



# 57



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— CA SHUBHAM SINGHAL —



## RANKS IN CA FINAL NOVEMBER 2023



2	SANSKRUTI PAROLIA
8	SHRUTI PAROLIA
10	ANSHUL SINGHAL
10	JAY KANT BERIA
10	NIKITA GOYAL
10	MEET KUVADIA
11	KAVYA MURTHY
14	PRAACHI SHARMA
14	ROHAN S
16	ADITYA LAKHOTIA
17	MAYANK HOLANI
19	SHASWAT GOYAL
20	VANDIT JAIN
20	MRIDULA SUBRAMANYAM

22	VIJAY BALUKA
23	ISHAAN PETHE
25	ADITYA MAHESHWARI
25	PRAKHAR AGRAWAL
26	AYUSHI KHEMKA
26	AMAY GUPTA
26	SHIVANI RAICHURA
27	MOHAMMED FAWAS
27	ISHA DELIWALA
29	SARTHAK MARWARI
29	HARSH AGRAWAL
30	ANKIT BANSAL
31	BHAVIN SHAH
32	SAKET AGRAWAL
32	PARTHIV CHHABRIA

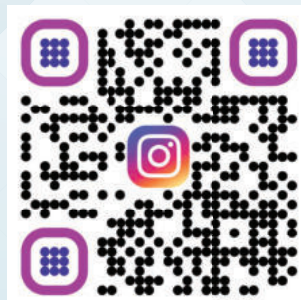
34	ANUSHKA MANDOT
34	NIMIT SHAH
35	SNEHIL B JAIN
39	DEEP BANSAL
40	VENU AGGARWAL
41	YASH INGALE
41	ARHAM MEHTA
41	YUVRAJ GUPTA
42	AKSHIT AGARWAL
43	PALASH AGRAWAL
43	SUYASHA SHRISHRIMAL
44	BHAWESH RAMCHANDANI
45	SHRAVAN MUNDRA
45	MANTHAN MEHTA
45	TUSHAR JAIN

45	TWINKLE CHAUHAN
46	VISHAL MALARA
46	SMRITI JAIN
47	UJWAL VAKHARIA
47	LUBDHI SANGHVI
48	SNEHA
48	SHRUTI GUPTA
48	SUBODH BARI
49	RIDHI AGGARWAL
49	ANKITH N
49	CHAITANYA JHUNJHUNWALA
50	DEEPANSHU METHI
50	ARCHIT NAVALAKHE
?	YOUR NAME

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## Chapter 1 Preliminary



### Objective of this Act

Act to **consolidate** and amend the law relating to companies.



### Enactment

- Received the assent of the Hon'ble President of India on **29th August 2013**
- Notified in Official Gazette on **30th Aug 2013** (different dates may be appointed for enforcement)



### Flow

29 Chapters → 470 Sections → 7 Schedules

**Company:** An **incorporated** association which is an **artificial person**, having a separate legal entity, with a **perpetual succession**, a **common seal** (optional).



### Section 1: Short Title, Extent, Commencement and Application:

Short Title	Companies Act, 2013
Extent	Whole of India (by default includes J&K)
Commencement	From date as appointed by <b>CG</b> by notification in <b>OG</b>
Applicability	The provision of this Act shall apply to: <ul style="list-style-type: none"> <li>a. <b>companies incorporated</b> under this Act or under any previous company law.</li> <li>b. <b>insurance</b> cos., except where provisions are inconsistent with that of Insurance Act, 1938 or IRDA Act, 1999;</li> <li>c. <b>banking</b> companies, except where provisions are inconsistent with that of Banking Regulation Act, 1949</li> <li>d. cos. engaged in generation/supply of <b>electricity</b>, except where provisions are inconsistent with that of Electricity Act, 2003</li> <li>e. other company governed by any <b>Special Act</b>, except where provisions are inconsistent with that of Special Act (Ex: LIC, RBI)</li> <li>f. such <b>body corporate</b>, incorporated by any Act for the time being in force, as may be <b>notified by CG</b> [Example - Food Corporation of India (FCI), National Highway Authority of India (NHAI)]</li> </ul>



### Section 2: Definitions: ('Internal aids to construction')

In this Act, unless the context otherwise requires:

#### 1 Abridged Prospectus

Means a **memorandum** containing such **salient features** of a **prospectus** as may be specified by the Securities and Exchange Board by making regulations in this behalf

## 2 Accounting Standards (AS)

Means AS or any **addendum** thereto for companies or class of companies referred u/s 133;  
Section 133: Central Government to Prescribe Accounting Standards

As per Sec 133, CG may prescribe the AS or any addendum thereto, as recommended by **ICAI**, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by **National Financial Reporting Authority (NFRA)**



**Rule 7 of Companies (Accounts) Rules, 2014:** Accordingly,

- i. The standards of accounting as specified under Companies Act, **1956** shall be deemed to be AS until AS are specified by CG u/s 133.
- ii. Till the NFRA is constituted u/s 132 of the Act, the CG may prescribe AS or any addendum thereto, as recommended by ICAI in consultation with and after examination of recommendations made by **National Advisory Committee(NAC)** on AS constituted u/s 210A of Companies Act, **1956**.

Further, in exercise of powers conferred u/s 133, the CG in consultation with the NAC on AS prescribed that Companies (AS) Rules, 2006 and Companies (Ind AS) Rules, 2015 may be followed.

## 3 Alter or Alteration

**Includes** the making of additions, omissions and substitutions;

## 5 Articles

Means the **articles of association** of a company:

- as **originally** framed, or
- as **altered** from time to time, or
- applied in pursuance of any **previous** company law or **this** Act;

## 6 Associate Company

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

Explanation: For the purpose of this clause:

- (a) "Significant influence" means control of **at least 20% of total voting power**, or control of or participation in **business decisions** under an agreement;
- (b) "Joint venture" means a **joint arrangement** whereby the parties that have **joint control** of the arrangement have rights to the net assets of the arrangement

Clarification: Shares held by a company in another company in a **fiduciary capacity** shall **not be** counted for the purpose of determining the relationship of associate company

A fiduciary is a person who holds a **legal or ethical relationship** of trust with one of more parties (persons or group of persons). Typically, a fiduciary prudently takes care of money or other assets for another person.

7 Auditing standards

means the standards of auditing or any addendum thereto for companies or class of companies referred to u/s 143(10)

Section 143(10) - CG may prescribe the standards of auditing or any addendum thereto, as recommended by ICAI, constituted u/s 3 of the CA Act, 1949, in consultation with and after examination of recommendations made by NFRA.

Provided that until any auditing standards are notified, any standard or standards of auditing specified by the ICAI shall be deemed to be the auditing standards.

8 Authorised Capital or Nominal Capital

means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company;

10 Board of Directors or Board

means the collective body of the directors of the company

11 Body corporate or Corporation

Includes a company incorporated outside India, but does not include:

- i. a co-operative society registered under any law relating to co-operative societies; and
- ii. any other body corporate (not being a company as defined in this Act), notified by CG;

12 "Book and Paper" and "Book or Paper": Includes: [WARM DVD]

maintained on paper or in electronic form;

13 "Books of account" includes records maintained in respect of:

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

14 Branch office, in relation to a company, means any establishment described as such by the co.;15 Called-up capital means such part of the capital, which has been called for payment;16 Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

- 17 Chartered Accountant means a CA as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a **valid certificate of practice** u/ss 6(1) of that Act;
- 18 Chief Executive Officer means an officer of a company, who has been **designated** as such by it;
- 19 Chief Financial Officer means a person **appointed** as the Chief Financial Officer of a company;
- 20 Company means a company **incorporated** under this Act or under any previous company law;  
Example: RIL (1973), Tata Steel (1907), Infosys (1981).
- 21 Company limited by guarantee means a company having the **liability** of its members **limited** by the memorandum to such amount as the members may **respectively undertake to contribute** to the assets of the company in the event of its being **wound up**;
- 22 Company limited by shares means a company having the **liability** of its members **limited** by the **memorandum** to the amount, if any, **unpaid on the shares respectively held** by them;  
Example: A shareholder who has paid Rs. 75 on a share of face value Rs. 100 can be called upon to pay the balance of Rs. 25 only.
- 26 Contributory means a person **liable** to contribute towards the assets of the company in the event of its being **wound up**.  
Explanation: For the purposes of this clause, it is hereby clarified that a **person holding fully paid-up** shares in a company shall be considered as a contributory **but** shall have **no liabilities** of a contributory under the Act whilst retaining rights of such a contributory;
- 27 Control shall **include**:
- the right to appoint **majority** of the **directors** or
  - to control the **management** or **policy decisions** exercisable by a person(s) acting individually or in concert, directly or indirectly,
  - including by virtue of their **shareholding** or **management rights** or shareholders agreements or voting agreements or in any other manner
- 30 Debenture includes debenture stock, bonds or any other instrument of a company **evidencing a debt**, whether constituting a charge on the assets of the company or not.  
Provided that, following instrument shall not be shall not be treated as debenture:
- a. **instruments** referred to in Chapter III-D of the RBI Act, 1934; and
  - b. such other instrument, as may be prescribed by **CG** in consultation with RBI, issued by Co.
- 34 Director means a **director appointed** to the Board of a company;
- 35 Dividend includes any **interim dividend**;

- 36 Document includes **summons, notice, requisition**, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form;
- 37 Employees stock option means the **option** given to the **directors, officers or employees** of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or **right to purchase**, or to subscribe for, the shares of the company at a **future date** at a **pre-determined price**;
- 38 "Expert" includes an **engineer**, a **valuer**, a **CA**, a **CS**, a cost accountant and any other person who has the power or authority to **issue a certificate** in pursuance of any law for the time being in force;
- 2 40 Financial statement in relation to a company, includes:
- Balance sheet** as at the end of the financial year;
  - a **profit and loss account**, or in the case of a company carrying on any activity **not for profit**, an income and expenditure account for the financial year;
  - cash flow statement (CFS)** for the financial year\*;
  - a statement of changes in equity, if applicable; and
  - any **explanatory** note annexed to, or forming part of, any doc. referred in above sub-clause:
- \*Provided that the FS, with respect to **OPC, small co. and dormant co. and Private company (startup)**, may not include **CFS**;
- 4 41 Financial Year, in relation to any company or BC, means **period ending on 31st day of March every year**, and where it has been **incorporated on or after the 1st day of January** of a year, the period ending on the 31st day of March of the **following year**, in respect whereof FS of the company or BC is made up.
- Provided that where a company or BC, which is a holding company or a subsidiary or associate company of a **company incorporated outside India** and is required to follow a different FY for consolidation of its accounts outside India, the **CG** may, on an application made by that company or BC in such form and manner as may be prescribed, **allow any period as its FY**, whether or not that period is **a year**.
- 43 Free reserves means such reserves which, as per the latest audited balance sheet of a company, are **available for distribution as dividend**.  
Provided that, following shall not be treated as free reserve:
- any amount representing **unrealised gains, notional gains**, or revaluation of assets, whether shown as a reserve or otherwise, or
  - any change in **carrying amount** of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at **fair value**;

44 Global Depository Receipt (GDR): means any **instrument** in the form of a depository receipt, by whatever name called:

- **created** by a **foreign depository outside India** and
- **authorised** by a **company** making an issue of such depository receipts.

45 Government company means:

- any co. in which **not less than 51%** of paid-up share capital is held by **CG**, or by any **SG**, or partly by **CG** and partly by one or more **SG**, and
- **includes** a company which is a **subsidiary co. of such Government co.;**

46 Holding company, in relation to one or more other companies, means a company of which such companies are **subsidiary companies**;

50 Issued Capital means such capital as the company **issues** from time to time **for subscription**;

51 Key Managerial Personnel, in relation to a company, means:

the CEO or the managing director or the manager;

the company secretary;

the whole-time director;

the Chief Financial Officer here

such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

such other officer as may be prescribed;

10 Listed company means a **company** which has any of its securities listed on any **recognised stock exchange ("RSE")**;

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



According to Rule 2A of the Companies (Specification of definitions details) Rules, 2014, the following classes of companies shall not be considered as listed companies, namely:

- a. **Public** companies which have **not listed their equity** shares on a RSE but have listed their:
  - i. **non-convertible debt securities** issued on **private placement basis** in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
  - ii. **non-convertible redeemable preference shares** issued on **private placement basis** in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;
  - iii. **both** categories of (i) and (ii) above.
- b. **Private** companies which have listed their **non-convertible debt securities on private placement** basis on a RSE in terms of SEBI Regulation, 2008;
- c. **Public** companies which have not listed their equity shares on a RSE but whose **equity shares are listed on a stock** exchange in a jurisdiction as specified in sec 23(3) of the Act.

53 Manager means an **individual** who:

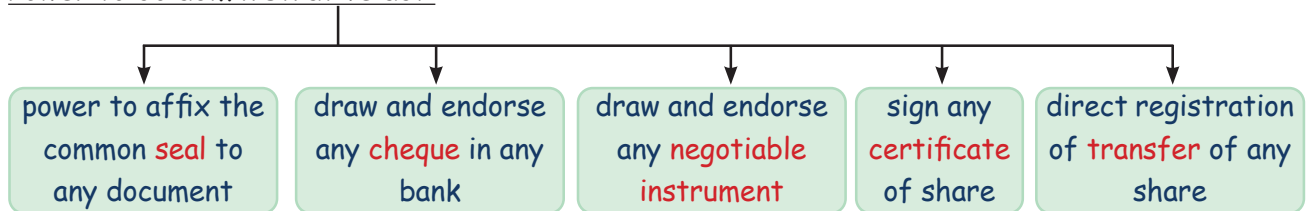
- subject to the superintendence, control and direction of the Board of Directors,
- has the management of **whole**, or **substantially the whole**, of the affairs of a company, and
- **includes a director** or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not;

54 Managing Director means a **director** who

- By virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors,
- is entrusted with **substantial powers of management** of the affairs of the company and
- includes a director occupying the position of managing director, by whatever name called.

Explanation: For the purposes of this clause, the **power to do administrative acts** of a **routine nature** when so authorised by the Board **shall not be deemed** to be included within the substantial powers of management;

Power to do administrative act:



55 Member in relation to a company, means:

- i. the **subscriber** to the memorandum of co. who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its **register of members**;
- ii. every other person who **agrees in writing** to become a member of the company and whose name is entered in the **register of members** of the company;
- iii. every person holding shares of the company and whose name is entered as a **beneficial owner** in the records of a **depository**;

56 Memorandum means the **MoA** of a company as **originally** framed or as **altered** from time to time in pursuance of any **previous** company law **or of this Act**;

3 57 Net worth means the:

Aggregate value of:

1. paid-up share capital,
2. **All reserves** created out of the profits,
3. Securities premium account &
4. debit or credit balance of P&L

After deducting aggregate value of:

1. the accumulated **losses**,
2. **deferred** expenditure &
3. miscellaneous **expense not written off**

Does NOT include:

1. Reserve created out of **revaluatn** of assets
2. **Write-back** of depreciation and amalgamation

- 58 Notification means a notification published in *OG* and expression "notify" to be construed accordingly;
- 59 Officer includes any *director, manager* or *KMP* or any person in accordance with whose directions or instructions the BoD or any one or more of the directors is or are accustomed to act;
- 60 Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the *following officers* of a company, namely:
- (i) *Whole-time director*;
  - (ii) *KMP*;
  - (iii) where there is *no KMP*, such *director(s) as specified* by the Board in this behalf and who has or have given his consent in writing to the Board to such specification, *or all the directors*, if no director is so specified;
  - (iv) any *person* who, *under the immediate authority of Board/KMP*, is charged with any responsibility including maintenance, filing or distribution of accounts or records, *authorises, actively participates* in, knowingly permits, or knowingly fails to take active steps to prevent, any default;
  - (v) any *person* in accordance with whose advice, directions or instructions the *BoD* of co. is *accustomed to act, other than* a person who gives advice to BoD in a *professional capacity*;
  - (vi) *every director*, in respect of a contravention of any of the provisions of this Act, who is *aware* of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings *without objecting* to the same, or where such contravention had taken place with his consent or connivance;
  - (vii) in respect of the issue or transfer of any shares of a company, the *share transfer agents, registrars* and merchant bankers to the issue or transfer;
- 62 One Person Company (OPC) means a company which has only one person as a member;
- 63 Ordinary or Special Resolution means an OR/SR as referred to in section 114;
- 64 Paid-up share capital or share capital paid-up means: such *aggregate* amount of *money credited* as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;
- 65 Postal ballot means voting by post or through any e-mode;
- 66 Prescribed means prescribed by rules made under this Act;

68 Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles:

- i. **restricts** the right to **transfer** its shares;
- ii. except in case of OPC, **limits** the number of its **members** to **200**:

Provided that in case **joint holding** - Treat them as **single member**.

Provided further, following shall **not be included** in number of members:

- a. persons who are in the **employment** of the company; and
- b. persons who, having been **formerly in employment** of co., were members of co. while in that employment and have **continued to be members** after employment ceased.
- iii. **prohibits** any invitation to the **public to subscribe** for any securities of the company;

The requirement of having a minimum PUSC shall **not apply to a Section 8 provided** it has not committed a default in filing its financial statements u/s **137** or annual return u/s **92** with RoC.

69 Promoter means a person:

- a) who has been **named** as such in a **prospectus** or is identified by co. in **annual return** u/s 92,
- b) who has control over the **affairs** of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- c) in accordance with whose advice, directions or instructions the Board of the company is **accustomed to act** (**except** where such person is acting merely in **professional capacity**)

70 Prospectus means any document described or issued as a prospectus and includes a **red herring prospectus** or **shelf prospectus** or **any notice**, circular, advertisement or other document **inviting** offers from the public for the subscription or purchase of any securities of a body corporate;

71 Public company means a company which:

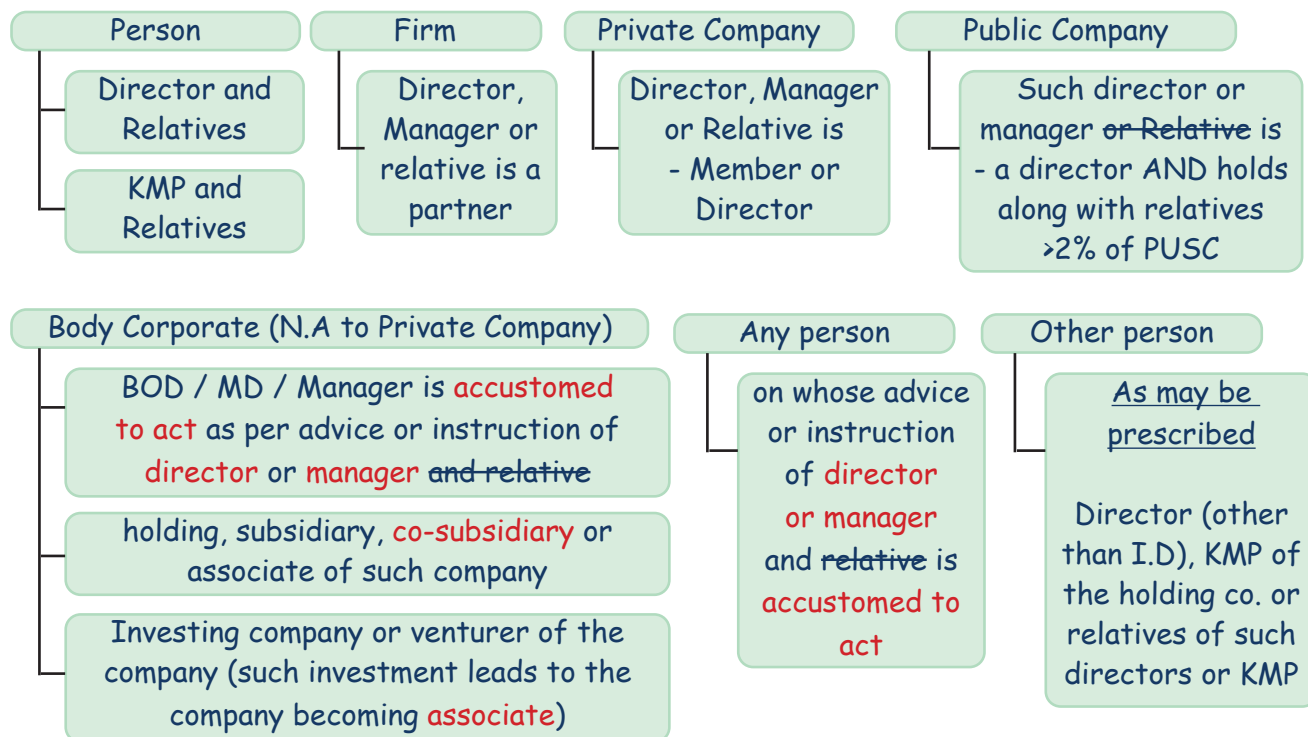
- i. is not a **private company**; and
- ii. has a minimum paid-up share capital as may be prescribed (N.A. to Sec 8 companies)

Provided that **subsidiary of a public co.** shall be **deemed** to be **public co.** for the purposes of this Act even where such subsidiary company continues to be a private company in its articles;

74 Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act;

75 Registrar means a **Registrar**, an **Additional Registrar**, a **Joint Registrar**, a **Deputy Registrar** or an **Assistant Registrar**, having the **duty** of registering companies and discharging various functions under this Act

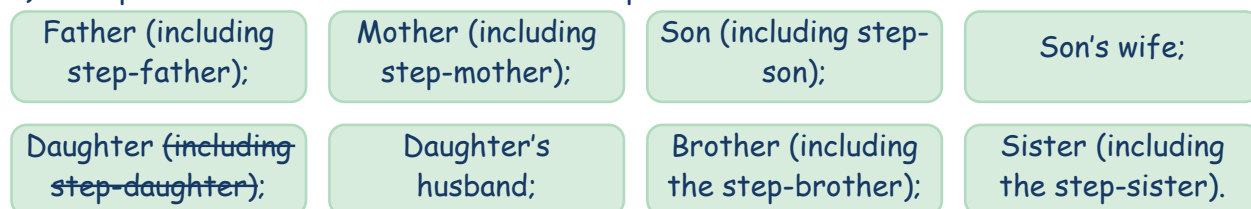
9 76 Related Party:



77 Relative:

Anyone who is related to another and covers the following:

- a) they are **members** of a HUF (Hindu Undivided Family);
- b) they are **husband** and **wife**; or
- c) one person is related to the other in the prescribed manner as under:



78 Remuneration means any **money**, or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961

84 Share means a share in the share capital of a company and **includes stock**;

85 Small company means a company, **other than a public company**: 5 7 11

- i. **PUSC** of which does not exceed **Rs. 50 lakh** or such **higher** amount as may be prescribed which shall not be **> Rs. 10 crores**; and
- ii. **turnover** of which as per P&L account for the immediately preceding FY does not exceed **Rs. 2 cr.** or such **higher** amount as may be prescribed which shall not be **> Rs. 100 cr.**

Provided that nothing in this clause shall apply to:

- i. a **holding** company or a **subsidiary** company;
- ii. a company registered under section 8; or
- iii. a company or body corporate governed by any **special Act**.

As per the Companies (Specification of Definitions Details) Rules, 2014, for section 2(85), PUSC and T/O of small company shall not exceed **Rs. 4 crores** and **Rs. 40 crores** respectively.

[Amendment]

86 Subscribed capital means **such part** of the capital which is for the time being **subscribed** by the members of a company;

1 87 Subsidiary company or Subsidiary, in relation to any other co., means a **company** in which the **holding company**:

- i. **controls** the **composition** of the Board of Directors; or
- ii. **exercises** or controls more than  $\frac{1}{2}$  of the **total voting power** either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed **shall not have layers of subsidiaries** beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause:

- a) a company shall be **deemed** to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or (ii) is of **another subsidiary** co. of holding co.;
- b) the **composition** of a company's BoD shall be **deemed** to be controlled by another company if that other company by exercise of some power exercisable by it at its **discretion** can **appoint or remove all or a majority** of the directors;
- c) the expression "**company**" includes any **body corporate**;
- d) **layer** in relation to a holding company means its subsidiary or subsidiaries;

Note - Shares held by a company or power exercisable by it in another company in a **fiduciary capacity** shall **not be counted** for purpose of determining the holding - subsidiary relationship.

