



**dronacharya**

FOR  
**CA INTERMEDIATE**

**2024**

Corporate Laws- Part 1

Revision Notes

Law

May 24



By – Kunal Mandhania

# SCHEDULE FOR OTHER LAWS MARATHON



Time	Topic Name
8.00 am to 9.30 am	Prospectus
10 to 12 shares	Shares
12.30 to 2 pm	Dividend and Debentures
2:30 pm to 4 pm	Deposits and Charges
4.30 to 6 pm	Preliminary and Charges



CA Inter **Law May 2024**

# Prospectus

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# Public Offer and Private Placement [Sec.23]

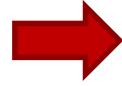
Type of Issue	Public Company	Private Company
Public Offer (including IPO, FPO or OFS)	Yes	No
Private Placement	Yes	Yes
Rights issue / Bonus Issue	Yes	Yes

## 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

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

## Sec.29

Demat / electronic form

- 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 ActComplied
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 <sup>st</sup> offer ii. Valid for 1 year from opening of 1 <sup>st</sup> 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 <sup>n</sup> 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 <span style="font-size: 2em; vertical-align: middle;">{</span> <span style="display: inline-block; vertical-align: middle; text-align: left;">Co. - 2 Dtr. Firm -. Half partners</span> ↓ 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)

<b>Abridged Prospectus [Section 2(1)]</b>	<p>"Abridged Prospectus" means :-</p> <ul style="list-style-type: none"><li>• a memorandum</li><li>• containing such salient features of a prospectus as may be specified</li><li>• <u>by</u> the SEBI by making regulations in this behalf.</li></ul>
<b>Application Form and Abridged Prospectus</b>	<p>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.</p> <p>In the following cases abridged prospectus need not be given—</p> <ol style="list-style-type: none"><li>a) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or</li><li>b) In relation to securities which were not offered to the public.</li></ol>
<b>On request</b>	<p>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.</p>
<b>Penalty</b>	<p>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.</p>



# 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.

# 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	<ul style="list-style-type: none"><li>i. Information immaterial</li><li>ii. He believed it to be true</li></ul>	<ul style="list-style-type: none"><li>i. Prosp. Issued without his consent</li><li>ii. Once he knew of mis-stat he withdrew his consent</li><li>iii. They believed it to be true</li></ul> <p>↓</p> <p>On basis of</p> <ul style="list-style-type: none"><li>a) Public document</li><li>b) Expert report basis</li></ul>

## 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
  - Not original allottee
  - Purchase from stock exchange
  - No damage loss caused → Derry vs peek
3. Sec. 37 → Investors can do class action (Group)

Peek vs  
Gurney



**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
<b>Min. Imprisonment</b>	<b>3 years</b>	<b>6 months</b>
<b>Max. Imprisonment</b>	<b>10 years</b>	
<b>Min. Fine</b>	<b>Amount involved in the fraud</b>	
<b>Max. Fine</b>	<b>3 times the amount involved in the fraud</b>	

**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




**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.



- **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**
- 

## 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 May 2024**

**Shares**

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# 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
<b>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)</b>		
2.Issue	Authorised in AOA → Pass B.R.	<ul style="list-style-type: none"><li>• SR</li><li>• No Subsisting default in redemption of Earlier PS.</li><li>• Max Redemption Period</li><li>• 20 Years</li><li>• 30 Years for infrastructure cos. (Redeem 10% p.a. from 21" year onwards)</li></ul>

<b>3. Types</b>	<p>a) Equity Shares (Normal)</p> <p>b) Equity shares with differential rights</p>	<p>(a)Cumulative Pref. Shares.</p> <p>(b)Non-cumulative Pref. shares</p> <p>(c)Participating Pref. Shares</p> <p>(d)Non-participating Pref. shares</p> <p>(e)Redeemable Pref. shares</p> <p>(f) Irredeemable Pref. shares</p> <p>(g)Convertible Pref. shares</p> <p>(h)Non-convertible Pref. shares</p>
<b>4. Rights</b>	<ul style="list-style-type: none"> <li>• Have right to vote in every general meeting</li> <li>• Equity shareholders are entitled to bonus and right shares</li> </ul>	<ul style="list-style-type: none"> <li>• Votes on matters only related to them</li> <li>• Fixed Dividend</li> <li>• No rights on reserves of company</li> <li>• No right of Interim Dividend or Bonus Shares or Right Shares.</li> </ul>



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

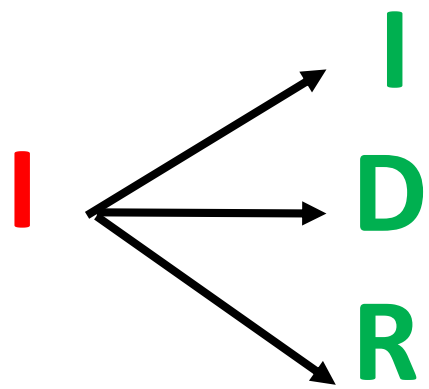
(2) With DVR (Rule 4)

Shortcut – 3 Annual IPL cricket match RSA

3 → 3 years



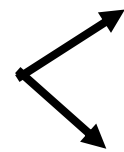
Annual → Annual A/cs & Return (3 years - no default)



- 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

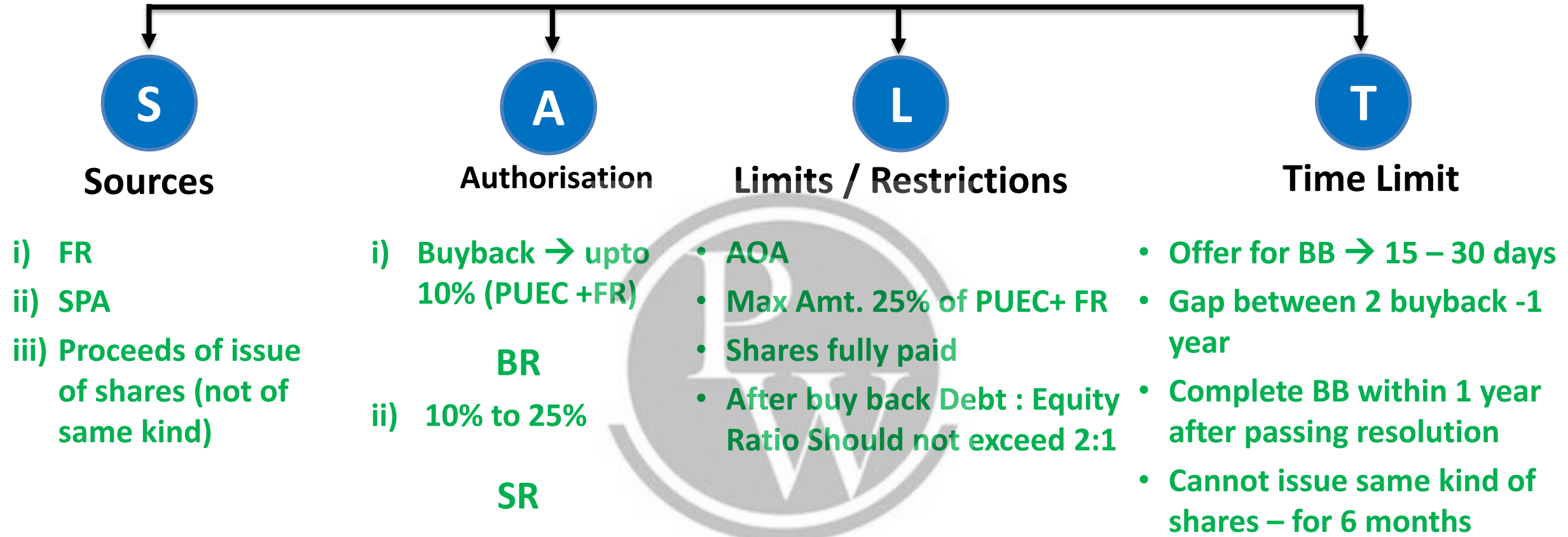
(Redemption of debt. Or pref shares,  
payment of div, repayment of deposits  
or any term loan or interest thereon.)

