



CMA FINAL PAPER - 13

CORPORATE LAWS



CONCEPT BOOK MODULE-01
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1. COMPANY FORMATION AND CONVERSION

Company Law in India traces its origins to the English Companies Act.

Key milestones:

- ❖ **Companies Act, 1850:** First Indian legislation.
- ❖ **Companies Act, 1913:** Modelled on the English Act.
- ❖ **Companies Act, 1956:** Major overhaul; introduced provisions for company incorporation, functioning, and winding up.
- ❖ **Companies Act, 2013:** Comprehensive modern legislation, enacted to improve corporate governance, CSR, investor protection, and transparency.

Derivation of the Term: The word "Company" is derived from the Latin word "Com" meaning "with or together" and "Panis" meaning "bread". Originally, it referred to a group of persons who took their meals together. Over time, the term came to represent a group of people associated together for a common purpose.

Meaning and Nature of a Company

Meaning of a Company:

- ❖ A "Company" is a legal entity formed and registered under the Companies Act, 2013 or any previous company law.
- ❖ As per Section 2(20) of the Companies Act, 2013, a "company" means a company incorporated under this Act or under any previous company law.
- ❖ A company is regarded as an artificial person having a separate legal entity, perpetual succession, and limited liability of its members.

Features of a Company:

The following are the essential characteristics of a company:

1. **Incorporated Association:** A company must be incorporated under the Companies Act.
2. **Separate Legal Entity:** It has a distinct legal identity separate from its members.
3. **Perpetual Succession:** It continues to exist despite changes in membership.
4. **Limited Liability:** Liability of members is limited to the extent of unpaid share capital.
5. **Artificial Legal Person:** It is created by law and not a natural person.
6. **Common Seal (optional now):** Was earlier used as the official signature.
7. **Transferability of Shares:** In a public company, shares are freely transferable.
8. **Capacity to Sue and Be Sued:** A company can initiate legal proceedings and be sued in its own name.

Objectives of the Companies Act, 2013

1. To improve corporate governance.
2. To provide enhanced disclosures and transparency.
3. To protect investors and stakeholders.
4. To promote ease of doing business.
5. To encourage CSR and ethical corporate behaviour.

Applicability of the Act (Section 1)

Applies to:

- ❖ Companies incorporated under this Act or previous Company Law.
- ❖ Insurance companies, banking companies, etc., to the extent not inconsistent with their respective Acts.
- ❖ Government companies.
- ❖ Foreign companies having a place of business in India.

Classification of Companies

1. On the Basis of Incorporation:

- ❖ **Statutory Companies:** Incorporated by a special Act of Parliament or State Legislature (e.g., RBI, LIC).
- ❖ **Registered Companies:** Incorporated under the Companies Act, 2013 or earlier laws.

2. On the Basis of Number of Members:

- ❖ **One Person Company (OPC) [Section 2(62)]:** One individual holds the entire share capital.
- ❖ **Private Company [Section 2(68)]:** Limits members to 200, restricts share transfers, prohibits public invitation for securities.
- ❖ **Public Company [Section 2(71)]:** No restriction on number of members or transfer of shares.

3. On the Basis of Control:

- ❖ **Holding Company [Section 2(46)]:** Has control over another company (subsidiary).
- ❖ **Subsidiary Company [Section 2(87)]:** Controlled by a holding company.
- ❖ **Associate Company [Section 2(6)]:** Company in which another has significant influence (at least 20% of share capital or business decision participation).

4. Other Types of Companies:

- a. **Government Company [Section 2(45)]:** At least 51% of paid-up capital is held by Central/State Government or both (e.g., ONGC, SAIL).
- b. **Dormant Company [Section 455]:** Inactive company or formed for a future project (or) to hold an asset (or) intellectual property and which has applied for dormant status.
In order to apply for Dormant status,

- ❖ It should not done any significant accounting transaction / business operation during the last two financial years (or)
- ❖ Has not filed financial statements and annual returns during the last two financial years, such a company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a Dormant company

Note:

Significant Accounting Transaction - What It Excludes?

According to Explanation (a) to Section 455(1), **Significant Accounting Transactions**

do not include:

- ❖ Payment of fees to the Registrar.
 - ❖ Payments made to fulfil the requirements of the Act or any other law.
 - ❖ Allotment of shares to meet legal requirements.
 - ❖ Office maintenance expenses like rent and statutory dues.
- c. **Nidhi Company:** A type of NBFC, incorporated to cultivate the habit of thrift and savings amongst its members and to lend only to members.
 - d. **Non-Profit Company / Section 8 Company:** Incorporated for promoting commerce, art, science, charity, etc. Profits are used for the object of the company.
 - e. **Joint Venture Company:** A business arrangement where two or more parties agree to pool resources for a specific task.
 - f. **Public Financial Institution (PFI) [Section 2(72)]:** Includes LIC, IDFC, ICICI, etc., notified by the Central Government.
 - g. **Banking Company:** A company that transacts the business of banking as defined under the Banking Regulation Act, 1949.
 - h. **Non-Banking Financial Company (NBFC):** A financial institution which provides banking-like services but does not hold a banking license. It is regulated by RBI.

About OPC & Pvt.Co & Public Co

ONE PERSON COMPANY (OPC) - Section 2(62)

Meaning:

One Person Company (OPC) means a company which has only one person as a member and is registered as a private company.

This concept was introduced to promote entrepreneurship among individuals by enabling them to form a company with limited liability.

Key Provisions

Particulars	Details
Definition	Section 2(62): A company with only one person as a member
Legal Status	Separate legal entity
Liability	Limited to the extent of unpaid share capital
Minimum Capital	No minimum capital prescribed
Number of Members	Only one
Number of Directors	Minimum 1, Maximum 15
Incorporation	Only a natural person who is an Indian citizen and resident in India can incorporate an OPC (i.e., stayed in India for at least 120 days during the immediately preceding financial year) (as per latest amendment in 2021)
Nominee	Mandatory to mention a nominee during incorporation Nominee must also be a resident Indian natural person
Conversion	Voluntary conversion allowed after 2 years (now permitted anytime w.e.f. 1 April 2021); Mandatory if turnover > ₹2 crore or paid-up capital > ₹50 lakh

Salient Features:

1. Treated as private company for most provisions.
2. No requirement to hold AGM.
3. Less compliance burden (e.g., simplified annual filings, no cash flow statement).
4. Not allowed to conduct NBFC/banking/investment activities.
5. Can be converted into a private/public company when it exceeds prescribed financial thresholds.

PRIVATE COMPANY - Section 2(68)

Meaning:

A Private Company is a company having a minimum of 2 members and restricting the right to transfer its shares. It cannot invite the public to subscribe to its securities.

Key Provisions

Particulars	Details
Definition	Section 2(68): Company which restricts transfer of shares, limits members to 200, and prohibits public invitation
Minimum Members	2
Maximum Members	200 (excluding present & past employees)
Minimum Directors	2
Maximum Directors	15 (can exceed by special resolution)
Minimum Capital	No minimum capital required
Suffix	Must use the words "Private Limited" at the end of its name

Key Restrictions

1. Transfer of Shares - restricted via Articles of Association.
2. Public Invitation - prohibited from inviting public to subscribe shares or debentures.
3. Securities Listing - not allowed on stock exchange.
4. Quorum for Board Meeting - 2 directors.

Example:

"Finverse Tech Solutions Pvt. Ltd." is a private company with 50 members. It cannot issue prospectus or list its shares in a stock exchange. It has Articles that restrict share transfers to outsiders.

Advantages:

- ❖ Easier to form and operate.
- ❖ Lesser compliance burden compared to public company.
- ❖ Flexible management structure

PUBLIC COMPANY - Section 2(71)

Meaning:

A Public Company is one which is not a private company and does not restrict share transfers, nor does it limit the number of its members. It may invite public to subscribe to its securities.

Key Provisions

Particulars	Details
Definition	Section 2(71): A company that is not a private company
Minimum Members	7
Maximum Members	No limit
Minimum Directors	3
Maximum Directors	15 (can exceed by special resolution)
Minimum Capital	No minimum prescribed (earlier ₹5 lakh, removed by Amendment)
Suffix	Must use "Limited" at the end of its name

Key Features:

1. Free Transferability of Shares - no restrictions.
2. Can invite public via prospectus for share subscription.
3. List securities on recognized stock exchanges (optional).
4. Strict compliance - SEBI Regulations, Listing Obligations (if listed).
5. Compulsory AGM and regular Board Meetings.
6. Disclosures and corporate governance standards must be followed.

Advantages:

- ❖ Easy to raise capital from public.
- ❖ High credibility and public confidence.
- ❖ Shares are tradable on stock exchanges (if listed).

Example:

"Reliance Industries Ltd." is a public company whose shares are freely tradable on stock exchanges. It follows all corporate governance norms under SEBI (LODR), and has lakhs of shareholders.

Comparison Chart: OPC vs Private Co. vs Public Co.

Feature	OPC	Private Company	Public Company
Minimum Members	1	2	7
Maximum Members	1	200	Unlimited
Minimum Directors	1	2	3
AGM	Not Required	Required	Mandatory
Public Subscription	Not Allowed	Not Allowed	Allowed
Transfer of Shares	Not transferable	Restricted	Freely transferable
Listing on Stock Exchange	Not allowed	Not allowed	Allowed
Suffix in Name	"OPC Pvt Ltd"	"Private Limited"	"Limited"

Concept of Corporate Veil and Its Lifting

1. Meaning of Corporate Veil

A company is treated as a separate legal person from its members/shareholders. This principle was firmly established in the famous case of:

Salomon v. Salomon & Co. Ltd. (1897) AC 22 Held:

Once incorporated, a company is a separate legal entity, distinct from its members. Mr. Salomon was not personally liable for company debts.

This "veil of incorporation" is the corporate veil — it protects the members from being personally liable for company acts or liabilities.

2. What is Lifting (or) Piercing the Corporate Veil

Although a company is a separate legal person, courts may "lift" the corporate veil in certain cases where the company is used for fraud, misconduct, evasion of law, or sham purposes. In such cases, the court looks behind the company to hold the actual persons (e.g., directors or shareholders) liable.

3. Circumstances Where Corporate Veil Can Be Lifted

Grounds	Explanation
Fraud or Improper Conduct	When the company structure is used to commit fraud or hide illegal activities.
Evasion of Tax or Law	If a company is formed to evade tax or violate any law, courts can disregard the separate entity.
Agency or Trust	Where a company is acting as an agent or trustee of its members.
Sham or Bogus Company	If the company is a façade or just a name, the veil can be lifted.
Enemy Company	During wartime or for national interest, veil may be lifted to identify foreign influence.
Group Enterprises	For holding-subsidary companies in fraud cases.
Public Interest or Social Justice	To serve justice in cases where company protection is misused.

Important Case Laws on Lifting of Corporate Veil

Gilford Motor Co. Ltd. v. Horne (1933)

Facts: Mr. Horne, a former employee, was bound by a non-solicitation clause. He formed a company to solicit clients of his old employer.

Held: The company was a sham created to evade legal obligations. Court lifted the veil and held Mr. Horne personally liable.

Jones v. Lipman (1962)

Facts: Lipman agreed to sell land, then transferred it to a company he controlled to avoid sale.

Held: Company was a mask to avoid specific performance. The veil was lifted.

Delhi Development Authority v. Skipper Construction Co. (1996) - Supreme Court of India

Facts: Company collected money for flats and misappropriated it. Directors formed multiple companies to hide funds.

Held: Corporate veil lifted to hold promoters/directors personally liable for fraud.

Workmen v. Associated Rubber Industries Ltd. (1986) - SC

Facts: The company created a subsidiary to reduce profits and thus worker bonuses.

Held: Veil lifted — holding that the subsidiary was used to manipulate bonuses, and thus both were a single economic entity.

State of Rajasthan v. Gotan Lime Stone Co. (2016) - SC

Facts: Original company transferred mining lease to a newly formed company to bypass government restrictions.

Held: Transfer was malicious, veil lifted.

Statutory Provisions that Allow Veil Lifting

The Companies Act, 2013 provides for lifting the corporate veil under various sections

Section	Description
Section 7(7)	If incorporation is obtained by false information, the person is personally liable.
Section 251(1)	If a company has applied for strike-off fraudulently, promoters/directors are liable.
Section 339	In case of fraudulent conduct of business during winding up, the Tribunal may hold directors personally liable.
Section 2(60)	Defines "officer in default" who may be held liable even if the company is a separate legal entity.

Conclusion

- The corporate veil is a legal shield, but not absolute.
- Courts can and do lift the veil when the corporate form is abused.
- Students must understand both the **principle of separate legal entity** and the exceptions where **law overrides it** in interest of justice, equity and public interest.

Incorporation of Company under Companies Act, 2013

Governing Provisions

- Companies Act, 2013: Sections 3 to 22
- Companies (Incorporation) Rules, 2014
- MCA Forms: SPICe+ (Form INC-32), INC-33 (MOA), INC-34 (AOA), etc.

Types of Companies under Companies Act, 2013

Type	Minimum Members	Maximum Members	Directors	Legal Identity	Minimum Capital
One Person Company	1	1	1	Separate	No min. capital
Private Company	2	200	2	Separate	No min. capital
Public Company	7	Unlimited	3	Separate	No min. capital

Note: The concept of minimum paid-up capital requirement has been removed as per Companies Amendment Act, 2015.

Steps Involved in Incorporation of a Company

Step 1: Digital Signature Certificate (DSC)

- ❖ Required for all proposed directors & subscribers to MOA/AOA.
- ❖ Issued by Certifying Authorities (CAs) like e-Mudhra, Sify, etc.
- ❖ [Hierarchy: Ministry of IT & Communications → CCA → CAs → CAs will issue DSC]

Step 2: Director Identification Number (DIN)

- ❖ Can be applied within SPICe+ form for up to 3 directors.
- ❖ If directors already have DIN, mention the same in the form.

Step 3: Name Reservation using Part-A of SPICe+

Name Reservation Rules

- ❖ Governed by Rule 8 of Companies (Incorporation) Rules, 2014.
- ❖ Name should not:
 - ✓ Resemble existing company or trademark.
 - ✓ Be undesirable or offensive.
 - ✓ Contain prohibited words (like 'National', 'Bank', etc. without approval).

Application through:

- ❖ SPICe+ Part A on MCA Portal.
- ❖ Maximum 2 names can be applied.
- ❖ Fee: ₹1,000
- ❖ Once approved, name is reserved for 20 days.

Step 4: Drafting of MOA and AOA

Memorandum of Association (MOA) - Section 4

Main Clauses of MOA:

Clause	Description
Name Clause	Name of the company with "Limited" / "Private Limited" / "OPC"
Registered Office Clause / Situation Clause	State in which the registered office is situated
Object Clause	Main object, ancillary object, and other objects
Liability Clause	Liability of members (limited by shares or guarantee)
Capital Clause	Authorized share capital and division of shares
Subscription Clause / Association clause	Names and details of subscribers and number of shares subscribed

Articles of Association (AOA) - Section 5

- ❖ Contains rules for internal management of the company.
- ❖ May adopt all or some provisions of Table F (for companies limited by shares).
- ❖ MOA tables (Table A -Table E)
- ❖ AOA tables (Table F - Table J)

Contents of Articles of Association (AOA)

Area Regulated in AOA	Examples of Provisions Included
Share Capital	Calls on shares, transfer/transmission of shares, forfeiture, etc.
Board of Directors	Appointment, powers, meetings, quorum, etc.
General Meetings	Procedure, notice, proxy, voting, etc.
Dividend and Reserves	Declaration, interim dividend, creation of reserve
Accounts and Audit	Maintenance, audit procedures, etc.
Borrowing Powers	Conditions and restrictions
Seal and Certificates	Use of common seal, share certificates
Winding Up	Rules for voluntary winding up
Adoption of Model Articles	May adopt all or some clauses from Table F (for companies limited by shares)

AOA < MOA < Companies Act

- ❖ Articles must not conflict with MOA or the Act.
- ❖ Any clause in AOA overriding MOA or Act is void to that extent.

Filing SPICe+ (Form INC-32)

Structure of SPICe+ Form

It consists of two parts:

- ❖ Part A - Name reservation.
- ❖ Part B - Incorporation application.

Attachments with SPICe+ Form:

Document	Applicability
MOA (Form INC-33)	Mandatory
AOA (Form INC-34)	Mandatory
Declaration by first directors & subscribers in INC-9	Mandatory
ID proof and address proof of directors	Mandatory
Proof of registered office (utility bill, NOC)	Mandatory
Consent to act as director (Form DIR-2)	Mandatory
PAN & TAN Application	Filed along with SPICe+ (Auto-generated forms)

Filing Fee depends on capital, stamp duty depends on state.

Issuance of Certificate of Incorporation (COI)

- ❖ MCA scrutinizes and verifies forms.
- ❖ If all documents are in order, COI is issued with CIN.
- ❖ PAN, TAN, and GSTIN (optional) are auto-generated.

Certificate of Commencement of Business (Form INC-20A)

- ❖ This form initially deleted in transition from 1956 - 2013, but later reintroduced in 2019
- ❖ Applicable to companies with share capital.
- ❖ Must be filed within 180 days from incorporation.
- ❖ Requires proof of deposit of subscription money in bank.

Company Specific Formation Details

One Person Company (OPC) - Section 2(62)

Feature	Description
Member	Only one individual, must be Indian resident (120 days or more stay)
Nominee	Mandatory to appoint nominee
Conversion	Voluntary conversion only after 2 years unless threshold limits crossed
Exemptions	Many exemptions under audit, AGM, board meetings, etc.

Private Limited Company – Section 2(68)

Feature	Description
Members	2 to 200
Transferability	Restriction on share transfer
Public subscription	Prohibited
Compliance	Lesser than public companies (less governance burden)

Public Limited Company – Section 2(71)

Feature	Description
Members	Minimum 7 (no max limit)
Transferability	Freely transferable shares
Public subscription	Allowed (can raise capital via IPO)
Compliance	Higher compliance; needs independent directors, audit, etc.

Effect of Incorporation

As per Section 9 of Companies Act, 2013:

"From the date of incorporation, the company becomes a body corporate, capable of exercising all functions of an incorporated company"

Comparison Table (MOA) vs (AOA)

Basis of Difference	MOA (Memorandum of Association)	AOA (Articles of Association)
Definition	Charter document of the company defining scope of activities	Internal rules and regulations for management of company
Section	Covered under Section 4 of the Companies Act, 2013	Covered under Section 5 of the Companies Act, 2013
Purpose	Determines objectives and powers of the company	Lays down internal procedures and conduct of company affairs
Content	Includes Name, Object, Capital, Liability, etc. clauses	Includes rules for meetings, dividends, directors, etc.
Alteration	More difficult; requires Special Resolution, sometimes Tribunal approval	Easier; usually altered by Special Resolution only
Necessity	Mandatory for all companies	Mandatory for all companies
Binding Nature	Binds the company and members with respect to outside world	Binds the company and its members internally
Supremacy	Supreme document—AOA cannot override MOA	Subordinate to MOA
Legal Effect	Acts ultra vires MOA are void ab initio	Acts ultra vires AOA may be ratified

Filing with ROC	Must be filed at the time of incorporation (Form INC-33)	Must also be filed (Form INC-34)
Relation to Public	Determines the company's relationship with outsiders	Does not affect outsider's rights generally

Alteration of MOA & AOA

Aspect	Memorandum of Association (MOA)	Articles of Association (AOA)
Purpose	Defines the company's scope and powers	Governs internal management and administration
Alteration Procedure	Requires Special Resolution and sometimes approval of RD or Tribunal	Requires Special Resolution
Authority Required	Shareholders (via special resolution) + sometimes ROC/Tribunal	Shareholders (via special resolution)
Clauses that can be altered	Name, Registered Office, Object, Liability, Capital, Subscription	All internal rules, procedures, powers of directors, etc.
Filing Requirement	Must file with ROC (Form MGT-14, INC-24, etc., depending on clause)	Must file with ROC (Form MGT-14)
Approval by Central Govt/Tribunal	Required for: • Name change (similar name) • Registered office across states • Change of object if money raised from public	Not generally required
Effect of Alteration	Becomes part of public record; binds company and outsiders	Binds company and its members internally
Limitations	Cannot go beyond company law or public interest	Cannot conflict with MOA or Companies Act
Clauses that can be altered	Name, Registered Office, Object, Liability, Capital, Subscription	All internal rules, procedures, powers of directors, etc.

Summary Table: Incorporation Checklist

Task	Form / Document	Notes
Digital Signature Certificate	-	For all subscribers and directors
DIN (up to 3 directors)	SPICe+	Auto-generated if not available
Name Reservation	SPICe+ Part A	Valid for 20 days, extension not separately allowed
MOA & AOA	INC-33 & INC-34	e-MOA & e-AOA through SPICe+
Director's Consent	DIR-2	Mandatory
Declaration in INC-9	INC-9	Auto-generated if conditions met
Registered Office Proof	Utility bill + NOC	Mandatory
Final Filing	SPICe+ Part B	Includes all incorporation forms
Certificate of Incorporation	-	Allotment of CIN, PAN, TAN
Commencement of Business	INC-20A	Must be filed within 180 days

Doctrine of Ultra Vires and Indoor Management

Doctrine of Ultra Vires

Meaning:

The term ultra vires means "beyond powers." In the context of company law, it refers to any act or contract that goes beyond the powers and objects mentioned in the company's Memorandum of Association (MOA).

Legal Foundation:

- ❖ Based on the principle that the company, being a creature of law, cannot go beyond its stated objectives in the MOA.
- ❖ Such acts are void ab initio (invalid from the beginning) and cannot be ratified even by unanimous shareholder approval.

Purpose:

- ❖ To protect shareholders and creditors from unauthorized actions.
- ❖ To ensure that capital is used only for legitimate and declared business purposes.

Consequences of Ultra Vires Acts

Situation	Legal Status
Ultra vires the MOA	Void and cannot be ratified
Ultra vires the AOA but intra MOA	Valid, if shareholders ratify

Leading Case Law:

Ashbury Railway Carriage Co. Ltd. v. Riche (1875)

- ❖ **Facts:** The company's object clause allowed manufacturing of railway carriages. Directors entered into a contract to finance the construction of a railway line in Belgium.
- ❖ **Held:** The act was ultra vires the MOA, hence void, even though the shareholders approved it.

Examples:

1. If MOA allows a company to manufacture textiles, and the company enters into a real estate venture - Ultra vires and void.
2. If MOA allows raising funds via equity and directors raise funds through illegal lotteries - Ultra vires.

Doctrine of Indoor Management

Meaning:

This doctrine protects outsiders dealing with a company. It states that persons dealing with the company are entitled to assume that all internal requirements and procedures (like board approvals, quorum, resolutions, etc.) have been complied with.

Legal Foundation:

- ❖ It is an exception to the Doctrine of Constructive Notice, which says that public documents (like MOA & AOA) are deemed to be known to all.
- ❖ While outsiders are deemed to know MOA/AOA, they are not required to check internal compliance.

Leading Case Law:

Royal British Bank v. Turquand (1856)

- ❖ **Facts:** The company's directors borrowed money without a resolution, which was required under AOA.
- ❖ **Held:** The lender could assume that the resolution was passed. The company was held liable.
- ❖ **Implication:** Promotes business confidence by ensuring that third parties are not penalized for internal lapses of the company.

Exceptions to Doctrine of Indoor Management

Exception	Explanation
Knowledge of Irregularity	If the outsider knew of internal non-compliance, they cannot claim benefit
Negligence	If the circumstances were suspicious, and the outsider failed to inquire
Forgery	Doctrine does not apply to forged documents
Act Outside Apparent Authority	If the act is outside the agent's usual authority, company not liable

Examples:

1. If company's AOA says borrowing beyond ₹50 lakh requires shareholder approval and the board borrows ₹70 lakh without it - outsider can assume approval was taken.
2. But if the document signed by director is forged, the company is not liable.

Comparison Table

Basis	Doctrine of Ultra Vires	Doctrine of Indoor Management
Meaning	Acts beyond company's MOA are void	Outsiders may assume internal compliance
Applies To	Company's external powers	Internal management/authority
Legal Effect	Void ab initio, cannot be ratified	Company bound unless exception applies
Who is Protected?	Shareholders and creditors	Outsiders/third parties dealing with company

Conclusion

- Doctrine of Ultra Vires ensures that companies remain within their legally defined boundaries.
- Doctrine of Indoor Management provides a fair shield to third parties who deal in good faith with companies.
- Together, they balance the internal control and external fairness in company operations.

All about Conversions

Conversion of Companies into Different Classes

Under the Companies Act, 2013, a company may convert itself from one type or class to another, such as from a (private company to a public company) or (OPC to a private company) etc., subject to certain **procedures, approvals, and conditions**.

Lets discuss about these conversions in two parts, namely:

Part A: Types of conversions among COMPANIES

Part B: Types of conversions among LLP's

A. Types of Conversions among Companies

From	To
Private Company	Public Company
Public Company	Private Company
One Person Company (OPC)	Private Company or Public Company
Private/Public Company	OPC (only in certain cases)
Company (other than Section 8)	Section 8 Company (Non-profit)
Section 8 Company	Company other than Section 8

A. Conversion of Private Company to Public Company

Procedure:

1. **Hold Board Meeting** - approve conversion and call for General Meeting.
2. **Pass Special Resolution** - For alteration of Articles (removal of "Private").
3. **Alter MOA & AOA** - Remove restrictive clauses of a private company.
4. **File Forms:**
 - ✓ **MGT-14** (for SR within 30 days)
 - ✓ **INC-27** (for conversion)
5. **ROC issues fresh Certificate of Incorporation** as a Public Company.

Effects:

- ✓ Minimum directors: 3
- ✓ Minimum members: 7
- ✓ Cannot restrict transfer of shares or prohibit public subscriptions.

B. Conversion of Public Company to Private Company

Procedure:

1. **Hold Board Meeting** and call EGM.
2. **Pass Special Resolution** - alter Articles (insert private company clauses).
3. **File Form MGT-14** - within 30 days of passing SR.

(For all companies, except OPC, Small co's, whenever S.R is passed, they should intimate to ROC with in **30 days** via form **MGT - 14**)

4. File Form INC-27 with:

- ❖ Altered AOA and MOA
- ❖ Copy of Resolution
- ❖ NOC from creditors (if any)
- ❖ Copy of advertisement (if required)

5. Approval of Central Government (RD) - Form INC 28 - as per amended Section 14(1).

6. ROC issues fresh COI on approval.

Restrictions:

- ❖ All debts, liabilities, and contracts remain enforceable.
- ❖ No reduction of member limit below 2.

C. Conversion of OPC to Private/Public Company

Conditions:

- ❖ **Voluntary Conversion**
- ❖ **Mandatory Conversion if:**
 - ✓ Paid-up share capital > ₹50 lakhs, or
 - ✓ Average annual turnover > ₹2 crores in last 3 years

Procedure:

1. **Pass Board Resolution** and alter MOA & AOA.
2. **Pass Special Resolution** (if public company).
3. **Increase number of directors and members** as required.
4. File **INC-5** (for mandatory conversion).
5. File **INC-6** (for voluntary conversion).
6. ROC issues **fresh COI**.

D. Private Company to OPC

Conditions:

- ❖ Only if **paid-up capital ≤ ₹50 lakhs** and turnover ≤ ₹2 crores
- ❖ No pending defaults
- ❖ **Only a natural person** can form OPC

Procedure:

1. Obtain NOC from members and creditors.
2. File Form **INC-6** with:
 - ❖ Altered MOA & AOA
 - ❖ List of creditors
 - ❖ Affidavit from Director

E. Conversion of Company into Section 8 Company

Procedure:

1. Apply to RD (Regional Director) using Form **INC-12**.
2. Attach:
 - ❖ Draft MOA & AOA (with charitable objects) - (INC-13)
 - ❖ Financial statements and Board reports
 - ❖ Declaration in Form INC-14 and INC-15
3. On approval, ROC issues **license under Section 8**.
4. File **INC-20** with license to get new COI.

F. Conversion of Section 8 Company into Any Other Company

Procedure:

1. Board Meeting + Special Resolution
2. Application to Regional Director (RD) in Form **INC-18**
3. Attach:
 - ❖ Financial statements
 - ❖ Detailed reasons for conversion
 - ❖ Certificate from CA/CS/CMA
4. Publish notice in newspapers
5. File Form **INC-20** after RD approval
6. ROC issues **new COI** upon conversion

Important:

- ❖ Remaining assets after conversion **must not be distributed among members**.
- ❖ The company must comply with **Section 8(9)** for asset transfer.

General Points to Remember:

Point	Detail
No Fresh Incorporation	Conversion is not fresh incorporation; the company continues
Liabilities remain unaffected	Conversion does not affect liabilities, contracts, or legal actions
New COI issued	ROC issues fresh certificate of incorporation post conversion
Alteration of MOA/AOA	Mandatory in almost every conversion
MGT-14	Required when a Special Resolution is passed

B. Conversion Between LLP and Company

PART 1: Conversion of LLP into Company

Eligibility Conditions

Criteria	Requirement
Type	Only a registered LLP can be converted
Designated Partners	At least 2 partners, for Pvt Ltd; 7 or more, for Public Ltd (if converting into public company)
Consent	All partners must agree for conversion
Name Availability	Proposed name should be approved via SPICe+ Part A
Filing of returns	LLP must have filed all annual filings and statements with ROC

Procedure for Conversion of LLP into Company:

Step	Description
1	Hold a meeting of partners and pass resolution for conversion
2	Apply for name reservation via SPICe+ Part A
3	File Form URC-1 (for registration under Section 366) with attachments:

The attachments are,

- ❖ Statement of shareholders
- ❖ Declaration of compliance
- ❖ Details of LLP
- ❖ Consent of partners
- ❖ No objection certificate (NOC) from creditors
- ❖ Statement of assets and liabilities, not older than 30 days
 - ✓ File **SPICe+ Part B, MOA, AOA**
 - ✓ ROC verifies documents and issues **Certificate of Incorporation**
 - ✓ LLP is dissolved and new company comes into existence

PART 2: Conversion of Company into LLP

(Private / Unlisted Public Company → LLP)

Eligibility Conditions

Criteria	Requirement
Type	Only Private Company or Unlisted Public Company eligible
Shareholders	All shareholders must become partners in the LLP
No security interest	Company must not have any secured loan/charge subsisting
ROC Compliance	Company should have filed all returns & financial statements
No Investigation	No pending inspection/investigation/prosecution against the company

Procedure for Conversion into LLP

Step	Description
1	Hold Board Meeting and approve conversion
2	Obtain DIN/DPIN and DSC for all partners
3	File RUN-LLP (Reserve Unique Name)
4	File Form FiLLiP for incorporation of LLP
5	File Form 18 along with FiLLiP (application for conversion of company into LLP)
6	Attachments to Form 18:

The attachments are,

- ❖ Consent of all shareholders
- ❖ Latest ITR acknowledgment
- ❖ Statement of assets and liabilities
- ❖ NOC from creditors
- ❖ Copy of Board Resolution
 - ✓ On approval, **ROC issues Certificate of Registration as LLP**
 - ✓ Company is deemed to be dissolved from the date of registration

Summary Table: LLP vs Company Conversion

Point	LLP → Company	Company → LLP
Applicable Law	Companies Act, 2013 (Sec 366)	LLP Act, 2008 (Sec 56)
Eligibility	Any LLP	Only Private / Unlisted Public Company
ROC Form	URC-1 + SPICe+	FiLLiP + Form 18
Minimum Members	2 (Private), 7 (Public)	All shareholders become partners
Effect	LLP dissolved, Company formed	Company dissolved, LLP formed
Regulatory Filing	With ROC (both LLP & Company portals)	With ROC and Ministry of Corporate Affairs

All about Section 8 Companies

(Companies Formed for Charitable or Not-for-Profit Purposes)

What is a Section 8 Company?

