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EXAM ORIENTED BOOK

Hello Bcche!!
Hope this Book helps you..
All the very best my future CS
Your Elder Sister
CS Shivani Miglani

by

CS SHIVANI MIGLANI

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MEMORANDUM AND ARTICLES OF ASSOCIATION AND ITS ALTERATION

MEMORANDUM OF ASSOCIATION

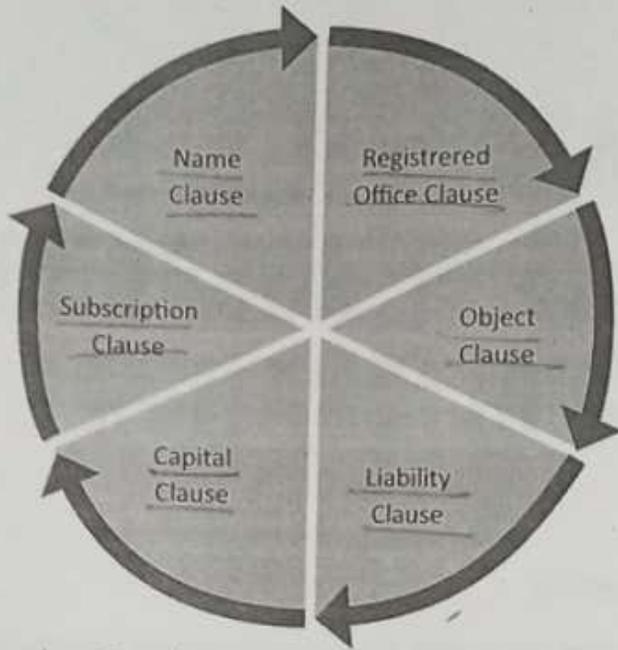
- As per Sec 2(56) Memorandum means MoA of a company originally framed and altered from time to time.
- It is Charter document. of the Company.
- Memorandum of Association is a legal document which describes the purpose for which the company is formed and therefore identified the possible scope of its operations beyond which its action cannot go. It determines
- It defines as well as confines the powers of the company. It contain the abject of the company.
- Object includes ancillary or incidental objective along with main objective

MODEL OF MOA

TABLE	COMPANY
A	Companies limited by shares
B	Companies limited by guarantee not having a share capital
C	Companies limited by guarantee having a share capital
D	Unlimited companies not having a share capital
E	Unlimited companies having a share capital

CONTENT OF MOA

NROLCS



1. Name clause Acc to Sec 4(2) :-

- > Name shall not be identical or resemble too nearly of an existing company
- > Name shall not be such that its use will constitute an offence or undesirable in the opinion of central government.
- Sec 4(3) -> Any word or expression which gives impression that Company is connected with or having patronage of Central government/state government / Local Authority, body corporate constituted by central government/ state government.
- > Such word or expression is prohibited by central government However to use such word obtain permission from central. gort

RESERVATION OF NAME As Per Sec 4(4)

- > Application for reservation of Name in in form SPICE + (INC-32) and for change name by using Reserve Unique Name facility (RUN).
- > Upon application Name shall be reserve for 20 days and in case of change in name reserve for 60 days from the date of approval.

Note:

1. Registrar before allowing the name must make basic enquiries that name shall not be misleading.
2. Court can pass the order to change the name of Company, however court cannot directly tell ROC to change the name.

Case law ③ Atlas Cycle Ltd vs Atlas Product Pvt Ltd
- Court pass the order & 2 defendants were restrain from using the word Atlas.

2. Registered office Clause (Address clause)

/ Situation Clause

- It specifies the name of state in which registered office is situated. which helps to determine the jurisdiction of ROC.
- Co. shall affix its name of address on the outside of every office as place where its business is carried on.
- The company is required to inform the location of the registered office to the Registrar of Companies within 30 days from the date of incorporation of the company
- Engraved the name an common seal.
- Name, address, fax no website, email id shall print an all business document and an hundis, promissory note & bill of exchange
- Company has changed its name during last 2 years then print former Name also.
- In case of One Person Company, the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

3. Object clause Under Sec 4(i)(c)

- It specify the object for which the company is proposed to be incorporated.
- Specify main object, incidental object and other in abject clause
- Any act beyond the object of the company shall be void and entire body of shareholder cannot ratify it and it will be termed as ULTRA VIRES ACT.
- It states affirmatively the ambit and extent of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified. [Ashbury Railway Carriage and Iron Company v. Riche].

4. Liability clause

- It specify the liability of member.
- Whether it is limited by shares or guarantee company or unlimited company

5. Capital clause

- It specify the maximum capital that company can raise i.e. Authorized capital called as nominal capital or registered capital.
- Company cannot raise capital beyond its authorized capital however company can alter the capital clause as per section 61 of the Companies Act, 2013.

6. Subscription Clause

- It specify who are signing the MOA
- Each subscriber must state the number of shares he is subscribing.
- Each subscriber must take at least 1 share and write opposite his name, the number of shares he is subscribing.

The statutory requirements regarding subscription of memorandum are that:

Each subscriber must take at least one share

Every subscriber must write opposite his name the amount of Shares Taken.

ARTICLES OF ASSOCIATION

- Article means AOA of the company as originally framed and altered from time to time..
- It contains the regulation for management of the company.
- MOA lays down scope and AOA governs in which objects are to be carried.
- Shall not contain anything illegal or ultra vires to MoA

Registration of Articles

- Company shall file MoA and AoA duly signed by all subscribers to RoC

Alignment of AOA with Companies Act.

- Provision of this Act shall have effect notwithstanding anything to the contrary contained in MoA & AoA or resolution or agreement which means any provision in AOA, MOA, agreement, resolution which is contrary to companies Act shall be void.

Entrenchment provision

- AoA may contain provision for Entrenchment i.e. provision in AoA may be more strict than companies 2013
- Entrenchment referred in shall be made either;
- At the time of incorporation or
- By amending AoA
- Give notice to RoC about the entrenchment in form SPICE + or MgT-14.

Legal Effect of MoA & AoA

1. Member bound to the Company

- MoA and AoA shall be binding on member.
- Each member are bound to the company.
- Member must observe the provision of MoA.
- Member could not enter into an agreement which is contrary or inconsistent with AoA
e.g. AoA specify that on bankruptcy of a member, his shares would be sold at price fixed by director. In such case, member is bound to follow AoA.

2. Company bound to the member

- AoA shall be binding on the company towards the member.
- Member can bring legal action against the company for infringements of MoA

3. Member bound to Member

- Member inter se bound by the provision of AOA & MOA. However MoA & AoA does not create express contract between the member.
- Member of a company has no right to bring a suit to enforce the article in its own name.

4. Company not bound to Outsider.

- Outsider means other than member
- MOA & ADA would not give any contractual right to outsider against the company.

e.g. AoA provides that solicitor would not be removed from office except misconduct however company removed such solicitor, still solicitor cannot file suit against the company because ADA did not constitute any contract between company and himself.

Alteration of AOA

It includes

- (a) Adaption of new set of article
- (b) addition/insertion of new clause
- (c) deletion of clause
- (d) amendments of a specific clause
- (e) Substitution of specific clause

Alteration includes conversion of private company into public company or public company into

Private company

- After conversion file altered AoA along with copy of Central government order to Roc within 15 days from alteration.

Limitation on power to alter article

- Alteration must not exceed the power given in MoA
- Must not be inconsistent with companies Act, however entrenchment is allowed.
- Not include anything which is illegal or opposed to public Policy.
- Alteration must be bona fide, for the benefit of company
- must not constitute a fraud on minority by majority
- Cannot compel to an existing member to subscribe more shares.
- Cannot escape from its contractual obligation.
- Cannot alter as to give retrospective effect.

Procedure you alteration of AOA

- > Hold board meeting and pass resolution
- > Approve the proposal of alteration of ADA
- > Approve the notice to call general meeting
- > Give authority to director to sign the document & file necessary document to Roc.
- > Prepare minutes & send to all director within 15 days from board meeting.

Procedure

- > Board meeting - Board Resolution.
- > General meeting - Special Resolution
- > Hold general meeting pass special Resolution
- > File MgT-14 to Roc within 30 days from Special Resolution along with
 - (a) Copy of special Resolution with explanatory statement
 - (b) Notice of General Meeting
 - (c) Certified true copy of altered AoA

Fallow Companies Act and MoA

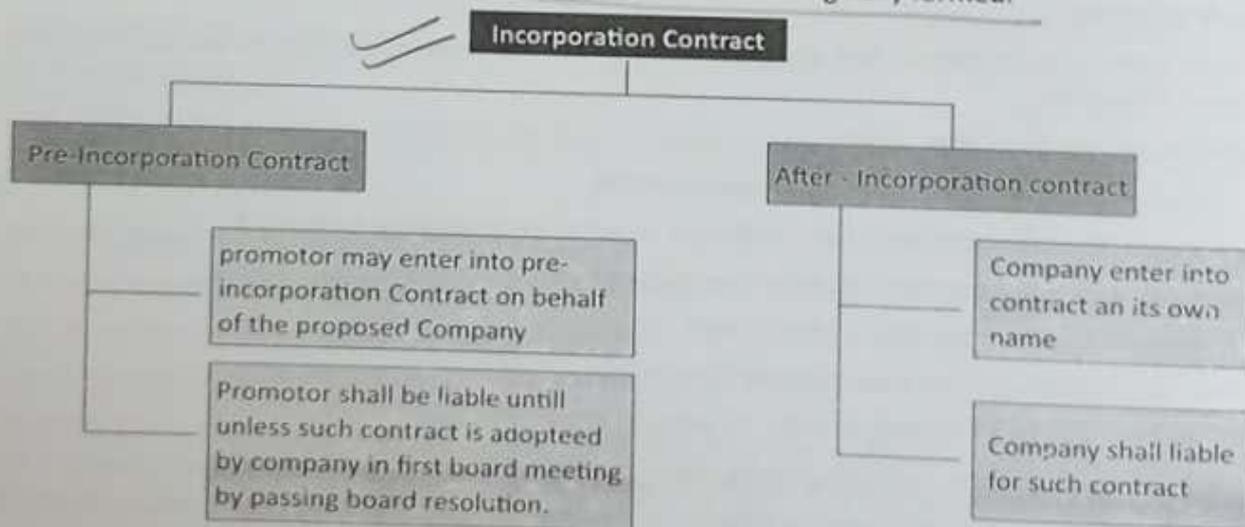
- Alteration of Act AoA shall not violate the MoA and Companies

Approval of Central government

- > Obtain Central government approval in case of conversion of public company to Private company.
- > No stamp duty on alteration of AoA

Effect of Altered article

Binding an a Company and member to the some extent as article originally formed.



ALTERATION OF NAME CLAUSE

Sr Is Needed Along With Cg Approval

- Board meeting → Board Resolution → Consider → New Name
- Authorized Company Secretary / Director for application to Roc
- Application to Roc by using RUN (Facility for availability of New Name).
- Roc. shall reserve new name 60 days.
- Hold Board meeting & approve the notice of General Meeting
- Hold General Meeting of pass special Resolution.
- Apply to Central government (power given to Roc) in Form INC-24 within or 90 days from special resolution or 60 days form reservation of name whichever is earlier.
- File MgT-14 which is certified by practicing CA-CS-CMA within 30 days to ROC.
- Roc shall give new certificate of INC in form INC-25
- Intimate Stock exchange and dip depository.
- **IMP: the change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon.**

Effect of change in Name:

No change in rights obligation and legal proceeding due to Change in Name

All the activity shall be continued in its new Name

Direction by Central Government to change the Name:

If central Government gives the direction to change the name of the company because the with other company, then name is identical company by passing ordinary resolution and obtain Central government approval and change the name of the company.

Change the name within 3 months from such direction.

CHANGE/ALTERATION OF OBJECT CLAUSE

- Pass Special Resolution
- File copy of special resolution to Roc
- RoC shall register the alteration and certify the registration within 30 days from filing of special resolution
- If company raised money from public and has any unutilized amount satisfy the following condition.
- Resolution shall be published in the newspaper where Register office is situated, and

- Provide exit opportunity to dissenting shareholder by promotor or shareholder having control.
- Special Resolution shall be passed by postal ballot if company having more than 200 members of money raised through prospectus still has unutilized amount.
- File MGT-14 to Roc within 30 days from special Resolution

Procedure for Alteration of object clause

1. - Board meeting
 - Approve Notice of General meeting
 - Delegate authority to director to sign and certify the requisite form to Roc
2. Hold General Meeting & pass special resolution.
 - pass special resolution through postal ballot, if company having more than 200 member or company has raise money from public & still has any unutilized amount.
3. public Advertisement & Exit opportunity.

If company has any unutilized amount need to give public advertisement in one and English newspaper & one in regional language also give exit opportunity to dissenting shareholder by promotor or share holder in control-
4. Filing with Roc
 - File MGT-14 to Roc along with following attachment.
 - (a) Copy of special resolution along with explanatory statement
 - (b) Notice of General meeting
 - (c) Altered MOA
5. Registration of Shall alteration.
 - Roc shall registered the change within period of 30 days from filing with Roc

ALTERATION OF LIABILITY CLAUSE

- Pass Special Revolution
- Pass MGT-14 to Roc within 30 days

ALTERATION OF CAPITAL CLAUSE

- Alteration Types of Alteration of Capital
 - (a) Increased in authorized Capital
 - (b) Consolidate and divide share capital (No change in Voting percentage)
 - (c) Convert fully paid up shares into stock
 - (d) sub-division of shares
 - (e) Cancel shares which has not been taken by any person.

MEMORANDUM AND ARTICLES OF ASSOCIATION AND ITS ALTERATION

No need to obtain NCLT approval except change in voting %

Copy of resolution shall be filed with Roc within 30 days -

Procedure for alteration of MoA by increasing authorized Cap

1. -Board meeting MoA by increasing
 - Special Resolution
 - Hold Board Meeting & pass Board Resolution.
 - Approve Notice of General Meeting
 - Issue Notice General Meeting by director or cs.
2. General Meeting - ordinary resolution
 - Hold General Meeting and pass ordinary Resolution.
3. Filing with Roc
 - File SH-7 to Roc within 30 days along with copy of notice of General meeting ordinary resolution and altered MOA
4. Roc shall check the document & approve the increase in authorized Capital.
5. However if alteration of capital clause results in alteration of AoA then pass special resolution file MGT-14 to Roc.

Alteration of Registered office clause

- (a) Change within the local to limit of same town
 - pass board Resolution
 - Intimation to Roc & verification of registered address.
 - File INC-22 within 30 days from such change to Roc.
 - Does not involve alteration of MOA.
- (b) Change Outside the local limit of any city, town or village
 - Pass special Resolution through postal ballot process - Hold Board Meeting - Board Resolution General Meeting - Special Resolution.
 - Intimation to Roc within 30 days inform INC-22
 - File MOT-14
- (c) change within the same state from one Roc to another Roc
 - Board Meeting - Board Resolution.
 - General Meeting - Special Resolution
 - Approval from Regional director

Process

- Hold Board Meeting and pass Board Resolution

- Hold General Meeting and pass special Resolution
- Application to Regional director in form INC-23 along with fees and prescribe documents.
 - (a) Copy of board Resolution & special Resolution
 - (b) Declaration by key Managerial Person (KMP) or two director that no default in workmen dues creditors and has obtain consent or provision of repayment.
 - (c) Declaration that No change in jurisdiction of court for pending litigation
 - (d) Acknowledged any copy of intimation to chief secretary of state that employee's interest is not adversely affected.
 - (e) Regional director shall examine the application & may approve or reject the application within 15 days from receipt of application
 - (F) file certified copy of order of Regional director to Roc in Form INC-28 within 30 days from such order.

Change of Regional Director from one state to another state

- Board Meeting - Board Resolution
- General Meeting- Special Resolution
- approval from central government.
- Results of Alteration of MOA

Process

1. Hold Board Meeting and pass special Resolution

- Approve notice to General Meeting
- Engage Company secretary to represent before Regional director.
- listed Company - give public Notice at least 7 days before Board Meeting in news paper.
- Intimate stock exchange within of board Meeting. 24 hours from conclusion
- Publish the notice. notice of in news paper. EGM (Extra ordinary General Meeting)

2. General Meeting. Special Resolution

- Hold General Meeting & pass Special Resolution
- File MGT-14 to Roc Within 30 days
- Intimate stock of EGM exchange within 24 hours from Conclusion

3. Application to Regional Director in form INC-23 with following document copy of MoA & AoA

- Certify Copy of Special Resolution and notice minutes. of EGM.
- Copy of minutes
- List of Creditors & debenture holders
- Affidavit from director that no employee shall retrenched

- Obtain consent of creditors debenture holder or discharge the debt.
- Details of prosecution
- Statement of reason for shifting Regional Director

4. Filing of advertisement

- Not more than 30 days prior to filing of INC-23 give public advertisement in form INC-26 in English and vernacular language.
- File copy of ad government to central government.
- Serve individual notice to creditors, and debenture holder.

5. Objection

- If objection not received then Central government shall approve the application within 15 days from receipt of application.
- If objection received then Central Government shall hold hearing to reach the consensus of pass an order approving the shifting within 60 days from application.
- If consensus is not reached then central Government may confirm or reject the application within 60 days from Filing.

6. Order with Condition

- Order includes shifting of Regional director of issue shall not be allowed if any enquiry, inspection is pending.

7. Effective date

- Effective from the date of issue of registration certificate

8. Form INC-22

- After order from Regional Director, File Form INC.22 to Roc along with following statement document
 - a) Copy of title deed or lease agreement
 - b) Authorization from owner to use premises.
 - c) Proof of utility services.

9. File certified copy of order to Roc on form INC-28 within 30 days

10. Roc shall give new certificate of incorporation within 30 days.

SHARE AND SHARE CAPITAL

SECTION 23 TO 72

+

Section 2(84) → 'Share'

+

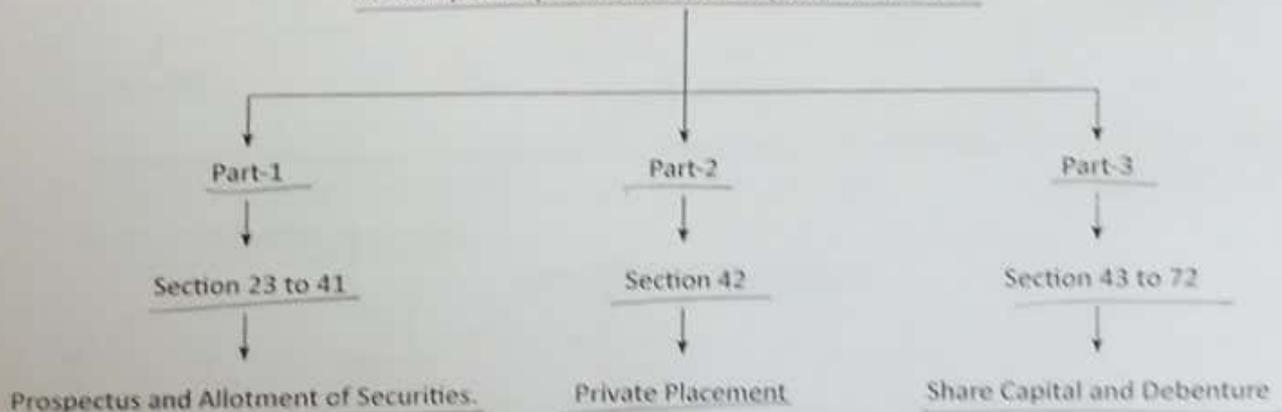
Section 2(70) → 'Prospectus'

+

The Companies (Prospectus & Allotment of Securities) Rules, 2014

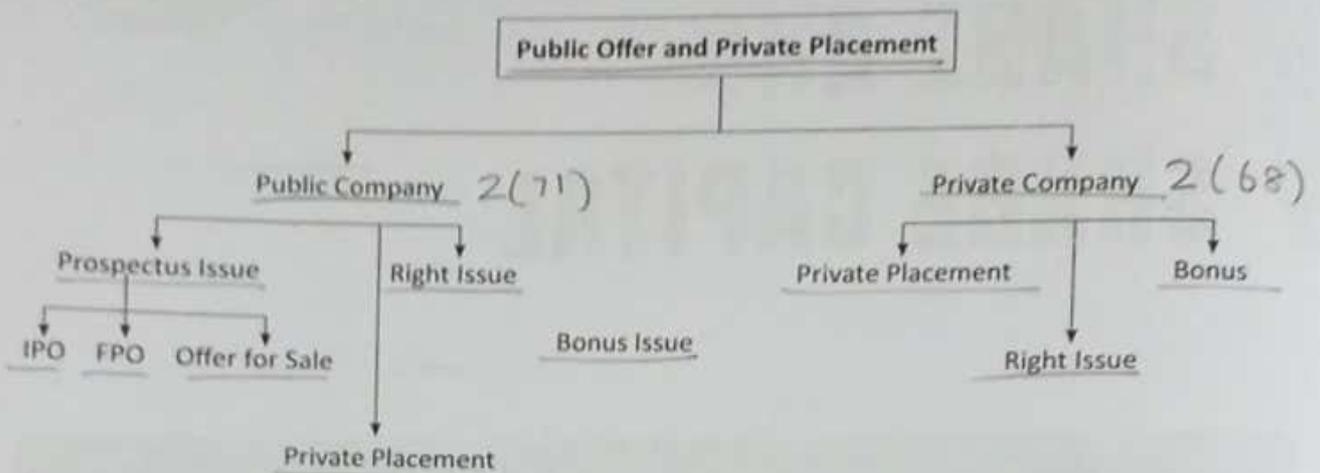
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The Companies (Share and Share Capital) Rules, 2014

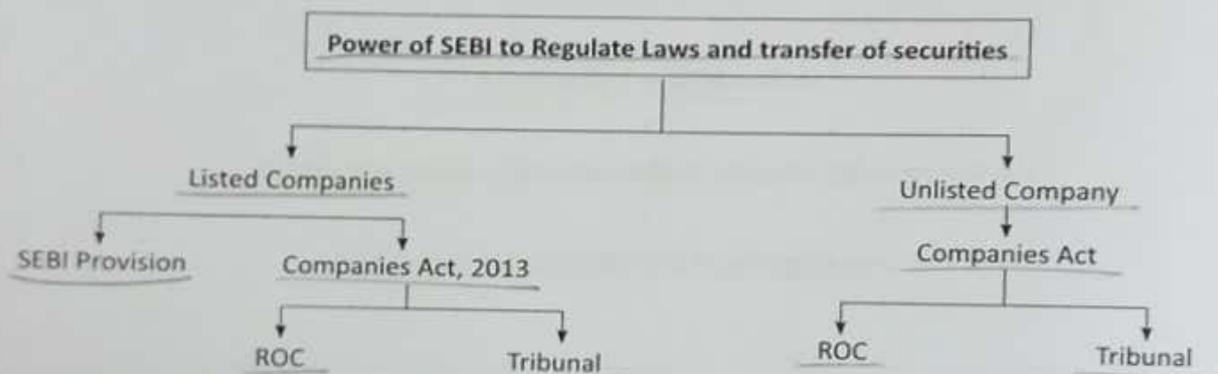


SECTION 23

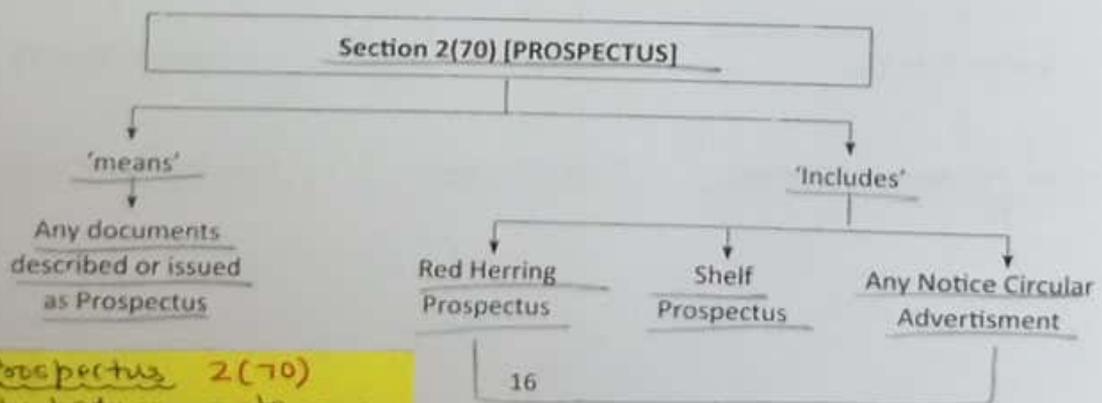
This Sections state the ways in which a Public and private company may issue securities.



SECTION 24



SEBI to regulate matters relating to issue and transfer of securities and Non payment of Dividend by the Listed Companies.



Prospectus 2(70)

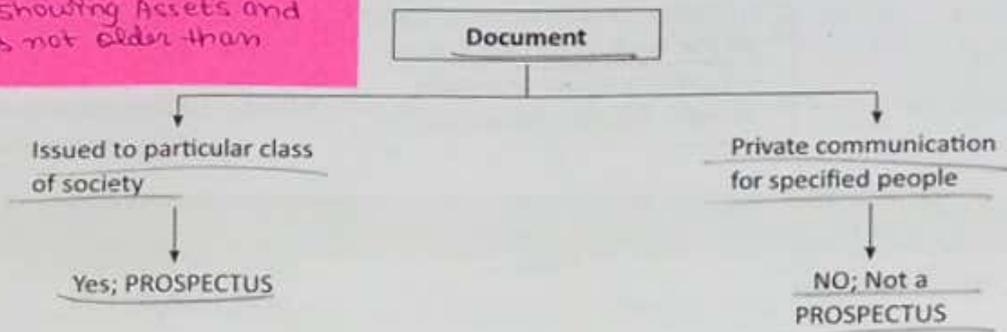
- Issued by body corporate on or behalf of body corporate.
- To invite the public at large.
- To purchase / subscribe the securities of body corporate.

which invites public at large to purchase or subscribe the securities of Body Corporate

Disclosure in PROSPECTUS

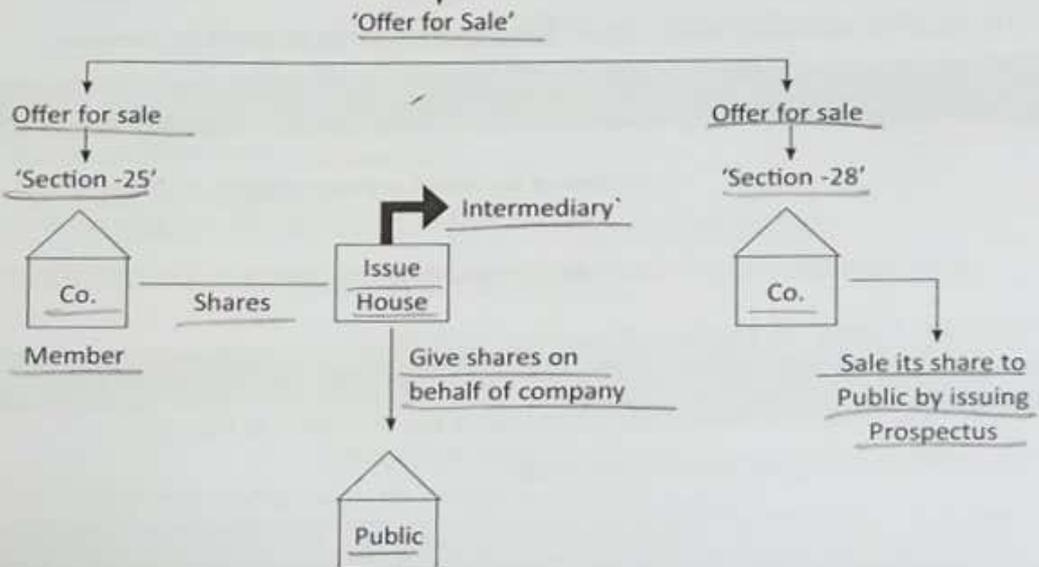
- (a) Audit Report
- (b) Latest Profit & Loss A/c not older than 5 Years
- (c) Expert Statement → about the disclosure in Prospectus
- (d) Statement of auditor regarding the Profit and Loss
- (e) Statement showing Assets and Liabilities not older than 6 months.

SHARE AND SHARE CAPITAL



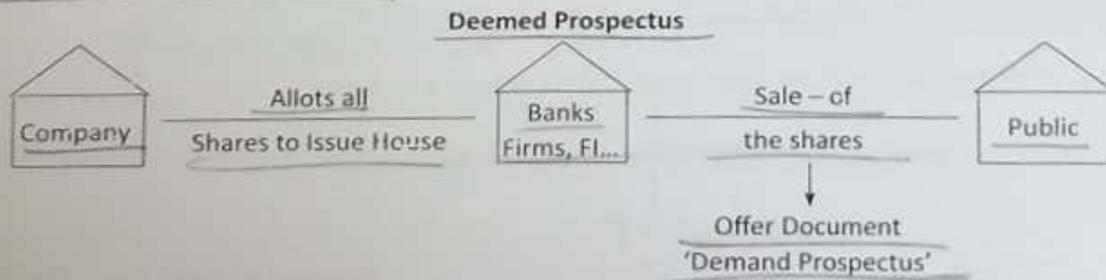
SECTION 25

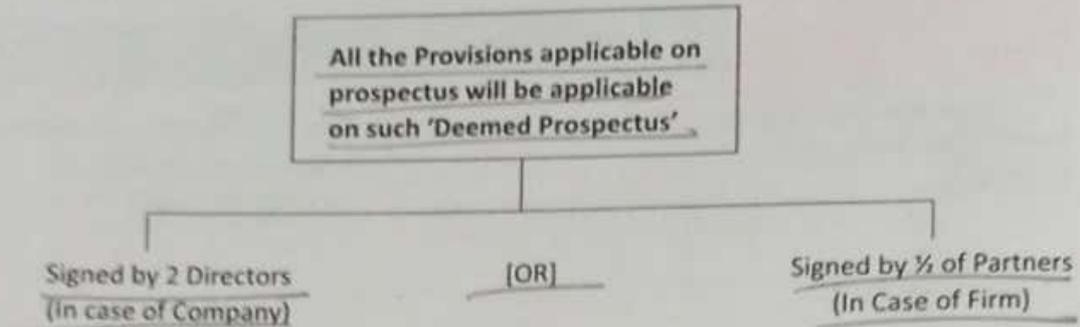
Documents containing offers of securities for sale to be deemed prospectus



* When Company does not want to handle the burden of public issue

let's Understand Section 25 in detail:





TEST OF DEEMED PROSPECTUS

- Issue House has made an offer of Securities for Sale to Public 'within 6 months of Allotment?'
- [OR]
- Date on which offer was made, 'Whole Consideration is not Received by Company.'

SECTION - 26

Matters to be Stated in Prospectus

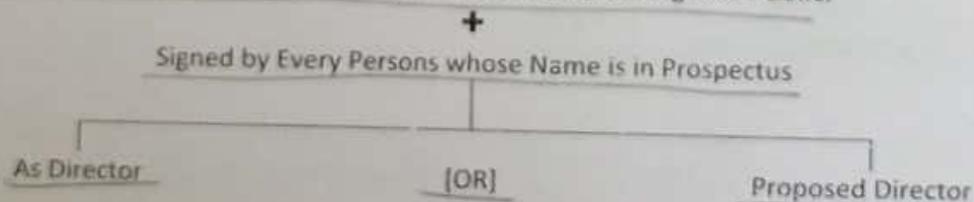
↓
Should be dated and Signed.

- इस Section में List दी गई है Matters Prospectus में Include होंगे
[Information and Report on financial Statement as may specified by SEBI]
- A statement shall be affirming the compliance of the provisions of this Act.
- The provision of this section shall not apply:

If prospectus issued to existing members or debenture holders of company or

If prospectus issued relating to shares or debentures or which are in all respects uniform with the shares or debentures previously issued.

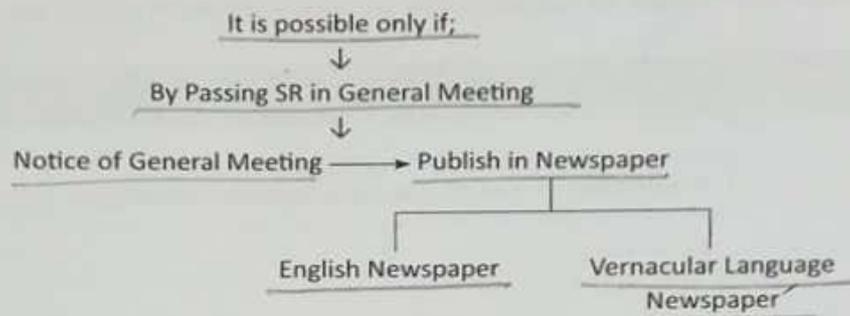
- Prospectus to be filed with ROC for Registration before issuing it to Public.



- Experts can also be named in Prospectus, if he has given Consent.
- Expert need to be Independent
- No Prospectus shall be valid if it is Issued more than 90 days after the date on which a copy of which it is delivered to ROC.

SECTION – 27

→ Variation in terms of Contract or Object in Prospectus.



and notice shall contain justification for such variation.

After Passing SR, Dissenting Shareholders

Exit opportunity to Dissenting Shareholders by Promoters or Controlling Shareholders

Money raised through Prospectus cannot be used for Buying / Selling in the Securities of Other Company

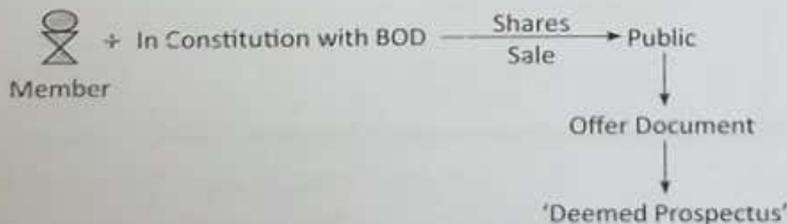
SECTION – 28

'OFFER FOR SALE'

Offer of Sale of Shares by the certain members of Company.

It is a mechanism that allows Promoters | Members to Reduce their Holding in Listed Company.

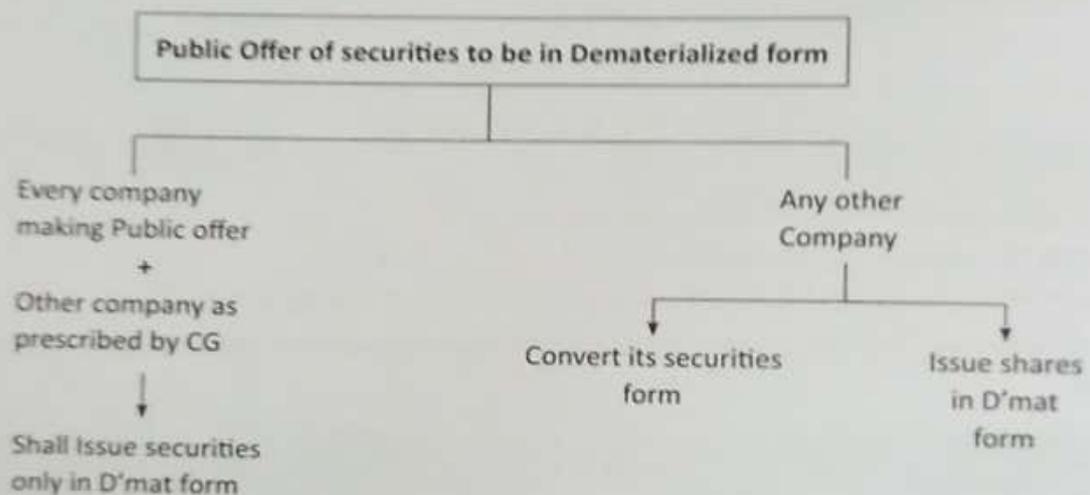
[No New Capital is Introduced]



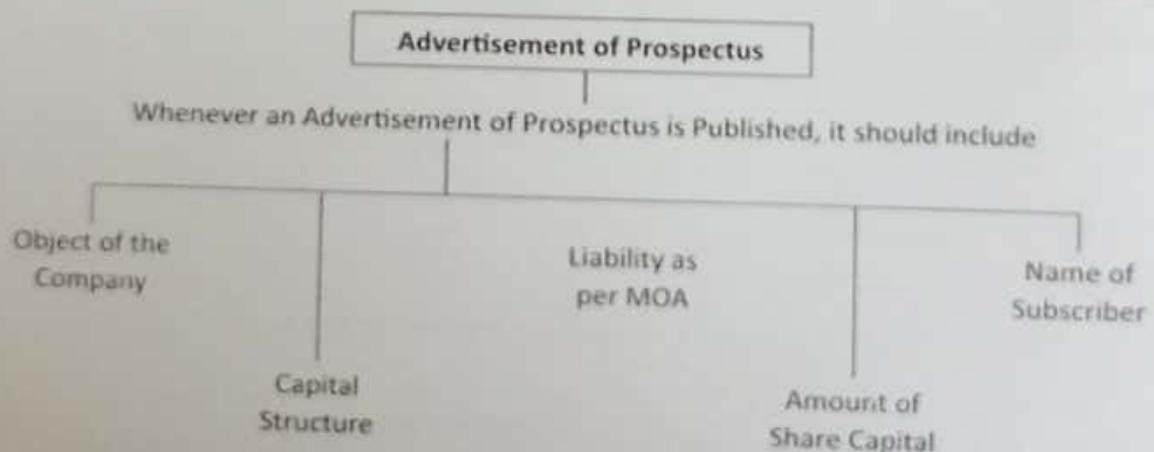
The rules in this context provide that the provisions of Part I of Chapter III namely "Prospectus and Allotment of Securities" there under shall be applicable to an offer of sale referred to in section 28 except for the following, namely:-

- (a) the provisions relating to minimum subscription;
- (b) the provisions for minimum application value;
- (c) the provisions requiring any statement to be made by the Board of Directors in respect of the utilization of money; and
- (d) any other provision or information which cannot be compiled or gathered by the offer or, with detailed justifications for not being able to comply with such provisions.

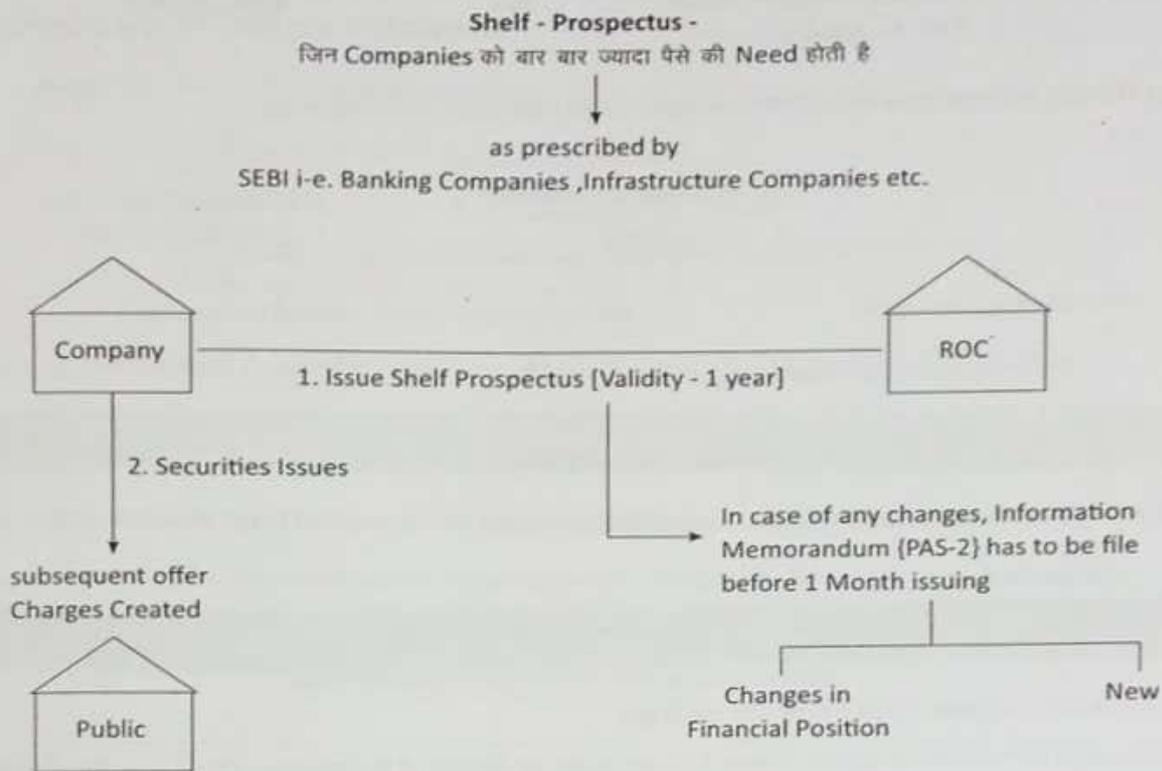
SECTION - 29



SECTION - 30



SECTION – 31



- No Prospectus is Required for Subsequent Offer for '1 Year'
- Validity period shall commence from date of opening of first offer of securities.
- where a company has received advance payments of subscription before the making of any such change, the company shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company shall refund all the monies received as subscription within fifteen days thereof.

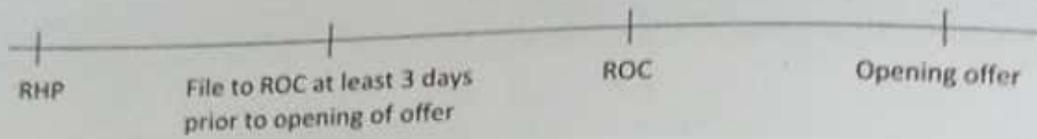
SECTION – 32

Red-Herring Prospectus

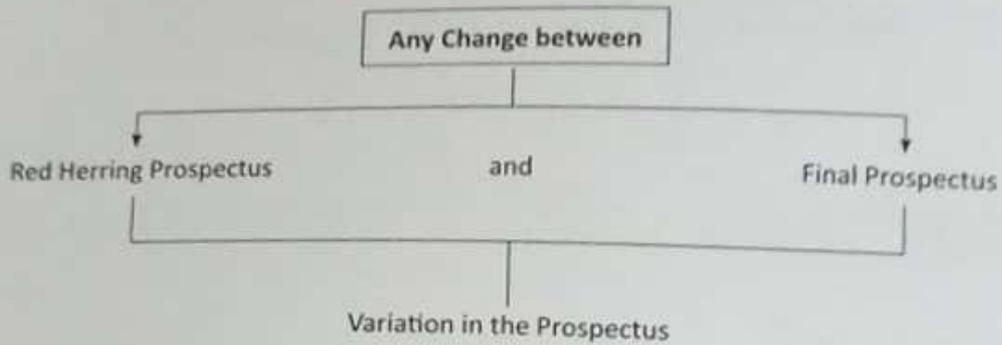


Incomplete Prospectus

- Prospectus which contain all the information except for Price and Quantum.
- Issue of RHP prior to Issue of a Final Prospectus.



- Red Herring Prospectus carries same obligations as applicable to Prospectus.



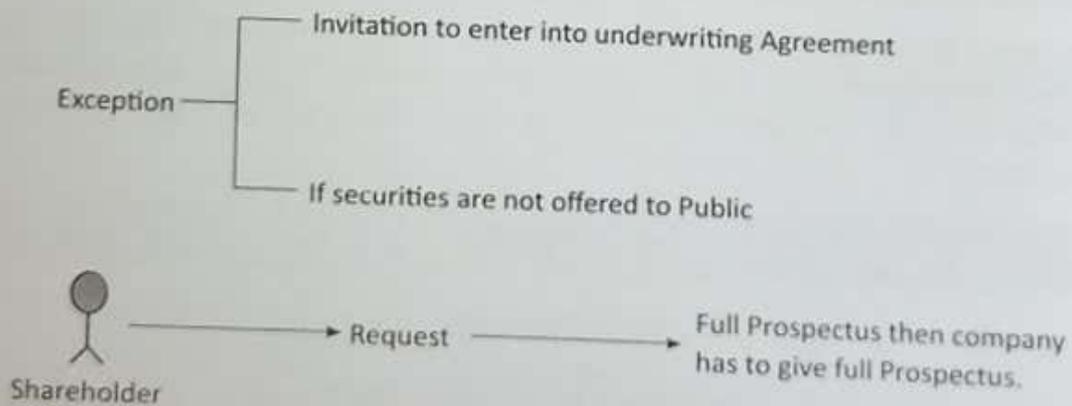
- Filing Prospectus with ROC and SEBI Upon closing of Offer.

SECTION - 33

ISSUE OF APPLICATION FORM FOR SECURITIES

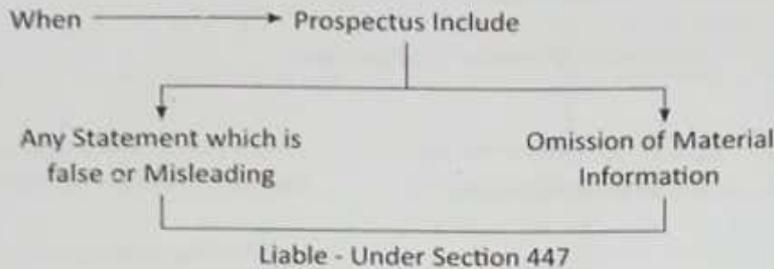
No Application form shall be Issued unless accompanied by Abridged Prospectus. (Summary Prospectus)

- Memorandum containing Salient features of Prospectus - Specified by SEBI.



SECTION – 34

CRIMINAL LIABILITY FOR MIS STATEMENT

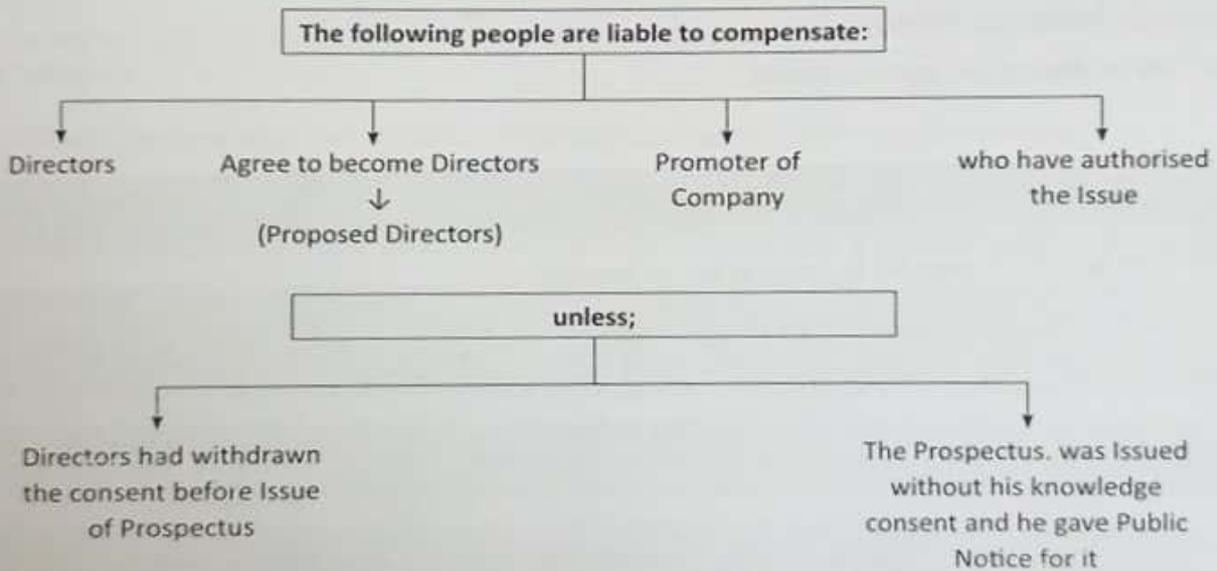


Nothing in this Section, Applicable to person who proves that the omission was immaterial.

SECTION – 35

CIVIL LIABILITY FOR MISSTATEMENT IN THE PROSPECTUS.

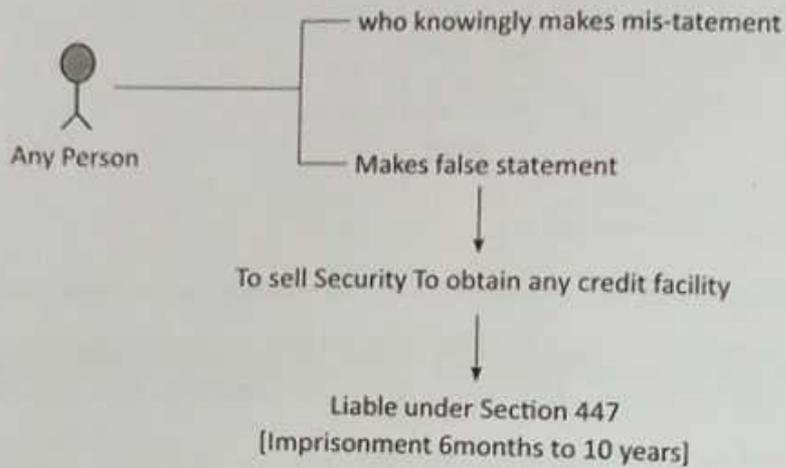
If any person has subscribed for Securities acting on the Prospectus, which is misleading and has sustained any damages.



Note: If it is proved that Prospectus was issued to defraud, every director shall be Personally liable without any Limit.

SECTION - 36

PUNISHMENT FOR FRAUDULENTLY INDUCING PERSONS TO INVEST MONEY



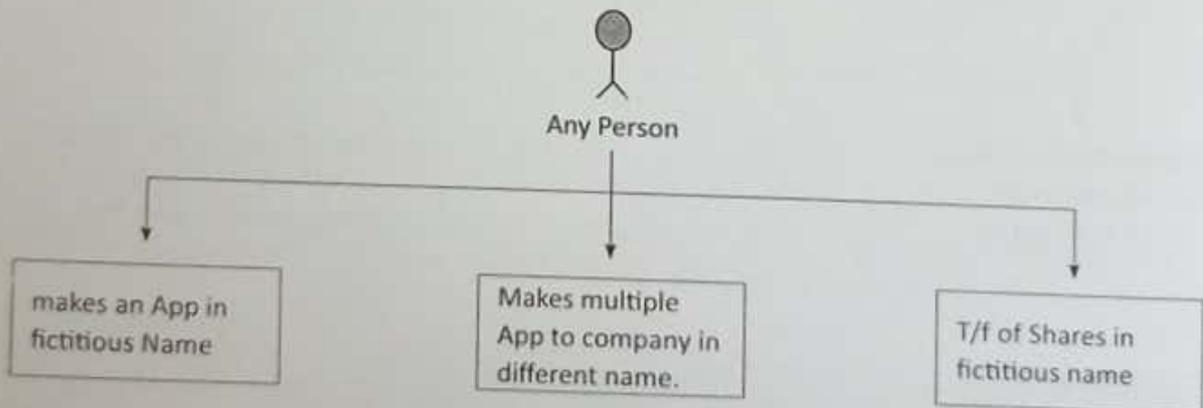
SECTION - 37

ACTION BY AFFECTED PERSON

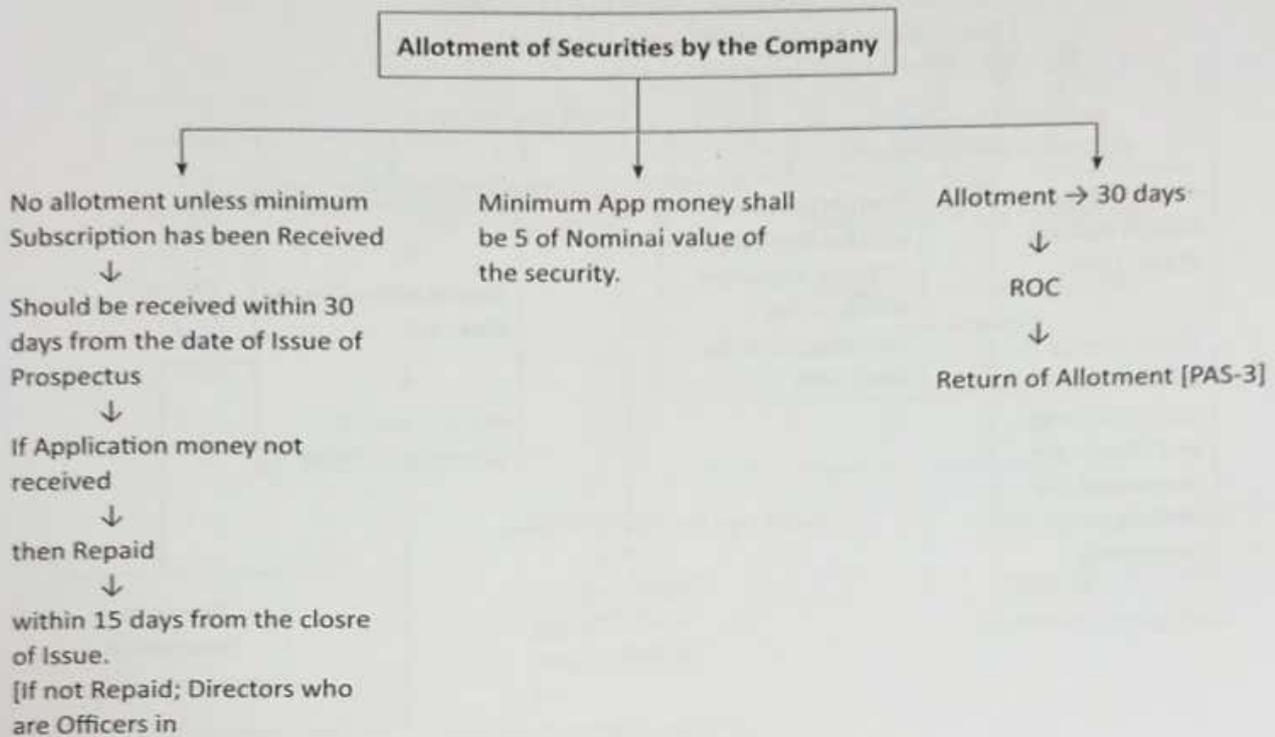
A suit may be filed by an Aggrieved Person.

SECTION - 38

Punishment for Personation for Acquisition etc. of Securities:



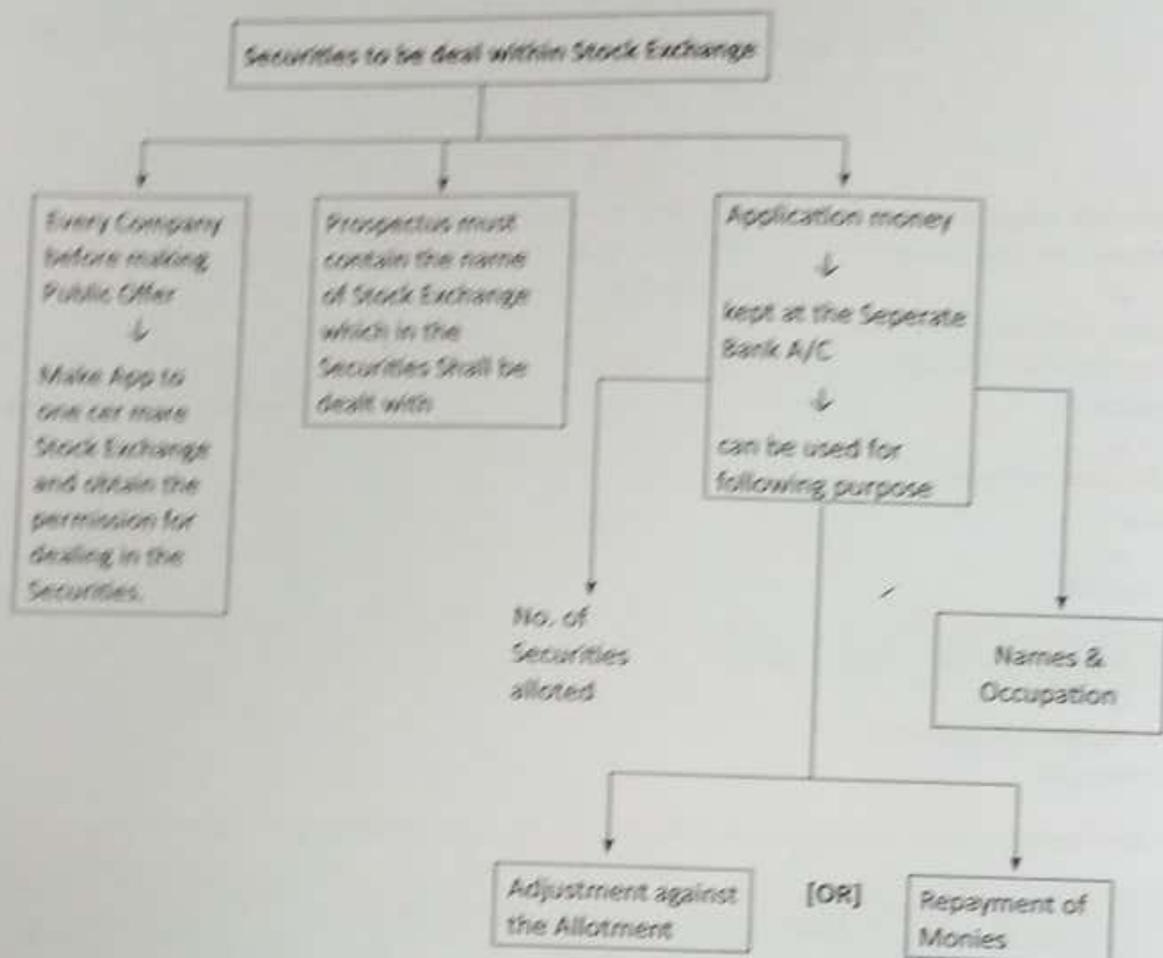
SECTION - 39



The following general principles should be observed with regard to allotment of securities:

1. The allotment should be made by proper authority
2. The proper authority may be the Board of Director of the company, or a committee authorised to allot securities on behalf of the Board.
3. Allotment of securities must be made within a reasonable time
4. Allotment should be absolute and unconditional
5. Allotment against application only
6. The allotment must be communicated

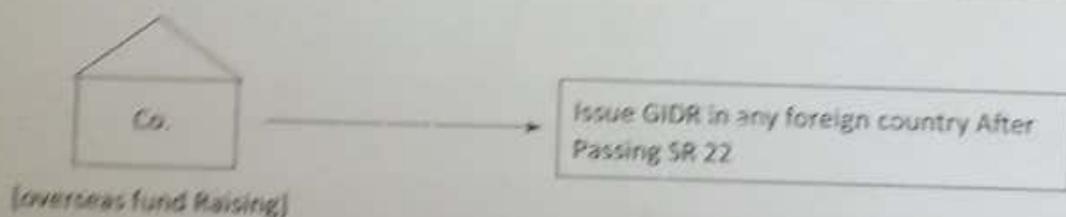
SECTION - 40



Underwriting Commission:

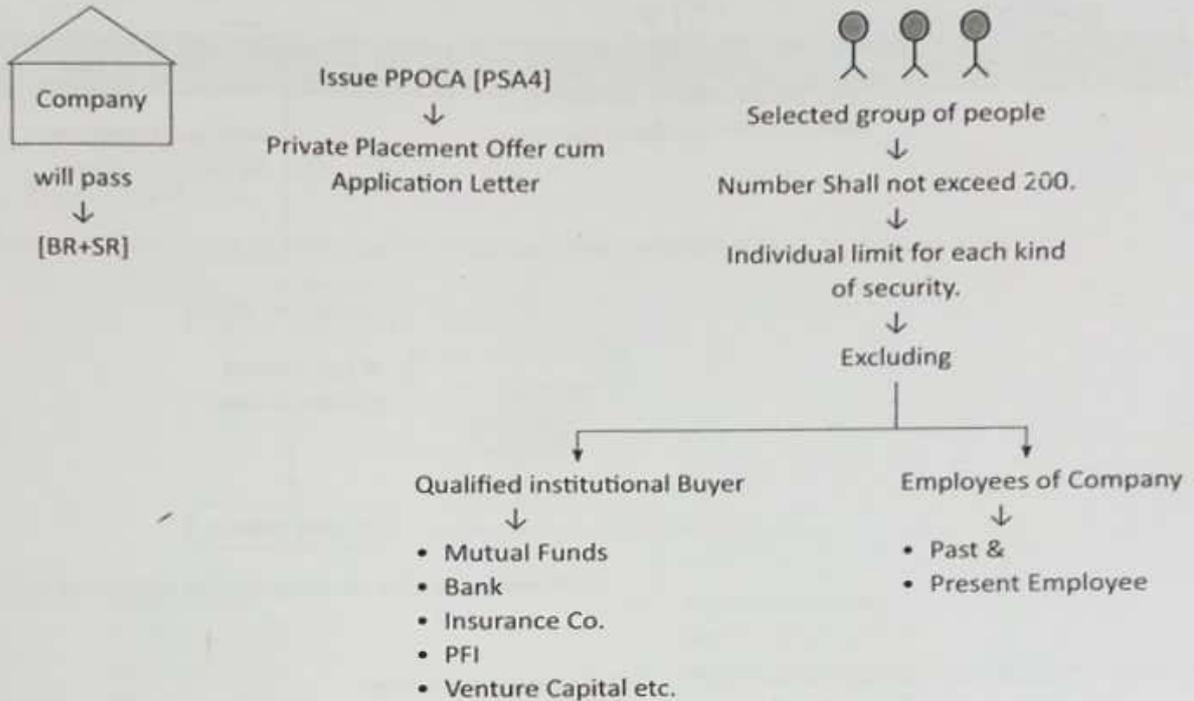
A Company may pay commission to any person in connection with the Subscription to its Securities.

SECTION - 41



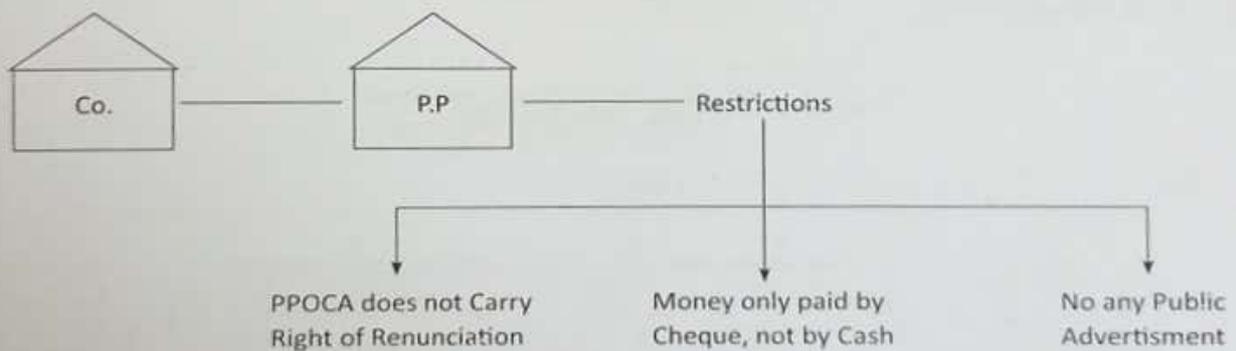
SECTION - 42

PRIVATE PLACEMENT OF SHARES

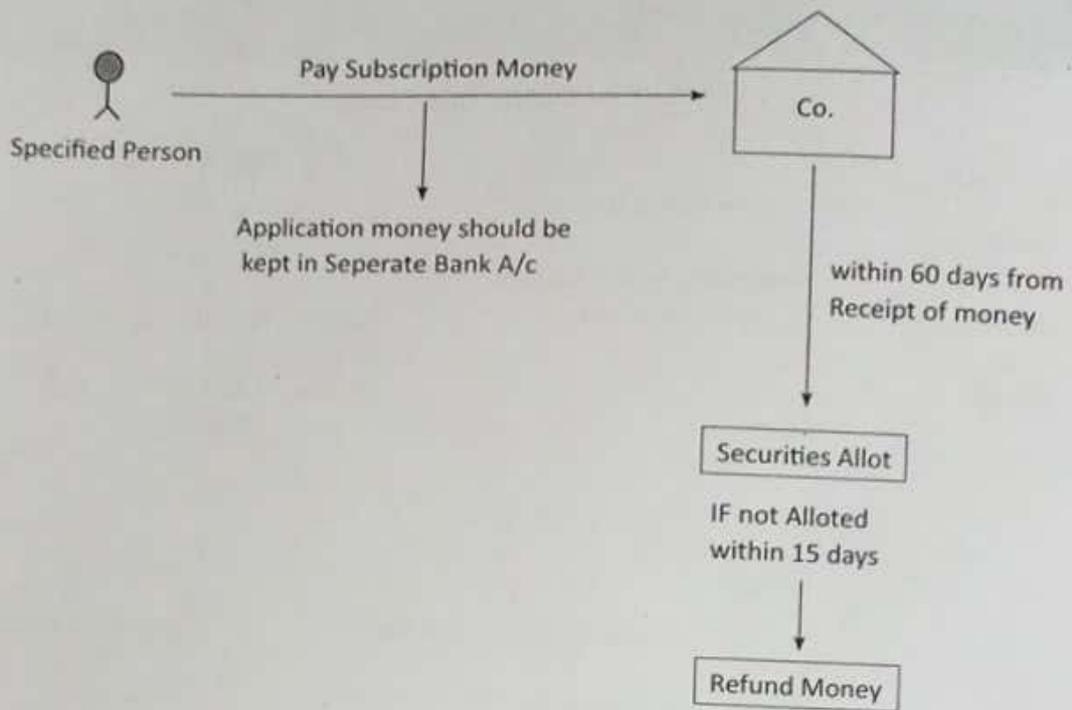


If Company makes an offer to more than 200 persons, then,

↓
'Deemed Public Offer'



➤ No Fresh Offer or Invitation shall be made unless the previous offer have been completed or withdrawn.

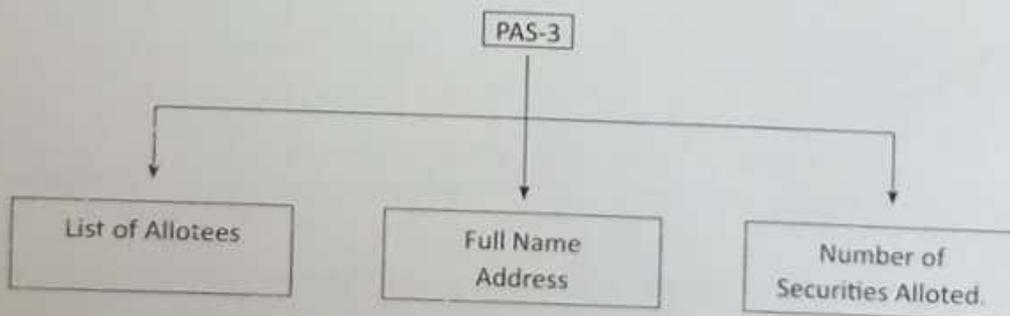


If not Repaid ; Liable to repay money @interest 12% p.a.

- Application Money can not be utilized for any purpose other than
 - For Adjustment against Allotment.
- OR
- For Repayment of Monies

Company has to maintain Record of Private Placement Offers in 6'PAS-5'
Return of Allotment

Allotment 15 days → PAS-3 → ROC



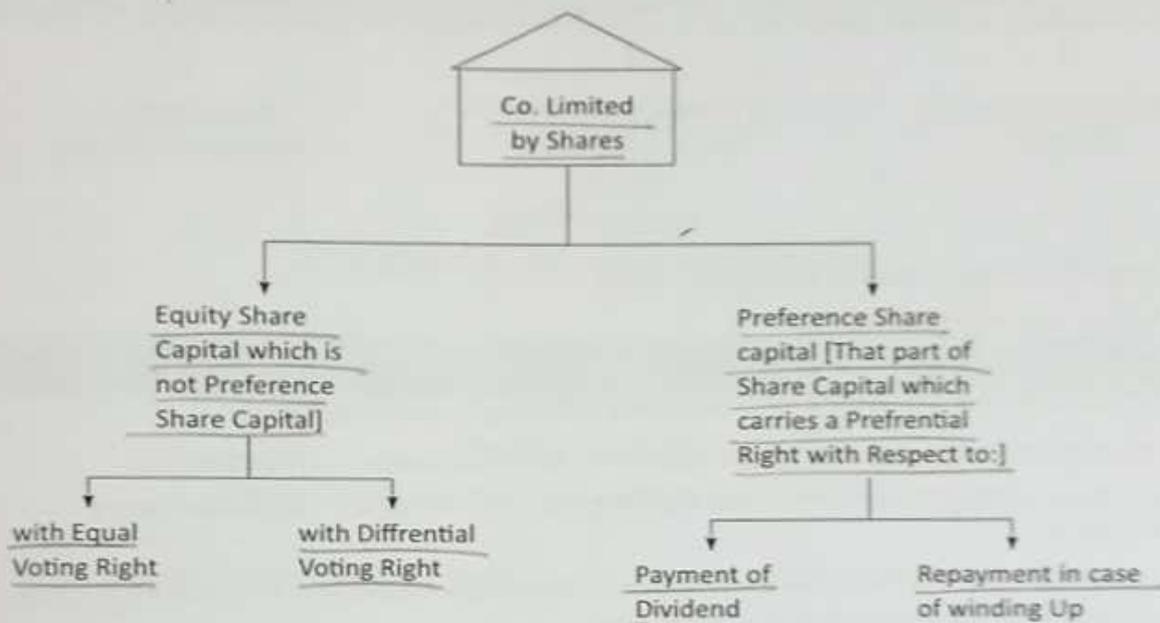
SECTION - 43 TO 72

SHARE CAPITAL AND DEBENTURES

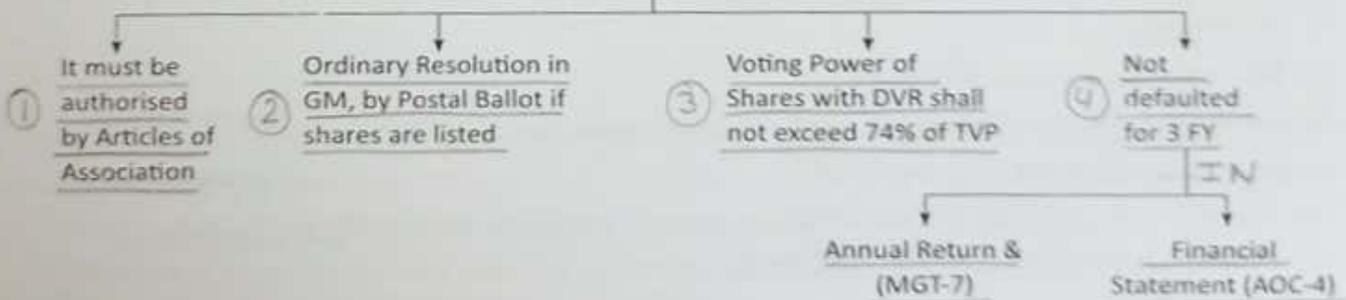
SECTION - 43

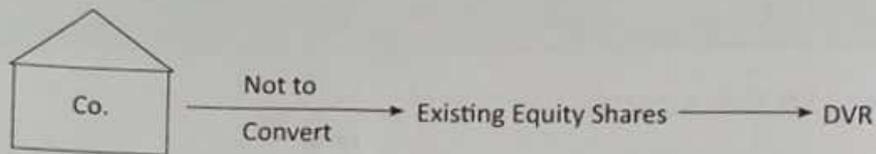
KINDS OF SHARE CAPITAL

- Every Class is itself a kind
- In Case of Private Company Section 43 - Shall not apply where MOA or AOA So provided

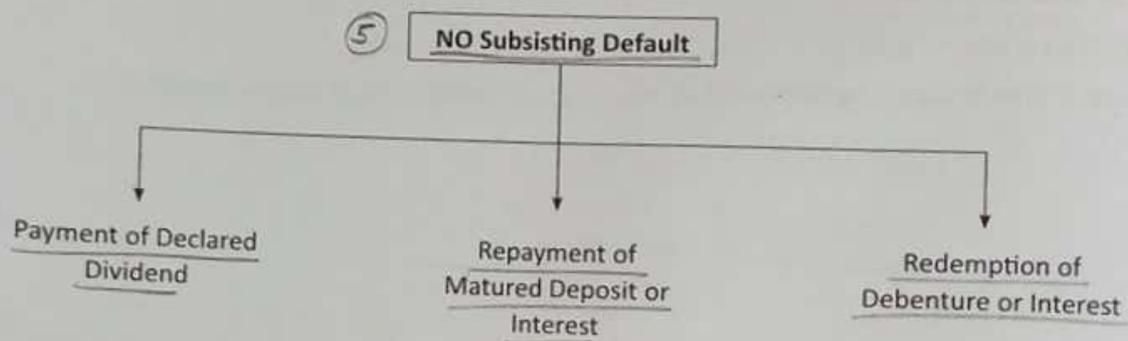


Conditions for the issue of Equity Shares with Differential Right:





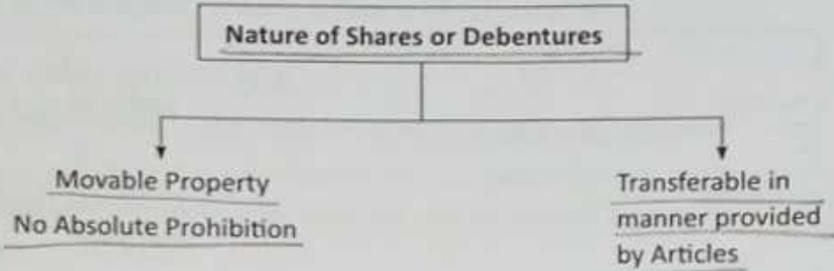
OR
VICE-VERSA



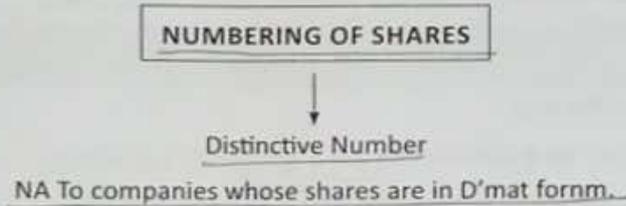
- 6 > The company has not defaulted in payment of the
- dividend on preference shares or
 - repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or
 - dues with respect to statutory payments relating to its employees to any authority or
 - default in crediting the amount in Investor Education and Protection Fund to the Central Government;
- > A company may issue equity shares with differential rights upon expiry of five years from the end financial year in which such default was made good.

