



# CS EXECUTIVE CHART BOOK

## QUICK REVISION GUIDE

# COMPANY LAW

## MODULE - I

Summarised Tabular Chart Format for revising the subject matter in an easy-to-learn format

Point-wise Summaries of each chapter are provided in a nutshell

Full-coverage of the New Syllabus for CS-Executive June 2025/Dec 2025 exams

**EDITION: 2025-26**

**Published By: Physicswallah Limited**



**ISBN:** 978-93-6897-572-4

**MRP:** 249/-

**Mobile App:** Physics Wallah (Available on Play Store)



**Website:** [www.pw.live](http://www.pw.live)

**Youtube Channels:** Physics Wallah - Alakh Pandey

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CA Intermediate by PW (@CAintermediatebyPW)

**Email:** [publication@pw.live](mailto:publication@pw.live)

**SKU Code:** a11bef34-b613-476f-be5a-f53b91a3cd7c

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# Preface

A highly skilled professional team of Commerce Wallah works vigorously to ensure that the students receive the best content for their school & board exams.

While there are tons of commerce study resources out there, Commerce Wallah by PW stands out by offering constantly improved, top-notch materials. Commerce Wallah team continuously works to provide supreme quality study material for the Commerce students.

From the beginning, the content team comprising Subject Matter Experts, Content Creators, Reviewers, DTP operators, Proofreaders, and others are involved in shaping the material to their best knowledge and experience to produce powerful content for the students.

Commerce Wallah Faculties have adopted a novel style of presenting the content in easy-to-understand language and have provided the content team with expert guidance and supervision throughout the creation and curation of this book.

PW Commerce Wallah strongly believes in conceptual and fun-based learning. Commerce Wallah provides highly exam-oriented content to bring quality and clarity to the students.

This book adopts a multi-faceted approach to mastering and understanding the concepts by having a rich diversity of questions asked in the school and board examination and equipping the students with the knowledge for this highly crucial exam.

The main objective of this book is to provide an edge to your preparation with short & crisp yet high-quality content.

## BOOK FEATURES

This book, especially designed for commerce students contains:

- ✓ Syllabus coverage as per the latest CBSE Curriculum.
- ✓ Keywords and Important terms provided for better conceptual understanding.
- ✓ Flowcharts, diagrams and tables in every chapter to grasp complex topics and boost understanding.
- ✓ Conquer exams with MCQs, Very short and Short Answer questions for practice with detailed solutions to understand the logic behind each answer.

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**TOPICS TO BE COVERED**

- ❖ Introduction - Jurisprudence of Company Law
- ❖ Meaning and definition of Company
- ❖ Nature and characteristics of a Company
- ❖ Doctrine of Ultra Vires and Indoor Management
- ❖ Doctrine of Constructive Notice
- ❖ Doctrine of lifting of or piercing the corporate veil

The Companies Act, 2013 received the assent of the President on August 29, 2013 and was notified in the Gazette of India on August 30, 2013.

**SECTION 2(20)**

Company means a company registered Under this Act (2013)

OR Any of the previous Companies law.

The word “Company” is derived from the Latin words ‘Com & panis’ Com means ‘Together’ and Panis means ‘Bread’. Company means association of person who took their meal together.

**As per Judicial Pronouncement**

Company means a voluntary organization of persons who are contributing their money in the common stock of the company and who agree to invest the same for a common goal/purpose, and to share the profits & the losses arising therefrom.

Such persons are called as shareholders or members and the common stock is called as the share capital of the company.

**SECTION 2(11) BODY CORPORATE**

Means a company and it includes foreign company and any corporation establish under special Act however it excludes

- ❖ Registered co-operative society
- ❖ Body corporate- specified by central government.

**NOTE:** Every Company is a Body Corporate but every Body Corporate is not a Company.

**The provision of this Act shall apply to**

- (a) Company incorporated under this Act or any previous company law
- (b) Insurance Companies
- (c) Banking Companies
- (d) Electricity Companies
- (e) Corporations establish under special act
- (f) Body corporate

**Basic Characteristics of a Company**

- (i) It is a voluntary organisation.
- (ii) It is a Separate legal entity.
- (iii) It is an artificial person in the eyes of law.

(iv) It can hold property in its own name.

(v) It can sue & be sued in its own name.

(vi) Perpetual succession.

(vii) Common seal.

(viii) Limited liability of members.

**Whether a company is a citizen of India?**

Company is not a citizen because citizenship can only granted to natural person. Company has residential status which depends upon place of incorporation. In general company cannot claim fundamental right because it is given to citizen however few fundamental rights which is available to any person, company can claim such rights.

**LIFTING / PIERCING OF CORPORATE VEIL**

Where the fraudulent intension to misuse the veil for benefit of their own or conducting illegal act, such person will not get the benefit of acting behind veil.

In simple words, if any person committing fraud or illegal activity inside the company then such person shall held personally liable.

To prevent dishonest practice court can lift corporate veil and look behind the corporate face.

**In Following Cases Court Can Lift Corporate Veil**

- (i) **Fraudulent application for removal of name:** Company fraudulently files the application to remove the name of the company so that creditors cannot claim in such situation court can lift the corporate veil.
- (ii) **Criminal activity:** If company is carrying any criminal activity under the corporate name then court can lift the veil.
- (iii) **Conflict of public policy religious sentiments:** Company is carrying such activities which is against the public policy or which hurt the religious sentiments.
- (iv) **Submission of false information:** Company is incorporated by submitting the false information.
- (v) **Avoidance of welfare legislation:** Where the sole purpose of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the corporate veil should be pierced to look at the real transaction.
- (vi) **Prevention of fraud:** The formation of the company is to do fraud then court can lift the corporate veil.
- (vii) **Determination of enemy character:** To determine the enemy character of the company court can break the corporate veil.
- (viii) **Protection of revenue:** Formation of the company is to evade the taxes then court can lift the veil.

**SECTION 464 ILLEGAL ASSOCIATION**

Any unregistered association or partnership having more than 50 persons working for acquisition of gain shall be treated as illegal association.

It does not include Hindu undivided family or partnership firm formed by professional who are governed by special Act. If partnership firm formed by HUF having more than 50 major members shall be treated as illegal association.

**Effects of Illegal Association**

- (a) Cannot enter into a contract.
- (b) Cannot wound up.
- (c) Disregard the entity.
- (d) Taxable.
- (e) Cannot sue to any member/creditor.
- (f) Cannot be sued by members/creditors.

**DOCTRINE OF ULTRA VIRES**

Ultra vires is a Latin term made up of two words “ultra” which means beyond and “vires” meaning power or authority. Ultra vires acts are any acts that lie beyond the authority of a company to perform.

Any activity done in contrary to or in excess of the scope of activity of the Companies Act, Memorandum of Association or Articles of Association will be ultra vires.

**CASE LAW: ASHBURY RAILWAY CARRIAGE AND IRON CO. LTD. V. RICHE (1878)**

The memorandum of the company in the said case defined its objects thus: “The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors. The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. Riche brought a case for damages on the ground of breach of contract, as according to him the words “general contractors” in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

The House of Lords held that the contract was ultra vires the company and, therefore, null and void. The term “general contractor” was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

**Exceptions to the Doctrine of Ultra Vires**

- (i) Any act which is performed irregularly, but otherwise it is intra-vires the company, can be validated by the shareholders of the company by giving their consent in general meeting.
- (ii) If any act is deemed to be within the authority of the company by the companies Act, 2013 then they will not be considered as ultra-vires even if they are not expressly stated in the MOA.
- (iii) Any incidental or consequential effect of the ultra-vires act will not be invalid unless the companies Act, 2013 expressly prohibits such act.
- (iv) Any act which is outside the authority of the directors of the company but otherwise it is intra-vires the company can be ratified by the shareholders of the company.

## DOCTRINE OF INDOOR MANAGEMENT

While the doctrine of, ‘constructive notice’ seeks to protect the company against the outsiders, the principal of ‘**indoor management**’ operates to protect the outsiders against the company. This doctrine emphasizes on the concept that an outsider whose actions are in good faith and has entered into a transaction with a company can have a presumption that there are no irregularities internally and all the procedural requirements have been complied with by the company.

The doctrine of indoor management, which protects outsiders against the actions done by the company.

## CASE LAW: ROYAL BRITISH BANK V. TURQUAND

The directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. Lord Hatherly observed: “Outsiders are bound to know the external position of the company but are not bound to know its indoor management.”

## Exceptions to the Doctrine of Indoor Management

- (i) **Where the outsider had knowledge of irregularity:** The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management.
- (ii) **No knowledge of Memorandum and Articles:** the rule cannot be invoked in favour of a person who did not consult the memorandum and articles and thus did not rely on them.
- (iii) **Forgery:** The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio. In the case of forgery it is not that there is absence of free consent but there is no consent at all.
- (iv) **Negligence:** The ‘doctrine of indoor management’, in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer’s authority.
- (v) This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power.
- (vi) Again, the doctrine of indoor management does not apply where the question is in regard to the very existence of an agency.

## DOCTRINE OF CONSTRUCTIVE NOTICE

In companies law the doctrine of constructive notice is a doctrine where all persons dealing with a company are deemed (or “construed”) to have knowledge of the company’s Articles of Association and Memorandum of Association.

Every person dealing with the company is deemed to have a “constructive notice” of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning.

[Case Law: *Griffith v. Paget*, (1877)].

A common example of Constructive Notice is when a court is unable to directly reach someone and publishes summons in the public newspaper and it is assumed that everybody has read it.

## DOCTRINE OF ALTER EGO

The term “Alter Ego” is a Latin word. Literally translated, it means the “Other I”. It can be understood as the identical copy or a person’s clone. It means that a company is a separate legal entity from its shareholders and directors. This common law principle grants immunity to the shareholders and directors from being held liable for the debts as well as criminal liabilities of the corporation.

The Doctrine of alter ego is based on lifting of the corporate veil between the directors/ shareholders and the corporation and treating both as one entity.

**In Case:** *Lennards Caring Co. Ltd. v. Asiatic Petroleum Co. Ltd.* [1915] AC 705, Viscount Haldane propounded the “alter ego” theory and distinguished it from vicarious liability. The House of Lords stated that the default of the managing director who is the “directing mind and will” of the company, would be attributed to him and he be held for the wrong doing of the company.

## Advantages of Corporate Form of Enterprise

1. Corporate Personality
2. Limited Liability
3. Perpetual Succession
4. Transferable Shares
5. Separate Property
6. Capacity to Sue

## Disadvantages of Corporate Form of Enterprise

1. Formalities and expenses
2. Corporate disclosures
3. Separation of control from ownership
4. Greater social responsibility
5. Greater tax burden in certain cases
6. Detailed winding-up procedure

## DIFFERENCE BETWEEN COMPANY AND A FIRM

Basis of distinction	Company	Partnership firm
1. Mode of creation	A company comes into existence only when it is incorporated under the company Act.	A firm comes into existence by an agreement between the partners. Registration of a firm is optional.
2. Separate Legal entity	A company has an identity of its own.	A firm is merely a collection of partners. It has no separate. It has no separate identity.
3. Perpetual Succession	A company enjoys the benefit of perpetual succession. Death or insolvency of shareholder(s) does not affect the continuity of the company.	A firm has no perpetual succession. A firm is close down in case of death or insolvency of all the partners (or of all except one partner).
4. Transfer of shares	A member of the company can transfer his share. On such transfer, the transferee becomes a member of the company.	A partner can also transfer his share to an outside. But, the transfer does not become a partner in a firm, although he become entitled to share the profit and property transferred to him
5. Management	A company is managed by the directors.	A firm is managed by the partners themselves.

## E-GOVERNANCE (MCA-21) - MEANING

E-Governance or Electronic governance is the application of Information Technology to the government functioning. **MCA-21** stands for e-governance initiative of Ministry of Corporate Affairs (**MCA**) of the 21st century. The project is named **MCA-21** as it aims at repositioning **MCA** as an organization capable of fulfilling the aspirations of its stakeholder in 21st century.

## AGENCIES UNDER MCA-21

**The Ministry of Corporate Affairs (MCA)** is primarily concerned with administration of the Companies Act 2013, the Limited Liability Partnership Act, 2008 & other allied Acts along with rules & regulations framed there-under mainly for regulating the functioning of the corporate sector in accordance with law.

**Registrar of Companies (ROC)** as defined under Section 2 (75) of the Companies Act, 2013 means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

**Regional Director (RD)** is in-charge of the respective region, each region comprising a number of States and Union Territories. They supervise the working of the offices of the Registrars of Companies and the Official Liquidators working in their regions.

**Official Liquidators (OL)** means an Official Liquidator appointed under sub-section (1) of section 359 of the Companies Act, 2013.

**Serious Fraud Investigation Office:** As per the Companies Act, 2013, Serious Fraud Investigation Office (SFIO) has been established through the Government of India. It is a multi-disciplinary organization under the Ministry of Corporate Affairs, consisting of experts in the field of accountancy, forensic auditing, banking, law, information technology, investigation, company law, capital market and taxation, etc. for detecting and prosecuting or recommending for prosecution white-collar crimes/frauds

**The National Financial Reporting Authority (NFRA)** was constituted on 01st October, 2018 by the Government of India under Sub Section (1) of section 132 of the Companies Act, 2013. Monitor and enforce compliance with accounting standards and auditing standards;

**National Company Law Tribunal/National Company Law Appellate Tribunal (NCLT/NCLAT):** The setting up of the NCLT and NCLAT are part of the efforts to move to a regime of faster resolution of corporate disputes, thus improving the ease of doing business in India. The Ministry of Corporate Affairs (MCA) on 1st June, 2016 notified the Constitution of National Company Law Tribunal (NCLT) & The National Company Law Appellate Tribunal (NCLAT) in exercise of powers conferred under section 408 and 410 of the Companies Act, 2013.

## MCA SERVICES

- (1) Register Digital Signature Certificate
- (2) Apply for Director Identification Number (DIN)
- (3) View Master details of any Company/LLP registered with Registrar of Companies
- (4) Index of Charges
- (5) LLP Services
- (6) LLP E-Filing
- (7) Company E-filing Services
- (8) Complaints
- (9) Fee and Payment Services
- (10) Independents Director Database Services
- (11) Public Search of Trademark.

## ALL ABOUT FILING AND FILING OF E-FORMS

An e-form is only a re-engineered conventional form notified and represents a document in electronic format for filing with MCA authorities through the Internet. This may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. Due to technical updates, these forms updates regularly, even though their user interface may not change. User always uses latest e-forms from the MCA Portal.

Filing and filing of forms is an important part of the secretarial function of a Company Secretary. Normally, where Company appoints a Company Secretary, he is designated as the officer responsible for compliance under the Companies Act and other allied legislations.

## PREREQUISITES FOR E-FILING ON MCA-21

Digital Signature certificate (DSC) of either Class 2 and Class 3 signing certificate category issued by a licensed Certifying Authority (CA) needs to be obtained for e-Filing on the MCA Portal.

Digital Signatures are legally admissible in a Court of Law, as provided under the provisions of IT Act, 2000. The Certifying Authorities are authorized to issue a Digital Signature Certificate with a validity of one or two years.

## Hardware and Software Requirements under E-filing

The minimum system requirement for e-filing on MCA-21 are as under:

- ❖ Computer System/laptop with Windows 2000 or later installed;
- ❖ JRE (Java Runtime Environment) -Java version 8 is suggested;
- ❖ Internet connection to access the MCA website;
- ❖ Internet Explorer 10 or above / Chrome 49 or above /Firefox 45 or above;
- ❖ Adobe Acrobat 11 or above version;
- ❖ Scanner for scanning paper attachments;
- ❖ Printer for printing bank challan or service fee payment receipt;
- ❖ Pop-ups from MCA21 Portal must be enabled in your browser

## Necessity of Pre-certification of E-Forms

Introduction of pre-certification by an independent professional in the e-form aimed at reducing the workload of the Registrar of Companies. Once an e-form has been pre-certified by a professional.

Professionals are responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry.

If a professional gives a false certificate or omits any material information knowingly, he is liable to punishment under Section 447 and 448 of the Companies Act, 2013.

## C-PACE (Centre for Processing Accelerated Corporate Exit)

- (i) The Central Government established a Central Processing Centre (CPC) for examining applications, e-Forms, or documents required under the Companies Act, 2013.
- (ii) Has all-India jurisdiction for processing specific e-forms related to company exit.
- (iii) The jurisdictional Registrar continues to oversee other company matters under the Companies Act, 2013.
- (iv) Examines applications, e-Forms, or documents filed under applicable rules.
- (v) Must take a decision within 30 days from the date of filing (excluding cases needing higher approvals).
- (vi) Provisions of Rule 10(2) to 10(5) apply mutatis mutandis to C-PACE processing.

**TOPICS TO BE COVERED**

- ❖ Nature and characteristics of a Company
- ❖ Types of Companies
- ❖ Characteristics of Private Company
- ❖ Privileges and exemptions of Private Companies
- ❖ Public Company
- ❖ Characteristics of Public Company
- ❖ Meaning of Small Company, Dormant Company, Government Company

**LEGAL STATUS OF REGISTERED COMPANIES**

1. **Corporate Personality:** A company incorporated under the Act is vested with a corporate personality.
  - (a) It bears its own name and acts.
  - (b) Its assets are separate and distinct from its members.
  - (c) It is a different person from the members who compose it.
  - (d) It can incur debts, borrow money, have a bank account, employ people, enter into contracts and can sue or be sued.
  - (e) It is capable of owning property.

**The case of Salomon v. Salomon and Co. Ltd., (1897)**

The above case has clearly established the principle that once a company has been validly constituted under the Companies Act, it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member holds a large or small proportion of the shares, and whether he holds those shares as beneficially or as trustee.

2. **Company as an Artificial Person:** A Company is an artificial person created by law. It is not a human being but it acts through human beings. It is considered as a legal person who can enter into contracts, possess properties in its own name, sue and can be sued by others etc. It is called an artificial person since it is:
  - (a) Invisible
  - (b) Intangible
  - (c) Existing in the contemplation of law
  - (d) It is capable of enjoying rights and being subject to duties.
3. **Perpetual Succession:** Perpetual Succession means that the membership of the company may change from time to time, but this does not affect its continuity. An incorporated company never dies, except when it is wound up as per law. "Members may come and go, but the company can go on forever."
  - (a) A company, being a separate legal person is unaffected by death/insolvency/retirement or departure of any member or director.
  - (b) It remains the same entity, despite total change in the membership.
4. **Separate Property:** A company being a legal person and entirely distinct from its members, is capable of owing, enjoying and disposing off property on its own name.
5. **Transferability of Shares:**
  - (a) The capital of a company is divided into parts, called shares.
  - (b) The shares are said to be movable property.

- (c) The shares are subject to certain conditions levied by law on free transferability.
- (d) No shareholder is permanently or necessarily weeded to company.

6. **Capacity to Sue or Be Sued:** A company being a body corporate can sue and be sued in its own name.

To sue, means to institute legal proceedings against (a person) or to bring a suit in a court of law.

All legal proceedings against the company are to be instituted in its name. Similarly, the company may bring an action against anyone in its own name.

7. **Company is Not a Citizen:** The company, though a legal person, is not a citizen under the Citizenship Act, 1955 or the Constitution of India.

The reason as to why a company cannot be treated as a citizen is that, citizenship is available to individuals or natural persons only and not to juristic persons.

8. **Company has Nationality and Residence:** It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

9. **Limited Liability:** "The privilege of limited liability for business debts is one of the principal advantages of doing business under the corporate form of organisation." The company, being a separate person, is the owner of its assets and bound by its liabilities.

The liability of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held by him.

**Exceptions to the principle of limited liability**

- ❖ Members are severally liable in certain cases- The following are the prerequisites for attracting the provisions of Section 3A:
  1. The number of members of the Company is reduced to below seven in case of public company or below two in case of private company;
  2. The company carries on business for more than six months with such less number of members;
  3. The members are cognizant of fact that the company is carrying business with such less number of members.

In such case the remaining members so continuing in the company shall be liable for the payment of whole debts of the company contracted during that time.

- ❖ When the company is incorporated as an Unlimited Company under Section 3(2)(c) of the Act.
- ❖ Where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information.
- ❖ Under Section 35(3), where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose.
- ❖ As per section 75(1), where a company fails to repay the deposit or part thereof or any interest thereon within the time specified and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose.
- ❖ Section 224(5) states that where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash.

10. **Contractual Rights:** A company, being a legal entity different from its members, can enter into contracts for the conduct of the business in its own name. A shareholder cannot enforce a contract made by his company; he is neither a party to the contract, nor be entitled to the benefit derived from it, as a company is not a trustee for its shareholders. Likewise, a shareholder cannot be sued on contracts made by his company.

**DISADVANTAGES OF REGISTERED COMPANIES**

**Formality and Expense:** Registration of a company involves a lot of statutory formalities and the consequent expense.

**Privacy Loss:** Another form of disadvantage of a company of loss of privacy. Various returns, resolutions and documents are to be uploaded and filed with the Registrar of Companies.

**Diversified Control:** The members of the company cannot have as effective control over the workings of company as in sole proprietorship and partnership business models.

**Public Accountability:** The Company cannot work in contravention to public interest, because as and when the public interest will come in conflict with corporate working, intervention by regulatory authorities will be triggered.

**Fraud Possibilities:** The company operates through control of economic resources in a few hands, there is a possibility that the other people who have contributed funds to the company either as shareholder or debenture holder or creditor or lender, those few hands may defraud by diverting funds of the company to their private channels.

**TYPES OF COMPANIES**

**Statutory Company:** A company may be incorporated by means of a special Act of the Parliament or any State legislation. These companies are generally formed to carry out some special public undertakings, e.g. railways, waterways, electricity generation etc.

**Registered Companies:** The companies registered under the companies Act, 2013 or earlier companies Acts are called registered companies. Such companies come into existence when they are registered under the companies Act and a certificate of incorporation is granted to them by the Registrar.

**Unregistered Companies:** An unregistered company is a company which is not registered or covered under the provisions of the companies Act, 2013. It includes partnership firms, society or co-operative society, railway company incorporated under any Act of Parliament or any other Indian law or registered under any previous law.

In India, the two common types of companies which may be registered are:

- (a) Private Company
- (b) Public Company

**Section 3** of the Companies Act, 2013 read with the Companies (Incorporation) Rules, 2014, states that:

1. **A company may be formed for any lawful purpose by–**
  - (a) seven or more persons, where the company to be formed is a public company;
  - (b) two or more persons, where the company to be formed is a private company; or
  - (c) one person, where the company to be formed is a One Person Company.
2. **A company formed under sub-section (1) may be either**

- (a) **Company limited by Shares:** Section 2(22) of the Companies Act, 2013 provides that “Company limited by shares” means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares held by them.
- (b) **Company limited by guarantee:** Section 2(21) of the Companies Act, 2013 provides that a company that has the liability of its members limited to such amount as the members may undertake, by the memorandum, to contribute to the assets of the company in the event of its being wound-up, is known as a company limited by guarantee.
- (c) **An Unlimited Company:** Section 2(92) of the Companies Act, 2013 provides that unlimited company means a company not having any limit on the liability of its members, such companies may or may not have share capital. They may be either a public company or a private company. The members is liable to the company and to any other person.

Such company, the liability of members of the company is unlimited.

### OTHER FORMS OF COMPANIES

- (a) **Section 8 Company/Non-Profit Oriented Company:** A company whose sole objective is to promote commerce, art, science, sports education, research, social welfare, religion, charity, protection of environment or any other useful purpose and not having any profit motive will be termed as a not for profit company. Such a company must apply its profits or other incomes in promoting its objects.
- (b) **Government Companies:** As per section 2(45) of the Companies Act, 2013 the “Government Company” means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.
- (c) **Holding and Subsidiary Companies:** As per section 2(46) of the Companies Act, 2013, the “holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies and the expression “company” includes any body corporate.  
As per section 2(87) of the Companies Act, 2013 “subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company
  - (i) controls the composition of the Board of Directors; or
  - (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies:

#### What is a Wholly Owned Subsidiary Company?

A wholly owned subsidiary company is a company that is incorporated under the provisions of the Companies Act, 2013 and in which hundred percent share capital of such company is held by another Indian or foreign company.

**Example:** Reliance Industrial Investment and Holdings Limited (RIIHL), is a wholly owned subsidiary of the Reliance Group of Company.

- (d) **Associate Companies/Joint Venture Company:** As per section 2(6) of the Companies Act, 2013 the “associate company”, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.
  - (i) the “significant influence” means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;
  - (ii) the “joint venture” means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.
- (e) **Dormant Companies** covered under Section 455 of the Companies Act, 2013 and includes a company which is formed and registered under the Act for a future project or to hold an asset or intellectual property and which has not been carrying on any

business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

- (f) **Small Company:** Section 2(85) “Small company” means a company, other than a public company
  - (i) paid-up share capital of which does not exceed four crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
  - (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed forty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

### Advantages of a Small Company



- (g) **Domestic Company:** A domestic company is a company that conducts its affairs in its home country. It should be registered under the provisions of the Companies Act, 2013 or earlier law applicable in India. The domestic company shall have registered office in India. Domestic Company means an Indian Company, has made the prescribed arrangements for the declaration and payment, within India, of the dividends (including dividends on preference shares) payable out of such income.

### PRIVATE COMPANY

As per Section 2(68) of the Companies Act, 2013, “private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- (i) restricts the right to transfer its shares;
- (ii) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member: Provided further that -
  - (a) persons who are in the employment of the company; and
  - (b) persons who, having been in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and
- (iii) Prohibits any invitation to the public to subscribe for any securities of the company.

The words ‘Private Limited’ must be added at the end of its name by a private limited company. As per section 3(1), a private company may be formed for any lawful purpose by two or more persons, by subscribing their names to a memorandum.

Section 149(1) provides that a private company shall have a minimum number of two directors. The only two members may also be the two directors of the private company.

### Characteristics of Private Limited Company

- ❖ **Limit on Members:** To start a company, minimum number of 2 members is required and a maximum number of 200 members as per the provisions of the Companies Act, 2013.
- ❖ **Limited Liability structure:** The liability of each member or shareholders is limited. It means that if a company faces loss under any circumstances then its shareholders are not liable to sell their own assets for payment.

- ❖ **A number of directors:** When it comes to directors, a private company needs to have minimum two directors. With the existence of 2 directors, a private company can come into existence and can start with its operations

### Public Company

Section 2(71), a public company means a company which:

- (a) Is not a private company
- (b) has a minimum paid-up share capital, as may be prescribed
- (c) Subsidiary of a public company shall be deemed to public company.

As per section 3(1)(a), a public company may be said to be an association consisting of not less than 7 members, which is registered under the Act. The securities of a public company may be quoted on a Stock Exchange.

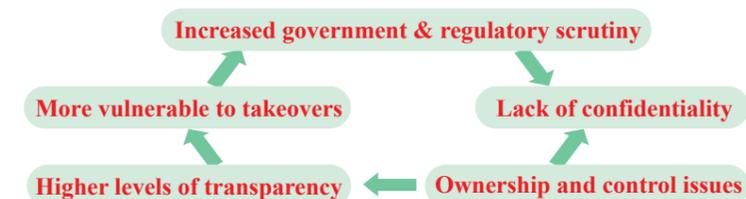
### CHARACTERISTICS OF PUBLIC COMPANY

- (a) **Board of Directors:** The Board of the Public company comprises of a minimum number of three directors and a maximum of 15.
- (b) **Limited Liability:** Shareholder liability for the losses of the company is limited to their share contribution only. This is what makes it a separate legal entity from its shareholders. The business can be sued on its own and not involve its shareholders.
- (c) **Transferable shares:** Shares of a public limited company are bought and sold by the shareholders, however, in case of listed company the shares are traded on a stock exchange where the shares of the company are listed. They are freely transferable between its members and people trading in the stock exchange.
- (d) **Financial Privacy:** Public limited companies are strictly regulated and are required by law to publish their complete financial statements annually. This ensures that they reveal their true financial position to their owners and to potential investors so that they can determine the true worth of its shares.

### ADVANTAGES OF A PUBLIC COMPANY

- (a) Raising capital through public issue of shares
- (b) Prestigious profile and confidence
- (c) Growth and expansion opportunity
- (d) Widening the shareholder base and spreading risk
- (e) Transferability of shares

### DISADVANTAGES OF PUBLIC COMPANIES



### Difference between Associate and Subsidiary Company

Associate Company	Subsidiary Company
The parent company holds a minimum of 20% but less than 50% of the total voting power.	Parent company holds more than 50% of the total voting power.
The parent company has significant influence, that is, the power to participate in the financial and operating decisions of the Associate company.	The Parent company has controlling power over the financial and operating decisions of the subsidiary company.
There may be presence of certain number of common promoters/directors.	The parent company controls the management of the subsidiary company.

# 3

## MEMORANDUM AND ARTICLES OF ASSOCIATIONS AND ITS ALTERATION

### WHAT IS MEMORANDUM OF ASSOCIATION?

According to Section 2(56) of the Act “memorandum” means the memorandum of association of a company as originally framed and altered, from time to time, in pursuance of any previous company law or this Act.

- ❖ Memorandum of Association is a legal document which describes the purpose for which the company is formed
- ❖ It is constitution of a company on which structure of a company is built
- ❖ First step in the formation of company is to prepare documents called MOA.

### FORM OF MOA

Table A - Applicable in case Company Limited by Shares.

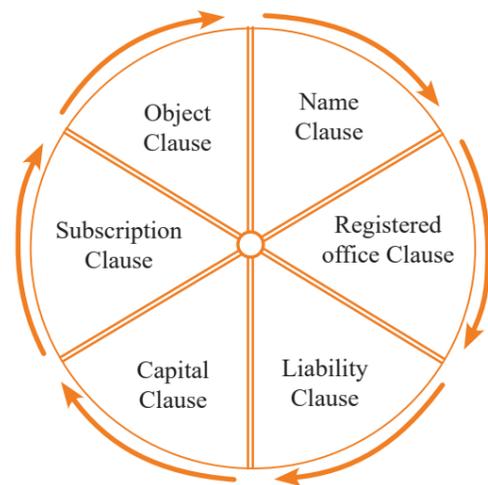
Table B - Company limited guarantee not having share capital.

Table C - Company Limited by Guarantee having share capital.

Table D – Unlimited Company not having share capital.

Table E – Unlimited Company Having share capital.

### CONTENTS OF MEMORANDUM [SECTION 4 READ WITH SCHEDULE I]



### 1. NAME CLAUSE

First Clause in MOA.

Company being a legal entity must have a name of its own to establish its separate identity.

Name shall not-

Be identical or too nearly to name of an existing company, be such name which constitutes an offence if used, or undesirable in operation of CG.

Company can apply of name on RUN. Such name will be reserved for period of 20 days

CG has power to direct any company to rectify its name if it is identical or too nearly to name of existing company & company have to change its name within 3 months from issue of above direction after passing ordinary resolution.

CG has another power to rectify the name of company which in his opinion constitutes an infringement of registered trademark. Proprietor of such trademark may make an application to CG within 3 years from the date of incorporation of company then CG may direct company to change its name within a period of 6 months from issue of such direction after passing ordinary resolution.

When company changes its name notice has to be given to registrar along with order of CG within 15 days from such change.

### 2. REGISTER OFFICE CLAUSE/ SITUATION CLAUSE

Name of state in which registered office of company is to be situated must be given in MOA.

Exact address of registered office is not required.

Company must have to inform registrar of its Register Office within 30 days from incorporation of company.

Name and address of its Register Office is printed or affixed on every document of company.

Negotiable instruments like hundis, promissory notes, BOE, etc. and other document also contains it.

### 3. OBJECT CLAUSE

It contains the objects for which the company has been formed. It also determines purpose and the capacity of company.

It states affirmatively the scope & extent of power of company & states negatively nothing should be done beyond such scope & extent.

Memorandum is a limit beyond which a company can't travel.

### 4. LIABILITY CLAUSE

Liability of members of company of company is to be specifically mentioned in MOA.

Liability of members may either be limited or unlimited, further shall also state that

- ♦ In case of company limited by shares, liability of members is limited upto unpaid amount of shares,
- ♦ In case of company limited by guarantee, liability of member become to held. up to unpaid amount of shares & amount of guarantee which will be called by company at the time of its winding up.

### 5. CAPITAL CLAUSE

This clause states the amount of capital with which company is registered

Capital value which is registered in MOA is known as Nominal / Authorized / registered capital.

Company cant issue shares exceeds amount of nominal capital.

### 6. DECLARATION FOR SUBSCRIBERS

This clause states that, "we several people whose names and address are subscribed below, desire to form in to a company & agrees to take numbers of shares stated opposite to respective names."

Then, names, address description, occupation of subscribers & number of shares taken & their signature is entered.

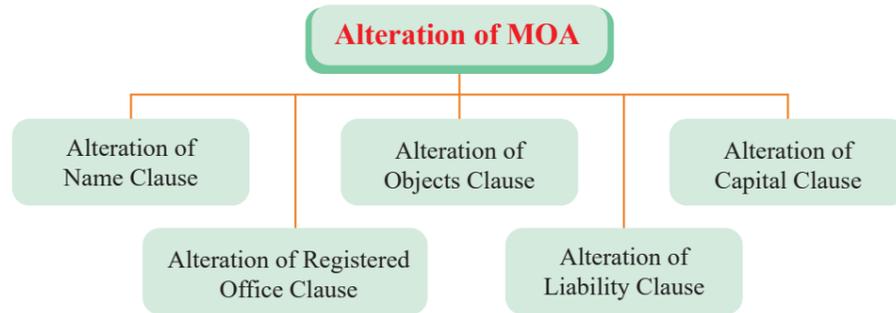
#### Requirements:

- ❖ Each subscriber must take at least one share
- ❖ Each subscriber must write opposite to his name number of shares which he agrees to take.

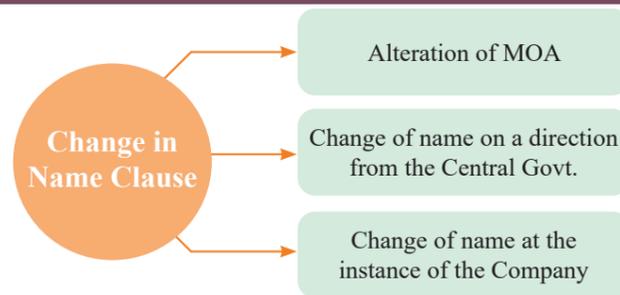
## 7. OPC

In case of OPC, name of person who in the event of death of subscriber shall become the member of company is entered in MOA is known as NOMINEE CLAUSE.

## ALTERATION OF MEMORANDUM OF ASSOCIATION (MOA)



## A. ALTERATION OF MOA DUE TO CHANGE IN NAME CLAUSE SECTION 13



### Procedure for Alteration in Name Clause of Memorandum

1. Calling of Board Meeting and Pass a Board resolution.
2. Seeking name availability for proposed new name from the ROC application for the reservation of name shall be in Form RUN along with prescribed fee of Rs. 1,000/-
3. Obtaining ROC Approval and Name Availability Letter.
4. Issue of Notice of Extra-ordinary General Meeting (EGM), Hold EGM and pass Special Resolution.
5. ROC filings and file Form MGT14 within 30 days to ROC.
6. After scrutiny of the documents filed, the ROC shall issue a fresh certificate of incorporation digitally signed in Form INC-25.
7. Intimate all concerned authorities about the changed name of the Company.
8. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors and keep it under safe custody.

9. Get the new name of the Company painted on all the signboards or name boards wherever they are displayed.

10. Correct all records, registers including the Register of Members, every copy of Memorandum and Articles of Association

11. It is also to be noted that in every document as above-mentioned the company shall paint, affix or print as may be the former name or names so changed during the period of last two years.

### Methods of Changing the Name

After incorporation, a company can change their name through following methods:

- 1. Conversion of private limited company into public limited company and thereby change in the name from private to public; or
- 2. Conversion of public limited company into private limited company and thereby change in the name from public to private; or
- 3. Change of name from ABC limited to XYZ limited.

### Change in Name of Listed Entity

Following conditions should be fulfilled:

- 1. Time period of at least 1 year has elapsed from last name change.
- 2. At least 50% of total revenue in last 1 year from new activity suggested in new name.
- 3. At least 50% of total assets invested in new activity.
- 4. Then only file an application for name availability
- 5. Must take approval from stock exchange also.
- 6. If changed activity is not reflected in name of co. shall change name according to activity within 6 months from change of activities.

## B. ALTERATION OF SITUATION/REGISTERED OFFICE CLAUSE IN THE MOA

### (a) Change Within the Local Limits of Same Town

A company by passing Board Resolution can change the situation of its registered office within the limits of same city, town or village

An intimation of the change of registered office and verification of registered address shall be given to the Registrar

E-Form INC-22 is required to be filed within 30 days of such change

This does not involve alteration of memorandum

### (b) Change Outside the Local Limits of Any City, Town or Village

In the case of an existing company, outside the local limits of any city, town or village pass special resolution by the company; and

In the case of any other company, outside the local limits of any city, town or village pass special resolution by the company.

### (c) Change Within the Same State from the Jurisdiction of One Registrar of Companies to the Jurisdiction of Another Registrar of Companies

Take approval from the Regional Director.

The Regional Director, after hearing the parties shall pass necessary orders within a period of thirty days from the date of the receipt of the application.

The company concerned shall file a copy of the said order with the ROC within a period of 60 days from the date of the order by Regional Director.

The said ROC shall record the ordered changes in its records.

The ROC of the state where the registered office of the company was previously situated, shall transfer all the documents and papers to the new ROC.

Company shall file Form No.INC.23 with the Regional Director along with the fee and the documents as prescribed.

Board Resolution for shifting of registered office;

Special Resolution of the members of the company approving the shifting of registered office;

A declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting.

A declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending.

Acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employee interest is not adversely affected by proposed shifting.

- ❖ Regional Director shall examine the application the order either approving or rejecting the application shall be passed within 15 days of the receipt of application
- ❖ The certified copy of order of the Regional Director, shall be filed in Form No.INC-28 along with fee with the Registrar of State within 30 days from the date of receipt of certified copy of the order.

#### (d) Change of Registered office from one State to another

Board meeting will be called & BR will be passed for shifting of RO from 1 State to another.