A **Section 8 Company** is a company:

- ☞ Formed for promoting commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such useful object,
- ☞ Which intends to apply its profits/income in promoting its objectives, and
- ☞ Prohibits payment of dividend to its members.

It is governed by **Section 8** of the **Companies Act, 2013** and the **Companies (Incorporation) Rules, 2014**.

Characteristics of a Section 8 Company

Particulars	Details
Purpose	Charitable or not-for-profit objectives
Profit Distribution	Profits are applied only for promotion of objectives
Dividend	Prohibited from declaring dividend to its members
Suffix to Name	Not required to add "Limited" or "Private Limited"
Legal Status	Separate legal entity
Applicable Law	Companies Act, 2013; Section 8; Incorporation Rules
License Issuing Authority	Central Government (delegated to Regional Director)

Formation of Section 8 Company (Step-by-step)

A. Preliminary Requirements

1. Minimum Members:

- Private company: 2 members
- Public company: 7 members

2. Minimum Directors:

- Private company: 2 directors
- Public company: 3 directors

3. At least one director must be Indian Resident

4. Digital Signature Certificates (DSC) for all proposed directors

B. Procedure to Incorporate Section 8 Company

Step	Activity
1	Apply for name reservation in Part A of Spice+ on MCA portal (without "Limited" or "Pvt Ltd" suffix)
2	Prepare and file INC-12 (Application for License) to Regional Director
3	Attachments with INC-12: • Draft MOA (in Form INC-13) and AOA • Declaration in Form INC-14 (by practicing CA/CS/CMA/Advocate)

- Declaration in Form **INC-15** (by promoters)
- Financial statements, project report, statements of assets/liabilities, etc.
- Estimated annual income & expenditure for 3 years
- ✓ After RD approval, license is issued
- ✓ ROC issues **Certificate of Incorporation** and company gets registered under Section 8

License under Section 8

Point	Description
Form	License granted in Form INC-16 (Private) / Form INC-17 (Public)
By	Regional Director (Central Government)
Validity	No expiry unless revoked or converted
Use of License	Used while filing incorporation documents with ROC

Conversion of Existing Company to Section 8 Company

- ❖ Application in **Form INC-12**
- ❖ Requires:
 - ✓ Alteration of MOA & AOA
 - ✓ RD approval
 - ✓ Fresh COI issued by ROC

Revocation / Cancellation of License

Grounds for Cancellation:

Grounds	Examples
Violation of license terms	Using profits for non-charitable purposes
Conducting business fraudulently	False filings or siphoning of funds
Contravention of any provisions	Breach of Section 8 conditions
Not operating in public interest	Misuse of charitable status
Defaults in filing financials	Not submitting returns with ROC

Procedure for Revocation

1. Notice by Central Government (RD) to show cause
2. Opportunity of hearing given to the company
3. If satisfied, license is **revoked** by RD
4. ROC may:
 - ✓ Order the company to **convert into another company type**, or
 - ✓ Order **winding up**, or
 - ✓ Appoint a **liquidator** under Section 356

Effects of Cancellation of License

Point	Effect
Loss of Privileges	Cannot enjoy tax or regulatory benefits of a Section 8 company
Change in Name	Must add "Limited" or "Private Limited" to its name
Alteration of MOA/AOA	Required to remove Section 8 references
Conversion/Winding Up	As per government order

Key Forms for Section 8 Company

Form No.	Purpose
INC-12	Application for license under Section 8
INC-13	Draft MOA of Section 8 Company
INC-14	Declaration by Professional
INC-15	Declaration by Promoters
INC-16/17	License granted by RD
INC-20	Intimation of conversion
INC-18	Application for conversion from Section 8
SPICe+	Incorporation of company

Advantages of Section 8 Company

Advantage	Details
Tax Benefits	Eligible for 12A and 80G registrations under IT Act
Separate Legal Entity	Company is distinct from its members
No Minimum Capital	No requirement of minimum paid-up capital
Exemption from suffix	Need not use "Limited" or "Private Limited"
Credibility	Better reputation for CSR funding and grants

2. INVESTMENT AND LOANS

Purpose:

To regulate the manner in which a company can give loans, provide guarantees, offer security, and make investments, ensuring transparency and preventing mismanagement of company funds.

1. Scope of Section 186:

Applies to **all companies**, including private companies (subject to some exceptions).

(Those exceptions are Banking, Insurance, Housing Finance, NBFC regd. with RBI....etc)

2. Activities Covered under Section 186(1):

No company shall directly or indirectly:

- ❖ Give **loan** to any person or body corporate;
- ❖ Give any **guarantee** or provide any **security** in connection with a loan;
- ❖ Acquire by way of **subscription, purchase or otherwise, the securities** of any other body corporate
 - ✓ **Unless** the decision is **approved by Board** at a Board Meeting (not by resolution by circulation).

3. Limits (Section 186(2)):

Company **cannot exceed** the following limits **without special resolution by shareholders**:

Higher of the two:

- ❖ **60%** of paid-up share capital + free reserves + securities premium, OR
- ❖ **100%** of free reserves + securities premium

If company exceeds this threshold, **special resolution** (with explanatory statement) is required.

4. Disclosure Requirements (Section 186(4)):

- ❖ Full particulars of the loan, guarantee, security, or investment made to be **disclosed in the financial statements**.
- ❖ Disclosures must include:
 - ✓ Purpose
 - ✓ Source of funds
 - ✓ Nature of transactions
 - ✓ Risks involved, etc.

5. Interest on Loan (Section 186(7)):

- ❖ Rate of interest charged on loans **shall not be lower than the prevailing yield of Government Security** closest to the tenor of the loan.

6. Restrictions/Prohibitions under Section 186(8):

No company which has:

- ❖ **Defaulted in repayment of deposits or interest thereon,**
Can't give any loan, guarantee, security or make investment **until the default is rectified.**

7. Exemptions from Section 186:

❖ **Not applicable to:**

A. Loan, guarantee or security by:

- ✓ Banking company
- ✓ Insurance company
- ✓ Housing finance company
- ✓ Company whose principal business is acquisition of securities (i.e., investment company)

B. **Any loan, guarantee, or investment made:**

- ✓ By a company to its **wholly owned subsidiary**
- ✓ By a **holding company** giving **guarantee or security** for loan taken by WOS (Wholly Owned Subsidiary)

C. **Acquisition made by NBFC** registered with RBI in ordinary course of business.

8. Approval Process Summary:

Transaction Type	Board Resolution	Special Resolution (SR)	Interest @ Govt Security
Within Limits	✓ Required	✗ Not required	✓ Required
Beyond Limits	✓ Required (Unanimous)	✓ Required	✓ Required

9. Penalty (Section 186(13)):

Person	Penalty
Company	Fine: ₹25,000 - ₹5 lakh
Officer in default	Imprisonment up to 2 years OR Fine: ₹25,000 - ₹1 lakh OR both

10. Reporting Requirement to ROC:

- ❖ Details of loans/guarantees/investments to be **reported in Form MGT-7** (Annual Return) and **Form MBP-1** (Disclosure of Interest by Director).
- ❖ No specific form is required for individual transactions, but entries must be properly recorded and disclosed.

Section 187: Investments to be Held in Company's Own Name

Purpose:

Ensures **transparency and accountability** in investment-related activities of the company.

1. Core Provision:

All investments made by a company shall be held by it in its own name.

2. Exceptions [Section 187(1) - Proviso]:

Company can hold investments in name of any nominee or other person if:

- ❖ Company is holding securities in dematerialized form (in the name of depository/DP).
- ❖ It is necessary to hold investments in the name of **nominee** to maintain company's rights in such securities.
- ❖ Investment is made by company as a **trustee** and it is so disclosed.

3. Register of Investments Not Held in Own Name [Section 187(2)]:

If any investment is **not held in its own name**, company must:

- ❖ Maintain a **register** containing:
 - ✓ Particulars of the investment
 - ✓ Name of the person in whose name it is held
 - ✓ Reason for holding in that name
- ❖ The register shall be:
 - ✓ Kept at **registered office**
 - ✓ Open for inspection to members during business hours

4. Penalty for Non-Compliance:

Person	Penalty
Company	Fine up to ₹5 lakh
Officer in Default	Fine up to ₹50,000

Comparison Between Section 186 and Section 187

Basis	Section 186 - Loan & Investment	Section 187 - Investment in Own Name
Purpose	Regulates financial transactions	Ensures transparency in ownership
Type of Transactions Covered	Loans, guarantees, security, investment	Investment only
Board Approval Required	Yes	Not specifically
Shareholder Approval Required	If beyond threshold	No

Register to be Maintained	No specific mention	Yes (if held in others' names)
Applicability to all Companies	Yes (with exceptions)	Yes

Acceptance of Deposits by Companies

Definition of Deposit [Explanation to Section 2(31)]

"Deposit" means any receipt of money by way of deposit or loan or in any other form by a company, but **does not include** such categories as may be prescribed in consultation with RBI (e.g., share application money, debentures, etc.)

Relevant Sections:

- ❖ **Section 73** - Prohibition on Acceptance from Public
- ❖ **Section 74** - Repayment of Deposits Accepted before the Act
- ❖ **Section 75** - Damages for Fraudulent Default
- ❖ **Section 76** - Acceptance of Deposits by Certain Public Companies
- ❖ **Section 76A** - Punishment for Contravention

And

Rules under Companies (Acceptance of Deposits) Rules, 2014

- ❖ Rule 3, 6, 7, 8, 9 (detailed below)

Section 73 - Prohibition on Acceptance of Deposits from Public

Applicability:

Applies to all companies, except:

- ❖ Banking companies
- ❖ NBFCs registered with RBI
- ❖ Other companies as notified by the Central Government

Prohibition:

Companies **cannot accept deposits from public** unless otherwise provided under Section 76 (only certain public companies can accept from public).

Allowed: Acceptance from Members (Shareholders)

A company may accept deposits **from its members** subject to the following:

Conditions (as per Section 73(2) & Rule 3)

Requirement	Description
Resolution	Company must pass an ordinary resolution in general meeting
Circular	Issue a circular to members (in Form DPT-1) disclosing financial position, credit rating, etc.

Filing with ROC	File circular with ROC in Form DPT-1 at least 30 days before issue
Deposit Insurance	Mandatory insurance for deposit repayment (currently not operationalized; hence exemption is allowed)
Deposit Repayment Reserve	Maintain at least 20% of deposits maturing during next FY in a scheduled bank (on or before 30 April every year)
Certification	Company must certify that it has not defaulted in repayment of deposits previously
Credit Rating	Obtain a credit rating and mention it in DPT-1
Register of Deposits	Maintain a register of deposits at registered office

Section 74 - Repayment of Deposits Accepted Before the Commencement of Act (Before 1 April 2014)

🕒 Timeline:

- ❖ Company must **repay all deposits** accepted before 1 April 2014 within **3 years** or within the period for which they were accepted, whichever is **earlier**.
- ❖ Apply to **NCLT** for extension if needed.

Section 75 - Damages for Fraudulent Default

If a company fails to repay a deposit or interest and it's proved that the default was **intentional or fraudulent**, then:

- ❖ Every **officer in default** is personally liable for losses/damages.
- ❖ Can be **prosecuted under Section 447** (fraud).

Section 76 - Acceptance of Deposits from Public by Certain Public Companies

Eligibility:

Only **public companies** that are:

- ❖ Having **Net Worth $\geq$ ₹100 crore** or
 - ❖ **Turnover $\geq$ ₹500 crore**
- ✓ can accept **deposits from public**, subject to the following:

Conditions:

Requirement	Description
Deposit Insurance	Must obtain deposit insurance (exemption given till further notification)
Reserve	Deposit Repayment Reserve of at least 20%
Resolution	Pass resolution in general meeting
Credit Rating	Obtain credit rating from SEBI/RBI registered agency
Filing	File DPT-1 with ROC
Advertisement	Issue advertisement in Form DPT-1

Section 76A - Punishment for Contravention

If any company accepts deposits in contravention of Section 73 or 76:

Entity	Penalty
Company	Fine: ₹1 crore to ₹10 crore
Officer in Default	Imprisonment up to 7 years , and/or fine ₹25 lakh - ₹2 crore
Fraudulent Intent	Liable under Section 447 (fraud provision)

Companies (Acceptance of Deposits) Rules, 2014

Rule 3 - Terms and Conditions for Acceptance of Deposits

- ❖ Governed by **Section 73 or 76**
- ❖ Maximum term: **36 months**
- ❖ Minimum term: **6 months**
 - ✓ Exception: Upto **10% of net worth** can be accepted for <6 months (minimum 3 months)

Limit on Deposits:

Company Type	From Members	From Public
Private Company	Up to 100% of paid-up share capital + free reserves + securities premium	✗ Not allowed
Public Company (eligible u/s 76) (Up to 35%)	Up to 10%	Up to 25%
Government Company (Up to 35%)	Up to 10% from members	25% from public

Rule 6 - Form and Particulars of Advertisements/Circular

- ❖ Circular in **Form DPT-1** is to be signed by majority directors.
- ❖ Includes:
 - ✓ Financial position
 - ✓ Credit rating
 - ✓ Terms of deposit
 - ✓ Risk factors
- ❖ Filed with ROC at least **30 days before** issue

Rule 7 - Deposit Trust Deed

Appointment of Trustee for Depositors (As per Rule 7)

Rule 7 - Appointment of Deposit Trustees (Applicable to Public Companies accepting deposits under Section 76)

A company accepting deposits from the public must appoint one or more deposit trustees for creating a security (in case of secured deposits) and for safeguarding the interests of the depositors.

When is Trustee Required?

- ❖ Mandatory for secured deposits accepted by eligible public companies under Section 76.
- ❖ Trustees are appointed before issuing the circular or advertisement for inviting deposits.

Deposit Trust Deed [Form DPT-2]

- ❖ The company is required to execute a Deposit Trust Deed in Form DPT-2 with the deposit trustee(s).
- ❖ This deed must be executed at least 7 days before issuing the circular or advertisement to invite deposits.

Eligibility Criteria for Deposit Trustee:

The trustee must be a person who:

- ❖ Is not a director, key managerial personnel (KMP) or an officer/employee of the company or its holding, subsidiary, or associate company;
- ❖ Is not indebted to the company, nor has any material financial interest in the company;
- ❖ Is not related to any director or KMP of the company;
- ❖ Must not have been convicted for any offence involving moral turpitude or fraud;
- ❖ Must not have been disqualified to act as a trustee under any law.

This ensures independence and integrity of the deposit trustee.

👥 Number of Trustees Required

- ❖ At least one or more trustees can be appointed.
- ❖ A trustee can be an individual or an entity (e.g., trust company or firm)

Duties of Deposit Trustees:

The primary responsibility of the deposit trustee is to protect the interest of depositors in case of default by the company. Their duties include:

1. Monitoring Security

- ❖ Ensure that the assets on which charge is created are adequate and sufficiently valued.
- ❖ Ensure that security is properly maintained and not encumbered.

2. Periodic Inspection

- ❖ May conduct periodic inspections of company's books, assets, and accounts relating to deposits.
- ❖ Ensure company maintains required deposit repayment reserve and insurance (if applicable).

3. Representation of Depositors

- ❖ Act on behalf of depositors in the event of any default by the company.
- ❖ Can take legal action or represent depositors before NCLT, courts, or other authorities.

4. Monitoring Compliance

- ❖ Ensure that the company complies with the terms and conditions of deposits.

- ❖ Check whether the company is complying with Sections 73-76A and the Companies (Acceptance of Deposits) Rules, 2014.

5. Default Reporting

- ❖ In case of default, the trustee must inform the depositors and regulatory authorities (like ROC, NCLT) immediately.
- ❖ Trustee can call a meeting of depositors in case of significant breach.

6. Maintenance of Records

- ❖ Maintain complete and proper records of:
 - ✓ Security created
 - ✓ Valuation reports
 - ✓ Agreements with the company
 - ✓ Any correspondence or action taken on behalf of depositors

7. Disclosure and Transparency

- ❖ Must disclose any conflict of interest, if it arises at any point.
- ❖ Remain independent and impartial throughout the term of appointment.

Liability of Deposit Trustee

- ❖ A deposit trustee is personally liable for any breach of trust or failure to protect the interest of depositors, especially in case of negligence or collusion with the company.
- ❖ Can also be prosecuted under civil and criminal laws if any fraudulent activity is proven.

Important Points to Remember (Exam-Focused)

Point	Description
Deposit Trustee required for	Secured Deposits (Section 76 only)
Form of Trust Deed	Form DPT-2
Time for executing trust deed	At least 7 days before issuing circular/advertisement
Primary duty	Safeguard interest of depositors
Default action	Represent depositors, initiate legal action
Independence	Trustee must be independent and not connected with company management

Rule 8 - Deposit Insurance

- ❖ Every company accepting deposits must obtain **deposit insurance**
- ❖ Insurance must cover:
 - ✓ Principal + interest
 - ✓ In case of default

However, as of now, **this rule is not enforced** due to non-availability of such insurance. MCA has granted exemption.

Rule 9 - Creation of Deposit Repayment Reserve Account

- ❖ Company must create a **separate** bank account with a scheduled bank called: **"Deposit Repayment Reserve Account"**
- ❖ Must deposit **at least 20%** of amount of deposits maturing during the next FY
- ❖ To be done **before 30th April** every year

Register of Deposits (Rule 14)

- ❖ To be maintained at registered office
- ❖ Must contain:
 - ✓ Name & address of depositor
 - ✓ PAN
 - ✓ Deposit amount & maturity date
 - ✓ Interest rate & payment details
- ❖ Preserved for **8 years** from last entry

Summary of Offences & Penalties

Section	Subject	On Company	On Officer in Default	On Repayment of Deposit with Interest
73	Prohibition on acceptance of deposits from public (except as provided u/s 76)	Company liable to repay deposit with interest; if fails → fine ₹1 crore - ₹10 crore	Every officer: imprisonment up to 7 years + fine ₹25 lakh - ₹2 crore	Mandatory repayment with interest u/s 73(2)
74	Repayment of deposits accepted before commencement of the Act	If not repaid → fine ₹1 crore - ₹10 crore	Every officer: imprisonment up to 7 years + fine ₹25 lakh - ₹2 crore	Yes, repay within 1 year (or as allowed by Tribunal) with prescribed interest
75	Damages for fraud (accepting deposit with intent to defraud or purpose is fraudulent)	Company + every officer responsible are liable for fraud u/s 447 (severe punishment)	Covered under fraud provisions	Repayment with interest + punishment under fraud
76	Acceptance of deposits from public by eligible companies (fulfilling conditions)	If default → punishable with fine ₹1 crore - ₹10 crore	Every officer: imprisonment up to 7 years + fine ₹25 lakh - ₹2 crore	Repayment with interest compulsory
76A	Punishment for contravention of Sec 73/76	Company: fine ₹1 crore - ₹10 crore	Every officer: imprisonment up to 7 years + fine ₹25 lakh - ₹2 crore	Repayment with interest remains mandatory

3. DIVIDENDS

Definition of Dividend [Section 2(35)]

"Dividend" includes **interim dividend**, but it does **not include bonus shares**.

It refers to a portion of **profit distributed** to shareholders in proportion to their shareholding.

APPLICABLE SECTIONS:

- ❖ **Section 123:** Declaration of Dividend
- ❖ **Section 124:** Unpaid/Unclaimed Dividend
- ❖ **Section 125:** Investor Education and Protection Fund (IEPF)
- ❖ **Section 126:** Dividend where shares are under transfer
- ❖ **Section 127:** Punishment for Failure to Distribute Dividend

TYPES OF DIVIDENDS

Type	Meaning
Final Dividend	Declared at the AGM out of profits of the financial year
Interim Dividend	Declared between two AGMs , during the financial year
Special Dividend	Declared on special occasion or surplus events
Stock Dividend (Bonus Shares)	Not technically dividend under Act - issue of bonus shares

DECLARATION OF FINAL DIVIDEND [Section 123(1)]

Conditions for Declaration:

1. Dividend can be declared only **out of**:
 - ✓ Profits of the current year after providing for depreciation (as per Schedule II)
 - ✓ Profits of previous financial years (transferred to free reserves)
 - ✓ Or both
2. Dividend **cannot** be declared from:
 - ✓ Revaluation reserves
 - ✓ Unrealized gains
 - ✓ Capital reserves
3. Must **clear previous losses and depreciation** before declaring dividend.
4. **Only shareholders** of equity shares are entitled, unless otherwise specified.
5. Dividend must be paid **only in cash**, cheque, warrant or by electronic means.

PROCEDURE FOR DECLARATION & PAYMENT OF FINAL DIVIDEND

Step	Description
1	Prepare Board Meeting Agenda
2	Hold Board Meeting - Recommend Dividend
3	Hold AGM - Pass Ordinary Resolution (Can reduce, can't increase)
4	Open separate bank account for dividend

5	Deposit amount into bank within 5 days of declaration
6	Pay dividend to shareholders within 30 days from declaration
7	If unpaid - transfer to Unpaid Dividend A/c within 7 days after 30 days
8	If still unclaimed for 7 years , transfer to IEPF

DIVIDEND OUT OF RESERVES

(Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014)

If current year profit is **insufficient**, company may declare dividend out of **accumulated profits (free reserves)**, subject to the following conditions:

Condition	Description
Rate	Dividend must not exceed average dividend of 3 immediately preceding years
Reserves	Withdrawn amount must not exceed 1/10th of paid-up share capital + free reserves
Set-off	Withdrawn amount must first be used to set off losses
Balance	Post-withdrawal, reserves must not fall below 15% of paid-up capital

INTERIM DIVIDEND [Section 123(3)]

Declared by the **Board of Directors**, during the financial year **before AGM**, out of:

- ❖ Surplus in P&L account, or
- ❖ Current year profits

Restrictions:

If the company has **incurred loss** during the current financial year **till the date of declaration**, interim dividend can be declared **only out of surplus** from previous years and **at a rate not exceeding the average of preceding 3 years**.

Note: No shareholder approval needed; only Board resolution is sufficient.

UNPAID OR UNCLAIMED DIVIDEND [Section 124]

If dividend is **not paid or claimed within 30 days** from declaration, the company must,

Transfer to:

"Unpaid Dividend Account" in a scheduled bank **within 7 days** after expiry of 30 days.

Disclosures:

- ❖ Prepare a statement containing names, last known address, amount unpaid.
- ❖ Upload the statement on company's website and MCA website within **90 days**.

Transfer to IEPF:

- ❖ If any dividend remains unclaimed for **7 consecutive years**, it must be transferred to the **Investor Education and Protection Fund (IEPF)**.

🏛️ IEPF [Section 125]

The following amounts are credited to IEPF:

Type of Amount	Transfer Timeline
Unclaimed Dividend	After 7 years from unpaid account
Matured deposits, debentures	Not claimed for 7 years
Application money refund	Not claimed within 7 years

Shareholders can claim refund from IEPF Authority via Form IEPF-5.

PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDEND [Section 127]

If a company declares dividend but fails to pay within 30 days, the following consequences apply:

Exceptions (No Penalty if):

- ❖ Lawful restriction by government or tribunal
- ❖ Shareholder direction not available
- ❖ Dispute regarding ownership of shares
- ❖ Adjusted against dues of shareholder
- ❖ Force majeure (natural calamities, etc.)

Penalty (if not exempted)

Person	Punishment
Company	Interest @ 18% p.a. from date of default
Directors	Imprisonment up to 2 years (or) fine of ₹1,000 per day of default (or) Both

RECAP: Dividend Compliance Timeline

Event	Time Limit
Deposit dividend into separate account	Within 5 days of declaration
Pay dividend	Within 30 days of declaration
Transfer unpaid dividend to bank a/c	Within 7 days after 30 days
Transfer to IEPF	After 7 years from unpaid a/c

4. ACCOUNTS AND AUDIT

CHAPTER IX & X: ACCOUNTS OF COMPANIES (Sections 128 to 138)

These provisions relate to maintenance of books of accounts, preparation and presentation of financial statements, directors' report, audit, internal audit, and related matters.

SECTION 128: Books of Account, etc., to be Kept by Company

Section 128(1): Maintenance of Books of Account

Every company shall prepare and keep at its **registered office** books of account and other relevant books and papers and financial statements for every financial year:

- ❖ In **physical** or **electronic** mode.
- ❖ On **accrual basis** and **double entry system**.
- ❖ To give a **true and fair view** of state of affairs of the company.
- ❖ Shall include records of:
 - ✓ All sums of money received and expended
 - ✓ All sales and purchases of goods/services
 - ✓ Assets and liabilities
 - ✓ Cost records (if applicable under Section 148)

Books may be kept at any other place in India as decided by the Board through a **board resolution**, and the company must inform the ROC within **7 days** in **Form AOC-5**.

Section 128(2): Branch Office Records

If a company has a **branch office**, it shall also keep **proper books of account** relating to the transactions at the branch. These shall be sent periodically to the registered office for consolidation.

Section 128(3): Right of Inspection

- ❖ Directors can inspect books of accounts **during business hours**.
- ❖ In case of a subsidiary, inspection is allowed only by authorized persons of the **holding company's Board**.

Section 128(4): Electronic Records

Inspection can be done in **electronic form** and company shall provide assistance and facilities for such inspection.

Section 128(6): Penalty for Contravention

If a company fails to comply with the provisions:

- ❖ Company: Fine of **₹50,000 - ₹5,00,000**
- ❖ Officer in default: **Imprisonment up to 1 year**, or fine, or both

SECTION 129: Financial Statement

Section 129(1): Preparation of Financial Statements

Every company shall prepare financial statements:

- ❖ Giving **true and fair view** of affairs.
- ❖ As per **Schedule III** of the Act.
- ❖ In compliance with **Accounting Standards** notified u/s 133.
- ❖ At the end of every financial year.
- ❖ Financial statements to be **laid before the AGM**.

OPC is exempt from holding AGM but must prepare and file statements.

Section 129(2): Consolidated Financial Statements (CFS)

- ❖ If a company has one or more **subsidiaries**, associate companies, or joint ventures:
 - ✓ It must prepare **CFS** along with standalone.
 - ✓ CFS must comply with **AS** and be in the **same form** as standalone.

Section 129(3): Statement of Subsidiaries

A **separate statement** containing salient features of financials of each subsidiary, associate, and joint venture shall be attached with the financial statement in **Form AOC-1**.

Section 129(4): Provisions Apply to CFS

All provisions applicable to standalone financials (like audit, approval, filing) also apply to **CFS**.

Section 129(7): Penalty

- ❖ Company and officer in default:
 - ✓ Imprisonment up to 1 year or fine between ₹50,000 and ₹5,00,000 or both.

Section 129(6) & 129(7): Applicability and Exemptions

- ❖ Some companies (e.g., banks, insurance, electricity companies) are governed by special laws and may be exempt.

SECTION 133: Central Government to Prescribe Accounting Standards

- ❖ Central Government, in consultation with **NFRA** and based on recommendation of **ICAI**, may prescribe **Accounting Standards (AS)**.
- ❖ These standards are mandatory for preparation and audit of financial statements u/s 129.

SECTION 134: Financial Statement, Board's Report, etc.

Section 134(1): Authentication of Financial Statements

Financial statements to be **approved by the Board** and signed by:

- ❖ **Chairperson** (if authorized), or
- ❖ **Two directors** including MD (if any), and
- ❖ **CFO** and **CS**, if appointed.

Section 134(2): Board's Report

- ❖ Every company shall attach a report by its Board of Directors to the financial statements laid before a general meeting.

Section 134(3): Contents of Board's Report

Shall include:

- ❖ Financial highlights
- ❖ State of company affairs
- ❖ Amount to be carried to reserves
- ❖ Dividend recommendation
- ❖ Material changes after year end
- ❖ Extract of Annual Return (MGT-9 or web link)
- ❖ Details of related party transactions
- ❖ CSR details (if applicable)
- ❖ Risk management policy
- ❖ Directors/KMP changes
- ❖ Secretarial Audit Report (for listed/public companies)

Section 134(4): Directors' Responsibility Statement (DRS)

Shall confirm:

- ❖ That applicable AS followed
- ❖ That accounting policies were applied consistently
- ❖ That books of account were maintained properly
- ❖ That internal controls are adequate
- ❖ That going concern basis is used

Section 134(5): Internal Financial Controls for Listed Co.

- ❖ Listed companies must confirm the adequacy and effectiveness of **internal financial controls**.

Section 134(6): Signing of Board's Report

To be signed by:

- ❖ **Chairperson** (if authorized), or
- ❖ At least **two directors**, one of whom shall be **MD**

Section 134(7): Circulation

- ❖ Must be circulated to members **at least 21 days before AGM**.

Section 134(8): Penalty for Contravention

- ❖ **Company:** Fine 50,000 - 25,00,000
- ❖ **Officer in default:** Imprisonment up to 3 years / 50,000 - 5,00,000 / both

SECTION 135: Corporate Social Responsibility (CSR)

Applicability

CSR provisions apply if during any financial year, the company has:

- ❖ Net worth $\geq$ ₹500 crore, or
- ❖ Turnover $\geq$ ₹1000 crore, or
- ❖ Net profit $\geq$ ₹5 crore

CSR Committee

Must consist of:

- ❖ At least 3 directors including 1 independent director (exemption for private/unlisted companies in some cases)

CSR Expenditure

- ❖ Minimum **2% of average net profit** of last 3 FYs.
- ❖ Unspent CSR:
 - ✓ Ongoing projects: Transfer to **Unspent CSR A/c** within 30 days and utilize within 3 years.
 - ✓ Others: Transfer to **Schedule VII Fund** within 6 months.

