Chapterwise Weightage

Weightage in old syllabus

Name of the Chapter	N-19	N-20	J-20	J-21	D-21	M-22	N-22	M-23	N-23
Preliminary	4	-	-	11	2	3	5	5	-
Incorporation	7	13	5	10	3	9	5	-	10
Prospectus	4	-	10	3	8	5	5	5	5
Share Capital	8	8	10	3	7	8	6	11	5
Deposit	6	6	7	4	5	2	4	5	4
Charges	5	4	3	-	-	4	5	5	2
Management	4	2	8	9	15	7	4	4	11
Dividend	5	8	5	3	2	2	6	6	-
Accounts	9	6	6	6	6	7	5	13	12
Audit	6	6	3	8	9	10	6	3	6
GCA	7	8	7	7	7	7	6	6	8
Interpretation	6	6	6	6	6	6	7	7	6
Total	71	67	70	70	70	70	64	70	69

Weightage in new syllabus

Name of the Chapter	M-24	S-24			J-25			M-25			S-25		
		D	M	Total	D	M	Total	D	M	Total	D	M	Total
Preliminary	-	-	-	-	-	-	-	-	-	-	-	-	-
Incorporation	-	-	-	-	5	2	7	5	-	5	-	2	2
Prospectus	5	5	-	5	5	2	7	10	-	10	5	2	7
Share Capital	10	10	2	12	5	2	7	-	6	6	10	2	12
Deposit	2	5	6	11	5	-	5	5	-	5	5	2	7
Charges	-	5	-	5	10	-	10	15	-	15	-	-	-
Management	18	10	-	10	5	-	5	-	6	6	15	2	17
Dividend	5	5	-	5	-	-	-	-	-	-	-	-	-
Accounts	5	8	-	8	5	8	13	10	-	10	15	-	15
Audit	8	2	-	2	5	6	11	5	-	5	5	-	5
Foreign Co	2	-	6	6	5	-	5	5	4	9	-	6	6
GCA	8	8	4	12	-	-	-	-	-	-	-	-	-
Interpretation	8	8	-	8	8	-	8	8	-	8	8	-	8
FEMA	4	8	6	14	8	6	14	8	6	14	8	6	14
LLP	10	10	6	16	10	2	12	10	4	14	10	2	12
Total	85	84	30	114	76	28	104	81	26	107	81	24	105

Note: 1) D=descriptive, M=MCQ's

2) New syllabus introduced from May 24. FEMA,LLP & foreign co. introduced in new syllabus.

3) ICAI has started officially releasing exam MCQ's only from Sep 24 only

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Table of content

SN	Name of Chapters	Pages
1	Preliminary	12
2	Incorporation of Company and Incidental Matters	21
3	Prospectus and Allotment of Securities	17
4	Share Capital and Debentures	24
5	Acceptance of Deposits by Company	9
6	Registration of Charges	6
7	Management and Administration	29
8	Declaration and Payment of Dividend	6
9	Accounts of Companies	20
10	Audit and Auditors	15
11	Companies Incorporated Outside India	6
12	The General Clauses Act, 1897	10
13	Interpretation of Statutes	13
14	Foreign Exchange Management Act	10
15	Limited Liability Partnership Act	15
		~200

Reason why I call this book - The Ultimate Solution

SN	Appendix	SN	Appendix
1	Matters requiring OR/SR	5	Exemption to Private companies
2	Important Limits of Companies Act	6	Exemption to Government companies
3	Power delegated to RD and RoC	7	Exemption to Nidhi companies
4	All you need to know about IFSC companies		

Steps to nail your theory papers - The Ranker's Way:

1. Take as much as you can from the classes - Conceptual clarity, concise notes, funny mnemonics and examples and what not.
2. Do a lot of writing practice in addition to the writing practice that we do in our classes.
3. Cover the full question bank in the first revision along with this summary notes and mark selected questions for next revision
4. Plan 2 revision for full syllabus of law and 3-4 revision for important or difficult topics
5. Use revision videos along with this summary notes for comprehensive revision
6. Boom - You are ready to nail Law exams - The Ranker's Way

5 - 21 - 7 - 11

These indicates marking of relevant question number from our question bank.