88 Sweat equity shares means such **equity** shares as are issued by a company to its **directors** or **employees** at a **discount** or for consideration, other than cash, for providing their **know-how** or making available rights in the nature of intellectual **property rights** or **value additions**.

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

90 Tribunal means the **NCLT** constituted u/s 408;

91 Turnover means the **gross amount** of **revenue recognised** in the **P&L account** from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a **FY**;

92 Unlimited company means a company **not having any limit on the liability** of its members;

93 Voting Right means the right of a **member** of a company **to vote** in any meeting of the company or by means of postal ballot;

—→... The End ...←—

## Chapter 4 Share Capital and Debentures

Form	Sec	Purpose
SH-1	46	Form of share certificate
SH-2	46	Maintenance of records of renewed and duplicate share certificates
SH-3	54	Issue of Sweat Equity Shares
SH-4	56	Form for transfer of security held in physical form
SH-5	56	Notice by the co. to the transferor and transferee in case of partly paid-up shares
SH-7	64	Notice to Registrar for the alteration of share capital
SH-8	68	Letter of offer for buy back of shares from Co. to ROC
SH-9	68	Solvency declaration - File with RoC (+ SEBI in case of listed cos) in case of Buyback
SH-10	68	Register of shares or other securities bought back
SH-11	68	Return on completion of the buyback of shares or other securities
SH-12	71	Debenture Trust Deed
SH-15	68	Buy back in compliance with Act - Certificate signed by 2 directors (1MD)

Sec No.	Section Name	Sec No.	Section Name
43	Kinds of Share Capital	58	Refusal of Registration and Appeal against Refusal
46	Certificate of Shares	59	Rectification of Register of Members
47	Voting Rights	61	Power of Limited Company to Alter its Share Capital
48	Variation of Shareholders' Rights	62	Further Issue of Share Capital
49	Calls on Shares of Same Class to be Made on Uniform Basis	63	Issue of Bonus Shares
50	Company to Accept Unpaid Share Capital, Although not Called Up	64	Notice to be Given to Registrar for Alteration of Share Capital
51	Payment of Dividend in Proportion to Amount Paid-Up	66	Reduction of Share Capital
52	Application of Premiums Received on Issue of Shares	67	Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares
53	Prohibition on Issue of Shares at Discount	68	Power of Company to Purchase its Own Securities
54	Issue of Sweat Equity Shares	69	Transfer of Certain Sums to Capital Redemption Reserve Account
55	Issue and Redemption of Preference Shares	70	Prohibition for Buy-Back in Certain Circumstances
56	Transfer and Transmission of Securities	71	Debentures
57	Punishment for Personation of Shareholder		

\* Sec 44, 45, 60, 65 and 72 are not applicable for exams!



**Key Definitions:**

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

Case Laws Defining Shares:

Name	Definition of Shares
New London & Brazilian Bank v. Brockle Bank:	A <b>share</b> is not a sum of money, but <b>is an interest</b> measured in a sum of money, and made up of <b>various rights</b> contained in the <b>contract</b> , including right to a sum of money of a more or less amount.
Borland's Trustee v Steel Brothers & Co Ltd	Share is the <b>interest</b> of a shareholder in the company measured by a sum of money, for the purpose of liability in the first place and of <b>interest</b> in the second, and also consists of a series of <b>mutual covenants</b> entered into by all the shareholders inter se as per the provisions of Companies Act and the AoA.

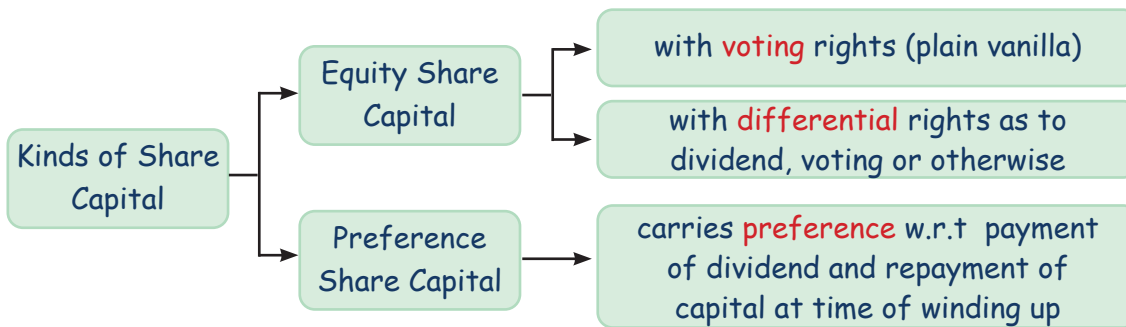
Stock: Stock is a **collection** of fully paid up shares.

Difference between stock and shares:

**Stock** is stated in **lump sum** whereas a '**share**' being the **smallest** unit. Originally shares are issued to shareholders while in case of stock, the fully paid-up shares of members are **converted** into '**stock**' afterwards. Thus, '**stock**' is **not issued originally** but is obtained by conversion of fully paid-up shares.



**Section 43 - Kinds of Share Capital**



Explanations:

- "Equity share capital" - w.r.t., any co. limited by shares, means **all share capital** which is **not preference share capital**;
- "Preference share capital", w.r.t, any co. limited by shares, means that part of the **issued share capital** of company which **carries** or would carry a **preferential right** w.r.t,;
  - payment of **dividend** (fixed amt or amt calculated at fixed rate)- free or subject to tax
  - repayment**, in the case of a **winding up**, of amount of PUSC.
- Capital shall be **deemed to be preference capital**, notwithstanding that it is entitled to **either** or **both** the rights w.r.t payment of dividend and repayment of capital at time of winding up.

Note:

1. Preference SHs may **also participate in equity** pool post preferential entitlements.

But to find out their rights of participation we must look at the terms of AOA and the issue.

If the right to participate in the **surplus** is not specified in the terms of the issue, pref. shares are **presumed to be not participating**. This was affirmed by the **House of Lords** in **Scottish Insurance Corpn Ltd vs. Wilsons & Clyde Coal Co Ltd**.

2. Preference shares are always **presumed** to be **cumulative** (unless AOA specifies otherwise)
3. Can a company have only PSC and no ESC? - No. Only ESC is possible. But only PSC not possible.



### Rule 4 of Cos (Share Capital & Debenture) Rules, 2014 - Equity Shares with Differential Right Conditions to issue equity shares with **Differential Rights (DR)**: [A2 VP FD2]

1. **AoA** authorizes the issue of such shares;
2. Such issue is authorized by an **ordinary resolution** passed at **GM**.  
If eq. shares are **listed** on RSE - Seek approval through **postal ballot (still OR)**.
3. **Voting Power (VP)** of shares with DR shall **not be > 74%** of total VP (incl. VP on shares with DR)
4. Co. has not defaulted in filing **FS and AR** for **3** immediately preceding **FY**
5. Co. has no **subsisting** default in:

payment of  
declared **dividend**

repayment of matured  
**deposit** + Intt.

Redemption of  
**pref. shares**

Redemption of  
**debenture** + Intt

6. Co. has **not defaulted** in:

payment of  
**dividend** on pref.  
shares

repayment of **term**  
**loan** + Intt. - PFI/  
State FI / Sch. Bank.

Stat. **dues** w.r.t.,  
Employee

Default in crediting  
amt. in **IEPF** to **CG**

Provided that co. may issue DVR on **expiry of 5 years** from end of FY in which default made good.

7. The co. has **not been penalized** by Court/Tribunal during last **3 years** of offence under the **RBI Act, 1934**, the **SEBI Act, 1992**, the **SCRA, 1956**, the **FEMA, 1999** or any other **special Act**

Additional Points:

1. **ES to notice** for GM or Postal Ballot to contain prescribed details about the issue (size of issue)
2. Co. shall **NOT convert** existing ESC with Voting Rights into ESC carrying DVR and **vice versa**
3. Details of such issue to be disclosed in **BOD Report**
4. Holders of Eq. shares with DR shall **enjoy all other rights** such as bonus shares, rights shares etc., which holders of eq. shares are entitled to, subj to DR with which such shares are issued.

5. **Register of Members** u/s 88 to contain relevant particulars of such shares with details of SHs.

Non-applicability of section 43:

- Specified **IFSC** co. where MOA or AOA provides for it.
- Private co. where **MOA** or **AOA** so provides for it (subject to filing FS u/s 137 or AR u/s 92)



**Section 46 - Certificate of Shares (SC)**

1. Certificate to be **Prima Facie** Evidence of title of such shares: - If such certificate is issued under:

common seal,  
if any or

signed by 2  
directors, or

where the company has appointed  
a CS - a director + CS

Note: If composition of BoD permits, **at least 1** of the 2 directors shall be **other than MD** or WTD.

2. Duplicate certificate may be issued if:

- a. It is **proved** to have been **lost** or destroyed; or
- b. has been defaced, **mutilated** or torn + **Surrendered** to company.

3. Details regarding **manner of issue** of certificate/duplicate - As may be **prescribed**



**Rules :**

a. **Time period** for issue of duplicate share certificate:

Unlisted co.	Within <b>3 months</b> from submission of complete docs.
Listed co.	Within <b>15 days</b> from submission of complete docs.

b. Maintain **register** of every renewed or duplicate share certificate:

Form	<b>SH-2</b>
Location	<b>RO</b> or any place where <b>Register of members</b> is kept
Custody and Authentication	<b>CS</b> or authorised person

c. Upon sub-division or **consolidation**, co. may **replace** all share certificates **without** requiring old ones to be **surrendered**. In the new certificate, mention the fact that it has been replaced.

d. Co. may charge fees as Board may decide (<= 50). No fees where scheme sanctioned by HC/CG

4. Where share is held in **depository form** - **Record** of depository is **prima facie** evidence of interest of beneficial owner.

5. If Co. issues a **duplicate** certificate of shares with intent to **defraud**:

	Minimum	Maximum
Company	<b>5x</b> of FV of shares involved	Higher of <b>10x</b> or Rs. <b>10 crores</b>
OID	Liable for action u/s <b>447</b>	

### Relevant points from Rule 5 and Rule 7 of Companies (Shares and Debentures) Rules 2014:

- Share certificate shall be in **Form SH-1**
- Books related to records of certificate - Preserve for **30 years**. In case of dispute - **permanently**.
- Surrender share certificate - **Immediately deface** by stamping the word "Cancelled" and **destroy** after **3 years** subject to **board resolution** and presence of **authorised** person.
- In case of **joint** ownership - **only 1** share certificate.

### Section 47 - Voting Rights [N.A. to Private Co. if mentioned so in MoA/AoA, subject to 92 + 137]

1. Subject to certain provisions of this Act:
  - a. every member holding **ESC**, shall have **right to vote** on **every resolution** placed before co.; &
  - b. his **voting right** on a **poll** shall be in **proportion** to his share in the **paid-up ESC** of the co.

Note - In case of **Nidhi**, no member shall exercise voting rights **on poll** > **5% of total VR** of ESH.

2. Every **member** holding **PSC** shall, in respect of such capital, have a **right to vote only**:
  - a. on resolutions which **directly affect** the rights attached to his preference shares and,
  - b. any resolution for the **winding up** of the company or
  - c. for the **repayment** or reduction of its **EQUITY or PSC** and
 his voting right on a **poll** shall be in **proportion** to his share in the paid-up PSC of the co.

Provided that **proportion** of voting rights of ESH to voting rights of PSH shall be in the **same proportion** as the ESC bears to PSC.

Provided further that where **dividend** in respect of a class of pref. shares has **not** been **paid for 2 years or more**, such class of **PSH** shall have a **right to vote** on **ALL resolutions** placed before the co.

### Section 48 - Variation of Shareholder's Rights

1. How to vary the rights?

Rights attached to shares of any class may be varied with:

- **Consent** in writing of **not less than 3/4th** of issued shares of that class, or
- **SR** (at a separate meeting of such class)

if provision for such variation is contained in **AoA/MoA** or in **absence** of such provision, it is **not prohibited** by terms of issue of such shares

If **variation by one** class of SH **affects** rights of any **other class**, consent of **3/4th** of such **other** class of SH shall also be obtained and the provisions of this section shall apply to such variation.

2. Resistance to such variation

- Where holders of **not less than 10%** of issued shares of a class
  - did **not consent** to such variation or vote in favor of SR
  - they **may** apply to **Tribunal** to have variation **cancelled**.
  - Where such appln is made - Variation shall **not** have **effect until** it is **confirmed** by Tribunal:
- Provided that - Such **application** to be made **within 21 days** after date of consent/resolution



3. The **decision** of the **Tribunal** on any application u/ss (2) shall be **binding** on the shareholders.
4. Co. shall, **within 30 days** of the date of order of Tribunal - File a copy thereof with the **Registrar**.



### Summary of Section 49 to 51

Sec	Provision
49	Where any <b>calls for further share capital</b> are made on shares of a class, such calls shall be made on <b>uniform basis</b> on all shares falling under that class Note - Shares of same nominal value with different PUSC are not said to be in same class.
50	1. Co. <b>may</b> , if authorized by <b>AOA</b> , <b>accept</b> from any member, the whole or a part of amount remaining unpaid on any shares held by him, even if such amount has not been called up. 2. Such <b>advance payment</b> shall <b>not entitle</b> the member to any <b>voting rights</b> .  Can co. pay dividend on the advance payment received u/s 50 - <b>No! Interest can be paid.</b>
51	Co. may, if authorised by <b>AOA</b> , pay dividends in proportion to amount <b>paid-up</b> on each share



### Section 52 - Application of Premiums Received on Issue of Shares



1. Where co. issues shares at premium (**cash/otherwise**) - **Transfer** such aggregate amount of premium to Securities Premium Account (**SPA**)

Except as provided in this section, provisions relating to **reduction of share capital shall apply** as if the SPA were the PUSC of the company.

2. Application/Utilisation of amount in SPA account:
  - a. towards issue of unissued shares of co. to members as fully paid **bonus** shares
  - b. write off **Preliminary** expenses of the co.
  - c. write off - **Expenses/Commission** paid or discount allowed on issue of shares/debentures of co.
  - d. providing for premium payable on **Redemption** of any redeemable pref. shares/ any debentures
  - e. purchase of its own shares u/s 68 (**Buyback**)
3. Notwithstanding above (1) and (2), in case of such **class** of cos. as may be **prescribed** + whose **FS** comply with prescribed **AS** u/s 133, the SPA shall be utilised for:
  - a. towards issue of unissued shares of co. to members as fully paid **bonus** shares
  - b. ~~write off Preliminary expenses of the co.~~
  - c. write off - **Expenses/Commission** paid/Discount allowed on issue of shares/debentures of co.
  - d. ~~providing for premium payable on Redemption of any redeemable pref. shares/ any debentures~~
  - e. purchase of its own shares u/s 68 (**Buyback**)

Note - SPA is not a Free Reserve. It's in the nature of capital reserve.

### Section 53 - Prohibition on Issue of Shares at Discount 6

1. Except as u/s 54, a company shall **NOT** issue shares at **discount**.
2. Any share issued by a company at a discount price shall be **void**.  
Exception - Notwithstanding anything contained above, a co. may **issue shares** at a discount to its **creditors** when its **debt** is converted into **shares** in pursuance of any **statutory resolution plan** or **debt restructuring scheme** as per RBI guidelines.
3. Default under this section:
  - Co. and OID - **Fine up to amt. raised** through such issue or **Rs. 5 lakhs**, whichever is **less**, and
  - Co. shall also be liable to **refund** such money + Intt. @12% p.a. from date of issue of such shares

### Section 54 - Issue of Sweat Equity Shares (SES) to Directors/Employees 7 8 36

#### Sweat Equity Shares [Sec 2(88)]

- Such **equity shares** as are issued by a co.
- to its **directors** or **employees**
- at a **discount** or for **consideration**, other than cash,
- for providing their **know-how** or making available rights in the nature of intellectual property rights (**IPRs**) or **value additions**, by whatever name called;

#### Provisions:

1. Notwithstanding anything contained in sec 53, co. may issue **sweat equity shares (SES)** (of class of shares **already issued**), provided that:
  - a. the issue is authorized by a **SR**
  - b. Resolution specifies:
 

No. of shares	Current Mkt. Price	Consideration, if any	Issued to whom
---------------	--------------------	-----------------------	----------------
  - c. If eq. shares are **listed**, such issue is as per **SEBI** Regulations. If not listed, as per **Rules**.
2. Rights, limitations and provisions of equity shares shall be applicable to sweat equity shares too and it shall rank **pari passu** with other Equity shares.

#### Rule 8 - Issue of Sweat Equity Shares:

"Employee" means:

- (a) a **permanent** employee of the company who has been working **in India or outside India**, or
- (b) a **director** of the company, whether a whole time director or not; or
- (c) Dir/Employee as per (a) or (b) above of **subsidiary** (India or o/s India) or of **holding** co. of the co.;

"Value additions" means actual or anticipated **economic benefits** derived/to be derived by co. from an **expert** or a **professional** for providing **know-how** or making available **rights** in the nature of **IPRs**, by such person to whom sweat equity is being issued **for which** the **consideration** is not paid or **included in the normal remuneration** payable under the contract of employment, in the case of an employee.

## Additional Points:

Validity of SR	Allotment of sweat eq. shares to be made <b>within 12 months</b> of passing SR
Maximum issue size per year:	In a FY, a co. shall <b>NOT issue SES &gt; 15% of existing PUESC or issue value of Rs. 5 crores, WEH</b>  Provided that, issuance shall not > <b>25% of PUESC at any time.</b>  Prov. further that - In case of <b>Startup</b> - Issue not > <b>50%</b> (instead of 25%) of its <b>Paid up equity share capital</b> upto 10 years from incorp.
Lock in	<b>3 years</b> from date of allotment [Mention lock-in in share certificate]
Issue price	To be determined by <b>Registered Valuer</b> with proper justification
Valuation	<b>Valuation</b> of IPR/Know how/Value Add - By <b>RV</b> with a proper report to BoD.
Treatment of non-cash consideration in books:	a. Where non-cash consideration is a depreciable/amortizable asset - Carry to <b>BS</b> as per <b>AS</b> b. Where clause (a) N.A. - <b>Expense</b> as per <b>AS</b>
BoD report	Co. to disclose specific details of such issue in <b>BoD report</b>
Register	Co. to maintain register of <b>SES in Form SH-3</b> at RO or such other place decided by Board



## Section 55 - Issue and Redemption of Preference Shares (PS)

9

- No** company limited by shares shall **issue** preference shares that are **irredeemable**
- Conditions for issue of PS:
  - The issue has to be authorized by **AoA**
  - The issue has been authorised by passing **SR** in the **GM**
  - At the time of such issue - there is **no subsisting default** in:
    - Redemption of any pref. share or
    - Payment of dividend due on preference shares.
  - Such PS is **redeemable** within period **not exceeding 20 years**

Provided that - Co. engaged in setting up and dealing with **infrastructural projects** may issue pref. shares of period **exceeding 20 years but not exceeding 30 years** provided that - **Min. 10%** of such pref. share is **redeemed** each year **from 21st year** at the **option** of PSH

3. Redemption of preference share:

- Redemption of PS shall be only on terms on which it was issued or varied u/s 48.
- PS may be redeemed:

At a **fixed time** or happening of certain event

Any time at **company's** option

Any time at **PSH** option

➤ Source of redemption:

Such shares shall be redeemed only out of -

- profits** of the co. available for dividend or
- proceeds** of **fresh issue** made for purpose of such redemption

- Only **fully paid up** preference shares can be **redeemed**

- Creation of CRR:
  - Where such shares are **proposed** to be redeemed **out of profits**, transfer a sum = **Nominal value** of shares to "Capital Redemption Reserve" A/C
  - Provision relating to reduction of SC shall apply as if CRR were PUSC of the company.
  - CRR may be applied for - **paying up** unissued shares to be issued as fully paid **bonus** shares.
- Premium on redemption of PS:
  - Such premiums shall be provided for out of **profits or SPA**.  
However, in case of prescribed class of co. whose FS comply with AS u/s 133, such **premium** shall be **provided for** out of profits (and not SPA as u/s 52)
  - Such premium shall be provided for **before** such redemption

4. Other relevant points:

- **Register** of members u/s 88 shall contain particulars w.r.t, such pref. SHs
- If co. **intends** to **list** such pref. shares - Issue preference shares as per **SEBI** regulations

5. Where a company is **not in position to redeem/pay dividend** on any pref. shares, it **may**:

- with **consent of 3/4th** in value of PSH and
  - approval of **Tribunal** on petition made by it
- issue further** redeemable preference shares = amount of unredeemed pref. shares + dividend.  
On such issue - Unredeemed pref. shares shall be **deemed** to have been **redeemed**.

Provided that **Tribunal shall**, while giving approval, order **redemption forthwith** of pref. shares held by such persons who have **not consented** to issue of further redeemable preference shares.


Note - Issue or redemption of pref. share is **not** = Reduction in SC of co.

Concept clarity check:

A co. proposes to redeem a pref. share of nominal value Rs. 100 with a premium of Rs. 20 per share. Such redemption was to be made by further issue of pref. shares. Decide the amount to be transferred to CRR? - **Zero! CRR is only needed when amt. is paid out of profit (as you are utilizing dividend money)**

## Section 56 - Transfer and Transmission of Securities

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1. Company to register transfer of securities.
- Co. shall **not register** transfer of securities (or interest of member in case of company not having SC) **unless**:
    - a. proper **instrument** of transfer (**Form SH-4**) duly **stamped** and **dated** has been executed  by transferor (TOR) and transferee (TEE)
    - b. Such instrument **specifies** the name, address and occupation of **transferee**
    - c. Such instrument has been **delivered** to co. by TOR or TEE **within 60 days** of execution along with share certificate or **letter** of allotment (if no certificate is in existence)

Above provision shall not apply in case of transfer between persons both of whose names are entered as **beneficial owners** in records of **depository**.


- If **instrument** of transfer is **lost/has not been delivered** to co. within prescribed time, co. may **register** on such terms as to **indemnity** as Board may think fit.
  - In case of **Govt co.**, **instrument** of transfer shall **not** be **required** w.r.t. transfer of **bonds** issued by a Govt. co provided that an **intimation** by TEE specifying name, address and occupation + **Bond certificate** or Letter of Allotment is delivered to the co.
2. A co. can register **TRANSMISSION** of any right to securities by **operation of law** on receipt of **intimation** for the same from any person to whom such right is transmitted (**transferee**) (i.e., transfer instrument not required in case of transmission. Instead, it requires intimation of transmission)

Cases of Transmission:

**Death** (to Legal Rep)

**Insolvency** (to resolution professional)

**Lunacy** (to administrator appointed by Court)

3. Notice to transferee in case of partly paid shares:  
Where an application for registration of trf. of **partly paid** shares is made by **TOR** alone, a co. shall not register such trf. unless:
- Co. has given **notice** (in **Form SH -5**) of such application to TEE and 
  - TEE to give **no objection** to the transfer **within 2 weeks** from receipt of notice.
4. Unless prohibited otherwise, co. to **deliver certificates** of all securities allotted, trfd/ transmitted:

In case of:	Within a period of:
<b>Subscribers</b> to MoA	within 2m of incorporation
Any <b>Allotment</b> of its shares	<b>within 2m of allotment</b>
Transfer or transmission	within 1m from date of receipt of <b>transfer</b> instrument or Intimation of <b>Transmission</b> (IOT)
<b>Allotment</b> of <b>debentures</b>	within <b>6m</b> from date of allotment

Note - where sec are dealt with in a **depository**, co. to intimate details of allotment to depository **immediately** on **allotment**.

