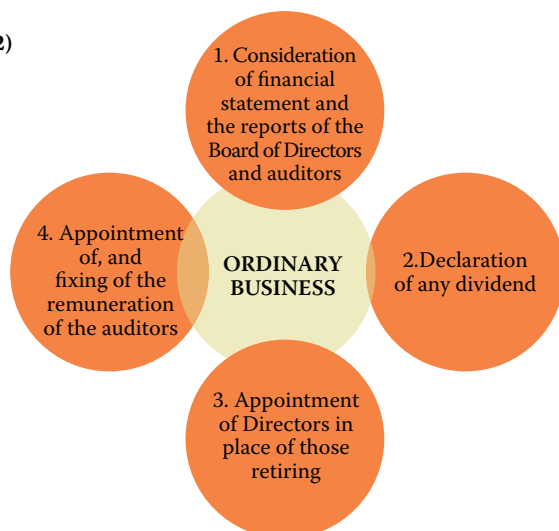


VIII. TYPES OF BUSINESS TRANSACTED IN AGM [Section 102]

(1)



(2)



IX. QUORUM FOR MEETINGS [Section 103]

PUBLIC COMPANY

NO. OF MEMBERS	QUORUM
Number of members ≤ 1000	5 members personally present
$1000 < \text{Number of members} \leq 5000$	15 members personally present
Number of members > 5000	30 members personally present

PRIVATE COMPANY

QUORUM	
	2 members personally present

X. PROXIES [Section 105]

PROXIES: Any member of a Co. entitled to attend and vote at a meeting of the Co. shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

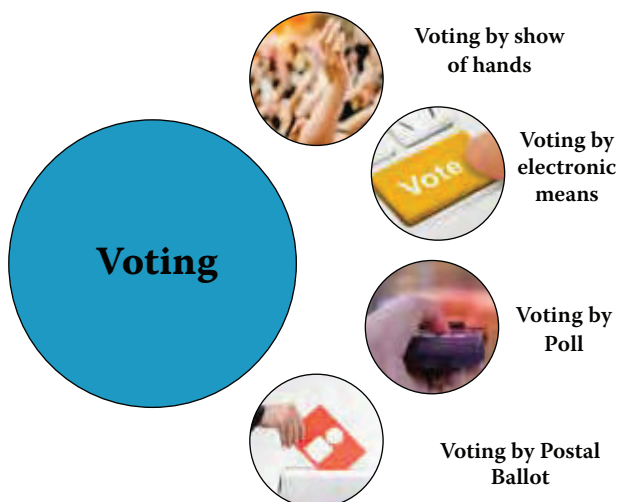
a proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.

A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and holding in aggregate not more than 10 per cent of the total share capital of the company carrying voting rights

a proxy received 48 hours before the meeting will be valid even if the articles provide for a longer period.

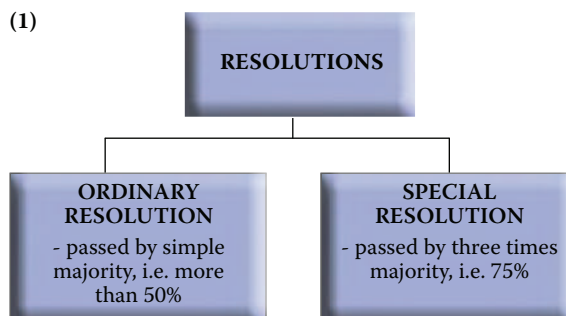
The instrument appointing a proxy shall be in writing

XI. VOTING

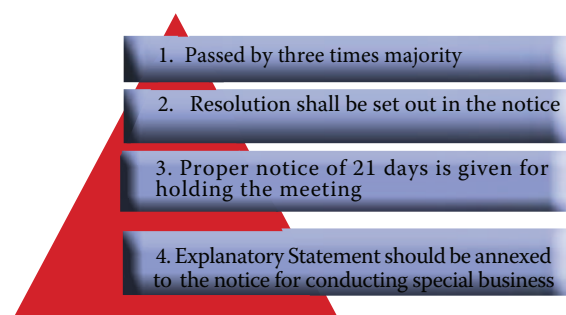


XII. TYPES OF RESOLUTION [Section 114]

(1)



(2) CHARACTERISTICS OF SPECIAL RESOLUTION



XIII. MINUTES [Section 118]

Minutes of the proceedings of meeting shall be kept within 30 days of the conclusion of every such meeting concerned or passing of resolution by postal ballot in books.

The minute book shall be consecutively numbered.

The minutes of each meeting shall contain a fair and correct summary of the proceedings that took place at the concerned meeting.

All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.

In the case of a Board Meeting or a meeting of a committee of the Board, the minutes shall also contain –

- The names of the directors present at the meeting; and in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.

Any of the following matter shall not be included in the minutes of the meeting, which in the opinion of the Chairman of the meeting –

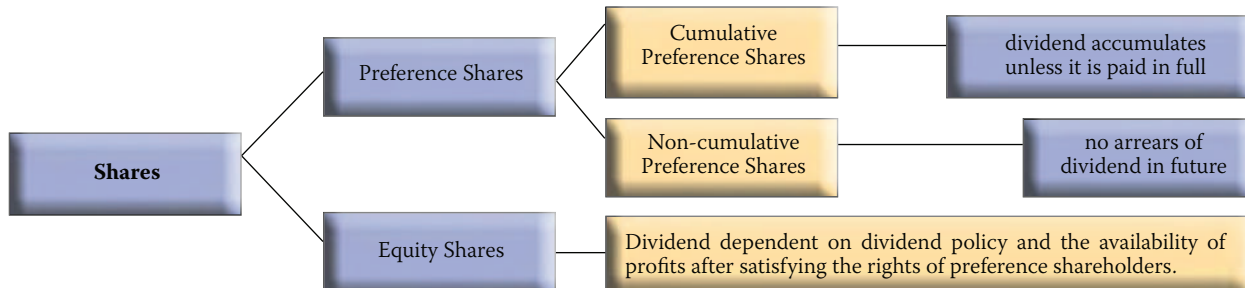
- Is or could reasonably be regarded as defamatory of any person; or
- Is irrelevant or immaterial to the proceedings; or
- Is detrimental to the interests of the company

The matter to be included or excluded in the minutes of the meetings shall be at the absolute discretion of the Chairman of the meeting.

The minutes kept in accordance with the provisions shall serve as the evidence of the proceedings therein.

DIVIDEND

I. DIVIDEND PAYABLE ON DIFFERENT TYPES OF SHARES

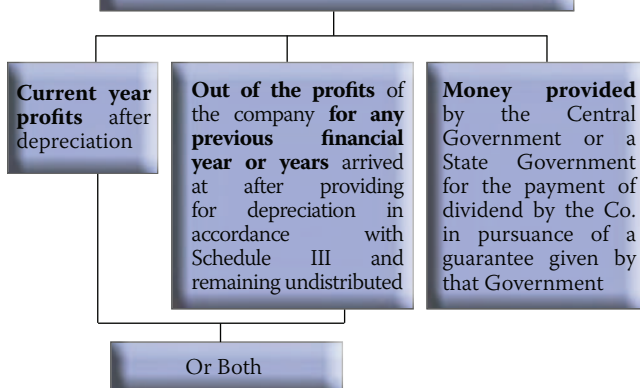


Section 2(35) of the Companies Act, 2013, states that "dividend" includes any interim dividend

II. DECLARATION OF DIVIDEND [Section 123]

1.

DIVIDEND CAN BE DECLARED OUT OF



2. **TRANSFER TO RESERVE**

Before declaration of dividend, transfer such % of its profit for that year, as it may consider appropriate (i.e. left at the discretion of the Co.)

3. **DEPOSITING AMOUNT OF DIVIDEND**

Amount of dividend including interim dividend shall be deposited **in a scheduled bank in a separate bank account within 5 days** from the date of declaration of such dividend

Exception: Government Co. in which entire paid up capital is held by CG/ SG/ or combination of CG & SG

III. RULES TO BE FOLLOWED WHILE DECLARING DIVIDEND OUT OF RESERVES

1.

$$\text{Rate of Dividend} \leq (\text{RD1} + \text{RD2} + \text{RD3}) / 3$$

Where, RD1, RD2, RD3 are rates at which dividend was declared by it in the 3 years immediately preceding that year.

However, **this rule will not apply** if a company has not declared any dividend in each of the 3 preceding financial years.

2.

Total amount that can be drawn from accumulated profits

≤

1/10 of (Paid up share capital + Free reserves) [as per latest audited Financial statement]

3. Drawn amount be first utilised to set off losses incurred in FY in which dividend is declared

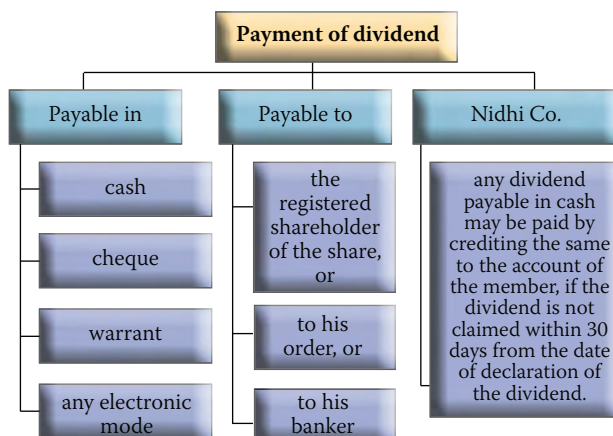
4.

Balance of Reserve (after drawal of Amt)

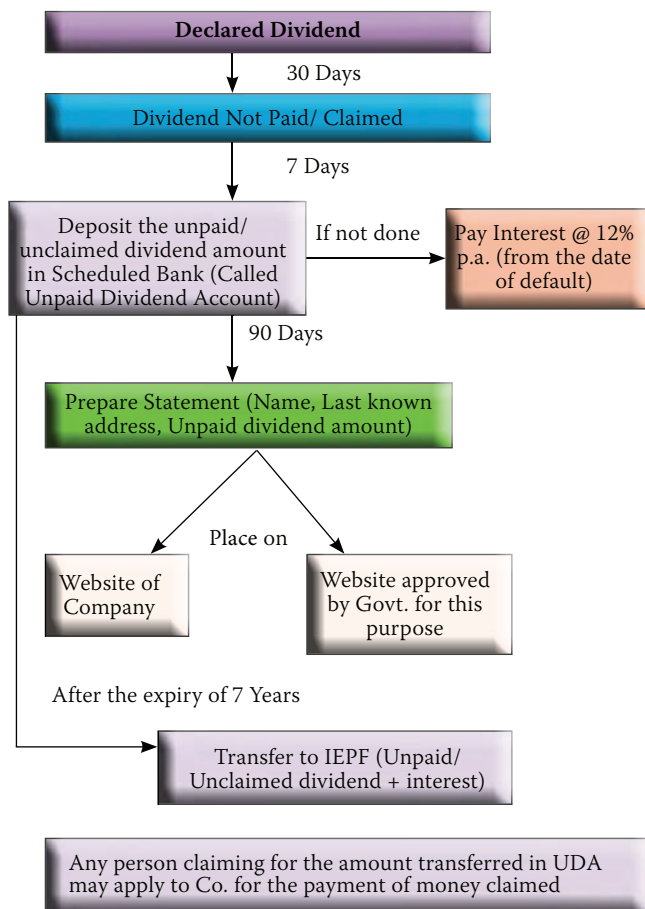
≥

15% of Paid up capital [as per latest audited Financial statement]

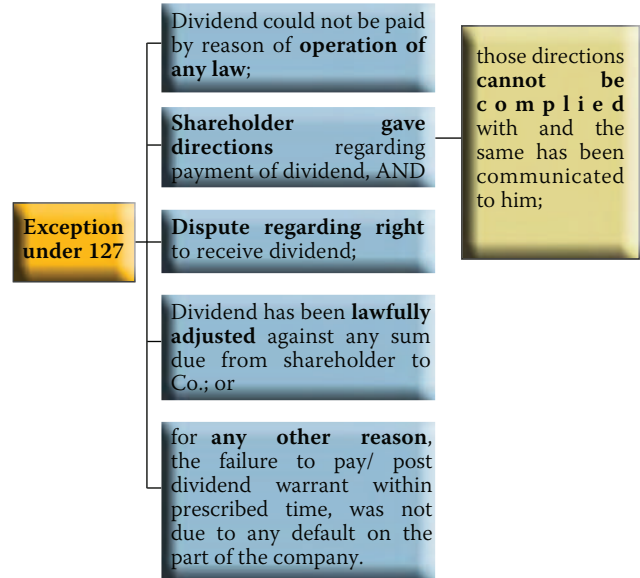
IV. PAYMENT OF DIVIDEND



V. UNPAID DIVIDEND ACCOUNT (UDA)[Section 124]

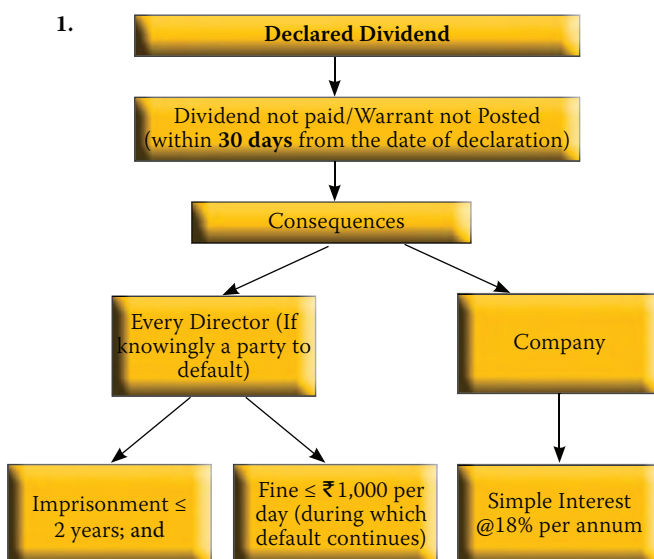


2. EXCEPTIONS UNDER WHICH NO OFFENCE SHALL BE DEEMED TO HAVE BEEN COMMITTED



VI. PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS [Section 127]

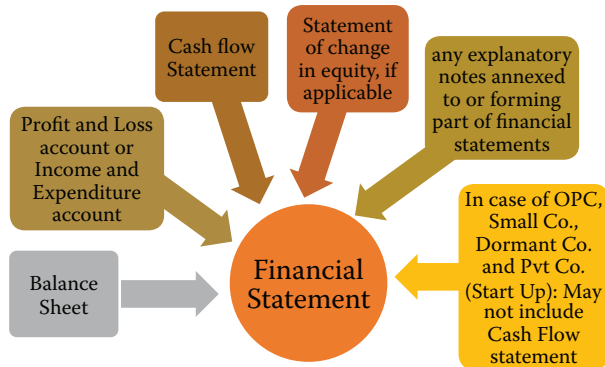
1.



ACCOUNTS OF COMPANIES

I. FINANCIAL STATEMENT (FS) [Section 128 & 129]

(1) Financial statement is defined under section 2 (40), to include



(2) Financial statement shall

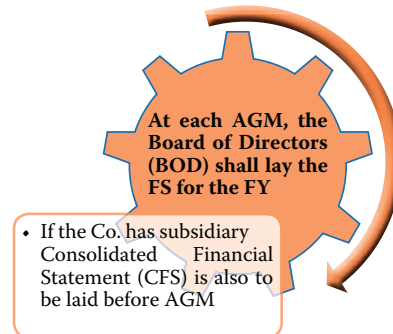
Give True & Fair view of state of affairs of the Co.

Comply with AS

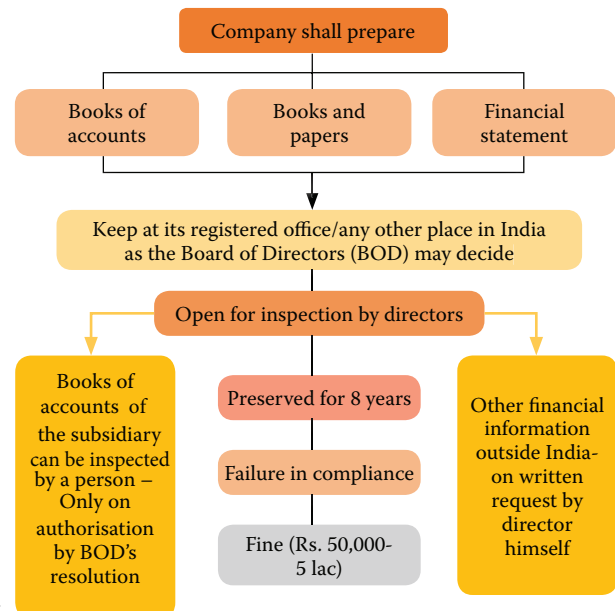
Be in form as provided for different classes of Co.s in Schedule III

If FS do not comply with AS- reasons for such deviation along with financial effects need to be disclosed.

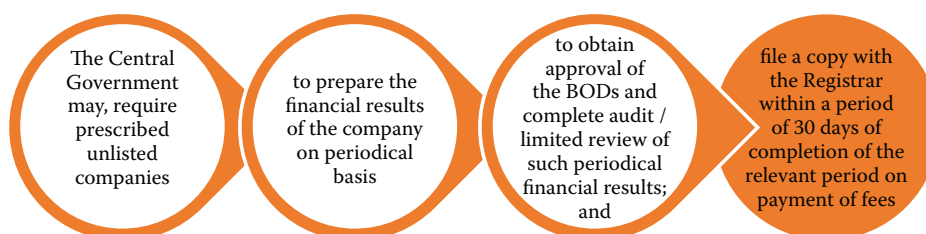
(3) Laying of Financial statement



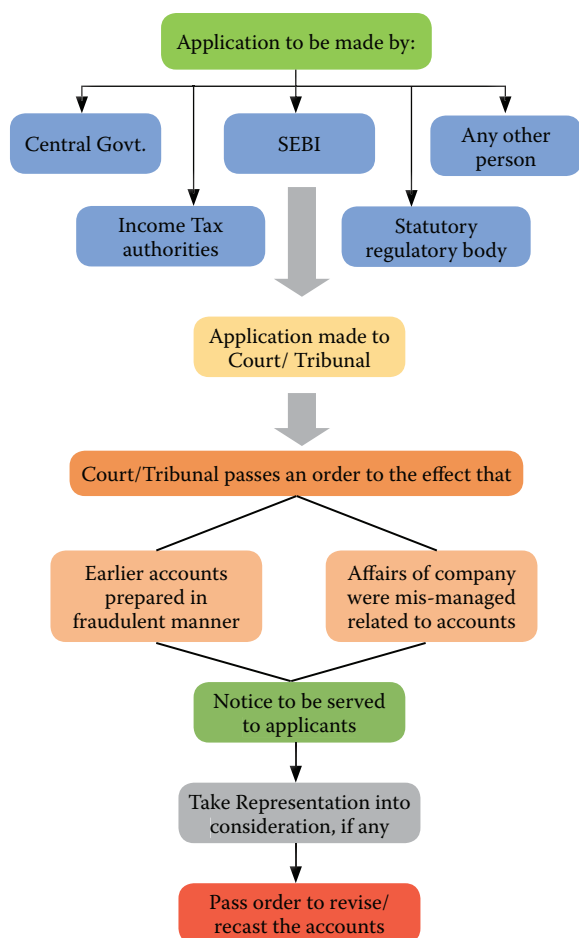
(4) Maintenance of Books of Accounts



II. PERIODICAL FINANCIAL RESULTS [Section 129A]

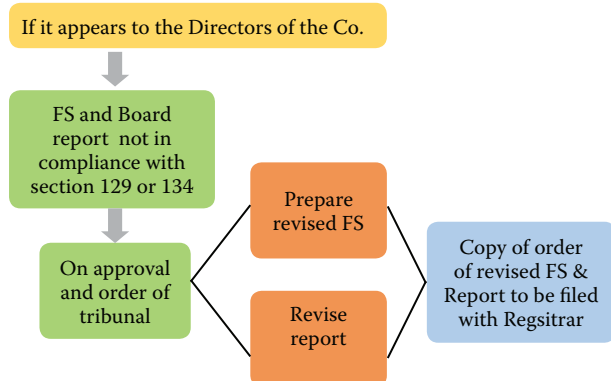


III. RE-OPENING OF ACCOUNTS [Section 130]



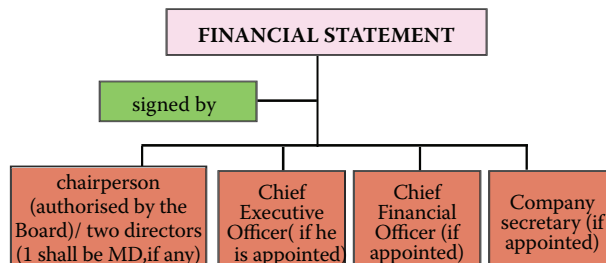
Time limit for reopening: No order in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year, shall be made. Except on direction of the Central Government BOA's may be kept for a period longer than eight years and accordingly may be ordered of re-opening for such period.

IV. VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT [Section 131]



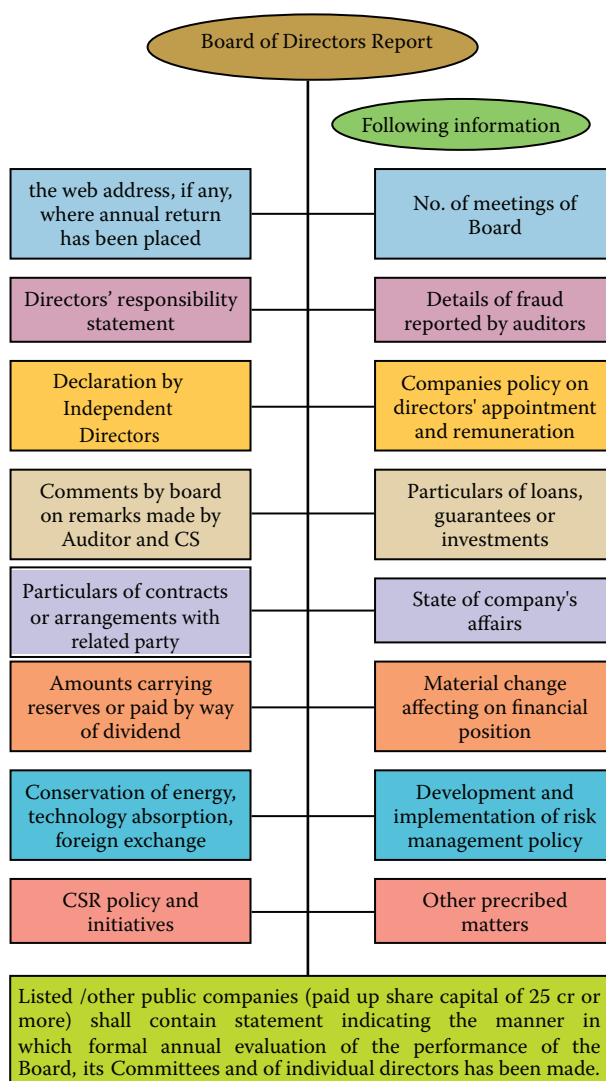
V. FINANCIAL STATEMENT, BOARD'S REPORT [Section 134]

1. Authentication of Financial Statement [Section 134]



Significant points: Signed copy of every FS, shall be including consolidated financial statement, if any. It shall be issued, circulated or published along with a copy of any notes annexed to or forming part of such financial statement; the auditor's report; and the Board's report.

2. Contents of Board Report

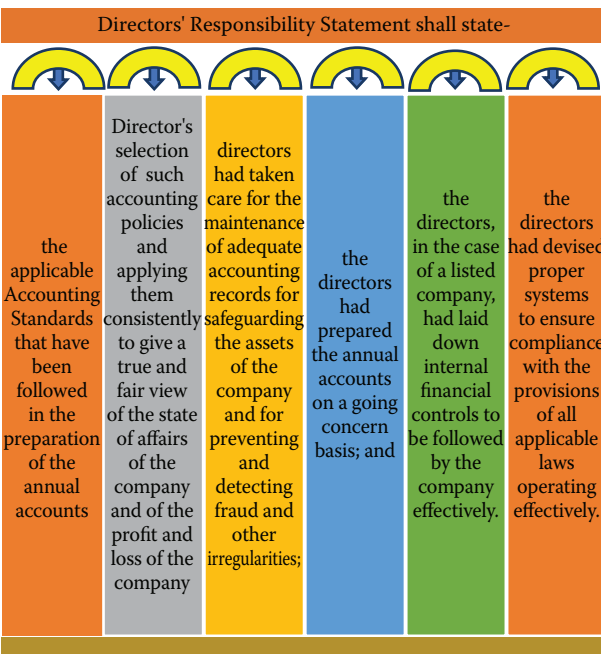


Significant points: The Board's Report shall be prepared based on the stand alone financial statements of the company and shall report on the highlights of performance of subsidiaries, associates and joint venture companies and their contribution to the overall performance of the company during the period under report.

The Board's report and any annexures under this section, shall be signed by its chairperson, if he is authorised by the Board.

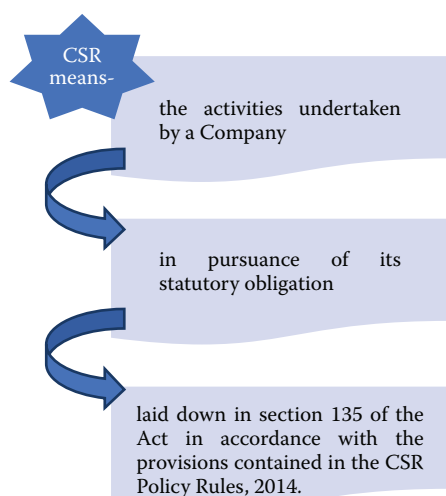
Where chairperson is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

3. Director's Responsibility Statement



VI. CORPORATE SOCIAL RESPONSIBILITY (CSR) [Section 135]

1. Meaning and activities which are specifically excluded:



CSR shall not include the following activities:-

(i) activities undertaken in pursuance of normal course of business of the company;

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions that-

- such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;
- details of such activity shall be disclosed separately in the Annual report on CSR;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel

(iii) Contribution of any amount directly or indirectly to any political party;

(iv) activities benefitting employees of the company the Code on Wages, 2019

(v) activities supported by the companies on sponsorship basis;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in India;

2. Companies required to constitute CSR committee

Every company shall constitute a Corporate Social Responsibility Committee of the Board, having-

- net worth of Rs. 500 crore or more, or
- turnover of Rs. 1000 crore or more or
- a net profit of Rs. 5 crore or more
- during the immediately preceding financial year

Comprising of -

three or more directors, out of which at least one director shall be an independent director:

- Provided that where a company is not required to appoint an independent director under section 149 (4),- it shall have in its Corporate Social Responsibility Committee two or more directors.

3. Duties of CSR Committee

formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII;

recommend the amount of expenditure to be incurred on the referred activities and

monitor the Corporate Social Responsibility Policy of the company from time to time.

4. Amount of contribution towards CSR

The Board shall ensure that the company spends, in every financial year,

- at least 2% of the average net profits of the co. during the three immediately P.F.Ys

Where the company has not completed the period of 3 F.Ys since its incorporation.

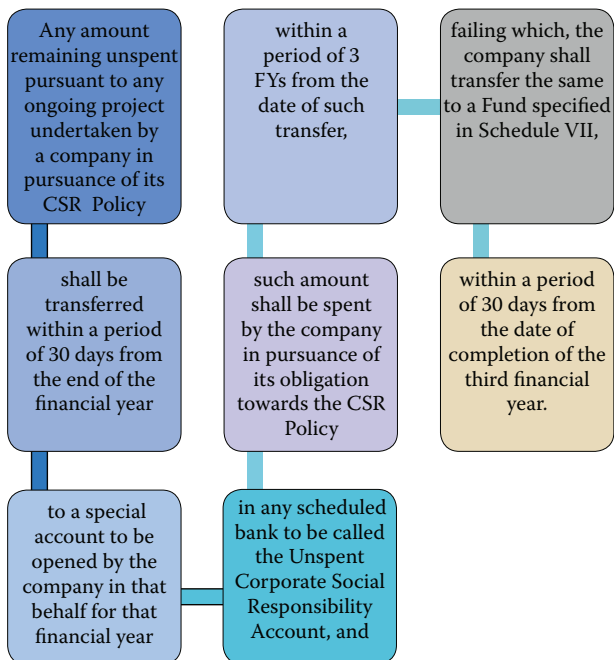
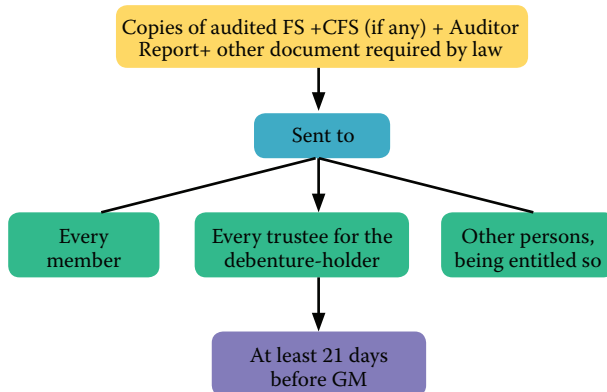
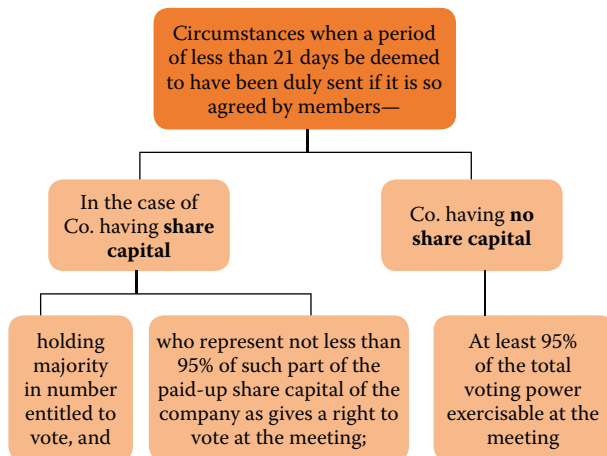
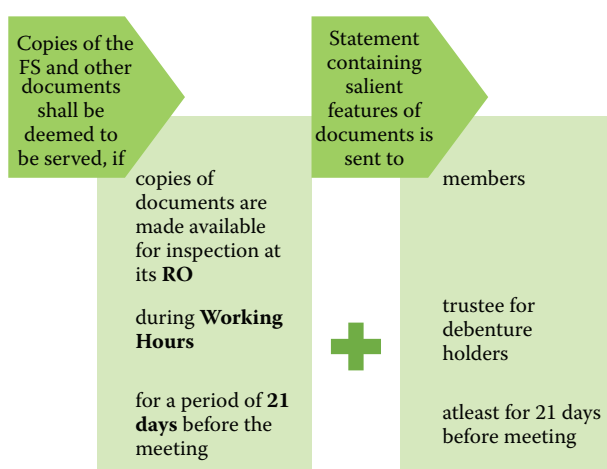
- at least 2% during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

In its report shall specify the reasons for not spending the amount.

