

COMPANY LAW



CHART BOOK

BY

CS ANOOP JAIN

BASICS OF COMPANY

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SECTION 1 SHORT TITLE, EXTENT, COMMENCEMENT AND APPLICATION

Act may be called the COMPANIES ACT, 2013

extends to the WHOLE OF INDIA

government has vested with power to enforce different provisions of this act at different point of time

The provisions of this Act shall apply to :

- incorporated under this Act or under any previous Company law
- Insurance companies
- Banking companies
- engaged in generation or supply of electricity.
- any special Act

CONCEPT OF COMPANY

AS PER SEC 20

Company means a company registered Under this Act (2013) OR Any of the previous Companies law

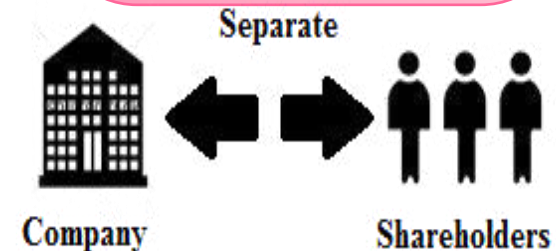


GENERAL MEANING

- association of persons
- contribute money or money's worth to a common stock,
- Capital of the company,
- Capital is employed in some common trade or business.
- Members share the profit or losses
- Proportion of capital
- Shares are always transferable

CHARACTERISTICS OF A COMPANY

- Separate Legal Entity
- Perpetual Succession
- Common Seal
- Transferability Shares(Sec. 42)
- Separation of ownership from management.
- Separate property



BASICS OF COMPANY

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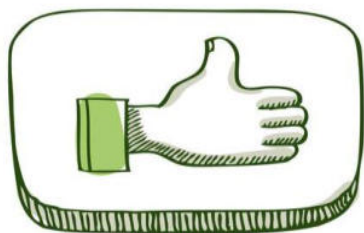
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COMPANY

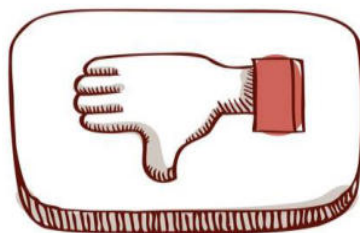
ADVANTAGES

- ❑ Corporate Personality
- ❑ Limited Liability
- ❑ Perpetual Succession
- ❑ Transferable Shares
- ❑ Separate Property
- ❑ Capacity to Sue



DISADVANTAGES

- Formalities and expenses
- Corporate disclosures
- Separation of control from ownership
- Greater social responsibility
- Greater tax burden in certain cases
- Detailed winding-up procedure



LIFTING OR PIERCING OF CORPORATE VEIL

- ◆ Lifting of corporate veil means ignoring the separate identity of a company.
- ◆ Lifting of corporate veil means disregarding the corporate personality and looking behind the retail persons who are in the control of the company

UNDER STATUTORY PROVISIONS

Section 7 (7) deals with punishment for incorporation of companies by providing false information.

Section 251 (1) deals with liability for making wrong application for removal of name .

Section 339 deals with liability for making fraudulent conduct of business during winding up

UNDER JUDICIAL INTERPRETATION

Protection of Revenue

Determination of enemy character of the Company

Prevention of fraud

Where a Company acts as an agent of its shareholders

Subsidiaries acts as agent



E - GOVERNANCE

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MINISTRY OF
CORPORATE AFFAIRS

E-GOVERNANCE (MCA-21) – MEANING

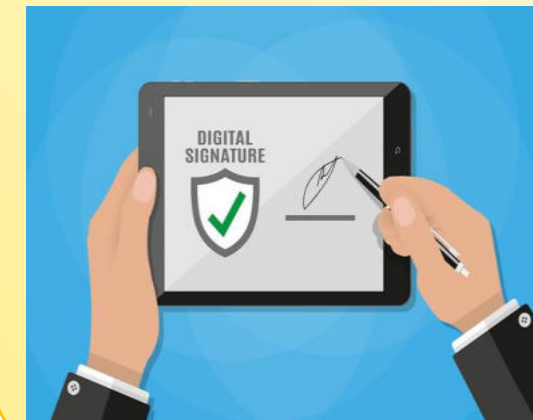
E-Governance or Electronic governance is the application of Information Technology to the government functioning. MCA-21 stands for e-governance initiative of Ministry of Corporate Affairs (MCA) of the 21st century.

MCA-21-SCOPE

The scope of MCA-21 project covers only the offices of ROCs, RDs, and the MCA headquarters at New Delhi. It does not include other offices of MCA like Official liquidators, CLB/NCLT and Court.

DIGITAL SIGNATURE CERTIFICATE (DSC)

Every user who is required to sign an e-form for submission to MCA is required to obtain a Digital Signature Certificate MCA has identified following 4 types of user of DSC .



BENEFITS OF MCA 21

- ❖ Elimination of interface with the offices of ROCs, RDs and the MCA
- ❖ Better supervision and monitoring of compliance
- ❖ Mutually beneficial system
- ❖ Speed, transparency and efficiency
- ❖ Effective due diligence
- ❖ Efficient services by professionals
- ❖ Environment Friendly



- MCA (govt.) employees.
- Professionals(CS,CA ,CWA and Lawyers)
- Authorized signatory of the company including MD, Directors, CS or Manager.
- Representative of banks and financial institutions.

E - GOVERNANCE

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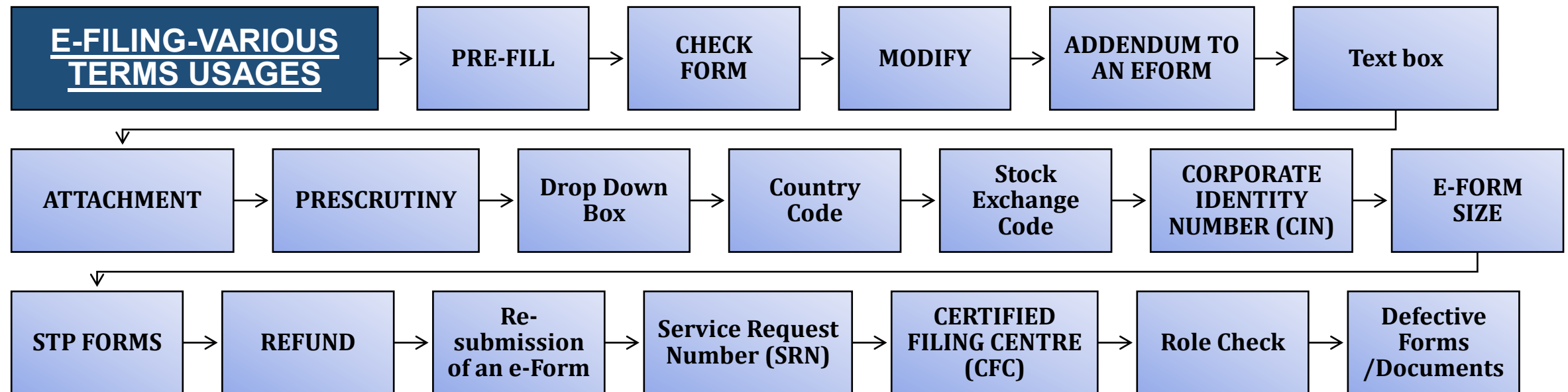
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DIRECTOR IDENTIFICATION NUMBER (DIN)

No company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number (DIN) under section 154. Section 152(3) provides that every individual, intending to be appointed as director of a company shall make an application for allotment of DIN to the Central Government in the prescribed Form DIR-3. A person cannot have more than one DIN



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UPLOADING THE DULY FILLED UP E-FORM

- ❑ When the 'submit' button is pressed, the e-form gets uploaded into the MCA central document repository.
- ❑ Thereafter, the requisite fees as applicable for the e-form should be paid either on-line or off-line.
- ❑ Once the e-form has been accepted and payment of fees has been acknowledged, a work item is created and assigned to the appropriate MCA employee.
- ❑ For every filing through MCA-21 portal, Service Request Number (SRN) is generated by the system. This SRN number is to be noted for future reference.
- ❑ The authorized official of the/MCA affixes his digital signature for registering/ approving/ rejecting the same.
- ❑ After the processing of the e-form is completed, an acknowledgement e-mail is sent to the user regarding its approval/ rejection.

STEPS FOR FILING FINANCIAL STATEMENTS IN XBRL MODE

- ❑ The complete information as contained in the annual accounts and related documents; and the information required to be filed with the Registrar of Companies should be reported in the XBRL instance documents to be submitted with MCA.
- ❑ For preparing instance document, the taxonomy as applicable for the relevant financial year is to be used.
- ❑ Download XBRL validation tool from MCA Portal
- ❑ Load the instance document in the validation tool.
- ❑ Validate the instance document.
- ❑ Pre-scrutiny of the instance document
- ❑ Convert to pdf and verify the contents of the instance document.
- ❑ Attach instance document to the Form 23AC-XBRL and 23ACA-XBRL]
- ❑ Submitting the XBRL Form on the MCA portal.
- ❑ Viewing of balance sheet and profit and loss submitted in XBRL form on MCA portal.

E - GOVERNANCE

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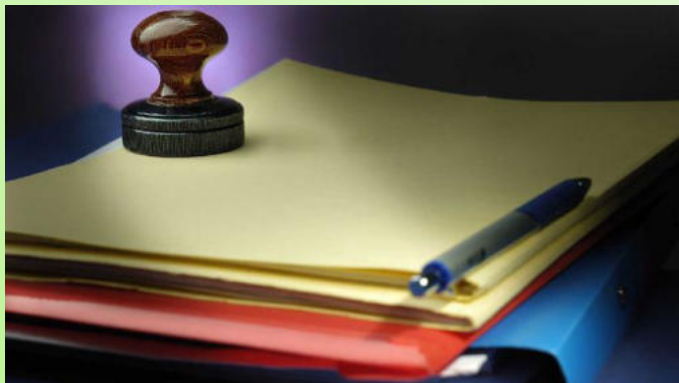
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Inspection, production and evidence of documents kept by Registrar.- Rule 14 of Companies (Registration offices and fees) Rules, 2014

The inspection of the documents maintained in the electronic registry so set up by MCA and which are otherwise available for inspection under the Act or rules made thereunder, shall be made by any person in electronic form.



ORGANIZATION OF ROC OFFICE UNDER MCA

The ROC office working from its address will virtually become the Back Office of the Ministry. Since number of companies/entities may find it difficult to switch over to e-Filing at the initial stage.

Front Office

The Front Office represents the interface of the corporate and public user with the MCA21 system. This companies 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.

Virtual Front Office

Virtual Front Office facilities online filing of the e-Forms using Internet.

The System automatically does pre scrutiny of the e-Forms filed and indicates error messages in case of incomplete or invalid particulars.

Back Office

Back Office represents the offices of Registrar of Companies, Regional Directors and Headquarters' and takes care of internal processing of the forms filed by the corporate user as per MCA norms and guidelines.

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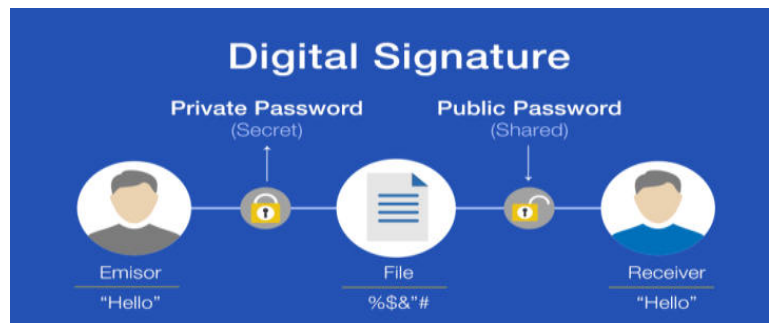
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HARDWARE AND SOFTWARE REQUIREMENTS UNDER E-FILING

- P-4 computer with printer.
- Windows 2000/Windows XP.
- Internet Explorer 6.0 version and above.
- Above Acrobat Reader 7.0.5 version. Scanner; and
- Java Runtime Environment (JRE) 1.4.2 version.

Affixing Digital Signature

- User clicks the provision provided (signature affixing icon) on the a-form, against his role, to digitally sign it.
- Utility to sign the e-Form opens, where user selects the intended certificate to digitally sign the eForm.
- After selecting the certificate, utility digitally signs the e-Form with the certificate and the certificate information gets embedded in the e-Form.

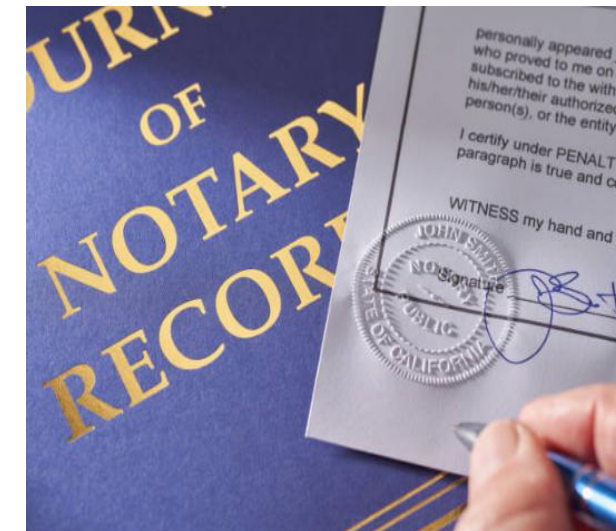


PAYMENT OF FEES TO MCA

- ❖ Credit Card (online)
- ❖ Internet Banking (online)
- ❖ Challan (offline)
- ❖ NEFT (National Electronic Fund Transfer)

SEARCH FACILITIES ARE AVAILABLE TO LOCATE THE REQUISITE INFORMATION

- ❖ Search for viewing public document.
- ❖ Search for getting certified copy.
- ❖ Finding the Corporate Identity Number (CIN) .
- ❖ Checking Company Name.



MEMBERSHIP

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DEFINITION OF MEMBER SEC. 2(55)

The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register of member OR

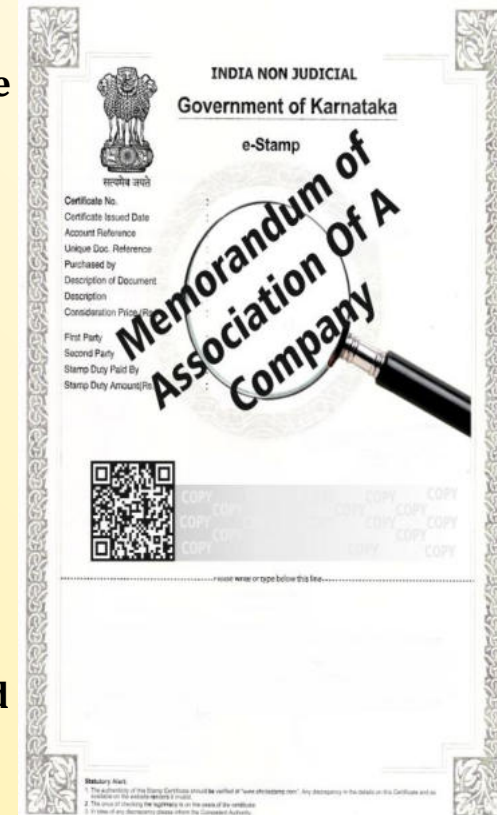
Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company OR

Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository



Procedure for Becoming a Member by subscribing to the Memorandum of Association

- subscribers are selected by the promoters.
- The subscribers (minimum, two for a private company and seven for a public company).
- The subscriber has to sign and write in his/her hand name in full, father's/husbands' name, address in full, occupation in the column meant for this purpose
- On registration of the company, the subscribers become members of the company
- The subscribers have to pay the money for the shares agreed to be taken by them
- The names of the subscribers shall be placed on the register of members on registration of the company.



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SECTION 19 OF COMPANIES ACT 2013

No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void:

- where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- where the subsidiary company holds such shares as a trustee; or
- where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

MODES OF ACQUIRING MEMBERSHIP OR HOW TO BECOME A MEMBER

By subscribing to Memorandum

By allotment of shares

By transfer

By transmission

By becoming a beneficial owner of shares.

By estoppels (estopped from his own conduct)

CESSATION OR TERMINATION OF MEMBERSHIP

- Surrender of shares
- Transfer of shares
- Transmission of shares
- Sale of shares of a member by the company, where the company has exercised lien on shares.
- Forfeiture of shares



MEMBERSHIP

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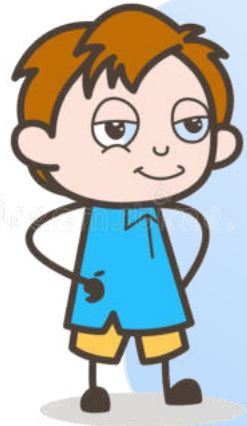
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CAPACITY TO BECOME A MEMBER OR WHO CAN BECOME A MEMBER

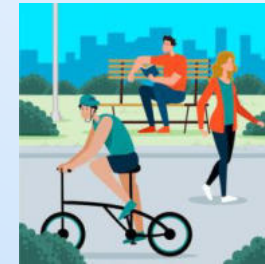
MINOR

There is no legal bar on minor becoming a member of a company, provided minor acquires the shares are fully paid up, and no further obligation of liability is attached to such shares.



CO. OPERATIVE SOCIETY AND SOCIETY

A cooperative society is a legal person, and so it has power to hold property. Therefore a cooperative society can become a member in a company.



TRADE UNION

A trade union registered under the Trade Union Act 1926 is legal person (i.e. a body corporate) capable of holding property. Therefore a trade union can become a member in a company.



COMPANY

There is no legal bar on minor becoming a member of a company, provided minor acquires the shares are fully paid up, and no further obligation of liability is attached to such shares.



FIRM

A firm is not a legal person. It cannot hold property in its own name; the property is Held in the names of the partners on behalf of the firm. Therefore, a firm cannot become a member in a company.



HUF

Hindu undivided family (HUF) is not a separate legal person. Therefore, An HUF cannot become a member in a company in its own name.



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CAPACITY TO BECOME A MEMBER OR WHO CAN BECOME A MEMBER

JOINT HOLDERS

There is no legal bar on minor becoming a member of a company, provided minor acquires the shares are fully paid up, and no further obligation of liability is attached to such shares.

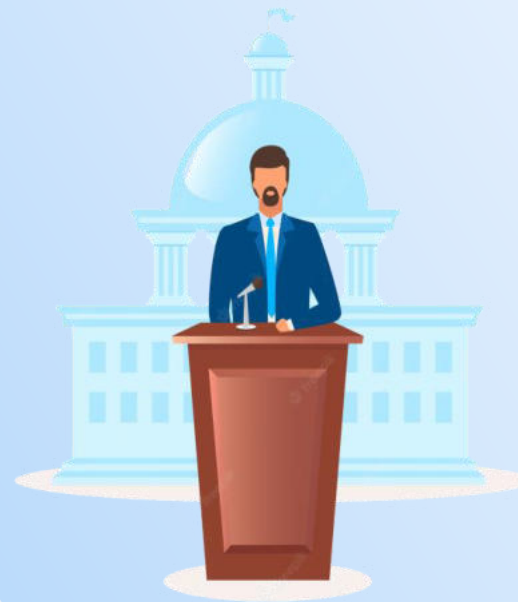


FOREIGNER

A foreigner can become a member in a company by complying with the Requirements of foreign exchange management act, 1999. In case a war breaks out with such foreign country, the foreigner cannot enforce any right available to the members.

GOVERNMENT

CG or SG can become a member in a body corporate



INSOLVENT

The shares of the insolvent VEST in the official receiver, as the case may be. However, an insolvent continues as a member until his shares are sold by the official receiver.



