

Introduction to Company Law

Chapter-1

Applicability of Co. Act 2023

- 1- Company
- 2- Banking company
- 3- Insurance
- 4- Generate / Supply of electricity
- 5- Statutory corp → special act
- 6- Body corporate

Loan, borrowing, guarantee & ultra vires

- Ultra vires loan does not create a relationship of a debtor to creditor.
- Company or directors borrows money outside the scope of MOA. such borrowing shall be void-ab-initio. & cannot be ratified
- Remedies to lender:-

(a) Injunction:-

Such persons can get an injunction (stay) over the properties acquired from such borrowing.

(b) Personal liability of directors:-

On the account of breach of duty, the directors held personally liable, if capital is diverted.

(c) subrogation

When ultra vires debt is used to satisfy intra vires debt in such situation the lender can replace the position of creditors whose debt is satisfied.

Exceptions to the Doctrine of Ultra vires

- 1) Any irregular act is validated by shareholders in GM, for such act company shall
- Act deemed to be within the authority of company shall not be considered ultra vires (implied power)
 - Any incidental effect of ultra vires act shall be valid unless companies act expressly prohibits such act.
 - Act outside authority of director but intra vires to company can be ratified by shareholders.
- (ये चारे act valid होंगे & co. uske liye ~~liable~~ liable होंगी)

Doctrine of Indoor management / Turquand Rule

- This doctrine protects the outside against the co.
- Also known as Turquand rule.
- Outsiders are bound to know the external position of the co. i.e. AOA & MOA but are not bound to know its indoor management i.e. procedural part
- Outsiders may presume that procedural requirement has been complied by the company.

Section-176 - Validity of the act of Directors

Any act done by directors will be treated as valid although afterwards it is found that appointment of director was invalid.

Shriomani Sugar Mills V. Devi Prasad

Allotment & forfeiture by director who continued to act even after disqualification but when not aware of it shall be valid.

2-Barnford v Barnford

If any act ratified by shareholder in GM shall be valid even if directors perform such act with malafide intention.

Beth Menaral V. Crossin Chambers Ltd - (Same as Case 1)

Exception of company law Indoor Management

1- Outsider had knowledge of irregularity

→ The rule does not protect outsiders who has actual or implied notice of irregularity.

Case study - Howard v Patent Ltd

Director tend to company & he had notice of irregularity that SR is passed than company shall not be liable for such borrowing.

2- No knowledge of MoA & AOA:

Any person who did not consult MoA & AOA then he can't claim protection under indoor management.

Case study - RAMA corporation V Pooved TIN

Outsider must have knowledge of MoA & AOA before entering into contract with the company.

3- If any transaction involving forgery, the rule of doctrine of indoor management does not apply.

Case study - Rauben V Great Fingal Consolidated

CS of the company forged signature of directors and allet in that situation particular shareholder cannot claim indoor management & Certificate is held to be invalid.

4- Negligence

An officer of company does something beyond the power or behaved negligently, the doctrine of indoor management does not apply.

Case study - Anand Beharilal V Dinshaw

Accountant transfers some companies property without authority in that situation transfer will be void and company shall not be liable.

5. The doctrine does not apply where the question is in regard to the very existence of the agency.

6. This doctrine is also not applicable where a pre-condition is required itself can exercise a particular power.

Doctrine of Constructive notice

- Any person dealing with the company are deemed to have knowledge of AOA & MOA.
- MOA & AOA are public documents hence any person entering into a contract beyond the power of AOA & MOA. such person cannot acquire any right under the contract against the company.
- This doctrine provides protection to the company against the outsider.

Case study - MOHONY V EAST HOLYFROD MINING CO

Doctrine of Lifting / Piercing of corporate veil

When members or directors of the company misuse the advantages of separate legal entity for fraudulent or dishonest purposes, in that situation court can lift the corp. veil and look ~~at~~ ~~dishonest purposes~~ ~~in that~~ and look behind the corp entity and take appropriate action against such member or director.

↓
Statutory Provision

↓
Judicial Pronouncement

1. Submission of false information → member become personally liable where a company has been incorporated by furnishing false or indirect info. NCLT can pass the following order.

- (a) Unlimited liability
- (b) Removal of name of company from Registrar of Roc
- (c) Winding up of company

2. Fraudulent application for removal of name → application for removal for of name of the company has been made with an object to deceive the creditor, then court can lift the corp. veil.

Judicial Pronouncement

1. Prevention of fraud or improper conduct - Company has been incorporated for the purpose of commission of fraud court may lift the corp veil.

Case law - Jones vs Lipman

2. Where corporate facade is really only as an agency instrumentality. If company works like an agent of other company, the court may lift the corporate veil.

Case study - RG films Ltd

3. Conflict with public policy - If co. conflict with public policy or MD made use of his position contrary to public policy then court may lift the corp veil.

Case - study - Connors Bros v. Connors

4. Protection of revenue - when a co. has been inc for evasion of tax and duties, then court may lift the corp veil to look at the real transaction.

Case study - Sir Dinshaw Maneckjee Patil

5. Determination of enemy of a co → co. being an artificial person cannot be enemy or friend but for was or was like situation court may lift the corp veil to determination the character

of the company.

Case Study - Daimles Co. Ltd V Continental Tyre & Rubber Co.

7- Acquisition of small scale india for taking benefits ~~Sexer~~ of exemptions where a small scale industry is owned & controlled only for the purpose of taking benefit or exemption, then court can lift the corporate veil.

Case study - Inalsa Ltd V UDI

8- Concealment of criminal activities - When corporate structure is used to conceal the criminal activities then court may lift the corp veil and take appropriate action.

Case study - Hand other (Restraint order: Realisable Property)

Doctrine of Alter Ego

Alter ego is latin word which mean 'other I' It prevents the shareholders and directors from taking advantages of separate legal entity. It is based on the principal of lifting of corp-veil. It assumed that shareholder & MD are alter ego of each other i.e 2 side of same coin

E-governance

→ Means electronic governance which is based on SMART Basis. (Simple, Moral, Accountable, Responsive & Trans-parent)

→ Initiative by MCA to enable an easy & secure access to MCA services.

Benefits of MCA

- It is virtually designed to eliminate the physical interface between companies and authorities (i.e. RoC, MCA, RD)
- Effective use of data base - All the vital information has been collected by MCA, which can be used by various stakeholder
- Better supervision & monitoring of compliances - Through MCA-21 supervision & control over the companies & with regard to the compliances.
- Mutually beneficial system MCA-21 is beneficial for companies & authorities.
- Speed, transparency & efficiency - MCA aims to bring speed transparency & efficiency in the ~~dit~~ delivery of services.

MCA-21 Services

- 1- Registered DSC
- 2- Apply for DIN
- 3- View master details of any company/LLP
- 4- Index of charge
- 5- LLP service
- 6- E-filing

Key Components of MCA-21

- 1- E-Scrutiny - scrutiny means checking or verification of the form
 - MCA in process of setting up a central scrutiny cell which scrutinise the co.
- 2- E-Adjudication
 - Adjudication means inquiry & investigation
 - E-adjudication will be able to manage incorporation volume of adj. proceeding & facilitate end to end

Digitalization of proceeding

3- E-Consultation

- In this module, MCA will provide online platform where proposed amendment / draft legislation will posted for public consultation.

4- Compliance Management system

- CMS will assist in identifying non-compliant co. LLP's and issuing e-notes to such companies

5- MCA - Lab

- It will consist of corp. law expert.
- MCA Lab will evaluate the effectiveness of compliance Management system, e-consultation module.

Legal Status and Types of Registered Co. Chapter-2

Defination of company

Section 2(20) - Company means a company which is registered under

Co. act 2013 or any other previous companies act eg-1956

Effect of Incorporation (Sec 9)

1-a) Corporate Personality / Separate Legal Entity

- After registration company, shall be considered as sep legal entity.
- Company & its member both are separate from each other.

Case study - Salmon v. Saloman & Co Ltd

2-b) Artificial legal person

- Company is created by law and it is a legal person in the eyes of law hence can enter into contract.

3-c) Perpetual succession

- Member may come and go but company goes forever
- Death, insolvency, insanity of member cannot affect the company.

4-d) Transferability of Shares

- Share of public company are freely, transferable, however shares of private company are not freely transferable.
- Shares are treated as goods hence freely transferable

5. Separate Property

- Property of company and member are separate. Non member can claim ownership on the property of the company
- Company is a legal person. Hence, can hold property in its name itself.

6. Ownership & Management both are separate
• Shareholders/member are the owner of the company where as management both are separate roles with the board of directors of the company.

7. Limited liability

↳ limited by shares - liability of members limits upto ~~up~~ unpaid amount of shares

↳ limited by guarantee - unpaid amt on shares + guarantee amt at the time of winding up.

↳ Unlimited company liability of the members is unlimited towards the company but not towards the creditors.

8. Contractual Rights

→ Company being a legal entity can enter into contract in its own name

→ Hence shareholder is neither a party to contract nor be entitled to the benefit derived from it.

9. Capacity to sue & can be sued

Company is a artificial legal person hence company can sue to another person & can be sued in its own name.

10. Is company citizen

No

Citizenship can only granted to natural person as per citizenship act & constitution of India.

11. Company has nationality & Residence

Yes

Nationality depends upon place of incorporation or where the governing body in bodily presence.

Exception to limited liability

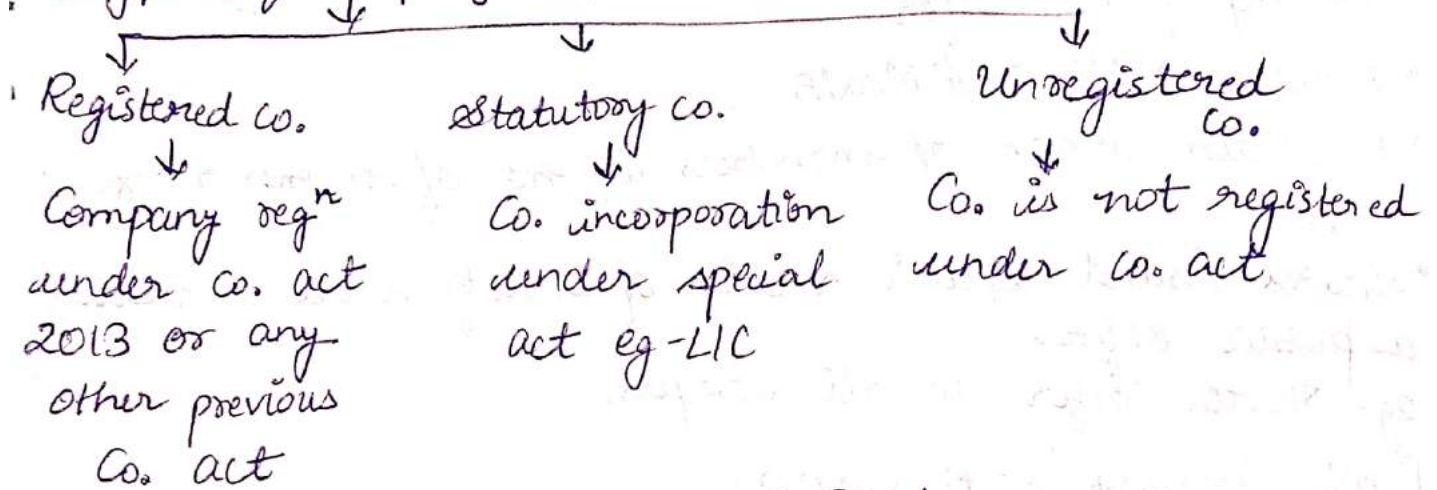
→ When number of members reduced below the statutory limit i.e. 2 & 7 & business is carried on for more than 6 month from such reduction.

→ Company is incorporated with unlimited liability

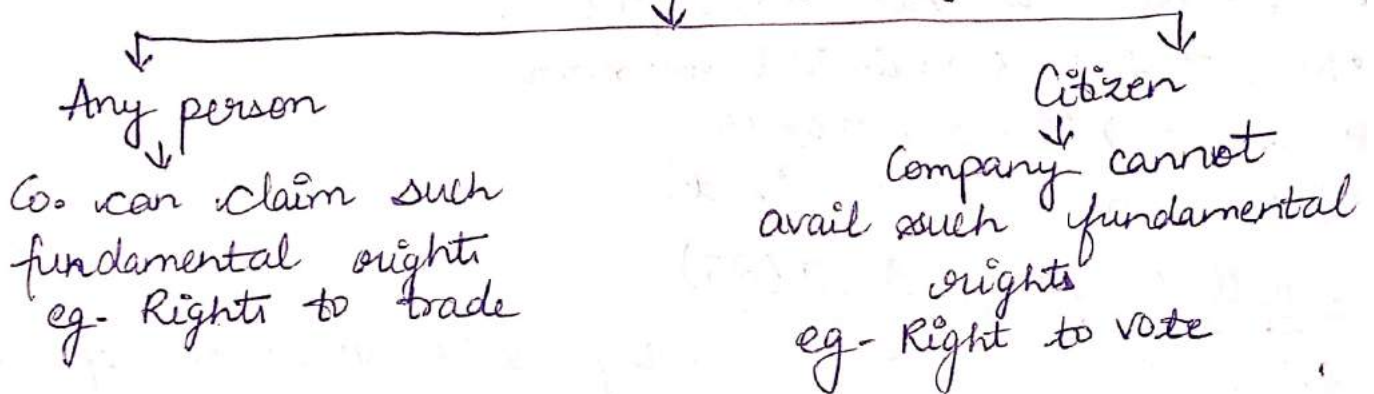
→ Co. has incorporated with intends to defraud with creditors or with the deposit holder or with any

Other person or business is carried on for fraudulent purpose than NCLT may pass the order specifying the liability of members shall be unlimited
 → Co. has incorporated by furnishing false information or by suppressing material facts

Types of Company



Fundamental Rights given to



Types of Companies

Private company Sec 2(68)

- Restriction in AOA
- Min 2 and Max 200 members
- Past & present employee shall be excluded
- Joint holder treated as single
- Restriction on transfer of shares
- First offer shall be given to existing shareholder
- Price of shares determined by directors or auditors of the company.

- Directors can refuse the transfer of shares
- Prohibition to invite public to subscribe the security of the company.
- It ends with word 'Pvt Ltd'.
- No restriction on no. of Debentureholder however Co. can issue debenture through private offer not by public offer.
- Directors \rightarrow Min 2 & Max 15
- Maintain index of members if no. of member exceeds 50.
- Shares issued specific section of society shall be treated as public offer.
eg. Shares offer to all lawyers.

Public Company Section 2(72)

- Co. which is other than Pvt Co.
- Min 7 & Max unlimited member
- Directors \rightarrow Min 3 & max 15
- Ends with the word 'Ltd'.

Small Company Sec 2(85)

Other than public co. having paid up share capital
4cr extend to 10cr. &

Turnover upto 40cr extend to 100cr
which exclude

- Holding co. & subsidiary co.
- Sec 8 co.
- Statutory Corporation

Holding Company Sec 2(46)

Means a company which have one or more subsidiary company.

Types

Pure holding

Mixed holding

Intermediary holding

Intermediate holding

Pure holding

Incorporating to owing stock in another entity

Mixed holding

Owing stock in another company and engaged in operation also

Intermediary Holding

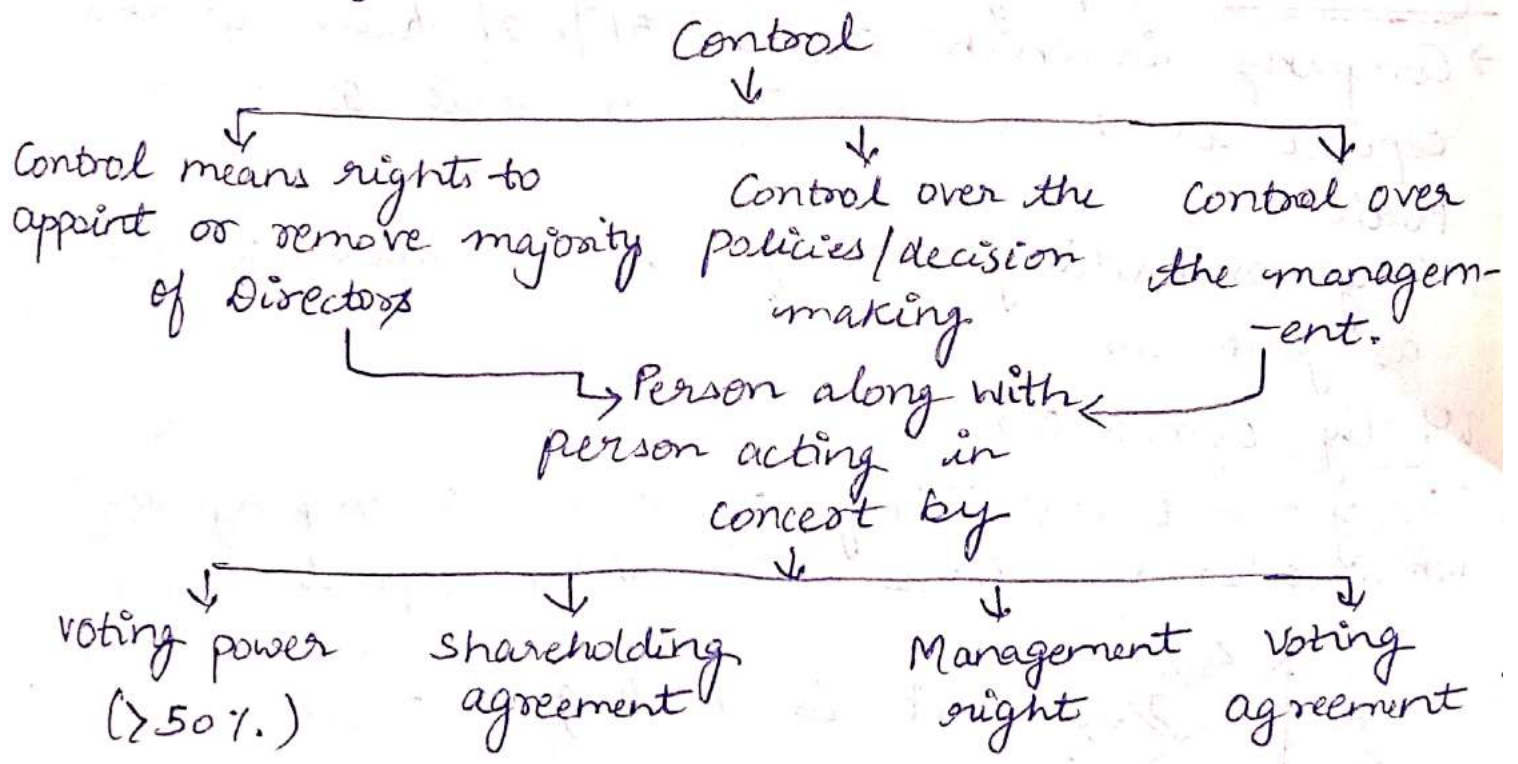
Who is holding co. as well as subsidiary of large company.

Intermediate Holding

Holding voting stock or control in another co. inspite that co. is controlled by another entity

Subsidiary Company (Section 2(87))

Controlled by holding company:



Associate co. (Section 2(b))

Any company in which other other company have significant control.

- Holding 20% or more and less than 50% of ₹ voting power.
- Control ~~power~~ business decision due to agreement. It includes joint venture also.
eg- Unique & Ambitious

Dormant Company (Sec 455)

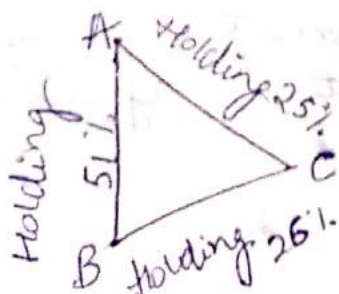
- Co. incorporated for future profit or holding intellectual property which includes inactive co.
- Inactive co. means a co. does not having significant accounting transaction or has not been carrying business or operation or not filed financial statement & annual return is proceeding 2 years.

Government Company (Sec 2(45))

- Company in which atleast 51% of paid up share capital is held by CG. or State govt. or Both
- Any subsidiary co. of govt. co shall be treated as govt. co.

Wholly owned company

Wholly owned subsidiary co. means a company in which other co. holds 100% share capital



A is holding of C

Court Decision

Case law - Salomon v/s Salomon & Co. Ltd

Summary

Co. and member both are separate from each other. Co. has its own existence after registration which is distinct from its members.

Lee v/s Lee & Co Ltd

Union Bank of India v/s Khadar International

Summary

Person includes natural person & artificial person

Mrs. Bacha F. Qudus v/s The Commissioner of Income Tax

Summary

Income of agricultural co. is entitled from income tax (to be exempted from income tax) however in dividend received by shareholder from agricultural co. is not exempted because dividend cannot be regarded as agricultural income.

Permal v/s John Deavin & Anu

Summary - Member cannot claim ownership of any company's property.

V.K. Rangasajan v/s V.B. Gopalakrishnan

As per the decision of SC in this case and other it was held that the clause of shareholder & main part of the article of association.

TVS Employee Federation v/s TVS and son Ltd

Workmen prepared a video showing struggle against the company's management. It was held that it is not actionable unless the content of DVD cast would be defamatory.

MOA, AOA & its Alterations

Chapter-3

Alteration of Name clause

Change of Name
by own motion

SR + CG approval

- Power give to ROC
- No need to obtain CG approval in case of conversion of Pvt co. to Public co. & vice versa.

change of name
because direction is
given by central govt

OR + CG approval

Change the name
within 3 months
from CG
Director

Process of Alteration of Name

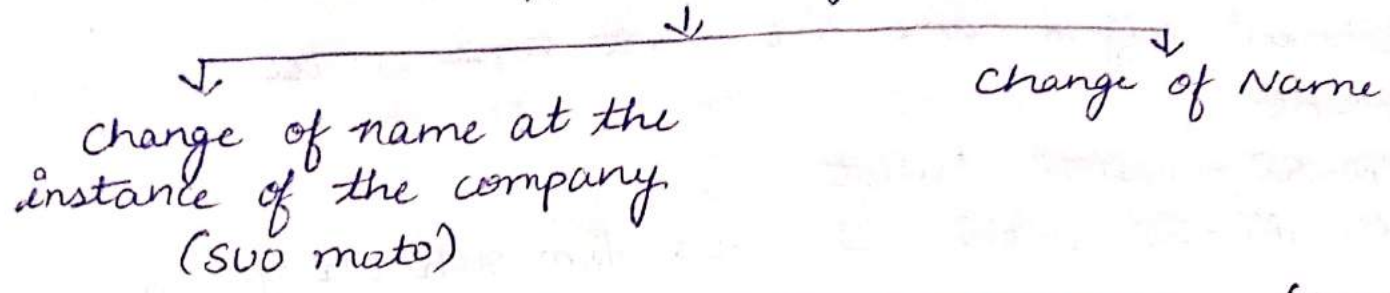
- BM - BR - Approve the change in name
- App to ROE MCA by using RUN facility for the reservation of name
- ROC issue name availability letter & reserve the name 60 days in case of change in name
- Hold BM & fix time, place, date for EGM.
- Hold EGM & Pass SR

Filing with ROC

- File form mgf 14 - within 30 days from SR
 - Application to ROC in form INC-24
 - ROC issue new certificate in form - INC-25
 - Intimate to stock exchange & Depository
- Display New name along with former name for 2 years.

Alteration of Name Clause

Name change



* Name change requirement for listed company (LODR)

- a- 1 year elapsed from last name change
- b- atleast 50% revenue in previous year by the new activities suggested under new name.

OR

c. Amount invested in New project is at least 50% of the assets of co.

$$\text{Amt Invested} = \text{Fixed Assets} + \text{Advance to supplier} + \text{Work in Progress} + \text{Investment} + \text{Trade Receivable} + \text{Cash \& Cash equivalent}$$

- d- Submit auditor's certificate to the stock Exchange.
- e- Use new name with old name on the website for atleast one year.

Alteration of Registered office clause

(a) change within the local limit of same town

- Same city, same place ROC, Same state
- BM- BR
- Intimation to ROC in form INC-22 within 30 days from such change
- This does not involve alteration of MOA.

b) Change outside the local limit of any city town, village.

→ Different city, same ROC, ~~to~~ same state

→ BM - BR

→ GM - SR - Postal ballot

→ File INC-22 within 30 days from such change

c) Change within same state from the Jurisdiction of one ROC to another ROC.

→ BM - BR

→ GM - SR

→ Apply to RD with following documents

(a) Declaration by KMP or 2 directors that co. has not defaulted in workmen dues & obtain consent of creditors or made payment.

(b) Copy of intimation to chief secretary that employee's int is not adversely affected.

→ RD after examination - may approve or reject the application within 15 days.

→ Certify copy of order of RD. file with ROC within 30 days from receipt of order.

* Change of RO from one state to another

→ BM - BR (advance 7 days notice)

→ Intimation to stock exchange within 24 hours from BR.

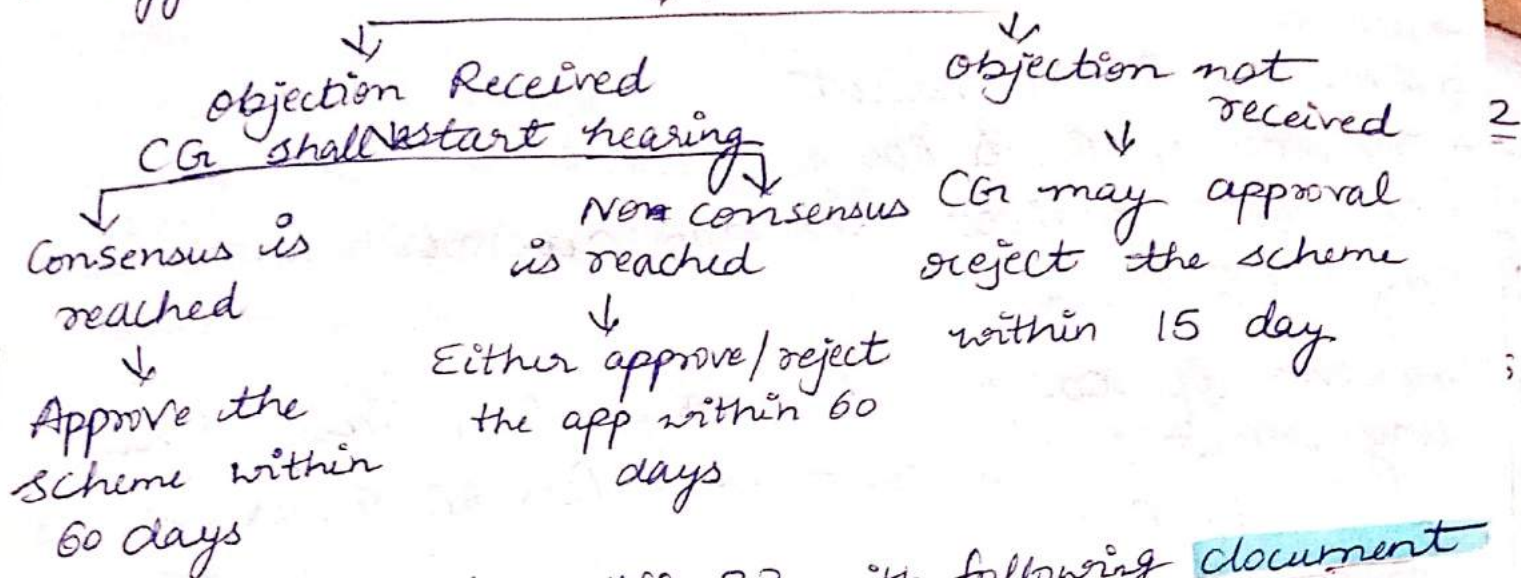
→ Hold EGM & Pass SR

→ Before not more than 30 days from filing of application to RD, advertise in newspaper in form INC-26.

→ Copy of advertisement served to CG, debenture holder & creditors.

→ Aggrieved Party may object the scheme

→ Aggrieved Party for may object the scheme



→ App to RD in form INC-23 with following document

- (a) Copy of MOA & AOA
- (b) Details of objection
- (c) Reasons of shifting
- (d) List of creditors
- (e) Details of Prosecution

→ Order of CG file with ROC in form INC-28 within and file INC-22 to ROC with 30 days

Note - Shifting of RO from one state to another is not allowed if inquiry, investigation has been initiated.

Note 2 - state govt cannot object such shifting on the ground revenue loss for the state govt.

→ Employee can object the scheme if their int is adversely affected however cannot oppose on the ground of loss of revenue or unemployment in state

→ if shifting approved BIFR than worker cannot opposed such shifting.

Alteration of object clause

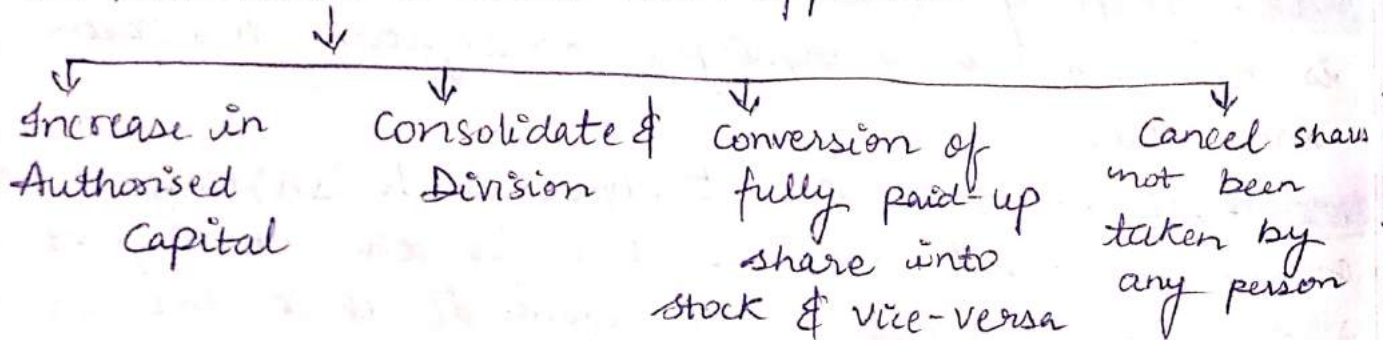
- BM - BR
- GM - SR - Postal ballot
- File copy of SR to ROC
- ROC shall register the app alteration within 30 days from filing.
- However if co. raised money from Public & has any unutilised amount than Pass SR & resolution shall be Published in newspaper & give exist opportunity to dissenting shareholders.
- ~~Exist~~ Exist opportunity shall be given by Promoter

Alteration of liability clause

- BM - BR
- GM - SR
- File mgt-14 to ROC within 30 days

Alteration of capital clause

(a) Alteration without NCLT approval



Process to increase the Authorised Capital

- BM - BR
- GM - OR
- File SH-7 within 30 days from OR to ROC along with notice of EGM, certify copy of OR & Altered MOA
- ROC will approve the increase in authorised capital
- File a notice to ROC within 30 days from alteration along with copy of altered MOA.

2. Company bound to member

- Company is bound by AOA & MOA
- Individual member can bring an action against the company for infringement of MOA.

3. Member bound to Member

- Member inter-se is bound by AOA but it does not create an express contract among the company hence member cannot file suit against other member upon infringement of AOA & MOA.

4. Co. not bound to outsiders.

- Outsider means person other than a member even if he is a director or solicitor of the company.
- Co. shall not be bound by AOA towards the articles & MOA
- eg. AOA provides company cannot remove the solicitor except for misconduct still co. can remove the solicitor because AOA is not binding on co. towards the outsiders.

Alteration of AOA

It includes -

- Adoption of new set of articles
- Addition or insertion of new clause
- Deletion of clause
- Amendment of a specific clause
- Substitution of specific clause

Alteration includes conversion of private co. into public Co. vice-versa

After conversion file altered AOA along with copy of Co order to ROC within 15 days from alteration.

Limitation on Power to alter article

Alteration must not exceed the power given in MOA
Must not be inconsistent with co. act however,
entrenchment is allowed.

Not include anything which is illegal or opposed to public policy.

Alteration must be bonafide for the benefit of co.
must not constitute a fraud on minority by majority
cannot compel to be an existing member to subscribe more shares.

Cannot escape from its contractual obligation.

Cannot alter as to give retrospective effect.

Procedure for alteration of AOA

→ Hold BM and pass resolution

→ Approve the proposal of alteration of AOA

→ Approve the notice to call GM

→ Give authority to director to sign document & file necessary documents to ROC.

Prepare minutes & send to all directors in 15 days from board meeting.

Procedure

→ BM - BR, GM - SR

→ Hold GM pass SR

→ File Mgt-14 to ROC in 30 days from SR along with

- Copy of SR with explanatory statement

- Notice of GM

- Certified true copy of altered AOA

Follow Companies Act & MOA

→ Alteration of AOA shall not violate the MOA & companies act.

Approval of CG

→ Obtain CG approval in case of conversion of public co. to Pvt co.

→ No stamp duty on alteration of AOA

Effect of altered article

Binding on a co. and member to the same extent as article originally formed.

Incorporation Contract

↓
Pre-incorporation contract
Promoters may enter into
pre-incorporation contract
on behalf of the proposed
Co.

↓
Promoter shall be liable until
unless such contract is adopted
by co. in first board meeting
by passing BR

↓
Post incorporation contract
Co. enter into contract
on its own name
↓
Co. shall liable for
such contract.

Procedure for alteration of pre-incorporation contract

such adoption is within the power of objects clause of the co.

AOA shall give power to directors to adopt such contract
Convey first boardly acquire share prior to its
incorporation. and pass BR to adopt such contract

Note - Co. cannot acquire shares prior to its
incorporation.

Promoter's liability

Promoters act as companies agent

Contract entered into by the promoters not binding
on the co. or third party.

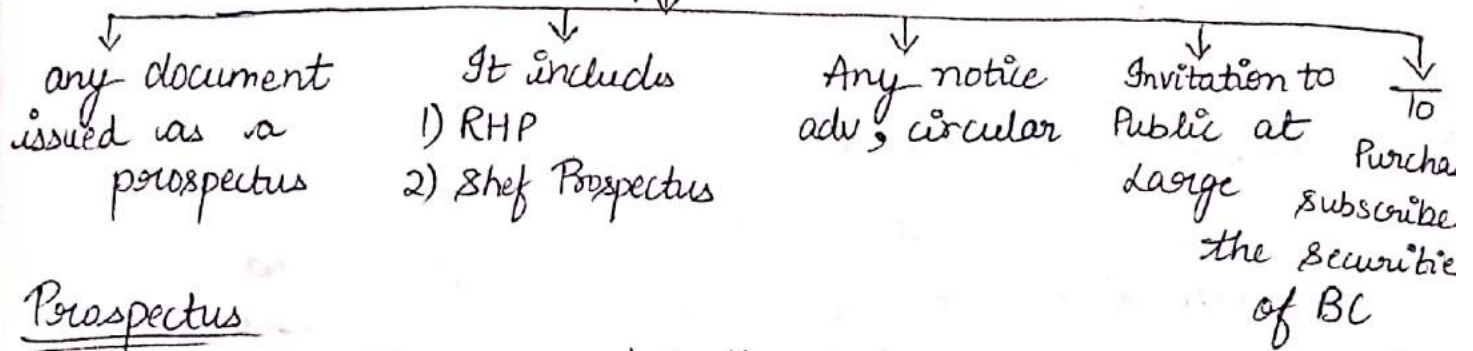
BR should be passed for adoption of pre-incorporation
on passing such resolution contract is binding
on the co.