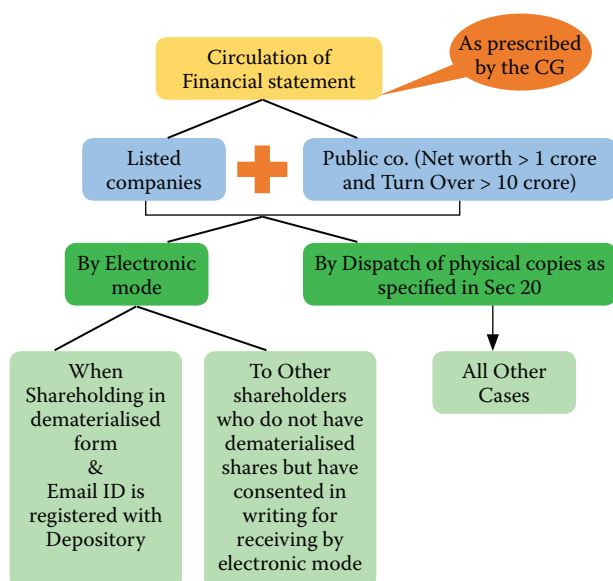
- and, where the unspent amount relates to any ongoing project, transfer such unspent amount to a Fund specified in Schedule VII.

Where the company spends an amount in excess of the requirements

- such company may set off such excess amount against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed.

5. Transfer of unspent CSR amount to special account.**6. When it is not necessary to constitute CSR Committee****VII. ENTITLEMENT OF MEMBERS TO RECEIVE FINANCIAL STATEMENT [Section 136]****1. Time period for serving of copies of audited financial statement****2. Circumstances when a period can be less than prescribed period****3. In case of Listed Companies:**

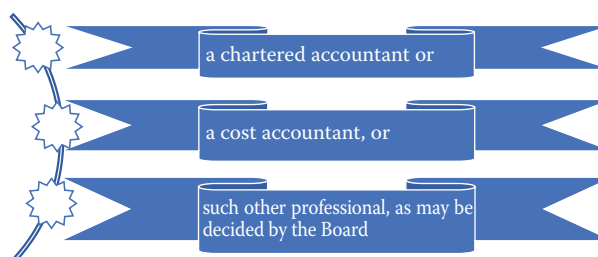
4. Manner of circulation of Financial Statement



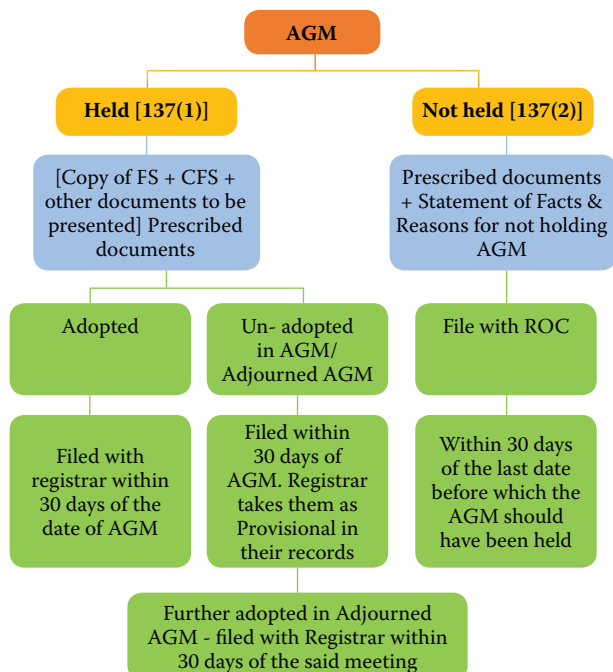
- In the case of a subsidiary which has been incorporated outside India ("foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso (above point) shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.

IX. INTERNAL AUDIT [Section 138]

1. Who can be internal auditor?



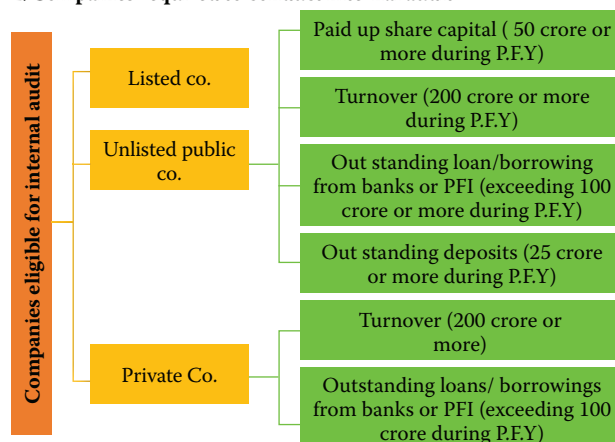
VIII. FINANCIAL STATEMENT TO BE FILED WITH REGISTRAR [Section 137]



- In case of a OPC, it shall file a copy of the financial statements duly adopted by its member, along with the required documents attached to such financial statements, within one **hundred eighty days from the closure of the financial year**.
- In case of companies having subsidiary/s: A company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary/s which have been incorporated outside India and which have not established their place of business in India.

Significant point: Internal auditor may be either an individual or a partnership firm or a body corporate. Internal auditor may or may not be an employee of the company.

2. Companies required to conduct internal audit



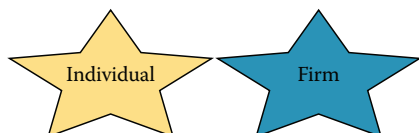
3. Function of Internal Auditor

The Audit Committee of the company or the Board shall, in consultation with the Internal Auditor-

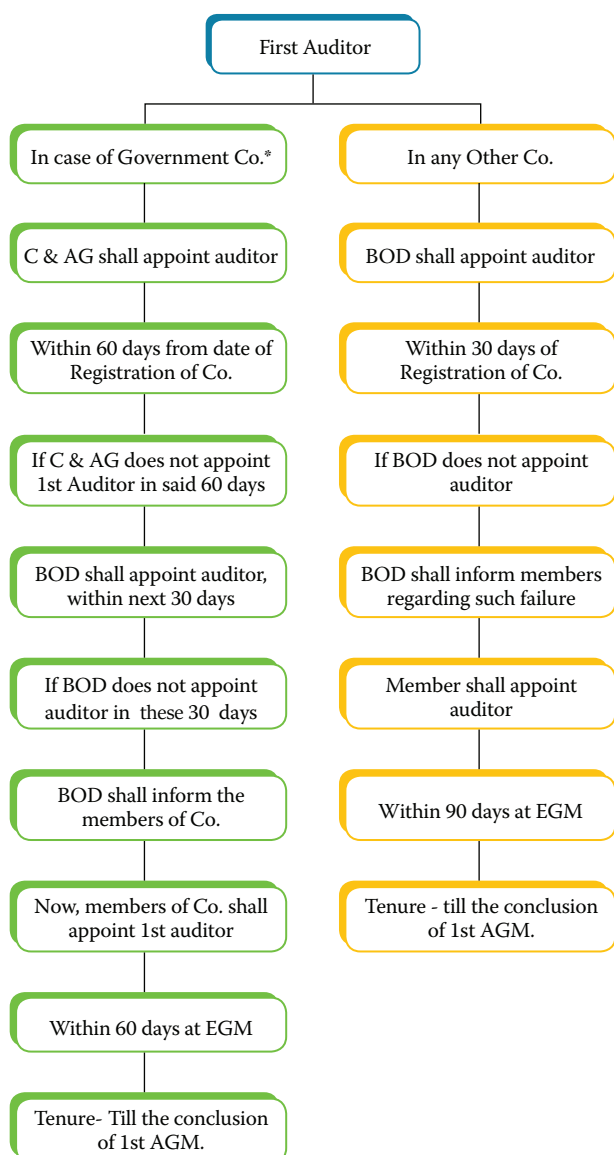
Formulate the scope, functioning, periodicity and methodology for conducting the internal audit.

AUDIT AND AUDITORS

I. WHO CAN BE APPOINTED AS AN AUDITOR?

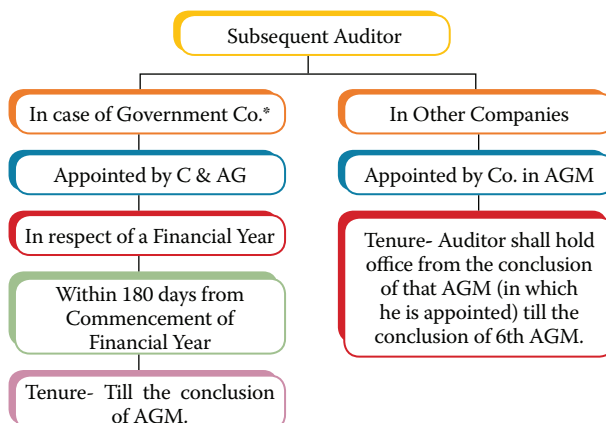


II. APPOINTMENT OF FIRST AUDITOR [Section 139 (6) & (7)]



*Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

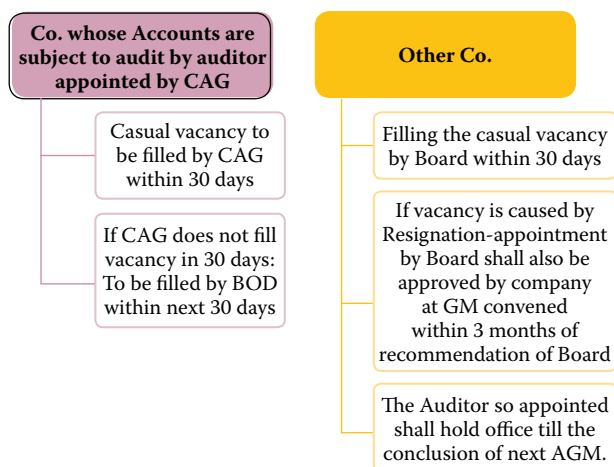
III. APPOINTMENT OF SUBSEQUENT AUDITOR



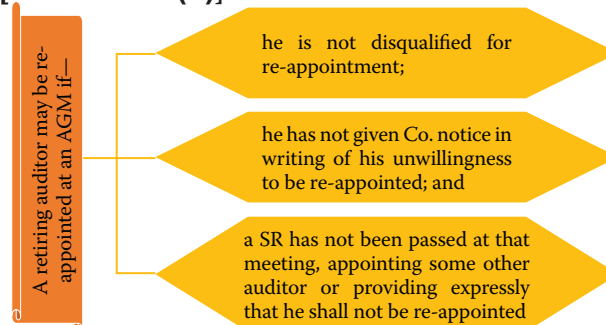
Here, 'appointment' includes re-appointment.

*Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government, or Governments, or partly by the Central Government and partly by one or more State Governments.

IV. CASUAL VACANCY OF AUDITOR [Section 139(8)]



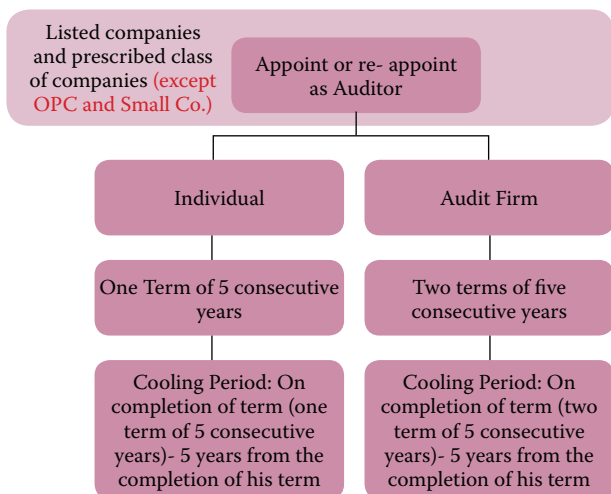
V. RE-APPOINTMENT OF RETIRING AUDITOR [Section 139(9)]



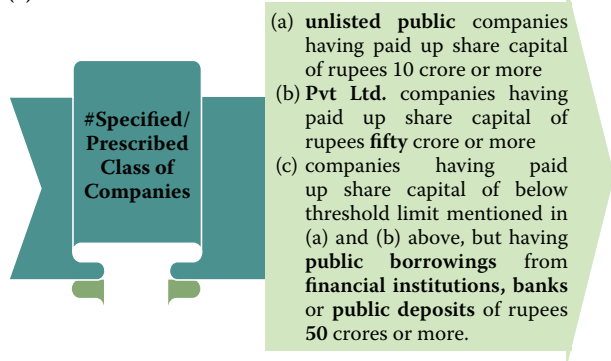
Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company

VI. TERM OF AUDITOR [Section 139(2)]

(1)



(2)



VII. DISQUALIFICATION OF AUDITORS [Section 141(3)]

Body Corporate

- Except LLP

Officer or employee of Co.

a person who is a partner, or who is in the employment, of an officer or employee of the company

a person who, or his relative or partner—

- is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company. (Relative may hold security or interest in the company of face value not exceeding Rs. 1 lac)
- is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 5 lac; or
- has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of Rs. 1 lac

a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company

- 'business relationship' shall be construed as any transaction entered into for a commercial purpose, except—
 - (A) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the regulations made under those Acts;
 - (B) commercial transactions which are in the ordinary course of business of the company at arm's length price like sale of products or services to the auditor as customer by the companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses

a person whose relative is a director or is in the employment of the company as a director or key managerial personnel

a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than 100 crore rupees

a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction

a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company

VIII. STEPS FOR REMOVAL OF AUDITOR [Section 140]

A **Special Notice** is received for Removal of auditor

A board meeting will be held

(To decide about removal and then authorising the filing of application to CG)

Application to CG (To be made in ADT-2), within 30 days of Board meeting

Approval of CG received

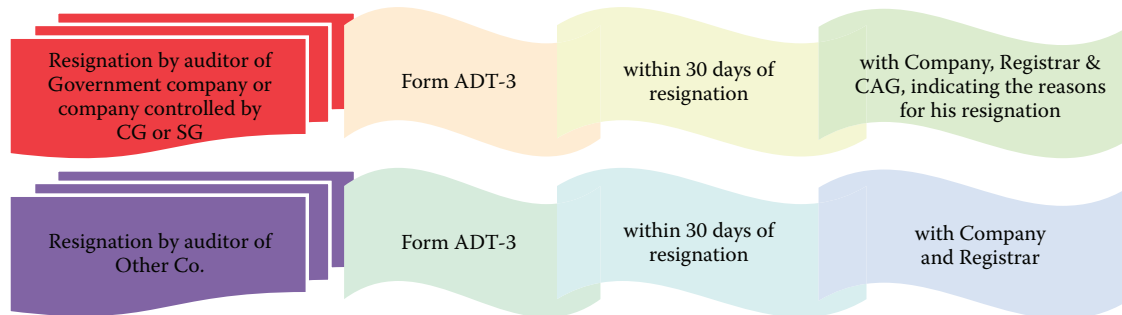
After approval from CG, **Special Notice** to be sent for AGM

Auditor shall be given a reasonable opportunity of being heard

Auditor removal can be done only through **Special Resolution**

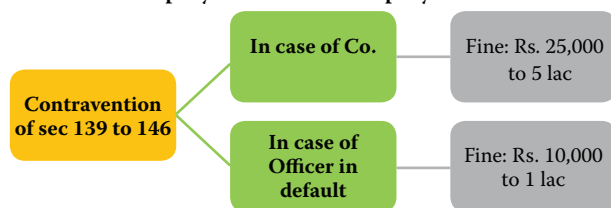
Auditor will be removed

IX. RESIGNATION BY AUDITOR

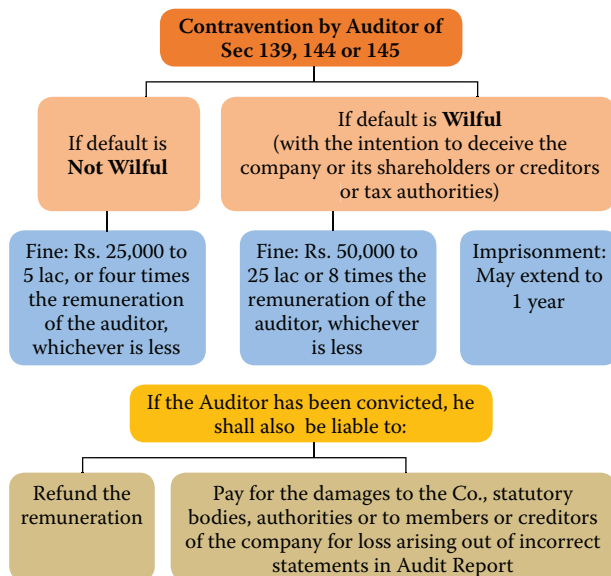


X. PUNISHMENT UNDER SECTION 147

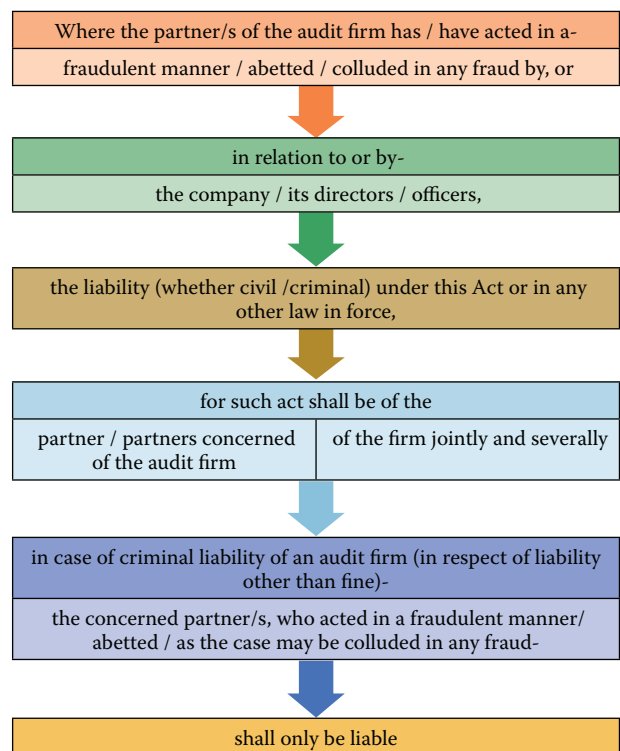
1. In case of company and officer of company



2. In case of auditor

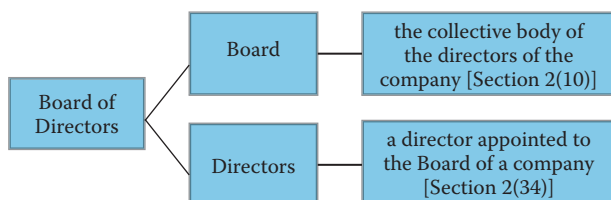


3. In case of audit of a co. conducted by an audit firm



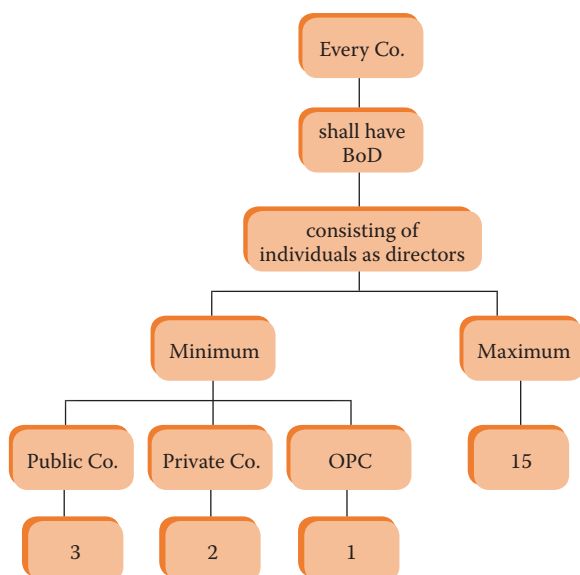
APPOINTMENT AND QUALIFICATIONS OF DIRECTORS

(1) Board of Directors



(2) Provisions related to appointment of directors in the companies

(i) Number of directors [Section 149(1)]



A co. may appoint more than 15 directors after passing special resolution (SR)
Limit of maximum of 15 directors, and their increase in limit by special resolution- shall not apply to Government & section 8 companies.

(ii) Provision related to Women director (WD) [Proviso to section 149(1) + Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules, 2014]

No. of Women Director	❖ At least one
Companies which require to have Women directors	❖ every listed co.;
	❖ every other public co. having -
	➤ paid-up share capital of 100 crore rupees or more; or ➤ turnover of 300 hundred crore rupees or more.
Filling of Intermittent Vacancy	❖ Immediate next Board meeting or three months from the date of such vacancy, whichever is later.
Of which date the amount of paid-up capital or turnover shall be taken in to consideration	As on the last date of latest audited financial statements.

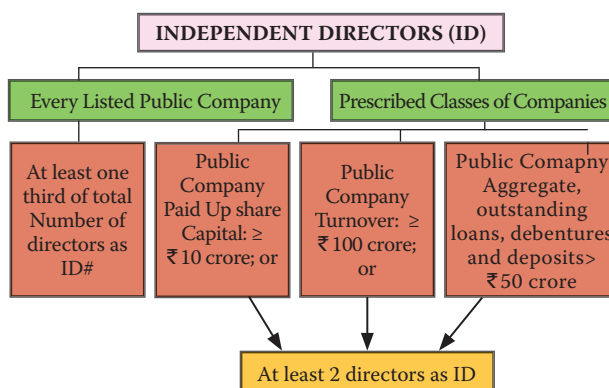
(iii) Provision related to Resident director (RD) [Section 149(3)]

Meaning of Resident Director	Who has stayed in india for a total period of not less than 182 days during financial year
Number	Atleast One
Companies which should appoint resident director	Every Company

In case of a newly incorporated company, the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

(iv) Provisions related to Independent Directors (Section 149 read with the relevant rules)

(a) Companies require to appoint Independent Directors (ID)



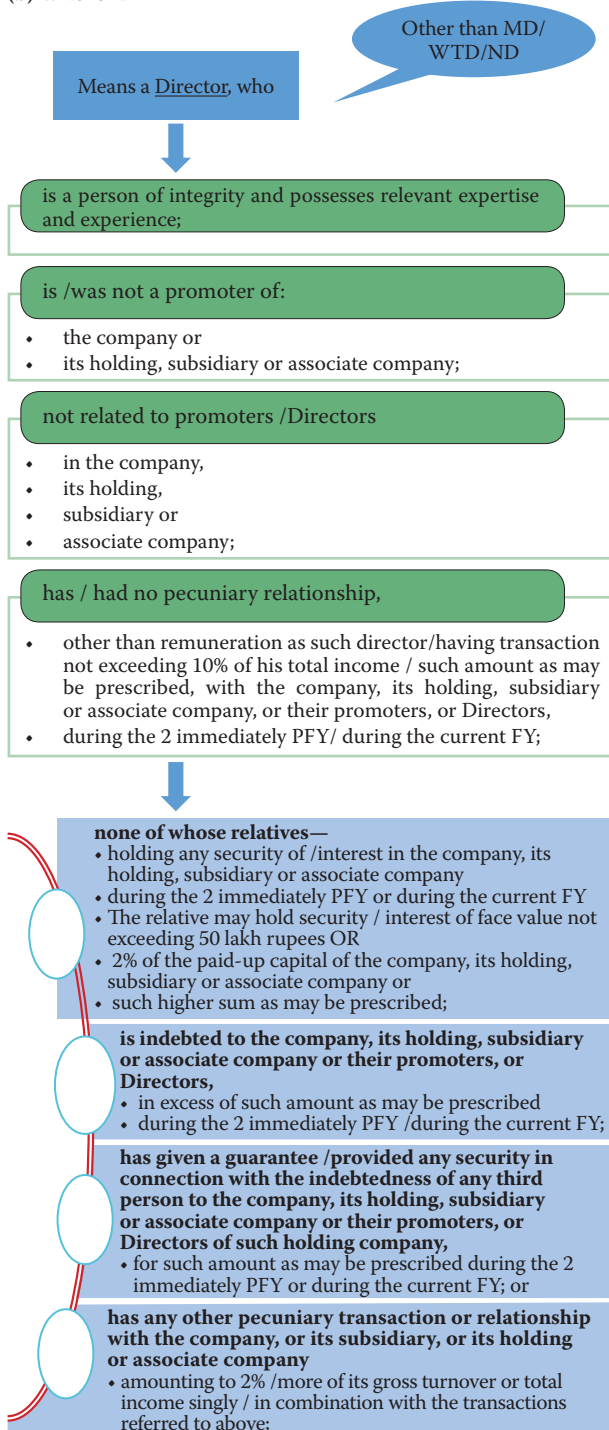
Any fraction contained in such one-third number shall be rounded off as one.

Higher number of ID appointed: Due to composition of audit committee in the prescribed companies, higher number of ID shall be appointed

Non-Applicability: If company ceases to fulfil any of the 3 conditions for 3 consecutive years

Exemption from appointment of ID'S in the following class of unlisted public companies: *a Joint Venture, Wholly Owned Subsidiary, and a Dormant Company.*

(b) Who is ID



who, neither himself nor any of his relatives—

- holds / has held the position of a KMP or
- is / has been employee of the company / its holding, subsidiary or associate company
- in any of the 3 FY immediately preceding the FY in which he is proposed to be appointed;
- Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding 3 FY.

is / has been an employee or proprietor or a partner, in any of the 3 FYs immediately preceding the financial year in which he is proposed to be appointed, of—

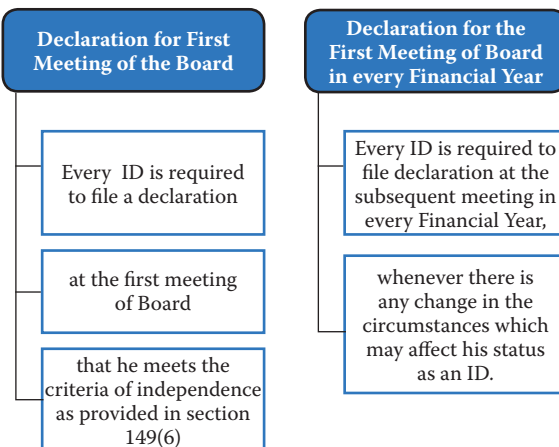
- a firm of auditors / company secretaries in practice / cost auditors of the company / its holding, subsidiary or associate company; or
- any legal / a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to 10% or more of the gross turnover of such firm;

holds together with his relatives 2% or more of the total voting power of the company; or

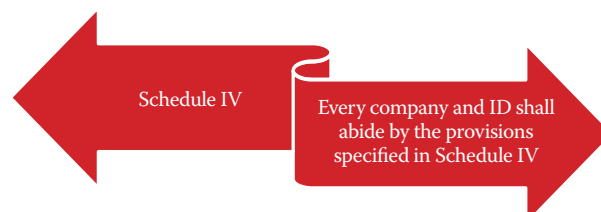
is a Chief Executive / director, of any nonprofit organisation that receives 25% or more of its receipts from the company, any of its promoters, Directors or its holding, subsidiary or associate company or that holds 2% or more of the total voting power of the company; or

who possesses such other qualifications as may be prescribed.

(c) Submission of Declaration by the Independent Director (ID) [Section 149(7)]



(d) Compliance of Schedule IV [Section 149(8)]



(e) Whether ID can have Stock Options [Section 149(9)]

Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director-

shall not be entitled-

- to any stock option

and

may receive -

- remuneration by way of fee provided under section 197(5),
- reimbursement of expenses for participation in the Board and other meetings, and
- profit related commission as may be approved by the members.

Provided that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V

(f) Tenure of office of ID [Section 149(10) & 149(11)]

An independent director shall hold office for a term up to-	No independent director shall hold office for more than two consecutive terms,	Explanation-
5 consecutive years on the Board of a company, - but shall be eligible for reappointment on passing of a special resolution by the company, and - disclosure of such appointment in the Board's report.	- but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director - Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.	For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections. [Section 149(11)]

(g) Liability of ID [Section 149(12)]

Notwithstanding anything contained in this Act,

Parties	Shall be held liable only in respect of such-
(i) an independent director (ii) a non-executive director not being promoter or key managerial personnel	- acts of omission or commission by a company which had occurred with his knowledge, - attributable through Board processes - with his consent or connivance, or - where he had not acted diligently

(h) Retirement of ID by rotation [Section 149(13)]

The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of Directors by rotation

Not applicable to

appointment of independent Directors

(i) Remuneration of Independent Directors [Section 197(5)]

Entitled to:	Not Entitled to:
Fee provided under section 197(5) Sitting Fee for attending the meeting of the Board or its Committees: Maximum Rs. One lac per meeting. Note: The sitting payable to ID and Women Directors shall not be less than that of the sitting fee payable to other directors.	Any stock option [Section 149(9)]
Reimbursement of expenses for participation in: (i) Board Meetings (ii) Other Meetings	
Profit related commission as may be approved by the members	

(v) Provisions related to Small Shareholder Director (SSD) [Section 151] read with Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules, 2014.

Small Shareholders Director	Is it compulsory to appoint SSD?	No (not mandatory)
	Which co. may appoint?	Listed co.
	Number	One
Who is Small Shareholders Director		A shareholder holding shares of nominal value of not more than ₹ 20,000 or such other sum as may be prescribed
How SSD is appointed		by notice - of not less than 1000 small shareholders; or one-tenth of the total number of such shareholders whichever is lower

Special Features of SSD

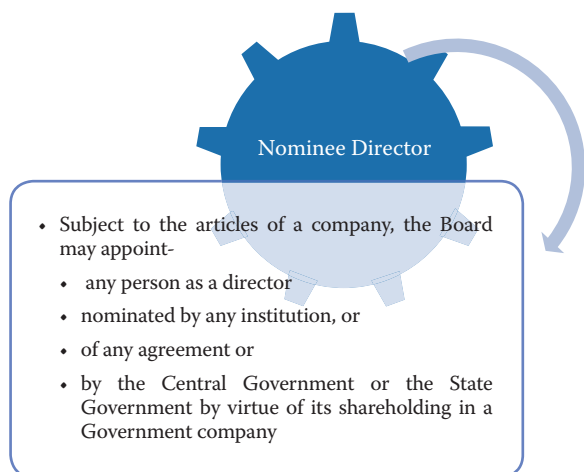
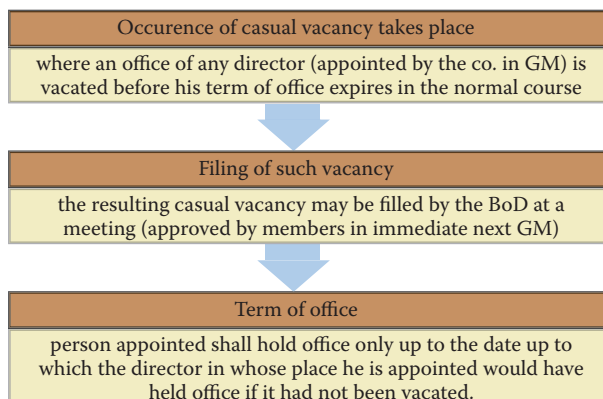
- SSD shall not be liable to retire by rotation
- SSD's tenure shall not exceed a period of 3 consecutive years and on expiry of the tenure he shall not be eligible for re-appointment.
- A person shall not be appointed as SSD if the person is not eligible for appointment in terms of section 164.
- SSD shall vacate the office if (i) the SSD incurs any of the disqualification specified in section 164; (ii) the office of the SSD becomes vacant in pursuance of section 167; (iii) The SSD ceases to meet the criteria of independence as provided in section 149(6).
- SSD shall not hold the position of SSD in more than two companies at the same time. Moreover, the second company in which he is appointed as SSD shall not be in the competing business with that of the first company.
- A SSD shall not, for a period of three years from the date on which he ceases to hold office as a SSD in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

(vi) Provisions related to Additional Director [Section 161(1)]

Additional Director		
Appointment	Disqualified	Term
• AOA of a co. may confer on its BoD the power to- • appoint any person as an additional director • at any time	• A person, who fails to get appointed as a director in a GM, cannot be appointed	• Hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.