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IMPERSONATION AS A MEMBER (Sec 57)

If a person deceitfully personates

- an owner of any share OR
- interest in a Company OR
- coupon issued in pursuance of the Companies Act, 2013 AND

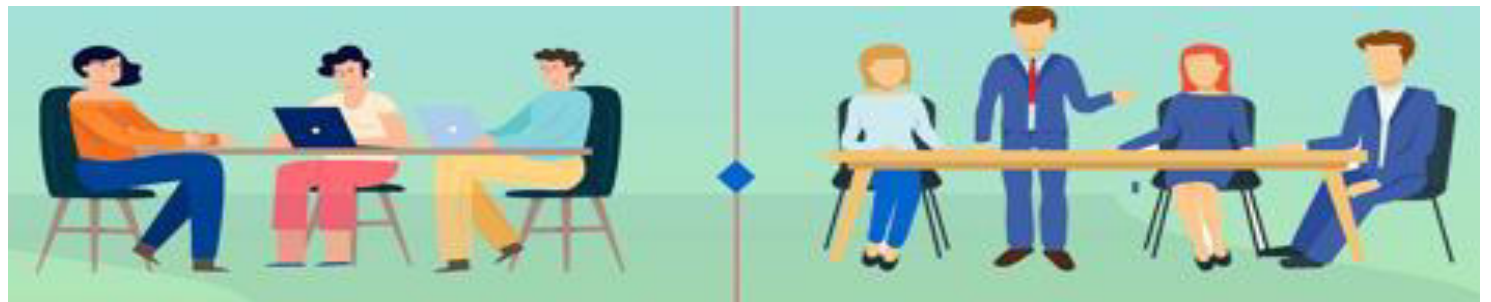


VARIATION IN RIGHTS OF SHAREHOLDERS (SEC 48)

AS PER COMPANIES ACT 2013

Variation refers to variation of rights to the prejudice of any class of shareholders. Where the share capital of a company is divided into different classes of shares, the rights attached to the shares of any class may be varied with:

<u>EITHER</u>	<u>OR</u>
The consent in writing of the holders of not less than three-fourths of the issued shares of that class.	By passing special resolution at a separate meeting of the holders of the issued shares of that class.
Provision with respect to such variation is contained in the memorandum or articles of the company	In the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class



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Rights of dissenting shareholders in cases of variation in rights of shareholders (sec 48)

- the holders of not less, in the aggregate, than 10% of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the Tribunal to have the variation cancelled.
- variation shall not have effect unless and until it is confirmed by the Tribunal.
- within 21 days after the date on which the consent was given or the resolution was passed, as the case may be.
- one or more of their number as appointed in writing for the purpose.
- Tribunal shall hear the applicant and any other persons interested therein and having regard to all the circumstances of the case, either confirm or cancel the variation. The decision of the Tribunal shall be final.
- forward a copy of the order to the Registrar, within 30 days of the service of the Tribunal order.

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RULE 68A of NCLT RULES 2016

- The application to NCLT shall be made in Form No. NCLT. 1
- applicant shall at least fourteen days before the date of the filing of the petition advertise the application in accordance with rule 35 OF NCLT RULES 2016 .
- Where any objection of any person whose interest is likely to be affected by the proposed application is received by the applicant, a copy thereof shall be served to the Registrar of Companies and Regional Director on or before the date of hearing.
- Tribunal, after hearing the applicant and any other person may, if it is satisfied, having regard to all the circumstances of the case that the variation would unfairly prejudice to the shareholders of the class represented by the applicant, cancel the variation and shall, if not so satisfied, confirm the variation for reasons to be recorded

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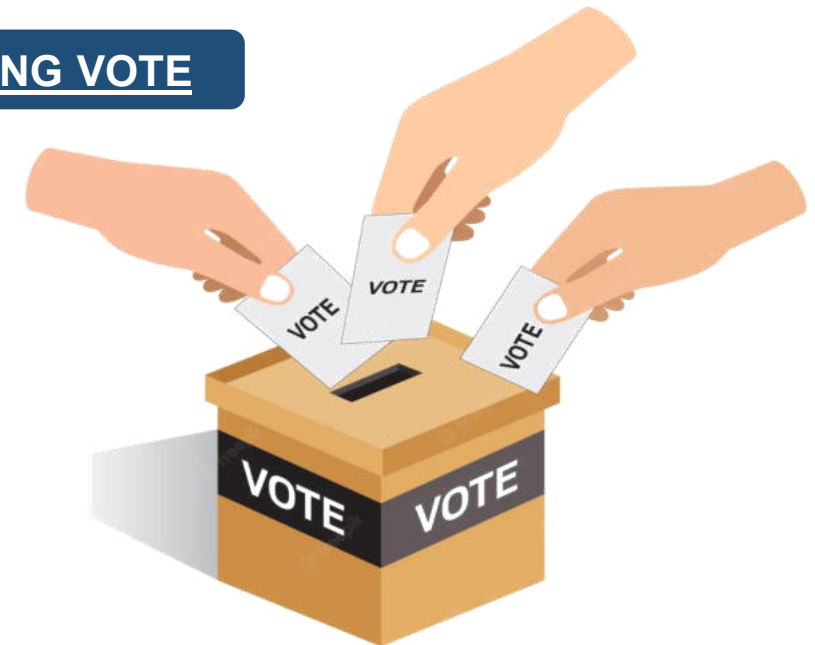
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COCEPT OF VETO

A veto - Latin for "I forbid" - is the power to unilaterally stop an official action, especially the enactment of legislation. A veto may give power only to stop changes, thus allowing its holder to protect the status quo.

VETO POWER AND CASTING VOTE

- Veto power is different than casting vote of Chairman. Casting vote is applicable on in case of equality of votes in favour and against.
- Veto power has not been defined in Companies Act. veto power is: "to refuse to admit or approve"



REGISTERS AND RETURNS

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REGISTER OF MEMBER AND OTHER SECURITY

Rule 3(1) says company shall maintain a register of its members in Form MGT-1 for section 88(1)(a)

Rule 4 says company shall maintain a separate register of debenture holders or other security holders Form MGT-2 for section 88(1)(b) or (c)

REGISTER OF MEMBERS

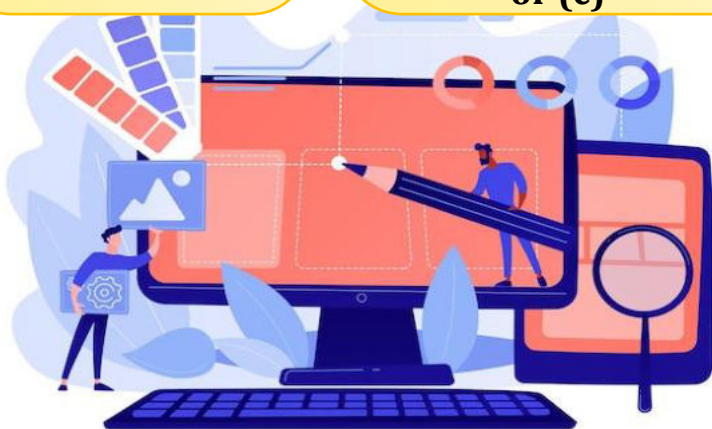
Rule 3(1) of the Companies (Management and Administration) Rules, 2014 provides that for the purposes of section 88(1)(a) of the Companies Act, 2013, every company shall, from the date of its registration, keep and maintain a register of its members in Form MGT-1.

Contents of the Register of members

- Name of the member;
- Address
- Date of becoming member;
- Date of cessation;
- Amount of guarantee, if any;
- Any other interest, if any
- Instructions, if any, given by the member with regard to sending of notices etc.

Register of debenture holders or any other security holders

Rule 4 of the Companies (Management and Administration) Rules, 2014 provides that for the purposes of section 88(1)(b) or (c) of the Companies Act, 2013, every company which issues or allots debentures or any other security shall maintain a separate register of debenture holders or other security holders, as the case may be, for each type of debentures or other securities in Form MGT- 2. Entries to be made in the register simultaneously on the allotment by the Board.



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Entries for securities held with a depository



If shares, debentures or other securities are held with a depository, the name, particulars of the depository and number of shares, debentures or other securities so held shall be entered in the respective register.



Foreign register of members, debenture holders, other security holders

Rule 7 of the Companies (Management and Administration) Rules, 2014 provides that for the purposes of section 88(4) of the Companies Act, 2013, A company which has

- share capital or
- which has issued debentures or
- any other security may,

If so authorized by its articles keep in any country outside India a part of the register of members or as the case may be, of debenture holders or of any other security holders or of beneficial owners, resident in that country
(FOREIGN REGISTER)

- within thirty days from the date of the opening of any foreign register, file Form MGT-3.
- any change in the situation of such office or of its discontinuance file notice in Form MGT-3 with the Registrar of such change or discontinuance.
- foreign register shall be deemed to be part of the company's register
- foreign register shall be maintained in the same format as the Principal Register.
- foreign register shall be open to inspection and may be closed.

REGISTERS AND RETURNS

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DECLARATION BY REGISTERED AND BENEFICIAL OWNER

Declaration in respect of beneficial interest in any shares

Rule 9 of the Companies (Management and Administration) Rules, 2014 provides that for the purposes of section 89(1) "the registered owner, shall file with the company, a declaration to that effect in Form MGT-4, within thirty days from the date on which his name is entered in the register of members of such company:

Filing of declaration of beneficial interest with the Company

Section 89(2), read with rule 9(2) of the Companies (Management and Administration) Rules, 2014 which provides the beneficial owner shall file with the company, a declaration disclosing such interest in Form MGT-5, within thirty days after acquiring such beneficial interest in the shares of the company .

Filing of declaration of beneficial interest with the Registrar Section 89(6) provides that where any declaration under section 89 is received by the company, the company shall file, within thirty days from the date of receipt of declaration by it, a return in Form MGT6.

Penalty for non-maintenance of Registers

If any person fails to make a declaration he shall be liable to a

- penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

required to file a return under sub-section (6), fails to do so

- penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default



REGISTERS AND RETURNS

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REGISTER OF SIGNIFICANT BENEFICIAL OWNERS IN A COMPANY SECTION 90

Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed

Every company shall maintain a register of the interest declared by individuals

Every company shall file a return of significant beneficial owners of the company and changes therein

register maintained shall be open to inspection by any member

A company shall give notice, in the prescribed manner, to any person

The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

The company shall,—

- where that person fails to give the company the information required by the notice within the time specified therein; or where the information given is not satisfactory, apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice

Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt

person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section(8), within a period of one year from the date of such order

If any person fails to make a declaration as required under sub-section (1), he shall be liable to a penalty

required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty

If any person wilfully furnishes any false or incorrect information, he shall be liable to action under section 447

REGISTERS AND RETURNS

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Beneficial owner

Beneficial owner means a person having beneficial interest in a share but whose name is not entered in the register of members of a company as the holder of that share

Registered owner

Registered owner means a person whose name is entered in the register of members of a company as the holder of shares in that company but who does not hold the entire beneficial interest in such shares

Significant Beneficial Owner

means an individual referred to in subsection (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:-

- holds indirectly, or together with any direct holdings, not less than ten per cent.
- holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares.
- has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution.
- has right to exercise, or actually exercises, significant influence or control, in any manner

Majority Stake means

- holding more than one-half of the equity share capital in the body corporate; or
- holding more than one-half of the voting rights in the body corporate; or
- having the right to receive or participate in more than one-half of the distributable dividend or any other distribution by the body corporate;

PENALTY SECTION 92(5)

before the expiry of the period specified therein such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day.

subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees

REGISTERS AND RETURNS

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SECTION 93 OMITTED BY THE COMPANIES (AMENDMENT)ACT,2017



- The registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company.
- 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 any member.
- Any such member, debenture-holder, other security holder or beneficial owner or any other.
- inspection or the making of any extract or copy required under this section is refused,
- The Central Government may also, by order, direct an immediate inspection of the document

INSPECTION OF REGISTERS, RETURNS ETC RULE 14



- The registers and indices maintained pursuant to section 88 and copies of returns prepared pursuant to section 92, shall be open for inspection during business hours, at such reasonable time
- Any such member, debenture holder, security holder or beneficial owner or any other person may require a copy of any such register or entries therein or return on payment of such fee as may be specified

PRESERVATION OF REGISTER OF MEMBERS ETC. AND ANNUAL RETURN RULE 15



- members along with the index shall be preserved permanently
- debenture holders or any other security holders along with the index shall be preserved for a period of eight years.
- Copies of all annual returns prepared under section 92 and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of eight years
- he foreign register of members shall be preserved permanently, unless it is discontinued.
- The foreign register shall be kept in the custody of the company secretary or person authorised by the Board.

SHARE CAPITAL PART-A

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MEANING OF THE TERM CAPITAL

Capital is the money, which a company has raised by issue of its shares. It uses this money to meet its requirements by way of acquiring business premises and stock-in-trade etc. In relation to a company limited by shares, the word "capital" means the share capital

TYPES OF CAPITAL

- Nominal, Authorised or Registered Capital
- Issued Capital
- Subscribed Capital
- Called up Capital
- Paid-up Share Capital

MEANING AND NATURE OF A SHARE

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

- share is a right to a specified amount of the share capital of a company,
- share is not a sum of money but a bundle of rights and liabilities.
- share or other interest of any member in a company is a movable property transferable
- "Goods" means any kind of movable property other than actionable claim
- share capital shall be distinguished by its distinctive number

Kinds of share capital

EQUITY SHARES

- Shares with Differential Voting Rights
- Shares with EQUAL Rights

PREFERENCE SHARES

- Cumulative and non-cumulative shares .
- Redeemable Preference Shares
- Convertible preference share
- Participating or non-participating



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ISSUE OF SECURITIES AT A PREMIUM SECTION 52

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

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

ISSUE OF SHARES AT DISCOUNT IS PROHIBITED SECTION 53

- Section 53 (1) states that except as provided in section 54(i.e. issue of sweat equity shares), a company shall not issue shares at a discount.
- Section 53 (2) Any share issued by a company at a discount shall be void.
- Section 53 (2A) 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 in accordance with any guidelines .
- Section 53 (3) Where any company fails to comply with the provisions shall be liable to a penalty the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent.

ISSUE OF SWEAT EQUITY SHARES SECTION 54

According to section 2(88), sweat equity shares mean equity shares issued by a company to its directors or EMPLOYEES at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or VALUE ADDITIONS, by whatever name called.

- sweat equity shares shall be valid for making the allotment within a period of not more than twelve months from the date of passing of the special resolution.
- Limits on issue of sweat equity shares
- Sweat Equity Shares to be locked for three years

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ISSUE AND REDEMPTION OF PREFERENCE SHARES

Section 55 (1) states Companies cannot issue the following types of preference shares—

- Irredeemable Preference shares, or
- Preference shares redeemable after 20 years from the date of its issue.

EXCEPTION Rule 10

The maximum limit is extended to 30 years in the following situation---

- setting up and dealing with of infrastructural projects
- period exceeding 20 years but not exceeding 30 years.
- Minimum 10% of such preference shares should be redeemed every year from the 21st year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

PREFERENCE SHARES

NCLT RULES 2016 RULE 69

- Petition shall be in Form No. NCLT. 1
- after hearing the petitioner and any other person as appears to it to be interested in the petition, may, if it is satisfied

ISSUE OF SECURITIES IN DEMATERIALIZED FORM

- securities only in dematerialized form
- making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer;
- who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialized before the transfer;
- unlisted public company shall facilitate dematerialization of all its existing securities
- defaulted in sub-rule (5) shall make offer of any securities or buyback its securities or issue any bonus or right shares till the payments to depositories or registrar to an issue and share transfer agent are made.
- (7) Except as provided in sub-rule (8), the provisions of the Depository

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ISSUE OF SECURITIES IN DEMATERIALIZED FORM

- Every unlisted public company shall ensure that
 - a) it makes timely payment of fees (admission as well as annual) to the depository and registrar to an issue and share transfer agent in accordance with the agreement executed between the parties;
 - b) it maintains security deposit, at all times, of not less than two years' fees with the depository and registrar to an issue and share transfer agent, in such form as may be agreed between the parties; and
 - c) it complies with the regulations or directions or guidelines or circulars, if any, issued by the Securities and Exchange Board or Depository from time to time with respect to dematerialization of shares of unlisted public companies and matters incidental or related thereto.
- Except as provided in sub-rule (8), the provisions of the Depositories Act, 1996, the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 shall apply mutatis mutandis to dematerialization of securities of unlisted public companies.
- unlisted public company governed by this rule shall submit Form PAS-6 to the Registrar with such fee
- The company shall immediately bring to the notice of the depositories any difference observed in its issued capital and the capital held in dematerialized form.
- The grievances, if any, of security holders of unlisted public companies under this rule shall be filed before the Investor Education and Protection Fund Authority.

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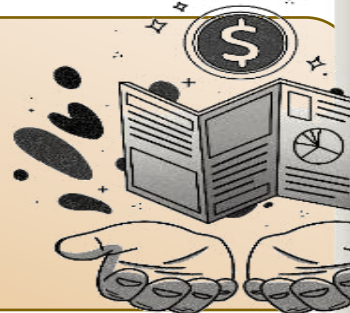
CONCEPT OF PROSPECTUS

Any Document described or issued as Prospectus.

- Red Herring Prospectus referred u/s 32, or
- Shelf Prospectus referred u/s 31, or
- Any Notice, Circular, Advertisement or other Document inviting offers from the public

CONDITIONS WHERE ISSUE OF PROSPECTUS NOT NECESSARY

- Rights Issue
- Underwriters
- Private placement
- Bonus issue

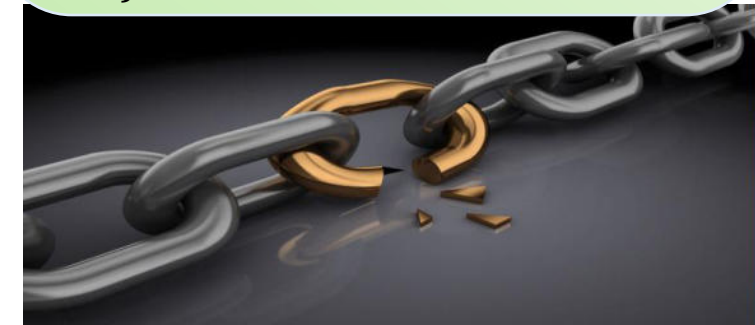


REGISTRATION of Prospectus [Sec.26]

- Submission of Prospectus by or on behalf of a Company or in relation to an Intended Company, to the ROC for registration, is mandatory for issue of Prospectus.
- Description
- Registration should be made on or before the date of its publication.
- Prospectus should be dated.
- Prospectus should be signed
- The Draft Prospectus should be approved
- ROC will register the Prospectus

Non-Compliance with Sec.26

- Minimum ` 50,000 Maximum 3 Lakhs.
- person who is knowingly a party to the issue of such Prospectus shall be punishable with -
 - a) Imprisonment (Maximum 3 years) or
 - b) Fine of Minimum
 - c) 50,000 Maximum ` 3 Lakhs, or
 - d) Both.



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TYPES OF PROSPECTUS

<u>Abridged Prospectus</u>	<u>SHELF PROSPECTUS"</u> [SEC.31]	<u>RED HERRING PROSPECTUS"</u> [SEC.32]
Abridged Prospectus means a Memorandum containing such salient features of a Prospectus as may be specified by SEBI.	Shelf Prospectus" means 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.	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 make an Offer of Securities may issue a Red Herring Prospectus prior to the issue of a Prospectus.

GOLDEN RULE OF DRAFTING PROSPECTUS

3 THINGS SHALL BE CONSIDERED WHILE DRAFTING PROSPECTUS

- Everything stated in prospectus shall be true
- Nothing shall be half true
- No misstatement shall be stated in prospectus

LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS

- any statement which is untrue or misleading in the form or context .
- Every person who authorized the issue of such Prospectus is liable for punishment u/s 447.
- Liability u/s 34 does not apply if the person proves that –
 - a) such statement or omission was immaterial, or **Material Misstatement**
 - b) he had reasonable grounds to believe



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Civil Liability for Mis-statements in Prospectus [Sec.35]

Where a person has subscribed for Securities of a Company acting on any statement included, or the inclusion or omission of any matter, in the Prospectus which is misleading and has sustained any loss or damage as a consequence thereof.

Persons Liable u/s 35

- The Company,
- Director at the time of the issue of the Prospectus,.
- has authorized himself to be named and is named in the Prospectus as a Director
- is a Promoter of the Company
- has authorized the issue of the Prospectus, and
- is an Expert referred u/s 26(5).



Punishment for fraudulently inducing persons to invest money. Section 36

- any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
- any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities
- view to obtaining credit facilities from any bank or financial institution,

Action by affected persons section 37

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

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SECTION 23 SAYS COMPANY MAY ISSUE OF SHARES BY WAY OF

PUBLIC OFFER
THROUGH PROSPECTUS

PRIVATE
PLACEMENT

RIGHT ISSUE
AND BONUS
ISSUE

IPO

FPO

ONLY FOR PUBLIC
COMPANY

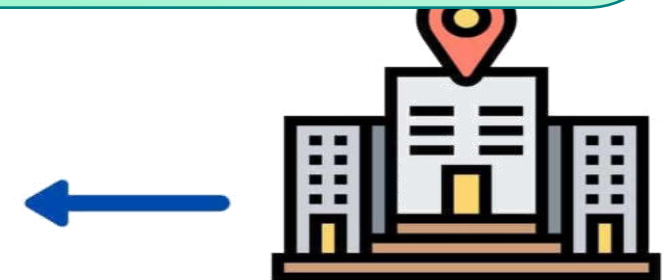
Section 29 of the Act provides that every company making public offer of any security, shall issue the securities only in dematerialized form by complying with the provisions of Depositories Act, 1996 and the regulations made thereunder.