**[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  Mnemonic- CP k disc mein jaake buy karo BP	<ul style="list-style-type: none"><li>1) No restriction on amount of premium.</li><li>2) Amount of premium should be transferred to 'Securities Premium account'.</li><li>3) Securities Premium account can be used only for. ( MtP sep 23)<ul style="list-style-type: none"><li>i. commission paid on issue of shares or debentures</li><li>ii. premium paid on redemption of preference shares or debentures</li><li>iii. discount allowed on any issue of shares or debentures</li><li>iv. Buy- back of shares u/s 68</li><li>v. Issue of Bonus shares</li><li>vi. Writing off the preliminary expenses</li></ul></li></ul>

**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.

# 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	<ol style="list-style-type: none"><li>1) belong to class of shares already issued.</li><li>2) Special Resolution making allotment valid for 12 months from passing.</li><li>6) Maximum Quantum of issue in a year<ul style="list-style-type: none"><li>▪15% of the existing paid up equity share capital in on FY or</li><li>▪Shares of the issue value of Rs. 5 crores. (whichever is HIGHER)</li></ul></li><li>8) Lock in period: 3 years from the date of allotment.</li><li>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 )</li></ol>

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	<p>1) Shares are offered in proportion of shareholding. 2) Existing shareholders can</p> <pre>graph TD; A[Existing shareholders can] --&gt; B[Accept the offer]; A --&gt; C[Decline the offer]; A --&gt; D[Renounce the offer]; B --&gt; E[Time to accept 7 – 30 days]; C --&gt; F[Deemed to be declined if not accepted]; D --&gt; G[Can give to somebody else (unless articles restrict)]</pre> <p>The flowchart illustrates the three possible actions for existing shareholders when offered shares. It starts with the text 'Existing shareholders can' and branches into three paths: 'Accept the offer', 'Decline the offer', and 'Renounce the offer'. Each path leads to a specific outcome: 'Time to accept 7 – 30 days' for acceptance, 'Deemed to be declined if not accepted' for decline, and 'Can give to somebody else (unless articles restrict)' for renunciation.</p> <ul style="list-style-type: none"><li><b>Accept the offer</b> Time to accept 7 – 30 days</li><li><b>Decline the offer</b> Deemed to be declined if not accepted</li><li><b>Renounce the offer</b> Can give to somebody else (unless articles restrict)</li></ul>

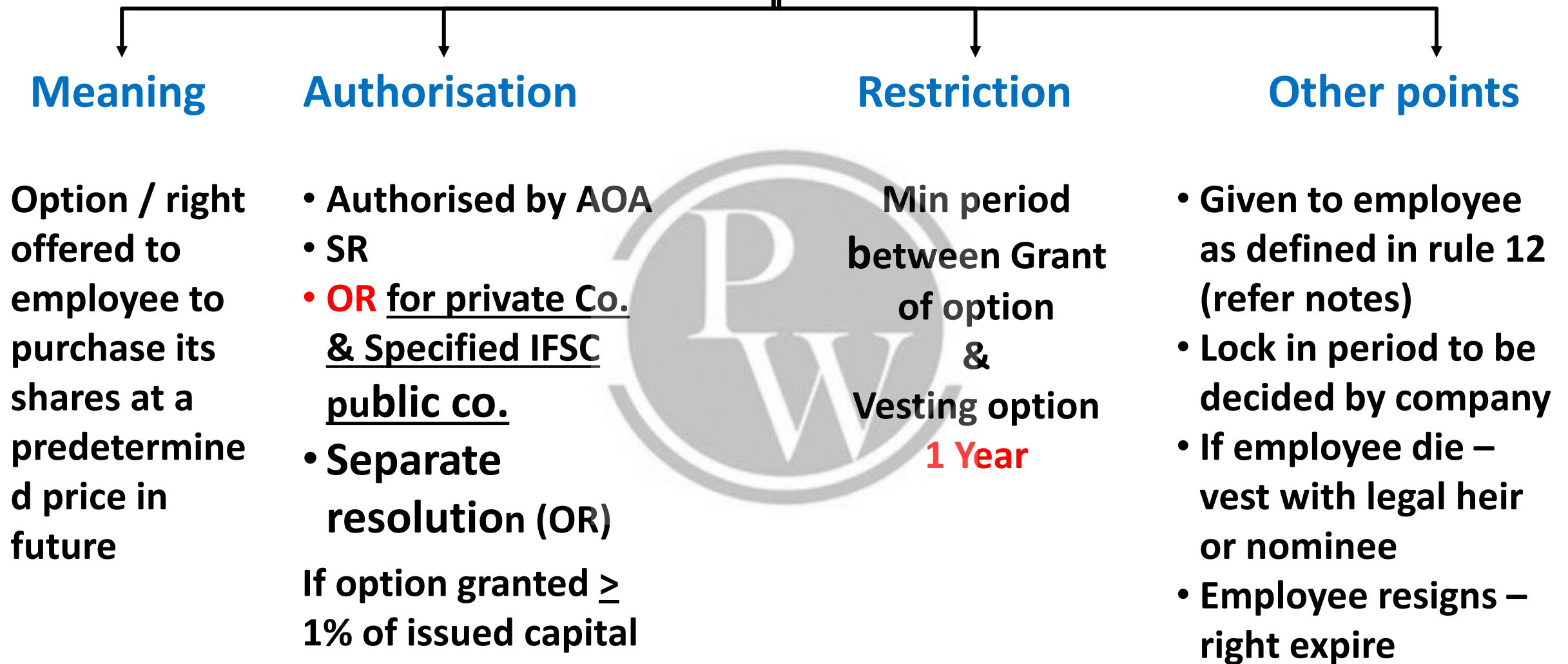
## Note:

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.

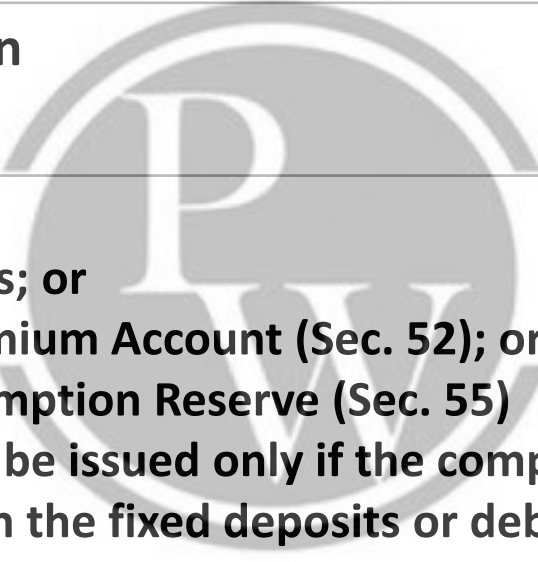
## Other points

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	 <ol style="list-style-type: none"><li>1. Sources<ol style="list-style-type: none"><li>a) Free Reserves; or</li><li>b) Security Premium Account (Sec. 52); or</li><li>c) Capital Redemption Reserve (Sec. 55)</li></ol></li><li>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.</li><li>3. Bonus shares must be fully paid up.</li><li>4. If there are any partly paid shares, they must be made fully paid up before the issue of bonus shares.</li><li>5. Shall comply with conditions presc. By CG.</li><li>6. Issued only to existing shareholder.</li><li>7. The bonus shares shall not be issued in lieu of dividend</li></ol>

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



- 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 → 3/4<sup>th</sup> majority of that class



