



dronacharya

FOR
CA INTERMEDIATE

2024

Marathon Notes (Entire Corporate and Other Laws)

Corporate and Other Laws

Sep 24



By – Kunal Mandhania

CA Inter **Law Sep 2024**

Preliminary and Incorporation



Private company [Sec. 2(68)]

- 1. Prohibits any invitation to the public to subscribe for any securities of the company.**
- 2. Cannot invite deposits from public**
- 3. Restricts the right to transfer its shares;**
- 4. limits the number of its members to 200**

Rules for calculation of 200

- 1. Joint members of shares = 1 member**
- 2. Past and present employee not counted**

Public company [Section 2(71)]

- Is not a private company**
- Is a private company which is a subsidiary of a public company,**

Question

(a) ABC Limited is a registered public company having the following:

i	Directors and their Relatives	20
ii	Employees	15
iii	Ex-Employees (Shares were allotted during employment)	20
iv	Members holding shares jointly (10 shares x 2 joint-holders each)	20
v	Other Members	150

The Board of Directors of ABC Limited proposes to convert the company into a private limited company. Referring the provisions of the Companies Act, 2013, advise: **(MTP July 24)**

- i. Whether the company can be converted into a private company?
- ii. Whether existing number of members need to be reduced for the proposed conversion into a private company? **(5 Marks)**

SMALL COMPANY [SEC. 2 (85)]

Conditions

(1) Paid up share capital

- Does not exceed 4

&

(2) Turnover (as per last P &L)

- Does not exceed 40 cr.

Following cannot be small company

- (a) Public company
- (b) Holding company of any company
- (c) Subsidiary of any company
- (d) Sec. 8 company
- (e) Statutory company

1. **AJD Pvt. Ltd. is having paid up share capital of ` 45 Lakhs and annual turnover of `185 Lacs. It is a wholly owned subsidiary of K Ltd.- a listed company. Can AJD Pvt. Ltd. be called a small company as per the provisions of the Companies Act, 2013.(April 22)(6 Marks)**

Hint - In the given case, AJD Pvt. Ltd. satisfies the turnover and paid up share capital criteria to be small company, but being a subsidiary of K Ltd (a listed), it falls under the exclusions to the definition and hence is not a small Company.

2. **MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid up Share Capital of ` 45 lakh and turnover of ` 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:**

- i. **Whether the MNP Private Ltd. can avail the status of small company?**
- ii. **What will be your answer if the turnover of the company is ` 1.50 crore?(MTP NOV 2020)**

Hint –

- i. In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ` 45 lakh and having turnover of ` 3 crore. Since only one criteria of share capital of ` 50 Lakhs is met, but the second criteria of turnover of ` 2 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
- ii. If the turnover of the company is ` 1.50 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

OPC [Sec. 2(62)]

Basics

- **Company formed by only 1 person**
- **Private Company**
- **Appointing nominee compulsory**

Qualification for Member/nominee

- **Natural Person**
- **Indian Citizen**
- **Resident of India or otherwise**
- **For Resident – stay of Atleast 120 days in Previous (F.Y)**

Restrictions

- **One person member of only one OPC**
- **1 person nominee of only 1 opc**
- **If he becomes member of 2 opcs by virtue of death where he was nominee , he shall decide which opc to continue within 180 days**
- **Minor cannot become nominee or member**
- **Cannot be converted into sec. 8 companies**
- **Cannot invest into securities of any company**
- **Cannot carry non banking financial activity**

Other imp points

- **Now no limit on P.U.C or turnover**
- **No provision of compulsory conversion**
- **OPC can anytime convert into any other Co except sec 8 co**

Note

- The nominee may withdraw his consent by giving a notice in writing to such sole member and to the OPC.
- The sole member shall nominate another person as nominee within 15 days of receipt of notice of withdrawal and shall send an intimation of such nomination in writing to the OPC along with the written consent of such other person so nominated in **Form No. INC-3. (MCQ)**

Question

- Prashant incorporated a "One Person Company" making his sister Priya as the nominee. Priya is an Indian citizen. She was born and brought up in Kanpur. However, now Priya and her husband are leaving India permanently to stay with their son who is settled abroad for the last 15 years. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below. **(RTP sep 24)**
- If Priya is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
- In case Priya withdraws her nomination as a nominee to the OPC, whether Prashant can appoint his minor son Rushang as the nominee of the OPC?

Nadeem incorporated a "One Person Company" making his sister Nisha as the nominee. Nisha is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below. (RTP MAY 2021)

- i. If Nisha is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
- ii. If Nisha maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company?

Hint

- i. Not required as now even a non resident can be member or nominee
- ii. Same answer

XYZ a One-Person Company (OPC) was incorporated during the year 2017-18 with an authorized capital of ` 45.00 lakhs (4.5 lakh shares of ` 10 each), The capital was fully subscribed and paid up. Turnover of the company during 2017-18 and 2018-19 was ` 2.00 crores and ` 2.5 crores respectively. Promoter of the company seeks your advice in following circumstances, whether XYZ (OPC) can convert into any other kind of company during 2019-20. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:(MTP NOV 2020)

- i.If promoter increases the paid up capital of the company by ` 10.00 lakhs during 2019-20.
- ii.If turnover of the company during 2019-20 was ` 3.00 crores.

Hint

- Now there is no limit on P.U.C or T/O
- And OPC can anytime convert into any other Company voluntary except sec 8 CO

ON THE BASIS OF CONTROL

Holding & Subsidiary Co.
Sec 2 (87)

Associate Co. 2(6)

Relation exist between 2 Co. if

i. A Company

- **Itself**
- **Itself & subsidiary**
- **Through subsidiaries**

Holds more than 50% voting rights in other company

ii. It controls composition of BOD in other company (i.e can appoint or remove majority of BOD)

If other co. hold significant influence in that co. but not subsidiary

i.e. atleast 20% ,Max 50% of total voting powers
Includes joint venture co.

Note

- Maximum layer – 2 except CIOI , Govt Co , 100% Subsidiary
- If Co. holds share in fiduciary capacity (eg. trust), then such holders is not counted for H/S Ref.
- The paid-up share capital of Saras Private Limited is ` 1 crore, consisting of 8 lacs Equity Shares of ` 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of `10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited? (RTP MAY 2018) (RTP MAY 2019)
- Conclusion - In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.
- However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

Sec 19

- i. Company either by Itself / Nominee



Should not hold shares in holding company

- ii. Holding company shall not allot / transfer shares to subsidiary

Exceptions

- a) If subsidiary holds shares even before it becomes subsidiary(no voting rights)
- b) If subsidiary holds shares as a (also have voting right)
 - i. LR of deceased member
 - ii. Trustee

Question

New Ltd. is a company in which Old Ltd. is holding 65% of its paid up share capital. One of the shareholder of Old Ltd. made a charitable trust and donated his 10% shares in Old Ltd. and ₹50 crore to the trust. He appoints New Ltd. as the trustee. All the assets of the trust are held in the name of New Ltd. Can a subsidiary hold shares in its holding company in this way? **(5 Marks)**
(MTP Aug 24)

Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ` 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited. As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited. (6 Marks) (MTP Sep. 22)

Hint

In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

As at 31st March, 2018, the paid up share capital of S Ltd. is ` 1,00,00,000 divided into 10,00,000 equity shares of ` 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013 :(MAY 2019)

- i. Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- ii. Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- iii. Can H Ltd. allot or transfer some of its shares to S Ltd.

Hint

- i. As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.
- ii. As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
- iii. Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

Kapila Limited issued equity shares of ` 1,00,000 (10,000 shares of ` 10 each) on 01.04.2021 which have been fully subscribed, whereby Kusha Limited holds 4000 shares and Prem Limited holds 2000 shares in Kapila Limited. Kapila Limited is also holding 20% equity shares of Red Limited before the date of issue of equity shares stated above. Red Limited controls the composition of Board of Directors of Kusha Limited and Prem Limited from 01.08.2021. Examine with relevant provisions of the Companies Act, 2013:(M 22)(6 Marks)

(i) Whether Kapila Limited is a subsidiary of Red Limited?

(ii) Whether Kapila Limited can hold shares of Red Limited?

Hint

(i) Yes, Kapila Limited is a subsidiary of Red Limited. In this case Kapila Limited shall be deemed to be a subsidiary company of the holding company (Red Limited) as Red Limited controls the composition of subsidiary companies Kusha Limited & Prem Limited as per explanation to sub-clause (87) of Clause 2.

(ii) Yes, Kapila Limited can hold shares of Red Limited. In this case Kapila Limited is a subsidiary of Red Limited as Kapila Limited was holding 20% of equity shares of Red Limited even before it became a subsidiary company of the Red Limited (i.e. on 01.08.2021), according to the exception to section 19.

CAWALLAH

Listed Co. [Sec. 2(52)]

	Public Co.	Pvt. Co.
Listed	If equity shares listed	X
Not Listed	If ↓ • Non convertible debt securities listed • Non-convt pref. shares listed • Listed outside India	If non-convt. Debt Sec. listed

Newage Private Limited issued 9% Non-convertible Debentures worth ` 10 lakh and thereafter, the directors contemplated to get them listed. After due formalities, these privately placed non-convertible debentures of ` 10 lakh were listed. Which of the following options is applicable in the given situation:

- a) Newage Private Limited shall be considered as a listed company.
- b) Newage Private Limited shall not be considered as a listed company.**
- c) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is ` 15 lakh.
- d) Newage Private Limited shall be considered as a listed company only when minimum amount of listed privately placed non-convertible debentures is minimum ` 20 lakh.

SEC. 8 COMPANY NOT FOR PROFIT

Conditions



Applications



Effect of license



Revocation of license



Effect of Revocation



1. Object to promote Art, Science, sports, Education, Social welfare, etc.
2. Apply profit only for its purpose
3. No payment of dividend to members

- To ROC (C.G)
- ROC issues license
- Note - Firm can also become member in sec 8 Co

- No use of word Ltd. or Pvt. Ltd.
- Many tax benefits

- RD(C.G) may revoke
- If breach in conditions

- Needs to register in any other company
- Amalgamate with other Sec 8 Co having similar object

1) P Cricket Club was formed as a Limited Liability Company under Section 8 of the Companies Act, 2013 with the object of promoting cricket by arranging introductory cricket courses at district level and friendly matches. The club has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. Mr. Y, a member decided make a complaint with Regulatory Authority to curb the fraudulent activities by cancelling the licence given to the company. (5 Marks) (MTP Oct. 22)

Hint:

- (i) Is there any provision under the Companies Act, 2013 to revoke the licence? If so, state the provisions. – (Yes if conditions not fulfilled)
- (ii) Whether the Company may be wound up? (Yes)
- (iii) Whether the P Cricket Club can be merged with Z Net Private Limited, a company engaged in the business of networking? (No , dissimilar object)

2) Sai along with his six friends desires to incorporate a Section 8 Company under the Companies (April 22)(5 Marks)

Hint: Act, 2013. He is seeking your advice in the following matters :

- (i) What is the minimum paid-up capital requirement in case of a Section 8 Company ? (No Min P.U.C)
- (ii) Whether a firm can be member of the Section 8 Company ? (yes)
- (iii) Whether the Section 8 Company can pay dividend to its members ?(No prohibited)

Advise, Sai with reference to the provisions of Companies Act, 2013.

3) Alpha Herbals, a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2020. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013.(MTP NOV 2020)

Hint: No Sec 8 company cannot give dividend

One of the matters contained in the articles of Dhimaan Foundation, incorporated as a limited company under section 8 of the Companies Act, 2013, was altered by passing a special resolution in its general meeting and thereafter, intimation for the same was given to Registrar of Companies. However, such alteration in the articles was opposed by Dhvaj & Co., a partnership firm which is its member that there such alteration was not valid. Advise, as per the provisions of the Companies Act, 2013, whether the contention of Dhvaj & Co. was valid and whether it can be a member in such company? (RTP May 2022)

Hint – For alteration approval of roc is required and yes firm can be member

Where a company is granted licence under section 8, it is not required to use the word ...even though it is a limited company: (April 22)(1 Mark)

- (a) Guarantee company
- (b) Limited Liability Partnership
- (c) Limited or Private Limited, as the case may be
- (d) Development Authority

GOVERNMENT COMPANY SEC. 2 (45)

Means any company in which not less than fifty- one per cent. of the paid-up share capital (having voting rights) is held by-

- i. the Central Government, or
- ii. by any State Government or Governments, or
- iii. partly by the Central Government and partly by one or more State Governments,

And the section includes a company which is a subsidiary company of such a Government company;

FOREIGN COMPANY 2(42)

Means any company or body corporate incorporated outside India which—

- i. **Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and**
- ii. **Conducts any business activity in India in any other manner**
 - **'Electronic mode'**, for the purposes of Section 2(42) of the Act, means 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,**

DORMANT COMPANY

- A company which has no significant accounting transaction, is called as a Dormant Company

"Significant accounting transaction" means any transaction other than- (RAAM)

- i. R- payment of fees by a company to the Registrar;
- ii. A-payments made by it to fulfil the requirements of this Act or any other law
- iii. A-allotment of shares to fulfil the requirements of this Act; and
- iv. M - payments for maintenance of its office and records.

Key Managerial Person (KMP) — Section 2(51)

- 'Key Managerial Personnel', in relation to a company, means:
- the **Chief Executive Officer (CEO)** or the **Managing Director** or the **Manager**;
- the **Company Secretary**;
- the **Whole-time Director**;
- the **Chief Financial Officer**;
- 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
- such other officer as may be prescribed.

Promoters Sec. 2 (69)-PAC + Act = PACt

- a) who has been named as such in a **Prospectus** or
- b) is identified by the company in the **Annual return**
- c) who has **Control** over the affairs of the company, directly or indirectly
- d) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to **Act**.

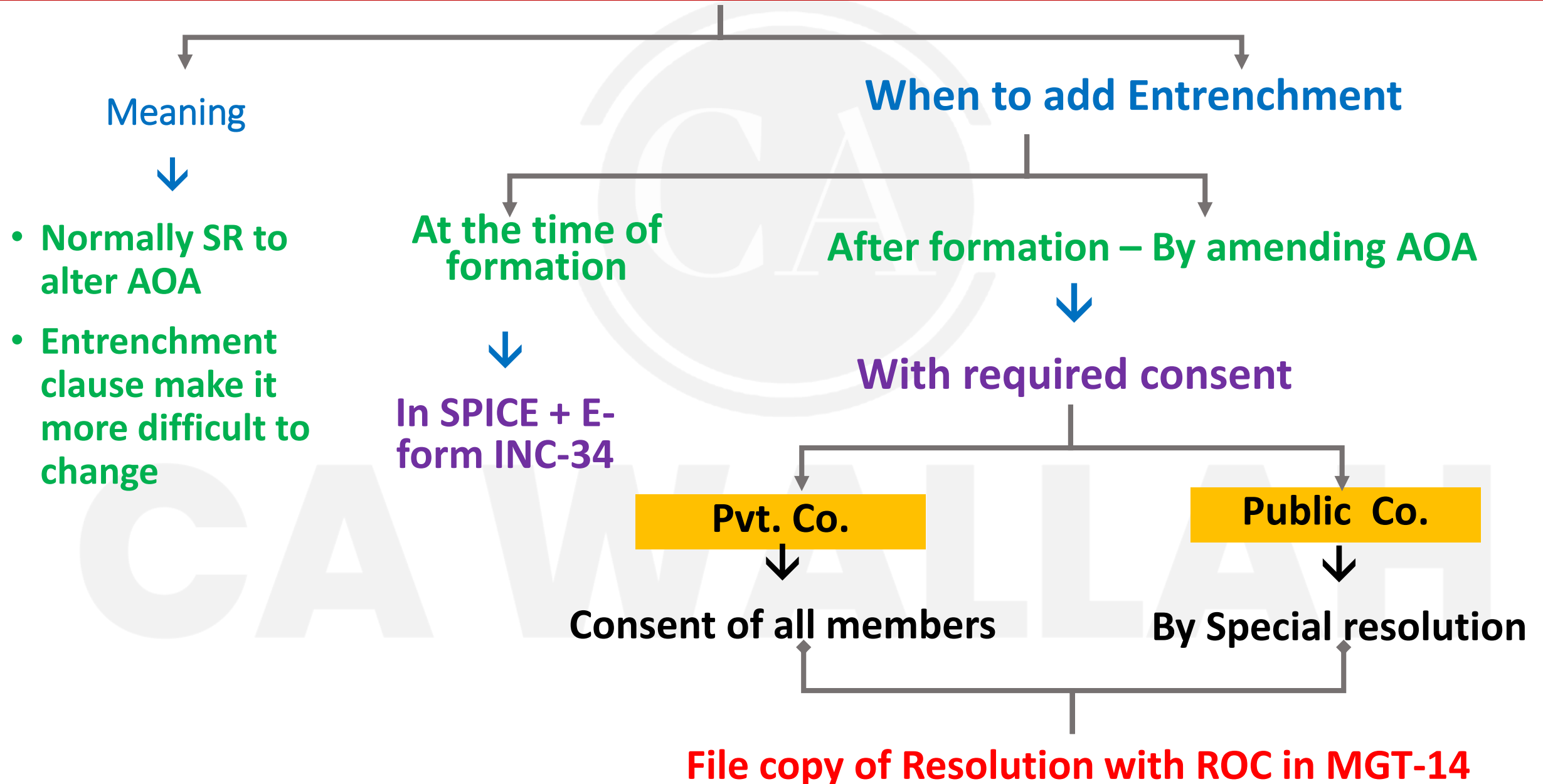
Note - If Person is acting in his professional capacity he is not Promoter

Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013. (RTP May 2022)

Hint

As the job profile of Mr. Abhi is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that too only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

Entrenchment Clause in AOA(sec 5)



The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also state the relevant provisions of the said Act dealing with entrenchment provisions.(6 Marks) (MTP Oct. 22)

Hint - In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.
In case of a private company, the provisions for entrenchment may be made at the time of formation) of the company or by amendment of articles, (April 22)

- (a) By passing a special resolution
- (b) With the consent of all the members**
- (c) By passing a special resolution and approval of the Central Government
- (d) With the consent of all the members and approval of the Central Government

DOCTRINE OF ULTRA VIRES ACT (Beyond the power)

	Meaning	Effect on Contract	Ratification	Other important points
Ultra vires the 'MOA'	Any act not authorised by: a) Companies Act b) Object Clause	Void-ab-initio	✗	1) Member may obtain injunction 2) Director personally liable, if funds misapplies or wasted.
Ultra vires the 'AOA'	Any act not authorised or against articles	Voidable @ option of shareholders	can be ratified by altering AOA	
Ultra vires the 'Director'	Any act beyond powers of directors	Voidable @ option of shareholders	can be ratified by altering AOA	

Doctrine of Constructive Notice	Doctrine of Indoor Management	Exceptions to Indoor Management
i. MOA, AOA is a public document. It is available to outsiders at a reasonable cost . ii. So, it is presumed that anybody dealing with company have read MOA & AOA of the company . iii. If not, outsider is at fault and such contract will not be enforceable on company. iv. Protects → Company Default → Outsider v. Ref. Case → <i>Kotla Venkataswamy vs C. Rammurthi</i>	i. It is an exception to Doctrine of Constructive Notice . ii. Although outsider dealing with co. should appraise themselves with MOA, AOA, but they are not require to enquire into internal management of company . iii. So, if it is a case of internal irregularity, company is at fault and such contracts will be enforceable on company. iv. Protects → Outsider* Default → Company v. Ref. Case → <i>Royal British Bank vs Turquand</i>	1. Knowledge of irregularity (Howard vs Patent Ivory Manufacturing company) 2. Negligence in case of Suspicious (Anand Bihari Lal vs Dinshaw & Company) 3. Forgery Ruben vs Great Fingall Consolidated Company 4. No knowledge of articles 5. Illegal transactions The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company.” Explain the above statement. Also, state the exceptions to the above rule (MTP Sep 22)

Question

Explain the exceptions to the Doctrine of Indoor Management. (5 Marks) (MTP July 24)

CAWALLAH

Alteration of Name Clause(sec 16)

Voluntary [Sec.13]



- Take B.M. pass BR to Convene GM
- Take GM pass SR
- Take permission from ROC (INC-24)
- File copy of SR in Form No. MGT-14
- Change name as per Sec. 7(RUN)
- Obtain fresh COI (INC-25)

If name is too identical [Sec.16]

By ROC → **Suo Moto**



Change within 3 months



- Take GM pass O.R
- File copy of O.R with ROC (MGT-14)
- Change name as per Sec. 7
- Obtain fresh COI (INC-25)

ROC directs on application of Registered trademark holder



- Can direct only within 3 years from incorporation
- Change within **3 months**
- If Co. fails to change, **CG will allot new name**

Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion? In the given case, owner of registered trademark is filing objection after 5 years of registration of company with identical name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name. (April 22)(6 Marks) (RTP Mar 23)

Hint- As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

CAWALLAH

Shifting of Registered Office(sec 12)

Within same city town or village (Local Limits)

- Take Board Meeting and Pass (**Board resolution** (B.R))
- File copy of B.R with ROC
- Shift to new place and file e-Form no. **INC 22** with ROC **within 30** days from shifting

In different city (In same State)

Same ROC

- Take BM and pass B.R to conduct general meeting (G.M)
- Take G.M and **pass S.R**
- File copy of S.R with RoC **within 30 day** in **MGT.-14**
- Shift to new place
- File e-Form no. **INC 22** with ROC within 30 days from shifting

Different ROC

- Take BM and pass B.R to conduct general meeting (G.M)
- Take G.M and **pass S.R**
- File copy of S.R with ROC within 30 day
- Take permission from **Regional director (INC- 23)**
- R.D will permit within **30 days**
- File permission letter of R.D with ROC **within 60** days from confirmation
- Shift to new place.
- File e-Form no. **INC 22** with ROC within 30 days from shifting to new ROC

In different state

- Take BM and pass B.R to conduct general meeting (G.M)
- Take G.M and pass S.R
- File copy of S.R with ROC within 30 day
- Take permission from **R.D (INC-23)**
- R.D will permit within **60 days**
- File permission letter of R.D with ROC **within 30** days from confirmation
- Shift to new place.
- File e-form no. **INC 22** with ROC within 30 days from shifting to new ROC

Alteration of Objects Clause.

Normally

- S.R

If Unutilised money from previous Object

- S.R + Advertisement + Exit option to dissenting shareholder

Namita Ceramic Goods Limited having 152 members was incorporated with the main objects of manufacture of ceramic goods, glazed, unglazed floor and wall tiles, etc. and to carry on trading in such products. After three years of successful operation, it wants to diversify its business by entering into the field of manufacturing electronic goods for which it is required to alter its objects clause. Advise the company in relation to alteration of Memorandum.

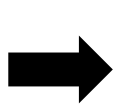
- (a) The company can alter its Memorandum of Association by passing an ordinary resolution and obtaining the confirmation of the Regional Director (RD).
- (b) **The company can alter its Memorandum of Association by passing a special resolution at the shareholders' meeting.**
- (c) The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and obtaining the confirmation of the Regional Director (RD).
- (d) The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and simultaneously publishing the contents of special resolution in two newspapers (one in English and the other one in vernacular language) circulating in that area

Sec.14 → AOA → Alter → SR

Procedure	Pvt. To Public		Public to Pvt.
1) Permission to C.G	X		Yes (MCQ)
2) S.R pass to Alter AOA	✓		Yes
3) Restrictions	Remove		Add.
4) Membership	Min. 7	Increase	Reduce to 200 of o/c 2 (68)
5) Directorship	Min. 3		-
6) File Permission with ROC / Alter AOA	Yes (Inc-27)		Yes (Inc-27)
7) Obtain Fresh COI	✓		✓

Sec.17

Or request of members



Payment of specified fees



Co. has to give copy of



- MOA
- AOA
- Agreement



MCQ(B)



Teacher Shortcut



Any document requested by member



Co. serves within 7 days

Sec.18



Conversion of any Co. to any Co.



Teacher Shortcut

i) S.R

ii) Alter MOA/ AOA

iii) Permission from requested authority

iv) File above doc. With ROC

v) Obtain fresh COI

Subsidiary Company not to hold shares in its holding company [Sec. 19]

- Sec. 19 is **not applicable** to a case:
- where the subsidiary company holds such shares as
 1. the **legal representative** of a deceased member of the holding company; or
 2. **as a trustee**; or
 3. where the subsidiary company is a **shareholder even before it became a subsidiary company** of the holding company:

- **Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ` 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited. As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited.(6 Marks)**
(MTP Sep. 22)

- **ABC Limited issued equity shares worth 1,00,000 (10,000 shares of 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013 —**
- **Whether ABC Limited is a subsidiary of MNP Limited ?**
- **Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023 ? (Nov 23) 5 Marks**

20→ Service of documents

Co. to members

Members/ ROC to company

→ Or officer

a) Registered address

To regd. Office of Co.

Deemed
to be
serve
within
48 hrs

i. By hand

ii. By post

iii. By courier

iv. By electronic means

Ordinary

Regd. Post

Speed Post

(i) Email

(ii) Software

Text

Attachment

Question

What is the mode of service of documents to Registrar or members, as per the provisions of the Companies Act, 2013. **(5 Marks) (MTP Aug 24)**

Sec 3 A- Reduction Of Membership Below Statutory Minimum

If at any time no. of members of a company is reduced –

- Public Co. → below 7
- Private Co. → below 2

And continued its business for **more than 6 months** Remaining members who are cognizant of this fact are personally liable for the whole debts contracted during that time (after 6 months)

2)

Sec 7 -Formation of a company (Public/Pvt/OPC/Sec 8/Others)

Steps to incorporate a company

Name Confirmation

- Reserve NAME through 'SPICe +' form –Part A service on MCA website
- Option of TWO proposed name
- With prescribed fees
- Reserve name shall be valid till 20 days
- Old companies can change name through RUN scheme ,which when available will be reserve for 60 days

Company Registration

Simplified Proforma for Incorporating Company Electronically(SPICe)+

- 1) Within 20 days of name reservation submit Part B (SPICe +) INC-32 includes
 - a) Application for registration
 - b) Details of Subscribers
 - c) Regd. Office details.
 - d) Application for DIN No. (Max. 3 if proposed directors do not have DIN)
- 2) Attach
 - a) e-MOA (INC-33) ,
 - b) e-AOA (INC-34)
 - c) INC-35 –AGILE PRO- S - application for GSTIN , EPFO , ESIC , bank a/c , Prof.tax
 - d) INC- 8 -Declaration of professionals – that Co. has complied rules
 - e) INC-9 – Declaration of Subscribers & First Directors that not convicted in last 5 years for offence involving fraud
- 3) Upload all documents with ROC of jurisdiction.(Central Registration Centre)
- 4) If all laws Complied , ROC issue Certificate of Incorporation (INC – 11)

Consequences Of Furnishing False Information For Incorporation

Action by CG / Tribunal / ROC

Against PERSON

Against COMPANY

- (a) Promoters;
- (b) First Directors;
- (c) Professionals incorporating company

- i. Direct Limited liability to Unlimited
- ii. Removal of name
- iii. Pass order to wound up Company
- iv. Any order which they deem fit.

Liable u/s 447

Question

- ABC Pvt. Ltd., a company that has been operational for two years, was incorporated with the submission of false information and suppression of material facts. The company's founders, Mr. X and Ms. Y, provided incorrect financial statements and concealed significant liabilities during the incorporation process. This misrepresentation was recently uncovered during an internal audit initiated by the company's new CFO, Mr. Z.
- Upon discovering these fraudulent actions, Mr. Z has filed an application with the National Company Law Tribunal (NCLT). Explain the provisions of the Companies Act, 2013 in respect where a company has been incorporated by furnishing false or incorrect information. **(RTP sep 24)**

Commencement of Business Sec 10(A)

Every company having share capital incorporated



After companies (amendment) Ordinance, 2019(i.e. from 2nd Nov, 2018)



Can commence business

&

Exercise borrowing power



If

1. A declaration by director is filed with ROC → Within 180 days → In Form no. INC 20A → Verified by CA / CS / CWA in practice → Every subscriber & taken up & paid for shares they subscribe
2. Verification of registered office is filed with ROC within 30 days in Form No. INC 22 (If not filed earlier) (verification – Title deed / Rent receipt (not older than 1 month and bills not older than 2 months)

AND

If not filed till 180 days, then ROC can also wound up company

Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed. (RTP MAY 2019)

- (a) Latest by 20th July, 2018
- (b) Latest by 27th July, 2018**
- (c) Latest by 4th August, 2018
- (d) Latest by 4th September, 2018

The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of _____ from the date of filing of the special resolution.(MTP NOV 2019)

- (a) 30 days**
- (b) 60 days
- (c) 90 days
- (d) 6 months

Swastik Private Limited passed a Special Resolution to change its name to Swastik Darshan Private Limited on 30th May, 2019. Relevant MCA filing was done on due time and then Company got its new stationery printed on 1st July, 2019. However there was a delay in issue of Certificate and Company received new certificate on 20th August, 2019 which was issued on (dated) 10th August, 2019. Company wants to enter into a lease agreement for new premise. When they can do such agreement in new name of the Company? (MTP MAY 2020)

- (a) 30th May, 2019
- (b) 1st July, 2019
- (c) 20th August, 2019
- (d) 10th August, 2019**

If a company changes its name; which of the following is most accurate:(MTP NOV 2020)

- (a) It is not allowed to use old name in any way
- (b) New name should not be identical with old name
- (c) Old name should be painted/printed for next 1 year along with new name
- (d) Old name should be painted/printed for next 2 years along with new name**

Swara Musical Instruments Private Limited was incorporated on 10th October, 2018 by converting existing partnership firm into company. Sohini and Mohini became the promoters of the company. Sohini's premises which was rented out to the partnership firm was to be used as the registered office. Mention the documents which need to be filed with the Registrar of Companies (ROC) for verification of registered office.

- (a) A notarised copy of rent agreement along with rent receipt which is not older than one month.**
- (b) A copy of the public notice published in a local newspaper that the premises is rented out to the company along with certified copy of rent agreement.
- (c) A notarised copy of rent agreement along with rent receipt which is not older than two months.
- (d) A notarised copy of rent agreement only.

CA Inter **Law Sep 2024**

Prospectus



Public Offer and Private Placement [Sec.23]

Type of Issue	Public Company	Private Company
Public Offer (including IPO, FPO or OFS)	Yes	No
Private Placement	Yes	Yes
Rights issue / Bonus Issue	Yes	Yes

Sec.27

Variation of terms or
object as mentioned in
prospectus



S.R



Advt.



Exit option to
dissenting shareholders

Sec.28

Offer for sale (OFS)

Existing
member

Approach
To sell their
shares

Company

Public
offer

Public

Sec.29

Demat / electronic form

- Document → Deemed Prospectus
- No rule of min-Subscriptions & min application money

- 1) Every Public offer
- 2) Any offer by unlisted Public Co.

To be done in demat
(electronic) form

A Private Company cannot issue securities:(MTP Sep. 22)

- (a) By way of rights issue
- (b) By way of bonus issue
- (c) By way of private placement
- (d) By issue of Prospectus in Public**

In case of 'offer of sale of shares by certain members of the company', which of the following options is applicable:

- (a) The provisions relating to minimum subscription are not applicable**
- (b) Entire minimum subscription amount is required to be received within three days of the opening date
- (c) 25% of the minimum subscription amount is required to be received on the opening date and the remaining 75% within three days thereafter
- (d) 50% of the minimum subscription is required to be received by the second day of the opening date and the remaining 50% within next three days after the second day

The paid up share capital of ABC Ltd. Is 5000000 shares of Rs. 200 each. 20% of its paid up share capital is held by 4 of its promoters, who wants to off load their holding by making an offer of sale to the public by issuing a prospectus. They want to authorise someone to take all actions and complete all formalities related to such offer of sale. From the following who can be authorised by them to do so—(MTP MAY 2019)

- (a) Any person who has agreed to fulfil all the formalities related to such offer of sale
- (b) Any one or more director of the company.
- (c) Company itself whose shareholding they want to offload.**
- (d) Any competent officer of the company.

Advertisement of Prospectus (Sec 30)

Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein the **contents of its memorandum** as regards :-

1. the objects,
2. the liability of members and
3. the amount of share capital of the company, and
4. the names of the signatories to the memorandum and
5. the number of shares subscribed for by them, and
6. its capital structure.

Prospectus [Sec. 2(70)]

Basics

Writing

- Oral – X
- Audio – X
- Video – X
- Define U/s Sec. 2(70) –
- Prospectus means documents issued as Prospectus and includes shelf redherring and deemed

Where req.

- i) Public offer (IPO/FPO/OFS)
- ii) Deemed to be Public offer

Pvt Placement

More than 200

In a F.Y

except

- QIB
- Employees under ESOP Scheme

Where not req.

RRIP

- i. R → Right issue
- ii. R → Repeat issue with same T&C
- iii. I → Invitation to underwriters
- iv. P → Pvt. Placement

PPOL (PAS-4)

Reports to be filled with ROC

DS-DS-DI

- 1. D → Declaration that

- Co. Act
- SEBI Act
- SCRA Act

Complied

- 2. S → As prescr. by SEBI
- 3. D → Dated
- 4. S → Signed
- 5. D → Disclosure that filled with ROC

- 6. I → Info

- a) Gen- Info.
- b) Fin- Info.
- c) Issue → T&C

Process

- i. Prepare prospectus

- Sec. 26
- Dated
- Sign by All dir and proposed dir and Expert (if req)

- ii. File with ROC

Within 90 days

- iii. Issue to Public (via advt.)

The Board of Directors of Plum Limited proposes to issue a prospectus inviting offers from the public for subscribing to the equity shares of the company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013. (RTP May 2022)

TYPES OF PROSPECTUS

BASIS	Shelf Prospectus (S.P) Sec. 31	Red Herring Prospectus (RHP) Sec. 32	Deemed Prospectus Sec. 25
Why	To Save cost in multiple issue	To ascertain price per share	Legal compliance
Applicable to	Co. Prescribed by SEBI	i. Price discovery ii. Book building process	Offer for sale through issue house / merchant bankers/ underwriters
Procedure	i. File S.P @ 1 st offer ii. Valid for 1 year from opening of 1 st offer iii. Any change in T&C in subseq. Offer within period ↓ File Info Memorandum(I.M) ↓ At least 1 month before offer ↓ ROC • Shelf + I.M = Prospectus	i. File RHP with ROC without a) Price per shares b) No. of shares Atleast 3 days before opening of offer ii. Invite bids through I.M iii. Decide price iv. Comm ⁿ through I.M v. File final prospectus with ROC after closing of offer before issue	Condition i. Offer to Public Within 6 months from allotment & ii. Whole consideration not received when offer to Public made ↓ Document through which OFS i. Should contain all contents as per Sec. 26 ii. Signed by { Co. - 2 Dtr. Firm -. Half partners ↓ Deemed Prospectus

Dwapar Equipment Finance Limited, a non-banking finance company (NBFC), is desirous of offering secured, redeemable, non-convertible 9% Debentures to the public in three or more tranches over a certain period of time. Which kind of prospectus it is required to issue so that its purpose is served and there arises no need to take out a fresh prospectus for second and subsequent offer of securities. (MTP NOV 2019)

Deemed Prospectus.

Shelf Prospectus.

Red Herring Prospectus.

Abridged prospectus.

An issuing house (share broker) has issued an advertisement in two leading newspapers for selling a large number of shares allotted to it by a company under a private placement. In which of the following conditions will the advertisement NOT be deemed to be a prospectus:

(a) Advertisement was given within six months from the date of allotment

(b) Advertisement was given after six months from the date of allotment and the issuing house has paid the entire consideration to the company

(c) The issuing house did not pay entire consideration to the company till the date of allotment

(d) advertisement was given within three month from the date of allotment

A shelf prospectus filed with the ROC shall remain valid for a period of:

(a) one year from the date of registration

(b) one year from the date of closing of first issue

(c) one year from the date of opening of first issue

(d) Ninety days from the date on which a copy was delivered to ROC

A prospectus which does not include complete particulars of the quantum or price of the securities included therein is called:

- a. A deemed Prospectus
- b. A Shelf Prospectus
- c. An Abridged Prospectus
- d. **A Red Herring Prospectus (1 Mark) (MTP Oct. 23)**

Issue of Application form for Securities [Abridged Prospectus] (sec 33)

Abridged Prospectus [Section 2(1)]	"Abridged Prospectus" means :- • a memorandum • containing such salient features of a prospectus as may be specified • <u>by</u> the SEBI by making regulations in this behalf.
Application Form and Abridged Prospectus	No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an Abridged Prospectus. In the following cases abridged prospectus need not be given— a) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or b) In relation to securities which were not offered to the public.
On request	A copy of the detailed prospectus shall be furnished on a request being made by any person before the closing of the subscription list and the offer.
Penalty	If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of Rs 50,000 for EACH default i.e., Rs 50,000 for every Application form that is issued without Abridged Prospectus.

GOLDEN RULES FOR FRAMING THE PROPECTUS

- 1) It should show whole picture of the Company.
- 2) No suppression of facts.
- 3) All material facts should be disclosed. (Rex vs kylsant)
- 4) Prospectus should not be misleading / untrue.

CAWALLAH

Remedies to investors – for mis-statement in Prospectus

Against
Company

- Contract avoid (shares/ deb. return)
- Damages claim
- No punishment

Against direc/ promoter / expert

Criminal liability

Civil liability

Section	34	35
Basis	Intentional	Unintentional
Punishment action	447 Punishment	Damages claim
Protection	i. Information immaterial ii. He believed it to be true	i. Prosp. Issued without his consent ii. Once he knew of mis-stat he withdrew his consent iii. They believed it to be true ↓ On basis of a) Public document b) Expert report basis

Others
(Sec. 36)

Any person
other than co/
dir/ Promoter



Induce to
others
fraudulently



Sec. 447
Punished

Note : PQ alert

1. No Protection if believed it to be true on basis of promoter's report

2. No remedy → if



Peek vs
Gurney

3. Sec. 37 → Investors can do class action (Group)

CAWALLAH

Green Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. However, he did not suffer any loss due to purchase of such shares. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013.(RTP MAY 2020)

Hint - Mr. Andrew can claim compensation for any loss or damage that he might have sustained from the purchase of shares. However, he did not suffer any loss due to purchase of such shares. Hence, Mr. Andrew will have no remedy against the company. (Derry vs Peek)

An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013. (RTP Nov 2014) (MTP NOV 2019) (MTP M 21)

Hint:- Yes, the Director shall be held liable. A director can escape liability for mis-statements in a prospectus only on the grounds specified under Section 34 and 35 of the Companies Act, 2013. Relying on statements prepared by promoters is not a ground included there under. Accordingly, no defence shall be available to the Director.

SEC 447 : PUNISHMENT FOR FRAUD.

Punishment for Fraud [Sec. 447]

Punishment u/s 447 of frauds of at least Rs. 10 lakh or 1% of the turnover of the company, whichever is lower

	Fraud involves public interest	Any other case
Min. Imprisonment	3 years	6 months
Max. Imprisonment	10 years	
Min. Fine	Amount involved in the fraud	
Max. Fine	3 times the amount involved in the fraud	

Punishment u/s 447 for frauds of lesser amount

- (a) imprisonment upto 5 years; or**
- (b) fine upto Rs, 50 lakh; or**
- (c) both.**

Sec. 40 Underwriting Commission

Rate

1. SHARES

5% of Issue Price

Or

As per Articles of Association
(w.e.L.)

2. DEBENTURES

2.5% of Issue Price

Or

As per Articles of Association
(w.e.L.)

Conditions

1. Authorized by AOA

2. Cannot be paid on Private Placement.

3. Can be paid out of

- proceeds of share; or
- profits of company or both

4. Disclose details in prospectus-

- name of u/w;
- rate & amt of comm payable;
- no. of securities underwritten

5. A copy of underwriting agreement to be filed to ROC along with Prospectus to be delivered.

Which of the following statements is not true?

- (a) in case of shares, the rate of underwriting commission to be paid shall not exceed five percent of the issue price of the share.
- (b) underwriting commission should not be more than the rate specified by the Article of Association.
- (c) in case of debentures, the rate of underwriting commission shall not exceed five percent of the issue price of the debentures.**
- (d) amount of commission may be paid out of profits of the company.

Commission is permitted to be paid to any underwriter by the company only in respect of an offer of securities:

- (a) where securities are offered on rights basis
- (b) where securities are offered in the form of bonus issue
- (c) where securities are offered on private placement basis
- (d) where securities are offered to the public for subscription**

The time limit within which a copy of the contract for the payment of underwriting commission is required to be delivered to the Registrar is:

- (a) Three days before the delivery of the prospectus for registration
- (b) At the time of delivery of the prospectus for registration**
- (c) Three days after the delivery of the prospectus for registration
- (d) Five days after the delivery of the prospectus for registration

Allotment of Securities (Sec. 39 & Sec. 40)

**Listing
Permission**



**Obtain share
application
money**



➤ Before prospectus, make application to one or more stock exchange if public offer

➤ Mention this in prospectus

➤ At least 5% of nominal value or amount prescribed by SEBI

➤ Deposit money in separate bank account

Can be utilized
only for



Adjusting against allotment

Refund if cannot allot shares

**Obtain
minimum
subscription**



Allot security



**File return of
allotment**

- As provided in prospectus
- Received **within 30 days** of issue of prospectus
- If not - repay within 15 days
- If late - 15% p.a. interest

- Within 30days
- With ROC in form no. PAS 3
- Mentioning:
 - a) List of allottee
 - b) Contract copy (if consideration other than cash)
 - c) Copy of resolution (bonus shares)

Delight Sports Garments Limited is contemplating to raise funds through issue of prospectus in which, according to the directors, a sum of ` fifty crores should be stated as the minimum amount that needs to be subscribed by the prospective subscribers. The funds shall be raised in four instalments consisting of application, allotment, first call and second & final call. Advise the company by which instalment it should receive the minimum subscription stated in the prospectus. *(RTP NOV 2019)*

- a) **Along with amount subscribed as application money.**
- b) Along with amount subscribed as final call money.
- c) Along with amount subscribed as first call money.
- d) Along with amount subscribed as second and final call money.

CAWALLAH

- Kite Limited issued 1,00,000 equity shares of ₹ 100 each at par to the public by issuing a prospectus. The prospectus discloses the minimum subscription amount of ₹ 15,00,000 required to be received on application of shares and share application money shall be payable at ₹ 20 per share. The prospectus further reveals that Kite Limited has applied for listing of shares in 3 recognized stock exchanges of which 1 application has been rejected. The issue was fully subscribed and Kite Limited received an amount of ₹ 20,00,000 on share application. Kite Limited, then proceeded for allotment of shares. Examine the three disclosures in the above case study which are the deciding factors in an allotment of shares and the consequences for violation, if any under the provisions of the Companies Act, 2013. (6 Marks) (MTP Sep. 23)

Examples Of Irregular Allotment

1. **Pubic Offer without issue of Prospectus**
2. **Untrue or Misleading Prospecus**
3. **Prosp issued to Public without registration with Roc**
4. **Allotment without minimum Subscription**
5. **Application Money less than 5 %**
6. **Return of allotment not filled with ROC**
7. **No listing permission on Public Offer**

CAWALLAH

Global Depository Receipt [GDR] (sec 41)

- "Global Depository Receipt [GDR]" means :-
 - any instrument in the form of a depository receipt, by whatever name called,
 - created by a foreign depository outside India and
 - authorised by a company making an issue of such depository receipts.
- **Board Resolution**
- **Special Resolution**
- The depository receipts shall be issued by an **overseas depository bank** appointed by the company and the underlying shares shall be kept in the custody of a **domestic custodian bank**.
- **Reserve Bank of India** guidelines complied
- The company shall appoint a merchant banker or a practising CA/CS/CMA to oversee all the compliances
- A holder of GDR may become a member of the company and shall be entitled to vote as such only **on conversion of the depository receipts into underlying shares**
- Until the conversion of depository receipts, the **overseas depository shall be entitled to vote on behalf of the holders of GDR** in accordance with the provisions of the agreement entered into between the depository, holders of depository receipts and the company in this regard.

Private Placement (Sec. 42)

Meaning

Offer to specified / Identified person

Decide by BOD

Through PPOL (Pas-4)

Restrictions

(Eq. Pref. ocb)

i. Max → 200 person/ per kind of Sec. / Per F.Y.

Exceed → deemed to be public offer
Exception → (i) OIB (ii) ESOP

ii. No Advt.

iii. No cash /only banking channel

iv. No fresh offer till old offer is completed / withdrawn / abandoned/

v. No right of renunciation

Others IMP Pts.

i. Reduction-S.R.

ii. Application money receive

↓ Within 60 days

Allotment within 15 days

↓

Return

↓

Internal Reu

iii. After allotment

Who 15 days

↓

File ROA with ROC in pass -3

Notes - If any restriction not fulfilled it will be deemed to be public offer

- The Board of Directors of 'A Limited' made a private placement offer to a group of 150 persons to subscribe for 100 equity shares @ Rs 100 each on 1st April, 2022 after passing a special resolution in this regard. The company received application money from the members on 15th April, 2022 but did not make an allotment of shares till 31st July, 2022. Instead, during this interim period, the Company opted to utilize the application money for the payment of dividend that had been declared by the company. Some of the members raised an objection that as the allotment was not done by the Company within the prescribed time limit, the company is liable to repay the application money with interest @ 15% p.a. for such non-compliance. Examine the validity of the objection raised by the members with reference to the Companies Act, 2013, and also decide whether application money can be used for the payment of dividends by the company. 5 Marks (Nov 23)

Purple Limited wants to raise funds for its upcoming project. Accordingly, it has issued private placement offer letters for issuing equity shares to 55 persons, of which four are qualified institutional buyers and remaining are individuals. Before the completion of allotment of equity shares under this offer letter, company issued another private placement offer letter to another 155 persons in their individual names for issue of its debentures. Being a public company is it possible for Purple Limited to issue securities under a private placement offer? By doing so, whether the company is in compliance with provisions relating to private placement or should these offers be treated as public offers? What if the offer for debentures is given after allotment of equity shares but within the same financial year? (6 Marks) (MTP Oct. 22)

Hint - Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security. As per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

Which of the following statement is contrary to the provisions of the Companies Act, 2013?

- (a) A private company can make a private placement of its securities.
- (b) The company has to pass a special resolution for private

placement.

- (c) Minimum offer per person should have Market Value of ` 20,000.**
- (d) A public company can make a private placement of its securities.

Shripad Religious Publishers Limited has received application money of ` 20,00,000 (2,00,000 equity shares of ` 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.

- (a) 9th November, 2019
- (b) 24h November, 2019
- (c) 9th December, 2019.**
- (d) 8th January, 2020

Being in need of further capital, Rimsi Cotton-Silk Products Limited offered 50 lacs equity shares of ` 1 each to 50 identified persons on 'private placement' basis and accordingly a letter of offer accompanied by application the necessary form was sent to them after fulfillment of due formalities including passing of special resolution. One of the

applicants Rajan made a written complaint to the company highlighting the fact that the offer letter was incomplete as well as illegal, as it did not contain 'renunciation clause' as he wanted to exercise his 'right of renunciation' in favour of his son Uday. By choosing the correct option, advise the company in this matter.

- (a) As the 'Right of Renunciation' cannot be denied, the company needs to rectify its mistake by including the same in the offer letter and the application form.
- (b) The company is prohibited from providing 'Right of Renunciation' so the offer letter and the application form need not include any such clause.**
- (c) Instead of absolute prohibition, the company can provide 'Right of Renunciation' limited to twenty five percent of offering.
- (d) Instead of absolute prohibition, the company can provide 'Right of Renunciation' limited to fifty percent of offering.

Innovative Tech Sol Limited intends to invite subscription for ` 1.10 crores equity shares of ` 10 each on private placement basis. The persons identified as potential subscribers are within the statutory limit and also include the two other categories to which such statutory limit is not applicable. One such category is employees of the company who are offered equity shares under Employees' Stock Option Scheme. The other excluded category is:

(a) Quality Institutional Buyers

(b) Qualified Institutional Buyers.

(c) Qualificational Institutional Buyers.

(d) Qualified Investing Institutional Buyers.

Neptune Metal Tools Limited was incorporated on 2nd December, 2018 with twenty-five subscribers and authorised capital of ` 50,00,000 (5,00,000 equity shares of ` 10 each). The directors of the

company are in a dilemma whether to issue share certificates to the subscribers in physical form or in dematerialized form. Advise them correctly on this matter:

(a) Being an unlisted company, Neptune may either issue physical share certificates to the subscribers or alternatively, issue them in dematerialized form.