**RIGHT
ISSUE OF
SHARES
SECTION
62 (1)(a)**

Section 62 of the Companies Act provides for the issue of "Rights Shares" and states that whenever at any time, A COMPANY having a share capital proposes to increase its subscribed capital by the issue of further shares

Section 42 and Rule 14 of the Companies (Prospectus and Allotment of Securities) amendment Rules, 2018

- Private Placement offer letter
- Application form to accompany offer letter
- Private offer to be previously approved by special resolution.
- Offer to maximum of 200 persons in a financial year.
- Offer counted separately for each kind of security.
- Payment from subscriber's bank account.
- Filing of such record with the Registrar.
- Return of allotment to Registrar



SHARE CAPITAL PART-C

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RULE 13 OF COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014

The expression 'Preferential Offer' means an issue of shares or other securities, by a company to any select person or group of persons on a preferential basis and does not include shares or other securities offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or bonus shares or depository receipts issued in a country outside India or foreign securities

PREFERENTIAL OFFER OF UNLISTED COMPANIES

- The issue is authorized by its articles of association
- The issue has been authorized by a special resolution of the members
- The allotment of securities shall be completed within a period of twelve months from the date of passing of the special resolution.
- The price of the shares or other securities to be issued on a preferential basis,

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BONUS SHARES SETION 63

A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. They are given free. The bonus shares allotted to the members do not represent taxable income in their hands

Advantages of Issuing Bonus Shares

- Fund flow is not affected adversely.
- Market value of the members' shareholdings increases with the increase in number of shares in the company.
- Bonus shares is not an income. Hence it is not a taxable income.
- Paid-up share capital increases with the issue of bonus shares.

a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of Sources for issue of Bonus shares

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

SHARE CAPITAL PART-D

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ALLOTMENT OF SHARES

- Allotment means acceptance of offer made by applicants to take shares of company.
- It is an appropriation of capital of company

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

- The allotment should be made by proper authority
- The allotment should be absolute and unconditional
- The allotment must be communicated.
- Allotment against application only

MINIMUM SUBSCRIPTION (SEC. 39(1))

- **Meaning :** Minimum subscription is the minimum amount stated in the prospectus, which in the opinion of directors, must be raised by the issue of share capital to start with.
- only if the amount stated in the prospectus as the minimum amount of subscription, is received.
- Quantum of minimum subscription shall be as under-
 - a) Under Companies Act: Amount stated in the prospectus
 - b) Under SEBI Guidelines : 90% of the total issue size
- Time limit for minimum subscription and effect of non-receipt

THE MINIMUM SUBSCRIPTION

- By the closure of issue otherwise refund the application money with in Fifteen days of the closure of the issue
- IN CASE OF UNDERWRITTEN ISSUE within 60 days of the closure of issue otherwise refund the application money with in next 10 days

COLLECTION OF MINIMUM APPLICATION MONEY (SEC. 39(2))

- **Condition for allotment**
- **Quantum of Minimum Application Money**
- Under companies Act : Note less than 5% of the Nominal Amount of the security
- Under SEBI Guidelines: 25% of nominal value of security.

SHARE CAPITAL PART-D

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PENALTY

39 (5) In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

COLLECTION OF MINIMUM APPLICATION MONEY (SEC. 39(2))

- **Condition for allotment:** Allotment of securities can be made only if the minimum value on application, is collected.
- **Quantum of Minimum Application Money:** Minimum amount payable on application of any security shall be—
- **Under companies Act :** Not less than 5% of the Nominal Amount of the security
- **Under SEBI Guidelines:** 25% of nominal value of security.

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RETURN OF ALLOTMENT SEC. 39(4)

- Section 39 (4) Whenever a company having a share capital makes any allotment of securities,
- it shall file with the Registrar a return of allotment in Form PAS-3.

LISTING PERMISSION STOCK EXCHANGE(S) SEC. 40(1)

Every Company making public offer of securities before making the public offer, the company shall make an application to one or more recognized stock exchange (s) and obtain permission for listing of its securities.

Prospectus should state the name of the stock exchange (s) in which securities shall be dealt. SEC. 40(2)

Effect of approval or denial from RSE

- Allotment of securities can be made, only if listing permission is granted.
- No allotment of securities can be made, if listing permission is denied.

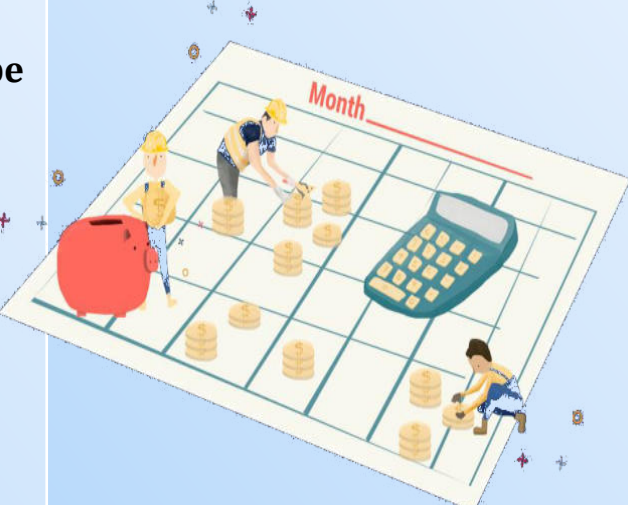

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<u>DEPOSIT OF APPLICATION MONEY IN SEPARATE BANK ACCOUNT (SEC. 40(3))</u>	<u>SECTION (40)(4)</u>	<u>Punishment for Default Sec. 40(5)</u>	<u>UNDERWRITING COMMISSION SECTION 40(6)</u>
<p>Every Company making Public Offer of Securities Deposit All monies received on application from public for subscription to the securities shall be kept in a separate bank a/c in a scheduled bank, and shall not be utilized for any purpose other than as given below :</p> <ul style="list-style-type: none"> • For adjustment against allotment, • For repayment of Monies, 	<p>Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.</p> 	<ul style="list-style-type: none"> • Company is punishable with fine of minimum 5 lakhs, maximum 50 lakhs • Every officer in default is punishable (i) Imprisonment of Maximum 1 year, or (ii) fine of minimum 50,000, maximum 3 lakhs, or (iii) both. 	<p>Section 40(6) provides that the company may pay commission to any person in connection with the subscription to its securities subject to such conditions as prescribed under Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 as under:</p> <p>A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional,</p>

SHARE CAPITAL PART-E

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SHARES TO BE MOVEABLE PROPERTY SECTION 44

The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company.

SHARES TO HAVE DISTINCTIVE NUMBERS SECTION 45

Every share in a company having a share capital shall be distinguished by its distinctive number

PROVISIONS RELATING TO SHARE CERTIFICATES SECTION 46

- issued under the common seal.
- duplicate certificate of shares may be issued, if such certificate (a) is proved to have been lost or destroyed; or (b) has been defaced, mutilated or torn and is surrendered to the company.
- the manner of issue of a certificate as may be prescribed.
- share is held in depository form, the record of the depository is the prima facie evidence.
- intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher

SHARE CERTIFICATES

- Issue of share certificate Rule 5 of the companies (Share Capital and Debentures) Rules, 2014
- issue of renewed or duplicate share certificate Rule 6 of the companies (Share Capital and Debentures) Rules, 2014

Split Certificate A split certificate means a separate certificate claimed by a shareholder for a portion of his holding. The advantages of a split certificate are that the shareholder may benefit in case of a transfer by way of sale or mortgage in small lots and the right to multiply the certificates into as many shares held by the shareholder.

SHARE CAPITAL PART-F

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CALLS, FORFEITURE, SURRENDER AND REDUCTION OF SHARES

- A call is a demand, by the company in pursuance of a Board resolution
- liquidator in the course of winding up of the company.
- amount payable in application on each share shall not be less than five per cent of the nominal amount of the share.
- all moneys payable by any member to the company on the shares held by him under the memorandum or articles
- default in payment of a valid call, the company can enforce payment of such moneys by legal process and forfeit the shares in case the call is not paid.
- liability of members is enforceable only after a proper notice which is called 'call letter' or call notice as 1st, 2nd and final or so on,

Requisites of a valid call

- Board of Directors to make call(s) on shares
- Call(s) to be made bonafide in the interest of the company
- Call(s) must be made on uniform basis
- Notice of call(s)

Regulations 13 to 18 of Table-F

- 14 days' notice must be given to members
- interval of one month is required between two successive calls .
- Board of directors has the power to revoke or postpone a call after it is made.
- Joint shareholders are jointly and severally liable for payment of calls.
- member fails to pay call money he is liable to pay interest not exceeding the rate specified in the articles or terms of issue or such lower rate, as the Board may determine.
- desires to pay the call money in advance,
- A defaulting member will not have any voting right till call money is paid by him.

Interest on calls due but not paid

A member is generally made liable to pay interest on the calls made but not paid. The rate of interest to be charged is as specified in the Articles.

SHARE CAPITAL PART-F

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FORFEITURE OF SHARES

Forfeiture may be termed as penalty for violation of terms of contract. Forfeiture of shares means taking back of shares by the company from the shareholders. If the shareholder makes default in payment of calls on shares, then the company can use the option of forfeiting the shares.

For a valid forfeiture, satisfaction of following conditions is necessary

- Articles of Association must authorise the forfeiture of shares. .
- Resolution for Forfeiture
- Power of forfeiture must be exercised bona fide and for the benefit of the company

Re-issue of Forfeited Shares

Shares forfeited by a company may either be cancelled or re-issued to another person at the discretion of the Board. This is done by a Board resolution. After the money due is received from the new member(s), the company executes a transfer deed and issues a share certificate, and if the original holder has already surrendered the share certificate, it is duly transferred, otherwise after a public notice in a newspaper, a new share certificate is issued.

COMPANY'S LIEN ON SHARES

Articles 9 to 12 of Table F of Schedule I to the Act carry the rules as to lien. These articles are not compulsory. A company may adopt its own articles regarding the subject matter of lien as also regarding any money due to it from the shareholder either originally or subsequently by a special resolution

SURRENDER OF SHARES

surrender of shares means voluntary return of shares by the shareholder to the Company for cancellation. There is no provision for surrender of shares in the Companies Act

- re-issued in the same way as the forfeited shares. In this case, there is no reduction in capital.
- No consideration can be paid by Company in exchange of surrendered shares as it would amount to purchase of its own shares, which is prohibited by Sec 68.

SHARE CAPITAL PART-F

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SECTION 66: REQUIREMENTS FOR REDUCTION



Reduction of capital refers to reduction of Subscribed and Paid-Up Capital of the Company. It applies to:

- Company limited by shares
- Company limited by Guarantee and having share capital.

A Company can reduce its capital only if:

- Authorized by its Articles
- Special resolution
- NCLT approval

Reduction of share capital without sanction of the NCLT



- Forfeiture of shares
- Surrender of shares
- Diminution of capital
- Redemption of redeemable Preference shares
- Purchase of shares of a member by the Company under Sec 242



PROCEDURE FOR REDUCTION OF CAPITAL



- Convene and hold a Board Meeting
- Issue the notice of general meeting.
- Convene and hold the general meeting and pass the necessary special resolution..
- File E-Form now MGT- 14 .
- Make An application to NCLT for reduction in Form No. RSC-1.
- The Tribunal shall, within fifteen days of submission of the application under rule 2, give notice
- list of creditors within seven days of the direction by tribunal,
- notice to be published, in Form No. RSC-4 within seven days from the date on which the directions are given,
- file an affidavit in Form No. RSC-5
- he Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained

SHARE CAPITAL PART-G

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TRANSFER OF SHARES AND TRANSMISSION OF SHARES

SECTION (56 (1, 3) and Rule 11(1, 2, 3) of Companies (Share Capital and Debentures) Rules, 2014 deals with TRANSFER OF SHARES

SECTION 56 (2, 5) AND Section 72 DEALS WITH TRANSMISSION OF SHARES

SEC 58 DEALS WITH REFUSAL BY THE CO. TO REGISTER TRANSFER AND TRANSMISSION OF SHARES

INSTRUMENT OF TRANSFER

a company, shall not register a transfer of securities of, the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of sixty days

PROCEDURE OF TRANSFER OF SHARES

- Purchase share transfer deed (form sh. 4)
- Thereafter, fill in all the particulars-e.g. Name of the concerned company, total number of shares being sold, distinctive number of shares, particulars of transferor and transferee, amount of purchase consideration etc.
- Get the share transfer deed stamped as per Indian stamp act
- Signing share transfer deed by transferor and transferee
- Submit share transfer deed and share certificate to company
- Company shall Enter the name of transferee in R.O.M. and enter the name of transferee on back side of share certificate and give back to transferee

IN CASE OF LOSS OF TRANSFER DEED

- In case of loss of the instrument, the company may register the transfer in terms of indemnity. It has been provided in section 56(2) of the Act that where, on an application in writing made to the company bearing adequate stamp value for an instrument of transfer

SHARE CAPITAL PART-G

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DEPOSITORY



A Depository is an organisation like a Central Bank where the securities of a shareholder are held in the electronic form at the request of the shareholder through the medium of a Depository Participant.

TWO BASIC CONDITIONS TO BECOME DEPOSITORY

- Registered under Companies Act
- Registered with SEBI

Depository

BENEFITS OF DEPOSITORY SYSTEM

- Elimination of bad deliveries
- Elimination of all risks associated with physical certificates
- Immediate transfer and registration of securities
- Reduction in handling of huge volumes of paper No stamp duty on transfer.

DEMATERIALISATION

Dematerialisation is a process by which the physical shares are converted into electronic shares at the request of the investor.

DEMATERIALISATION PROCESS

- Fills Dematerialization Request Form (DRF) and lodges DRF and share certificates with DP
- DP intimates the Depository and send certificates and DRF form to Registrar/Issuer
- Depository intimates Registrar/Issuer
- Registrar on receipt of DRF form cancel the share certificate and entered in its ROM the name of depository as a registered owner.
- After that Registrar/Issuer confirms to Depository.

REMATERIALISATION

Rematerialisation is a process by which the electronic shares are converted back into physical shares at the request of the investor.

REMATERIALISATION PROCESS

- Client submits Rematerialisation Request Form (RRF) to DP.
- DP intimates Depository and DP sends RRF to the Registrar/Issuer.
- Depository intimates the Registrar/Issuer
- Registrar/Issuer prints certificates and sends to Investor.
- Registrar/Issuer confirms to Depository

SHARE CAPITAL PART-H

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Financial restructuring

Financial restructuring of a company involves a re-arrangement of its financial structure to make the company's finances more balanced. It is an adjustment of debt-equity ratio.

NEED FOR FINANCIAL RESTRUCTURING

- Necessity for injecting more working capital to meet the market demand for the company's products or services;
- When the company is unable to meet its current commitments;

METHODS OF FINANCIAL RESTRUCTURING

FOR UNDER-CAPITALIZED COMPANY

- Injecting more capital whenever required either by resorting to rights issue or additional public issue.
- Resorting to additional borrowings
- issuing debentures, bonds, etc or other
- Inviting and accepting fixed deposits from directors, their relatives, business associates and public.

FOR OVER-CAPITALIZED COMPANY

- Buy-back of own shares
- Paying back surplus share capital to shareholders
- Repaying loans to financial institutions, banks, etc
- Repaying fixed deposits to public
- Redeeming its debentures, bonds



SHARE CAPITAL PART-H

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BUY BACK OF SHARES

- Buy back of its own shares by a company is nothing but reduction of share capital. **BUYBACK OF SHARES**
- It is nothing but a process which enables a company to go back to the holders of its shares and offer to purchase from them the shares that they hold.



BUY BACK OBJECTIVE

- To increase promoters holding
- Increase Earnings per share
- Maintaining shareholders' value.
- Restructuring the debt-equity mix
- To counter a hostile takeover
- To return surplus cash not required by business to share holders

BUY BACK UNDER COMPANIES ACT

Section 68 **OVERRIDES** all other provisions of Companies Act 2013, as it starts with the words "Notwithstanding anything contained in the Act" but is **SUBJECT** to Section 70 of Companies Act. Though Capital is reduced under Buy Back, the provisions of Section 66 of Companies Act 2013, requiring NCLT Approval is **NOT REQUIRED** as Section 68 overrides all other Section 66. Thus, only sections 68, 69 & 70 to be complied with.

LEGAL FRAMEWORK FOR BUY BACK

In case of listed companies:

- Companies Act, 2013
- SEBI (Buy-back of Securities) Regulations, 2018

In case of listed companies:

- Companies Act, 2013
- SEBI (Buy-back of Securities) Regulations, 2018



SHARE CAPITAL PART-H

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IMPORTANT PROVISIONS OF BUY BACK OF SHARES {SECTION 68}

- Sources of buy back.
- 8 pre conditions for buy back.
- Explanatory statement
- Completion of buy back
- Methods of buy back
- Declaration of solvency .
- Extinguish and physically destroy the securities bought-back.
- Restriction on further issue
- Register of buy back
- Return of buy back
- Penalty

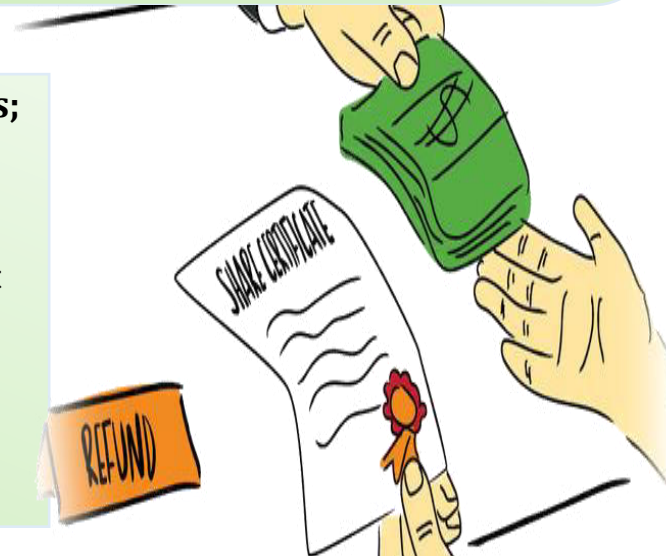
PROHIBITION FOR BUY-BACK

directly or indirectly purchase its own shares or other specified securities

directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of

- Section 92 Annual Return
- Section 123 Declaration of Dividend
- Section 127 Failure to distribute dividend
- Section 129 Financial Statement

- subsidiary company including its own subsidiary companies;
- investment company or group of investment companies;
- 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 thereon to any financial institution or banking company:



SHARE CAPITAL PART-H

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SECURITIES WHICH CAN'T BE BOUGHT BACK

Lock-in securities:-

Any securities issued by a listed company to its promoters or group of employees, which subject to lock-in period, are not available for buy-back before expiry of lock-in period.

Partly paid -up shares:-

A company can't buy-back its partly-paid up shares, on which call money is in arrear.

Non-transferrable securities

those securities which are subject to lien or are pledged or restricted by a court can't be bought -back by the company

STAMP DUTY ON BUY-BACK

- bought back have to be statutorily extinguished within 7 days from the last date of completion of buy-back.
- no registration of such shares takes place in the name of the company.
- names of the members/ holders of the shares have to be struck off from the register of members if the entire holding is bought back.
- buy-back cannot be construed as transfer and stamp duty would not be payable in a case where buy-back of shares takes place in physical form
- buy-back of shares will not be construed as "release" falling under Article 55 of the Indian Stamp Act attracting stamp duty.

PROCEDURE FOR BUY-BACK OF SECURITIES

- authorized by a special resolution
- The company shall file with the Registrar, along with the letter of offer,
- The letter of offer shall be dispatched immediately after filing the same with the Registrar of Companies.
- offer for buy-back shall remain open for a period of not less than fifteen days and not exceeding thirty days.
- securities offered is more than the total number of shares or securities to be bought back by the company
- complete the verifications of the offers received within fifteen days from the date of closure
- immediately after the date of closure of the offer, open a separate bank account and deposit therein,
- company shall within seven days of the time specified in sub-rule (7) Make payment of consideration in cash Return the share certificates
- maintain a register of shares or other securities which have been bought back in Form No. SH.10
- after the completion of the buy-back under these rules, shall file with the Registrar.
- There shall be annexed to the return filed with the Registrar in Form No. SH.11, a certificate in Form No. SH.15 signed by two directors of the company

ACCOUNTS OF COMPANIES

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The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more.