Basic Terms Related To Issue &

Chapter-4 (Part-B)

Allotment of Securities

Prospectus



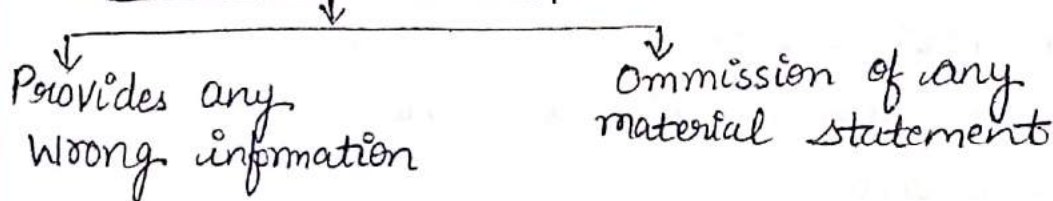
Prospectus

- (a) Issued by BC or on behalf of BC → Merchant Banker
- (b) Invite to Public at large
- (c) Purchase / Subscribe the securities of the BC

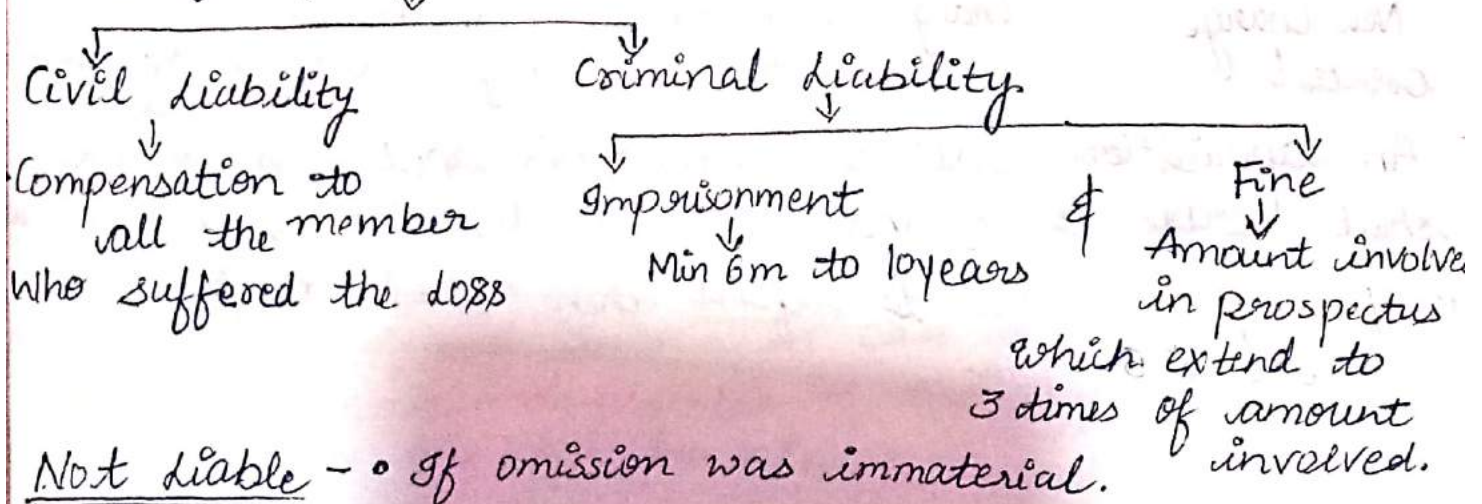
Disclosure in Prospectus

- (a) Audit Report
- (b) P & L of 5 Preceding year
- (c) Assets of Liability → not older than 6 month
- (d) Expert statement - about the Disclosure in Prospectus
- (e) Statement of auditor regarding P & L

Misstatement in Prospectus



Liability of Misstatement



Not liable - • If omission was immaterial.

Note - Non-Disclosure of the facts that dividended are paid out of the capital profit, amounts to misstatement.

Red Herring Prospectus (Section-32)

It does not include the info relating to

Price of Securities Quantum

- It specify Price range or lower price
- It issued in case of Book Building method
- File with ROC atleast 3 days Prior to issue opening date.
- After bidding, company shall determine cut-off Price (final Price) & file Prospectus with ROC
- Any variation between RHP & Prospectus shall be highlighted.

Section 31 Shelf Prospectus

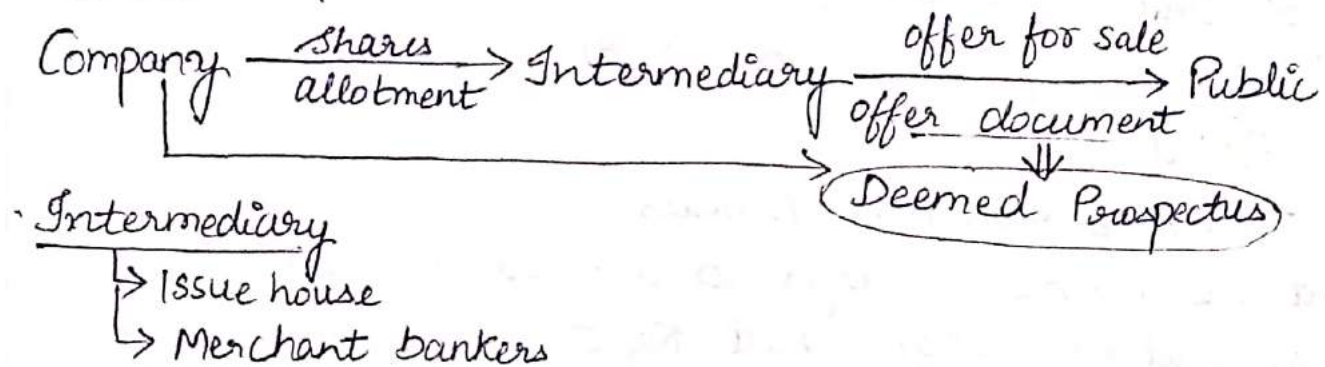
- 1- Single Prospectus for multiple issue.
- 2- Validity :- one year from opening of First Issue.
- 3- Issued by FI, Public Sector bank, Schedule bank, BC specified by SEBI
- 4- File IM (PAS-2) within one month Prior to opening of subsequent issue in case of material change.
- 5- Change in Material Info

New Change created Change in Financial Position Other change E-g - Change in Management

- 6- An application want to withdraw his application, company shall liable to refund within 15 days from such applicat
- 7- If company failed to refund then liable to pay int @ 15 % p.a.

Abridged Prospectus [Chotu wala Prospectus]

- Summarised version of Prospectus.
 - It contain salient features of Prospectus specified by SEBI.
 - Every Application form shall be attached with Abridge prospectus
 - No need to file abridged prospectus
 - (a) Underwriter
 - (b) Private Placement
 - (c) Right Issue → Existing shareholder
 - (d) Issue of uniform shares (FPO of same kind of share)
- ### Deemed Prospectus (Section-25)



- Document issued by or on behalf of the company for the purpose of offer for sale to public then such document issued by merchant banker, issue house shall be treated as Deemed Prospectus
- Condition
 - (a) offer for sale shall be made within 6 months from allotment OR
 - (b) Whole consideration had not received at the time of offer for sale.
- Additional Disclosure
 - (a) Net consideration received by company from issue house
 - (b) Place & time at which such documents can be inspected. (agreement between company & intermediary)
 - (c) Deemed Prospectus shall be signed by 2 Directors or one half of partner in case of firm
 - (d) BOD may permitted member of the company to offer shares in the offer for sale.

Allotment of Shares

- Acceptance of offer or
- Act of appropriation of Issue- Proceeds
- Must be done by BOD within reasonable time.
- Uncondition & Absolute
- Only made against the application

Minimum Subscription

- 90% of Issue size
- Must be received within 30 days from Issue of Prospectus
- If no received, refund within 15 days

Minimum Application

- 5% of price - as per Co act
- 25% of Issue price - as per SEBI

Offer Period

- Min 3 days & may max 10 years
 - Right issue - min 7 days and max 30 days
 - All application money shall kept in separate Bank account known as "A/c"
 - Allotment must be done by BOD or committee authorised by BOD
 - file return of allotment to ROC within 30 days from allotment in form No PAS-3.
 - After Incorporation - 2 months
 - Transfer - 1 month
 - Allotment - 2 month
 - Transmission - 1 month
- } Share certificate

Legal affect of Share Certificate

1) Estoppel to the title-

The Company cannot deny the truth of the certificate of the company is estoppel from denying his title except forged transferred.

2. Estoppel as to payment

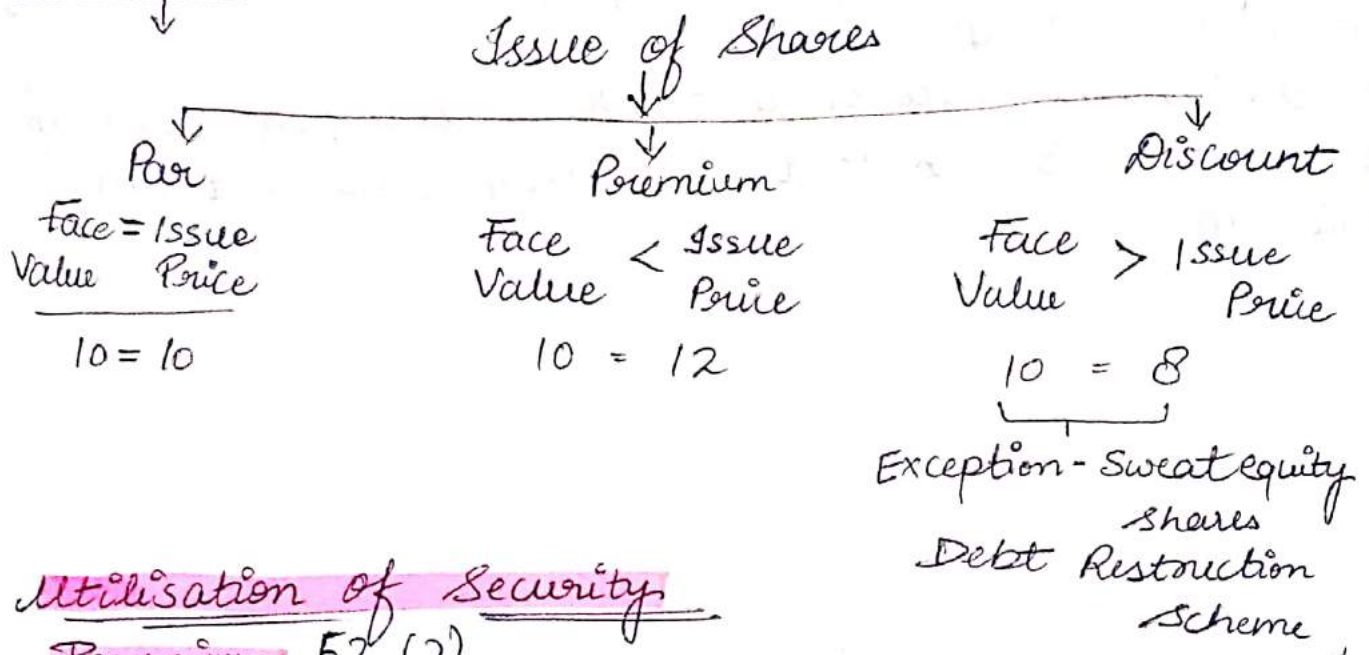
→ If share certificate is issued as fully paid up then company is estoppel from alleging that they are not fully paid up

→ If the company states that shares are fully paid-up it cannot later contend that they were not fully paid-up.

Issue & Allotment of Securities

Chapter-4 (Part-C)

Lecture-1



Utilisation of Security

Premium 52 (2)

- P → Premium Payable on redemption of pref shares or discount
- C → Commission or discount on issue of shares or debentures
- PE → Preliminary Expenses
- F → Fully Paid up bonus shares
- D → Buy back of securities

* Certain class of company can utilise Security Premium for following Purpose only

- (a) Commission or discount on issue of shares or debentures
- (b) Bonus shares
- (c) Buy back

Note - Security Premium can be utilise for selective capital reduction to Non-Promoter shareholder.

Issue of shares at discount

Lecture-2

- No company can issue shares at discount except sweat Equity shares & shares issued under Debt Restructuring scheme.

Concept of Allotment

- Allotment means act of appropriation of issue Proceeds.
- Acceptance of offer by the company
- It must be done by Board of Director → [OR Committee]
- It must be unconditional & absolute [Approved by Board of Director.]
- Must be communicated by issuing letter of allotment
- Done within Reasonable time
- Should not be in contravention of any law
- Allotment without authority shall be Invalid.
- Allotment by an irregularly constituted Board shall be invalid.

Process of Allotment

- File a prospectus or statement in lieu of Prospectus with ROC before making allotment → prospectus ki jagh
- Opening and closing of Issue
 - Min 3 days & Max 10 days
 - Right Issue min 7 days & max 30 days
 - In case of Private company, Right issue can be open for less than 7 days with 90% of members approval
- Minimum app money - 5% of face value & as per SEBI - 25% of Issue price.

Minimum Subscription

- 90% of Issue size
- Must be received within 30 days from issue of prospectus
- Failed to receive minimum subscription then refund within 15 days from closure of issue otherwise liable to pay int @ 15% p.a.

Separate bank Account

- Kept in separate bank account known as Escrow a/c.

Return of Allotment

- File PAS-3, 30 days from allotment to ROC along with following documents:-

- (a) list of allottees, their name, address, occupation & No. of securities
- (b) Copy of contract if shares issued for consideration other than cash
- (c) file copy of resolution passed in GM in case of bonus issue.

Private Placement (Sec 42)

- Maximum person at a time - 500
- FY - maximum person - 200
- Prepared list of proposed allottee
- Issue Pvt placement offer Document within
- offer to max 50 person at a time exclude
 - (a) Qualified Institution buyer
 - (b) Employee under ESOP
 - (c) NBFC - registered under RBI
 - (d) Housing finance - National Housing Bank
- Minimum investment size - 20,000 at Face value

$$= \frac{20,000}{F.V} = \text{No. of shares}$$

$$= \text{No. of share} \times \text{Market Value}$$

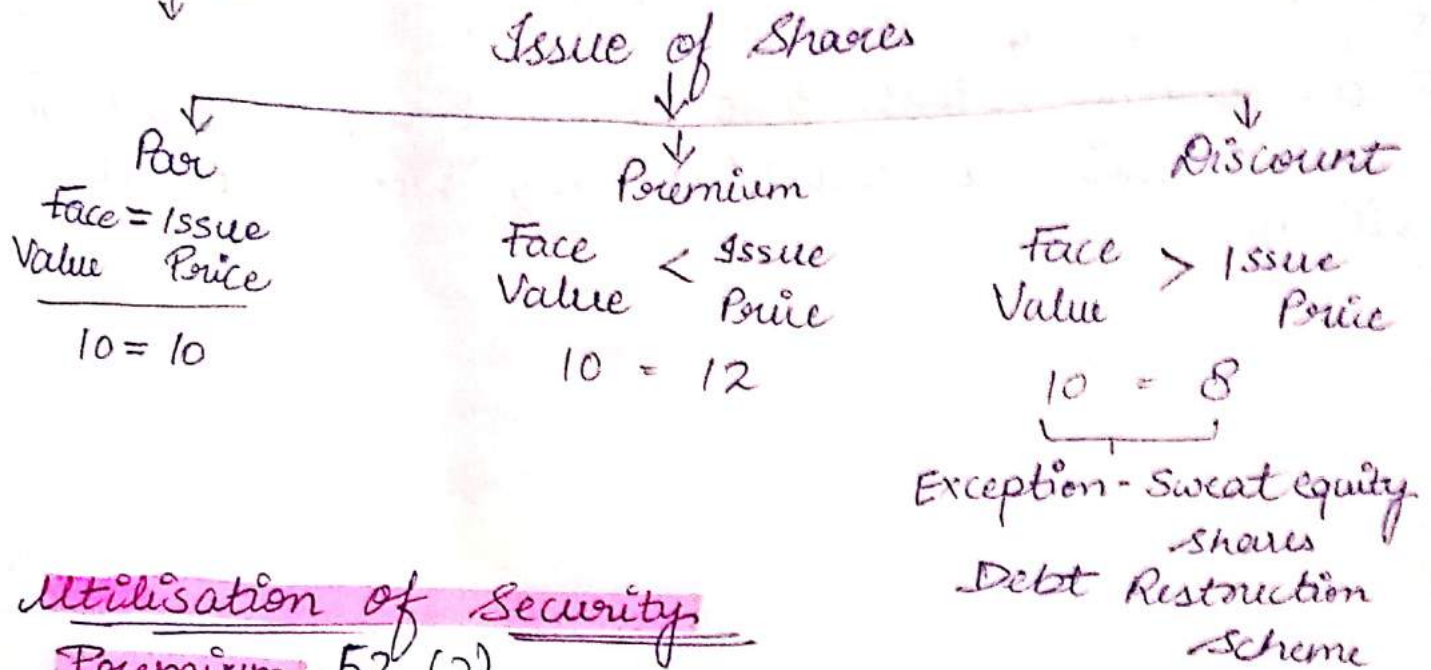
Preferential Issues

- Offer given to selected group of person
- Authorized AOA
- Pass \rightarrow special Resolution
- offer shall be completed within 12 months from passing special resolution.
- If company fail to allot securities within 12 months then pass another SR
- Pricing \rightarrow valuation shall be done by registered valuer
- Follow Pvt placement as per sec 42.

Issue & Allotment of Securities

Chapter-4 (Part-c)

Lecture-1



Utilisation of Security

Premium 52 (2)

- P → Premium Payable on redemption of pref shares or discount
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- Follow Pvt placement as per sec 42.

Differential Voting Rights Sec(43)

- Difference either in voting power or dividend or otherwise
- Authorised by AOA
- Pass ordinary resolution in General meeting
- listed company - Ordinary Resolution by postal ballot
- limit - 74% ordinary Resolution of total voting power including previous DVR.

e.g. equity shares - 1000
preference shares - 500
Bond - 300
DVR (NO voting power) 300

DVR

- > Total Voting power = $1000 \times 74\%$
= 740
= $740 - 300$
= 440
- > No default in financial statement & Annual Return in 3 previous financial year.
- > No default in
 - D - Declared dividend
 - D - Deposit & interest thereon
 - D - Debenture and Interest
 - P - Preference shares and dividend thereon
 - L - Term loan & Interest
- Statutory dues (Govt. Taxes, Employee's salary)
- No default in transfer of IEPF (Investor Education Protection Fund)
- No conversion
- ~~Issue~~ of DVR to ordinary shares & ordinary shares to DVR
- Issue of DVR after 5 yrs from default made good
- Not penalise by court or tribunal in previous 3 yrs.
- No conversion DVR to ordinary shares and ordinary shares to DVR.
- The details of DVR shall be mention in register of member.

→ Company not being having completed 3 yrs cannot issue DVR.

Disclosure in Explanatory statement

- No. of shares issued
- Details of voting Rights
- Price of DVR
- Basis for determination of price
- Pre and post shareholding
- Also disclose in board report.

Issue and redemption of Preference shares

- Pass special Resolution
- Term - 20 yrs (maximum)
- Infrastructure company - 30 yrs
- No existing default in redemption of preference shares and dividend thereon.

Redemption

- Redemption out of the profit or from the proceeds of fresh issue.
- If redemption is out of profit there some equal amount shall be transfer to CRR.
- Premium payable on redemption can be utilize from profit or security premium account.

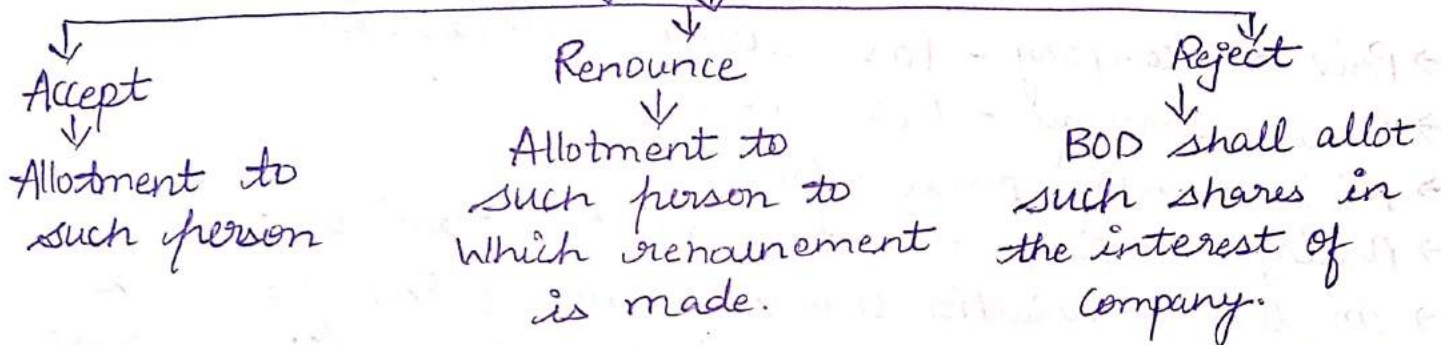
Inability to Redeem preference shares

- Company is not in position to redeem preference shares or dividend thereon.
- In such case company after obtaining approval of preference shareholder in value and NCLT approval shall issue new preference shares which results into deemed redemption of preference shares due for redemption.

Right Issue Sec-62

- Equity share holder in proportionate basis.
- Company shall decide record date for the purpose of right issue.
- Company shall issue 100 to existing shareholder at least 3 days prior to opening of issue.
- ~~Company~~ ~~st~~ After
- offer shall be open for minimum 7 days & maximum 30 days

Existing shareholder can



- In case of private company with the approval of 90% in number the issue can be open for less than 7 days and can dispatch letter of offer to existing shareholder for less than 3 days.
- Company can not issue shares on selective basis.

Exemption:

- at the time of conversion of convertible security sec 62 does not apply.
- Conversion of government loan

Employee stock option scheme - (62)

- Option given to
 - D - Director
 - E - Employee
 - O - officer
- To purchase or subscribe at a future date at a pre-determined price.

Eligible Person

→ Director - Executive or non Executive except ID

→ Employee Permanent or part time except Temporary

→ Officer - CEO / CFO / CS. Director Employee or officer of holding Company or subsidiary Company or associate Company

→ Private company - Pass ordinary resolution

→ Public company - Pass special resolution

→ Minimum Vesting period - 1 year

→ Pricing - Company have freedom to determine the price.

→ In term of variation of any terms of Employee stock option scheme, pass special Resolution and var must be favourable to employee

→ In case of amalgamation vesting period shall be adjusted → company may specify lock-in-period.

→ No voting power, dividend rights or other rights or other rights still allotment.

→ No pledge or hypothecation till allotment

→ Maintain Register of ESOP in form no. SH6

→ Entries in such register shall be authenticated by Authorized

Ineligible Person

→ Promoter or Employer

→ Employee who is belonging to promoter group.

→ Employee who is belonging to promoter group and director holds more than 10% of equity shares along with relative or through body corporate.

status of ESOP

↓
Death
↓
option vested to legal Representative

↓
Permanent Incapable
↓
vesting on the same day to such employee

↓
Resignat
↓
Forfeiture of advance amt
option expiry

↓
Option not vested due to non Fulfillment of condition
↓
Refund

- option shall not be transferable to any person
- Disclosure in board report
- Start-up company → No need to fulfill any condition fee 1st 10 yrs.

Preferential Issue - Sec 62

- Offer given to selected group of person which exclude other type of issue.
- Pass - special Resolution
- Allotment of shares within 12 months from special Resolution
- Pricing - valuation shall be done by register value.

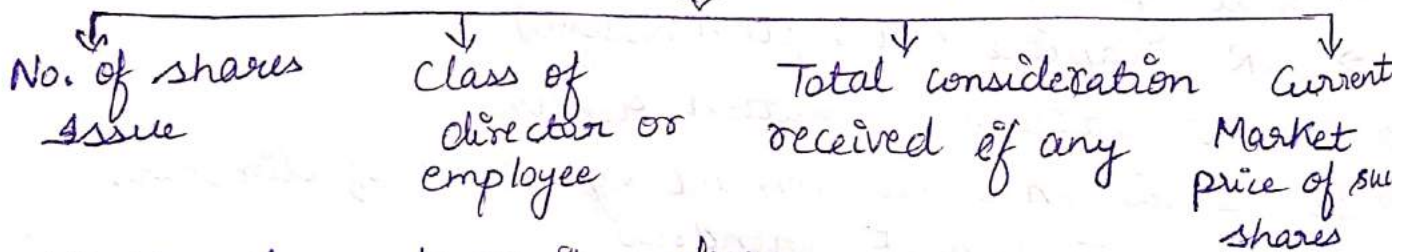
Bonus Shares - 63

- Shares given to existing shareholder at free of cost
- It is also known as capitalising of undistributed profit.
- sources
 - Free Reserve
 - Security Premium
 - CRR (Capital Redemption Reserve)
- Cannot utilise revaluation reserve.
- Bonus is once recommend by board of directors subsequent cannot withdraw
- Conditions
 - Authorised by AOA
 - Board of director by Passing Board Resolution recommend the bonus and in general meeting by passing ordinary resolution, shareholder approve it. (BM - BR & GM - OR)
- No default in
 - (a) Payment in statutory dues e.g. Govt Taxes, Employee salary.
 - b) Payment of interest & repayment of principle amount on debt security e.g. Fixed deposit of other debt security

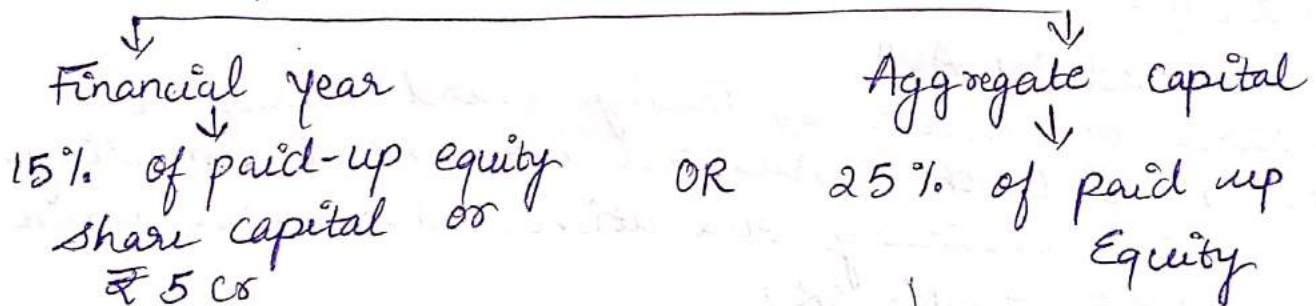
- Partly paid up shares first converted into fully paid up share.
- No bonus is lieu of dividend
- Once bonus is proposed, it must be implemented within 6 months and cannot reverse it
- File PAS-3 - 30 days to ROC

Sweat Equity Shares - 54

- Shares issued to director, employee, officer at discount or consideration other than cash for providing intellectual property or technical know how
- Director → Executive
Non-Executive
Including Independent Director
- Employee - Permanent working in or out wide India
- Director & Employee of subsidiary company or holding company.
- Pass - Special Resolution - SR shall specify



- limits of sweat equity share



Which ever is higher

- Startup company - 50% of paid up equity share capital
- Price is determined by registered value. If shares issued against intellectual property or technical know how.
- Lock in period - 3 years
- Treated as managerial remuneration if issued to director/manager for consideration other than cash (free)
- Maintain register of sweat equity shares in form SH-3
- Entry in such register of ~~sweat equity shares~~ in form SH-3 shall be authentic by CS or person authorised board of director.
- No need to obtain NCLT approval.
- Disclose in board report.

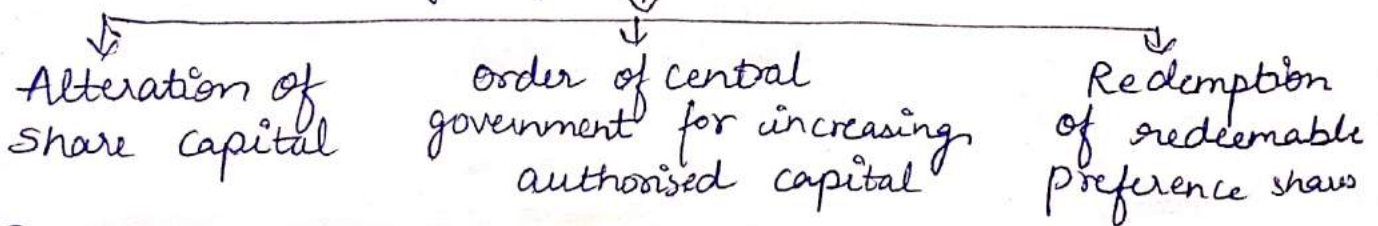
Alteration In share capital, Buy-Back And reduction of share capital

Chapter-4 (Part-D)

Alteration of share capital (61)

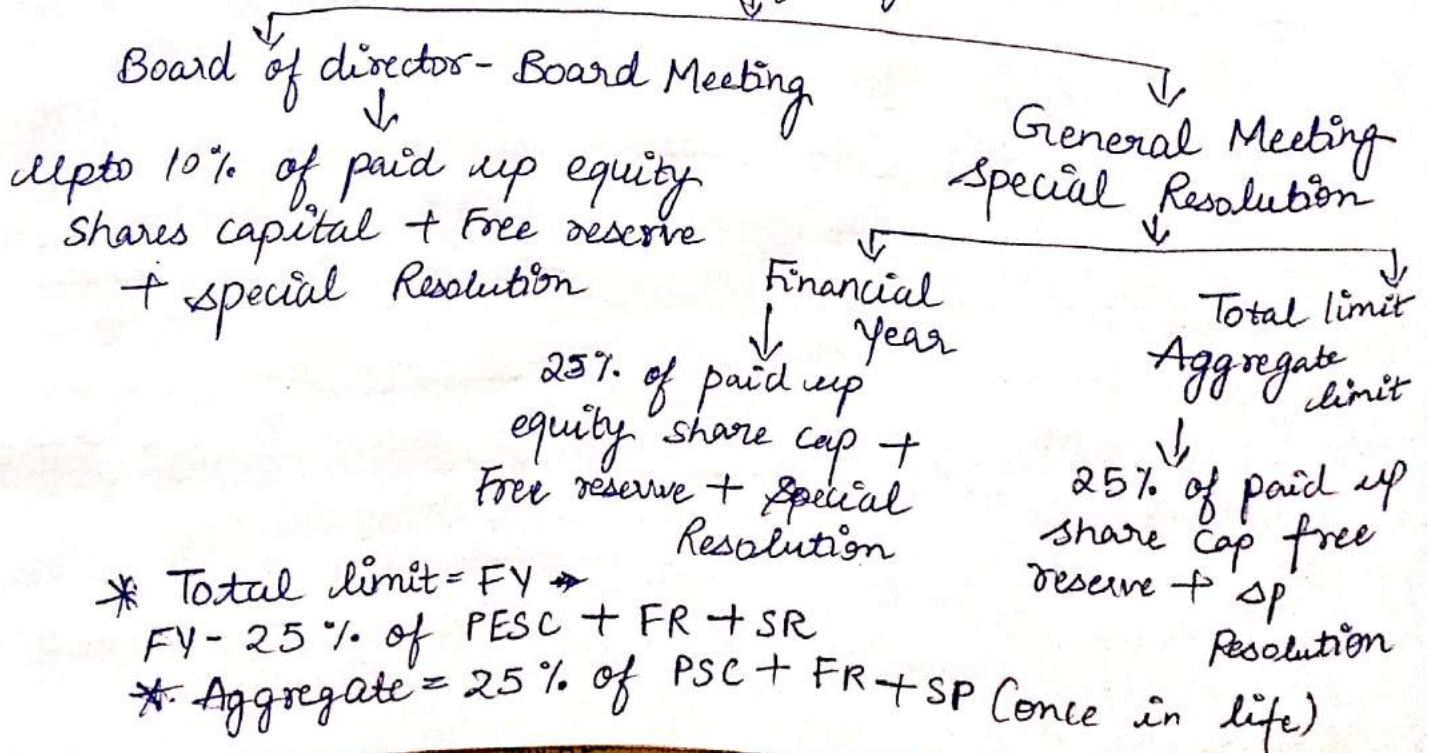
- Increase in Authorised capital
- Consolidation and division of shares
 - Consolidation - 10 shares of ₹10 is converted in one share of ₹100
 - Division - One share of ₹100 is converted into 10 shares of ₹10
 - Conversion of shares into stock - 10 shares is converted into one stock.
 - Sub-division of shares - division of shares of existing shareholder.

Filing of form SH-7 to ROC

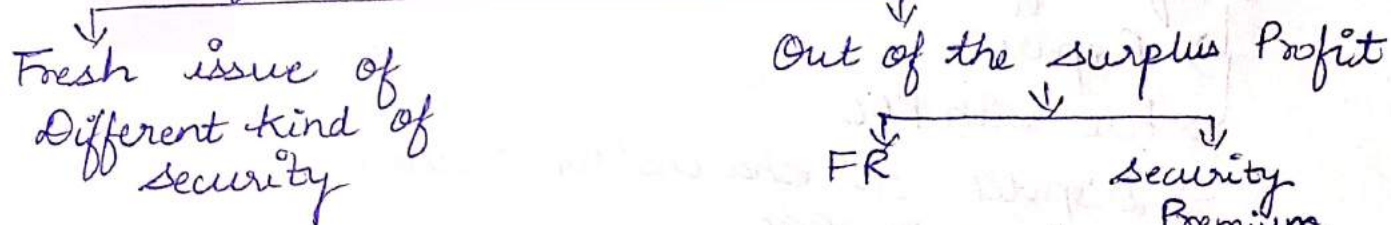


Condition of buy back

Limit of buy back



Method of Buy-Back



- Buy back must be completed within 1 year from the resolution
- Prepare draft offer document
- File letter of offer to ROC after passing resolution and before buy back.
- Dispatch letter of offer to existing shareholders within 21 days from filing with ROC.
- Buy Back period - Min 15 days & Max 30 days from Dispatch of letter of offer.
- Destroy within 7 days from closing of buy-back period
- So file return of buy back to ROC within 30 days from completion of buy-back.
- Maintain register of buy-back and entry shall be authenticated by CS.

RTP to shareholders

R - Reserve

I - Issue proceeds of different kind

P - Premium

10% by BD \rightarrow 10% of PESC + FR + SP

25% by SH \rightarrow 25% of PESC + FR + SP

- DND को 21 दिन 100 दैके off करो

D - Declaration of solwency

N - No-further buy-back - 1 year

No further issue of some kind of \rightarrow 6 months

No further issue till completion of buy back

D - Debt: Equity (2:1)

D = Draft offer document

→ Prepare

→ File with ROC

→ Dispatch to shareholder within 21 days from filling with ROC

LOO - Letter of Offer

OFF - Destroy within 7 days

Section 69

Buy back from surplus profit \Rightarrow Sum equal amt transfer to CRR.

Section -70 Prohibition of buy back

Company shall not directly or indirectly purchase its own shares through subsidiary company including its own subsidiary and investment company or group of investment company.

Default in:-

D (a) Repayment of Deposit & Interest thereon

D (b) Redemption of Debenture & Interest thereon

P (c) Redemption of Preference share

D (d) Payment of Dividend to any shareholders

(e) Repayment of term loan & Interest thereon to any financial institution or Bank however if default in remedied & 3 years has elapsed then company can buy back its shares.

Non compliances with

Section 92 - Filing of annual return

Section 123 - Declaration of Dividend

Section 127 - Distribution of declared dividend

Section 129 - Financial statements

Reduction of share capital (Section-66)

Authorised capital — X
Issued capital — reduction
Unissued capital — X
Subscribe capital — reduction
Unsubscribe capital — X
Paid-up capital — reduction

Reduction in share capital by

- (a) Partly paid up shares → convert into fully paid up shares.
- (b) Refund of excess amount
- (c) Cancellation of shares capital which is lost

Process

- Pass special resolution
- Application to NCLT
- NCLT gives that applications or notice to central govt, ROC, SEBI, creditor
- Representation within 3 months by regulatory authority
- obtain consent of creditors or secured or ~~discto~~ discharged the debt
- NCLT shall give the confirmation of reduction
- The order of NCLT shall filled with ROC
- Company add the word 'and reduce' after the name for 1 year.