(vii) Provision related to Alternate Director [Section 161(2)]

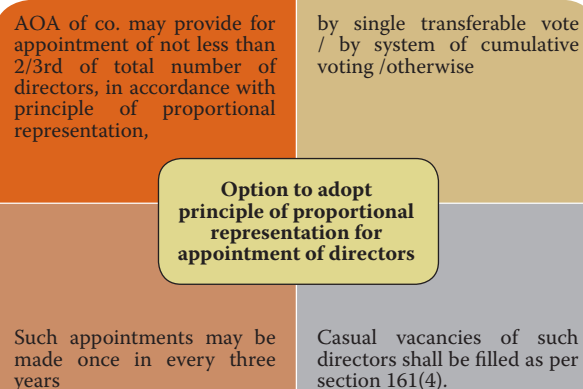
Alternate Director (ALT. DIR)	Appointed by-	BoD, if so authorised by AOA, or
		resolution passed by company in GM
	Time of appointment	during the absence of original director for a period of not less than 3 months from India.
	Exception: No person shall be appointed as ALT. DIR-	who is holding any alternate directorship for any other director in the co. / holding directorship in the same co.
		for an independent director who is not qualified to be appointed as an ID
	Term of holding office	Till the period permissible to the original director
	Vacation	if & when the original director returns to India.
	Automatic re-appointment	apply to the original, and not to the alternate director.

(viii) Nominee Director [Section 161(3)]**(ix) Appointment of director through casual vacancy [Section 161(4)]****(x) Modes of appointment [Section 162 & 163]****(i) Appointment through single resolution****Appointment of Directors to be voted Individually**

- Each director shall be appointed by a separate resolution
- Unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement.
- Contravention of above shall be void.
- A motion for approving a person or for nominating a person, for appointment as a director, shall be treated as a motion for his appointment.

Non applicability of section 162 to the following companies:

- (1) A Government company in which the entire paid up share capital is held by the Central Government / by any State Government / Governments / by the Central Government and one or more State Governments;
- (2) A subsidiary of a Government company, referred above, in which the entire paid up share capital is held by the Government company.
- (3) A Private company

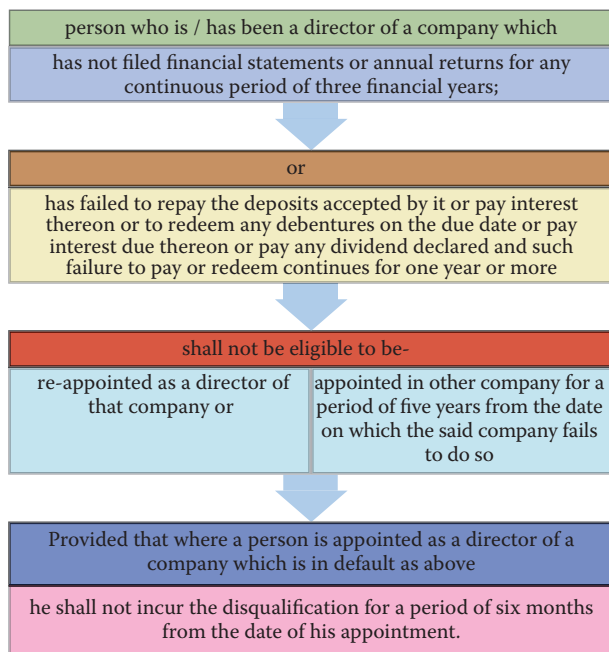
(ii) Appointment of Directors through proportional representation [Section 163]

Non applicability of section 163 to the following companies:

- (1) A Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments;
- (2) A subsidiary of a Government company, referred to above, in which the entire paid up share capital is held by the Government company.

(3) Disqualifications for appointment of director [Section 164 (1)]

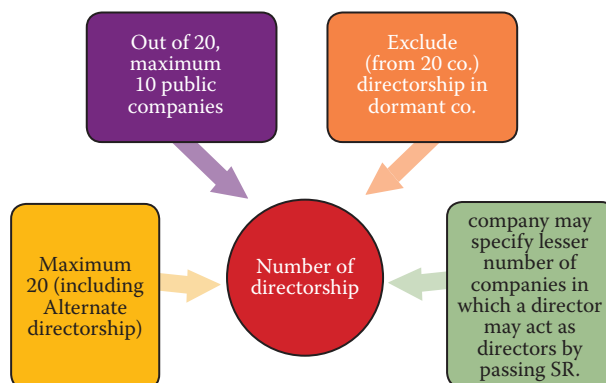
General disqualification of directors in the following situations:	(a) of unsound mind and so declared by a competent court;
	(b) an undischarged insolvent;
	(c) applied to be adjudicated as an insolvent and his application is pending
	(d) convicted by a court of any offence, and sentenced in respect thereof to imprisonment for minimum 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. However, if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years / more, he shall not be eligible to be appointed as a director in any company.
	(e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
	(f) not paid any calls in respect of any shares of the company held by him, and 6 months have elapsed from the last day fixed for the payment of the call;
	(g) he has been convicted of the offence of dealing with related party transactions under section 188 at any time during the last preceding 5 years; or
	(h) he has not complied with section 152(3) which requires a director to have a DIN under section 154.
	(i) he has not complied with the provisions of section 165(1).

Other disqualifications [Section 164(2)]

A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2).

The disqualifications as mentioned in (d), (e) and (g) of sub-section (1) of section 164 shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Section 164(2) is not applicable to Government company.

(4) Holding of maximum number of directorship [Section 165]

Provision related to maximum holding of directorship shall not apply to section 8 companies.

If a person accepts an appointment as a director in contravention to holding directorship in more than 20 companies / more than 10 public companies, he shall be liable to a penalty of ₹2,000 for each day after the first during which such violation continues, subject to a maximum of ₹2 Lac

(5) Duties of Directors [Section 166]

Act in accordance with AOA, subject to the provisions of the Act.

Act in good faith to promote the objects of co. for benefit of its members & in the best interests of co., its employees, shareholders, community & for protection of environment.

Exercise his duties with due & reasonable care, skill & diligence & with independent judgment.

Not involve in a situation in which he may have a direct / indirect interest that conflicts, or possibly may conflict, with interest of co.

Not achieve / attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates & if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company

Not assign his office & if any assignment so made, it shall be void.

In case of contravention, a director of the company shall be levied fine from ₹1 lac to ₹5 lac.

(6) Vacation of Office of Director [Section 167]

Director incurs any of the disqualifications specified in sec. 164;

In case, he incurs disqualification under section 164(2), the office shall become vacant in all the companies, except the company in default

on absence from all meetings of BoD held during a period of 12 months

acts in contravention of provisions of sec. 184 relating to entering into contracts /arrangements in which he is interested;

fails to disclose his interest in any contract / arrangement in which he is interested, in contravention of the provisions of sec. 184;

becomes disqualified by an order of a court / the Tribunal;

convicted by a court for any offence & sentenced to imprisonment for not less than 6 months.

removed in pursuance of the provisions of this Act;

having been appointed a director by virtue of his holding any office / other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(7) Resignation of Director [Section 168]

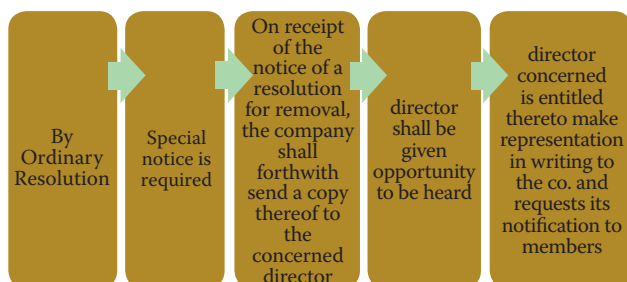
Director may resign by giving a notice in writing to co.

Board shall on receipt take note of the same

Co. shall within 30 days from receipt, intimate the Registrar & post the information on its website, if any.

Co. shall also place the fact of such resignation in BoD's Report laid in immediately following GM.

Director may forward a copy of his resignation with reasons to Registrar within 30 days of resignation

(8) Removal of Directors [Section 169]**(i) Steps for removal****(ii) Restrictions on removal of certain directors**

Directors appointed by Tribunal u/s 242

ID: who are re-appointed for second term u/s 149(10) can be removed only by passing SR+ opportunity of being heard

Directors appointed u/s 163

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

(1) Appointment of Managing Director, Whole-Time Director or Manager [Section 196]

(i) Appointment of MD and Manager [Section 196(1)]

Company shall not appoint/ employ at the same time a MD and a Manager

• So, appoint either MD or Manager

(ii) Tenure [Section 196(2)]

Tenure of MD, WTD or Manager

Maximum 5 years

(iii) Disqualifications for MD, WTD or Manager [Section 196(3)]

No company shall appoint or continue the employment of any person as MD, WTD or Manager who-

- below the age of 21 years or has attained the age of 70 years; or
- is an undischarged insolvent or has at any time been adjudged as an insolvent; or
- has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or
- has at any time been convicted by a court of an offence and sentenced for a period of more than six months.
- Additional conditions prescribed through Schedule V (for appointment without approval of Central Government)

***Provided** that appointment of a person who has attained the age of 70 years may be made by:

- (1) passing a special resolution with an explanatory statement indicating the justification for appointing such person.
- (2) where no such special resolution is passed but votes cast in favour of such motion, and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of 70 years may be made.

(iv) Procedure of appointment of MD, WTD or Manager [Section 196(4)]

Subject to provisions of Sec. 197 and Schedule V

Terms and conditions and remuneration payable be approved by BOD at meeting

Approval of shareholders in next GM

Approval of Central Government (if appointment is at variance with Part I of Schedule V)

Return in prescribed form shall be filled with Registrar within 60 days of such appointment.

In case of Private company – given Section 196(4) shall not apply
In case of Government company – given Section 196(2) and (4) shall not apply

(2) Overall maximum Managerial Remuneration [Section 197(1)]

S. No.	Conditions	Maximum remuneration in any financial year	Conditions when remuneration can exceed as referred in column (b)
	(a)	(b)	(c)
(i)	Overall limit	11% of the net profits of the company for that financial year	Company in general meeting may authorize the payment of remuneration exceeding 11% of the net profits of the company subject to provisions of Schedule V.
(ii)	If there is one Managing director/ Whole time director/ manager	5% of the net profits of the company for that year	With the approval of the company in general meeting by Special Resolution, this limit may be exceeded.
(iii)	If there is more than one Managing director/ Whole time director/ manager	10% of the net profits	With the approval of the company in general meeting by Special Resolution, this limit may be exceeded.
(iv)	If there are directors who are neither Managing director nor whole time directors	1% of the net profits of the company if there is a managing director or a whole time director	Approval of the company in general meeting by Special Resolution is required.
(v)	If there are directors who are neither Managing director nor whole time directors	3% of the net profits of the company if there is no managing director or whole time director	Approval of the company in general meeting by Special Resolution is required.

Where the company has defaulted in payment of dues to any bank / PFI/ non-convertible debenture holders / any other secured creditor, the prior approval of the bank / PFI concerned / the non-convertible debenture holders / other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

In case of Government Company, Section 197 shall not apply.

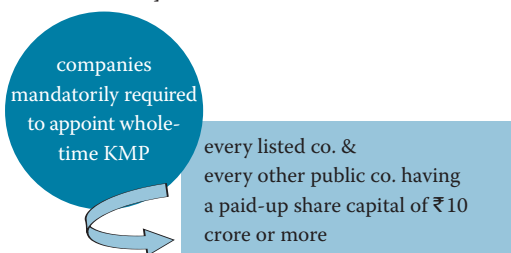
(3) Appointment of KMP [Section 203]

(i) KMP [Section 2(51)]

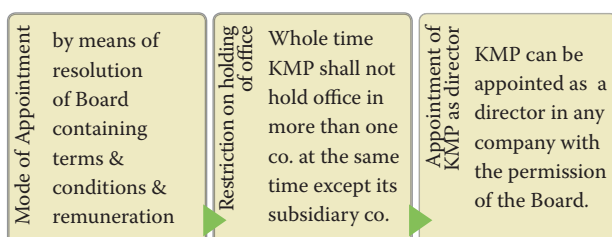


- MD/ CEO / Manager
- WTD (in absence of MD/CEO/Manager)
- CS;
- CFO.
- Officer not more than one level below the directors (in whole time employment designated as KMP)
- Other prescribed officer

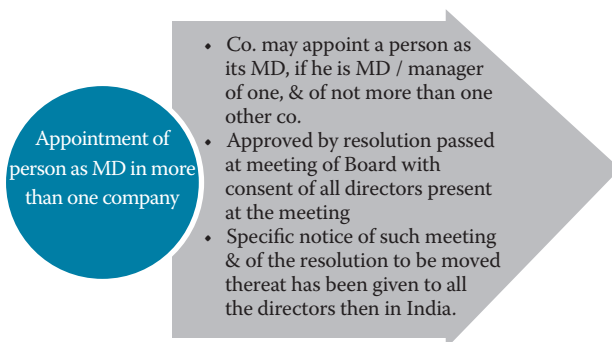
- (ii) Companies which mandatorily required appointment of whole time KMP [Section 203(1) + Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014]



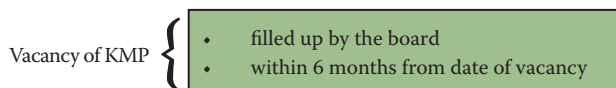
- (iii) Provisions related to appointment of whole time KMP [Section 203(2) & (3)]



- (iv) Managing Director / Manager in more than one company [Third proviso to section 203(3)]



- (v) Vacancy in office of KMP [Section 203(4)]



In case of Government Company, as per section 4A, the provisions of sub-sections (1), (2), (3) and (4) of section 203, shall not apply to a Managing Director / Chief Executive Officer / Manager and in their absence, a Whole-Time Director of the Government Company.

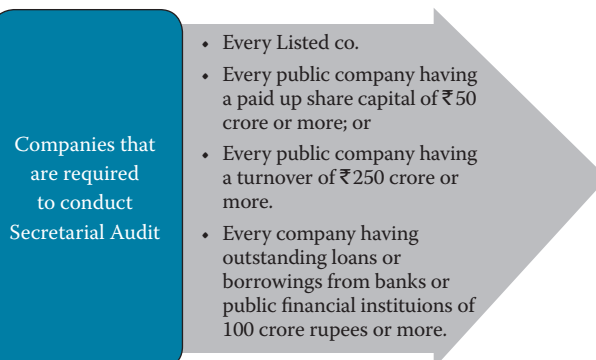
- (vi) Penalty [Section 203(5)]

On company	Every Director & KMP in default	where the contravention is a continuing one
• fine of Rs.5 lac	• fine extending to ₹50000/-.	with a further fine from ₹1000/- for each day after the first during which such default continues to ₹5 lac

- (4) Functions of the Company Secretary [Section 205]

Functions of the CS includes	to report to the Board about compliance
	to ensure that the co. complies with the applicable secretarial standards;
	to provide to the directors of the co. guidance as they may require, with regard to their duties, responsibilities and powers;
	to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings
	to obtain approvals from the Board, general meeting, the government and other authorities as required
	to represent before various regulators, and other authorities in connection with discharge of various duties under the Act;
	to assist the Board in the conduct of the affairs of the co.;
	to assist and advise the Board in ensuring good corporate governance and compliance & best practices
	to discharge such other duties as have been specified under the Act or rules; &
	such other duties as may be assigned by the Board from time to time.

- (5) Secretarial Audit (Section 204)

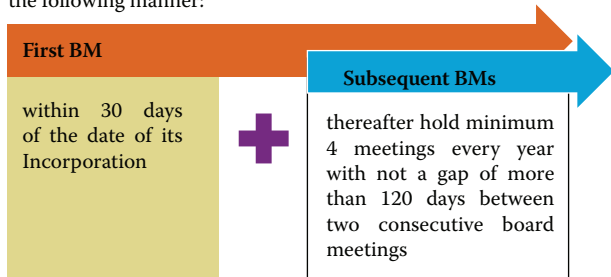
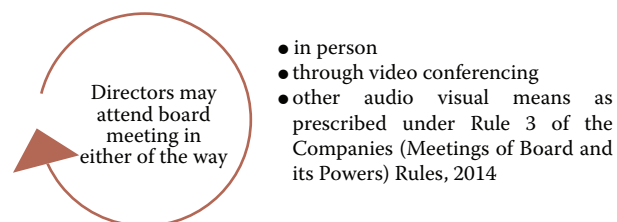


The above companies shall annex with its Board's report made in section 134(3), a secretarial audit report (in Form No. MR.3), given by a company secretary in practice.

MEETINGS OF BOARD AND ITS POWERS

(1) Board Meeting (BM) [Section 173]**(1) Meetings of Board****(i) Holding of BM [Section 173(1)]-**

Every company shall hold Board meeting of its Board of Directors in the following manner:

**(ii) Participation in BM [Section 173 (2)]****(iii) Notice of the BM [Section 173(3) & (4) + Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]**

A meeting of the Board shall be called by giving

- not less than seven days' notice in writing
- to all the directors at registered address
- sent by hand delivery/ by post/ by electronic means

Shorter notice less than 7 days may be served

- to transact an urgent business
- atleast one independent director, if any, shall be present
- in his absence, decisions taken shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any

Option to participate through video conferencing mode/ other audio visual means (Rule 3)

- notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means

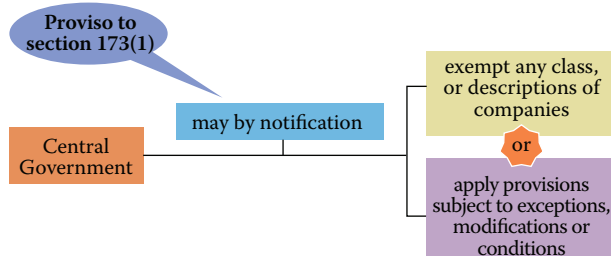
On receipt of notice

- a director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the company secretary of the company

No intimation from director of his participation through the electronic mode

- it shall be assumed that the director shall attend the meeting in person

In case of failure to serve the notice -Every officer of the company whose duty is to give notice, shall be liable to a penalty of ₹25,000.

(iv) Exemption/relaxation from applicability of section 173(1)**Relaxation to companies from compliance of section 173**

Section 8 companies- Applicable to the extent that the Board of Directors, shall hold at least one meeting within every six calendar months.

OPC, Small Co., Dormant Co. Private start ups- deemed to have been complied with the provisions of section 173, if at least one meeting of the BoDs has been conducted-

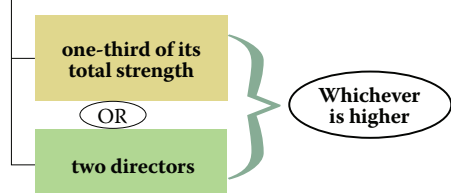
- in each half of a calendar year, and
- the gap between the two meetings is not less than 90 days.

In case of OPC, in which there is only one director on its Board of Directors, it shall not be required to hold even a single Board meeting during the year.

(2) Quorum [Section 174]

(i) Quorum

quorum for a Board Meeting shall be -



For section 8 Companies, quorum for the BM, either 8 members or 25% of its total strength whichever is less, however, quorum shall not be less than two members.

(ii) Quorum when directors participate through Video Conferencing

In case of participation of director through video conferencing or by other audio visual means

- shall also be counted for the purpose of determining the quorum at the meeting,
- unless he is to be excluded for any items of business under any provisions of the Act or the Rules [Explanation as given in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014]

(iii) Where quorum is less than prescribed under the Act [Section 174 (2) & (3)]

Where the quorum of continuing directors is reduced (as fixed by Act)

the continuing directors/director may act for the purpose of-

- increasing the number of directors to that fixed for the quorum, or
- of summoning a general meeting of the company

Where at any time the number of interested directors exceeds or is equal to 2/3 of the total strength of the BOD

the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time

In case of Private Company - Section 174(3), shall apply with the exception that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.

(iv) Where a meeting of the Board could not be held for want of quorum [Section 174(4)]

Unless the articles of the company otherwise provide,

the meeting shall automatically stand adjourned

- to the same day
- at the same time and place
- in the next week,

if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place

(3) Powers of Board [Section 179]

(i) Powers to be exercised by the Board [Section 179(1)]

The BoD of a company shall be entitled to

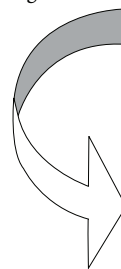
- exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do

Exception to Board's Power:

- The Board shall not exercise any power or do any act or thing which is directed or required,
- whether under this Act or by the memorandum or articles of the company or otherwise,
- to be exercised or done by the company in general meeting

(ii) Illustrative Powers of Board [section 179(3)]

Board may exercise its powers by means of the resolution passed at a duly convened Board meeting



- make calls on shareholders in respect of money unpaid on shares
- authorise buy-back of securities
- issue securities
- borrow monies
- invest the funds of the company
- grant loans or give guarantee or provide security in respect of loan
- approve financial statement and the Board's report
- diversify the business
- approve amalgamation, merger or reconstruction
- take over a company or acquire a controlling or substantial stake in another company
- any other matter which may be prescribed in Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014

The Board may, by a resolution passed at a meeting, delegate the powers specified in clauses (d) to (f) on conditions as it may specify to-

- any committee of directors, the managing director, the manager or any other principal officer of the company, or
- in the case of a branch office of the company, the principal officer of the branch office

Additional powers prescribed under Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014

to make political contributions;

to appoint or remove KMP;

to appoint internal auditors and secretarial auditor;

(4) Restrictions on powers of Board [Section 180(1)]

The BoD of a company shall exercise the following powers only with the consent of the company by a special resolution

(a) To sell, lease or dispose of the undertaking(whole/substantially of the whole) of the company, or it owns more than one, of the whole/substantially the whole of any of such undertakings

(b) To invest in trust securities the amount of compensation received as a result of any merger or amalgamation;

(c) borrow money, together with the money already borrowed by the company exceeding aggregate of its paid-up share capital, free reserves and securities premium apart from temporary loans obtained from the company's bankers in the ordinary course of business

(d) To remit, or give time for the repayment of, any debt due from a director

Exemption to Clause (a) and conditions for such transaction [Section 180(3) & (4)]

the title of a buyer / other person who buys /takes on lease any property, investment / undertaking as is referred to in that clause, in good faith;

OR

the sale / lease of any property of the company where the ordinary business of the company consists of / comprises, such selling or leasing

Conditions for transaction referred to in clause (a) of sub-section (1)

Any special resolution passed by the company consenting to the transaction -

may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions

provided that this shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.

Restriction as to borrowing of money under Clause(c) [Section 180(2) & (5)]

Every special resolution passed by the company in general meeting in relation to the borrowing of money-

• shall specify the total amount up to which monies may be borrowed by the Board of Directors.

No debt incurred by the company in excess of the limit imposed -

• shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed had been exceeded.

Section 180 is not applicable to private company.

(5) Powers of BoD of a Company to make contributions [Section 181, 182, & 183]

To Bona fide charitable and other funds

- any amount the aggregate of which, in any financial year, exceed 5% of its average net profits for the three immediately preceding financial years.
- prior permission of the company in general meeting shall be required

To Political Contributions

- a company
- may contribute any amount to any political party,
- with a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors,
- and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.
- Except a Government company, and a company which has been in existence for less than three financial years

To National Defence Fund, etc.

- BoD or any person or authority exercising the powers of the Board of Directors of a company in general meeting, may-
- contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the Central Government for the purpose of national defence

(6) Disclosure of interest by director [Section 184]

(i) Applicability:

Section 184 is applicable on

- all directors of the company and
- all types of Companies

(ii) When to disclose & what are the disclosures [Section 184(1) & (2)]

When to disclose

- Every director shall disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in manner as prescribed in Rule 9 the Companies (Meetings of Board and its Powers) Rules, 2014:
 - At the First meeting of the Board in which he participates as a director, and
 - Thereafter, at the first meeting of the Board in every financial year, or
 - Whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.

Disclosures

- Every director of a company who is concerned or interested in a contract or arrangement /proposed contract or arrangement entered into /to be entered into:
 - with a body corporate in which such director or such director in association with any other director, holds more than two per cent shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
 - with a firm or other entity in which, such director is a partner, owner or member, as the case may be,
 - the directors shall disclose his concern or interest, by giving a notice in writing at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

Exceptions to following companies from application of section 184(2):

- shall apply to private companies with the exception that the interested director may participate in such meeting after disclosure of his interest
- shall apply to Section 8 Companies, only if the transaction with reference to section 188 on the basis of terms and conditions of the contract or arrangement exceeds ₹1 lakh

Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested.

(iii) Manner of Disclosure [Rule 9 of the Companies (Meeting of Board and its Powers) Rule, 2014]

Every director shall disclose his concern / interest

- by written notice

in Form

- MBP-1

Such Director shall

- cause it to be disclosed at the meeting held immediately after the date of the notice

All notices shall be kept

- at the registered office of the company

Preserved

- for eight years from the end of the financial year to which they relate

They shall be kept in the custody of the

- Company Secretary or any other person authorised by the Board

(iv) Consequences of non-disclosure [Section 184(3) & 184(4)]

Consequences of non-disclosure of concerned or interest in any contract or arrangement:

- It shall be voidable at the option of company
- Penalty levied on a director of the company
- With fine of ₹1 lac

Exceptions

Section 184 shall not apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company or the body corporate

(7) Loan to directors, etc. [Section 185]

(i) No providing of loan / guarantee / security-General Law [Section 185(1)]

No company shall, directly or indirectly, advance

any loan, including any loan represented by a book debt to

or

give any guarantee

or

provide any security in connection with any loan

- to any director of company/ or of a company which is its holding company, or
- any partner or relative of any such director, or
- any firm in which any such director or relative is a partner.

(ii) Conditions when company may advance loan/give guarantee/ provide security [Section 185(2)]

A company may advance any loan / give any guarantee / provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, only when-

Special Resolution is passed by the company in general meeting along with the Explanatory statement

the loans are utilised by the borrowing company for its principal business activities.

(iii) Who will be "any person in whom any of the director of the company is interested" [Explanation to section 185(2)]

"Any person in whom any of the director of the company is interested" means—		
		
any private company of which any such director is a director / member;	any body corporate at a general meeting of which not less than 25% of the total voting power may be exercised / controlled by any such director, / by 2 or more such directors, together; or	any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions / instructions of the Board, or of any director/s, of the lending company.

(iv) Exceptions to section 185 [Section 185(3)]

Exceptions to section 185	giving of any loan to a managing director or whole-time director—	as a part of the conditions of service extended by the company to all its employees; or
		pursuant to any scheme approved by the members by a special resolution; or
	a company which in the ordinary course of its business provides loans/ guarantees / securities for-	the due repayment of any loan and
		in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
	any loan made by a holding company to its wholly owned subsidiary company / any guarantee given/ security provided by a holding company in respect of any loan made to its wholly owned subsidiary company; or	
	Any guarantee given or security provided by a holding company in respect of any loan made by any bank or financial institution to its subsidiary company:	

Provided loans made are utilized by the subsidiary company for its principal business activities

(vi) Exemptions

Exemptions to following companies from application of section 185 –

Nidhis	Private company	Government company
• Provided the loan is given to a director or his relative in their capacity as members and such transaction is disclosed in the annual accounts by a note.	• In whose share capital no other body corporate has invested any money; • If the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or ₹50 crore rupees, whichever is lower; and • Such company has no default in repayment of such borrowings subsisting at the time of making transactions under this section	• Such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the state Government before making any loan or giving any guarantee or providing any security under the Section.

Above exemption is applicable to a **private and government company** if it has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

(8) Loan and Investment by Company [Section 186]

(i) Investment by company [Section 186(1)]

Investment by company

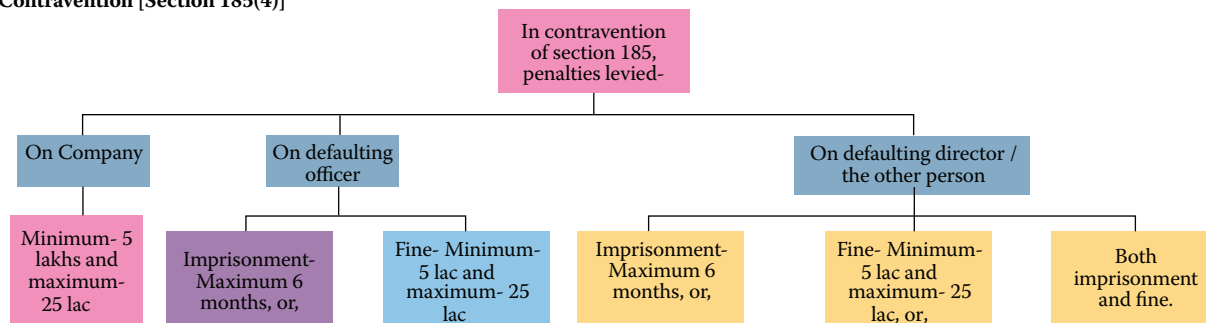
- a company shall unless otherwise prescribed, make investment through not more than 2 layers of investment companies

Exemption

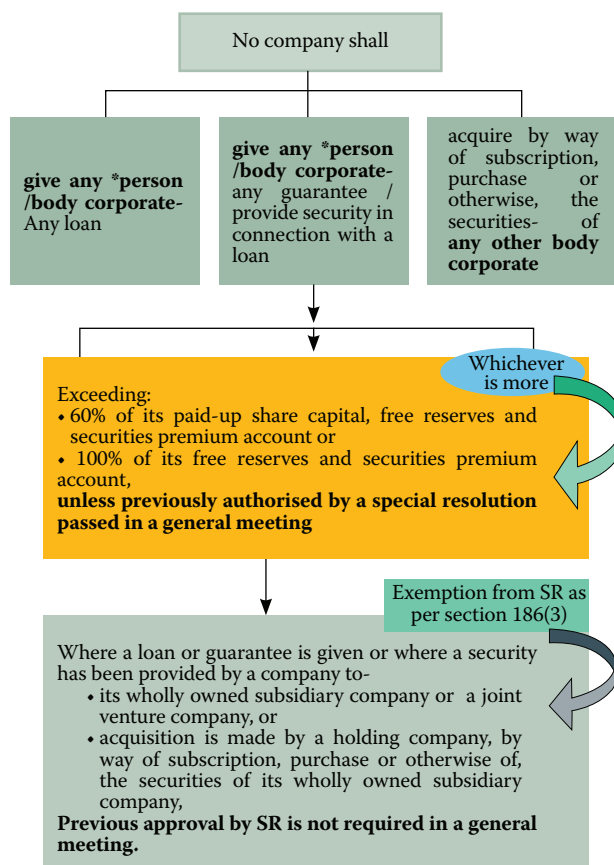
However, above provisions shall not affect,—

- a company **from acquiring any other company incorporated in a country outside India** if such other company has investment subsidiaries beyond two layers as per the laws of such country;
- a **subsidiary company from having any investment subsidiary** for the purposes of meeting the requirements under any law / under any rule / regulation framed under any law for the time being in force.