(b) Neptune needs to issue shares to the subscribers only in dematerialized form.

(c) A company having more than 100 shareholders needs to issue shares in dematerialized form and therefore, Neptune may issue physical share certificates to the subscribers.

(d) A company having authorised capital of fifty lakhs and above needs to issue shares in dematerialized form and therefore, Neptune may issue physical share certificates to the subscribers.

CA Inter **Law Sep 2024**

Shares



Types of Shares (Sec 43)

EQUITY

PREFERENCE

Basis	Equity Shares	Preference Shares
1. Meaning / Definition	other than preference shares	which carry a preferential right as to ✓ payment of dividend and ✓ repayment of capital

Note - MOA-AOA of a Private Company may specify that the Preference shareholders shall not have any preference either for payment of Dividend or Repayment in winding up.(MCQ)

2.Issue	Authorised in AOA → Pass B.R.	• SR • No Subsisting default in redemption of Earlier PS. • Max Redemption Period • 20 Years • 30 Years for infrastructure cos. (Redeem 10% p.a. from 21" year onwards)

3. Types	a) Equity Shares (Normal) b) Equity shares with differential rights	(a)Cumulative Pref. Shares. (b)Non-cumulative Pref. shares (c)Participating Pref. Shares (d)Non-participating Pref. shares (e)Redeemable Pref. shares (f) Irredeemable Pref. shares (g)Convertible Pref. shares (h)Non-convertible Pref. shares
4. Rights	• Have right to vote in every general meeting • Equity shareholders are entitled to bonus and right shares	• Votes on matters only related to them • Fixed Dividend • No rights on reserves of company • No right of Interim Dividend or Bonus Shares or Right Shares.

The Articles of Association of a private limited company state that the company may issue preference shares which will have preference with respect to payment of dividend only but no preference as to the repayment of capital, in the case of winding up. Is it possible for the company to issue such preference shares?

- (a) No; as per section 43 preference shares should have both preferences.
- (b) No; this will become an equity share as per section 43.
- (c) Yes; because as per section 43 preference shares should have any one preference.
- (d) Yes; because Articles of Association of the company allow issue of such preference shares and the issuing company is a private limited company.**

Rajesh Infrastructure Limited wants to issue preference shares for a period exceeding 20 years for financing its proposed infrastructure project. On the basis of which statement, company can do so?

- (a) Yes; company can issue irredeemable preference shares by passing special resolution
- (b) Yes; company can issue preference shares for a period of more than 20 years with the prior approval of Central Government
- (c) Yes; company can issue irredeemable preference shares for infrastructure project
- (d) Yes; company can issue preference shares for infrastructure project for a period up to 30 years.**

Types- Equity Shares

(1) Normally

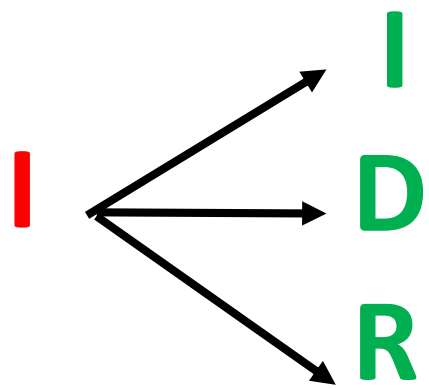
(2) With DVR (Rule 4)

Shortcut – 3 Annual IPL cricket match RSA

3 → 3 years



Annual → Annual A/cs & Return (3 years - no default)



- Interest + Amt. (Deposit | **Loan** | Deb)

- **Dividend** (declared but not paid)

- Redemption of Pref. Shares

P→ **Payments**

Employees Payment (Statutory) (can issue after 5 YRS from end of F.Y in which default made good)
IEPF

C→ **Conversion** to normal equity shares or vice versa - Prohibited

M→ **Maximum** - 74% of total voting rights

S→ **Shares** – Right of Bonus + Right Shares

R→ **Resolution** (O.R + Postal Ballot)

S→ **Shares** – Right of Bonus + Right Shares

A→ **Authorised** in AOA

Swagat Hospitality Limited defaulted in the repayment of last two instalments of term loan availed from National Commercial Bank. On 30th September, 2019, they cleared all the dues by repaying it. When can it issue equity shares with differential voting rights?

- (a) Upon expiry of five years from the date on which the default was made good
- (b) Upon expiry of three years from the end of the financial Year in which the default was made good
- (c) **Upon expiry of five years from the end of the financial Year in which the default was made good**
- (d) Upon expiry of seven years from the end of the financial Year in which the default was made good

Buy Back of Shares

Sec. 67



Co. cannot buy (Purchase)
it's own Shares

Nor

Public co. can give Financial
Assistance to purchase

- It's Share
- It's holding's share

Except

- Banking co. in ordinary course of business
- To employees (other than director /KMP)



For amt **not exceeding their 6 months salary**

- For employment benefit trust → SR

Sec. 68



Procedures for buy-
back of shares

Sec. 69



Create CRR



If buy-back out of



- Free reserves
- Sec. pre A/c



Used for payment of
fully paid bonus
shares

Sec. 70



No BB in case if co., directly or
indirectly,

1) Purchase own sec:

- ☐ Through any subsidiary co.;
- ☐ Through any investment co.;
- ☐ If a default is made by the co.,
in

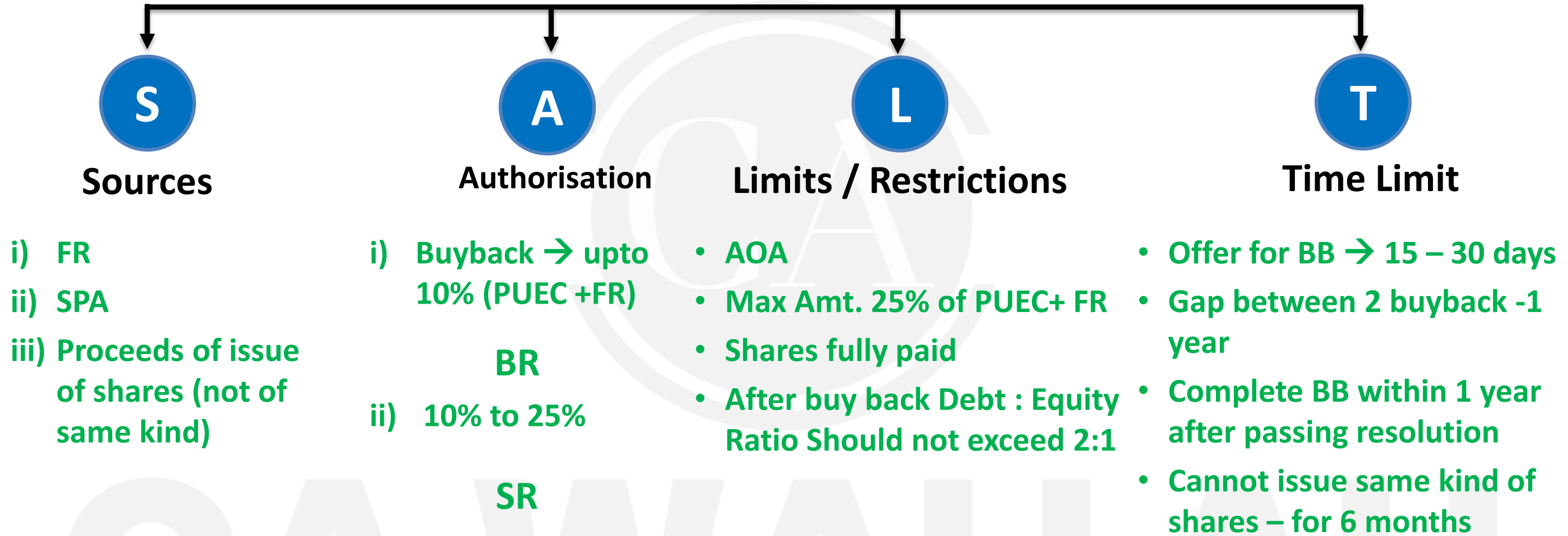
(Redemption of debt. Or pref shares,
payment of div, repayment of deposits
or any term loan or interest thereon.)

**[Provided that BB not prohibited if 3
years has lapsed after such default]**

2) Not complied with the
provisions of:

- ☐ Sec 92 – Filing of AR
- ☐ Sec 123 & 127 – Payment of
Dividend
- ☐ Sec 129 – Filing of FS

Buy Back [Sec. 68](SALT)



A company bought back 10% of its equity shares in August 2020. Due to certain miscalculations during the first buy-back, it again buy back another 10% equity shares in September 2020. Whether the company can resort to second buy-back?

- (a) It can do so subject to the fulfilment of other conditions because maximum buy-back in a financial year is up to 25%
- (b) **It cannot do so because there must be a time gap of 12 months between two buy-backs**
- (c) It can buy back shares within one year but the company need to pass an ordinary resolution by its board of directors
- (d) It can buy back shares within one year but the company will have to pass a special resolution

"The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard. (5 Marks) (MTP Oct. 23)

- The company shall not make further issue of same kind of shares **within next 6 months** except by way of
 - Bonus shares; or
 - Issue of shares to discharge the existing obligations such as conversion of preference shares or debentures or warrants

- Goals Limited, a listed company has authorised share capital of ` 25,00,000 (issued, subscribed and paid up capital of ` 20,00,000). The company has planned to buy back shares worth ` 10,00,000. What is the maximum amount of equity shares that the company is allowed to buy back based on the total amount of equity shares?
(2 Marks) (MTP Sep. 23)

A. ` 2,00,000

B. ` 5,00,000

C. ` 6,25,000

D. ` 8,00,000

Question

(b) "The offer of buy-back of its own shares by a company shall not be made within a period of six months from the date of the closure of the preceding offer of buy-back, if any and cooling period to make further issue of same kind of shares including allotment of further shares shall be a period of one year from the completion of buy back subject to certain exceptions." Examine the validity of this statement by explaining the provisions of the Companies Act, 2013 in this regard.

(5 Marks) (MTP Mar. 24)

Issue of Shares

At par

At discount (Sec 53)

At Premium (Sec 52)

Any company (pvt or public) cannot issue shares at discount except –

- 1) sweat equity shares [Sec. 54]
- 2) Creditor when debt is converted to shares in a debt restructuring scheme.

Company can issue shares at premium subject to Sec. 52

Note : Sec. 53 If Co issue shares with discount it shall also be liable to refund all monies received with interest at the rate of 12% per annum.

Yuvan Limited is a public company incorporated in Pune. The Board of Directors (BOD) of the company wants to bring a public issue of 1,00,000 equity shares of ₹ 10 each. The BOD has appointed an underwriter for this issue for ensuring the minimum subscription of the issue. The underwriter advised the BOD that due to current economic situation of the Country it would be better if the company offers these shares at a discount of ₹ 1 per share to ensure full subscription of this public issue. The Board of Directors agreed to the suggestion of underwriter and offered the shares at a discount of ₹ 1 per share. The issue was fully subscribed and the shares were allotted to the applicants in due course.

- (1) Decide whether the advise of underwriter to issue of shares as mentioned above is valid as per provisions of the Companies Act, 2013.
- (2) What would be your answer in the above case if the shares are issued to employees as Sweat equity shares?
(5 Marks) (MTP Oct. 22)

Hint

- (1) As per facts of the question and provisions of section 53 and 54 of the Companies Act, 2013, Yuvan Limited cannot issue at a discount of Rs. 1 per share. Hence, the advise of the underwriter to issue shares at a discount is not valid.
- (2) In terms of provisions of section 54 of the Companies Act, 2013, if the above shares have been issued to employees as Sweat equity shares and prescribed conditions are fulfilled, then the issue of shares at discount is valid.

Issue of shares at Premium [Sec. 52](MARO)

Meaning	Issue of shares at amount more than face value
Authorisation in AOA	Not Required
Resolution Required	Board
Other Special Points	1) No restriction on amount of premium. 2) Amount of premium should be transferred to 'Securities Premium account'. 3) Securities Premium account can be used only for. (MtP sep 23) i. commission paid on issue of shares or debentures ii. premium paid on redemption of preference shares or debentures iii. discount allowed on any issue of shares or debentures iv. Buy- back of shares u/s 68 v. Issue of Bonus shares vi. Writing off the preliminary expenses

Note - In case of such class of companies, as may be prescribed and whose financial statement comply with the accounting standards prescribed u/s 133, the securities premium account can be used for:
Issuing bonus shares
Writing off commission paid, expense, or discount allowed on, issue of equity shares.
For buy-back of shares u/s 68.

Question

Navni Ltd. has accumulated a significant amount in its securities premium account. The company is considering different ways to utilize these funds. Advise the directors of the company on the application of the securities premium account as per the provisions of the Companies Act, 2013. **(5 Marks) (MTP Aug 24)**

SWEAT EQUITY SHARES (SEC 54)

Meaning 2(88)	Are equity shares issued to Dir/employees either at discount or consideration other than cash for providing know how , making available right in nature of IPR or value addition
Authorisation AOA	Required
Resolution	Special Resolution
Other Special Points	1) belong to class of shares already issued. 2) Special Resolution making allotment valid for 12 months from passing. 6) Maximum Quantum of issue in a year ▪15% of the existing paid up equity share capital in on FY or ▪Shares of the issue value of Rs. 5 crores. (whichever is HIGHER) 8) Lock in period: 3 years from the date of allotment. 9) At any time, the sweat equity shares shall not exceed 25% of the paid-up equity capital of the company. (50 % start up Company)

2. Innovative Ltd. a start-up by a few qualified professionals, which was incorporated in 2014. The Company is booming and favouring the younger generation to work. The Capital Structure of the Company is as follows :

Particulars	INR (Crores)
Authorised Share Capital 100,00,000 Equity Shares of ₹ 10 Each	10.00
Issued, Subscribed and Paid-up Share Capital 50,00,000 Equity Shares of ₹ 10 Each	5.00
Share Premium	1.00
General Reserve	3.52
Profit & Loss Account	1.58

The company decided to issue 30% sweat equity shares to a class of directors and permanent employees to keep them motivated and partner in growth. Lock-in period for sweat equity will be five years. For this purpose, a resolution in General meeting of Company was passed in this manner.

"The Resolution specifies 15 lakh sweat equity shares, Current Market price! 25 per share with a consideration of ₹ 5 per share to be issued to a class of directors and employees."

The company seeks your advice with reference to the provision of issue of sweat equity shares company under the Companies Act, 2013.

- (i) Whether size of issue of sweat equity shares was appropriate?
- (ii) Whether lock-in period was justifiable? 6 Marks (May 23)

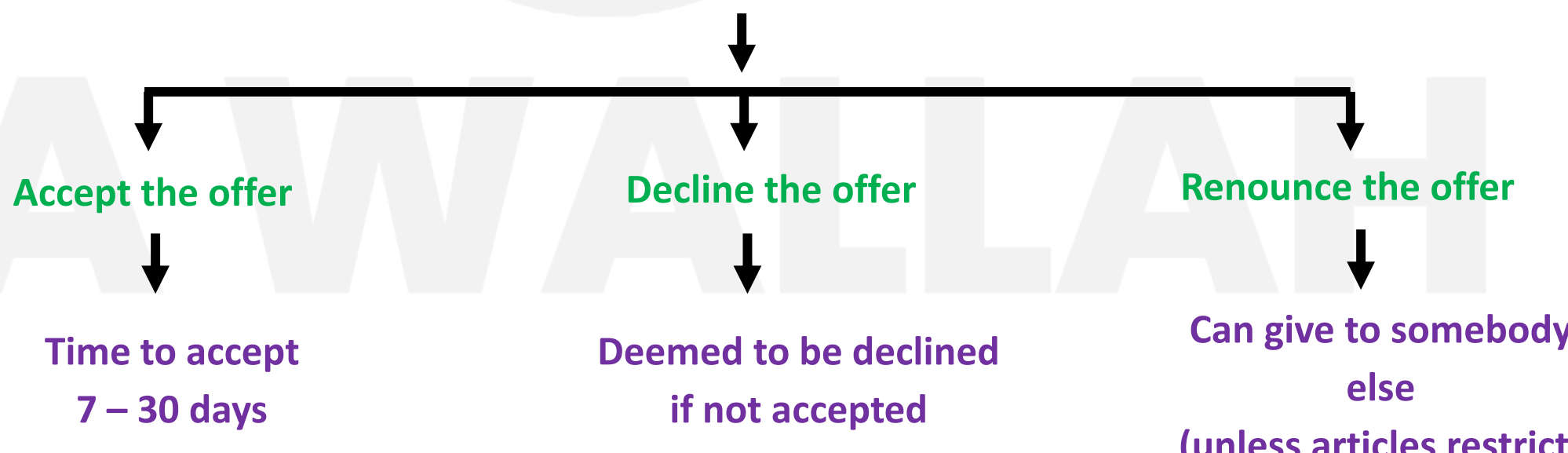
Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with

- (a) Equity Shares
- (b) Preference Shares
- (c) **Sweat Equity Shares**
- (d) Redeemable preference shares

It has been decided by Vanita Watches Limited to issue sweat equity shares to five of its employees for the 'value additions' made by them in term of economic benefits which proved beneficial to the company. For how many year(s), the employees who have been allotted sweat equity shares cannot transfer them:

- (a) One year from the date of allotment
- (b) Three years from the date of allotment
- (c) **Five years from the date of allotment**
- (d) Six months from the date of allotment

Right shares or Further issue of shares [Sec. 62]

Meaning	Against right of Pre-emption, shares offered to existing shareholders.
Authorisation in AOA	Required
Resolution Required	B.R/ S.R if directly to outsiders
Other Special Points	1) Shares are offered in proportion of shareholding. 2) Existing shareholders can  <pre>graph TD; A[Existing shareholders can] --> B[Accept the offer]; A --> C[Decline the offer]; A --> D[Renounce the offer]; B --> E[Time to accept 7 – 30 days]; C --> F[Deemed to be declined if not accepted]; D --> G[Can give to somebody else (unless articles restrict)]</pre> Accept the offer Time to accept 7 – 30 days Decline the offer Deemed to be declined if not accepted Renounce the offer Can give to somebody else (unless articles restrict)

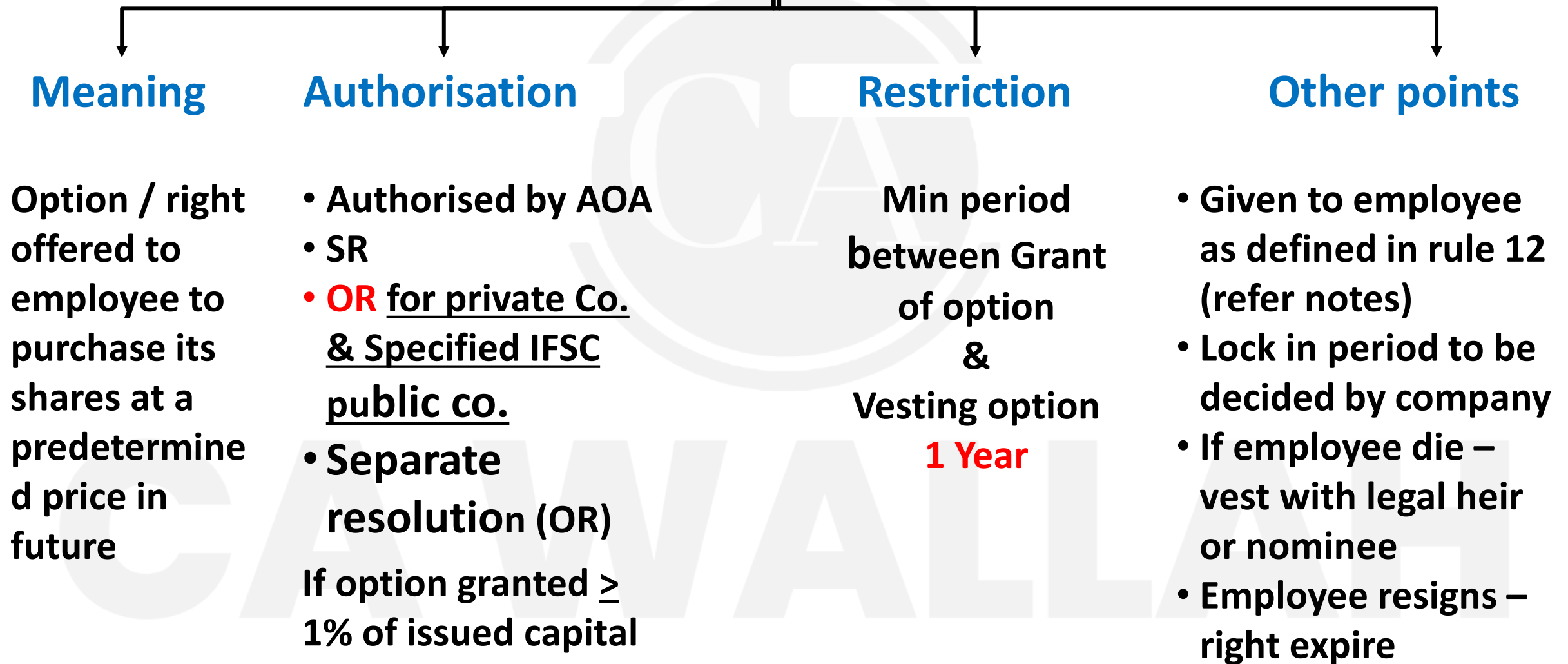
Note:

1. In Pvt. Co. it can Prescribe for lesser time of opening of offer if 90% of members give consent.
2. Notice should be given at least 3 days before opening of offer.
3. The unsubscribed shares are disposed off by the BOD
4. Cases where new shares directly offered to outsider.(TQ)
 - a) If the company passes a special resolution in the general meeting deciding to offer new shares to the outsiders, or
 - b) If the existing shareholders to whom the shares are offered decline to accept the shares.
 - c) Conversion of Debentures or loans into shares
 - d) Any Re-issue of forfeited shares also can be issued without being offered to the existing shareholder. Since they are does not treated as further allotment of shares.

X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favor of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.?(NOV 2019)

Hint - Right of renunciation can be made to anyone even non member

Employee Stock Option Scheme



Preferential Issue of Shares

Sec. 62(1)(c)

Meaning

Issue of shares by Co.
↓
To selected person or Group of person on preferential basis

Authorisation

- Authorised by AOA
- SR
- Listed Co.
↓
SEBI Guidelines

Restriction

Fully Paid up
Till Allotment

Other points

- **Unlisted Co –**
Price Determined on basis of **Valuation report**
- **Listed Co –**
As per SEBI
 - Allotment of Security Completed within 12 months of passing SR
 - (otherwise new resolution)

COMPULSORY CONVERSION SEC. 62(4)

Basis

If debentures issued to / loan from

Any Government

In public Interest, they can direct to be converted into shares

In T&C, Seem reasonable to govt.

Other points

1. If terms & conditions not acceptable to company
2. They may apply to Tribunal within 60 Days from communication of offer
3. Points to be considered for such action
 - a) Financial position of co.
 - b) Terms of issue of debentures / Loan
 - c) Public interest
 - d) Rate of interest

If a company has Authorised Share Capital of ` 6,00,000; Paid-up Share Capital of ` 5,00,000; a loan of ` 2,00,000 obtained from the State Government. The State Government ask the company to convert its loan into shares, then such order shall have the effect of increasing:

- (a) The subscribed share capital of the company
- (b) The paid-up share capital of the company
- (c) The Authorised Share Capital of the company
- (d) All of the above

BONUS SHARES [Sec 63]

Meaning	Shares issued free of cost
Authorisation in AOA	Required
Resolution Required	Ordinary Resolution
Other Special Points	1. Sources a) Free Reserves; or b) Security Premium Account (Sec. 52); or c) Capital Redemption Reserve (Sec. 55) 2. Bonus shares can be issued only if the company has not defaulted in payment of principal sum or interest on the fixed deposits or debt securities issued by it. 3. Bonus shares must be fully paid up. 4. If there are any partly paid shares, they must be made fully paid up before the issue of bonus shares. 5. Shall comply with conditions presc. By CG. 6. Issued only to existing shareholder. 7. The bonus shares shall not be issued in lieu of dividend

Particulars		Amount (!)
Equity & Liabilities		
(1) Shareholder's Fund		
(a) Share Capital:		
Authorized Capital:		
10,000, 12% Preference Shares of ! 10 each	1,00,000	
1,00,000 equity shares of ! 10 each	10,00,000	11,00,000
Issued & Subscribed Capital:		
8000,12% Preference Shares of ! 10 each fully paid up		80,000
90,000 equity shares of ! 10 each, ! 8 paid up		7,20,000
(b) Reserve and Surplus		
General Reserve	1,20,000	
Capital Reserve	75,000	
Securities Premium	25,000	
Surplus in statement of P& L	2,00,000	4,20,000
(2) Non-Current Liabilities:		
Long-term borrowings:		
Secured Loan: 12% partly convertible		
Debenture @ ! 100 each		5,00,000

On 1st April, 2022 the company has made final call at ! 2 each on 90,000 Equity Shares. The call money was received by 25th April, 2022. Thereafter, the company decided to capitalize it's reserves by way of bonus @ 1 share for every 4 shares to existing shareholders.

Answer the following questions according to the Companies Act, 2013, in above case:

- (A) Which of the above-mentioned sources can be used by company to issue bonus shares?
- (B) Calculate the amount to be capitalized from free reserves to issue bonus shares? (5 Marks) (MTP Sep. 22)

Particulars	Amount
Amount of bonus shares to be issued	90,000 shares x 1/4
	= 22,500 shares
Amount that ought to be capitalized for issue of bonus shares	22,500 x ` 10 per share
	= ` 2,25,000
Total amount available to be capitalized from free reserves to issue bonus shares	= 1,20,000+
	25,000+
	2,00,000
	= ` 3,45,000
Hence, the amount to be capitalized from free reserves to issue bonus shares will be	` 2,25,000

Question

(b) APR Limited, a company renowned for manufacturing various types of mats, has established a strong brand presence and garnered a commendable reputation over the years. As of March 31, 2023, its Balance Sheet reflects the following financial position:

- 1) Authorized Share Capital (25,00,000 equity shares of Z 10/- each) ` 2,50,00,000**
- 2) Issued, subscribed and paid-up Share Capital (10,00,000 equity shares of Z 10/- each, fully paid-up) Z 1,00,00,000**
- 3) Free Reserves Z 3,00,00,000**

The Board of Directors intends to propose a bonus issue wherein existing shareholders would receive 1 additional share for every 2 shares held. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013.

(5 Marks) (MTP April 24)

Reduction of Shares Capital (Sec. 66)

Meaning

1. Extinguish / reduce the liability on shares not paid
2. Pay off any PUC if in excess of wants of co.
3. Cancel any PUC which is lost or unrepresented by assets

Authorisation

SR

Restriction

1. Take permission from Tribunal
 - a) Tribunal will seek objection from CG, ROC, SEBI, Creditors
 - b) Objection can be raised **within 3 months**
 - c) No representation means, no objection
2. Sec 133 on AS complied
3. No Default w.r.t. Deposits

Other points

1. Sec 66 do not Apply to buy back U/s 68
2. Tribunal can impose T&C as it deems fit
3. Application to Tribunal in form **RSC-1 + fees**
4. Notice published in newspaper within 7 days of order **(RSC- 4)**
5. Order of Tribunal **(RSC 6)**

Voting Rights (sec 47)

Equity Shares

- On every resolution placed before company in GM
- In Poll → voting depends upon proportion of his shares to total equity PUC

Preference Shares

- On matters
 - a. Related to them
 - b. Reduction
 - c. Winding up
- In Poll → depends upon his proportion of shares in total preference shares capital in company

Note:

1. Where both equity shareholders & preference share holders vote on a matter
→ Voting rights will be in proportion to equity capital & preference capital in capital
2. If preference shares do not receive dividend for **2 or more years**
→ they can vote on all matters before GM till dividend is paid

A general meeting of the company is to be held on 30th August, 2020. The company has not paid dividend for the financial year 2018-2019. It has also not yet paid any dividend for the year 2019-2020. In such case preference shareholders:

- (a) will not have the right to vote because preferential shareholder has no right to vote
- (b) will have the right to vote because dividend for last two years have not been paid**
- (c) will not have the right to vote because only equity shareholders can vote in general meetings
- (d) will have right to vote because preference shareholder have the right to vote in general meetings

CAWALLAH

- Variation only if specified in AOA or not prohibited by terms of issue
- Variation by 3/4 th majority or SR (of that class)
- If affects right of other shares → 3/4th majority of that class



In a company if any change of right of one class also affects the right of other class, then:

- A resolution should be passed in general meeting in this case
- Company need not to do anything else
- Written consent of three fourth majority of that other class should be obtained**
- A resolution in joint meeting of both the classes should be passed

Transfer or Transmission of Shares (Sec. 56)

→ Transfer of shares as per the Act and the Articles.

→ A person entitled to shares by operation of law, is termed as transmission.

Submit to co.

- Transfer Deed -- Stamped, dated (Not reqd. in case of demat/transmission)
- Executed (signed) by Transferor & Transferee

(Within 60 days of execution)

Share transfer deed (SH-4)

- Along with death certificate (by legal representative)
- By transferor & transferee
- If transfer deed lost → Co. Asks to indemnify

Company will

Partly Paid up shares

Blank transfer

Forged transfer

Give notice to transferee
(SH-5)

He can object within **2 weeks** of transfer, if not then co, may register the transfer

Wait for transferee's response

Transferor signature forged
↓
Void ab initio

Co. will

- cancel certificate to transferee
- Restore transferor name (original owner)

Note

- If forged transfer → if transferee has already transfer shares to innocent purchaser



Company will



Refuse to register new transferee as member

+ pay damages to new transferee

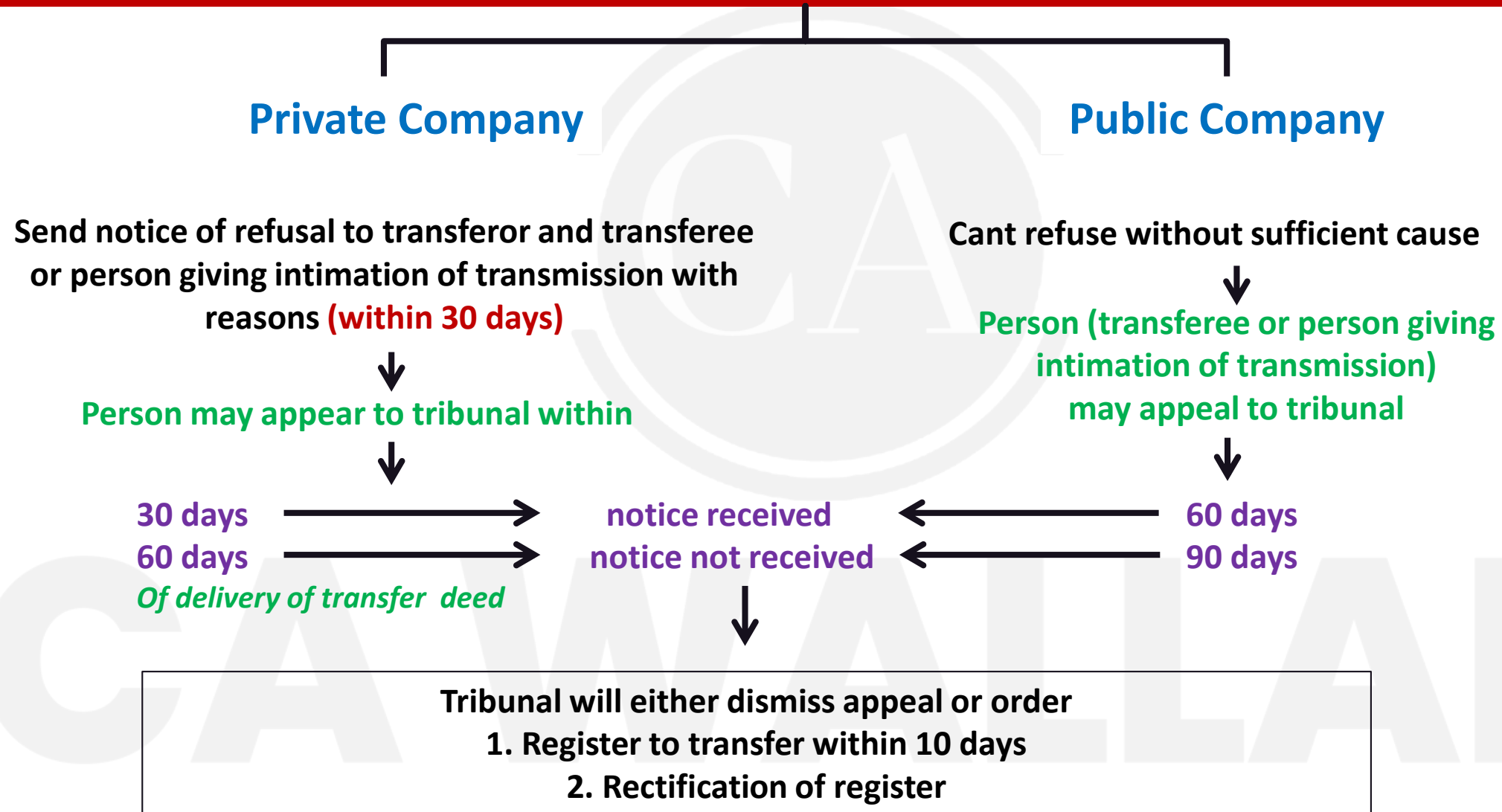
+ claim damages from old transferee

Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013. (MTP MAY 2020)

In the above case, 'therefore, Mr. A has the right against the company to get the shares recorded in his name. However, neither Mr. B nor Mr. C have any rights against the company even though they are bona fide purchasers.

However, since Mr. A seems to be the perpetrator of the forgery, he will be liable both criminally and for compensation to Mr. B and Mr. C.

REFUSAL TO TRANSFER SHARES (SEC. 58)



Time limit to issue / transfer share certificate

- **Subscribers** → within **2 months** of incorporation
- **Allottee** → within **2 months** of allotment
- **Transferee** → within **1 month** of transfer
- **Debenture** → within **6 months** of allotment

Ruchi was handed over an instrument of transfer dated 21st August, 2020, duly stamped and signed by Radha who had transferred 2000 equity shares of ₹ 100 each allotted to her by Murti Mechanical Toys Private Limited. Advise Ruchi regarding the date by which the instrument of transfer along with share certificates must be delivered to the company, to register the transfer in its register of members.

- (a) 21st August, 2020.
- (b) 20th September, 2020
- (c) **20th October, 2020.**
- (d) 19th November, 2020.

CA Inter **Law Sep 2024**

Debentures



Introduction

- **Deb. Includes deb. Stock/ bonds / instrument of Co. evidencing a debt**
- **Following are not deb.**
 - Inst under Chp III of RBI Act (Derivatives & money market Instruments)**
 - Commercial papers**
 - Foreign currency convertible / currency bond**
 - Rupee denomination bonds issued to overseas investors**

STEPS TO ISSUE DEBENTURES

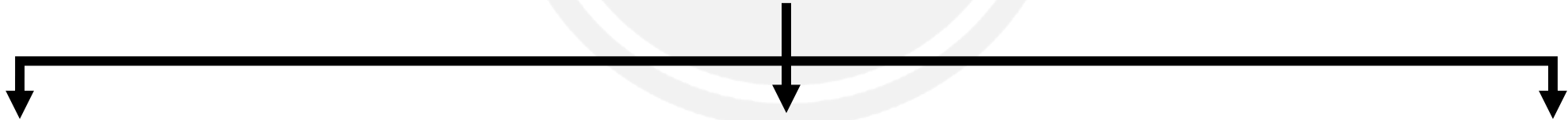
Appoint Debenture Trustee



Issue Prospectus or PPOL



Issue Debentures



**Issue debenture
certificate**



- Within 6 months from allotment
- within 1 month of transfer or transmission

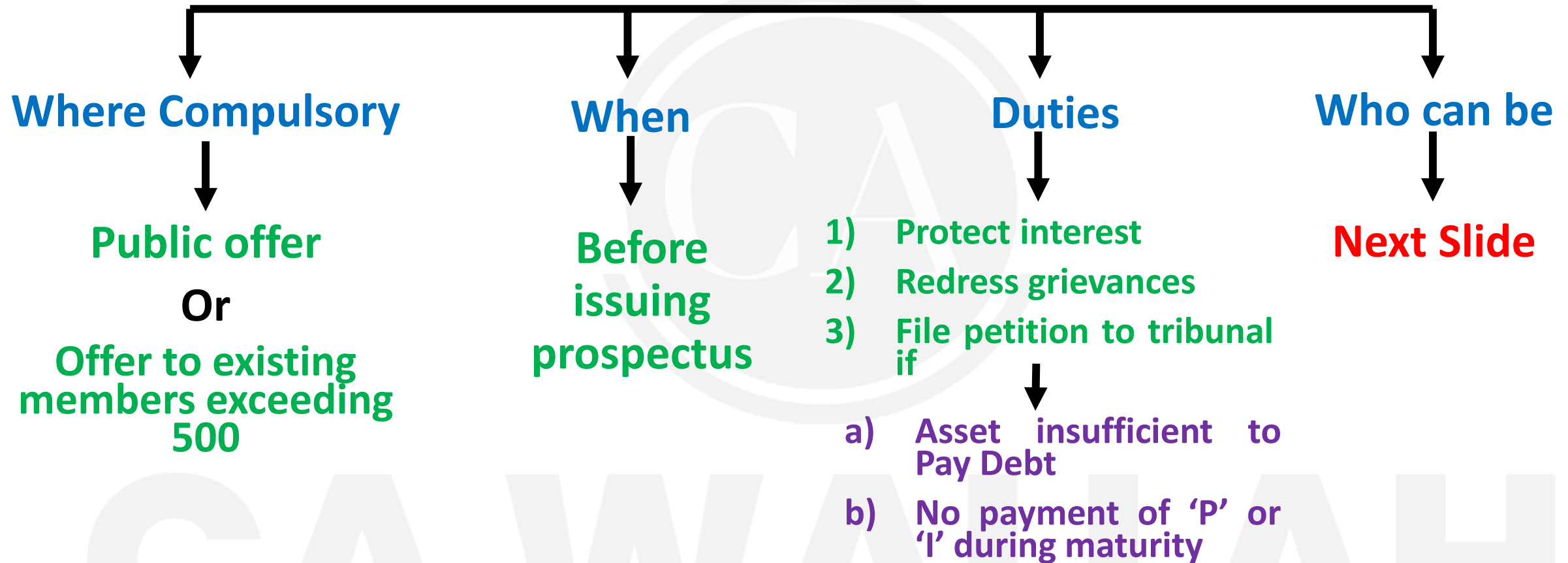
**Create debenture
trust deed**



- Within 3 months from closure of offer of allotment
- Form No. SH-12
- On request provide copy to member or deb-holder within 7 days

Create DRR

Appointment of Debenture Trustee



Eligibility criteria for becoming a Debenture Trustee

A person shall not be appointed as a debenture trustee, if he-

- i. **Beneficially holds shares** in the company
- ii. **beneficially entitled** to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee
- iii. Is a **promoter, director or key managerial personnel** or any other or an **employee** of the company or its holding, subsidiary or associate company.
- iv. Is **indebted** to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.
- v. Has furnished any **guarantee** in respect of the principal debts secured by the debentures or interest thereon.
- vi. Has any **pecuniary relationship** with the company amounting to 2% or more of its gross turnover or total income or Rs. 50 lacs , whichever is lower, during the 2 immediately preceding financial years or during the current financial year.
- vii. Is **relative** of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Appointment and removal of Debenture Trustee (Rule -18)

- The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act.
- Where such **casual vacancy** is caused by the **resignation** of the debenture trustee, the vacancy shall only be filled with the **written consent of the majority of the debenture holders**.
- Any debenture trustee may be **removed** from office before the expiry of his term only if it is approved by the holders of not less than **three fourth in value of the debentures outstanding**, at their meeting.
- meeting of all the debenture holders shall be convened by the debenture trustee on- requisition in writing signed by debenture holders holding **at least 1/10th in value** of the debentures for the time being outstanding;

Note – Security sufficient to cover P + I should be created in favour of trustees (Not required if taken by Govt Co with guarantee of C.G/S.G/jointly)

Conditions for issuing debentures

- Can issue convertible debenture only after S.R.
- Can be issued at par/premium/discount
- No voting rights (even if specified in AOA)
- Max. Redemption period → 10 years (secured deb.)
- For secured deb. (Redemption period)

• Normally 10 years

• > 10 years upto 30 years

- Infra finance/projects/Debt fund NBFC
- Permitted by CG/RBI/ NHB/ Statutory body

Prithvi Cements Limited is desirous of issuing debentures carrying voting rights. Choose the right option from the following:

- (a) Prithvi Cements Limited can issue debentures carrying voting rights by passing an ordinary resolution at a general meeting of the company.
- (b) Prithvi Cements Limited can issue debentures carrying voting rights by passing a special resolution at a general meeting of the company.
- (c) Prithvi Cements Limited can issue such debentures carrying voting rights only if it mortgages its land and buildings worth two times the amount of the debentures.
- (d) Prithvi Cements Limited cannot issue debentures carrying voting rights.

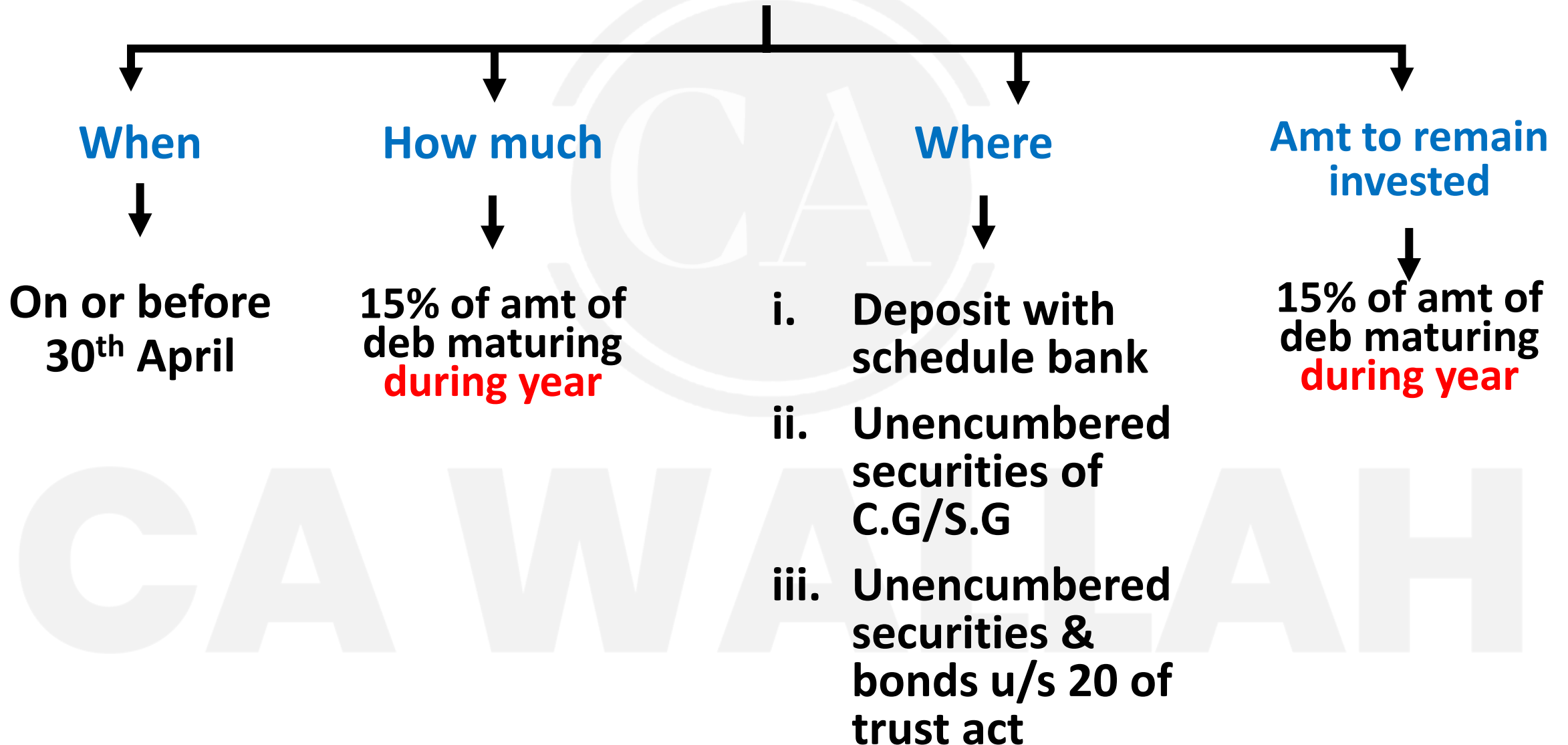
DRR

- Compulsory
- Out of profit available for dividend
- If partly convertible, DRR created for non-convertible part

Rate of DRR



Debenture Reserve Fund (Investment)



S.No.	Type of Company	Mode of issue of Debentures	DRR Needed?	How Much DRR?	How Much DRF?
i.	All India Financial Institutions (AIFI) and Banking Companies	Public Issue or Private Placement	No.	N/A	N/A
ii.	Public Financial Institution (PFI)	Public Issue Private Placement	Yes	Same as before NBFC	N/A.
iii.	Listed Companies except (i)	(A) Public Issue (Listed NBFC/HFC)	No	N/A	15%(*)
		(A) Public Issue (Other Listed Co.)	No	N/A	15%(*)
		(B) Private Placement (Listed NBFC/HFC)	No	N/A	15%(*)
		(B) Private Placement (Other Listed Co.)	No	N/A	15%(*)
iv.	Unlisted Companies except (i)	(A) Unlisted NBFC/HFC	No	N/A	N/A
		(B) Other Unlisted Companies	Yes	10% of O/S Debentures	15%(*)

Debentures with Pari Passu Clause

- Pari Passu means ranking equally
- Rights of debenture holders

**With pari passu
clause**

**Shares proceeds as
equal ranking**

**Without pari passu
clause**

**Shall rank according
to date of issue of
debentures**

Cannot add pari passu clause unless such right is expressed earlier.