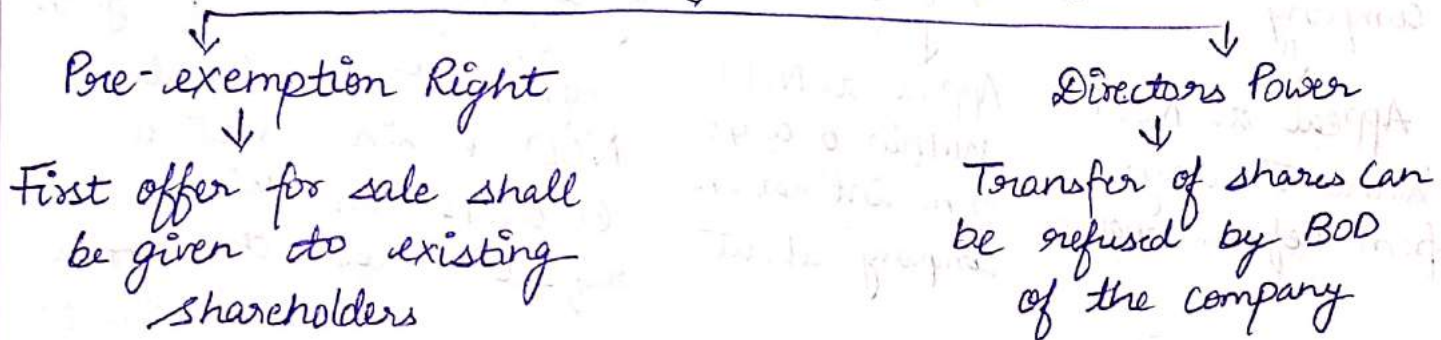
Diminution of Share Capital

- Unissued capital } reduce
Unsubscribed capital }
→ Pass ordinary resolution
→ ROC within 3 months

Transferability of Shares

Chapter-4 4.5

- Private companies shares are not fully freely transferable
- Restriction in AOA can be of following types



Exemption of Restriction

In case of death

- Right of Renounce in case of Right issue

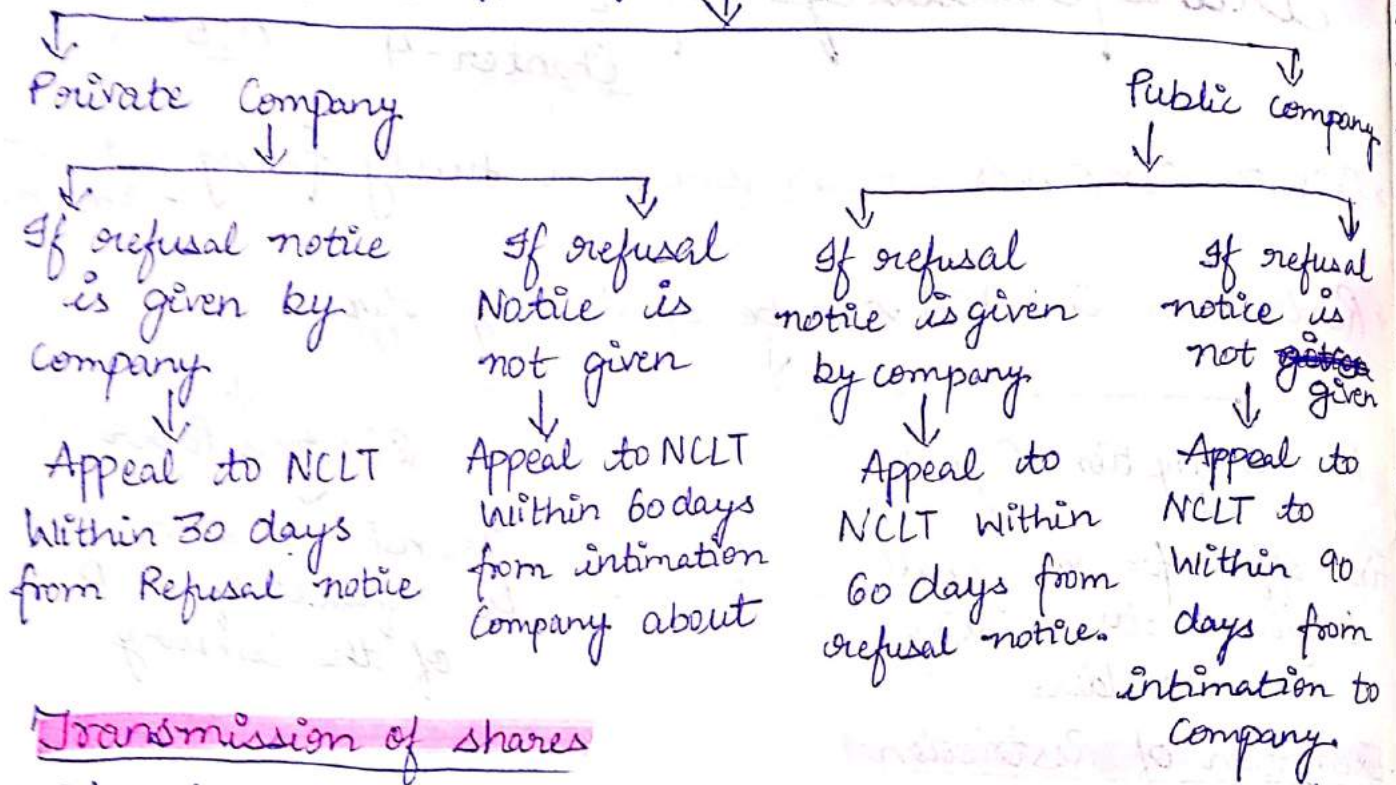
Transfer of shares of public company

- Contract between transferor and transferee
- Execution of transfer deed in form SH-4
- Deliver such transfer deed to company within 60 days from execution
- Partly paid up shares → Company shall within send notice to transferee within 2 weeks
- After receipt of NOC, company shall register the transfer and deliver share certificate to transferee within 1 hour 1 month from receipt of transfer deed.

Transfer Instrument lost or not delivered

Company shall register the transfer after obtaining indemnity bond from transferee & company may also deemed affidavit as a proof of lost of transfer deed.

Refusal of transfer by board of Director



Transmission of shares

- Transfer to shares due to operation by law
- Death → legal Representative
- Insolvency → official Assignee
- Merger & Amalgamation → Resultant company

Rectification of Register of Member

In case of transfer company shall register the name of transferee.

Remedy to Aggrieved Person

For not carrying the changes in register of member

↓

Remedy to Aggrieved person for not carrying the changes in register of member.

- Appeal to tribunal
- After hearing the parties tribunal may pass the order to register the transfer or transmission within a period of 90 days from NCLT order.

Ground of Appeal to NCLT

- Name of other person is entered in register of member
- Delay in registering the name
- Name of such person is omitted without sufficient reasons

Forged Transfer

- Instrument on which the signature of transferor is the shareholder of the company
- To avoid forged transfer company should intimate transferor about the lodgement of transfer instrument

Consequence

- 1- Transfer null and void → original owner remain shareholder.
- 2- No denial of Transfer of shares sold to innocent purchase → Company liable to compensate such person.
- 3- Indemnify the losses → Paid damages to innocent buyer
→ Recover from person who layed the forged transfer.

Transposition

In case of joint-shareholder one or more required the company to alter or rearrange the serial order of their name in the register of members of the company of all joint holder wish to hold shares individually.

Blank Transfer

- Shareholder transfer his share without filling name of transferor and date of execution and handover to transferee such transfer is known as Blank Transfer.

Purpose of Blank transfer

- 1) Avoidance of transfer stamps
 - 2) Concealment of the indemnify of real owner
 - 3) Evasion of taxes by suppression of profit
- * An instrument on which signature of transferee do is forged.

Evasion
the act of avoiding something that you

Ch-4.5 Extras

Process of Dematerialisation

- 1- Investor submit DRF and SC to DP
- 2- DP $\xrightarrow[\text{Electronically}]{\text{Intimate}}$ Depository
- 3- DP $\xrightarrow[\text{Send}]{\text{DPT + SC}}$ Company
- 4- Depository $\xrightarrow{\text{Inform}}$ Company
- 5- Company confirms the dematerialisation
- 6- Depository credit the Demate account.

Members & Shareholder Chapter-5

2(55) Member

↓
S
Subscribers to MOA are deemed to be registered sub cannot rescind the contract even on the ground of fraud

↓
A
Agreement in writing
↓
• Application of Allotment
• Transfer
• Transmission

↓
B
Beneficial owner
↓
Beneficial owner means a persons who name entered in Registered of Beneficial owner in the record of Depository

By Acquiescence of Estoppels

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

Who can be a member

(1) Minor

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

2- ADR | GDR

→ They cannot become members

→ Bank will be the member

eg

Tata co. → Bank → ADR/GDR

Expulsion of Members

→ Expulsion of a member of a company by BOD by amending the AOA of company is illegal & void & ultra vires.

Case law - Bajaj Auto Ltd V. N.K Ferada

Place of Keeping Register

Register office of the company
or

Special Resolution

Any place within city, town, village where register office of the company is situated.

Any place in India where more than 1/10th of total member resides.

- Execute - 7 days

- Pledge - 15 days

Inspection of Register

↓
member / Debenture holder
Other security holder

↓
Can inspect free of cost during business hours

↓
for other persons

↓
Fees ₹ 100

Copies of Register

- Supply within 7 days from deposit fees
- fees shall not exceed ₹10 per page

Book closure

- To determine eligible shareholder company shall close its books or register
- Advance intimation to all shareholder 7 days before book closure.
- Books can be closed for max 30 days or a time of max 45 days in a year

Record Date

- Day on which register is closed
- Advance intimation to all shareholder at least 7 days before record date
- Listed co. shall close its books of A/c at least once in a year

VETO POWER

- Veto power is the special power to stop an official action
- In some cases consent of shareholder is mandatory to approve any decision and such power is known as veto power.
- In companies Act veto power is given to shareholders in special resolution in case of related party transaction.

Casting Vote

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

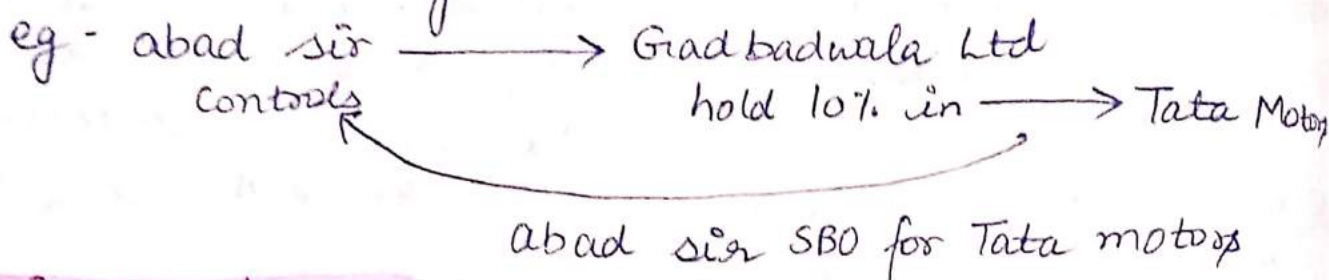
Significant Beneficial Owner (Sec 90)

- Individual person who act alone or together with one or more person or trust or person resident outside India who holds not less than 25% shares in the company or holds such

percentage as may be prescribed.

- 1- Hold Directly or indirectly 10% voting rights in company
- 2- Right to receive at least 10% or more of total distributable dividend.
- 3- Right to exercise significant influence or control other than direct holding.

• Indirect holding



Duties of SBO (Declaration)

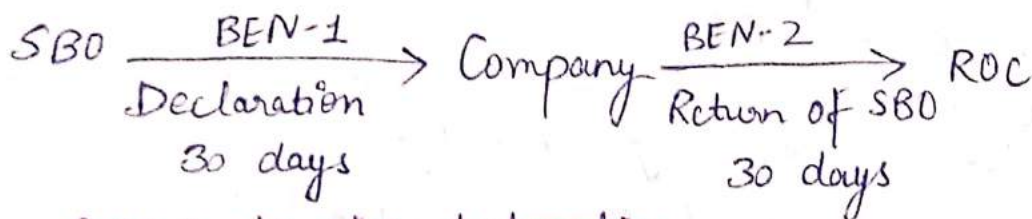
- SBO shall file a declaration to reporting company in form no. BEN-1 within 30 days from becoming SBO or any change in SBO.

Companies Duty (Return of SBO)

- Reporting company give notice to SBO with specified period to file declaration.

Companies Duty (Return of SBO)

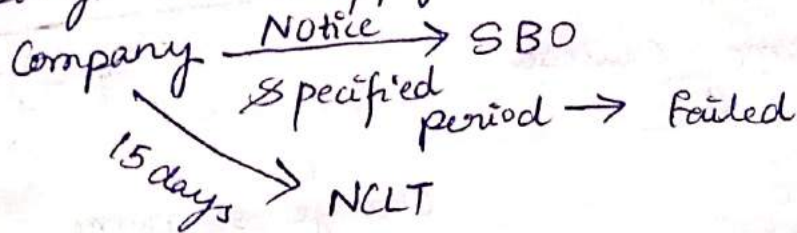
- Reporting company shall file a return of SBO in form No. BEN-2 with ROC within 30 days from Receipt of declaration from SBO.



SBO failed to give declaration

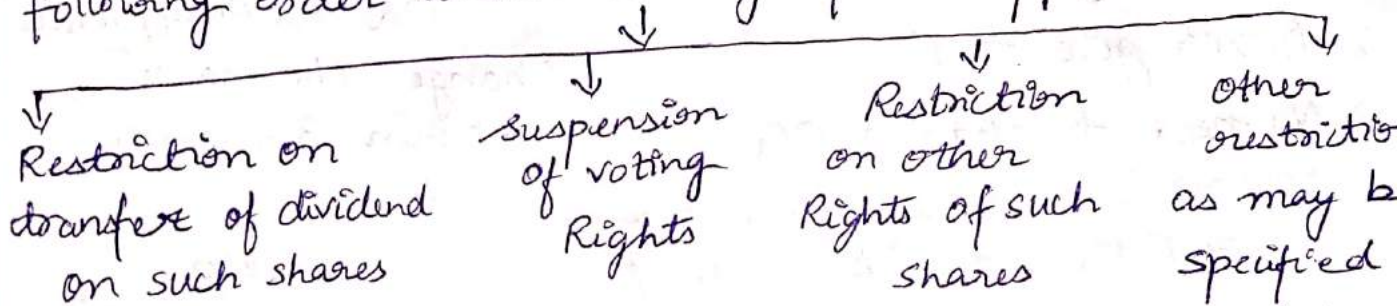
- Reporting company shall file give notice to SBO with specified period to file declaration

- After expiry of period specified in notice reparting company shall apply to NCLT with 15 days.

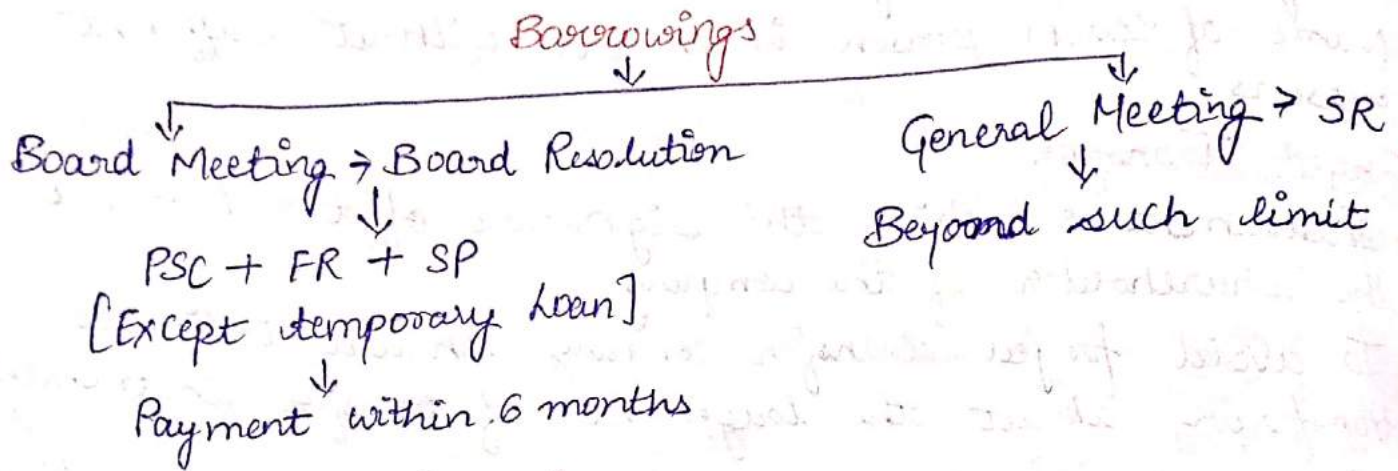


Order by NCLT

- NCLT offer giving opportunity of Being Heard may pass following order within 60 days from application.



- Aggrieved may appeal to NCLT for relating to lifting of restrictions within 1 year from order to NCLT.
- If no appeal within 1 year then such shares shall transferred to IEPF.



Ultra Virus Borrowings

Borrowing without authority given in the AOA, Borrowing beyond the limit specified by the article. Such ultra virus borrowing is void and lender can not sue to the company and security give to for such loan shall also in cooperative.

Remedies to Lender

1- Injunction to Recovery

Lender can obtain injunction order & recover from any property which has bought with borrowed money

2- Suit against Director

Lender can sue to director for breach of authority especially if director misrepresented their authority.

3- Subrogation

If ultra virus borrowing has used to pay intra-virus debt in such situation the lender would be substituted to the position of the creditor pay off. Intra Virus borrowing but outside the scope of agents authority

1) If director borrow money beyond their authority but borrowing is within the company authority such borrowing is known as intra-virus borrowing.

2) In simple words it is ultra virus to directors but intra-virus to company and company will be liable for such authority.

3) The company will be liable to such borrowing if lender acted in good faith or transaction was ratified by the company

4) The company would be liable if the money has been used for the benefits of company.

Issue of Debenture

→ Pass Ordinary Resolution

→ Option to convert into equity shares either wholly or partly.

→ No voting Right

→ Term → 10 years

→ In case of infrastructure companies → 30 years

Creation of DRR

→ Reserve created for redemption of debenture

→ Created out of profit

Exemption

• All Indian financial Institution Regulated by RBI & Banking Company.

• Registered NBFC regulated by RBI & Housing finance company (National Housing Bank) → listed.

• Financial Institution

• Unlisted NBFC & Unlisted Housing finance company

↓
Private
↓
NO DRR

↓
Public
↓
10% of outstanding debenture

• Listed Company

• Unlisted Company - 10% of outstanding debenture (public)

Creation of Debenture Redemption fund

- Every company required to create DRR
- On or before 30th April in each year required to deposits or invest atleast 15% of debenture maturity during the current FY.

• Deposit / Investment

↓
Deposit with
schedule bank

↓
Govt Security / Bond
(cannot create charge)

↓
Security mort-
gaged in India
Trust Act

Appointment of debenture trustee

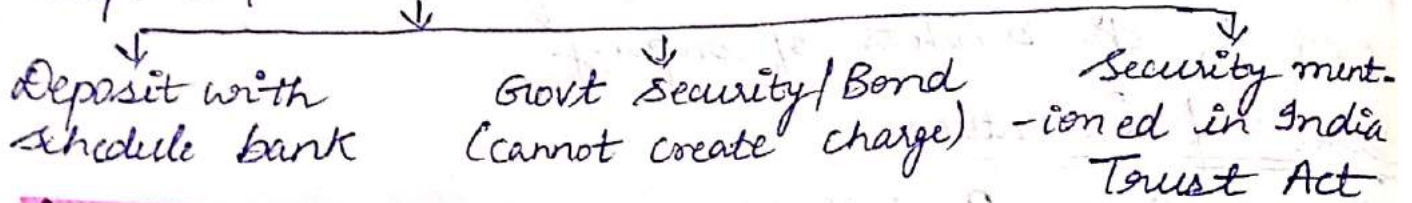
- If after to its exceeding 500 (appoint debenture trustee)
- Name of debenture trustee must be stated in letter of after
- Obtain consent from debenture trustee

Disqualification of Debenture Trustee

- Member
- Promoter, Director, KMP, officer, employee of the company of its holding company or subsidiary company or Associate company.
- Beneficially entitled to money or part for remuneration payable to debenture Trustee
- Indebted to the company or its holding / subsidiary / Associate company / subsidiary of such holding company.
- Guarantor in respect of principle debt secured by debentures.
- Pecuniary relationship amounting to 2% of or more of its Gross Turnover or total income or 50 lakh whichever is lower during 2 immediately preceeding financial year or current year.
- Relative of any promoter director, KMP

Creation of Debenture Redemption Fund

- Every company required to create DRR
- On or before 30th April in each year required to deposits or invest atleast 15% of debenture maturity during the current FY.
- Deposit / Investment



Appointment of debenture trustee

- If after to its exceeding 500 (appoint debenture trustee)
- Name of debenture trustee must be stated in letter of after
- Obtain consent from debenture trustee

Disqualification of Debenture Trustee

- Member
- Promotor, Director, KMP, officer, employee of the company of its holding company or subsidiary company or Associate company.
- Beneficially entitled to money (apart from remuneration payable to debenture Trustee)
- Indebted to the company or its holding / subsidiary / Associate company / subsidiary of such holding company.
- Guarantor in respect of principle debt secured by debentures.
- Pecuniary relationship amounting to 2% of or more of its Gross Turnover or total income or 50 lakh whichever is lower during 2 immediately preceeding financial year or current year.
- Relative of any promotor director, KMP

Appointment of Nominee Director by Debenture Trustee

Two consecutive default in payment of interest

- Default in creation of security
- Default in redemption of Debenture

Note - If the asset of the company are insufficient or likely to become insufficient debentures Trustee may file a petition to NCLT. NCLT may impose restriction

Cause Vacancy

Resignation - Consent of majority debenture holder

Other Reasons - BOD may file the casual vacancy.

Debenture Certificate

2 months from allotment, OR
1 month from transfer

Closure of Register of Debenture

Advance 7 days notice before closure by way of advertisement maximum period 45 days at one time 30 days

Deposit

Receipt of money by way of deposit or loan but does not include following:-

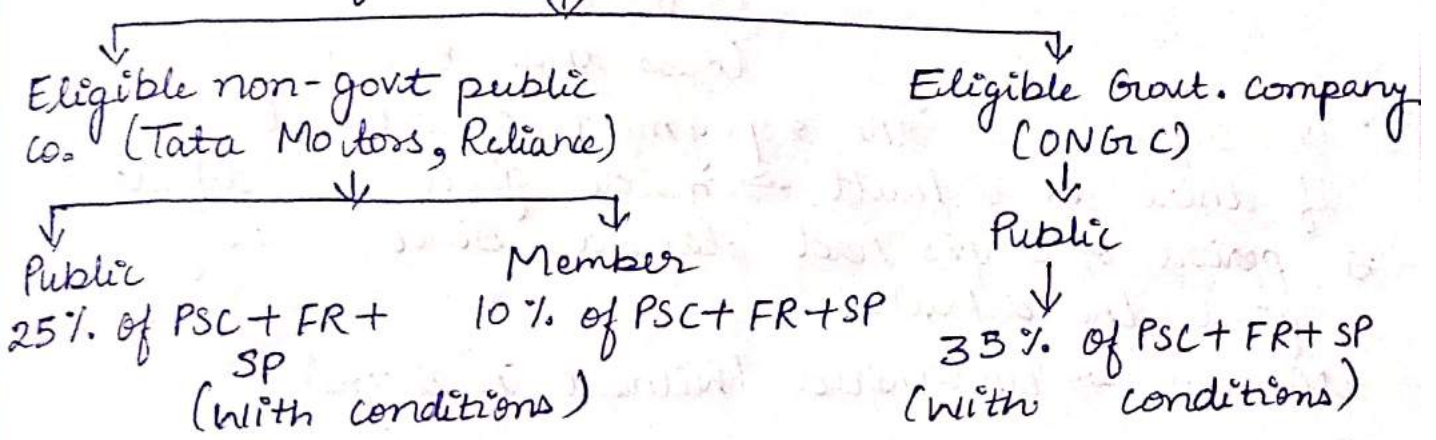
- Amount received from central govt, state govt, local authority or any other statutory authority
- Amount received from another source where repayment is guaranteed by central govt. and state govt.
- Amount received by foreign govt. Institution, Body corporate, citizens
- Amount received by banking company or from SBI.
- Amount received from public financial institution (LIC).
- Regional financial institution, Institution or Insurance company, scheduled Bank.
- Amount received against issued of commercial paper.
- Amount received from other company.
- Application money received.

Special Note: Allotment within 60 days otherwise refunded within 15 days from expiry of 60 days. if not refunded shall be treated as deposit

- Amount received from director or relative of director in case of private company.
- However declaration shall be given in writing that amount given owned fund & not from borrowed fund.
- In free deposits from employee do not exceeding annual salary.
- Security deposit for the performance of contract for supply
- Consideration of future service - within 5 years of or period of common practice.
- Supply of goods and services within 365 days
- Amount bought by promoter by way of unsecured
- Amount received & collective Investment Scheme. Loan.
- Amount received by chit fund & Nidhi company.
- Amount called by issue of bonds or debenture
- Secured by charge or tangible assets.
- Convertible within 10 years.
- Issue of non-convertible debenture (unsecured) listed on RSC.
- Other than these debentures → treated as deposit
- An amount of ₹ 25 lakh or more received by startup company by way of convertible note / Conversion or redemption within 6 years.
- Amt received by alternate investment fund, domestic venture fund, Infrastructure Investment Trust or Mutual fund.

Eligible Public Company

- 1- Public company having
Networth of ₹ 100 cr or more
OR
Turnover of ₹ 500 cr or more



2- Other than Eligible public company

Member

↓
33% of PSC + FR + SP
(with conditions)

3- IFSC public company

Member

100% of PSC + FR + SP
(without conditions)

4- Private Company

Member

100% of PSC + FR + SP
(without conditions)

5- Private company (Startup company)

Member

Unlimited Deposit for first 10 years

6- Private company which satisfy 3 conditions

- Not an Associate & Subsidiary
- Borrowing from Bank / Financial Institution any body corporate is less than twice of PSC or ₹ 50 cr.
- (whichever is lower)

Example PSC = ₹ 10 Cr → 20 Cr (10 x 2)
 ↳ 50 Cr (0%)
 (less than 20 Cr)

PSC = ₹ 30 Cr → 60 Cr (30 x 2)
 ↳ 50 Cr (0%)
 (less than 50 Cr)

7. No default in the repayment of such borrowing if there is default → made good the default & a period of 5 yrs had elapsed since making good the default

- Member → Unlimited (Without conditions)

Conditions

Member (Sec-73)

↓
 other public company eligible Member

- ① Pass Ordinary Resolution
- ② Issue circular to its members + Financial position + Credit rating obtained
- ③ File circular with ROC within 30 days before the date of issue to member
- ④ Deposit repayment fund
 ↓
 Deposit on or before 30th April.
 At least 20% of deposit matured during financial year.

Common conditions for every company

- ↓
- ① Pass OR or SR
 - ② All 6 companies
 - ③ Term - Minimum 6 months, maximum 36 months from acceptance or renewal.
 Short term - Minimum 3 months (10% of PSC + FR + SP)
 - ④ Rate of Int → Prescribed by RBI or NBFC
 - ⑤ Premature repayment of deposit - After expiry of General meeting
 Penalty - reduction of Rate of interest by 1%.

Public (Sec-

- ① Pass OR
- ② Issue circular to its member + Financial position + Credit rating obtained.
- ③ File circular with ROC within 30 days before the date of issue to member.
- ④ Deposit repayment fund.
 ↓
 Deposit on or before 30th April
 ↓
 At least 20% of deposit mature during the FY
- ⑤ However if borrowing within limit under sec 180 than pass BR

5) No default in repayment of deposit of interest, there on if there is default → make good & 5 yrs had lapsed.

6) Appoint a trustee for Depository.

7) Provide security if any

6) Register of deposit shall be maintained & kept at RO of the company.

7) Entry in such register within 7 days, authentication by Cs.

8) Reserve for 8 years

9) Return of deposit to ROC.

6) Additional conditions:-

→ Obtain credit Rating

→ CRA shall obtain every years.

→ Create a charge within 30 days from acceptance

Trustee of Depository

→ Appoint one or more trustee if a company inviting secured deposit.

→ Obtain consent of such person

→ Execute Trust deed in form DPT-2 within 7 days before issuing of circular.

Disqualification

→ Director, KMP, Employee of company / Holding / subsidiary / associate.

→ Depositor of the company

→ Indebted to the company / Holding / subsidiary / Associate

→ Material pecuniary relationship with the company

→ Given guarantee on behalf of company against depositor

→ Related to director, KMP, Employee.

Removal of Trustee

→ Consent of all directors and atleast 1 ID should be present in the meeting.

Disclosure in Board Report

2) Accepted during the year

b) Remain / unpaid / unclaim at the end of the year

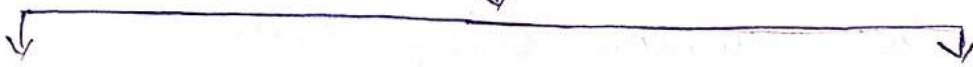
2) Default in such deposit at the beginning of the year, during the year & at the end of the year.

Charges. Chapter-7

Charge

- Charge means an interest or lien created on Property or assets of a company or any of its undertaking or both as a security & includes mortgage.
- In simple words charge means security given for the loan.

Types of charge



Fixed charge

- Property is ascertained as defined
- Specific Property
- Cannot deal in such property
- Nature - It is Legal Charge
- Created on fixed assets like land, building or Plant & Mach.

Floating charge

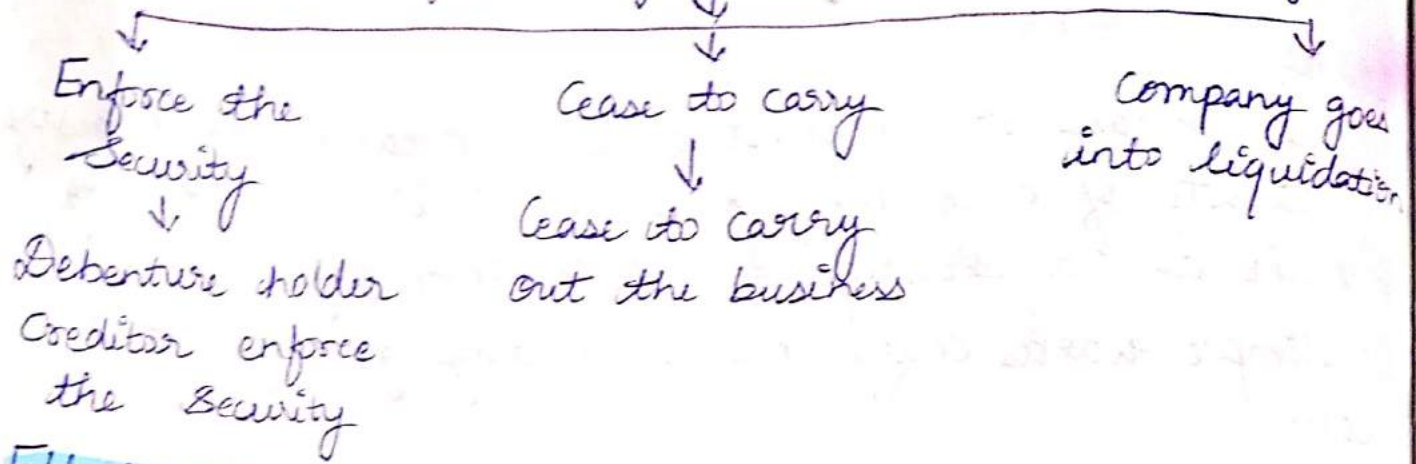
- Property is unascertained or unidentified
- General Property
- Can deal in Property until default
- It is equitable charge
- Created on Floating assets like stock in trade, debtors etc

Types of charge on the basis of condition

- Pari-Passu charge :- charge is shared by more than one lender in the ratio of loan amount.
 - Obtain Prior consent of existing charge holder
- Exclusive Charge - single lender
- Further charge - With consent of first charge holder the further charge is created

Crystallization of Floating charge

Conversion of floating charge into Fixed charge



Effect of Crystallization of Floating charge

- Priority over other equitable charge holder
- Priority over the unsecured creditors

Postponement of Floating charge

- 1) landlord was distraint from rent
 - 2) Creditor who obtain garnishee order
 - 3) Judgment creditor who attach and sold the goods
 - 4) Employee and Preferential creditor Eg- Govt tax, pf- Provident Fund
 - 5) Supplier under hire purchase agreement
- Direct Paise creditor degra Garnishee K

Registration of Charge

- 1) Registration of charge within 30 days from creation of charge in form no. CHG-1 for other than debenture Form no - CHG-9.
- 2) If company failed to register within 30 days then company can register within 60 days from creation of charge after payment of additional fees.
- 3) If company failed to register within 60 days company may register within 60 days after expiry of above 60 days the payment of adjourn duty.

4) If failed to register within 120 days such charge cannot be register.

Effect of Non-Registration of Charge

- Lender shall be treated as unsecured creditor
- Void against the liquidator it means company can ignore the charge and concerned creditor is treated as unsecured creditor.
- If subsequent charge is created on the same property and the charge in register then registered charge holder gets the property.

Application for register of charge by Chargeholder

- If company failed to register the charge within 30 days from creation of charge
- Chargeholder may apply to ROC for registration after the payment of additional fees or ad valorem fees as the case may be
- ROC shall give Notice to company about such registration
- Company shall register the charge within 14 days
- If company failed to register within 14 days then ROC shall allow the registration on the basis of application given by chargeholder
- The amount of fees paid by charge holder shall be recovered from company.

Certificate of Registration of Charge

- When charge is registered ROC shall give certificate of registration in form CHG-2
- Such certificate is the conclusive evidence that charge is registered

Satisfaction of charge Section-82

- Company shall give intimation to ROC about the satisfaction of charge within 30 days from payment in Form CHG-4 along with the fees.
- If failed to register within 30 days ROC may Register within a period of 300 days from such payment after the payment of additional fees → apply to CG (Failed to regⁿ within 300 days)
- ROC shall intimate to charge holder
- Chargeholder can object such registration within 14 days from such Notice.
- After expiry of 14 days ROC allow such registration
- However, no need to send such Notice if the letter of chargeholder stating that the amount has been satisfied if filled with company.
- Certificate of registration of satisfaction of charge in CHG-5

Modification

- 1) Follows section 77 only
- 2) Certificate of registration of Modification of CHG-3

Companies Registration of Charges Section-85

- Every company shall maintain at registered office of the company a register of charge in Form NO. CHG-7
- Contains particulars of charges
- All the entries shall be authenticated by director or secretary
- Register of charge shall be maintained permanently
- Instrument creating charge shall be preserve for 8 years from satisfaction of charge.

Rectification by Cr in register of charge (Appeal to Cr)

↓
Omission to give intimation about satisfaction of charge within specified time

↓
(or) Omission or mis-attachment of any particular of charge in respect of modification or satisfaction

Grounds

- (a) Non registration of satisfaction was accidental
- (b) It is not in a nature to prejudice the position of creditors.
- (c) Other sufficient reasons

↓
Cr if satisfaction may order for registration

Invalidity of Floating Charge

↓
Charge is created within 12 months preceding the commencement of winding up

↓
Charge is invalid

↓
However if it is proved that the company was solvent at the time of creation of charge

↓
Charge is valid

Restrain on the power to create charge with priority to a floating charge.

- It is common to insert a clause restricting the power to create another charge with priority or pari-passu with it.
- If company create a mortgage in favour of any person who has Notice of floating charge & about the restriction such person rank after the floating charge.

