

INTRODUCTION OF COMPANY

Structure of Co. Act 2013

- ❖ New Company Law has been framed on **Skelton Approach**
- ❖ It consist of **29 chapters, 470 Sections, 7 schedules, 95 definitions.**

Definition

- **Section 2(20)** of the Companies Act, 2013, provides that a 'company' means a company **incorporated under this Act** or under any **previous company law**.

CHARACTERISTICS/ FEATURES OF A COMPANY

- (1) Incorporated Association
- (2) Artificial Person
- (3) Separate Legal Entity
- (4) Separate property
- (5) Capacity to sue and to be sued
- (6) Separate Ownership & Management
- (7) Common Seal
- (8) Transferability Shares
- (9) Perpetual Succession
- (10) Limited Liability
- (11) One-man Company
- (12) Experience of a Shareholder as Experience of a Company
- (13) Contractual Rights
- (14) Limitation of Action
- (15) Voluntary Association for Profit
- (16) Termination of Existence

Advantages of Company

1. A company is a **legal entity**, **distinct** and **independent** of those persons who from time to time are called its members.



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2. The **liability** of the company's members are **limited** to the extent they have agreed to contribute towards the capital of the company with reference to the number of shares and/or the amount of guarantee respectively undertaken by them.
3. As the company is having an independent personality of its own, its members are **not personally liable** for any act or omission on the part of the company, unless the law expressly provides otherwise.
4. The company being a juristic person, distinct from the members constituting it, a company can **acquire, own, enjoy and alienate property** in its own name. As such the property would be that of the company and no member can make any claim upon it so long as the company is a going concern.
5. The company being a legal entity **can sue and also be sued** in its own name.
6. The continuity of the company and its functioning-is **not effected** by the **death, disability or retirement** of any of its members. The company continues to exist, irrespective of change in its membership. It is commonly referred to as "perpetual succession"
7. **Transfer of member's interest** in the company can be readily attained without in any way adversely affecting its property, business, or existence.
8. Transferability of the company's shares provides an **element of liquidity** to the investors in respect of their investment in the shares of the company and thus facilitates increased investment in the company's funds without, in any way, adversely affecting its economic stability.
9. The members of the company equitably **share the profit** by way of dividend and the company's assets in the event of its winding up distributed in proportion of its capital respectively contributed by them.
10. Shares of small denomination afford an **opportunity to the small investors** to invest according to their capacity.

Disadvantages of Company

1. **Formalities and expenses:** Incorporation of Company is coupled with many complexes and legal formalities. Even after the Company is incorporated, it has to comply with the various legal provisions. Various documents and returns have to be filed with various government agencies from time to time, which lead to heavy expenditure.
2. **Corporate disclosure:** Various corporate information has to be disclosed from time to time to the members of the Company, hence no secrecy.
3. **Separation of control from ownership:** Members of the Company do not have the control over the Company. Although they have interested in money and are the owner of the Company but still they do not have active control over the Company.
4. **Greater social responsibility:** The Companies have the great impact on the society, due to this reason the Companies are called to show greater social responsibility in their working.
5. **Greater tax burden:** Tax burden in case of the Company is more than any other form of business organisation. A Company is liable to pay tax without any minimum taxable limit and it has to pay tax on its whole income in other words Basic exemption limit for Companies is Nil.
6. **Detailed winding-up procedure:** The Act provides for a very detailed and lengthy procedure to wind up the Company, which is more expensive and time consuming.

Body Corporate (or) Corporation (or) Corporation [Sec 2(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), which the Central Government may, by notification, specify in this behalf.

Body corporate includes a private company, public company, one person company, small company, limited liability partnership, foreign company etc.



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Note: A company is a body corporate but bodies corporate need not be a company

ILLEGAL ASSOCIATION

Sec 464 read with Rule 10 of Co. (Miscellaneous) Rules 2014

No association or partnership consisting of more than such number of persons as may be prescribed (i.e. 100 as per the Sec 464 but 50 as per Rules, (Rules shall be prevailed here)) shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the Individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force.

However the restrictions shall not apply to

- Hindu Undivided Family carrying any business OR
- An Association or Partnership formed by professionals who are governed by special Acts.

LIABILITY OF MEMBERS

Every member of an illegal association is:

- a) **Personally liable** for all liabilities incurred in carrying on the business of, or by, the illegal association; and
- b) Punishable with fine **up to Rs.1,00,000/-**

LIFTING OR PIERCING CORPORATE VEIL

A company is formed by the members and managed by the Board of Directors with the assistance of officers and employees. On incorporation, law gives separate legal entity to the company. Thus, a fiction is created by law by which the rights, powers, duties, functions, liabilities and property of a company is differentiated from the rights, powers, duties, functions, liabilities and property of the members, Directors, officers and employees of the company. This fiction of law is called **Veil of Incorporation or Corporate Veil**.

Or

“Lifting of Corporate Veil” means ignoring the separate legal entity of the company and looking behind the company to identify the real persons who controls the company.

Effect of Corporate Veil

The effect of this Corporate Veil is that only Company can be held liable for the acts and defaults done in the name of the company, even though members, Directors, officers or employees had acted on behalf of the company.

Lifting of Corporate Veil under Companies Act

Corporate veil can be ignored under:

- A. Statutory provisions
- B. Judicial Pronouncements

A. STATUTORY PROVISIONS UNDER WHICH CORPORATE VEIL IS REMOVED.

- (1) Reduction of membership
- (2) Misrepresentation in Prospectus
- (3) Failure to refund Application money
- (4) Mis-description of Company's name
- (5) Holding and Subsidiary
- (6) Fraudulent Conduct
- (7) Liability under other Statutes
- (8) Ultra Vires Act

B. Lifting of Corporate Veil under Judicial interpretation

1. Protection of Revenue

Case Law *Sir Dinshaw Maneckjee Petit*

2. Determination of enemy character of the Company

Case Law *Daimler Co. Ltd. Vs. Continental Tyre & Rubber Co. Ltd*

3. Prevention of fraud

Case Law *Gilford Motor Company vs. Horne*

4. Avoidance of Welfare Legislation

Case Law *Workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd.*

5. To punish for contempt of Court

6. Subsidiary to act as an agent.

Applicable Rules

Chapter	Rules	Forms
I	Co. (specification of definition details) Rules 2014	
II	Co. (incorporation) Rules 2014	INC 1 (RUN) – INC 34
III	Co. (prospectus & allotment of securities) rules 2014	PAS 1 – PAS 5
III	Co. (Issue of GDR) Rules 2014	
IV	Co. (Share capital & Debenture) Rules 2014	SH 1 – SH 15 RSC 1 – RSC 7
IV	NCLT (procedure for reduction of share capital of co.) Rules 2016	
V	Co. (acceptance of deposit) Rules 2014	DPT 1 – DPT 4
VI	Co. (registration of charge) Rules 2014	CHG 1 – CHG 9
VII	Co. (management & administration) Rules 2014	MGT 1 – MGT 15
VIII	Co. (Declaration & payment of Dividend) Rules 2014	IEPF 1 – IEPF 6
VIII	IEPFA (appointment of chairperson & members holding of meeting & provision for offices and officers) Rules 2016	
IX	Co. (accounts) Rules 2014	AOC 1 – AOC 5
IX	Co. (corporate social responsibility policy) Rules 2014	
IX	Co. (Indian Accounting Standard) Rules 2015	
IX	NFRA (composition & manner of selection of chairperson & member) rules 2014	
X	Co. (audit and auditors) Rules 2014	ADT1 – ADT4
X	Co. (cost records and audit) Rules 2014	CRA 1 – CRA 4
XI	Co. (appointment and qualification of directors) Rules 2014	DIR 2 – DIR 12
XII	Co. (meeting of board and its powers) Rules 2014	MBP1 – MBP 4
XIII	Co. (appointment & remuneration of Managerial person) Rules 2014	MR1 – MR3
XIV	Co. (inspection, Investigation & Inquiry) Rules 2014	
XV	Co. (compromise, arrangement & amalgamation) Rules 2016	CAA 1 – CAA15
XVI	Companies (winding up) rules 2014	
XXI	Co. (authorized to register) Rules 2014	URC1-URC2
XXII	Co. (Registration of foreign co.) Rules 2014	FC1 – FC5
XXIV	Co. (Registration offices and fees) Rules 2014	GNL1- GNL 4
XXIV	Co. (filing of documents and forms in XBRL) Rules 2014	
XXVI	Nidhi Rules 2014	NDH 1 – NDH 3
XXVII	NCLT (Salary, allowances & other terms and conditions of services of president & other members) Rules 2015	
XXVII	NCLAT (Salary, allowances & other terms and conditions of services of president & other members) Rules 2015	
XXVII	NCLT Rules 2016	NCLT 1 – NCLT 18 NCLAT 1 – NCLAT 9
XXVII	Co. (transfer of pending proceedings) Rules 2016	
XXVIII	Co. (mediation and conciliation) Rules 2016	MDC 1 – MDC 2
XXIX	Co. (Miscellaneous) Rules 2014	MSC1- MSC 5
	Co. (adjudication & penalties) Rules 2014	ADJ
	Draft rules of prevention of oppression and mismanagement rules	
	Draft rules for registered valuer	
	Draft rules for removal of name from the register of	



	companies	
	Draft rules for rehabilitation and revival of sick companies	

Categories of Forms to be filed with ROC and other authorities of MCA

Form	Description
AGILE	Application for GSTIN, ESIC, EPFO numbers.
CG 1	Form for filing application or documents with Central Govt.
INC 1 (RUN)	Application to Reserve of Unique Name
INC 2	OPC – Application for incorporation
INC 3	OPC – Nominee consent form
INC 4	OPC – Change in member/ nominee
INC 5	OPC – Intimation of exceeding threshold
INC 6	OPC – application for conversion
INC 7	Application for incorporation of company (other than OPC)
INC-12	Application for grant of License under section 8
INC – 18	Application to regional director for conversion of sec 8 company into company of any other kind
INC 20	Intimation to ROC of revocation/ surrender of license issued under sec 8
INC 21	Declaration prior to the commencement of business or exercising borrowing power
INC 22	Notice of situation or change of situation of registered office
INC 22A	Active Compliant Form “ACTIVE”
INC 23	Application to RD for approval to shift the Registered office from one state to another state or from jurisdiction of one ROC to another ROC within the same state.
INC 24	Application for approval of CG for change of name
INC 27	Conversion of public company into private company or private co. into public company
INC 28	Notice of order to the court or any other competent authority
RD 1	Application to RD
RD 2	Form for filing application to CG (RD)
MSC 1	Application to ROC for obtaining the status of dormant company
MSC 4	Application for seeking status of active company
GNL 1	Application made to ROC
GNL 2	ROC document – schedule IV, Schedule II, MOA and AOA
GNL 3	Details of persons/ directors/ charged/ specified.
GNL 4	Addendum for rectification of defects or incompleteness.
FTE	Application for striking off the name of company under the Fast track exit mode
FC 2	Return of alteration in the documents filed for registration by foreign company
FC 3	Annual accounts along with the list of all principal places of business in India established by foreign company
Form 14	Form for intimating to ROC of conversion of the co. into LLP
CHG 1	Application for registration of creation, modification of charge (other than those related to debentures)
CHG 4	Particulars for satisfaction of charge thereof
CHG 6	Notice of appointment or cessation for receiver or manager
CHG 8	Application to CG for extension of time for filing particulars of registration of creation of creation / modification/ satisfaction of charge Or



	For rectification of omission or misstatement/ of any particular in respect of creation/ modification / satisfaction of charge.
CHG 9	Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification o charge for debentures
SH 7	Consolidation, diversion, increases in share capital or members.
SH 8	Letter of offer
SH 9	Declaration of Solvency
SH 11	Return in respect of buy back of securities
DIR 3	Application for allotment of director identification number
DIR 3	Application for Active DIN of Directors.
KYC	
DIR-3C	Intimation of Director Identification Number by the company to the Registrar DIN services
DIR 5	Application for surrender of DIN
DIR 6	Intimation of change in particulars of directors to be given to the CG
DIR-9	A Report by a company to ROC for intimating the disqualification of the director
DIR 10	Application for removal of disqualification of director
DIR 11	Notice of resignation of a director to the ROC
DIR 12	Particulars of appointment of directors and the KMP and the changes among them
URC 1	Application by company for registration u/s 366
FC 1	Information to be filed by foreign company
FC-2	Return of alteration in the documents filed for registration by foreign company
FC 3	Annual accounts along with the list of all principal places of business in India established by foreign company
FC 4	Annual Return of a foreign company
1 INV	Statement of amounts credited to IEPF a/c
PAS 2	Information Memorandum
PAS 3	Return of allotment
PAS 4	Private Placement Offer Letter
MGT 3	Notice of situation or change of situation or discontinuation of situation of place where foreign register shall be kept
MGT 6	Persons not holding beneficial interest in shares
MGT 7	Form for filing annual return by a company
MGT 14	Filing of resolution and agreements to ROC
MGT 15	Form for filing Report on Annual General Meeting
MGT 10	Changes in shareholding position of promoters and top ten shareholders
AOC 5	Notice of address at which books of account are maintained
MR 1	Return of appointment of MD or WTD or Manager
MR 2	Form of application to the CG for approval of appointment or re appointment and remuneration or increase in remuneration or waiver for excess or over payment to MD or WTD or Manager and commission or remuneration to directors.
MSC-1	Application to Registrar for obtaining the status of dormant company
MSC 3	Return of dormant companies
MSC-4	Application for seeking status of active company
ADT-1	Information to the Registrar by Company for appointment of Auditor
ADT 2	Application for removal of auditor(s) from his/their office before expiry of term
ADT-3	Notice of Resignation by the Auditor
5 INV	Statement of unclaimed and unpaid amounts
DPT 1	Circular or circular in the form of advertisement inviting deposits
DPT-3	Return of deposits
DPT-4	Statement regarding deposits existing on the commencement of the Act



22	Statutory report
CRA 2	Form of intimation of appointment of cost auditor by the company to Central Government.
CRA-4	Form for filing Cost Audit Report with the Central Government.
I- XBRL	Form for filing XBRL document in respect of cost audit report and other document with the CG
A-XBRL	Form for filing XBRL document in respect of compliance report and other documents with the CG
35A	Information to be furnished in relation to any offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company
ICP	Investor Complaint Form Form for filing complaint against the company
ADJ	Memorandum of appeal
SCP	SERIOUS COMPLAINT FORM
AOC 4 (XBRL)	Form for filing XBRL document in respect of financial statement and other documents with the Registrar
AOC 4	Form for filing financial statement and other documents with the Registrar
AOC 4 (CFS)	Form for filing consolidated financial statements and other documents with the Registrar
Refund	Application for requesting refund of fees paid.
23C	Form of application to the Central Government for appointment of cost auditor.
23D	Information by cost auditor to Central Government
23AC	Form for filing XBRL document in respect of balance sheet and other documents with the Registrar.
23 ACA	Form for filing XBRL document in respect of Profit and Loss account and other documents with the Registrar.
20B	Filing annual return by a company having a share capital with the Registrar.
21A	Particulars of annual return for the company not having share capital
66	Form for submission of compliance certificate with the Registrar
NDH 1	Return of Statutory Compliances
NDH 2	Application for extension of Time
NDH 3	Half Yearly Return

Schedules

Schedule 1	Formant of MOA and AOA
Schedule 2	Useful life to compute depreciation
Schedule 3	General instruction for preparation of balance sheet and statement of profit and loss of a company
Schedule 4	Code for independent directors
Schedule 5	Conditions to be fulfilled for the appointment of a MD, WTD or a Manager without the approval of the central Govt.
Schedule 6	Infrastructural projects or infrastructural facilities
Schedule 7	Activities which may be included in CSR policy.



- [illegible]

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Answer:

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TYPES OF COMPANIES.

Types of companies

1. On the basis of Statute
 - a. Chartered companies
 - b. Statutory companies
 - c. Registered companies
2. On the basis of Registration
 - a. Private CO.
 - b. Public Co.
3. On the basis of liability
 - a. Limited by shares
 - b. Limited by Guarantee
 - c. Unlimited liability company
4. On the basis of Listing
 - a. Listed company
 - b. Unlisted company
5. On the basis of control
 - a. Govt. Company
 - b. Non – Govt. company
6. On the basis of Holding
 - a. Holding Company
 - b. Subsidiary Company
 - c. Associate Company
 - d.

PRIVATE COMPANY [Sec 2(68)]

A company, which has a minimum paid-up share capital as may be prescribed **and** which by its articles provides the following:

- i. Restricts the **right to transfer** its shares;
- ii. Except in the case of OPC, limits the number of its members to 200 **excluding** present and past employees who continue to be the members of the company (here joint members shall be counted as one); and
- iii. **Prohibits** any **invitation to the public** to subscribe for any securities of the company.

Privileges of a Private Limited Company

1. Financial assistance can be given to its employees for purchase of or subscribing to its own shares or shares in its holding company.
2. Need not prepare a report on the AGM.
3. Need not prepare a statement indicating the manner in which formal annual evaluation has been made by the Board of its own performance and that of its committees and individual directors.
4. Need not appoint Independent directors on its Board.
5. A proportion of directors need not retire every year.
6. Additional grounds for disqualification for appointment as a director may be specified by the company in its AOA.



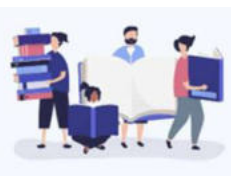
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7. Restrictive provisions regarding total no. of directorships which a person may hold in a public company do not include directorships held in a private company which is neither a holding nor subsidiary company of a public company.
8. Additional grounds for vacation of office of a director may be provided in the AOA.
9. The provisions relating to contract of employment with **MD or WTD** does not apply to a private company.
10. Total managerial remuneration payable by a private company, to its directors, including MD and WTD, and its manager in respect of any financial year **may exceed 11%** of the net profits.

Public Company [Sec 2(71)]

A public Company means a Company which:

- i. Is **not a private Company and (w.e.f 3/1/18)**
- ii. Has a **minimum paid up capital** as may be prescribed

A private Company which a subsidiary of a public Company shall also be **deemed to be a public company** for the purpose of Co. Act.

A Public co. must have minimum 7 members and minimum 3 directors.

ONE PERSON COMPANY (OPC) [Sec 2(62)]

- **only one person** as a member.
- It is basically a private company with some unique features.
- The words “one person company” or “OPC” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.
- Only a **natural person** who is an **Indian citizen and resident** in India shall be eligible to incorporate a one person company;
Resident in India → A person who has stayed in India for a period of **not less than 182 days** during the immediately preceding one ~~calendar year~~ **Financial Year. (27/07/18)**

PRIVILEGES TO AN OPC

As much public interest is not involved, many relaxations have been granted to OPC in compliances and procedural aspect, which are as follows:

- i. Mainly it is a **private Company**.
- ii. **No need** to hold Annual General Meeting (AGM)
- iii. Information to be provided in the **directors' report** has been significantly reduced (as compared to a private company).
- iv. In the case of OPC annual return shall be **signed by CS** and in case of his absence it will be signed by **director** of the company, In other companies it shall be signed by director and company secretary and in case of no company secretary by a **PCS**.
- v. The requirement of a minimum number of Board meetings to be convened shall **not apply** to an OPC having **one director**. However, in case of OPC having **more than one director**, the OPC shall hold at **least one meeting** of the board of directors in each **half of calendar year** and the gap between 2 meetings is **not less than 90 days**.

NOMINATION BY THE SUBSCRIBER OR MEMBER OF ONE PERSON COMPANY

WITHDRAWAL OF CONSENT BY NOMINEE

CHANGE OF NOMINEE BY SOLE MEMBER

DEATH OF SOLE MEMBER

Conversion of OPC into Public or Pvt co.

Compulsory Conversion

If

- a) Paid up share capital of an OPC exceeds Rs. 50 Lakh **AND**
- b) Avg. annual Turnover of an OPC during the immediately preceding 3 consecutive FY exceeds Rs. 2 Cr.

Then

OPC shall

- 1) Within next 60 days, it shall intimate to ROC in Form no. INC 5 that it has ceased to be an OPC and
- 2) Within 6 months, convert itself into
 - a) A private co. with minimum of 2 members and 2 Directors OR
 - b) A public co. with minimum 7 members and 3 directors.

Voluntary Conversion

Voluntary conversion of OPC in to Pvt. Co. or Public co. is possible only after expiry of 2 years from the date of incorporation of OPC

In case of voluntary conversion of OPC to Pvt. Co. or Public co., the procedure shall be same but requirement for filing INC 5 shall not be applicable.

Conversion of Private Company into OPC

1. A private company (other than Sec 8 co.) having paid up capital of **≤ Rs. 50 Lakhs** or avg. annual turnover during the relevant period is **≤ Rs. 2 cr.** may convert itself into OPC by passing **special resolution** in GM.
2. Before passing such resolution, the co. shall obtain **NOC** in writing from its members and creditors.
3. File copy of the special resolution with the **ROC within 30 days** from the date of passing such resolution in **Form no. MGT 14**
4. The co. shall file an application in **INC 6** for its conversion into OPC along with prescribed fees by attaching the following documents, namely:
 - a) The directors of the co. shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the co. have given their consent for conversion, the paid up share capital co. is **≤ Rs. 50 Lakhs** or avg. turnover is **≤ Rs. 2 cr.** as the case may be
 - b) The list of member and list of creditors
 - c) The latest audited balance sheet and the profit and loss account and
 - d) The copy of No objection letter of secured creditors
5. On being satisfied and complied with requirements stated herein the ROC shall issue the new certificate of incorporation.

6. Penalty – If an OPC or any officer of such co. contravenes any of the provisions of these rules, the OPC & such officer in default shall be punishable with fine up-to Rs. 5000 AND with a further fine up-to Rs. 500 for each day in default.

Conversion of Private Company into Public company

1. The AOA shall be altered to delete the 3 matters as given 2(68). Alteration of AOA requires special resolution in general meeting
2. If the number of members are below 7, step should be taken to increase it to a minimum of 7
3. If the number of directors is less than 3, it should appoint more directors to make it 3 at least
4. Within 30 days from the date of alteration the co. shall file the following to ROC
 - a) Copy of SR along with Explanatory statement in form MGT 14 and
 - b) copy of altered MOA & AOA.
 - c) Application in INC 27 to ROC for conversion from Pvt. To Public.
5. ROC will issue a fresh certificate of incorporation
6. Then change the name shall be noted in MOA, AOA, letterheads, bills, invoices, seals etc.

Conversion of public company into private company (Sec 14) of companies Act 2013, Rule 67 of NCLT Rules 2016 & Rule 33 of co. (incorporation) Rules 2014

1. The AOA shall be altered to include 3 matters required u/s 2 (68) of co. Act 2013
2. Alteration of AOA requires a Special Resolution in GM.
3. Alteration of MOA (name clause) also requires a Special Resolution in GM.
4. As per Companies (Amendment) Ordinance, 2018 w.e.f 02/11/2018 2nd proviso of Section 14(1) shall be substituted by
“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the CG on an application made in such form and manner as may be prescribed:
Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.” (2018)
5. A petition under proviso of Sec 14(2) shall be filed to **NCLT CG (2018)** in form no. NCLT 1 within 3 months of passing the SR.
6. Attachment to the petition
 - a) List of Creditors and debenture holders drawn up to latest practicable date but not older than 2 months prior to date of filing of petition.
 - b) Affidavit from the company, signed by CS (if any) and by 2 directors (out of which one should be MD (if any)) w.r.t. correctness of list of creditors and estimated value of debt therein.
Note: Copy of list of creditors shall be kept at registered office of the company so that any desirous person can inspect during business hours and take extracts from the same on payment of Rs. 10 per page.
7. The company shall, at least 14 days before the date of hearing –
 - a) Advertise the petition.
 - b) Serve individual notice to Debenture holders & Creditors of company in **NCLT 3B**.
 - c) Serve a notice to CG, ROC & SEBI (if co. is listed co.) and to any other regulatory body (if co. is regulated by any other Act)
8. If any objection by any debenture holder or Creditor, then notice of such objection shall be sent to ROC on or before date of hearing.
9. While passing the order, the NCLT may disallow the conversion with reasons to be recorded in writing.
10. A copy of order shall be filed with ROC in INC 27.
11. Such change shall be incorporated in MOA & AOA & in all bills letter heads and common seal (if any).
12. Surrender to ROC, the COI of co. in order to get new COI.

SMALL COMPANY (Sec 2(85))

“Small Company” means a company, other than a public company,—

- i. Paid-up share capital of which does not exceed *Rs.50 Lakhs* or such higher amount as may be prescribed *which shall not be more than Rs. 10 cr.. AND*
- ii. Turnover of which as per P & L account for the immediately preceding FY does not exceed *Rs.2Cr.* or such higher amount as may be prescribed which shall not be more than **Rs. 100 Cr.**



NOTHING IN THIS SECTION SHALL APPLY TO

- a. A holding company or a subsidiary company.
- b. Sec 8 co. or
- c. Special Act company

Start up Company

A Pvt. Company incorporated under companies act 2013 or any other previous company law AND recognized as start up as per notification issued by Department of Industrial Policy and Promotion, Ministry of commerce and Industry.

NON-PROFIT ORGANISATION AS A COMPANY [Sec8]

A person or an association of persons may be registered under this Act as a limited company if the following conditions are satisfied:

a) OBJECT

Its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object.

b) APPLICATION OF PROFITS

It intends to apply its profits, if any, or other income in promoting its objects; and

c) PROHIBITION ON PAYMENT OF DIVIDEND

It intends to prohibit the payment of any dividend to its members, etc.

LICENCE TO BE GRANTED BY CENTRAL GOVERNMENT

IMPORTANT NOTES:

1. NO USE OF WORDS ‘LIMITED’ OR ‘PVT. LTD’
2. SAME PRIVILEGES AND OBLIGATIONS AS A LIMITED COMPANY
3. FIRM CAN ALSO BECOME ITS MEMBER
4. NO ALTERATION IN MOA & AOA EXCEPT THE PRIOR APPROVAL OF CG
5. CONVERSION ALLOWED AFTER SATISFYING THE CONDITIONS
6. LICENSE MAY BE REVOKED
7. PAYMENT OF DEBTS AND LIABILITIES
8. ADDITION OF WORDS ‘LIMITED’ OR ‘(P) LTD’
9. OPPORTUNITY OF BEING HEARD

GOVERNMENT COMPANIES [Sec 2(45)]

A Government Company is a Company in which not less than 51% of the paid up share capital is held by:

1. CG, OR



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2. Any SG, OR
3. Partly by CG and partly by one or more SG.

Note: It also includes a Company which is a subsidiary of a Government Company.

Employees of the government company are not government servants, so they have no legal right to claim that the government should pay their salary or any additional expenditure incurred on account of revision of pay scale should be met by the government. It is the responsibility of the Company to pay them the salary.

Case Law	<i>Andhra Pradesh Road Transport Corporation v. ITO</i>
-----------------	--

What corporations are State?

Case Law: RD Shetty vs. International Airport Authority

Supreme court has pointed out that corporations acting as instrumentality or agency of govt. would become 'State' u/a 12 of Constitution of India.

- a) The entire share capital of corporation is held by the govt.
- b) The corporation enjoys a monopoly status which is conferred or protected by the state.
- c) The state exercises deep and pervasive control in corporations.
- d) The functions of the corporation are of public importance and closely related to government functions.
- e) If a department of govt. is transferred to a corporation.

Non-Govt. Companies

The Company other than Govt. Company is Non-Government Company.

LISTED COMPANY (Sec 2(52))

"Listed company" means a company has any of its securities listed on any recognised stock exchange.

FOREIGN COMPANIES (Sec 2(42))

A Company **incorporated outside India** which

- a) has established a **place of business in India** and
- b) conducts any business activity in India in any other manner

However, Following activities are held as not constituting "carrying on of business":

1. Carrying small transactions
2. Conducting meeting of shareholders.
3. Operating bank account
4. Transferring of shares and other securities.

Note:

- Where a company incorporated outside India, has a representative in India, who on behalf of the company receives orders from the customers, shall be treated as "**foreign company**" only if such company has place of business in India and conducts business activities.
- If company holds BM or GM in India, the company shall not be treated as "**foreign company**" unless the company carries some business activity and has a place of business in India.
- Foreign company shall comply with provision of Sec 380 to 386 and Sec 392 & 393 of companies act 2013 however CG may exempt any foreign company by order & copy of such order shall be placed before both the houses of parliament.

Section 379

Where not less than 50% of the paid up share capital whether equity or preference share of a foreign company is held by one or more citizen of India or by one or more companies or body corporate incorporated in India whether singly or in the aggregate, such company shall comply with the provisions of this chapter or such other provisions of the Act as may be prescribed with regard to the business carried on by it in India as if it were a Company incorporated in India.

Rule 12 registration of foreign companies rules 2014

Action for improper use or description as foreign company: if any person or persons trade or carry on business in any manner under any name or title or description as a foreign company registered under the act or the rules made thereunder, that person or each of those person shall, unless duly registered as foreign company under the act and rules made thereunder, shall be liable for investigation u/s 210 of the Act and action consequent upon that investigation shall be taken against that person.

PROCEDURE TO REGISTER A FOREIGN COMPANY

Section 380 - Every foreign company shall within 30 days of the establishment of its place of business in India, deliver to the ROC for registration:-

1. Certified copy of charter, statute or memorandum and articles.
2. Full address.
3. List of the Directors and Secretary of the Company.
4. Other prescribed particulars.

Foreign company shall within a period of 30 days of establishment of its place of business in India, file form FC-1 of the companies (registration of foreign companies) Rules 2014.

Accounts of Foreign company (Sec 381)

Every Foreign company shall prepare and file, within 60 days from the last day of its financial year, to the ROC annual return in form FC 4 along with prescribed fees containing the particulars as they stood on the close of FY.

INVESTMENT COMPANIES

A Company whose primary business is the acquisition of shares, stock, debentures or other securities of other companies is an investment Company.

PRODUCER COMPANIES

Section 465(1) of the Companies Act, 2013 provides that the Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed.

However, proviso to section 465(1) provides that the provisions of Part IX A of the Companies Act, 1956 shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

In view of the above provision, Producer Companies are still governed by the Companies Act, 1956. Companies (Amendment) Act, 2002 had added a new Part IXA to the main Companies Act, 1956 consisting of 46 new Sections from 581A to 581ZT.