CA Inter **Law Sep 2024**

Deposits

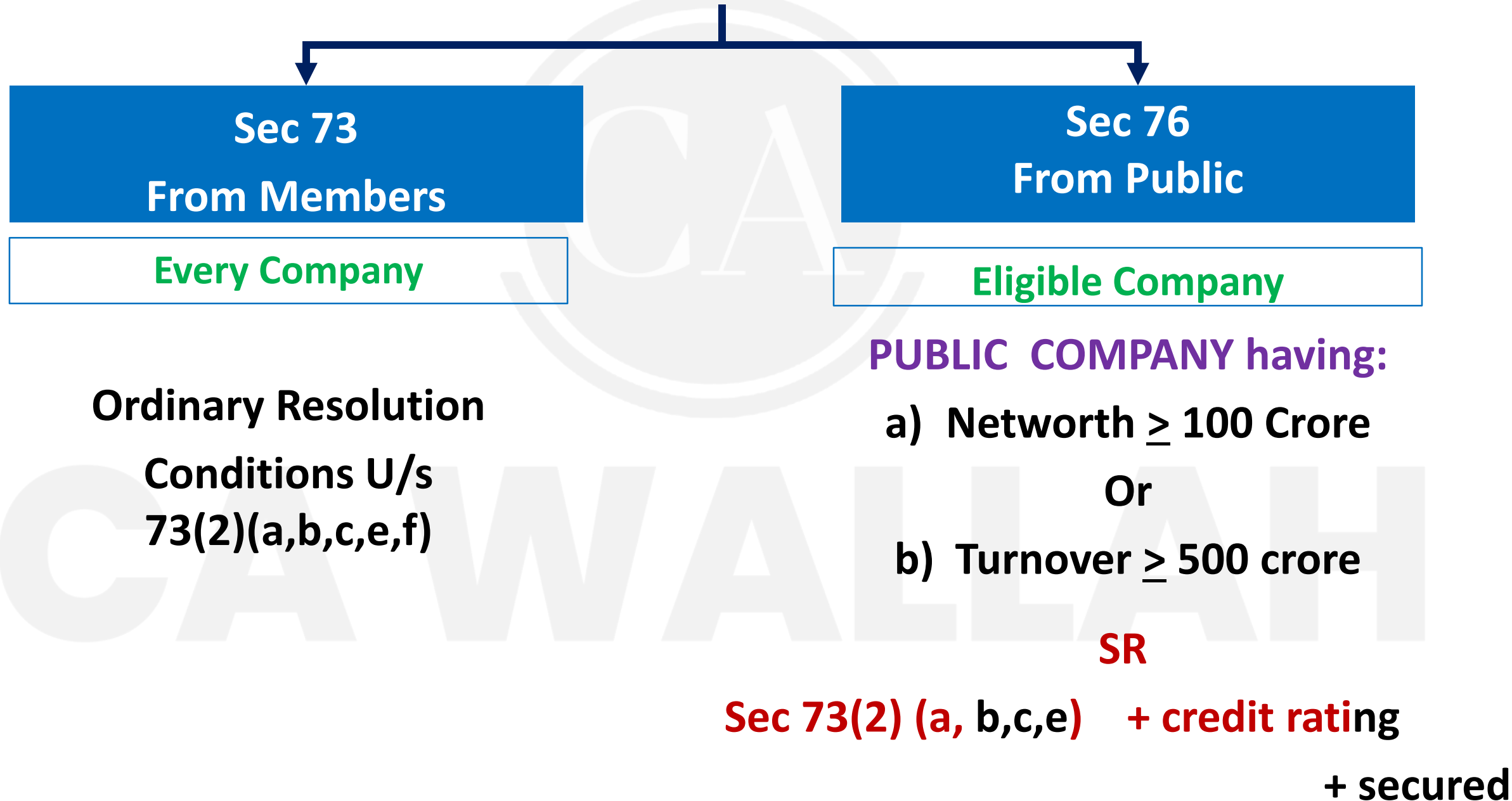


Deposits



- **Sec. 73 to 76 does not apply to**
 - a) Banking co.
 - b) NBFC
 - c) Housing finance co.
 - d) As specified by C.G in consultation with RBI
- **All laws made in consultation with RBI**

Acceptance of Deposits



As per the provisions of the Companies Act, 2013 and relevant rules thereunder, an eligible company is not permitted to accept from public or renew the same deposits (whether secured or unsecured) which is repayable on demand or in less than ____ months. Further, the maximum period of acceptance of deposit cannot exceed ____ months. But, for the purpose of meeting any of its short- term requirements of funds, a company may accept or renew deposits for repayment earlier than _____ months subject to certain conditions. (RTP Mar 23)

- (a) **six, thirty six, six**
- (b) three, twenty four, three
- (c) six, sixty, six
- (d) three, sixty, six

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Sec. 73(2) Accepting Deposit from Member

CONDITIONS

- a) Circulate a Circular DPT-1 Among members with all details
- b) File copy of Circular (DPT-1) with ROC within 30 Days before issue of circular to others
- c) Deposit Repayment Reserve A/c (DRRA)



NOTE: Min bal in DRRA should be 20% of amt of deposits maturing during the FY.

- e) No Subsisting Default → payment of P+I on any earlier deposits
- f) Can be secured or Unsecured

(quoted in every circular)

Suneet Spices Limited decides to raise deposits of ` 20.00 lacs from its members. However, it proposes to secure such deposits partially by offering a security worth ` 15.00 lacs. Which of the following options best describe such deposits:

(a) Fully secured deposits (except a small portion)

(b) Unsecured deposits

(c) Partially secured deposits

(d) These cannot be classified as deposits

A reserve account that shall not be used by the company for any purpose other than repayment of deposits is called:

(a) Debenture redemption reserve account

(b) Deposit repayment reserve account

(c) Capital redemption reserve account

(d) Free reserve account

Bhumi Real Estate Developers Limited has accepted deposits from its members. There is no default in repayment of such deposits on their maturity. The statutory amount to be deposited by the company on or before 30th April of each year in a specified account opened with its bankers, till the deposits are fully repaid is:

(a) Not less than 50% of the amount of its deposits maturing during the following financial year.

(b) Not less than 30% of the amount of its deposits maturing during the following financial year.

(c) Not less than 20% of the amount of its deposits maturing during the following financial year.

(d) Not less than 10% of the amount of its deposits maturing during the following financial year.

Sec. 76 Accepting Deposit from Public

Even this Company needs to follow

a) Basic Conditions → Sec. 73(2)(a,b,c,e)

b) Additional Condition 1

Company shall provide for security by way of charge → Sufficient to cover P+I → In favour of trustee

c) Additional Condition 2

Obtain credit rating from recognised Agency
(before acceptance + every year)

+

Rating should not be below minimum rating for NBFC decided by RBI

Note - company accepting secured deposits shall create security by way of charge on its **tangible assets only**.

2. A Limited Company raised the secured deposit of Rs. 80 crore on 30th June, 2023 from the public on interest @ 12% p.a. repayable after 3 years. The charges have been created within prescribed time in favour of trustee of depositors against the deposit taking following assets of the company as security:

Land & Building	₹ 55 crore
Plant & machinery	₹ 15 crore
Factory Shed	₹ 10 crore
Trade Mark	₹ 10 crore
Goodwill	₹ 15 crore

Decide on the validity of the charges created with reference to the provisions of the Companies Act, 2013.
(RTP Nov 23)

Particulars	Amount (in Rs)
Total value of security (value of assets on which charge can be created)	55+15+10 [Land and Building, Plant & machinery and Factory Shed] = 80 crore
Total deposits accepted and interest payable thereon	80+ [(80*12%)*3 years] = 108.8 crore

Since, the total value of security is less than the amount of deposits accepted and interest payable thereon, hence the charge is not validly created.

Maximum Quantum of Deposits [Rule 3]

Type of Company	From	Maximum limit of deposits of (P.U + F.R + S.P.A)	Conditions u/s 73(2) (a) to (e)
Eligible Public company	members	10%	✓
	Public	25%	✓
Eligible Public Government company	members + public	35 %	✓
Other Public Co (not eligible)	members	35%	✓
• A Specified IFSC Public company • A private company	members	100%	X
Start up Private Co (Upto 10 years from incorp.)	members	No limit	X
Private Co (which satisfies conditions)(next slide)	members	No limit	X

***Conditions to be fulfilled by a Private Company (all)**

- 1) Not an associate or a subsidiary company of any other company.**
- 2) Borrowings from Banks or FI or Body Corp. is less than**
 - a) twice of its Paid-up capital or**
 - b) 50 Crore**
- 3) Has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits u/s 73**

Other Important Points

- 1. Interest / brokerage cannot be more than as prescribed by Rbl for nbFCs (rule 3)**
- 2. Company cannot accept deposit which is repayable**
 - a) On Demand**
 - b) Less than 6 months**
 - c) More than 36 months**

Except : if deposit → does not exceed 10% (P+F+S) → 6months can be reduced to 3 months
- 3. Give receipt to depositor / agent within 21 days**
- 4. Every year file a return before 30th June in DPT- 3 (rule- 16)**
- 5. Penal Interest – 18% p.a. (Rule 17)**
- 6. On premature termination – ROI reduced by 1 %**

Red Limited is accepting deposits of various tenures from its members from time to time. The current Register of Deposits, maintained at its registered office is complete. State the minimum period for which it should mandatorily be preserved in good order. (MTP Oct. 22)

- (a) Four years from the financial year in which the latest entry is made in the Register.
- (b) Six years from the financial year in which the latest entry is made in the Register.
- (c) **Eight years from the financial year in which the latest entry is made in the Register.**
- (d) Ten years from the latest date of

entry.

Normally no deposits are repayable earlier than _____ from the date of such deposits or renewal thereof.

- (a) 3 months
- (b) **6 months**
- (c) 12 months
- (d) 1 year

What is the maximum tenure for which a company can accept or renew deposits from its members as well as public?

- (a) 12 months
- (b) 24 months
- (c) **36 months**
- (d) 48 months

Validity of Circular or Advertisement

The circular or advertisement shall be valid until:

- i. Expiry of 6 months from the date of closure of the financial year in which it is issued; or**
- ii. Date on which the financial statement is laid before the company in its annual general meeting; or**
- iii. If annual general meeting has not been held, the latest day on which it should have been held, whichever is earlier.**

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Disqualifications of Trustee

- a) is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
- b) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- c) has any material pecuniary relationship with the company;
- d) has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
- e) is related to any person specified in clause (a) above.

Note

- No company under Section 73(2) or any Eligible company shall issue a circular or advertisement inviting secured deposits **unless the company has appointed one or more trustees for depositors** for creating security for the deposits.
- **Removal of Trustee:** Consent of all the directors present at a meeting of the board.(at least one independent director shall be present in such meeting of the Board,if any)
- The company shall execute a **Deposit Trust Deed** in Form No. DPT-2 at least **7 days** before issuing the circular or advertisement.
- ***Meeting of Depositors*** – The trustee for depositors shall call a meeting of all the depositors on: requisition in writing signed by at least **one-tenth of the depositors in value** for the time being outstanding;

General Provisions regarding Premature Repayment of Deposits — Rule 15

- Where a company makes a premature repayment of deposits, **on the request of the depositor**, after expiry of 6 months from date of such deposit, the **rate of interest payable on such deposit shall be reduced by 1% from the rate payable for the period such deposit actually remained with company.**
- For the purposes of this rule, where the period for which the deposit had run contains any part of a year, then, if such part is less than 6 months, it shall be excluded and if such part is six months or more, it shall be reckoned as 1 year.
- Sometimes, a depositor may want to take **benefit of higher rate of interest if such deposit is renewed in accordance with the other provisions of these rules and for a period longer than the unexpired period of the deposit.**

Ruchita wants to renew her deposit of ₹ 5.00 lakh with Kewal Constructions Limited before the expiry of original period for availing higher rate of interest. The fresh period, for which Ruchita is required to renew her deposit to be eligible for the higher rate shall be

(a) One and a half times the

unexpired period of original deposit.

(b) Double the unexpired period of original deposit.

(c) Six months more in addition to the unexpired period of deposit.

(d) Longer than the unexpired period of deposit.

D → Director → Amt received from Debtor

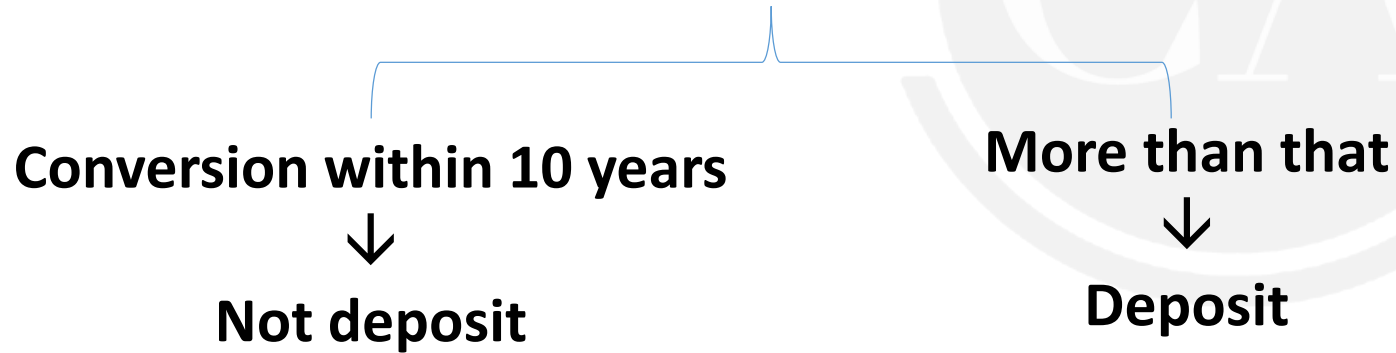
- **Director of Public or Private Co.**
- **Relative of Director of private co.**



- Written Declaration that amount not given out of borrowing from others.
- Disclosed in board report
- Disclosed in notes to accounts

D → Debentures

- i. **Secured debentures → Not deposit**
(M.V of asset covers amt of debentures)
- ii. **Unsecured debentures → deposits**
- iii. **Conv. Deb. Into shares**



- i. **Unsecured Deb.+ Non Convertible → Listed on S.E → Not deposits**

Vrinda Limited is a company manufacturing orange and strawberry candies for kids. Now, the company wants to expand its business and start the manufacturing of 10 more types of candies. The company has raised ` 1 crore through the issue of non-convertible debentures not constituting a charge on the assets of the company and listed on a recognised stock exchange as per the applicable regulations made by the Securities and Exchange Board of India. Advise, whether the above amount of ` 1 crore will be considered as deposit?(RTP May 2022)

Hence, ` 1 crore raised by Vrinda Limited will not be considered as deposit

L→ Loan from banks and F.I

P→ Promoters



By way of unsecured loan on condition from lended from bank or F.I



Conditions



- i. By promoter or relative**
- ii. Loan on condition from banks & F.I that they will give if he gives**
- iii. Not deposit till such loan paid to banks/FI**

The Promoters of Green Limited contributed in the form of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not ?(Mar. 22)(4 Marks)

Hence, in the instant case, the unsecured loan contributed by promoters of Green Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

Question

(b) The Promoters of J Limited contributed in the shape of unsecured loan to the company in fulfilment of the margin money requirements stipulated by State Industries Development Corporation Ltd. (SIDCL) for granting loan. In the light of the provisions of the Companies Act, 2013 and Rules made thereunder whether the unsecured loan will be regarded as Deposit or not. What will be your answer in case the entire loan obtained from SIDCL is repaid?

(5 Marks) (MTP Mar. 24)

Answer

(b) According to Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, the following amount is not considered as deposit:

Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to the fulfillment of following conditions:

- (a) the loan is brought because of the stipulation imposed by the lending institutions on the promoters to contribute such finance;
- (b) the loan is provided by the promoters themselves or by their relatives or by both; and
- (c) such exemption shall be available only till the loans of financial institution or bank are repaid and not thereafter.

Hence, in the instant case, the unsecured loan contributed by promoters of J Limited will not be regarded as deposit as the unsecured loan is brought because of the stipulation imposed by the SIDCL and the loan is provided by the promoters themselves.

In case the entire loan obtained from SIDCL is repaid, then the unsecured loan provided by promoters of J Limited will be regarded as deposit.

W → Warranty → Advance for Warranty

➤ Not deposit if



- Period does not exceed

- a) 5 years

- b) As per business practice

- Refunded when due

} w.e.less

➤ If not refunded within 15 days it becomes due, it is deposit from date of refund.

I→ Inter – Corporate loans

N→ Nidhi Company → Amt accepted as per rules

E→ Employee → Security deposit from employees



➤ **Not deposit if**

➤ **Non –interest bearing**

➤ **Amt does not exceeds annual salary of employee**

➤ **Deposit if interest bearing or amt exceeds his annual salary.**

Comment quoting relevant provisions of the Companies Act, 2013, whether the following amounts received by a company will be considered as deposits or not: (i) ` 2,00,000 received by Yash Limited from its employee Mr. A, who draws an annual salary of ` 1,50,000, as a non-interest bearing security deposit under a contract of employment. (ii) Textile Traders Limited received a loan of ` 30,00,000 from R who is one of its directors.(April 22)(4 Marks)

In the given case, ` 30,00,000 received as a loan by Textile Traders Limited from R (a director) shall not be treated as deposit, if he was a director at the time of giving such loan and had furnished to the company at time of giving money, a written declaration to the effect that the amount was not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and in addition, the company had disclosed the details of money so accepted in the appropriate Board's report.

Question

(b) Wood Limited has received 4,00,000 as a non-interest bearing security deposit under a contract of employment, from its employee Mr. Cotton. Mr. Cotton draws an annual salary of 3,85,000. Analyse under the provisions of the Companies Act, 2013, whether the said amount received by Wood Limited will be considered as deposits or not.(5 Marks) (MTP April 24)

In the above case, the amount of 4,00,000 received by Wood Limited from Mr. Cotton under the contract of employment with the company being non-interest bearing security deposit, will be considered as deposit in terms of sub-clause (x), since the amount is more than his annual salary of 7 3,85,000.

A → Application money on subscription

- For Any security
- If not allotted within 60 days



Shall be refunded in next 15 days



Otherwise deposits

- If adjusted against any other purpose other than for allotment → then deposit

C → Commercial Papers → Issue

G → Government → Amt recd. From Gov.

- **C.G**
- **S.G**
- **Local authority**
- **Statutory authority**
- **Any other (repayment Guaranteed by C.G/S.G)**

F→ Foreign

- **Govt.**
- **Banks**
- **Collaborators**
- **Citizen**
- **Body Corporate**



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Answer the following citing relevant provisions of the Companies Act, 2013:

- a) Wire Electricals Limited having paid-up capital of ` 1.00 crore availed a term loan of ` 10,00,000 from ABC Bank Limited to purchase electrical items. Mr. Taar, one of the directors of the company, is of the opinion that it shall be considered as 'deposit'. Is his contention correct?
- b) A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013, cannot accept deposits from public exceeding 25% of the aggregate of its paid-up capital, free reserves and security premium account. Is this correct?(RTP Mar 23)

Hint

(a) In terms of Rule 2 (1) (c) (iii) of the Companies (Acceptance of Deposits) Rules, 2014, any amount received as a loan or facility from any banking company shall not be considered as 'deposit'.

In view of the above, the contention of Mr. Taar that the term loan of ` 10,00,000 availed by the company from ABC Bank Limited shall be considered as 'deposit' is not correct.

(b) As per Rule 3 (5) of the Companies (Acceptance of Deposits) Rules 2014, a Government Company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five per cent of the aggregate of its paid-up share capital, free reserves and securities premium account.

Therefore, the given statement where the limit of 25% has been stated for acceptance of deposits is not correct.

Rashmika Ltd. received share application money of ` 50.00 Lakh on 01.06.2021 but failed to allot shares within the prescribed time limit. The share application money of ` 5.00 Lakh received from Mr. Kumar, a customer of the company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2021. The Company Secretary of Rashmika Ltd. reported to the Board that the entire amount of ` 50.00 Lakh shall be deemed to be 'Deposits' as on 31.07.2021 and the company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount. You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013. (4 Marks) (MTP Oct. 22)

Hint

In the light of the facts of the question and provisions of Law:

- a) If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2021 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Rashmika Limited is not correct in treating the entire amount of Rs. 50 Lakh as 'Deposits' on 31.07.2021.
- b) (2) Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of Rs. 5 Lakh adjusted against payment due to be received from Mr. Kumar, cannot be treated as refund.

- **Hello Limited received share application money of ` 50 Lakh on 01.06.2023 but failed to allot shares within the prescribed time limit. The share application money of ` 5 Lakh received from Diwas, a customer of the Company, was refunded by way of book adjustment towards the dues payable by him to the company on 30.07.2023. The Company Secretary of Hello Limited reported to the Board that the entire amount of ` 50 Lakh shall be deemed to be 'Deposits' as on 31.07.2023 and the Company is required to comply with the provisions of the Companies Act, 2013 applicable to acceptance of deposits in relation to this amount. You are required to examine the validity of the reporting of the Company Secretary in the light of the relevant provisions of the Companies Act, 2013.(5 Marks) (MTP Sep. 23)**
- **Hint -**
- If such application money or advance is not refunded to the subscribers within 15 days from the date of completion of 60 days, such amount shall be treated as a deposit. In the question, the prescribed limit of 60 days will end on 31.07.2023 and the company has 15 more days to refund such application money to the subscribers. Otherwise, after lapse of such 15 days, the amount not so refunded will be treated as deposit. Hence, the Company Secretary of Hello Limited is not correct in treating the entire amount of ` 50 Lakh as 'Deposits' on 31.07.2023.
- Any adjustment of the amount for any other purpose shall not be treated as refund. Thus, the amount of ` 5 Lakh adjusted against payment due to be received from Diwas, cannot be treated as refund.

- **WEE Remedies Ltd. incorporated on 26th November, 1995 with a paid-up capital of Z 25 crores. According to financial results of the company as on 31.3.2022 net worth of the company was Z 120 crores and turnover for the year 2021-22 was Z 350 crores. The Company proposed to accept the deposits as on 1st November, 2022, which would be due for repayment on 30th September, 2027 from the public for expansion and redevelopment programs of company. Besides that, company accepts a loan of Z 1.5 crores from Mr. P N Seth (Director) and the loan was expected to be repaid after twenty four months. Company in its books of account, records the receipt as a loan under non-current liabilities. At the time of advancing loan, Mr. Seth affirms in writing that such amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others ,and complete details of such loan transaction is furnished in the -boards' report.**
- **On the basis of above facts answer the following questions :**
- **Whether Company was eligible to accept deposit from public? What is the criteria for acceptance of deposit and tenure for which deposit can be accepted? Whether the tenure decided by Company was in accordance with provisions of Companies Act, 2013?**
- **With reference to the loan advanced by Mr. Seth to Company, state whether the same is to be classified as a deposit or not 4 Marks (Nov 23)**

punishment shall be as follows:-

On Company	Minimum Punishment	1 crore or twice the amount of deposits accepted by the Company, whichever is lower
	Maximum Punishment	10 crores
On officer in default	Imprisonment 5 7 Years AND Fine - Z 25 lacs 5 Fine 5 7 2 crores	
Willful offence by officer in default with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities	Punishment u/s 447	

CA Inter **Law Sep 2024**

Charges



Definition → Sec. 2 (16)

Charge → Interest / lien created

↓
On property / Assets of Co/ undertaking

↓
As security (includes a mortgage)

Types of Charge

↓
Fixed Charge

- On definite / ascertained assets of permanent nature
- E.g. → Land, Building, Machine

↓
Floating Charge

On Assets which may be present or future

↓
Which changes from time to time
E.g. → Stock Debtors, Block of Assets

Registration of Charges by Company (Sec 77) + Rule 3

On creation of charges (Movable, immovable, tangible, intangible, within/ outside India)



Register charge with ROC within 30 days of creation

- ✓ In Form No. CHG-1, CHG-9 (Debentures)
- ✓ Instrument Creating Charges



After 2nd Nov. 2018
[Co. (Amend) Act, 2019]



Within 60 days of creation (30 +30)



Within further 60 days (30 +30+60 =
120 days)



X

Additional fees



Advalorem fees



Apply for condonation
of delay to C.G

Sec. 77(2) → On Registration , ROC issues Certificate of Registration → CHG-2

An interest or lien created on the property or assets of a company or any of its undertakings or both as security is known as:

- (a) Debt
- (b) Charge**
- (c) Liability
- (d) Hypothecation

A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ` 1.00 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. The latest date within which the

company must register the charge with the ROC so as to avoid paying ad valorem fees for registration of the charge is

- (a) 27th April, 2019.
- (b) 17th April, 2019.**
- (c) 2nd May, 2019.
- (d) 16th June 2019

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1. Krish Limited created a charge on its assets on 2nd February, 2021. However, the company did not register the charge with the Registrar of companies till 15th March, 2021.

(a) What procedure should the company follow to get the charge registered?

(b) Suppose the company realises its mistake of not registering the charge on 27th May, 2021 (instead of 15th March, 2021), can it still register the charge?

Advise with reference to the relevant provisions of the Companies Act, 2013. (RTP May 2022)

Hint - If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

2. Bows Limited is required to create a charge on one of its assets. However, the above charge could not be registered within the required period of 30 days. State the provisions related to extension of time and procedure for registration of charges, in case when the charge was not registered within 30 days of its creation. (5 Marks) (MTP Oct. 22)

Registration of charges by Charge holders (Sec. 78)

If Co. fails to register charge within 30 days as per Sec. 77(1)



Charge holder may apply to ROC



ROC gives notice to company to register



If Co. doesn't register within 14 days



ROC allows registration by Charge holder on Payment of

- Fees
- Additional Fees

Note : Fees paid by charge holder can be recovered from company

Modification of Charges [Sec. 79]

Any modification of charges



E.g. i) Change of Interest rate

ii) Change in terms

iii) Change in limits

iv) Change in repayment schedule



Also to be registered with ROC

- Same time limits
- Same Form No



As to Sec. 77



ROC issues Certificate of modification in Form No. **CHG-3**

Satisfaction of Charge [Sec. 82]

On Company Pays / Satisfied Debt For which charges is created

Company will
[Sec. 82(1)]



ROC will



- Intimate to ROC in Form No. **CHG-4** within **30 days**
- If not, till **300 days** from satisfaction on payment of additional fees
- Beyond **300 days**, power to grant condition lies with **C.G. u/s 87**
- Send notice to charge holders and asking show- cause as to why to not register satisfaction (**max time – 14 days**)
- If no show – cause



ROC records satisfaction of charge in register of charges maintained by ROC



Inform to Co. in Form No. **CHG -5**

Note : (i) **CHG-5** nor required if **CHG -4** signed by charge holder
(ii) Rule of show cause not applicable if charge holder himself register satisfaction.

- 1. Mr. Raj acquired a property from XYZ Limited which was mortgaged to ABC Bank. He settled the dues to ABC Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor ABC Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr. Raj approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.(5 Marks) (MTP Sep. 22)**
- 2. Ranjit acquired a property from ABC Limited which was mortgaged to OK Bank. He settled the dues to Ok Bank in full and the same was registered with the sub-registrar who has noted that the mortgage has been settled. But neither the company nor OK Bank has filed particulars of satisfaction of charge with the Registrar of Companies. Can Mr.. Ranjit approach the Registrar and seek any relief in this regard? Discuss this matter in the light of provisions of the Companies Act, 2013.(MTP N 2020)**

Power of Registrar to record satisfaction of Charge [Sec. 83]

- If ROC himself get acquainted with information in relation to a registered charge –
 - ✓ The debt has been repaid in full; or
 - ✓ The property charged has been released from charge; or
 - ✓ The property charged has ceased to be the property of the company.
- He informs affected parties in **CHG-5** (*as per Rule 8 (2)*) **within 30 days.**

What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.(MTP MAY 2019)(RTP NOV 2020)

Question

What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013.(5 Marks) (MTP Aug 24)

Answer

- i. Section 83 of the Companies Act, 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.
- ii. This situation would arise where the property subject to a charge is sold to a third-party and neither the company nor the charge-holder has intimated the Registrar regarding satisfaction of the earlier charge.
- iii. Accordingly, with respect to any registered charge if evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied wholly or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:
 - a) • the debt has been satisfied in whole or in part; or
 - b) • part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.
- iv. This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.
- v. According to section 83 (2), the Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.
- vi. In case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

Register of Charges by Company [Sec. 85]

- Where → Regd. Office
- Form No. → CHG -7
- Preserve → Permanently
- Inspection → Member / Creditor – No fees
other → Prescribed Fees
- Authentication → Director / Secretary / Person
authorised by board

Note : Copy of Instrument creating charge also to be preserved by Co.

- At regd. office
- For 8 years

The instrument creating a charge or modification thereon shall be preserved for a period of _____ years from the date of satisfaction of charge by the company. (MTP Oct. 22)

- (a) 5
- (b) 7
- (c) 8**
- (d) 15

Who cannot inspect the register of charges and instrument of charges, during business hours, without paying any fees:(RTP Mar 23)

- (a) Any member of the company
- (b) The Creditor of the company
- (c) Persons other than member and creditor of the company**
- (d) No person is allowed to inspect the register of charges

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Other Imp Points

- i. **Sec. 80** creates a presumption in favor of company



Person dealing with company



Has notice of charge created on particular asset

- ii. **If company doesn't pay on due date**

- Fixed charges can be used to recover
- Floating charges converted into fixed charge [crystallization] and then use

1. Krish (Private) Limited on 7th May 2022 obtained ` 25 lakhs working capital loan by offering its Stock and Accounts Receivables as security and ` 5 Lakhs adhoc overdraft on the personal guarantee of a Director of Krish (Private) Limited, from a financial institution. Is the company required to create charge for working capital loan and adhoc overdraft in accordance with the provisions of the Companies Act, 2013?(4 Marks) (MTP Oct. 22)

Hint

If the company realises its mistake of not registering the charge on 27th May, 2021 instead of 15th March, 2021, it shall be noted that a period of sixty days has already expired from the date of creation of charge.

Since the first sixty days from creation of charge have expired on 3rd April, 2021, Krish Limited can still get the charge registered within a further period of sixty days from 3rd April, 2021 after paying the prescribed ad valorem fees. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge.

2. Mr. Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr. Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr. Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct? (RTP MAY 2018)(MTP N 19, M 21)

Any person acquiring property, on which charge is registered under section 77, shall be deemed to have notice of the charge from:

- (a) the expiry of thirty days of such charge
- (b) the date of application for registration of the charge
- (c) the date of acquiring the property
- (d) the date of such registration**

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Appointment of Receiver or Manager [Sec. 84]

- If;
- Any person obtains an order from the Court to appoint a person as receiver or manager of any property of the company on which charge is created; or
- Any person appoints a receiver or manager of any property of the company on which charge is created due to the power contained in any instrument; then, such person shall **within 30 days**, give a notice to the **company and the Registrar in Form No. CHG-6** along with fee; along with a copy of order of Court or instrument conferring power.

Register of Charges to be kept by ROC (sec 81)

- The ROC shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter.
- A register kept in pursuance of this section shall be open to inspection **by any person** on payment of **such fees as may be prescribed** for each inspection.

The Registrar shall keep a register of charges which shall be open to inspection by on payment of fee: **(1 Mark) (MTP Oct. 23)**

- the company
- the charge holder
- Holder
- **any person**

Question

6. (a) Explain the provisions of the Companies Act, 2013, in respect of 'Inspection of Register of Charges and Instrument of Charges'.

(5 Marks) (MTP April 24)

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Forms relating to Registration of Charge

Form No.	Purpose
CHG-1	Creating or modifying the charge (for other than Debentures)
CHG-2	Certification of Registration of Charge
CHG-3	Certification of Modification of Charge
CHG-4	Intimation to Registrar of Satisfaction of Charge
CHG-5	Memorandum of Satisfaction of Charge issued by Registrar
CHG-6	Notice of appointment or cessation of receiver or manager
CHG-7	Register of Charges to be maintained by Company
CHG-8	Application for condonation of delay or Rectification to be filed with the Central Government for omission or misstatement
CHG-9	Creating or modifying the charge in (for debentures) including rectification

Question

6. (a) What is 'Floating Charge'? When does it get crystallised?

(5 Marks) (MTP Mar. 24)

A 'Floating Charge' is a type of charge that is created on assets or a class of assets which are of fluctuating or changing in nature. The assets which are under floating charge may include raw material, stock-in-trade, debtors, etc.

It is a charge created upon a class of assets both present and future.

The assets under floating charge keep on changing because the borrowing company is permitted to use them in the ordinary course of business.

The buyers of the assets covered under floating charge will get them free of charge.

Crystallization of a Floating Charge

In the following events, a floating charge will get crystallised or fixed:

(i) When the creditor enforces the security due to the breach of terms and conditions of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.

(ii) When the company ceases to continue its business.

(iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation of charge, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed and is available for realization so that borrowed money is repaid.

Question

Explain the meaning of Crystallization of a Floating Charge. (5 Marks)
(MTP July 24)

CAWALLAH

On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding _____ days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar:(MTP NOV 2019)

- a.14
- b.21
- c.30
- d.300

With a view to augment its production, Surya Techno-Products Limited availed a loan of ` 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth ` 2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time. As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover _____ the fees so paid for registration of charge from Surya Techno-Products. (RTP NOV 2019)

- a.Yes, the bank can recover the fees paid by it for registration of charge.**
- b.No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.
- c.Only when it obtains recovery orders from Regional Director (RD),

the bank can recover the fees paid by it for registration of charge from the company.

d.Only when it obtains recovery orders from National Company Law Tribunal (NCLT), the bank can recover the fees paid by it for registration of charge from the company

Cyplish Games and Toys Limited was sanctioned a term loan of ` 60.00 lacs by Zawnn Industrial Bank Limited on 21st November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an instrument of charge was executed. However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration of charge. (RTP NOV 2019)

- a.Special Fees.
- b.Ad-valorem Fees.**
- c.A Late Registration Fees.
- d.Ad-valorem Duty.

Purvi Pvt. Ltd. is maintaining a register of charges along with all other necessary books and registers. The entry for every creation, modification and satisfaction of charges is being done properly. The company is also preserving every instrument related to such charges. From the following for how long the instrument of charges shall be maintained/preserved by the company---(MTP MAY 2019)

- a) For minimum 8 years from the date of creation of charge
- b) For minimum 10 years from the date of creation of charge
- c) For minimum 8 years from the date of satisfaction of charge**
- d) Permanently, without any time limit

Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of ` 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of ` 50.00 lacs was released immediately after sanction of term loan with the condition that subsequent three installments of `50.00 lacs shall be released as soon as the earlier released installment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry? (RTP NOV 2019) (MTP NOV 2019)

- a. It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.
- b. It is necessary to get the charge on plot on land registered with**

the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.

- c. The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds ` 1.00 crore.
- d. The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds ` 2.00 crores.

Any person acquiring property (on which charge is registered under section 77) shall be deemed to have notice of the charge from:

- a. Thirty days of such charge
- b. Date of application for charge
- c. Date of acquiring the property
- d. Date of such registration**

CA Inter **Law Sep 2024**

Mgt and Admin



AGM (SEC. 96)

Meaning

- G.M held once every year
- Compulsory for every company except 'OPC'

Time Limit

First AGM

- Within 9 months from closing of first F.Y.

Subsequent AGM

Whichever is earlier

- 1) One AGM, each calendar year (i.e. up to 31st Dec)
- 2) Within 6 months from closure of F.Y. (i.e. till 30th Sep normally)
- 3) Gap between previous AGM & this AGM does not exceed 15 months.

When to conduct

- Only during business hours. (9 am to 6 pm)
- On any day except National holiday

Where to conduct (Place)

- Registered office of Co. City, town, village of Regd. Office.
- AGM of unlisted Co. can be held any where in India with consent of all members in advance.
- Sec 8 – at discretion of BOD

Consequences of default

- Meeting beyond time not void
- Fine – up to 1,00,000 + 5000 per day (sec 99)
- On default tribunal can direct AGM (sec 97) on application of members

*Note :- Extension of 3 months if AGM (except first) not conducted in specified time.

- **Sunshine Limited, an unlisted company, registered in the State of U.P. 4 with 40 shareholders, wants to organize the Annual General Meeting of the company for the financial year 2022-23 as under:**
- **The meeting shall be held on 28th September, 2023 which happens to be Raksha Bandhan, a day declared as a holiday by the U.P. Government.**
- **The venue for the meeting shall be Lonavala, a hill resort in Maharashtra. Out of 40 shareholders, 38 have given their consent in writing for conducting the meeting in Lonavala.**
- **Advise the Company on the feasibility of the above with reference to the provisions of Companies Act, 2013.4 M (Nov 23) .(5 Marks) (MTP July 24)**

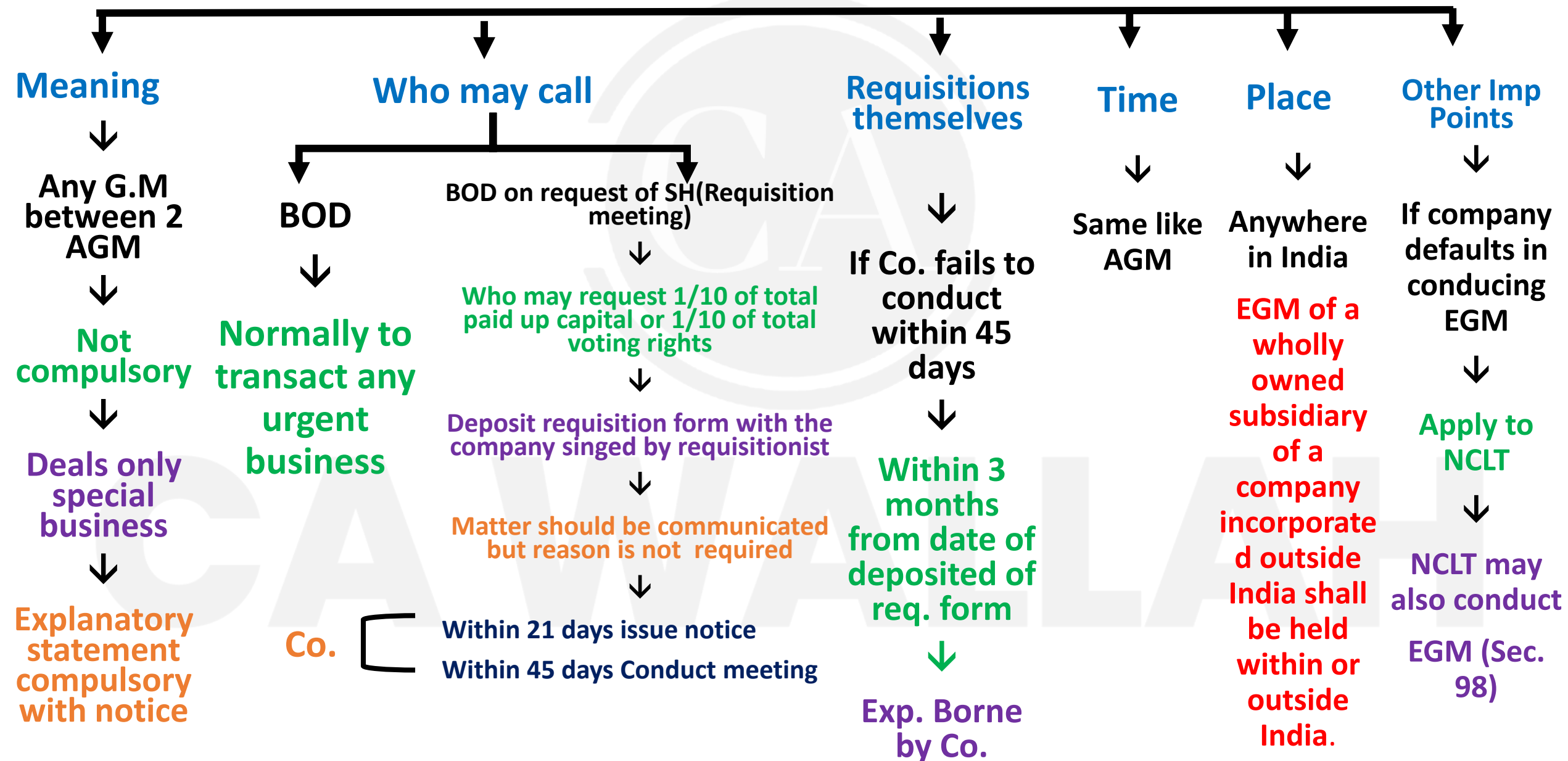
Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:

- (i) The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.**
- (ii) The Registrar may, for any special reason, extend the time within which the first AGM shall be held. (MTP Mar. 22)(4 Marks)**

Hint

Thus, the Registrar cannot extend (for any reason) the time period within which the first AGM shall be held. Given statement is incorrect.

EGM – Sec. [100]



Question

The Board of Directors of ABC Ltd. called an extra-ordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. In the light of the provisions of the Companies Act, 2013, the Board of directors on the decision to adjournment of the meeting. (5 Marks) (MTP Aug 24)

- **Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:**
- **The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given explanatory statement for the resolution proposed to be passed at the meeting.**
- **Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present in the meeting.(6 Marks) (MTP Oct. 23)**

Notice (SEC. 101)

Meaning

- Intimation to members to attend meeting
- Intimates time, place, date & Agenda of meeting
- Should always be in writing

Who can give?

- BOD
- Can delegate their powers to secretary, manager, etc.
- If secretary or other issue without delegation from BOD, Notice invalid
- However it can be ratified by BOD

Who are entitled to receive notice?

- Every member
- L.R/ Nominee of deceased member
- Official assignee/ receiver of insolvent member
- Auditor & director of Co.

Time limit (length notice)

- Should be sent at least 21 clear days before meeting to calculate clear days
- For calculating clear days
 - A) Leave date of sending notice & date of meeting
 - B) If Posted exclude 2 more days
- For Sec. 8 Co., it should be 14 clear days

Question

Enumerate the persons who are entitled to receive the Notice of the General Meeting, as per the provisions of the Companies Act, 2013.(5 Marks) (MTP July 24)

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Answer

Persons entitled to receive the Notice of the General Meeting

According to section 101(3) of the Companies Act, 2013, the notice of every meeting of the company shall be given to:

- (1) every member of the company,
- (2) legal representative of any deceased member
- (3) the assignee of insolvent member;
- (4) the auditor or auditors of the company;
- (5) every director of the company.

Shorter Notice when valid

- Annual General Meeting may be called by giving a shorter notice, if consent is obtained from **95% of members entitled to vote** at such meeting.
- EGM may be called by giving shorter notice, if consent is obtained from:
- **Majority of members in number** who are entitled to vote; and
- **Who represent not less than 95% of paid up share capital of company** (If company does not have share capital, consent of members having 95% of voting power required)

The AGM shall be called by giving 21 clear days' notice. However, it can be called by giving shorter notice if members entitled to vote at that meeting give their consent in writing or by electronic mode. In such cases how many members have to give their consent?

- (a) 75% of members entitled
- (b) 90% of members entitled
- (c) 91% of members entitled
- (d) 95% of members entitled**

1) Amar, a director of Gokul Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Amar did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide, as per the provisions of the Companies Act, 2013:

(i) Whether the contention of Amar is valid.

(ii) Will your answer be the same if Amar remains in U.S.A. for one month during which the notice of the meeting was served and the meeting was held? (April 22)(5 Marks)

Hint: Accordingly, the questions as asked may be answered as under:

(i) The contention of Amar shall be tenable, for the reason that the notice was not properly served.

(ii) In the given circumstances, the company is bound to serve a valid notice to Amar by registered post at his residential address at Kanpur and not outside India.

2) Chetan Ltd. issued a notice for holding its Annual general meeting on 7th November 2019. The notice was posted to the members on 16th October 2019. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was valid. Referring to the provisions of the Act, decide:

i. Whether the meeting has been validly called?

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

iii. Can the delay in giving notice be condoned? (RTP NOV 2020)

Hint

i. A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.

ii. As explained in (i) above, notice falls short by 2 days.

iii. The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Ordinary Business .[Section 102(2)(a)]

- For AGM:

- 1) A-Consideration and **adoption** of F.s , A.R , D.R
- 2) D- Declaration of **dividend**
- 3) D- Retirement of directors and appointment of **directors** in place of those retiring
- 4) A- Retirement ,appointment and reappointment of **auditors** and fixing his remuneration

- For EGM: No business is ordinary

Special Business [Section 102 (2)(b)]

- For AGM:

- All business except the four business is considered special business.
- For EGM- All business are deemed to be special business

Explanatory Statement (Sec 102)(MISD)

- 1) All **material facts** concerning each item of business to enable members to take decisions.
- 2) The nature of **interest** of every director, managers, Key Managerial Persons, and relatives of them
- 3) If any item of the special business affects any other company, then the extent of **shareholding** of every director and manager in that company in case their shareholding interest is at **least 2% of the paid up share capital** of the other company.
- 4) The time when and place where the document to be approved at the meeting can be inspected.

Question

8. Zorab Garments Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the company would be considered at such meeting. Roshni, a shareholder of the company complained that the amount of the proposed increase was not specified in the notice. Is the notice valid? (5 Marks) (MTP Aug 24)

Answer

(a) Under section 102(2)(b) of the Companies Act, 2013, in the case of any general meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business.

Further under section 102(1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details of the item to be considered at the general meeting are not fully disclosed. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice considering the provisions of section 102 of the Companies Act, 2013

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

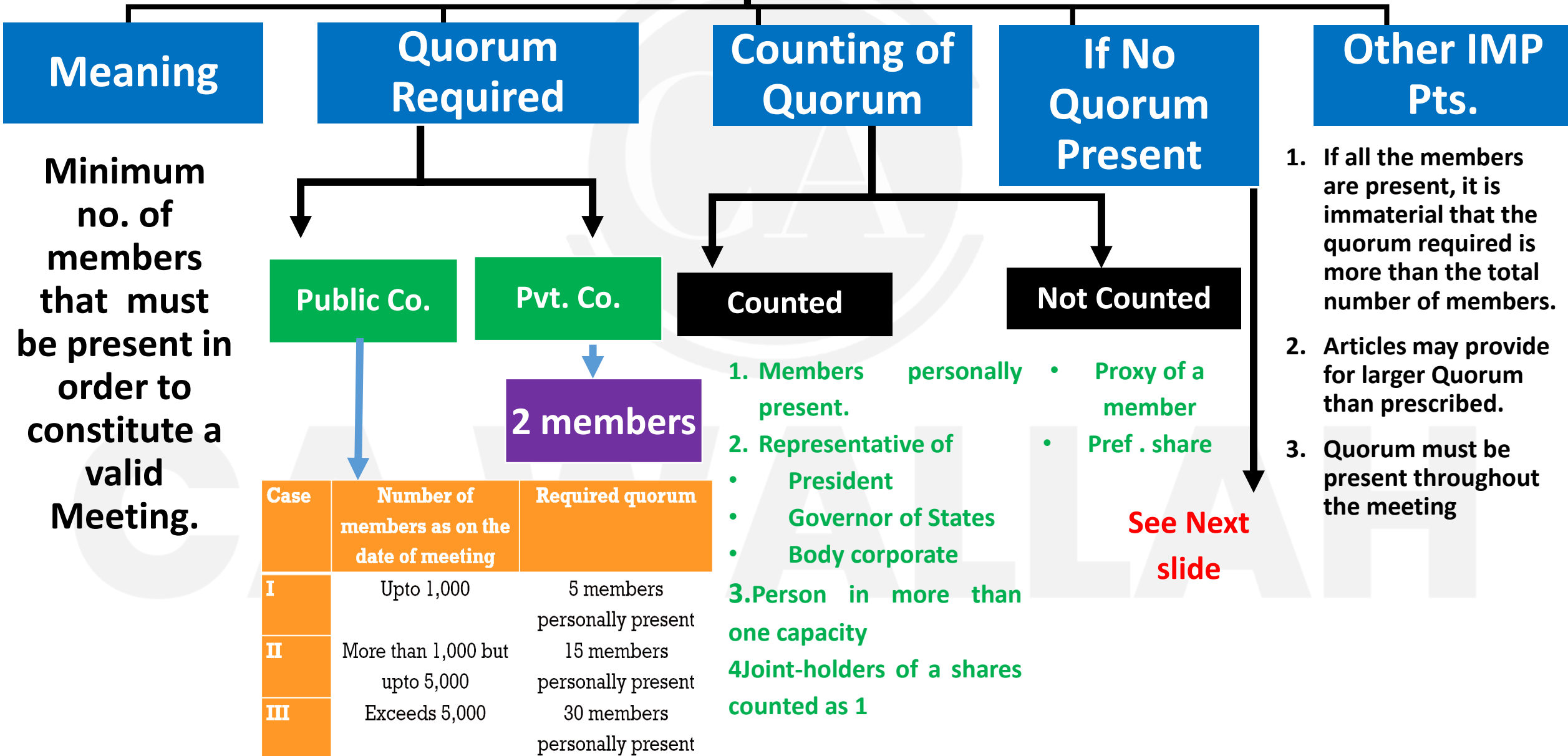
- (i) Resolution to increase the Authorised share capital of the company.
- (ii) Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013.(NOV 2019) **(RTP sep 24)**

Hint: Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

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Quorum [Sec 103]



Kurt Limited is a company engaged in the business of manufacturing papers. The company has approached you to explain them the following as per the provisions of the Companies Act, 2013:(April 22) (5 Marks)

- (a) Quorum for the general meeting if the company has 800 members.
- (b) Quorum for the general meeting if the company has 6500 members.
- (c) Quorum for the general meeting if the company has 5500 members. The articles of association has prescribed the quorum for the meeting to be 50.

Hint: According to section 103(1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company:

- (1) five members personally present if the number of members as on the date of meeting is not more than one thousand,**
- (2) fifteen members personally present if the number of members as on the date of meeting is more than one thousand but up to five thousand,**
- (3) thirty members personally present if the number of members as on the date of the meeting exceeds five thousand.**

The term ‘members personally present’ as mentioned above refers to the members entitled to vote in respect of the items of business on the agenda of the meeting.

Thus,

- (a) If the company has 800 members, quorum shall be 5 members personally present.**
- (b) If the company has 6500 members, quorum shall be 30 members personally present.**
- (c) If the company has 5500 members, quorum shall be 30 members personally present.**

However, since the articles of association has prescribed the quorum for the meeting to be 50, the quorum shall be 50 (higher of 30 and 50).

IF NO QUORUM PRESENT

Wait for 30 min

If still not present see which meeting

Requisitionist's meeting

Other Meeting

Dissolved

See time / day specified

Yes

No

Meeting adjourned to that day (but 3 days prior notice required)

Meeting automatically stand adjourned to next week
-- same day, same time, same place

Meeting automatically adjourned to next week, same day, time place

On day of Adjourned meeting



If no Quorum is present

Members present will form Quorum.