Procedure for registration or modification of charges

- BM-BR → Consider borrowing & creating charge
- Authorise director / MD to sign & execute charge instrument
- GM-SR to authorise company to create or modify the charge
- File MGT-14 to ROC
- File CHG-1 as CHG-9
- Maintain Register of charge

Inspection of Register of Charge

- By Member or creditor → Free of cost
- Any other Person → Prescribe fee.
- Inspection during business hours only. i.e. (9am to 6pm)

Search & Status Report

- It traces the history of a company's Property & how it has charged its assets with bank as lender
- Report Prepared by CS in Practice
- It helps to bank / FI / lender / Investor to take conscious decision
- It includes:-
 - (a) Name of company (b) CIN
 - (b) CIN
 - (c) Registered address
 - (d) Capital
 - (e) List of director / Shareholder
 - (f) List of Registered charges
 - (g) Date of loan taken & charge created
 - (h) Name & address of charge holder
 - (i) Details of Property charged & terms & condition of charge.

Accounts & Auditors (Chapter-9)

Introduction

- (a) Maintain BOA on Accrual basis
- (b) show true and Fair view
- (c) Double Entry System
- (d) Accrual Basis

* Place of Keeping Books of Accounts → Kept at register office of the company or such other place in India with board approval.

→ Inform to ROC within 7 days from such change by passing Board Resolution in form AOC-5

Books of Branch a/c

Branch office can be maintained at branch office however submit summarised Books of Accounts at regular interval. (not more than 3 months) to register office of the company.

Preservation of Books of Accounts

- 8 years from preceeding current year
- Can be maintaining in electronic mode
- Data received from branch shall not be altered.
- Maintained in legible format.

Responsible person for keeping the books of Accounts

- Whole time Director
- Person incharge of finance
- Managing Director
- Chief Financial / officer
- Other specified person

Inspection of Books of Accounts

M → Member carried inspect except authorised by Board of directors or company.

A → Auditor can inspect all the Books of Accounts at any point of time.

- R → ROC or officer appointed by central govt or SEBI.
- D - Director or his agent or his representative however inspection can be refused if information sought to be passed to a rival business

Financial Statements Section 2(40)

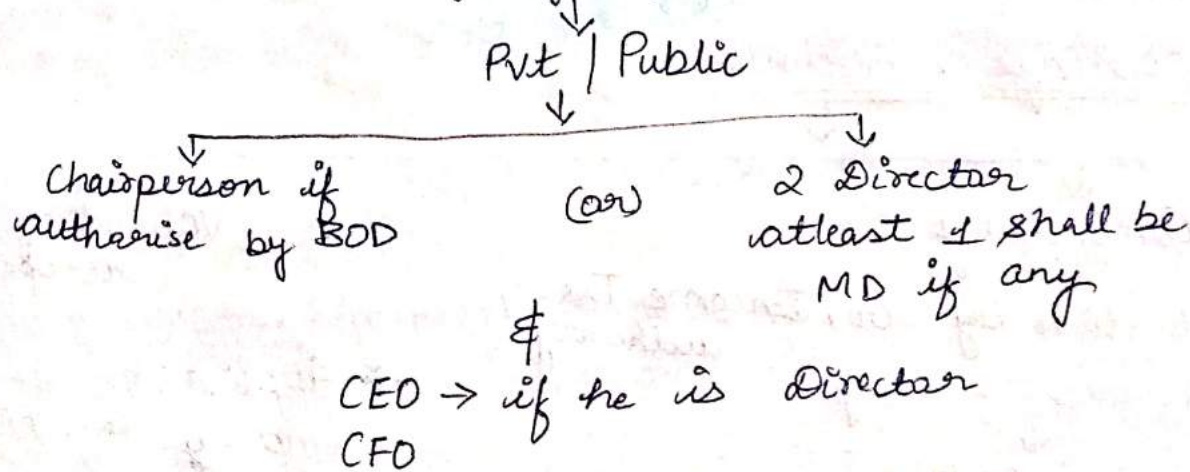
1. Balance sheet
2. Profit & loss a/c
3. Statement showing changes in equity (~~Exemption दिया है~~)
4. Cash Flow Statement [~~Exemption दिया है~~]
5. Explanatory Notes (if आप कोई special provision follow कर रहे हैं तो इसका reason explanatory notes में लिखते हैं।)

Note - OPC / Dormant / Small company

↓
No need to maintain cash flow statement

- Financial statements shall be laid before Annual General Meeting)
- Prepare consolidated financial statement of subsidiary company & Associated company.

Signing of FS



- OPC - Atleast 1 CS Director
- Audit report shall attach with FS
- Right to get c.

Rights to get copies of Audited FS

- Copies of FS & Audit report to all member at least 21 clear days before the members

Listed Entity

send statement containing salient features of FS & Full copies made available at RO at least 21 clear days prior to meeting

Mode of Sending Financial statement

→ Listed company

→ Public Company (Net worth > 1 cr) & (T/O > 10 cr)

1- Demat a/c holder

& Registered E-mail ID

→ E-mail soft copy

2- Physical shareholder but positively give consent in writing to receive FS in E-mail

→ soft copy

3- Other shareholder → Physical made (Summarised FS)

4- Request for full copy → Provide the same

Re-opening of Accounts [NCLT ka approval (lega)]

Compulsory

Application by CG, Income Tax authority, SEBI / other regulatory

App to NCLT

NCLT can order the re-opening

Voluntary

re-opening

→ Application by company to NCLT

→ NCLT order to re-open the account

Grounds

- accounts were prepared in Fraudulent manner
- affairs of company mismanaged
- Doubt on reliability of FS

Order

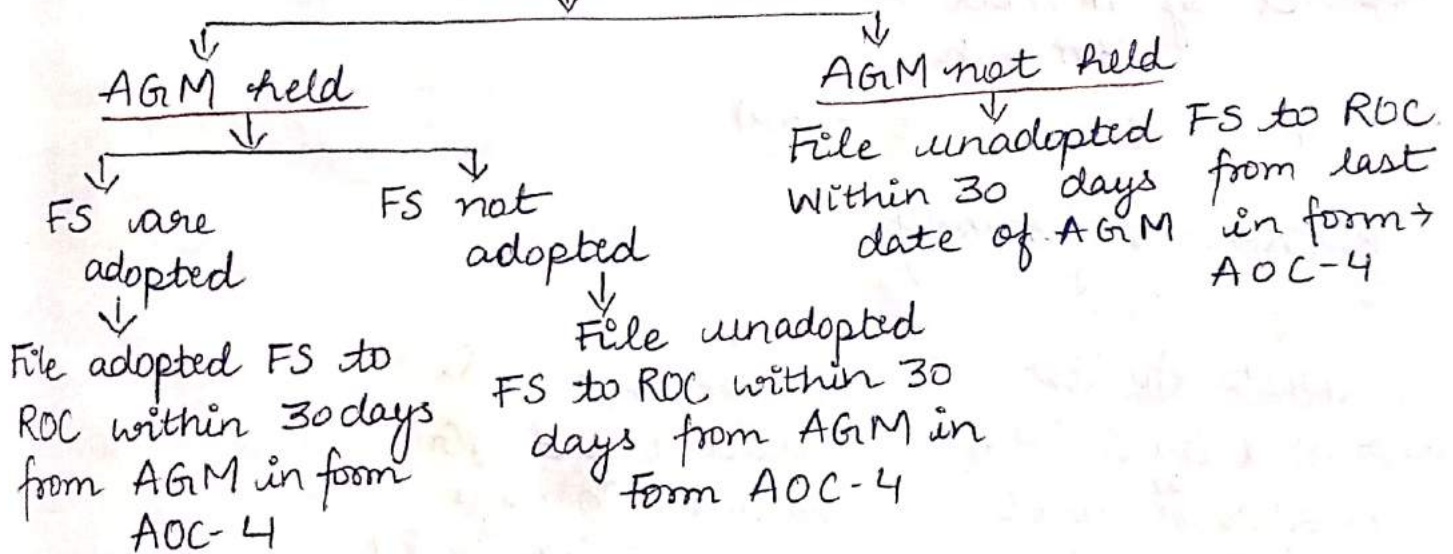
- Books of accounts can be re-open for 8 FY
(or)
- if CG direct the Period of 8 years can be extended

Order

- Books of Accounts can be re-open for max 3 years
- Revision in BDA - once in FY

Annual Compliances of FS

Pvt / Public



OPC - File adopted FS to ROC within 180 days from closing of FY.

Filing in XBRL format [Extensible Business Reporting Language]

listed co or Co. having PSC of ₹ 5cr or more or Co having Turnover of ₹ 100cr or more

Appointment of auditor (Sec-139)

Govt. company

Non-Govt company

First Auditor

Appointed by BOD
within 30 days from
INC.

Appointment by member
within 90 days

Till the conclusion of
1st AGM

Casual Vacancy

Resignation

→ Recommend by BOD &
approved by member within
3 month

→ Term - Till the next AGM

Subsequent Auditor

→ Appointment by
member in AGM

→ Obtain consent from such
auditor

→ Term - Till the conclusion of
6th AGM

Government Company

First Auditor

Appointed by C & AG
comptroller & audit
general of India
within 60 days
from INC

If Fails

Next 30 day - BOD

Fails

Next 60 days - Member

Till - The conclusion of
1st AGM

Subsequent

Appointed C & AGM
within 180 days
from beginning of FY

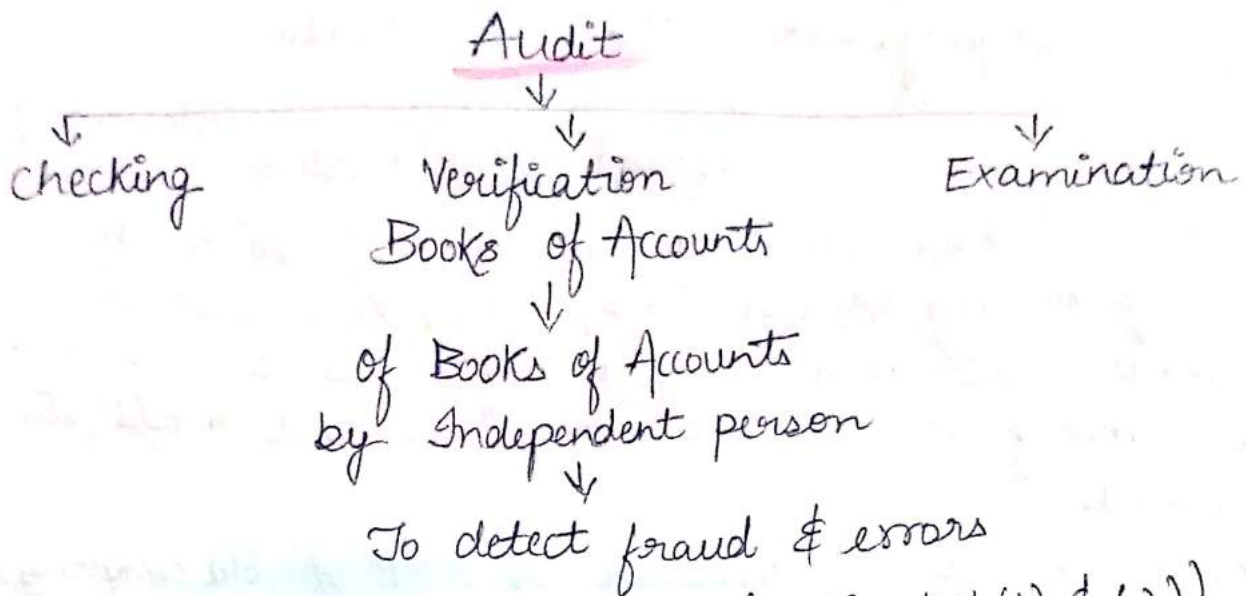
Term - Conclusion of Next AGM

Casual vacancy - Filled by C & AG
within 30 days

↓
BOD within next
30 days

* Re-appointment is possible

Part B Audit and Auditors



Qualification of the Auditors (Section 141 (1) & (2))

- Practising Chartered Accountant
- Firm or CA where majority partner practicing in India
- LLP → act and sign by practising CA only.

Disqualification of Audit

- Body corporate except LLP
- Officer or employee of the company
- Partner, employee of officer as employee of the company
- Person or his relative, partner is holding security in company / holding / subsidiary / Associate.
However relative can hold upto ₹1 Lakh face value in the company However if holding of relative exceeds ₹1 lakh than face value than corrective actions shall be taken within 60 days.
- Persons / Partners / relatives has given guarantee or securities in excess of ₹1 lakh in connection with the indebtedness of any third party by company / holding / subsidiary / Associate sub holding of holding company

Company $\xrightarrow{\text{SL loan}}$ Person / Partners / Relative

Company $\xrightarrow{\text{TL loan}}$ Third Party

Person / Partner / Relative $\xrightarrow{\text{Guarantee / Security}}$

• Person / Firm has business relationship with the company holding / subsidiary / Associate. However transaction at arm length Price as a customer like communicate Airline, hospitals and hotels is allowed.

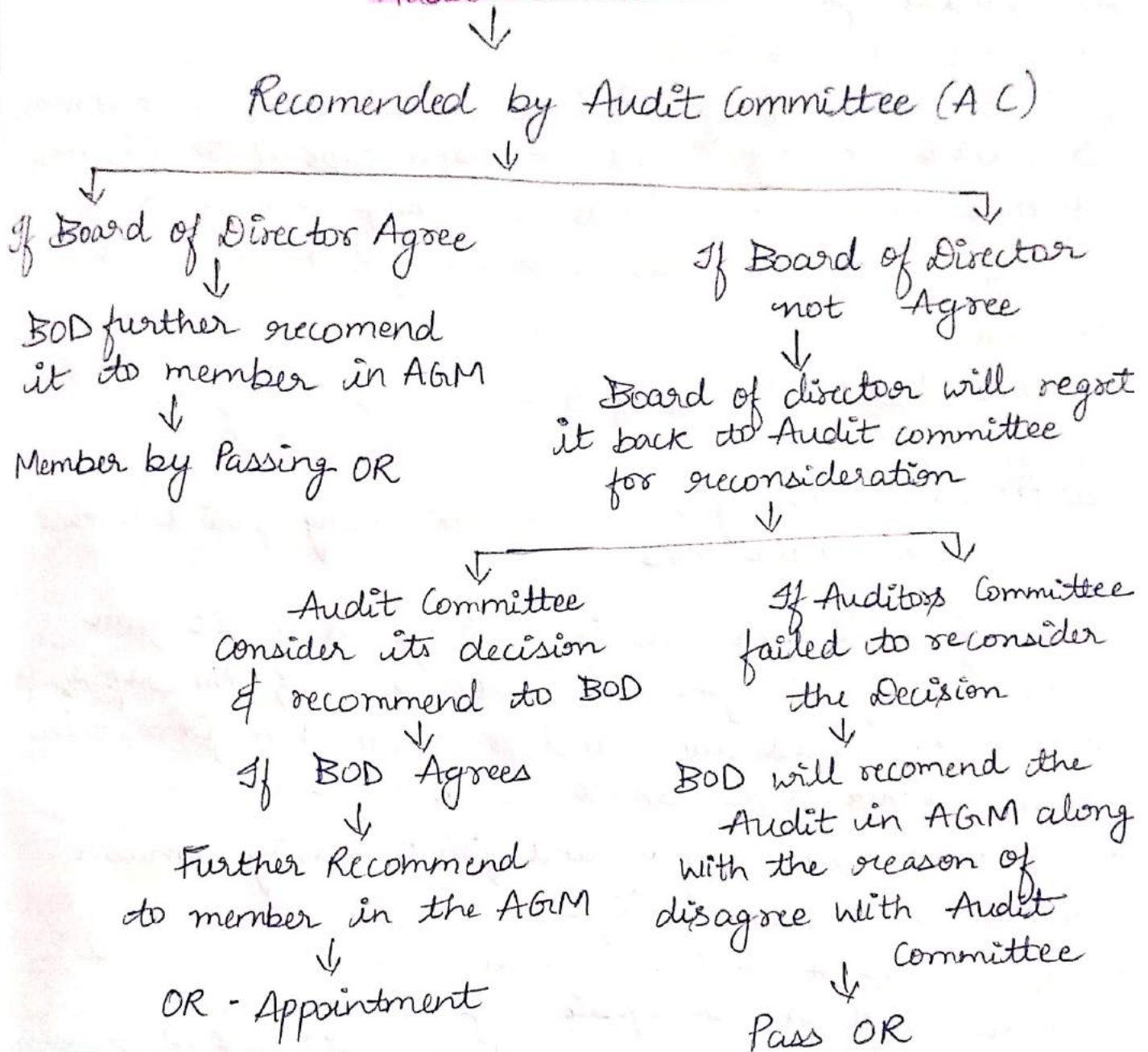
- Person / relative is director or KMP of the company
- Full Time Employment
- Person is auditor in already 20 companies.
- Convicted by court of offence involving fraud and 10 yrs has not elapse from such conviction.
- He renders services u/s 144

Note - 20 companies does not include one Person company, Dormant company, small company and private company having less than 100 cr of capital.

Section 144 shall not include:-

- (a) Accounting & Book Keeping services
- (b) Internal Audit
- (c) Design & Implementation of any financial information.
- (d) Actual service
- (e) Investment Advisory services
 - Investment Banking services
 - Rendering of out sourced financial services
 - Managerial services
 - Other Prescribed services.

Appointment of Auditor if company is having Audit Committee



Re-appointment of Retiring of Auditor

AGM → OR → Re-appointment

↓

Except / unless

↓

Disqualify

↓

He shows Unwill-
-ingness

↓

SR - To appoint new Auditor in the place of retiring Auditor

Rotation of Auditor Sec 139 (2)

A. Applicability

- 1- listed Company
- 2- Unlisted Company - Paid up share capital 10cr or more
- 3- Private company - Paid up share capital 50cr or more
- 4- Any other co. - Public borrowing from bank
Public deposit of ₹ 50cr or more

B- Term

- a) Individual: 1st term of 5 —————> Cooling Period
5 years
- b) Firm: 2 terms of 5 —————> cooling period 5 years
Consecutive years

Note- If a partner who is in charge of Audit firm and certify the financial statement of the company retires from said firm and joint another firms, then such another firm shall be ineligible.

- Any other audit firm and joint having common partner shall also ineligible
- Firm existing under common network or brand name shall be ineligible e.g. E and Y.

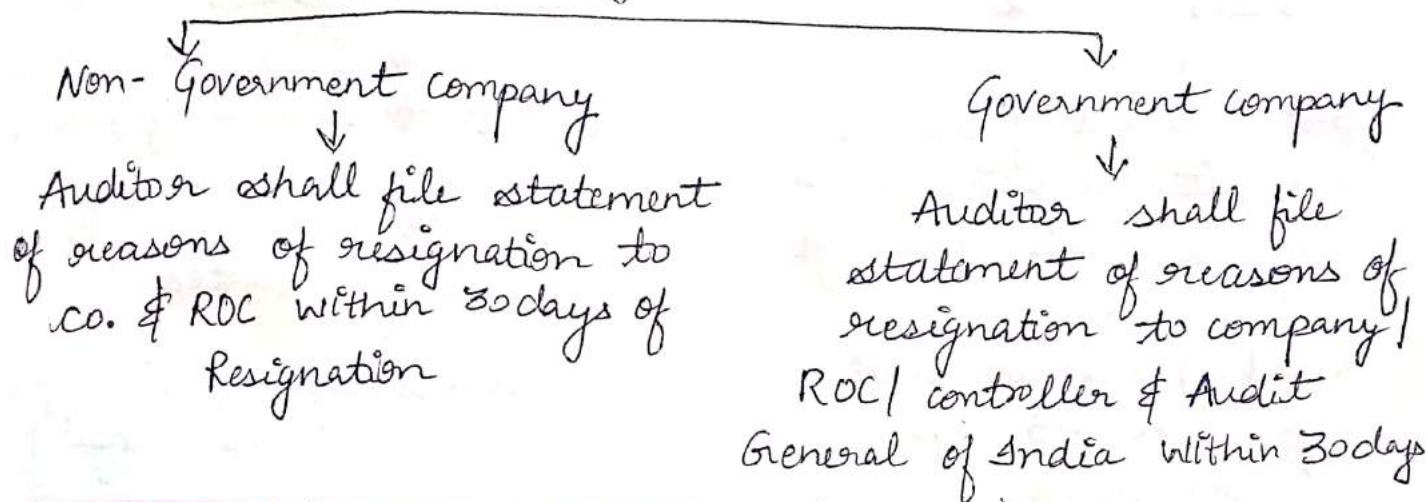
Appointment of Auditor other than retiring Auditor Sec 140

- Special Notice (115) to company atleast 14 day before the meeting
- Company shall forward the notice to retiring Auditor
- Auditor shall give representation to the company (reasonable length and not too long)
- Auditor may requires the company to read out the representation in the meeting if it received for late.
- Company shall forward notice and representation to all the members atleast 7 days before the meeting
- No need to give special notice if rotational clause apply to such auditor.

Removal of Auditor (requires CG Approval & JK approval)

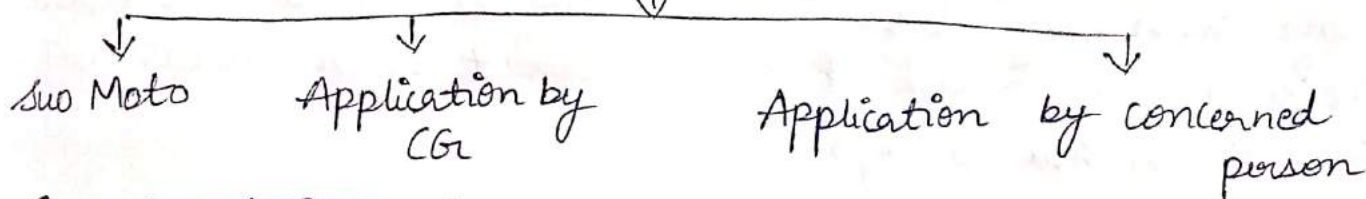
- Board Meeting → Board Resolution
- Obtain the approval of Central Govt.
- (Application in form ADT-2, within 30 days from Board Resolution)
- Central Govt → Approval.
- Approval from member by way of special Resolution within 60 days from central Govt approval.
- Give opportunity of being heard. (OOBH)

Resignation of Auditor (ROC की approval देना पड़ता है)



Powers of Tribunals Section 140(5)

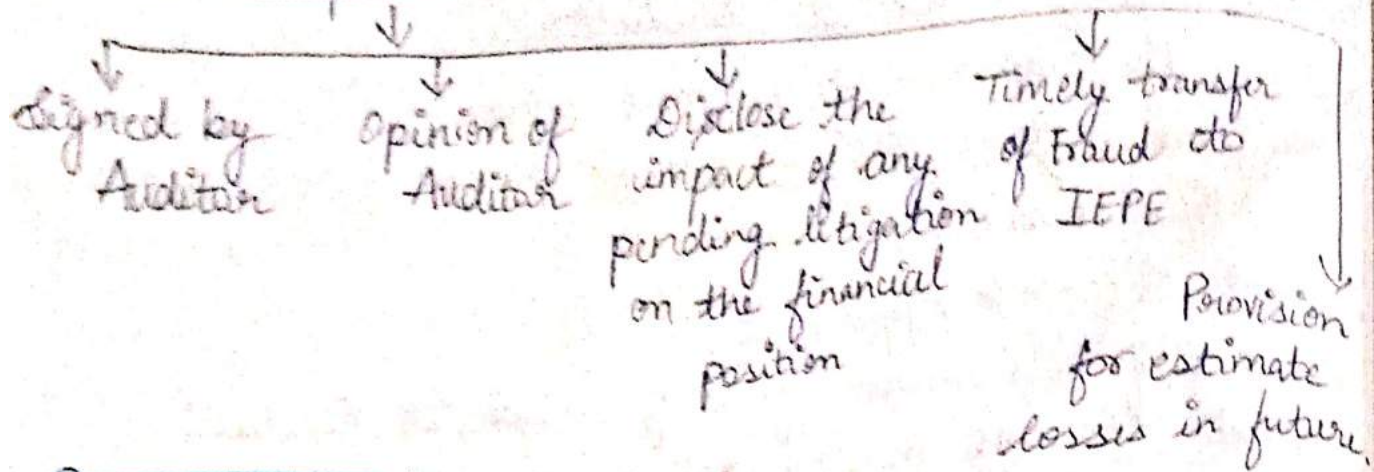
NCLT can direct to the company to charge the auditor



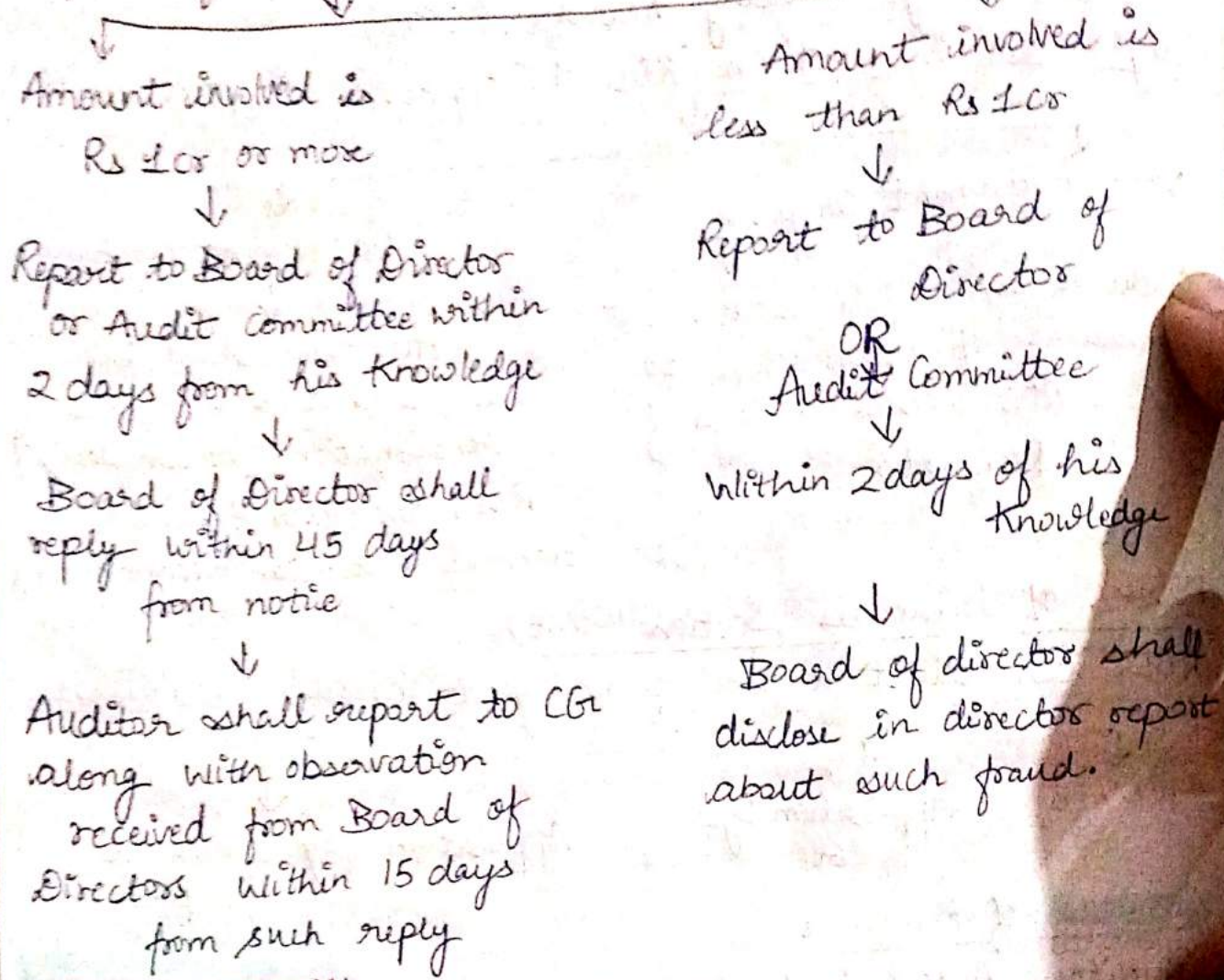
Grounds of Removals

- Auditor Acted in fraudulent manner
- Order → Within 15 days from receipt of Application
- If application is given by Central Govt. will appoint new auditor removed by NCLT shall be disqualified for a period of 5 yrs from such order & liable for frauds.

Audit Report



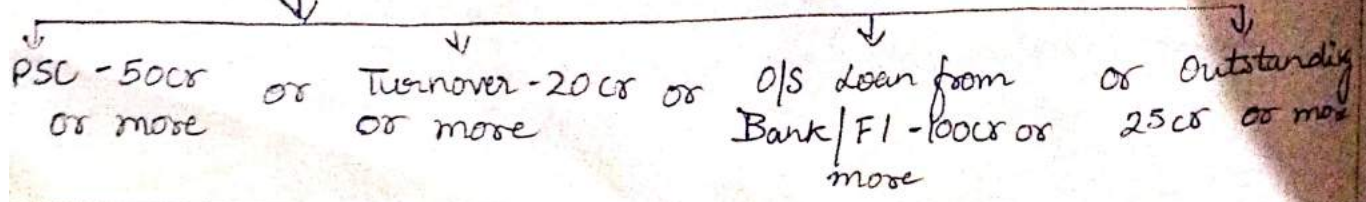
Report of Fraud



Internal Audit

Applicable to

- 1) listed company
- 2) Unlisted company



3- Private Company

- a. Loan \rightarrow 100 cr or more (or)
- b. Turnover \rightarrow 200 cr or more

Who can be Internal Auditor

- Qualified CA/CMA
- Practicing CS
- Employee
- Other Professional
- Statutory Auditor cannot conduct internal Audit

Scope of Internal Audit

- Accounting Standard
- Internal Control
- Effectiveness of Internal Control
- Other financial recording

Secretarial Audit

Applicable to

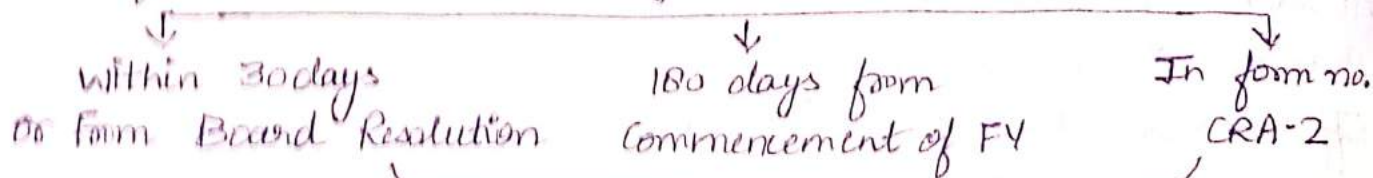
- a. Listed Company
- b. Public Company \rightarrow PSC of 50 cr or more or
 \rightarrow Turnover of ₹ 250 cr or more
- c. Every company having outstanding loan or borrowing from Bank / Financial Institution of ₹ 100 cr or more
- Conducted by PCS.
- Secretarial Report in form MR-3
- Objectives \rightarrow To check the compliances of applicable laws
 - \rightarrow Point out non compliances
 - \rightarrow Protect the interest of shareholder
 - \rightarrow To avoid the legal Action
- Appointed by BOD
- Secretarial Report shall attached with Board Report

Cost Audit

Applicable to

(A) Central govt. specifies company.

- Conducted by practicing cost Accountant
- Cost report to BOD
- BOD shall submit such report to Central government within 30 days
- Cost report shall be maintain in form CRA-3
- BOD shall appoint cost Auditor by passing Board Resolution
- Inform central govt about such appointment



whichever earlier

- Cost Auditor shall give cost report within 180 days from closing of financial year of company, shall forward such report to central government within 30 days

Companies Auditor Report Order 2020 (CARO)

- Applicable to all company except including foreign company except section of company, or one person company of certain private company.

Following subject matter are described as per CARO in Audit Report.

- Whether company is maintaining proper records showing full details about plant, property & equipment. Physical verification of property, revaluation of property is more than 10% of change in assets.
- Details of proceeding against company with regards to benami property.
- Physical verification of inventory.
- Quarterly return if company having more than 500 of

working capital with banks or Financial Institution

- (e) Details of investment and default in loan
- (f) Details of undisputed statutory dues like GST, provident fund

Company is Required to File statement in AOC-4 are as follows:-

- (a) Listed company & its subsidiary
- (b) Company paid having paid up share capital of ₹500
- (c) Company having Turnover of ₹100 cr or more
- (d) All other company except NBFC having finance company, Bank & insurance company.

Voluntary Revisions of Financial Statement or Boards Report (Sec-131)

Grounds

- Accounts were prepared in fraudulent Manner Affairs of the company are mismatched
Doubts are reliability of Financial statement
- Financial Statement does not comply with sec 129
- Board report does not comply with the provision of law.

Period

- Books of Accounts can be re-opened for a financial year OR if CG direct the period of 8 yrs can be extended
- Books of Accounts can be re-opened for a period 3 years
- Revision in Board → once in financial year

Constitution of NFRA

- Chairperson (Atleast 25 years of experience accounting, auditing, financial & law)
- 3 full time members → ~~experience~~ and same part time members (maximum 15 members)

- Full time members → experience of at least 20 years in Accounting, Auditing & finance.)

NFRA National Financial Reporting Authority

Objectives:

- Maintain details of auditors
- Recommend the Accounting standards & standard of Auditing.
- Oversee the quality of services of Professional

Duties

- 1) Protect the public interest
- 2) Establish high quality of accounting standard & standards of Accounting

Note - Chairperson & full time director shall not associate with any other Audit firm during employment & 2 years after ceasing employment. Body corporate shall inform in Form NFRA about the appointment of Auditors within 15 days.

Penalty

Penalty for individual CA or Firm

Individual

Not less than 1 lakh which may extend to 5 times of the fees received in case of Individual

Firm

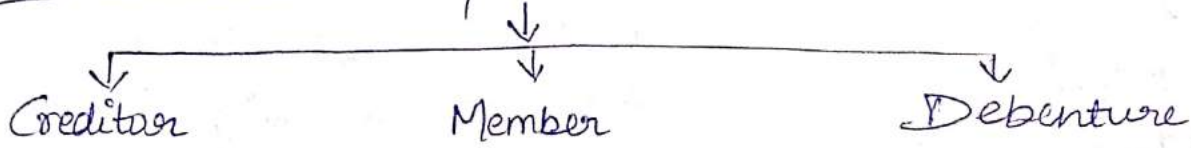
Not less than 5 lakh ₹ which may extend to 10 times of fees received in cash of firm.

- Debarring the members firm if appointed as auditor and debarring from performing valuation assignment for minimum 6 months & maximum 10 years.