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Commonly used shortforms

Short	Full Form	Short	Full Form
AIF	Alternate Investment Fund	OFS	Offer for Sale
AoA	Articles of Association	OOBH	Opportunity of being heard
BC	Body Corporate	OPC	One Person Company
BoA	Books of Accounts	OR	Ordinary Resolution
BoD	Board of Directors	PFI	Public Financial Institutions
BR	Board Resolution	POB	Place of Business
CASH	Company or its holding, subsidiary, or associate company	PP	Private Placement
CFS	Cash Flow Statement	PROI	Person Resident Outside India
CG	Central Government	PSC	Preference Share Capital
CRR	Capital Redemption Reserve	PUSC	Paid Up Share Capital
CTV	City, Town, Village	RD	Regional Director
DH	Debenture Holders	RGTB	Reasonable Ground to Believe
DP	Designated Partner	RoC	Registrar of Company
DVR	Differential Voting Rights	RoM	Register of Members
EGM	Extra-Ordinary General Meeting	RPAD	Registered Post Acknowledgement Due
ESC	Equity Share Capital	RPT	Related Parties Transaction
FC	Foreign Company	SAS	Statement of Account Solvency
FPO	Further Public Offer	SEBI	Securities and Exchange Board of India
GM	General Meeting	SEZ	Special Economic Zone
ID	Independent Director	SG	State Government
IEPF	Investor Education and Protection Fund	SH	Shareholders
IPO	Initial Public Offer	FS	Financial Statement
IRDA	Insurance Regulatory & Development Authority	SOH	Subsidiary of Holding
KMP	Key Managerial Personnel	SR	Special Resolution
LR	Legal Representative	T&C	Terms and Conditions
MCA	Ministry of Corporate Affairs	UDA	Unpaid Dividend Account
MoA	Memorandum of Association	VR	Voting Rights
MD	Managing Director	WOS	Wholly Owned Subsidiary
MSME	Micro Small Medium Enterprises	WTD	Whole Time Director
NCLT	National Company Law Tribunal		

TELEGRAM: CA NOTES COMMUNITY



Chapter 1 Preliminary

Objective of this Act

Act to consolidate and amend the law relating to companies.

Enactment

- Received the assent of the Hon'ble President of India on 29th August 2013
- Notified in Official Gazette on 30th Aug 2013 (different dates may be appointed for enforcement)

Structure of Companies Act

29 Chapters 470 Sections 7 Schedules

Section 1: Short Title, Extent, Commencement and Application

Short Title	Companies Act, 2013
Extent	Whole of India (by default includes J&K)
Commencement	From date as appointed by CG by notification in Official Gazette
Applicability	The provision of this Act shall apply to:
	a. companies incorporated under this Act or under any previous company law.
	b. insurance companies, except where provisions are inconsistent with that of Insurance Act, 1938 or IRDA Act, 1999;
	c. banking companies, except where provisions are inconsistent with that of Banking Regulation Act, 1949
	d. companies engaged in generation or supply of electricity, except where provisions are inconsistent with that of Electricity Act, 2003.
	e. other company governed by any Special Act, except where provisions are inconsistent with that of Special Act (e.g., LIC, RBI)
	f. such body corporate, incorporated by any Act for the time being in force, as may be notified by CG. [e.g., Food Corporation of India (FCI), NHAI]

Section 2: Definitions

In this Act, unless the context otherwise requires:

1 Abridged Prospectus

Means a memorandum containing such salient features of a prospectus as may be specified by SEBI by making regulations in this behalf.

TELEGRAM: CA NOTES COMMUNITY

2 Accounting Standards

Means the standards of accounting or any addendum thereto for companies or class of companies referred to in section 133.

3 Alter or Alteration

Includes the making of additions, omissions and substitutions.

5 Articles

Means the articles of association of a company:

- as originally framed, or
- as altered from time to time, or
- applied in pursuance of any previous company law or this Act.

6 Associate Company

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

Explanation: For the purpose of this clause:

a. "Significant influence" means control of at least 20% of total voting power, or control of or participation in business decisions under an agreement;
b. "Joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.

Clarification: Shares held by a company in another company in a fiduciary capacity shall not be counted for the purpose of determining the relationship of associate company

A fiduciary is a person who holds a legal or ethical relationship of trust with another person. Typically, a fiduciary prudently takes care of money or other assets for another person.

7 Auditing standards

means the standards of auditing or any addendum thereto for companies or class of companies referred to u/s 143(10).

