

CS-EXECUTIVE

MODULE-1

COMPANY LAW  
**(HAND WRITTEN BOOK)**

FOR JUNE/DEC 2023 EXAMS

SOURCE: ICSI MODULE

## **PREFACE OF THIS BOOK**

This Book adopts a fresh and new approach to understand and gain in depth knowledge of the Provision of the Companies Law in an illustrative Manner for the Students of CS EXECUTIVE and other Law Students. The Law Stated in the Book is as per the Amended Provisions and the problems are solved keeping in Mind the amended provisions of The Companies Act, 2013.

This Book helps you to understand the provision in an easy and better way. This is designed to ease your Study of the company Law. Moreover, the objective of the book is to present the Law in Simple and easy language so as make topics student friendly by illustrating provisions in graphical and tabular manner.

The Book has been written keeping in view of the new syllabus as Notified by ICSI.

Key Features of the Book:

- **Suitable for Detailed Discussion and in depth understanding of the topic:** The book covers entire syllabus at a place along with suitable illustration for Concepts for better Understanding.
- **Includes most important solved problems:** The book contains practical questions that will help with help in the application of law.
- **All Concepts in Simple and Easy Language:** All the Provisions have been explained in easy language and also in graphical and tabular manner to make study easy and simple.

I would like to thank my Lord for his constant courage, blessing and everything that has been provided by Almighty to each one of us.

I would like to thank my parents for their constant love, support, encouragement, and blessing and for being a big source of inspiration.

**HAND WRITTEN BOOK**  
**MOST IMPORTANT CHAPTERS**  
**COVERED**  
**FOR JUNE/DEC 2023 EXAMS**

S.no	Topic	Page no
1.	Share & share Capital	1-45
2.	Debenture	49-56
3.	Members & Shareholders	57-70
4.	Deposits	77-83
5.	Board of Directors	84-141
6.	General Meeting	142-180

# SHARE AND SHARE CAPITAL



Section 23 to 42



Section 2(84) → 'Share'



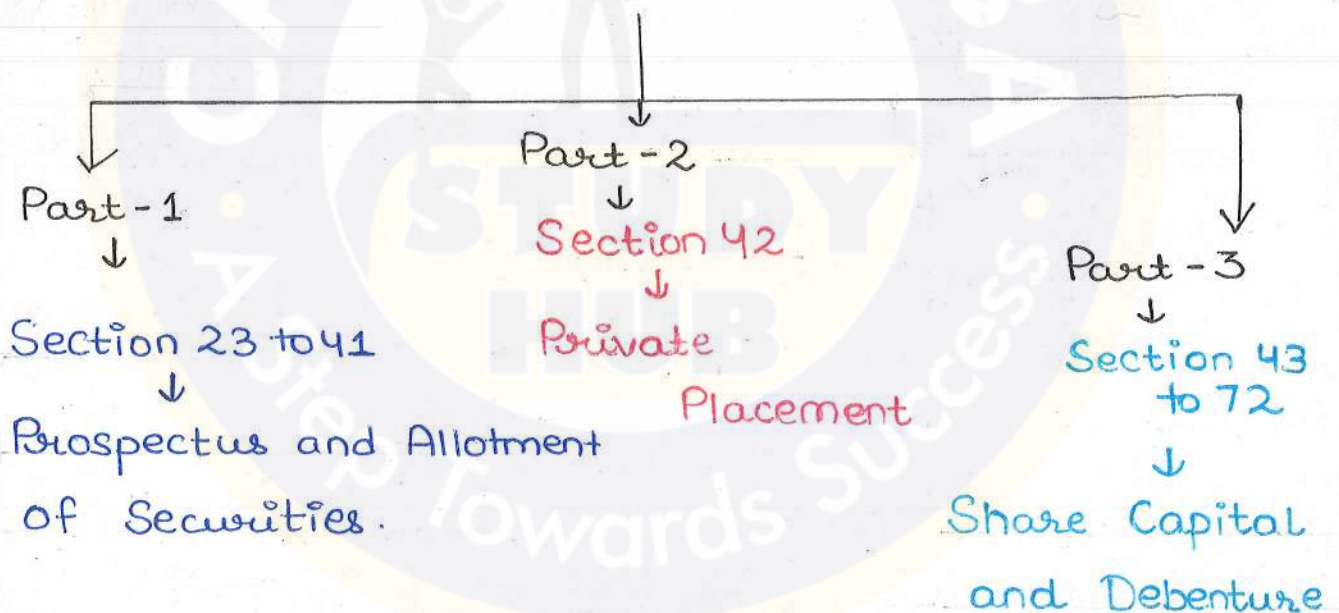
Section 2(70) → 'Prospectus'



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

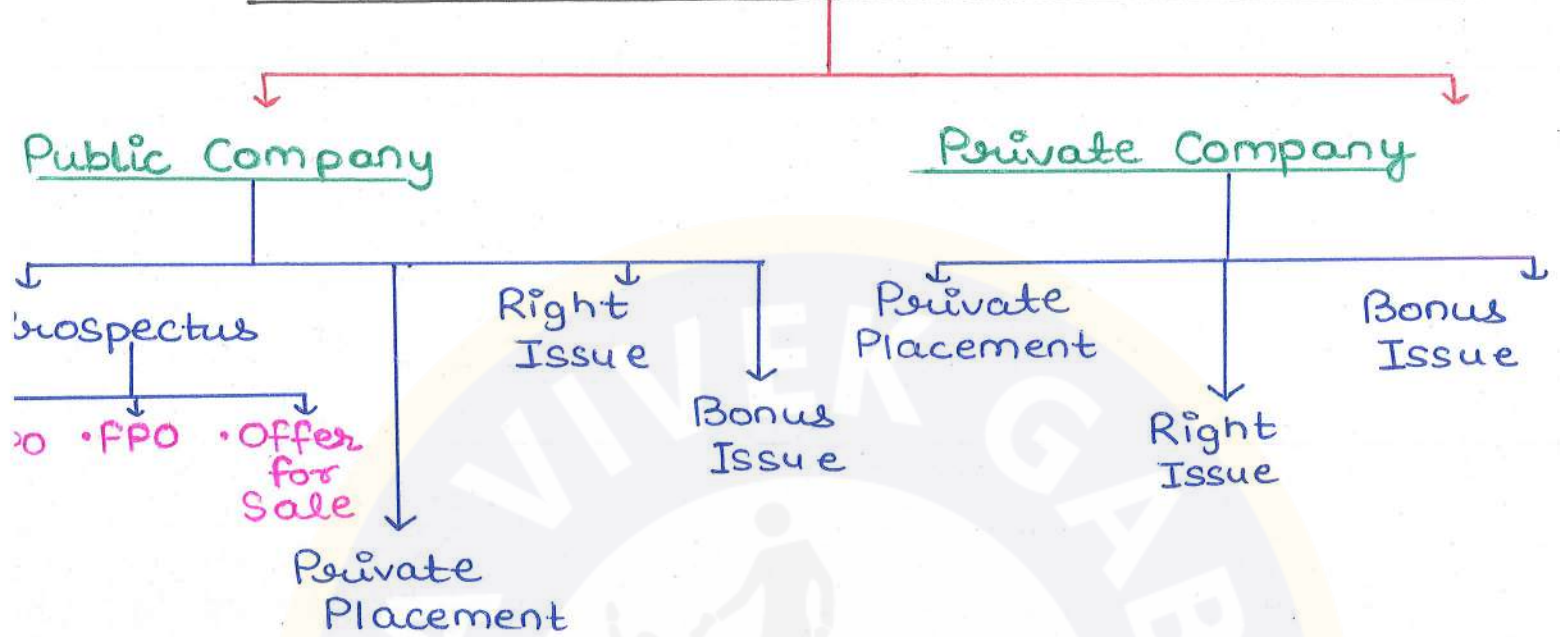


The Companies (Share and Share Capital) Rules, 2014



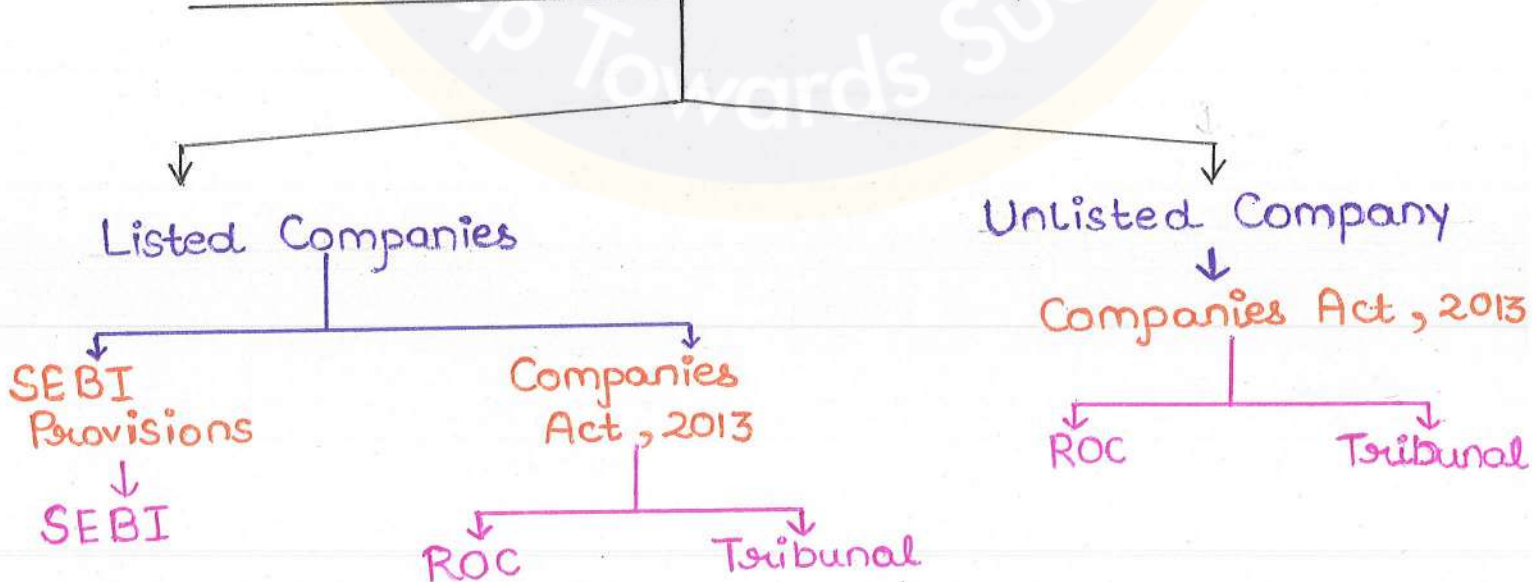
~ Section - 23

Public Offer and Private Placement



~ Section - 24

Power of SEBI to Regulate Laws and transfer of Securities

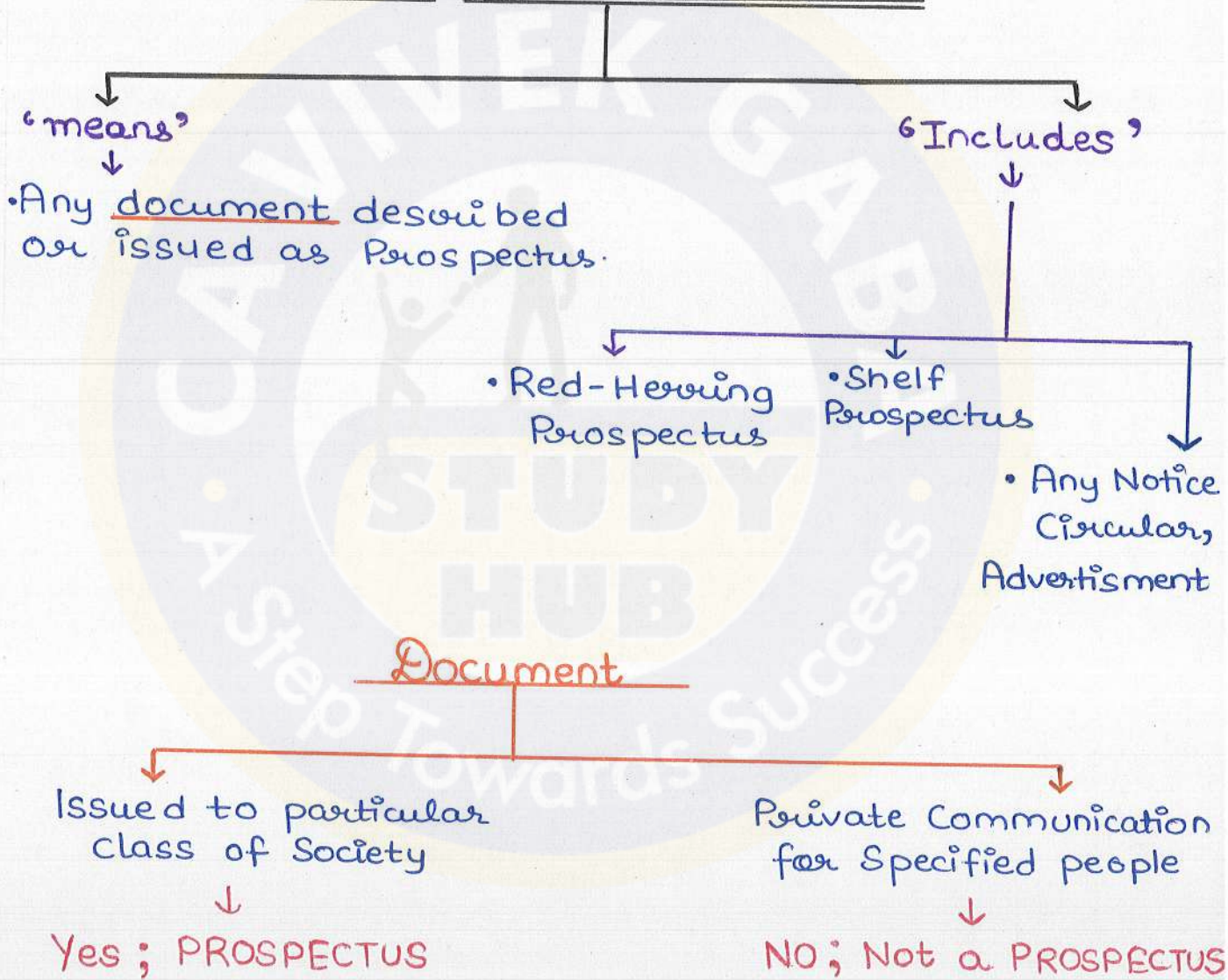


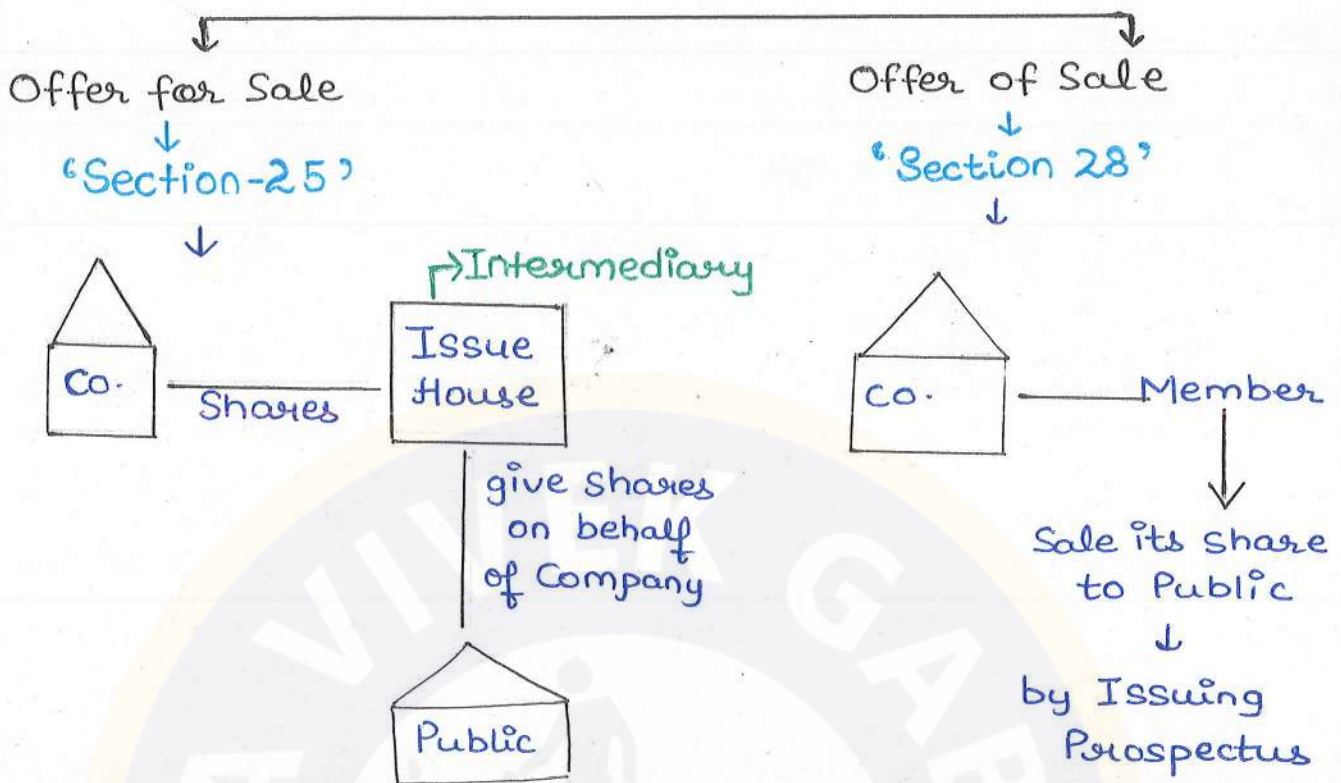
~ Section 25

Documents containing Offer of Securities  
for Sale to be Deemed Prospectus

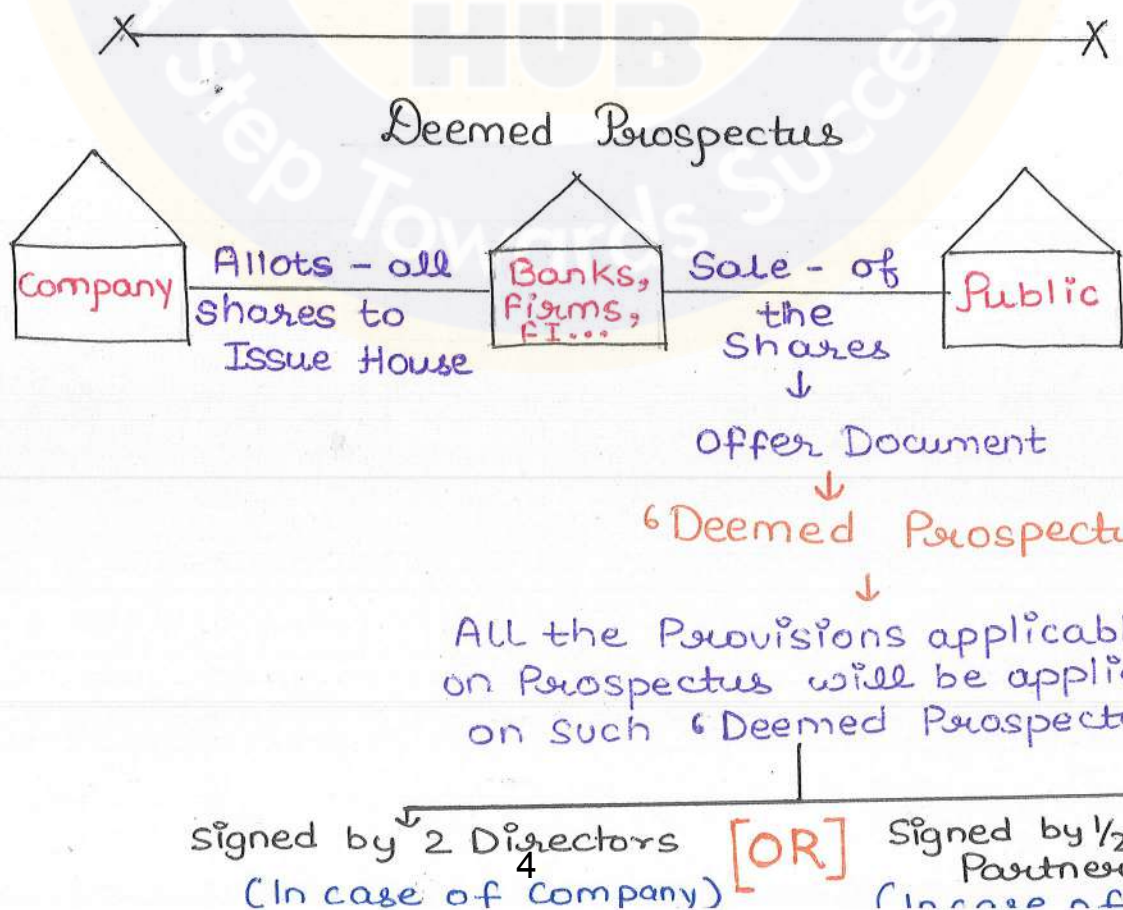
↓  
'Offer for Sale'

- Section 2(70) [PROSPECTUS]





\* When Company does not want to handle the burden of Public Issue.



\* Test of Deemed Prospectus :

(\*) Issue House has made an offer of Securities for Sale to Public 'within 6 months of Allotment'.

'OR'

(\*) Date on which offer was made, 'Whole Consideration is not Received' by Company.

~ Section-26

Matters to be Stated in Prospectus

↓  
Should be dated and signed.

\* इस Section में List दी है जो Matters Prospectus में \$ Include होंगे

[Information, Report on Financial Statement]

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

⊕

Signed by Every Persons whose Name is in Prospectus

↓  
As Director

[OR]

↓  
Proposed Director

\* Experts can also be named in Prospectus, if he has given Consent.

↳ Expert need to be Independent.

\* No Prospectus shall be valid if it is issued more than 90 days after the date on which a copy of which it is delivered to ROC.

~ Section - 27

→ Variation in terms of Contract or Object in Prospectus.

It is possible only if ;

↓  
By Passing SR in General Meeting

↓  
Notice of General Meeting → Publish

↓  
Notice shall include Justification

in Newspaper

↓  
English Newspaper

↓  
Vernacular Language Newspaper

→ After Passing SR, Dissenting Shareholders

↓  
Exit Opportunity to Dissenting Shareholders by Promoters or Controlling Shareholders.

★ Money raised through Prospectus can not be used for Buying / Selling in the Securities of Other Company.

~ Section - 28

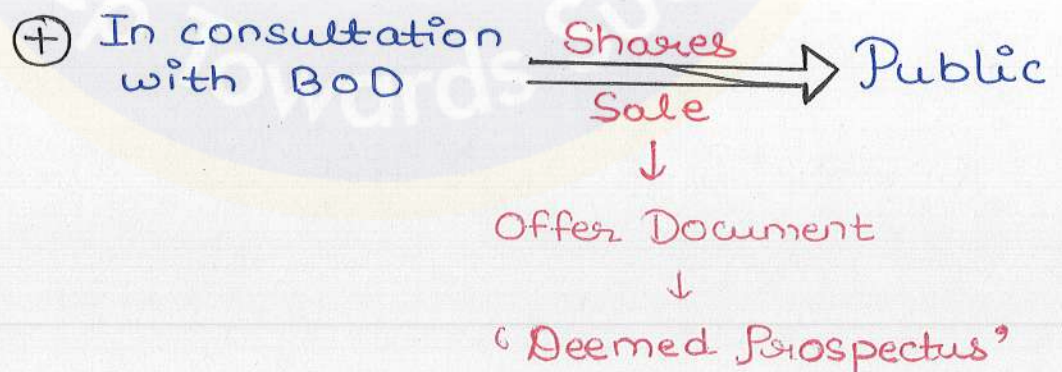
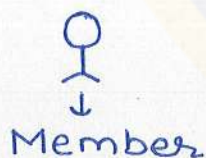
↓  
'Offer of Sale'

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



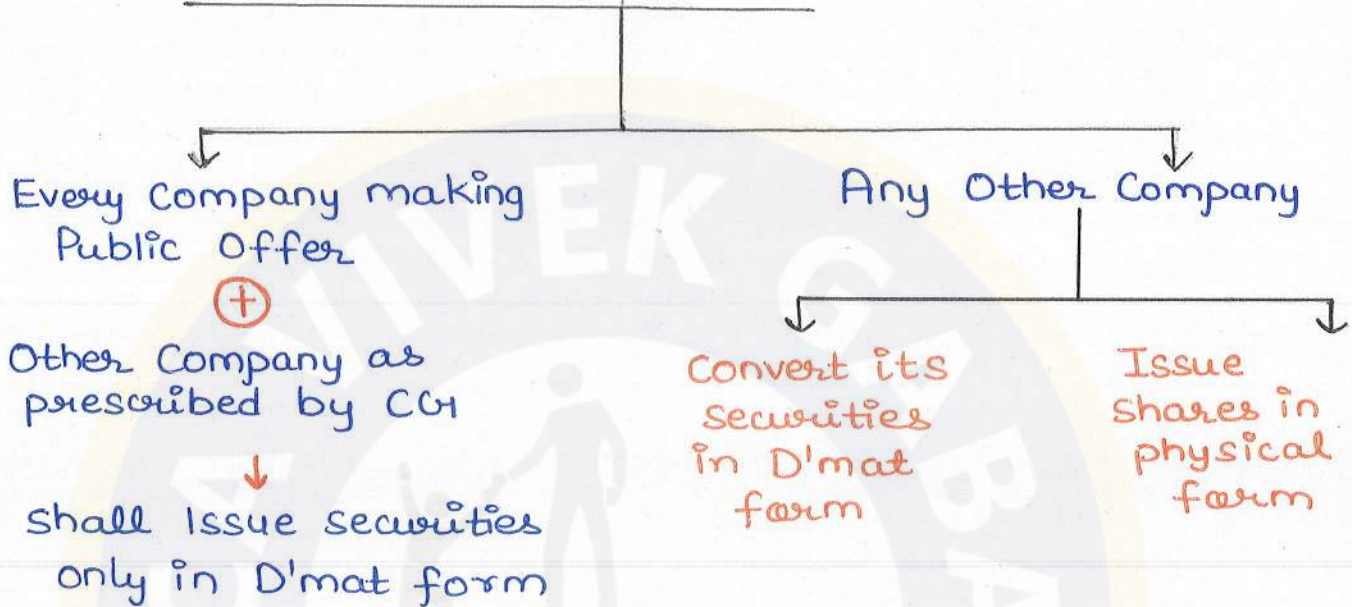
It is a mechanism that allows Promoters / Members to Reduce their Holding in Listed Company.

[No New Capital is Introduced]



~ Section-29

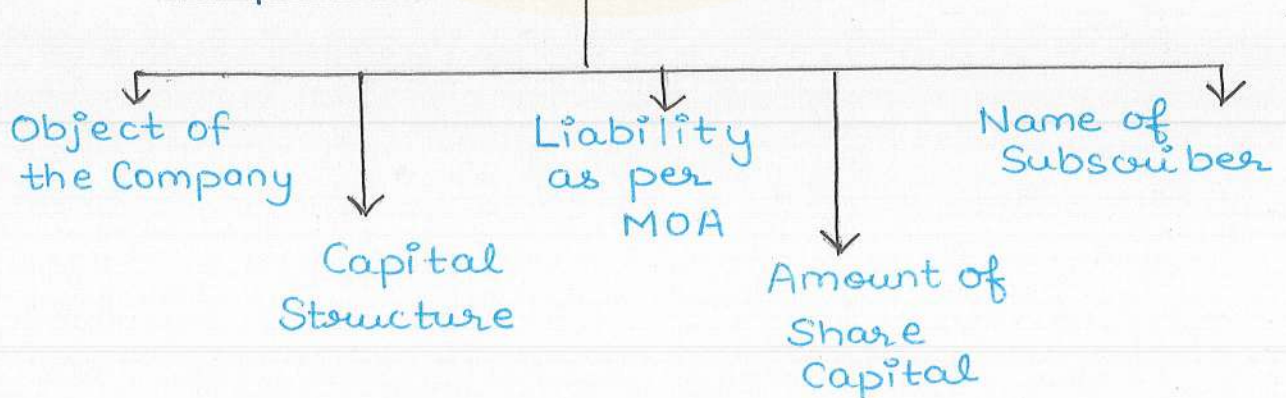
Public Offer of Securities to be in Dematerialised form.



Section-30

Advertisement of Prospectus

Whenever an Advertisement of Prospectus is published, it shall include

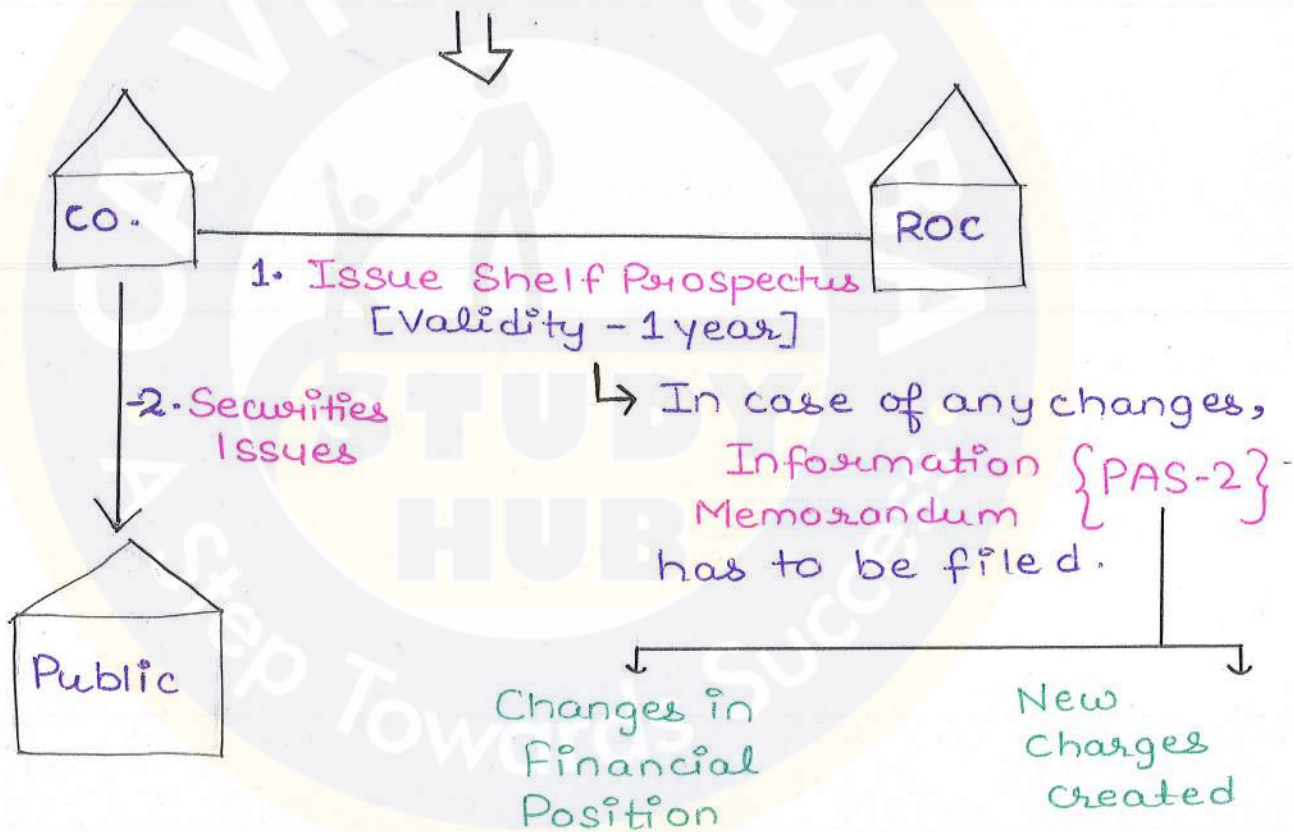


## ~ Section - 31

### Shelf - Prospectus

जिन Companies को बार-बार ज्यादा पैसे की  
need होती है

as prescribed by  
SEBI i.e. Banking Companies  
Infrastructure Companies etc.



★ No Prospectus is Required for Subsequent Offer for '1 year'

★ A Maximum of 4 Issues of Securities can be made Using a Shelf - Prospectus

Section - 32

Red-Herring Prospectus



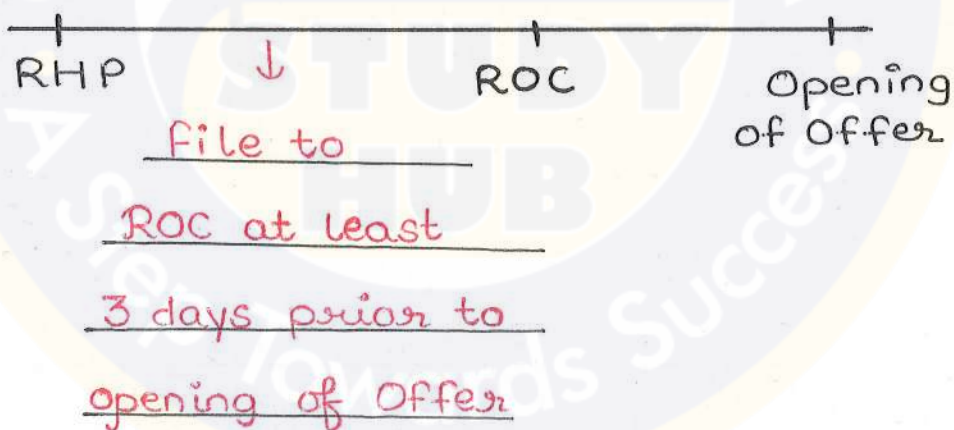
Incomplete Prospectus



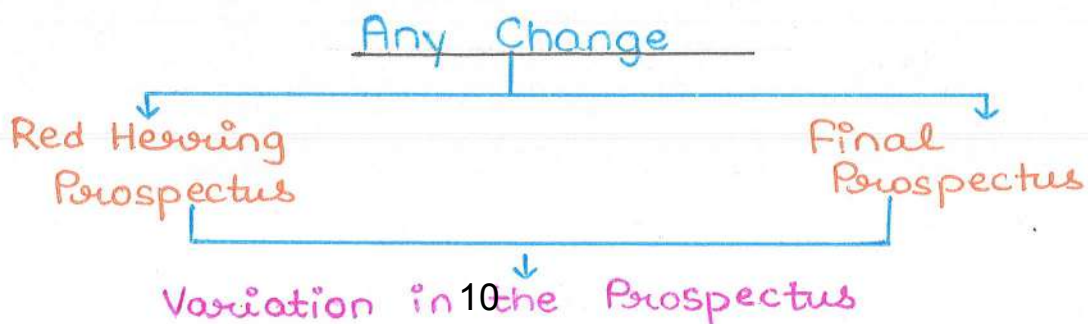
Prospectus which contain all the information except for Price and Quantum.



Issue of RHP prior to issue of a Prospectus.



Red Herring Prospectus carries same obligations as applicable to Prospectus.



Filing Prospectus with ROC and SEBI  
upon closing of Offer.

### Section - 33

#### Issue of Application form for Securities

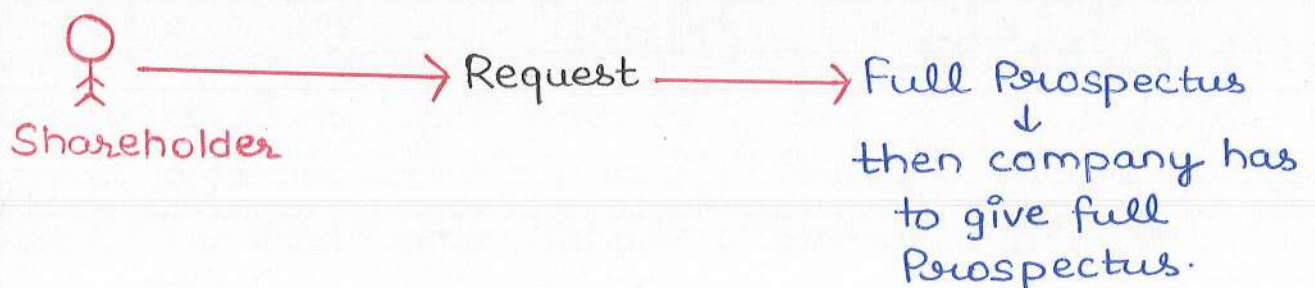
No Application form shall be Issued  
unless accompanied by Abridged  
Prospectus. (Summary Prospectus)

⇒ Memorandum containing  
salient features of Prospectus  
specified by SEBI.

#### Exception

Invitation to enter into  
underwriting Agreement.

If Securities are not offered  
to Public.



## Section - 34

### Criminal Liability for Misstatement

When → Prospectus Include

Any Statement  
which is false or  
Misleading

'OR'

Omission of  
Material  
Information

↓  
Liable - Under Section 447

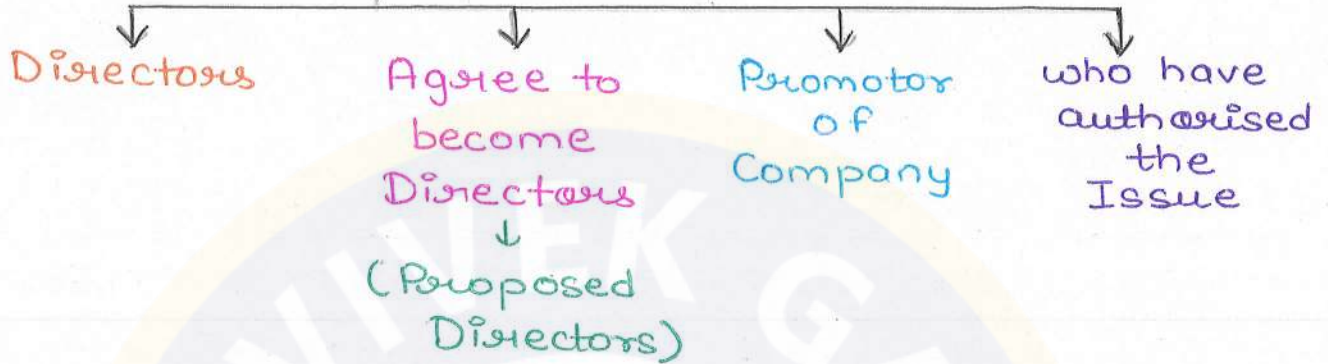
Nothing in this Section, Applicable  
to person who proves that the  
ommission was immaterial.

## Section - 35

### Civil Liability for Misstatement in the Prospectus.

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

The following people are liable to compensate :



unless ;

Directors had withdrawn the consent before Issue of Prospectus

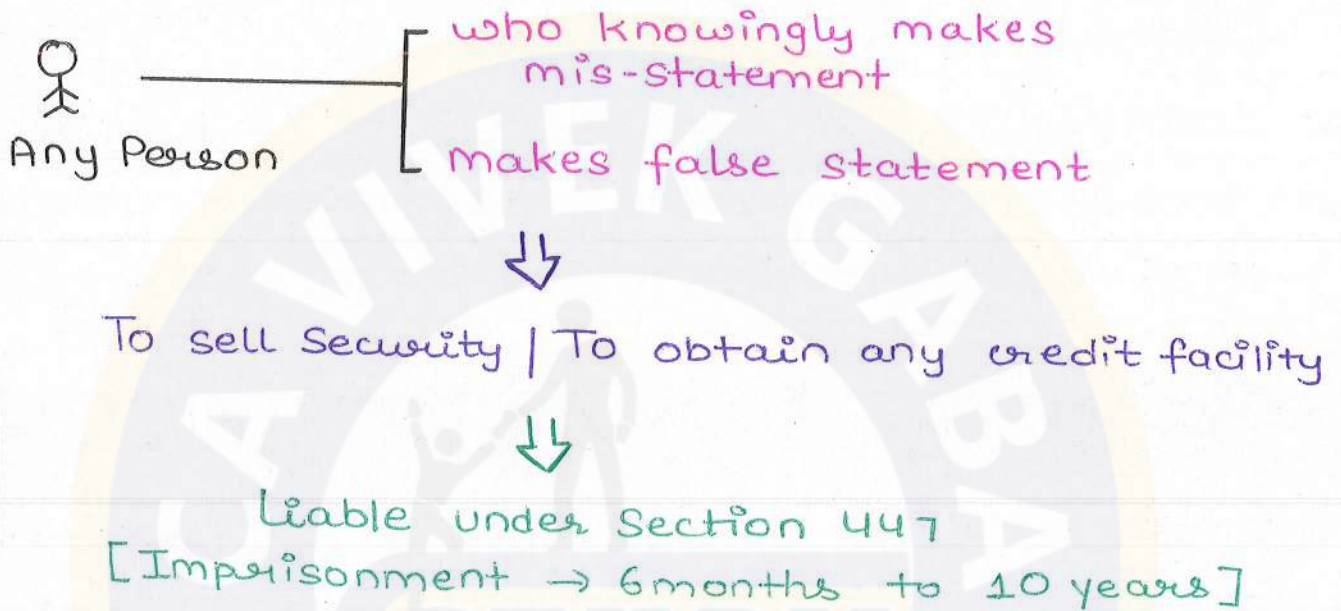
OR

The Prospectus was Issued without his knowledge / consent and he gave Public Notice for it.

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

~ Section - 36

Punishment for fraudulently Inducing  
Persons to Invest money



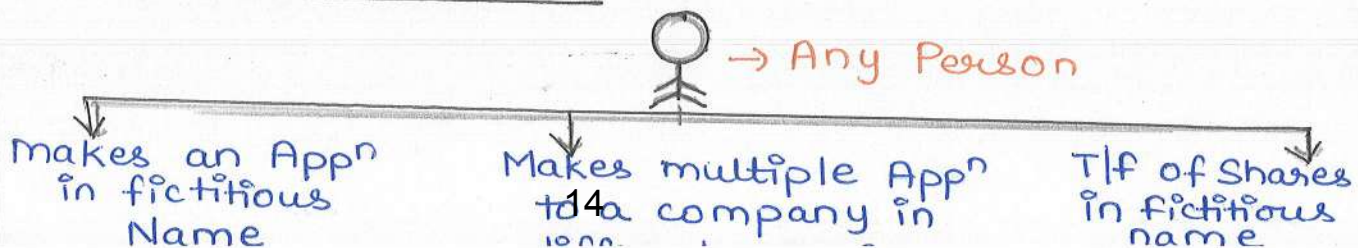
~ Section - 37

Action by Affected Person

A suit may be filed by an Aggrieved Person.

~ Section - 38

Punishment for Personation for Acquisition etc.  
of Securities :



## Section - 39

### Allotment of Securities by the Company

No allotment unless minimum subscription has been Received

Should be received within 30 days from the date of Issue of Prospectus

If Application money not received

then Repaid

within 15 days from the closure of Issue.

[If not Repaid; Directors who are Officers in Default shall be Jointly and severably liable]

Minimum App<sup>n</sup> money shall be 5% of Nominal value of the Security.