EGM notice will be given to shareholders (21 clear days). Publish notice of EGM in newspaper & also send copy of such publication to stock exchange.

SR will be passed at EGM & intimation will be given to stock exchange within 24 hours of conclusion of EGM.

MGT-14 will be filed with ROC within 30 days of passing such resolution.

INC- 23 will be filed to RD along with necessary attachments.

Minimum 30 days before date of filing form INC-23.

- ❖ Publish a notice at least once in daily newspaper published in English & in principle language of that district in which RO is situated
- ❖ Serve individual notice to each debenture holder, depositor & creditor of the co. clearly indicating that any person who's interest in likely to be affect may oppose & give his intimation to Regional director along with the copy to co. within 21 days from date of publication of notice.

CG shall dispose the application within 60 days & he will satisfy itself that alteration has consent of creditors debenture holders, or all dues of creditor is discharged or adequate security has been provided for such discharge.

After approval from CG Co. will file certified copy of ordering INC-28 to ROC within 30 days.

#### ALTERATION OF OBJECT CLAUSE

Company which has raised money from public through prospectus and has any unutilized amount out of such money, shall not change its object for which it raised the money through prospectus unless SR is passed by company and-

- Details of resolution shall be published in newspaper one in English and one is vernacular language and shall also be placed on website of company if any.
- Dissenting shareholder shall be given an opportunity to exit by promotor.

#### PROCEDURE

- Hold board meeting and pass board resolution.
- Notice of general meeting to all members, auditor and director.

(c) If company raised any amount through prospectus and have unutilized portion then Pass special resolution to alter MOA

(d) Publish an advertisement of SR.

(e) Opportunity to dissenting member to exit from promotor.

(f) Pass special resolution in general meeting.

(g) File with ROC in MGT-14 within 30 days.

(h) Special resolution passed by postal ballot in following company

- ♦ Company having more than 200 members.
- ♦ Amount raised through prospectus is unutilized.

#### ALTERATION OF LIABILITY CLAUSE

- ❖ Can change by passing special resolution as per sec 13 (1).

#### ALTERATION OF CAPITAL CLAUSE

Sec 61 (1) provides that, company may alter its share capital by passing ordinary resolution in following ways.

○ Increase in authorized share capital.

○ Consolidation and division of share capital.

○ Sub- division of shares.

○ Cancellation or determination of share capital.

○ Sub- division of share.

○ Cancellation or diminution of share capital

#### NOTICE TO ROC

Sec 64 provide that company having share capital shall give notice to ROC for alteration in share capital in form no SH -7 within 30days.

#### PROCEDURE

1. Ensure AOA gives power to change capital clause.

2. Board meeting and pass board resolution-

- ❖ Decision about increase in authorize share capital of company.
- ❖ Day, date, time and place of GM.
- ❖ Approval of notice.
- ❖ Authorize CS to issue notice.

3. Issue notice to member auditor, director.

4. Hold annual general meeting & pass ordinary resolution.

5. Filing with roc-

- ❖ MGT 14 if passed special resolution
- ❖ SH-7 within 30 days from passing resolution.

#### ARTICLES OF ASSOCIATION

AOA contains regulation for management of the company. These are the bye-law or rules that will govern the functioning of company.

AOA defines duties, rights & powers of governing body & subordinate to MOA.

#### DEFINITION

As per section 2(5), "articles" means article of association of a company as originally framed & altered from time to time in pursuance of any previous company law or this act."

#### FORMAT OF AOA

○ Table F – AOA of Company limited by shares.

○ Table G – limited by guarantee having share capital.

○ Table H – Limited by Guarantee not having share capital.

○ Table I – Unlimited company having share capital.

○ Table J – Unlimited company not having share capital.

#### REGISTRATION OF ARTICLE

At the time of incorporation, company must file document called MOA & AOA to ROC.

Which must be duly signed by all the subscribers.

Every type of company whether public or private, limited by shares or limited by guarantee, having or not having share capital or unlimited company must register their AOA.

## ENTRENCHMENT PROVISIONS

AOA contains provisions for entrenchment specifies the article may be altered only if conditions are more restrictive than those of company law.

Entrenchment shall be either.

- ❖ On Formation, or
- ❖ By amendment in article, but such amendment must be agreed by all members in case of private company and by passing SR in public company.

If article contain such provision for entrenchment whether on formation or by amendment, company shall give notice to ROC.

## CONTENTS OF AOA

Share capital, no of shares, values of shares, issue of preference shares, allotment of shares, calls on shares, transfer & transmission of shares, nomination, share certificate, dematerialisation, voting & other rights of shareholder, remuneration to directors etc.

## CONSISTENCY OF AOA WITH COMPANY ACT 2013

At any point of time AOA should not be inconsistency with company act 2013. Any such condition or provision will be null & void & even all shareholders cannot rectify such condition.

## SUBORDINATE TO MOA

If clauses in AOA going beyond MOA will be ultra virus.

## ALTERATION OF AOA

- ❖ Company can alter AOA by passing special resolution.
- ❖ No requirement of approval of ROC for alteration of AOA
- ❖ AOA can alter in following manner:

- By adoption of new set of article
- By addition of new clause.
- By removing few clause
- By amend specific clause.
- By substitution of specific clause.

## PROCEDURE

(a) Board meeting pass board resolution.

(b) Issue notice of general meeting to member, director, auditor.

(c) Convene GM pass special resolution.

(d) File copy of proceeding of GM to all stock exchange.

(e) File MGT-14 with ROC within 30 days along with copy of resolution and explanatory statement

**Note:** Sec. 14(1) lays down that, private company alter its AOA and removes restriction and limitation which are required to be include in AOA of private company, thus such company ceased to be private company from date of such alteration.

14(1) also ley down that, any alteration effect of conversion of public company into private company shall not take place except with approval of tribunal.

Alteration binds member and company to the same way as original article.

There is clear power to alter the articles, and as altered, they bind members just in the same way as did the original articles.

The alteration is effective only when the procedure laid down in the Companies Act and Memorandum is followed.

The changes shall be made in all the copies of the Articles of Association.

**Sec 8 company cannot alter its AOA except with prior approval of central government.**

## LIMITATIONS ON POWER TO ALTER ARTICLES

Articles must not exceed the powers given by the MoA

Must not be inconsistent with provisions of Companies Act

Alteration not be inconsistent with any alteration made by the Tribunal

Alteration must not include anything with is illegal or opposed to public policy

Alteration must be bonafide for the benefit of the company

Alteration must not constitute fraud on the minority

Alteration of articles cannot operate retrospectively

## DISTINCTION BETWEEN MEMORANDUM AND ARTICLES

Memorandum of Association	Articles of Association
Memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation.	Articles of association are the rules and regulations framed to govern this internal management of the company.
Clauses of the memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court.	In the case of articles of association, members have a right to alter the articles by a special resolution. Generally, there is no need to obtain the permission of the Court or the Central Government for alteration of the articles.
Memorandum of association cannot include any clause contrary to the provisions of the Companies Act.	The articles of association are subsidiary both to the Companies Act and the memorandum of association.
The memorandum generally defines the relation between the company and the outsiders.	The articles regulate the relationship between the company and its members and between the members inter se.
Acts done by a company beyond the scope of the memorandum are absolutely void and ultra vires and cannot be ratified even by unanimous vote of all the shareholders.	The acts of the directors beyond the articles can be ratified by the shareholders.

## LEGAL EFFECT OF THE MEMORANDUM AND ARTICLES

- ❖ **According to section 10(1):**

The memorandum and articles, when registered, bind the company and its members. We shall examine the extent to which the memorandum and articles bind:

the members to the company:

- ❖ The memorandum and articles constitute a contract binding on the members of the company. The members, as members, are bound to the company.

the company to the members:

- ❖ Since the articles constitute a contract binding the company to its members in their capacity as members, a member can bring an action against the company for infringement by it of the memorandum or articles.

the members inter se:

- ❖ As between the members inter se each member is bound by the articles to the other members but that does not mean the memorandum and articles create an express contract among the members of the company.

the company to outsiders:

- ❖ As between outsiders and the company, neither the memorandum nor the articles would give any contractual rights to outsiders against the company or its members even though the names of outsiders are mentioned in those documents.

**TYPES OF CAPITAL**

1. Authorized capital is the maximum share capital issued by company.
2. Issued capital means company issues for the time being for public subscription and allotment.
3. Subscribed capital is that portion of the issued capital at face value which has been subscribed for or taken up by the subscribers.
4. Called up capital is that portion of the subscribed capital which has been called up or, demanded on the shares by the company.
5. Paid up capital means the portion of called up capital which has been paid by shareholder.

**MEANING AND NATURE OF A SHARE**

Section 2(84) of the Act defines a share as “a share in the share capital of a company, and includes stock except where a distinction between stock and shares is expressed or implied.

Basis	Share	Stock
<b>Meaning</b>	It is the unit into which the capital of the Company is divided.	It is the aggregate value of fully paid shares of a member merged into one fund of equal value.
<b>Paid up</b>	It may be partly or fully paid up.	It is always fully paid up.
<b>Nominal value</b>	It has a nominal value.	It has no nominal value.

**TYPES OF SHARE CAPITAL**

(a) Equity share capital—

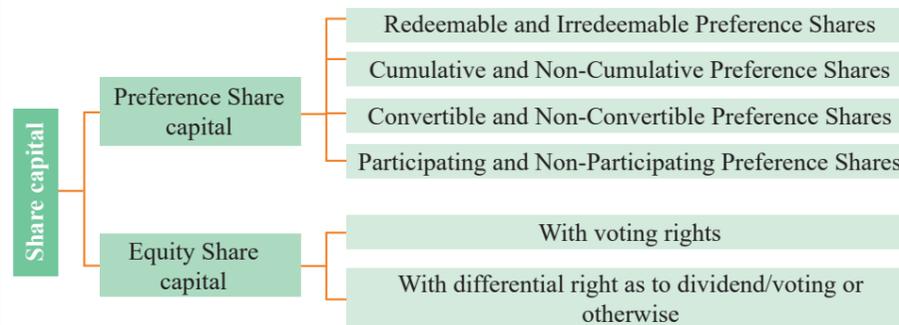
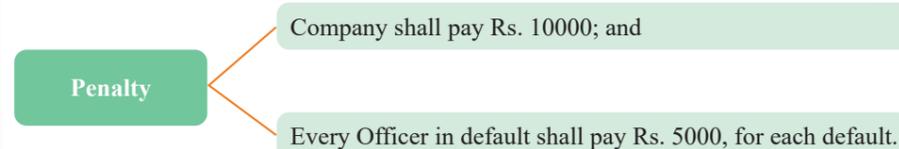
- ❖ with voting rights; or
- ❖ with differential rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed; and

(b) Preference share capital

**PREFERENCE SHARES COMPARED WITH EQUITY SHARES**

S. No	Preference Capital	Equity Share Capital
1.	Preference shares are entitled to a fixed rate of dividend.	The rate of dividend on equity shares depends upon the amount of profit available and the funds requirements of the company for future expansion etc.

2.	Dividend on the preference shares is paid in preference to the equity shares.	The dividend on equity shares is paid only after the preference dividend has been paid.
3.	In case of winding up, preference share holder get preference over equity share holders with regard to the payment of capital.	In case of winding up, equity share holder get payment of capital after the payment of capital to preference shareholders.
4.	Dividend on preference share may be cumulative.	The dividend on equity shares is paid only after the preference dividend has been paid and it is not cumulative.
5.	No bonus shares/right shares are issued to preference share holders.	A company may issue rights shares or bonus shares to the company's existing equity shareholders.

**PENALTY FOR NON-COMPLIANCE OF PUBLICATION OF SHARE CAPITAL****PROSPECTUS SECTION 2(70)**

Prospectus means any document issued as a prospectus.

- It includes red herring prospectus 32
- Shelf prospectus 31
- And notice, circulars, advertisements which
- Invite public
- To purchase/subscribe the securities of a body corporate.

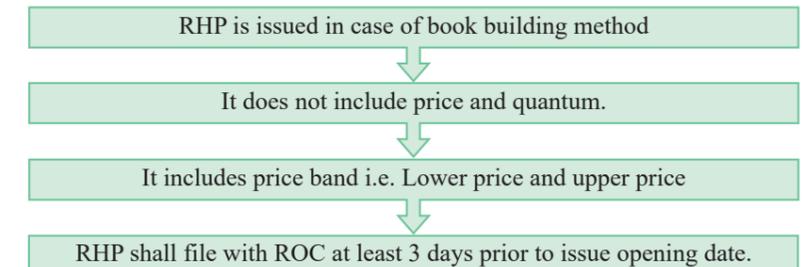
Red-herring Prospectus

Shelf prospectus

Abridged Prospectus

Any document described or issued as a prospectus

Any notice, circular, Advertisement or other documents inviting offer

**RED HERRING PROSPECTUS SECTION 32****SHELF PROSPECTUS SECTION 31**

Shelf prospectus means a prospect issued for one or more issues over a certain period without the issue of a further prospectus.

Validity is one year from the date of opening of first issue.

Single prospectus for multiple issue

In case of material change file information memorandum in form no (PAS-2)

Material changes mean it includes new charges created, change in financial information and other material information.

Application may withdraw their application.

Refund within 15 days with interest @15% p.a.

## ABRIDGED PROSPECTUS [SECTION 2(1)]

- Summarized form of prospectus
- It contains silent features of prospectus
- Issued along with the application form
- No need to issue if shares offer to underwriters and securities not offer to public & further issue of offer of same class.

## DEEMED PROSPECTUS (SECTION 25)

- Inviting public to purchase or subscribe the security through intermediary.
- Document issued on behalf of the company to subscribe the security (deemed prospectus).
- Condition to be fulfilled for deemed prospectus
  - Offer for sale within 6 months after the allotment Or
  - Whole consideration is not received by the company at the time of offer.

## ADDITIONAL DISCLOSURE IN DEEMED PROSPECTUS

- Net consideration received or to be received.
- Time and place for inspection of contract.
- It should signed by 2 director or in case of firm by not less than 1/2 of the partner.

## CRIMINAL AND CIVIL LIABILITY FOR MISSTATEMENT IN PROSPECTUS

Every person who authorised the issue of prospectus which contain false statement or omission of any material information shall be liable u/s 447 i.e. Liability of fraud.

## SHARE CERTIFICATE

- Share certificate is documentary evidence of title.
- Form no SH-1
- Pass board resolution to issue share certificate and it should be issued within specified time.
- In case of incorporation – 2 months
- In case of allotment – 2 months
- In case of transfer – 1 month

## SEALING AND SIGNING

- (a) Sign by 2 directors and CS if any and common seal.
- (b) In absence of common seal sign by 2 directors or director and CS if any.

## ISSUE OF DUPLICATE SHARE CERTIFICATE

Company shall not issue any duplicate share certificate in lieu of those lost or destroyed without the board approval.

Duplicate share certificate shall be issued within 45 days in case of listed company and within 3 months in case of unlisted company.

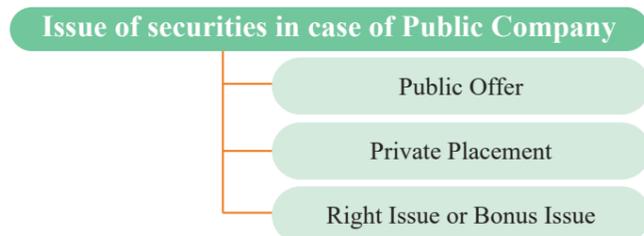
## LEGAL EFFECT OF SHARE CERTIFICATE

- Estoppel as to Title:**
  - Share certificate is a declaration by the company to the entire world that the person in whose name the certificate is made out and to whom it is given is a shareholder in the company. In other word the company is estopped from denying his title to the shares.
- Estoppel as to Payment:**
  - If the certificate states that on each of the shares full amount has been paid, the company is estopped as against a bona fide purchaser of the shares, from alleging that they are not fully paid.

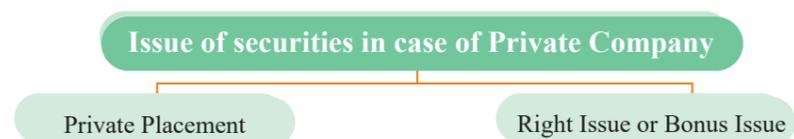
Chapter III of the Companies Act, 2013 deals with “Prospectus and allotment of securities”, the chapter is divided into two parts:



As per Section 23(1), a public company may issue securities



For a private company, Section 23(2) provides that a private company may issue securities



## KINDS OF ISSUE OF SHARES

**Issue of securities at a premium:** A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium.

Section 52(1) states that when a company issue shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a “securities premium account”.

## UTILISATION OF SECURITIES PREMIUM

In accordance with the provisions of Section 52(2) of the Act, the securities premium can be utilised only for:

- (a) issuing fully paid bonus shares to members;
- (b) writing off the balance of the preliminary expenses of the company;
- (c) writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- (d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- (e) for the purchase of its own shares or other securities under section 68.

## PROHIBITION TO ISSUE THE SHARES AT DISCOUNT

Section 53 states that except as provided in section 54 (i.e. issue of sweat equity shares), a company shall not issue shares at a discount. Any share issued by a company at a discount shall be void.

**Exception:** When its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme.

**Penalty:** Every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of 12% per annum from the date of issue of such shares.

## CONCEPT OF ALLOTMENT OF SECURITIES

### Allotment

Allotment of any securities of a company offered to the public for subscription shall be made only when the amount stated in the prospectus as the minimum amount has been subscribed and payable on application and received by the company by cheque or other instrument.

**Minimum Amount of Application:** The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security.

**FORM PAS-3:** For allotment of securities, co. shall file with the Registrar a return of allotment, in Form PAS-3 within 30 days along with the fee.

Time to refund the application money	15 days from closure of issue
Interest to be paid in case of default in repayment of application money	15% p.a.

### PENALTY FOR DEFAULT [SECTION 39(5)]

The company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

### ISSUE OF SECURITIES

PRIVATE PLACEMENT OF SHARES

EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

ISSUE AND REDEMPTION OF PREFERENCE SHARES

RIGHT ISSUE

EMPLOYEE STOCK OPTION SCHEME

ISSUE OF SHARES ON PREFERENTIAL BASIS

BONUS ISSUE

SWEAT EQUITY SHARES

### PRIVATE PLACEMENT (SECTION 42)

Issue private placement offer document (PPOD) (PAS-4) along with application form.

PPOD is given to selected person whom the offer is made.

Issue PPOD within 30 days from recording the names.

Issued to 200 persons in the financial year.

At a time issued to max.50 persons which exclude qualified institutional buyers and employee under ESOP.

The above restriction is considered individually (200 equity shares, 200 debentures, 200 pf shares).

Minimum investment size (20,000 face value)

Fund through normal banking channel and not in cash.

Fund kept in separate account till allotment and return of allotment is filed.

Allotment within 60 days from receipt of application.

Failed to allot within 60 days refund within 15 days

Failed to refund within 15 days pay interest @12% pa from 61st. Day

Return of allotment (PAS 3) file to ROC within 15 days.

### SHARES WITH DIFFERENTIAL VOTING RIGHTS (SECTION 43)

Authorised by AOA.

Hold General meeting and pass ordinary resolution.

In case of listed company resolution by postal ballot.

Maximum-26% of post issue paid up equity share capital.

No default in filling financial statement & annual returns in preceding last 3years.

No default in payment of interest on debenture other deposits.

No default in redemption of preference shares or debentures.

No default in payment of dividend on preference shares.

Not penalise under SEBI, RBI, depository, SCRA act

No conversation is allowed from DVR to EVR and EVR to DVR.

File return on allotment in PAS -3 within 30 days to ROC.

### ISSUE OF SWEAT EQUITY SHARES (SECTION 54)

Issued to directors or employees (permanent) at discount or consideration other than cash for providing technical knowhow or intellectual property rights. (IPR).

### EMPLOYEE MEANS

(A) a permanent employee of the company who has been working in India or outside India, for at least last one year;

(B) A director of the company, whether a whole time director or not,

(C) An employee or a director of a subsidiary, in India or outside India, or of a holding company.

### SR CARRIES

No. of shares issued

Total consideration.

Class of director/employee

Current market price

SR is valid for 12 months.

Limit: Financial year: - 15% of paid-up equity share capital or issue value of 5cr whichever is higher.

Aggregate limit of life time: - 25% of paid-up equity share capital.

Price is determined by registered value

Lock in period – 3 years

Treated as a part of managerial remuneration if issued to directors or manager and issued for consideration other than cash

Disclosure in directors report

- Class of directors or employee
- No. Of shares issued
- Terms and conditions
- Justification of the issue
- Class of shares

Authenticated by CS

No need to obtain approval from NCLT

Maintain registrar form no. (Sh-3).

### ISSUE OF PREFERENCE SHARE (SECTION 55)

GM-SR (MGT14 within 30 days to ROC)

No existing default in case of payment of dividend and redemption of PF shares.

Maximum period 20 years

In case of infrastructure company – 30 years

From 21st year redemption 10% every year.

PAS-3 – 30 days – ROC.

## REDEMPTION OF PREFERENCE SHARE

By two ways  
(A) Proceeds of fresh issue  
(B) Surplus profit.

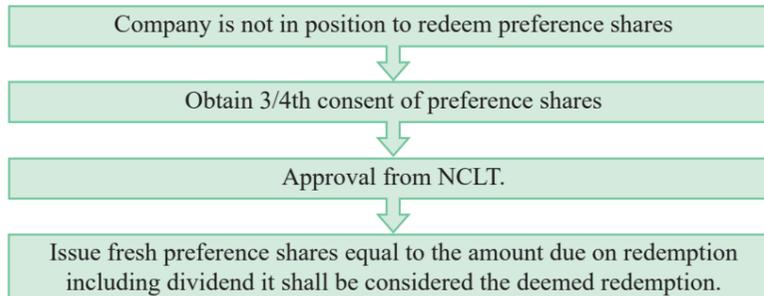
Fully paid-up shares can be redeemed.

Out of profit some equal amount shall be transfer to CRR (Capital redemption reserve).

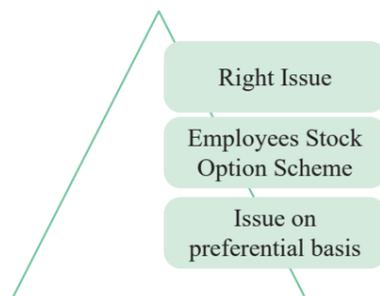
CRR is used to issue fully paid-up bonus shares.

Notice of redemption given to ROC in SH-7.

## INABILITY TO REDEEM PREFERENCE SHARES



## FURTHER ISSUE OF SHARE CAPITAL



## RIGHT ISSUE SECTION 62(1)(A)(I)

- Shares issued to existing shareholder.
- Power to BOD – BR
- Bod approve letter of offer (LOO)
- Send letter of offer (LOO) at least 3 days prior to issue opening date to existing share holder.
- Issue open for min 15 days & max 30 days.
- Private company – Obtain approval from 90% of shareholder - may be open for less than 15 days.

## EXCEPTIONS

Right issue not applies in the following cases

- ❖ Conversion of convertible debentures or pf shares.
- ❖ Conversion of government loan as per the direction given by the government.

## EMPLOYEE STOCK OPTION SCHEME [SECTION 62(1)(B)]

It is an option given to the directors, employees or officers of company or its holding company or subsidiary company which gives right to purchase or subscribe shares at future date at pre-determined price.

## ELIGIBILITY

Director

- ❖ Whole time director (WTD) or other directors except independent director.

Employee

- ❖ Permanent employee working in or outside India

Employee or director of the company its subsidiary company in India or outside India or holding company in India.

## NON-ELIGIBILITY

Employee cum promoter or belonging to promoter group a director who either himself or through his relative or through any body-corporate, holds more than ten percent of the outstanding equity shares of the company.

## CONDITIONS

- Public company pass SR
- Private company pass OR
- Vesting period – minimum 1 year
- Till exercise – no voting right & dividend
- If failed to subscribe or exercise the option then the amount paid shall be forfeited.
- Freedom to specify the locking period

## DEATH/PERMANENT DISABILITY/RESIGNATION OF EMPLOYEES WHO WERE GRANTED WITH OPTIONS

In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

In the event of the death of employee while in employment, all the options granted to him till such date shall vest in the legal heirs or nominees of the deceased employee.

In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire.

## ISSUE OF SHARES ON PREFERENTIAL BASIS [SECTION 62(1)(C)]

### Conditions

- Offer given to selected group of persons.
- Authorised by AOA.
- Pass SR (MGT14 within 30 days -ROC.)
- Completion of preferential allotment within 12 months from passing SR
- Failed to complete the procedure within 12 months pass another SR.
- Valuation of shares is done by registered value.
- Follow section 42 (private placement).

## DIFFERENCE BETWEEN PRIVATE PLACEMENT AND PREFERENTIAL ALLOTMENT

Particulars	Private Placement	Preferential Allotment
<b>Governing</b>	Section 42	Section 62(1)(c)
<b>Meaning</b>	Offer or invitation made to a select group of persons	Issue of shares to any persons whether or not they include members and employees
<b>Securities to be issued</b>	Any security including Equity. Preference and Debentures	Only Equity and other securities convertible into Equity can be issued
<b>Shareholders' Approval</b>	Required	Required
<b>Allottees</b>	Any person as identified by the Board	To members, employees or any other persons
<b>Disclosures in Explanatory Statement</b>	Only a few as per Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014	Detailed disclosures as per Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014

## BONUS ISSUE (SECTION 62)

Known as capitalisation of profit.

Free shares given to existing shareholders (fully paid up)

Sources

- (i) profit
- (ii) free reserve
- (iii) Security premium
- (iv) CRR

Recommended by BOD and approval by shareholder by passing OR

RR (revaluation reserves) cannot be utilized for issue of bonus shares.

No default in payment of interest or principle amount on fixed deposit or other debt security.

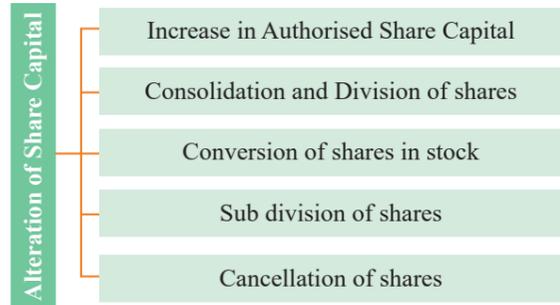
No default in payment of statutory dues

No bonus in lieu of dividend

File PAS 3 within 30 days to ROC.

### ALTERATION OF SHARE CAPITAL (SECTION 61)

The company may for commercial reasons, alter its share capital. Section 61 of the Companies Act, 2013 provides that a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting.



### FILLING OF FORM SH-7 WITH ROC

Section 64(1) states that when-

- ❖ a company alters its share capital in any manner specified in sub-section (1) of section 61;
- ❖ an order made by the Government under sub-section (4) read with sub-section (6) of section 62 has the effect of increasing authorised capital of a company; or
- ❖ a company redeems any redeemable preference shares.

The company shall file a notice in the prescribed Form SH-7 with the Registrar with in a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

### PENALTY

As per Section 64 (2), contravention every officer who is in default shall be liable to a penalty of five hundred rupees for each day during which such default continues, subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.

### BUY-BACK OF SECURITIES

The term buy-back implies the act of purchasing its own shares/securities by a company. This facility enables the Company to go back to the holders of its own shares/securities and make an offer to purchase such shares/ securities from them.

### OBJECTIVES OF BUY BACK

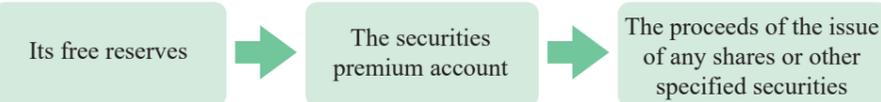
1. To return the surplus cash to shareholders
2. Increase the current market price
3. To avoid unwelcome takeover bids
4. to achieve optimum capital structure;
5. to support share price during periods of sluggish market condition;
6. to serve the equity more efficiently

### SEC.67 – PROHIBITION ON BUY BACK

Company shall not directly or indirectly buy back its own shares or give loan, guarantee, security, to any person for purchase of its own shares or shares in its holding company.

### SOURCES

According to Section 68(1) of the Companies Act, 2013 a company may purchase its own shares or other specified securities (hereinafter referred to as “buy-back”) out of:



### METHODS



Limit: - BOD-BR: up to 10% of paid-up equity share capital + free reserve+ security premium.

Gm-SR: More than 10% of paid-up share capital + free reserve + security premium

Before buy back and after buy back share capital should remain constant

Only fully paid-up shares can buy back

Debt equity ratio shall not exceed 2 : 1.

Before buy back file letter of offers to ROC (Form SH-8)

Dispatch to all shareholders within 21 days from filing with ROC

Issue shall remain open for min 15 days and max 30 days

Completion within 12 months from passing SR/ BR

No buy back within 1 year from closing of previous buy back

File declaration of solvency with ROC & SEBI in form (SH-9) sign by 2 director one of whom must be MD if any

Extinguish and destroy the shares physically within 7 days from completion of buy back

No further issue of same kind of security in next 6 months except by way of bonus issue

File return of buy back within 30 days to ROC which is signed by 2 director including MD.

Maintain register of buy back

### TRANSFER TO CRR (SEC 69)

In case of buy back out of free reserve and security premium a/c sum equal amount shall be transfer to CRR.

### SEC.70 PROHIBITION OF BUY BACK

No buy back through subsidiary company including its own subsidiary.

No buy back through Investment Company.

No buyback if default in

- A. Repayment of deposit.
- B. Redemption of preference shares and debenture.
- C. Payment interest on debt security.
- D. Repayment on loan.
- E. Payment of declared dividend.

No default in

- (a) Filing annual return.
- (b) Filing financial statement
- (c) Declaration of dividend.
- (d) Distribution of dividend.

### PENALTY

If a company makes any default in complying with the provisions of Section 68, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

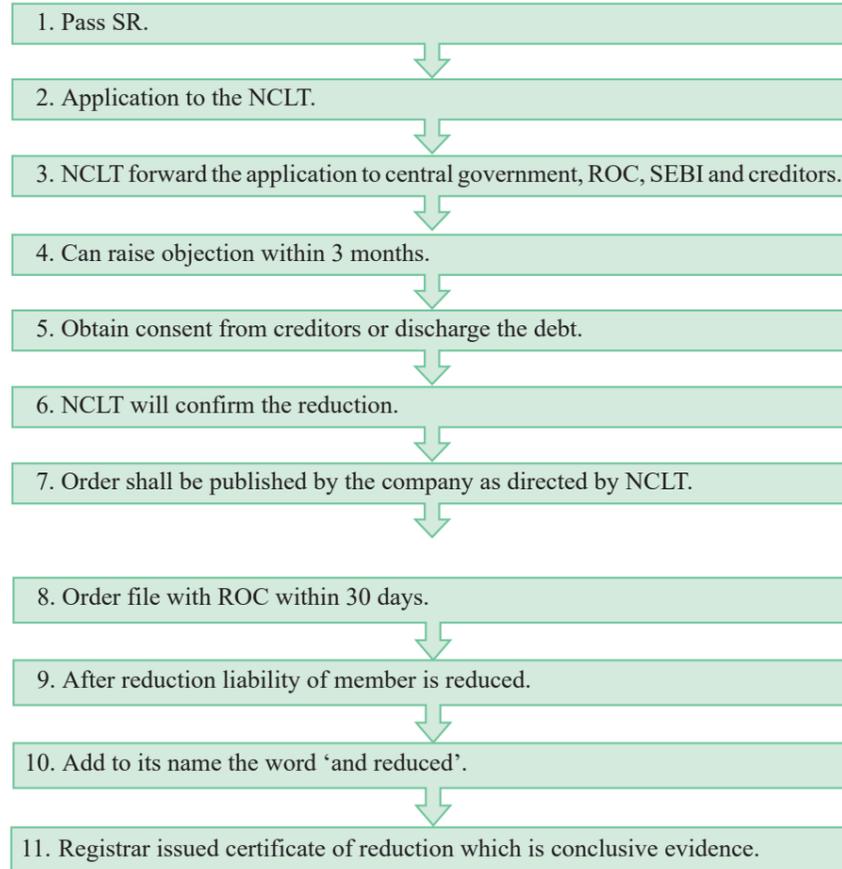
### REDUCTION OF SHARE CAPITAL (SECTION 66)

Reduction of share capital means reduction in issued, subscribe and paid-up share capital.

Following transaction results in reduction of share capital

- ❖ By way of conversion of partly paid up shares into fully paid up.
- ❖ Cancellation of paid-up share capital which is lost.
- ❖ Pay off the excess amount.

## PROCEDURE FOR REDUCTION OF SHARE CAPITAL



## DIMINUTION OF SHARE CAPITAL IS NOT A REDUCTION OF CAPITAL

Diminution of capital is the cancellation of the unsubscribed part of the issued capital.

It can be effected by an ordinary resolution.

It does not need any confirmation of the tribunal under section 66.

- ❖ Redemption of redeemable preference shares.
- ❖ Purchase of shares of a member by the company on order of the tribunal
- ❖ buy-back of its own securities.

## TRANSFER

Private company.

- ❖ Restriction on transfer of shares i.e. Right given to existing shareholders at a price determined by director or auditor.
- ❖ Director may refuse the transfer.

Public company [Section 2(71)]

- ❖ The shares of public company are freely transferable.
- ❖ Two parties – transferor and transferee.
- ❖ Execution of transfer document (SH-4).
- ❖ The instrument shall be duly stamped, dated and properly executed.
- ❖ Deliver transfer document to company within 60 days from the execution.
- ❖ If the share are partly paid up then company send notice to transferee and transferee shall give no objection from receipt of notice within 2 weeks.
- ❖ Delivery of share certificate within 1 month from the date of receipt of SH-4.

Loss of transfer document.

- ❖ If the transfer document is lost, transferee submit the indemnity bond
- ❖ If BOD think fit may register the transfer.
- ❖ 0.25% stamp duty is payable by transferee on the share value.

## BETWEEN THE PERIODS OF TRANSFER AND REGISTER

- (a) The company demands call money from transferor and transferor may recover it from transferee.
- (b) The company pay dividend to transferor.
- (c) The transferor will vote but with the pre- direction of transferee.

## TIME LIMIT FOR DELIVERY OF CERTIFICATES SECTION 56 (4)

Every company, deliver the certificates of all securities allotted, transferred or transmitted

1. Within a period of 2 month from the date of incorporation of company in case of subscribers the company.
2. Within a period of 2 month from the date ALLOTMENT (SHARES)
3. Within a period of 6 month from the date ALLOTMENT (DEBENTURES)
4. Within a period of 1 month from the date of receipt by the company of the instrument of transfer.

## BLANK TRANSFER

Blank transfer means transfer of shares by blank instrument of transfer. The instrument is blank if:

- ❖ It contains the signature of the transferor. It does not contain the name of the transferee and the date of transfer.

The transferor delivers to the transferee:

- ❖ Blank transfer deed, and
- ❖ Share certificate

The advantage of blank transfer is that the transferee can sell the shares again without filling his name and signature to a subsequent buyer. Thus, the process of sale and purchase of shares can be repeated number of times without any requirement of new transfer form and stamp duty every time.

## FORGED TRANSFER

An instrument on which signature of the transferor is forged is called forged transfer.

Forged transfer is null and void.

To avoid forged transfer company intimate to transferor about the lodgment of instrument (SH-4).

## EFFECTS OF FORGED TRANSFER

Null and void and the original owner continues to be owner and company will restore his name.

No denial of transfer of shares in favour of buyer Company is liable against the innocent buyer if his name is removed.

## TRANSFEEE'S DEATH

- Company has no notice of his death.
- Company has notice of his death.
- Register the transfer. Shares cannot be registered.
- Consent of transferor and legal representative is required.

## TRANSFEROR'S DEATH

- (i) **Company has no notice of this death:** Company will register the transfer.
- (ii) **Company has notice of his death:** Not to register until legal Representative referred to.

## APPEAL AGAINST REFUSAL

- ❖ If company refuse transfer then appeal against such refusal

Private company.

- ❖ Appeal to NCLT within 30 days from receipt of notice of refusal.
- ❖ No notice sent by company
- ❖ Within 60 days from the deposit of share transfer instrument (SH-4).

Public company.

- ❖ Appeal to NCLT within 60 days from receipt of notice of refusal.
- ❖ No notice sent by company.
- ❖ Within 90 days.

### TRANSMISSION

Operation by law

Death – legal representative or nominee.

Insolvency – official assigns or receiver.

Merger or amalgamation—resulting company.

Lunatic – legal representatives or nominee.

Transfer without the name of the transferee

It is the transfer by mere delivery.

Objective of blank transfer

- ❖ Avoidance of stamp duty.
- ❖ Concealment of indemnity of real owner.
- ❖ Evasion of taxes.
- ❖ Until registration transferor will be the owner.

### TRANSMISSION OF SECURITIES

- ❖ According to Section 56(2) Nothing in sub-section (1) shall prejudice the power of the company to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted.

### TRANSFER BY LEGAL REPRESENTATIVE

- ❖ According to Section 56(5) of the Act, the transfer of any security or other instrument of a deceased person in a company made by his legal representative shall, even if the legal representative is not a holder thereof, be valid as if he had been the holder at the time of execution of the instrument of transfer.

### TRANSFER OF SHARES TO MINOR

- ❖ A minor is not competent to enter into any contract, as under Section 11 of the Indian Contract Act, 1872. Since a minor cannot enter into a contract or agreement except through a guardian, his name cannot be entered in the Register of Members and therefore, he cannot become a member of a company.

### DISTINCTION BETWEEN TRANSFER AND TRANSMISSION

S. No.	Transfer of Securities	Transmission of securities
1.	Transfer takes place by a voluntary act of the transferor.	Transmission is the result of the operation of law.
2.	An instrument of transfer is required in case of transfer.	No instrument of transfer is required in case of transmission.
3.	Transfer is a normal course of transferring property.	Transmission takes place on death or insolvency of a holder of securities
4.	Transfer of securities is generally made for some consideration.	Transmission of securities is generally made without any consideration.
5.	Stamp duty is payable on transfer of securities by a holder of securities.	No stamp duty is payable on transmission of securities.

### TRANSPPOSITION OF NAME

1. Alteration or arrangement of name or wants to hold shares individual.
2. Request to BOD.
3. No need to execute transfer deed.
4. No stamp duty.