8 Authorised Capital or Nominal Capital

means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company.

10 Board of Directors or Board

means the collective body of the directors of the company.

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11 Body corporate or Corporation

Includes a company incorporated outside India, but does not include:

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act) notified by CG.

12 "Book and Paper" and "Book or Paper": Includes:

Books of Accounts | Deeds | Voucher | Writings | Documents | Minutes | Registers

maintained on paper or in electronic form.

13 "Books of account" includes records maintained in respect of:

(i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;

(ii) all sales and purchases of goods and services by the company;

(iii) the assets and liabilities of the company; and

(iv) the items of cost as may be prescribed u/s 148.

14 Branch office, means any establishment described as such by the company.

15 Called-up capital means such part of the capital, which has been called for payment.

16 Charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

17 Chartered Accountant means a CA as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice u/s 6(1) of that Act.

18 Chief Executive Officer means officer of company, who has been designated as such by it.

19 Chief Financial Officer means a person appointed as the CFO of a company.

20 Company means a company incorporated under this Act or under any previous company law.

Example: RIL (1973), Tata Steel (1907), Infosys (1981).

Generally speaking, company means an incorporated association which is an artificial person, having a separate legal entity, with a perpetual succession, a common seal (optional).

Requirement to have a common seal is optional. Any document is valid if signed by 2 directors or one director + CS, where company has appointed CS, even without a seal.

TELEGRAM: CA NOTES COMMUNITY

21 Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

22 Company limited by share capital means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

26 Contributory means a person liable to contribute towards the assets of the company in the event of its being wound up.
Explanation: For the purposes of this clause, it is hereby clarified that a person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.

27 Control shall include:
- the right to appoint majority of the directors or
- to control the management or policy decisions exercisable by a person(s) acting individually or in concern, directly or indirectly,
- including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

30 Debenture includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.
(Discussed in detail in Sec 71)

34 Director means a director appointed to the Board of a company.

35 Dividend includes any interim dividend.

36 Document includes summons, notice, requisition, order, declaration, form and register, whether issued, sent or kept in pursuance of this Act or under any other law for the time being in force or otherwise, maintained on paper or in electronic form.

37 Employees stock option means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price.

38 "Expert" includes an engineer, a valuer, a CA, a CS, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force.

TELEGRAM: CA NOTES COMMUNITY

40 Financial statement in relation to a company, includes: (2) (5)

(i) Balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity (SOCE), if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred above.

Provided that the FS may not include CFS in case of following companies:

- OPC
- Small company
- Dormant company
- Private company (recognised as start-up as per the notification by Department of Industrial Policy and Promotion, Ministry of Commerce and Industry.)

41 Financial Year, in relation to any company or BC, means period ending on 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof FS of the company or BC is made up.

(4) Provided that where a company or BC, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different FY for consolidation of its accounts outside India, the CG may, on an application made by that company or BC in such form and manner as may be prescribed, allow any period as its FY, whether or not that period is a year.

43 Free reserves means such reserves which, as per the latest audited balance sheet of a company, are (13) available for distribution as dividend.

Provided that, following shall not be treated as free reserve:

i. any amount representing unrealised gains, notional gains, or revaluation of assets, whether shown as a reserve or otherwise, or

ii. any change in carrying amount of an asset or liability recognised in equity, including surplus in Profit and Loss account on measurement of the asset or the liability at fair value.

44 Global Depository Receipt (GDR): means any instrument in the form of a depository receipt, by whatever name called:

- created by a foreign depository outside India and
- authorised by a company making an issue of such depository receipts.

45 Government company means:

- any company in which not less than 51% of paid-up share capital is held by CG, or by any SG, or partly by CG and partly by one or more SG, and
- includes a company which is a subsidiary company of such government company.

TELEGRAM: CA NOTES COMMUNITY

46 Holding company, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

50 Issued Capital means such capital as the company issues from time to time for subscription.

51 Key Managerial Personnel, in relation to a company, means:

- the CEO or the managing director or the manager;
- the company secretary;
- the whole-time director;
- the CFO
- such other officer, not more than one level below the directors who is in whole-time employment, designated as KMP by the Board; and
- such other officer as may be prescribed.

52 Listed company means a company which has any of its securities listed on any recognised stock exchange ("RSE"); (10)

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies.