Allotment → 30 days

↓  
ROC

↓  
Return of Allotment [PAS-3]

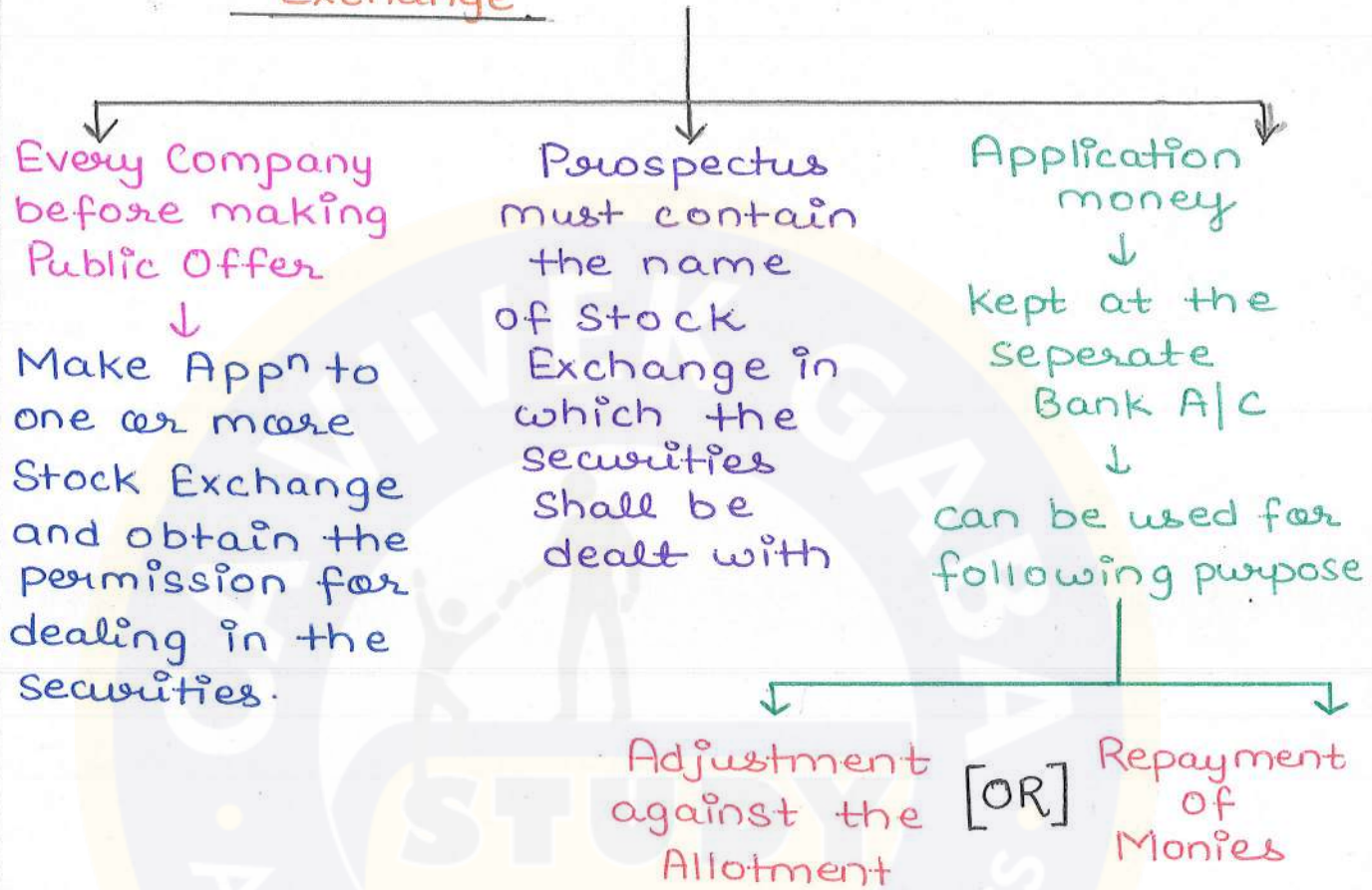
\* No. of Securities allotted

\* List of Allotees

\* Names & Occupation

~ Section 40

Securities to be dealt within Stock Exchange

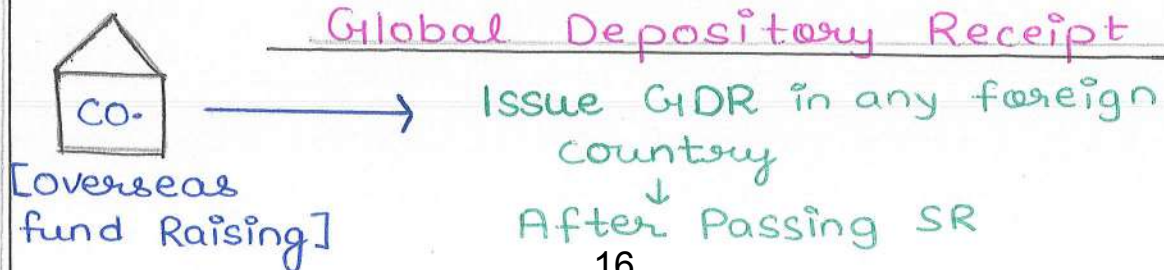


Underwriting Commission :

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

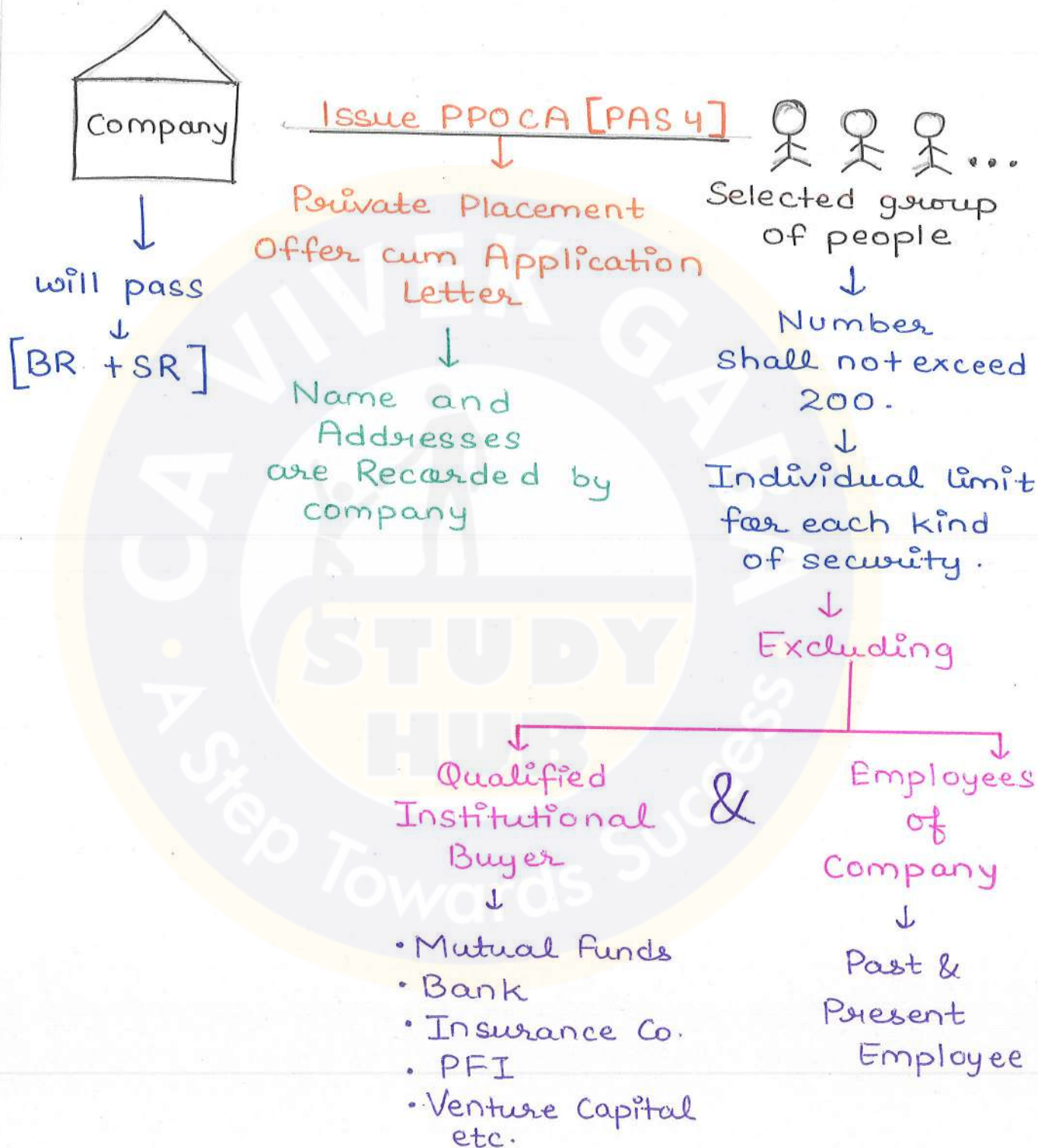
~ Section 41

Global Depository Receipt

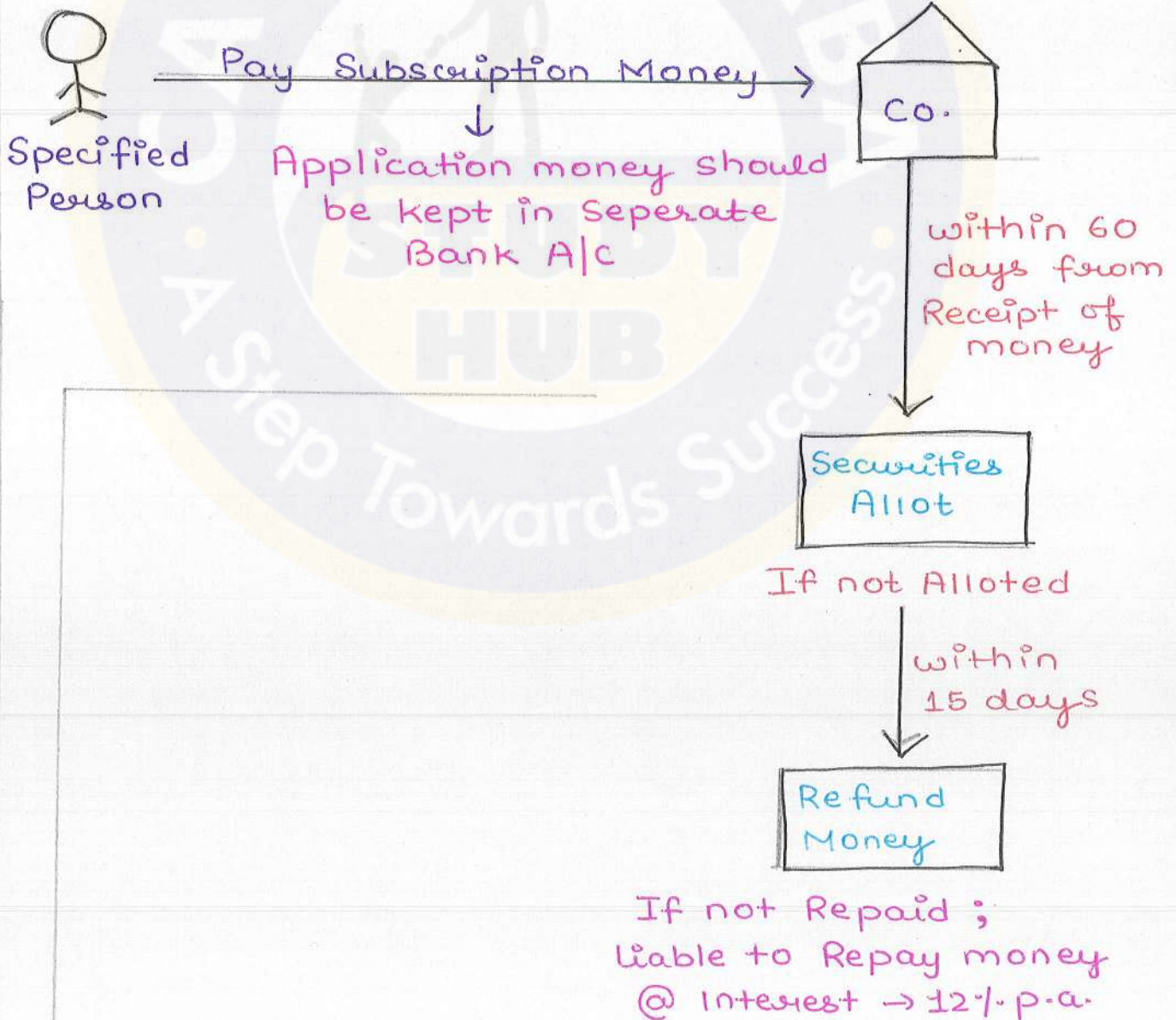
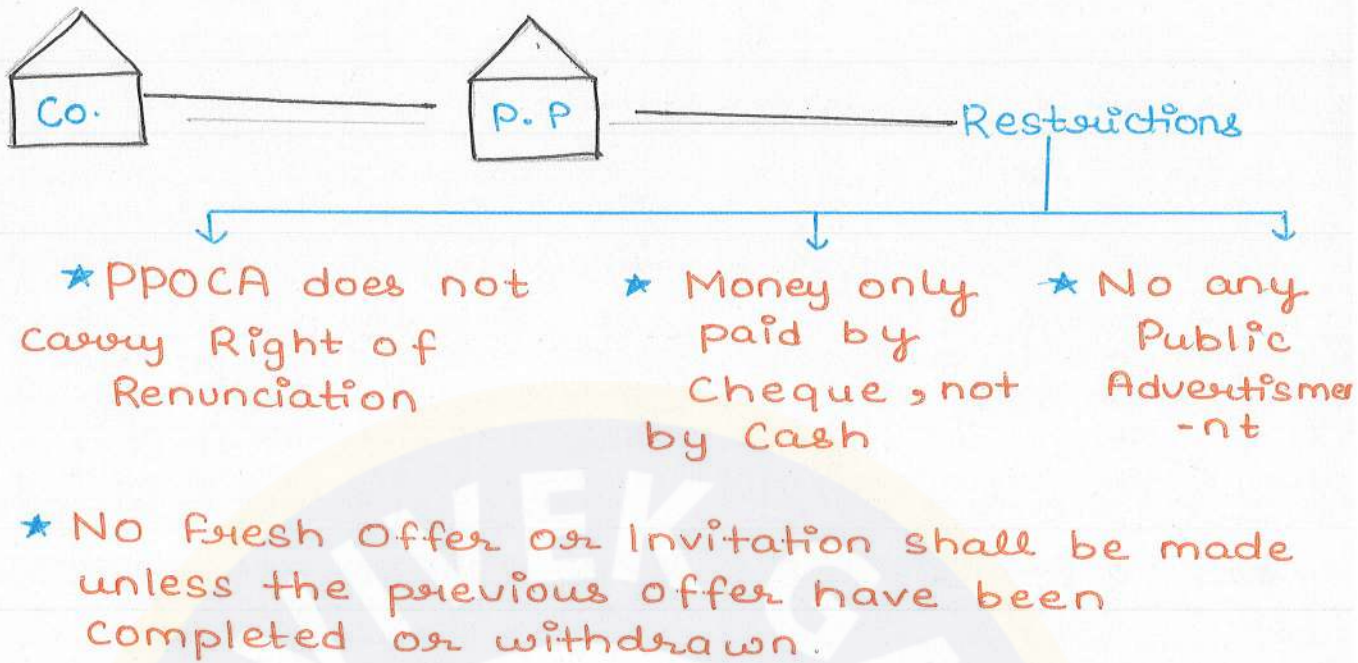


## Section 42

### Private Placement



- ★ If Company makes an offer to more than 200 persons, then ;  
↓  
'Deemed Public Offer'



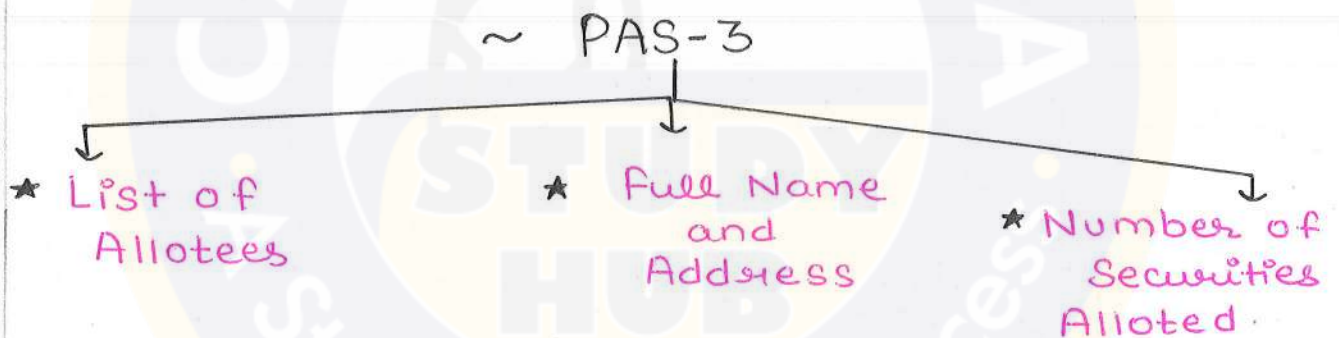
★ Application Money can not be utilised  
for any purpose other than;

- For Adjustment against Allotment.
- OR
- For Repayment of Monies

★ Company has to maintain Record of Private Placement Offers in 'PAS-5'

### Return of Allotment

Allotment → 15 days → PAS-3 → ROC

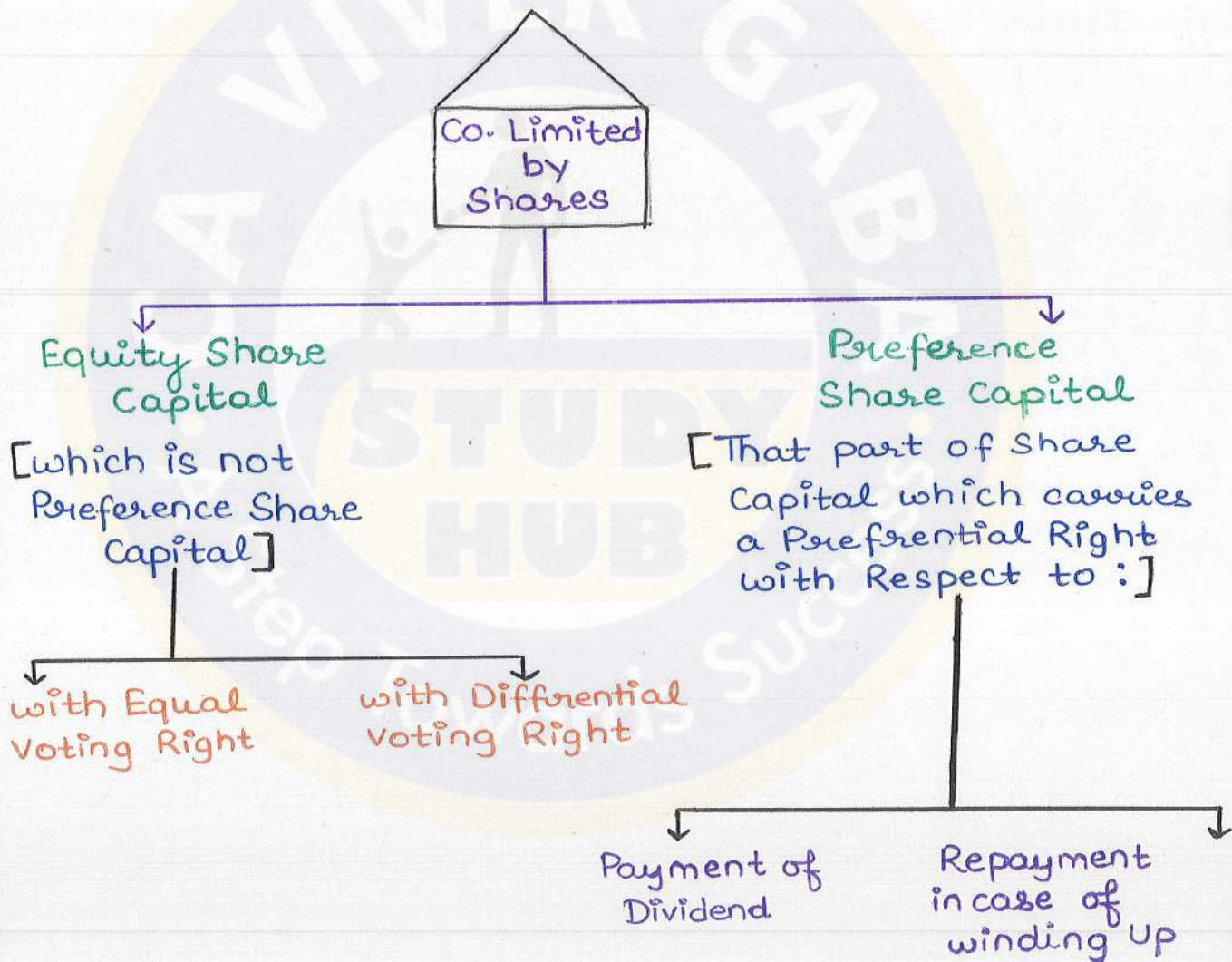


Section 43 to 72

Share Capital and Debentures

~ Section 43

Kinds of Share Capital



\* Every Class is itself a kind.

\* In Case of Private Company Section 43 shall not apply where MOA or AOA so provided.

## Conditions for the Issue of Equity Shares with Differential Right :

• It must be authorised by Articles of Association

• Ordinary Resolution in GM, by Postal Ballot if Shares are Listed.

• Voting Power of Shares with DVR shall not exceed 74% of TVP

• Not defaulted for 3 FY

Annual Return (MGT-7)

Financial Statement (AOC-4)



OR

VICE-VERSA

No Subsisting Default

Payment of Declared Dividend

Repayment of Matured Deposit or Interest

Redemption of Debenture or Interest

Company may Issue DVR from expiry of 5 years from end of FY in such default was made good.

~ Section-44

Nature of Shares or Debentures

Movable  
Property

Transferable in  
manner provided  
by Articles

⇒ No Absolute Prohibition.

~ Section-45

Numbering of Shares

↓  
Distinctive Number

~ Section-46

Certificate of Shares

Under Common  
Seal or ;  
Signed by 2 dir  
(OR)  
CS + Director  
↓  
[where a Company  
has appointed CS]

SHARE CERTIFICATE  
[SH-1]

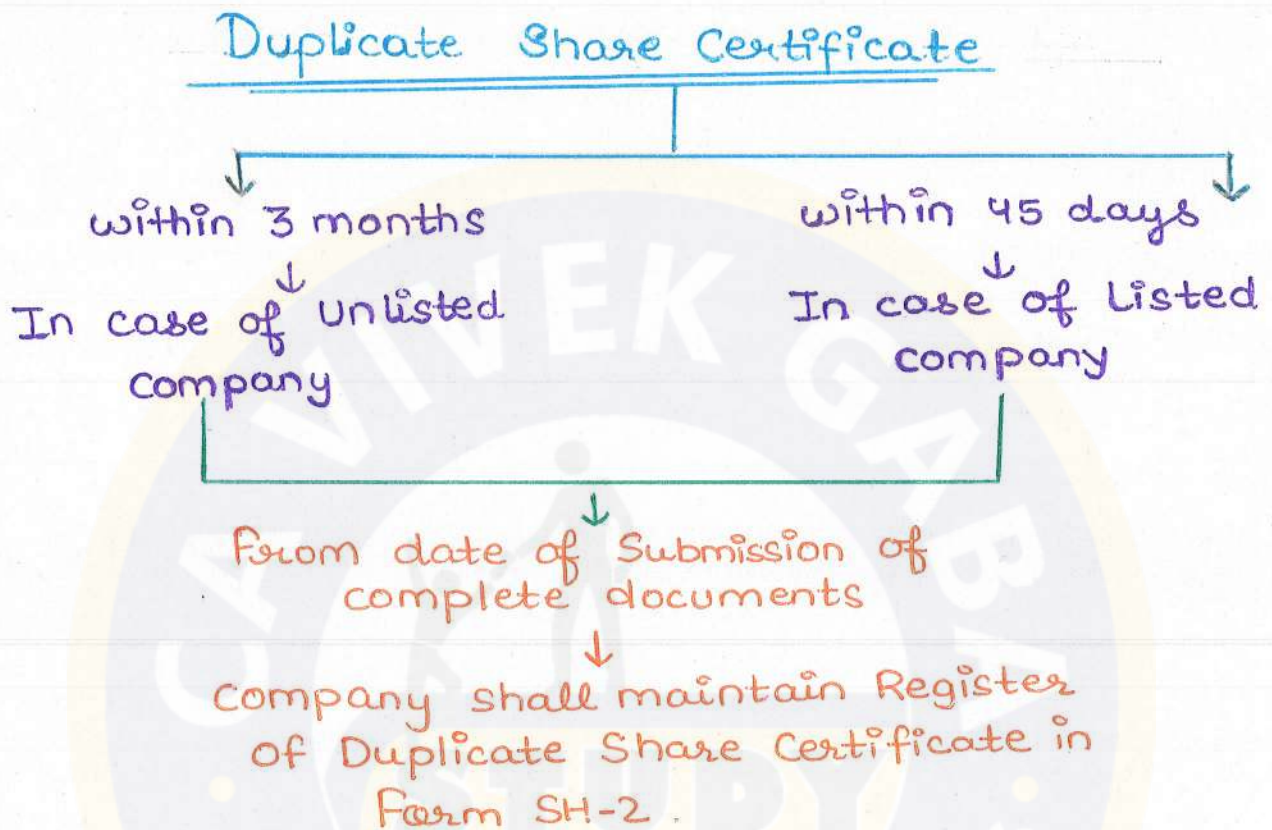
↓  
Prima evidence of the  
title of Person of 22  
such Shares.

Duplicate Share  
Certificate can be  
issued only if ;

Original  
certificate  
is lost  
or  
Destroyed

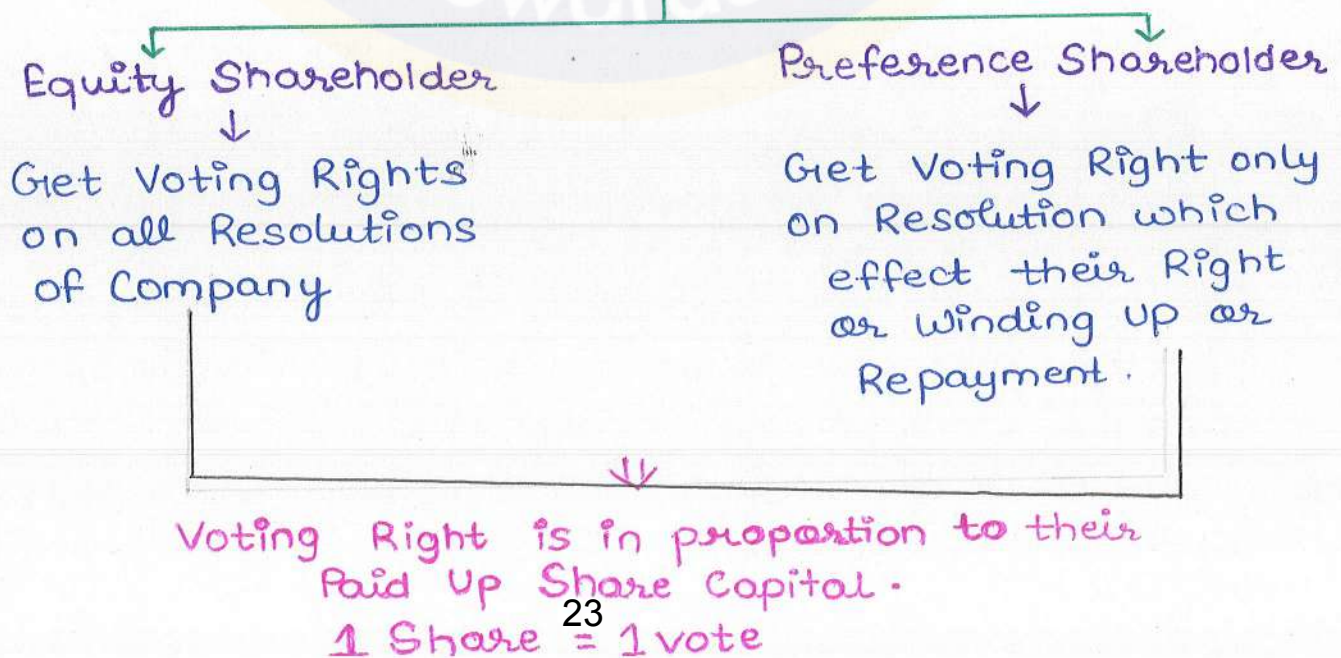
Has been  
defaced,  
torn  
and is  
Surrendered  
to company

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



Section 47

Voting - Rights



Dividend :-> Not paid Dividend

↓  
for 2 years

↓  
Then, the Preference Shareholders  
get the Voting Right on all the  
Resolutions of a company.

~ Section - 48

Variation of Shareholder's Right

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

↓  
In absence of  
Such provision

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

:- Company can vary the Right of Shares  
of any class.

↓  
By Passing SR  
in General  
Meeting

↓  
Written consent of  
Shareholding

# Holders of not less than 10% of Issued Shares of the class

↓  
May apply to NCLT to have variation cancelled.

↓  
within 21 days of consent or Resolution.

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

### ~ Section - 49

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

↓  
Call Money सबसे equally माँगी जायगी

### ~ Section - 50

Company to accept unpaid Share Capital although not Called-Up

→ If so authorised by Articles, accepts from any member, the whole or part of the amount remaining unpaid on any shares held by him.  
[Calls in Advance]

⊙ No Voting Right is available for Calls in Advance.

## ~ Section 51

### Payment of Dividend in proportion to Amount Paid-Up

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

## ~ Section 52

### Application of Premiums Received on Issue of Shares



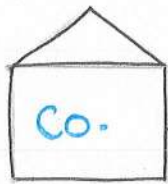
Amount of Premium shall be transferred to a 'Securities Premium Account'



can be applied only on :

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

Co.:



Follows Sec-133  
↓  
CBI to prescribe  
certain AS

SPR  
↓

- Buy Back
- Expenses on Issue of Shares
- Fully paid-up Bonus shares

~ Section 53

Prohibition on Issue of Shares at

Discount



A company shall not issue shares at discount.

Except:

- i. Section 54 [Sweat Equity Shares]
- ii. Debt Reconstruction Scheme

↳ When its debt converted into shares in a debt reconstruction scheme in accordance with RBI guidelines.

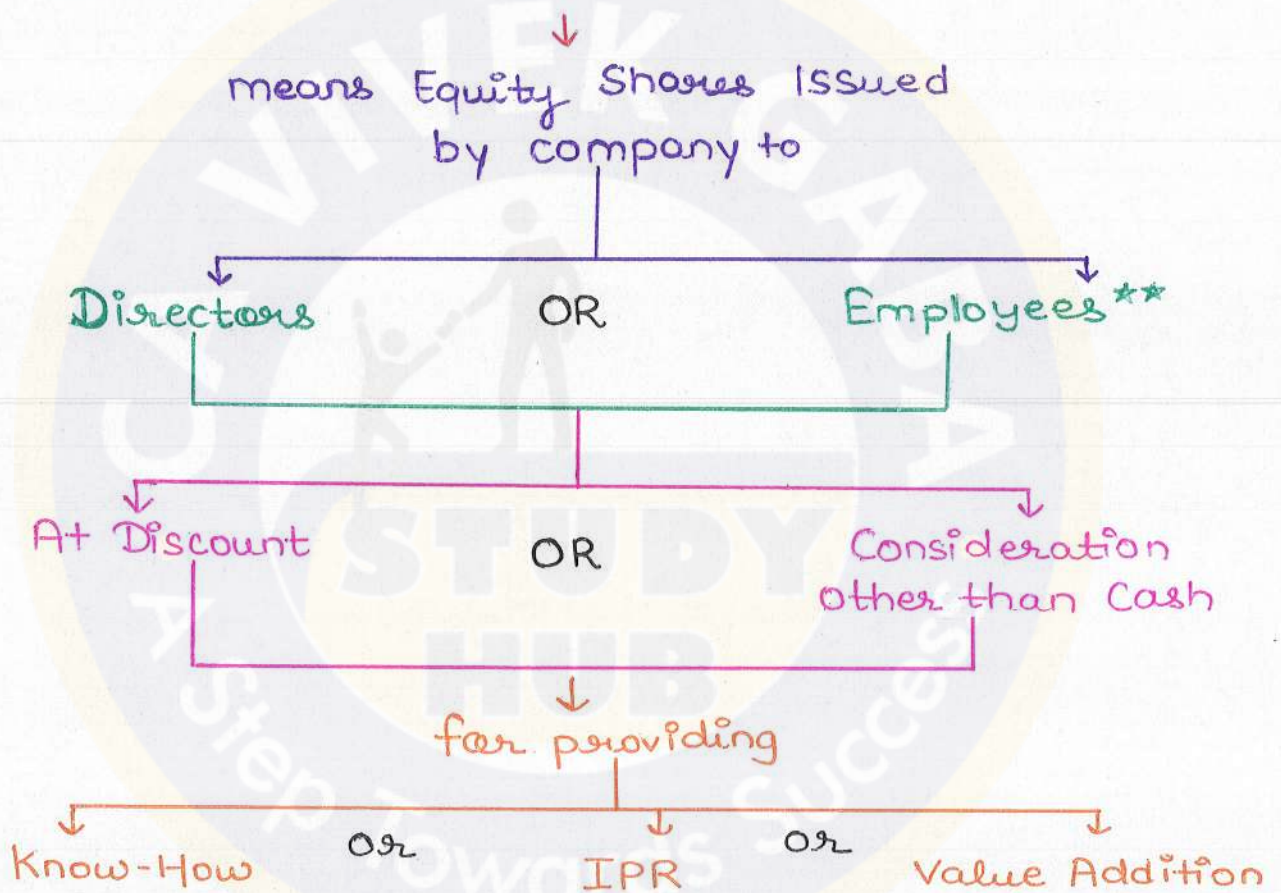
\* Shares issued at discount is void.

~ Section 54

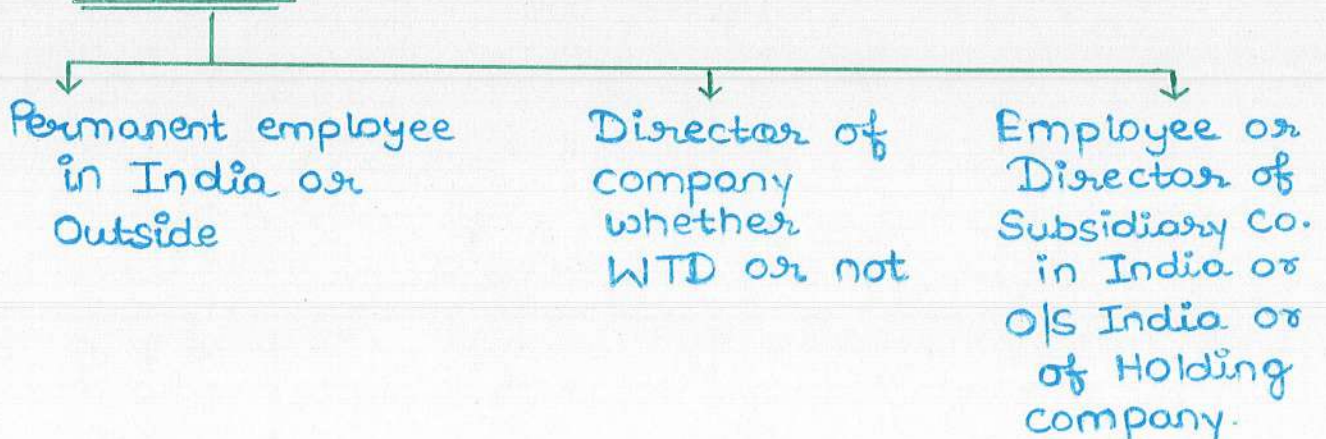
Issue of Sweat Equity Shares

Sweat Equity Shares are Issue to motivate the Director and Employee of the Company by making them member.

Sec 2(88) : Sweat Equity Shares



\*\* Employee :



## Conditions to Issue Sweat Equity Shares

- SR to be passed in General Meeting.

↓  
Resolution Passed

↓  
Number of Shares

↓  
Current Market Price

↓  
Consideration

Company

↓  
Listed

↓  
Unlisted

↓  
Issued according to SEBI Regulation

↓  
RULE 8

- SR is valid max 12 month from date of passing

Maximum Limit in a year

↓  
15% of PSEC

↓  
Shares of Issue value of ₹5 crore

↓  
HIGHER

Life time Limit → 25% of Paid Up Equity Share Capital

Startup : Maximum Limit

↓  
50% of Paid up Share Capital

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

### ~ Section 55

### Issue and Redemption of Preference Shares



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

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

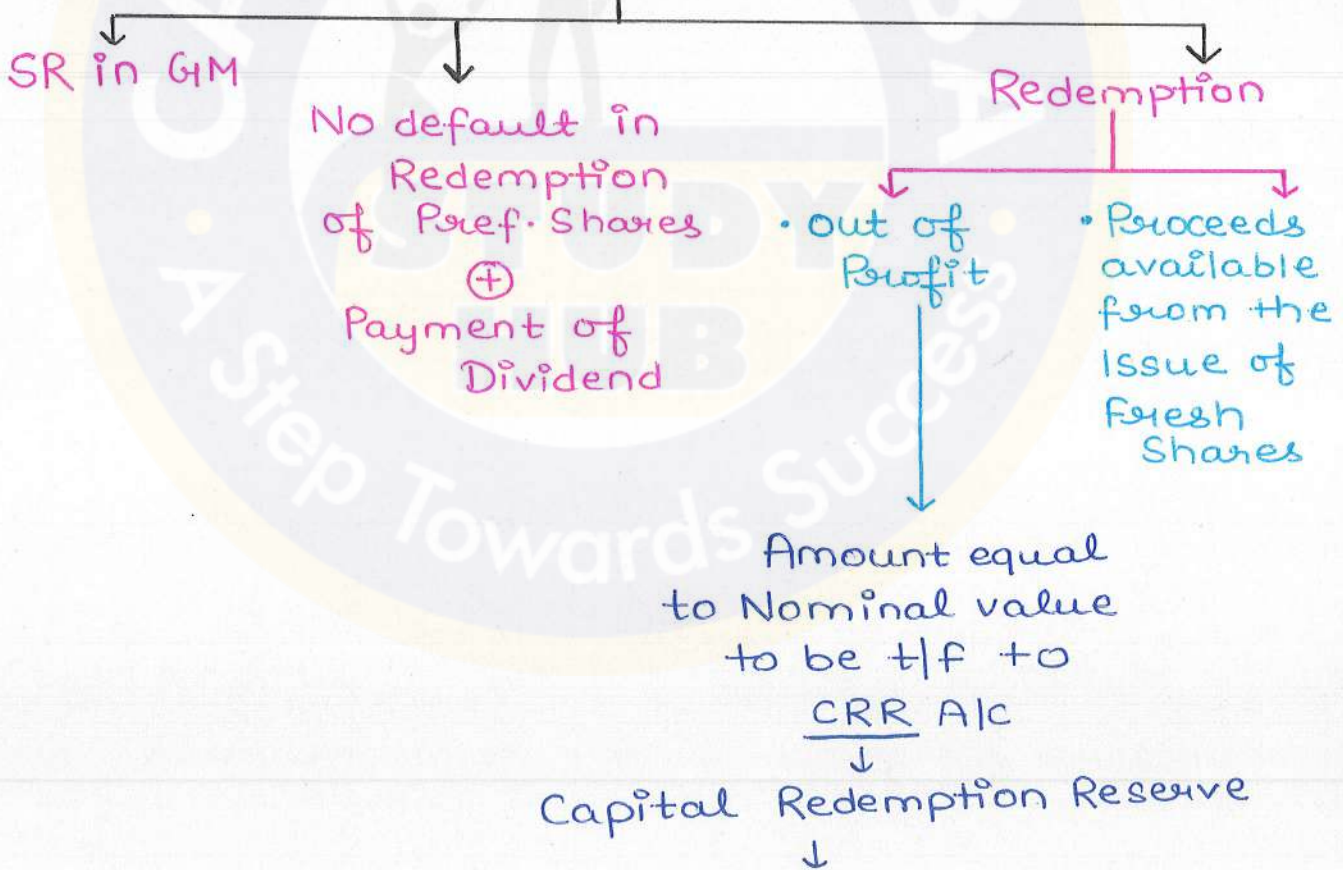


Company engaged in Setting up Infra Projects



Subject to Redemption of Minimum 10% of P.S per year from 21<sup>st</sup> year onwards.

### Conditions



★ can only be used for Issuing fully paid up Bonus Shares.

★ Premium on Preference Shares:

- Profit <sup>or</sup>
- SPR

★ Inability to Redeem:

Company with consent of 3/4<sup>th</sup> in value

⊕  
NCLT Approval



Issue further Redeemable Preference Shares equal to amount due

⊕  
dividend to Redeem



Exit Opportunity to Dissenting Shareholders.

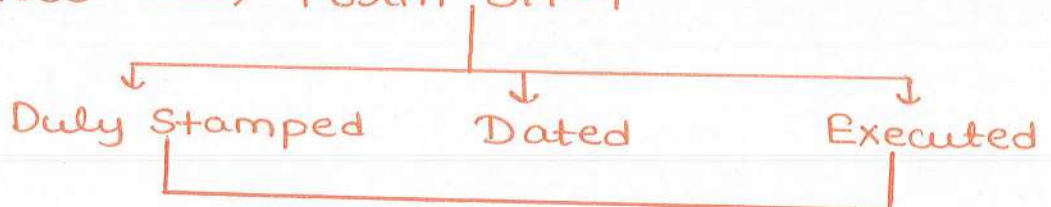
~ Section-56

Transfer and Transmission of Securities:

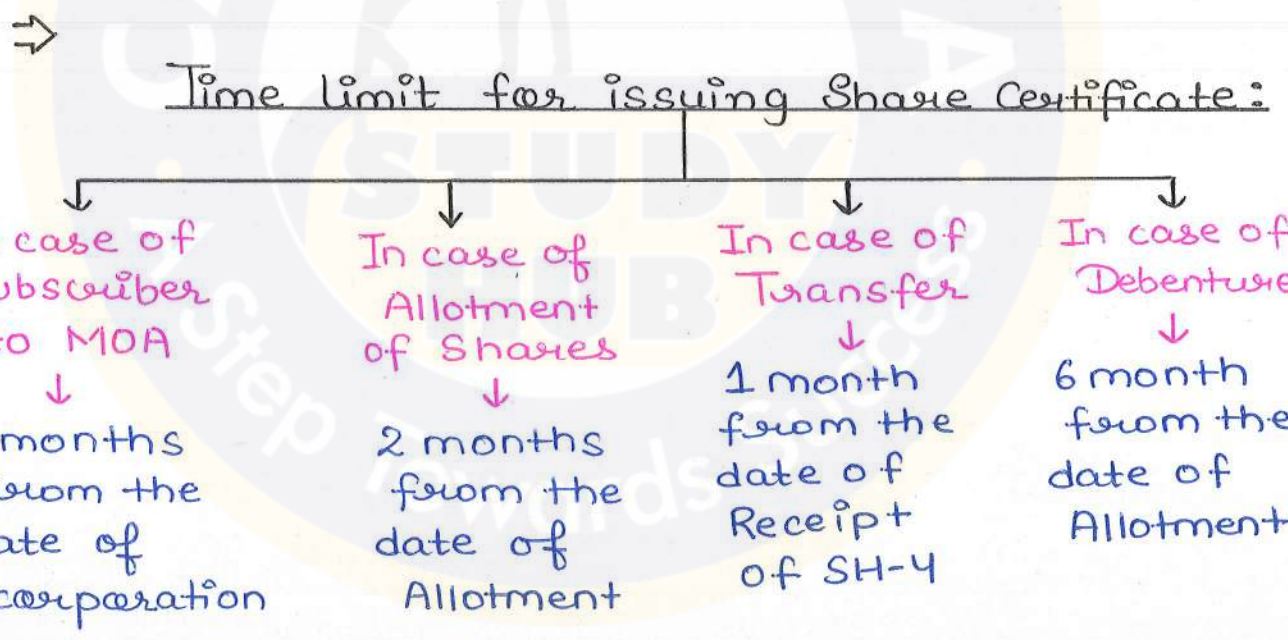
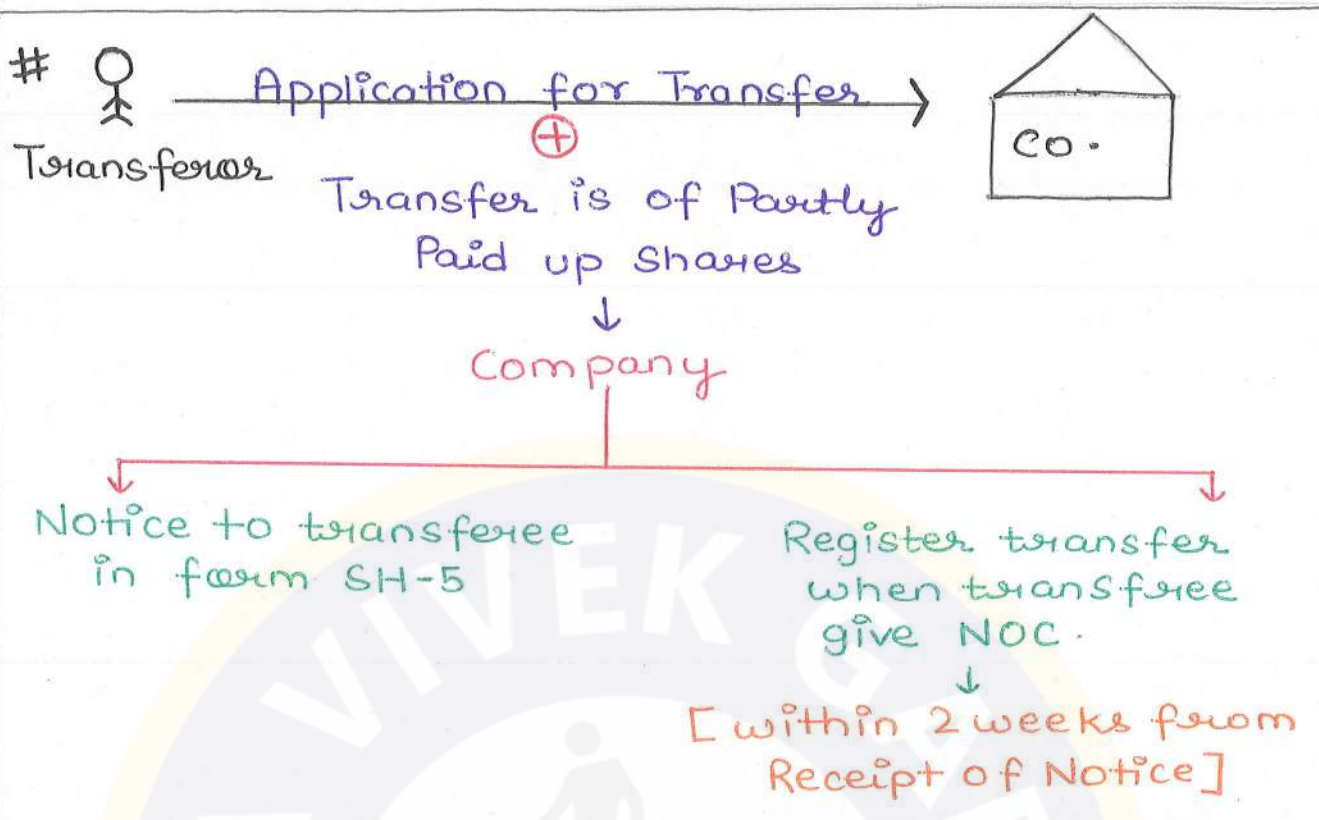
• Execution of Transfer Instrument



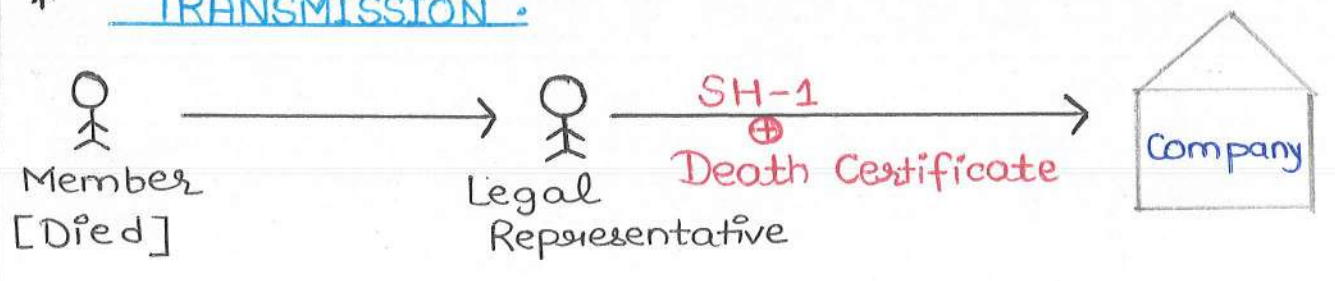
Company will not Register the transfer unless → Form SH-4



Delivered to company within 60 days of execution along with SH-1

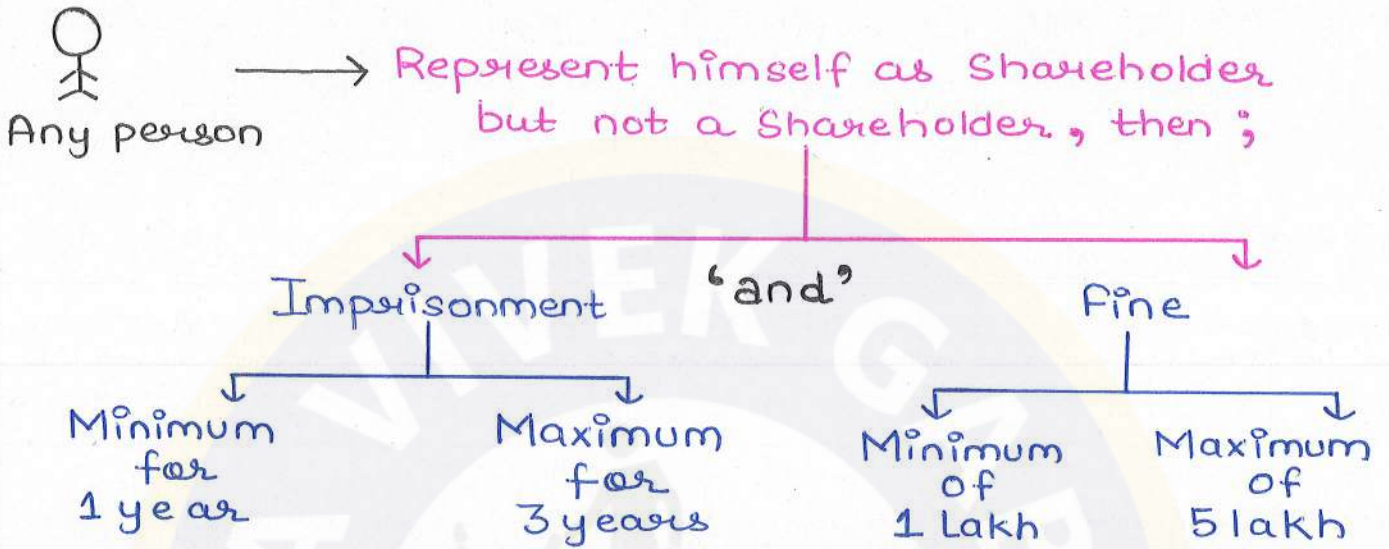


\* TRANSMISSION:



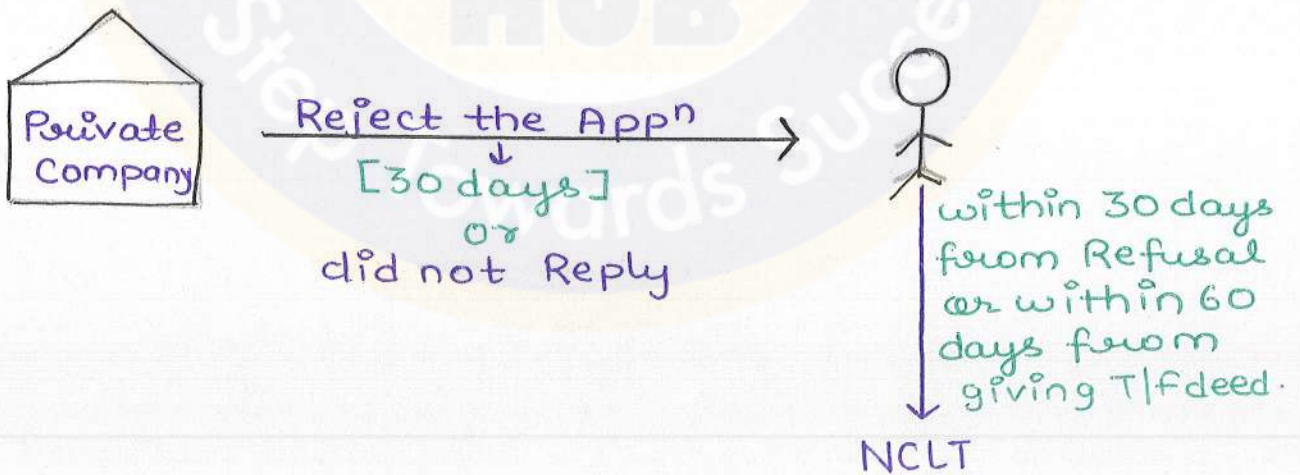
~ Section-57

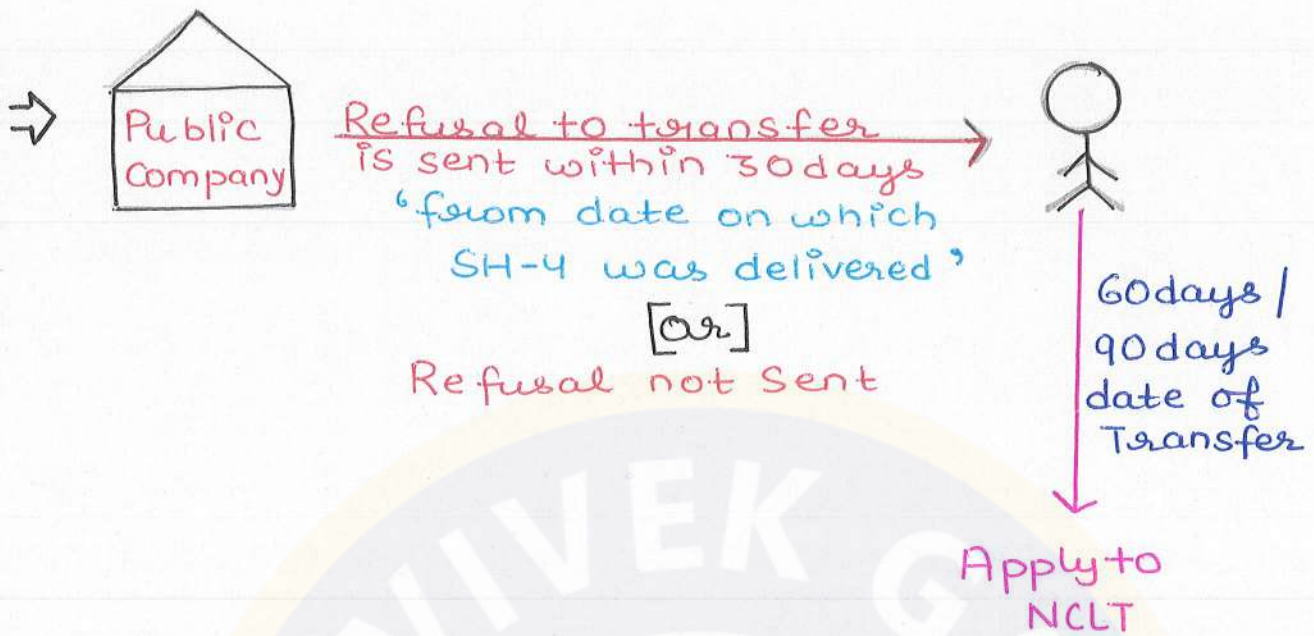
Punishment for Personation of Shareholders



~ Section-58

Refusal of Registration and Appeal against Refusal





⊙ Tribunal Order

↓  
 To Register the transfer within 10 days

↓  
 To pay the damages

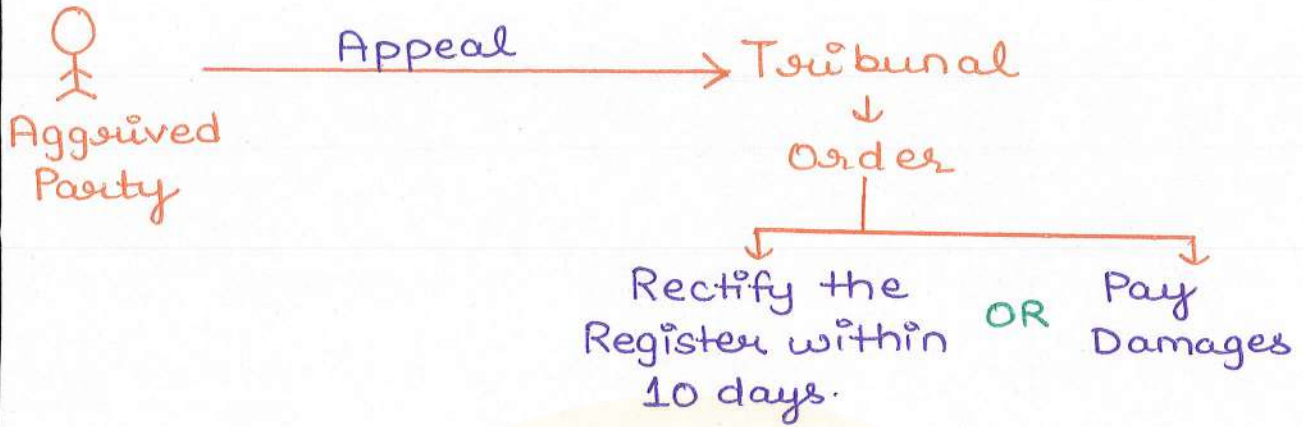
~ Section-59

Rectification of ROM-[Section 88]

↓  
 Name of member is entered without the sufficient cause.

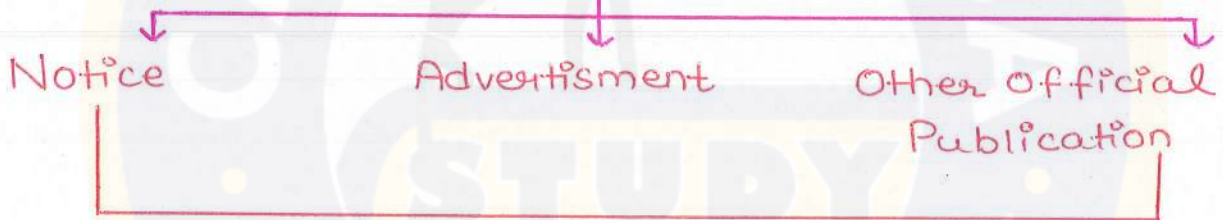
OR  
 Name of member is removed without having any sufficient cause.

OR  
 Unnecessary - any Delay in Entering name



~ Section 60

Publication of Authorised, Subscribed and Paid-up Capital



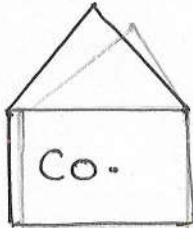
Contains a statement of Authorised Capital of Company.

Such Notice shall also contain Capital which has been Subscribed & Paid-Up.

~ Section 61

Alteration of Share Capital

By passing OR in General Meeting.



→ Limited by Shares

↓  
If it AOA authorise

↓  
Alter its AOA to ;

↓  
• Increase the Authorised Share Capital

↓  
• Consolidate & divide all the shares into shares of larger amt.

↓  
• Conversion of Shares into stock or vice-versa

↓  
• Cancel the shares which have not been taken

↓  
• sub-divided its shares into shares of small amounts

↓  
If results in change in Voting Right

↓  
Approval of NCLT required

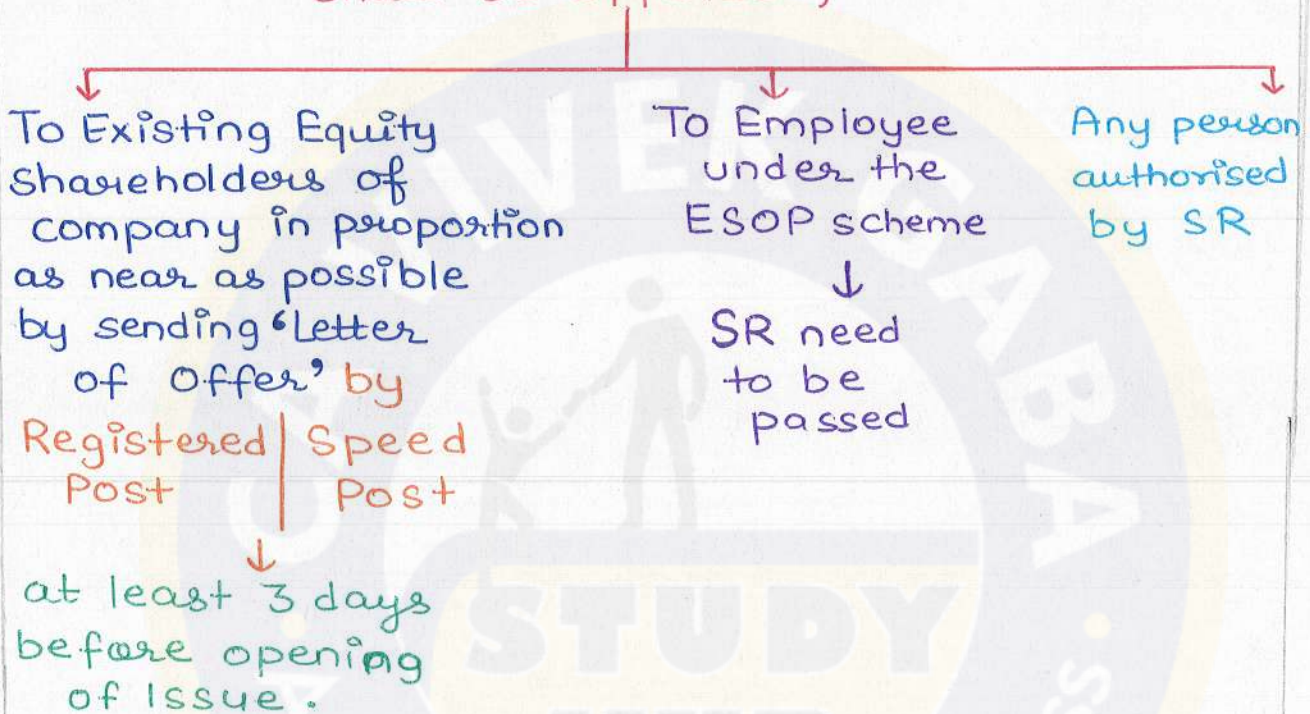
→ Notice of Alteration :

Form SH-7 ⊕ Copy of OR ⊕ Altered MOA within 30 days for → ROC  
Passing OR

## ~ Section - 62

### Further Issue of Share Capital (Right Issue)

Where at anytime company proposes to Issue Further Equity Shares ; such shares shall be offered ;



### Conditions

- ★ Notice - No. of Shares offered
- ★ Time limit - Minimum = 15 days  
Maximum = 30 days
  - ★ • If NO Reply
    - ↓
    - Deemed Declined
- ★ Right of Renunciation is there ; either full or half.

★ After expiry of time specified

'OR'

Earlier Receipt of Non-Acceptance of offer.



BOD may dispose them in such manner as advantages of the Shareholders of Company.

### Employee Stock Option Plan



Employees under ESOP



Permanent employee I/S India or o/s India

Director WTD or not but excluding Independent Director

Employee or Director of Subsidiary in India or o/s India or of Holding Co.

### ★ Does not Include :

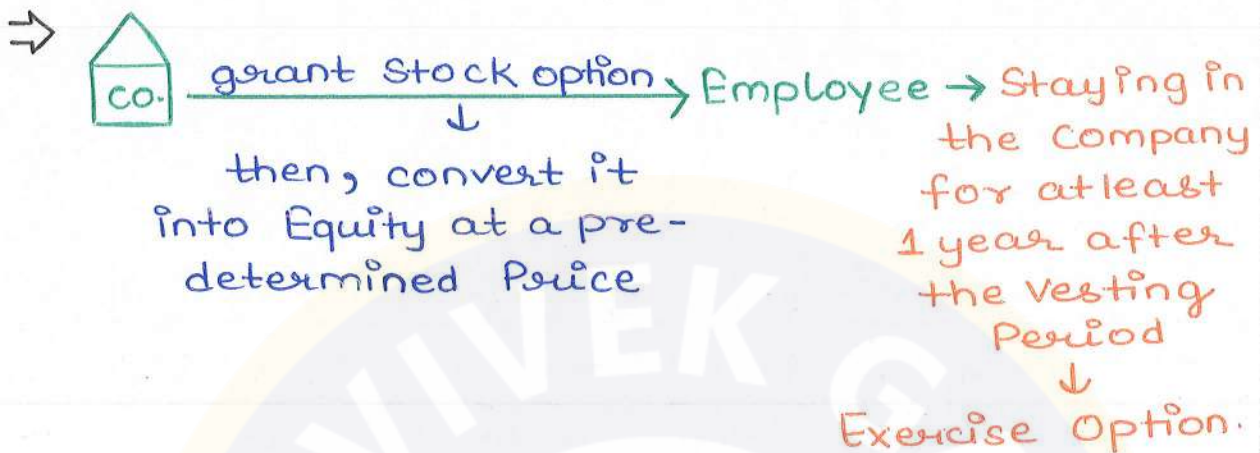
- ✓ Employee who is a Promoter
- ✓ Person belonging to Promoter Group
- ✓ A Director himself or through his Relative hold more than 10% of Equity Shares.

### ESOP



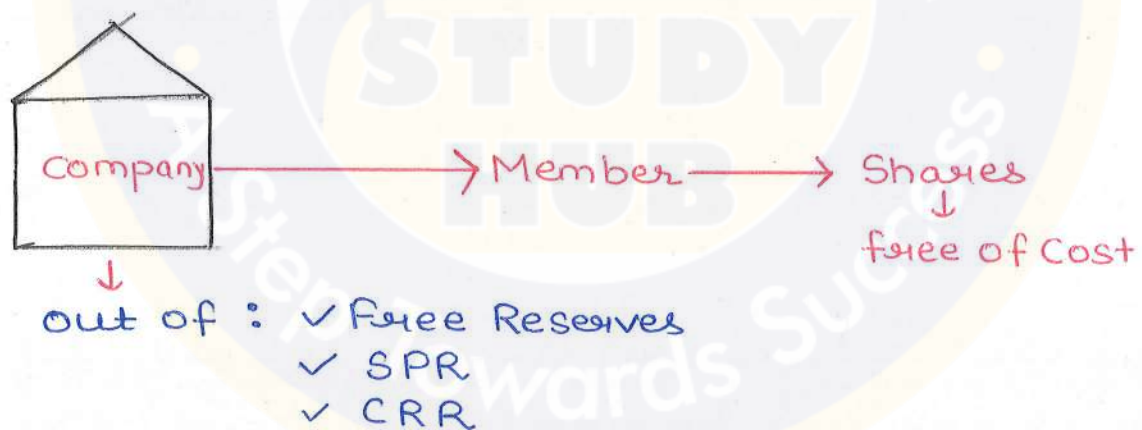
⇒ The Option granted to employee shall not be transferable.

⇒ Not Issued at Discount



### ~ Section-63

#### Issue of Bonus Share



#### → Conditions :

- ✓ Authorised by AOA
- ✓ Board Resolution
- ✓ OR in General Meeting
- ✓ Not defaulted in respect of Statutory dues of employees.
- ✓ Not defaulted in payment of Interest or Principal in respect of FD or Debt Securities.

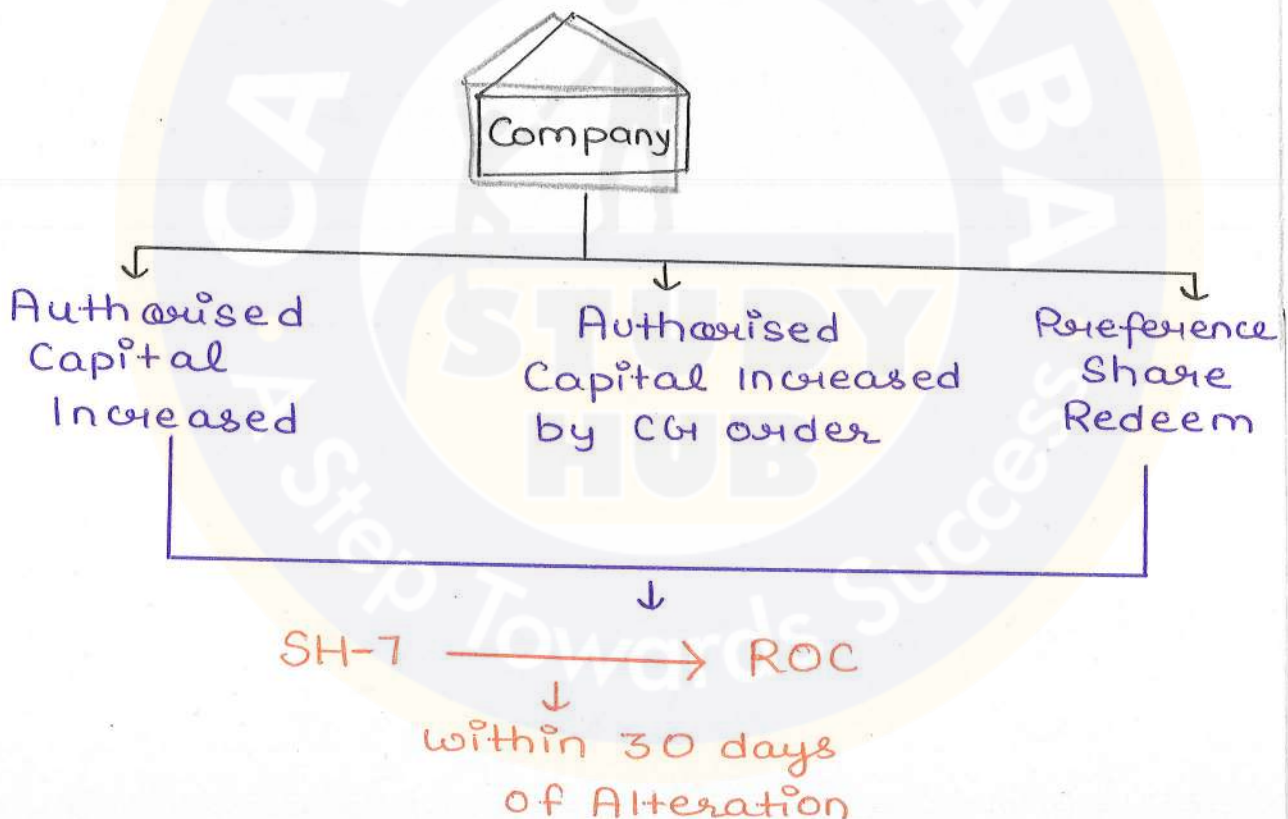
✓ All shares are fully paid-up.

∴ Bonus Issue → Shall not be issued in lieu of Dividend.

~ Once B/R is passed - it shall not be withdrawn.

~ Section 64

Notice to be given to Registrar for Alteration of Share Capital



~ Section - 65

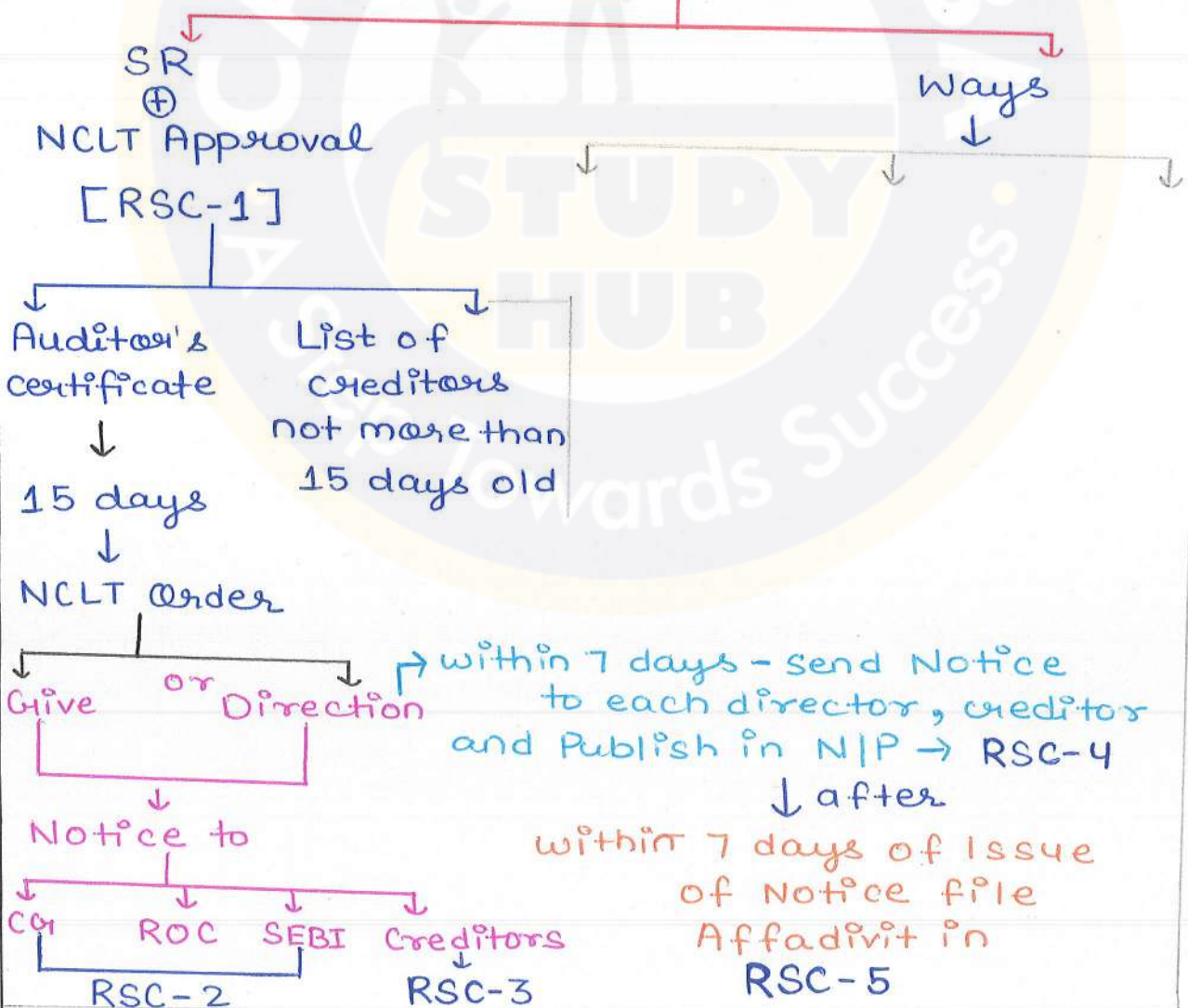
Unlimited Company to provide for the Reserve Share Capital on conversion of Limited Company :



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

~ Section 66

Reduction of Share Capital



RSC-5 → confirming the dispatch and  
Publication of Notice.



will pass Order in RSC-6

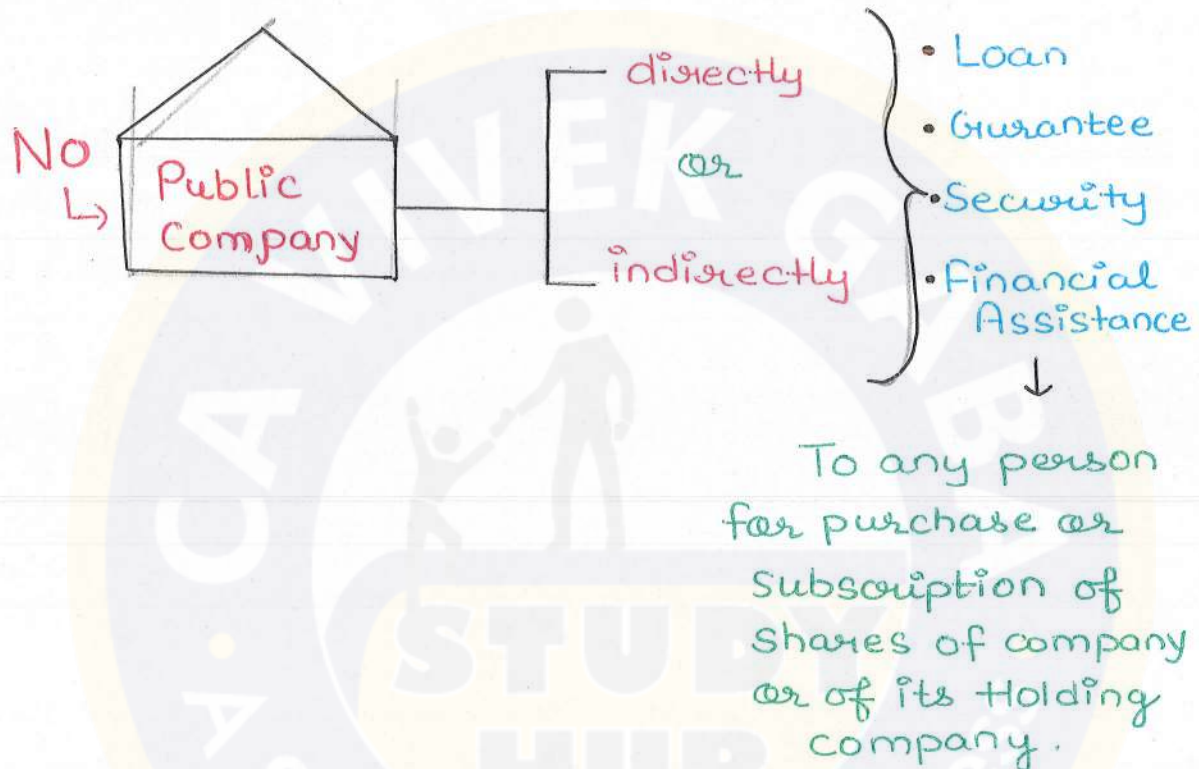
Certified copy of NCLT order shall  
be filed with ROC within 30 days  
of Order.

ROC Register and Issue certificate  
in RSC-7 → RSC-7

## ~ Section-67

### Restrictions on Purchase by Company

### or Giving of loan for purchase of its shares

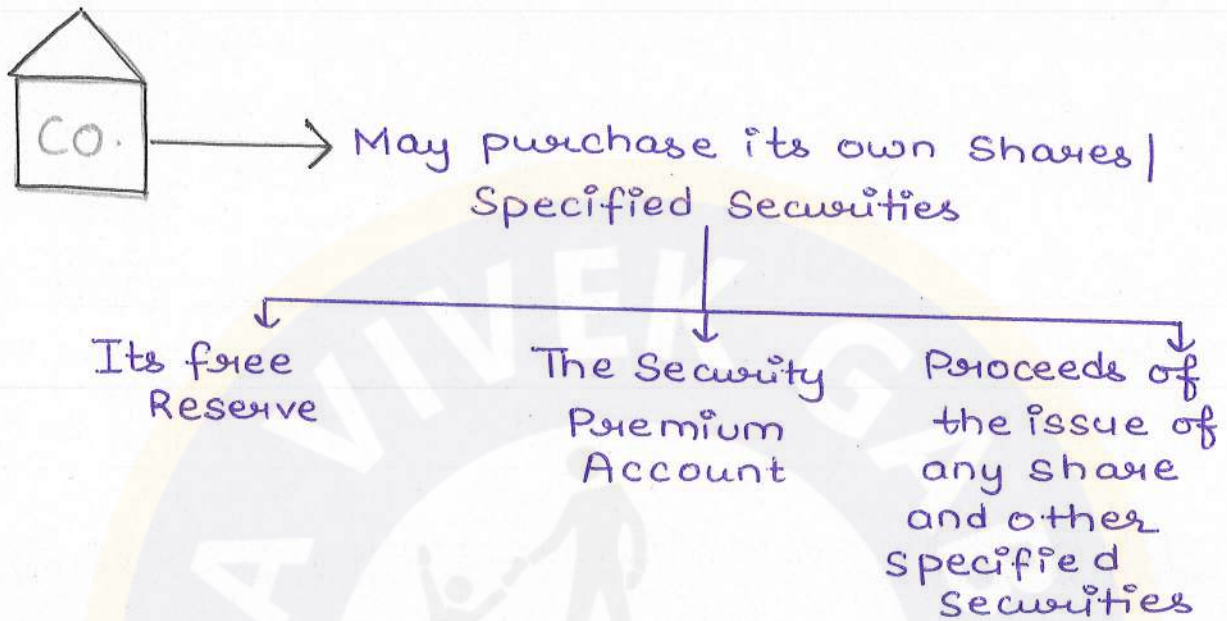


### Exception:

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

## ~ Section 68

### Power of Company to purchase its own Securities.



★ Buy Back करने के बाद Shares Cancel होते हैं

∴ No Buy Back of Securities shall be made out of Proceeds of an earlier issue of same kind of security.

#### \* Conditions

- ~ Authorised by AOA
- ~ SR with Explanatory Statement is needed.

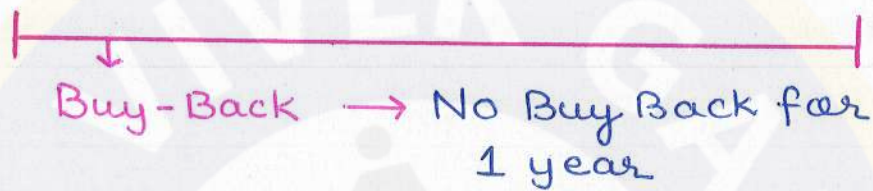
But, in this case ;

• Only BR is needed → Buy Back of  $\leq 10\%$  [PUES + FR]  
[NO RBC]

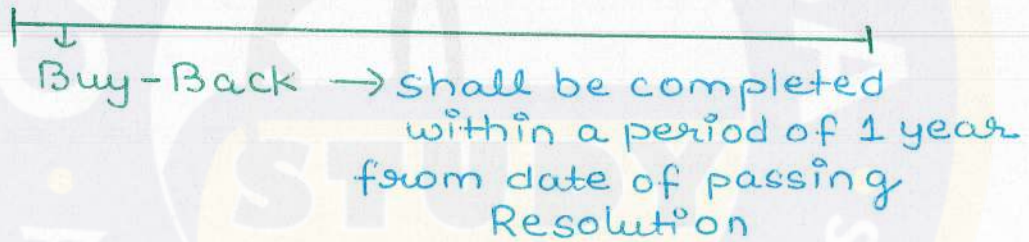
• SR is needed → Buy Back  $> 10\%$  &  $\leq 25\%$   
[PUES + FR]

1 FY → Equity Share → Max 25% → Buy Back

- ~ Debt Equity Ratio 2:1
- ~ Shares or other Specified Securities are fully paid up.
- ~ Listed Company → Buy Back → BB Regulation  
↓  
made by SEBI
- ~ Buy Back (BB) → as per Rules specified (by SEBI)
- ~



#



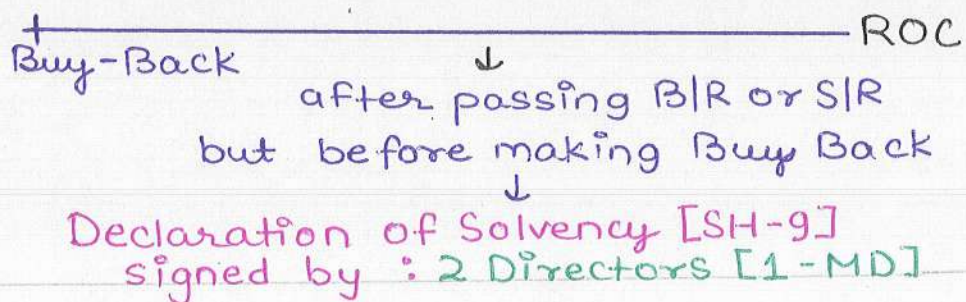
⇒ Method of Buy-Back

From existing shareholders on the basis of Proportion

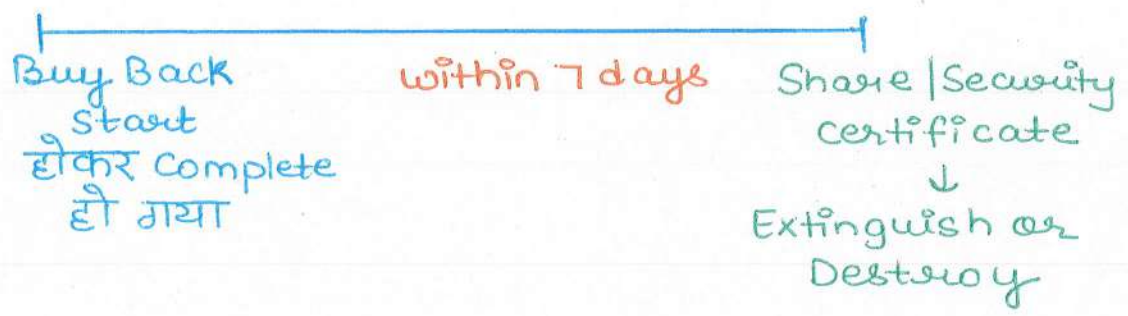
From the Open Market

By purchasing the securities issued to employees under ESOP.

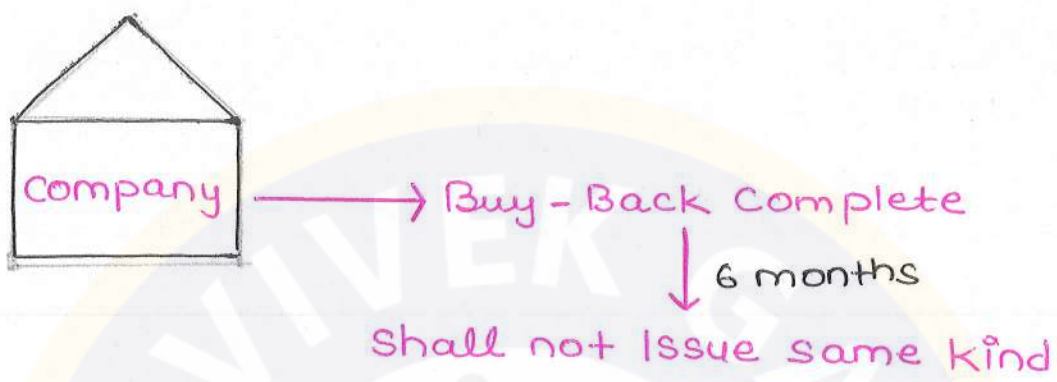
#



#



#



Exceptions :

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

# Register of Buy Back → SH-10

# Buy Back Complete → Return → ROC

↓

SH-11

⊕

Certificate SH-15

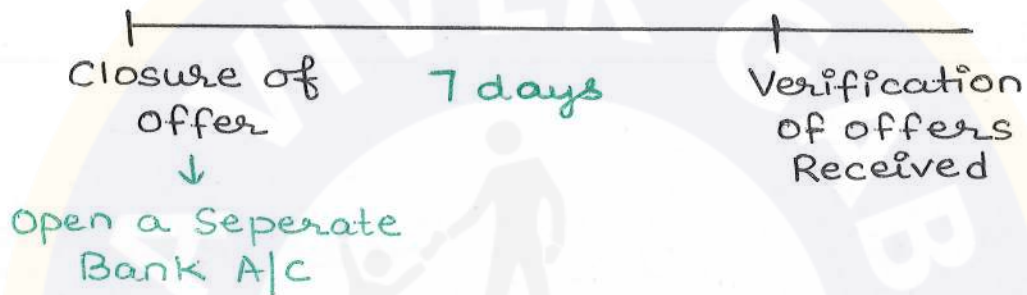
[Certificate that provision of this Section are satisfied]

~ Section - 69

⇒ Buy Back → Nominal Value → CRR

Other Relevant Provision of Sec 68

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



~ Section 71

Debentures

A Company may Issue Debentures with an option to convert it into Shares

No Company Shall Issue any Debentures carrying Voting Rights

No company shall issue Prospectus inviting Public exceeding 500 to subscribe its debenture unless, Company has appointed one or more debenture-trustee

↓  
Secured Debentures के Case में हर बार appoint होगा,

Time-Period : A company may issue Secured Debentures for a period

↓  
Not exceeding 10 years

↓  
Not exceeding 30 years

↓  
Infra Debt Fund Non-Banking financial companies

↓  
Companies engaged in to Infra-structure Projects

↓  
Infra-structure finance companies

↓  
Companies permitted by Ministry

## Debenture Trustee

Name of DT shall be stated in letter of offer

Before Appointment, has to take his written consent

Disqualification:



- holds share in the co.
- is a promoter director, KMP or other officer or employee of CASH.

• Entitled to money paid by company otherwise by Remuneration payable to D.T [creditors]

• Indebted to CASH

• Guarantee of Principal Debt.

• has pecuniary relationship with company

2% or more of Gross T/O

2% Total Income

50 lakh

Lower in 2 IPFY

• Relative of Promoter / Director / KMP

Company → Appoint DT

↓  
before issue of Prospectus  
or PPOCA.

↓  
but not later than 60 days  
execute a trust deed.

↓  
To protect Interest of Debenture  
holders.

### CASUAL VACANCY.

↓  
Death

Disqualification

Resign

Remove

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

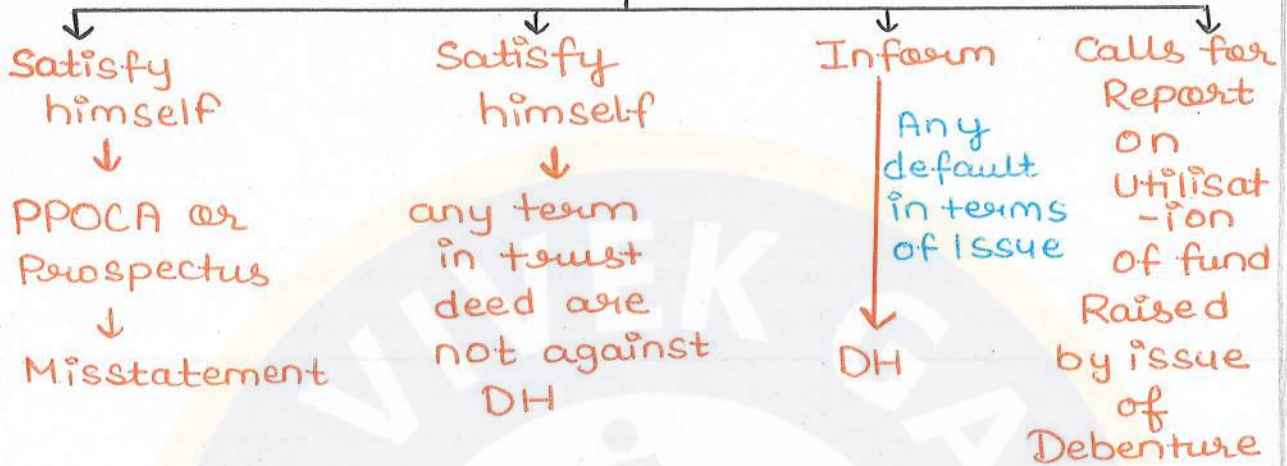
If Vacancy arises → Due to Resignation  
↓  
Vacancy shall only  
be filled with  
consent of Majority  
of Debenture -  
holder

### Removal :

If approved by holder of at least  
 $3/4^{\text{th}}$  in value of debentures.

# Functions of Debenture

## Trustee



Call for Performance Report from company

Appoint a Nominee Director on Board

2 consecutive default in payment of Interest to Debenture-holder

Default in the creation of Security

Default in Redemption of Debentures

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

Requisition in writing signed by DH-holding  $\geq 1/10^{\text{th}}$  of value

DH  $\rightarrow$  Company

Breach or Default which affect Right of DH



$\rightarrow$  DT

$\Rightarrow$  Assets of co. are insufficient to discharge the principal amount



$\rightarrow$  Reasonable Opportunity to being Heard provided to Company

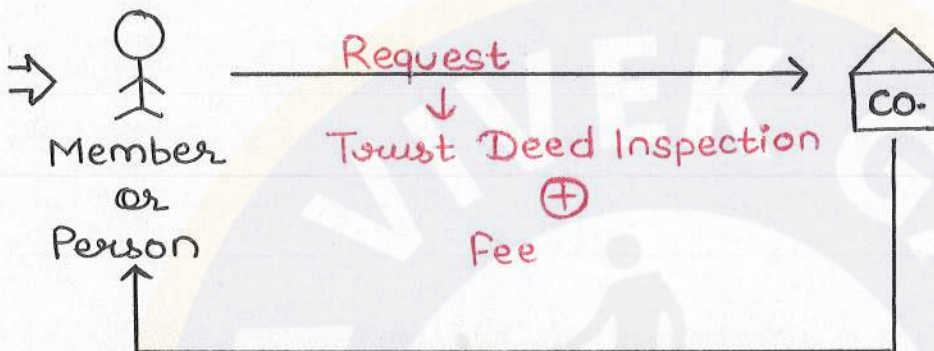
can impose such restriction on incurring any further liability.

## Debenture Trust Deed

within 60 days  
of Allotment

← SH-12 (executed by company  
issuing debentures  
in favour of DH)

↓  
Open for Inspection



## Issue Debenture Certificate

↓  
within 6 months from Allotment

### \* Debenture Redemption Reserve

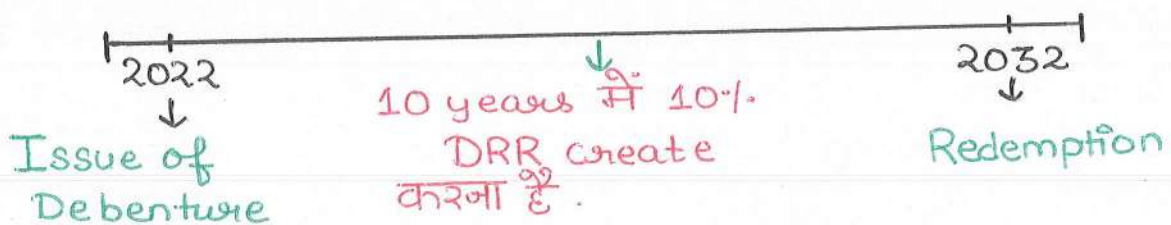
↓  
Where Debentures are issued by company ;  
It shall create DRR out of Profit  
available for payment of Dividend

and  
Amount Credited to such A/c shall not  
be utilised by company except Redemption of  
Debenture.

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

	Private Placement	Public Offer
*) All India Financial Institution Regulated by RBI. [NABRAD, SIDBI or Banking companies]	NIL	NIL
*) Other Financial Institution or NBFC	NIL	NIL
*) Listed Companies   NBFC   Housing Company	NIL	NIL
*) Unlisted Companies [other than NBFC & HFC]	10% of value of outstanding debentures	10% of value of outstanding debentures

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



Debenture - Investment

Listed Company

Unlisted Company

[ Public Issue ⊕ Private Placement ]

Making 10% of DRR [PP]

15% of Debenture value जिस year में debenture mature हो रहे हैं [1 April - 30 April]

Investment

Deposit with Bank [FD]

Securities of CG or SG

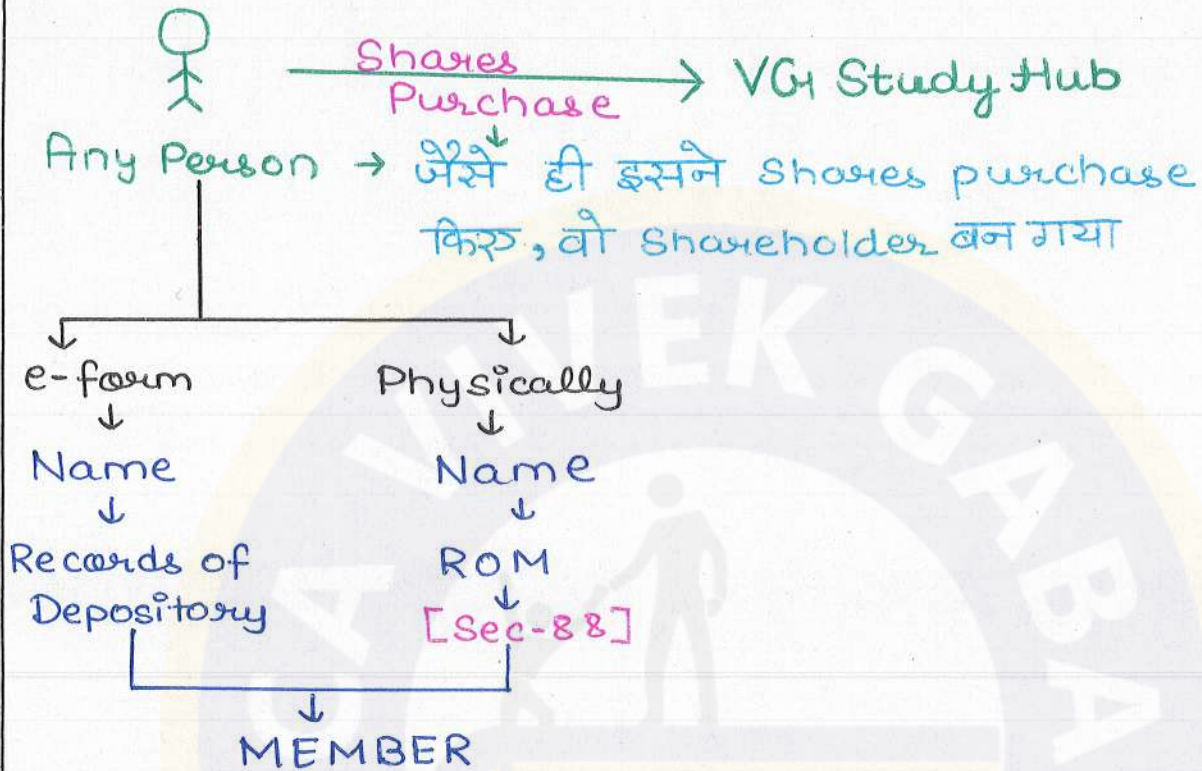
Securities mentioned in Indian Trust Act, 1882

Bonds notified under Indian Trust Act.