FINANCIAL COMPANIES

A financial Company is a non-banking Company which is a financial institution within the meaning of Section 45 of RBI Act, 1934.



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HOLDING COMPANY [SEC 2(46)]

“A company shall be deemed to be a holding company of another only if the other is its subsidiary”.

[Explanation: Here company includes any body corporate]

SUBSIDIARY COMPANY OR SUBSIDIARY [SEC 2(87)]

In relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) Controls the composition of the Board of Directors; or
- (ii) Exercises or controls more than one-half of **[Total Voting Power]** ~~the total share capital~~ 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.

The Companies (Restriction on number of layers) Rules, 2017

No company other than a company belonging to a specified class, shall have more than 2 layers of subsidiaries.

This provision shall not apply to a company from acquiring a company incorporated outside India with subsidiaries beyond 2 layers as per the laws of such country. Further for computing the number of layers under this rule, one layer which consists of one or more WOS or subsidiaries shall not be taken into account.

Specified class are as follows:

- i. a banking company
- ii. a non-banking financial company
- iii. an insurance company
- iv. a Government company

The provisions of this rule shall not be in derogation of the proviso to sec 186(1).

Every existing company which has number of layers of subsidiaries in excess of the specified layers –

- (i) shall file, with the ROC a return in **CRL-1** disclosing the details specified therein, **within 150 days** from the date of notification.
- (ii) shall not have any additional layer of subsidiaries over and above the layers existing on date of notification of rules; and
- (iii) shall not, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed (whichever is more)

In case of any company contravenes any provision of these rules the company and every officer of the company who is in default shall be punishable with **fine up to Rs. 10,000** and where the contravention is a continuing one, with a further fine which may extend to Rs. 1,000 for every day after the first during which such contravention continues.

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 point (i) & (ii) is of another subsidiary company of the holding company;

- b. The composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power at its discretion can appoint or remove all or a majority of the directors;
- c. The expression "company" includes anybody-corporate;
- d. "Layer" in relation to a holding company means its subsidiary or subsidiaries.

MEMBERSHIP OF HOLDING COMPANY[SECTION 19]

A subsidiary company cannot be a member of its holding company and any allotment or transfer of shares by a company to subsidiary company shall be void.

EXCEPTIONS

- A. A subsidiary company can become the member of its holding company and **CAN** vote in its meeting:
 - i. Where the subsidiary is holding shares in the capacity of a legal representative of a deceased member of the holding company. Or
 - ii. Where the subsidiary is holding shares as a trustee.
- B. A subsidiary company can become the member of its holding company but **CANNOT** vote in its meeting:
 - Where subsidiary company was the member of holding company either
 - 1. Before the commencement of this act or
 - 2. Before becoming the subsidiary of that company

ASSOCIATE COMPANY Section 2 clause (6)

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

- a) Whereas the term "Significant influence" used in the definition means control of at least 20% of **total voting power**, or control of or participation in business decision under an agreement.
- b) The expression "JV" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement

DORMANT COMPANY (SEC 455)

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

Another Name of this concept by Professionals is "ASSET SHIELDING CONCEPT"

Procedure and conditions to be complied with, to form a dormant company:

- 1. Where a company is formed and registered under this act for a future project or to hold property or an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may **make an application** to the registrar in such a manner as may be prescribed for obtaining a status of a dormant company.
- 2. The registrar on consideration of an application shall **allow** the status of the dormant company to the applicant and **issue a certificate** in such manner as may be prescribed.
- 3. The registrar shall **maintain a register** of a dormant company in such form as may be prescribed.
- 4. In case a company which has **not filed financial statements or annual returns for 2 years consecutively**, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies

5. Further, a dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the registrar and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.

“SIGNIFICANT ACCOUNTING TRANSACTION”

“Significant accounting transaction” means any transaction other than—

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

PROCESS FOR OBTAINING STATUS OF DORMANT COMPANY:

1. Call a Board meeting- to the EGM.
2. Authorization to director to make application for Dormant with ROC.
3. Issue Notice of General Meeting
4. Engage an Auditor/ Chartered Accountant to issue certificate.
5. Hold extraordinary General meeting
6. Pass Special Resolution.
7. Must file E-Form MGT-14 with ROC.

NIDHI COMPANIES [Sec.406]

1. "Nidhi" or "Mutual Benefit Society" means a company which CG may, by notification in the Official Gazette, declare as such
2. As per Rule 4 of Nidhi Rules 2014, a Nidhi company shall be a public company and must have a minimum paid up eq. capital of Rs. 5 Lakh.
3. The CG may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—
 - a. shall not apply to any *Nidhi* or Mutual Benefit Society; or
 - b. shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.
4. A copy of every notification proposed to be issued shall be laid in draft before each House of Parliament, while it is in session, for a total period of 30 days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
5. In reckoning any such period of 30 days, no account shall be taken of any period during which the House is prorogued or adjourned for more than 4 consecutive days.
6. The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament.

Important Case Laws

Q.1 ABC Ltd.is a company incorporated under the Companies Act, 2013, the paid up share capital of the company is held as under:

- Government of India 20%
- Govt. of Andhra Pradesh 20%
- Govt. of Tamil Nadu 10%
- Govt. of Maharashtra 10%

Explaining the provisions of the Companies Act, 2013, state whether the said company be called a Govt. Co. and also state whether the employees of a Govt. Co. can claim their salaries from the Government of India.

Answer:

[illegible]

Q.2 The paid up share capital of XYZ (P) Ltd. is Rs. 20 lakhs consisting of 2,00,000 equity shares of Rs. 10 each fully paid up. ABC (P) Ltd. and its subsidiary DEF (P) Ltd. are holding 60,000 and 50,000 shares respectively in XYZ (P) Ltd.

Examine with reference to the provisions of the companies Act, 2013 whether XYZ (P) Ltd. is a subsidiary of ABC (P) Ltd. Would your answer be different if DEF(P) Ltd. is holding 1,10,000 shares in XYZ (P) Ltd. and no shares are held by ABC (P) Ltd. in XYZ (P) Ltd.?

Answer:

[illegible]

[illegible]

Answer:

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Answer:

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PROMOTION AND FORMATION OF COMPANY.

PROMOTION OF A COMPANY

Promotion is the **first stage** in the formation of a company.

The term Promotion means all those steps that are required to bring a company into existence and then to set it going.

Certain persons who wish to carry on some business come together to form a company. **These persons are known as promoters.**

A PROMOTER [Section 2(69)]

“Promoter” means a person—

- Who has been **named** as such in a prospectus or is identified by the company in the annual return as a promoter, or
- Who has **control over the affairs** of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- In accordance with whose **advice, directions or instructions** the Board of Directors of the company is accustomed to act.

But in this case, if a person is acting merely in a professional capacity he will not be treated as a Promoter.

Note: They are **neither the agents nor the trustees** of the proposed Company.

Duties of Promoters

1. Not to make secret profits
2. Disclosure of material facts
3. To compensate for losses of company
4. Not to use position unfairly
5. To act diligently

ACTIONS AGAINST THE PROMOTERS

Where the promoters make a secret profit, and the fact comes to the knowledge of the Company, the Company can:

- a) **Rescind** the contract and recover the purchase price where the promoter sold his own property to the Company.
- b) **Recover** the secret profits made by the promoters.
- c) **Sue** the promoters for breach of trust.

RIGHT OF PROMOTERS

Right to receive Preliminary Expenses

1. To claim promotional expenses & remuneration for his services.
2. Entitled to recover his preliminary expenses.
3. To receive all the expenses incurred for in setting up and registering the company, from Board of Directors.

But these rights are subject to valid contract between Company after incorporation and the the promoter.

Right to recover proportionate amount from the Co-promoters



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REMUNERATION TO PROMOTERS

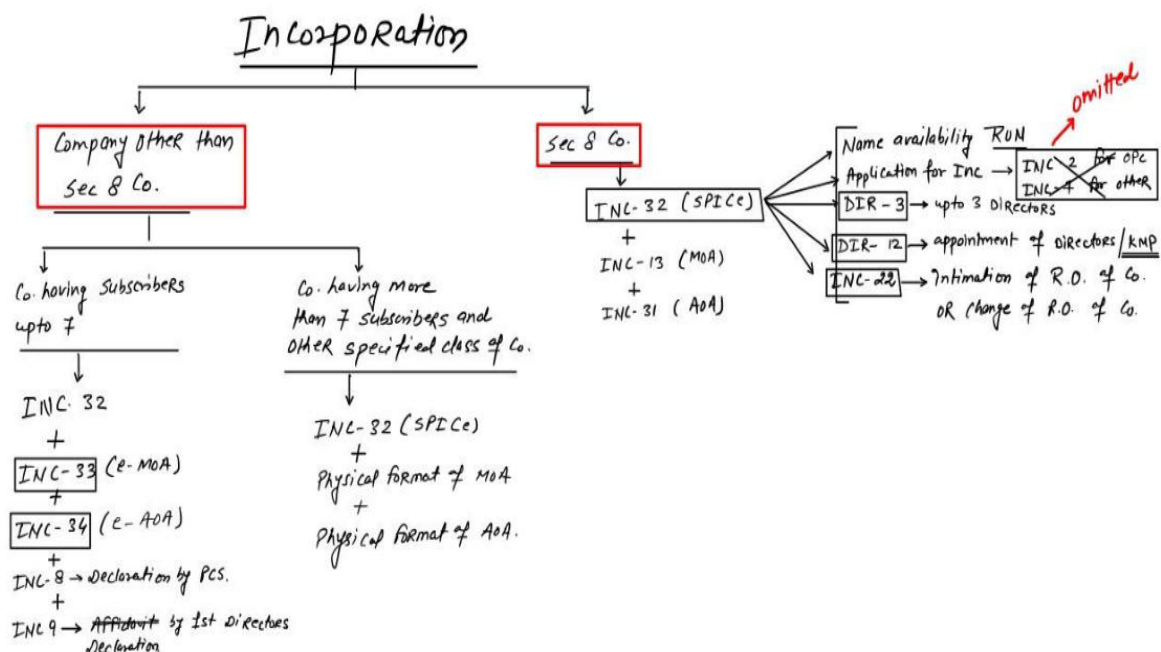
The promoters cannot claim any remuneration from the company unless there is a contract for the same between the promoters and the company.

If the Company, after incorporation, **makes a contract** with the promoters, the promoters shall have the right to:

- **Receive the remuneration** that the Company has contracted to pay.
- **Recover the expenses** properly incurred by them for incorporation of the Company.

Note: Even where the Articles provide that the Company shall pay remuneration to the promoters after incorporation, such a provision is not binding.

INCORPORATION OF COMPANY



Companies (Incorporation) Rules, 2014.

Reservation of Name: an application shall be made through the web service available at www.mca.gov.in by using RUN along with prescribed fees which may be approved or rejected by ROC (Central Registration centre) **after allowing re submission of such application within 15 days for rectification of the defects, (if any).** (w.e.f. 23/03/18)

Upon receipt of an application for reservation of name, the ROC may, on the basis of information and documents furnished along with the application, reserve the name for 20 days from the date of approval or such other period as may be prescribed:

Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name **for 60 days** from the date of approval.". (w.e.f 3/1/18)

Rule 12: Application for incorporation of company shall be made in INC 32 (SPICe) along with fees as may be prescribed.

Provided that in case pursuing of any of the objects of a company requires registration or approval from sectoral regulators such as RBI SEBI, registration or approval as the case may be from such regulators shall be obtained by the proposed co. before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation of the co.

Rule 25A: Active Company Tagging identities and verification (ACTIVE) INC 22A

1. Every co., incorporated on or before 31/12/17 shall file a particulars of the co. and its registered office, in e – form Active on or before 15.06.19.

Provided that any co., which has not filed its due Financial Statement u/s 137 or due annual Return u/s 92 or both with ROC shall not be allowed to file ACTIVE, unless such co. is under management dispute and the ROC has recorded the same on the register.

Provided further that the co. which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved shall not be required to file ACTIVE form.

Provided also that if co. does not intimate the said particulars, the co. shall be marked as “Active – non compliant” on or after 16th June 2019 and shall be liable for action u/s 12(9) of the act.

Provided also that no request for recording the following event based information or changes shall be accepted by the ROC from such co. marked as ACTIVE non compliant unless e- FORM ACTIVE is filed –

- i. SH-07 (Change in authorised cap)
 - ii. PAS-03 (change in paid up capital)
 - iii. DIR-12 (change in directors) except in following cases -
 - ✓ Cessation of any director
 - ✓ Appointment of directors in co., where total no. of directors are less than prescribed on account of disqualification of all or any of its director u/s 164.
 - ✓ Appointment of director for implementation of the order of court or Tribunal or Appellate Tribunal under this Act or IBC 2016.
 - iv. INC 22 (Change in R.O.)
 - v. INC 28 (Amalgamation, Demerger)
2. If co. files ACTIVE on or after 16th June 2019, the co. shall be marked as ACTIVE compliant, on payment of fees of Rs. 10,000

Rule 38 → Simplified Proforma for Incorporating Company Electronically (SPICe).-

Provided further that in case of companies incorporated, with effect from the 26/01/2018, with a nominal capital of less than or equal to Rs. 15 lakhs (18th March



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2019) or in respect of companies not having a share capital whose number of members as stated in the AOA does not exceed 20, fee on INC-32 (SPICE) shall not be applicable. (2018)

Rule 38A: Application for Registration of GSTIN, ESIC, EPFO & PTR & Opening of Bank Account. The application for incorporation of co. shall be accompanied by e – form AGILE – PRO (INC 35) containing an application for registration of following, namely –

- a. GSTIN w.e.f. 31st March 2019
- b. EPFO w.e.f 8th April 2019
- c. ESCI w.e.f 15th April 2019
- d. Professional Tax Registration w.e.f 23rd Feb 2020
- e. Opening of Bank Account w.e.f 23rd Feb 2020

STEPS OF INCORPORATION OF A COMPANY.

1. Company shall file to ROC the following documents & info -
 - 1) **MOA and AOA duly signed by subscribers in prescribed manner.**
 - 2) **Declaration by practicing CS/CA/CMA/Adv**
 - 3) **Declaration by Subscribers & First Directors**
 - 4) **Address for Correspondence**
 - 5) **Particulars of every subscriber to the Memorandum**
 - 6) **Other relevant particulars**

ROC shall register all the documents and shall issue a Certificate of Incorporation in **INC 11**.

On and from the date of Incorporation, a unique Corporate Identification number shall be allotted to company.

All the documents and information filed with ROC shall be maintained by Co. till its dissolution in original format.

If any wrong, false or incorrect information is furnished or if any material information is suppressed then such officer or promoter or any other person in default shall be punishable **u/s 447**.

Details of CIN:

Every Indian company (listed or unlisted) has a unique 21 digits CIN

Digit number	What it shows?	Remark
1st digit	Listing status	If the company is listed it will start with “L” and if the company is unlisted it will start with “U”
Next 5 digits	Industry code	
Next 2 digits	State code	Eg. MH for Maharashtra
Next 4 digits	Year of incorporation	i.e. A company formed in the calendar year 2011 , it will be 2011
Next 3 digits	Ownership	PLC for Public Limited Company PTC for Private Limited Company OPC for One Person Company
Next 6 digits	Registration No.	Eg. 090868

Commencement of Business Sec 10 A (02/11/18)

- 1. Any co. having S.C. shall not commence any business or exercise borrowing powers unless –**



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- a) A declaration is filed by its directors within 180 days from DOI in prescribed form and verified to ROC, that each subscriber to MOA has paid value of shares agreed to be taken.
 - b) Co. has filed verification of Registered office.
2. In case of default, Penalty on company = Rs. 50,000 and officer in default = Rs. 1000 for each day in default and up-to Rs. 1,00,000.
 3. If no such declaration filed to ROC within 180 days and ROC has reasonable cause to believe that co is not carrying any business/ operation, he may initiate removal of Name of company.

EFFECT OF CERTIFICATE OF INCORPORATION

- 1) From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company.
- 2) It shall be a body corporate.
- 3) It shall exercise all the functions of an incorporated company.
- 4) Upon incorporation, the Company becomes a legal person separate from its members.
- 5) It acquires perpetual succession and common seal.
- 6) It shall have power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible.
- 7) It shall have power to contract and to sue and be sued, by the said name.

MEANING OF CERTIFICATE OF INCORPORATION

- A certificate which certifies that the company is registered is called 'Certificate of Incorporation'. It is issued by the ROC.
- It contains the **name of the company**, the **date of its issue** and the **signature of Registrar with his seal**.
- The Company comes into existence from the date of the certificate of incorporation.
- After scrutinizing the documents filed with the ROC, and after being satisfied that all the requirements have been fulfilled, the Registrar will enter the name of the company in the Register of companies and shall certify under his hand that the company is incorporated.

CERTIFICATE OF INCORPORATION IS A CONCLUSIVE EVIDENCE

- Thus, the certificate is conclusive evidence on the following points:
 - All the **requirements** under the Act have been complied with in respect of registration of Company and matters precedent and incidental thereto, and
 - The association is a Company, **authorized** to be registered and duly registered under this Act.
- Thus, if Memorandum of Association is:
 - **Materially altered** after signature but before registration, or
 - **Signed** by only 1 person for all 7 subscribers, or
 - If signatories are all **minors**, or
 - If all or some of the signatures on the Memorandum and Articles are **forged**,
 - Contains illegal objects,The certificate would be conclusive and would not affect the status and existence of the Company as legal person although such irregularities might give rise to claims between the subscribers.

PRELIMINARY CONTRACTS



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A pre-incorporation contract means a contract entered into by the promoters on behalf of the Company before its incorporation. Before incorporation, the promoters usually enter into certain contracts for the purchase of assets on company's behalf. A company cannot be sued nor can it sue for the pre-incorporation contracts.

CONDITIONS FOR ENFORCEMENT OF PRELIMINARY CONTRACTS

Ordinarily, pre-incorporation contracts are not binding on the company even after its incorporation. However, Pre-incorporation contracts are enforceable only if the following conditions are fulfilled:

- i. The contracts were entered into by promoters before incorporation of the company.
- ii. The contracts were entered in to on behalf of Proposed Company.
- iii. Such contracts are **warranted by the terms** of its incorporation.
- iv. The Company has **adopted** such contract after incorporation and has **communicated** the same to the other party.
- v. The company has entered into a fresh contract with the third parties on the same terms and conditions as contract entered into by the promoters.

EFFECTS WHEN COMPANY ADOPTS PRE-INCORPORATION CONTRACTS

- i. The contracts can be enforced by the company.
- ii. The contract becomes binding on the company.
- iii. The promoters are not personally liable on such a contract.

EFFECTS WHEN COMPANY DOES NOT ADOPT PRE INCORPORATION CONTRACTS

- i. The pre-incorporation contract shall not bind the company.
- ii. Even if the contract stipulates that the company after incorporation shall be bound by it, the company shall not be bound by such contract.
- iii. Even if the company takes the benefit of pre-incorporation contract, it is not bound by it.
- iv. The company cannot ratify a pre-incorporation contract.
- v. The Company, after incorporation, cannot enforce a pre-incorporation contract.
- vi. The promoters are personally liable on pre-incorporation contract.



1. Based on the information given in the MOA, Smart Ltd. was incorporated and the certificate of incorporation was issued by the registrar of companies, New Delhi. The MOA was duly signed, except that X, Y and Z signed it on behalf of five minors. Examine the validity of the certificate of incorporation issued by the Registrar of Companies.

[illegible]

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Answer:

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Memorandum and Article of association of Company

Memorandum (Sec 2(56))

- “Memorandum of Association of a Company
- as originally framed or altered from time to time
- in pursuance of any previous Companies Law or of this Act”

Memorandum meaning:

- It is the charter of a Company.
- It contains the objects for which the Company is incorporated.
- It defines the possible scope of operations of the Company.

Case Law

Ashbury Railway Carriage & Iron Co. Ltd. v. Riche

Purpose:

For 3rd parties

To provide information to the third parties as to whether the contracts they are intending to enter into with the Company are within the object clause of the Company or not.

For shareholders

To provide information to the intending shareholder regarding the purpose for which his money is going to be used by the Company and the amount of risk he is taking in making the investment.

FORMAT OF MEMORANDUM SEC 4(6)

TABLE A	Company Limited By shares
TABLE B	Company limited by Guarantee & Not having share Capital
TABLE C	Company limited by Guarantee & having share Capital
TABLE D	Unlimited Companies & Not having share Capital
TABLE E	Unlimited Companies & having share Capital

Contents of Memorandum Section 4

Following are the Clauses/Conditions of Memorandum.

1) Name clause

Case Law

Atlas Cycles (Haryana) Ltd. Vs. Atlas Products Pvt. Ltd (2008)

Case Law

Ewing V Buttercup Margarine Co. Ltd

2) Situation or Registered Office Clause (Sec 12(1))

A company shall, **within 30 days from (w.e.f 3/1/18)** its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it. The company shall furnish to the ROC verification of its registered office within 30 days of its incorporation in **Form INC-22**.

If ROC believes that co, is not carrying business, he may cause physical verification of Registered office and if any default found than he may initiate strike off. (02/11/18)

3) Objects Clause

The objects should be stated in the following manner

- The objects to be pursued, by the company on its incorporation are:
- Matters which are necessary for furtherance of the objects specified in clause 3(a) are:

Note: Here the word necessary for furtherance means ancillary, if object of a company is illegal, such company cannot be registered.

4) Liability Clause

5) Capital clause (Only in case of Company having Share Capital)

6) Association or Subscription clause

The subscribers to the MOA declare:

"We, the several persons whose names and addresses are subscribed below, are desirous of being formed into a company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names".

7) Succession Clause (Only in case of OPC)

Name of person (Nominee) who in the event of death of subscriber, shall become member of company.

REQUIREMENTS FOR MEMORANDUM

- The MOA shall be **Printed**,
- Divided into **paragraphs** and **numbered** consecutively, **Signed by each subscriber**, who shall mention his address, description and occupation, if any.
- The signature shall be made in the presence of at least **1** witness who shall attest the signatures.

Alteration of Memorandum of Association (MOA) Sec 13

<i>(Alteration of Name Clause (Sec 13(2))</i>	
VOLUNTARY CHANGE OF NAME	
a) Availability of Name	
b) Pass a special Resolution	
c) Approval of CG.	
d) Filing of Form MGT.14 with ROC	
e) The approval of Central Government is not required	

B. RECTIFICATION OF NAME (COMPULSORY CHANGE OF NAME)	
In the following cases CG has power to give directions to rectify its name if a Company has been registered either inadvertently or otherwise, with a name, which	
i. Is identical with, or too nearly resembles the name of an existing Company ii. Infringes a registered trademark.	
(i) Procedure for change in case the name is identical with, or too nearly resembles the name of an existing Company	a. Ordinary Resolution passing of ordinary resolution in the shareholders meeting. b. Compliance with CG directions c. The Company shall comply within 3 months
(ii) Procedure for change in case the name infringes a registered trademark on application within 3 years from date of incorporation or change in name.	a. The Company shall comply within 6 months

EFFECT OF CHANGE IN NAME OF THE COMPANY
a. Where a Company changes its name it shall give notice to the ROC within 30 days and the ROC shall enter the new name on the register in place of the old name and shall issue a fresh COI with the necessary alterations. b. The change of name shall be complete and effective only on the issue of fresh COI by the ROC. c. The ROC shall also make the necessary alteration in the MOA of the Company.

Change in name of Listed Company:**Subject to following condition**

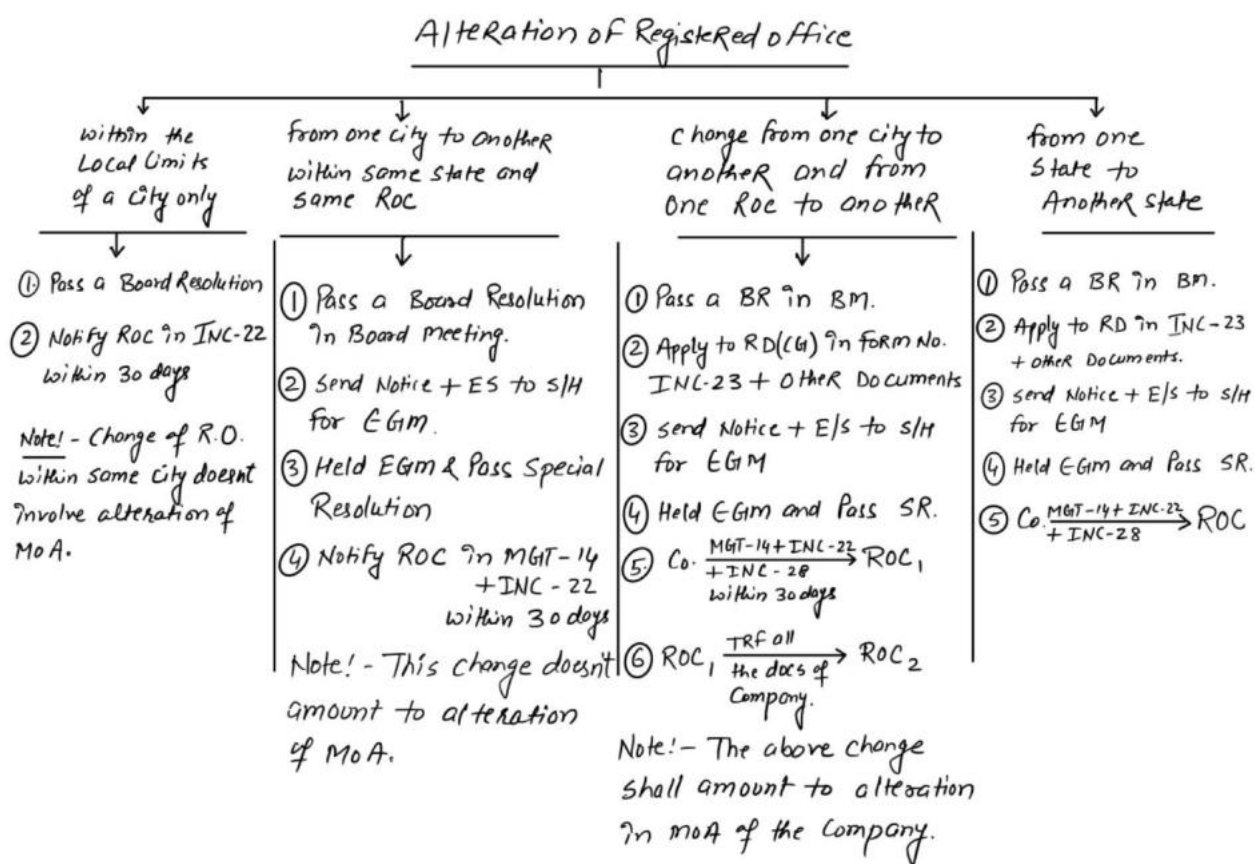
1. A time period of at least 1 year shall be elapsed from the last name change.
2. At least 50% of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name. OR
3. The amount invested in the new activity/ project is at least 50% of the assets of the listed entity;
Provided that if listed entity has changed its activity which are not reflected in its name, it shall change its name in line with its activities within a period of 6 months from the change of activities in compliance of provisions of companies act 2013.

Procedure of Name change

1. A board meeting shall be convened to consider a new name for the company
2. After deciding, an application is required to be made to ROC in RUN for along with a fee of Rs. 1000 for ascertaining the availability of new name.
3. On confirmation from ROC, a board meeting is held to:
 - a. Note down the new name
 - b. Decide the day, date, time and venue of general meeting
 - c. Approve the notice of General meeting
 - d. Authorise the CS or any one director to issue the notice general meeting

4. Issue notice of GM to all members, auditors and directors at least 21 clear days before the date of general meeting.
5. Hold the GM and pass the special Resolution.
6. Special Resolution along with ES shall be filed with ROC in MGT 14 within 30 days from the date of passing the SR.
7. An application shall be made to CG in INC 24 along with certified copy of SR & altered copy of MOA within 60 days from the date of name reserved by ROC or 30 days from the date of passing the SR (w.i.e)
8. Apply to ROC in INC 25 for issue of fresh COI.

Change of Registered Office Sec 13(4) & 13(7)



Case Law Minerva Mills Ltd. vs. Government of Maharashtra

A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.



Alteration of Object Clause Sec (13)

A company can change its objects clause by passing a special resolution. Further in case of a listed company, the special resolution for alteration in the objects clause of the MOA needs to be passed through Postal Ballot in terms of Section 110.

The Company needs to file SR in the **Form MGT-14** along with the altered copy of the MOA and other relevant documents with the RO with the filing fee as prescribed. Thereafter the ROC shall register alteration of the MOA with respect to the objects of the company and certify the registration within a period of **30 days** from the date of filing of the SR.

Alteration of Liability Clause

- a. **Limited to unlimited:** All members must agree in writing.
- b. **Unlimited to limited company:** Such change shall not affect any existing debt, liquidity, obligation or contract

Conversion of unlimited liability company into a limited liability company

It shall not be converted if

- a) Its net worth is negative OR
- b) An application is pending under co. act for striking off its name OR
- c) The co. is in default of any of its annual Return or financial statement under the provisions of co. act.
- d) The co. has not received amount due on calls in arrears, from its directors for at least 6 months from the due date OR
- e) A petition for winding up is pending against the company
- f) An inquiry, inspection or investigation is pending against company.

Process of Conversion

1. A special resolution is required to be passed.
2. Within NEXT 7 days, publish a notice in INC 27A of such proposed conversion in 2 Newspaper (one English and one vernacular), seeking objection if any, from the person interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debenture holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch.
3. The notice shall also state that the objections, if any, may be intimated to ROC and to the company within 21 days of the date of publication of the notice, duly indicating nature of interest and ground of opposition.
4. Within 45 days from SR file an application to ROC for its conversion into a company limited by shares or guarantee by attaching the following documents
 - a. Notice of GM along with ES
 - b. Copy of SR
 - c. Copy of newspaper publication

- d. A copy of altered MOA & AOA duly certified by one of director authorised or CS of co.
 - e. Declaration signed by at least 2 directors of co. including MD, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the company before conversion (except to the extent that the liability of the members shall be limited)
 - f. A complete list of creditors and debenture holders.
 - g. A declaration of solvency signed by at least 2 directors of co. one of whom shall be the MD.
 - h. A certificate of solvency from auditor.
 - i. NOC from sectoral regulator, if applicable
 - j. NOC from all secured creditors, if any.
5. After wards the ROC shall suitably decide whether the approval for conversion should or should not be granted within 30 days form the date of receipt of application complete in all respects.
6. The certificate of incorporation consequent to conversion of unlimited liability company to into a company limited by share or guarantee be in form INC 11A issued to the company upon grant of approval for conversion.