Penalty

- ❖ Company: **2x unspent amount** or ₹1 crore
- ❖ Officers: **1/10th** of unspent or ₹2 lakh

SECTION 136: Right of Members to Financial Statements

Circulation

Company shall send copies of:

- ❖ Financial statements
- ❖ Board Report
- ❖ Auditor's Report

To:

- ❖ Shareholders
- ❖ Debenture trustees
- ❖ Deposit holders

At least **21 days before AGM**.

Hosting on Website

- ❖ **Listed companies** must also place these documents on their website.

SECTION 137: Filing of Financial Statements with ROC

Time Limit:

File Form AOC-4 within:

- ❖ 30 days of AGM
- ❖ 180 days from end of FY for OPC

Penalty for Non-Filing:

- ❖ Company: ₹10,000 + 100 per day (Max ₹2 lakh)
- ❖ Officer in default: ₹10,000 + ₹100 per day (Max ₹50,000)

SECTION 138: Internal Audit

Applicability (Rule 13 of Companies (Accounts) Rules, 2014):

Internal audit is mandatory for:

- Listed Companies
- Unlisted Public Companies with:
 - ❖ Turnover $\geq$ ₹200 Cr, (or)
 - ❖ Loans $\geq$ ₹100 Cr, (or)
 - ❖ Deposits $\geq$ ₹25 Cr
- Private Companies with:
 - ❖ Turnover $\geq$ ₹200 Cr, (or)
 - ❖ Loans $\geq$ ₹100 Cr

Internal Auditor:

May be:

- ❖ Chartered Accountant (in practice or not)
- ❖ Cost Accountant
- ❖ Any other professional as decided by Board

AUDITOR - APPOINTMENT, REAPPOINTMENT, REMOVAL & RESIGNATION

(Sections 139 to 144, read with related rules under Companies (Audit and Auditors) Rules, 2014)

1. APPOINTMENT OF AUDITOR [Section 139]

A. Appointment of First Auditor

Company Type	Who Appoints	Time Limit	Term
Non-Govt Company	Board of Directors	Within 30 days from incorporation	Till conclusion of 1st AGM
If Board fails	Members at EGM	Within 90 days	Same
Govt Company / Govt Controlled	CAG of India	Within 60 days from incorporation	Till conclusion of 1st AGM
If CAG fails	Board of Directors	Within next 30 days	Same
If Board also fails	Shareholders	Within next 60 days at EGM	Same

B. Subsequent Appointment of Auditor (Non-Government Companies)

- ❖ Appointed by **members** in the **AGM**.
- ❖ **Term**: For **5 years** (i.e., until conclusion of 6th AGM).
- ❖ Subject to **ratification by members every year** (Note: **Ratification requirement removed by Companies (Amendment) Act, 2017**, effective 07.05.2018).
- ❖ Form **ADT-1** must be filed within **15 days** of appointment.

C. Appointment in Government Companies

Appointment by	When?	Duration
CAG of India	Within 180 days from the beginning of FY	Till conclusion of next AGM

2. RE-APPOINTMENT OF AUDITOR [Section 139(9) & (10)]

An auditor **shall be re-appointed** at the AGM if:

- ❖ He is **not disqualified** for reappointment.
- ❖ He has **not expressed unwillingness** in writing.
- ❖ No **special resolution** has been passed to appoint someone else or to **not reappoint** the existing auditor.

If no auditor is appointed or reappointed at AGM, the existing auditor continues until a new auditor is appointed.

3. MANDATORY ROTATION OF AUDITORS [Section 139(2)]

Applicable to:

- ❖ Listed Companies, and
- ❖ Unlisted Public Companies (≥ ₹10 crore)
- ❖ Private Companies (≥ ₹50 crore)
- ❖ **Companies with borrowings ≥ ₹50 crore from banks or FIs)

Rotation Rules:

- ❖ Individual auditor: Max 1 term of 5 years
- ❖ Audit Firm: Max 2 terms of 5 consecutive years
- ❖ **Cooling-off Period:** After completion, a gap of 5 years before reappointment.
- ❖ Joint audit allowed (rotation applies individually).
- ✓ Example:
 - ❖ Let's say a listed company appoints Firm A and Firm B as joint auditors:
 - ❖ Firm A completes 10 years.
 - ❖ Firm B has completed only 4 years.
- Firm A must be rotated out and cannot be reappointed for 5 years.
- Firm B can continue for 6 more years, until it completes 10 years, if desired.

4. FILLING OF CASUAL VACANCY [Section 139(8)]

Type of Company	Who Fills Vacancy	Time Limit	Approval Required
Non-Govt Company	Board of Directors	Within 30 days	No shareholder approval required
If due to Resignation	Board Members	Within 30 days	Members within 3 months at EGM
Govt Company	CAG of India	Within 30 days	

5. REMOVAL OF AUDITOR BEFORE TERM [Section 140(1)]

- ❖ Auditor can be removed before expiry of term by **Special Resolution**.
- ❖ Prior **approval of Central Government** (via **Form ADT-2**) is required.
- ❖ Opportunity of **being heard** must be given to auditor.

6. RESIGNATION OF AUDITOR [Section 140(2)]

Auditor's Duties on Resignation:

- ❖ Must file **Form ADT-3** with ROC within 30 days of resignation.
- ❖ If auditor is of a company covered under Rule 5 of Audit Rules (e.g., listed co., public co. with large turnover), he must also give **detailed reasons** for resignation.

Penalty for non-filing:

- ❖ Fine of ₹50,000 or an amount equal to **remuneration**, whichever is less.
- ❖ If continuing default, ₹500/day up to ₹2 lakhs max.

7. AUDITOR IN CASE OF GOVERNMENT COMPANY [Sec 139(5) & 139(7)]

- ❖ Auditor is appointed by **CAG of India** within **180 days** of commencement of financial year.
- ❖ Term is **until next AGM**.
- ❖ In case of **casual vacancy**, CAG can appoint again within **30 days**.

8. AUDIT OF BRANCH ACCOUNTS [Section 143(8)]

- ❖ Branches can be audited by:
 - ✓ Company's auditor, or
 - ✓ Any other **qualified auditor** appointed under Section 139.

Foreign Branch:

- ❖ Accounts of foreign branch to be **audited by an accountant or auditor qualified under the law of that country**.

9. DISQUALIFICATIONS OF AUDITOR [Section 141(3)]

A person is not eligible for appointment if:

1. Not a **Chartered Accountant**.
2. Body corporate (except LLP).
3. Officer/employee of the company.
4. Partner/employee of company's officer/employee.
5. Person/firm holding $\geq ₹1,00,000$ or **prescribed limit** in company/securities.
6. Indebted to company or subsidiary $> ₹5$ lakh.
7. Provided guarantee/security $> ₹1$ lakh.
8. Related business relationship with company.
9. Relative is director or KMP.
10. Auditor of >20 companies (limit includes private cos. with share capital $\geq ₹100$ crore).
11. Convicted by court and 10 years not elapsed.

10. REMUNERATION OF AUDITOR [Section 142]

- ❖ **Fixed by:**
 - ✓ **Board**, if appointed by Board.
 - ✓ **Shareholders**, if appointed in AGM.
- ❖ **Includes:**
 - ✓ **Audit fee**
 - ✓ **Expenses**
 - ✓ **Facilities provided**
- ✗ Does not include remuneration for other services.

11. POWERS OF AUDITOR [Section 143(1)]

Auditor has right to:

- ❖ Access books of accounts and vouchers at all times.
- ❖ Ask necessary information and explanation from officers.
- ❖ Verify compliance with accounting standards.
- ❖ Conduct audit of branch accounts.

12. DUTIES OF AUDITOR [Section 143(2) to (5)]

Auditor must:

- ❖ Make a **report** on the accounts examined.
 - ❖ State whether accounts show **true and fair view**.
 - ❖ Comment on proper maintenance of books.
 - ❖ Report any **fraud** noticed to the Board/Audit Committee/Central Govt (Sec 143(12)).
- Auditor's Report must comply with **CARO (Companies Auditor's Report Order)** where applicable.

13. AUDITOR'S ATTENDANCE AT GENERAL MEETINGS [Section 146]

- ❖ Auditor must be **notified of general meetings**.
- ❖ Auditor or authorized representative has **right to attend and be heard** on any part related to their duties.

14. SERVICES NOT TO BE RENDERED BY AUDITOR [Section 144]

Auditor **shall not provide**, directly or indirectly, the following to the company, its holding, or subsidiary:

1. Accounting and book-keeping
2. Internal audit
3. Design/implementation of financial information systems
4. Actuarial services
5. Investment advisory/banking
6. Management services
7. Outsourced financial services
8. Any other service prescribed

Purpose: To ensure **independence** and avoid **conflict of interest**.

15. PUNISHMENTS FOR CONTRAVENTION [Section 147]

For Company:

- ❖ Fine: ₹25,000 to ₹5,00,000

For Officer in Default:

- ❖ Imprisonment: Up to 1 year or
- ❖ Fine: ₹10,000 to ₹1,00,000, or both

For Auditor (If knowingly or wilfully contravenes):

- ❖ Fine: ₹25,000 to ₹5,00,000
- ❖ Or **4x the audit fee**, whichever is less
- ❖ May also face liability to pay damages

If contravention made with intent to deceive, auditor shall be liable for:

- ❖ Imprisonment up to 1 year (or)
- ❖ fine between ₹1 lakh to ₹25 lakh, or both

16. Appointment of Cost Auditor – Section 148 of Companies Act, 2013

Applicability:

Companies (specified in Rule 3 of Companies (Cost Records and Audit) Rules, 2014) which:

- ❖ Are engaged in production of goods or provision of services listed in the Rules, and
- ❖ Meet prescribed **turnover thresholds** (e.g., ₹35 crore+ for regulated sectors, ₹100 crore+ for others)

Company must:

- ❖ Maintain cost records and
- ❖ Get them audited by a Cost Auditor.

Who Can Be a Cost Auditor?

- ❖ A **Cost Accountant** (as defined under the Cost and Works Accountants Act, 1959)
- ❖ Who is **in practice** (i.e., a member holding certificate of practice)

Appointment Procedure

Step	By Whom	Requirement
1	Board of Directors	Appoint cost auditor by board resolution
2	File Form CRA-2 with ROC	Within 30 days of appointment or 180 days from start of FY, whichever is earlier

Tenure:

- ❖ Cost auditor holds office until the conclusion of the **next financial year**.
- ❖ Reappointment is allowed if eligible.

Submission of Report:

- ❖ Auditor must submit **Cost Audit Report** to the Board in **Form CRA-3** within **180 days** from the end of the financial year.
- ❖ Company then files the report with ROC in **Form CRA-4** within **30 days** of receipt.

Non-Applicability:

Cost Audit is **not applicable** to:

- ❖ Micro & small enterprises
- ❖ Companies exporting **≥75%** of total production
- ❖ Companies operating from **SEZs**, etc., as per Rule 3 exceptions

CARO, 2020 - Overview

- ❖ **CARO (Companies Auditor's Report Order), 2020** is issued by the **Central Government** under **Section 143(11)** of the Companies Act, 2013.
- ❖ It is applicable to **statutory audits** of financial statements of companies.
- ❖ Under CARO, the auditor must include **specific matters** in his audit report to enhance transparency and accountability.

Applicability of CARO, 2020

CARO is applicable to all companies **except** the following:

Excluded Companies:

1. **One Person Company (OPC)**
2. **Small Company** (as defined under Section 2(85))
3. **Banking Company**
4. **Insurance Company**
5. **Company licensed under Section 8** (i.e., Not-for-Profit Company)
6. **Private Limited Company**, if all the following conditions are met:
 - ✓ Not a holding or subsidiary of a public company
 - ✓ Paid-up capital + Reserves & Surplus ≤ ₹1 crore
 - ✓ Borrowings ≤ ₹1 crore at any point during the year
 - ✓ Revenue ≤ ₹10 crore

Matters to be Reported under CARO, 2020 (Total 21 Clauses)

Some **key clauses** to be reported by the auditor include:

Clause No.	Matter
3(i)	Records of Property, Plant & Equipment and Title Deeds
3(ii)	Inventory and working capital
3(iii)	Loans or advances to related parties
3(iv)	Compliance with Section 185 and 186
3(v)	Acceptance of deposits or deemed deposits
3(vi)	Maintenance of cost records
3(vii)	Statutory dues and any default in payments
3(viii)	Unrecorded income
3(ix)	Repayment of borrowings and default to lenders

3(x)	Funds raised and end-use
3(xi)	Fraud reporting by company or employees
3(xii)	Nidhi company compliance
3(xiii)	Related party transactions
3(xiv)	Internal audit system
3(xv)	Non-cash transactions with directors
3(xvi)	Registration under RBI Act (NBFC etc.)
3(xvii)	Cash losses
3(xviii)	Resignation of auditors
3(xix)	Material uncertainty regarding repayment obligations
3(xx)	CSR compliance
3(xxi)	Qualifications of consolidated financial statements

Note:

- CARO enhances the **responsibility of auditors**.
- Aimed at **detecting frauds, mismanagement**, and promoting **good corporate governance**.

5. BOARD OF DIRECTORS AND KEY MANAGERIAL PERSONNEL

Who is a Director under the Companies Act, 2013?

Definition:

As per **Section 2(34)** of the **Companies Act, 2013**,

"Director" means a ****director appointed to the Board of a company."**

- ❖ So, a **director** is an individual who is appointed to perform the duties and functions of a director in accordance with the provisions of the Companies Act, 2013.
- ❖ Only an **individual** (natural person) can be appointed as a director — **not a body corporate, firm, or association** (Section 149(1)).

Role and Importance of a Director:

1. **Fiduciary Position:** Acts as trustee and agent of the company.
2. **Decision-Maker:** Participates in key business decisions through the Board.
3. **Compliance Officer:** Ensures that the company complies with legal and regulatory provisions.
4. **Strategic Planner:** Guides in formulating company strategy, policy, and objectives.
5. **Representative:** Represents the company before regulatory authorities or in legal proceedings.

Minimum and Maximum Number of Directors Section 149(1)

Minimum Number of Directors:

Type of Company	Minimum Number of Directors
Private Company	2
Public Company	3
One Person Company (OPC)	1

✓ These are mandatory statutory minimums. A company may appoint more than the minimum.

Maximum Number of Directors:

- ❖ The **maximum number of directors** allowed in any company is **15** (Section 149(1), 2nd proviso).
- ❖ However, **more than 15 directors** can be appointed **after passing a special resolution** in the **general meeting**. (No approval from the Central Government is required)

Company Type	Minimum Directors	Maximum Directors
OPC	1	15 (more by SR)
Private Company	2	15 (more by SR)
Public Company	3	15 (more by SR)

Types of Directors

As per the Companies Act, 2013, different types of directors can be classified based on their **appointment, role, and powers**. These types include:

1. Executive Director

An executive director is involved in the **day-to-day management** of the company.

- ❖ They are full-time employees of the company.
- ❖ Includes positions such as Managing Director, Whole-Time Director.
- ❖ They are **active participants** in operations and management.

2. Non-Executive Director

A non-executive director is **not involved in daily management** but participates in policymaking and attends board meetings.

- ❖ They do not hold executive or managerial positions.
- ❖ They play a monitoring or advisory role.
- ❖ May be independent or promoter directors.

3. Managing Director

[Section 2(54)]

A Managing Director (MD) means a director who is entrusted with **substantial powers of management** of the company affairs.

❖ Key Points:

- ✓ MD may be appointed by an **agreement, resolution, or MOA/AOA**.
- ✓ MD is **involved in day-to-day management**.
- ✓ Only **one MD** can be appointed in a company unless it is a **Joint MD**.

4. Whole-Time Director (WTD)

[Section 2(94)]

A Whole-Time Director is a **full-time employee** of the company and is entrusted with **regular duties**.

- ✓ Includes **executive directors**.
- ✓ Subordinate to the Board and MD (if appointed).
- ✓ Required to **devote whole working time** to the company.

5. Independent Director

[Section 2(47) and Section 149(6)]

An independent director is a director **other than a Managing Director or Whole-Time Director or Nominee Director**, who is **not related to promoters or management**.

❖ Applicability:

- ✓ **Listed Public Companies:** Must have at least **1/3rd of total directors** as independent.
- ✓ **Certain Unlisted Public Companies** (Rule 4 of Companies (Appointment & Qualification of Directors) Rules, 2014):

- Paid-up share capital ≥ ₹10 crore,
- Turnover ≥ ₹100 crore,
- Outstanding loans/debentures/deposits ≥ ₹50 crore.

❖ **Qualifications [Section 149(6)]:**

- ✓ Must possess integrity, relevant expertise.
- ✓ No pecuniary relationship with company/promoters.
- ✓ Must not be a KMP or employee in the current or past 3 years.
- ✓ Must not be relative of promoter/managerial personnel.

Aspect	Details
Definition	An independent director is a non-executive director who does not have any material or pecuniary relationship with the company, its promoters, or management.
Applicability	Listed companies and certain public companies meeting thresholds (paid-up capital, turnover, or borrowings) must appoint independent directors.
Minimum Number	- Listed company: At least 1/3 of the total number of directors must be independent. - Unlisted public companies (certain thresholds): Minimum 2.
Tenure	- A term of up to 5 consecutive years. - Eligible for reappointment by passing a special resolution. - Maximum two terms (i.e., 10 years).
Cooling-off Period	After completing two terms, a 3-year cooling-off period is required before reappointment.
Appointment	- Must be approved by shareholders in a general meeting. - First appointment can be by board, then confirmed by shareholders within 3 months or next AGM.
Retirement by Rotation	Not liable to retire by rotation.
Remuneration	- Sitting fees for attending meetings (max 1 lakh per meeting). - Reimbursement of expenses incurred in attending meetings. - Profit-related commission (if approved).
Stock Options (ESOPs)	Not entitled to stock options.
Disqualification	Cannot be promoter or related to promoters/directors; must not have had any pecuniary relationship with the company in the last 2 financial years or current year.
Duties	- Uphold ethical standards. - Act objectively and independently. - Exercise responsibilities in a bona fide manner.

Resignation/Removal	- Must give a detailed resignation letter. - Removal before term requires a special resolution and an opportunity of being heard.
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6. Nominee Director

[Section 161(3)]

A director nominated by a **financial institution, bank, or government** as per law or agreement.

- ❖ Appointed by **third parties** such as creditors or debenture holders.
- ❖ Their role is to **protect the interest** of the nominating party.

7. Alternate Director

[Section 161(2)]

A director appointed to act in place of a director who is **absent from India for at least 3 months**.

❖ Conditions:

- ✓ Can be appointed if **authorized by Articles or resolution**.
- ✓ Cannot be appointed for an **Independent Director** unless qualified.
- ✓ Automatically vacates office when the original director returns.

8. Additional Director

[Section 161(1)]

Appointed by the Board between two **AGMs**, if Articles of Association permit.

❖ Key Points:

- ✓ Holds office only up to the **next AGM** or **last date on which AGM should have been held**.
- ✓ Board must have **authorization in AOA** for such appointment.

9. Casual Vacancy Director

[Section 161(4)]

What is a Casual Vacancy?

A **casual vacancy** arises when the office of a director becomes vacant **before the expiry of his term** due to reasons like:

- ❖ **Death**
- ❖ **Resignation**
- ❖ **Disqualification**
- ❖ **Incapacity**
- ❖ **Removal by tribunal**
- ❖ **Any other unforeseen reason**

Legal Provision – Section 161(4)

"If the office of any director **appointed by the company in general meeting** is vacated before his term expires, the **Board of Directors** may appoint another person in his place."

Key Features of Casual Vacancy Appointment:

Particulars	Details
Applicability	Only to public companies
Director must be	One who was originally appointed in a general meeting
Appointing authority	Board of Directors
Tenure of new director	Holds office only up to the date the original director would have held office if the vacancy had not occurred
AOA requirement	Appointment must be authorized by the Articles of Association (AOA)

Example:

Suppose Mr. A was appointed as a director in a public company in the AGM for a term of 5 years. After 2 years, he **resigns**.

- ✓ The Board may fill this casual vacancy by appointing Mr. B,
- ✓ And Mr. B will hold office only for the remaining 3 years of Mr. A's original term.

Important Points to Remember:

1. Applies only to public companies (not to private companies or OPCs, unless adopted voluntarily via AOA).
2. Casual vacancy can be filled only for directors appointed by shareholders in the general meeting.
3. If a director was appointed by the Board (e.g., additional, alternate, or nominee director), then his vacancy cannot be filled under Section 161(4). BOD will fill that vacancy as per AOA.

10. Resident Director

[Section 149(3)]

Every company must have at least one director who has stayed in India for at least 182 days (i.e. ≥ 182) in the financial year.

- ❖ Applies to all companies, including OPC.
- ❖ This applies to all companies — private, public, listed, or unlisted.
- ❖ Even a foreign national can be a resident director, if they meet the stay requirement.
- ❖ New companies must comply within 6 months of incorporation)

11. Women Director

[Section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014]

Mandatory for:

- ❖ Every listed company
- ❖ Every public company having:

- ✓ Paid-up capital $\geq$ ₹100 crore, or
- ✓ Turnover $\geq$ ₹300 crore

Points:

- ❖ Must be a **woman**.
- ❖ No specific qualifications beyond general director qualifications.
- ❖ The appointment should be made within 6 months of falling under the criteria.
- ❖ She can be executive, non-executive, or independent

12. Small Shareholder Director (SSD)

[Section 151 read with Rule 7 of Companies (Appointment and Qualification of Directors) Rules, 2014]

❖ Who is a Small Shareholder?

A small shareholder is a shareholder holding shares of nominal value of ₹20,000 or less.

❖ Applicability:

Appointment of Small Shareholder Director is:

- ✓ **Mandatory** in case of a listed company, if 1,000 small shareholders or 1/10th of the total number of shareholders (whichever is lower) give a notice to the company.
- ✓ **Voluntary** for any company (including private or unlisted public), if it chooses to appoint such a director.

❖ How is SSD Appointed?

- ✓ A notice must be given by the **eligible small shareholders**, along with a **declaration** from the proposed person that he meets the eligibility criteria.
- ✓ The company shall appoint the SSD in a **general meeting** through **ordinary resolution**.
- ✓ The notice must contain:
 - Name
 - Address
 - Number of shares held
 - Folio number/DP ID-Client ID
 - Signature of shareholders proposing the person

❖ Eligibility Criteria for SSD:

The person proposed must:

- ✓ Not be disqualified under **Section 164**.
- ✓ Not hold directorship in **more than 2 companies** where he is an SSD.
- ✓ Not be a **retiring director** under Section 152.
- ✓ Not be associated with the company or its promoters in any **professional capacity** in the last 3 years.

❖ **Tenure:**

- ✓ Can be appointed for a maximum period of **3 years**, but **not eligible for reappointment** immediately after completion of tenure.
- ✓ After 3 years, the same person can be re-appointed **only after a cooling-off period**.

❖ **Role & Powers:**

- ✓ SSD is treated at par with other directors.
- ✓ He can be an **independent director** if he meets the independence criteria.
- ✓ Not required to be elected by rotation.

Summary Table

Type of Director	Key Provision / Section	Key Characteristics
Executive Director	-	Full-time, involved in daily management
Non-Executive Director	-	Part-time, advisory role
Managing Director	Sec 2(54)	Entrusted with substantial management powers
Whole-Time Director	Sec 2(94)	Devotes whole time to company affairs
Independent Director	Sec 149(6)	Independent of company and promoters
Nominee Director	Sec 161(3)	Nominated by institution/government
Alternate Director	Sec 161(2)	Substitutes for an absent director (≥3 months)
Additional Director	Sec 161(1)	Appointed by Board until next AGM
Casual Vacancy Director	Sec 161(4)	Appointed to fill mid-term vacancy
Resident Director	Sec 149(3)	Stays ≥182 days in India in FY
Woman Director	Sec 149 + Rules	Mandatory for certain companies

Qualifications & Disqualifications of Directors

PART 1: Qualifications of Directors

Companies Act, 2013 **does not prescribe any specific educational or professional qualifications** for becoming a director (except for some specialized positions like **Independent Directors**). However, there are some **basic eligibility criteria and conditions** that must be fulfilled:

1. Only Individuals can be Directors

As per Section 149(1):

- ❖ Only a **natural person (individual)** can be appointed as a director.
- ❖ Body corporates, firms, associations, or other legal entities **cannot** be appointed.

2. Director Identification Number (DIN) - Section 152(3)

Every individual proposed to be appointed as a director must:

- ❖ Furnish **Director Identification Number (DIN)**.
- ❖ File declaration that he is **not disqualified** to become a director under Section 164.

DIN is a **unique identification number** allotted by the Central Government through the MCA portal (Form DIR-3).

3. Resident Director - Section 149(3)

Every company must have at least **one director who has stayed in India for at least 182 days** during the financial year.

(Applicable to all companies including OPC).

4. Additional Qualifications for Independent Directors - Section 149(6)

Independent Directors must:

- ❖ Be a person of **integrity** and **possess relevant expertise and experience**.
- ❖ Not be a promoter or relative of promoters.
- ❖ Have **no pecuniary relationship** with company/promoters.
- ❖ Not have been a **KMP or employee** in the last 3 years.

In listed companies, **at least one Independent Director** must be a person with **financial/accounting/legal/management expertise** (as per SEBI LODR).

PART 2: Disqualifications of Directors - Section 164

A person is **disqualified from being appointed or reappointed** as a director under the following circumstances:

Section 164(1): Disqualifications applicable to all companies

A person **shall not be eligible** to be appointed as a director if:

1. He is of **unsound mind** and has been so declared by a competent court.
2. He is an **undischarged insolvent**.
3. He has applied to be adjudicated as an insolvent and his application is pending.

4. He has been convicted by a **court of any offence** involving **moral turpitude or otherwise**, and sentenced to imprisonment for **not less than 6 months**:
 - ✓ Disqualified for **5 years** from the date of expiry of the sentence.
 - ✓ If imprisonment is **7 years or more**, disqualification is **permanent**.
 - ✓ i.e. if imprisonment period is less than 6 months, then, no Disqualification attracts.
5. An order has been passed by a court or tribunal **disqualifying him**.
6. He has not paid any **calls on shares held** by him, and such calls are unpaid for **6 months** from the due date.
7. He has been **convicted of offences dealing with related party transactions** under Section 188 in the last 5 years.
8. If he is already **holding maximum number of Directorships** allowed u/s 165

Section 164(2): Disqualification due to default by company

A person **cannot be reappointed or appointed** as director of **any other company** if he is or was a director in a company that:

1. Has **not filed financial statements or annual returns** for any **continuous period of 3 financial years, (or)**
2. Has **failed to repay deposits, interest, redeem debentures, or pay declared dividends** for **more than 1 year**

Such a person is disqualified for **5 years** from the date of default.

- This provision applies to **all companies**, not just listed ones
- They should not vacate Defaulting company till tenure end, because they are responsible to fix the mess caused by them, but they need to vacate all other companies and they are not fit for appointment in any other companies till 5 years.

Section 164(3): Additional Disqualifications (by AOA)

- ❖ Companies can add **additional disqualifications** for directors in their **Articles of Association (AOA)**.
- ❖ These must not override the provisions of the Act.
- ❖ Example:
Company limited the maximum number of directorships to be held by directors to 8 - **valid**

Consequences of Disqualification:

- ✓ If a person becomes disqualified under Section 164, he **must vacate office** under **Section 167(1)**
- ✓ MCA maintains a **database of disqualified directors**, and such individuals are **barred from holding directorship** in other companies as well.

Summary Table: Disqualifications under Section 164

Disqualification	Section	Applies When
Unsound mind	164(1)	Declared by competent court
Insolvency	164(1)	Undischarged or pending application
Criminal Conviction	164(1)	≥6 months imprisonment (5 years disqualification); ≥7 years → permanent
Court Order	164(1)	Prohibited by court/tribunal
Calls unpaid	164(1)	For >6 months
Related Party Offences	164(1)	Conviction under Section 188
Non-filing of returns/FS	164(2)	3 consecutive FYs
Default in deposits, dividends, etc.	164(2)	Default for >1 year
Additional (Optional)	164(3)	AOA of company

Additional Notes:

1. **Maximum Directorships - Section 165**
2. **Vacation of Office of Director - Section 167(1)**
3. **All about DIN**

1. Maximum Directorships - Section 165**a. Overall Limit**

- A person can hold directorship in maximum 20 companies at the same time.

b. Public Company Sublimit

- Out of these, **not more than 10** can be public companies.
- For this purpose, private companies which are **holding or subsidiary of a public company** are counted as public companies.

c. Exclusions (not counted in the above limit)

- Unlimited companies
- Section 8 companies (not-for-profit)
- Dormant companies

d. Consequences of Exceeding Limit

- If a person accepts directorships beyond the prescribed limit, such excess directorships are **void**.
- **Penalty:** ₹2,000 per day, for each day of default.

2. Vacation of Office of Director - Section 167(1)

a. Disqualification under Section 164

- If a director incurs any disqualification specified under Section 164, he vacates office.

Exception: In case of disqualification under Section 164(2) (default by company in filing/repayment), the director vacates office in all other companies **except the defaulting company**.

b. Absence from Meetings

- If absent from all Board Meetings for **12 months**, with (or) without leave, office is vacated

c. Contravention of Limit on Directorships

- If he holds directorships **beyond the maximum** prescribed under Section 165.

d. Failure to Disclose Interest

- If he fails to disclose interest in any contract/arrangement (as per Section 184).

e. Disqualified by Court or Tribunal

- If he is disqualified by an order of a court/tribunal.

f. Conviction by Court

- If convicted of any offence and sentenced to imprisonment of **6 months or more**.
- If sentence is **7 years or more**, he vacates office immediately on conviction.

g. Removal

- If removed as per provisions of the Act.

h. Non-residency

- If he ceases to be a resident in India (as per Section 149).

3. All about DIN - Director Identification Number (DIN)

[Section 153 to 159 of the Companies Act, 2013 & Companies (Appointment and Qualification of Directors) Rules, 2014]

a. What is DIN?

DIN (Director Identification Number) is a **unique 8-digit number** allotted by the **Central Government (via MCA)** to any individual who intends to become a **director of a company** or is already a director.