[Rule → But there should be at least 2 members]

Red Flag Ltd., which has its registered office at Delhi and having 12500 members is holding its Annual General Meeting in Ashoka Hotel. Despite swanky arrangements most of the members did not turn up and quorum was not present within half an hour of the scheduled time of the meeting, as a result meeting was adjourned. However, due to heavy booking schedule, hotel authorities could not make available, for adjourned meeting, sufficient space in the same hall where meeting was originally called but allowed conduct of meeting in a different hall on a different floor next week at same time. Please advise the option available to board: (RTP NOV 2020)

- a. The meeting stands adjourned automatically to the same place and time next week as per provisions of law. There is no alternate but to hold meeting in the same hall,
- b. **As same banquet hall is not available meeting can be held at different place as may be decided appropriate by the Board,**
- c. As the same hall is not available to conduct meeting after one week, a fresh notice of 21 days is needed for a different location,
- d. As the same hall is not available to conduct the meeting, the company needs to conduct meeting electronically through internet and give sufficient notice to shareholders,

The Articles of Association of Ajad Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

- ✓ **A, the representative of Governor of Uttar Pradesh.**
- ✓ **B and C, shareholders of preference shares,**
- ✓ **D, representing Y Ltd. and Z Ltd.**
- ✓ **E, F, G and H as proxies of shareholders.**

Can it be said that the quorum was present in the meeting? (RTP MAY 2020)

Hint: The requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

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Can it be said that the quorum was present in the meeting? (RTP MAY 2020)

Hint: The requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Sec.104 → Chairman

Appointment

- Normally → By Shareholders → show of hand
- If Poll demanded →
 - During poll → Chairman by show of hand continues
 - After Poll if some body else is appointed he continues till rest of meeting

Other Imp points

In case of tie on a resolution, chairman puts his casting vote

Proxy [Sec. 105]

Meaning

- Person who is appointed by member to represent themselves to attend and vote
- He is agent of person appointing him
- Also form in which proxy is appointed is called as proxy form.

Who can be appointed as Proxy

- Any person members or not(except sec 8 company)
- A person can act as proxy on behalf of member—
 - i. Not exceeding 50
 - ii. Holding in the aggregate not more than 10% of the total share capital of the company carrying voting rights.
- A member holding more than 10% of the total share capital of the Company carrying voting rights may appoint a single person as proxy, provided that such person shall not act as proxy for any other person or shareholder.

Gen. Pts. Regarding Proxy

- Cannot speak at meeting
- Is not counted for counting quorum.
- Cannot vote by show of hand
- Can demand poll and also vote.

Proxy Form

Time to deposit

- At least 48 hrs. before meeting
- Articles may specify less than but not more than 48 hrs..
- If articles specify more than 48 hrs. then rule of 48 hrs. will apply

Inspection

- Any members can inspect
- He has to give 3 days notice
- Can inspect not less than 24 hrs. before meeting till completion of meeting

Other Imp. Point

- 1) Company can make it's own proxy form or can use form no. MGT-11
- 2) If member and proxy both vote, members vote will be counted
- 3) Revocation of Proxy
 - If members personally present
 - If members appoint new proxy.

A General Meeting was scheduled to be held on 15th April, 2019 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2019 was deposited by Mr. Y with the company at its registered Office on 11-04-2019. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2019 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2019. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? (RTP MAY 2021)

Hint: In case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

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According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent as proxies for members X and W respectively? (RTP MAY 2021) (MTP MAY 2019)

Conclusion - Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

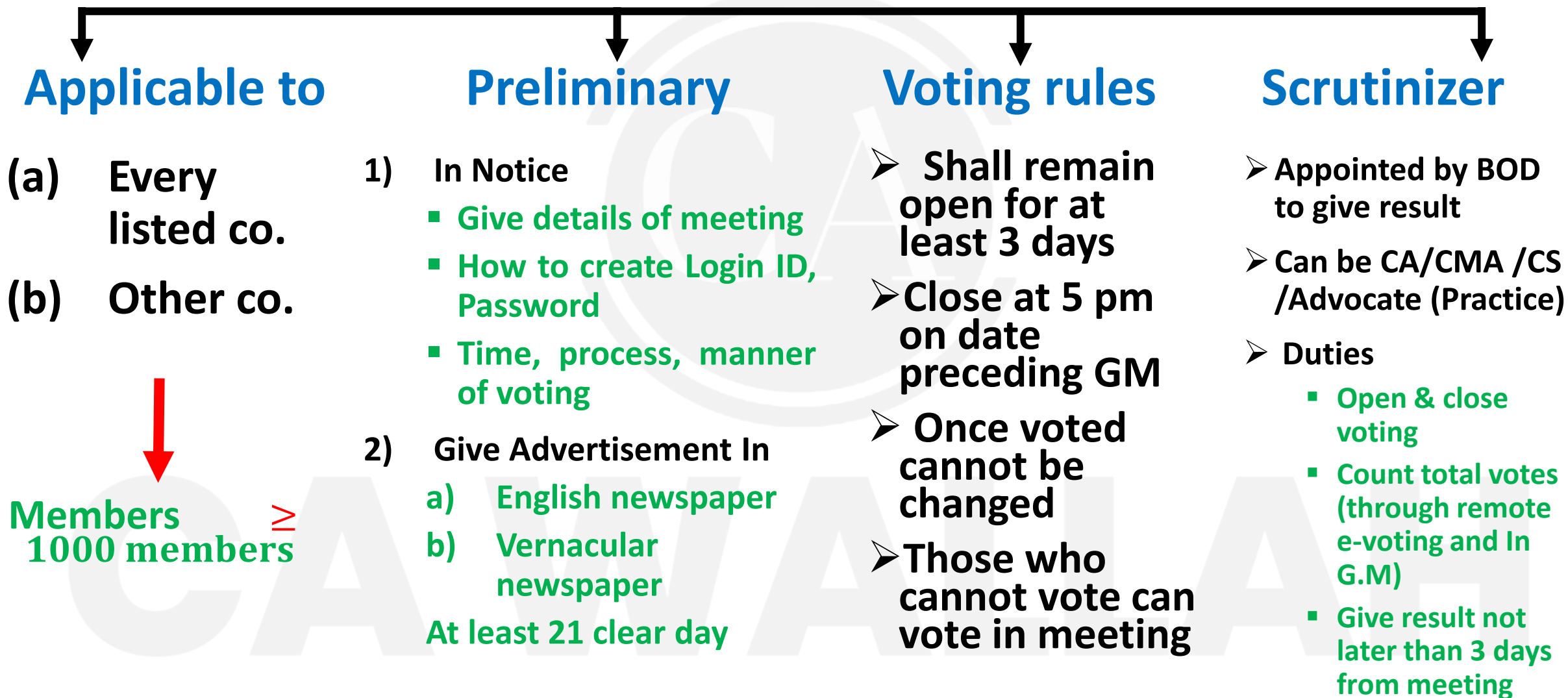
Voting Rights (Sec 106)

- 1) Voting rights cannot be restricted except
 - a) If calls unpaid
 - b) Company has lien on shares.
- 2) This restriction should be expressly provided in AoA or else no prohibition allowed

Sec. 107 – Voting by Show of Hands

- 1) Voting is conducted by show of hands unless
 - a) Poll demanded
 - b) Voting carried out electronically
- 2) Here – **1** Person = **1** Vote
- 3) Proxy cannot vote

Sec. 108 – Voting through Electronic means



If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy? (MAY 2019)

Hint:- In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

Upkaar Nidhi Ltd., was about to hold an AGM on 25th August, 2022, for which the notice of AGM along with relevant documents, as prescribed, was sent to all its members including the following:

Sr. No.	Particulars
1	A member individually holding shares with face value of ` 800 which amounted to 0.16% of the total paid-up share capital.
2	Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital.
3	Forty-two members each holding individually shares with face value of ` 600 which amounted to holding 0.12% of the total paid-up share capital for each such member.
4	All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.

In the AGM held on 25th August, 2022, the members were not provided with the facility to vote by electronic means. In the context of aforesaid case-scenario, please answer whether Upkaar Nidhi Ltd. was required to send the notice of AGM along with relevant documents to all its members as aforesaid?

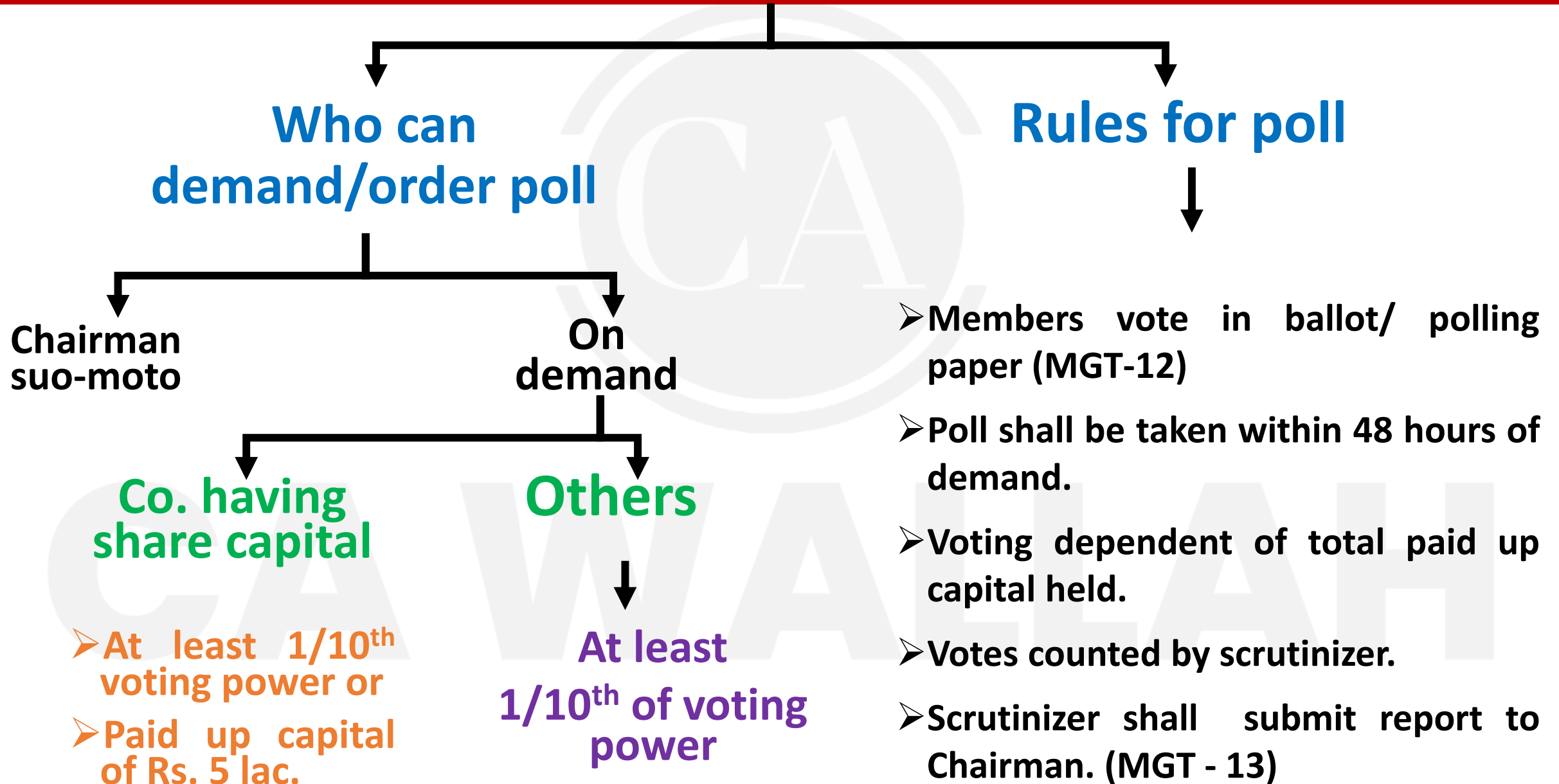
(RTP Mar 23)

Hint: Upkaar Nidhi Ltd. was only required to send such notice of AGM and other relevant documents to members who individually or jointly hold shares of more than ` 1,000 in face value or more than 1%, of the total paid-up share capital, whichever is less. Accordingly, Upkaar Nidhi Ltd. would have send notice and other relevant documents to only following category of members:

- (i) Two members jointly holding shares with face value of ` 1,600 which amounted to 0.32% of the total paid-up share capital**
- (ii) All the remaining members holding individually more than 1.2% of the total paid-up share capital of the company.**

For the category of members mentioned in Sr. no. 1 & 3, of the aforesaid table given in case scenario, it would have been sufficient compliance if an intimation for the AGM was sent in the newspaper as per the provisions, as aforesaid, and there was no need to send the notice of AGM along with relevant documents to such category of members personally.

Poll [109]



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

- (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10th of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.**
- (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. (RTP May 2016) (RTP NOV 2018) (MTP NOV 2017) (MTP MAY 2020)**

Hint: As per sec 109 of companies act ,

(i) The chairman cannot reject the demand for poll subject to provision in the articles of company.

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

(ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll because The demand for a poll may be withdrawn at any time by the persons who made the demand.

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Postal Ballot (Sec 110)

For which matter shortcut **A² B C² D E F G**

All company

except –

(i) OPC

(ii) Company
having members
up to 200

A → Alteration or object clause (clause 3 of MOA)

A → Alteration of AOA to convert private company into public Company.

B → Buy Back of shares (Redemption of equity shares)

C → Change in place of registered office outside local limits (Clause 2nd of MOA)

C → Change in object for which money was raised but still has unutilized money.

D → Issue of shares with (DVR) Differential Voting Rights

E → Election of Small Shareholders Directors

F → For variation in rights attached to shares or debentures

G → Giving loans/guarantee or **Enactment** exceeding amount specified under Sec. 186

*Note – Items of business required to be transacted by means of postal ballot, may be transacted at GM by voting through Electronic means, only companies on which Sec 108 is applicable.

Procedure for Postal Ballot (Sec. 110)

**Along with
Notice**

→ **Send copy of draft resolution and prepaid reply card.**



Reply

→ **Replies within 30 days from date of issue of notice will be valid**



Result

→ **Declared by scrutinizer within 7 days of last date of receive replies**

Sec. 111

Members may

- a) Include their business in meeting (at least 6 weeks)
- b) Circulate any statement (at least 2 weeks)



But by depositing request by members by at least 1/10th of total voting power or 1/10th of total paid up capital (same like IGM)

Question

12. Prakash and some of his friends are members of Focus Limited, a company with a paid-up share capital of ` one crore. They all intend to propose a resolution at the forthcoming General Meeting of the company which is going to be held in CP, New Delhi i.e. the place where Registered Office of Focus Limited is situated.

(i) Kindly provide guidance to Prakash and his friends on the requisite minimum paid-up share capital they should hold to initiate a members' resolution.

(ii) What are the other requirements that Prakash and his friends need to keep in mind for moving a members' resolution.

(RTP May24)

Sec. 114

Resolution

Ordinary

$$V_F > V_A$$

Special

➤ Atleast 75% voters in favour

➤ 3/4th majority

➤ $V_F \geq 3 \times V_A$

Note: Votes will be counted only of members present, whose votes are valid and are not abstained to vote.

Which one of the following transactions requires the passing of an ordinary resolution?

- (a) To change the name of the company
- (b) To alter the articles of association
- (c) To reduce the share capital
- (d) To declare dividends.**

A resolution shall be a special resolution when the votes cast in favour of the resolution by members are not less than _____ the number of votes, if any, cast against the resolution.

- (a) Twice
- (b) Three times**
- (c) Three fourth of
- (d) Two third of

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115 → Resolution Requiring Special Notice

What

→ By shareholders

By Whom

→ 1% of voting powers, or at least 5 lac P.U.C

Time Limit

→ Max- 3 months before meeting

→ Min – at least 14 days before meeting

Reply by Co.

→ At least 7 days before meeting, if not possible publish in newspaper & post in website

E.g.

Director

- Removal
- Appointment

Auditor

- Appointment
- Removal
- Expressly providing that retiring auditor shall not be reappointed

116 → Resolution passed on Adjourned meeting

Although adjourned meeting is an extension to and part of original meeting



But any resolution passed in adjourned meeting



Is deemed to be passed on date of passing and not earlier date

118→ Minutes & 119

Meaning	Applicability	Signing	Inspection (sec 119)	Other IMP Points
▪ Fair & correct summary of proceeding of meeting ▪ Official record of event held in meeting	• To all Co. • For all meetings	• Prepared & entered into min. book within 30 days of meeting • Every page initialed & last page signed by chairman • If chairman dies/unavailable ↓ • Any director authorize by BOD	Only by members ↓ During business hours ↓ Co. Should reserve at least 2 hrs Copy provided ↓ Presc. Fees (Rs. 10 per page) ↓ Within 7 days (Penalty if failed) Note : Refusal to members under any Circ. Not allowed even if B.R passed	- Chairman can exclude any matter if (DID) a) Immateria l b) Defamator y to person c) Detriment al to Co. - Preserve permanently • Sec. 8 Co. Not req. to have minute book

Awareness Limited's General Meetings are held at its registered office situated in Delhi. The minute book of General meetings of Awareness Limited will be kept at:(MTP Mar. 22) (1 Mark)

held at its registered office situated in Kochi. The minute book of General meetings of Yellow Limited will be kept at:(1 Mark) (MTP Oct. 22)

- (a) That place where members of Awareness Limited will decide.
- (b) That place where all employees of Awareness Limited will decide.
- (c) **Registered office of Awareness Limited.**
- (d) That place where senior officials of Awareness Limited will decide.
- Yellow Limited's General Meetings are
- (a) That place where members of Yellow Limited will decide.
- (b) That place where all employees of Yellow Limited will decide.
- (c) **Registered office of the company Yellow Limited.**
- (d) That place where senior officials of Yellow Limited will decide.

In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013? (RTP MAY 2018) (MTP NOV 2019)

Hint- Under Section 118 (5) of the Companies Act, 2013, chairman can exclude certain matters in Minutes of a meeting, which, in the opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceeding; or
- (iii) is detrimental to the interests of the company;

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

Sec. 121

Every listed public company



Shall file MGT-15 with ROC within 30 days from AGM



Which contains details of AGM

Pristine Limited, a listed public company, conducted its Annual General Meeting on 31st August, 2020. However, 10 days have passed since 31st August, 2020, but it has still not filed report on Annual General Meeting. The Accountant of the company has approached you to advise them whether Pristine Limited is required to file report on Annual General Meeting?(RTP MAY 2021)

Hint: Pristine Ltd. is a listed company, hence it has to file a copy of ONE annual Report with the Registrar within 30 days from 31st August, 2020.

The Annual General Meeting of Yellow Limited was held on 25th June 2022. According to the provisions of Companies Act, 2013, till what date the company should submit report on AGM to the registrar? (2 Marks) (MTP Sep. 22)

- (a) 30.06.2022
- (b) 10.07.2022
- (c) 24.07.2022
- (d) 25.07.2022**

Every listed company shall file with the Registrar a copy of the report on each annual general meeting within _____ of the conclusion of the annual general meeting.

- (a) 7 days
- (b) 30 days**
- (c) 60 days
- (d) 90 days

The Annual General Meeting (AGM) of Green Limited was held on 31.8.2022. Suppose the Chairman of the company after two days of AGM went abroad for next 31 days. Due to the unavailability of the Chairman, within time period prescribed for submission of copy of report of AGM with the registrar, the report as required was signed by two Directors of the company, of which one was additional Director of the company. Comment on the signing of this report of AGM. (2 Marks) (MTP Oct. 22)

- (a) Yes, the signing is in order as the report can be signed by any director in the absence of Chairman.
- (b) No, the signing is not in order as only the Chairman is authorised to sign the report
- (c) Yes, the signing is in order, as in the absence of Chairman at least two directors should sign the report.
- (d) No, the signing is not in order, since in case the Chairman is unable to sign, the report shall be signed by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company.**

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Sec. 88

Every company whether pvt or public, whether having capital or not.

Register of
Members



MGT 1

(+)

Register of
Debt. Holders



MGT 2

(+)

Reg. of
other Sec.
hold.



MGT 2

(+)

Foreign Register

(Rule 7)



- Kept outside India
- Details of Sec.holder residing outside India in that country
- Location of office to be noted to ROC within 30 days of opening of foreign register in **MGT 3**.
- Any change in location of such office, notice in Form No. **MGT 3**
- Format and rules for inspection same like main register

Sec. 88 – Note

- Entries in register u/s to be made within 7 days of approval of BOD/committee (except foreign register to be held simulatenously)
- Register to be maintained at regd office but can be shifted by S.R where atleast 1/10 th of total members reside
- If no of members are 50 or more also make index

M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

- (i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
- (ii) Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? (MAY 2018)

Maintenance of the Register of Members etc.:

(i) As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it. (MAY 2018)

Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

- 1 Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- 2 Its shares, debentures and other securities and shareholding pattern
- 3 Its indebtedness;
- 4 Its members and debenture-holders along with the changes therein since the close of the previous financial year;
- 5 Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- 6 Meetings of members or a class thereof, Board and its various committees along with attendance details;
- 7 Remuneration of directors and key managerial personnel;
- 8 Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- 9 Matters relating to certification of compliances, disclosures;
- 10 Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
- 11 Such other matters as may be prescribed.

Sec. 90

→ C.G if required → can order enquiry or investigation



To investigate beneficial ownership of shares

Sec. 91

→ A company can close register of members / deb.holder / other sec. holder



Max → 30 days → at one time

Max → 45 days → in a year



By giving notice of at least 7 days prior to closure

Public Co.

Pvt. Co.



- Publish in website
- In newspaper

To all members

Sec. 92

→ Annual Return → **MGT-7**

Contents

→ Details regarding shares / Deb. / indebtedness / change of member / promoter / directors / KMP/ meeting held / resolution details / penalty on Co. etc.

Signing

→ Director + CS (If no C.S then Pract.C.S)

→ In OPC + Small co. + Pvt. Co. → only CS or director (if no C.S)

Certification

→ **By PCS if**

Issue Certificate In MGT- 8

Listed Company; or

P.U.C → 10 cr or more; or

T/o → 50 cr or more

Preservation

→ **8 years**

Time limit
of filling

→ **Within 60 days** of AGM or last date of AGM ought to have been held

Abridged Form of Annual Return MGT- 7A

- **Special Provision for One Person Company & Small Company**
- Central Government has prescribed **Abridged Annual Return (MGT-7A)** for :-
- One Person Company.
- Small Company.

In relation to **One Person Company, Small Company** and **Start-up private company**, the annual return shall be signed by:-

- The CS, where there is a CS **or**,
- The DIRECTOR of the company, where there is no CS.

Question

2. (a) Explain the following as per the provisions of the Companies Act, 2013:

(i) Abridged Form of Annual Return

(ii) Signing of Annual Return

(5 Marks) (MTP April 24)

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Sec. 94

→ Additional matters → reg. Registers, Returns, etc.

→ Inspection

→ At least 2 hrs every working day

→ Fees

→ Mem/ Deb. Holder / sec. holder → no fees

→ Other → Rs 50

→ For copy → Max Rs. 10 per page

→ Period of
maintenance

→ Reg. of members → Permanently

→ Reg. of deb. Holder → 8 years from redemption

→ Annual return → 8 years from filing

Sec. 95

→ Reg. u/s 88 and annual return u/s 92 prima facie evidence

Shreya is a director of Shree Limited. She intends to participate in the board meeting through video conferencing and has intimated the same to the chairperson at the beginning of calendar year. Advise, Shreya for how long such declaration shall be valid. (1 Mark) (MTP Oct. 22)

- (a) 1 month
- (b) 6 month
- (c) 1 year**
- (d) She has to furnish declaration for each meeting separately

All the 40 members of Taxila Traders Limited have valid voting rights. Due to some urgency, its directors are desirous of convening Annual General Meeting (AGM) at a shorter notice than statutorily required. Is it possible for them to do so? (RTP NOV 2019)

- a. Taxila Traders Limited cannot convene AGM at shorter notice than statutorily required.
- b. Taxila Traders Limited can convene AGM at shorter notice than statutorily required, if consent in writing or by electronic mode is accorded by all the forty members who are entitled to vote at the AGM.
- c. Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 38 members who are entitled to vote at the AGM.**
- d. Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 36 members who are entitled to vote at the AGM.

Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advice the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution? (MTP MAY 2019)

- a.60 Votes**
- b.80 Votes
- c.41 votes
- d.20 votes

The Annual General meeting of Tirupati Limited was scheduled for 28th December, 2017. Mr. Ananat, shareholder of Tirupati Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least _____ before the meeting:(MTP MAY 2019)

- a.24 hours
- b.1 day
- c.2 days
- d.3 days**

In the current financial year Zunee Traders Limited, a non-listed company, has 556 members, increased from 451 members which it had in the immediate previous financial year. For the forthcoming Annual General Meeting (AGM), advise the company whether it is required to provide to its members the facility to exercise their right to vote at this AGM by electronic means. (MTP NOV 2019)

- a.Since the company has more than 500 members it is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means.
- b.The company is not required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means since its members are less than one thousand.**
- c.Though the company is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means because it has more than 500 members, it can, as a one-time measure, seek exemption from ROC beforehand and in that case, it need not provide facility of voting by electronic means.
- d.Only a listed company is required to provide to its members the facility to exercise their right to vote at the General Meetings by electronic means.

10.A company undertook to vary the rights attached to the shares of a particular class and a special resolution with 76% majority was passed by the members of that class. However, all the remaining dissenting members holding 24% shares of that class approached Tribunal for cancellation of variation. The Tribunal passed an order cancelling such variation of rights. Within how much time a copy of the order of Tribunal needs to be filed with the jurisdictional

Registrar. (MTP NOV 2020)

- a.Within ten days of the date of the order of Tribunal
- b.Within fifteen days of the date of the order of Tribunal**
- c.Within thirty days of the date of the order of Tribunal
- d.Within sixty days of the date of the order of Tribunal

14.During the half year ended September 2019, the board of directors (BOD) of Vidyut Manufacturing Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended on March 2017. Further during the year ended March 2020, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2019. You are required to state the validity of the acts of the Board of directors.

- a.The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.
- b.The act of the BOD is valid as application made for revision in the accounts and board's report pertains to two different financial year.**
- c.The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.
- d.The act of the BOD is invalid as to the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2020. The application made for revision in the Board report is however valid in law.

CA Inter **Law Sep 2024**

Dividend



Dividend

Basics

- ☐ Latin word 'Dividendum' means a thing to be divided
- ☐ Profit available for distribution of dividend known as 'divisible profit'
- ☐ It is not debt till it is declared
- ☐ It is appropriation of profit
- ☐ Two Types
 - Final
At AGM
Recommended by BOD
Declared by SHAREHOLDERS
 - Interim
Declared by BOD

Sources (Sec. 123(1))

- ☐ Profits of current year
- ☐ Accumulated profits of previous years (Reserves)
↓
Follow Rule 3
- ☐ Both 1 and 2
- ☐ Money by CG / SG
↓
Since they gave guarantee

Mode of Payment

- ☐ By cash
- ☐ By cheque
- ☐ Dividend warrant
- ☐ Crediting in bank account
- ☐ ECS
- ☐ But Cannot be paid in Kind i.e. goods, gift or giving bonus share instead of dividend is not allowed

Using Free Reserves

Whenever company uses past profits / reserves / accumulated profits

Rule 3 should be complied

- ☐ Rate of dividend cannot be more than
Average rate of Preceding 3 years

Note: This rule is not applicable if company has not paid dividend in any of all 3 year

- ☐ Amount that can be drawn from reserves
1/10th of PUC + FR (as per latest F.S)
- ☐ amount drawn first used to set off losses
- ☐ Balance to be kept in FR not less than 15% of PUC

Rule 3 does not apply to 100% government company (i.e. all shares held by CG/ SG)

Other points

- ☐ Rate of declared dividend cannot be more than recommended
- ☐ Company may transfer any amount into reserve (not compulsory)
- ☐ No dividend to Equity shares if company not comply with Sec. 73 to 76 (Deposits)[123(6)]
- ☐ Capital profits can be used for payment if it is actually realised

When the dividend is declared at the Annual General Meeting of the company, it is known as (1 Mark) (MTP Sep. 22)

- (a) Final Dividend
- (b) Interim Dividend
- (c) Dividend on preference shares
- (d) Scrip Dividend

Amount to be transferred to reserves out of profits before any declaration of dividend is _____

- (a) 5%
- (b) 7.5%
- (c) 10%
- (d) at the discretion of the company.**

MNP Ltd. has a paid up share capital of ` 10 crore and free reserves of ` 50 crore, as on 31st March, 2019. The company made a loss of ` 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend. (RTP MAY 2020)(MTP N18/M19)

Hint: Section 123 - Second Proviso. In case of inadequacy or absence of profits, the conditions of Rule to be complied with. (i) Rate of dividend declared 20% is less than average of last 3 years 25% (ii) Max. amount which can be withdrawn from reserves is 10% of {10 Crore + 50 Crore } = 6 Crore. (iii) After set-off of current year loss of 50 Lakh, the balance available is 5.5 Crore. Amount actually required for dividend is 2 Crore. (iv) Minimum amount after withdrawal will be 48 Crores which is more than 15% of paid-up capital. Therefore, all conditions are fulfilled and decision of Directors is valid.

Dev Pharma Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2019-20 out of the profits of current year. The company has earned a profit of ` 910 crores during 2019-20. The company does not intend to transfer any amount to the general reserves out of the profits. Is Dev Pharma Limited allowed to do so? Comment. (MTP NOV 2020)

Hint: As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if Dev Pharma Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Note

1. For paying dividend , adjust current year Profit with
 - a) Carried over previous losses and depreciation not provided in previous year or years are set off
 - b) Excludes notional and revaluation profits.
2. In case of joint shareholders, the dividend may be paid to one of the joint shareholders who is first named in the Register of Members
3. Depreciation shall be provided as per Scd. II
4. Normally dividend paid cannot be revoked except
 - a) Declaration ultra vires
 - b) Company ceases to be going concern
5. Punishment for failure to pay dividend – CO- 18 % p.a ,Officer in default – fine – 1000 per day , jail - ,max 2 years except dispute , lawful adjustment
6. Lawful adjustment – Call in arrears

Question

(c) Smart Limited declared dividend at its Annual General Meeting held on 31-07-2023. The dividend warrant to Mr. A, a shareholder was posted on 22nd August, 2023. Due to postal delay Mr. A received the warrant on 5th September, 2023 and encashed it subsequently. Can Mr. A initiate action against the company for failure to distribute the dividend within 30 days of declaration under the provisions of the Companies Act, 2013?

(2 Marks) (MTP Mar. 24)

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Interim Dividend (Sec 123)

Dividend decl. bet 2 AGMs



By Board

Sources –

1. Surplus in P&L Account
2. Profits of FY
3. Profits generated in the FY till quarter prec the dt. Of decl. of interim dividend

If loss in current year till end of quarter

Rate of interim dividend $\leq$ Avg. rate of dividend of immediately preceding 3 F.Y

Other Pts. – Shall be paid within 30 days, once decl. cannot be revoked.

The Board of Directors of Jip Rise Pharmaceuticals Limited wish to declare interim dividend in the last week of July, 2018. The company has incurred a loss during the current financial year up to the end of June, 2018. However, it is noted that during the previous five financial years i.e., 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at

which they can declare interim dividend despite incurring loss during the current financial year.

(a) 10%.

(b) 11%.

(c) 10.5%.

(d) 11.5%.

1. Guru limited is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid? (April 22)(5 Marks)

As per section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared. Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years. According to the given facts, Guru Ltd. is facing loss in business during the financial year 2018- 2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates $(7+11+12=30/3)$ at which dividend was declared by it during the immediately preceding three financial years. Therefore, the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the financial year 2018-2019 is not valid.

Time limit for payment of Dividend → Final/Interim Dividend

Recommended by
BOD



Declared in AGM



Transfer amount to
Separate Bank
Account -123(3)



Pay Amount



By passing OR

Rate of declared
dividend



should not be
more than



Rate of dividend
recommended

Within 5 days of declaration
N.A to 100% government Co.

Within 30 days of declaration – sec 12(1)
Or else pay 18% p.a. for period of default – sec 127

The Annual General Meeting of ABC Bakers Limited held on 30th May, 2022, declared a dividend at the rate of 30% payable on its paid-up equity share capital as recommended by Board of Directors. However, the Company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder, up to 25th July, 2022. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20 percent per annum for the period of default. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also, state the directors' liability in this regard under the Act. (6 Marks) (MTP Sep. 22)

Hint: Section 127 of the Companies Act, 2013 lays down the penalty for non-payment of dividend within the prescribed time period of 30 days. According to this section where a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within 30 days from the date of declaration of dividend to any shareholder entitled to the payment of dividend:

- (1) every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment maximum up to two years and with minimum fine of rupees one thousand for every day during which such default continues; and**
- (2) the company shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues.**

In the given question, the company was unable to post dividend warrant within 30 days from the date of declaration of dividend. Thus, the directors will be liable as per the above provisions and the company is liable to pay simple interest. However, Mr. Ranjan will not succeed if he claims interest at 20% per annum interest as the limit prescribed under section 127 is 18% per annum.

Dividend once declared, should be paid within _____ days from the date of declaration

- (a) 14 days
- (b) 21 days
- (c) 30 days**
- (d) 45 days

The authorised and paid-up share capital of Avantika Ayurvedic Products Limited is ` 50.00 lacs divided into 5,00,000 equity shares of ` 10 each. At its Annual General Meeting (AGM) held on 24th September, 2019, the company declared a dividend of ` 2 per share by passing an ordinary resolution. Mention the latest date by which the amount of dividend must be deposited in a separate account maintained with a scheduled bank

(a) Latest by 29th September, 2019

(b) Latest by 4th October, 2019

(c) Latest by 9th October, 2019

(d) Latest by 24th October, 2019

CAWALLAH

(Sec 124)

Transfer unpaid /
Unclaimed amount in
separate bank
account



Publish list on
website



Transfer unclaimed
amount to Investors
education &
Protection Fund
(IEPF)

Within 7 days from completion of 30 days In unclaimed dividend account
If late then also pay **12% p.a.**
N.A. to 100% government co.

Within 90 days from transfer to separate account
Of shareholder who have not claimed
Prepare Statement including names/address/amt

If not claimed till 7 years from day it becomes due

Special Point:

If no dividend is claimed for a SHARE then such SHARE should be transferred to IEPF account 124(6).

Question

(c) Sheesham Limited is a company engaged in the business of manufacturing premium quality furniture in the state of Tamil Nadu. In light of the provisions outlined in the General Clauses Act, 1897, and the Companies Act, 2013, please advise on the specific timelines regarding the payment of dividends subsequent to its declaration at the Annual General Meeting (AGM) held on 8th August 2023.

(4 Marks) (MTP April 24)

CAWALLAH

Right to dividend, rights shares and bonus shares to be held in abeyance pending registration of transfer of shares — Section 126

- Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, it shall, notwithstanding anything contained in any other provision of this Act:
 - (1) transfer the dividend in relation to such shares to the **Unpaid Dividend Account** referred to in Section 124 unless the company is authorised by the registered holder of such shares in writing to pay such dividend to the transferee specified in such instrument of transfer; and
 - (2) keep in abeyance in relation to such shares, any offer of rights shares under Section 62(1)(a) and any issue of fully paid-up bonus shares in pursuance of first proviso to Section 123(5).

The Directors of Silver tongue Solutions Limited proposed dividend at 18% on equity shares for the financial year 2018-2019. The same was approved at the Annual general body meeting held on 30th September 2019. Mr. Jagan was the holder of 2000 equity of shares on 31st March, 2019, but he transferred the shares to Mr. Rajiv on 8th August 2019. Mr. Rajiv has sent the shares together with the instrument of transfer to the company for registration of the shares in his favour only on 25th September 2019. The registration of the transfer of

shares is pending on 30th September 2019. With respect to the dividend declared the correct action to be taken by the company is:

- (a) Pay the dividend to Mr. Jagan
- (b) Pay the dividend to Mr. Rajiv
- (c) Transfer the dividend in relation to such shares to the Unpaid Dividend Account**
- (d) Transfer the dividend in relation to such shares to the Investor Education and Protection Fund.

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Investors Education & Protection Fund (Sec 125)

SOURCE

APPLICATION

A →	Application Money not refunded	→ Refund
B →	Being Money unpaid of matured deposit, debenture, pref shares & interest there on	→ Refund
C →	Company's unclaimed dividend for 7 years	
D →	Donations from CG/SG/any Co./ other institutions	
E →	Earlier Act, 1956	
F →	Fractional shares left unsettled during amalgamation, merger or issue of bonus shares	
G →	Govt. Grants	
H →	Haram ki kamai – Shares or money disgorged by Govt. because of fraudulent transaction	→ Distribution of disgorged amount to aggrieved party
I →	Investment income from money in fund	

Investors Education & Protection Fund (Sec 125)

- 1 Chairperson, CEO
- Member not exceeding 7
- Audited by CAG

Investors Education & Protection Fund

SOURCE

APPLICATION

- Promotion of investors education & awareness
- Helping non-competent by reimbursing legal expenses in case of suit for non-compliances of companies Act.

2. (i) A Limited declared and paid 10% dividend to all its shareholders except Mr. B, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. B doesn't tally with the records of the bank. The company, however, did not inform Mr. B about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

(ii) G Medical Instruments Limited is a manufacturing company & has proposed a dividend @ 10% for the year 2021-2022 out of the profits of current year. The company has earned a profit of ` 910 crores during 2021-2022. The company does not intend to transfer any amount to the general reserves out of the profits. Is G Medical Instruments Limited allowed to do so, as per the provisions of the Companies Act, 2013?

(6 Marks) (MTP Oct. 22)

(i) Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to the shareholder.

In the instant case, A Ltd. has failed to communicate to the shareholder Mr. B about the discrepancy (as per bank, account number as given by Mr. B doesn't tally with the records of the bank) which led to non-compliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

(ii) According to section 123 of the Companies Act, 2013, a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, G Medical Instruments Limited has earned a profit of ` 910 crores for the financial year 2021-2022. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of the profits of current year.

As per the provisions stated above, the amount to be transferred to reserves out of profits for any financial year is at the discretion of the company acting through its Board of Directors. Therefore, at its discretion, if G Medical Instruments Limited decides not to transfer any profit to reserves before the declaration of dividend at 10%, it is legally allowed to do so.

Which of the following amount need not be credited to Investor Education and Protection Fund Account (IEPF)?

(a) Amount in unpaid dividend account (UDA) of company

(b) Amount of matured deposits with the company

(c) Profit on sale of asset

(d) Amount of matured debentures with the company.

(c) Maximum at the rate of 10.5%.

(d) Maximum at the rate of 11.5%.

The Board of Directors of Jip Rise Pharmaceuticals Limited are contemplating to declare interim dividend in the last week of July, 2018 but the company has incurred loss during the current financial year up to the end of June, 2018. However, it is noted that during the previous five financial years i.e., 2013-14, 2014-15, 2015-16, 2016-17 and 2017- 18, the company had declared dividend at the rate of 8%, 9%, 12%, 11% and 10% respectively. Advise the Board as to the maximum rate at which they can declare interim dividend despite incurring loss during the current financial year.

(a) Maximum at the rate of 10%.

(b) Maximum at the rate of 11%.

CA Inter **Law Sep 2024**

Accounts Of the Company



CSR [Sec. 135]

Applicable



(Any 1)

- 1) T/O – 1000 cr. or more
- 2) Net worth – 500 cr or more
- 3) Profit – 5 cr or more

During immediate preceding FY

Consisting of 3 or more directors (at least 1 should be independent director)

Where to spent



Project / program specified in Sch. VII (refer Module)

Procedure



Constitute CSR Committee



CSR Committee will

- Formulate
- Recommend

a CSR policy and monitor



Board will approve ,disclose ,ensure recommendation followed



Spend at least 2% of avg. net profit of preceding 3 FY

Other Imp points



1. If no independent director and for private companies , csr committee should have atleast 2 directors
2. Where the CSR amt does not exceed Rs. 50 lakhs, CSR Committee shall not be constituted & functions of such committee shall be discharged by the BOD.
3. If Company has not completed 3 years then take average of such years as completed 135 (5)
4. Also, if amt is spent in excess then such excess amt shall be adjusted in 3 succeeding FY as may be prescribed.
5. ~~Company who doesn't fulfill requirement till next 3 consecutive years can cease CSR spending (deleted)~~

Not CSR Activity



Shortcut – PEON



- 1) P – Political party
- 2) E – Employees of Co. & family
- 3) O – Outside India.
- 4) N – Normal course of business

Red Limited (the Company) was incorporated on 01.04.2020. The balances extracted from its audited financial statement are as given below:

Financial Year (FY)	Net Profit before tax	Net Profit after tax (Ignore Income Tax computation)
2020-21	` 5.00 crore	` 3.75 crore
2021-22	` 7.00 crore	` 5.25 crore

The Company proposes to allocate the minimum required amount for CSR Activities to be undertaken during FY 2022-23, if it is mandatory. You are requested to advice the Company in this regard and compute the minimum amount to be allocated, if so required, taking into account the relevant provisions of the Companies Act, 2013.

(RTP Mar 23)

Hint : In the instant case,

1. Net Profit before tax of Red Limited for the FY 2021-22 is ` 7 crore, hence, Red Limited is required to constitute a CSR committee during FY 2022-23 as the Net profit before tax for the FY exceeds ` 5 crore.
2. Minimum contribution towards CSR will be: 2% of average net profits since incorporation (Red Limited was incorporated on 1.04.2020.)

Average Net Profit since incorporation: (` 5 crore} + \text{` 7 crore)/ 2 = ` 6 crore

Minimum contribution towards CSR will be: 2% of ` 6 crore = ` 0.12 crore or ` 12 Lacs.

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CSR Committee of the Board of shall consist of:

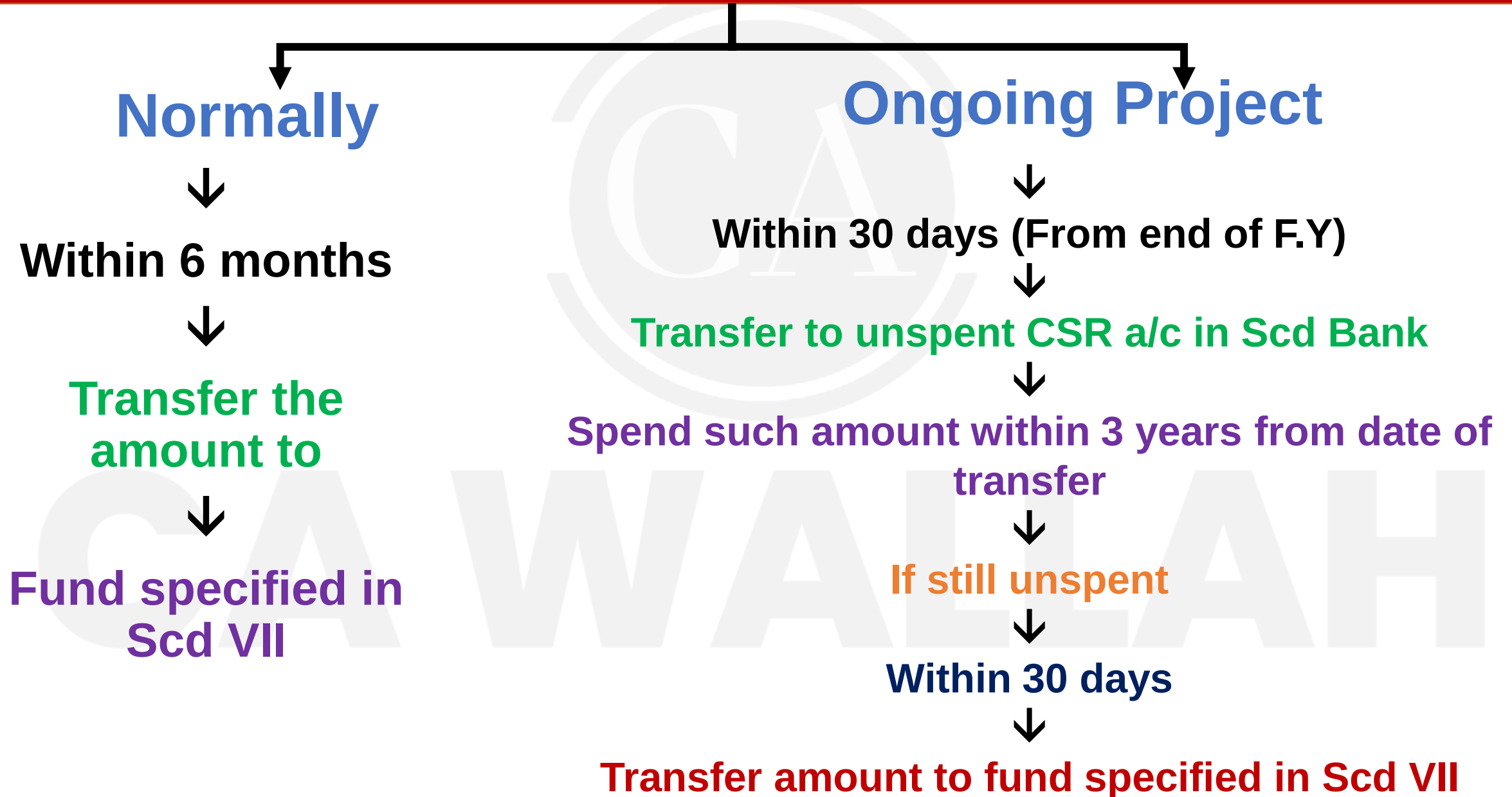
- (a) Directors forming 1/3rd of the total no of directors.
- (b) At least 2 directors out of which one shall be independent director.
- (c) 3 or more directors out of which one shall be managing director.
- (d) 3 or more directors, out of which at least 1 director shall be an independent director.**

Provisions of CSR are applicable to:

- (a) Companies with net worth of ` 250 crore or more but less than 500 crore.
- (b) Companies with turnover of ` 1000 crore or more.**
- (c) Companies with net profit of ` 1 crore or more but less than ` 5 crore in any financial year
- (d) Companies having aggregate outstanding loans and deposits Exceeding ` 50 crore or more in any financial year.