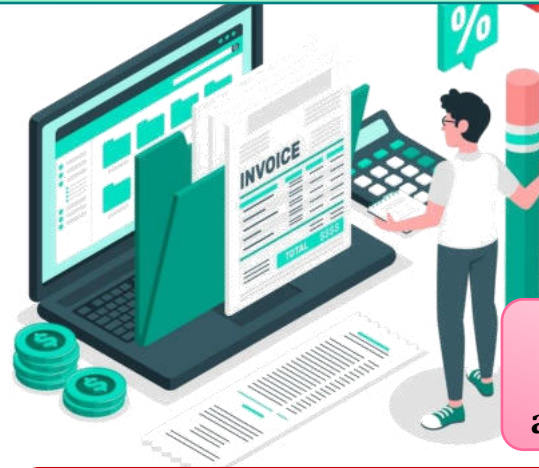
REQUIREMENT OF KEEPING BOOKS OF ACCOUNT (SECTION 128 (1))

NATURE OF BOOKS TO BE KEPT

The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013

FEATURES OF BOOKS OF ACCOUNTS

- True and fair view
- Accrual basis
- Double entry



LOCATION OF BOOK OF ACCOUNT (SECTION 128 (1))

Registered office

All the books of account shall be kept at the registered office

Any other place

Place in India

All or any of the books may be kept at any other place in India.

Board resolution

The Board must pass a resolution according approval to keep the books at such other place

The company shall give a notice to the registrar within 7 days of passing the Board resolution. (form AOC -5) (SECTION 128 (1) Proviso)

BOOKS OF ACCOUNT OF BRANCH SECTION 128 (2)

- keep the books of account in the same manner as specified in sub-section (1)
- branch offices are required to send the proper summarized return at quarterly intervals to the company at its registered office and kept open to directors for inspection.

ACCOUNTS OF COMPANIES

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INSPECTION BY DIRECTORS SECTION 128 (3)

- The books of account etc. maintained with India shall be open for inspection
- financial information, if any, maintained outside the country, copies of such financial information shall be maintained.
- The inspection of books of account of any subsidiary company shall be made only by the person authorized by a resolution of the Board of Directors.
- duty of every officer and employee of the company to give to the person making inspection all reasonable of the Board of Directors.

Rule 4 of the Companies (Accounts) Rule, 2014

- returns of the books of account of the company kept and maintained outside India
- other financial information maintained outside the country is required by a director,
- financial information shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

PERIOD FOR WHICH BOOKS TO BE PRESERVED SECTION 128 (5)

- Not less than 8 financial years
- existence for less than 8 financial years, then, for the entire period of its existence.
- Where an investigation of the company is ordered, the Central Government may direct that the books of account may be kept for such longer period as it may deem fit.

RESPONSIBILITY OF MAINTAINANCE BOOKS OF ACCOUNTS (section 128 (6))

Person's responsible u/s 128(6)

- MD
- CFO
- WTD

Charging a competent person with duty of maintenance of books

Duty charged to whom?

Any competent and reliable person

Duty charged by whom?

Board

ACCOUNTS OF COMPANIES

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PENALTY SECTION 128 (6)

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

Legal requirements financial statement [Section 129(1)]

- give a true and fair view of the state of affairs of the company.
- comply with accounting standards notified under section 133.
- form or forms as may be provided for different class or classes of companies in Schedule III.

SECTION 129 FINANCIAL STATEMENT

As per Section 2(40), financial statement includes:

- Balance Sheet.
- Profit and loss account or in the case of company not for profit, income and expenditure statement.
- Cash flow statement.
- Statement of changes in equity, if applicable.
- Any explanatory note annexed to above documents.

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NON-APPLICABILITY

- Any insurance company; or
- Any banking company; or
- any company engaged in the generation or supply of electricity; or
- Any other class of company

Consolidated financial statement [Section 129(4)]

The provisions relating to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements.

Consolidated financial statement [Section 129(3)]

one or more subsidiaries or associate companies, it shall, in addition to financial statements. company shall also attach along with its financial statement,

Persons responsible and Penalty [Section 129(7)]

- Managing director
- Whole-tome director in charge of finance
- Chief Financial Officer
- Any other person of a company charged by the Board with such duty
- All the directors,

ACCOUNTS OF COMPANIES

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PERIODICAL FINANCIAL RESULTS

- results of the company on such periodical basis and in such form as may be prescribed;
- to obtain approval of the Board of Directors
- file a copy with the Registrar within a period of thirty days

FINANCIAL STATEMENTS, BOARD REPORT ETC. SECTION 134

- STEP 1 PREPARATION OF FINANCIAL STATEMENTS
- STEP 2 SIGNING OF FINANCIAL STATEMENTS
- STEP 3 CIRCULATION OF FINANCIAL STATEMENTS
- STEP 4 ADOPTION OF FINANCIAL STATEMENTS
- STEP 5 FILING OF FINANCIAL STATEMENTS TO ROC

RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL'S ORDERS

- A company shall not re-open its books of accounts and shall not recast its financial statements,
- The re- opening and recasting of financial statements is permitted
- The accounts so revised or re-cast under this section shall be final.
- It may be noted that the Tribunal will include National Company Law Tribunal (NCLT).
- No order shall be made under sub-section (1) in respect of re-opening of books of account

COMPOSITION OF AUTHORITY RULE 3

- The Authority shall consist of the following persons to be appointed by the Central Government,
- The chairperson shall be a person of eminence, ability, integrity and standing and having expertise and experience of not less than twenty-five years in the field of accountancy, auditing, finance or law.
- A full-time member shall be a person of ability,
- A part-time member shall be a person who shall not, have any such financial or other interest

ACCOUNTS OF COMPANIES

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FILING OF COST AUDIT REPORT

A company required to furnish cost audit report and other documents to the Central Government under sub-section (6) of section 148 of the Act and rules made there under, shall file such report and other documents using the XBRL taxonomy given in Annexure-III for the financial years commencing on or after 1st April, 2014 in e-Form CRA-4

CORPORATE SOCIAL RESPONSIBILITY

CSR has many interpretations but can be understood to be a concept imposing a liability on the Company to contribute to the society (whether towards environmental causes, educational promotion, social causes etc.) along with the reinforced duty to conduct the business in an ethical manner. It is also known as corporate conscience, corporate citizenship, social performance or sustainable business/responsible business.

BENEFITS OF CSR

- Strengthened brand positioning
- Enhanced corporate image and reputation
- Satisfaction of economic and social contribution to society
- Contribution to the surrounding society
- Increased ability to attract, motivate and retain employees
- Enhanced sales and market share
- Increased appeals to investors and financial analysts

SECTION 138: INTERNAL AUDIT

- Every listed company
- Every unlisted public company having
 1. Paid up share capital of fifty crore rupees
 2. Turnover of two hundred crore rupees
 3. Outstanding loans or borrowings one hundred crore rupees or more
 4. Outstanding deposits of twenty five crore rupees
- Every private company having
 - a) Turnover of two hundred crore rupees
 - b) Outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more

AUDIT OF ACCOUNTS

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INTRODUCTION

Audit is an examination of accounting records undertaken with a view to establish the correctness or otherwise of the transactions reflected therein. The main object of audit is to

- Detection and prevention of errors.
- Detection and prevention of fraud.

Manner and procedure of selection of auditors (Rule 3)

The Audit committee shall recommend the name of an individual or a firm as auditor to the Board for consideration or In case the company is not required to constitute the Audit Committee, the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

- Board agree with the recommendation of audit committee, then send to members.
- Board does not agree with the recommendation of audit committee

APPOINTMENT OF FIRST AUDITOR

Government Company

The first auditor shall be appointed by CAG within 60 days of registration of the company.

CAG does not appoint the first auditor the Board shall appoint the first auditor within next 30 days.

In case any other Company

The first auditor shall be appointed by the Board of directors within 30 days of registration of the company.

Reappointment of retiring auditor

- He is not disqualified for re-appointment;
- He has not given to the company a notice in writing of his unwillingness to be reappointed; and
- A special resolution has not been passed at the AGM appointing some other auditor or providing expressly that he shall not be re-appointed.

No auditor is appointed or reappointed at AGM – Consequences

Where at any AGM, no auditor is appointed or re-appointed, the existing auditor shall continue to be the auditor of the company.

AUDIT OF ACCOUNTS

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CASUAL VACANCY IN THE OFFICE OF AUDITOR – Section 139 (8)

- The term 'casual vacancy' has not been defined under the Companies Act, 2013. It generally means a vacancy caused by the auditor ceasing to act as such after accepting a valid appointment.
- Where no auditor is appointed or reappointed it does not result in a casual vacancy.
- vacancy created because of resignation of an auditor falls within the meaning of 'casual vacancy'.

RESIGNATION OF AUDITOR

- In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.
- In case of Government Company or government controlled company, auditor shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

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REMOVAL OF AUDITOR- Section 140 (1) and Rule 7

- Obtaining the prior approval of the Central Government (R.D.) by filling an application in form ADT-2 within 30 days of resolution passed by the Board.
- The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
- The auditor concerned shall be given a reasonable opportunity of being heard.

PENALTY FOR CONTRAVENTION OF SECTION 140(2)

liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of 2 lakh rupees.

AUDIT OF ACCOUNTS

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POWERS OF TRIBUNAL- Section 140 (5)

A National Company Law Tribunal (NCLT) can either

- Suo Moto or
- on an application from Central Government, or
- on an application from person concerned

NCLT RULES 2016 RULE 78

- filed by the director on behalf of the company or the aggrieved auditor to the Tribunal in Form NCLT-1.
- Tribunal is satisfied on an application of the company or the aggrieved person that the rights conferred by the provisions of section 140 are being abused by the auditor.
- If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt

BRANCH AUDIT – SECTION 143 (8) AND RULE 12

IN CASE OF LOCAL BRANCHES

- Company's auditor
- Another qualified auditor

IN CASE OF FOREIGN BRANCHES

- Company's auditor
- Another qualified auditor
- A person qualified to audit accounts according to laws of that country

PUNISHMENT FOR CONTRAVENTION – Section 147

- Section 147(1) Punishment for contravention of Section 139 to 146
- Section 147(2) Punishment for contravention of Section 139, 143, 144, or 145
- Section 147(3) Refund of remuneration by auditors

COST RECORDS & AUDIT

Maintenance of cost records is mandatory only if such an order is made by the Central Government.

Order for which companies

- Such class of companies as are engaged in the production of such goods as may be prescribed.
- Such class of companies providing such services as may be prescribed.

CHARGES

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INTRODUCTION

A charge is a right created by any person including a company referred to as “the borrower” on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as “the lender”, which has agreed to extend financial assistance.

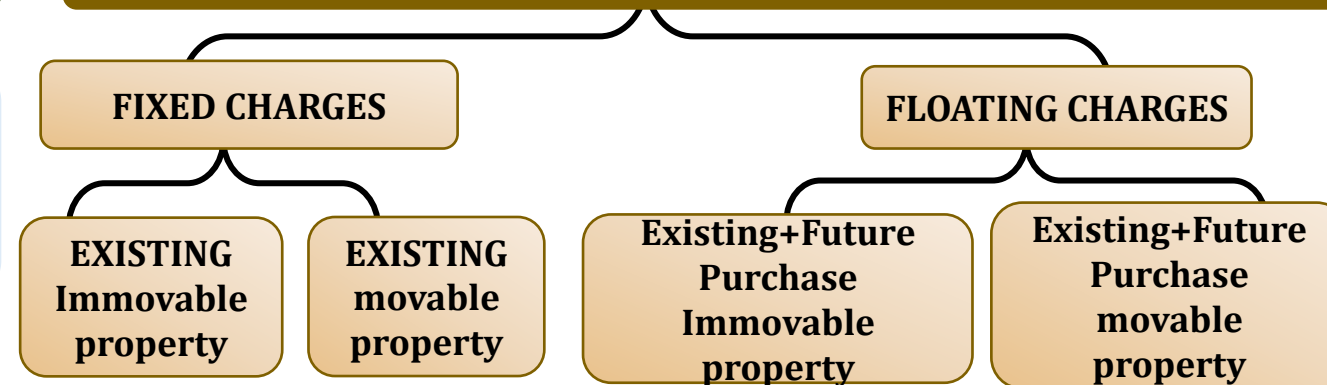
AS PER COMPANIES ACT, 2013

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.

AS PER TRANSFER OF PROPERTY ACT, 1882

According to Section 100 where 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, it is called charge.

TYPES OF CHARGES



CRYSTALLISATION OF A FLOATING CHARGE

‘Crystallization’ means that the right of the company to deal in the assets, which are subject of floating charge, comes to an end.

- Cases in which crystallization Takes place.
- ceases to carry on business. .
- makes a default in payment of interest or repayment of principal to the charge holder in accordance with the terms of the charge, and the charge holder brings an action to enforce his security.

CHARGES

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REGISTRATION OF CHARGES

Section 77(1) provides that it shall be the duty of every company creating a charge

- within or
- outside India,

on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating such charge in Form No. CHG-1 (for other than debentures) or Form No. CHG-9 (for debentures including rectification), with the Registrar within 30 days of its creation.

CERTIFICATE OF REGISTRATION OF CHARGE Section 77(2)

Section 77(2) of the Act states that when a charge is registered with the Registrar under section 77(1), he shall issue a certificate of registration of such charge in Form No. CHG-2 and for registration of modification of Charge in Form No. CHG-3, to the person in whose favour the charge is created.

APPLICATION TO REGISTRAR RULE 4

- Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge,
- The application under sub-rule (1) shall be made in Form No.CHG-1 and Form No. CHG9 supported by a de

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REGISTRATION OF CREATION OR MODIFICATION OF CHARGE RULE 3

- particulars of the charge together with a copy of the instrument, if any, creating or modifying the charge in Form No.CHG-1
- If the particulars of a charge are not filed in accordance with sub-rule (1), such creation or modification shall be filed in Form No. CHG-1 or Form No. CHG- 9.
- fails to register the charge shall be entitled to recover from the company the amount of any fees or additional fees or advalorem fees paid by him 'to the Registrar for the purpose of registration of charge.
- A copy of every instrument evidencing any creation or modification of charge

CHARGES

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CONSEQUENCES OF NON-REGISTRATION

- The charge shall be void against the liquidator appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be and any creditor of the company.
- liable for the repayment of the money secured by the charge.
- money secured by the charge becomes payable immediately.
- punishable with fine minimum 1 lakh and max. 10 lakh.
- imprisonment up to 6 month or with a fine min. 25000/- max. 1 lakh or with both.

APPLICATION FOR REGISTRATION OF CHARGE BY CHARGEHOLDER SECTION 78

Where a company fails to register the charge within the period of 30 days specified in section 77, without prejudice to its liability in respect of any offence under this Chapter, the person in whose favour the charge is created may apply to the Registrar for registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed

Applicability of provisions relating to modification of charge SECTION 79

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

- A company acquiring any property subject to a charge within the meaning of that section;
OR
- modification of the charge.

REGISTER OF CHARGES MAINTAINED BY ROC SECTION 81

The Registrar of Companies is required to maintain a Register of charges, separately, in respect of each company pursuant to the provisions of section 81 of the Companies Act, 2013. Section 81(2) provides that the Register of charges shall be open to inspection by any person on payment of fees of Rs. 100 as prescribed

SATISFACTION OF CHARGE SECTION 82
Satisfaction of charge is another important aspect relating to debts created by a charge. In case of a full and complete payment of the secured charge registered with the Registrar of Companies.

CHARGES

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INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER SECTION

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appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or if any person appoints such receiver or person under any power contained in any instrument, he shall, within a period of thirty days from the date of the passing of the order or of the making of the appointment

RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES

- the omission to give intimation to the Registrar of the payment or satisfaction of a charge
- the omission or misstatement of any particulars with respect to any such charge

PUNISHMENT FOR CONTRAVENTION SECTION 86

penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

MORTGAGE DEFIN



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(SEC. 58) MORTGAGE

- "Mortgage" is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan : An existing debt or future debt
- OR the performance of an engagement which may give rise to pecuniary liability.

KINDS OF MORTGAGE

- Simple Mortgage
- Mortgage by conditional sale
- English mortgage
- Usufructuary mortgage.
- Mortgage by deposit of title deeds or equitable mortgage.
- Anomalous mortgage.

PRODUCER COMPANY

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CSEET - CS EXECUTIVE AND PROFESSIONAL.

- A producer company is company form of business organization. these types of companies are working like co-operative societies.
- Companies Amendment Act 2020 has made amendment under Companies Act 2013, After section 378 of the Companies Act 2013 Act, the CHAPTER XXIA is inserted, containing the provisions of producers company.
- SECTION 378A TO SECTION 378ZU DEALS WITH PRODUCERS COMPANY

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FORMATION OF PRODUCERS COMPANY SECTION 378C

- Any ten or more individuals, each of them being a producer or any two or more Producer Institutions.
- Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration within thirty days.
- liability of its Members limited by the memorandum to the amount,
- may reimburse to its promoters all other direct costs associated with the promotion and registration of the company.
- shall become a body corporate as if it is a private limited company

OBJECTS OF PRODUCER COMPANY SECTION 378B

- Producer Company may carry on any of the activities specified in this clause either by itself or through other institution;
- Processing
- Manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;
- Providing education on the mutual assistance principles to its Members and others;
- activities for the promotion of the interests of its Members;
- Generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce;
- Insurance of producers or their primary produce;
- Promoting techniques of mutuality and mutual assistance;
- Welfare measures or facilities
- any other activity, ancillary or incidental to any of the activities.
- Financing of procurement, processing, marketing or other activities specified in clauses (a) to (j)

PRODUCER COMPANY

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MEMBERSHIP AND VOTING RIGHTS OF MEMBERS OF PRODUCER COMPANY SECTION 378D

- membership consists solely of individual Members, the voting rights shall be based on a single vote for every Member.
- where the membership consists of Producer Institutions only, the voting rights.
- where the membership consists of individuals and Producer Institutions, the voting rights shall be computed on the basis of a single vote for every Member. .
- Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.
- Producer Company may, if so authorised by its articles.
- No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.

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OPTION TO INTER-STATE CO-OPERATIVE SOCIETIES TO BECOME PRODUCER COMPANIES SECTION 378J

- any inter-State cooperative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Chapter
- Every application under sub-section (1).
- inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name.
- compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days.
- A co-operative society formed by producers, by federation or union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force.
- The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company,
- Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State cooperative society was earlier registered for deletion of the society from its register.

PRODUCER COMPANY

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NUMBER OF DIRECTORS

Section 378-O provides that, every Producer Company shall have minimum five and not more than fifteen directors. Provided that in the case of an Inter-State Co-operative Society as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

MATTERS TO BE TRANSACTED AT THE GENERAL MEETING

- Approval of budget and adoption of annual accounts
- Approval of patronage bonus.
- Issue of bonus shares
- Declaration of limited return and decision on the distribution of patronage.
- Specify the conditions and limits of loans that may be given by the Board to any director.
- Approval of any transaction of the nature as is to be reserved in the Articles.

QUORUM OF THE GENERAL MEETING

Section 378Y of the Act provides that unless Articles of Association require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

STRIKING OFF NAME OF PRODUCER COMPANY SECTION 378ZP

- fails to commence business within one year of its registration or ceases to transact business with the Members or if the Registrar is satisfied, after making such inquiry as he thinks fit,
 - Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified,
 - who is aggrieved by an order made under subsection (1), may appeal to the Tribunal within sixty days of the order.
- (4) Where an appeal is filed under sub-section (3),

DEBENTURES

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Raising of funds by issue of debentures or bonds is also a source of long-term capital for a company like share capital. Persons who subscribe to the equity shares of a company are its owners while debenture holders are its creditors.

DEBT MARKET IN INDIA

Issue and listing of non-convertible debt securities are required to be made in accordance with the provisions of the SEBI (issue and listing of Debt securities) Regulations, 2008.

Issue of debt securities that are convertible into equity shares shall be guided by the SEBI (ICDR) Regulations, 2018

DEBENTURE

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

FEATURES/ CHARACTERISTICS OF DEBENTURE

- A debenture is usually in the form of a certificate
- 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.
- A company shall not issue any debentures carrying voting rights. [Sec. 71(2)]
- A contract with the company to take up and pay for any debentures of the company may be enforced by a decree for specific performance.

TYPES OF DEBENTURES



DEBENTURES

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KINDS OF DEBENTURE

Redeemable Debentures

Debentures are generally redeemable, that is to say, they are issued on the terms that the company is bound to repay the amount of debentures, either at a fixed date, or upon demand, or after notice, or under a system of periodical drawings.