### Dematerialisation of Shares

- ❖ Dematerialisation of securities means holding of securities in electronic form in lieu of physical certificates.
- ❖ Dematerialisation of shares of a company is regulated by the Depositories Act, 1996.

### PROCESS

1. Investors submit DRF + Physical shares
2. DP verifies & forwards to RTA
3. RTA validates ownership
4. RTA cancels physical shares.

Depository credits shares in Demat account.

Investors Receives confirmation.

### REMATERIALISATION OF SECURITIES

- ❖ An investor may opt to re-materialise his shares even after Dematerialisation. Re-materialisation is conversion of electronic securities into physical certificates of such securities

### THIS CAN BE DONE IN THE FOLLOWING MANNER

1.
  - ❖ Beneficial owner sends request to DP.
  - ❖ DP intimates Depository (NSDL or CDSL) of such request electronically.
2.
  - ❖ DP intimates Depository (NSDL or CDSL) of such request electronically.
  - ❖ STA updates accounts, prints certificates and confirms the Depository
3.
  - ❖ Depository updates accounts and downloads the details to the DP.
  - ❖ STA dispatches certificates to holder thereof & DP also sends intimation about rematerialisation to its client.

### DIRECT LISTING OF INDIAN COMPANIES AT GIFT-IFSC

- ❖ MCA issued Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024.
- ❖ To enable direct listing of Indian companies on international stock exchanges, starting with GIFT-IFSC exchanges.
- ❖ Foreign Exchange Management (Non-debt Instruments) Rules, 2019 amended by the Department of Economic Affairs (DEA).
- ❖ Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme notified.
- ❖ Currently allows unlisted public Indian companies to list their equity shares on international exchanges.
- ❖ SEBI is working on operational guidelines for listed public Indian companies to avail direct listing in future phases.
- ❖ Permitted Stock Exchanges (at GIFT-IFSC): India International Exchange (India INX).
- ❖ NSE International Exchange (NSE IFSC), Both under IFSCA regulation.

**MEMBER 2(55)**

Subscribers to memorandum of association (deemed member)

Agreement in writing with the company

- ❖ By way of application and allotment.
- ❖ Transfer of shares
- ❖ By transmission of shares.
- ❖ By acquiescence or estoppel

Beneficial owner

- ❖ In the record of depository.

**WHO CAN BECOME A MEMBER?**

Company:

- ❖ Legal entity can be a member. Subsidiary company cannot become a member in a holding company.

Partnership Firm:

- ❖ Cannot be a member. However in case of Sec 8 company firm may become a company.

LLP:

- ❖ Can become a member unless prohibited by AOA/MOA.

Foreigner:

- ❖ Cannot be a member.
- ❖ If shares are transferred to minor transferor is liable for all future calls till he attains majority.
- ❖ Company may refuse the transfer if company knows of his minority.
- ❖ Minor can hold fully paid up shares through guardian.
- ❖ Minor after attaining majority, if he does not want to be a member he must repudiate his liability on the shares on ground of minority.

Insolvent:

- ❖ He is a member as long as his name is entered in register of member.
- ❖ Having voting power.
- ❖ Dividend to official assignee or receiver.
- ❖ No corporate benefit.

Pawnee:

- ❖ Pawnee cannot be treated as member. He never has the absolute ownership.

Receiver:

- ❖ Cannot exercise any of his rights till his name is entered in register of members.

Person taking Shares in fictitious Shares:

- ❖ Criminal liability for commission of fraud. He is a member.

Trade Union:

- ❖ Registered trade union can hold the share.

ADR/GDR holder:

- ❖ Cannot be treated as member.
- ❖ ADR/GDR— not a member till conversion.

Basis of distinction	Member	Shareholder
Definition	The Term 'member' is defined under sec. 2 (55)	The term 'shareholder' has not been defined Under the companies act. 2013.
Meaning	The term 'member' generally means a Person whose name is entered in the Register of members.	The term 'shareholder' means a person who Holds shares in a company.
Nature of company	Every company shall have the minimum Number of members, whether it is Limited by share capital or guarantee.	Only a company having a share capital can Have shareholders. A company limited by Guarantee and having no share capital does Not have any shareholders.
Transferor of shares Until change in the register	A transferor of shares continues to be a member until his name is removed from Register of Member.	Where a person transfers his shares, he immediately ceases to be a shareholder, even though his name continues to appear in the register of members.

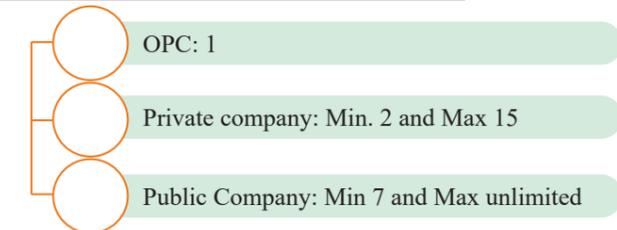
**JOINT MEMBER**

Two or more person applying for shares

Joint holder treated separately except in case of private company for the purpose of counting the member.

In case of notice, dividend, voting rights treated as single member

Max. 4 member can hold one share jointly.

**RESTRICTIONS ON NUMBER OF MEMBERS**

If number is reduced below the minimum number then the liability becomes unlimited or NCLT can order the winding up.

**CESSATION OF MEMBERS**

- ❖ Cessation means cancellation of membership Occurs in the following situation:

Transfer of shares

Transmission.

Insolvent -Official assignee disclaims

Redemption of preference share

Surrender of shares

Winding up of the company

**SHAREHOLDERS' AGREEMENTS**

Shareholders' agreements (SHA) are quite common in business.

In India shareholder's agreement have gained popularity with bloom in newer forms of businesses.

There are numerous situations where such agreements are entered into – family companies, JV companies, venture capital investments, private equity investments, strategic alliances, and so on.

**ENFORCEABILITY OF THE SHAREHOLDER'S AGREEMENT**

While shareholders' agreements are enforceable in England regardless of whether they have been incorporated in the articles of association of the company, in India courts have either refused to recognize clauses in shareholders agreements or, even when consistent with company legislation, enforced such clauses only if they have been incorporated in the articles of association of the company.

## REGISTER SEC-88

Register of members separately for each class

Register of debenture holder

Register of other securities

If there are more than 50 members then maintain index

Register of beneficial owner maintained by depository shall be treated as register of member.

Register of foreign members, In the register of members entry is made with 7 days from the allotment or transfer. Registers shall keep at register office of the company or such place as may be decided by passing S.R.

- ❖ At any place within same city town village where register office is situated
- ❖ The place in India where more than 10% of the total members resides.
- ❖ In case of any changes due to bonus, ESOP, right issue is made within 7 days from approval of board.

Authentication by CS or by authorised person.

## INSPECTION

Member's debenture holder's security holders are beneficial owners without any fees can inspect.

Any other person wants to inspect may inspect by paying fees not exceeding Rs 50.

Inspection during the business hours.

## COPIES

Any person can obtain copies by paying fees not extending RS.10 per page.

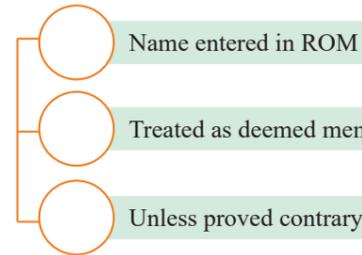
Company shall serve the copies within 7 days deposit of fees.

## FOREIGN REGISTER

Companies may keep foreign registers of members or debenture holders, other security holders or beneficial owners residing outside India.

If authorised by its articles, company may keep foreign register in any country outside India.

## EVIDENCE



## PRESERVATION OF REGISTER

Register of member-maintain permanently.

## SECTION 90 SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY

Section 90(1) of the Act provides that every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than 25% or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control.

As per Rule 2(h) of the Companies (Significant Beneficial Owners) Rules, 2018:

“Significant beneficial owner” in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

- ❖ Holds indirectly, or together with any direct holdings, not less than 10% of the shares;
- ❖ Holds indirectly, or together with any direct holdings, not less than 10% of the voting rights in the shares;
- ❖ Has right to receive or participate in not less than 10% of the total distributable dividend, or any other distribution, in a financial year through indirect holding alone, or together with any direct holdings;
- ❖ Has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

## DECLARATIONS TO BE MADE BY SIGNIFICANT BENEFICIAL OWNER

Initial Disclosure:

- ❖ every individual who is a significant beneficial owner in a reporting company, was required to file a declaration in Form No. BEN-1 to the reporting company within ninety days from such commencement.

Continual Disclosure:

- ❖ Every individual, who subsequently becomes SBO/ or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within 30 days of acquiring such significant beneficial ownership or any change therein

## OBLIGATIONS OF THE REPORTING COMPANY

Filing of Returns with ROC:

- ❖ Upon receipt of a declaration from the Significant Beneficial Owner of the company and changes the reporting company shall file a return in Form No. BEN-2 with the Registrar within a period of 30 days from the date of receipt of such declaration, along with the prescribed fees.

Filing of Returns with ROC:

- ❖ It should be noted that, the obligation of the individual to self-declare his significant beneficial holdings, and the obligation of the company to send notice seeking information from members are independent obligations.

## CONSEQUENCES OF NON-REPORTING UNDER SECTION 90 (5)

As per Rule 7 of The Companies (Significant Beneficial Owners) Rules, 2018, the reporting company shall apply to the Tribunal within a period of 15 days of the expiry of the period specified in BEN-4.

Where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or

Where the information given is not satisfactory.

In accordance with section 90(7) of the Companies Act, 2013, for order directing that the shares in question be subject to restrictions, including:

- Restrictions on the transfer of interest attached to the shares in question;
- Suspension of the right to receive dividend or any other distribution in relation to the shares in question;
- Suspension of voting rights in relation to the shares in question;
- Any other restriction on all or any of the rights attached with the shares in question.

## VETO POWER

As per the provisions of the Companies Act, 2013 there are some resemblance where the management can take decisions on their own, by virtue of law. However, there are some instances where the consent of the shareholders is mandatory to approve any decision or transaction which is said to be as the veto power or veto right of shareholders of the company.

## DIFFERENCE BETWEEN VETO POWER AND CASTING VOTE

Veto power is different than casting vote of Chairman.

Casting vote is applicable in case of equality of votes in favour and against.

In case of equality the Chairman may give vote either in favour or against the resolution and it can be carried accordingly.

Veto power has not been defined in the Companies Act. However, dictionary meaning of veto power is: “to refuse to admit or approve; specifically: to refuse assent so as to prevent enactment or cause reconsideration.

## BOOK CLOSURE SEC- 91

A company may close the register for any period or periods not exceeding in the aggregate forty-five days in a year,

Max 30 days at a time Give 7 days prior notice.

## RECORD DATE

Date on which records of company are closed advance 7 days' notice.

## RIGHTS OF MEMBERS

When once a person becomes a member he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act.

These rights can be categorized as under:

Right to receive copies of documents

Right to inspect statutory registers/returns & get copies

Right to attend meetings of the shareholders

Other Rights

## COLLECTIVE SHAREHOLDER RIGHTS

Members of a company have certain rights which can be exercised by members collectively by means of democratic process, i.e. by majority of members usually unless otherwise prescribed.

The shareholders in majority determine the policy of the company and exercise control over the management of the company

Application to Board in case of Oppression and Management:

❖ However, if and when the majority becomes oppressive or is accused of mismanagement of the affairs of the company, Section 241 read with section 244 of the Act, confers right, to not less than one hundred members of a company or not less than one-tenth of the total number of its members whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company.

Making a requisition for calling Extra Ordinary General Meeting:

❖ Section 100 of the Companies Act, 2013 confers on members, holding not less than one-tenth of the paid-up share capital of a company, right to make a requisition to the Board of Directors to call an extraordinary general meeting of the company.

## RIGHTS OF DISSENTING SHAREHOLDERS

Section 48(2) of the Companies Act, 2013 confers certain rights upon the dissenting shareholders.

According to section 48(2), where the rights of any class of shares are varied, the holders of not less than ten per cent of the issued shares of that class, being persons who did not consent to such variation or vote in favour of the special resolution, can apply to the Tribunal to have the variation cancelled.

Where any such application is made to the Tribunal, the variation will not be effective unless and until it is confirmed by the Tribunal.

Application shall be made within twenty-one days after the date on which the consent was given or the resolution was passed.

The Companies (Management and Administration) Second Amendment Rules, 2023 in rule 9, after sub-rule (3), the MCA has inserted following sub-rules:

### 1. Every company must designate a person responsible for:

- ♦ Furnishing information regarding beneficial interest in shares.
- ♦ Extending co-operation to the Registrar or authorized officer.

### 2. The company may designate:

- (a) Company Secretary (if appointment is mandatory under the Act), or
- (b) Key Managerial Personnel (KMP) (other than CS), or
- (c) Every director, if no CS or KMP is appointed.

### 3. In absence of a formally designated person:

- (a) Company Secretary, if required under the Act, or
- (b) Managing Director or Manager, if no CS is appointed, or
- (c) Every director, if no CS or MD/Manager is present.

### 4. Disclosure in Annual Return:

- ♦ A company must disclose details of the designated person in its Annual Return.

### 5. Change in Designated Person:

- ♦ Any change must be intimated to the ROC using e-Form **GNL-2**, as per Companies (Registration Offices and Fees) Rules, 2014.

**POWERS & RESTRICTIONS OF BOARD U/S 179 AND 180**

Section 179 of the Companies Act, 2013, the Board of Directors of a company are entitled to exercise its power to borrow monies subject to the provisions contained in the Act and as contained in the memorandum or articles of association of the Company or in any regulations not inconsistent, by passing a resolution at duly convened meeting of Board of Directors of the Company.

Section 180(1) of the Companies Act, 2013 states that the Board of Directors of a company shall exercise the powers conferred under this section only with the consent of the company by a special resolution.

**SECTION 180(1) (C)**

- Director can borrow upto 100% of PSC + FR except temporary loans
- GM-SR if borrowing exceed 100% of PSC + FR
- Not applicable to private company.
- Temporary loan means repayable within 6 months.

**ULTRA VIRES BORROWINGS**

It is a Latin term made up of two words "ultra" which means beyond and "vires" meaning power or authority. So in the company, we can say that anything which is done by the company or its directors which is beyond their legal authority or which was outside the scope of the object of the company is ultra-vires.

**CONSEQUENCES OF ULTRA-VIRES BORROWINGS**

- Void ab initio** ❖ The ultra-vires acts are null and void ab initio. These acts are not binding on the company. Neither the company can sue, nor it can be sued for such acts.
- Estoppel** ❖ Estoppel or ratification cannot convert an ultra-vires act into an intra-vires act.
- In-junction** ❖ The lender has been given authority under law to restrain the company for using the money lent.

**Sub-rogation**

- ❖ Where the money of an ultra-vires borrowing has been used to pay off lawful debts of the company, he would be subrogated to the position of the creditor paid off and to that extent would have the right to recover his loan from the company.

**Liability of directors**

- ❖ The lender may be able to sue the directors for breach of warranty of authority, especially if the directors deliberately misrepresented their authority.

**ULTRA VIRES TO BOD BUT INTRA VIRES TO COMPANY**

Company will liable for such borrowing if the borrowing is within the ostensible authority and lender acted in good faith or transaction was ratified by the company.

Company would be liable, particularly if the money has been used for the benefit of the company.

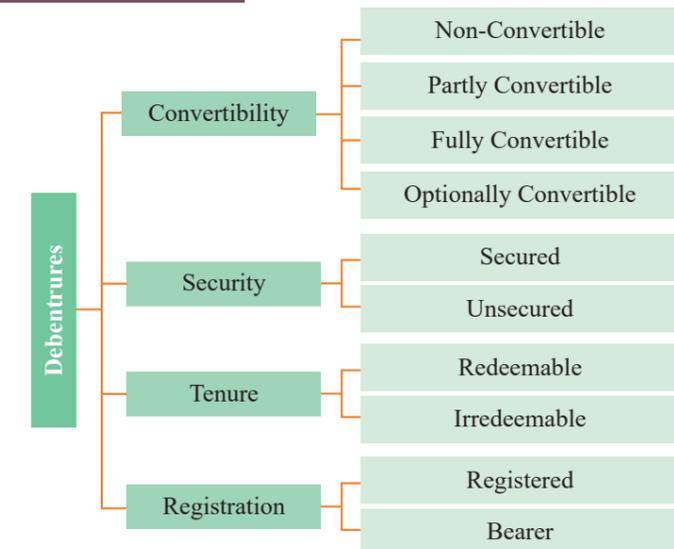
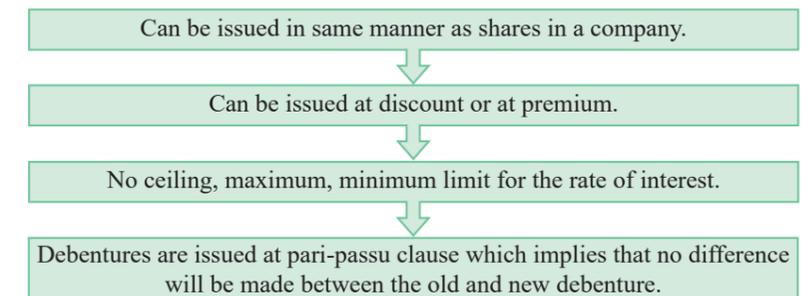
If MD borrow large sum of money and misappropriated it and if such borrowing is within limit then company will be liable if lender acted in good faith.

**MEANING OF DEBENTURES**

Debenture is a written instrument acknowledging a debt.

**FEATURES OF DEBENTURE**

- It is in the form of certificate.
- Acknowledge by the company of its indebtedness to a holder.
- Fixed rate of interest
- Company may issue perpetual or irredeemable debenture with no undertaking to pay.
- Usually contain a charge
- No voting rights
- Fixed deposit is not debenture.

**KINDS OF DEBENTURES****ISSUE OF DEBENTURE****PARI PASSU CLAUSE IN CASE OF DEBENTURES**

Debentures are usually issued in a series with a pari passu clause and it follows that they would be on an equal footing as to security and should the security be enforced.

**PROVISION OF COMPANIES ACT FOR ISSUE OF DEBENTURE**

- (A) Pass SR
- (B) Company may issue convertible debenture.
- (C) Max term-10 years.

(D) Following company may issue debenture for max term of 30 years.

- (i) Company engaged in setting up of infrastructure projects or
- (ii) Infrastructure finance company or
- (iii) Infrastructure debt fund non-banking finance company or
- (iv) Other companies specified by RBI/national housing board, ministry of CG.

(E) Create a charge on the assets of the company in case of secured debenture.

(F) Appoint debenture trustee before issue of prospectus to public or members exceeding 500 and within 60 days from allotment execute trust deed.

(G) Name of trustee must be stated in offer document.

(H) Create the charge in favor of debenture trustee on specific immovable property or movable property (not being in the nature of pledge)

(I) Obtain written consent before appointment.

(J) Creation of DRR

(K) DRR created out of profit available for payment of dividend.

### NO NEED TO CREATE DRR

(A)

❖ All India financial institution and banking company for both publicly as well as privately placed debenture.

(B)

❖ Listed NBFC registered under RBI and national housing company registered with national housing board for both publicly as well as privately placed debenture.

(C)

❖ Other listed company for privately placed debenture.

(D)

❖ Unlisted NBFC registered with RBI and housing finance company registered with national housing board for privately placed debenture.

Other unlisted company, the DRR should be maintained at least 10% of the value of outstanding debenture.

Every company required to create DRR shall deposit or invest at least 15% of debenture maturing during the current financial year ending 31st March.

Deposit in schedule commercial bank or investment in unencumbered securities of government/ trust securities.

Amount invested shall use for the redemption of debenture.

In case of partly convertible debenture create DRR for nonconvertible options.

### APPOINTMENT OF DEBENTURE TRUSTEE

The Company shall before the appointment of debenture trustee or trustees obtain a written consent from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

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

- (i) beneficially holds shares in the company;
- (ii) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- (iii) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (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 fifty lakh rupees whichever is lower, during the two 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.

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.

The vacancy shall only be filled with the written consent of the majority of the debenture holders.

### DUTIES OF DEBENTURE TRUSTEE

(A)

❖ To satisfy himself that the letter of offer does not contain any matter which is inconsistent with the terms of the issue of debentures or with the trust deed;

(B)

❖ To satisfy himself that the covenants in the trust deed are not prejudicial to the interest of the debenture holders;

(C)

❖ To call for periodical status or performance reports from the company;

(D)

❖ To communicate promptly to the debenture holders defaults, if any, with regard to payment of interest or redemption of debentures and action taken by the trustee.

### MEETINGS OF DEBENTURE HOLDERS

The meeting of all the debenture holders shall be convened by the debenture trustee on-

❖ Requisition in writing signed by debenture holders holding at least one-tenth in value of the debentures for the time being outstanding.

### DEBENTURE TRUSTEE DEED

A debenture trust deed is an instrument that a company executes in favour of a debenture trustee.

No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures.

A debenture trust deed shall be in Form No. SH.12

Trust Deed in Form SH-12 contains the following:

- Details of charge created
- Description of Debenture issue
- Particulars of the appointment of Debenture Trustee
- Events of defaults
- Obligations of the company

### DEFINITION OF DEPOSIT

As per Sec 2(31) read with Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014, Deposit includes any receipt of money by way of deposit or loan or in any other form, by a Company, But DOES NOT INCLUDE:

- (i) any amount received from the CG/SG, or any amount received from any other source whose repayment is guaranteed by the CG/SG, or any amount received from a local authority, or any amount received from a statutory authority constituted under an Act of Parliament or a State Legislature.
- (ii) any amount received from foreign govt., foreign bank, foreign body corporate, foreign citizen etc. pursuant to the provisions of FEMA, 1999.
- (iii) any amount received as a loan or facility from any banking company or from the State Bank of India or any of its subsidiary banks or from a banking institution notified by the Central Government under section 51 of the Banking Regulation Act, 1949...etc
- (iv) any amount received as a loan or financial assistance from Public Financial Institutions.

(v) any amount received against issue of commercial paper.

(vi) any amount received by a company from any other company (Inter corporate - governed by Sec 186,185 as the case may be).

(vii) any amount received by a Company pursuant to offer of securities (through Private Placement/Preferential Allotment/Rights Issue etc) as the subscription money or share application money or advance towards allotment of the securities applied for. However, if the securities (for which aforesaid money is received by the Company) cannot be allotted within 60 days from the receipt of money and such money is not refunded to the subscriber within next 15 days the completion of 60 days (means after 75 days of receipt of money and pending allotment), then such amount SHALL be treated as Deposits.

(viii) any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the Private company.

(ix) any amount raised by the:

- ❖ issue of bonds or debentures secured by a first charge or a charge ranking pari passu with the first charge on any assets referred to in Schedule III of the Act excluding intangible assets of the company. The amount of such bonds or debentures shall not exceed the market value of such assets as assessed by a registered valuer or
- ❖ bonds or debentures compulsorily convertible into shares of the company within 10 years.

(x) UNSECURED NCDs Listed on the recognised stock exchange

(xi) any amount received from an employee of the company not exceeding his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit

(xii) any non-interest bearing amount received and held in trust

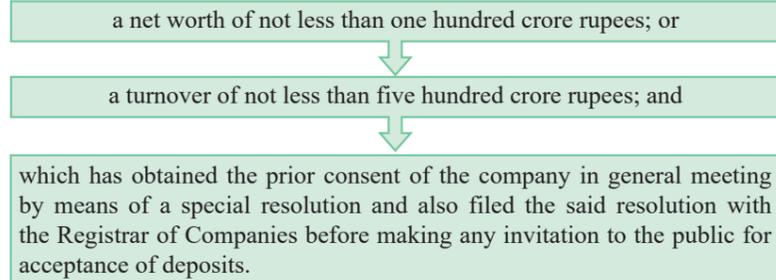
(xiii) any amount received in the normal course of business of the Company:

- ❖ as an advance from the customers against the supply of goods or services and such amount shall be appropriated against such goods/services within 365 days from the date of acceptance.

In case of any legal proceedings in any court of law, then time period of 365 days shall not apply as an advance in connection with consideration for an immoveable property as security deposit for the performance of the contract for supply of goods or provision of services as advance received under long term projects for supply of capital goods advance for providing future services (period should not be more than period as per common business practice or 5 Yrs whichever is less) advance received/allowed by any sectoral regulator under the instructions of CG/SG advance towards publications (print/electronic). [Explanation – In point no xii above, the amount shall be deemed to be deposits on the expiry of 15 days from the date they become due for refund.]

### MEANING OF ELIGIBLE COMPANY

'Eligible Company' means a public company having:



### DEPOSIT MAY BE ACCEPTED

(i) From Own Members Sec 73:

- ❖ Both Private and Public Companies

(ii) From Public and Own Members Sec 76:

- ❖ Only Eligible public company

### MAX. LIMIT OF DEPOSITS TO BE ACCEPTED

Type of company	Members	Public
Eligible Company	Upto 10% of aggregate of the paid up share capital, free reserves and securities premium account	Upto 25% of aggregate of the paid up share capital, free reserves and securities premium account
Company referred in section 73(2) i.e. Non-eligible Companies	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account	Prohibited
Government Company (eligible under section 76)	–	Upto 35% of aggregate of the paid up share capital, free reserves and securities premium account

- ❖ Deposits may be held in joint names not exceeding three.

The provisions of Chapter V (Sec 73 to 76A) are not applicable to the following companies:

- ❖ Banking company
- ❖ NBFC
- ❖ Such other company as specified by CG in consultation with RBI i.e (IFSC & Pvt.co)

### TERMS OF DEPOSIT (BOTH FROM PUBLIC AND MEMBER)

- (A) Term- Minimum 6 month and maximum 36 months.
- (B) Can accept deposit for less than 6 month such deposit shall not exceed 10% of PSC+ FR + SP and repayable not earlier than 3 months.
- (C) Deposits may be accepted in joint names not exceeding three
- (D) Rate of interest as prescribe by the RBI for NBFC
- (E) In case of premature deposit company can reduce the rate of interest by 1%.
- (F) Register of deposit
  - ❖ Every company shall maintain register of deposit at the register office
  - ❖ Entries in the register within 7 days from the issuance of deposit.
  - ❖ Entries authenticated by a director or secretary
  - ❖ The register shall preserve for 8 years from FY in which the latest entry made
- (G) File return of deposit on or before 30th of June of every year in form DPT-3
- (H) Where a company fails to repay the deposit or interest, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him and for such other orders as the Tribunal may deem fit.
- (I) Company to furnish deposit receipts to the depositor within 21 days from the receipt of money.
- (J) Receipt shall be signed by the officer of the company authorised by the BODs.

### TRUSTEE OF DEPOSITORS

- Appointment of one or more trustee for depositors for creating security for the deposits.
- Written consent to be obtained from the Depositor's trustee.
- Deposit trust deed executed in Form DPT 2 between the Company and trustee
- Disqualifications of a depositor's trustee mention in rule 7.
- Unanimous Board resolution – Removal of the depositor's trustee.
- Duties of depositor trustee mentioned in rule 8.

### PUNISHMENT FOR FRAUD

Imprisonment which may extend to 7 years and with fine which shall not be less than 25 lakh rupees but which may extend to 2 crore rupees. Moreover if officer in default has is proved to have intention to DECEIVE then he is liable u/s 447.

**DEFINITION & MEANING OF "CHARGES"**

Clause 16 of Section 2 of the Companies Act, 2013 defines the term "charge" as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

**TYPES OF CHARGE****Fixed charge or specific charge**

- ❖ It covers assets which are ascertained or are capable of being ascertained and defined.
- ❖ Generally created on fixed assets.
- ❖ Cannot deal in that property which has been charged.

**Floating charge or general charge**

- ❖ It covers those assets which are not capable to be ascertained and defined.
- ❖ Generally it is created on current assets.
- ❖ It is created on such class of assets which change from time to time in the ordinary course of business.
- ❖ Company may freely deal in the property which has been charged. Company may sell, mortgage, or lease such charged property.

**DIFFERENCE BETWEEN FIXED OR SPECIFIC CHARGE AND FLOATING CHARGE**

Basis	Fixed Charge	Floating Charge
Nature	It is a legal Charge	It is an equitable Charge
Meaning	Security in terms of certain specific property	Security remains dormant until it is fixed or crystallised
Scope	It is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge	It is created on variable property which keeps on changing or moving. The property or assets of the Company cannot be specifically ascertained
Created on	It is created on fixed assets like land, building, or plant and machinery	It is created on floating assets like stock-in-trade, debtors etc.
Priority	It has priority over floating Charge	No such priority
Disposing of assets	The Mortgagor i.e., Company cannot dispose off the property without the consent of the charge holder	The Mortgagor is free to deal with the property as it sees fit until the holders of charge take steps to enforce their security

**CRYSTALLIZATION OF FLOATING CHARGE**

This conversion of the floating charge into a fixed charge known as crystallization can be triggered by following events:

1. Cessation of business, including winding up and ceasing business operations as a going concern prior to winding up; and
2. Debenture holder intervention, including appointment of a receiver or manager, taking possession as debenture holder and obtaining an injunction against company dealings with charged asset generally;
3. On the happening of event specified in deed.

**EFFECT OF CRYSTALLISATION OF A FLOATING CHARGE**

Priority over any subsequent equitable charge and other and unsecured creditors

However, preferential creditors like government, employee dues gets priority over the floating charge.

**POSTPONEMENT OF FLOATING CHARGE**

Floating charge leaves the company free to create equitable mortgage on the same property until crystallized. Where such mortgage has priority over the floating charge which gets postponed.

Situations where floating charges get postponed-

- (a) Landlord who restrains from rent
- (b) Creditor who obtains a garnishee order
- (c) Judgment creditor who attaches and sells the property
- (d) Employee or other preferential creditors
- (e) Supplier under the hire purchase agreement where goods remain the property of seller.

(f) Persons who take mortgage without notice of floating charge have priority over floating charge.

(g) Floating charge created within 12 months immediately preceding the winding up shall be invalid unless it is proved that the company was solvent after the creation of charge.

**DIFFERENCE BETWEEN MORTGAGE AND CHARGE**

	Mortgage	Charge
(1)	Transfer of interest	Security for securing the loan
(2)	Act of the parties	Act of parties or operation by law
(3)	Registration is compulsory	Charge created by operation by law does not require registration.
(4)	Fixed term	May be for perpetuity
(5)	Carries personal liability	No personal liability unless default.

**DIFFERENCE BETWEEN CHARGE AND PLEDGE**

	Charge	Pledge
	It is not a physical transfer of property of one to another.	It is a bailment of personal property as security for some debt or engagement, redeemable on certain terms, and with an implied power of sale on default.
	It is a right created in favour of one, referred to as "the lender" in the immovable property of another, referred to as "the borrower", as security for repayment of the loan and payment of interest on the terms and conditions contained in the loan documents evidencing charge.	It consists of a delivery of goods by a debtor to his creditor as security for a debt or other obligation, to be held until the debt is repaid along with interest or other obligation of the debtor is discharged, and then to be delivered back to the pledger, the title not being changed during the continuance of the pledge.

**Note:** Both a pledge and a charge are the result of voluntary act of parties. Both create security but the nature of the security is different.

**REGISTRABLE CHARGES**

Section 2(16) and section 77 of the Act require to register the charge created by way of every kind of interest or lien (including negative lien) on the property or assets, tangible or otherwise, of a company as security, including mortgage.

- (i) ❖ a charge created for the purpose of securing any issue of debentures or deposits
- (ii) ❖ a charge on uncalled share capital of the company;

- (iii) ❖ a charge on any immovable property, wherever situate, or any interest therein. This includes mortgage by deposit of title deeds.
- (iv) ❖ a charge on any book debt of the company. Assignment of book-debts as security is covered.
- (v) ❖ a lien on sub freight is a charge on book-debt of the company.
- (vi) ❖ a charge, on any movable property of the company;
- (vii) ❖ a floating charge on the undertaking or any property of the company including stock-in-trade;
- (viii) ❖ a charge on calls made but not paid;
- (ix) ❖ a charge on a ship or any share in a ship;
- (x) ❖ a charge on intangible assets, including goodwill, patent, a license under a patent, trade mark, copy right or a license under a copyright;
- (xi) ❖ a charge or assignment on insurance policies obtained by the company;
- (xii) ❖ all and every kind of pledge margin money, including shares, is a pledge;

### REGISTRATION OF CHARGES (SECTION 77)

- (1) Company shall register the charge within 30 days from creation.
  - (2) Particulars of charge signed by company and charge holder.
  - (3) Submit CHG -1 for other than debenture and CHG -9 for debenture along with instrument creating charge.
  - (4) Extension- can be granted by ROC.
- ❖ Charge created before commencement of companies act 2019
  - ❖ Can be register within 300 days from creation of charge
  - ❖ Company shall register within 6 months from commencement of amendment (2019) act by paying additional fees.
  - ❖ Charge created after commencement of companies amendment act (2019)
  - ❖ Register within 30 days from creation if not
  - ❖ Can be register within 60 days from creation by paying additional fees
  - ❖ Further extension of 60 days after payment of ad valorem duty
- (5) ROC issue certificate of registration of charge in form no. CHG- 2
  - (6) Section not applicable to charge specified by CG after consultation with RBI.

S. No.	Period of Delay	Additional Fees Applicable
1.	Up to 30 days	2 times of normal fees
2.	More than 30 days and up to 60 days	4 times of normal fees
3.	More than 60 days and up to 90 days	6 times of normal fees
4.	More than 90 days and up to 180 days	10 times of normal fees
5.	More than 180 days	12 times of normal fees

### CONSEQUENCES OF NON-REGISTRATION

Liquidator can ignore the charge and treat them as an unsecured creditors

If subsequent charge is created and registered on the same property than later charge would get priority

### APPLICATION FOR REGISTRATION BY CHARGE HOLDER

- Company failed to register within 30 days from creation
- Charge holder may apply to ROC for registration
- ROC issue 14 days' notice to company for registration of charge.
- If company failed to register the charge even after notice given by ROC then ROC shall register the charge.
- Fees paid by charge holder can be recover from company.

### SATISFACTION OF CHARGES

- (A) ❖ Company intimate to ROC within 30 days from satisfaction (CHG-4).
- (B) ❖ Extension can be granted by ROC for a period of 300 days after payment of additional fees.
- (C) ❖ ROC shall give 14 days' notice to charge holder.
- (D) ❖ If no objection is received within 14 days then ROC shall register the satisfaction of charge and issue certificate of registration for satisfaction in form CHG -5.

### REGISTER OF CHARGES MAINTAINED IN ROC'S OFFICE (SECTION 81)

The Registrar of Companies shall maintain a register containing particulars of the charges registered in respect of every company in manner as stated:

- ❖ The particulars of charges maintained on the Ministry of Corporate Affairs portal ([www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21)) shall be deemed to be the register of charges for the purposes of section 81 of the Act.
- ❖ This charge register shall be open to inspection by any person on payment of fee.

### REGISTER OF CHARGE (SECTION 85)

Company's register of charge-

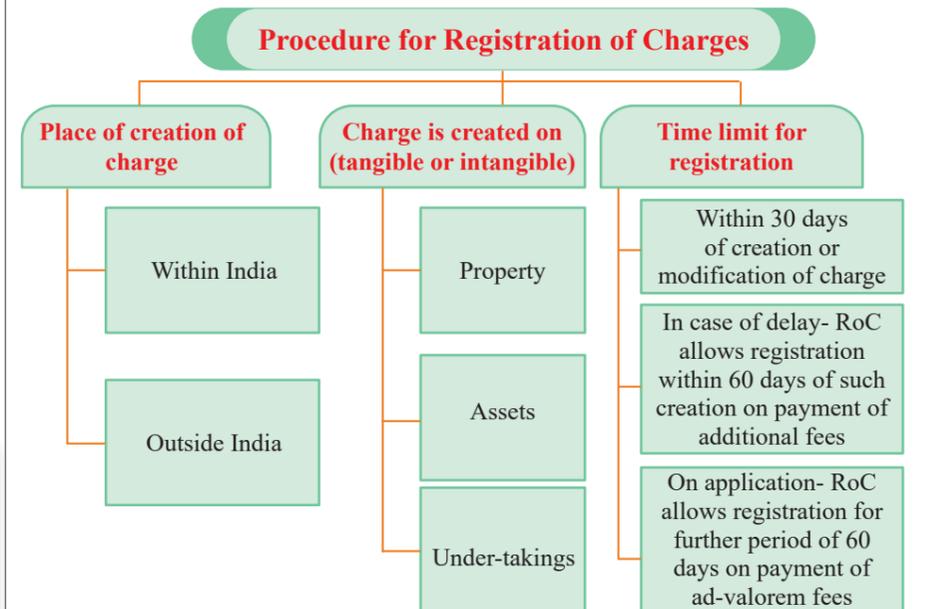
- Keep register of charge in form CHG-7 containing particulars of charge.
- Register of charge shall be kept at register office of the company and preserved permanently.
- Instrument creating charge shall preserve for 8 years from satisfaction.
- Register of charge can be inspected by member, creditors (free of cost) and other person (fees) during business hour.