Conversion of company limited by guarantee into a company limited by shares

1. A special Resolution is required to be passed.
2. A copy of such SR shall be filed with ROC within 30 days along with altered MOA & AOA and a list of members.
3. The ROC shall take a decision **within next 30 days** and upon approval, the company shall be issued with a certificate of incorporation in **Form INC 11B**.

Alteration of Capital Clause Sec 61

A company limited by shares may, by passing an ordinary resolution in a general meeting, alter the capital clause of its MOA; provided authority to alter is given to it by its AOA. A notice of alteration in Form No. SH-7 and copy of resolution is required to be filed with the ROC within 30 days.

Ways of altering capital clause:

- By **increasing** its authorized share capital by an issue of new shares.
- By **Consolidating and dividing** existing shares into shares of larger denomination.
- By **sub-dividing** shares into shares of smaller denomination than is fixed by the MOA.
- By converting **fully - paid shares into stock** or vice - versa.
- **Cancelling the unsubscribed shares.**

All the above alterations do not require the confirmation by the NCLT, if it does not result in changes in the voting percentage of shareholders.

These alterations are, however, required to be notified and a copy of the resolution should be filed with the ROC **within 30 days** of the passing of the resolution along with an altered MOA.

Reduction of paid up share capital by the confirmation of the Tribunal (Sec 66)

Subject to confirmation by the NCLT on an application by the company, a company and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may-

- a. extinguish or reduce the liability on any of its shares in respect of the share capital not paid - up; or
- b. either with or without extinguishing or reducing liability on any of its shares-
 - I. Cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - II. Payoff any paid-up share capital which is in excess of the wants of the company, alter its MOA by reducing the amount of its share capital and of its shares accordingly.

Articles of Association Sec 2 (5)

"Articles" means Articles of Association of the company as originally framed or as altered from time to time in pursuance of any previous company's law or of this Act.

Form and Contents of Articles Sec 5 [Section 5]

The AOA of a company shall be in respective forms specified in Tables, **F, G, H, I** and **J** in Schedule 1 as maybe applicable to such company.

Contents of AOA

AOA usually contain provisions relating to the following matter.

1) Exclusion wholly or in part of Table F.	19) Indemnity.
2) Adoption of preliminary contracts.	20) Capitalisation of reserves.
3) Number and value of shares.	21) Voting rights and proxies.
4) Issue of preference shares.	22) Meetings and rules regarding committees.
5) Allotment of shares.	23) Directors, their appointment and delegations of powers.
6) Calls on shares.	24) Nominee directors.
7) Lien on shares.	25) Issue of Debentures and stocks.
8) Transfer and transmission of shares.	26) Audit committee.
9) Nomination.	27) Managing director, Whole-time director, Manager, Secretary.
10) Forfeiture of shares.	28) Additional directors.
11) Alteration of capital.	29) Seal.
12) Buy back.	30) Remuneration of directors.
13) Share certificates.	31) General meetings.
14) Dematerialisation.	
15) Conversion of shares into stock.	
16) Dividends and reserves.	

17) Accounts and audit. 18) Winding up.	
--	--

Entrenchment Provisions [Section 5]

The AOA may contain provisions for entrenchment to the effect that specified provisions of the AOA may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

Alteration of Articles of Association [Section 14]

- A company may, by a special resolution, alter its AOA including alterations having the effect of conversion of a private company into a public company; or vice versa;
- It stipulates that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the NCLT;
- Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per Section 14(1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of 15 days.
- Copy of altered AOA+ order of NCLT shall be filed with ROC in 15 days.

Restriction on Alteration of Articles of Association

- Alteration must not exceed the powers given in MOA.
 - Alteration must not be inconsistent with Companies Act.
 - Alteration must be in the bonafide interest of company.
 - Alteration must not be illegal.
 - Alteration must not be against to public policy.
 - No alteration regarding expulsion of member.
- Note: any irregular alteration, which have been acted upon for many years, are binding.

The effect of documents, when registered, may be discussed under the following heads:-

- 1) Members bound to the Company;
- 2) Company bound to the members;
- 3) Member bound to Member; and
- 4) Company not bound to outsider.

Doctrine of ultra vires

The meaning of the term 'ultra vires' is **beyond the powers** of. Anything which is outside the specified objects and powers or not reasonably incidental to or necessary for the attainment of objects of the company is ultra vires the company and therefore is **void**.

Case Law: Ashbury Railway Carriage and Iron Co. Vs. Riche



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Doctrine of Constructive Notice

The office of the ROC is a public office and documents filed or registered therewith are public documents. These documents are open and accessible to all for inspection. The MOA and AOA of a company assume the character of public document on their registration with the concerned ROC, therefore the AOA are open to any person to read these documents and ensure that his contract is in keeping with the provisions contained in the Articles.

Doctrine of Indoor Management

The Doctrine of Indoor Management restricts the scope of the "Doctrine of Constructive Notices".

This Doctrine is also termed as '**Turquand Rule**' and was enunciated in the famous and leading case of **Royal British Bank vs. Turquand** in 1856.

It is based on the maxim **Omnia Praesumuntur Rit Esse Acts** (all things are presumed to have been done rightly). It seeks to protect outsiders against the company and its management.

Exceptions to the Doctrine of Indoor Management

- i. The doctrine of indoor management has its own exceptions as stated hereunder -
- ii. The rule does not protect a person actually having knowledge of the irregularity.
- iii. The rule will not apply in favour of a person who does not make inquiry regarding the transaction being made under suspicious circumstances. Non-making of inquiry by him where the circumstances so warrant may be considered as negligence on his part and may not be able to resort to this doctrine as his shelter.
- iv. The rule does not protect void or illegal *ab initio* transactions.
- v. If the acts are outside the scope of the apparent authority, rule will not render protection.

The rule cannot be invoked in favour of a person who did not consult the MOA and AOA.

Doctrine of Alter Ego

It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

Important Case Laws

1. With the approval of the Board, an amount of Rs. 50 Cr. was spent by Speed Jet Ltd., in producing a commercial film, not covered under its objects clause. The film was a complete flop and the company lost an amount of Rs. 40 Cr. Some of the members of the company objected to such investments not covered by the objects clause of the company. They filed a

Answer:

[illegible]

Answer:

[illegible]

3. The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The memorandum of Association of the company authorises the company to carry on any other trade or business which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the

Answer:

[illegible]



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MEMBERSHIP

Member Sec 2 (55)

- 1) The **subscribers of the MOA**.
- 2) Every other person who agrees **in writing** and whose name is entered in its **register of members**.
- 3) Every person **holding equity shares** of a company and whose name is entered as **beneficial owner** in the records of the depository.

Who can become a Member?

Subject to the memorandum and articles of a company, any **sui juris** (a person who is competent to contract) can become a member of a company. However, it is important to note the following points in relation to certain organizations and persons:

1. Company as a member of another company:

A company is a legal person and so is competent to contract. Therefore, it can become a member of any other company. However, it must be **authorized by its MOA** to invest in the shares of that company or any other company.

Note: A subsidiary company cannot become a member of its holding company.

However, there are certain exceptions to this rule enumerated below:

- Where a subsidiary company acts as the **legal representative of a deceased member** of the holding company.
 - If the subsidiary company is a **trustee**, for some other shareholder, the holding company or any subsidiary of it, not being beneficiary except as lender of money in the ordinary course of business.
 - A subsidiary company can continue to be a member of its holding company, if it was its member **before becoming subsidiary**. But in this case, the subsidiary company cannot exercise any right of vote at any meeting of the holding company.
2. **Partnership firm as a member:** A partnership firm is **not a legal person** and so much it cannot, in its own name, become member of a company. **However**, it can become a member of Section 8 Company but on dissolution of firm, its membership in such company ceases.
 3. **Foreigners as members:** A foreigner may take shares in an Indian company and become a member with the general or special permission of the RBI under the FEMA, 1999, but in the event of war with his country, he becomes an alien enemy and his power of voting and his right to receive notices are suspended.
 4. **Minors as members:** A minor cannot become a member of a company since he is not competent to enter into a contract. Consequently, an agreement by a minor to take shares is void ab - initio.

Case Law 46 Devan Singh vs Minerva Films Ltd.

Case law 47 Miss Nandita Jain Vs Benett Coleman & co. ltd

5. **Pawnee:** A pawnee has no right of foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law. In this sense, a pledge



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differs from a mortgage. In view of the foregoing, a pawnee cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member.

6. **Receiver:** A receiver whose name is not entered in the register of members cannot exercise any of the membership rights attached to a share unless in a proceeding to which company is a party, an order is made therein. Mere appointment of a receiver in respect of certain shares of a company without more right cannot, deprive the holder of the shares, whose name is entered in the register of members of the company of the right to vote at the meeting of the company.
7. **Bankrupt/ Insolvent:** A bankrupt may be a member of a company as long as he is on the register of members. He is entitled to vote.
8. **Trade union:** a trade union registered under the trade union act 1926 can be registered as a member and can hold shares in the company in its own corporate name.
9. **Person taking shares in fictitious name:** He becomes liable as a member besides incurring criminal liability u/s 38 of the Act.

Cessation of Membership

A person ceases to be a member of a company when his name is removed from its register of members, which may occur in any of the following situations:

- He **transfers** his shares to another person.
- His shares are **forfeited**.
- He makes a valid **surrender** of his shares.
- His shares are sold by the company to **enforce a lien**.
- He **dies** or is adjudged **insolvent**.
- His redeemable preference shares are **redeemed**.
- His shares are **bought-back**.
- His shares are **attached** by the Court in satisfaction of a decree.

Expulsion of a Member

- The AOA of a company cannot provide for expulsion of a member, as such a power is opposed to the fundamental principle of the Company Jurisprudence.
- It also opposed to the principle of natural justice.

Rights of Members

- Not to have his financial **obligation increased** by the company without his consent.
- To **transfer** his shares.
- To have a **share certificate** issued to him in respect of his shares.
- To **vote** on resolutions at meetings of the company.
- To take **inspection** of the various registers of the company.
- To requisition an **extraordinary general meeting** of the company.
- To receive **notice** of general meetings and to attend and speak at general meetings.
- To appoint **proxy** and **inspect** proxy registers.
- To demand for **poll**.
- To appoint the **representative** to attend and vote at general meetings of the company on its behalf, if the member is a body corporate.
- To require the company to **circulate** his resolution.
- To enjoy the **profits** of the company in the shape of dividend.

- To **elect directors** and thus to participate in the management through them.
- To apply to the NCLT for relief in case of **oppression of the minority shareholders**.
- To apply to the NCLT for relief in case of **mismanagement**.
- To apply to the NCLT for **winding up** of the company.
- To share in the **surplus on winding up**.

Liability of Members

- In case of Company limited by share capital, members are liable to pay for the **outstanding calls only**.
- Whereas in case of Company limited by Guarantee, subscribers to MOA are liable to pay the **amount guaranteed**, in the event of winding up, if assets of the company fall short of the liabilities.
- In case of Unlimited Company, the members are personally liable to pay for the **debts of the company** as in the case of Partnership Firm by partners.

Joint Members

1. If more than one person apply for shares in a company and shares are allotted to them, each one of such applicants becomes a member.
2. In the case of a private company, joint members are counted as one member.
3. In the case of joint shareholders, usually right are exercised by the first named joint holder but duties are cast on all the joint holders.
4. In the case of joint holders, the vote of the senior who tenders a vote, shall be accepted to the exclusion of the votes of the other joint holders.
5. No transfer of shares shall be registered by the company unless the instrument of transfer is executed by all the joint shareholders as transferors of the shares. Joint members are liable jointly and severally to pay calls on the shares held by them. Proxy form to be valid must be signed by all the joint shareholders.

Registration of shares in the name of public office

There is no provision in the Companies Act, 2013 that the shares in a company may be held in the name of a public office. The Collector of Central Excise or the Secretary to the Government of India, as such, is not a legal entity. Shares cannot, therefore, be held in the name of such office. Hence, shares in a company cannot be registered in the name of a Public Office, which is not a corporation sole as understood in law.

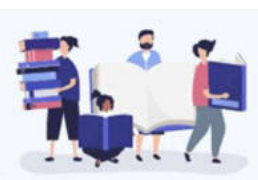
Important Case Laws

- Q.1** The name of Piyush is found entered in the register of members of a company. But, Piyush contends that he is not a member of company. The company maintains that Piyush had orally agreed to become a member of the company, and hence, his name was entered in the register and so he is a member. Is the contention of Piyush valid?

Answer:

Q.2 Fortune Ltd. refused to enter the name of the minor son of a deceased member in the register of members on the ground that the minor cannot enter into a contract as per Section 11 of the Indian Contract Act, 1872. The shares are fully paid up. Comment on the decision of the company and suggest remedies available.

Answer:



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E-GOVERNANCE

(MCA 21) SMART GOVERNANCE: The Sanjivani

A solution to all the above -mentioned difficulties cannot be found with the frame work of the current manual filing system. Hence, the need for e-Governance. Realising the need for e-Governance, the Ministry of Corporate Affairs has embarked on an ambitious e-Governance project. The MCA 21 on 20th February, 2006. The MCA deserves to be complimented for this bold initiative. In a couple of months from the launch, physical filing of documents under the Companies Act, 1956 has been discontinued and e-filing of documents through the new portal is made compulsory.

E-governance is the application of information technology to the government functioning in order to bring about Simple, Moral, Accountable, Responsive and Transparent (SMART) Governance. The system aims at moving from paper based to nearly paperless environment. It is based on the Government's vision of National e-Governance in the country.

Highlights of the System

- The filing of forms (E-Forms) with ROC can be done from the comforts of one's home or office through the internet. There is no need to visit the ROC's office for filing various documents.
- The payment of filing fees can also be made over the internet through credit card/ internet banking without queuing up at the banks. The filing will be valid only when filing fee is paid.
- Pre - scrutiny of filled - up forms is done in the portals before final submission.
- Many of these e Forms require certification by CA/CWA/CS (in whole time practice). Certification must be done by signing digitally.
- DIN (Directors Identification Number) is compulsory for all directors.
- Every signatory of e Form must obtain DSC (Digital Signature Certificate).

Advantages of e-Filing

1) The advantages this system offers to Corporate and Professionals are:

- Filing of documents without visiting the ROC office, sitting in the comfort of one's office or home.
- No need to stand in long queues for filing documents or paying filing fee.
- Filing will be open on a 24 X 7 basis. This affords one the flexibility to do this work at one's convenience.
- Pre-scrutiny of forms filed will be done in the portals itself at the point of filing. So, once the form is filed, a need to interact with ROC personnel to rectify deficiencies in filings will be minimized to a great extent.
- Filing fees can be paid from the comforts of one's office / home using credit card / internet banking.

2) To the public

The portal offers inspection of documents filed by companies on a 24 X 7 basis from the comforts of one's home/ office.



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3) The advantages flowing to the Government are tremendous:

- Better utilization of existing staff and space resources.
- The DIN - Director's Identification Number (Which is compulsory for all existing and prospective directors to obtain) will help enforce accountability of directors.
- Time and energy spend in mundane (ordinary) tasks of accepting documents, filing them, corresponding with companies will be drastically reduced and channelized towards taking action against errant corporate.

Digital Signature Certificate (DSC)

For MCA-21, the following four types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

- MCA (Government) Employees.
- Professionals like Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers who interact with MCA and companies in the context of Companies Act.
- Authorized signatories of the Company including Managing Director, Directors, Managers or Secretary.
- Representatives of banks and Financial Institutions.

A person requiring a Digital Signature Certificate can approach any of the Certifying authorities identified by the MCA for issuance of Digital Signature Certificate.

Note: Registration of DSE is a one-time activity on the MCA portal. (Roll Check)

Services Available on MCA21

The following services will be available under the MCA21 Project:-

- Registration and incorporation of new companies.
- Filing of Annual Returns and Balance Sheets.
- Filing of forms for change of names, address and other Director's details.
- Registration and verification of charges.
- Inspection of documents.
- Applications for various statutory services from MCA.
- Investor Grievance Redressal.

Organization of ROC Office under MCA:

The ROC office working from its present address will virtually become the Bank Office of the Ministry. Since number of companies /entities may find it difficult to switch over an e-filing at the initial stage. Facilitation Centres known as Physical Front Offices (PFOs) have been set-up throughout the country to provide requisite comfort for e-filing to such companies.

Organization of ROC office under MCA:

- The Front Office represents the interface of the corporate and public user with MCA21 system. This comprises of Virtual Front Office and Physical Front Office.
- Virtual Front Office merely represents a computer facility for filing of digitally signed e-forms by accessing the My MCA portal through internet.
- It also pre-supposes availability of related facilities to convert documents into PDF format and scanning of documents wherever required.
- When a company or user does not have these computer facilities, it can avail of these facilities at



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the designed facilitation centres, known as the Physical Front Offices.

Organization of ROC Office under MCA:

- Virtual Front Office facilities online filing of the forms using internet.
- The system automatically does not pre scrutiny of the forms filed and indicates error messages in case of incomplete or invalid particulars. Upon successful submission, a service Request Number (SRN) will be generated by the system for the user, which will be used for future correspondence with MCA.
- Virtual Front Office is meant for electronically delivering services at a place and time convenient to the business community through the Front Office portal.

Back office:

- Back office represents the officers of Registrar of companies, RD and Headquarters and takes care of internal processing of the form filed by the corporate user as per MCA norms and guidelines. The e-forms are routed dynamically to the concerned authority for processing depending upon the assigned role. All the e-forms along with attachments are stores in the electronics depository which the staff of MCA can view depending upon the access right.

Important Terms Relating to E-Filing

1. E-form
2. Pre-fill-
3. Attachment
4. Check form
5. Modify
6. Pre scrutiny
7. Service Request Number (SRN)
8. Addendum to e-Form

Infrastructure for e-filing

The minimum system requirements for e-filing are:

- P-4 computer with printer;
- Windows 2000/Windows XP/Windows Vista/Windows 7;
- Internet Explorer 6.0 version and above;
- Above Acrobat Reader 9.4 and lower versions;
- Scanner; and
- Java Runtime Environment (JRE) 1.6 updated version 30.

Extensible Business Mark-up Language (XBRL):

XBRL is a language for the electronic communication of business and financial data which is revolutionizing business reporting around the world. It provides major benefits in the preparation, analysis and communication of business information.

- It offers cost savings, greater efficiency and improved accuracy and reliability to all those involved in supplying or using financial data.

- It is an open standard, free of licence fees, being developed by a non-profit making international consortium. Other pages on this web site provide detailed information on XBRL, its technical features and its business opportunities.
- XBRL is a data-rich dialect of XML (Extensible Markup Language), the universally preferred language for transmitting information via the internet.
- It was developed specifically to communicate information between businesses and other users of financial information, such as analysts, investors and regulators.
- XBRL provides a common, electronic format for business reporting. It does not change what is being reported.
- XBRL is a world-wide standard, developed by an international, non-profit making consortium XBRL International Inc. (XII)
- XII is made up of many members, including government agencies, accounting firms, software companies, large and small corporations, academics and business reporting experts.
- XII has agreed the basic specifications which define how XBRL works.

Benefits of XBRL:

- XBRL offers major benefits at all stages of business reporting and analysis.
- The benefits are seen in automation, cost, saving, faster, more reliable and more accurate handling of data, improved analysis and is better quality of information and decision making.
- All types of organizations can use XBRL to save costs and improve efficiency in handling business and financial information.
- Because XBRL is extensible and flexible, it can be adapted to a wide variety of different requirements. All participants in the financial information supply chain can benefit, whether they are preparers, transmitters or users of business data.
- XBRL enables producers and consumers of financial data to switch resources away from costly manual processes, typically involving time-consuming comparison, assembly and re-entry of data. They are able to concentrate effort on analysis, aided by software which can validate and manipulate XBRL information.



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PROSPECTUS AND ALLOTMENT

INTRODUCTION

Section 23 provides the methods of issue of securities by a public company and a private company.

A. Public company may issue securities in the following modes:

1. PUBLIC OFFER:
2. PRIVATE PLACEMENT:
3. RIGHT OR BONUS ISSUE:

B. A private company may issue securities in the following modes:

1. Private placement;
2. Rights or bonus issue.

Basic concepts and Provisions of Prospectus

Definition: Sec 2(70)

"Any document described or issued as a prospectus and includes a red herring prospectus, 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".

Ingredients of Prospectus:

- a) There must be an **invitation** offering to the public; (General Public)
- b) The invitation must be made "**by or on behalf of the company**" or in relation to an intended company";
- c) The invitation must be "**to subscribe or purchase**";
- d) The invitation must relate to **shares or debentures or such other instrument**.

Note: Prospectus is Invitation to make offer

Case law Immugan Vs. Ranga Ram

In essence, it means that a prospectus is an invitation issued to the public to offer for purchase / subscribe shares or debentures of the company.

Case law Nash Vs. Lande

But to be a prospectus, it must be 'issued to the public. A single private communication does not satisfy the term "issue".

When prospectus is not required to be issued:

1. When shares/debentures are issued to existing shareholders /debenture holders.
2. When issue relates to shares or debentures uniform in all respect with in or quoted in a RSE.
3. When person is bonafide invitee to enter an underwriting agreement.
4. Where shares are not offered to public.

Abridged Prospectus Section 2(1)

A memorandum containing such salient features of the prospectus as may be specified by SEBI by making regulation in this behalf.

Section 33 → No application forms can be issued by a company inviting subscription for any securities unless it is accompanied by an 'abridged prospectus'.

Exceptions:

- a) application to the **existing security holders** of the company, by way of Rights Issue;
- b) Form to Underwriters; and
- c) shares **not offered to the public** (private placement cases).

Shelf Prospectus [Section 31]

Meaning: A prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

A company filing a shelf prospectus, however, is also required to file information memorandum containing all material facts of new charges created, and changes in financial position of the company with the Registrar which occurred within 1 month prior to the issue of a 2nd or subsequent offer under shelf prospectus.

Red Herring Prospectus [Section 32]

A company can issue red-herring prospectus prior to issue of a prospectus. The expression "red-herring prospectus" means a prospectus which does not include complete particulars of the **quantum or price** of the securities included therein.

A company proposing to issue a red herring prospectus shall file the same with the ROC at least 3 days prior to the opening of the subscription list and the offer. Upon the closing of the offer of securities, the company is required to file with the ROC of Companies and the SEBI, prospectus stating therein the total capital raised, and the closing price of the securities and any other details as are not included in the red herring prospectus.

Remedies for Misrepresentation in the Prospectus

(a) Remedies against the Company

- The 1st remedy against the company is to **rescind the contract**.
- The 2nd remedy against the company is **to sue** the company for damages for deceit.

(b) Remedies against Directors/ Promoters/Expert

Where a mis-statement or untrue statement occurs in a prospectus, there may arise **civil as well criminal liability** for the directors, promoters, expert, etc.

Section 447 → Penalty for fraud



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If the fraud involves an amount less than Rs. 10 lakh or less than 1% of T.O. of the co, (w.i.l) and does not involve public interest → imprisonment up-to 5 years OR with Fine upto Rs. 20 Lakhs OR with both.

If fraud involve an amount of at least Rs. 10 Lakh or 1% of the T.O. of the company (w.i.l)→Imprisonment →Minimum **6 months up-to 10 yrs. AND** Fine →Minimum **Amt involved in the fraud**, up to **3 times** the amount involved in the fraud.

If fraud involves public interest→the term of imprisonment →Minimum 3 years and Maximum 10 years.

Civil Liability for Mis-statement in Prospectus

Section 35 makes the following persons liable to pay compensation for loss or damage sustained by reason of mis-statement/untrue statement or inclusion or omission of any matter in the prospectus:

1. Director of company;
2. Proposed Directors;
3. Promoter
4. Every person who has authorized the issue of the prospectus; and
5. Every person who is named in the prospectus as an expert.

Case law Peek Vs. Gurney

A subsequent purchase of shares in the open market has no remedy against the company or the directors or promoters.

Punishment for Impersonation [Section 38]

This section provides punishment for those persons who apply in fictitious name or make multiple applications in different names or different combination of surnames or otherwise induces companies to allot shares in fictitious name. Such persons will be held guilty of fraud under section 447, an offence which is non- compoundable.

Private Placement (Sec 42)

1. A company may, subject to the provisions of this section, make a private placement of securities.
2. A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number **shall not exceed 50** or such higher number as may be prescribed [excluding the QIB and employees being offered securities under a scheme of ESOP], in a financial year **however the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations.**
 - An offer or invitation to subscribe securities under private placement shall not be made to persons more than 200 in the aggregate in a financial year.
 - Offer or invitation made to QIB or employee of co. under ESOP shall not be considered while calculating the limit of 200 persons.
 - Note: the restrictions aforesaid would be reckoned individually for each kind of security



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that is equity share, preference share or debenture.

3. A company making private placement shall issue private placement offer and application in Form **PAS 4** serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within 30 days of recording the name of such person.

Provided further that No other person shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid.

Provided that the private placement offer and application shall not carry any right of renunciation.

4. Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash:

Provided that a company shall not utilize monies raised through private placement unless allotment is made and the return of allotment is filed with the **ROC** in accordance with sub-section (8).

5. The payment to be made for subscription to securities shall be made from the bank account of the person subscribing to such securities and the company shall keep the record of the bank account from where such payment for subscription has been received

Provided that monies payable on subscription to securities to be held by joint holders shall be paid from the bank account of the person whose name appears first in the application

Provided further that the provisions of this sub-rule shall not apply in case of issue of shares for consideration other than cash. (2018)

6. No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:

Provided that, subject to the maximum number of identified persons, a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

7. A company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of 60 days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of 12% p.a. from the expiry of the 60th day:

Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than—

- a) For adjustment against allotment of securities; or
b) For the repayment of monies where the company is unable to allot securities.
8. No company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue.
9. A company making any allotment of securities under this section, shall file with the ROC a return of allotment within 15 days from the date of the allotment in PAS 3 + Fees, including a complete list of all allottees, with their full names, addresses, number of securities allotted and



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such other relevant information as may be prescribed.

10. If a company defaults in filing the return of allotment within the period prescribed u/s (8), the company, its promoters and directors shall be liable to a penalty for each default of Rs. 1,000/- for each day during which such default continues but not exceeding Rs. 25 lakhs.
11. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or Rs. 2 Cr, whichever is lower, and the company shall also refund all monies with interest to subscribers within 30 days of the order imposing the penalty.
12. Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.'
13. The company shall maintain a complete record of private placement offers in Form PAS-5.

Explanation I: - "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II: - "QIB" means the qualified institutional buyer as defined in the SEBI (ICDR) Regulations, 2009, as amended from time to time, made under the SEBI Act, 1992.

Explanation III:- If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognized stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2018 (7th Aug 18)

A company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations:

Explanatory statement shall contain following disclosure –

- a. Particulars of the offer + date of Board resolution.
- b. Kinds of securities offered and its price.
- c. Basis or justification for the price.
- d. Name and address of concerned valuer.
- e. amount to be raised by issue of such securities;
- f. material terms of raising such securities, proposed time schedule, purposes or objects of offer, contribution being made by the promoters or directors either as part of the offer or separately in furtherance of objects; principle terms of assets charged as securities.

Provided further that Special resolution shall not be required on to offer or invitation of NCD, if amount to be raised does not exceed limit specified u/s 180(1)(c) and only a Board resolution shall be sufficient.



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Provided also that if limit exceeds it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitations for such debentures during the year.

Provisions of Sub rule 2 shall not be applicable to -

A) NBFC

B) Housing finance co.

if they are complying with regulations made by the Reserve Bank of India or the National Housing Bank in respect of offer or invitation to be issued on private placement basis.

Allotment of securities

General Principles Regarding Allotment

1. The allotment **should be made by proper authority** i.e., BOD, or an authorised committee. Otherwise it will be invalid.
2. Allotment must be made within a reasonable time.
3. The allotment should be absolute and unconditional.
4. The allotment must be communicated. Posting of letter of allotment will be taken as a valid communication even if the letter is lost in transit or delayed in transit.

Statutory Provisions Regarding Allotment [Sections 39 & 40]

The Companies Act, 2013 lays down the following conditions to be fulfilled before a company proceeds to allot securities:

1. **Application Money:**
2. **Minimum Subscription:**
3. **Listing Permission:**

Return of Allotment (Sec 39)

Within 30 days of the allotment of securities, a company must send to the ROC, a report in e-**Form No. PAS.3**, containing the following particulars/ documents:

1. A list of allottees stating their names, address, occupation and number of securities allotted to each of the allottees.
2. Contracts in writing, under which securities have been allotted for any consideration other than cash, must be produced for examination of the ROC.
3. Where bonus securities have been allotted, a copy of the **resolution** of the shareholders.

UNDEWRITING COMMISSION (Sec 40)

The conditions, which must be fulfilled for the payment of underwriting commission, are as follows:

- a) The payment of the commission must be authorized by the AOA of the company.
- b) The rate of the commission must not exceed 5% of the price at which the securities have been issued or any lesser amount prescribed by articles. In the case of debentures, the rate of the commission must not exceed 2.5% or any lesser amount prescribed by articles;
- c) Underwriting commission shall not be paid on those securities which are not offered to the public for subscription;



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- d) Commission may be paid out of the proceeds of issue or profits of the company or both;
- e) The name of the underwriter and rate of commission must be disclosed in the prospectus;
- f) The prospectus should also indicate the number of securities or debentures which have been underwritten; and
- g) A copy of underwriting agreement should be delivered to the Registrar along with the prospectus.