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If unspent CSR till end of year



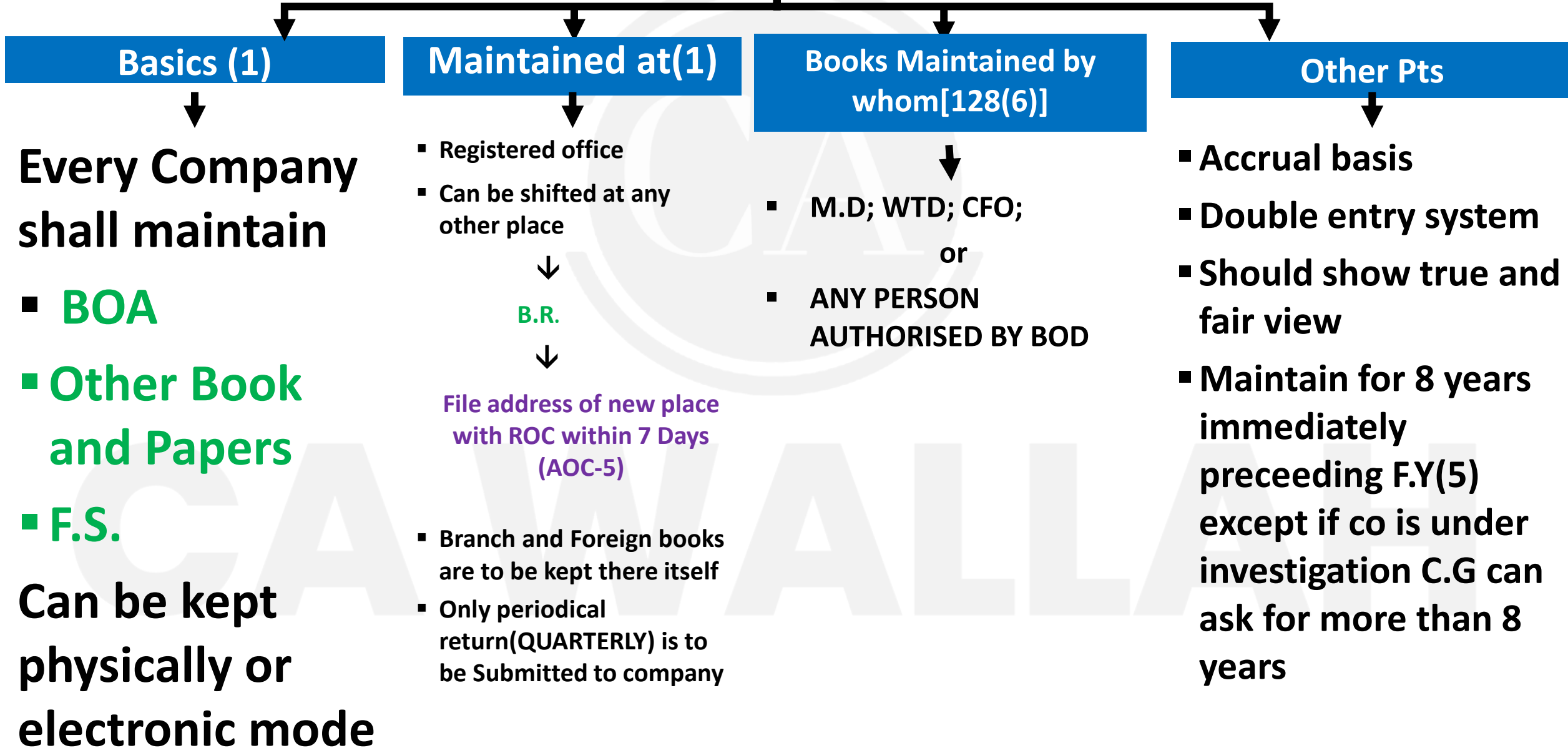
OTHER IMP POINTS

1. Sec 135 not applicable to specified IFSC Public & Pvt Co. for 5 years from the commencement of business.
2. Administrative overheads should not exceed **5 %** of total CSR exp.
3. Calculation of Avg. Net Profit (sec 198): Shall not include
 - a) profits from overseas branches
 - b) dividend from other co. in India covered u/s 135
4. Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities
 - A Company undertaking impact assessment may book the impact assessment expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed ~~LOWER~~ Higher of :-
 - ~~5%~~ 2 % of the total CSR expenditure for that financial year or
 - 50 lakhs.

- The Board shall ensure that the CSR activities are undertaken by the company itself or through –
 - a) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or
 - b) a company established under section 8 of the Act or a registered trust or a registered society, established by CG or State Government; or
 - c) any entity established under an Act of Parliament or a State legislature; or
 - d) a company established under section 8 of the Act, or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least 3 years in undertaking similar activities.
- The board shall ensure that the administrative overheads shall not exceed 5%—of total CSR expenditure of the company for the financial year.

- As per the provisions of the Companies Act, 2013, which of the following statement is correct with respect to the surplus arising out of the CSR activities: (Mar. 22) (1 Mark)
- The surplus cannot exceed five percent of total CSR expenditure of the company for the financial year.
- **The surplus shall not form part of the business profit of a company**
- The surplus cannot exceed 10 percent of total CSR expenditure of the company for the financial year.
- The surplus shall form part of the business profit of a company

Books Of Accounts (Sec. 128)



Question

- Define the term 'Book of account' as per the Companies Act, 2013. (MTP July 24)(5 Marks)

According to section 2(13) of the Companies Act, 2013, 'Books of account' includes records maintained in respect of:

- (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- (ii) all sales and purchases of goods and services by the company;
- (iii) the assets and liabilities of the company; and
- (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section.

Question

State the person responsible for complying with the provisions regarding maintenance of Books of Accounts, etc. of a Company.
(RTP sep 24)

Question

- K Ltd. in its first year of incorporation maintained its books of account under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013? **(RTP sep 24)**

- According to section 128(1) of the Companies Act, 2013, every company shall prepare books of account and other relevant books and papers and financial statement for every financial year, which give a true and fair view of the state of the affairs of the company, including that of its branch office(s) if any, and explain the transactions effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double entry system of accounting.
- Hence, maintenance of books of account under Singly Entry System of Accounting by K Ltd. is not permitted.

Inspection of BOA by Directors

[128(3) r/w Rule 4]

a) Inspection by Directors:

- Open during business hours
- If books outside India, Send to registered office at quarterly intervals and if asked by director should be made available in 15 Days from the date of receipt of request

b) Can inspect BOA of subsidiary only by resolution of BOD.(holding co)

c) If information maintained outside India – director will request and information will be sent within 15 days

d) Members may inspect – if provided in AOA

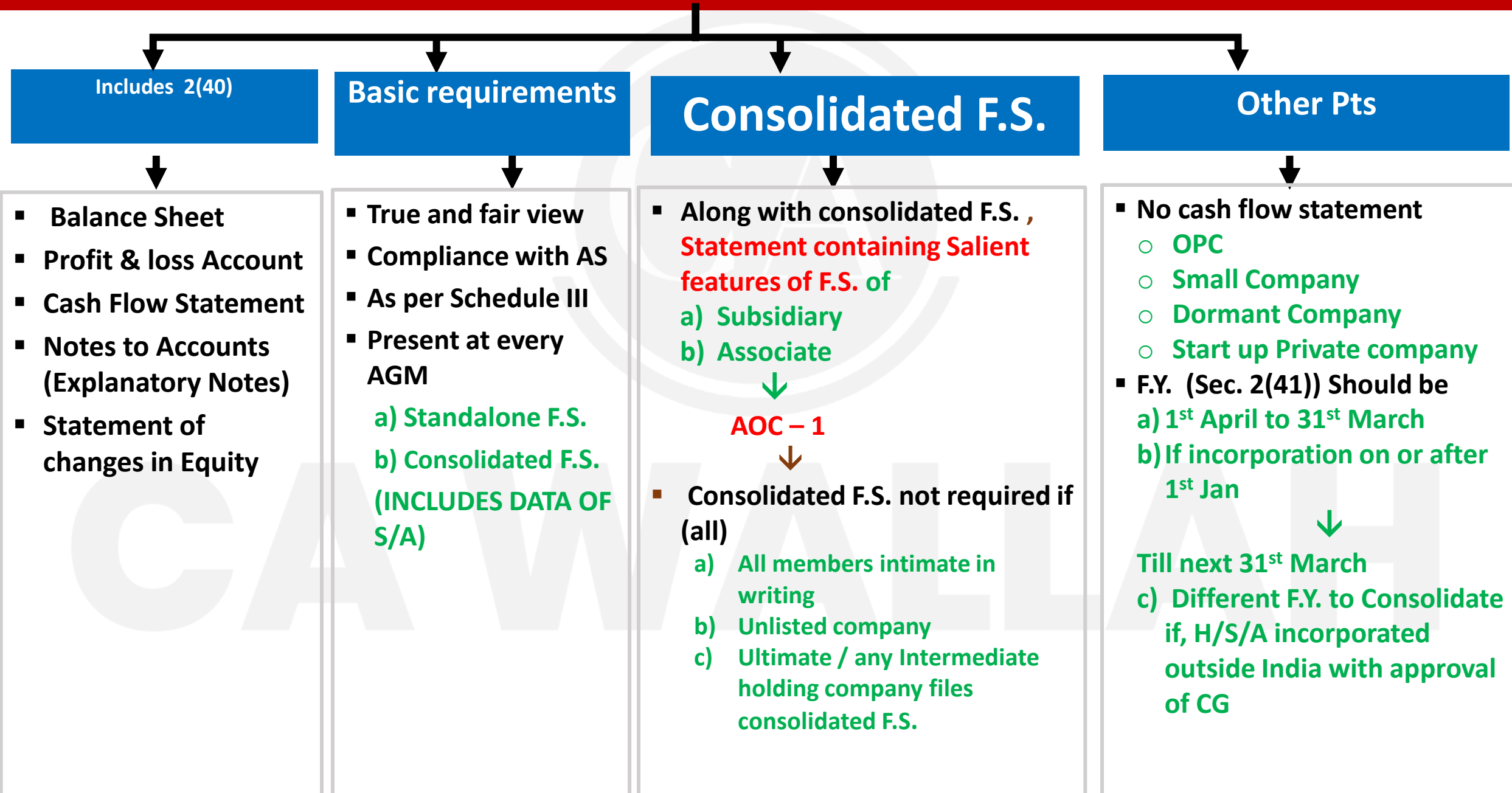
Accounts Amendment Rules

In Rule 3(1), the following proviso shall be inserted-

Provided that

- a) For the **Financial Year Commencing on or after the 1st day of April, 2022,**
- b) every company which uses **Accounting Software** for maintaining its books of accounts,
- c) Shall use only such accounting software which has a **feature of recording audit trail of each and every transaction,**
- d) Creating an edit log of each change made in books of accounts along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

Financial Statements (Sec. 129)



The financial statement in relation to a dormant company may not include:(1 Mark) (MTP Sep. 22)

(a) balance sheet	(c) applicable explanatory note
(b) cash flow statement	(d) profit and loss account

Hastprat Ltd. is an unlisted public company, having five directors in its board which includes two independent directors. Sankul (P) Ltd., is subsidiary company of Hastprat Ltd., actively carrying on its business, having paid up capital of ` 1.5 crore with 40 members and turnover of ` 18 crore, respectively and the said company is not a start-up company.

In the context of aforesaid case-scenario, please answer to the following question(s):

Whether Sankul (P) Ltd. is mandatorily required to prepare cash flow statement for the financial year as a part of its financial statements? Provide your answer by analyzing Sankul (P) Ltd. into following category of companies:

(i) One person company, (ii) Small company, (iii) Dormant company and (iv) Private company, respectively. (RTP Mar 23)

Hint:

For considering the applicability of preparation cash flow statement in case of Sankul (P) Ltd., it is required first to be analyzed that Sankul (P) Ltd. does not fall in any of the categories of companies mentioned under proviso to section 2(10) of the Companies Act, 2013:

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Section 129A- Periodical Financial Results

CG may, require such class or classes of UNLISTED COMPANIES, as may be prescribed-

- a) To prepare the financial results of the company on such periodical basis and in such form as may be prescribed.**
- b) To obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and**
- c) File a copy with the Registrar within a period of 30 days of completion of the relevant period with such fees as may be prescribed**

Note – Listed Co is already asked to do so as Per SEBI Guidelines.

Question

4. (a) Crystal Limited recently received a communication from the Central Government requesting the preparation of periodical financial results along with the completion of either a full audit or a limited review of these financial results. The Board of Directors, however, has raised an objection, arguing that Crystal Limited, being an unlisted company, are not obligated to prepare periodical financial results.

Analyze the situation, citing relevant provisions of the Companies Act, 2013, with respect to the company's obligation regarding the preparation of periodical financial results.(5 Marks) (MTP April 24) (MTP July 24)

Yellow Ltd. received a communication from Central Government for preparation of periodical financial results and complete audit or limited review of such periodical financial results. The Board of Directors have raised an objection on the ground that as it is an unlisted company, periodical financial results need not to be prepared. Examine, referring the provisions of the Companies Act, 2013, in this regard. (RTP Mar 23)

Hint: Periodical Financial Results [Section 129A of the Companies Act, 2013]

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

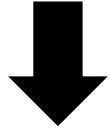
- (a) to prepare the financial results of the company on periodical basis and in prescribed form**
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in the prescribed manner; and**
- (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.**

Therefore, the objection of the Board of Directors on the ground that as Yellow Ltd. is an unlisted company, periodical financial results need not be prepared, is not correct. Section 129A clearly specifies that even unlisted company has to prepare Periodical Financial Results.

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RE-OPENING OF ACCOUNTS [Sec. 130]

- ✓ The Central Government
- ✓ Income Tax authorities
- ✓ SEBI
- ✓ Statutory Regulatory body
- ✓ Any person concerned



Applies to

Court / Tribunal



Court passes
order



REASONS

1. earlier accounts prepared in a **fraudulent** manner or
2. doubt on reliability of F.S due to **mismanagement**



1. and serves notice to the applicant



2. The accounts so revised / re-casted shall be final



3. No order – for period earlier than 8 FY immediately preceding the current FY (except on order from C.G)

Adani Enterprises Limited has its shares listed on a recognized stock exchange in India. During the current financial year ending on 31st March 2020, the securities and exchange board of India (SEBI) has found some irregularities in the filings made by the company.

Accordingly, SEBI proposes to make an application to the Tribunal for reopening of the books of accounts of the Company. You, as an expert, are called upon by SEBI to advise

with which last financial year for reopening of books of accounts an application can be made?

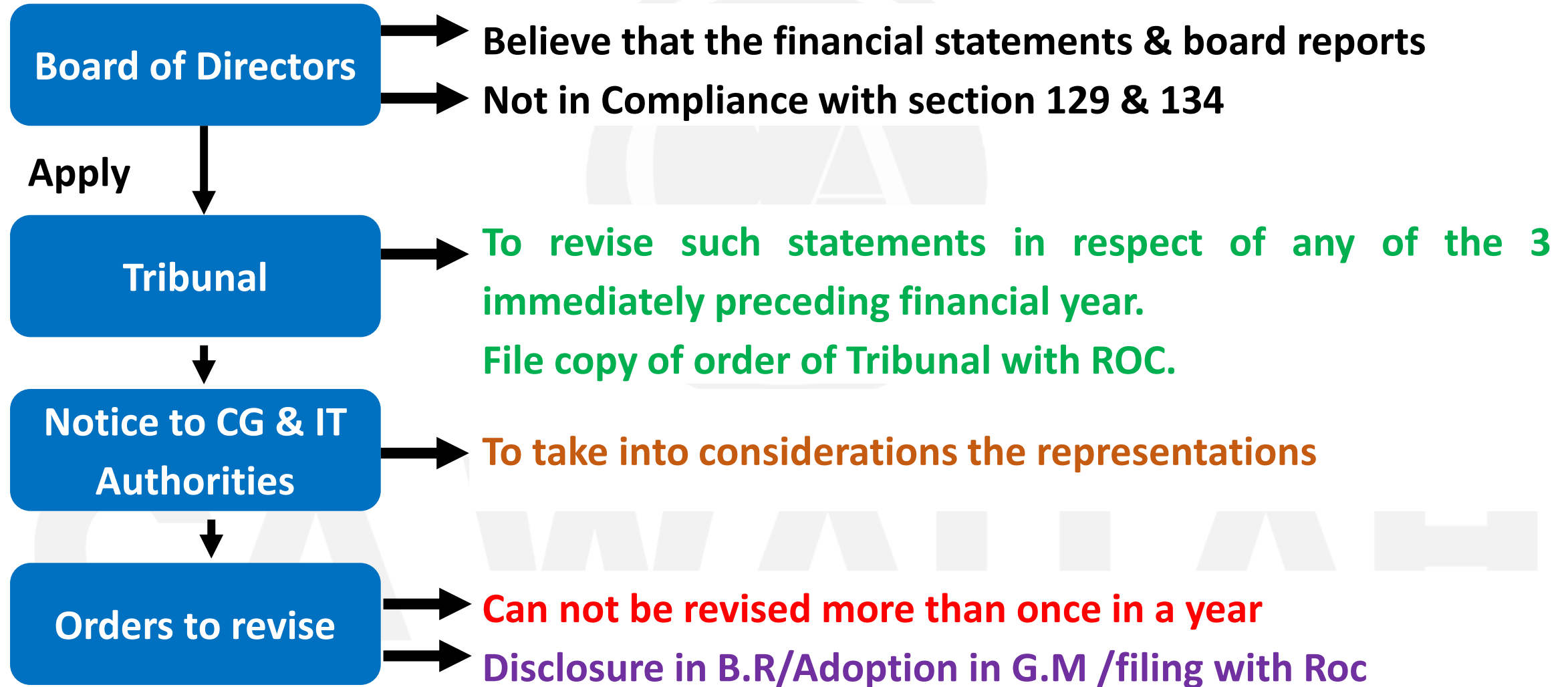
- (a) 2015-2016
- (b) 2013-2014
- (c) 2010-2011
- (d) 2011-2012**

The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008 -09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT. (MTP NOV 2020)

Hint: In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

VOLUNTARY REVISION [Sec. 131]



During the half year ended September 2019, the board of directors (BOD) of Vidyut Manufacturing Limited has made an application to the Tribunal for revision in the accounts of the company for the financial year ended as on March 2017. Further during the year ended March 2020, the BOD has again made an application to the Tribunal for revision in the board's report pertaining to the year ended March 2019. You are required to state the validity of the acts of the Board of directors.

(a) The act of the BOD is valid only to the extent of application made for revisions in accounts as board's report are not eligible for revision.

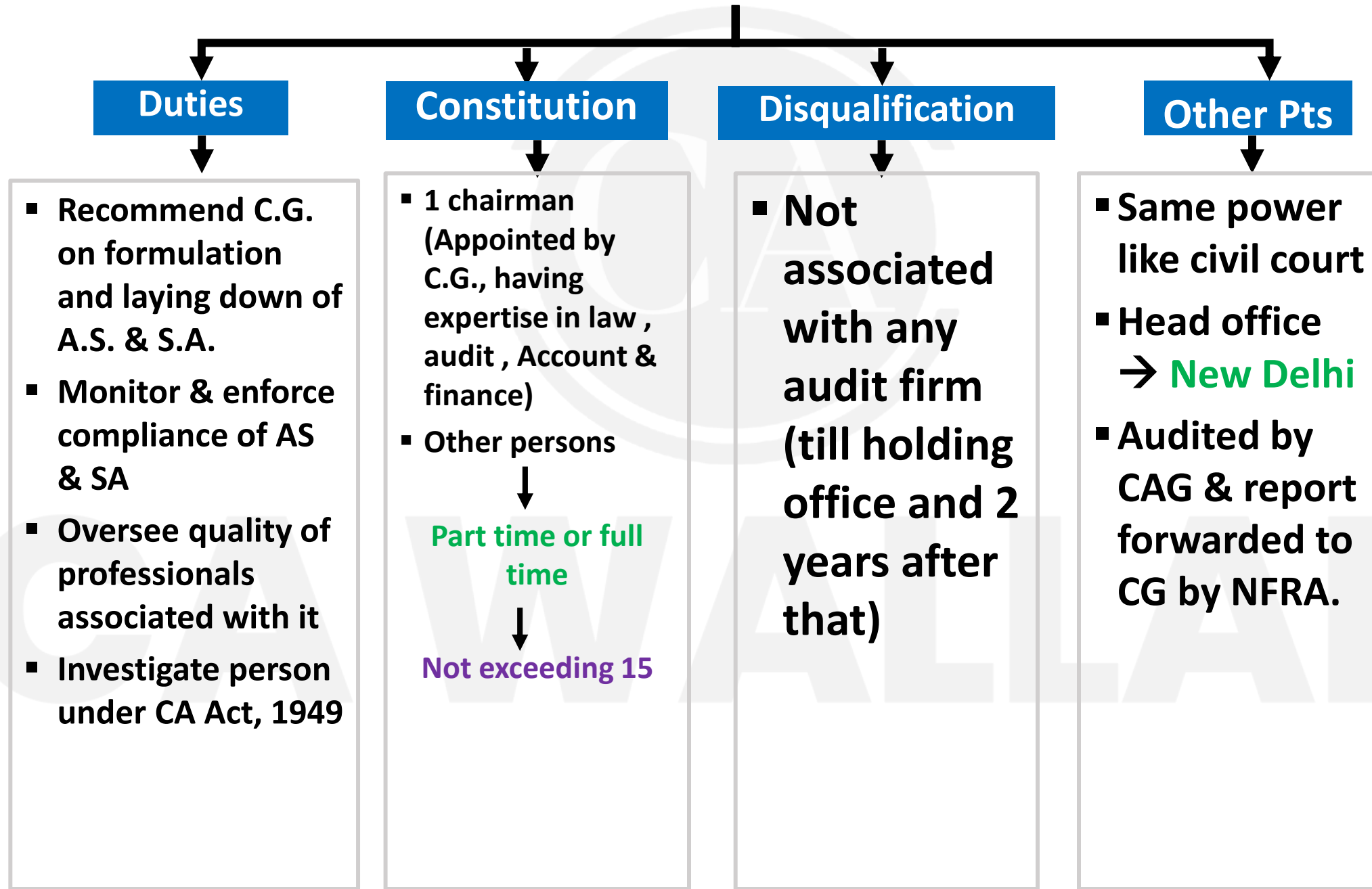
(b) The act of the BOD is valid as the applications made for revision in the accounts and board's report pertain to two different financial years.

(c) The act of the BOD is invalid as the law provides for only one time application to be made in a financial year for revision of accounts and boards report.

(d) The act of the BOD is invalid as the application made for revision in accounts pertains to a period beyond 2 years immediately preceding the year 2020. The application made for revision in the Board report is however valid in law.

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National Financial Reporting Authority (Sec. 132)



COMPANIES & BODY CORPORATE GOVERNED BY NFRA

1. Listed Co.
2. Unlisted Public Co. having
 - a) PUC $\geq$ Rs. 500 Cr. or
 - b) T/O $\geq$ Rs 1000 Cr. or
 - c) O/s loans, deb, deposits $\geq$ Rs. 500 Cr as on 31 Mar of preceding FY.
3. Insurance Co, Banking Co, Electricity Co, Co. under special Act
4. Body corporate or company or person as referred to NFRA by CG in public interest.
5. Body corporate outside India, being S/A of Co. or Body corporate in India as ref. in a to d above, if the net-worth of such S/A exceeds 20% of consolidated net-worth.

Note:

- 1) Existing body corporate (other than above) shall inform the particulars of auditor to NFRA within 30 days of the commencement of NFRA rules, in Form NFRA-1.
- 2) Companies governed by NFRA shall continue to be governed for 3 years after it ceases to be governed as per above conditions.

Directors Responsibility Statement (134)

Shortcut: **(AAAAGE)**

Should state:

- 1) **Accounting** standards has been followed
- 2) **Accounting** policies are consistently selected and applied
- 3) **Maintenance of accounting records**
- 4) **Adequate Financial Control system Maintained**
- 5) **Going concern** is followed
- 6) **Ensure compliance of all other related laws**

The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a "Directors' Responsibility Statement". Briefly enumerate any four matters to be furnished in the said statement. (6 Marks) (MTP Oct. 22)

Question

4. (a) The Companies Act, 2013 has prescribed an additional duty on the Board of directors to include in the Board's Report a 'Directors' Responsibility Statement'. Briefly mention any four matters to be furnished in the said statement.

(5 Marks) (MTP Mar. 24)

CAWALLAH

SEC 134

FS approved by BOD
(Sec. 134)

- Before submission to auditor
- Cannot be approved by teleconference / video meeting / circulation
- Signed by → **Chairperson or 2 director (1 MD if any) + CEO + CFO + CS**
- OPC → **1 director**

FS Submitted to auditor

- As per contents of section 134 (REAL DIRECTOR)
- Including directors responsibility statement and management discussion analysis report
- Signed by → **Chairman (if authorised) / 2 directors (1 MD if any)**
- OPC → **1 director**

Prepare Board Report

MGT-14, within 30 days

File resolution
approving Board
Report & FS with ROC

Ganesh Company Ltd, a public company incorporated under the Companies Act, 2013 has Mr. Jay- Director, Mr. Sagar – Independent Director, Mr. Abhishek – Nominee Director and Mr. Yash – Whole time director. Mr. Abhishek wants to inspect the books of account of Shankar Company Limited, the subsidiary of Ganesh Company Limited. You are required to state whether Mr. Abhishek is eligible to inspect the books of accounts of Ganesh Company Limited?

(a) Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization of the public financial institution on whose behalf he has been so appointed in the board of the Ganesh Company Ltd.

(b) No. Mr. Abhishek being a nominee director can only inspect the books of account of Ganesh Company Ltd and not its subsidiary company.

(c) Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the board of directors.

(d) Yes, Mr. Abhishek can inspect the books of account of Shankar Company limited only on authorization by way of resolution of the members holding not less than 25% of the paid up share capital of the company.

1. ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. C, on its rolls. The financial statements of the company for the year ended 31 March,2019 were authenticated by two of the directors, Mr. X and Mr. Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

- i. Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.**
- ii. What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? (MTP MAY 2020)**

Hint:

- i. In the given case, the Balance Sheet and Profit & Loss Account have been signed by Mr. X and Mr. Y, the directors. In view of the provisions of Section 134 (1), the Managing Director, Mr. D should be one of the two signatories. Since, the company has also employed a full- time Secretary Mr. C, he should also sign the Balance Sheet and Profit & Loss Account. Therefore, authentication done by two directors is not valid.**
- ii. In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.**

Rights for copy of financial statements [Section 136]

Copy of financial statement, consolidated financial statement, audit report, Board report

Other than listed company

A copy is to be send to

1. Every member
2. Trustee of debenture holders
3. Other person

21 days (14 days – sec 8 co) before the date of meeting

Listed company

Deemed to serve the document if

- Copy made available for inspection at its registered office during the business hours for a period of 21 days before the meeting &
- Statement containing salient features of such documents are send in form AOC-3(AOC-3A for Co. req. to comply IND AS) or full document as the company deems fit delivers it to its members, trustee & other persons at least 21 days before the meeting.

NOTE:

1. Nidhi co. is not required to send notice to members holding

a) Shares not more than 1000 FV

b) >1% of PUC

w.e.l.



Publish in newspaper (Public Notice- Regional language)

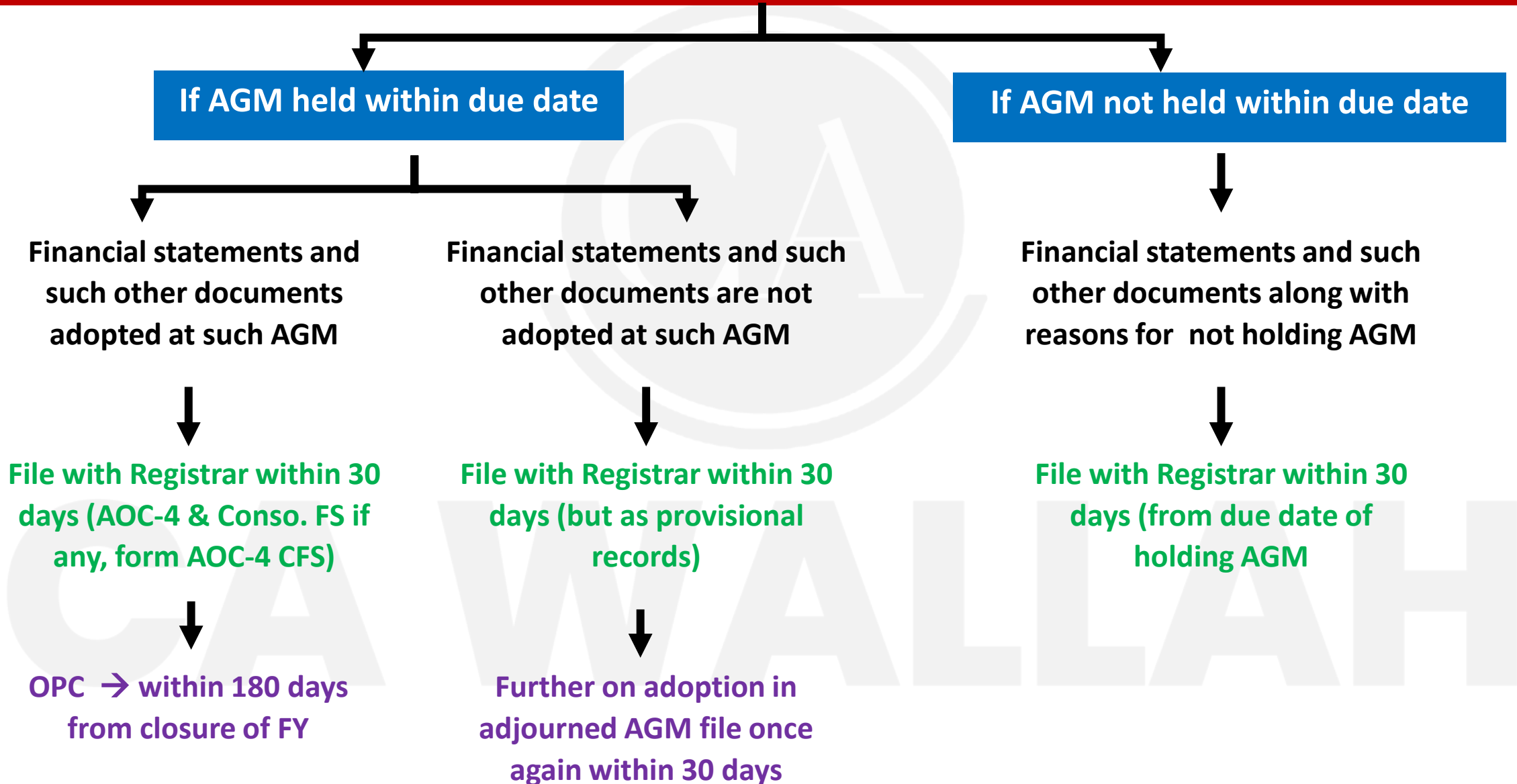
2. In sec. 136, for sec. 8 Co. Instead of 21 days it is 14 days

3. Less than 21 days if agreed by,

a) Co. having share capital: members holding $\geq 95\%$ of PUSC: OR

b) Co. not having share capital: Members holding $\geq 95\%$ of total voting rights.

Filing of financial statement [Section 137]



Question

14. The Governments of Tamil Nadu and Andhra Pradesh collectively hold 60% of the paid-up Equity Share Capital of Orange Limited. The audited financial statements of Orange Limited for the financial year 2022-23 were presented at its Annual General Meeting convened on 17th August, 2023. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. Therefore, the company did not file its financial statements with the Registrar of Companies. Afterwards, on receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 20th September, 2023 whereat the accounts were adopted. Thereafter, Orange Limited filed its financial statements relevant to the financial year 2022-23 with the Registrar of Companies on 29th September, 2023.

Examine, with reference to the applicable provisions of the Companies Act, 2013, whether, Orange Limited has complied with the statutory requirement regarding filing of accounts with the Registrar.

(RTP May24)

Question

The Government of India is holding 51% of the paid-up equity share capital of Surya Ltd. The Audited financial statements of Surya Ltd. for the financial year 2023-24 were placed at its annual general meeting held on 1st August, 2024. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 29th September, 2024 whereat the accounts were adopted. Thereafter, Surya Ltd. filed its financial statements relevant to the financial year 2023-24 with the Registrar of Companies on 20th October, 2024. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Surya Ltd. has complied with the statutory requirement regarding filing of accounts (unadopted and adopted) with the Registrar?(5 Marks) (MTP Aug 24)

Law –

- I. According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.
- II. According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

Conclusion –

In the instant case, the accounts of Surya Ltd. were adopted at the adjourned AGM held on 29th September, 2024 and filing of financial statements with Registrar was done on 20th October, 2024 i.e. within 30 days of the date of adjourned AGM. Hence, Surya Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

One Person Company shall file a copy of the duly adopted financial statements to the Registrar within:

- (a) 30 days of the date of meeting at which it was adopted.
- (b) 90 days of the date of meeting at which it was adopted.
- (c) 90 days from the closure of the financial year.
- (d) 180 days from the closure of the financial year.**

Rema formed and occupied the office of director in Rem Stationers (OPC) Private Limited which deals in manufacturing and trading of various items of stationery. Rema noticed a changed provision which mandates that from the Financial Year 2020-21 onwards, an OPC shall file its Annual Return in MGT - 7A. Rema is also one of the directors in another company which too is required to file its Annual Return in

MGT - 7A. Which is that 'other company' where Rema also occupies the office of director in addition to OPC.

- (a) That other company is a 'small company' where Rema also occupies the office of director in addition to OPC.**
- (b) That other company is an 'associate company' where Rema also occupies the office of director in addition to OPC.
- (c) That other company is a 'subsidiary company' where Rema also occupies the office of director in addition to OPC.
- (d) That other company is a 'dormant company' where Rema also occupies the office of director in addition to OPC.

CAWALLAH

Internal audit [Section 138]

APPLICABILITY

Following Class of companies are required to appoint an internal auditor (individual or firm or body corp.)

- **Listed company**
- **Unlisted company having**
 1. Paid up Capital not less than 50 crore, or
 2. Turnover not less than 200 crore, or
 3. Borrowing from banks or PFI not less than 100 crore, or
 4. Deposits not less than 25 crore
- **Private company having**
 1. Turnover of not less than 200 crore or
 2. Borrowings from banks or PFI not less than 100 crore.

(All above limits during preceding FY)

QUALIFICATION

- Any person certified as :
 1. Chartered accountant
 2. Cost accountant
 3. Such other professional as may be decided by board.
- May or may not be an employee of the company.
- CA or cost accountant whether in practice or not.

Question

(b) Kesar Limited, an unlisted company furnishes the following data:

- (i) Paid-up share capital as on 31st March 2024 49 Crore.**
- (ii) Turnover for the year ended 31st March 2024 100 Crore**
- (iii) Outstanding loan from bank as on 3rd March 2024 is 102 crore (Z 105 Crore loan obtained from bank) and the outstanding balance as on 31st March 2024 95 crore after repayment.**

Considering the above scenario and in accordance with the provisions outlined in the Companies Act, 2013, determine whether Kesar Limited is required to appoint an Internal Auditor during the financial year 2024-2025.

(5 Marks) (MTP April 24)

CA Inter **Law Sep 2024**

Audit & Auditors



Qualifications of Auditor

- CA under CA Act, 1949.
- Nationality is not imp.
- Holds COP

Can Accept Audit

By Proprietor firm

In his own name

**By Partnership
Firm**

In firm's name

By L.L.P

**Foreign L.L. P
disqualified**

Disqualifications of Auditor [Sec. 141 (3)]

(CA + COP) Still cannot do audit

To Be checked

On appointment

If disq. cannot be appointed as auditor[sec 141(3)]

After Appointment

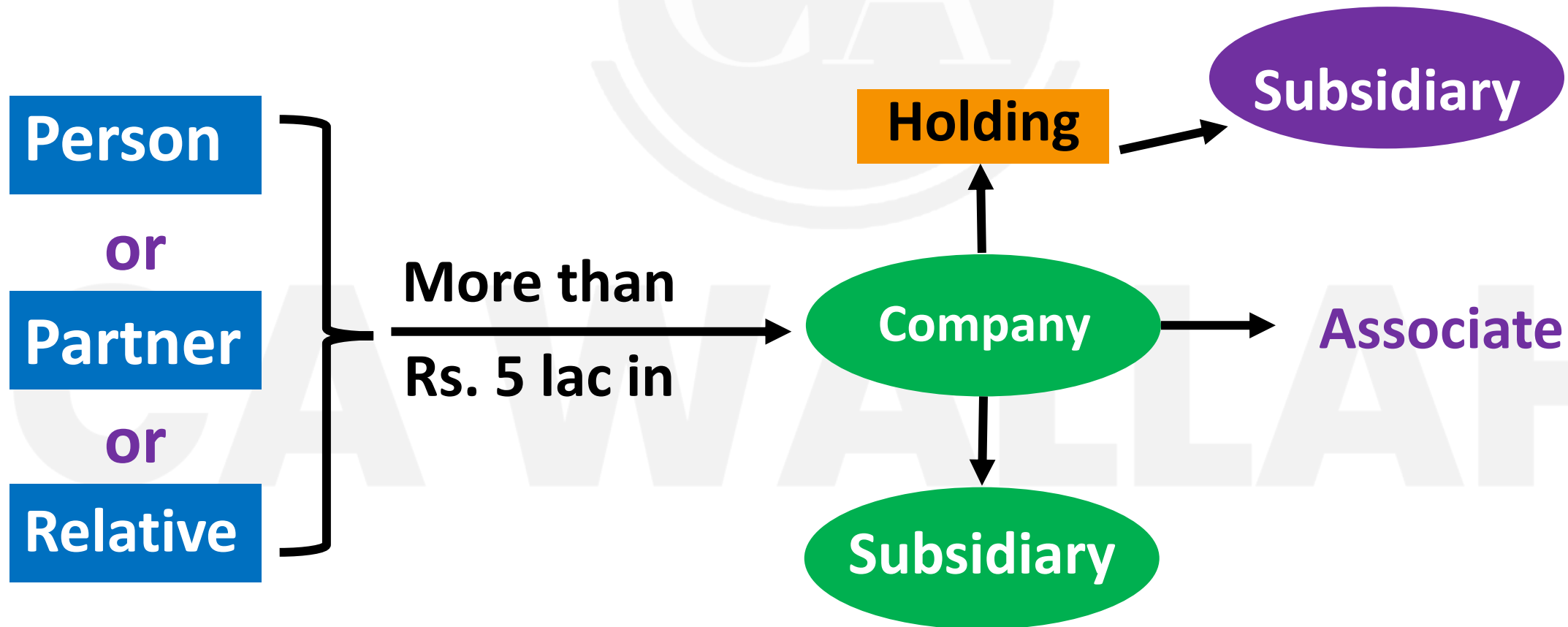
If disq. Attracts will leave office of auditor i.e casual vancancy[sec 141(4)]

Shortcut → BIG FIBRE ROPE

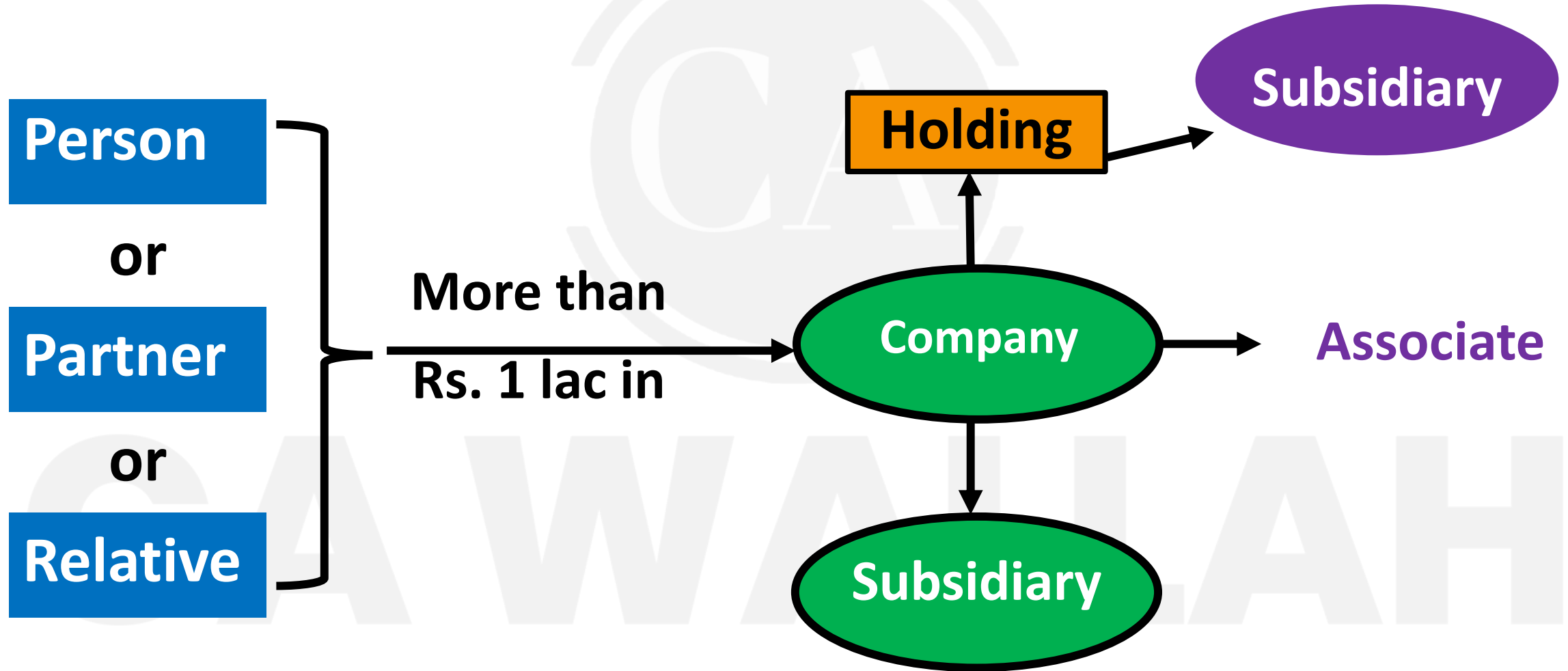
B- Body Corporate

- Except L.L.P

I- Indebtedness to Company



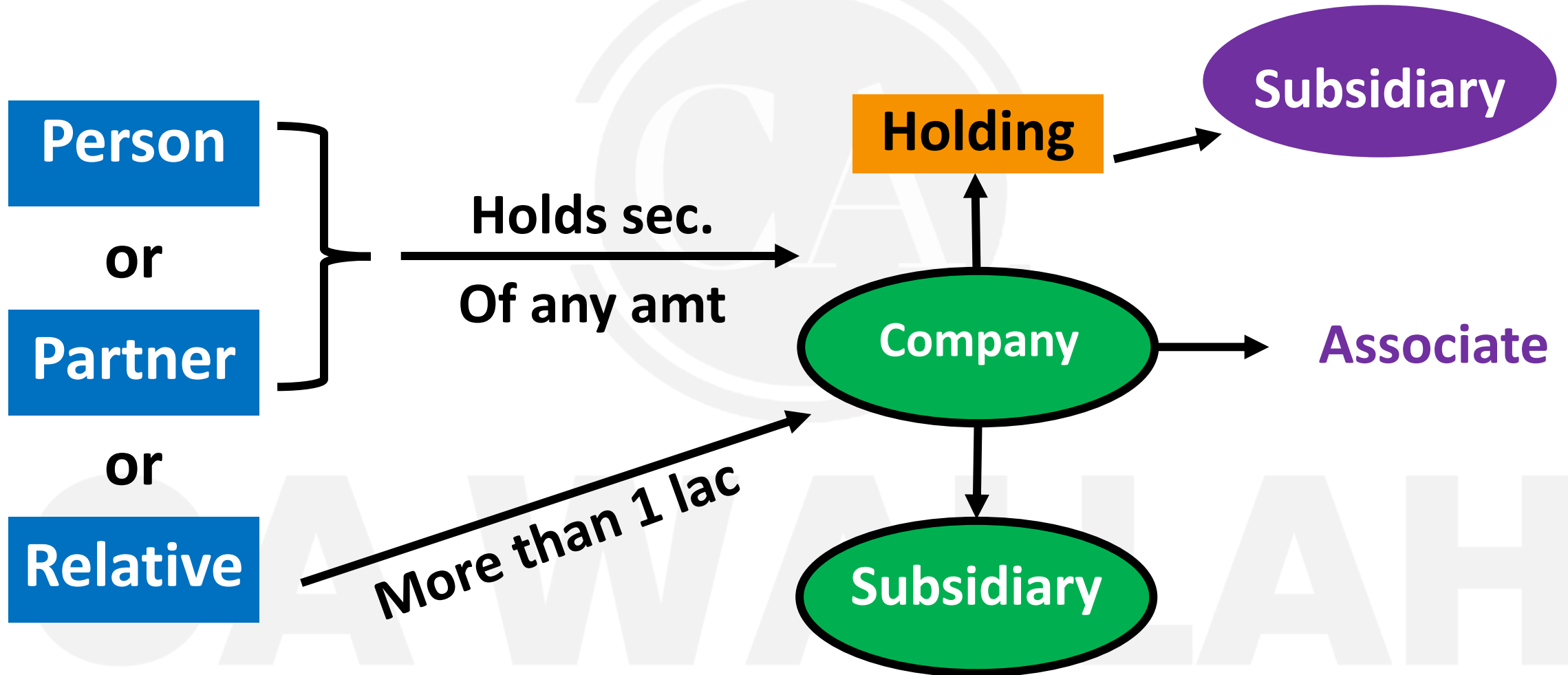
G → Guarantee



F → Full time Employment

Employment	That Co.	Other Co.
Part- Time	✗	✓
Full-Time	✗	✗

I-Interest in securities of Company



Mr. R brother of CA. Sana, a practicing chartered accountant, acquired securities of Hot Ltd. having market value of `1,20,000 (face value ` 95,000). State whether CA. Sana is qualified to be appointed as a statutory auditor of Hot Ltd. (3 Marks) (MTP Oct. 21)

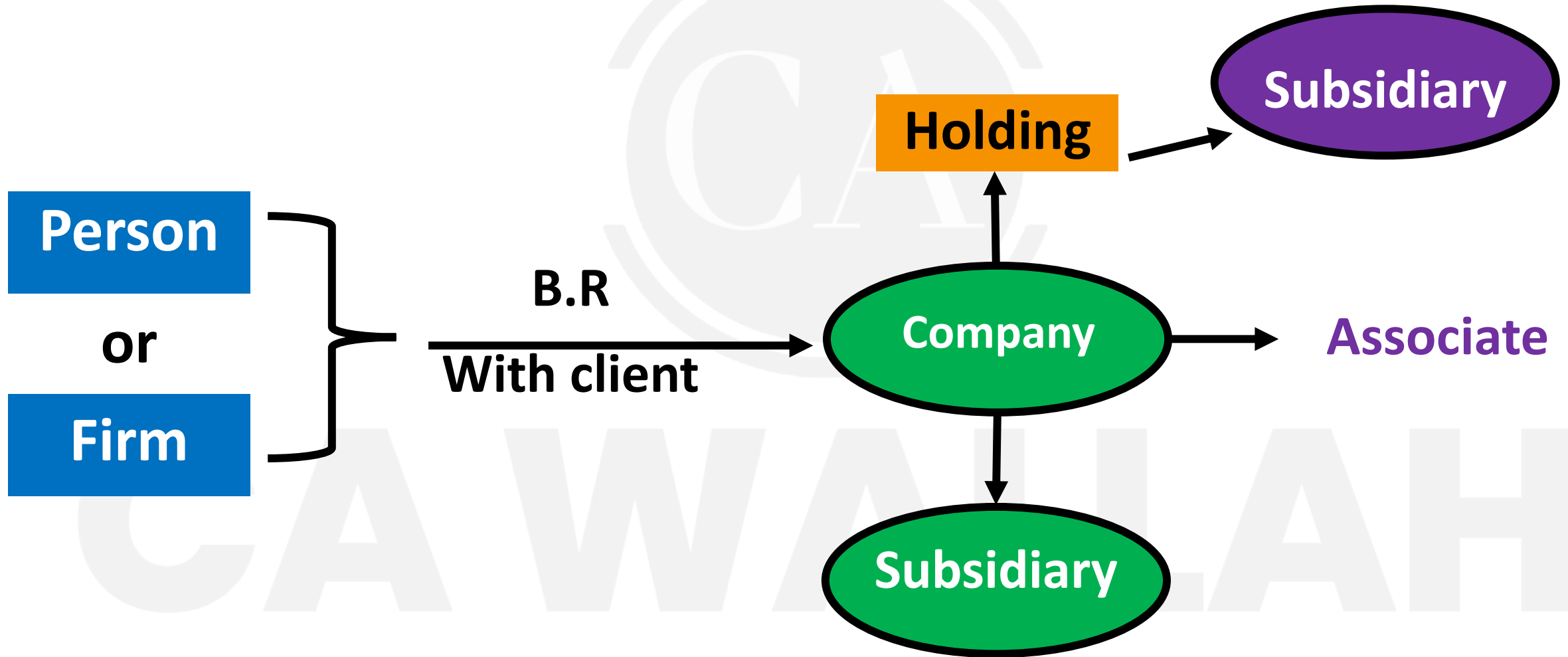
Hint: As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ` 1,00,000 [as prescribed under the Company (Audit and Auditors) Rules, 2014].