(v) Contravention [Section 185(4)]



(ii) Ceiling on the investment [Section 186(2) & (3) Read with Rule 13 of the Companies (Meetings of Board and its Powers) Rules, 2014]



*Word "person" does not include any individual who is in the employment of the company.

(iii) Disclosure to members [Section 186(4)]

Company shall disclose to the members in the financial statement the full particulars of-

loan given,	investment made or guarantee given or security provided,	the purpose for which the loan / guarantee / security is proposed to be utilized by the recipient of the loan / guarantee / security.

*Provided that prior approval of a PFI shall not be required –

- where the aggregate of the loans and investments **so far made**, the amount for which guarantee or security **so far provided** to or in all other bodies corporate,
- along with the investments, loans, guarantee or security **proposed to be made or given**

does not exceed the limit specified under section 186(2) and there is **no default in repayment of loan instalments or payment of interest** thereon as per the terms and conditions of such loan to the PFI.

(v) Maintenance of register [Section 186(9) & (10)]

Every company giving loan /a guarantee / providing security /making an acquisition shall

- keep a register
- containing such particulars and maintained as per Rule 12 of the Companies (Meetings of Board and its Powers) Rules, 2014
- be kept at the registered office of the company
- be open to inspection at such office and extracts may be taken therefrom by any member

(vi) Non-applicability of section 186 [Section 186(11)]

Except sub-section (1) of section 186

Section 186 shall not apply

to a loan made, guarantee given /security provided or investment made by-

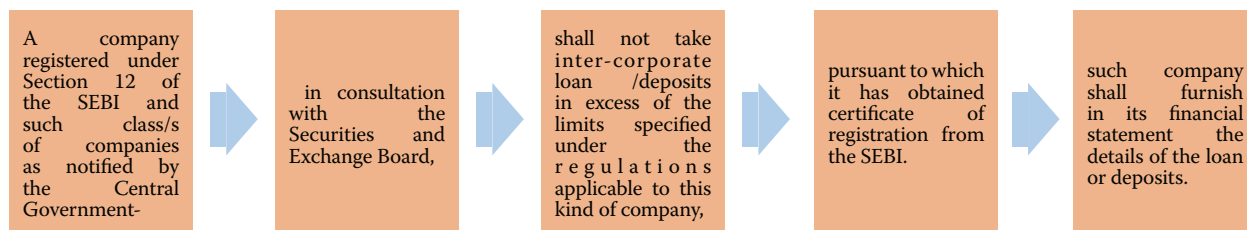
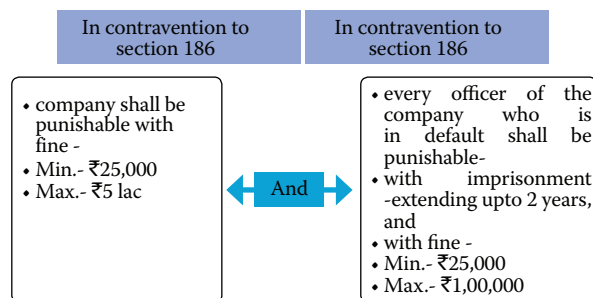
- a banking company or
- an insurance company or
- a housing finance company in the ordinary course of its business or
- or a company established with the object of and engaged in the business of financing industrial enterprises or
- of providing infrastructural facilities.

to any investment-

- made by an investment company;
- of shares allotted in pursuance of section 62(1)(a) or in shares allotted in pursuance of rights issues made by a body corporate;
- made, in respect of investment or lending activities, by a NBFC registered under Chapter III-B of the RBI Act, 1934 and whose principal business is acquisition of securities.

(iv) Requirements for the process of investment/ loan/guarantee/providing of security [Section 186(5)]

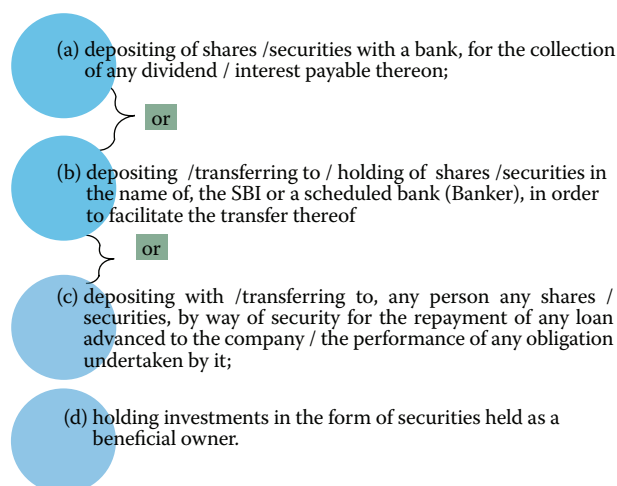
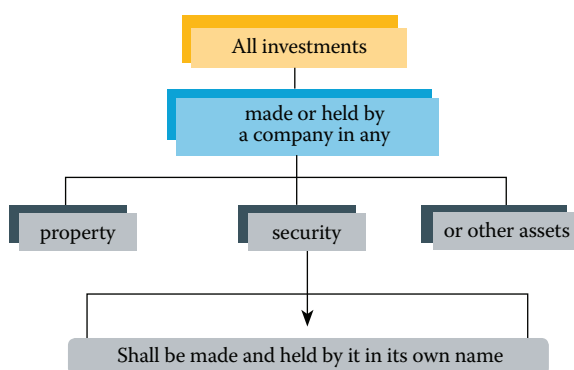


(vii) Restriction on company registered under SEBI on inter-corporate loans [Section 186(6)]**(viii) Penalty [Section 186(13)]****Non-applicability of Section 186 to a Government company**

-to a Government company engaged in defence production.

-A Government company, other than a listed company, in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before making any loan or giving any guarantee or providing any security or making any investment under the section.

Such exception is applicable to a Government company which has not committed a default in filing its financial statements under Section 137 or Annual Return under Section 92 with the Registrar.

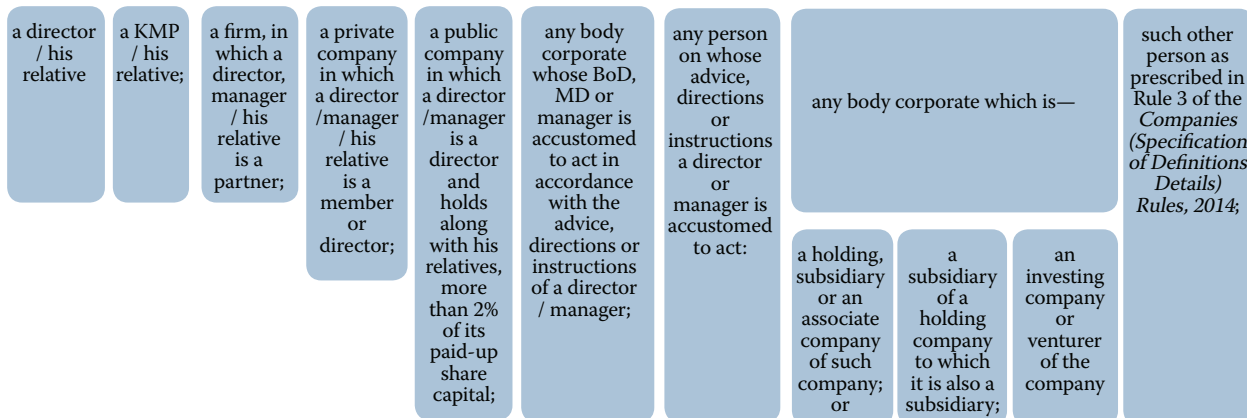
(ii) Following investment is allowable to the company [Section 187(2)]**(9) Investments of company to be held in its own name [Section 187]****(i) Investment made by company in its own name [Section 187(1)]**

However, the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(10) Related Party Transactions [Section 188 read with Rule 3 of the Companies (Specification of Definitions Details) Rules, 2014]

(i) Meaning of Related Party

Related Party (Section 2 clause 76) with reference to a company, means-



(ii) Contracts with related parties (RP) which are covered under section 188 [Section 188(1)]

Company shall enter into any contract or arrangement with a RP with respect to the below transactions, with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under rule 15(1) of the Companies (Meetings of Board and its Powers) Rules, 2014

Transactions



However, no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as prescribed under Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014, shall be entered into except with the prior approval of the company by a resolution. [First proviso to section 188(1)]

(iii) Prescribed limits for the transactions to be entered into as contracts or arrangements with the prior approval of the Company [Rule 15(3) of the Companies (Meetings of Board and its Powers) Rules, 2014]

(A) Where the transaction/s to be entered into as contracts or arrangements with respect to clauses (a) to (e) of section 188(1), with criteria as mentioned below -

Conditions with respect to transactions to be entered into with the prior approval	Prescribed limits for the transactions to be entered into as contracts or arrangements
sale, purchase or supply of any goods or materials, directly or through appointment of agent	Amounting to 10% or more of the turnover of the company, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188
selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent	Amounting to 10% or more of net worth of the company, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188
leasing of property of any kind	Amounting to 10% or more of the turnover of the company, as mentioned in clause (c) of sub-section (1) of section 188
availing or rendering of any services, directly or through appointment of agent	Amounting to 10% or more of the turnover of the company, as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188

It is hereby clarified that the limits specified above, shall apply for transaction/s to be entered into either individually or taken together with the previous transactions during a financial year.

(B) **Transaction entered is for appointment to any office or place of profit:** Where the transaction/s to be entered into as contracts or arrangements is for appointment to any office or place of profit in the company, its subsidiary company / associate company at a monthly remuneration **exceeding ₹2.5 lac**; or

(C) **Transaction entered is for remuneration for underwriting the subscription of any securities etc.:** Where the transaction/s to be entered into as contracts or arrangements is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company **exceeding 1% of the net worth** as mentioned in section 188(1)(g).

(iv) **Concept of "Arm's length transaction"**

Meaning			
a transaction	between two related parties	conducted as if they were unrelated,	so that there is no conflict of interest

Applicability of section 188 on transactions on arm's length basis

Section 188(1) shall not apply to any transactions	Except the transactions which are not on an arm's length basis, with the appropriate approval.
entered into by the company in its ordinary course of business & at an arm's length basis with no approval	

(v) **Relevant particulars to disclose in the notice of a general meeting and consequences on being a related party/ or in relation to a related party, in a transaction.** [Proviso & explanation to Section 188]

- The explanatory statement to be annexed to the notice of a general meeting as per section 101, shall contain-
- name of the related party;
- name of the director / KMP who is related, if any;
- nature of relationship;
- nature, material terms, monetary value and particulars of the contract / arrangement;
- any other information relevant / important for the members to take a decision on the proposed resolution.

No voting by member who is related party

- no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party.

- the above shall not apply to a company in which ninety per cent or more members, in number, are relatives of promoters or are related parties.

Where any director is interested in any contract / arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement. [Rule 15(2)]

(vi) **Passing of resolution is not necessitated** [Proviso to Section 188(1)]

No resolution required to be passed by members under first proviso

for transactions entered into between a holding company and its wholly owned subsidiary, whose accounts are consolidated with such holding company, and are placed before the shareholders at the general meeting for approval.

(vii) **Consequences of Related party transaction** [Section 188(3) & (4)]

A contract or arrangement shall be voidable at the option of the Board/ shareholders

Where any contract / arrangement is entered into without obtaining the consent of the Board or approval by a resolution in the general meeting by-

- a director, or
- any other employee, and

if it is not ratified by

- the Board, or
- the shareholders at a meeting within 3 months from the date on which such contract or arrangement was entered into.

Such act shall be open to the company to proceed against-

- a director or any other employee
- who had entered into such contract or arrangement
- in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

Further, if the contract or arrangement is with a related party to any director, or is authorised by any other director,

- the directors concerned shall indemnify the company against any loss incurred by it.

company may proceed against such a director / any other employee for recovery of any loss who had entered into such contract / arrangement in contravention of the provisions of Section 188

(viii) **Penalty for contravention** [Section 188 (5)]:

In the case of a-	Liability- Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall-
Listed company	liable to be penalty of ₹25 lac; and
Any other company	liable to a penalty of ₹5 lac

Exemption from applicability of section 188 for transactions arising out of Compromises, Arrangements and Amalgamations dealt with under specific provisions of the Companies Act, 2013.

INSPECTION, INQUIRY AND INVESTIGATION

(1) Powers given to the authorities for inspection, inquiry and investigation

Authorities	Powers
Registrar under sections 206, 207, 208 & 209	Section 206 - Call for information and inspection of books of account, papers and explanations and order for inquiry, Section 207 – Conduct of Inspection and Enquiry, The Registrar have all the powers as are vested in a civil court. Section 208 – Submission of inspection report, Section 209 - Search and seizure,
Inspector under sections 206, 207, 208, 209 & 216	Section 206 - Call for information and inspection of books of account, papers and explanations and order for inquiry, Section 207 – Conduct of Inspection and Enquiry, The Registrar have all the powers as are vested in a civil court. Section 208 – submission of inspection report, Section 209 -Search and seizure Section 216 – To investigate on matters relating to company and its membership for determining ownership of company.
Central Government (CG) under sections 206, 210, 211, 212, 216 & 224	Section 206 – CG may authorize any statutory authority to carry out the Inspection of books of accounts of company, Section 210 - Investigate into affairs of company, Appointment of inspectors to investigate into affairs of the company and to report there on. Section 211 - Establishment of Serious Fraud Investigation Office (SFIO), Section 212 - Assignment of investigation into the affairs of company by SFIO Section 216 - Appointment of inspector to investigate on matters relating to company and its membership for determining ownership of company, Section 224 - Actions may be taken in pursuance of inspector's report
Regional director in section 206	Section 206 - Appoint inspector for inspection of books and papers of company
Tribunal under section 213, 221, 222	Section 213 -Pass an order for investigation into company's affairs in other cases, Section 221 - for freezing of assets of company on inquiry and investigation, Section 222 -for imposing restrictions upon securities

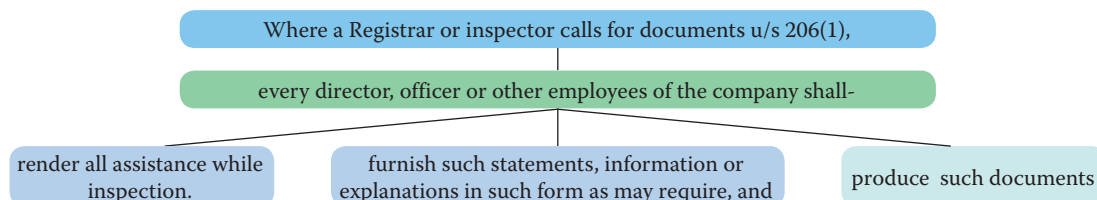
(2) Power to call for information, inspect books and conduct inquiries [Section 206]

Concerned authorities	In the following circumstances	Have following Powers
Registrar	- On a scrutiny of any document filed by a company, or - on any information received by him, - is of the opinion that any further information /explanation / any further documents relating to the company is necessary	May by a written notice require the company— (a) to furnish in writing such information or explanation; or (b) to produce such documents
Where Registrar	(a) is not furnished information or explanation within time, or (b) on examination, is of the opinion that the information / explanation furnished is inadequate; or (c) is satisfied on a scrutiny, that an unsatisfactory state of affairs exists in the company and the information or documents fails to disclose a full & fair statement of the information required.	May by another written notice call on the company- (a) to produce for inspection such further books of account, books, papers and explanations (b) at such place & time as specified in the notice by him.

Concerned authorities	In the following circumstances	Have following Powers
Registrar	(1) on the basis of information available with or furnished; or (2) on a representation made to him by any person that the business of a company is being carried on for a fraudulent / unlawful purpose or not in compliance with the provisions of this Act; or (3) the grievances of investors are not being addressed,	May call the company to furnish in writing any information/explanation on matters specified in the order (within specified time) and carry out inquiry after providing the company a reasonable opportunity of being heard
Central Government	if is satisfied that the circumstances so warrant	- direct the Registrar / an inspector to carry out the inquiry - direct inspection of books and papers of a company by an inspector appointed for the purpose
Central Government	having regard to the circumstances	by general/special order, authorise any statutory authority to carry out the inspection of books of account of a company /class of companies

(3) Conduct of inspection and inquiry [Section 207]

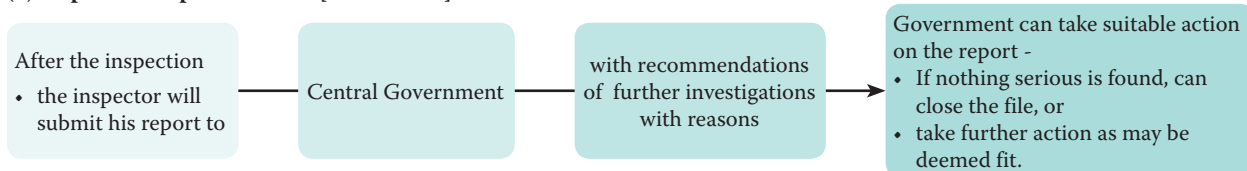
(i) Duty of director, officer or employee



(ii) Powers of the Registrar or inspector

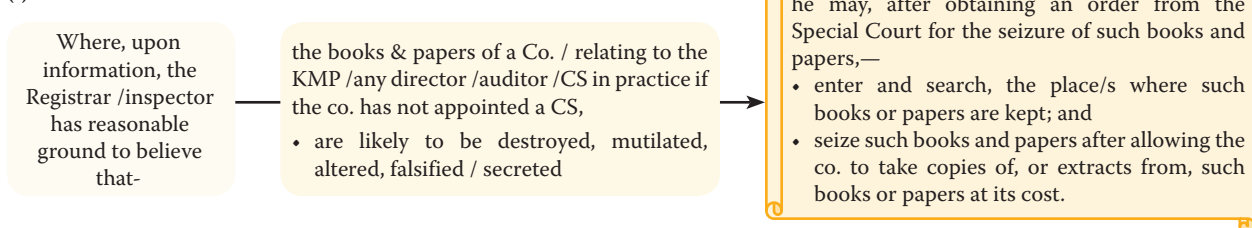
The Registrar / inspector making an inspection or inquiry u/s 206 may,
- during the course of such inspection or inquiry— - make/ cause to be made copies of books of account and other books and papers, or - place / cause to be placed any marks of identification in such books in token of the inspection having been made.
The Registrar / inspector making an inspection or inquiry shall have all the powers as of civil court, while trying a suit as to:
- discovery & production of books of account and other documents, as may be specified by such Registrar / inspector making the inspection or inquiry - summoning & enforcing the attendance of persons and examining them on oath, and - inspection of any books, registers and other documents of the company at any place.
Penalty: Any director / officer of the company disobeys the direction issued by the Registrar / the inspector-
- shall be punishable with imprisonment which may extend to 1 year and with fine varying 25,000 -1 lakh rupees. - If has been convicted of an offence under this section, on and from the date on which he is so convicted, be deemed to have vacated his office - on such vacation of office, shall be disqualified from holding an office in any company.

(4) Report on inspection made [Section 208]

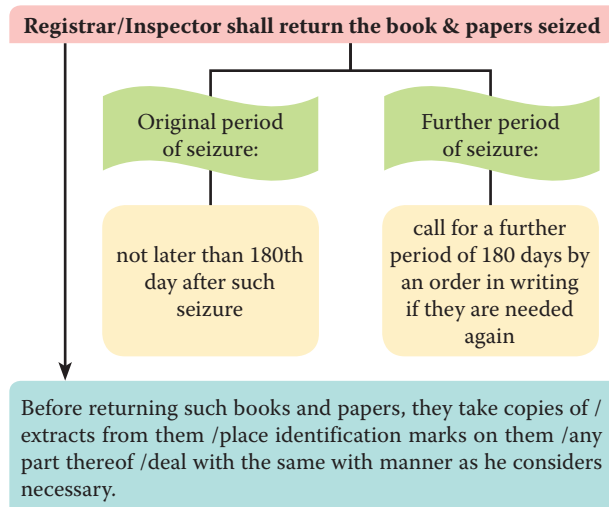


(5) Search and Seizure [Section 209]

(i) Circumstances for search & seizure

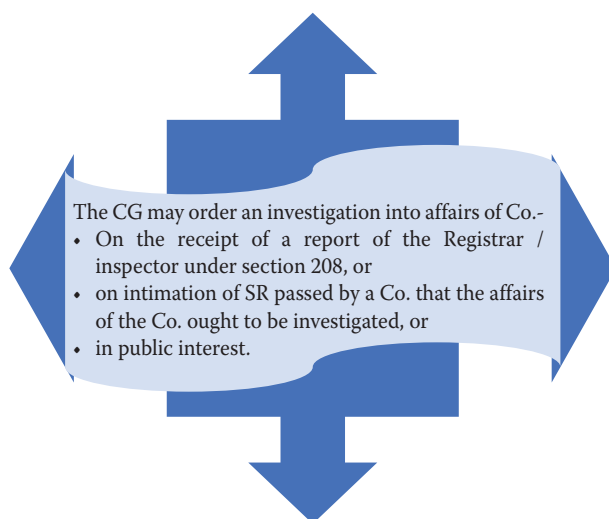


(ii) Period of Seizure

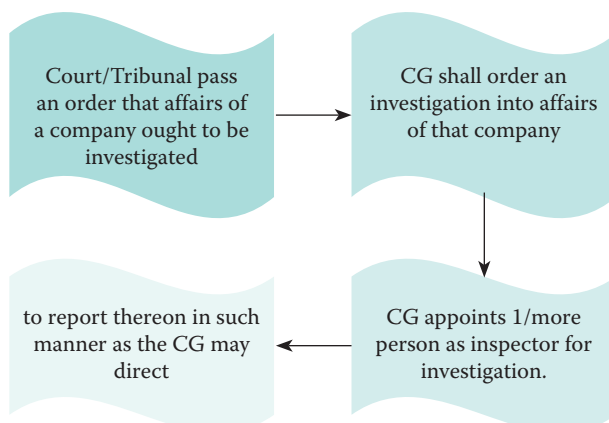


(6) Investigation into affairs of company [Section 210]

(i) By Central Government



(ii) By Court/Tribunal



(7) Establishment of Serious Fraud Investigation Office [Section 211]

Serious Fraud Investigation Office –an office established to investigate frauds relating to a company



(8) Investigation into affairs of Co. by SFIO [Section 212]

CG to investigate into affairs of company by SFIO, may by order assign its investigation to SFIO

on receipt of report of Registrar or inspector u/s 208	On intimation of SR by company	In Public Interest	on request from any Dept. of CG or SG
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On receipt of such order, SFIO may designate inspectors

If investigation is pending with other investigating agency, such concerned agency shall transfer the relevant documents and records to SFIO

SFIO shall conduct the investigation according to chapter XIV and submit its report to CG within such period as specified in order

the investigating officer shall have the power of the inspector u/s 217

the company and its officers and employees shall be responsible to provide assistance to investigating Officer as may be required

Offences covered u/s 447 shall be cognizable and person accused shall not be released on bail or on bond except under certified circumstances

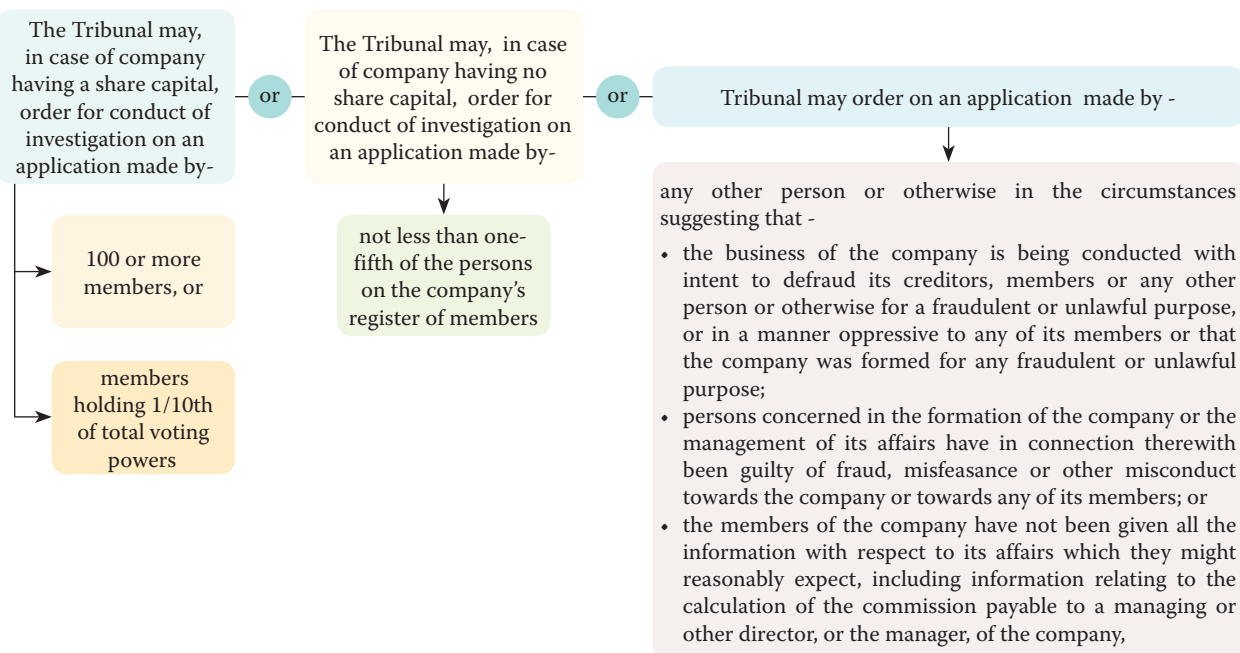
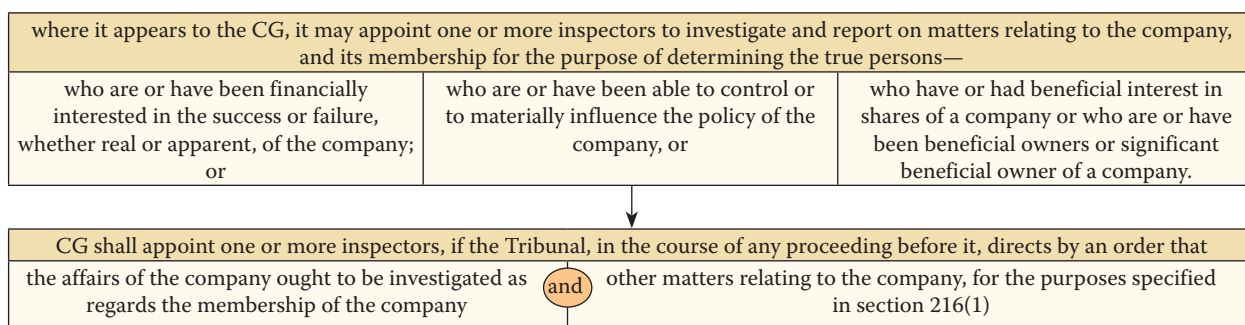
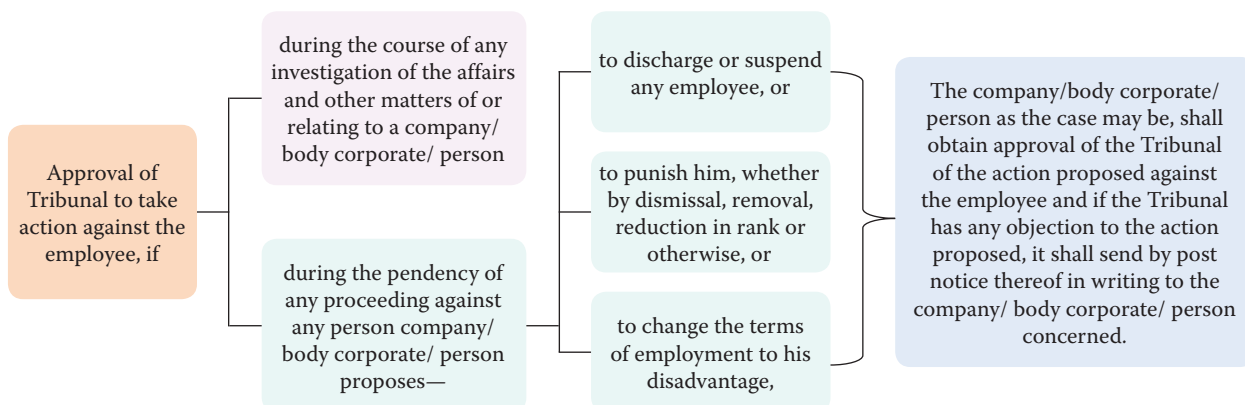
the concerned officers of SFIO may arrest the guilty person if has reason to believe and inform him of the grounds for such arrest.