5. **Transfer** of any security of a deceased person **made by his LR** shall, **even if the LR is not a holder** thereof, **be valid** as if he had been holder at the time of execution of instrument of transfer.
6. Default in compliance of above provisions - Fine - Co. and OID - Rs. 50,000 [*Amendment*]
7. Without prejudice to any liability under the Depositories Act, 1996, where any **depository** or DP, with an **intention to defraud** a person, has **transferred shares**, it shall be **liable u/s 447**.

Difference between Transfer and transmission (just for knowledge)

	Transfer	Transmission
Voluntary?	Yes	No. Operation of Law
Transfer Instrument?	Yes	No. Intimation of Transfer
Consideration	Likely, Yes.	No.

Note - **Forged Transfer** is a **Nullity** and is not legally binding. A company can be forced to delete name of TEE in case of Forgery.

Case:

Mr. A is shareholder of RIL. Mr. Chor forged signature of Mr. A and transferred his shares to Mr. B. Mr. B then further transferred the shares to Mr. C & RIL registered such trf. Discuss consequences.

Answer:

- Co. to restore **ownership** to Mr. A. Co. shall not be liable to Mr. B or Mr. C
- Genuine buyer (Mr. C) shall be indemnified by Mr. B.
- Mr. B, who **indemnified** Mr. C, shall, in turn, chase Mr. Chor.

Exam question:

What if a share certificate is transferred via forgery (Q2 of QB):

- A forged transfer is a **nullity**.
- It does not give the transferee any title to the shares. Similarly any transfer made via such forgery will also **not give a good** title to shares as the title of buyer is only as good as that of seller.
- If a co. acts on a forged transfer & removes name of real owner, then co. is bound to restore such name and **pay him any dividends** which he ought to have received  
(*Barton v. North Staffordshire Railway Co.*)



### Section 57 - Punishment for Personation of Shareholder

- If any **person deceitfully personates** as **owner** of any security/interest/share warrant/coupon, **and**
- thereby **obtains** or attempts to obtain any such security or interest or any such share warrant or coupon, **or receives** or attempts to receive **any money due to any such owner**,
- he shall be **punishable** with **imprisonment** - 1 year to 3 years **AND** with **fine** Rs. 1 lakh to Rs. 5 lakhs.



## Section 58 - Refusal of registration and appeal against refusal.

11

### Refusal by Private company:

Where a private co limited by shares refuses to register transfer or transmission, it shall:

- within 30 days of delivery of trf. inst. or intimation of transmission (IOT).
- send notice of refusal to TOR and TEE or to person giving IOT
- stating the reason for refusal to register



### Appeal in case of refusal:

TEE or IOT person may appeal to Tribunal:

- within 30 days of receipt of notice of refusal
- where no notice of refusal is received, within 60 days of delivery of instrument of trf or IOT to co.

### In case of Public Co:

- Securities of public companies are **freely transferrable**.
- Any contract w.r.t., trf of securities shall be a **valid contract** and enforceable.



### Refusal by a Public co. without sufficient cause:

If a public co., without sufficient cause refuses to register the transfer of sec. within 30 days from date on which instrument of transfer or IOT, is delivered to the co., transferee may appeal to tribunal:

- within 60 days of receipt of notice of refusal
- where no notice of refusal is received, within 90 days of delivery of instrument

### Order by Tribunal:

After hearing the parties, Tribunal may either dismiss the appeal or by order:

- a. Direct co. to register trf/transmission & co. shall comply within 10 days of receipt of such order, or
- b. Direct rectification of the register and also direct the co. to pay damages to party aggrieved.

Contravention of order of Tribunal - Imprisonment - 1 year to 3 years AND Fine Rs. 1 L to Rs. 5 L



## Section 59 - Rectification of Register of Members

### 1. Application for Rectification of Register of Member (RoM):

If without sufficient cause, the name of any person is:

entered into RoM

omitted from RoM

unnecessary delay in entering/removing name

Aggrieved person or Any Member may make an application for rectification of RoM to:

- a. Tribunal, or
  - b. Competent court o/s India specified by CG - In case of foreign members or DHs o/s India
2. Tribunal may either dismiss the appeal or by order:
- a. Direct co. to register trf/transmission and co. to comply within 10 days of receipt of order, or
  - b. Direct rectification of the register and also direct the co. to pay damages to party aggrieved.

3. The sections shall not restrict the holder of the sec. from **transferring** such sec. and any person acquiring such sec. shall be entitled to **Voting Rights**.
4. Where a trf. is made in **contravention** of any Law, Tribunal may, on application to it, direct the company or depository to set right the contravention and rectify registers.



### Section 61 - Power of Limited Company to Alter its Share Capital

12 19 31 34

1. A limited co. having a SC may, if so authorised by its AoA, alter its MoA in its **GM** to:
  - a. **increase** its ASC by such amount as it thinks expedient;
  - b. **consolidate & divide** its SC into shares of a **larger amount** than its existing shares.  
Provided that **no consolidation** and division which **results** in changes in **voting %** of **SHs** shall take effect unless **approved** by **Tribunal** on an **application** in prescribed manner;
  - c. **convert** its fully paid-up shares into **stock**, and **reconvert** that stock into fully paid-up shares of any denomination;
  - d. **sub-divide** its shares into shares of **smaller amount** than is **fixed by the memorandum**, However, in such sub-division, the **proportion** between the amount paid and the amount unpaid on each reduced share shall be **same** as it was earlier;
  - e. **cancel** shares which have not been taken by any person and **diminish** amount of its share capital by amt. of the shares so cancelled.
2. The **cancellation** of shares u/ss (1) shall **not** be **deemed** to be a reduction of share capital.

**Note** - The capital clause of memorandum, if authorised by the articles, shall be altered by passing a **special resolution** as per Section 61 (1) of the Companies Act, 2013.



### Section 62 - Further Issue of Share Capital

13 14 15 16

(Right issue/preferential allotment/Right of Pre-emption)

1. Where a co. proposes to increase its subscribed capital, by issue of further shares, such shares shall be offered to -
  - a. Persons who, on the date of such offer, are ESH of the company:  
Such offer shall be made in **proportion to PUSC** by sending a letter of offer subject to:
    - i. Offer to be made by **notice** specifying no. of shares offered & limiting time to accept offer.  
  
**Time limit** shall be not **< 15 days** or days as may be prescribed and shall **not > 30 days**.  
If **not accepted** within time limit - **Deemed declined**.

**Note** - In Pvt. co (92 + 137) - If 90% of member give consent, then less than 15 days allowed

    - ii. Right to Renounce - **Unless AOA** provides otherwise, above offer shall be deemed to include right to renounce shares offered. A statement to this effect is to be included in the offer .

iii. After expiry of time limit/receipt of intimation declining offer - BoD to dispose such shares in manner **not dis-advantageous** to SH **and** the company

b. Offer to employees - Under **ESOPs** subject to **SR** and prescribed T&C  
(In case of Pvt co (92+137) - Pass OR instead of SR)

c. Offer to **any** person:

if it is authorised  
by **SR**

either for cash or  
**consideration** other than cash.

if the **prices** to be determined  
by a valuation report by **RV**

2. Dispatch of notice referred above: to existing SH

- Via - **Registered post** or **speed post** or **e mode** or **courier** or other mode having **proof of delivery**
- at least **3 days** before opening of issue.

3. Provision of this section - **N.A.** in case of **conversion** of debenture/loan by way of exercise of option as per terms attached to such debt issued/loan raised. Provided that such an option in the issue of debenture/loan raised was approved by **SR**.

4. Conversion of Debenture issues to Government on T&C as per Govt.:

- Notwithstanding provision u/ss(3),
- where any **debentures/loan** has been obtained from any **Government**, and
- if that Govt. considers it necessary in **public interest** so to do,
- it may, by **order, direct** that debentures/loans or part thereof shall be **converted** into shares
- on **terms** as may appear **reasonable** to **Govt.**
- even if terms of debentures/loan **do not include option** for such conversion.

Provided that where **terms** of such conversion are **not acceptable to co.**, it may, within **60 days** from date of communication of such order, **appeal to Tribunal** for order as NCLT may deem fit.

5. In determining the terms, Govt. shall have due regard to:

Financial Position

terms of issue of such debt

rate of intt. on such debt/loan

Others

6. Effect of Govt passing such order + **No appeal** or where appeal is made has been dismissed, if the order has effect of increasing the ASC:

- a. the **MoA** stands altered
- b. **ASC** stands increased by amt equal to **value** of shares to which such debt/loan is converted into.

## Rule 12 - Issue of Employee Stock Options (ESOP)

"Employee" means-

- (a) a permanent employee of the company who has been working in India or outside India; or
- (b) a director of the co., whether whole time or not **but excluding an independent director**; or
- (c) an employee referred in (a) or (b) of a **subsidiary** (India or outside) or of a **holding co.**

but **does not include**:

- (a) an employee who is a **promoter** or a person belonging to the promoter group; or
- (b) **director** who (himself or via relative/any BC) holds **more than 10%** of o/s equity shares of the co.

In case of Startups - Above 2 exceptions N.A. for **first 10** years.

To issue ESOP:

Listed company - Comply with SEBI Regulations.

Other than listed co, comply with following conditions:

Such issue is approved by way of <b>SR</b>	Co. to make specified <b>disclosure</b> in ES annexed to notice	Co. has <b>freedom</b> to determine "Exercise Price" as per applicable policies
Min. period of <b>1 year</b> between grant and vesting of options*	Co. has freedom to specify <b>lock in</b> period.	No right to <b>vote</b> /receive <b>dividend unless</b> shares issues on <b>exercise</b> of option.
Options are <b>non-transferrable</b>	Options granted shall <b>not be pledged</b> , hypothecated, etc	No person other than employee entitled to ESOPs.
In case of <b>death</b> - options granted to him shall vest with <b>legal heirs or nominees</b>	In case of <b>permanent incapacity</b> - Option granted to vest on such employees on <b>that day</b>	In case of <b>resignation/termination</b> - option to <b>expire</b> .

\* In case of **amalgamation** - Adjust the period for which options were held in prior co. with min. vesting period. (If you didn't understand this, read the detailed text below or else, skip.)

Provided that in a case where options are granted by ABC Ltd. under its ESOP in lieu of options held by the same person under an ESOP in XYZ Ltd, which has merged or amalgamated with ABC Ltd., the period during which the options granted by ABC Ltd. were held by him shall be adjusted against the minimum vesting period required under this clause;

**Section 63 - Issue of Bonus Shares**

17 18 32 35

A company may issue **fully paid-up** bonus shares to its **members**, in any manner whatsoever, out of:

Free Reserve

Sec. premium Account

CRR Account

Provided that **no issue** of bonus to be made by **capitalizing reserves** created by **revaluation** of assets.

Conditions for issuing bonus shares:

**No** company shall **capitalise its profits or reserves** for issuing fully paid-up bonus shares, **unless:**

Auth. by  
AOAOn recommendation of BoD  
- Auth in GMNot defaulted in payment of intt/principal  
w.r.t., fixed deposit or debt sec. issued by itNot defaulted - Stat  
due of employeePartly paid up shares  
are made fully paid upCondition prescribed - Bonus once  
announced by BoD, cannot be withdrawn

Concept clarity check:

- Can a company issue bonus out of revaluation reserve after complying with above 6 conditions?  
- No!
- Bonus shares shall **not** be **issued** in **lieu of dividend**.

**Section 64: Notice to be Given to Registrar for Alteration of Share Capital**

- In the following cases:

Alteration of SC u/s 61(1)

Increase in ASC u/s 62(6)

Redemption of pref. shares

Co. shall file a notice (**Form SH - 7**) along with **Altered MoA** to RoC **within 30 days** of such action. 📄

- Contravention - Co. & OID - Fine of Rs. 500 / day subject to max. Rs. 5 lakhs (Co) or Rs.1 lakh (OID)

**Section 66: Reduction in Share Capital**

19

- A company **may reduce** its share capital subject to:
  - Confirmation by **Tribunal** on application by company, and
  - By a **Special Resolution**, and
  - Alter MoA by reducing the amt. of SC and no. of shares.

Manner of Reduction in SC:

- Extinguish** or reduce the liability on any shares **not paid up**
- With or without extinguishing or reducing liability on its shares:
  - Cancel** any PUSC which is **LOST** or is **unrepresented** by available asset.
  - Pay off** any PUSC which is in excess of the wants of the co.

**Provided** that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, or the interest payable thereon

2. On receipt of application u/ss (1), the Tribunal shall give a notice thereof to:

CG

RoC

Creditors of co.

SEBI (in case of Listed Co.)

and shall take into consideration the **representation**, if any, made **within 3 months** of such notice.

If **no representation** - **Presume** no objection.

3. **Tribunal** to **order confirming** reduction of SC on T&C as it may deem fit - **Only** when it is satisfied that debt/claim of every **creditors** has been **discharged** or his **consent** is obtained.

**Provided** that Tribunal shall not sanction unless: **A/C treatment**, proposed by co. **for such reduction** is in **conformity** with AS u/s 133 + **Certificate** by company's **auditor** has been filed with **Tribunal**.

4. Order of Tribunal shall be published in manner as directed by Tribunal.
5. Co. to deliver **copy** of **order** of Tribunal **and** of a **minute** approved by Tribunal showing the following with **ROC within 30 days** of receipt. RoC shall register and issue a certificate thereof.

The minute approved by Tribunal shall include the following info:

Amount of SC

No. of shares into which it is to be divided

Amt. of each share

Amt. at the date of registration deemed to be paid up

6. **Nothing** in this section shall apply to **buy-back** of its own securities by a company u/s 68.
7. A **member**, past or present, shall **not be liable** to any **call/contribution** w.r.t, any share held by him **exceeding** [Amount paid up on the share - Amount of share as fixed by the order of reduction].
8. Where the name of a creditor is not entered in the list of creditors by reason of his own ignorance of proceeding for reduction or otherwise **AND** after such reduction, the co. commits a default (Sec 6 of IBC) of his debt,;
- Every member of co. on the date of registration by RoC of order for reduction shall be liable to **contribute to payment of that debt** an amt not > amt he would be liable in case of WUP, **AND**
  - If co. is **wound up**, the Tribunal may, **on application** of such cr. + proof of his ignorance - **Settle a list of person** so liable to contribute and enforce such calls on contributories as if they were ordinary contributories.

9. If any **officer** of the company:
- knowingly **conceals** the name of any creditor entitled to object to the reduction;
  - knowingly **misrepresents** the nature or amount of the debt or claim of any creditor; or
  - abets** or is privy to any such concealment or misrepresentation as aforesaid
- he shall be liable **under section 447**.

Alteration (sec 61) vs Reduction (sec 66) - Refer QB Q19



### Section 67: Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares

- No company having **SC** shall have power to buy its own shares without consequent reduction in **SC**.
- No **public company shall** give any loans, guarantee or provide security or any financial assistance for purchase/ subscription of shares of the company or its holding co.
- Nothing u/ss (2) shall apply to:
  - lending of money by a **banking** company in the ordinary course of its business;
  - the **provision** by a co. of money as per any **scheme** approved by co. through **SR** for the purchase/ subscription, **fully paid-up** shares in co. or its holding co., if the purchase/ subscription of the shares is held by **trustees** for benefit of employees or such shares are held by employees.



#### Rule 16:

- In the case of listed co., purchase such shares only through **RSE**.
  - In case of unlisted co., - valuation of purchased shares shall be made by **Registered Valuer**.
  - Value of shares purchased  $\leq 5\%$  of (PUSC + FR)
  - Various **disclosures** w.r.t. voting rights not directly exercised by employees shall be made in Board report.
- c. Loan to employee for purchase of shares of company: <sup>20</sup> <sup>21</sup> <sup>22</sup>
- Giving of **loans** by a company to employees (**other than** directors or KMP),
  - for an **amount not exceeding 6m salary** or wages
  - **with** a view to enabling them to subscribe for **fully paid-up** shares in co. or its **holding co.**

Provided that **disclosures** in respect of **voting rights not exercised** directly by employees in respect of shares to which **scheme** relates shall be made in BOD report in prescribed manner.

- Nothing in this section shall affect the right of a co. to **redeem** any preference shares issued by it.
- Contravention:**  
Co. - Rs. 1 lakh to Rs. 25 lakh **and** OID - Jail upto 3 years **and** fine Rs. 1 lakh to 25 lakhs.

Non applicability of Section 67:

1. Pvt co. (92+137) and IFSC Public Co. where all the condition is fulfilled:
  - In whose share capital, no other BC has invested
  - Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
  - Co. has no subsisting default in repayment of borrowing.
2. 67(1) shall not apply to Nidhi co. when shares are purchased from members on ceasing to be a depositor.



### Section 68: Power of Company to Purchase its Own Securities ("Buy-back/BB")

23 24 25 26 27 28 29

This section talks about purchase of own shares or other specified securities (Buy-back). Specified Securities include ESOPs or securities notified by CG.

1. Notwithstanding other provision of the Act, co. may BB out of:

Free Reserve

Sec. premium Account

proceeds of issue of any share/other sec.

Proviso- No buy-back of a kind of share/sec. shall be made out of proceeds of an earlier issue of the same kind.

2. Conditions to be fulfilled prior to BB:

i. Auth. by AoA

ii. Auth. by SR in the GM

Note - SR not needed where:

a. Limit - buy-back is <=10% of total PUESC + FR, and

b. Auth. by Board by means of resolution passed at BM

iii. BB is <=25% of total PUC + FR

[In case of BB of equity share in any FY, reference to 25% shall be construed w.r.t., PUESC +FR in that FY]

iv. **Ratio** → 
$$\frac{\text{Debts (secured + unsecured) owed after BB}}{\text{Paid up Equity Capital + FR}} = \text{Not } > 2 \text{ (or higher ratio by CG)}$$

v. All the shares/sec. for buy-back is fully paid up.

vi. If securities are listed on RSE - BB as per SEBI Regulations. If not listed, then as per this Act

Proviso - BB shall NOT be made within 1 year reckoned from date of closure of preceding BB

3. The ES of the notice of meeting at which SR is proposed to be passed shall state: [Necessity FACT]

full disclosure of material Facts;

Necessity for the buy-back;

securities intended to be purchased;

Amount to be invested; and

Time-limit for completion

4. Time limit for completion - **Within 1 year** from date of passing SR/BR as the case may be
5. Source of BB: buy-back may be from:
  - Existing SH on prop. basis
  - Open Market
  - Sec. issued to employee (ESOP or sweat shares)
6. Declaration of Solvency:
  - Before making buy-back, co. to file with **RoC** and **SEBI (only if listed)**,
  - a "Declaration of solvency" in **Form SH-9**
  - **signed** by at least 2 directors (1 MD compulsory).
  - verified by an **affidavit** stating BoD has made **full inquiry** into affairs of co. and are of **opinion** that it is capable of **meeting liabilities** + will **not** be rendered **insolvent within 1 year** from date of declaration adopted by BoD.
7. Post buy-back - Co. to **extinguish** and physically **destroy** the share so bought back **within 7 days** of **last date** of completion of BB
8. Where a company complete a buy-back - Co. shall **NOT** make **further issue** of shares/sec. of **SAME** kind including allotment u/s 62(1)(a) **within 6m** (except for bonus shares or shares to discharge subsisting obligations such as conversion of warrants, ESOPs, sweat equity or conversion of pref. shares/debentures into equity)
9. Co. to maintain register (in **Form SH-10**) showing:
  - shares/sec. so bought back
  - consideration paid
  - Date of cancellation of sec. so bought back
  - date of extinguishing/ physically destroying shares
  - Other part.

Additional Points:

- Before BB, co. to file with ROC a letter of offer in **Form SH 8**
- After completion of buy-back - File **return** with **RoC** + SEBI (if listed) **within 30 days** in **Form SH-11**
- Along with such return, file a certificate in **Form SH 15** signed by 2 directors (1 MD) stating that BB is in compliance with this Act.
- Default under this section → Company and OID - Rs. 1 lakh to Rs. 3 lakhs


**Section 69: Transfer of Certain Sums to Capital Redemption Reserve Account**

1. Where a co. **purchases** its own shares out of **free reserves** or **SPA**, a **sum** equal to the **nominal value** of shares so purchased shall be transferred to **CRR A/C**
2. Details of such transfer shall be **disclosed** in the **balance sheet**.
3. CRR A/C may be **applied** by the company, in issue of **bonus** shares.

Concept clarity check

A co. does BB from proceeds from issue of any other shares. How much amt is to be trf to CRR?  
**None! Trf. to CRR is to be done only in case of purchase out of FR or SPA**

### Section 70: Prohibition for Buy-Back in Certain Circumstances:

1. No **company** shall directly or indirectly **purchase** its own shares or other specified securities:
  - a. through any **subsidiary** co. including its own subsidiary companies; (**Section 19**)
  - b. through any **investment company** or group of investment companies; or
  - c. if a **default**, is made by the co., in the **repayment** of **deposits** + interest payment thereon, redemption of **debentures** or **pref. shares** or payment of **dividend** to any shareholder, or repayment of any **term loan** or interest payable thereon to any **banking** company or FI:

Provided that the buy-back is not prohibited, if the default is remedied and **3 years** has **lapsed** after **such default ceased to subsist**.

2. No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has **not** complied with the provisions of **sections 92, 123, 127 and section 129**.

### Section 2(30) - Debenture:

Debenture includes debenture stock, bonds or **any other instrument** of a company **evidencing a debt**, whether constituting a **charge** on the assets of the company **or not**.

Provided that, following instrument shall **not** be treated as debenture:

- a. instruments referred to in Chapter III-D of the RBI Act, 1934; and
- b. such other instrument, as may be prescribed by **CG** in consultation with RBI, issued by a company.

### Section 71: Debentures

30-33

1. A co. **may** issue debentures with an **option** to convert such debentures into **shares**, either wholly or partly at time of **redemption**.  
Provided that the issue of such convertible debentures shall be approved by a **SR** passed at a **GM**.
2. **No** company shall issue any debentures carrying any **voting rights**.
3. **Secured** debentures may be issued by a company subject to such T&C as may be **prescribed**.

### Rule 18 - Issue of Secured Debenture:

- i. Redemption period

In case of secured debenture, the date of redemption shall **not > 10 years** from date of **issue**.

Provided that, in following class of cos, it **may exceed 10 years** but **not exceeding 30 years**:

Companies engaged in setting up infra projects

Infra finance companies

Infra debt fund NBFCs

Co. as may be permitted by CG/RBI/NHB for > 10 years

ii. How will it be secured - Creation of charge:

- Such an issue of debentures shall be **secured**
- by the creation of a **charge** on properties or assets (in favor of **debenture trustee**)
- of **company** or its **subsidiaries** or its **holding co.** or its **associates** companies,
- having **value** which is sufficient for due repayment of the debentures and interest thereon

iii. Appointment of debenture trustee:

- **Company** shall appoint debenture trustee ("DT")
- **before issue** of prospectus or letter of offer for subscription of its debentures and
- execute a debenture trust deed ("deed") to protect the interest thereon not later than **60 days** after **allotment** of debentures.

Note - Deed shall be executed in **Form SH-12** within **3 months of closure** of issue or offer. 📄

4. Creation of DRR and Deposit of sums:

- Co. shall create a **Debenture Redemption Reserve (DRR)** account
- out of the **profits** available for distribution as dividend, and
- Amt. credited to DRR account shall **be utilised** only for **redemption** of debentures.

**Rule 18: Creation of DRR and investment of sums for redemption of Debentures:**Creation of DRR :

All India Financial Institutions and Banking companies are generally not required to create DRR. For unlisted co. other than NBFCs - Adequate DRR is **10%** of outstanding debentures in that FY.