Rule 2A of the Companies (Specification of definitions details) Rules, 2014

The following classes of companies shall not be considered as listed companies, namely:

a. Public companies which have not listed their equity shares on a RSE but have listed their:
   i. non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
   ii. non-convertible redeemable preference shares issued on private placement basis as per SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013;
   iii. both categories of (i) and (ii) above.

b. Private companies which have listed their non-convertible debt securities on private placement basis on a RSE in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

c. Public companies which have not listed their equity shares on a RSE but whose equity shares are listed on a stock exchange in a jurisdiction as specified in section 23(3) [permissible foreign jurisdiction].

53 Manager means an individual who:

- subject to the superintendence, control and direction of the Board of Directors,
- has the management of the whole, or substantially the whole, of the affairs of a company, and
- includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

TELEGRAM: CA NOTES COMMUNITY

54 Managing Director means a director who

- By virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors,
- is entrusted with substantial powers of management of the affairs of the company and
- includes a director occupying the position of managing director, by whatever name called

Explanation: For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board shall not be deemed to be included within the substantial powers of management.

Power to do administrative act like:

power to affix the common seal to any document	draw and endorse any cheque in any bank	draw and endorse any negotiable instrument	sign any certificate of share	direct registration of transfer of any share

55 Member in relation to a company, means:

i. the subscriber to the memorandum of co. who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
ii. every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
iii. every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.

56 Memorandum means the MoA of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

57 Net worth means the: (3)

Aggregate value of:	After deducting:	Does NOT include:
1. paid-up share capital,	1. the accumulated losses,	1. reserve created out of revaluation of assets
2. all reserves created out of the profits,	2. deferred expenditure &	2. write-back of depreciation and amalgamation
3. securities premium account &	3. miscellaneous expense not written off	
4. debit or credit balance of P&L		

58 Notification means a notification published in Official Gazette and expression "notify" to be construed accordingly.

59 Officer includes any director, manager or KMP or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act.

TELEGRAM: CA NOTES COMMUNITY

60 Officer who is in default, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

(i) Whole-time director;

(ii) KMP;

(iii) where there is no KMP, such director(s) as specified by the Board in this behalf and who has or have given his consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of Board/KMP, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of directors of company is accustomed to act, other than a person who gives advice to Board of directors in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

62 One Person Company (OPC) means a company which has only one person as a member.

63 Ordinary or Special Resolution means an OR/SR as referred to in section 114.

64 Paid-up share capital or share capital paid-up means:
such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company, but does not include any other amount received in respect of such shares, by whatever name called;

65 Postal ballot means voting by post or through any e-mode.

66 Prescribed means prescribed by rules made under this Act.

TELEGRAM: CA NOTES COMMUNITY

68 Private Company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles: [8]-

i. restricts the right to transfer its shares;

ii. except in case of OPC, limits the number of its members to 200:

Provided that in case joint holding - Treat them as single member.

Provided further, following shall not be included in number of members:

a. persons who are in the employment of the company; and

b. persons who, having been formerly in employment of company, were members of company while in that employment and have continued to be members after the employment ceased.

iii. prohibits any invitation to the public to subscribe for any securities of the company;

Exception to Sec 8 companies: Requirement of prescribed minimum PUSC is not applicable to Sec 8 companies (provided that Sec 92 and Sec 137 is complied with)

69 Promoter means a person: [14]-

a. who has been named as such in a prospectus or is identified by company in annual return u/s 92,

b. who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

c. in accordance with whose advice, directions or instructions the Board of the company is accustomed to act (except where such person is acting merely in professional capacity)

70 Prospectus means any document described or issued as a prospectus and includes a red herring prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

71 Public company means a company which: [12]-

i. is not a private company; and

ii. has a minimum paid-up share capital as may be prescribed (N.A. to Sec 8 companies)

Provided that subsidiary of a public company shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

74 Register of companies means the register of companies maintained by the Registrar on paper or in any electronic mode under this Act.