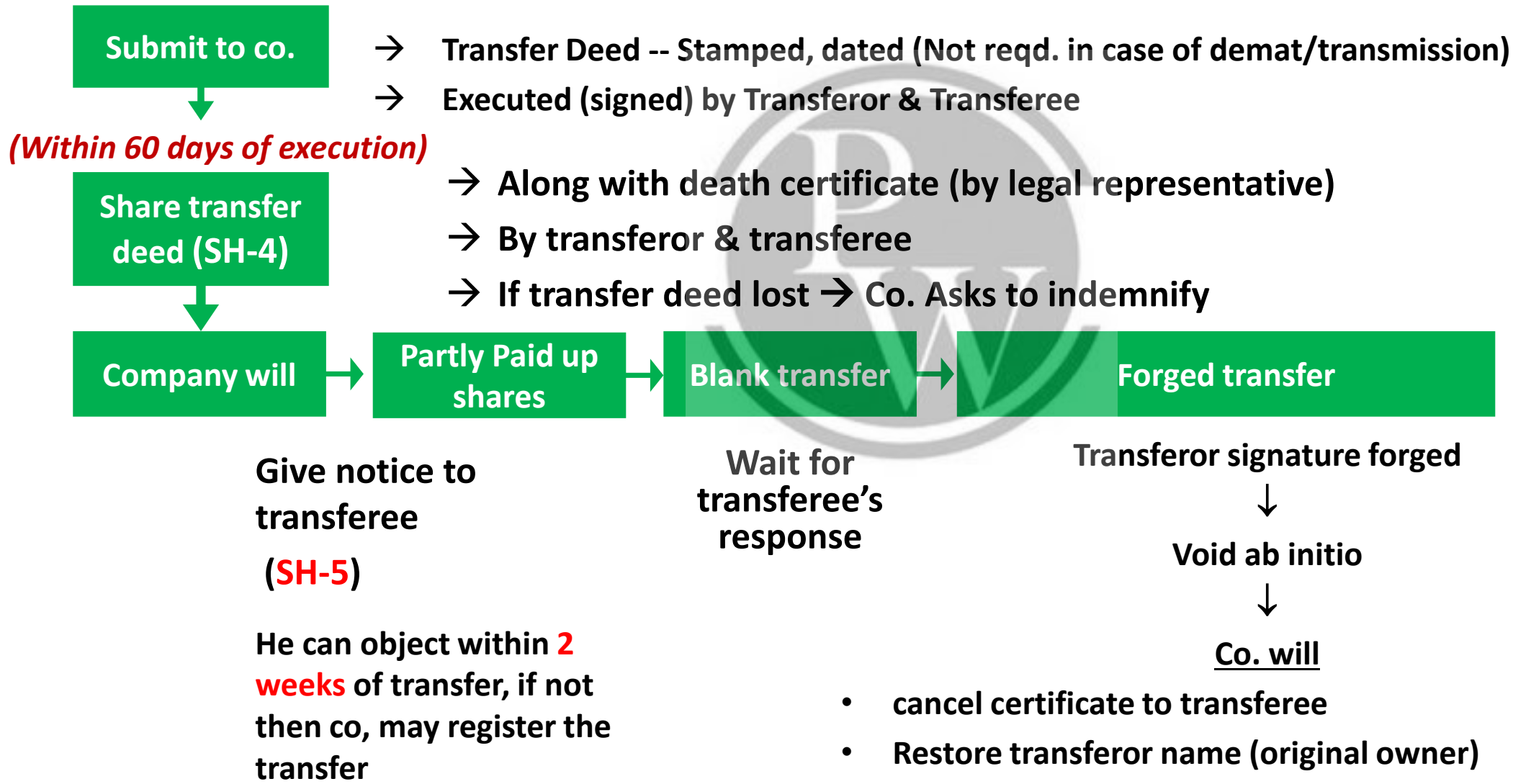
In a company if any change of right of one class also affects the right of other class, then:

- 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.



# Note

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



**Company will**

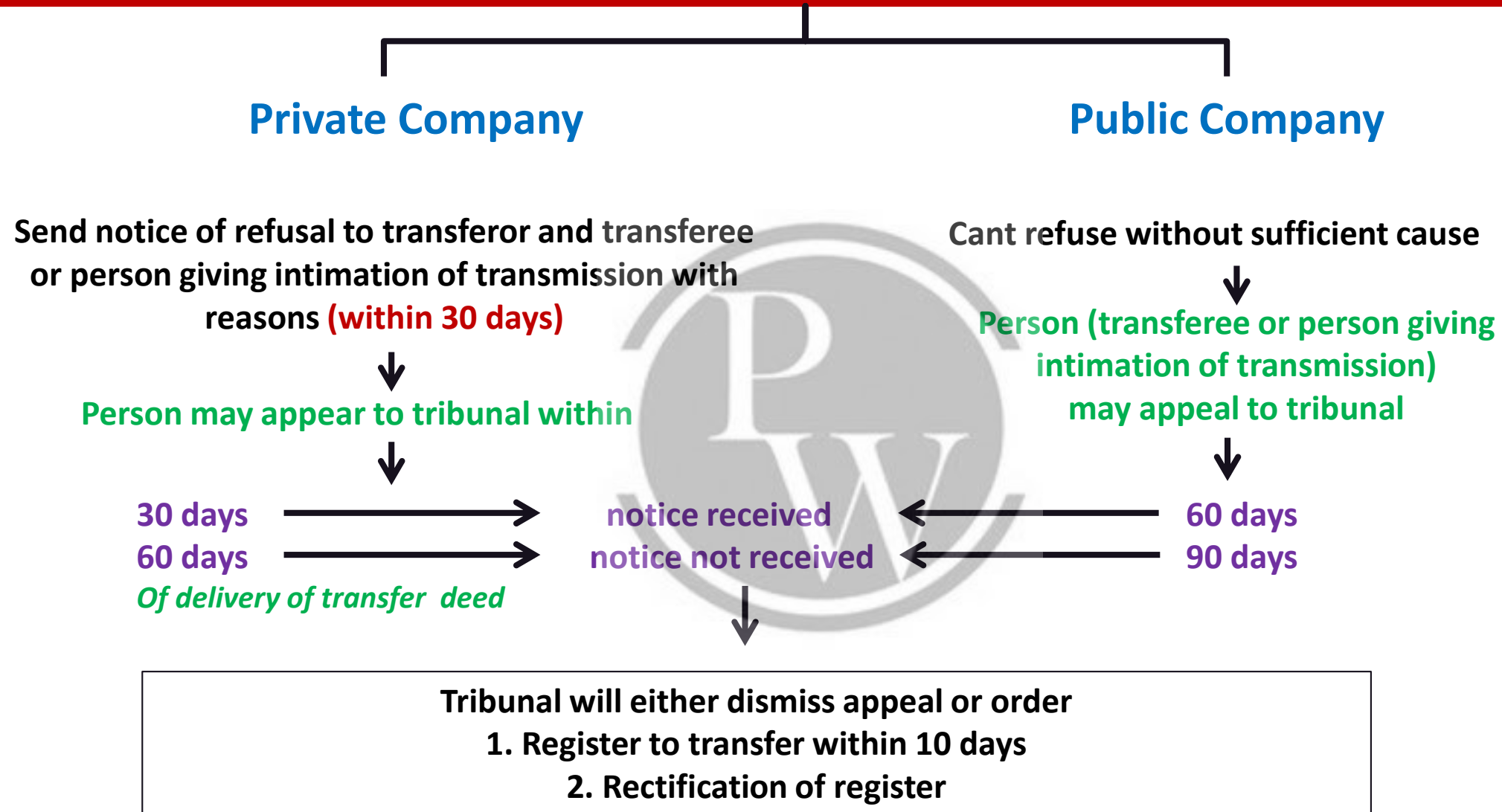


**Refuse to register new transferee as member  
+ pay damages to new transferee  
+ claim damages from old transferee**

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 May 2024**

# Dividend

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# 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)**

# 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

## (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)**

## 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 25<sup>th</sup> 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.

# Investors Education & Protection Fund (Sec 125)

## SOURCE

## APPLICATION

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



# 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 May 2024**

# Debentures

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# Introduction

- **Deb. Includes deb. Stock/ bonds / instrument of Co. evidencing a debt**
- **Following are not deb.**
  - i. **Inst under Chp III of RBI Act (Derivatives & money market Instruments)**
  - ii. **Commercial papers**
  - iii. **Foreign currency convertible / currency bond**
  - iv. **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