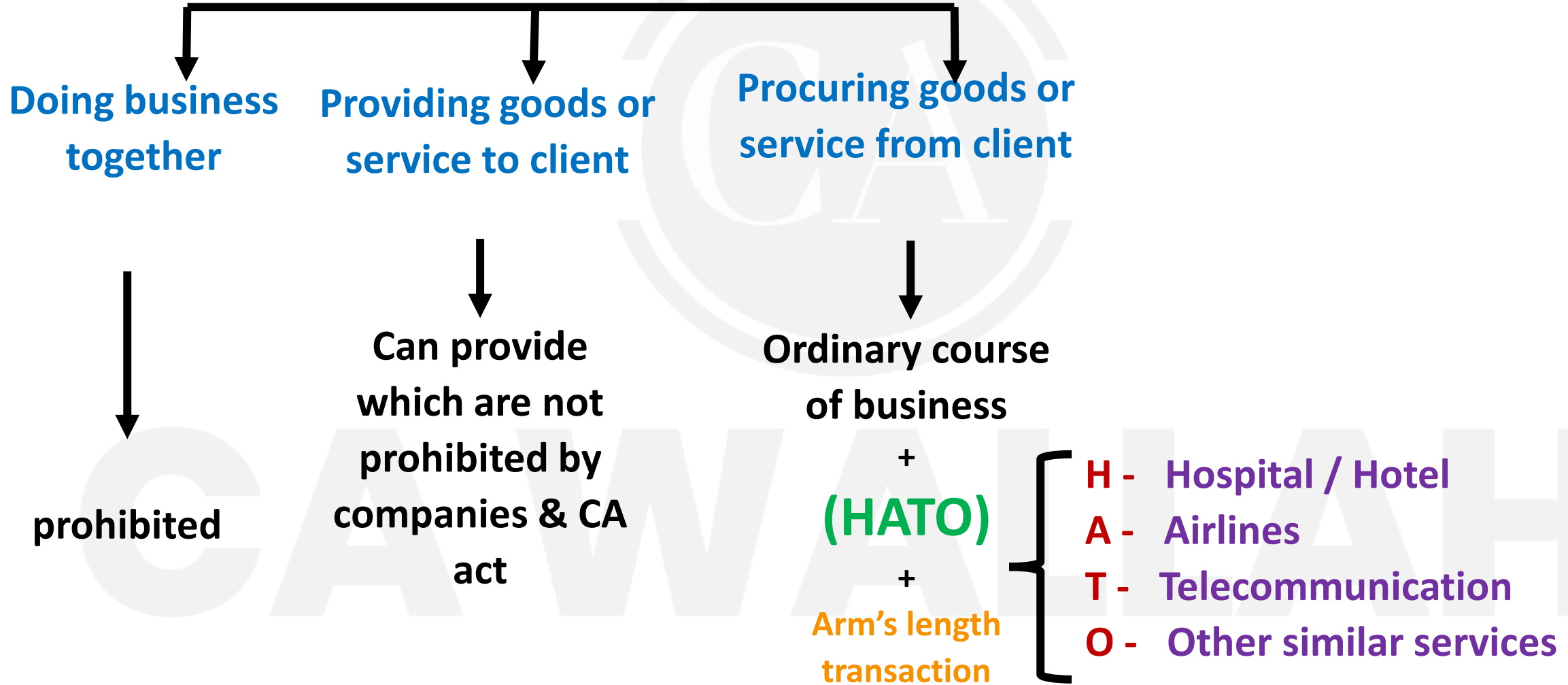
In the given instance, CA. Sana is not disqualified to be appointed as a statutory auditor in Hot Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ` 95,000 in the said company, which is within the prescribed limit.

CAWALLAH

B- Business relationship



Business Relationship



R- Relative in company

- A person whose relative is
- A Director or is in the employment of the Company as a director or key Managerial Personnel

E- Employee

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

R- Restricted services(section 144).

Shortcut - ACADEMICS

- 1) **Accounting** and book keeping services;
- 2) **Carry** out outsourced financial services;
- 3) **Actuarial services**;
- 4) **Design** and implementation of any financial information system;
- 5) **Engaged** in investment advisory or investment banking services;
- 6) **Management** services
- 7) **Internal audit**
- 8) **Carry** out any other kind of services as may be prescribed

- **Harry Limited appointed CA Lakshman as an auditor of the company for a term of 5 years. Further, the company offered him the services of actuarial which were also approved by the board of directors. As an auditor, how would you deal with such situation? (RTP May 2022)**

CA WALLAH

Which of the following is a prohibited service to be rendered by the auditor of the Company?

- (a) Design and implementation of any financial information system**
- (b) Making report to the members of the company on the accounts examined by him
- (c) Compliance with the auditing standards
- (d) Reporting of fraud against the company by officers or employees to the Central Government

Overall Limit

1 person = 20 company audit

Excludes

1. One person company
2. Dormant company
3. Small company
4. Private company having paid up capital less than 100 cr

Person who is Convict

- A person who has been convicted by a Court of an offence
- Involving fraud and
- A period of ten years has not elapsed from the date of such conviction

CAWALLAH

The word 'firm' for the purpose of Section 139 shall include-

- (a) An individual auditor
- (b) A LLP**
- (c) An individual auditor and LLP both
- (d) A company

Gizmo Limited was incorporated in 1990 in the town of Alwar. Its main business is manufacturing high quality bangles. It is in the process of appointing statutory auditors for the financial year 2021-22. Advise whether the following persons are qualified to be appointed as statutory auditor of the Gizmo Limited:

- (1) Priyansh, a qualified chartered accountant, is an employee of Gizmo Limited.**
- (2) Vinod is a practicing Chartered Accountant indebted to Gizmo Limited for rupees 2 lakh. (5 Marks) (MTP Sep. 22)**

Hint:

(1) As per section 141 (3) of the Companies Act, 2013, read with Rule 10 of the Companies (Audit and Auditors) Rules, 2014, a person is disqualified to be appointed as an auditor if he is an officer or employee of the company.

Hence, Priyansh is disqualified to be appointed as an auditor in Gizmo Limited.

(2) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees 5 Lacs. In the instant case, Vinod will be qualified to be appointed as an auditor of Gizmo Limited as he is indebted to Gizmo Limited for rupees 2 lacs.

- Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013 :
- "Ms. Rekha," a practicing Chartered Accountant, and "Mr. Alok," who happens to be a spouse of "Ms. Rekha," holds securities of "Charcoal Ltd." valued at a face amount of 85,000 (with a market value of 75,000/-). The directors of Charcoal Ltd. are considering the appointment of Ms. Rekha as an auditor for the company.
- Mr. Pun, a practicing Chartered Accountant, has a debt of 7 lakhs owed to RAI Ltd. The directors of RAI Ltd. are considering the appointment of Mr. Puri as an auditor for the company.
- Ms. Komal, the real sister of Mr. Sharad, a Chartered Accouitant, holds the position of CFO at Biotech Ltd. The directors of Biotech Ltd. are considering the appointment of Mr. Sharad as an auditor for the company. **6 Marks (Nov 23)**

Question

- 14. XYZ Ltd., a prominent manufacturing company, is in the process of appointing a new auditor for the upcoming financial years. Mr. A is a renowned auditor being considered for the role. During the due diligence process, the following details come to light:
 - 1. Mr. B and Mr. A are partners in ABC & Co. Mr. B has taken a personal loan of `4 Lacs from XYZ Ltd.'s subsidiary, EFG Ltd., six months ago.
 - 2. Mr. A's relative, Ms. C, has an outstanding debt of `2 Lacs with DEF Ltd., an associate company of XYZ Ltd., which was taken three months ago.

Discuss about the eligibility of Mr. A for being appointed as an auditor of XYZ Ltd. in view of the provisions of the Companies Act, 2013. (RTP sep 24)

Question

Assess the eligibility of the following individuals for appointment as Auditors in accordance with the regulations outlined in the Companies Act, 2013:

(i) Chintamani is a practicing Chartered Accountant, and his spouse, Chitralekha, holds securities of Nagmani Ltd. valued at a face value amount of ` 80,000 (with a market value of ` 50,000). The directors of Nagmani Ltd. are considering the appointment of Chintamani as an auditor for the company.

(ii) Mani, the real sister of Mr. Priyanshu, a Chartered Accountant, holds the position of CFO at Parivar Ltd. The directors of Parivar Ltd. are considering the appointment of Mr. Priyanshu as an auditor for the company.(5 Marks) (MTP July 24)

Appointment of First Auditor [Tenure till 1st AGM]

Other Company [Sec. 139(6)]

Govt. Company [Sec. 139(7)]

By BOD

If BOD fails

By CAG

If CAG fails

If BOD fails

- Within 30 days from incorporation

- Naming in AOA not sufficient

Intimate to shareholders

By shareholders

Within 60 days from incorp.

By BOD

Within 30 days

Intimate to shareholders

By shareholders

Take valid B.M & Pass B.R

Within 90 days from intimation in EGM

Within 60 days from intimation in EGM

Appointment of subsequent Auditor

Other Company [139(1)]

- In AGM
- By shareholders
- By passing O.R.
- Tenure



1 term = 5 years



i.e. from 1st AGM to 6th AGM

- After appointment



Co. intimates to ROC within 15 days



(ADT-1)

Govt. Company [139(5)]

- By CAG
- Within 180 days from commencement of F.Y.
- Tenure



AGM to AGM

For appointing an auditor other than the retiring auditor, (1 Mark) (MTP Oct. 21)

- (a) **Special notice is required.**
- (b) Ordinary notice is required.
- (c) Neither ordinary nor special notice is required
- (d) Approval of Central Government is required.

1. The Board of Directors of Moon Light Limited, a listed company appointed Mr. Teja, Chartered Accountant as its first auditor within 30 days of the date of registration of the Company to hold office from the date of incorporation to conclusion of the first Annual General Meeting (AGM). At the first AGM, Mr. Teja was re-appointed to hold office from the conclusion of its first AGM till the conclusion of 6th AGM. In the light of the provisions of the Companies Act, 2013, examine the validity of appointment/ reappointment in the following cases:

(i) Appointment of Mr. Teja by the Board of Directors.

(ii) Re-appointment of Mr. Teja at the first AGM in the above situation. (RTP Nov. 21)

Hint: As per section 139(6) of the Companies Act, 2013, the first auditor of a company, other than a Government company, shall be appointed by the Board of Directors within thirty days from the date of registration of the company and such auditor shall hold office till the conclusion of the first annual general meeting.

Whereas Section 139(1) of the Companies Act, 2013 states that every company shall, at the first annual general meeting (AGM), appoint an individual or a firm as an auditor of the company who shall hold office from the conclusion of 1st AGM till the conclusion of its 6th AGM and thereafter till the conclusion of every sixth AGM.

As per section 139(2), no listed company or a company belonging to such class or classes of companies as may be prescribed, shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.

As per the given provisions following are the answers:

(i) Appointment of Mr. Teja by the Board of Directors is valid as per the provisions of section 139(6).

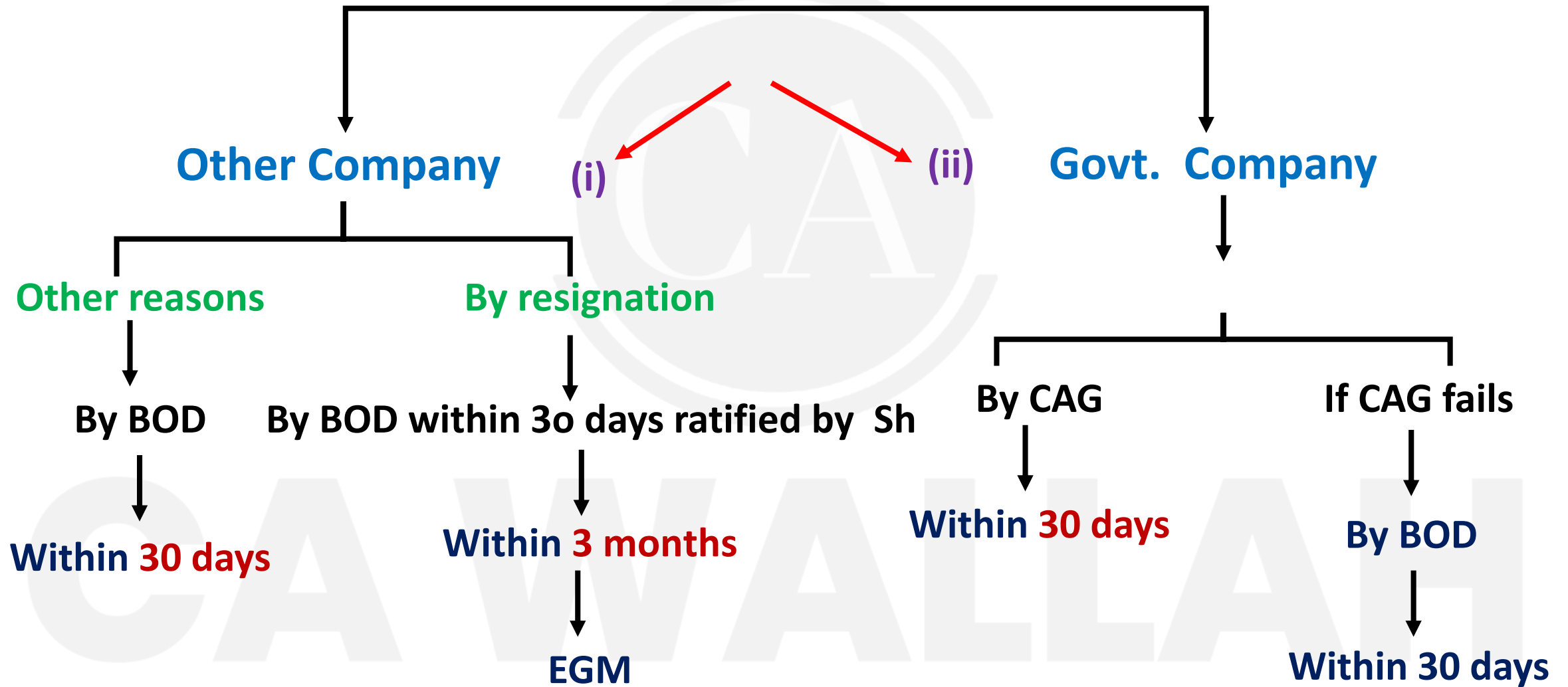
(ii) Appointment of Mr. Teja at the first Annual General Meeting is valid due to the fact that the appointment of the first auditor made by the Board of Directors is a separate appointment and the period of such appointment is not to be considered, while Mr. Teja is appointed in the first Annual General Meeting, which is for the period from the conclusion of the first Annual General Meeting to the conclusion of the sixth Annual General Meeting.

2. Discuss the Provisions regarding appointment of Auditors -

a) First auditor of a Government company and a Non-Government company.

b) Subsequent auditor of a Government company and a Non-Government company. [RTP - May 21]

Appointment in case of Casual vacancy Sec. 139(8)



Note :- In case of resignation, Auditor within 30 days intimate to

→ (1) Company, (2) ROC, (3) CAG(Govt. Co.) in form No. – ADT-3

Reappointment of Auditor [139(9)]

Not eligible for reappointment if rotation applicable & term expired (individual – 5yrs / firm – 2 terms i.e. 10 yrs)

Same auditor appointed earlier can be reappointed except

- 1) Disqualified [U/s 141(3) + 139(2)(3)(4)]**
- 2) Unwilling to continue**
- 3) Company has appointed somebody else instead of him or expressly stating that retiring auditor will not be reappointed**

Automatic Reappointment [139(10)]

If no new auditor is appointed

+

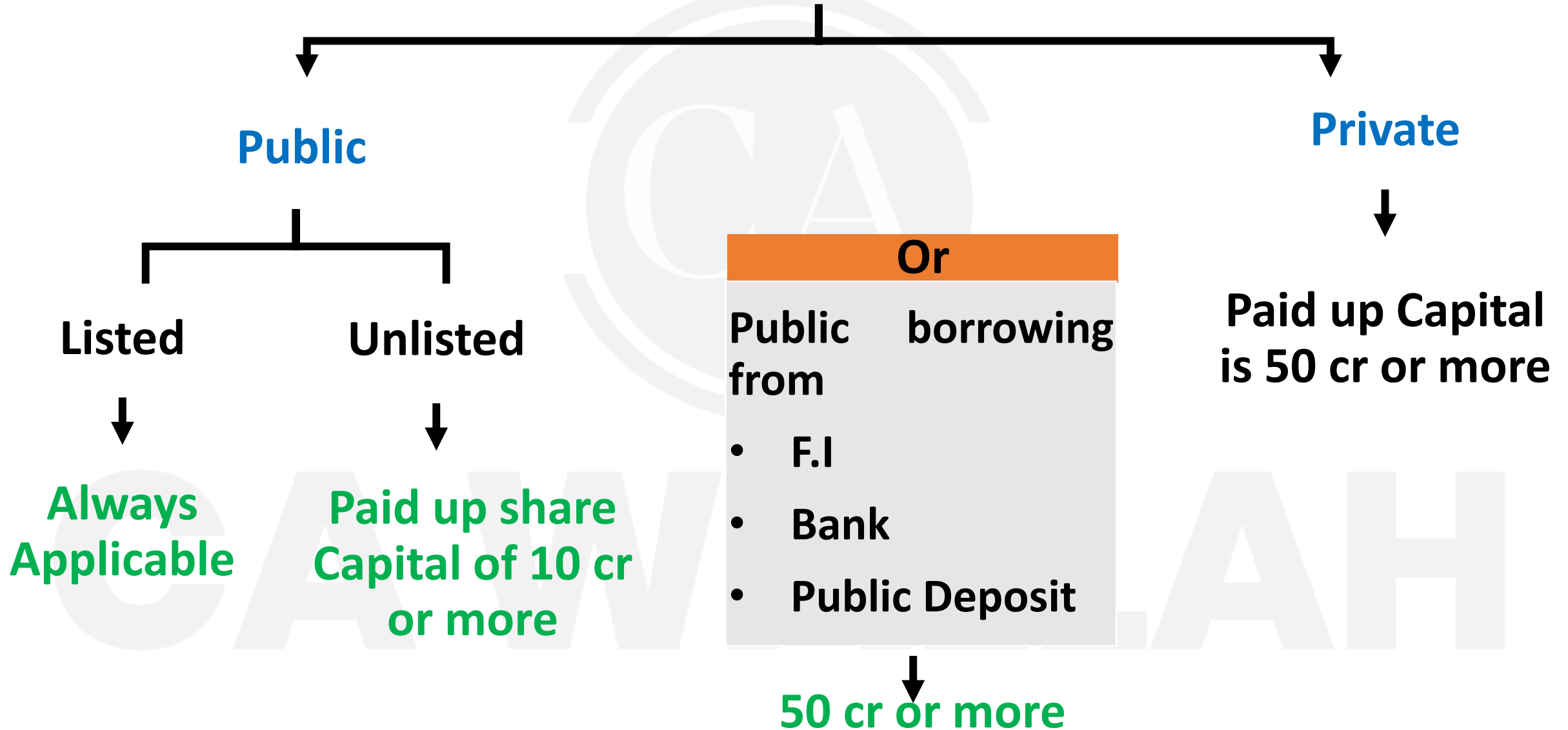
Auditor can be reappointed
[not disqualified u/s 139(9)]



Existing auditor will be automatically reappointed for next tenure

Note: if no new auditor appointed + retiring auditor cannot be reappointed → Casual vacancy → filled by BOD within 30 days

Rotation Applicability



- **S Private Limited has a paid-up share capital of ` 49 Crores and borrowings from bank of ` 99 Crores. The audit firm P & Company was appointed as statutory auditors of the Company for one term of six consecutive years. Is the provision of rotation of auditors applicable to the company? Comment.(RTP Mar 23)**

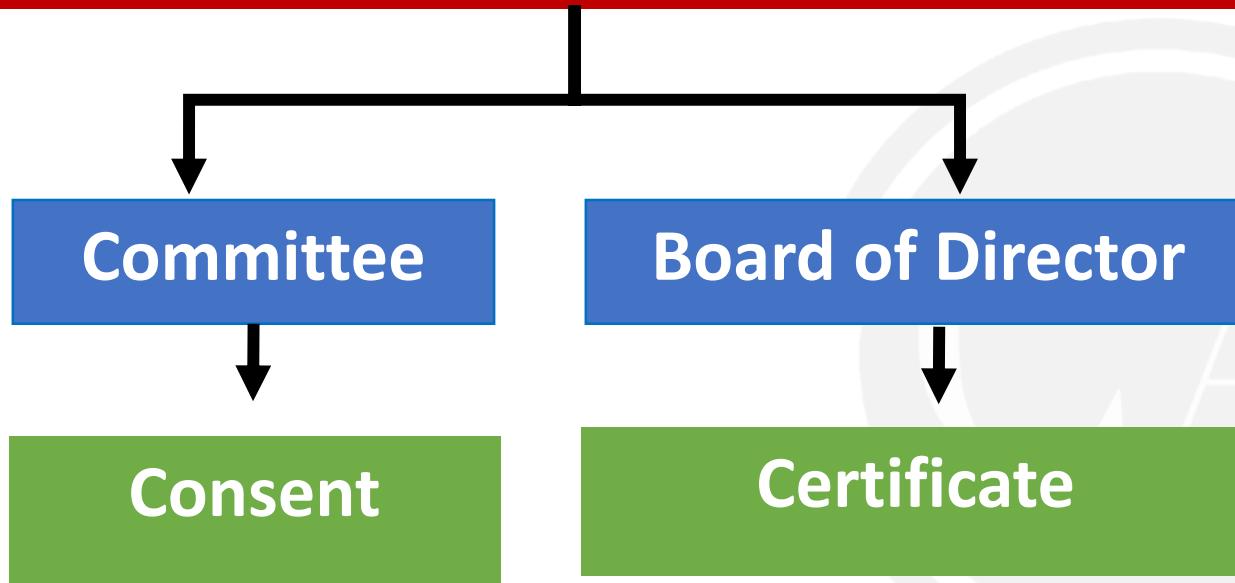
Rotation – [Sec. 139(2)]

- CA Proprietary firm → Max 1 term
- CA Partnership firm / LLP → Max 2 term
- Cooling period for both → 5 years
- In cooling period cannot appoint
 - a) Same firm
 - b) Other firm with any common partner
 - c) Firm with same network i.e same brand name , trade name or common control [Sec. 139(4)]
- Sec 139(3) → In same auditing firm → members can decide to rotate partners & term

Question

CA. Mudit is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of Liberal Ltd. (a listed company) for past ten years as on 31st March, 2027. Advice under relevant provisions of the Companies Act, 2013, whether ML & Company be appointed as statutory auditor of Liberal Ltd. during cooling off period (after 31st March, 2027) for SM & Company?(5 Marks) (MTP Aug 24)

Consent & Certificate



- I/We agree to become auditor of the company
- He should take NOC from previous auditor before sending Consent as per CA Act, 1949

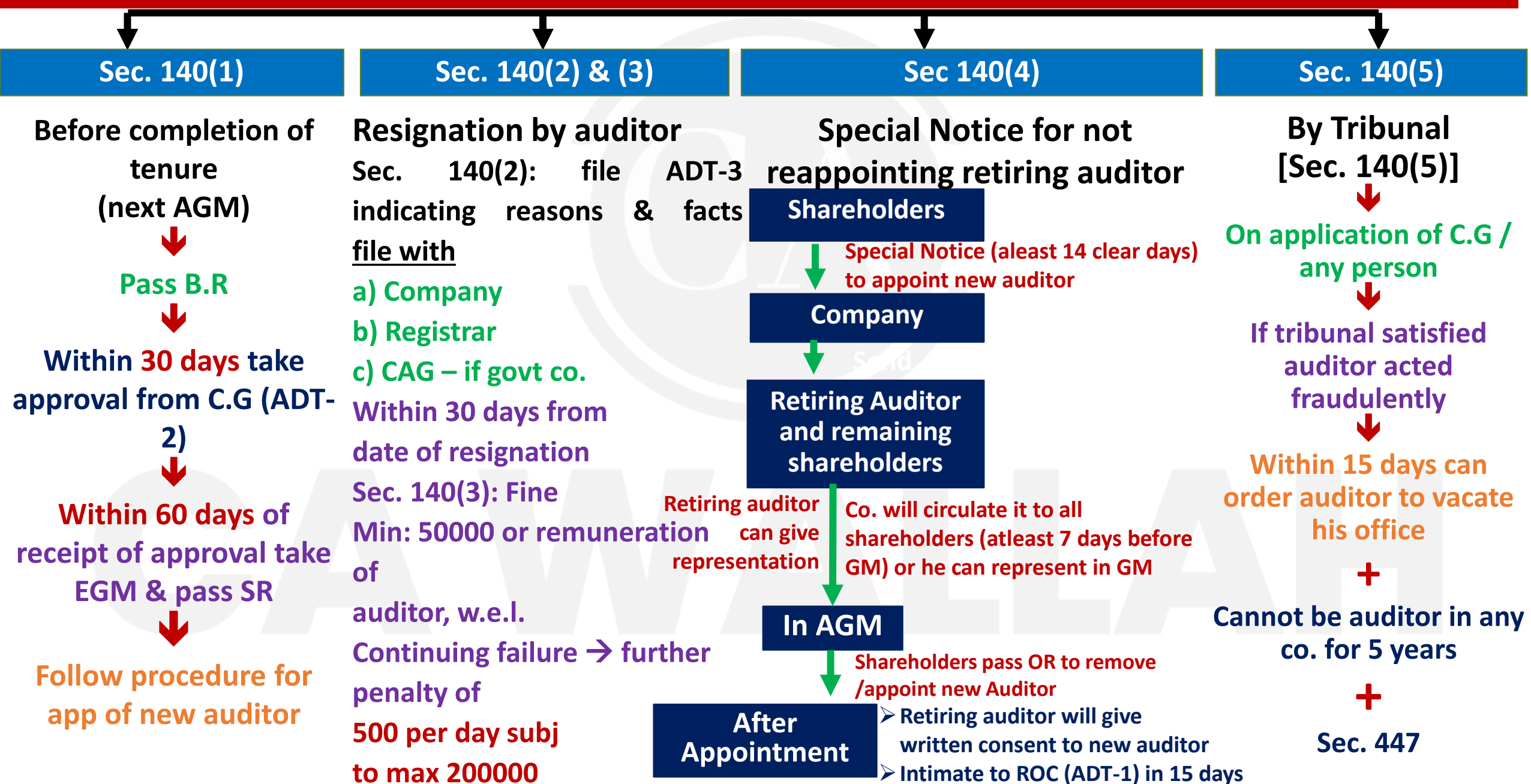
I certify that following is True & Correct.

- I am qualified u/s 141
- I am not disqualified u/s 141.
- Appointment is correct as per other sections of companies Act, & CA Act, 1949.
- I have limit to accept audit
- List of orders & proceedings provided to company is True & Correct.

CA

CA Firm

Removal, Resignation & Special Notice (Sec. 140)



Question

(b) ABC & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of X Ltd. held on 30-09-2022. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2023. Subsequently, having given consideration to the Board recommendation, ABC & Associates were removed at the general meeting held on 25-05-2023 by passing a special resolution but without obtaining approval of the Central Government. Examine the validity of removal of ABC & Associates by X Ltd. under the provisions of the Companies Act, 2013.

(5 Marks) (MTP Mar. 24)

- **XYZ Ltd. removed its statutory auditor by passing a resolution in the meeting of Board of Directors for his removal without obtaining prior approval of the Central Government. Such removal of the auditor was made before the expiry of term of the auditors. Give your comments in this regard.(RTP Mar 23) (4 Marks) (MTP Oct. 23)**

XYZ & Associates, a firm of Chartered Accountants was re-appointed as auditors at the Annual General Meeting of ABC Ltd. held on 30-09-2021. However, the Board of Directors recommended to remove them before expiry of their term by passing a resolution in the Board Meeting held on 31-03-2022. Subsequently, having given consideration to the Board recommendation, XYZ & Associates were removed at the general meeting held on 25-05-2022 by passing a special resolution. The approval of the Central Government was not taken before passing the special resolution. Explaining the provisions for removal of second and subsequent auditors, examine the validity of removal of XYZ & Associates by ABC Ltd. under the provisions of the Companies Act, 2013. (5 Marks) (MTP Oct. 22)

Hint: Section 140 of the Companies Act, 2013 prescribes procedure for removal of auditors. Under section 140 (1) the auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner.

From this sub section it is clear that the approval of the Central Government shall be taken first and thereafter the special resolution of the company should be passed.

Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard. Therefore, in terms of section 140 (1) of the Companies Act, 2013 read with Rule 7 of the Companies (Audit & Auditors) Rules, 2014, the following steps should be taken for the removal of an auditor before the completion of his term:

- 1. The application to the Central Government for removal of auditor shall be made in Form ADT-2 and accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.**
- 2. The application shall be made to the Central Government within thirty days of the resolution passed by the Board.**
- 3. The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.**

Hence, in the instant case, the decision of ABC Ltd. to remove XYZ & Associates, auditors of the company at the general meeting held on 25-5-2022 subject to approval of Central Government is not valid. The Approval of the Central Government shall be taken before passing the special resolution in the general meeting.

For the removal of an auditor before the expiry of his term, which of the following sequence of events is correct (Nov 23)

- A. Board meeting - General meeting for passing a special resolution Application to Central Government - Grant of approval by Central Government
- B. Application to Central Government - Grant of approval by Central Government - Board meeting - General meeting for passing a special resolution
- C. General meeting for passing a special resolution - Board meeting Application to Central Government - Grant of approval by Central Government
- D. **Board meeting - Application to Central Government - Grant of approval by Central Government - General meeting for passing a special resolution**

- **CA B, an auditor of DBF Limited engaged in the manufacturing & trading of hardware products, while auditing got aware of some secrets of the company. The auditor acted in an unlawful way in order to deceive or gain an advantage over others & also he encouraged & assisted directors to do something wrong, in particular to commit crime. Now company has requested you to guide it as to how such acts are covered under Companies Act, 2013 & what consequences auditor may face ? (4 Marks May 2022)**

Sec. 143(1) → Duty to enquire

- Enquire means to inquire & report only in case of discrepancy

S Security → Loan & Advance → Made by co. → Properly secured Terms –prejudicial

B Mere book entries → Prejudicial to interest of Co.

I Investment in securities → Whether selling price < Purchase Price

D Deposits → Loan & Advance → Shown as deposits

P Personal expense → Charged to revenue a/c's

S Shares → Paid up → Actually cash received or not

Sec. 143(3)– Principal Assertions

I	Information & Explanation	→ Needed to be obtained	→ Has been obtained
A	A.S	→ Complied or not	
B	Books of accounts	→ Properly maintained	
B	B/s & P&L	→ In agreement with BOA	
B	Branch Audit Report	→ Timely submitted to H.A	
C	Control system	→ Adequate (financial control system)	
D	Directors	→ Disqualified	→ u/s 164(2)

Sec. 143(3)– Principal Assertions

E

Effect



Matters having adverse effect on functioning of company

F

Further Points

Pending litigations

Provision made

Delay

Company has disclosed impact

For material foreseeable losses

In transfer of amount to IEPF

Amendment

After clause (d), the following clauses shall be inserted –

(a)

(i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts,

- **no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company**
- **to or in any other person(s) or entity(ies), including foreign entities (“Intermediaries”),**
- **with the understanding, whether recorded in writing or otherwise, that**
- **the intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;**

(ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company

- from any person(s) or entity(ies), including foreign entities (“Funding Parties”),
- with the understanding, whether recorded in writing or otherwise, that
- the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party (“Ultimate Beneficiaries”) or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(b) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

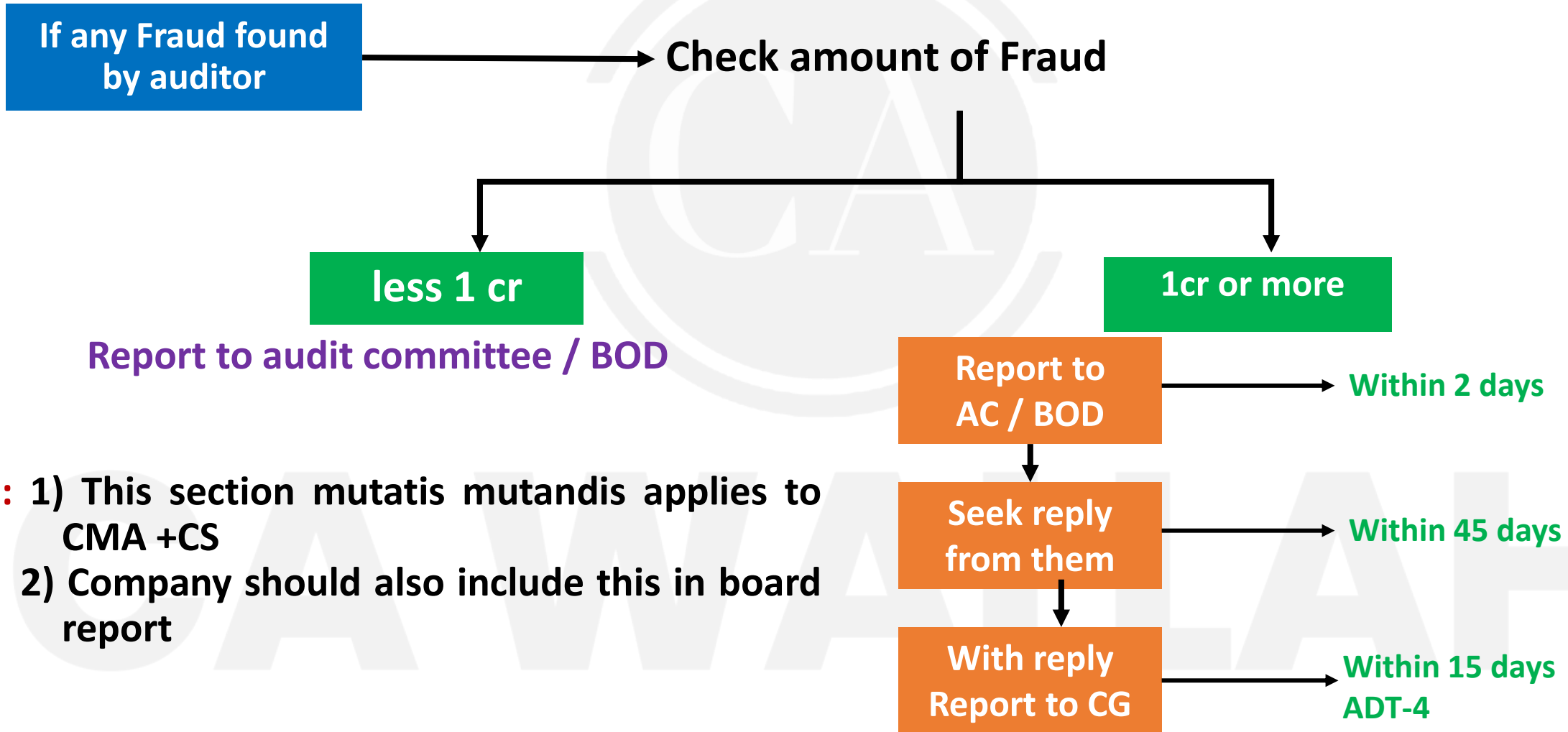
(c) Whether the company, in respect of financial years commencing

- on or after the 1st April, 2022 has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and
- the same has been operated throughout the year for all transactions recorded in the software and
- the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention

Question

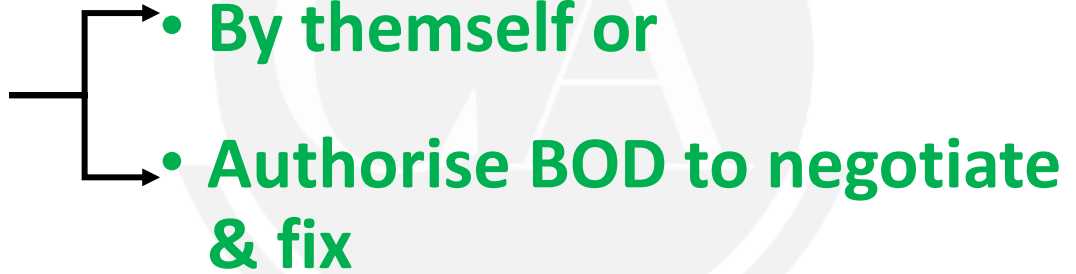
The Board of Directors of Avni Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as a Statutory Auditor of Avni Ltd., taking into account the consequences, if any, of accepting this proposal?(5 Marks) (MTP Aug 24)

Sec. 143 (12) → Fraud Reporting



Note: 1) This section mutatis mutandis applies to CMA +CS
2) Company should also include this in board report

142 → Remuneration of Auditor

- To appⁿ Karta hai wohi remⁿ fix Karta except Govt Co. 
 - Appⁿ → CAG
 - Remⁿ fix → Sh.
- Where SH remⁿ fix 
 - By themselves or
 - Authorise BOD to negotiate & fix
- Remⁿ → include- Out of pocket exp Exclude → any other services

Sec. 145 → Duty to sign A.R.

- Any partner of Firm (CA + COP)
- Employee (CA +COP) → cannot sign.
- Modification in AR → read in GM in front of shareholders

- **As per section 142 of Companies Act, 2013, the remuneration to the auditor shall also include any facility provided to him. (May 23)**
-
- **Yellow Private Limited is engaged in the business of manufacturing premium quality rattle toys. They have a huge market for their toys all over India. The company has appointed its statutory auditors for the financial year 2022-2023. The engagement letter of the auditors was signed with a clause that fee to be mutually decided. Directors of the company have approached you to seek your advice for provisions related to remuneration of auditors as per the provisions of the Companies Act, 2013. (RTP Nov 23)**
- **Hint - As per the facts of the question and stated provision, remuneration of the appointed statutory auditors of a company shall be fixed by Yellow Private Limited in general meeting or in such manner as the company in general meeting may determine.**

146 → Right / Duty to attend GM

- **Right** → Co will send notice / any commⁿ of GM to auditor.
- **Duty** → Auditor (atleast 1 partner – CA +COP) has to attend GM



By himself or representative (CA+COP).

- **It not possible** → take permission from Co.
- **Right** → to representation → in case of removal

Sec. 147 → Penalties

To whom	Contravention Sec.	Min Penalty	Max Penalty
1) Company	139 to 146	25,000	5 lac
2) Officer in default	139 to 146	10,000	1 lac
3) Auditor (unknowingly)	139, 144, 146	25,000	5 lac or 4x Rem (w.e.l)
4) Auditor (Knowingly willfully)	Any contravention	Fine 50,000 + Imprison → max	25 lac or (well) 8x Rem ⁿ

Basis	Cost Audit U/s 148	Branch Audit Sec. 143(8)
(i) Applicable	As per Sec. 148	Compulsory
(ii) Appointed by	Board / A.C within 180 days from Commencement of F.Y (Intimate to ROC – CRA-2)	Shareholers in consultation with Head Auditor
(iii) Tenure	1 year	1 year
(iv) Qualification	Prac. CMA	1. Company Auditor 2. Person qualified u/s 141(1)(2) 3. Foreign Branch – as per rules of that country
(v) Disq.	Same Like 143 (3)	Same like 143(3)
(vi) Reporting	i. Prepare report and submit to BOD within 180 days of closure of year in CRA-3 ii. Within 30 days Board report to CG in CRA-4 (along with explanation)	• Prepare same like H.A using SA 700, 701, 705, 706 & Sec. 143 (Incl. CARO) • Submit to P.A.

Cost Record applicability

Cost Records

Applicable

Not Applicable

(1) Having product
of Regulated /
unregulated
sector

+

(2) Overall
T/O of C.Y $\geq$ 35 Cr

(1) Foreign co.
having liaison
office in India

(2) Micro & small
enterprises

Cost Audit

Applicable



(1) Maintaining cost records

+

(2) **Regulated** **Un-regulated**

(a) Overall T/O

50 Cr or more

100 Cr or more

+

(b) Individual T/O

25 Cr or more

35 Cr or more

Not Applicable



(1) Revenue from export



≥ 75% of Total revenue

(2) Operating in SEZ (Don't limit) count T/O

CA Inter **Law Sep 2024**

Company Incorporated Outside India



Company Incorporated Outside India [Sec. 379 to 393A]

*** Foreign Company [Sec. 2(42)]**



Co. or B.C

**Incorporated
outside India**

+

**Place of Business
in India**

**And
(or)**

**Conducts any
business
activity in India**

(Itself / agent)

(Physically / Electronic mode)

CA WALLAH

Note

1) Electronic means carrying out electrically

→ Whether main server in or outside India



Including

↓ S T² D²

S → Services

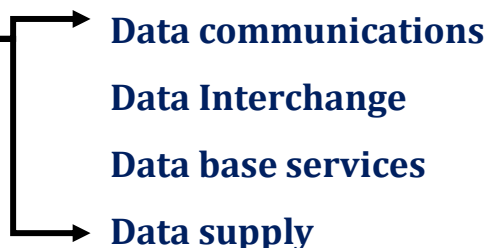


T → Transactions → B2B, B2C

T → Tele (i) Telemarketing (ii) Telecommunications (iii) Telemedicine (iv) Education / Research

D → Deposits or subscription in securities → in India /from Indian

D → Data



***Note:**

- 2) If Branch office in India then deemed to place of business in India.**
- 3) If CIOI only takes any business decision in India then not F.C.**
- 4) Place of business includes share transfer or share registration office**
- 5) Listing of Securities in IFSC is not electronic mode**
- 6) POB matters even if no transaction during the year.**

Application of Act to F.C (Sec. 379)

Normal Foreign Co.



➤ **Sec. 380 to 386**

➤ **Sec. 392 & 393**



Of this chapter

**FC ← at least 50% of PUC
(Eq.+ Pref.)**



Held by



- **Citizen of India (Singly, Jointly)**
- **Co./ B.C of India**



**Entire Companies act as
if normal Indian Co.**

Sec. 392 → Penalty / Punishment for contravention of any section in this chapter

	F.C.	Officer in default
Fine	1 lac to 3 lac	25 k to 5 lac
Additional Fine	50,000 per day Till default continues	N.A.

Documents to be filed with Roc (Sec. 380)

On establishes POB in India → **Within 30 days** → **File followers documents** → **F.C.1 form**

↓
CAR → PDC → with ROC

C → Constitutional documents (e.g. MOA/AOA)

A → Address → **Principal / Regd. Office.**
→ **POB → in India**

R → Representative (Indian) → Name & address

P → particulars of opening / closing of POB on earlier occasions

D → Director/ secretary → List & full details

C → Declaration that director & Represecter (not secretary)

→ **No convicted debarred** → **From in corp. Co.** → **In India or outside India**

***Note:**

- 1) If any change in above → file FC-2 within 30 days**
- 2) If document in other language → file certified translation in English with registrar.**
- 3) In this chapter registrar always means registrar of new Delhi**
- 4) If F.C ceases to have POB in India apply to ROC → then obligation to file doc. ceases.**

Question

16. Fine Publishers, registered in Tokyo, began operating in India during the financial year 2009. The company has duly submitted all necessary documents to the registrar within the specified due date. On 1st March, 2023, Fine Publishers has shifted its principal office in Tokyo. Is Fine Publishers required to undertake any steps due to change in address of principal office. Give your answer in reference to the provisions of the Companies Act, 2013. **(RTP May24)**

CAWALLAH

Question

- In the light of the provisions of the Companies Act, 2013, discuss the status of Gram Pte, which is a company registered in Singapore, that is conducting online business through telemarketing in India without a physical place of business. It is also informed that for the telemarketing business in India, its main server located outside India. (RTP sep 24)
- (ii) In continuance of (i) above, Prism Ltd. (registered in India), a wholly owned subsidiary company of Gram Pte decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. (RTP sep 24)

*Financial Statements [Sec. 381]

F.C

**In every
calendar year**



**Should file
F.S with ROC**



**Within 6
months of
closure of F.Y**



**In form F.C
3**

**→ 3 months
extension allowed**

CA WALLAH

*Note:

- 1) F.S as per Scd III or as near as practical
- 2) Audit by person qualified u/s 141 (CA+ COP)
- 3) F.S to annexed with **PRACT**

P → Profit repatriation statement

R → RPT statement

A → Accounts of Co → documents (B.R/ A.R) etc.

C → consolidated F.S of Parent foreign Co.

T → Transfer of funds (Including dividend)

- 4) If documents of parent Co. not in English



Then file certified translated document



In English language with ROC

- 5) File annual return → Within 60 days of last day of F.Y → In form FC -4

Question

(b) Gato Limited dealing in coloured contact lenses, is a company incorporated in Singapore. The said company is operating in India through its branch office in Kolkata. The company has approached its legal department to state the relevant provisions of the Companies Act, 2013 and rules made thereunder relating to preparation and filing of financial statements in case of such a company. **(5 Marks) (MTP Mar. 24)**

CAWALLAH



*Provisions applicable to CIOI but not F.C

Sec. 387 → Dating of Prospectus and Particulars

Prospectus
issued in India

(N.A)



Where prospectus not
required

(a) Dated & Signed

(b) Particulars (Instrument incorporate **karne K**
liye ACP ko bulao

i. Instruments defining constitution

ii. Incorporation → details & documents

iii. Address where (i) & (ii) can be inspected

iv. Country of Incorporation

v. Principal POB → address

Not req.
after 2
years from
COB

(a) Matters specified u/s 26

Question

(b) What are the documents that must be annexed to a prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, as per the Companies (Registration of Foreign Companies) Rules, 2014?

(5 Marks) (MTP April 24)

CAWALLAH

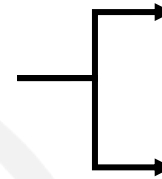
Sec. 388



If expert
statement
included in
prospectus



Don't circulate
unless such expert



Give consent in writing

Consent not withdrawn by him

Sec. 389



No prospectus
issued
unless



- (i) Delivered for registration to ROC
- (ii) Consent attached
- (iii) Some documents annexed



ME -CUP

M → M.D / Manager → appointment contract

E → Expert consent

C → Contracts → last 2 yrs. → outside normal course of business (material)

U → Underwriting agreement → copy

P → Power of attorney (copy) → if signed by authorized agent

Question

Shaltom Ltd., an international corporation headquartered outside Japan, is interested in expanding its investor base and thus is planning to issue a prospectus for the subscription of its securities to potential investors in India.

However, the company has not yet established a physical place of business within India.

As a consultant for Shaltom Ltd., you have been asked to provide guidance on the legal procedures and compliance requirements that the company must follow to issue this prospectus in India.(5 Marks) (MTP Aug 24)

- (b) As per section 389 of the Companies Act, 2013, 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, a copy thereof certified by the chairperson of the company and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus 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 under Rule 11 of the Companies (Incorporated outside India) Rules, 2014.
- Accordingly, the Shaltom Ltd. a foreign company shall proceed with the issue of prospectus in compliance with the above stated provisions of section 379 of the Act.

Sec. 390

Indian
Depository
receipt

Meaning → Instrument → In form of → Depository receipt → Created by domestic depository in India

C. G can make rules

Has to follow SEBI guidelines

Standard chartered PLC was first Co. to file IDR in India in 2010

Sec. 391

→ Sec. 34 to 36 and Chp. XX → Also apply to CIOI

Sec. 392

→ Punishment discussed earlier

Sec. 393

→ If Co. fails to comply with provision of this chapter

→ Such contracts continue to remain valid



But co. cannot

- File suit
- Claim set off
- Counter claim



On such contracts



Till co. has complied with provision of act.

Sec. 393A

→ C.G can exempt any Co. from provision of this chapter

CAWALLAH

CA Inter **Law Sep 2024**

General Clauses Act, 1897



Introduction

- Enacted on 11th March 1897
- Contains
 - Definitions
 - General Rule of Interpretation
- It is **'Law of all the laws'**
- Applicable to Central Acts
- Does not define any territorial extent clause
 - where central law applies, it also applies
- Also known as → Interpretation Law of India
- It does not apply to State Acts (they have their own GCA, but they are in line with GCA)

OBJECTS

The General Clauses Act, 1897 has following objects:

- ❖ To **Shorten the language** of Central Acts and regulations
- ❖ To provide **uniformity of expression** in Central Acts by definitions
- ❖ State **R**ules of Interpretation

Definitions

Open for interpretation

Inclusive Definition



Word 'includes' is used



**Eg. Body Corporate U/s 2(11)
definition**

**Body Corporate or corporation
Includes a company incorporated
outside India**

Closed for interpretation

Exhaustive Definition



Word 'means' or 'means &
includes' is used



Eg. Company U/s 2(20) definition

**Company means a company
incorporated under this act or
under previous act**

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition.(4 Marks) (MTP Oct. 23) (MTP Mar. 24)

Use of Words shall & may

Shall → Imperative or Mandatory

May → Not Mandatory but Directory

Important note:

Sometimes, the word 'may' has to be interpreted as 'shall'.

Eg. Section 3 of the Companies Act, 2013 states that 'a company 'may' be formed for any lawful purpose by....'

↓
may will be interpreted as shall

Meaning of certain words

'Statute'	• will of the legislature in writing
'Instrument'	• means a formal legal document which creates or confirms a right or liability or records a fact • Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded. • It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form
'Deed'	• <u>instrument</u> in writing (or other legible representation or words on parchment or paper) purporting to effect some legal disposition. • Simply stated deeds are instruments though all instruments may not be deeds.