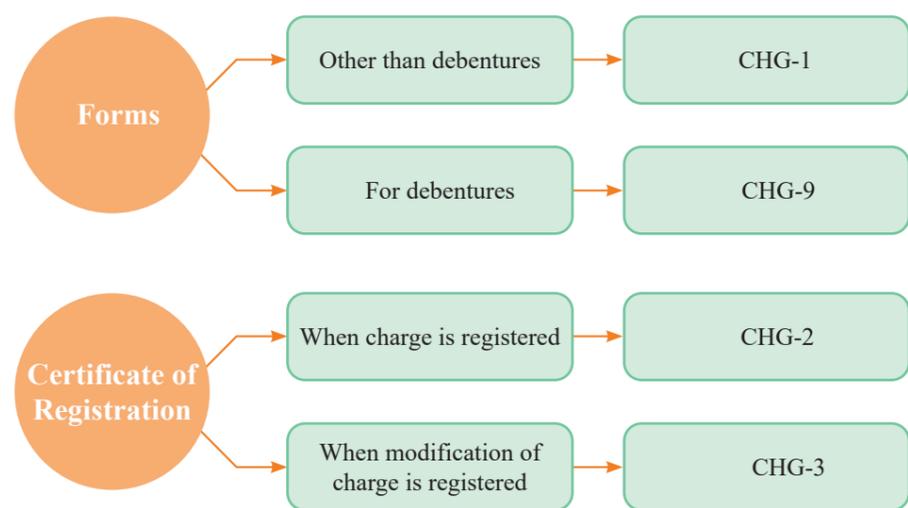
### APPLICATION TO CENTRAL GOVERNMENT CONDONATION OF DELAY [SECTION-87]

Company fails to register with specified time then company may apply to central government for extension of time (CHG 8) CG may grant extension if satisfied that-

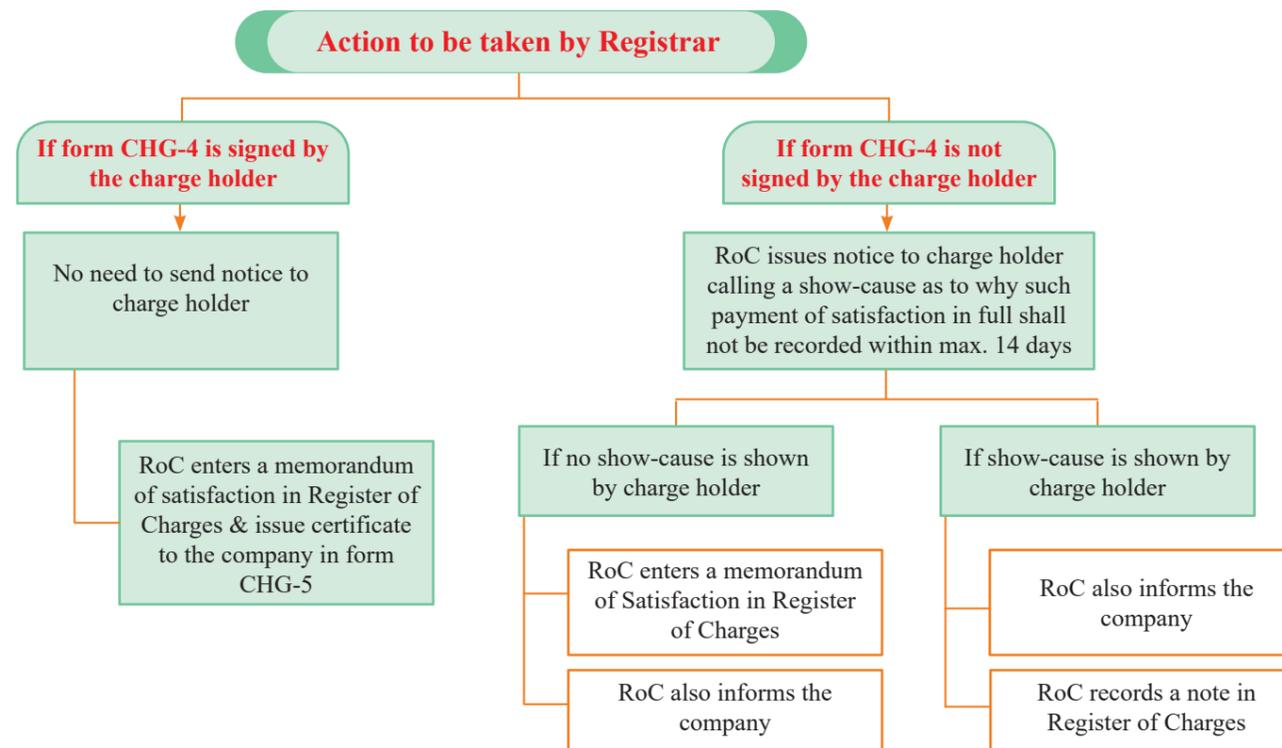
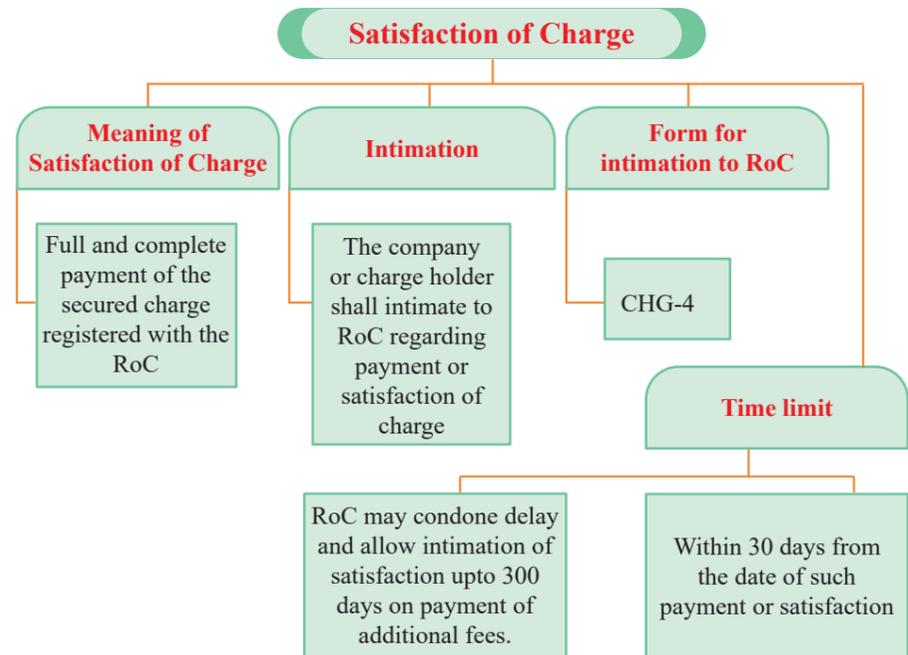
- (A) ❖ Non-registration was accidental
- (B) ❖ Inadvertence or some other sufficient reason
- (C) ❖ Not of a nature to prejudice the position of creditors
- (D) ❖ Just and equitable grounds. Order of CG shall be filed with ROC in form no. INC-28 along with the fees.

### SUMMARY OF REGISTRATION OF CREATION OR MODIFICATION OF CHARGE





### SUMMARY OF PROVISIONS OF SATISFACTION OF CHARGE



### FORMS FOR CHARGE MANAGEMENT UNDER THE COMPANIES ACT, 2013

S. No.	E-Form/ Form	Purpose
1.	CHG-1	Application for registration of creating or modifying the charge (for other than Debentures)
2.	CHG-2	Certificate of registration of charge
3.	CHG-3	Certificate of modification of charge
4.	CHG-4	Intimation of the satisfaction to the Registrar
5.	CHG-5	Certificate of Memorandum of satisfaction of charge
6.	CHG-6	Notice of appointment or cessation of receiver or manager
7.	CHG-7	Register of charges
8.	CHG-8	Application to CG for extension of time for filing of particular of registration of satisfaction of charge or rectification of omission or mis-statement of any particular. In respect of creation / modification / satisfaction of charge
9.	CHG-9	Creating or modifying the charge for debentures including rectification

**MEANING AND DEFINITION OF DIVIDEND**

The term 'dividend' takes its root from Latin noun 'dividenda' which means 'something to be divided'.  
Secretarial Standard-3 defines dividend so as to mean a distribution of any sums to Members out of profits and wherever permitted out of free reserves available for the purpose.

**DIVIDEND**

- (A) Part of net profit distributed to shareholder
- (B) It is not obligatory but once declared it becomes debt (except preference dividend)
- (C) Return on the paid-up share capital
- (D) It also includes interim dividend.
- (E) Until and unless dividend is declared, the shareholder has no claim against the dividend.
- (F) Distribution of dividend coupons shall not treated as deemed dividend.

**DIVIDEND IMPLIES TWO THINGS**

(i) payment out of profits, and

(ii) actual release of some assets.

**INTEREST VS. DIVIDEND**

Nature of Difference	Interest	Dividend
Meaning	Interest is the return on borrowed capital	Return on the investment made in the share capital of a company
Nature	It is a charge against profit	It is appropriation of profit
Calculations	It is a liability which has to be discharged even if the company has suffered loss	It is appropriation of profit which is arrived after providing of all expenses including interest
Commitment	Interest is always a commitment which is to be paid by the borrower as per the terms decided between lender and borrower	It is not a commitment

Paid to	The lenders, creditors and debenture holders	Equity Shareholders and Preference Shareholders
Expenditure	Interest on bonds or other debt is an expense of the company. The interest, being an expense, reduces the company's net income and consequently its taxable profits	It is not an expense of the company. The right of preference shareholders to receive dividend is even subject to the availability of distributable profits and this right is not to the receipt of dividend but to preferential treatment if and when dividend is declared
Mandatory	Interest is to be paid even if there is no chance of making profit	To distribute dividend, profits are necessary
Rate	Fixed	Remains constant in the case of preference shares, but fluctuates in case of equity shares.

**TYPES OF DIVIDEND****1. Final Dividend**

- (A) Dividend declared at AGM
- (B) Once declared it becomes debt
- (C) Recommended by BOD and declared by shareholder by passing OR
- (D) Mentioned amount of dividend in board report

**2. Interim Dividend**

- (A) Declared between two AGM
- (B) Declared by BOD
- (C) BOD may declare during current financial year or between closing of financial to date of AGM.
- (D) In case loss in current FY up to end of previous quarter in which dividend is declared then rate shall not exceed average of three immediately preceding financial year.

(E) All provision relating to payment of dividend shall apply to interim dividend.

(F) Interim dividend once declared by BOD cannot revoked except with the consent of shareholder or if it is declared illegally.

Basis	Final Dividend	Interim Dividend
Meaning	The Dividend recommended by the Board of Directors and declared by the Members at an Annual General Meeting	Dividend paid by the Company between two annual general meetings
Power to declare Dividend	Recommended by the Board at the board meeting and declared by the Members of the Company	Declared by the Company's Board of Directors
Meetings	Declared in Annual General Meeting of Members	Declared at the Meeting of the Board
Time of Declaration	It is declared after the end of the financial year after the amount of distributable profit has been computed	It is declared on the basis of provincial financial statements or estimates
Frequency of payment	It can be paid only once in a financial year	It can be paid more than once in a financial year

**DECLARATION OF DIVIDEND (SECTION 123)**

- (A) Authorized by AOA
- (B) Out of current year or previous year profit or both or out of fund provided by CG/SG in pursuance of guarantee.
- (C) First set off previous year losses and depreciation (schedule 2).
- (D) While computing profit exclude notional gain/unrealized gain/revaluation profit.
- (E) Company may transfer such amount to reserve before declaration.

## DIVIDEND IN CASE OF LOSS OR INADEQUACY OF PROFIT

- (A) May declared out of previous year's accumulated profit.
- (B) Rate shall not exceed average rate of 3 immediately preceding financial year (not apply if company has not declared dividend in each preceding 3 year.)
- (C) Withdrawal from accumulated profit shall not exceed 10% of PSC and FR as per latest financial statement.
- (D) Balance in reserve shall be at least 15% of PSC.
- (E) Before declaration first set off the loss incurred in FY.
- (F) No dividend from other reserve except free reserve.

## CONSEQUENCES OF NON-REGISTRATION

- Rate of Dividend** ❖ It shall not exceed the average of the rates at which dividend was declared by it in 3 years immediately preceding that year. (This rule shall not apply to a company, which has not declared any dividend in each of the 3 preceding financial year.)
- Amount to be drawn** ❖ Total amount to be drawn from such accumulated profit shall not exceed 1/10th of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.
- Utilisation of the amount** ❖ The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- Balance of Reserve** ❖ The balance of reserves after such withdrawal shall not fall below 15% of its paid up share capital as appearing in the latest audited financial statement.

## PROCESS FOR APPROVAL AND PAYMENT OF DIVIDEND

- (A) ❖ Recommendation by BOD and approved/declared by shareholder in AGM by passing BR.
- (B) ❖ Interim dividend can be declared by BOD.
- (C) ❖ Deposit in a schedule bank within 5 days and payment within 30 days from declaration.
- (D) ❖ If dividend has not paid within 30 days then transfer to unpaid dividend account within 7 days and kept for 7 years. Company shall prepare the list of unpaid dividend account and placed on the website within 90 days from transfer to unpaid dividend account.

- (E) ❖ If failed to transfer within 7 days than liable to pay interest @ 12% on remaining unpaid amount.
- (F) ❖ After 7 years it should transfer to investor education protection fund Account (IEPF)
- (G) ❖ Shareholder and their legal heirs can claim his dividend or shares from IEPF.

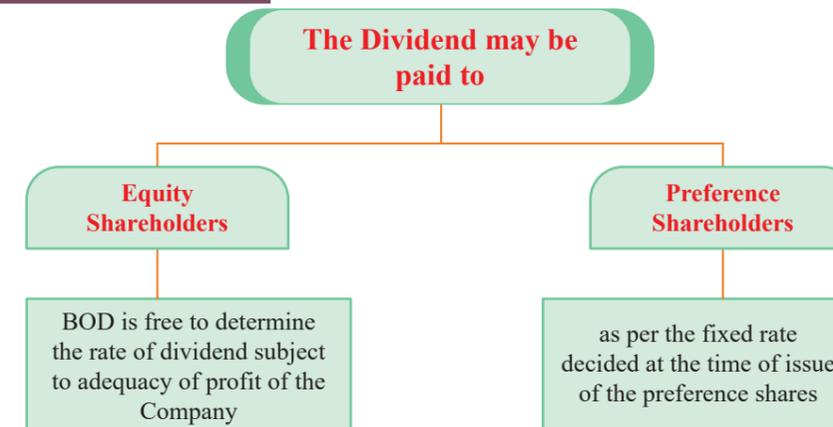
## DIVIDEND DISTRIBUTION POLICY

While considering the financial statements for declaration of Dividend, the Board should take into account the Dividend Policy of the company, if any.

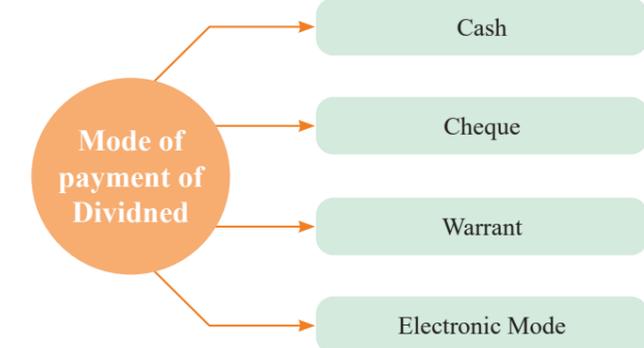
The various determinants of the Dividend Policy ordinarily include:

- (a) Legal and contractual restrictions:
  - ❖ This includes the restrictions/conditions imposed under the applicable laws or by the financial institutions/banks in the loan agreement;
- (b) Earnings of the company:
  - ❖ Current earnings provide the best index of what a company can pay;
- (c) Cash position and liquidity:
  - ❖ The cash position of a company is an important consideration in paying Dividends, the greater the cash availability and overall liquidity the greater is the ability to pay Dividend;
- (d) Financial needs:
  - ❖ There are many financial needs of a company such as meeting the cost of capital borrowed, non-availability of external capital and making provisions for any expansion or growth plans of the company;
- (e) Tax considerations:
  - ❖ The tax burden is a determining factor in the formulation of a Dividend Policy.

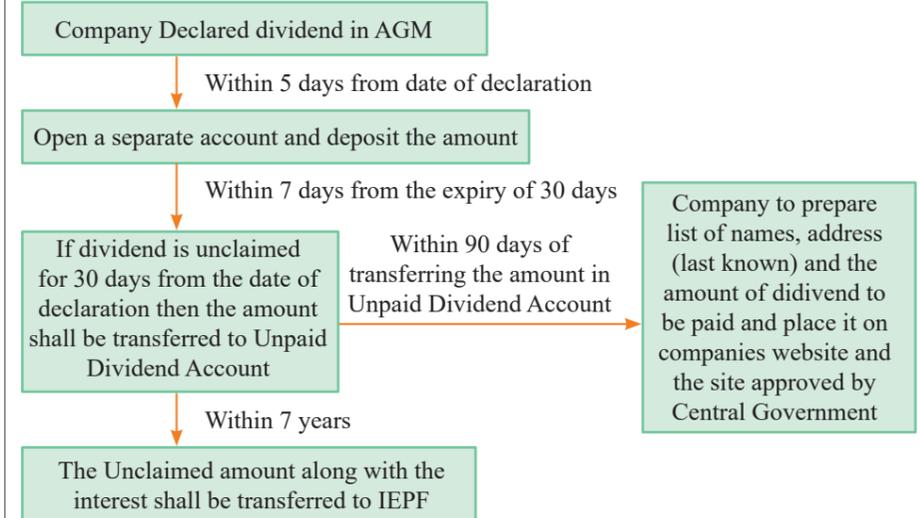
## RATE OF DIVIDEND



## MODE OF PAYMENT OF DIVIDEND (SECTION 123(5))



## UNPAID DIVIDEND ACCOUNT (SECTION 124)



## THE INVESTOR EDUCATION AND PROTECTION FUND (IEPF) (SECTION 125)

- (A) Established by CG
- (B) To educate the investor and protect the interest of investor.
- (C) Amount credited to the fund
  - (i) Unpaid dividend
  - (ii) Unclaimed application money
  - (iii) Unclaimed matured deposit.
  - (iv) Unclaimed matured debenture Interest thereon
  - (v) Grant given by CG/SG/BC/Institution
  - (vi) Interest or other income received.

## UTILIZATION OF INVESTOR EDUCATION PROTECTION FUND

- (A) Refund in respect of unclaimed dividend / matured deposit / debenture / application money / interest thereon.

(B) Promotion of investor education

(C) Distribution amongst shareholder / debenture holder / deposit holder / who suffered the losses if ordered by court.

(D) Reimbursement of legal expenses in pursuing to class action suit.

#### DIVIDEND DURING REGISTRATION OF TRANSFER OF SHARE

(A) Instrument of transfer has been delivered to company but not registered then transfer such amount to unpaid dividend account unless registered holder authorized to pay to transferee.

(B) Any right issue/bonus issue shall keep in abeyance.

#### PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDEND

(A) Every Director in default shall be punishable with imprisonment up to 2 years and fine shall not less than 1000 per day of default.

(B) Company shall liable to pay interest @ 18%

(C) Exception

- ❖ Dividend could not paid because of operation of law.
- ❖ If direction is given by shareholder and such direction cannot be complied by company.
- ❖ Dispute regarding the right to receive dividend.
- ❖ Dividend is lawfully adjusted against the sum due from member.
- ❖ Dividend warrant is post within with in period

Dividend declared

30  
days

Not claimed by Shareholder

7 days

Transfer to unpaid Dividend Account

7 Years

Transfer of unclaimed Dividend / Shares to IEPF

#### REVOCATION OF DIVIDEND

Dividend once declared becomes a debt to the company and therefore cannot be revoked once declared.

A Dividend once declared becomes a debt due to the Members and hence cannot be revoked. It gives rise to an enforceable obligation or creates a debt enforceable immediately or in the future

Dividend when proposed does not become a debt. The right of Members to claim Dividend arises only after the Dividend is declared either by the company in an Annual General Meeting or, in the case of Interim Dividend, by the Directors in a Board Meeting.

**BOOKS OF ACCOUNTS**

As per section 2 (13) of the Act, "books of account" includes records maintained in respect of –

- ❖ all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- ❖ all sales and purchases of goods and services by the company;
- ❖ the assets and liabilities of the company; and
- ❖ the items of cost as may be prescribed under section 148 of the Act.

**REQUIREMENT OF KEEPING BOOKS OF ACCOUNTS (SECTION 128)**

Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year.

The books of account must be kept on accrual basis and according to the double entry system of accounting.

Section-128 of Companies Act, 2013 specifies that:

The company must prepare and keep at its registered office the books of account and other relevant books & papers and financial statement for every financial year.

The books of account must give a true and fair view of the state of the affairs of the company or its branches.

**PLACE OF KEEPING BOOKS OF ACCOUNT SECTION 128(1)**

- (i) Every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office.
- (ii) However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide.
- (iii) When the Board so decides, the company is required within 7 days of such decision to file with the Registrar of Companies a notice in writing giving full address of that other place.
- (iv) Such intimation is to be made in e-form AOC-5 to the ROC.
- (v) The branches of the company, if any, in India or outside India shall also keep the books of account in the same manner as specified in Section 128(1) of the Act, for the transaction effected at the branch office.

**PRESERVATION OF BOOKS OF ACCOUNTS**

- (i) The books of account of every company shall be kept for not less than eight financial years immediately preceding a financial year.
- (ii) Where the company had been in existence for a period less than eight years, then consider such periods.
- (iii) Where an investigation has been ordered, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

**PERSONS RESPONSIBLE TO MAINTAIN BOOKS**

- (i) Managing Director;
- (ii) Whole-Time Director, in charge of finance;
- (iii) Chief Financial Officer; or
- (iv) Any other person of a company authorized by the Board.

**INSPECTION OF BOOKS OF ACCOUNTS**

- (i) Director or his agent or representative during business hours.
  - ❖ ROC, SEBI, CG, or person appointed by such authority.
- (ii) Members if authorised by board of company in GM.
  - ❖ Auditor has the right to access at all time books of account of company account.

**PENALTY**

In contravene such provisions, be punishable with fine which shall not be less than: fifty thousand rupees, but which may extend to five lakh rupees.

**NON-APPLICABILITY**

Nothing contained in section 129(1) shall apply to

- (A) Any insurance company; or
- (B) Any banking company; or
- (C) Any company engaged in the generation or supply of electricity; or
- (D) Any other class of company for which a form of financial for which a form of financial statement has been specified in the Act governing such class of company.

**FINANCIAL STATEMENT**

As per section 2(40) of the Act, financial statement in relation to a company, includes:

- (i) a balance sheet as at the end of the financial year;
- (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;
- (iii) cash flow statement for the financial year;
- (iv) a statement of changes in equity, if applicable; and
- (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv).

**CONSOLIDATED FINANCIAL STATEMENTS**

Where a company has one or more subsidiaries or associates. It shall, in addition to its financial statements for the financial year, prepare a consolidated financial statement of the company.

**PROCESS FOR APPROVAL AND PAYMENT OF DIVIDEND**

- (A) Financial statement shall be approved by BOD before signing.
- (B) It should be signed by:
  - ❖ Chairperson if authorised by BOD or
  - ❖ Two director one should be MD if any and
  - ❖ CEO (if he is director) CFO and CS if any.
- (C) One person company- Signed by only one director before submitting to the auditor.
- (D) Auditor report and board report shall be attached to the financial statement.

**PERSONS RESPONSIBLE AND PENALTY [SECTION 129(7)]**

1. Managing director
2. Whole-time director in charge of finance
3. Chief Financial Officer
4. Any other person of a company charged by the Board with such duty
5. All the directors, in the absence of any of the officers mentioned above.

In case of non-compliance of any of the provisions of this section, all such persons shall be liable to—

1. Imprisonment up to 1 year; or
2. Fine: Minimum Rs. 50,000; Maximum Rs. 5,00,000; or both

### RIGHT TO GET COPIES OF AUDITED FINANCIAL STATEMENT

1. Send copies of the audited financial statement at least 21 days (14 days in case of the section 8 company) before general meeting to members and debenture trustee and other person who are so entitled.

2. Shorter period than 21 days is sufficient if:

- ❖ Company having share capital-approval from majority in number and holding at least 95% of the PSC having voting power
- ❖ Company not having share capital- 95% of member holding voting power.

3. Listed company deemed to complied this section

- ❖ If copies made available for inspection at RO at least 21 days before meeting and
- ❖ Statement containing the salient features of financial statement is sent at least 21 days before meeting.
- ❖ However send full copy if requested by any member.

4. Listed company and other public company having Net worth more than 1 crore and turnover of more than 10 crore can send financial in following manner

- ❖ Electronic form to Demat account holder whose email id is registered
- ❖ Members who hold shares in physical form but consented in writing to receive in electronic form.
- ❖ In physical form to other member.

### RE-OPENING OF ACCOUNTS IF ORDERED BY COURT OR TRIBUNAL

Company can reopen after order of competent court and NCLT.

Application can be made by CG/income tax authorities/SEBI/Regulatory Body/competent court.

### GROUND FOR RE-OPENING

(A) Accounts are prepared in a fraudulent manner.

(B) Affairs of the company were mismanaged.

(C) Doubt on the reliability of the financial statement.

Books of account of past 8 financial year can be re-opened If CG gives direction period of 8 years can be extended.

### VOLUNTARY REVISION OF FINANCIAL STATEMENT OR BOARD'S REPORT

(A) BOD can prepare revised financial statement or board's report of any of the three past year after obtaining approval of the tribunal if:

- ❖ Financial statement do not comply with 129
- ❖ Board report do not comply with 134.

### ANNUAL COMPLIANCES OF FINANCIAL STATEMENT (PRIVATE AND PUBLIC COMPANY)

(i) File adopted or un-adopted financial statement with ROC within 30 days from the date of AGM to ROC in form AOC-4.

(ii) If AGM not held file financial statement along with the reasons of not holding AGM within 30 days from last of meeting to ROC.

### ANNUAL COMPLIANCES FOR OPC

(A) File adopted financial statement within 180 days from closure of FY.

### QUALIFICATION OF STATUTORY AUDITOR

A Chartered accountant or a firm where majority of partner practicing in India.

B However in case of LLP only CA partner shall be authorised to act and sign.

### DISQUALIFICATIONS OF AUDITOR SECTION

(i) Body corporate under than LLP.

(ii) Officer or employee of company.

(iii) Partner/employee of such officer or employees of the company.

(iv) Persons / partner / relative hold security or interest in the company / holding / subsidiary / associate company however relative can hold upto Rs 1 lakh (face value) corrective action within 60 days.

(v) Person whose partner / relative indebted to company / holding / subsidiary / associate / subsidiary of such holding company in excess of rupees 5 lac.

(vi) Person / partner / relative has given guarantee or security in excess of Rs. 1 lac to company.

(vii) Person or firm has business relationship with the company except professional services and commercial transaction as a customer engaged in the business of telecommunication, airlines, hospitals, hotels at arm's length price.

(viii) Relative is a director or in employment as a director or KMP.

(ix) Full time employment elsewhere or appointed as an auditor or more than 20 companies exclude one person company small company / dormant company / private having share capital less than 100 cr.

(x) Convicted by court offence including fraud and the 10 years has not elapsed from such conviction.

(xi) Cannot render certain services under section 144.

(xii) Account and bookkeeping

- ❖ Internal audit
- ❖ Design and implementation of any financial information system
- ❖ Investment advisory services
- ❖ Investment banking services
- ❖ Rendering of outsourced financial services
- ❖ Management services.

If auditor incurs any disqualification then he shall vacant his office and it would result into casual vacancy.

### APPOINTMENT OF AUDITORS (SECTION-139)

The BOD of a company shall appoint an individual or firm as the first auditor of a company, other than a Government company, within 30 days from incorporation.

BOD failed to appoint then member shall appoint within 90 days from incorporation.

Every company shall, at the first AGM, appoint an individual or a firm as an auditor who shall hold the office till the conclusion of sixth AGM.

Inform to ROC in form ADT-1 within 15 days from appointment.

### PROCEDURE OF SELECTION & APPOINTMENT OF AUDITORS

While considering the appointment of auditor, the Audit Committee or the Board, shall consider any pending proceeding relating to professional matters of conduct against the proposed auditor.

Where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor and the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

If the Board agrees with the recommendation of the Audit Committee, it shall further recommend the appointment of auditor to the members in the AGM otherwise; it shall refer back the recommendation to the committee for reconsideration.

Thereafter if the Audit Committee decides not to reconsider its original recommendation, then Board shall record reasons for its disagreement with the Audit committee and send its own recommendation for consideration of the members in the AGM.

If the Board agrees with the recommendations of the Audit Committee, it shall place the matter for consideration by members in the AGM.

The auditor appointed in the AGM meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting.

## APPOINTMENT OF AUDITOR IN GOVERNMENT COMPANY

The appointment of auditor in Government Company or government controlled (directly/indirectly) company shall be held in accordance with the following provisions:

- ❖ The First auditor shall be appointed by the Comptroller and Auditor General within 60 days from the date of incorporation
- ❖ In case of failure, the Board shall appoint auditor within next 30 days and on failure by Board, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.
- ❖ In case of subsequent auditor for existing Government Companies, the Comptroller & Auditor General shall appoint the auditor within a period of 180 days from the commencement of the financial year.

## MANNER OF APPOINTMENT OF AUDITOR

(A) BOD consider the qualification of auditor and recommend to the member.

(B) If company constitute audit committee

- ❖ Audit committee consider the qualification of auditor and recommend to BOD.
- ❖ If BOD agrees with the recommendation then BOD further proposed the name in AGM.
- ❖ If BOD disagrees then BOD shall refer back to audit committee.
- ❖ Audit committee shall reconsider the decision and if BOD agrees then they proposed the name at AGM.
- ❖ If audit committee does not reconsider, then BOD shall send its own recommendation to the AGM.
- ❖ Members will appoint auditor at AGM by passing OR.

## RE-APPOINTMENT OF RETIRING AUDITOR

Retiring auditor cannot be reappointed if

- If he is disqualified.
- He shows unwillingness to be re-appointed.
- Sr has been passed that somebody else is appointed or retiring director shall not be appointed.
- If auditor is not appointed or re-appointed than existing auditor shall continue to be auditor.

## ROTATION OF AUDITOR

Applicability

- Listed company
- Unlisted public company having PSC 10 Crore or more.
- Private company having PSC 50 Crore or more.
- Any company having public borrowing and public deposit of Rs 50 crore or more.

## PROVISION OF ROTATION

Individual- 1 term of 5 consecutive years

Firm- 2 terms of 5 consecutive years.

Cooling period - 5 continuous years.

Member may make voluntary provision in article.

## APPOINTMENT OF AUDITOR OTHER THAN RETIRING AUDITOR

Special notice by member at least 14 days before the meeting.

Special notice is not required if provision of cooling period applies.

Company forward a copy to retiring auditor.

Auditor may make a representation in writing.

- ❖ State the facts of representation in the notice.
- ❖ Send the copy of representation to all the members.
- ❖ If copy of representation is not sent the same shall file to ROC.

Auditor may require the company to read out the representation in the meeting if not notified to member and Hold **GM** pass **OR**.

## REMOVAL OF AUDITOR

Hold **BM-BR**

Application to CG within 30 days from passing BR in form no ADT-2 Within 60 days pass SR from the date of receipt of order Opportunity of being heard shall be given before removal.

## RESIGNATION OF AUDITOR

Auditor may resign from office by giving notice to company in writing.

**Non-government company:** Within 30 days from resignation file reasons of resignation to company and ROC.

**Government company** – Within 30 days from resignation file statement to the company roc, C&AG.

File ADT-3 to ROC indicating the reasons of resignation.

## CASUAL VACANCY

Non govt company

- ❖ BOD within 30 days except in case of resignation.
- ❖ In case of resignation appointed by BOD and approved by member within 3 months.
- ❖ Term- till the conclusion of next AGM

Govt company

- ❖ C&AG within 30 days from vacancy.
- ❖ If C&AG failed than BOD shall appoint within next 30 days.
- ❖ Term- till the conclusion of next AGM

## POWER OF NCLT TO REMOVE THE AUDITOR

NCLT may remove any auditor Suo moto or an application by CG or other concern person.

Removal if director acted in fraudulent manner.

NCLT pass the order within 15 days from application.

If application made by CG then CG shall appoint new auditor.

Once removed further **disqualified** for further **5 years**.

## PENALTY UNDER SECTION 447(FRAUD)

Imprisonment

- ❖ For 6 months to 10 years.

Fine

- ❖ For 6 months to 10 years.

## POWERS AND DUTIES OF AUDITORS

- Access the books of account.
- Inquiry about the loans and advances/assets.
- Verify the assets.
- Charging of personal expenses to revenue account.

## AUDIT REPORT

(A) Auditor shall make a report to the member on financial statement.

(B) Audit report shall consider the provision of companies act/accounting and auditing standard.

(C) Audit report shall state that to the best of his information and knowledge.

(D) Auditor shall sign the audit report.

(E) Adverse opinion of auditor shall read out in the general meeting.

(F) It should remain open for inspection.

## BRANCH AUDIT

Branch audit can be performed by–

- Auditor of the company or any other qualified person.
- Foreign branch-company's auditor / other competent person under foreign laws.
- Branch auditor shall submit his report to the company's auditor.
- Follow auditing standard.

## REPORT ON FRAUD BY AUDITOR

Amount involved is 1 crore or more than he shall report to CG.

Report to BOD or audit committee within 2 days of his knowledge.

BOD should reply within 45 days.

Auditor shall forward his report to CG along with his comment within 15 days.

If BOD failed to reply within 45 days than auditor shall forward his report to CG.

If amount of fraud involved is less than Rs 1 crore.

Auditor shall report to BOD or audit committee within 2 days from his knowledge of the fraud.

Disclose in directors report.

## INTERNAL AUDIT SEC (138)

- Applicable to all listed company.
- Every unlisted public company having
- Outstanding deposit- of Rs 25 Cr or more

- PSC- 50 Cr or more
- Outstanding loan- 100 Cr or more
- Turnover-200 Cr or more.

## EVERY PRIVATE COMPANY HAVING

Outstanding loan- 100 crore or more or

Turnover -200 crore or more.

Internal auditor may or may not be a CA

Employee of the company can act as an internal auditor.

Statutory auditor cannot act as an internal auditor

Internal auditor should have knowledge of legal and regulatory framework, accounting.

## COST AUDIT SEC (148)

Conducted by cost accountant.

Cost audit report submitted to BOD.

Company within 30 days from the receipt of cost audit report shall furnish to CG.

Maintain cost record in form no (CRA-1).

Appoint cost auditor within 180 days from commencement of FY.

Qualification of cost audit report along with his observation or suggestion in from CRA-3.

CG may direct the cost audit of certain class of company e.g. Manufacturing drugs tele-communication fertilizers etc.

## SECRETARIAL AUDIT (204)

(A)

❖ Secretarial audit is also known as compliances report.

(B)

❖ It is part of total compliances management.

(C)

❖ Conducted by PCS

(D)

❖ Secretarial auditor is appointed by BOD.

(E)

❖ Secretarial report will form part of board report.

## APPLICABILITY

- Listed company
- Unlisted public company having PSC of Rs 50 crore or more or
- Turnover of Rs 250 crore or more.

## OBJECTIVE OF SECRETARIAL AUDIT

- Check & report on compliances of applicable laws and SS.
- Point out non compliances.
- Protect the interest of various stakeholders.
- Avoid the unwarranted legal action.

**SECTION 230(1)****Power to Compromise or make Arrangements with Members or Creditors**

When a compromise or arrangement is proposed –

- ❖ between a company and its creditors or any class of them; or
- ❖ between a company and its members or any class of them,

The Tribunal may, on the application of the (i) company, or (ii) any creditor or (iii) member of the company, or (iv) in the case of a company which is being wound up, of the liquidator.

**SECTION 230(2)****Affidavit by the Applicant to Disclose Certain Material Facts as Follows-**

- (a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company.
- (b) reduction of share capital of the company, if any,
- (c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value, including— a creditors' responsibility statement in the Form CAA-1.
- (d) a valuation report in respect of the shares and the property and all assets, movable and immovable, of the company by a registered valuer.

**WHO CAN OBJECT TO THE SCHEME?**

Any objection to the compromise or arrangement shall be made only by persons holding not less than 10% of the shareholding or having outstanding debt amounting to not less than 5% of the total outstanding debt as per the latest audited financial statement.

**SECTION 230(3)**

Notice of the meeting shall be sent to individually to each of the members, creditors, debenture-holders, directors, debenture trustees in Form No. CAA.2.

**SECTION 230(5)**

Notice shall be in Form CAA- 3 sent to the regulators-

CG, ROC, I.T authorities, RBI, SEBI, Stock exchanges, OL, & CCI.

If any representation shall within a period of thirty days from the date of receipt of such notice.

**AFFIDAVIT OF SERVICE**

The chairperson appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit before the Tribunal not less than seven days before the date fixed for meeting or date of the first of the meetings.

**VOTING**

Vote within one month from date of receipt of the notice.

Copy of compromise or arrangement to be furnished by the company to Every creditor or member entitled to attend the meeting.

**SECTION 230(6) APPROVAL AND SANCTION OF THE SCHEME**

- (i) Majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members,
- (ii) Voting in person or by proxy or by postal ballot,
- (iii) Agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding on the company,
- (iv) All the creditors, or class of creditors or members or class of members or, in case of a company being wound up, on the liquidator appointed under this Act.

**[SECTION 230(7)]****Order of the Tribunal Sanctioning the Scheme to Provide for the Following Matters**

Shall provide for all or any of the following matters, namely:

- (a) Where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;
- (b) The protection of any class of creditors;
- (c) If the compromise or arrangement results in the variation of the shareholders' rights.
- (d) If the compromise or arrangement is agreed any proceedings pending before the Board for Industrial and Financial Reconstruction.
- (e) Such other matters including exit offer to dissenting shareholders, if any,

- (f) The order shall be in Form No. CAA. 6, with such variations as may be necessary.

**SECTION 230(8)**

Order of Tribunal to be filed with the Registrar within a period of thirty days of the receipt of the order.

**SECTION 230(9)**

No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

**SECTION 230(10)**

No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.

**SECTION 230(11)**

Compromise may include takeover as per the regulations framed by the Securities and Exchange Board of India.

**SECTION 230(12)**

Application to the Tribunal by an aggrieved party may be made in Form NCLT-1.

**SECTION 231(1) POWER OF THE TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT**

When the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it–

- (a) shall have power to supervise the implementation of the compromise or arrangement; and
- (b) Give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

Section 230(2) states that if the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily and the company is unable to pay its debts as per the scheme, it may make an order for winding-up the company and such an order shall be deemed to be an order made under section 273.

## MERGER & AMALGAMATION OF COMPANIES

### Merger

- ❖ 'Merger' is the fusion of two or more companies, whereby the identity of one or more is lost resulting in a single company.

### Amalgamation

- ❖ Amalgamation is a legal process by which two or more companies are joined together to form a new entity or one or more companies are to be absorbed or blended with another as a consequence the amalgamating company loses its existence and its shareholders become the shareholders of new company or amalgamated company.

(i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

(ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;

(iii) shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies become shareholders of the amalgamated company by virtue of the amalgamation.