Issue of securities in Dematerialised Form (Rule 9A of PAS amendment rules 2018)

1. Every unlisted public co. shall issue securities only in demat form and facilitate dematerialisation of all its existing securities as per depositories act 1996 and regulations made thereunder.
2. Every unlisted public co. making any offer for issue of any securities or buyback of securities or issue of bonus shares or right offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, KMP has been dematerialised.
3. Every security holder of unlisted public co. –
 - a. Who intends to transfer such securities on or after 2nd Oct 2018, shall get such securities dematerialised before the transfer. OR
 - b. Who subscribes to any securities of an unlisted public company (whether by way of pvt. Placement or bonus shares or right offer) on or after 2nd Oct, 2018 shall ensure that all his existing securities are held in Demat form before such subscription.
4. Every unlisted public co. shall facilitate dematerialisation of all its existing securities by making necessary application to a depository and shall secure international security Identification Number (ISIN) for each type of security and shall inform all its existing security holders about such facility.
5. Every Unlisted public company shall ensure that –
 - a. It makes timely payment of fees (admission as well as annual) to the depository and RTA as per the agreement executed between parties;
 - b. It maintains security deposit, at all times, of not less than 2 years' fees with the depository and RTA, in such form as may be agreed between the parties;
 - c. It complies with the regulations or directions or guidelines or circulars, if any, issued by the SEBI or Depository from time to time with respect to dematerialisation of shares of unlisted public companies and matters incidental or related thereto;
6. No unlisted public company which has defaulted in sub rule 5 shall make offer to any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or RTA are made.
7. The provisions of Depository act 1996, SEBI (Depositories and participants) Regulations, 1996 and SEBI(RTA) Regulations, 1993 shall apply mutatis mutandis to dematerialisation of securities of unlisted public companies.
8. Every unlisted public company governed by this rule shall submit PAS 6 to the ROC with prescribed fees within 60 days from conclusion of each half year duly certified by a PCS/ PCA.
9. The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in demat form.



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- ## Important Case Laws

Answer:

[illegible]

Q.2 A company has issued a prospectus to the public stating that the company has paid dividend regularly and the prospectus is silent relating to the sources of profits, i.e., whether trading profits or capital profits. The fact is that the company has incurred losses for all the last 5 years, but the dividend is paid out of realised capital profits (i.e., secret reserves). Y, a shareholder, claimed that the prospectus is false. Whether Y's contention is correct? Discuss.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface. The overall appearance is that of a clean, unused piece of stationery or notebook paper.

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SHARE CAPITAL OF A COMPANY

In Company Law, the "Capital" is the share capital of a company, which is classified as:

- a) **Nominal, Authorised or Registered Capital**
- b) **Issued Capital:**
- c) **Subscribed Capital:**
- d) **Called up Capital:**
- e) **Paid-up Share Capital:**

Reserve Capital

This is that part of uncalled capital of the company, which can be called up, only in the event of its winding up.

A limited company may, by a special resolution, determine that a portion of its uncalled capital shall be called up.

- In the event of winding up
- For the purpose of winding up only.

Reserve capital cannot be turned into uncalled capital without the leave of the tribunal. It is available only for the creditors on the winding up of the company. The company can neither charge reserve capital nor cancel it in a reduction of capital. (Midland Ry Carriage Co.)

Difference between Reserve Capital and Capital Reserve

Reserve capital	Capital Reserve
It is that part of the uncalled capital which the company cannot demand except company being wound up.	It is created by the accumulation of profits out of capital profit or earning.
Creation of reserve capital is not mandatory.	It is mandatory to create capital reserve in case of profit.
Disclosure of reserve capital is not entertained in the balance sheet of the company.	Capital reserve is disclosed under the head reserve and surplus on the liabilities side of balance sheet.
Reserve capital cannot be used to write off capital losses.	Capital reserve can be used to write off capital losses or for the issue of bonus shares.

Kinds of Shares (Section 43)

There are 2 types of shares:

1. Preference share and
2. Equity share.

Preference Share: A preference share is a share which fulfils the following 2 conditions:

- That in respect of **dividends**, in addition to the preferential rights to the amounts with respect

to dividend, it has a right to participate, whether fully or to a limited extent, with capital not entitled to the preferential right aforesaid;

- That in respect of **capital**, in addition to the preferential right to the repayment, on a winding up, of the amounts aforesaid, it has a right to participate, whether fully or to a limited extent, with capital not entitled to that preferential right in any surplus which may remain after the entire capital has been repaid.

Kinds of Preference share Capital

1. **Cumulative/ Non-Cumulative Preference shares:**
2. **Participating / Non-participating preference shares**
3. **Redeemable /Irredeemable preference shares (Sec 55)**

The above Section, read with the Rules, provides that a company, if so authorized by its AOA, may issue redeemable preference shares, subject to the following conditions:

- a) **special resolution;**
- b) **no subsisting default**, in the redemption of preference shares issued either before or after the commencement of this Act or in payment of dividend due on any preference shares; and
- c) The company cannot issue preference shares which is **redeemable after the expiry of 20 years** from the date of its issue.

However, a company engaged in the setting up and dealing with of **infra structural projects**, as defined in **Schedule VI** to this Act, may issue preference shares for a period **exceeding 20 years but not exceeding 30 years**, subject to the redemption of a minimum 10% of such preference shares per year from the 21st year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

Note: → A company cannot issue irredeemable preference shares.

Conditions for redemption of Preference share capital:

- i. Shares should be **fully paid-up**;
- ii. Share may be redeemed **only out of the distributable profits**;
- iii. Where the shares are redeemed out of the profits available for distribution as dividend, a sum equal to the nominal amount of the shares redeemed shall be transferred out of profits to the **CRR Account**, which can be utilized only for the purpose of issuing fully-paid bonus shares, otherwise it shall be deemed to be reduction of share capital; and
- iv. If premium is payable on redemption, it must have been provided for **out of profits or out of company's security premium account**.

If a company is unable to redeem its preference shares, it may redeem unredeemed preference shares by issue of further preference shares **with consent of holders of 75%** in value of such preference shares and **the approval of the NCLT**.

The NCLT shall while giving, such approval, and order the redemption forthwith of preference shares of such person who have not consented to the issue of further redeemable preference shares.

It may further be noted the fact of redemption of preference shares is required to be intimated to the ROC by filing **Form SH.7 within 30 days**.

4. Convertible/ Non-Convertible preference shares

Equity Share

Equity share means share which is not preference share. Following are the important features of equity shares:

- Availability of voting rights.
- No fixed dividend.
- No priority in distribution of surplus assets.

Voting Rights

Every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and his voting right on a poll shall be **in proportion to his share** in the paid-up equity share capital of the company.

Preference share holder shall have a right to vote only on -

- Resolutions placed before the company which directly affect the rights attached to his preference shares and,
- Any resolution for the winding up of the company or for the repayment or reduction of its share capital.

Preference shareholders are entitled to vote on every resolution placed before the company at any meeting, if the dividend due on such class of preference shares are in arrears for a period of **2 years** or more.

Further, equity share capital is of 2 types:

- Ordinary Shares with equal rights
- Shares with Differential Rights

Equity Shares with Differential Rights [Sec 43(a)]

A DVR share is like an ordinary equity share, but it provides fewer voting rights to the shareholder. The difference in voting rights can be achieved by reducing the degree of voting power. It is ideal for long term investors, typically small investors who seek higher dividend and are not necessarily interested in taking a voting position.

Rule 4 of The Companies (Share Capital and Debentures) Rules, 2014 provide that no company whether it is unlisted, listed or a public company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions:

1. There must be an authority in the **AOA** of the company;
2. **ordinary resolution shall be passed**. However, in case of Listed company such OR shall be passed by way of Postal Ballot.
3. The equity capital with differential rights shall not exceed 26% of the total post-issue paid-up equity share capital;



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4. The Company has not defaulted in filing of annual accounts and annual returns for 3 years; in repaying deposits or paying interest thereon; in redeeming debentures or paying interest there on; or redemption of preference share or paying dividend thereon; or re payment of any term loan or payment of interest thereon to a bank or financial institution; and paying dividend after declaration; and
5. The company has-not been convicted, during the last three years, of any offence under SCRA, 1956; SEBI Act, 1992; and FEMA Act, 1999; RBI Act, 1934 or any other special Act, under which such companies being regulated by sectorial regulators.
6. It may be noted that a company cannot convert its equity shares with equal rights into equity shares with differential rights and vice-versa.

Issue of Shares at a Premium [Section 52]

A company may issue shares at a premium when it is able to sell them at a price above par or nominal value, irrespective of the fact whether the shares are listed on Stock Exchange or not. The rate of premium will be decided by the BOD.

Section 52 deals with the concept of share or securities premium.

- It cannot be treated as Free Reserve or profit and shall not available for distribution as dividend.
- The amount of premium, whether received in cash or in kind must be kept in a separate account, known as the "**Securities Premium Account**'
- The amount of share premium is to be maintained with the same sanctity as the share capital.

Section 52(1) The securities premium can be utilized only for the following purposes: -

- Issuing fully-paid bonus shares to members.
- Write-off the preliminary expenses of the company.
- Write-off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company.
- For providing for the premium payable on redemption of any redeemable preference shares or debentures of the Company.
- For the purpose of buy-back of shares or securities **u/s 68**.

Issue of Shares at Discount is prohibited [Section 53]

A company u/s 53 of the Act has been prohibited to issue shares at discount, except in case of issue of sweat equity shares. Any share issued by a company at a **discount** shall be void.

However, a company 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 any guidelines or directions or regulations specified by the RBI under RBI Act 1934 or the banking regulation act 1949.

In case of contravention, the company shall be punishable with **Penalty** which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 Lakh **and** every officer who is in default shall be punishable with imprisonment for a term up to 6 months **OR** with fine **Rs. 1 Lakh – Rs. 5**



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Lakh OR with both.

Sweat Equity Shares [Section 54]

A company may issue sweat equity shares subject to the following conditions: -

1. The shares must be of class already issued.
2. The issue must be authorized by a **Special Resolution** passed by the Company in GM.
3. The resolution must specify number of shares; their current market price; consideration (if any); and the class or classes of directors or employees to whom they are to be issued.

Note: Sweat equity share holders shall be ranked pari passu with other equity shareholders.

Section 53 states that no shares to be issued at discount whereas **Section 54** states that sweat equity shares can be issued at discount. It means that **Section 54** shall override **Section 53**.

The rules for the purposes of sweat equity has defined 'Employee' so as to mean

1. A **permanent employee** of the company who has been working in India or outside India.
2. A **director** of the company, whether a whole time director or not.
3. An **employee or a director** as defined in sub-clauses (a) or (b) above of a **subsidiary**, in India or outside India, or of a **holding company** of the company.

Alteration of Share (Sec 61)

A limited co. having a share capital may, if so **authorized by its AOA**, Alter its share capital in the following manner

- ✓ By increasing the share capital by issuing new shares
- ✓ By consolidating the shares into shares of larger amount.
- ✓ By converting fully paid up shares into stock and vice versa.
- ✓ By sub dividing shares into shares of smaller amount
- ✓ By cancelling shares not taken up

This can be done by an **ordinary resolution** at a general meeting

The ROC has to be notified of the type of alteration made **within 30 days** of such alteration to enable him to make changes in the co.'s MOA and AOA

Where the company and any officer of co. is in default contravenes it than he shall be punishable with **Penalty (2/11/18)** which may extend to **Rs. 1000** for each day of such default, or Rs. 5, 00,000 whichever is less.

Reduction of share capital (Sec 66)

A co. limited by share or a co. limited by guarantee and having a share capital may reduce its share capital, subject to confirmation by NCLT, in any of following 3 ways -

1. **Reduction in unpaid capital**
2. **Cancellation of lost paid up capital**
3. **Paying off excess paid up capital**



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Procedure for reduction

- There shall be provision in the AOA for reduction of capital
- A special resolution shall be passed in General meeting
- Confirmation of court is also required before affecting the reduction of capital
- Along with NCLT, co. has to make application CG before reduction of capital.
- Similarly, Company has to make application to SEBI before reduction of capital.
- Every creditors of the company shall be entitled to object to the reduction
- The tribunal shall settle a list of the creditors of the company
- The tribunal shall ensure that the creditors objections to reduction-
 - ✓ Have given their consent ; or
 - ✓ Have been discharge ; or
 - ✓ Have been given sufficient security.
- The Tribunal has the discretion to confirm or reject the reduction
- Before sanctioning the reduction, the Tribunal shall satisfy itself that-
 - ✓ The reduction will be fair considering the interest of all the classes of shareholder.
 - ✓ The reduction will not be prejudicial to the interest of creditors.
- The Tribunal may confirms the reduction of capital on such terms as it thinks fit.
- The Tribunal may direct the company to add the word 'and reduction' at the end of the name of the company.
- The company shall delivers to ROC for registration:-
 - ✓ A certified copy of the order of the Tribunal ; &
 - ✓ A certificate copy of the minute approved by the Tribunal
- The registration shall register the order & minute procedure before him. He shall issue a certificate of registration to the company.
- The certificate shall be conclusive evidence that all the requirement of this act with, & respect to the reduction of share capital have been complied with, & that the share capital of the company is such as is started in the minute.
- Reductions shall become effective only on registration of the order & minute of the Tribunal.
- The order of the Tribunal shall be punishable in such manner as may be directed by the court.

Reduction of share capital without Sanction of NCLT

Surrender of Shares

Buy-Back of Shares and securities

A company would opt for buy - back for the following reasons: -

- i. To improve shareholder value - Buy back generally results in higher Earning per share (E.P.S.)
- ii. As a defence mechanism - Buy back provides a safeguard against hostile take - overs by increasing promoters' holding,
- iii. To provide an additional exit route to shareholders when shares are undervalued or thinly traded.
- iv. To return surplus cash to shareholders.

Important Provisions [Section 68]



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Following are the important provisions of Section 68:

1. Company may purchase its own shares or other specified securities out of;
 - (i) Its free reserves;
 - (ii) The Securities premium account; or
 - (iii) The proceeds of an earlier issue of shares or other specified securities. However, no buy - back can be done out of proceeds of an earlier issue of same kind of shares/ securities.
2. For buy - back purpose, the following conditions must be fulfilled-

Transfer to and Application of Capital Redemption Reserve Account [Section 69]

Circumstances Prohibits Buy-Back [Section 70]

No company shall directly or indirectly purchase its own shares or other specified securities-

- Through any subsidiary company including its own subsidiary companies;
- Through any investment company or group of investment companies; or
- If a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable there on to any financial institution or banking company: However, the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.
- 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 **sec 92(Annual Return)**, **Sec 123(Declaration of Dividend)**, **Sec 127 (punishment for failure to distribute dividend)** and **sec 129(Financial Statement)**.

Further Issue of Capital [Section 62]

Rights Issue of Shares [Section 62(1) (a)]

A rights issue is an offer of a company's shares to its existing shareholders. It gives them the first opportunity to purchase a new issue of shares.

Note: Right issue is also known as Right of First Refusal or Pre-emptive Right of Existing Shareholders.

No need of SR/OR for Start-up company up to 10 years from the date of its incorporation. (19th Feb 2019)

EMPLOYEES STOCK OPTION SCHEME SEC 62 (1) (b)



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Company may at any time issue shares to its employees under a scheme of employees' stock option, subject to ordinary resolution passed by company and subject to such conditions as may be prescribed.

Preferential Allotment or Allotment of Shares Section 62(1)(c)

Completion Period:

Rights of Convertible Securities or Non applicability of Section 62

Bonus Share [Section 63]

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

- Its free reserves;
- The securities premium account; or
- The capital redemption reserve account:

The following conditions must be satisfied before issuing bonus shares:

- Bonus issue must be authorized by the **AOA** of the company.
- It has, on the recommendation of the Board, been authorized in the GM of the company;
- It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- It complies with such conditions as may be prescribed.
- Under the rules no company which has once announced the decision of its Board recommending a bonus issue, can subsequently withdraw the same.

Return of Bonus Issue

When a company having a share capital makes any allotment of bonus shares, it must **within 30 days** in **E-form SH-3**, thereafter file with the ROC a return stating the number and nominal amount of such shares comprised in the allotment and the names, addresses and occupations of the allottees and a copy of the resolution authorising the issue of such shares.

IMPORTANT CASE LAWS

- Q.1** GCL Ltd., a listed company, wants to increase its paid up capital through private placement basis. Before placing the proposal to the Board of directors, for formal approval, the managing director of the company would like to understand the legal provisions pertaining to the following issues:
- i. Restrictions on the quantum of preferential allotment.
 - ii. Criteria for pricing of the proposed issue,
 - iii. Restriction on currency of instrument.
 - iv. Financial commitment necessary from the promoters/financial institutions, etc.

Answer:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Answer:

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TRANSFER AND TRANSMISSION OF SHARES

Transfer and Transmission of shares

Sec 56 to Sec 58
of Co. Act 2013

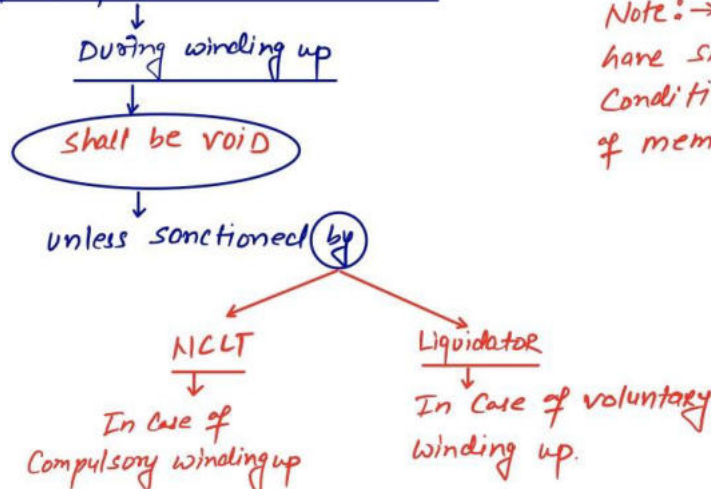
Transfer of shares

Introduction

Shares are movable property and are capable of being transferred in a manner provided in APA → if APA is silent & Regulation of Table F is expressly excluded

Then Transfer shall be governed by General law relating to Transfer of movable property.

Transfer of shares OR interest

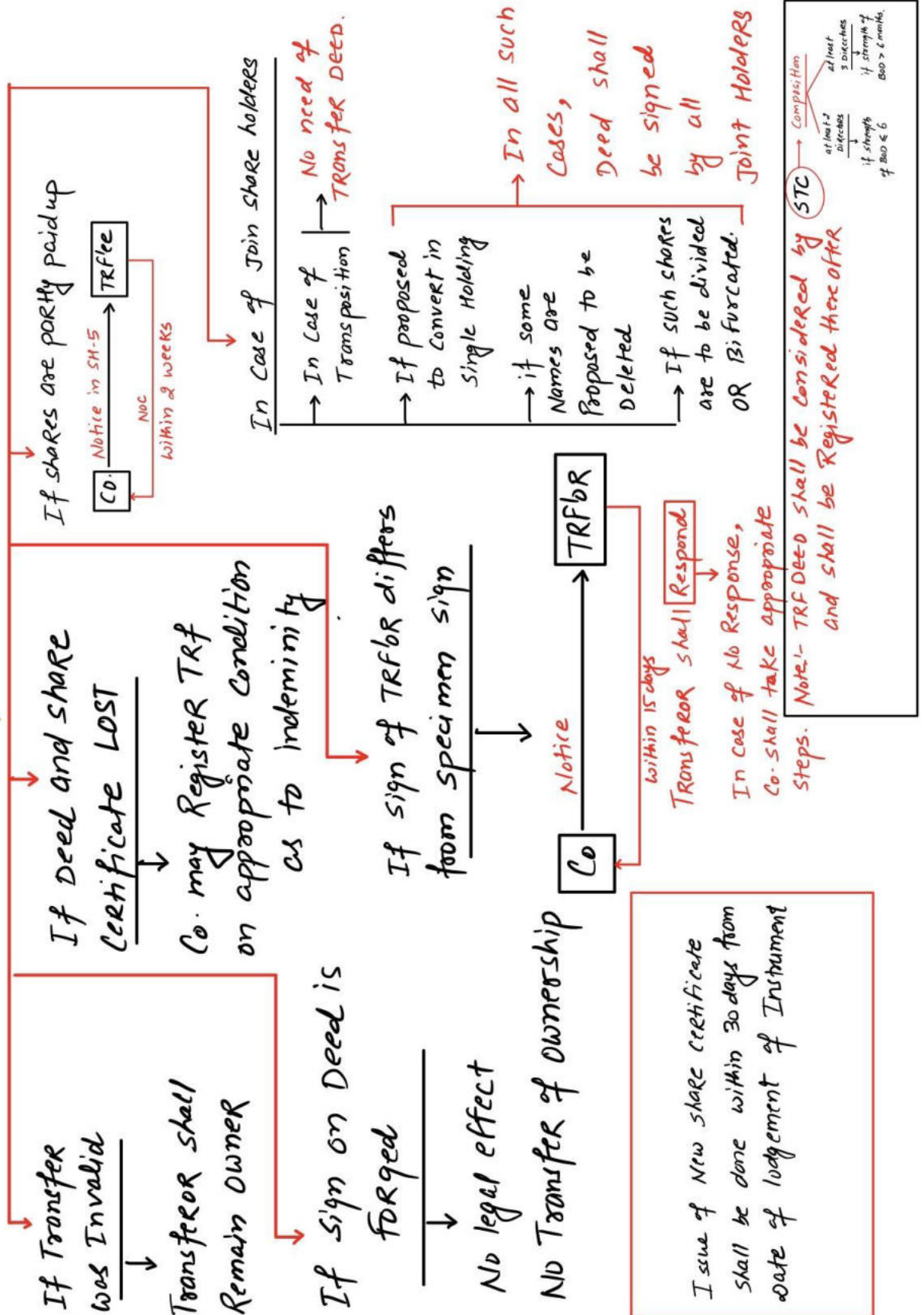


Conditions for Transfer of shares

- There shall be a proper instrument of Transfer
Transfer Deed in SH-4
- Such instrument shall be only stamped of appropriate amt and should be properly cancelled
- shall be dated & executed by or on behalf of Trf'or and Trf'ee.
- shall specify the name, address and occupation of Trf'ee
- shall be delivered to Company within 60 days from date of execution.

Note: → if Company does not have share capital, above conditions shall apply on interest of member.

Important Points for Transfer of Shares



IMPORTANT CASE LAWS

Q.1 Anant buys 20 shares of a public Co. from Basant through a stock broker. Anant receives the share certificate and the blank transfer deed countersigned by Basant but does not lodge the transfer deed for registration. Examine the legal effect of unregistered transfer between the transferor and the transferee.

Answer:

This image shows a blank sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Q.2 Dinesh, one of the joint holders of shares of a Co., sent a requisition to the company to split the shares equally amongst him and the other joint holders, by issuing fresh share certificates. State whether the company is bound to comply with this requisition.

Answer:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on its right side, suggesting it's resting on a surface.

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DEBENTURE

Definition Sec 2 (30)

The term "debenture" includes debenture stock, bonds and any other securities of a company, whether constituting a charge on the assets of the company or not.

Provided that –

- a) Instruments referred to in chapter III D of RBI Act 1934 and
 - b) Such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company.
- Shall not be treated as debenture

SALIENT FEATURES OF DEBENTURES

- A debenture is usually in the form of a **certificate** (like a share certificate) issued under the common seal of the company.
- The certificate is an acknowledgement by the company of **indebtedness** to a holder.
- A debenture usually provides for the payment of a specified sum at a specified date.
- A debenture usually provides for payment of interest until the principal sum is paid back. Interest may be made payable subject to contingencies of uncertain nature [Section 71 (8)].
- Even zero rate of interest debentures can be issued.
- Debenture holders do not have any right to vote at any meeting of the company [Section 71(2)]

There is no prohibition to issue debentures at a discount unlike the restrictions contained in Section 54 of the Companies Act, 2013 for the issue of shares at a discount.

CLASSIFICATION OF DEBENTURES:

Debenture may be of different kinds as follows:

1. **REDEEMABLE DEBENTURES**
2. **PERPETUAL OR IRREDEEMABLE DEBENTURES**
3. **REGISTERED AND BEARER DEBENTURES:**

Note: Debenture Certificates must be issued within 6 months of Allotment

4. **SECURED AND UNSECURED OR NAKED DEBENTURES:**

Conditions to issue secured debentures (Rule 18)

No company shall issue secured debentures unless it complies with the following conditions:

- Maximum Maturity Period = shall not exceed 10 years from the date of issue. However, A company engaged in the setting up of infrastructure projects may issue secured debentures for a period exceeding 10 years but not exceeding 30 years.
- The company shall appoint a debenture trustee before the issue of prospectus or letter of



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offer for subscription of its debentures and within 60 days after the allotment of the debentures, execute a **debenture trust deed** to protect the interest of the debenture holders.

- Security for the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee only.

5. CONVERTIBLE AND NON-CONVERTIBLE DEBENTURES:

- Fully convertible debentures (FCDs)
- Partly convertible debentures (PCDs)
- Non-convertible debentures (NCDs)

DISTINGUISH BETWEEN DEBENTURES AND SHARES:

Debenture	Shares
Debenture constitute a loan	Shares are part of capital of company
Debenture holders are creditors of company	Shareholders are owners/members of company
Debenture holders get fixed interest which gets priority over dividend	Shareholders get dividend with varying rights
Debentures generally have charge on the assets of company	Shares do not carry any such charge
Debentures can be issued at discount without restriction.	Shares cannot be issued at discount
In case of debentures, interest rates are fixed.	In case of equity shares, dividend varies from year to year depending on profit of company and decision of BOD to declare dividend or not.
Debenture holders do not have any voting rights	Generally Shareholders enjoy Voting Rights
Interest on debenture is payable even if there is no profit in company	Dividend to shareholder can only be paid out of profits of company and not otherwise.
Interest paid on debenture is a business expenditure and allowable deduction from profits.	Dividend is not allowable deduction as business expenditure.
Return of allotment is not required for allotment of debentures	Return of allotment in PAS 3 is to be filed for allotment of shares.

Issue of Debentures:

- The power to issue debentures is usually set out in the MOA.
- Unlike shares, they can be issued at a discount without any restriction, if AOA so authorize, the reason being that they do not form part of the capital of the company.
- They can also be issued at a premium.
- Interest payable on them is a debt and can be paid out of capital.
- There is no ceiling, minimum or maximum, for the rate of interest payable on debentures. Any rate of interest, though justifiable, can be paid on the debentures.
- In the case of unsecured debentures which amounts to be deposits, the rate of interest should be within the maximum limit prescribed by the rules.



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- All sums allowed by way of discount must be stated in every balance sheet of the company until written-off.

REDEMPTION OF DEBENTURES(SECTION 71):

Debenture Redemption Reserve (DRR)

Creation of DRR

Rule 18 (7) of the Companies (Share Capital and Debentures) Rules, 2014

The company shall create a DRR for the purpose of redemption of debentures, as per following conditions: (16th Aug 2019)

- a) DRR shall be created out of the profits of the company available for payment of dividend;
- b) The limits with respect to adequacy of DRR & investment of deposit shall be as under:
 - i. For AIFI & Banking Co., No DRR is required.
 - ii. For other FI, DRR shall be as applicable to NBCF registered with RBI.
 - iii. **For listed companies (other than AIFI & Banking Co.'s), DRR is not required in following cases –**
 - I. In case of public issue of debentures –
 - A. For NBFC & for Housing Finance companies.
 - B. For other listed companies.
 - II. In case of privately placed debentures, for companies specified in A & B above.
 - iv. **For unlisted companies, (other than AIFI & Banking co.) –**
 - A) For NBFCs & Housing Finance companies, DRR is not required in case of privately placed debentures.
 - B) For other Unlisted companies, the adequacy of DRR shall be 10% of value of outstanding debentures.
 - v. In case of companies covered in item A or B of point iii or item B of point iv, it shall on or before the 30th day of April in each year, invest or deposit a sum which shall not be less than 15% of amount of debenture maturing during the year, ending on 31st day of March of next year in any one or more methods of investments or deposits.
Provided that the amount remaining invested or deposited, shall not at any time fall below 15% of the amount of debenture maturing during the year ending on 31st day of March of that year.
 - vi. The methods of investments or deposits are as follows:
 - a. In deposit with SCB, free from any charge or lien.
 - b. In unencumbered securities of CG or SG.
 - c. In unencumbered securities specified in Indian Trust Act 1882
Note: the amount so invested or deposited shall not be used for any purpose other than for redemption of debentures maturing during the year referred above.
 - c) In case of partly convertible debentures, DRR shall be created in case of non convertible portion of debenture.
 - d) The amount credited to DRR shall not be utilised by co., except for the purpose of redemption of debentures.

DEBENTURE TRUST DEED (SECTION 71)

Rule 18(5) of the Companies (Share Capital and Debentures) Rules, 2014 provides that for the purposes of Sec 71 (13) and sub-rule (1) a **trust deed in Form SH-12** or as near thereto as possible shall be executed by the company issuing debentures in favour of the debenture trustees **within 60 days** of allotment of debentures.

Advantages of a Trust Deed

- The trustees hold the title deeds of the mortgaged property, which prevents the company from misusing the property for any purpose.
- The trustees are given power under the trust deed so that the property mortgaged is kept insured and is maintained in proper condition.
- The company can, with the consent of the trustees, enjoy a number of powers over the property charged, e.g., by way of sale, exchange or lease, thus enabling the company to put the property to advantageous use without jeopardizing the interest of debenture holders.
- In case of default by the company, the trustees can take necessary steps to realize the security without the aid of the Court.

Appointment of Debenture Trustee

The company shall not issue prospectus to more than 500 persons without appointing debenture trustee.

Conditions for appointment of Debenture trustees [Rule 18(2)]

- The names of the debenture trustees shall be stated in letter of offer inviting subscription for debentures.
- A written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Disqualification from being appointed as Debenture Trustee.

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

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



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director or KMP

2. Casual Vacancy of Debenture Trustee

The Board may fill any casual vacancy in the office of the trustee but while any such vacancy continues, the remaining trustee or trustees, if any, may act:

Provided that where such vacancy is caused by the resignation of the debenture trustee, the vacancy shall only be filled with the written consent of the majority of the debenture holders.

3. Removal of Debenture Trustee

Any debenture trustee may be removed from office before the expiry of his term only if it is approved by the holders of not less than $\frac{3}{4}$ th in value of the debentures outstanding, at their meeting.

Duties and functions of debenture trustee

The functions of the debenture trustee to protect the interest of debenture holders shall generally:

- To protect the interest of holders of debentures.
- To redress the grievances of holders of debentures effectively.