Compromise, Arrangement & Amalgamation

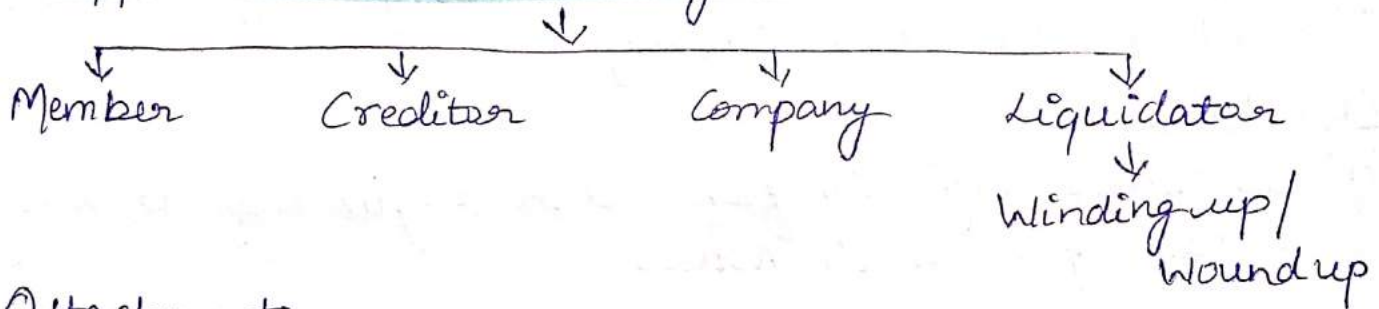
Chapter-10

Section - 230 Compromise



Compromise & Arrangement Section-230

1- Application to NCLT by



Attachment

- All material Facts
- Latest Financial Position
- Latest Auditor report
- Details of pending litigation
- Details of Reduction of Share capital
- Details of Debt restructurings scheme (approval from 75% of creditor in value)

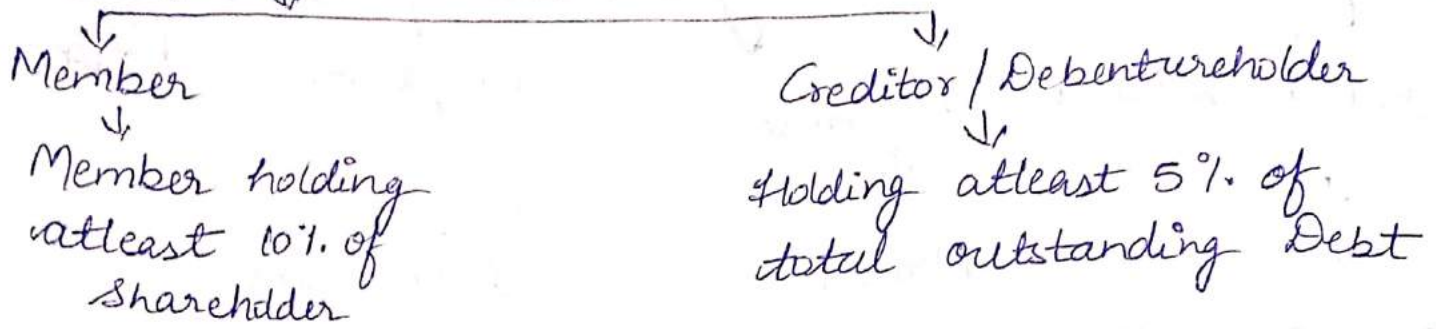
2- Direction

NCLT will give direction to conduct the meeting of creditor, member, Debentureholder, class of member

3- Intimation

Company shall give intimation to creditor, member, Debentureholder, class of member along with notice & Draft scheme of compromise & arrangement

4- Objection



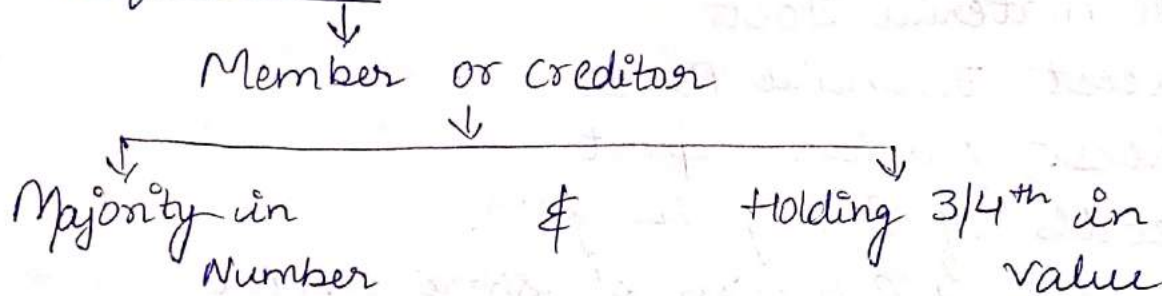
5- Intimation

→ Company shall intimate to regulatory body like CG, ROC, SEBI, CCI, Stock Exchange

6- Objections

Representation (Objection from such regulatory within 30 days from such Notice.

7- Confirmation



8- Final app to NCLT

- If NCLT is satisfied, that pass the order of C&A
- File order of NCLT to ROC within 30 days
- NCLT shall supervise the scheme
- If such scheme is not implement satisfaction than NCLT can pass winding up order

Note - The Tribunal may exempt from calling of meeting of member or creditor if company has obtain approval from govt. in value of creditor or member.

Section-232 Merger & Amalgamation

- (a) App to NCLT under sec 230 if involves scheme of Merger & Amalgamation
- (b) NCLT gives director to hold meeting
- (c) Intimation to member or creditor
- (d) BOD of adopt the scheme of M & A
- (e) ~~Final app~~ Approval - Majority in Number & $3/4^{\text{th}}$ in value
- (f) Final app to Tribunal
- (g) Tribunal if satisfied, Pass the order of M & A
- (h) Filing of such order to ROC within 30 days

Effect of Merger & Amalgamation

1. Property, Assets, liability of transferor company shall transfer to transferee company.
2. Shareholder, Debentureholder & other security holder of transferor shall transfer to transferee company
3. Continuation of legal Proceeding against the transferee company
4. Dissolution of transferor ^{not agree with M & A} company without winding up
5. Make Provision for dissenting shareholders
6. Employee of transferor company becomes the Employee of transferee company
7. Transferee co. cannot hold shares in its own name or under any trust name or under subsidiary.
8. If transferor co. is listed company & transferee co. is unlisted company then transferee co. remain unlisted until it becomes listed.
9. File auditor certificate to tribunal that accounting standard is duly completed
10. Scheme shall indicate appointed date from such date M & A shall take effect (Date Mentioned in Scheme)
11. Copy of order file with ROC within 30 days from Receipt of order

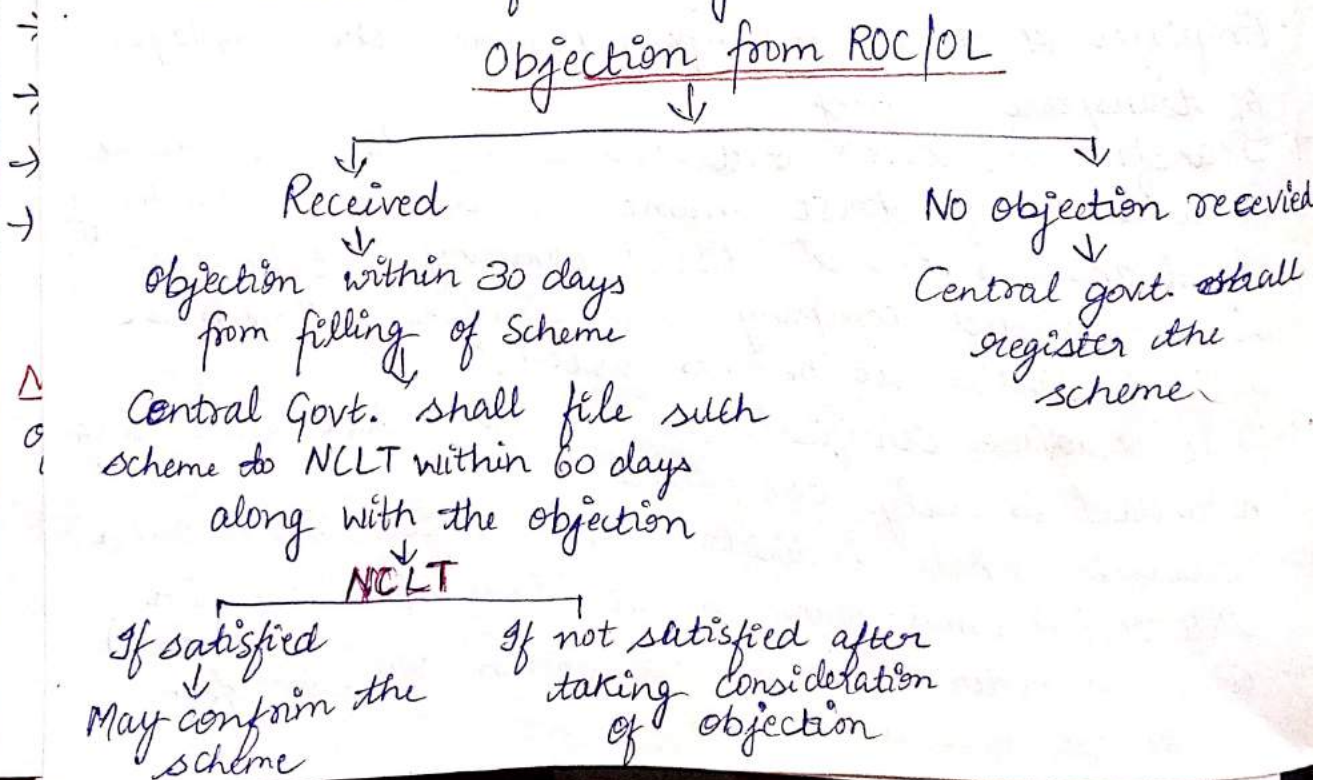
12. Annual statement certified by CA/CS/CMA & shall filed with ROC every year until the completion of scheme.
13. File Annual Statement within 210 days from closing of financial statement

Merger & Amalgamation of certain companies (233)

- Two or more small co. ✓
- Wholly owned co with holding co.
- Two or more startup co.
- One or more startup with small co.

Procedure

- 1- Prepare draft scheme & file with ROC and official liquidator
- 2- ROC & official liquidator can object or give suggestion within 30 days from such filing.
- 3- Approval from member holding 90% in value
- 4- Obtain approval of creditors - majority in number & 9/10th in value.
- 5- File Declaration of solvency



↓
Scheme shall be
registered with
ROC

↓
May reject the
scheme

Merger in Public Interest Sec 237

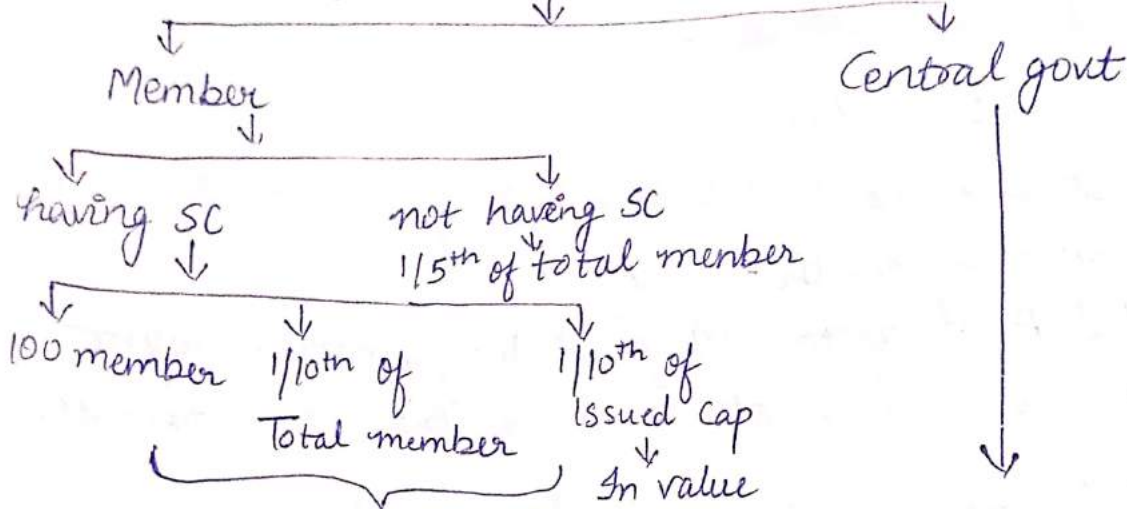
- 1- Prepare Draft Scheme
- 2- Send such scheme to each company
- 3- Modification - 2 month - specify
- 4- Before M & A & after Merger & Amalgamation right nearly remain same otherwise liable for compensate
- 5- CGI → order → Notification in official Gadget
(Share ka Rajparata)
↓
File → order → Both the house of Parliament
- 6- Aggrieved Party
↓
Appeal to NCLT within 30 days from order

Power to acquire shares from Dissenting Shareholders

- Scheme involving transfer of shares to transferee co.
- Transfer of such shares within 4 months after making an offer by transferee company after approval from 9/10th in value of shares
- Transferee company shall give notice to dissenting shareholder within 2 months from expiry of said 4 months.
- Acquire such shares within one month from such notice.

Oppression & Mismanagement

↓
Appeal against O & M to NCLT



Grounds Whichever Lower

- 1- Prejudicial to company int
- 2- Prejudicial to member int
- 3- Prejudicial to Public int
- 4- Material change in management

Grounds

- Person concerned in the conduct of mang is or has been found guilty
- Affairs - Prejudicial Manner
- Affairs - Serious injury damage to share

↓
Central govt - Tribunal

↓
Order

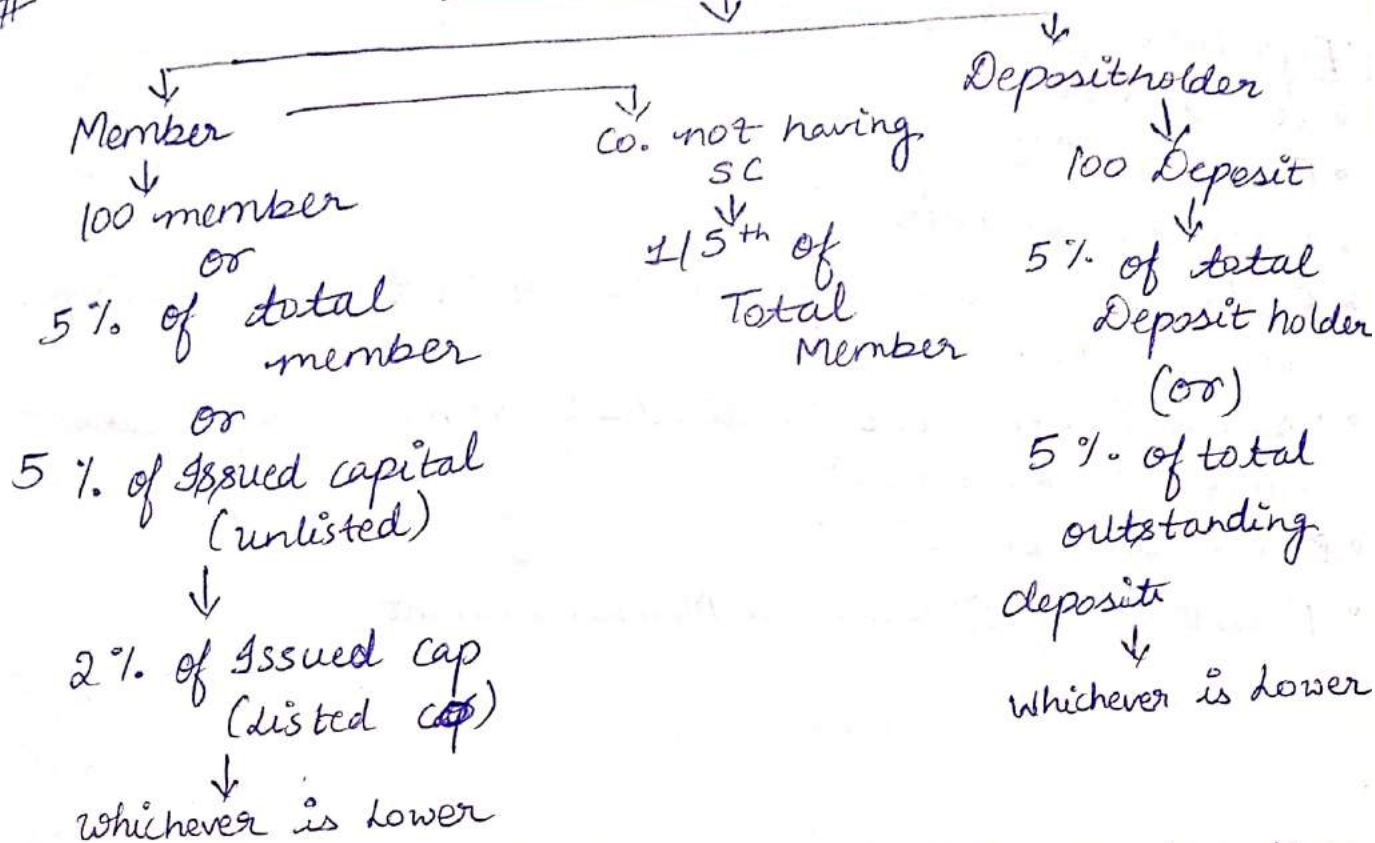
- ↓
- Prejudicial & oppressive & Hindup is not justified
 - Regulate the affairs
 - Purchase of shares by other member
 - Modified - Contract of Managing Director, Manager or director or other person

(NO compensation for loss of office.)

- 4- setting Aside of cancelling fraudulent preference preference given last 3 months before application
- 5- Removal of Managing Director, Manager, director
- 6- Appointment of Director
- 7- Recovery of undue gain made by MD, manager, director

Class Action Suit

#



Note - Once application is filed by requisite member then even though subsequent withdrawal of application by member will not consider by SEBI.

Admission of class Action Suit

- NCLT shall give public notice on Admission of class Action suit.
 - All similar class Action suit should be consolidated into single Appointment.
 - Two class action application shall not be allow
 - Cost of class action suit shall not be bare by company or other responsible persons.
- Operation & Mismanagement

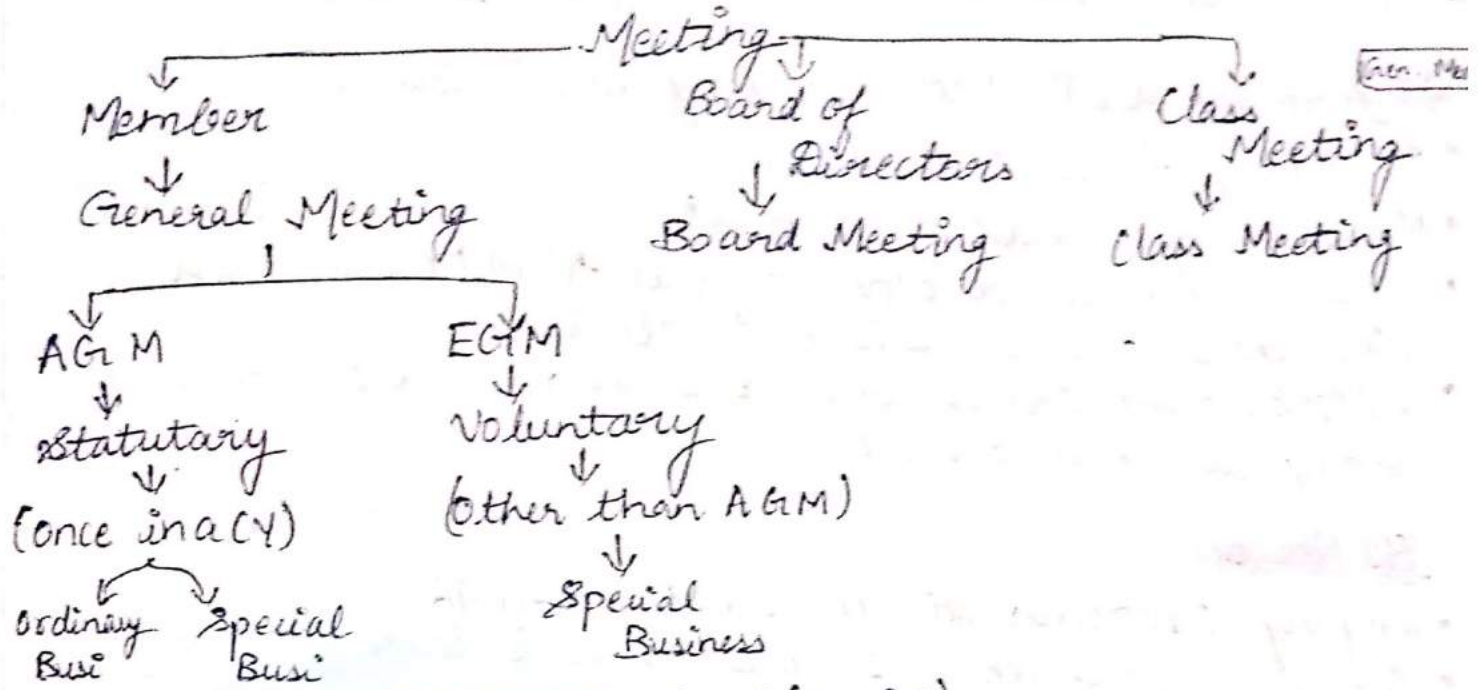
Majority rule / Rule of non-interference

- If decision of director approved by majority shareholder or ratified by majority shareholder then, court will not interfere.
- Case Study - Foss V. Hothbottle.

Operation & Mismanagement

Expectation of Majority Rules

- Ultra vires
- Fraud as Minority
- Wrong does in control
- Resolution required special Majority but pass by simple majority.
- Personal Action i.e individual member right cannot inactivated by majority.
- Breach of Duty.
- Prevention of oppression & Mismanagement



Annual General Meeting AGM (Sec 96)

- First AGM
 - 9th month from closing FY
 - No extension by any authority
 - No need to hold AGM in the year of INC
- Subsequent
 - 6m - from closing of FY
 - ROC - 3 months extension
 - Sufficient cause
 - eg - natural cause
 - Covid
 - Book of accounts seized by authority

- Gap between 2 AGM shall not exceed 15 months
- No need to hold AGM to OPC

Day - Any day excluding national holiday or any day declared by CG as a national holiday

RTI → 7th Dec - National holiday
Company - 7th Dec Notice

Time - During business hours
(9 to 6) - Start
→ 5:55pm - 11:30PM

Place - Registered office of the company or any place within city, town, village where Regd of the co. situated.
Govt company - Any Place with approval of cent govt.
Unlisted - Any Place in India with the prior consent of all members.

Agenda

→ Can transact ordinary business & special business

97 AGM by NCLT (Nation Company Law Tribunal)

- If company failed to hold AGM
- Member may request to tribunal
- Tribunal can give direction to call AGM & Provide such incidental direction to hold the AGM
- Direction may includes even a single member by person or proxy can hold a valid meeting

99 Penalty

- Company contravenes the provision of section 96
- Company & every officer in default shall be liable for upto ₹12 & may extend 5K per day in case of continuance default

100 EGM

- BOD by Passing Board Resolution (BR)
- Can hold EGM
- To Transact special business

BOD upon Requisition

Requisition by Member having voting power

Company having share capital

↓
10% paid up share capital having voting rights

Company not having share capital

↓
10% of voting power

- Requisition must be deposited at RO of the company
- Company shall start proceeding within 21 days from deposit of requisition
- And hold meeting within 45 days from Requisition

Meeting called by Requisition themselves

- If company failed to proceed within 21 days or hold meeting later than 45 days
- Requisitionist themselves call the meeting within 3 months from deposit of requisition.

→ Any expenses incurred by member shall be repaid by the company

Day - Can be held including National Day (EGM)

Can be held on any day except national holiday - EGM by Requisition

Time - Can be held Any Time even after business hours

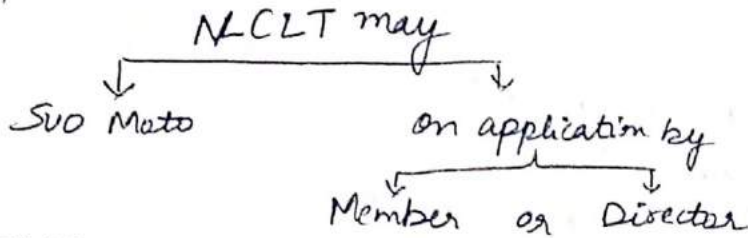
Place - EGM by Requisition - Registered office of the company or at other place within city, town, or town where RO is situated.

EGM of wholly owned subsidiary of Co. incorporated outside India

Any Place in India or outside India

Section 98 EGM by NCLT

- Impracticable to hold EGM



- NCLT can give direction to hold EGM
- May give incidental direction also
- Even a single member by person or proxy can hold valid meeting

Section 101 - Notice

- Sent notice at least 21 clear days before the meeting
- Exclude $\left\{ \begin{array}{l} \rightarrow \text{Day on which notice is served} \\ \rightarrow \text{Date of Meeting} \end{array} \right.$
- Notice send by Post → exclude 48 hours (Exclude 4 days)

Content of Notice

→ Day, Date, Time, Place, Agenda, Proxy clause & Proxy form

Rec Entitlement of Notice

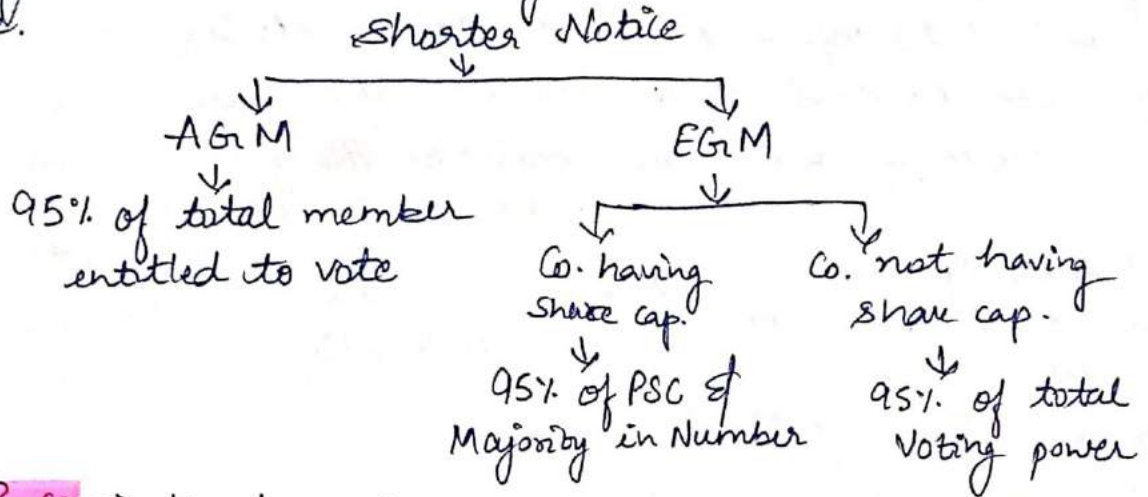
- Member - Death → legal rep. insolvent - assignee
- Auditor (statutory auditor)
- Director
- SS₂ → Secretarial auditor & Debenture trustee

Mode of Sending Notice

- by hand, ordinary post, speed post, regu post, courier, email, fax
- however if e-voting or postal ballot is provided then notice cannot send by ordinary post

Shorter Notice

→ Anything less than 21 clear day notice is known as shorter notice.



In sec 8 co → 14 clear days

• **Proxy** → every member having voting right
↳ Not granted in quantum
Representative → President / Body corporate / Govt.
→ Counted

102 → Explanatory Statement

• Special business required explain statement to be attached with notice of meeting

103 Quorum → Minimum no. of member required to conduct a valid meeting

→ Public co.	Private co.
upto 1000 member - 5	(Min 2 member personally present)
upto 1001 to 5000 - 15	
above 5000 - 30	

Note - AOA can specify the higher number of quorum

- Proxy - Not counted for quorum
- Pref shareholder - Not counted for quorum
- Joint Member - Separately counted → Single vote (Both)

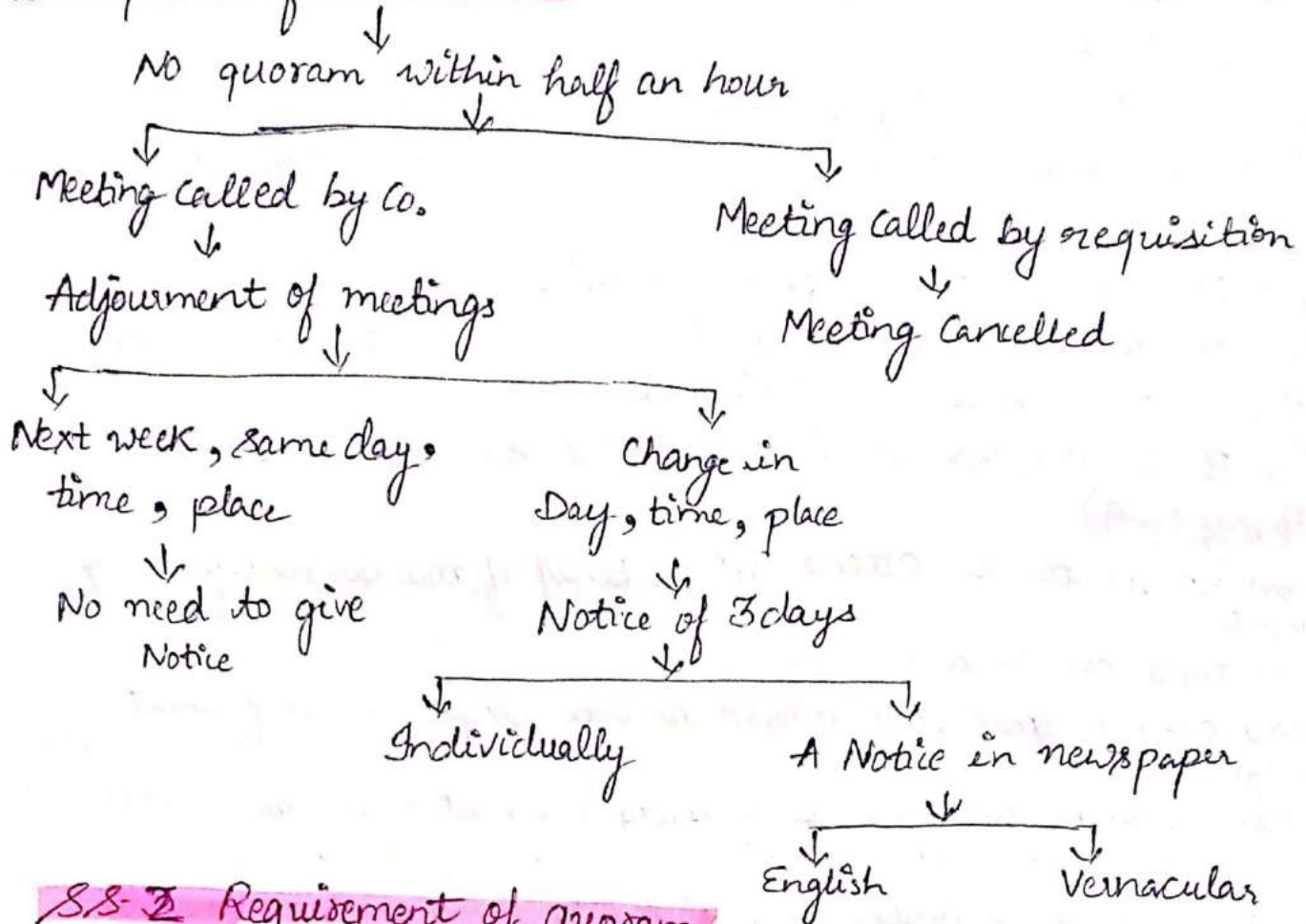
→ **Representative** of President, Governor & Body corporate shall be counted for quorum & can vote also.

→ Single person can be appointed as a representative of multiple companies & counted separately

→ However one more individual is required to conduct a valid meeting

→ Interest member cannot vote but counted in quorum.

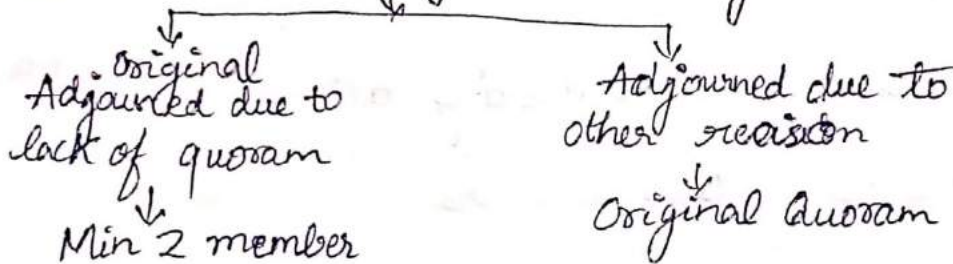
Consequences of NO Quorum



SS-2 Requirement of quorum

- Adjourned for more than 30 days - 21 clear days
- Adjourned for 3 to 30 days - 3 days Notice individually
- Adjourned for less than 3 days → Either Individually or adv in Newspaper

Note - Quorum in adjourned meeting



Note - Effective Date of resolution - Date on which resolution is actually passed. & not on earlier day

Note 3 - Quorum shall be present at the time of commencement of meeting as well as while transacting business

104 - Chairperson

- Name mentioned in AOA
- If AOA is silent - then member shall appoint one of them as a chairperson by show of hands
- If poll is demanded it shall be taken immediately

→ Chairperson appointed by Bll shall continue as a chairperson

Duties of Chairperson

- Ensure that meeting is properly constituted.
- Ensure proper voting is carried & minute is prepared

Chairperson

- Not Present in 15 min from scheduled time
- One of the Director shall be elected as a chairperson
- If Director show unwillingness
- One of the member shall be elected as a chairperson

Proxy (105)

- Person appointed to attend GM on behalf of member having voting rights.
- Proxy need not be a member
- Proxy cannot speak, Not allowed to vote except in poll & cannot in quorum.
- A Person can be appointed as a proxy for max 50 member however such person can hold max 10% of PSC having voting rights.
- If any member is holding more than 10% of PSC such person can appoint proxy however such person cannot be applied as a person can appoint proxy for any other member.

Inspection of Proxy list

- If any member wants to inspect proxy list prepared by company
- Such member shall give advance intimation to company atleast 3 days before the meeting
- Inspection between 24 hours before the meeting till the conclusion of meeting
- Inspection shall be done during business hours

Proxy

- Deposit Proxy form (MGT 11) atleast 48 hours before the meeting
- AOA cannot specify longer period than 48 hours
- However can specify shorter period e.g- 20 hours
- If any period longer than 48 hours is specified than it will be considered as 48 hours.

(Krud se time mark krte hai Kam wqt ka)

Note - Once Proxy has voted it cannot be revoked

- Proxy need not be Informed of revocation
- Two proxy form are lodged within time second in time will be considered as proxy

Revocation of Proxy

Appointment of New proxy within specified time i.e. 48 hrs

Member himself attend the meeting & voting before Proxy

Revocation of proxy in writing and intimation given to company

Note - Company cannot send proxy list to member. However if demand by member then company shall be provide such list.

Note - A member can appoint multiple proxy until AOA prohibit

Show of hands 107

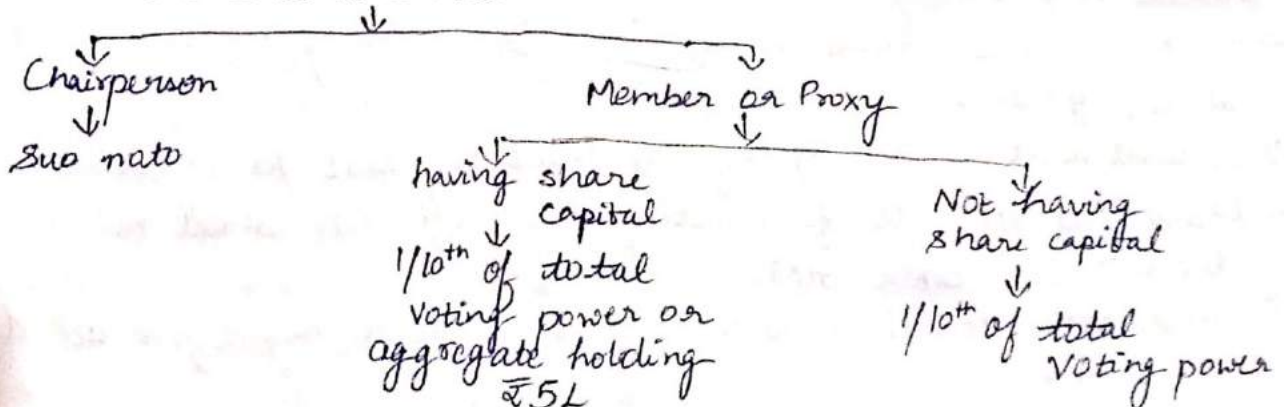
- At first instance voting shall be carried by show of hand.
- One member one vote irrespective of no. of shares
- Chairman call upon the member to vote hand in favour or against the motion.
- After counting chairperson shall declare the result whether carries or lost
- Entry in minute book shall be conclusive evidence of passing the resolution.
- If poll is demand or entry facility is given then show of hand shall not apply.