## TRIBUNAL'S POWER TO CALL MEETING OF CREDITORS OR MEMBERS, WITH RESPECT TO MERGER OR AMALGAMATION OF COMPANIES

Section 232(1) states that when an application is made to the Tribunal under section 230 and it is shown to the Tribunal—

- that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and
- that under the scheme, the whole or any part of the undertaking, property or liabilities of any company is required to be transferred to another company or is proposed to be divided among and transferred to two or more companies.

## CIRCULATION OF DOCUMENTS FOR MEMBERS'/CREDITORS' MEETING WITH THE FOLLOWING DOCUMENTS

- the draft of the proposed terms of the scheme.
- confirmation that a copy of the draft scheme has been filed with the Registrar;
- the report of the expert with regard to valuation, if any;
- a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

## EFFECTIVE DATE OF THE SCHEME

Section 232(6) states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from the appointed date.

Certified copy of the order to be filed with the Registrar in Form No CAA.7 within thirty days of the receipt of certified copy of the order.

## MERGER AND AMALGAMATION OF CERTAIN COMPANIES

Section 233 prescribes simplified procedure for Merger or amalgamation of—

- two or more small companies; or
- between a holding company and its wholly-owned subsidiary company; or
- between two or more startup company; or
- between startup company with small company
- such other class or classes of companies as may be prescribed.

## SCHEME OF MERGER OR AMALGAMATION MAY BE ENTERED INTO BETWEEN ABOVE COMPANIES

- Prepare the scheme and file with ROC and official liquidator to invite objection within 30 days from filing of scheme in Form CAA-9;
- Obtain approval by the respective members or class of members at a general meeting holding at Least 90% of the total number of shares;
- each of the companies involved in the merger files a declaration of solvency, in Form No.CAA-10, with the Registrar of the place where the registered office of the company is situated; and
- the scheme is approved by majority representing 90% in value of the creditors or class of creditors in a meeting convened by the company by giving a notice of 21 days along with the scheme to its creditors.
- File copy of scheme to ROC, CG and O.L by the transferee company.

## OBJECTION BY ROC OR OFFICIAL LIQUIDATOR WITHIN 30 DAYS

- If objection received:
  - Such Objection shall be received within 30 days from filing of scheme.
  - CG shall the application to NCLT within 60 days from objection.
  - Tribunal after considering the objection may confirm or reject the scheme.
  - If the Tribunal confirms then Registered to ROC.
- If no objection received:
  - CG shall register the scheme and send confirmation to the companies.

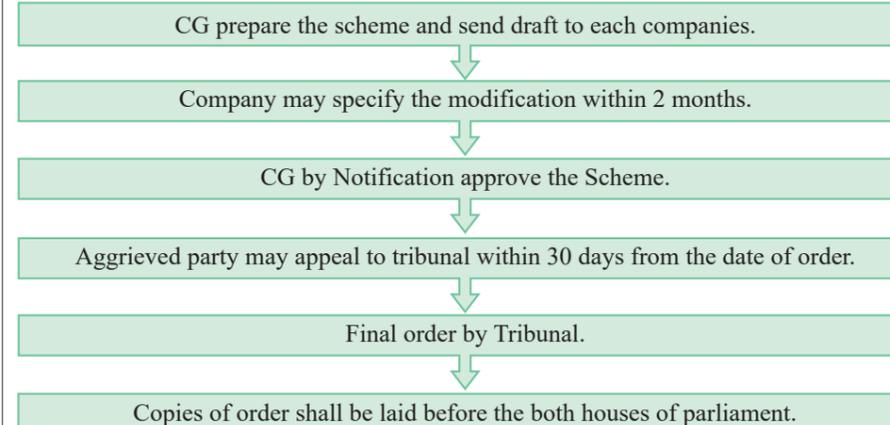
## SECTION 237

### Merger and Amalgamation of companies in public Interest

Power given to Central Government.

CG if satisfied that, it is in the public interest, CG may by notification in official gazette provides Merger & Amalgamation of the company.

## PROCEDURE



## PAYMENT TO DISSENTING SHAREHOLDERS

Notice to dissenting shareholder.

Transferor company shall deposit in separate bank Account the consideration paid by transferee company.

Payment within 60 days to the dissenting shareholder.

## "MAJORITY RULE AND MINORITY RIGHTS"

### The Principle of Non-interference (Rule in Foss v. Harbottle)

- ❖ Every member holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company.
- ❖ The basic principle of non-interference with the internal management of company by the court is laid down that no action can be brought by a member against the directors in respect of a wrong alleged to be committed to a company. The company itself is the proper party of such an action.

## ADVANTAGES

- Recognition of the separate legal personality of company:
- Need to preserve right of majority to decide:
- Multiplicity of futile suits avoided:
- Litigation at suit of a minority futile if majority does not wish it:

## EXCEPTION TO THE MAJORITY RULES

1. Ultra-virus to the company
2. Fraud on Minority
3. Wrong doers in control
4. Resolution required special majority but pass by simple majority
5. Personal action i.e. individual members right cannot invade by majority.
6. Breach of Duty
7. Prevention of operation and Mismanagement.

## "MAJORITY RULE AND MINORITY RIGHTS"

- ❖ Oppression and mismanagement of a company means that the affairs of the company are being conducted in a manner that is oppressive and biased against the minority shareholders or any member or members of the company.

## APPLICATION TO NCLT AGAINST OPERATION & MISMANAGEMENT

### A. Members

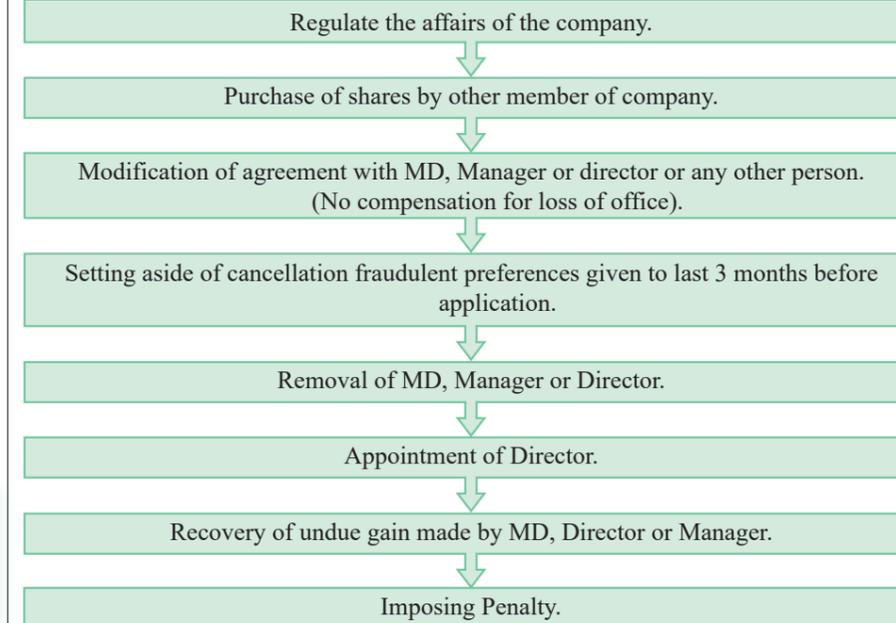
- ❖ Having share capital 100 members or 1/10 of total member or 1/10 of issued capital whichever is lower.
- ❖ Not having share capital 1/5 of total members.

### B. Central Government

- ❖ Person concerned in the conduct of management of affairs of the company is or has been found guilty.
- ❖ Affairs of the company has not been conducted in prudential manner.
- ❖ Affairs of the company may cause serious injury or damage to the shareholders defraud the creditor.
- ❖ CG may initiated the case and request to tribunal for enquiry.

## POWER OF TRIBUNAL TO ISSUE ORDERS [SECTION 242(1)]

Prejudicial & Oppressive Act and Winding-up would not be Justify:



## SECTION 245 CLASS ACTION SUIT

A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued.

The major objective behind the provision of class action suits is to safeguard the interests of the minority shareholders.

## REQUIRED NUMBER OF APPLICANTS

### (A) Member

- (i) Company having share capital: Application can be given by
- ❖ Not less than 100 member or
  - ❖ Not less than 5% of total member or
  - ❖ Not less than 5% of issued capital in case of unlisted company in terms of value or
  - ❖ Not less than 2% of issued capital in case of listed company in terms of value whichever is lower.

- (ii) Company not having share capital: Application can be made by not less than 1/5th of total number of its member.

### (B) Deposit Holder

Application can be made by atleast 100 deposit holders or 5% of total deposit or 5% of total outstanding deposit whichever is lower.

- ❖ Joint holders shall be treated as single.
- ❖ Once application is filed by requisite members than even through subsequent withdrawal of application by member will not considered by NCLT.

**DEFINITION:**

Section 455 of the Companies Act, 2013 read with Companies (Miscellaneous) Rules, 2014 stipulates the provisions pertaining to "Dormant Company". Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property without having any significant accounting transaction, such a company or an inactive company may make an application to the ROC in such a manner as may be prescribed for obtaining the status of a dormant company.

**FOR THE ABOVE PURPOSES, 'INACTIVE COMPANY' MEANS A COMPANY WHICH**

- (a) has not been carrying on any business or operation; or
- (b) has not made any significant accounting transaction during last two financial years; or
- (c) has not filed financial statements and annual returns during the last two financial years.

**SIGNIFICANT ACCOUNTING TRANSACTION**

means any transaction made by the company except below transaction:

- (a) payment of fees by a company to the Registrar;
- (b) payments made by company to full-fill the requirements of this Act or any other law;
- (c) allotment of shares to full-fill the requirements of this Act; and
- (d) payments for maintenance of its office and records.

All the transactions apart from the above mention transactions will be considered as Significant accounting transactions. If a company has made above mention transactions in last 2 years then also that company will fall under definition of Inactive Company.

**ADVANTAGES OF DORMANT COMPANIES**

Some of the main advantages are listed below:

- (a) It helps in preserving the domain name and hence a company may be founded to prepare for a future undertaking.

(b) A Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage.

(c) It assists the company in projecting a more positive image to potential consumers and/or lenders.

(d) Once a company is registered as a dormant company, the annual return for the company can be filed using a simplified Form MSC-3. Also, the number of Board Meetings to be conducted by the Company is reduced. The compliance burden of the company is also reduced.

(e) Dormant Company is not liable to pay any taxes until it is reactive.

(f) Dormant Company is not required to include the statement of cash flow in its financial statement.

(g) The provision of rotation of auditors is not applicable in case of a dormant company.

(h) Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to dormant company as compared to active company, for example, a dormant company need not hold Annual General Meeting every year and no need to hold and convene four (4) Board Meetings in a year, etc.

(i) It is easier for dormant companies to reacquire its active status and it also reduces the cost of incorporation of a new company.

**COMPLIANCES FOR DORMANT COMPANY**

There are certain compliances which needs to be fulfilled by the dormant company. These are mentioned below:

(1) Company needs to have minimum number director as required by Companies Act, 2013 i.e. at least 3 Directors in case of a Public Company, 2 for Private Company and 1 for OPC.

(2) The company shall continue to file the returns of allotment and change in directors, whenever the company allots any security to any person or there is any change in the directors of the company.

(3) The Dormant Company is required to hold at least one meeting of the Board of Directors in every half year. The gap between two meetings shall not be more than 90 days.

(4) The maximum tenure for which a company can remain dormant is 5 consecutive financial years. If a company remains dormant for more than 5 years, the Registrar strike off the name of the company from the Records, i.e. the company will be removed.

(5) A dormant company is required to file a "Return of Dormant Company" in Form MSC-3 annually, inter-alia, indicating financial position duly audited by a Chartered Accountant in Practice along with such annual fee within a period of thirty days from the end of each financial year.

(6) No need not enclose cash flow statements in its annual accounts.

(7) The provisions of the Act in relation to the rotation of auditors are not applicable to dormant companies.

**OBTAINING DORMANT COMPANY**

A Company can obtain status as Dormant Company by Suo moto or ROC can declare a company as Dormant.

**Suo-Moto application**

- ❖ A company which meets the above criteria can apply suo-moto to Registrar of Companies (ROC) for the status of a "Dormant company" in Form MSC-1 along with such fee as provided in the Companies.

**Dormant by ROC**

- ❖ In case of a company which has not filed financial statements or annual returns two financial years consecutively, the Registrar may issue a notice to such company and enter the name of such company in the register maintained for dormant companies.

## PROCEDURE TO OBTAIN THE STATUS OF A DORMANT COMPANY

1. The company shall call a board meeting to fix day, date, time and venue for General Meeting of the members of the company to pass resolution for making application to the ROC to obtain status of a dormant company.

2. The company shall obtain Statement of affairs from the Auditor of the company.

3. The company shall pass a special resolution for obtaining the status of a dormant company and authorizing the director(s) to make application to ROC or After issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value).

4. After passing the special resolution, the company shall file e-form MGT-14 with ROC for filings special resolution.

5. After filling of form MGT-14, the company shall file Form MCS-1 with the ROC along with the copy of the special resolution. Copy of statement of affairs, declarations by the directors and other necessary documents.

6. On being satisfied with the merits of the application, the ROC shall issue certificate in Form MSC -2 on confirming the application.

## PRE-REQUISITES FOR OBTAINING THE STATUS OF DORMANT COMPANY

As per rule 3 of the Companies (Miscellaneous) Rules, 2014, the Registrar **shall not grant** the status of a dormant company if:

(i) Any inspection, inquiry or investigation has been ordered or taken up or carried out against the company.

(ii) Any prosecution has been initiated and pending against the company under any law.

(iii) There are public deposits which are outstanding or the company is in default in payment thereof or interest thereon.

(iv) There is any outstanding loan, whether secured or unsecured. In case the company has any outstanding unsecured loan, the company may apply for the status of a dormant company without obtaining the concurrence of the lender.

(v) Any prosecution has been initiated and pending against the company under any law.

(vi) There are outstanding statutory taxes, dues, duties, etc., payable to the Central Government or any State Government or local authorities etc.

(vii) There is default in payment of its workmen's dues.

(viii) The Company is a listed company within or outside India.

## PROCEDURE TO OBTAIN THE STATUS OF ACTIVE COMPANY FROM DORMANT COMPANY

An application shall be made in Form MSC-4 for obtaining the status of an active company from dormant company before the end of five consecutive years from the date of becoming a dormant company.

However, if any company has contravened any of the conditions mentioned in the grounds of application for obtaining the status of dormant company, the directors should, within seven days of such contravention, file an application for obtaining the status of an active company.

The Registrar can take action to remove the company from the list of dormant companies, if it is observed that the company has contravened the conditions for granting the dormant company status, after carrying out an enquiry and after giving a notice and a reasonable opportunity of being heard.

The dormant company shall follow the below procedure for obtaining status of an active company on its own:

1. Hold board meeting: The Company shall prepare notice of board meeting along with draft resolutions to be passed in the board meeting. Send the notice of board meeting to all the directors at least 7 days before the date of board meeting. The following resolutions needs to be passed at the board meeting:

- ❖ To make an application with the Registrar of Companies for obtaining status of dormant company as an active company.
- ❖ To authorize a director to make an application and sign the documents or forms and to complete all the formalities relating to the application.

2. Prepare return in Form MSC-3: The return in form MSC-3 shall be prepared in respect of the financial year in which the application for obtaining the status of an active company is being filed.

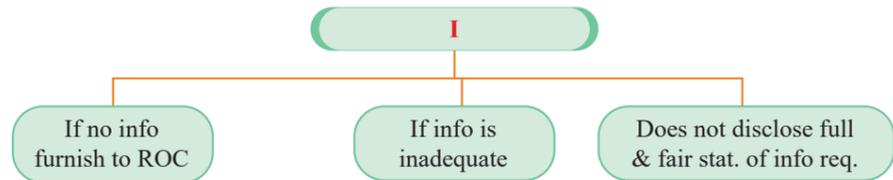
3. File e-Form MSC-4: An application for obtaining the status of an active company is required to be made in Form MSC-4 along with fees as provided.

4. Certificate for active company: The ROC after considering the application filed for obtaining the status of the active company from dormant company shall issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

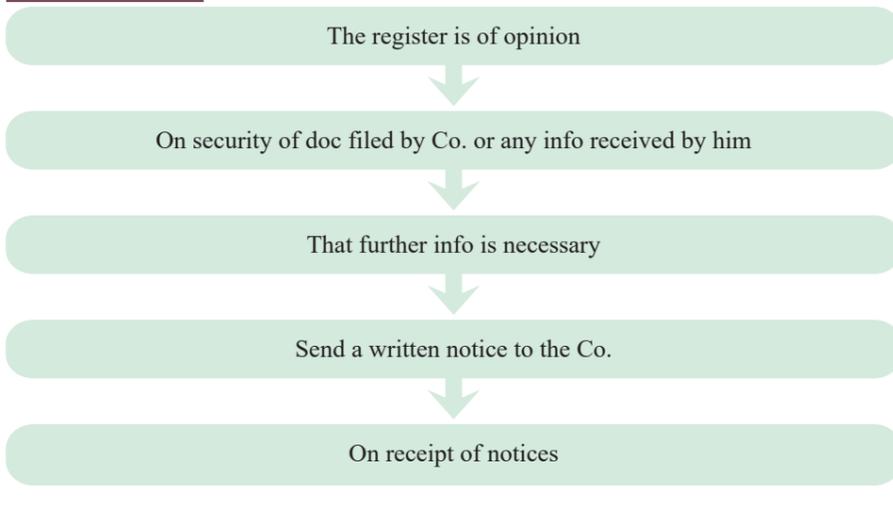
## THE REGISTRAR OF COMPANIES SHALL IN FOLLOWING CASES CHANGE THE STATUS OF THE DORMANT COMPANY TO ACTIVE COMPANY

(a) Where a dormant company does or omits to do any act mentioned in the grounds in the application made for obtaining status of a dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.

(b) Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company, Registrar can initiate the proceedings for enquiry under section 206 of the Companies Act 2013 and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar can remove the name of such company from register of dormant companies and treat it as an active company.



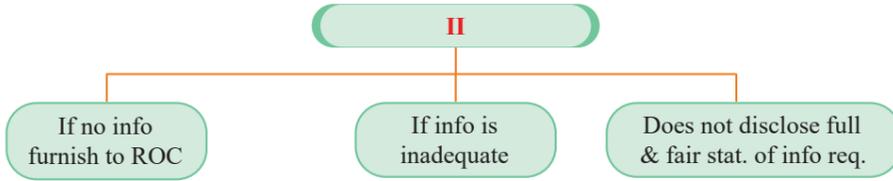
### SECTION-206



#### I. Duty of the Co. & its officer

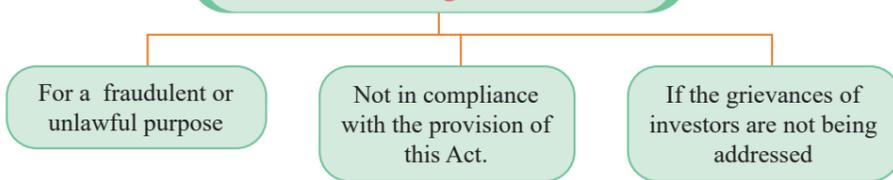
to furnish info/ explanation	Produce the doc with ROC
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Provided, where such info relates to any past period, the officer who had been in employment of co. will be served a notice & they have to function such info / explanation.



ROC, by another written notice call the Co. to produce for inspection of Book/papers, explanation. The ROC shall recusal his in writing for issuing such notice.

#### III. If Register is satisfied that the list of Co. is being ceased on:

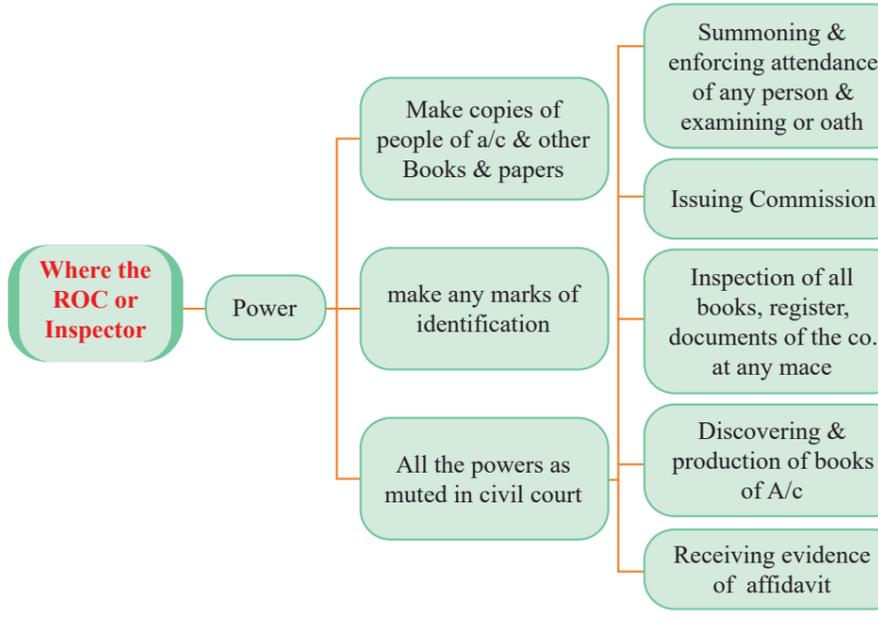
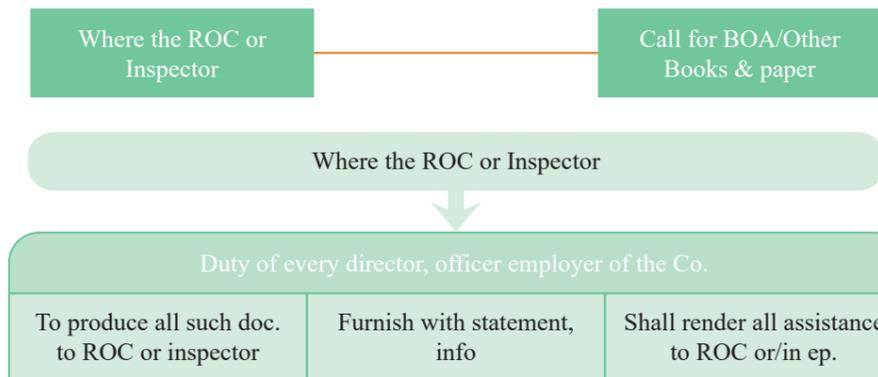


The Registrar carry out such inquiry after providing the co. a reasonable opp. of being Heard.

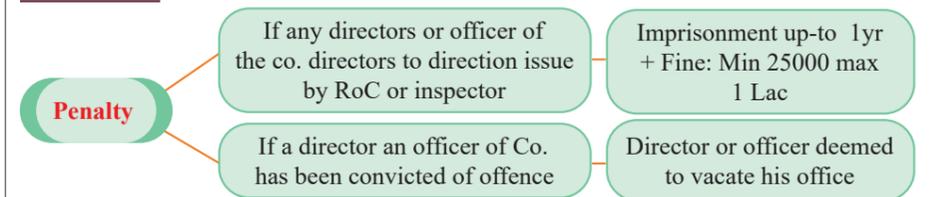
where Business of a co. has been carried for fraudulent or unlawful Purpose, every officer of co., who is in default shall punishable for fraud as per Sec 447.

1. CG appoint inspector for direct inspection of Books & Papers of a co
2. CG appoint statutory authority for inspection of Books of A/c
3. If a co. fails to furnish any info, produce any doc the LP & every officer shall be punishable with a fine which may extend to 1 lakh ₹ in lace of a continuing failure, with an additional fine which may extend to ₹ 500 for every day during which failure continues.

### CONDUCT OF INSPECTION AND INQUIRY (SECTION 207)



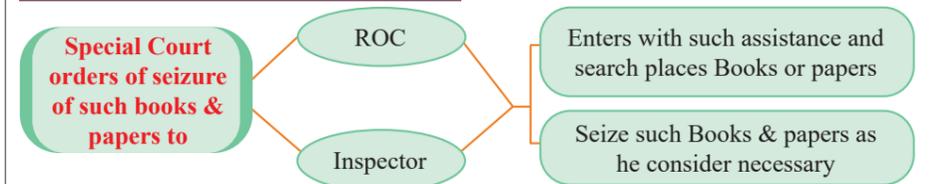
### PENALTY



### SECTION 200: INSPECTION REPORT

Roc or Inspector (after inspection or inquiry) → Submit a Report to → CG + Recommended for further investigation.

### SECTION 209 (SEARCH & SEIZE)



1. When Books & papers of a co, or relating KMP, Director, Auditor, CS Likely to be destroyed, mutilated, falsified or secreted.
2. ROC or inspector shall return the books & papers within 180 days. These Books & Papers may be called again for further 180 days. By order in writing when they are needed again.
3. ROC or inspectors refer returning Books & Papers
  - (i) Take copies of or
  - (ii) Extract from tins or
  - (iii) Place identification marks

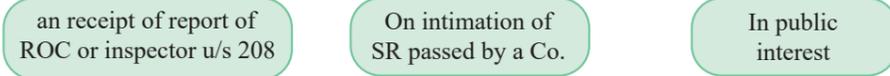
The provisions of CRPC 1973, relating to search or seizure shall apply mutatis mutandis to every search & seizure.

### INVESTIGATION (210-228)



## SECTION 210- INVESTIGATION INTO AFFAIRS OF CO.

Where CG is of opinion that it is necessary to investigate into affairs of a Co.



It may order an investigation into affairs of a Co.

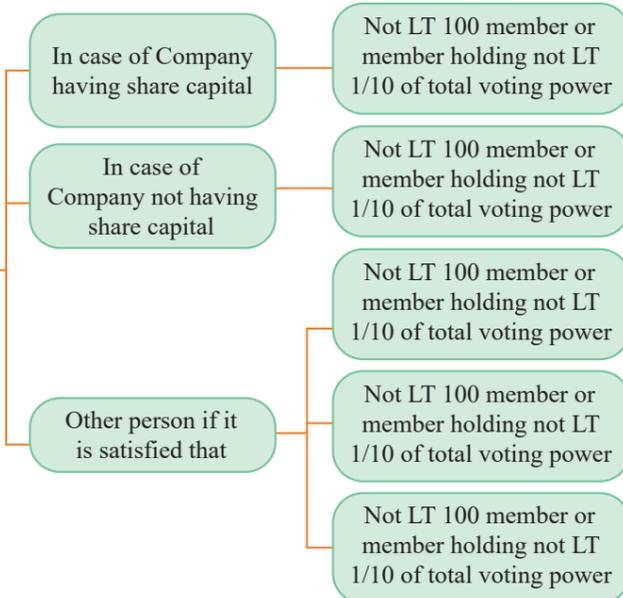
When an order is passed by court or internal

The CG shall order an investigation into affairs of Co.

The CG may appoint 1 or more inspector to investigate into affairs of company.

## SECTION 213- INVESTIGATION INTO COMPANY'S AFFAIRS ON APPLICATION MADE BY MEMBERS OR OTHER PERSONS

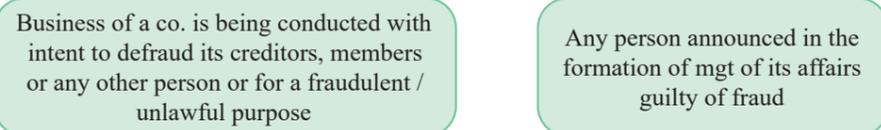
The inspector may order investigation into affairs of Co. on an application made by



❖ NCLT, may order after giving OOBH to parties concerned the affairs of Co. caught to the investigation by inspector or inspector appointed by CG.

❖ The CG may appoint 1 or more inspector to investigate.

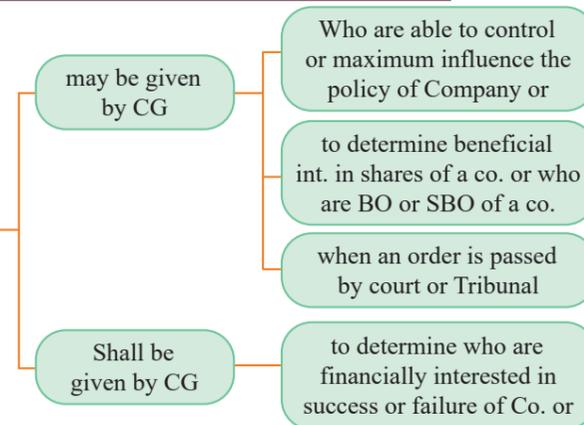
If after investigation it is proved that



Who is in default & person concerned in the formation of mgt. of its affairs shall be punishable as per Sec 447.

## SECTION 216- INVESTIGATION OF OWNERSHIP OF CO.

order to investigate and report on matters relating to company & its membership

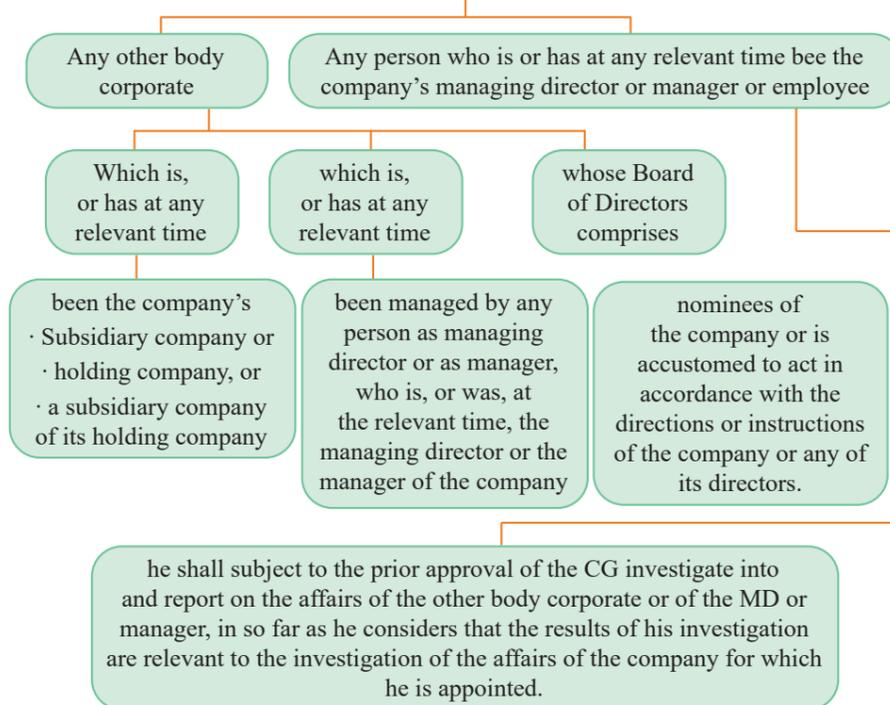


❖ CG may appoint 1 or more inspector

❖ CG may define scope of investigation

## Section-219 Power of Inspector to Conduct Investigation into Affairs of Related Companies

If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of



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

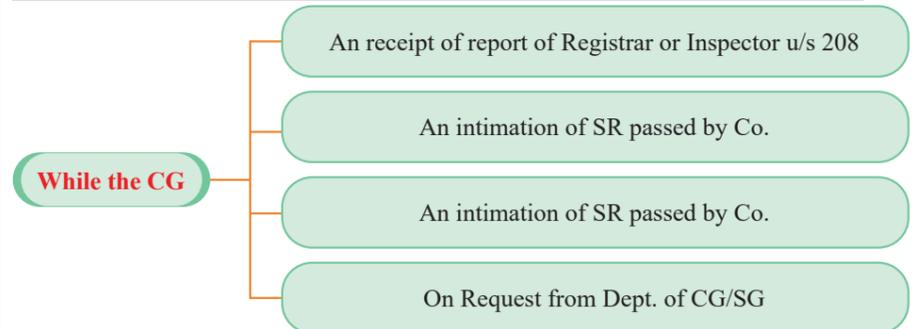
## SECTION-211 (ESTABLISHMENT OF SFIO)

1. The CG shall any notification establish an officer to be called SFIO to investigate frauds relating to a company.
2. SFIO shall be headed by a Director + such no. of expert among persons of ability, integrity & experience in



3. Director in the SFIO shall be an officer net below rank of a Joint Secretary to GOI having knowledge & experience in corporate affairs.
4. The CG may appoint for efficient discharge of its functions.
5. The T & C of service of air, expert, strike of SFIO as may in prescribed.

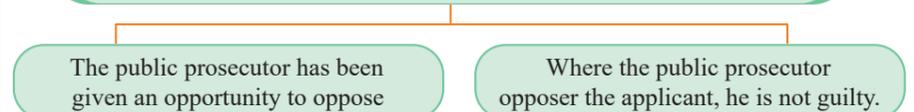
## SECTION-212 (INVESTIGATION INTO AFFAIRS OF CO. BY SFIO)



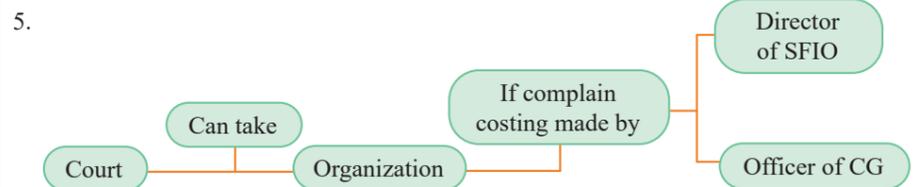
While the CG

1. Is of opinion that is necessary to investigate into affairs of company leg. SFIO to the CG may designate such no. of inspector as he may consider necessary for purpose of investigation.
2. Where case has been assigned to SFIO no other investigating agency proceed with investigation.
3. Director of SFIO shall have the power of the inspector u/s 217 of Company's Act Co. its officers, employee shall be responsible to provide all information, explanation, assistance to the investigating officer.

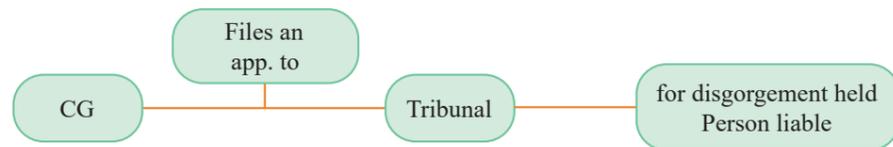
4. Offences u/s 447 of Company's Act shall be cognizable a no person accused of any offence shall be released on bail or own unless



**Exception:** A person who is under the age of 16 years, or is a woman as is sick may be released on bail.



6. Any officer of SFIO arrest a person who is in possession of material info.
7. The officer after arrest, forward a copy of order to SFIO in sealed envelope.
8. Every person arrested shall within 24hrs be taken to a special court or Judicial Magistrate or metropolitan Magistrate provided that 24hrs shall exclude the time necessary for the journey from place of arrest to special court.
9. On completion of investigation, the SFIO shall submit the investigation report to CG.
10. Receipt of investigation report, the CG after examination direct the SFIO initiate prosecution against company & its officers.
11. Where the report states that fraud has taken place in a company, taken undue advantage or concept whether in form of asset, property, cash.

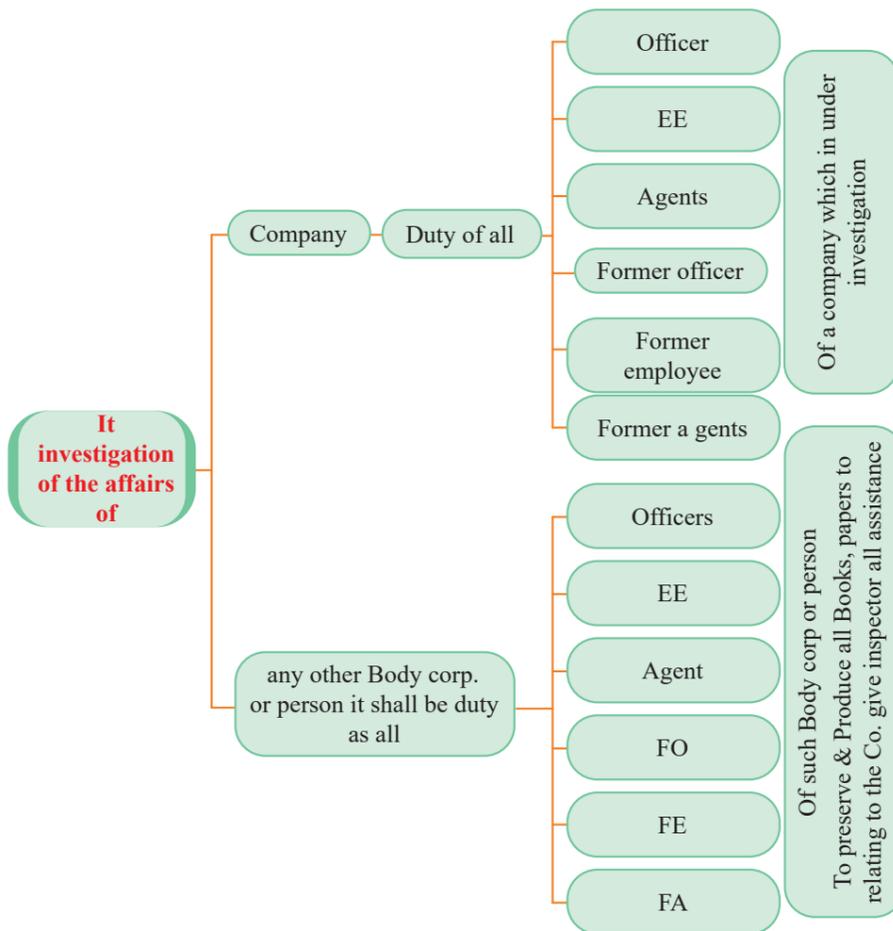


12. In case SFIO has been investigating any offence, other department in respect of such offence shall provide information to SFIO.

13. The SFIO share any Info with any investigation agency.

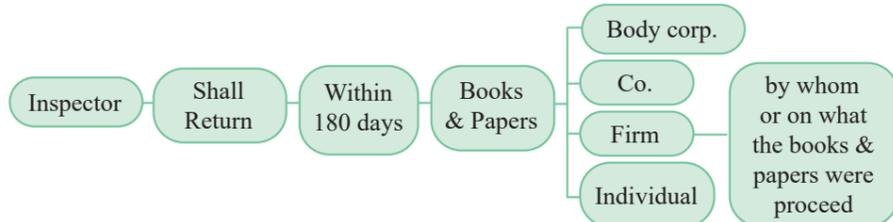
### SECTION-217 PROCEDURE, PROCESS OF INSPECTORS

1.