- 7 > The company has not been penalized by Court or Tribunal during the last three years of any offence
- Under the RBI Act, 1934,
- the SEBI Act, 1992,
 - the Securities Contracts Regulation Act, 1956,
 - the Foreign
 - Exchange Management Act, 1999 or
 - any other Special Act, under which such companies being regulated
 - by sectoral regulators.
- > The Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of these;

SECTION - 44



SECTION - 45



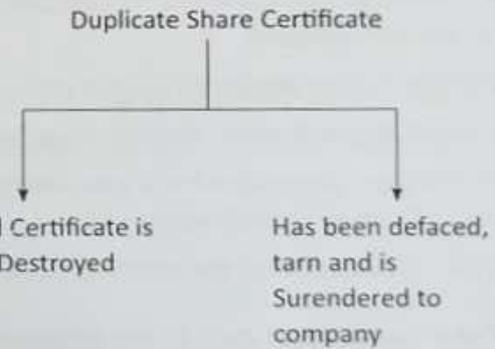
SECTION - 46

CERTIFICATE OF SHARES ★★

Share Certificate is a prima facie evidence of the title of the person

Issued Under Common Seal or; Signed
by 2 dir
Or;
CS + Director
[where a Company has appointed CS]

- If there is CS in a company, then CS sign is mandatory.



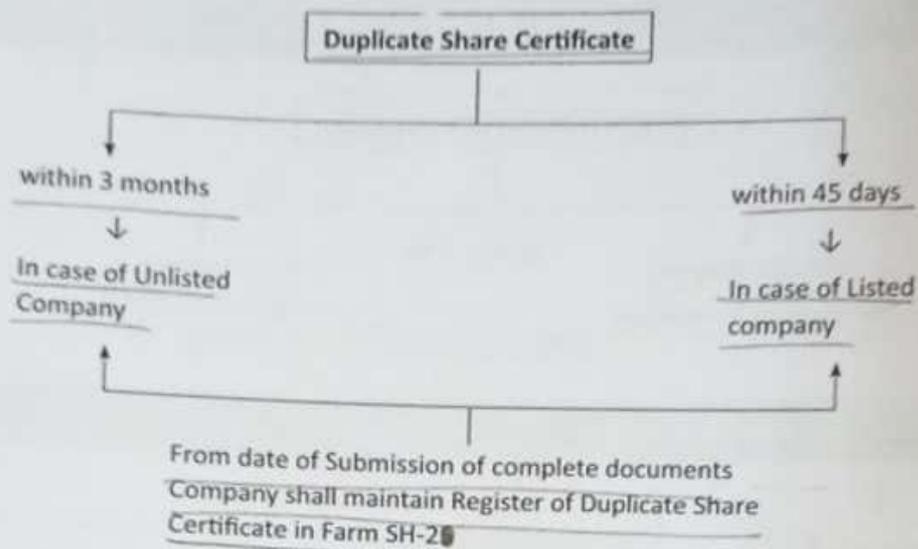
If composition of Board permits at least 1 of the 2 Director shall be other than MD or WTD.

SHARE CERTIFICATE

[Format: SH-1]

Prima evidence of the title of Person of 28 Such Shares

Where a Share is held in depository form, the Record of Depository is the prima facie evidence.



SPLITTING OF SHARE CERTIFICATE

- separate certificate claimed by a shareholder for a portion of his holding.
- the shareholder may benefit in case of a transfer by way of sale or mortgage in small lots and the right to multiply the certificates into as many shares held by the shareholder.

PERSONS SHALL BE RESPONSIBLE FOR THE MAINTENANCE, ALL BOOKS RELATING TO THE ISSUE OF SHARE CERTIFICATES:

- (a) the committee of the Board, if so authorized by the Board or where the company has a Company Secretary, the Company Secretary; or
 - (b) where the company has no Company Secretary, a Director specifically authorised by the Board for such purpose.
- All books shall be preserved in good order not less than thirty years and
 - in case of disputed cases, shall be preserved permanently,
 - all certificates surrendered to a company shall immediately be defaced by stamping or printing the word "cancelled" in bold letters and
 - may be destroyed after the expiry of three years from the date on which they are surrendered

WHETHER SHARE CERTIFICATE AN OFFICIAL PUBLICATION

- it will be seen that in terms of section 44 of the Companies Act, 2013, the shares in a company are movable property.
- Section 46 of the Companies Act, 2013 provides that a certificate shall be prima facie evidence of the title of the member to such share.

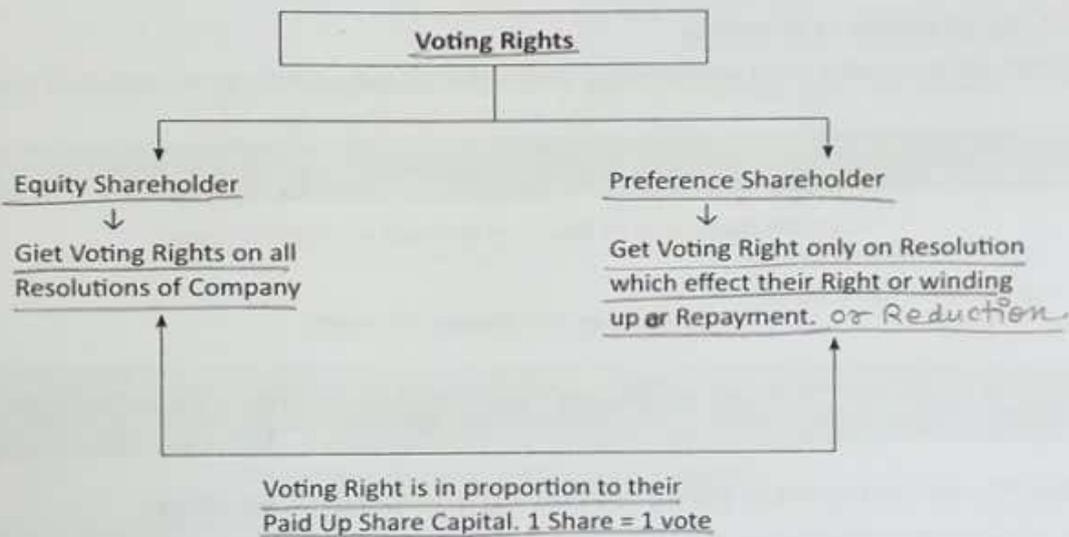
- Thus, shares are movable property transferable in the manner and that the share certificates are certificates of title and are movable property but are not publications in the nature of prospectus, balance sheet, profit and loss account, notice or advertisement.

LEGAL EFFECT OF SHARE CERTIFICATE:

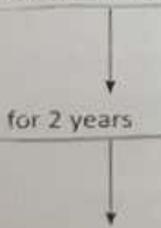
A share certificate once issued by the company binds it in two ways, namely:

- (a) by estoppel as to title: it 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.
- (b) by 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 bonafide purchaser of the shares, from alleging that they are not fully paid.

SECTION - 47



Dividend:- Not paid Dividend



Then, the Preference Shareholders get the voting Right on all the Resolutions of a company

SECTION - 48

Variation of Shareholder's Right

If Provision of variation is contained in MOA or AOA of company.

In absence of Such provision

Variation is not prohibited by the terms of Issue of shares of that class.

Company can vary the Right of Shares of any class
Holder of not less than 10% of Issued Shares of the class

- Consent of $\frac{3}{4}$ th of issued share of that class in writing

↓
May apply to NCLT to have variation Cancelled.

OR
- Pass SR.

↓
within 21 days of consent or Resolution

#NCLT Order will be binding on all and Company shall within 30 days of order of Tribunal file a copy with ROC

SECTION - 49 U

Calls on Same class of Shares to be made on Uniform basis:

↓
Call Money सबसे equally मांगी जाएगी

SECTION - 50 A

COMPANY TO ACCEPT UNPAID SHARE CAPITAL ALTHOUGH NOT CALLED-UP

- If so authorised by Articles, accepts from any member, the whole or part of the amount remaining unpaid on any shares held by him. [Calls in Advance]
- No Voting Right is available for Calls in Advance.

SECTION - 51 D

Payment of Dividend in proportion to Amount Paid-up

→ No Dividend on Calls in Advance and Calls in Arrears.

SECTION - 52

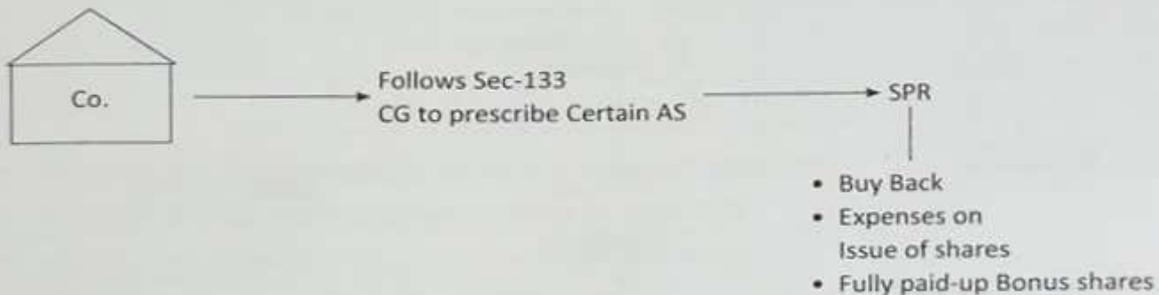
Application of Premiums Received on Issue of Shares

↓
Amount of Premium shall be transferred to a 'Securities Premium Account'

↓
can be applied only on:

- i. Fully Paid Bonus Shares [Section 63]
- ii. In writing off the preliminary expenses of the company.
- iii. In writing off the expenses of, or the commission paid or Discount allowed on any issue of shares or Debentures.
- iv. Premium on Redemption of Preference Shares or Debentures
Buy Back of Shares [purchasing own shares] [Section 68]

Crux:



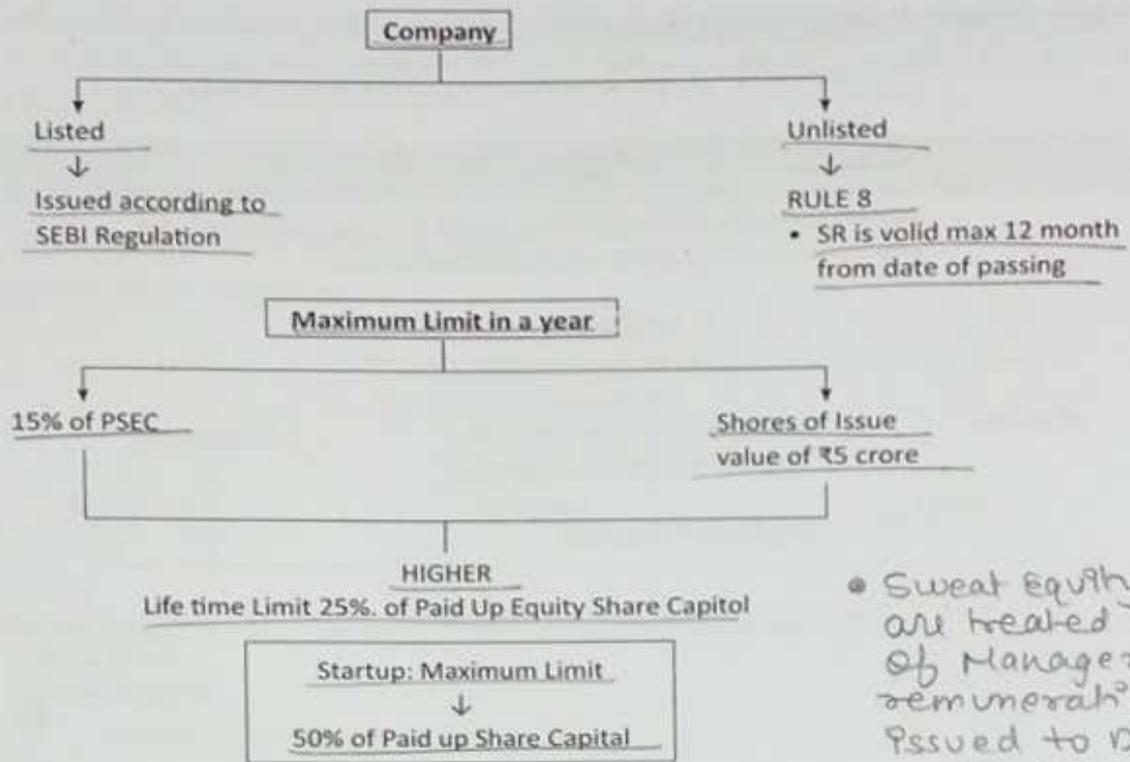
SECTION - 53

Prohibition on Issue of Shares at Discount

↓
A Company shall not shares at discount

Except:

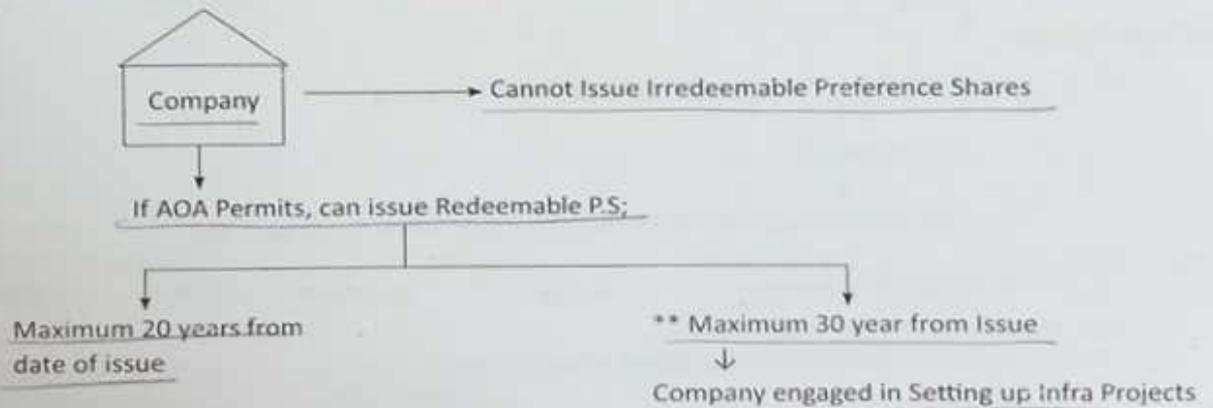
- i. Section 54 [Sweat Equity Shares]
 - ii. Debt Reconstruction Scheme
↳ When its debt converted into Shares in a debt reconstruction scheme in accordance with RBI guidelines.
- * Shares issued at discount is Void.



- Locked In Non Transferrable for period of 3 years from Allotment.
- Company Register maintain of Sweat Equity Shares [SH-3]
- Valuation of Shares shall be done by the Registered Valuer.
- Sweat Equity Holder = Other Equity Holder

SECTION - 55

ISSUE AND REDEMPTION OF PREFERENCE SHARES

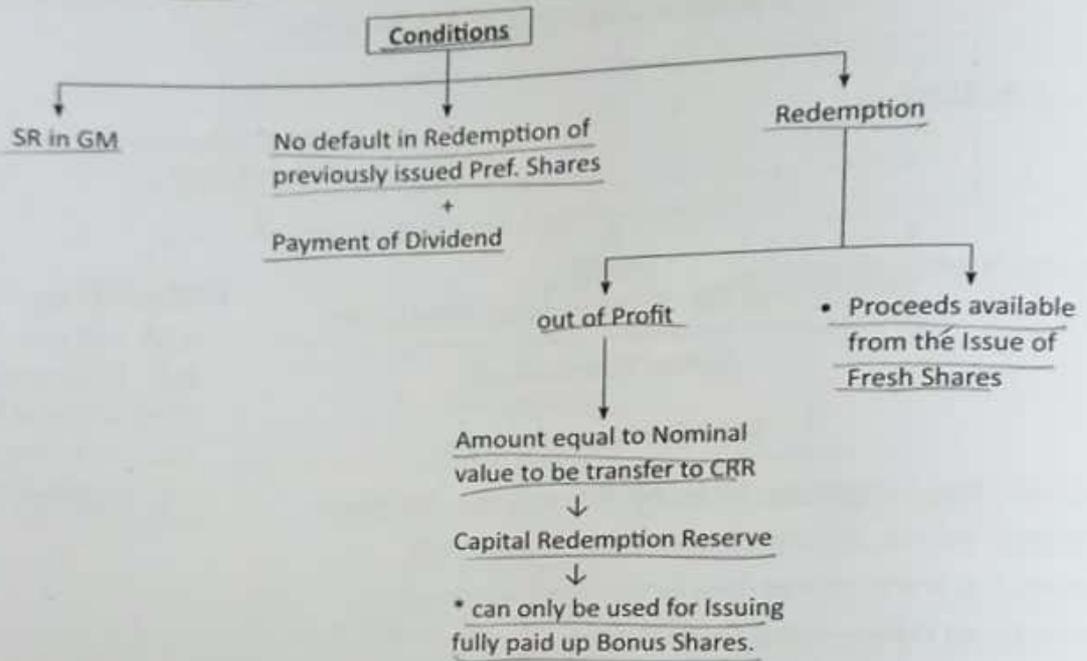


*No Such Shares be redeemed unless they are fully paid-up.

** If AOA authorise, can Issue Redeemable Preference Shares;

Company engaged in Setting up Infra Projects

Subject to Redemption of Minimum 10% of P.S per year from 21st year onwards at the option of preference holders



PREMIUM ON PREFERENCE SHARES:

- Profit
- SPR

Inability to Redeem:

Company with consent of holders of 3/4th in value

+ NCLT Approval

Issue further Redeemable Preference Shares equal to amount due

+ dividend to Redeem

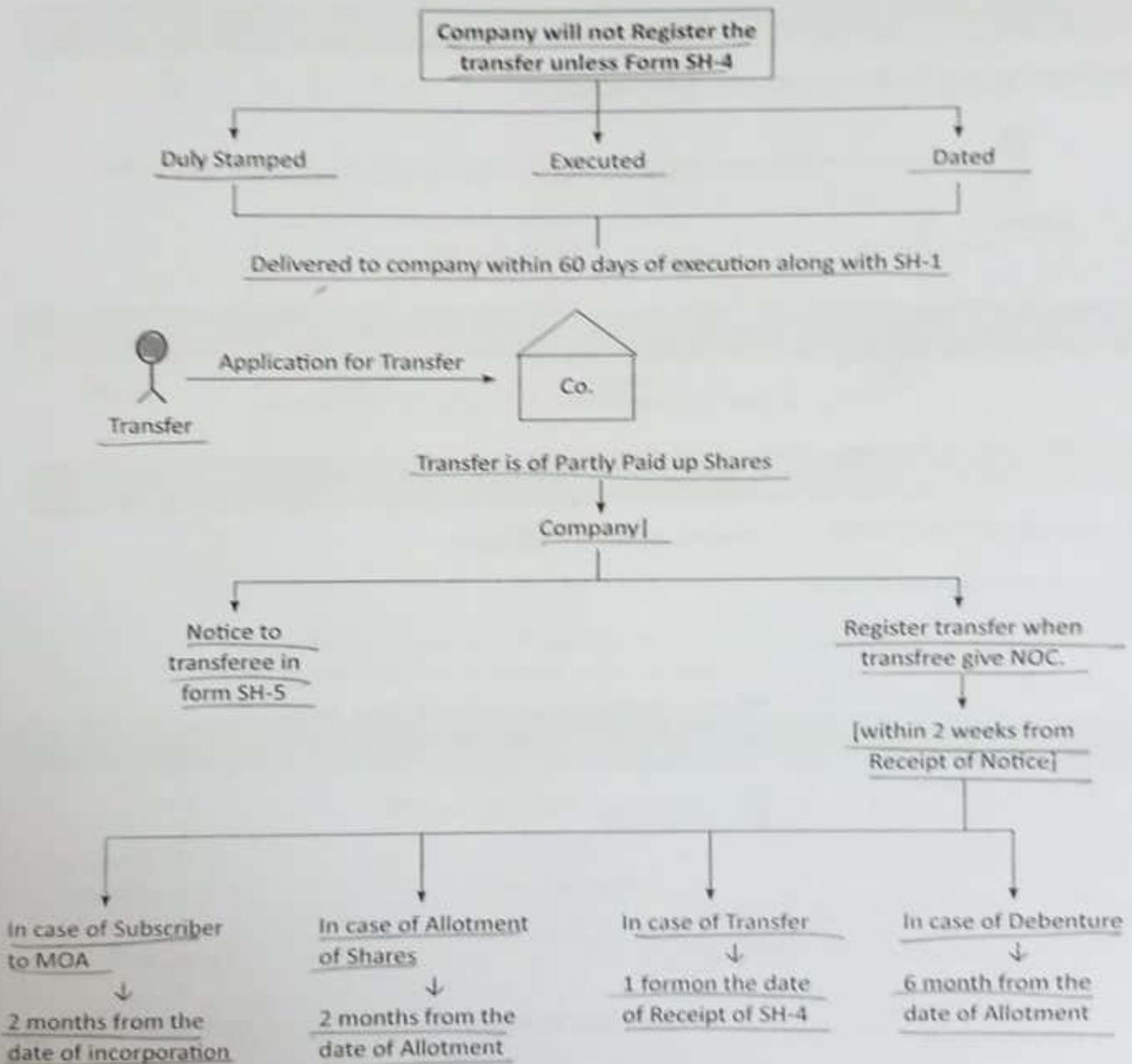
Exit Opportunity to Dissenting Shareholders.

- The issue of further redeemable preference shares or the redemption of preference shares under this section shall not be deemed to be an increase or, as the case may be, a reduction, in the share capital of the company.

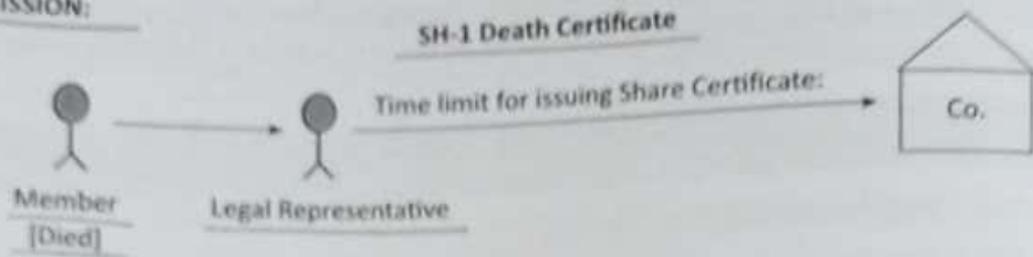
SECTION - 56

TRANSFER AND TRANSMISSION OF SECURITIES :

- Execution of Transfer Instrument

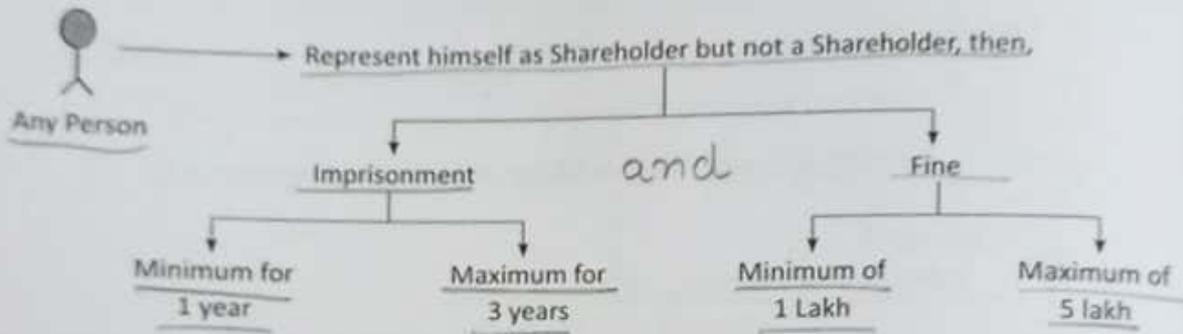


TRANSMISSION:



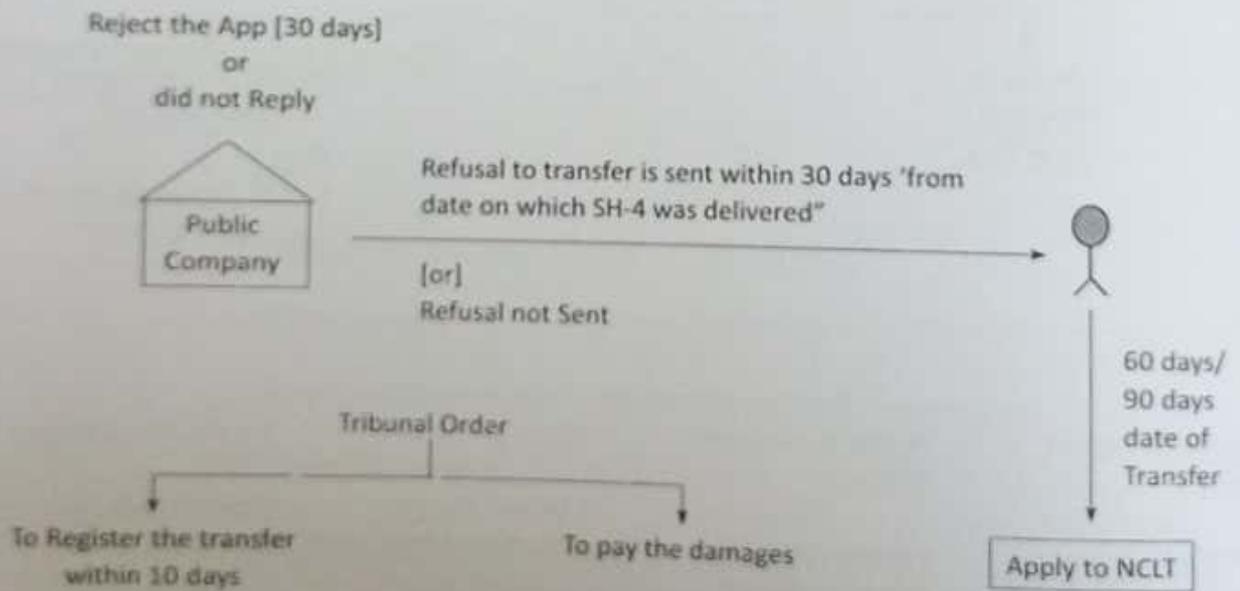
SECTION - 57

PUNISHMENT FOR PERSONATION OF SHAREHOLDERS

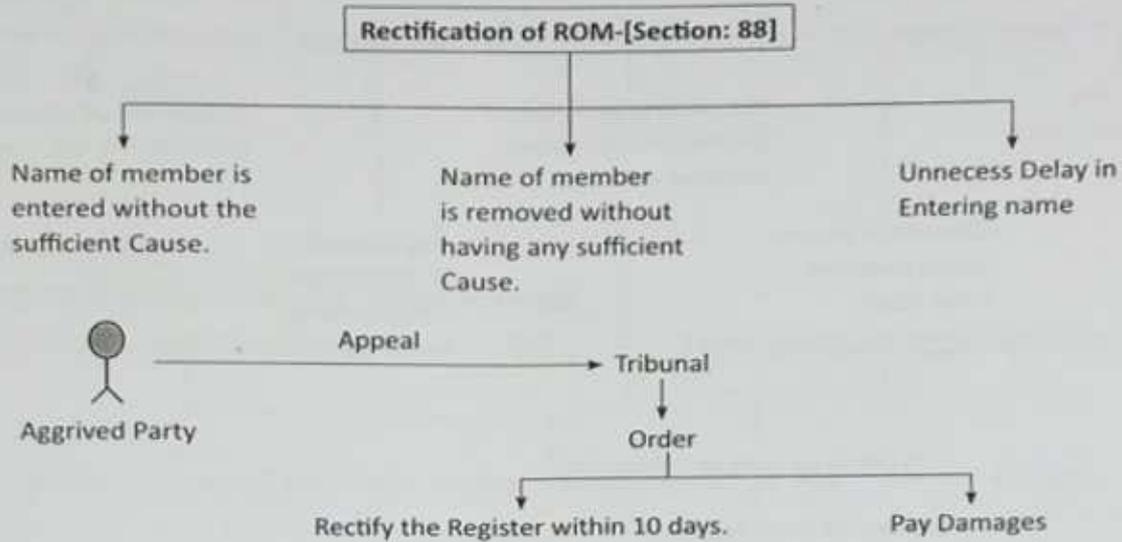


SECTION - 58

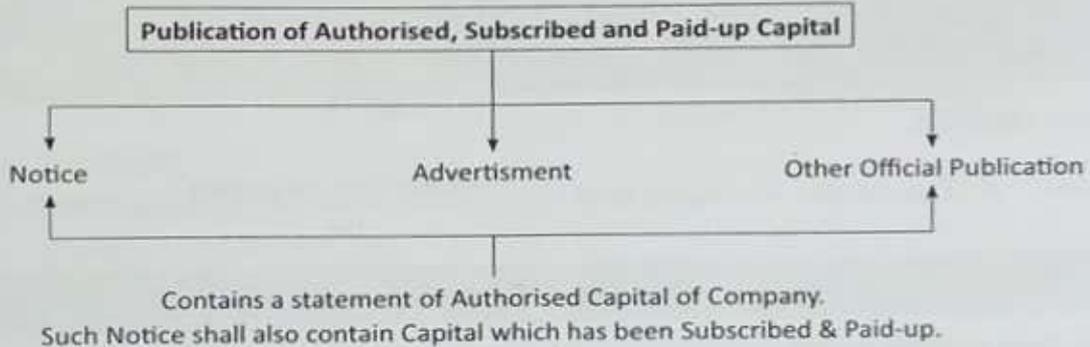
REFUSAL OF REGISTRATION AND APPEAL AGAINST REFUSAL



SECTION - 59



SECTION - 60



SECTION - 61

Alteration of Share Capital By passing

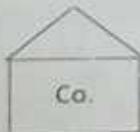
OR

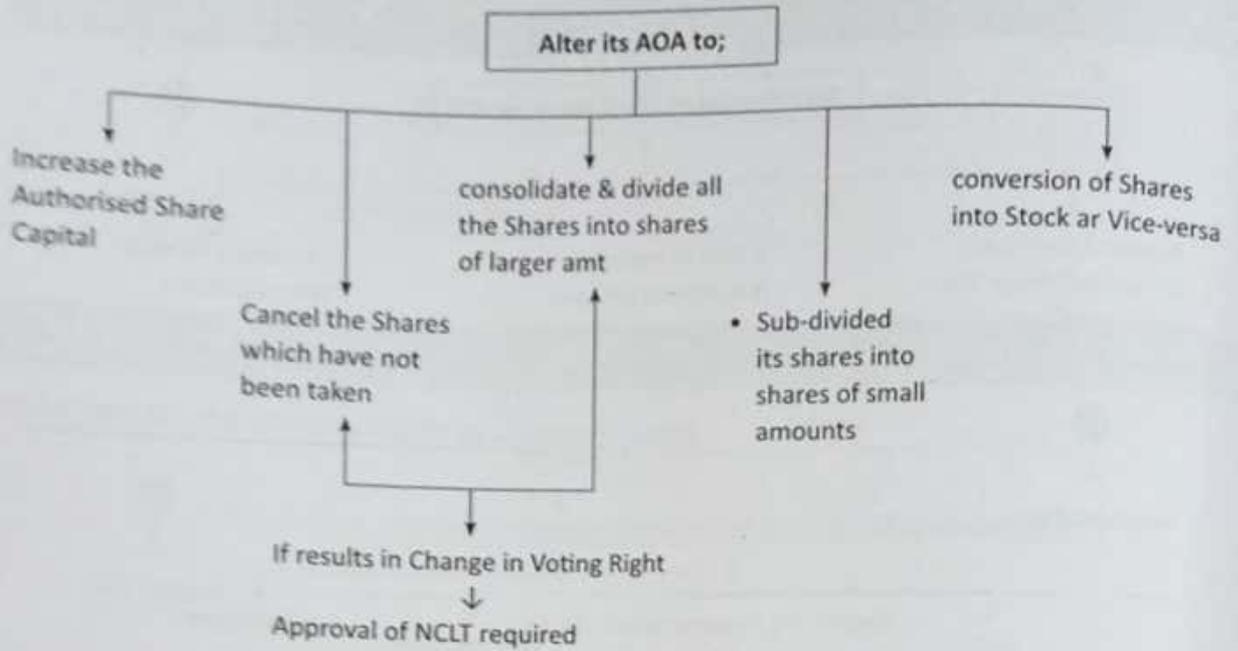
in General Meeting..

→ Limited by Shares

↓

If it AOA authorize





Points to be noted

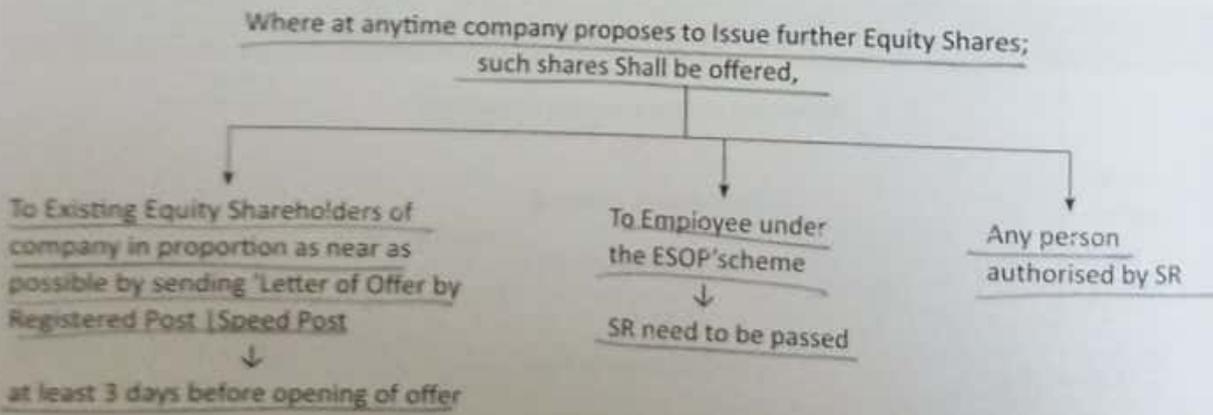
- ✓ The cancellation of shares shall not be deemed to be a reduction of share capital.
- ✓ In order to alter its capital clause in the Memorandum, the company requires authority in its articles.

Notice of Alteration:

Form SH-7 + Copy of OR + Altered MOA $\xrightarrow[\text{OR}]{\text{within 30 days for passing}}$ ROC

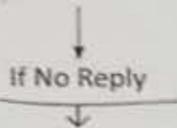
SECTION - 62

Further Issue of Share Capital

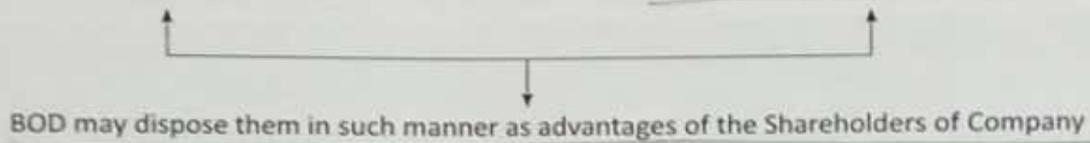


CONDITIONS

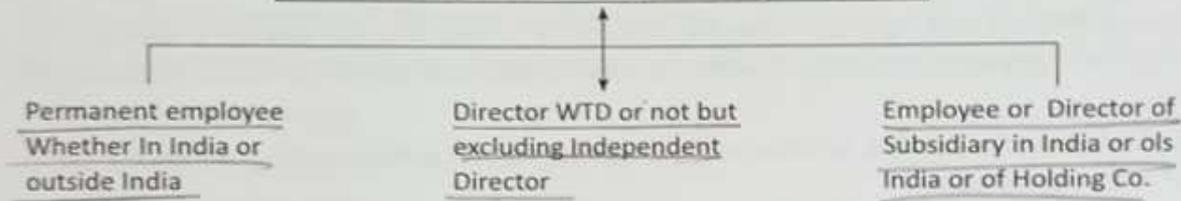
- Notice- No. of shares offered
- Time limit-Minimum = 15 days or such days as may be prescribed (7 days is prescribed)
- Maximum = 30 days



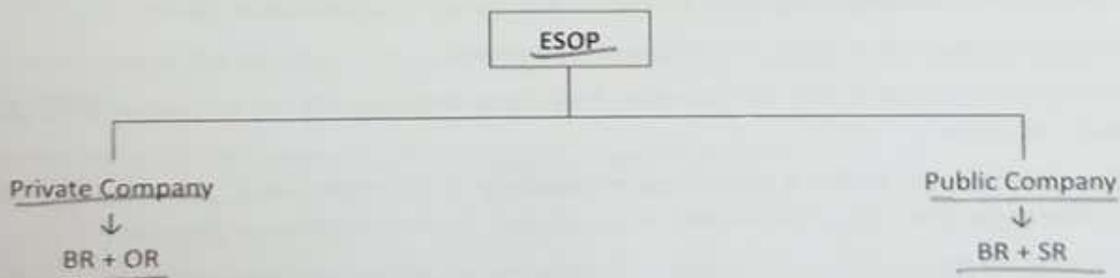
- Right of Renunciation is there; either full or half.
- After expiry of time specified 'OR' Earlier Receipt of Non-Acceptance of offer.



Employee Stock Option Plan Employees under ESOP

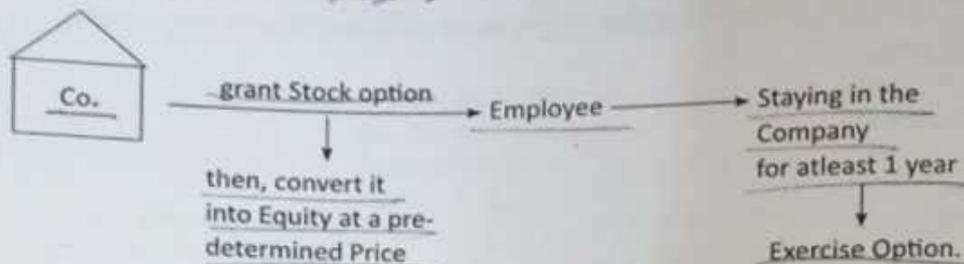


- But Does not Include:
 - ✓ Employee who is a Promote
 - ✓ Person belonging to Promotor Group
 - ✓ A Directorar himself or through his Relative hold more than 10% of Equity Shares.



- The Option granted to employee shall not be transferrable.
- ESOP will Not be Issued at Discount

- The Option granted to employee shall not be transferrable.
- ESOP will Not be Issued at Discount



There shall be a minimum period of one year between the grant of options and vesting of option.

In a case where options are granted by a company under its Employees Stock Option Scheme in lieu of options held by the same person under an Employees Stock Option Scheme in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by the merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required under this clause

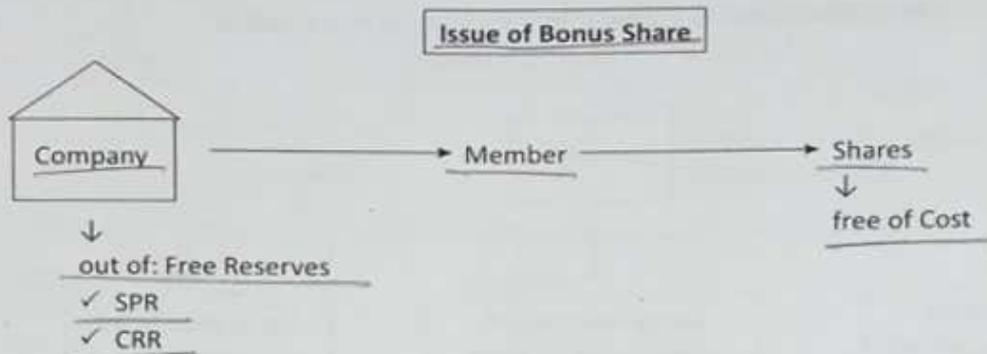
- Employees shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.
- Forfeiture/refund the amount, payable by the employees, at the time of grant of option may be forfeited by the company
 - (a) if the option is not exercised by the employees within the exercise period; or
 - (b) the amount maybe refunded to the employees if the options are not vested due to non-fulfillment of conditions relating to vesting of option as per the Employees Stock Option Scheme

*** M.IMP

- Death/Permanent disability/Resignation of employees who were granted with options
 - ✓ 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 case the employee suffers a permanent incapacity while in employment, all the options granted to him as on the date of permanent incapacitation, shall vest in him on that day.
 - ✓ In the event of resignation or termination of employment, all options not vested in the employee as on that day shall expire.

However, the employee can exercise the options granted to him which are vested within the period specified in this behalf, subject to the terms and conditions under the scheme granting such options as approved by the Board.

SECTION - 63

→ Conditions:

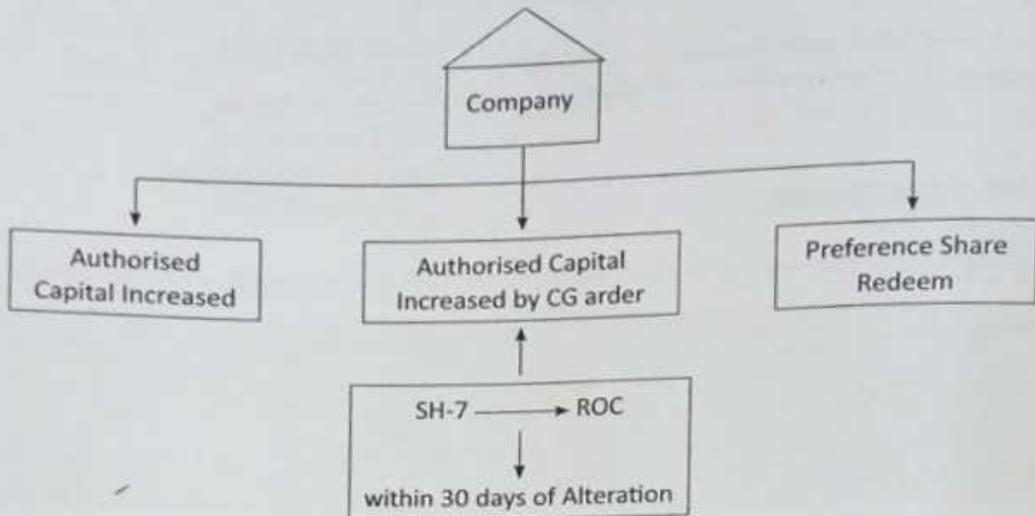
- ✓ Authorised by AOA
- ✓ Board Resolution
- ✓ OR in General Meeting
- ✓ Not defaulted in respect of Statutory dues of employees.
- ✓ Not de faulted in payment of Interest or Principal in respect of FD or Debt Securities.
- ✓ All Shares are fully paid-up.
- ✓ Bonus Issue Shall not be issued in lieu of Dividend.
- ✓ Once BIR is passed - it shall not be withdrawn

Benefits of Issuing Bonus Shares:

1. It is meant for capitalizing undistributed profits.
2. Fund flow is not affected adversely.
3. Market value of the company's shares comes down to their nominal value by issue of bonus shares.
4. Market value of the members' share holdings increases with the increase in number of shares in the company.
5. 'Bonus shares' is not an income. Hence, it is not a taxable income

SECTION - 64

Notice to be given to Registrar for Alteration of Share Capital



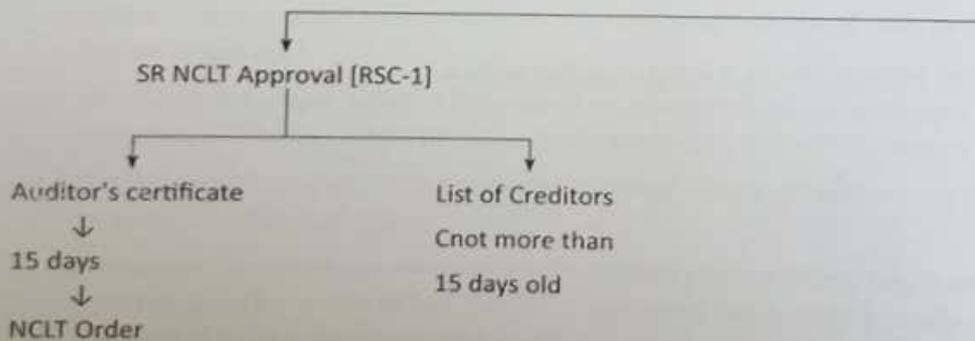
SECTION - 65

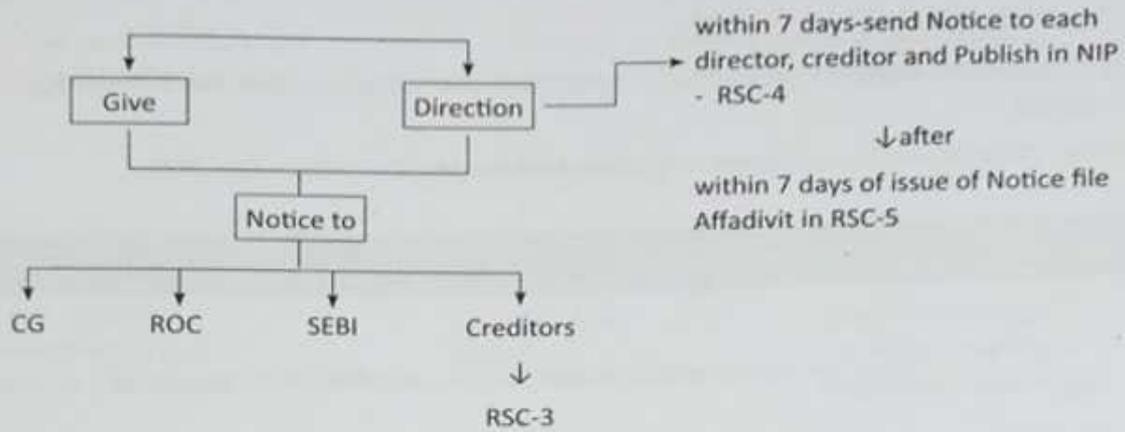
Unlimited Company to provide for the Reserve Share Capital on conversion of Limited Company:

Set aside a part of its uncalled Capital to be Called Out Only in case of Winding up.

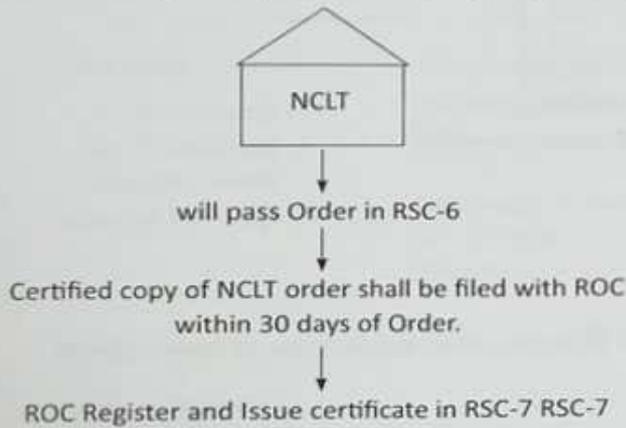
SECTION - 65

Reduction of Share Capital



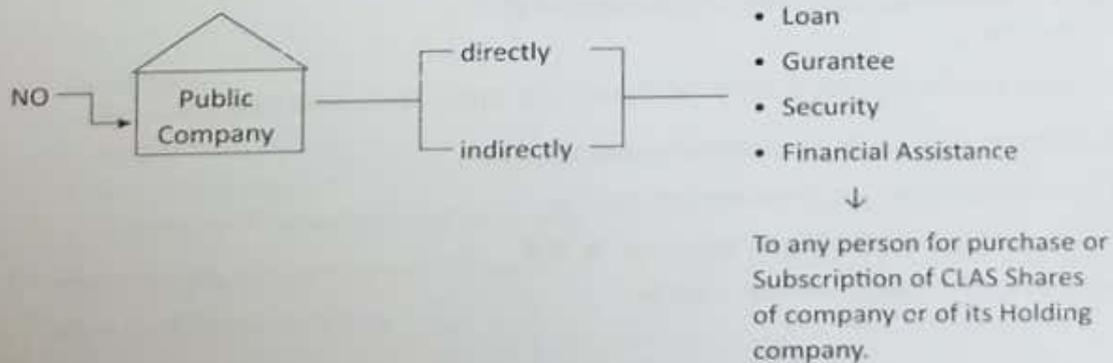


RSC-5 confirming the dispatch and Publication of Notice



SECTION - 67

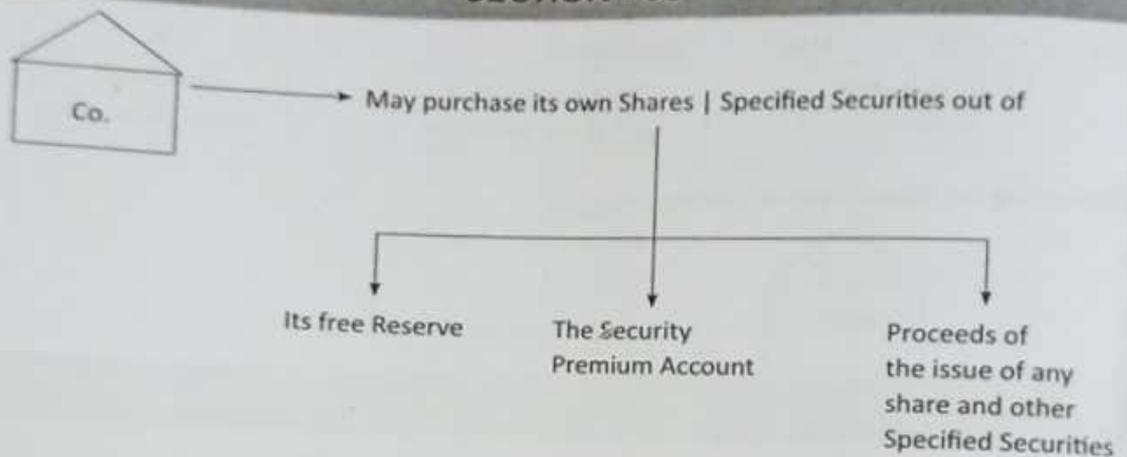
Restrictions on Purchase by Company or Giving of loan for purchase of its Shares



Exception:

- ✓ Lending of money by Banking Company
- ✓ Buying of shares to be held by trustee for the benefit of employees under the Scheme approved by company.
- ✓ Loan by a company to its employees other than Directors or KMP within the limit.

SECTION - 68



- Buy Back करने के बाद Shares Cancel होते हैं
- No Buy Back SE of Securitie Shall be made out of Proceeds of an earlier Issue of Same kind of security.

➤ **Conditions**

- ~ Authorised by AOA
- ~ SR with Explanatory Statement

But, in this case;

- Only BR is needed if Buy Back is up to 10% [PUES +FR] [NO RBC]
- SR is needed Buy Back > 10% & ≤25% [PUES+FR] 1FY Equity Share Max 25%. Buy Back
- ~ Debt Equity Ratio after buy back shall not exceed 2:1
- ~ Shares or other Specified Securities are fully paid up.
- ~ Listed Company Buy Back BB Regulation made by SEBI
- ~ Buy Back (BB) as per Rules specified (by SEBI)

Buy-Back Buy-Back No Buy Back far 1 year
 Buy-Back → shall be completed within a period of 1 year from date of passing Resolution

Method of Buy-Back

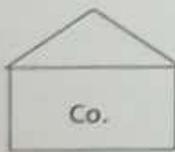
From existing Shareholders on the basis of Proportion
 From the Open Market
 By purchasing the securities issued to employees under ESOP.

Buy-Back
 after passing BIR or SIR but before making Buy Back
 ROC

↓
 Declaration of Solvency [SH-9] Signed by 2 Directors [1-MD]

Buy Back Start होकर Complete हो गया
 Within 7 Days
 Share Security Certificate

↓
 Extinguish or Destroy



→ Buy-Back Complete 6 Months Shall not Issue same kind

Exceptions:

- Bonus Issue
- ESOP
- Sweat Equity Shares
- Conversion of Debenture and Preference Shares

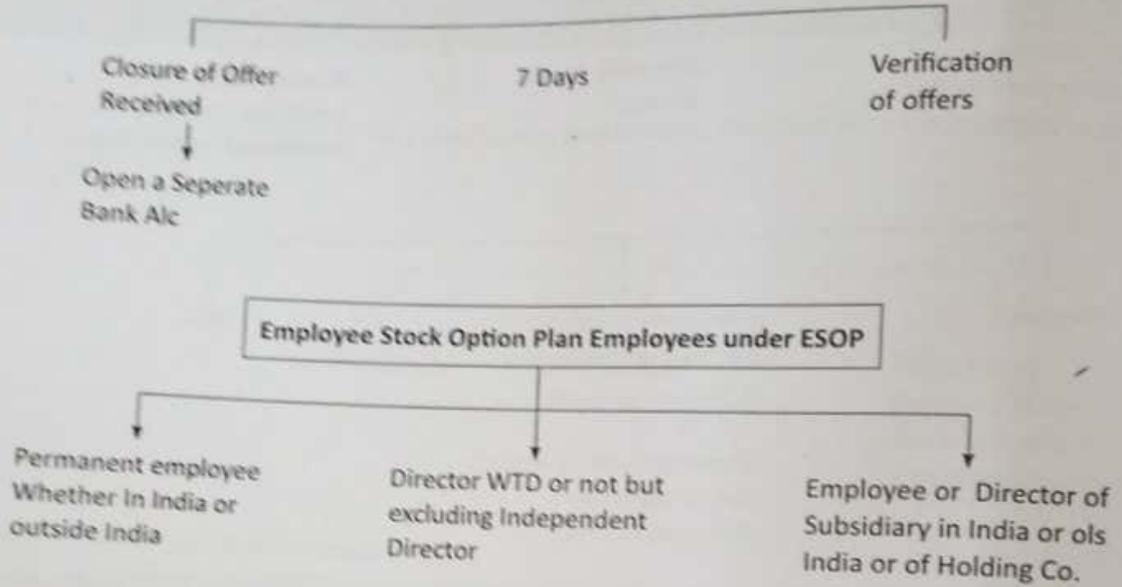
#Register of Buy Back SH-10 → ROC
 #Buy Back Complete Return ↓
 SH-11 + Certificate SH-15

SECTION - 68

Buy Back → Nominal Value → CRR

OTHER RELEVANT PROVISION OF SEC 68

- Offer of Buy Back shall remain open for a period of not less than 15 days not exceeding 30 days



NOTES FOR REVISION

- Reference to Sec 54.

⇒ Accounting treatment of Sweat Equity

Situation #1

Situation #2

↓
Value addition given by employee / director can be shown in B/S as depreciable Asset

↓
Consideration given by employee or director cannot be shown as Depreciable Asset

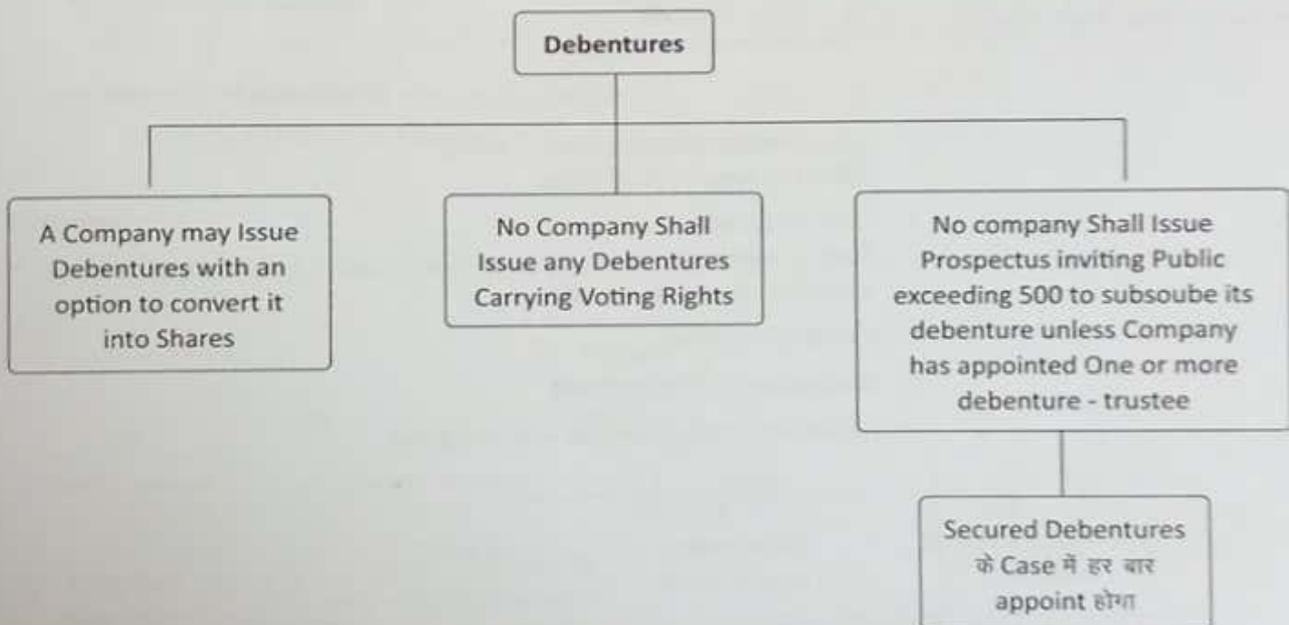
↓
It shall be carried to B/S as per Accounting Standards.

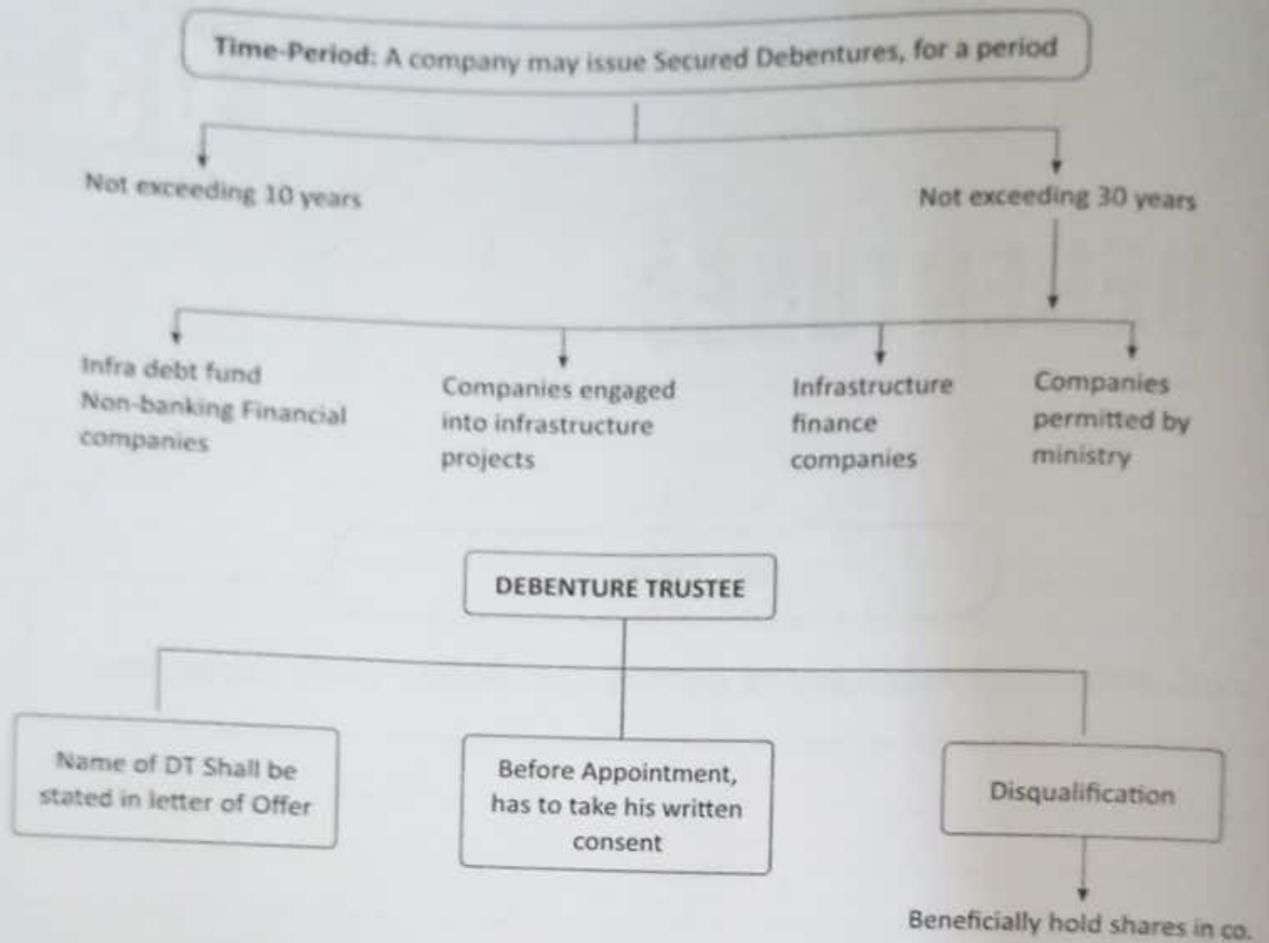
↓
It shall be expensed as provided in Accounting Standard.

DEBENTURES

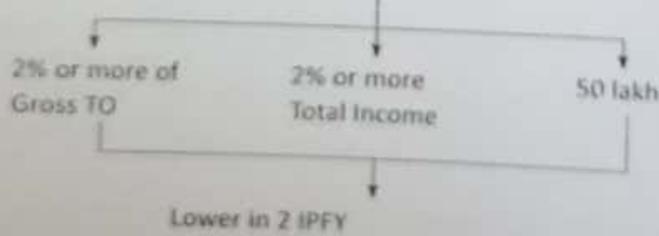
SECTION 71

READ WITH COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014



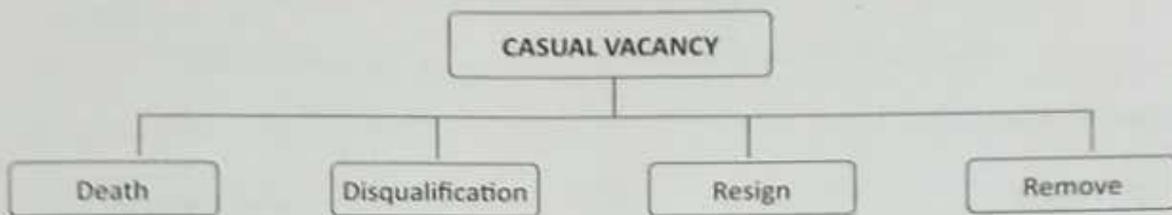


- is a promoter Director, KMP or Other Officer or employee of CASH
- Entitled to money Paid by company otherwise by Remuneration
- Indebted to CASH
- Guarantee of Principal Debt
- has pecuniary relationship with company



- Relative of Promoter / Director / KMP

Company → Appoint DT
 ↓
 before issue of Prospectus or PPOCA
 ↓
 but not later than 60 days execute a trust deed.
 ↓
 To protect interest of Debenture holders

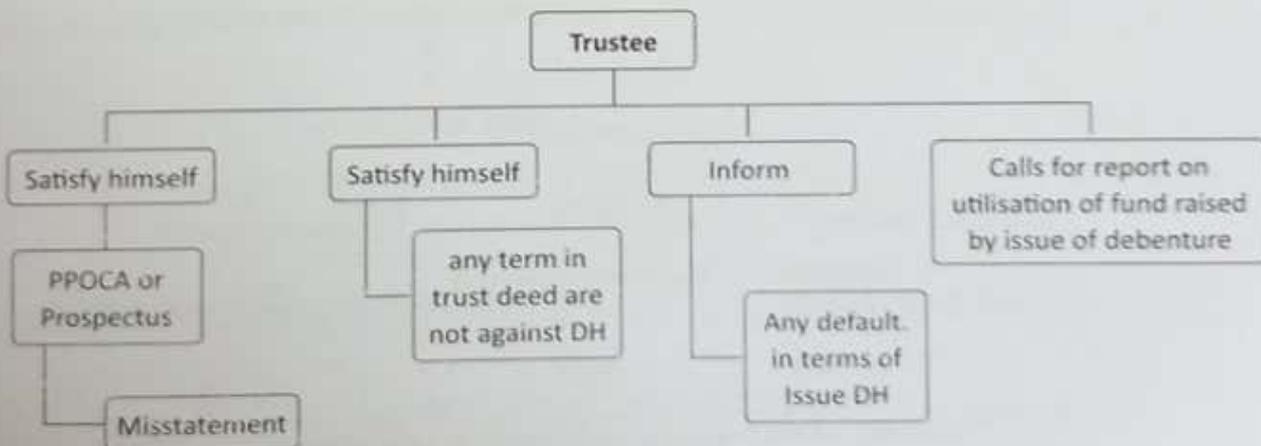


#Board may fill Casual Vacancy, while such vacancy continue Remaining trustee may Act.

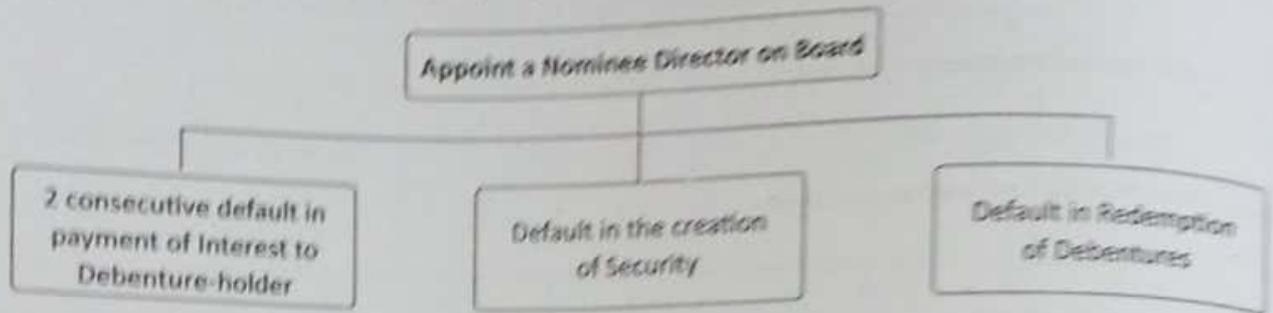
If Vacancy arises → Due to Resignation
 ↓
 Vacancy shall only be filled with consent of Majority of Debenture holder.