106 Restriction on Voting Power

- If any member failed to pay call money then his voting power shall be restricted by company

109 Voting by Poll

- Before or on the declaration of result by show of hand, Poll can be demanded
- Who can demand the Poll



Time for Poll

Appointed of (Adjournment of)
chairperson

Taken Immediately

other cases

within 48 hours from
Demand of POLL

- One shall one vote
- Poll Paper shall given to all member having voting rights
- Chairperson shall appointed 2 Scrutinizer other than in employment
(normally 2 logo ko appoint karna jata hai)
- Scrutinizer shall count the vote & submit report to chair person & report signed by such scrutinizer.
- Chairman shall declare the result either by him or by authorized person.
- Report shall be given within 7 days from Poll is taken
- Section 102 to 107 & 109 shall apply to Private company unless overruled by AOA.

Adjournment of meeting

- Poll can be written withdrawn by the person who made the demand.

E-Voting 108 (Narendar Modi)

Applicability - All listed company whose equity shares are listed irrespective of no. of shares.

→ All other Co. having 1000 or more members

Non Applicability

- Company whose pref shares or debentures are listed
- Company listed on SME Platform
- Company listed on Institutional trading platform
- Nidhi company who lend money to member

Process of e-voting

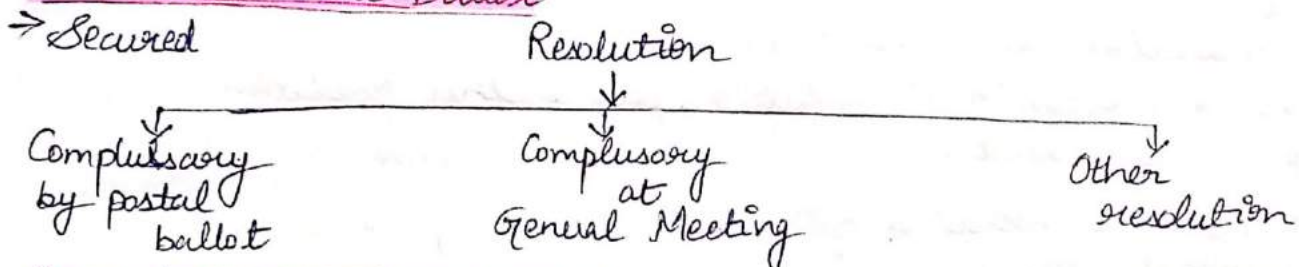
- appoint one or more scrutinizer for e-voting process who is not in employment
- Appointment of an agency eg. NSDL or CDSL for e-voting facility
- Decide cut-off date for e-voting & cut-off date shall not be earlier than 7 days before G.M.
- Send Notice to all members atleast 21 clear day & give all details of e-voting
- Notice shall specify the process of e-voting including details of login-ID

- Publish such notice in newspaper one English & other in vernacular or paper.
 - Notice shall also host of website.
 - E-voting shall remain open for min 3 days & shall close at 5 PM Preceding the GM.
 - Scrutinizer first count vote casted in GM in presence of 2 witness other than in employment
 - Report within 3 days from conclusion of an & signed by Scrutinizer & chairperson
 - Result shall be disclose on website, Registered office and Corporate office.
 - Listed entity within 2 working days from conclusion of GM intimate stock exchange about the result.
- A Member who casted e-vote can attend the meeting but cannot vote. If a member casted e-voting as well as vote in meeting than e-vote shall be considered

Secured System

- Secured from Unauthorized access & Misuse.
- Provide reliability & correct result
- Generally accepted security procedure.

Sec-110 - Postal Ballot



Compulsory by Postal ballot

- Alteration of object clause
- Alteration of AOA to convert public company into private company or vice versa
- Buy back of shares
- Change in registered office outside local limit of any city.
- Differentiate voting rights shares (DVR)
- Election of Small Shareholders director
- For selling whole or substantially whole undertaking
- Giving loan, guarantee or security.
- Variation of right attached to shareholder or debentures.

Resolution Compulsary at General Meeting

- Ordinary resolution and
- Resolution where director or auditor have right to heard. (opportunity of been heard) eg:- Removal of director or any auditor.

Other Resolution

Can be passed by postal ballot or can be passed in meeting

Procedure of Postal ballot 3 din m batayenge 30 din karenge ^{7 days} result

→ Notice to all shareholder, auditor, directors by registered post, speed post, E-mode, courier e-mail.

→ Advertisement in Newspaper

English

Vernacular

- Notice also post on the website
- Member shall give assent or dissent within 30 days from dispatch of notice.
- Note received after 30 days shall be invalid.
- BOD shall appoint scrutinizer who is not in employment.
- Scrutinizer shall give his report within 7 days from the last day of receipt of Postal ballot. (i.e 30 days)
- Declaration of result on the website along with scrutinizer report.
- Once resolution is passed cannot be modified
- In case of cancellation of resolution, pass another resolution through postal ballot.

NOTE → Notice of Postal ballot cannot be send by hand or ordinary post.

→ Postal ballot shall keep in custody of scrutiniser and no person shall deface or destroy the ballot paper.

Circulation of member's resolution

Company having
Share Capital
1/10th Paid up share
Capital having
Voting rights

Not having share
Capital
1/10th of total
Voting Power

Circulation

Resolution

Notice of resolution shall be given at least 6 weeks before the General Meeting and deposited at registered office of the company.

If AGM is called within 6 weeks, the resolution although not deposited within time, still it will be considered as properly deposited.

- Company shall circulate such resolution or statement to all members of the company.
- In case of needless publicity
- Company shall apply to Central Govt. (C.G.) and if Central Govt. is satisfied then Central Govt. can grant exemption from circulation of statement or resolution.

Sec-115 → Resolution require special notice

- Resolution require special notice
 - Removal of director and appointment of new director in the place of director so removed.
 - Appointment of auditor other than retiring auditor or providing that retiring auditor shall not be re-appointed
- Special notice send by the member

Holding 1% of total voting power

OR

Aggregate holding of ₹ 5 lakh paid up

Time Period :- Special notice shall be given at least 14 days before the General meeting, but not earlier than 3 months from General Meeting.

- Company shall serve such notice to all members at least 7 days before the meeting. (7 clear days)
- Company can send notice either individually or by giving advertisement in English & vernacular newspapers.

Statement

Deposit the statement 2 weeks before the General Meeting

Section 118 → Minute

- Minutes are the fair summary of meeting.
- Prepare distinct minute book for General meeting, DM, Committee meeting and class meeting.
- Resolution passed by postal ballot shall be recovered in minute book.
- Prepare minute within 30 days from conclusion of General meetings.
- Fair and correct summary of proceeding.
- Minute shall be evidence of the proceeding of meetings.
- All appointment made shall be included in minute.
- Chairman can delete any matter which is irrelevant, or detrimental to investor.
- Serially Numbered
- Can be maintain in loose leaf form but it must be bound periodically.
- Preserved permanently and kept in custody of CS.
- Signed by chairperson or authorized director in case of death or incapability of chairperson.
- Every page shall be initialed or signed and last page must be signed and dated.
- CS has no authority to sign minute book.
- Minute can be maintain in electronic mode.
- Kept at registered office.

Filing of certain Resolution (117) with ROC

Sec 117 Certain Resolution and agreement to be files with the registrar.

- File copy of Resolution or agreement to ROC within 30 days in form MGT 14 to ROC
- a) Special Resolution
- b) Resolution agreed by all the members
- c) Board resolution for appointment, re-appointment, renewal, variations of the terms of appointment of M.D.
- d) Resolution for voluntarily winding up.
- e) Resolution agreed by any class of members.
- f) Resolution passed under (79(3))
- g) Other resolution as may be specified.

Section 116 → Effective date of resolution

→ Resolution shall be considered as passed on the day it was actually passed and not earlier date.

SS-2

Resolution passed at adjourned meeting and not on any earlier date.

Important Points

- Sec 101 to 107 & 109 is not applicable to part co. if ACA part provides for the same. If such company is not defaulted in Sec 92 to 137
- Private co. cannot provide for one man quorum.
- Private co. can provide that meeting called by stand adjourned in case of lack of quorum.
- When all the members of public company has died except 3 member than these 3 member can form a quorum.
- Joint-shareholder accounted as one in few judgment in court

Meeting

Original AGM
Adjourned AGM in which reappointing of ~~one~~ retiring is the one of the agenda

Cannot held on National Holiday
Day
Cannot held on National Holiday

Adjourned AGM in other cases

Can held on National Holiday

Original EGM

May be/Can be held on National Holiday

EGM called by Requir

Cannot held on National Holiday

Adjourned EGM

Can hold on National Holiday

→ Notice send by CS without the approval of Board shall be void However, such act of company secretary can be rectified by BOD. (BOD approval de ker notice ko vaild karna sktte hai)

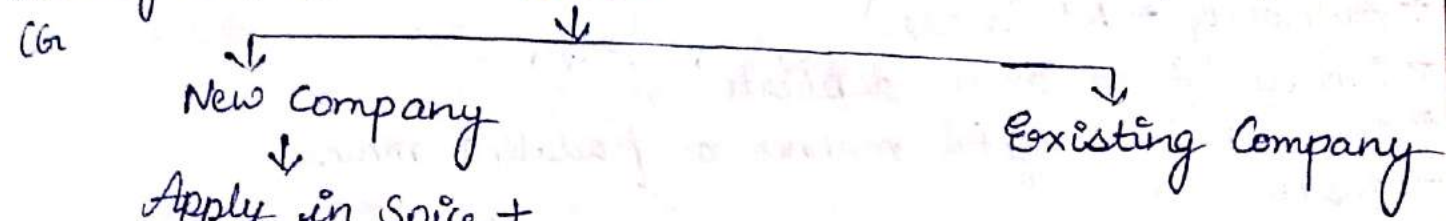
→ General meeting held at the place other than the place mention in notice shall be void. However, if company change the venue and provide the communication facility then meeting shall be vaild.

→ If company go in wound up still they conduct AGM.

- Two AGM can be held on single day
- Scutinizier & Chairman report shall be sign by scutinizier & chairman or any person authorised by chairperson.
- CS has no authority to sign the minutes.
- Postal ballot shall be kept in custody of scutinizier
- Extention is only available for original meeting & not Adjourned meeting
- Application under Sec 97 shall be given by the member only. (Director cannot give application to NCTT).
- In case of shorter notice obtain approval from 95% of total member.
- In case of shorter notice if 100% of approval of member is obtained than meeting can be called by giving less than 2 days time period.
- BOD can convey EGM before the first AGM.
- If notice is not given to a member whosed registered address is situated in enemy territory then there will be no violation of law.

Directors 2 (34)

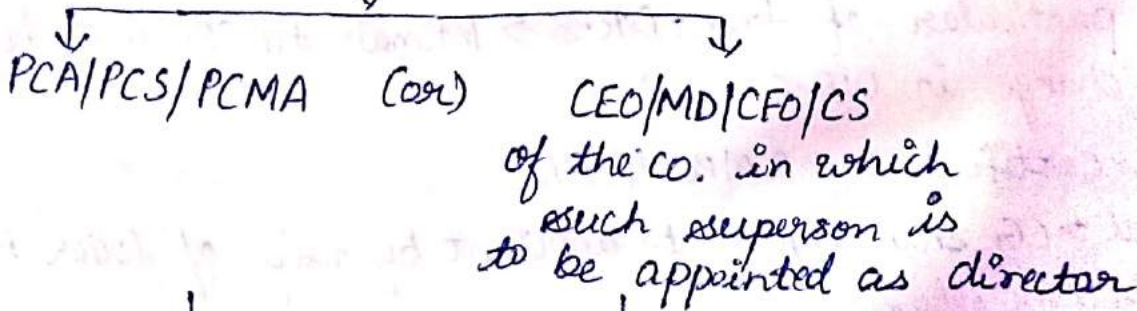
Every director must have → DIN, consent and qualification
allotted by MCA, ← **DIN**



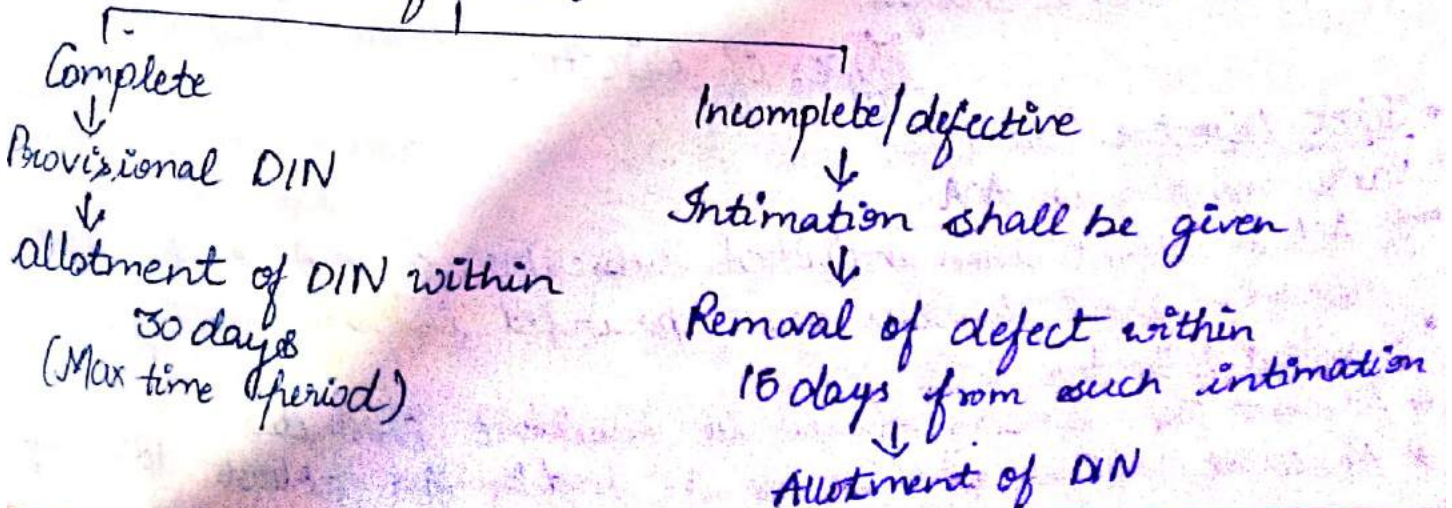
- ↓
Apply in Spice +
↓
max 3 din can be applied
(+) documents
(a) Identify proof → PAN
(b) Residential proof → Voter ID /
Passport / Driving license

- (c) Photograph
(d) self certified by own DSC
(e) foreign national :- Passport

↓
Certified by



Information



→ One DIN for one director

→ Life time Validity

Cancellation / deactivation / Surrender of DIN

→ Authority → RD (North)

→ DIN is found to be duplicate

→ Obtained in wrongful manner or fraudulent means

→ Death

→ Lunatic or unsound mind

→ Adjudicated as insolvent (Give OOBH)

→ Surrender in form DIR-5 along with declaration that he has never been appointed as director in any company.

KYC

→ Submit DIR-3-KYC on or before 30th September to CG

→ Already submitted e-form DIR-3-KYC, Submit DIR-3-KYC web through web service - OTP based verification

→ Change in phone no. or email-id → file DIR-3-KYC

Change in particulars of director

• If change in particular of form-DIR-3 → Intimate to CG in 30 days from such change in DIR-6.

• Shall be pre-certified by PCA/PCS/PCMA

• If CG satisfied → CG shall inform to applicant by way of letter by post or electronically.

• Concerned person shall intimate company (or) Companies in which he is director within 15 days.

Types of Director

• First Director (Sec 152)

→ Name mention in AOA

→ If AOA is silent then individual subscribers deemed to be first directors until directors are appointed in General meeting.

• Resident Director (Sec 149(3))

→ At least one director shall be resident in India

→ Resident means who stays in India for at least 182 days

during the financial year.

→ In case of newly incorporated company days shall be applied proportionately

• Women Director (Sec 149(1))

Public

→ Applicable to all listed company & unlisted company having paid-up share capital of 100 cr or more or turnover of ₹ 300 cr or more.

Disqualification - Sec 164(1)

[Lecture - 4, 5]

→ Unsound mind, declared by competent court

→ Undischarged insolvent

→ Adjudicated as an insolvent & application is pending.

→ Convicted (Dofthi Tharana) by court offence involving moral turpitude or otherwise and sentenced for 6m or more disqualify for 5 years from expiry of sentence.

Note - If sentenced for 7 years or more - life time disqualify.

→ Disqualify by court & tribunal and order is in force.

→ Not paid the call money and 6 months elapsed from due date

→ Convicted under Related party transaction at any time during the last preceding 5 years (Sec-188).

→ Not got DIN

Note - In clause d, e.g. the person shall remain disqualified even the appeal has filed.

ADDITIONAL Disqualification - based on non-compliance → Sec 164

(a) Company failed to file annual return or financial statement or both for consecutive 3FY.

(or)

b) failed to pay debenture or deposit of mt thereon or declared dividend for one year or more

Effect

→ Defaulted directors cannot be appointed in any co. for period of 5 years &

→ Cannot be reappointed for a period of 5 year in same co.
(जिसने गारंटी करी वहि साफ करेगा)

→ If such default is made good, still the directors will remain disqualified.

Khud court ko
ga ke batan
ki m insana
hu

→ If new director is appointed then such director shall not be disqualified for a period of 6 months from appointed (6 महीने में वापसी सफ़ करेगा)

→ Defaulted director before his appointment or re-appointment file DIR-8 to the co. and inform about disqualification.

Director $\xrightarrow{\text{DIR-8}}$ Company

→ Company shall inform to ROC within 30 days from such default in form DIR-9

Company $\xrightarrow{\text{DIR-9}}$ ROC

→ Private company may specify additional disqualifications

Sec 164(2) \longrightarrow shall ^{not} apply to govt. co.

Note - If any director resigns, to avoid a disqualification in such case the director still remain disqualify.

Section 167 Vacation of Director

[Lecture - 7]

- a) Disqualified sec 164(1) & 164(2) however in case 164(2) vacant from all companies except default company.
- (b) Absent from all BM held in previous 12 months with or without leave of absence.
- (c) fails to disclose his interest in the contract or arrangement in which such director is interested
- (d) Contravenes the provision of section 184 i.e. contract in which he is directly or indirectly interested e.g. vote in interested contract.
- e) Disqualify by court/tribunal
- f) Convicted under offence involving more turpitude & sentenced for 6 months or more
- g) Removed in sec 169
- h) Cease to be hold director of holding/subsidiary/Associate comp. any & by virtue of this cease to hold such other office

Note - In case of vacation of all director new director can be appointed by promoter or in absence of promoter. CG shall appoint new director & such person shall hold office till the directors appointed in G.M.

Rotational and non-Rotational Director 152 (6)(7) [Lecture-9]

- Consent - DIR 2 to company by Director
- DIR-12 To ROC by company within 30 days from appointment

Total Director

Term - 3 year

Rotational

Non-Rotational

Minimum $2/3^{\text{rd}}$ director shall be rotational

Maximum $1/3^{\text{rd}}$ Director can be non-rotational

Round off \rightarrow Next one

$1/3^{\text{rd}}$ of Rotational Director shall, compulsory retire at AGM

Round off nearest one

- Retiring \rightarrow who was longest in the office
- Appointment on same day $\left\{ \begin{array}{l} \rightarrow \text{Mutual agreement} \\ \text{or} \\ \rightarrow \text{by LOTS system} \end{array} \right.$

Retiring Director

Reappointment
तु चाहिए

New appointment
तैरे जैसा

Pass resolution to keep vacancy
ना तु चाहिए
ना तैरे जैसा

None of the above

Meeting adjourned

Re-appointment

New-appointment

Keep the vacancy alive

No action

Automatic re-appointment

Unwillingness

Disqualified

Resolution put but lost

Specific resolution required

Provision in AOA casual vacancy

BoD

Non-applicability

- Pvt company
- Unlisted Govt. company
- Subsidiary co. of unlisted Govt. co.
- Section 8
- Dormant company

* Special Note - AOA of company may specify higher no. of rotational Director

• Total Director excludes → TD & Nominee director appointed by financial institution established under special act.

• Non rotational Director

↳ (i) Name ~~not~~ specified in AOA or

(ii) Appointed in AGM or BM for fix period of time or for lifetime.

* Section 160 New appointment other than Retiring Director

(i) any person $\xrightarrow[14 \text{ days before GM}]{\text{Notice}}$ Company

↓
Deposit 1 Lac / in Nidhi 10K

(ii) Company $\xrightarrow[Sent]{\text{Notice}}$ to all members

↓
7 days before General meeting

↓
Individually

↓
Email Post Courier

↓
Ad in newspaper

↓
English

↓
Vernacular

(iii) Company shall hold meeting & pass OR → appoint

(iv) Exemption for Deposit of 1 Lacs

↳ (a) Independent Director

(b) appointment was recommended by nomination & remuneration committee in absence of NRC recommended by BOD

v) Refund ~~five~~ of Deposits $\left\{ \begin{array}{l} \rightarrow \text{won} \\ \rightarrow \text{get more than 25\% vote} \end{array} \right.$

vi) Sec 160 shall be available in GM or AGM

vii) Non-applicability

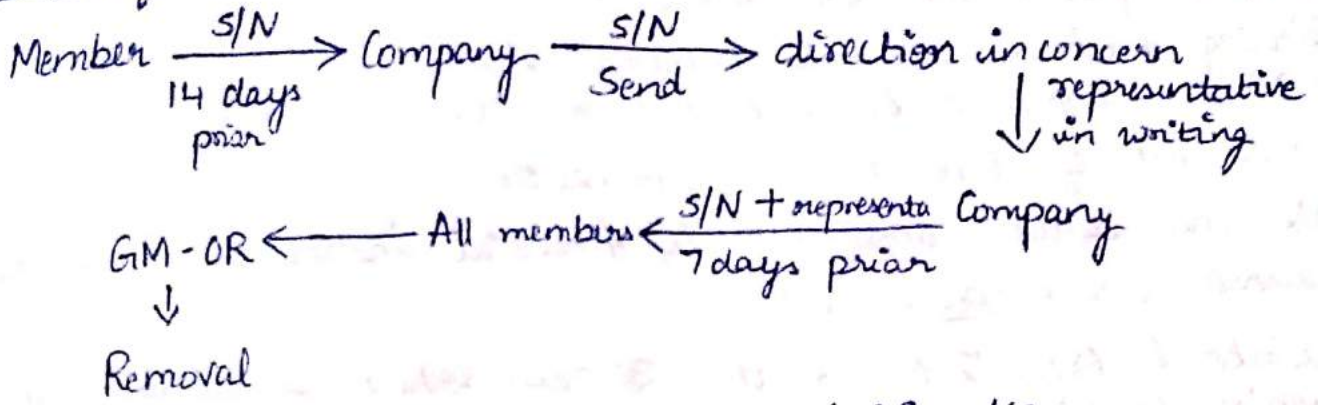
(a) Pvt Company

(b) Govt company & subsidiary of such govt company. (100%)

(c) Section 8 company

[Lecture - 10]

Removal of Director (Section-169)

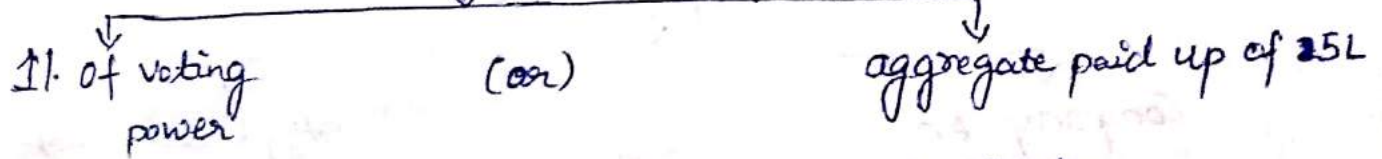


Removal a director before the expiry of his office.

Exception \rightarrow appointed by tribunal \rightarrow can be removed by tribunal
 \hookrightarrow principal of proportional representation

\rightarrow Members shall give special notice to co at least 14 days before GM

\rightarrow Special notice shall be given by members having



\rightarrow Co shall send such notice to concerned director

\rightarrow concerned director shall give representation to the company.

\rightarrow Company shall send such notice of representation to all the members at least 7 days prior the meeting.

\rightarrow If representation was received too late then read out in the meeting.

\rightarrow Needless publicity \rightarrow Apply to NCLT by co.

\downarrow
NCLT may exempt from circulation of representation

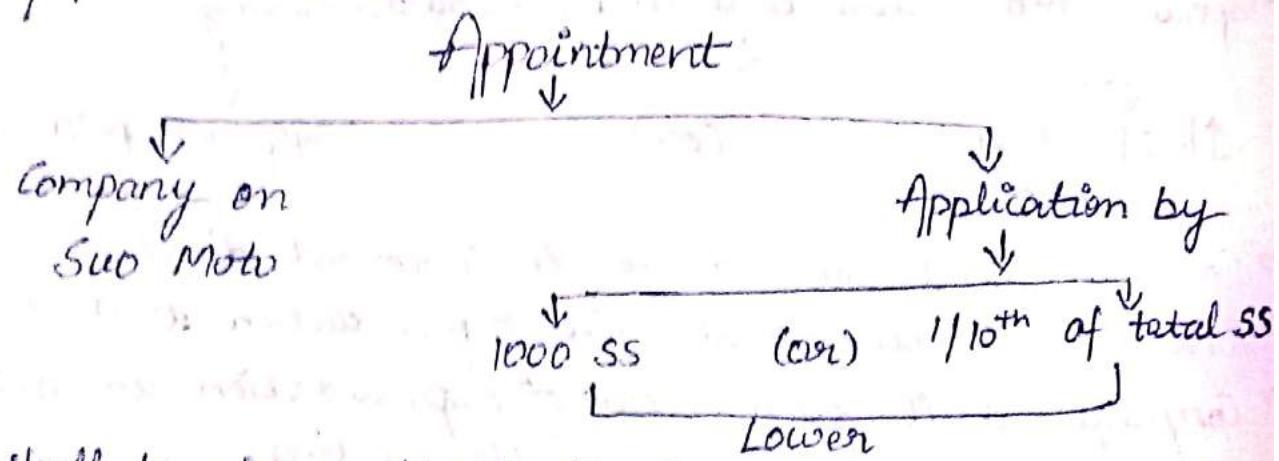
→ Co. shall hold GM if pass OR to remove the director
 → ID serving second term → pass SR (or) [Lecture 11]

Pass OR + OR in public shareholding

- New director can be appointed in the place of director so removed
- Term of new director → remaining term of original director
- If vacancy is not filled it will result into casual vacancy which can be filled out by BOD however BOD cannot appoint the same person who was removed.
- Following directors cannot be removed v/s 169.
 - (a) Director appointed by tribunal or CG
 - (b) Principal of proportional representation
 - (c) Nominee director appointed by financial institution / bank established under special act.
- Submit DIR-12 ROC within 30 days which is signed by MD/Mg/Wh/CS or in abs. PCA/PCS/PCMA.

SMALL SHAREHOLDER DIRECTOR (Section 151)

- Listed company may have one SSD.
- Small shareholders means any shareholder having upto 20,000 of face value shares



- Notice shall be given atleast 14 days before the meeting
 - (+) DIR-2 (consent)
 - (+) DIN
 - (+) Not disqualified
 - (+) his consent

• term → not exceeding three consecutive years.

• Reappointment → cannot be re-appointed or associated with co. for next-3 years (cooling period) ↓

• Qualification → Same as ID

• Appointment → Max in 2 co

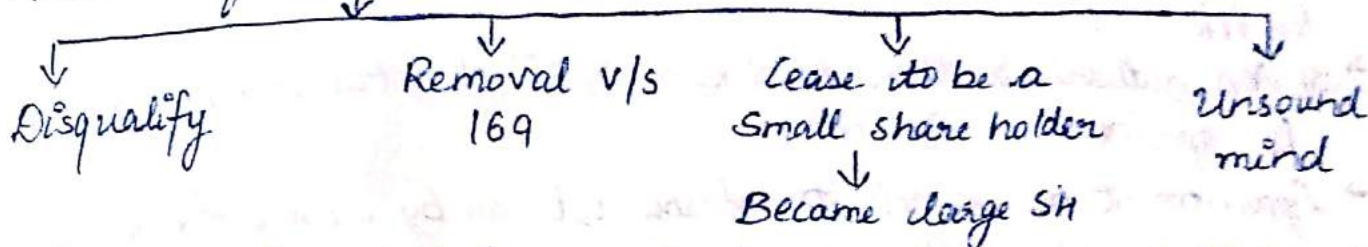
[Jis co. m 3 saal kaam
kija age 3 saal usme
nhi ja skte]

↓
End shall not be of competitive nature

Removal of SSD → follow Sec-169 pass OR

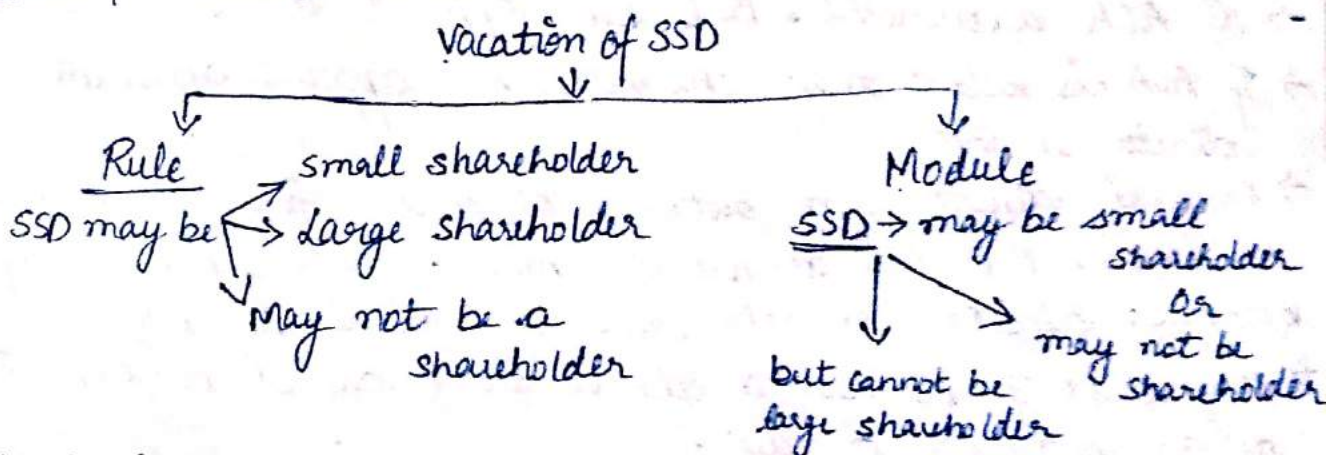
• Not liable to retire by rotation
Voting by all shareholders

• Removal of SSD ↓



⇒ While counting total no. of director for Sec 152(6)(7) SSD shall be considered. [Lecture-13]

Note - SSD shall not be considered as ID however if he is qualified to be an ID & gave declaration of his independence then SSD shall be considered as ID & not counted in total director for Section 152(6)(7)



Additional Director Section 161(1)

• Appointment by BOD if AOA authorised

• Term → Till the commencement of next AGM or last date of AGM whichever is earlier

• Can be appointed by voting by circulation

- If any person fails to appoint as a director in GM, such person cannot be appointed as an Additional director.
- While counting total Director for section 152(6)(7) additional director shall be considered
- Nature → Non-rotational director.
- If AGM got postponed, vacate his office on the date of AGM.

[Lecture - 14]

Principal of Proportional Representation (163)

- Company may provide in AOA for the appointment of directors as per PPR.
- If AOA authorised than minimum $2/3^{\text{rd}}$ of total director shall be appointed as per PPR.
- Appointment by single transferable vote or by accumulative voting.
- Casual Vacancy can be fillout by BOD
- Term → 3 years
- Non-applicability → 100% Govt. company & wholly owned subsidiary company of such Govt. company.
- This section overrides section 152(6)(7)

Alternative Director 161(2)

- If AOA authorised, BOD can appoint alternate director
- If AOA is silent than shareholder can appoint alternative director in GM.
- Original director gone outside of India for atleast 3 months or more, BOD can atleast 3 months or more, BOD can appoint alternate director on the place of original director.
- Any existing director of the company cannot be appointed as an alternate director
- Person holding alternate directors in the company, cannot be appointed as alternative director.
- However a person can be appointed as an alternate director in more than one company on the place of original director.

Can be appointed by passing resolution by circulation

- Team → Original director returns to India (OR)
- Expiry of term of original director

↓
whichever is earlier

- original director is not empowered to appoint an alternate director.
- Cannot be appoint for fixed term
- The provision of re-appointment, automatic re-appointment shall be apply to original director.

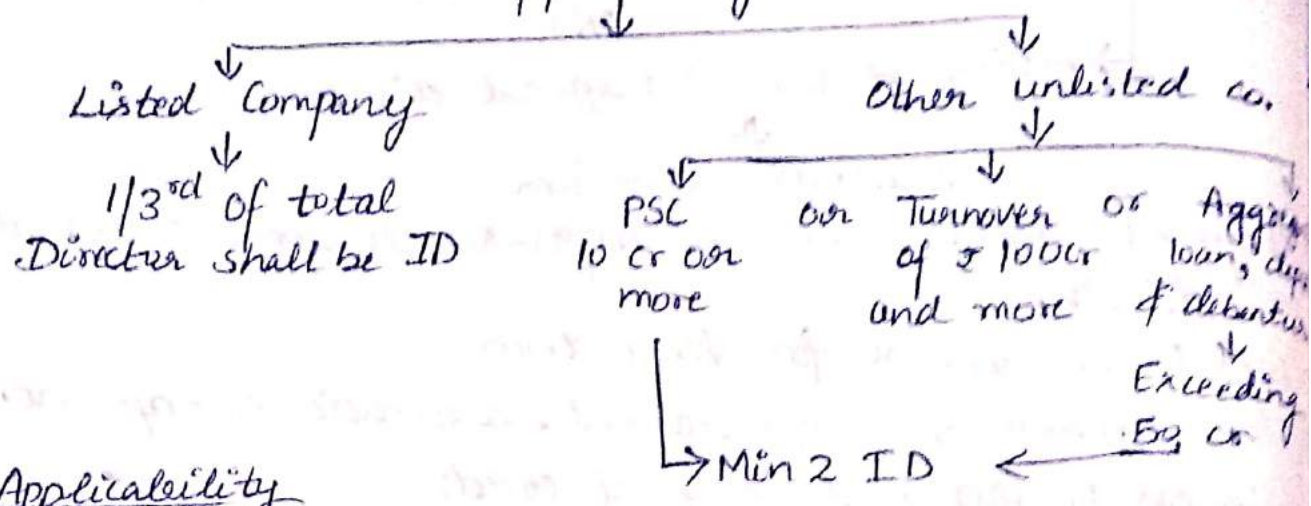
Nominee Director Sec 161(3)

- BOD may appoint any person nominated by financial institutions, banks, private equity partner.
- Appointment based on the agreement b/w the co- and the lender.
- BOD resolution have no option to reject the recommendation of Bank
- Board resolution is a merely formality.
- Remuneration/fees is given by company
- Can be appointed by circulation.

Casual Vacancy [Sec 161(4)]

- BOD can appoint a director in place of casual vacancy.
- caused by death.
- Casual vacancy is created if such director is dead, resignation disqualification who was appointed by shareholder.
- Appointed at GM.
- Term → remaining term of original director
- Cannot appoint through circulation - different in all points
- Rotational / non-rotational depends on original directors.
- Shareholder approval in GM.
- BOD may keeps the vacancy alive.