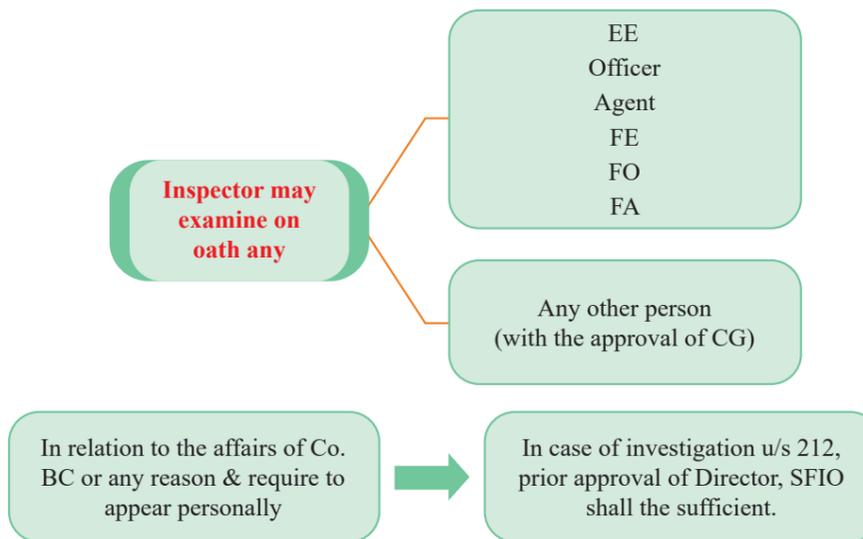
2. Inspector may require any other body corp. to produce such books & Papers.

3.



If they are needed may be called again for further 180 day by order in writing

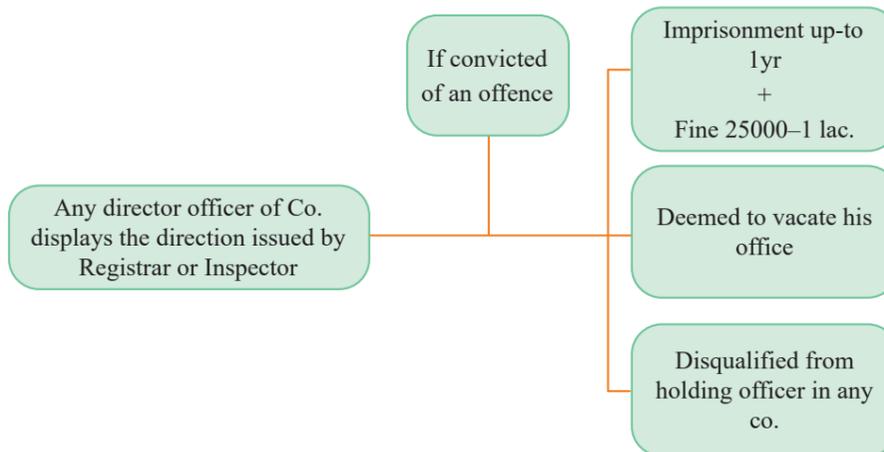
4.



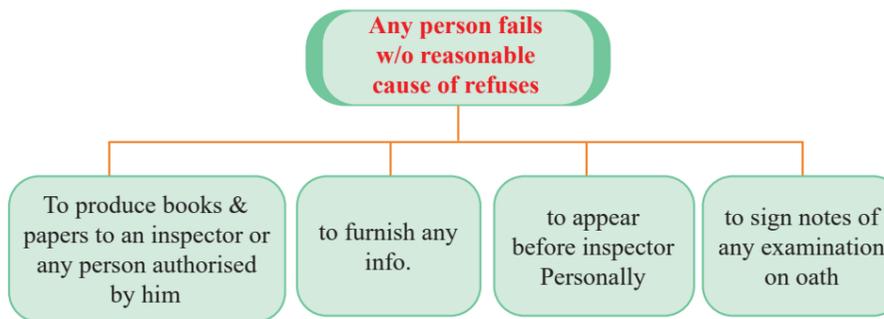
Notes of examination shall be taken down in writing, read over to, signed by the person examined & may be used in evidence against him.

5. Inspector, being an officer of CG shall have all the Powers as are vested in civil court, under CPC 1908- SIID

6.

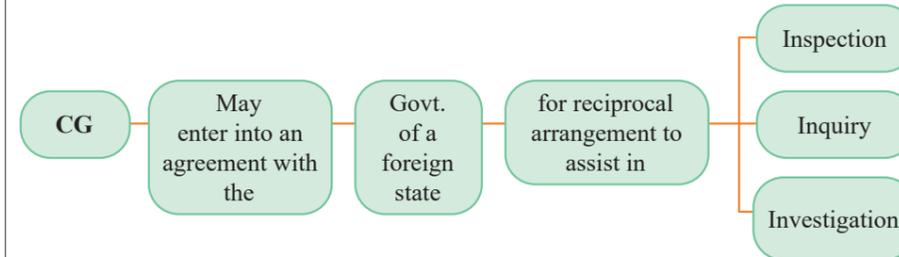


7.

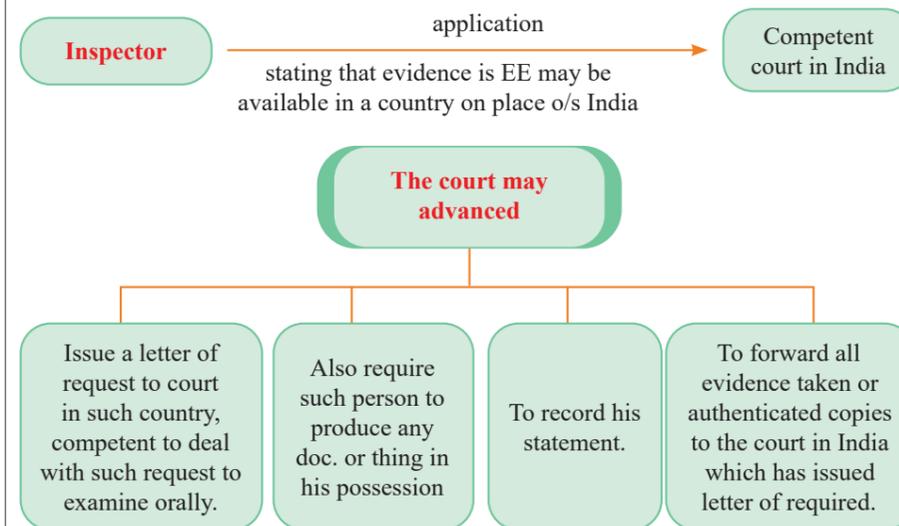


Imprisonment up-to 6m & Punishable with fine min.25000 – Max. 1 lac.

8.



9.



Every Statement recorded under this Sec shall be deemed to the evidence in India collected during investigation.

### PROTECTION OF EMPLOYEES DURING INVESTIGATION (SECTION 218)

During the course of any investigation and during pendency of any proceeding against any person concerned in the conduct and management of the affairs of such company, **other body corporate or person shall not discharge or suspend or punish any employee without approval of the Tribunal.**

Following action are not permitted without approval of the Tribunal –

- To discharge or suspend any employee.
- To punish any employee, whether by dismissal, removal, reduction in rank or otherwise; or
- To change the terms of employment to his disadvantage

If the applicant is dissatisfied with the objection raised by the tribunal it may within a period of 30 days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal. The decision of the Appellate Tribunal on such appeal shall be final and binding on the Parties concerned.

### Freezing of Assets of Company on Inquiry and Investigation (Section 221)

In case of any contravention of the order NCLT has the power to freeze the assets of the company.

Where it appears to the Tribunal –

(i) on a reference made to it by the Central Government; or

(ii) in connection with any inquiry or investigation into affairs of a company; or

(iii) on any complaint made by members under Section 244(1); or

(iv) a creditor having one lakh amount outstanding against the company; or

(v) any other person having a reasonable ground to believe

### Expenses of Investigation (Section 225)

Expenses incurred by CG but shall be reimbursed by the following person namely –

- (a) any person convicted on a prosecution instituted or who is ordered to pay;
- (b) any company or body corporate in whose name proceedings are brought or value of any sums or property;
- (c) unless a prosecution is instituted under Section 224 –
  - (i) any company, body corporate, managing director or manager dealt with by the report of the inspector; and
  - (ii) the applicants for the investigation, where the inspector was appointed under section 213, to such extent as the CG may direct.

### Voluntary Winding Up of Company, etc., Not to Stop Investigation Proceedings– Section 226

As per section 226 of the Act, no such investigation shall be stopped or suspended by reason only of, the fact that–

- (a) an application has been made under section 241;
- (b) the company has passed a special resolution for voluntary winding up; or
- (c) any other proceeding for the winding up of the company is pending before the Tribunal:

### Legal Advisers and Bankers Not to Disclose Certain Information – Section 227

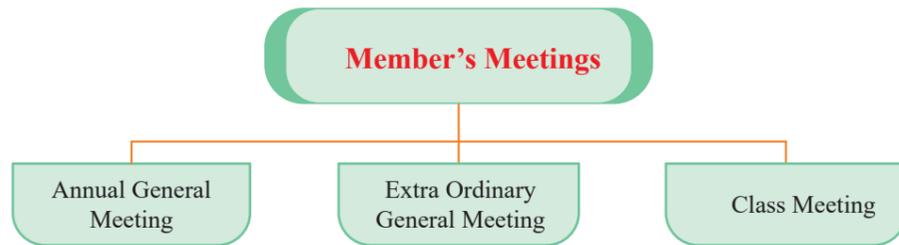
Nothing in Chapter XIV shall require the disclosure to the Tribunal or to the CG or to the Registrar or to an inspector appointed by the CG-

- (a) by a legal adviser, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by the bankers of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

### Information, Inspection, Inquiries and Investigation of Foreign Company – Section 228

The provisions of this Chapter XIV shall apply mutatis mutandis to inspection, inquiry or investigation in relation to foreign companies.

## GENERAL MEETING



## ANNUAL GENERAL MEETING (SECTION 96)

1. Annual General Meeting should be held once in each calendar year.
2. First A.G.M of the company should be held within 9 month from the closing of the first financial year.
3. It shall be necessary to hold any annual general meeting in the year of its incorporation.
4. Subsequent A.G.M should be held within 6 months from the date of closing of the relevant financial year.
5. The gap between two A.G.M shall not exceed 15 months.
6. The Registrar may, for any special reason extend the time, such extension can be for a period not exceeding 3 months.
7. In case of OPC: No A.G.M is required to be conducted.

### Day of AGM:

- ❖ Any day other than National Holiday

### Time of AGM:

- ❖ AGM shall be conducted only during business hours i.e. 9:00 AM to 6:00 PM.

### Place of AGM:

- ❖ AGM shall be conducted at Registered office of the company or any other place within same city, town, village where registered office of the company is situated.

AGM of an unlisted company may be held at any place in India if consent is given by all the members.

### Place of AGM of Govt. Co.:

- ❖ At registered office of the company or any place within same city, town, village or any place approved by CG for conducting AGM.

### In case of listed companies:

- ❖ Shall have to disclose all proceeding of the meeting to the stock exchange within 24 hours.

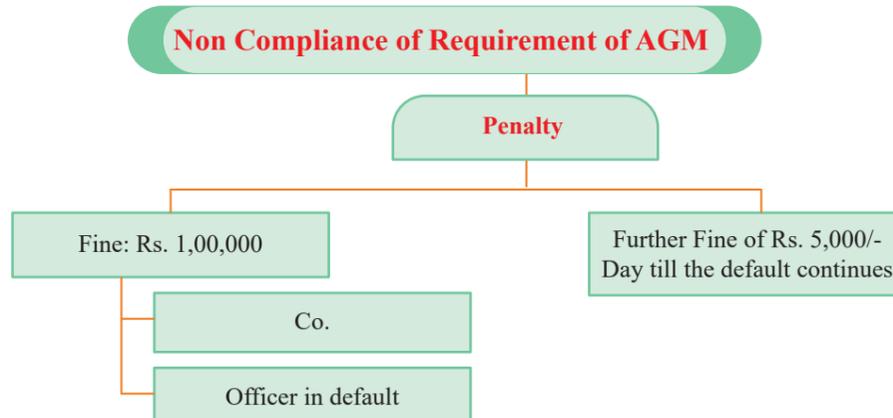
### In case of section 8 Co:

- ❖ Time, day, Place of AGM of such Co. shall be as prescribed by board of such Co.

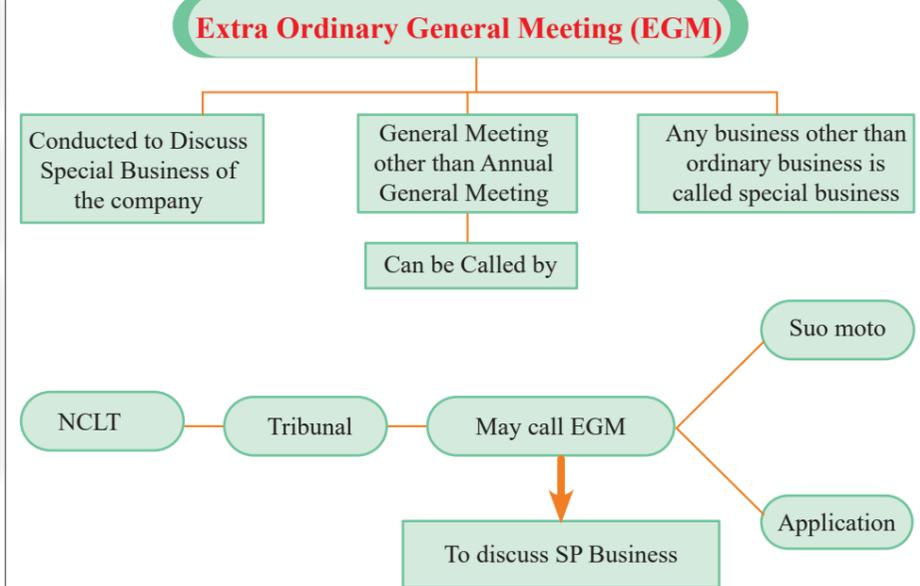
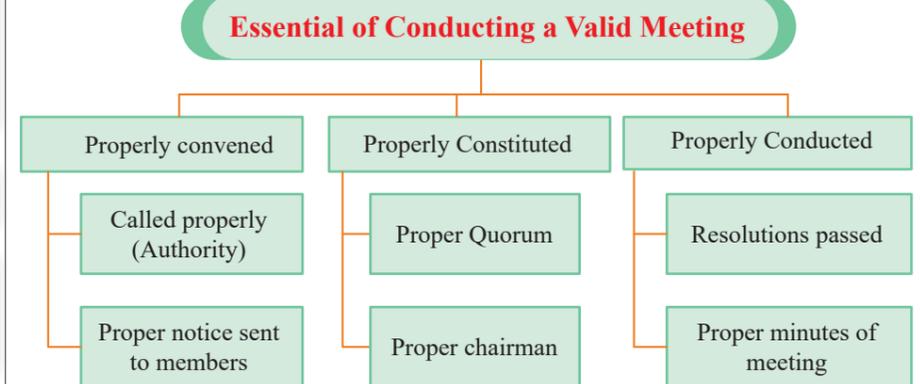
### AGM ⇒ Only Ordinary Business of the Co. is discussed

- ❖ Appointment of directors
- ❖ Appointment of auditors
- ❖ Declaration of dividend
- ❖ Adoption of Financial statements

## PENALTY FOR DEFAULT IN HOLDING THE AGM [SECTION 99]



## ESSENTIAL OF CONDUCTING A VALID MEETINGS



## EXTRA-ORDINARY GENERAL MEETING (SECTION 100)

All general meetings other than AGM are called extra-ordinary general meetings (EGM). This means that all the transactions dealt upon in an EGM shall be special business



## 1. BY BOARD

### BOD can call EGM as it deems fit

- EGM can be held at any place in India.
- EGM of company which is wholly owned sub-Co. incorporation outside Indian
- EGM shall be outside India

## 2. BY THE BOARD ON REQUISITION OF MEMBERS

### Request shall be made by

- (a) Company having a share capital:** members who hold, not less than one-tenth of such of the paid-up share capital of the company.
- (b) Company not having a share capital:** members who have, not less than one-tenth of the total voting power of all the members.
- (c) Time period for calling the meeting:** The Board is required to proceed to call a meeting within 21 days from the date of receipt of a valid requisition, to convene a meeting which should be held within 45 days of such deposit of the requisition with the company.

## 3. BY REQUISITIONISTS THEMSELVES

### BOD fails to conduct EGM within 45 days from date of request

Requisitionists shall conduct EGM within 3 months from date of request made

Expenses of EGM shall be incurred by Co.

## 4. BY TRIBUNAL

- (a) Orders a meeting held and conducted in such manner as the Tribunal thinks fit.**
- (b) Give such ancillary direction as the Tribunal thinks expedient, including directions modifying or supplementing.**

Directions may include one member of the company present in person or by proxy shall be deemed to constitute a meeting.

### Day of EGM:

- ❖ Any day including national holiday.

### Time of AGM:

- ❖ Any time even after business hours.

### Place of AGM

- ❖ Any place in India.

## NOTICE OF MEETING (SECTION-101)

- ❖ A general meeting of a company called by giving notice **not less than 21 clear days** either in writing or through electronic mode.
- ❖ 21 clear days are **exclusive** of day of the service of notice and day of the general meeting.
- ❖ Where notice is sent by post, it shall be deemed to be served at the expiration of 48 hours.
- ❖ Omission to send notice on mistake ground that he is not member will not be considered as accident omission.

## SHORTER NOTICE

**AGM-** Approval from not less than Ninety-five per cent of the members entitled to vote.

**EGM (Company having share capital)- Majority in number of members entitled to vote and who represent not less than 95%** of such part of the paid-up share capital of the company as given a right to vote at the meeting.

**EGM (Company not having share capital)- Not less than 95% of the total voting power** exercisable at that meeting.

## CONTENT OF THE NOTICE

Specified day, time, place, proxy form, agenda.

Member by person or proxy can attend GM.

## ENTITLEMENT OF NOTICE

Member or his legal representative (equity and preference)

Auditor statutory.

Directors.

## ACCORDING TO SS-2

- Additional entitlement of notice give to.
- Secretarial auditor.
- Debenture trustee.
- Other specified member.

## QUORUM OF MEETING (SECTION-103)

- Minimum number of members required to be present in the meeting.
- Meeting to constitute valid general meeting.
- No quorum no meeting.
- Private company: Two members personally present.
- Proxy are not counted for the purpose of quorum.

## QUORUM OF PUBLIC COMPANY:-

- Up to 1000 members- **Minimum five members.**
- 1001 to 5000 member- **Minimum 15 members.**
- Member exceeding 5000- **Minimum 30 member**
- Representative of governor, president, or body corporate treated as member.
- Joint shareholders are counted separately for purpose of quorum.
- Interested member are counted for the purpose of quorum but cannot vote on that particular business.

One person can be representative of more than one body corporate he will be counted.

### ADJOURNMENT OF MEETING

If the quorum is **not presented within half an hour** then

- (A) ❖ Meeting shall stand adjourned to the same day, time, place in the next week or such other place, time, date decided by BOD.
- (B) ❖ Meeting shall stand cancelled if called by requisitions.

### NOTICE OF ADJOURNED MEETING

In case of **any changes** in time, day, place by BOD then the company shall **give notice of not less than 3 days** either individually or by way of advertisement in newspaper.

### QUORUM IN CASE OF ADJOURNED MEETING

- (a) ❖ If adjournment is because of lack of quorum- the presented member shall form the valid quorum. **(at least 2)**
- (b) ❖ If meeting is adjourned because of other reasons- original quorum is required.
- (c) ❖ Resolution is passed at an adjourned meeting shall be treated as passed on the day it was actually pass and not on any earlier date.
- (d) ❖ Even a single member by person and proxy can hold valid meeting if directed by NCLT.

### CHAIRPERSON (SECTION-104)

- The name of chairman or procedure to appoint chairperson is mentioned in AOA.
- If AOA is silent then chairperson shall be elected by members by show of hand.
- Generally, members elect the chairperson but if AOA provide then directors can elect the chairperson.
- If poll is demanded taken immediately.
- The chairman elected on a show of hands shall continue to be the chairman of the meeting.
- If chairman is not present within 15 minutes, **one of the director can act as a chairman.**

Directors are unwillingness to act as a chairman then select one of the members as a chairman of the general meeting.

### PROXY (SECTION-105)

- Proxy means a person appointed by member to attend the general meeting.
- Proxy need not be member accept section 8 company.
- Company not having share capital cannot appoint proxy accept AOA permit.
- Proxy is not counted for the purpose of quorum.
- Not allowed to speak and vote unless poll is demanded.
- Deposit proxy form at least 48 hours before the meeting at the registered office of the company.

### ARTICLE CANNOT PRESCRIBE LONGER PERIOD THAN 48 HOURS

- A person can act as a proxy on behalf of maximum 50 members and holding 10% of total share capital.
- If a single member holds 10% of more capital than proxy can act on behalf of such member only.
- Proxy must be in writing and signed by member his duly authorized.

### REVOCAION OF PROXY

- (i) ❖ Person himself attend the meeting and voted.
- (ii) ❖ Deposit of new proxy form within specified time.
- (iii) ❖ Written notice has been given before commencement or adjournment of meeting.
- (iv) ❖ Notice of revocation signed by a member who signed the proxy form.

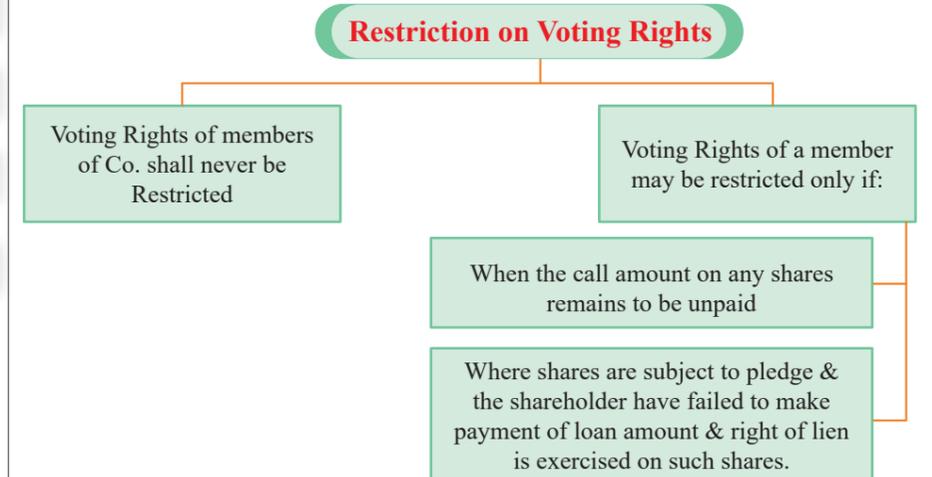
### INSPECTION OF PROXY FORM

- (i) ❖ Inspection by members entitled to vote.

- (ii) ❖ 3 days advance notice should be given to the company.

- (iii) ❖ Inspection between 24 hours before the commencement of meeting till the conclusion of meeting. Inspection between business hours.

### RESTRICTION ON VOTING RIGHTS (SECTION-106)



### VOTING BY SHOW OF HANDS (SECTION 107)

- (i) Voting firstly taken by show of hands.
- (ii) Count the hands raised in favour of against the motion.
- (iii) Chairman announces the resolution whether it is carried or lost and entered in minute book.
- (iv) One member one vote.

### VOTING THROUGH ELECTRONIC MODE (SECTION 108)

- Applicability
  - ❖ Listed company
  - Company having more than 1000 or more members.

## Non-applicability

Whether debenture/preference shares are only listed.

Listed on SME platform.

Listed on institutional trading platform.

Nidhi Company.

Notice is send to all members, auditors, directors.

Notice shall specify the details about the e voting facility.

Notice also post on the website.

Also published in newspaper at least 21 days before GM one in

English and one vernacular language.

E-voting shall **remain open for minimum 3 days and close at 5 pm on the day preceding the general meeting.**

Members can physically attend general meeting but can vote through one mode only.

Once voted cannot change subsequently.

BOD shall appoint scrutinizer who is not in employment.

Scrutinizer shall **declare result within 3 days** from the conclusion of meeting.

Result should be displayed at register office, head office, corporate office and website of the company.

## VOTING BY POLL (SECTION-109)

○ Poll can be demanded before or on the declaration of the result by show of hands.

○ Poll can be demanded by member of proxy or chairman.

○ A poll demanded may be withdrawn at any time.

## WHO CAN DEMAND POLL

Company having share capital: Member by person or proxy having **10% of the total voting power or aggregate holding not less 5,00,000**

Company not having share capital: Member or proxy **having 10% of total voting power.**

## TIME OF POLL

(A) Adjournment of meeting and appointment of chairman- Taken immediately.

(B) Other cases- Within 48 hours

- ❖ Poll paper shall be given to all members having voting rights.
- ❖ Chairman will appoint the scrutinizers, person other than in employment.
- ❖ Scrutinizer will submit the report to chairman.
- ❖ Chairman declared the result. Result of the poll shall be deemed to be the decision of the meeting.

## VOTING BY POSTAL BALLOT (SECTION-110)

Business compulsory transacted by postal ballot

(A) ❖ Alteration of object clause, alteration of AOA to determine private company.

(B) ❖ Buy back

(C) ❖ Change in the register office outside local limits.

(D) ❖ Demerger / merger / takeover / acquisition

(E) ❖ Election of small shareholder director

(F) ❖ For selling whole or substantially whole of the undertaking.

(G) ❖ Giving loan or extending guarantee or provide security in excess of the limit.

(H) ❖ Variation of right attached to shareholder and debenture holder.

## BUSINESS COMPULSORY TRANSACTED AT GENERAL MEETING

(A) Ordinary business

(B) Transaction where director or auditor have right to be heard

## PROCEDURE

(1) **Optional for OPC and other company having up to 200 members.**

(2) Send notice to all member along with draft resolution.

(3) Notice shall be sent by registered post, speed post, through electronic mode, courier service.

(4) Advertisement in newspaper one in English and one in regional language.

(5) Notice shall also post on the website of the company.

(6) Members shall **give assent or dissent within 30 days from dispatch of notice.**

(7) Vote received **after 30 days shall not be consider.**

(8) BOD shall appoint one scrutinizers who is not in employment.

(9) Scrutinisers shall **submit report within 7 days from last date of voting or last ballot paper received, whichever is earlier.**

(10) The result shall be declared by posting on the website of the company.

(11) Business transacted by postal ballot, may be transacted by electronic means under section 108.

## CIRCULATION OF MEMBER'S RESOLUTION (SECTION-111)

(A) ❖ Requisition made in writing by 1/10th of paid-up equity share capital in case company having share capital.

(B) ❖ If company not having share capital then requisition by 1/10th of total voting power.

(C)

❖ Notice shall be deposited at least 6 weeks before the meeting in case requisition proposing the resolution.

(D)

❖ However, meeting is called within 6 weeks then the notice shall deem to be deposited within time.

(E)

❖ Notice shall be deposited at least 2 weeks before the meeting if requisition wants to circulate any statement with respect to proposed resolution.

(F)

❖ The company shall circulate the notice to all member.

(G)

❖ However, company is not bound to circulate any statement if CG is satisfied that member wants to secure needless publicity.

#### TYPES OF RESOLUTION (SECTION-114)

##### Ordinary resolution-

❖ Vote casted in favor is more than voted casted against the motion. **(Simple majority)**

##### Special resolution-

❖ Vote casted in favor is three time more then vote casted against the motion. **(75% or more)**

#### RESOLUTION REQUIRING SPECIAL NOTICE (SECTION 115)

(1) Special notice is required to move resolution.

(2) Notice shall be signed individually or collectively.

(3) Members holding **not less than one percent of total voting power or**

(4) Aggregate sum of not less than **rupees 5 lakh paid up.**

(5) Notice **not earlier than 3 months but at least before 14 days before meeting.**

(6) Company shall send **notice to members at least 7 days before the meeting.**

(7) If is not practicable to give notice then published in newspaper one in English and one in vernacular language **at least 7 days before the meeting.**

#### MINUTES OF MEETING (SECTION 118)

Recorded within 30 days.

Serially number.

Fair and correct summary of proceeding.

All appointments made shall be included in minutes.

In case of board meeting includes name of the directors.

Present at the meeting.

And the names of directors who descended the resolution.

Distinct minutes book for different meeting.

Can be in loose leaf form but bound periodically.

Can kept at registered office of such other place approved by Board.

Preserved permanently with the custody of CS.

Can be in physical or electronic mode.

Signed by chairman of the meeting or duly authorised director.

CS can never sign the minutes of the company.

#### REPORT ON ANNUAL GENERAL MEETING (SECTION 121)

Applicable to every listed company.

Prepare a report on each annual general meeting and filed with the **ROC within 30 days** from conclusion of annual general meeting in form **MGT 15.**

Signed by **chairman** of the meeting **or by two directors** one of whom shall be a managing director.

It contains for and correct summary of the proceedings.

#### VIRTUAL MEETINGS

##### Advantages of Virtual AGM/EGMs

❖ Increase shareholder participation in meeting.

❖ Save time on travel and cost because of remote voting.

❖ Encourages more participation by investors across the world.

❖ Provides greater accessibility to shareholders who cannot be physically present due to distance.

❖ Enables institutional investors to attend more than one meeting in a day and protect shareholders interest.

❖ Reduce the cost of holding and conducting shareholder meeting, including the costs of the venue, stationary, transport and refreshments.

❖ Saves time of the Company's personnel.

#### DIFFICULTIES IN HOLDING VIRTUAL MEETINGS OF MEMBERS

Security of the systems used.

Streaming with quality without interruption.

Providing with secure login and shareholder authentication for attendance, with ease of access for shareholder, and remote voting.

Combined registration, voting and reporting software.

Customized instant result screen and detailed audit reporting.

Data Security of Logins and Passwords.

Allowing the shareholders, the choice of device.

The technology used must give all shareholders a reasonable opportunity to participate.

The technology must be secure and must provide reasonable measures for verifying / validating those allowed to attend and vote at the meeting.

The company must provide a digital record of the meeting.

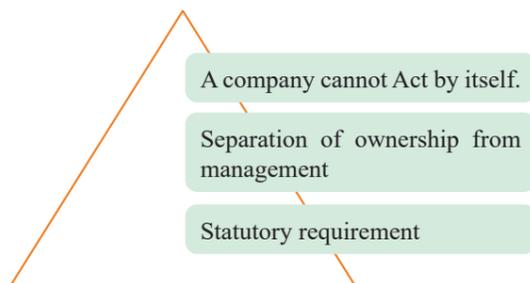
### Section 2(34)

❖ “Director” means a director appointed to the Board of a company.

### Section 2(10)

❖ “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

### NEED FOR DIRECTORS



### DIRECTOR IDENTIFICATION NUMBER(DIN)

Director Identification Number(DIN)

“Director Identification Number” (DIN) includes the Designated Partnership Identification Number (DPIN)

DIN is mandatory for every director

DIN no. once obtained is valid for life time of a director.

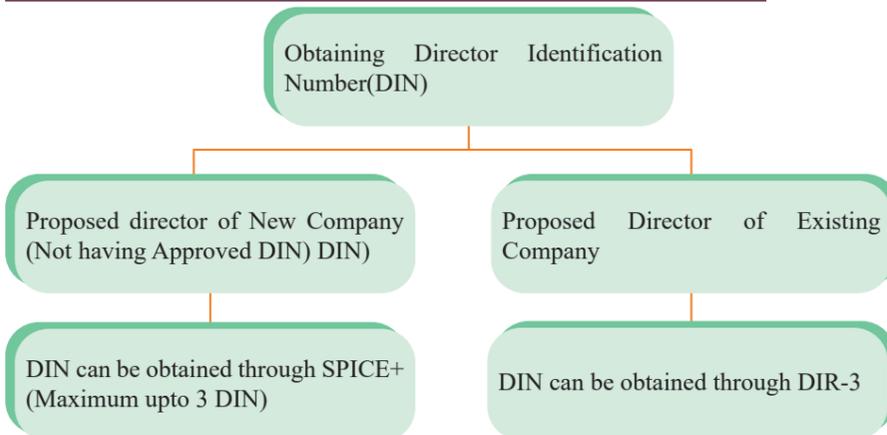
One DIN can be obtained by one individual

If an individual generates two DINs inadvertently, he has to surrender his unused DIN immediately

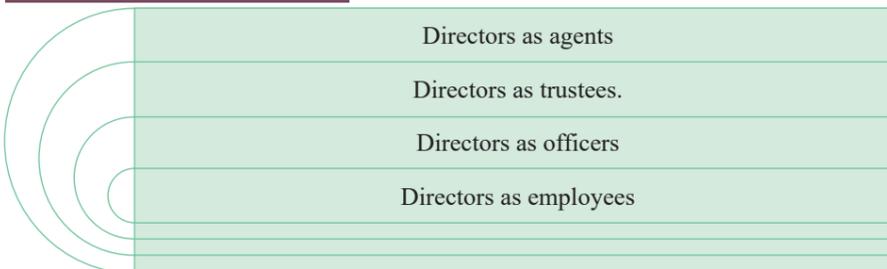
### CANCELLATION OF DIN

<b>Cancellation of DIN</b>	DIN is found to be duplicate.
	DIN obtained in wrongful manner.
	Death/insolvency/insanity of director
	Before cancellation opportunity of being heard shall be given.

### OBTAINING DIRECTOR IDENTIFICATION NUMBER (DIN)



### POSITION OF DIRECTOR



### SECTION 149

#### Company to have Board of Directors

Every company SHALL have a Board of Directors consisting of individuals as directors.

#### WOMEN DIRECTOR: [SECOND PROVISO TO SEC 149(1)]

**Following class of Companies SHALL appoint at least one Women Director**

Every Company	Listed Public Company having paid up share Capital of Rs. 100 cr or more	Public Company having turnover of Rs. 300 cr or more
---------------	--	--

#### Minimum number of Directors

Public Company – 3

Private Company – 2

OPC - 1

#### Maximum number of Directors

Maximum No. of Directors – 15

More than 15

After passing Special Resolution

### SECTION 149(3) RESIDENT DIRECTOR

Every company shall have at least 1 Resident Director (who stay in India for a period of 182 days or more during the FY).

### SECTION 149(4) INDEPENDENT DIRECTORS

**Following class of companies shall required to appoint an Independent Directors.**

Listed Public Company – 1/3rd of total number of directors shall be an ID.  
(any fraction – rounded off as one)

Unlisted Public Company having-  
PSC – Rs. 10 cr or more; or  
Turnover – Rs. 100 cr or more; or  
Outstanding loans, deb, deposits Rs. 50 cr or more

Min. 2 ID

In case of section 8 companies and specified IFSC public companies this sub section is not applicable.

If there is any vacancy of an ID then it shall be filled by the board within 3 months from the date of such vacancy or not later than next B.M, whichever is later.

### SECTION 149(6)

An ID in relation to a Company, means a director other than a MD or a WTD or a Nominee Director, who is a person of integrity and possesses relevant expertise and experience.

An ID shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company’s business.

### WHO HIMSELF IS NOT

- (a) a Promoter or ex-promoter of a Company
- (b) Related to Promoter or directors of the Company
- (c) Has or had Pecuniary Relationship, other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as may be prescribed, with the Company, or their promoters / directors, during the 2 immediately preceding FY or during the current FY

### NONE OF HIS RELATIVE

(i) Is holding any security / interest in the Company during the 2 immediately preceding FY or during the current FY.  
(Exclusion – holding security of face value less than Rs 50 lacs or 2% PUC of the Company)

(ii) Is indebted to the Company + promoters + directors.

(iii) Has given Guarantee/security in connection with indebtedness of any third person to the Company + promoters + directors.  
(Monetary limits for (ii) & (iii) - An amount of Rs. 50 lacs, at any time during the 2 immediately preceding FY or during the current financial year)

(iv) Has any Pecuniary Transaction with the Company amounting to 2% or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii).

### WHO NEITHER HIMSELF NOR HIS RELATIVE

(a) Holds or has held a position of a KMP / Employee of the Company in the immediately 3 preceding FYs (3yrs period not applicable for Relative who is an employee)

(b) Employee/Proprietor/Partner of:

- ❖ Firm of auditors/PCS/Cost auditors of the Company.
- ❖ any legal or consulting firm, which has or had transaction of more than 10% of its gross turnover, with the Company.

(c) Holds collectively 2% or more of the total voting power of the Company.

(d) Is a Chief executive of director of a NPO that's receives 25% or more of its receipt from the Company + promoters + directors or NPO that holds 2% or more voting power of the Company.

Company includes its holding, subsidiary or associate company.

### SECTION 149(7) DECLARATION BY AN INDEPENDENT DIRECTOR

Every I.D shall give a declaration that he meets the criteria of independence when:

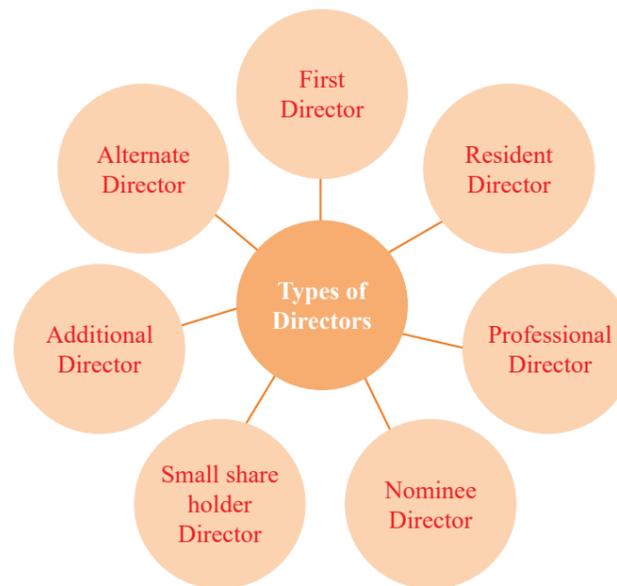
- he attends the first meeting of the Board as a director,
- thereafter at the first meeting of the Board in every financial year, &
- whenever there is any change in the circumstances which may affect his status as an ID.