Secured and Unsecured/ Naked Debentures

Where debentures are secured by a mortgage or a charge on the property of the company, they are called secured debentures.

Convertible Debentures

Convertible debentures are those in which an option is given to the debenture holders to exchange a part or whole of their debentures for shares in the company under certain conditions and limitations imposed regarding the period during which the option may be exercised.

PRIOR APPROVAL OF THE GENERAL MEETING TO BORROW IN EXCESS OF THE PAID-UP CAPITAL AND FREE RESERVES

Where the amount of a proposed issue of debentures of a company together with its existing borrowings will exceed its paid-up capital and free reserves, the proposed issue cannot be made before a special resolution is passed by the company in general meeting pursuant to section 180(1)(c) and (2) of the Act empowering the Board to borrow in excess of the paid-up capital and free reserves of the company.

BONDS

Bonds are typically issued by financial institutions, government undertakings and large companies. The interest rate is assured and is paid at a fixed interval. On maturity, the principal is repaid. Bond is a form of loan.

Therefore all the provisions applicable for debentures given in the Companies Act 2013 and other relevant statutes are applicable for bonds also

DEBENTURES

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TYPES OF BONDS

- Deep discount bonds
- Deep discount bonds
- Sovereign bonds
- Convertible bonds

Debenture Trustee

not issue prospectus to more than five hundred persons without appointing a debenture-trustee.

prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, then only it is required to appoint a debenture trustee.

PRE CONDITIONS FOR ISSUING DEBENTURES

- date of its redemption shall not exceed ten years from the date of issue.
- debentures shall be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies .
- appoint the debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than sixty days after the allotment of the debentures.
- the debentures by way of a charge or mortgage shall be created in favour of the debenture trustee.
- appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures; and
- The company shall execute a debenture trust deed in Form No. SH.12 or as near thereto as possible, within 3 months from the closure of issue.

DEBENTURE TRUST DEED

[SECTION 71]

debentures are issued for public subscription, involving a considerable number of debenture holders, who do not have the time to look after their interests in the properties mortgaged or charged to them, a trustee may be appointed for the supervision of their common interest.

A trust deed is made under which some person is appointed as trustee, whereby the properties of the company are mortgaged or charged to trustee.

The trust deed also contains provisions dealing with the rights of the debenture holders and the company.

DEPOSITS

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Introduction:

- Deposit/Public Deposit/Fixed Deposit is a kind of borrowing made by the companies.
- It may be noted that deposits may be secured or unsecured borrowings.
- Sections 73 and 76 of the Companies Act, 2013 and Companies (Acceptance and Deposits) Rules, 2014 are the relevant provisions relating to concept of Public Deposits.

TYPE OF COMPANIES ON THE BASIS OF BUSINESS ACTIVITIES

BANKING COMPANY

IF these companies accept deposits Sections 73 and 76 and (Deposits) Rules, DO NOT APPLY

NBFC

IF these companies accept deposits Sections 73 and 76 and (Deposits) Rules, DO NOT APPLY

NBNEFC

IF these companies accept deposits Sections 73 and 76 and APPLY

KINDS OF DEPOSIT

Acceptance of deposit from Members (Section 73) (case-1)

Any company (whether private or public) can accept deposits from its members, subject to the passing of a resolution in general meeting and subject to certain specified conditions.

Acceptance of deposits from the Public (Section 76) (case-2)

Only a public company, having a NET WORTH of not less than one hundred crore rupees OR a TURNOVER of not less than five hundred crore rupees, can accept deposits from the Public. Such kind of public company, for the purpose of this Chapter, shall be referred to as 'Eligible Company'.

DEPOSITS

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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 section 76

73(2) A company by passing ordinary resolution may accept deposits from its members subject to the fulfilment of the following conditions, namely

- Issue of circular to the members
- FILING OF CIRCULAR TO ROC
- Maintenance of liquid fund
- DEFAULT IN EXISTING DEPOSITS

COMPANY ACCEPTING DEPOSITS FROM PUBLIC— SECTION 76

Section 76 provides that a public company having such net worth or turnover as mentioned above may accept deposits from persons other than members of the company, namely from the public.

Conditions

- A public company of the nature referred to above shall comply with the conditions stipulated
- Prior credit rating and annual renewal
- Creation of charge on the assets
- Issue of circular in newspaper

MEANING OF DEPOSIT

Any receipt of money by way of deposit or loan or in any other form, by a company. And it EXCLUDES the following:

- Amount from government
- Amount from foreign govts
- Loan from banking company/ Public Financial Institutions etc.
- Commercial paper, etc.
- Intercompany LOAN
- Share Application Money etc.
- Amount from director
- Bonds or debentures
- Amount accepted by nidhi company
- Unsecured loans from promoters
- Employee security deposit

DEPOSITS

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Depositor [Rule 2(1)(d)]

- Any member of the company who has made a deposit with the company in accordance with the provisions of Section 73 of the Companies Act; or
- Any person who has made a deposit with a eligible company in accordance with the provisions of Section 76 of the Companies Act

Periods of Acceptance of Deposits [Rule 3(1)(a)]

Minimum period

6 MONTH (1 exception Short term deposit not exceeding 10% of (paid up capital+ free reserves and security premium account) repayable after 3 month may be accepted

Maximum period

36 month

Joint Depositors [Rule 3(2)]

Where depositors so desire, deposits may be accepted in joint names, but not exceeding three, with or without any of the clauses, namely,

- “Jointly”,
- “Either or Survivor”,
- “First named or Survivor”,
- “Anyone or Survivor”.

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.

REPAYMENT OF DEPOSITS ACCEPTED UNDER THE PREVIOUS ACT

deposits accepted under the previous Act, any amount of deposit or interest is due on the commencement of the new Act or becomes due later, the company shall file with the Registrar in Form DPT-4 within three months from the commencement of the Act or from the date the payments are due, a statement of all deposits accepted by the company and sums remaining unpaid and the interest due thereon and the arrangements made for repayment.

DIVISIBLE PROFITS AND DIVIDENDS

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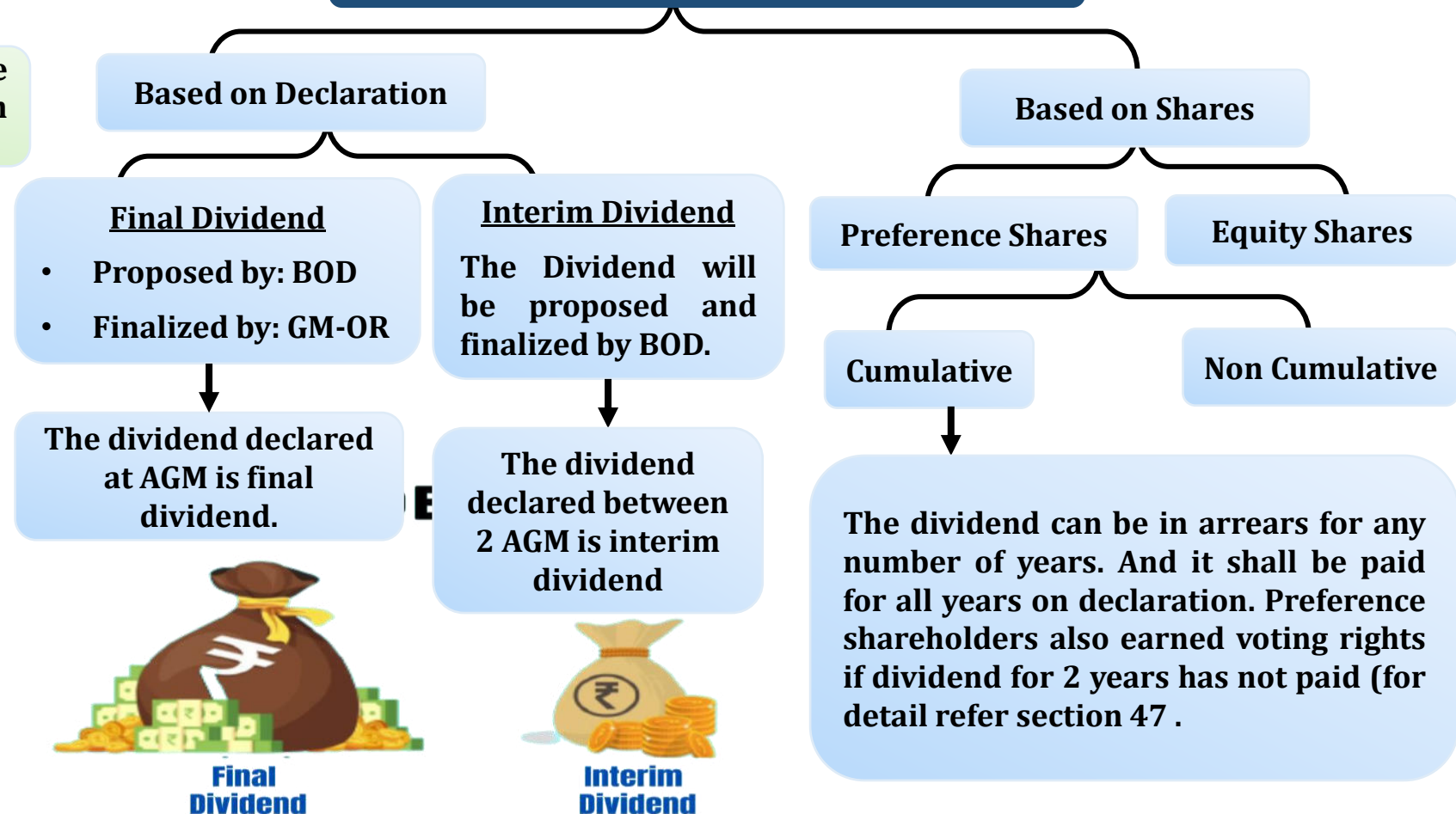
DIVIDEND

Dividend defined under Section 2(35) of the companies act, 2013, includes any interim dividend.

Declaration of Dividend by Company u/s 123 in BORAD MEETING

- WITH IN 5 DAYS Deposit dividend in separate dividend account.
- Payment of Dividend in 30 days u/s 127
- If not then in Next 7 days Transfer amount in unpaid dividend account and After 7 years Transfer of Dividend to IEPF u/s 124(5).
- With in 90 days Publish on the Website.

Types of Dividend



DIVISIBLE PROFITS AND DIVIDENDS

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Sources of Dividend Section 123 (1)

- Profits of the company for the year for which the dividend is to be paid.
- Undistributed profits of the previous financial years.
- Moneys provided by the Central Government or a State Government for payment of dividend



MODE OF PAYMENT OF DIVIDEND

- Cash
- Cheque
- Dividend warrant
- Electronic mode (ECS)

PUNISHMENT

dividend has been declared by a company but has not been paid or the warrant within 30 days from the date of declaration

PENALTY ON DIRECTOR
punishable with simple imprisonment which may extend to 2 years and shall also be liable to fine of Rs. 1,000/-

PENALTY ON COMPANY
Further, company shall be liable to pay simple interest @ 18% p.a. for the period of default.

EXCEPTION (WHERE NO PENALTY APPLIES)

- Where the dividend could not be paid by reason of the operation of any law;
- Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
- Where there is a dispute regarding the right to receive the dividend;
- Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;
- Where, for any other reason, the failure to pay the dividend

DIVISIBLE PROFITS AND DIVIDENDS

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INTERIM DIVIDEND [Sub-section (3) of Section 123]

- section 2(35) of companies Act 2013, dividend includes interim dividend.
- Interim dividend is usually paid in the middle of the year.
- Payment of interim dividend is optional.
- After declaration of interim dividend, the amount must be deposited in a separate bank account within 5 days of the declaration.

UNPAID DIVIDEND ACCOUNT SECTION 124

where a dividend declared by the Board or a company, interim or final, as the case may be, has not been paid or claimed within 30 days from the date of the declaration, the company shall transfer the unpaid or unclaimed dividend to an account opened in a scheduled bank to be called "Unpaid Dividend Account of Company within seven days from the date of expiry of the said 30 days.

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PENALTY

date of default, pay interest at the rate of twelve percent on such amount of dividend as has not been transferred and the amount of interest shall accrue to the benefit of the members in proportion to the amount remaining unpaid to them.

INVESTOR EDUCATION & PROTECTION FUND [IEPF] [SECTION 125]

- Unpaid Dividend
- Unpaid application money received by companies for allotment of securities and due for refund;;
- Unpaid matured deposits;
- Unpaid matured debentures;
- Interest accrued on (a) to (d) above;
- Grants and donations given to IEPF by the C/G, S/Gs,
- Interest or other income received out of the investments.
- Sale proceeds of fractional shares
- Redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- Such other amount as may be prescribed:



DIVISIBLE PROFITS AND DIVIDENDS

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unpaid and unclaimed for a period of 7 years from the date they become due for payment. The Fund shall be utilized for

- The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- Promotion of investors' education, awareness and protection;
- Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered loss due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- Reimbursement of legal expenses incurred in pursuing class action suits under sections 37 and 245 by members, debenture-holders or depositors as may be sanctioned by the NCLT; and
- Any other purpose incidental thereto, in accordance with such rules as may be prescribed.

(IEPFA) Appointment of Chairperson and Members holding of meetings and provision for offices and officers)

- Establishment of the authority
- Composition of the authority.
- Chairperson of the Authority .
- Chief Executive Officer of the Authority.
- Members of the Authority.
- Term of office of members of the authority.
- Functions of the authority.
- Meetings .
- Member not to participate in meetings in certain cases.
- Vacancies, etc., not to invalidate proceedings of authority .
- Protection of action taken in good faith

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Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016

- RULE 5 Statement to be furnished to the Fund .
- RULE 6 Manner of transfer of shares under sub-section (6) of section 124 to the Fund.
- RULE 7 Refunds to claimants from Fund.

RIGHT TO DIVIDEND, ETC. PENDING REGISTRATION OF SHARES [SECTION 126]

Where any instrument of transfer of shares has been delivered to any company for registration and the transfer of such shares has not been registered by the company, then the dividend is required to be paid to the transferee in case the transferor has given a mandate to that effect.

LOANS AND INVESTMENTS BY COMPANIES

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FREE RESERVES

As per section 2(43) "free reserves" means such reserves which, as per the latest audited balance Sheet of a company, are available for distribution as dividend

Scope of sec. 186

- Give any loan to any person or other body corporate
- Give any guarantee, or provide security, in connection with a loan
- Acquire, by way of subscription, purchase or otherwise the securities of any other body corporate

DIVIDEND TO SHAREHOLDERS

REQUIREMENTS OF MAKING INTER CORPORATE LOANS AND INVESTMENTS BY COMPANIES

APPROVAL OF BOARD

required for making intercorporate loan, investment, guarantee or security of any amount.

Conditions

- approval of Board must be obtained prior
- approval of Board must be obtained by passing a unanimous resolution.

APPROVAL OF SHAREHOLDERS

security proposed to be made or given by the Board, exceed the limits specified no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting

Approval of Public Financial Institution

- No prior approval of public financial institution is required, up to 60% or 100%; as the case may be; provided there is no default in repayment of loan
- loans is beyond 60% or 100%, as the case may be, then prior approval of the public financial institution is required in all cases.

LOANS AND INVESTMENTS BY COMPANIES

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INTEREST RATE SECTION 186(7)

- No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.
- Section 186(8) Restriction on providing loan, guarantee or security in case of default committed in repayment of deposit and/or interest thereon.
- Register of Loans, investment, guarantee or security Section 186(9) (10).
- Entries to be made in the register within 7 days
- Place of keeping and preservation of the Register.
- Inspection of the Register



NON – APPLICABILITY OF SECTION 186(11)

This section {except sub-section (1)} does not apply to loans made or guarantee or security provided or (investment) by

- A banking company
- An insurance company
- A housing finance company
- A company engaged in the business of financing of companies or of providing infrastructural facilities.

This section {except sub-section (1)} does not apply to any investment made by

- A company engaged in the business of financing of companies or of providing infrastructural facilities
- A Non-Banking Financial Company (NBFC).
- making investments in the 'Rights Shares' under Section 62(1)(a) of the Companies At, 2013.

RESTRICTIONS ON MAKING INVESTMENT THROUGH NOT MORE THAN 2 LAYERS

- company from acquiring any other company incorporated in a country outside India.
- A subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation

LOANS AND INVESTMENTS BY COMPANIES

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PENALTY UNDER SECTION 186(13)

punishable with fine which shall not be less than 25,000 but which may extend to 5 Lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 2 years and with fine which shall not be less than 25,000 but which may extend to 1 lakh.



PROCEDURES INVOLVED IN MAKING LOAN, GIVING GUARANTEE AND PROVIDING SECURITY

- meeting of Board of Directors is to be convened after giving proper notice
- No investment shall be made unless the resolution sanctioning it is passed at a meeting.
- checked whether there is any existing loan from any public financial institution
- Arrange to convene a general meeting of shareholders after giving proper notice and to pass special resolution therein.
- File the copy of special resolution in Form No. MGT-14 with the Registrar within 30 days of passing the resolution.
- Registers are to be maintained in Form MBP-2.
- It is to be ensured that no loan shall be given at a rate of interest lower than the prevailing yield

Investments of company to be held in its own name [Section 187]

All investment made or held by a company in a property, security or other asset must be made and held by it in its own name. The company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.



COMPANY NAME

GLOBAL DEVELOPMENTS

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Duty to prepare directors' remuneration report under UK Companies Act, 2006(Section 420 & 422)

The directors of a quoted company shall for each financial year prepare a directors' remuneration report which shall contain the information specified in the Schedule to Act and comply with any requirement of that Schedule as to how the information is to be set out in the report.

The advantages of Setting Up Business in Hong Kong:

- Free to Choose the Name of the Company.
- Utile Restriction of the Business Areas .
- Great Development in Low Taxation Environment.
- Easy to Get the International Credit.
- Doing Best to Get the Inhabitant Right in Hong Kong

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Formation of companies under the provisions of Singapore Companies Act

Any person may, whether alone or together with another person, by subscribing his name or their names to a memorandum and complying with the requirements as to registration, form an incorporated company.

A company may be

- a company limited by shares;
- a company limited by guarantee; or
- an unlimited company.

Singapore Private Limited Company

Private Limited Company is the most popular business entity in Singapore. It usually has the words "Pte Ltd" or "Ltd" as part of its name. In many European countries or the US, it is commonly known as a Corporation.

The statement that "the provisions of the Hong Kong Companies Ordinance relating to formation of an incorporated company are broadly similar to the provisions of the Companies Act, 2013"

MAJORITY POWERS AND MINORITY

RIGHTS

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POWERS OF MAJORITY

It is a cardinal rule of company law that prima facie a majority of members of a company are entitled to exercise the powers of the company and generally to control its affairs.

'THE PRINCIPLE OF NON-INTERFERENCE'

The court will not usually intervene at the instance of shareholders in matters of internal administration, and will not interfere with the management of a company by its directors so long they are acting within the powers conferred on them under the articles of the company. The basic principle of non-interference with the internal management of company by the court is laid down in the case of *Foss v. Harbottle*.

EXCEPTION OF GENERAL RULE

- Ultra vires and illegal acts
- Fraud on minority .
- Wrongdoers in control
- Breach of fiduciary duties.
- Infringement of rights of a member
- Minor acts of mismanagement, however, are not to be regarded as oppression.
- There must be an unfair abuse of powers and impairment of confidence
- A member can complain of oppression only in his capacity as a member and not in his capacity as director or creditor.
- The legal representatives of a deceased member.
- "Oppression must be a continuous process.

PREVENTION OF OPRESSION AND MISMANAGEMENT

The minority shareholders are empowered to bring action with a view to preventing the majority from oppression and mismanagement. These are the statutory rights of the minority shareholder.

The words "oppression" and "mismanagement" are not defined in the Act. The meaning of these words for the purpose of Company Law should be used in a broad generic sense and not in any strict literal sense.

In general, oppression refers to an act of majority which is harsh and burdensome on minority.

Mismanagement refers to gross negligence. Mere un-wise conduct of business cannot be considered as mismanagement.

WINDING UP OF COMPANIES

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DISSOLUTION CAN BE ACHIEVED BY ANY OF THE FOLLOWING PROCESS

Through
Merger/
Amalgamation
Process

Through
Striking
Off
Process

Through
Winding Up
Process

Winding Up-
Meaning Winding up of a Company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors.

MODES OF WINDING UP

Compulsory winding up AS PER COMPANIES ACT 2103

Voluntary winding up AS PER INOLVENCY AND BANKRUPTCY CODE 2016



OVERVIEW OF CORPORATE REORGANISATION

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CONCEPT OF BUSINESS ACQUISITION

Business acquisition is the process of acquiring a company to build on strengths or weaknesses of the acquiring company.