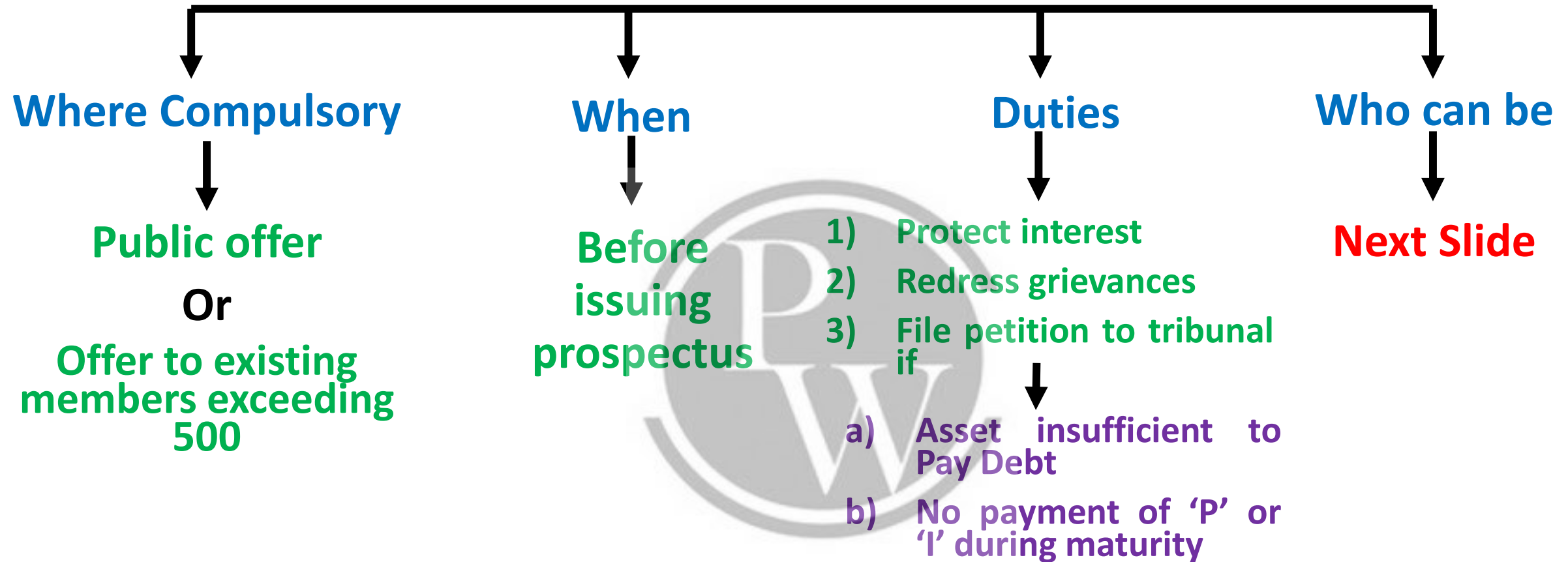
**Create debenture  
trust deed**



- 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

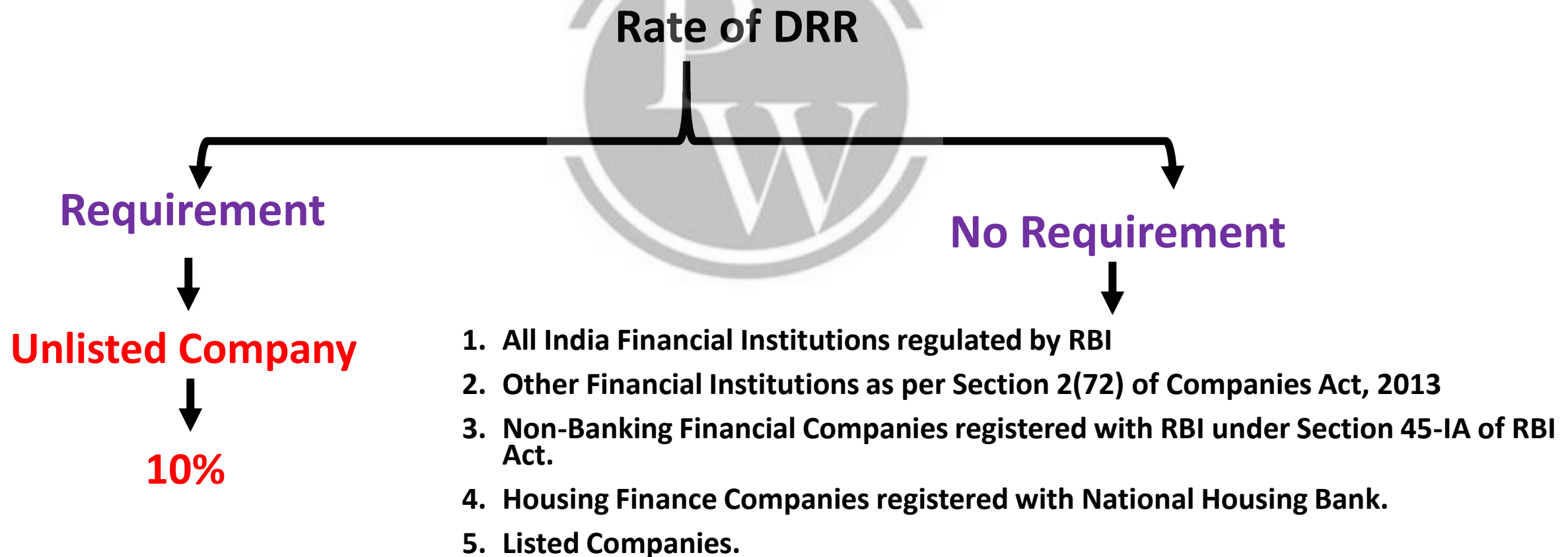
- Infra finance/projects/Debt fund NBFC
- Permitted by CG/RBI/ NHB/ Statutory body

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

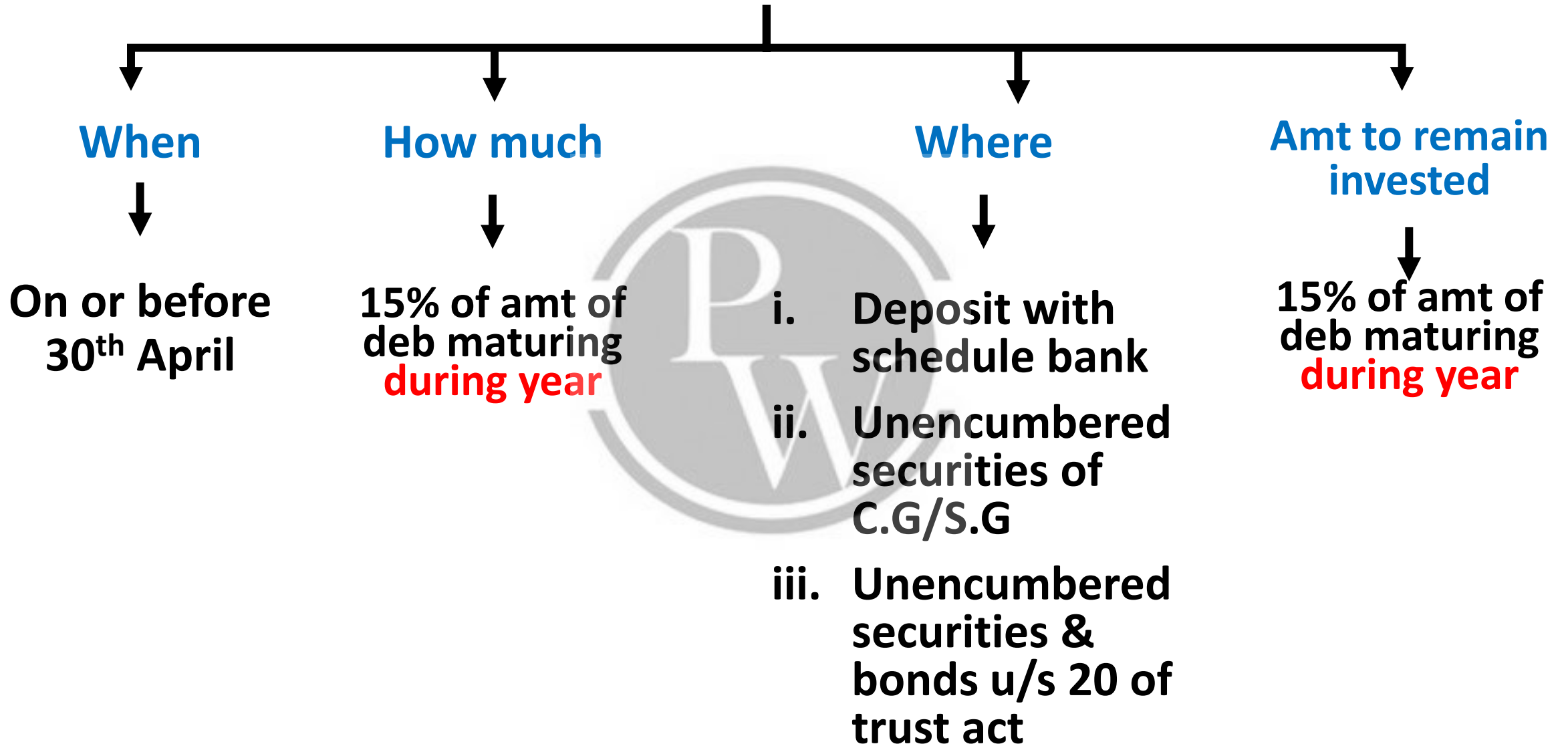
- (a) Prithvi Cements Limited can issue debentures carrying voting rights by passing an ordinary resolution at a general meeting of the company.
- (b) Prithvi Cements Limited can issue debentures carrying voting rights by passing a special resolution at a general meeting of the company.
- (c) Prithvi 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