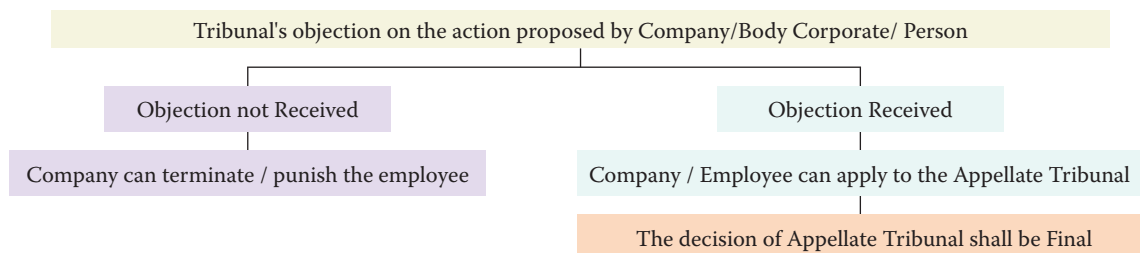
the concerned officers of SFIO shall immediately after arrest forward a copy of order to SFIO

Every person arrested shall within 24 hours be taken to special court / JM or MM having jurisdiction

Submission of interim report and Investigation report to CG

CG after examination, may order the SFIO to initiate prosecution against the company and its officers and employees

(9) Investigation into company's affairs in other cases (Section 213)**(10) Investigation of ownership of company [Section 216]****(11) Protection of employees during investigation [Section 218]****(i) To obtain approval of Tribunal**

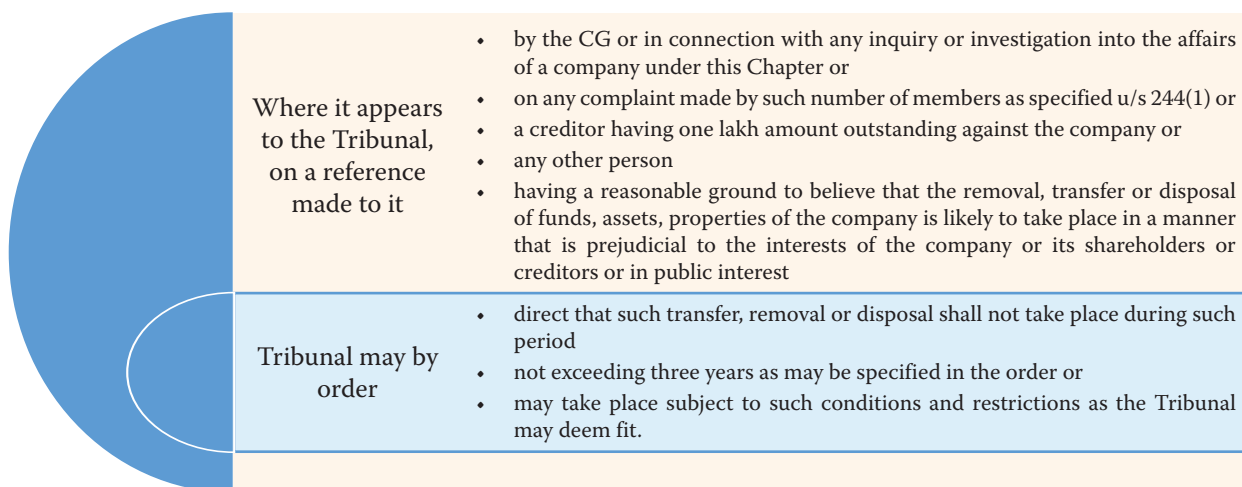
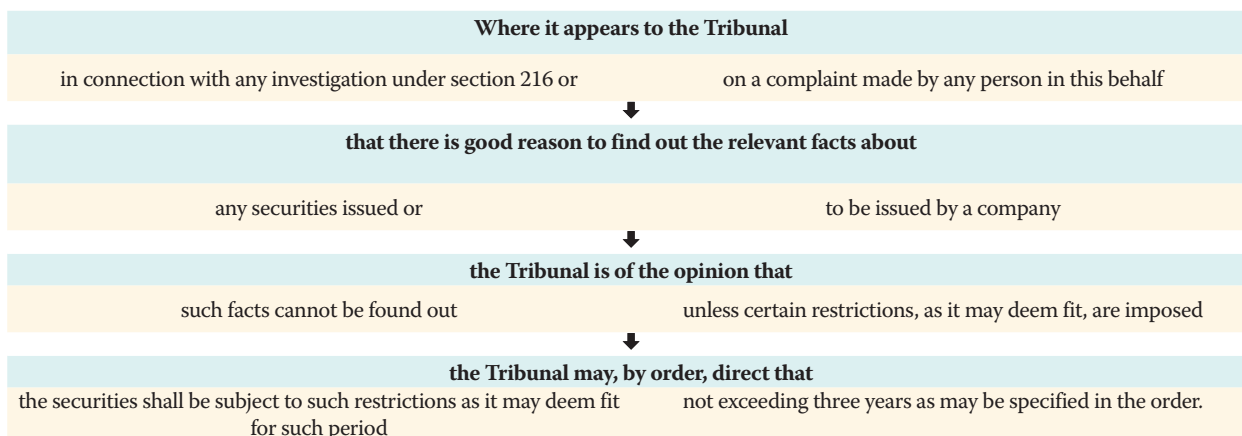
(ii) Consequences of Tribunal's objections**(12) Powers of inspector****(i) To conduct investigation into affairs of related companies, etc. [Section 219]**

If an inspector while investigating into the affairs of a company considers it necessary, can also investigate the affairs of—			
any other body corporate which is/ has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company,	any other body corporate which is/ has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company,	any other body corporate whose Board of Directors comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its Directors, or	any person who is or has at any relevant time been the company's managing director or manager or employee

Report of inspector: The inspector shall, subject to the prior approval of the CG, investigate into and report on the affairs of the other body corporate/ managing director/ manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

(ii) Seizure of documents by inspector [Section 220]

If the inspector believe that the related books and paper are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—	- enter the place/s where such books and papers are kept in such manner as may be required and - seize books and papers as is necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the investigation.
The inspector shall keep in his custody the books and papers seized	- for such a period not later than the conclusion of the investigation as he considers necessary and - thereafter shall return the same to those from whose custody or power they were seized.
The inspector may, before returning such books and papers	- take copies of, or extracts from them or - place identification marks on them or any part thereof or - deal with the same in such manner as he considers necessary
Application of provisions of Cr.PC	- relating to searches or seizures shall apply <i>mutatis mutandis</i> - to every search or seizure made under this section.

(13) Freezing of Assets of Company on Inquiry and Investigation [Section 221]**(14) Imposition of Restrictions upon Securities [Section 222]****(15) Inspector's report [Section 223]****(16) Actions to be taken in pursuance of Inspector's Report [Section 224]****(i) On basis of report, if person appears to be guilty of offence****If, from an inspector's report, it appears to the CG that**

- any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated
- been guilty of any offence for which he is criminally liable

CG may prosecute

- such person for the offence and
- it shall be the duty of all officers and other employees of the company or body corporate
- to give the CG the necessary assistance in connection with the prosecution.

(ii) Filing of petition by person authorized by the CG:

If any company or other body corporate is liable to be wound up and it appears to the CG from Inspector's report that it is expedient so to do

- CG may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorized by the Central Government in this behalf—
- a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up;
- an application under section 241; or
- both.

(iii) Initiation of winding up proceeding suo moto by the CG

If from Inspector's report, it appears to the CG that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated

for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or

for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained,

CG may itself bring proceedings for winding up in the name of such company or body corporate.

(iv) Where fraud has been committed

Where the Inspector's report states that fraud has taken place in a company and due to such fraud

any director, KMP, other officer of the company or any other person or entity

has taken undue advantage or benefit,

whether in the form of any asset, property or cash or in any other manner

CG may file an application before the Tribunal for appropriate orders

with regard to disgorgement of such asset, property, or cash

and

for holding such director, KMP, officer or other person liable personally without any limitation of liability.

COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS

(1) Power to Compromise or make arrangements with Creditors and Members [Section 230]

Where a compromise or arrangement is proposed between—			
a company and its creditors or any class of them; or		a company and its members or any class of them,	
↓			
the Tribunal may, on the application of the-			
Company, or	creditor, or	member of the company, or	Liquidator (in case of voluntary liquidation)
↓			
• Order a meeting of the creditors/ members or class of creditors/ members • Meeting is to be called, held and conducted in such manner as the Tribunal directs.			
↓			
The company or any other person, by whom an application is made, shall disclose to the Tribunal by affidavit—			
All material facts relating to Co. (latest financial position , latest auditor's report and pendency of any investigation)	Reduction of share capital		any scheme of corporate debt restructuring (consented to by not less than 75% of the secured creditors in value)
↓			
Where a meeting is proposed to be called in pursuance of an order of the Tribunal, a notice of such meeting shall be sent to-			
all the creditors or class of creditors, and	to all the members or class of members,	the debenture-holders of the company,	Sectoral regulators u/s 230(5)
↓			

The above notice is to be sent individually at the address registered with the company

Notice of meeting shall be accompanied by:

statement disclosing the details of the compromise or arrangement	a copy of the valuation report, if any, and explaining their effect on creditors, KMP, promoters and non-promoter members, and the debenture-holders and	the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and	other prescribed matters
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Such notice and other documents shall also be placed on -

- the website of the Co., and
- in case of a listed Co., these documents shall be sent to the SEBI and stock exchange where the securities are listed, for placing on their website and
- also be published in newspapers

Notices to sectoral regulators to make representation, if likely to be affected by the compromise or arrangement

Meeting can be dispensed by Tribunal if atleast 90% in value of creditors agree & confirm to scheme of compromise or arrangement.

Objection to the compromise/arrangement shall be made by persons-

- holding 10% or more of shareholding, or
- having outstanding debt 5 % or more of total outstanding debt

Where, at a meeting, majority of persons representing 3/4th in value agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding

Filing of order of Tribunal with Registrar within 30 days of the receipt of the order.

(2) Power of Tribunal to enforce Compromise or Arrangement [Section 231]

(i) Power of Tribunal to implement the order

Where the Tribunal makes an order u/s 230 sanctioning a compromise or an arrangement in respect of a co., it—

shall have power to supervise the implementation of the compromise or arrangement; &

give such directions as it may consider necessary for the proper implementation of the compromise or arrangement.

(ii) Passing of Winding up order by Tribunal

Scheme u/s 230 cannot be implemented satisfactorily with or without modifications

+

Co. is unable to pay its debts as per the scheme

=

Tribunal may order for winding up

Winding up order is deemed to be u/s 273

(3) Merger and Amalgamation of Companies [Section 232]

(i) Filing of an application for purpose of reconstruction of companies involving merger/ amalgamation or transfer of undertaking, property etc.

Application filed u/s 230 to Tribunal and it is shown to the Tribunal that:

compromise or arrangement has been proposed for:

- reconstruction
- merger or
- amalgamation

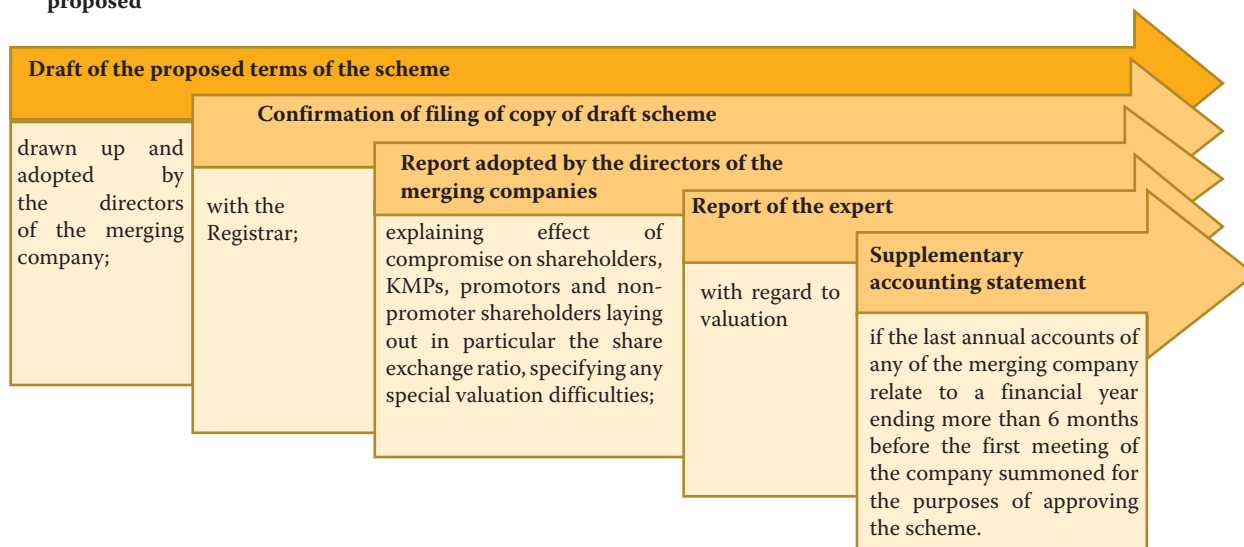
Under the scheme,

- the whole or any part of the undertaking, property or liabilities of transferor company is required to be transferred to transferee company, or
- is proposed to be divided among and transferred to two or more companies

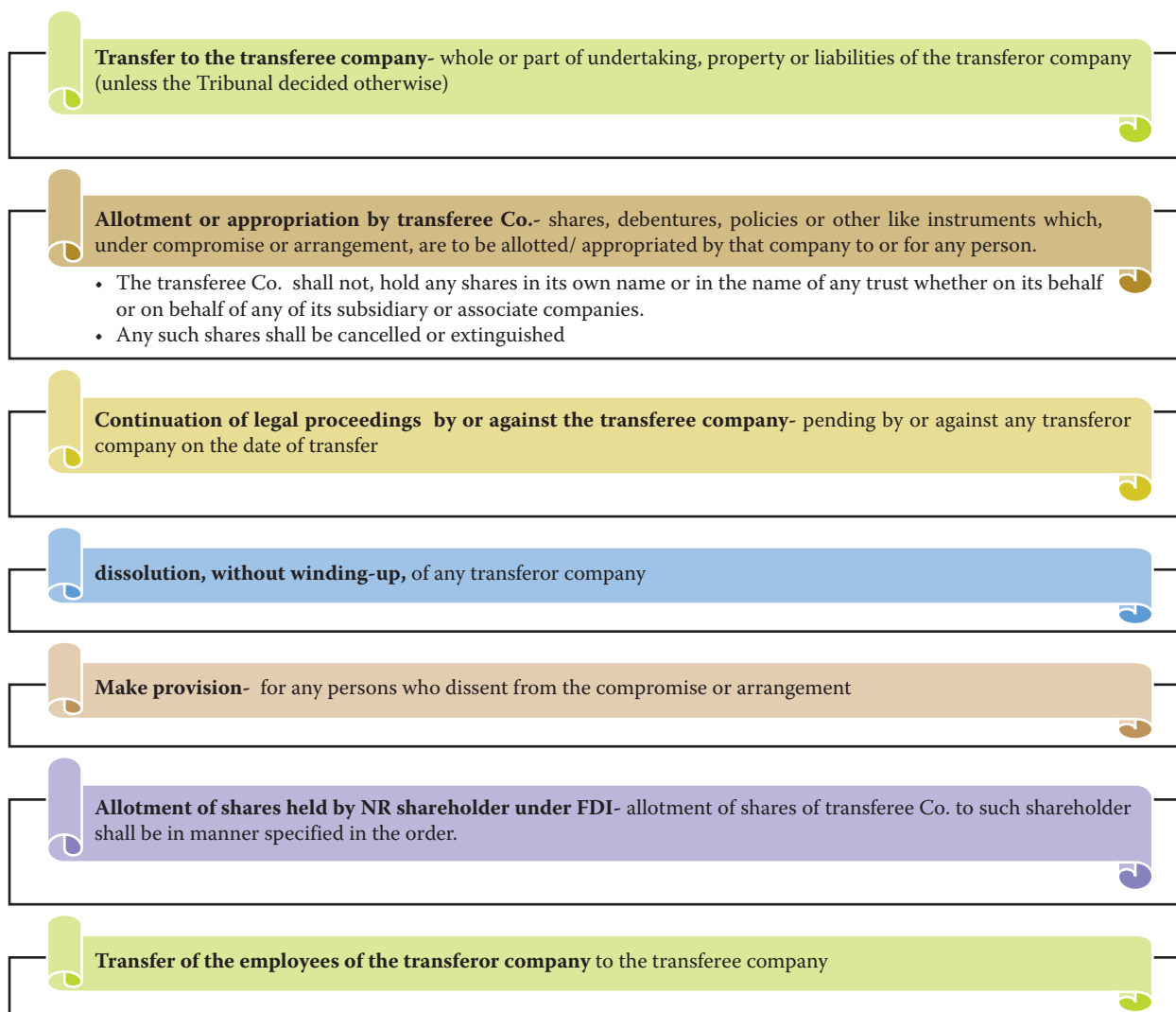
Tribunal (on application)

- order a meeting of creditors or members
- to be called, held and conducted in manner as directed by Tribunal
- provisions u/s 230(6) to (8) shall apply *mutatis mutandis*

- (ii) Circulation of information for the meeting by the merging companies / the companies in respect of which a division is proposed



- (iii) Order of Tribunal on the agreement of compromise or arrangement



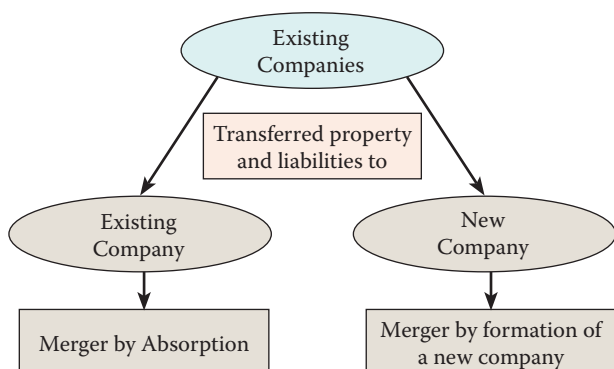
where transferor Co. is a listed Co. and transferee Co. is an unlisted Co.:

- (i) transferee Co. shall remain an unlisted Co. until it becomes a listed Co.
- (ii) if shareholders of transferor Co. decide to opt out of transferee Co., provision shall be made for payment of value of shares held by them and other benefits as per a pre-determined price formula or valuation
 - However, amount of payment or valuation for any share shall not be less than what has been specified by SEBI Regulations.

Where the transferor Co. is dissolved- fee, if any, paid by the transferor Co. on its authorised capital shall be set-off against any fees payable by the transferee Co. on its Authorised Capital subsequent to the amalgamation

Certificate by company's auditor- to be filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the Accounting Standards prescribed u/s 133.

(iv) Merger by Absorption and Merger by formation of new company



(v) Merging Companies

Merging companies are in relation to a merger by absorption

- to the transferor Co.s and
- transferee Co.s

Merging companies are in relation to a merger by formation of a new company

- to the transferor Co.s

(vi) Property

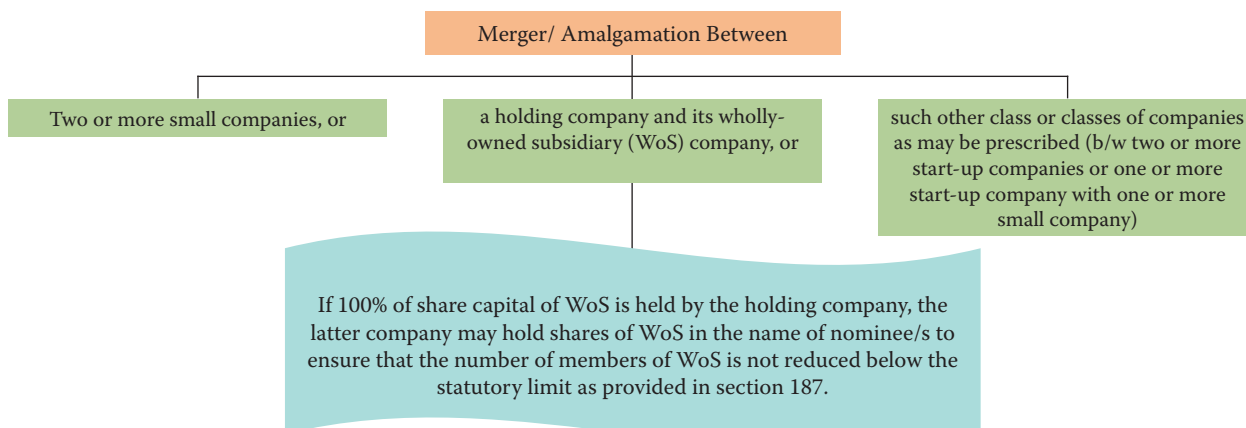
Property Includes

assets, rights and interests of every description

liabilities include debts and obligations of every description

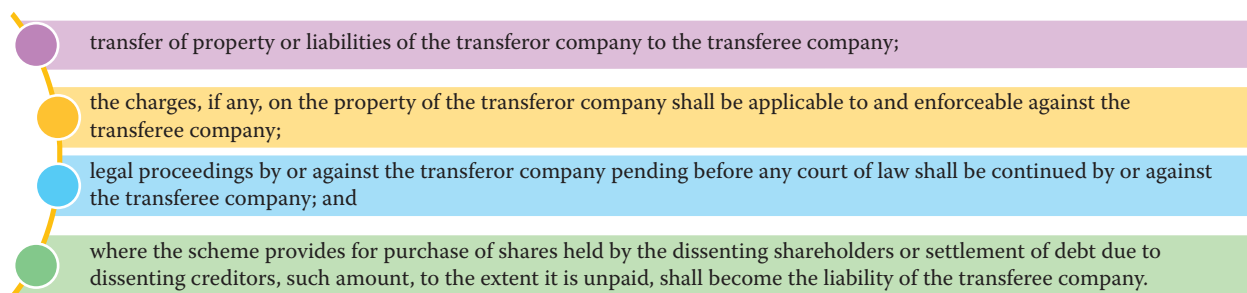
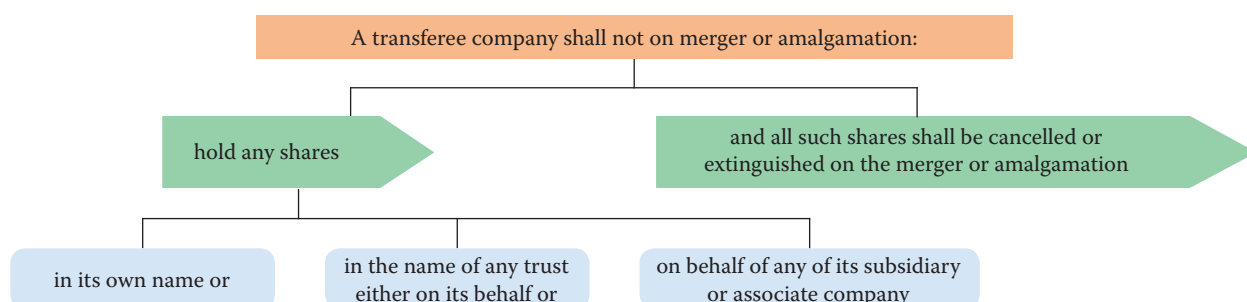
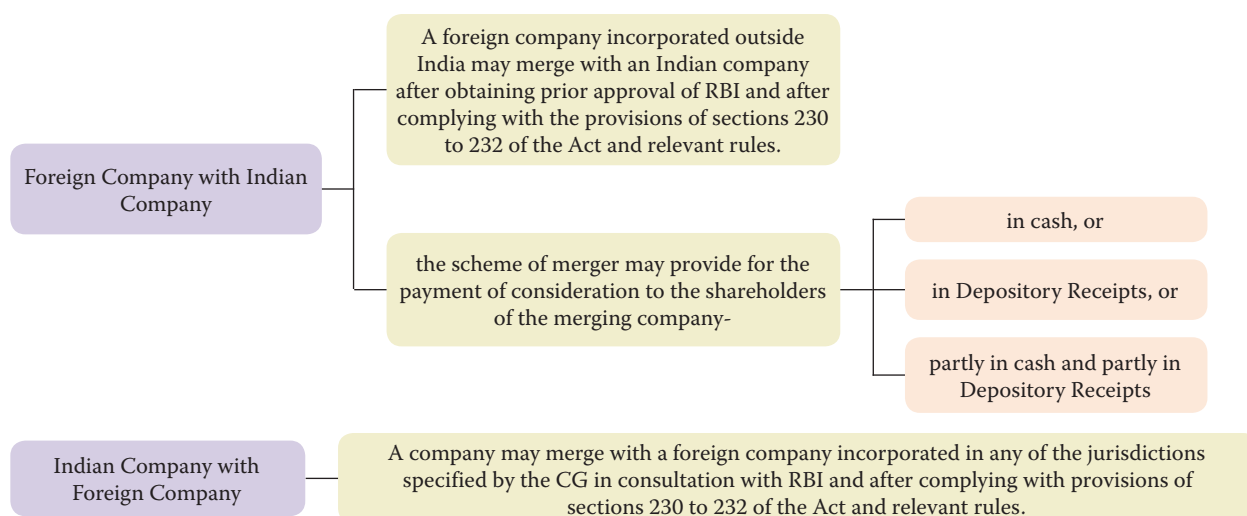
(4) Fast track mode of Merger or Amalgamation of Certain Companies [Section 233]

(i) Companies who may enter into scheme of merger or amalgamation



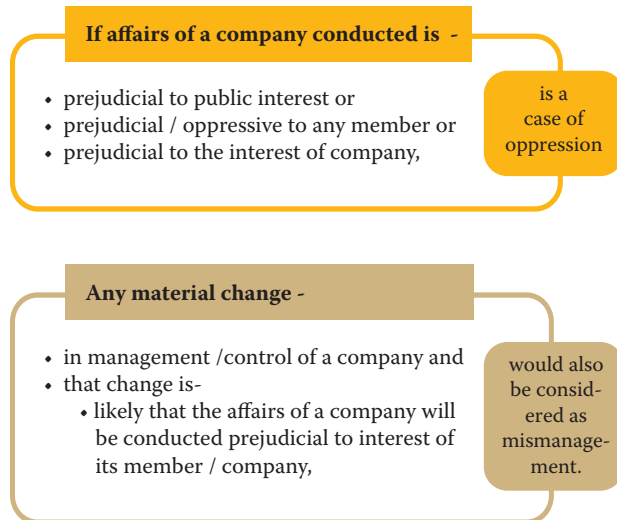
(ii) Conditions for entering into scheme of merger or amalgamation

A scheme of merger or amalgamation may be entered, subject to following conditions:	(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within 30 days is issued by the transferor company or companies and the transferee company;
	(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least 95% of the total number of shares;
	(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
	(d) the scheme is approved by majority representing 9/10th in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of 21 days along with the scheme to its creditors for the purpose or otherwise approved in writing.