Removal:

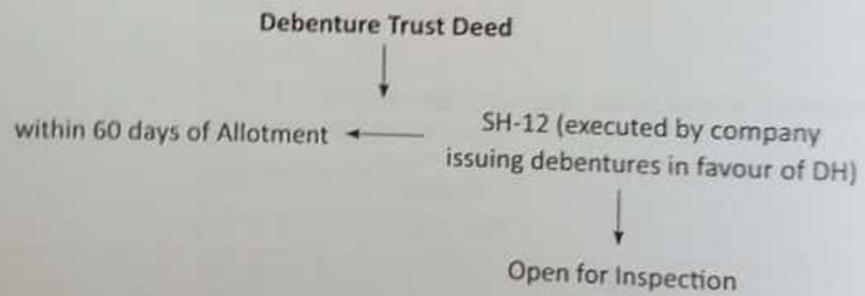
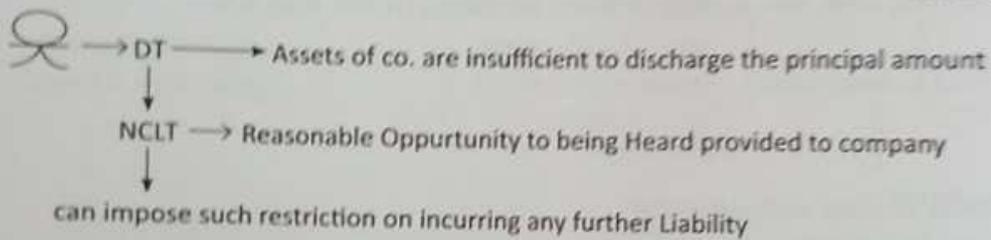
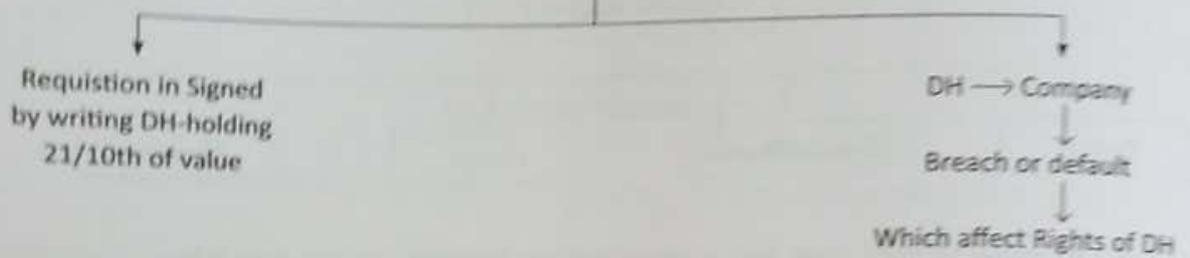
If approved by holder of atleast 3/4th in value of debentures. —



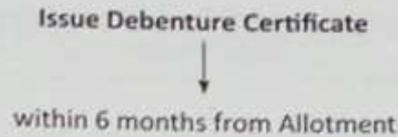
Call for Performance Report from company



* DT must take steps to convene meeting of DH as and when required



Company within 7 days forward Trust Deed to any Member

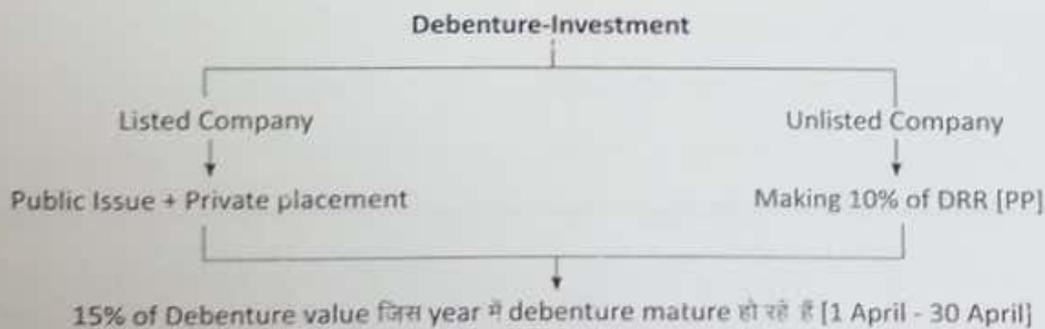
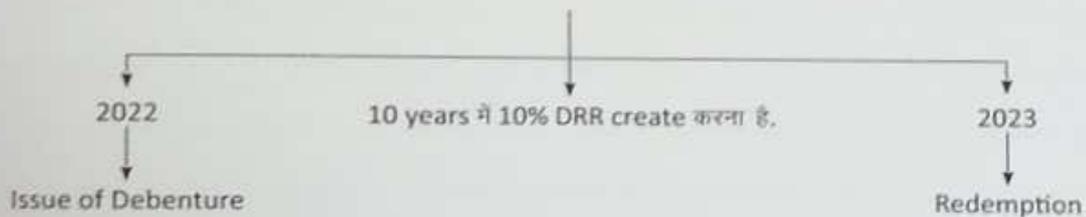


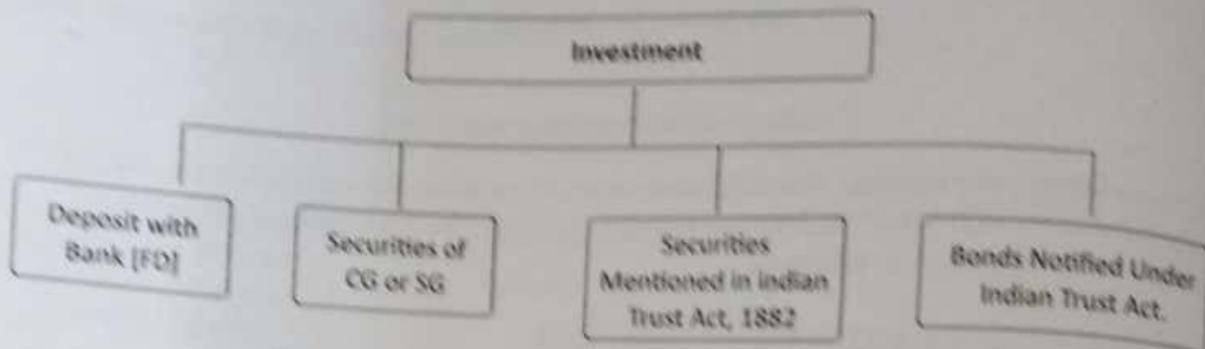
* **Debenture Redemption Reserve:** Where Debentures are Issued by company; It shall create DRR out of Profit available for payment of Dividend and Amount Credited to Such A/C shall not be utilised by company except Redemption of debenture.

Provision as per Companies (SH & Deb) Rules, 2014

	Private Placement	Public Offer
<ul style="list-style-type: none"> All India Financial Institution Regulated by RBI. [NABRAD, SIDBI or Banking companies] 	NIL	NIL
<ul style="list-style-type: none"> Other Financial Institution or NBFC 	NIL	NIL
<ul style="list-style-type: none"> Listed Companies NBFC Housing Company 	NIL	NIL
<ul style="list-style-type: none"> Unlisted Companies [other than NBFC & HFC] 	10% of Value of outstanding debentures	10% of value of Outstanding debentures

The Company shall comply with the requirements with regard to DRR and Investment of Sum in respect of debentures maturing during the year ending 31st March of next year.



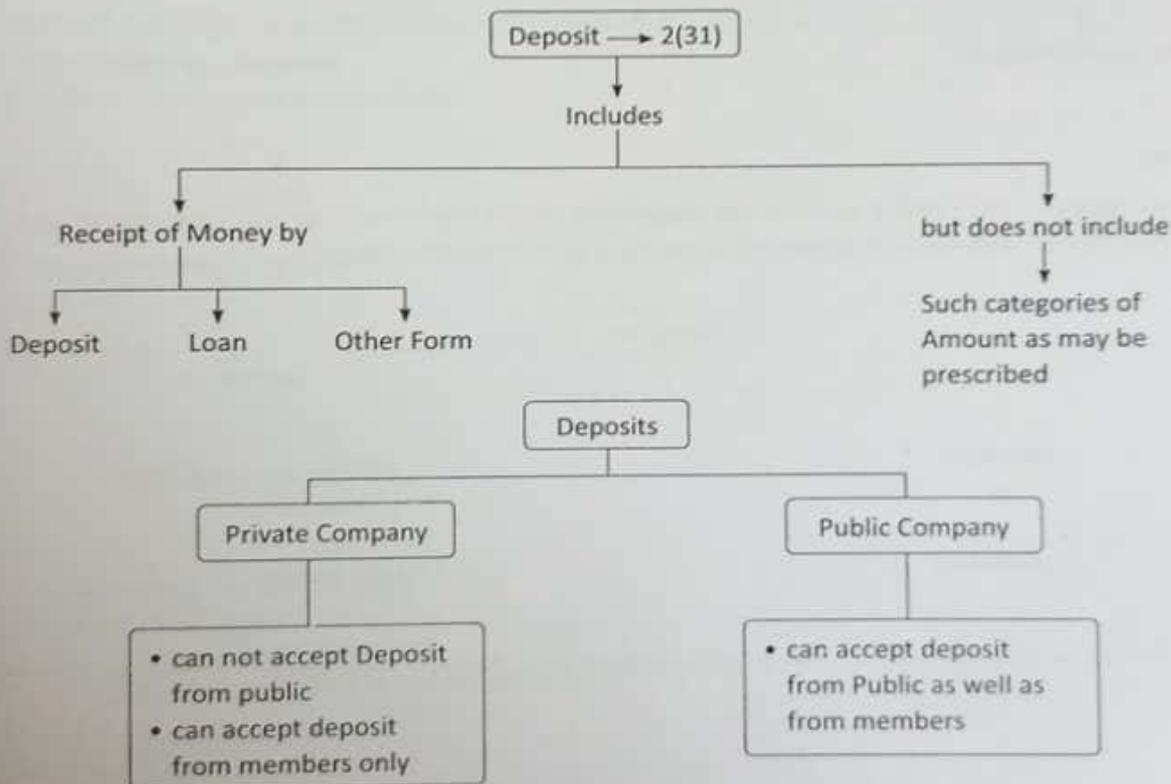


Debenture Stock: A company, instead of issuing debentures, each in respect of separate and distinct debt, may raise one aggregate loan fund or composite stock known as 'debenture stock'.

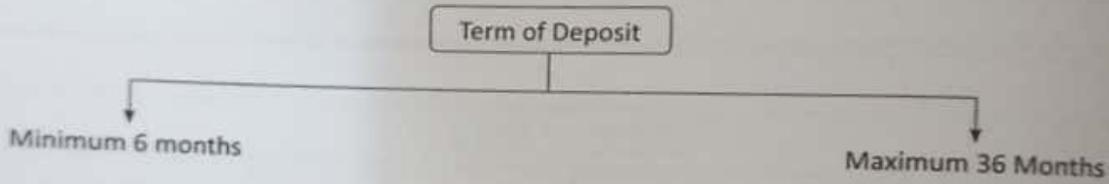
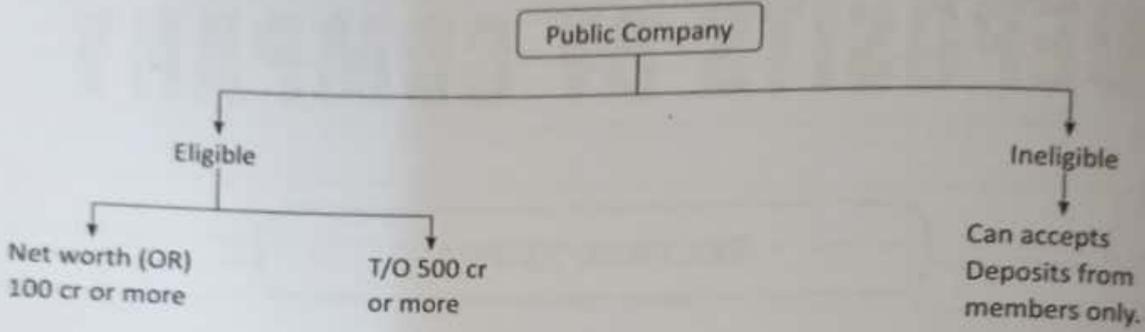
ACCEPTANCE OF DEPOSITS BY COMPANY

SECTION 73-76A

COMPANIES (ACCEPTANCE OF DEPOSITS RULES, 2014)

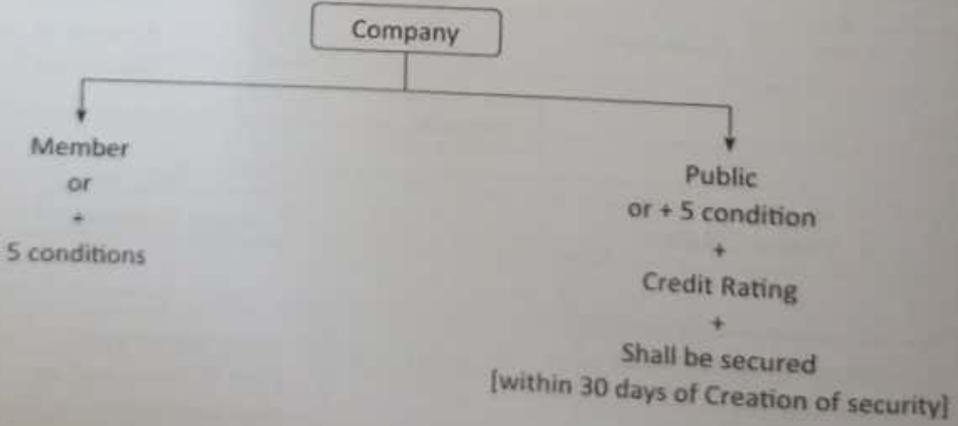


Meaning of depositor:
 (i) any member of the company who has made a deposit with the company in accordance with section 73(2) of the Act; or
 (ii) any person who has made a deposit with a public company in accordance with section 76 of the Act.



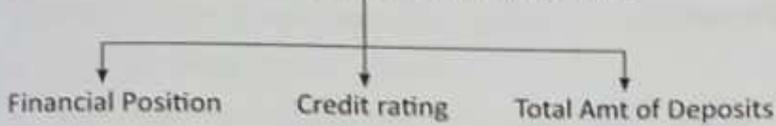
Exception:

A co. accept deposit from Public | Member for repayment earlier than 6 months but not earlier than 3 months from date of such deposit. Provided; Deposit \leq 10% [PSC+ FR+ SPR]

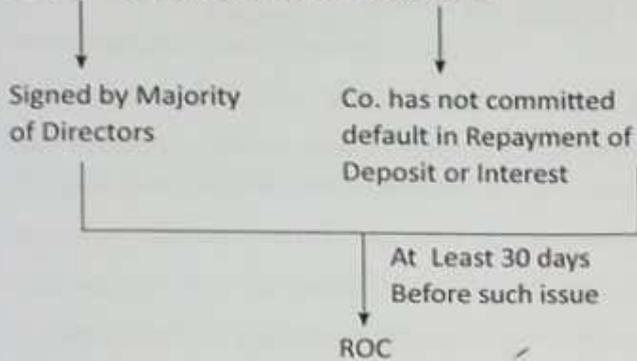


5 conditions

1. Issuance of Circular to member | Public [DPT-1]



2. DPT-2 + 4. Statutory Auditor Certificate



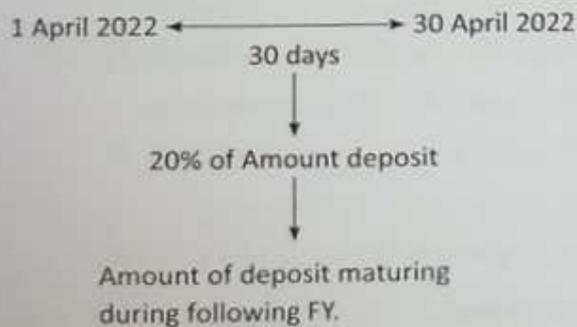
और अगर + default किया तो 5 years has been Elapsed from date On which such Default Has been Made Goods.

Validity Of DPT-1

- * Expiry of 6 months from date of close of FY in which it is issued or
- * Date of AGM or
- * If AGM is not held, last date of AGM

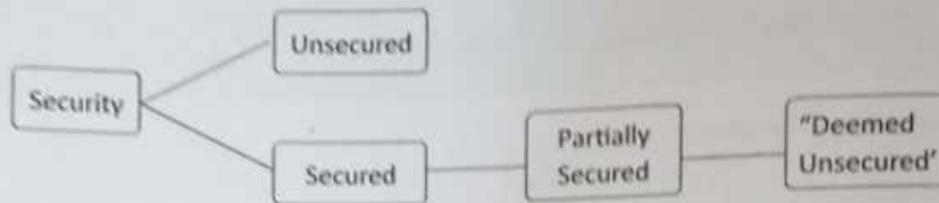


3. Deposit Repayment Reserve

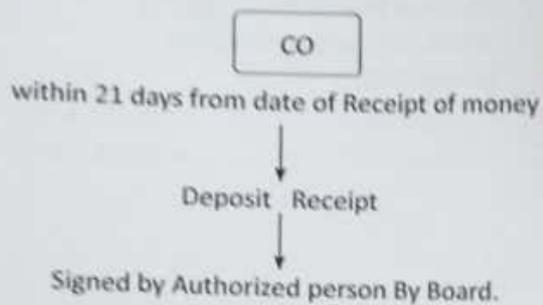


5. Providing security if the deposits are accepted from public.
Partially secured deposits will be termed as unsecured.

➤ DRR can only be used for Repayment of Deposit



→ Furnishing of Deposit Receipt to Depositors.



	Eligible Public Co.		Public Company	Private Company	Start-Up Company	Private Co. [3.conditions]
Member	Govt. co. 35% [PSC +FR+SPR]	Non-govt co. 10% [PSC+FR+SPR]	35% [PSC +FR+SPR]	100% [PSC+FR + SPR]	Unlimited	Unlimited
Outsider		25% [PSC +FR + SPR]	NA	NA	NA	NA

3 conditions:

- i. Not associate or Subsidiary
- ii. Not de faulted in payment of Deposit
- iii. Loan < 2 PSC or 50 crore – Whichever is less

Question: (Should be in table) Can deposits be accepted in joint names?

Where depositors so desire, deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor".

Deposit: Following Categories of Amount are not considered as Deposits:

- Amt Received from CG & SG
- Other Source whose Repayment is guaranteed by CG Or SG
- Amt read from Local Authority
- Amt reed from Statutory Authority constituted under an Act of Parliament
- Amt read from foreign Govt., International Banks, Multilateral financial Institution
- Any amt recd. from PFI or Bank Or Regional Financial Institution
- Amt received by co. from any other co.
- Amt. recd. against Issue of Commercial paper or any other Instrument Issued by RBI.
- 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 a private company.
- Any Non-Interest bearing amt. read and held in trust.
- Any amt received by NIDHI Company; amt recd. by Chit fund
- Receipt of Share Application Money. [within 60 days allotment, 15 days Refund otherwise treated as Deposit]
- Any amount recd. by NIDHI Company, amount received by Chit fund.
- Any amt recd. from person who at time of Receipt of Amount was director of company or Relative of director of Put. company.
- Any amt raised through Secured Debentures or Bonds.
- Any amt raised by issue of non-convertible debentures, not constituting a charge and Listed on Stx.
- Amount read from employee not exceeding his Annual Salary under a contract of employment.
- Any amt read in ordinary course of Business :-
 - AS Advance for Supply of goods & Services.
 - Provided, advance is appropriated within 365 days.
 - As Advance for Sale of Immovable Property.
 - As Advance for Security Deposit for performance of Supply of goods & services.
 - As Advance for providing future Services period for providing such Services shall not exceed

does not exceed period prevalent as per common business 84 or 5 year
 LESS

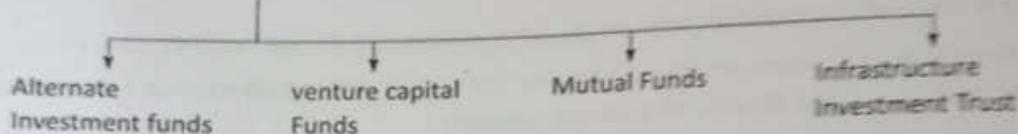
- As an advance for Subscription towards Publications, whether in print or in e-form
- As an advance Received and as allowed by Sectoral Regulator.
- As an advance recd. under long term projects. for supply of Capital goods

COMPANY LAW - EXAM ORIENTED BOOK

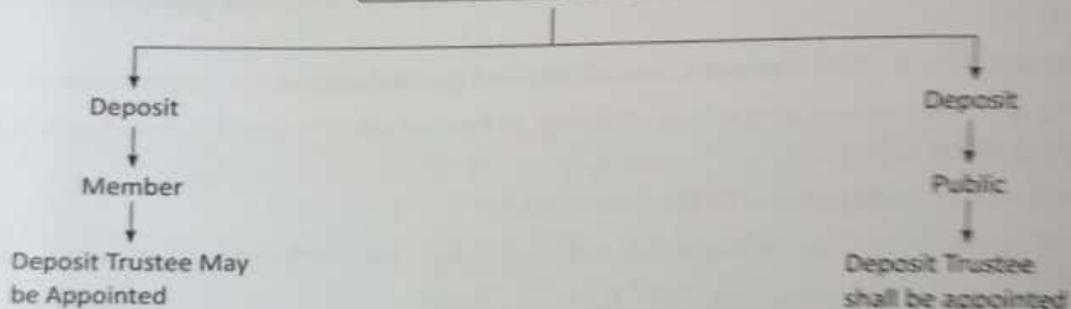
- Any Receipt of money from promoter as unsecured loan :
 - Loan brought in pursuance of the condition imposed by lending institution
 - Loan is provided by Promoters or by their Relatives.
- Amount Received by Collective Investment Scheme regulated by SEBI.
- Amount Received by Start-up Company

↓
25 lakh or more by way of convertible note in a single trench

- Amount Received by co. form



Appointment of Deposit Trustee



* Eligibility of Deposit Trustee

Not eligible if;

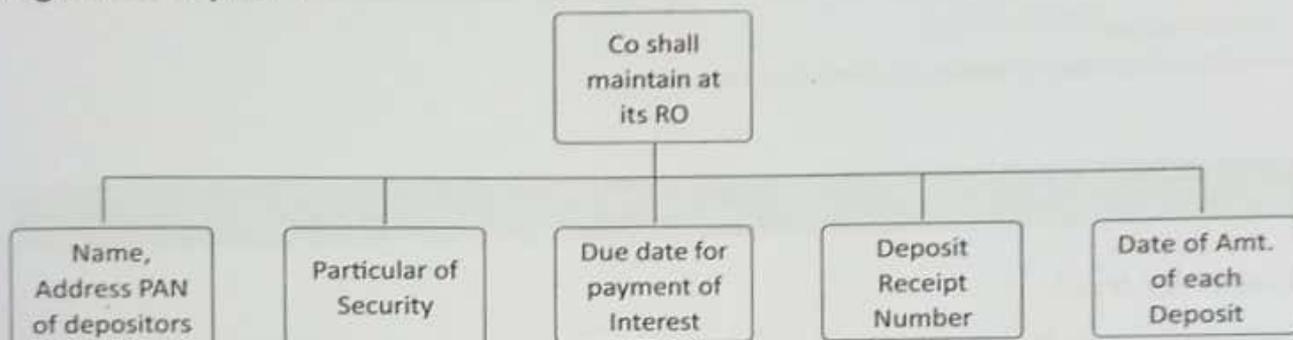
- Director | KMP | Officer | Employee of CASH
 - Depositor in the Company
 - Indebted to CASH
 - has any Material Pecuniary Relationship with the company.
 - has extended into any guarantee in respect Of Principal debts secured by the deposit.
 - is related to any person; Director/KMP/ employee of CASH.
- ✓ Deposit Trustee Deed DPT-2
 - ✓ Shall execute DPT-2 at least 7 days before issuing DTT-1

Meeting of Depositors:

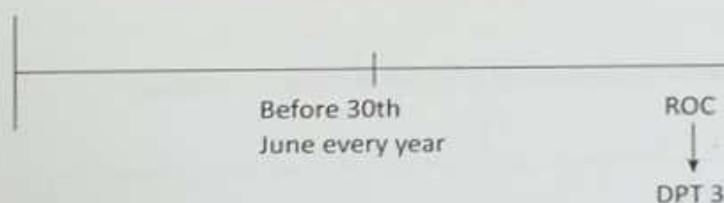
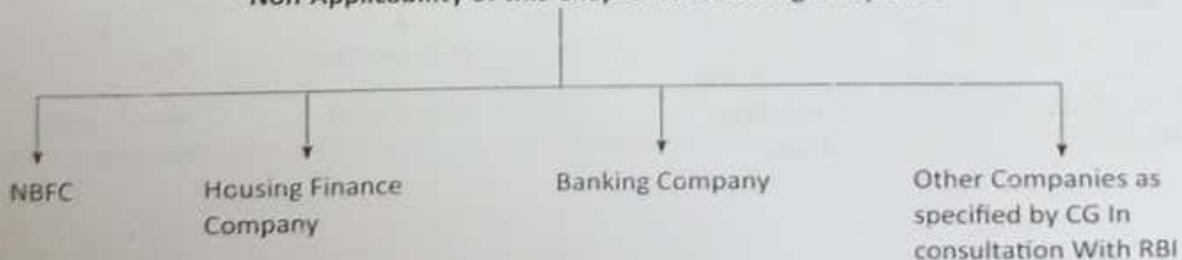
The trustee for depositors shall call a meeting of all the depositors on-

(a) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding

(b) the happening of any event, which constitutes a default or which, in the opinion of the trustee for depositors, affects the interest of the depositors.

Register of Deposit :

Entries in Register shall be made within 7 days from issuance of Receipts

Return of Deposit to be filled with Register*** Non-Applicability of this Chapter to following companies**

PRE-MATURE Repayment of Deposit

After expiry of 6 month, but before the actual date of maturity; ROI payable shall be 1% less than Rate which would be payable for period for which deposit has actually Run.

Provided that rate will not reduce, if such repayment is made solely for the purpose of-

- (a) complying with the provisions of limits on acceptance of deposits or
- (b) providing war risk or other related benefits to the personnel of the naval, military or air forces or to their families,

→ **Nomination:**

Every Depositor may Nominate any person at any time.

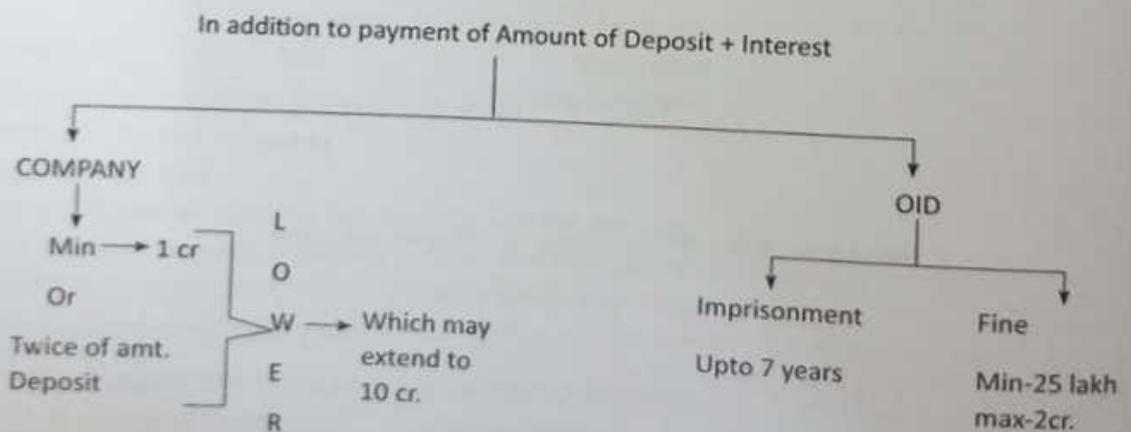
SECTION-75

Damages for fraud

अगर Company Sec-74 को Contravene करती है तो Sec-447 लगेगा

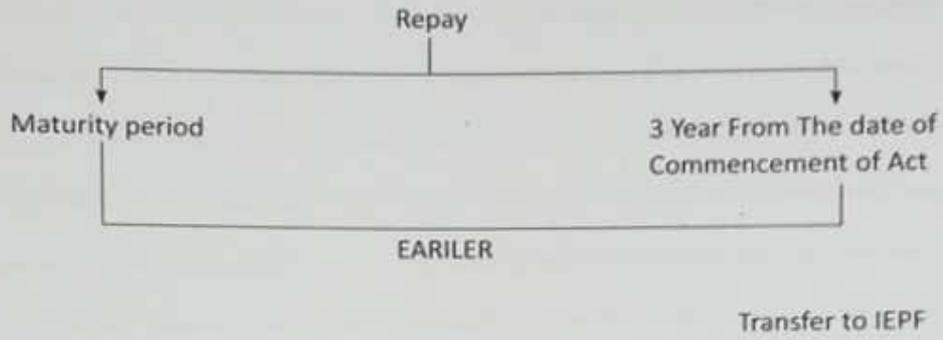
SECTION-76A

Punishment for contravention Of Section 73 or 76



SECTION-74

If Co., इस Act से पहले Deposit Accept किया है;



NOTES FOR REVISION

Lined area for writing notes.

CHARGES

SECTIONS 77-87

READ WITH THE COMPANIES (REGISTRATION OF CHARGES) RULES, 2014

Read with The Companies (Registration of Charges) Rules, 2014



Charges means Control of the Creditor on the assets of the company.

Definition of Charges - Section 2(16)

'Charge' has been defined as an Interest car Lien created on the property or assets of a company.

ESSENTIALS OF CHARGES:

1

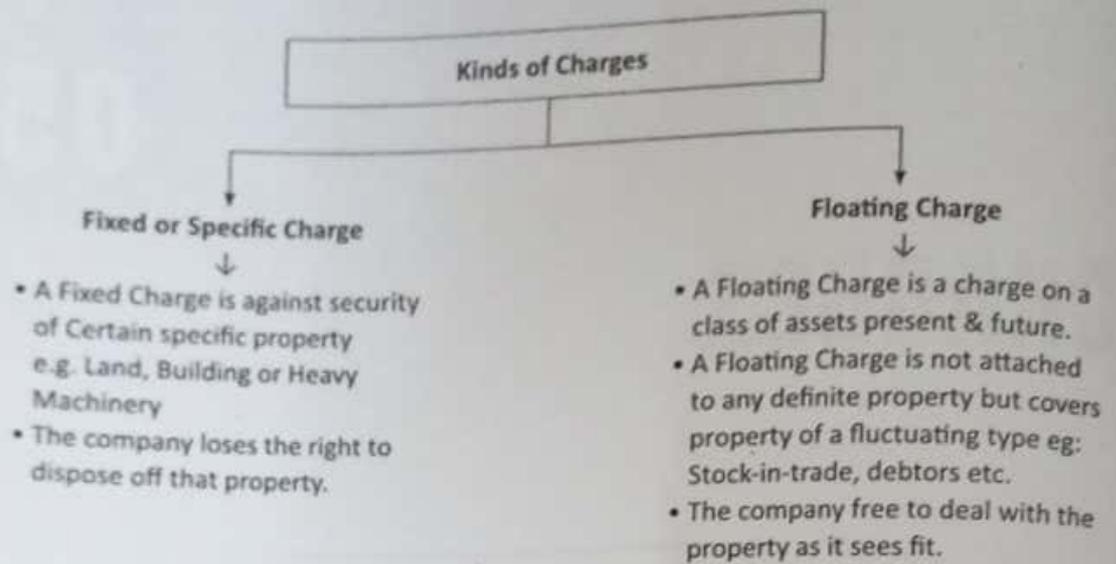
- There are minimum 2 parties to a transaction. The creator of charge and a chargeholder.

2

- There must be a subject matter for which charge must be created.

3

- There must be an agreement between 2 parties.



~When floating charge is converted into fixed Charge?

(CRYSTALLIZATION OF CHARGE)

- a) When the terms and conditions of floating Charge are violated.
- b) Company ceases to continue its business.
- c) Company goes into liquidation
- d) Creditors enforced by the security Covered by the floating charge.

~Duty of company to register Charges:

[SECTION-77]

If Company creates any charge, then such Charge is required to be registered with Roc, Charge is required to be registered with ROC within 30 days of creation of charge.

And if company fails to get it registered within 30 days

- it can do it within a period of 60 days of such creation or modification, on payment of such additional fees as prescribed
- or Registrar may, on an application, allow such registration to be made within a further period of 60 days after payment of such ad-valorem fees as prescribed

Company is required to file for CHG-1 with ROC within 30 days of creation of Charge.

In case of Debentures Company is required to file form CHG-9

Once Charge is Registered, ROC will issue certificate of Registration of charge in form CHG-2.

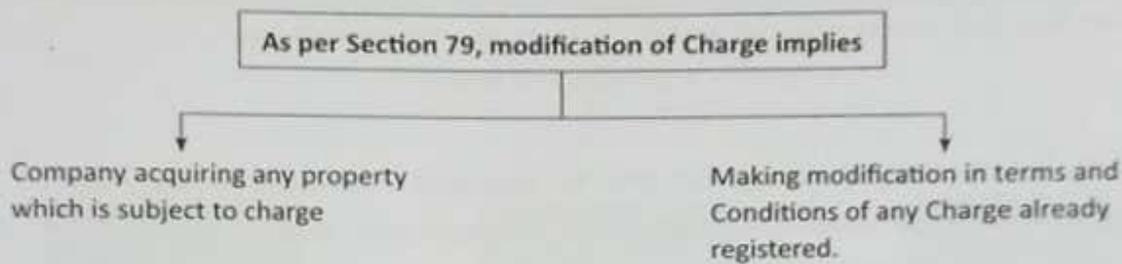
REGISTRATION OF MODIFICATION OF CHARGE: SECTION-79

If the company fails to register charge within 30 days of creation of charge, then Application for Registration of Charges Shall be made by the charge holder to Roc by filing form CHG-1/CHG-9

On receipt of Such application, Roc shall issue notice to the company requiring to submit their representation within 14 days on receipt of such notice.

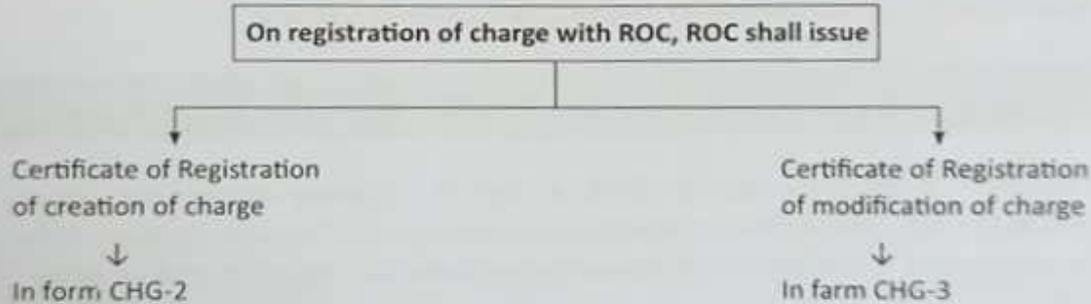
If the Charge holder incurs any expenses: towards fees paid by the charge holder to Roc, then such Charge holder shall be entitled to recover the same from the company.

REGISTRATION OF MODIFICATION OF CHARGE - SECTION 79



➤ Examples of modification of Charge -

- 1) Change in repayment schedule of loan
- 2) Change in rate of interest (Other than Bank rate)
- 3) Change in tenure of loan
- 4) Partial release of the charge on a particular asset or property



DEEMED NOTICE OF CHARGE - SECTION 80

If any person has acquired the assets he shall be deemed to have notice of charge from date of its registration.

COMPANY TO REPORT SATISFACTION OF CHARGE. [SECTION-82]

Once the company has made entire repayment of Loan company is required to file an intimation of satisfaction of charge form CHG-4 with Roc within 30 days of satisfaction of charge

If company fails, then it can apply within 30 days from the date of satisfaction of charge.

If company fails to make an application within above 300 days, then it can apply to CG(RO) for condonation of delay in for CHG-8.

If CG(RO) condones the delay then company shall submit form INC-28 along with CHG-4. [Section-87]

On receipt of application, ROC shall send a notice to the holder of the charge as to why payment or satisfaction in full should not be recorded.

Note : No Notice is required to be sent, in case the intimation to the Registrar in this regard is in form CHG-4 and signed by the holder of charge.

Power of Registrar to make entries of Satisfaction and Release in absence of Intimation from company [Section 83]

The Registrar may after receiving evidence with respect to any registered Charge



- that the debt for which the charge was given has been paid or satisfied in whole or part :

ROC will enter in the register of charges, a memorandum of satisfaction that –

- the debt has been satisfied in whole or in part; or
- the property has been released from the charge or has ceased to form part of the company's property.

INTIMATION OF APPOINTMENT OF RECEIVES – [SECTION-84]

- If any person being appointed as Receiver or manager to manage the property which is subject to charge, whenever such receiver is removed then intimation of such appointment shall be filed with Roc in form CHG-6 within 30 days of appointment or removal.

M.IMP: CONSEQUENCES OF NON-REGISTRATION OF CHARGES

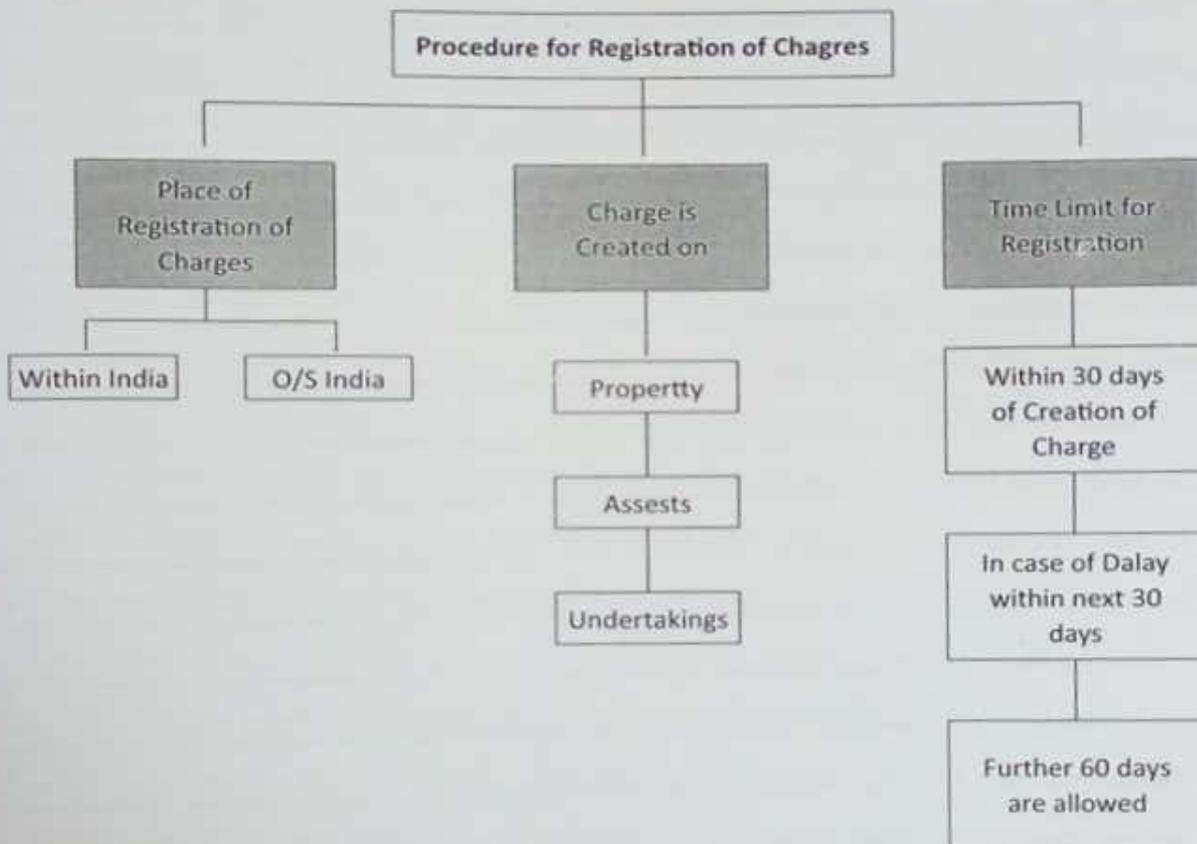
According to Section 77 of the Companies Act, 2013, all types of charges created by a company are to be registered by the ROC, where they are non-compliant and are not filed with the Registrar of Companies for registration, it shall be void as against the liquidator and any other creditor of the company.

This does not, however, mean that the charge is altogether void and the debt is not recoverable. So long as the company does not go into liquidation, the charge is good and may be enforced.

- Void against the liquidator means that the liquidator on winding up of the company can ignore the charge and can treat the concerned creditor as unsecured creditor.
- The property will be treated as free of charge i.e. the creditor cannot sell the property to recover its dues.

- Void against any creditor of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority.
- Thus, non-filing of particulars of a charge does not invalidate the charge against the company as a going concern.
- It is void only against the liquidator and the creditors at the time of liquidation. The company itself cannot have a cause of action arising out of non- registration.

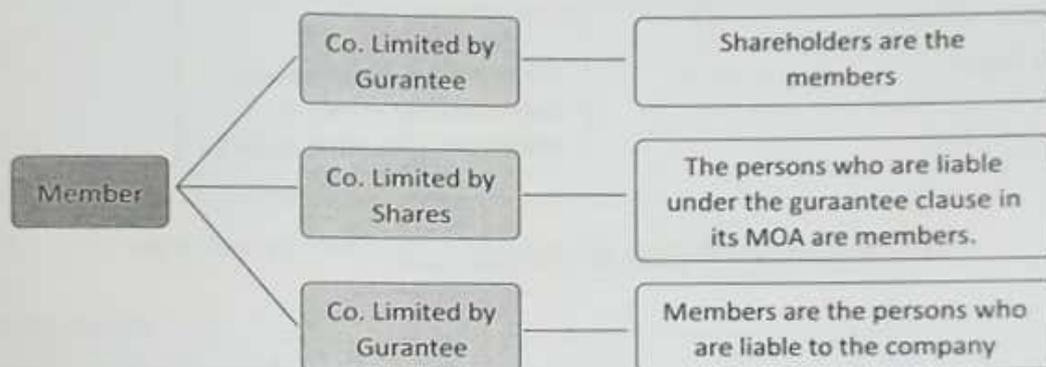
PROCEDURE FOR CREATION OF CHARGE:



NOTES FOR REVISION

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MEMBERS AND SHAREHOLDERS



According to Section 2(55) of the Companies Act, 2013,

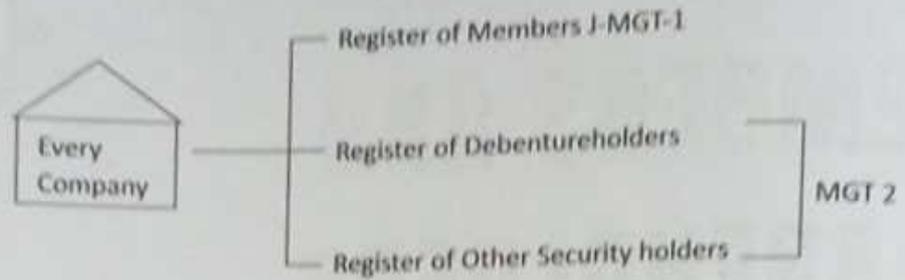
member, in relation to a company, means,

- S • The subscribers to the memorandum of a company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as members in its register of members; *AGREEMENT in writing*
- A • Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company;
- B • Every person holding shares of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.

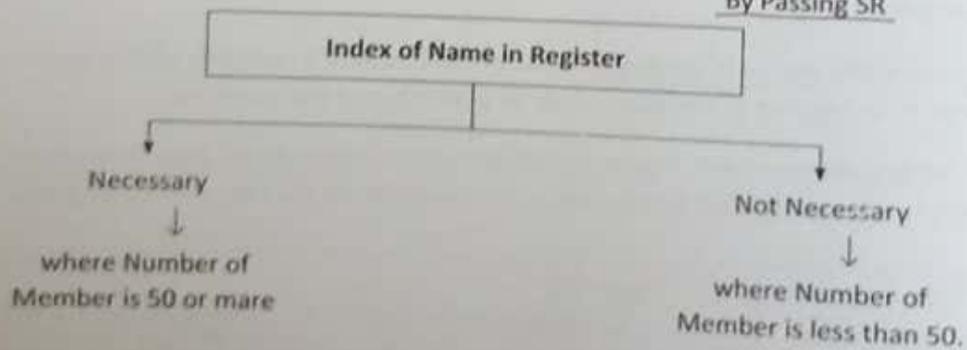
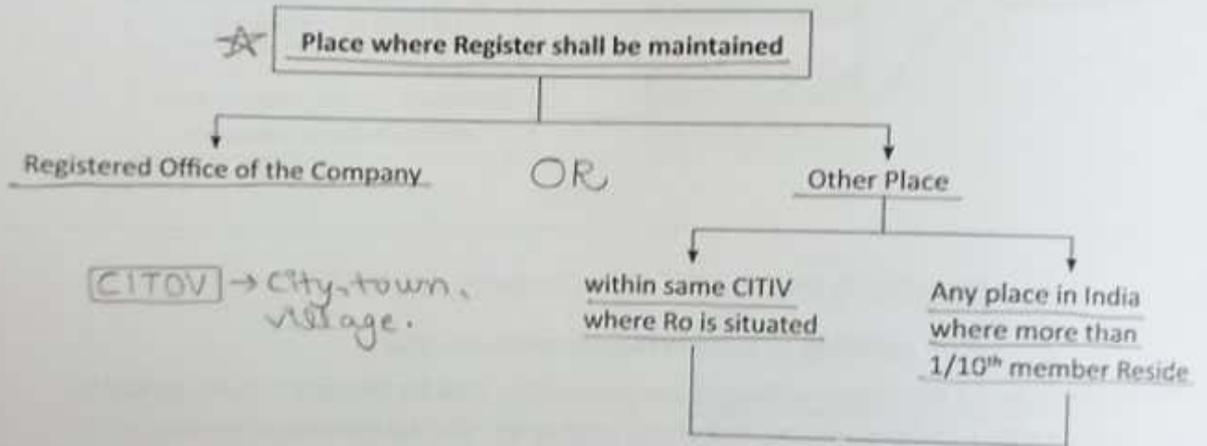
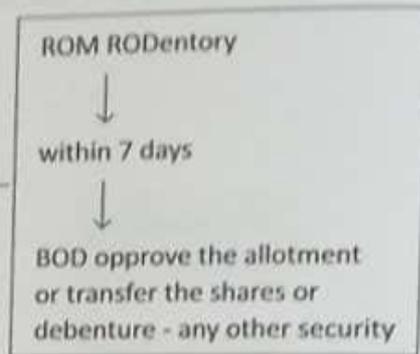
• *By Acquiescence or Estoppel :-*

- *A Person deemed to a member of the Co. if his name without sufficient cause to be on the register of member.* 81
- *However, he can escape his liability by taking prompt action by removal of name.*

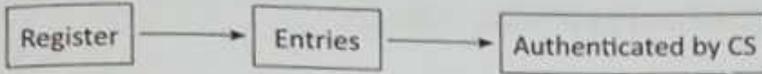
REGISTER OF MEMBER OR SECURITY HOLDER



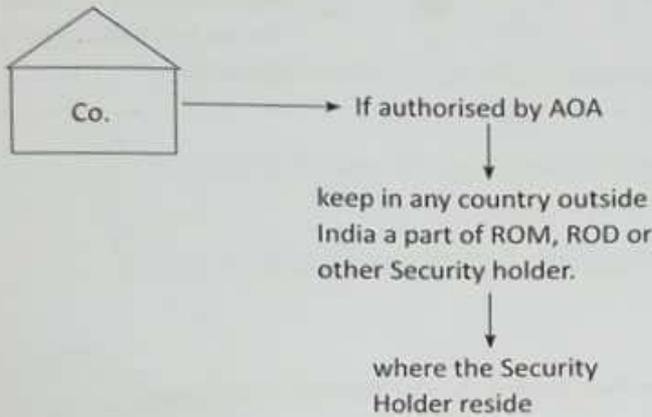
- Particulars of ROM
- Name of Member
- Date of becoming member
- Nominal Value of Shares
- Other Basic Details



→ Register and Index of Beneficial Owner is maintained by Depository shall be deemed to be register and index under this Act.



FOREIGN REGISTER



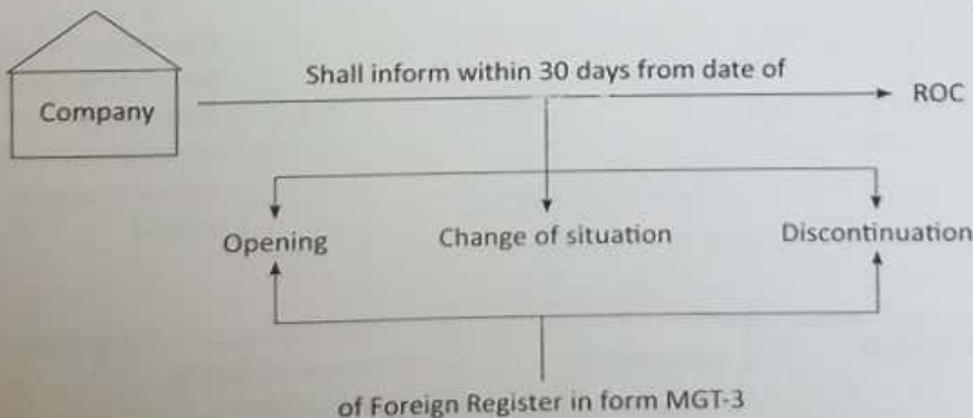
- * Company shall keep copy of Duplicate Foreign Register at RO in India.
- * Transmit to RO Copy of every entry made in FR within 15 days after entry is made.

FOREIGN REGISTER

[Deemed to be part of Company Register]

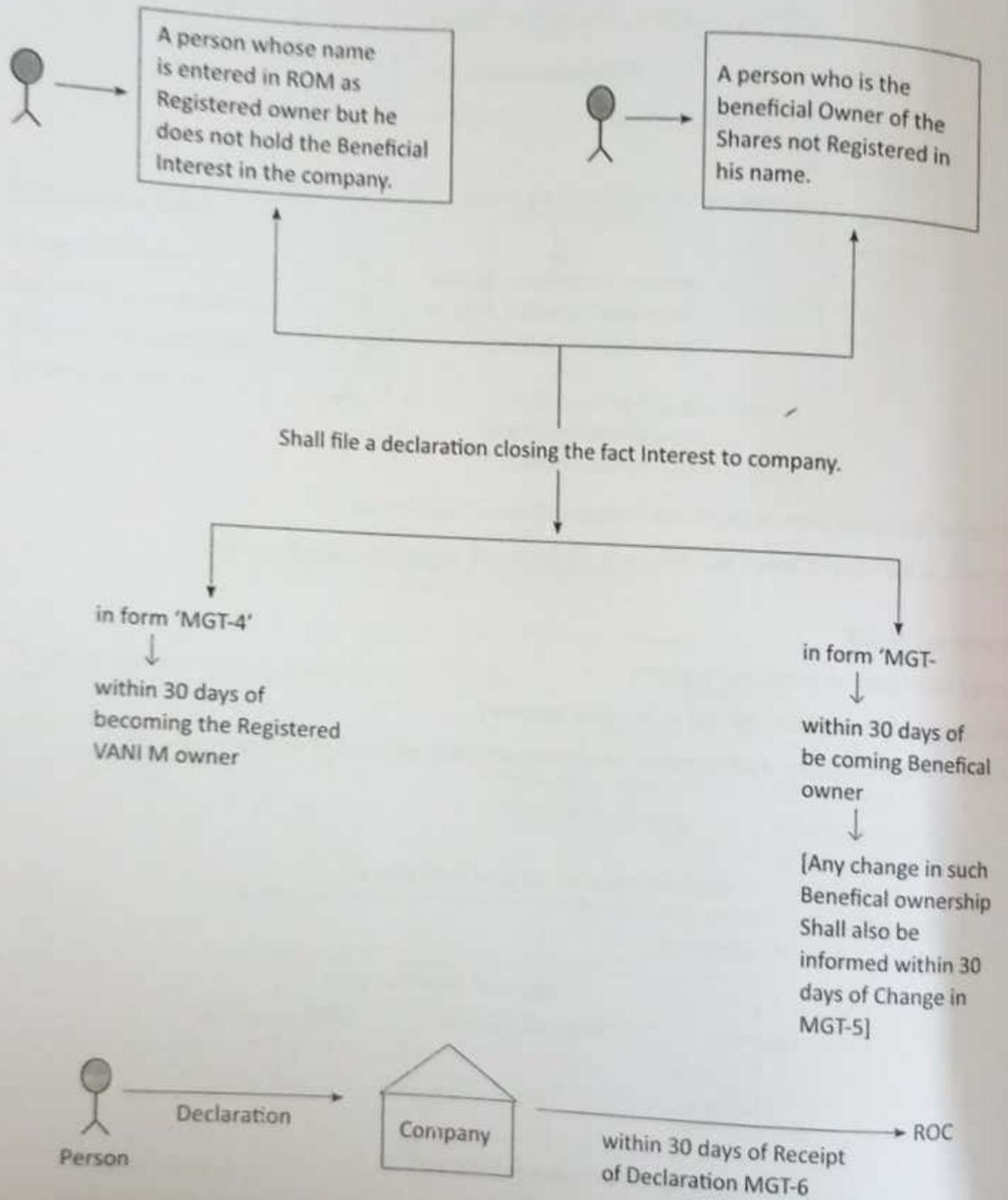
[shall be maintained in same format as Principal Register]

[Entries in Foreign Register shall be made simultaneously after approval of BOD or committee]



SECTION-89

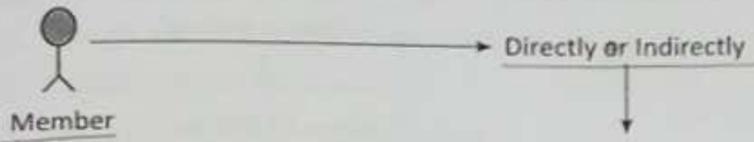
DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE
[Not applicable in case of Govt. Co.]



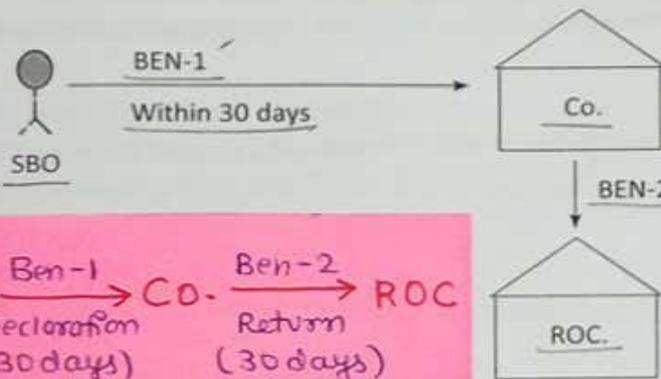
SECTION-90

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY

— Individual person who acts alone or together with one or more person or trust or person resident outside India who hold not less than 10% shares in the Co.



- i. An Individual holding 10% of Share Capital of Company.
- OR
- ii. Any person holding 10% VR of Company (Voting Right)
- OR
- iii. Has Right to receive 10% of total dividend
- OR
- iv. If any person has significant control over the company

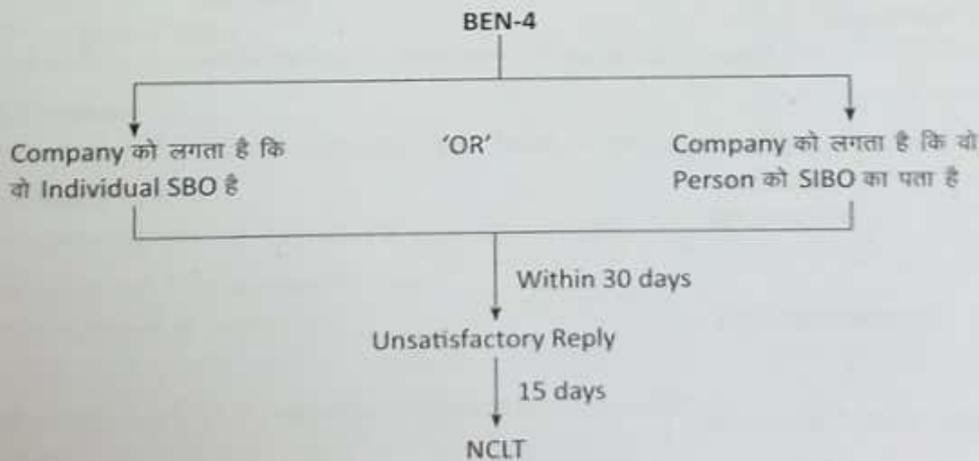


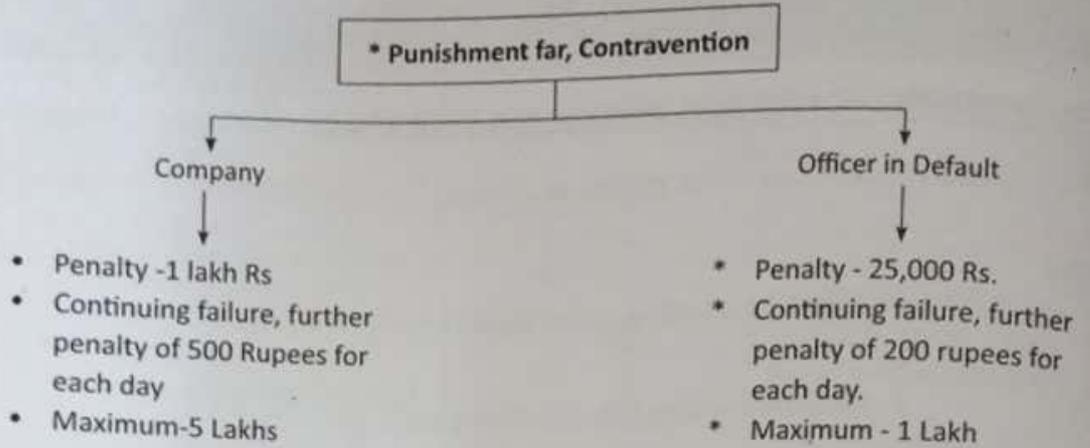
★ Duties of SBO [declaration] :-
 — SBO shall file a declaration to reporting Co. in form Ben - 1 within 30 days from becoming SBO or change in SBO.

SBO $\xrightarrow{\text{Ben-1 Declaration (30 days)}}$ Co. $\xrightarrow{\text{Ben-2 Return (30 days)}}$ ROC

★ Compliance Duties [Return] :-
 — Reporting Co. shall file a return of SBO in form Ben-2 with ROC within 30 days from receipt of declaration from SBO.

* Company shall maintain a Register Under BEN-3.

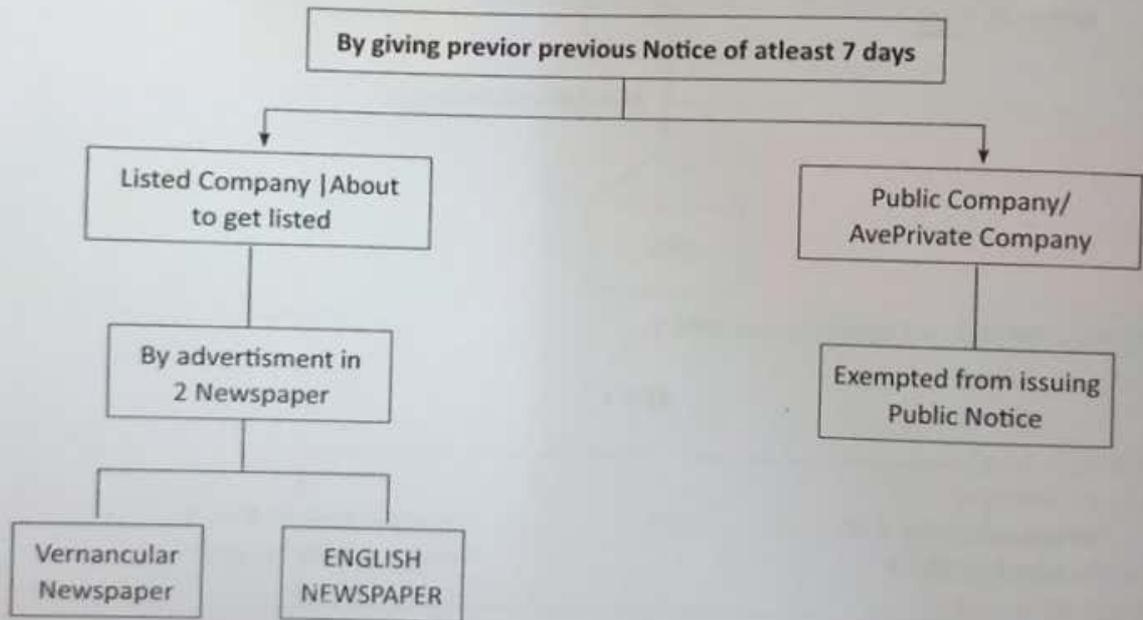




SECTION-91

Power to close Register of Members or Debenture Holders or Other Security-Holders

A Company may close Register for any period Maximum 45 days in each year [Not exceeding 30 days at any one time]



*** Contravention - Company and OID**
 ↓
 Penalty- 5000 ₹ Everyday
 Maximum - 1 lakh

RIGHTS OF MEMBERS

- ✓ Right to Receive copies of financial Statements, Cost Auditor, Report, Notice of GM etc.
- ✓ Right to Inspect Statutory Registers | Returns and get copies.
- ✓ Right to attend Meeting of Shareholders and exercise Voting Rights.
- ✓ Right to transfer the Shares.
- ✓ To Receive dividend when declared.
- ✓ To have Rights on Shares.
- ✓ Right of Nomination
- ✓ Right to Appoint Directors.
- ✓ Right to make Application collectively to
- ✓ Tribunal for Relief in case of Oppression and Mismanagement
- ✓ To share the Surplus Assets on winding up.
- ✓ Right to file case suit in case of any Misleading Statement or the inclusion or omission of any matter in Prospectus.

WHO MAY BECOME A MEMBER?**➤ Partnership firm as a Member**

A Partnership firm cannot hold shares in its own name and never become a member of company except Section 8 Company.

➤ Limited Liability Partnership

Being an Incorporated body under the Statute, can become a member of company.

➤ Foreigner's as a Member

A foreigner may take shares in the co. & become member in Indian Company subject to provision of FEMA.

➤ Trade Union as Member

A Trade Union Registered Under Trade Union Act can become member

➤ Section-8 Company

Can become member in a co. if authorised Co.'s MOA to invest into shares of Other by Co. Company

➤ Hindu Undivided Family

Can not become member as it is not a Separate legal Entity.

➤ Central Government / State Government

can become member of company

➤ Receiver

He can not exercise any of Membership Rights attached to a share.

- Minor cannot be a member if Co. allotted shares to minor & entered his name then Co. can repudiate the allotment & remove his name and also return all appl. money
- Minor can also repudiate the allotment during his minority.
- Minor after becoming major can escape his liability on ground of minority
- Minor can hold & fully paid up share becz no further obligation attach to it...

COMPANY LAW - EXAM ORIENTED BOOK

- > **A person who takes Share in the name of any fictitious person**
Becomes liable as a person
- > **Minor:** Can not become a member of Company; but
 - A minor can be transferee in case of fully paid up Shares.
 - In case of Unpaid Shares, if shares are transferred to a minor, the transferor will remain liable for all future calls.
 - A minor can hold the shares in name of his lawful guardian.
- > **Expulsion of a Member** [Case Law → Bajaj Auto Ltd V. N.K. Ferrada]
 - The Department of company affairs has clarified that an Articles for expulsion of a member is Ultra-Vires and Void
 - Such provision is against the Rights of members of the company.

Thus, any power of BOD to expel a member by Alteration of AOA shall be illegal and void

WHEN A PERSON CEASE TO BE A MEMBER OF COMPANY



Member → Company

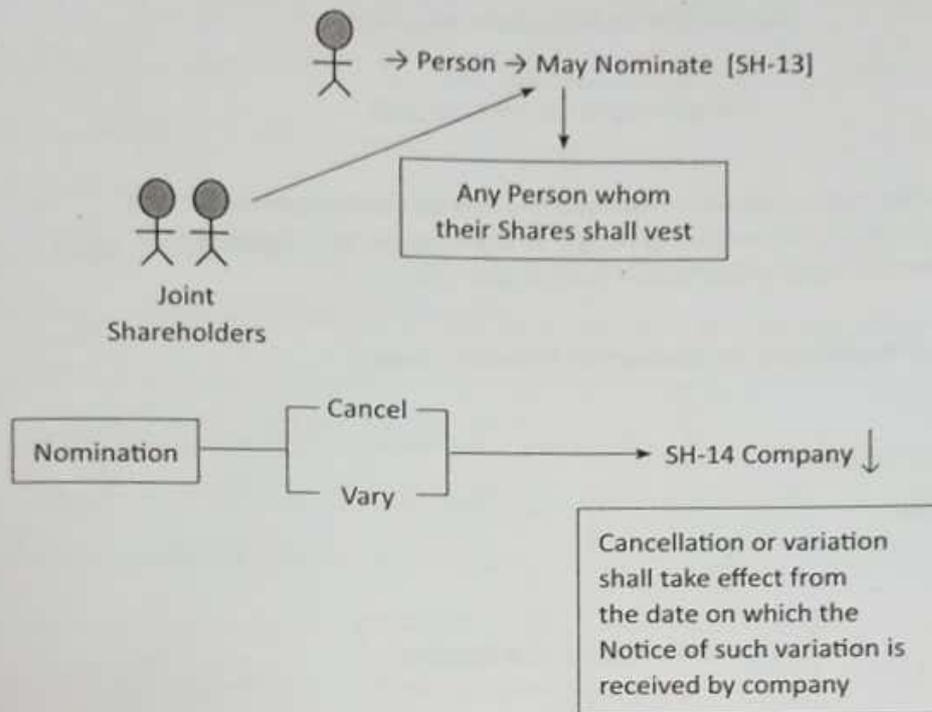
- His shares are forfeited
- He transfers his shares to another person
- His shares are sold by company to enforce a lien
- He dies
- His Redeemable Preference Shares are Redeemed
- The Company is wound Up
- The member is company which is being wound up and official liquidator disclaims the shares

As per Section 2(55) of the Companies Act, 2013, a person may acquire the membership of a company:

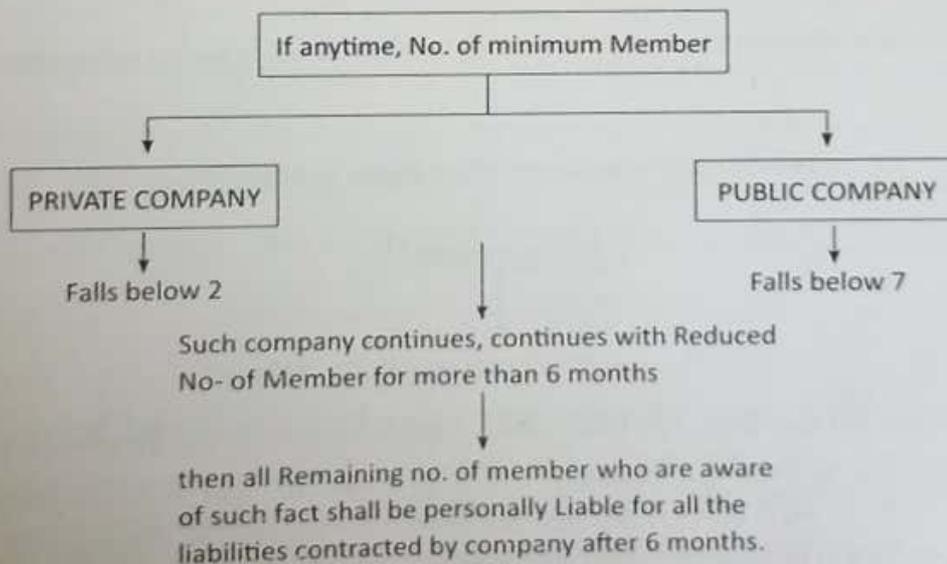
- > **Subscribers to MOA:** by subscribing to the Memorandum of Association (deemed agreement); or
- > **Entering an Agreement:** by agreeing in writing to become a member:
 - Allotment:** by making an application to the company for allotment of shares; or
 - Transfer:** by executing an instrument of transfer of shares as transferee; or
 - Transmission:** by consenting to the transfer of share of a deceased member in his name; or
 - Estoppel:** by acquiescence or estoppel.
- > **Beneficial Owner in Depository's Records:** by holding shares of a company and whose name is entered as beneficial owner in the records of a depository (Under the Depositories Act, 1996).
- > **Entering the name in Register of Members:** On his name being entered in the register of members of company.

SECTION-72

POWER TO NOMINATE



MEMBERS SEVERALLY LIABLE IN CERTAIN CASES:



Shareholder's Democracy

This concept denotes the Shareholder's Supremacy in governance of business.

Section 179 of Companies Act, 2013

General Power has given to BOD

BOD shall be entitled to exercise all such powers and to do exercise all such powers and to do all such acts & things, as the company is authorised to excise and also need Authorisation from Shareholders.

Few Provisions which are Required to be transacted by Shareholders:

- > Alteration of MOA AOA
- > Further Issue of Share Capital
- > Shifting the Regd. Office
- > Appoint director

SHAREHOLDERS AGREEMENT

Contractual Agreement

b/w the shareholders of company describing how the company should be operated

and defining Inter-se Shareholders Rights and obligations.

★ VETO POWER:

I FORBID → POWER TO AN OFFICAL ACTION

- Veto power is the special power to stop an official action.
- In some cases consent of SH is mandatory to approve any decision and such power is known as veto power.
- In compromise Act, Veto Power is given to SH in special resolution in case of related Party Transaction.

NOTES FOR REVISION★ INSPECTION OF REGISTER :-

Member/Deb-holders/other
Security

For other
Person

↓
Can inspect free of cost
during business hours.

↓
Fee → ₹ 50.

★ COPIES OF REGISTER :-

- Supply within 7 days from deposit fees.
- Fees shall not exceed ₹ 10 Per Page.

★ BOOK ClosureRecord Date

- To determine eligible SH. Co. shall close its book of Register.

- Day on which Register is closed.

- Advance intimation to all SH 7 days before book closure

- Adv. Intimation to all SH atleast 7 days before record date.

- Books can be closed for max 30 days at a time & max 45 days in a yr & notice shall be send to all member within 7 days.

- Listed Co. shall close its book of A/c atleast once a Year.

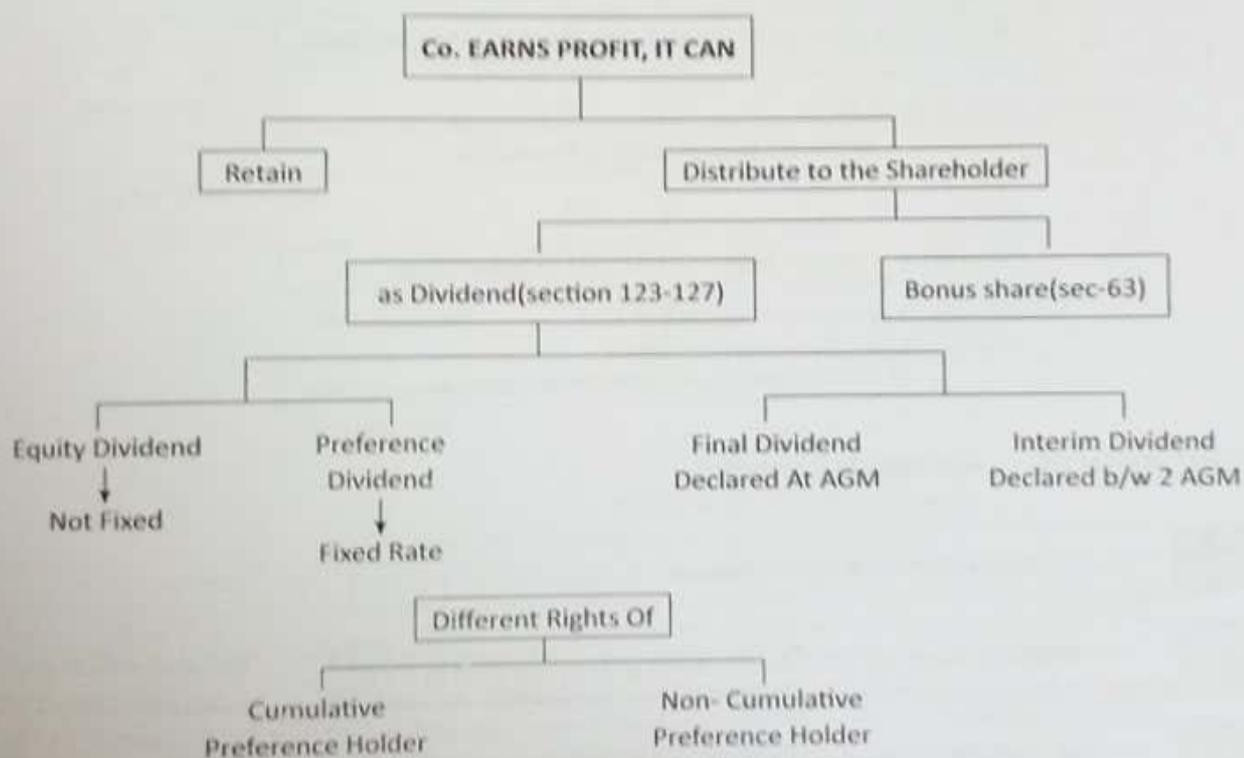
★ CASTING VOTE :-

- Also known as 2nd vote.
- This right is given to chairperson to cast 2nd vote in case of equality of votes.