TWO TYPES OF AMALGAMATION

Amalgamation in the nature of merger are in effect a mode by which one company acquires another company's asset and liabilities in such a way that, the equity shareholders of the combining entities continue to have a proportionate share in the equity of the combined entity.

Amalgamation in the nature of purchase are in effect a mode by which one company acquires another company and hence, the equity shareholders of the combining entities do not continue to have a proportionate share in the equity of the combined entity or the business of the acquired company is not intended to be continued after amalgamation

TWO TYPES OF BUSINESS ACQUISITION

MERGER AND AMALGAMATION

TAKEOVER

REGULATED BY SECTION 230 AND 232 OF COMPANIES ACT 2013

UNLISTED COMPANY SECTION 235, 236 and 238 OF COMPANIES ACT 2013

LISTED COMPANY SEBI TAKEOVER CODE 2011

THREE PERSPECTIVES OF MERGER AND AMALGAMTION

AS PER COMPANIES ACT

AS PER INCOME TAX ACT

AS PER ACCOUNTING STANDARD - 14

No definition of merger and amalgamation

Only definition of amalgamation and not of merger

(AS)-14 RECOGNIZES TWO TYPES OF AMALGAMATION:- Amalgamation in the nature of merger. Amalgamation in the nature of purchase.

OVERVIEW OF CORPORATE REORGANISATION

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CATEGORIES OF MERGERS

Congeneric Merger

Congeneric mergers means merger within same industries and taking place at the same level of economic activity.

Vertical Merger

Vertical mergers occur between firms which are complementary to each other.

- BACKWARD MERGER
- FORWARD MERGER

Horizontal Merger

This class of merger is a merger between business competitors who are manufacturers or distributors of the same type of products or who render similar or same type of services for profit

Conglomerate Merger

This type of merger involves coming together of two or more companies engaged in different industries and/or services

OTHER CLASSIFICATION OF MERGER

- Cash Merger
- Defacto Merger
- Down Stream Merger
- UP Stream Merger
- Short-Form Merger
- Triangular Merger

REVERSE MERGER

Reverse merger takes place when a healthy company merges with a financially weak company. In the context of Companies Act, 2013 there is no distinction between a merger or a reverse merger because in either case one company merges with another company.

CONCEPT OF REVERSE MERGER UNDER SICA

The scheme of merger prepared by the operating agency shall be examined by the BIFR and copies of the scheme with modifications, if any, made by BIFR, shall be sent to the sick industrial company, the operating agency and in case of amalgamation, also to any other company concerned and the BIFR shall also publish or caused to be published the draft scheme in brief in such daily newspapers as the BIFR may consider necessary for suggestions and objections if any, within the specified period.

REGISTERED VALUER

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Valuation by Registered Valuers SECTION 247

247(1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

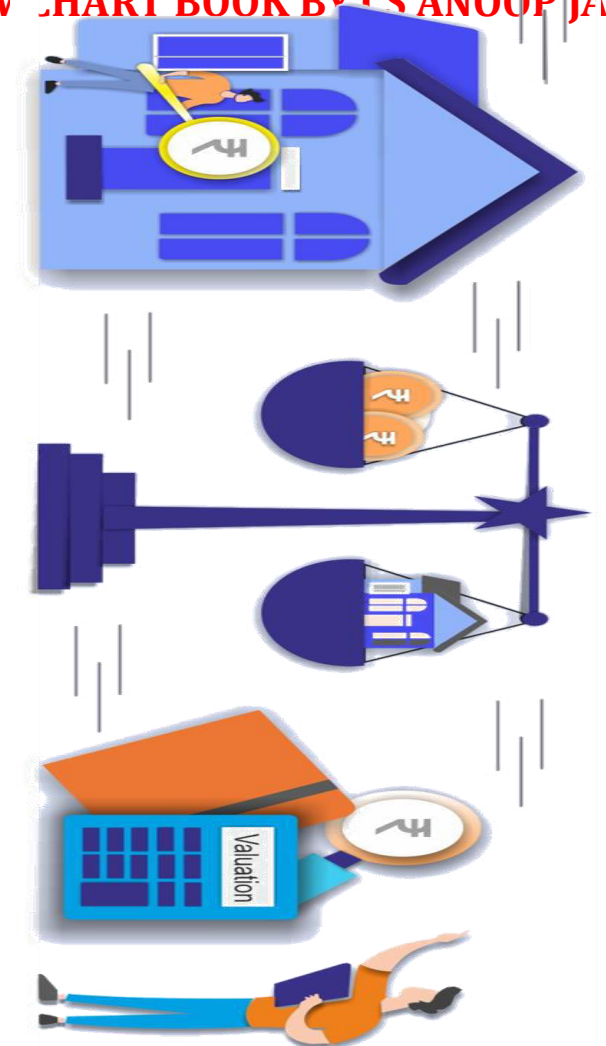
247(2) The valuer appointed under sub-section (1) shall,

- make an impartial, true and fair valuation of any assets which may be required to be valued;
- exercise due diligence while performing the functions as valuer;
- make the valuation in accordance with such rules as may be prescribed; and
- not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of 3 years prior to his appointment as valuer or 3 years after valuation of assets was conducted by him

247(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees

247(4) Where a valuer has been convicted under sub-section (3), he shall be liable to

1. refund the remuneration received by him to the company; and
2. pay for damages to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report



REGISTERED VALUER

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Institute of Company Secretaries of India –
Registered Valuer Organisation (ICSI-RVO)

The IBBI vide Registered Valuers Organisation Recognition No. IBBI/RVO/2018/003 recognised ICSI RVO as a Registered Valuers Organisation for the Asset Class(es):-

- Land and Building
- Plant and Machinery
- Securities or Financial Assets



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Power of Central Government to Direct Companies to Furnish
Information or Statistics

Section 405 of the Companies, Act, 2013 states that the Central Government may, by order, require companies or any class of companies, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

Failure to furnish information or statistics by the companies required
by the Central Government

If any company fails to comply with an order specified above, or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company shall be punishable with fine which may extend to twenty-five thousand rupees and every officer of the company who is in default, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, or with both.

TRANSPARENCY AND DISCLOSURES

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Transparency is a pivotal feature in the market based monitoring of companies and is central to shareholders' ability to exercise their ownership rights on an informed basis, which can help attract capital and maintain confidence in the capital markets.

There are no of legislations where corporates have to make various disclosure. Some of important legislations are as follows:

- SEBI (LODR) Regulations, 2015
- Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013
- Companies Act, 2013

DISCLOSURES UNDER SEBI (LODR) REGULATIONS, 2015

REGULATION 9 PRESERVATION OF DOCUMENTS

- The listed entity shall have a POLICY for preservation of documents, approved by its board of directors. Listed entity may keep documents in electronic mode.

REGULATION 13 GRIEVANCE REDRESSAL MECHANISH

- The listed entity shall ensure that Adequate Steps Are Taken for expeditious redressal of investor complaints. The listed entity shall ensure that it is registered on the SCORES platform or such other electronic platform

REGULATION 18 AUDIT COMMITTEE

- Every listed entity shall constitute a qualified and independent audit committee . Minimum 3 directors SHALL BE MEMBERS OF AUDIT COMMITTEE nd 2/3RD SHALL BE INDEPENDENT DIRECTOR.
- The chairperson of the audit committee shall be an Independent Director.
- At least 4 Board Meetings in a Year nd Maximum Gap B/w Two Meetings 120 days
- Quorum of Meetings: 2 Members or 1/3 Members of audit committee and at least 2 independent director

TRANSPARENCY AND DISCLOSURES

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REGULATION 19 NOMINATION & REMUNERATION COMMITTEE

Board of Directors shall constitute the nomination and remuneration committee. Constitution of N&R Committee will be as follow:

- Minimum 3 directors SHALL BE MEMBERS OF COMMITTEE
- 50% SHALL BE INDEPENDENT DIRECTOR
- THE CHAIRMAN SHALL BE INDEPENDENT DIRECTOR
- Chairman of the company shall not Chair such Committee.
- Chairman of Company can appoint as Member of committee.
- Chairperson of Committee may be present at the Annual General Meeting.
- The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance.

REGULATION 20 STAKE HOLDER RELATIONSHIP COMMITTEE

- constitute a Stakeholders Relationship Committee to specifically look into the various aspects of interest of shareholders, debenture holders and other security holders.
- The chairperson of this committee shall be a non-executive director.
- The board of directors shall decide other members of this committee.
- At least three directors, with at least one being an independent director, shall be members of the Committee

REGULATION 21 RISK MANAGEMENT COMMITTEE

- Board of Directors shall constitute the risk management committee.
- regulation shall be applicable to top 500 Listed Entities.
- Majority of Members of committee will be members of the board.
- The board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit
- The risk management committee shall meet at least once in a year

TRANSPARENCY AND DISCLOSURES

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RULE 22 VIGIL MECHANISM:

- The listed entity shall formulate a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism.
- The Vigil Mechanism also provides for direct access to the chairperson of the audit committee in appropriate or exceptional cases.

RULE 23 RELATED PARTY TRANSACTIONS.

- formulate a policy on materiality of related party transactions and on dealing with related party transactions
- require prior approval of the audit committee.
- may grant omnibus approval for related party transactions proposed to be entered into by the listed entity .
- All material related party transactions shall require approval of the shareholders through resolution and no related party shall vote to approve on such resolutions whether the entity is a related party to the particular transaction or not.

DISCLOSURES UNDER SEBI (LODR) REGULATIONS, 2015



- **RULE 24 Corporate governance requirements with respect to subsidiary of listed entity .**
- **RULE 24A SECRETARIAL AUDIT**
- **RULE 27 OTHER CORPORATE GOVERNANCE COMPLIANCE REQUIREMENT.**
- **RULE 29 PRIOR INTIMATIONS.**
- **RULE 30 DISCLOSURES UNDER REGULATION 30 AND SCHEDULE III- PART-A/B**
- **RULE 33 FINANCIAL RESULTS**
- **RULE 34 ANNUAL REPORT**
- **43A. Dividend Distribution Policy**
- **RULE 46 WEBSITE**

TRANSPARENCY AND DISCLOSURES

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DISCLOSURES UNDER SEBI (SHARE BASED EMPLOYEE BENEFITS) REGULATIONS, 2014

Regulation 14 of the Regulations provides that in addition to the information that a company is required to disclose, in relation to employee benefits under the Companies Act, 2013, the Board of directors of such a company shall also disclose the details of the scheme(s) being implemented, as specified by SEBI in this regard. SEBI vide circular dated 16th June, 2015 has provided for following disclosure requirements in the Board's Report.

- The Board of directors in their report shall disclose any material change in the scheme(s) and whether the scheme(s) is / are in compliance with the regulations.
- Further, SEBI has prescribed specific details which shall be disclosed on the company's website and a web-link thereto shall be provided in the report of board of directors.



EMPLOYEE BENEFITS

Disclosure Requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013

The Act mandates that all companies having more than 10 women employees shall disclose in annual report following details as per section 22 and 28 of the Act. Rule 14 of Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013 provides that the annual report which the Complaints Committee shall prepare shall contain following information

- Number of complaints of sexual harassment received in the year
- Number of complaints disposed off during the year
- Number of cases pending for more than ninety days
- Number of workshops or awareness programmed against sexual harassment carried out
- Nature of action taken by the employer or District Officer

TRANSPARENCY AND DISCLOSURES

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POLICIES

The Companies incorporated under the Indian Company Law are required to frame different Policies/ maintain systems/ plans and devise Codes of/ for the Company/ Board of Directors and Senior Management Personnel/ Directors and Employees etc. pursuant to the provisions of the Companies Act, 2013 and other corporate laws.

The table below lists the various Policies/ Codes to be framed, applicability, manner of framing and disclosure requirements etc.

1. Corporate Social Responsibility (CSR) Policy
2. Whistle Blower Policy - A Vigil mechanism
3. Policy for formal annual evaluation by the Board of its own performance,
4. Policy on directors' appointment And remuneration of the directors, KMP and other employees



POLICIES TO BE ADOPTED AS PER SEBI LODR REGULATIONS

- Policy for preservation of documents
- Policy for determining material subsidiary
- Policy on materiality of related party transactions
- Policy for determination of materiality.
- Vigil Mechanism/ Whistle Blower policy
- Policy on diversity of board of directors
- Dividend Distribution Policy

MEDIATION AND CONCILIATION

UNDER COMPANIES ACT 2013

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MEDIATION AND CONCILIATION PANEL **SECTION 442**

- maintain a panel of experts to be called as the Mediation and Conciliation Panel.
- Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal,
- The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.
- Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

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Companies (Mediation and Conciliation) Rules, 2016

- Rule 3 Panel of mediators or conciliators
- Rule 4 Qualifications for empanelment.
- Rule 5 Disqualifications for empanelment
- Rule 6 Application for appointment of Mediator or Conciliator and his appointment
- Rule 30 Matters not to be referred to the mediation or conciliation.
- Rule 11 Procedure for disposal of matters
- Rule 12 Mediator or Conciliator not bound by the Evidence or Civil Procedure,
- Rule 13 Representation of parties.
- Rule 14 Consequences of non-attendance of parties at sessions or meetings on due
- Rule 16 Offer of settlement by parties.
- Rule 17 Role of Mediator or Conciliator
- Rule 18 Parties alone responsible for taking decision
- Rule 19 Time limit for completion of mediation or conciliation.
- Rule 25 Settlement agreement.
- Rule 26 Fixing date for recording settlement and passing order
- Rule 27 Expenses of the mediation and conciliation

DRAFTING UNDER COMPANIES ACT

2013

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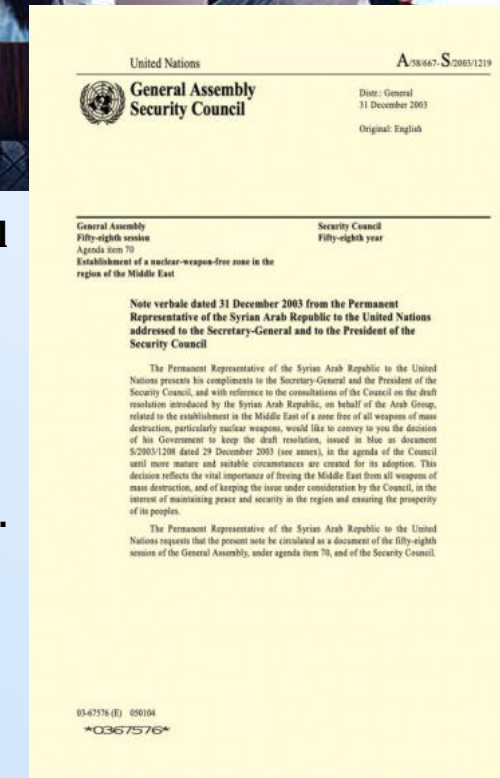
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PRACTICAL ASPECTS OF DRAFTING RESOLUTIONS

- All essential facts are included in the resolution.
- Surplus and meaningless words or phrases should not be included in resolutions.
- Resolutions must indicate the relevant provisions or sections of the Act and the Rules pursuant to which they are being passed.
- If a resolution is one which requires the approval of the Central Government or confirmation of the National Company Law Tribunal/Court, this must be stated in the resolution.
- A resolution must indicate when it will become effective.
- A resolution must confine itself to one subject matter and two distinct matters should not be covered in one resolution.
- A resolution should be crisp, concise and precise and should be flexible enough to take care of eventualities.
- Where lengthy resolutions have to be approved, they should be divided into paragraphs and should be arranged in their logical order having regard to the subject matter of the resolution.
- A resolution must be so drafted that anybody not present at the meeting or anybody referring to it at a later date will know clearly what the decision was at that meeting without referring to any other document.



MISCELLANEOUS PROVISIONS OF THE COMPANIES ACT, 2013

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2 (59) "OFFICER"

Officer includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act

2(60) "OFFICER WHO IS IN DEFAULT"

- Whole-time director
- Key managerial personnel
- there is no key managerial personnel, such director or directors as specified.
- person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act,
- contravention of any of the provisions of this Act.
- issue or transfer of any shares of a company,

SECTION 20 SERVICE OF DOCUMENTS

- registered post or
- by speed post or
- by courier service or
- by leaving it at its registered office
- or by means of such electronic or
- other mode as may be prescribed

DIRECTORS' AND OFFICERS' LIABILITY INSURANCE

- provides financial protection for the Directors and Officers of the Company in the event they are sued in conjunction with the performance of their duties as they relate to the Company..
- treated as management Errors and Omissions Policy.
- Director can be held personally responsible for acts of the Company, most Directors and officers will demand that they be protected rather than put their personal assets at stake.

ESTABLISHMENT OF SPECIAL COURTS [SECTION 435 TO 440]

- speedy trial of offences
- single judge holding office

- a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences

MISCELLANEOUS PROVISIONS OF THE COMPANIES ACT, 2013

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COMPOUNDING OF OFFENCE SECTION 441

- An offence is punishable with fine only
- An offence is punishable with imprisonment or fine
- An offence which is punishable with imprisonment or fine or with both imprisonment

CLASS - ACTION SECTION 245

Class action suit can be filed against the

- Company
- Any of its directors
- Auditor, including audit firm
- Expert or advisor or consultant or any other person

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NCLT RULES 2016RULE 84 Right to apply under section 245

- An application under sub-section (1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filed in Form NCLT-9.
- A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as the Tribunal may direct.

RULE 85. Conducting a class action suit

- class has so many members
- there are questions of law or fact common to the class;
- claims or defences of the representative parties.
- representative parties will fairly and adequately protect the interests of the class.

NCLAT
NATIONAL COMPANY
LAW APPELLATE TRIBUNAL

COMPANY LAW



CHART BOOK

BY

CS ANOOP JAIN

PART – B

GENERAL MEETING

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IN EVERY COMPANY DECISIONS ARE TAKEN BY THE FOLLOWING

SHAREHOLDERS

THE MEETING IN WHICH SHAREHOLDERS TAKE DECISION IS CALLED GENERAL MEETING. (THEY TAKE DECISION BY PASSING O/R AND S/R)

DIRECTORS

THE MEETING IN WHICH DIRECTORS TAKE DECISION IS CALLED BOARD MEETING. (THEY TAKE DECISION BY PASSING B/R)

GENERAL MEETING

- ANNUAL GENERAL MEETING 96 97 99.
- EXTRA ORDINARY GENERAL MEETING 100 98

ALL COMPANIES

SEC. 101 TO 121 ARE APPLICABLE TO ALL TYPES OF COMPANIES SEC. 122 certain sections not applicable on OPC

REQUISITES OF A VALID GENERAL MEETING

- PROPERLY CALLED
- PROPERLY CONVENED
- PROPERLY CONDUCTED

WHO CAN CALL GENERAL MEETING

- Board
- Members
- NCLT

LENGTH OF NOTICE FOR CALLING GM SECTION (SEC.101)

- clear twenty-one days' notice either in writing or through electronic mode 101(1)
- not less than ninety-five per cent of the members entitled to vote at such meeting. 101 (1)

SEC. 101 SHORTER NOTICE

shorter notice for general meeting is valid if consent is given in writing or by electronic mode

- IN THE CASE OF AN ANNUAL GENERAL MEETING.
- IN THE CASE OF ANY OTHER GENERAL MEETING

GENERAL MEETING

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RULE 18: Companies (Management and Administration) Rules, 2014

- Notice through email.
- Addressee of e-mail and its updation.
- Contents of e-mail
- The Company shall not be in default for non-delivery of notice by email..
- Notice by email may be sent in-house or through the RTA.
- Placement of notice on website.
- Advertisement of notices in the newspaper

QUORUM FOR GM SEC. 103

In case of a public company

- Five members personally present not more than one thousand;
- Fifteen members personally present more than one thousand but up to five thousand.
- Thirty members personally present meeting exceeds five thousand;

In the case of a private company,
Two members personally present, shall be the quorum for a meeting of the company. 103 (1)

ADJOURNMENT

suspension of a meeting, to be resumed at a later time or date

Adjournment can be done only after commencement of a meeting.

POSTPONEMENT

putting off or deferring the holding from a scheduled date to a future date

only before the commencement of a meeting.

CANCELLATION

where the meeting no longer exists.

It is the conclusion of a meeting

CHAIRMAN OF MEETING SEC. 104

The Board of directors normally appoints one of the directors as the chairman for the meetings of the Board of directors and also for the general meetings of the company.

The Articles also provide that the chairman of the Board shall be the chairman for general meeting of the company.