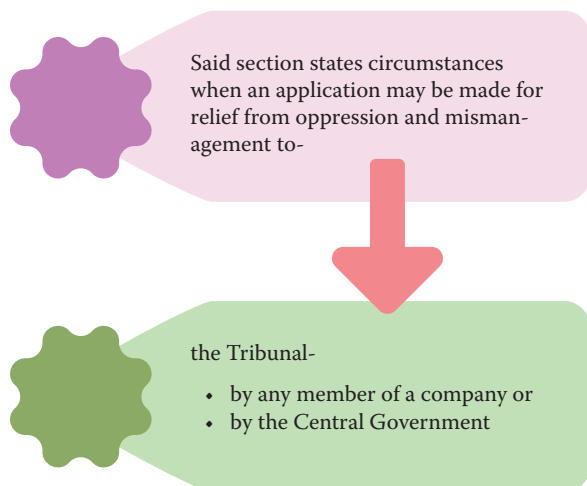
(iii) Effect of Registration of Scheme**(iv) Effect of merger and amalgamation on transferee company****(5) Merger or Amalgamation of Company with Foreign Company [Section 234]**

PREVENTION OF OPPRESSION AND MISMANAGEMENT

I. Definition of Oppression and Mismanagement



II. Application to Tribunal for Relief in cases of Oppression, etc. [Section 241]



(i) Right to apply to Tribunal:

Any member of a co. may apply to the Tribunal (provided has a right to apply under section 244) where-

affairs of the company have been / are being conducted prejudicial to-

- public interest
- member himself
- the interests of the company

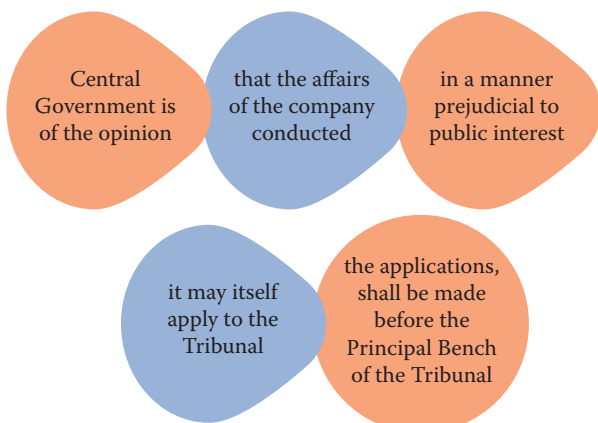
the material change

- has taken place in the management / control of the company (in case of share capital)
- in its membership, (if it has no share capital), or
- in any other manner

by reason of such change

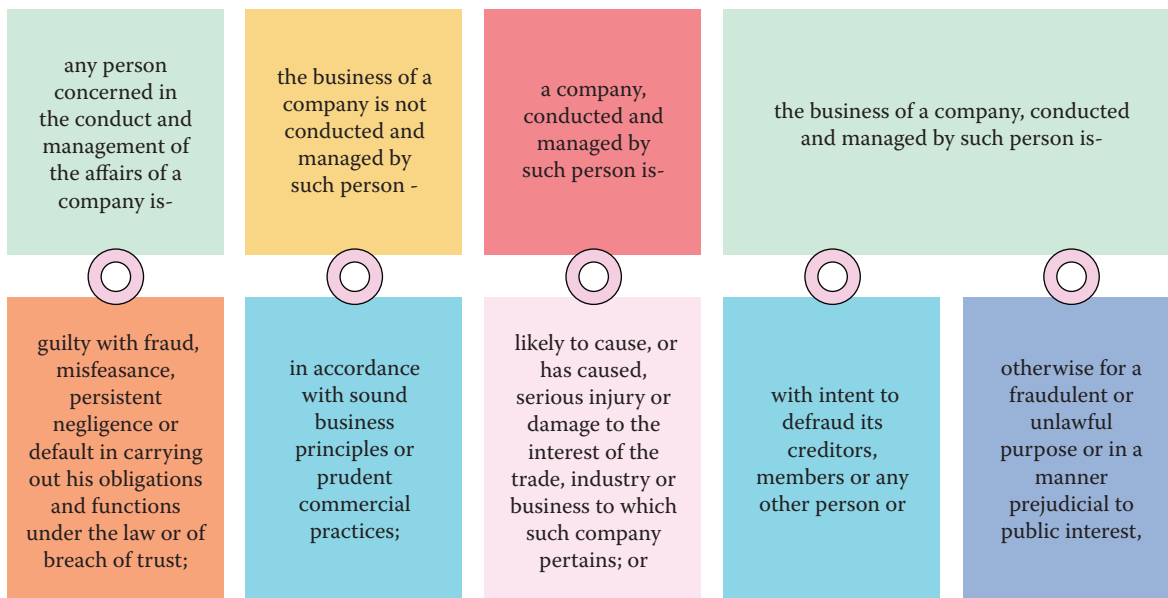
- affairs of the company will be conducted in a manner prejudicial to its
 - interests or
 - members/ any class of members

(ii) Central Government may suo moto apply the Tribunal:



(iii) Circumstances under which CG may initiate case

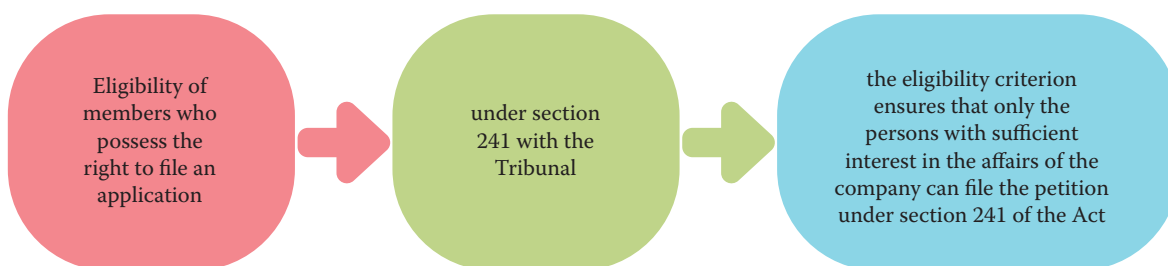
Circumstances for initiation of case by CG



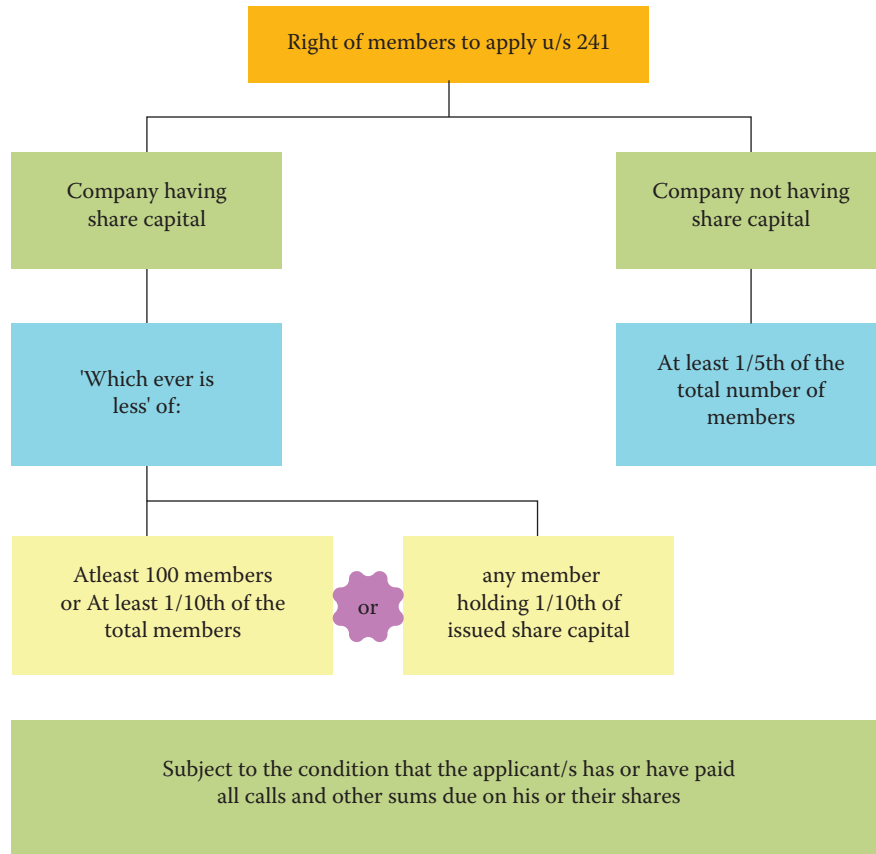
- CG may initiate a case against such person and refer the same to the Tribunal.
- Request the Tribunal to inquire into the case and record a decision
- whether /not such person is a fit and proper person to hold the office of director / any other office connected with the conduct and management of any company

III. Right to apply under Section 241 [Section 244]

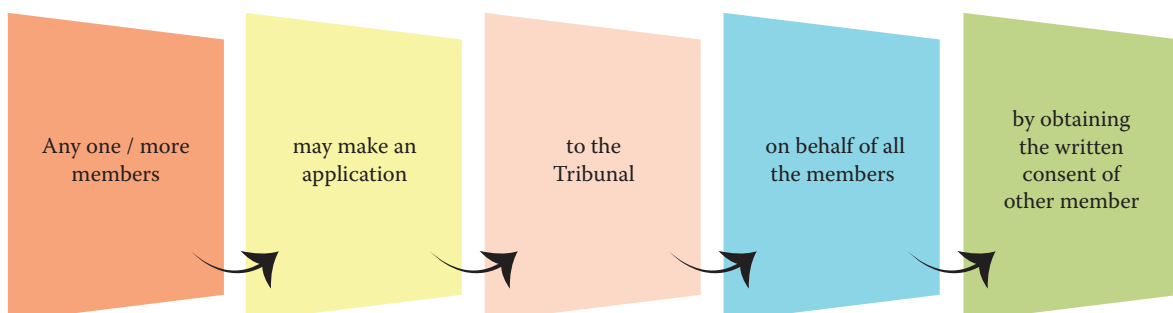
(i) Section relates to



(ii) Rights of Members to Apply:



(iii) Entitlement to members to make an application

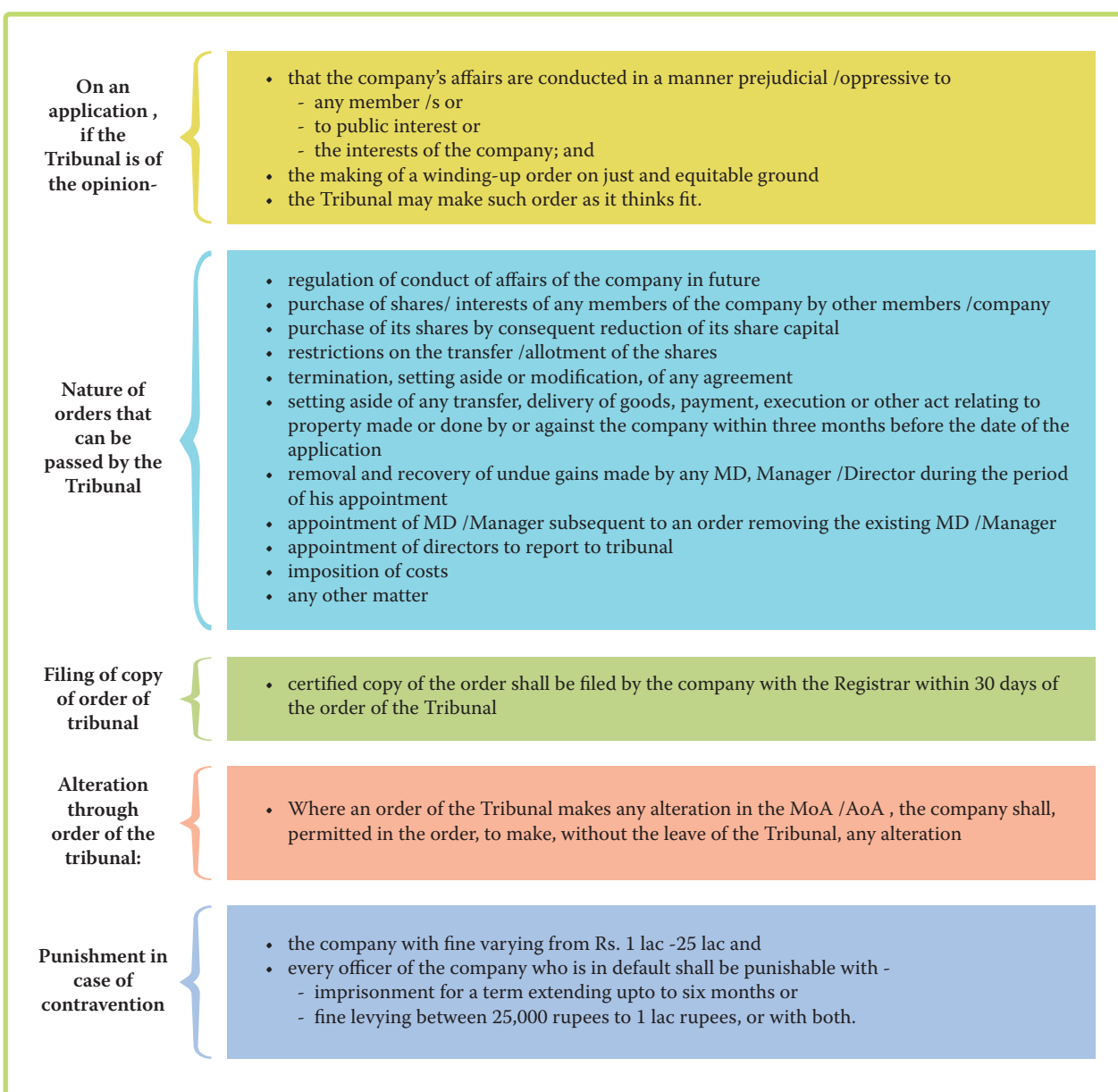


IV. Powers of Tribunal [Section 242]

(i) Power of NCLT to hear matter



(ii) Procedure to be followed after NCLT issues order



V. Consequences of Termination or Modification of Certain Agreements [Section 243]

(i) Consequences of termination/Modification by an order passed by Tribunal

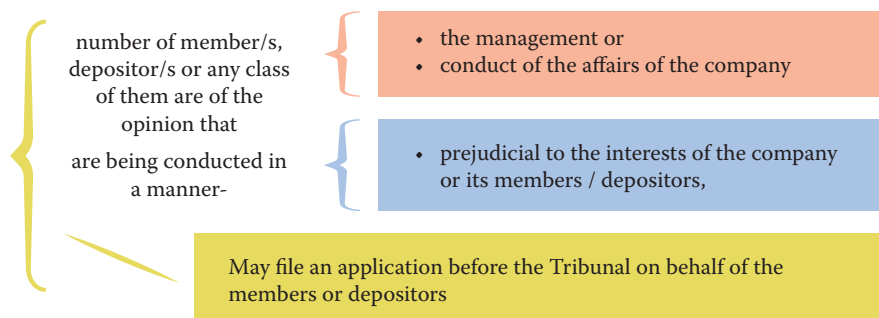
Where an order passed	Such passed order shall not give rise to-	No MD/ other Director / Manager whose agreement is so terminated or set aside shall,	Penalty to MD/D /M of a company and every other director of the company knowingly acts in contravention
- terminates, - sets aside or - modifies an agreement referred in section 242(2)	- to any claims against the company by any person for damages or - for compensation for loss of office or - in any other respect either in pursuance of the agreement or - otherwise;	- for a period of five years from the date of the order terminating or setting aside the agreement, - without the leave of the Tribunal, - be appointed, or act, as the managing director or other director or manager of the company	- shall be punishable with - with fine extending to 5 lac rupees
Provided that the tribunal shall grant leave only when notice of the intention to apply for leave has been served on the central government and that government has been given a reasonable opportunity of being heard in the matter.			

(ii) Disqualified to hold office

The person who is not fit and proper -	Provided that the CG may, with the leave of the Tribunal-	Notwithstanding anything contained in any other provision of this Act/any other law for the time being in force / any contract, memorandum / articles, on the removal of a person from the office of a director /any other office connected with the conduct and management of the affairs of the company-
- shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company - for a period of five years from the date of the said decision.	permit such person to hold any such office before the expiry of the said period of five years.	that person shall not be entitled to, or be paid, any compensation for the loss or termination of office

VI. Class Action (Section 245)

(i) Filing of application before the Tribunal on behalf of the members /depositors:



(ii) Order of tribunal: Members/depositors may seek the following orders –

restrain the company from committing an ultravires act

to restrain the company from committing breach of any provision of the company's AoA/MoA

to declare a resolution altering the memorandum or articles of the co. as void if

- the resolution was passed by suppression of material facts, or
- obtained by mis-statement to the members or depositors;

to restrain the co. and its directors from acting on such resolution;

to restrain the co. from doing an act contrary to the provisions of this Act / any other law

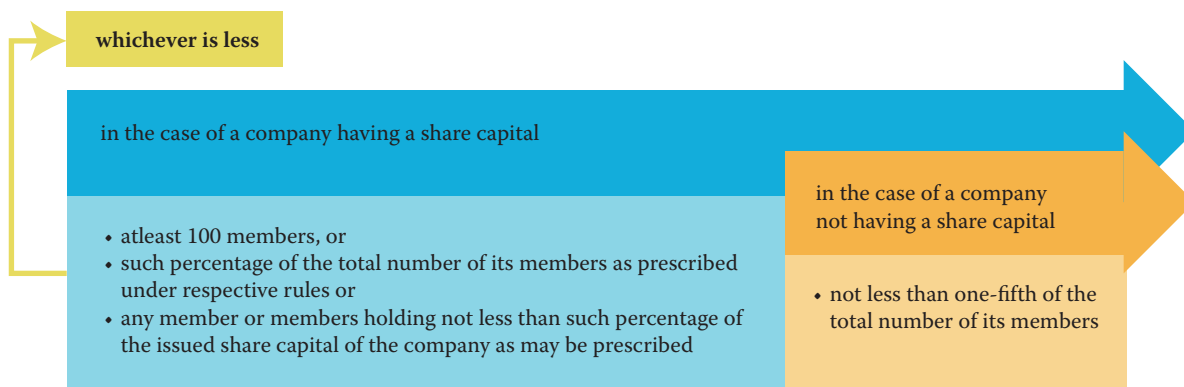
to restrain the company from taking action contrary to any resolution passed by the members;

to claim damages /compensation /demand /any other suitable action from or against-

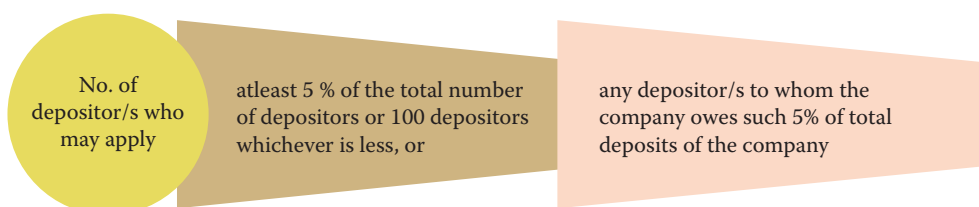
- the co. / its directors for any fraudulent, unlawful /wrongful act / omission /conduct / any likely act / omission / conduct on its /their part;
- the auditor including audit firm of the co. for any improper /misleading statement of particulars made in his audit report / for any fraudulent, unlawful / wrongful act / conduct; or
- any expert or advisor or consultant / any other person for any incorrect / misleading statement made to the company / for any fraudulent, unlawful / wrongful act / conduct / any likely act / conduct on his part;

to seek any other remedy as the Tribunal may deem fit.

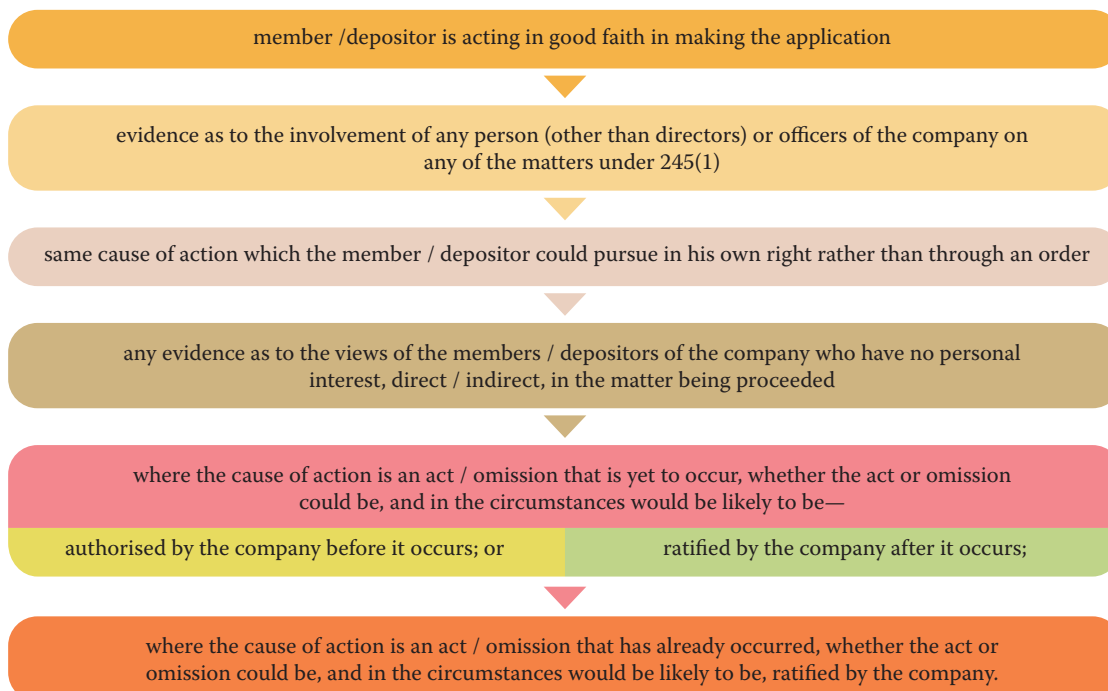
(iii) Required number of members to apply:



(iv) Required number of depositors to apply:



(v) Consideration of application by Tribunal



(vi) In case of admission of application

When an application is admitted, the Tribunal shall

- serve public notice
- to all the members / depositors
- all similar applications prevalent in any jurisdiction should be consolidated into a single application
- the class members / depositors allowed to choose the lead applicant
- the members / depositors of the class are unable to come to a consensus,
- the Tribunal shall appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side
- two class action applications for the same cause of action shall not be allowed;
- the cost / expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act

(vii) Order to be binding on the parties:

order passed by the Tribunal shall be binding on the

- company and all its members,
- depositors and
- auditor including
 - audit firm or
 - expert or
 - consultant or
 - advisor or
 - any other person associated with the company.

(viii) Punishment for non-compliance of section 245

Company which fails to comply with an order of Tribunal shall be punishable with-

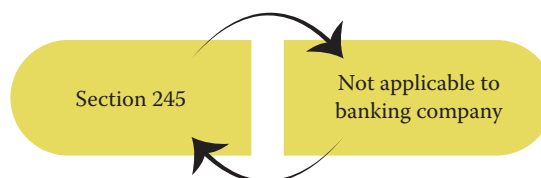
fine - minimum 5 lac rupees to maximum 25 lac rupees,

And

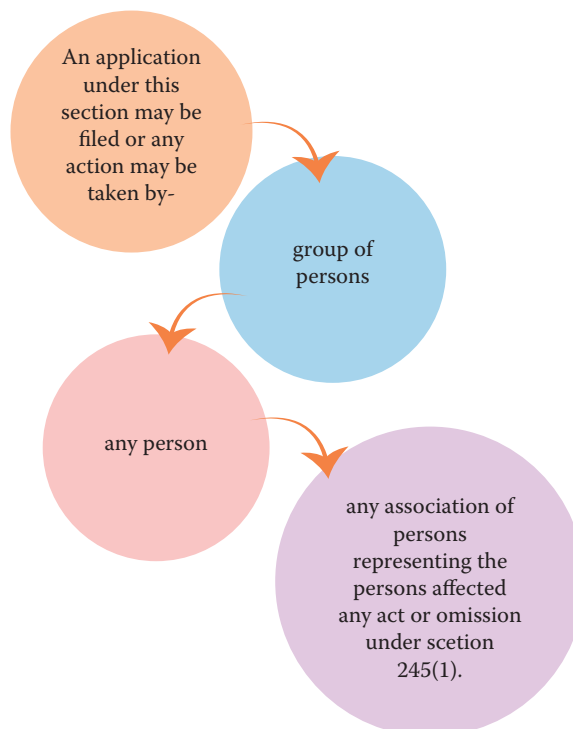
every officer of the company who is in default

Imprisonment for a term extending to 3 years + fine at least of 25 thousand rupees extending to 1 lac rupees

(ix) Exemption from application of section



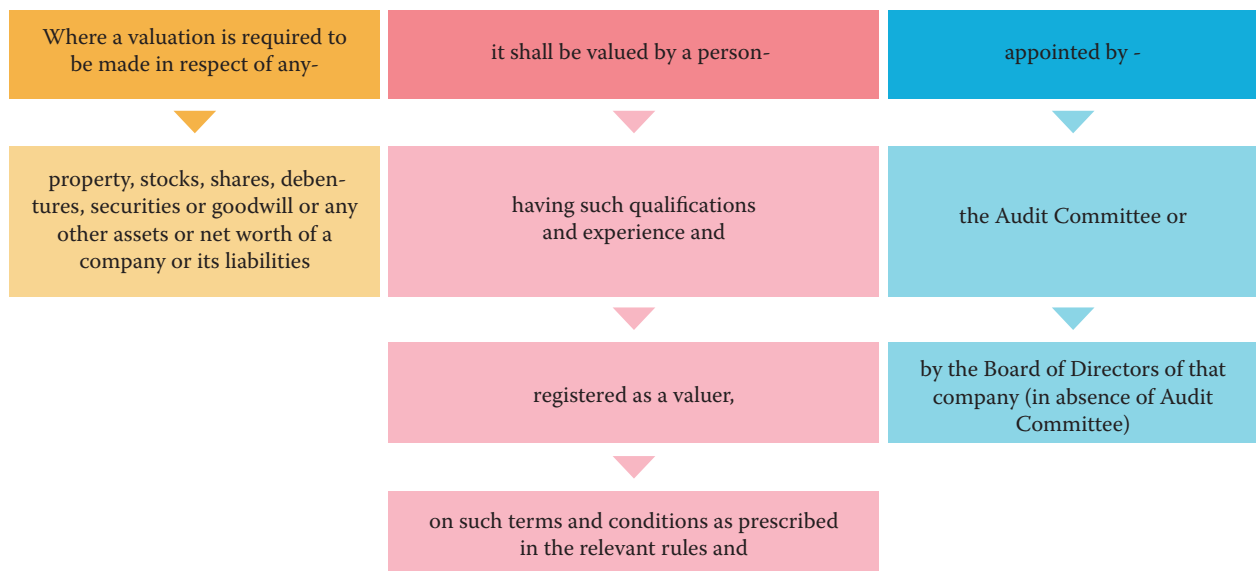
(x) Application may be filed on behalf of affected persons



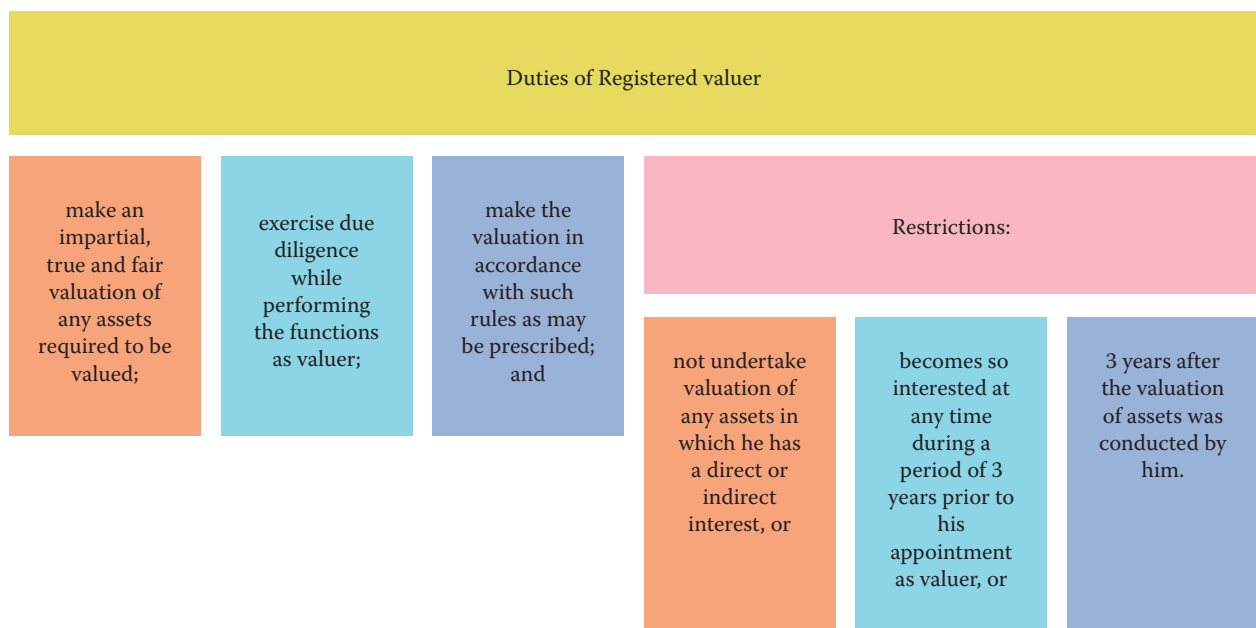
REGISTERED VALUER

Registered valuer (Section 247)

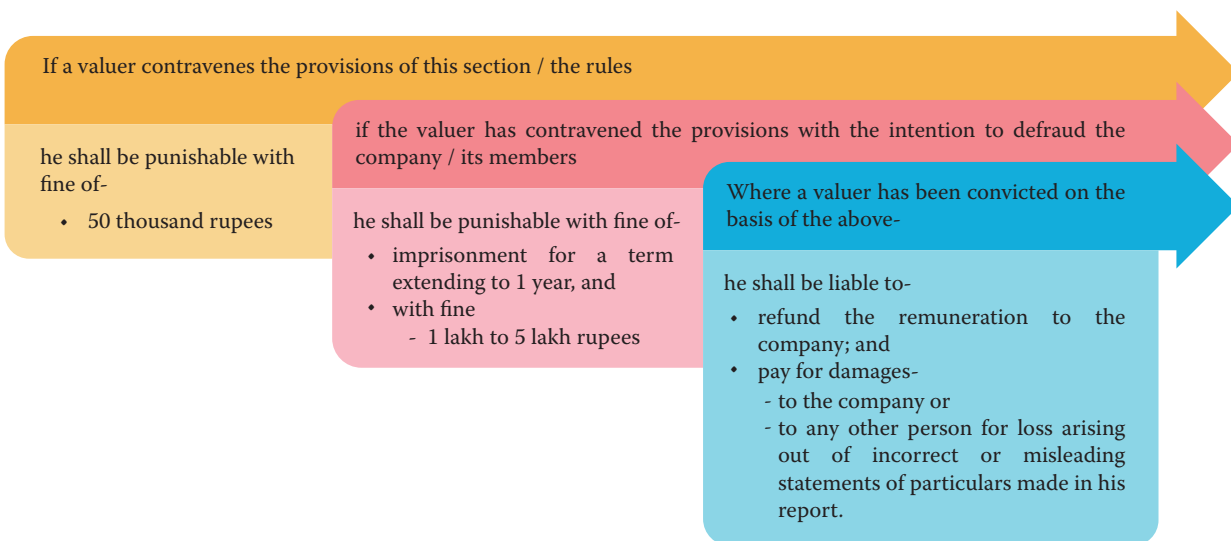
(i) Valuation



(ii) Duties of Registered valuer



(iii) In case of contravention



REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES

(1) Power of Registrar to Remove Name of Company from Register of Companies [Section 248]

(i) Removal of name by registrar

Registrar shall send a notice to the co. + to all the directors for removal of name of company from register of companies and can request them to send their representations along with copies of the relevant documents, if any, within a period of 30 days from the date of the notice, where he has reasonable cause to believe that-

a company failed to commence its business within 1 year of its incorporation, or;

a company not carrying on any business / operation

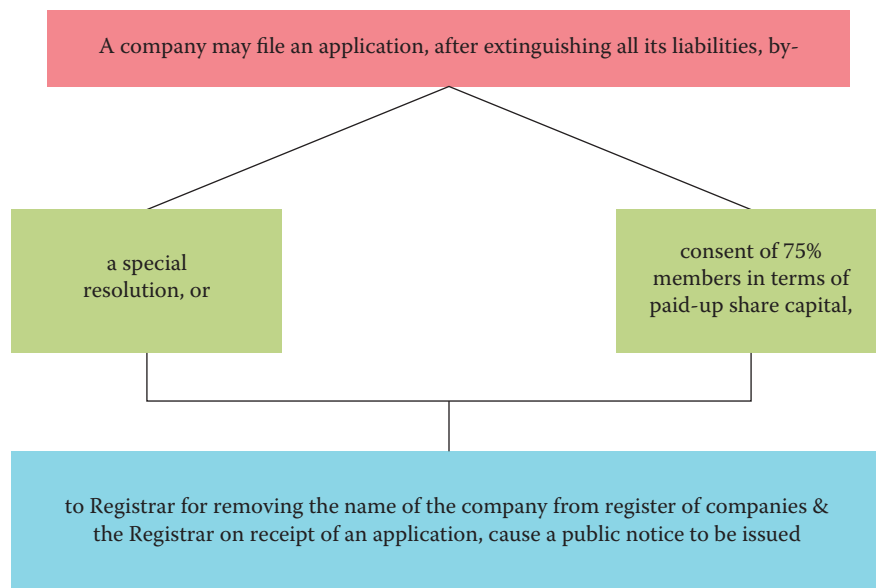
- for a period of 2 immediately preceding F/Ys and
- has not made any application within such period for obtaining the status of a dormant company u/s 455, or

the subscribers to the Memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and

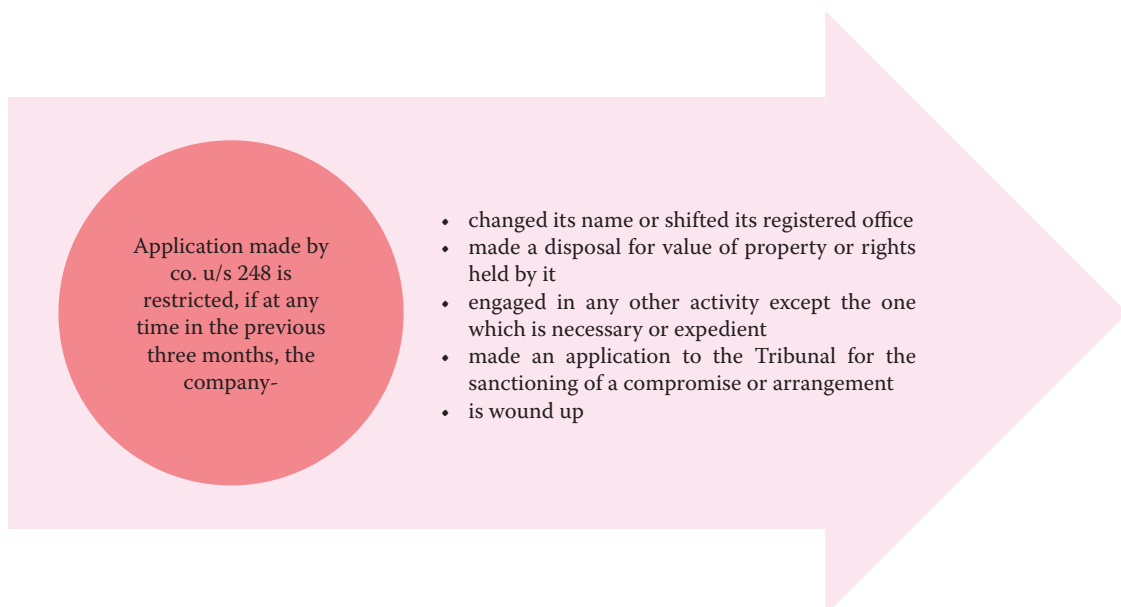
- a declaration to this effect has not been filed within 180 days of its incorporation under section 10A(1); or

the company is not carrying on any business / operations, as revealed after the physical verification carried out u/s 12(9).