- ❖ It is **mandatory** for every director to have a DIN before being appointed.
- ❖ Once allotted, DIN is **valid for the lifetime** of the individual and can be used for **multiple companies**.

b. Purpose of DIN:

Purpose	Description
Unique Identification	To identify directors across companies
Regulatory Control	Ensures transparency in appointments
Compliance Tracking	Helps MCA track compliance and disqualifications
Public Disclosure	DIN details are visible in company master data

c. Who Can Apply for DIN?

- ❖ Any individual intending to be appointed as a director in an Indian company.
- ❖ Only natural persons (not body corporates or firms).
- ❖ Can be a citizen of India or a foreign national.

Procedure for Obtaining DIN

a) First-Time DIN Application (for New Directors)

As per Rule 9 of Companies (Appointment and Qualification of Directors) Rules, 2014.

If DIN is applied with incorporation of a company:

Step	Description
1	File SPICe+ (Simplified Proforma for Incorporating Company Electronically) along with AGILE-PRO form
2	Maximum of 3 DINs can be allotted through SPICe+ at the time of incorporation
3	Attach ID proof, address proof, photo, and DSC of the proposed directors
4	MCA validates the documents, and DIN is allotted in the Certificate of Incorporation (COI)

b) DIN Application for Existing Companies (Post Incorporation)

If person is being appointed as director in an existing company and does not have a DIN:

Step	Description
1	File Form DIR-3 online on MCA portal
2	Attach the following documents:
	- Photograph
	- Proof of identity (PAN - mandatory for Indian citizens)
	- Proof of residence
	- Board resolution proposing appointment as director
3	Form DIR-3 must be signed with Digital Signature Certificate (DSC) of applicant and certified by a practicing CA/CS/CMA
4	Submit form and pay fees (₹500)
5	DIN gets approved (if all validations pass) and is communicated by email

❖ Post Allotment Compliance (DIR-3C & DIR-6)

Form	Purpose	Time Limit
DIR-3C	Company must intimate DIN of new director to ROC	Within 15 days
DIR-6	For changes in director's particulars (name, address, etc.)	Within 30 days

❖ Prohibitions - Section 155

- ✓ A person **cannot apply for more than one DIN**.
- ✓ Holding multiple DINs is an offence and subject to **penalty**.

❖ **Penalties for Non-Compliance - Section 159**

Default	Penalty
Applying for more than one DIN	₹50,000 and up to ₹1,000 per day for continuing default
Not intimating DIN to company	₹25,000
Company not filing DIR-3C	₹25,000 for company + ₹25,000 for officers in default

Summary Table - DIN Process

Particulars	Description
Governing Section	Sections 153 to 159
Form for incorporation	SPICe+ (max 3 DINs)
Form for existing directors	DIR-3
Validity	Lifetime (unless surrendered or cancelled)
Documents Required	ID proof, address proof, photograph, board resolution
Signing Authority	Applicant's DSC + professional attestation (CA/CS/CMA)

Appointment, Reappointment & Rotation of Directors

(Sections 149-152 and 160-164, Companies Act, 2013)

1. Appointment of First Directors❖ **Private Company or Public Company (other than OPC):**✓ **As per Section 152(1):**

- First directors are appointed **as per the Articles of Association (AOA)**.
- If AOA is **silent**, then all **subscribers to the Memorandum of Association (MoA)** shall be deemed to be the first directors.

❖ **One Person Company (OPC):**

- ✓ Only **one director is mandatory**.
- ✓ The sole **member is deemed to be the first director**, until the company appoints a director as per Section 152.

2. Subsequent Appointment of Directors

(After incorporation)

❖ **In Public Company:**

- ✓ Directors are appointed in the **general meeting by shareholders** (Section 152(2)).
- ✓ Every person proposed to be appointed must:
 - Furnish **Director Identification Number (DIN)**.
 - File a declaration that he is not disqualified (Section 152(3)).

❖ **In Private Company:**

- ✓ Similar to public company, unless Articles provide different mechanism.
- ✓ **More flexibility** is given to private companies under Section 5.

❖ **In OPC:**

- ✓ The single member can appoint a director (no requirement for AGM).

3. Reappointment of Retiring Directors in Public Company

(Section 152(7))

In a **public company**, **one-third** of the directors (excluding independent and nominee directors) are **liable to retire by rotation** at every Annual General Meeting (AGM).

Reappointment Process:

- ❖ The retiring director may be:
 - ✓ **Reappointed**, or
 - ✓ **Replaced** by someone else.
- ❖ If the company fails to do either, and no resolution is passed, then **the retiring director is automatically reappointed, unless:**
 - ✓ He is not qualified,
 - ✓ He has given written unwillingness,
 - ✓ A resolution for reappointment was rejected,
 - ✓ The place was not filled due to deliberate decision.

4. Rotation of Directors (Section 152(6))**Applicability:****Mandatory for:**

- ❖ All **public companies** (except government companies, Section 279)
- ❖ **Not applicable** to private companies and OPCs unless Articles provide for it.

Rules for Rotation:

1. **At least two-thirds** of the total number of directors shall be **liable to retire by rotation**.
2. **One-third** of these **rotational directors** shall **retire at every AGM**.
3. The director longest in office retires first; if multiple, chosen by mutual consent or draw of lots.

Note: In $\frac{2}{3}$ rd calculation, fraction = consider **next** number

In $\frac{1}{3}$ rd calculation, fraction = consider **nearest** number

The following types of directors are excluded when computing the number of directors who are liable to retire by rotation:

a. Independent Directors

- ❖ **Not counted** in the total number of directors for the purpose of rotation.
- ❖ Their tenure and reappointment are governed by **Section 149(10) & (11)**.
- ❖ They are appointed for a **fixed term** (max 5 years) and **not subject to retirement by rotation**.

b. Nominee Directors(Appointed under **Section 161(3)**)

- ❖ Appointed by **financial institutions, banks, or the government** under law or agreement.
- ❖ **Excluded** from the rotational directors count as they represent **third-party interests**.

c. Additional Directors(Appointed under **Section 161(1)**)

- ❖ Appointed by the Board to hold office until the next AGM.
- ❖ Not regular directors; hence, **not counted** for rotation.

d. Alternate Directors(Appointed under **Section 161(2)**)

- ❖ Temporarily substitutes for another director during absence from India.
- ❖ Holds office **only till the return** of the original director.
- ❖ Not considered for rotation as they do not hold a permanent seat.

e. Small Shareholder Directors(Appointed under **Section 151**)

- ❖ Not liable to retire by rotation.
- ❖ Their appointment is for a **fixed term** (maximum 3 years), with no immediate reappointment.

Directors who are Included in Rotation:

Only "**directors other than those mentioned above**" are included in the total for purposes of computing:

- ❖ The **two-thirds** who should be liable to retire by rotation.
- ❖ Of those, **one-third** should retire at each AGM.
- ❖ Managing Directors and Whole-Time Directors **can be included** in the rotational pool, unless their appointment terms exempt them.

Summary Table

Type of Director	Included in Rotation Calculation?
Independent Director	✗ No
Nominee Director	✗ No
Additional Director	✗ No
Alternate Director	✗ No
Small Shareholder Director	✗ No
Managing/Whole-Time Director	✓ Yes (if not exempted by terms)
Regular Director	✓ Yes

5. Appointment of Additional, Alternate, and Casual Vacancy Directors (Section 161)

Additional Director [Section 161(1)]:

- ❖ Appointed by the **Board**, if authorized by the AOA.
- ❖ Holds office **up to next AGM** or last date on which AGM should have been held.

Alternate Director [Section 161(2)]:

- ❖ Appointed when a director is **absent from India for ≥3 months**.
- ❖ Should meet the qualifications if replacing an Independent Director.
- ❖ Automatically vacates when the original director returns.

Director to fill Casual Vacancy [Section 161(4)]:

- ❖ Board may appoint a director in place of a **resigned/died/disqualified** director.
- ❖ Valid only for **public companies**.
- ❖ The new director holds office **for the remaining term**.

6. Appointment through Small Shareholder Nomination (Section 151)

- ❖ Applicable to **listed companies**.
- ❖ Upon request from **1,000 small shareholders** or **1/10th of total**, a director may be appointed.

7. Appointment of Independent Directors (Section 149(4))

- ❖ Applicable to:
 - ✓ **Listed Public Companies** (at least 1/3rd of the total board must be independent directors)
 - ✓ Certain unlisted public companies based on thresholds (paid-up capital, turnover, loans, etc.)
- ❖ Appointed by **shareholders in general meeting**.
- ❖ Tenure: **Maximum 5 years** per term; **2 terms** allowed.

8. Reappointment of Independent Director

- ❖ Allowed for **one additional term of 5 years**.
- ❖ Requires **special resolution**.
- ❖ After 2 terms, a **cooling-off period of 3 years** is mandatory.

OPC-Specific Note:

- ✓ **Only one director** is mandatory (Section 149(1)(a)).
- ✓ OPCs are **exempt from rotation**, reappointment procedures, and board strength conditions.

Summary Table: Appointment, Reappointment & Rotation

Type of Company	First Directors	Appointment of Subsequent Directors	Rotation	Reappointment
Public Company	As per AOA or MoA subscribers	In General Meeting by shareholders	Yes, mandatory (Sec 152(6))	Yes, at AGM
Private Company	As per AOA or MoA subscribers	More flexibility; AOA can provide	Not mandatory	Yes, if AOA allows
OPC	Sole member = first director	By member's decision	Not applicable	Not applicable

Summary about Appointment of BOD

Type of Director	Appointed by	Section	Remarks
Additional Director	Board of Directors	Section 161(1)	Holds office until the next AGM or the last date on which AGM should have been held.
Casual Vacancy Director	Board of Directors	Section 161(4)	For public companies only. Appointed to fill a vacancy due to resignation /death, etc.
Nominee Director	Board of Directors (based on nomination)	Section 161(3)	Nominated by banks, financial institutions, or government under provisions of law or AoA.
Alternate Director	Board of Directors	Section 161(2)	For a director who is absent for ≥3 months from India. Must be authorized in AoA or by Board.
First Directors (at incorporation)	Subscribers to MoA or as named in AoA	Section 152(1)	If not named in Articles, all subscribers become first directors (until directors are appointed).
Regular/Ordinary Director	Shareholders (General Meeting)	Section 152(2)	Appointed by passing an ordinary resolution. Subject to retirement by rotation.
Independent Director	Shareholders (General Meeting)	Section 149(10), (11)	Initially appointed by Board but must be approved by shareholders within 3 months or at next AGM.
Managing Director / Whole-time Director / Executive Director	Shareholders (General Meeting)	Section 196	Requires approval via resolution in general meeting

Resignation & Removal of Directors under Companies Act, 2013

PART 1: Resignation of Director

(Section 168 of the Companies Act, 2013)

A director may voluntarily resign from the Board of a company. The law lays down a clear process for such resignation.

1. Manner of Resignation:

- ❖ The director must **submit a written notice of resignation** to the company.
- ❖ Can be submitted to the **Board or company secretary** (if any).
- ❖ The resignation becomes effective either:
 - ✓ From the **date specified in the notice**, or
 - ✓ From the **date on which the notice is received by the company**, **whichever is later**.

2. Obligations of the Company:

- ❖ The company must **take note** of the resignation in the **next Board Meeting**.
- ❖ The company must **file Form DIR-12** with the **Registrar of Companies (ROC)** within **30 days** from the date resignation becomes effective.
- ❖ The resignation must be disclosed in the **Board's Report** in the next annual financial statements.

3. Obligation of the Resigning Director (optional but recommended):

- ❖ The resigning director **may also forward a copy** of the resignation along with **reasons** to the ROC in **Form DIR-11**, within **30 days** of resignation.
- ❖ However, **DIR-11 is optional** for directors of **all companies** as per MCA Notification dated 7th May 2018.

4. Liabilities post-resignation:

- ❖ Resigning director shall **remain liable** for offences or liabilities incurred **during his tenure** as a director.
- ❖ Resignation does **not absolve past responsibilities** or statutory breaches during his office.

Special Case: Resignation in OPC (One Person Company)

- ❖ The sole director can resign **only after appointing another individual** as the director and **intimating the ROC**.

PART 2: Removal of Director

(Section 169 of the Companies Act, 2013)

This deals with the **removal of a director by shareholders** before the expiry of his term.

1. Who can Remove a Director?

A company may **remove a director** before the expiry of his term by **passing an ordinary resolution** in a **general meeting** (Section 169(1)).

However, **following directors cannot be removed** under this section:

- ❖ A **director appointed by the Tribunal** under Section 242 (for oppression/mismanagement cases).
- ❖ A **director appointed under proportional representation** (Section 163).

2. Procedure for Removal of Director:

Step-by-Step Process:

1. Special Notice:

- ❖ A member(s) holding at least **1% of total voting power** or shares on which an aggregate sum of **₹5 lakh has been paid-up**, must give **special notice** to the company **at least 14 days before** the meeting (Section 115).

2. Notice to Director:

- ❖ The company must **immediately send a copy** of the notice to the concerned director.

3. Right to be Heard:

- ❖ The concerned director has a right to make a **written representation** and request circulation to members.
- ❖ If not circulated, the director may request for the representation to be read in the meeting.

4. General Meeting:

- ❖ The company must call a **general meeting** (AGM or EGM) and pass an **ordinary resolution** to remove the director.

5. Filing with ROC:

- ❖ The company must file **Form DIR-12** with the ROC within **30 days** of passing the resolution.

Director's Rights during Removal:

- ❖ Right to receive a copy of the special notice.
- ❖ Right to make a written representation.
- ❖ Right to attend the meeting and be heard.

Comparison Table: Resignation vs Removal

Aspect	Resignation	Removal
Who initiates it?	The director himself	Shareholders (by ordinary resolution)
Governing Section	Section 168	Section 169
Need for board resolution?	No (just notice)	Yes (to convene general meeting)
Filing with ROC	DIR-12 (company), DIR-11 (director, optional)	DIR-12 (mandatory)
Right to be heard	Not applicable	Yes, the director has this right
Liabilities post-event	Continues for acts done during tenure	Continues for acts done during tenure
Mandatory in OPC?	Must appoint a replacement before resigning	Not practically applicable

REMUNERATION OF DIRECTORS

(Section 197, 198, Schedule V of the Companies Act, 2013 + Related Provisions)

1. Meaning of Remuneration

Remuneration includes:

- ❖ Salary, perquisites, and benefits
- ❖ Commission, sitting fees, bonuses, stock options, etc.
- ❖ Any other monetary benefit given for services rendered in capacity as director, managing director, or whole-time director.

Section 2(78) defines remuneration as any money or equivalent benefit paid in exchange for services rendered.

2. Key Governing Provisions:

Section	Provision
Section 197	Overall limit and distribution of managerial remuneration
Section 198	Computation of net profits for remuneration
Schedule V	Conditions for remuneration in case of inadequate or no profits
Section 149(9)	Independent directors are not entitled to stock options or performance-based remuneration
Rule 4 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014	Manner of determining remuneration, filings

3. Maximum Remuneration Payable – Section 197

Applicable to:

Only **public companies**. Private companies are **exempt** from the limits under Section 197 as per MCA Notification dated 5th June 2015.

Overall Limit:

- ❖ **Total Managerial Remuneration** to all directors (including MD, WTD, and manager) **shall not exceed 11% of the net profits** of the company (computed as per Section 198).

Break-up of Limits

Category	Limit (as % of Net Profits)
Managing Director / Whole-Time Director	Max 5% (if one person)
MD/WTD (more than one)	Max 10% (together)
Non-executive Directors (including Chairman)	Max 1% (if company has MD/WTD)
Non-executive Directors	Max 3% (if company has NO MD/WTD)

These limits can be **exceeded** by passing:

- ❖ A **special resolution**, and
- ❖ Complying with **Schedule V** (if profits are inadequate).

4. Remuneration in Case of No/Inadequate Profits – Schedule V

If the company has **inadequate or no profits**, managerial personnel can be paid **remuneration** without **Central Government approval**, only if conditions of **Schedule V** are met.

Remuneration Limits (Part II, Section II of Schedule V):

Eff.Cap = PSC + SP + Reserves & Surplus + Loans - Investments - Prelim.exp - Acc.losses

Effective Capital (₹)	Maximum Yearly Remuneration (₹)
Negative or < ₹5 crore	₹60 lakh
₹5 crore to < ₹100 crore	₹84 lakh
₹100 crore to < ₹250 crore	₹120 lakh
₹250 crore and above	₹120 lakh + 0.01% of excess over ₹250 crore

These limits can be **doubled** with a **special resolution**.

a. Approval Process:

- ✓ **Board approval**, and
- ✓ **Nomination and Remuneration Committee (NRC)** approval (if applicable), and
- ✓ **Special resolution** in general meeting if required.

Exception:

If the company **fails to comply with Schedule V**, **Central Government approval** is **mandatory** for payment of managerial remuneration in case of no/inadequate profits.

b. Remuneration to Independent Directors - Section 149(9)

Independent directors are **not entitled** to:

- ✓ Stock options (ESOPs),
- ✓ Commission linked to profit.

They can receive:

- ✓ **Sitting fees** for attending meetings (up to ₹1 lakh per meeting),
- ✓ **Reimbursement** of expenses for participation in board/committee meetings,
- ✓ **Profit-related commission**, if approved by shareholders (not linked to performance).

c. Sitting Fees - Section 197(5)

- ✓ Paid to **non-executive and independent directors** for attending Board or committee meetings.
- ✓ Maximum amount: ₹1 lakh per meeting.
- ✓ May differ for different directors, but should be authorized by Articles or shareholders.

d. Remuneration to Directors in Private Companies

- ✓ No restriction on managerial remuneration under Section 197.
- ✓ **No ceiling limits apply** (per MCA Exemption Notification - 2015).
- ✓ Still subject to **AOA** provisions and approval from Board/shareholders as per internal governance.

e. Additional Compliance and Disclosures

Required Disclosures (in Board's Report - Section 197(12), Rule 5):

- ✓ Ratio of director's remuneration to median employee remuneration.
- ✓ % increase in remuneration.
- ✓ Affirmation of remuneration policy being aligned with company's performance.
- ✓ Disclosure in MGT-7 and AOC-4.

Summary Table - Remuneration Limits at a Glance

Scenario	Limit (as % of Net Profit)
Total managerial remuneration (public co.)	Max 11% (Sec 197)
One MD/WTM/Manager	5%
More than one MD/WTM/Manager	10% (together)
Non-executive directors with MD/WTM	1%
Non-executive directors without MD/WTM	3%
Company with inadequate/no profits (Schedule V)	As per effective capital slab
Independent Directors (sitting fees)	Max ₹1 lakh per meeting

Powers & Duties of Board of Directors (BOD)

(Relevant Sections: 179 to 183, 166, 184, 188 of Companies Act, 2013)

PART A: POWERS OF BOARD OF DIRECTORS

(Section 179 and other relevant provisions)

- ❖ The Board of Directors is the **main executive body** of a company.
- ❖ It exercises all powers and does all such acts and things that the company is authorized to do, except those which are required to be done by the shareholders in the general meeting.

Section 179(1): General Powers

The Board is entitled to exercise all such powers of the company **as are not required to be exercised by the company in the general meeting** of the members, either under this Act or under the Articles.

1. Specific Powers of the Board (Section 179(3))

The following powers can be exercised **only by passing a board resolution at a duly convened meeting** (i.e., not by circular resolution):

Power
1. To make calls on shareholders in respect of unpaid share capital
2. To authorize buy-back of securities (as per Section 68)
3. To issue securities, including debentures (except convertible debentures, which need special resolution)
4. To borrow money (within limits specified in Section 180)
5. To invest the funds of the company
6. To grant loans or give guarantees or provide security in respect of loans
7. To approve financial statements and Board's Report
8. To diversify the business of the company
9. To approve amalgamation, merger, or reconstruction
10. To take over a company or acquire a controlling stake
11. Any other matter as may be prescribed

2. Matters that CAN be Approved by Circulation:

The Act does not provide a specific list of matters that can be passed, any matter except those covered under Section 179(3) and Rule 8 (which must be decided at a Board Meeting) can be passed by circulation.

Examples of Resolutions by Circulation:

Type of Matter
1. Opening or closing bank accounts
2. Appointment of additional directors under Section 161(1)
3. Appointment of internal auditor or secretarial auditor
4. Shifting registered office within the same city or town

5. Allotment of shares under private placement (subject to shareholder approval)
6. Approving draft notice of AGM or EGM
7. Approving signing authority or authorizing signatories
8. Appointment of scrutinizer for general meetings
9. Routine administrative decisions
10. Approving draft policies (e.g., CSR policy, risk management policy)
11. Authorizing a person to appear before authorities or sign documents
12. Ratification of decisions already made in urgency

3. Powers Requiring Shareholders' Approval (Section 180)

The following powers can be exercised **only with prior approval by special resolution in a general meeting**:

Power
1. To sell, lease, or otherwise dispose of the whole or substantially the whole of the undertaking(s)
2. To invest the compensation received from merger or amalgamation in a manner other than what was approved earlier
3. To borrow money exceeding the aggregate of paid-up share capital and free reserves and securities premium
4. To remit or give time for the repayment of any debt due from a director

"Substantially the whole of undertaking" means 20% or more of the value of the undertaking.

PART B: DUTIES OF DIRECTORS

(Section 166 of the Companies Act, 2013 - Statutory Duties)

This is a **codified provision** of director duties introduced in the 2013 Act.

1. Act in Good Faith - Section 166(2)

A director must:

- ❖ Act in **good faith**,
- ❖ In the best interests of the company, its employees, shareholders, community, and environment.

2. Exercise Duties with Due Care - Section 166(3)

- ❖ Exercise **due and reasonable care, skill, diligence**, and
- ❖ Exercise **independent judgment**.

3. Avoid Conflicts of Interest - Section 166(4)

- ❖ A director must **not involve** in situations where there is **direct or indirect conflict** of interest with the company.

4. Not Achieve Undue Gain - Section 166(5)

- ❖ Must **not achieve undue gain or advantage** for himself, relatives, associates, or partners.
- ❖ If any gain is made, it must be **repaid to the company**.

5. Not Assign Office – Section 166(6)

- ❖ A director must not assign his office to another person.
- ❖ Such assignment is void ab initio.

6. Compliance with the Act and Articles – Section 166(1)

- ❖ Must act in accordance with the Articles of the company and the provisions of the Companies Act, 2013.

Penalty for Contravention of Section 166:

If a director contravenes the provisions of Section 166:

- ❖ He is liable to a fine of ₹1 lakh to ₹5 lakh.

Additional Duties under Other Provisions

Duty	Section
Disclosure of interest in contracts	Section 184
Avoiding conflict in related party transactions	Section 188
Signing financial statements and Board's report	Section 134
Duty to attend board meetings regularly	Section 173
Duty to ensure compliance with CSR (if applicable)	Section 135
Duty to inform about resignation or disqualification	Section 168 & 164

Summary Table

Category	Powers	Duties
Legal Basis	Sections 179 to 183, 180	Section 166, 184, 188
Type	General powers, specific powers, reserved powers	Fiduciary duties, statutory duties
Exercised By	Board resolution or with shareholders' approval	Individually by directors
Breach Consequence	Void acts, penal provisions	Fine up to ₹5 lakh, personal liability
Objective	Operate the company effectively and lawfully	Protect interests of company and stakeholders

In simple, Delegable & Non-Delegable powers are as follows,

Powers	Delegable?	Remarks
To make calls on shareholders in respect of money unpaid on shares	✓ Delegable	Can be delegated to a committee, MD, or principal officer
To issue securities, including debentures	✓ Delegable	Subject to conditions; often delegated to a committee or key personnel
To borrow money	✓ Delegable	Subject to limits and articles of the company
To invest the funds of the company	✓ Delegable	Commonly delegated to CFO or investment committee

To grant loans or give guarantees/security	✓ Delegable	With Board-defined limits and internal controls
To approve financial statements and Board's Report	✗ Non-delegable	Must be done in a Board Meeting
To diversify the business	✗ Non-delegable	Significant decision requiring full Board approval
To approve amalgamation, merger or reconstruction	✗ Non-delegable	Strategic decision, must be approved in a meeting
To take over a company or acquire a controlling interest	✗ Non-delegable	Critical business decision
To authorize buy-back of securities	✗ Non-delegable	Must be exercised by the Board itself

Simple note:

- ❖ **Delegable powers:** Routine operational decisions (e.g., borrowings, loans, investments)
- ❖ **Non-delegable powers:** Major strategic and statutory functions (e.g., approving financials, mergers)

Key Managerial Personnel (KMP)

1. Meaning of KMP

Section 2(51) of the Companies Act, 2013 defines **Key Managerial Personnel (KMP)** as:

"Key managerial personnel", in relation to a company, means:

- Chief Executive Officer (CEO) or Managing Director (MD) or Manager
- Company Secretary (CS)
- Whole-Time Director (WTD)
- Chief Financial Officer (CFO)
- Such other officer as may be prescribed

Explanation (Rule 8 & Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014):

- ❖ "Such other officer" includes an officer not more than one level below directors who is in whole-time employment and is designated as KMP by the Board.

2. Applicability of Appointment of KMP

As per **Section 203(1)** read with **Rule 8**, the following companies are **mandated** to appoint whole-time KMP:

Company Type	Applicability
Listed Companies	Mandatory
Unlisted Public Company with:	
- Paid-up capital of ₹10 crore or more	Mandatory

Private Company with:	
- Paid-up capital of ₹10 crore or more (Rule 8A)	Must appoint Company Secretary only

Latest Amendment (as per Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020):

Private companies (with paid-up share capital of ₹10 crore or more) are **only required to appoint a CS**, not other KMPs.

3. KMP vs Managerial Personnel

Basis	KMP (Section 2(51))	Managerial Personnel (Section 2(53))
Definition	Includes CEO/MD/Manager, WTD, CS, CFO	Refers only to MD/Manager/WTD
Scope	Broader	Narrower
Appointment covered under	Section 203	Section 196
Applies to	Listed & large unlisted public/private companies	All companies having MD/WTD/Manager
Basis	KMP (Section 2(51))	Managerial Personnel (Section 2(53))

4. Appointment of KMP - Section 203

Requirements:

- ❖ Board must appoint **MD/Manager/CEO, WTD, CFO, and CS** as KMPs in companies where Section 203 applies.
- ❖ A whole-time KMP shall not hold office in more than one company, except in:
 - ✓ **Subsidiary company**, or
 - ✓ With **Board's approval** of both companies.

Procedure for Appointment:

1. **Board Resolution** is mandatory.
2. Appointment must be **notified to ROC** in **Form DIR-12** (for director KMPs) and **Form MR-1** (for MD/WTD/Manager).
3. Must be appointed within **6 months of vacancy**.

5. Restrictions and Conditions:

Provision	Requirement/Restriction
Multiple roles	A person can be both MD and CEO , or WTD and CFO
Holding office in other company	Only in subsidiary or with Board's approval
Vacancies in KMP positions	Must be filled within 6 months
KMP disqualifications	Same as director disqualifications (Section 164)

6. Functions of KMPs (Practical and Legal)

KMP Role	Key Functions
MD/CEO	Day-to-day management, policy execution, board representation
WTD	Full-time employee with executive authority
CFO	Financial reporting, budgeting, regulatory filings, internal control
CS	Compliance with secretarial standards, ROC filing, conducting Board/GM meetings
Manager	Manage substantially whole affairs (if no MD is appointed)

7. Penalties for Non-Compliance - Section 203(5)

If a company fails to comply with the appointment of KMP:

- ❖ **Company:** Penalty of ₹5 lakh
- ❖ **Every director and KMP in default:** Penalty of ₹50,000
 - ✓ ₹1,000 per day for continuing default (subject to max ₹5 lakh)

8. Disclosures Regarding KMP

Disclosure Point	Where Disclosed
Names and designations of KMP	Annual Return (MGT-7), Financial Statements
Appointment and resignation	ROC forms (DIR-12 / MR-1), Board's Report
Remuneration of KMP	Board's Report (Section 197(12) & Rule 5)
Shareholding (if any)	Register of KMP under Section 170

9. Removal and Resignation of KMP

- KMPs can **resign voluntarily** by giving written notice.
- Company must **file DIR-12** with ROC.
- Resignation must be **noted in the next Board Meeting**.
- Company must **fill the vacancy within 6 months**.

10. Latest Amendments & Exemptions (as applicable):

Type of Company	Relaxation Available
Private Company	Only CS required if paid-up capital ≥ ₹10 crore (Rule 8A)
Government Company	Relaxation from KMP provisions under certain conditions
Start-ups/Small Companies	No requirement to appoint KMP

Summary Chart - KMP at a Glance

Designation	Mandatory for (Companies)	Can hold office in another Co.?
CEO/MD/Manager	Listed + unlisted public $\geq$ ₹10 Cr	Only in subsidiary or with approval
CFO	Listed + unlisted public $\geq$ ₹10 Cr	Same as above
Whole-Time Director	Listed + unlisted public $\geq$ ₹10 Cr	Same as above
CS	Listed + unlisted public $\geq$ ₹10 Cr; Pvt $\geq$ ₹10 Cr	Same as above
Other KMPs (by Board)	Optional	Same as above

Concept of "Compensation for Loss of Office"

(Sections 191 & 202 of Companies Act, 2013)

❖ Meaning

"Compensation for loss of office" refers to **payment or benefits** given to a **managing director (MD), whole-time director (WTD), manager, or director**, when they **resign, are removed, or cease** to hold office **before the completion of their term**.

This is often called a "Golden Handshake".

SECTION 202 - Compensation to MD / WTD / Manager

❖ When Compensation is Allowed (Sec. 202)

A **Managing Director, Whole-Time Director, or Manager** can be paid compensation if they:

Conditions Met	Explanation
Cease to hold office before term expires	Due to termination, resignation, or non-renewal
Are not guilty of fraud or misconduct	If guilty → No compensation
Compensation is approved by Board	And complies with Articles
Does not exceed prescribed limits	(See Section 202(3) below)

❖ When Compensation is NOT Allowed

As per **Section 202(2)**, no compensation shall be paid if:

Reason of Termination	Compensation Not Allowed
Due to fraud, negligence, misconduct	✗ Not entitled
Due to disqualification under Section 164	✗ Not entitled
Office vacated under Section 167	✗ Not entitled
Company is wound up due to fraud/misconduct of such person	✗ Not entitled
Resignation voluntarily without valid reason	✗ Generally not entitled

❖ Limit on Compensation – Section 202(3)

Compensation must **not exceed the remuneration** that the director would have earned for the **residual term of office** or for **three years**, whichever is less.