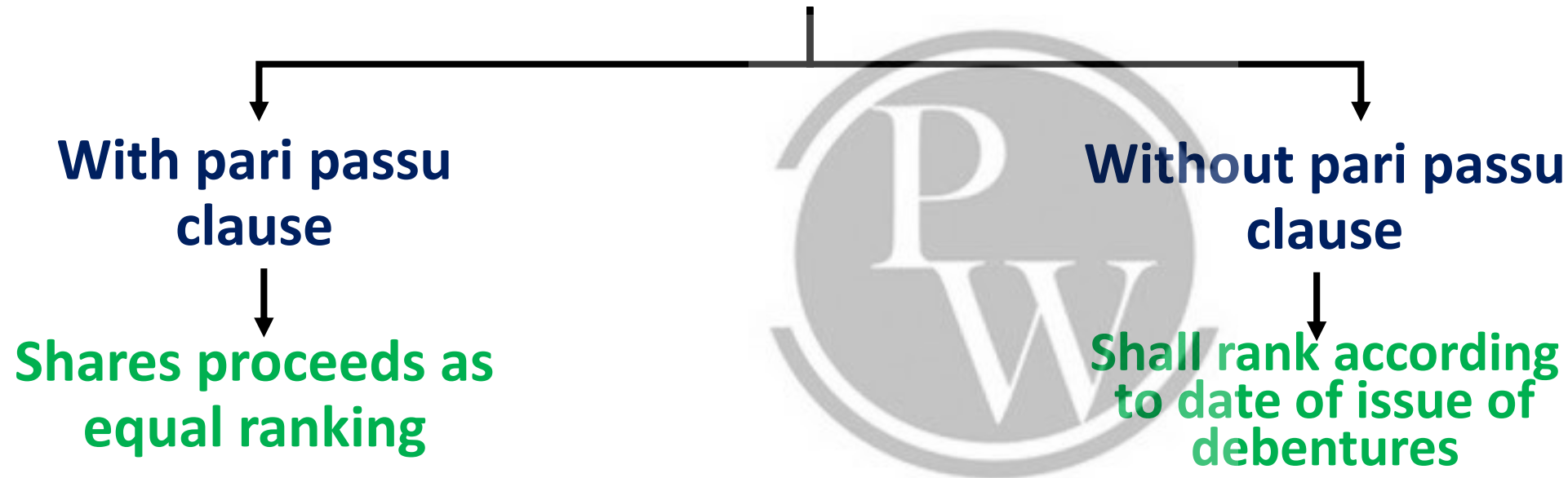
# Debenture Reserve Fund (Investment)



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



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

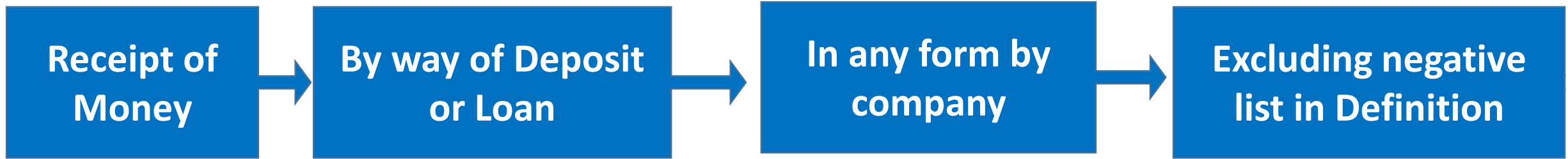
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# Deposits

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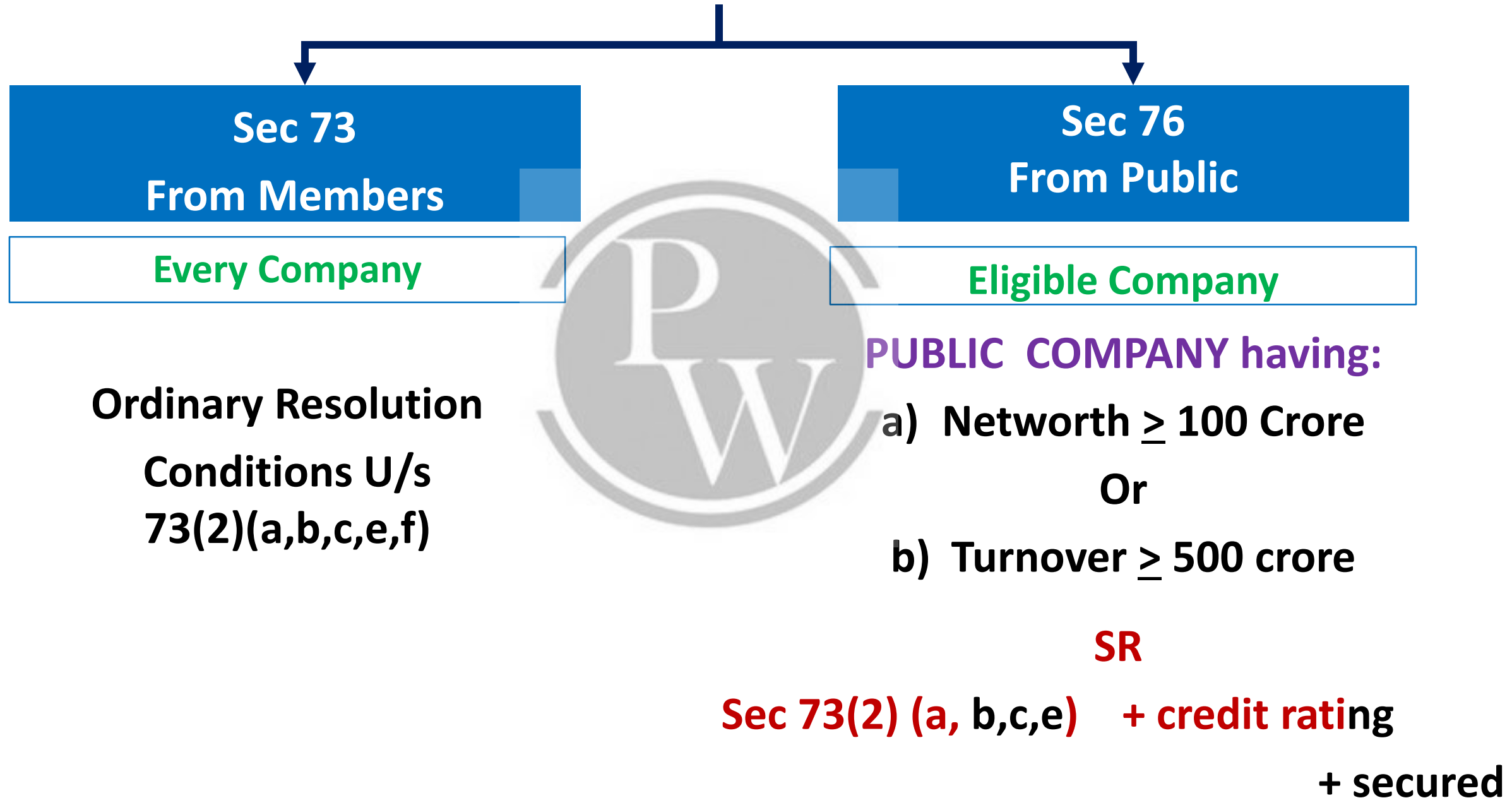
# Deposits



- **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



# 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%	✓
<ul style="list-style-type: none"> <li>• A Specified IFSC Public company</li> <li>• A private company</li> </ul>	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) → 6 months can be reduced to 3 months
3. Give receipt to depositor / agent within 21 days
4. Every year file a return before 30<sup>th</sup> 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.

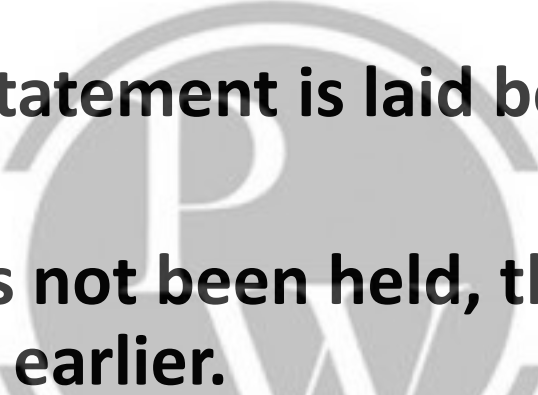
- (a) 3 months
- (b) **6 months**
- (c) 12 months
- (d) 1 year