DECLARATION & PAYMENT OF DIVIDEND

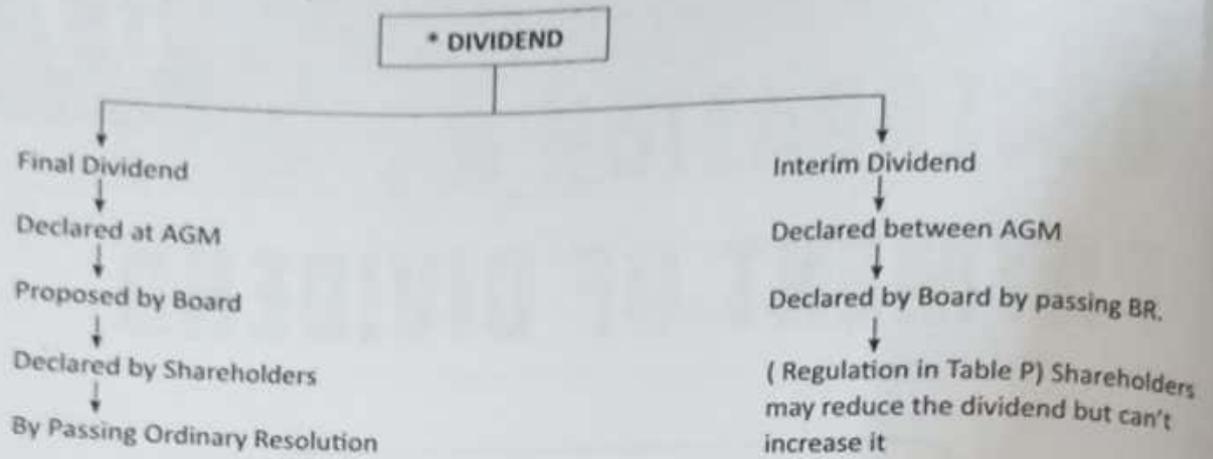
SECTION 123-127

+
READ WITH COMPANIES (DECLARATION AND PAYMENT OF DIVIDEND) RULES, 2014

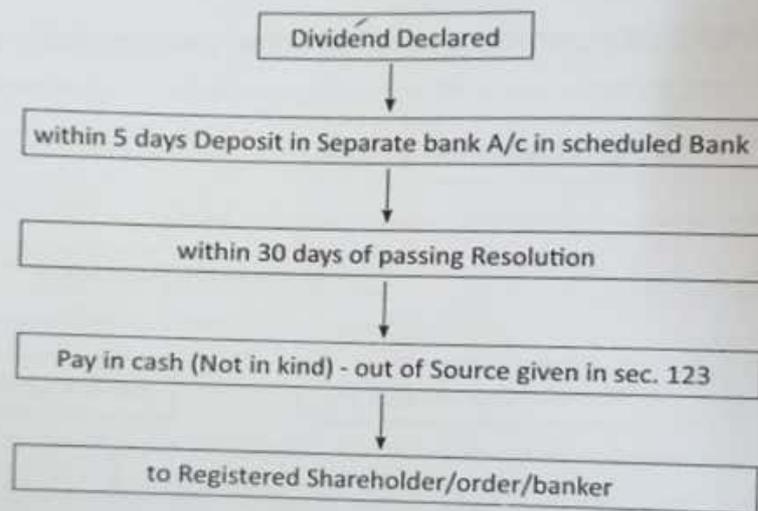


If there is no profit, Dividend will not be given to preference holders.

- As per Sec 2(35) of the Companies Act, 2013 Dividend Includes Interim Dividend.



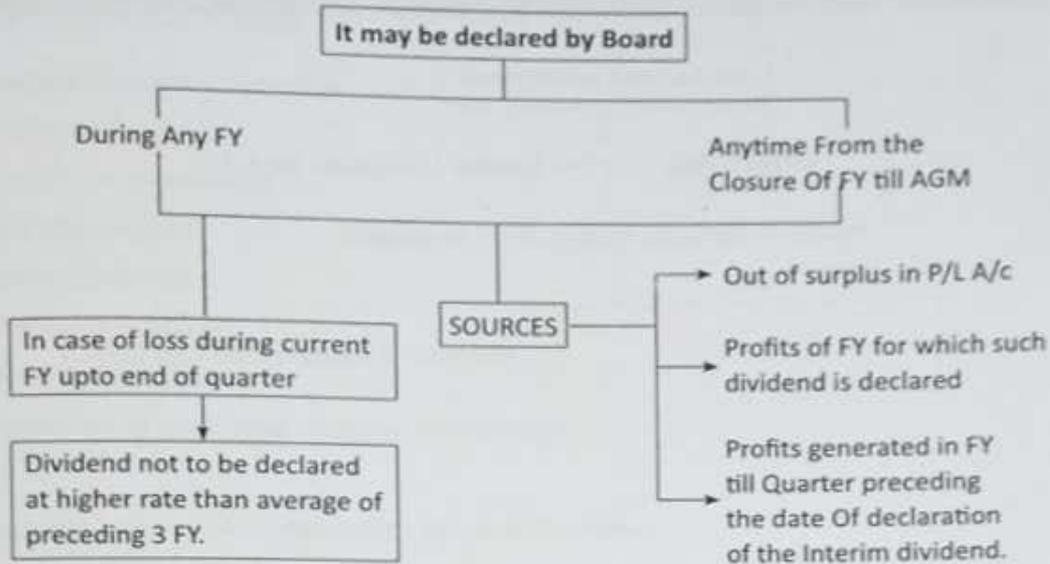
Process of Dividend Declaration:



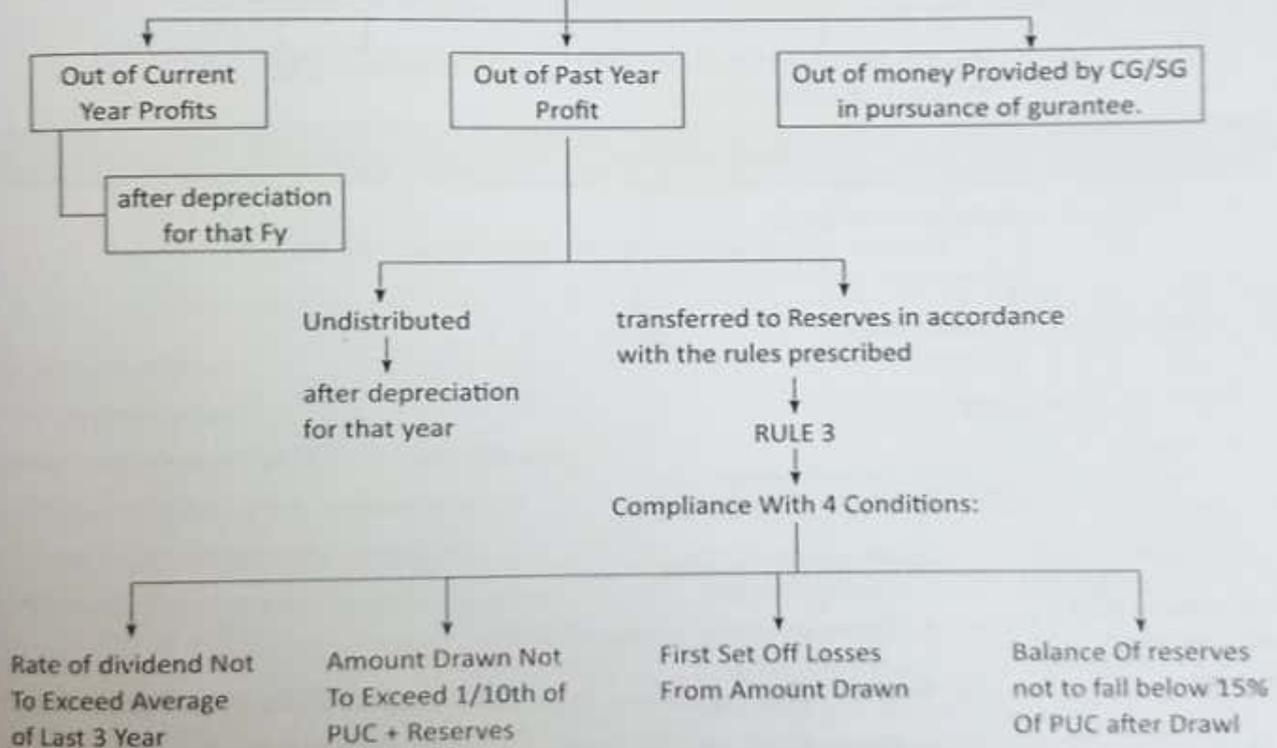
PROHIBITION IN DECLARATION OF DIVIDEND:

- 1 • Sec 8 Co. can not declare dividend
- 2 • Nidhi Co. shall not declare dividend exceeding 25% in a FY
- 3 • No Company shall declare dividend if Default in sec 73/75

INTERIM DIVIDEND

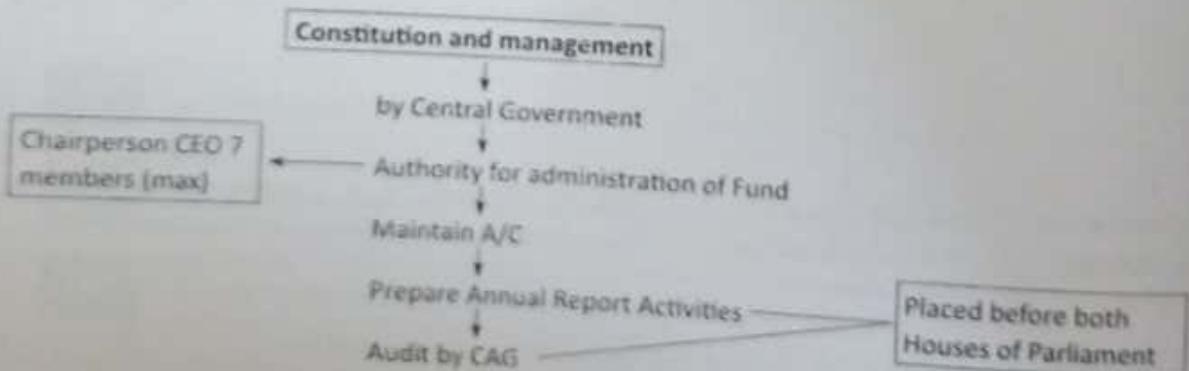
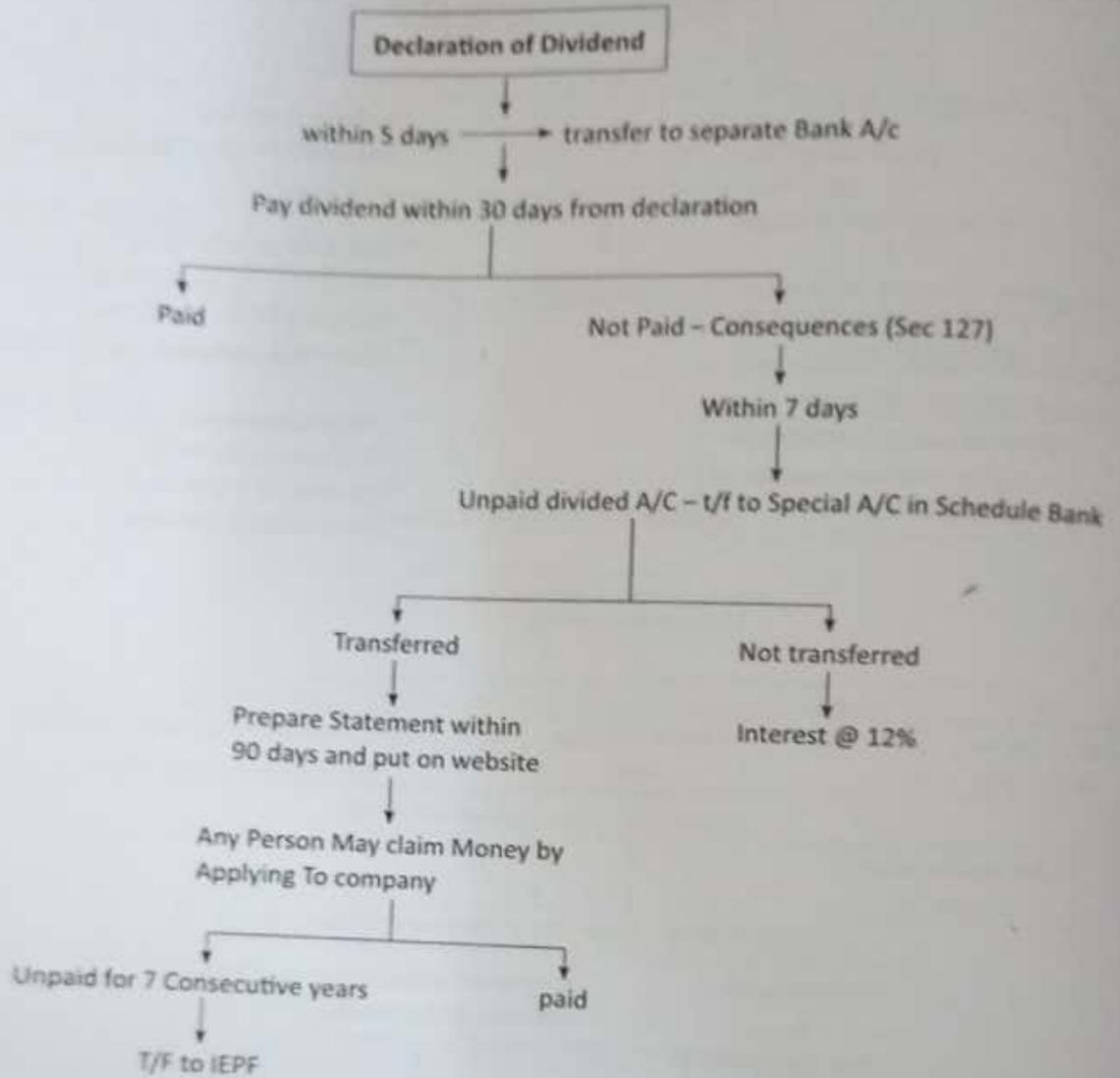


Sources of Dividend



➤ Dividend to be paid after setting off PY losses and depreciation not provided for.

UNPAID DIVIDEND (SEC. 124)



SOURCES OF FUND

- Government Grant | Donation
- Unpaid Dividend A/c
- Income from Investment
- Application Money
- Matured Deposits
- Debentures + Interest
- Sale of Fraction Shares
- Redemption of Preference Shares - (Unclaimed)

Utilisation of fund

- Refund of Unclaimed money
- Promotion of investor's education distribution of disgorged amount
- Reimbursement of legal expenses.

FAILURE TO DISTRIBUTE DIVIDEND- SECTION 127

Dividend Declared But not paid within 30 days Reason of Non-Payment

Specified in Proviso

- by operation of Law
- Shareholder's direction can't be complied with
- Dispute regarding right to receive dividend.
- Dividend Lawfully adjusted against due.
- Non-payment not due to default of company

No offence under this section

Others

Every Director

Knowingly is party to default punishable

Imprisonment fine up to fine up to 2 yrs./ 1000 per day.

Company

Pay Simple Interest @18% P.A

OTHERS POINT RELATED TO DIVIDEND.:

- If transfer not registered, pay to transferee if authorised by Registered holder in writing or else transfer to unpaid dividend A/C [Sec 126]
- Dividend once declared can't be Revoked.

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:

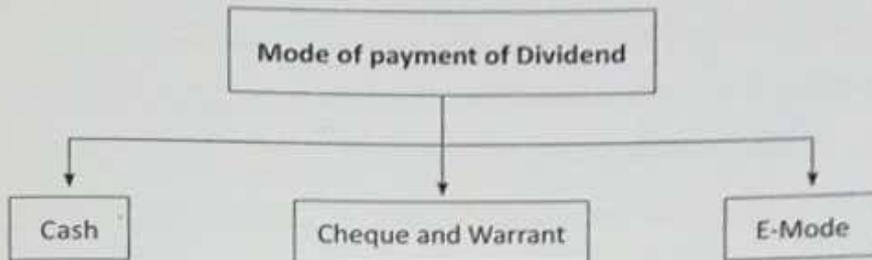
- | | |
|----------|--|
| 1 | <ul style="list-style-type: none">• Legal and contractual restrictions: This includes the restrictions/ conditions imposed under the applicable laws or by the financial institutions/banks in the loan agreement; |
| 2 | <ul style="list-style-type: none">• Earnings of the company: Current earnings provide the best index of what a company can pay; |
| 3 | <ul style="list-style-type: none">• 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; |
| 4 | <ul style="list-style-type: none">• 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; |

SOME ADDITIONAL POINTS

- SS-3 provides that where a company has issued equity shares with differential rights as to Dividend, Interim Dividend may, at the option of the Board, be declared on all or any one or more of the classes of such shares in accordance with the terms of issue.
- A company shall also not declare any Dividend, if it has defaulted in –
 - (a) Redemption of debentures or payment of interest thereon or creation of debenture redemption reserve,
 - (b) Redemption of preference shares or creation of capital redemption reserve,
 - (c) Payment of Dividend declared in the current or previous financial year(s), or
 - (d) Repayment of any term loan to a bank or financial institution or interest thereon, till such time the default is subsisting.

DECLARATION & PAYMENT OF DIVIDEND

- a company may, before the declaration of any Dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.
- Dividend once declared becomes debt of the company and therefore can not be revoked once decalred.



NOTES FOR REVISION

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PRELIMINARY AND INCORPORATION OF COMPANY

SECTION 128

⇒ Origin of Companies Act, 2013



J.J Irani Committee in 2004 (2005)



Companies Amendment Bill 2008, 2009, 2011



In 2012 : Finally Companies Amendment

Bill: Passed in Loksabha on 18th December 2012



In 2013 : On 29th August 2013 President signed the bill.

On 30th August 2013 the Act was notified in Official Gazzattee.

⇒ Applicability of Companies Act:

- Every company registered under this law [or] under any previous Law.
- Banking Company
- Autnomus Bodies [Special act of Parliament]
- Insurance Companies
- Electricity Companies
- Any Body Corporate governed by any other Act, but notified by CG in official Gazette.

⇒ **Characterstics of Company**

1. Seperate Legal Entity

↓
Artifical person by law

↓
Seperate - Legal - Entity

↓
Independent lawful enterprise

2. Perpetual Succession

↓
• Continuous existence

• Members may come and members may go but company continues forever.

3. Transferability of Shares

↓
• Public Company - Free transferability of Shares

• Private Company - Restriction on transfer of shares.

4. Seperate Property

i. No Shareholder has right on the assets of company.

ii. Shareholders right is limited to the extent of capital contribution made by him.

5. Common Seal

• Official Signature of the company Use of Common Seal is optional.

6. Capacity to be sued and sue

7. Limited Liability

• Limited by Shares

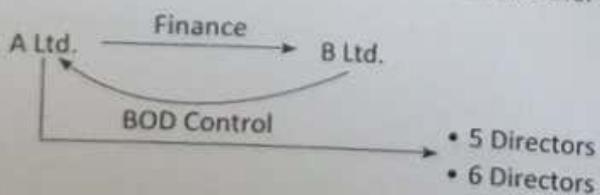
• Limited by Gurantee

• Unlimited Liability

* **Definations**

• Holding Company - Sec 2(46)

↓
Company which exercises control over another company.

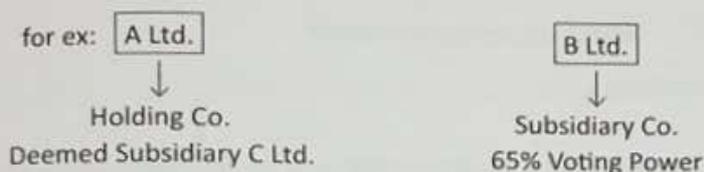


• **Subsidiary Company - Sec 2(87)**



It means a company in which the holding company :-

- exercise more than 50% of Total composition of BOD of other company.
- exercise more than 50% of Total Voting power directly / indirectly
- Subsidiary of subsidiary is a deemed subsidiary



⇒ **Associate Company: Sec 2 (6)**



It means a company in which Holding Company have significant influence

- of more than or equals to 20% of the composition of BOD
- of more than or equal to 20% of Total Voting Power directly | indirectly and includes : Joint Venture Company

• **One Person Company : Section 2 (62)**



- Company which has only one person as member.
- OPC has to be formed as Private Company.
- Minimum one director is essential.
- Only a natural person, who is an Indian citizen and Resident in India Shall be eligible to 'Incorporate a OPC' and shall be 'Nominee for the sole member of OPC'.

⇒ **Note:** Resident in India means a person who stayed in India for a period of not less than 182 days during the immediately preceding one calendar year.

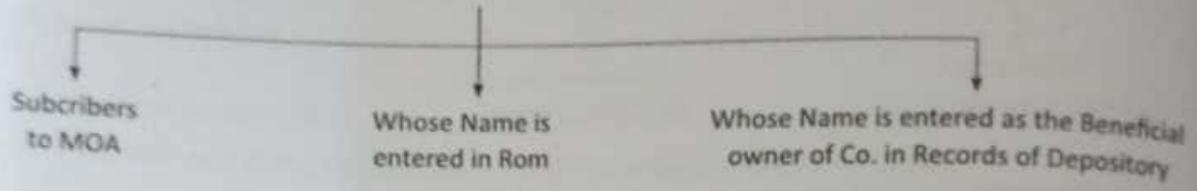
• **Private Company: Sec 2(68)**

- Restricts the right to transfer its shares.
- Limits the no. of members; Min-2 / Max-200
- Prohibits, any invitation to the public to subscribe for any securities
- The limit of 200 members are applicable only to members and not for debenture holders.
- The name of company should end with words 'Pvt. Ltd.'.
- No. of directors - Minimum 2 / Maximum 15

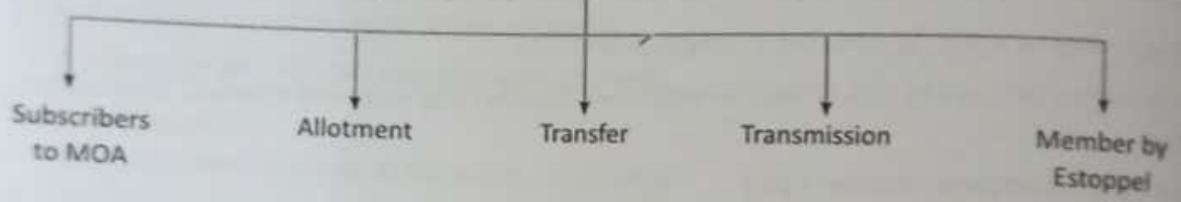
⇒ Public Company: Sec 2(71)

- A Company which is not a Private Company is a Public Company.
- No. of members ; min-2 / max- Unlimited
- Name of company should ends with words "Ltd." or "Public Ltd."
- No. of directors - Min: 3 / Maximum: 15

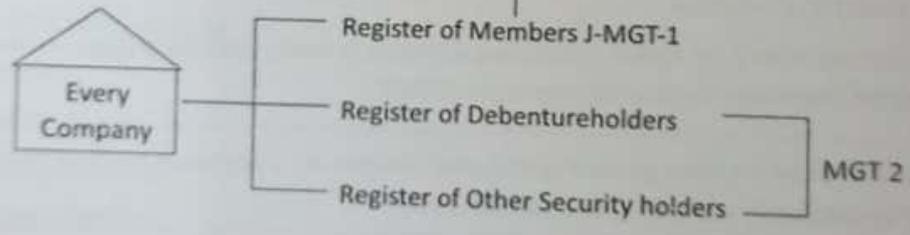
→ Section 2(55) - "Members" in relation to company means-



Modes of Acquiring Membership



Register of Member or Security Holder



* PARTICULARS OF ROM

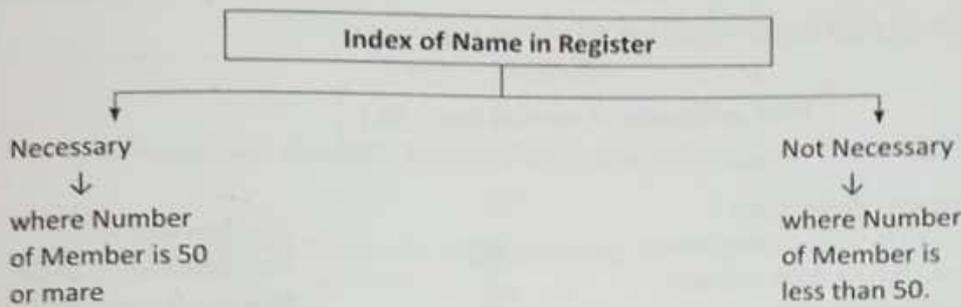
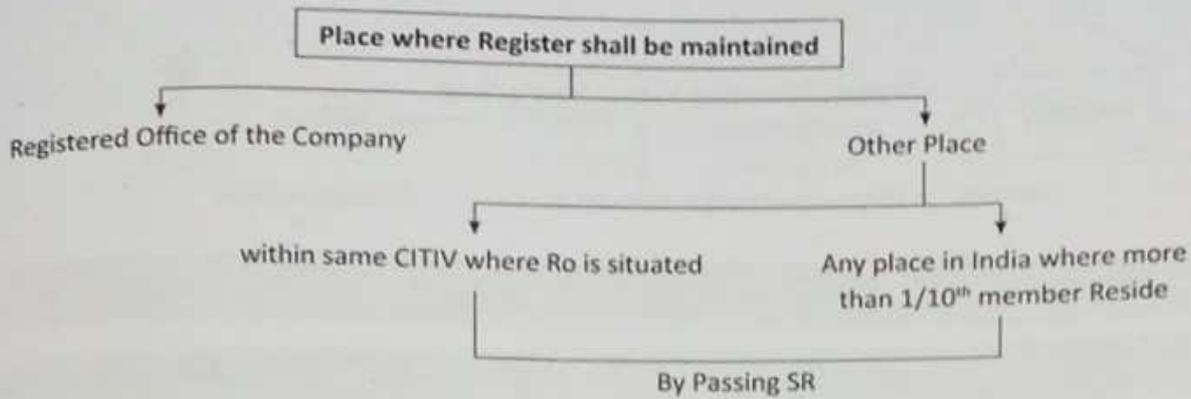
- Name of Member
- Date of becoming member
- Nominal Value of Shares
- Other Basic Details

ROM RODentory

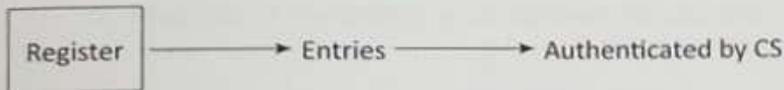
↓
within 7 days

↓
BOD approve the allotment or transfer the shares or debenture - any other security

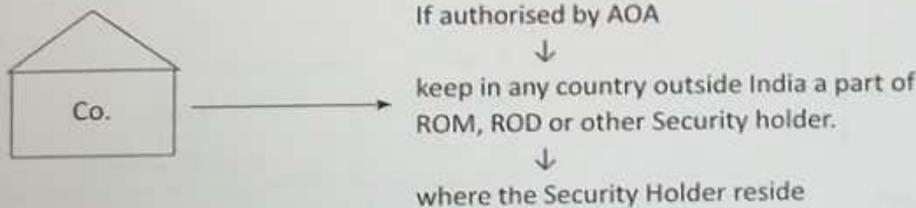
PRELIMINARY AND INCORPORATION OF COMPANY



→ Register and Index of Beneficial Owner is maintained by Depository shall be deemed to be register and index under this Act.



FOREIGN REGISTER



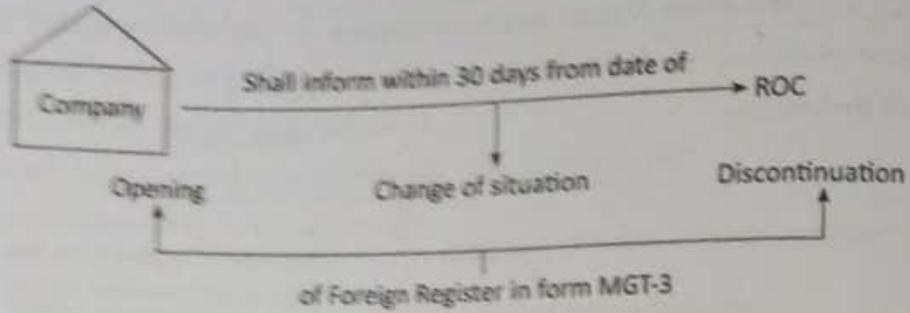
- Company shall keep copy of Duplicate Foreign Register at RO in India.
- Transmit to RO Copy of every entry made in FR within 15 days after entry is made.

FOREIGN REGISTER

[Deemed to be part of Company Register]

[shall be maintained in same format as Principal Register]

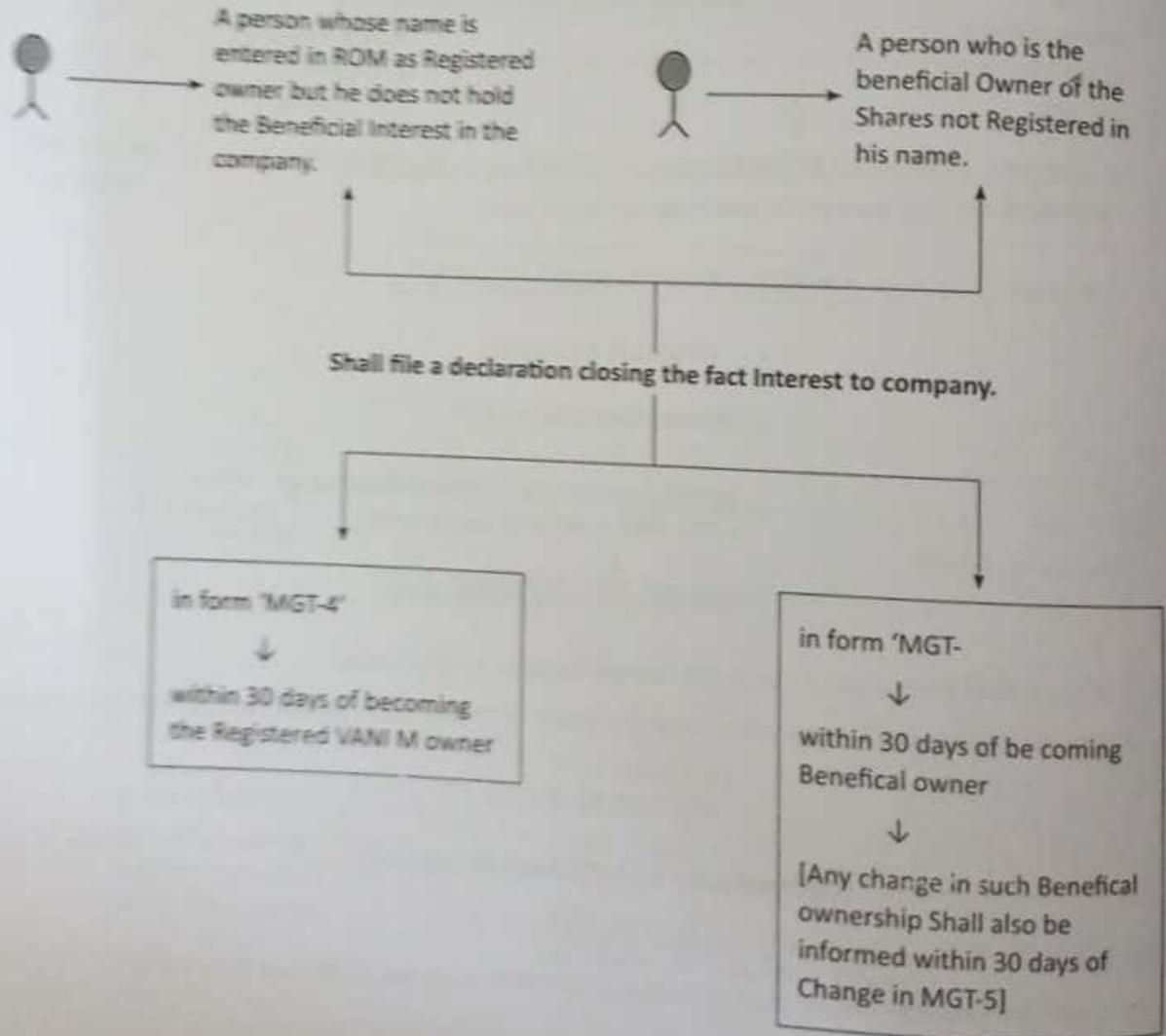
[Entries in Foreign Register shall be made simultaneously after approval of BOD or committee]

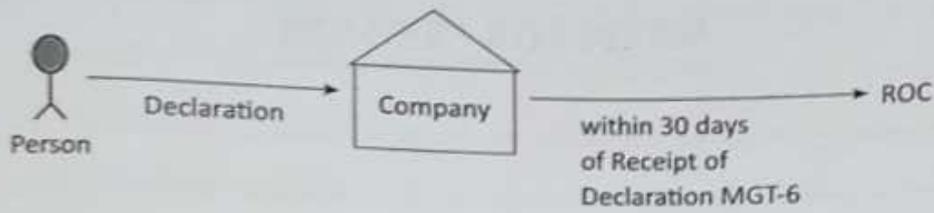


SECTION - 89

DECLARATION IN RESPECT OF BENEFICIAL INTEREST IN ANY SHARE

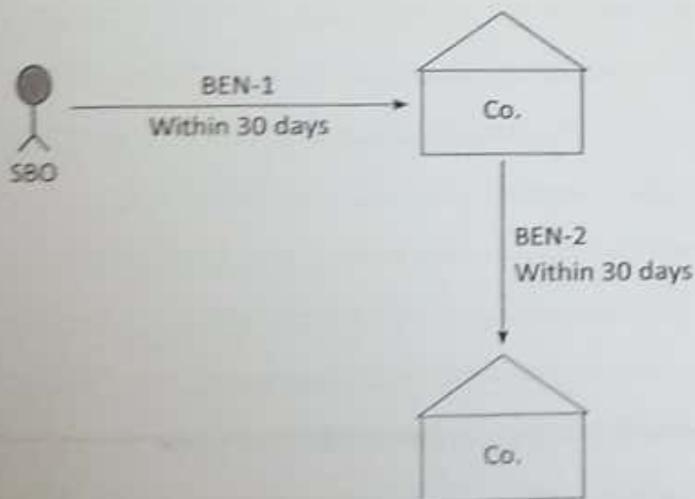
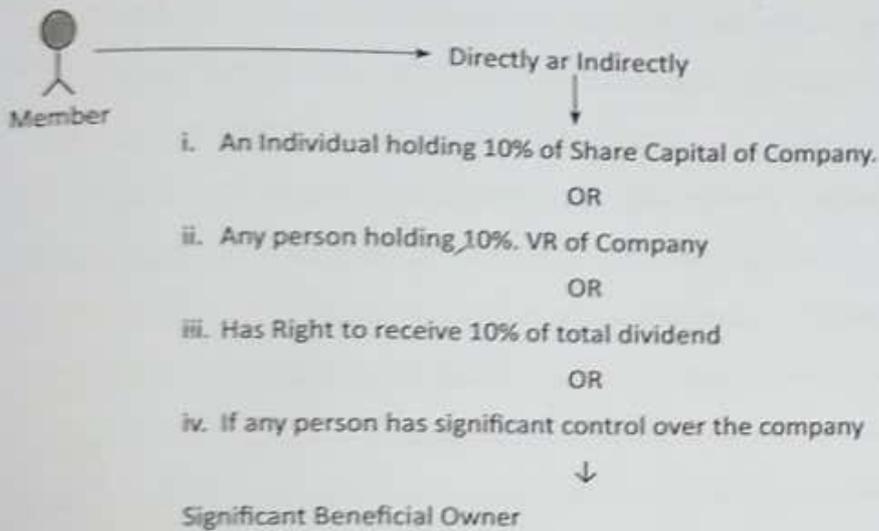
[Not applicable in case of Govt. Co.]





SECTION - 90

REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY



• Company shall maintain a Register Under BEN-3.

NOTES FOR REVISION

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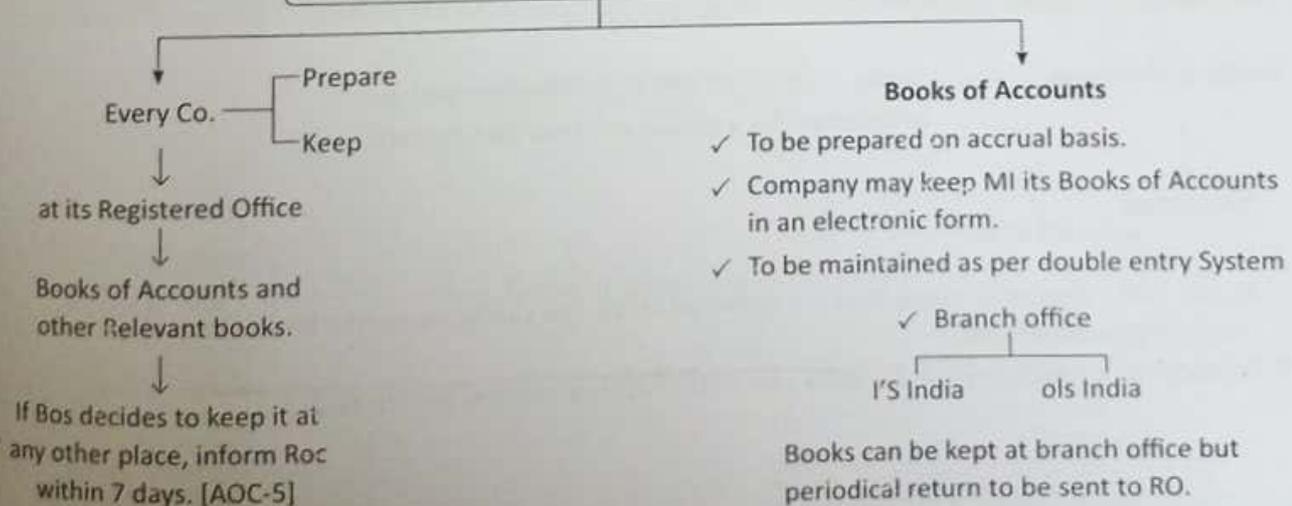
ACCOUNTS, AUDIT AND AUDITORS

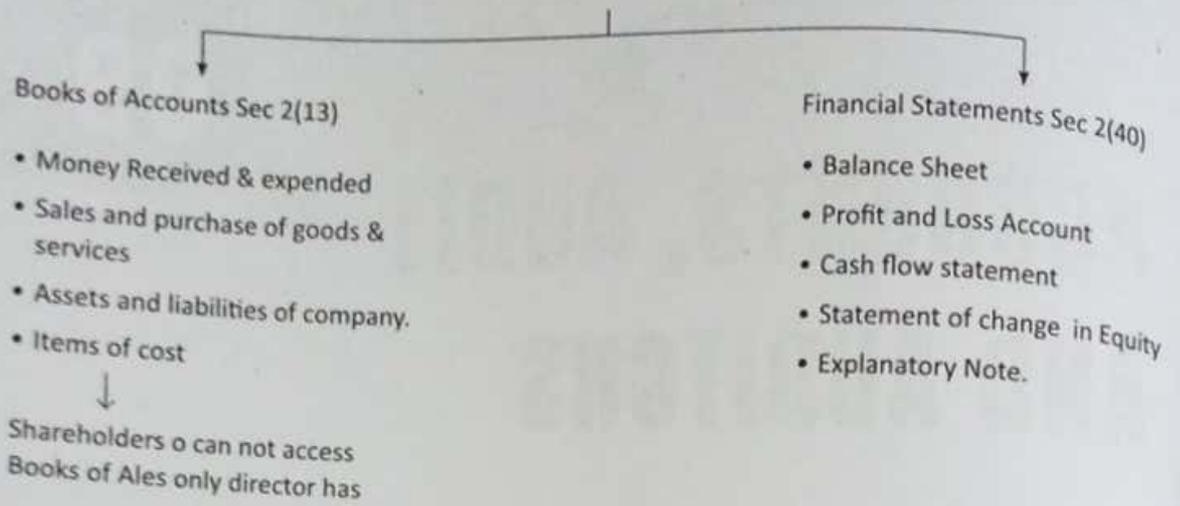
SECTION 128-148

(128-138 ACCOUNTS OF THE COMPANY// 138-148 AUDIT AND AUDITORS)
+
THE COMPANIES (ACCOUNTS) RULES, 2014
+
THE COMPANIES (AUDIT & AUDITORS) RULES, 2014

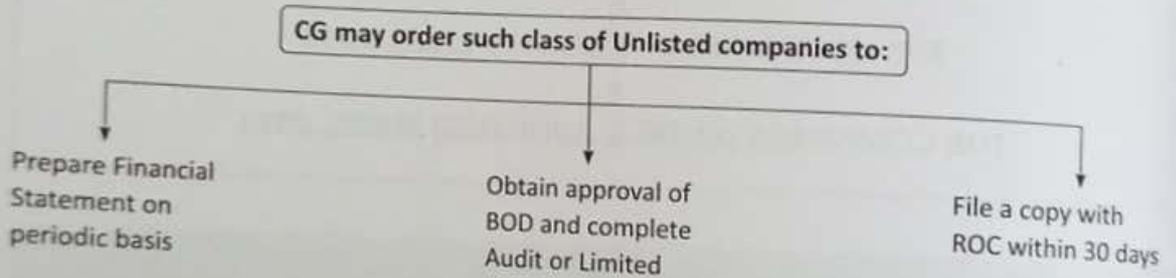
SECTION 128

Books of Accounts, etc., to be kept by company





SECTION 129 A PERIODICAL FINANCIAL RESULTS



SECTION-128

Books of Accounts → Books of Accounts with the relevant vouchers maintained for a period not less than 8 years.

↓
Inspection:

- ~ Books shall be open for inspection at Registered office and can be inspected by any director during business hours.
- ~ Inspection of subsidiary can be done only if BOD authorised any person to do so.

➤ Following persons are responsible for maintenance of Books of Account

- ✓ MO
- ✓ WTO in charge of Finance
- ✓ CFO

Question: ABC Ltd. is having its branch office in Jodhpur, Udaipur and Bhiwadi. Is maintenance of books required at all the branch offices? What is required by Registered office regarding maintenance of Books of Account of branch offices?

Answer: As per section 128 of Companies Act, 2013, every branch office should maintain proper books of account. Proper summarized returns periodically are to be sent by the branch office to the Company at its registered office.

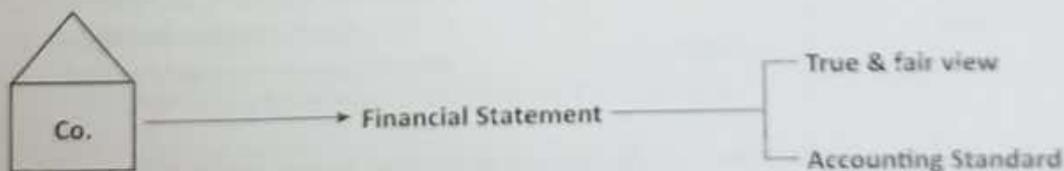
Maintenance of Books In E form:

- Such books of accounts or other relevant books and papers maintained in electronic mode shall remain accessible in India, at all times so as to be usable for subsequent use.
- The information contained in the records shall be retained completely in the format in which they were originally generated.
- There shall be a proper system for storage, retrieval, display or printout of the electronic records.
- The company shall intimate to the Registrar on an annual basis at the time of filing of financial statement -
 - (a) the name of the service provider;
 - (b) the internet protocol address of service provider;
 - (c) the location of the service provider

Books of Accounts of Branch Office:

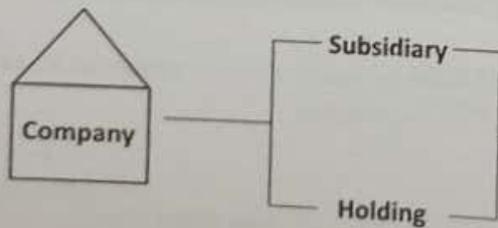
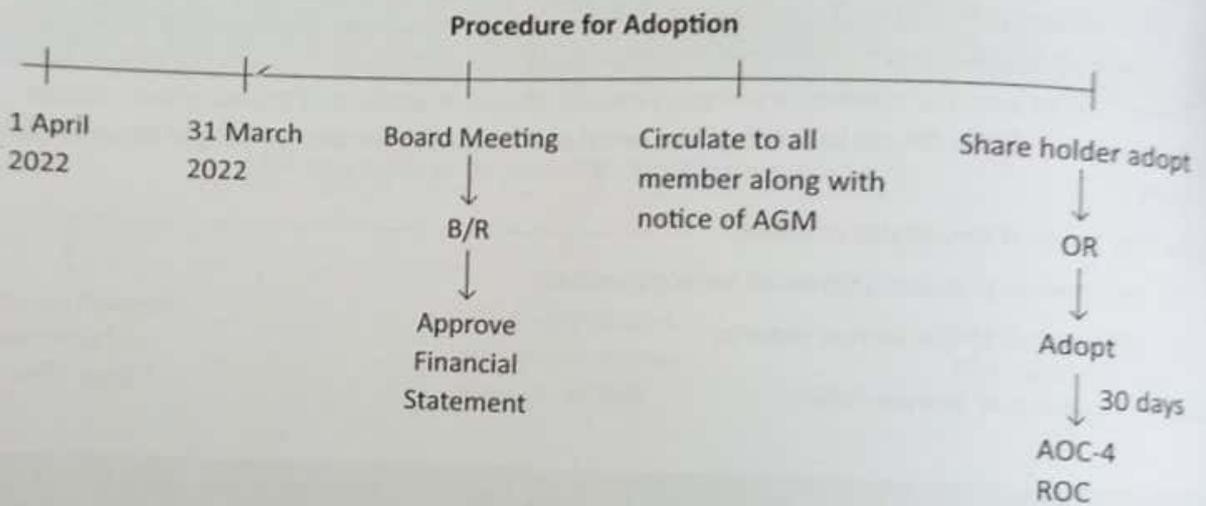
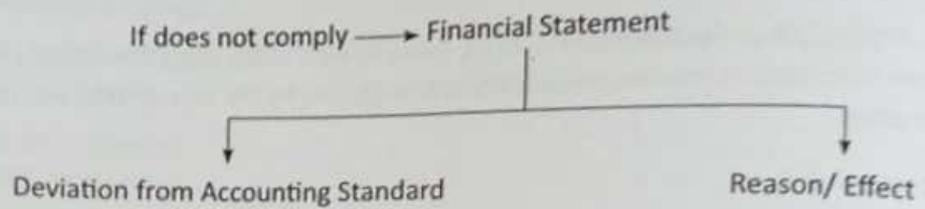
SECTION-129

FINANCIAL STATEMENTS



Not Applicable on:-

- Insurance Company
- Banking Company
- Electricity Company
- Government Co. Defence Production



Consolidated Financial Statement: The Companies Act, 2013 has made preparation of consolidated accounts mandatory for all companies including unlisted companies and private companies having one or more subsidiaries or associates or joint ventures

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary/ies or associate/s or joint venture/s in Form AOC-1 (Rule 5 of the Companies (Accounts) Rules, 2014).

Important: Provided further that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets the following conditions:-

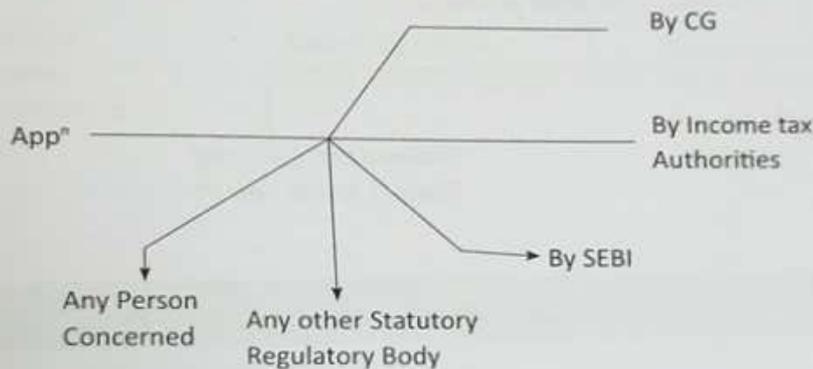
- (i) it is a wholly-owned subsidiary, or is a partially-owned subsidiary of another company and all its other members, including those not otherwise entitled to vote, having been intimated in writing and for which the proof of delivery of such intimation is available with the company, do not object to the company not presenting consolidated financial statements;
- (ii) it is a company whose securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India; and
- (iii) its ultimate or any intermediate holding company files consolidated financial statements with the Registrar which are in compliance with the applicable Accounting Standards

#CG Co. Section 129 → Exempt

SECTION-130 RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDER

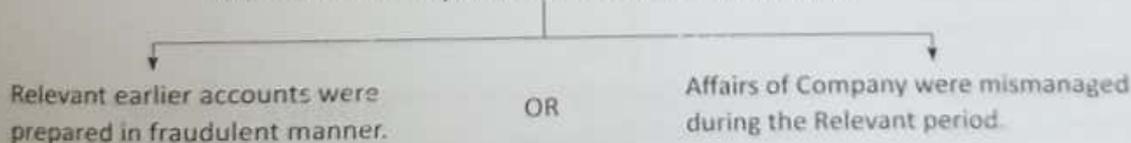
The co. cannot reopen its books of accounts and not recast its Financial Statements,

Unless



∴ The Accounts so Revised shall be final.

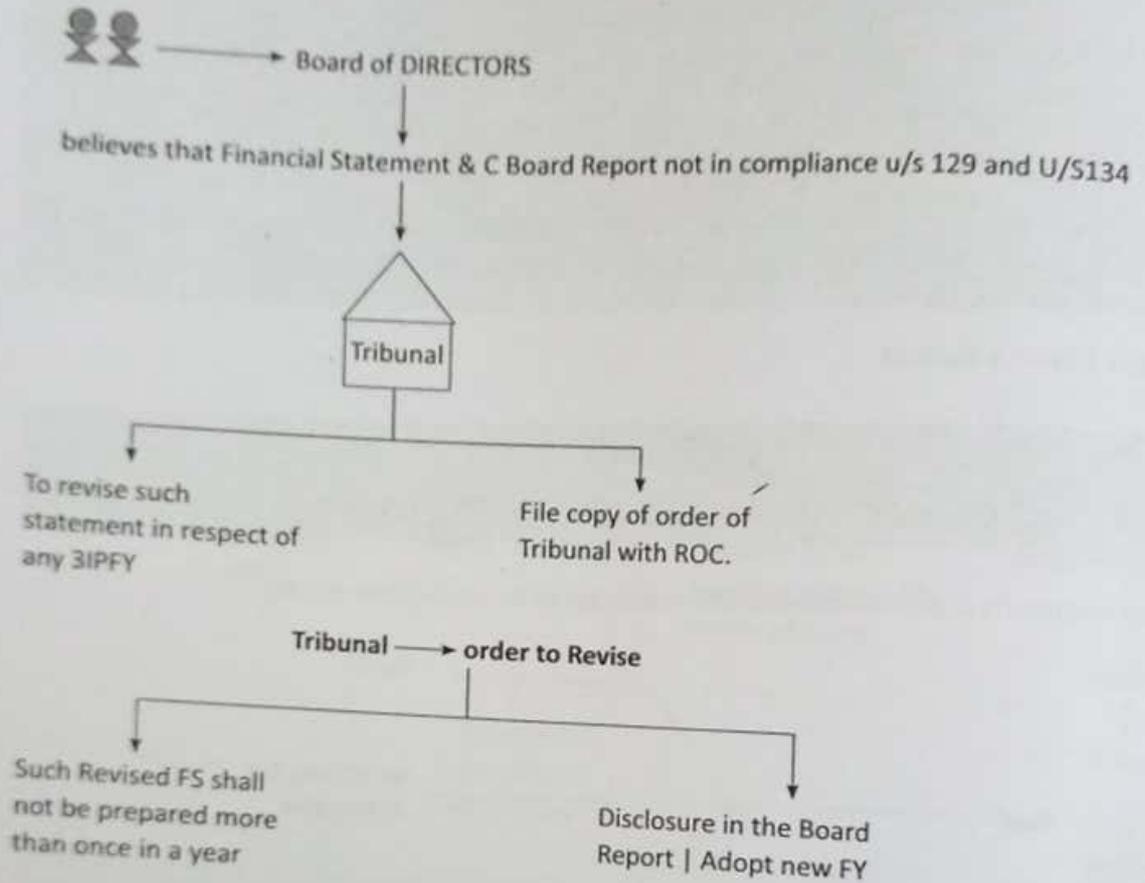
A Order is made by a court of Competent Jurisdiction



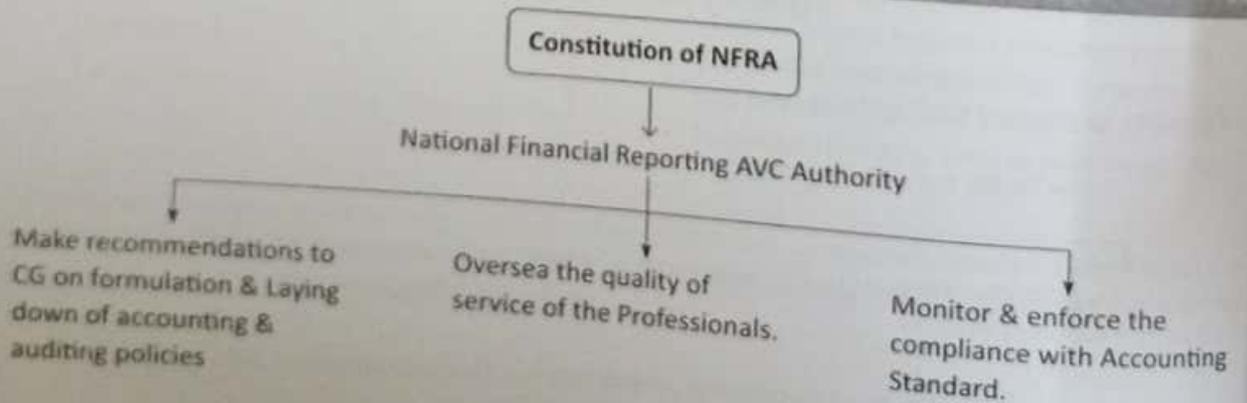
∴ No order shall be made in respect of re-opening of BoA relating to a period earlier than 8 year

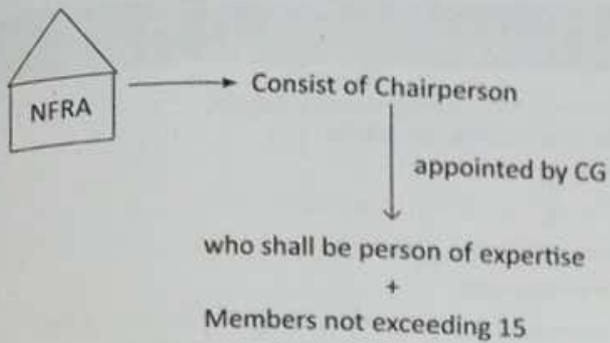
SECTION-131

Voluntary Revision of Financial Statements Or Board Report:

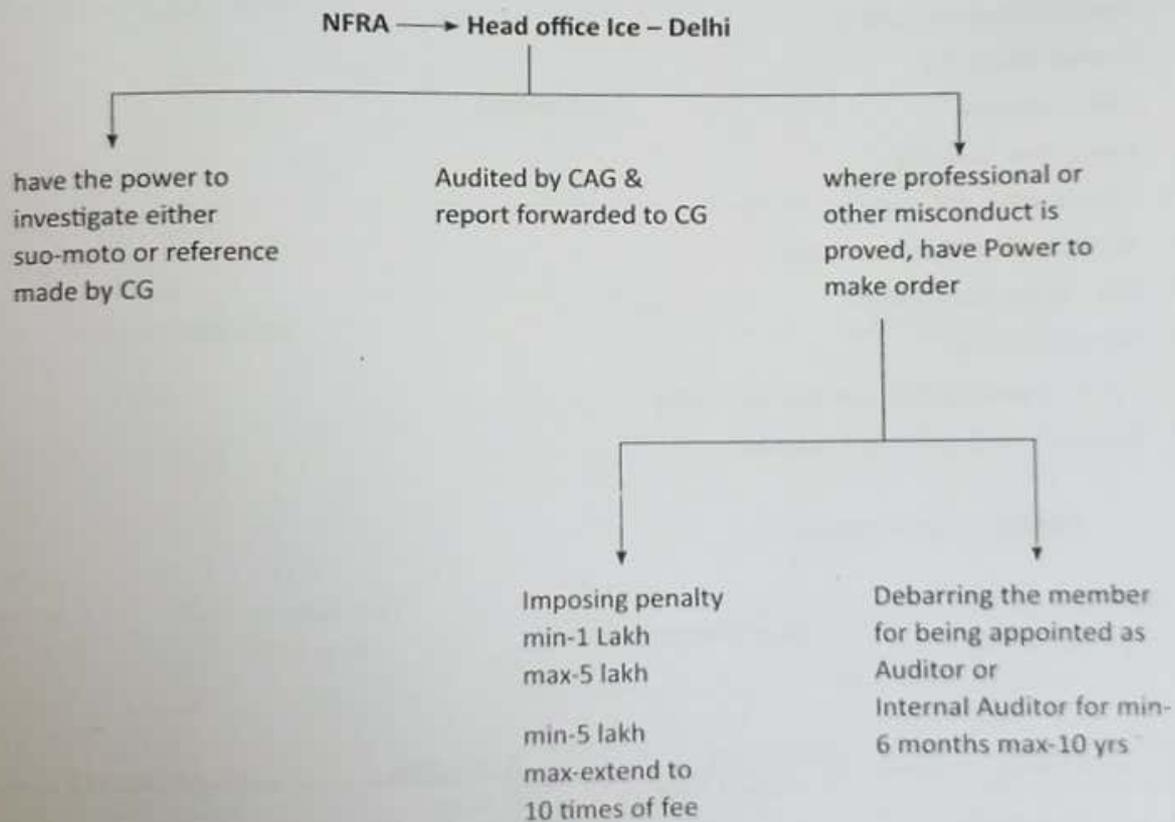
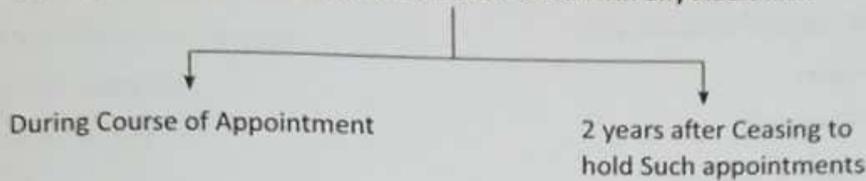


SECTION-132





:- Provided also that the Chairperson and members, who are in full-time employment with NFRA shall not be associated with any Audit firm



- Person aggrieved by order of NFRA may appeal to NCLAT.

SECTION-133

CG to prescribe Accounting standards

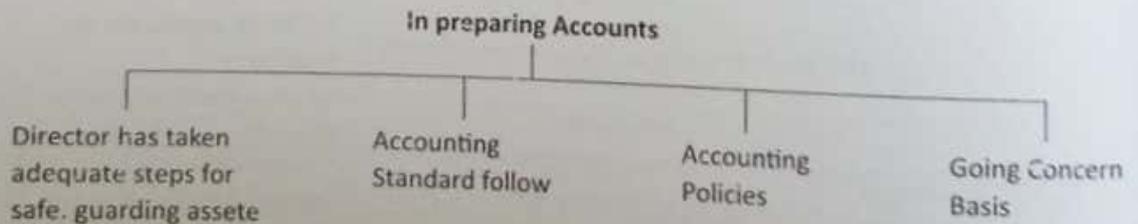
↓
Central Government to may prescribe the Standard of Accounting.

SECTION-134

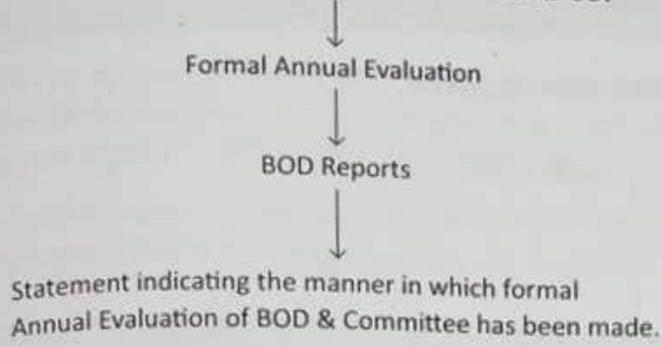
Financial Statement, Board Repast etc.

- Content of Board Report
 - ~ Web- address of Company
 - ~ Number of meeting of Board
 - ~ Details of fraud
 - ~ Declaration given by ID
 - ~ Section 186 & 188
 - ~ CSR Statement
 - ~ Technology MIGLANI
 - ~ Conservation of Energy
 - ~ Audit Committee composition
 - ~ State of company's affair
 - ~ Material Changes
 - ~ Details regarding Risk management Policy
 - ~ Director's Responsibility Statement.

↓
Declaration by directors



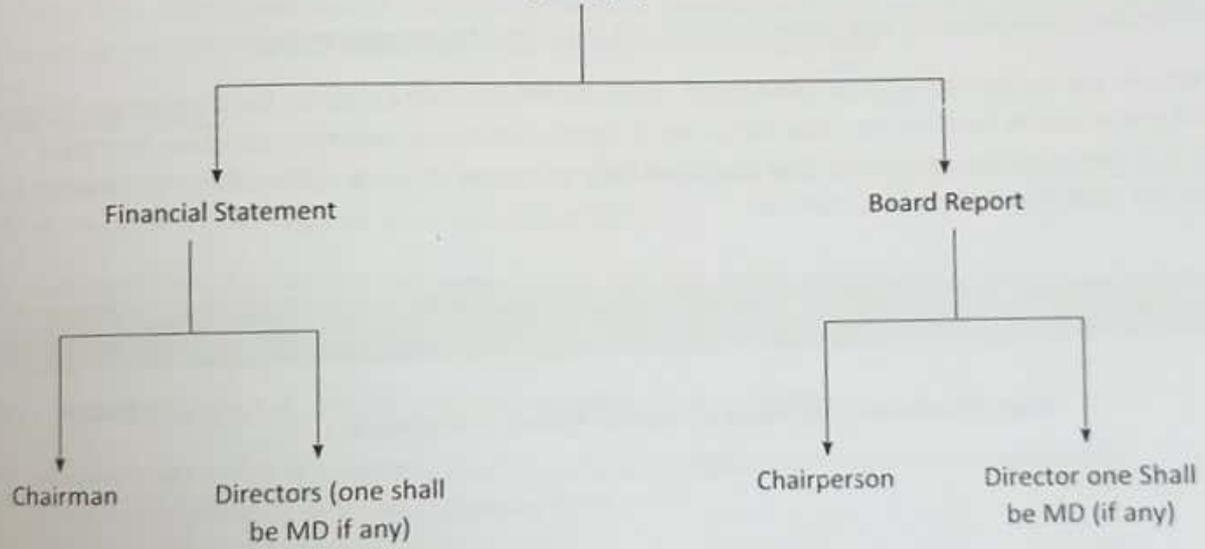
Additional content in case of Listed Co.



- Report on Corporate Governance
- Management Discussion Analysis
- Report (SWOT Analysis)
- Remuneration details

↓
Top 10 employee [Salary wise]

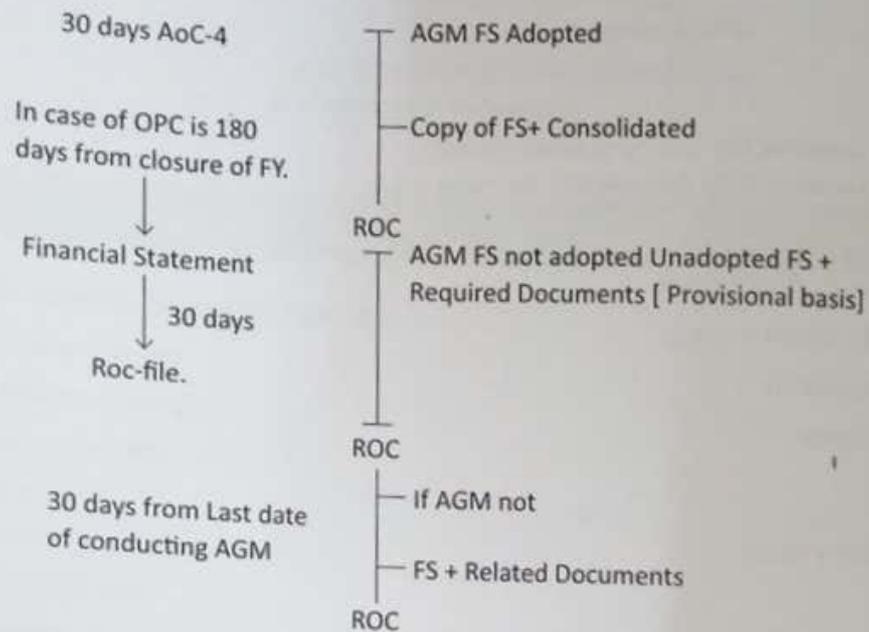
Signing: (V,



+
CFO + CEO + CS

SECTION-137

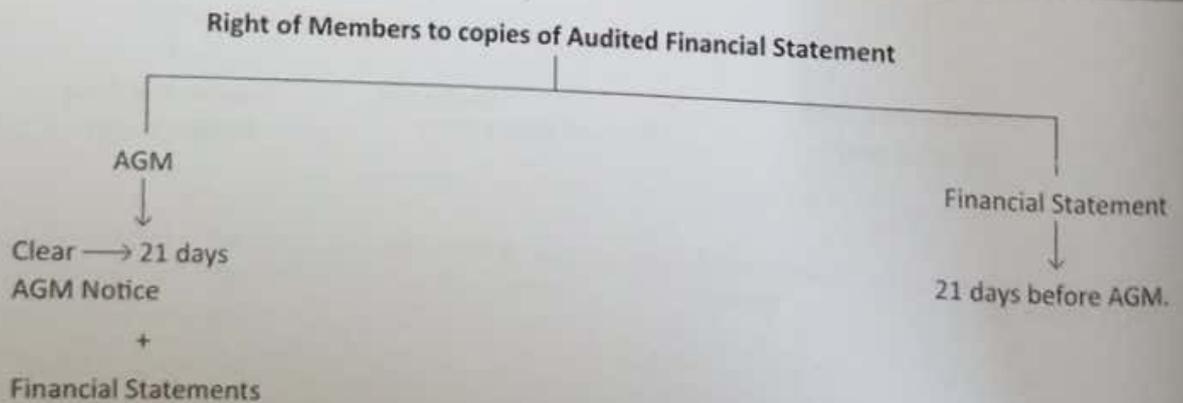
Copy of Financial Statement to be filed with Registrar:



Question: Is it mandatory to sign financial statement from the company secretary?

Answer: As per Section 134(1), the company in which the Whole-time Company Secretary is appointed, then it is mandatory that the Financial Statement is signed from the Whole-time Company Secretary. Further if the company appointed Chief Executive Officer or Chief Financial Officer then the financial statement shall also be signed from them.

SECTION-136:



The copies of the documents can be sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members –

- (a) In case of the company having share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) In case of company not having share capital, not less than ninety-five per cent of the total voting power exercisable at the meeting.

SECTION 137: FINANCIAL STATEMENTS TO BE FILLED WITH ROC

Every Company Should file its financial statements including CSF in form AOC-4 with ROC within 30 days from the day on which the AGM held and members adopted financial statements.

- What if Financial Statements are not adopted at AGM or adjourned AGM??

Such Unadopted financial statements along with required documents be filed with ROC within 30 days of the date of AGM.

If Financial Statement are adopted in adjourned AGM then such statements shall be filed with ROC within 30 days of date of such adjourned Meeting.

The One Person Company shall file the copy of financial statements duly adopted by its member within a period of one hundred and eighty days from the closure of financial year.

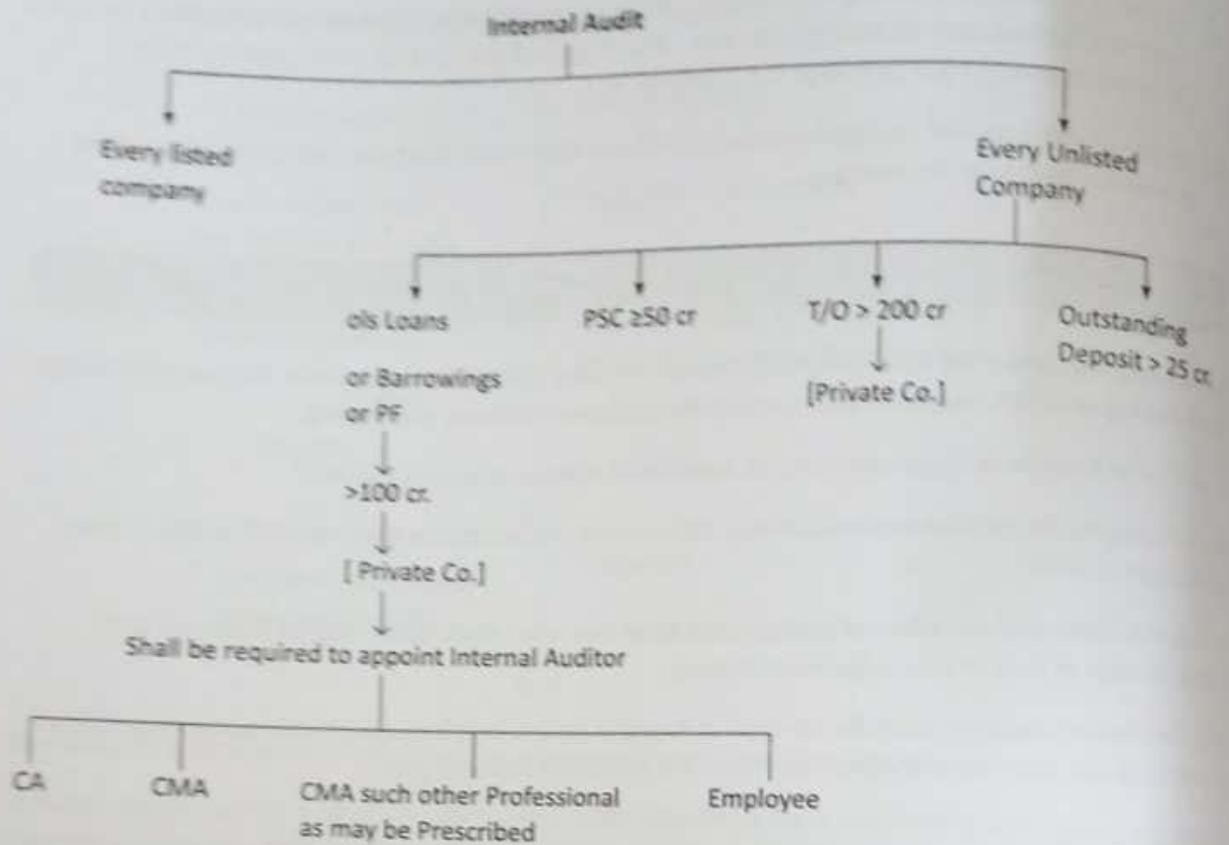
Concept of XBRL :

The following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-Form AOC-4 XBRL:

- (i) companies listed with stock exchanges in India and their Indian subsidiaries;
- (ii) companies having paid up capital of five crore rupees or above;
- (iii) companies having turnover of one hundred crore rupees or above;
- (iv) all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standards) Rules, 2015

Further non-banking financial companies, housing finance companies and companies engaged in the business of banking and insurance sector are exempted from filing of financial statements under these rules.