MEETING OF DEBENTURE HOLDERS: Rule 18(4)

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

- Requisition in writing signed by debenture holders holding at least $\frac{1}{10}$ th in value of the debentures for the time being outstanding.
- The happening of any event, which constitutes a breach, default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

LIABILITY OF TRUSTEE TO DEBENTURE HOLDERS: SECTION 71(7)

In general, a debenture trustee is liable to debenture holders for any type of breach of trust. However, he may escape the liability in the following cases:

- Where the trustee can show that he took such care and diligence as required of him as a trustee having regard to the powers, authorities and discretions conferred on him by the trust deed.
- Where a majority of, not less than $\frac{3}{4}$ th in value, debenture holders, present and voting in person or by proxy agree, at a meeting summoned for the purpose, with respect to specific acts or omissions of the trustee.

Pari Passu Clause in case of Debentures

- a) Debentures are usually issued in a series with a *pari passu* clause and it follows that they would be on an equal footing as to security and should the security be enforced, the amount realised shall be divided pro-rata, i.e. they are to be discharged rateably. In the event of deficiency of assets, they will abate proportionately.

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DEPOSITS

Deposits → Ramson
Sec 73 to 76 of Co. Act 2013
And
Co. (Acceptance of deposit) Rules 2014.

Definition Sec 2(31) & Rule 2(1)(c)

Deposit includes Any Receipt of money by way of Loan OR any other form, by a company

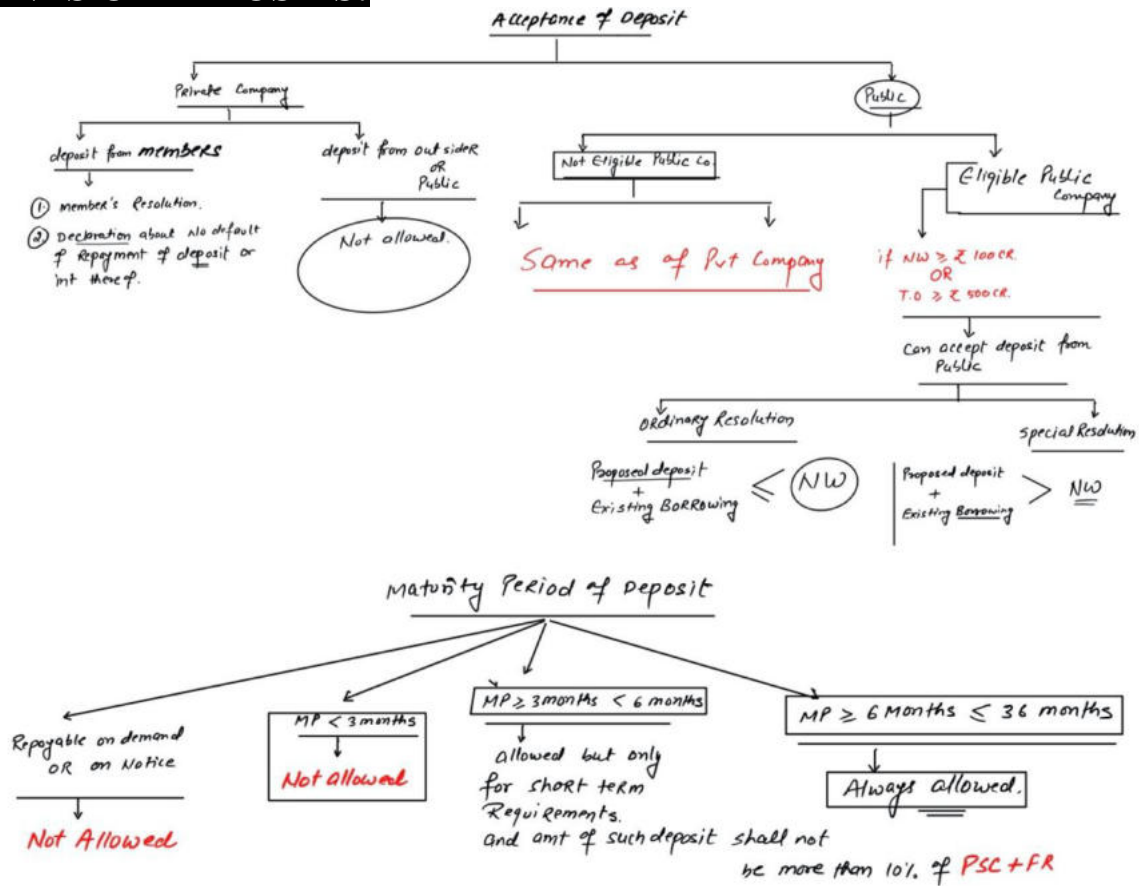
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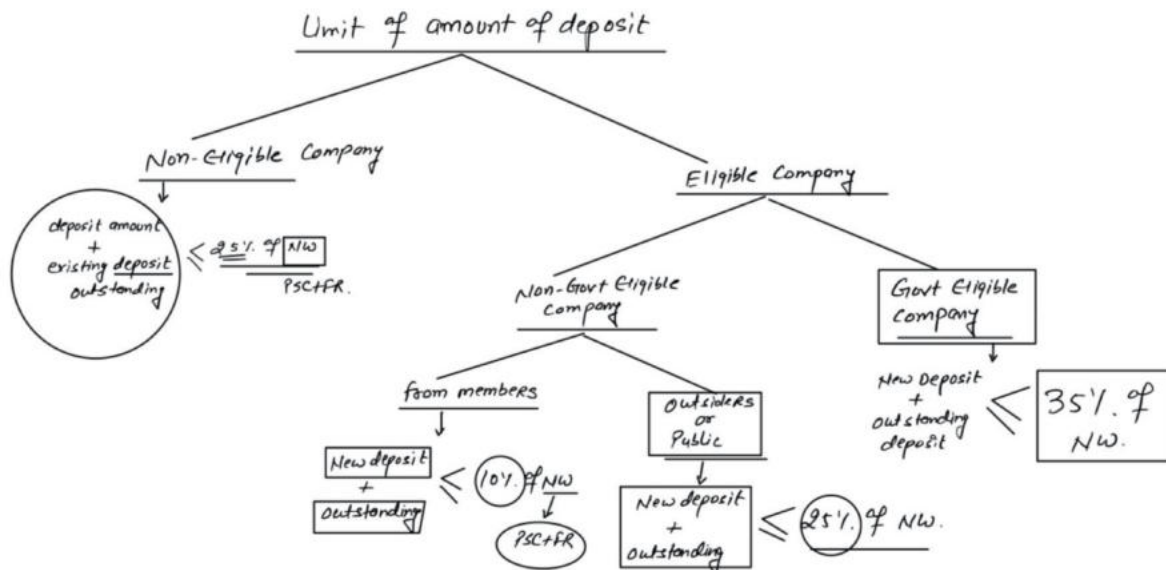
- ① Any amount Received from Indian Govt.
 - Central
 - State
 - Local Authority
 - Statutory Authority
- ② Any Amount Received from foreign Govt.
- ③ Any Amount Received from Bank/FI
 - Indian
 - Foreign.
- ④ Any amount Received from other company.
- ⑤ Any amount received against subscription of securities
But subject to condition that allotment shall be made within 60 days otherwise money shall be refunded within next 15 days OR otherwise it shall be deemed to be Deposit
- ⑥ Any Amt Received from Director of Company
→ shall not be borrowed by such Director.
- ⑦ Any Amt Received from employee of Company.
→ upto his annual salary.
- ⑧ Any non-interest bearing amount, Received OR kept by Co. Goods
- ⑨ Any amount Received as advance → for supply of services
→ if become refundable, it shall be refunded within 15 days
- ⑩ Any Amt Received by Promoter by way of unsecured loan
→ Such loan shall be by Promoter/his Relative but not by friend.
But if such loan is brought by promoter by taking loan from any Banking/FI, then loan to Co. shall be as per conditions stipulated by such Bank/FI

Note: - Exemption shall be available only till the loan is repaid to Bank/FI



KINDS OF DEPOSITS:





Prohibition on acceptance of deposits from public: Section 73(1)

No company shall invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V.

Exceptions:

- A banking company
- Non-banking financial company as defined in RBI Act, 1934 and
- To such other company as the CG may, after consultation with the Reserve Bank of India, specify in this behalf.

Conditions for acceptance of deposits from members:

Section 73(2) states that a company may, subject to

- The passing of a resolution in GM and
- Subject to such rules as may be prescribed in consultation with the RBI, accept the deposits from its members on such terms and conditions, including the provisions of security, if any, on such repayment of such deposits with interest, as may be agreed upon between the company and its members,

Subject to the fulfilment of the following conditions, namely-

- a) Issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such manner as may be prescribed.
- b) Filing a copy of the circular along with such statement with the **ROC 30 days** before the date of issue of the circular.



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- c) Depositing **sum not less than 20%** of the amount of its deposits maturing during a FY and the FY next following, and kept in a scheduled bank in a separate bank account to be called as **Deposit Repayment Reserve Account**.
- d) ~~Providing such deposit insurance in such a manner and to such extent as may be prescribed. (Omitted)~~
- e) Certifying that the company has **not committed any default** in the repayment of deposits accepted either before or after the commencement of this act or payment of interest on such deposits **and where such default has occurred, the company made good the default and a period of 5 years had lapsed since the date of making good the default**.
- f) Providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation if such charge on the property or assets of the company. In case when a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured Deposits” and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.

Clauses (a) to (e) of section 73(2) Shall not apply to a private company

- A. which accepts from its member's monies not exceeding 100 % of aggregate of the paid up share capital, free reserves and securities premium account; or
- B. which is a start-up, for 5 years from the date of its incorporation; or
- C. which fulfils all of the following conditions, namely:
 - a) which is not an associate or a subsidiary company of any other company;
 - b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or Rs. 50 Cr., whichever is lower; and
 - c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the ROC in prescribed manner (2018)

Applicable Rules [Rule 3]

- **Periods of Acceptance of Deposits**

Shall not be repayable on demand; or on notice; or after a period of minimum 6 months or more than 36 months from the date of acceptance or renewal of such deposits, as the case maybe.

However, a company may, for meeting short-term requirements of funds, accept or renew short-term deposits for repayment earlier than 6 months from the date of deposit or renewal;

Provided that such deposits do not exceed 10% of the aggregate of the paid-up share capital and free reserves of the company and such deposits are not repayable earlier than 3 months from the date of acceptance or renewal, as the case may be.



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Ceiling on Rate of Interest and Brokerage [Rule 3(6)]

No company shall accept/renew deposits at a rate of interest exceeding the maximum rate of interest prescribed by RBI that the NBFCs can pay on their public deposits.

Who is eligible to receive brokerage?

Only the person who is authorized, in writing, by a company to solicit deposits on its behalf and through whom deposits are actually procured will be entitled to the brokerage and payment of brokerage to any other person for procuring deposits shall be deemed to be in violation of these Rules.

Form and Particulars of Advertisements or Circulars [Rule 4]

Every company, other than an Eligible Company, intending to invite deposit from its members shall issue a circular to all its members by registered post with acknowledgement due or speed post or by electronic mode **in Form DPT-1**. It may be noted that in addition to this, the circular may be published in English language in an English newspaper and in vernacular language in a vernacular newspaper having wide circulation in the State in which the registered office of the company is situated.

Every Eligible Company intending to invite deposits shall issue a circular in the form of an advertisement **in Form DPT-1** for the purpose in English language in an English newspaper and in vernacular language in one vernacular newspaper having wide circulation in the State in which the registered office of the company is situated. Every company inviting deposits from the public shall upload a copy of the circular on its website, if any.

As per the Companies (Acceptance of Deposits) Amendment Rules, 2018 w.e.f 15/08/2018 a new proviso to be inserted as follows –

“Provided further that a certificate of the statutory auditor of the company shall be attached in Form **DPT-1**, stating that the company has not committed default in the repayment of deposits or in the payment of interest on such deposits accepted either before or after the commencement of the Act and in case a company had committed a default in the repayment of deposits accepted either before or after the commencement of the Act or in the payment of interest on such deposits, a certificate of the statutory auditor of the company shall be attached in Form **DPT-1**, stating that the company had made good the default and a period of 5 years has lapsed since the date of making good the default as the case may be.”;

APPOINTMENT OF TRUSTEE FOR DEPOSITORS, ETC. (RULE 7,8,& 9):

Every company, inviting secured deposits shall appoint one or more trustees for depositors for creating security for the deposits. The company shall execute a deposit trust deed in **Form DPT-2** at least **7 days** before issuing the circular or circular in the form of advertisement.

Certain Persons not to be appointed as Deposit Trustees



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No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the deposit holders, if the proposed trustee -

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

REMOVAL OF DEPOSIT TRUSTEES:

With consent of all the directors including Independent Director if company have one.

The duties and functions of deposit trustee shall generally be -

- To protect the interest of holders of depositors (including creation of securities within the stipulated time); and
- To redress the grievances of holders of depositors effectively.

Premature Surrender of Deposits [Rule 15]

If a company makes repayment of any deposit **after the expiry of 6 months** from the date of such deposit but before, the maturity date of deposit, it should, reduce the interest on such deposit by **1%** from the rate which the company would have paid, had the deposit been accepted for the period for which such deposit had run; and the company should not pay interest at a rate higher than the rate so reduced.

Where the period for which the deposit had run contains any part of year, then if such part is **6 months or more**, it should be reckoned as one year for the purpose of this Rule.

Return of Deposits [Rule 16]

Every company shall file a return of deposits, in **Form DPT-3**, with the **ROC** on or before **30th June** of every year. This return shall contain information as on **31st March** and shall be duly certified by the Auditors of the Company.

Penal Rate of Interest [Rule 17]

A penal rate of interest of **18%** per annum shall be paid for the overdue period, in case of public deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

Penalty for Violation of the Provisions of Deposits [Section 76A]

If a company fails to repay the deposits or part thereof or any interest thereon within the specified time the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with minimum fine of **Rs. 1Cr or twice the amount of deposit accepted by the company (w.i.l)** and maximum fine of **Rs. 10 Cr** and every officer in default shall be punishable with imprisonment which may extend to **7 years AND** with minimum fine of **Rs.25 Lakh** and a maximum



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Important Case Laws

Answer:

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REGISTRATION OF CHARGES

Charges

Definition Sec 2(16)

Section 2(16) of the Companies Act, 2013 defines charges so as to mean 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.

1. There should be 2 parties creator of the charge and the charge holder.
2. The subject-matter of charge,
3. A charge may be fixed or floating depending upon its nature.

"Charge" as defined u/s 100 of the Transfer of Property Act, 1882, where an immovable property of one person is by act of parties or operation of law made security for the payment of money to another and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property, and all the provisions which apply to a simple mortgage shall, so far as may be, apply to such charge.

A charge is a security, given for securing loans or debentures. The security may be provided either by way of mortgage, hypothecation, pledge or lien.

Kind of Charges

A charge on the property of the company as security for creditors may be of the following kinds, namely:

1. Fixed or specific charge.
2. Floating charge.

Fixed or Specific Charge: A charge is fixed or specific when it is made specifically to cover assets, which are ascertained and definite or are capable of being ascertained and defined, at the time of creating charge e.g., land, buildings, or heavy machinery. A fixed charge, therefore, is against security of certain specific property, and the company loses the right to dispose off that property as unencumbered.

Floating Charge: A floating charge is a charge on a class of assets present and future, which in the ordinary course of business is changing from time to time and leaves the company free to deal with the property as it sees fit until the holders of charge take steps to enforce their security. A floating charge is not attached to any definite property but covers property of a fluctuating type.

Crystallisation of Floating Charge

A floating charge crystallizes and the security becomes fixed in the following cases-

- When the company goes into liquidation.
- When the company ceases to carry on the business.
- When the creditors or debenture holders take steps to enforce their security e.g. by appointing Receiver to take possession of the property charged.



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- On the happening of the event specified in the deed.
- On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors

Registration of Charges

1. Certificate of Registration of Charge:

Where a charge is registered with the ROC, ROC shall issue a certificate of registration of charge **in CHG-2** and for registration of modification of charge **in CHG-3** to the company and to the person in whose favour the charge is created.

2. Duty to Register Charge (Sec 77)

Every company creating a charge shall register the particulars of charge signed by the company and its charge - holder together with the instruments creating it.

Important points in the Act relating to charge creation:

- ✓ Any charge created within or outside India.
- ✓ On property or assets or any of the company's undertakings.
- ✓ Whether tangible or otherwise, situated in or outside India shall be registered.

Hence all types of charges are required under the Act to be registered whether created within or outside India

Except charges as may be prescribed in consultation with the RBI.

3. Time Limit for Registration of a Charge

A charge created by a company is required to be registered with the ROC within 30 days of its creation in CHG 1 (for other than debentures) and CHG 9 (for Debentures).

Provided that the ROC may, on an application, allow such registration to be made— (02/11/18)

- a) in case of charges created before the commencement of the Companies (Amendment) Act, 2019, within a period of 300 days of such creation; or
- b) in case of charges created on or after the commencement of the Companies (Amendment) Act, 2019, within a period of 60 days of such creation, on payment of such additional fees.

Provided further that if the registration is not made within the period specified—

- a. in clause (a) to the 1st proviso, the registration of the charge shall be made within 6 months from the date of commencement of the Companies (Amendment) Act, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;
- b. in clause (b) to the 1st proviso, the ROC may, on an application, allow such registration to be made within a further period of 60 days after payment of such ad-valorem fees as may be prescribed."



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4. Application for Registration of Charge by the Charge-holder

Where a company fails to register the charge within **30 days**, the person in whose favour the charge is created may apply to the ROC for registration of the charge along with the instrument created for the charge in **Form No.CHG-1** or **Form No.CHG-9**, as the case may be, duly signed along with fee.

Modification of charges[Section 79]

It provides that the provisions of Section 77 relating to registration of charge shall apply to:

1. A company acquiring any property subject to a charge within the meaning of that section; or
2. Any modification in the terms or conditions or the extent or operation of any charge registered under that section.

The provisions relating to Condonation of delay shall apply, mutatis mutandis, to the registration of charge on any property acquired subject to such charge and modification of charge u/s 79 of the Act.

Section 80 – Effect of registration of charges

According to Section 80, where any charge on any property or assets of a company or any of its undertakings is registered u/s 77, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. The section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Consequences of Non-Registration

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

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

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

• **Void against any creditor** of the company means that if any subsequent charge is created on the same property and the earlier charge is not registered, the earlier charge would have no consequence and the latter charge if registered would enjoy priority. In other words, the latter charge holder can have the property sold in order to recover its money.



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Thus, non-filing of particulars of a charge does not invalidate the charge against the company as a going concern. It is void only against the liquidator and the creditors at the time of liquidation.

Register of charges maintained by company [Section -81]

ROC shall maintain a register containing particulars of the charges registered in respect of every company. The particulars of charges maintained on the MCA portal (www.mca.gov.in/MCA21) shall be deemed to be the register of charges.

Satisfaction of Charges[Section 82]

A company shall give intimation to the ROC in prescribed form, of the payment or satisfaction in full of any charge registered within 30 days from date of such payment of satisfaction in **FORM NO. CHG 4** along with the FEE.

Provided that the ROC may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within 300 days of payment or satisfaction on payment of such additional fees as may be prescribed.

On receipt of such intimation, the ROC shall issue a notice to the holder of the charge calling a show cause within such time **not exceeding 14 days**, as to why payment or satisfaction in full should not be recorded as intimated to the **ROC**. If no cause is shown, by such holder of the charge, the **ROC** shall order that a **memorandum of satisfaction** shall be entered in the register of charges maintained by the **ROC** u/s 81 and shall inform the company. If the cause is shown to the **ROC** shall record a note to that effect in the register of charges and shall inform the company accordingly.

However, the aforesaid notice shall not be sent, in case intimation to the **ROC** is in specified form and is signed by the holder of charge.

Certificate of registration of satisfaction of charge:

Where the **ROC** enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in **Form No. CHG-5**.

Company's Register of Charges [Section 85]

Every company shall keep at its registered office a register of charges in **Form No. CHG.7** which shall include details of all charges created, modified and satisfied.

The register of charges shall be **preserved permanently** and the instrument creating a charge or modification there on shall be preserved **for 8 years** from the date of satisfaction of charge by the company.

A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

Inspection of the Register of charges and of the instruments creating charges can be allowed



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only during the business hours to any member or creditor of the Company or any other person subject to reasonable restriction as the company by its article impose. The register of charges and the instrument of charges kept by the company shall be open for inspection-

- a) By any member or creditor of the company without fees;
- b) By any other person on payment of fee.

Penalty for Non-Registration of Charge [Section 86]

The company, shall be punishable with fine which shall not be less than Rs. 1lakh and maximum 10Lakh and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or fine not less than Rs.25, 000 which may extend to Rs. 1, 00,000, or with both.

If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action u/s 447. (02/11/18)

Rectification by Central Government in register of charges [Section 87]

(02/11/18)

The CG on being satisfied that —

- a. The omission to give intimation to the ROC of the payment or satisfaction of a charge, within the time limit OR;
- b. The omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction;

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company,

Then

CG may, on the application of the company or any person interested and on prescribed terms and conditions, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified."

Important Case Laws

1. Daisy Ltd., a company registered under the Companies Act, 2013, has failed to register a charge which requires registration under Section 77. What will be the consequences of such non-registration?

Answer:



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[illegible]

- Answer:**

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REGISTERS AND RETURNS

Ram Ban =

Sec 88 to sec 95 of co. Act 2013

Co. (Management & Administration) Rules 2014

REGISTERS:

All the books or registers may be broadly divided into 2 categories:

- Statutory Books or Registers
- Optional or Statistical Books or Registers.

Statutory Books or Registers	Every company incorporated under the Act is required to keep at its registered office, inter-alia, the following statutory books and registers - 1. Register of Sweat Equity Shares. 2. Register of Securities bought back. 3. Register of deposits. 4. Register of charges. 5. Register of members 6. Index of members. 7. Register of debenture holders. 8. Index of debenture holders. 9. Register and index of beneficial owners. 10. Foreign register of security holders.
Optional book or register	With a view of keeping proper records, companies invariably maintain some other books in addition to statutory books. These are called optional books. These are: 1. Register of transfer of shares. 2. Register of documents sealed. 3. Register of share application and allotment. 4. Director's Attendance Books. 5. Register of attendance of shareholders, etc. 6. Register of proxies for general meeting.

Register of Members or Debenture Holders or other security holders

Register of Members, etc. [Section 88]	1. Every company shall keep and maintain the following registers- (a) Register of members; (b) Register of debenture - holders; and (c) Register of any other security holders. 1. Format - MGT-1 Note: Maintenance of Index is not necessary if members are less than 50. 2. A company may, if so authorised by its AOA, keep “foreign
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	register" containing the names and particulars of the members, debenture - holder, other security holder or beneficial owners residing outside India. 3.And the company shall inform the ROC about the foreign address within 30 days from the date of opening the foreign register in Form MGT-3. Default: Every officer of the company who is in default shall be punishable with fine minimum Rs. 50,000 and maximum of Rs. 3 lakh and where the failure is a continuing one, with a further fine which may extend to Rs. 1000 for every day, after the first during which the failure continues.
Closing of register (Sec 91)	For any period or periods not exceeding in the aggregate 45 days in each year, but not exceeding 30 days at any ONE time. But a 7 day's prior notice is required to be given. In case of contravention, the company and every officer in default shall be punishable with fine which may extend to Rs. 5,000 for every day in default.
[Section 89] Declaration in Respect of Beneficial Interest in Any Share	➤ Declaration by Registered Holder: Where any person who is a member but does not hold the beneficial interest in such shares, such person shall make a declaration in Form no. MGT-4 in duplicate, within 30 days. ➤ Declaration by Beneficial Holder: Every person who holds or acquires a beneficial interest in a share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such declaration shall be filed in Form NO. MGT-5 in duplicate, within 30 days ➤ Return to be filed with ROC: Where any declaration is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within 30 days from the date of receipt of declaration by it, a return in Form No MGT-6 with the ROC in respect of such declaration.
Register of Significant Beneficial Owners in a co. (Section 90) Read with co.	1. Every Individual (acting alone or together or through one or more person or trust) including trust & person resident outside India, who hold beneficial Interest of at-least 25% or other prescribed percentage in shares of co. OR right to exercise OR the actual exercise of significant influence or control (called as Significant Beneficial Owner) over a company shall make a declaration in form BEN 1 within 90 days from the date of notification and within 30 days from date of becoming SBO,



**(beneficial
Interest & SBO
interest) Rules
2018**

13/06/2018

subsequently.

Explanation: where an individual becomes SBO, or where SBO undergoes any change, within 90 days of the commencement of the CO. (SBO), amendment Rules, 2019, it shall be deemed that such individual became the SBO or any change therein happened on the date of expiry of 90 days from the date of commencement of said rules and the period of 90 days will be reckoned accordingly.

If failed –

Punishment

Imprisonment up to one year OR fine of min = Rs. 1Lakh, max Rs. 10 Lakh OR both

And if default continues, then further fine of Rs. 10,000 for each day in default.

However, exemption can be provided by CG to specified class of persons.

2. Every co. shall maintain a register of SBO in BEN – 3, which shall be open for inspection for at-least 2 hours during business hours on every working day, by any member of co. on payment of fees specified by co. but not more than Rs. 50.
3. Co. shall file a return of SBO, in form no. BEN 2, with ROC within 30 days from date of receipt of declaration along with prescribed fees.

Note: In case of default w.r.t. point 2 and 3, co. & its officer in default will be punishable with fine of min Rs. 10 lakhs to max of Rs. 50 lakhs and if the default continues then further fine of Rs. 10,000 for each day in default.

4. Co. shall give notice in form BEN – 4 to person, who company knows –
 - a. To be SBO, OR
 - b. To be having knowledge of SBO, OR
 - c. To have been SBO at any time during last 3 yrs. But not registered with co. as such.
5. Such person shall reply to company within 30 days, and if he fails, co. shall apply to NCLT within 15 days from an order restricting the transfer of shares/ interest and suspension of all rights attached.

NCLT may pass appropriate order within 60 days from the date of application and aggrieved party may within one year apply for relaxation or lifting of restriction.

Note: If any person provides false information, then he will be liable for action u/s 447.

Explanation – As per sec 2(27) – Significant influence or control shall include

- a. Right to appoint majority of directors
- b. To control management
- c. Policy decision exercisable by person or person acting in



**Inspection,
Extract and
Copy of
Registers and
Returns
[Section 94]**

concert etc.

The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by the security holder during business hours, without payment of any fees and by any other person on payment of specified fees subject to a maximum of Rs.50/- for each inspection.

Any such security holder or any other persons may -
Take extracts from any register, or index or return without payment of any fee; or
Require a copy of any such register or entries therein or return on payment of specified fees subject to maximum of Rs. 10/- for each page. Such request has to be honoured within 7 days from the date of deposit of fees.

Default: Every officer in default shall be liable, for each such default, to a penalty of **Rs. 1,000** for every day subject to a **maximum of Rs. 1 Lakh** during which the refusal or default continues.

**Rectification of
register of
members
Section 59**

The register of members is only prima facie evidence of membership and any person can say either

- a) That his name should no longer appear or should never have been place in the register at all;
- b) That his name has wrongfully been removed from the register;
or
- c) That his name should be entered as a member.

That aggrieved person may apply to the NCLT.

Default: If default is made in complying with the order of the NCLT, the company shall be punishable with fine **Rs. 1 Lakh to Rs. 5 lakhs**

AND

Every officer in default shall be punishable with imprisonment **up to 1 year OR** with **fine Rs. 1 Lakh to Rs. 3 lakhs, OR** with both.

Returns:

The returns can be classified into 2 categories namely:

- i. Casual Returns; and
- ii. Periodical Returns

Casual Returns

Casual returns are those returns, which are required to be filed as, and when contingency arises. The important casual returns are the



Periodical Returns

- creation of charge,
- return of allotment,
- change of directors,
- change in the registered office,
- special resolution, etc.

Periodical returns are those returns, which are required to be filed after a specified period.

These are:

- i. Annual Return under Section 92.
- ii. Balance Sheet and P&L Account u/s 137.

Annual Return [Section 92]

1. Every company shall, **within 60 days** from the AGM, prepare and file the ROC, an annual return in **Form No MGT.7**.

Every co. shall place a copy of AR on the website of co., if any, and the web link of such annual returns shall be disclosed in the Board report.

If any company fails to file its annual return, such company and its every officer in default shall be liable to a penalty of Rs. 50,000 and in case of continuing failure, with further penalty of Rs. 100 for each day during which such failure continues, subject to a maximum of Rs. 5 lakh.” (2018)

Note 1: If AGM is not held for a year, annual return should be filed **within 60 days** from the last day on which the AGM should have been held.

Note 2: An extract of the annual return in Form No MGT - 9 shall form part of the Board's report.

Signing of Annual Return

Annual return is required to be signed by one director and CS and If there is no CS then by a PCS.

- In case of listed company; and
- A company having PSC of **Rs. 10 Cr.** or
- A company having T.O. of **Rs. 50 Cr.** or more,

The annual return shall also be certified by a **PCS**, in **Form. No MGT-8**, stating that the annual return disclosed the facts correctly and adequately and that the company has complied with all the provisions of this Act.

In case of contravention, penalty on PCS → minimum Rs. 15,000 to maximum Rs. 5 Lakhs.

In relation to **OPC**, Small Company and **Start-up Private Company (2018)**, the **Annual Return** shall be signed by the **CS** of Co. or by a director of the company.



Note: Filing of return to the **ROC** for change in the **promoters and top 10 shareholders** in case of a **listed company**.

Section 93 provides that every listed company shall file a return in form **MGT-10** with the ROC with the fee with respect to changes relating to either **increase or decrease of 2% or more** than shareholding position of promoters and **top 10 shareholders** of the company in each case either value or volume of shares, **within 15 days** of such change.



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GENERAL MEETINGS

Ram Ban –

Sec 96 to Sec 122 of Companies Act 2013

Companies (Management and Administration) Rules 2014

Requisites of Valid General Meeting

- 1) Properly called
- 2) Properly conveyed
- 3) Properly conducted

MEANING OF MEETING:

There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders subject to certain exceptions.

Type of share holders meeting

- 1) Annual General Meeting
- 2) Extra ordinary General Meeting

ANNUAL GENERAL MEETING (Sec 96):

Annual General Meeting is a regular meeting of the members of the company held annually for the purpose of transacting mainly ordinary business of the company.

Every company other than a **OPC** shall in each year hold in addition to any other meetings, a general meeting as its general meeting and shall specify the meeting as such in the notices calling it.