Deposit/Investment:

Co. which has raised debentures shall:

- on or before **30th April** in each year,
- in respect of debentures issued by such co., **invest or deposit**,
- a **sum not less than 15%** of amount of debentures **maturing on 31st March of next year**
- in any one or more methods of investments or deposits as follows:

deposit with  
scheduled bank

unencumbered  
securities of  
CG/SG

unencumbered  
securities as per  
Indian Trust Act

unencumbered **bonds** of any  
other cos. notified under  
Indian Trust Act

Provided that amount invested or deposited shall **not**:

- at any time **fall below 15%** of amount of debentures maturing during the year ending on 31st day of **March of that year**.
- be **used** for any purpose other than redemption of debentures maturing during the year

5. No co. shall issue a **prospectus** to the public or to its members (**> 500**) for subscription of its debentures, **unless** the co. has, **appointed** one or more **debenture trustees**.  
(i.e., if offers to public or members (> 500), appoint debenture trustee)

### Rule 18: Eligibility of Debenture Trustee

The co. shall appoint DT after complying with following conditions:

- i. **Name** of DT to be stated in prospectus or letter of offer and in subsequent communications
  - ii. Before appointment, **written consent** of DT obtained and statement to that effect included in the letter of offer.
  - iii. A person shall not be appointed as DT if he:
    - a. Beneficially holds **shares** in co.
    - b. is promoter, director or KMP or other officer or **employee** of CASH
    - c. beneficially entitled to moneys to be **paid by the co.** (other than remuneration as DT)
    - d. **indebted** to CASH or subsidiary of such holding co.
    - e. furnished **guarantee** in respect of principal debts secured by debentures
    - f. has **pecuniary** relationship with co.  $\geq$  Lower of [ 2% of Gross T/O or total income or 50 lakhs or higher amount as may be prescribed] in preceding 2 FY or CY
    - g. **Relative** of [promoter or director or KMP] of the company
  - iv. Board to fill **casual vacancy** in office of trustee (in case of **resignation**, obtain **written consent** of majority of **DH** prior to filling such vacancy)
  - v. DT may be **removed** if approved by **not less than 3/4th** in value of **DHs**
6. A **debenture trustee** shall take steps to **protect** the **interests** of the **debenture-holders** and redress their grievances in accordance with such rules as may be prescribed.

### Rule 18: Meeting of DHs:

**Meeting** of all the **DHs** shall be convened by the DT on:

- (a) **requisition** in writing signed by **DHs** holding  $\geq$  1/10th in value of outstanding debentures;
- (b) happening of any **event**, which constitutes **breach**, default or which in the **opinion** of DT **affects** interest of **DHs**.

7. Any **provision** in trust deed which has the **effect** of exempting DT from **liability for breach of trust** or **indemnifying** him where he fails to due care and diligence - Shall be **void**.


Provided that - **Liability** of DT shall be subject to **exemption** as agreed by - **Majority** of **DHs** holding  $>$  3/4th in value of total debentures.

8. Co. shall pay **interest** and **redeem** debentures as per the **terms** and conditions of their **issue**.
9. Where at any time, **DT** comes to **conclusion** that **assets** of co. are **insufficient**/likely to become insufficient to **discharge** principal amount when it become due, **DT** may **file petition** before **Tribunal**.

Tribunal may, after hearing, impose **restriction** on **further liability** of co. (in interest of **DH**)

10. If co. **fails** to **redeem debentures** on date of maturity or **fails** to pay **interest** when due, **Tribunal** may, on **application** of **DHs** or **DT**, order co. to **redeem** it **forthwith** with payment of principal and interest thereon.
11. A contract with co. to **take up and pay** for any debentures of co. may be enforced by a **decree** for specific performance.

Additional points:

1. As per sec 180(1)(C) - Co. to obtain SR if borrowings exceed 100% of PUSC + FR + SPA
2. Co. to file return of allotment in Form PAS -3 within 30 days of allotment of such debentures 

Addition concept relevant for CA Inter:



**Section 180(1)(c) - Restriction on power of Board w.r.t. Borrowing Money**

Board can exercise the following power only with the consent of co. by way of SR:

- c. **Borrow** money if money to be borrowed + Already borrowed > PUSC + FR + SP

Important Note:

- If BoD borrow in excess of limits specified, SH may ratify.
- PUSC to include both - Equity as well as preference.
- SR not applicable in case of temporary loans (payable on demand/within 6m) obtained from co. bankers in OCOB.
- Temporary loan does not include loan raised to finance capital expenditure.

→... The End ...←

## Chapter 7 Management and Administration

Sec	Name	Sec	Name
88	Register of Members, etc.	106	Restriction on Voting Rights
89	Declaration of Beneficial Interest	107	Voting by Show of Hands
90	Register of significant beneficial owners	108	Voting through Electronic Means
91	Power to Close Register of Members or DH or Other Security Holders	109	Demand for Poll
92	Annual Return	110	Postal Ballot
93	Omitted	111	Circulation of Members' Resolution
94	Place of Registers, Returns, etc.	112	Representations of President
95	Registers, etc., to be Evidence.	113	Representations of BCs
96	Annual General Meeting	114	Ordinary and Special Resolutions
97	Power of Tribunal to Call AGM	115	Resolutions Requiring Special Notice
98	Power of Tribunal to call Meetings, etc.	116	Resolutions Passed at Adjourned Meeting
99	Punishment for default u/s 96 to 98	117	Resolutions and Agreements to be Filed
100	Calling of EOGM	118	Minutes of meeting
101	Notice of Meeting	119	Inspection of Minute-Books of GM
102	Statement to be Annexed to Notice	120	Maintenance and Inspection in e-form
103	Quorum for Meetings	121	Report on Annual General Meeting
104	Chairman of Meetings	122	Applicability to OPC
105	Proxies		

Form	Sec	Purpose
MGT-1	88	Register of members of the company
MGT-2	88	Register of Debenture Holders or Any Other Security Holders
MGT-3	88	Notice or change in situation or discontinuation of a location where a foreign register is kept
MGT-4	89	Declaration by Registered owner of shares who does not hold beneficial interest in shares
MGT-5	89	Declaration by beneficial owner of shares but whose name is not entered in RoM
MGT-6	89	Return to RoC in respect of declaration u/s 89 received by co.
MGT-7	92	Annual Return (for companies other than OPC and small companies)
MGT-7A	92	Annual Return (for OPC and small companies)
MGT-8	92	Certificate by a Company Secretary in practice (in case of Annual Return)
MGT-11	105	Appointment of proxy for a meeting (proxy form)
MGT-12	109	Polling paper in the meeting
MGT-13	109	Scrutinizer's report to the Chairman pertaining to the poll of the meeting
MGT-14	117	Filing of company resolutions and agreements with the Registrar
MGT-15	121	Form for filing report on the AGM



**Introduction:**



**Section 88: Register of Members, etc.**

1. Every co. shall keep and maintain following **registered** in prescribed manner:

Register of Members (RoM)  
for ESH and PSH  
**(MGT 1)**

Register of Debenture  
Holders (DH)  
**(MGT 2)**

Register of Other  
Security Holders  
**(MGT 2)**

2. Every register maintained u/ss (1) shall include an **index** of the names included therein.  
Note - Maintenance of index is **not necessary** in case the number of **members < 50**.

3. Register + Index of beneficial owners (BO) maintained by **depository** = Deemed compliance of Act



**Rules relating to Register of Members:**

- **Entry** to be made **within 7 days** of date of **BoD approval** for allotment or transfer of shares.
- RoM shall be maintained at **RO**. However, **SR** in **GM** is passed to keep register at:
  - Any other place within city, town, or village of **RO**, or
  - Any place **within India** in which > 1/10th of total members (as in RoM) **reside**.
- Every **co. limited by shares** shall - maintain RoM in **Form MGT-1**
- In case of **co. not having SC**, RoM shall contain following particulars w.r.t. each member:

<ul style="list-style-type: none"> <li>• Basic details of <b>members</b> (name, address, e-mail, PAN or CIN)</li> <li>• In case member is a <b>minor</b>, name of the <b>guardian</b> and <b>DOB</b> of member;</li> <li>• Name and Address of <b>Nominee</b>;</li> </ul>	<ul style="list-style-type: none"> <li>• date of <b>becoming</b> member or date of <b>cessation</b>;</li> <li>• <b>any other interest</b> if any; and</li> <li>• <b>instructions</b>, if any, given by the member w.r.t. sending of <b>notices</b>.</li> </ul>
<ul style="list-style-type: none"> <li>• amount of <b>guarantee</b>, if any;</li> </ul>	

- If any securities are **attached** by **SEBI** or any competent authority giving directions for **remittance** of dividend or interest thereon, **mention** the same in the **Registers**.
- In case of **listed** shares, mention the details of **pledge**, charge, lien w.r.t. the securities of co. held by **promotor** along with the name of pledgee - Within **15 days** of event.
- **Changes**, if any, in the **status** of members or DH or OSH on account of **death**, insolvency or transfer of shares to **IEPF** or any other reason - **Record** such change in register

## 4. Foreign Register:

- If so authorized by AoA, co. may keep outside India (in prescribed manner)
- a part of the register u/ss (1) called Foreign register,
- containing names and other particulars of members, DH, OSH or BO residing o/s India.

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 Rule 7: Foreign Register (FR):

Particulars	Details
File with RoC	Co. shall, within 30 days from date of opening of FR - File with RoC - Notice of situation of the office in Form MGT-3 + Fees
Change in situation	In event of change in situation of office or discontinuance -Intimate within 30 days (MGT 3)
FR = PR	FR = Deemed part of principal register
Inspection and advertisement for closing FR	FR shall be open to inspection and may be closed, and extracts /copies may be taken, in same manner, as is applicable to principal register. Except that advertisement before closing FR shall be inserted in at least 2 newspapers circulating in the place wherein FR is kept.
Entry in FR	After BoD approves allotment
Transmit data to RO	Company shall: <ul style="list-style-type: none"> <li>a. transmit to RO in India a copy of every entry within 15 days of such entry;</li> <li>b. keep at such office a duplicate register of every FR duly entered up.</li> </ul>
Discontinue FR	Thereupon, all entries in that register shall be transferred to: <ul style="list-style-type: none"> <li>➤ some other FR kept by the company outside India or</li> <li>➤ to the principal register.</li> </ul>

## 5. Failure to maintain register u/s 88: Company - Penalty of Rs. 3 lakhs ; OID - Rs. 50,000

## Note:

1. Can a minor's name be entered in RoM? - No. Only legal guardian's name can be entered
2. Joint SHs may request co. to enter their names in RoM in a certain order. Seniority shall be determined by the order in which the names stand in the ROM.

## Concept clarity:

Location of RO - Mumbai

Total Shareholders - 1,000 shares

Location	No. of shares	OR or SR?	Can RoM be kept?
Mumbai	50 members	None	Yes. Irrespective of members, it's RO
Delhi	101 members	SR	Yes.
Goa	98 members	SR	No.

## Section 89: Declaration in Respect of Beneficial Interest in any Share

1. Where name of person is entered in RoM as **holder** of shares **but who does not hold beneficial interest (BI)** on it - Such person shall:
  - **within 30 days** of **entry** of name in RoM, in **Form MGT 4**
  - make a **declaration to the company specifying** name and other particulars of **beneficial owner**.
2. Every person who **acquires a BI** in share shall:
  - **within 30 days** of acquiring such BI,
  - in **Form MGT-5**
  - make a **declaration** to co. specifying **nature** of his interest, particulars of person in whose name shares are registered and other prescribed details
3. Where any **change occurs in BI** such shares, such person and BO shall - **within 30 days** from date of such change, make a **declaration** to the **company** in prescribed form.
4. Where **declaration** under this section **is made** to a company, the **company shall**:
  - make a **note** of such declaration in concerned register and shall
  - **within 30 days** of receipt of declaration - File a return in **Form MGT - 6** with **Registrar** + Fees
5. Where **declaration** required under this section is **not made** by BO - **No rights** in respect of such shares shall be **enforceable** by him or by any person claiming through him.
6. Notwithstanding this section, company to **pay dividend** to members (not BO)
7. **Penalty:**  
 Failure to make declaration to company - Rs. 50,000 + 200/day - Max 5 lakhs  
 Failure of company to file MGT 6 - Co. + OID - Rs, 1,000/day - Max 5 lakhs (co) and 2 lakhs (OID)

### Exemption:

Section 89 - Not applicable to Government companies (92 + 137)

Trust created to set up Mutual fund, venture capital fund or other SEBI approved fund - Need not file such declarations.



### Designation of responsibility to furnish information to RoC:

- Every co. shall **designate** a person responsible for furnishing info. to RoC w.r.t. beneficial interest.
- Following person **may** be designated:
 

CS	KMP, other than CS	Every director, if there is no CS or KMP
----	--------------------	--
- Until a person is so designated, following shall be **deemed** to be the designated person:
 

CS, if any	Every MD or Manager, in case CS is not appointed, or	Every director, if co. has no CS, MD or Manager
------------	--	---
- Co. shall inform details of designated person in **Annual Return**.
- **Change** in designated person - Intimate to RoC in e-form **GNL-2**.



## Section 90: Register of significant beneficial owners in a company

Who is a significant beneficial owner (SBO)? [2(1)(h)]





"SBO" in relation to a reporting company means:

- an individual,
- who acting alone or together, or through one/more persons or trust,
- possesses one or more of the following rights or entitlements in such reporting co., namely:
  - (i) holds indirectly, or together with any direct holdings, not less than 10% of the shares;
  - (ii) holds indirectly, or together with any direct holdings, not less than 10% of voting rights;
  - (iii) has right to receive or participate in not less than 10%, of the total distributable dividend in a FY through indirect holdings alone, or together with any direct holdings;
  - (iv) has right to exercise, or actually exercises, significant influence\* or control, in any manner other than through direct-holdings alone:


Note - If an individual does not hold any right indirectly under (i), (ii) or (iii) above - he shall not be considered to be SBO. (i.e., Indirect holdings are mandatory for becoming SBO)

\*Significant influence means power to participate, directly or indirectly, in financial and operating policy decisions of the reporting company but is not control or joint control of those policies

### Legal provision

1. Every SBO shall make a declaration to the co., specifying the nature of his interest and other particulars, in Form BEN - 1 within 30 days of becoming SBO. 
2. Every co. shall maintain a register of SBO and changes therein in Form BEN-3 which shall include the name of individual, his date of birth, address, details of ownership and other prescribed details 
3. The register maintained u/ss (2) shall be open to inspection during business hours, at such reasonable time of not < 2 hours, on every working day, by any member on payment of fee specified by company (not > Rs. 50 for each inspection)
4. Return of SBO:  
Every company shall file a return of SBO of the company and changes therein in Form BEN-2 with the Registrar containing names, addresses and other prescribed details within 30 days of receipt of declaration from SBO in Form BEN -1   


Note - Every co. shall take necessary steps to identify an individual who is a SBO in relation to the company and require him to comply with the provisions of this section.

5. A company shall give notice in Form BEN-4 to any person (whether or not a member) whom the company knows or has RGTB: 
  - (a) to be a SBO of the co.;
  - (b) to be having knowledge of identity of a SBO or another person likely to have such knowledge;
  - (c) to have been a SBO of the company at any time during 3 years immediately preceding the date on which the notice is issued,
 and who is not registered as a SBO with the company as required under this section.

6. Info. required by notice u/ss (5) - Concerned person to give **within 30 days** of date of the notice.

7. Apply to Tribunal

The company shall:

- (a) where that **person fails** to give info. within time specified therein; or
- (b) where info. given is **not satisfactory,**



- Apply to **Tribunal within 15 days** of expiry of notice period, **for an order** directing that **shares in question** be subject to
- **restrictions** w.r.t. transfer of interest,
  - **suspension** of rights attached thereto
  - **other** matters as may be prescribed

8. On application u/ss (7), **Tribunal may**, after giving **OOBH** to parties concerned, make **such order restricting** the rights attached with the shares **within 60 days** of receipt of application.

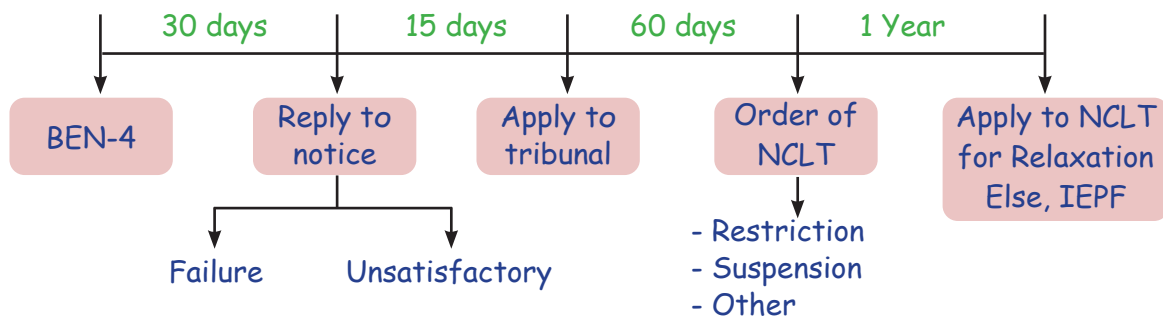
9. Co. or the **person aggrieved** by order of Tribunal may **apply to Tribunal** for **relaxation** or lifting of the restrictions placed u/ss (8), **within 1 year** from the date of such order.

Provided that - If no appln. made within 1 year - such shares shall be **transferred** to **IEPF Authority**

Penalty u/s 90:

Sub -section	(10)	(11)		(12)
Failure	Person fails to make declaration u/ss (1)	Co. fails to maintain register or allow inspection thereof		Person willfully furnishes false or incorrect info. or suppresses material info.
Liable	Person	Company	OID	Such person shall be liable for action u/s 447
Penalty	Rs. 50,000	Rs. 1 lakh	Rs. 25,000	
Continuing Failure	Rs. 1,000/day	Rs. 500/day	Rs. 200/day	
Maximum	Rs. 2 lakhs	Rs. 5 lakhs	Rs. 1 lakh	

**Summary of BEN -4 timeline:**





### Section 91: Power to Close Register of Members or Debenture-Holders or Other Security Holders.

- A company may **close** the RoM or register of DH or OSH for **any period**, subject to:
  - not exceeding **in aggregate 45 days** in each **year** and not exceed **30 days** at any one time.
  - previous notice** has to be given in prescribed manner **of at least 7 days** (or such lesser period as specified by SEBI for listed cos. or cos. which intend to get their securities listed)

Prescribed manner for notice - 1 **vernacular** newspaper + 1 **english** newspaper + **website**.

- In case of contravention u/ss (1), penalty shall be:  
**Co. and OID - Rs. 5,000 for every day** during which register was closed subject to **max. Rs. 1 L.**



### Section 92: Annual Return



Every company shall prepare a return containing the following details as on close of FY: **[BGR SH KMP CFO]**

RO, princial <b>Biz.</b> activities	Particulars of holding, associate or suby ( <b>Group</b> cos)	shares, debentures or other sec. and <b>SH</b> pattern	Members, DH, OSH and change since Previous FY ( <b>Holder</b> s)
Promoter/Dir/ <b>KMP</b> and changes since PFY	<b>Meetings</b> - GM, BOD, Committee and attendance details	<b>Remuneration</b> of director/KMP	<b>Penalty</b> on co., director or officers + Compounding + Appeals
Certification of <b>compliance</b>	Details of shares held by <b>Foreign</b> Institutional Investors		<b>Other</b> matters

#### Annual Return:

Sign on Annual Return	<ul style="list-style-type: none"> <li><u>OPC &amp; small co</u> - AR to be signed by <b>CS</b>. Where there is no <b>CS</b>, by director</li> <li><u>Other companies</u> - By a director + <b>CS</b> (where no <b>CS</b>, by <b>CS</b> in practice)</li> </ul>
Form for AR	<ul style="list-style-type: none"> <li>Other companies - <b>MGT - 7</b></li> <li>OPC &amp; Small Co - <b>MGT - 7A</b></li> </ul>
AR to be certified by <b>CS</b> in Practice	AR filed by: <ul style="list-style-type: none"> <li><b>Listed</b> company</li> <li>Co. having <b>PUSC not less than 10 crore</b> or <b>turnover not less than 50 crore</b> shall be certified by <b>CS</b> in practice in <b>Form MGT - 8</b> stating that:                             <ul style="list-style-type: none"> <li>AR discloses the <b>facts correctly</b> and adequately and</li> <li>company has <b>complied</b> with all the <b>provisions</b> of this Act.</li> </ul> </li> </ul>
Place on website	AR on <b>website</b> of company and <b>web-link</b> thereof - Disclose in BoD's report
File with RoC [Section 96(4)]	Every <b>co.</b> shall file with <b>the Registrar</b> a copy of AR + Fees: <ul style="list-style-type: none"> <li>within <b>60 days</b> from date on which <b>AGM</b> is held or</li> <li>where no <b>AGM</b> is held in any year, <b>within 60 days</b> from date on which <b>AGM</b> should have been held + statement specifying reasons for not holding <b>AGM</b></li> </ul>

Penalty	Co. fails to file AR within prescribed time, penalty of: Co. - Rs. 10,000 + Rs. 100/day upto max Rs. 2 lakhs OID - Rs. 10,000 + Rs. 100/day upto max Rs. 50,000
Penalty on CS in practice	If <b>CS in practice certifies the AR otherwise than in conformity</b> with the requirements of this section, he shall be liable to a <b>penalty</b> of Rs. 2 lakhs



**Section 94: Place of keeping and Inspection of Registers, Returns, etc.**



- Registers u/s 88 and copy of AR filed u/s 92 shall be kept at the RO of the company.

Provided that such registers or AR may also be kept at any other place in India in which > 1/10th of the total no. of members (as per RoM) reside, if approved by SR passed at GM (3 conditions - Such place is within India, more than 1/10th member reside and SR is passed)

The period for which such registers or AR shall be preserved is as shown below:

Registers/Annual Return	Preserve for?	Custody
RoM u/s 88 + Index	Permanently	CS of co. or any other person auth. by Board
Register of DH or other security holders + Index	8 years from date of redemption	CS of co. or any other person auth. by Board
Foreign Register	Permanently, unless it is discontinued and all the entries are trfd. to any other FR or to the principal register	CS of co. or any other person auth. by Board
Foreign register of DH or any other security holders	8 years from date of redemption	CS of co. or any other person auth. by Board
Annual returns prepared under section 92	8 years from date of filing with Registrar.	

- Inspection of Registers, Indices and AR:

The registers, indices and AR shall be open for inspection during business hours (at such reasonable time on every working day):

- By members, DH or OSH - without any fees
- By any other person - on payment of such fees as may be prescribed.

Note - Reasonable time of not less than 2 hours on every workday shall be considered by the co.

- Extract or copies by ANY person:

Any member, DH, OSH or BO or any other person may—

- take extracts from any register, or index or return without payment of any fee; or
- require a copy thereof on payment of fees as per AoA (not > Rs. 10/page). Co. to provide copies within 7 days.

4. On **refusal** of any inspection or making extract or copy:
- **company** and every **OID - Liable** for each such default, to a **penalty** of Rs. 1,000/day subject to a max of Rs. 1 lakh during which the refusal or default continues.
  - **CG** may also, **by order**, direct:
    - o an immediate inspection of the document, or
    - o that **extract** required shall **forthwith** be allowed to be taken by person requiring it.

**Note** - The following particulars of register or index or return in respect of members shall not be made available for any inspection u/ss (2) or for extracts or copies u/ss (3), namely:

address or registered address  
(in case of a body corporate);

e-mail ID

Unique Identification  
Number

PAN  
Number



### Section 95 - Registers, etc., to be Evidence:

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be **prima facie evidence** of **any matter** directed or authorised to be inserted therein by or under this Act



### General Meetings (Section 96 to 105)



### Section 96: Annual General Meeting

4 5 6 31 32

1. **Every company** (other than OPC) shall, in **each year**, in addition to other meetings, hold **AGM**, and shall specify as such in the notices, and **not more than 15m** shall elapse between two AGMs

Provided that - **First AGM** to be held **within 9m** of closing of first **FY**. Thereafter, within **6m** from closing of each **FY**.