SECTION-138



Small and Medium Sized Company:

A Company:

- Equity or Debt are not listed
or
are not in the process of listing on any Stx.
- which is not a Bank, FI or Insurance Co.
- whose TIO < 250 cr.
- Borrowings < 50 cr.
- which is not a holding or subsidiary Co. of a Company which is not a SMC Co.



An existing co. which was not Previously a SMC becomes now a SMC Shall not be qualified for exemption for Auditing/Accounting standard till co. remains SMC for 2 consecutive years.

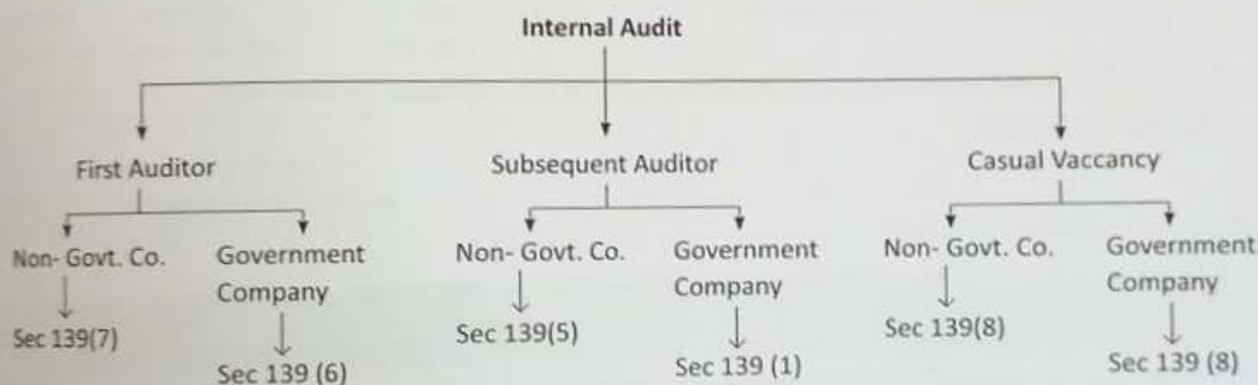
Audit and Auditors.

Companies (Audit and Auditors) Rules, 2014

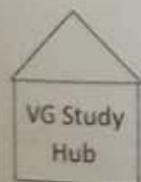
➤ List of Sections:

- Section 139: Appointment of Auditors
- Section 140: Removal, Resignation of Auditor and giving of special notice.
- Section 141 : Qualification and Disqualification of Auditor
- Section 142: Remuneration of Auditor
- Section 143 Power and Duties of Auditor
- Section 144: Auditor not to render certain Services
- Section 145 : Auditor to sign Audit Report
- Section 146: Auditor to attend General Meeting
- Section 147 Penal Provision
- Section 148: Central Government to specify audit of items of cost in respect of certain companies.

SECTION-139



Appointment of First Auditor in case of Non-Government Company.



- Incorporation - 30 days, If Board fails to do so, then
- Board inform Members and then Members within 90 days appoint at EGM

Tenure: First Auditor shall hold office till the conclusion of first Annual General Meeting

Appointment of first Auditor in case of Government Company

Comptroller and Auditor General

↓ within 60 days

Appoint Auditor

If CAG fails to do so;

Board of Directors

↓ within 30 days

Appoint Auditor

If Board fails to do so;

Members

↓ within 60 days

Conduct EGM and Appoint Auditor

Tenure: Hold office till the conclusion of First AGM

Appointment of Subsequent Auditor in case of Non-Govt. Company

First Auditor



Individual 'PCA' or firm of 'PCA'



Shall hold office from the conclusion of FIRTST meeting till the conclusion of Sixth AGM.

First Auditor → 1 year

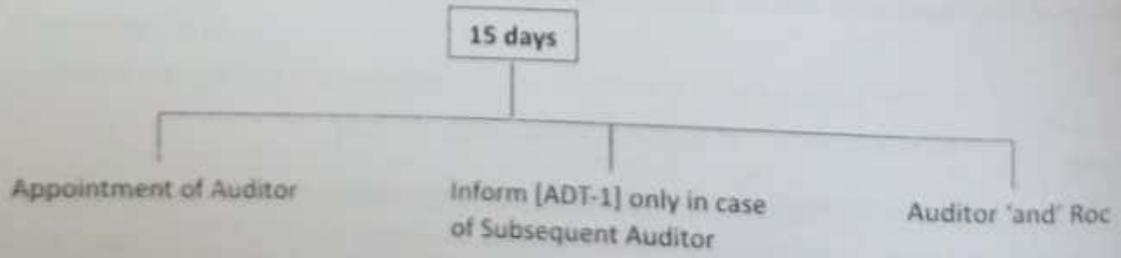
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Subsequent Auditor → 5 year

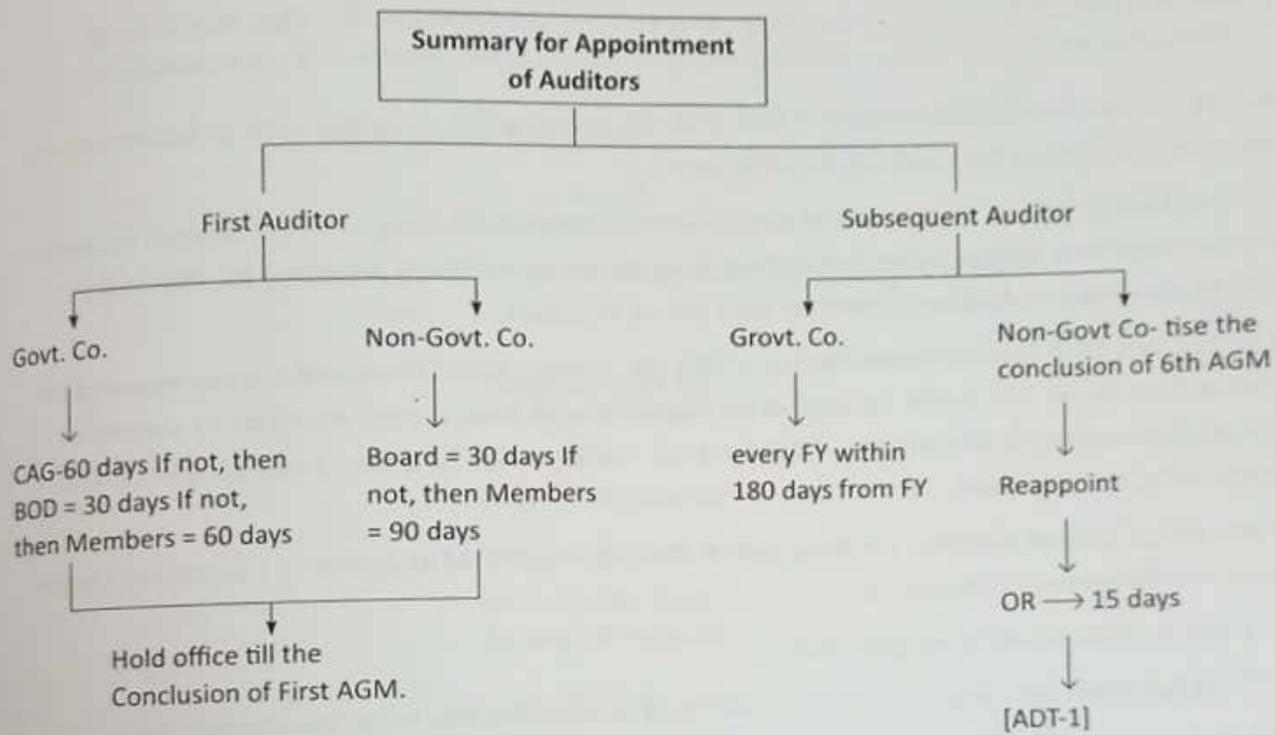
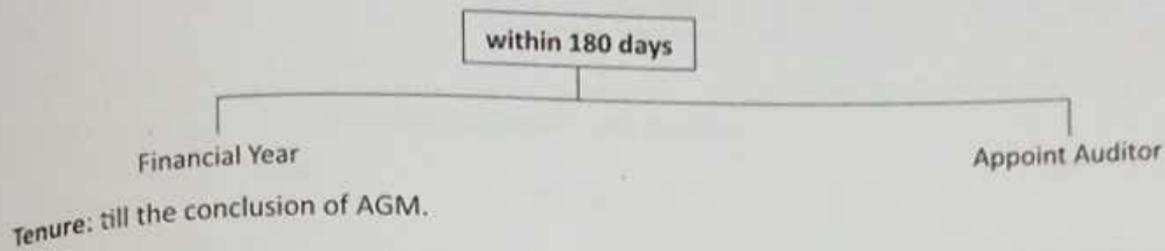
Provided that before such appointment is made, the written consent to such appointment

+

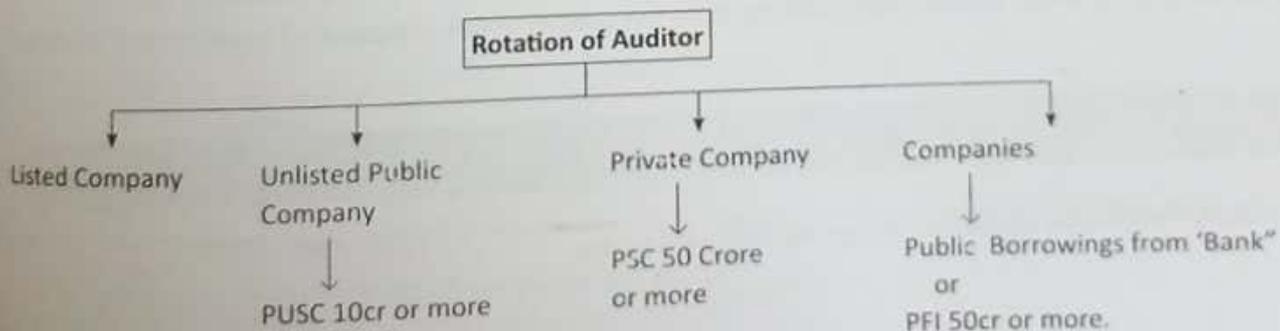
Certificate from the Auditor (that they are not disqualified)



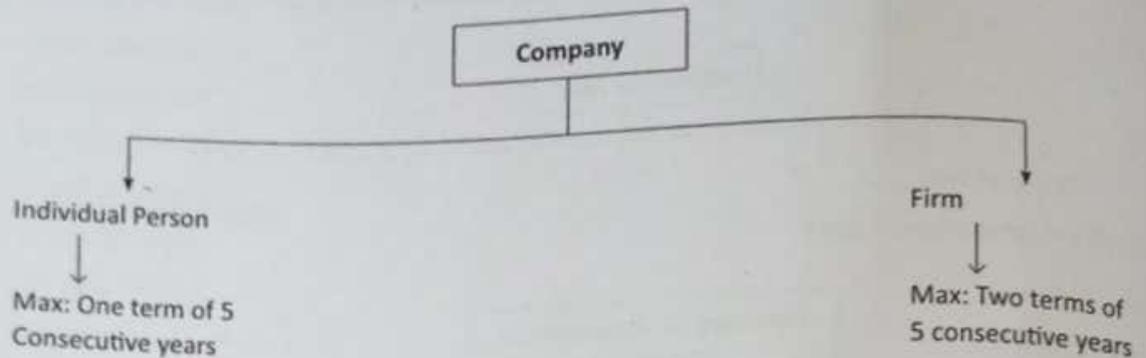
Appointment of Subsequent Auditor in case of Government Co.
 CAG will appoint Subsequent Auditor within 180 days from the start of FY.



SECTION-139



Exception: OPC & Small Company



Cooling Period: An Individual Auditor or firm shall not be eligible for re-appointment as Auditor in same company from 5 years from completion of his term.

Provided further that, as on the date of appointment No Audit firm having common partners or partner to other Audit firm, whose tenure has expired in a company immediately preceding the financial year, Shall be appointed as Auditor of same co. for a period of 5 years.

Example" M/s AD & Associates was auditor of M/s ABC Limited (Listed Company) and has rendered his services for 5 years. The firm is not eligible for reappointment. Even in case where, Mr. D, partner of M/s AD & Associates is also partner of M/s SD & Co. Therefore M/s SD & Co. cannot be appointed as auditor of M/s ABC Limited.

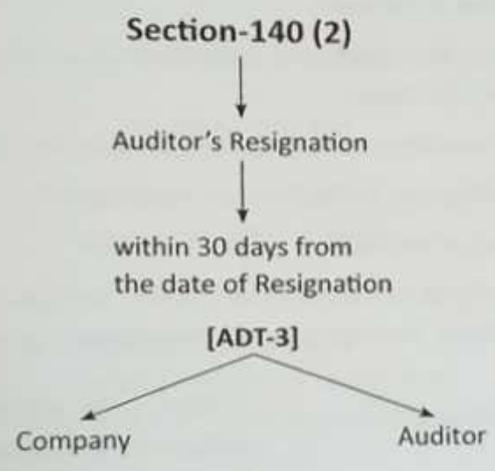
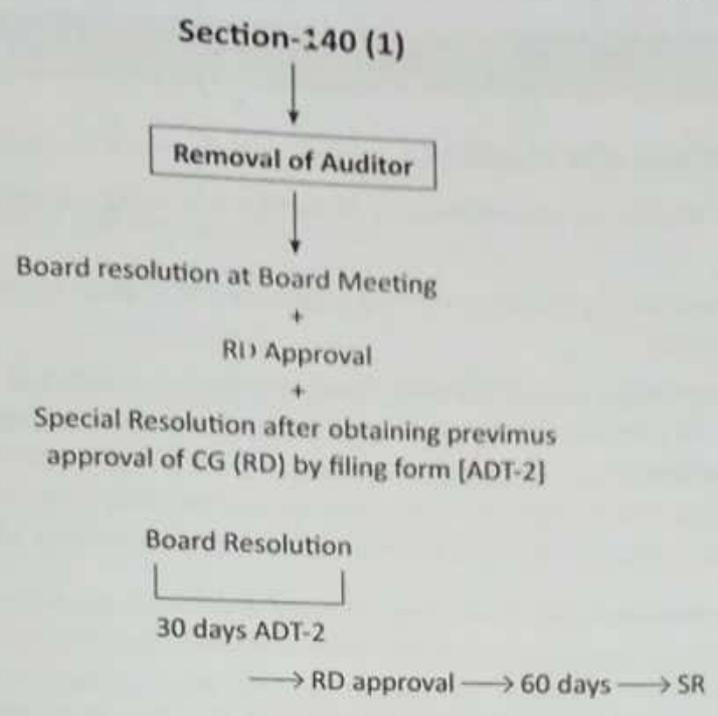
At any annual general meeting, a retiring auditor shall be reappointed as auditor of the company except under the following circumstances:

- (a) He is not qualified for re-appointment;
- (b) He has given the company a notice in writing of his unwillingness to be re-appointed; and
- (c) A special resolution has not been passed at that meeting appointing somebody else instead of him or providing expressly that retiring auditor shall not be re-appointed.

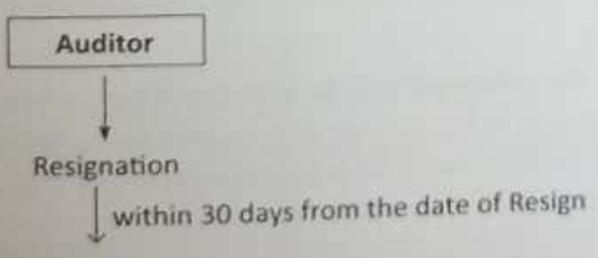
Section 139 (10) lays that where at any annual general meeting, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company

SECTION-140

Removal, Resignation of Auditor and giving of Special Notice



In case of Government Company:



SECTION - 141

Qualification and Disqualification of Auditor

- Person shall be eligible for appointment as an Auditor of a company only if he is CA (individual) or
- a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor.
- Where a firm including a Limited Liability Partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

Disqualifications

- a) A Body Corparte other than LLP.
- b) An Officer or Employee of Company
- c) A person who is partner or who is in the employment of an officer or employee of company.
- d) A person who, who or his Relative ar Partner
 - i. is holding any security or Interest in company, Subsidiary Co., Associate Co., Holding Company or Subsidiary of such Holding Company.
Provided, Relative shall held maximum Security interest up to face value of 1 lakh.
 - ii. is indebted to company, Holding Co., Subsidiary Co., Associate Co.
Provided, Indebttness allowed up to 5 lakh.
 - iii. has given guarantee or security to company Associate Co., Subsidiary Co., Holding Co. or holding company's Subsidiary Co. Provided, Guarantee allowed up to 1 lakh.
- e) Person or Firm Business Relationship → Company, Associate Holding, Subsidiary or subsidiary of Such

The term "business relationship" shall be construed as any transaction entered into for a commercial purpose, except –

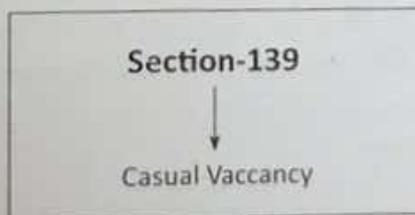
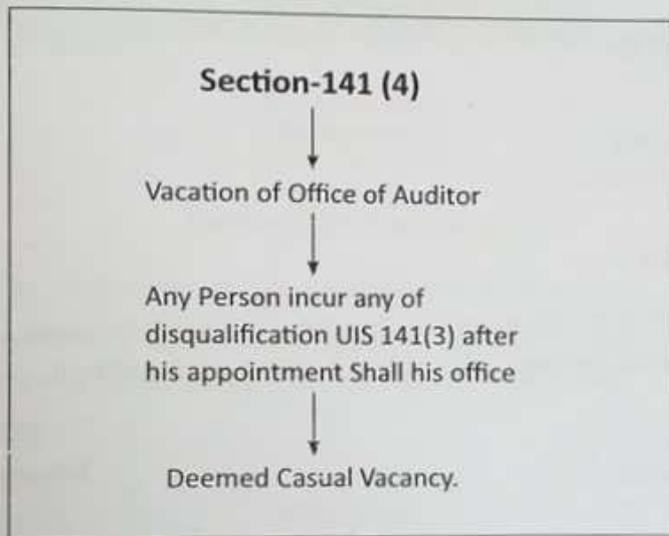
- i. commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm.
 - ii. commercial transactions which are in the ordinary course of business of the company at arm's length price-like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses
- f) A person whose Relative is a director ar is in the employment of Company as Director | KMP.

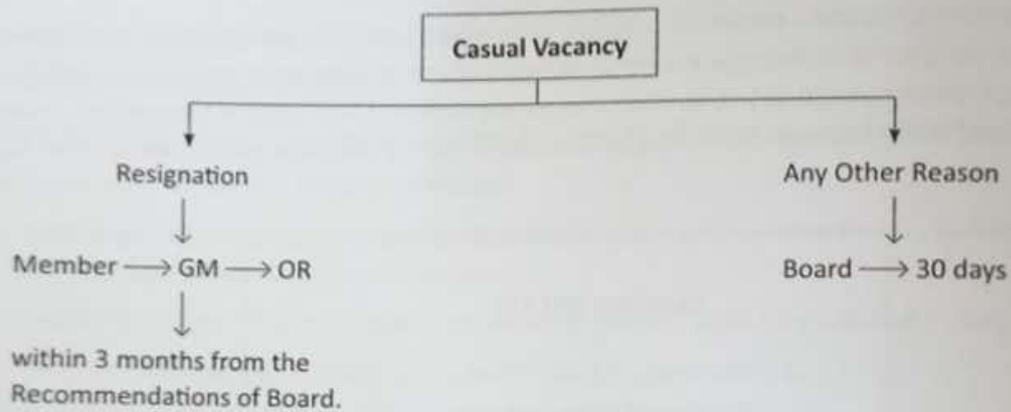
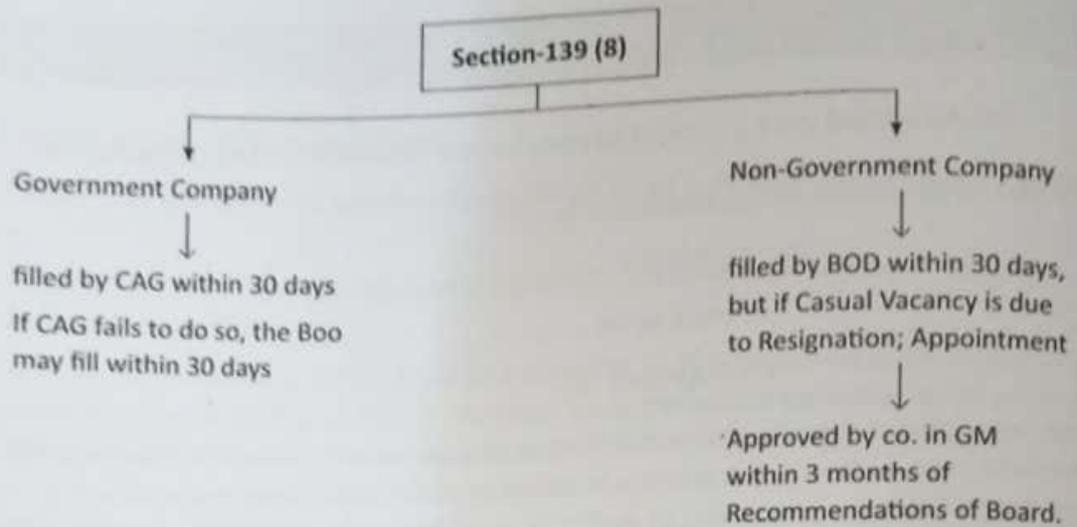
g) Person → convicted by court
 ↓
 Involving fraud and a period of 10 years has not elapsed from date of Conviction

h) Person who render service mentioned under Sec-144
 → Company
 → Holding Co.
 → Subsidiary Co.

i) A person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies;

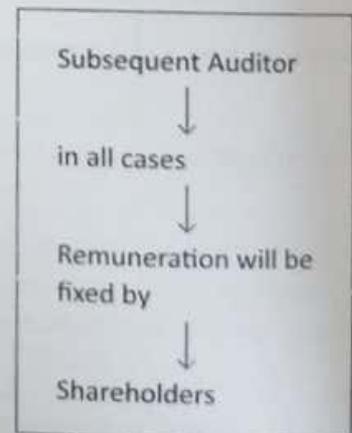
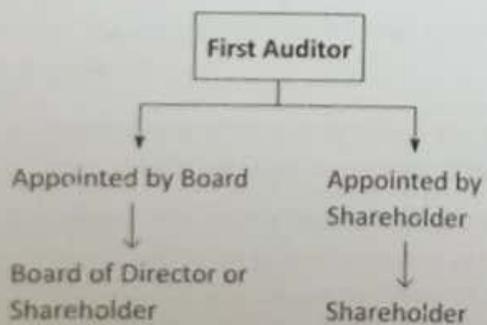
In case of private company a person is ineligible to be appointed as an auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of more than twenty companies other than one person companies, dormant companies, small companies and private companies having paid-up share capital less than one hundred crore rupee





Remuneration of Auditor

The Remuneration of Auditor of Company shall be fixed in the General Meeting.
Provided that, Board may fix the remuneration of first Auditor appointed by it.



Remuneration shall include expenses incurred by Auditor in connection with the Audit of Company but does not include remuneration paid to him for any Services rendered by him in any other capacity at request of company.

SECTION-144 V. IMP

Auditor not to render Certain Services:

- i. Accounting and Book- Keeping Services.
- ii. Internal Audit
- iii. Design and Implementation of any finance formation System
- iv. Acturial Services
- v. Investment Advisory Services
- vi. Management Services
- vii. Rendering of Outsourced Financial Services
- viii. Any other Services

→ Company
or
Holding Co.
Or
Associate Co.
or
Subsidiary Co.

Section-145

Auditor to sign Audit Report

The person appointed as an Auditor of company Shall sign the Audit Report

Any Qualifications, Observations or comments on financial transactions which may have adverse effect on functioning of company mentioned in Audit Report shall be read at GM.

Shall be open for Inspection.

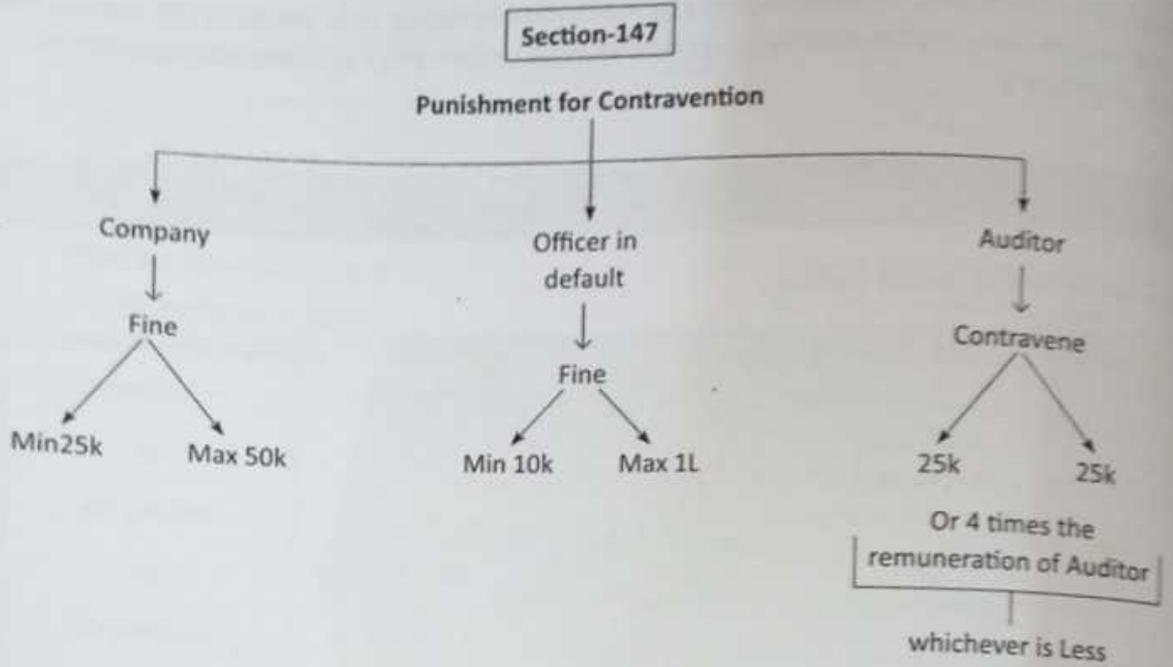
Section-146

Auditor to attend General Meeting

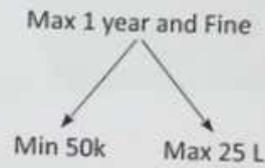
All Notices + Communications of any General Meeting shall be forwarded to Auditor and Auditor shall unless otherwise exempted by company attend either through his Authorised Representative who shall also be qualified as Auditor .

+

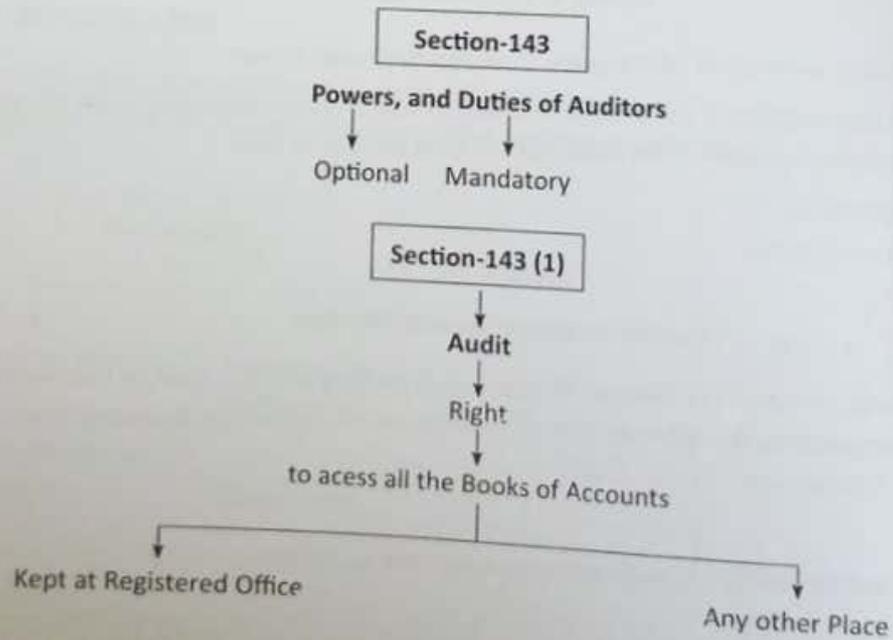
Have Right to be heard on part of business which concern him as Auditor.



Provided, If Auditor has contravened such provision knowingly then Imprisonment

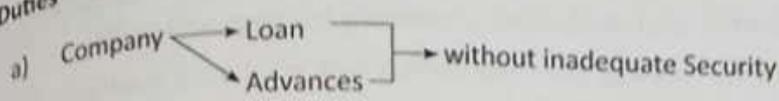


where an Auditor has been convicted, he Shall be liable to refund remuneration received by him and to pay the damages.

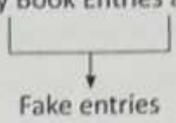


Auditor shall be entitled to require from officer of company such information as he may consider necessary for performance of duties.

Duties



b) Whether transaction of company which are represented merely by Book Entries are prejudicial to interest of Co.



c) Shares Debentures sold at a price less than at which they are purchased by company.

Exception: Investment Company or Banking Company

d) Whether Loans & Advances made by the company have been shown as deposits.

e) Whether personal expenses have been charged to Revenue account.

f) Securities sale for cash whether cash has actually been received and if no cash has actually been received whether the position has stated in accounts book.

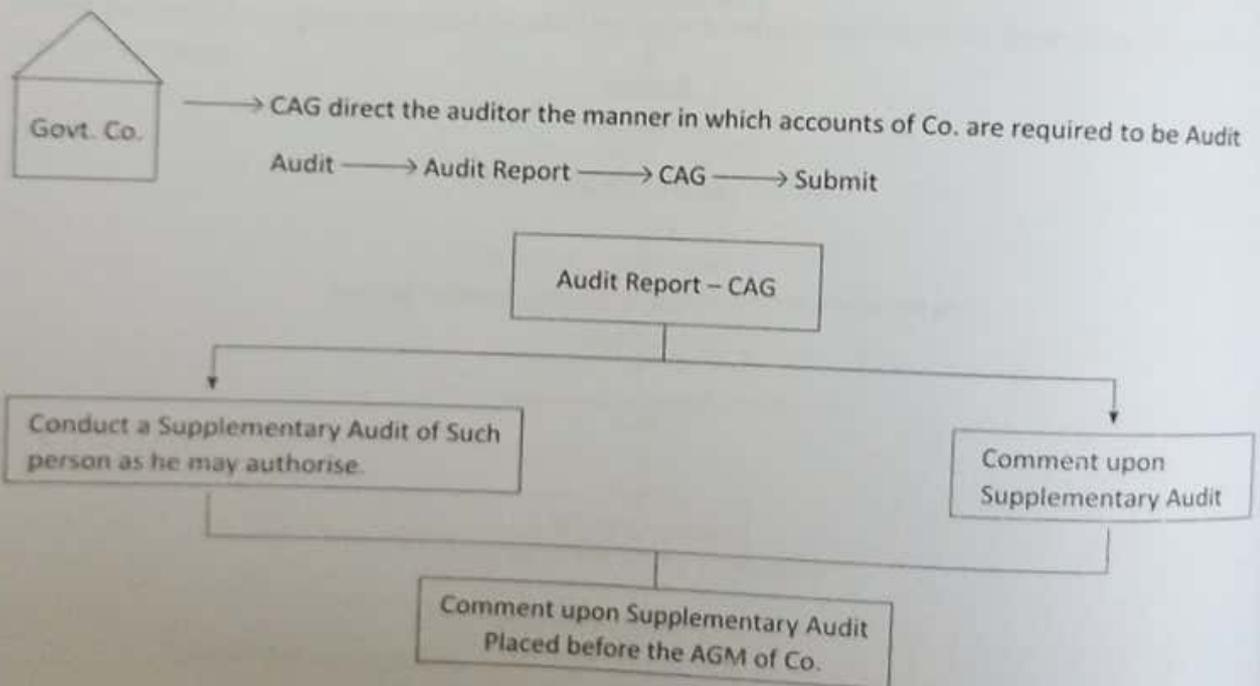
Above Statements has to be taken into accounts while carrying out an Audit.

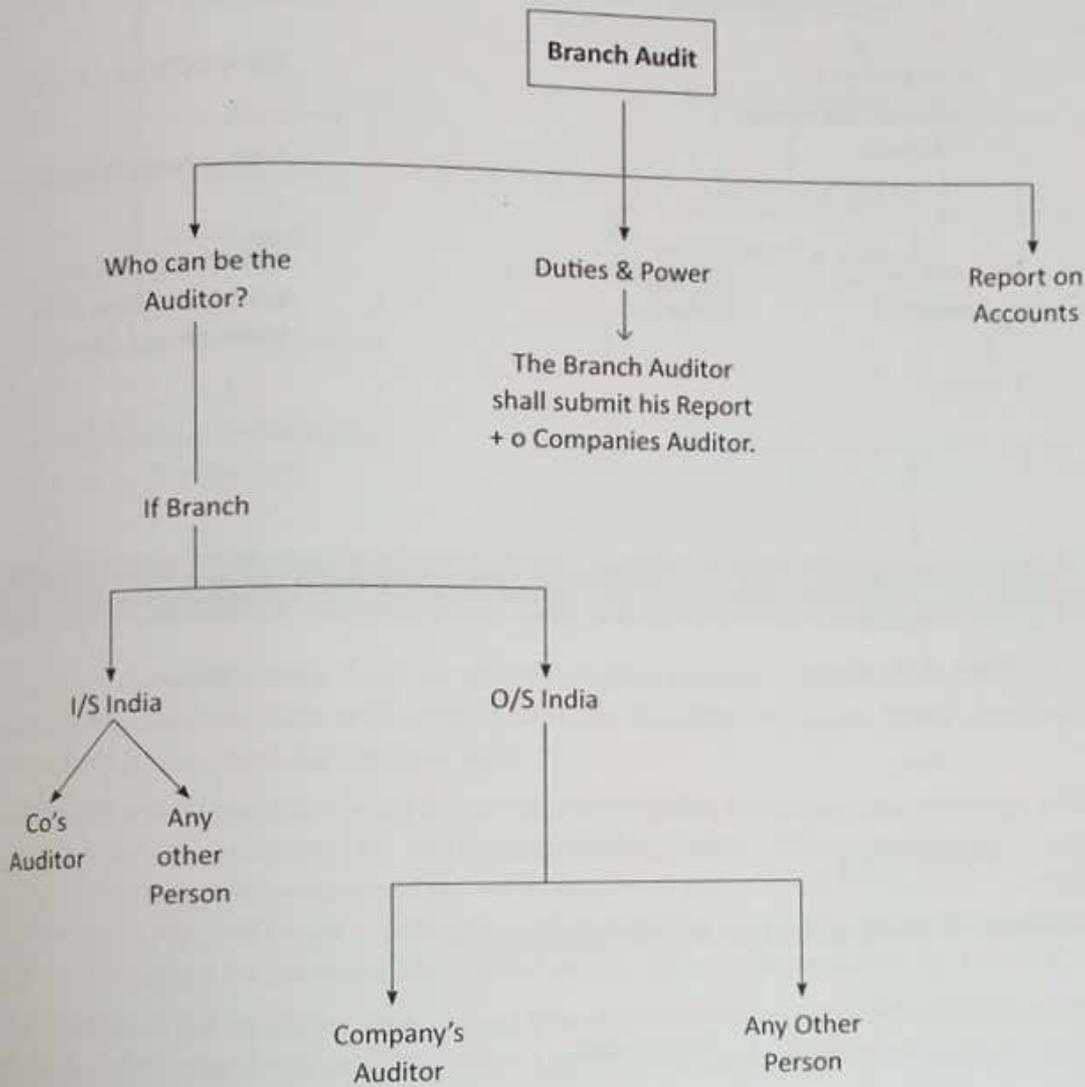
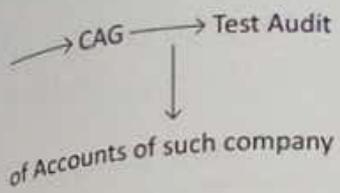
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    graph TD
      A[Section-143 (2)] --> B[Auditor]
      B --> C[make a Request]
      C --> D[to members of company on accounts examined by him]
      D --> E[every financial statement]
      E --> F[Section-143 (3)]
      F --> G[Auditor Report shall state]
    