Example:

- ✓ Mr. X (MD) was appointed for 5 years at ₹20 lakh/year.
- ✓ He is terminated after 2 years → residual term = 3 years.
- ✓ Max compensation = 3 years × ₹20 lakh = ₹60 lakh.

Summary:

- ✓ Always look for **misconduct, disqualification, or vacation of office** to determine eligibility
- ✓ Maximum amount = **remuneration for remaining term (or) 3 years, whichever is less**

Difference Between MD, WTD & Manager

(Sections 2(54), 2(94), 2(53), 196, 203 of Companies Act, 2013)

1. Managing Director (MD)

[Section 2(54)]

A **Managing Director** is a director who is entrusted with **substantial powers of management** of the affairs of the company.

Key Features:

- ❖ He must be a **director**.
- ❖ He has **substantial powers** (not administrative or routine).
- ❖ Powers can be by **virtue of Articles, Board resolution, or agreement**.

2. Whole-Time Director (WTD)

[Section 2(94)]

A **Whole-Time Director** is a director in the **whole-time employment** of the company.

Key Features:

- ❖ Must be a **director**.
- ❖ Is a **full-time employee**.
- ❖ May or may not have substantial powers.
- ❖ He is bound by the terms of employment like any other employee.

3. Manager

[Section 2(53)]

A **Manager** is an individual (need not be a director) who is responsible for **management of the whole or substantially the whole** of the affairs of the company.

Key Features:

- ❖ **Need not be a director**.
- ❖ May or may not be on the Board.
- ❖ Subordinate to the Board of Directors.
- ❖ Can have **executive powers**.

Summary Table: Comparison of MD, WTD, and Manager

Basis	Managing Director (MD)	Whole-Time Director (WTD)	Manager
Must be a Director?	Yes	Yes	Not necessary
Employment	May or may not be full-time	Must be full-time	Full-time
Substantial powers?	Yes	Not mandatory	Yes
Subordinate to Board?	Yes (but has board-delegated power)	Yes	Yes
Governing Section	Section 2(54)	Section 2(94)	Section 2(53)

Appointment Process for MD / WTD / Manager

[Section 196 read with Schedule V and Rule 3 of Appointment and Remuneration Rules]

1. Eligibility Criteria:

Criteria	Requirement
Age	21 years $\leq$ Age $\leq$ 70 years (Above 70 $\rightarrow$ Special Resolution needed)
Citizenship	Should be a resident of India (for Managerial Personnel)
Disqualifications	Not disqualified under Section 164

2. Approval Process for Appointment

Step-by-Step:

a. Board Meeting:

- ❖ Pass **Board Resolution** to appoint MD/WTD/Manager.
- ❖ Fix **terms, conditions, and remuneration**.

b. General Meeting:

- ❖ **Ordinary Resolution** (if within limits of Schedule V), or
- ❖ **Special Resolution** (if exceeding limits or age > 70).

c. File with ROC:

- ❖ File **Form MR-1** within **60 days** of appointment.

d. If remuneration exceeds limits (and Schedule V conditions not met):

- ❖ Prior **Central Government** approval required.

3. Term of Appointment:

- ❖ **Maximum 5 years** at a time.
- ❖ Can be reappointed **within 1 year before expiry** of term.
- ❖ Cannot be appointed for a term exceeding 5 years at once.

4. One Person Rule - Section 196(1):

A company shall **not** appoint both a **Managing Director** and a **Manager** at the same time. However, a company **can** appoint both an **MD** and **WTDs**.

5. Listed Companies – Additional Compliance (SEBI LODR):

- ❖ Disclosure of appointment/reappointment must be made to the stock exchange.
- ❖ NRC and Board must recommend appointment before shareholder approval.

Notes:

- ❖ **Private companies** have **relaxation**: They can appoint MD/WTD/Manager without following Schedule V (MCA Notification).
- ❖ **Government Companies** and **section 8 companies** may have separate rules/guidelines from their regulators.

Directors and Related Party Restrictions under Companies Act, 2013

Covered Topics:

- A) Making Loans to Directors – Section 185
- B) Disclosure of Interest by Director – Section 184
- C) Holding of Office or Place of Profit by Director or Relative – Section 188

A) Making Loans to Directors – Section 185

Prohibition under Section 185(1):

A company shall not directly or indirectly:

- ❖ Advance any loan, including book debt,
- ❖ Give guarantee or
- ❖ Provide security in connection with any loan taken by:

Prohibited Persons (Sec 185(1))
1. Any director of the company or its holding company
2. Any partner or relative of such director
3. Any firm in which such director or relative is a partner

Such transactions are completely prohibited, irrespective of shareholder or board approval.

Permitted Loans Under Section 185(2):

Company may give loan, guarantee, or security to the following, subject to special resolution (SR) by shareholders:

Permitted to	Conditions
1. Any private company in which any such director is a member or director	✓ SR + use of funds for principal business activity only
2. Any body corporate whose Board or members are accustomed to act on the advice of the lending company's director	✓ SR + for principal business use

3. Any person/entity in whom director is interested	✓ SR + company should have clean records (no default in repayment of deposits/debentures)
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Note: The **explanatory statement** to SR must disclose:

- ❖ Full particulars of the transaction,
- ❖ Purpose,
- ❖ Nature of relationship.

Exemptions under Section 185(3):

Following entities are **exempted** from Section 185 prohibitions:

Exempted Cases	
1.	Loans to MD/WTB as part of conditions of service or pursuant to a scheme approved by shareholders
2.	Loans in ordinary course of business by NBFC or banking companies, charging interest ≥ prescribed rate
3.	Loan to wholly owned subsidiary (WOS) for its principal business
4.	Guarantee/security for loan by holding company to its WOS

Penalty (As per Companies Amendment Act, 2017):

Defaulting Party	Penalty
Company	Fine: ₹5 lakh to ₹25 lakh
Officer in default	Imprisonment up to 6 months or fine ₹5 lakh to ₹25 lakh, or both
Recipient of loan	Imprisonment up to 6 months or fine ₹5 lakh to ₹25 lakh, or both

B) Disclosure of Interest by Director - Section 184

Objective:

To ensure that directors do not take part in decisions where they have a **conflict of interest**.

Section 184(1): General Disclosure (Annual/Change-based)

Every director must:

- ❖ Disclose his interest in any company, body corporate, firm, or association of individuals, including shareholding.
- ❖ Must be made:
 - ✓ At the first Board meeting in which he participates as a director,
 - ✓ At the first Board meeting of every financial year, and
 - ✓ Whenever there is a change in disclosures.

Disclosure is made in **Form MBP-1**.

Section 184(2): Specific Disclosure in Transaction

If a director is **directly or indirectly interested** in a contract or arrangement with:

- ❖ A **body corporate** where he holds $\geq 2\%$ shareholding or is a promoter/manager/director,
- ❖ A **firm** in which he is partner/owner/member,

He must:

- ❖ Disclose nature of interest **at the board meeting**, and
- ❖ **Not participate** in the meeting where that contract is discussed.

Non-Compliance - Section 184(4):

Offence	Penalty
Contravention of Section 184	Penalty: ₹1 lakh
Contract entered without disclosure	Contract is voidable at option of the company

c) Holding of Office or Place of Profit - Section 188(1)(f)

Meaning of 'Office or Place of Profit'

A director or related party is said to hold an **office or place of profit** if:

They receive **any remuneration, salary, fees, commission, perquisites, rent-free accommodation**, or other benefits in addition to director remuneration.

Who is Covered?

- Director
- Relative of director
- Firm or private company in which director/relative is a partner/member
- Any related party under Section 2(76)

When Office of Profit Requires Approval?

Holder of Office	Requires Special Resolution if Remuneration Exceeds
Director	Always needs special resolution
Relative of director	If monthly remuneration > ₹2.5 lakh

Procedure for Approval:

1. Board Approval - with quorum excluding interested director.
2. **Shareholders' approval by Special Resolution** in General Meeting.
3. **Disclosure in notice of GM**: nature of concern, material terms, interest, etc.
4. **Entry in register** of contracts u/s 189.

Non-Compliance Consequences:

- ❖ Contract is **voidable** at the option of the Board or shareholders.
- ❖ Company may **recover the profit** made from the director or relative.

- ❖ Penalty under **Section 188(3)**:
 - ✓ Director/party must **refund any undue gain**.
 - ✓ Fine up to **₹25 lakh** may be imposed.

Summary Table

Topic	Section	Key Rule
Loans to Directors	Sec 185	Strictly prohibited to directors & relatives, allowed to certain entities with conditions
Disclosure of Interest	Sec 184	Mandatory at first meeting, every FY, and upon change; no participation in interested items
Office/Place of Profit	Sec 188(1)(f)	Director/relative needs special resolution for remuneration beyond limits

Composition of BOD - Regulation 17 of SEBI (LODR), 2015

a. Optimum Combination

- The Board must have an optimum combination of executive and non-executive directors, with at least one woman director.

b. Independent Directors Requirement

- If Chairman is non-executive → At least 1/3rd of the Board should be independent directors.
- If Chairman is executive → At least half of the Board should be independent directors.
- If Chairman is a promoter or related to promoters/persons in management (even if non-executive) → At least half of the Board should be independent directors.

c. Top 1000 / 2000 Listed Entities

- Top 1000 listed companies (by market cap) → must have at least one independent woman director.
- Top 2000 listed companies (by market cap) → must have at least one woman director (not necessarily independent).

Memory tip:

- "Half, when Executive / Promoter"
- "One-third, when Non-executive"
- Always one woman director (and independent if in top 1000).

6. BOARD MEETINGS AND PROCEDURES

(Sections 173 to 175, read with Companies (Meetings of Board and its Powers) Rules, 2014)

1. Frequency of Board Meetings - Section 173(1)

a. For Companies (other than OPC, Small Co., Dormant Co.)

Requirement	Rule
Minimum number of Board Meetings per year (here no clarity about F.Y, C.Y. But, C.Y is apt)	4 meetings
Maximum gap between two meetings	Not more than 120 days

b. For OPC, Small Company, Dormant Company, Sec-8 Company, Pvt. startup Co, (as per MCA Notification dated 13 June 2017):

Requirement	Rule
Minimum number of Board Meetings per year	At least 1 Board Meeting in each half of the calendar year
Gap between two meetings	Minimum 90 days between meetings

2. Notice of Board Meeting - Section 173(3)

Requirements:

Particular	Details
Who can call the meeting	Company Secretary or any Director authorized
Mode of notice	By hand delivery, post, courier, email or electronic means
Minimum notice period	At least 7 days before the meeting
Format	Must be in writing
To whom	All directors at their registered address in India

Shorter Notice:

Permitted in case of urgent business, but:

- ❖ At least one Independent Director (if applicable) must be present.
- ❖ If not present, decision must be ratified later by at least one Independent Director.

3. Quorum for Board Meeting - Section 174

General Rule:

- ✓ Minimum Quorum = $\frac{1}{3}^{\text{rd}}$ of total strength or 2 directors, whichever is higher
(Any fraction is rounded up to the next whole number)
- ✓ Quorum for Sec-8 Company = $\frac{1}{4}^{\text{th}}$ of total strength or 8 directors, whichever is lower

Notes:

Rule	Explanation
Interested Directors are excluded	From quorum for that specific item
Participation via video conference	Is counted for quorum (Section 173(2))
Quorum must be present throughout	The entire meeting duration
Leave of absence	Do not reduce total strength for quorum

4. Participation in Board Meeting (Video Conferencing & Other Audio-Visual Means)

Section 173(2) read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014:

- ❖ Directors can participate **physically** or via **video conferencing (VC)** or other **audio-visual means (OAVM)**.
- ❖ Such participation is **equivalent to physical attendance**.
- ❖ **Company must maintain recorded proof** of attendance.
- ❖ Roll call at the start of the meeting is mandatory to ensure:
 - ✓ **Identity, location, and clear audio/video presence.**

Matters restricted from being dealt with via VC/OAVM:

The following matters **should not be dealt with via VC/OAVM**, unless otherwise allowed by MCA:

Restricted Matters (Rule 4)
1. Approval of Annual Financial Statements
2. Approval of the Board's Report
3. Approval of prospectus
4. Matters relating to amalgamation, merger, demerger, acquisition
5. Audit Committee's approval of financial statements
6. Filling casual vacancy in office of auditor (now allowed via VC as per latest MCA Circulars)

However, **MCA has temporarily relaxed some restrictions via circulars** (especially during COVID), allowing even restricted items to be approved via VC.

5. Passing Resolution by Circulation - Section 175**What is it?**

A resolution passed **without a physical/VC meeting** by **circulating the draft resolution** to all directors and receiving majority approval.

Note: (If 1/3rd of BOD insisted on physical meeting, then RBC not allowed)

Conditions:

Condition	Description
Draft resolution	Must be sent to all directors at their registered address
Mode	Hand delivery, post, courier, or email

Approval	Must be approved by a majority of directors entitled to vote
Noting	Must be noted in next Board Meeting and entered in minutes

✗ Resolutions that **CANNOT** be passed by circulation:

Listed in **Section 179(3)** read with **Rule 8**, such as:

Not Permitted to be Passed by Circulation
Making calls on shares
Authorizing buy-back
Borrowing money
Investing company funds
Granting loans/giving guarantees
Approval of financial statements & Board's Report
Amalgamation, merger, reconstruction
Diversifying business
Acquisition/takeover

Summary Table

Topic	Key Rule/Provision
Frequency of Meetings	Sec 173(1); Min. 4/year; Max gap: 120 days
OPC/Small Co. Meetings	1 per half-year, gap $\geq$ 90 days
Notice	Sec 173(3); Min. 7 days; to all directors
Quorum	Sec 174; 1/3 rd or 2 directors (whichever is higher)
VC Participation	Allowed; counted in quorum
Circulation Resolution	Sec 175; Allowed except for restricted matters

Minutes and Registers under Companies Act, 2013

These are part of a company's statutory records and are essential for ensuring **transparency**, **compliance**, and **accountability** in corporate governance.

PART A: MINUTES OF MEETINGS

Relevant Sections: 118 & 119, Companies (Management and Administration) Rules, 2014

1. **Meaning of Minutes**

"Minutes" are a **written record of the proceedings and decisions** of a meeting, including resolutions passed.

Minutes are prepared for:

- ❖ **Board Meetings**
- ❖ **General Meetings (AGM/EGM)**
- ❖ **Meetings of Committees of the Board**

2. Types of Minutes

Type of Meeting	Type of Minutes Maintained
Board/Committee Meeting	Minutes under Section 118(1) (Secretarial Standard SS-1)
General Meeting	Minutes under Section 118(1) (Secretarial Standard SS-2)

3. Key Provisions (Section 118)

Provision	Rule/Requirement
Minutes to be prepared	Within 30 days of the conclusion of the meeting
Mode of Maintenance	In physical or electronic form , bound or in a tamper-proof format
Signing of Minutes (General Meeting)	By Chairman of the meeting
Signing of Minutes (Board Meeting)	By Chairman of the meeting or next Board Meeting
Page Numbering	Every page should be serially numbered and initialed
No alteration	Once entered, minutes cannot be altered

4. Secretarial Standards: SS-1 & SS-2

Standard	Title	Applicability
SS-1	Secretarial Standard on Board Meetings	Mandatory for all companies (except OPCs)
SS-2	Secretarial Standard on General Meetings	Mandatory for all companies (except OPCs)

5. Preservation of Minutes (Rule 25)

Type of Meeting	Preservation Period
General Meetings	Permanently
Board/Committee Meetings	Permanently

6. Inspection of Minutes - Section 119

Type of Meeting	Who Can Inspect?	Right to Obtain Copy?
General Meetings	Members	✓ Yes (on request with fee)
Board Meetings	Directors only (not public)	✗ No public access

Refusal to permit inspection → Penalty of ₹25,000 for company + ₹5,000 for every officer in default.

PART B: REGISTERS TO BE MAINTAINED

Relevant Sections: 88 to 95, 170, 189

1. Register of Members – Section 88

Mandatory for every company to maintain a **register of members**, showing:

- ❖ Names
- ❖ Address
- ❖ Date of becoming member
- ❖ Shareholding details

Also includes:

- ❖ Register of Debenture Holders
- ❖ Register of Other Security Holders

Must be maintained:

- ❖ Physically or electronically
- ❖ At Registered Office or another place with ROC approval

2. Register of Directors and KMP – Section 170

Maintained by:

Company

Details include:

- ❖ DIN
- ❖ Name, Address
- ❖ Date of appointment
- ❖ Positions held
- ❖ Shareholding in company or holding/subsidiary/associate company

Inspection: Open to members during business hours.

3. Register of Contracts or Arrangements in which Directors are Interested – Section 189

Maintained under **Section 184** disclosures

Applies To	Details Required
All companies (except private)	Contracts with director/relative or related party, office/place of profit, etc.

- ❖ Maintained in **Form MBP-4**
- ❖ Enter particulars within **7 days** of approval
- ❖ **Preserved for 8 years**
- ❖ If **184(2)** not applies to a company, obviously **189** also not applicable

Note: For Pvt.co's 184(2) not applicable if,

- they don't have any L.B (Large Borrowing) from Banks/FI/Body corporates
L.B=(2xPSC) / 50cr, w.e.less, AND
- the company has not defaulted in repayment of such borrowing

4. Other Statutory Registers

Register	Relevant Section	Applicability
Register of Charges	Sec 85	All companies
Register of Renewed and Duplicate Shares	Sec 88(4)	All companies
Register of Sweat Equity Shares	Rule 8 of SH Rules	If such shares are issued
Register of Employee Stock Options	Rule 12 of SH Rules	If ESOPs are granted
Register of Buy-back of Shares	Rule 17 of SH Rules	If buy-back is undertaken
Register of Deposits	Rule 14 of Deposit Rules	If deposits are accepted

5. Penalties for Non-Maintenance of Registers

Default	Penalty
Not maintaining/registering minutes	Company: ₹25,000 to ₹1,00,000 + Officer: ₹10,000 to ₹50,000
Not maintaining registers (Sec 88)	Company: ₹50,000 + ₹1,000/day up to ₹3,00,000 for company + ₹1,00,000 for officers

Summary Table: Registers & Minutes

Record Type	Section	Applicable To	Preservation
Minutes of Meetings	Sec 118	All Companies (except OPC for Board)	Permanent(Board); Permanent (GM)
Register of Members	Sec 88	All Companies	Permanent
Register of Directors & KMP	Sec 170	All Companies	Permanent
Register of Interests	Sec 189	All Companies (except private in some cases)	8 years

Committees of the Board of Directors under the Companies Act, 2013

To ensure good governance, transparency, and accountability, the Companies Act, 2013 mandates the constitution of various committees by the Board of Directors in specified classes of companies.

The key committees are:

1. **Audit Committee**
2. **Nomination and Remuneration Committee (NRC)**
3. **Stakeholders Relationship Committee (SRC)**
4. **Corporate Social Responsibility Committee (CSR Committee)**
5. **Risk Management Committee** (under SEBI LODR for listed entities)

1. Audit Committee - [Section 177 of the Companies Act, 2013]

Applicability:

Mandatory for,

- ❖ Every listed company;
- ❖ Public companies with:
 - ✓ Paid-up capital $\geq$ ₹10 crores, or
 - ✓ Turnover $\geq$ ₹100 crores, or
 - ✓ Outstanding loans/borrowings/debentures $\geq$ ₹50 crores.

Composition:

- ❖ Minimum 3 directors;
- ❖ Majority should be Independent Directors;
- ❖ Members must be financially literate;
- ❖ Chairperson must be an Independent Director;
- ❖ Company Secretary acts as Secretary to the committee.

Functions & Duties:

- ❖ Recommend appointment/removal/remuneration of auditors;
- ❖ Review auditor's independence & performance;
- ❖ Examine financial statements and auditor's report;
- ❖ Approval/review of Related Party Transactions (RPTs);
- ❖ Scrutiny of inter-corporate loans/investments;
- ❖ Evaluation of internal controls & risk management systems;
- ❖ Oversee vigil mechanism (whistle blower policy);
- ❖ Review internal audit reports and findings;
- ❖ Discuss financial statements before submission to the Board.

2. Nomination and Remuneration Committee (NRC) - [Section 178(1)]

Applicability:

Mandatory for,

- ❖ Every listed company;
- ❖ Public companies with:
 - ✓ Paid-up capital $\geq$ ₹10 crores, or
 - ✓ Turnover $\geq$ ₹100 crores, or
 - ✓ Outstanding loans/borrowings $\geq$ ₹50 crores.

Composition:

- ❖ Minimum 3 non-executive directors;
- ❖ At least 50% must be Independent Directors;
- ❖ Chairperson should be an Independent Director;
- ❖ Chairperson of the company may be a member but not the chair of the committee.

Functions & Duties:

- ❖ Identify and recommend individuals for appointment as directors and KMPs;
- ❖ Formulate criteria for performance evaluation of Board and its committees;
- ❖ Recommend remuneration policy for directors, KMPs, and senior management;
- ❖ Ensure remuneration is reasonable and performance-linked;
- ❖ Devise Board diversity policy.

3. Stakeholders Relationship Committee (SRC) - [Section 178(5)]

Applicability:

Mandatory for,

- ❖ Every company having more than **1,000** shareholders, debenture-holders, deposit-holders, and any other security holders at any time during a financial year.

Composition:

- ❖ Chairperson should be a non-executive director;
- ❖ Other members can be decided by the Board;
- ❖ No requirement of Independent Directors.

Functions & Duties:

- ❖ Resolve grievances of shareholders and security holders;
- ❖ Handle complaints related to transfer/transmission of shares, non-receipt of dividends, annual reports, etc.;
- ❖ Monitor share transfer processes;
- ❖ Ensure proper redressal of stakeholder complaints.

4. Corporate Social Responsibility Committee - [Section 135]

Applicability:

CSR provisions become applicable to a **company (including holding, subsidiary, foreign company)** if, during **any financial year**, it meets **any one** of the following thresholds:

1. **Net Worth** $\geq$ ₹500 crore, OR
2. **Turnover** $\geq$ ₹1,000 crore, OR
3. **Net Profit** $\geq$ ₹5 crore

Once applicable, the company must spend **at least 2% of the average net profits of the 3 immediately preceding financial years** on CSR activities.

CSR Committee:

- If the company is covered under CSR, but its CSR obligation does not exceed ₹50 lakh in a year, then no need to constitute CSR Committee.
- In such case, the Board itself will discharge CSR functions.

- In other words, if CSR obligation is $\geq 50L$, then company has to constitute a CSR Committee of the Board with the following composition,

Composition:

- ❖ Minimum 3 directors;
- ❖ At least 1 director should be an Independent Director;
- ❖ If company is **not** required to appoint an Independent Director (e.g., private company), then CSR Committee can be formed without an Independent Director;
- ❖ In case of foreign company: 2 persons (one resident in India, another nominated by the foreign company).
- ❖ In case of **Unlisted Public Company** (not required to appoint ID under the Act) → need not appoint an ID in CSR committee.

Functions & Duties:

- ❖ Formulate and recommend CSR policy to the Board;
- ❖ Recommend amount to be spent on CSR activities;
- ❖ Monitor the CSR policy and implementation;
- ❖ Institute a transparent monitoring mechanism.

Fund Earmarking under CSR:

Once CSR becomes applicable, the **Board of Directors** must:

- ❖ Approve the CSR policy & projects
- ❖ **Earmark (set aside/allocate)** the required CSR amount = min 2% of the average net profits of the preceding 3 financial years.
 - This earmarking happens at the beginning of the financial year when the budget is fixed.
 - The money is to be spent only on activities listed in **Schedule VII**.

Spending Time Limit:

1. **General Rule (Sec. 135(5)):**

- ✓ The company should spend the earmarked CSR amount **during the same financial year**.

2. **If the amount is unspent:**

- ✓ **Ongoing Projects** (multi-year CSR projects, up to 3 years excluding the year of commencement):
 - Unspent amount must be transferred to a special account called "**Unspent CSR Account**" within **30 days from the end of the financial year**.
 - That amount must be spent **within the next 3 financial years**.
 - If still unspent → transfer to **Fund specified in Schedule VII** (like PM National Relief Fund, PM CARES etc.) within 30 days from completion of 3rd year.

✓ **Other than Ongoing Projects:**

- Unspent amount must be transferred directly to a Fund specified in Schedule VII within 6 months from the end of that financial year.

Simple Shortcut:

- Same year → spend
- Ongoing project → transfer to Unspent CSR A/c (30 days), spend within 3 years
- Not ongoing → transfer to Schedule VII Fund (6 months)

5. Risk Management Committee (Under SEBI LODR Regulations, not under Companies Act)

Applicability:

It is mandated under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR) — for listed companies only.

Applicability of RMC (as per SEBI LODR Regulation 21)

The RMC is mandatory for:

1. **Top 1,000 listed entities** (based on market capitalization) as of March 31 of every financial year.
2. **High Value Debt Listed Entities (HVDLEs):** Listed entities with outstanding listed debt securities of ₹500 crores or more.

Composition of the Risk Management Committee:

As per SEBI LODR:

- ❖ Minimum 3 members in the committee.
- ❖ Majority must be members of the Board of Directors.
- ❖ At least one member must be an Independent Director.
- ❖ Chairperson should be a member of the Board of Directors.
- ❖ Senior executives (e.g., Chief Risk Officer) may be invited to be part of the committee, but must not form majority. It means, these senior executives cannot outnumber the directors in the committee.
- ❖ In simple terms, they can be members, but:
 - ✓ They cannot dominate or control the committee.
 - ✓ The majority of the members must be directors, not company staff

Main Functions / Roles of the RMC

The RMC is responsible for overseeing the enterprise-wide risk management framework. Its major roles include:

1. Formulate Risk Management Policy

- ❖ Create a comprehensive policy identifying various risks: operational, financial, regulatory, cyber, reputation, environmental, etc.

2. Monitor and Review Risks

- ❖ Evaluate the effectiveness of risk management systems.
- ❖ Regularly monitor internal controls and risk exposure.

3. Cyber Security Oversight

- ❖ Assess and mitigate cyber security threats, data breaches, IT risks.

4. Review Risk Strategy

- ❖ Approve action plans for managing risks.
- ❖ Provide direction for building a risk-aware culture.

5. Coordinate with Audit Committee

- ❖ RMC works in sync with the Audit Committee regarding internal control and risk.

Meetings of the RMC (As per SEBI LODR)

- ❖ Must meet at least **twice in a financial year**.
- ❖ The **gap between two meetings** should not exceed **180 days**.
- ❖ **Quorum**: Majority of members, including at least one Independent Director.

Reporting:

- ❖ RMC's activities, findings, and decisions must be **reported to the Board** of Directors.
- ❖ Summary of the risk policy and management must be **disclosed in the Annual Report**.

Risk Management Policy Should Cover:

- ❖ Risk philosophy and strategy;
- ❖ Structure for risk governance;
- ❖ Identification, measurement, and mitigation of risks;
- ❖ Business continuity planning;
- ❖ Roles and responsibilities of risk owners and reviewers.

Examples of Key Risks Reviewed

Risk Type	Example
Financial Risk	Liquidity, Credit risk, FX fluctuations
Operational Risk	Supply chain failure, plant accidents
Cyber Risk	Data breaches, ransomware
Reputational Risk	Negative media, social backlash
Regulatory Risk	Legal penalties, non-compliance

Summary Table for Exam

Aspect	Details
Law Governing	SEBI LODR, not Companies Act
Applicability	Top 1,000 listed cos & HVDLEs
Members	Min 3; Majority Board Members; 1 Independent Director
Chairperson	Board Member

Meetings	At least 2 per year; ≤ 180 days apart
Key Functions	Identify, monitor, and mitigate enterprise-wide risks
Link to Board	Reports findings to the Board
Cyber Risk	Explicitly included in duties

General Provisions Applicable to Committees:

1. Meetings:

- ❖ Frequency as per Charter or Board decisions;
- ❖ Minimum once a year (more frequently in Audit/NRC);
- ❖ Quorum: Generally 2 members or 1/3rd of total members (whichever is greater).

2. Minutes:

- ❖ Minutes of committee meetings should be recorded and signed;
- ❖ Copies to be placed before the Board for noting.

3. Powers:

- ❖ Committees can seek external professional advice;
- ❖ May invite outsiders (experts, consultants) to meetings if required.

Important Notes for CMA Final Preparation

Committee Name	Composition	Applicability	Key Duties
Audit Committee	Min. 3 Directors; Majority Independent	Listed Cos. + Public Cos. (capital/turnover/borrowings thresholds)	Financial oversight, audit, RPTs, vigil mechanism
NRC	Min. 3 Non-Exec Directors; 50% Independent	Same as Audit Committee	Appointment & remuneration policy
SRC	Chair: Non-Executive Director	Companies with $\geq 1,000$ security holders	Grievance redressal
CSR Committee	Min. 3 Directors; 1 Independent	Cos. meeting CSR threshold	CSR planning, budgeting, monitoring
Risk Mgmt. Committee	Min. 3; Majority Board members	Top 1,000 listed Co's (SEBI)	Risk evaluation & mitigation

Political Contributions by Companies - (Section 182)

1. Eligibility

- Only a **company other than a Government company** and a company that is in **existence for at least 3 financial years** can contribute to a political party.
- The political party must be **registered under Section 29A of the Representation of the People Act, 1951**.

2. Quantum of Contribution

- Earlier (before amendment), the maximum limit was **7.5% of average net profits of the last 3 financial years**.
- **After amendment (Finance Act, 2017)**, this limit has been **removed**.
- Now, eligible companies can contribute any amount to political parties.

3. Mode of Contribution

- Contributions must be made by **account payee cheque, bank draft, electronic transfer**, or through **electoral bonds**.
- **Cash contributions are prohibited** if they exceed ₹2,000.

4. Board Approval

- A **Board Resolution** in a duly convened Board Meeting is mandatory for approving such contributions.
- Political contributions **cannot be delegated** to a committee or officer.

5. Disclosure Requirements

- The company must **disclose in its Profit and Loss Account** the total amount contributed and the **name of the political party** to which the contribution was made (except where contribution is made via **electoral bonds**, where disclosure of party name is not required).

6. Penal Provisions

- If a company makes a political contribution in violation of Section 182:
 - The company is punishable with **fine up to 5 times the amount contributed**.
 - Every officer in default is punishable with **imprisonment up to 6 months and fine up to ₹5,000**.