Provided further - If first AGM is held as aforesaid - **No AGM** necessary in **year of incorporation**.

**RoC** may, for any **special reasons**, **extend** the time within which **AGM** (other than first AGM) shall be held by **not > 3m**.

2. **AGM** shall be called during **business hours (9AM to 6PM)** on **any day other than national holiday** (as declared by **CG**).

Place of holding AGM:

AGM:

Held at **registered office** or some other place **within city, town/village** where **RO** is situated

AGM of unlisted co. -

Held at **any place in India** if **consent** in writing/emode by **ALL members** in advance

AGM of Govt co. (92+137) -

**RO** or **within city/town/village** where **RO** is situated or **other place approved** by **CG**

**Section 97: Power of Tribunal to call AGM:**

1. Notwithstanding anything contained in Act or AOA, in case of **default** in holding AGM u/s 96, **Tribunal** may, **on appln** by **any member** of co - call or direct **calling of AGM** & give such consequential directions.  
Provided that - Such directions **may include** that **1 member** present in **person or proxy** shall be **deemed to constitute** a meeting.
2. GM held u/ss (1) - Deemed AGM of company.

**Section 98: Power of Tribunal to call meeting of members, etc****(applicable only for EGM. Not AGM)**

1. **Other than AGM**, if for any reason, it is **impracticable** to call a meeting or hold or conduct a meeting in manner prescribed by Act or AOA, **Tribunal** may, either:
  - i. either **suomotu**, or
  - ii. on **application** of director or member entitled to vote at the meeting **order** a meeting of co. to be **called, held and conducted** in manner as Tribunal thinks fit, and give such ancillary directions as may be expedient.  
Provided that - Such directions **may include** that **1 member** present in **person or proxy** shall be **deemed to constitute** a meeting.
2. Any meeting held u/ss (1) - Deemed to be a meeting of company duly called, held and conducted

**Section 99: Punishment for default u/s 96 to 98.**

If default is made in holding meeting u/s 96, 97 or 98 or in complying Tribunal's directions:

**Company and OID** - Fine which may extend to **Rs. 1 lakh** + **Continuing default** - Further **Rs. 5,000/day****Section 100: Calling of Extraordinary General Meeting (EGM)**

7-13-36

1. **Board** may, whenever it deems fit, call an EGM of the company.  
Place - EGM shall be held at a **place in India** (except in case of **WOS of co. incorporated o/s India**)
2. Board **shall**, at the **requisition** made by following, **call an EGM** of the company:

Co. having **share capital** - Members holding **not less than 1/10th of total PUSC** that carries voting rights.

Co. not having **SC** - Members having **not less than 1/10th of total voting power**.

3. The requisition made u/ss (2) shall:
  - a. Set out **matters** for consideration at the meeting
  - b. **Signed** by requisitionists, and
  - c. Sent to **RO** of the co.

4. The Board shall:
  - a. Call for such meeting **within 21 days** from **receipt** of valid requisition
  - b. Meeting to be called on a **day** not later than **45 days** from date of **receipt** of valid requisition
5. **On failure** of board to call such meeting - **Requisitionists may themselves** call and hold such meeting **within 3m** of date of requisition.
6. Meeting by requisitionists to be called, held & conducted in same **manner** as it is called, held by BoD
7. **Reasonable expenses** of such meeting shall be **reimbursed** to requisitionists by co. and such sum shall be **deducted** from **remuneration u/s 197** of directors who were in default in calling the meeting.



#### Rule 17: Calling of EGM by Requisitionists:

1. Requisition has to be in **writing** or **e-mode** at least **21 clear days** prior to EGM proposed date.
2. Notice to specify **place, date, day, and hour** of meeting & contain **business** to be **transacted**.  
The meeting shall be convened at **RO** or in the **same city or town** where RO is situated **on any day except national holiday**.
3. If proposed resolution is **SR** - Give notice as required u/s 114(2)
4. Notice shall be signed by **all** requisitionists **or by a requisitionists** duly **authorized** in writing.
5. **No ES** needs to be annexed to notice for such EGM. They **may disclose reasons** for proposed resolutions at the meeting.
6. Notice shall be given to those members whose names appear in RoM within 3 days of receipt of a valid requisition by the co.
7. Where **meeting is not convened**, the requisitionists shall have a **right to receive**:
  - **list** of members
  - their registered **address** and
  - number of **shares** held and
 the co. is bound to give such info **as on 21st day** from date of receipt of valid requisition form **together with such changes**, if any, **before expiry of 45 days** from such receipt.
8. **Mode** of sending notice - Speed post or registered post or through e-mode.
9. **Accidental omission** to give notice to, or the non-receipt of such notice by, any member shall not **invalidate** the proceedings of the meeting.

#### Concept clarity check

Are the requisitionists required to specify reasons for the matters proposed to be considered?  
- **No. Just stating the matters is enough. Reasons not required. [LIC vs Escorts]**

## Section 101: Notice of meeting:

8 35

1. GM may be called by giving **not less than clear 21 days'** notice in **writing** or **e-mode** - Manner prescribed.

Provided that GM may be called **after giving shorter** notice if **consent** is accorded:

In case of AGM:

By not less than **95%** of members entitled to vote thereat

In case of any other GM:

- In case of co. having SC - **Majority** in numbers + representing **not less than 95%** of PUSC
- In case of co. not having SC - members having not less than **95%** of total **voting power**

To calculate 21 clear days: - **Exclude** - Date on which **notice** is served AND date of **meeting**

2. Notice to specify **place, date, day** and **hour** of meeting & contain **business** to be **transacted** thereon.
3. Notice to be given to **[MAD]**:

**Every member** of the co. (LR of deceased member or **assignee** of insolvent member)

**Auditors** of the company, and

Every **director** of the company

4. **Accidental omission** to give notice to, or the non-receipt of such notice by, any member shall not **invalidate** the proceedings of the meeting

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## Rule 18: Modes of Sending the Notice

- Sending of notices through electronic mode (e-mode) has been statutorily recognized
  - "Electronic mode" means:
    - any communication sent by co. through authorized & **secured computer** programme
    - capable of **producing confirmation and**
    - keeping **record** of such communication addressed to the person entitled to receive
    - at the **last e mail** address provided by the member.
  - Notice may be sent through e-mail as a **text, attachment** or URL.
  - E-mail to be **addressed to entitled person** (as per records of **depository**)
  - Co. to **allow changing** or adding email IDs at least **once in a FY**
  - Subject line** of email - State the name of co., notice of type of meeting, place and date.
  - Place notice on **website** of co. and other website notified by **CG**
- Note** - Where notice is sent by **post**, it shall be **deemed to be served** at expiration of **48 hours after** the letter containing the same is **posted**. (Refer Sec 20 of chapter 2)

Concept clarity check:

- Can an individual director call for GM? - **No. Individual director is not authorized. Only BoD can. However, if individual director ends up calling, BoD can later, ratify the same.**
- Cos **obligation** to send notice shall be **satisfied when it transmits the email**. Co. cannot be held responsible for transmission of email beyond control.

3. If an entitled members fails to provide email address to co., co. shall not be in default for not delivering notice via email.
4. Companies Act does **not provide** anything specific regarding **condonation** of delay in giving notice.
5. In case of section 8 company (92 + 137), notice shall be sent within ~~21 days~~ 14 days.

Example:

AGM to be held on 7th Nov. Notice was posted on 16th October. Is the notice valid or short?  
**Answer** - Notice is invalid as it is of only 19 clear days. (because when posted on 16th Oct, it is deemed to be served on 18th October i.e., 48 hours later)



### Section 102: Statement to be annexed to notice (Explanatory statement)

9-32

1. A statement setting out following material facts concerning each item of special business shall be annexed to notice calling such meeting:

the nature of **interest** (finance/ otherwise) in respect of each **items** of:

- every **director & manager**
- every other **KMP**
- **relatives** of above

**other info & facts** that may enable to **understand** meaning, scope and implication of items of business and **take decisions**

Where, as a result of **non-disclosure** or insufficient disclosure of interest (as required above), if any **benefit accrues** to promoter, director, manager, KMP or their relatives - They shall **hold** such benefit **in the trust** of the company + **Liable to compensate** the co. to extent of such benefit.

2. Special business in AGM - In case of **AGM**, all **business** shall be deemed **special**, other than:

consideration of **FS** and **reports** of **BoD** and **auditors**

declaration of **dividend**

appointing of **director** in place of those **retiring**

**appointment** of and fixing **remuneration** of **auditors**

Special business in EGM - All business shall be deemed to be special.

Provided that:

- Where any **item** of **special business** **relates to or affects** any other company (say, A Ltd),
- the extent of **shareholding interest** in that other company (A Ltd) of:
  - o every **promoter, director, manager**, if any, and
  - o of every other **KMP** of the first mentioned company
- **shall** be set out in the **ES**, if not less than 2% of PUSC of that company (A Ltd)

3. Where any item of business refers to any **doc**, which is to be considered at the meeting, the **time** and **place** where such doc can be **inspected** shall be specified in ES.

Contravention - If default is made in complying with this section - Every promoter, director, manager, KMP ~~or their relatives~~ who is in default - Liable to penalty which is higher of:

- Rs. 50,000 or
- 5x the amount of benefits accrued to such promoter, director, manager, KMP or their relative

Summary of Ordinary vs Special Business:

	AGM	EGM
Ordinary Business	FS, Dividend, Director, Auditor	None
Special Business	All, other than above	All

Note: ES not required for transacting ordinary business



### Section 103: Quorum for meetings



1. Unless articles provide for a larger number:

a. In case of a public company:

No. of members as on date of meeting	Members personally present
Not more than <u>1,000</u>	5
More than 1,000 but up to <u>5,000</u>	15
> <u>5000</u>	30

b. In case of a private co. - 2 members personally present

2. If quorum is not present within half an hour from appointed time:

a. Meeting called by requisitionists u/s 100 - stands cancelled

b. Other meetings - Adjourned to same day, next week at same time and place or such other date as board may determine.

In case of adjourned meeting or change of day, time or place of meeting - the company shall give not less than 3 days notice to members either individually or publish ad in newspaper (English + Vernacular)

3. If at adjourned meeting, quorum is not present within half an hour - Members present = Quorum [Example - Jet Airways]

#### Concept clarity check:

1. AOA can only provide for a larger number of quorum (i.e., not less than no. given in act)
2. Preference shareholder (PSH) shall not be counted for quorum where the matter is such that it does not affect rights of PSH or where PSH are not allowed to vote.
3. In case where a person representing a body corporate shareholder is present in meeting, he shall be considered as personally present (i.e., Say, X Ltd is a SH in A Ltd. X Ltd. sent his representative Mr. X in the GM of A Ltd. It shall be considered personal presence)
4. One member representing 2 companies is counted as 2 members.

5. Where a person is AR for 5 BCs. He is present at a meeting of co. having < 1000 members. Is the quorum present? - No. 1 more person is still required because min. 2 person constitute quorum.
6. Proxies will not be included for the purpose of quorum.
7. Presence of a single member can never be called as meeting (even if meeting is adjourned meeting)



### Section 104: Chairman of meetings

(N.A. to Pvt. Co. (92+137) unless AoA of Pvt co. specifies otherwise)

1. Unless AOA provides otherwise, members personally present shall elect one of themselves to be chairman thereof on a show of hands.
2. If poll is demanded on election of chairman:
  - Chairman elected u/ss (1) by show of hands shall continue to be chairman until some other person is elected chairman by way of poll.
  - Such other person to be chairman for rest of the meeting.

Additional points:

- Chairman is a person who manages meetings and ensures decorum is maintained.
- Chairman has prima facie authority to decide all questions arising in the meeting.
- Chairman has casting vote or second vote in BM and GM (only if empowered by AoA)



### Section 105: Proxies

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1. Any member entitled to attend and vote at a meeting shall be entitled to appoint another person as a proxy to attend and vote on his behalf.

Provided that proxy shall have no right to speak at such meeting + entitled to vote only on a poll

Provided further that:

- Unless AoA provides otherwise, this sub-section - N.A. to co. not having SC
- CG may prescribe classes of cos. whose members shall not be entitled to appoint proxy
- Limit - A person shall not act as a proxy on behalf of members exceeding 50 and having prescribed no. of shares.



### Rule 19: Proxies

1. A member of sec 8 co. can only appoint another member ONLY of the co. as proxy
2. A person can act as proxy on behalf of members not exceeding 50 and holding (aggregate) not > 10% of total share capital of the company carrying voting rights  
Provided that a person holding > 10% of SC may appoint a single person as proxy and such person shall not act as proxy for any other SH
3. Appointment of proxy shall be in Form MGT 11



2. Every notice calling for meeting, there shall appear with reasonable prominence a statement that -
- a member entitled to attend & vote is entitled to appoint a proxy, or one or more proxies (where allowed) and
  - that proxy need not be a member
3. Default u/ss (2) - OID liable to penalty of Rs. 5,000
4. Deposit of proxy form:  
48 hours before meeting, proxy form or any other doc. necessary to show validity of such appt. shall be deposited with the company (even if articles provide for longer period)
- Such instrument appointing proxy shall be in writing and be signed by:
- appointer or duly authorized attorney in writing or
  - if appointer is BC - under its seal or be signed by an officer or duly authorized attorney
5. If invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to notice of meeting and vote thereat - Every officer who issues or authorized such issue - Liable for penalty Rs. 50,000  
Provided that - Officer not liable if such issue is at the member's request in writing.
6. An instrument appointing proxy in Form MGT - 11 shall not be questioned on the grounds that it fails to comply with special requirements by the AOA
7. Inspecting proxy forms by member:  
Every member entitled to vote at the meeting - entitled to inspect proxies lodged. Provided that:
- Inspect during period - 24 hours before time fixed for commencement of meeting and ending with conclusion of meeting during business hours
  - Not less than 3 days' notice in writing of intention given to co.

Concept clarity check:

1. In case where member and proxy both are present in a GM -  
The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority
2. AoA provides that the proxy form should be received at least 60 hours before the GM. Is such provision valid? - No! The limit of 48 hours cannot be increased in any case.



## Voting [Sec 106 to 110]



## Section 106: Restriction on voting rights:



1. Notwithstanding anything contain in act, **AoA** may provide that:  
A member shall **not exercise voting right** in respect of the shares registered in his name on which:
  - **call** or other sum is **unpaid**, or
  - co. has exercised any right of **lien**.
2. Except as specified above, a co. shall **NOT prohibit** member from voting right **on any other ground**
3. In case of poll - Member (or his proxy) entitled to **more than one vote need not use all his votes or cast in the same way all the votes he uses**. (i.e., he can split his votes for and against same resolu)

Voting in case of joint shareholders:

- Unless AOA provides otherwise, joint shareholders **must concur** in voting.
- In case of joint shareholder, voting is done in **order of seniority** (determined on basis of order of **name appearing in RoM** which is as per the joint shareholders instruction)

Note - A company can restrict voting right in case of unpaid calls or lien **only if authorized by AoA**.



## Section 107: Voting by show of hands:

1. At any **GM**, resolution put to vote shall be **decided by show of hands**, unless poll is demanded u/s 109 or voting is carried out **electronically**.
2. Following shall be **conclusive evidence** of fact of passing of resolution or otherwise:
  - a. **Declaration** by **chairman** of passing of such resolution, and
  - b. Entry to that effect in the **minutes** of the meeting

Concept clarity check:

Can insolvent SH vote by show of hands? **Yes (as long as his name appears in RoM, he is entitled)**



## Section 108: Voting through electronic means.

**CG** may **prescribe** class or classes of **companies and manner** in which member may exercise voting rights by electronics-means.

 Rule 20: Voting through e-means:

1. Following cos. shall provide facility to vote by e-means:
  - a. Every co. having **listed** its equity shares in a RSE and
  - b. Every co. having **>= 1000** members

Provided that - **Nidhi** cos or **institutional investors** as per SEBI Regulations - Not required to provide such facilities.

2. Companies providing facility of voting by e-means shall comply with following procedures:

Particulars	Detail
Notice of meeting	To be <b>sent to</b> - All members, auditors, and directors. <b>Mode</b> - Registered post, speed post or e-means or by <b>courier</b> service
Place notice	On <b>website</b> of - Company and Agency (NSDL/CDSL)
Notice to state:	<ul style="list-style-type: none"> <li>➤ Co. is <b>providing facility</b> for voting by e-means.</li> <li>➤ That the facility - either <b>EVS or ballot or polling paper</b> shall also be made <b>available at meeting</b> and members attending the meeting who have not already cast vote via remote e-voting shall be able to exercise their right at meeting</li> <li>➤ Members who have cast <b>vote by remote voting</b> prior to meeting <b>may also attend meeting</b> but not vote again.</li> </ul>
Notice shall:	<ul style="list-style-type: none"> <li>➤ indicate <b>process</b> and manner for voting by e-means;</li> <li>➤ indicate <b>time schedule</b> including time period during which the votes may be cast by <b>remote e-voting</b>;</li> <li>➤ provide login ID details.</li> <li>➤ specify process for generating <b>password</b> and voting in secure manner</li> </ul>
Publication in newspaper	Co. shall cause a public notice by way of advertisement - <b>Immediately</b> on dispatch of notices <b>but at least 21 days before</b> date of GM in the following newspaper: <ul style="list-style-type: none"> <li>➤ at least once in <b>vernacular newspaper</b> in the language of <b>district</b> where RO is situated and having wide circulation in that district,</li> <li>➤ at least once in <b>English newspaper</b> having country wide circulation <b>specifying</b> the following: <ol style="list-style-type: none"> <li>1. statement that business may be transacted by <b>e-voting</b>.</li> <li>2. date and time of <b>commencement</b> of remote e-voting</li> <li>3. date and time of <b>end</b> of remote e-voting</li> <li>4. <b>cut-off date</b> (a date not earlier than 7 days before date of GM for <b>determining eligibility</b> to vote)</li> <li>5. manner in which person who became <b>members after dispatch</b> of notice may obtain login ID and password.</li> </ol> </li> </ul>
	<ol style="list-style-type: none"> <li>6. the statement that: <ol style="list-style-type: none"> <li>a. <b>remote voting</b> shall not be allowed beyond said date and time.</li> <li>b. manner in which co. shall provide for <b>voting at the meeting</b>.</li> <li>c. member <b>may participate</b> in GM even <b>after remote voting</b> but not allowed to vote again.</li> <li>d. person named in RoM as on <b>cut off date only</b> - entitled to vote</li> <li>e. <b>website</b> of the co. and agency</li> <li>f. name, designation, etc. of person responsible for <b>grievances</b> addressal</li> </ol> </li> </ol>
Remote voting	<ul style="list-style-type: none"> <li>➤ Remain open for <math>\geq</math> 3 days. Shall close at 5PM on date preceding date of GM.</li> <li>➤ During such period - members holding shares in <b>physical or demat</b> form, <b>as on cut-off date</b>, may vote</li> </ul>

	<ul style="list-style-type: none"> <li>➤ Vote once cast - <b>cannot</b> be subsequently <b>changed</b>.</li> <li>➤ At the end - facility to be <b>forthwith blocked</b>.</li> </ul> <p><u>Provided that</u> - If a co. decides to <b>use the same EVS</b> as used in remote e-voting for voting <b>during</b> the <b>GM</b>, the said facility - The said facility shall be operational till all resolutions are voted upon in the meeting.</p>
Scrutiny	<ul style="list-style-type: none"> <li>➤ <b>BoD</b> to appoint one/more scrutinizers (CA, CS or Cost Accountant, in practice or advocate or any person <b>not in employment</b> + Person of repute) to scrutinize the voting process in fair and <b>transparent</b> manner.</li> <li>➤ Scrutinizer may take assistance - Not an employee + well versed with EVS.</li> <li>➤ Scrutiniser shall be <b>willing</b> to be appointed and be <b>available</b> for ascertaining requisite majority.</li> <li>➤ Chairman to <b>allow voting</b> at the <b>GM</b> by use of <b>ballot</b> or <b>polling paper</b> or by <b>EVS</b> for those who didn't vote using remote e-voting.</li> </ul>
Counting votes	<p><b>Scrutiniser</b> shall, <b>immediately after</b> conclusion of voting at <b>GM</b>:</p> <ul style="list-style-type: none"> <li>➤ first count votes cast at <b>GM</b>,</li> <li>➤ thereafter <b>unblock</b> votes cast through remote e-voting in presence of <b>at least 2 witnesses not in employment</b> of co. and</li> <li>➤ <b>make</b> (<b>within 3 days</b> of conclusion of <b>GM</b>), a <b>consolidated scrutiniser's report</b> of total votes cast in favor or against, if any, to Chairman or a person authorised by him in <b>writing</b> who shall <b>countersign</b> the same.</li> <li>➤ Thereafter, <b>CM</b> or authorised person to <b>declare result</b> of voting <b>forthwith</b>;</li> <li>➤ Votes to remain secret till the votes are cast at <b>GM</b>.</li> </ul>
Prevent dual votes	To ensure that members who voted via e-voting do not vote again in <b>GM</b> - Scrutinizer to have access to details of shareholders who voted but not the manner in which they have cast their votes.
Register of assent/ dissent received	<ul style="list-style-type: none"> <li>➤ Scrutiniser to maintain a <b>register</b> (manually or electronically) to <b>record</b> assent or dissent received, mentioning particulars of name, address, folio number or client ID of members, number of shares held by them, nominal value and whether the shares have DVR;</li> <li>➤ Such <b>register</b> to remain in <b>safe custody of scrutinizer</b> till approval of minutes by chairman. Thereafter, hand over to company</li> <li>➤ Result of resolution - Place on <b>website</b> - Co + Agency + RSE (if listed)</li> </ul>
Deemed date of resolution	Date of <b>GM</b>
Withdrawn	Resolution proposed to be considered through voting by e-means <b>shall not be withdrawn</b>

## Section 109: Demand for poll

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1. **Before or on** declaration of result of voting on any resolution **on show of hands**:
  - a poll may be **ordered** to be taken by the **Chairman on his own motion**, and
  - **shall** be ordered to be taken by him on a **demand** made in that behalf:

In case of co. having SC -

By members present **in person or proxy** having  $\geq 1/10$ th of total VP or holding shares in aggregate having **PUSC  $\geq$  Rs. 5 lakhs or higher** amount prescribed

In case of other co. -

By members present in person or proxy having  $\geq 1/10$ th of total VP
2. The demand for a poll **may be withdrawn** at **any time** by the persons who made the demand.
3. Poll demanded for **adjournment** of meeting or appt. of **Chairman** of meeting to be taken forthwith.
4. A poll demanded on **any question other** than adjournment/ appt. of chairman shall be **taken at such time (within 48 hours from time it was demanded)**, as Chairman of the meeting may direct.
5. Where poll is to be taken, Chairman shall **appoint such number of persons**, as he deems necessary, to **scrutinise** the poll process and votes given on poll and to report to him in manner prescribed.
6. **Chairman** of the meeting shall have **power to regulate** the manner in which the poll shall be taken
7. **Result** of poll shall be **deemed** to be **decision** of meeting on **resolution** on which poll was taken

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**Rule 21: Manner in which chairman shall get the poll process scrutinized:**

Chairman of the meeting shall ensure the following:

- a. Scrutinizers are **provided** with:
  - **Register of members**, specimen **signs** of members, attendance and proxy register
  - All documents pursuant to sec 105, 112 and 113
- b. Scrutinizers to arrange **Polling papers (MGT-12)** & distribute to members & proxies present In case of joint SH - Give polling paper to first named holder (in his absence - joint holder)
- c. Scrutinizers to **keep record** of the polling papers received in response to poll, **by initialing** it.
- d. Scrutinizers shall **lock and seal** an empty polling box in presence of members and proxies. Such box shall be **opened** in presence of at least **2 witness**.
- e. In case of **ambiguity** about validity of a **proxy**, **Scrutinizers + Chairman to decide** validity
- f. Ensure that if member (who has appointed proxy) has voted in person, proxy's vote **disregarded**.