75 Registrar means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

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76 Related Party:

Person	Firm	Private Company	Public Company
Director or Relatives	Director, Manager or relative is a partner	Director, Manager or Relative is Member or Director	Such director or manager ~~or Relative~~ is a director AND holds along with relatives >2% of PUSC
KMP or Relatives			

Body Corporate [2(76)(viii)]*	Any person	Other person
BOD / MD / Manager is accustomed to act as per advice or instruction of director or manager ~~and relative~~	on whose advice or instruction of director or manager and ~~relative~~ is accustomed to act	As may be prescribed Director (other than I.D), KMP of the holding co. or relatives of such directors or KMP
holding, subsidiary, co-subsidiary or associate of such company		
Investing company or venturer of the company (such investment leads to the company becoming associate)		

*Exemption: Section 2(76)(viii) shall not apply to a private company w.r.t transaction u/s 188 (i.e., related party transation) even though it is a related party u/s 2(76).

77 Relative:

Anyone who is related to another and covers the following:

a. they are members of a HUF (Hindu Undivided Family);
b. they are husband and wife; or
c. one person is related to the other in the prescribed manner as under:

Father (including step-father);	Mother (including step-mother);	Son (including step-son);	Son's wife;
Daughter ~~(including step-daughter)~~;	Daughter's husband;	Brother (including the step-brother);	Sister (including the step-sister).

78 Remuneration means any money, or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under the Income Tax Act, 1961.

84 Share means a share in the share capital of a company and includes stock.

TELEGRAM: CA NOTES COMMUNITY

85 Small company means a company, other than a public company: 5 - 7 - 11

i. PUSC of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be more than Rs. 10 crores; and

ii. turnover of which as per P&L account for the immediately preceding FY does not exceed Rs. 2 crores or such higher amount as may be prescribed which shall not be more than Rs. 100 crores

Provided that nothing in this clause shall apply to:

i. a holding company or a subsidiary company;

ii. a company registered under section 8; or

iii. a company or body corporate governed by any special Act.

As per Companies (Specification of Definitions Details) Rules, 2014, PUSC and turnover of small company shall not exceed Rs. 4 crores and Rs. 40 crores respectively.

86 Subscribed capital means such part of the capital which is for the time being subscribed by the members of a company.

87 Subsidiary company or Subsidiary, in relation to any other company, means a company in which the holding company: 1

i. controls the composition of the Board of Directors; or

ii. exercises or controls more than $\frac{1}{2}$ of the total voting power either at its own or together with one or more of its subsidiary companies.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation: For the purposes of this clause:

a. a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or (ii) is of another subsidiary company of holding company;

b. the composition of a company's Board of directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;

c. the expression "company" includes any body corporate;

d. layer in relation to a holding company means its subsidiary or subsidiaries;

Note: Shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for purpose of determining the holding - subsidiary relationship.

TELEGRAM: CA NOTES COMMUNITY

88 Sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions.

89 Total voting power, in relation to any matter, means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote are present at the meeting and cast their votes.

90 Tribunal means the NCLT constituted u/s 408.

91 Turnover means the gross amount of revenue recognised in the P&L account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY.

92 Unlimited company means a company not having any limit on the liability of its members.

93 Voting Right means the right of a member of a company to vote in any meeting of the company or by means of postal ballot.

The End

"Deserve before you desire"

TELEGRAM: CA NOTES COMMUNITY

Amendment in definition of Small Company
[with effect from 1st December 2025]

As per Companies (Specification of definition details) Amendment Rules, 2025, the limit u/s 2(85) has been revised as follows:

Paid up capital and turnover of the small company shall not exceed Rs. 10 crores and Rs. 100 crores respectively.

Note: This revised limit is applicable from Sept'26 and Jan'27 attempt onwards. Request you to make necessary changes in question bank and MCQs as well please.

For Jan'26 and May'26 attempts, the limit of small company will continue to be Rs. 4 crores and 40 crores. So no changes needs to be done.