Formal legal document which creates or confirms a right or record a fact is a—

- (a) Document
- (b) Deed
- (c) Statute
- (d) **Instrument**

(MTP M 21)

1. Every Act has a _____ which expresses the scope, object and purpose of the Act. It is the main source for understanding the intention of lawmaker behind the Act. (ICAI Study material)

a. Definition

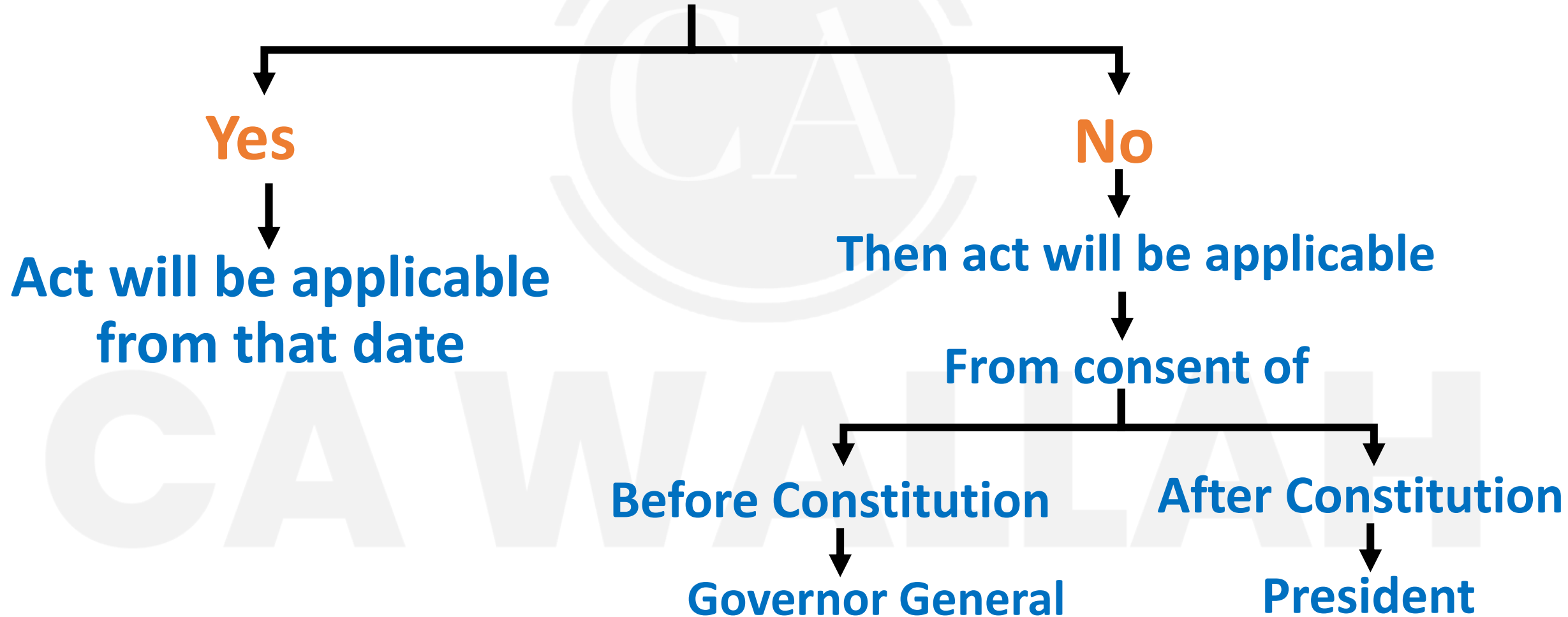
b. Preamble

c. Affidavit

d. Document

Sec. 5 → Comes into operation

Whether date of operation /commencement is specified



Note :- Act applies from midnight

Note of Sec. 5

1. Rules will be effective rules as published by gazette notification
2. Normally all laws are prospective unless then are expressly made retrospective

Where an act of parliament does not expressly specify any particular day as to the day of coming into operation of such Act, then it shall come into operation on the day on which:(1 Mark) (MTP Sep. 22)

- (a) It receives the assent of the President
- (b) It receives the assent of the Governor General
- (c) It is notified in the official gazette**
- (d) It receives assent of both the houses of Parliament

Sec. 6 → Repeal

- It is not an amendment
- It is complete obliteration of provision as if it never existed

Sec. 6 Consequences of Repeal

Repeal any enactment, then such repeal **shall not** → (RRIP)

- a) **Revive** anything not in force at the time when repeal takes effect
- b) Affect any **right**, obligation, liability incurred under enactment so Repealed
- c) Affect any **investigation**, legal proceedings
- d) Affect any **penalty**, forfeiture or punishment for any offence committed under enactment so repealed

- **"Whenever an Act is repealed, it must be considered as if it had never existed."**

Comment and explain the effect of repeal under the General Clause Act, 1897.4

Marks (May 23)

‘Repeal’ of provision is different from ‘deletion’ of provision. Explain as per the General Clauses Act, 1897. (module)

- ‘Repeal’ of provision is in distinction from ‘deletion’ of provision.
- ‘Repeal’ ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the ‘repealed’ provision
- while ‘deletion’ ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Sec. 6A - All Amendments in repealed Act to Continue

- Where any Central Act or Regulation made after this Act
- Repeal any enactment
- Then such repeal shall not affect the continuance of any amendment / omission / insertion made by enactment so repealed

CAWALLAH

Sec. 6A

Fact of case

Sec. 138 to 142 of NI Act was amended



By Banking , PFI, NI laws amendment Act, 1988



Later on banking, PFI, NI act was repealed

Question

- Will amendment made under NI act will also be repealed

Law

Repeal shall not affect continuance of any amendment made by Act so repealed

Conclusion

Amendment act will remain valid.

Sec. 7 – Revival of Repealed Act

- In any Central Act or Regulation made after commencement of this act
- Where any enactment repealed, either wholly or partially has been revived
- Then any such revival shall expressly state the purpose

Company Act, 1956

- Sec 1 to 658

Winding up

- Sec 425 to 560 (Supervision of Court)

Companies Act, 2013

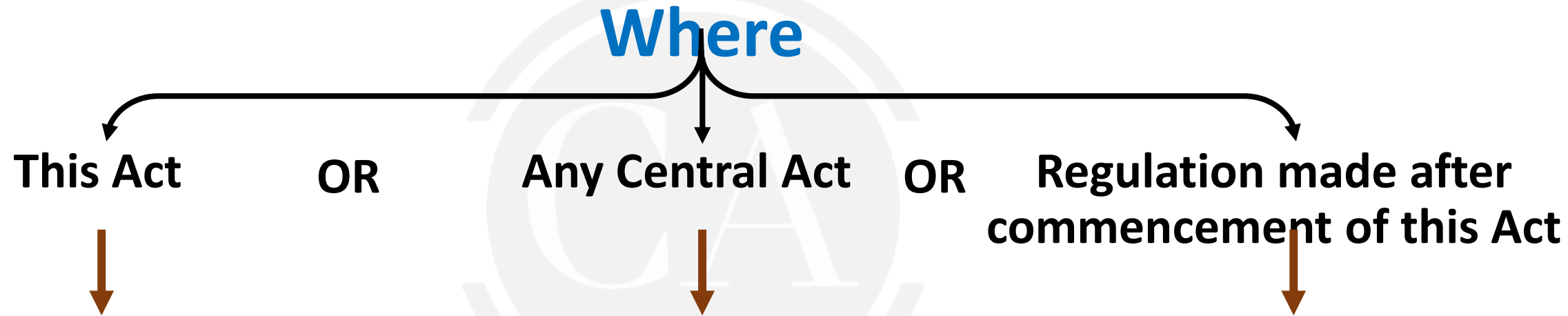
- repealed Company Act, 1956

Winding up U/Co. Act 13

- Sec 271 to 366 (Supervision of NCLT)

However at the formation of Companies Act, 2013, since NCLT was not there, thus Companies Act, 2013 provides for continuance of Sec 271 to 366 of Companies Act, 1956 to facilitate winding up

Sec. 8 Consequences of References to Repealed Act



Repealed & reenacted (Purana hataya naya laya), any provision of previous enactment then any reference in any other Act, above provision so repealed shall, unless a different intention appears be considered as reference to provisions so reenacted.

As per POBA, 1965 – as per sec 2(1) – financial year in relation to company shall have the same meaning as defined under companies act 1956 → since now Companies Act, 1956 repealed & Companies Act, 2013 reenacted after repealed → now any reference about companies Act 1956 means reference to Companies Act 2013

Sec. 9 – Commencement & Termination Of Time

Q. Count 10 Days from 1st January 2019

→ 1st Jan + 10 Days → 11th Jan

thus 1st Jan to be excluded

Q. IT return can be submitted upto 31st July. Whether 31st July to be included ??

→ Now last date to include is 31st July as well

- Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2022. Referring to provisions of the General Clauses Act, 1897 and the Companies Act, 2013, advice: (module) (MTP MAY 2020)
- The dates during which Komal Ltd. is required to pay the dividend?
- The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account?
- Hint -
- **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2022. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2022 to 27/10/2022. In this series of 30 days, 27/09/2022 will be excluded and last 30th day, i.e. 27/10/2022 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2022 and 27/10/2022 (both days inclusive).
- **Transfer of unpaid or unclaimed dividend:** As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the “Unpaid Dividend Account” (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2022 to 3rd November, 2022 (both days inclusive).

Sheesham Limited is a company engaged in the business of manufacturing premium quality furniture in the state of Tamil Nadu. In light of the provisions outlined in the General Clauses Act, 1897, and the Companies Act, 2013, please advise on the specific timelines regarding the payment of dividends subsequent to its declaration at the Annual General Meeting (AGM) held on 8th August 2023.

(4 Marks) (MTP April 24)

Sec. 10

Fact of case

Last day to sue was 31st Jan → It was Sunday & court was closed → He sued on immediately next day

Question

- Will suit be maintainable

Law

If certain Act/ proceeding was to be done within prescribed time and court/ office is closed on such day, then it is deemed to be done in prescribed time if done on next immediate day when court / office is open.

Conclusion

Yes suit will be maintainable

Sec. 11-Measurement of Distance

Any distance will be measured in a straight line on horizontal plane

- **Kiran and Naman had a long dispute regarding the ownership of a land for which a legal suit was pending in the court. The court fixed the date of hearing on 29.04.2023, which was announced to be a holiday subsequently by the Government. What will be the computation of time of the hearing in this case under the General Clauses Act, 1897? (MTP Sep. 23)**
- **Ans – When court opens**
- **Shree was supposed to submit an appeal to the High Court of Delhi on 8th September, 2023, which was the last day on which such appeal could be submitted. However, on that day the High Court was closed due to total Lockdown in Delhi for 30 days due to visit of foreign delegates from 40 countries for G40 Summit. Examine the remedy available to Shree under the provisions of the General Clauses Act, 1897.(3 Marks) (MTP Oct. 23)**
- **Hint – When court reopens**

Question

A Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2024. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice, the dates during which A Ltd. is required to pay the dividend? (4 Marks) (MTP Aug 24)

Sec. 12 – Duty to be taken pro-rate

Fact of case

Sugar → Custom duty → Rs. 100 for 1000 kg

Calculate the duty for 100kg of Sugar

Law

Any duty / customs / exercise



Leviable on a quantity weigh / measure / value



Like duty is leviable on same rate on any greater / less quantity

Conclusion

$100/1000 * 100 = \text{Rs.}10$

Question

Mr. Chaggan Lal is an importer dealing in luxury perfumes. Recently, a new enactment was passed which imposes a duty of 15% on the value of luxury goods, including perfumes.

Now Mr. Chaggan Lal has approached you to explain to him the provisions in relation to 'Duty to be taken pro rata in enactments' of the General Clauses Act, 1897. Also, help him to calculate the amount of duty on a Shipment of 100 bottles of perfumes, each valued at \$50. **(RTP sep 24)**

Sec. 13

- Masculine gender always include 'She'
- 'Singular' always include 'Plural'

Exception 1) If male / female word is expressly mentioned in law

E.g (1) Male descendants will not include female descendants

(2) Bullock will not include cow.

Exception 2) It will not cover all cases

E.g (1) Previous year in companies act will not mean previous years

In all Central Acts and Regulations, unless there is anything repugnant in the subject or context, words importing the masculine gender shall be taken: (1 Mark) (MTP Sep. 23)

- A. To exclude females
- B. To exclude girl child
- C. To include females**
- D. To exclude boy child

- **Mr. Avinash currently holds the position of a Whole-time director (Key Managerial Personnel) at Moon Pharma Limited, a company that maintains substantial ownership stake in X Limited (55% shares), Y Limited (60% shares), and Z Limited (65% shares). Mr. Avinash has expressed his desire to expand his role as a Whole-time director to encompass both X Limited and Y Limited. Determine the validity of his appointment as a Whole-time director in these additional companies, as per the provisions of the General Clauses Act, 1897.4 M (Nov 23)**
- **Hint – subsidiary includes subsidiaries**

- **Mrs. Neelu Chandra was director in Laddoo Sweets Private Limited. Once while dealing with supplier of raw materials for company, she agreed to get some secret commission from supplier for making the deal. Afterwards, on finding the facts, the company has filed the suit against Mrs. Neelu Chandra. She contended that section 166 of the Companies Act, 2013, provides “A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and 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.” She contended that section 166 is applicable to male director only, she being female will not be liable.**
- **In the light of the provisions of the General Clauses Act, 1897, decide whether she is bound by the provisions of section 166 of the Companies Act, 2013?(RTP Nov 23)**
- **Hint – Masculine includes feminine . She is bound for punishment**

Define the following with reference to the provisions of the General Clauses Act, 1897:

(i) Measurement of Distances

(ii) Duty to be taken pro rata in enactments(4 Marks) (MTP July 24)

Sec. 14 – Powers Conferred to be exercised from time to time

Fact

Sec. 12 confer power to R.D for permission to shift Regd. Office from one state to another can be do it only once or he can continue to exercise the power

Law

If any power is conferred



Then unless different intention appears



Power may be exercised from time to time as occasion requires

Conclusion

R.D can continue to give permission till he is expressly restricted

Where by any legislation or regulation, a power to appoint any person to fill any office or execute any function is conferred, any such appointment, may be made either by name or by virtue of office.

Sec. 16 – power to appoint to include power to Suspend / Dismiss

Power to appoint



Includes power to suspend / dismiss



Unless otherwise specified

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- **Examine the validity of the following statements with reference to the General Clauses Act, 1897:**
- **Board of Directors of Sabarwal Construction Private Limited authorised by passing resolution in board meeting Mr. Munim to appoint five employees for accounts department of company. Mr. Munim appointed five employees including Mr. Rupal who was relative of one of the director of company. After one month, Mr. Munim observed that Mr. Rupal was not performing his duties honestly. Mr. Munim issued the order of dismissal of Mr. Rupal with proper reasons. Mr. Rupal filed a petition in the court that his dismissal order is not valid as Board of Directors had authorized Mr. Munim only for appointment of employees not for dismissal. Whether is Mr. Rupal correct with his words? (April 22)(4 Marks)**
- **Hint – one who can appoint can also dismiss**

Sec. 17 – Substitution of Functionaries

It shall be sufficient to mention the office title of the officer at present executing the functions of an office for the purpose of indicating the application of law

Sec. 18 – Successor

Any act done by functionary , can also be done by its successor

Sec. 19 – Official Chief & Subordinate

In any

Any Central Act

Regulation made after commencement
of act

Any law relating to Chief as senior of any office shall also apply to his deputies / subordinates who is lawfully performing duties of that office in place of their superior

Example : in case under the Preventive Detention Act, where there is a change in the Advisory Board after service of the detention order, the new Advisory Board can consider the case pending before the earlier board.

Sec. 20 – words used in definition to have same meaning for whole Act

Any **expression** used in



Notification, orders, schemes, rule forms



Shall have same meaning



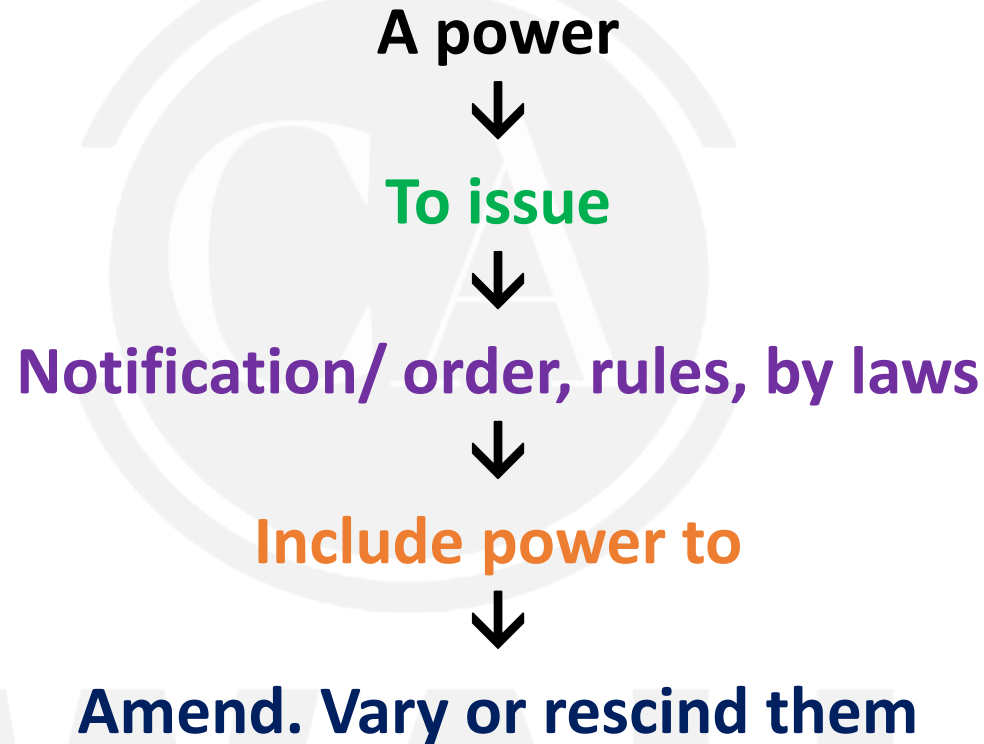
As in act or regulation

E.g. Companies Act, 2013 – defined the word ‘Company’ later on certain rules were formed on concerned meeting. These rules also include the word ‘company’ now ‘company’ as used in rules shall have same meaning as assigned in companies Act

Question

- Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897. **(4 Marks) (MTP Aug 24)**

Sec. 21 – power to issue include power to amend as well



E.g.

1/4/2014	→	Companies Act, 2013 –existence
24/June/2015	→	Exemption notification to govt co. by MCA
Dec. 2017	→	MCA amends its exemption notification & provided that govt. co. shall be entitled to exemption only if there is non-compliance of Sec. 137 or 92

Sec. 22 – Validity of rules before commencement of Act

Fact of case

Co. Act
↓
Applicable
↓
29th Aug. 2013

Prescribed
provisions
for NCLT

But NCLT was notified in
Dec. 2016

Whether provisions of NCLT applicable from 29th Aug or Dec. 2016?

Law

Rules / Bye law / orders

Issued before will not enforce to

Till commencement of Act/ regulation

Conclusion

Provision of NCLT applicable from Dec. 2016

Sec. 23 –Making of rule or bye-laws after previous publications

Step 1 Make Draft by manner decided by govt. / authority

Step 2 Publish Draft mentioning time for suggestions / objections / comments

↓
Given to

↓
Affected person

↓
Permission authorities

Step 3 Interested person will make objections / suggestions

Step 4 Incorporate / consider suggestions / comments if req.

Step 5 Publish final copy in official gazette / conclusive proof

Sec. 24 – Continuation of orders issued under enactments repealed and reenacted

- Where any Central Act or Regulation, is, after the commencement of this Act,
- repealed and re-enacted with or without modification,
- then, unless it is otherwise expressly provided
- any notification, order, scheme, rule, form or bye-law, made or issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted,
- continue in force,
- and be deemed to have been made or issued under the provisions so re-enacted,
- unless and until it is superseded by any appointment notification, order, scheme, rule, form or bye-law, made or issued under the provisions so re-enacted
- Example - The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Rules made under the repealed Act must be deemed to continue in force by virtue of this section until superseded.

Sec. 25 – Recovery of Fines

Whether fine prescribed in specified law

Yes

Same fine will apply

No

Fines prescribed by

a) Sec. 63 to Sec. 70 of IPC

b) Provisions of code of criminal procedures will apply

Sec. 26 –Provision as to offence punishable under two or more enactments

- 1. Will not be punished twice / only punish under either of law**
- 2. Trial can be held under different laws, but punishment once**
- 3. If 2 alternative charges in same trial, acquittal from one does not ban conviction from other.**

"No person shall be prosecuted and punished for the same offence • more than once." Explain in the light of provisions of Section 26 of the General Clauses Act, 1897.3 Marks (May 23)

An act or omission constitutes an offence under two enactments. Referring to the provisions of the General Clauses Act, 1897, state which among the following is correct in such a situation: (module)

- a) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted last and not under the other enactment.
- b) The offender shall be liable to be prosecuted and punished under that enactment only, which was enacted first and not under the other enactment.
- c) The offender shall be liable to be prosecuted and punished under both the enactments.
- d) **The offender shall be liable to be prosecuted and punished under that either or any of those enactments, but shall not be punished twice for the same offence.**

As per the provisions of the General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under: (Mar.22)(1 Mark)

- a) **Under either or any of those enactments**
- b) Twice for the same offence
- c) Either (a) or (b) as per the discretion of the court
- d) Under the cumulative effect of both the enactments

A company enter into process of reducing capital. Mr. Shah is concerned officer designated for preparing the list of creditor to records their reservation and reach to a settlement under section 66 of the Companies Act, 2013. Mr. Shah while preparing such list deliberately conceal the name of Ms. Ramya who is one of the company's creditor and object to the reduction, whereas make misstatement in context of some other creditors' claims. The offence committed by Mr. Shah is punishable under; (i) Under section 447 of the Companies Act, 2013 and (ii) Also under sections 417 read with 415 of Indian Penal Code 1860 (as dishonest concealment is involved). You are required to select the most appropriate option out of given below in context of offence committed by Mr. Shah:

- a) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code 1860, but shall be punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.
- b) Mr. Shah shall be liable to be prosecuted under both of the Companies Act, 2013 and the Indian Penal Code, 1860, but shall be punished under the Companies Act, 2013 or the Indian Penal Code, 1860 where maximum punishment is lower.
- c) **Mr. Shah shall be liable to be prosecuted and punished under either of the Companies Act, 2013 or the Indian Penal Code, 1860.**
- d) Mr. Shah shall be liable to be prosecuted and punished under both of the Companies Act, 2013 and the Indian Penal Code, 1860. **(RTP Nov 23)**

Sec. 27 – Service by Post

1) Deemed to be served by post if :-

Properly
Addressed

+

Pre-paid

+

Posted by
Registered
post

2) Should be served by post – Acknowledgement due



Unless acknowledgement is not obtained it is not served

What is the meaning of service by post as per provisions of the General Clauses Act, 1897? (3 Marks) (MTP Sep. 22)

Hint: “Meaning of Service by post”: As per section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

- (i) properly addressing**
- (ii) pre-paying, and**
- (iii) posting by registered post.**

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

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Question

(c) Mr. Rachit purchased a new house and after some time he shifted to his new house. He was regularly filing his Income Tax Return but he did not update his address with the Income Tax Department. The Income Tax department sent a show cause notice to Mr. Rachit whereby the time limit for reply was 15 days from service of notice. The notice was properly sent by registered post to his address which was in the records of the Income Tax Department. The notice reached at old house and present owner of that house refused to accept that notice. After a certain period, the Income Tax Department took a penal action against Mr. Rachit. He requested the department, that he should not be charged as he did not receive the said notice. Advise in terms of the provisions of the General Clauses Act, 1897, whether sending of the show cause notice by the Income Tax Department would be considered proper service of notice?

Give your answer with reference to the provisions of the General Clauses Act, 1897.

(4 Marks) (MTP Mar. 24)

Sec. 27

Cases	Due service when done
1) Addressee refuses to accept order	Assumed that done
2) Post return with not available in house / house locked / shop closed	Due service presumed
3) Sec. 138 notice unclaimed	Due service presumed
4) Regd. Post acknowledgment due is instead sent by only regd. Post	Due service cannot be presumed

AFFIDAVIT – SECTION 3(3)

- ‘Affidavit’ shall include **affirmation and declaration**
- In the case of persons by law
- Allowed to affirm or declare instead of swearing.
- In simple language, affidavit means a
- **Sworn statement in writing**
- Made under **oath or on affirmation**
- Before an **authorized Magistrate or officer.**

CENTRAL ACT- SECTION 3(7)

- Central Act mean an **Act of Parliament**.

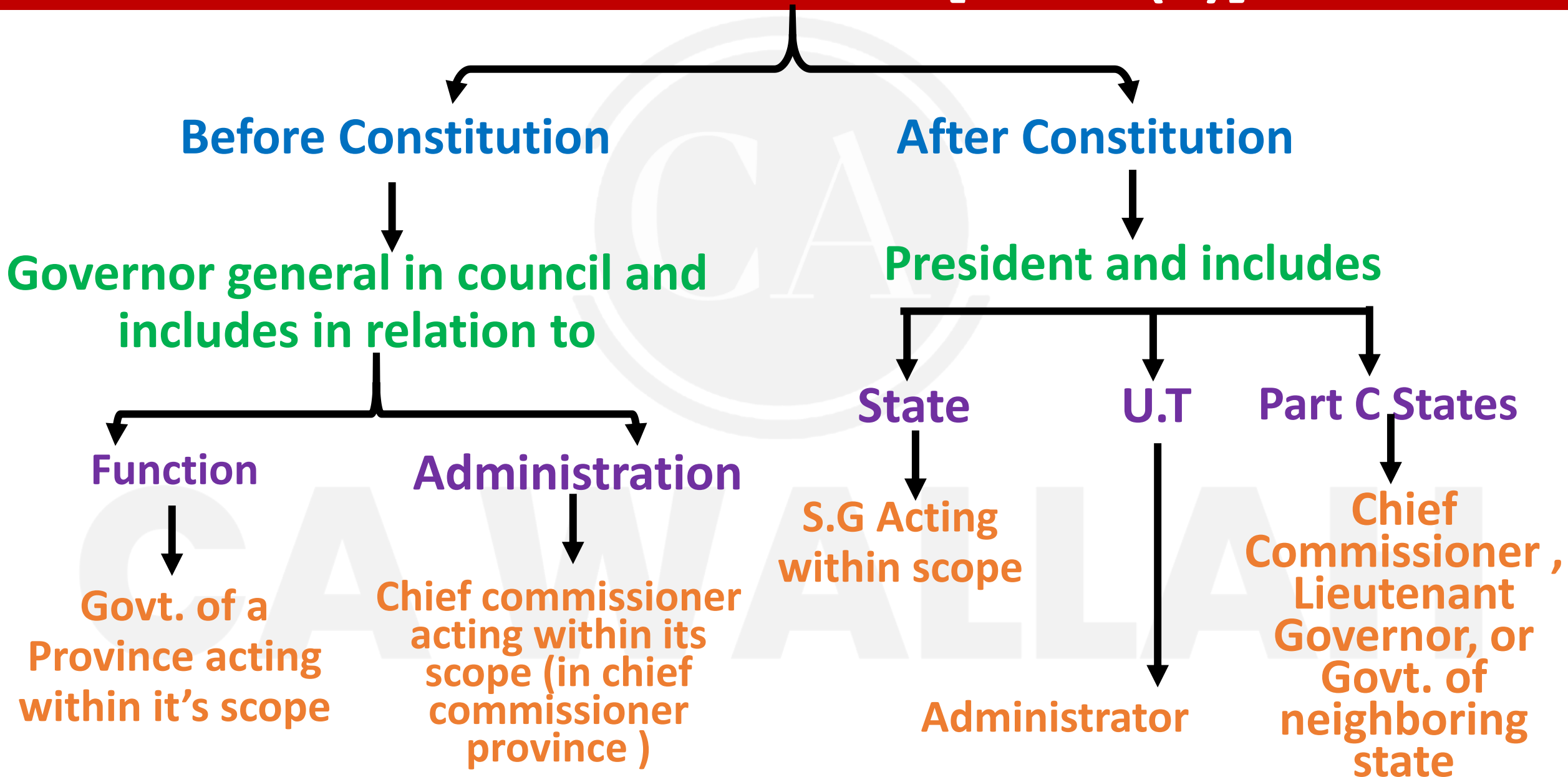
It shall include:

- An Act of the **Dominion Legislature** or
- Of the **Indian Legislature** Passed before the commencement of the constitution.

AND

- An Act made before such commencement
- By the **Governor-General in Council** or
- The **Governor-General**,
- Acting in a legislative capacity

Central Government [Sec. 3(8)]



- **‘Commencement’ [Section 3(13)]:**
‘Commencement’ used with reference to an Act or Regulations, shall mean the day on which the Act or Regulations **comes into force.**
- **‘Document’ [Section 3(18)]:**
‘Document’ shall include any
 - **matter** (written, Expressed or described upon)
 - **any substance**
 - **By means** of letters, figures or marks or by more than one of those means.
 - **Which is intended to be used or which may be used, for the purpose or recording that matter.**
include printing, lithography and photography.
- **A book, file, painting, inscription and even computer files are all documents.**
- **However, it does not include Indian currency notes.**

Financial year [SECTION 3(21)]

- Financial year' shall mean the year commencing on the first day of April.
- **Note:** Section 3(66) separately defines a year which means a calendar year starting from January to December.
- **Difference between Financial Year and Calendar Year:** Financial year starts from first day of April but Calendar Year starts from first day of January

- **What is “Financial Year” under the General Clauses Act, 1897? (module)**
- **Mr. Apar and Mr. New, both aspiring Chartered Accountants have met in a conference for CA students. Both are having an argument about the meaning of Financial Year. They have approached you as a senior in the profession to guide them about the meaning of Financial Year as per the provisions of the General Clauses Act, 1872. Also, brief them about the difference between a calendar year and financial year.(RTP MAY 2021) (4 Marks) (MTP Oct. 23) (4 Marks) (MTP Mar. 24)**

GOOD FAITH [SECTION 3(22)]

- A thing shall be deemed to be done in “good faith” where
 - It is in FACT done honestly, whether it is done negligently or not;
 - The question of good faith under the General Clauses Act is ONE OF FACT. It is to determined with reference to be circumstances of each case.
-
- "The act done negligently shall be deemed to be done in good faith."Comment with the help of the provisions of the General Clauses Act, 1897.(3 Marks) (MTP Sep. 23)

Government [SECTION 3(23)]

- **`Government' or 'the Government' shall include both the Central Government and any State Government.**

Q.Income Tax Act, 1961 provides that the gratuity paid by the government to its employees is fully exempt from tax. You are required to explain the scope of the term 'government' and clarify whether the exemption from gratuity income will be available to the State Government Employees? Give your answer in accordance with the provisions of the General Clauses Act, 1897.

- **Hint – Govt includes both central and state((MTP Sep. 23)**

**Immovable Property
[Section 3
(26)]**

Shall include

Land

**Benefits to arise out of land
(e.g Trees , right to access)**

**Things attached to the earth
e.g – building /trees)**

**Things permanently fastened
to anything attached to the
earth (e.g bathroom fittings)**

IMMOVABLE PROPERTY – SECTION 3 (26)

- **Timber is not immovable property**
- Right of way to access from one place to another may come within the definition of Immovable property whereas the right to drain of water is not immovable property.

Which of the following is not an Immovable Property?

- (a) Land
- (b) Building
- (c) **Timber**
- (d) Machinery permanently attached to the land(1 Mark) **(MTP M 21)**

Question

19. Yogveer Singh has a mango orchard at Manchanga Village, Bilaspur. The orchard has more than one hundred Mango trees. Yogveer Singh has sold orchard along with all the mango trees. Explain, in the lights of provisions of the General Clauses Act 1897, whether the sale of trees will be considered as sale of Immovable Property?

(RTP May24)

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What among the following could be considered in the term 'Immovable Property' as defined under section 3(26) of the General Clauses Act, 1897? (2 Marks) (MTP Oct. 22)

- (i) The soil for making bricks
- (ii) Right to catch fish

- (iii) Right to drain water
- (iv) Doors and Windows of the house
- (a) Only (i) and (iv)
- (b) Only (i), (ii) and (iv)**
- (c) Only (i) and (ii)
- (d) Only (ii), (iii) and (iv)

M owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to N. M wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of the General Clauses Act, 1897. (RTP Mar 23)

Hint: . "Immovable Property" [Section 3(26) of the General Clauses Act, 1897]: 'Immovable Property' shall include:

- (i) Land,
- (ii) Benefits to arise out of land, and
- (iii) Things attached to the earth, or
- (iv) Permanently fastened to anything attached to the earth.

It is an inclusive definition. It contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the instant case, M sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Mr. Z passed away at the age of 75 leaving behind some properties including both movable and immovable to be distributed between his two sons A & B, as per his registered will. According to the provisions of his duly registered will, Mr. Z specified that all immovable properties should go to A, while all the movable properties should go to B. Both the brothers divided the properties as per the will except for mentioned properties, because they could not establish which property should go to whom. Kindly help them by identifying the property which should go to B out of the followings, as per the provisions of the General Clauses Act, 1897 : (Nov 23)

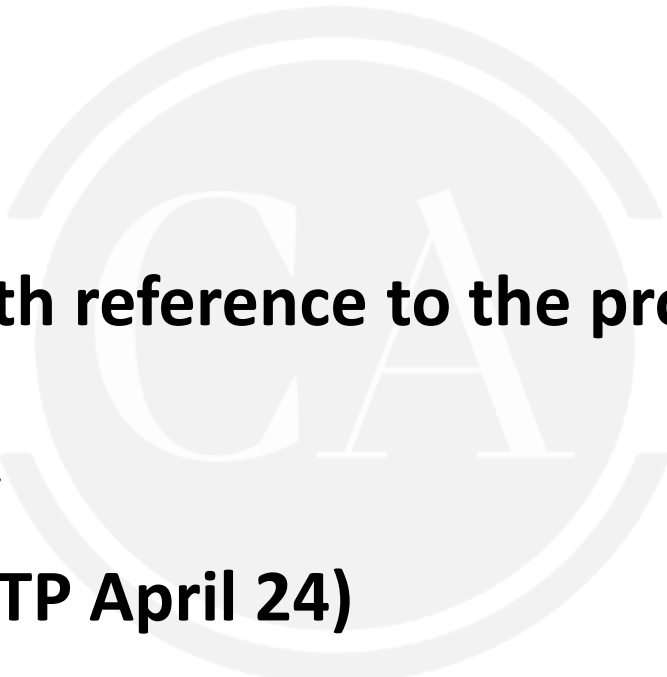
- a. Standing crop in the fields
- b. Tubewell in the agricultural land
- c. **Cut crops, ready to sell**
- d. Sandalwood tree

“Person” [Section 3(42)]:

“Person” shall include:

- (i) any company, or**
- (ii) association, or**
- (iii) body of individuals, whether incorporated or not**

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A large, light gray watermark logo is centered in the background. It consists of a circle containing the letters 'CA' in a stylized font, with 'WALLAH' written in a smaller font below it.

Explain the following with reference to the provisions of the General Clauses Act, 1897:

- (i) Movable Property**
- (ii) Oath(4 Marks) (MTP April 24)**

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Question

Define the term 'Official Gazette' as per the provisions of the General Clauses Act, 1897. (2 Marks) (MTP July 24)

C A W A L L A H

CA Inter **Law Sep 2023**

Interpretation Of statues



Need for Interpretation (AUDI)

- **To remove ambiguities:** Although in modern times the statutes are drafted by legal experts, yet they are expressed in a language and no language is perfect. The English language is not an instrument of mathematical precision. The courts have to resort to interpretation to remove ambiguities in the language.
- **To understand intent of the legislature:** A statute is made by legislator and many times the intent of the legislature is derived not only from the language but also the surrounding circumstances that prevailed at the time when that particular law was enacted.
- **Different situations and facts:** In the words of Denning L.J., 'it is not within human powers to foresee the manifold set of facts which may arise in the future; and that, even if it were, it is not possible to provide for them in the statute in terms free from all ambiguity'.
- **Multiple interpretations:** If any provision of the statute is open to two interpretations, the court has to choose that interpretation which represents the true intention of the legislature.

Some Legal Terms

1. Statute:

- ✓ Law / Act
- ✓ Includes ordinance, orders, bye-laws, rules, regulations, notifications.
- ✓ 'a statute is a will of legislature conveyed in the form of text'.

2. Instrument:

- ✓ Formal legal Document which creates a Right or Record
- ✓ Includes Agreement, Deed, Charter, Record.

3. Deed: Instrument in writing → Purporting → To effect some legal disposition

NOTE: all deeds are instrument but all instruments are not deeds

How will you interpret the term "Instrument" used in a statutes? (NOV 2019)

Difference between Interpretation and Construction:

- where the Court adheres to the **plain meaning** of the language used by the legislature, it would be '**interpretation**' of the words, but where the meaning is not plain, the court has to decide whether the wording was meant to cover the situation **to understand intent of legislature** . Here, the court would be resorting to '**construction**'.
- Conclusions drawn by **Interpretation are within the letter of law** but by **construction are within the spirit** though not necessarily within the letter of the law.

Rules of Interpretation

Primary Rule

Rule of

1. Literal Construction
2. Reasonable Construction
3. Harmonious Construction
4. Beneficial Construction
5. Exceptional Construction
6. Ejusdem Generis
7. Mischief Rule

Secondary Rule

1. Noscitur a sociis
2. Contemporanea Expositia

Shortcut to Remember

ROMAN → **HD**

Rule → **Which rule**

Other Imp Pts.

Meaning

Applicable

Not applicable

How to apply

Draftsman

R

O

M

A

N

H

D

Rule of Literal / Grammatical Interpretation

(i) R → Rule

- Primary and Cardinal rule
- Entry gate of every interpretation

(ii) Meaning →

Interpret literally & grammatically



Giving words their



Ordinary and natural meaning

(iii) Applicable

- Language → Plain, simple, unambiguous, only 1 meaning

(iv) Not -
Applicable

- If words or law creates Ambiguity, unreasonable or absurd results, defeats intention of law is defeated. in consistency, in completeness,

(v) H → How

1. Follow rules of grammar
2. No word to be added or deleted

Rule of Literal / Grammatical Interpretation

(vi) D → Draftsman ➤ Perfect (Assumption)

(vii) Other Imp Pts → i. Absoluta sententia expositore non indigent



If plain words capable of only one interpretation, no explanation required



ii. If two interpretation – Narrower & Broader → use narrower if broader fails to serve purpose

is the cardinal rule of construction that words, sentences and phrases of a statute should be read in their ordinary, natural and grammatical meaning so that they may have effect in their widest amplitude. (1 Mark) (MTP Oct. 22) (MTP Oct. 23)

- (a) Rule of Literal Construction
- (b) Rule of Harmonious Construction
- (c) Rule of Beneficial Construction
- (d) Rule of Exceptional Construction

Nehul, a director of a Company, not being personally concerned or interested, financially or otherwise, in a matter of a proposed motion placed before the Board Meeting, did not disclose his interest although he has knowledge that his sister is interested in that proposal. He restrains from making any disclosure of his interest on the presumption that he is not

required by law to disclose any interest as he is not personally interested or concerned in the proposal. He made his presumption relying on the 'Rule of Literal Construction'. Explaining the scope of interpretation under this rule in the given situation, decide whether the decision of Nehul is correct? (3 Marks) (MTP Sep. 23)
Hint - we have to interpret in its broader sense of referring to any concern or interest containing any information and facts What is required is a full and frank disclosure without reservation or suppression, as, for instance where a son or daughter or father or mother or brother or sister is concerned in any contract or matter, the shareholders ought fairly to be informed of it and the material facts disclosed to them.

Rule of Reasonable / Logical Interpretation/Golden Rule

(i) Rule	➤ Primary
(ii) Meaning →	If legislature fails to give intended results ↓ Give sensible meaning to it
(iii) Applicable	Words / Provisions ↓ ➤ If words or law creates Ambiguity, unreasonable or absurd results, defeats intention of law is defeated. in consistency, in completeness,
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	If absurdity , adopt construction ↓ which was the intent of the legislator
(vi) Draftsman	Faulty
(vii) Other Imp Pts.	Maxim → Utres magis valeat Quam pareat ↓ It is better to have effect then to be made void

Rule of Harmonious Construction

(i) Rule	➤ Primary
(ii) Meaning →	When there is conflict between two or more provisions ↓ Harmonize it to give effect to all provisions
(iii) Applicable	Where there is conflict between . ↓ i. Two statutes of same law ii. Two statutes of different laws iii. Conflict between previous and new law
(iv) Not - Applicable	➤ Where statute give a clear indication as to which provision is subservient and which overrides. This is done by the use of the terms “ subject to ”, “ notwithstanding ” and “ without prejudice ”.
(v) How to apply	i. Harmonize ii. If not possible give effect to both iii. Still not possible, amended, later act should prevail iv. Specific rule to over-ride general rule
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	Statute should give clear reference of over riding provisions by using words. Subject to, notwithstanding, without prejudice.

Subject to

- a clause that uses the words **“subject to”** is **subservient to another.**

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Notwithstanding

- A clause that begins with the words “notwithstanding anything contained” is called a **non-obstante** clause. Unlike the “subject to” clause, the notwithstanding clause has the effect of making the provision **prevail over others**.
- A notwithstanding clause can operate at four levels.
 1. Notwithstanding anything contained in **another section or sub– section of that statute**.
 2. Notwithstanding anything **contained in a statute**.
 3. Notwithstanding anything contained in specific section(s) or sub-section(s) or all the provisions contained in **another statute**.
 4. Notwithstanding anything contained in **any other law** for the time being in force.

A clause that begins with the words "notwithstanding anything contained" is a clause that has the effect of making the provision prevail over others. It can operate at four levels. Explain any two of them.4 Marks (Nov 23)

Without prejudice

- When certain **particular provisions follow general provisions** and when it is stated that the particular provisions are without prejudice to those general provisions the particular provisions would not restrict or circumscribe the operation and generality of the preceding general provisions. In other words, the **particular provisions shall operate in addition to and not in derogation of the general provisions.**
- **Example 5:** Section 4(3) of the Companies Act, 2013, “Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains ”
- This implies that while registering (and deciding) the name of the company [as per section 4(3)], provisions of section 4(2) shall also be operative.
- **Explain the meaning of ‘Without Prejudice’ as a Harmonious aid to interpretation of statutes. Support your answer with the help of an example. (RTP Nov 23)**

- When there is a conflict between two or more statutes or two or more parts of a statute then which rule is applicable: (1 Mark) (MTP Oct. 23)
 - Welfare construction
 - Strict construction
 - **Harmonious construction**
 - Mischief Rule

Smith v. Hughes (1960)

Law : "Prostitutes shall be liable to prosecution if found guilty of attracting the attention of passers-by in street".



(1) **Literally :** No prosecution (as attention is attracted from balconies / windows)

(2) **Mischief :** ---- Purpose was to clean up the streets, to enable people to walk along the streets without being molested or solicited by common prostitutes.
---- Considering the purpose, lady is liable to prosecution.

Royal Challenge of Nursing (1981)

Law : Legal abortion can be performed only by Doctors (Abortion Act 1967)



(1) **Literally :** Illegal (as not performed by Doctor)

(2) **Mischief :** ---- Purpose was to curb / check 'back-street abortions performed by unqualified people.
---- Drug based abortion done in hospital under supervision of doctor $\therefore$ It is legal

Mischief Rule / Heydon's Rule / Beneficial

(i) Rule	➤ Primary
(ii) Meaning →	Where statute does not give intended result ↓ Words in statute may be extended to give intended meaning
(iii) Applicable	i. Where actual law is different but intention of lawmaker is different ii. Where law was made to grant remedy to a problem
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	• Court shall consider: a) What was the earlier law ? b) What was the mischief ? c) What is the remedy ? d) Reason for the remedy. Then suppress mischief & advance remedy
(vi) Draftsman	Faulty (Assumption)
(vii) Other Imp Pts.	

- The Rule in Heydon's case is also known as— **(ICAI STUDY MATERIAL)**
 - Purposive construction
 - **Mischief Rule**
 - Golden Rule
 - Exceptional Construction

Rule of Exceptional Construction

(i) Rule	➤ Primary
(ii) Meaning →	Where statute does not give intended result ↓ Words in statute may be eliminated/replaced to give sensible meaning
(iii) Applicable	i. Directors (May) & Mandatory Provisions (Shall) or Conjunctive (and) or disjunctive (or) do not provide intention of lawmaker
(iv) Not - Applicable	➤ Language is plain simple, unambiguous and has only 1 meaning and give intended results.
(v) How to apply	i. 'May' should be treated as directory and 'shall' should be treated as compulsory ii. 'And' means addition whereas 'or' means optional
(vi) Draftsman	Faulty (Assumption)
• (vii) Other Imp Pts.	whether it is mandatory or directory depends upon 1.the nature of the thing empowered to be done, 2.the object for which it is done, and 3.the person for whose benefit the power is to be exercised.

Rule of Beneficial Construction:

- Beneficial construction will be given to a statute, which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past. In such cases it is permissible to give an extended meaning to words or clauses in enactments. But this can only be done when two constructions are reasonably possible and not when the words in a statute are quite unambiguous
- A method of interpretation which brings into effect provisions for improving the conditions of certain classes of people who are under privileged or who have not been treated fairly in the past. **(RTP Nov 23)**
 - Rule of Literal Construction
 - Rule of Harmonious Construction
 - **Rule of Beneficial Construction**
 - Rule of Exceptional Construction

Ejusdem Generis

- The general word will derive meaning from group of word it follows
 - E.g. Pineapple juice, orange, mosambi juice, etc (kya hoga??? ...Vodka, gin, whiskey)
 - E.g bread , butter, fruits , vegetable and other things
 - Other things means - edibles

Rule of Ejusdem Generis

Series of words forming particular class, or category are used & then general word follow them



In such case general words should be construed with reference to the previous words & accordingly meaning should be derived

Rule of Ejusdem Generis:

(i) R → Rule	Primary
(ii) Meaning	Where specific words pertaining to a class or category or genus are followed by general words, the general words shall be construed as limited to the things of the same kind as those specified.
(iii) Applicable	This rule applies when: 1. The statute contains an enumeration of specific words 2. The subject of enumeration constitutes a class or category; 3. That class or category is not exhausted by the enumeration 4. General terms follow the enumeration; and 5. There is no indication of a different legislative intent.
(iv) Not - Applicable	1. If the preceding term is general, as well as that which follows this rule cannot be applied. 2. Where the particular words exhaust the whole genus. 3. Where the specific objects enumerated are essentially diverse in character.
(v) H → How to apply	—————
Examples	• Pineapple juice, orange, <u>mosambi</u> juice, etc (<u>kya hoga???</u> ...Vodka, gin, whiskey ??) Solution - juices • <u>E.g</u> bread , butter, fruits , vegetable and other things Other things means – edibles

Enumerate when does the rule of Ejusdem Generis apply. (3 Marks) (MTP Sep. 22)

Noscitur A Sociis

(i) Rule	➤ Secondary
(ii) Meaning →	'Word is known by its associates' ↓ The meaning of a word is derived from the words found in immediate connection when words with analogous meaning are coupled together , understood in cognate sense
(iii) Applicable	When some articles are grouped together, each word in the entry draws color from the other words therein.
(iv) Not - Applicable	➤ It cannot be applied where the meaning of the words was deliberately used in order to make the scope wider.
(v) How to apply	• 2 or more specific words • One ambiguous specific word • Such ambiguous specific word to derive its meaning from other specific word

“Associate words to be understood in common sense manner.” Explain this statement with reference to rules of interpretation of statutes. (3 Marks) (MTP Oct. 22)

Define the concept of "Doctrine of Noscitur a Sociis" with example in accordance with the provisions of the Interpretation of Statutes. 3 Marks (Nov 23)

_____ means that when two or more words that are susceptible of analogous meaning, are coupled together they are understood to be used in their cognate sense. (1 Mark) (MTP Oct. 23)

- **Noscitur a Sociis**
- Contemporanea Expositio
- prima facie
- absoluta sententia expositore non indigent

Effect of usage and customs

- The Latin maxim of '*Optima legum interpres est consuetudo*' which means that the best interpreter of laws is custom, has been recognised as one of the oldest principle in construing statutes.
- The Apex Court also confirmed another maxim *Contemporanea expositio est optima et fortissinia in lege* meaning 'the best way to construe a document is to read it as it would have been read when made'. The rule is that a statute must be considered in the light of all circumstances existing at the time of its enactment. [Desh Bandhu Gupta v. Delhi Stock Exchange Asson. Ltd. — (SC) 1979]
- **At the time of interpreting a Statute what will be the effect of 'Usage' or 'customs and Practices'? (Module) (Nov 23)**
- **Explain the Doctrine of Contemporanea Expositio.3 Marks (May 23)**

Explain the Doctrine of
Contemporanea
Expositio.(4 Marks) (MTP
July 24)

- i. This doctrine is based on the concept that a statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority.
- ii. The maxim "*Contemporanea Expositio est optima et fortissima in lege*" means "contemporaneous exposition is the best and strongest in the law."
- iii. This means a law should be understood in the sense in which it was understood at the time when it was passed.
- iv. This maxim is to be applied for construing ancient statutes, but not to Acts that are comparatively modern.