- g. Scrutinizers shall **count votes** cast on poll and prepare a **report** addressed to the Chairman. The report shall be in **Form MGT - 13**. Such report shall be sign and submitted **within 7 days** from date of poll. Chairman to counter-sign the same.
- h. Where voting is conducted by **e-means** u/s 108 and rules made thereunder, co. shall **provide all the necessary support**, technical and otherwise, to Scrutinizers in orderly conduct of voting and counting the result thereof.
- i. Scrutinizers' **report shall state total votes cast**, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
- j. Chairman shall **declare the result** of Voting on poll. The result may either be announced by him or a person authorized by him in writing.



### Section 110: Postal Ballot

As per Sec 2(65) - Postal ballot means voting by post or through e-mode

1. Notwithstanding anything contained in this Act, a company:

**shall**, w.r.t., such items of business as **CG may**, by notification, declare to be transacted **only** by means of postal ballot; **and**

**may**, in respect of any item, **other than ordinary business and any business** in respect of which **Directors or auditors have right to be heard** at meeting, transact by means of postal ballot

in such manner as may be prescribed, **instead of transacting such business at a GM.**

Provided that any item of business required to be transacted by means of postal ballot **under clause (a), may be transacted at a GM** by a company which is **required** to provide the facility to members to **vote by e-means** u/s 108, in the manner provided in that section.

2. If a resolution is **assented** to by the requisite **majority** of SHs by means of postal ballot, it shall be **deemed** to have been **duly passed** at a GM convened in that behalf.



### Rule 22: Postal Ballot:

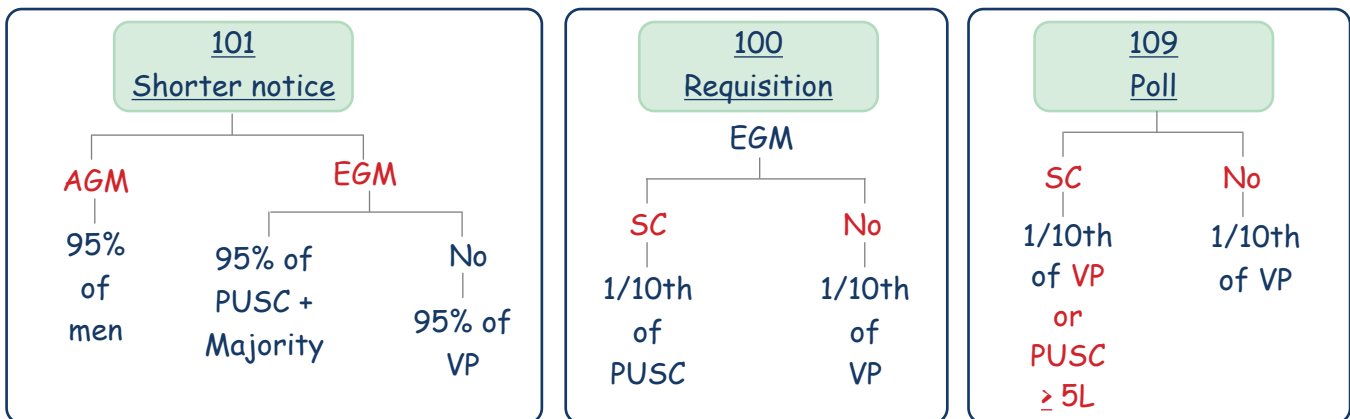
Particulars	Detail
Introduction	Where a co. is required or decides to pass resolution by postal ballot, - send <b>notice to all SHs + draft resolution</b> explaining reasons therefor and requesting them to <b>send their assent or dissent in writing on a postal ballot</b> because postal ballot means voting by post or through e-means <b>within 30 days</b> from date of dispatch of notice
Notice of meeting	To be <b>sent to</b> - All members, <del>directors and auditors</del> <b>Mode</b> - Registered post, speed post or e-means or by <b>courier service</b>
Place notice	On <b>website</b> of company - Remain on website till last date of receipt of PB forms

Publication in newspaper	<ol style="list-style-type: none"> <li>1. Co. shall publish an advertisement about having dispatched the ballot papers, in: <ul style="list-style-type: none"> <li>➤ at least once in <b>vernacular newspaper</b> in the language of <b>district</b> where RO is situated and having wide circulation in that district,</li> <li>➤ at least once in <b>English newspaper</b> having country wide circulation <b>specifying</b> the following: <ul style="list-style-type: none"> <li>➤ statement that business may be transacted by postal ballot including <b>e-voting</b></li> <li>➤ date of <b>completion</b> of dispatch of notice</li> <li>➤ date of <b>commencement</b> of voting</li> <li>➤ date of <b>end</b> of voting</li> <li>➤ the statement that: <ol style="list-style-type: none"> <li>a. <b>postal ballot</b> received beyond date is <b>invalid and voting</b> shall not be allowed beyond said date and time</li> <li>b. members who have not received the postal ballot forms may apply to the co. and obtain a <b>duplicate</b> thereof.</li> </ol> </li> </ul> </li> </ul> </li> <li>2. name, designation, address, etc. of person responsible for <b>grievances</b> addressal</li> </ol>
Scrutiny	<ul style="list-style-type: none"> <li>➤ <b>BoD</b> to appoint one/<del>more</del> scrutinizers who is <b>not in employment</b> to scrutinize the postal ballot process in fair and <b>transparent</b> manner</li> <li>➤ Scrutiniser shall be <b>willing</b> to be appointed and be <b>available</b> for ascertaining requisite majority</li> <li>➤ Postal ballot <b>received back</b> from SH shall be kept in <b>safe custody</b> of <b>scrutinizer</b> and after receipt of assent or dissent of the SH in writing on a postal ballot, <b>no person shall deface</b> or destroy ballot paper or declare the identity of the SH.</li> <li>➤ scrutinizer shall submit his <b>report</b> as soon as possible <b>after last date</b> of receipt of postal ballots but <b>not later than 7 days</b> thereof</li> </ul>
Register of assent/ dissent received	<ul style="list-style-type: none"> <li>➤ Scrutiniser to maintain a <b>register</b> (manually or electronically) to <b>record</b> assent or dissent received, mentioning particulars of name, address, folio number or client ID of members, number of shares held by them, nominal value and whether the shares have DVR; details of postal ballot <b>defaced</b>, if any</li> <li>➤ Such <b>register</b> and other papers to remain in <b>safe custody of scrutinizer till approval of minutes</b> by chairman. Thereafter, hand over to company to <b>preserve</b></li> <li>➤ Assent or dissent received <b>after 30 days</b> from the date of issue of notice shall be <b>treated</b> as if reply from the member has <b>not been received</b>.</li> <li>➤ Result shall be declared by placing it on <b>website</b> of company</li> </ul>
Rule 20 to apply	Provisions of rule 20 regarding voting by e-means shall apply, as far as applicable, <b>mutatis mutandis</b> to this rule in respect of voting by e-means.

Postal Ballot <b>ONLY</b>	Following items of business shall be transacted only by means of voting through a postal ballot:	
	Section	Business
	13	Alteration of object clause of MoA
	NA	Alteration of AoA to insert or remove provisions which, u/s 2(68) are required to be included in AoA of private co.
	12	Change in place of RO outside local limits of city/town/village
	13/27	Change in object for which money raised from public
	43	Issue of shares with differential rights
	48	Variation in rights attached to class of shares
	68	Buy-back
	151	Election of a director
	180	Sale of undertaking of co.
186	Giving loans, guarantees in excess of limit	
Non-applicability	Provided further - <b>OPC</b> and Cos. having <b>members up to 200</b> are <b>NOT</b> required to transact any business through <b>postal ballot</b>	



### Summary of Limits in Chapter 7



### Section 111: Circulation of Member's Resolutions

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- On requisition in writing by such number of members as u/s 100, a company shall:
  - give **notice** to members of **any resolutions** intended to be moved at the meeting, and
  - circulate to members - any **statement** w.r.t. matters referred to in proposed resolution
- A company shall not be bound u/ss (1) unless:
  - Copy of signed requisition is **deposited** at the **RO**:
    - In case of requisition requiring **notice** of resolution - Not less than **6 weeks before** meeting
    - In case of any **other** requisition - Not less than **2 weeks before** meeting
  - Along with requisition, deposit a **sum** reasonably sufficient to meet company's **expense**

**Note** - If after the **requisition requiring notice** is deposited at the RO + AGM is called on a date **within 6 weeks** after deposit thereof - It shall be deemed to have been properly deposited.

## Chapter 11

# Companies Incorporated Outside India

AR	Authorised Representative	IDR	Indian Depository Receipts
BC	Body Corporate	POB	Place of Business
Biz	Business	PRI	Person Resident in India
Co.	Company	STO	Share Transfer Office
DH	Debenture Holders	SRO	Share Registration Office
FC	Foreign Company		



### Foreign Company [Sec 2(42)]:



FC means a company/body corporate **incorporated outside India** which:

- a. has a POB in India (itself/agent, physical/e-mode), **AND**
- b. conducts any **business** activity in India in any manner.

#### Conceptual Clarity Check:

1. Would a company incorporated outside India conducting business in India without having POB in India be considered as a FC? - **Yes**. On literal interpretation of the definition, the word "and" shows that both POB and conduct of activity is needed. But this sec is to be interpreted under **Exception Construction**. i.e., the word "and" in definition is to be read as "or".
2. FC is not a co. u/s 2(20) but is a BC u/s 2(11) because FC is incorporated outside India.
3. Registrar has jurisdiction over FCs? - Registrar having jurisdiction over **New Delhi**
4. A FC has POB in West Bengal. To which RoC will it file necessary docs to? - **New Delhi RoC**
5. If BoD of a co. incorporate outside India meets and executes business decision in India, would it make it a FC? - **No**.
6. If a co. incorporated o/s India authorizes Mr. X in India to find customers and enter into contract on behalf of co., Is such co. a FC? - **Yes. Such arrangement establishes POB in India through agent.**
7. Place of business includes **Share Transfer Office** and **Share Registration Office**
8. If a person not being an FC carries on business or trade as FC - **Liable** for investigation u/s 210.
9. Branch offices are considered as reflection of parent company's office.

Place of Business via electronic mode bole toh?

Carrying out following **business electronically**, whether or not the **main server** is in India or outside [TDS OC]:

- B2B or B2C **Transactions** (E.g., Udaan, Amazon), data interchange or other digital supply transaction (E.g., Netflix).
- Offering to accept, inviting or accepting **Deposits** or subscription to securities in India or from Citizen of India
- Following **Services**:

Fin. settlement  
(E.g. Paypal)

Web based mkt.  
[Eg. Google Ads]

Advisory and  
transactional service

Database  
services

Supply chain  
Mgt.

➤ **Online services:**

Telemarketing

Telecomuting

Telemedicine [Online doc  
consultation]Education &  
info research➤ All related data **communication** via email/social media/mobile, etc.

**Note** - E-offering of securities, subscription, and listing of securities in **IFSCs** shall not be construed as an electronic mode for Foreign Cos. [**Amendment**]



### Section 379: Application of Act to foreign companies

8 12 19

1. Sec 380-386 and 392/393 shall apply to FCs (i.e., 387 to 391 - N.A.) [**Amendment**]
2. Where **not less than 50%** of PUSC (Equity/Preference) of Foreign co. is held (singly/aggregate) by:
  - a. one or more **citizen** of India
  - b. one or more companies or BC **incorporated** in India
  - c. one or more citizens of India and one or more cos. or BC incorporated in India, such co. shall comply with provision of this Chapter, in respect of its **Indian business**, as if it were company incorporated **in India**.

#### Conceptual Clarity:

1. An **Indian citizen** incorporated a co. in **Singapore** for business in Singapore. Is it a **FC**? - **No**. The fact that founder/promotor/owner of a co./BC is Indian would not impact the decision whether it is a FC or not.
2. A co. is incorporated in India having 100% Foreign Shareholding. Is it a **FC**? - **No**. Co. incorporated in India is a company u/s **2(20)** and not FC.



### Section 380: Documents, etc., to be delivered to Registrar by foreign companies

1. Every FC shall **within 30 days** of establishment of POB in India deliver the following to **RoC** (New Delhi) for registration [**CA<sub>2</sub>R PDC**]:

2 6 7 11

Certified **Charter** Docs - MoA/  
AoA or any other instrument  
defining constitution  
[Certified translation in  
English language]

Full **Address**  
of principle  
office of co.  
(not in India)

Full **Address**  
of office of  
co. deemed to  
be principal  
POB in India

List of **all Directors**/  
secretary of co.  
[Name, Father's  
Name, DOB, Address,  
nationality, passport,  
PAN, DIN, etc]

Name and Address of  
**PRI** auth. to accept  
notices/other docs  
served on co.  
[Auth. Representative]

Particulars  
of Opening/  
Closing of **POB** in  
India in earlier  
occasions

Declaration that none of  
director/AR (not secretary)  
are **Convicted**/debarred from  
formatn of co./mgt. thereof -  
India/Abroad

**Other**  
prescribed  
info.

2. Alteration to docs already submitted to RoC - Inform RoC within 30 days of alteration Form **FC-2**



### Companies (Registration of FC) Rules, 2014:

1. Above info. to be filed with RoC in **Form FC - 1**
2. Above application to be supported with an attested copy of:
  - a. **approval of RBI** under FEMA and approval from other **regulators** if required **or**
  - b. declaration from AR that no such approval is required
3. If a FC **ceases** to have POB in India, it shall **forthwith** give notice to RoC and from date of such notice, obligation to file docs with RoC ceases, provided no other POB.

### Section 381: Accounts of foreign company

1. Every FC shall, in every **CALENDAR YEAR**,
  - a. Make BS, P&L in prescribed forms, particulars and annexures
  - b. Deliver a **copy** to RoC
 CG may exempt FC from applicability of this.
2. If not in English - **Certified Translation** thereof in English to be annexed
3. Along with above docs, FC to send to RoC - **List of POB** in India as on BS date (**in Form FC-3**)

### Companies (Registration of FC) Rules, 2014:

1. FC to prepare FS for its Indian business operation **as per Sch III** for each **Financial** year
2. **Docs** to be annexed to FS - As per Chap **IX** - Accounts of Companies [Sec 128-138]
3. Docs relating to **CFS** of Parent FC also to be submitted (if not in English, certified translation)
4. Annex following additional docs/statements, **along with FS**:
  - Statement w.r.t, **RPT**
  - Statement of **Repatriation** of Profit
  - Statement of **Transfer** of Funds (incl. Dividend)
5. Time limit for delivery of above docs to RoC:
  - **Within 6m** from close of FY
  - RoC may on application, extend the time limit **by 3m**
6. **Audit** of books of Indian business ops - By practicing **CA** or Firm/LLP of CAs
7. Provision of **Chap X** (Sec 139-148) i.e., Audit and Auditors shall apply mutatis mutandis

Note regarding filing of **annual return** of the Indian operations of the foreign company:

As per Companies (Registration of FC) Rules, 2014, every FC shall prepare & file **Annual Return** in **Form FC-4 + Fees** within **60 days** from last day of FY **to RoC** containing particulars as on close of FY.

### Section 382: Display of name of Foreign Companies:

Every FC shall conspicuously exhibit:

Where?	Outside of every <b>office or POB</b> in India	Business letters, bill-heads, letter papers, & all notices and other publications,
What?	<ul style="list-style-type: none"> <li>➤ <b>Name</b> of the co.</li> <li>➤ <b>Country</b> of incorp.</li> <li>➤ State whether liability of members of co. is <b>limited</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>Name</b> of the co.</li> <li>➤ <b>Country</b> of incorp.</li> <li>➤ State whether liability of members of co. is <b>limited</b></li> </ul>
Language?	<ul style="list-style-type: none"> <li>➤ Letters easily legible in <b>English, and</b></li> <li>➤ Local Language used in POB</li> </ul>	<ul style="list-style-type: none"> <li>➤ Letters easily legible in English,</li> <li>➤ <del>Local Language</del></li> </ul>

**Section 383: Service on Foreign Company:**

16 22

- Any notice/other docs required to be served on FC
- shall be **deemed** to be sufficiently served if:
  - o **Addressed** to Auth. Representative of such FC (as per Sec 380), **and**
  - o Left at or **sent** by post or **e-mode** at such address

**Section 384: Applicability of other sections**

Following provision of Companies Act shall apply to Foreign Co.:

Section	Provisions related to:	Applicable to Indian business of FCs
71	Debentures	Mutatis Mutandis
92 & 135	Annual Return and CSR	Subject to Exceptions, Modifications & Adaptations as per Rules
128	BoA to be kept by Co.	To the extent that BoA to be kept at POB in India
Chap VI	Registration of Charges	Mutatis Mutandis
Chap XIV	Insp., Inq. and Investigation	Mutatis Mutandis (Sec 228)

**Section 386: Interpretation**

1. "Certified" means certified to be a **true copy** or **correct** translation.

Translation can be done **in India** or **outside** India. Who shall **authenticate** such translation?

- 13 Where a translation is to be made **within India**, it shall be authenticated by:
  - a. an **advocate**, attorney or pleader entitled to appear before any **High Court**; or
  - b. an **affidavit**, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.
- 17 Where translation is done **outside** India, it shall be authenticated by signature and seal of:
  - a. an official having **custody** of the **original**, or
  - b. **Notary** of the country where company is incorporated
2. "Director" w.r.t., FC includes person on whose direction or instruction, BoD is accustomed to act.
3. "Place of Business" includes Share Transfer Office & Share Registration Office (**STO and SRO**)

**Section 387: Dating of prospectus and particulars to be contained therein.**

1. No **prospectus** offering to subscribe to any securities shall be issued or circulated by a Co. incorporated o/s India (**not FC**) unless such prospectus:
  - a. is dated and signed.
  - b. contains particulars w.r.t., following matters [*Instrument Incorp. karne ke liye ACP ko bulaya*]:
    - i. **Instruments** defining constitution of the co.
    - ii. Enactments/provisions under which co. was **incorporated**.
    - iii. **Address** where (i) and (ii) above or English translation thereof can be **inspected**
    - iv. Date and **country** of incorporation
    - v. Whether co. has estb. POB in India. If so, address of **principal POB**
  - c. states matter specified u/s **26** (Matters to be stated in Prospectus)

Note: Points of b (i),(ii) and (iii) N.A. if prospectus is issued **> 2 years after** co. is entitled to commence business [Agar nayi taazi co. (<2 years) hai to declare karo, warna mat karo]

2. Compliance with conditions mentioned u/ss (1) **cannot be waived off** on any grounds.
3. **Application forms** for securities of a Co. incorp. o/s India shall be **issued** subject to following:
  - a. Such appln is **issued with prospectus** which is in compliance with this Chap
  - b. Such issue **does not contravene** provision of sec 388 (Expert's consultation)

Exception: Where such form for appln. is issued to a person to enter into underwriting agreement.
4. Sec 387 **N.A.** (except for dating of prospectus) to issue of prospectus:
  - a. relating to issue of sec. of co. to **existing members or DH**, or
  - b. offering securities which is **uniform** with sec. previously issued and listed on RSE



### Section 388: Provisions as to expert's consent and allotment:

1. Where the prospectus includes **expert's statement**, no such prospectus shall be issued or circulated by a Co. incorporated o/s India (**not FC**), unless such expert:
  - has given **written consent** to issue
  - has **not withdrawn**, before delivery of the prospectus for registration, such written consent
  - a **statement** appears in the prospectus that expert's written consent is given and not withdrawn
2. A statement shall be **deemed included** in prospectus, if it is contained in any report/memorandum appearing on the face thereof or by reference incorporated therein.



### Section 389: Registration of prospectus:

No prospectus shall be issued/circulated unless all the following conditions are satisfied:

- a. A certified copy has been delivered for **registration to RoC**  
Certification to be done by Chairperson **and 2 dir.** (as approved by resolu. of managing body)
- b. Prospectus **states** on the face that a copy has been so delivered,
- c. **Consent** (of **expert**) to issue the prospectus is attached.
- d. Such **other** prescribed docs is attached



### Companies (Registration of FC) Rules, 2014: [EC2UA]

Following docs to be annexed to prospectus:

- a. **Expert's** consent u/s 388
- b. Copy of **contract** or memorandum for appt. of **MD/Manager**
- c. Copy of **material contracts** in last 2 years **not** in OCOB
- d. Copy of **underwriting** agreement
- e. Copy of **power of attorney** if prospectus is signed by auth. agent of directors



### Section 390: Offer of IDRs

Indian Depository Receipts (IDR) means any instrument in the form of a **depository receipt** created by a Domestic Depository in India and authorized by a company incorporated outside India making an issue of such depository receipts.

According to section 390, notwithstanding anything contained in any other law for the time being in force, the CG may make rules applicable for:

- (i) the offer of IDR;
- (ii) the requirement of disclosures in prospectus or letter of offer issued in connection with IDR;
- (iii) the manner in which the IDR shall be dealt with in a depository mode and by custodian and underwriters; and
- (iv) the manner of sale, transfer or transmission of IDR, by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

As per Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014, foreign companies **cannot issue Indian Depository Receipts** (IDRs) without complying with the specified conditions, alongside adhering to regulations by SEBI and directions from RBI.

Chapter XV provisions apply to schemes of mergers and amalgamations between companies registered under the Act and those incorporated in notified foreign jurisdictions. The Central Government, in **consultation** with **RBI**, may **create rules** for such mergers and amalgamations.

Foreign companies can **merge** with companies registered under the Act, or vice versa, with prior **approval from RBI**. The scheme of merger may provide consideration to shareholders in cash or **Depository Receipts**, as per the scheme's terms.

Explanation: For the purposes of sub-section (2) above, the expression "foreign company" means any co. or BC incorporated outside India whether having a place of business in India or not.



### Section 391: Application of Sec 34 to 36 and Chap XX (Winding up)

1. The provisions of sections 34 to 36 (both inclusive) shall apply to—
  - (i) issue of a **prospectus** by a co. incorporated outside India u/s 389 as they apply to prospectus issued by an Indian co.;
  - (ii) issue of **Indian Depository Receipts** by a foreign co.
2. Winding up provision shall also apply to FC.

**Section 392: Punishment for Contravention**

[Very important penalty]: 1

If a FC contravenes prov. of this chapter:

	Foreign Co.	OID
Fine	Rs. 1 lakh to Rs. 3 lakhs	Rs. 25,000 to Rs. 5 lakhs
Additional Fine	Rs. 50,000/day	NA
Jail	NA	NA [Amendment]

**Section 393:**

Co's failure to comply with prov. of this Chapter not to affect validity or contracts, etc entered into by such co. or its liability to be sued in respect thereof, **but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim** or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has **complied** with the provisions of this Act applicable to it.

**Section 393A: Exemption by CG**

CG may, by notification, exempt from provision of this chap:

a. Foreign company

b. Co. incorp o/s India whether or not having POB

insofar as they related to offering of securities, relating to prospectus or incidental matters in the International Financial Service Centers set up u/s 18 of SEZ Act, 2005

Copy of such notification should be laid before HoP.

→... The End ...←

## Chapter 14 Foreign Exchange Management Act, 1999

### Short forms used:

AD	Authorized Dealer	Forex	Foreign Exchange
AP	Authorized Person	Forse	Foreign Securities
BOA	Branch, Offices and Agencies	IC	Indian Currency
CAT	Capital Account Transaction	LRS	Liberalised Remittance Scheme
CUAT	Current Account Transaction	PRI	Person Resident In India
FC	Foreign Currency	PROI	Person Resident Outside India
FEMA	Foreign Exchange Mgt. Act, 1999	TC	Travellers' cheque

### Purpose of the Act:

An Act to **consolidate** and amend the law relating to foreign exchange with the **objective** of:

- **facilitating** external trade and payments and
- for **promoting** the orderly **development** and **maintenance** of forex market in India

With liberalization of Indian economy in 1991, the flow of Forex into India increased thus increasing the Foreign Exchange Reserve (FER) substantially. This act enables mgt. of FER for the country.