TELEGRAM: CA NOTES COMMUNITY

Summary of Forms

Form No.	Section	Purpose
		1. Incorporation Stage
DIR-2	7	Consent of person to act as first director.
DIR-12	7	Filing particulars of first director with consent (DIR-2).
INC-4	3	Nominee's consent for OPC incorporation; also for withdrawal/change/ cessation of nominee with RoC.
INC-8	7	Declaration of compliance by professional (Advocate/CA/CS) and first director/manager/secretary.
INC-9	7	Declaration from subscribers and first directors on document correctness and non-conviction.
INC-11	7	Certificate of incorporation issued by RoC.
SPICe+ (INC-32)	Many	Integrated application for incorporation: name reservation, Sec. 8 registration, OPC nominee, AoA entrenchment.
INC-33	7	eMoA furnished for registration.
INC-34	7	eAoA furnished for registration.
RUN	4	Application for name reservation when changing name of existing company.
		2. Post-Incorporation Compliance
INC-20A	10A	Director's declaration that subscribers paid for shares.
INC-22	12	Verification/notice of every change of registered office after incorporation.
		3. Alteration / Conversion
INC-23	13	Application to CG/RD for MoA alteration (registered office shifting State-to-State or RoC jurisdiction change).
INC-24	13	Application for approval of change in company name.
INC-25	13	Fresh certificate of incorporation after name change.
INC-26	13	Newspaper advertisement for registered office shifting State-to-State.
INC-27	14	Filing AoA alteration, CG order (if any), and altered AoA with RoC.
INC-28	13	Filing certified copy of CG order (approving RO shifting State-to-State) with RoC of both States.
MGT-14	5	Notice to RoC of entrenchment provisions in AoA by existing company.
RD-1	14	Application to RD for conversion of public company into private company.
		4. Section 8 Companies
INC-18	8	Application to RD for approval of Sec. 8 company conversion.
INC-19	8	Newspaper notice for Sec. 8 company conversion.

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Summary of sections

Sec.	Section Name	Sec.	Section Name
3	Formation of Company	15	Alteration of Memorandum or Articles
3A	Members severally liable in certain cases		to be Noted in Every Copy
4	Memorandum	16	Rectification of Name of Company
5	Articles	17	Copies of Memorandum, Articles, etc.,
6	Act to Override Memorandum, Articles.		to be Given to Members
7	Incorporation of Company	18	Conversion of Companies Already
8	Formation of Companies with Charitable		Registered
	Objects, etc.	19	Subsidiary Company not to Hold Shares
9	Effect of Registration		in its Holding Company
10	Effect of Memorandum and Articles	20	Service of Documents
10A	Commencement of business etc.	21	Authentication of Documents,
12	Registered Office of Company		Proceedings and Contracts
13	Alteration of Memorandum	22	Execution of Bills of Exchange, etc.
14	Alteration of Articles		

Understanding Promoter

Promoter [Sec 2(69)] means a person:

- who has been named as such in a prospectus or is identified by company in annual return u/s 92,
- who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with whose advice, directions or instructions the Board of the company is accustomed to act (except where such person is acting merely in professional capacity)

General meaning of promoter:

- A person who initiates promotion of a company is usually called as Promoter.
- A promoter is one who undertakes to form a company w.r.t. a given project, and to set it going, and who takes the necessary steps to accomplish that purpose.
- To be a promoter, one need not necessarily be associated with the initial formation of the company; one who subsequently helps to arrange floating of its capital will equally be regarded as a promoter.
- Hence, "promoter" denotes any individual, association, partnership or a company that takes all the necessary steps to incorporate a company and set it going, in a fiduciary position.

[Example - RIL currently has approx. 46 shareholders who are promoters or part of promoter group.]

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Section 3 - Formation of Company:

A company may be formed for any lawful purpose by:

(a) 7 or more persons in case of a public company;

(b) 2 or more persons in case of a private company; or

(c) 1 person, where the company to be formed is to be an OPC,

by subscribing to a memorandum and complying with the requirements of this Act.

Such company may be either a company limited by shares, or a company limited by guarantee, or an unlimited company.

Formation of One Person Company (OPC): 4-20-31

1. One Person Company [Sec 2(62)] means a company which has only one person as a member;

2. In case of OPCs, the name shall have the suffix (OPC) Private Limited.

3. Nominee of OPC: In case of OPC, the MoA shall indicate:
   - the name of the other person,
   - with his prior written consent in the prescribed form,
   - who shall, in the event of the subscriber's death or his incapacity to contract
   - become the member of the company

   The written consent so obtained shall also be filed with the Registrar at the time of incorporation of the OPC along with its MoA and AoA.

4. Eligibility of nominee and member:
   - Only a natural person who is an Indian citizen whether resident in India or otherwise:
     a. shall be eligible to incorporate OPC;
     b. shall be a nominee for the sole member of OPC.

     "Resident in India" means a person who has stayed in India for not less than 120 days during immediately preceding FY.

     Note: Even a Non-Resident Indian, who is Indian Citizen, can form OPC.