Applicability



→ Non Applicability

- Wholly owned subsidiary
- Dormant company
- Sec 8 company
- Joint venture company

Conditions

- 1- Other than MD/WTD/ND
- 2- Person of ability, integrity & having relevant experience
- 3- who is or was not a Promoter of the Co/Hold/Subs/Asso.
- 4- who has or had no pecuniary relationship with the company Hold/Sub/Asso/P/D during current FY or Preceding 2 years however it exclude remuneration the capacity of director & transaction upto 10% of total Income is allowed.

[Lecture - 16]

Relative

→ None of his relative holding any security or any int in the Co/Holding/Subsidiary/Asso. However, relative may hold 50L face value or 2% of Paid up capital.

Whichever is lower.

→ None of whose relative has been indebted in the Co/H/S/A in preceding 2FY and current FY of limit exceeding 50L.

→ None of whose relative is guaranteed or is a security provider in connection with the indebtedness to any third party in excess of ₹ 50L from Co/H/S/A/P/D.

→ Has any other pecuniary relationship with the Co/H/S/A amount to 2% or more of gross turnover of total Income either single or in connection with

above points.

Person & Relative

- No person or his relative holds or held the position of KMP/employee in CY or 3 previous year however relative can be employed in PY.
- No person or his relative is or has been employer or promoter or partner of a firm of PCS/PCA/PCMA which provides auditing services to Co/H/S/A or any legal firm or consultancy firm that has transaction with Co/H/S/A amounting to 10% or more of gross TD of their firm.
- He or his relative
 - Chief Executive → NGO → 2% or more (hold krtn)
 - ↓ 25% or more donation
 - IDx → C/H/S/A/P/D

Term = 5 years

Reappointment = 5 year - Required = SR

↓
3 year (cooling period)

- JD - One separate Meeting (To evaluate the performance of Directors)
- Do not calculated in Total D
- Stock option = JD x

Other Conditions

Term → 1st Term → 5 consecutive years

2nd Term → 5 consecutive years

- After 2nd term cooling period of 3 years & such person cannot be reappointed as associated with company directly or indirectly.

- Appoint for less than 5 years shall be considered as 1 term

[Lecture-17]

LODR → Listing obligation & Disclosure requirements

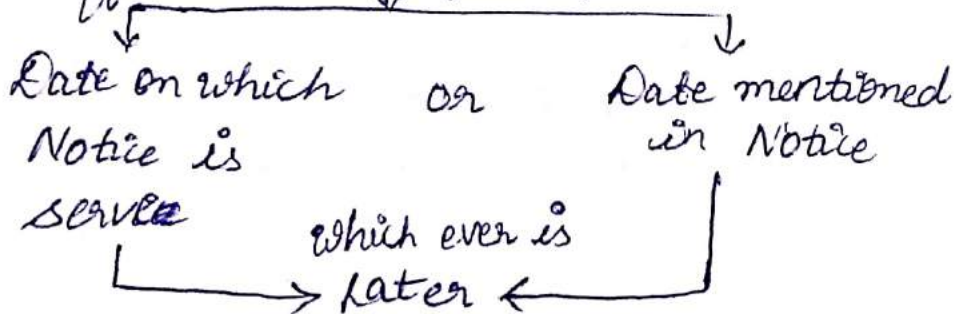
- Top 2000 companies - Must have 1 Independent Women director
- All listed company must have atleast 50% Non-Executive Director (NED)
- Composition of Board of Director



- Top 2000 listed company → Min 6 Director
- Maximum Age of NED → 75 years
- No. of companies ID can be appointed in max 7 listed company
- If ID is also MD of any other company than can be appointed as ID is ~~not~~ ^{max} 3 companies

Resignation of Director (Section-168)

- By giving Notice in writing to the company
- Effective date of Resignation



- Any act done before resignation shall be valid & remain liable for those act even after resignation
- Director shall also intimate to ROC along with the reason of Resignation to ROC in form DIR-11 within 30 day from Resignation.
- Company also send notice to ROC in form DIR-12 within 30 days from Resignation

Director $\xrightarrow[DIR-11 + \text{reasons}]{30 \text{ days}}$ ROC

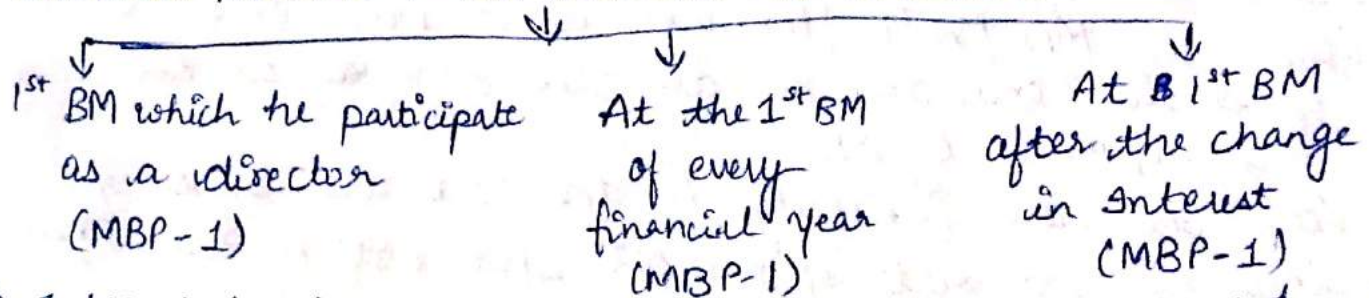
Company $\xrightarrow[30 \text{ days}]{DIR-12}$ ROC

Appointment of Director Voted Individually (162)

- single Director can be appointed by one resolution however to appoint multiple director by single resolution for this first pass a unanimous resolution in the meeting (100%)

Section 184 Disclosure of Interest [MBP-1]

- Every director shall disclose his interest in any body corporate in which is he interested
- Interested Director: Director with any other directors holds more than 2% of shareholding in that Body corporate
- Director is promotor or manager or CEO of such body corporate
- Any firm or entity in which such director is partner / owner or member.
- Interested Director shall disclose his interest



- Interested director cannot participate in such BM & cannot vote & cannot counted in quorum
- In Interested director have vote then his vote shall be void, however the contract does not become void if

remaining vote are requisite.

→ In a private company which has not committed any default in filing FS & Annual return in such Pvt co interested director can participate in BM.

Section 185 Loans to Directors

◦ Prohibited Company

- (a) Director of the company
- (b) Relative of such Director
- (c) Partner of such Director
- (d) A firm in which have partner

director or relative is a

This section prohibits loans, guarantee security including book debt.

◦ Restricted Category

→ Company may advance any loan to following person in which director is interested

- (a) Pvt company in which such director is a director or member
- (b) Any BC in which director or director hold 25% or more voting power.
- (c) Any BC whose BOD, MD or manager is accustomed to act any as per the direction given by BOD of the company (lending company)

→ Pass special Resolution

→ loan shall utilized for the Principle object of the company (PBA) Principle Business activity

◦ Permitted Category

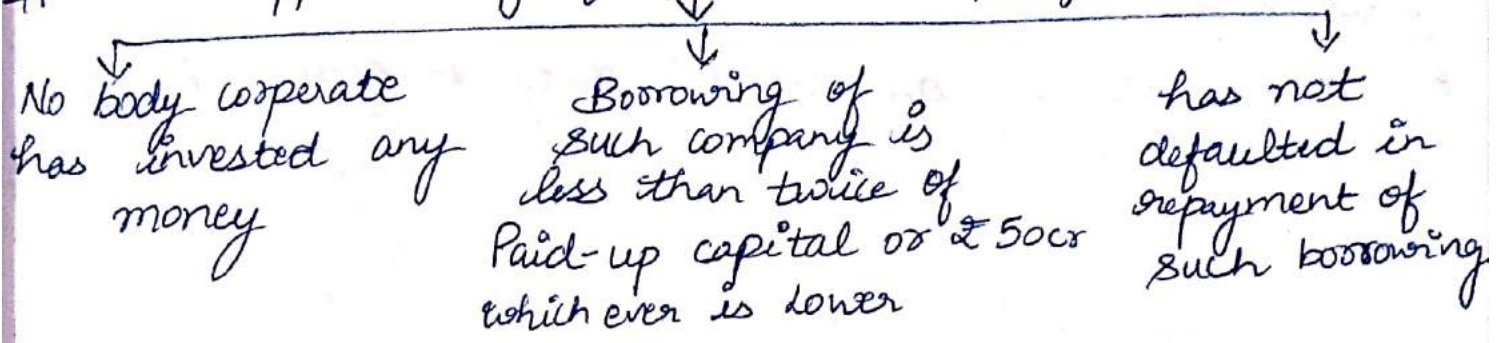
- (i) loan to MD / WTD / Manager as a part of condition of service extended to all the employees or loan is approved by SR.
- (ii) loan / Guarantee / Security in the ordinary course of business. However rate of interest shall not be less than interest rate of 1/3/5/10 years, Govt Securities.
- (iii) loan / Guarantee / Security to wholly owned subsidiary of the loan utilise for Principle Business Activities

(iv) Guarantee / Security to subsidiary company against the loan obtain from third party like bank, financial institution etc.

(v) Guarantee / Security to subsidiary company against the loan-obtain

Note- If company sell flats to Director on receipts of 50% cash or 50% received in installment it does not amount to loan

Non-applicability of 171 → Pvt company in which



- Nidhi company → Can give loan to director or his relative in the capacity of member
- Govt company with the approval of CG

Section 171 Members right to inspect

- Member can inspect Register of director or KMP of such shall be open for inspection during business hours.
- Member can take extract of such register after deposit of fees
- Can also inspect during AGM
- If inspection is refused or failed to provide copies within 303 then members may apply to ROC
- ROC may pass the order to supply the copies or allow the inspection.

Non-Applicability of sec 171

- Govt company in which entire capital was held by state govt / central govt.

Professional Director

Acting in two capacity

↓
Director

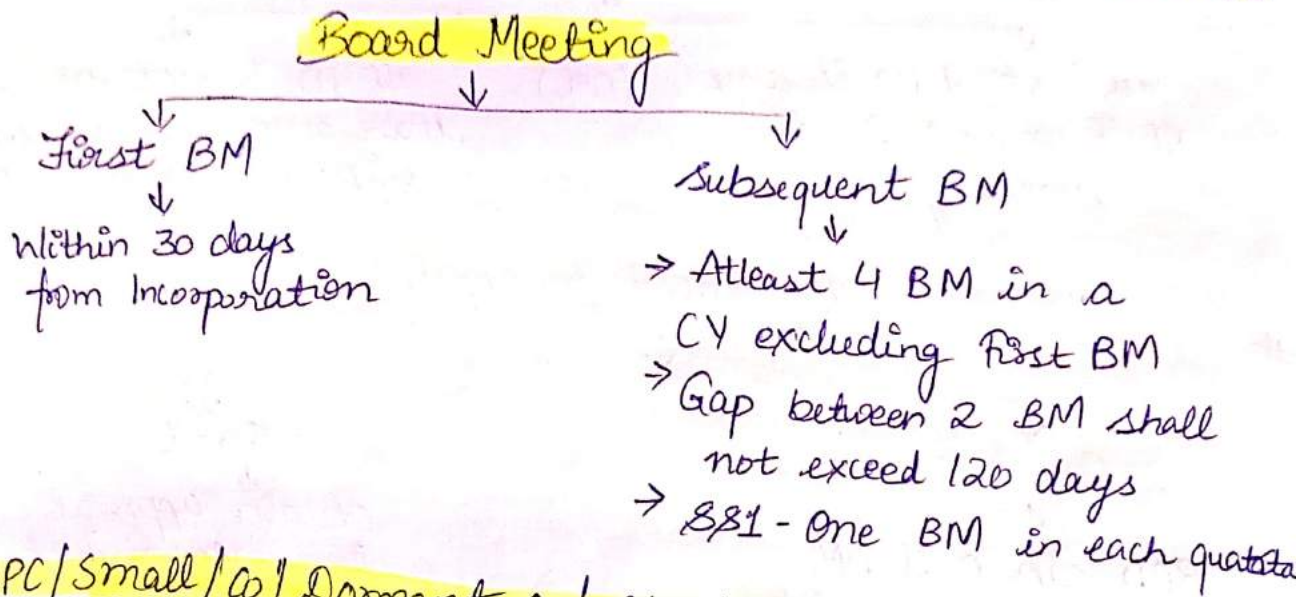
↓
Professional Capacity

→ Can received payment in two capacity i.e Director fees as remuneration as well as professional fees.

Section 166

→ Director cannot assign his duty or offence to other.

Chapter-16 Meetings of Board & its Committees



OPC/Small/co/Dormant co/Startup co

- One BM in each half calendar year & Gap between them is min 90 days.
- OPC having one director → No need to hold BM
- Director cannot appoint Proxy in BM

Notice of BM

- 7 days before the meeting to every director excluding the date of meeting
- Notice to all directors - Including interested director, Alternative director, original director, original director
- Notice shall also send to such director if such director already informed to the company that he will not attend the meeting
- If company failed to send notice to any director or accidental omission to send the notice to a single director, shall invalidate the meeting however such director attends the meeting than meeting is valid
- Exclude 2 additional days in case of notice by post sent

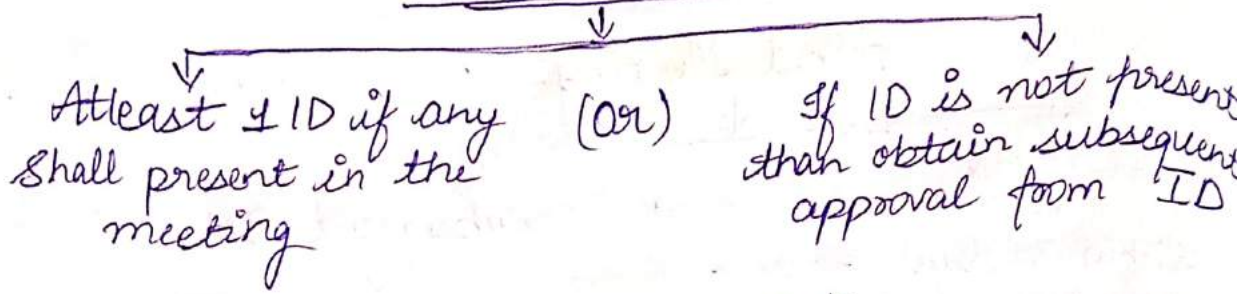
Mode of Sending Notice

- by hand, speed post, registered post, electronic post but not by ordinary post & courier.

• Telephonic or oral invitation is not allowed

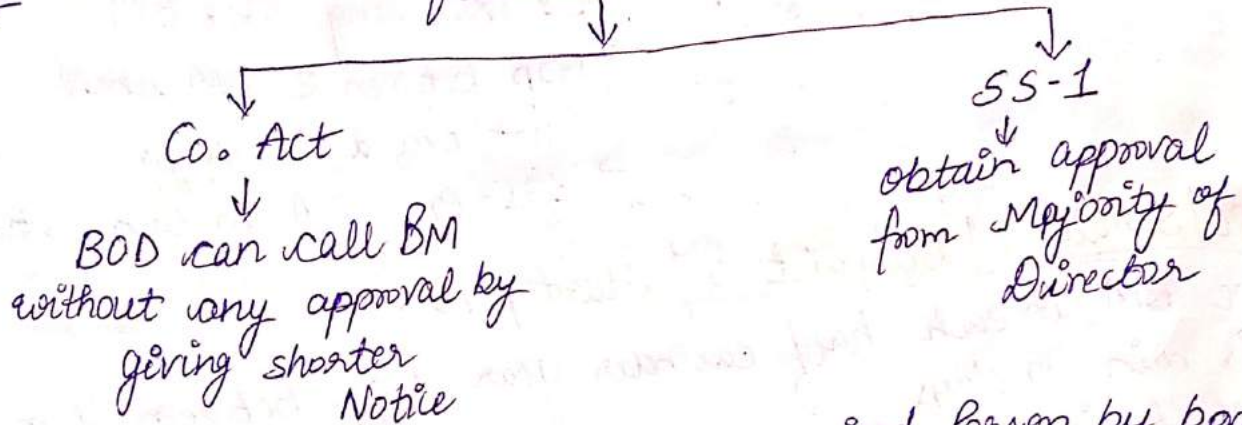
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Shorter Notice



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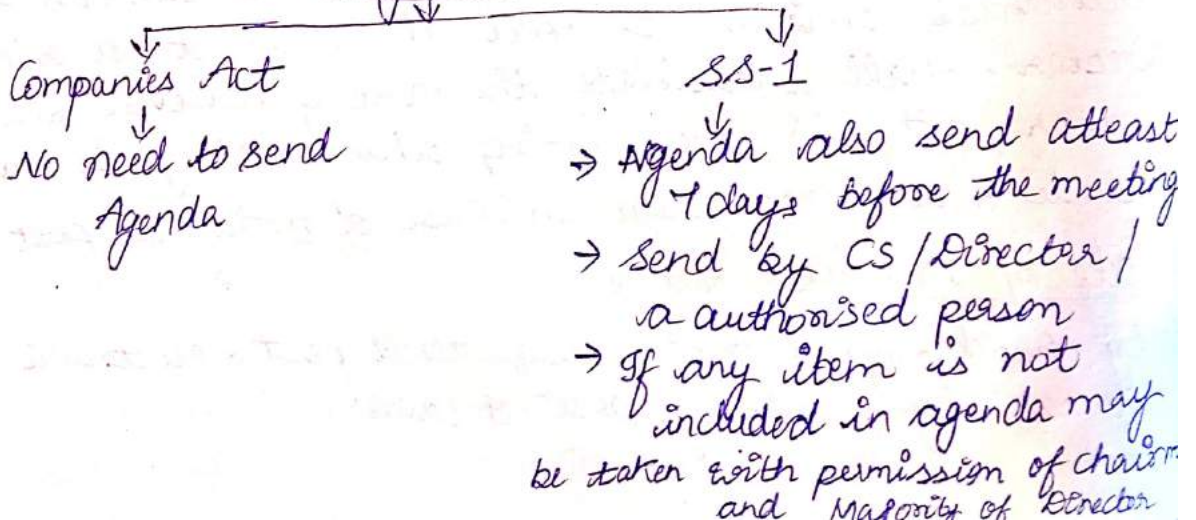
If no need to appoint



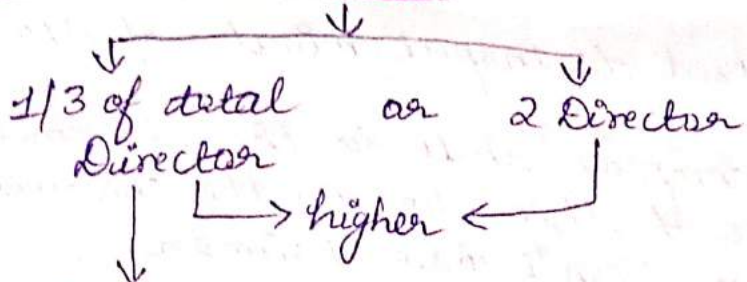
- Notice shall be by the CS or authorised person by board
- Proof of sending notice & its delivery shall be maintained by company for atleast 3 years
- Notice include, day, date, time, venue
- Notice of a meeting shall be given if meeting are held on Pre-determined dates or at Pre-determined intervals
- Place - Any Place in or outside India
- Time - Any Time even after business hours
- Day - Any day including National Holiday
- Adjourned meeting due to want of quorum - Cannot held on National Holiday.

#

Agenda



Section-174 - Quorum



- Round off Next one
- Interested director are not counted in quorum in case of public company.
- If interested director equal to exceeds $2/3^{\text{rd}}$ then quorum will be 2 director
- AOA may authorise higher quorum
- Quorum shall remain present throughout the meeting
- If all directors are interested or disinterested directors falls below 2 then BOD shall appoint new director
- Pvt co which has not committed default in filing annual return or financial statement / return for the purpose of quorum
 - ↳ After disclosing his interest
- Directors participating through video conferencing or audio visual mode shall be counted in the quorum
- Adjourned meeting or adjournment of BM (when Quorum is not present)

Next week
Same days, time, place

Change
Notice in 7 days
advance

Attendance register

- Co shall maintain attendance regi^o of BM or committee
- Such register should be kept at reg office of the Co. or other place approved by BOD
- Inspection by BOD even after cease to be a director if the meeting was held during his period of directorship.
- Preservative of 8 years from the last entry in the custody of CS.
- Such reg can be taken at the place of Reg BM.

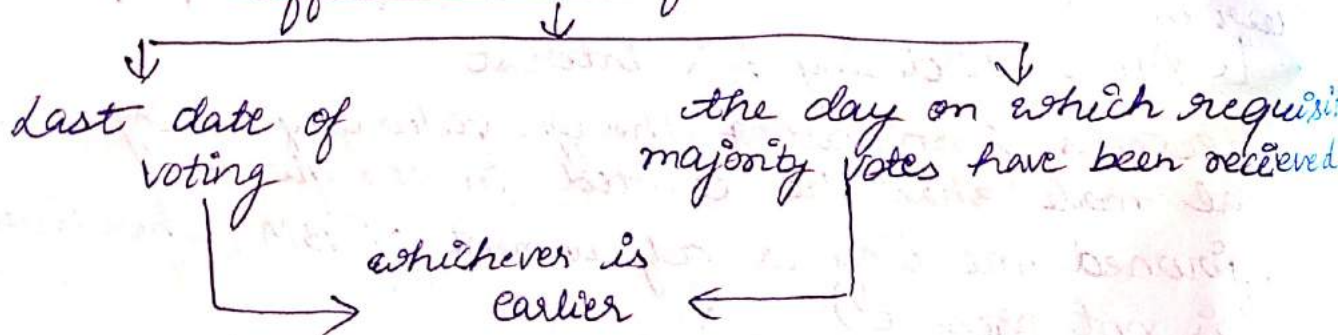
88-1

- Director is entitled to inspect minutes of BM before chairman
- Chairman of the company shall be the chairman of BM
- BOD can elect one of themselves as the chairman/chaips-person if company doesn't have chairman
- Chairperson of the audit committee may be appointed by member of audit committee

Resolution pass by Circulation (Sec-175)

- Circulation by resolution paper to all the directors in India with relevant paper / document.
- Resolution must be passed by majority of director
- If atleast $\frac{1}{3}^{\text{rd}}$ director requested for the meeting then chairperson shall put the resolution in meeting and by circulation
- Assent or dissent - shall be within 7 days from circulation.

Effective date of Resolution



- Minutes of such resolution passed by circulation shall be part of Minutes → Next BM

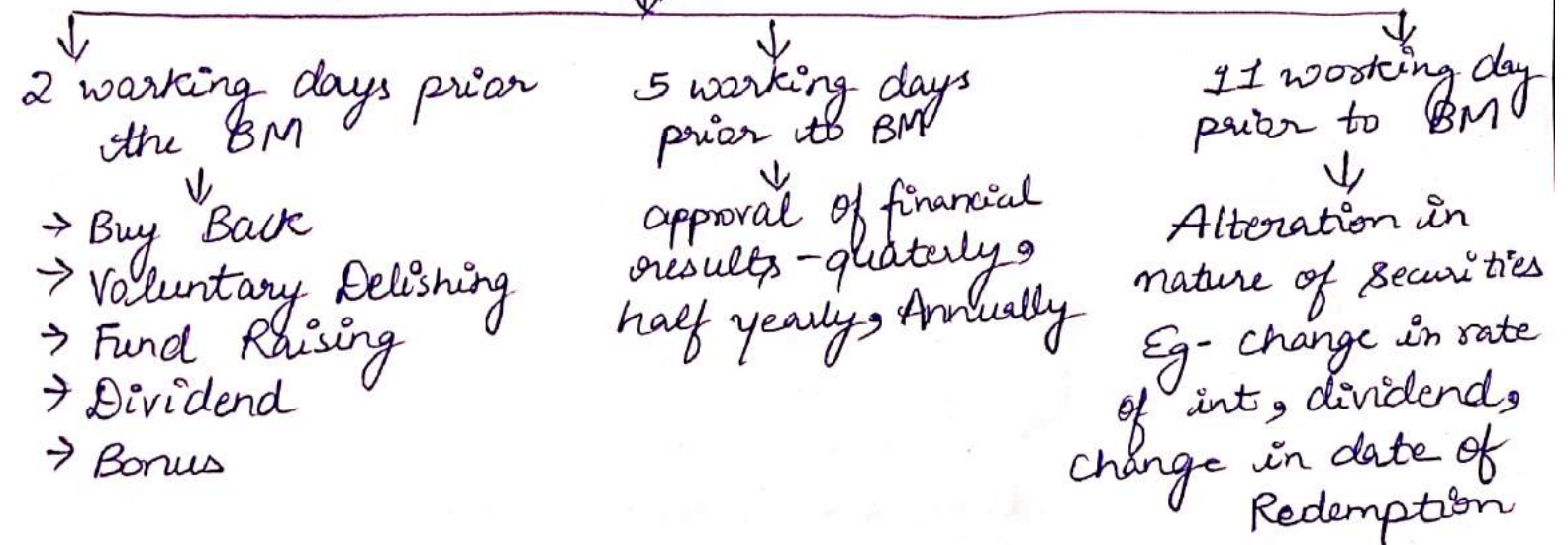
Minutes of Board Meeting

- Prepare draft minutes
- Circulation draft minutes to all the director within 15 days from BM.
- Confirmation from every director who attended the BM
- Confirmation within 7 days from receipt of draft minutes
- Entry in minutes book within 30 days from BM
- Minutes shall be signed ~~out~~ by chairperson of the meeting or chairperson in next meeting

- All pages shall be initiated and last page must be signed & dated
- All minutes shall be preserved permanently either physically or electronically.

PRIOR INTIMATION TO STOCK EXCHANGE

LODR



Board Composition And Power of Board

Lecture - 1

Minimum No. of Directors

- One person - Company - 1 member
- Pvt company - 2 member
- Public company - Min 3
- Max - 15 (not applicable to sec-8 co & Govt co)
- Can exceed 15 by passing SR
- AOA can authorise higher number of min director
- Producer co → Min 5 & max - 15
- In case of conversion of inter-state company operat society into producer company - may have more than 15 directors for one year from incorporation

LODR Regulation

- Top 2000 co → shall have min 6 director
- All listed company have one women director
- Top 1000 co → one independent women director

Age of NED → max - 75

Above 75 → pass SR

* All non-executive directors need not to be independent director but all independent directors are non-executive director.

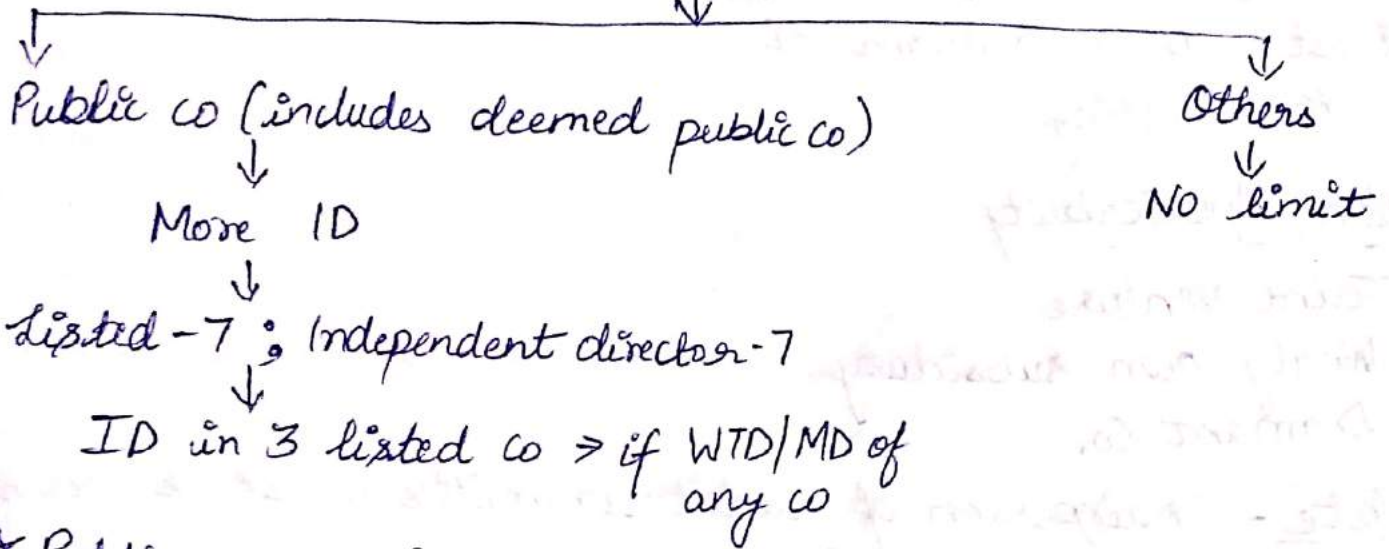
Composition of Independent Director

- Chairperson NED → Independent director $\frac{1}{3}^{\text{rd}}$
- Chairperson NED but promoter but related to promoter/ position of the level below.
- Not regular NE chairperson → Outstanding SR Shares

Independent
↓
 $\frac{1}{2}$

No. of Directorship (Sec 165)

max - 20 co (except sec 8 co & dormant co)



★ Public company (includes deemed public co)

• Deemed Public company

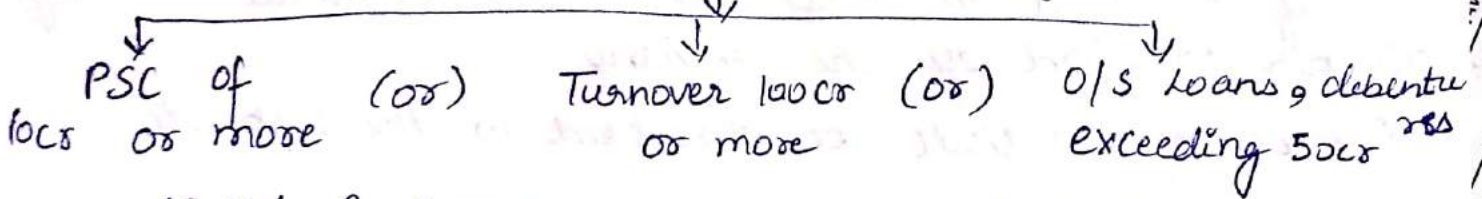
1) Public co
↓ holding
Pvt co

2) Pvt co
↓ holding
Public co.

Audit Committee

Applicability → listed co.

Unlisted public co. having



Listed Company

- Companies act 2013 & LODR
- Min 3 director 2/3rd → ID
- Co. having O/S SR shares all ID

→ All members shall be financially literate + 1 expert

→ Chairman shall be ID

→ At least 4 meeting in FY
more gap shall not exceed

120 days

Unlisted co

Companies Act

→ Min 3 director majority ID

→ Majority members shall be financially literate

→ Chairman not specified

→ Not specified

Listed company

→ 2 members or $\frac{1}{3}$ of total member whichever is higher at least 2 ID in Quorum of the meeting

Unlisted co

→ Not specified

Non Applicability

- Joint Venture
- Wholly own subsidiary
- Dominant Co.

Note - Chairperson of audit committee must be present in the AGM.

VIGIL MECHANISM (All is not well)

Applicability: all listed company
Co which accept deposit from public
Co which has borrowed money from bank
(FI in excess of 50crs)

- Oversee of such Mechanism by audit committee and if no need to constitute audit committee then by director specified by the company.
- Details of VM shall be disclosed on the website

OMNIBUS APPROVAL FROM AUDIT COMMITTEE

- Audit committee may grant omnibus approval for related party transaction
 - Single approval for multiple RPT in a year
 - AC may consider the following info before granting omnibus approval
- (a) Aggregate value of RPT in a year
 - (b) in a single transaction
 - (c) Review Extend & manner of Disclosure
 - (d) Review of RPT

e) transactions which cannot be subject to omnibus approval.

→ Audit committee may give omnibus approval without such info if transaction value is upto ₹7cr

NOTE

- 1) RPT is upto 1cr entered by director or officer without approval of AC & not ratified by AC within 3m then such transactions shall be voidable & if transactions is with director or consent of director is obtained the director shall indemnify the company.
- 2) Transactions b/w holding & wholly owned subsidiary company shall not receive AC approval.
- 3) Transactions b/w holding co & sub co need to obtain AC approval.

Nomination and Remuneration Committee

Applicability:-

- (a) Listed Company
- (b) Unlisted public company

↓
PSC
↓
10cr or more

↓
Turnover
100 cr or more

↓
O/S deposit/debt/
exceeding 50cr

Company Act 2013
(unlisted & listed co)

→ Min 3 directors - NE, majority ID

→ Chairman → not specified

→ Meeting → not specified

→ Chairman of NRC must be present in AGM

→ Quorum - Not specified

LODR
(Listed co.)

→ Min - 3 Directors - NED
2/3rd ID

O/S SR shares - 2/3rd ID

→ Chairman - ID

→ Meeting once in a year

→ May present at the AGM

→ Quorum - 2 members (OR)
1/3rd of total member

(whichever is higher atleast)
IID)

Non-Applicability

- Sec-8 Co
- Dormant company
- Wholly owned subsidiary co.

SRC Committee (Sec-178)

- Listed Co.
- Co which consist more than 1000 shareholders, debentures holders, deposit holders & other security holders.

LODR

- At least 3 director
- At least 1 ID
- O/S SR eq share - 2/3rd director - 1 ID
- Chairman NED
- Meeting once in a year

Co. Act

- Not specified
- At least 1 ID
- O/S SR eq share - 2/3rd director - 1 ID
- Chairman NED
- Not specified

Chairman of SRC must be present at AGM or give authority to someone to attend the meeting

Risk Management Committee

- Chairman of RMC → shall be director of the Co.
- Quorum → 2 or 1/3rd / Including 1 member of board
- Follow LODR regulation
- Min-3 members → Member shall be majority of BOD → at least 1 ID.
- 2 meeting in a year with max gap of 180 days.
- Chairperson → BOD; Senior executive → Member.

Role of Audit Committee

- Recommendation for appointment of auditor
- Review and monitor the auditors independence
- Examination of the financial statement.
- Approval or any subsequent modification of transac

- of the co with related party.
- Scrutiny of inter-corporate loans & investment
 - Valuation of undertaking & assets.
 - Evaluation of internal financial controls.
 - Monitoring the end use of funds raised through Public offer.

No. of committee Membership & chairmanship

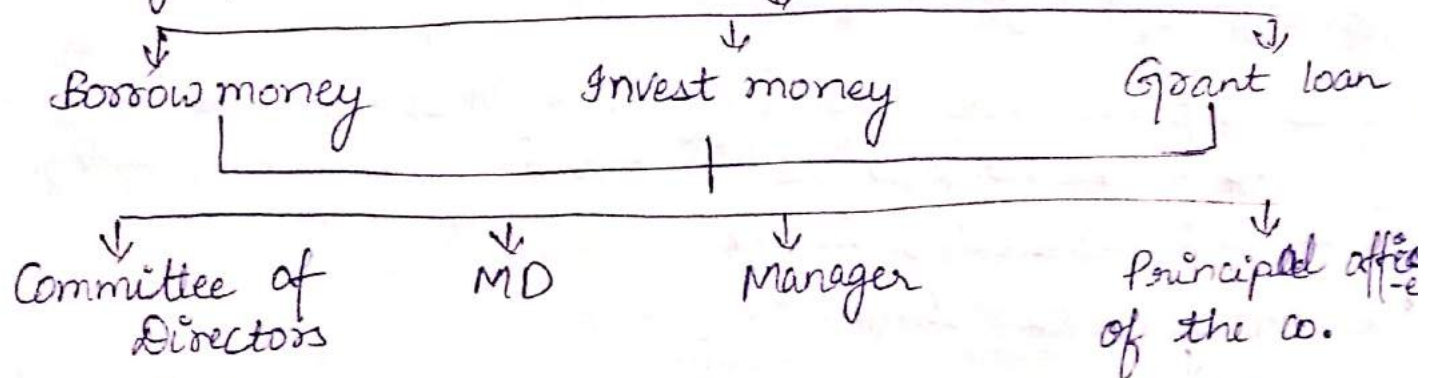
- Member - Max 10 committee
- Chairmanship in max-5
- For the purpose of chairmanship and membership of AC & SRC shall be considered one.
- It excludes Sec 8 co, Pvt co., & foreign co.