Time for holding GM

1. The 1st AGM can be held **within 9 months** from the closing of FY.
2. For subsequent AGM's there are 2 requirements:
 - i. Company must hold AGM **every year**.
 - ii. The gap between 2 AGM's cannot be **more than 15 months**.
3. AGM **must not be held later than 6 months** from the date of closing of FY.

Place of GM

The notice should state the place where the general meeting is scheduled to be held.

In case of an AGM, the place of the meeting has to be either the -

- i. **Registered Office** of the company or
- ii. Some other place **within the City, town or village** in which the registered office of the company is situated.

Day of GM

In case of an AGM, the day should be one that is **not a National Holiday**.

Time of GM

An annual general meeting can be called during **business hours only**, that is, between 9 a.m. and 6 p.m.



Extra Ordinary General Meeting sec 100

The BOD may, whenever it deems fit, call an EGM of the co. and such EGM shall be held at a place within India only.

Exception: WOS incorporated outside India.

Such EGM can be called by BOD or can also be called on requisition of members.

Notice of GM Sec 101

A meeting cannot be validly held unless a proper notice of it has been given. Three things in connection with the notice have to be considered namely: -

- i. Length of notice;
- ii. Entitlement of notice and
- iii. What should be its contents

Length of Notice (Sec101(1))

Not less than 21 days' notice in writing. However, a company may, by its AOA, provide a longer period. **21 days shall be excluding the day of the service of notice and the day on which the meeting is to be held.**

Provided that a GM may be called **after giving shorter notice**, if consent, in writing or by E-mode, is accorded thereto—

- i) in the case of an AGM, by not less than 95% of the members entitled to vote thereat; and
- ii) in the case of any other GM, by members of the company —
 - a) If the company has a share capital, holding majority in number of members entitled to vote and who represent not less than 95% of such part of the PSC of the company as gives a right to vote at the meeting; or
 - b) If the company has no share capital, having not less than 95% of the total voting power exercisable at that meeting:

Entitlement of Notice [Section 101 (3)]

Notice of every general meeting of the company shall be given

- i. To **every member** of the company;
- ii. To the persons (**legal representative or receiver**) entitled to share in consequence of the death or insolvency of a member;
- iii. To the **auditor or auditors** for the time being of the company;
- iv. To **every director** of company

Preference shareholders are also entitled to notice.

Contents of the Notice [Section 101 (2)]

Every notice of the meeting of a company shall specify the

- i. **Place**
- ii. **Day**
- iii. **Date and**

iv. **Hour** of the meeting.

It should also contain the **statement of business to be transacted** thereat. This is done by grouping the items of business under two heads namely **Ordinary Business & Special Business**.

Special Business means all business to be transacted at a meeting except the following, which is called Ordinary Business.

- The consideration of the account, balance sheet and the reports of the board of directors and auditors.
- The declaration of dividend.
- The appointment of directors in the places of those retiring.
- The appointment of and the fixing of remuneration of the auditors.

Statement to be annexed to Notice [Section 102]

In case of special business items to be transacted at a general meeting, a statement setting out the following material facts, shall be annexed to the notice calling the meeting:

Material facts to be given in the explanatory statement

The nature of concern or interest, financial or otherwise, if any, in respect of each item of:

- Every director and the manager, if any;
- Every other key managerial personnel; and
- Relatives of the persons mentioned in sub-clauses (i) and (ii);

Disclosure of shareholding interest in the explanatory statement

Where any item of Special Business to be transacted at a meeting of the company relates to or affects any other company, the **extent of shareholding interest in that other company of every promoter, director, manager**, if any, and of **every other KMP** of the first mentioned company shall, **if the extent of such shareholding is not less than 2% of the PSC of that company**, also be set out in the statement.

Penalty (02/11/18)

If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with **penalty** which may extend to **Rs. 50,000 or five times the amount of benefit accruing to the promoter**, director, manager or other key managerial personnel or any of his relatives, **whichever is more**.

Quorum of General Meeting Sec 103

Quorum

Quorum is the **minimum number of members required to be present at a general meeting** of the company to validly transact any business.

Main Provisions (Sec 103)

For various categories of companies.

a) In the case of public company:

- 5 members** personally present if the number of members as on the date of meeting is **not more than 1000**;
- 15 members** personally present if the number of members as on the date of meeting is **more than 1000 but up to 5000**;



- C. **30 members** personally present if the number of members as on the date of the meeting exceeds 5000.
- b) **In case of Private company:**
2 members personally present, shall be the quorum for a meeting of the company.

Articles may provide for Larger Quorum

AOA of a company may provide for larger number of members personally present as quorum, but it cannot be less than the minimum number of quorum required for the meeting.

Whether presence of preference shareholders would count for quorum?**Representative in the general meeting shall be considered for quorum****Joint shareholders will be regarded as one member for the purpose of quorum****Consequences of absence of quorum**

If within half an hour from the time appointed or holding a meeting of the company, a quorum is not present, the meeting, if called up on the requisition of members, shall stand dissolved. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place, as the Board may determine.

Adjourned meeting

In case of an adjourned meeting or of a change of day, time or place of meeting, the company shall give **not less than 3 days' notice to the members either individually or by publishing an advertisement** in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, **the members present shall be the quorum subject to the minimum 2.**

Can a single member constitute quorum for a meeting?**Chairman of Meeting [Sec 104]**

Appointment of Chairman under Articles	Table F Regulation 45: It provides that the Chairman, if any, of the Board shall preside as Chairman at every GM of the company. Regulation 46: If there is no Chairman or he is not present within 15 minutes after the appointed time of the meeting or is unwilling to act as Chairman of the meeting, the directors present shall elect one among themselves to be
---	---

	chairman of the meeting. Regulation 47 If in any meeting, no director is willing to act as chairman or if no director is present within 15 minutes after the appointed time of the meeting, the members present should choose one among themselves to be chairman of the meeting.
Appointment u/s 104	If the AOA of a company do not contain any provision for the appointment of chairman, such appointments shall be made by the members personally present at the meeting who shall elect one of themselves to be the chairman thereof on a show of hands. If a poll is demanded on the election of the Chairman, it shall be taken immediately. If some other person is elected as a result of poll, he shall be the Chairman for the rest of the meeting
Appointment of Chairman by NCLT	Where the NCLT u/s 97 or 98 directs the calling of general meeting of a company, it may give directions regarding its calling holding and conducting. It may appoint any person as its Chairman.
Position and responsibility of Chairman	He has to carry out the following duties: • With the permission of chairman, each item of business will be moved for the consideration of the members. • He will give enough time to members to discuss and express their opinion and views on each of the proposal under consideration. • He has powers to close the discussion if sufficient time has been spent. • He has the powers to admit or reject an amendment to a resolution. • Where there is a serious disorder, he has an inherent power to adjourn the meeting. However, he cannot arbitrarily close or adjourn a meeting. • He shall arrange for voting on every resolution and declare the result. If the AOA give authority to the chairman to exercise a casting vote, he can cast a second vote in case of a tie as he consider appropriate.
Declaration of result by the Chairman	A declaration by the chairman that on a show of hands, a resolution has or has not been carried unanimously or by a particular majority and an entry to that effect set in the minutes book, shall be conclusive evidence of the fact without proof of the number or proportion of the votes cast in favour of or against the resolution.
Discretion of chairman for recording proceedings of the meeting	The chairman has the power to exclude from the minutes any matter, which, in his opinion- ➤ Is regarded as defamatory of any person; ➤ Is irrelevant or immaterial to the proceeding or ➤ Is detrimental to the interest of the company.

Proxies [Sec 105]

Meaning

The word "proxy" has 2 different meanings.

- Firstly it means the **agent appointed by the member** of a company to attend and vote on his behalf at a meeting of members, and
- Secondly, it means **the document by which such an agent is appointed.**



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The relation between the member appointing proxy and the proxy so appointed is that of **principal and agent** and thus this relationship is governed by the relevant provisions of **Indian Contract Act, 1872**.

Who has right to appoint proxy

In the case of a company, having a share capital every members of the company who is entitled to attend and vote at the meeting can appoint a proxy. In the case of a company not having share capital, this right is available only if the AOA make a specific provision for it. A proxy need not to be member of the company.

Generally, the preference shareholders are not entitled to appoint a proxy as they are not entitled to vote at the meeting.

Notice for GM should mention right to appoint proxy

In every notice calling a general meeting of the company, there should appear with reasonable prominence a statement that a member, entitled to attend and vote, is entitled to appoint a proxy to attend and vote instead of himself and a proxy need not be a member of the company.

In case of default, every officer in default, shall be punishable with fine, **which may extend to Rs.5,000/-**.

The note may be given in the following manner:

"MEMBERS ENTITLED TO ATTEND AND VOTE MAY APPOINT ONE OR MORE PROXIES TO ATTEND AND VOTE INSTEAD OF THEMSELVES AND A PROXY NEED NOT BE A MEMBER. PROXIES TO BE VALID MUST BE RECEIVED AT THE REGISTERED OFFICE OF THE COMPANY NOT LESS THAN FORTY- EIGHT HOURS BEFORE THE APPOINTED TIME OF THE MEETING:"

Maximum Number of proxies to be held by an individual

The member of a public company can **appoint more than one proxy**. This will be possible only if he is entitled to **cast more than 1(one) vote**. A member of a private company cannot appoint more than one proxy to attend on the same occasion.

A person appointed as proxy shall **not act as proxy on behalf of more than 50 members** and members **holding in the aggregate more than 10% of the total share capital** of the company carrying voting rights.

Who can appoint proxy for the General Meeting?

1. **Members** of a company having a **share capital**.
2. Members of a company **not having a share capital**, if AOA provides so.
3. **Representatives of body corporate** appointed u/s 113.
4. **Representatives of the President and the Governors** of the State appointed u/s112.
5. **Power of Attorney holder of a member** may vote by proxy, if authorised by such power of attorney.

Note: A member of Sec 8 Company i.e. NPC shall not be entitled to appoint any other person as proxy unless such other person is also a member of such company.

Who cannot appoint proxy for a meeting?

The following persons cannot appoint proxy to attend a general meeting of the company:-

1. A **proxy cannot appoint** a proxy.
2. A member of a company **not having a share capital** cannot appoint a proxy if the AOA does not authorise.
3. Members of an **independent private company unless the AOA** provide otherwise.

Only individual can be appointed as a proxy

A proxy may be signed by the following persons:

- i. In the case of **joint holders, all of them**;
- ii. By the **individual sole member** of a company;
- iii. **Power of attorney holder** of a member of a company;
- iv. **Authorised representative** of a body corporate;
- v. By receivers/liquidators and/ or executors of a member

Limitations of proxy

1. A proxy has **no right to speak** at the meeting.
2. A proxy shall not be entitled to vote **except on poll**.
3. He cannot take part in any discussion.
4. A proxy is not counted for quorum.
5. A proxy cannot inspect the proxies list with the company and the minute's book of the GM.

Period for deposit of proxy:

A **proxy instrument** should be deposited at registered office **at least 48 hours before the time fixed for a meeting**. Any provision contained in the AOA, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

Note: Sunday shall form part of 48 hours.

Requirements of instrument of proxy

The instrument appointing a proxy must be in **Form no. MGT11** as per Rule 19(3). It should be in **writing and be signed by the appointer** or on his behalf.

A proxy must put revenue stamp of appropriate value and stamp should be cancelled either by signature or by some other means.

Canvassing for appointment of Proxy Sec 105(5):

In the case of default, every officer who knowingly issued the invitation shall be punishable with fine, which **may extent to Rs.1, 00,000/-**.

Revocation of proxies:

A proxy can be revoked in any of the following ways:-

- i. By **deposit of a new proxy** within the time stipulated for deposit of proxies;
- ii. **By the member himself attending** and voting before the proxy has voted; and
- iii. **By the death or insanity of the appointer or by revocation of proxy or transfer of shares** by the appointer



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Provided that the company has received intimation in writing of such death, insanity, revocation or transfer before the commencement of the meeting.

Voting by Show of Hands [Section 107]

At any general meeting, a resolution put to the vote of the meeting shall in the **first instance** be decided on a show of hands, unless a poll is demanded before or immediately on declaration by Chairman.

Methods of Voting

VOTING THROUGH ELECTRONIC MEANS :(SECTION 108)

- Every listed company OR
- A company having 1,000 or more shareholders

May provide to its members, facility to exercise their right to vote at general meetings by electronic means.

A member may exercise his right to vote at any GM by electronic means and company may pass any resolution by electronic voting system.

Procedure for E-Voting:

- i. The notices of the meeting shall be sent to all the members/auditors.
- ii. The notice of the meeting shall clearly mention that the business may be transacted through E voting system and the company is providing facility for voting by electronic means.
- iii. The company shall cause an advertisement to be published, **not less than 5 days** before the date of beginning of the voting period,
- iv. E-voting shall remain open for not less than 1 day and not more than 3 days.
Provided that in all such cases, such voting period shall be completed 3 days prior to the date of the general meeting;
- v. During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically. Provided that once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.
- vi. At the end of the voting period, the portal where votes are cast shall forthwith be blocked.
- vii. The BOD shall appoint one scrutinizer who can be assisted by 2 other persons.
- viii. The scrutinizer shall, within 3 working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least 2 witnesses not in the employment of the company and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman.
- ix. The scrutinizer shall maintain a register either manually or electronically to record the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.
- x. The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the register and other related papers to the company.
- xi. The results declared along with the scrutinizer's report shall be placed on the website of the

company and on the website of the agency within 2 days of passing of the resolution at the relevant general meeting of members.

Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

Demand for Poll [Section 109]:

A poll can be demanded at any time before or after the declaration of the result on the voting of any resolution by show of hands.

A poll can be demanded by any of the following persons

- Chairman himself;
- Members and proxies.

The Chairman shall order a poll to be taken, if any demand is made in this behalf:-

- in the case of a **company having a share capital**, by any member or members present in person or by proxy and holding shares in the company-
- Which confer a power to the vote on the resolution **not being less than 1/10th of the total voting power in respect of the resolution; OR**
- Holding shares on which an aggregate sum of **at least Rs.5, 00,000** has been paid up.
- in the case of **any other company**, by any member or members present in person or by proxy and having **not less than 1/10th of the total voting power** in respect of the resolution.

The demand for a poll may be withdrawn at any time by the person or persons who made the demand.

Procedure for conduct of poll:

As per **Rule 21(1)** of the **Companies (Management and Administration) Rules, 2014** provides that the chairman of a meeting shall ensure that -

- The Scrutinizers are provided with the Register of Members, specimen signatures of the members, Attendance Register and Register of Proxies.
- The Scrutinizers are provided with all the documents received by the Company.
- The Scrutinizers initial the Polling papers and distribute them to the members and proxies present at the meeting. **In** case of joint shareholders, the polling paper shall be given to the first named holder or in his absence to the joint holder attending the meeting as appearing in the chronological order in the folio. **The Polling paper shall be in Form No. MGT.12.**
- The Scrutinizers keep a record of the polling papers issued.
- The Scrutinizers lock and seal an empty polling box in the presence of the members and proxies.
- The Scrutinizers open the Polling box in the presence of two persons as witnesses after the voting process is over.
- In case of ambiguity about the validity of a proxy, the Scrutinizers decide the validity in consultation with the Chairman.
- The Scrutinizers shall ensure that if a member who has appointed a proxy has voted in person, the proxy's vote shall be disregarded.
- The Scrutinizers count the votes cast on poll and prepare a report thereon addressed to the Chairman.
- Where voting is conducted by electronic means, the company shall provide all the necessary support, technical and otherwise, to the Scrutinizers in orderly conduct of the voting and counting



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the result thereof.

- The Scrutinizers' report state total votes cast, valid votes, votes in favour and against the resolution including the details of invalid polling papers and votes comprised therein.
- The Scrutinizers submit the Report to the Chairman who shall counter-sign the same.
- The Chairman declare the result of Voting on poll. The result may either be announced by him or a person authorized by him in writing.

The Scrutinizer/s Appointed for the poll, shall submit a report to the Chairman of the meeting in **Form No. MGT No. 13**. The report shall be signed by the **scrutinizer / all the scrutinizers**, in case there is more than one scrutinizer, and be submitted by them to the Chairman of the meeting **within 7 days** from the date the poll is taken.

ADJOURNMENT OF MEETING:

Meaning

Adjournment means suspending a meeting after it has been duly commenced to be resumed at a later date and time fixed in that meeting itself at the time of adjournment or to be decided later on.

Methods

A meeting may be adjourned in anyone of the following ways:-

- i. By passing a resolution at the meeting;
- ii. By the act of chairman;
- iii. By lack of quorum at the meeting.

By passing a resolution at the meeting: According to common law, the power to adjourn a meeting lies in the hands of those constituting it.

By the act of Chairman: In case of disorder, etc. at the meeting, the Chairman is authorized to adjourn the meeting for a short period say **an hour** or so with a view to restore the order.

By lack of quorum at the meeting: If **within half an hour** from the time appointed for holding a meeting of the company, a quorum is not present, the meeting (other than called upon at the request of the members) shall adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.

No business shall be transacted at an adjourned meeting other than the business **left uncompleted** of the meeting at which the adjournment took place.

Postponement of a Meeting

Postponement of a meeting implies putting off commencement of the properly convened meeting. Such postponement takes place before the time fixed for the commencement of the meeting. On many occasions, it becomes necessary not to have the scheduled meeting for which a notice has already been issued. This may be for various reasons, which are beyond the control of management. However postponement of a general meeting must be exercised objectively on valid and cogent grounds and a decision to do so must be bona fide.

Where there is a change of day, time and place of meeting, the company is required to give not less



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than 3 days' notice to the members, either individually or by publishing an advertisement in the newspapers (English & Vernacular) in the state of registered office of company.

Cancellation of a meeting:

Cancellation of a meeting refers to the situation where meeting no longer exists as such. Its proceedings are not merely suspended but exhausted.

Passing of Resolution by Postal Ballot [Section 110]

Rule 22(16) of the Companies (Management and Administration), Rules, 2014, provides as under with regard to conducting business through postal ballot.

- Alteration in the Object Clause of MOA.
- Alteration of AOA in relation to insertion of provisions which, u/s 2(68), are required to be included in the AOA of a company in order to constitute it a private company;
- Buy-Back of own shares by the company u/s 68(5).
- Issue of shares with differential rights as to voting dividend or otherwise u/s 43(a) (ii).
- Change in place of Registered office outside local limits of any city, town or village as specified u/s 12(5)
- Sale of whole or substantially the whole of undertaking of a company as specified.
- Giving loans or extending guarantee or providing securities in excess of the limit prescribed u/s 186(3).
- Election of Director' u/s 151 of the act.
- Variation of rights attached to a class of shares or debentures or other securities as specified u/s 48.
- Section 110(1)(b) further provides that a company may pass any item of business, other than ordinary business and any business in respect of which director or auditors have a right to be heard

Proviso to Rule 22 of the Companies (Management and Administration) Rules, 2014 provides that **OPC and other companies having members up to 200 are not required** to transact any business through postal ballot.

Procedure

- (1) Company shall send a notice to all the shareholders, along with a draft resolution explaining the reasons there for and requesting them to send their assent or dissent in writing on a postal ballot or by electronic means within a period of 30 days from the date of dispatch of the notice.
- (2) An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying therein, inter alia, the following matters:
- (3) The BOD shall appoint one scrutinizer.
- (4) The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
- (5) If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot including voting by electronic means, it shall be deemed to have been duly passed at a general meeting convened in that behalf.



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- (6) Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer. After the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
- (7) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than 7 days thereof;
- (8) The Scrutinizer's Report must be addressed to the Chairman and should contain details of the complete process of scrutiny.
- (9) The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company who shall preserve such ballot papers and other related papers/register safely;
- (10) The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received;
- (11) The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company;
- (12) The resolution shall be deemed to be passed on the date of declaration of its result;
- (13) The provisions regarding voting by electronic means shall apply, as far as applicable, mutatis mutandis in respect of the voting by Postal ballot.

Circulation of Member's Resolution [Sec 111]

Section 111 enables members to avail of the administrative machinery of the Company to put resolutions at their expense, in the AGM and make other members aware of the purpose behind submission of such resolutions.

In the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, **not less than 1/10th** of such PSC of the company as on that date carries the right of voting;

In the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than 1/10th of the total voting power of all the members having on the said date a right to vote.

Circumstances in which a company is not required to circulate Members' Resolution

A company shall not be bound to give notice of any resolution or to circulate any statement unless:

- A. A copy of the requisition signed by the requisitionists is deposited at the registered office of the company -
 - i. in the case of requisition requiring notice of resolution **not less than 6 weeks** before the meeting;
 - ii. in the case of any other requisition, **not less than 2 weeks** before the meeting; and
- B. This is deposited or tendered with the requisition a sum reasonably sufficient to meet the company's expenses in giving effect thereto:



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Provided that if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an AGM is called for a date **6 weeks or less** after the copy has been deposited, the copy although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited for the purposes thereof.

Penalty

The company and every officer of the company who is in default shall be liable to a penalty of Rs. **25,000**.

Resolutions [Sec 114 to 18]

The term 'resolution' has not been defined in the Companies Act, 2013. Taking the dictionary meaning, which should therefore hold good, resolution means **a formal decision** of the meeting. A motion when decided at a meeting becomes a resolution.

Motion Vs. Resolution:

“**Motions**” and “**Resolutions**” are the terms generally used interchangeably but are different. The submission of Proposal for discussion is Motion whereas adoption of decision is by the mean of resolution.

- A motion is a proposal and a resolution is the adoption of such motion duly made.
- A motion becomes a resolution only after the requisite majority decides on it.
- A motion should be in writing and signed by the mover and put to the vote at the meeting by the chairman.

In case of **GM**, only such motions are proposed which are covered by the agenda.

Types of Resolutions [Section 114]

The resolutions passed at a GM of a company can be of 2 types, namely:

- Ordinary Resolution and
- Special Resolution

Resolution requiring Special Notice [Section 115]

Section 115 provides that where, by any provision contained in this Act or in the AOA of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1 % of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules.

Important Case Laws

1. In a public Co. where the AOA require presence of six members to constitute the quorum, can the following persons be treated as members for the purpose of constituting the quorum:
 - i. X, a representative of Governor of a state,
 - ii. Y and Z, preference shareholders,



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- iii. A, representing B Ltd. And
- iv. P, Q, R and S who were proxies?

Answer:

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Q.2 Abhijeet is a shareholder of Kutumb Ltd. on receipt of notice of an annual general meeting to be held on 28th September 2004. Abhijeet issued a proxy in favour of Baljeet on 25th September 2004. Abhijeet again issued another proxy in favour of Charanjeet on 26th September 2004. Both Baljeet and Charanjeet attended the meeting on 28th September 2004. Decide who is entitled to vote on a poll.

Answer:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper has a slight shadow on the right side, suggesting it's resting on a surface.

Q.3 Amol, a non-member of Shrishti Ltd., has been appointed as a director of the company. Later on, he has become the chairman of the Co. In an annual general meeting of Shrishti Ltd., Amol presided over the meeting. Zahir, a member of the

Answer:

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.



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Appointment and Qualification of Directors

Definition and Meaning of Director

Section 2(34)→ A director appointment to the BOD of a Company.

Section 2(10)→ "Board of Directors" or "Board", in relation to a company, means the collective body of the directors of the company.

Position of directors

As Trustees

As Agents

Number of Directors: Sec 149(1)

- Every OPC shall have at least 1 director
- Every Private Company shall have at least 2 directors.
- Every Public Company shall have at least 3 directors.

A company can appoint maximum 15 directors.

Note: A company may appoint more than 15 directors after passing a special resolution in general meeting.

TYPES OF DIRECTORS

Woman Director 2nd Proviso to Sec 149(1)

Following class of companies shall appoint at least one-woman director-

- Every listed company
- Every other public company having:
 - PSC of Rs. 100 Cr. or more **OR**
 - Turnover of Rs. 300 Cr. or more

within 1 year from the date of commencement of 2nd proviso to section 149(1) of the Act.

Further if there is any intermittent vacancy of a woman director then it shall be filled up by the BOD within 3 months from the date of such vacancy or not later than immediate next board meeting, whichever is later.

Resident director Sec 149(3)

Every company shall have at least one director who stays in India **for not less than 182 days** during the financial year

Independent Director (Sec 149(4))

Every listed company shall have at least 1/3rd of the total number of directors as independent directors AND the CG may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Small Shareholder's Directors [Section 151 & Rule 7]

A **listed company** may have 1 director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.



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Small shareholder means a shareholder holding shares of **nominal value** of not **more than Rs. 20,000/-** or such other sum as may be prescribed.

Conditions

- Notice shall be given by at-least 1000 OR $1/10^{\text{th}}$ of total no. of small shareholders, (w.i.L).
- Such notice shall be given to company at least 14 days before the meeting.
- The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholder's director stating -
 - a) His DIN.
 - b) That he is not disqualified to become a director under the Act.
 - c) His consent to act as a director of the company.
- Tenure = Max 3 years and he shall not be liable to retire by rotation & shall not be eligible for re-appointment.
- Simultaneously he shall not hold the office of small shareholders' director in more than 2 companies. If 2nd company is in competitive business or is in conflict with business of the 1st company, then he shall not be appointed in 2nd company.
- He shall directly or indirectly not be appointed or associated in any other capacity with the company for a **period of 3 years** from the date of cessation as a small shareholder's director.
- If he fulfils the criteria of independent director as per Sec 149(6) then, he may be treated as independent director.

Appointment of Directors Sec 152

Directors may be appointed in the following ways:

1. By subscribers to the memorandum. (sec 152)
2. By members in General Meeting (Sec 152,160,163)
3. By Board of directors (Sec 161)
4. By small shareholders if the articles provide (sec 151)
5. Director appointed by National Company Law Tribunal. u/s 242 [notified]

Appointment of First Directors

- ✓ The first directors of a company may be named in its AOA.
- ✓ In case no directors are so named in the AOA, the AOA may authorize the subscribers to the MOA to appoint the 1st directors.
- ✓ Regulation 60 of table F of schedule I provides that the number of directors and the names of 1st directors shall be determined in writing by the subscribers of the MOA or a majority of them.
- ✓ In the absence of any such provision in AOA, the subscribers to the MOA, who are individuals, shall be deemed to be the first directors of the company until the subsequent directors are duly appointed.
- ✓ In case of OPC, an Individual, shall be deemed to be its 1st director until the director or directors are duly appointed by the member u/s152.

Appointment of Subsequent Directors

Unless the AOA provide for the retirement of all directors at every AGM,
Not less than 2/3rd of the total no. of directors of a public company shall-



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- i. Be person whose period of office is liable to determination by retirement of directors by rotation (i.e., only 1/3rd can be non-retiring directors); and
- ii. Save as otherwise expressly provided in this Act, be appointed by the company in GM.

The remaining directors (i.e., non-rotational/non-retiring/Permanent directors) in the case of public company shall be appointed as per the provisions contained in the AOA of the company.

At the 1st AGM held next after the date of GM at which the 1st directors are appointed in accordance with aforesaid provisions and at every subsequent AGM, 1/3rd of the rotational directors shall retire at every AGM, OR

As between persons who become directors on the same day, retirement, in the absence of an agreement, will be determined by lot.

Where a director retires by rotation at the AGM of a company, the company at the same meeting may appoint:

- i. The retiring director or
- ii. Some other person in the vacancy.

Note: If the AGM of the company is not held or cannot be held, the directors due to retire by rotation shall retire on the last day on which the AGM should have been held.

Appointment of Person as a Director, who is not a Retiring Director [Sec 160 & Rule 3]

- ✓ A written notice at least 14 days before the meeting by him or any member who intend to propose his appointment.
- ✓ A deposit of Rs. 1 lakh shall be deposited.
- ✓ Notice to other members at least 7 days before meeting.
- ✓ If proposed director get elected OR get more than 25% of total valid votes cast, deposit shall be refunded. Otherwise, the aforesaid deposit shall be forfeited by the company.
- ✓ Provided that requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the NRC, or a director recommended by BOD of co.

Appointment of Directors by the Board [Sec 161]

Appointment of Additional Directors [Section 161 (1)]

- The BOD may, **if authorized by AOA**, appoint additional directors.
- Such additional Director shall hold office **only up to the date of ensuing AGM**.
- If such a person, while he was the additional director of a company, had been appointed the MD, the latter appointment also ceases simultaneously with the termination of his directorship, if such appointment is not regularized at the AGM.

Note: A person who **fails to get appointed** as a director in a general meeting **cannot be appointed as the Additional Director**.

Alternate Director [Section 161 (2)]



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The BOD can appoint, **if the AOA or member's resolution so authorizes**, an alternate director to act **in place of director during his absence for at least 3 months from India**.

An alternate director **shall not hold office for a period longer than that permissible to the original director & Shall vacate** the office if and when the director in whose place he has been appointed **returns to India**.

Note: If the term of office of the **original director is determined before he so returns to India**, any provision for the **automatic re-appointment** of retiring directors in default of another appointment **shall apply to the original and not to the alternate director**.

Appointment of Nominee Directors [Section 161 (3)]

Subject to the AOA of a company, the **Board may appoint any person as a director nominated by any institution** in pursuance of the provision of any law for the time being in force or of any agreement or by the CG or the SG by virtue of its shareholding in a Government Company.

Appointment of Director to fill Casual Vacancies [Section 161 (4)]

If the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may in default of and subject to any regulations in AOA be **filled by the BOD at a Board Meeting** which shall be subsequently approved by members in the immediate next GM.

It means resolutions to fill casual vacancy must be passed at the Board Meeting only & not by circulation.

The person so appointed to fill the casual vacancy will hold office until the expiry of the period for which the outgoing director would have held office; if it had not been vacated.

Note: It may be noted that this provision of Section 161 (4) does not apply to private company.

Appointment of Directors to be voted on Individually [Sec 162]

1. 2 or more directors should not be elected "En-bloc" or by a single resolution.
2. At general meeting of a company, a motion shall not be made for the appointment of 2 or more persons as directors of the company by a single resolution, unless a resolution that it shall be made has first been agreed to, in meeting without any vote being cast against it.
3. Resolution in contravention shall be void, whether or not objection was taken at the time of its being so moved.
4. The provisions of this section are not applicable on private companies.