   - A natural person shall not be a member of more than 1 OPC at any point in time and the said person shall not be a nominee of more than 1 OPC at the same time.

5. Where a member in OPC becomes member in another OPC by virtue of his being a nominee in that OPC, such person shall meet eligibility criteria (as given in point above) within 180 days.

6. When such nominee becomes member (in case of death or incapacity):
   - He shall appoint a new nominee within 15 days of becoming member.
   - OPC to inform RoC in Form INC-4 within 30 days of becoming member.

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7. Withdrawal of consent by nominee:
   - Nominee may withdraw consent by giving a notice in writing to the sole member and to OPC.
   - Sole member shall nominate another person within 15 days of such withdrawal.
   - Send intimation of such nomination + written consent
   - OPC to inform RoC in Form INC-4 within 30 days of withdrawal of nomination.

8. Replacement of Nominee:

Member of OPC may, at any time, change the name of Nominee by:
   - Member to obtain written consent of new nominee.
   - Intimate the company about such change.
   - OPC to inform RoC in Form INC-4 within 30 days of intimation of change of nominee from member.
   - Change of such name shall NOT be deemed as Alteration of MoA.

9. Conversion of OPC:
   - OPC cannot be incorporated as or converted into a section 8 company.
   - OPC may be converted to private or public companies in certain cases. (as per Rules)

10. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
11. OPC cannot carry out NBFC Investment activities including investment in securities of any BC.

12. Relaxations available to OPC (as well as Small companies):

Section	Relaxation for OPC
2(40)	Not required to prepare CFS.
92	Annual Return can be signed by Director (CS not mandatory).
96	AGMs not applicable to OPCs
98, 100-111	Sec 98 and 100 to 111 - not applicable.
134	FS and BoD Report can be signed by 1 director.
137	FS can be filed within 6m from close of FY (instead of 30 days).
143(3)	Reporting on adequacy of IFC - Not applicable to OPCs
173	Only 1 BoD meeting in each half of calendar year. Gap between 2 BM >= 90 days.

Section 3A - Members severally liable in certain cases: 5

If at any time, the no. of members is reduced below prescribed limit i.e., 7 (public) or 2 (private) + Company carries on business for more than 6m while no. of members is so reduced

Every person who is a member during the time that it so carries on business after those 6m and is cognizant of the fact that business is carried on by reduced member, such members shall be severally liable for payment of whole debts contracted during that time, and may be severally sued therefor.

*Note: Such members shall be severally liable for whole debts contracted after the lapse of 6 months.

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Section 4 - Memorandum of Association:

Understanding Memorandum of Association:

- Base document for the formation of the company (MoA + AoA = Constitutional Document)
- Content of MoA need to be in compliance with Companies Act, 2013
- MoA contains object for formation of company beyond which its actions cannot go.
- MoA is a public document u/s 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have knowledge of conditions contained therein.
- Shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.
- Company cannot depart from provisions contained in MoA - Otherwise, ultra vires Act.

1. The MoA of a company shall state:

Name of company with last word "Limited" or "Private Limited"*;	State in which Registered office of company is to be situated	Objects for which the company is proposed to be incorporated and any matter incidental thereto

the Liability of members of company, whether limited or unlimited**	In case of company having SC: a. Amount of registered SC (divided into amount and no. of shares) b. the no. of shares each subscriber intends to take opposite to his name	Name of nominee (in case of OPC)

* In case of Govt company & Section 8 company, suffix such as "Pvt Ltd" or "Ltd" is N.A.

** Liability clause: State that liability is limited to

- unpaid amt of shares (in case of company limited by shares) or
- amt upto which member undertake to contribute in event of winding up (ltd. by Guarantee).

2. Name Clause:

The name stated in the memorandum shall:

(a) NOT be identical with or resemble too nearly the name of an existing company under this Act or previous companies Act;

(b) NOT be such that its use by the company:

(i) will constitute an offence under any law for the time being in force; or

(ii) is undesirable in the opinion of the CG (power delegated to RoC).