Power of BOD (Sec-179) 1979

→ Power can be exercised by BOD in BM only

- Demand call money
- buy back
- Issue of securities
- Borrow money
- Invest money
- loan, guarantee security
- Appoint internal auditor, secretarial auditor

Following powers can be delegated



→ In sec-8 co, above 3 powers can be exercised by circulation

Restriction on power of Board

- Pass SR for following transactions
- To sell, lease, dispose off the undertaking or substantial part of the undertaking.
- Undertaking means a unit, division (or) asset, subsidiary co in which investment is exceeding 20% of net worth of the co. (or)
- Receive 20% or more total income from such unit or undertaking
- 2- Borrowing excess of psc + fr + sp except temporary borrowing (re-payment within 6m)
- 3- Investment otherwise in securities specified in trust act of compensation received due to merger and amalgamation.
- 4- To remit or give time for the repayment of any debt due to from a director.

Charitable Contribution

- Contribution for bonafide purpose
- BM-BR can contribute upto 5% of avg net profit of preceding 3FY
- above 5% pass OR
- Disclose in financial statement

Section 186(1) Inter Corporate Loan / 1/6/5

- Investment not more than 2 layers of investment subsidiary company except: Investment in some foreign company having investment subsidiary is the requirement of law.

• Section 186(2) limit →

↓
BOD By unanimous Resolution

↓
60% of PSC + FR + SP

↓
100% of FR + SP

→ higher ←

→ Holding Co ←

↓
above the limit

- By postal ballot
- By passing SR

↓
No need to Pass SR wholly
→ subsidiary co

* Disclose in financial statement

* Loan, Guarantee, Security to employee to be ignore

* Non applicability

1) Banking company

2) Insurance company

Housing finance company

• Company having objective and engaged in business of financing

• Investment by investment company in Right issue investment by NBFC

• Govt company engaged in Defence production

• Unlisted company after obtaining approval from CG/SG

Process

Board meeting \rightarrow unanimous resolution

GM \rightarrow SR \rightarrow above limit

Bank approval Bank or financial statement. if

(i) Loan / Investment / Guarantee / Security is above the limit and

(ii) Default in payment of interest or principal amt rate of interest \rightarrow shall not be lower than rate prescribed on govt securities of 1yrs / 3yrs / 5yrs / 10yrs.

(iii) No default in payment of interest and principal amt on deposit \rightarrow first repay the interest and principal amt

(iv) Disclose in financial statement

Section 188 Related Party Transaction

Related Party

a) Director or his relative

b) KMP his relative

c) Firm in which director / manager or relative is a partner

d) Pvt co in which director / manager or relative is a director or member.

e) Public company in which Director / manager is a director & holds more than 2% of PSC along with his relative

f) BC whose BOD / manager / MD is accustomed to an act as for the director given by director or manager is of the company

g) Any person upon whose direction the BOD or manager is accustomed to Act.

h) In which his holding / subsidiary / Associate Investment company / Joint venture company and subsidiary company of holding company and subsidiaries subsidiary company.

Transactions

Approval in Related party Transactions

BOD → BR
↓
within limit

GM - OR
↓
over & above limit
specified Transactions

- (a) Sale / Purchase / Supply amounting to 10% or more of Turnover.
- (b) Rendering & availability the services → 10% or more of Turnover
- (c) Selling / buying / disposing off property → 10% or more of Net worth
- (d) Lease of property → 10% or more of Turnover
- (e) Appointment at place of Profit → exceeding 2.5L monthly excluding the remuneration received in the Capacity of director.
- (f) Commission to underwriter exceeding 1% of Net worth (above transaction with Related party either directly or through agent)

Important Note

- Interested Director cannot affect participation in BM & cannot vote in such resolution in which he is interested
- Interested member cannot vote in GM however. In case of Pvt company or I&SC public co or 90% or more are relative of promoters or related party.

Exemption to Section 188 (No need to obtain OR/BR)

- (i) Transactions in ordinary course of business at arms length price.
- (ii) Govt company entered into the Transaction Cr/SGr
- (iii) Unlisted Govt company → Transaction with the other company → obtain Cr/SGr approval.
- (iv) Holding company with wholly own subsidiary if consolidated accounts are maintained.

Approval from Audit committee

- All Related Party Transactions required prior approval from audit committee.
- Obtain omnibus approval which shall be void for one financial year.

Emergency Contract

- In case of emergency BOD may enter into RPT but if required subsequent approval within 3 months from BOD or shareholder.
- Such contract shall be voidable at the option of BOD or shareholder.
- All Related party Transactions required prior approval from audit committee
- Obtain omnibus approval which shall be void for one financial year.

Section 187 Investment by company on its own Name

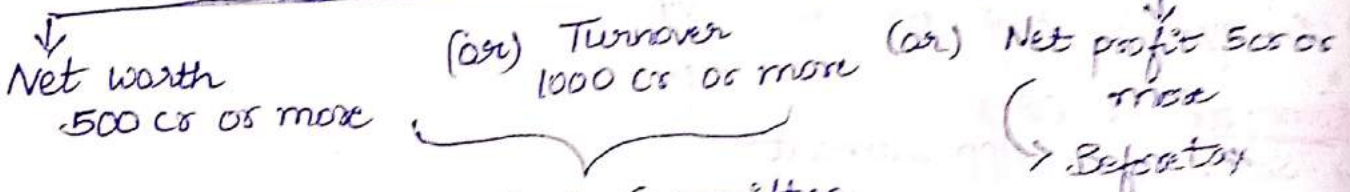
- All Investment shall held in the name of company however in certain case investment can be held in the name of Nominee.
- e.g share in wholly own subsidiary to ensure that the member shall not reduce below the limit.
- If Investment held in other name then company shall maintain the register which disclose the investment not held in co's name such register shall kept open for inspection during business hours.

Corporate Social Responsibility

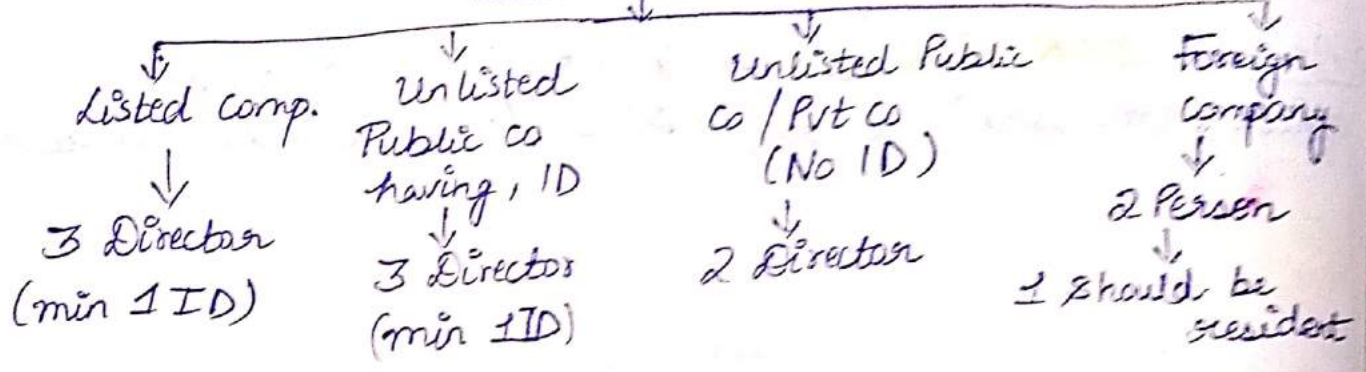
(Chapter-17)

Applicability of CSR (Section-135)

(Every company)



CSR Committee

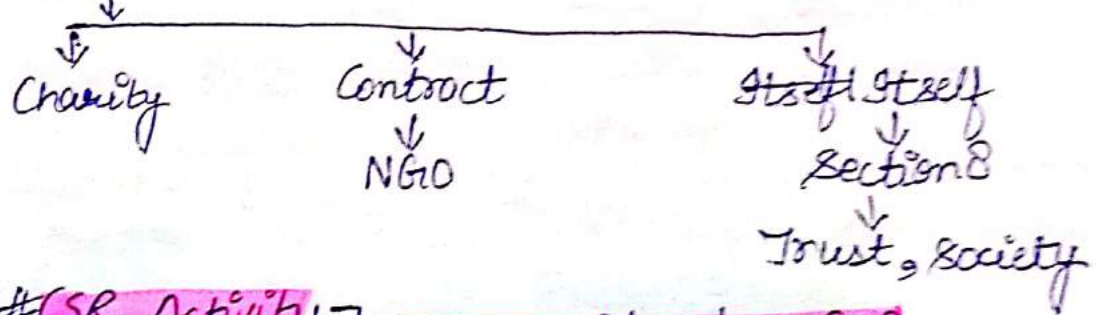


CSR spending is upto 50 lakh → No need to constitute CSR committee

Duties of CSR committee

- 1- Formulate the CSR policies
- 2- Recommend the amount of expenses
- 3- Monitor the implementation of CSR

CSR



CSR Activity → Not considered as CSR

- 1- Activities considered outside India
- 2- Activities for Benefit of Employee
- 3- Political contribution
- 4- CM-Care Fund
- 5- Activities in Normal course of business

6. One-off events like marathons, sponsorship, T.V program.
7. Charitable Contribution
8. Activities undertaken to follow the legislation

↓
Activities considered as CSR

1- Social Welfare Work :-

- Eradicating Poverty
- Malnutrition
- Preventive health care & Sanitation
- Safe drinking water
- Slum area development
- Swachh Bharat Kosh Kosh & Clean Ganga River

2- Education

- Promoting Education
- Enhancing vocation skill [soft skill]

3- Gender Equality

- Empowerment of women
- Setting up homes & hostel for women
- Orphan

4- Environment

- Ecological balance, animal welfare, conservation of natural resources.

5- National Heritage

- Protection of National Heritage
- Restoring of building & sites
- Setting up public libraries

6- Armed Force

- Benefit for army forces
- War widows & their dependant
- Benefit for central armed police force &
- Para military force

7- Promotion of Sports

- Training to promote rural sports
- Nationally recognised fund
- PM care fund
- Fund establish for social economic development
- Relief & welfare of SC, ST & other backward classes

8- Disaster Management fund

9- Rural Development Project

10- Contribution to technology incubator funded by CG/SG/PSU/ or any Govt agency.

11- Contribution to Public funded universities, IIT, National laboratories under department of atomic energy or bio technology or sciences & technology contribution to Ministry of Ayurveda, Yoga, & Naturopathy, Unani, Siddha Homeopathy (Ayush), Ministry of Electronic & IT, ICMR, ICAR, Council of Scientific & Industrial Research.

12- Covid Related Activities

- Awareness & Public out reach of COVID-19 vaccination → CSR
- Setting up makeshift, hospital & temporary covid care facility of covid-19.
- Creating health infrastructure for covid care establishment of medical oxygen generation & storage plant
- Spending in normal course of business for the companies engaged in R & D of new vaccine, drugs, medical devices for the year 20-21, 21-22, 22-23.

[PSU - Public Sector Undertaking
ICMR - Indian Council of Medical Research
ICAR - Indian Council of Agricultural Research]

CSR Spending

Atleast 2% of Average NP of 3 IPFY

OR

Where the company has not completed 3 years then average of such immediately preceding financial year (IPFY) shall be considered.

→ If company incorporated for 2 year then divide by 2

- loss should be deducted
- Preference should be given to local area
- Limit 500 cr, 1000 cr, 5 cr
- The Provision of CSR shall cease to apply if failed to fulfill the condition for continuous 3 years.
- Failed to spend CSR amount then disclose in board report along with the reason.

Board Report

(a) Disclose the reasons of not spending of CSR.

Unspend amount of CSR

↓
Ongoing project

Within 30 days from closing of FY transfer to unspend CSR account

↓
Utilise for next 3 years

↓
Failed to utilise in next 3 years

↓
Within 30 days From closing of 3rd FY Transfer to fund specified in Schedule VII

↓
Completed Project

↓
Unpaid amount shall transfer to a fund specified in schedule VII within 6 months from closing of FY

→ PM - care

→ Swachh Kosh

→ Clean Ganga river

→ Arms fund

Note - Excess CSR shall carry forward for next 3 years.

Penalty

- 1- When company failed to disclose the reason for not spending the amount
- 2- Fail to give correct treatment of unspent amount ongoing project.

Penalty

Company

Twice of the amt required to be transfer to fund specified in Schedule VII or unspent CSR account.

OR

1cr whichever is lower

Officer in default

1/10th of amount required to be transfer to fund under Schedule VII or unspent CSR account

OR

200,000 whichever is lower

Impact Assessment

Managed for

Avg

CSR budget ₹10cr or more in last 3 years

₹

Outlay of ₹1cr or more & Completed 1 year

Base act

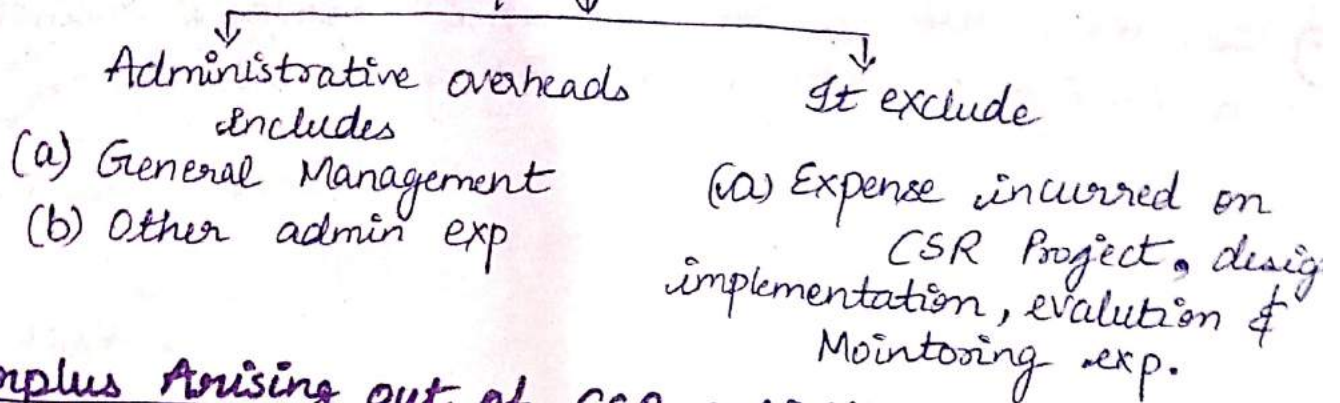
- (ix) (a) Contribution to incubators or research & development projects in the field of science, technology, engineering and medicine, funded by the CG or SG or Public sector undertaking or any agency of the central Govt or State Govt.
- (b) Contribution to public funded universities, IIT, AYUSH, ICAR, Department of Biotechnology, Dep sci and Tech, aimed at promoting Sustainable Development Goals.

Eligible Implementary Agency (Sec 8/ Trust / Society)

- Established track record of 3 years or more
- Shall not have any association with any political party either directly or indirectly
- No directly or indirect benefit to any of employee
- Registered under section 12A & 80G of Income Tax act.
- Past reputation

Administrative overheads

- Shall not exceed 5% of Total CR.



Surplus Arising out of CSR activities

- (a) shall not form part of business Profit
- (b) Used for CSR activity only or transfer to unspent & S. account.

Excess Spend on CSR

- Avail set off for succeeding 3 years.
- Surplus from CSR activity cannot be available for set off.

Acquisition of Capital Assets

- Shall be held by eligible implementary agency.

CSR Reporting

- Annual report on CSR shall be part of Board report of the company
- Annual report on CSR includes report of Impact Assessment agency.

Website Disclosure

- Disclose about composition of CSR committee
- CSR policy & project & Project approved by Board.

CSR Portal

- National Corporate Social Responsibility Data portal is

an initiative of MCA

National CSR Award given to

- Companies that have positively impacted both business & society.
 - Recognize the companies that are leading transformation
 - 4 awards for effort excellence in CSR based on CSR spend
 - 5 awards for CSR Projects in direct
 - 11 awards for CSR Project in National Priority area
 - 3 separate awards for MSME
- ⊛ Top 1000 listed entity requested to prepare business responsibility report as a part of annual report.

Annual Report

Chapter-18

Annual Report

- LODR regulation about annual Report
(a) Listed entity shall submit to stock exchange

↓
Copy of annual report
no later than the day
of commencement of
dispatch to shareholder

↓
File revise copy of
annual report along with
explanation for the change
within 48 hours from
conclusion of AGM

Content of Annual Report

- Audited financial statement (AFS)
- Consolidated financial statement
- Directors report
- Management discussion & analysis report
- Top 1000 company → Business Responsibility Report

Related party Disclosure

- Disclosure of loan & advances to subsidiary, Associate and firm & company in which directors are interested.
- Investment by the loan in the shares of parent company or subsidiary company.
- Interest firm & entity: In which promoter/promoter group hold more than 10% shares
- Discussion & Analysis Report for listed company
- Discussion on following matter
 - (a) Industry structure & Development
 - (b) Opp & threats
 - (c) Segment wise or product wise performance
 - (d) Outlook
 - (e) Risk & concern
 - (f) Details of significant change in Debtors, Turnover,

Inventory Turnover, Debt Equity Ratio.

Corporate Governance Report for

- Brief statement on listed entity is philosophy
- Details of Directors, composition of Director, attendance at the board meeting, no of board meeting, details of shares held by NED.
- Details of AC, NRC, SRC & RMC committee about the composition meeting, attendance, name of compliance officer complaints received.
- Remuneration of Directors
- General body Meeting

Disclosure with respect to demat suspense account

- No. of shareholder approach for transfer of shares from suspense account.
- Outstanding shares in suspense account at the end of the year.

Statement of deviation or variation

- listed entity submit to stock exchange on quarterly basis about the deviation in the use of proceeds from the object stated in offer document & indicating category wise variation & explanatory statement.
- Such statement shall be continued to be given till such time the issue proceeds have been fully utilise.
- Appoint monetary agency to monitor the utilisation of proceeds.
- Company shall file report of monetary agency to stock exchange within 45 days from end of each quarter.

Board Report

→ Secretarial Report to be attached with board report
→ It specify performance and other aspect of the company.

→ Disclosure under company act in Board Report

(a) Details of DVR

(b) Sweat Equity shares

(c) Details of employee stock option scheme

(d) Buy Back

(e) Financial statement

(f) Details of Account

(g) CSR

(h) Vigil Mechanism

(i) Remuneration of Director

→ It includes web address of annual report

→ Director responsibility statement with following affirmation

(a) Accounting standard has been followed

(b) Directors taken responsibility statement with following

(b) Directors taken proper care for maintenance of accounting record.

(c) Prepare account on going concern

(d) Accounts are showing true & fair view

→ Details in respect of fraud reported by Auditors

(a) Nature of Fraud

(b) Amount of Fraud

(c) Parties involve &

(d) Remedial action taken

→ Details of dividend declared, total amount of dividend statement of dividend distribution policy.

→ Details of step taken on conservation of energy & step taken for utilising alternate sources & capital investment

On energy conservation equipment
→ Technology absorption & efforts made towards technology absorption.

Abridge board report for one person co. & small co.

→ It contains following information

- (a) Web address of Annual report
- (b) No. of Board Meeting
- (c) Directors Responsibility statement
- (d) Details of fraud
- (e) Financial summary
- (f) Details of directors appointed & resigned during the year.
- (g) Details of related party disclosure.

Disclosure under Sexual Harassment of women

- Applicability → If 10 or more women are working
- Annual Report shall specify.
- (a) No. of complaints received during the year of sexual harassment
 - (b) Complaints disposed off during the year
 - (c) Cases pending for more than 90 days
 - (d) No. of workshops taken against sexual harassment.
 - (e) Nature of Action taken by employer or District officers

Investor education & Protection Fund

- Details of transfer of IEPF during the year
- Details of unpaid dividend
- Transfer to IEPF of unpaid or unclaimed amount of debenture, deposit, interest thereon, application money.

→ Yearwise amount lying in unpaid account.

Credit rating of security

- Credit rating obtain in respect of security
 - Name of credit rating agency
 - Date on which rating was obtain
 - Revision in credit rating
 - Reasons for downward rating if any
 - Reason for not using of rating if any
- Signing of board Report

↓
Chairperson if authorised
by board Board of Director

↓
2 directors one of them
shall be Managing
Director if any

- Company if Board of Directors are suspended after appointment of resolution professional then such professional shall sign the report.
- File copies of financial statement and board report to ROC within 30 days from the conclusion of AGM
- In case one person co. file within 180 days from closing of financial year.

Annual Return

- Significant document for stakeholder which comprehensive information about the various aspect.
- Need to file with ROC by every co.
- Prepare annual return in Mgt-7 and for one person co. & small co. in Form Mgt 7A and file with ROC within 60 days from AGM or last day of its financial year.

→ Content of Annual Return

- (a) Registered office, principal business activity
- (b) Details of holding, subsidiary & Associate co.
- (c) Details of shareholding pattern.
- (d) Indebtedness
- (e) Details promoters, Director, KMP along with changes.
- (f) Remuneration of Director & KMP

Attachment to E-Form Mgt-7 or T-A

- List of shareholder / Debentureholder
- Approval letter for extension of AGM
- Copy of MGT 8 (if applicable)
- List of Directors
- Optional Attachment

Signing of Annual Return

- Signed by Director & Company Secretary
- If no CS then by Practising CS.
- One Person co. & Small company → signed by CS
or if no CS → then by director

Certificate of Annual Return

- Applicability → listed co.
 - Co. having psc - 10cr or more or
 - Turnover - 50cr or more
- Certified by PSC in form MGT-8

Preservation of Annual Return

- Keep and Maintain copies of annual return under sec-92 at registered office.
- May kept at other place in India where most than 1/10th of total member resides → Pass special Resolution
- Preserve for 8 yrs from date of filing ✓ ROC.
with

Inspection of Annual Return

- Open for inspection
- at least for 2 hours on every working day
- inspection during working hour only
- inspection by member, debentureholder & other security holder, without fees.
- For only person fees not exceeding ₹ 100
- Copies: For any person fees or maximum ₹ 10 per page and such copies shall be supplied within 7 days from deposit of fees.
- Central govt. may order the inspection

Active Company Tagging Identities & Verification

- Incorporation before 31-Dec-2017 → File E form active on or before 15-6-19.
If company failed to file financial statement or annual return both restricted from filing E-form Active except co. is under management dispute.
- Company failed to file E-form → co. marked as "Active non compliant"
- Company which have been struck off or under process striking off or under liquidation or amalgamated or dissolved shall not be required to file E-form Active.

Active non compliant co. cannot request for SH-7, i.e. change in authorised capital.

PAS-03 → change in capital

DIR-12 → change in Director

INC-22 → change in Register office

INC-28 → Amalgamation, Demerger

Company filed E-form Active on or after 16 June - 2019

Maked as Active complaint on payment of ₹ 10,000

Note - Person not holding any commercial int cannot demand copies of document for inspection

KMP and their Remuneration

Chapter - 19

→ KMP

- MD or Manager or CEO & in that absence WTD
- CS
- CFO
- Any person not below one position of director & declar or KMP.

* Appointment of KMP (Sec 203)

- BM - BR & BR shall specify the remuneration & other conditions.

- KMP cannot be appointed as chairperson except AOA authorise.

- • By passing BR in BM only ; BR shall specify remuneration and other conditions.

- Any individual can be MD or CEO and chairperson of the company if AOA permit or company does not carry multiple business.

- Public company having paid up share capital of ₹ 100 crore or more & annual turnover of ₹ 1000 crore or more which are engaged in multiple business and have appointed CEO of each business and have can appoint as chairperson & MD.

- WT KMP shall not hold office in more than one company except subsidiary company.

- However WT KMP can hold office in more than one co. except subsidiary company. directorship in any other

- * Company with the permission of board.

MD or Manager can be appointed in another co. after obtaining consent of all directors. in the meeting (unanimous resolution)

- Vacancy - Filled up by BOD within 6M

- Non Applicability

Section-196 Appointment of MD/WTD/Manager

- MD or Manager
- Term → Max 5 years
Reappointment not earlier than one year before the expiry of term
- Age → 21 years Minimum
→ 70 years Maximum
- More than 70 years → Pass SR
or
OR + CG approval
- Not discharged from insolvency or adjusted to an insolvent
- Not suspended the payment of creditors
- Not convicted by court & sentenced from period of not more than 6 months.

Schedule VI Part 1

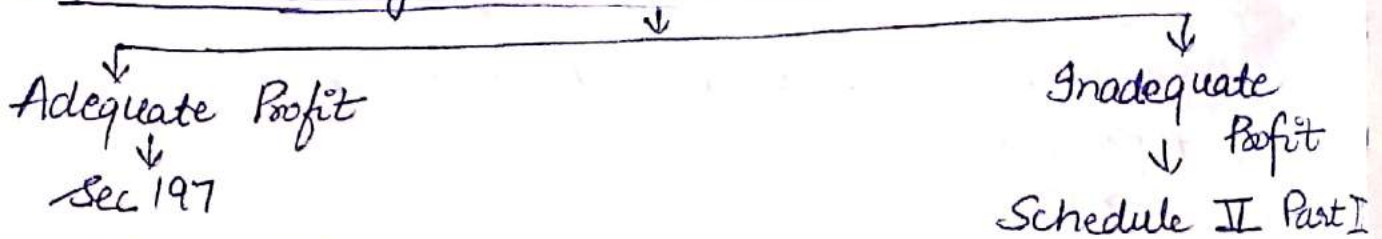
- Has not sentenced to imprisonment for any period or fine exceeding 1000/- under 19-Act specified
- New Act → GST
→ IBC
→ Economic offender Act
- The person has not been detained for any period under conservation of foreign exchange and ~~prevention~~ prevention of smuggling Act 1974.
- Person is resident of India [Except in special Economic Zone]
- Resident in India includes a person staying in India continuous period of 12 months immediately preceding the date of his appointment as Managerial person and who has come to stay in India.
 - (i) For taking up employment in India
 - (ii) For carrying on a business or vacation in India.
- BM-BR and subject to approval by shareholder in next GM.
- All act done before the vacation shall be valid.
- File MR-2 → Application for approval of Cr.
File MR-1 → Within 60 days from appointment [Company to ROC]

- DIR 12 → Particular of Director
- MGT 14 → Within 30 days

Exceptions

- 1) Pvt company - May appoint MD/Manager/WTD
 - above the age limit without central govt
 - Approval no need to pass OR in GM.
- 2) Govt Company - May appoint MD/Manager/WTD
 - above the age limit without CG approval
 - and term may be more than 5 years.
 - No need to Pass OR in GM
- 3) IFSC company - May appoint MD/Manager/WTD.
 - above the age limit without \neq GG approval.

Section 197 Managerial Remuneration



- All Director (including Executive and Non Executive)
 - ↳ 11% of Net Profit
- All Executive Director
 - ↳ 10% of Net Profit
- One Executive Director
 - ↳ 5% of Net Profit
- No ED only NED → All NED → 3% of Net Profit
- ED present in company then All NED → 1% of Net Profit

Non applicability

- 1) Pvt company
- 2) Govt Company
- 3) IFSC company

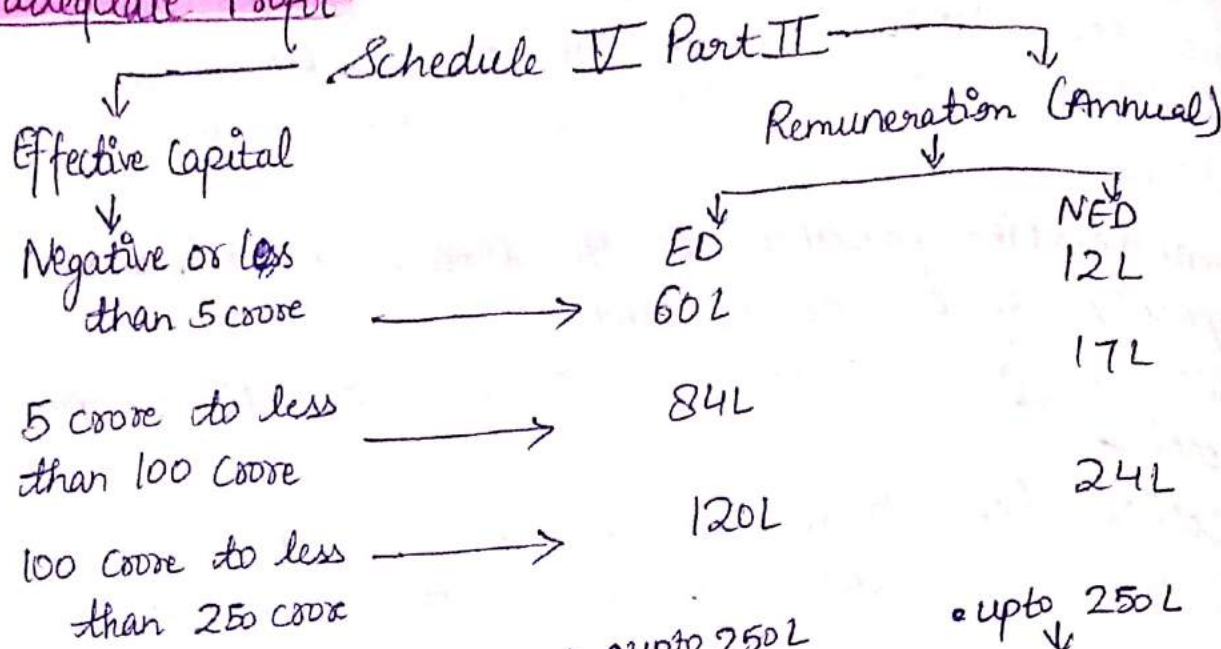
Provision as per Section 197

- > More than 11% remuneration → Pass QR
- > Individual (1% / 3% / 5% / 10%) above limit
 - ↳ Pass SR
- Remuneration payable to the Director in Professional capacity shall be excluded
- Sitting fees can be paid ₹ 1 lakh per director per meeting
- Sitting fees to woman Director and ID shall not be less than the fees paid to other Directors.
- Service of Professional nature and such payment shall recommended by NRL or BOD and the directors possesses the requisite qualification for the service of the professional nature.
- Insurance premium paid by the company for indemnity against any liability in respect of any negligence shall not be treated as part of managerial remuneration.
- Except the person proved to be guilty the premium paid on such insurance shall be treated as part of remuneration.
- Managerial person can received commission or fees from holding or subsidiary company
- Excess Remuneration shall be refunded ~~who~~ within 2 years until hold in Trust.
 - e.g. - Monthly remuneration = $5L \times 12m = 60L$
 - Net Profit = $1000 \times 5\% = 50L$
 - Excess = 10 Lakhs
- To waive such excess remuneration pass SR

• Inadequate Profit

↳ Next page!

◦ Inadequate Profit



• upto 250L
↓
120 Lakhs

• in excess of 250L
↓
0.001% of effective capital

• upto 250L
↓
24 Lakhs

• in excess of 250L
↓
0.001% of effective capital

> Pass SR above limit

◦ Effective Capital

- PSC + FR + SP + long term deposit + long term debt + long term debentures
- long term means more than 1 year
- (less) I → Investment
P → Preliminary Exp
L → Accumulated losses

Note : In case of Investment company will not deduct investment.

- Other conditions to be follow inadequate Profit (Sch-5)
- such person shall functioning in Professional capacity
- shall not hold shares in the company/Holding/ Subsidiary except in ESOP upto 0.5% shares at any time during 2 years before or on or after the appointment.

Not related to director of promoter 2 years before or after the appointment.

At least Graduation

No default in payment of interest and principal amount on debt or debenture for continuous period of 30 days in preceding 30 days from due date.

→ Pass OR → Within limit

→ Pass SR → above limit

→ Validity of OR/SR → 3 years

Remuneration shall be approved by NRC or BOD if payment of Remuneration for beyond the limit.

Remuneration without limit in special circumstances Managerial Remuneration can be passed without limit if company not having adequate profit

a) Foreign company

b) Newly Incorporated company for first 7 year

c) Sick company → Under scheme of

Note:

Managerial person can be draw the remuneration from 2 companies however the limit does not exceed the higher maximum limit admissible from any 1 company.

Compensation for loss of office (Section-202)

→ Compensation to MD/Manager/NTD, But not to any other Director

Amount of compensation

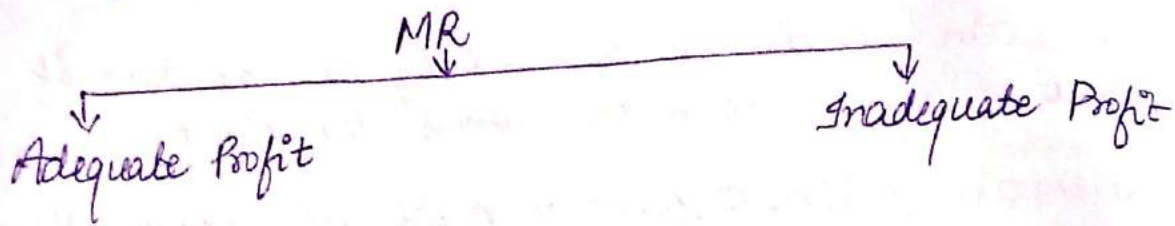
↓
Avg salary that he would had earn during his remaining term in the office

or

↓
3 years Avg salary

(whichever is lower)

- No compensation
- Resignation due to merger & amalgamation of person is appointed as a MD / Manager / WTD is resultant
- Resignation for any other reason
- Valuation due to disqualification
- Director has been found guilty
- Company is being wound up due to negligence or default of such Director.

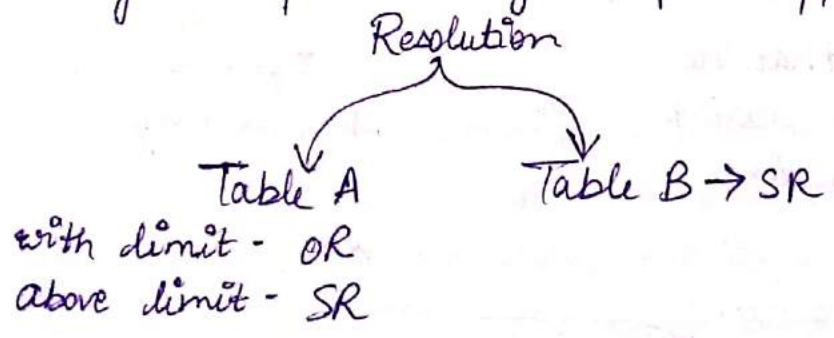


Schedule VI Part II
 ↓ Part B
 Remuneration (Annual)
 ↓ without limit

- a) Professional capacity
- b) Not hold any capital in Co/H/A/S/A in last 2 years & current year & after appointment however can hold upto 0.5% ESOP
- (c) Not related to promoter / director of the Co/H/S in last 2 years / current year & after appointment
- (d) atleast graduate - Pass SR

Process under Schedule VI Part II

Pass SR and obtain NRC approval
 No default is int of repayment on Debentures, deposit, debt for 30 days in previous year from appointment.



Appointed of CS

→ Board Resolution

→ File DIR-12 & MGT-14 within 30 days from appointment

→ Inform stock exchange in case of listed co.

→ Entry in Register in KMP

Removal of CS

→ Same as Appointment

→ Fill out the vacancy within 6 months.

* As per LODR Regulation → Apoint CS as a compliance officer, who shall be responsible for all the compliance