```

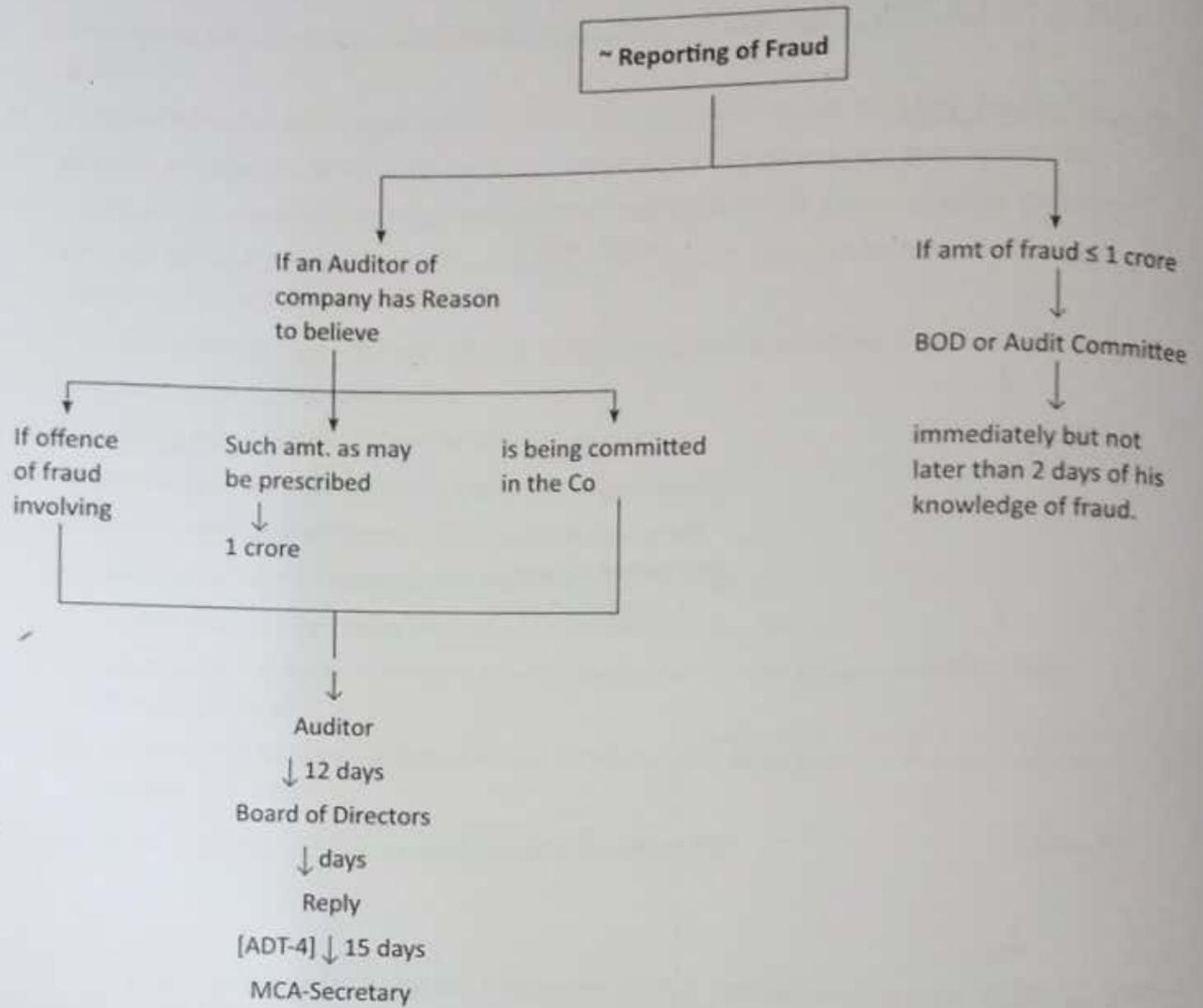
- i. Whether he has sought and obtain all the information and explanation, that were necessary for Audit.
- ii. Whether in his opinion, proper books of accounts are required by law have been kept by company.
- iii. Whether the Reports on the account of any branch office of company has been sent to him.
- iv. Whether in his statement /opinion the Financial Statement comply with accounting Standards.
- v. Whether the company's Balance Sheet & Profit and Loss A/c dealt within the report are in argument with BOA and returns.
- vi. The observations which have any adverse effect on functioning of company.
- vii. Whether any director is disqualified
- viii. Any qualifications relating to maintenance of accounts
- ix. Where the company has adequate internal financial control.
- x. Any such matter as may be prescribed:
 - a) Where the Co. has disclosed the impact of pending litigation.
 - b) whether the co. has made provisions for material Losses. AVC
 - c) whether there has been delay in transferring amount to IEPF (Investor Education and Protection Fund)
 - d) Whether the dividend declared ar paid during the year by company is in compliance with Section 123. GLAN

Reason for Qualified Report shall be mentioned in Audit Report.





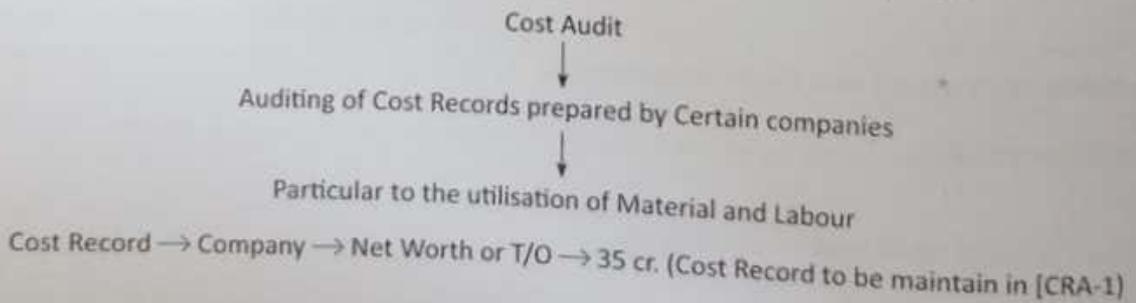
- ↳ Every Auditor shall comply with the Auditing Standard
- ↳ Central Government
 - ↓
 - ↳ prescribe standards which have to be followed.



Company shall disclose the details about such fraud in Board Report.

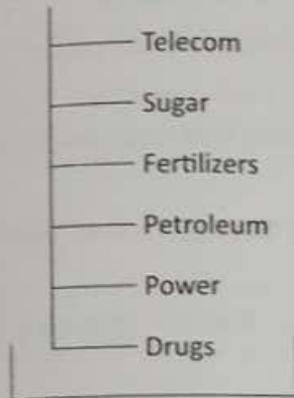
Section-148

Central Government to specify audit of items of cost in respect of certain companies.



Cost Record बनाना तो पड़ेगा पर Audit इस बात पर depend करता है कि तुम Regulated Sector में हो या Unregulated Sector में.

Regulated Sector



To-50 cr and T/O Individual Product=25cr

Unregulated Sector

↓
Any other Sectors

↓
T/O = 100 cr and Individual 35 cr Product

COMPANIES (AUDITOR'S REPORT) ORDER, 2020

Ministry of Corporate Affairs 'MCA' notified Companies (Auditor's Report) Order, 2020 (CARO 2020) which is applicable for audit of financial statements of eligible companies for the financial years commencing on or after the 1st April, 2021.

CARO 2020 will be applicable to all the companies including foreign companies except banking company, insurance company, section 8 company, OPC [section 2(62)], small company [section 2(85)], certain private limited companies. This order stated that every report of the auditor under Section 143 of Companies Act, 2013 must contain the matters stated in 21 clauses as specified under paragraphs 3 and accord reasons for unfavourable or qualified answer as stated in paragraph 4 of CARO 2020.

CARO 2020 will not be applied with respect to auditor's report on Consolidated Financial Statements. The order 2020 elaborated on all the matters which are to be included in the auditor's report.

Wherein, the following details of the subject-matter are described:

1. Whether the company is maintaining proper records showing full particulars such as:
 - i. The quantitative detail and situation of property, plant, and equipment,
 - ii. Physical verification of the property, plant, and equipment by the management at reasonable intervals,
 - iii. The details of the title deeds of the immovable properties held in the name of company,

- iv. Revaluation of the property, plant, and equipment or intangible assets or both and if there is more than 10% of the change in the property, plant, and equipment or intangible assets, Accounts & Auditors LESSON 9 453
2. Details of proceedings against the company on the holding of any Benami property.
 3. Physical verifications of inventory by the management at reasonable intervals and proper treatment of any discrepancies of 10% or more found.
 4. Quarterly returns or statement filed by company having working capital limit more than 5 crore rupees with such banks or financial institution.
 5. Details of the investments made by the company (except companies dealing in loans), security or guarantee given by the company.
 6. Details of the payment pertaining to the undisputed statutory dues such as GST, provident Funds, Custom Duty, etc.
 7. Details of any default done by the company in making the repayment of the loan.
 8. Details of the funds raised by a company by the way of the Initial public offer.
 9. Details of fraud done by the company, and many more.
 10. The Auditor's Report Order 2020 of any company is supposed to state the reasons for unfavorable or qualified answers

NOTES FOR REVISION

Lined area for writing notes, consisting of approximately 25 horizontal lines.

DORMANT COMPANY

SEC-455

+
Read with Company (miscellaneous) Rules, 2014

Co. Made for

for future Projects or

TO hold Intellectual property Right

And No Significant Accounting Transactions

Inactive Co.

Co. Which has not been carrying any Business

or Not filled FS/AR-Last 2 FY

or has not made significant Accounting transaction last 2FY

Significant Accounting transaction means any transaction other than:-

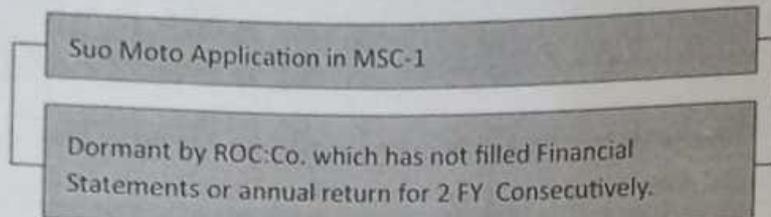
Payment of fees
by co. to Roc

Payment made to fulfill the
requirements of this act or
any other law

Allotment of Shares
to fulfill the reg
uirements of this Act

Payment for
maintainance of office
& Record.

PROCEDURE TO OBTAIN THE STATUS OF A DORMANT COMPANY:



APPROVALS/ DOCUMENTS REQUIRED FOR OBTAINING THE STATUS OF DORMANT COMPANY:

- Board Meeting: Board Resolution .
- SR at GM or Issue notice to all SH & obtain consent .3/4th SH in value.
- Copy of MOA/AOA.
- Consent of lender, if the Loan is subsisting.
- Statement of affairs duly certified by a CA or Auditor.
- No objection certificate from regulatory authority..
- Application Roc MSC-1 +fees.
- ROC will Issue certificate of dormant in form MSC-2.

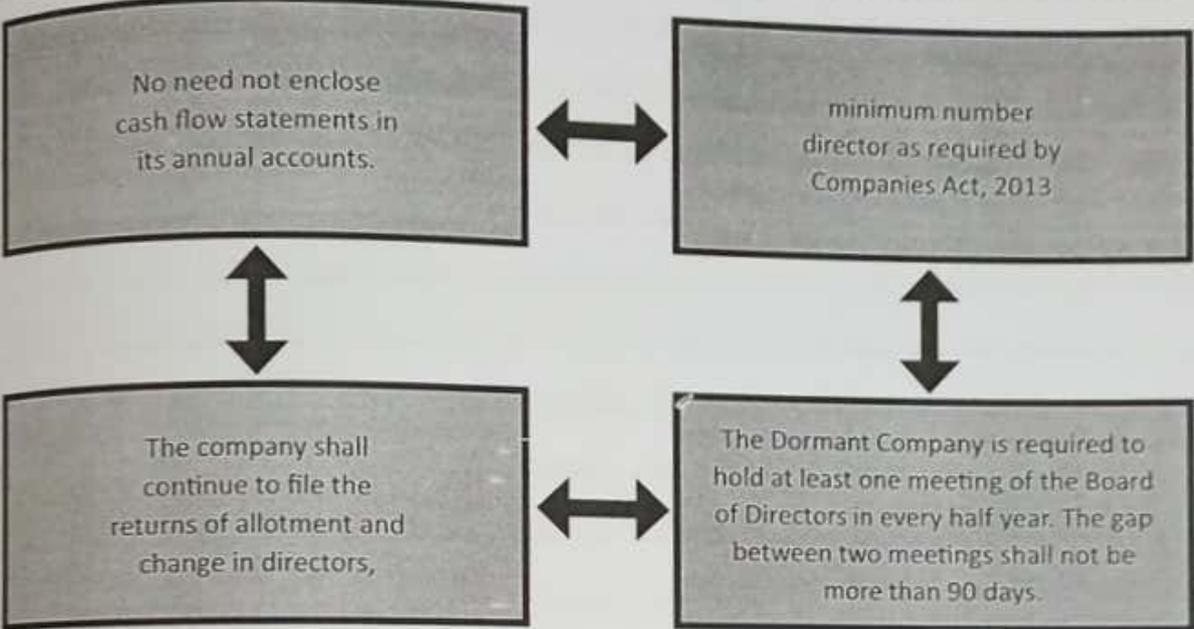
PRE-REQUISITES FOR OBTAINING STATUS OF DORMANT COMPANY

The ROC shall not grant the status of a dormant company if:

- No inspection inquiry or investigation has been ordered.
- No Prosecution case Initiated or pending
- No outstanding Public Deposits & no default in Payment.
- No outstanding loan (secured / unsecured)
- If o/s loan co may apply to lenders for approved to obtain status of Dormant Co..
- No Dispute in mngt / ownership
- Not listed in Stock exchange India o/s India
- No Default in workmen due
- No dues to Local authority.

Roc will strike off name of w. from register of Dormant co. If fails to comply with sec 455.
 Or
 If Co. remains Dormant for 5 Years Conseqartively.

COMPLAINCES FOR DORMANT COMPANY:



TENURE FOR DORMANT CO:
 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 commences the process of striking off the name of the company from the Records, i.e. the company will be removed.

RETURN OF DORMANT CO.:
 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 as provided in the Companies (Registration Offices and Fees) Rules, 2014 within a period of thirty days from the end of each financial year.

PROCEDURE TO OBTAIN STATUS OF ACTIVE CO. FROM DORMANT CO.:

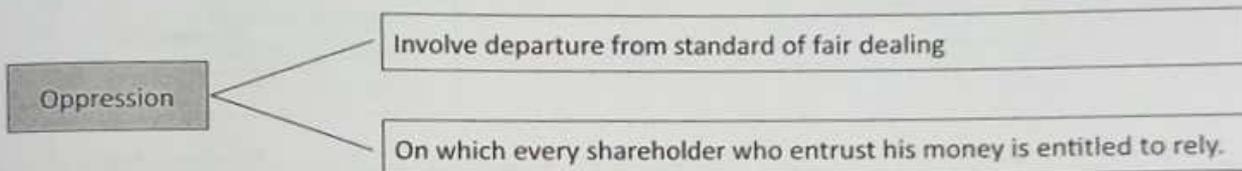
- Co will apply to ROC in form MSC-4
- ROC will issue certificate in form MSC-5

NOTES FOR REVISION

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OPPRESSION & MISMANAGEMENT

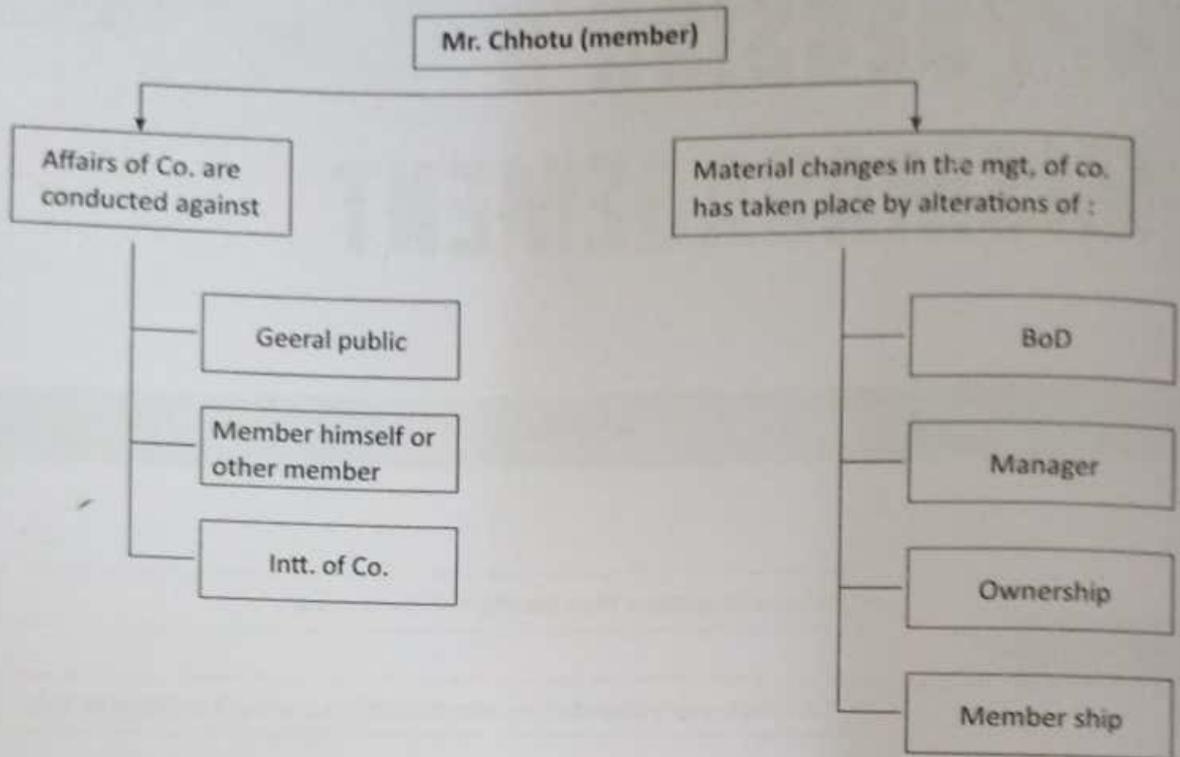
SEC-241-245



Oppression:- The majority exercised their authority wrongfully, in a manner burden one harsh & wrongful.

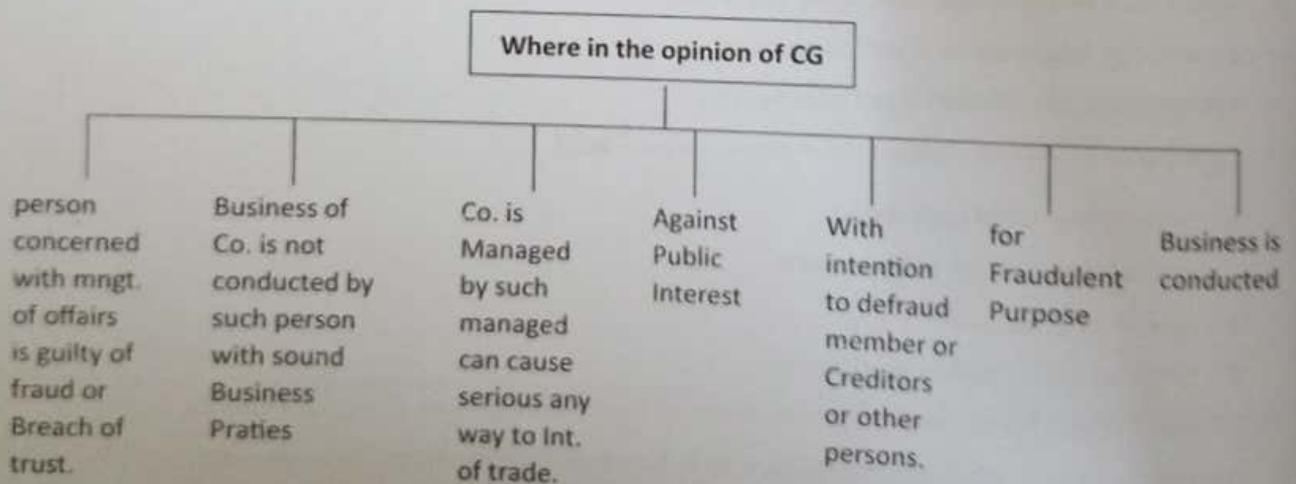
- Minor act of mismanagement is not oppression.
- Continuous losses by co. is not oppression.
- Failure to declare divided is not oppression.
- Member -----plea-----NCLT
 1. What is the act of oppression.
 2. Who committed act of oppression
 3. How it is oppressive
 4. Whether it is in affairs of company.
- Petition shall be filled even if oppression was of short duration & of a singular conduct.
- A member can complain of oppression only in his capacity as member not as director.

APPLICATION TO TRIBUNAL FOR RELIEF IN CASE OF OPPRESSION & MISMANAGEMENT



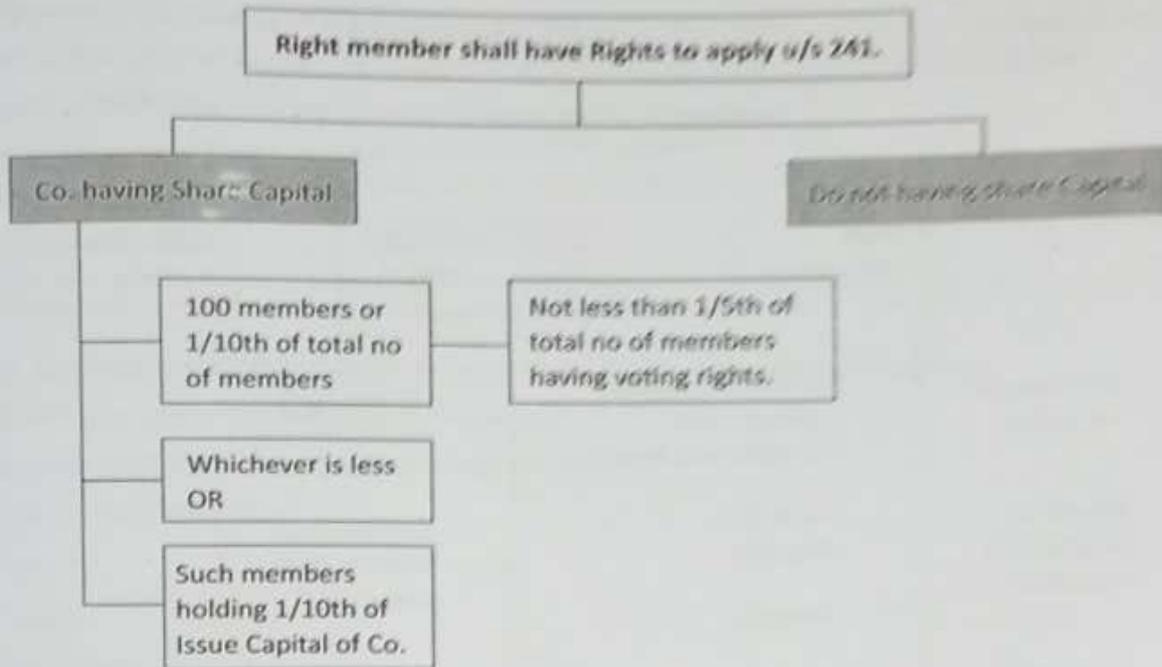
And as a result of such change – Affairs are likely to be against the Int. of member. Then Member can apply in form NCLT-1.

➤ CG may initiate a case against company;-



Tribunal then Inquire & decide Whether such person id fit & proper to hold office of director.

RIGHT TO APPLY UNDER SECTION 241 (SECTION 244):



IMP: Tribunal may on application in this behalf waive off above requirement to enable member to apply u/s 241.

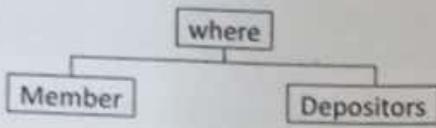
- Joint shares = One member
- If members entitled U/s, 244 only one or more may obtain consent (writing) of Rest of them & make application on behalf s/o for Beneficial of all.
- consent to be given by SH of if afterwards withdrawal, will not affect Proceedings of company.

SECTION 245

CLASS ACTION SUIT

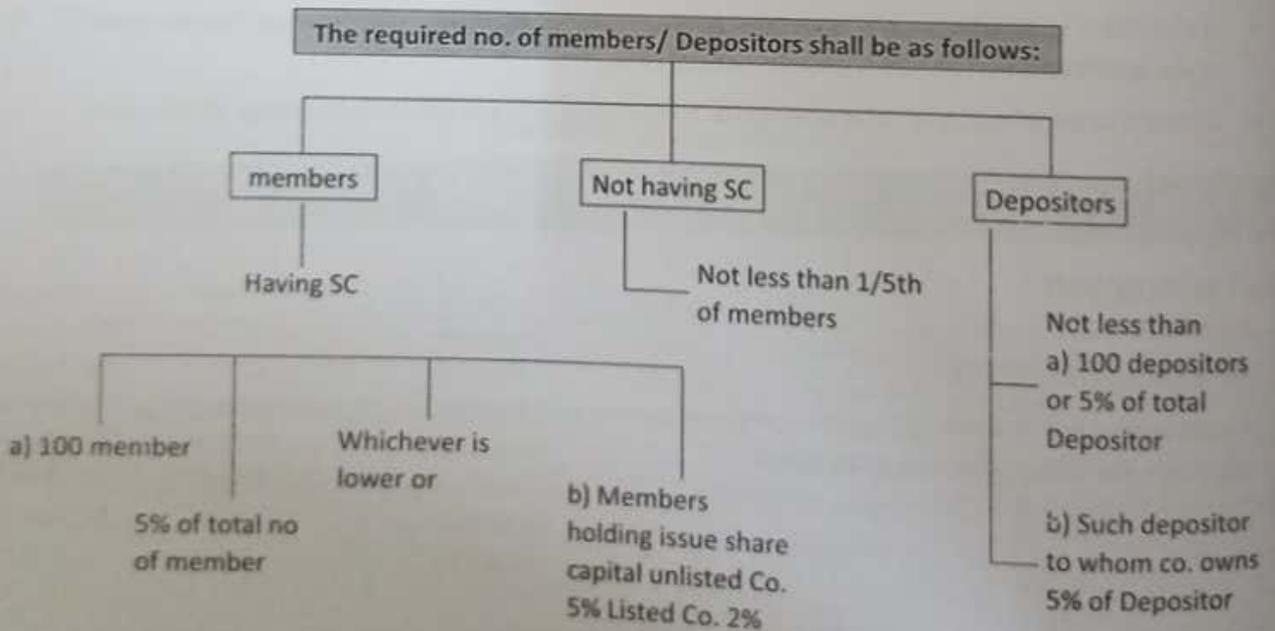
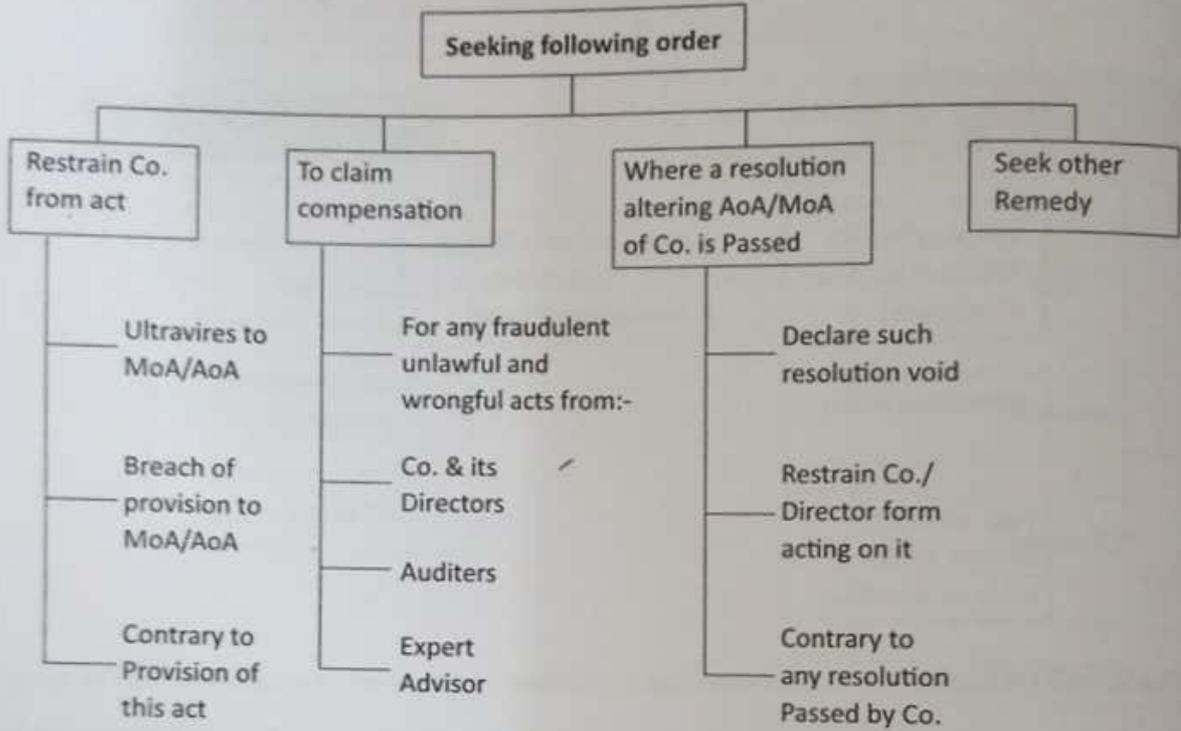
What is Class Action Suit?

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.



are of the opinion affairs of co. are being conducted in a manner which is detrimental to interest of Co. its member or Depositors.

Member or Depositor ----- NCLT in form NCLT-9



While considering application tribunal to consider following:

- Any evidence with respect to Investment if any Person other than Director/ officer of 10
- Whether MID is acting in good faith in making such application.
- Whether cause of Action can be proved or by MID e in his own right then class Action
- View of MID Who have no Personal interest on the matter.
- Where cause of Action is act that is
 - Likely to occur
 - Already occur

Where application u/s 245 is admitted, tribunal shall have to regard to following:

- Serve Public notice to members or Depositors
- 2 classes application suits for same cause not allowed
- Order of NCLT Binding of
 - Co
 - M/D
 - Auditors
 - Experts

SEC-242

POWER OF TRIBUNAL TO ISSUE ORDERS:

If, Member-----app. u/s 241-----NCLT

NCLT is of Opinion that:

- Affairs are conducted in a manner detrimental to
 - Public Intt.
 - Members
 - Int of co. of
- facts would Justify Passing of winding up order but Winding up would Unfairly prejudice member.

NCLT may Provide for:

- Purchase of shares of members by other members .
 - In case of purchase of shares by company it will amount to Reduction of share capital
 - Removal of MD/ Manager other Director of co.
 - Restriction on the transfer of Shares.
 - Manner of appointment of MD/ manager in place of removed Manager.
 - setting aside any action of transfer, deliver relating to made within 3 months Property made Before Date of application u/s 241 which Would it done in case of insolvency Would be deemed fraudulent.
 - Termination
 - modification
 - Agreement b/w Co. & MD, Directors/ Manager
 - Agreement b/w & any other Person
 - getting aside
 - Recover of undue gains.
 - Regulation of Conduct of affairs of co.
 - Imposition of cost.
 - Regulation of conduct of affairs of the Company in future.
 - other matter.
-
- Copy of order of Tribunal of to Roc within 30 days.
 - Where an order of the Tribunal makes any alteration in the memorandum or articles of a company, then, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.
 - INTERIM ORDER: The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable

SECTION- 243

CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS

Where an order made under Section 242 terminates, sets aside or modifies an agreement :

such order shall not give rise to any claims whatever against the company by any person for compensation for loss of office.

no managing director or director or manager whose agreement is so terminated ,for a period of five years from the date of the order terminating without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.

NOTES FOR REVISION

Lined area for writing notes, consisting of approximately 25 horizontal lines.

MEETING OF BOARD AND ITS POWER

CHAPTER - XII
AS per Base Act.

SECTION 173 - 193

COMPANIES (MEETING OF BOARD AND ITS POWER)

SECTION -173

MEETING OF BOARDS

Co → Shall hold its first meeting of Board within 30 days from the date of Incorporation

Thereafter,

Hold after a minimum no of 4 meeting of bod every calendar year.

AND

Not more than 120 days shall intervene b/w 2 consecutive Board Meetings.

For : OPC, Small co., Dormant co., sec- 8 co. start up :-

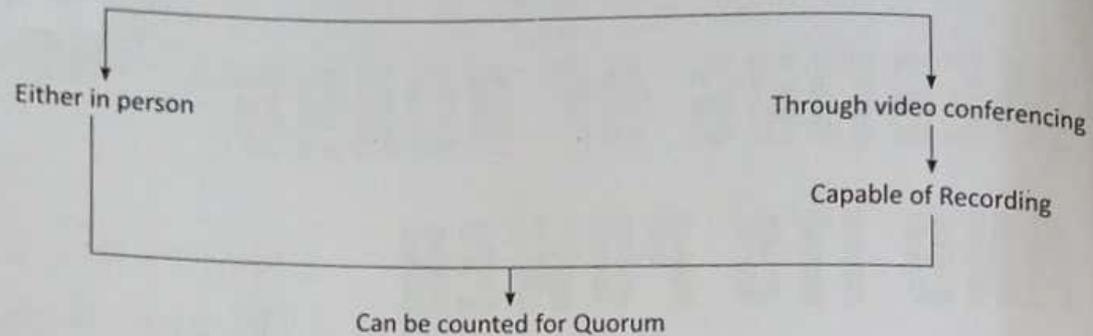
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1 BM in each half of calendar year

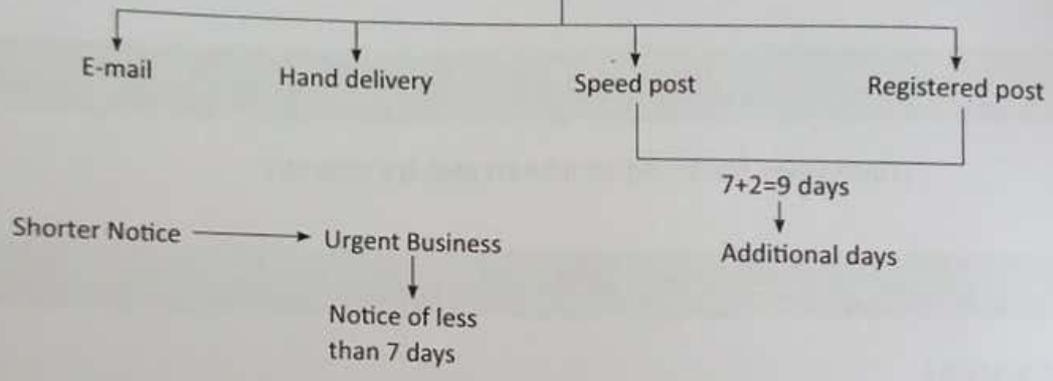
○ +

Gap b/w 2 meeting is not less than 90 days

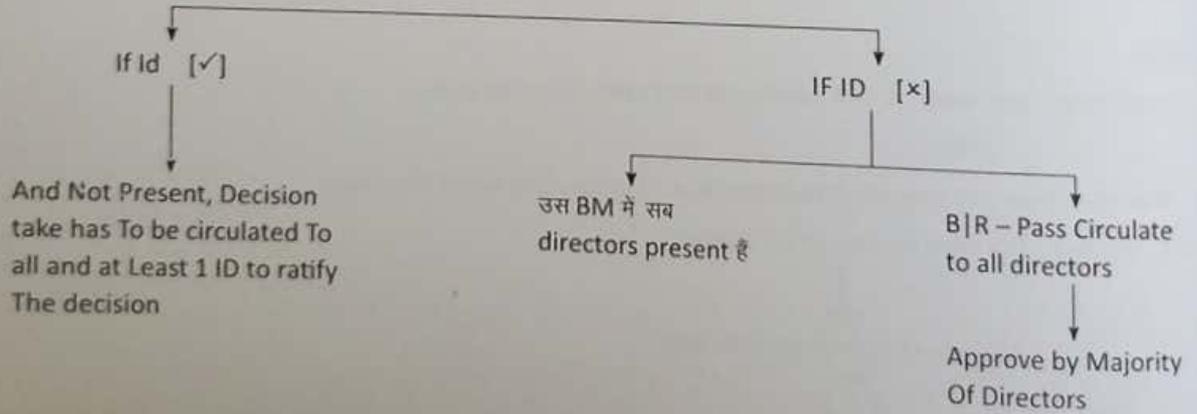
The participation of Directors in a Meeting



Meeting of BOD shall be called by giving not less than 7 days Notice in Writing at address

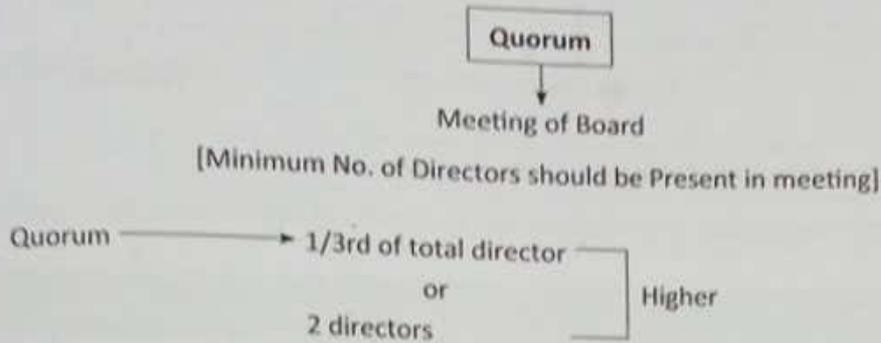


Provided,
1 ID if any I shall be present at the meeting.



A new Item can be added in Agenda in the BM itself with permission of Chairperson & By majority of director.

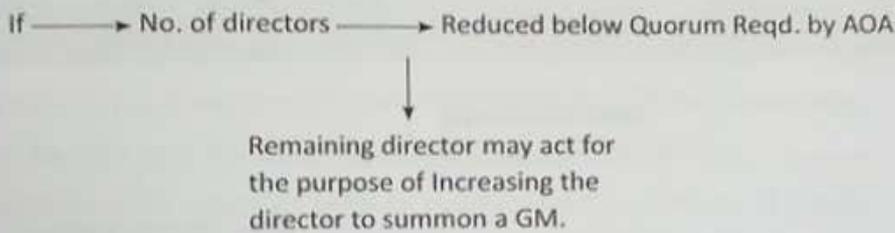
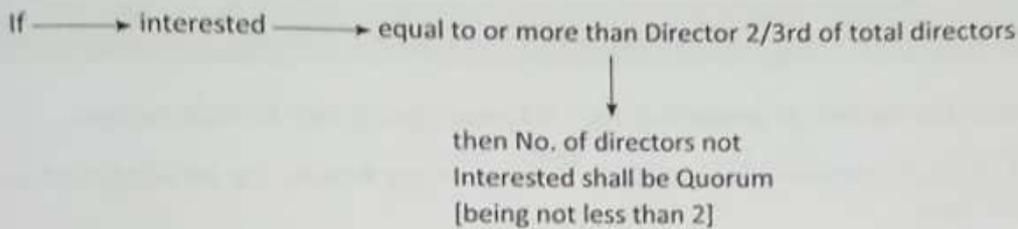
SECTION -174



Co. by its AOA can fix a higher Quorum not lower.

Participation of director through VC shall be counted.

- Interested Director shall not be counted for purpose of Quorum.

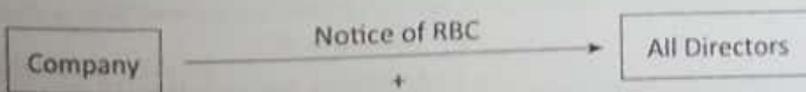


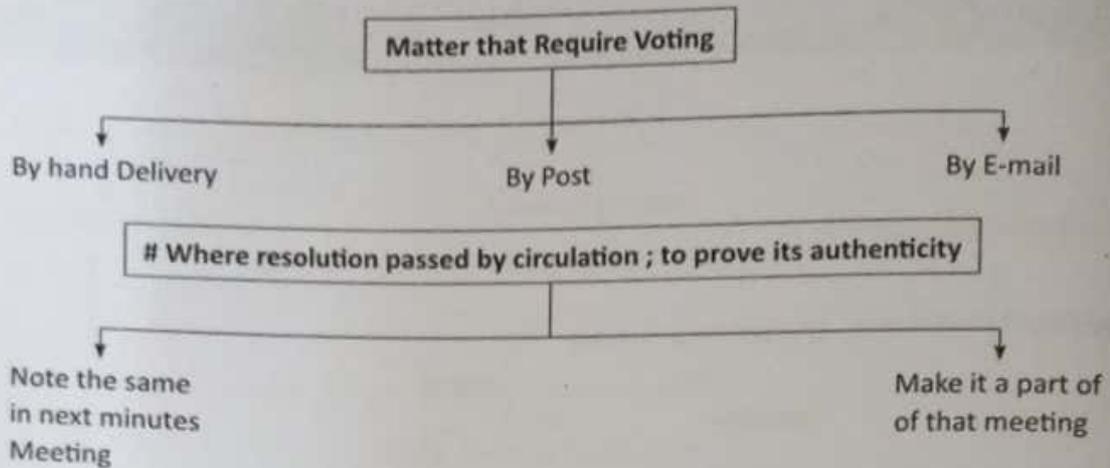
- For Private Company —> Even Interested director can attend BM and will be counted for purpose of Quorum.

SECTION 175

RESOLUTION BY CIRCULATION

The Board or Committee thereof may pass any Resolution by Circulation except those Resolution which are Required to be passed only at Board Meeting.





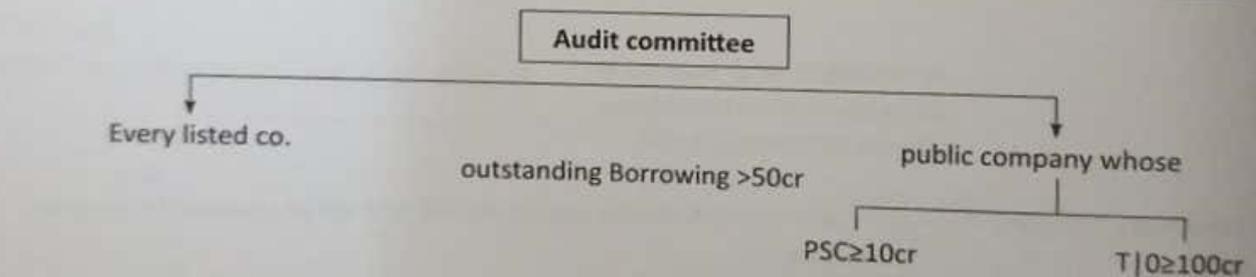
If 1/3rd of the directors at require the Resolution to be decided at the meeting then the Chairman to put the Resolution at meeting

SECTION-176

DEFECTS IN APPOINTMENT OF DIRECTOR NOT TO INVALIDATE THE ACTION TAKEN.

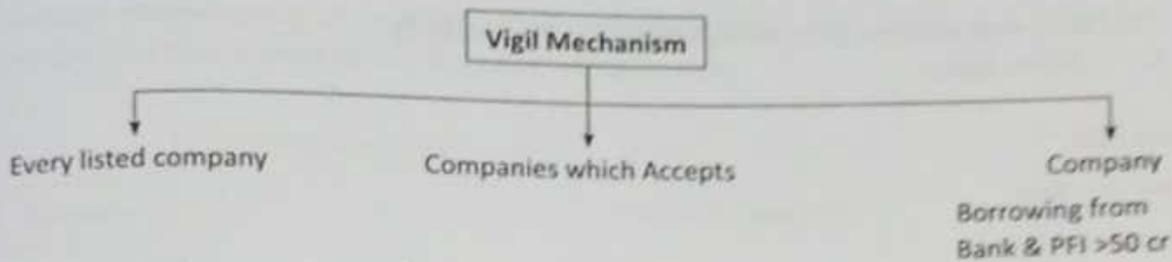
→ If a director appointment has been invalidated because of any Reason, the act which he has already done shall stand valid.

SECTION-177



Composition
 → Min. 3 directors
 +
 Majority of director shall Be independent
 ↓
 Financial Literates
 Meeting : at least 4 times in a years
 Chairman : shall be Non-Executive
 Quorum : 1/3rd or 2 } - higher

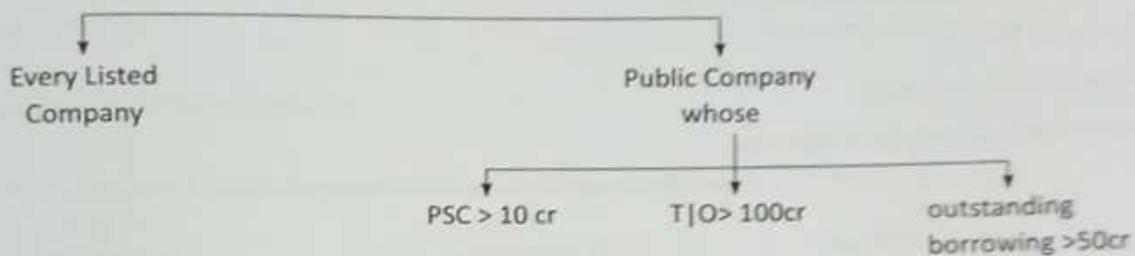
Audit Committee:
 → To review and monitor the Auditor's Independence & Performance
 → Examination of the financial statement of Auditor report
 → to Approve RPT
 → Monitoring the end use of fund Raised through public offer.



Shall establish a vigil Mechanism for directors and employees to report Genuine concern.

SECTION 178

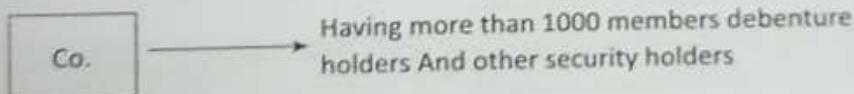
Nomination and Remuneration committee & Stakeholder Relationship Committee



Members in NRC:

- 3 or More NED out of which not less than ½ shall be Independent Director.
- Chairperson of company shall not be the chairperson of the committee.
- Shall identify person who are Qualified to become Director.
- Committee shall formulate persons \ policies for Appointment of Director.

Stake – Holder Relationship committee:



The Stakeholder Relationship committee shall consider and resolve the Grievances of the security holder of company.
Meet at least once in a year.

SECTION 179

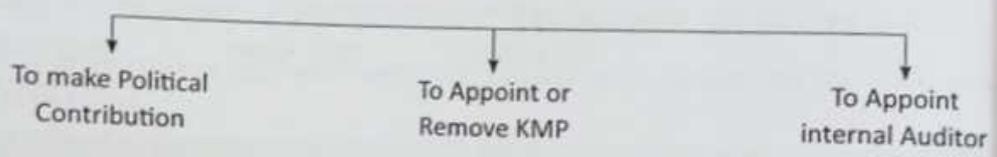
Power of the Board

All the powers of company exercised through the Board of Directors.

The Board shall exercise all its powers subject to Res made by Co. in GM or AOA.

Power:

- # To make calls
- # To make Buy-Back
- # To issue securities
- # To borrow money
- # To invest funds of company
- # To give Loan | Guarantee | Security
- # To approve F.S & Board Report
- # To diversify the business of company
- # To approve Amalgamation, Merger or
- # Re-construction
- # To takeover a company
- # Any matter as may be prescribed



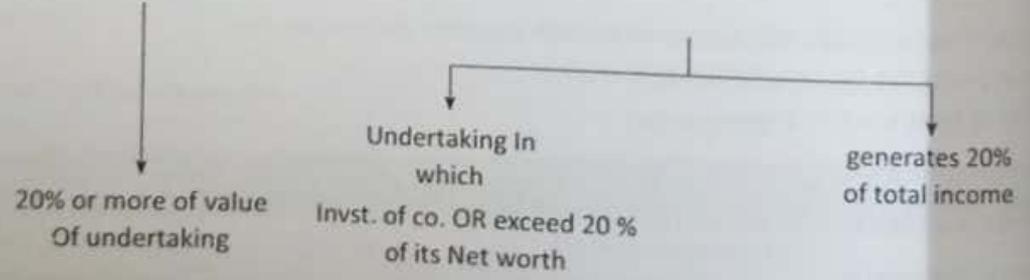
The Board may delegates power specified in clause d | e | f to committee of Director or MD or Manager.

SECTION 180

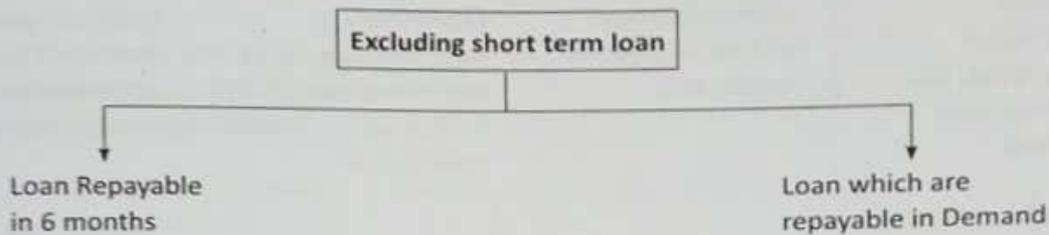
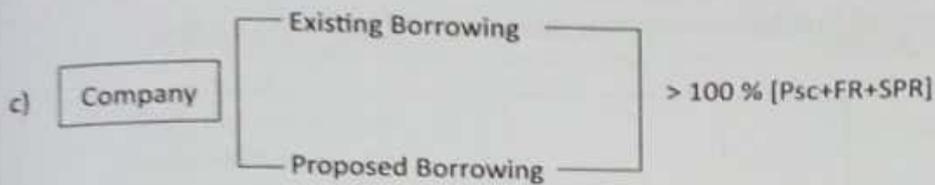
Restrictions on Power of Board

The following powers to be exercised by Board of Directors only with approval Of Directors only with approval of shareholder by passing SR.

- a) To sell, lease or otherwise dispose off the whole or substantially the Whole of undertaking

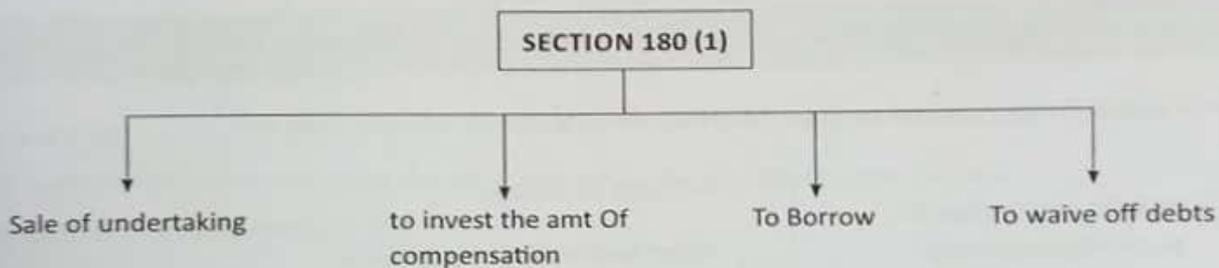


b) To invest otherwise in trust securities of amt of compensation Received by its as a result of any merger or Amalgamation.



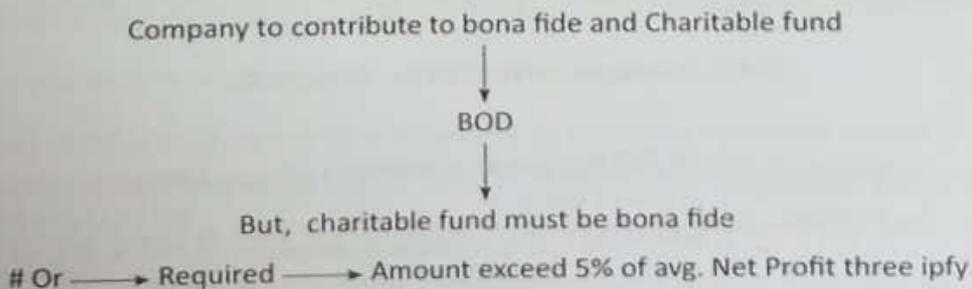
→ Not Applicable to Banking Company

d) To Remit or give time for the Repayment of any debt due to Director



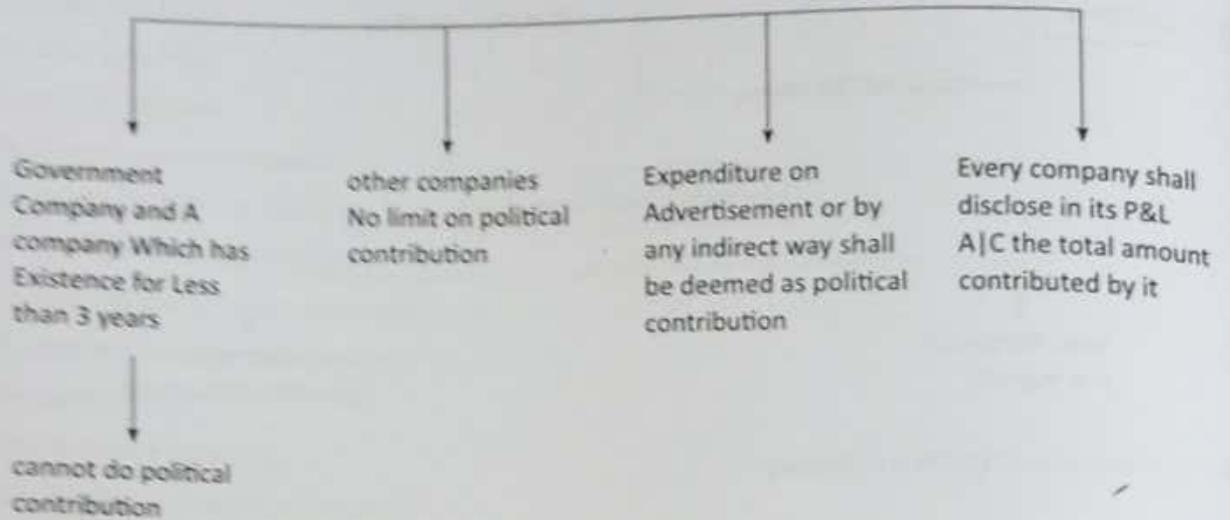
SR passed in section 180 (1) © shall specify the total amount up to which monies May be borrowed by company

SECTION 181



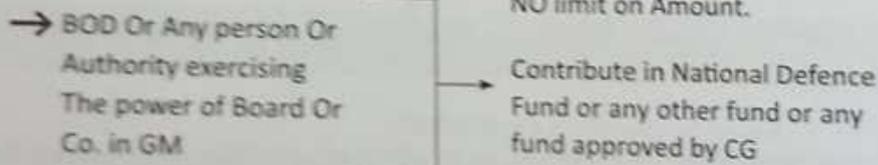
SECTION 182

Prohibitions and Restrictions regarding political Contribution



SECTION 183

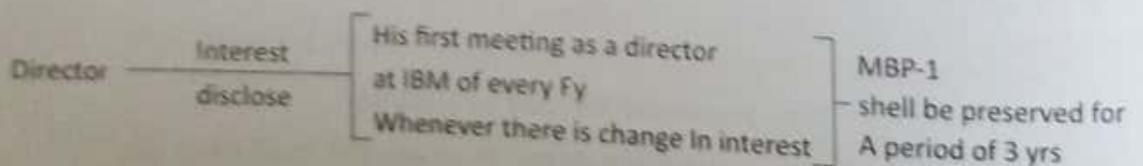
Power of Board & other person to make contribution to Notional Defense Fund etc.



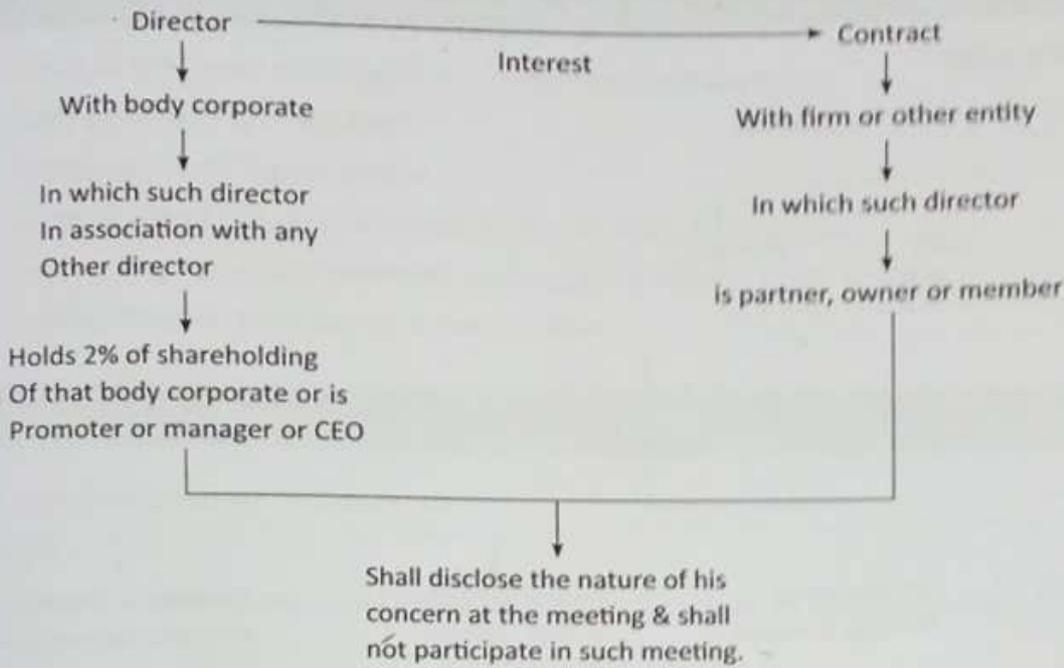
Disclose → P&L A/C → Amount contributed

SECTION 184

DISCLOSURE OF INTEREST BY DIRECTOR



➤ Specific Disclosure



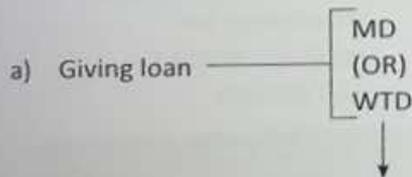
Exception- private company

Any contract entered without complying above Reg shall be voidable at Option of company and Director liable to penalty of 1 lakh rupees.

By passing SR ;

If Borrower is a company then loans should be utilized for its principal Business activity

➤ Nothing in this section apply to



As a part of the conditions of service extended by co.
To all its employees

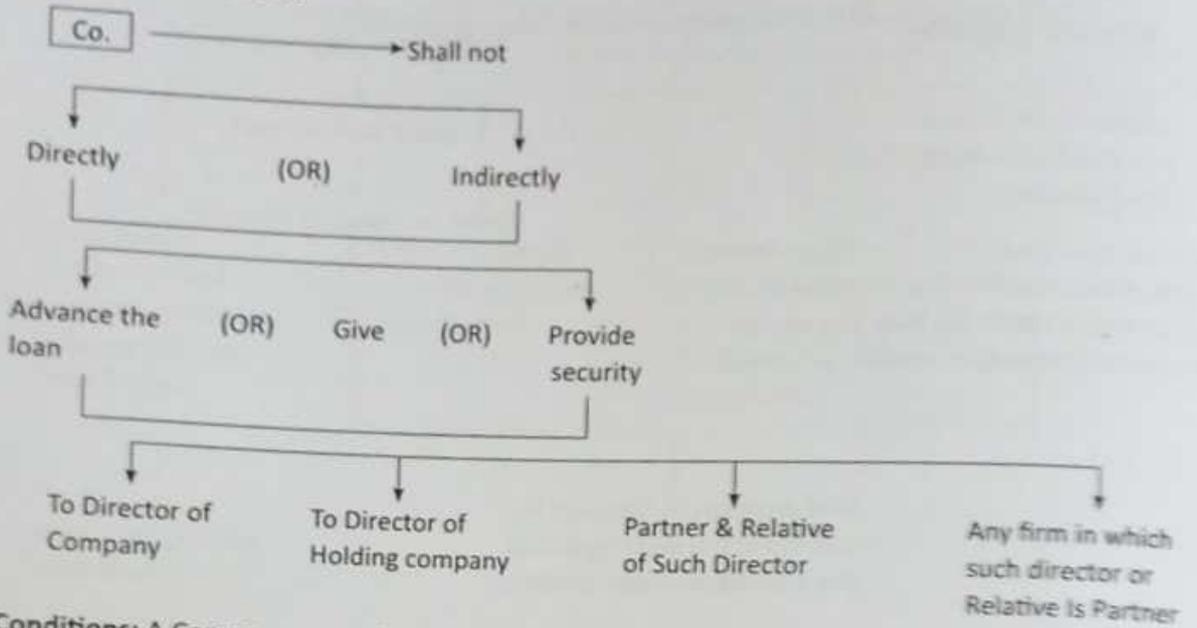
(OR)

Pursuant to any scheme approved by members by a Special Resolution

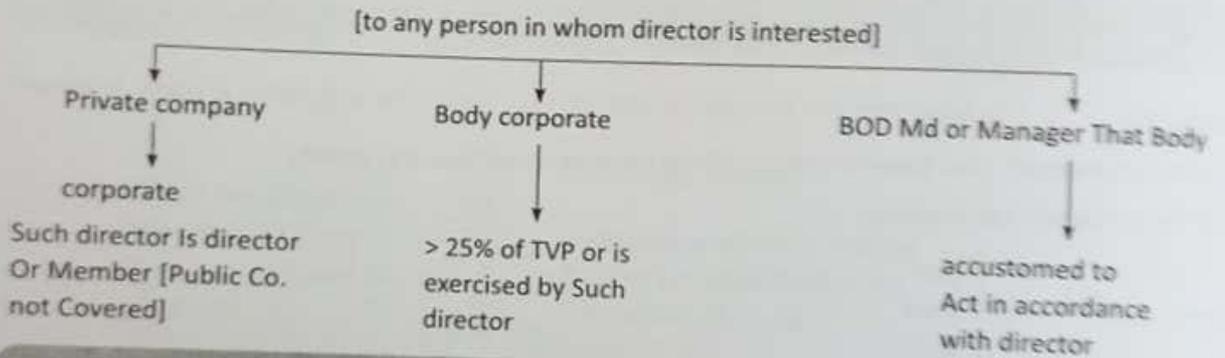
- b) Company → जिसका ordinary course of business Loan or Guarantee or security provide करना है
- c) Loans | Guarantee | Security by holding company to its wholly owned Subsidiary company
Guarantee | Security and by holding company to its subsidiary company with a condition to use for it principal activity.

SECTION 185

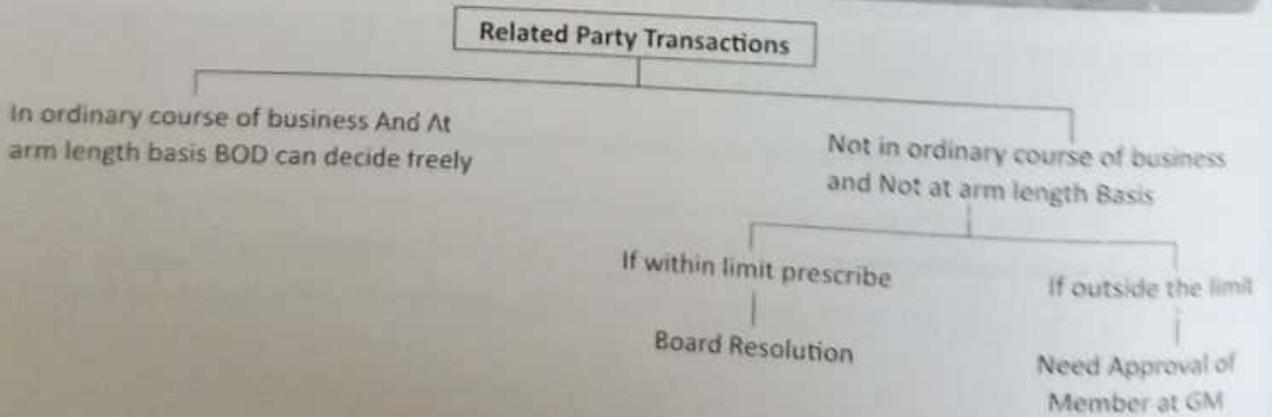
LOANS TO DIRECTORS



Conditions: A Company may advance loan or give guarantee or provide security



SECTION-188



Except with consent of BOD, no co-shall enter in to contract with RP wort:

- 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 any Service
- Appointment of any agent for purchase or sale of goods, materials.
- Such Related Party's Appointments to any office or place of Profit in CASH.
- Underwriting the Subscription of any Securities.

SECTION-186

LOAN AND INVESTMENT BY COMPANY

Sec 186(1):

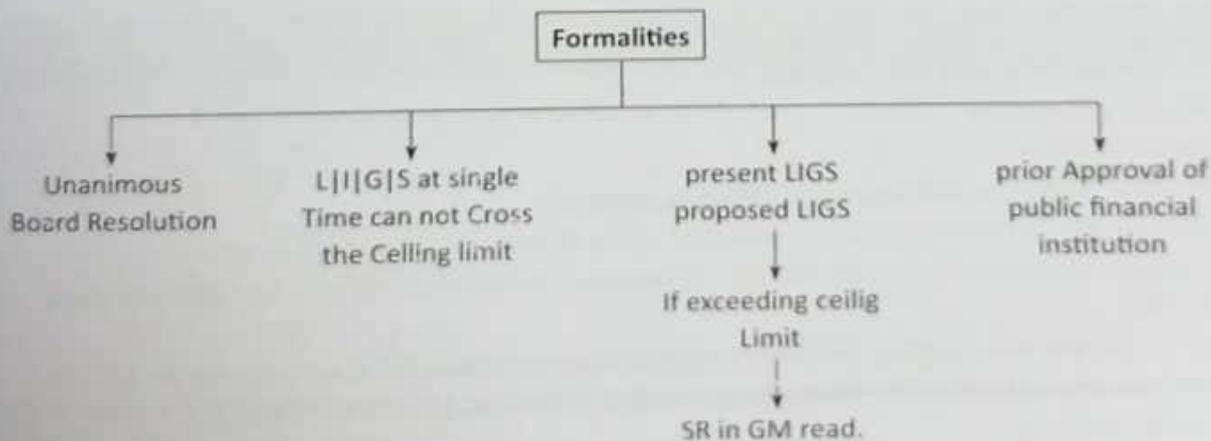
Company shall not make Investment through more than two layers of Investment Company unless required by law.

Exemption:

It does not prohibit a company in India to acquire any company ols India if such Foreign Company has Invst. Subsidiaries beyond 2 layers as per law of such country.

Sec 186 (2)

- When any company gives loans to body corporate or person
- Guarantee | Security to body corporate | person
- Investment in body corporate [acquire by way of subscription | purchase Or otherwise]



→ LIGS at single time cannot cross the ceiling limit

60% [PSC+FR+SPR]

OR

100% [FR+SPR]

HIGHER

→ Prior Approval of PFI :

When company has Defaulted
in PFI's loan

PFI Approval
+
UBR

PFI Loan is outstanding
but not defaulted

L|I|G|S exceeds
UBR + SR
+
PFI Approval

SECTION 187

INVESTMENT OF COMPANY TO BE HELD IN ITS OWN NAME

Provided, Company may hold any shares in its Subsidiary Company in the Name of any Nominee or Nominees of Co., if necessary to do so, to ensure that the number of member of the Subsidiary company is not Reduced below the statutory limit.

SECTION 2(76)

Related Party

In Relation to company, Related Party 'means':

- A director or his Relatives
- A KMP or his Relatives
- A firm in which a Director, Manager or his Relative is Partner
- A Private Company in which Director or Manager or his Relative is a Member or Director
- Public Company in which Director or Manager is Director and holds along with his Relatives, more than 2%. PSC.
- Any Body Corporate whose; BOD, MD Or Manager is accustomed to Act in accordance with advice.
- Any Person on whose advice, Directions cer Instruction a director is accustomed to act.
- Any Body Corporate is:
 - Holding, Subsidiary or Associate Co.
 - Subsidiary of Holding Co.

Investing co. of the Company

Cases where Prior Approval of Shareholders are Required

- Sale, Purchase or supply of any Goods or Materials directly or through Agent → 10% or More of T/O
- Selling or otherwise disposing of or buying any kind of property directly or through agent → 10% or More Net Worth of Company
- Leasing of Property of any kind → 10% or more of T/O of co.
- Availing or Rendering of any service → 10% or more of T/O of co.
- Is for Appointment to any Office or Place of Profit → At monthly exceeding 2-5 Lakh
- Is for Remuneration for Underwriting → Exceeding 1% of its Net Worth

SECTION 189

Register of Contracts or Arrangement in which Directors are interested

↓
MBP - 4



Register of contract or arrangement in which Director are interested

↓

Kept at Registered office and should be open for inspection & Extracts may be taken.

- Register should be placed in Next meeting of Board and signed by all directors.
- The Register to be kept shall be produced at the commencement of every AGM.

SECTION 190

Contracts of Employment with MD or WTD

↓
MBP - 4



Contract

↓

Shall be kept at its Ro where contract not in writing.
Written memorandum setting out in terms.

- Shall be open to inspection by any member of company

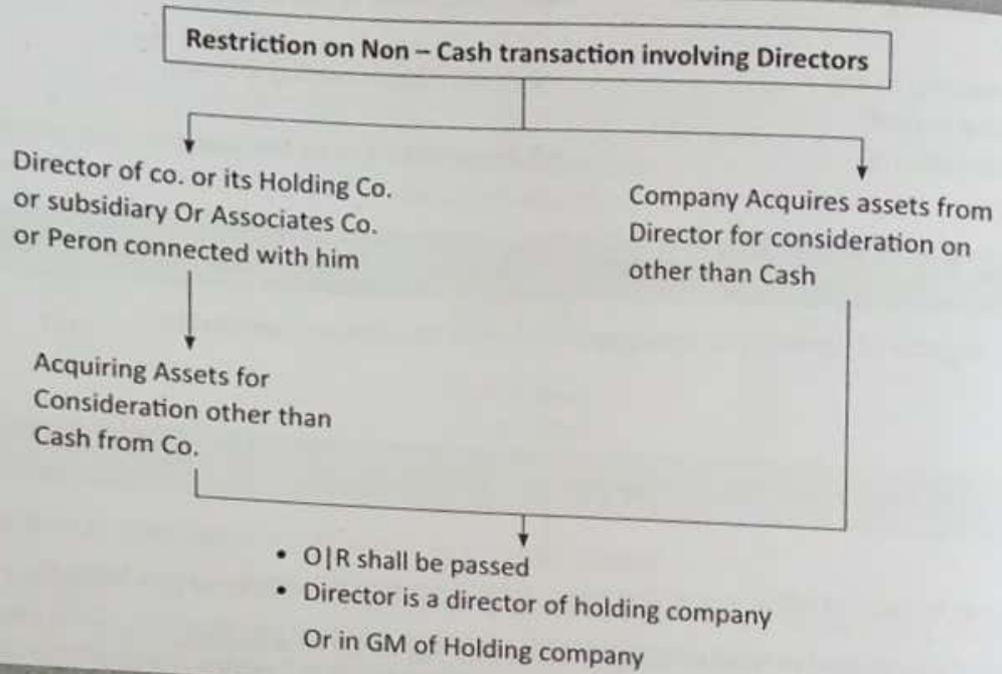
SECTION - 191

Payment to Director for loss of office, etc. In connection with transfer of undertaking, Property or share

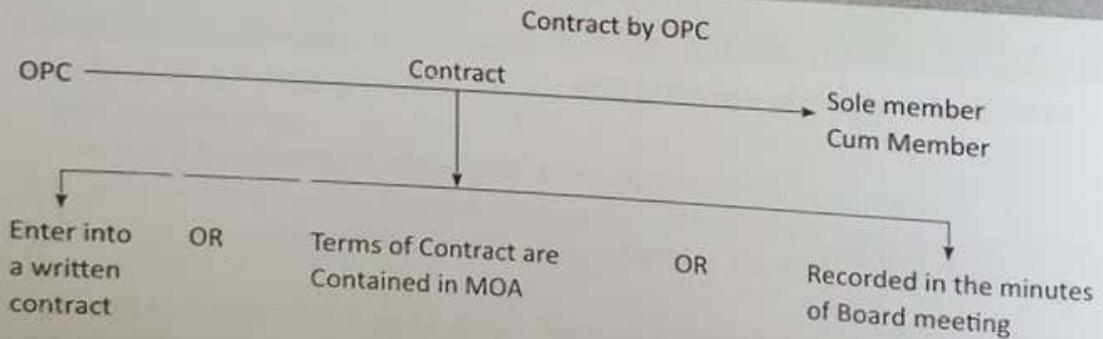
- If owing to transfer of undertaking, property or shares.

Payment is made to director for leaving office, then it has To be approved by shareholders by passing OR.

SECTION - 192



SECTION - 193



NOTES FOR REVISION

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

CHAPTER - XIII
As per BARE ACT.

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

SECTION 196 – 205

Companies (Appointment and Remuneration of Managerial Personnel Rules)

SECTION 196

Appointment of Managerial Director, Whole time director Manager

↓
Managing Personnel