Enforcement of the Act - Directorate of Enforcement (ED)

### Forex Regulation Act 1947, 1973 vs FEMA 1999:

	FERA	FEMA
Objective of Act	Conserve Forex	Promote and develop the forex
PRI	Based on citizenship	Based on stay in India
Strictness	Forex transaction is prohibited unless permitted	Forex transaction is permitted unless restricted
Mens-rea (guilty mind)	Presumption of existence of mens-rea	Mens-rea not presumed. Responsibility of prosecution to prove
Compounding of offence	Not allowed	All offences are compoundable

### Broad Division of Act:

Preliminary [Sec 1-2]	Reg and Mgt. of Forex [Sec 3-9]	Authorised Person [Sec 10-12]	Contravention and Penalty [Sec 13-15]	Adjudication and Appeal [Sec 16-35]	Directorate of Enforcement [Sec 36-38]	Misc. [Sec 39-49]
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### Sec 1: Applicability

This Act extends to **whole of India**. Also applies to all BOA **outside India** owned or controlled by **PRI**

## Sec 2: Definition

➤ Authorised Person [Sec 2(c)] means an:

Authorised Dealer (AD)

Money Changer

Off-shore banking unit

Other person auth. u/s 10 to deal in Forex or Forse

➤ Foreign Currency [Sec 2(m)] means any currency other than Indian Currency

➤ Foreign Exchange [Sec 2(n)] means Foreign Currency and includes:

Deposits, credits and bal. payable in any FC

Draft, TC, LoC, BoE drawn in IC but payable in FC

Drafts, TC, LoC, BoE drawn by Banks or Person outside India but payable in IC

➤ Foreign Security [Sec 2(o)] means:

- o Any **security** in the form of - Stock, shares, bond, debentures or other inst.
- o **Denominated** in FC,
- o And includes - Sec. denominated in FC but redemption or returns (int./div) payable in IC

➤ Capital Account Transaction [Sec 2(e)]: means a transaction which **alters**:

- a. Asset or Liabilities (incl. contingent liability) o/s India of PRI
- b. Asset/Liability in India of PROI

➤ Current Account Transaction [Sec 2(j)] means transaction other than CAT

Without prejudice to the generality of the definition, CUAT includes:

Payments w.r.t., foreign trade, current business, services, & **short-term banking** & credit facility in **OCOB**

Payments w.r.t., **interest on loans** & as net income from investments

Remittances for **living expenses** of parents, spouse and children residing abroad

Expense w.r.t. foreign **travel, education and medicare** of parents, spouse and children

## Section 2(u) - "Person" includes:

- i. an individual,
- ii. a HUF,
- iii. a company,
- iv. a firm
- v. an association of persons or body of indiv., (incorporated or not)
- vi. every artificial juridical person, and
- vii. **any agency, office or branch owned or controlled by such person;**

### Section 2(v) - "Person Resident in India" means:

#### In case of Individual

A person residing in India for **more than 182 days** during the course of **the preceding FY** but does not include:

- (A) a person who has **gone out of India** or who stays outside India, in either case:
- for or on taking up **employment** O/S India, or
  - for carrying on O/S India a **business** or **vocation** outside India, or
  - for any other purpose, in such circumstances as would indicate his **intention** to stay outside India for an **uncertain period**;
- (B) a person who has **come to** or stays in India, in either case.  
**However**, if such person has come to or stays in India for any of the following purpose, he shall be considered as PRI (**irrespective of no. of days of stay in India in preceding FY**):
- for or on taking up **employment** in India, or
  - for carrying on in India a **business** or vocation in India, or
  - for any other purpose, in such circumstances as would indicate his **intention** to stay in India for an **uncertain period**;

#### Artificial Person

any person or body corporate **registered** or **incorporated** in **India**

any **BOA in India** owned or **controlled** by a person resident **outside India**

a **BOA outside India** owned or **controlled** by a person resident **in India**

### Section 2(w) - "Person Resident outside India" means a person who is not Resident in India

#### Concept Clarity Check:

- Citizenship** is not relevant for determining PRI or PROI
- If in FY 2019-20, a person resides in India for 200 days. On 1st June 2020, the person leaves India for employment o/s India. Determine whether PRI or PROI? - **For the period 1st April 2020 to 1st June 2020, such person shall be PRI and from 2nd June 2020 onwards, he will be a PROI (irrespective of the fact that he resides for more than 182 days in preceding FY)**
- Mr. S comes to India on 1st June 2019 for visiting his parents. However, his parents fall sick and he is certain that he will not be able to return for an year. He ends up staying with them till 31st July 2020. Is he a PRI in FY 20-21? - **No, in FY 20-21, Mr. S will be considered as PROI. Even though he resided in India for more than 182 days in FY 19-20, he has not come for any of the 3 purpose (employment, business or uncertain period) and hence he is not a PRI in FY 20-21**
- Residential status is **not for a year**. It's on a particular date. (Unlike Income Tax Act, 1961)
- Is it mandatory for a person to reside in India for more than 182 days in the previous FY to be considered as PRI? - **Umm, No. If he resides for <=182 days in preceding FY, but comes to India in the current year for the 3 purpose, he will become PRI in current year.**
- Where a student is leaving India for **higher studies**, RBI has clarified that they shall be **treated as PROI** majorly because of their intention to stay outside India for an uncertain period and the fact that they start working there to take care of their expenses

### Sec 3: Dealing in Foreign Exchange, etc.

No person (PRI & PROI) shall:

Deal in or transfer  
Forex or Forse to any  
person other than AP

make any  
payment to/for  
credit of PROI

Receive any payment  
from PROI otherwise  
through an AP\*

Enter into Financial Transaction  
in India as consideration for  
acq. of asset o/s India

\*Where any such payment is received without corresponding inward remittance, it shall be deemed to be received through person other than AP

However, the above restricted transactions may be carried on:

- i. If otherwise provided in this Act, Rules or Regulation, or
- ii. With permission of RBI (general or special)

Note -

1. For this section - Financial transaction means:

payment to/credit  
of any person or

receiving payment for or  
on behalf of any person or

to draw/issue/  
negotiate any BoE or

trf. security or  
acknowledge debt

2. Purpose of this section is to regulate inflow and outflow of Forex in regulated manner and through APs only.

### Sec 4: Holding of Forex

Except as provided in this Act, no PRI shall Acquire, Hold, Own, Possess or Transfer [HA! TOP] any Forex, Forse or Immovable Property situated o/s India.

### Sec 5: Current Account Transactions:

Any person may sell or draw Forex to or from an authorised person if such sale or drawal is a CUAT.

CG may, in consultation with RBI, impose reasonable restrictions on CUAT.

Note: RBI cannot, on its own, impose any restriction on current account transaction. Restrictions can be imposed only by CG (in consultation with RBI)

Examples of CUAT:

1. Import in India of machinery for installation in factory from a UK vendor by payment in cash
2. Import in India of machinery for installation in factory from a UK vendor on credit for 3 months (this is CUAT because short term banking and credit facilities covered as CUAT)
3. Gift (say \$1,000) by a PRI to PROI (note: Gift is given in FC)
4. Gift (say Rs. 1,000) by a PRI to PROI in India - This will be a CAT and not CUAT as this results in alteration of asset of the PROI in India. Although it is a CAT, such gifting is permitted as per Rules.

General Rule:

CUAT is freely permitted unless specifically restricted.



## Schedules of FEM(CUAT) Rules, 2000

**Schedule I** - Drawal of forex by any person for following purpose is prohibited:

1. Remittance out of **lottery** winnings,
2. Remittance of income from **Racing/riding** etc. or any other hobby,
3. Remittance for **purchase** of lottery tickets, banned magazines, football pools, sweepstakes etc.,
4. Payment of **commission** on exports made towards equity investment in JV / WOS abroad of Indian cos.,
5. Remittance of **dividend** by any co. to which the requirement of dividend balancing is applicable,
6. Payment of **commission** on exports under Rupee State Credit Route, **except** commission upto **10%** of invoice value of exports of tea and tobacco.
7. Payment related to "**Call Back Services**" of telephones,
8. Remittance of **interest income** on funds held in Non-Resident Special Rupee Account Scheme

[i.e., if any of the above remittance/payments is to be done by a PRI to a PROI, the PRI cannot go to AP and draw \$s because these are **prohibited**]

**Schedule II** Schedule II - Transactions which require prior approval of GoI for drawal of forex

Purpose of Remittance	Ministry / Dept. of GoI who approval is required
Cultural Tours	Ministry of Human Resources Development, Dept. of Education and Culture (Now known as Ministry of Education)
Advt. in <b>foreign print media</b> by a SG & its PSUs > \$ 10K Except where such advt. is for the purposes of <b>promotn of tourism</b> , foreign investments and international bidding <b>Note: PSUs of CG not covered!</b>	MoFinance, Dept. of Economic Affairs
Remittance of <b>freight</b> of vessel chartered by a PSU	MoSurface Transport, Chartering Wing
Payment of <b>import</b> (through ocean transport) by a Govt. Department or a PSU on C.I.F. basis (i.e., other than F.O.B and F.A.S. basis)	MoSurface Transport, Chartering Wing
Multi-modal transport <b>Operators</b> making remittance to their agents abroad	Registration Certificate from Director General of Shipping
Remittance of <b>hiring charges</b> of <b>transponders</b> :	
a. TV Channels	Ministry of Info and Broadcasting
b. Internet service providers	Min. of Communication & Info. Tech

Remittance of container <b>detention</b> charges > the rate prescribed by Director General of Shipping	Ministry of Surface transport (Director General of Shipping)
Remittance of <b>prize money</b> / <b>sponsorship</b> of sports activity abroad by a person other than International/National/State Level sports bodies, if the amt. involved > US\$ 100,000	Ministry of HR Development, Dept of Youth Affairs & Sports  (Now - Mo Youth Affairs and Sports)
Remittance for <b>membership</b> of P & I Club (protection and indemnity insurance)	Ministry of Finance (Insurance Division)



### Schedule III

Transactions which in excess of limits require prior approval of RBI for drawal of forex: [Liberalised Remittance Scheme]

1. Individuals - Avail forex facility for the following purpose within limit of **USD 2,50,000 only**. Additional remittance **beyond limit** shall **require prior approval of RBI**:
  - a. Private **visits** to any country (**except Nepal and Bhutan**)
  - b. **Gift** or **donation**
  - c. Going abroad for **employment**
  - d. **Emigration** (permanently settling in a country)
  - e. Maintenance of close **relatives** abroad
  - f. **Travel** for:
 

business

attending a conference

specialized training

for meeting expense of medical treatment/ check up abroad or accompanying a patient
  - g. Expenses in connection with **medical treatment** abroad
  - h. **Studies** abroad
  - i. Any other current account transaction

Provided, for (d), (g) and (h), individual may avail forex facility > \$2,50,000 if it so required by country of emigration, medical institute offering treatment or the university, respectively

Provided further that, where individual "Remits" any amount under this scheme in a FY, the applicable limit shall be **reduced from \$250K** by such amount remitted (**i.e., the limit of \$250,000 is aggregate in FY**)

Provided also that for a PRI but not permanently resident in India and

- a. is a **citizen** of a foreign State other than Pakistan; or
- b. is a citizen of India, who is on **deputation (to India)** to the office or branch of a foreign co. or subsidiary or JV in India of such foreign co.,  
**may make remittance** up to his **net salary** (after deduction of taxes, PF, etc.)

Explanation: For this schedule, a PRI on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which is not > 3 years, is a resident but not permanently resident.

2. Facilities for person other than individuals: Following shall require **prior permission** of RBI:

Particulars	Purpose	Limit
Donation	Donation for: a. creation of <b>Chairs</b> in reputed <b>edu.</b> Inst., b. contribution to <b>funds</b> (not being an invst. fund) promoted by educational Inst; and c. contribution to a <b>technical inst./body</b> in the field of activity of the donor co	> <b>Lower</b> of 1% of Forex Earnings during last 3 FY or \$5Mn
Sale of flats/plots in India	<b>Commission</b> (per transaction) to agent abroad for <b>sale</b> of residential flats or commercial plots in <b>India</b>	> <b>Higher</b> of \$25,000 or 5% of Inward Remittance
Consultancy per project	Remittance for any <b>consultancy</b> w.r.t Infra projects and	> \$10Mn per project
Consultancy per project	For other consultancy procured from <b>o/s India</b>	> \$1 Mn per project
Pre-incorp expense	Remittance as <b>reimbursement</b> of <b>pre-incorporation expense</b>	> <b>Higher</b> of 5% of Investment brought into India or \$100K

Note - Limit of \$250,000 is irrelevant in case of person other than individuals

Additional Note:

1. Procedure for Drawal/remittance of Forex under Sch III shall be same as LRS
2. Approval for transaction under Sch II and III shall **not be required** where remittance is from:
  - a) **Resident** Foreign Currency Account
  - b) **Exchange Earners'** Foreign Currency A/C (except for remittance for membership of P&I club under Sch II and payment commission/pre-incorp under Sch III)
3. If a person is **on visit abroad**, he can incur expenditure stated in **Sch III** if he incurs it through **International Credit Card** (to the extent of limit on the card)

Note - If a transaction is not listed in any of the three schedule, it can be freely undertaken.

**CAPITAL ACCOUNT TRANSACTION (SEC 6)**

Capital Account Transaction [Sec 2(e)]: means a transaction which **alters**:

- a. Asset or Liabilities (**incl. contingent liability**) o/s India of PRI
- b. Asset/Liability in India of PROI
- ~~c. Includes transaction referred u/s 6(3)~~

1. Subject to (2), a person may sell or draw forex to/from AP for CAT
2. RBI (+CG) specify:
  - Class of CAT - **involving Debt** instruments, which is **permissible**
  - Limits for such permissible transactions
  - **Conditions** placed on such transactions

Provided that, RBI or CG shall not impose restriction on drawal of forex for:

- Payment due on account of **amortization** of loans or **repayment** of loans
- **Depreciation** of direct investment in OCOB

Subsection (2A):

CG (+RBI) specify:

Class of CAT - **Not involving debt** instruments, which is **permissible**

- **Limits** for such permissible transactions
- **Conditions** placed on such transactions

3. Omitted

4. PRI may hold, own, transfer or invest in:

Foreign Currency

Foreign Security

Immovable Property Outside India

Provided that it was

- **acquired**, held or owned by such person when he was **PROI**, or
- **inherited** from a **PROI**

As per RBI Clarification:

The following transaction are covered u/s 6(4):

1. **FC accounts** opened and maintained by PRI when he was PROI
2. **Income** from employment/business/vocation when o/s India taken up when he was **PROI**, or from investment when he was PROI or from **gift/inheritance** received when he was PROI
3. Forex held o/s India by a PRI acquired by way of **inheritance** from **PROI**
4. PRI may freely **utilize eligible assets** abroad or income/sales proceed therefrom after their return to India for making payment/fresh investments abroad **without approval of RBI**.  
Provided that, cost of investments is met completely out of eligible assets.

5. **PROI** may hold, own, transfer or invest in:

Indian Currency

Indian Security

Immovable Property in India

Provided that it was

- **acquired**, held or owned by such person when he was **PRI**, or
- **inherited** from a **PRI (not PROI)**

6. RBI may impose restrictions on BOA of PROI

7. Debt instrument means such instrument as determined by CG (+RBI) [**Amendment**]

CAT is broadly split into following categories as per **FEM (Permissible CAT) Regulations 2000:**

**Permissible**  
Transaction for  
**PRI [Schedule I]**

**Permissible**  
Transaction for PROI  
[Schedule II]

Transactions on which  
restriction **cannot** be imposed  
(**amortisation and depreciation**)

**Prohibited**  
CAT

### Permissible Transaction for PRI [Schedule I]

[SL-AP CG in CID style that O2 kamm pad jaye]

Investment by PRI in <b>ForSe</b>	FC <b>Loans</b> raised in India and abroad by a PRI	<del>Acq./</del> Transfer of <b>IP</b> o/s India by a PRI	<b>Guarantees</b> issued by a PRI in favour of a PROI
Loans and <b>Overdrafts</b> (borrowings) by a PRI from a PROI	Export, import and holding of <b>Currency/</b> currency notes	Maintenance of FC <b>Accounts</b> in India and o/s India by a PRI	Taking out of <b>Insurance</b> policy by a PRI from an insurance co. outside India
Loans and <b>Overdrafts</b> by a PRI <u>to</u> a PROI	Remittance outside India of <b>Capital</b> assets of a PRI	Undertake <b>Derivative</b> contracts	

Note - PRI may draw forex **not > \$250k** per FY or such amt as decided by RBI for CAT in **Sch I**

Note - Drawal of forex as per Sch III (Facilities for individual) of FEM(CUAT) Rules, 2000 shall be **subsumed** within the above limit. (i.e., Sch I + Sch III = Max \$250K)

Provided further that no part of the forex of \$ 250,000 drawn above shall be used for remittance to **non-co-operative countries** and territories (notified by Financial Action Task Force (FATF))

### Permissible Transaction for PROI [Schedule II]

[IPC ke baad GD doge to Achi Co. Degi offer]

<b>Investment</b> in India by a PROI, i.e., <ul style="list-style-type: none"> <li>➤ issue of security by a BC/entity in India and investment therein by PROI</li> <li>➤ investment by a PROI to the capital of a firm/proprietorship concern/AOP in India.</li> </ul>	Acquisition and transfer of <b>IP</b> in India by a PROI	EXIM of <b>Currency/</b> currency notes into/from India by a PROI.	<b>Guarantee</b> by a PROI in favour of a PRI
<b>Deposits</b> between a PRI and a PROI.	FC <b>Accounts</b> in India of a PROI	Remittance o/s India of <b>Capital</b> assets in India of a PROI	Undertake <b>Derivative</b> contract

### Prohibited CAT [Regulation 4]:

1. No PROI shall make **investment** in India in any co/partnership firm/proprietary or any entity which is engaged or proposes to engage [**CARTN**]:

in the business of <b>Chit</b> fund, or	<b>Nidhi</b> Company	<b>agricultural</b> or plantation activities	<b>real estate</b> business	construction of <b>farm</b> houses	trading in <b>TDRs</b>
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Explanation:

For the purpose of this regulation, 'real estate business' shall not include:

development of  
townships,

construction of residential/commercial  
premises, roads or bridges and

registered  
REITs.

Note - PROIs are restricted from investment in business of Chit Funds but may be eligible to subscribe to such chits provided approval of Registrar of chits or officer of SG concerned is sought and in compliance with RBI T&Cs

2. No PRI shall undertake any CAT with a citizen/ resident/entity of Democratic People's Republic of Korea ("North Korea"), unless approval from CG
3. Any existing investment transactions with North Korea by a PRI shall be liquidated/settled within 180 days from the date of issue of this Notification, unless there is specific approval from the CG to continue beyond that period



→... The End ...←

## Chapter 15 Limited Liability Partnership Act, 2008

### Introduction:

- LLP Act, 2008 received President's assent on 7th Jan 2009 and was enacted on Jan 9, 2009.
- It comprises 81 sections and 4 schedules.

### Schedules:

First	Rights of partner and LLP in the absence of formal agreement
Second	Converting a firm into LLP
Third	Converting a private company into LLP
Fourth	Converting an unlisted company into LLP

### Need and benefits:

- This act was introduced as an alternative corporate structure to meet evolving economic needs.
- It fills void between traditional unlimited liability partnerships & structured limited liability cos.
- It offers limited liability benefits while allowing flexible, partnership-like internal structuring based on mutual agreements.
- While the LLP itself will be liable to the full extent of its assets, the liability of the partners will be limited to the extent of their capital contribution.

### Characteristics of an LLP

Body Corporate	Perpetual Succession	Separate Legal Entity	Mutual Agency
LLP Agreement	Common Seal	Limited Liability	Business for profit only
Compromise or Arrangement	Conversion into LLP	E-Filing of documents	Foreign LLPs

### Special characteristics worth understanding in detail:

Mutual Agency	All partners are agents of LLP alone. No one partner can bind other partner by his act
Limited Liability	The liability of partners will be limited to their agreed contribution in LLP. Such contribution may be of tangible or intangible nature or both

### Definitions:

1. Address [(Sec 2(1)(a)]: "Address" in relation to a partner of LLP, means:
  - (i) If he is an individual, his usual residential address; and
  - (ii) If it is a body corporate, the address of its registered office.

## 2. Body Corporate [(Section 2(1)(d))]:

Means:	Includes:	Excludes:
A company	<ul style="list-style-type: none"> <li>• LLP registered under this Act</li> <li>• LLP incorporated outside India and</li> <li>• Company incorporated outside India.</li> </ul>	<ul style="list-style-type: none"> <li>• Corporation Sole.</li> <li>• Co-operative Society</li> <li>• Any other body corporate notified by CG</li> </ul>

3. Business [Sec 2(1)(e)] **includes** every trade, profession, service and occupation except any activity which CG may, by notification, exclude.

4. Financial Year [Sec 2(1)(l)]: means period from **1st April** of a year to **31st March** of following year. However, in the case of a LLP incorporated **after 30th September** of a year, FY may end on **31st March** of **next following year**.

Example: LLP incorporated on 15/10/24 - FY will be 15/10/24 - 31/04/26

5. Foreign LLP [section 2(1)(m)]: It means an LLP formed, incorporated or registered **outside India** which establishes a **place of business within India**.

6. LLP Agreement [Section 2(1)(o)]: means any **written agreement** between the **partners** of the **LLP** or between the **LLP** and its partners which determines the **mutual rights** and **duties** of the partners and their rights and duties in relation to that LLP.

7. Small LLP [Sec 2(1)(ta)]: means an LLP

(i) Having **contribution**  $\leq$  **25 lakhs** or higher amt. as may be prescribed **not > Rs. 5 crores** and

(ii) **Turnover** as per "Statement of Accounts and solvency"  $\leq$  **40 lakhs** or such higher amt. as may be prescribed **not > Rs. 50 crores** or

(iii) meets such other terms and conditions as may be **prescribed**.



#### Section 4: Non-Applicability of Indian Partnership Act, 1932

Save as otherwise provided, Indian Partnership Act, 1932 **shall not apply** to LLP's.



#### Section 5: Partners:

**Individual** or **body corporate** may become partners in LLP but **exclude** an individual if:

(i) He has been declared of having **unsound mind** by competent court.

(ii) He is an **undischarged insolvent**.

(iii) He has applied to be **adjudicated as an insolvent** and his application is pending.

#### Concept clarity check :

1. **HUF is not a BC** and hence **cannot** become partner in LLP.

2. **Can one LLP become partner in another LLP?** - Yes. Because LLPs are BC and BC can become partner. Similarly, foreign LLPs, foreign companies, etc. can also become partner in LLP.



### Section 6: Minimum number of Partners:

Minimum- 2 Partners; Maximum- No Limit.

**Provided that-** If no. of partners is reduced **below 2** and LLP carries on business for **> 6 months**, such partner shall be **personally liable** for obligations incurred by LLP **after 6 months**.



### Section 7: Designated Partner (DP):

- (1) At least **2 individuals or BC** as DP and at least **1 DP** shall be **resident** of India.  
Resident in India means a person who has stayed in India for **>= 120 days** during the FY.

What if all partners are BC?

If all partners are BC or if one or more partners are individual and BC - **2 individual** partners or **nominees of BC** shall act as DP.

Failure to appoint 2 DP: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every partner.

- (2) If incorporation document:
- **specifies** who are to be **DP - such person** shall be DP on incorporation, or
  - state that each of the partner from time to time will be DP - **Every partner** shall be DP.
- A person may **become** or **cease** to be DP in accordance with **LLP Agreement**.
- (3) Every partner **appointed as DP** shall give **prior consent** to LLP. Thereafter, LLP shall file particulars of such DP with ROC within **30 days** of his appointment in prescribed manner.