### SECTION 149(10) TERM OF ID

- Up to 5 consecutive FY.
- Reappointment for the 5 years by passing SR
- After completion of 2 terms cooling period of 3 years and shall not associate with the company directly or indirectly.
- Appointment for less than 5 years treated as one term.
- Not liable to retire by rotation.

### TYPES OF DIRECTORS



### [SECTION 151] DIRECTOR ELECTED BY SMALL SHAREHOLDERS

Every listed company may have one director elected by small shareholders “Small shareholder” means a shareholder holding shares of nominal value of not more than twenty thousand rupees.

- ❖ Appointment Upon notice of not less than 1000 small shareholders or 1/10th of the total number of such shareholders, whichever is lower.
- ❖ Tenure - not exceed a period of 3 consecutive year.
- ❖ Re-appointment – Not be eligible for re-appointment.
- ❖ No person shall hold the position of SSD in more than two companies at the same time.
- ❖ Such director shall be considered as an ID subject to, his being eligible under Section 149(6).

### SECTION 152 APPOINTMENT OF FIRST DIRECTOR

- ❖ Name mention in AOA or follow the procedure given in the articles.

- ❖ If AOA does not provide a manner, all subscribers who are individuals shall be the first directors.
- ❖ On or before his appointment obtain consent in DIR-2.
- ❖ Company shall file consent to ROC within 30 days in form DIR-12. (60 days in case of IFSC).

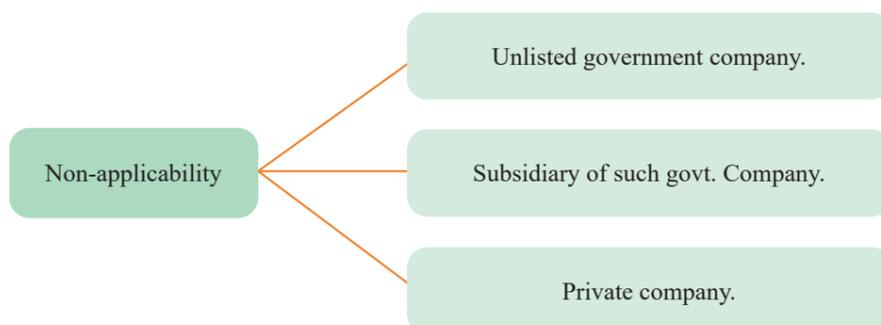
### SECTION 152(6)(7) ROTATIONAL OR NON-ROTATIONAL DIRECTOR

- Minimum two third of total number of directors are liable to retire by rotation.
- Maximum one third can be non- rotational directors.
- Article may provide higher number of rotational director.
- One third of rotational director shall compulsory retire at each AGM.
- Who have been longest in the office.
- Appointment on same day then they shall retire by mutual agreement and if there is no agreement then by lot system.
- Retiring director shall be eligible for reappointment.
- Company may reappoint the same director or appoint new director on the place of retired director or pass the resolution not to full fill the vacancy.
- If vacancy is not filled and meeting has not resolved, for not filing the vacancy the meeting shall be adjourned to same day, same time, same place in the next week.
- In adjourned meeting also vacancy is not filled and resolution for not filing the vacancy is not passed then retiring director shall get automatically appointed unless,
  - ❖ Resolution put and lost.
  - ❖ Director express his unwillingness.
  - ❖ Disqualified section 164.
  - ❖ Separate resolution required for appointment.
  - ❖ Original appointment in contravention of section 162.
  - ❖ If vacancy is not filled by automatic re-appointment then it result into casual vacancy (filled out by board).

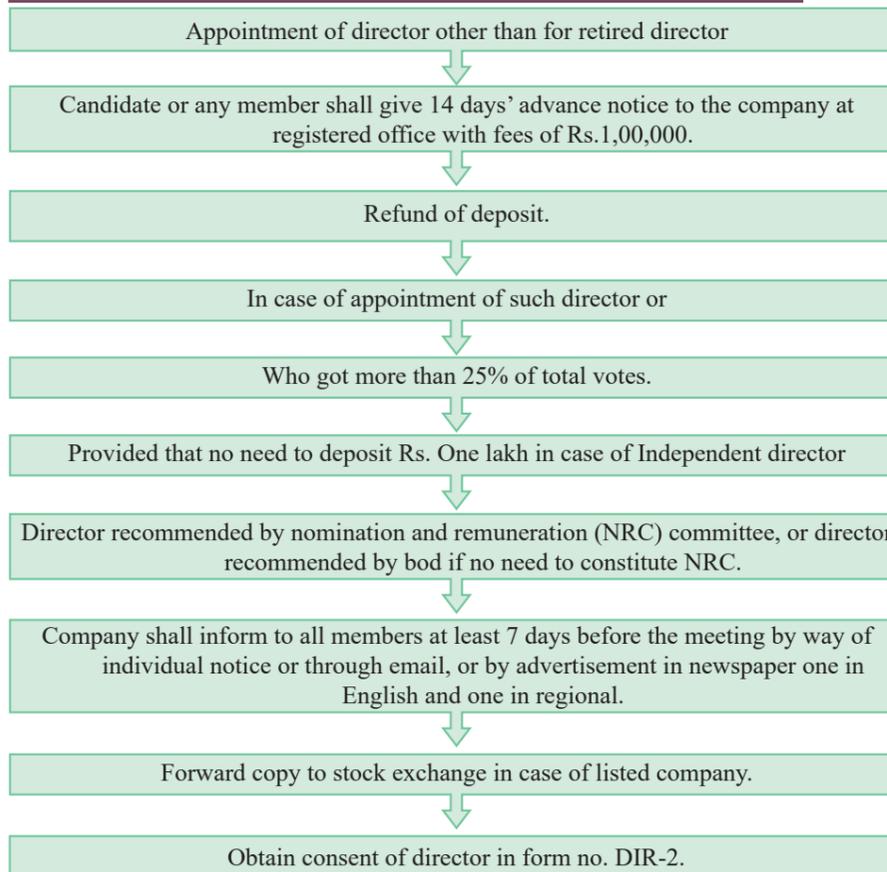
**Note:** Retiring director shall not include proportional representational director, nominee director appointed by CG/NCLT/bank/FI/BIFR, small shareholder director, additional director, nominee director of BOD and independent director.

❖ If AGM is not held then retiring director shall vacant office on the last date of AGM.

### NON-APPLICABILITY



### SECTION 160 APPOINTMENT OF SUBSEQUENT DIRECTOR (OTHER THAN RETIRING DIRECTOR)



### SECTION 161(1) ADDITIONAL DIRECTOR

❖ If authorized by AOA BOD can appoint additional director.

- ❖ If AOA is silent then appointment by passing OR
- ❖ To reduce the workload additional director is appointed by board of directors by passing BR can appoint additional director.
- ❖ Additional director shall continue till the conclusion of AGM or last date of AGM whichever is earlier.
- ❖ Person fails to appoint as a director in general meeting, board of director cannot appoint such person as additional director.
- ❖ Appointment within maximum limit fixed by AOA.
- ❖ AD can be appointed as MD or WTD and shall hold office till the AGM.
- ❖ Can be appointed by resolution by circulation.
- ❖ Director file DIR 2 and company shall file DIR 12.

### SECTION 161(2) ALTERNATE DIRECTOR

- Appointed by the board of directors if authorised by articles of association or pass Ordinary resolution.
- Original directors absent himself from India for at least three months but not more than 12 months with notice, an alternate director in his place shall be appointed.
- One person cannot act as alternate director for more than one director.
- An existing director cannot act as an alternate director.
- If original director is ID then alternate director shall satisfy the condition of ID.
- Can be appointed by passing a resolution by circulation.
- Term: Original director returns to India or expiry of the term of the original director whichever is earlier.
- Provision of automatic reappointment applies to original director.
- Alternate directorship is counted to determine the total number of directorship.
- Rights and liability of alternate director are same as original director.

Can act as an alternate director for the same person for two or more different companies.

File DIR 2 by director and DIR 12 by company.

### SECTION 161(3) NOMINEE DIRECTOR

- Subject to provision in AOA.
- Board may appoint a person nominated by bank, financial institute,
- Private equity partners, CG or SG.
- Nominee director appointed to protect the interest of the bank financial institution.
- Nomination cannot be rejected by board of director.
- CG/SG by virtue of holding shares in the co.
- Even third party can appoint nominee director as per the agreement with co.

### SECTION 161(4) CASUAL VACANCY DIRECTOR

Casual vacancy director can be appointed by BOD in the following cases.

- If original director is on leave for more than 12 months.
- OD regins u/s 168.
- OD's office is vacated by casualty.
- Appointment shall be subject to the approval at next AGM by passing OR.
- Term: Remaining term of original director.
- CVD cannot be appointed by resolution by circulation.

### SECTION 162 APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. A resolution moved in contravention of aforesaid provision shall be void.

This provision shall not apply to-

- ❖ private company and specified IFSC public company;
- ❖ a Government Company

## SECTION 164(1) DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR

- ❖ Unsound mind
- ❖ undischarged insolvent
- ❖ applied to be adjudicated as an insolvent and his application is pending
- ❖ convicted by a court for offence involving moral turpitude or otherwise and sentenced imprisonment for 6 months or more and 5 years has not elapsed after expiry of imprisonment.
- ❖ (If imprisonment of 7 years or more - he shall not be eligible to be appointed as a director in any company for lifetime.)
- ❖ Disqualification order passed by a court or NCLT.
- ❖ Failed to pay share call money and 6 months have elapsed from the day fixed for payment.
- ❖ Convicted for RPT offence (Sec 188)
- ❖ Not obtained DIN
- ❖ Not maintained the limits of directorships as mentioned u/s 165

## SECTION 164(2) PERSON WHO IS OR HAS BEEN A DIRECTOR OF A COMPANY (DEFAULTING COMPANY) WHICH

(a) has not filed financial statements or annual returns for any continuous period of three financial years; or

(b) has failed to:

- ❖ repay the deposits accepted or pay interest thereon or
- ❖ to redeem any debentures on the due date or
- ❖ pay any dividend declared, and such failure to pay or redeem continues for one year or more. SHALL NOT be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so.
- ❖ Where director is appointed in defaulting company, he shall not incur above disqualification for a period of 6 months from date of his appointment.
- ❖ Before appointment / re-appointment, every director SHALL inform give declaration that he is not disqualified in Form DIR 8.

Defaulting Company u/s 164(2) to file Form DIR 9 with the ROC within 30 days of failure.

## SECTION 165 NUMBER OF DIRECTORSHIP

Max.10 public co.	Remaining other co.
Public company	Private company
Holding of public company	Section 8 company
Subsidiary of public company	OPC & Small company

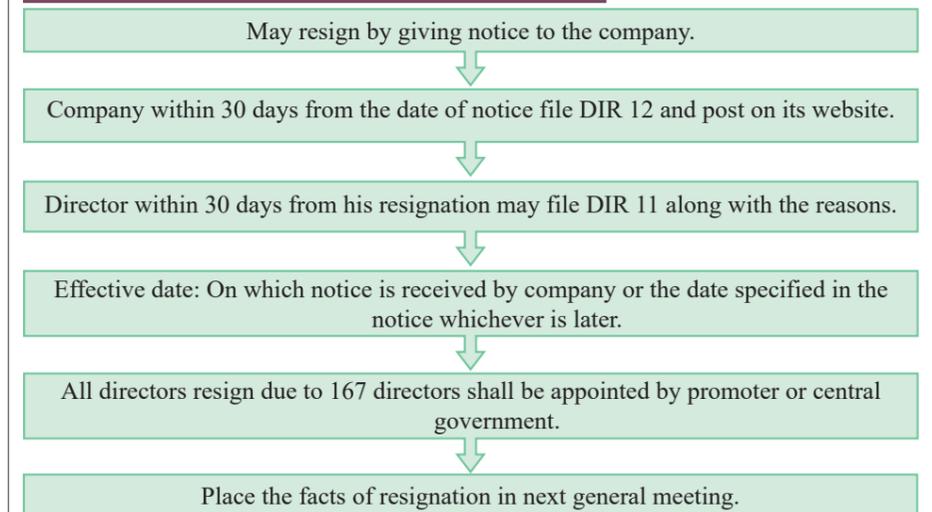
## SECTION 166 DUTIES OF DIRECTORS

- Director shall act in accordance with AOA of the Company.
- Director shall act in good faith to promote objects of the Company for the benefit of its members.
- Avoid Conflict of Interest (conflict of personal interest with Company's interest).
- Perform duties with due and reasonable care, skills and diligence.
- Should not attempt to achieve personal gain or advantage.
- Shall not assign his office and any assignment.

## SECTION 167 VACATION OF OFFICE

- Disqualified under section 164.
- Disqualified u/s 164 (2) (company disqualification) vacation from all companies except company in default.
- Absent from all board meeting during 12 months with or without notice.
- Convicted under section 184 – voting on such resolution in which he is interested.
- Failed to disclose interest.
- Disqualified by order court or tribunal.
- Converted by court and sentenced for not less than 6 months.
- Removal of director u/s 169 or by CG/NCLT.
- Cease to hold such employment by virtue of which was appointed as director.

## SECTION 168 RESIGNATION OF DIRECTOR



## SECTION 169 REMOVAL OF DIRECTORS

- Removal of a director by - Special Notice u/s 115 + O.R. (Removal by S.R. – in case of removal of ID, who is appointed for second term). OOBH given to such director before removal.
- A director appointed in place of REMOVED DIRECTOR shall hold office till the term of such removed director.
- Following director cannot be removed by member
  - Director appointed by tribunal
  - Proportional representational director.
  - Nominee director appointed by FI/bank.

## SECTION 170 MEMBERS RIGHT TO INSPECT REGISTER OF DIRECTOR OR KMP

- Member can inspect register of director or KMP during business hours and member can take extract
- Company shall provide copies within 30 days (free of cost)
- Registers shall kept open for inspection at every AGM
- If inspection during business hours is refused or copies not send within 30 days than on request the registrar shall on an application made to him order immediate inspection and supply of copies.

## SECTION 184 DISCLOSURES BY A DIRECTOR OF HIS INTEREST

- In first meeting of the Board in which he participates as a director.
- Contract or arrangement entered into by the company without disclosure director shall be "liable to a penalty of one lakh.

Whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract.

Director shall disclose interest in any company body corporate form in form number MBP 1.

Director is interested in:

- ❖ Body corporate in which director or directors holds more than 2% of shareholding or he is a promoter, manager, CEO of that company.
- ❖ Firm/entity in which such director is partner, owner, member.

Interested director shall not participate in such meeting and he is not counted as for quorum.

If disinterested director falls below than required quorum then remaining disinterested director shall form the quorum only if they are 2 or above.

If disinterested director falls below 2 then resolution automatically becomes void.

Requirement for disclosure of Interest is applicable to all companies.

### SECTION 185 LOANS TO DIRECTORS

Company shall no directly or indirectly advance any loan, including any loan represented by a book debt.

Advance any loan including any loan represented by a book debt.

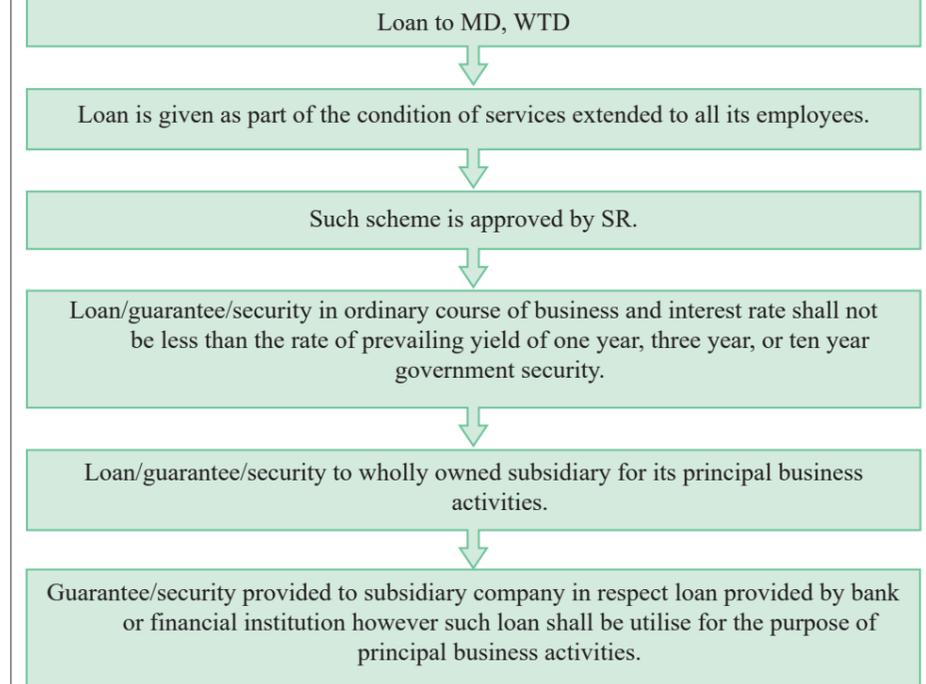
Nothing contained in sub-section (1) and (2) shall apply loan in advanced or a guarantee or security

Pass SR and such loans are utilised by the borrowing company for its principal business activity.

Any person in whom any of the director of the company is interested means

- ❖ Private company of which any such director is a director or member.
- ❖ Any-body corporate in which 25% or more voting power is controlled by director or directors.
- ❖ Any-body corporate, BOD, MD, manager is accustomed to act in accordance with the direction given by director or directors of the lending company.

### SECTION 185 DOES NOT APPLY TO FOLLOWING CATEGORIES-



**Section 2(10)** of the Companies Act, 2013 defines that “**Board of Directors**” or “**Board**”, in relation to a company, means the collective body of the directors of the company

Board of Directors of every company shall consist of **individual only**. Thus, no body corporate, association or firm shall be appointed as director.

### MINIMUM/ MAXIMUM NO. OF DIRECTORS

Company	Minimum	Maximum
OPC	1	15
PRIVATE	2	15
PUBLIC	3	15

- ❖ NOTE: More than 15 directors can also be appointed by passing SR in GM.
- ❖ Section 8 companies can have more than 15 Directors even without passing a special resolution.

### COMPOSITION OF BOARD OF DIRECTORS

COMPOSITION OF BOARD OF DIRECTORS IN A LISTED COMPANY as per Regulation 17 of SEBI (LODR) Regulations, 2015 shall be as follows:

- BOD shall have an optimum combination of executive and non-executive directors with at least one women director and not less than 50% of the board of directors shall comprise of NED. [top 1000 listed entities shall have at least one independent woman Director]
- Where the chairperson = non-executive director, at least one-third of BOD shall be independent directors &, where the chairperson = executive director, at least half of BOD shall be independent directors
- Where the listed company has outstanding Superior Voting Rights Equity Shares, at least half of the board of directors shall be independent directors.

No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of 75 years unless a special resolution is passed with explanatory statement.

Top 2000 listed entities shall comprise of not less than 6 directors

top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall –

- (a) be a non-executive director; (b) not be related to the Managing Director or Chief Executive Officer

### BOARD COMMITTEES

A board committee is a small working group identified by the board, consisting of board members, for the purpose of supporting the board’s work. Committees are generally formed to perform some expertise work.

### SECTION 177 AUDIT COMMITTEE

**Class of Companies required to constitute an Audit Committee (AC)**  
 Every Listed Public Company  
 Public Company with PUC – Rs. 10 cr or more; or  
 Public Company with Turnover – Rs. 100 cr or more; or  
 Public Company with Outstanding loans, deb, deposits – Rs. 50 cr or more

**Composition of an AC**  
 Min. 3 directors with ID forming a majority.  
 Members of AC shall be the persons with an ability to read and understand the financial statements

**Non-Applicability**  
 Unlisted public company which is  
 A) Joint venture  
 B) Dormant company  
 C) Wholly owned subsidiary

### FUNCTIONS OF AUDIT COMMITTEE

- ❖ To recommend appointment, remuneration and terms of auditors.
- ❖ Review and monitor performance of the auditors of the Company and audit process
- ❖ To examine financial statements and auditor’s report
- ❖ Approval or any subsequent modification of transactions of the company with related parties  
 (Power to give Omnibus Approval on the RPTs after checking the provided criteria)
- ❖ Power to approve & ratify transactions by directors or officers for an amount of Rs. 1cr or less. (any such transaction without approval shall be Void)
- ❖ Scrutiny of inter-corporate loans and investments
- ❖ Valuation of undertakings or assets of the company, wherever it is necessary
- ❖ Evaluation of internal financial controls and risk management systems
- ❖ Monitoring the end use of funds raised through public offers and related matters

### AUDIT COMMITTEE

Listed Company	Unlisted Company
Constitution Minimum 3 director out of 2/3rd shall be independent director.	Minimum 3 director- majority shall be independent director
B. All members shall be financially literate and at-least one shall be expert.	Majority of members + Chairman shall be financially literate.

C. At-least 4 board meeting gap shall not exclude-120 days b/w two audit committee meeting	The Companies Act 2013 does not provide for Frequency of meeting of the Audit Committee
Quorum 2 Directors or 1/3 of total director whichever is higher (min-2-id)	Quorum min no. of meeting may be decided by bod.
Chairman shall be independent director	Chairman shall be independent person.

### SECTION 177(9) & (10) VIGIL MECHANISM

**Applicability**  
 Listed Company  
 the Companies which accept deposits from the public  
 the Companies which have borrowed money from banks and PFI in excess of Rs. 50 cr  
**AC shall oversee the vigil mechanism. In other cases (where AC is not required), Board to nominate a director to play the role of AC for the purpose of Vigil mechanism**

Vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism

### SECTION 178 NOMINATION AND REMUNERATION COMMITTEE

**Applicability**  
 Every Listed Public Company  
 Public Company with PUC – Rs. 10 cr or more; or  
 Public Company with Turnover – Rs. 100 cr or more; or  
 Public Company with Outstanding loans, deb, deposits – Rs. 50 cr or more

**Composition of NRC**  
 3 or more NED out of which 50% or more shall be ID  
 Chairperson of the Company shall not chair NRC, however, can become a member of NRC

**Functions of NRC**  
 Identify persons who are qualified to become directors / senior management officials.  
 Recommend the appointment and removal to the Board.  
 Specify the manner for effective performance evaluation of the Board, its committees and individual directors.

## SECTION 178(5) STAKEHOLDERS RELATIONSHIP COMMITTEE

### Applicability

A company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a SRC

### Composition

SRC to consist of a chairperson who shall be a non-executive director and such other members as may be decided by the Board

### Functions

Consider and resolve the grievances of security holders of the company

## RISK MANAGEMENT COMMITTEE

**APPLICABILITY:** Top 1000 listed entities

### Composition

- Minimum 3 members** with majority of them being members of the board of directors, including at least one independent director
- Listed entity having outstanding SR equity shares, at least two-thirds of the Risk Management Committee shall comprise of independent directors
- The Chairperson (RMC) = member of the BOD and senior executives of the listed entity may be members of the committee
- QUORUM:** Two members or one-third of the members of the committee, whichever is higher (Including at-least one member of BOD)
- MEETING** – 2 meeting; Gap max 210 days between 2 consecutive meeting
- FUNCTIONS / ROLE**

- Monitor and implement risk management policy
- Measures for risk mitigation

- Identify internal and external risk
- Review policy

## CSR COMMITTEE (SECTION 135)

**APPLICABILITY:** Every Company shall constitute CSR Committee Having

Net worth  
500cr or more or,

Turnover  
1000 cr or more  
or,

Net profit  
5cr or  
more

## COMPOSITION

### Listed co.

3 Directors  
Atlest 1 ID

### Unlisted Public co.

Min. 2  
Directors

### Private co.

Min. 2  
Directors

## FUNCTIONS

- formulate policy and recommend to board
- recommended amount of CSR Expenditure
- Monitor CSR Policy

DISCLOSURE: In board report & website

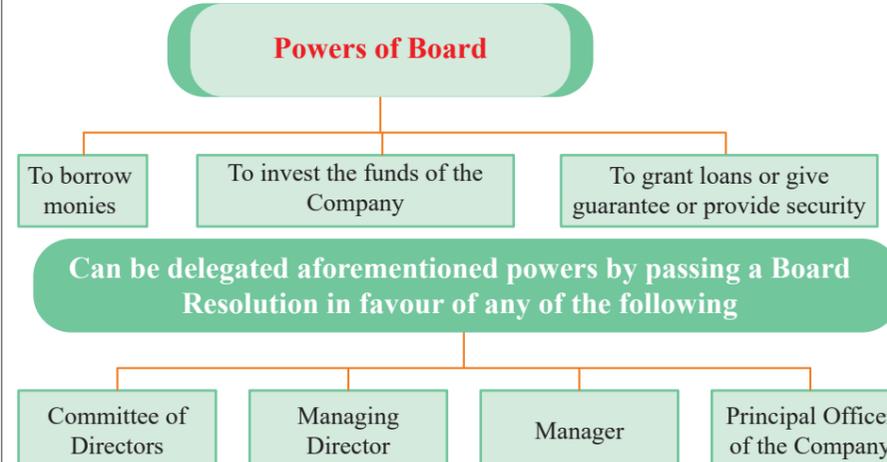
## SECTION: 179 POWER OF BOARD

The Board of Directors of the Company, without the permission of shareholders may exercise following powers namely:

- To make calls on shareholders in respect of money unpaid on their shares;
- To authorize buy-back of securities under section 68;
- To issue securities, including debentures, whether in or outside India;
- To borrow monies;
- To invest the funds of the company;
- To grant loans or give guarantee or provide security in respect of loans;
- To approve financial statement and the Board's report;
- To diversify the business of the company.
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company;
- To make political contributions;
- To appoint or remove key managerial personnel (KMP);
- To appoint internal auditors and secretarial auditor

## DELEGATION OF POWERS OF BOARD

Board may delegate these 3 powers:



❖ In case of section 8 company the above 3 powers decided by circulation.

## [SECTION 180] RESTRICTION ON POWERS OF THE BOARD

This Section is applicable only to public company.

The company shall with the consent of the shareholders by way of a special resolution exercise following powers namely:

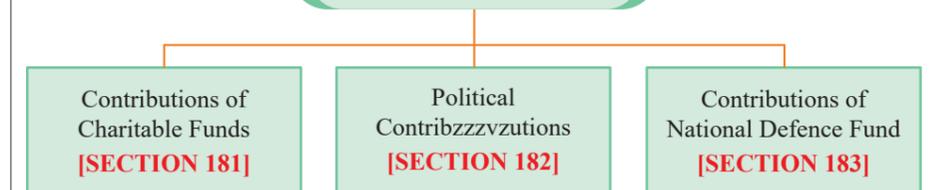
To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings

To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation

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

Money already borrowed + proposed borrowing if exceed aggregate of (PSC+FR+SPR), except temporary loans

### Various Contributions Made by Company



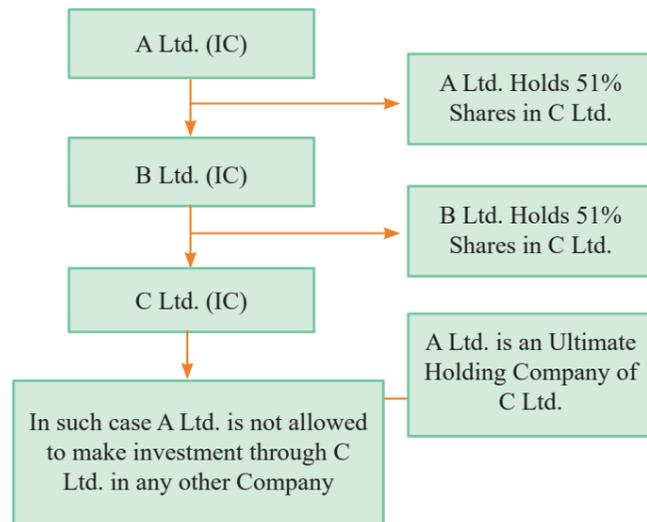
Heads	Charitable	Political	Defence
Section	181	182	183
Applicable	All Companies	All Companies	All Companies
Not allowed to	NA	To Government Companies and Companies incorporated less than 3 yrs	NA
Limit of Contribution	Upto 5% of average net profit of last 3 years	No Limit	No Limit
Approvals	Upto 5% = BR Above 5% = OR	BR	BR

## LOAN AND INVESTMENT BY COMPANIES [SECTION 186(1)]

Section 186(1) restricts the power of a company from making an investment through not more than 2 layers of investment companies, subject to exceptions provided in the proviso as follows:

Acquisition of any other company incorporated in a country outside India, which has investment subsidiaries beyond two layers as per the laws of such country

A subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.



### NON-APPLICABILITY OF SECTION 186

Banking company  
Insurance company  
Housing finance company  
Business of financing industrial enterprises or infrastructure facility

**Exemption**  
Government Company engaged in defence produce.  
Government unlisted company with the approval of central government

### INVESTMENT IN THE NAME OF COMPANY (SECTION 187)

All investment shall be made and held by the company on its own name.

Company may hold any shares in its subsidiary in the of any nominee if it is necessary to do so

Any share or securities not held by it in own name, then company shall maintain a register which contain the particular of such investment and kept open for inspection during business hours.

### [SECTION 188] RELATED PARTY TRANSACTIONS

Related party transactions mean contracts or arrangements between a company and its related parties with respect to transactions covered under this section.

### [SECTION 2(76)] RELATED PARTY

- Director or his relative.
- KMP or his relatives.
- A firm in which director, manager or his relative is a partner
- Private Company in which director, manager or his relative is a director or member
- A Public company in which director or manager is a director and **holds more than 2% of his paid-up share capital along with his relatives.**
- Body corporate whose board, MD or manager is accustomed to act as per the directions given by the director or manager.
- Any person on whose advice or director or manager is a custom to act.
- Any-body corporate which is holding, subsidiary, associate company of such company.

- Body corporate which is a subsidiary company of a holding company to which it is also a subsidiary company.
- Any-body corporate which is an investment company or the venture of the company.

### NATURE OF RPT (7 TYPES OF TRANSACTIONS)

- sale, purchase or supply of any goods or materials;
- selling or otherwise disposing of, or buying, property of any kind;
- leasing of property of any kind;
- availing or rendering of any services;
- appointment of any agent for purchase or sale of goods, materials, services or property;
- such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
- underwriting the subscription of any securities or derivatives thereof, of the company

### Related Party Transaction → by Passing OR if the Value Exceed the Lower of Following Limit

Sale/supply/purchase of goods/materials worth	10% or more of annual turnover
Selling or otherwise disposing of, or buying, property of any kind	10% or more of net worth
Leasing of property	10% or more of annual turnover
Availing or rendering of services	10% or more of annual turnover
Any regarding appointment at office or place of profit	Rs 2.5 lacs per month.
Underwriter where remuneration to underwriter	More than 1% of net worth.

### Exceptions

- ❖ Transaction in ordinary course of business at **an arm's-length price**
- ❖ Transaction between **holding or wholly owned subsidiary company.**
- ❖ Transactions between **government companies.**
- ❖ Unlisted Government Company with the related party, approval from central or state government.

### POINTS TO BE REMEMBER

- ❖ Interested directors shall not be present at board meetings during discussion on the subject matter of the resolution relating to such contract/arrangement.
- ❖ All the RPT required prior approval of the audit committee.
- ❖ Details of RPT shall be disclosed in the Annual report.
- ❖ Obtain omnibus approval which shall be valid for 1 year in case of transaction up to 1 cr.

### LIMITS FOR LOANS, GUARANTEES, SECURITY AND INVESTMENT [SECTION 186(2)]

**No Company can directly or indirectly do the following activities**

- Give any loan to any person or other body corporate;
- Give any guarantee, or provide security, in connection with a loan to any other body corporate or person; and
- Acquire, by way of subscription, purchase or otherwise the securities of any other body corporate;

exceeding 60% of its paid-up share capital, free reserves and securities premium account **Limit OR** exceeding 100% of its free reserves and securities premium account **Whichever is more**

Section 186(3) – Special Resolution in the General Meeting. If ILGS exceeds 60% or 100% (whichever is HIGHER) limit laid down u/s 186(2)

Section 186(5) – Prior Unanimous Board Resolution + Prior PFI Approval (if any term loan is subsisting).  
There are certain conditions laid down in which PFI approval is not required

**SECTION 173 MEETINGS OF THE BOARD**

- ❖ First board meeting within 30 days from the incorporation
- ❖ Subsequent four board meetings in every calendar year in addition to first board meeting.
- ❖ Gap between two BM should not be more than 120 days
- ❖ 1 meeting in each quarter as per SS 1.
- ❖ In case of OPC /small Company/dormant company private company / section 8 company/IFSC / start-up company- One meeting in each half calendar year, min. gap 90 days.
- ❖ OPC having single director- no need to hold board meeting

**NOTICE OF B.M**

At least seven clear days' notice to all director before the meeting. (Exclude day on which notice is served and date of board meeting.)

- ❖ If company sends the notice by speed post or by registered post, an additional two days shall be excluded.
- ❖ Notice given to all directors including alternate director and interested director at their registered address.

- ❖ The Notice shall specify the serial number, day, date, time and full address of the venue of the meeting
- ❖ Give notice by hand delivery or post or electronic mode.

MEETING AT SHORTER NOTICE - Shorter notice is allowed if one ID is present in the meeting

- ❖ In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification by at least one ID.

Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall not be less than three years from the date of the Meeting.

- ❖ Notice shall be issued by the Company Secretary or where there is no Company Secretary, any Director or any other person authorised by the Board.

The Notice of a Meeting shall be given even if Meetings are held on pre-determined dates or at pre-determined intervals.

- ❖ The Notice shall inform the Directors about the option available to them to participate through Electronic Mode.

**AGENDA OF BM**

As per SS-1, an Agenda, setting out the business to be transacted at the Meeting, shall be given to the Directors at least seven days before the date of the Meeting, unless the Articles prescribe a longer period.

Each item of business to be taken up at the Meeting shall be serially numbered.

Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting

**MODE OF PARTICIPATION IN BM**

- ❖ Physical presence or
- ❖ Through Video Conferencing or Audio-Visual means
- ❖ **Section 174 Quorum of BM - Quorum means the minimum number of directors required to convene BM.**

- ❖ Quorum is required throughout the BM.
- ❖ Quorum of BM - 1/3rd of total strength of Board or two directors, whichever is higher.

Directors participating through video conference/ audio visual modes shall be counted for the quorum.

- ❖ Interested director cannot be counted for the purpose of quorum. Except in case of a private company, a Director shall be entitled to participate in respect of such item after disclosure of his interest.

If more than 2/3rd director are interested then remaining director shall form the quorum, provided they are at least 2 in number .If disinterested director is less than 2 then resolution shall be void

- ❖ When quorum is not sufficient then continuing director can act to bring the quorum to requisite number or convene an EGM to appoint new director to meet the quorum.

Lack of quorum: - Adjournment of meeting on the same day, time, and place in next week except national holiday or if such day is national holiday then till the succeeding day which is not a national holiday.

If at the time of adjourned BM no quorum is present, THEN such meeting shall stands cancelled.

**ADJOURNED MEETING**

Notice of an adjourned meeting shall be given to all directors including those who did not attend the meeting on the originally convened date and unless the date of adjourned Meeting is decided at the Meeting, Notice thereof shall also be given not less than seven days before the meeting. (SS-1)

Where adjourned meeting will be held as per AOA or at the same time, place in the next week of original meeting, no notice is required.

If notice of meeting is not given to one of its directors, meeting of board of directors is invalid and resolution passed at such meeting are inoperative. however if director attends the meeting then the meeting is valid.

**ATTENDANCE REGISTER**

- ❖ Attendance register is a formal evidence of the presence of the persons signing such register.
- ❖ Maintain separate register and shall Kept in the custody of CS .

- ❖ Maintain at registered office or other approval place by director.
- ❖ Open for inspection by the director even after ceased to be a director if meeting is held during the period of his directorship.

- ❖ Preserve for 8 financial years from last entry.
- ❖ The attendance register shall be deemed to have been signed by the Directors participating through Electronic Mode, if their attendance is recorded and authenticated by the Company Secretary.

**CHAIRMAN OF THE MEETING**

Chairman of the meeting shall be the chairman of the board.

Company does not have chairman BOD shall elect one of themselves as chairman

## TYPES OF RESOLUTIONS

Board Resolution	Unanimous Resolution
No. of directors voting in favour of the resolution.	All the directors present at the Board meeting
Shall be more than the no. of directors voting against the resolution.	Shall give their EXPRESS CONSENT for approving the resolution
Includes Resolution by Circulation (Sec 175)	i.e. 100% of directors consent.

## RESOLUTION PASSED BY CIRCULATION (SECTION 175)

- ❖ Resolution paper circulated to all the directors as well as committee members in India
- ❖ Send draft resolution by Speed post/Courier/Electronic mode

- ❖ Resolution must be passed by majority of directors
- ❖ If request by one third of director that the resolution must be decided at the meeting chairman shall put the resolution at meeting.

- ❖ Resolution passed by circulation shall be part of subsequent meeting and made part of the minutes of such meeting
- ❖ Respond within 7 days from the circulation of draft

### Effective Date

last date for signing or assent has been received **or**  
date on which assent is received by requisite majority

**provided that** on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall **not be one third or more** of the total number of Directors. [Whichever is earlier]

## MINUTES (SECTION 118)

Minutes” means a formal written record, in physical or electronic form, of the proceedings of a Meeting.

- Prepare within 30 days from meeting

  - ❖ Shall prepare sign and keep minutes of meeting.
  - ❖ Circulated among all the directors within 15 days from conclusion of BM.

Every director who attends the meeting shall confirm or give comment about accuracy within 7 days after receipt of draft minutes.

  - ❖ Entry in minutes book and signed by chairperson within 30 days from conclusion of BM.
  - ❖ Signed by chairman of the meeting or chairman of the next meeting.

All pages initiated and last page to be signed and dated.

  - ❖ Preservation of minutes shall be permanently.
  - ❖ Minutes may be maintained in written or electronic form.

## VIRTUAL MEETING

Meaning of Virtual Meetings: A meeting held totally by means of either Video conferencing or other audio-visual means is known as Virtual Meeting.