GENERAL MEETING

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PROXIES (Form No. MGT 11) SEC. 105

- Any member of a company entitled to attend and vote at a meeting of the company.
- Shall be entitled to appoint another person (whether a member or not)
- As his proxy.
- To attend and vote instead of himself
- proxy so appointed shall not have any right to speak at the meeting.
- may prescribe a class or classes of companies shall not be entitled to appoint another person as a proxy

RESTRICTION ON VOTING RIGHTS SECTION 106

- the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name.
- cannot restrict voting rights of member on any other ground.
- On a poll taken at a meeting of a company, a member entitled to more than one vote, or his proxy,

Types of voting in a general meeting

- Voting by show of hands
- Voting on poll
- Voting by postal ballot
- E-voting

APPLICABILITY OF E VOTING

- Unlisted Public Companies Company having not less than 1000 members.
- Listed Companies MANDATORY.
- Private Companies E voting is not mandatory.

E-VOTING PERIOD

The remote e-voting period shall be of minimum 3 days and end necessarily 1 day before the general meeting at 5:00 P.M. Once the vote on a resolution is cast by the member, he shall not be allowed to change it subsequently or cast the vote again.

GENERAL MEETING

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BEFORE OR ON DECLARATION OF RESULT OF SHOW OF HAND

A poll may be ordered by the chairman of his own motion.

A poll shall be ordered by the chairman if a demand is made by Members.

Rule 21 of Companies (Management and Administration Rules, 2014)

- Appointment of Scrutinizer
- Documents to be provided to scrutinizers
- Role of Scrutinizers during polling process
- Report of Scrutinizers
- Declaration of Result

SECTION 2 (65) POSTAL BALLOT

Postal Ballot means voting by post or through any electronic mode

Minutes — Meaning SECTION 118

The term 'minutes' though not defined in the Companies Act, 2013, it may be considered as a written record of proceedings of a meeting of any Company duly kept in pursuance of the law

RESOLUTION REQUIRING SPECIAL NOTICE (SEC 115)

ANY MEMBER holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than 5 lakh has paid up

EXTRAORDINARY GENERAL MEETING

There is generally a gap of around a year or so in between two annual general meetings. Important businesses arising in between two annual general meetings that require shareholders approval shall be considered at the extraordinary general meeting

DIRECTORS PART – A

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DIRECTORS

- section 2 (34) of the Act prescribed that “director” means a director appointed to the Board of a company.
- Section 2 (10) of the Companies Act, 2013 defined that “Board of Directors” or “Board”, in relation to a company, means the collective body of the directors of the company.

NEED FOR DIRECTORS

- A company cannot Act by itself.
- Separation of ownership from management
- Statutory requirement

SHADOW DIRECTOR

A person in accordance with whose directions or instructions, the Board of directors is accustomed to act is called as ‘deemed director’ or shadow director. The words ‘accustomed to act’ imply that the Board does not exercise its own discretion but acts blindly on the instruction or directions of a person on regular and repetitive basis

POSITION OF DIRECTORS

- Directors as agents
- Directors as trustees.
- Directors as officers
- Directors as employees

Application for Allotment of Director Identification Number
SECTION 153

ALLOTMENT OF DIN SECTION 154

PROHIBITION TO OBTAIN MORE THAN 1 DIN SECTION 155

DIRECTOR TO INTIMATE DIN SECTION 156

COMPANY TO INFORM DIN TO ROC SECTION 157

DIRECTOR TO INTIMATE DIN SECTION 159

RULE 12-A of Companies (Appointment and Qualification of Directors) RULES 2014

Every individual who holds a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC

DIRECTORS PART – A

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RULE 12B

- Directors of company required to file e-form.
- Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”.
- “Director of ACTIVE compliant company.

SECTION 149 INTRODUCES 3 NEW CONCEPTS

- SECTION 149 (4) INDEPENDENT DIRECTORS.
- Second Proviso to section 149 WOMAN DIRECTORS.
- SECTION 149 (3) RESIDENT DIRECTORS

Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019

- CREATION AND MAINTENANCE OF DATA BANK RULE-3.
- DUTIES OF THE INDIAN INSTITUTE OF CORPORATE AFFAIRS RULE 4
- COMPLIANCES REQUIRED BY A PERSON ELIGIBLE AND WILLING TO BE APPOINTED AS AN INDEPENDENT DIRECTOR RULE-6
- RULE -6 Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021.

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Disqualification of director

- Personal Disqualification section 164(1)
Individual director will disqualify for respective period & also vacation of office u/s 167.
- Company disqualification section 164(2)
All director holding the position of director will be disqualified for 5 years and also vacation of office u/s 167

Disqualification in a private company— Section 164(3)

A private company may by its Articles provide for any disqualification for appointment as Director in addition to those specified above.

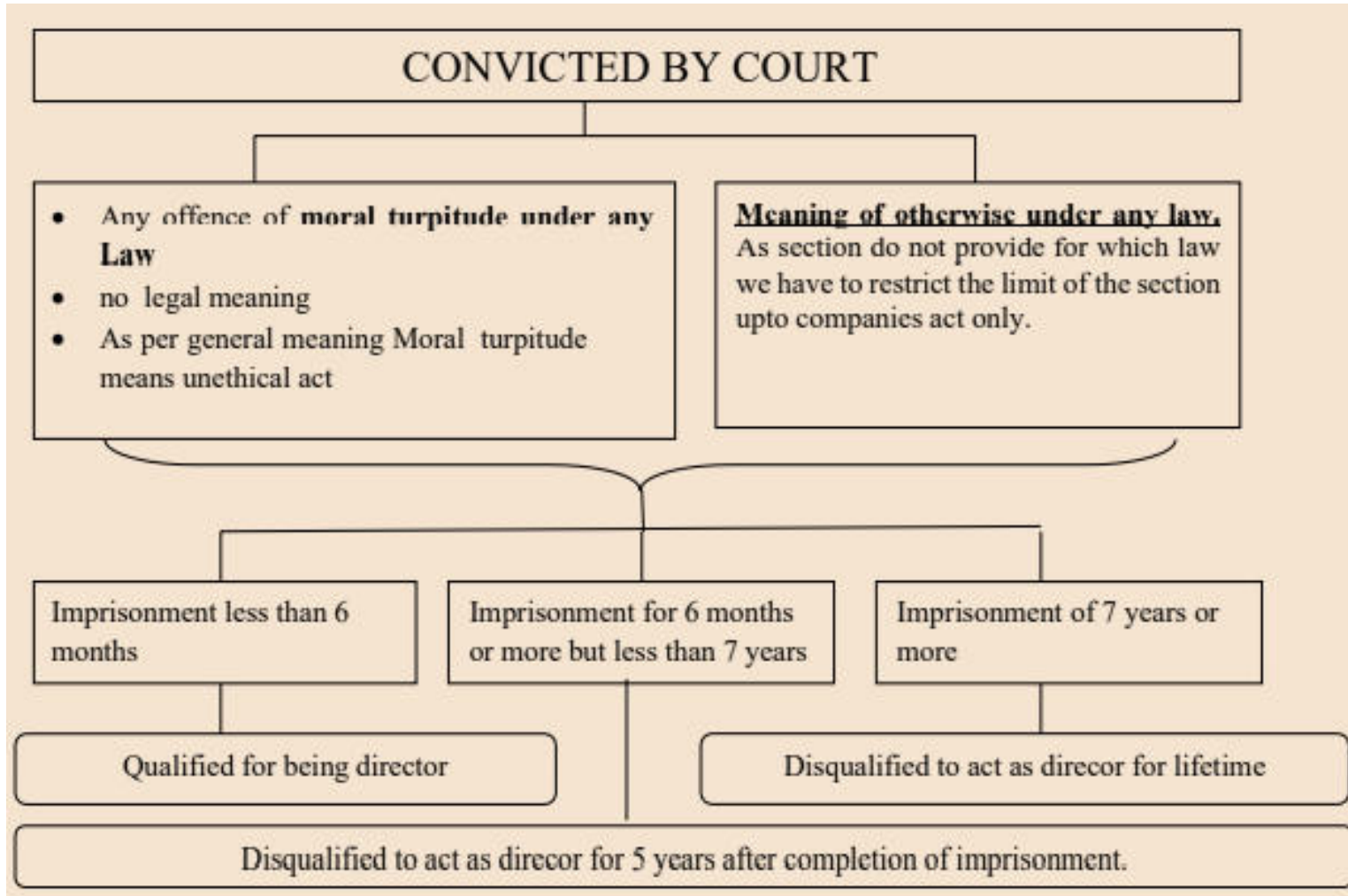
DIRECTORS PART – A

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Section 165(1): Maximum No. of 20 Directorship

Maximum 10 Public company

- **Public company**
- **Holding of Public company**
- **Subsidiary of Public company**

Remaining Other Companies

- **Private**
- **Section 8 companies**
- **One person company**
- **Small companies**

APPOINTMENT OF DIRECTORS

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Section 152 Appointment of Directors

Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

APPOINTMENT OF FIRST DIRECTORS

- IF DIRECTORS ARE NAMED IN ARTICLES.
- IF THE DIRECTORS ARE NOT NAMED IN THE ARTICLES

APPOINTMENT BY PROPORTIONAL REPRESENTATIONAL (Sec. 163)

Section 163 shall not apply to (a) a Government Company in which the entire paid up share capital is held by the Central Government, or by the State Government or Governments or by the Central Government and one or more State Governments; (b) a subsidiary of a Government Company, referred in on (a) above, in which entire paid up share capital is held by that Government Company

APPOINTMENT OF NOMINEE DIRECTORS

NOMINEE DIRECTORS: Subject to the articles 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 Central Government or the State Government by virtue of its shareholding in a Government Company.

APPOINTMENT OF DIRECTORS BY SMALL SHAREHOLDER

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

APPOINTMENT OF DIRECTORS

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SIMPLIFIED LANGUAGE

- Who can propose a small shareholder as Director.
- Notice by the specified number of shareholders giving specified details.
- Content of the notice
- Small shareholders' Director shall be treated as independent Director
- A person can be small shareholders' Director in two companies.
- Restriction on small shareholders' Director.
- Disqualification for election as such Director
- Vacation of office by such Director
- Some special points

REMOVAL OF DIRECTORS

- company has availed itself of the option to appoint not less than 2/3 rd directors according to the principle of proportional representation u/s 163.
- A nominee director appointed by a financial institution under the terms of a loan agreement.
- A director appointed by NCLT u/s 242.
- A special director appointed by BIFR under Sec.16 (4) of SICA.

RESIGNATION BY A DIRECTOR— POSITION AS PER THE NEW ACT— SECTION 168

- Director shall give notice of his resignation in writing.
- The resignation will be effective at date later of
 - a) Date of receipt of resignation by company
 - b) Date of effectiveness mentioned in resignation:

WITH IN 30 DAYS Company shall file with ROC form number DIR 12 regarding resignation by director within 30 days **AND** Director **MAY** file with ROC form number DIR 11 with reason of resignation and copy of resignation within 30 days

BOARD MEETINGS

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Introduction

The affairs of a company are managed by the Board of Directors. It is, therefore, necessary that the directors should often meet to discuss various matters regarding the management and administration of the affairs of the company in the best interest of the shareholders and the public interest.

Essentials of a Valid Board Meeting

- Proper constitution of the Board of Directors;
- Due notice in accordance with the provisions of Section 173 of the Companies Act, 2013 must have been issued by an authorized person.
- Presence of a properly elected or chosen person in the chair; and
- Proper quorum must be present for due transaction of business.

Audit Committee. Section 177 (1)

Applicability

1. Every Companies listed public
2. The Public Companies having paid up share capital of ten crore rupees or more; or
3. The Public Companies having turnover of one hundred crore rupees or more; or
4. The Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Stake-holder Relationship Committee. Section 178(5).

Companies having more than one thousand members, debenture holders, deposit holders or other security holders at any time in a financial year

BOARD MEETINGS

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BOARD'S POWERS AND RESTRICTIONS THEREON [SECTIONS 179 TO 183]



- Director acting mala fide.
- Incompetent Board
- Deadlock in the Board

Here, the shareholders in general meeting appointed additional directors, as the two existing directors were not on talking terms.

Meaning of temporary loan



- The term "temporary loan" means loan repayable on demand or within six months from the date of the loan such as short-term cash credit arrangement, the discounting of bills, or shortterm seasonal loans but does not include loan for the purpose of financial expenditure of capital nature.

Heads	Charitable	Political	Defence
Section	181	182	183
Applicable	All Companies	All Companies	All Companies
Not allowed to	na	To Government Companies and Companies incorporated less than 3 yrs	na
Limit of Contribution	Upto 5% of average net profit of last 3 years	No Limit	No Limit
Approvals	Upto 5% = BR Above 5% = OR	BR	BR

VIRTUAL MEETING

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VIRTUAL MEETING – DEFINITION

A meeting held totally by means of either Video conferencing or other audio-visual means is known as Virtual Meeting. A virtual meeting is when people around the world, regardless of their location, use video, audio, and text to link up online

THE MEETINGS ARE MAINLY

- audio- and/or video based
- Audio conferencing
- Video conferencing

Procedures for Convening and Conducting Board's Meetings

- necessary arrangements to avoid failure
- take due and reasonable care,
- meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
- a roll call shall be taken by the Chairperson
- After the roll call, the Chairperson or the Secretary shall inform the Board about the names of persons other than the directors.
- every meeting conducted authorised under these rules.
- The statutory registers which are required to be placed in the Board meeting
- Every participant shall identify himself for the record before speaking
- Chairperson of the meeting shall announce the summary of the decision taken.
- The draft minutes of the meeting shall be circulated among all the directors

LOAN TO DIRECTORS AND RPT

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Disclosure of Interest, Loan to directors and Related Party Transactions

first meeting of the Board in which he participates as a director.

whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract

contract or arrangement entered into by the company without disclosure

director shall be "liable to a penalty of one lakh rupees.

ANALYSIS ON SECTION 184

- OBJECT OF DISCLOSURE OF INTEREST.
- REQUIREMENT FOR DISCLOSURE OF NATURE OF INTEREST WHETHER DIRECT OR INDIRECT.
- REQUIREMENT FOR DISCLOSURE OF INTEREST IS APPLICABLE TO ALL COMPANIES

GIVING OR READING OF GENERAL NOTICE AT BOARD MEETING

- FORM FOR DISCLOSURE
- NOTICE OF DISCLOSURE NEEDS TO BE KEPT AT THE REGISTERED OFFICE AND ITS PRESERVATION.
- REQUIREMENT OF DISCLOSURE IF A DIRECTOR BECOMES CONCERNED OR INTERESTED AFTER ENTERING INTO CONTRACT BY THE COMPANY.
- CONTRACTS WITHOUT DISCLOSURE OF INTEREST BY A DIRECTOR SHALL BE VOIDABLE AT THE OPTION OF THE COMPANY

LOAN TO DIRECTORS, ETC. [SECTION 185]

- directly or indirectly, advance any loan, including any loan represented by a book debt.
- advance any loan including any loan represented by a book debt.
- Nothing contained in sub-sections (1) and (2) shall apply
- loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions

LOAN TO DIRECTORS AND RPT

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RELATED PARTY TRANSACTIONS [SECTION 188]

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7 TYPES OF CONTRACT (SECTION 188)

- Sale, purchase or supply of any goods or materials;
- Selling or otherwise disposing of, or buying, property of any kind;
- Leasing of property of any kind;
- Availing or rendering of any services;
- Appointment of any agent for purchase or sale of goods, materials, services or property
- Such related party's

• Special Contracts Under Rule 15

GM – OR & BOD RESOLUTION

• Other Contracts

BOD- Board of Directors Resolution only at Board meeting.
(within 3 mths of contract)

Meaning of 'Related Party: Section 2(76)

- director or his relative;
- key managerial personnel or his relative
- private company in which a director or manager or his relative.
- public company in which a director or manager is a director and holds along with his relatives, more than two per cent.
- Board of Directors, managing director or manager is accustomed to act.
- person on whose advice, directions or instructions a director or manager is accustomed to act:
- any body corporate
- such other person as may be prescribed.

Meaning of 'Relative: Section 2(77)

- As per this, a person shall be deemed to a relative of another if, and only if
- They are the members of a HUF
 - They are husband and wife; or
 - The one is related to the other in the manner indicated in Rule 4

KMP appointment and their remuneration

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INTRODUCTION

While the Board of Directors are responsible for providing the oversight, it is the key managerial personnel who are responsible for not just laying down the strategies as well as its implementation.

Managing Director

A managing director is entrusted with substantial powers of management which are not otherwise exercisable by a director

Managing director is not considered as whole time employee of company

Whole time director

A whole time director means director in whole time employment of the company.

Whole time director is considered in whole time employment of the company

Managing director - Section 2(54)

Managing director must be director

Managing director exercises substantial power of management

A managing director, on his ceasing to be a director, shall automatically cease to be the managing director as well.

Manager - Section 2(53)

Manager need not be a director

Manager has the management of the whole or substantially the whole of the affairs of a company.

A managing director can continue as a manager even though he ceases to be a director.

SCHEDULE-V OF COMPANIES ACT 2013

- Part I Conditions for appointment
- Part II Remuneration
- Part III Certificate of Compliance of Schedule V
- Part IV CG may exempt certain class of companies

Appointment of Key Managerial Personnel Section 203 (1)

listed company and every other public company having a paid-up share capital of rupees ten crores or more, to appoint following whole-time key managerial personnel:

MD , CEO , Company Secretary; and Chief Financial Officer

KMP appointment and their remuneration

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RULE 8. APPOINTMENT OF KEY MANAGERIAL PERSONNEL

Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel

RULE 8A APPOINTMENT OF CS IN COMPANIES NOT COVERED RULE 8.

A company other than a company covered under rule 8 which has a paid up share capital of 10 crore rupees or more shall have a whole-time company secretary.

APPOINTMENT OF MANAGING DIRECTOR, WHOLE-TIME DIRECTOR OR MANAGER

- The appointment may be made with the approval of CG.
- The appointment may be made without CG approval, provided such appointment is accordance with Schedule V.

Payment to Director for Loss of Office, etc. in connection with Transfer of Undertaking, Property or Shares [Section 191]

No director of a company shall receive any payment by way of compensation in case of transfer of the whole or any part of any undertaking or property of the company or the transfer to any person of all or any of the shares in a company;

RESTRICTIONS REGARDING APPOINTMENT OF KEY MANAGERIAL PERSONNEL

the same person should not act as both Chairman and Managing Director or Chief Executive Officer of the Company.

Whole time KMP not to hold office in more than one company

If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

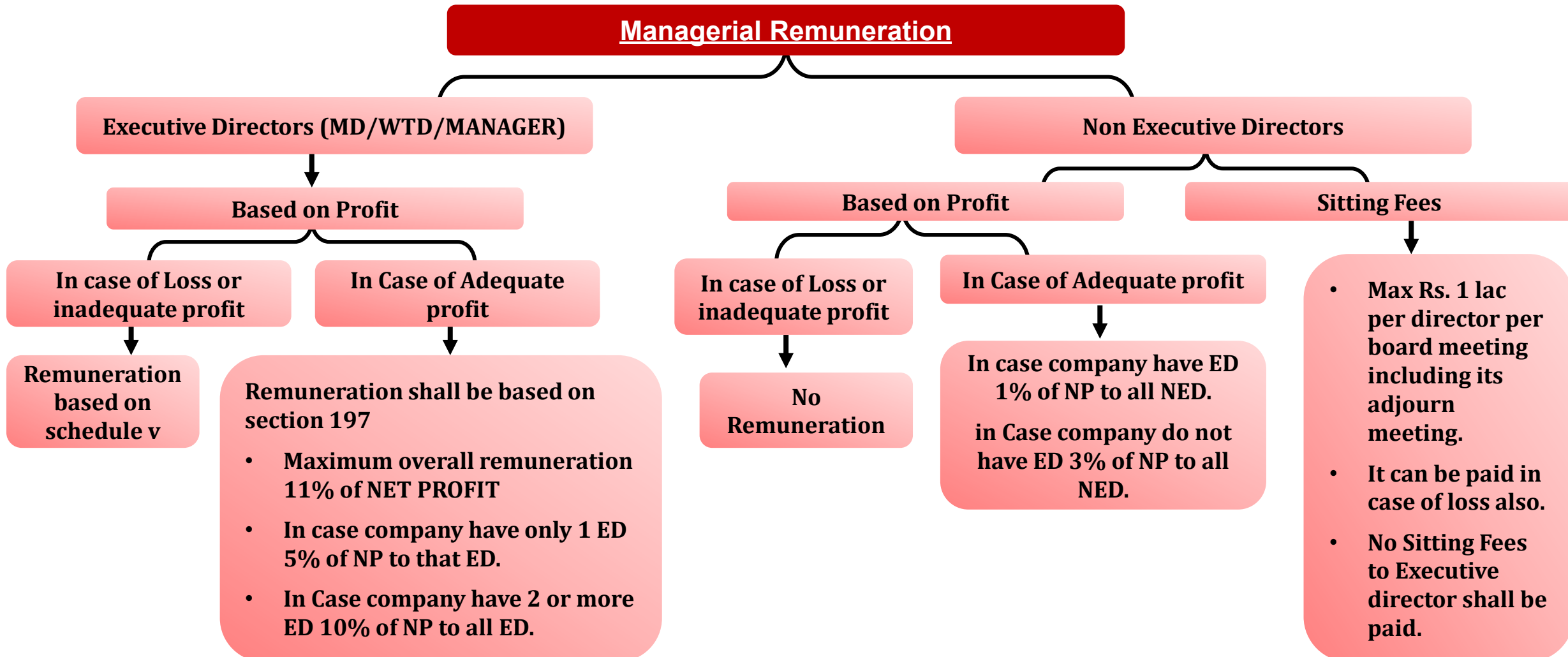
penalty of 5lakh rupees and every director and kmp of the company who is in default shall be liable to a penalty of 50000 and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.