Summary:

- ✓ Earlier 7.5% limit → **Removed by Finance Act, 2017;**
- ✓ Disclosure in P&L is compulsory;
- ✓ Contributions allowed only through cheque, draft, electronic means, or electoral bonds.

Vigil Mechanism - Section 177(9) & (10)**1. Meaning**

- Vigil mechanism is a system that allows **directors and employees** to report genuine concerns or unethical practices (commonly known as a *whistle-blower mechanism*).

2. Applicability

- **Every Listed Company**
- **Prescribed classes of companies:**
 - Companies which accept public deposits, and
 - Companies which borrow money from banks/financial institutions exceeding ₹50 crore.

3. Key Features

- Provides adequate safeguards against **victimisation** of employees and directors.
- Ensures **direct access** to the Audit Committee (or a director nominated for the purpose) in appropriate/exceptional cases.
- The details of the vigil mechanism must be **disclosed on the company's website** and in the **Board's Report**.

4. Objective

- To promote ethical conduct.
- To encourage reporting of frauds, mismanagement, or violations without fear.

7. INSPECTION, INQUIRY, AND INVESTIGATION

1. Overview

- ❖ Sections 206 to 229 of the Companies Act, 2013 provide the framework for Inspection, Inquiry, and Investigation.
- ❖ These are tools available to the Registrar of Companies (RoC), Central Government, and other authorities to examine the affairs of companies and ensure compliance with the law.

2. Inspection (Section 206)

Aspect	Details
Authority	Registrar of Companies (RoC)
When Initiated	If company fails to file returns, information is defective, or further scrutiny is required.
Process	RoC issues notice and company must provide documents in time.
Non-cooperation	May lead to inquiry under Section 206(4) or further investigation.
Penalty	Company/officer may be fined up to ₹1 lakh; ₹500/day for continuing default.
Inspection by Members	Allowed for certain registers under Section 171.

3. Inquiry (Section 206(4))

Inquiry authority also lies with ROC

The ROC may conduct an inquiry if it believes the company's business is conducted

- ❖ fraudulently,
- ❖ explanations are not satisfactory, or
- ❖ affairs are prejudicial to member/public interest

ROC can demand further documents and may recommend an investigation.

4. Investigation

Multiple types of investigation exist under the Act:

Type	Section	Initiated by
Investigation into Company Affairs	210	Central Government (ROC report, Special Resolution, Public Interest)
Serious Fraud Investigation Office (SFIO)	212	Central Government
Investigation into Related Companies (Holding/Subsidiary/Associate companies)	219	If made application by 100+ members (or 1/10th of total)
Investigation on Application by Members	213	NCLT (based on application by members or evidence)

Investigation of Ownership of Company	216	Central Government (To determine true owners / beneficial interest holders)
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Section 210 - Investigation into Affairs of the Company

Triggering Conditions	Details
Based on ROC or inspector's report	If business is being conducted fraudulently
Special resolution passed by company	Voluntary investigation
In public interest	As deemed necessary by the Central Government
Appointed Inspectors	Central Government appoints inspectors to carry out the investigation

Section 212 - Investigation by SFIO

Serious Fraud Investigation Office (SFIO)	Details
Nature	Specialized body under MCA for investigating complex frauds
Trigger	By order of Central Government
Powers	Same as a civil court: summon, enforce attendance, search, seize
Arrest Powers	Yes, with prior approval of CG (added under Companies (Amendment) Act, 2015)
Report	SFIO submits its report to the Central Government

Section 213 - Investigation by NCLT Order

Who can apply	Conditions for NCLT to order investigation
- 100 or more members of company	- Affairs are being conducted fraudulently
- Members holding $\geq 10\%$ voting power	- Company formed for fraudulent or unlawful purpose
- Any person with evidence	- Management is guilty of fraud, misfeasance, or misconduct

Section 216 - Investigation of Ownership

Purpose	To determine who are the real owners or beneficial shareholders of the company.
Who can initiate	Central Government
When	If it appears that affairs are being conducted in a way to conceal ownership

5. Rights & Powers of Inspectors (Sec 217)

Inspectors have the power to:

- ❖ Call for books and documents from company and related companies
- ❖ Examine officers on oath
- ❖ Seize documents with prior approval (Sec 220)
- ❖ Extend investigation to holding, subsidiary, associate companies (Sec 219)
- ❖ Submit report to CG (interim or final)

6. Legal Proceedings and Penalties

Offence	Penalty
Non-cooperation during inspection/investigation	Fine up to ₹1 lakh + ₹500/day for continuing default
Fraud found in investigation	Imprisonment (6 months to 10 years) + Fine (at least amount involved, up to 3x)
False evidence to inspector	Imprisonment up to 2 years + fine
Destroying documents, tampering with evidence	Imprisonment up to 3 years + fine

Summary

Process	Conducted By	Used When
Inspection	Registrar of Companies	Routine checks or specific concerns
Inquiry	Registrar of Companies	Serious issues suspected
Investigation	Central Govt / SFIO / NCLT	Fraud, misconduct, or ownership concerns

Compromise, Arrangement & Amalgamation

Definitions

❖ **Compromise:**

An agreement between a company and its creditors or members to restructure debts or rights; typically used to help financially distressed companies.

❖ **Arrangement:**

Any adjustment in the rights of members or creditors among themselves (e.g. change in shareholding, conversion of securities).

❖ **Amalgamation:**

Merger of two or more companies into one, where the transferor companies cease to exist and assets/liabilities are transferred to transferee company.

Section 230: Compromise & Arrangement – Detailed Process

Stepwise Procedure

1. Application to NCLT

- ❖ Filed by company, any member, creditor, or liquidator.
- ❖ Must provide disclosures:
 - a. latest financials,
 - b. auditor's report,
 - c. pending investigations,
 - d. capital reduction,
 - e. corporate debt restructuring (if $\geq 75\%$ secured creditors agree)

2. Tribunal Directions & First-Motion Hearing

- ❖ NCLT may order meetings of separate classes of creditors/members.
- ❖ Furnish valuation report, auditor's certificate, and creditor responsibility statement

3. Notice & Advertisement

- ❖ Notices sent individually to all members, creditors, debenture holders and to authorities: ROC, RD, Income-Tax, RBI, SEBI, CCI, Official Liquidator, sectoral regulators. Representations due within 30 days
- ❖ Notice of meetings advertised (Form CAA.2) in at least one English and one vernacular newspaper and on company website ≥ 1 month prior

4. Meetings: Dual-Majority Requirement

- ❖ Voting turnout > 50% and approval by $\geq \frac{3}{4}$ in value of each class (dual majority)
- ❖ If $\geq 90\%$ of value consents via affidavit, NCLT may dispense with convening meeting

5. Second-Motion Hearing & Final Order

- ❖ NCLT hears objections (from authorities or objectors)
- ❖ Who can Object? ($\geq 10\%$ members / 5% creditors threshold)
- ❖ Advertisement of final petition notice ≥ 10 days prior; hearing notice served to objectors, authorities
- ❖ If scheme unsatisfactory or company insolvent, NCLT may order winding up under Sec 231

6. Sanction & Modification

- ❖ Final order in Form CAA-7; NCLT can modify scheme as needed for workable implementation

7. Post-Sanction Filing

- ❖ Order filed with ROC in Form INC-28 within 30 days
- ❖ Annual compliance filing (Form CAA-8) certified by CA/CS/CMA until scheme completion

Section 231: Tribunal's Powers for Enforcement

Once the scheme is sanctioned:

- NCLT **supervises implementation**, can issue directions or modify terms.
- If scheme cannot be implemented or debts unpaid → Tribunal can **order winding-up**, deemed under Section 273

Section 232 - Merger & Amalgamation: What It Means

Under **Section 232**, if an arrangement under Section 230 includes a **merger or amalgamation**—meaning one or more transferor companies transfer their business, assets or liabilities to a transferee company—the Tribunal can call meetings and sanction the scheme, subject to enhanced procedural safeguards

Stepwise Detailed Procedure Under Section 232

Step 1: Drafting the Scheme of Merger/Amalgamation

Prepare a comprehensive scheme covering:

- a. Appointed date / Effective date
- b. Transfer of assets and liabilities

- c. Share exchange ratio
- d. Valuation report
- e. Employee treatment, contracts, legal proceedings, etc.
- f. Valuation Report: Must be obtained from a Registered Valuer (mandatory under Sec 232(2)(d))

Step 2: Approval of the Draft Scheme by the Boards

Board of Directors of both Transferor and Transferee Companies must:

- a. Approve the draft scheme by passing a Board Resolution
- b. Authorize filing with NCLT

Filing with Stock Exchanges / SEBI:

If any company is listed, file the draft scheme with SEBI and stock exchange and get No Objection Certificate before proceeding.

Step 3: Filing Application with NCLT (First Motion)

File a joint application (or separate) with the jurisdictional NCLT under Section 232 read with Section 230, in Form NCLT-1.

Attachments include:

- a. Scheme of amalgamation
- b. Board resolutions
- c. Auditor's certificate (no adverse effect on shareholders)
- d. Valuation report
- e. Latest financials
- f. Affidavit and memorandum of application

Step 4: NCLT Directions for Meetings (Under Section 230(1))

NCLT issues an order for convening meetings of:

- a. Shareholders (equity and preference)
- b. Creditors (secured and unsecured)
- c. Debenture holders, if any

Step 5: Dispatch of Notices and Public Advertisement

Notice to all stakeholders by:

- a. Registered post or email
- b. Newspaper publication in one vernacular and one English newspaper

Notice to:

ROC, Income Tax Department, SEBI (if listed), Official Liquidator, CCI (Competition Commission of India), if thresholds are hit

Step 6: Holding Meetings

Conduct meetings as per NCLT directions.

Approval Requirement: (Dual Majority required)

- ❖ Majority of persons present and
- ❖ Voting representing: At least 75% in value of each class (as per Sec 230(6))

Step 7: Filing Second Petition with NCLT (Second Motion)

- ❖ After meetings, file second motion petition for approval of the scheme.
- ❖ File affidavit reporting the outcome of meetings.

Step 8: Final Hearing and Order by NCLT

- ❖ NCLT examines, Scheme fairness, Stakeholder objections (if any), Reports from ROC, OL, SEBI, IT Dept., etc.
- ❖ And, if satisfied, NCLT approves the scheme.

Step 9: Filing with ROC (Post-NCLT Approval)

- ❖ File certified copy of NCLT order with ROC in, Form INC-28 within 30 days
- ❖ Also file necessary documents for dissolution (if any company is to be dissolved)

Step 10: Issue of Fresh Certificate / Dissolution

Transferee company may receive a revised incorporation certificate (if required)

Transferor company stands dissolved without winding up (Sec 232(3)(b))

Summary Flowchart

1. Draft Scheme →
2. Board Approval →
3. File with NCLT →
4. NCLT orders meetings →
5. Notice/Publication →
6. Hold meetings (75% value approval) →
7. File second petition →
8. NCLT Final Order →
9. File with ROC →
10. Effect: Merger completed

Penalties for Non-Compliance

Non-Compliance	Penalty
Failure to file sanction order within 30 days	₹20,000, plus ₹1,000 per day (max ₹3 lakh)
Contravention of other provisions (e.g. execution)	₹1 lakh to ₹25 lakh; Officers defaulting: imprisonment up to 1 year or ₹1 lakh-₹3 lakh or both

Section 233: Fast-Track Merger / Amalgamation

Applicability & Eligibility

- ❖ Available for:
 - Two or more **startup companies**, or
 - One or more **startup** with one or more **small companies**, per Rule 25 (Amendment 2021)

Key Procedural Flow

1. Public Notice & Objections

- ❖ Public notice inviting objections from ROC, Official Liquidator, affected persons within 30 days

2. Declaration of Solvency

- ❖ Each company files declaration of solvency (with ROC) before convening meetings; minimum members and creditor thresholds apply

3. Meetings & Approval (> 90%)

- ❖ Meetings of members/creditors or written consent; approval must be $\geq 90\%$ in value

4. Scheme Submission to Central Govt

- ❖ Transferee company files Form CAA-11 with scheme and meeting results, fees, to Central Govt within 7 days after meeting

5. Approval / Referral

- ❖ If no objection within 30 days, RD issues confirmation (Form CAA-12).
- ❖ If objection or not in public interest, Central Govt refers to NCLT within 60 days (Form CAA-13)

6. Scheme Effect

- ❖ Upon confirmation, transferor dissolves without winding-up; same effects as Sec 232: asset/liability transfer, continuation of suits, dissenters' rights, etc.

Additional Provisions

1. Merge/Amalgamation with Foreign Company:

Governed via Section 234 (extension of Sec 233).

Similar to fast-track process, scheme to be submitted to Central Govt; deemed approval if no objection; referral to NCLT if required

2. Minority Shareholding Acquisition:

- ❖ **Sec 235:** Post-scheme acquisition of dissenting shareholders.
- ❖ **Sec 236:** Tribunal-led mechanism for valuation and buy-out of minority shares.

3. Public-Interest Amalgamation:

- ❖ **Sec 237:** Central Government can, via Gazette notification, amalgamate companies on public interest grounds without applying Sec 230/232/233 procedures

Summary Table of Key Sections

Section	Purpose	Approval Threshold	Key Feature
230	Regular compromise/arrangement	50% turnout & $\geq \frac{3}{4}$ in value (dual-majority)	Tribunal-supervised, meetings & notices
231	Tribunal's enforcement power	-	Modify scheme, supervise or order winding-up
232	Regular merger/ amalgamation via NCLT	Same dual-majority	Appointed date, auditor certificate, asset & liability transfer
233	Fast-track merger (small/start-ups)	$\geq 90\%$ consent	Central Govt confirmation, streamlined process
234	Amalgamation with foreign co.	$\geq 90\%$ consent	Central Govt route similar to Sec 233
235/236	Minority acquisition/ dissenters' buy-out	Tribunal-directed	Valuation & payment to dissenters
237	Govt-ordered amalgamation in public interest	-	No scheme process required

Important Points:

1. **Remember the "appointed date" concept:**

Scheme becomes effective from the appointed date—may precede sanction date—under Sec 232(6)

2. **Dual-majority vs $\geq 90\%$ threshold distinction:**

Regular route requires $>50\%$ turnout and $\geq \frac{3}{4}$ in value; fast-track requires $\geq 90\%$ consent.

3. **Forms & Rules:**

Be familiar with Forms NCLT-1/2/5/6, CAA-2/4/5/7/11/12/13 and Rules 3, 6, 25—especially for Sec 230 and Sec 233 procedures.

4. **Notice timelines:**

30-day representation window for authorities, 10-day notice before final hearing, 1-month notice before meetings.

5. **Annual compliance:**

Form CAA-8 due each financial year until full implementation.

6. **Tribunal's power under Sec 231:**

Monitor scheme implementation and enforce modifications or winding-up.

Oppression and Mismanagement

Aim of the provisions in this chapter is to **protection of minority shareholders** against misuse of powers by majority shareholders or mismanagement by those in control of the company.

Relevant Sections:

- ❖ **Sections 241 to 246** of the Companies Act, 2013
- ❖ **Rules:** Companies (Prevention of Oppression and Mismanagement) Rules, 2016
- ❖ **Sections 245 & 246** - Class Action

Meaning of Oppression:

- ❖ **Oppression** is not defined explicitly in the Act, but the meaning is derived from **judicial interpretations**.
- ❖ As per various court rulings, **Oppression** means:
"Conduct which is **harsh and wrongful**, which involves **lack of fair dealing** and violates the **legitimate expectations** of shareholders."
- ❖ Oppression occurs when:
 1. The majority **abuses its power** to the detriment of the minority.
 2. Actions are **unfair, prejudicial, or lack probity** in managing company affairs.
 3. Rights of minority shareholders are **continuously violated**.
- ❖ **Examples of Oppression:**
 1. Issue of further shares to dilute the minority's holding.
 2. Unjust removal of minority shareholders from management.
 3. Withholding dividends unfairly.
 4. Siphoning of funds or misappropriation of assets to benefit the majority.

Meaning of Mismanagement:

- ❖ **Mismanagement** refers to **conduct of the affairs of the company in a manner prejudicial to:**
 1. The interests of the company, or
 2. The interests of its members, or
 3. Public interest.
- ❖ Mismanagement involves **inefficient or dishonest conduct** that may cause **financial loss or jeopardize the future of the company**.
- ❖ **Examples of Mismanagement:**
 1. Diversion of company funds for personal benefit.
 2. Gross negligence in managing affairs leading to continuous losses.

3. Breach of fiduciary duties by directors.
4. Entering into contracts detrimental to the company.

Provisions Governing Oppression and Mismanagement

Section 241 - Application to NCLT

❖ **Who can apply?**

Any member of the company can apply to the National Company Law Tribunal (NCLT),

if:

1. The affairs of the company are being conducted in a manner prejudicial to public interest, or
2. In a manner oppressive to any member or group of members, or
3. There is mismanagement of the company's affairs likely to cause prejudice to the company or its members.

❖ **Central Government can also apply** (S.241(2)) if it is of the opinion that:

- The company's affairs are conducted in a manner prejudicial to public interest.

Section 242 - Powers of NCLT

If the NCLT is satisfied that:

1. **Company affairs** are being conducted in a manner oppressive to members or prejudicial to public interest/company, **and**
 2. **Winding up** of the company would unfairly prejudice members,
- then the NCLT may pass such orders as it thinks fit to bring an end to the matters complained of.

Orders NCLT may pass (Illustrative list under S.242(2)):

1. **Regulation of conduct** of company affairs in future.
2. **Purchase of shares** by other members or by the company.
3. **Restriction on transfer or allotment** of shares.
4. **Termination, setting aside, or modification** of any agreement with managing director, directors, or other persons.
5. **Removal of managing director, manager, or directors.**
6. **Recovery of undue gains** made by directors or key managerial personnel (KMPs).
7. **Appointment of directors** to report to NCLT.
8. **Amendment of AOA** (Articles of Association).
9. **Imposition of costs** as per Tribunal's discretion.

Key Point: NCLT has **very wide powers** to protect the company and minority shareholders.

Section 243 - Consequences of Termination or Modification of Certain Agreements

- ❖ If NCLT **terminates** or **modifies** an agreement with the managing director, manager, or other directors:
 1. That person **cannot claim compensation** for loss of office.
 2. That person **cannot be re-appointed** as MD, manager, or director **for 5 years** without Tribunal's approval.

Section 244 - Right to Apply (Qualification of Members)

A. Companies having Share Capital

To file an application under Section 241, the following members may apply (Sec. 244(1)(a)):

1. Minimum **100 members** of the company / **10% of total members**, whichever is less, OR
2. Any member(s) holding $\geq 10\%$ of **issued share capital**, provided that all dues on shares are paid.

Note: We have to consider Issued share capital here, not Paid up share capital (provided, no due should be there)

Example 1:

- ❖ Company has 800 members
- ❖ $10\% \text{ of } 800 = 80$
- ❖ So, 80 members or 10% of share capital holders can apply.
- ❖ If 100 members requirement is taken, the lesser is 80 → minimum 80 members can apply.

Example 2:

- ❖ Company has 1200 members
- ❖ $10\% \text{ of } 1200 = 120$
- ❖ Minimum 100 members required or 10% (whichever is less) → 100 members.
- ❖ So 100 members or 10% shareholding can apply.

B. Companies Not Having Share Capital

- ❖ Not less than 1/5th (20%) of total members can apply (Sec. 244(1)(b)).

Example:

- ❖ Company with 50 members and no share capital → $1/5\text{th} = 10$ members → minimum 10 members required to apply.

C. Waiver by NCLT

- ❖ As per Section 244(1) Proviso, NCLT may waive the eligibility requirements in deserving cases, to protect minority shareholders

Landmark Case: Cyrus Investments Pvt. Ltd. vs. Tata Sons Ltd. (2017)

- ❖ The minority (Cyrus Mistry group) did not satisfy 10% shareholding requirement.
- ❖ NCLT had power to waive the requirement under the proviso to S.244(1) if it deems fit.

D. Who Cannot Apply

- ❖ A debenture holder or creditor cannot apply under Section 241 (unless they are also members).
- ❖ Their remedy lies under Class Action (Sec.245).

Role of Central Government

- ❖ The Central Government (CG) plays a watchdog role under Section 241(2) in protecting public interest.
- ❖ While Section 241(1) focuses on members' grievances, Section 241(2) empowers CG to intervene, even if members do not apply.

A. When can the Central Government apply?

❖ Grounds (S.241(2)):

If the Central Government is of the opinion that the affairs of the company are conducted:

1. In a manner prejudicial to public interest, OR
2. Oppressive or prejudicial to the company.

❖ Action:

1. CG may apply to NCLT, or
2. Authorize any person to apply to NCLT on its behalf.

B. Investigation before CG applies

- ❖ CG generally acts based on:
 1. Reports of Registrar of Companies (RoC) under Section 206/207,
 2. Serious Fraud Investigation Office (SFIO) reports under Section 212, or
 3. Complaints from minority shareholders or public.
- ❖ **Purpose:** To protect stakeholders and public interest, even when shareholders remain silent.

C. Powers of NCLT after CG Application

Once the Central Government applies to NCLT:

- ❖ NCLT can pass any order under Section 242, like:
 1. Removal of directors/MD/KMP,
 2. Appointment of government-nominated directors,
 3. Restricting share transfers,

4. Recovery of undue gains,
5. Regulating future management.

❖ **Key Point:**

CG cannot directly remove directors or take control; it must go through NCLT for such actions under Section 242.

Section 246 – Application to Class Action

- ❖ **Sections 337 to 341** (liability for fraudulent conduct) **apply to applications under S.241-245** also.
- ❖ This ensures **personal liability of directors** in fraudulent activities.

Class Action (Section 245)

Class Action empowers **members and depositors** to take **collective action** against the company for acts that are **prejudicial to their interests**.

Who can apply for Class Action?

1. **Members** of the company (same thresholds as S.244 or as prescribed), or
2. **Depositors** of the company.

Purpose of Class Action

- ❖ To **restrain the company** from:
 1. Acting **ultra vires** the Memorandum or Articles.
 2. **Breaching provisions** of the Companies Act.
 3. Entering into contracts **unlawful or against members' interests**.
 4. **Mismanagement or oppression** of members or depositors.
- ❖ To **claim damages or compensation** from:
 1. Company,
 2. Directors,
 3. Auditors (including audit firms),
 4. Experts, advisors, or consultants who misled the company.

Orders NCLT can pass in Class Action

1. **Restrain the company** from committing the act complained of.
2. **Declare a resolution void** if it is against the Act or MOA/AOA.
3. **Restraining directors** from acting on such resolutions.
4. **Claim damages/compensation** from responsible persons.

Summary of Steps in Oppression and Mismanagement Proceedings

1. **Eligibility check** of members under Section 244.
2. **Application to NCLT** under Section 241.
3. **NCLT hears** both parties and examines if:

- ❖ Affairs are prejudicial/oppressive.
- ❖ Winding up is otherwise justified but would harm minority.
- 4. **NCLT passes order** under Section 242 to end oppression/mismanagement.
- 5. **Consequences** under Section 243 and **possible Class Action** under Section 245.

When Conduct Does NOT Amount to Oppression

Oppression under **Section 241** requires **continuous, harsh, and wrongful conduct** against the minority.

Mere **differences or isolated instances** do not automatically qualify as oppression. Courts have repeatedly clarified this.

1. Mere Loss of Confidence is NOT Oppression

❖ Principle:

- Minority losing confidence in the majority or directors is **not enough**.
- There must be **continuous oppressive acts**.

2. Single/Isolated Acts of Mismanagement

❖ Principle:

- A **single incident** that is **not continuous** and does not cause lasting prejudice does not amount to oppression.

3. Mere Negligence or Inefficiency of Directors

❖ Principle:

- Simple **negligence or poor business judgment** ≠ oppression.
- Must prove that actions were **deliberately harsh or prejudicial**.

4. Non-Declaration of Dividend Alone

❖ Principle:

- Non-declaration of dividend **by itself** does not amount to oppression if **supported by financial reasons**.
- It becomes oppression **only if mala fide or discriminatory**.

5. Valid Exercise of Powers by Majority

❖ Principle:

- Majority exercising powers **within the law** and **AOA/MOA** does not amount to oppression, even if minority dislikes it.
- Oppression requires **unfairness or mala fide intention**.

❖ Case Law:

Cyrus Mistry vs. Tata Sons Ltd. (2021, SC)

- Removal of Executive Chairman by the board as per Articles **did not amount to oppression**,
- Because it was a **valid exercise of powers under law** and not prejudicial to company's interest.

6. Genuine Business Decisions / Restructuring

❖ Principle:

- Decisions like **mergers**, **issue of new shares**, **business restructuring** taken in **good faith** are not oppression.
- Courts avoid interfering in **bona fide commercial decisions**.

7. Difference in Opinion on Management Policies

❖ Principle:

- Disagreement on **business strategy** or **policy decisions** ≠ oppression.
- Oppression requires **harsh treatment** of minority or **violation of their rights**.

Summary Table: When it is NOT Oppression

Situation	Reason
Mere loss of confidence	Must show continuous oppressive conduct
Single/isolated act	Oppression requires ongoing unfairness
Negligence or inefficiency	Must be mala fide or dishonest to be oppression
Non-declaration of dividend	If supported by commercial reasoning
Valid exercise of majority powers	If in compliance with law & articles
Genuine business decisions	Courts will not interfere in good faith decisions
Differences in management opinions	Normal in business; not oppressive

10. INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

Overview and Objectives

Particulars	Details
Enacted on	May 28, 2016
Came into effect	In phases from December 1, 2016 onwards
Administered by	Insolvency and Bankruptcy Board of India (IBBI)
Objective	Consolidate and amend laws related to insolvency of companies, LLPs, partnerships, and individuals; ensure time-bound resolution.

Before **IBC, 2016**, there were multiple overlapping laws and adjudicating forums dealing with financial failure and insolvency of companies and individuals in India.

The erstwhile legislative frame work comprised of:

- a) Chapter XIX and Chapter XX of Companies Act, 2013
- b) Part VIA, Part VII and Section 391 of Companies Act, 1956
- c) RDDBFI Act, 1993
- d) SARFAESI Act, 2002
- e) SICA Act, 1985
- f) The Presidency Towns Insolvency Act, 1909
- g) The Provincial Insolvency Act, 1920
- h) Chapter XIII of LLP Act, 2008

This legal and institutional framework did not facilitate lenders in effective and timely recovery or restructuring of defaulted assets and causes undue strain on the Indian credit system. So, to overcome the existing difficulties, government introduced this code.

Key Objectives:

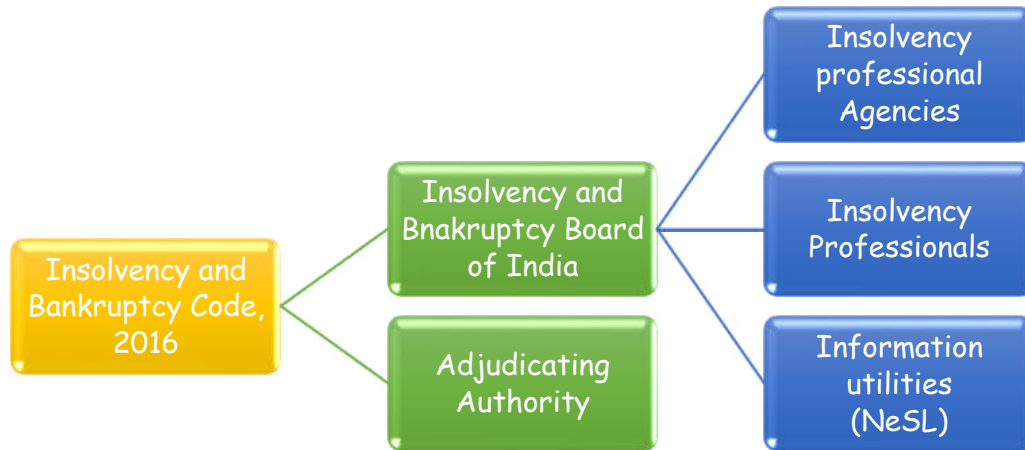
- ✓ To **promote entrepreneurship**.
- ✓ To provide **time-bound resolution** of insolvency.
- ✓ To **maximize the value of assets** of such persons.
- ✓ To **balance interests** of all stakeholders.
- ✓ To establish **Insolvency and Bankruptcy Board of India (IBBI)**.

Applicability of IBC (Section 2)

Entity Type	Covered under IBC
Companies under Companies Act, 2013/1956	✓
Limited Liability Partnerships (LLPs)	✓
Any Body Corporate other than above mentioned 2 cases [For ex: Corporations estd. by special acts (LIC, SBI, FCI, Coal India, ONGC...etc) & Foreign companies]	✓

Personal guarantors to corporate debtors	✓
Partnership firms and proprietorships	✓
Individuals (in phased manner)	✓
Financial service providers (like banks)	✗ Excluded

The Insolvency and Bankruptcy Code, 2016 would be based on the following five pillars



Now, let's discuss about each of the five pillars,

Pillar 1 - IBBI

- ❖ The Insolvency and Bankruptcy Board of India (IBBI) is the key regulator under the IBC, responsible for overseeing insolvency processes, registering and regulating Insolvency Professionals (IPs), IPAs, and Information Utilities (IUs).
- ❖ It ensures transparency, efficiency, and accountability in India's insolvency and bankruptcy ecosystem.

Pillar 2 - Insolvency Professionals (IPs)

❖ Who is an Insolvency Professional (IP)?

- ✓ An Insolvency Professional is a person registered with IBBI (Insolvency and Bankruptcy Board of India) and authorized to conduct:
 - Corporate Insolvency Resolution Process (CIRP)
 - Liquidation
 - Bankruptcy and Individual Insolvency Proceedings
- ✓ They are licensed professionals responsible for managing the affairs of the debtor during insolvency resolution or liquidation.

❖ Who Can Become an IP?

- ✓ To become an Insolvency Professional, a person must:
 1. Be a Chartered Accountant (CA), Cost Accountant (CMA), Company Secretary (CS), or Advocate with at least 10 years of post-membership experience, (OR) be a Graduate with 15 years of managerial experience.
 2. Pass the Limited Insolvency Examination (LIE) conducted by IBBI.
 3. Enrol with an Insolvency Professional Agency (IPA).
 4. Apply for registration with IBBI and obtain a Certificate of Registration.