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.**
- 

# 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**

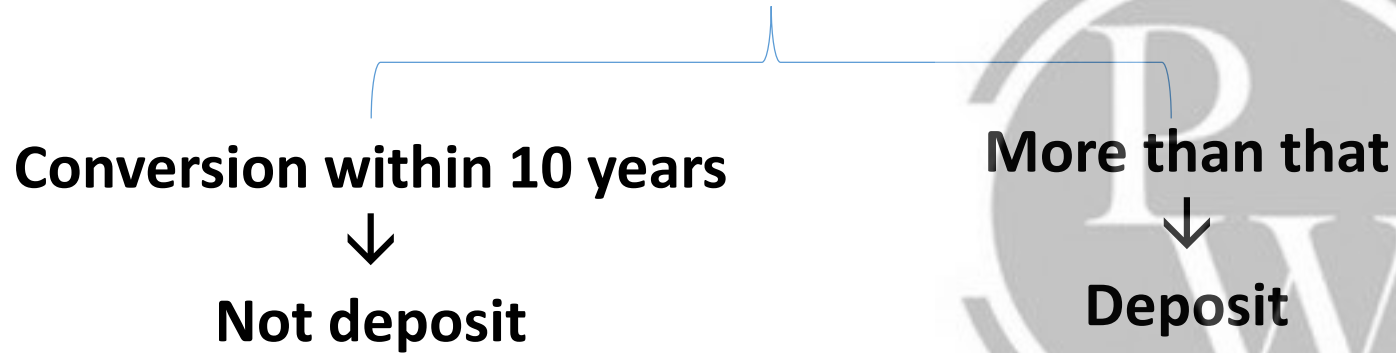
- **Director of Public or Private Co.**
- **Relative of Director of private co.**

- 
- i. Written Declaration that amount not given out of borrowing from others.
  - ii. Disclosed in board report
  - iii. 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**



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:-

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

CA Inter **Law may 2024**

# Charges

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# 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 2<sup>nd</sup> 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

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)



# 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.**

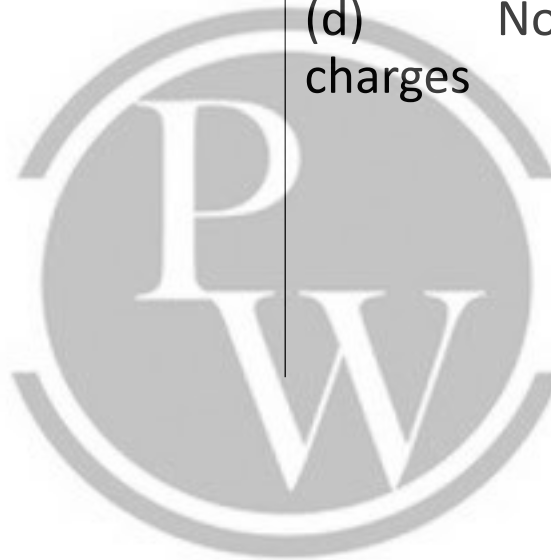
- At regd. office
- For 8 years

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



# 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**

# 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)**





# 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.

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**

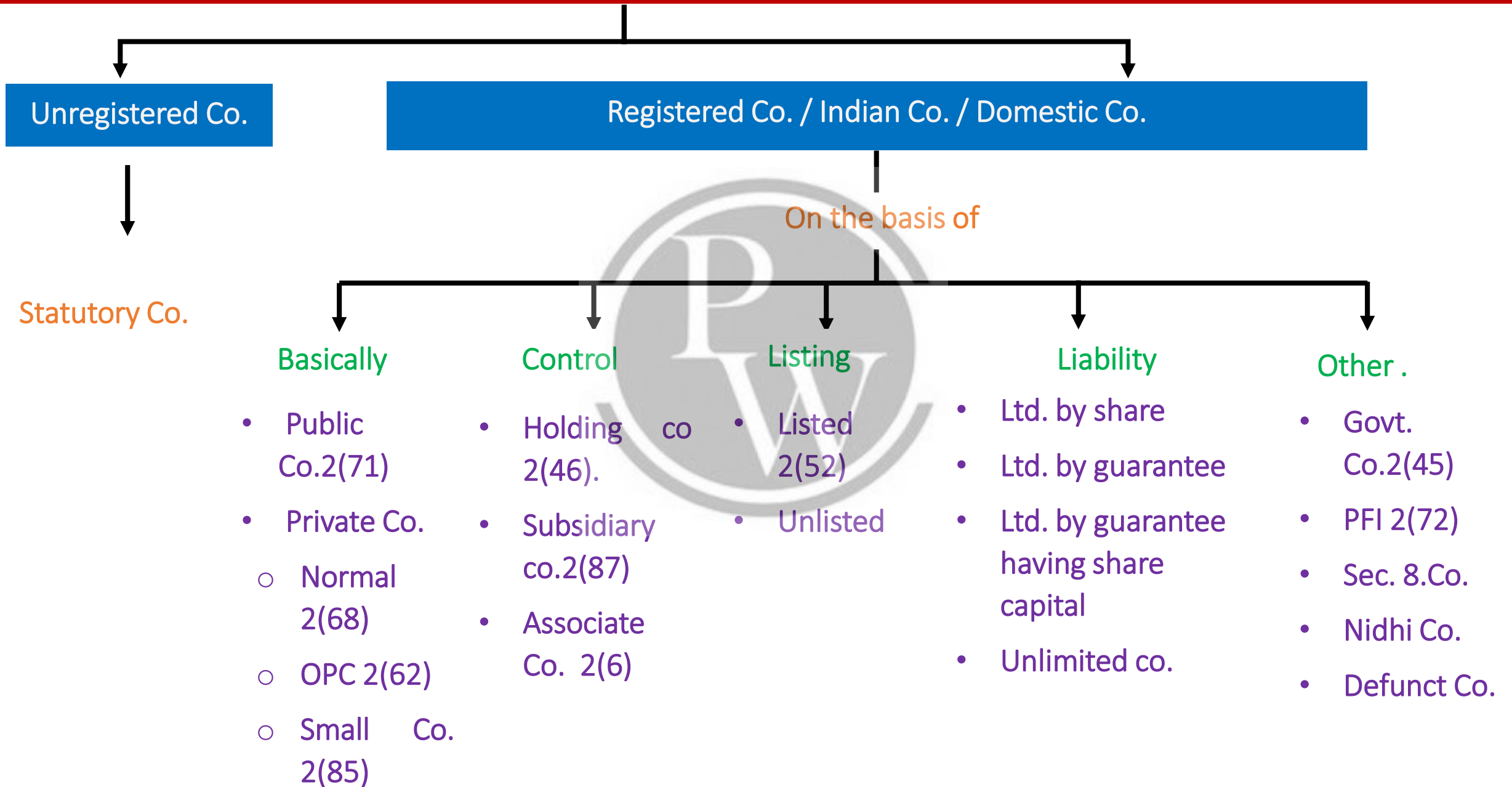
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# **Preliminary and Incorporation**

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# TYPES OF COMPANIES



## **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,**

# 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



Abhilasha and Amrita have incorporated a 'not for profit' private limited company which is registered under Section 8 of the Companies Act, 2013. One of their friends has informed them that their company can be categorized as a 'small company' because as per the last profit and loss account for the year ending 31st March, 2019, its turnover was less than ` 20 crores and its paid up share capital was less than ` 2 crores. Advise.

- (a) A section 8 company, which meets the criteria of 'turnover' and 'paid-up share capital' in the last financial year, can avail the status of 'small company' only if it acquires at least 5% stake in another 'small company' within the immediately following financial year.
- (b) If the acquisition of minimum 5% stake in another 'small company' materializes in the second financial year (and not in the immediately following financial year) after meeting the criteria of 'turnover' and 'paid-up share capital' then with the written permission of concerned ROC, it can acquire the status of 'small company'.
- (c) **The status of 'small company' cannot be bestowed upon a 'not for profit' company which is registered under Section 8 of the Companies Act, 2013.**
- (d) A section 8 company, if incorporated as a private limited company (and not as public limited company) can avail the status of 'small company' with the permission of concerned ROC, after it meets the criteria of 'turnover' and 'paid-up share capital'.

Roma along with her six friends has incorporated Roma Trading Ltd. In May 2019. The paid-up share capital of the company is ` 30 lacs. Further, in April 2020, she noticed that in the last financial year, the turnover of the company was well below ` 20 crores. Advise whether the company can be treated as a 'small company'.

- (a) Roma Trading Ltd. is definitely a 'small company' since its paidup capital is much below ` 2 crores and also its turnover has not exceeded the threshold limit of ` 20 crores.
- (b) **The concept of 'small company' is applicable only in case of a private limited company/OPC and therefore, despite meeting the criteria of 'small company' it being a public limited company it cannot enjoy benefits of 'small company'.**
- (c) Unlike a private limited company/OPC which automatically becomes a 'small company' as soon as it meets the criteria of 'small company', Roma Trading Ltd. being a public limited company has to maintain the norms applicable to a 'small company' continuously for two years so that, thereafter, it will be treated as a 'small company'.
- (d) If all the shareholders of Roma Trading Ltd. give an undertaking to the ROC stating that they will not let the paid-up share capital and also turnover exceed the limits applicable to a 'small company' in the next two years, then it can be treated as a 'small 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.