Aid to Interpretations



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graph TD; A[Aid to Interpretations] --> B[Internal Aid]; A --> C[External Aid]
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Internal Aid

1. Long title
2. Preamble
3. Heading & chapter name
4. Definitions
5. Illustrations
6. Proviso
7. Explanations
8. Schedule
9. Marginal notes
10. Act as a whole

External Aid

1. History
2. Consolidating Statutes & Previous laws
3. Usage
4. Earlier Act / later act.
5. Dictionary definition
6. Court decisions

Internal Aids

- 1) Long/short title →
 - Short title – identifies enactment & used for convenience – not aid
 - Long title – describes enactment and used to ascertain object, general scope and purpose
- 2) Preamble →
 - Express more comprehensively scope, object and purpose than long title.
 - Preamble discloses primary intention of legislature but can only be used as aid if statute is not clear
- 3) Headings/ title of chapter →

Used for interpretation of sections included in it.
- 4) Definitions →

When definition is included, interpreter uses definition meaning and not ordinary meaning
- 5) Illustrations (Examples) →

Good guide to find intention of draftman but is not part of section, so cannot modify /curtail section

When can the Preamble be used as an aid to interpretation of a statute? (RTP Mar 23)

Hint: When will courts refer to the preamble as an aid to construction?

Situation 1: Where there is any ambiguity in the words of an enactment the assistance of the preamble may be taken to resolve the conflict.

Situation 2: Where the words of an enactment appear to be too general in scope or application then courts may resort to the preamble to determine the scope or limited application for which the words are meant.

Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus " has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [Gullipoli Sowria Raj v. Bandaru Pavani, (2009)1 SCC714]

When can the Preamble be used as an aid to interpretation of a statute?(4 Marks) (MTP July 24)

CAWALLAH

Classification of Definitions

(a) Restrictive and exhaustive definitions	● When the words used in definition restrict its meaning: ○ 'means' ; or ○ 'means and includes'
(b) Extensive or inclusive definitions	● When the word extends or enlarge the ordinary and natural meaning beyond the definition given in the Act or creating a legal fiction: ○ 'includes ...' ; or ○ 'to apply to and include....'; or ○ 'any... ' ; or ○ 'is deemed to include...'
(c) Ambiguous definitions	● Sometime the definition section may itself be ambiguous and it has to be interpreted having regard to the ordinary meaning of the word or in the light of the other provisions of the Act.

Explain the impact of the two words "means" and "includes" in a definition, while interpreting such definition. (3 Marks) (MTP Oct. 22)

Impact of the words “Means” and “Includes” in the definitions- The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘mean’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘include’ such and such, the definition is ‘prima facie’ extensive, here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section.

Example:

Definition of Director [section 2(34) of the Companies Act, 2013]—Director means a director appointed to the board of a company. The word “means” suggests exhaustive definition.

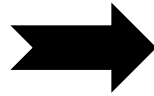
Definition of Whole time director [Section 2(94) of the Companies Act, 2013]—Whole time director includes a director in the whole time employment of the company. The word “includes” suggests extensive definition. Other directors may be included in the category of the whole time director.

Preamble - Example

The preamble of the Hindu Marriage Act, 1955 reads, 'An Act to amend and codify the law relating to marriage among Hindus'. Section 5 of the Act reads, 'A marriage may be solemnised between any two Hindus...'. A question arose that whether use of the word 'may' in Section 5 of the Act can be construed mandatory in the sense that both parties to the marriage must be Hindus. The court having regard to, inter alia, preamble of the Act held that a marriage between a Christian male and a Hindu female solemnised under the Hindu Marriage Act was void. [Gullipoli Sowria Raj v. Bandaru Pavani — (SC) 2009]

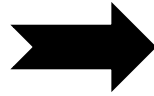
Internal Aids

6) Proviso



- It is not rule but exception to main provision to carve out qualification to main provision which is too general
- Starts with Provided that , to exclude something or limit applicability

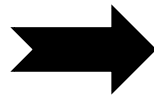
7) Explanation



An internal aid that may be added to include something within the section or to exclude something from it

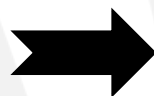
Normally used to clear ambiguity

8) Schedule



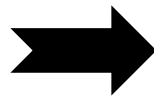
- A list , a format ,Form part of Act
- Read together with Act for construction
- If conflict between enactment or schedule, then Act prevail

9) Marginal notes



Normally cannot be used for construction except in exceptional cases .

10) Act as a whole



Act must be readed as whole in order to ascertain true meaning of several clauses for proper harmonisation

Proviso vs. Exception and Saving Clauses

- 'Exception' is intended to **restrain** the enacting clause to **particular cases i.e reverse effect to the section e.g sec 149 – total 15 directors – except by passing S.R**
- 'Proviso' is used to **remove special cases from the general enactment** and provide for them specially (provided that) sec 188- RPt- B.R→ N.A to Arm,s length transaction
- 'Saving clause' is used to preserve provision of other sections in statute e.g MOA – alteration – S.R save as sec 61

Question

(c) Write short note on:

(i) Provisio

(ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents. (4 Marks) **(MTP Aug 24)**

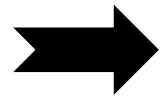
- Proviso:

- i. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there.
- ii. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general.
- iii. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment.
- iv. Ordinarily a proviso is not interpreted as stating a general rule.
- v. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision

- i. An Explanation is at times appended to a section to explain the meaning of the text of the section.
- ii. An Explanation may be added to include something within the section or to exclude something from it.
- iii. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section.
- iv. It should not be so construed as to widen the ambit of the section.
- v. The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

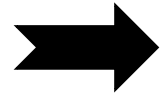
External aids

1) History



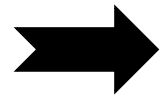
Helps in understanding subject matter object and scope of law.

2) Consolidating statutes & Previous law



May solve doubtful points in statute for intention

3) Usage



In case of doubt, usage helps to create understanding

4) Earlier law/ later law/ Analogous law



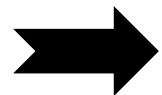
If there are 2 different act in each cases, various rules of interpretation can be used to know exact interpretation.

5) Dictionary definition



Useful where word is not defined in act.

6) Court decision



Used for construction of our own law
However prime importance given to Indian statutes

In what way are the following terms considered as external aid in the interpretation of statutes:

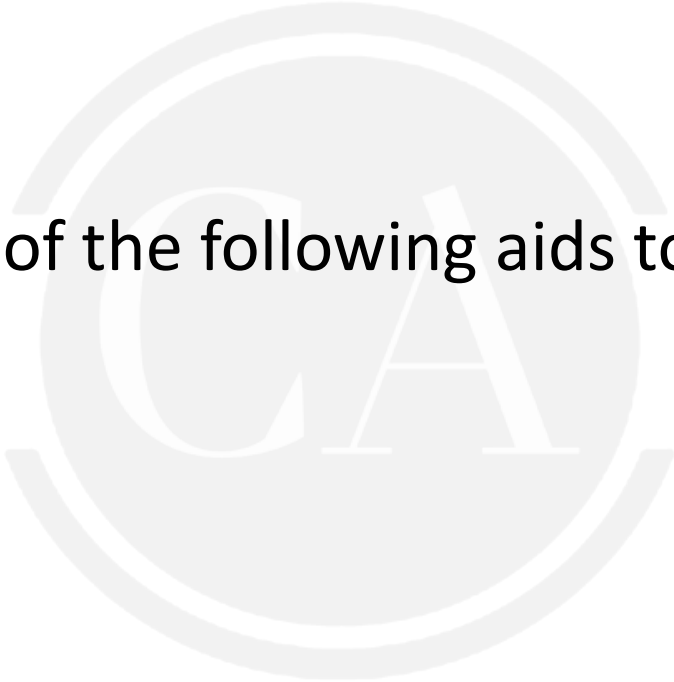
- (i) Historical Setting**
- (ii) Use of Foreign Decisions (3 Marks) (MTP Oct. 22) (MTP may 24)**

Hint:

- (i) Historical Setting:** The history of the external circumstances which led to the enactment in question is of much significance in construing any enactment. We have, for this purpose, to take help from all those external or historical facts which are necessary in the understanding and comprehension of the subject matter and the scope and object of the enactment. History in general and Parliamentary History in particular, ancient statutes, contemporary or other authentic works and writings all are relevant in interpreting and construing an Act.
- (ii) Use of Foreign Decisions:** Foreign decisions of countries following the same system of jurisprudence as ours and given on laws similar to ours can be legitimately used for construing our own Acts. However, prime importance is always to be given to the language of the Indian statute. Further, where guidance can be obtained from Indian decisions, reference to foreign decisions may become unnecessary.

Pick the odd one out of the following aids to interpretation:(1 Mark) (MTP Oct. 22)

- (a) Preamble**
- (b) Marginal Notes**
- (c) Proviso**
- (d) Usage**

- 
- 1. Pick the odd one out of the following aids to interpretation:(1 Mark)
(MTP Oct. 22)
 - a. Preamble
 - b. Marginal Notes
 - c. Proviso
 - d. **Usage**

CAWALLAH

Statutory interpretation is a practice through which the courts break down the words of a legislation and give true intent to it. While the legislature makes the laws, the judiciary performs the art of interpretation to give meaning to the words of the law maker. It is correctly said that “The purpose of Interpretation of Statutes is to help the Judge to ascertain the intention of the Legislature – not to control that intention or to confine it within the limits, which the Judge may deem reasonable or expedient”. For interpretation of statutes various tools are used, you are required to pick the option depicting correct sequence of tools in order their application.

- a. Internal Aids to Construction, External Aids to Constructions, and Literal Construction
- **b. Literal Construction, Internal Aids to Construction, and External Aids to Constructions**
- c. Internal Aids to Construction, Literal Construction, and External Aids to Constructions
- d. External Aids to Constructions, Internal Aids to Construction, and Literal Construction (1 Mark) (MTP Sep. 23)

- 3. An internal aid that may be added to include something within the section or to exclude something from it, is—
 - a. Proviso
 - b. **Explanation**
 - c. Schedule
 - d. Illustrations(1 Mark) (MTP Sep. 23)

- 4. The Preamble is most important in any legislation, it:
 - a. Provides definitions in the Act.
 - b. Expresses scope, object and purpose of the Act.
 - c. Provides explanation of all the sections of the entire Act.
 - d. Provides side notes often found at the side of a section.(1 Mark) (MTP Oct. 23)

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? (ICAI STUDY MATERIAL)

1. the nature of the thing empowered to be done,
2. the object for which it is done, and
3. the person for whose benefit the power is to be exercised.

Question

Imagine you are a legal advisor for a company drafting a new contract. One of the clauses in the contract states:

"Notwithstanding anything contained in any other provisions of this agreement, the company reserves the right to terminate the agreement without notice if there is a breach of confidentiality by the employee." Explain to the management of the company the meaning of a non-obstante clause in legal documents and its effect on overriding other provisions with reference to decided case law. **(RTP sep 24)**

Question

Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? (4 Marks) **(MTP Aug 24)**

CA Inter **Sep May 2024**

FEMA Act, 1999



FEMA 1999

Resident (Individual)

PRI



Preceding year → more than 182 day



India reside

Exception

Going outside India →

E → Employment

B → Business / vocation

U → Uncertain period

182 more stay
doesn't matters



PROI

Coming in India → otherwise than EBU

PROI



Not PRI

Nutshell

If person goes out of India for EBU

→ PROI → Irrespective of stay > 182 days

If person come to India otherwise than EBU

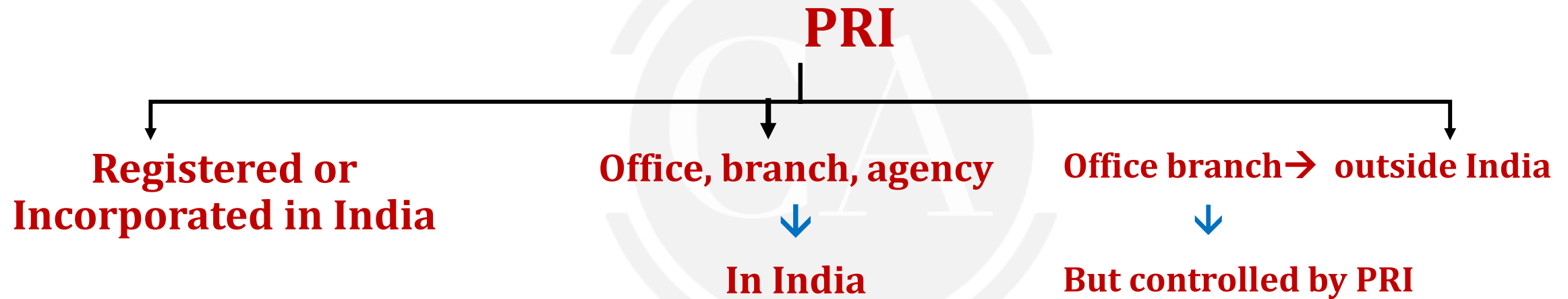
→ PROI → "-----"

If person comes to India for EBU

→ Last year stay doesn't matter
↓
PRI

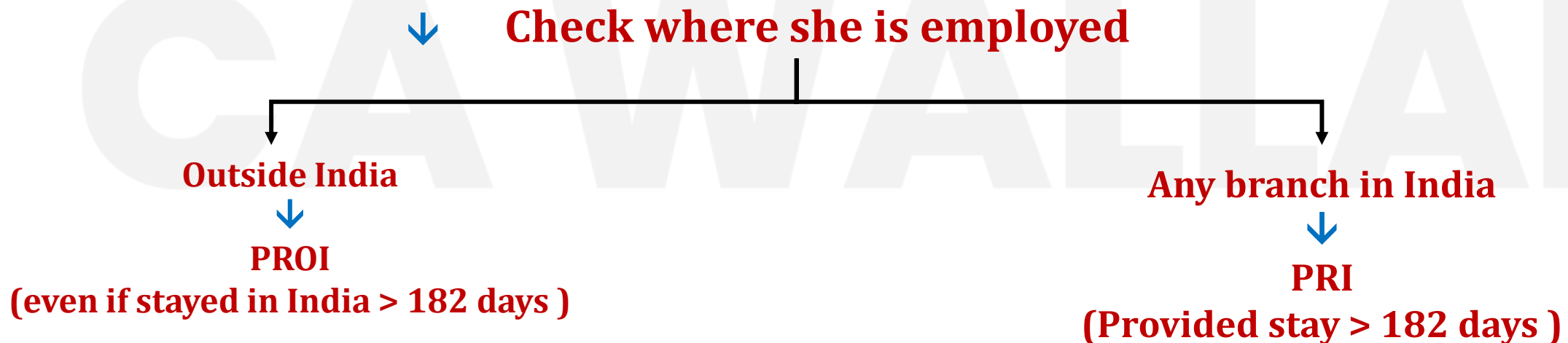
***Note:**

1. Residential status for B.C (Body Corporate)



2. If left India for studies → PROI (RBI circular)

3. Airhostess coming and going outside India



- **Mr. X had resided in India during the financial year 2019-2020 for less than 182 days. He had come to India on April 1, 2020 for carrying on business. He intends to leave the business on April 30, 2021 and leave India on June 30, 2021. Determine his residential status for the financial years 2020-2021 and 2021-2022 up to the date of his departure?**

Hint - As explained in the above illustration, Mr. X will be considered as a 'person resident in India' from 1st April 2020. As regards, financial year 2021-2022, Mr. X would continue to be an Indian resident from 1st April 2021.

- If he leaves India for the purpose of taking up employment or for business/vocation outside India, or for any other purpose as would indicate his intention to stay outside India for an uncertain period, he would cease to be person resident in India from the date of his departure. It may be noted that even if Mr. X is a foreign citizen, has not left India for any of these purposes, he would be considered, 'person resident in India' during the financial year 2021-2022. Thus, it is the purpose of leaving India which will decide his status from 1st July 2021.

- **Mr. Z had resided in India during the financial year 2019-2020. He left India on 1st August, 2020 for United States for pursuing higher studies for three years. What would be his residential status during financial year 2020-2021 and during 2021-2022?**
- **Answer**
- Mr. Z had resided in India during financial year 2019-2020 for more than 182 days. After that he has gone to USA for higher studies. He has not gone out of or stayed outside India for or on taking up employment, or for carrying a business or for any other purpose, in circumstances as would indicate his intention to stay outside India for an uncertain period. Accordingly, he would be 'person resident in India' during the financial year 2020-2021. RBI has however clarified in its AP circular no. 45 dated 8th December 2003, that students will be considered as non-residents. This is because usually students start working there to take care of their stay and cost of studies.
- For the financial year 2021-2022, he would not have been in India in the preceding financial year (2020-2021) for a period exceeding 182 days. Accordingly, he would not be 'person resident in India' during the financial year 2021-2022.

- **Miss Alia is an airhostess with the British Airways. She flies for 12 days in a month and thereafter takes a break for 18 days. During the break, she is accommodated in 'base', which is normally the city where the Airline is headquartered. However, for security considerations, she was based at Mumbai. During the financial year, she was accommodated at Mumbai for more than 182 days. What would be her residential status under FEMA?**
- Miss Alia stayed in India at Mumbai 'base' for more than 182 days in the preceding financial year. She is however employed in UK. She has not come to India for employment, business or circumstances which indicate her intention to stay for uncertain period. Under section 2(v)(B), such persons are not considered as Indian residents even if their stay exceeds 182 days in the preceding year. Thus, while Miss Alia may have stayed in India for more than 182 days, she cannot be considered to be a Person Resident in India.
- If however she has been employed in Mumbai branch of British Airways, then she will be considered a Person Resident in India.

Dealing in foreign exchange, etc. [Section 3]

- No person shall-
 - a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person (AP);
 - b) make any payment to or for the credit of any person resident outside India
 - c) receive otherwise than through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.
 - d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person

Current A/c transaction vs Capital A/c Transaction

Capital a/c transaction (CAT)



Current transaction (sec. 5)

CUAT

a/c → Other than capital a/c transaction

Includes (SIRF)

S → Short term banking / credit facility (max 3 months)

I → Interest on loan/ income from investment

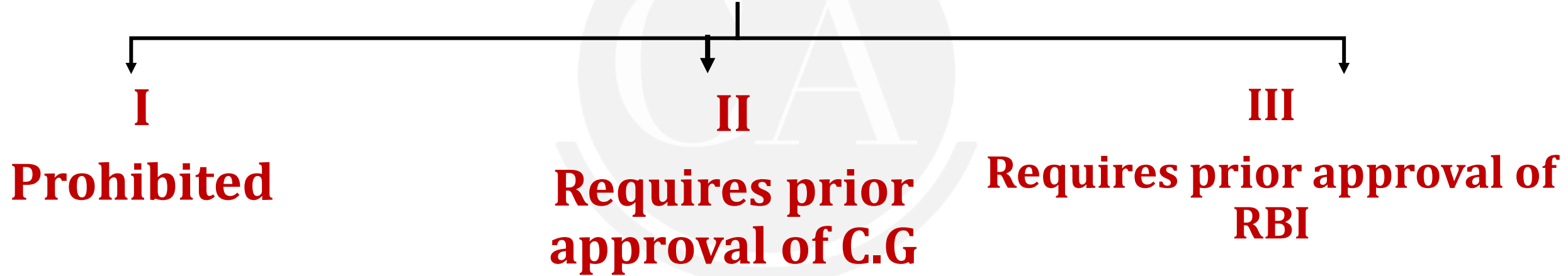
R → Parents / spouse / children → residing abroad → living expenses

F → Foreign travel, education, medical care of parents, spouse, children

***Current A/c Transaction[sec. 5]**

→ It is permitted, unless specifically prohibited

→ **Schedule**



CA WALLAH

Schedule

I → Prohibited

REAL → Cash Dukarndaari RIP

R → Racing / riding horse → Income

E → Equally investment



Commission



In joint venture/ Wholly owned subsidiary

A → Any other prescribed

L → Lottery winning

C → Call back services

D → Dividend in dividend bal. Scheme

R → Rupee state credit route



Export commission



Except 10% of invoice value of tea/tobacco.

I → Interest income in non-resident special rupee a/c

P → Purchase of wrong thing

(lottery ticket, banned managing, Football pools, sweepstakes)

II → C.G Permission (CA me FM/SM/ DT / Costing)

Approval

C → Cultural tours

A → Advt. in foreign print media by S.G/ P.S.U

HRD ministry
→ Finance Ministry



Exceeding USD 10,000

Except promotion of tourism, foreign investment, international bidding

F → Freight of vessel chartered by P.S.U → Ministry of surface transport

M → Multimodal transport

→ Director general of shipping



To agent abroad

T → Transponder hiring charges for

✓ TV channel

✓ Internet service provider

→ Information Broadcasting ministry

D → Detention charges

S → sponsorship / prize abroad

→ Surface transport



Other than International / National/ state body exceeding USD 1 lakh

M → member of P&I club

→ Finance

Co. → CIF basis → Ocean transport

→ Surface

- **Exemption for payment by International Credit Card while on a visit abroad** – If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

CAWALLAH

Question

Ms. Prabha, a classical dancer of Bharatnatyam, wants to go to the USA for a performance. In this connection she requires foreign exchange drawal of US\$ 50,000. Explain Ms. Prabha, the provision of the Foreign Exchange Management Act, 1999, in respect of permission required for such drawal of foreign exchange. **(4 Marks) (MTP Mar. 24)**

Mr. Shivesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
- (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions? **(RTP May24)**

University of Oxford is one of the leading institutes of UK. In the month of May 2024, they are planning a cultural event in UK. The University has invited Ms. Kanika Tripathi and her group, an Indian artist to perform in the event. Ms. Kanika Tripathi needs to withdrawal foreign exchange of USD 75,000 for the purpose of visit to UK for performing at cultural event of University of Oxford in UK. Advise whether she can withdraw Foreign Exchange and if so, under what conditions? **(4 Marks) (MTP April 24)**

Question

(c) Mr. Rohan Sharma, an international cricket player has started its cricket academy, namely, Rohan Sharma Cricket Academy, a private coaching club, which provides coaching for cricket. The Academy has a cricket team which participates in cricket matches all over India as well as outside India.

Rohan Sharma Cricket Academy in a collaboration with Melbourne Cricket Academy is organizing a cricket event in Melbourne, Australia in the month of May 2024 and June 2024. Rohan Sharma Academy is required to remit USD 200,000 to Melbourne Cricket academy as a part of its share for organizing the cricket event in Melbourne. Advise whether it can get Foreign Exchange and if so, under what conditions?

(4 Marks) (MTP April 24)

Schedule III- Requiring RBI approval

Individuals

MOGAMBO-SE



M → Medical expenses abroad, treatment, check-up
O → Other prescribed
G → Gift / donation
A → Abroad for employment
M → Maintenance of close relative abroad
B → Business Travel / conference / travel / meeting
Θ
S → Study abroad
E → Emigration



Limit USD → 2,50,000



Exceeds → RBI permission

Others

Donation →

- Chair in edu. Inst
- Funds of edu. Institute
- Technical institutes

Commission →

- To agent abroad for sale of flats Plots in India

Consultancy →

- Infra. Project
- Other project

Re-imbursement of Pre – incorporation contract →

5% of Invt. Bought in India or USD → 1 lakh

Exceeding

1% of their foreign exch. Earning or 50 lakh USD

5% of inward remittance or USD 25,000

→ USD → 1 C.r

→ USD → 10 lakhs

Question

(d) Mr. Pravesh, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) US\$ 140,000 for studies abroad on the basis of estimates given by the foreign university.
- (ii) U.S. \$ 10,000 for remittance towards hiring charges of transponders.

Advise him whether he can get Foreign Exchange, as per the provisions of the Foreign Exchange Management Act, 1999.

(4 Marks) (MTP Mar. 24)

❖ No Permission if done by RFC (Resident /foreign currency a/c) or EEFC (Exchange earners foreign currency A/c)

Except (i) P & club (ii) Flats (iii) pre-incorp. expenses

❖ No RBI permission for → EMS (Emigration medical study abroad) → If required by country of emigration, medical institute, university.

❖ Resident but not permanently resident in India (3 years)

Citizen of foreign state except Pakistan

Citizen of India deputed to foreign Co.

Can remit upto net salary after tax & P.F Deah.

❖ If individual rents any amt. from Liberalised

→ Amt. Reduced from 2,50,000 USD

Question

Analyse the below mentioned situation in the light of the provisions of the Foreign Exchange Management Act, 1999.

(i) Mr. Vinod has won a big lottery and wants to remit US Dollar 20,000 out of his winnings to his son who is in Singapore.

(ii) Mr. Shyam requires US Dollar 5,000 for remittance towards hiring charges of transponders. (4 Marks) (MTP July 24)

(MTP July 24)

*Capital A/c Transaction [Sec. 6]

→ Prohibited unless specifically permitted

→ **Division**

**Cannot
restrict**

Permissible for

Prohibited

➤ **PRI**

➤ **PROI**

→ **Cannot restrict**

➤ **Amortisation of loan / depn in asset**

➤ **Asset acquired outside India → when
PROI**

➤ **Asset acquired in India → when PRI**

Permissible → SIA → G.F → LCD → DI		
Particulars	PRI	PROI
S → Securities	Purchase in foreign	➤ From B.C in India ➤ Capital of firm /ADP in India
I → Immovable property	Transfer outside India	Acquire transfer in India
A → A/c foreign currency	In/ outside India	In India
G → Guarantee	In favor of PROI	For PRI
F → Foreign Currency Loan	From India / abroad	-
L → Loan/ Deposits	From PROI	From PRI
C→ Capital Assets	Outside India of asset in India	Same
D → Derivative contract	Outside India	In India
I → Insurance policy	In foreign currency	X

Prohibited

1) PROI cannot invest in India in any form



- Chit fund
- Nidhi Co.
- Agriculture or plantation activity
- Real estate or construction of farm house → Except
- Trading in Transferable development right



Township development
resident / commercial –
construction road,
bridge, real estate trust

2) PRI → from person Co. / → Citizen or resident of Korea

→ > 2,50,000 USD

- **No person resident in India shall undertake any capital account transaction with any person who is, a citizen of or a resident of Democratic People's Republic of Korea, or an entity incorporated or otherwise, in Democratic People's Republic of Korea, until further orders, unless there is specific approval from the Central Government to carry on any transaction.**

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*** L.R.S Scheme**

(Individual + Minor)

➤ **USD 2,50,000 (capital +current)**

➤ **No Clubbing by family members for CAT**



Unless co-owner / co-partner

CA WALLAH

- M/s. Kedhar Sports Academy, a private coaching club, provides coaching for cricket, football and other similar sports. It coaches sports aspirants pan India. It also conducts various sports events and campaigns, across the country. In 2022, to mark the 25th year of its operation, a cricket tournament (akin to the format of T-20) is being organized by M/s. Kedhar Sports Academy in Lancashire, England, in the first half of April. The prize money for the 'winning team' is fixed at USD 40,000 whereas in case of 'runner-up', it is pegged at USD 11,000. You are required to choose the correct option from the four given below which signifies the steps to be taken by M/s. Kedhar Sports Academy for remittance of the prize money of USD 51,000 (i.e. USD 40,000+USD 11,000) to England keeping in view the relevant provisions of Foreign Exchange Management Act, 1999:

- For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Human Resource Development (Department of Youth Affairs and Sports).
- For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Reserve Bank of India.
- **For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is not required to obtain any prior permission from any authority, whatsoever, and it can proceed to make the remittance.**
- For remittance of the prize money of USD 51,000, M/s Kedhar Sports Academy is required to obtain prior permission from the Ministry of Finance (Department of Economic Affairs).

- Akash Ceramics Limited, an Indian company, holds a commercial plot in Chennai which it intends to sell. M/s. Super Seller, a real estate broker with its Head Office in the USA, has been appointed by Akash Ceramics Limited to find some suitable buyers for the said commercial plot in Chennai which is situated at a prime location. M/s. Super Seller identifies Glory Estate Inc., based out of USA, as the potential buyer. It is to be noted that Glory Estate Inc. is controlled from India and hence, is a 'Person Resident in India' under the applicable provisions of Foreign Exchange Management Act, 1999. A deal is finalised and Glory Estate Inc. agrees to purchase the commercial plot for USD 600,000 (assuming 1 USD = ` 70). According to the agreement, Akash Ceramics Limited is required to pay commission @ 7% of the sale proceeds to M/s. Super Seller for arranging the sale of commercial plot to Glory Estate Inc. and commission is to be remitted in USD to the Head Office of M/s. Super Seller located in USA. Considering the relevant provisions of Foreign Exchange Management Act, 1999, which statement out of the four given below is correct (ignoring TDS implications arising under the Income-tax Act, 1961):

- There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 25,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 17,000, prior permission of RBI is required to be obtained.
- There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of commission upto USD 30,000 by Akash Ceramics Limited to M/s. Super Seller but for the balance commission of USD 12,000, prior permission of RBI is required to be obtained.
- There is no requirement of obtaining prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.
- **It is mandatory to obtain prior permission of Reserve Bank of India (RBI) for remittance of entire commission of USD 42,000 by Akash Ceramics Limited to M/s. Super Seller.**

Question

20. Mr. Arjun, an Indian resident, had been working abroad for the past 10 years. During his tenure abroad, he acquired foreign currency and held investments in foreign securities. He also inherited a property located in New York from his late grandfather, who was a non-resident Indian. After returning to India permanently, Mr. Arjun wishes to understand the provisions under the Foreign Exchange Management Act, 1999 (FEMA) regarding the ownership and utilization of his foreign assets. **(RTP sep 24)**

- Under the provisions of the Foreign Exchange Management Act, 1999 (FEMA), resident in India or outside India, can hold, own, transfer, or invest in foreign currency, foreign securities, or immovable property situated outside India under certain conditions. These conditions are clarified by the RBI through A.P. (DIR Series) Circular No. 90 dated 9th January, 2014, which elaborates on section 6(4) of the Act.
- **Clarifications under section 6(4) of FEMA**
- **Foreign Currency Accounts**
 - Mr. Arjun can maintain foreign currency accounts that were opened and maintained by him when he was resident outside India.
- **Income and Investments**
 - Income earned through employment, business, or vocation outside India while Mr. Arjun was a non-resident.
 - Investments made abroad during his non-resident status.
 - Gifts or inheritance received from a non-resident Indian.
- **Foreign Exchange and Income therefrom**
 - Foreign exchange holdings, including income arising from them, held outside India by Mr. Arjun, acquired through inheritance from a non-resident Indian.

Utilization of Assets After Return to India

- Mr. Arjun may freely utilize all eligible assets abroad, including the income on such assets or sale proceeds received after his return to India.
- He can make payments or fresh investments abroad without the approval of the Reserve Bank of India, provided the funds used are from eligible assets held by him abroad and the transaction complies with FEMA provisions.

Therefore, Mr. Arjun is eligible to hold and utilize his foreign assets as per the provisions outlined in section 6(4) of FEMA and the RBI circular. These provisions allow him to manage his foreign currency, securities, and inherited property located outside India in compliance with the regulations governing residents' dealings in foreign assets under FEMA.

Question

Mr. A, an Indian National desires to obtain Foreign Exchange for the following purposes:

- (i) Remittance of US Dollar 50,000 out of winnings on a lottery ticket.
- (ii) US Dollar 100,000 for sending a cultural troupe on a tour of U.S.A.

Advise him whether he can get Foreign Exchange and if so, under what conditions?**4 Marks)** (MTP Aug 24)

Question

Explain the meaning of term
'Foreign Exchange' as per the
provisions of the Foreign
Exchange Management Act,
1999. (4 Marks)
(MTP Aug 24)

According to section 2(n) of the Foreign Exchange Management Act, 1999, 'foreign exchange' means foreign currency and includes:

- (i) deposits, credits and balances payable in any foreign currency,
- (ii) drafts, travelers' cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,
- (iii) drafts, travelers' cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency.

CA Inter **Law May 2024**

LLP Act, 2008



Enactment

- **The Ministry of Law and Justice on 9th January 2009 notified the Act**
- **81 sections and 4 schedules.**

Schedule	Deals with
I	mutual rights and duties of partners and limited liability partnership and its partners
II	conversion of a firm into LLP.
III	conversion of a private company into LLP.
IV	conversion of unlisted public company into LLP.

Need

- 1. alternative to the traditional partnership with unlimited personal liability**
- 2. benefits of limited liability but allows its members the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.**

Question

5. (a) “LLP is an alternative corporate business form that gives the benefits of limited liability of a company and the flexibility of a partnership”. Explain.

(5 Marks) (MTP Mar. 24)

CAWALLAH

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
1 Perpetual Succession	Yes	No	Yes
2 Liability	Limited	Unlimited	Limited to agreed Contribution
3 Artifical person but separate legal Entity	yes	no	yes
4 Seperation of Ownership From management	yes	No	Partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal Compliances
5 Separate Property in its own name	Yes	No	Yes
6 Transferability Of Shares	Freely transferable in Public co	With consent of partners	With consent of partners

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

Particulars	Company	Partnership Firm	LLP
7 Incorporated Association (Registration Compulsory)	Yes	No	Yes
8 Common Seal	not mandatory	Not required	not mandatory
9 Capacity to sue in its own name	Yes	Through partners	Yes
10 Min Members /Partners	Pvt – 2 Public – 7 OPC- 1	2	at least two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India
11 Max Members / Partners	Pvt- 200 Public – No limit	50	No limit

Characteristics and Comparison with Other Forms Of Business (PLASTIC + Basics)

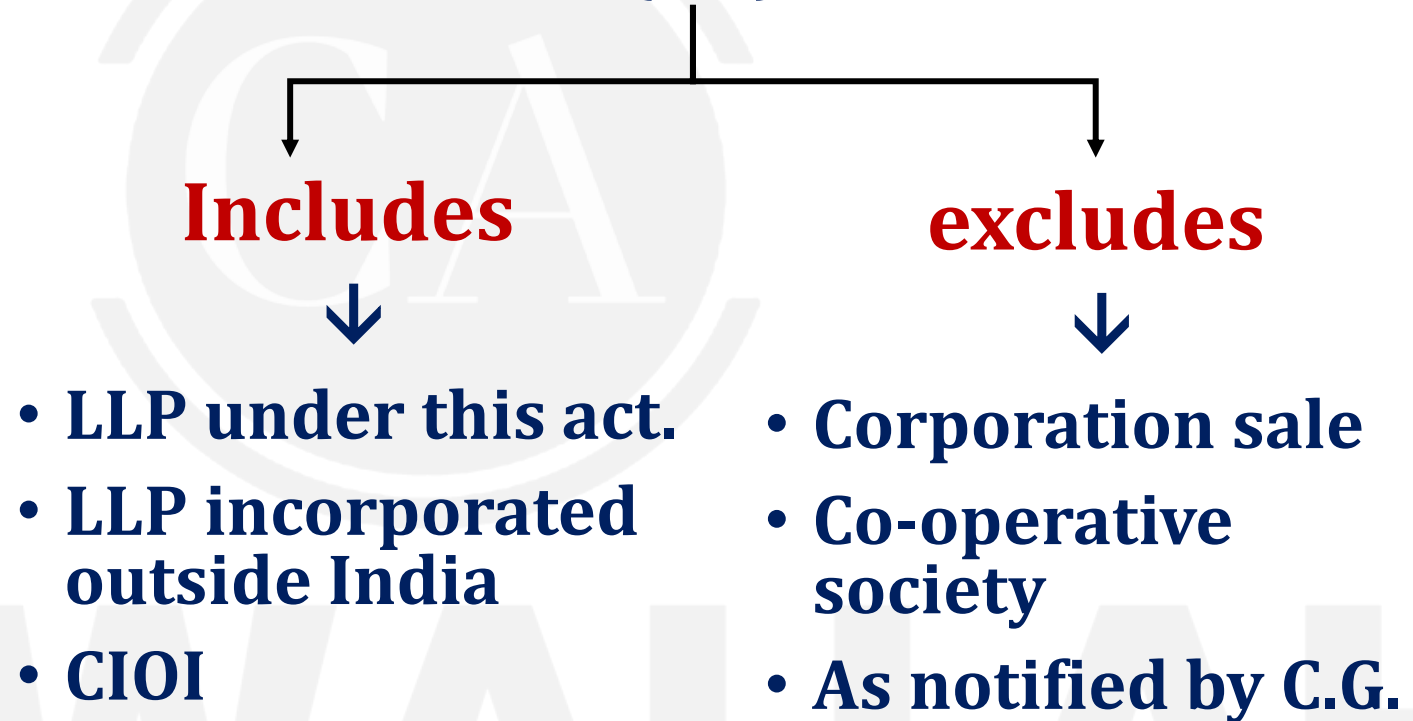
Particulars	Company	Partnership Firm	LLP
12 Agreement	MOA/AOA	Partnership deed	LLP Agreement
13 Business	For profit or non profit	Only for profit	Only for profit
14 Mutual Agency	Members not agent of company	All partners are agent of firm and of other partners	All partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

ADVANTAGES OF LLP FORM (LOL-FEE)

L	1. All partners enjoy limited liability.
O	2. organised and operates on the basis of an agreement.
L	3. Less legal and procedural requirements.
F	4. Flexible Capital Structure
E	5. Easy to form
E	6. Easy to dissolve.

Some Imp definitions

1. Body Corporate → As defined in 2(20) of Co. Act.



2. Business → Every trade, occupation, profession
→ Only profit motive

Question

Define the term 'Body Corporate' as per the provisions of the Limited Liability Partnership Act, 2008.(5 Marks)(MTP Aug 24)

Some Imp definitions

3. F.Y → 1st April to 31st Mar.

→ If LLP incorporated after 30 Sep.



then FY till next 31st Mar.

4. Foreign LLP → Incorp. Outside India + POB → in India

5 Small LLP →
[Sec. 2(i) (ta)]

Contribution



Does not exceed
25 lakhs

&

Turnover
(preceding F.Y.)



Does not exceed
40 lakhs

Question

Define the term 'Small limited liability partnership' as per the provisions of the Limited Liability Partnership Act, 2008. (5 Marks) (MTP July 24)

Question

Explain the meaning of term 'currency' as per the provisions of the Foreign Exchange Management Act, 1999. (2 Marks) (MTP July 24)

- According to section 2(h) of the Foreign Exchange Management Act, 1999, 'Currency' includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travelers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as may be notified by the Reserve Bank.

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Other Imp Details

1) File Statement of A/c & Solvency → **Within 6 months of F.Y.** → **With ROC** → **Signed by of LLP (Sec. 34)**

2. Annual Return → **within 60 days closure of F.Y. (Sec. 35)**

CA WALLAH

Steps to incorporate LLP

Reservation of
Name of LLP



File application
form for
incorporation



Execute LLP
Agreement



Registrar



Effect of
Registration

- File e-form no RUNLLP
- ROC reserves name for 3 months
- In e-form FiLLP
- Includes Name / business / Address/ details of partner
- Attach statement → By Adv. /CA/ CS/ CMA & subscriber → That all requirements of act
- During incorp.
- Within 30 days of incorporation file with ROC
 - Within 14 days → Register & give or certificate (Certificate conducive evidence about incorporation)
- Becomes B.C

	Partner	Designated Partner
1. Who can be	- Individual (Resident / NR / OCI/ Foreign national) - LLP - Co. - Foreign LLP	Individuals
2. Requirement	- Atleast 2 partners (Sec. 6) - If no. fall below ↓ - After 6 months ↓ - Personally liable (same like co.)	- Atleast 2 D.P. individual ↓ 1 should be resident in India (atleast 120 days in F.Y.) - If all partner B.C ↓ - Nominee of such B.C. (Sec. 7)
3. Disqualification	Sec. 5 i. Unsound mind ii. Insolvent iii. Applied for insolvency & application pending	

- There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so? **(module)**

CAWALLAH

Question

(b) Mr. Prateek (an individual) has started a Limited Liability Partnership firm along with Brown Limited and Picture Limited. As per the provisions of the Limited Liability Partnership Act, 2008, advise Limited Liability Partnership firm, about who can be the designated partners of the firm.

(5 Marks) (MTP April 24)

CAWALLAH

Question

(b) Mohan and Rakul are college friends and intend to do trading in musical instruments. They have met Mr. John and Ms. Kate who are non-resident Indian and they all have decided to form a Limited Liability Partnership (LLP) under the name and style of Mohan John LLP with an initial capital contribution of ` 1,00,000 each. The LLP was incorporated on October 15, 2020. The LLP intends to appoint Mr. John and Ms. Kate as designated partners and consults same with its Company Secretary. You as the Company Secretary advise the LLP on the appointment of Mr. John and Ms. Kate as the only designated partners of the LLP.

(5 Marks) (MTP Mar. 24)

Other IMP Pts.

- i. Prior consent required for DP**
- ii. D.P. should acquire DPIN no or has DIR no.**
- iii. Liability of D.P (sec. 8)**
 - Compliance of provision of Act.
 - Liable to penalties
- iv. Changes in DP → appoint New D.P within 30 days**
- v. If no. D.P or less than 2 → all partners will be deemed to be D.P.**

Question

Priya, Smita, Shilpa, and Shefali were partners in Sharma & Associates LLP. Shilpa resigned from the firm effective 7th May 2024. However, neither Sharma & Associates LLP nor Shilpa informed the Registrar of Companies about her resignation. Is Shilpa still liable for any losses incurred by the firm from transactions entered into after 7th May 2024? Analyze this situation with reference to the provisions of the Limited Liability Partnership Act, 2008.(5 Marks)(MTP July 24)

Name of LLP (Sec. 15)

- End with LLP
- If changes name → within 15 days → give notice of change to ROC
- If name → too identical → C.G may Ask to Change → Change within 3 months → Ask to change only till 3 years from incorp.

Question

M/s Sulbha LLP was incorporated on 01.09.2022. On 01.01.2023, one partner of a partnership firm named M/s Sulbha which is registered with Indian Partnership Act, 1932 since 01.01.2000 requested ROC that as the name of LLP nearly resembles with the name of already registered partnership firm, the name of LLP should be changed. Explain whether M/s Sulbha LLP is liable to change its name under the provisions of Limited Liability Act, 2008? (5 Marks) **(MTP Aug 24)**

Question

XYZ LLP was registered under the Limited Liability Partnership Act, 2008 (LLP Act) with a name that was later found to be identical to an existing company's name, XYZ OPC Pvt Ltd. This similarity was not noticed at the time of registration. Explain the provisions of the Limited Liability Partnership Act, 2008, in respect of the following:

- When the name of LLP is identical.
- Formalities with the Registrar of Companies after name change of LLP. **(RTP sep 24)**

Cessation of Partnership (Sec. 24)

Mode



- i. As per LLPA
- ii. By notice in writing to all the other partners (atleast 30 days notice)
- iii. By Law
 - Death/ dissolution of LLP
 - Declared unsound
 - Applied / declared insolvent

Effect



- Continues to be partner → if notice not give to ROC no public notice given



- Continues to be liable for obligation while be was partner

- Right

His contribution in firm
+
Acc. Profits → his share

Liabilities of LLP & Partner

- ❖ Normally LLP liable for all its act (separate legal entity)
 - ❖ LLP bound by acts of partners unless
 - No authority → partner
 - Person doesn't believe him to be partner
 - ❖ any remaining liability to be borne by property of LLP
 - ❖ Partners not personally liable unless
- ↓
- As per Sec. 30 (fraud) → liability becomes unlimited
- ↓
- liable for punishment

Question

18. Mohit is a creditor of ABC LLP. He has a claim of ₹ 10,00,000 against the LLP. However, the assets of the LLP are valued at only ₹ 7,00,000. Now, Mohit seeks to hold the partners of the LLP personally accountable for the shortfall of ₹ 3,00,000. Under the provisions of the Limited Liability Act, 2008, can Mohit demand for the deficit from the partners of ABC LLP?

(RTP May24)

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Other Imp Points

1) R.D or officer not below rank of R.D → Can compound offence → Which punishable by fine only

2) Trf of partners right → Same like partnership
→ Partner → right → Trf. → Transferee → will not be partner
→ Transferor → partner

3) Conversion → Firm
→ Pvt. Co.
→ Unlisted Co. → As per provision of Act.
→ Within 15 days inform ROC

Other Imp Points

4) Compromise / Arrangement



5) Winding up – Circumstances

By
Tribunal

- Application by LLP
- Reduction of partners below 2 → more than 6 month
- Act against sovereignty or integrative of India.
- Default in filing
 - Statemtn of A/c & solvey
Or
Annual return
 - ← 5 consecutive years
- Any just / equitable ground

Question

5. (a) Enumerate the circumstances in which a Limited Liability Partnership may be wound up by the Tribunal. Give your answer in respect of the provisions of the Limited Liability Partnership Act, 2008.

(5 Marks) (MTP April 24)

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Mr. Ankit Sharma wants to form a LLP taking him, his wife Mrs. Archika Sharma and One HUF as partners for that. Whether this LLP can be incorporated under LLP Act, 2008? Explain. (module)

Hint - HUF is not covered in the definition of body corporate and cannot be partner in LLP.

There is an LLP by the name Ram Infra Development LLP which has 4 partners namely Mr. Rahul, Mr. Raheem, Mr. Kartar and Mr. Albert. Mr. Rahul and Mr. Albert are non – resident while other two are resident. LLP wants to take Mr. Rahul and Mr. Raheem as Designated Partner. Explain in the light of Limited Liability Partnership Act, 2008 whether LLP can do so? (module)

Hint - Hence, in the given problem, besides Mr. Ram and Mr. Raheem, Mr. Albert should also be designated partners.

Question

1. Which of the following cannot be converted into LLP?

- a. Partnership firm
- b. Private company
- c. Listed company
- d. Unlisted company

Question

2. The approved name of LLP shall be valid for a period of ___ from the date of approval:

- a. 1 Month
- b. 2 Months
- c. 3 months**
- d. 6 months

Question

3. Name of the Limited Liability Partnership shall be ended by:

a. Limited

b. Limited Liability partnership or LLP

c. Private Limited

d. OPC

Question

4. Which one of the following statements about limited liability partnerships (LLPs) is incorrect?

- a. An LLP has a legal personality separate from that of its members.
- b. The liability of each partner in an LLP is limited.
- c. Members of an LLP are taxed as partners.
- d. A listed company can convert to an LLP.**

Question

5. For the purpose of LLP, Resident in India means:

- a. Person who has stayed in India for a period of not less than 182 days during the current year.
- b. Person who has stayed in India for a period of not less than 180 days during the immediately preceding one year.
- c. Person who has stayed in India for a period of not less than 181 days during the immediately preceding one year
- d. Person who has stayed in India for a period of not less than 120 days during the financial year.**

Question

6. LLP shall have atleast Partners.

a. 2

b. 4

c. 3

d. 5

Question

7. The maximum no. of Persons in a LLP is —

a. 50

b. 100

c. 20

d. No limit

Question

8. Duration of LLP —

- a. Is Limited
- b. Depends on the Partnership Agreement
- c. Extends upto proper dissolution (perpetual succession)**
- d. None of the above

Question

9. The is responsible for doing all acts, matters and things as are required to be done by LLP as per the Act.

a. Designated Partner

b. Active Partner

c. Designated Director

d. All the Partners

Question

10. Which of the following enjoys separate legal entity status?

a. Partnership Firm

b. LLP

c. Company

d. Both B and C

Question

What does the principle of "reading the statute as a whole" imply in the interpretation of statutes? Explain with the help of an example.

(RTP May24) (4 Marks) (MTP April 24)

- It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only.
- The deed must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions

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