❖ Functions and Duties of an Insolvency Professional

1. Conducts CIRP / liquidation / bankruptcy as per the IBC provisions.
2. Takes control of the debtor's assets and business operations during resolution.
3. Manages meetings of the Committee of Creditors (CoC).
4. Prepares the Information Memorandum for inviting resolution plans.
5. Ensures that all processes are transparent and within timelines.
6. Files reports and applications before NCLT or DRT, as applicable.
7. Acts honestly, impartially, and in fiduciary capacity for all stakeholders.
8. Complies with the Code of Conduct under the IBBI regulations.

❖ Types of IPs in a Case

Type	Role
IRP (Interim Resolution Professional)	Appointed by NCLT by the recommendation of Fin Cred. / Corporate debtor / Op Cred. (if recommended) for the first 30 days of CIRP
RP (Resolution Professional)	Appointed by CoC to continue managing CIRP
Liquidator	Appointed by NCLT when liquidation is initiated
Bankruptcy Trustee	Manages bankruptcy for individuals and partnership firms

❖ Code of Conduct for IPs

- ✓ Key principles include:
 - Integrity, objectivity, and professional competence
 - Independence and avoidance of conflict of interest
 - Confidentiality of information
 - Timely reporting and compliance
 - Disclosure of fees and no undue gains

Pillar 3 - Insolvency Professional Agencies (IPAs)

An IPA is an entity registered with IBBI that enrolls and regulates Insolvency Professionals (IPs).

- ✓ It functions like a self-regulatory organization for IPs.
- ✓ IPs must be members of an IPA to be eligible for IBBI registration.

Functions of IPA

1. Enrolls qualified individuals as Insolvency Professionals.
2. Conducts training and development programs for members.
3. Monitors, disciplines, and regulates the professional conduct of its members.
4. Lays down standards of professional conduct and ethics.
5. Provides guidance and grievance redressal for IPs.

Registered IPAs in India

As of now, the following three IPAs are registered with IBBI:

1. **ICMAI – IPA:** Insolvency Professional Agency of the Institute of Cost Accountants of India
2. **ICAI – IPA:** Insolvency Professional Agency of the Institute of Chartered Accountants of India
3. **ICSI – IPA:** Insolvency Professional Agency of the Institute of Company Secretaries of India

Pillar 4 – Information Utility (IU)

- ❖ An Information Utility is an organization registered with the **Insolvency and Bankruptcy Board of India (IBBI)** that collects, stores, authenticates, and provides financial information to stakeholders in the insolvency ecosystem.
- ❖ It as a central database that maintains credible records of debts, defaults, and other financial information of debtors.

Objectives of Information Utility

- ❖ Maintain electronic records of financial information
- ❖ Provide authenticated information to creditors, debtors, and adjudicating authorities
- ❖ Reduce time for establishing default in insolvency proceedings
- ❖ Help ensure transparency and speedy disposal in CIRP and liquidation

What kind of Information Stored?

As per Section 3(13), financial information includes:

- ❖ Records of debt and liabilities
- ❖ Records of assets of debtor
- ❖ Records of security interest
- ❖ Records of defaults in repayment
- ❖ Balance sheet, cash flow statements, etc.
- ❖ Any other information specified by IBBI

Process Flow of Information Handling

Step	Explanation
Submission	Creditor or debtor submits financial info to IU
Authentication	IU sends to counterparty (usually debtor) for authentication
Acceptance/Dispute	Debtor either accepts or disputes the info
Record Creation	IU stores authenticated info as valid record
Access	Accessible to adjudicating authorities, insolvency professionals, creditors, etc. during CIRP/Liquidation

Role in CIRP (Corporate Insolvency Resolution Process)

Function	Explanation
Record of Default	IU record serves as prima facie evidence of default
Proof of Claim	IPs can rely on IU data for verifying creditor claims
Creditor Coordination	Facilitates data exchange among financial creditors
Speed	Reduces time in verifying debt and default claims
First IU Registered	National E-Governance Services Ltd. (NeSL) - Registered in 2017

Benefits of IUs

Benefit	Description
Transparency	Common access to verified debt info
Speed	Eliminates delays in proving default
Authenticity	Authenticated by counterparty (debtor)
Efficiency	Supports faster CIRP, repayment, and resolution
Reduced Litigation	Disputes over existence of debt are minimized

IU vs Credit Information Companies

IU	CIC (like CIBIL)
Focused on insolvency	Focused on creditworthiness
Used for proof of default	Used for credit scoring
Mandatory for CIRP	Voluntary for banks & lenders
Stores legal & financial records	Stores credit histories

Summary Table

Topic	Details
Governed by	IBC & IU Regulations, 2017
Purpose	Maintain financial records and proof of default
Key player	NeSL
Key benefit	Faster resolution by establishing default quickly
Data authentication	Mandatory from counterparty
Role in CIRP	Helps in proof of claim & default

Pillar 5 - Adjudicating Authorities

Entity Type	Authority	Appeal Lies To
Companies, LLPs	NCLT	NCLAT
Individuals, Firms	DRT	DRAT
Further Appeal	Supreme Court (on question of law only)	Not Allowed

Key Definitions as per IBC (Section 3)

Term	Meaning
Corporate Debtor	A corporate person who owes a debt to any person
Creditor	Any person to whom a debt is owed
Financial Creditor	A creditor to whom a financial debt is owed (includes banks, etc.)
Operational Creditor	A creditor to whom an operational debt (goods/services) is owed
Insolvency Resolution	Process of resolving insolvency under IBC
Default	Non-payment of debt when whole or part has become due and payable
Secured Creditor	A person (like a bank) who has given a loan and holds a legal right over some asset of the borrower as security.
Security Interest	A legal right or charge on a borrower's asset given to the lender to ensure repayment of a loan.
Adjudicating Authority	The official authority (like NCLT for companies) that decides legal matters under the IBC.
Corporate Applicant	A company or person (like a director or creditor) who files for insolvency against the company.
Dispute	A disagreement or legal issue related to the debt (e.g., unpaid bills, quality of goods, etc.).
Insolvency Resolution Process Period	The time given to resolve insolvency (usually 180 days, extendable up to 330 days).
Related Party	A person or entity connected to the debtor (like relatives, subsidiaries, etc.) who might influence decisions.
Resolution Plan	A proposal by a resolution applicant on how to revive the company and pay off debts.
Resolution Professional (RP)	A licensed person appointed to manage the affairs of the company during the insolvency process.
Resolution Applicant	A person (or company) who submits a resolution plan to revive the company under IBC.
Voting Share	The percentage of voting rights a member of the Committee of Creditors (CoC) holds, based on the amount of debt owed to them <u>Ex:</u> If a bank is owed ₹40 crore and the total debt in CoC is ₹100 crore, then, the bank has a 40% voting share

Detailed Notes on Corporate Insolvency Resolution Process (CIRP)

1. What is CIRP?

CIRP is the process under IBC, 2016 to resolve insolvency of a corporate debtor (company) in a time-bound manner. It ensures:

- ❖ Repayment to creditors
- ❖ Revival of the company (if possible)
- ❖ Liquidation (if revival fails)

2. Who Can Initiate CIRP?

Applicant Type	Section	Conditions
Financial Creditor	Sec 7	Debt > ₹1 crore (threshold); Default must be proved
Operational Creditor	Sec 9	Serve a demand notice → If no reply in 10 days → File application
Corporate Applicant	Sec 10	The debtor company itself can initiate CIRP voluntarily

3. Application Process Explained:

A. By Financial Creditor (Sec 7)

- ❖ File application with NCLT
- ❖ Proof of default (from records or Information Utility)
- ❖ NCLT must admit or reject within 14 days
- ❖ On admission, CIRP starts immediately

B. By Operational Creditor (Sec 9)

1. Send a demand notice to debtor → wait 10 days.
2. If no payment/dispute raised → file application to NCLT
3. Must include:
 - ✓ Invoice
 - ✓ Proof of service of demand
 - ✓ No notice of dispute
4. NCLT admits or rejects → CIRP begins on admission.

C. By Corporate Applicant (Sec 10)

- ❖ Debtor company can voluntarily file
- ❖ Needs:
 - ✓ Board resolution
 - ✓ Books of accounts
- ❖ Admission by NCLT triggers CIRP

If application is defective/provides partial information, then NCLT asks for resubmission of the application under IBC - In that case time limit to resubmit the application is 7 days from the date you receive notice of the defect.

4. What Happens After Admission of Application?

Event	Time Limit
Appoint Interim Resolution Professional (IRP)	Within 14 days of admission (0-14)
Public announcement by IRP	Within 3 days of appointment
Submission of claims by creditors	Within 14 days of announcement
Formation of Committee of Creditors (CoC)	Within 30 days of admission of application by NCLT (0-30)
First meeting of CoC	Within 7 days of formation
Appointment of RP (Resolution Professional)	CoC may confirm IRP or appoint new one

5. Role & Duties of IRP and RP

IRP (Interim Resolution Professional):

- ❖ Takes control of management and operations of the corporate debtor
- ❖ Collects claims from creditors
- ❖ Makes public announcement
- ❖ Forms Committee of Creditors (CoC)

RP (Resolution Professional):

- ❖ Manages day-to-day operations
- ❖ Conducts CoC meetings
- ❖ Receives resolution plans
- ❖ Prepares Information Memorandum (IM)
- ❖ Presents plans to CoC for voting
- ❖ Submits approved plan to NCLT

6. Committee of Creditors (CoC)

- ❖ Consists of only financial creditors
- ❖ Operational creditors can attend meetings (but no vote)

Key powers:

- ✓ Appoint/Replace RP
- ✓ Approve resolution plan
- ✓ Approve liquidation

7. Resolution Plan

- ❖ Plan to revive the company (submitted by Resolution Applicant)
- ❖ **Can include:**

- ✓ Restructuring of debt
- ✓ Change in management
- ✓ Sale of assets
- ❖ RP checks compliance of plan with IBC
- ❖ CoC approves → then submitted to NCLT

8. Role of NCLT

- ❖ Admits or rejects CIRP application
- ❖ Approves or rejects resolution plan (after CoC approval)
- ❖ Orders liquidation if:
 - ✓ No resolution plan received
 - ✓ Plan rejected
 - ✓ CIRP time limit expires (max 330 days)

9. Who is a Resolution Applicant?

- ❖ Any person who submits a resolution plan
- ❖ Must meet eligibility under Sec 29A (e.g., cannot be a willful defaulter)
- ❖ Can be:
 - ✓ A company
 - ✓ A consortium
 - ✓ A private investor

10. Role of NCLAT (National Company Law Appellate Tribunal)

- ❖ Hears appeals from orders of NCLT
- ❖ Appeal can be filed:
 - ✓ Against rejection of application
 - ✓ Against approval/rejection of resolution plan
 - ✓ Against liquidation order
- ❖ Appeal to NCLAT must be filed within 30 days of NCLT order (extendable by 15 days)

CIRP Timeline Overview

Event	Timeline
Admission of application	Day 0
Appointment of IRP	Within 14 days
Claims submission & verification	Within 14-30 days
CoC formation	By Day 30
Appointment of RP by CoC	By Day 30-37
Submission of Resolution Plan	By Day 150 (to allow CoC review)
Approval by CoC	Before Day 180/270
Final approval by NCLT	Within 330 days total

About "INFORMATION MEMORANDUM" (IM) UNDER IBC - EXPLAINED

❖ What is an Information Memorandum?

The Information Memorandum is a document prepared by the Resolution Professional (RP) that contains financial, operational, and legal details of the Corporate Debtor.

It is provided to potential Resolution Applicants to help them assess the company and prepare a resolution plan.

Contents of the Information Memorandum

Category	Details Included
Assets & Liabilities	List and valuation of all assets and liabilities (movable/immovable)
Financial Statements	Last 2 years' audited financials
Creditors' Details	List of secured and unsecured creditors and amounts due
Guarantors	Details of guarantees given and by whom
Litigation	Legal proceedings against or by the company
Material Contracts	Key agreements, obligations, and expiry dates
Employees	Number and details of employees/workmen
Other Information	Operational structure, business operations, past defaults, etc.

Time Frame

Stage	Timeline
Draft IM prepared	Within 14 days of appointment of RP (or replacement of IRP)
Shared with CoC	At the time of 1st CoC meeting
Shared with Resolution Applicants	Only after they sign Confidentiality Undertaking (Sec 29(2))

Confidentiality Clause:

- ❖ As per Section 29(2) of IBC, no person can access IM unless they:
 - ✓ Provide a confidentiality undertaking
 - ✓ Commit to not disclose or use the information other than for preparing a resolution plan

Who Can Get the IM?

- ❖ Only those parties who are eligible resolution applicants and have signed the confidentiality agreement.

Purpose of IM

Objective	Explanation
Enable due diligence	Resolution applicants use IM to assess the viability of the company
Transparency to CoC & stakeholders	Helps in informed decision-making
Basis for drafting resolution plans	All critical business and financial information in one place

Liquidation of 'Corporate Person' under IBC, 20161. When Does Liquidation Start?

Liquidation of a corporate debtor begins when:

- ❖ Committee of Creditors (CoC) does not approve any resolution plan under CIRP
- ❖ Resolution Professional didn't received any Resolution Plans
- ❖ NCLT rejects resolution plan
- ❖ NCLT orders liquidation due to non-completion of CIRP within 330 days
- ❖ Resolution plan is approved but not complied with Legal Reference: Section 33 of IBC

2. Appointment of Liquidator

Event	Provision	Appointed By
Liquidation order by NCLT	Section 34	Resolution Professional (RP) becomes the Liquidator, unless replaced by NCLT

- ❖ If NCLT believes the RP is not fit, it may appoint another professional from IBBI panel.

3. Powers and Duties of Liquidator

Powers / Duties (Sec 35)	Description
Control over assets	Takes custody of all assets of the corporate debtor
Formation of liquidation estate	Identifies and collects all assets (see below)
Continue business operations	Only as required for beneficial liquidation
Sell assets	Can sell assets through auction or private sale
Investigate transactions	Preferential, undervalued, fraudulent (see Sec 43, 45, 49)
Legal proceedings	Can initiate or defend any legal suit on behalf of the debtor
Claims verification	Consolidates and verifies all creditor claims (Sec 38)
Distribution of proceeds	Distributes assets according to waterfall (Sec 53)
Dissolution application	Files for corporate debtor's dissolution once liquidation is complete

4. Liquidation Estate

Legal Reference: Section 36

This includes all assets of the corporate debtor that will be collected and sold during liquidation.

Includes	Excludes
All tangible and intangible assets	Assets held in trust for third parties
Financial assets and investments	Assets not owned by corporate debtor
Rights, title, interest in property	Personal assets of promoters/directors (Fraud case)
Receivables, leasehold interest	Secured assets outside liquidation estate (if enforcement under Sec 52)

5. Consolidation and Verification of Claims

Provision	Details
Section 38	Liquidator shall receive and collate claims within 30 days from the liquidation commencement date
Section 39	Claims shall be verified by the liquidator within 30 days from last date of receipt
Section 40	Liquidator may accept or reject the claim and must communicate decision within 7 days

6. Distribution of Assets - Waterfall Mechanism

Legal Reference: Section 53

Priority Order	Remarks
1. Insolvency process costs / liquidation expenses	Paid in full first
2. Secured creditors (if they relinquish security) & workmen dues (preceding 24 months)	2nd (Both gets Equal priority)
3. Wages and dues to employees (preceding 12 months)	3rd
4. Unsecured creditors	4th
5. Government dues (2 years) + unpaid secured creditors	5th (Both gets Equal priority)
6. Remaining debts and dues (Unsecured Creditors)	6th
7. Preference shareholders	7th
8. Equity shareholders / partners	Last

7. Important Sections on Avoidance of Transactions

Section	Type of Transaction	Explanation
Sec 43	Preferential Transactions	Unfair preference to one creditor over others within 2 years (related party) or 1 year (others) before insolvency
Sec 45	Undervalued Transactions (Back date → Related party - 2 years Others - 1 year)	Asset sold at undervalue or gifted without proper consideration
Sec 49	Extortionate Credit Transactions (Back date → 2 years)	High interest loans or unfair credit terms; can be avoided by NCLT
Sec 50	Transactions defrauding creditors (Back date → No time limit)	Done to deliberately put assets beyond creditors' reach
Sec 52	Rights of Secured Creditors	Secured creditors may either: 1. Relinquish security to liquidation estate 2. Enforce it outside (as per Securitisation Act or other law)

8. Final Steps

Step	Details
Asset distribution completed	After claims are settled
Final report by liquidator	Submitted to NCLT
Application for dissolution	Filed under Sec 54
Dissolution order by NCLT	Corporate debtor ceases to exist legally

Common Mistakes to Avoid

✗ Mistake	✓ Correction
Thinking employees and workmen are same	They are different legally
Assuming all dues from past are included	Only last 24/12 months are counted
Believing government dues come earlier	They actually fall after unsecured creditors

Quick Recap Table

Aspect	Workmen	Employees (Non-workmen)
Legal definition	As per Industrial Disputes Act	Not covered under "workman"
Priority in waterfall	2nd	3rd
Period covered	24 months before liquidation	12 months before liquidation
Examples	Labourers, welders, helpers	Managers, accountants, executives

Personal Insolvency under IBC, 2016

1. Applicability of Personal Insolvency Provisions

The provisions relating to individuals and partnership firms are covered under Part III of the IBC.

❖ Applies to:

- ✓ Individuals
- ✓ Sole proprietors
- ✓ Partnership firms

Note: Part III is yet to be fully notified, except in certain specific cases (e.g. personal guarantors to corporate debtors).

2. Key Definitions

Term	Meaning
Debtor	Individual or partnership firm who owes a debt
Creditor	Person to whom debt is owed
Debt	Includes financial and operational liabilities
Default	Non-payment of debt when due

3. Two-Stage Resolution Process

Stage	Name	Purpose
Stage 1	Fresh Start Process (for poor debtors)	Full debt waiver for those meeting strict eligibility
Stage 2	Insolvency Resolution Process (for all)	Negotiated repayment or resolution with creditors

4. Fresh Start Process (FSP) - Section 80 to 93

Eligibility:

Criteria	Threshold
Gross Income	≤ ₹60,000/year
Assets	≤ ₹20,000
Total Debt	≤ ₹35,000
Not a debtor in last 12 months	Not availed fresh start earlier
No ongoing insolvency case	Under IBC or other law

Process:

1. Application by debtor to DRT (Debt Recovery Tribunal)
2. Appointment of Resolution Professional (RP)
3. RP examines application and makes recommendations
4. If accepted, a moratorium begins (i.e. no recovery action)
5. DRT may allow complete waiver of qualifying debts

5. Insolvency Resolution Process (IRP) - Section 94 to 120

Who can apply?

By Whom	Conditions
Debtor	Voluntarily, with default $\geq$ ₹1,000
Creditor	Financial/operational creditor with evidence of default
RP	If directed under Fresh Start or other provisions

Steps Involved:

1. Application to DRT by debtor or creditor
2. Appointment of RP
3. Moratorium begins (Section 101) - stops all recovery
4. RP prepares repayment plan in consultation with debtor
5. Plan is submitted to Creditors Meeting
6. If approved by 75% in value, sent to DRT
7. DRT approves / rejects plan

Repayment Plan may include:

- ❖ Debt restructuring
- ❖ Interest waiver
- ❖ Instalment repayment
- ❖ Sale of assets

6. Bankruptcy Process - Section 121 to 148

Triggered when:

- ❖ Repayment plan is rejected by creditors/DRT
- ❖ Debtor fails to implement approved plan

Process:

1. Application by debtor or creditor to DRT
2. Bankruptcy Trustee is appointed
3. DRT declares Bankruptcy Order
4. Trustee prepares Bankruptcy Estate (all assets)
5. Estate is liquidated and distributed as per priority
6. After distribution, debtor is discharged

7. Moratorium under Part III (Section 101)

Once insolvency application is admitted:

- ❖ No legal action can be initiated/recovered
- ❖ No property can be repossessed
- ❖ Valid till approval/rejection of repayment plan

8. Priority of Distribution in Bankruptcy (Section 178)

Priority	Beneficiaries
1	Costs of bankruptcy process
2	Workmen dues & secured creditors → (who relinquished their right)
3	Employees (other than workmen)
4	Unsecured creditors
5	Government dues + Secured creditors (if any deficit)
6	Others

(Same principle as corporate waterfall mechanism)

9. Role of Adjudicating Authority

Body	Function
DRT	Adjudicating Authority for individuals and firms
DRAT	Appellate Authority
NCLT/NCLAT	Only for personal guarantors to corporate debtors

10. Special Provisions for Personal Guarantors to Corporate Debtors

- ❖ Part III is notified only for personal guarantors
- ❖ NCLT handles their cases (not DRT)
- ❖ Linked to corporate insolvency of principal debtor

Summary Table

Process	Applicable to	Threshold	Outcome
Fresh Start	Poor individuals	₹35,000 debt	Full waiver
IRP	All individuals/firms	₹1,000 default	Repayment Plan
Bankruptcy	Post-IRP failure	No threshold	Liquidation & discharge

Important Timelines under IBC (with Explanation)

Time Limit	What it Refers To	Explanation
14 days	Admission or rejection of application by Adjudicating Authority (NCLT)	NCLT should decide whether to admit/reject an insolvency application within 14 days (though in practice it may take longer).
7 days	Time given to applicant to fix defects in application	If the NCLT finds errors in the application, the applicant must correct them within 7 days.
180 days	Corporate Insolvency Resolution Process (CIRP) period	The main time frame for completing the insolvency resolution process. Starts from admission of application.
90 days	Resolution process for fast-track cases	For small companies/startups/others notified by govt. (Section 55-58), the resolution should be completed in 90 days (extendable by 45 days).
30 days	Time to submit Resolution Plan before expiry of CIRP	Resolution applicants must submit their plan at least 30 days before 180/330-day limit ends.
270 days	Maximum allowed extension of CIRP by 90 days	NCLT can extend the 180-day CIRP by 90 more days (once only), making it 270 days max (without litigation delays).
330 days	Ultimate deadline for CIRP including litigation	Supreme Court fixed the total cap of 330 days, including any legal delays. This is a hard deadline to finish the process.
1 year (365 days)	Liquidation process timeline	Once a company goes into liquidation, the liquidator must complete the process ideally within one year.
90 days (Liquidation)	Time for sale of secured assets by secured creditor	If a secured creditor chooses to realize their security outside the liquidation estate, they must do so within 90 days.

Key Things to Remember:

- ❖ 180 days is the standard time to resolve insolvency.
- ❖ 90 days is for fast-track resolution.
- ❖ 330 days is the maximum time allowed including all extensions and court delays.
- ❖ Delays beyond 330 days are not permitted unless exceptional reasons are justified (as per SC rulings).

Voting Share in IBC - Key Percentages Explained

Voting Threshold	Where It Applies	Explanation
75% (Old Law)	Before 2018 amendments	Earlier, most important decisions (like approving a resolution plan) required 75% of voting share of CoC.
66% (Current Law)	After 2018 amendment (effective from June 6, 2018)	Now, many decisions require only 66% approval instead of 75%. This made the process faster and more flexible.
51%	For routine decisions by CoC	Some regular decisions like appointing or replacing the Resolution Professional, extending CIRP timeline, etc., require simple majority.

Current Voting Thresholds (after amendment)

Decision	Required Voting Share
Approval of Resolution Plan	66%
Replacement of Resolution Professional (RP)	66%
Initiating Liquidation of the corporate debtor	66%
Filing application for avoidance transactions	66%
Approval of interim finance during CIRP	66%
Routine operational decisions (e.g. day-to-day matters)	51%

Why the Change?

The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 reduced the voting threshold from 75% to 66% to:

- ❖ Improve consensus-building
- ❖ Avoid deadlocks
- ❖ Speed up the process

Simple Tip to Remember

- ✦ **66%** = Big strategic decisions
- ✦ **51%** = Routine matters

Case laws

Some famous case laws under the **Insolvency and Bankruptcy Code, 2016 (IBC)**, along with their **brief summaries** —

1. Swiss Ribbons Pvt. Ltd. v. Union of India (2019)

Court: Supreme Court

Issue: Constitutionality of IBC provisions

Summary:

The Supreme Court upheld the constitutional validity of IBC, stating it is not arbitrary or discriminatory. It clarified the **difference between financial and operational creditors**, and recognized **commercial wisdom of the CoC (Committee of Creditors)** as paramount in the resolution process.

2. Innoventive Industries Ltd. v. ICICI Bank (2017)

Court: Supreme Court

Issue: Initiation of CIRP under Section 7

Summary:

This was the **first major judgment under IBC**, where the Court held that once default is established, **CIRP must be admitted**. The judgment emphasized the IBC's **time-bound resolution process** and limited role of the Adjudicating Authority.

3. Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2017)

Court: Supreme Court

Issue: Definition of "dispute" under Section 9

Summary:

The Court ruled that if a **pre-existing dispute** is evident, even if not in court or arbitration, **CIRP cannot be triggered** under Section 9 by operational creditors. This set an important test for "existence of dispute".

4. Essar Steel India Ltd. v. Satish Kumar Gupta & Ors. (2019)

Court: Supreme Court

Issue: CoC powers and distribution of resolution proceeds

Summary:

The SC upheld **commercial wisdom of CoC** in distribution of resolution amount. It also stated that **financial and operational creditors need not be treated equally**, but must be treated **fairly and equitably**. ArcelorMittal was allowed to take over Essar.

5. Committee of Creditors of Essar Steel v. Satish Kumar Gupta (2019)

Court: Supreme Court

Issue: Validity of NCLAT's order changing distribution

Summary:

Supreme Court overruled NCLAT's decision to **modify CoC's commercial decision**, reinforcing that courts should not interfere in CoC's domain unless decisions are **arbitrary, capricious or perverse**.

6. State Bank of India v. V. Ramakrishnan (2018)

Court: Supreme Court

Issue: Moratorium applicability on personal guarantors

Summary:

The Court held that **moratorium under Section 14 applies only to the corporate debtor** and not to personal guarantors. This clarified that banks can proceed against guarantors during CIRP.

7. Jaypee Infratech Ltd. v. Axis Bank Ltd. (2020)

Court: Supreme Court

Issue: Homebuyers as financial creditors

Summary:

Homebuyers were recognized as **financial creditors**, allowing them representation in the CoC. The SC also held that **lenders of the parent company cannot claim security interest in subsidiary's assets** if they are not directly involved.

8. Kalpraj Dharamshi v. Kotak Investment Advisors Ltd. (2021)

Court: Supreme Court

Issue: Timeline and process of submitting resolution plans

Summary:

The Court held that **CoC has discretion to accept late resolution plans**, and such acceptance does not violate IBC if reasons are justified. This decision supported **flexibility over strict deadlines** in certain cases.

9. ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2018)

Court: Supreme Court

Issue: Eligibility of resolution applicant under Section 29A

Summary:

The SC disqualified **defaulting promoters** from bidding under Section 29A. It also allowed **ArcelorMittal**, who cleared its NPA dues, to participate in the bidding of Essar Steel.

10. Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. (2021)

Court: Supreme Court

Issue: Related party financial creditors and voting

Summary:

SC ruled that a **related party financial creditor cannot vote in the CoC**, especially if the relationship is used to influence decisions. This judgment reinforced **independence and neutrality of CoC**.

11. CORPORATE GOVERNANCE, SOCIAL RESPONSIBILITY AND SUSTAINABILITY

Meaning:

- ❖ **Corporate Governance** refers to the system, principles, and processes by which a company is directed and controlled.
- ❖ It ensures **accountability, fairness, and transparency** in a company's relationship with all stakeholders
 - ✓ [Stakeholders means and includes shareholders, management, employees, customers, suppliers, financiers, government, and the community]

In simple terms: It is about how companies are run and managed ethically, transparently, and in the best interest of all stakeholders.

Example:

If a company discloses its financial statements properly, holds regular board meetings, and follows fair practices in appointing directors, it is following good corporate governance.

Objectives of Corporate Governance:

1. **Balance Interests of Stakeholders**
Ensure fair treatment and protection of the rights of shareholders, creditors, employees, and society at large.
2. **Transparency in Decision Making**
Encourage open and honest disclosure of information and internal processes.
3. **Efficient Use of Resources**
Optimize the use of the company's financial, human, and material resources.
4. **Accountability of Management**
Make the management accountable to the Board and the Board accountable to shareholders.
5. **Ensure Ethical Conduct**
Promote integrity, ethical business practices, and compliance with laws.
6. **Mitigate Corporate Failures and Risks**
Through checks, controls, and risk management systems.
7. **Enhance Shareholder Value**
Create long-term value for shareholders and investors.

Features of Corporate Governance

Feature	Description
Transparency	Clear and timely disclosure of all material facts to stakeholders.
Accountability	Clear lines of responsibility from management to the Board to stakeholders.
Fairness	Equitable treatment of all stakeholders, especially minority shareholders.
Responsibility	Directors and management are responsible for their decisions and actions.
Ethical Business Conduct	Adherence to high standards of integrity and ethics in all operations.
Participation	Encourages involvement of stakeholders in key corporate decisions.
Stakeholder Recognition	Acknowledges and respects the contributions of all stakeholders.
Innovation and Growth	Good governance fosters sustainability, innovation, and long-term performance.

Ethics vs. Corporate Governance

Point of Difference	Ethics	Corporate Governance
Meaning	Set of moral values and principles guiding individual behavior	System of rules and practices to direct and control a company
Focus	Internal conscience and moral compass of individuals	Organizational structure and regulatory compliance
Scope	Applies to individuals at all levels	Applies mainly at top levels (Board, senior management)
Nature	Informal, not codified	Formal and codified through laws, codes, and regulations
Emergence	Naturally developed through upbringing and culture	Developed through laws, corporate codes, and best practices
Compliance	Voluntary (based on personal morality)	Mandatory in many aspects (statutory compliance)
Example	A manager refusing a bribe despite no strict rule	Board disclosing financial results to shareholders on time as per SEBI norms

Management vs. Corporate Governance

Point of Difference	Management	Corporate Governance
Meaning	Process of planning, organizing, leading and controlling day-to-day tasks	Framework of rules and relationships guiding how a company is directed and controlled
Focus	Achieving company goals efficiently and effectively	Ensuring transparency, accountability, and fairness to stakeholders
Level of Application	All operational levels within the company	Mainly at Board and top management level
Regulatory Framework	Follows internal company policies	Bound by legal provisions (e.g., Companies Act, SEBI LODR, IBC, etc.)
Results vs Methods	Focus on results - achieving targets	Focus on methods - achieving targets ethically and legally
Example	A sales manager plans targets and budget	Board ensures company financials are audited and disclosed properly

Benefits of Corporate Governance (Try to remember any 6)

Corporate Governance provides a structured framework to run companies ethically and transparently. Its benefits extend to the company, shareholders, employees, and the economy at large.