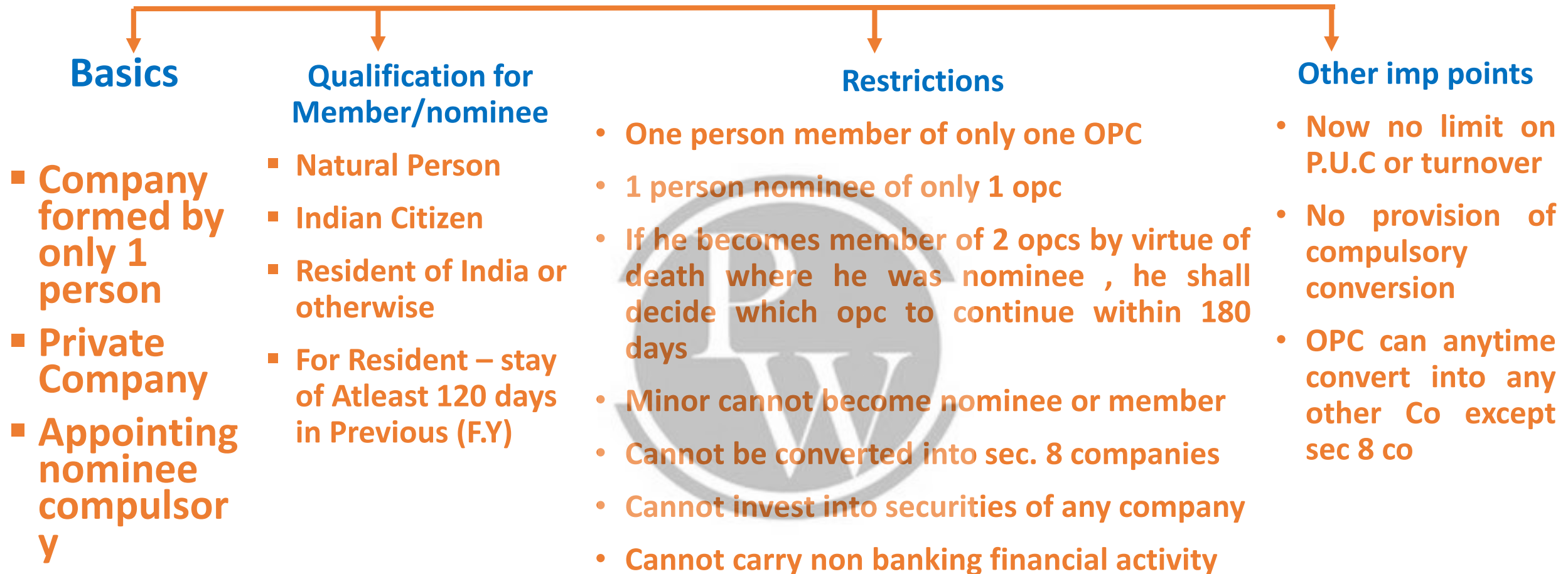
2. **MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid up Share Capital of ` 45 lakh and turnover of ` 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:**

- 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)]



## Note

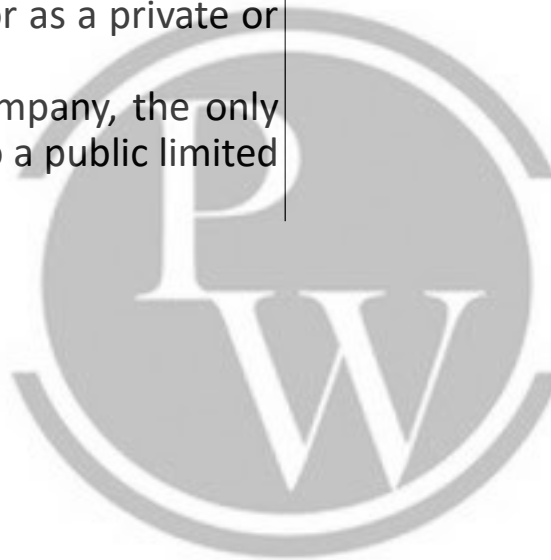
- The nominee may withdraw his consent by giving a notice in writing to such sole member and to the OPC.
- The sole member shall nominate another person as nominee within 15 days of receipt of notice of withdrawal and shall send an intimation of such nomination in writing to the OPC along with the written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

Anupam incorporated a 'One Person Company' (OPC) with his sister Alpana as the nominee and about three years have passed satisfactorily. Anupam does a number of charitable works and is associated with three NGOs. His business under his OPC has also flourished. Now he is planning to convert the OPC into a Section 8 company (i.e. a company formed with charitable objects). Choose the correct option.

- (a) Since the company belongs to Anupam, he has full discretion to convert the OPC either as a Section 8 company or as a private or public company
- (b) Since the company was formed as a private company, the only option available with Anupam is to convert it into a public limited company.

(c) **There is specific prohibition on converting OPC into a Section 8 company; otherwise it can be converted into a private or public company without any hindrance.**

(d) Since Anupam does a lot of charitable works there is no prohibition on converting his OPC into a Section 8 company.



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)**



**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)

**Associate Co. 2(6)**



**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



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.



# Listed Co. [Sec. 2(52)]

	Public Co.	Pvt. Co.
Listed	If equity shares listed	X
Not Listed	<p>If ↓</p> <ul style="list-style-type: none"><li>• Non convertible debt securities listed</li><li>• Non-convt pref. shares listed</li><li>• Listed outside India</li></ul>	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.



Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife? (RTP MAY 2019)

- a. Since blood relation can only be appointed as nominee in case of OPC, Rajesh needs to appoint his son Rakshak.
- b. Rajesh can appoint his friend Ramnivas as nominee in his OPC**
- c. Roopali is not agreeable to the proposal of Rajesh and hence, Rajesh cannot change her as the nominee
- d. Either Rakshak or Mr. Ramnivas can be appointed as nominee

Shruti, a common friend of Suchitra and Sukanya, got incorporated OPC sometime before and during a chit-chat with her friends informed them that there is some limit on the maximum capital which her OPC can have and she would have to convert her OPC either into a private or public limited company if such limit exceeded. Suchitra and Sukanya who are desirous of forming a private limited company for carrying on textile trading business, are unsure about the maximum capital which a private limited company can have. Advise. (MTP MAY 2019)

- a. A private limited company can have maximum of Rs. One crore as share capital.
- b. A private limited company can have maximum of Rs. Two crores as share capital.
- c. A private limited company can have maximum of Rs. Five crores as share capital.
- d. A private limited company can have unlimited share capital.**

In Roopali Marketing Company Private Limited (Authorised capital 50,000 shares of Rs. 10 each and paid-up share capital of Rs. 4,50,000), 1000 shares are jointly held by Abeer and Abheek; another 800 shares are jointly held by Seema and Srividya; and another 1200 are jointly held by Ramesh, Raksha and Rajneesh. Further, 42,000 shares are held by 193 individual persons in their individual capacity. Is it possible for the company to induct more persons? (MTP MAY 2019)

- a. The company is unable to induct more persons since it already has two hundred individual members.
- b. The company can induct four more persons as members.**
- c. The company can induct another 20 persons (i.e. 10% of two hundred individual members) after seeking permission from the concerned ROC.
- d. If the company does not want to seek permission of the concerned ROC, it can induct only 10 more persons (i.e. 5% of two hundred individual members).

A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd. (RTP MAY 2019)

- a. There is no relationship between A Ltd. and C Ltd.
- b. C Ltd. is deemed to be the subsidiary of A Ltd.**
- c. A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
- d. C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.