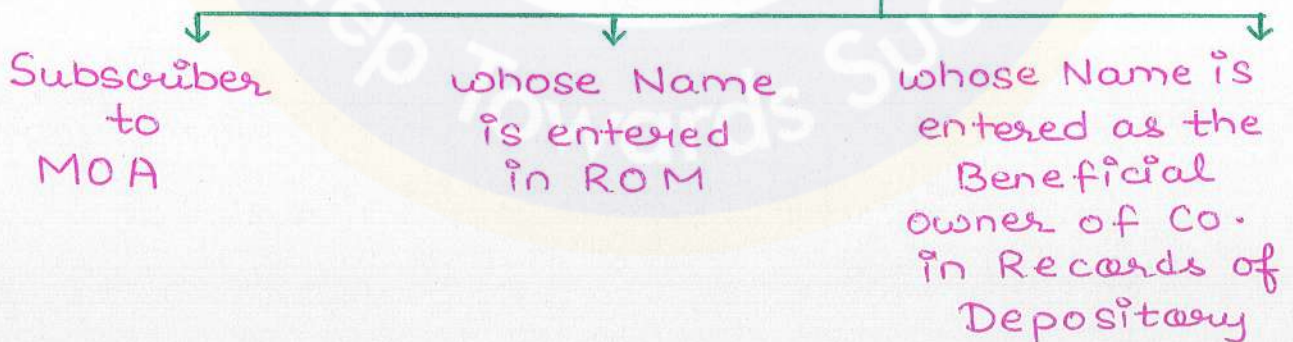


# Members and Shareholders

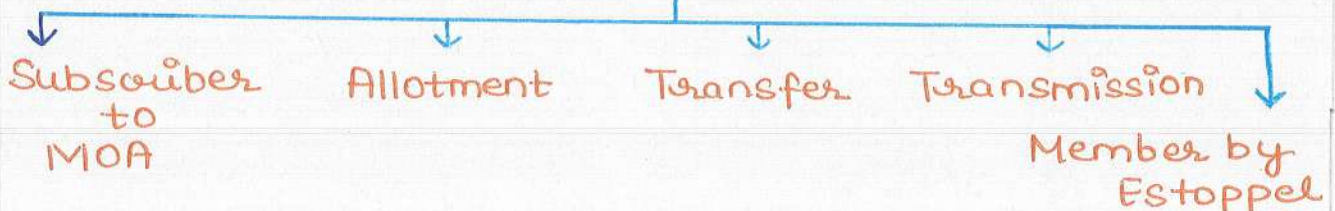
## ⇒ Membership in a Company



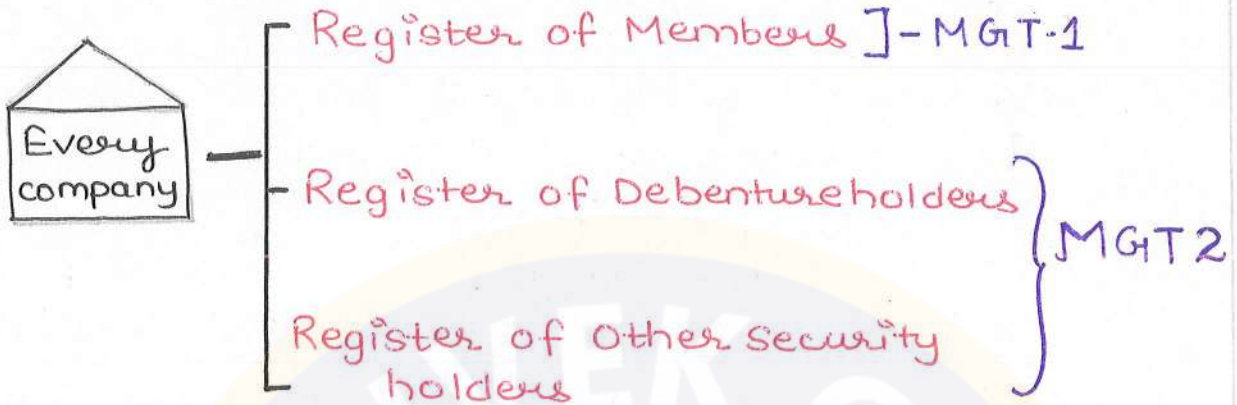
## ⇒ Section 2(55) - "Member" in relation to Company means -



## Modes of Acquiring Membership :



# Register of Member or Security Holder



## \* Particulars of ROM

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



ROM | ROD → entry

↓  
within 7 days

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

## Place where Register shall be

maintained

Registered Office of the Company

Other Place

within same C/T/V where RO is situated

Any place in India where more than 1/10<sup>th</sup> member Reside

By passing SR

## Index of Name in Register

Necessary

↓  
where Number of Member is 50 or more

Not Necessary

↓  
where Number of Member is less than 50.

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



Entries → Authenticated by CS.

## Foreign Register



↓  
If authorised by AOA

↓  
Keep in any country outside India a part of ROM, ROD or other Security holder.

↓  
where the Security Holder reside

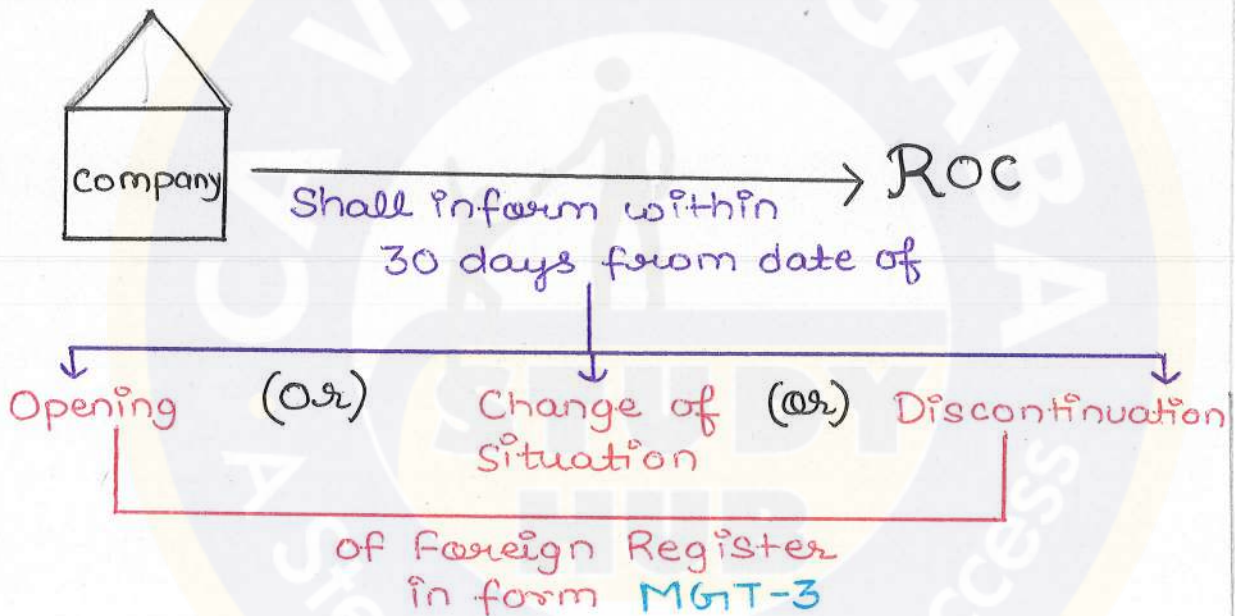
- \* Company shall keep copy of Duplicate Foreign Register at RO in India.
- \* Transmit to RO copy of every entry made in FR within 15 days after entry is made.

# Foreign Register

[Deemed to be part of Company Register]

[Shall be maintained in same format as Principal Register]

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



## Section-89

### Declaration in Respect of Beneficial Interest in any share

[Not applicable in case of Govt. Co.]

→ A person whose name is entered in ROM as Registered owner but he does not hold the Beneficial Interest in the company.

→ A person who is the beneficial owner of the shares not Registered in his name.

↓  
Shall file a declaration closing the fact/ Interest to company.

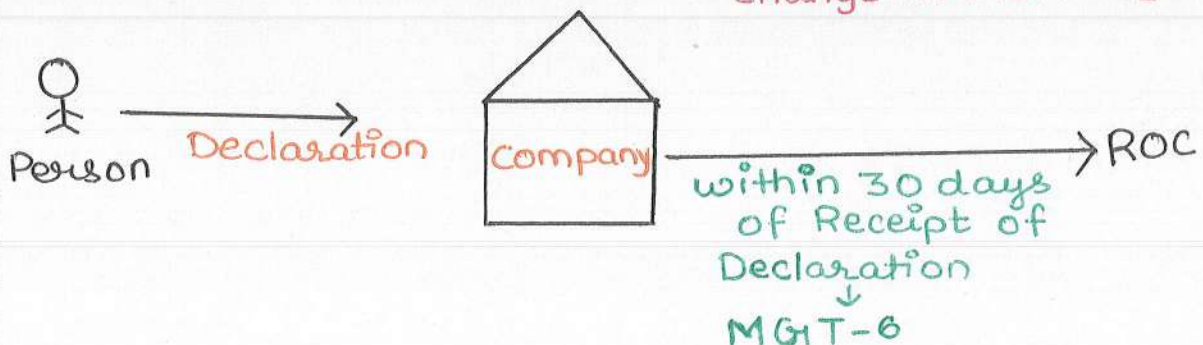
↓  
in form 'MGT-4'

↓  
within 30 days of becoming the Registered owner

↓  
in form 'MGT-5'


↓  
within 30 days of becoming Beneficial owner.

↓  
[Any change in such Beneficial ownership shall also be informed within 30 days of change in MGT-5]



## Section - 90

### Register of Significant Beneficial Owners in a company

  
Member

→ Directly or Indirectly



i. An Individual holding 10% of Share Capital of Company

(OR)

ii. Any person holding 10% VR of Company

(OR)

iii. Has Right to receive 10% of total dividend

(OR)

iv. If any person has Significant Control over the company.



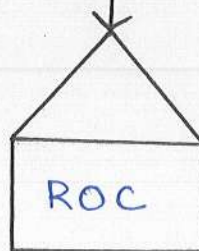
Significant Beneficial Owner

  
SBO

BEN-1  
within 30 days



BEN-2  
within 30 days

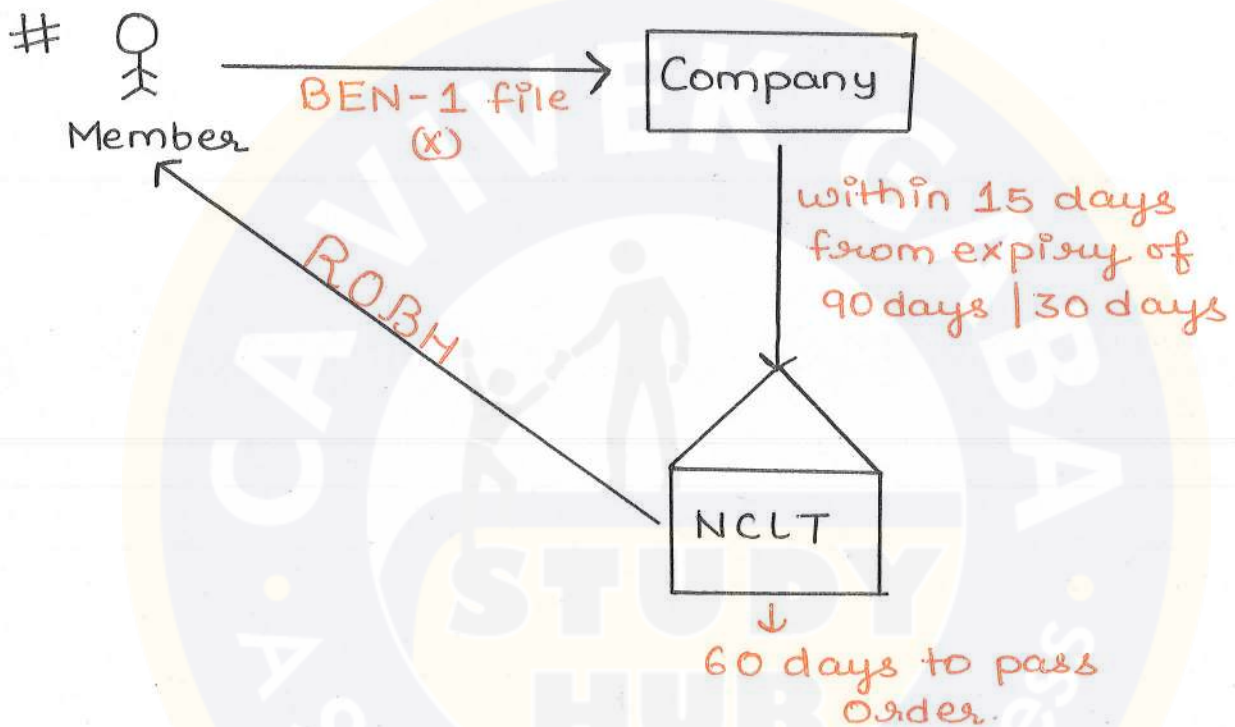


\* Company shall maintain a Register under BEN-3.

Register: Open for inspection during business hours.

[at least for 2 hrs on every working day]

↓  
only member can inspect on payment of prescribed fees.



\* Most Important:

If an individual does not hold any Right or Entitlement Indirectly, then he shall not be considered as SBO.

→ जब हम SBO का Concept देखेंगे तो उसमें Indirect holding सबसे पहले देखेंगे

→ Company send Notice to Relevant person in 'BEN-4'

## BEN-4

Company को लगता है कि वो Individual SBO है

'OR'

Company को लगता है कि वो Person को SBO का पता है

↓ within 30 days

Unsatisfactory Reply

↓ 15 days

NCLT

### \* Punishment for Contravention

Company

↓

- Penalty - 1 lakh Rs.
- Continuing failure, further penalty of 500 Rupees for each day
- Maximum - 5 Lakhs

Officer in Default

↓

- Penalty - 25,000 Rs.
- Continuing failure, further penalty of 200 Rupees for each day
- Maximum - 1 Lakh

## Section - 91

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

↓  
A Company may close Register for  
any period

↓  
Maximum 45 days in each year  
[Not exceeding 30 days at any one  
time]

↓  
By giving previous Notice of atleast 7 days

↓  
Listed Company /  
About to get  
Listed

↓  
By advertisement in  
2 Newspaper

↓  
Vernacular  
Newspaper

↓  
English  
Newspaper

↓  
Public Company /  
Private Company

↓  
Exempted  
from issuing  
Public Notice

\* Contravention - Company and OID

↓  
Penalty - 5000 ₹ everyday

Maximum - 1 Lakh

## Rights of Members

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

## Who may Become a Member?

### ⇒ Partnership firm as a Member

A P'ship firm can not hold shares in its own name and never become a member of company except Section 8 Company.

### ⇒ Limited Liability Partnership

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

### ⇒ Foreigner's as a Member

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

### ⇒ Trade Union as Member

A Trade Union Registered Under Trade Union Act can become member.

### ⇒ Section-8 Company

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

### ⇒ Hindu Undivided Family

Can not become member as it is not a Seperate Legal Entity.

### ⇒ Central Government / State Government can become member of company

### ⇒ Receives

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

⇒ A person who takes Share in the name of any fictitious person

Becomes liable as a person

⇒ Minor : Can not become a member of Company ; but

→ A minor can be transferee in case of fully paid up Shares.

→ In case of Unpaid Shares, if shares are transferred to a minor, the transferor will remain liable for all future calls.

→ A minor can hold the shares in name of his lawful guardian.

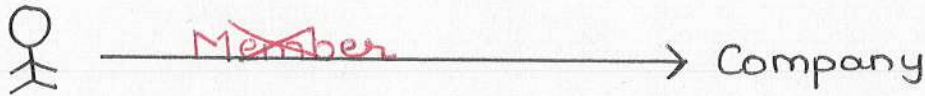
\* Expulsion of a Member

⊙ The Department of company affairs has clarified that an Article for expulsion of a member is Ultra-Vires and Void.

⊙ Such provision is against the Rights of members of the company.

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

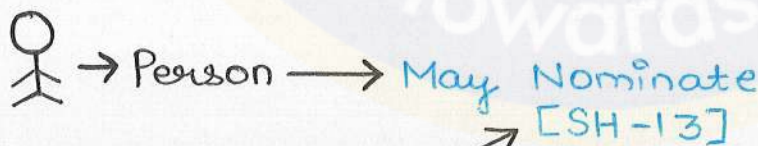
When a person ceases to be a member of company



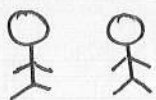
- His shares are forfeited
- He transfers his shares to another person.
- His shares are sold by company to enforce a lien
- He dies
- His Redeemable Preference Shares are Redeemed.
- The Company is wound Up
- The member is company which is being wound up and official liquidator disclaims the shares.

Section-72

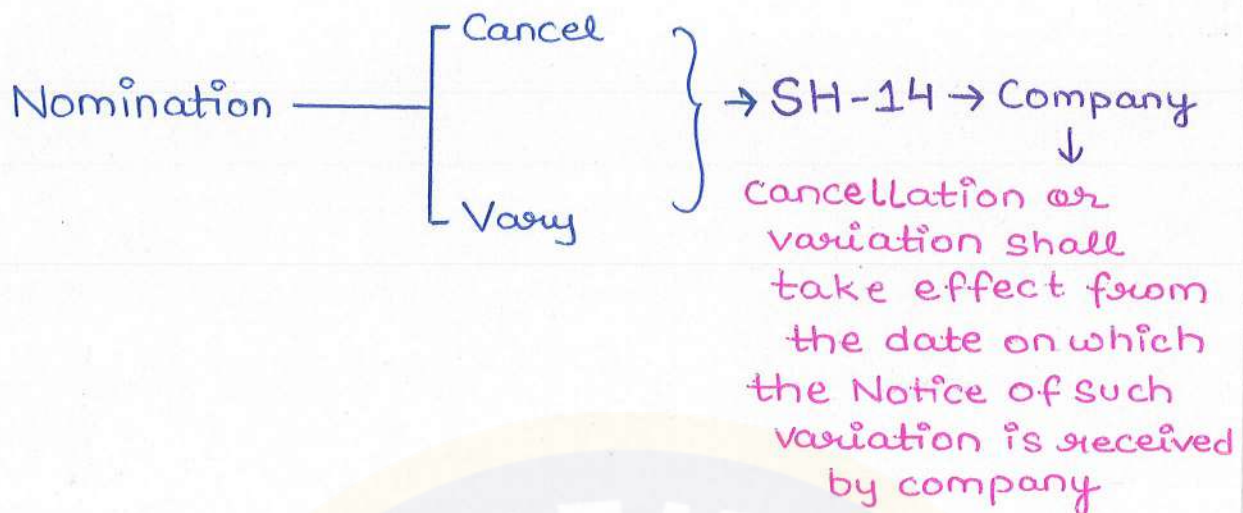
Power to Nominate



↓  
Any Person whom their shares shall vest

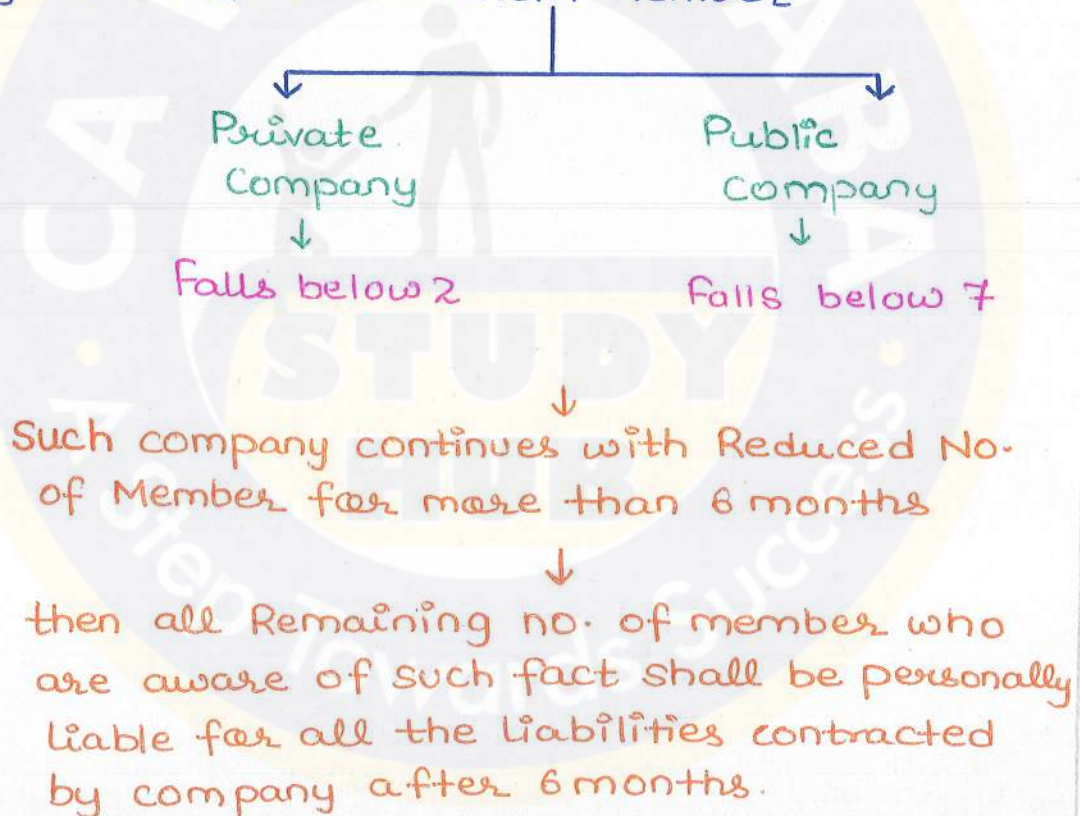


Joint Shareholders



Members severally liable in certain cases:

If anytime, No. of minimum Member



Shareholder's Democracy

↓  
This concepts denotes the Shareholder's Supremacy in governance of business

Section 179 of Companies Act, 2013



General Power has given to BOD



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

Few Provisions which are Required to be transacted by Shareholders :

- ★ Alteration of MOA/ AOA
- ★ Further Issue of Share Capital
- ★ Shifting the Regd. Office
- ★ Appoint Director

Shareholders Agreement



Contractual Agreement



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



and defining Inter-se Shareholders Rights and Obligations.

Veto Power :



I forbid → Power to an Official Action

---

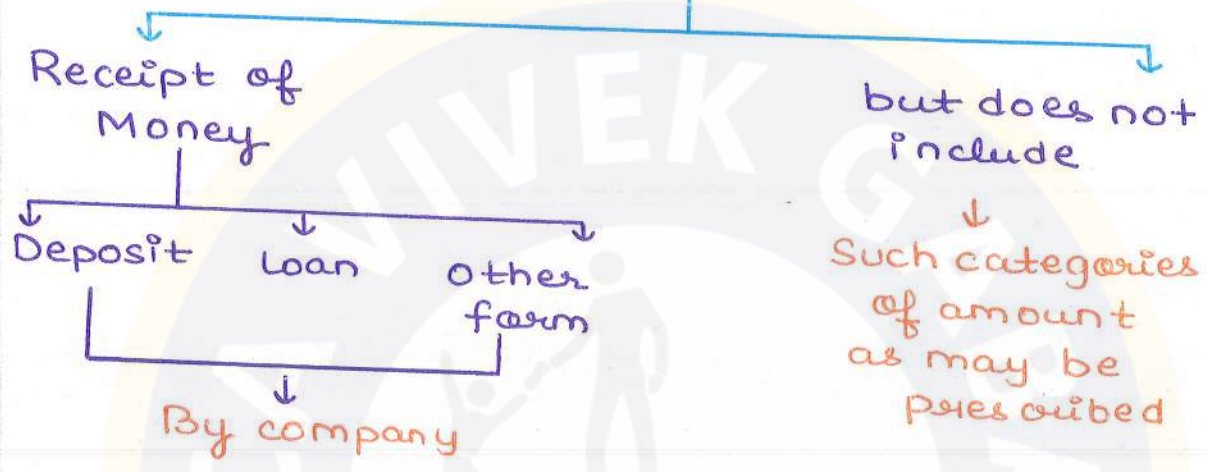
# Acceptance of Deposits by Company

## Section 73-76A ⊕

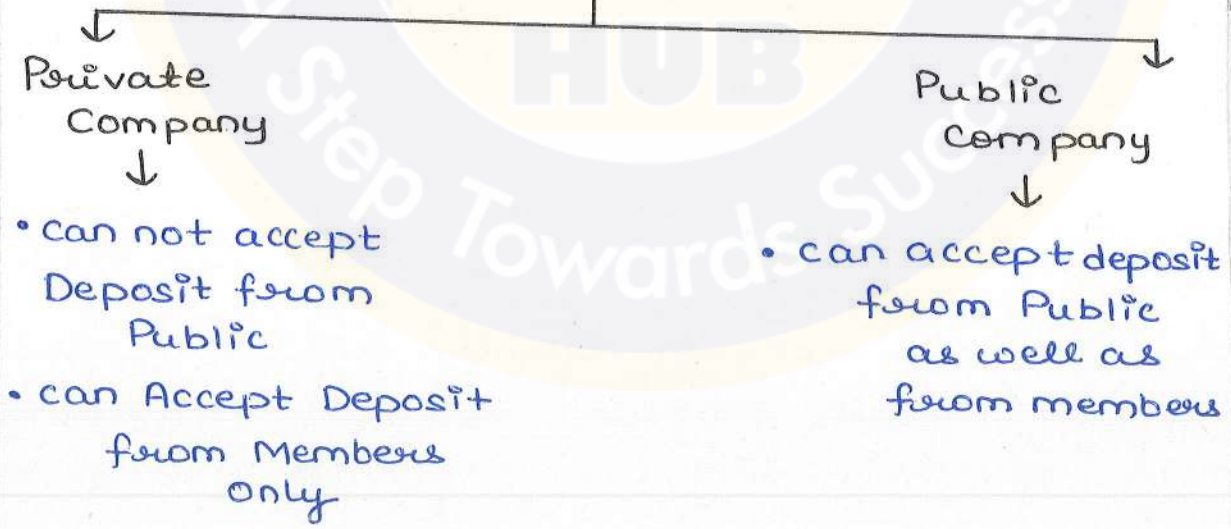
Companies (Acceptance of Deposits) Rules, 2014

Deposit → 2(31)

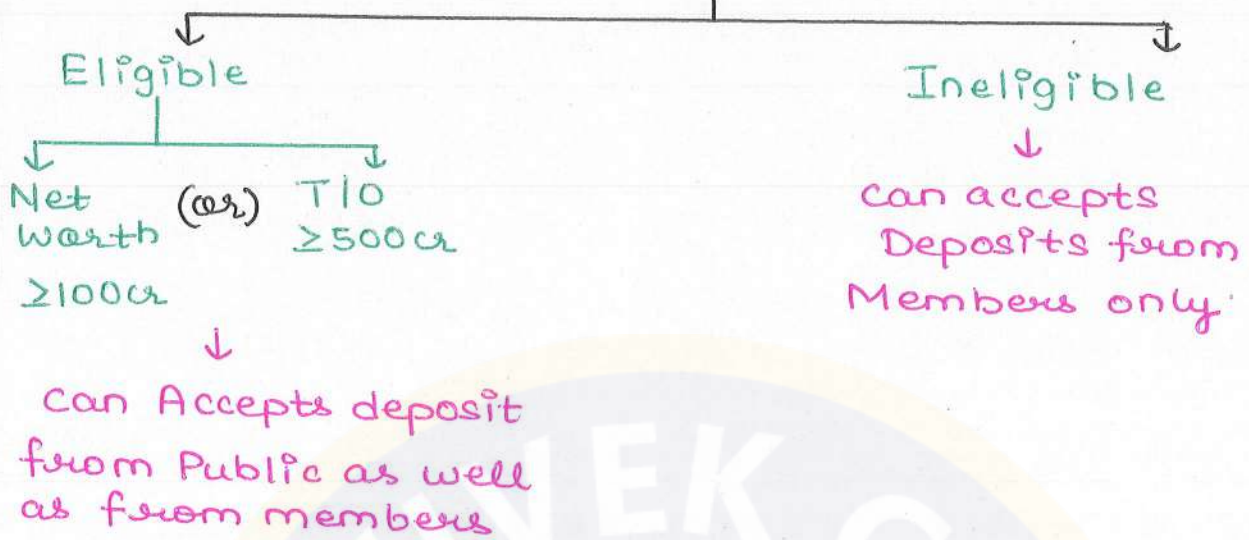
Includes



Deposits



# Public Company



## Term of Deposit

Minimum 6 months

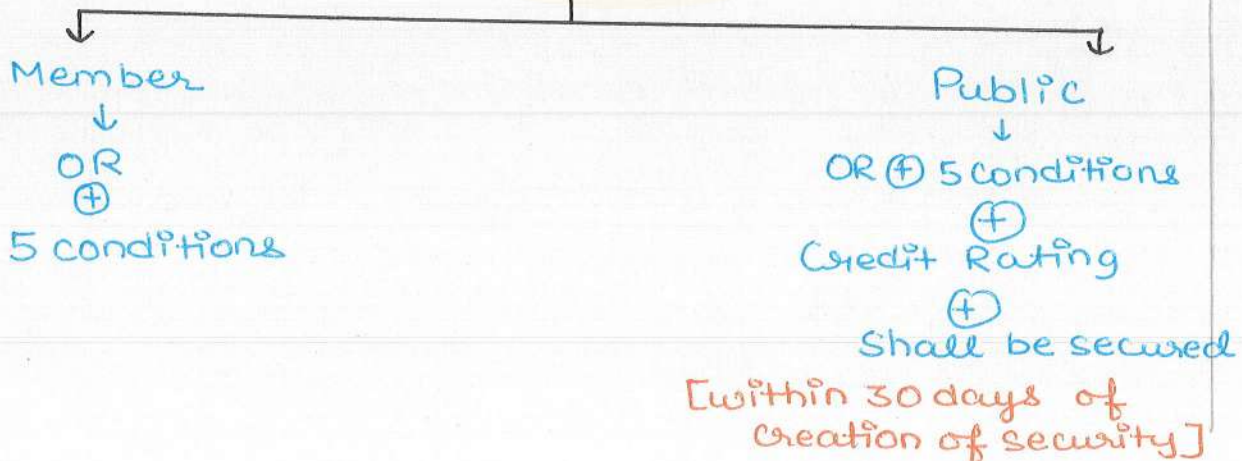
Maximum 36 months

### Exception :

A co. accept deposit from Public / Member for repayment earlier than 6 months but not earlier than 3 months from date of such deposit.

Provided ; Deposit  $\leq 10\%$  [PSC + FR + SPR]

## Company



## 5 Conditions

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

Financial Position

Credit Rating

Total Amt of Deposits

2. DPT-2 + Statutory Auditor Certificate

signed by Majority of Directors

Co. has not committed default in Repayment of Deposit or Interest

और अगर default किया था तो 5 years has been elapsed from date on which such default has been made good.

at least 30 days before such issue

ROC

## Validity of DPT-1

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

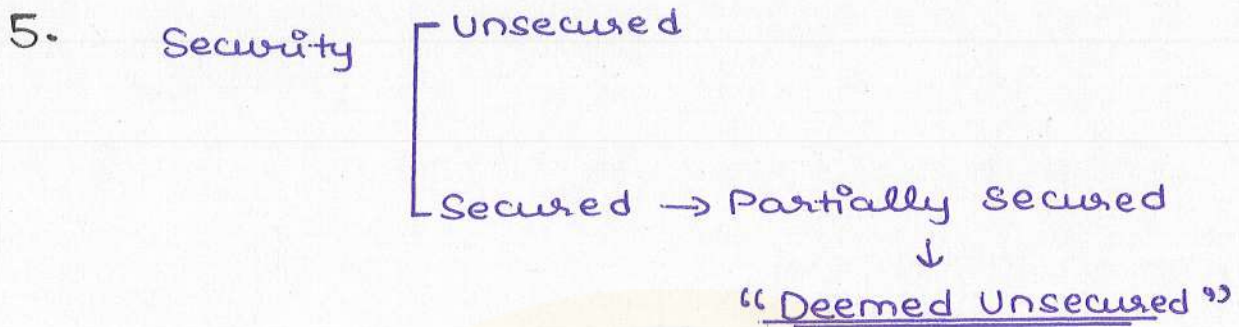
3. Deposit Repayment Reserve

1 Apr 2022 ← 30 days → 30 Apr 2022

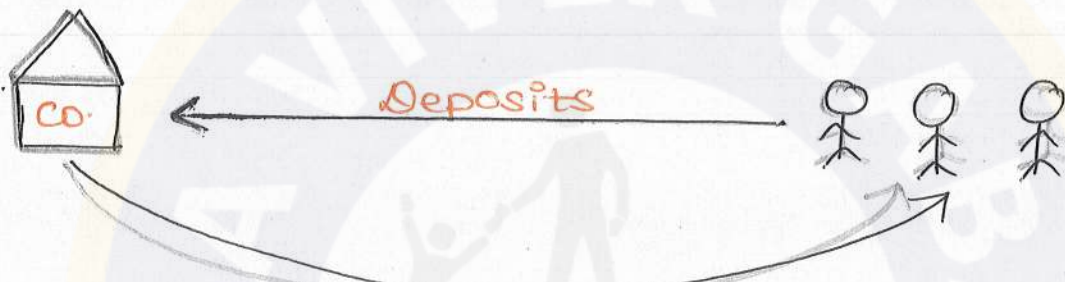
20% of Amount deposit

↓  
Amount of deposit maturing during following FY.

⇒ DRR can only be used for Repayment of Deposit.



→ Furnishing of Deposit Receipt to Depositors



within 21 days from date of Receipt of money  
↓  
Deposit Receipt  
↓  
Signed by Authorized person by Board.

MAXIMUM LIMIT

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

### 3 conditions :

- i. Not associate or Subsidiary  
⊕
- ii. Not defaulted in payment of Deposit  
⊕
- iii.  $\text{Loan} \leq 2 [\text{PSC or } 50 \text{ crore}]$   
↓  
whichever is less

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

- Amt. recd. from CG & SG
- Other Source whose Repayment is guaranteed by CG or SG
- Amt. recd from Local Authority
- Amt. recd from Statutory Authority constituted under an Act of Parliament
- Amt. recd from foreign Govt., International Banks, Multilateral Financial Institution.
- Any amt. recd. from PFI or Bank or Regional Financial Institution
- Amt. received by co. from any other co.
- Amt. recd. against Issue of Commercial Paper or any other Instrument issued by RBI.
- Any Non-Interest bearing amt. recd and held in trust.
- Any amt. received by NIDHI Company; amt. recd. by Chit fund

- Receipt of Share Application Money.  
[within 60 days allotment, 15 days Refund otherwise treated as Deposit]
- Any amount recd. by NIDHI Company ;  
amount received by Chit fund.
- Any amt. recd. from person who at time of Receipt of Amount was director of company or Relative of director of Pvt. company .
- Any amt. raised through Secured Debentures or Bonds.
- Any amt. raised by issue of non-convertible debentures, not constituting a charge and Listed on Stx.
- Amount recd. from employee not exceeding his Annual Salary under a Contract of employment.
- Any amt. recd. in ordinary course of business :-
  - ✓ AS Advance for Supply of goods & Services .  
Provided, advance is appropriated within 365 days.
  - ✓ AS Advance for Sale of Immovable Property.
  - ✓ AS Advance for Security Deposit for performance of Supply of goods & Services
  - ✓ AS Advance for providing future Services period for providing such Services shall not exceed

does not exceed period prevalent as per common business 78

OR

5 years

✓ As an advance for subscription towards Publications, whether in print or in e-form.

✓ As an advance received and as allowed by Sectoral Regulator.

✓ As an advance recd. under long term projects for supply of Capital goods

• Any Receipt of money from promoter as unsecured loan :

✓ Loan brought in pursuance of the condition imposed by lending Institution

✓ Loan is provided by Promoters or by their Relatives.

• Amount Received by Collective Investment Scheme regulated by SEBI.

Amount Received by Start up Company  
↓  
25 lakh or more

Amount Received by Co. from

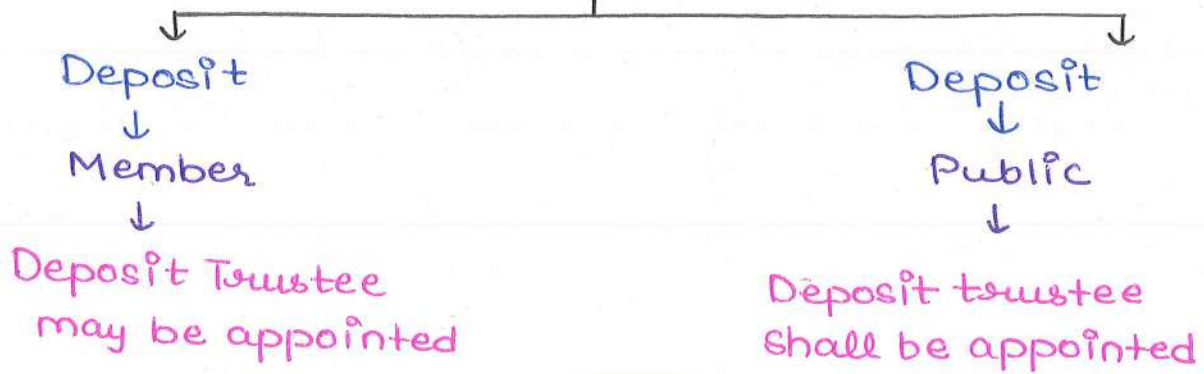
Alternate  
Investment  
Funds

Venture  
Capital  
Funds

Mutual  
Funds

Infrastruc-  
-ture  
Investment  
Trust

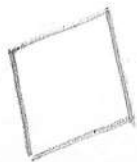
## Appointment of Deposit Trustee



### \* Eligibility of Deposit Trustee

Not eligible if ;

- ~ Director | KMP | Officer | Employee of CASH
- ~ Depositor in the Company
- ~ Indebted to CASH.
- ~ has any Material Pecuniary Relationship with the company.
- ~ has extended into any guarantee in respect of Principal debts secured by the deposit.
- ~ is related to any person ; Director | KMP | employee of CASH.



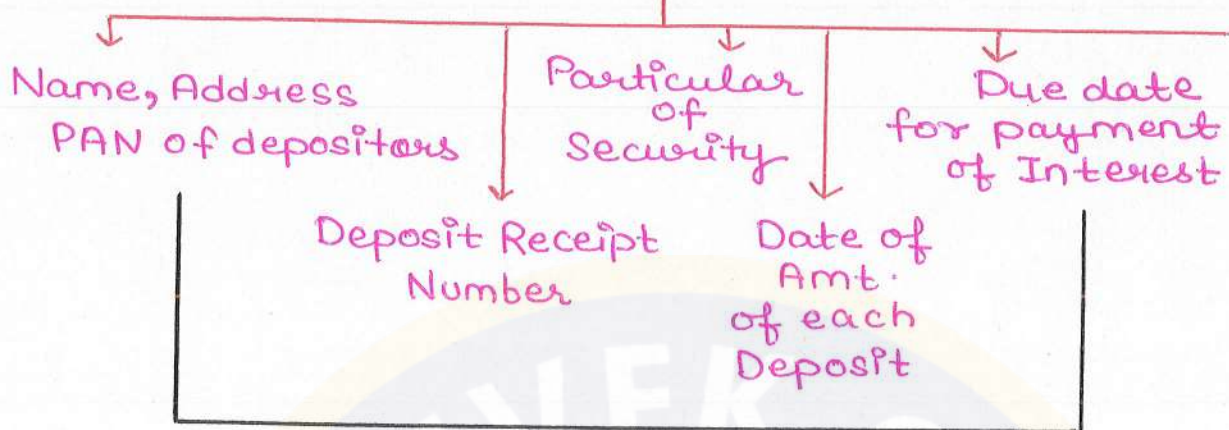
- Deposit Trustee Deed - DPT-2



Shall execute DPT-2 at least 7 days before issuing DTT-1

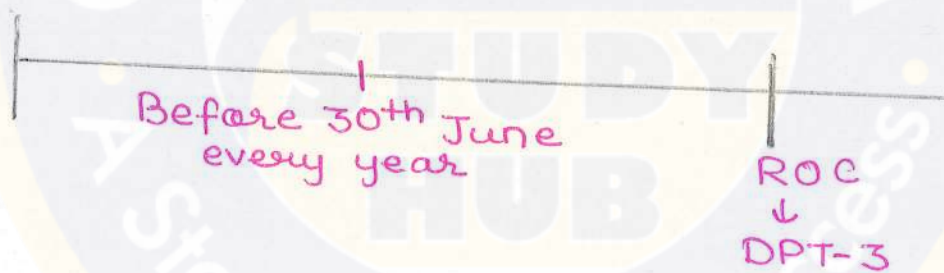
## Register of Deposit :

Co → shall maintain at its RO

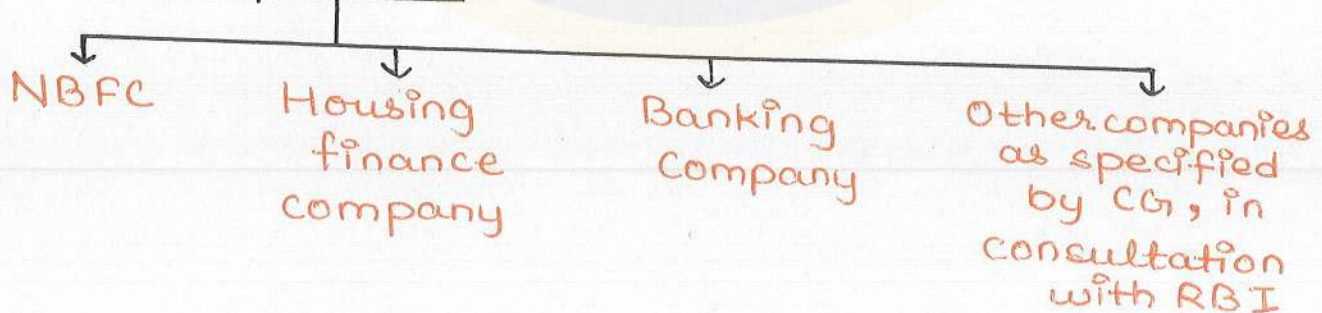


↓  
Entries in Register shall be made within 7 days from issuance of Receipts

Return of Deposit to be filled with Register



\* Non-Applicability of this Chapter to following companies



## PRE-MATURE Repayment of Deposit

After expiry of 6 month, but before the actual date of maturity;

ROI payable shall be 1% less than Rate which would be payable for period for which deposit has actually Run.

### → Nomination :

Every Depositor may Nominate any person at any time.

### → Deposit in Joint Name

In case of depositors so desire, deposits may be accepted in joint names not exceeding three.

### Section-75

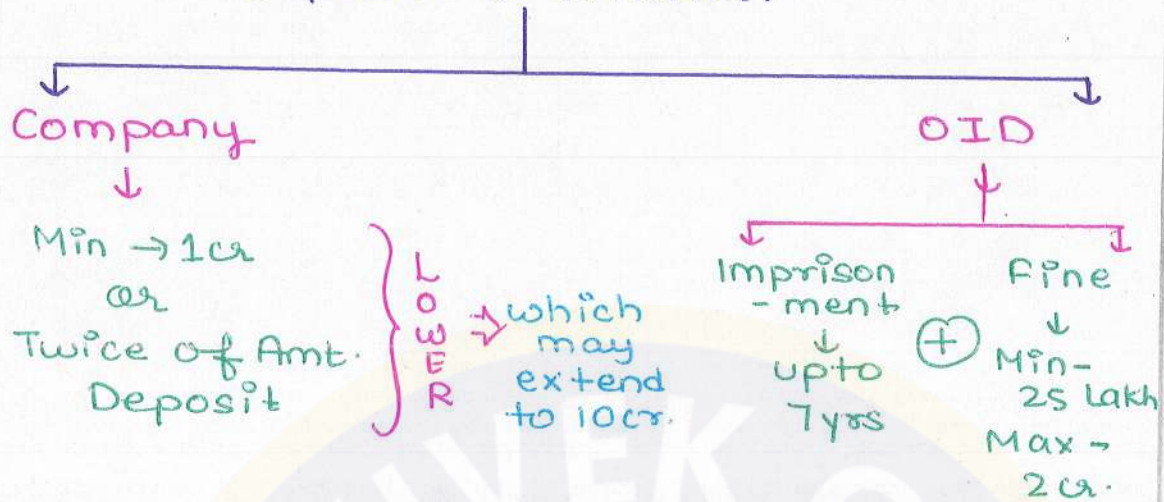
#### Damages for fraud

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

### Section-76A

#### Punishment for Contravention of Section 73 or 76

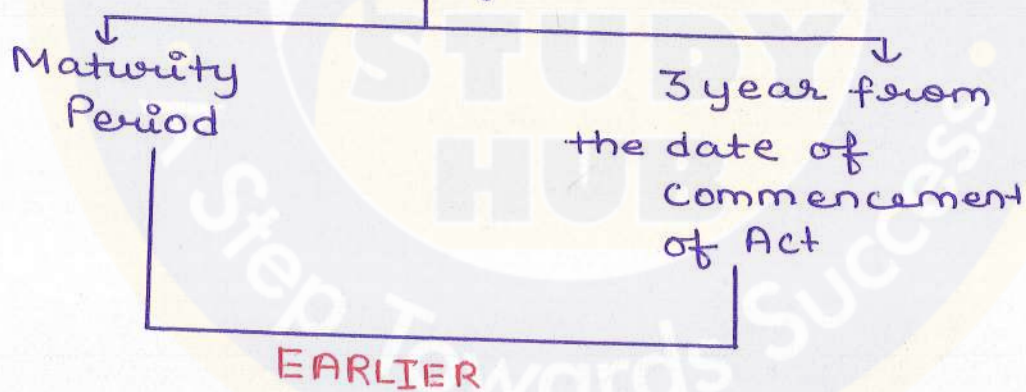
In addition to payment of Amount of Deposit + Interest



### Section 74

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

Repay



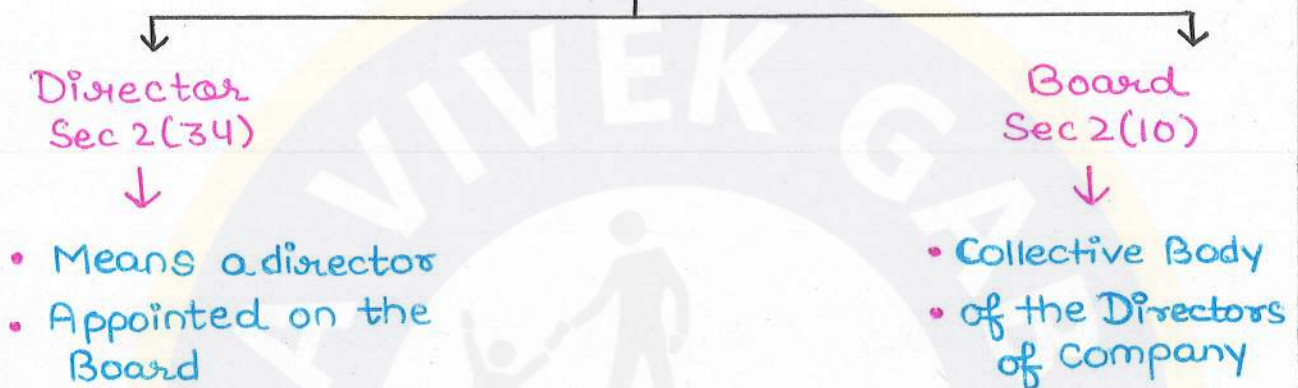
# APPOINTMENT and Qualification

## of DIRECTORS

Section 149 - Section 172

⊕

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



### Section-149

Company to have Board of Directors

Director - Individual

Minimum and Maximum Director

	Public Co.	Private Co.	OPC
Min.	3 Director	2 Director	1 Director
Max.	15 Director	15 Director	15 Director

\* After passing SR, Number can be Increased

## Women Director

Every Listed Company

Public Company

PSC  $\geq$  100 cr.