Option to Adopt Principle of Proportional Representation [Section 163]

A company may provide in its AOA for the appointment of **not less than 2/3 of the total number of its directors according to the principle of proportional representation**, whether by single transferable vote or by a system of cumulative voting or otherwise, the **appointments being made once in 3 years** and interim casual vacancies being filled in accordance with the provisions, mutatis mutandis, of Section 161 (4) of the Act.

The directors appointed according to this principle hold office for 3 years and **cannot be removed**

by the company in general meeting u/s 169.

Procedure for Application for Allotment of DIN [Section 153 and Rule 9]

1. Application in Form DIR-3 to the CG for the allotment of a DIN.
2. (a) The applicant shall download Form DIR- 3 from the portal, fill in the required particulars and with attachments & duly signed by PCS/PCA/PCA.
3. The CG shall, **within 1 month** from the receipt of the application u/s 153, allot a DIN to an applicant in prescribed manner.

Companies (Appointment and Qualification of Directors) fourth Amendment Rules, 2018 (2018)

Rule 12A - Directors KYC:-

As per the rule, “every individual who has been allotted a DIN as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year.

Provided that every individual who has already been allotted a DIN as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October, 2018.”

Provided further that where an individual who has already submitted e form DIR 3 KYC for previous FY, submits web form DIR-3 KYC WEB through the web service in relation to subsequent FY it shall be deemed to be compliance of the provisions of this rule for the said FY.

Provided also that in case an individual desire to update his personal mobile no. or the mail ID, he shall update it by submitting e form DIR 3 KYC only;

Provided also that fees shall be as prescribed in co. (Registration office and Fees) Rules 2014.

Rule 12B: Directors of company required to file E form ACTIVE –

1. Where a co. governed by Rule 25 A of co.(incorporation) Rules 2014, fails to file the ACTIVE form within prescribed time period, the DIR of such directors shall be marked as “Director of ACTIVE non-compliant company”.
2. Such marked director shall take all necessary steps to ensure that all relevant companies where such director has been appointed, file E-Form ACTIVE.
3. After all the companies file the ACTIVE form, the DIN of such director shall be marked as “Director of Active compliant company”

Disqualifications of Director (Sec 164)

Section 164 (1)& Rule 14

A person shall not be eligible for appointment as a director or a company, if –

- a. He is of unsound mind and stands so declared by a competent court.
- b. He is an undischarged insolvent.
- c. He has applied to be adjudicated as an insolvent and his application is pending.
- d. He has been convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not been lapsed from the date of expiry of sentence.



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Note: However, if a person has been sentenced to imprisonment for not less than 7 years, he shall not be eligible to be appointment as a director in any company forever.

- e. An order disqualified him for appointment as director has been passed by a Court or NCLT and the order is in force.
- f. He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with other, and six months have elapsed from the last day fixed for the payment of the call.
- g. He has been convicted of the offence dealing with Related Party Transactions u/s188 at any time during the last preceding five years.
- h. He has not got the DIN.
- i. he accepts directorships exceeding the maximum number of directorships provided in section 165. (2018)

Section 164(2) provides that no person who is or has been a director of a company which-

- a. Has not filed FS or AR for any continuous period of 3 FY OR
- b. Has failed to repay the deposits accepted by it OR
- c. Pay interest thereon OR
- d. To redeem any debentures on the due date OR
- e. Pay interest due thereon OR
- f. Pay any dividend declared And

Such failure to pay or redeem continuous for 1 year or more, shall be eligible to be re-appointment as a director of that company or Appointment in other company for a period of 5 years from the date on which the said company fails to do so.

Provided that where a person is appointed as a director of a company which is in default, he shall not incur the disqualification for a period of 6 months from the date of his appointment.";

Section 164(3)

A Private Company may, by its AOA, provide that a person shall be disqualified for appointment as a director on any grounds in addition to those specified in Section 164(1) & (2).

Proviso to Sec 164(3)

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

Rule 14 of Companies (Appointment and Qualification of Directors) Rules, 2014

- Disqualified Director shall inform to the concerned company in **DIR-8** before he is appointed or re- appointed.
- Whenever a company fails to file the FS or AR or fails to repay any deposit or to pay interest, dividend or fails to redeem its debentures the company shall immediately file **Form DIR-9** furnishing therein the names and address of all the directors of the company during the relevant FY.
- But when a company fails to file the form **DIR-9** within **30 days** of the failure it would



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attract the disqualification u/s 164(2).

- Upon receipt of the **DIR-9** the ROC shall immediately register the document and place it in the document file for public inspection.
- Any application for removal of disqualification of directors shall be made in Form **DIR-10**

Number of Directorships [Section 165]

1. **No person**, after the commencement of this Act, shall hold office as a **director, including any alternate directorship, in more than 20 companies** at the same time.
Provided that the **maximum number of public companies** in which a person can be appointed as a director shall **not exceed 10**.
Note: For reckoning the limit of public companies in which a person can be appointed as a director, directorship in **private companies that are holding or subsidiary company of a public company shall be included**.
For reckoning the limit of directorship in 20 companies, directorship in Dormant co. shall not be included.
2. However, the members of a company may, by **special resolution, specify any lesser number of companies in which a director** of the company **may act** as directors.
3. **Any person holding office as director in companies more than the limits**, immediately before the commencement of this Act, shall, **within 1 year from such commencement: -**
 - ❖ **Choose not more than the specified limit** of those companies, as companies in which he wishes to continue to hold the office of director;
 - ❖ **Resign his office** as director in the other remaining companies; and
 - ❖ **Intimate the choice made by him, to each of the companies** in which he was holding the office of director before such commencement and to the ROC having jurisdiction in respect of each such company.
4. Any **resignation** made, shall become **effective immediately** on the dispatch thereof to the company concerned.
5. **No such person shall act as director in more than the specified number of companies-**
 - **After dispatching the registration** of his office as director or non-executive director thereof;
 - OR
 - **After the expiry of 1 year from the commencement of this Act, whichever is earlier.**

If a person accepts an appointment as a director in **contravention**, he shall be punishable with **fine** which shall **not be less than Rs. 5,000 but which may extend to Rs. 25,000** for every day after the first during which the contravention continues.

Vacation of office of Directors [Section 167]

- 1) **The office of a director shall become vacant in case-**
 - a) He incurs any of the disqualifications specified u/s 164;
 - b) He absents himself from all the Board Meetings held during a period of 12 months.
 - c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested.
 - d) He becomes disqualified by an order of a court or the Tribunal.
 - e) He is convicted by court of any offence, whether involving moral turpitude or otherwise & sentenced to imprisonment for not less than 6 months:



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Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) & (f):

- i) For 30 days from the date of conviction or order of disqualification;
 - ii) Where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of 7 days from the date on which such appeal or petition is disposed of; or
 - iii) Where any further appeal or petition is preferred against order or sentence within 7 days, until such further appeal or petition is disposed of.
- f) He is removed in pursuance of provision of Co. Act 2013.

Punishment = Imprisonment for up-to 1 year **OR fine** Minimum Rs. 1,00,000/- Max up-to Rs. 5,00,000/- or with both.

Note: A director who has resigned shall be liable even after his resignation for the offence which occurred during his tenure.

Removal of Directors [Section 169]

- The shareholders of a company may, by passing an **Ordinary Resolution**, remove a director before the expiry of his tenure.
- A special notice shall be required of the intention to move any resolution for the removal of a director not less than clear 14 days before the meeting.
- On receipt of the notice, the company shall forthwith send a copy of the same to the director concerned and, such director is entitled to be heard on the resolution at the GM.
- Where the notice is received well in advance, the company can conveniently send the notice of the resolution to the members by including the same in the notice of GM. Otherwise, the company has to notify the same by way of 2 newspapers advertisement, at least 7 days before the meeting.
- Where the director makes representations in writing to the company and request for circulation of the same to the members, the company is duty bound to do so, unless it is received by it too late.
- If a copy of the representations is not sent to the members as aforesaid because they were received too late or because of the company's default, the direction may require that the representations shall be read out at the meeting.
- However, a copy of the representations shall neither be sent to members nor be read out at the meeting, if on the application, either of the company or of the aggrieved party, the NCLT is satisfied that the rights so conferred are being abused to secure needless publicity for defamatory matter.
- The company shall, in its GM, discuss the proposal and pass the necessary resolution.
- The vacancy caused by such removal may be filled at the same meeting; provided special notice of the proposed appointment has also been given. If the vacancy is not filled at the meeting, it may be filled by the Board as a casual vacancy. However, the director who has been removed shall not be appointed.
- The director so appointed shall hold office till the removed director could have held office, had he not been removed.

Important Case Laws

-
- This image shows a blank sheet of white paper with horizontal blue or grey ruling lines, typical of notebook paper. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

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Answer:

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MEETING OF BOARD AND ITS POWERS

Board Meeting and Essentials of a valid Board Meeting [Section 173 to 176]

To constitute a valid Board Meeting, there are certain conditions, which have to be complied with.

- Proper constitution of the Board of Directors.
- Due notice must have been issued by an authorized person.
- Presence of a properly elected or chosen person in the chair.
- Proper quorum must be present for due transaction of business.

Number of Board Meetings

[Sec 173(1) & (5) Read with [Rule 3 and 4]

- Every company,
- Private or Public,

Shall hold the 1st Board Meeting within 30 days DOI.

And

Thereafter hold a minimum number of **4 Board Meeting every year**. There should not be gap of more than 120 days between 2 consecutive Board meetings.

A OPC, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least 1 meeting of the Board has been conducted in each half of a calendar year and the gap between the 2 meetings is not less than 90 days:

Provided that nothing contained in this sub-section and in section 174 shall apply to OPC in which there is only one director on its Board of Directors. (2018)

An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting. [SS 1]

MEETINGS OF THE INDEPENDENT DIRECTORS:

Where a company is required to appoint Independent Directors under the Act, such **Independent Directors shall meet at least once in a Calendar year**.

CONVENING A MEETING SS - 1

Any **Director of a company may, at any time, summon a Board Meeting** and the CS or any authorized person, shall convene Board Meeting, in consultation with the Chairman or in his absence, the MD or in his absence, the WTD, where there is any, unless otherwise provided in the AOA.

DAY, TIME, PLACE, MODE AND SERIAL NUMBER OF MEETING:

- Every Meeting shall have a serial number.
- A Meeting may be convened at **any time and any place, on any day**.



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Notice of Board Meeting [Section 173(3) & (4)]

- ✓ Notice of Board Meeting shall be **at least 7 days** before BM.
- ✓ Shall be in writing.
- ✓ To Every Director at his registered address, by hand delivery or post or by E-mode.
- ✓ In case of shorter notice, at least **1 Independent Director** shall be present at the meeting. If he is not present, then Decision of meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least **1 Independent Director**.
- ✓ Every authorised officer who fails to do so, **shall be punishable with fine up to Rs. 25,000/-**

NOTICE OF BOARD MEETING as per SS - 1

Notice, Agenda and Notes of Agenda in writing of every Meeting shall be given to EVERY DIRECTOR by following ways

- By hand or by Speed Post or by Registered Post or
- By Courier or by fax or by Email or by any other electronic mode.
- **In case the company sends the Agenda and Notes on Agenda by speed post or by registered post or by courier, an additional 2 days shall be added for the service of Agenda and Notes on Agenda.**
- **Where a Director specifies a particular means of delivery of Notice, the Notice shall be given to him by such means. However, in case of a Meeting conducted at a shorter notice, the Company may choose an expedient mode of sending notice.**
- **Proof of sending Notice and its delivery shall be maintained by the company for such period as decided by the Board, which shall be at least 3 years from the date of the Meeting.**
- Notice shall be issued by CS/Director/any other authorized officer.
- **Notice shall be sent even if meeting is held on pre-determined dates or at pre-determined intervals.**
- **Notice on items of business which are in the nature of unpublished price sensitive information may be given at a shorter period of time but only with consent of a majority of the directors, which shall include at least 1 Independent Director.**
- **Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting.**

The decision taken in respect of any other item shall be final only on its ratification by a majority of the Directors of the company, unless such item was approved at the Meeting itself by a majority of Directors of the company.

Quorum of Board Meeting [Sec 174]

Section 174 states that-

1. The quorum for Board Meeting shall be $\frac{1}{3}^{\text{rd}}$ (any fraction contained in that $\frac{1}{3}^{\text{rd}}$ being rounded off as 1) of its total strength or 2 Directors (whichever is higher) **AND**



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2. The participation of the directors by video conferencing or by other audio visual means also shall be counted for the purpose of quorum.
3. The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or directors may act for the purpose of increasing the number of directors to that fixed for the quorum OR of summoning a GM of the company and for no other purpose.
4. Where at any time the number of interested directors $\geq 2/3^{\text{rd}}$ of the total strength of BOD, the number of directors who are not interested directors and present at the meeting, being not less than 2 shall be the quorum during such time.

In case of Private Company, interested director shall be counted for quorum after disclosure of his interest pursuant to section 184. (2018)

Note: In case of board meetings, Quorum is required throughout the meeting.

CHAIRMAN OF BOARD MEETING [Reg 70 of Table F & SS – 1]

1. The Chairman of the Board shall conduct the Board Meeting. If no such Chairman is elected or if the Chairman is unable to attend the Meeting, the Directors present at the Meeting shall elect one of themselves to chair and conduct the Meeting, unless otherwise provided in the AOA
2. **If the Chairman is interested in an item of business, he shall, with the consent of the members present, entrust the conduct of the proceedings in respect of such item to any Non-Interested Director with the consent of the majority of Directors present and resume the chair after that item of business has been transacted. However, in case of a private company, the Chairman may continue to chair and participate in the Meeting after disclosure of his interest.**
3. **If the item of business is a related party transaction, the Chairman shall also not be present at the Meeting, whether physically or through Electronic Mode, during discussions and voting on such items.**

Casting Vote of Chairman

Regulation 68 of Table F of Schedule I to the Companies Act, 2013 provides that in the case of an equality of votes, the Chairman of the Board shall have a second or casting vote.

Resolution by Circulation [Section 175 Read with Rule 5& SS 1]

The Act requires certain business to be approved **only at Meetings of the Board**. However, other **business that requires urgent decisions can be approved by means of Resolutions passed by circulation**. Resolutions passed by circulation are deemed to be passed at a duly convened Board Meeting and have equal authority.

- **It shall be** approved by a majority of the directors, who are entitled to vote on the resolution.
- However, where **not less than $1/3^{\text{rd}}$ of the total number of directors** of the company for



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the time being require that any resolution under circulation must be decided at a meeting, the Chairperson shall put the resolution to be decided at a Board Meeting.

Validity of Acts of Directors [Sec 176]

Acts done by a person, as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the AOA:

Provided that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been noticed by a company to be invalid or to have terminated.

Meeting not to be dealt in a meeting through video conferencing or other Audio-Visual Means

Directors may participate in the meeting either in person or through video conferencing or other audio visual means.

Rule 4, however, provides that the following matters shall not be dealt with any meeting through video conferencing or other audio visual means.

- The approval of the annual financial statements.
- The approval of the Board's report.
- The approval of the prospectus.
- The Audit Committee Meeting for consideration of accounts.

The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

As per the Companies (Meetings of Board and Its Powers) Amendment Rules, 2018, Dated: 07-05-2018, the following proviso has been inserted, namely:

“Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.” (2018)

Committees of Board

Audit Committee of Directors [Section 177]

1. The requirement of constitution of Audit Committee has been limited to:
 - a. Every **listed public Companies** or
 - b. The following **class of unlisted companies**-
 - All public companies with a PSC $\geq$ Rs. 10 Cr.
 - All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits $\geq$ Rs. 50 Cr.
 - All public companies having turnover $\geq$ Rs. 100 Cr.
2. The Committee shall comprise of **minimum 3 directors with majority of the directors being Independent Directors**. The majority of members of audit committee including its chairperson shall be person with ability to read and understand the financial statement.

Nomination and Remuneration Committee (NRC) [Section 178(1) to (4)]



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The Board of directors of following companies shall constitute NRC of the Board:

- **Every listed Public companies or**
- **The following class of Unlisted Public Companies-**
 - ✓ All public companies with a PSC ≥ 10 Cr.
 - ✓ All public companies having in aggregate, outstanding loans or borrowings or debentures of deposits $\geq$ Rs. 50 Cr.
 - ✓ All public companies having turnover $\geq$ Rs. 100 Cr.

The committee shall consist of 3 or more Non-Executive Director out of which not less than **half** shall be independent directors.

Note: The chairperson of the company may be appointed as member, but shall not chair such committee.

Stakeholders Relationship Committee (SRC) [Section 178 (5) to (8)]

- ✓ The BOD of a company that has more than 1000 shareholders, debenture-holders, deposit- holders and any other security holders at any time during a financial year is required to constitute a SRC consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.
- ✓ The Chairperson of the SRC or in his absence, any other member of the committee authorized by him in his behalf shall attend the general meeting of the company.

General Powers of Board [Section 179 (1) and (2)]

Subject to the provisions of the Companies Act, the **Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts** and things, as the company is authorized to exercise and do any act or thing which is directed or required, whether by this or any other Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

The **relationship** of the Board of directors with the **shareholders is more of federation than one of sub- ordinate and superior.**

In the following exceptional cases, the general body of shareholders is competent to act even in matters delegated to the Board, for the inherent residuary and ultimate powers of a company lie with the general body of shareholders:

1. **Director acting mala fide**
2. **Incompetent Board**
3. **Deadlock in management**

Certain Powers to be Exercise by Board only at a Board Meeting [Section 179 (3) and (4)]

Board of directors of a company shall exercise the following powers on behalf of the company, and it shall to do so only by means of resolution passed at the meetings of the Board and not by circulation: -



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- a. To make calls on shareholders in respect of money unpaid on their shares.
- b. To authorize buy-back of securities u/s 68.
- c. To issue securities, including debentures, whether in or outside India.
- d. To borrow monies.
- e. To invest the funds of the company.
- f. To grant loans or given guarantee or provide security in respect of loans.
- g. To approve financial statement and the Board's report.
- h. To diversity the business of the company.
- i. To approve amalgamation, merger or reconstruction.
- j. To take over a company or acquire a controlling or substantial stake in another company.
- k. Any other matter which may be prescribed.

Section 179(4)

Empowers the **company in general meeting to impose restrictions** and conditions on the exercise by the **Board** of any of the **powers** specified above.

Other Powers to be exercised at Board Meeting [Rule 8 of Companies (Meeting of Board and its powers) Rules, 2014]

The following powers shall also be exercised by the BOD only by means of resolutions passed at meetings of the Board:

- a. To make **political contributions**.
- b. To **appoint or remove KMP**.
- c. To appoint **internal auditors** and **secretarial auditor**.

Restriction of powers of Boards [Section 180]

1. The BOD of a company shall exercise the following powers only with the consent of the company by a SR, namely: -
 - a. To sell, lease or otherwise dispose of the whole or substantially the whole of the **undertaking** of the company or where the company owns more than one undertaking of the whole or substantially the whole of any of such undertakings.
Here -
 - **Undertaking** = in which the investment of the company exceeds 20% of its net worth **OR**
Which generates 20% of the total income of the company;
 - b. To invest otherwise in trust securities, the amount of compensation received by it as a result of any merger or amalgamation.
 - c. To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its PSC + Free Reserves + Security Premium, apart from temporary loans (to be paid within 6 months) obtained from the company's bankers in the ordinary course of business.
 - d. To remit, or give time for the repayment of any debt due from a director.
2. Every special resolution passed by the company in general meeting shall specify the total amount up to which monies may be borrowed by the Board of Directors.
3. Nothing contained in clause (a) of sub-section (1) shall affect-

- The title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith.
- OR
- The sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.
4. Any **special resolution** passed by the company consenting to the transaction, may stipulate such conditions as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transaction.

No debt incurred by the company in excess of the limit imposed shall be valid or effective, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed by that clause has been exceeded

This section is not applicable on Private Companies.

Company to Contribute to Bona Fide and Charitable Funds [Sec 181]

The BOD may contribute to bona fide charitable and other funds. However, prior permission of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, exceeds 5% of its average net profits for the 3 immediately preceding FY.

Prohibitions and Restrictions Regarding Political Contributions [Sec 182]

- Government companies and other companies, which have been in existence for less than 3 FY, cannot make any contribution to political party.
- Thus, other Companies which are in existence for not less than 3 FY may make contributions **of any amount** (by Finance Act 2017), directly or indirectly, in any FY, to any political party.

Power of Board to make Contributions to National Defence Fund etc. [Sec 183]

The BOD of any company may contribute such amount as it thinks fit to the National defence fund or any other Fund approved by the CG for the purpose of national defence.

Disclosure of interest by Director [Section 184 read with Rule 9]

1. Every director shall at the 1st BM in which he participates as a director and thereafter at the 1st BM in every FY or whenever there is any change in the disclosures already made, then at the 1st BM held after such change disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding in prescribed manner.
2. A **contract or arrangement** entered into by the company without disclosure or with participation by a director who is concerned or interested in any way directly or indirectly in the contract or arrangement **shall be voidable at the option of the company**.



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3. If a director of the company contravenes, such director shall be punishable with imprisonment for a term which may extend to **1** year or with fine which shall not be less than Rs. 50,000 but which may extend to Rs. 1 Lakh, or with both.

Rule 9 provides that every director shall disclose his concern or interest in any company or companies or bodies corporate (including shareholding interest), firms or other association of individuals, by giving a notice in writing in **Form MBP 1**.



Loan to Directors (Sec 185)

No company shall

Directly or indirectly

* Advance any loan (including loan on Book debt)

* Give guarantee

* Provide any security

Taken by-

a) Any Director of Company
Holding Co. of Co.

b) His Relative or partner

c) Any firm in which he or his relative is partner.

Irrespective of provisions of (1) & (2)
A Co. can give loan

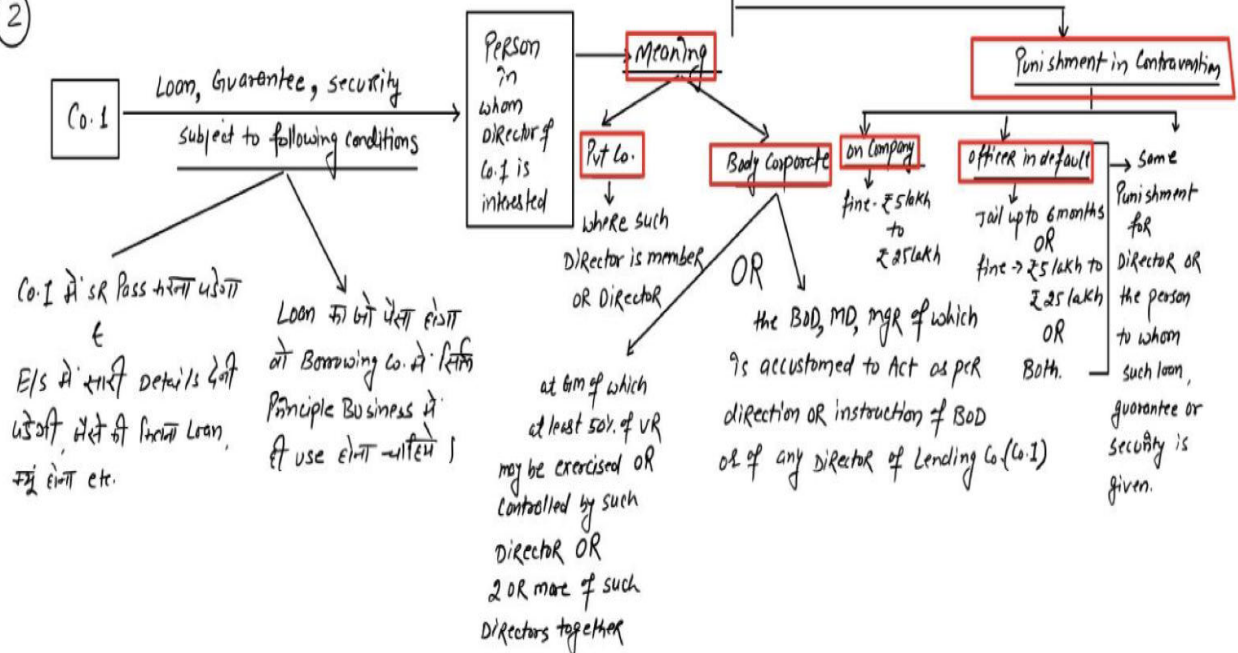
→ To MD/WTG, as a part of service extended to all empls.
OR
Pursuant to any scheme approved by SR.

→ In ordinary course of business, and interest is charged at least the rate of prevailing yield of 1YR, 3YR, 5YR, 10YR Govt Sec closest to tenure of loan.

→ made by Holding Co. to WOS, or guarantee or security.

→ guarantee by H.C to BANK/FI for loan to its subsidiary Co., subject to condition that such loan shall be used by such Co. for its principle Business.

(2)

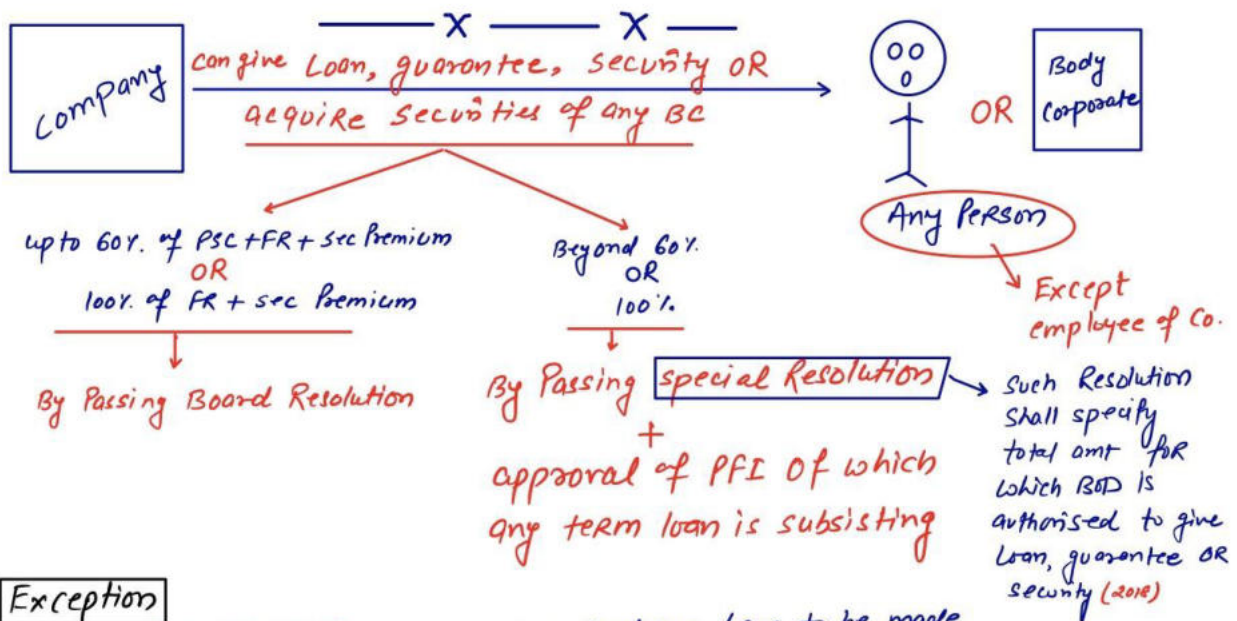


Sec 186

(Unless otherwise provide)

A Co. may acquire any Co. incorporated outside India even if such Co. has investment subsidiaries beyond 2 layers

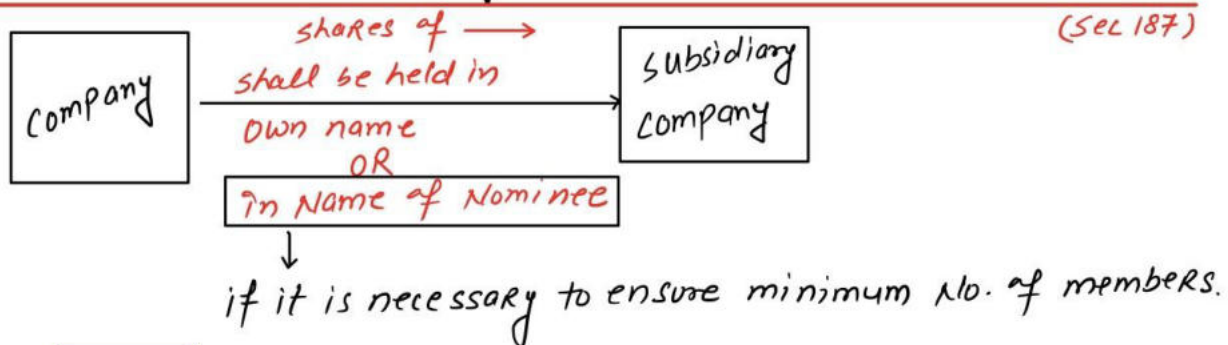
A subsidiary Co. may acquire any investment subsidiary to meet the requirement of any Law, Rule or Regulation.