### Brief Requirements for Virtual Meeting

- ❖ The brief requirements of virtual meetings are given below:
- ❖ Meeting rooms;
- ❖ Software, which can be either purchased or can be provided by vendor for a fee on yearly rental basis;
- ❖ Hardware equipment like Monitor or LED screen, Webcams;
- ❖ High quality mike system;
- ❖ Projectors;
- ❖ Document scanners;
- ❖ Leased Lines;
- ❖ High speed wireless internet;

- ❖ Recording & Storage Equipment for recording the proceeding and Proper storage for future reference as many be required under law;
- ❖ Have trial run before the meeting to ensure all the systems are working properly;
- ❖ Ensure that the proper arrangements are made in the Meeting room.

## KEY POINTS OF VIRTUAL MEETING

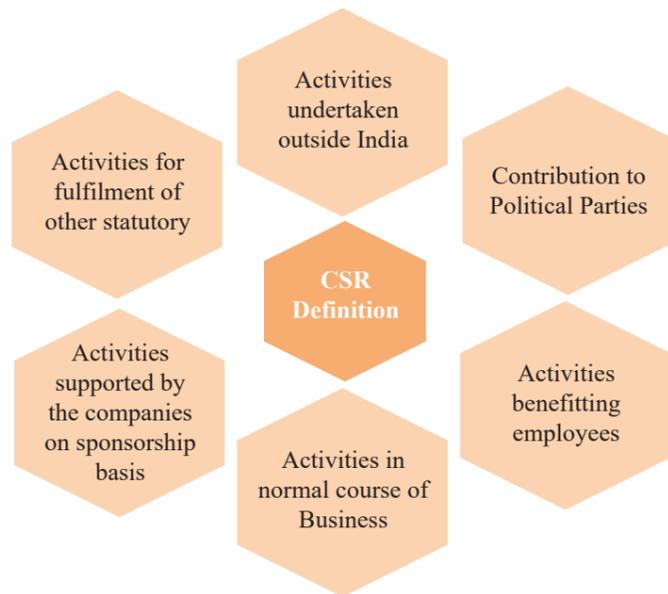
- ❖ Every Company shall make necessary arrangements to avoid failure of video or audio-visual connection.
- ❖ The chairperson of the meeting and the company secretary, if any, shall take due and reasonable care.
- ❖ The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means.
- ❖ A director intending to participate through video conferencing mode or audio-visual means shall communicate his intention to the Chairman or the Company Secretary of the company.
- ❖ If the director intends to participate through video conferencing or other audio-visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangement in this behalf.
- ❖ Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year.
- ❖ In the absence of any such intimation from the director, it shall be assumed that the director will attend the meeting in person.

## SUMMARIZED PROCEDURE OF VIDEO CONFERENCING

- ❖ Roll call by chairperson.
- ❖ Directors to introduce themselves at each and every time they speak on matters.
- ❖ Presence will be counted for quorum.
- ❖ No unauthorized access.
- ❖ Directors to repeat if there is any disturbances.
- ❖ Chairperson to announce summary at the end of the Meeting

## MEANING OF CORPORATE SOCIAL RESPONSIBILITY (CSR)

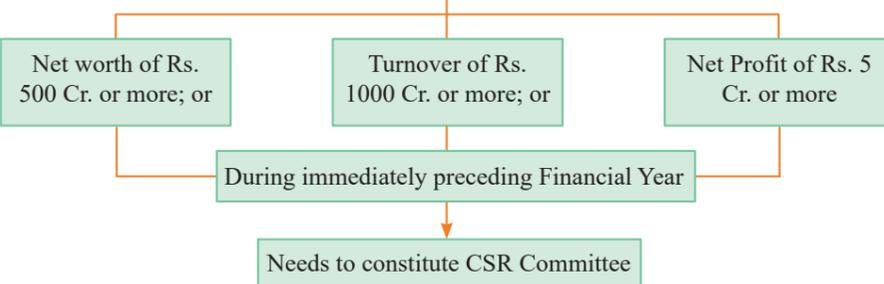
CSR is a concept whereby companies not only consider their profitability and growth, but also the interests of society and the environment by taking responsibility for the impact of their activities on stakeholders, environment, consumers, employees, communities, and all other members in the public sphere.



## SECTION 135(1) APPLICABILITY OF CSR

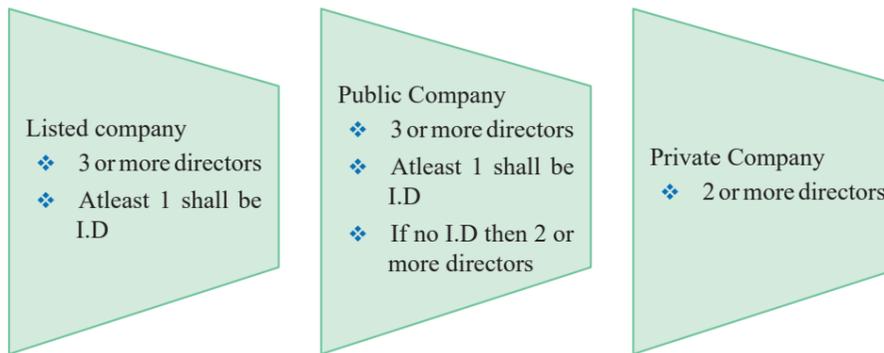
### Companies falling under CSR preview

### Every company (including Foreign Company) having:



As per section 135(9) of the Act, where the amount to be spent by a company under Section 135 (5) of the Companies Act, 2013 does not exceed Rs. 50 Lakh, the requirement under Section 135 (1) for constitution of the CSR Committee shall not be applicable.

## SECTION 135(2) COMPOSITION OF CSR COMMITTEE



## SECTION 135(3), THE ROLES OF CSR COMMITTEE SHALL:

- To formulate and recommend to the Board, a CSR Policy which would indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII of the Act.
- To recommend the amount of the expenditure to be incurred on the activities undertaken in pursuance of the CSR policy.
- To monitor the CSR policy of the company time to time.

## FUNCTIONS AND RESPONSIBILITIES OF THE BOARD

The Board of the Company shall be fully accountable and responsible for the execution and implementation of the CSR policy and all of the projects that are formulated thereunder and ensure:

- Provisions of the resources for the establishment, implementation, maintenance and continual improvement of the system required for CSR;
- Involvement of all concerned stakeholders in CSR Implementation;
- Awareness and promotion of CSR as an integral part of the business and culture

## CSR IMPLEMENTATION

### The Board shall ensure that the CSR activities are undertaken by the company itself or through

- |  |   |   |
|--|---|---|
| (a) a company established under section 8 of the Act, or a registered public trust or a registered society | (b) a company established under section 8 of the Companies Act, 2013 or a registered trust or a registered society, established by the Central Government or State Government; or | (c) any entity established under an Act of Parliament or a State legislature; |
|--|---|---|

## SECTION 135(4), THE BOARD OF EVERY COMPANY SHALL:

(a) after taking into account the recommendations made by CSR Committee, approve the CSR Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, and

(b) ensure that the activities as are included in CSR Policy of the company are undertaken by the company

## SECTION 135 (5) THE BOARD OF EVERY COMPANY SHALL ENSURES THAT

- the company spends, in every financial year, at least 2% of the average net profits of the company made during the 3 immediately preceding FY or
- where the company has not completed the period of 3 FY since its incorporation, during such immediately preceding financial years in pursuance of its CSR Policy:
- Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for CSR activities:
- Provided further that if the company fails to spend such amount, the Board shall, in its report specify the reasons for not spending the amount and, unless the unspent amount relates to any ongoing project transfer such unspent amount to a Fund specified in Schedule VII, within a period of 6 MONTHS of the expiry of the FY
- Provided also that if the company spends an amount in excess of the requirements provided, such company may set off such excess amount against the requirement to spend for such number of succeeding FY and in such manner, as may be prescribed.

Any amount remaining unspent pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its CSR Policy, shall be transferred by the company within a period of 30days from the end of the FY to a special account to be opened by the company in any scheduled bank to be called the Unspent CSR Account, and such amount shall be spent by the company in pursuance of its obligation towards the CSR Policy within a period of 3 FY from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of 30days from the date of completion of the third FY

If a company is in default in complying with the provisions of sub-section (5) the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent CSR Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent CSR Account, or two lakh rupees, whichever is less

## SCHEDULE VII CSR ACTIVITIES

Activities which may be included by companies in their Corporate Social Responsibility Policies Activities relating to:

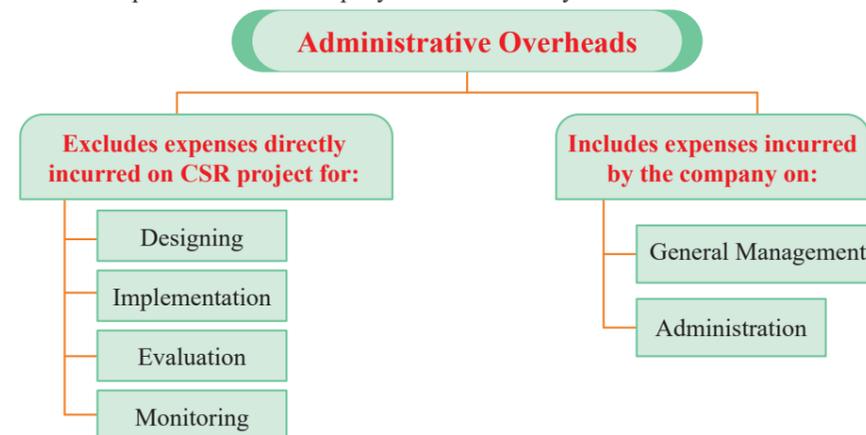
- (i) eradicating hunger, poverty and malnutrition, promoting health care including preventive health care and sanitation including contribution to the Swachh Bharat Kosh set-up by the Central Government for the promotion of sanitation and making available safe drinking water;
- (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects;
- (iii) promoting gender equality, empowering women, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups;
- (iv) ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, Agroforestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga;
- (v) protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts;
- (vi) measures for the benefit of armed forces veteran, war widows and their dependents, Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows;
- (vii) training to promote rural sports, nationally recognized sports, paralympic sports and Olympic sports;
- (viii) contribution to the Prime Minister's National Relief Fund or Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM Cares Fund) or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women;
- (ix) (a) Contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the Central Government or State Government or Public Sector Undertaking or any agency of the Central Government or State Government; and  
(b) Contributions to public funded Universities; Indian Institute of Technology (IITs); National Laboratories and autonomous bodies established under Department of Atomic Energy (DAE); Department of Biotechnology (DBT); Department of Science and Technology (DST); Department of Pharmaceuticals; Ministry of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (AYUSH); Ministry of Electronics and Information Technology and other bodies, namely Defense Research and Development Organisation (DRDO); Indian Council of Agricultural Research (ICAR); Indian Council of Medical Research (ICMR) and Council of Scientific and Industrial Research (CSIR), engaged in conducting research in science, technology, engineering and medicine aimed at promoting Sustainable Development Goals (SDGs).
- (x) rural development projects;
- (xi) slum area development where 'slum area' shall mean any area declared as such by the Central Government or any State Government or any other competent authority under any law for the time being in force;

(xii) disaster management, including relief, rehabilitation and reconstruction activities.  
**The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:**

- ❖ the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;
- ❖ the manner of execution of such projects or programmes.
- ❖ the modalities of utilisation of funds and implementation schedules for the projects or programmes
- ❖ monitoring and reporting mechanism for the projects or programmes; and
- ❖ details of need and impact assessment, if any, for the projects undertaken by the company.
- ❖ Provided that Board may alter such plan at any time during the FY, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

## CSR EXPENDITURE

- (1) The board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of the company for the financial year.



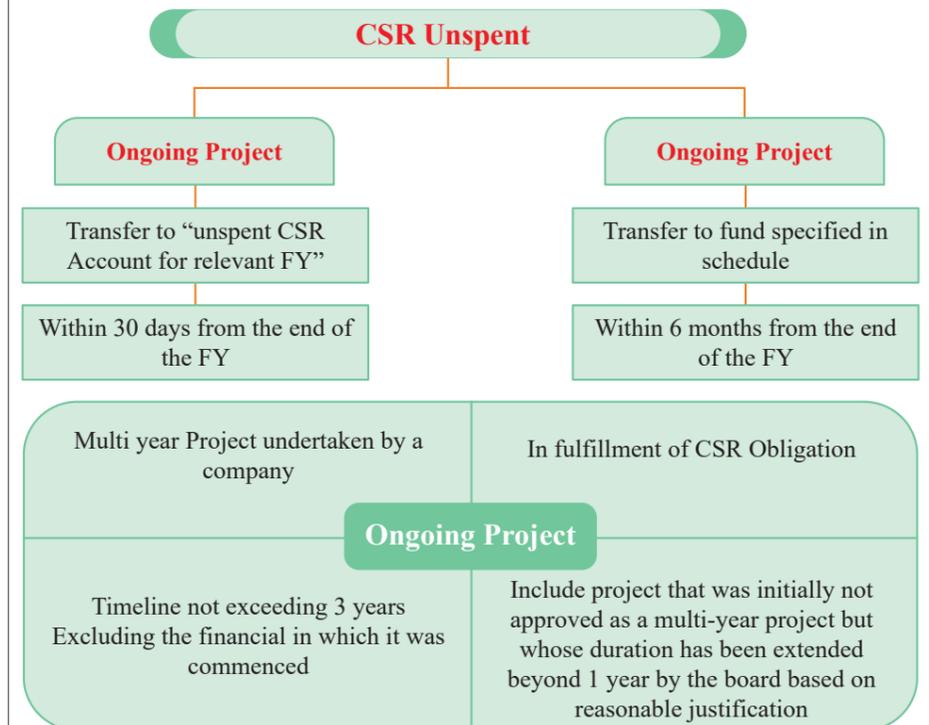
- (2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Sch VII, within a period of **6 months** of the expiry of the FY.
- (3) Where a company spends an amount in excess of requirement provided under section 135(5), such excess amount may be set off against the requirement to spend under section 135(5) up to immediate succeeding **3 FYs** subject to the conditions that
  - (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities.
  - (ii) the Board of the company shall pass a resolution to that effect.
  - (iii) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –

- (a) a company established under section 8 of the Act, or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number or
- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or

## CSR REPORTING

- (1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable
- (2) In case of a foreign company, the balance sheet filed shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.
- (3) (a) Every company having average CSR obligation of **10 crore rupees or more** in pursuance of section 135(5) of the Act, in the **3 immediately preceding financial years**, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of **1 crore rupees or more**, and which have been completed **not less than 1 year** before undertaking the impact study.  
(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.  
(c) A Company undertaking impact assessment may book the expenditure towards CSR for that FY, which shall not exceed 2% of the total CSR expenditure for that FY or 50lakh rupees, whichever is higher.

**Display of CSR activities on its website:** The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access



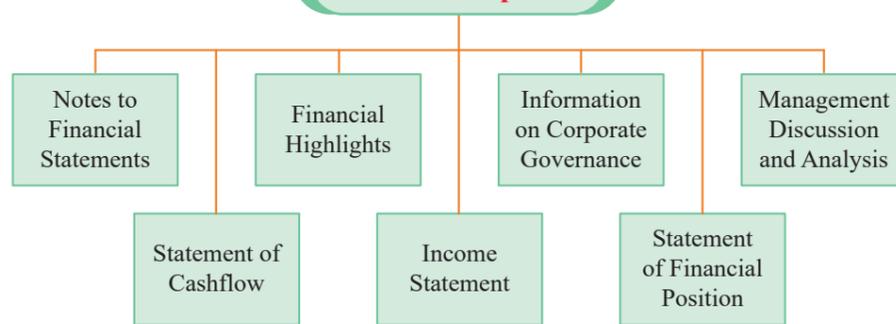
## ANNUAL REPORT

The annual report is a comprehensive report provided by most public companies to disclose their corporate activities over the past year. The report is typically issued to shareholders and other stakeholders who use it to evaluate the firm's performance including both operating and financial highlights.

Annual reports also give an account of corporate activities, legal highlights and corporate governance arena. In addition, the management discussion and analysis report emphasize management commentary on risks and concerns of the business.

The annual report also present changes in accounting policies, financial disclosure, capital projects, and other information/disclosures relevant to shareholders.

### Components to Annual Report



2.	Subsidiary	Same disclosures as applicable to the parent company in the accounts of subsidiary company.
3.	Holding Company	Investments by the loanee in the shares of parent company and subsidiary company, when the company has made a loan or advance in the nature of loan.

### B. Management Discussion and Analysis

This section shall include discussion on the following matters:

- Industry structure and developments;
- Opportunities and Threats;
- Segment-wise or product-wise performance;
- Outlook;
- Risks and concerns;
- Internal control systems and their adequacy;
- Discussion on financial performance with respect to operational performance;
- Material developments in Human Resources / Industrial Relations front, including number of people employed;
- Details of significant changes, along with detailed explanations including:
  - Debtors Turnover
  - Inventory Turnover
  - Interest Coverage Ratio
  - Current Ratio
  - Debt Equity Ratio
  - Operating Profit Margin (%)
  - Net Profit Margin (%)
 or sector-specific equivalent ratios, as applicable.
- Details of any change in Return on Net Worth as compared to the immediately previous FY along with a detailed explanation thereof.

**As per Regulation 34 of the SEBI (LODR), Regulations, 2015, the listed entity shall submit to the stock exchange and publish on its website-**

- A copy of the annual report sent to the shareholders along with the notice of the AGM not later than the day of commencement of dispatch to its shareholders;
- In the event of any changes to the annual report, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the AGM.

### SUCH ANNUAL REPORT SHALL CONTAIN THE FOLLOWING:

- Audited financial statements i.e. balance sheet, profit and loss account etc, and Statement on Impact of Audit Qualifications.
- Consolidated financial statements audited by its statutory auditors;

- Cash flow statement
- Directors Report;

- Management discussion and analysis report
- For the top one thousand listed entities based on market capitalization, a business responsibility report describing the initiatives taken by the listed entity from an environmental, social and governance perspective, in the format as specified by the Board from time to time.



### A. Related Party Disclosure

- The listed entity which has listed its non-convertible securities shall make disclosures in compliance with the Accounting Standard on "Related Party Disclosures".
- The disclosure requirements shall be as follows:

S.No.	In the accounts of	Disclosures of amounts at the year end and the maximum amount of loans/advances/Investments outstanding during the year
1.	Holding Company	<ul style="list-style-type: none"> <li>Loans and advances in the nature of loans to subsidiaries by name and amount.</li> <li>Loans and advances in the nature of loans to associates by name and amount.</li> <li>Loans and advances in the nature of loans to firms/companies in which directors are interested by name and amount.</li> </ul>

### STATEMENT OF DEVIATION OR VARIATION

As per Regulation 32 of SEBI(LODR) Regulations, 2015, The listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc:

- indicating deviations, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the GM, as applicable;
- indicating category wise variation (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the GM

## DOCUMENTS & INFORMATION TO SHAREHOLDERS

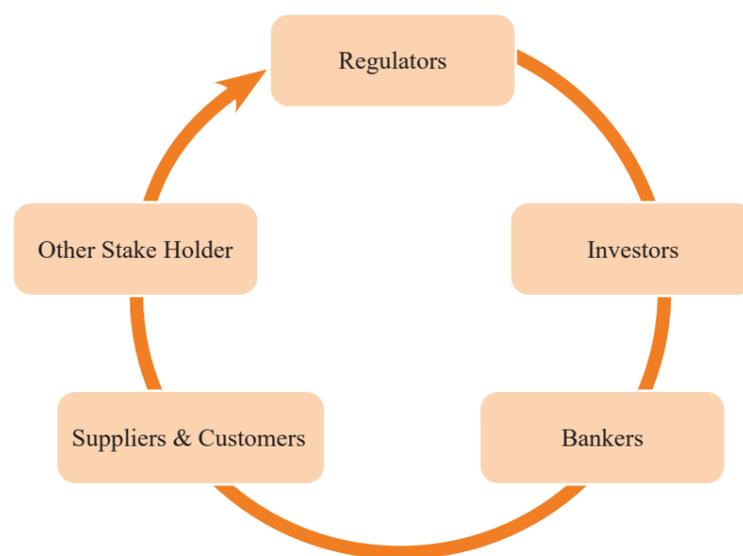
According to Regulation 36 of SEBI (LODR) Regulations the listed entity shall send the annual report in the following manner to the shareholders:

- Soft copies of full annual report to all those shareholder who have registered their email address either with the listed entity or with any depository;
- Hard copy of statement containing the salient features of all the documents, as prescribed in Section 136 of Companies Act, 2013.
- Hard copies of full annual reports to those shareholders, who request for the same.

## BOARD'S REPORT

- It is mandatory for the BOD of every company to present financial statement to the shareholders along with its report, known as the "Board's Report" at every AGM.
- The Board's Report is the most important means of communication by the Board of Directors of a company with its shareholders
- The Board's Report enables not only the shareholders but also the lenders, bankers, government and the public to make an appraisal of the company's performance and provides an insight into the future growth and profitability of the company.

## COMPANY SHALL DISCLOSE THEIR BOARD REPORT TO



## DISCLOSURE IN BOARD'S REPORT PURSUANT TO THE COMPANIES ACT, 2013

Disclosures under Section 134(3)	Issue of Equity Shares with differential rights under Section 43 r/w Rule 4 of the Companies (Share Capital & Debentures) Rules, 2014	Issue of Sweat Equity Shares under Section 54 r/w Rule 8 of the Companies (Share Capital & Debentures) Rules, 2014
Details of Employees Stock Option Scheme-Section 62(1)(b) r/w Rule 12(9) of the Companies (Share Capital & Debentures) Rules, 2014	Restrictions on purchase by company or giving of loans by it for under Section 67 r/w Rule 16 of the Companies (Share Capital & Debentures) Rules, 2014	Disclosures pertaining to Consolidated Financial Statements under Section 129
Voluntary revision of Financial Statements or Board's Report-Section 131(1)	Corporate Cocila Responsibility Section 135	Appointment/ Re-Appointments of an Independent Director-Section 149(10)
Resignation of Director Section 168(1)	Composition of Audit Committee Section 177(8)	Details of Vigil Mechanism Section 177(10)
Policy relating to the remuneration for the directors, key managerial personnel and other employees - Section 178(4)	Related party transactions- Section 188(2)	Disclosures pertaining to remuneration of directors and employees - Section 197(12)
Remuneration received by MD and WTD from holding or subsidiary companies- Section 197(14)	Secretarial Audit Report - Section 204(1)	

## DISCLOSURES UNDER SECTION 134(3)

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

### Board's Report shall include

- The web address,
- Number of meetings of the Board
- Directors' Responsibility Statement
- details in respect of frauds reported by auditors under sub-section (12) of section 143 other than those which are reportable to the Central Government.
- A statement on declaration given by independent directors under sub-section (6) of section 149:
- Company's policy on directors' appointment and remuneration including criteria for determining qualifications.
- Particulars of loans, guarantees or investments under section 186:

- Particulars of contracts or arrangements with related parties referred to in sub-section (1) of **section 188**
- The state of the company's affairs
- The amounts, if any, which it proposes to carry to any reserves
- the details of directors who were appointed or have resigned during the year;

## APPROVAL OF THE BOARD'S REPORT

The Board's Report should be considered, approved and signed at a meeting of the Board duly convened or held through video conferencing or other audio-visual means.

## SIGNING OF BOARD'S REPORT

<b>Where Chairperson is authorised by the Board</b>	Chairperson of the Company
<b>Where Chairperson is not authorised by the Board</b>	At least by two directors, one of whom shall be Managing Director, or by the director where there is one director

## Circulation of the Board's Report

The copy of Board's Report shall be issued, circulated or published along with a signed copy of every financial statement, including consolidated financial statement if any, all the notes annexed to or forming part of such financial statement and the Auditors' Report.

## Right of Members to Receive Copies of Financial Statements, Board's Report, etc.

Section 136 of the Act provides that, a copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a company in its general meeting, shall be sent to:

- every member of the company,
- every trustee for the debenture holder of any debentures issued by the company, and
- all persons other than such member or trustee, being the person so entitled, **not less than 21 clear days** before the date of the meeting.

## Filing of the Board's Report

Section 137(1) of the Act provides that copies of financial statement along with all documents required to be annexed should be filed with the ROC **within 30 days** along with the prescribed fees, after the financial statements, including consolidated financial statements have been adopted at the AGM. The Board's Report has to be attached to the financial statements.

## SECTION 92 [ANNUAL RETURN]

- Annual Return is a significant document for the stakeholders of a company as it provides in a nutshell, very comprehensive information about various aspects of a company.
- It is perhaps the most important document required to be filed by every company with the ROC, this is the only document to be compulsorily filed with the Registrar every year irrespective of any events / happenings in the company.
- Annual Return which gives extensive disclosure and greater insight into the non-financial matters of the company and the people behind management of the company.

## APPLICABILITY

- ❖ Every company is required to prepare the Annual Return in **Form No. MGT-7** except One Person Company (OPC) and Small Company.
- ❖ OPC and Small Company shall file annual return from the financial year 2020-2021 onwards in **Form No.MGT-7A**.
- ❖ Annual Return is to be filed with the Registrar **within 60 days** from the date on which AGM is actually held or from the last day on which AGM should have been held.

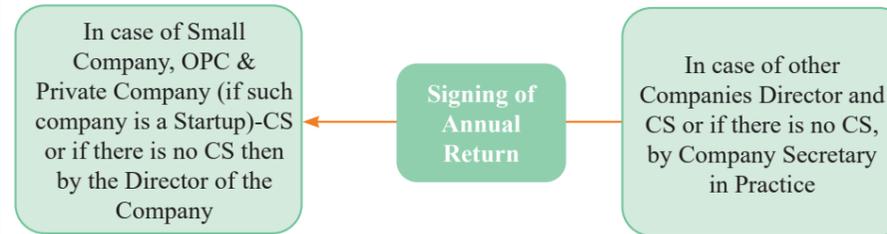
## CONTENTS OF ANNUAL RETURN

Annual Return shall contain the following particulars in consonance with the Section 92(1) of the Act:

- its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and share holding pattern;
- its indebtedness;
- its members and debenture-holders along with changes therein since the close of the previous FY.
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;

- remuneration of directors and key managerial personnel;
- penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of compliances, disclosures as may be prescribed;
- details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of share holding held by them; and
- such other matters as may be prescribed.

## SIGNING OF ANNUAL RETURN



## PRESERVATION OF ANNUAL RETURN

- ❖ The Company is required to keep and maintain copies of the Annual Return filed under Section 92 of the Companies Act, 2013 at the registered office of the company.

- ❖ The copies of Annual Return may also be kept at any other place in India in which **more than one-tenth** of the total number of members entered in the register of members resides, if **approved by a special resolution** passed at a GM of the company.
- ❖ Copies of all Annual Returns and copies of all certificates and documents required to be annexed shall be **preserved for a period of eight years** from the date of filing with the Registrar.

## INSPECTION OF ANNUAL RETURN

- ❖ Copies of Annual returns prepared, shall be open for inspection during business hours, of **not less than two hours** on every working day on payment of such fee as may be specified in the articles of association of the company but **not exceeding 50 rupees** for each inspection.
- ❖ Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of return on payment of fees in the AOA of the company but not exceeding **10 rupees** for each page. Such copy of return shall be supplied **within 7 days** of deposit of such fee.

## CONTRAVENTION AND CONSEQUENCES

If any company fails to file its annual return under section 92(4), before the expiry of the period, such company and its every officer who is in default shall be liable to a penalty of **ten thousand rupees** and in case of continuing failure, **one hundred rupees** for each day during which such failure continues, subject to a **maximum of two lakh rupees** in case of a company and **fifty thousand rupees** in case of an officer who is in default.

**M.D.-SECTION 2(54)**

1. Director who is by virtue of AOA or
2. Agreement with the company or
3. Resolution passed in GM or BOD
4. M.D. is entrusted with substantial powers of management which are not otherwise exercisable by a director.

**MANAGER-SECTION 2(53)**

1. An individual
2. Who manage whole or substantially whole affairs of the Company.
3. Includes any person holding such position
4. Manager need not be a director

**WHOLE TIME DIRECTOR [SECTION 2(94)]**

Whole time director includes a director in the whole-time employment of the company.

**OFFICER WHO IS IN DEFAULT SECTION 2(60)**

- (i) whole-time director;
- (ii) key managerial personnel
- (iii) where there is no key managerial personnel, such director or directors as specified by the Board.
- (iv) any person who, under the immediate authority of the Board or any key managerial personnel
- (v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity.

**Section 2(51) "key managerial personnel", in relation to a company, means;**

- (i) the chief executive officer or the managing director or the manager;
- (ii) the company secretary;
- (iii) the whole-time director;
- (iv) the chief financial officer;
- (v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and
- (vi) such other officer as may be prescribed.

**SECTION 203**

**APPOINTMENT OF K.M.P** read with **Rule 8** of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the following class of Companies are required to appoint KMP-

Every listed company, and

Every other public company having paid up share capital of Rs.10 Crores or more

Such Companies shall have the following whole time key managerial personnel,-

- ❖ **Managing Director, or Chief Executive Officer or manager and in their absence, a whole-time director;**
- ❖ **Company secretary; and**
- ❖ **Chief Financial Officer.**

Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every private company which has a paid-up share capital of ten crore rupees or more shall have a whole-time Company Secretary.

**SECTION 203 PROVISO 1 OF COMPANIES ACT 2103**

No Person shall act as Chairman and Managing Director/CFO at the same time-

An individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the M.D or C.E.O of the company at the same time after the date of commencement of this Act unless-

- ❖ the articles of such a company provide or
- ❖ the company carries only a single business; or
- ❖ the company is engaged in multiple businesses and has appointed one or more C.E.O for each such business.

**EXCEPTION**

- i. public companies having paid-up share capital of rupees one hundred crore or more; and
- ii. annual turnover of rupees one thousand crore or more

Which are engaged in multiple businesses and have appointed C.E.O for each such business.

As per Section 203 (2) every whole-time K.M.P of a company shall be appointed by means of a passing Board resolution in Board Meeting.

Under Section 203 (3) a Whole-time K.M.P shall not hold office in more than one company.

**EXCEPTIONS**

- (i) in its subsidiary company at the same time.
- (ii) K.M.P. may become a director of any company with the permission of the Board.
- (iii) Further, it has also been provided that a whole-time K.M.P holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of 6 months from such commencement, choose one company, in which he wishes to continue to hold the office of K.M.P.

**VACANCY OF K.M.P SECTION 203(4)**

The vacancy shall be filled-up by the Board within a period of 6 months from the date of such vacancy.

### NON APPLICABILITY OF SECTION 203

The provisions of sub-section (1), (2), (3) and (4) of this section shall not apply to Government Company.

### APPOINTMENT OF MD & MANAGER AT THE SAME TIME IS NOT POSSIBLE [SECTION 196 (1)]

No company shall appoint or employ at the same time a managing director and a manager in the same Company. i.e. One company one MD or Manager.

### TENURE - SECTION 196 (2)

A company may re-appoint them for next term before expiry of their present term but not earlier than one year before expiry of the current term. This means, company may re-appoint them for next term in last one year of current term.

### RE-APPOINTMENT

A company may re-appoint them for next term before expiry of their present term but not earlier than one year before expiry of the current term. This means, company may re-appoint them for next term in last one year of current term.

### DISQUALIFICATION OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER -SECTION 196 (3)

- (i) is below the age of 20 years or has attained the age of 70 years. However, the appointment of a person who has attained the age of 70 years may be made by passing a special resolution.
- (ii) is an undischarged insolvent or has at any time been adjudged as an insolvent;
- (iii) has at any time suspended payment to his creditors or makes, or
- (iv) has at any time been convicted by a court of an offence and sentenced for a period of more than 6 months.

### APPROVAL FOR APPOINTMENT OF MD, WTD AND MANAGER - SECTION 196 (4)

Provides that subject to the provisions of section 197 and part-1 of Schedule V of the Companies Act, 2013, a managing director, whole-time director or manager shall be appointed and remuneration payable be approved by the Board of Directors which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in that Schedule.  
The company should file with the ROC return of appointment of the managing director, whole time director or manager in **Form MR-1**, within 60 days and the return must be certified by the auditors.

### APPOINTMENT WITH THE APPROVAL OF CENTRAL GOVERNMENT IN E-FORM NO. MR 2. SECTION 196(5)

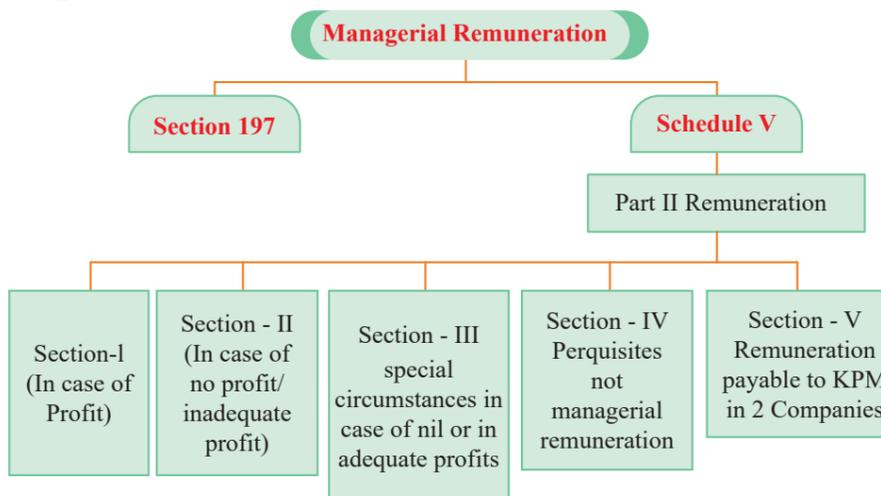
Where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

### SCHEDULE V PART 1 IN ADDITION TO SECTION 196

- (i) He had not been sentenced for any period and or to a fine exceeding rupees 1000 under 19 act.
- (ii) Shall not be detained under conservation of foreign exchange and preservation of smuggling activity act 1974.
- (iii) Age 21 years to 70 years above 70 pass special resolution.
- (iv) Resident in India.
  - ❖ Staying in India for continuous period of 12 months before his appointment.
  - ❖ Who comes to stay in India for taking unemployment or carrying business in India (this condition not apply to SEZ).

### EXEMPTIONS

- Private company
- Government company
- International Financial Service centre company (IFSC)



### SECTION 197(1) SCHEDULE V PART II SECTION 1

#### In Case of Adequate profit Managerial Remuneration of Executive Directors (MD/WTD/MANAGER)

- Maximum overall remuneration 11% of NET PROFIT
- In case company have only 1 ED 5% of NP to that ED
- In Case company have 2 or more ED 10% of NP.

#### MANAGERIAL REMUNERATION OF NON-EXECUTIVE DIRECTORS

- (i) ❖ In case company have an ED 1% of NP to all NED.
- (ii) ❖ In Case company do not have ED 3% of NP to all NED.

The above individual limit can be extended by passing S.R

### SECTION 197(2)

Payment made in Professional Capacity shall be excluded while calculating Managerial Remuneration.

### MANAGERIAL REMUNERATION AS PER SECTION 197(3) SCH V PART II SEC 2

Where the effective capital	Limit of yearly remuneration payable shall not exceed (in rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
Negative or Less than Rs. 5 crore	Rs. 60 Lakhs	Rs. 12 Lakhs
Rs. 5 crores or more but less than Rs. 100 crores	Rs. 84 Lakhs	Rs. 17 Lakhs
Rs. 100 crores or more but less than Rs. 250 crores	Rs. 120 Lakhs	Rs. 60 Lakhs
Rs. 250 crores or more but	Rs. 120 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores	Rs. 120 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores

### EFFECTIVE CAPITAL

PSC + FR + SP + Long term loan and deposit + debenture (-) investment (-) preliminary expense (-) accumulated losses.

Remuneration shall be approved by NRC committee and there is no default on payment of debenture, debt, deposits, and interest for 30 days in preceding FY of appointment.

Managerial Personal if draws remuneration in excess of remuneration, he shall return such excess remuneration within 2 years until such refund kept in trust.

### SECTION 197(5) SITTING FEES

1. Max Rs. 1 lakh per director per board meeting apart from M.R.

2. It can be paid in case of loss also.

3. It can be paid to both E.D and N.E.D

- ❖ Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other directors.

### SECTION 202 COMPENSATION FOR LOSS OF OFFICE

(a) Company may pay compensation for loss of office to managing director or whole-time director or manager.

(b) Amount of compensation: Remuneration which he could earn if he had been in the office for the remaining term or Average salary of during his past 3 years whichever is lower.

### NO COMPENSATION IN FOLLOWING CASES IF

(A) He resigns due to the reconstruction and he is appointed as a manager director whole time director manager of resulting company.

(B) Resign otherwise than amalgamation.

(C) Vacation under section 167.

(D) Winding up of the company due to negligence or default of such director

(E) Director has been guilty of fraud or mismanagement the affairs of the company its holding, subsidiary company.

### PENALTY [SECTION-203(5)]

If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of 5 lakh rupees and every director and KMP - penalty of 50,000 rupees and where the default is a continuing one, with a further penalty of 1,000 rupees for each day after the first during which such default continues but not exceeding 5 lakh rupees.

### SECTION 204 SECRETARIAL AUDIT

#### APPLICABILITY

- ❖ Every Listed company
- ❖ Every public company having paid up share capital of 50 crore or more or, Turnover 250 crore or more or outstanding loan 100 crore or more.
- ❖ Secretarial audit reports in form no MR-3.
- ❖ Secretarial audit report attached to board report.
- ❖ Board of directors explain in full any qualification mark by PCS.
- ❖ If a company or any officer of the company or the C.S in practice contravenes shall be punishable with fine of rupees 1 lakh up-to 5 lakh.

### APPOINTMENT OF A COMPANY SECRETARY (SECTION-205)

Company having PSC **10 crore or more, appoint whole time CS (Rule8A)**

- BM-BR
- File DIR-12 within 30 days to ROC.
- File MGT-14 within 30 days to ROC.
- Entry in register of KMP.
- Inform stock exchange in case of listed company.

### FUNCTIONS OF A C.S.

CS shall report to board of director about compliances.

Ensure that the company complies with the applicable standard.

Guidance to director with regard to duties, responsibilities, and Power.

Facilitate the convening the meeting and attend board meeting, committee meeting and GM.

Obtain approval from board, shareholders, government as required under the act.

Give representation before various regulatory authority.