T/O  $\geq$  300 cr.



→ Women Director to be appointed within 6 months from date of its Incorporation.

Vacancy

Immediate Next Board Meeting

'OR'

3 Months from such vacancy

Later

## Resident Director

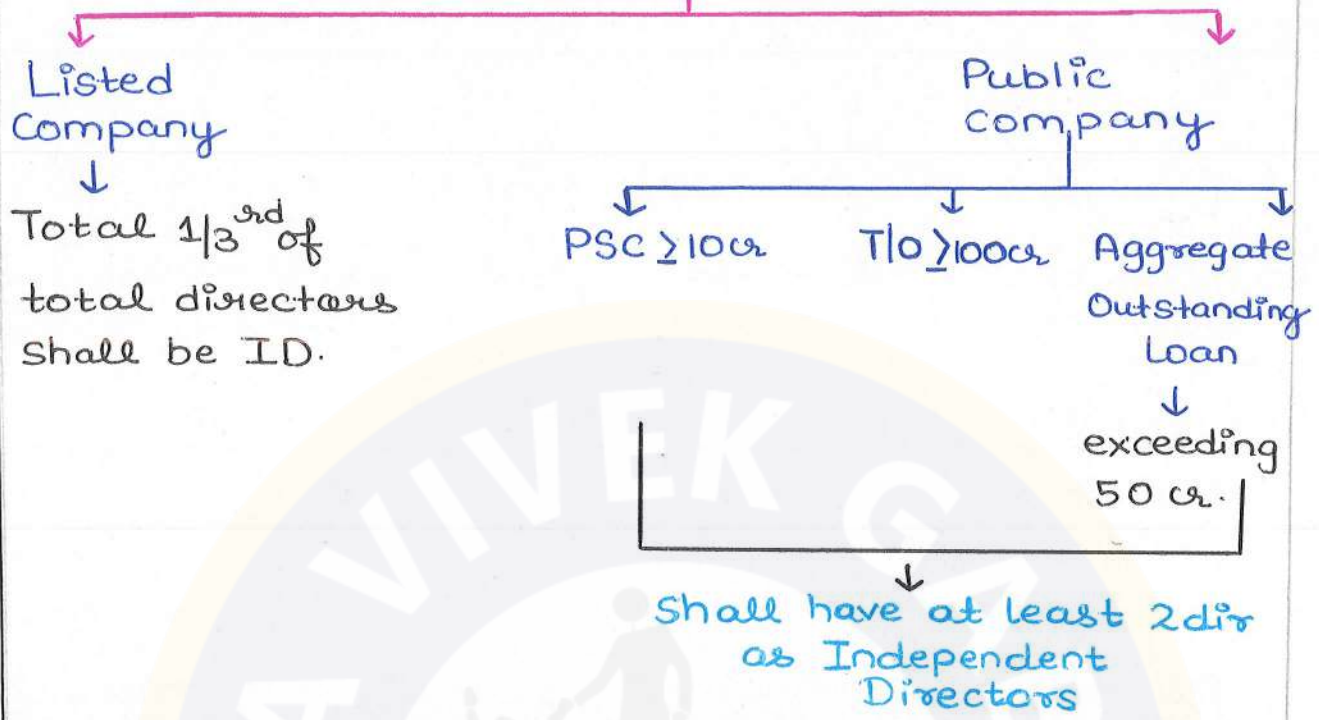
At least 1 Director  
↓  
who stays in India

↓  
for total period of not less than 182 days during the FY.

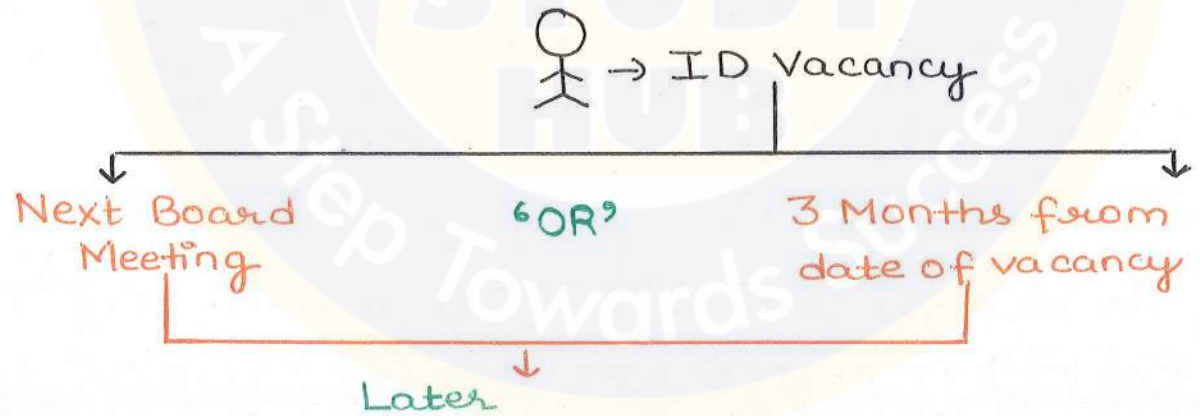
Newly Incorporated Company  
↓

Proportionately at end of FY.

## Independent Directors

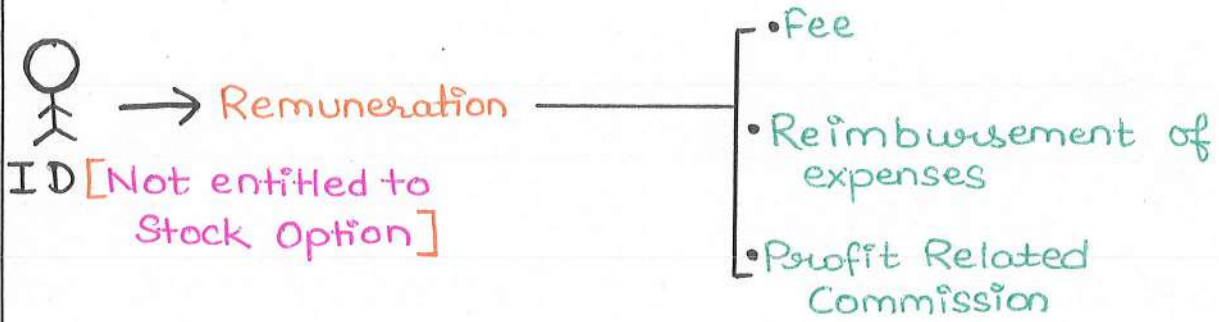


\* If Company cease to fulfil 3 conditions for three consecutive years, it shall not required to appoint ID.

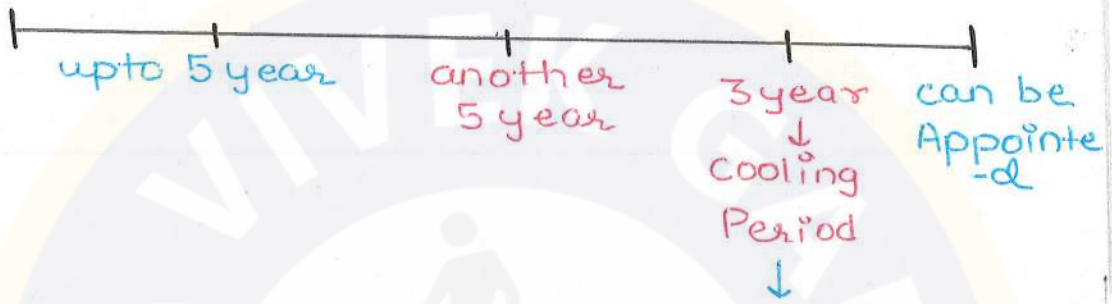


\* Declaration of Interest to be given by Independent Director to Board

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



\* Tenure

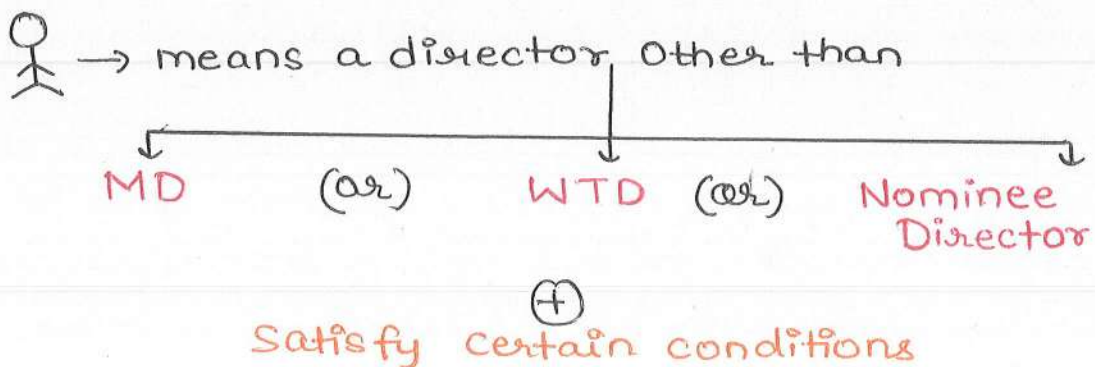


can not be associated with company in any other capacity either directly or indirectly.

\* Retirement by Rotation does not apply to Independent Director.

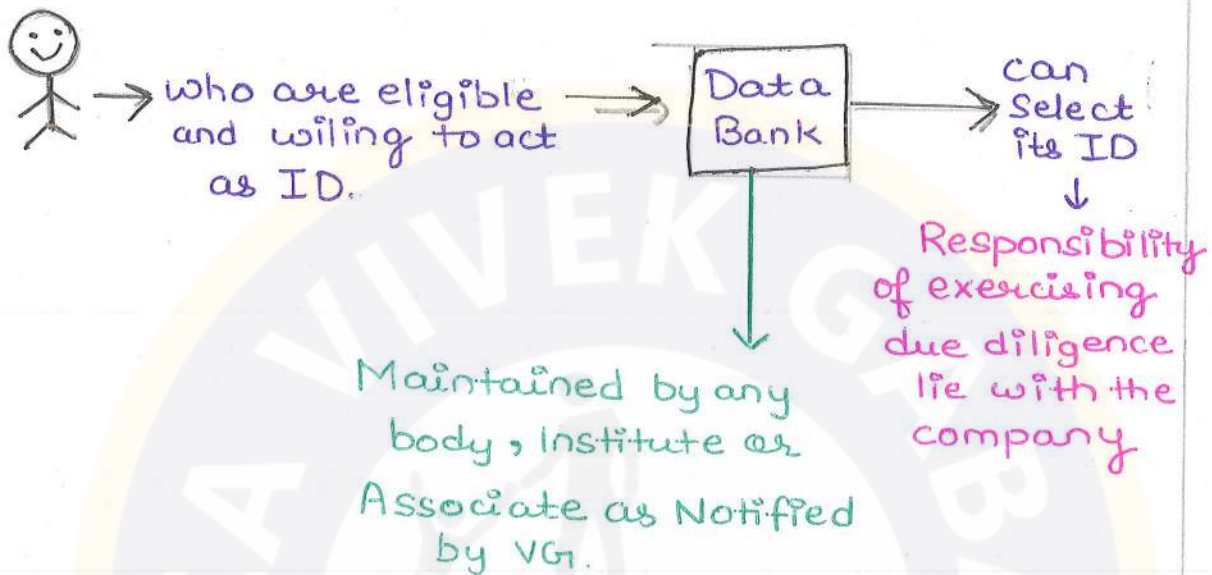
\* ID & NED → liable → only for such acts and omissions which have occurred with his knowledge.

Independent Director 149(6):



## Section - 150

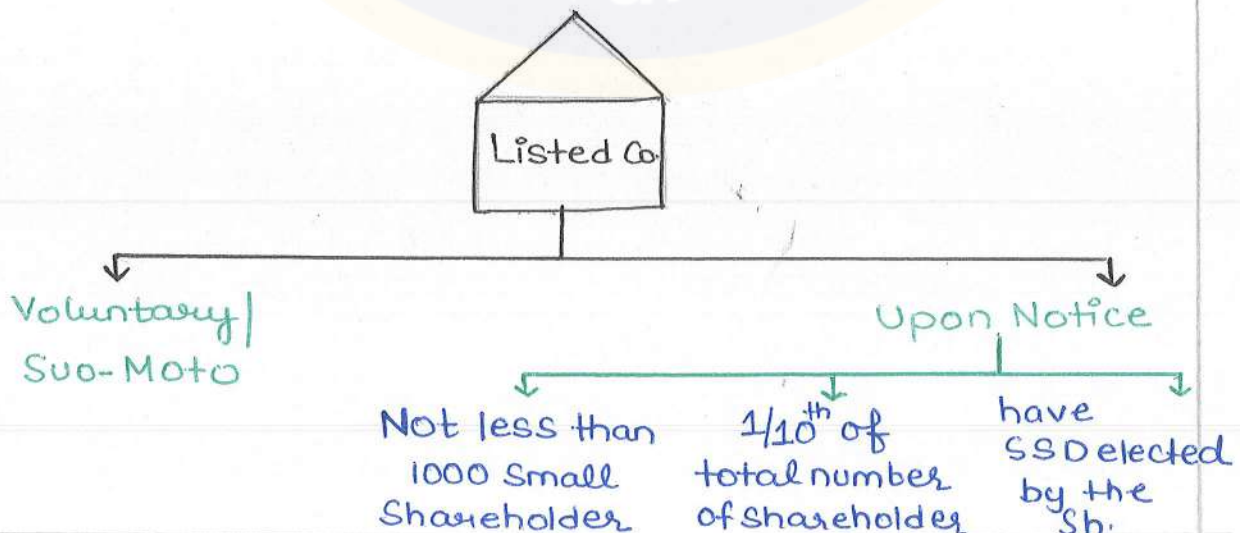
### Manner of Selection of Independent Director and Maintenance of Databank of ID

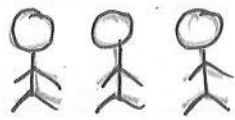


## Section - 151

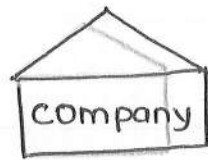
### Small Shareholder Director

- (\*) Holding shares of Nominal Value of 20,000 or less or other sum as may be prescribed.
- (\*) SSD need not be a small shareholder.





At least 14 days before G.M



Notice

Specify

- Name
- Address
- Shares held
- Folio Number

of Proposed director and SSH who are proposing

Accompanied Statement by proposed director

consent to act as SSD.

### Small Shareholder Director

Not liable to Retire by Rotation

Maximum Tenure 3 consecutive years

Not eligible for Re-appointment

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

### Vacation of Office of SSD

Disqualified u/s 164

Vacates u/s 167

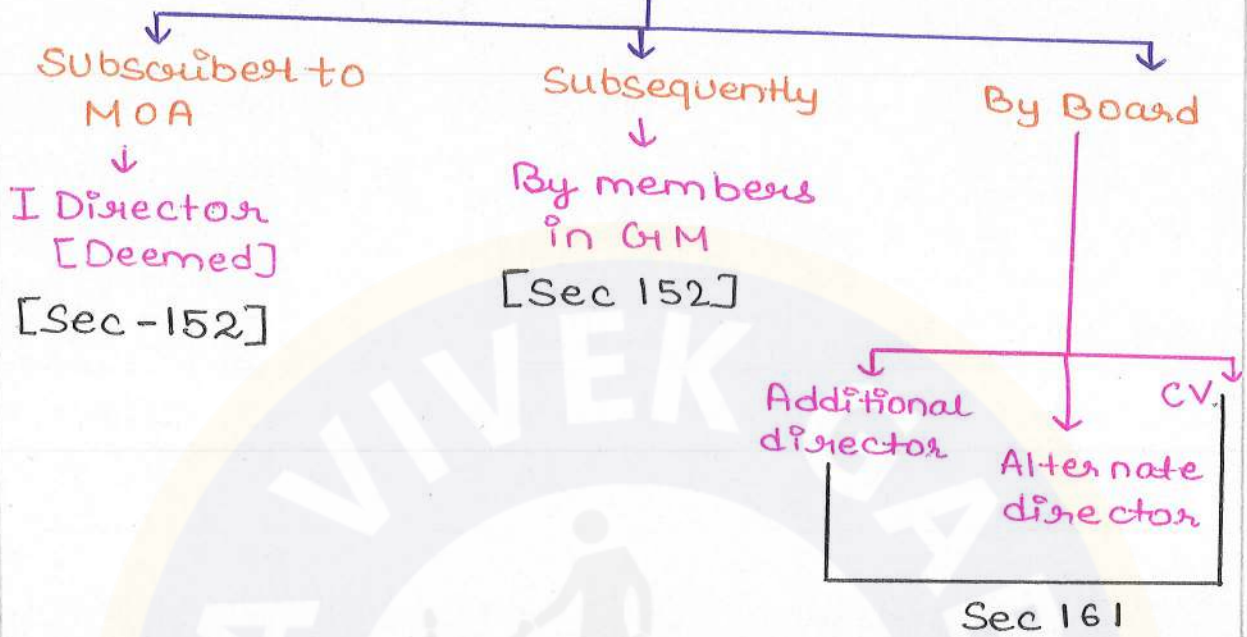
cease to meet criteria u/s 149(6)

Stick figure → SSD ⇒ After ceasing → shall not be appointed in CASH for 3 years.

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

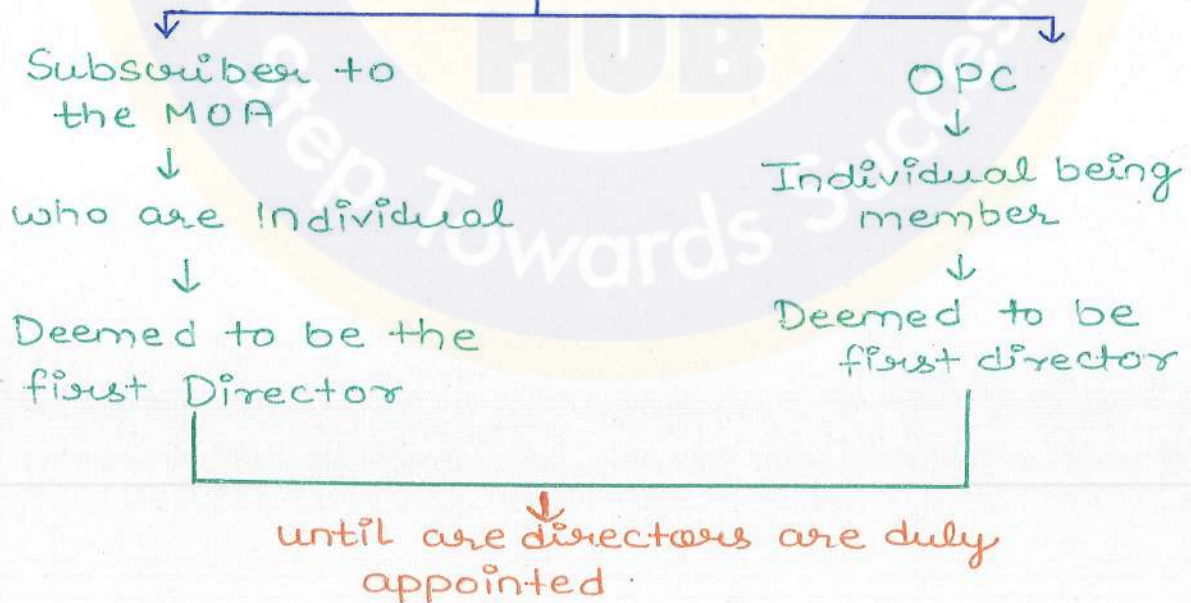
Section - 152

Appointment of Directors



First Director

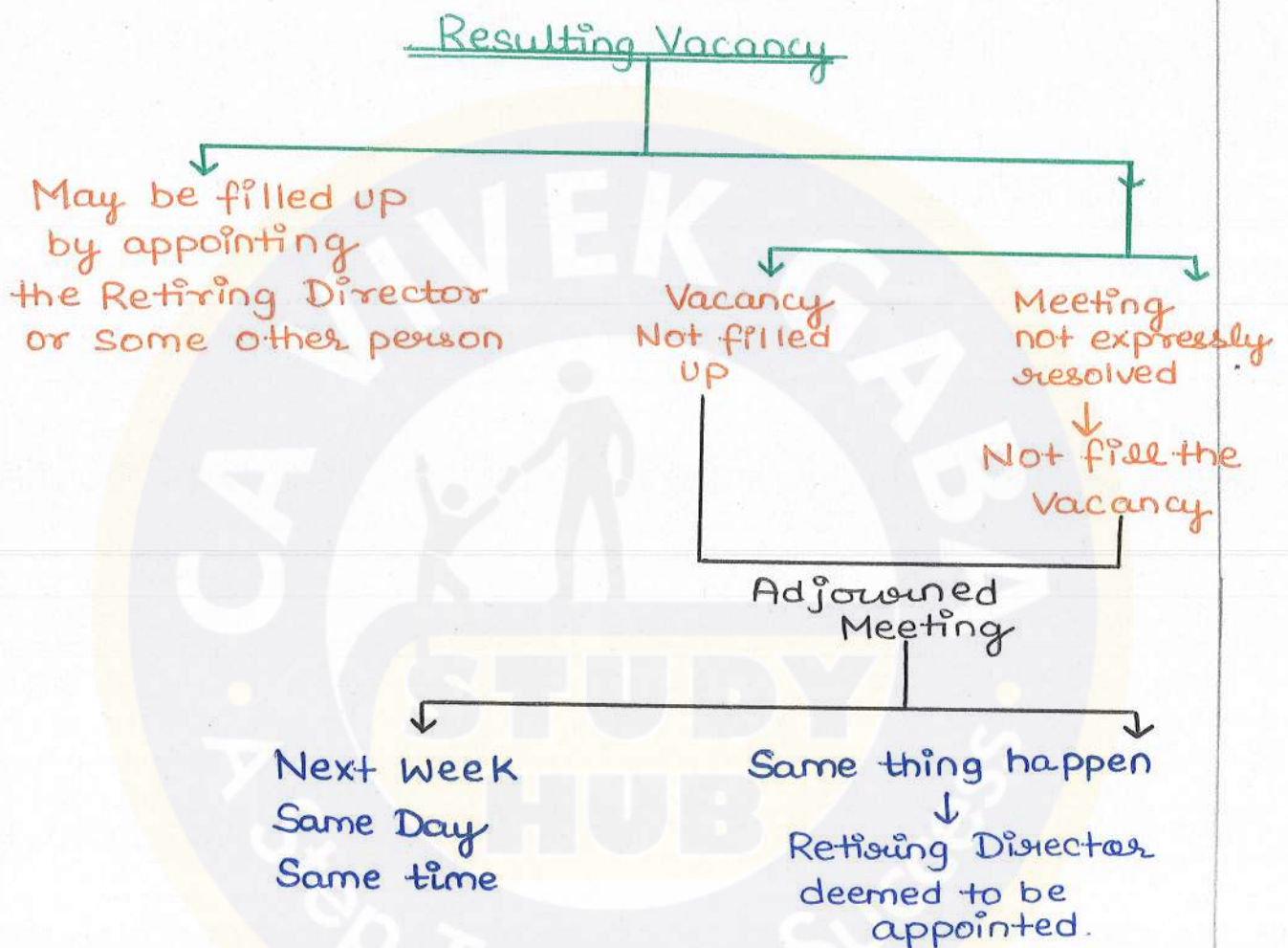
No Provision in AOA regarding First Director



## # Rotational Director exclude:

[Non Rotational]

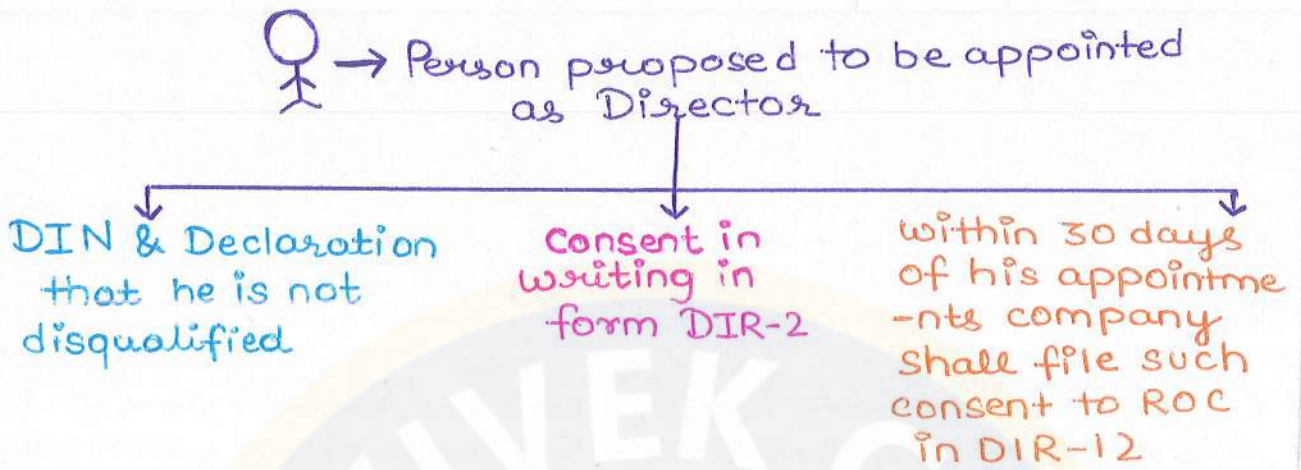
- Independent Director
- Director appointed by Tribunal
- SSD.



Deemed Re-appointment will not happen  
in following cases:

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

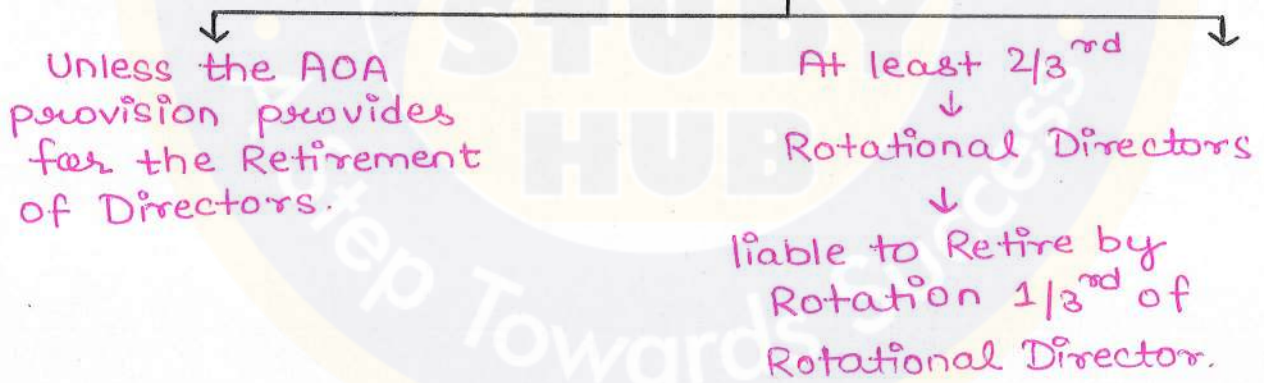
# Appointment of Director in General Meeting



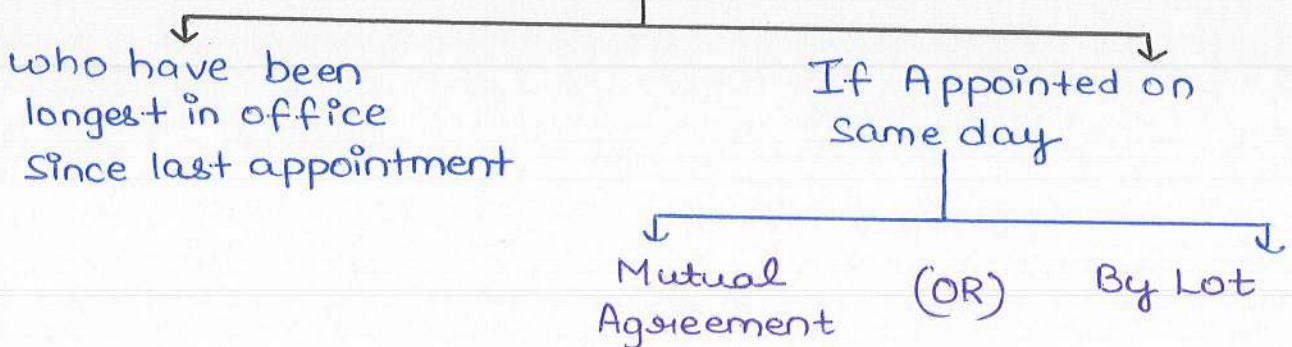
## Retirement by Rotation

[Sec 152(6)]

Total Directors of the company



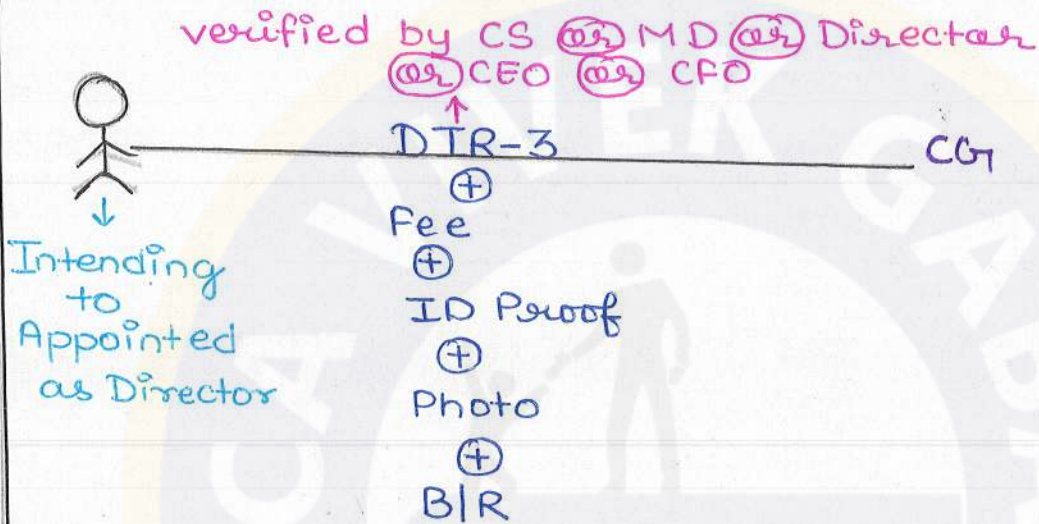
### Order of Retirement :



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

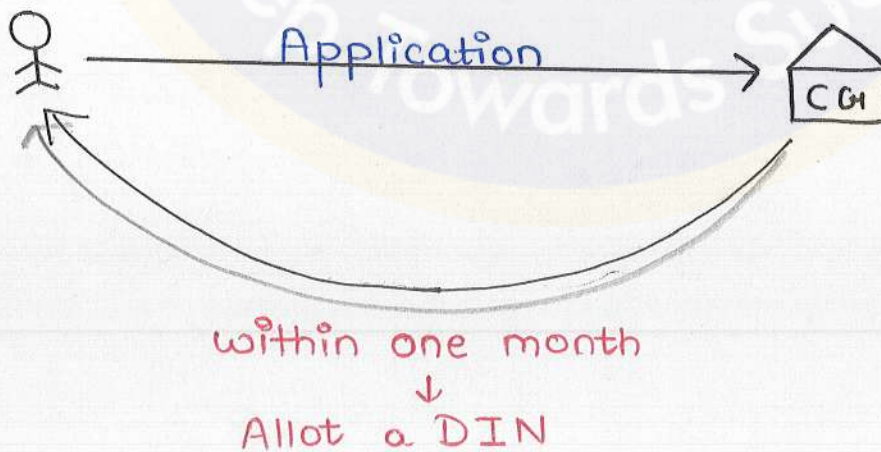
Section-153

Application for Allotment of DIN



Section - 154

Allotment of DIN



## Section -155

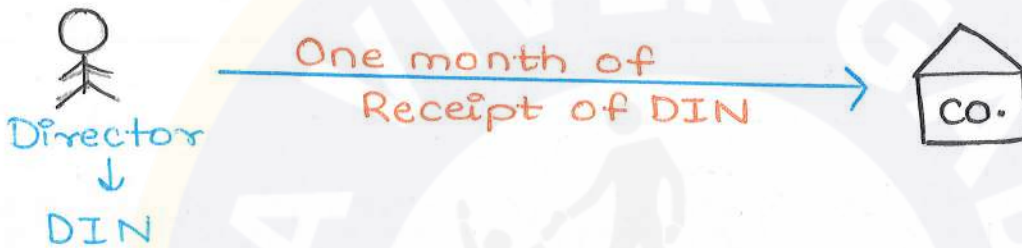
### Prohibition to Obtain more than a DIN



If a person is once allotted a DIN, he can not apply again.

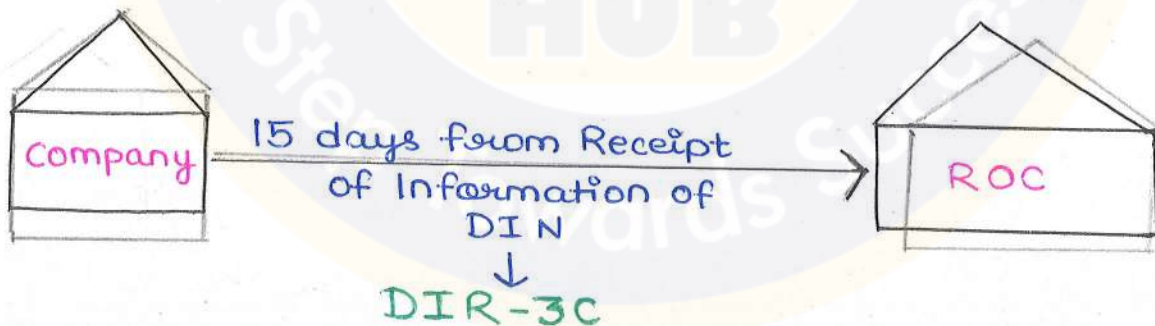
## Section 156

### Director to Intimate DIN

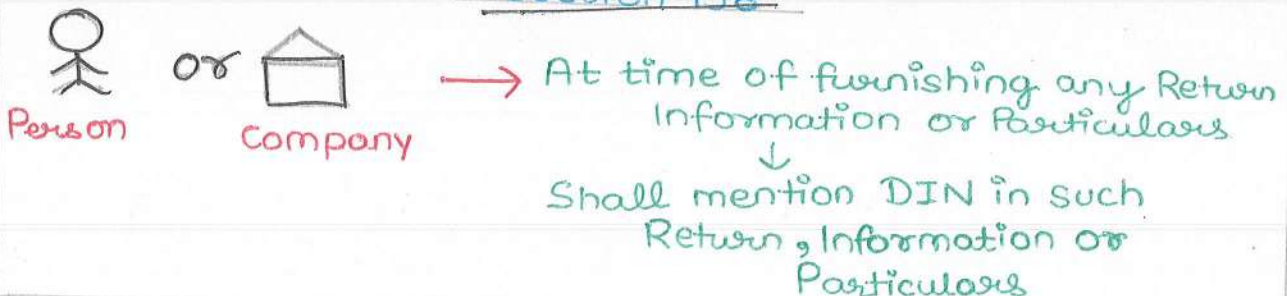


## Section -157

### Company to Inform DIN to Registrar

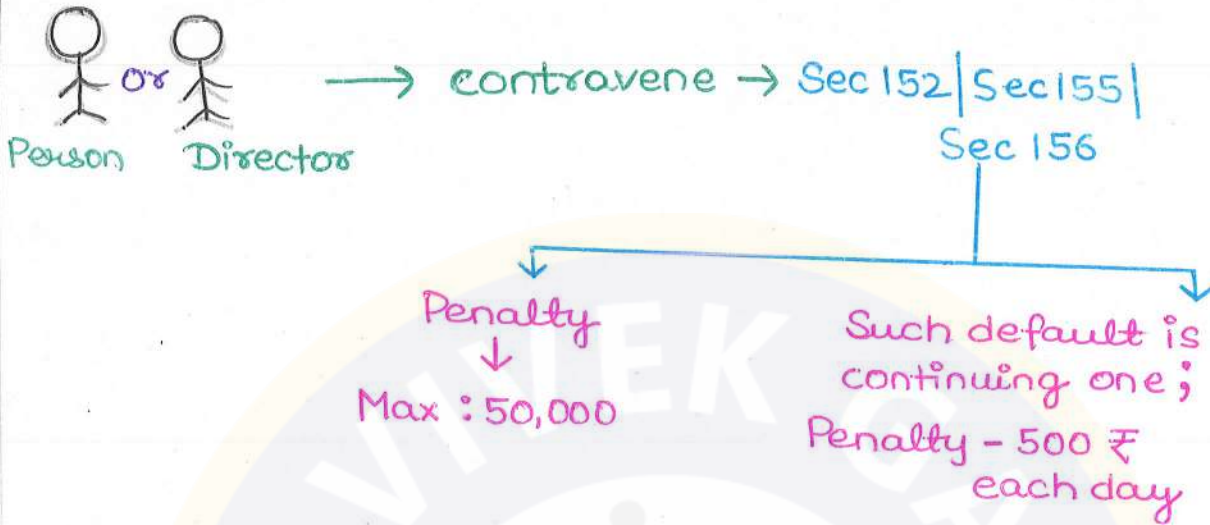


## Section 158



## Section 159

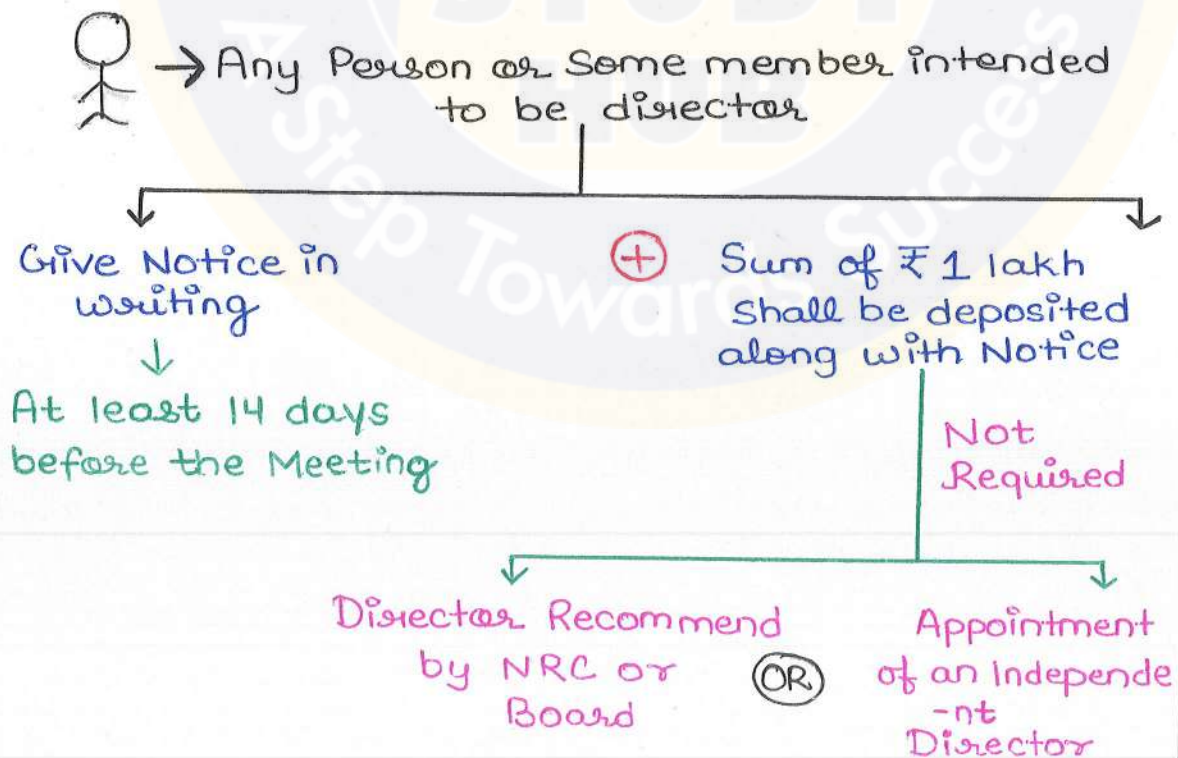
### Penalty for Default of Certain Provision



## Section -160

### Right of Persons other than Retiring

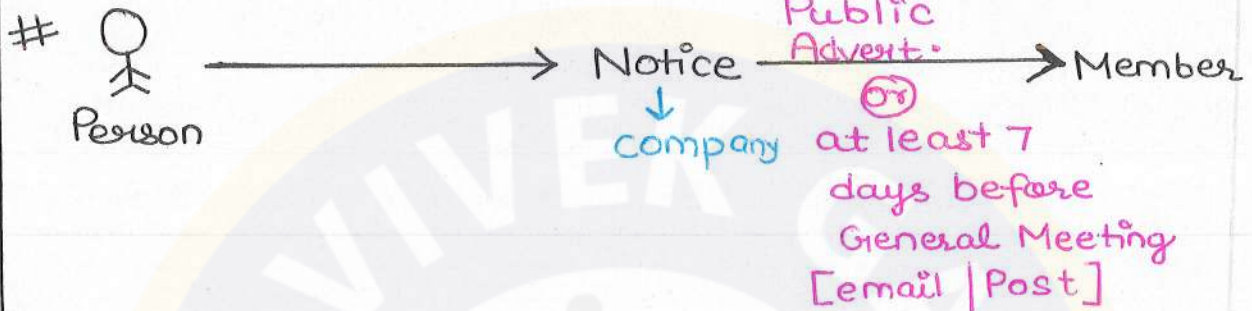
### Director to stand for Directorship



## Refund

Gets elected as Director

Gets More than 25% of total valid votes



## Section-161

Appointment of Additional Director,

Alternate Director and Nominee Director

→ Additional Director

• Who can appoint → Board of Directors

• Tenure → Date of Next AGM

(or)  
Last date on which AGM should have been held.

LEGAL  
REVIEW

• Who can not be appointed as Additional Director → Any person who fails to get appointed as Director in a G.M.

• When appointed → When BOD feels so.

## Alternate Director

- Who can appoint → If Authorised by Articles, Board of Directors  
or  
Resolution passed by the company in GM
- Who can not be appointed → Person holding any Alternate Directorship for any other director  
or  
Holding Directorship in the same company.
- Term of office → Max. tenure of Original Director  
or  
Original Director Return } EARLIER
- When Appointed → When Original director is out of India for 3 months or more.

# Provided that no person shall be appointed as an Alternate Director for an Independent Director unless he is qualified to be appointed as Independent Director.

⇒ Specific Provision → Any provision for automatic re-appointment of Original Director shall not apply to Retiring Director.

## Nominee Director:

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

{ can not be an Independent Director }



by virtue of its shareholding in a Govt. Co.

## Casual Vacancy

- Who can fill the CV → Filled by BOD  
↓  
shall be subsequently approved by members in next GM.
- Need for Appointment → When director vacates before the expiration of his term.
- Tenure → Date → Original Director → Tenure  
↓  
end

## Section -162

### Appointment of Directors to be voted Individually

#### General Meeting



Single Resolution



only one Director can be appointed  
by passing Single Resolution

Allowed,

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

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

## Section-163

### Option to adopt principle of proportional Representation for Appointment of Director

Two Methods

↓  
Single Transferrable  
vote

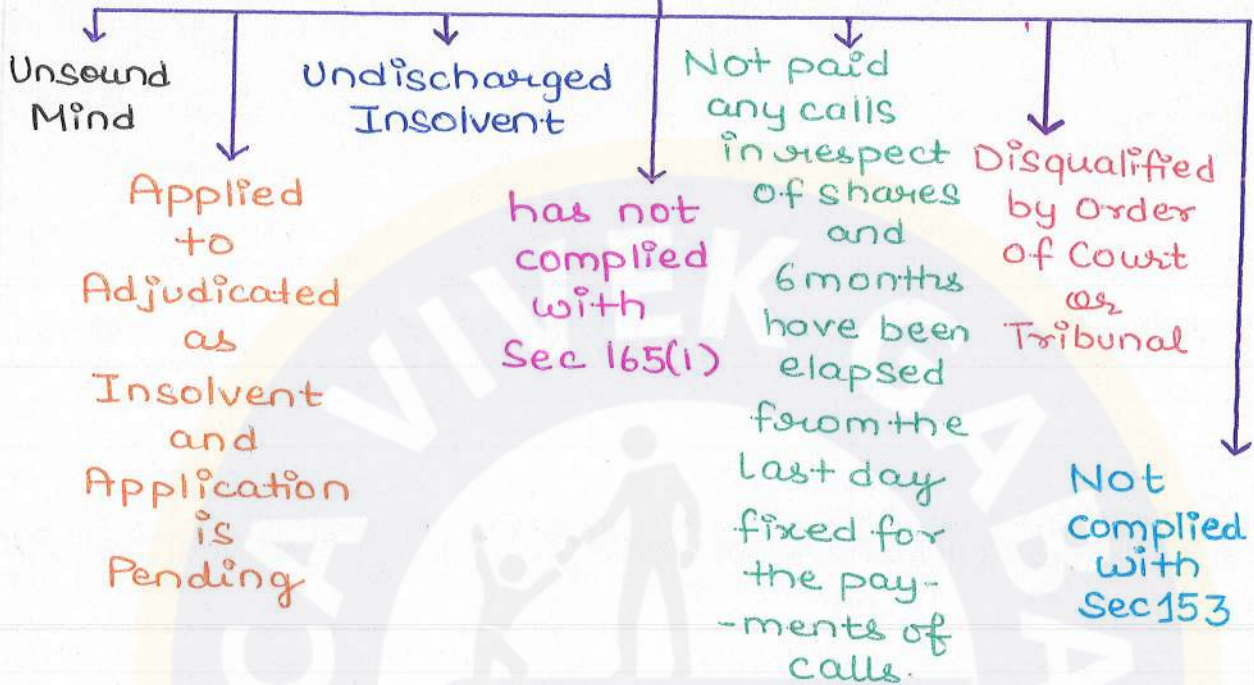
↓  
Cumulative  
Voting

\* AOA must authorise & if opted at least  
 $\frac{2}{3}^{\text{rd}}$  of directors to be appointed by this  
method.