KMP appointment and their remuneration

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COMPANY SECRETARY, SECRETARIAL AUDIT AND STANDARDS

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INTRODUCTION

Despite the name, the role of a Company Secretary is not a clerical or secretarial one in the usual sense

APPOINTMENT OF C.S.

SECTION 203 and
Rule 8/8A of
Companies

SECRETARIAL AUDIT

SECTION 204 and Rule
9 of Companies

FUNCTIONS OF C.S.

SECTION 205 and Rule
10 of Companies

Appointment of KMP by the Board of directors

APPOINTMENT OF COMPANY SECRETARY SECTION 203

- Every listed company and every public company having paid up share capital 10 crore or more shall have whole time kmp (Rule 8)
- Every company which has a paid up share capital of ten crore rupees or more shall have a whole-time (RULE 8A)

- shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees

a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

- DIR-12 within 30 days of their appointment
- MGT-14 within 30 days of their appointment

Summons to company in civil matters can be served on a secretary As per rule 2 of order 9 of Code of Civil Procedure, in case of suit against a corporation, summons can be served on

1. Company Secretary, Director or other principal officer of the corporation or
2. By leaving it or by sending by post to registered office of the corporation.

COMPANY LAW



CHART BOOK

BY

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PART – C

COMPANY SECRETARY, SECRETARIAL AUDIT AND STANDARDS

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SECRETARIAL AUDIT

- | | |
|---|--|
| <ul style="list-style-type: none"> • listed company • public company capital of fifty crore rupees or more. • turnover of two hundred fifty crore rupees or more. • outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more Has to obtain secretarial audit report in form no. MR 3 from P.C.S. | <p>liable to a penalty of two lakh rupees.</p> |
|---|--|

UNDER SEBI RULES AND REGULATIONS

- The Depositories Act, 1996.
- The SEBI (Substantial Acquisition of Shares and Takeovers) 2011.
- The SEBI (Prohibition of Insider Trading) Regulations, 1992.
- The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 .

SCOPE OF SECRETARIAL AUDIT

- Matters to be specified in the Secretarial Audit.
- Flexibility in the form of Compliance Certificate.
- Verification of records and documents.
- Crucial area of the Secretarial Audit Report.
- Period of the Secretarial Audit.
- Disqualifications for appointment of the Secretarial Auditors.
- Duty of the company to provide all assistance and facilities for auditing the secretarial and related records

SECRETARIAL AUDIT THE PROCESS

- APPOINTMENT OF SECRETARIAL AUDITOR.
- COMMUNICATION TO EARLIEST INCUMBENT .
- ACCEPTANCE OF APPOINTMENT.
- PRELIMINARY DISCUSSIONS / SURVEYS .
- PRELIMINARY MEETING.
- FINALIZATION OF AUDIT PLAN AND BRIEFING THE STAFF.
- TESTING, INTERVIEWS AND ANALYSIS .
- WORKING PAPERS.
- AUDIT SUMMARY FOR DISCUSSIONS .
- SUBMISSION OF SECRETARIAL AUDIT REPORT

COMPANY SECRETARY, SECRETARIAL AUDIT AND STANDARDS

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PENALTIES UNDER COMPANIES ACT, 2013

- which is false in any material particulars, knowing it to be false or
- which omits any material fact, knowing it to be material.

He shall be liable under section 447 (Fraud).

SECTION 205 - FUNCTIONS OF COMPANY SECRETARY

- To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- To ensure that the company complies with the applicable secretarial standards;
- To discharge such other duties as may be prescribed.

RULE 10 OF COMPANIES (APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL) RULES, 2014

- provide to the directors of the company, collectively and individually.
- facilitate the convening of meetings and attend Board.
- obtain approvals from the Board, general meeting, the government and such other authorities.
- represent before various regulators, and other authorities.
- assist the Board in the conduct of the affairs of the company;
- assist and advise the Board in ensuring good corporate governance and in complying.
- discharge such other duties as have been specified under the Act or rules;
- Such other duties

DUTIES OF A SECRETARY

- THE CONTRACTUAL
- UNDER THE COMPANIES ACT.
- UNDER THE INCOME-TAX ACT.
- UNDER THE INDIAN STAMP ACT .
- UNDER OTHER ACTS

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SECRETARIAL STANDARD-1

- SECRETARIAL STANDARD-1
- NON-APPLICABLE OPC in which there is only 1 director and section 8 company.

SOME IMPORTANT POINTS

- CONVENING A MEETING
- DAY, TIME, PLACE, MODE AND SERIAL NUMBER OF MEETING
- NOTICE OF BOARD MEETING
- ADDRESS FOR SENDING THE NOTICE TO DIRECTORS
- WHO WILL ISSUE NOTICE OF BOARD MEETING

TIME PERIOD FOR ISSUE OF NOTICE

NORMAL NOTICE

Notice, Agenda and Notes of Agenda convening a Meeting shall be given at least SEVEN days before the date of the Meeting, unless the Articles prescribe a longer period.

In case the company sends the Notice, Agenda and Notes of Agenda by Speed Post or by registered post or by courier, An Additional Two Days Shall be Added for the service of Notice.

The Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director.

SHORTER NOTICE

To transact urgent business, the Notice, Agenda and Notes on Agenda may be given at shorter period of time than stated above,

If at least one Independent Director, if any, shall be present at such Meeting.

If no Independent Director is present, decisions taken at such a Meeting shall be circulated to all the Directors and shall be final only on ratification thereof by at least one Independent Director, if any.

In case the company does not have an Independent Director, the decisions shall be final only on Ratification Thereof By A Majority Of The Directors of the company, unless such decisions were approved at the Meeting itself by a majority of Directors of the company

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FREQUENCY OF GENERAL MEETING

ANNUAL GENERAL MEETING	EXTRA ORDINARY GENERAL MEETING:
Every Company in each Calendar Year, hold a General Meeting called the Annual General Meeting.	The Board may also, whenever it deems fit, call an Extra- Ordinary General Meeting of the Company.
FIRST AGM: First AGM within 9 month from the date of closing of First Financial year of the Company. In case of First AGM, it is not necessary for the company to hold any AGM in the calendar year of its Incorporation.	The Board shall, on the requisition of Members who hold, as on the date of the receipt of a valid requisition can call an Extra- Ordinary General Meeting,
Time period of First Annual General Meeting after Incorporation of Company cannot be extended.	<ul style="list-style-type: none"> In the case of Company having a Share Capital, not less than 1/10th of the paid-up share capital carrying Voting Rights; OR In the case of a Company not having share capital, not less than 1/10th of total voting power of the Company.

QUORUM OF GENERAL MEETING



- **PRIVATE LIMITED:**
Two Members Personally Present.
- **PUBLIC LIMITED:**
In case of Public Company "Minimum Present of Members required"
 - 5 (five members) personally present if the number of Members as on the date of Meeting is up to 1000 (one thousand).
 - 15 (Fifteen members) personally present if the number of Members as on date of Meeting is more than 1000 (one thousand) but upto 5000 (five thousand)
 - 30 (thirty member) personally present if the number of members as on date of the Meeting exceeds 5000 (five thousand)

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PROXY:

- A member entitled to attend and vote is entitled to Appoint Proxy.
- A proxy can't act on behalf of more than 50 members and members holding aggregate more than 10% of the total share capital of the Company carrying voting rights.

SIGNING OF PROXY FORM

- MEMBER IS INDIVIDUAL BY THE MEMBER, or His attorney duly authorized in writing .
- MEMBER IS BODY CORPORATE If the appointer is a body corporate than the instrument of Proxy should be under its seal and shall be signed by the: An officer, or An attorney duly authorized by it.

MINUTES

Every company shall keep Minutes of all Meetings. Minutes kept in accordance with the provisions of the Act evidence the proceedings recorded therein. Minutes help in understanding the deliberations and decisions taken at the Meeting.

REVOCATION OF PROXY

- A proxy later in date can revoke the earlier dated proxies.
- Proxy is valid until written notice of revocation has been received by the Company before the commencement of the Meeting or adjourned meeting.
- A notice of revocation of proxy shall be signed by the same Member(s) who had signed the proxy, in the case of joint membership.
- When both the Member and Proxy attend the Meeting, the proxy stand automatically revoked.

WHEN PROXY FORMS CAN BE INSPECTED

Proxies shall made available for inspection during the period beginning 24 hours before the commencement of the Meeting and Ending with the conclusion of the Meeting Between 9 a.m. to 6 p.m.

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SECRETARIAL STANDARD-3 (SS-3) ON "DIVIDEND"

- Secretarial Standard-3 (SS-3) on "Dividend", issued by the Council of the Institute of Company Secretaries of India for voluntary adoption by companies.
- This Standard shall come into effect from 1st January, 2018.
- Dividend is a return on the investment made in the share capital of a company, as distinct from the return on borrowed capital, which is in the form of interest.
- In commercial usage, the term "Dividend" refers to the share of profits of a company that is distributed amongst its Members.
- The term "Dividend" has been inclusively defined in the Act to the effect that it includes Interim Dividend. The Act neither specifically defines the term Dividend nor makes any distinction between Interim and Final Dividend.
- For the purposes of this Standard, capitalization of profits in the form of bonus shares is not Dividend.
- Companies licensed under Section 8 of the Companies Act, 2013 or corresponding provisions of any previous enactment thereof are prohibited by their constitution from paying any Dividend to its Members.

SECRETARIAL STANDARD-4 (SS-4) REPORT OF THE BOARD OF DIRECTORS

- The Companies Act, 2013, requires the Board of Directors of every company to attach its report to the financial statements to be laid before the members at the annual general meeting.
- The Board's Report is an important means of communication by the Board of Directors of a company with its stakeholders.
- The Board's Report should be based on the company's standalone financial statement and not on the consolidated financial statement and should relate to the financial year for which such financial statement is prepared

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SECRETARIAL STANDARD PART I: DISCLOSURES

- COMPANY SPECIFIC INFORMATION
- GENERAL INFORMATION
- CAPITAL AND DEBT STRUCTURE
- CREDIT RATING OF SECURITIES
- INVESTOR EDUCATION AND PROTECTION FUND (IEPF)
- MANAGEMENT
- DISCLOSURES RELATING TO SUBSIDIARIES, ASSOCIATES AND JOINT VENTURES.
- DETAILS OF DEPOSITS
- PARTICULARS OF LOANS, GUARANTEES AND INVESTMENTS
- PARTICULARS OF CONTRACTS OR ARRANGEMENTS WITH RELATED PARTIES
- CORPORATE SOCIAL RESPONSIBILITY (CSR)
- CONSERVATION OF ENERGY, TECHNOLOGY ABSORPTION, FOREIGN EXCHANGE EARNINGS AND OUTGO
- RISK MANAGEMENT
- DETAILS OF ESTABLISHMENT OF VIGIL MECHANISM
- MATERIAL ORDERS OF JUDICIAL BODIES /REGULATORS
- AUDITORS
- SECRETARIAL AUDIT REPORT
- EXPLANATIONS IN RESPONSE TO AUDITORS' QUALIFICATIONS
- COMPLIANCE WITH SECRETARIAL STANDARDS
- CORPORATE INSOLVENCY RESOLUTION PROCESS INITIATED UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)
- ANNUAL RETURN
- ADDITIONAL DISCLOSURES UNDER LISTING REGULATIONS

PART II: OTHER REQUIREMENTS

- APPROVAL OF THE REPORT
- SIGNING OF THE REPORT
- DISSEMINATION
- FILING AND SUBMISSION OF THE REPORT

LEGAL FRAMEWORK GOVERNING COMPANY SECRETARIES

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JOURNEY OF PROFESSION OF COMPANY SECRETARY

The Department of Company Affairs conducting examination leading to Government Diploma in Company Secretary ship (GDSCS), marked the beginning of the profession of Company Secretaries in an organized manner.

later in the wake of substantial increase in the number of candidates for gdcs,

In 1980, the Government moved the Company Secretaries Bill, 1980 to convert the Institute into a statutory body and company secretaries act 1980 came in to force

'Company Secretary' or 'Secretary' means a Company Secretary as defined in clause (c) of sub section (1) of Section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of the Company Secretary under the Companies Act, 2013.

ASSOCIATES AND FELLOWS MEMBERS

Any person whose name is entered in the Register of members

A person, being an Associate who has been in continuous practice in India as a Company Secretary for at least five years

REGISTER OF MEMBERS

- his full name, date of birth, domicile, residential and professional addresses;
- the date on which his name is entered in the Register;
- his qualifications;
- whether he holds a certificate of practice; and
- any other particulars which may be prescribed.

DEEMED "TO BE IN PRACTICE"

A member of the Institute shall be deemed "to be in practice" when, individually or in partnership with one or more members of the Institute in practice

- engages himself
- offers to perform or performs services in relation to the promotion, forming, incorporation, etc.
- offers to perform or performs such services as may be performed
- holds himself out to the public as a Company Secretary in practice; or
- renders professional services or assistance
- renders such other services

LEGAL FRAMEWORK GOVERNING COMPANY SECRETARIES

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REMOVAL FROM THE REGISTER OF MEMBERS

- who is dead; or
- from whom a request has been received to that effect; or
- who has not paid any prescribed fee required to be paid by him; or
- who is found to have been subject at the time when his name was entered in the Register,

EXPLANATORY STATEMENT TO BE ANNEXED TO NOTICE (Sec.102)

- CONTENT OF EXPLANATORY STATEMENT
- AT ANY OTHER GM
- FULL TEXT OF THE RESOLUTION
- INDICATION OF NATURE OF BUSINESS
- EXPLANATORY STATEMENT

PROVISIONS RELATING TO MISCONDUCT UNDER THE COMPANY SECRETARIES ACT, 1980

- Professional misconduct in relation to Company Secretaries in practice requiring action by disciplinary committee (Part I of the Second Schedule)
- Professional misconduct in relation to members of the Institute generally, requiring action by disciplinary committee (Part II of the Second Schedule).
- Other misconduct in relation to members of the Institute generally (Part III of the Second Schedule)

- Professional misconduct in relation to Company Secretaries in Practice. (Part I of the First Schedule)
- Professional misconduct in relation to members of the Institute in service. (Part II of the First Schedule)
- Professional misconduct in relation to members of the Institute generally. (Part III of the First Schedule)
- Other misconduct in relation to members of the Institute generally (Part IV of the First Schedule)

IN CASE OF ADVERTISEMENT THROUGH WEBSITE:

- A Company Secretary or a firm of Company Secretaries may display photograph of the Company Secretary or partners of the firm of Company Secretaries in Practice .
- RESTRICTIONS
- DECLARATION
- EFFECTIVE DATE

MEGA FIRMS

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INTRODUCTION

- rapidly changing economy, industrial environment and emergence of the need for corporate governance and ethical business practices of voluntary disclosures, role of a practicing company secretary has also changed substantially over last three decades.
- Company Secretary in Practice has become a crucial player.
- obtained new dimensions from being conscience keeper to compliance officer, governance professionals, Advisor, strategist for the growth of corporate.
- The Company Secretaries to assume the leadership position with new role, values and approach.

LIMITATIONS OF A SINGLE PRACTICING PROFESSIONAL ARE ENUMERATED AS UNDER:

- Irregular Cash flows;
- Capital investment. (Fixed as well as Working);
- No limit on working hours, clients expect PCS to be available 24*7;
- No work no pay is a rule;
- Need to continuously update oneself;
- No body to protect your mistakes, PCS is directly exposed to all kinds of acts of omission & commission;
- Has to create his own infrastructure
- Has to have staff, their appointments, promotions, incentives, salaries, HR management;
- Cannot directly or indirectly solicit clients.

APPLICABLE RULES, REGULATIONS AND GUIDELINES FOR PCS OR FIRM OF PCS

- Company Secretaries Regulations, 1982.
- Schedule I and III of Company Secretaries Act, 1980 in relation to Professional misconduct
- Guidelines for issuing compliance certificate and signing of annual return.
- Guidelines framed by the council relating to approval of proprietorship concern/firm's name under regulation 169 of the company secretaries Regulations, 1982
- Guidelines for advertisement by Company Secretary in Practice

MEGA FIRMS

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APPLICABLE RULES, REGULATIONS AND GUIDELINES FOR PCS OR FIRM OF PCS

- Guidelines for compulsory attendance of Professional development programmes by the member
- Mechanism for maintenance of attendance records of members at professional development programmes and issuance of Certificates for programme credit hours (PCH)
- Guidelines for peer review of attestation services by Practising Company Secretaries
- Guidelines for professional dress of Company Secretaries
- Guidelines for setting up and Conversion of Firms of PCS into LLP.

WHAT IS MULTIDISCIPLINARY /MEGA FIRM?



Mega Firm can be described as a Partnership firm with more than twenty five partners. A firm which provides core professional service of a particular profession along with the allied and ancillary service with equal competence under one roof is a multidisciplinary firm.

Regulation 168B of Company Secretaries Regulations, 1982 determines the membership of professional body for partnership, accordingly

- The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949 (No. 38 of 1949);
- The Institute of Cost and Works Accountants of India established under the Cost and Works Accountants Act, 1959 (No.23 of 1959);
- Bar Council of India established under the Advocates Act, 1961 (No. 25 of 1961);
- The Institute of Engineers or Engineering from a University established by law or an institution recognized by law;
- The Indian Institute of Architects established under the Architects Act, 1972 (No. 20 of 1972);
- The Institute of Actuaries of India established, under the Actuaries Act, 2006 (No. 35 of 2006);
- Professional bodies or institutions outside India whose qualifications relating to Company Secretary recognized by the Council under Sub-section (2) of Section 38 of the Act
- This actually introduces the concept of multi disciplinary firms or mega firms.

MEGA FIRMS

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PRE REQUISITES

- All minds should work together and in unison;
- Say go to ego;
- Mutual faith and respect lays strong foundation;
- Unanimity shall be the rule on important policy decisions;
- Financial discipline is a must;
- Founder partners shall be given equal status;
- Income of the firm shall be distributed at short regular intervals;
- One shall not put undue influence on the others or show that he is king pin of the association.

BENEFITS OF A MULTIDISCIPLINARY FIRM

- Working in a team environment
- Exposure to various and different works
- Cost effective
- Exceptional training and on-boarding
- Continuous learning
- Big growth opportunities
- Revenue sharing
- Structure & Processes.
- Corporate or Industry perception
- Reputation & risk-adjusted value

RISKS

- More cost on infrastructure and technology.
- Dominance of senior partners over the younger partners.
- Defining exit route is difficult.
- Lack of transparency may lead to disputes.
- If crack develops in mutual faith & trust, very difficult to cure.
- Communication gap between partners

PROCESS OF CONSTITUTION

The process of formation of MDF shall be an outcome of conscious and sincere decision and it is essential that the like minded professional should deliberate and take this decision.

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Agreement between partners

Partners must enter into a partnership agreement defining inter alia the process of decision making, allocation of duties, responsibilities, delegation of authorities, revenue sharing and exit route.

Management of Firms

The mega firm requires effective management skills including skills for handling finance, dealing with human resources and day to day administration of the office. The management of a MDF is in itself a major challenge.

REVENUE SHARING MODELS

- partner bringing new client shall be given referral or induction share, say, @ 15% of the fees settled and received; it can be for the first year or for given number of years;
- Certain percentage of fees, say 15% shall be retained in business in common pool for meeting expenses;
- 70% of the fees shall be given to the partner or partners who actually work on the assignment (assignment share).