(ii) Removal of name by company

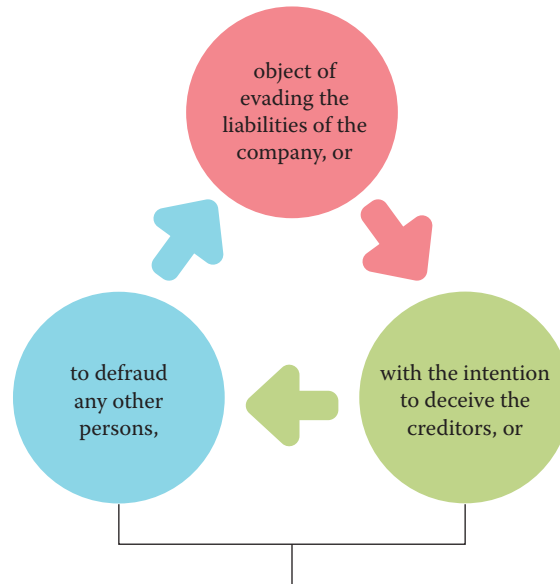


(2) Restrictions on making application under section 248 in certain situations [Section 249]



(3) **Fraudulent Application for Removal of Name [Section 251]**

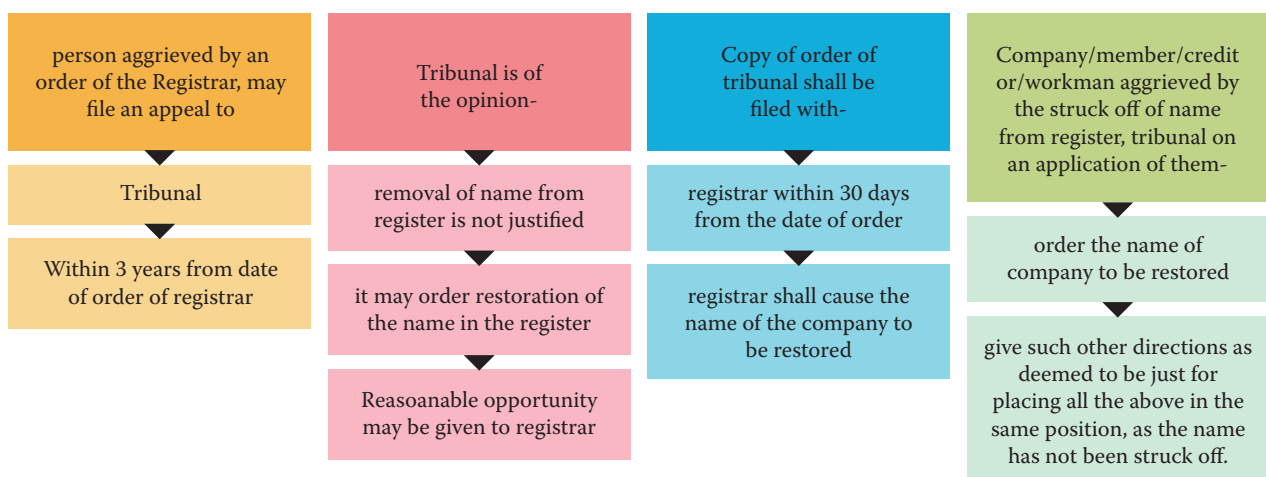
Where it is found that an application by a company has been made with the-



The persons in charge of the management of the company shall,-

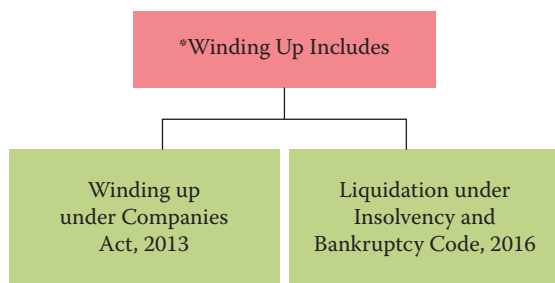
- be jointly and severally liable
- be punishable for fraud

Registrar may also recommend prosecution of the responsible persons

(4) **Appeal to Tribunal [Section 252]**

WINDING UP

(1) Definition of Winding Up [Section 2(94A)]



*In most of the cases, liquidation (winding up) of companies is through the Insolvency Code only. Direct winding up process under Companies Act, 2013 are used very rarely.

(2) Circumstances in which Company may be Wound Up by Tribunal [Section 271]

Company may, wound up by Tribunal on petition filed u/s 272-

- by SR resolved that company be wound up
- If acted against the national interest (sovereignty & integrity, security etc.)
- Tribunal on an application (by Registrar or person authorised by CG), is of opinion that affairs of the company have been conducted in a fraudulent manner, or formed for fraudulent and unlawful purpose or the persons concerned in the formation /management of its affairs have been guilty of fraud, misfeasance or misconduct
- Co. has defaulted in filing financial statements/ annual returns for immediately preceding 5 consecutive FYs
- On just and equitable ground

(3) Petition for Winding up [Section 272 (1)]

(i) Presentation of Petition



- The Company
- Any Contributory / Contributories
- All or any of the persons specified above
- The registrar
- Any person authorized by CG in that behalf
- the CG/SG, in case falling u/s 271(b) i.e., if Co. acted against the national interest etc.

Copy of petition shall also be filed with the Registrar

Registrar shall submit his views to Tribunal within 60 days of receipt of petition.

(ii) Petition filed by contributory [Section 272(2)]

Contributory can file petition, though

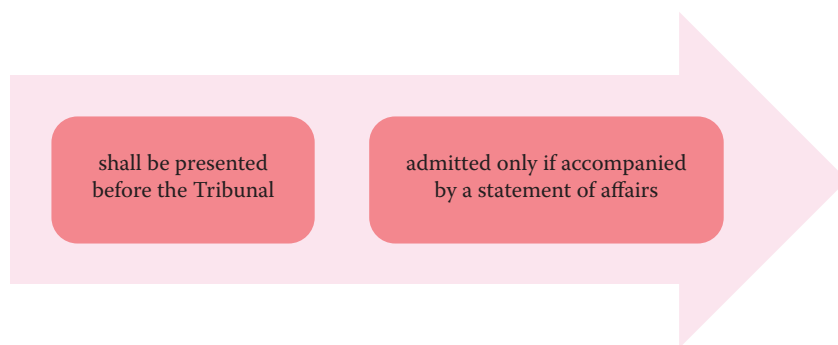
- He may be the holder of fully paid-up shares.
- The company may have no assets at all.
- The company may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.
- Shares in respect of which he is a contributory/allotted to him/held by him & registered in his name for atleast 6 months during 18 months immediately before commencement of Winding up; or
- have devolved on him through the death of a former holder

(iii) Petition filed by Registrar [Section 272(3)]



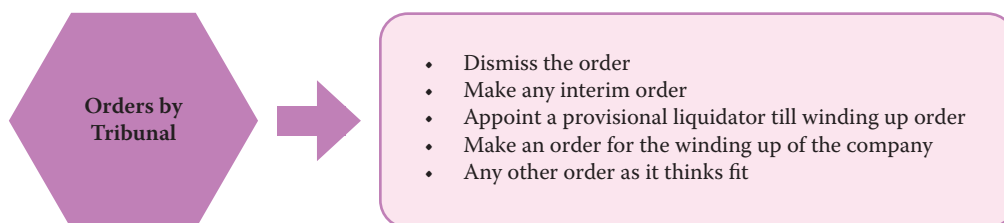
*Registrar cannot file petition for winding up on the grounds given u/s 271(a) i.e. where the petition is made by the company.

(iv) Petition presented by Co. for winding up



(4) Powers of Tribunal [Section 273]

(i) Order passed by Tribunal



(ii) Time period for passing of an order

Order u/s 273 shall be made

- within 90 days from the date of presentation of petition.

(5) Tribunal may order company to file a statement of its affairs [Section 274(1)]

Where Petition for winding up filed by any person (except the company)

on prima facie satisfaction, Tribunal by an order direct the company to file its objections + statement of its affairs (SOA) within 30 days of the order.

further extend time period by 30 days under special circumstances

in case of failure in filing of SOA Tribunal shall forfeit right to oppose the petition

Director/any officer in default for such non-compliance shall be liable for punishment u/s 274(4)

(6) Company Liquidator (CL) & their appointment [Section 275]

Tribunal, at the time of passing of order of winding up

shall appoint an Official Liquidator or a liquidator (from the panel maintained as the Company Liquidator)

The provisional liquidator /the Company Liquidator

shall be appointed by the Tribunal from amongst the insolvency professionals registered under the IBC, 2016;

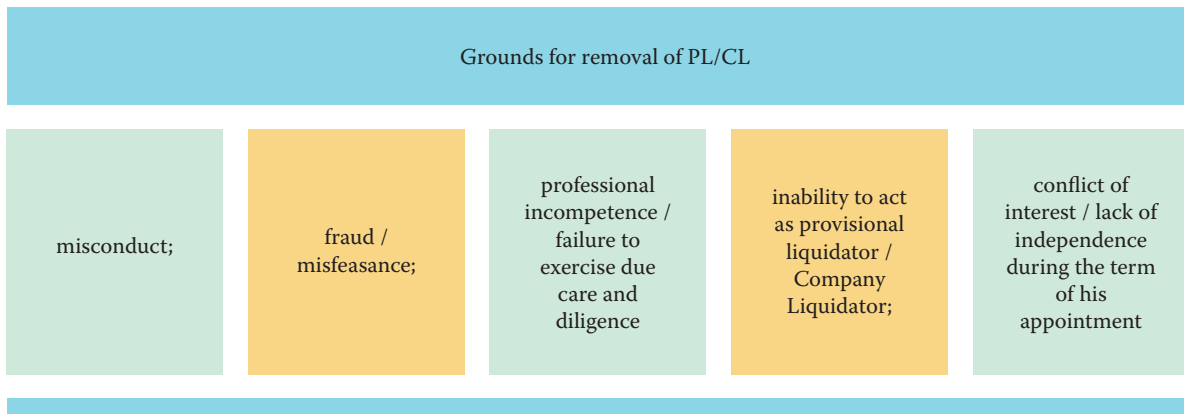
Powers, terms and conditions of appointment of a provisional liquidator / Company Liquidator, and their removal and replacement

shall be regulated by Tribunal as per section 275 & 276

On appointment as provisional liquidator / Company Liquidator

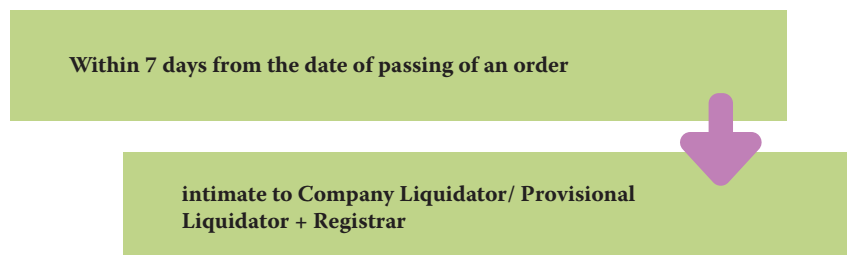
such liquidator shall file a declaration within 7 days from the date of appointment disclosing conflict of interest / lack of independence in respect of his appointment with the Tribunal.

(7) Removal and Replacement of Liquidator [Section 276]

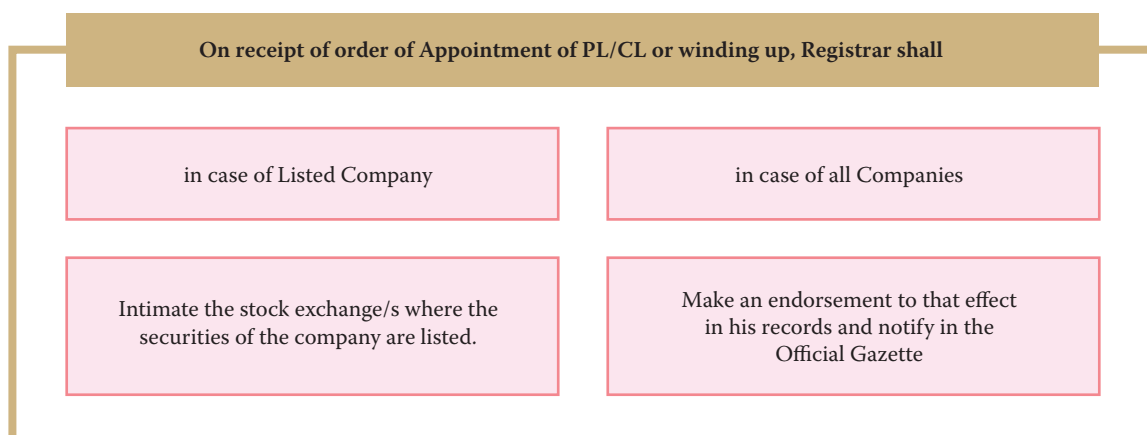


(8) Intimation of appointment to CL, PL & Registrar [Section 277]

(i) Intimation of order of Tribunal of an appointment of provisional liquidator (PL) /winding up of a company



(ii) On receipt of order of appointment /winding up



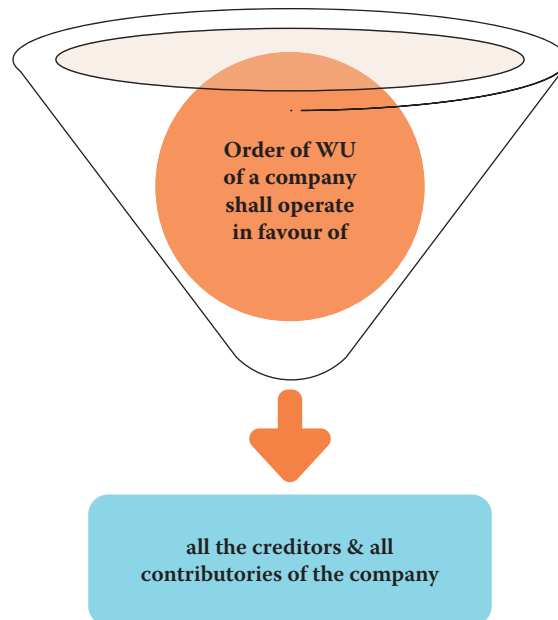
(iii) In case of Winding up order by the Tribunal

On passing and intimation of WU order by tribunal	- CL shall make an application - Within 3 weeks from the date of passing of WU order
for constitution of a WU Committee	to assist and monitor the progress of liquidation proceedings by the CL
WU Committee shall comprise of	- OL attached to the Tribunal; - nominee of secured creditors; and - a professional nominated by the Tribunal.
CL shall place report of the Committee to Tribunal	- on monthly basis - duly signed by the members till the submission of final report for dissolution of the company
CL shall prepare the draft final report	- for consideration and approval of the WU Committee - shall be submitted by the CL before the Tribunal for passing of a dissolution order in respect of the company

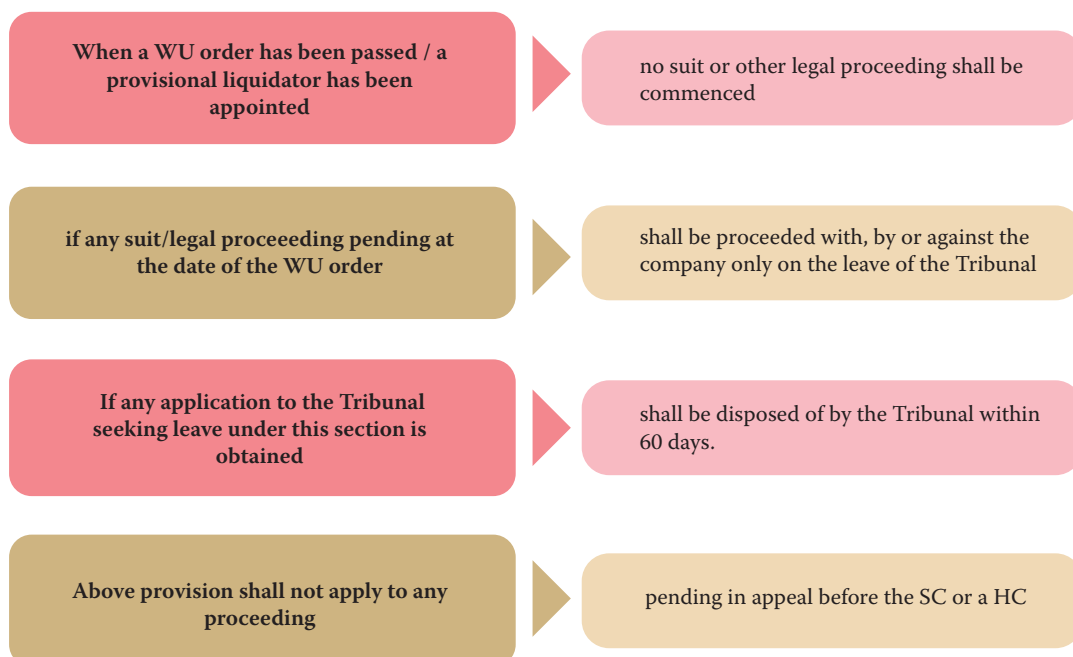
(iv) Areas in which winding up committee to assist and monitor liquidation functions



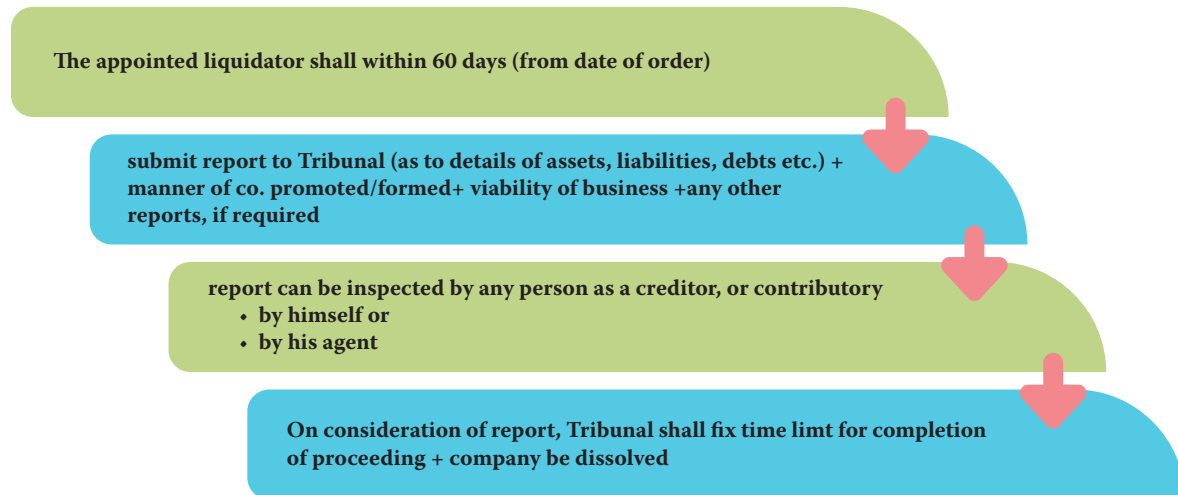
(9) Effect of Winding Up Order [Section 278]



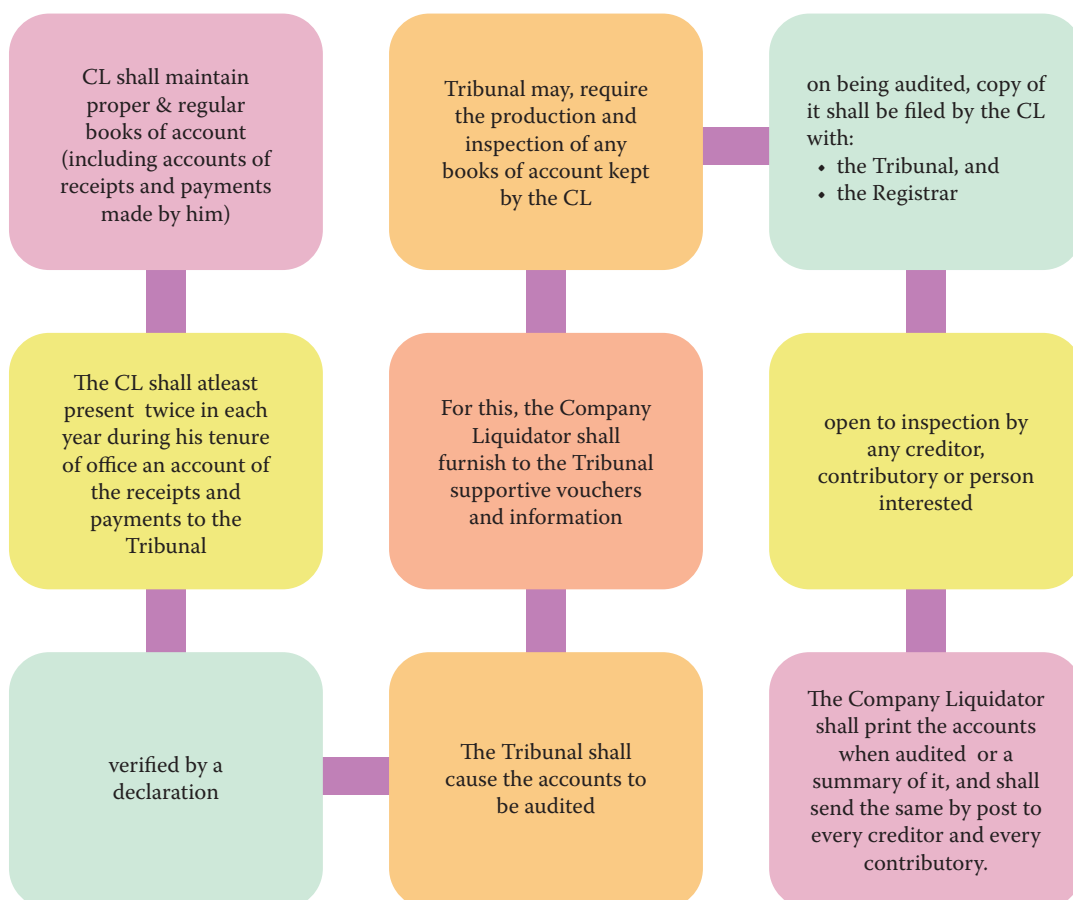
(10) Stay of Suits, etc. on Winding up Order [Section 279]



(11) Submission of report by Company Liquidator and direction of Tribunal on the report [Section 281 & 282]



(12) Audit of Company Liquidator's Accounts [Section 294]



(13) Payment of Debts by Contributory and Extent of Set-off [Section 295]

(i) Payment of debts by contributor

The Tribunal may, after passing of a winding up order,

pass an order requiring any contributory (in the list of contributories) to pay,

any money due to the company, from him or from the estate of the person whom he represents,

exclusive of any money payable by him / the estate by virtue of any call in pursuance of this Act.

(ii) Setoff of amount due to any contributory

in an
unlimited
company

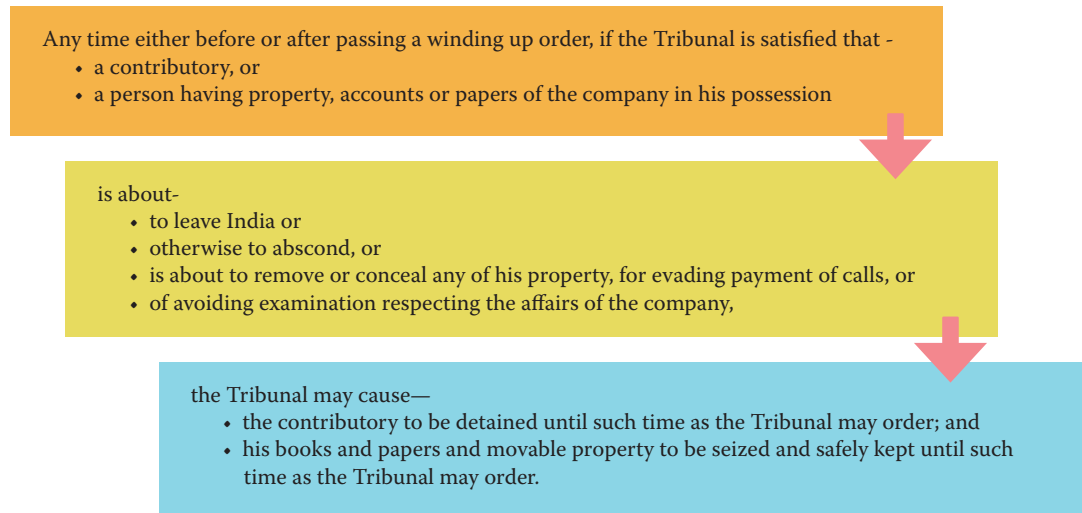
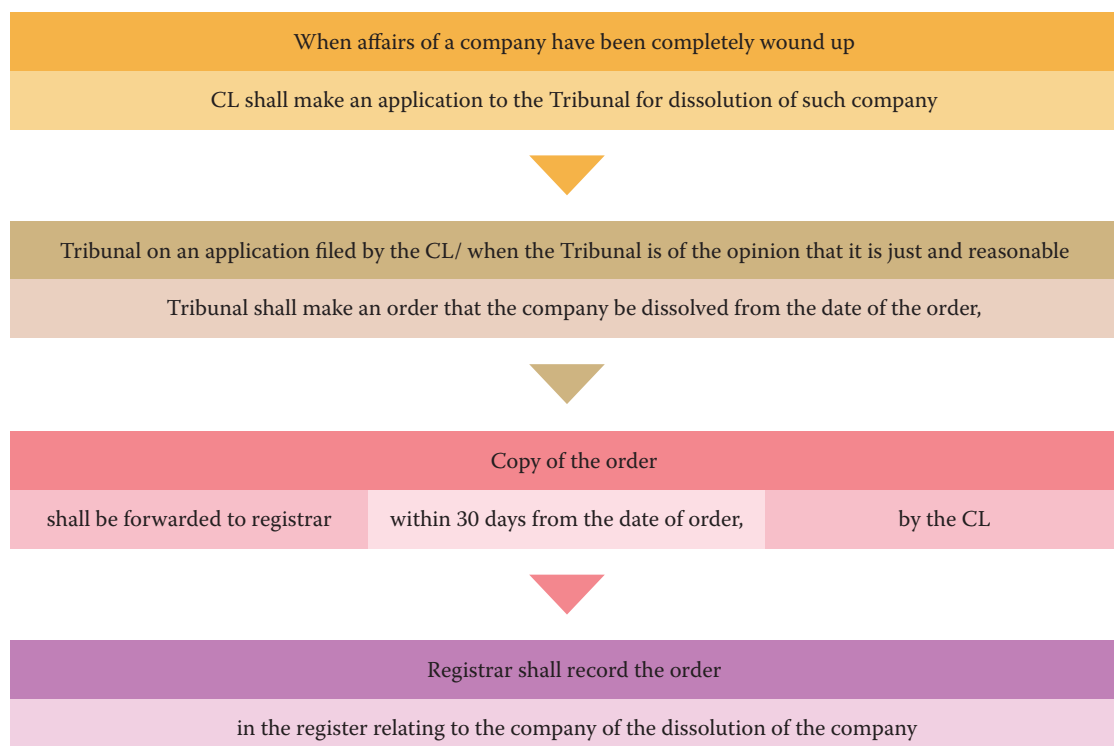
Tribunal may allow to the contributory, by way of set-off, any money due to him, or to the estate which he represents-

- from the company, on any independent dealing or contract with the company.

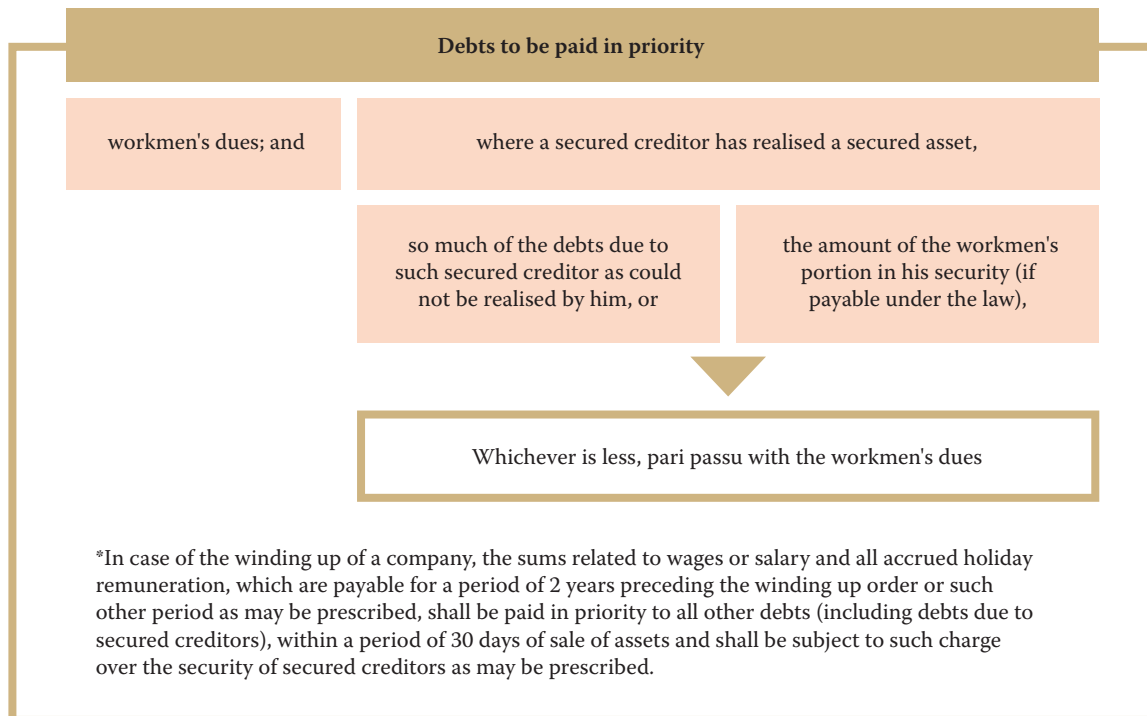
in a
limited
company

allow to any director or manager whose liability is unlimited, or to his estate, such set-off.