## Section 164

### Disqualifications for Appointment of Directors

#### Sec 164(1)



↓  
has been convicted u/s 188  
(Related Party Transaction)

↓  
has been convicted for an offence

↓  
• अगर 6 Month से कम का Imprisonment है - then No Issue

• If Imprisonment > 6 month & < 7 years :-  
5 years have been elapsed from date of expiry of sentence

• > 7 years - Lifetime disqualification

Sec-164(2)

Has not filled :  
Financial Statement  
'OR'  
Annual Return  
for any continuous  
period of 3 FY.

OR

Has failed to Repay  
the deposit  
accept by it or  
Interest on Deben-  
-tures, declared  
Dividend and  
Failure to pay or  
Redeem continues  
for 1 year or  
more.



Disqualified for 5 years

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

Section-165

Number of Directorship



Not hold office → More than 20 companies



Public company → shall not exceed 10

Director  
'Including'  
Alternate  
Directorship

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

## Section - 166

### Duties of Director

- Act in accordance with Articles
- Act as per Company's Interest
- Act in good faith in order to promote objects of company
- No Undue advantage either to himself or his Relatives, Partners or Associates.
- Personal Interest should not be conflicted with company Interest.
- Director can not assign his office.
- Director shall exercise his duties with due care.

## Section -167

### Vacation of office of Director

#### a) Disqualifications U/S 164

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

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

↓  
with or without absence of leave

c) He acts in contravention of provision of Section 184.

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

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

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

f) he is removed U/s 169.

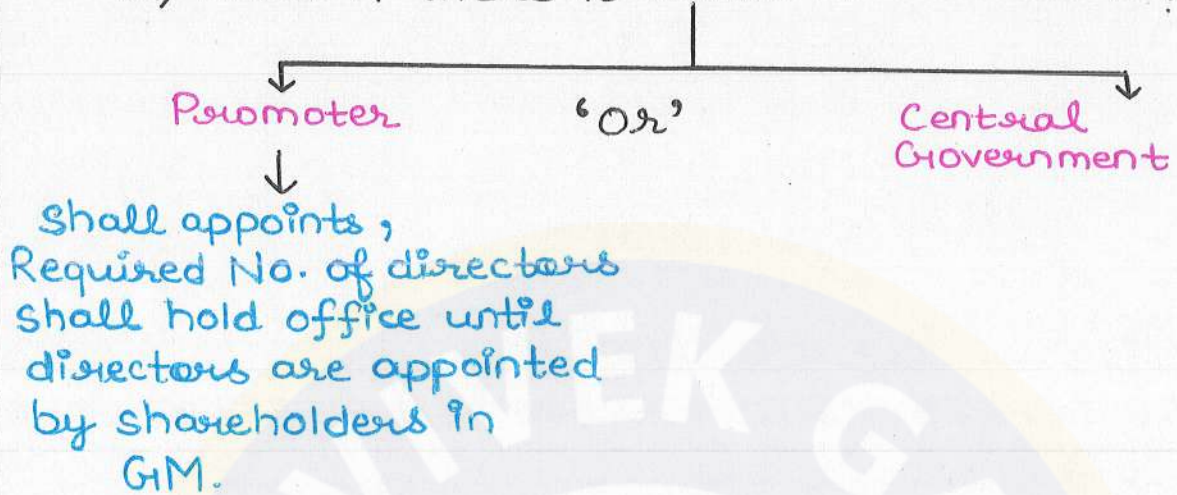
g) where he was appointed as director by virtue of some other position and now ceases to hold that position.

h) he is convicted for an offence for imprisonment for not less than 6 months.

i) he will not vacate office up to 30 days  
↳ he should appeal within 30 days → If appeal is disposed he shall reappeal within

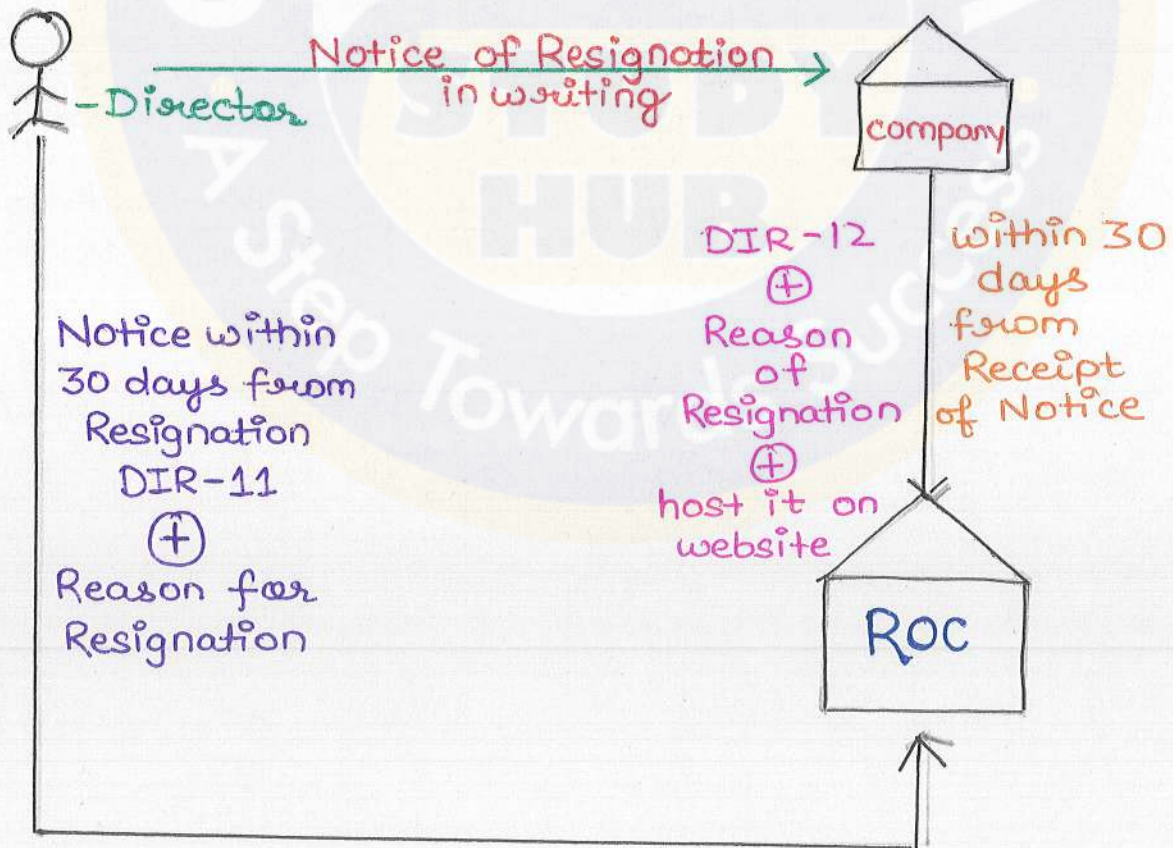
7 days → still disposed of → then he may be Removed.

Q) What if there is vacuum in the Board?



### Section 168

### Resignation of Director



## Resignation

Date on which  
the Notice is  
Received by  
Company

'OR'

Date specified  
in  
Notice

↓  
whichever is earlier

\* Also, Place the fact of Such Resignation  
in Director's Report laid in G.M.

Provided,

Director who has Resigned shall be liable  
even after his Resignation for offence  
which occurred during his Resignation.

## Section 169

### Removal of Directors

Ordinary  
Resolution

↓  
Before expiry of  
his term by giving  
ROBH

Special  
Resolution

↓  
Independent dir.  
appointed for  
2<sup>nd</sup> term by  
giving ROBH.

\* Company can not remove the director  
appointed by NCLT.

Special Notice

Remove director

OR

Appoint somebody in place of Removed director.

NCLT

Forward the copy of Notice

Make Representation in writing

Concerned director

Company, if time permits

If, not, then Representation shall be Read out at Meeting.

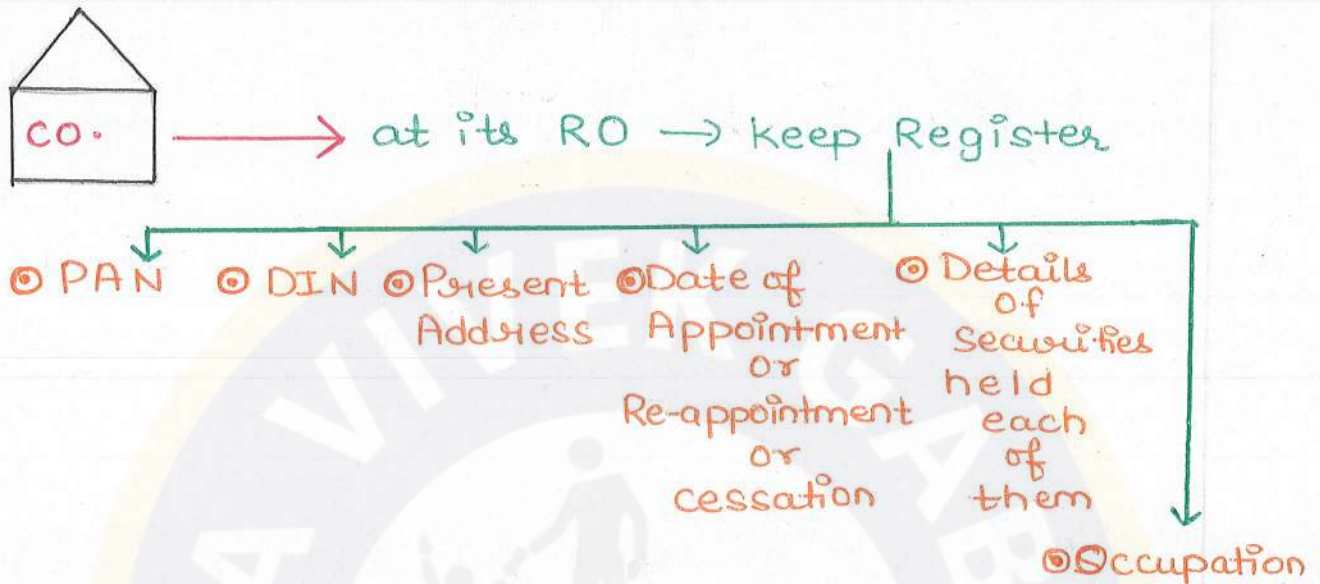
Inform the member about the Representation

Send the copy of same

No need to do so, if NCLT is satisfied by Application of Company or person aggrieved that this Right is being utilised to serve Needless Publicity.

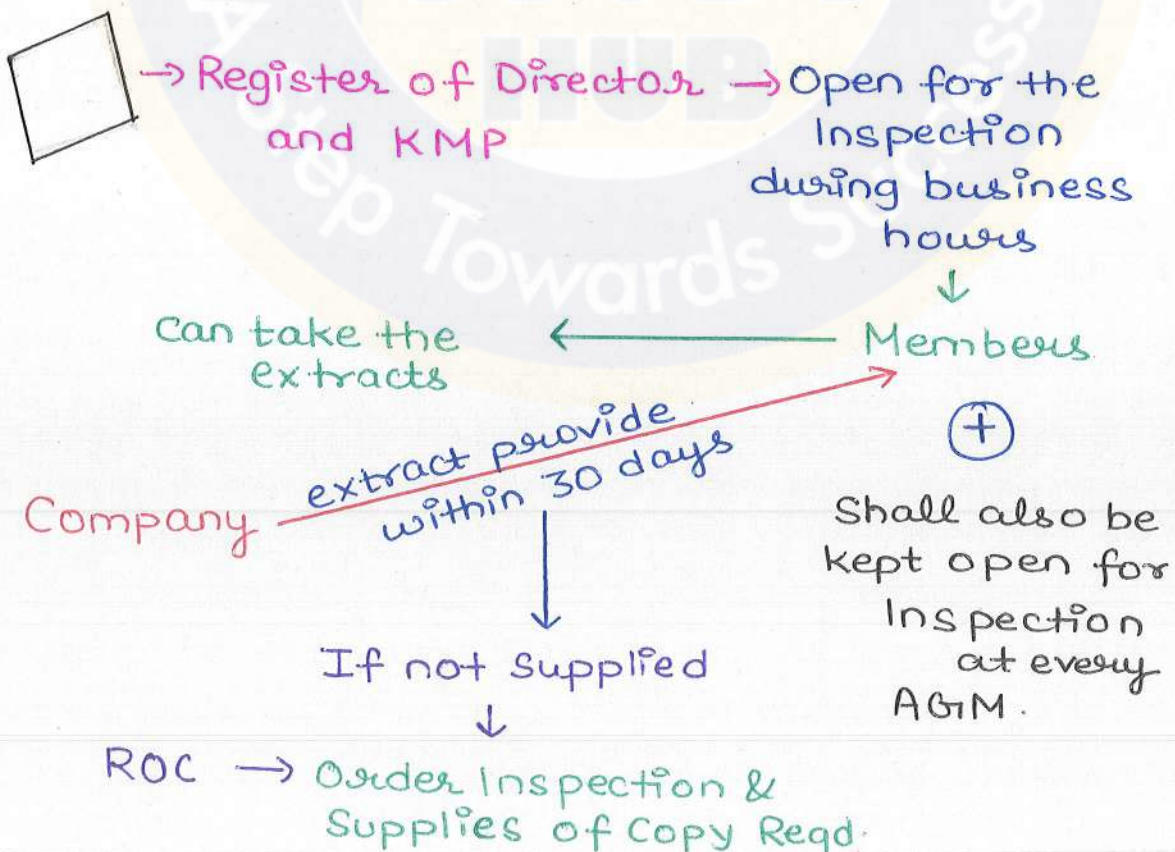
## Section - 170

### Register of Directors and KMP and their Shareholding



## Section - 171

### Member's Right to Inspect



Section - 172

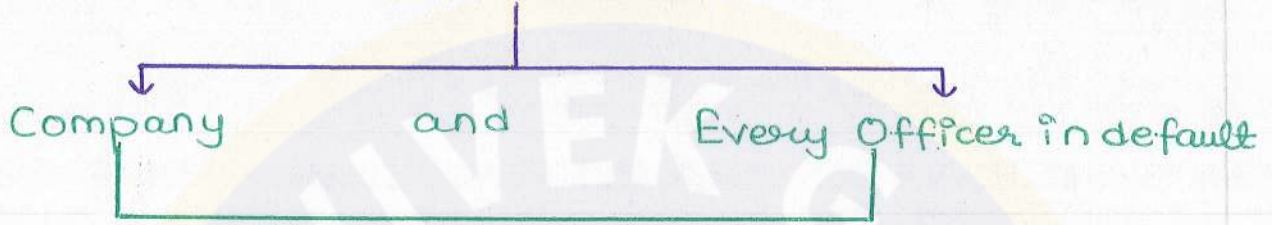
Penalty



Chapter XI



Not followed



Penalty - 50,000 ₹ each  
&

In case of Continuing default  
further → 500 per day.

Penalty, Maximum - 3 lakh [Company]

Penalty, Maximum - 1 lakh [OIO]

## Chapter - XII

### Meeting of Board and Its Power

#### Section 173 - 193

⊕

#### Companies (Meeting of Board and Its Power)

##### Section-173

##### Meeting of Boards



co. → shall hold its first meeting of Board within 30 days from date of Incorporation.

Thereafter,

hold after a minimum no. of 4 meeting of BOD every calander year.

AND

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

For: OPC, Small Co., Dormant Co., Sec-8 Co.  
StartUp :-

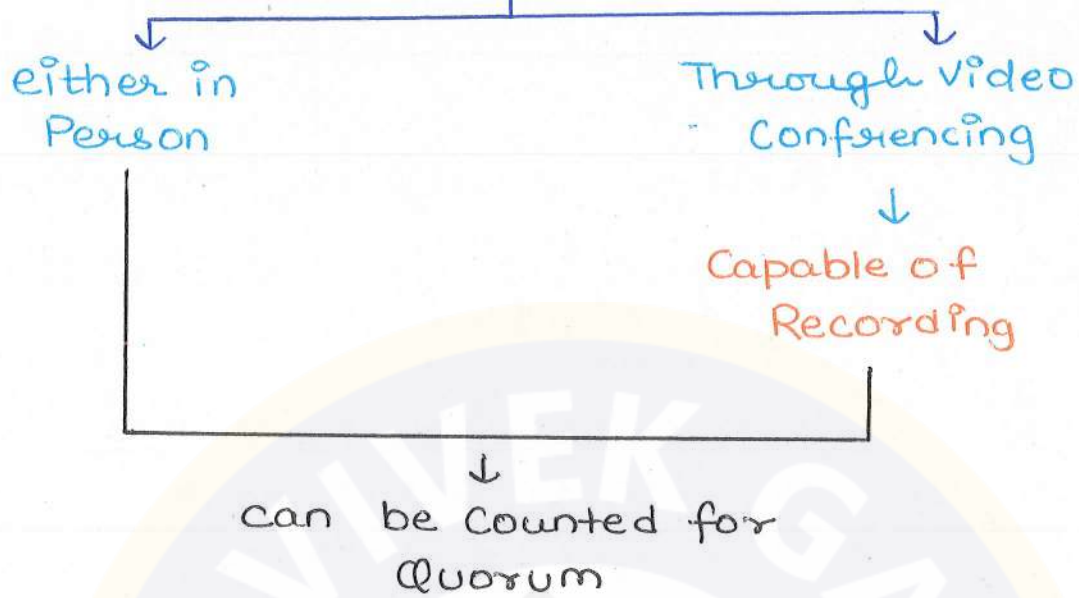


1 BM in each half of Calander Year

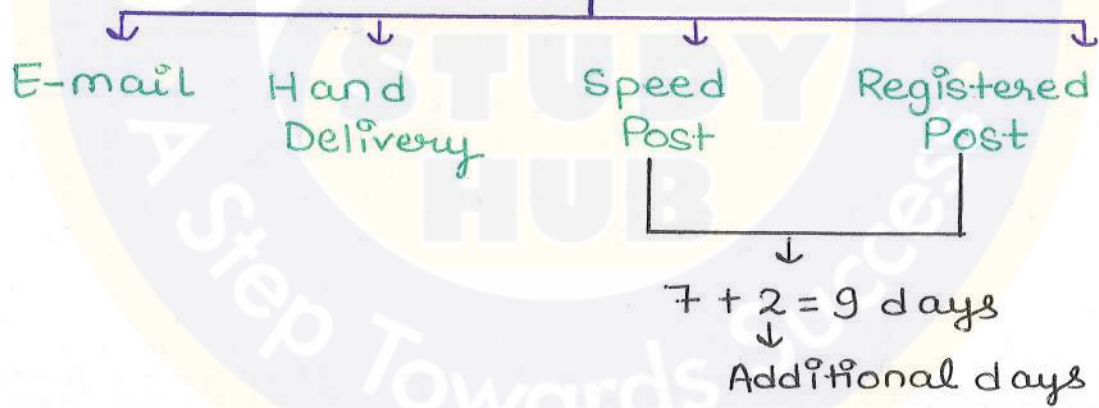
⊕

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

## # The Participation of Directors in a Meeting



# Meeting of BOD shall be called by giving not less than 7 days NOTICE in writing at address.

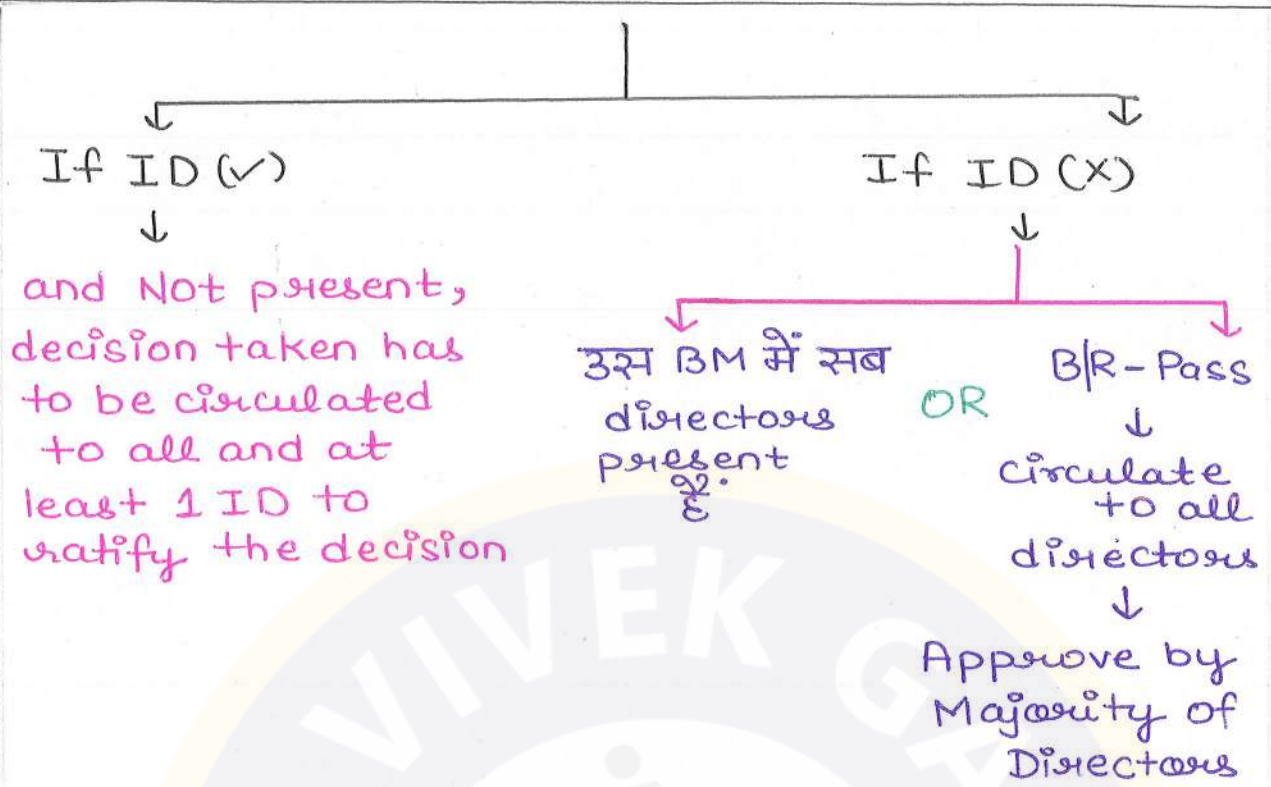


# Shorter Notice → Urgent Business

↓  
Notice of less than  
7 days

Provided,

1 ID if any 1 shall be present at the meeting.



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

Section - 174

Quorum

↓  
Meeting of Board

[ Minimum No. of Directors should be Present in meeting ]

Quorum →  $\frac{1}{3}^{\text{rd}}$  of total director  
or  
2 Directors ] Higher

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

\* Participation of dir. through VC shall be counted.

\* Interested Director shall not be counted for purpose of Quorum.

- If → Interested Director → equal to or more than  $\frac{2}{3}^{\text{rd}}$  of total directors

↓  
then No. of directors not Interested shall be Quorum [being not less than 2]

- If → No. of directors → Reduced below Quorum Req. by AOA

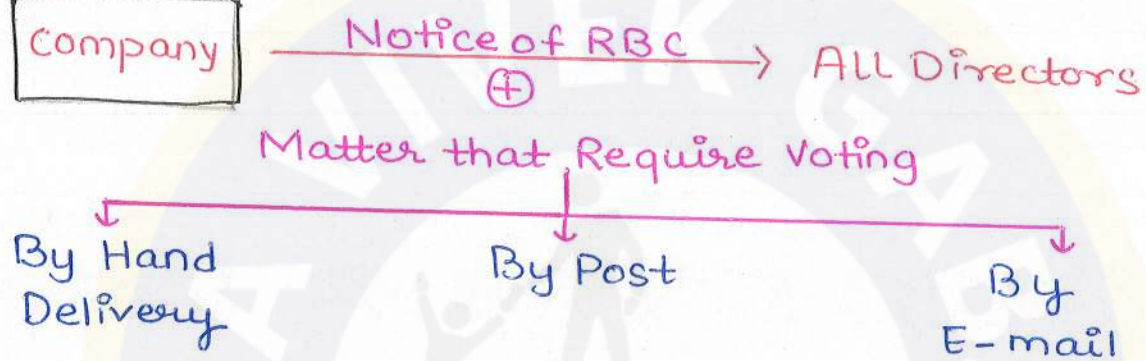
↓  
Remaining director may act for the purpose of increasing the director to summon a G.M.

\* For Private Company → Even Interested director can attend BM and will be counted for purpose of Quorum.

## Section 175

### Resolution by Circulation

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



\* where Resolution passed by Circulation ; to prove its authenticity

'Note' the same  
in next Board  
Meeting

Make it a part of  
minutes of that  
meeting

\* If  $\frac{1}{3}^{\text{rd}}$  of the directors require the Resolution to be decided at the meeting then the Chairman to put the Resolution at meeting.

## Section - 176

### Defects in Appointment of Director

not to invalidate the Action taken:

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

## Section 177

### Audit Committee

Every Listed Co.

Public Company

↓  
whose

PSC  $\geq 10cr$

T/O  $\geq 100cr$

Outstanding  
Borrowing  
 $> 50cr$

### Composition

→ Min. 3 Directors

⊕

Majority of Director shall  
be Independent

↓  
Financial Literates

Meeting : at least 4 times in a year

Chairman : shall be Non-Executive

Quorum :  $1/3^{rd}$  or 2 }-higher

### Audit Committee :

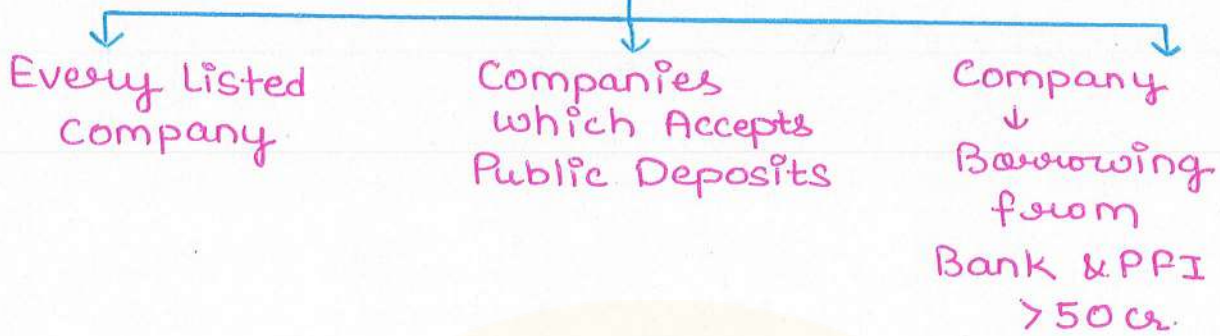
\* To Review and Monitor the Auditor's Independence & Performance.

\* Examination of the Financial Statement of Auditor's Report.

\* To Approve RPT

\* Monitoring the end use of fund Raised through Public Offer.

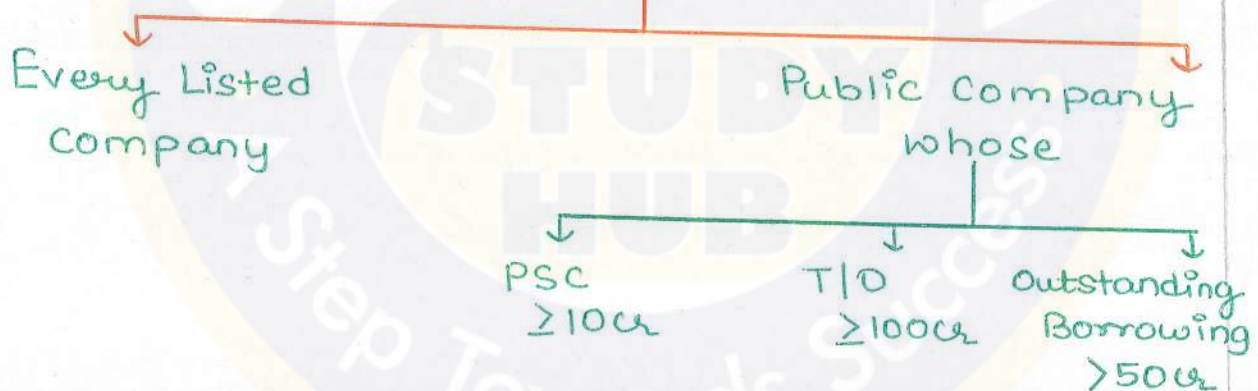
## Vigil Mechanism



Shall establish a Vigil Mechanism for directors and employees to report genuine concern.

## Section-178

### Nomination and Remuneration Committee & Stakeholder Relationship Committee

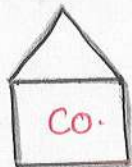


### Members in NRC :

- ⊙ 3 or More NED out of which not less than  $\frac{1}{2}$  shall be Independent Director.
- ⊙ Chairperson of Company shall not be the chairperson of the Committee.
- ⊙ Shall Identify persons who are Qualified to become Directors.

- ⊙ Committee shall formulate persons/policies for Appointment of Director.

### Stake-Holder Relationship Committee :



→ having more than 1000 members member, debentureholders and other Security holders

The Stakeholder Relationship Committee shall consider and resolve the Grievances of the Security holder of Company.

\* Meet at least once in a year.

### Section -179

#### Power of the Board

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

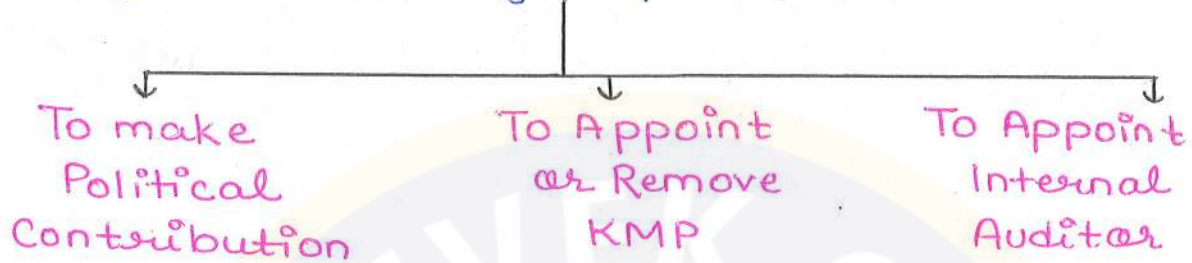


→ The Board shall exercise all its powers subject to Reg<sup>n</sup> made by co. in GM or AOA.

#### Powers :

- \* To make calls
- \* To make Buy-Back
- \* To Issue Securities
- \* To borrow money
- \* To Invest funds of Company
- \* To Give Loan/Guarantee/Security.
- \* To approve F.S & Board Report

- \* To diversify the business of company.
- \* To approve Amalgamation, Merger or Re-construction
- \* To takeover a company.
- \* Any matter as may be prescribed



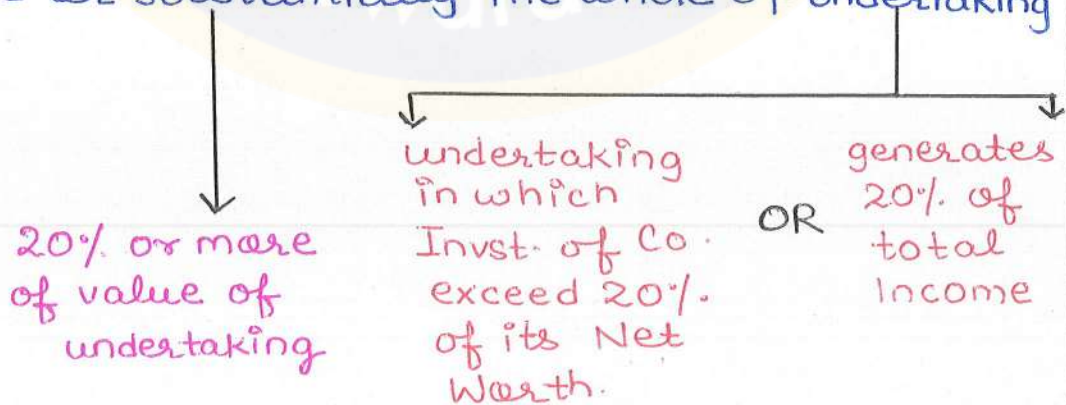
The Board may delegates power specified in clause d|e|f to committee of director or MD or Manager.

### Section 180

#### Restrictions on Powers of Board

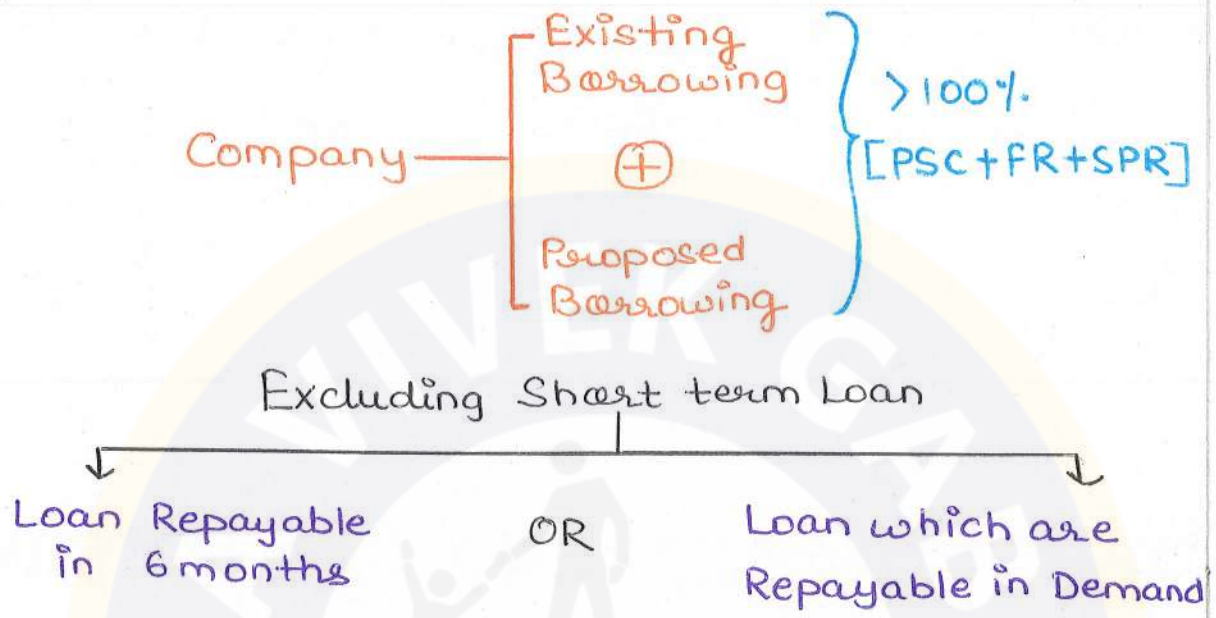
The following powers to be exercised by Board of Directors only with approval of Shareholder by passing SR.

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



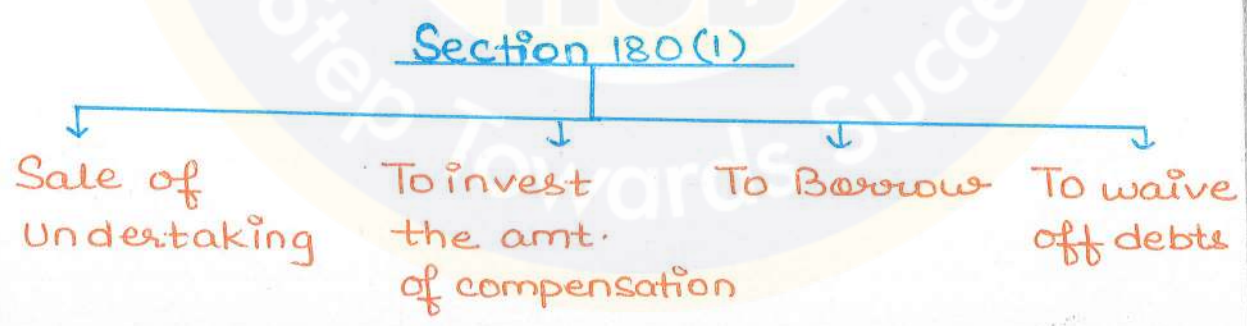
b) To invest otherwise in trust securities of amt. of compensation received by its as a Result of any merger or Amalgamation.

c)



→ Not Applicable to Banking Company

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



SR passed in Section 180(1)(c) shall specify the total amount up to which monies may be borrowed by company.

## Section 181

Company to contribute to Bona-fide and Charitable fund



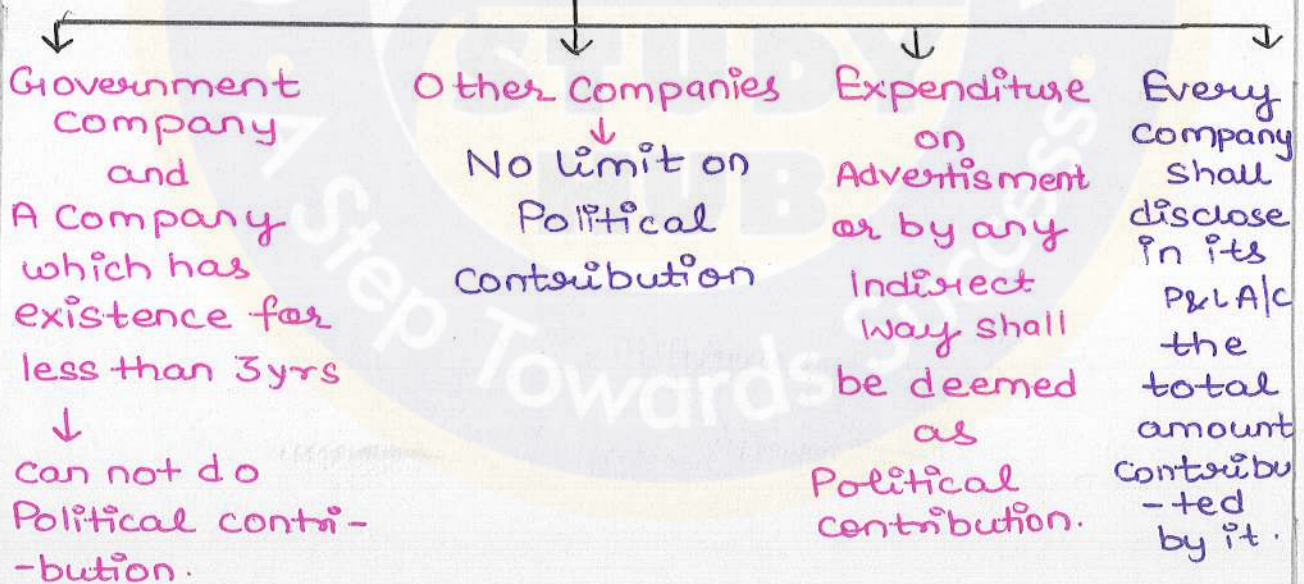
But, Charitable fund must be Bonafide

# OR → Required → Amount exceed 5% of Avg. Net Profit for three IPFY

## Section-182

Prohibitions and Restrictions regarding

Political Contribution



## Section 183

### Power of Board & other persons to make contribution to National Defence fund etc.

→ BOD  
or  
Any Person  
or  
Authority exercising  
the Power of Board  
or  
Co. in G.M

- No limit on Amount.

→ Contribute in National Defence fund or any other fund approved by CG.

# Disclose → P&L A/c → Amount contributed

## Section-184

### Disclosure of Interest by Director



Director

Interest disclose

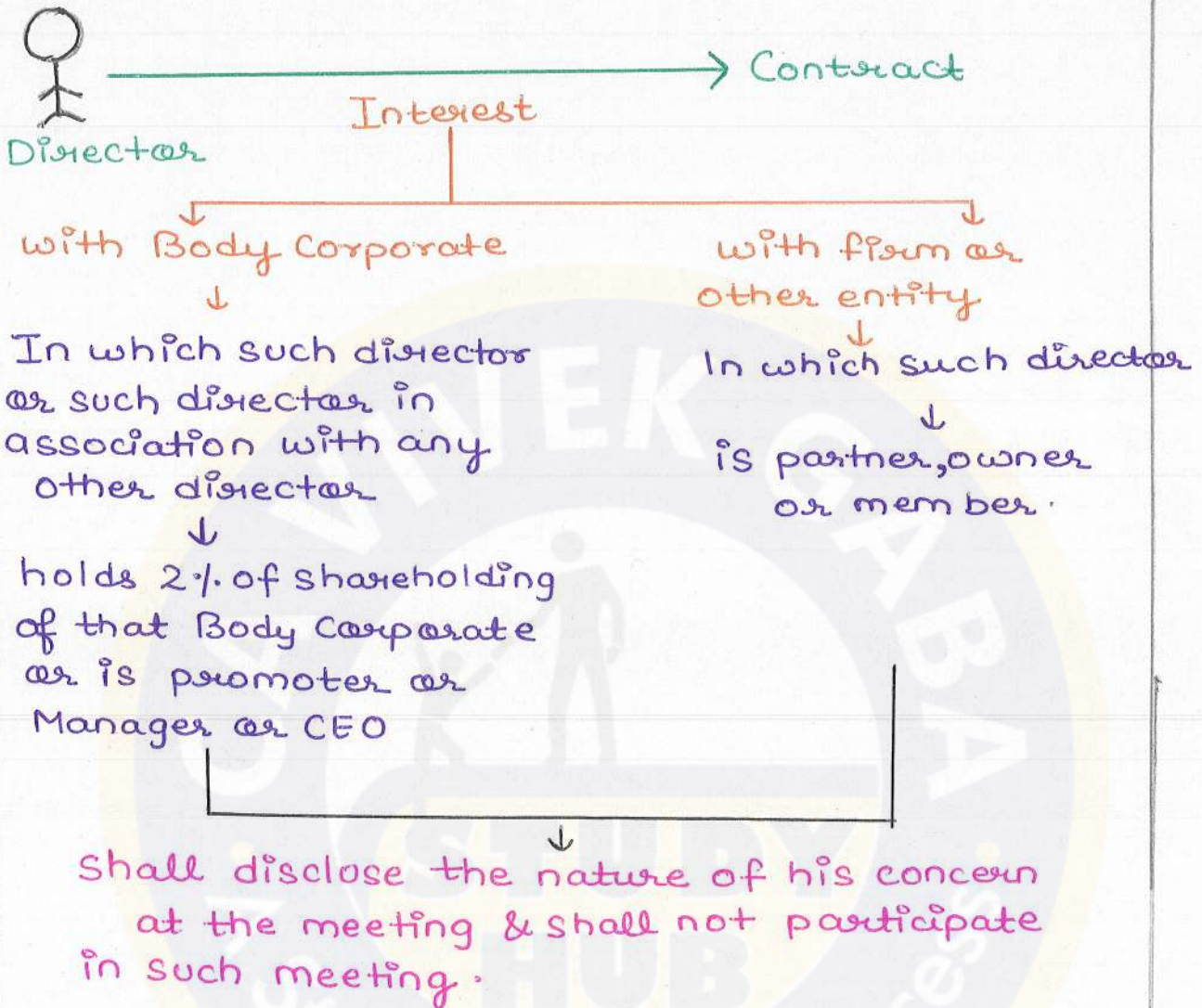
his first meeting as a director

at I BM of every FY

whenever there is change in Interest

- MBP-1  
↓  
Shall be preserved for a period of 8 yrs

## \* Specific Disclosure



Exception - Private Company

Any Contract entered without complying above Reg<sup>n</sup> shall be voidable at option of company and Director liable to penalty of 1 lakh Rupees.

By passing SR;

If Borrower is a company then loans should be utilised for its principal business activity.

★ Nothing in this Section apply to

a) Giving loan — [ MD  
(or)  
WTD

↓  
as a part of the conditions of service extended by co. to all its employees

(or)

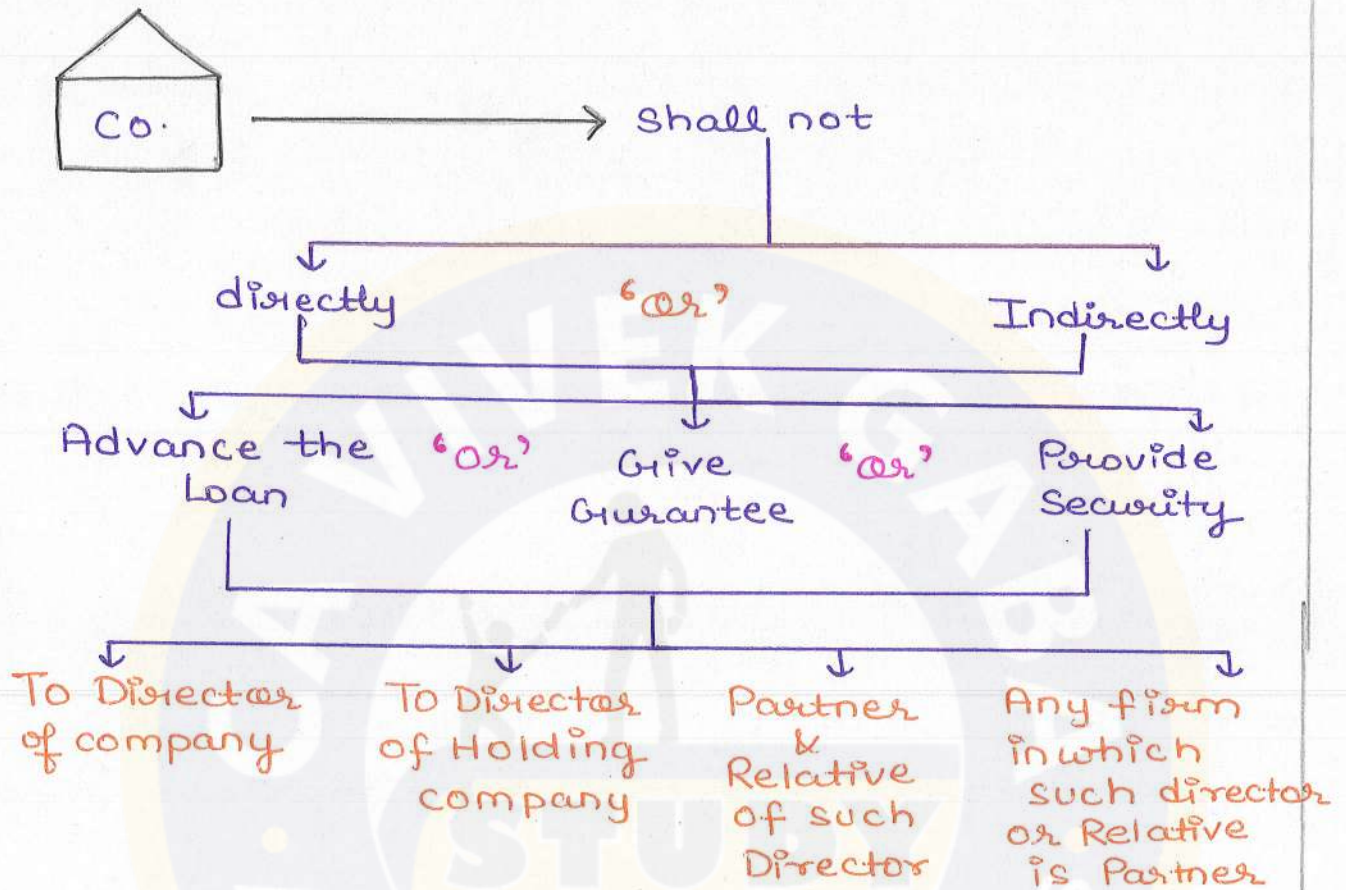
Pursuant to any scheme approved by members by a Special Resolution

b) Company → जिसका ordinary course of business loan or Guarantee or Security provide करना है

c) Loans | Guarantee | Security by Holding Company to its wholly Owned Subsidiary Company and Guarantee | Security by Holding Company to its Subsidiary company with a condition to use for its principal activity.