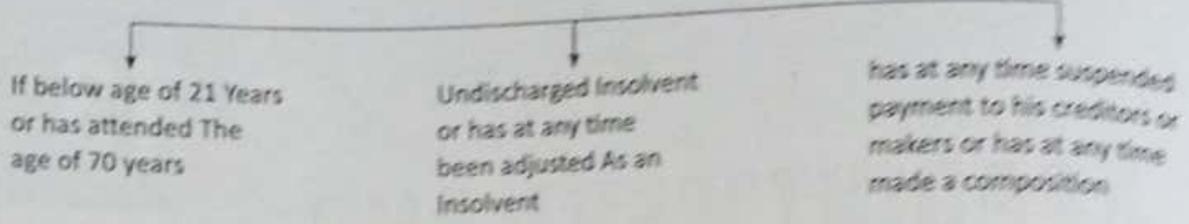
Prohibition = 1 company = MD + Manager

Term = Wd | WTD | Manager = Max tenure
5 years] Not applicable on Govt. co.

+

Re – appointment not earlier than 1 year
Before expiry of term.

No company shall appoint or continue MD | WTD | manager



> 70 years → SR OR OR + CG Approval

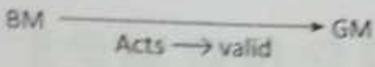
OR

• Has at any time being convicted by court of an offence and Sentenced for period of more than 6 months.

Appointment: BR pass

OR Pass

→ If OR not pass



MR-1 Return is 60 days of Appointment

CG → Approval → If Appointment is at variance needed To conditions of sch V

No shall be eligible for appointed as MD|WTD| Manager, Unless he satisfies following conditions.

→ Not sentenced to imprisonment for any period.

(Or)

Fine exceed ₹1000 for an offence under various Acts.

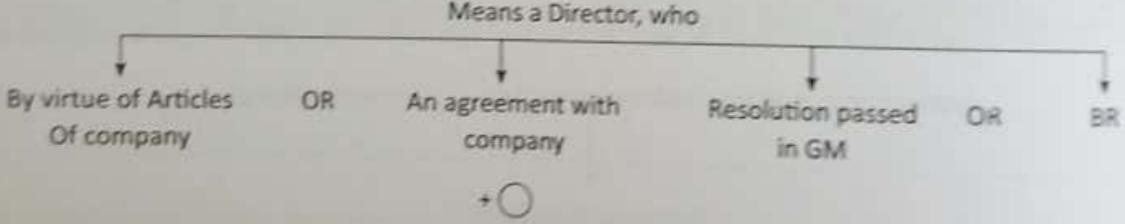
→ Not detained for any period under COFEPOSA Acts.

→ Resident in India

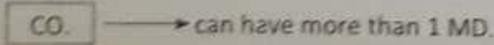
→ Age same as previous.

Managing Director

Section 2 (54)



Entrusted with Substantial power of Management



Includes.

Director occupied the position of MD by whatever name called.

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

Section 2 (53)

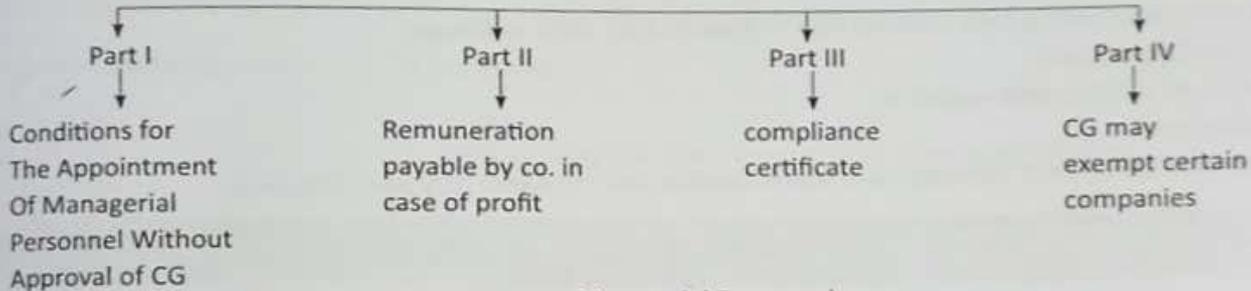
Manager Means individual
 ↓
 Has management of the whole or substantially
 the whole of affairs of Company.

And Includes:

a director or any other person
 ↓
 occupying the position of manager
 by whatever name called.

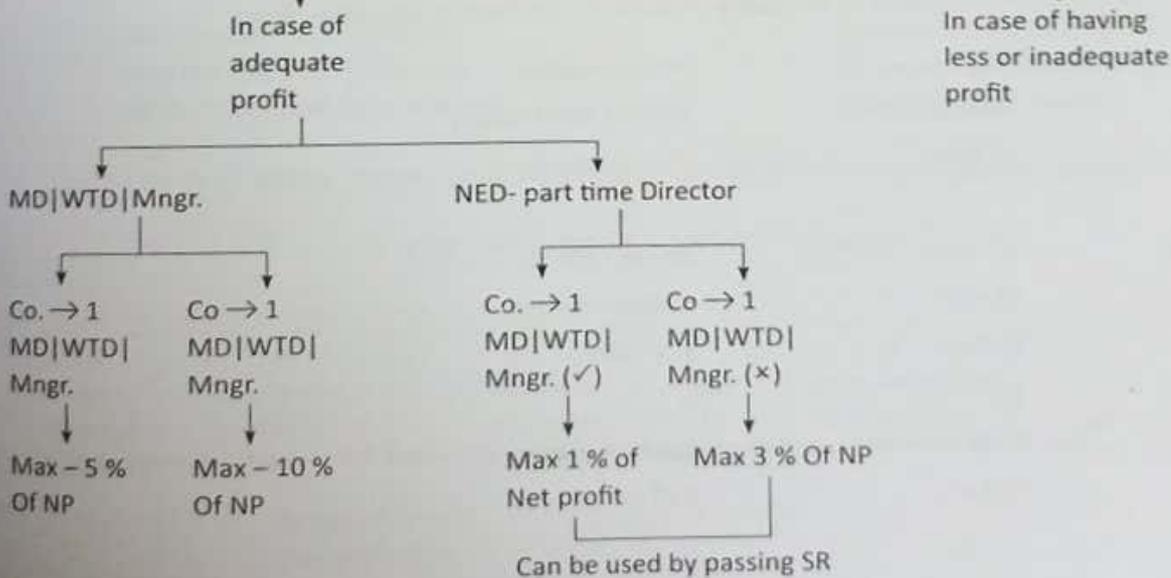
SECTION - 197

Overall Maximum Remuneration

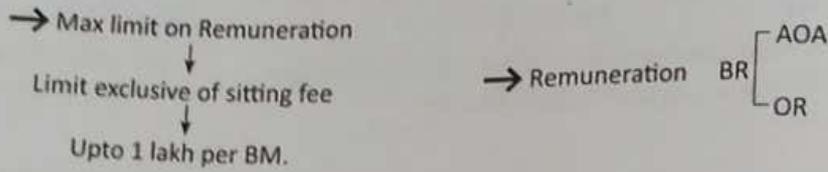


Managerial Personnel

11% of Net profit



➤ If Co. has defaulted in payment of any bank or PFI, then there approval is also needed.



SECTION 198

Calculation for Profit

Net Profit of a company any FI Shall be computed as per sec 198

SECTION 199

Recovery of Remuneration in Certain cases

Restates its financial Statement

Then company shall recover from its Past or Present MD, WTD or Manger.

Section-200 [omitted]

CG or Co. to fix limit with regard to

Remuneration

Company may fix limit with regard to Remuneration having regard to matter Specified :-

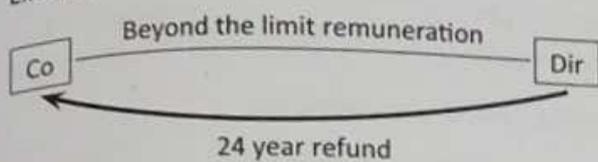
- The Financial Position of Co.
- The Remuneration drawn by Individual on any other Capacity.
- The Remuneration drawn by him from any Other company.
- Professional Qualification & experience of Individuals.

Remuneration in case of Adequacy of profit On the basis of Effective capital

Effective capital	other Director	Remuneration [WDT MD Mngr]
<5cr.	12 lakh	60 lakh per dir
>5cr - <100cr	17 lakh	84 lakh per dir
≥100cr - <250 cr	24 lakh	120lakh per dir
≥250 cr	24 lakh	120 lakh
	+	+
	0.1% of excess	0.1 % of excess of
	250 cr	250 cr

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL

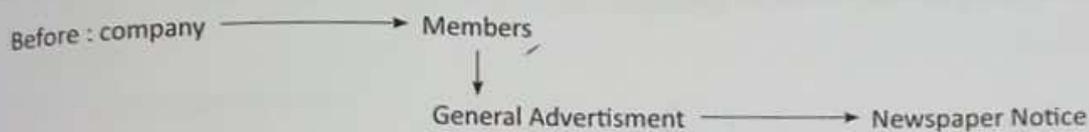
- Company can pay remuneration on exceeding this limit by SR.
- Remuneration to MD | WTD | manager shall include all Remuneration, Except professional capacity



Whether guarantee commission include in limit of 11% | 5% | 10%
 ↓
 No

SECTION - 201

Forms of and Procedure in relation to certain Application
 CG → Approval → MR - 2

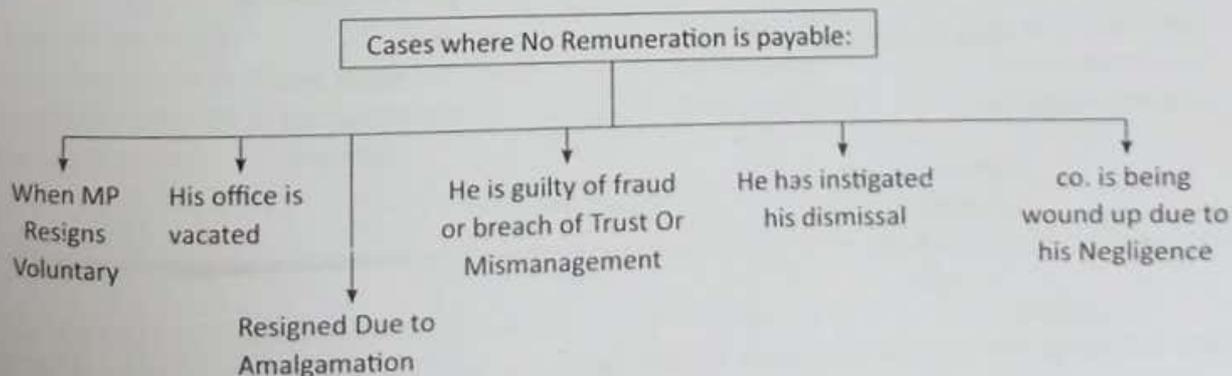


SECTION - 205

Compensation for loss of office of MD | WTD | Manager



- On the basis of Average Remuneration earned by him in IP 3 FY Or such shorter period.



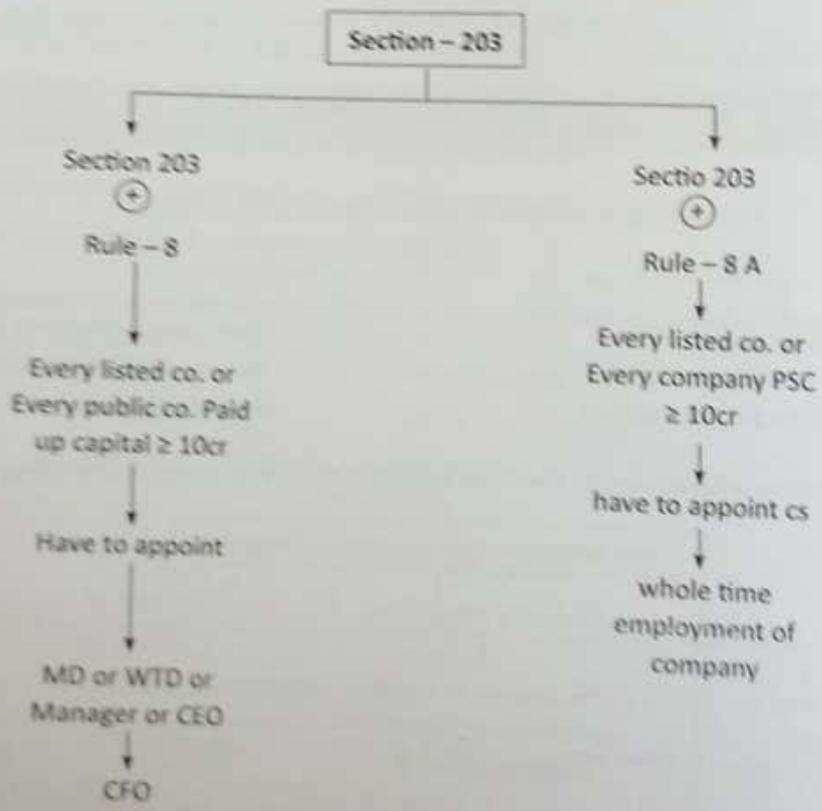
SECTION - 203

Appointment of Key Managerial Personnel

KMP → Sec 2 (51)

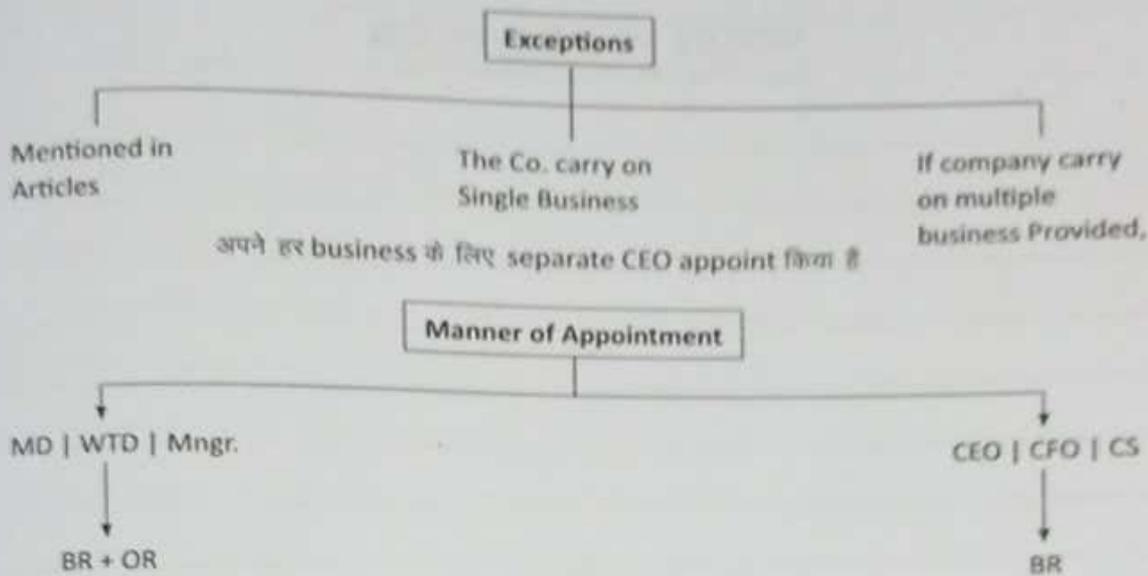
- ↓
- MD
- WTD
- Manager
- CEO
- CFO
- CS

- Officer of Co. + 1 level below Rank of director
- + Designation by Board as KMP + whole time Employment
- Prescribed Person



➤ Same person cannot acts as chairman & MD or chairman & CEO

APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL



➤ A whole time KMP shall not take office In other Company

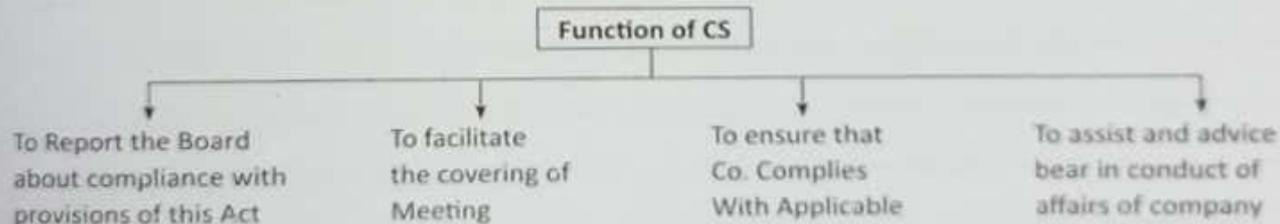
Exception:

- ✓ In Subsidiary company
- ✓ As a director in any other Co-
- ✓ AS a MD, if he was a MD or Manager of 1 and not more than 1 Co [by passing Unanimous decision]

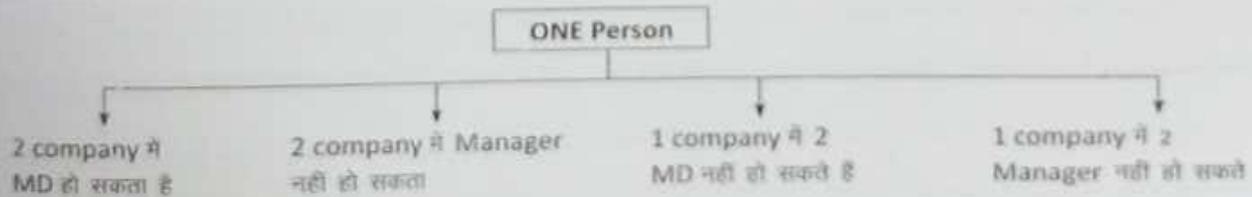
#Vacancy → Position of KMP

↓
Fill vacancy within 6 month

SECTION 205



Some Basic Points



NOTES FOR REVISION

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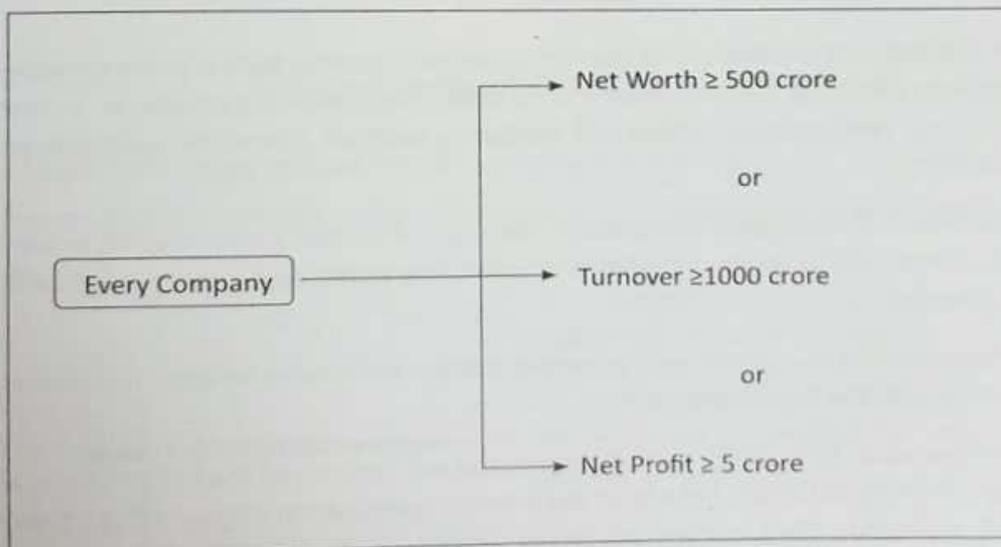
CORPORATE SOCIAL RESPONSIBILITY

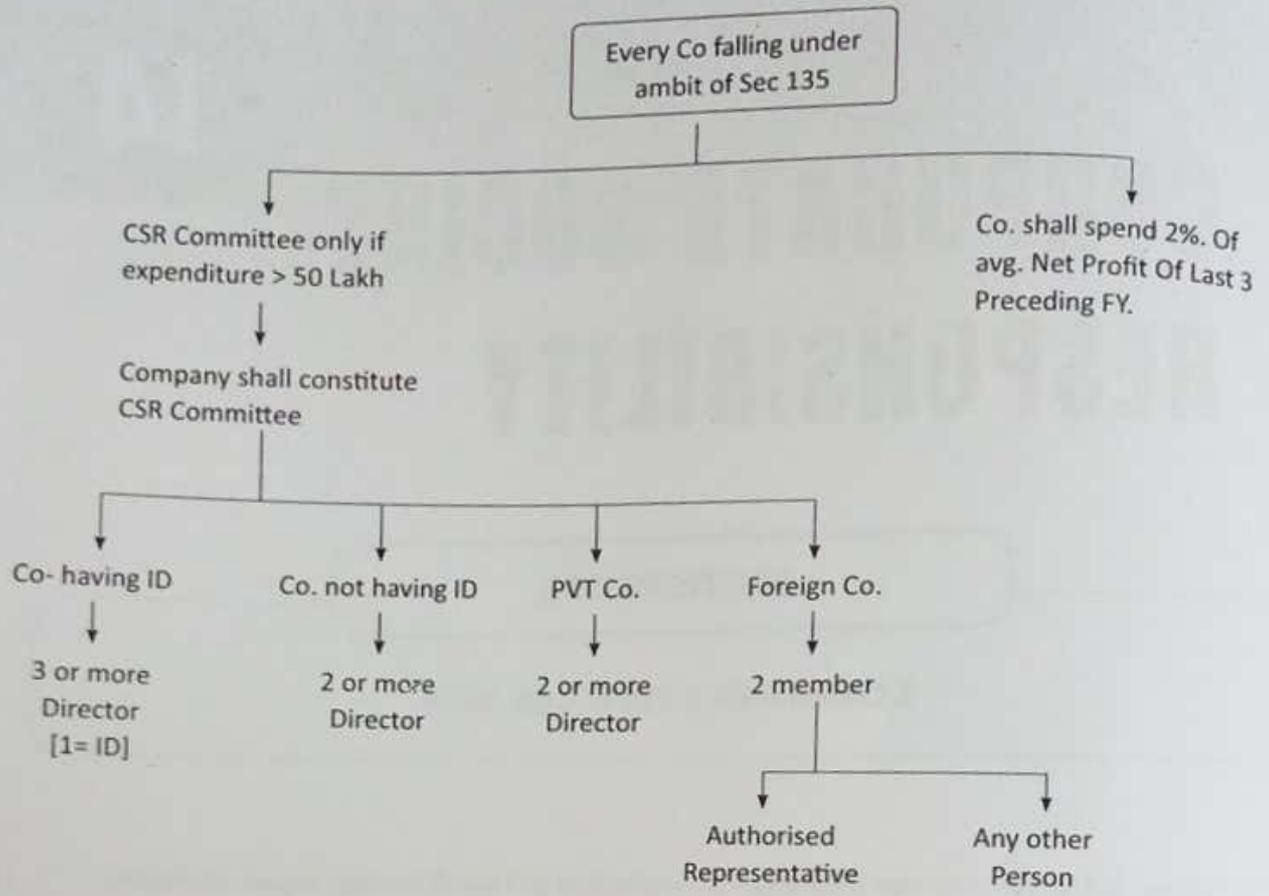
SECTION 135

COMPANIES (CSR) RULES, 2014

CSR is the way Companies manage their business to produce an Overall Positive Impact on Society through social, Environment -al and Economic Aspect.

Applicability:





Question: Whether a holding or subsidiary of a company fulfilling the criteria under section 135(1) has to comply with the provisions of section 135, even if the holding and subsidiary itself does not fulfill the criteria?

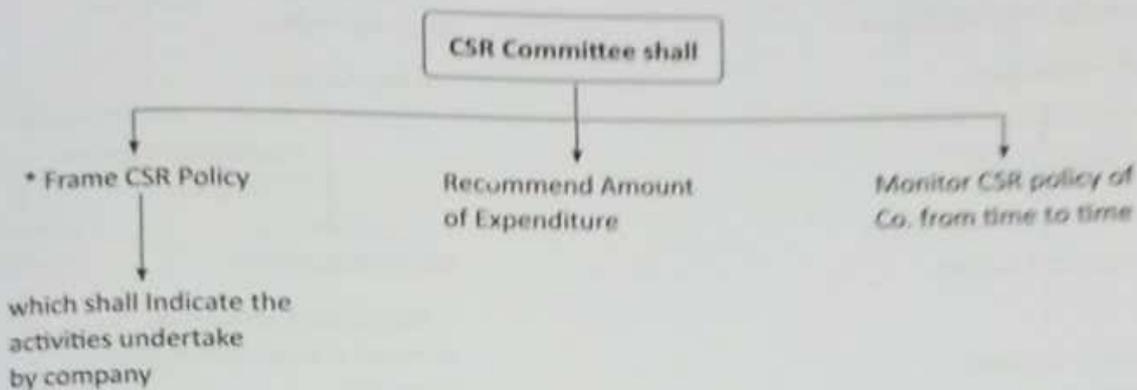
Applicability of provisions of Section 135 of the Act is company specific. Hence, every company whether holding or subsidiary satisfying the prescribed criteria shall comply with the provisions. By mere relationship between two companies as Holding and Subsidiary, shall not extend the applicable provisions to the other company.

A Holding or subsidiary of a company falling within the ambit of section 135 of the Act, is not required to comply with section 135(1) unless the holding or subsidiary, as the case may be, itself fulfills the criteria.

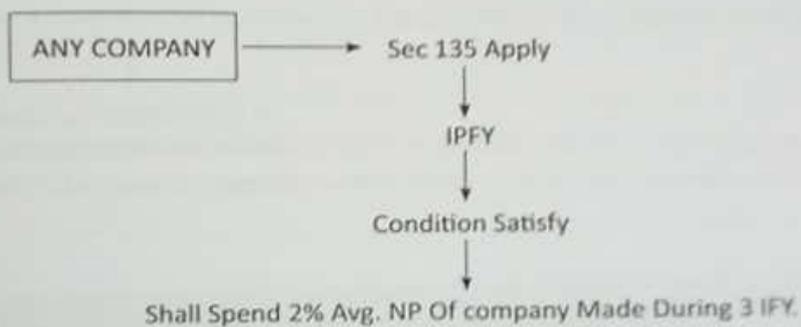
Question: If a company has not completed the period of three financial years since incorporation, is it required to comply with the CSR provisions?

As per the provisions of section 135(5), if the Company has not completed the period of three financial years since incorporation, but it satisfies any of the criteria mentioned in section 135(1), then it has to comply with CSR provisions. The Company will be required to constitute a CSR committee and comply

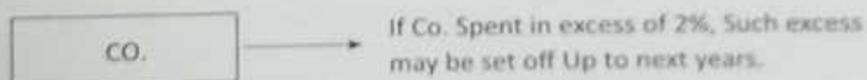
with other requirements of section 135 including spending of at least two percent of the average net profits of the company made during such immediately preceding financial years since the date of incorporation

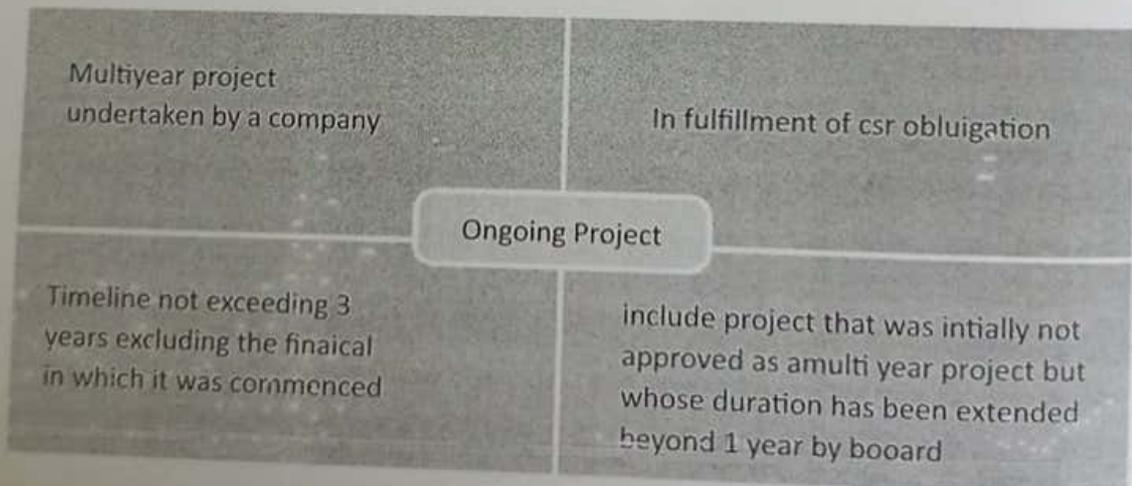
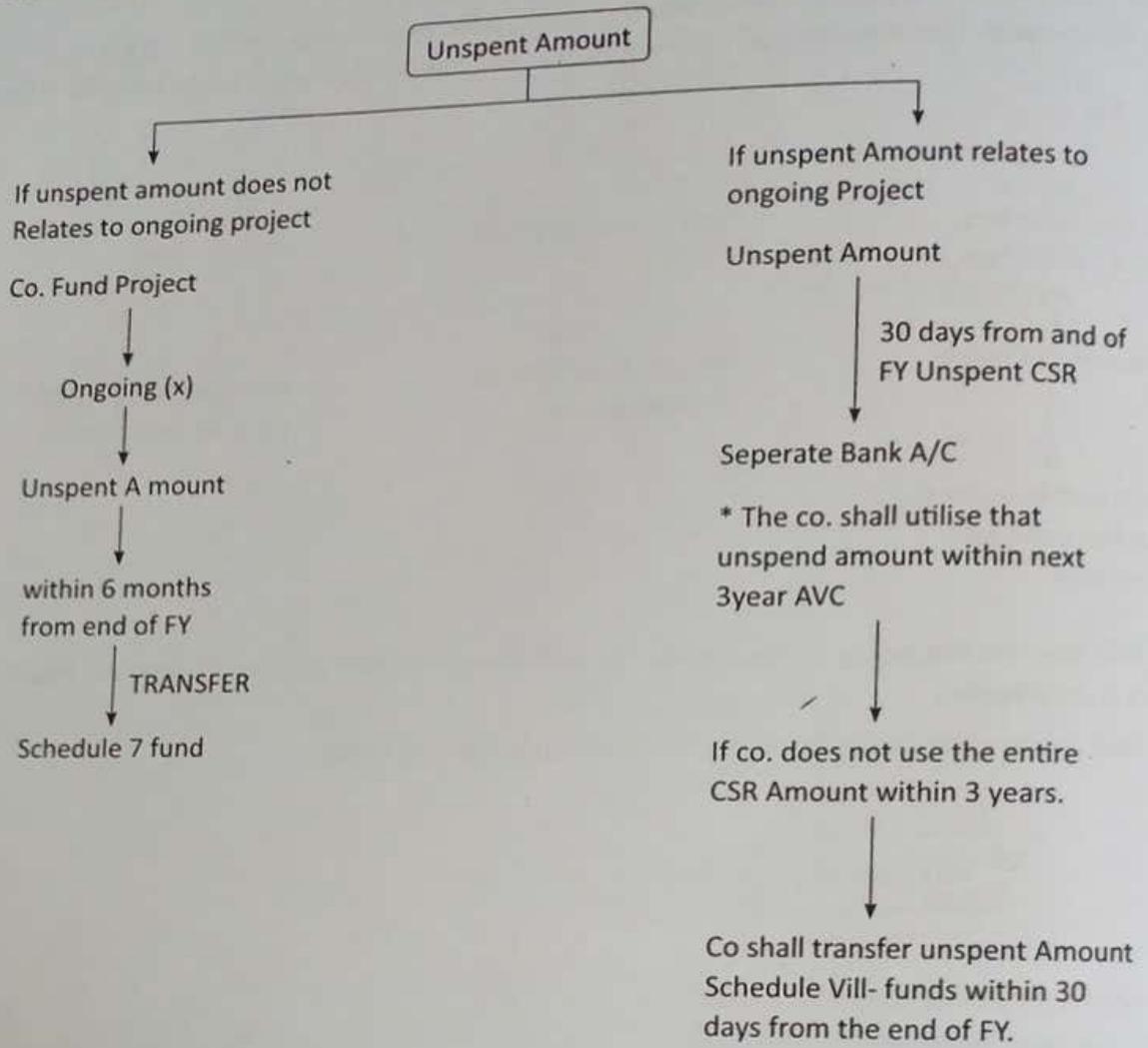


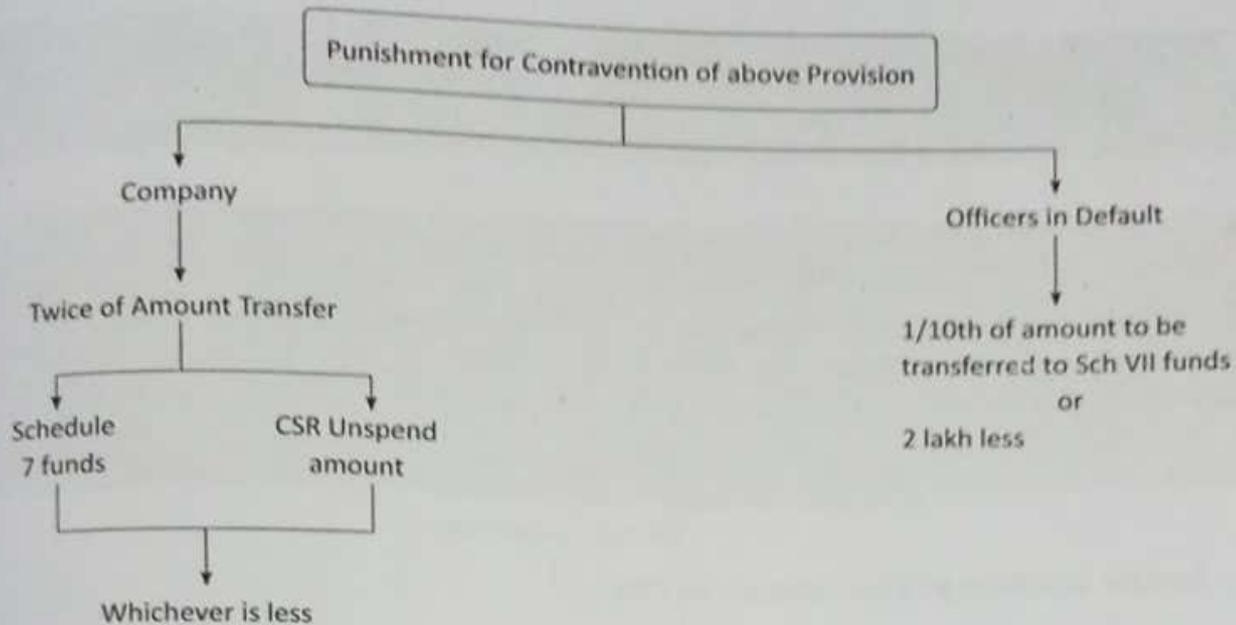
- BOD shall approve the policy Recommended by CSR Committee and disclose the same in Board Report & on Website.
- BOD shall disclose the composition of CSR Committee in Board Report.



- The co shall give preference to Local Area for spending CSR amount.
- If there is some Unspent Amount of CSR, Co-Should Specify the Reason for same in Board Report.







M.IMP.: CSR Implementation [Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014

The Board shall ensure that the CSR activities are undertaken by the company itself or through -

1

- a company established under section 8 of the Act, or a registered public trust or a registered society approved under Income tax Act established by Company.

2

- a company established under section 8 of the Companies Act, 2013 or a registered trust or a registered society, ;

3

- any entity established under an Act of Parliament or a State legislature;

4

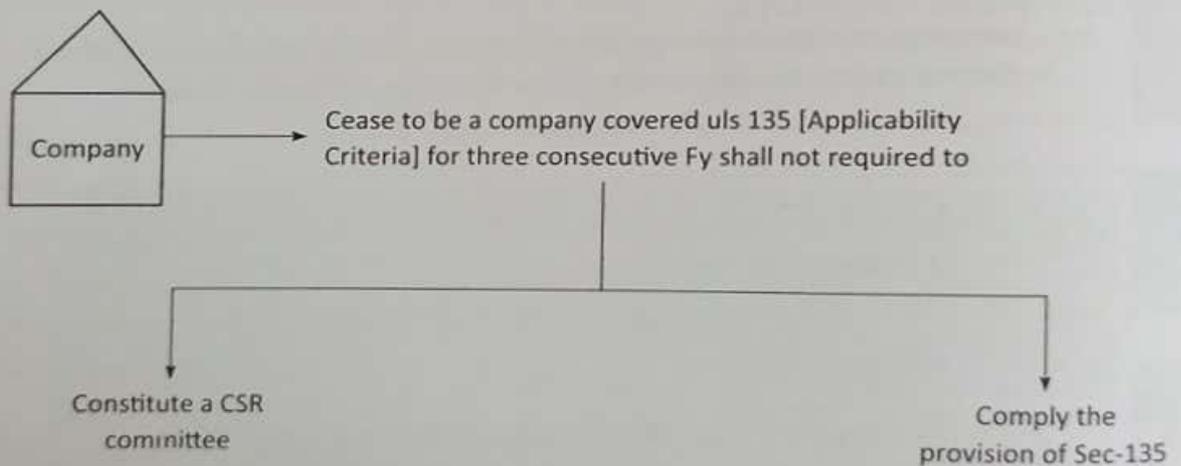
- a company established under section 8 of the Act, or a registered public trust or a registered society approved under Income tax Act and having an established track record of at least 3 years in undertaking similar activities.

Every eligible entity who intends to undertake any CSR activity, shall register itself with the Central Government by filing the form **CSR-1** electronically with the Registrar.

Sunoo... Kya Collaboration allowed hai ??
HANNNNNNNN> A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules

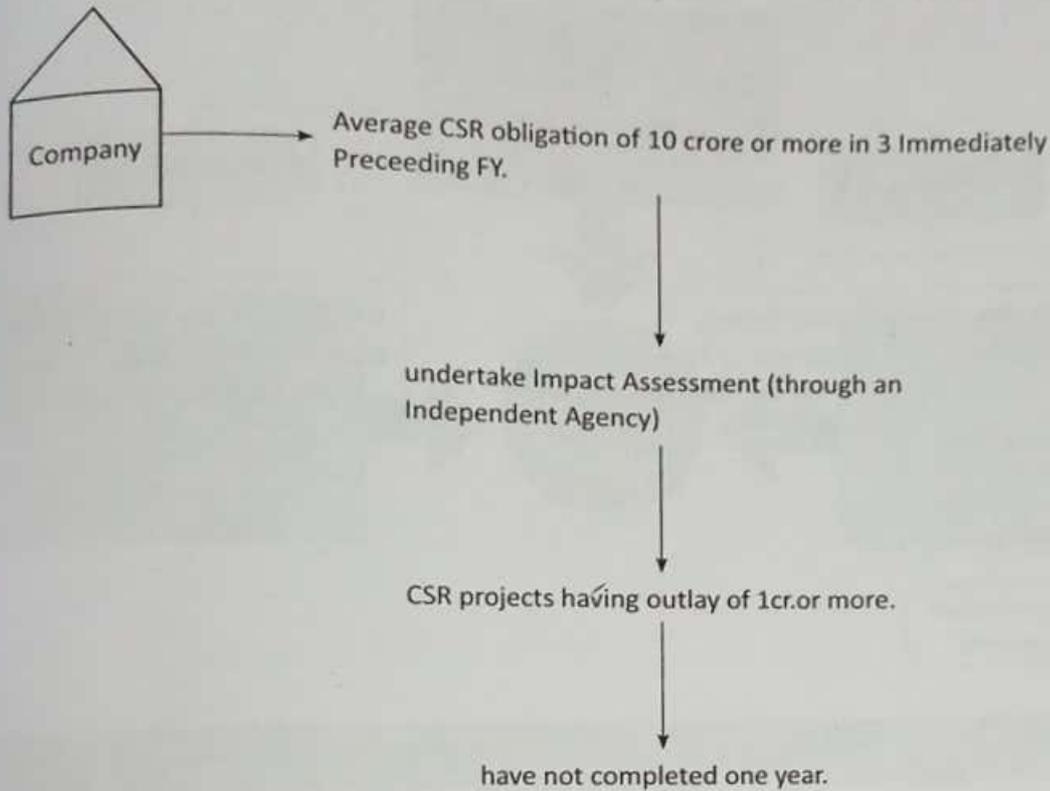
Imp. Certain activities will not amount to CSR

- CSR Activities done outside India except for training of Indian Sports Personnel
- If co. doing anything exclusively for Benefit of Employees.
- If Co. making contribution to any political party.
- Activities carried out for fulfilment of any other statutory obligations.
- Activities undertaken in pursuance of Normal course of Business of company.



#The Board shall ensure that the administrative overheads shall not exceed 5% of total CSR expenditure of Co. for FY.

IMPACT ASSESMENT

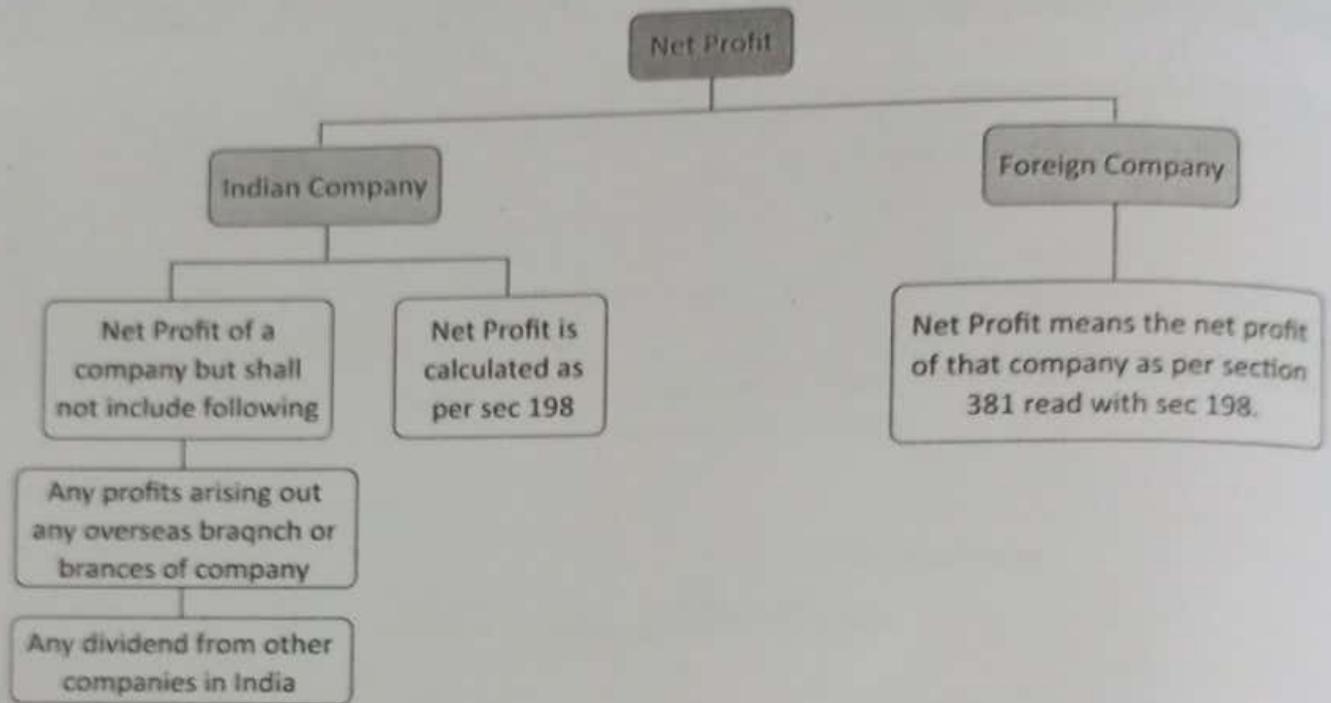


- A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed two per cent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher.

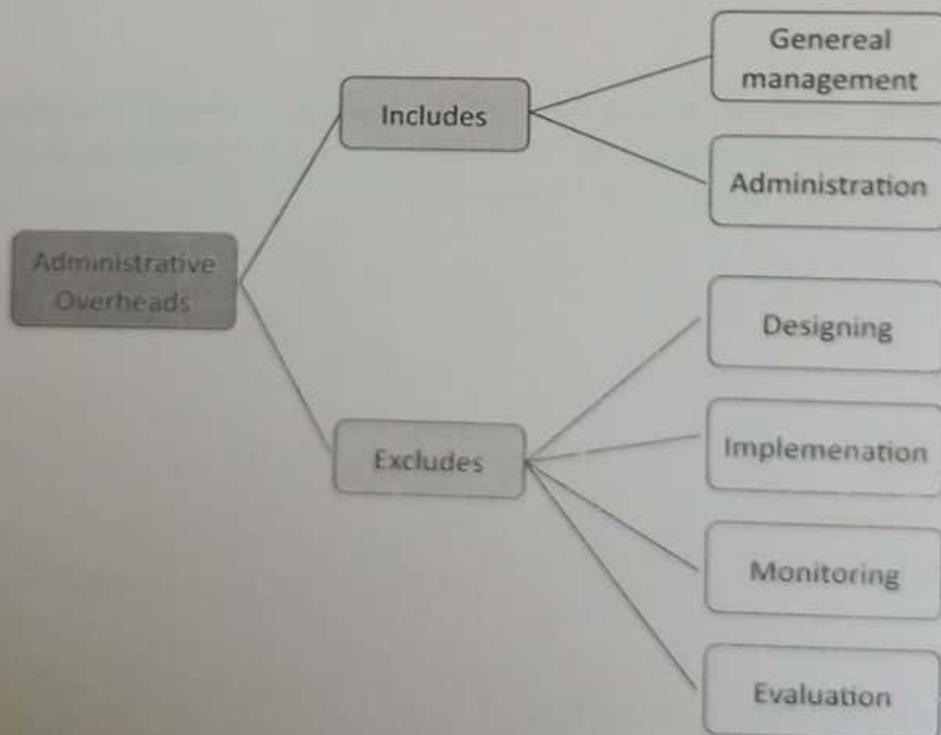
CSR Activities

- Social Welfare Work
- Promotion of Education
- Promotion of Gender Equality
- Environment Protection
- Protection of National Heritage
- Contribution to the National Relief fund of PM.

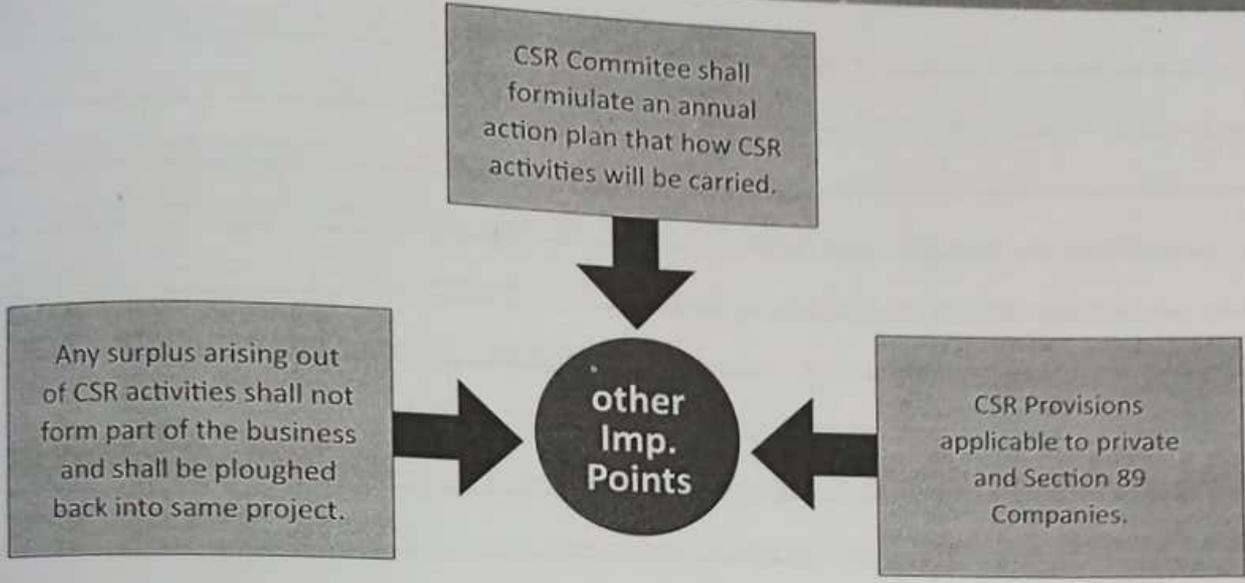
COMPUTATION OF NET PROFIT FOR CSR



ADMINISTRATIVE OVERHEADS



SOME MORE IMPORTANT POINTS



NOTES FOR REVISION

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GENERAL MEETING

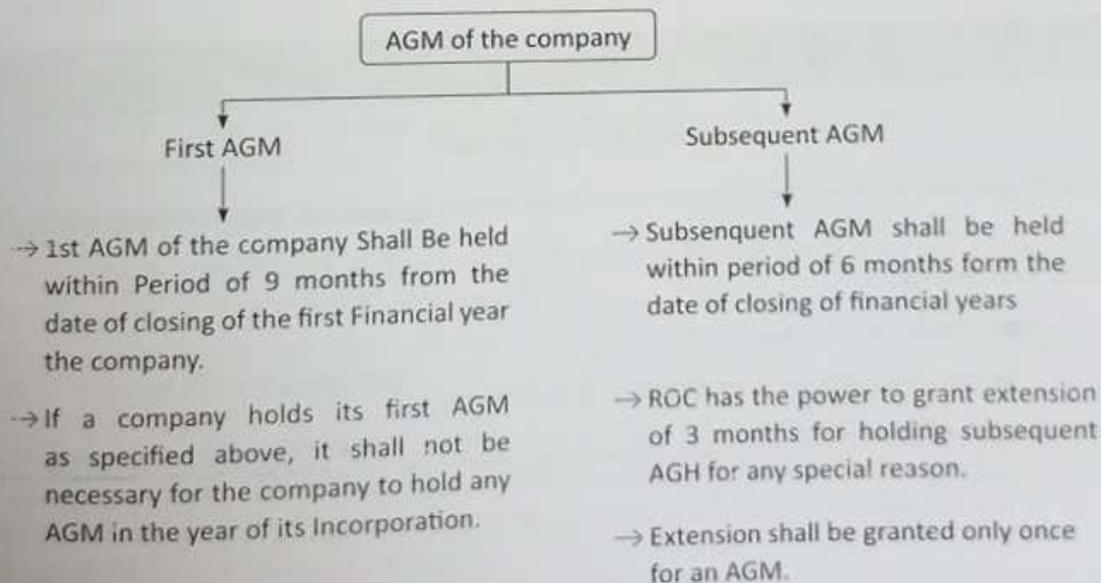
SECTION 135

SEC 96-120

READ WITH MANAGEMENT AND ADMINISTRATION RULES, 2014

* ANNUAL GENERAL MEETING [SECTION 96]

1. Every company other than a One Person. Company shall in each year hold in addition to any other meetings, a general meeting as its Annual General Meeting.
2. Maximum gap between 2 AGM should not be more than 15 months.
- 3.



Note: Extension of 3 months shall not be given for holding 1st AGM.

IMPORTANT POINTS ABOUT AGM:

- Every AGM shall be called during Business Hours, i.e. between 9am to 6p.m
- AGM can be called on any date that is not a National Holiday
- AGM shall be held either at Registered Office of the company or at any place situated in India.
- Provided that AGM of an unlisted company, may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

POWER OF TRIBUNAL TO CALL AGM : [SECTION -97]

1. Tribunal has the power to call AGM on an application made to it of the company by any member if the company fails to hold AGM.
2. Provided that such directions may include a direction that one member of the company, present in person or by proxy shall be deemed to constitute a meeting.

DEFAULT IN HOLDING GENERAL MEETING: [SEC-98]

If any default is made in holding a meeting of company in accordance with Section 96, 97 or 98, the Company and every officer of the company who is in default shall be punishable with:

- fine which may extend to ₹ 1 Lakh in case of continuing default:
- further fine which may extend to 5000 ₹ per day during the day such default continues.

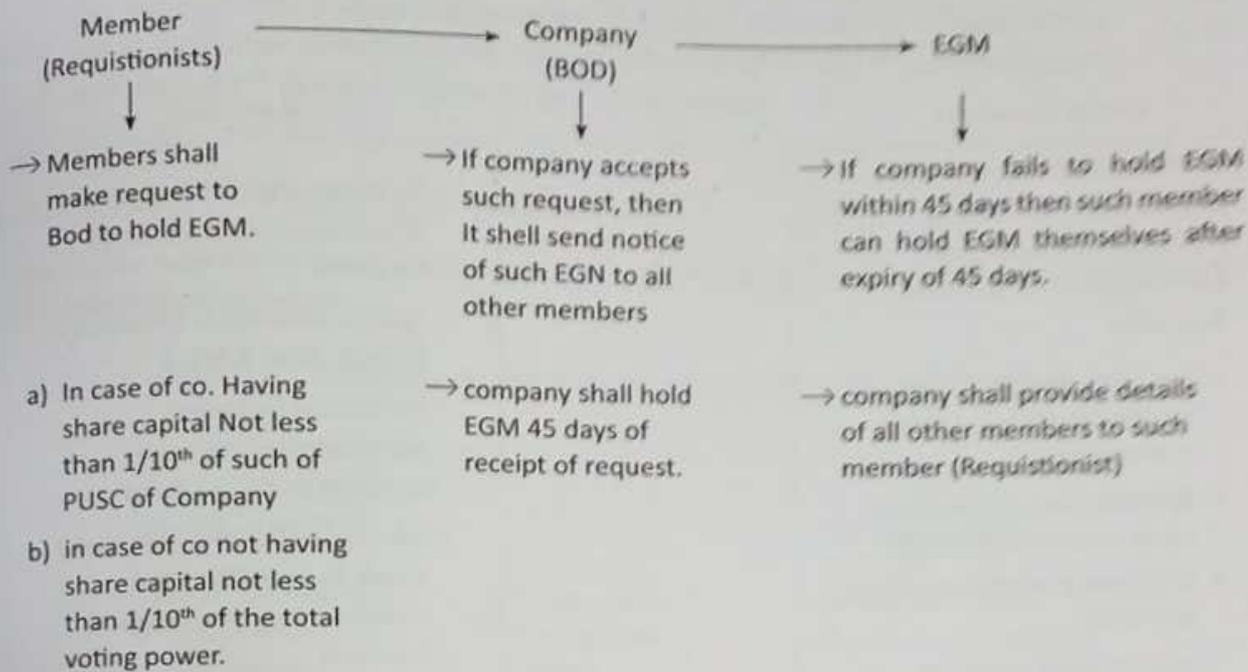
EXTRA ORDINARY GENERAL MEETING

[EGM] {SECTION-100}

General Meeting called between two Annual General Meetings is called an Extra-Ordinary General Meeting.

- An EGM can be called by:
 - By Company itself through Board
 - By Company on Requisition i.e. on Request of members
 - By Requisitions themselves
 - By Order of NCLT

MEETING CALLED BY REQUISITIONS :



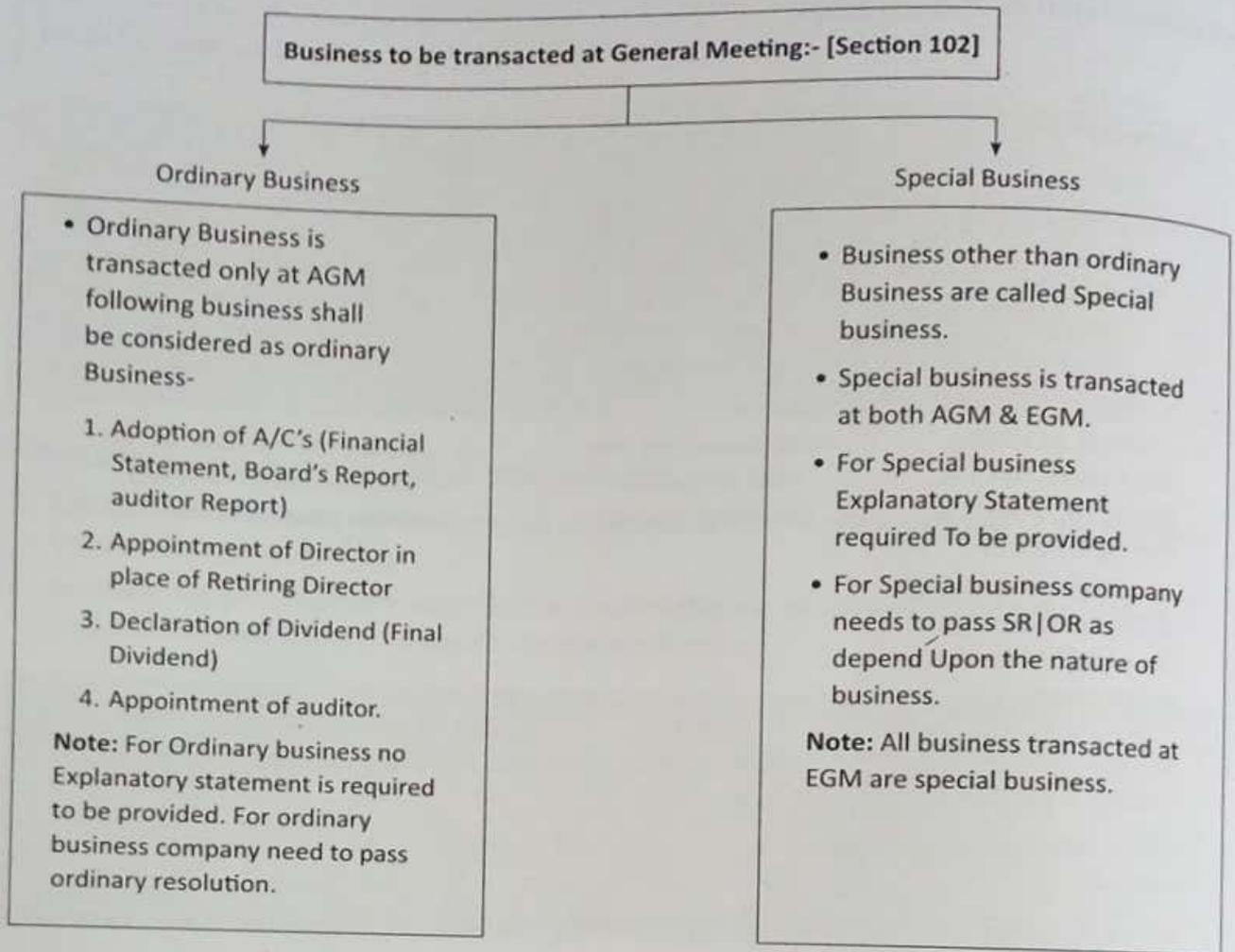
- Such member Shall send notice of EGM to all other member and shall hold EGM in same manner as company would have conducted EGM.
- All reasonable expenses for conducting such EGM shall be reimbursed by the company to such members
- Such member Shall hold EGM within 3 months from the date on which the requisition was made to the company.

IMPORTANT POINTS ON EGM:

- a) EGM can be held on any day However, EGM called by requisitionists Should be conducted on any day except National Holiday.
- b) EGM can be held at any place in India.
- c) meeting called by Requisitionist shall be held either at RO of the company or at some other place within the same C|T|V of where RO is situated.

EGM on order of NCLT [Section 99]

As per Section 99, if it is impractical to call the meeting of the company, then the Tribunal may on suo moto or on the application of any member/director who is entitled to vote at meeting can call the meeting. NCLT will issue order for conducting the meeting in the manner as NCLT may deems fit.



Notice of General Meeting [Section-101]

A general meeting of company may be called by giving not less than 21 clear days' notice. Notice can be given in either writing or through electronic mode in such manner as may be prescribed. ***In case of Section 8 Company 14 days Clear notice is required instead of 21 days.**

—> Clear day means day exclusive of the day of the notice of service and of the day on which the meeting is held.

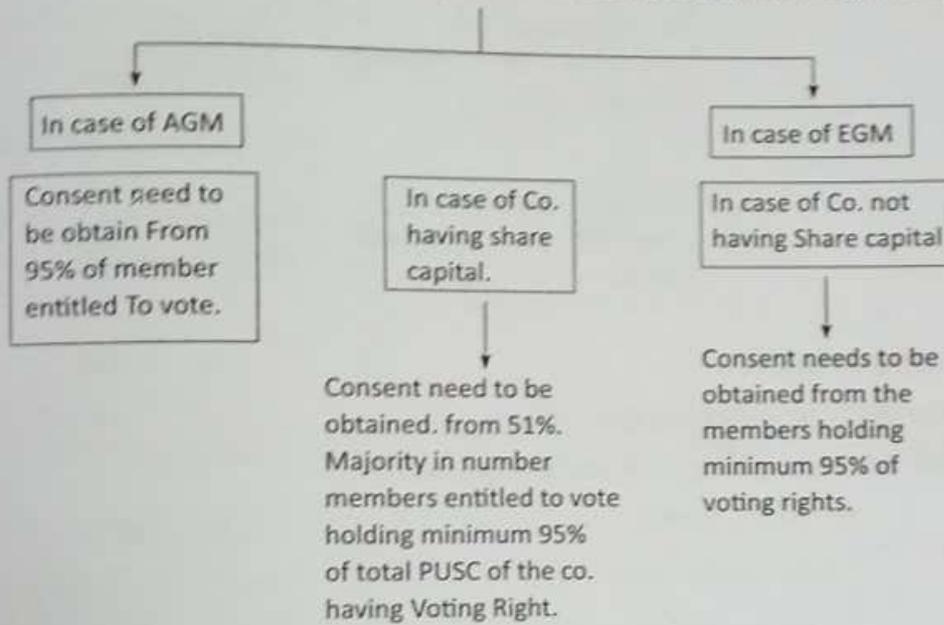
➤ If Notice is sent by post then it shall be deemed that notice is received after the expiry of 48 hours after the letter is posted.

Where this is not practicable, the Notice shall be published in a vernacular newspaper and in a English newspaper at least seven days before the Meeting, exclusive of the day of publication of the Notice and day of the Meeting. In case of companies having a website, such Notice shall also be hosted on the website.

SHORTER NOTICE FOR HOLDING GENERAL MEETING

Company can hold GM by giving Shorter notice, provided consent being obtain from the members in writing or electronic means.

Consent for holding GIM by giving Shorter notice need to be obtain by member

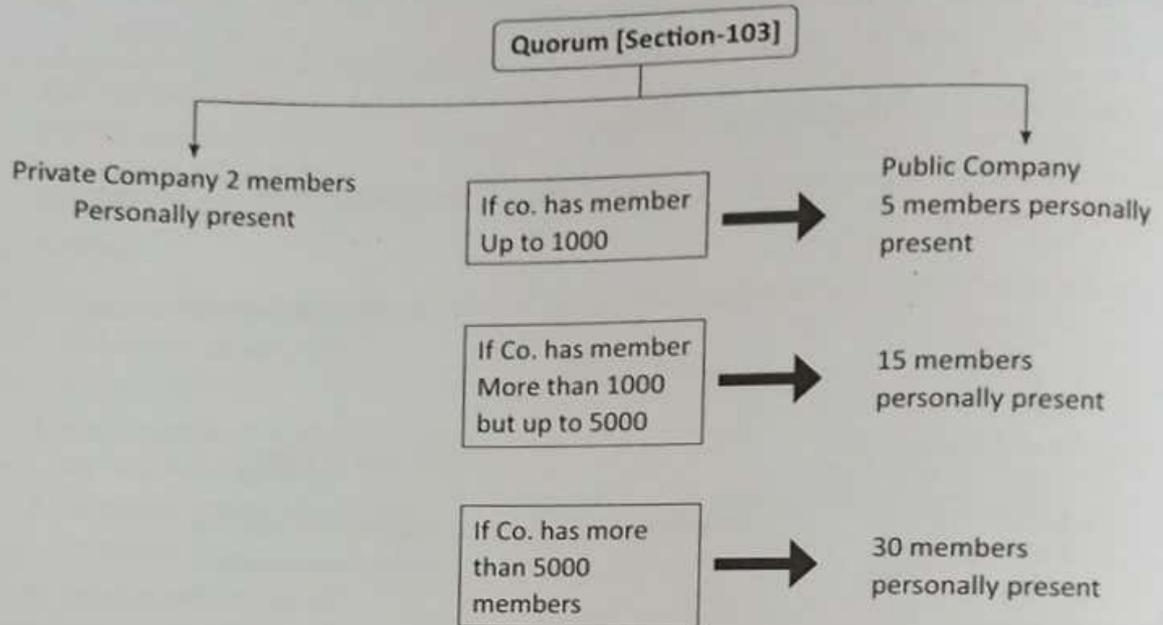


PERSONS ENTITLED TO RECEIVE NOTICE:

- Every Member of Company and in a case of insolvent Member to his Nominee
- Every Director of Company
- Auditor of the Company
- In case of listed Company to Stock Exchange

IMP PROVISION:

The non-receipt of notice or accidental omission to give notice to any member shall not invalidate the proceedings in the meeting.

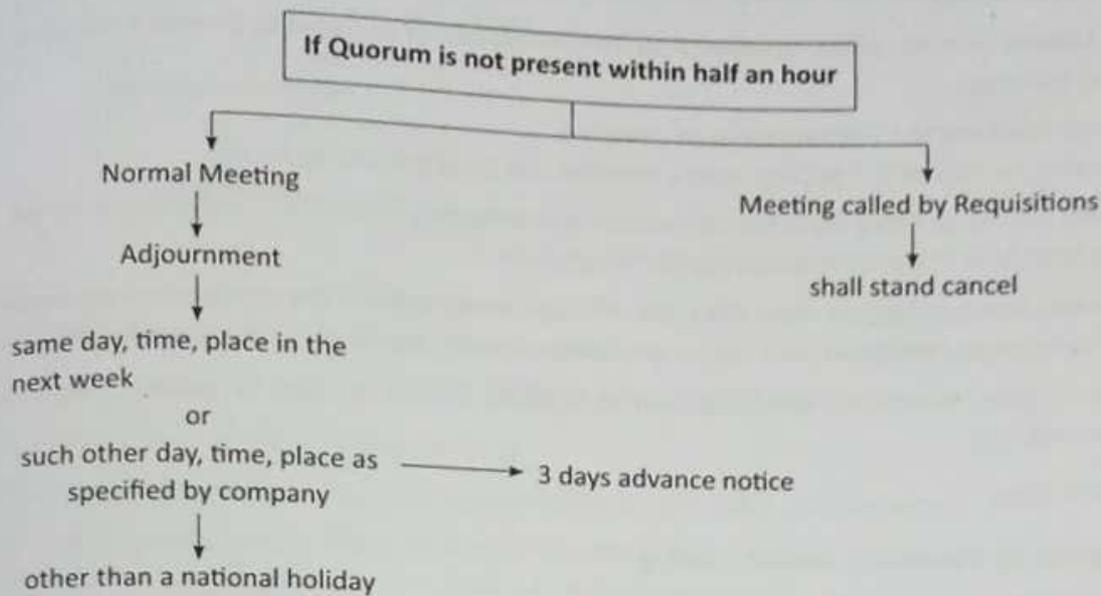


- Proxy not counted as Quorum
- Preference Shareholder not counted as Quorum.
- Joint Shareholder counted as one but only one voting power
- Representative of
 - Body Corporate
 - President of India
 - Governor of State

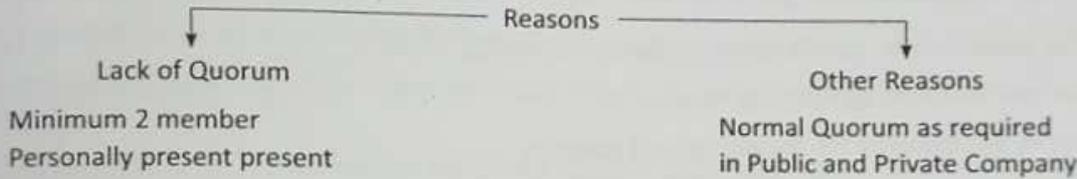
SOME MORE IMPORTANT POINTS:

- All Counted as Member Personally present.
- One person can be an authorized representative of more than one body corporate
- However, to constitute a meeting, at least two individuals shall be present in person.
- Quorum shall be present not only at the time of commencement of the Meeting but also while transacting business.
- Where the Quorum provided in the Articles is higher than that provided under the Act, the Quorum shall conform to such higher requirement.

ADJOURNMENT OF MEETING



Quorum in Adjourned Meeting



CHAIRMAN [SECTION 104]

- Name mentioned in AOA
- If, AOA silent then, one of the director Shall act as Chairman
- If directors are not agreed Members Shall appoint chairman by show of hand
- Chairperson | Chairman is not present within 15 minutes or shows unwillingness to act as Chairman
 - Elect one of the director as Chairman
 - If directors not agreed then, one of the member shall elect as Chairman
 - If poll is demanded for election of chairman, then it shall taken immediately.
- In case of Public company
 - ↓
 - Chairperson shall not propose any resolution in which he is interested.

PROXY [SECTION 105]

- ✓ Any Member/Person who is appointed by Member to attend and vote at General Meeting is called as Proxy.
- ✓ A Proxy need not to be the member of company.
[However, in Section 8 Company, only a member can be appointed as Proxy]
- ✓ A Proxy can act as Proxy on behalf of member not exceeding 50 and their holding should not more than 10% of the Total Share Capital of company.
- ✓ However, member holding more than 10% of Total Share capital of the company may appoint Single person as Proxy and such person shall not act as a Proxy for any other shareholder.
- ✓ In case of listed companies providing e-voting facilities, there is no need to appoint proxy to vote at the meeting.

RIGHTS OF PROXY

1. Proxy has right to attend General Meeting.
2. Proxy has the right to vote only on a poll.
3. A proxy has right to demand a poll.

DISABILITIES OF PROXY

1. A Proxy do not have right to speak at General Meeting
2. A Proxy can not vote by Show of hands.
3. A Proxy is not counted for the purpose of quorum.

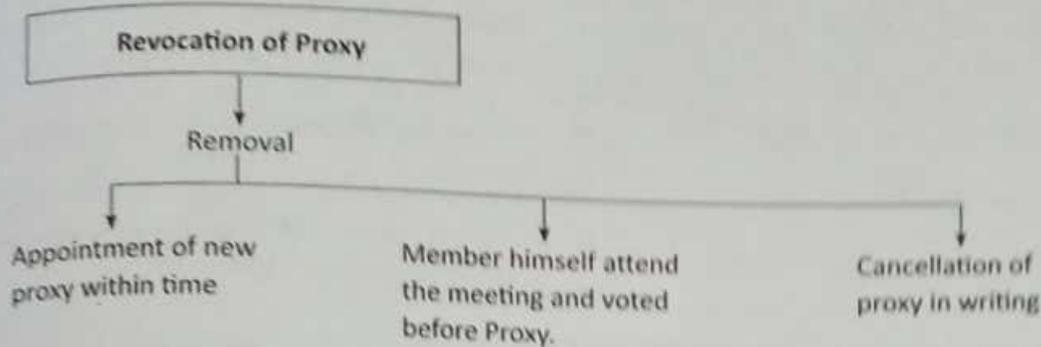
TIME LIMIT FOR DEPOSIT PROXY FORMS:

1. The Instruments appointing Proxy must be deposited with company at least 48 hours (2 days) before the meeting.
2. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

INSPECTION OF PROXY LIST

1. Company shall prepare Proxy list
Member entitled to attend and vote at General Meeting is also entitled to inspect the Proxy Lodged with the company.
2. Such request for inspection of registration of proxy need to be made to the company at least 3 days before the commencement of meeting.
3. Such inspection shall be provided during the period beginning 24 hours before the time fixed for commencement of meeting and ending up to the conclusion of the meeting during business hours of the company i.e. from 9AM to 6P.M.

4. If the General Meeting stands to be adjourned than fresh request need to be made for Inspection of Proxy.



- Once Proxy has voted it can not be revoked.
 - If the Proxy is undated and not duly Stamped such proxy is liable to be rejected.
- The Instrument appointing Proxy shall be in form MGT-11 and need to be duly signed by the appointer member or by his attorney and duly dated and stamped.

RESTRICTION ON VOTING RIGHTS [SECTION 106]

The voting Right of the member shall be restricted only in the following 2 conditions :-

- a) Call amount on such shares being pending.
- b) Company has exercised right to lien upon such shares.

VOTING BY SHOW OF HANDS [SECTION 107]

At any General Meeting, a resolution put to the vote of meeting, shall unless

- a poll is demanded or
- Voting is carried out electronically.

- a) At first instance, Voting by show of hands shall be carried by chairperson.
- b) One member one vote irrespective of number of share.
- c) Chairman shall count the hands raised in favour and against the resolution and declare the result whether it is Carried or lost.
- d) However, if poli is demanded or voting is carried by e-vote then, show of hand" Shall not apply.
- e) Entry in minute book shall be **conclusive evidence** of passing such resolution.

VOTING THROUGH ELECTRONIC MEANS [SECTION-108]

a) Company whose equity shares Are listed on recognized stock Exchange. And	a) Company whose debentures preference Shares are listed and not equity shares.
b) Unlisted company having minimum 1,000 Shareholder.	b) Company having less than less than 1000 members.
	c) Company Listed SME Trading platform or IGP (Innovators Growth Platforms)

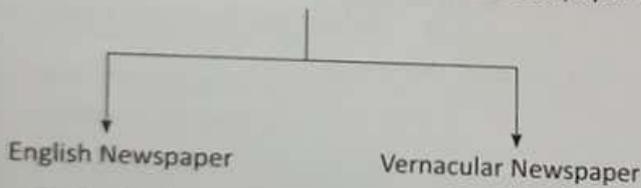
- A resolution proposed to be considered through voting by electronic means shall not be withdrawn.
 - ✓ Co. shall appoint an agency which provides e-voting facility[CDSL/ NSDL]
 - ✓ One share, One vote

Cut-off Date: Cut off-date means a date not earlier than 7 days before the date of General Meeting for determining the eligibility to vote by electronic means or by their physical presence in General Meeting.

- Member who cast their vote by remote e- voting may also attend the meeting but shall not be entitled to cast their voting.

Notice: The notice of the meeting shall be Sent to all the members/directors/ auditors of the company either by an electronic means or ballot.

- Company shall publish Such notice in 2 Newspaper at least before 21 clear days General Meeting:



—Notice shall also post on the website

PERIOD FOR VOTING AND RELATED MATTERS :

- a) E-voting shall remain open for not less than 3 days and shall close at 5PM on the date preceding the date of General Meeting.
- b) Once member casted his vote on Resolution then he is not allowed to change the vote.
- c) At the end of remote E-voting period, the facility shall be blocked.

The Board of Director shall appoint one or more scrutiner who shall be practicing professionals (PCA, PCS, PCMA, Advocate). Scrutinizer shall not be in the employment of company.

The scrutiner shall immediately after the conclusion of meeting's vote i.e. after the voting at GM Shall first count the vote casted in meeting, and there after unblock the vote casted through e-voting in the presence of atleast 2 witness who are not the employee of company.

Scrutinizer

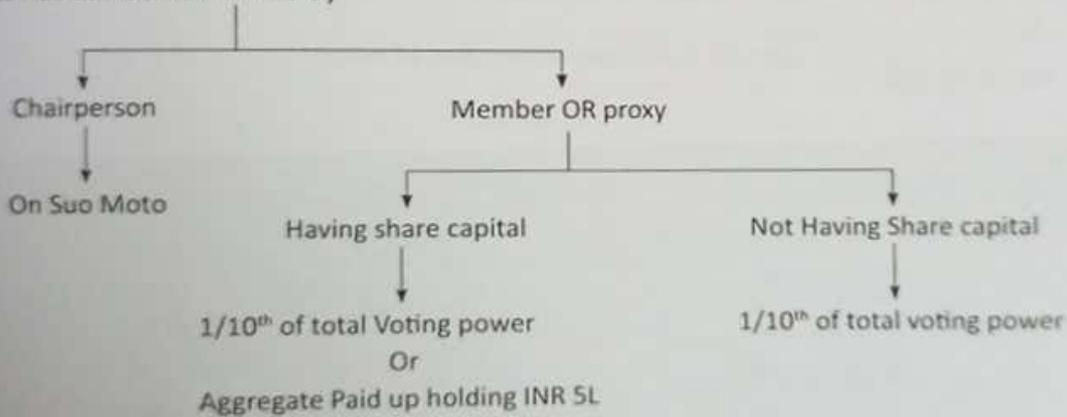
The Scrutinizer shall make his Report within 3 days of conclusion of notice. Submit the Report to the Chairperson and the Chairperson shall declare the result of the voting.

Such result shall be placed on the website of the company and the agency after declaration of result.

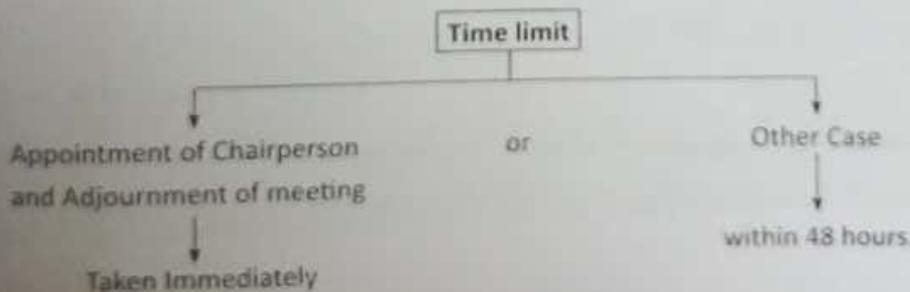
VOTING BY POLL [SECTION 109]

When: Before 'or' On the Declaration of Result by show of hand

Who: Poll can be demanded by



When:



- One Share, One Vote
- Poll paper shall given to all member having voting power
- Chairman shall appoint 2 scrutinizor other than in employment
- Scrutinizer is the person who counts the vote, he is not employee.
- Scrutinizer shall submit the report to Chairman
- Chairman declares the result.

POSTAL BALLOT [SECTION-110]

Meaning: As per Section 2(65) Postal Ballot any means, voting by electronic mode.

It includes by post or electronic mode instead of voting personally in the General Meeting of the company.

Notice: Where a Company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons and requesting them to sent their assent or dissent in writing on a postal ballot within 30 days from the date of dispatch of Notice.

The Notice shall be sent either –

- by Registered post or Speed Post
or
- Through electronic means like e-mail
Or
- Through courier service

APPOINTMENT OF SCRUTINIZER:

- The Bod shall appoint one scrutinizer. who is not in employment of company.
- The Scrutinizer shall submit the report as soon as possible after the last date of submitting postal ballot, but not later than 7 days.
- The assent or dissent received after 30 days from the date of issue of notice shall be treated as not received.
- The result shall be declared by placing it, along with scrutinizer's report on the website of company.
- The Resolution shall be deemed to be passed on the date at a meeting convened on that behalf.

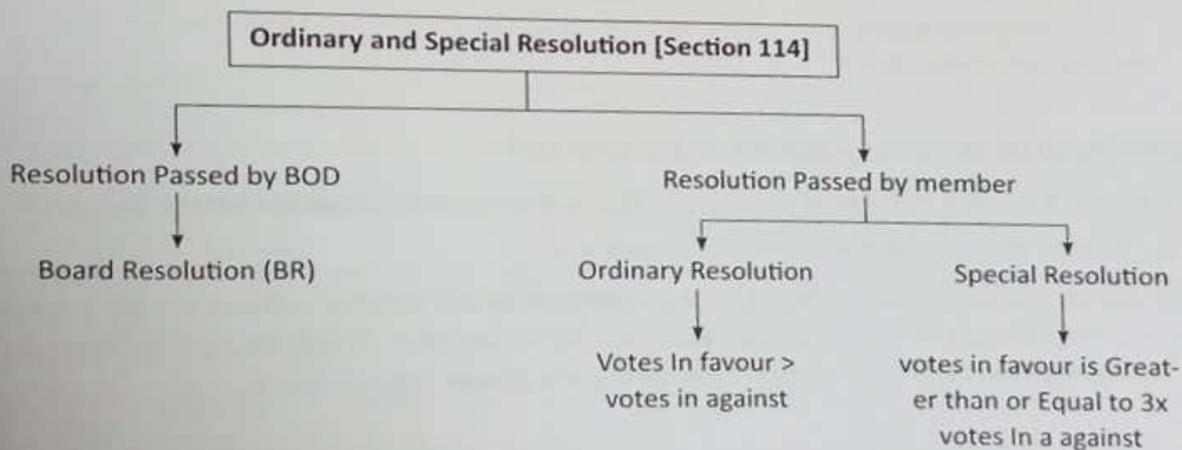
BUSINESS MATTER WHICH NEED TO BE PASSED ONLY BY POSTAL BALLOT:

- Alteration of Object Clause
- Alteration of Articles of Association
- Buy-Back of Securities
- Change of Object after raising fund from Public under Public Issue and before its Utilization.
- Election of Small Shareholder Director