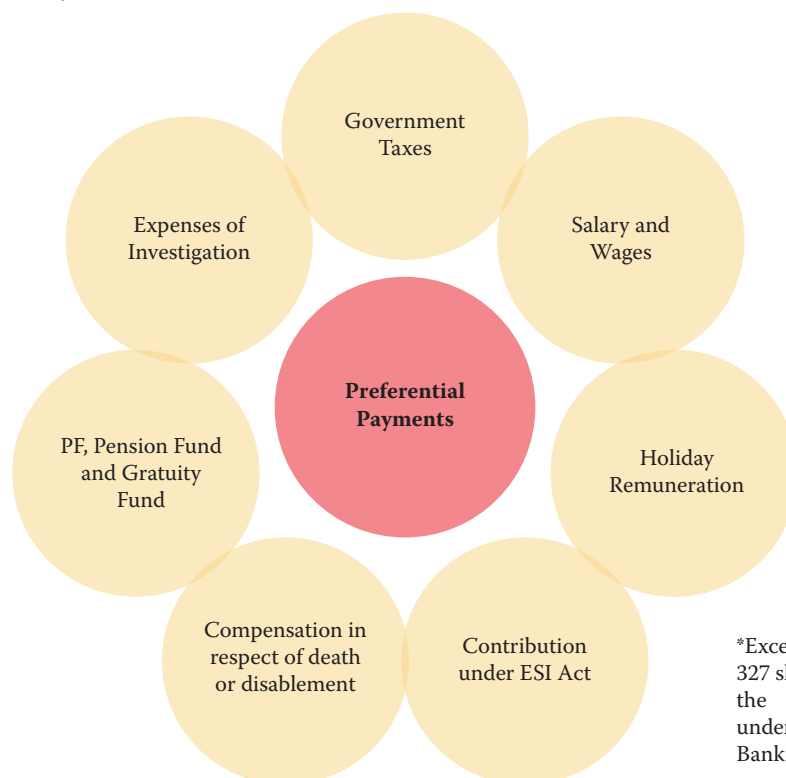
*In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

(14) **Arrest of Person trying to Leave India or Abscond [Section 301]**(15) **Dissolution of Company by Tribunal [Section 302]**

(16) Overriding Preferential Payments [Section 326]

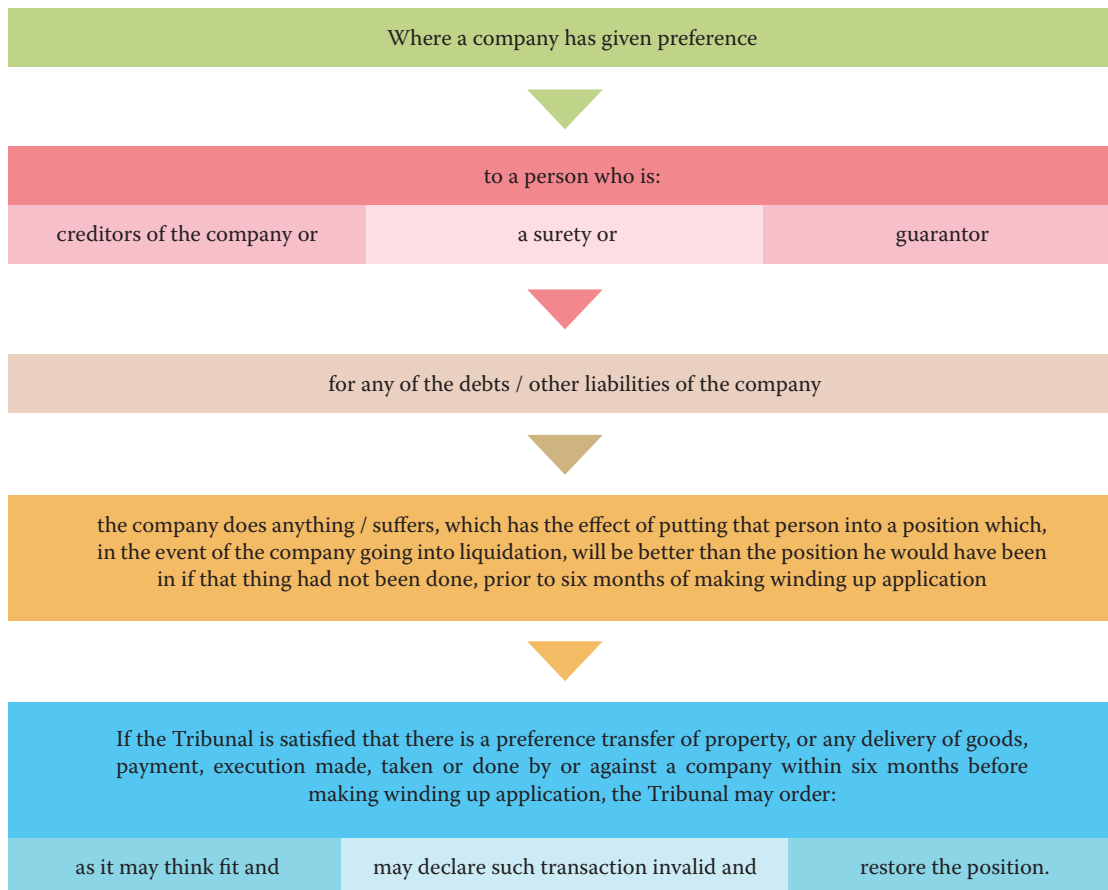


(17) Preferential Payments [Section 327]



*Exception: sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.

(18) Fraudulent Preference [Section 328]



COMPANIES INCORPORATED OUTSIDE INDIA

(1) Foreign Company [Section 2(42)]:

Any company or body corporate incorporated outside India	
has a place of business in India whether by itself or through an agent, physically or through electronic mode	conducts any business activity in India in any other manner

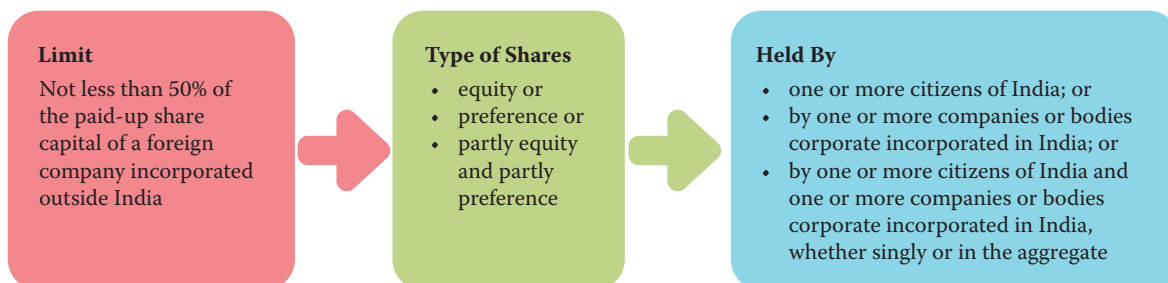


electronic mode carrying out electronically based, whether main server is installed in India or not, including, but not limited to				
business to business and business to consumer transactions, data interchange and other digital supply transactions;	offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;	financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;	online services such as telemarketing, telecommuting, telemedicine, education and information research; and	all related data communication services



whether conducted by:					
e-mail	mobile devices	social media	cloud computing	document management	voice or data transmission or otherwise

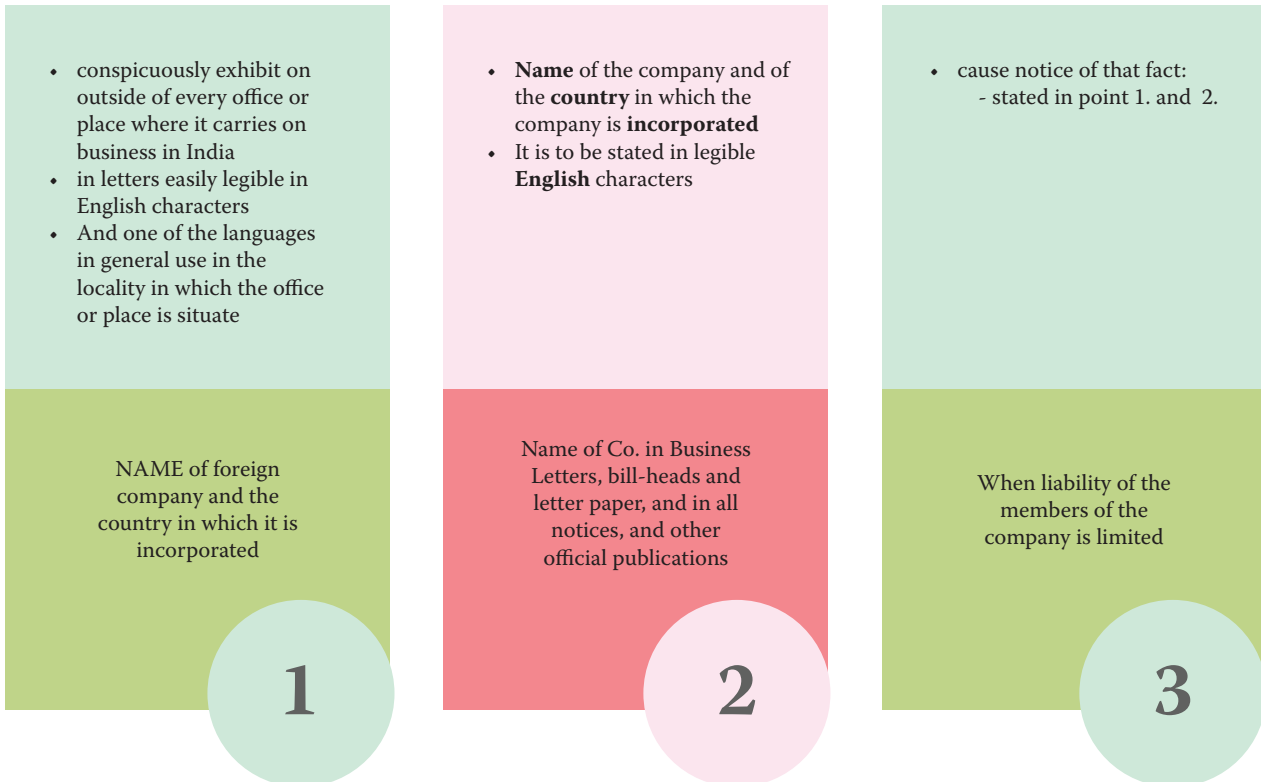
(2) Applicability of provisions of Chapter XXII to foreign companies (Section 379)



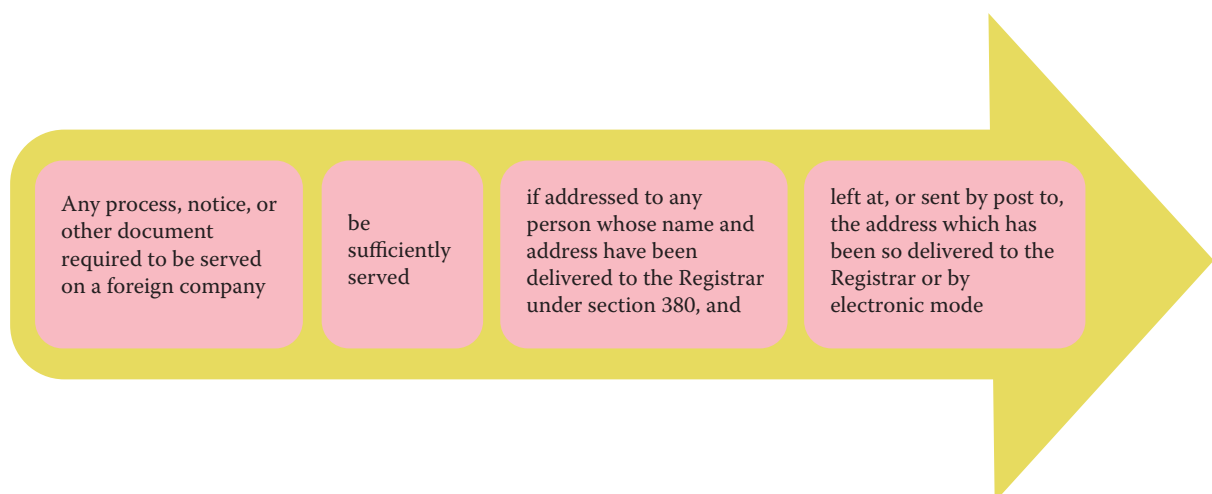
(3) Documents, etc., to be delivered to Registrar by foreign companies [Section 380]

Every foreign company within 30 days of establishment of place of business in India, deliver to the Registrar for registration	Other Points
• certified copy of the charter, statutes or memorandum and articles (in English language) • full address of the registered office • list of the directors and secretary of the company • name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company any notices or other documents required to be served on the company • full address of principal place of business in India • particulars of opening and closing of a place of business in India on earlier occasion/s • declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad	• Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi • If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and from the date on which such notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India. • Any alteration in the documents is to be delivered to the Registrar within 30 days of such alteration (a return containing the particulars of the alteration).

(4) Display of name, etc., of foreign company (Section 382)



(5) Service on foreign company (Section 383)



(6) Registration of prospectus (Section 389)

(i) Signing and delivery of prospectus

No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India;

copy of prospectus certified by the chairperson of the company and 2 other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar; and

states on the face of it that a copy has been so delivered, and

there is endorsed on or attached to the copy, any consent to the issue of the prospectus required by section 388 and such documents as may be prescribed.

(ii) Documents to be annexed to the prospectus

- any consent to the issue of the prospectus required from any person as an expert;

- copy of contracts for appointment of managing director or manager and in case of a contract not reduced into writing, a memorandum giving full particulars thereof;

- a copy of any other material contracts, not entered in the ordinary course of business, but entered within preceding 2 years;

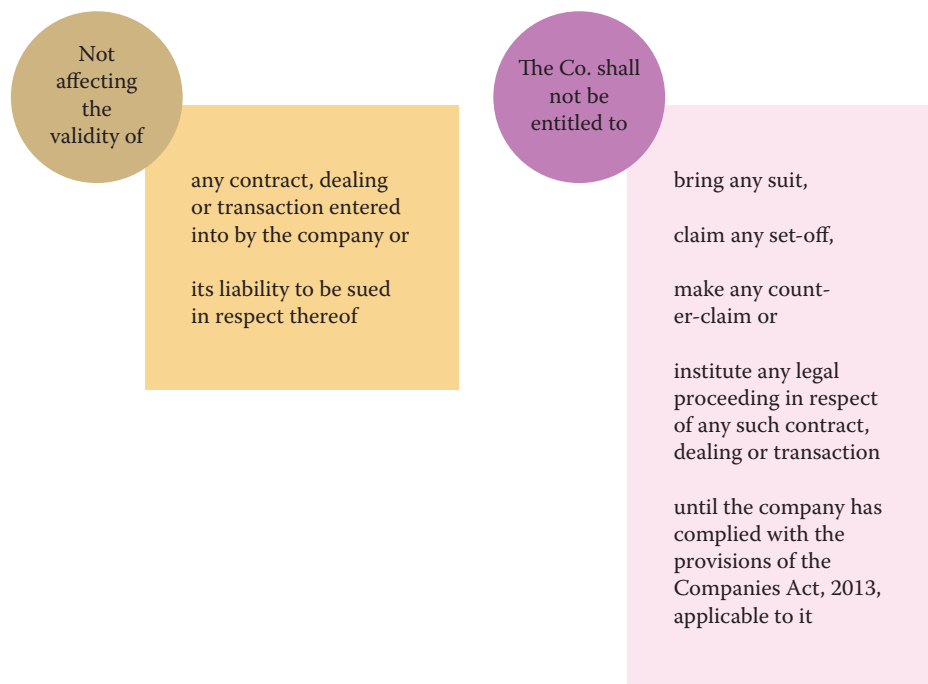
- a copy of underwriting agreement; and

- a copy of power of attorney, if prospectus is signed through duly authorized agent of directors.

(7) Punishment in case of failure to comply with provisions of this Chapter (Section 392)

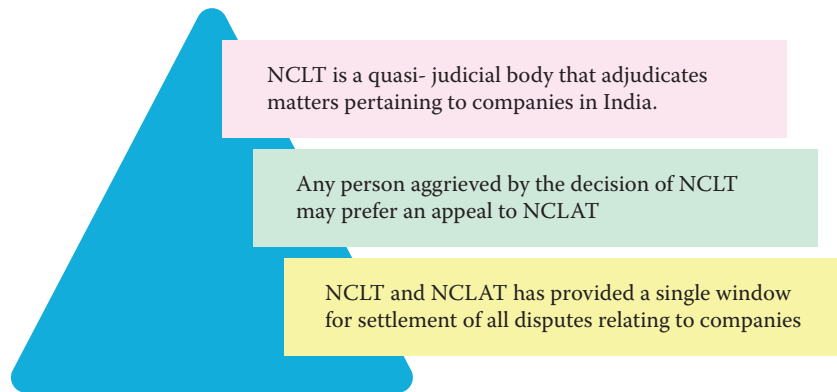
Defaulting foreign company Rs. 1 lac to 3 lac	In case of continuing default Additional fine Rs. 50 thousand per day after the first during which the contravention continues	Every defaulting officer of the foreign company Rs. 25 thousand to 5 Lac
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(8) Company's failure to comply with provisions of this Chapter not to affect validity of contracts, etc. (Section 393)



NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL

(1) NCLT and NCLAT



(2) Qualification of President and Members of Tribunal [Section 409]

Qualification for the President	Qualification for the Judicial member	Qualification for Technical member
A person who is or has been a Judge of a High Court for 5 years.	is, or has been, a judge of a High Court; or	a member of the Indian Corporate Law Service or Indian Legal Service and has been holding the rank of Secretary or Additional Secretary to the Government of India for at least fifteen years or
	is, or has been, a District Judge for at least five years; or	is or has been in practice as a chartered accountant, or a cost accountant, or as a company secretary for at least fifteen years
	an advocate of a court for at least ten years.	is a person of proven ability, integrity and standing having special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy
		is or has been a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under the Industrial Disputes Act, 1947 for at least five years.

(3) Qualifications of Chairperson and members of Appellate Tribunal [Section 411]

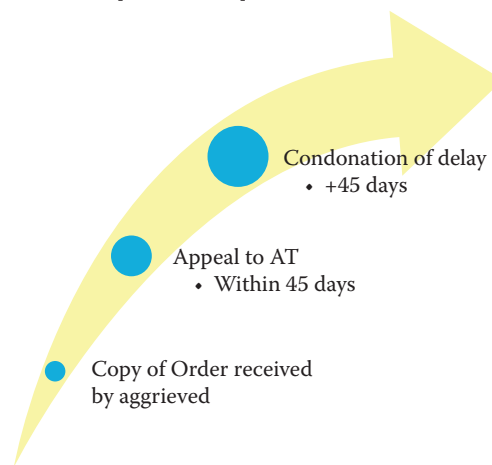
Qualification of Chairperson	Qualification of Judicial members	Qualification of Technical Member
person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.	person who is or has been a Judge of a High Court or is a Judicial Member of the Tribunal for 5 years.	a person of proven ability, integrity and standing having special knowledge and professional experience of not less than twenty-five years in industrial finance, industrial management, industrial reconstruction, investment and accountancy

(4) Removal of members [Section 417]

CG may, after consultation with the CJI, remove from office the President, Chairperson or any Member, who				
has been adjudged an insolvent; or	has been convicted of an offence which, in the opinion of the CG, involves moral turpitude; or	has become physically or mentally incapable of acting as such President, the Chairperson, or Member; or	has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, the Chairperson or Member; or	has so abused his position as to render his continuance in office prejudicial to the public interest.

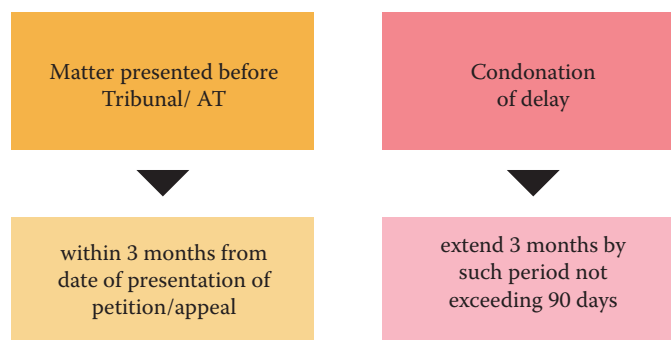
*The President, the Chairperson / the Member shall be removed from his office only on an order made by the Central Government on the ground of proved misbehaviour / incapacity after an inquiry made by a Judge of the Supreme Court on a reference made to him by the Central Government in which such President, the Chairperson or Member had been informed of the charges against him and given a reasonable opportunity of being heard.

(5) Appeal from Orders of Tribunal [Section 421]

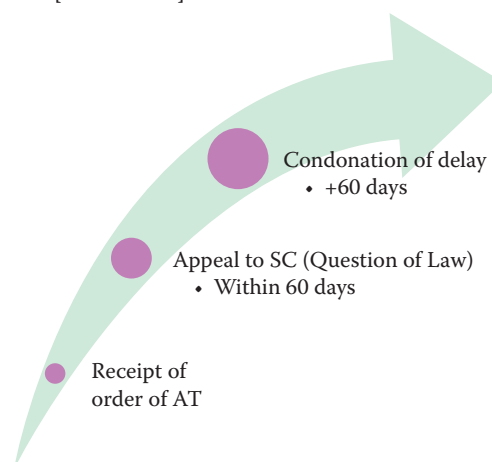


***Exception:** No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(6) Expeditious Disposal by Tribunal and Appellate Tribunal [Section 422]

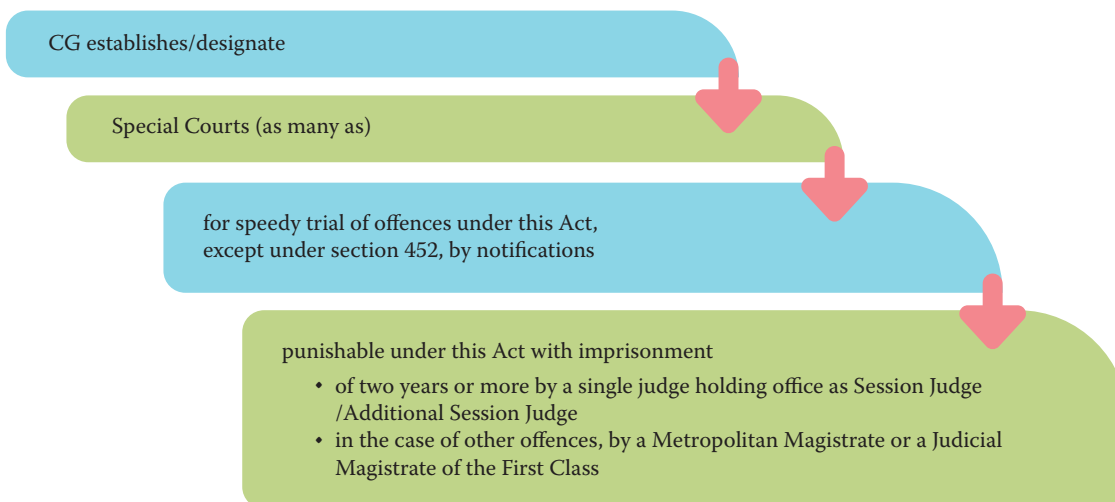


(7) Appeal to Supreme Court [Section 423]



SPECIAL COURTS

(1) Establishment of Special courts [Section 435]



(2) Offences triable by Special Courts [Section 436]

(i) Powers of special courts with respect to trial of offences

special courts	Provisions related to jurisdiction of special court
Offences triable by the particular special court	All offences specified under section 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed.
In case of more than one Special Courts	Where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
Where a person accused of, or suspected of the commission of, an offence under this Act	Such person is forwarded to a Magistrate under section 167 of the Code of Criminal Procedure, 1973. (i) such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate,

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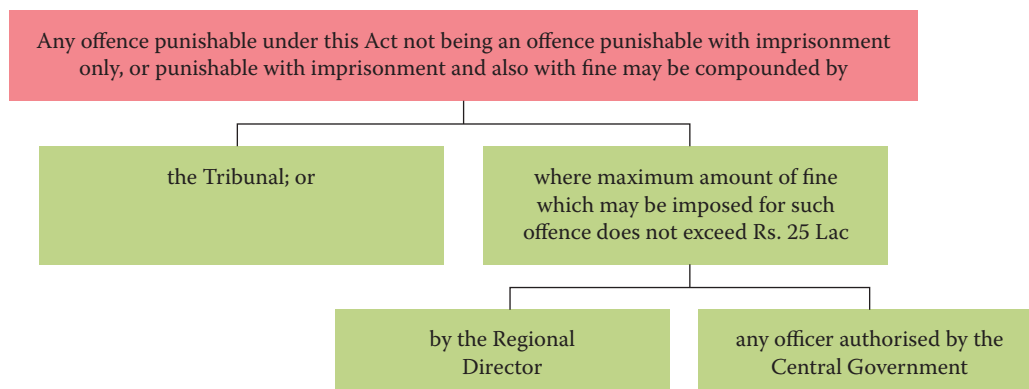
	(ii) and seven days in the whole where such Magistrate is an Executive Magistrate. Provided that where such Magistrate considers that the detention of such person (upon or before the expiry of the period of detention) is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
Vested with same power as provided under the Cr. P.C	the Special Court may exercise the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section;
Cognizance of offence by special court	A Special Court may, upon perusal of the police report or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(ii) Summary Trial

Power of special court on summary trial of an offence	Nature of summary trial
The Special Court may, if it thinks fit, try in a summary way any offence under this Act	Which is punishable with imprisonment for a term not exceeding three years
In the case of conviction in a summary trial	no sentence of imprisonment for a term exceeding one year shall be passed
When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that – - the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed, or - that it is, for any other reason, undesirable to try the case summarily	the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.

(3) Offences to be Non-Cognizable [Section 439]

Offence	Nature of offence
Every offence under the Companies Act, 2013 except the offences referred to section 212(6)	shall be deemed to be non-cognizable within the meaning of the Cr. PC
Court shall take cognizance of any offence under the Companies Act which is alleged to have been committed by any company or any officer thereof	Only on the written complaint of the Registrar, a shareholder or a member of the company, or of a person authorised by the Central Government in that behalf.
Cognizance of offences relating to issue and transfer of securities and non-payment of dividend	The court may take cognizance on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.
Non-application of section 439(2)	To a prosecution by a company of any of its officers
Where the complainant is the Registrar or a person authorised by the Central Government	The presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial
Non-application of section 439(2)	To any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX (Winding up) or in any other provision of this Act relating to winding up of companies The liquidator of a company shall not be deemed to be an officer of the company.

(4) **Compounding of Certain Offences [Section 441]**(i) **Power to the authority for compounding of offences**(ii) **Filling of application for the compounding of an offence**

Every application shall be made to the Registrar

he shall forward application with his comments to the

- Tribunal or
- the Regional Director or
- any officer authorised by the Central Government

Where any offence is compounded under this section, whether before or after the institution of any prosecution-

- an intimation shall be given by the company to the Registrar
- within seven days from the date on which the offence is so compounded.

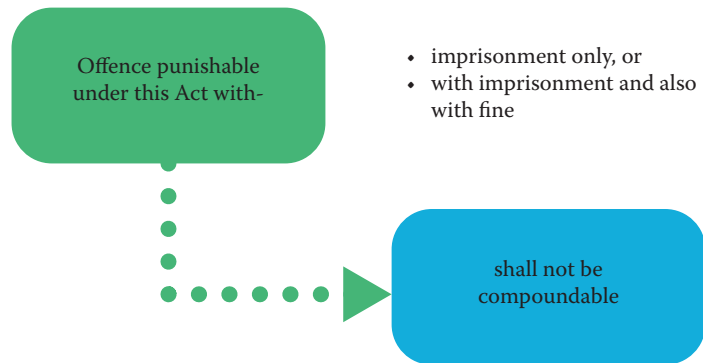
Where any offence is compounded before the institution of any prosecution,

- no prosecution shall be instituted in relation to such offence against the offender in relation to whom the offence is so compounded
- either by the-
 - Registrar or
 - by any shareholder of the company or
 - by any person authorised by the Central Government

Where the compounding of any offence is made after the institution of any prosecution, -

- such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and
- on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(iii) Nature of offence punishable under this Act

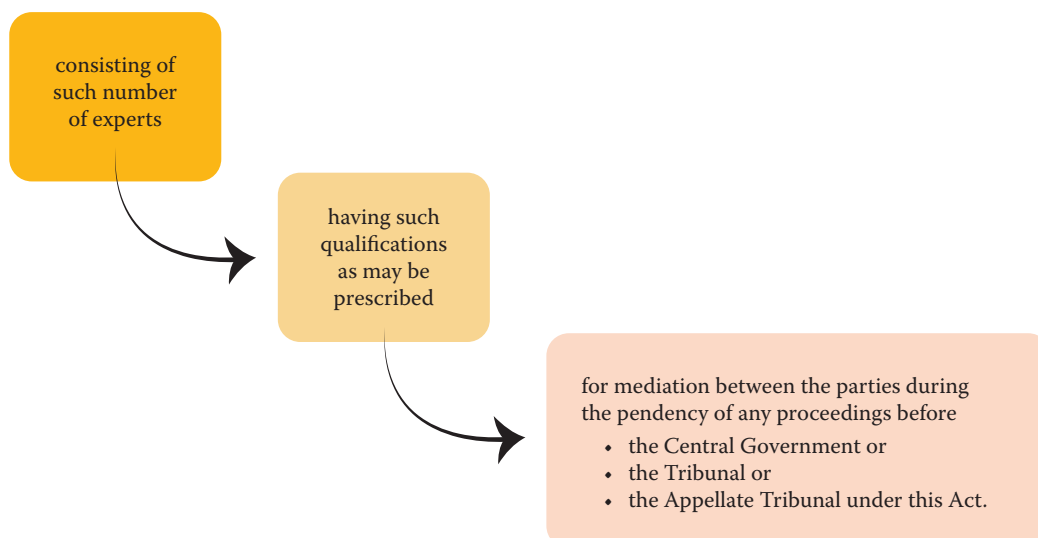


(5) Mediation and Conciliation Panel [Section 442]

(i) Maintenance of panel of experts



(ii) Composition



(iii) Mode for Apply of Mediation and Conciliation proceedings





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Last Mile Referencer for

COMPANY LAW



The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)

Board of Studies (Academic)

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