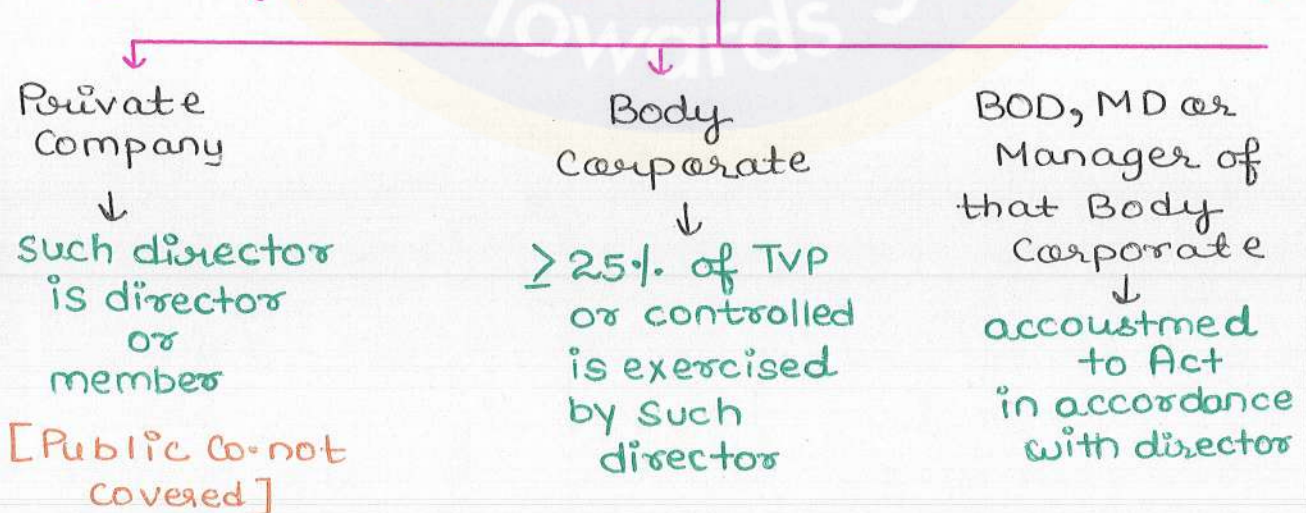
# Section - 185

## Loans to Directors



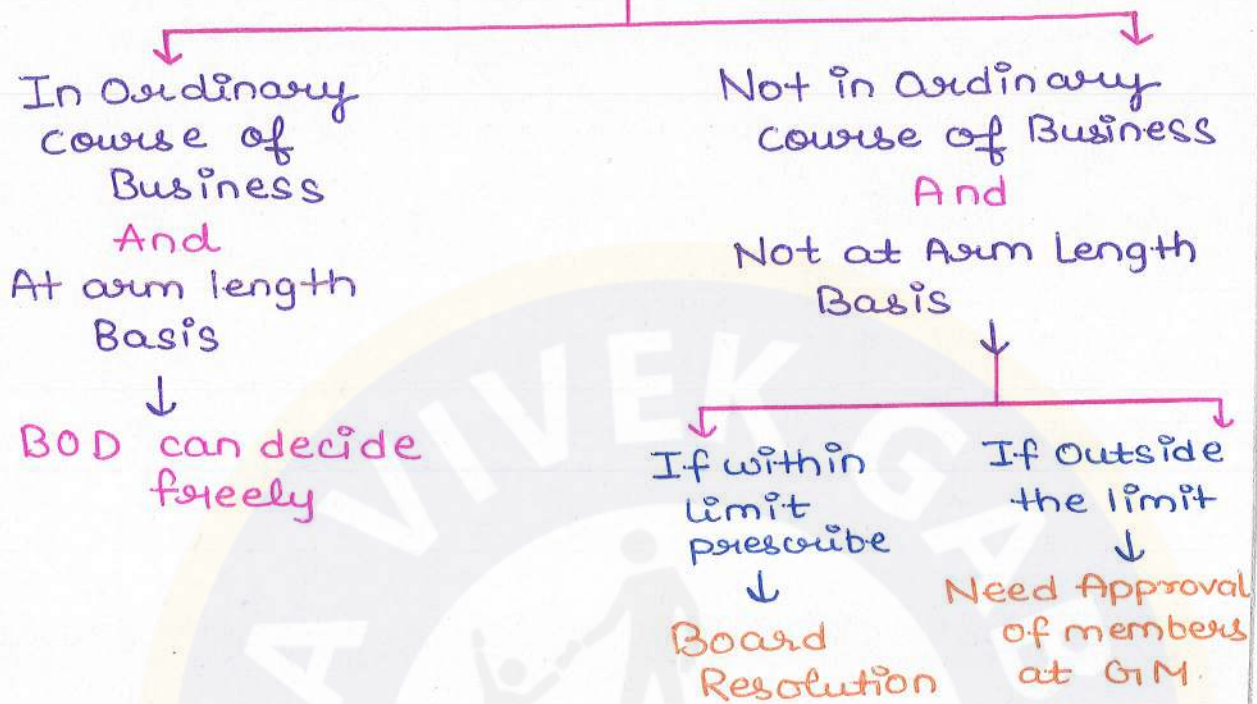
Conditions: A Company may advance loan or give guarantee or provide security

[to any person in whom director is interested]



## Section-188

### Related Party Transactions



Except with consent of BOD, no co. shall enter into contract with RP w.r.t :

- \* Sale, Purchase or Supply of any goods or materials.
- \* Selling or otherwise disposing of or buying property of any kind.
- \* Leasing of Property of any kind
- \* Availing or Rendering any service
- \* Appointment of any agent for purchase or sale of goods, materials.
- \* Such Related Party's Appointments to any office or place of Profit in CASH.
- \* Underwriting the Subscription of any Securities.

## Section - 186

### Loan and Investment by Company

#### Sec 186(1):

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

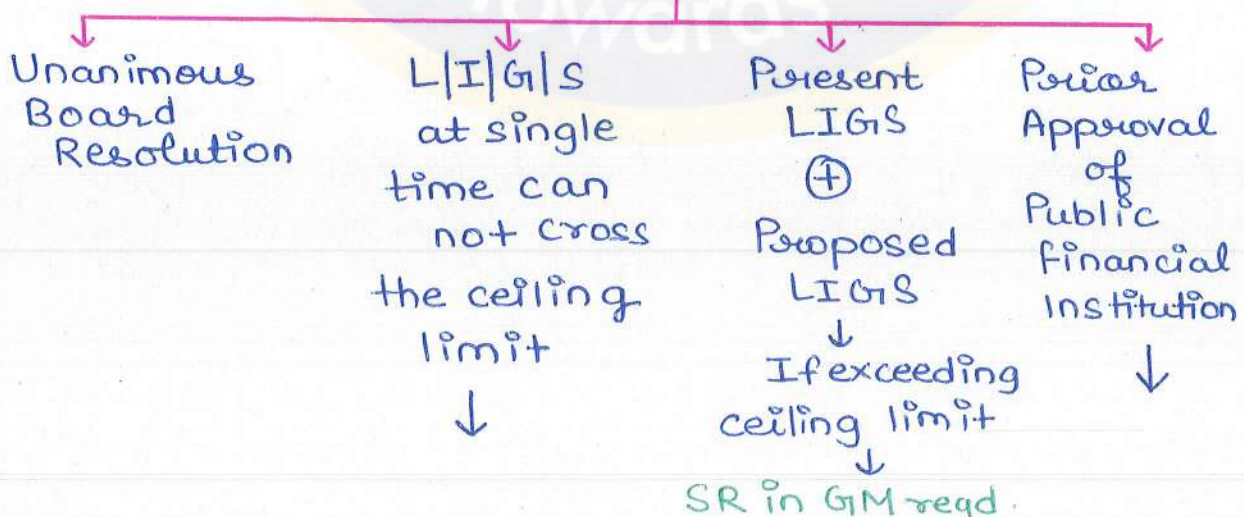
#### Exemption:

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

#### Sec 186(2)

- When any company gives loans to Body Corporate or person
- Guarantee | Security to Body Corporate | Person
- Investment in Body Corporate [acquire by way of Subscription | Purchase or otherwise]

#### Formalities



→ LIIGS at single time can not cross the ceiling limit

↓  
60% [PSC + FR + SPR]

or  
100% [FR + SPR]

↓  
HIGHER

→ Prior Approval of PFI:

↓  
When company has defaulted in PFI's

Loan

↓

PFI Approval

⊕

UBR

↓  
PFI loan is outstanding but not defaulted

⊕

LIIGS exceeds

↓

UBR ⊕ SR

⊕

PFI Approval

### Section-187

#### Investment of Company to be held in its own name

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

## Related Party

## Section 2(76)

In Relation to Company, Related Party 'means' :

- a) A director or his Relatives
- b) A KMP or his Relatives
- c) A firm in which a Director, Manager or his Relative is Partner
- d) A private Company in which Director or Manager or his Relative is a Member or Director.
- e) Public Company in which Director or Manager is Director and holds along with his Relatives, more than 2% PSC.
- f) Any Body Corporate whose ; BOD, MD or Manager is accustomed to Act in accordance with advice
- g) Any Person on whose advice, Directions or Instruction a director is accustomed to act.
- h) Any Body Corporate is :
  - ✓ Holding, Subsidiary or Associate Co.
  - ✓ Subsidiary of Holding Co.
  - ✓ Investing Co. of the Company

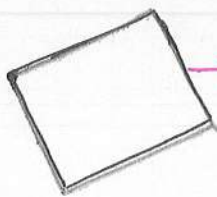
## Cases where Prior Approval of Shareholders are Required

- Sale, Purchase or supply of any Goods or Materials directly or through Agent - 10% or More of T/O
- Selling or otherwise disposing of or buying any kind of property directly or through agent - 10% or More Net Worth of Company
- Leasing of Property of any kind - 10% or more of T/O of CO.
- Availing or Rendering of any service - 10% or more of T/O of CO.
- Is for Appointment to any Office or Place of Profit - At monthly Remuneration exceeding 2.5 Lakh
- Is for Remuneration for underwriting - Exceeding 1% of its Net Worth

## Section-189

### Register of Contracts or Arrangement in which Directors are Interested

↓  
MBP-4



→ Register of Contract or arrangement in which Director are interested

↓

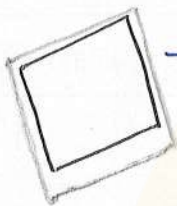
Kept at Registered Office and should be open for Inspection & extracts may be taken.

\* Register should be placed in Next meeting of Board and signed by all directors.

→ The Register to be kept shall be produced at the commencement of every AGM.

### Section - 190

#### Contracts of Employment with MD or WTD



→ Contract

↓

Shall be kept at its RO where Contract Not in writing; written memorandum setting out in terms.

\* Shall be open to inspection by any member of company

### Section - 191

Payment to Director for loss of office, etc. in connection with transfer of undertaking, property or shares.

→ If owing to transfer of Undertaking, property or shares.

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

## Section - 192

### Restriction on Non-Cash transaction involving Directors

Director of Co. or its Holding Co. or Subsidiary or Associates Co. or person connected with him

Company Acquires assets from Director for consideration on other than Cash

↓  
Acquiring Assets for consideration other than cash from Co.

- O/R shall be passed
- Director is a director of Holding Company  
↓  
OR in GM of Holding Company

## Section - 193

### Contract by OPC



Contract



Sole member cum Member

Enter into a written contract

'OR'

Terms of Contract are contained in MOA

'OR'

Recorded in the minutes of Board Meeting

Chapter - XIII

Appointment and Remuneration of Managerial Personnel

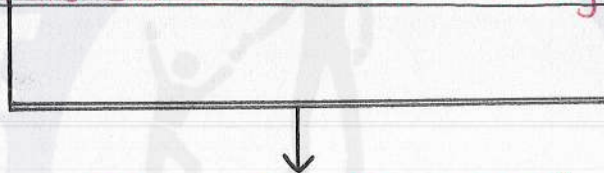
Section 196 - 205

Companies (Appointment and Remuneration of Managerial Personnel) Rules

Section - 196

Appointment of Managing Director,

Whole-time director or Manager



Managing Personnel

# Prohibition = 1 company = MD + Manager

# Term = WD | WTD | Manager = Max tenure 5 years } Not applicable on Govt. Co.

⊕

Re-appointment not earlier than 1 year before expiry of term.

# No company shall appoint or continue MD | WTD | Manager

If below age of 21 years  
or has attained the age of 70 years.

↓  
>70 yrs → SR  
OR  
OR + CG Approval

Undischarged Insolvent  
or has at any time been adjudged as an Insolvent

has at any time suspended payment to his creditors or makers or has at any time made a composition with them

'OR'

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

# Appointment : • BR pass  
• OR pass


→ If OR not pass


BM  $\xrightarrow{\text{acts} \rightarrow \text{valid}}$  GM

⊕

MR-1 Return in 60 days of Appointment

CG → Approval Needed → If Appointment is at variance to conditions of Sch V

No  shall be eligible for appointed as MD|WTD|Manager ;  
unless he satisfies following conditions :

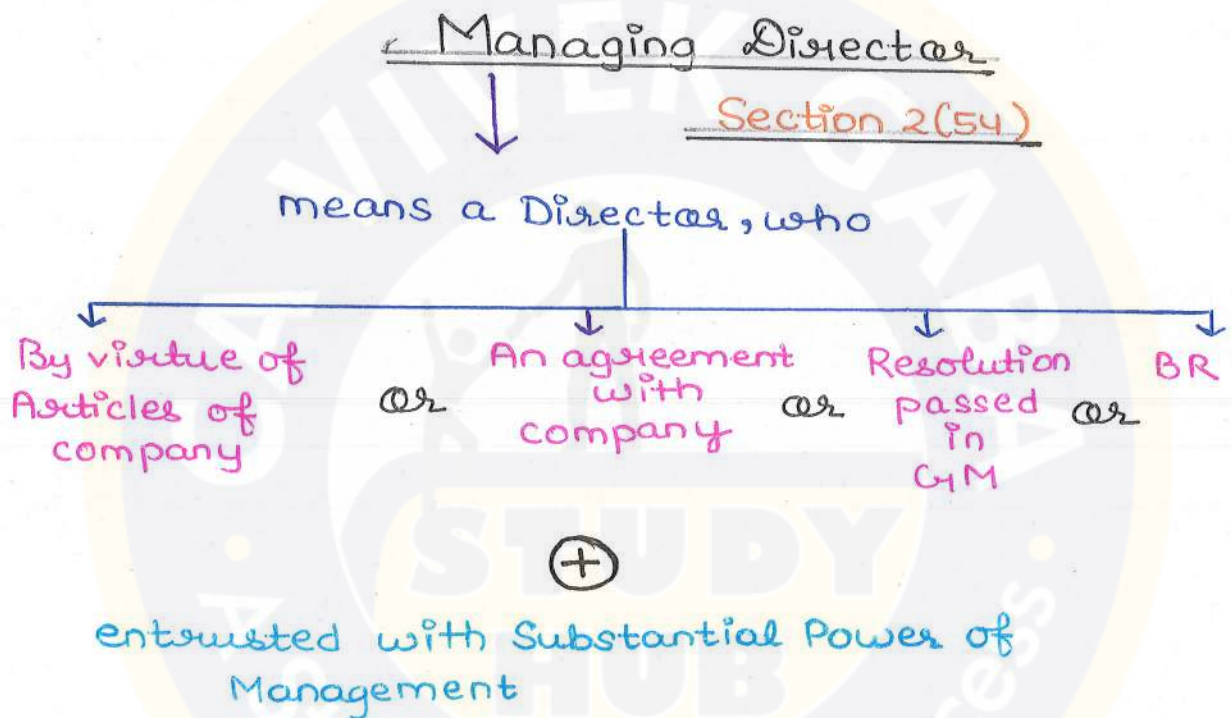
\*  → Not Sentenced to Imprisonment for any period. (OR)

Fine exceed ₹ 1000 for an offence under various Acts.

Stick figure → Not detained for any period under COFEPOSA Act.

Stick figure → Resident in India

Stick figure → Age same as provision previous.



→ can have more than 1 MD.

Includes;

Director occupied the position of MD by whatever name called.

## Section 2(53)

### Manager



→ means Individual



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

and includes ;

a director or any other person

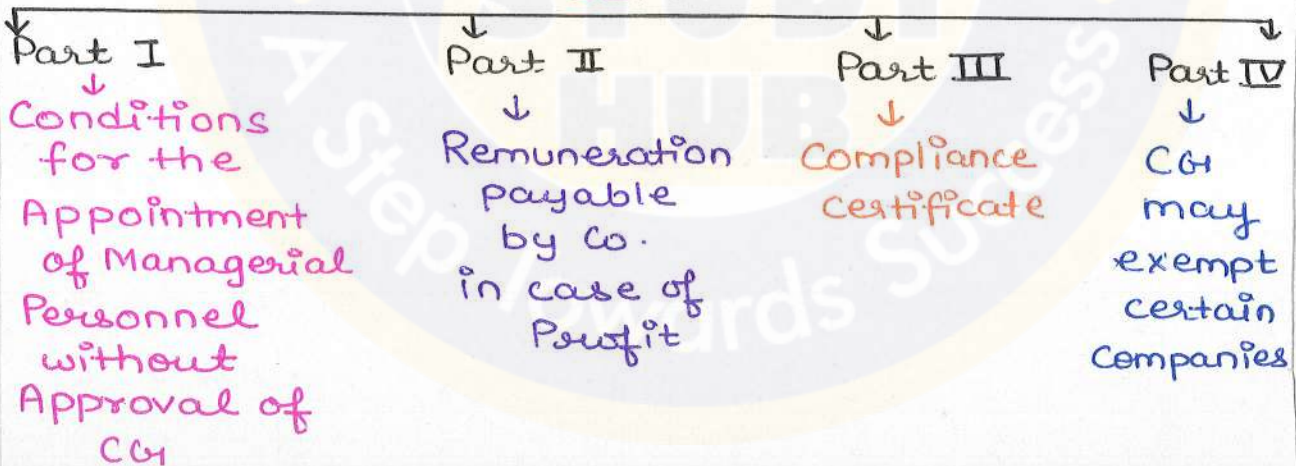


occupying the position of manager by whatever name called.

## Section - 197

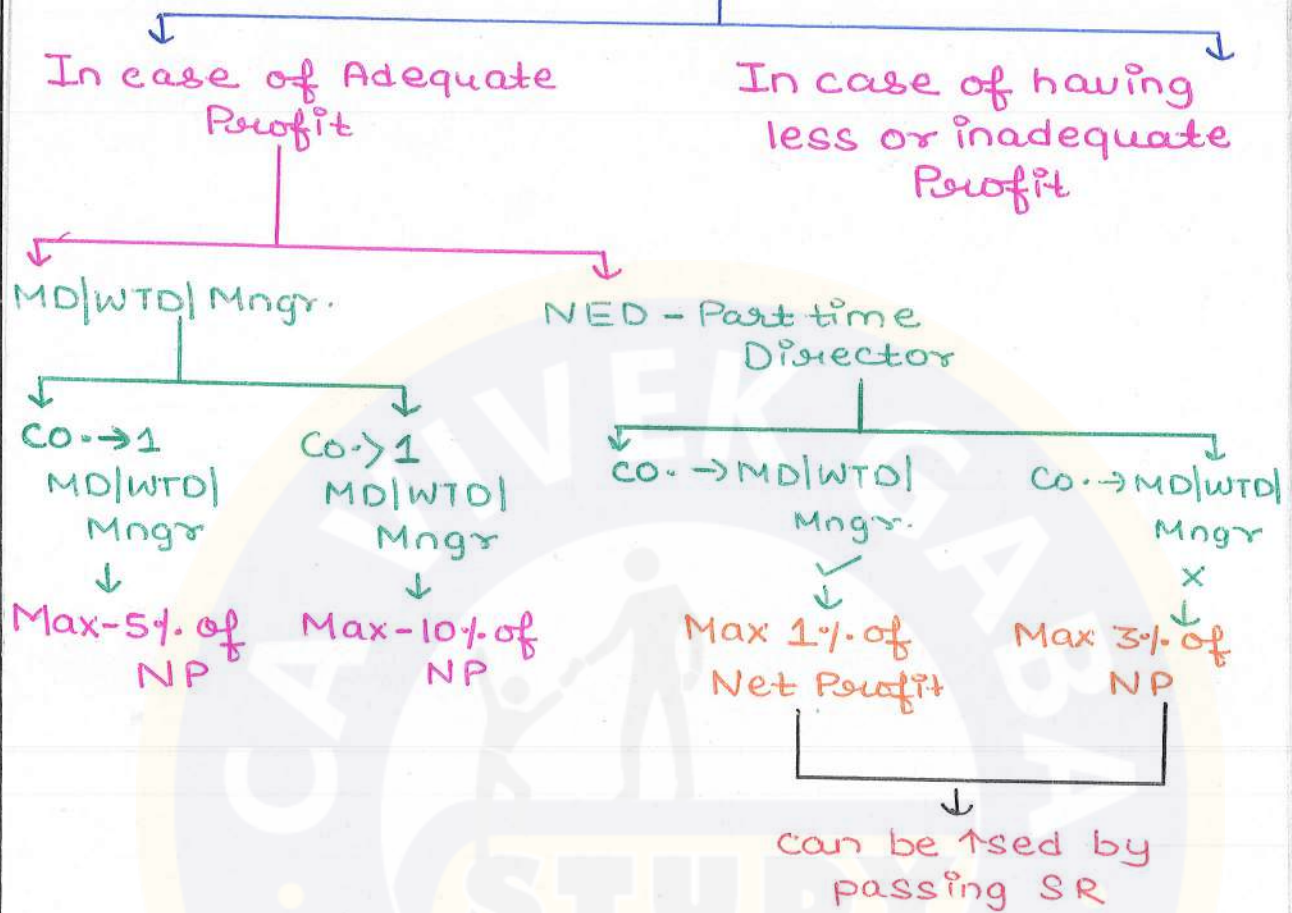
### Overall Maximum Remuneration

⊕  
Sch.V



## Managerial Personnel

↓  
11% of Net Profit



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

### # Max. Limit on Remuneration

↓  
Limit exclusive of sitting fee

↓  
upto 1 Lakh per BM.

# Remuneration {  
AOA  
BR  
OR

## Section 198

### Calculation for Profit

↓  
Net Profit of a company any FI shall be computed as per Sec 198

## Section 199

### Recovery of Remuneration in certain cases



→ Restates its Financial Statement



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

## Section - 200 [Omitted]

### CGI or Co. to fix limit with regard to Remuneration

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

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

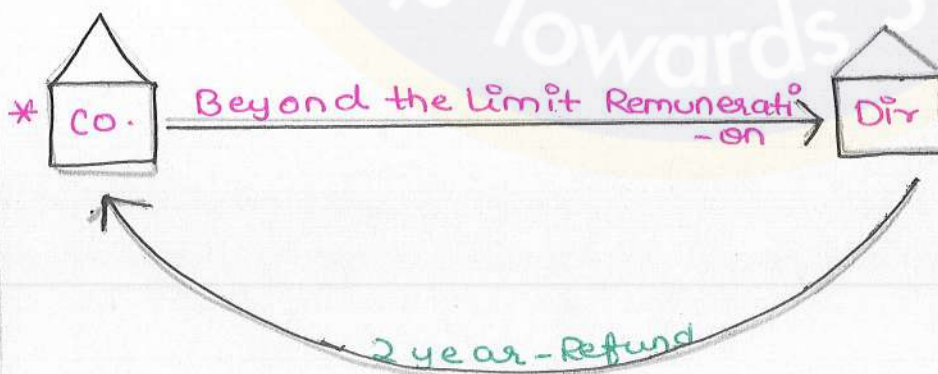
## Remuneration in case of Adequacy of Profit

### On the basis of Effective Capital

Effective Capital	Other Director	Remuneration [WOT MD Mngr]
Negation < 5 cr.	12 Lakh	60 Lakh per dir
> 5 cr - < 100 cr	17 Lakh	84 Lakh per dir
≥ 100 cr - < 250 cr	24 Lakh	120 Lakh per dir
≥ 250 cr	24 Lakh ⊕ 0.1% of excess of 250 cr	120 Lakh ⊕ 0.1% of excess of 250 cr

\* Company can pay Remuneration on exceeding this limit by SR.

\* Remuneration to MD|WTD|Manager shall include all Remuneration, except Professional Capacity



\* Whether Guarantee commission include in limit of 11% | 5% | 10%  
 ↓  
 NO

## Section-201

### Forms of and Procedure in relation to certain Applications

CGI → Approval → MR-2

Before ; Company → Members

General Notice → Newspaper Advertisement

## Section 205

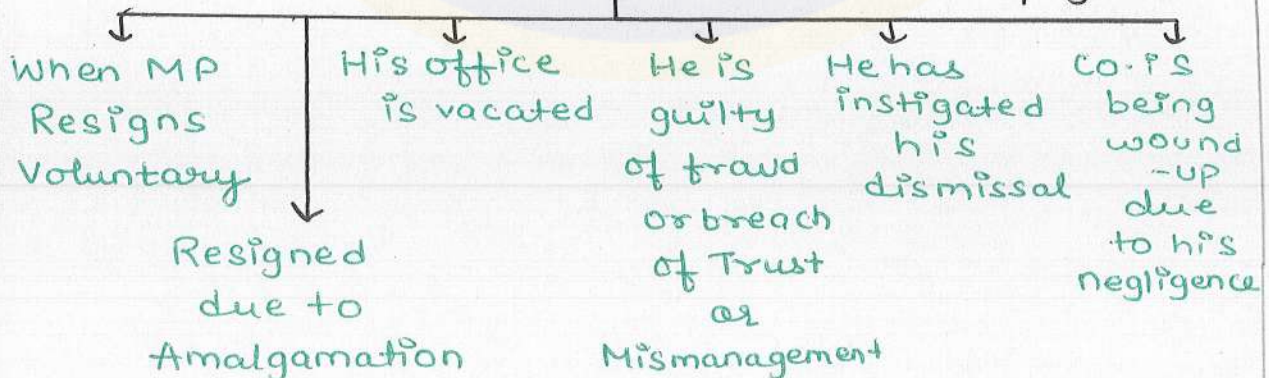
### Compensation for loss of Office of MD | WTD | Manager :

Such compensation is given only to MD | WTD | Manager for their Removal before tenure

Such compensation is given for an unexpired tenure but subject to max. 3 years

\* On the basis of Average Remuneration earned by him in IP3FY or such shorter period.

### Cases where No Remuneration is payable:



## Section -203

### Appointment of Key Managerial Personnel

KMP → Sec 2(51)



- M D
- WTD
- Manager
- CEO
- CFO
- CS
- Officers of Co. ⊕ 1 level below Rank of director
  - ⊕ Designation by Board as KMP ⊕ Whole time Employment
- Prescribed Person

## Section 203

Section 203

⊕

Rule - 8



Every Listed Co.  
or  
Every Public Co.  
Paid up Capital  $\geq 10\text{cr}$



have to appoint

↳ MD or WTD or

Manager or CEO

↳ CFO

Section 203

⊕

Rule - 8A



Every Listed Co.  
or  
Every Company  
PSC  $\geq 10\text{cr}$



have to appoint

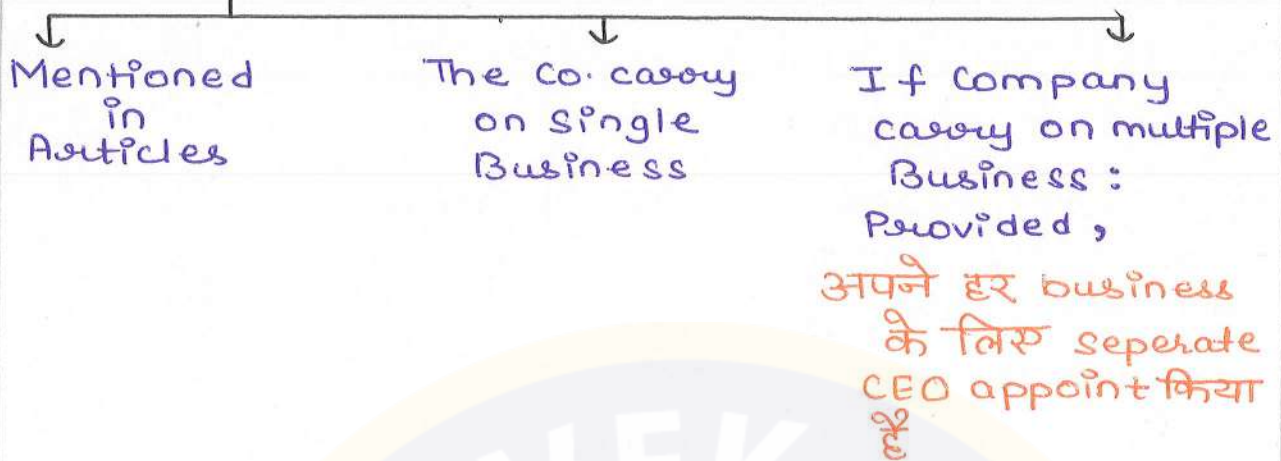
CS



Wholtime employ-  
ment of Company

\* Same person can not acts as Chairman & MD  
or Chairman & CEO.

## Exceptions



## \* Manner of Appointment



★ A whole time KMP shall not take office in other Company.

## Exception :

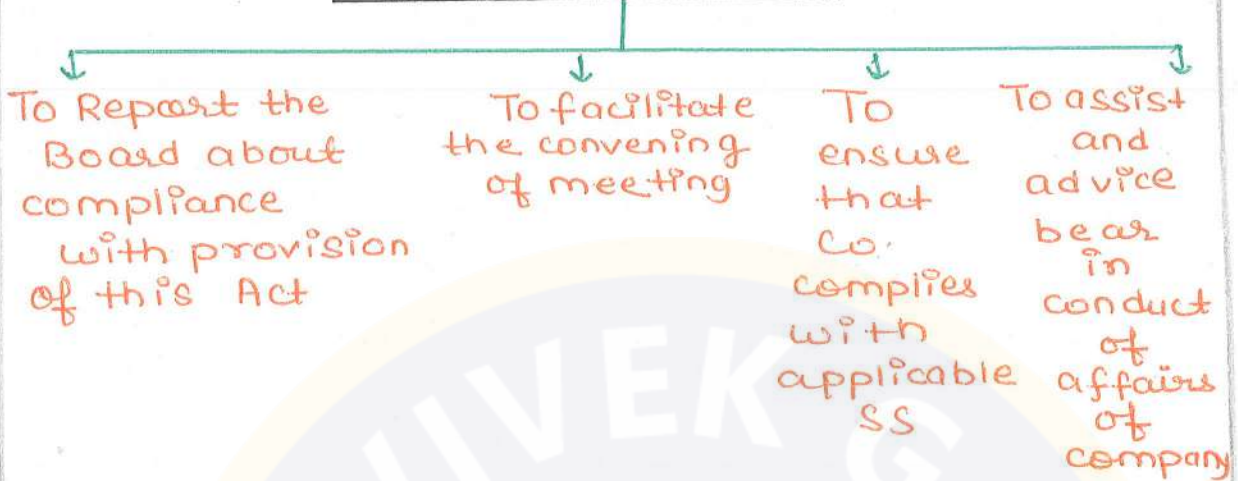
- ✓ In Subsidiary Company
- ✓ As a director in any other Co.
- ✓ As a MD, if he was a MD or Manager of 1 and not more than 1 Co [by passing Unanimous decision]

# Vacancy → Position of KMP

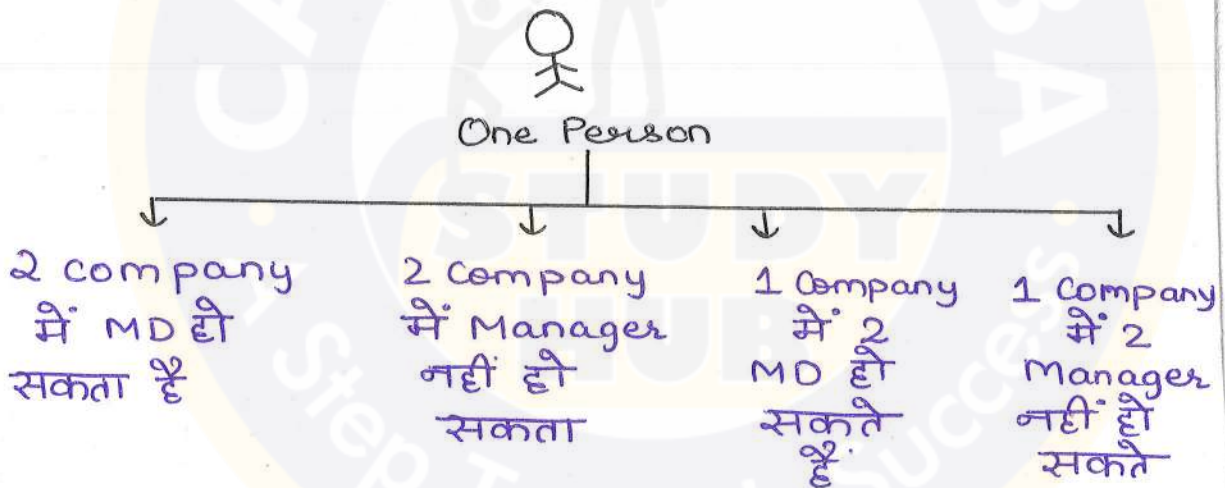
↓  
Fill vacancy within 6 month

## Section 205

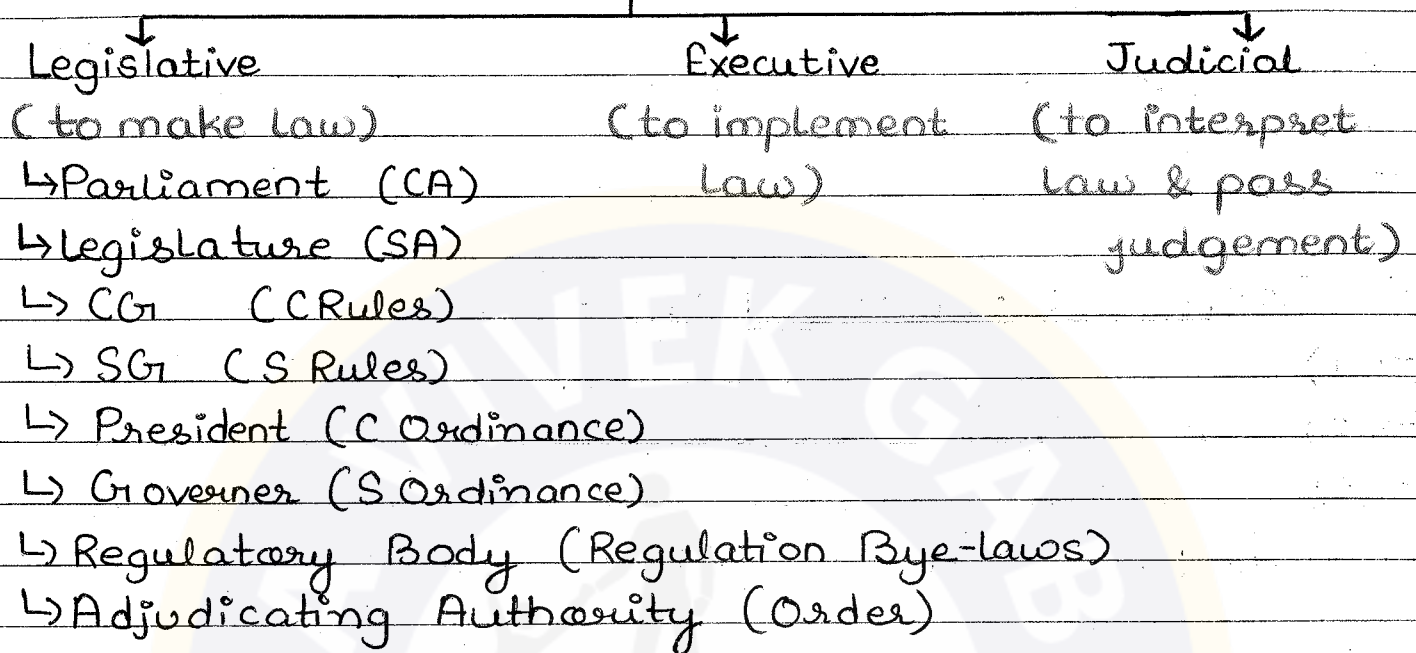
### Function of CS



### Some Basic Points



→ 3 Mechanisms | Bodies of Law



⇒ Website of MCA → [www.mca.gov.in](http://www.mca.gov.in)

⇒ Website of Official Gazette → [www.egazette.nic.in](http://www.egazette.nic.in)

★ CIN: Corporate Identification Number is a 21 digit alphanumeric code.

example: Reliance's CIN:

L 17110 MH 1973 PLC 019786  
 ↓ ↳ Industry ↓ ↳ Year ↓ ↳ Registration Code  
 Listed code State of Public Ltd. Company  
 Company Incorporation

★ A-246 read with schedule VII of Constitution of India has given law making power in 4 lists:

- Union list: Parliament
- State list: State Legislature
- Concurrent list: Both
- Residuary list: Parliament

Lecture 2:

Company Law Important Basic Concepts

(\*) Meetings :-

There are two types of General Meetings :

→ General Meeting (meeting of members)

→ Board Meeting (meeting of directors)

→ GENERAL MEETING TYPES -

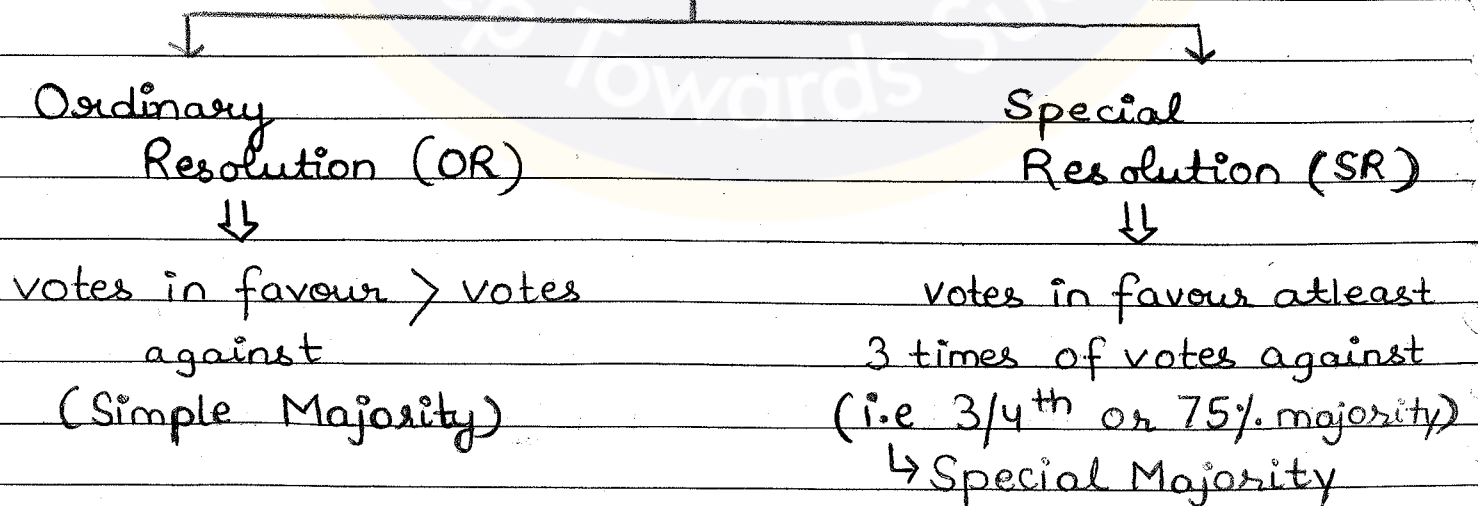
↳ a) Annual General Meeting : (AGM)

↳ b) Extra-Ordinary General Meeting : (EGM)

↳ c) Class Meeting : Its a type of particular EGM meeting held only for a particular class of members.

→ BOARD MEETING - It is the meeting of directors held atleast 4 times in a year (according to Calend-  
 -ary year). → [Section 173 onwards]

(\*) Resolutions :- Meetings are called to take decisions by passing the Resolutions.



(\*) Business Matters : There are 2 types of business matters :

↳ Ordinary Business : It contains 4 items only :-

[A] Consideration of Annual A/cs, Auditors Reports and Director Reports.

[B] Declaration of Dividend.

[D] Appointment of Director in place of retiring

[A] Appointment of Auditors & fixation of Auditors remuneration.

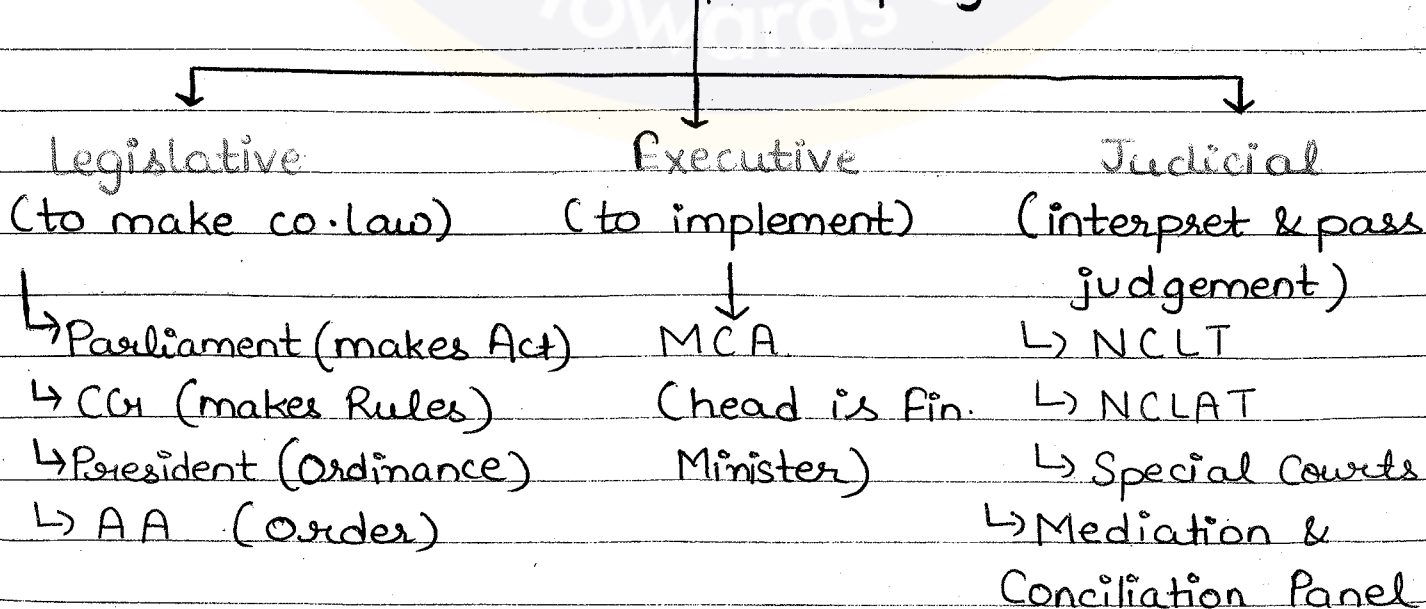
↳ Special Business : Apart from Ordinary Business most all items are covered under Special Business.

\* It is not mandatory that OB always require OR & SB always require SR.

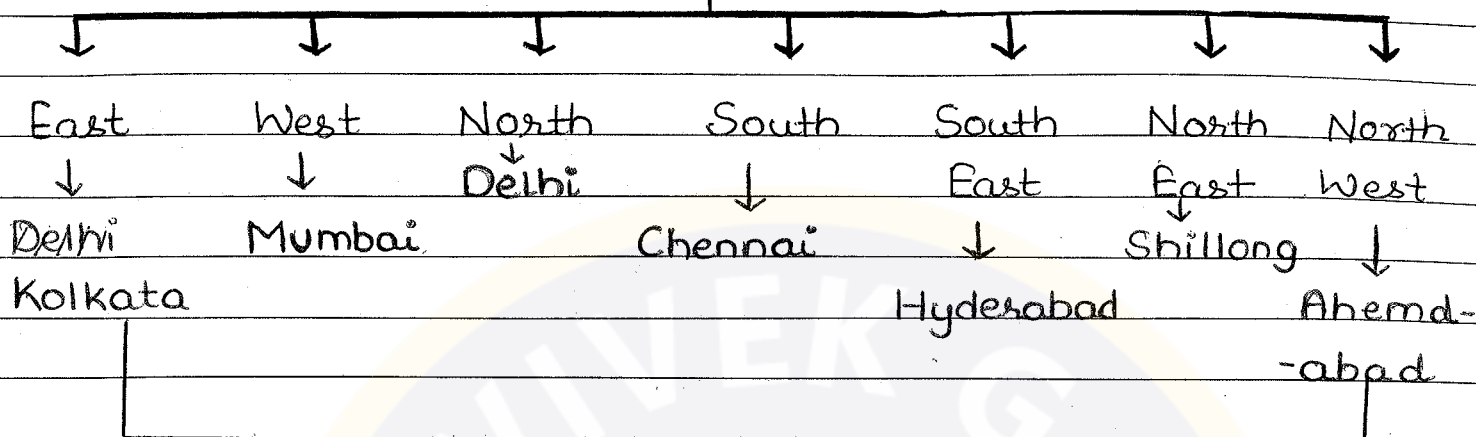
\* Ordinary Business (OB) i.e. ADDA can be transacted only in AGM.

However, SB can be transacted in any GM including AGM.

### ⇒ Machinery of Company Law



⇒ MCA has divided India into 7 zones & appointed Regional Director in each zone :-



7 Regional Directors

23 Registrar of Companies

↳ deals with form filling etc.



Central Registration Centre

↳ deals with incorporation of companies.

23 Official Liquidators

↳ deals with the liquidation of the companies.

## (\*) Types of Companies :-

a) On the basis of Members : One Person Company

OPC

Members

Directors

Min.

Max.

Min.

Max.

i) OPC

1

1

1

15

ii) Pvt. Co.

2

200

2

15

iii) Public Com.