1. Enhances Investor Confidence

- ❖ Good governance practices assure investors that their funds are safe.
- ❖ Results in **greater investment inflow** and access to capital.

2. Improves Company Reputation

- ❖ Companies that follow ethical practices gain **trust and goodwill** in the market.
- ❖ Builds a strong brand image and public credibility.

3. Ensures Long-Term Sustainability

- ❖ Encourages **sustainable business strategies** balancing profit and social impact.
- ❖ Focuses on long-term goals rather than short-term gains.

4. Promotes Accountability and Transparency

- ❖ Ensures management and Board are **answerable to stakeholders**.
- ❖ Transparent disclosures reduce frauds, manipulation, and insider trading.

5. Enhances Operational Efficiency

- ❖ Clearly defined responsibilities and decision-making systems lead to **efficient operations**.
- ❖ Reduces wastage, misuse of resources, and management conflicts.

6. Strengthens Compliance and Risk Management

- ❖ Helps in **timely compliance** with regulatory and legal requirements.

- ❖ Implements **internal controls and risk mitigation systems**.

7. Protects Stakeholder Interests

- ❖ Balances the interests of shareholders, employees, customers, suppliers, creditors, and society.
- ❖ **Fair treatment of minority shareholders** is ensured.

8. Increases Valuation and Market Price

- ❖ Good governance boosts investor perception, resulting in **better stock performance and valuation**.

9. Facilitates Strategic Alliances

- ❖ Well-governed companies are preferred for **mergers, acquisitions, and partnerships**.

10. Helps Avoid Corporate Failures

- ❖ Governance mechanisms help detect and correct financial and ethical mismanagement before it escalates (e.g., Satyam case).

Emergence and Evolution of Corporate Governance

What Led to the Rise of Corporate Governance?

- ❖ Corporate Governance evolved as a **response to major corporate scandals, financial frauds, and the growing complexity of business**.
- ❖ It emerged to **safeguard stakeholder interests**, especially those of shareholders in large companies where ownership and management are separated.

Key Factors Behind the Emergence of Corporate Governance

1. Major Corporate Failures

- ❖ Fraud and mismanagement in companies like **Enron, WorldCom, Xerox, Satyam, and IL&FS** highlighted the need for strong governance.
- ❖ These failures **shook investor confidence** and called for transparency and accountability.

2. Rise of Institutional Investors

- ❖ Institutional investors like mutual funds and pension funds demanded **more oversight and disclosures** to protect their large investments.

3. Globalization and Liberalization

- ❖ With companies going global, they needed to **comply with international standards** and attract foreign investment.
- ❖ **Cross-border listings** on stock exchanges (like NYSE, LSE) required good governance frameworks.

4. Increased Retail Participation

- ❖ Growth of the middle class and technology led to a surge in **retail investors**, who required **protection and information**.

5. Public Demand for Corporate Accountability

- ❖ Society now expects businesses to act ethically and responsibly, not just profit-driven.

6. Opening of Company Information to Public

- ❖ With improved access to information (websites, reports), stakeholders now demand transparency and **question board decisions**.

7. Strengthening of Legal and Regulatory Frameworks

- ❖ Laws like the **Companies Act, 2013**, **SEBI (LODR) Regulations**, and the **IB Code** made **governance compliance mandatory**.

8. Stock Market Volatility

- ❖ Unusual swings in share prices due to insider trading or bad practices prompted regulators to enforce stricter governance norms.

9. Separation of Ownership and Management

- ❖ In large corporations, **owners (shareholders)** and **managers (board, executives)** are different. Good governance ensures alignment of their interests.

Evolution of Corporate Governance in India

Phase	Development
Pre-1991	Mostly family-owned businesses, governance based on trust, not regulation .
Post-1991	Economic liberalization brought foreign investors → demand for reforms.
1999	CII Code of Corporate Governance - First formal guidelines in India.
2000	Kumar Mangalam Birla Committee Report - Introduced SEBI governance norms.
2002-2004	Naresh Chandra and Narayana Murthy Committees - Enhanced audit and ethics.
2013	Companies Act, 2013 - Codified many governance provisions.
2015-present	SEBI (LODR) Regulations, IBBI guidelines - Tightened disclosure and conduct.

Conclusion:

- ❖ Corporate Governance today is not just a set of legal rules.
- ❖ It has **evolved as a cultural, ethical, and legal framework** to build **trust, transparency, and accountability** in business practices.
- ❖ It is now a **crucial pillar for corporate success and economic stability**

Theories of Corporate Governance through Board Management

Stewardship theory:

Directors are regarded as stewards of the company's assets. They decide what is to be done and drive the people of the company

Agency theory:

Directors are considered to be agents of the shareholders and are supposed to run the company for best interest of the shareholders

Stakeholder theory:

This theory considers wide inclusion of stakeholders, other than shareholders. Hence the directors need to keep a balance between the interests of various stakeholders.

Trusteeship theory:

The directors are the persons who are given the authority to run the business by the shareholders which may be a huge amount of money.

The relationship of trust is very important for performance by directors who take major decisions of the company

Corporate Governance Practices / Codes in India

1. Introduction

Corporate Governance, though influenced by global practices such as those in the West, finds its ethical roots in Indian philosophy. Principles like truth, transparency, fairness, and accountability form its backbone. Several committees have contributed to formalizing these concepts in India, mirroring the global push toward ethical governance.

2. Committees on Corporate Governance

a) Cadbury Committee (USA)

- ❖ Recommended the formation of Audit Committees in listed companies, disclosed in Annual Reports.
- ❖ Audit Committees to include external auditors and finance directors. Board members could attend.
- ❖ Committees to coordinate multiple auditors, define audit scope, and review financials before Board submission.
- ❖ Authority to investigate and seek external professional advice. Chairperson to respond to AGM queries.

b) Rahul Bajaj Committee (India)

- ❖ Formed by Confederation of Indian Industry (CII).
- ❖ Audit Committees required for listed companies with turnover $\geq$ ₹100 crores or paid-up capital $\geq$ ₹20 crores.
- ❖ Committees to assist the Board in supervising financial reporting and interacting with auditors.

c) K.R. Chandratre Committee (India)

- ❖ Drafted Companies Bill to replace Companies Act, 1956.
- ❖ Proposed Audit Committees for companies with paid-up capital $\geq$ ₹5 crores. Constitution to be disclosed in annual report.
- ❖ Included participation (non-voting) of auditors and finance officers.
- ❖ Committees to review internal controls and audit scope, and could seek external advice.

d) Kumar Mangalam Birla Committee (India)

- ❖ Appointed by SEBI; introduced both mandatory and non-mandatory recommendations.
- ❖ 50% of Board to be independent (or 1/3 if Chairman is non-executive).
- ❖ Audit Committee: 3 non-executive directors (majority independent), meeting thrice a year.
- ❖ Other Committees: Remuneration, Investor Grievance. Committee chairs to attend AGMs.
- ❖ Limits on number of committee memberships per director.
- ❖ Mandatory annual report disclosures on governance. Postal ballots recommended.

3. Principles of Good Governance

- ❖ Policies should be built on fairness, honesty, and serve all stakeholders.
- ❖ Governance applies both at Board and below-Board levels.

a) Board Level Governance

- ✓ Guided by the Companies Act and SEBI LODR Regulations.
- ✓ Includes Board composition, disclosures, and statutory compliance.

b) Below Board Level Governance

- ✓ Companies adopt codes of conduct, ethics policies, disciplinary rules, whistleblower policies, etc.

4. Independent Directors - Role & Duties**a) Ethical Responsibilities**

- ❖ Maintain integrity, act objectively, and avoid conflicts of interest.
- ❖ Uphold company's interest without personal benefit.

b) Functions

- ❖ Provide independent judgment on strategy, performance, risk, appointments.
- ❖ Evaluate Board and management, ensure robust financial controls.
- ❖ Represent minority shareholders, resolve conflicts.

c) Duties

- ❖ Stay updated on company affairs and external environment.
- ❖ Attend all board/committee/general meetings.
- ❖ Raise concerns on unethical behavior and protect company interests.
- ❖ Keep information confidential; do not share unpublished price-sensitive data.

d) Appointment Process

- ❖ Board to ensure appropriate mix of skills/experience.
- ❖ Shareholder approval required; formalized through appointment letter.
- ❖ Letter must include duties, liabilities, expectations, committees, ethics code.

5. Corporate Governance Ratings

- ❖ Ratings assess a company's adherence to governance principles.
- ❖ Helps investors, stakeholders, and regulators evaluate credibility.
- ❖ Encourages companies to benchmark and improve governance standards.

Assessment criteria include:

- ✓ Board structure & balance
- ✓ Shareholder rights & compensation
- ✓ Financial disclosures, audit practices
- ✓ Ownership, control, risk management
- ✓ Related party transactions, grievance redressal
- ✓ CSR initiatives and ESG compliance

6. ESG Ratings and SEBI Compliance Format

- ❖ ESG (Environmental, Social, Governance) indicators are integrated to assess company sustainability.
- ❖ SEBI mandates Corporate Governance reports in prescribed formats:
 - ✓ Annex I - Quarterly
 - ✓ Annex II - Annual
 - ✓ Annex III - 6 months from FY end

Corporate Governance in Family-Owned Businesses

What are Family-Owned Businesses?

- ❖ Family businesses are enterprises in which **ownership and management are dominated by one or more families**, and **family members play key roles** in strategic and day-to-day decision-making.
- ❖ They are **very common in India**, even now 99% of the corporate houses are owned by individuals or families. Nothing wrong in that. In fact growth of family business is quite substantial.

Why is Corporate Governance Important in Family Businesses?

- ❖ **Overlap of ownership and management** may lead to conflicts of interest.
- ❖ **Emotional and personal relationships** can cloud objective business judgment.
- ❖ Absence of **formal systems of control**, transparency, or succession planning can cause instability.
- ❖ Strong governance brings **professionalism, continuity, and investor confidence**.

Challenges in Family-Owned Businesses

Challenge	Explanation
Concentration of power	Control often lies with a few individuals, reducing checks and balances.
Conflict of interest	Family interests may clash with the interests of shareholders or stakeholders.
Death / Disability	Death/disability of senior member in the family results to leadership management crisis
Lack of transparency	Limited information disclosure, informal communication channels.
Succession planning issues	Unclear leadership succession can lead to disputes or loss of direction.
Resistance to professionals	Many hard-core professional avoid working in family business for obvious reasons

Corporate Governance Mechanisms for Family Businesses

1. Clear Role Definitions

- ❖ Define roles and responsibilities of family members versus professionals.
- ❖ Create **formal organizational structures and reporting lines**.

2. Board Independence

- ❖ Appoint **Independent Directors** to ensure objective oversight.
- ❖ Form Board Committees (e.g., Audit, Remuneration, Nomination).

3. Succession Planning

- ❖ Develop a **formal succession policy**.
- ❖ Prepare next-generation family members through training or external exposure.

4. Separation of Ownership and Management

- ❖ Shareholding can remain with the family, but professional managers may run operations.

5. Code of Conduct and Family Charter

- ❖ Adopt a **Family Constitution/Charter** covering:
 - ✓ Values and mission
 - ✓ Dispute resolution methods
 - ✓ Criteria for entry and exit of family members
 - ✓ Employment and remuneration rules

6. Transparency and Disclosures

- ❖ Regular financial and strategic disclosures, not just statutory.
- ❖ Encourage an **open culture of communication** across all levels.

7. Performance Evaluation

- ❖ Periodic evaluation of Board, executives, and family members involved in the business.

Emerging Trends in Family Business Governance

- ❖ **Professionalization:** Hiring outside experts and CEOs.
- ❖ **Governance codes:** Adoption of governance codes voluntarily.
- ❖ **Tech-savvy Next Gen:** Younger family members promote digitization, ESG focus.
- ❖ **Wealth management & diversification:** More focus on risk management and sustainability.

Conclusion

Strong corporate governance in family-owned businesses:

- ❖ **Preserves the legacy**, promotes long-term sustainability,
- ❖ Builds **trust among investors, lenders, and stakeholders**, and
- ❖ Prepares the business for **succession, IPOs, or partnerships**.

Governance transforms a family business into a professionally managed institution

Corporate Social Responsibility (CSR)

Introduction:

- ❖ CSR is rooted in the principles of Concern, Care, and Share (CCS)
- ❖ Corporate Social Responsibility (CSR) refers to the **voluntary or statutory commitment** of companies to **conduct their business in an ethical, responsible, and sustainable manner**.
- ❖ It involves initiatives that **benefit society, the environment, and stakeholders**, beyond just making profits.
- ❖ In essence, CSR is about **giving back to society**, addressing the **social, environmental, and economic impacts** of business operations.

Concept of CSR:

The concept of CSR is built around the **idea of corporate accountability** - that businesses must operate in a manner that is **ethical and contributes to economic development**, while also **improving the quality of life of employees, local communities, and society at large**.

Key Elements of CSR Concept:

1. **Responsibility towards Society**
2. **Sustainability**
3. **Ethical Conduct**
4. **Stakeholder Engagement**
5. **Voluntary and Mandatory Dimensions:**

CSR Under Companies Act, 2013

Criteria for Applicability (Any one of the following in preceding FY)

- ❖ **Net Worth $\geq$ ₹500 crore**
- ❖ **Turnover $\geq$ ₹1000 crore**
- ❖ **Net Profit $\geq$ ₹5 crore**

If applicable, the company must:

- ✓ **Constitute a CSR Committee** (if spending obligation $\geq$ 50L, otherwise board will manage it)
- ✓ **Spend at least 2% of average net profits** of the last 3 years on CSR activities
- ✓ **Prefer local area development**
- ✓ **Disclose CSR policy and activities** in Board's Report and on website

As per Schedule VII - List of CSR Activities:

Some permitted CSR activities include:

- ❖ **Eradicating hunger, poverty and malnutrition**
- ❖ **Promoting education, gender equality, women empowerment**

- ❖ Ensuring environmental sustainability
- ❖ Promoting healthcare and sanitation
- ❖ Rural development projects
- ❖ Disaster management
- ❖ Contributions to PM CARES Fund and other notified funds

Business Society Interface

- ❖ Business and society are interdependent.
- ❖ Corporate Social Responsibility (CSR) is crucial for sustainable business practices that align economic, legal, ethical, and social responsibilities.

CSR in India - Background

- ❖ CSR in India evolved from voluntary actions to statutory obligations under guidelines such as NVGs (NVGs - National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business) and NGRBC (NGRBC - National Guidelines on Responsible Business Conduct)
- ❖ SEBI mandated BRR (Business Responsibility Report) for top listed companies.

Sustainability Reporting

Annual Business Responsibility Report (ABRR) is mandated.

NGRBC consists of nine interrelated principles that guide ethical, environmental, and social conduct.

National Guidelines on Responsible Business Conduct

Nine principles include ethical governance, sustainable products, employee well-being, stakeholder responsiveness, human rights, environmental care, policy advocacy, inclusive growth, and consumer value.

Principle 1: Businesses should conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable

Principle 2: Businesses should provide goods and service in a manner that is sustainable and safe

Principle 3: Businesses should respect and promote the well-being of all employees, including those in their value chains

Principle 4: Businesses should respect the interests of and be responsive to all its stakeholders

Principle 5: Businesses should respect and promote human rights

Principle 6: Businesses should respect and make efforts to protect and restore the environment

Principle 7: Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and transparent

Principle 8: Businesses should promote inclusive growth and equitable development

Principle 9: Businesses should engage with and provide value to their consumers in a responsible manner

Activities / Expenditures considered as CSR

CSR touch upon social issues such as

- ❖ welfare of employees,
- ❖ empowerment of the weaker sections,
- ❖ holistic development of backward regions,
- ❖ improvement of the working conditions of labour, etc.
- ❖ Activities undertaken by companies to address basic issues pertaining to health, nutrition, sanitation and education needs of the impoverished communities, for the promotion of skill development, capacity building and inclusive growth of society, are all sustainability activities

Activities not considered as CSR

- ❖ Publicity activities with only intention to advertise product/services
- ❖ Compliance of regulation / Govt. order
- ❖ Employee benefits, employees' family benefit, direct or indirect
- ❖ Anything done to facilitate production, distribution of goods
- ❖ Contribution to political parties or for political purpose.

Steps in CSR Implementation

Steps in CSR Implementation include

- ❖ determining thrust area,
- ❖ identifying project,
- ❖ evaluating, implementing, monitoring, and assessing impact of CSR projects.

Collaborative Projects

Companies may collaborate with other businesses, Government (PPP), or specialized agencies for effective CSR execution

a) With other companies:

sometimes, one company may not be able to implement the project on its own and may decide to go with other similar companies

b) With Govt. under PPP model:

Govt. may not be able to reach out to every corner due to lack of resources. NGOs and voluntary organizations may be roped in to do the job with Govt. Support

c) With specialized agencies:

companies sometimes implement project through specialized agencies funded by them

Specialized Implementing Agencies

1. Community based organizations whether formal or informal;
2. Elected local bodies such as Panchayats;
3. Voluntary Agencies (NGOs);
4. Institutes/Academic Organisations;

5. Trusts, Missions, etc. (NGOs)
6. Self-help Groups;
7. Government, Semi-Government and autonomous Organisations;
8. Mahila Mandals/Samitis

Evaluation of the CSR Projects

Evaluation of CSR projects can be in two phases;

1. Evaluation before making the expenditure
2. Evaluation after making the expenditure

Let us elaborate on two issues.

Evaluation before making the expenditure:

- This is also called due diligence of CSR projects after shortlisting have been made.
- Normally companies make a shortlisting on the basis of the projects proposals available to the company.
- The purpose of due diligence is to decide whether the company is ultimately taking up the project or making the expenditure.
 1. nature of project
 2. cost of the project
 3. independent or linked to some other project
 4. collaborative project
 5. beneficiaries
 6. technical feasibility
 7. financial feasibility
 8. implementation time
 9. Whether impact can be measurable
 10. Monitoring mechanism

Evaluation after making the expenditure:

- ❖ Diligence of CSR initiatives is important to ensure effective implementation of planned strategy
- ❖ Each company can design measuring strategies based on their selected CSR focus areas.
- ❖ Some basic indicators to measure different CSR areas are elucidated as follows:
 - ✓ Monitoring
 - ✓ Collecting data of the performance
 - ✓ Assess the progress
 - ✓ Corrective action, (in case of deviation / delay)

How evaluation is done?

CSR Evaluation – Simplified Explanation

1. Formation of Evaluation Team:

The company forms a team of 2-3 officers to evaluate the CSR project. This team checks the documents submitted and may also visit the site or office of the implementing agency.

2. Checklist Preparation:

The team prepares a checklist of all important aspects related to the project and the implementing agency.

3. Structured Report:

After evaluation, the team prepares a **structured report** on the project and submits it with recommendations.

4. CSR Project Report:

- ❖ A detailed project report is usually prepared containing complete information - from the concept to the implementation plan.
- ❖ This report may be prepared by independent experts having domain knowledge.
- ❖ If an **implementing agency** is involved, the report is prepared either by them or by a consultant hired by them.
- ❖ This report is evaluated by the company's evaluation team.

5. Approval Process:

- ❖ The evaluation report along with the team's recommendation is placed before the **CSR Committee**.
- ❖ If the Committee agrees, the project is recommended to the **Board of Directors** for final approval.
- ❖ In many companies, the CSR Committee or CMD has the power to approve projects up to a certain limit without needing Board approval.

6. Agreement with Agency:

After approval, a formal **agreement or MoU** is signed between the company and the implementing agency.

7. Payment and Monitoring:

- ❖ Payments are made in **instalments** based on project progress.
- ❖ The company may also **monitor the project** during execution.

8. Completion and Verification:

- ❖ Once the project is completed, the agency provides a **completion certificate**, signed by an independent **Chartered Accountant** or **Chartered Engineer**.
- ❖ The company may also carry out a final inspection if needed.

CSR – Implementation Mechanisms

CSR can be implemented in two main ways:

1. In-House Implementation

The company directly plans, executes, and monitors the CSR project through its own personnel, infrastructure, and resources.

Advantages

- ❖ **Better Control & Supervision:** Company can closely monitor the project progress and quality.
- ❖ **Alignment with Vision:** Ensures CSR is aligned with company values and mission.
- ❖ **Cost Savings:** May reduce administrative or intermediary costs.
- ❖ **Employee Engagement:** Employees may participate actively, fostering team spirit and social value.
- ❖ **Accountability:** Easier to hold internal teams accountable for outcomes.

Disadvantages

- ❖ **Limited Expertise:** Company may not have expertise in social work or development projects.
- ❖ **High Operational Burden:** CSR may divert focus from core business activities.
- ❖ **Scalability Issues:** May be difficult to implement large-scale or multi-location projects.
- ❖ **Risk of Non-Compliance:** Mistakes in documentation or project selection can lead to regulatory scrutiny.

2. Implementation Through Third Parties

Companies may partner with external entities to implement CSR activities:

- ❖ Registered NGOs, Section 8 companies, Registered public trusts/societies, or
- ❖ Implementing agencies approved by the Ministry of Corporate Affairs (MCA).

Advantages

- ❖ **Expertise & Experience:** NGOs/partners have subject matter knowledge and local network.
- ❖ **Operational Efficiency:** Reduces management burden on company.
- ❖ **Wide Reach:** Easier to implement projects in remote or rural areas.
- ❖ **Innovative Solutions:** Third parties often bring innovative and community-friendly approaches.

Disadvantages

- ❖ **Lack of Control:** Company may have limited say in day-to-day operations.
- ❖ **Monitoring Challenges:** Difficult to track whether funds are properly used.

- ❖ **Brand Dilution:** CSR work may not be associated with the company's name.
- ❖ **Misuse of Funds:** If due diligence is poor, there's risk of fraud or non-compliance.

Common Problems in CSR Implementation (Both Modes)

Problem	Description
Lack of Clear Planning	Vague CSR policies and objectives can lead to ineffective project execution.
No Baseline Survey	Without proper assessment of community needs, CSR projects may not be relevant or impactful.
Weak Monitoring & Evaluation	Absence of measurable KPIs and follow-up mechanisms reduces effectiveness and accountability.
Documentation Gaps	Failure to maintain proper records, reports, and financial statements can lead to non-compliance with MCA norms.
Short-Term Focus	Projects designed only to utilize the 2% fund within the year may not yield long-term impact.
Inadequate Internal Capacity	Lack of trained CSR professionals within the company hampers effective planning and supervision.
Poor Selection of Third Parties	Partnering with unqualified or non-compliant NGOs can lead to misuse of funds and reputational damage.
Community Resistance	If the local community is not involved in planning, they may resist implementation efforts.
Changing Legal Framework	Frequent changes in CSR rules and compliance requirements cause confusion and increase legal risk.
Transparency & Disclosure Issues	Failure to report CSR activities properly in Board Reports or on MCA portal leads to regulatory scrutiny.

Conclusion

Aspect	In-House Implementation	Through Third Party
Control	High	Medium to Low
Cost	Often lower	Sometimes higher
Expertise	May be lacking	Usually strong
Reach	Limited	Wide/Deep
Employee Involvement	High	Low
Monitoring	Easier	Difficult

Ideal Approach:

- ❖ Many companies adopt a **hybrid model**, where they **design the project in-house**, but **collaborate with experienced NGOs** for execution.
- ❖ This ensures **strategic alignment** and **effective implementation**.

What is Impact Assessment in CSR?

- ❖ Any CSR project / activity should have some impact, big or small
- ❖ Impact refers to success of the activity with relation to the target
- ❖ it is confined to the target beneficiaries
- ❖ In order to know the impact, an impact analysis study is supposed to be made, which would compare the achieved results with the desired result

In order to get real picture, the following issues needs to be taken in to consideration;

- a) Should preferably done by an independent agency
- b) Focused on the impact only
- c) Done immediately after the benefit given
- d) Should be data based

Sustainable Development and Management

What is Sustainable Development (SD)?

- ❖ Defined by **Brundtland Commission (1987)** in the report "*Our Common Future*".
- ❖ It refers to development that **meets present needs without compromising the ability of future generations** to meet theirs.
- ❖ Emphasizes **needs of the poor** and **limitations of technology and social systems** to protect the environment.

Triple Bottom Line (3P) Approach to Sustainable Development

Approach	Also Called	Key Focus
Economic	Profit	Do not harm future living standards while taking current economic decisions.
Ecological	Planet	Preserve scarce natural resources, reduce pollution and resource use.
Social	People	Protect social values, welfare, and security of the population.

Steps in Sustainable Management (Applies to both Government & Corporate Managers)

1. Identify problem areas
2. Set thrust areas
3. Set goals/targets
4. Evaluate projects
5. Select suitable project
6. Plan action
7. Use tools and technology
8. Innovate processes
9. Schedule actions
10. Organise resources
11. Staff the team
12. Direct activities
13. Monitor progress
14. Take corrective action
15. Review actions

Practical Areas of Sustainable Action

- ❖ Shift to alternate processes to reduce natural resource use
- ❖ Community awareness on recycling, biodegradable materials
- ❖ Control deforestation and encourage afforestation
- ❖ Reduce effluent discharge, install treatment plants
- ❖ Promote sustainable agriculture
- ❖ Manage carbon emissions

Benefits of Sustainable Management

- ❖ Integrates **environment, economy, and needs of future generations**
- ❖ Ensures businesses are viable, communities prosperous, and natural resources preserved
- ❖ Applies to business, agriculture, society, environment, and even personal life
- ❖ Helps companies remain **competitive and resilient**
- ❖ Supports **system-wide** improvement in organizations

Role of a Sustainable Manager

- ❖ Plans and manages operations in a way that ensures long-term viability
- ❖ Must integrate sustainability into the **strategic vision** of the organization
- ❖ Align business processes with earth's **carrying capacity**
- ❖ Consider **stakeholders' survival needs** and **long-term impact**
- ❖ Link **sustainability values** with **strategic decision-making**

Sustainability Reporting

What is Sustainability Reporting?

- ✓ A mechanism for organizations to **report their Environmental, Social & Governance (ESG)** performance.
- ✓ Driven by initiatives like **UN Principles of Responsible Investment (PRI)** - supported by over 3,500 investor signatories.
- ✓ ESG reporting shows a company's commitment to responsible business conduct beyond financial performance.

ESG Ratings & Global Trends

- ❖ ESG performance is being assessed by **rating agencies** (not yet mandatory).
- ❖ Rating varies across sectors but promotes **transparency** and **stakeholder confidence**.
- ❖ More companies are aligning with ESG principles voluntarily.

SEBI's Role and the BRSR Framework

Item	Details
SEBI's Initial Step	Introduced ESG disclosure format in 2015
Updated Format	In May 2021 , SEBI introduced the Business Responsibility and Sustainability Report (BRSR)
Reporting Basis	Based on National Guidelines on Responsible Business Conduct (NGBRC)
Disclosure Indicators	Divided into Leadership (voluntary) and Essential (mandatory) indicators
Mandatory Filing	For top 1000 listed companies by market capitalization, from FY 2022-23 onwards

Objectives of BRSR Disclosure

1. **Standardized Data:** For comparison across companies and for third-party evaluation.
2. **Stakeholder Engagement:** Improves corporate-stakeholder relationships.
3. **Beyond Financials:** Encourages holistic performance evaluation - social, environmental, and governance factors.

Conclusion

- ❖ Sustainable development and sustainable management are now **core parts of corporate governance**.
- ❖ Sustainability Reporting, especially through **ESG and BRSR frameworks**, reflects a company's responsibility towards people, planet, and profits - ensuring **long-term business continuity** and **stakeholder trust**.

Case laws

Corporate Governance:

1. Satyam Computers Scam (Ramalinga Raju v. SEBI) - 2009

- ❖ **Key Issue:** Falsification of accounts and lack of internal governance.
- ❖ **Importance:** One of the biggest corporate frauds in India that led to reforms in the corporate governance framework, especially the role of independent directors and auditors.

2. Tata Sons v. Cyrus Mistry (2021) - Supreme Court

- ❖ **Key Issue:** Boardroom governance, removal of executive chairman.
- ❖ **Importance:** Clarified the role of majority shareholders and Board discretion in governance matters. Also highlighted the interpretation of oppression / mismanagement under Company Law.

3. MCX-SX v. SEBI (2012)

- ❖ **Key Issue:** Regulatory role in corporate governance.
- ❖ **Importance:** SEBI's power to reject stock exchange licenses on governance grounds was upheld.

4. Punit Dalmia v. Dalmia Bharat Ltd. (NCLT 2021)

- ❖ **Key Issue:** Governance conflict in family-run business.
- ❖ **Importance:** Showed the role of NCLT in resolving internal governance disputes, especially in family-owned enterprises.

CSR (Corporate Social Responsibility):

5. Technicolor India Pvt. Ltd. v. Registrar of Companies (2016)

- ❖ **Key Issue:** Delay in spending CSR amount.
- ❖ **Importance:** Emphasized the mandatory nature of CSR reporting and explanations for unspent funds.

6. In Re: National CSR Exchange Portal Initiative (2022)

- ❖ **Key Issue:** Improving transparency in CSR spending.
- ❖ **Importance:** Led to development of the CSR Exchange Platform to improve access to CSR project information and reporting.

7. Nestle India - Maggi Noodles Case (2015) (Though not a legal judgment, it's widely discussed)

- ❖ **Key Issue:** Product safety and corporate accountability.
- ❖ **Importance:** Raised concerns on ethical business practices and CSR responsibility towards public health.

Sustainable Development:

8. Vellore Citizens' Welfare Forum v. Union of India (1996) – Supreme Court

- ❖ **Key Issue:** Pollution by tanneries in Tamil Nadu.
- ❖ **Importance:** Landmark case establishing the "Precautionary Principle" and "Polluter Pays Principle" in Indian environmental jurisprudence.

9. T.N. Godavarman Thirumulpad v. Union of India (1996–ongoing)

- ❖ **Key Issue:** Forest conservation and biodiversity.
- ❖ **Importance:** Ongoing case that shaped India's forest policy and sustainable development principles.

Corporate Reporting / Disclosure:

10. Price Waterhouse v. SEBI (Satyam Scam fallout) – 2018

- ❖ **Key Issue:** Auditor's role in financial misreporting.
- ❖ **Importance:** SEBI barred PwC from auditing listed companies, stressing the role of transparent financial reporting and accountability of auditors.



GRR Complex,
Opposite Canara Bank, SR Nagar,
Main Road, Hyderabad - 500038.