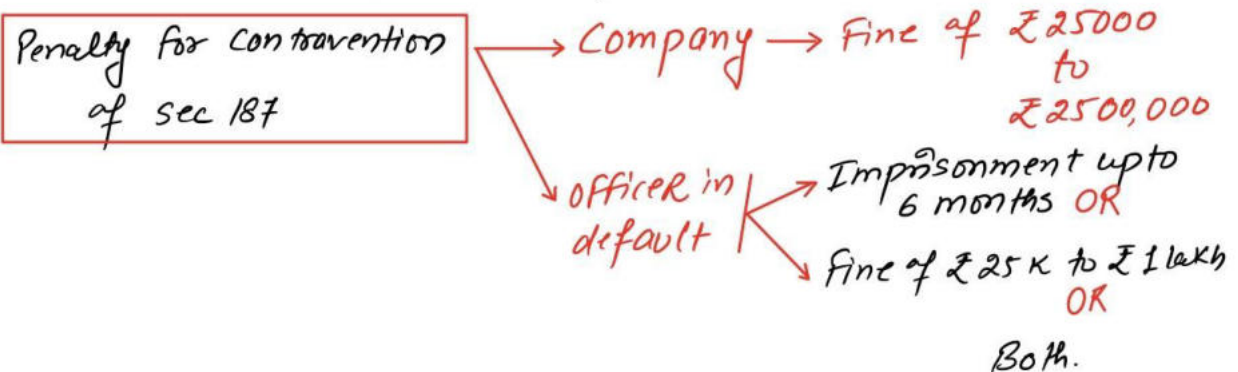
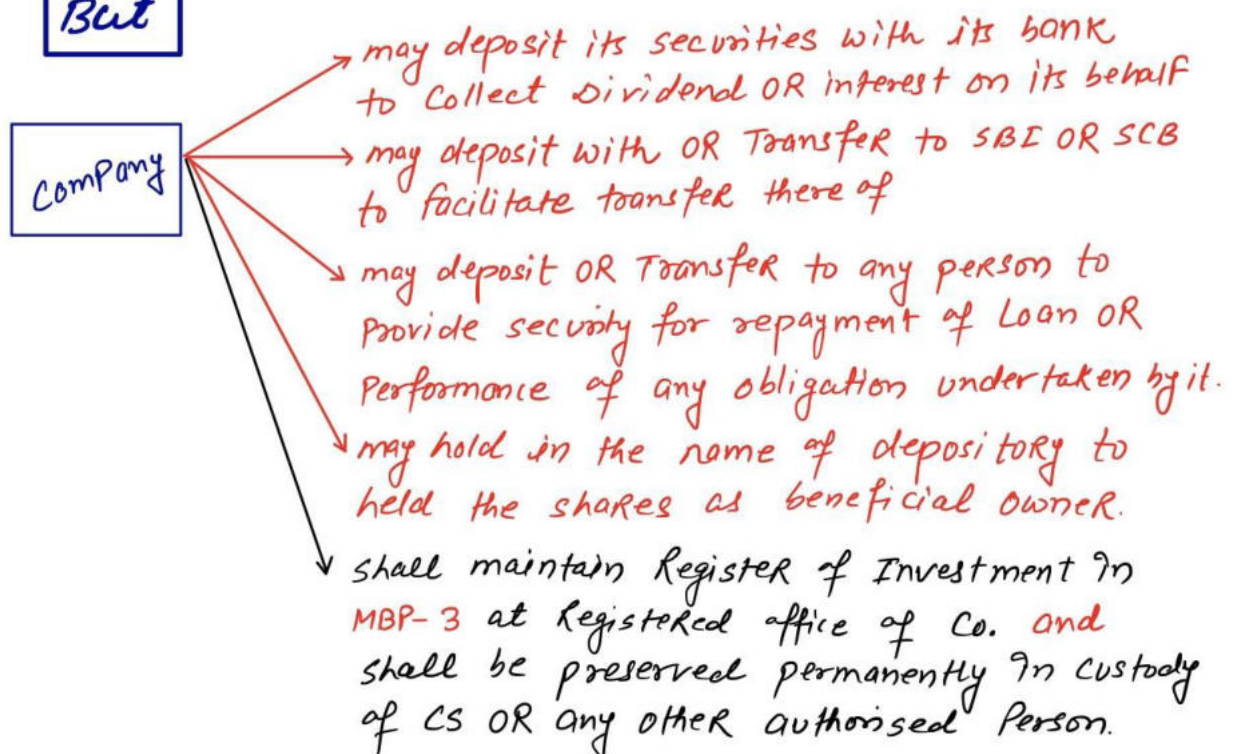
Exception

- ① H.C. $\xrightarrow{\text{Loan, guarantee security}}$ WOS But disclosure have to be made in financial statement
- ② Loan Guarantee Security] By
 - Banking Co.
 - Insurance Co.
 - Housing Finance Co.
 - A Co. engaged in financing industrial enterprise] $\rightarrow$ In ordinary course of Business
- ③ To an Investment $\rightarrow$
 - By Investment Co.
 - In shares allotted u/s 62(1)(a) OR Right Issue
 - In respect of investment or lending by NBFC whose principal Business is acquisition of security.

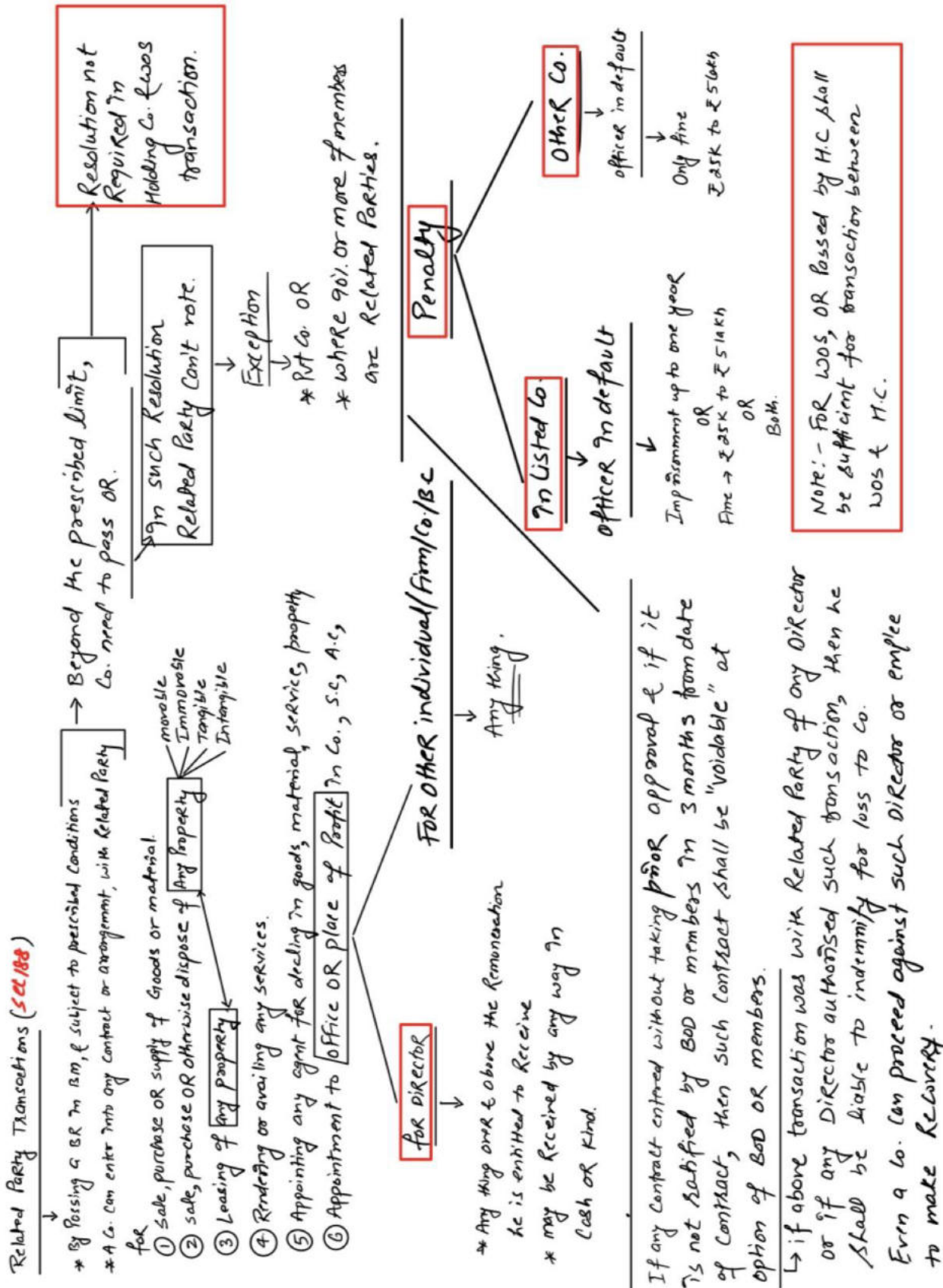
Investment of Company to be held in its own Name



But







When prior approval of company by ordinary resolution is required for related party transaction [Rule 15 of companies (Meeting of Board and its Powers) Rules, 2014]

For the purpose of first proviso to section 188(1), except with the prior approval of the company by an ordinary resolution-

(1) A company shall not enter into a transaction, where the transaction or transactions to be entered into-

(a) As contracts or arrangements, with criteria, as mentioned below-

- i. Sale, purchase or supply of any goods or material directly or through appointment of agents exceeding 10% of the annual turnover ~~or Rs. 100 crore, whichever is lower.~~
- ii. Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agent, **exceeding 10%** of net worth of the company ~~or Rs. 100 crore, whichever is lower;~~
- iii. Leasing of property of any kind exceeding 10% of the net worth or ten percent of turnover ~~or Rs. 100 crore, whichever is lower;~~
- iv. Availing or rendering of any services directly or through appointment of agents exceeding 10% of turnover of the company ~~or Rs. 50 Crore, whichever is lower.~~

Above changes are made by co. (Meeting of Board and its powers) Amendment Rules 2019

Note: The above limits shall apply for transaction or transactions to be entered into either individually or taken together with the previous transaction during the FY.

(b) Appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding Rs. 2.5 Lakh; **OR**

(c) Remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent of the net worth.

Meaning of 'Related Party'

The term 'Related Party' has been defined u/s 2(76) of the Companies Act, 2013. As per this, 'related party'; with reference to a company, means-

- i. A director or his relative.
- ii. A key KMP or his relative;
- iii. A firm, in which a director, manager or his relative is a partner;
- iv. A private company in which a director or manager or his relative is a member or director;
- v. A public company in which a director or manager is a member or director and holds along with his relatives, more than 2 % of its PSC;
- vi. Anybody corporate whose BOD, MD or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- vii. Any person on whose advice, directions or instructions a director or manager is accustomed to act:

Provided that nothing in sub-section (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

viii. Any company which is-

- a. A holding, subsidiary or an associate company of such company; or
- b. A subsidiary of a holding company to which it is also a subsidiary;



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ix. Such other person as may be prescribed.

Meaning of 'Relative'

The term 'Relative' has been defined under Section 2(77) of the Companies Act, 2013.

As per this a person shall be deemed to a relative of another if, and only if,-

- They are the members of HUF.
- They are husband and wife.

A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:

- Father (includes step-father).
- Mother (includes step-mother).
- Son (includes step-son).
- Son's wife
- Daughter
- Daughter's husband
- Brother (includes step-brother)
- Sister (includes step-sister)

Register of Contracts or Arrangements in which Directors are Interested

Section 189 read with Rule 16

- Every company is required to keep one or more registers in **Form MBP-4** giving separately the particulars of all contracts or arrangements to which Section 184 or Section 188 applies.
- Such register is required to be placed before the next Board Meeting, whenever a new entry is made in this Register, and shall be signed by all the directors present at the meeting.
- Every director within 30 days of his appointment or relinquishment is required to disclose his concern or interest in other associations, which are required to be included in the register.
- The register be kept at the registered office of the company and also open for inspection during business hours.



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Appointment and Remuneration of KMP

Definition of Key Managerial Personnel (KMP) Section 2 (51)

In relation to a company, KMP means-

- The CEO or the MD or the Manager.
- The CS.
- The WTD.
- The CFO.
- Such other officer as may be prescribed.

Managing Director Section 2(54)

- 1) A 'Managing Director' means a **director who is entrusted with substantial powers of management.**
- 2) The **administrative acts of a routine nature** such as affixing common seal, if any, draw and endorse any cheque or negotiable instrument, signing share certificates, etc. **are excluded from the sphere of substantial powers** to be exercised by the MD.
- 3) **A person has to be a director before he can be appointed MD.**
Therefore, if a co. wants to appoint a person as MD who is not a director of the co., he has first to be appointed as an **additional director**.

WTD [Section 2(94)]

It provides that a "whole-time director" includes a director in the whole-time employment of a co.

- 1) This means that any person, who is a part- time director of the co. as well as in the full time employment of the co. in some other capacity, shall be considered as a WTD.
- 2) WTD's devote their entire time and attention to the business and affairs of the Co. They cannot accept the office of WTD in any other Co.
- 3) They may however, accept ordinary (Part Time) directorships in other companies, within the prescribed limits.
- 4) It may further be noted that a person has to be a director before he can be appointed WTD.

Manager [Section 2(53)]

An individual who, subject to the superintendence, control and direction of the BOD, has the management of the whole or substantially the whole of the affairs of a co., and includes a director or any other person occupying the position of a manager, by whatever name called, and whether under a contract of service or not.

APPOINTMENT OF MD, WTD OR OF MANAGER

Section 196 of Companies Act, 2013 read with Rule 3

- 1) No co. shall appoint or employ at the same time a MD and a Manager.
- 2) No co. shall appoint or re-appoint any person as its MD, WTD or manager for a term exceeding 5 years at a time.
Provided that no re-appointment shall be made earlier than 1 year before the expiry of his term.
- 3) No Co. shall appoint or continue the employment of any person as MD, WTD or manager who-



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- a) Is below the age of 21 years
Or
- b) Has attained the age of 70 years.

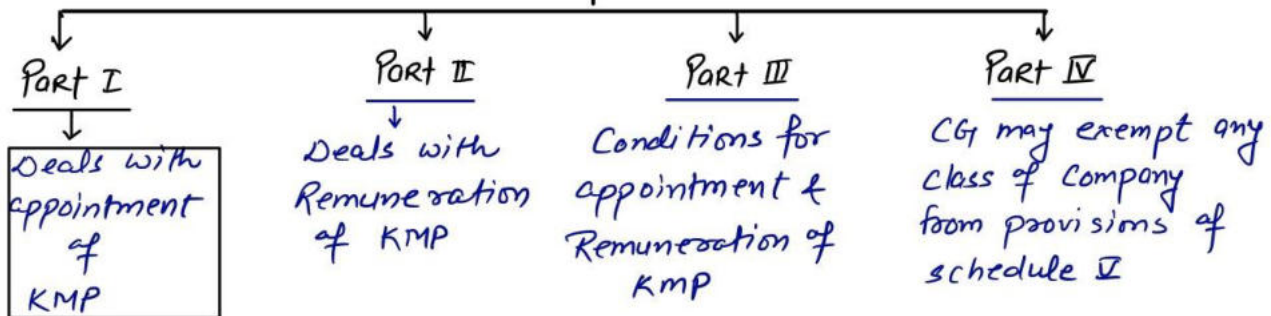
Provided that appointment of a person who has attained the age of 70 years may be made **by passing a special resolution.**

Rule 3 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014

A co. shall file a return of appointment of MD, WTD or Manager, CEO (CEO), CS and CFO within **60days** of the appointment, with the ROC in **Form No. MR.1** along with such fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.



Schedule V

 → Amended on 12/08/18


① No Imprisonment for any period

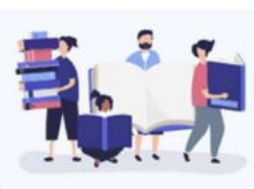
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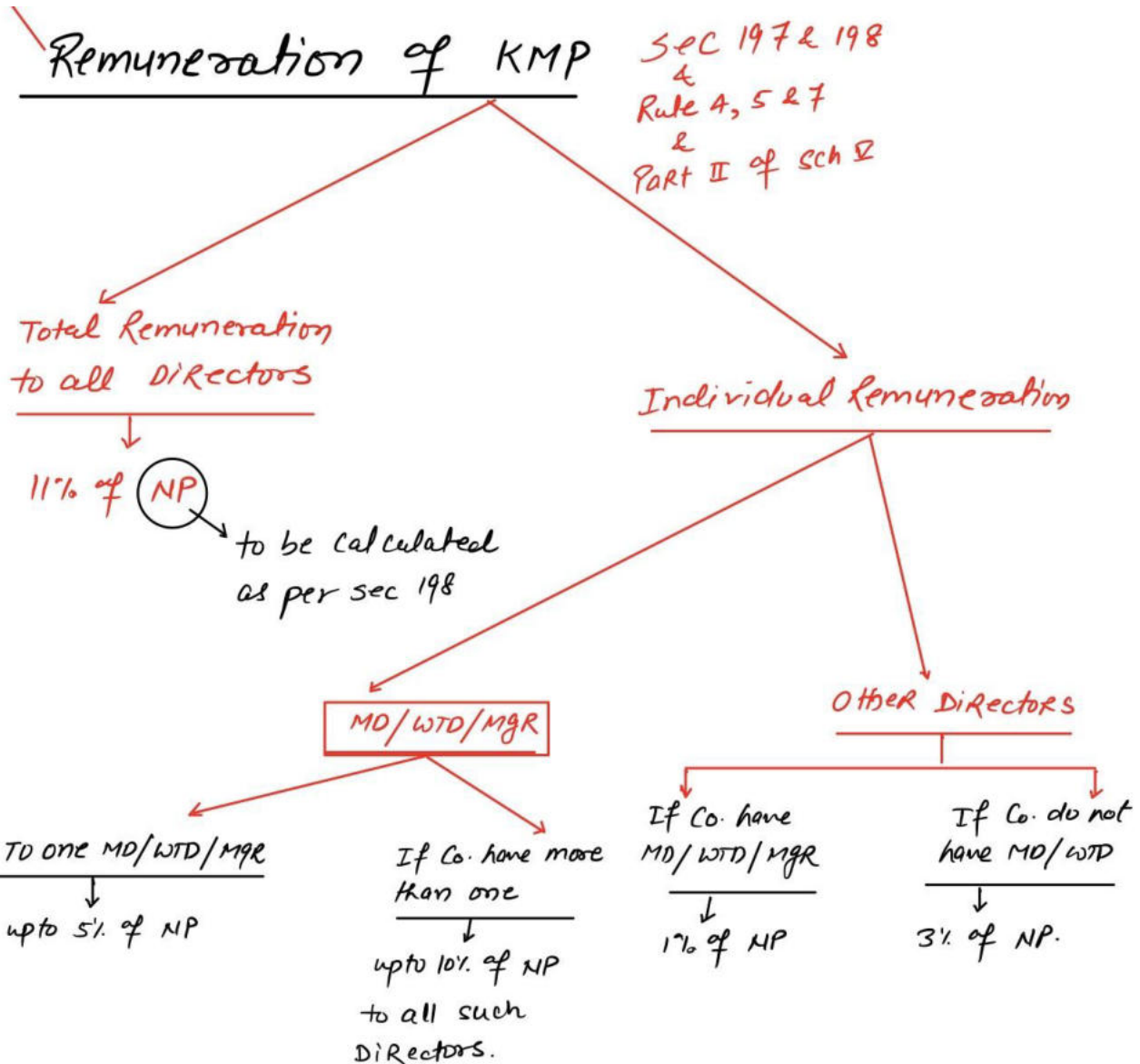
fine exceeding ₹1000
for any offence under

→ Stamp Act → Central Excise Act
→ IDRA → Prevention of food adulteration
→ Essential Commodities Act
→ SCRA → Companies Act
→ Custom Act → Income Tax Act
→ Competition Act
→ FEMA → SEBI
→ Prevention of Money Laundering
→ GST 2018 → IBC 2016

Provided that if CG approval of appointment of such convicted person, No further approval of CG is required for his subsequent appointment.

- ② should not be detained under Conversation of Foreign Exchange and prevention of smuggling Activities 1974
- ③ Age between 21 to 70 years and more than 70 yrs, if approved by SR.
- ④ if he is Managerial Person in > 1 company, Total Remuneration from all such companies shall not exceed maximum permissible limit from any of such Co.
- ⑤ should be Resident of India
 - Person continuously staying from last 12 months
 - Person who come to stay in India- for employment OR for Business OR vacation.





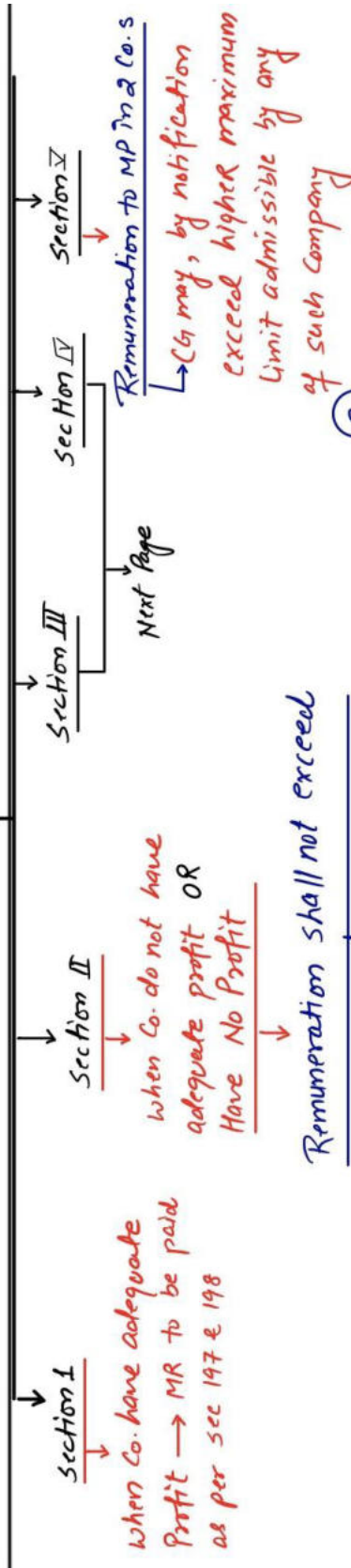
Note: -

- ① Above percentage shall be exclusive of sitting fees.
- ② To pay more than above prescribed percentage, member's approval and Conditions of schedule II are required to be complied.
- ③ Generally the above percentages can be paid only when Co. have adequate profit. Otherwise Co. need to pay Remuneration as per schedule II, Part II





Part II of Schedule II



And

To withdraw Remuneration in professional capacity

He shall not have any Interest in Capital of Co., Holding Co., Subsidiary Co Directly or Indirectly or through other structure. He shall not be directly or indirectly related to Director or promoter of Co., H.C., S.C., at any time during last 2 yrs OR on or before date of appointment possesses graduation level qualification with expertise and specialised knowledge in the field in which company operates.

Note: - Any employee of Co., holding $\leq 0.5\%$ of PSC of Co. under any scheme, shall not be deemed to be interested person.

Effective Capital	Yearly Remuneration to each MP	
	With OR	With SR
① -ve to ₹ 5 CR	₹ 60 lakh	₹ 120 lakh
② ₹ 5 CR to ₹ 100 CR	₹ 84 lakh	₹ 168 lakh
③ ₹ 100 CR to ₹ 250 CR	₹ 120 lakh	₹ 240 lakh
④ ₹ 250 CR & above	₹ 120 lakh for ₹ 250 CR + 0.01% of Excess Cap.	₹ 240 lakh for ₹ 250 CR + 0.02% of Excess Cap.

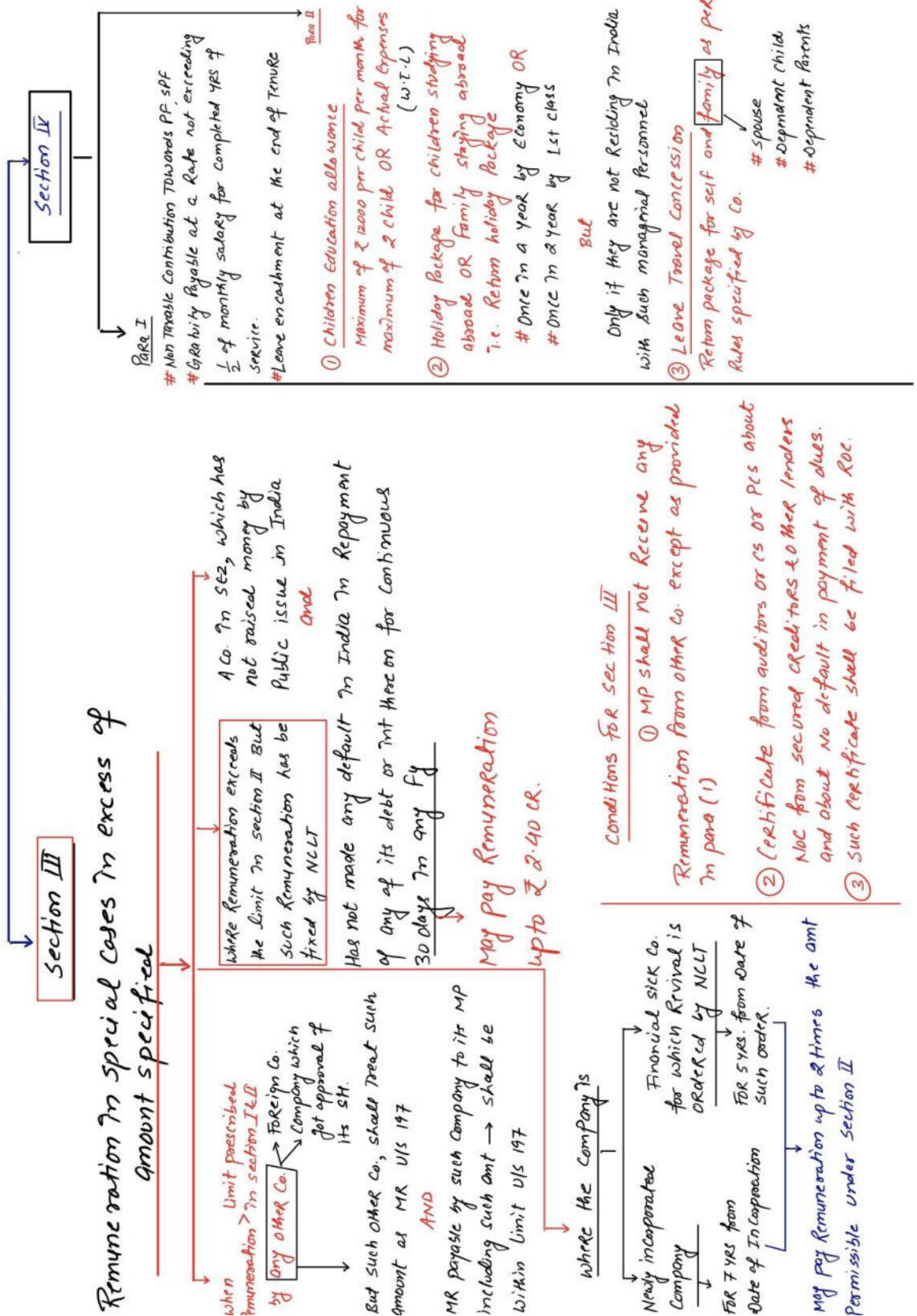
Basic Conditions

- BR has to be passed.
- Approval of NRC (if any) is Required.
- No default in repayment of any of debt or int thereon for continuous period of 30 days FY prior to date of appointment. and if default was made, Take approval of secured creditors.





Part II of Schedule II



Appointment of KMP [Sec 203 read with Rule 8 & 8A]

- 1) Every co. belonging to such class or classes of co. as may be prescribed shall have following whole-time KMP:
- MD, or CEO, Manager or a WTD
 - CS
 - CFO

Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the AOA of the co., as well as the MD or CEO of the co. at the same time after the date of commencement of this Act

unless-

- The AOA of such a co. provide otherwise or
- The Co. does not carry multiple business.

Provided further that nothing contained in the 1st proviso shall apply to such class of companies engaged in multiple business and which has appointed one or more CEO for each such business as may be notified by the CG.

- 2) Every whole-time KMP of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
- 3) A **Whole-Time KMP** shall not hold office in **more than 1 company** except in its subsidiary company at the same time.

Provided that nothing contained in this sub-section shall disentitle a KMP from being a director of any company with the permission of the Board.

- 4) If the office of any whole-time KMP is vacated, the resulting vacancy shall be filled-up by the Board at a Board Meeting within a period of **6 months** from the date of such vacancy.
- 5) **Default:**
Co. shall be punishable with fine Minimum Rs. 1 lakh Maximum of Rs. 5 lakh **AND** Every director and **KMP** in default shall be punishable with fine up-to Rs. 50,000 and where the contravention is a continuing one, with a further fine which may extend to Rs. 1000 for every day in default.

Rule (8 and 8A)

Rule 8 provides that every listed company and every other public co. having a paid-up share capital of Rs. 10 cr. or more shall have whole-time KMP.

Rule 8A further provides that a co., other than a co. covered under Rule 8, which has a paid-up share capital of Rs. 5 cr. or more shall have a whole-time CS. (10 Cr. Ki limit Dec 2020 exams and onwards applicable hogi)

Secretarial Audit for Bigger Companies [Section 204 read with Rule 9]

- (1) Every listed co. and a co. belonging to other class of co. as may be prescribed shall annex with its Board's report, a secretarial audit report, given by a PCS, in prescribed form.



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(2) It shall be the duty of the co. to give all assistance and facilities to PCS, for auditing the secretarial and related records of the co.

(3) The BOD, in their report, shall explain in full any qualification or observation or other remarks made by the PCS in his report.

(4) **Default:** If a Co. or

Any Officer of the co. or

The PCS contravenes the provisions of this section, then he shall be punishable with fine **Minimum Rs. 1 lakh but Maximum of Rs. 5 lakhs.**

Rule 9

(1) For the purposes of section 204(1), the other class of companies shall be as under-

a. Every public co. having a paid-up share capital of Rs. 50 Cr. or more or

b. Every public co. having a turnover $\geq$ Rs. 250 Cr.

(2) The format of the Secretarial Audit Report shall be **in Form No. MR 3.**

Functions of Company Secretary [Section 205 Read with Rule 10]

1) The functions of the CS shall include-

a. To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;

b. To ensure that the company complies with the applicable secretarial standards;

c. To discharge such other duties as may be prescribed.

For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the ICSI constituted u/s 3 of the Company Secretaries Act, 1980 and approved by the CG.

2) The provisions contained in Sec 204 and Sec 205 shall not affect the duties and functions of the BOD, Chairperson of the Co., MD or Whole-Time Director under this Act, or any other law for the time being force.

Rule 10

CS shall also discharge the following additional duties, namely:

1. To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers.
2. To facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings.
3. To obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act.
4. To represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act.
5. To assist the Board in the conduct of the affairs of the company.
6. To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices.
7. To discharge such other duties as have been specified under the Act or rules.
8. Such other duties as may be assigned by the Board from time to time.

1. Y, the managing Director, who has completed 70 years of age, is to be reappointed for 5 years. The remuneration will be within the limits prescribed under Schedule V. Advise how appointment of Managing Director be made?

[illegible]

- Answer:**

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

3. Pawan, the managing director of ABC Ltd., resigned on 10th May, 2012. The company has filed form DIR 12 with the Registrar of Companies mentioning the date of resignation as 5th July 2013. The company issued various cheques to its investors in repayment of the deposits after 10th May 2012 and the said cheques were dishonoured. The investors filed complaints against the company and Pawan, the former Managing Director of the company. Discuss and advise whether Pawan shall be liable or not.

Answer:





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