Failure to file with ROC: Liable for **Rs. 5,000 + Rs.100/day** max. up to Rs. 50,000 (LLP) & Rs.25,000 (DP).

- (4) Every DP of LLP shall obtain Designated Partner Identification Number (**DPIN**) from CG.  
Note - Director Identification Number (DIN) and DPIN can be used interchangeably.



### Section 8: Liabilities of a DP:

Unless otherwise provided, **DP** shall be

- (i) responsible for doing **all acts of LLP** including filing of documents, returns, statements etc.
- (ii) liable to **all penalties** imposed on LLP.



### Section 9: Changes in DP in case of vacancy

- (1) LLP may appoint **DP within 30 days** of vacancy due to any reason.
- (2) If at any time there is **no DP** or **only 1 DP**, **each partner** shall be **deemed as DP**.

Contravention: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every partner.

## INCORPORATION OF LLP



## Section 11: Incorporation document

- (1) Incorporation document shall
- have **2 or more** persons as **subscribers** to carry on lawful **business** with a view to earn **profit**
  - include a **statement** that all requirements of this Act and rules have been complied with:
    - made by **advocate, CA, CS, Cost Accountant** engaged in formation of LLP, **AND**
    - by any one of the **subscribers**,
  - be **filed with ROC** of State in which registered office of the LLP is proposed to be situated.
- (2) Incorporation Document to include the following:

Name of  
LLPProposed  
BusinessAddress of  
ROName & Address of  
each Partner and DP

Other info.

- (3) If a person makes a statement
- knowing it to be **false**, or
  - does **not** believe it to be true.
- shall be punishable for **imprisonment** up to **2 year** **AND** **fine** of **Rs. 10k - Rs. 5 lakhs**.

Note: An LLP can be incorporated with profit motive. It cannot be an NPO.



## Section-12: Incorporation by Registration

- (1) On receipt of incorporation documents and statements u/s 11, Registrar shall retain such documents and **within 14 days**:
- Register** the incorporation document, and
  - Give the **LLP** a **certificate** of incorporation.
- Such certificate shall be **signed** by **RoC** and **authenticated** by official **seal**. It shall be **conclusive evidence** of incorporation of LLP with name specified therein.
- (2) **Statement** delivered u/s 11 - **Sufficient evidence** of compliance with clause (a) of Sec 11.



## Section 13: Registered Office of LLP and Change therein

- (1) Every LLP shall have a **RO** to which all **notices** and **communication** may be addressed and received.
- (2) A document may be **served** at RO on an LLP or its Partner or DP by

Sending it by post

Registered post

Any other manner prescribed.

- (3) Change in RO- File **notice to RO** in prescribed manner.

Penalty- **Rs. 500/day** up to **Rs.50,000** for LLP and its ~~Designated~~ Partners.



### Section 14: Effect of Registration

On registration LLP shall be capable of

Suing or being sued

Doing and suffering all other acts BC may do and suffer

Acquiring, owning, holding or disposal of Property.

Having a common seal.



### Section 15: Name

(1) Every LLP shall add **suffix** - LLP or Limited Liability Partnership to its name.

Example: ABC LLP or ABC Limited Liability Partnership.

(2) No LLP shall be registered with a name, which in **opinion** of **CG** is:

- **Undesirable**
- **Identical or** closely resemble to name of existing LLP or company or registered trademark.

Author's Note - Sec 15 of LLP prohibits from using a name identical to that of existing company. However, sec 4 of companies act, did not prohibit using name of existing LLP. This is merely a lacunae in law and may be rectified in future by amendment.



### Section 16: Reservation of name

(i) A person may **apply to RO** in prescribed manner + fees for **reservation** of:

- Name of **proposed** LLP
- Name to which LLP proposes to **change** its name

(ii) ROC on **satisfaction** that the name is **not identical** or **undesirable** as per **CG**, **reserves** the name for **3 months** from date of intimation.

Note - In Companies Act, as per **Sec 4**, name of company could only be reserved for 20/60 days.



### Section 17: Rectification of name of LLP

(1) Notwithstanding anything contained in sec 15 & 16, during its **first registration** or upon registration with **new name**, if LLP is **inadvertently** registered with name **identical** or **too similar** to:

- Any other LLP, **OR**
- A **registered trademark** under Trade Marks Act, 1999

**CG**, upon **application** by affected LLP, trademark proprietor, or company, may direct LLP to **change** its name within **3 months** from date of such direction.

Note: Application by **proprietor** is to be made within **3y** of incorporation or change of name.

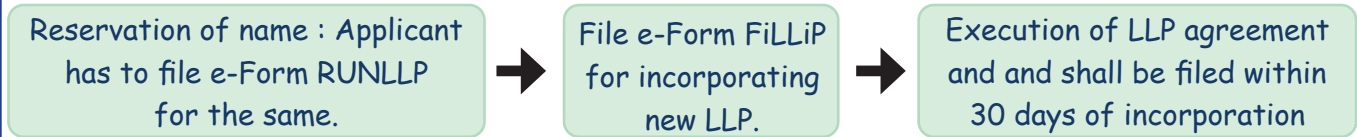
(2) On such change of name - notify **ROC** within **15 days**. RoC to make changes in **CoI** within **30 days**.

(3) If LLP is in **default** in complying with any direction, **CG** shall allot a **new name** to the LLP and the **RoC** shall enter the **new name** in register in place of the old name and **issue** a fresh certificate of incorporation with new name.

Provided that **nothing** shall **prevent** a LLP from subsequently **changing its name**.

**Note** - Unlike **sec 16** of Companies Act, here **CG** cannot **suo-motu** order for rectification of name.

### STEPS TO INCORPORATE LLP



### PARTNERS AND THEIR RELATIONS



#### Section 22: Eligibility to be partners

On **incorporation** of a LLP, the persons who **subscribed** names to incorporation document shall be its **partners** and any other person may become partner of LLP in accordance with the **LLP agreement**.



#### Section 23: Relationship of partners

- (1) Save as otherwise provided, the **mutual rights** and **duties** of:
  - **Partners** of a LLP, and
  - LLP and its partners
 shall be **governed** by the **LLP agreement**.
- (2) **LLP agreement** & any **changes** made therein shall be filed with the **RoC** in prescribed manner + Fees.
- (3) Any agreement in writing between LLP and subscribers **before incorporation** shall be **valid** only if **ratified** by **ALL partners** upon incorporation.
- (4) In **absence** of agreement, the **mutual rights** and **duties** shall be determined by the **First Schedule**.



#### Section 24: Cessation of Partnership Interest

- (1) A person may **cease** to be a partner:
  - in accordance with **LLP agreement** with other partners or,
  - in **absence of agreement**, by giving **notice** in writing > **30 days** to other partners of his intention
- (2) A person shall **cease** to be a partner of LLP in case of
 

Death of partner or Dissolution of LLP	Declared to be of <b>unsound mind</b> by competent court	applied to be <b>adjudged</b> as an <b>insolvent</b> or <b>declared</b> as an <b>insolvent</b> .
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- (3) Where a person has **ceased** to be a partner of a LLP, the **former partner** is to be **regarded as still being a partner** of the LLP **unless**-
  - the person has **notice** that former partner has **ceased** to be a partner, or
  - **Notice** that former partner has ceased to be a partner is **delivered to RoC**.

- (4) Cessation of partner **does not discharge** a partner of **obligation** incurred while being a partner.
- (5) Where a partner of a LLP ceases to be a partner, the **former partner** or a **person entitled to his share** case of the death or insolvency, shall be **entitled** to receive from the LLP-
- **Actual partner contribution** made by such former partner,
  - **Right to share** in accumulated profit after deduction of accumulated losses.
- (6) Former partner or entitled person (death/insolvency) shall **not** have any **right to interfere** in **management of LLP**.



### Section 25: Registration of changes in partners

- (1) Partner shall inform LLP of any **change** in name or address within **15 days** of such change.
- (2) A LLP shall file a **notice** with RoC within **30 days** in case where-
- a person **becomes** or **ceases** to be a partner, file a notice with the Registrar
  - there is any change in the **name** or **address** of a partner
- (3) Such notice filed with RoC shall be-
- In **prescribed manner** + Fees
  - **Signed** by DP
  - If relates to **incoming partner**, shall contain a **statement** that he **consents** to becoming a partner, **signed** & authenticated in prescribed manner.
- (4) **Penalty: Rs. 10,000** for LLP & Designated Partners
- (5) **Former partner** may file the above notice with RoC if he has **reasonable cause** to believe that **LLP may not** file such notice. **RoC** shall thereafter obtain **confirmation** from LLP w.r.t. such cessation.  
If **no** confirmation is given by LLP in **15 days**, RoC shall register such notice.



### Section 26: Partner as agent

Partners are **agent** of the **LLP** **but not** of other partners.



### Section 27: Extent of liability of LLP

- (1) LLP is **not bound** by an act of a partner if-
- Such partner has **no authority** of doing such act.
  - The person **knows** that he has no authority or **does not know** or **believe** him to be partner.
- (2) LLP is **liable** to any person for **wrongful act** or **omission** by partner in **course of business**.
- (3) The **obligation** of LLP shall be **solely** obligation of LLP.
- (4) The **liability** of LLP shall be **met** out of **property of LLP**.

**Section 28: Extent of liability of partner**

- (1) He is **not** personally liable, directly or indirectly for obligation solely by **reason** of **being partner**.
- (2) A partner shall be **personally liable** for his **own wrongful act** or **omission** but **not** for wrongful act or omission of **other partner**.

**Section 29: Holding out**

- (1) Where any person
  - who by **words spoken** or **written** or by **conduct**,
  - **represents** himself or **knowingly represents** himself as partner of LLP,
  - such person is **liable** to any person who has on the **faith** such representation
  - given credit to LLP (whether or not the person representing himself to be a partner know that such representation led to the person giving LLP the credit)

However, the LLP **receiving** such credit shall also be **liable** to **extent** of **credit received**.

- (2) Where after a **partner's death** the **business** is **continued** in the **same LLP** name shall **not** by itself make his **LR** or his **estate liable** for any act of the LLP done after his death.

**Section 30: Unlimited liability in case of fraud**

- (1) Unlimited liability in case of fraud:
  - where act is carried out by **LLP** or any of its **partner**
  - with an **intent** to **defraud** any creditor or any other person
  - the **liability** of LLP & **responsible partners** shall be **unlimited** for all debts & other liabilities.

However, where such act is done by partner, **Liability of LLP = Liability of partner**, unless partner has acted **without authority**.

- (2) Every person who was knowingly involved shall be punishable with
  - **Imprisonment** up to **5 years** and
  - **Fine** of Rs.5,000 to Rs.5 Lakhs.
- (3) Where an LLP or partners or employee has **conducted business** in fraudulent manner- **Liable to compensate to any person** who suffered **losses** or **damages**.  
However, LLP shall **not** be liable if the above person acted **without knowledge** of LLP.

**Section 31: Whistle blowing**

- (1) Court/Tribunal may **reduce** or **waive penalty** against any partner or employee if it is **satisfied** that
  - he has provided **useful information during investigation** of such LLP; or
  - when information given by him **leads** to LLP or any partner or employee being **convicted**.
- (2) No partner or employee may be

Discharged

Suspended

Demoted

Threatened

Harrassed

**merely because** he provided **information** to court or tribunal.

CONTRIBUTIONS**Section 32: Form of contribution**

- (1) Partner **contribution** may consist of **tangible** (movable/immovable) or **intangible property** or other benefits including money, promissory notes, and agreements to contribute cash or property, etc.
- (2) The **monetary value** of partner's contribution shall be **accounted** and **disclosed** in the accounts.

**Section 33: Obligation to contribute**

- (1) The obligation to contribute shall be as per **LLP agreement**.
- (2) A **creditor** may **enforce** partners to contribute as per **original obligation** if he extends credit by **relying** on such original obligation as per the LLP agreement.

FINANCIAL DISCLOSURES**Section 34: Maintenance of books of account, other records and audit, etc.**

- (1) Proper Books of account (BOA) shall be maintained on **cash** or **accrual** basis as per **double entry system** at **RO** for **prescribed period** of time.
- (2) Statement of Account and Solvency (SAS): Every LLP shall **prepare** such statement **within 6 months** from end of FY **signed** by **all DP's** and **filed** with RoC in prescribed manner.
- (3) **Accounts** of LLP shall be **audited** as may be prescribed. **CG** may **exempt** certain **LLP** from audit.
- (4) Penalty for contravention:

Nature of contravention	Penalty
Non-compliance of filing with RoC	LLP: Rs. 100/day up to 1 Lakh Every DP: Rs. 100/day up to 50,000
<b>Non-compliance of</b> <ul style="list-style-type: none"> <li>• Maintenance of <b>BOA</b></li> <li>• Maintenance of <b>SAS</b></li> <li>• <b>Audit</b> of BOA</li> </ul>	LLP- 25,000 to 5 Lakhs Every DP- Rs. 10,000 to Rs. 1 Lakh

**Section 34(A): Accounting and auditing standards**

**CG** in consultation with **NFRA** to prescribe **accounting & auditing standards** (as recommended by ICAI)

**Section 35: Annual Return**

- (1) Every LLP shall file an annual return duly authenticated with RoC within **60d** of **closure** of **FY**.  
Example: Closure of FY- 31st March, then due date of filing - 31<sup>st</sup> 30th May.
- (2) Penalty: **Rs.100/day** max. up to **Rs. 1 lakh** for **LLP** and **Rs. 50,000** for every **DP**.

**Section 36: Inspection of document by registrar**

Incorporation doc.

Name of partner &amp; changes

SAS

Annual Return

shall be available for **inspection** to **any person** as per prescribed rules.

**Section 37: Penalty for false statement**

If in any **return**, **statement** or other document any person makes a statement

- which is **false** in any **material particular**, knowing it to be false; or
- which **omits** any material fact knowing it to be material

will be punishable with imprisonment up to **2 years** **AND** fine **1 lakh** to **5 lakhs**.

**Section 38: Power of registrar to obtain information**

- (1) RoC may require **any person** (including any present or **former partner** or DP or employee) of LLP to answer **any question** or **supply any details** or particulars in **writing** within a **reasonable period**.
- (2) **Failure** to provide above info. - RoC shall have **power** to **summon** that person to **appear in person**.
- (3) **Contravention: Fine** Rs. 2,000 to 25,000.

**Section 39: Compounding of offences**

For this section, **RD** means Regional Director or officer not below rank of RD authorised by **CG**

- (1) RD may **compound** any offence which is **punishable with fine only** by collecting a sum which may **extend** up to **max. fine** for such offence but **not less than min. fine** for such offence.
- (2) Compounding shall **not apply** to offence committed within **3 years** from the date on which **similar** offence was compounded.  
Note: Second or subsequent offence after **3 years** shall be **deemed** to be first offence.
- (3) Procedure for compounding:
  - Application to be made to **RoC** who shall **forward** it, together with his comments thereon, to **RD**.
  - Where any offence is **compounded** (whether before or after institution of prosecution), intimate **RoC within 7 days** from date on which offence is so compounded.
- (4) Consequences of compounding:
  - Where compounded **before institution** of prosecution - **No** prosecution shall be **instituted**
  - Where compounding is made **after institution** of prosecution - RoC to **intimate** such compounding to court where prosecution is pending & thereafter offender shall be **discharged**.
- (5) While dealing with proposal of compounding, **RD may direct** **DP**, partner or employees to **file such return**, account or other doc. as may be specified in the order.

**Failure** to comply with above **order** - **Max amount** of fine - **Twice** the amount provided in corresponding section in which punishment for such offence is provided.

## ASSIGNMENT AND TRANSFER OF PARTNERSHIP RIGHT



### Section 42: Partners transferable interest

- (1) **Rights** of a partner to:
- a **share** of profits & losses and
  - receive distributions as per LLP agreement
- are **transferable** either **wholly** or **in part**.
- (2) **Transfer** of any such rights does **not** by itself:
- **cause disassociation** of partner or **dissolution or winding up** of LLP.
  - **entitle** transferee to **participate** in management or **access information** w.r.t. LLP transactions

### CONVERSION INTO LLP

Sec	Conversion	As per provision of:
55	Firm to LLP	Second Schedule
56	Private company to LLP	Third Schedule
57	Unlisted public co. to LLP	Fourth Schedule



### Section 58: Registration and effect of conversion

- (1) Registration:
- On satisfying that **firm**, private co. or **unlisted public co.** has complied with schedules,
  - RoC shall **register documents & issue certificate of registration**.
  - LLP shall be **effectively incorporated** from the date mention in the certificate of registration.
- (2) LLP shall, within **15 days** of **date of registration**, **inform Registrar of Firms** or **RoC** about such **conversion & particulars of LLP** in prescribed manner.
- (3) Upon such **conversion**, LLP and partners of such LLP shall be bound as per respective schedule.

#### Effect of Registration:

**Notwithstanding** anything contained in **any other law**, from **date of registration**:

- There shall be **LLP** by **name** specified in certificate of registration registered under this Act;
- All **tangible** (movable/immovable) & **intangible** property, all **assets, interests, rights, privileges, liabilities & whole undertaking** of firm/co. shall be **transferred** to and shall vest in the **LLP**; and
- **firm** or **co.**, shall be **deemed** to be **dissolved & removed** from **records** of Registrar.



### Section 59: Foreign LLPs

**CG** may **prescribe** rules in this behalf (similar to Companies Act 2013).



### Section 60: Compromise or arrangement (C/A) of LLP

(1) Where a C/A is proposed between

LLP and its creditors; or

LLP and its partners

- On application of LLP or of any creditor or partner or liquidator (in case of winding up),
- Tribunal may order meeting of creditors/partners to be called, held & conducted as prescribed.

(2) Sanction of C/A:

- If majority representing 3/4th in value of creditors/partners agree to any C/A, and
- Such C/A is sanctioned by the Tribunal by order
- Such C/A shall be binding on all creditors /partners / LLP / liquidator and contributories.

No order sanctioning any C/A shall be made by Tribunal unless it is satisfied that LLP has disclosed

- All material facts including latest financial position; and
- pendency of any investigation proceedings.

(3) File with RoC:

Tribunal's order shall be filed by LLP with RoC within 30 days after making such order and shall have effect only after it is filed.

Penalty for non-filing: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh (for LLP) & Rs. 50,000 (for DP).

(4) The Tribunal may, at any time after an application has been made, stay the commencement or continuation of any suit or proceeding against LLP on such terms as the Tribunal thinks fit, until the application is finally disposed of.



### Section 61: Power of Tribunal to enforce compromise or arrangement

(1) Where the Tribunal makes an order sanctioning a C/A in respect of a LLP, it:

- shall have power to supervise the carrying out of C/A, and
- may, give directions in regard to any matter or make such modifications in the C/A as it may consider necessary for the proper working of C/A.

(2) If the Tribunal is satisfied that a C/A sanctioned cannot be worked satisfactorily, it may,

- either on its own motion or
  - on the application of any person interested in the affairs of LLP,
- make an order for winding up the LLP.



### Section 62: Provisions for facilitating reconstruction or amalgamation of limited liability partnerships

(1) Where an application is made to the Tribunal u/s 60 and it is shown that:

- C/A has been proposed for a scheme for reconstruction or amalgamation of 2 or more LLP;
- and

- Under the scheme, whole or any part of **undertaking, property or liabilities** (UPL) of any LLP concerned is **transferred** to another LLP

Tribunal may, either by **order sanctioning** the C/A or by a subsequent order, make provisions for all or any of the following matters, namely:

- transfer** to the transferee LLP of whole or any part of the **UPL** of any transferor LLP;
- continuation** by/against transferee LLP of any **legal proceedings** pending by/against transferor;
- dissolution, without winding up**, of any transferor LLP;
- provision for person **dissenting** from C/A;
- such incidental, consequential and supplemental matters as are necessary.

No such C/A proposed amalgamation shall be **sanctioned** by Tribunal **unless** the Tribunal has received a **report** from **RoC and Official Liquidator** that **affairs** of LLP have **not** been **conducted** in a manner **prejudicial** to interests of its **partners** or to **public interest**.

(2) Where an **order** provides for **transfer** of any **property** or **liabilities**, then, by virtue of the order, it shall be **freed from any charge** (only if the order so directs)

(3) File certified copy of NCLT order with ROC - Within **30 days**

(4) **Penalty**: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh (LLP) and Rs. 50,000 (DP)

Note: Compliance of Sec 62 is **in addition to** compliance with provision of section 60.



### Section 63: Winding up and dissolution

The **winding up** of LLP may be either **voluntary** or by **Tribunal** and LLP, so wound up may be dissolved.



### Section 64: Circumstances in which LLP may be wound up by Tribunal

LLP may be **wound up** by Tribunal where:

- LLP **decides** that LLP be **wound up** by **Tribunal**;
- For **> 6 months**, **number of partners** of LLP is reduced **below two**;
- LLP has **acted against interests** of sovereignty and integrity of India, security of the State or public order;
- LLP has made **default** in **filing** with the RoC, the SAS **AND** AR for any **5** consecutive FY or
- Tribunal** is of the **opinion** that it is **just and equitable** that the LLP be wound up.



### Section 66: Business Transactions of Partner with LLP

Partner may **lend money & transact business** with LLP & has **same rights and obligation** as **non-partner**.



### Section 67: Application of the Provisions of the Companies Act

(1) **CG** may, by notification direct that provisions of Companies Act shall **apply** to **LLP** with such **exception, modification & adaptation** as may be specified.

(2) A copy of every notification proposed - Lay before **Parliament** and get it approved.



**Section 69: Payment of Additional Fee**

Any document or return to be registered or filed with RoC is not filed within prescribed time, it may be registered or filed after that time, on payment of such additional fee as may be prescribed.



**Section 70: Enhanced Punishment**

The LLP or any partner or DP shall, for second or subsequent offence, be punishable with

- imprisonment as provided, but
- with a fine which shall be twice the amount of fine for such offence.

**DIFFERENCES WITH OTHER FORMS OF ORGANISATIONS**

**LLP vs Partnership Firm**

Basis	LLP	Partnership Firm
Regulating Act	LLP Act, 2008.	Indian Partnership Act, 1932.
Body corporate	Yes	Not a body corporate
Separate legal entity	Yes	No
Registration	Mandatory	Voluntary
Perpetual succession	Members may join or leave but its existence continues forever.	It has no perpetual succession.
Suffix	Limited liability Partnership (LLP)	No guidelines
Liability	Limited to agreed contribution	Liability of partner - Unlimited.
Mutual agency	Partner can bind the LLP by his own acts but no other partners.	Each partner can bind firm as well as other partners by his own acts.
Designated partners	≥ 2 DP & ≥ 1 resident in India.	No such provision
Common seal	It may have its common seal	no such concept in partnership
Legal compliances	DPs are responsible for all the compliances and penalties	All partners are responsible for all the compliances and penalties
Annual filing	File SAS and Annual Return.	No such requirement
Foreign partnership	Foreign nationals can be partner	Cannot be a partner.
Minor as partner	Not allowed (even for benefit)	Yes. Can be admitted to benefits.

**LLP and Limited Liability company**

Basis	LLP	Limited Company
Regulating Act	The LLP Act, 2008	The Companies Act, 2013.
Contributors are called	Partners	Members
Internal governance	Governed by LLP agreement	Regulated by statute i.e. Co. Act
Suffix	Limited Liab partnership or LLP	Private Limited or Limited
Numbers of partners/ members	Min. 2; Max - No limit	Pvt co.: Min. 2; Max. 200 Public co: Min. 7; Max. No limit
Liability	To extent of agreed contribution	Limited to unpaid amount of shares
Management	Managed by DPs	Managed by BoD
Min. no. of directors/DP	Minimum 2 DP	Pvt. Co.- 2 ; Public co. 3 directors

—→... The End ...←—