- Inter-Corporate Loan, Investment, Security, Guarantee
- Issue of Equity Shares with Differential Voting Rights
- Shifting of Registered office outside the local limits of any City / Town or village.
- Sale of Undertaking of Company.
- Variations in the rights attached of shares or debentures or other Securities.

CIRCULATION OF MEMBER'S RESOLUTION [SECTION 111]

A company shall, on requisition in writing of such number of members, as required in Section-100:

- a) give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting.
- b) circulate to any members any Statement with respect to the matters. referred in proposed resolution or business to be dealt with at that meeting.

**MINUTES OF MEETING [SECTION-118]**

"Minutes" means the Recording of the Proceedings of the meeting.

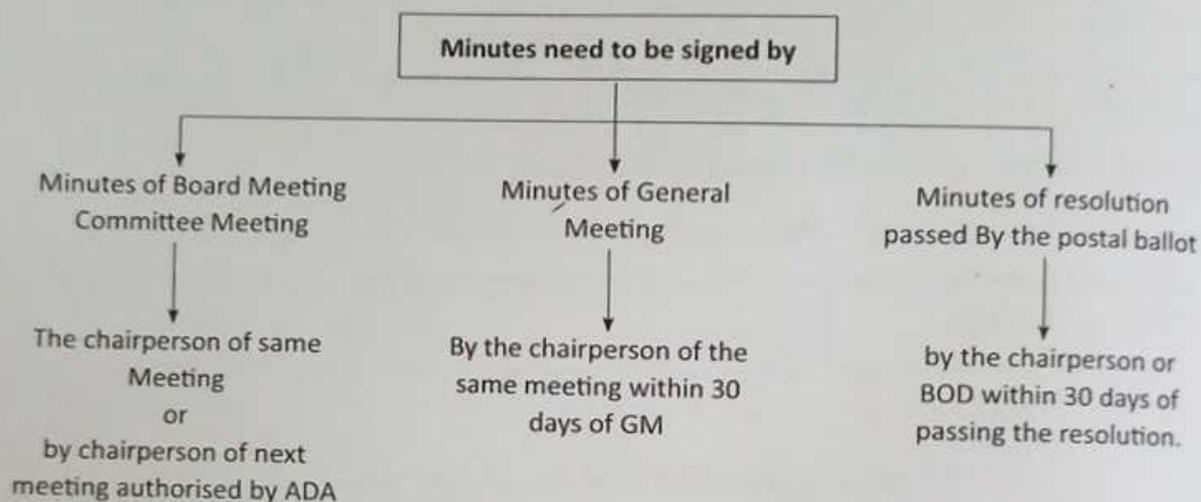
Meeting's Minutes are required to be maintained prepared within 30 days of the meeting.

→ Separate minute books are required to be prepared for :

- A. Board Meeting
- B. Committee Meeting
- C. Class Meeting
- D. Postal Ballot

→ Each page of minutes is required to be initiated by the 3 and last page should be fully signed by the by the Chairperson.

As per Sec 118 (10) every co. is required to comply with requirement of SS-1 for BM and SS-2 for GM. Minutes need to be preserved permanently at the Registered Office of the company under the custody of CS or person appointed by Board.



INSPECTION OF MINUTES – BOOKS OF GM [SEC-119]

The books containing minutes of the any meeting or a resolution passed by Postal Ballot, shall-

- a) be kept at the registered office of the company.
- b) be open, during business hours, to the inspection by any member without charge, subject to such reasonable restrictions as the company may, by its articles or in GM, impose, so, however, that not less than two hours in each business day are allowed for inspection.

APPOINTMENT AND QUALIFICATION OF DIRECTORS

CHAPTER - XI
As Per Bore Act.

SECTION 149-SECTION 172

The Companies (Appointment and Qualification of Directors) Rules, 2014

- Director sec 2 (34)
- Means a director
 - Appointed on the Board of company

- Board sec 2(10)
- Collective Body of the Directors

Collective Rights
Collective Duties
Collective Decision making

SECTION 149

Company to have Board of Directors Who are Individual.
Minimum and Maximum Director

Public Co (Sec-2(71))
Min. 3. Director
Max. 15. Director

Private Co (Sec-2(68))
2. Director
15. Director

OPC (Sec-2(62))
1. Director
15. Director

* After passing SR, Number can be Increased

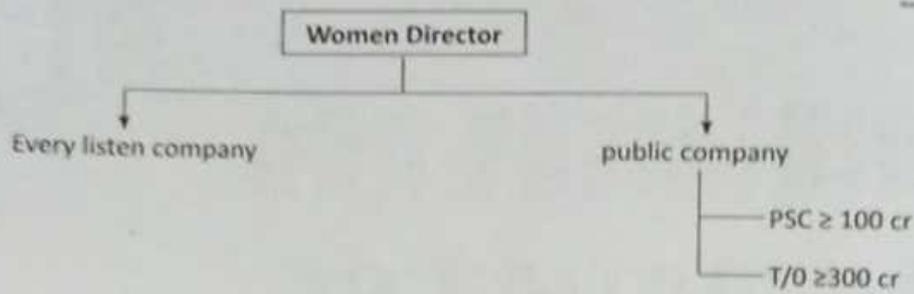
* 1-15 तक डीर बोर्ड के लिए 213
GM → OR
* The- The SR pass hoga - who - who
mgt - 14 को बनाएँ।

Director

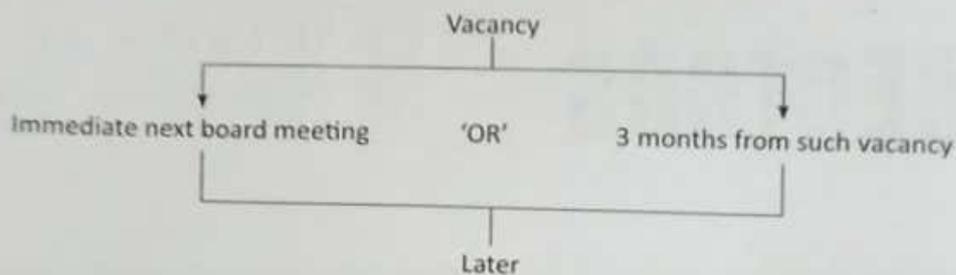
Executive Director
 - a director concerned with day to day management of CO.

Non-Executive
 - A director who is usually not associated with day to day working.
 - Only provide their expertise
 - Every ID is NED but every NED is not ID.

Concept of Women Director :

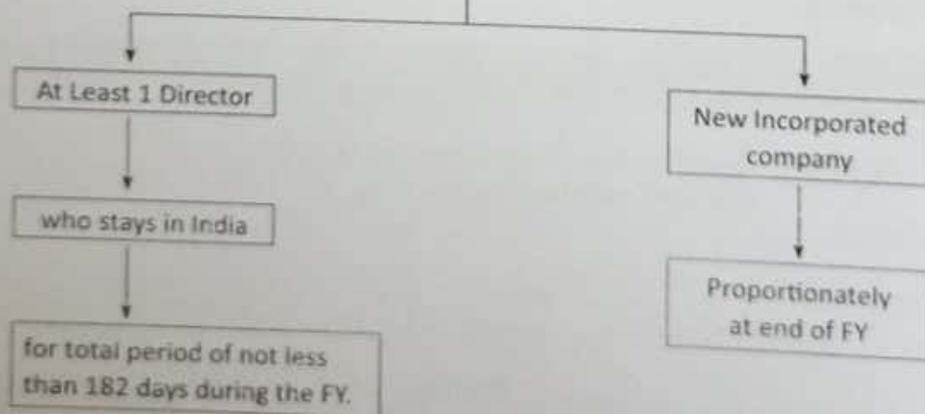


- Women Director to be appointed within 6 months from date of its incorporation.

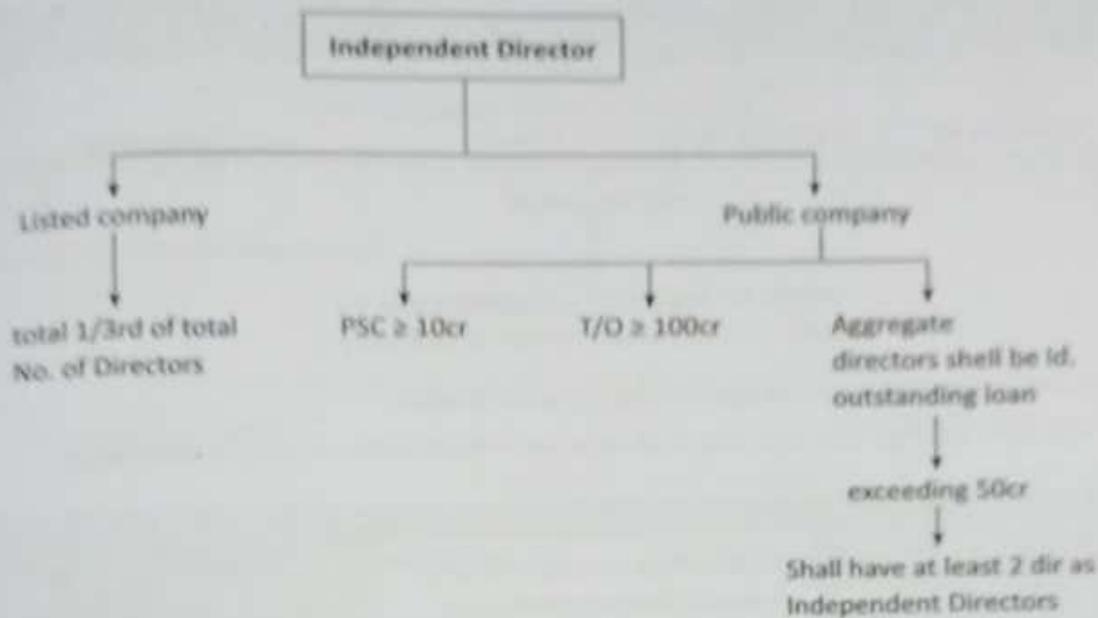


- the Board of directors of the top 1000 listed entities shall have at least one independent woman director
- Following companies are not required to appoint woman director:
 1. Specified IFSC Public Company
 2. Private Company which is not subsidiary of public company

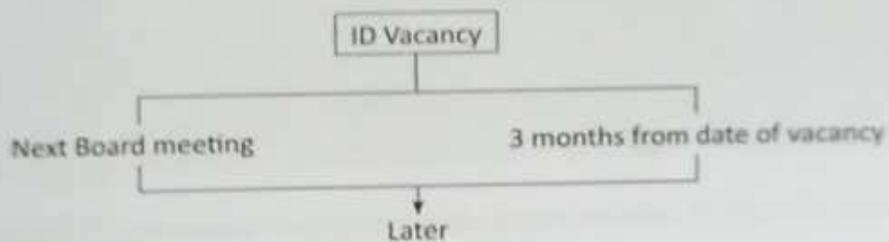
RESIDENT DIRECTOR



• As per Sec 2(44) → "Whole Time Director" includes a director in the whole-time employment of the company.

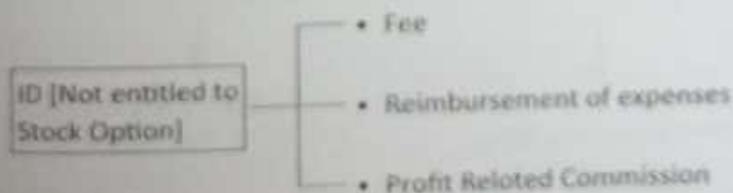
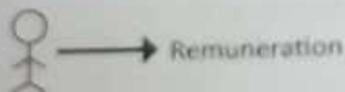


If Company cease to fulfil 3 conditions for three consecutive years, it shall not required to appoint ID.

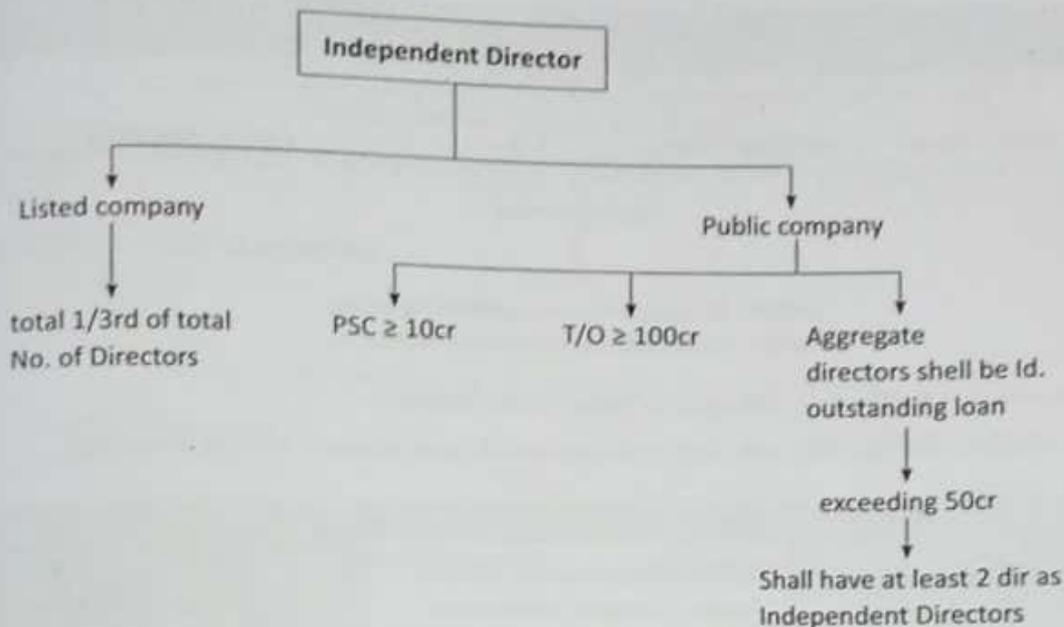


Declaration of Interest to be given by Independent Director to Board

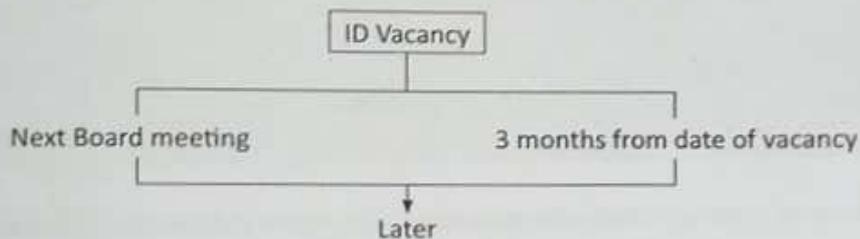
- First BM after his Appointment
- First BM every year
- When there is change in his interest



APPOINTMENT AND QUALIFICATION OF DIRECTORS

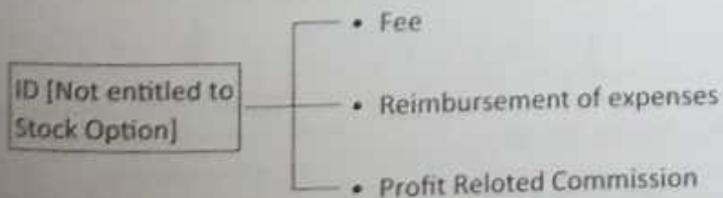
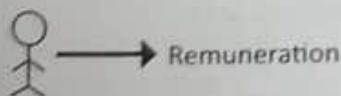


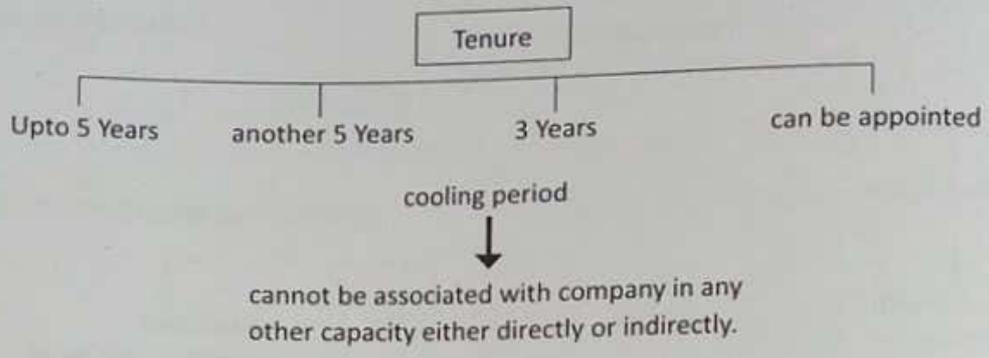
If Company cease to fulfil 3 conditions for three consecutive years, it shall not required to appoint ID.



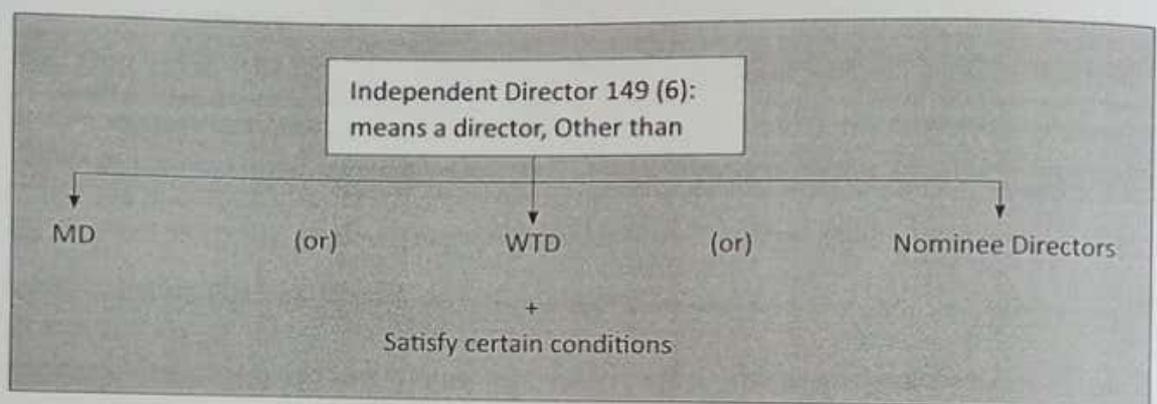
Declaration of Interest to be given by Independent Director to Board

- First BM after his Appointment
- First BM every year
- When there is change in his interest





- Retirement by Rotation does not apply to Independent Director.
- ID & NED liable Only for such acts and omissions which have occurred with his knowledge.

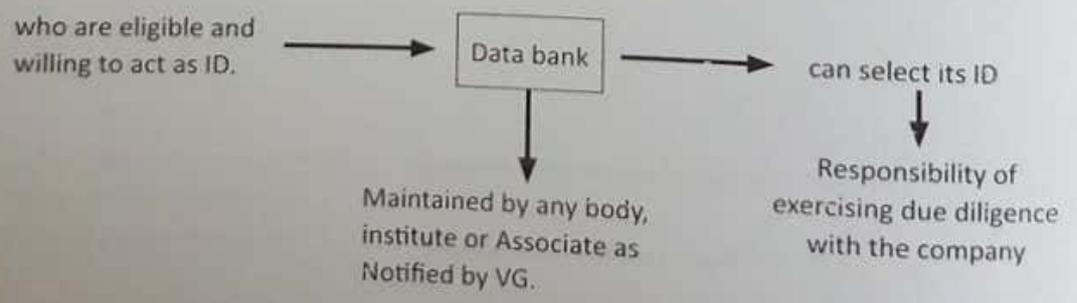


The following classes of unlisted public company does not require Independent Director :

- a joint venture;
- a wholly owned subsidiary; and
- a dormant company as defined under section 455 of the Ac

SECTION-150

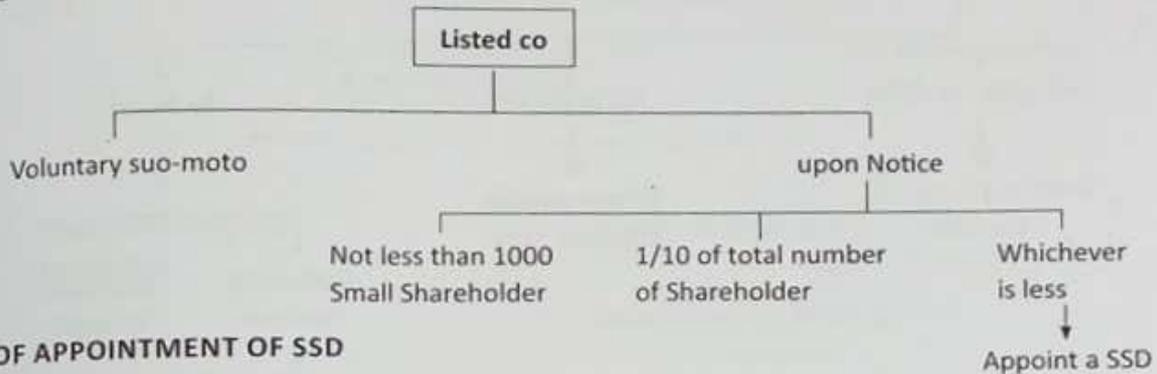
Manner of Selection of Independent Director and Maintenance of Databank of ID



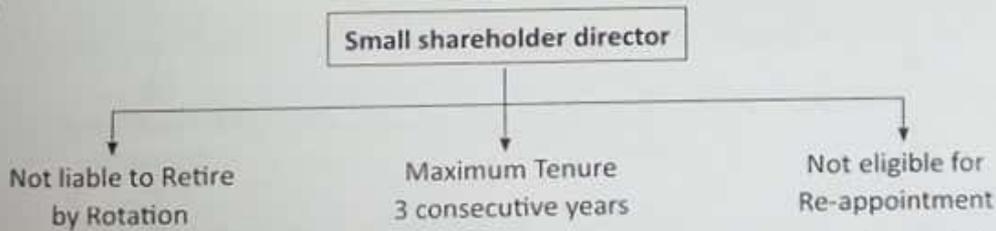
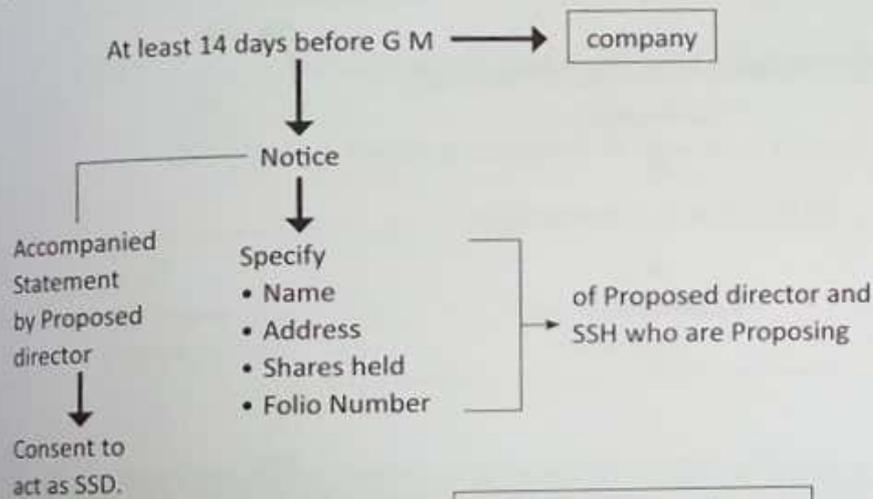
SECTION-151

SMALL SHAREHOLDER DIRECTOR

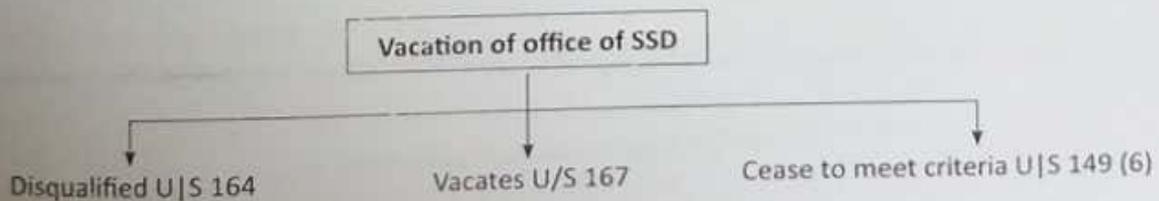
- Small Shareholder is one Holding shares of Nominal Value of 20,000 or less or Other sum as may be prescribed.
- SSD need not be a small shareholder.



PROCESS OF APPOINTMENT OF SSD



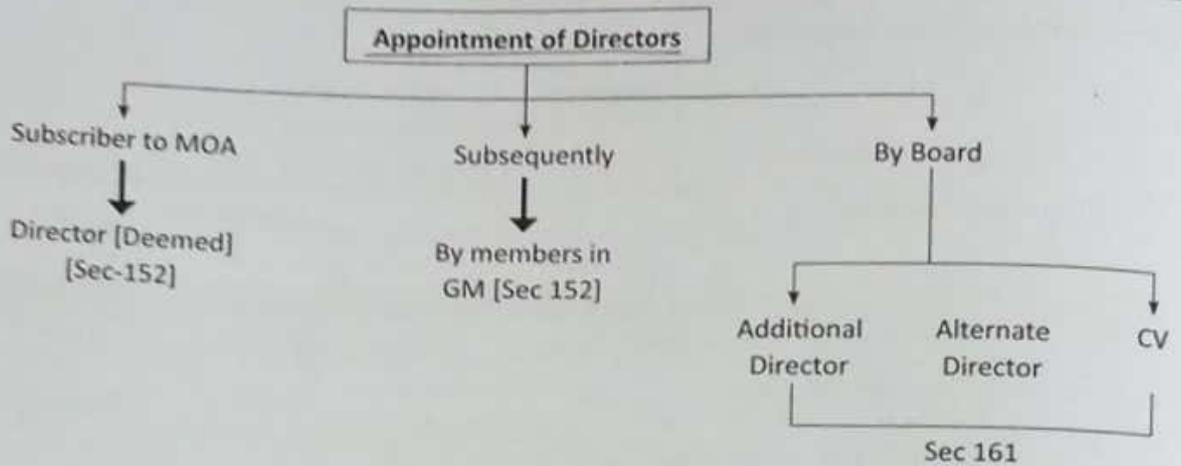
cannot be SSD for more than 2 companies; Second Company shall not be in conflict with first company's business.



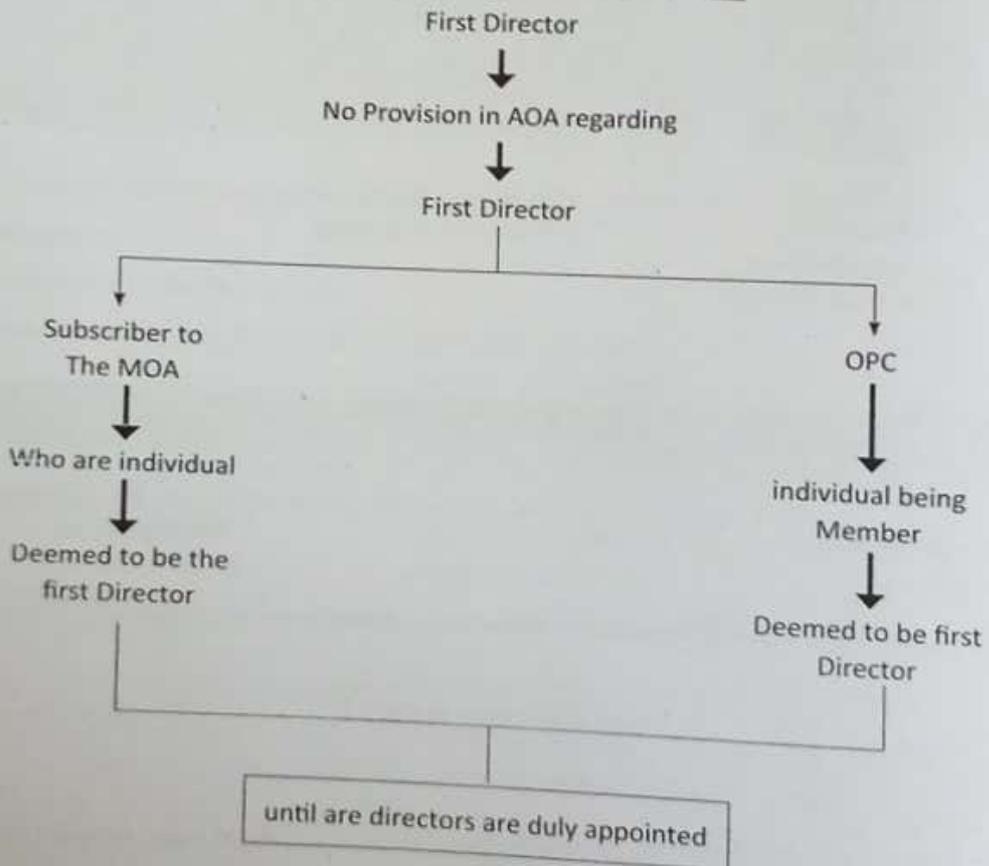
SSD After ceasing shall not be appointed in CASH for 3 years.

आप 1 Director को appoint कर सकते हो, as SSD as well as ID.

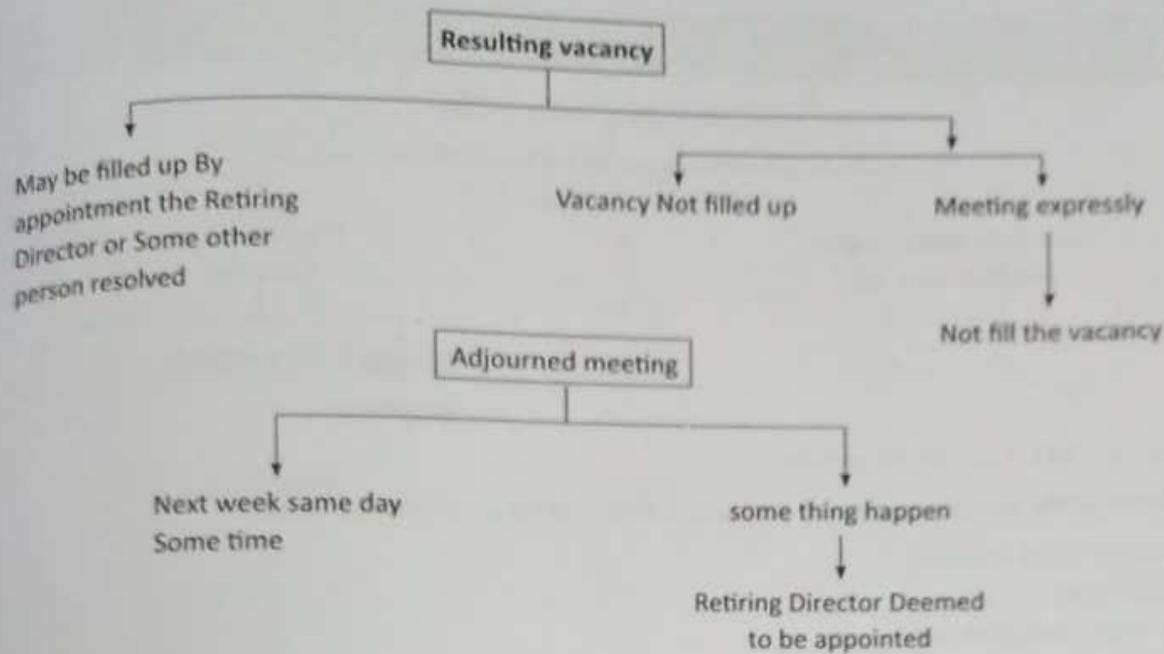
SECTION-152



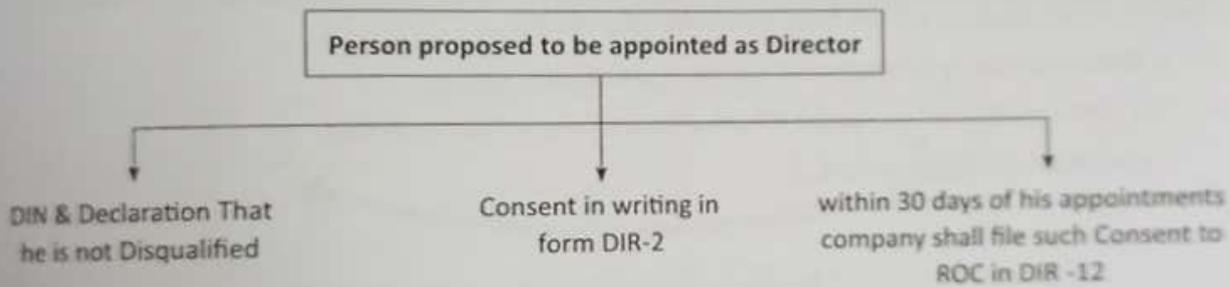
APPOINTMENT OF FIRST DIRECTOR



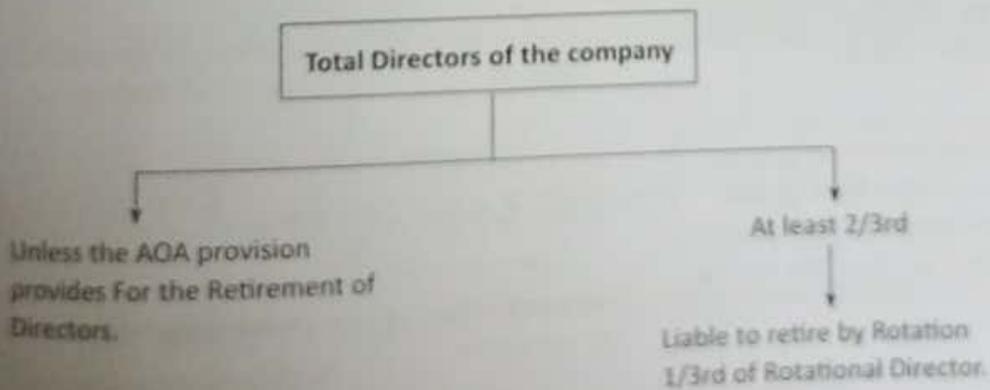
APPOINTMENT AND QUALIFICATION OF DIRECTORS

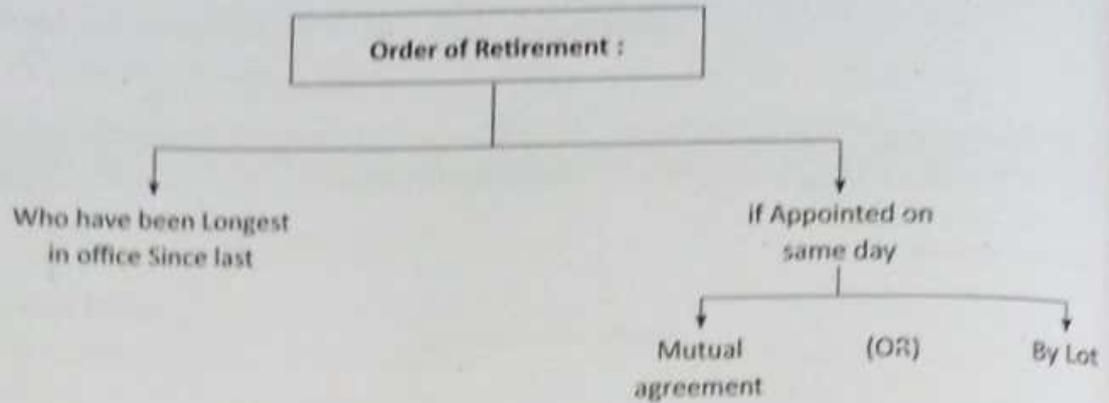


APPOINTMENT OF DIRECTOR IN GENERAL MEETING



RETIREMENT BY ROTATION [SEC 152 (6)]





- Section 162 is applicable to Case
- Resolutions whether Special or Ordinary is Required by provision of this Act.

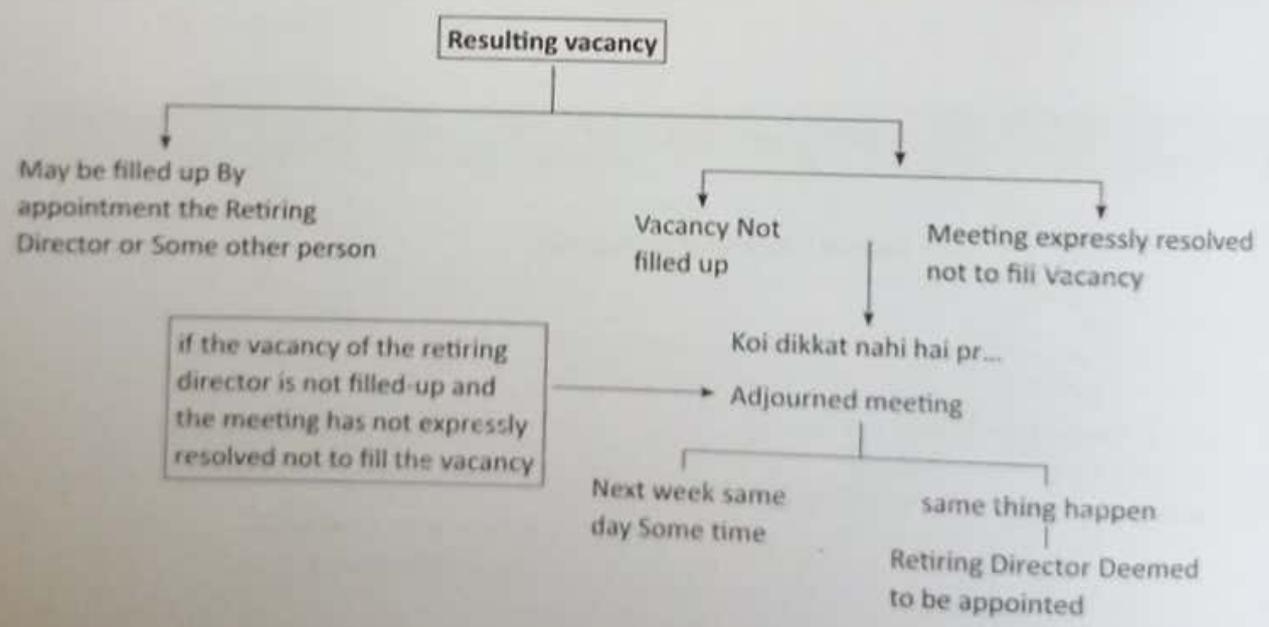
Rotational Director exclude :

[Non Rotational]

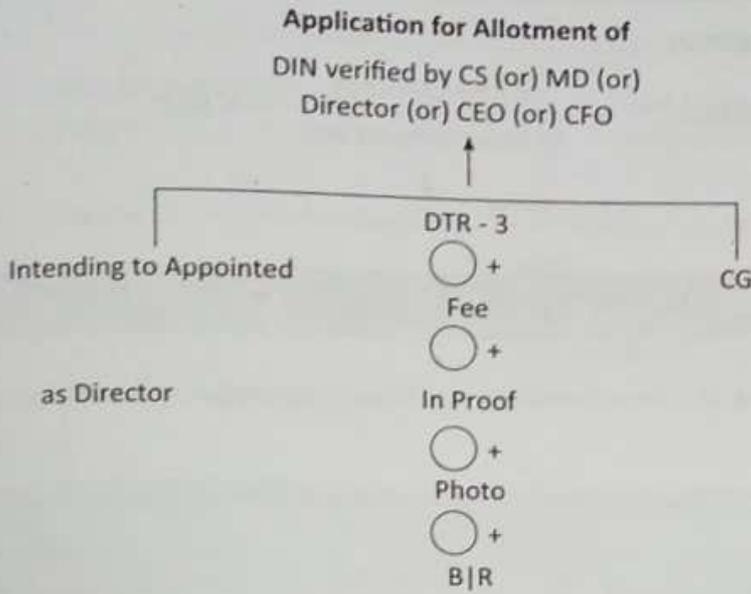
- Independent director
- Director appointed by tribunal
- SSD

Deemed Re-appointment will not happen in following cases:

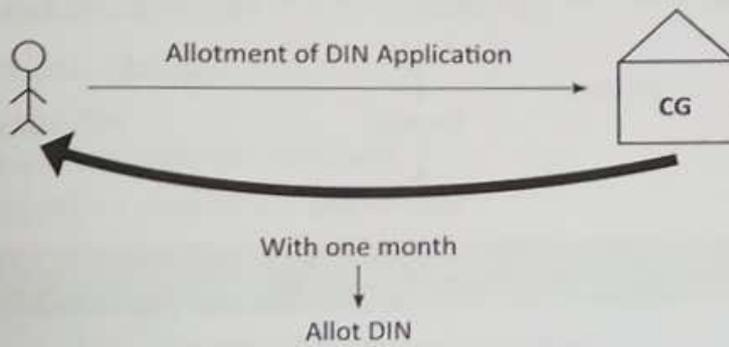
- A Resolution for re-appointment has been put up and lost.
- The Retiring director expressed his un willingness by Notice in writing.
- Disqualified for Appointment.



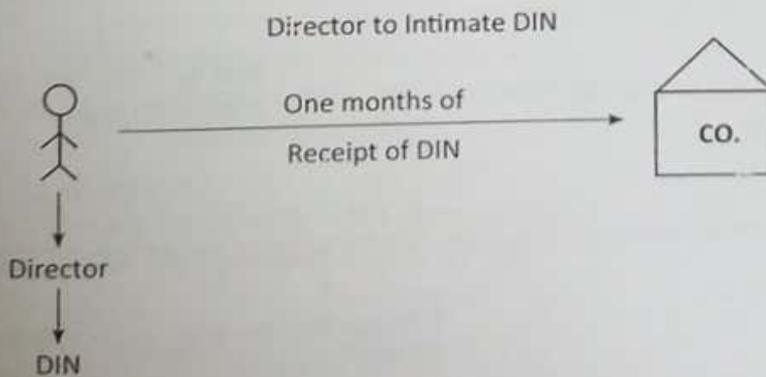
SECTION-153



SECTION-154

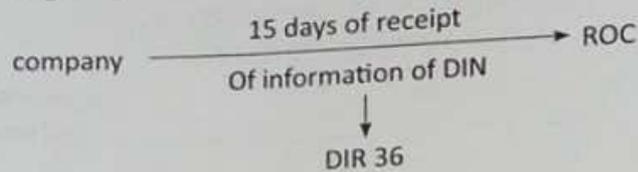


SECTION-156



SECTION -157

Company to inform DIN to registrar



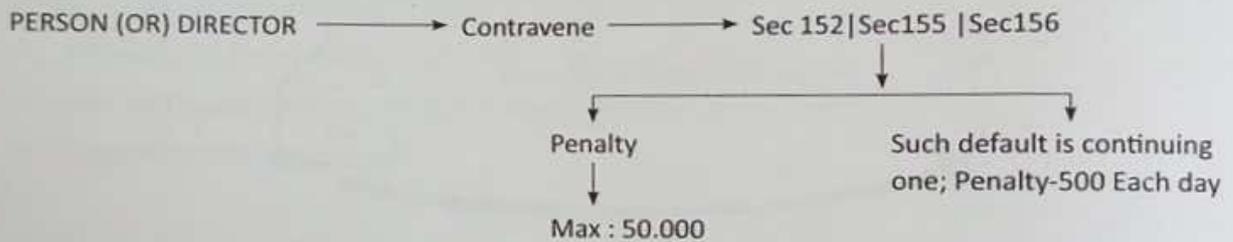
SECTION -158

COMPANY (OR) PERSON → At time of furnishing any Return Information or Particulars.

↓
Shall mention DIN in such Return, Information or Particular

SECTION -159

Penalty for default of certain provision

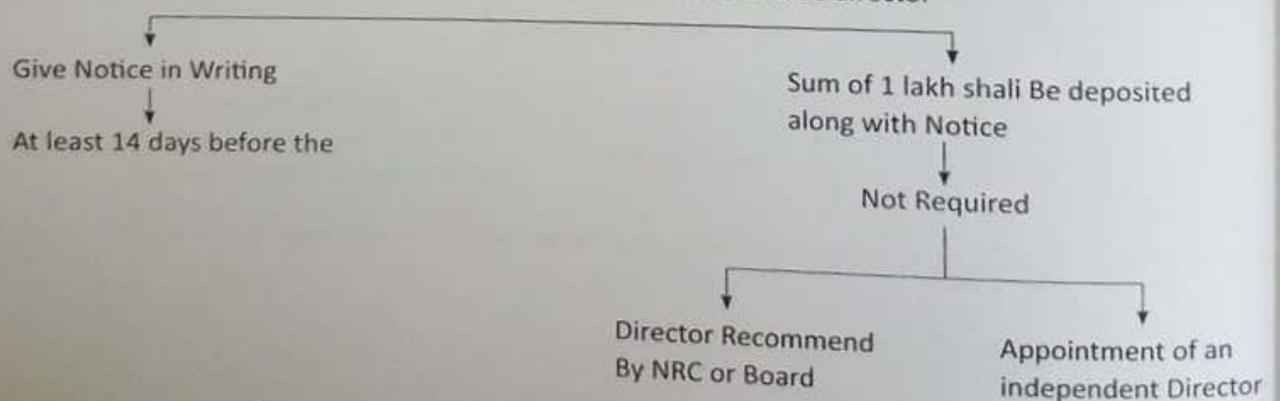


SECTION -160

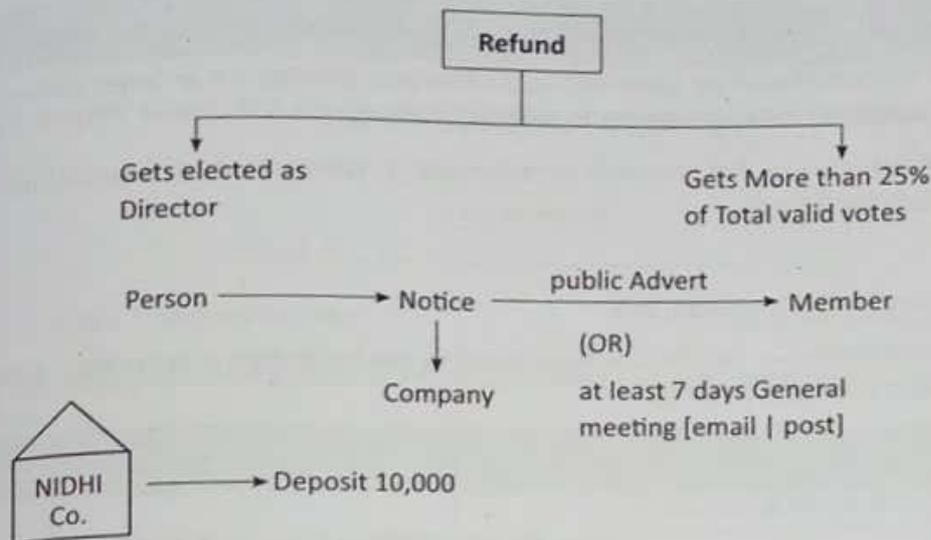
Right of persons other than Retiring

Director to stand for Directorship

Any person or some member intended to be director



APPOINTMENT AND QUALIFICATION OF DIRECTORS



SECTION -161

Appointment of Additional Director Alternate Director and Nominee Director

Additional Director

- who can appoint Board of Directors
- Tenure → Date of Next AGM
(OR)
- Last date on which AGM should have been held. → EARLIER
- Who cannot be appointed as Additional Director → Any person who fails to get appointed as Director in a GM.
- When appointed → When BOD feels so.

Alternate Director

- Who can appoint → If Authorized by Articles, Board of Directors
(OR)
- Who cannot be Appointed → Resolution passed by the company in GM
Person holding any Alternate Directorship for any other director
(OR)
- Term of office → Holding Directorship in the same company
Max tenure of original Director
(OR)
Original Director Return → EARLIER

- When Appointed ———> when original director is out of india for 3 months or more.
- Provided that no person shall be appointed as an Alternate Director for an Independent Director unless he is qualified to be appointed as Independent Director.
- Specific Provision ———> Any provision for automatic re-appointment of Original Director shall not apply to Retiring Director.

Nominee Director:

- Who can appoint If AOA authorise, BOD
- Need to be Appointed ———> Director Nominated by any Institution in pursuance of any law or by an agreement aor by CG or by SG

Cannot be an Independent Director

By virtue of its shareholding in a Govt co.

Casual Vacancy

- Who can fill the CV ———> Filled by BOD

Shall be subsequently approved by members in next GM.

- Need for appointment ———> when director vacates before the expiration of his term.

- Tenure ———> Date ———> original Director ———> tenure ———> End

SECTION - 162

Appointment of directors to be voted individually

General Meeting

Single Resolution

Only one Director can be appointed by passing Single Resolution

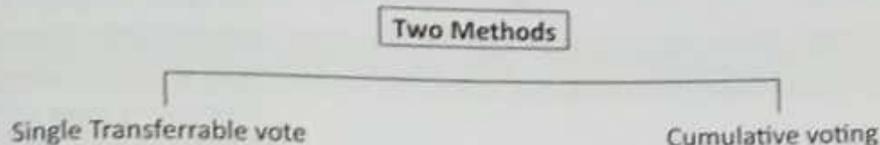
Allowed ,

A proposal to move such motion has first been agreed to at the meeting without any vote caste against it.

A resolution moved in contravention of above, it shall be void , whether or not any objection was taken.

SECTION - 163

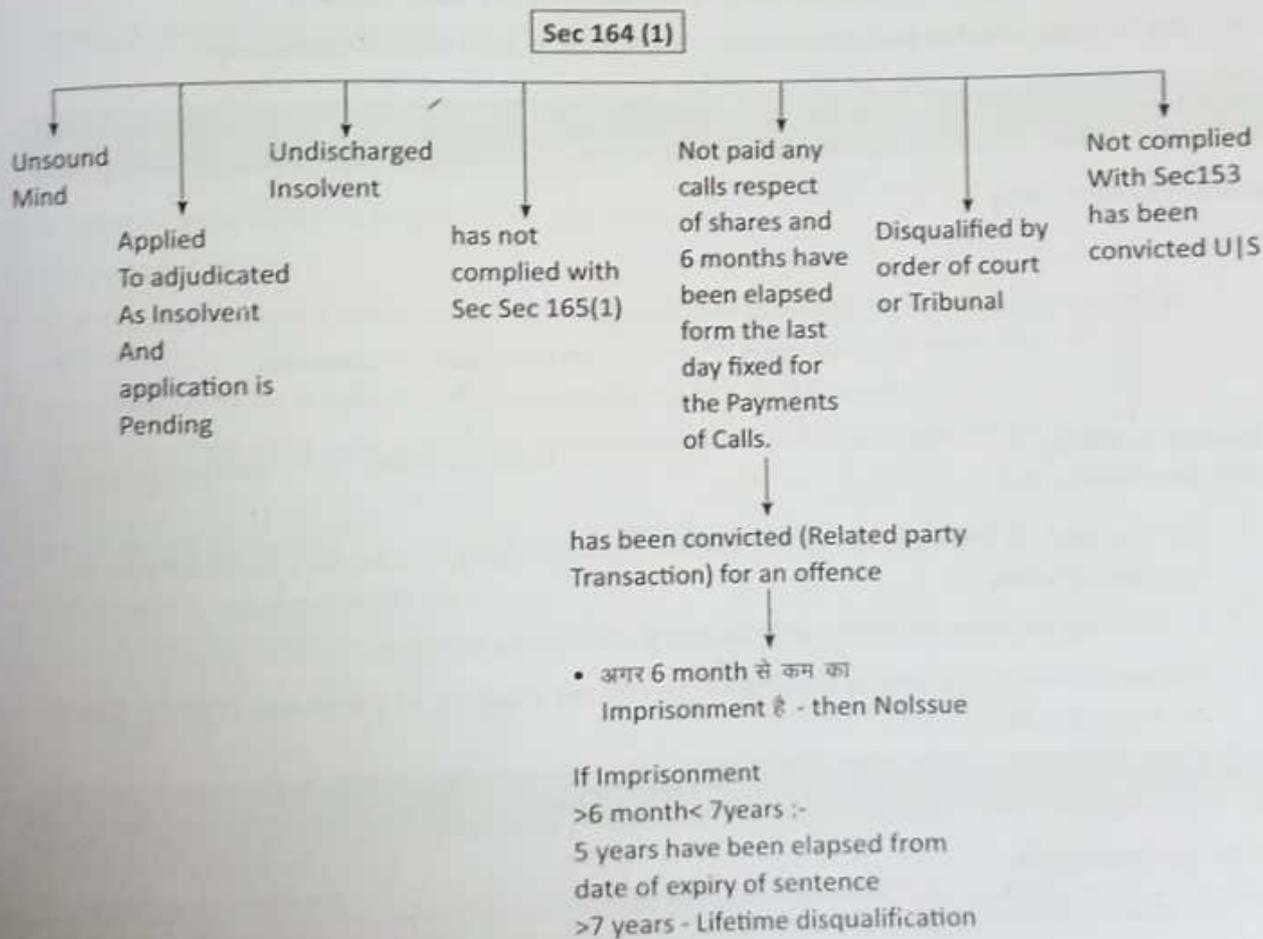
OPTION TO ADOPT PRINCIPLE OF PROPORTIONAL REPRESENTATION FOR APPOINTMENT OF DIRECTOR

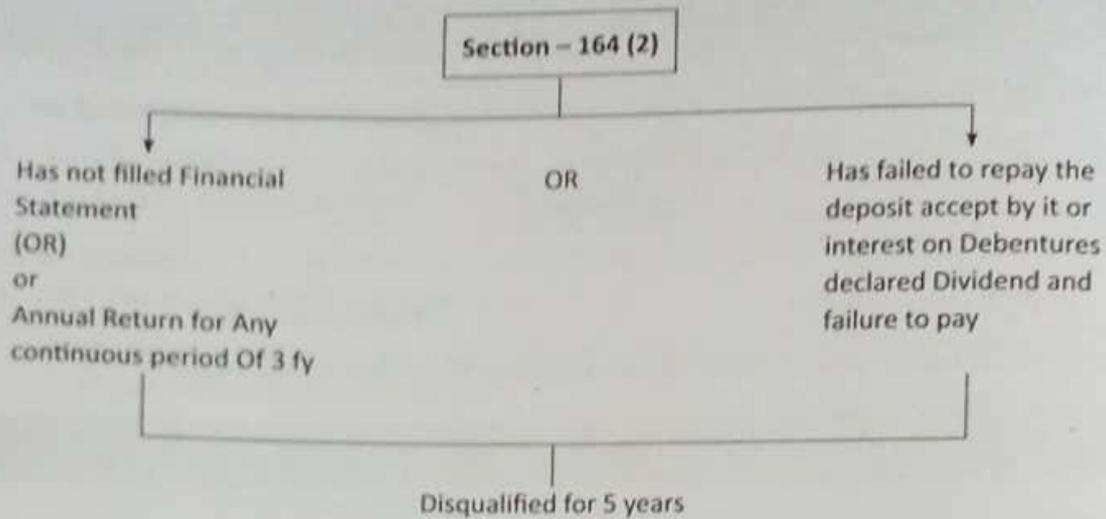


AOA must authorize & if opted at least 2/3rd of directors to be appointed By this method.

SECTION - 164

DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTORS

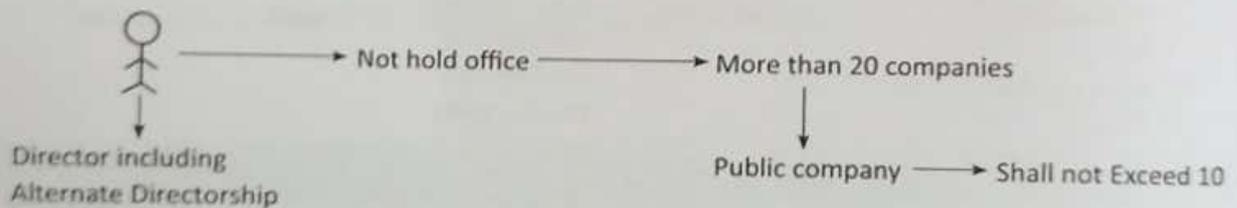




- Ineligible to reappoint in that company and appoint in any other company
- Any Director who has been appointed in last 6 months from date of appointment

SECTION 165

Number of Directorship



- [for counting 10, Directors in Pvt. Companies that are holding or subsidiary co. of a Public Co. shall be Included]
- Directorship in Dormant company & Section 8 Shall not be included.
- Members of Company may by passing SIR Specify any lesser no. of companies in which Director can act as Director.

SECTION 166

DUTIES OF DIRECTOR

- Act in accordance with Articles
- Act as per company's interest
- Act in good faith in order to promote objects of company

- No under advantage either to himself or his relative, Partners or Associates
- Personal Interest should not be conflicted with company interest
- Director cannot assign office
- Director shall exercise his duties with due care.

SECTION 167

VACATION OF OFFICE OF DIRECTOR

a) Disqualifications U/S 164

if disqualified U/S 164 (2), the office of director shall become vacant in all the Companies other than company which is in default.

b) Does not attend all BM held during a period of 12 months



c) He acts in contravention of provision of section 184



Contract में director का interest है but disclose नहीं किया है.

d) he fails to disclose his interest in any contract.

e) he become disqualified by a an Order of a Court or Tribunal.

f) he is removed uls 169.

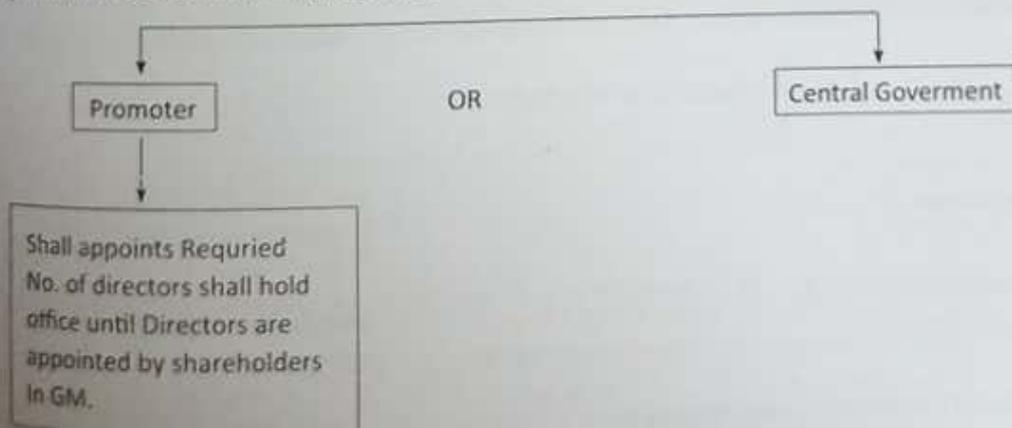
g) where he was appointed as director by virtue of some other position and now Ceases to hold that position.

h) he is convicted for an of fence for Imprisonment far not less than 6 month.

i) he will not vacate office upto 30 days She should appeal within 30 days If appeal is disposed he shall reappeal within

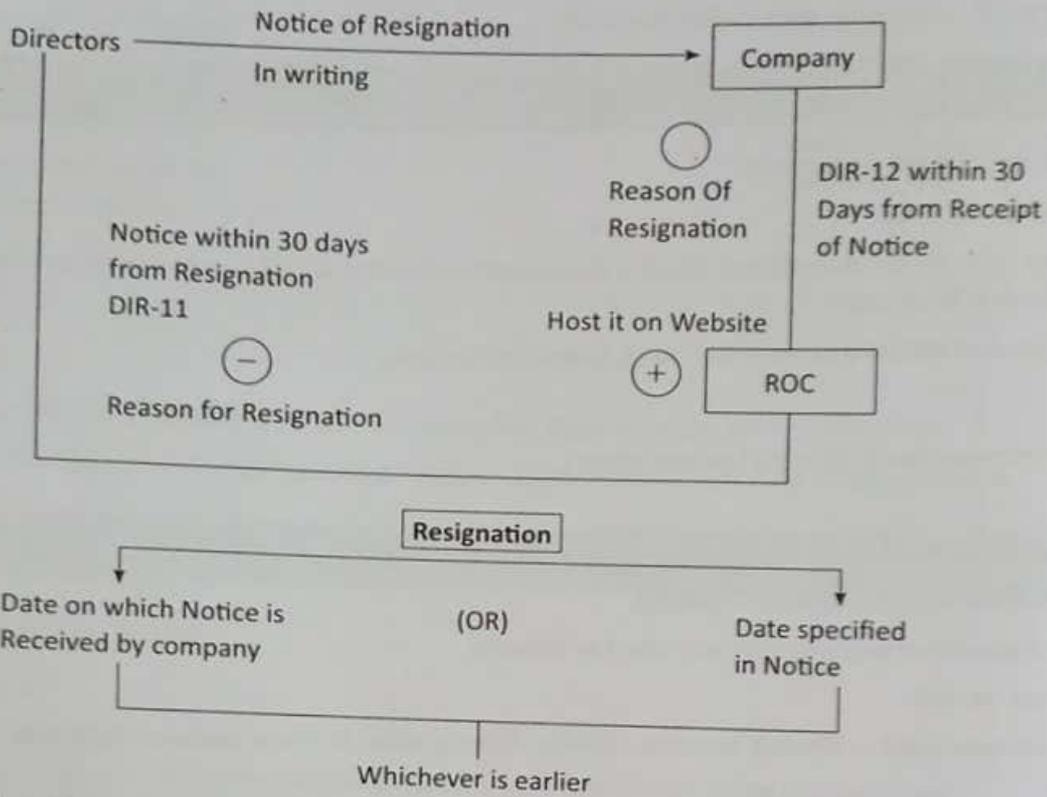
7 Days → still disposed of → then he may be Removed.

Q) what if there is vacuum in the Board ?



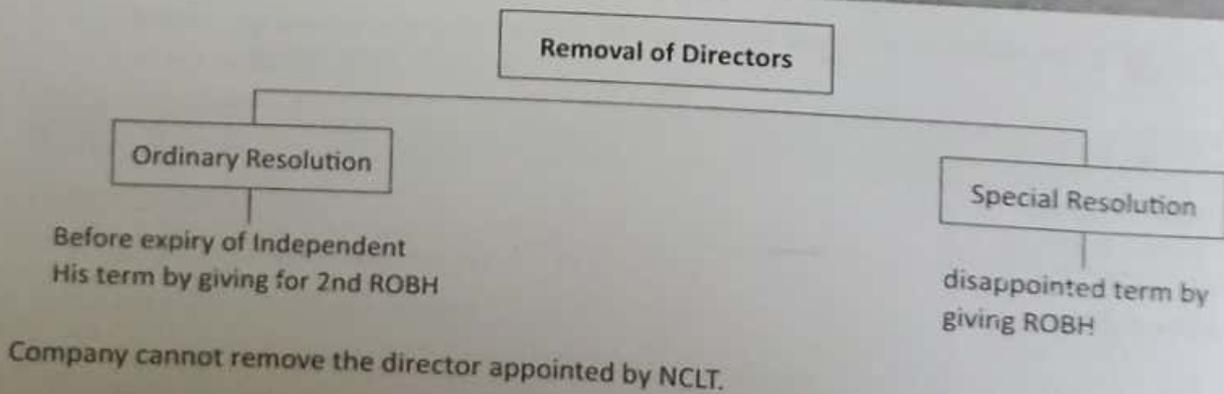
SECTION 168

RESIGNATION OF DIRECTOR

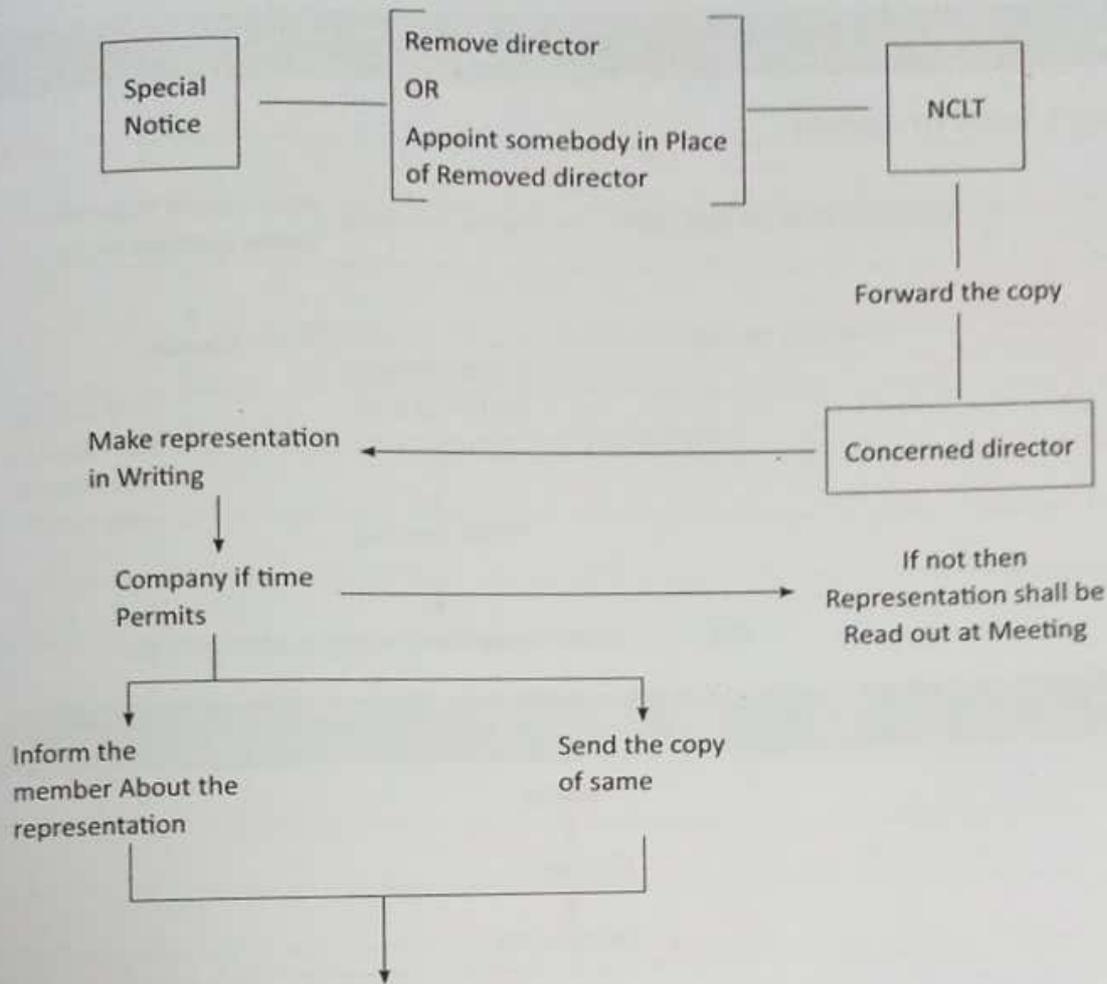


- Also Place the fact of such Resignation in Director's Report laid in GM. Provided, Director who has resigned shall be liable ever after his Resignation For offence which occurred during his Resignation

SECTION 169



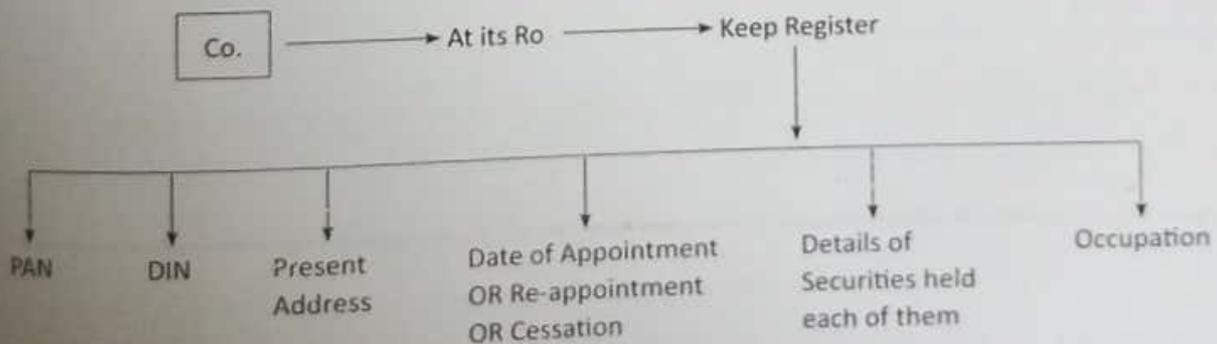
APPOINTMENT AND QUALIFICATION OF DIRECTORS



No need to do so, if NCLT is satisfied by Application of company or person aggrieved That this Right is being utilized to serve Needless Publicity.

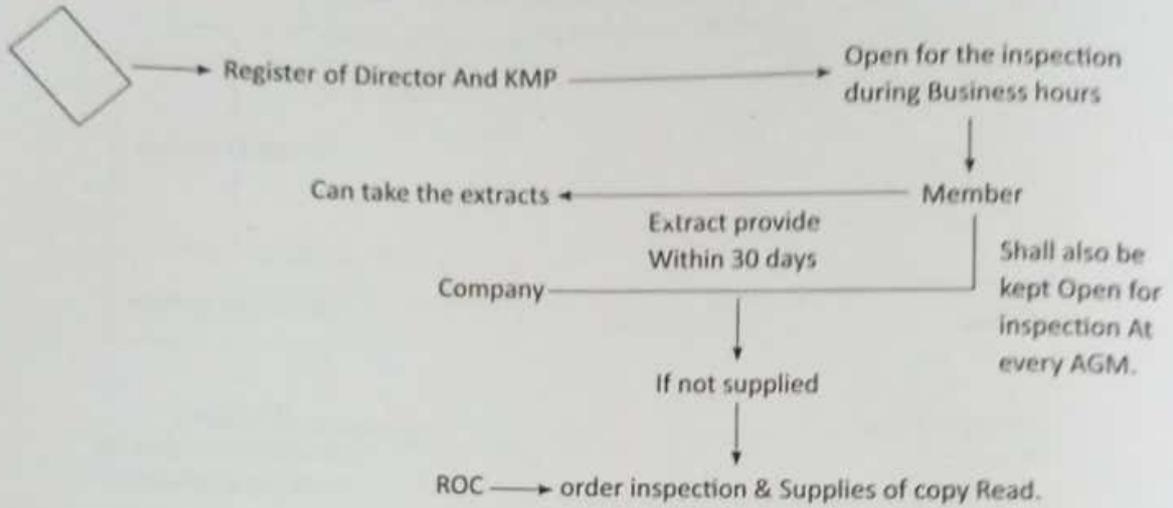
SECTION - 170

Register of Directors and KMP and Their Shareholding

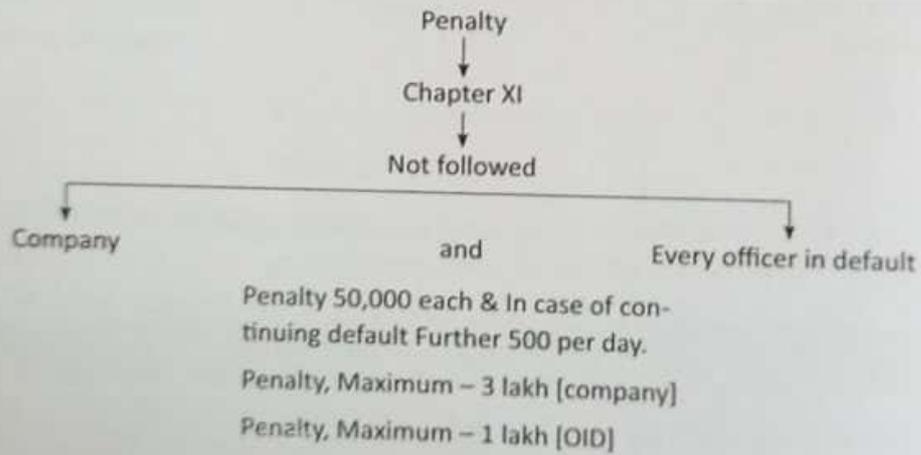


SECTION - 171

MEMBER'S RIGHT TO INSPECT



SECTION - 172



INSPECTION, INQUIRY & INVESTIGATION

SEC-206

POWER TO CALL FOR INFORMATION, INSPECT BOOKS AND CONDUCT ENQUIRIES

1. On Basis of
- Scrutiny of any document filled by Co.
 - Any Infor. Received by Roc

Roc is the opinion that further

- Documents
- Explanation
- Information

It may by written notice Require Co. to

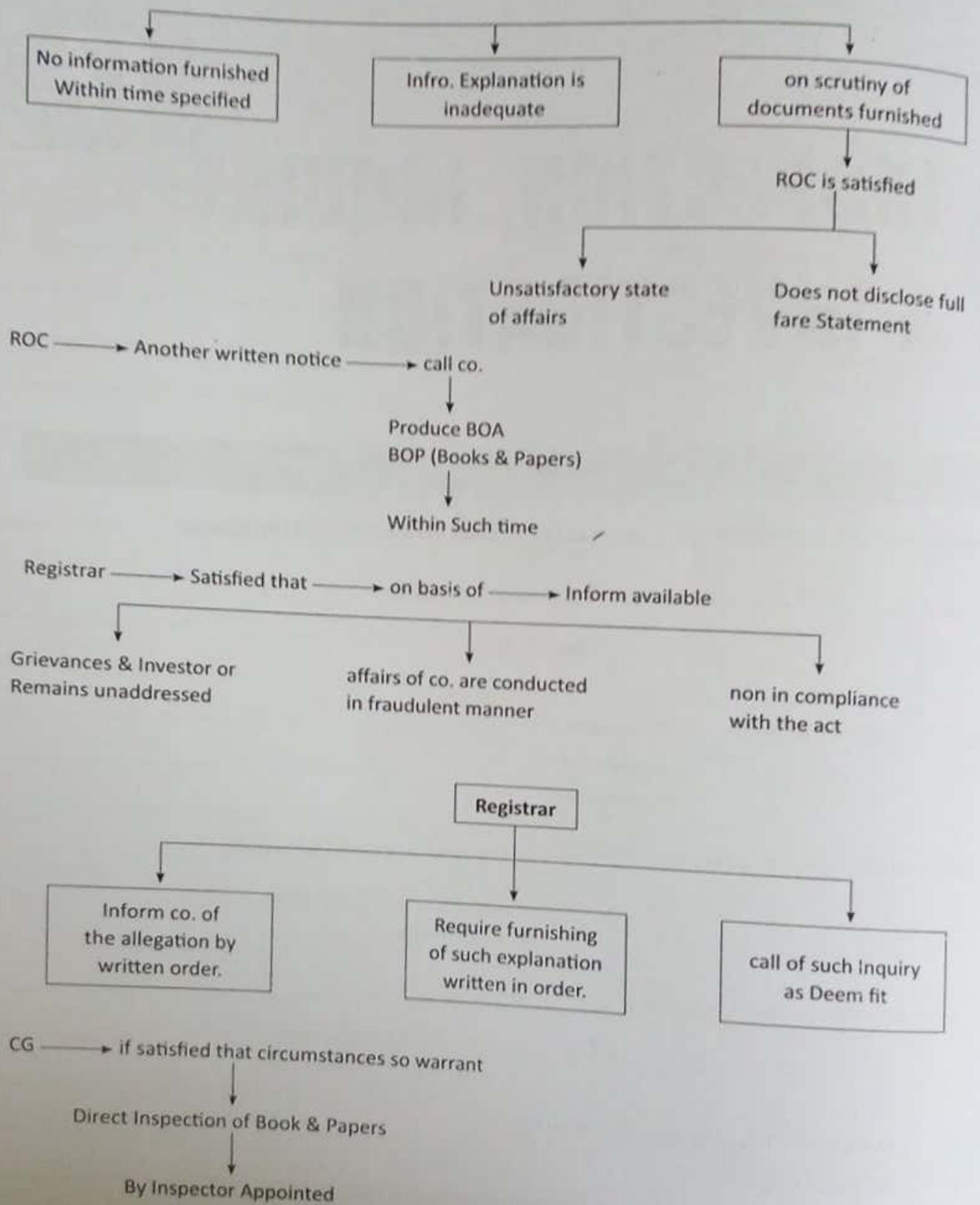
- Furnish in writing such Explanation
- Produce such document Within Reasonable time.

2. on receipt of such note, it is the Duty
- CO.
 - its officer concerned to furnish the required Infor.

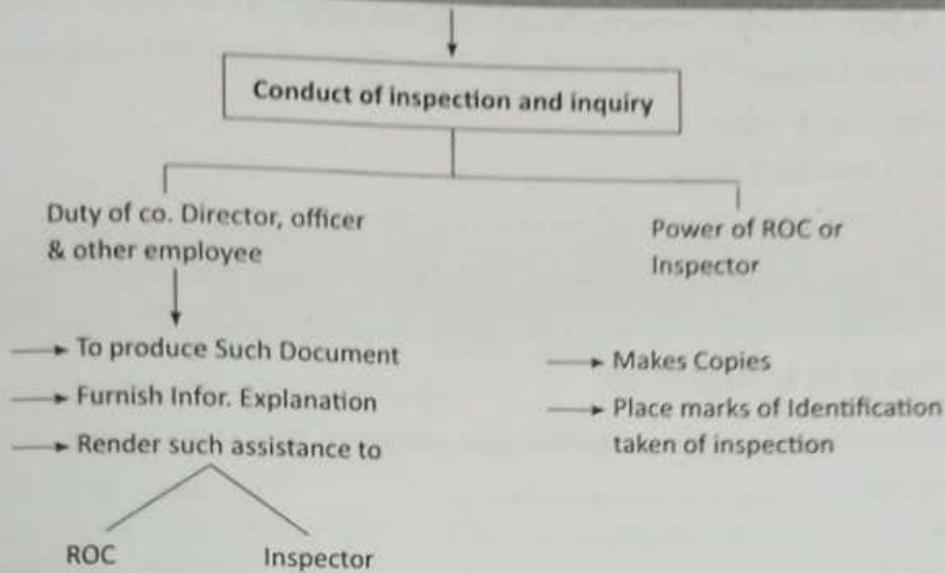
WHERE EXPLANATION RELATES TO PAST PERIOD

The officer who was employee.

In such Past Period: shall also furnish such information to best of their knowledge.



SECTION 207



If any director or other officer is convicted Under this section, he. shall be Deemed to vacate his office.

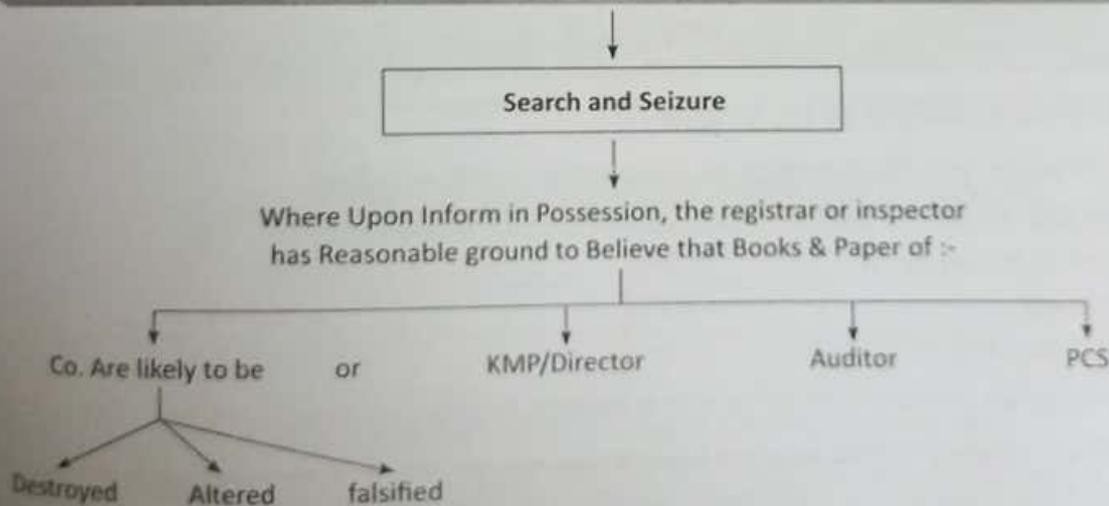
SECTION-208

REPORT OF INSPECTION MADE

Roc after inspection → Report in Inspector or Inquiry U/S writing to 206/207 CG.

& they may recommend further investigation along with reasons.

SECTION-209



Search & seize सभी हो सकता जब Inspector Special court से approval लेकर आएगा

The inspector may offer obtaining the approval of Special Court :

- (a) enter & Search the Place When Books and Papers are kept.
- (b) Seize Books & Papers.

custody of seize Books & Papers

- Period not later the 180 days.
- Books & Papers may further Period be called for 180 days.

SECTION 210

INVESTIGATION INTO AFFAIRS OF CO.

Where an is opinion that it is necessary to investigate affairs of o. Based on:-

- Report U/S 208
- Public Intt.
- SR Passed by Co

When order of Investigate in passed by Court / Tribunal, CG Shall pass an order

SECTION 211

SFIO

Serious fraud Investigation office

CG to establish SFIO to Investigate frauds Relating to co.

SFIO to headed by Director appointed by CG

SECTION 212

INVESTIGATION INTO AFFAIRS OF CO. BY SFIO

Where CG is of opinion that affairs ought to be Investigation by SFIO based on:

- Reposts u/s 208
- Intimation of SR Passed by Co.
- in Public interest
- on request of any Dept. of CG & SG

CG may by order, assign such investigation to SFIO & Director, SFIO to designates inspectors.

- Where a case is assigned to SEIO, no other Investigating agency Shall initiate. Investigation in respect of offence.

In case investigation had already been initiated It shall not be proceeded with.

SFIO Shall Prepare a report & submit it to CG.

No Person accused u/s 447 of this act Shall be released on bail.

provided that following Person may be released on bail if special court Direct.

- > Age <16
- > Women
- > sick women

SECTION 213

INVESTIGATION INTO COMPANY AFFAIRS IN OTHER CASES:

Tribunal may order Investigation in following Cases :-

On an application made by:

- > Co. having SC- Not less than 100 person Members or member at least 1/10 on application made by any if NCLT is satisfied that Of TUP
- > Co. Not having SC-Not less than 1/5th Of total members.

Business is being conducted	person concerned	members not given
With intent to defraud	with management	all Information
Creditors members, other.	Of Co. is guilty of	
	Fraud or other Misconduct.	

- > for a fraudulent purpose
- > manner aspersive to member

SECTION 214

SECURITY FOR PARMENT OF COSTS AND EXPENSES OF INVESTIGATION

Before appointing Inspector for investigation U/S 210 or 2/3, CG Shall require the applicant to given the below security for Payments.

T/O as per Previous Year	Security
Up to 50 cr.	10,000
50 - 200cr.	15000
Above 200 cr.	25000

Above security shall be refunded to applicant if investigation respect in prosecution.

SECTION 215

No firm, Body Corporate, or other association shall be appointed as inspector.

SECTION 216

INVESTIGATION OF OWNERSHIP OF CO.

Where CG has a reason to do so, it may appoint inspector to investigate & report matters relating to co & its member to determine the true Person:

Financially interest in	who controls the	has beneficial Intt.
Success & failures of CO.	Policies of CO.	in CO.

SECTION 219

POWER OF INSPECTOR TO CONDUCT INVESTIGATION INTO AFFAIRS OF RELATED CO.

if the inspector appointed for investigation U/S 210 & 212, Consider if necessary for purpose of investigation to investigate affairs of following Person, it may do so, with prior approval of CG.

- other Body Corporate Which is subsidiary / Holding / associate.
- other Body Corporate which has been managed by MD/ Manager who is or MD/Manager of Co.
- other Body corporate Whose BOD is accustomed to act as per Director of co.
- any Person who is was MD/ Manager employee of Co.

SECTION 217

POWER OF INSPECTOR

Duty of Co. & its officer/ employee/agent	To pressure & Produce Books & papers give Assistance to inspector For investigation
---	--

Inspector may require Body corporate Other than Body corporate under investigation to furnish such infor. as necessary.

SECTION 218

PROTECTION OF EMPLOYEES DURING INVESTIGATION

If during the course of investigation

Such company Proposes:-

- To suspend any employee or
- To Punish him
- To change the terms of employment to his disadvantage

such co. shall obtain approval from tribunal.

COMPROMISE, ARRANGEMENT & AMALGAMATION

SEC 230-240 READ WITH THE COMPANIES (COMPROMISE, ARRANGEMENTS AND AMALGAMATIONS) RULES, 2016

NOTES CONTAIN ONLY RELEVANT PROVISIONS:

Merger & Amalgamation

- Fusion or absorption of one Co. by other co.
- Identify of one or more entity is lost.

Amalgamation

Legal process by which 2 or more companies are joint together from a new entity or one or more companies are to be absorbed with another.

SECTION 230 -> COMPROMISE & ARRANGEMENT

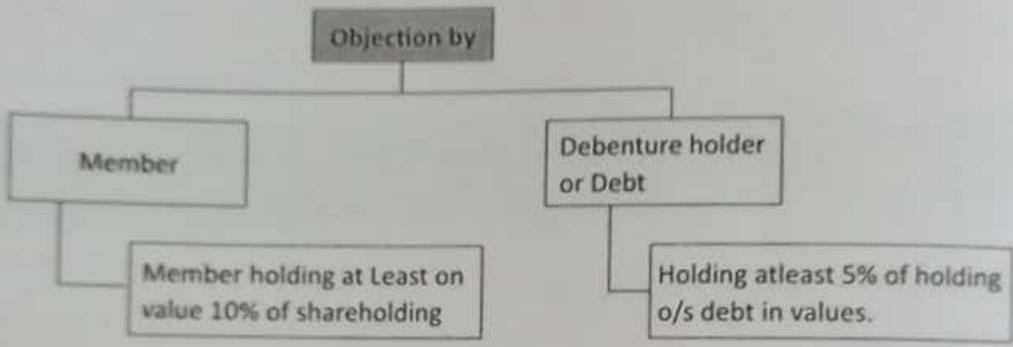
1. Application to NCLT by

Company	Going Concern
Member	
Creditor	
Liquidator	Winding Up/Wound up

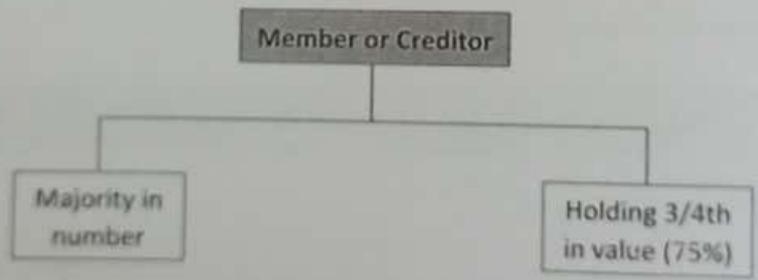
2. Attachment (MAFI)

- All Material fact
- Latest financial position

- Latest auditor report
 - Details of pending Litigation (Investigation Report)
 - Details of Reduction of share Capital
 - Debt Restructuring scheme (DRS)
 - Approved by 75% of Creditors in value
3. **Direction:** NCLT will give the direction to conduct the member of creditor or class of creditor (Ex-secured or Unsecured) member or class of member.
 4. **Intimation:** Intimation to creditor or class of creditor or member or class of member or debenture or class of along with notice, send scheme of Compromise or arrangement
 5. **Objection:**



6. **Intimation:** Intimation to regulatory body like CG, RBI IT authority, SEBI, CCI, Stock Exchange
7. **Objection:** Representation/objection within 30 days from such no.
8. **Confirmation:**



- Final application to NCLT for C&A
- If NCLT is satisfied to Roc within 30 days from receipt of C&A
- If NCLT is satisfied, NCLT may pass order of C&A
- NCLT shall supervise the scheme of C&A
- If such is not implemented satisfactory then NCLT will pass winding up order.

SECTION 232 MERGER & AMALGAMATION OF COMPANY:

- Application 10 NCLT as per u/s 230 if involves scheme of M
- Direction by Tribunal to hold the Meeting
- Intimation to Member or creditor
- Board of director adopt the scheme of Merger & Amalgam
- Approval Majority in number & 3/4th in value.
- Final Application in Tribunal for sanction of scheme

Effect of Order

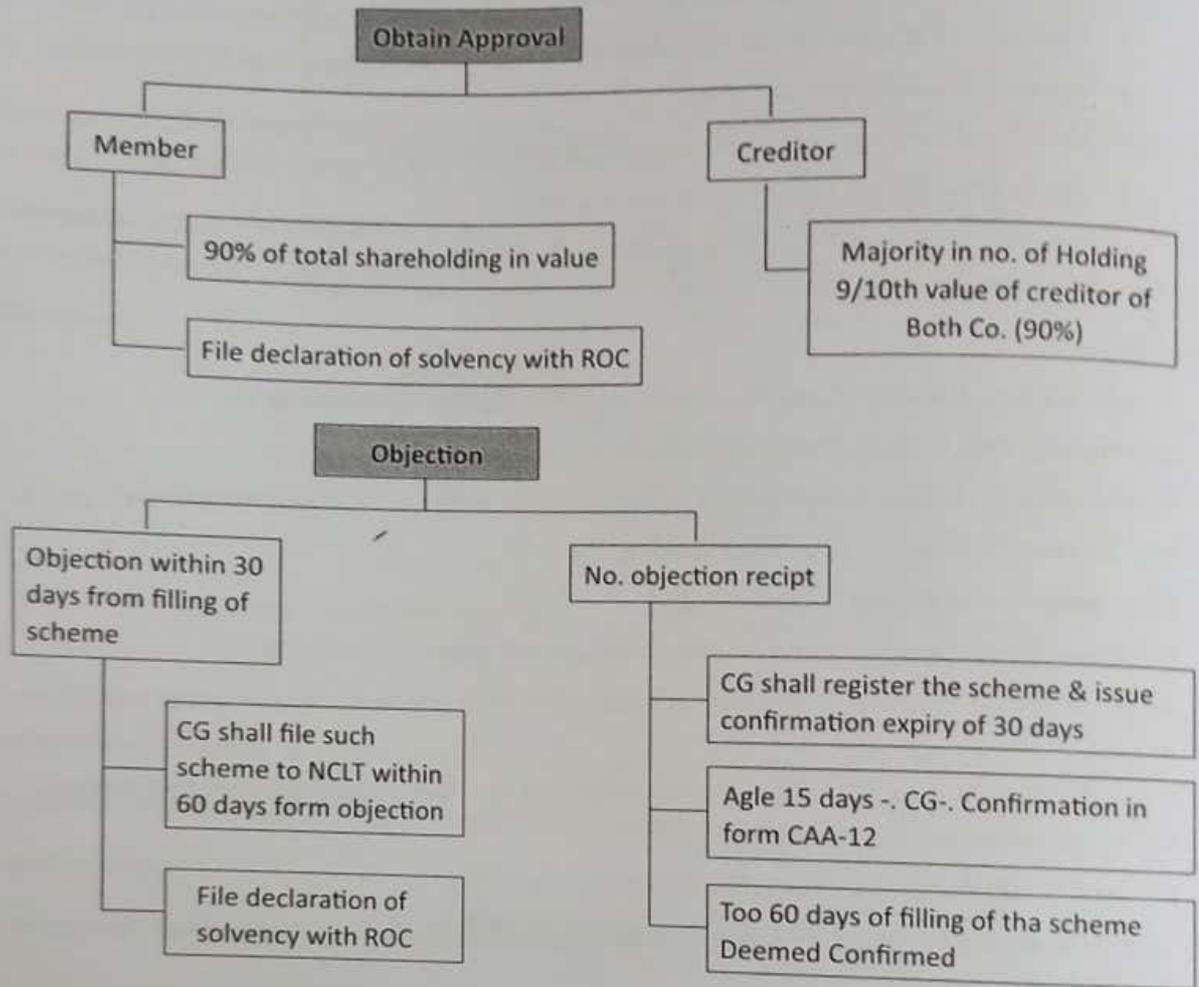
- Property, assets, Liability of transferor Company shall transfer to transferee Co.
- Shareholder, debt holder, and other security holder of transferor
- Continuation of Legal proceeding by or against the transferor Co. shall transfer to transferee co.
- Dissolution of transferor Co. without Winding Up
- Make provision for dissenting shareholder
- Employee of transferor Co. becomes the Employee of transfer
- No transferee Co. can hold Share in its own name or Under any trust name or under subsidiary name.
- If transferor Co is listed Co. & transfer Co. is Unlisted Co. Then in such situation transferee Co. remain Unlisted until its become listed.
- File auditor certificate to tribunal that As is duly complied
- Scheme Shall indicate appointed date from such merger & amalgamation shall take effect (Date mentioned in scheme)
- Copy of order shall file to ROC within 30 days from receipt of order.
- Annual statement certified by CA/CS/CMA. Shall filed with Roc every year until the completion of Scheme.

M&A of certain Company Section 233 [Fast track Merger]

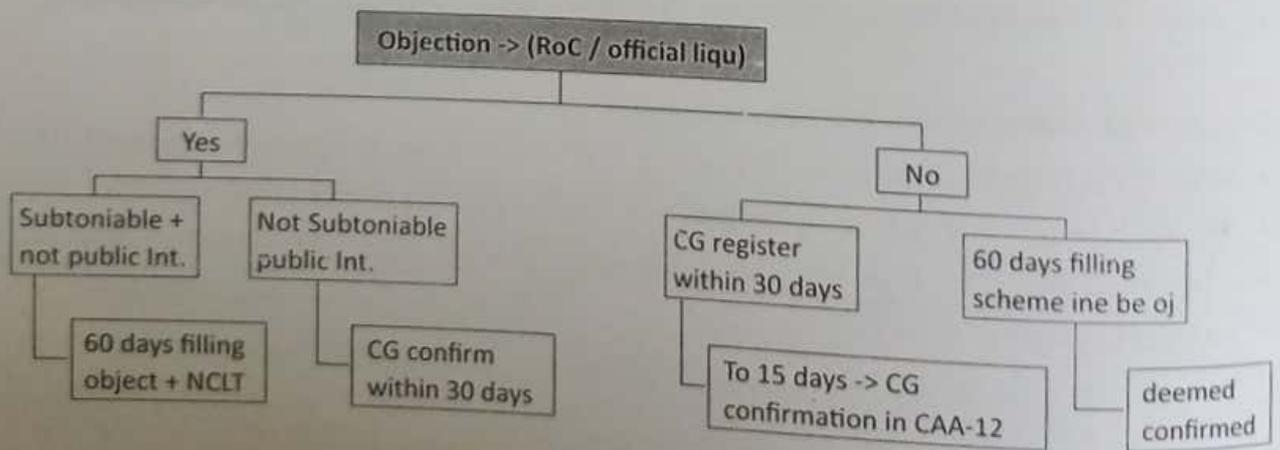
- M&A of 2 or more Small Co.
- M&A of holding with its subsidiary Company.
- M&A of 2 or more Startup Co. with 1 or more Small co.
- M&A of 2 or more startup Co.

Procedure-

Prepare the scheme & file with Kos & official liquidation and invite objection within 30 days from filing of Scheme



Short Summary



➤ **M&A of Public Co in Public Interest Section 237**

- Power given to CG
- If CG satisfied that it is in Public Int, may by notification in official Gazette provides merger & amalg.
- Rights of Member Creditor, debenture holder of transfer Co. remain nearly same.
- In case changes in Rights of transfer Co., they shall be entitled for compensation.

Procedure:-

- Central Govt Shall send draft scheme to each Co.
- Co may specify the modification within 2 month
- Ch shall file final order before both house of parliament

Objection:- Aggrieved party file appeal to NCLT within 30 days from date of order.

Merger & Amalgamation of foreign co:-

- M&A of Indian Co. with foreign co.
- Obtain RBI approval
- Follow FEMA provision
- Payment in Cash I depository receipt or Both

“Believe In Yourself And Anything Is Possible”

By CS Shivani Miglani

- ACS
- Faculty for CS Executive Company Law, CA Inter Corporate Law & Judiciary Exams.
- Clear CS at age of 19
- Starting Teaching Company Law in 2021.
- Makes Difficult Subject Like Company Law, Simple to understand
- Makes everything so simple so easy.
- Plays multiple roles as a Teacher Guide, Mentor and Elder sister.



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