7

unlimited

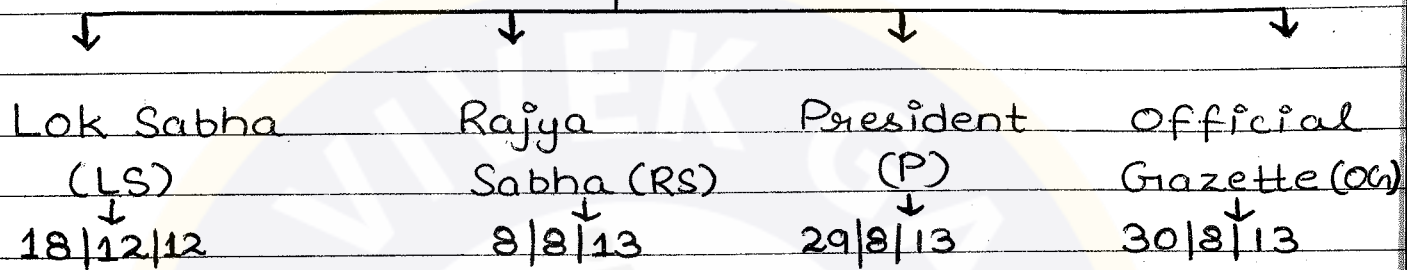
3

15

Note :- No. of directors can be increased by 15 by passing Special Resolution in General Meeting.

### Lecture 3 :

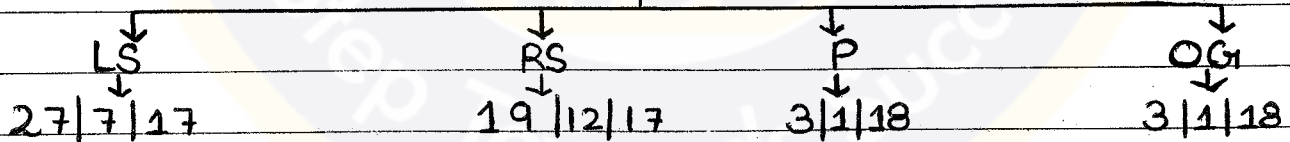
⊙ The Companies Act 1956 was repealed (obliterated/destroyed) by the companies Act, 2013



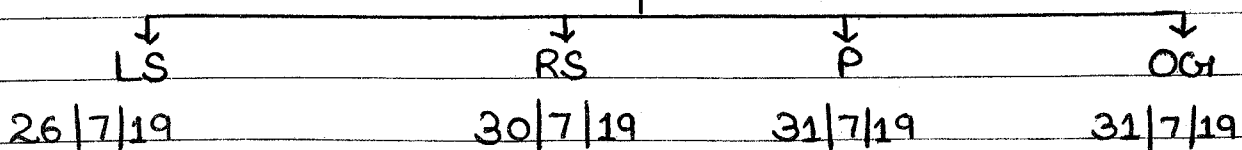
⊙ Amended by Companies Act (Amended) 2015



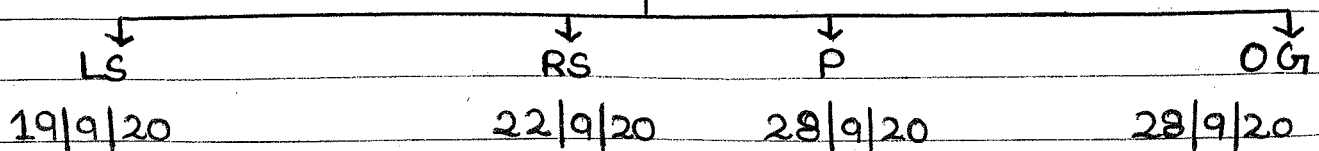
⊙ Amended by Companies (Amended) Act 2017



⊙ Amended by Companies (Amendment) Act 2019



⊙ Amended by Companies (Amendment) Act 2020



\* The Companies Act 2013 was enacted by following the recommendations of J.J IRANI Committee.

\* Reasons / Advantages of the Companies Act, 2013 :

- a. Laws has been made concise. Only 470 Section, 29 chapters, 7 schedules.
- b. Introduction of OPC
- c. Penalties & fines have been increased.
- d. Introduction of 'Whistler Blower Mechanism'.
- e. To enhance Corporate Governance i.e. to make directors more accountable and transparent.

\* Drawbacks :

- a. Amendments keep on coming.
- b. Defination of relative made narrower.

\* As per Section 2(77) of the Companies Act 2013, Relative means,

- a. Husband & Wife
- b. Members of HUF
- c. Such other persons as may be prescribed.

Rule 4 prescribes the following persons :

- i. Father (including step father)
- ii. Mother (including step mother)
- iii. Brother (including step brother)
- iv. Sister (including step sister)
- v. Son (including step son)
- vi. Daughter
- vii. Son's wife
- viii. Daughter's husband

\* Company Law is the matter of UNION LIST  
Entry no. 43.

## \* ESSENTIALS OF VALID MEETING

\* Properly  
Convened



- a. Proper Notice to
- b. Proper Person in
- c. Proper Time by
- d. Proper Authority (BOD)

\* Properly  
Constituted



- a. Quorum  
[Sec-103]
- b. Chairperson  
[Sec-104]

\* Properly  
Conducted



Meeting must be  
conducted by  
complying all  
provisions.  
[Sec- 88 to 122]

# Management & Administration

## - Section 88-122

### SECTION - 103 - QUORUM

↳ Minimum number of members required to be present in the meeting.

↳ Meeting to constitute valid general meeting.

↳ No quorum no meeting.

### ⇒ Quorum in Public and Private Meeting

#### → In Public Company :-

upto 1000 members - Minimum 5 members

1001 to 5000 members - Minimum 15 members

Members exceeding 5000 - Minimum 30 members

#### → In Private Company :-

Minimum two members personally present or the numbers mentioned in Article of Association

↳ whichever is higher.

∴ Personally Present : Proxies are not counted for the purpose of quorum.

⇒ Representative of Governor, President or Body corporate is treated as member.

⇒ Joint shareholders are counted 1 for purpose of Quorum.

⇒ Interested members are counted for the purpose of quorum but can not vote on that particular businesses.

⇒ One person can be the representative of more than one body corporate he will be counted separately if one more individual present at the meeting.

### \* Adjournment of meeting :

When required quorum has not present in the meeting then the meeting will be adjourned for same time, same place, same day in next week.

∴ But, when meeting is called (the time)

↳ 30 minutes wait has been done for the quorum on the original meeting day.

<u>For example</u> :	Time	Day	Place	Week
1 <sup>st</sup> Meeting →	11am	Tuesday	RO	1 <sup>st</sup>
Adjourned Meeting →	11am	Tuesday	RO	2 <sup>nd</sup>

Note :> When chaos has been created at the meeting ~~x~~ then meeting will be adjourned again.

∴ BOD have the power to change the day, time & place for the adjourned meeting.

### \* Meeting on the Requisition : Section 100

EGM can be held on the requisition by the members of Company who held  $1/10^{\text{th}}$  voting power or  $1/10^{\text{th}}$  paid up share capital.

But, if quorum did not present at the requisitioned meeting after waiting of 30 minutes then the particular meeting shall stand cancelled.

\* At least 3 days prior notice should be given before Adjourned meeting.



4) Notice must be served to 1<sup>st</sup> named joint holder.

5) If a member requests to serve the notice in a specified mode, Co. is not bound unless the member has deposited the cost of serving the notice.

### PROPER TIME

⇒ Notice must be served at least 21 clear days before meeting. While computing 21 clear days, the date of service of notice & date of meetings both are excluded.

If notice served by Advertisement or Email :

→ the date of sending adv / e-mail is the date of service. (deemed to be served on same day)

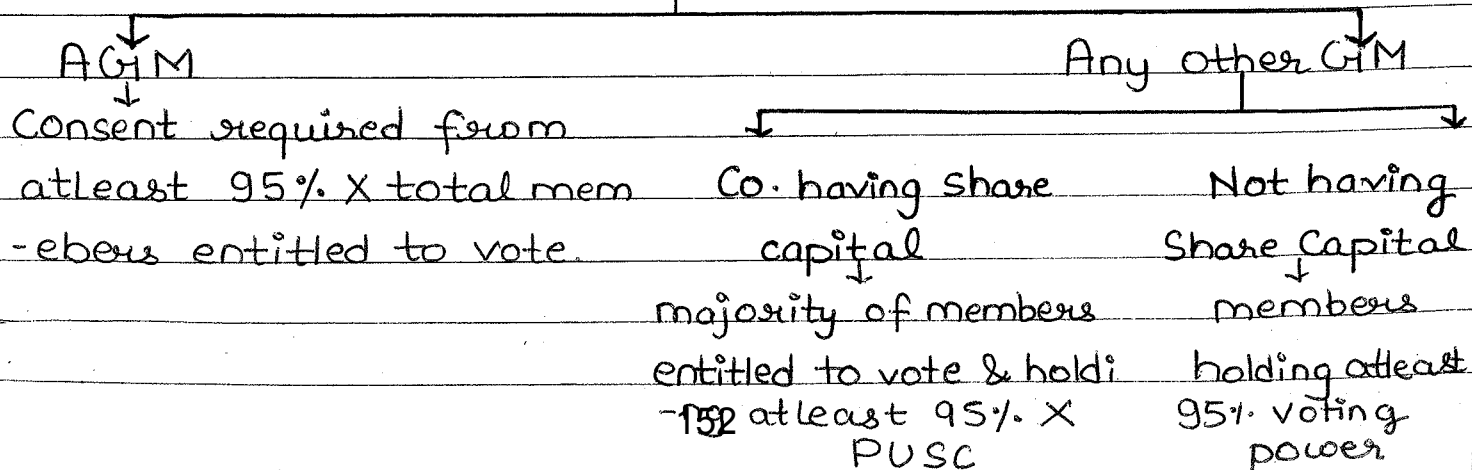
Shortcut : Add 22 days in the date of service.

If notice served by Post :

→ notice is deemed to be served on the expiry of 48 hours from dispatch of post.

Shortcut : Add 24 days in the date of service.

### \* Calling G.M at a shorter notice :



## PROPER AUTHORITY

BOD by passing BR at BM.

### Case Laws:

1. Al Amin Seatrans Ltd. Vs Vessel Loyal Bird

It is held in this case that if 1 director or any secretary or any person serves the notice then it is invalid because the proper authority is BOD.

2. Hooper Vs Kerr Stuart & Co.

It was held in this case that if notice was sent by an authorised person & then if it gets ratified i.e. confirmed by BOD then the notice shall be valid.

Example: Meeting has been called to discuss :

- |      |   |                   |
|------|---|-------------------|
| 1. A | } | ORDINARY BUSINESS |
| 2. D |   |                   |
| 3. D |   |                   |
| 4. A |   |                   |

5. Capital Reduction } SPECIAL BUSINESS

Suppose there are 100 members — [ 90 Eq. Shareholder  
10 Pref. Shareholder

Now to discuss first 4 items, consent will be required from  $95\% \times$  total members entitled to vote.  
 $= 95\% \times 90$  [∵ Pref. shareholder are not entitled to vote on these matters]  
 $= 86$  members.

However, for 5<sup>th</sup> item it shall be :  $95\% \times 100$  members [∵ even Pref. shareholders can vote on matters which affect them].  $= 95$  members

If in above example 4 Equity shareholders are having calls in arrears & as per Articles they can't vote then answer will be :

$$\text{For 1}^{\text{st}} \text{ 4 matters} = 95\% \times (90 - 4) = 82 \text{ members}$$

$$\text{For 5}^{\text{th}} \text{ matter} = 95\% \times (100 - 4) = 92 \text{ members}$$

Suppose MEPL is giving a contract to X Ltd.

Now, if MEPL's promoter/director/manager/KMP holds atleast 2% PUSC of X Ltd. then MEPL must mention it in explanatory statement.

## PROXY (Section - 105)

⇒ As per Section 105 of the Companies Act 2013,

Any member who is entitled to vote & attend at the meeting of company shall also have a right to appoint ANY PERSON as a proxy to attend & vote on his behalf.

⇒ Proxy can not speak at the meeting and can vote only by Poll.

↳ This means proxy can vote by Poll only Not by show of hands.

⇒ Vote by Poll - U/S 109

Voting Rights given on the basis of no. of shares held by that member.

$$1 \text{ share} = 1 \text{ vote}$$

Example : A have 10,000 share of a co. which total Shares are 10,00,000 ⇒ A voting power =  $\frac{10,000 \times 100}{10,00,000} = 10\%$

⇒ Proxy can also vote.

∴ Polling paper given in form MGT-12.

→ To appoint a Valid Proxy form MGT-11 has to be submitted at companies Registered office, by members at least 48 hours before G.M.

→ Original shareholders can himself attend and vote before the Proxy (his proxy) voted.



Case laws :-

Cousins Vs. International Brick Co. Ltd.

**Note:** In case of Sec. 8 Company, Proxy present shall be member of Sec 8 company.

\* Vote by Show off Hand :

→ All members given Equal Voting Power i.e. 1 vote each.

⇒ 1 member = 1 vote

→ Proxies can not vote through this method.

→ No such forms.

**Note:** If Shareholders did Calls in Arrear and, AOA authorised then such Shareholder shall not appoint Proxy.

★★ A person can be the Proxy of maximum 50 mem at a time if their provided PUSC should be 10% maximum.

## SECTION 102 : Explanatory Statement

\* It is required to be annexed with Notice for every Special business.

⇒ Explanatory Statement will contain :

- |   |  |   |
|---|--|---|
| <p>1. Meaning, Scope, Implication of Special Business</p> | <p>2. Disclosure of Interest whether (financial or otherwise) in Special Business of :</p> <ul style="list-style-type: none"> <li>i. Every DIR, manager</li> <li>ii. KMP ⊕</li> <li>iii. Relatives of Above</li> </ul> | <p>3. If any company entering into transactions with other company whose atleast 2% PUSC is held by Promoters, DIRs, Manager / KMP of earlier company (former co.), then it must be mentioned in the Explanatory Statement.</p> |
|---|--|---|

Questions : Is Explanatory Statement required for Appointment of Director :

Answer : Appointment of Director

In place of Retiring Director  
 ↓  
 ORDINARY BUSINESS  
 ↳ here not required

Fresh Appointment  
 ↓  
 SPECIAL BUSINESS  
 ↳ here required

## Important Note :

1. Private Company + IFSC Company have been exempted from Sec 101 to 107 & 109 if they make their own provision in Articles of Association.
2. IFSC Co. are Indian co. which provide financial services to foreign investors.
3. For Ordinary Business [ADDA] Explanatory statement - t need not be annexed.

## SECTION 96 : ANNUAL GENERAL MEETING [AGM]

∴ Every Company other than OPC shall hold/call its AGM and GAP between 2 AGMs shall be maximum 15 months.

i.e. Time limit of AGM conduction

↓  
within, 15 months  
from last AGM

OR

↓  
within 6 months  
from end of FY.

↓  
whichever is earlier

Example : ↴

Compute AGM due date of FY 21-22 ; if last AGM hold on 1.5.21.

Ans: 15 months from  
1.5.21 ∴ 1.8.21

OR

6 months from end of  
FY : 31.9.21

↓  
whichever is

earlier i.e. 1.8.21

★ Provided that, 1<sup>st</sup> AGM of Co. after incorporation shall be held within 9 months from end of FY.

★ Provided further that, If 1<sup>st</sup> AGM held within the above time limit, no need to conduct any AGM in year of its incorporation.

⇒ No Extension in 1<sup>st</sup> AGM.

⇒ Extension for Subsequent AGM for unusual events.

\* Company may apply to ROC for extension of due date of Subsequent AGM (other than 1<sup>st</sup> AGM) in form GNL-1 on grounds of Special Reason (i.e. reason beyond human control).

AND

⊙ ROC can grant Maximum 3 months extensions.

★ Day, Time & Place of AGM

Day	Time	Place
Any day except National Holiday. (On Sunday AGM can be hold)	Business Hours 9am - 6pm	At Registered Office OR within same C/T/V in which registered office situated.

⇒ Exemptions given to :

→ Sec 8 Company : After 100% members consent, can conduct its AGM any place in India.

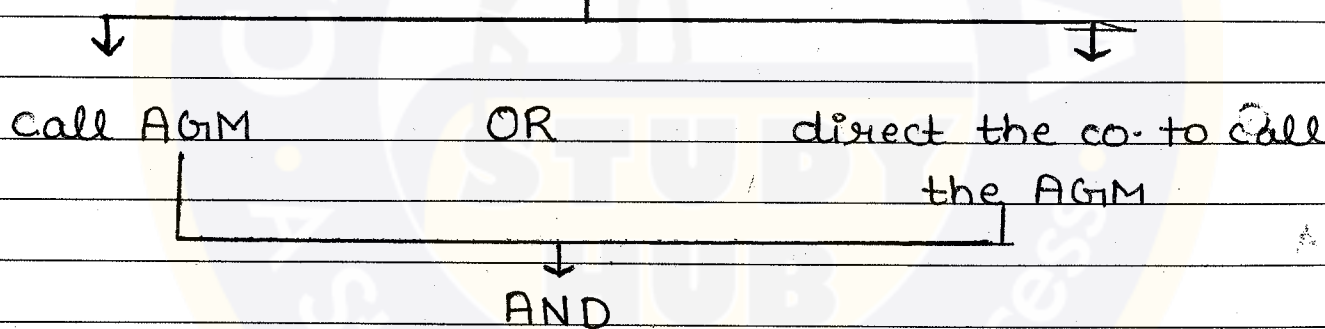
→ Unlisted Company : can conduct its AGM on any day / time / place as its members may decide.

→ Govt. Company : can conduct its AGM at any place as decided by the Govt. (Central Government)

### SECTION - 97 : NCLT's power to call AGM :

If company defaults in calling AGM U/S 96, then Any member may apply to NCLT ; and either

NCLT may



Give directions (order) that even 1 member present in person / proxy shall constitute a valid AGM.

### SECTION 100 : Extraordinary General Meeting (EGM)

- ⊙ BOD may whenever it deems fit can call an AGM. (Member or members) OR
- ⊙ Members holding at least  $1/10^{\text{th}}$  of PUSC / voting power can make a written request at Companies Registered Office to call EGM. Provided members shall disclose the reason.

● BOD shall within 21 days take steps to call meeting.

↳ within 21 days → from date of receipt of written request.

↳ take steps → send Notice

● So that EGM is conducted within 45 days, failing which it means if BOD refuse to call EGM, Requisitionists can call the EGM themselves within 3 months.

Note: All these days (21, 45, 3 months) are counted from date of Receipt of Written request.

Ques: Can a single member holding 10,000 shares out of Co's. 1,00,000 shares request EGM?

Ans:- Yes because he is holding at least  $1/10^{\text{th}}$  Paid up Share Capital of Company.

$$\Rightarrow \frac{10,000}{1,00,000} = \frac{1}{10}$$

Ques: What if BOD calls an EGM but only a member alone is present? Can it be adjourned?

Ans: No, EGM will be cancelled.

Ques: Will members requesting for EGM have to disclose the reason of it?

Answer: Yes

Note: IFSC can conduct its AGM even outside India.

⇒ Any reasonable expenses incurred by the requisitionists in calling EGM shall be reimbursed by the company.

AND

Sum so paid shall be deducted from fees / Remuneration payable to Directors who were in default.

→ Place of EGM:

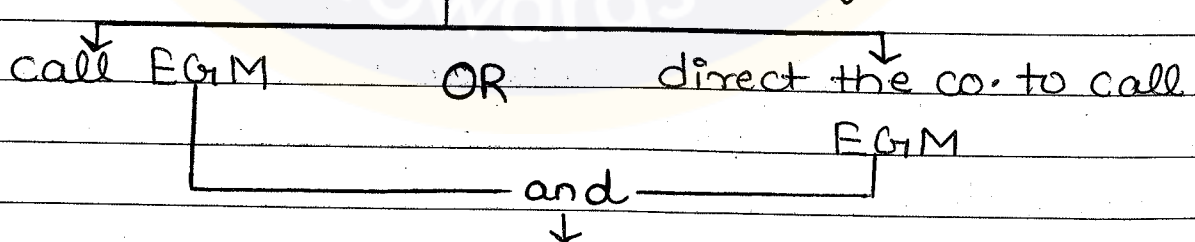
\* EGM of Co. (called by BOD) shall be held at Any place in India.

Exception: If it is WOS of a co. which incorporated o/s India then Any place in world.

### SECTION 98 : NCLT's Power to call EGM

If for any reason its impracticable to call EGM of co. then;

NCLT may, Either Suo Moto OR on the application of any director / member may



give order that even 1 member present personally or by proxy shall constitute a valid EGM.

SECTION 99 : Punishment for violation of  
Sec- 96, 97 & 98 :

In case of default u/s 96 / 97 / 98



Penalty on Company ⊕ Officer in default



₹ 1 lac + ₹ 5K per day till the default continues.

Difference between AGM & EGM

Basis	AGM	EGM	
		called by BOD	called by Requisitionist
Place	RO or C/T/V in which RO is situated Unlisted Co. : Any place in India with consent of 100% members ↳ Section - 96	Any place in India. WOS of the Foreign co: Any place in World. ↳ Section - 100	RO or C/T/V in which RO is situated. [Rule 17 of the Companies Act Administration Rules]
Day	Any day except National Holiday. (NH) [Sec-96]	Any Day	Any day except NH. [Rule-17]
Time	9am - 6pm [Sec-96]	Any time	9am - 6pm [SS2]

Note :- As per Rule 17, when EGM is called by the Requisitionists, then explanatory statement is not required to annexed with the Notice.

## SECTION 104: Chairman of Meetings

Chairman of Board Meeting shall be Chairman of General Meeting.



But if CM of BM is not present in GM within 15 mins  
(OR) if present but does not want to become Chairman of General Meeting, then



Director amongst themselves shall appoint any director to be Chairman of General Meeting.



But if no director is present within 15 minutes (OR) if present but do not want to be Chairman, then



Chairman shall be appointed as per Articles of Co.



But if AOA is silent, then



Members present shall elect 1 among themselves as Chairman by show of hands



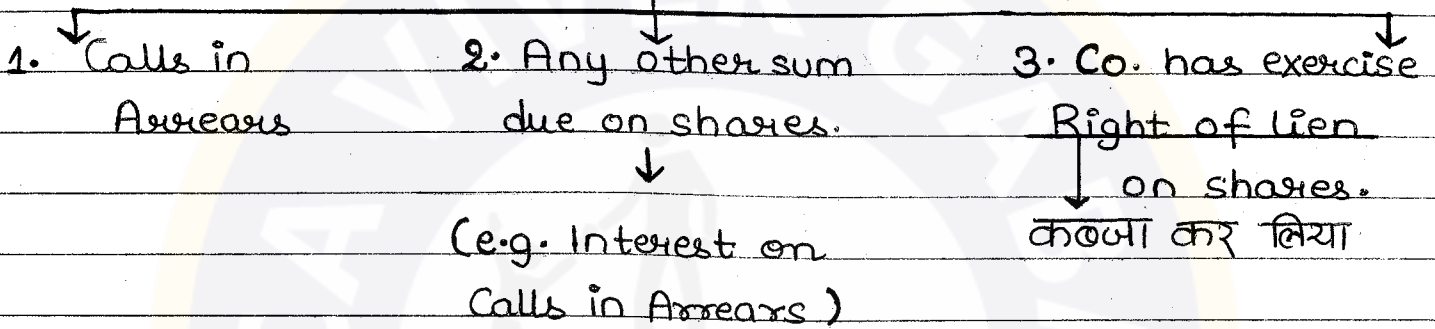
But if member(s) holding  $1/10^{\text{th}}$  of PUSC / Voting power  
(OR) Paid up Capital ₹ 5L then they can demand Poll,  
then;



Chairman shall be elected by poll.

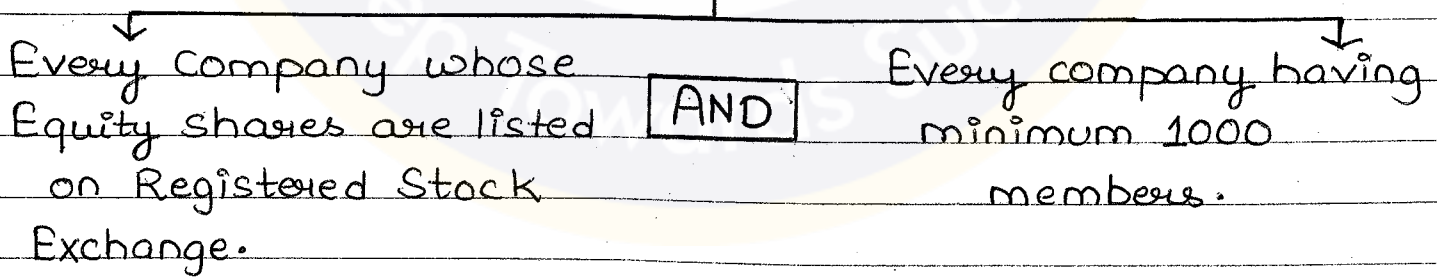
SECTION - 106 : Restriction on Voting Right of Shareholder

Company can restrict shareholders voting right by mentioning in its AOA's, the following ground of Restrictions :-



SECTION - 108 : E-Voting

Applicability



Analysis :- Is Sec 108 applicable on all listed Companies?

Answer :- No, Its no applicable on the companies whose debentures are listed. Sec 108 shall apply only on those listed companies whose equity shares are listed on RSE.



5. Immediately after dispatch of notice but at least 21 days before G.M., shall be published in two newspapers :

↓  
English Language

In English Newspapers having nation wide circulation

↓  
Regional Language

In Regional Newspapers having district wide circulation in the district in which RO of company is situated.

6. Notice published in newspaper shall contain :-

- a. Statement that Remote E-voting has been provided.
- b. Members who do not want to vote by Remote E-voting can Attend & vote at meeting.
- c. Members who voted by Remote e-voting can still attend the meeting but can not vote again or change the vote.
- d. Time schedule
- e. Cut off dates
- f. Steps to generate login id & passwords if not yet received.
- g. Details of person to solve grievances.

7. Time :- Remote - Evoting facility shall remain open for atleast 3 days and close exactly at 5 pm immediately a day before the date of meeting.

8. Members :- Who have voted by remote e-voting can still attend meeting but can not vote or change their vote.
9. Block :- Remote E-voting facility shall be blocked exactly at 5 pm immediately preceding date of meeting.
10. Appointment of Scrutinizer :- BOD of a company shall appoint a scrutinizer to count the votes and he shall be either CA/CS/CMA in practice or Advocate or any other person as BOD may deem fit.
11. Function of Scrutinizer :- He should be willing to function and count the votes. He can appoint a person who is not in employment of company to help him.
12. Role of Chairperson : Chairperson will allow the members present in meeting to vote if they had not voted through remote e-voting.
13. Counting of Votes : Scrutinizer shall first count the votes of meeting and then votes of remote e-voting and submit his report to Chairperson within 3 days of meeting in form no. MGT-13.
14. Access to details of Votes : will remain only with scrutinizer until he submits his report to the Chairperson.

15. Maintenance of Register : Scrutinizer shall maintain a register showing total votes cast in favour & votes against.
16. Self Custody of Register : Will be the duty of Scrutinizer until he hands over it to the Chairperson.
17. Result of Voting : will be declared by Chairperson and also published on notice board of company & website if any.
18. Date of Passing Resolution : will be the date on which meeting took place.
19. Resolution for which remote e-voting done : cannot be withdrawn.

### SECTION-110 : Postal Ballot

↳ Read with Rule No. 22

\* It means a company will send a draft resolution to all its members either by post or courier or e-mail giving them 30 days time to reply back with their assent or dissent vote.

\* CG has prescribed following 10 matters to be compulsorily discussed by Postal ballot by all the companies except :

- i. One Person Company
- ii. Company having upto 200 members.

⇒ 10 matters which have to be compulsorily discussed through Postal Ballot :

- i. Shifting of RO beyond local limits of C/T/V.  
↳ Section 13.
- ii. Changing Object Clause of Company.  
↳ Section 13
- iii. Changing the object which was mentioned in the Prospectus in case of Public issue & money raised from such issue is still unutilised.  
↳ Section 13.
- iv. Issue of shares with differential rights.  
↳ Section 43
- v. Variation of shareholder's rights  
↳ Section 48
- vi. Buyback → section 68
- vii. Conversion of Public Co. into Private Co.  
↳ Section 14
- viii. Appointment of small shareholder director.  
↳ Section 151
- ix. Sale of Undertaking (important branch)  
↳ Section 18D(1)(a)
- x. Loan / Investment / Guarantee / Security given by Co.  
↳ Section 186(3)

\* Any co. may discuss any matter by way of Postal Ballot except following 2 :-

- a) Ordinary business i.e. ADDA
- b) Matters in which Auditor / Director have Right to be heard.

\* The provision of Rule 20 shall mutatis mutandis (as near as possible) apply in case of Postal Ballot also.

\* Difference between E-voting & Postal Ballot :

E-voting	Postal Ballot
I. It is governed by Sec. 108 and read with Rule 20.	It is governed by Sec. 110 and read with Rule 22.
II. General Meeting will take place.	General Meeting will not take place.
III. Applicable on : i. every co. whose eq. share are listed on RSE. ii. every co. having minimum 1000 members.	IV. 10 matters prescribed by CG to be discussed by postal ballot applicable on all companies except : i. OPC ii. co. having upto 200 members
IV. Scrutinizer will count votes within 3 days.	Scrutinizer will count votes within 7 days.

\* SECTION-194 : OR and SR

Ordinary Resolution : Votes in favour must be more than votes against.

Special Resolution : Votes in favour atleast 3 times of votes against.

SECTION 111 : Circulations of Members Resolution

Member(s) holding at least 1/10<sup>th</sup> of PUSC or voting power

Give writt<sup>n</sup> - en Notice to

COMPANY

Now co. will decide whether to circulate it or not.

Place of deposits

→ RO

→ signed by all Requisitionists

→ along with the cost of forwarding it to the other members.

Notice proposing a new Resolution

Notice containing any objection / other matters

At least 6 weeks before AGM

At least 2 weeks before any GM

If co. is of the opinion that member doing it for needless publicity or defamation then co. will apply to CG (RD) for its approval to not to circulate

Otherwise Circulate

RD approves  
 Don't Circulate

RD disapproves  
 171 Circulate

SECTION - 117 : Resolutions to be filed with ROC

As per Sec 117, Co. shall submit form MGT-14 to ROC within 30 days of passing following resolutions :-

- i. Passing SR in GM
- ii. Passing any resolution in GM Class Meeting.
- iii. Any resolution requiring consent of 100% members.
- iv. Board Resolution to appoint or re-appoint MD or any change in the terms of his appointment.
- v. Voluntary Winding Up.
- vi. Matters U/s 179(3).

Exemptions :- 1. IFSC Co. instead of 30 days will file MGT 14 within 60 days.

ii. Pvt. Co. & IFSC Co. are not required to file MGT 14 in matters U/s 179(3).

\* Penalty U/s 117 for contravention :

Amendment

Company  
 ₹ 1 lac + 500/day  
 but subject to maximum  
 of ₹ 25 lacs

Officers in default  
 ₹ 50,000 + 500/day  
 but subject to  
 maximum ₹ 5 lacs.

SECTION-118 : Minutes

Minutes refer to the decision and proceedings that took place in the meeting.

<u>Basis</u>	<u>Minutes of /</u>	
	<u>G.M</u>	<u>Creditor's Meeting</u>
Time limit of Preparation	within 30 days of conclusion of meeting.	<u>Minutes of /</u> <u>BM</u> <u>Committee Meeting</u> within 30 days of conclusion of meeting
Time limit of Signing	30 days of conclusion of meeting	No time limit
Signing Authority	CM of that G.M but in case of his incapacity by a Director authorized by BOD.	CM of that BM but in case of his incapacity CM of next BM.
Time limit of Preservation	Permanently	Permanently
Custody	CS or any Director authorized by BOD	CS or any Director authorized by BOD.
Place where it will be kept	RO	Any place in India

Note :- Minutes must be maintained in a bound book but if its recorded in loose sheets then it must be

binded by the Company.

SECTION - 88 : Register of Members

Company having  
Share Capital



MGT-1

Company not having  
Share Capital



No form



But will prepare :

- Name of member
- Address
- Contact
- E-mail
- PAN
- Father/Mother/Spouse name
- Guardian's Name
  - ↳ in case of Minor
- CIN
  - ↳ in case of Body Corporate
- Date of becoming member
- Date of cessation of member

⇒ Time limit of making entries in ROM :-

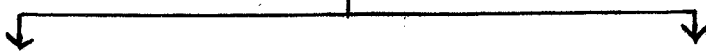
↳ within 7 days of allotment or transfer approved by BOD / Committee.

⇒ Place where ROM kept :

ROM shall be kept at its Registered Office (RO).



But by passing SR in GIM it can be kept at :



In same C/T/V

where RO is situated

At any place in India

where > 1/10<sup>th</sup> of total members Reside.

⇒ Index in ROM is :-

↓  
Mandatory  
↓

If company has  
≥ 50 members

↓  
Optional  
↓

If company has  
< 50 members

\* If Shares / Debentures / Securities are Pledged then such information also be recorded in RESPECTED REGISTERS.

\* Form No. MGT-2 is of Register of Debenture holder / any kind of Security holder.

### FOREIGN REGISTER

↓  
can be kept in foreign country by company

↓  
If authorised by  
AOA of Company.

↓  
Company having its  
members in that foreign  
country.

⇒ MGT-3 shall be filed by company to ROC within 30 days of :

(i) Opening of  
Foreign Register

(ii) Change of  
Address of  
Foreign Register

(iii) DISCONTINUAN  
- CE of Foreign  
Register

⇒ Within 15 days of Any changes made in foreign Register company shall inform at its Registered Office.

\* Penalty for Contravention :

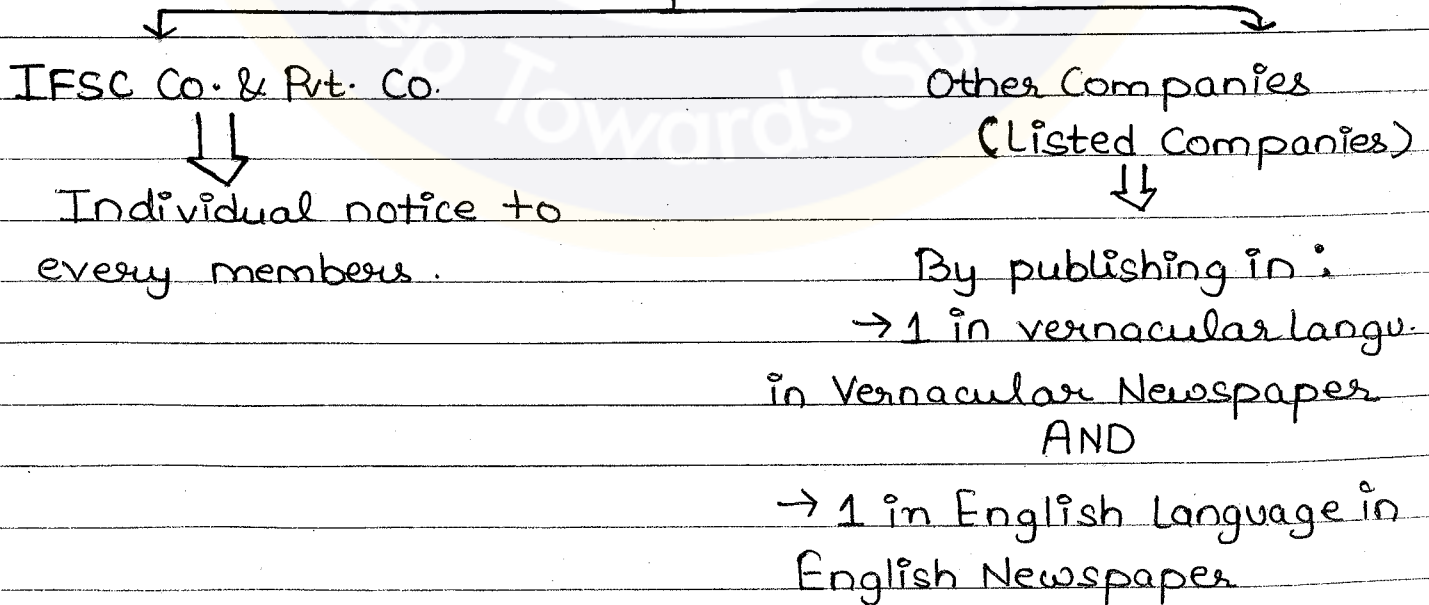
↓	↓
Company	Officers in default
₹ 3lac	₹ 50 k

SECTION - 91 : Closure of Register of Members

Company may close its Registers for Maximum 45 days in any year but not exceeding 30 days continuously.

⇒ Company shall give Notice to all the members atleast 7 days before such closure of registers.

Mode of Above Notice



## ⇒ Penalty for Contravention of Section 91 :

Every Company and Officer in default liable to penalty of ₹ 500/day but subject to maximum ₹ 1lac.

## SECTION 92 : Annual Return

Every co. shall submit its Annual Return in form no. MGT-7 within 60 days of AGM but if AGM not held within due date then within 60 days of due date of AGM along with the reasons that why AGM was not held.

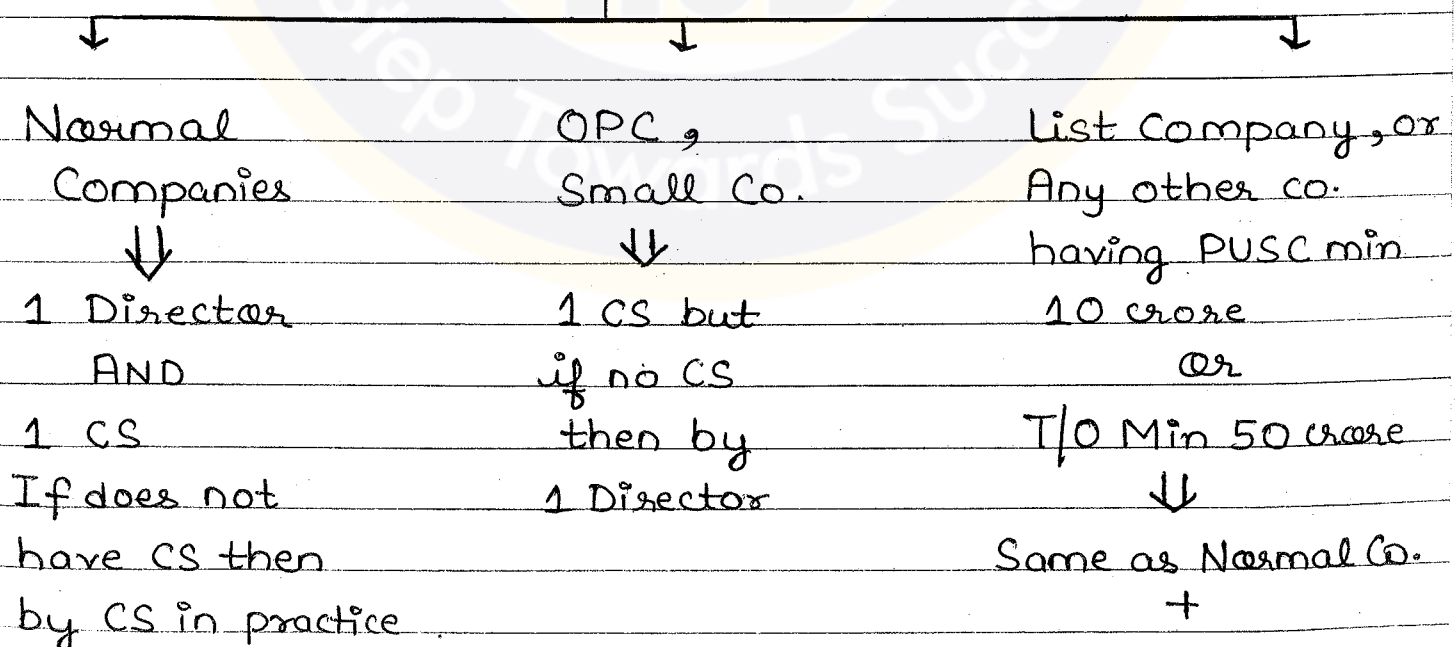
### ⇒ Content of Annual Return :-

There are 10 matters in the content of Annual Return :

- a) Details of Registered Office of Company, Principal Business Activity and its Holding, Subsidiary & Associate Companies.
- b) Details of its Shares, Debentures & Other securities issued.
- c) List of its members, Debentureholders & other securities holders.
- d) List of its Directors, Promoters & Key Managerial Personnel.

- e) Remuneration of its Directors, Promoters and Key Managerial Personnels.
- f) Penalty or Fine imposed on Company and on its members or directors or KMPs for the non-compliance.
- g) Certification of Compliance of Laws.
- h) Details of its meetings of members, class meeting, Board Meetings & Committee meetings
- i) Details of Shares hold by Foreign Institutional Investors.
- j) Any other matters as may be prescribed.

⇒ Signing of Annual Return

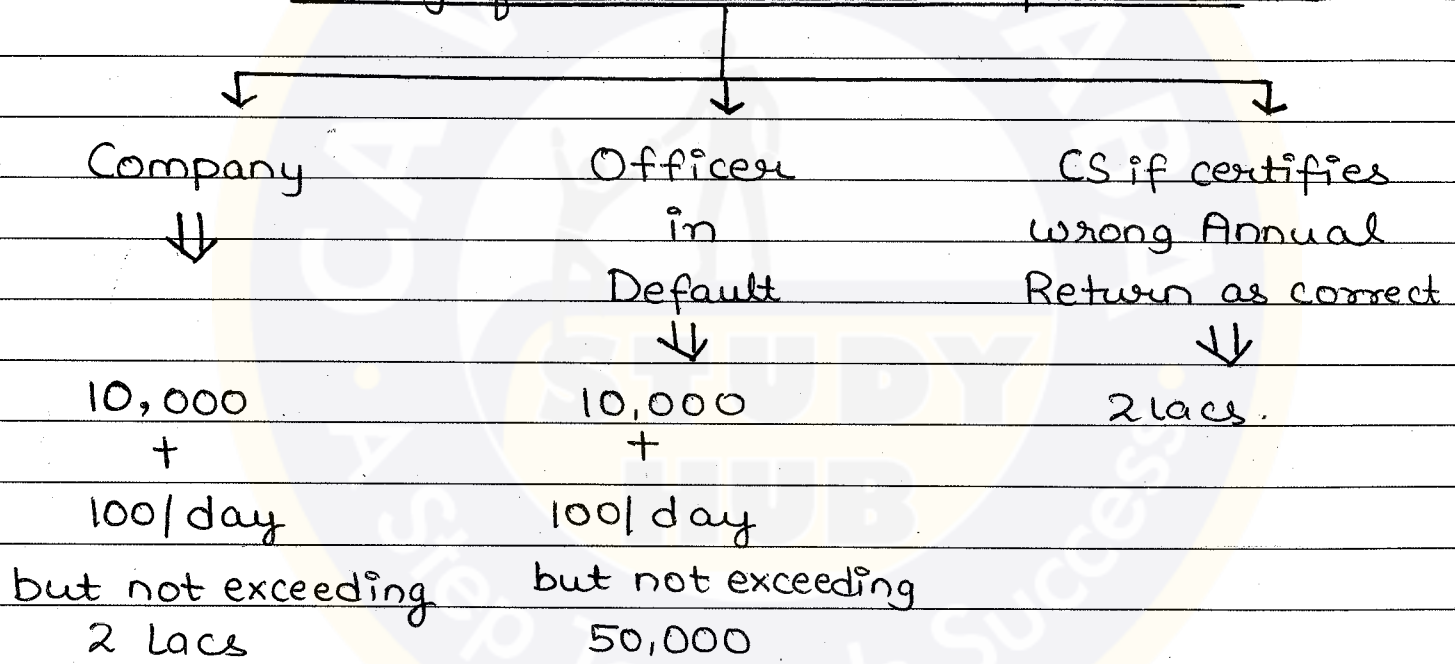


Form MGT 8 to be signed by CS in practice certifying that contents of MGT 7 are correct.

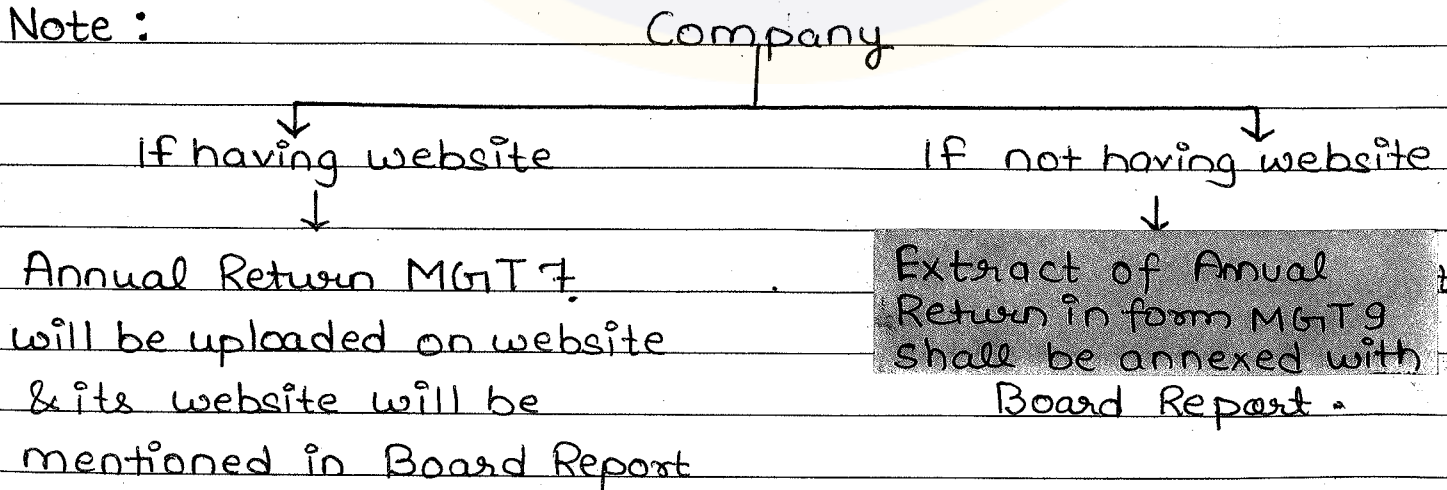
Ques. MA Ltd. having T/O 50 Cr gets its MGT7 signed by 1 Dir & 1 CS in practice (Ayush) because Co. had no CS. Can it get MGT8 also signed by same CS in practice (Ayush)?

Answer: The Act is silent but to follow the law both in letter and spirit, MGT8 should be signed by different CS in practice

⇒ Penalty for Contravention of Section 92



Note:



## ANSWER - WRITING TIPS

1. Write your answer according to the question
2. Answer the question in structured way.
3. Read the question 'at least' 2 times.
4. Never get personal in answer
5. Use clear language with some good vocabulary.
6. Try to be as clear as you can.

⇒ When there is question of Differences :

Case 1 :- जब Difference of Basis create हो सके :

<u>Basis of Difference</u>	<u>Point 1</u>	<u>Point 2</u>

Case 2 : जब Basis of Differences हो ही ना :

[ Explanation of Pt. 1 ]

[ Explanation of Pt. 2 ]

⇒ Types of Questions asked in Examination