# 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**.

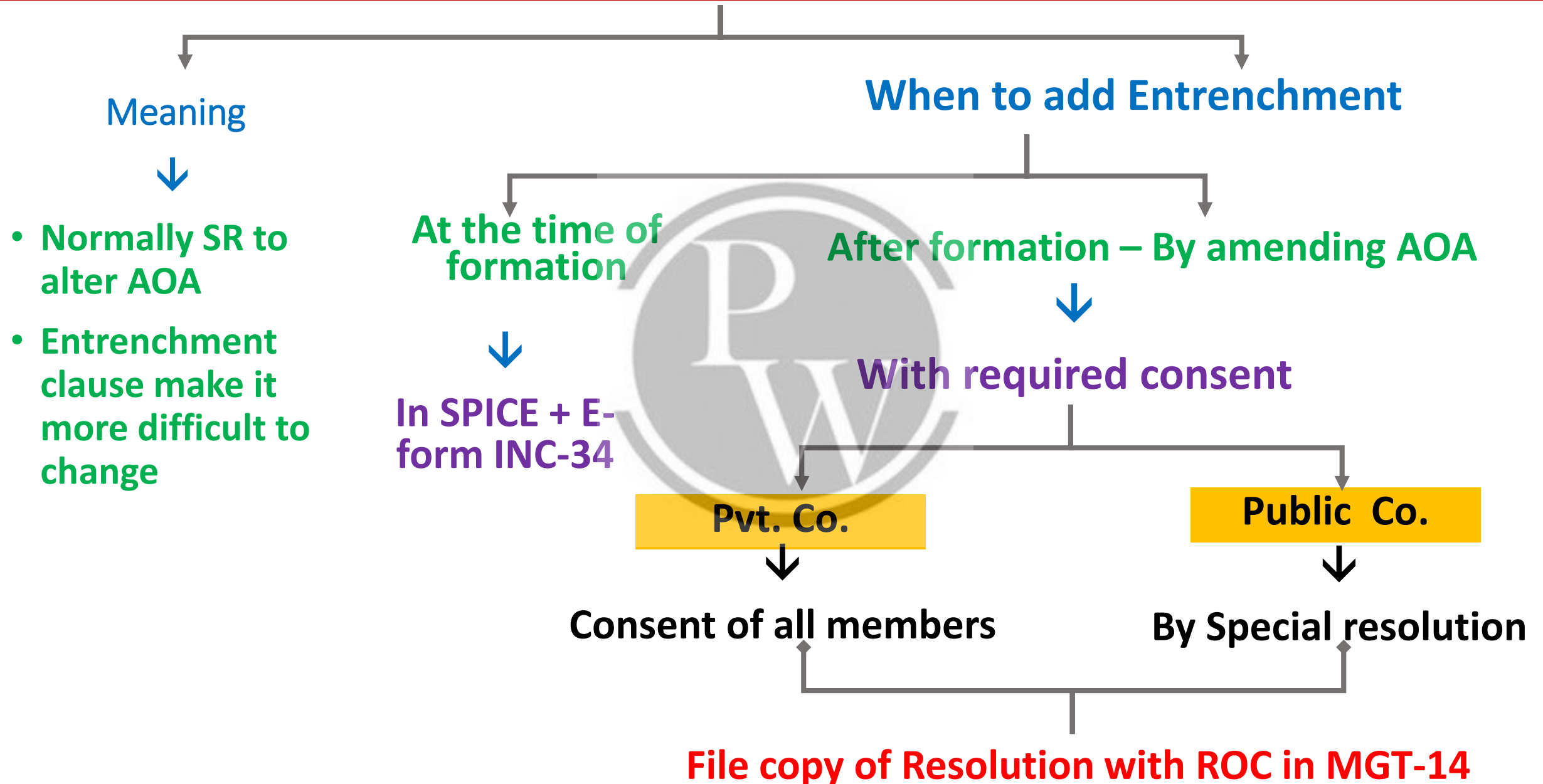
**Note** - If Person is acting in his professional capacity he is not Promoter

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)



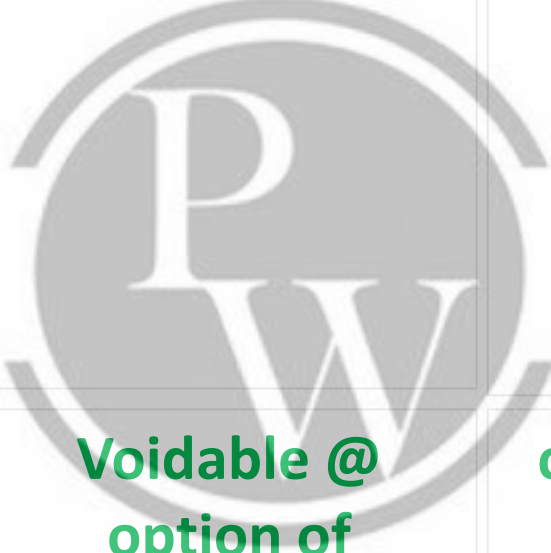
**The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also state the relevant provisions of the said Act dealing with entrenchment provisions.(6 Marks) (MTP Oct. 22)**

**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**

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

# 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

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**

- 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)

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.

# 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.

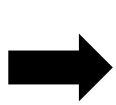
- (a) The company can alter its Memorandum of Association by passing an ordinary resolution and obtaining the confirmation of the Regional Director (RD).
- (b) **The company can alter its Memorandum of Association by passing a special resolution at the shareholders' meeting.**
- (c) The company can alter 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

# 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

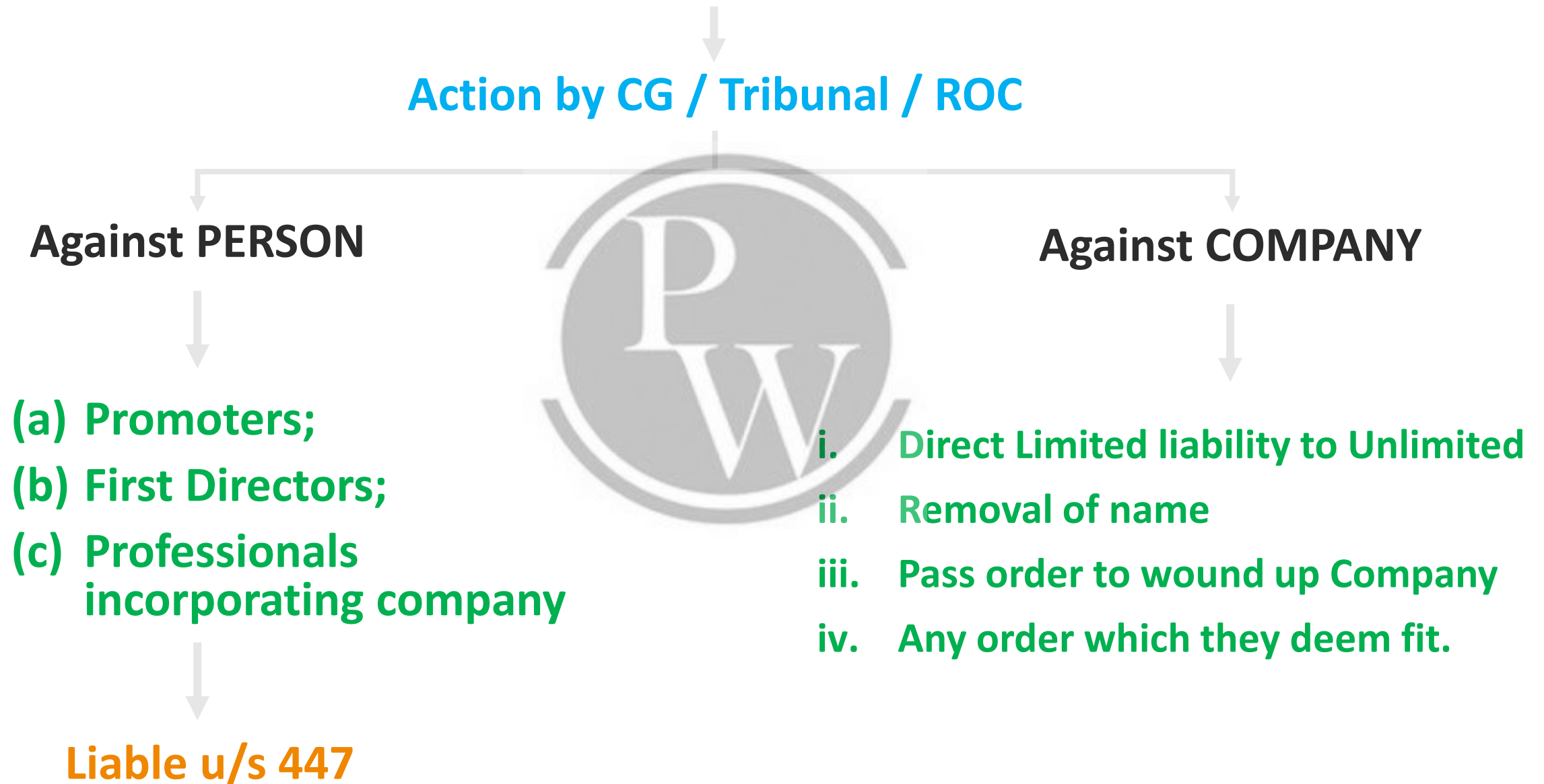
- Reserve NAME through 'SPICe +' form –Part A service on MCA website
- Option of TWO proposed name
- With prescribed fees
- Reserve name shall be valid till 20 days
- Old companies can change name through RUN scheme ,which when available will be reserve for 60 days

### 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



# Commencement of Business Sec 10(A)

Every company having share capital incorporated



After companies (amendment) Ordinance, 2019(i.e. from 2<sup>nd</sup> 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.