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A name is said to "resemble" when difference is only of:

Plural or Singular	Spacing between letter or punctuation marks	Use of different tenses	Slight variation of spelling (Disc Ltd vs Disk Ltd.)
Different phonetic spellings (Jay Kay Ltd. and JK Ltd)	Complete translation in Hindi or English (National Service Ltd vs. Rashtriya Seva Ltd)		
Use of www. or ".net" etc. (SS Ltd vs SS.com Ltd)	Order of words is similar (Ravi Builders and Teacher Ltd. vs Ravi Teacher and Builder Ltd)		
Addition of name of place	Addition or deletion of numerals (unless numerals represent brand)		

3. A company shall not be registered with a name which contains:

a. any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the CG, any SG, or any local authority, corporation or body constituted by the CG or SG under any law for the time being in force; or

b. such word or expression, as may be prescribed,

unless the previous approval of CG has been obtained for the use of any such word or expression.

Rule 8B of Companies (Incorporation) Rules, 2014:

Following words and combinations thereof shall not be used in the name of a company in English or any of the languages depicting the same meaning unless the previous approval of the CG has been obtained:

• Board;	• National;	• Authority;	• Forest corporation;	• Development Authority;
• Union;	• Republic;	• Municipal;	• Development Scheme;	• Small Scale Industries;
• Nation;	• President	• Panchayat;	• Court or Judiciary;	• Financial Corporation and the like;
• Central;	• Minister;	• Commission;	• Statute or Statutory;	• Khadi and Village Industries Corporation;
• Federal;	• Governor;	• Undertaking;		
• Bureau	• Rashtrapati;			
	• PM or CM;			

- The use of word of Scheme with the name of Government (s), State, India, Bharat or any Government authority or in any manner resembling with the schemes launched by CG/SG or local Governments/authority.

4. A person may make an application (SPICe+/RUN form) to Registrar for reservation of a name as:

(a) the name of the proposed company; or

(b) the name to which the company proposes to change its name.

Resubmission may be allowed within 15 days, in case of any defect.

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5. Reservation of Name:

i. Upon receipt of application u/s (4), the Registrar may, on the basis of information and documents furnished with application, reserve the name:

For 20 days	From approval or such other prescribed period in case of New company
For 60 days	From approval in case of Existing company.

Rule 9A (only for new companies)

Application for extension of time can be made before expiry of 20 days as follows:

Another 20 days (Total 40 days)	Fees Rs. 1,000
Further 20 days (Total 60 days)	Fees Rs. 2,000
40 days in one go (Total 60 days)	Fees Rs. 3,000

ii. Where after reservation, it is found that name was applied by furnishing wrong or incorrect information, then:

Co. is not incorporated	Cancel reserved name + Applicant liable for penalty upto Rs. 1L
If company is incorporated	Registrar may, after giving the company an OOBH,:
	a. direct company to change name within 3m, after passing an OR;
	b. take action for striking off name of company from register; or
	c. make a petition for winding up of the company.

6. MoA shall be in respective forms specified in Tables A, B, C, D and E in Sch I as may be applicable.

7. In case of company limited by guarantee and not having a share capital - Any provision in MoA/AoA purporting to give any person a right to participate in divisible profits of company otherwise than as a member, shall be void.

Note: CG directed Registrar that while allotting names to companies or LLPs, the RoC concerned should exercise due care to ensure that the names are not in contravention of the provisions of the "Emblems and Names (Prevention of Improper Use) Act, 1950".

Section 5 - Article of Association: 6 7

1. AoA shall contain the regulations for management of the company (internal rules and regulations)

2. AoA to include such matters, as may be prescribed.
Provided that company may include additional matters in AoA as considered necessary for management.

Entrenchment Provision:

3. AoA may contain provisions for entrenchment

Effect of such provision - AoA may be altered only if conditions or procedures as that are more restrictive than those applicable in case of special resolution, are met or complied with.

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4. Provisions for entrenchment shall only be made:
   - either on formation of a company, or
   - by an amendment in AoA agreed to by:
     a. all members (in case of private company) or
     b. by a special resolution (in case of public company)

5. Where AoA contain provision for entrenchment, company shall give notice to RoC of such provision in:
   - SPICe+ (for entrenchment provision made on formation of companies) or
   - MGT-14 (within 30 days if such provision made by amendment to AoA of existing company)

6. AoA shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I.
7. A co. may adopt all or any of the regulations contained in the model articles applicable to such co.

8. Where registered AoA do not exclude or modify regulation contained in model AoA applicable to such company, the regulations (in model AoA) shall be deemed to be regulation of such company as if they were contained in duly registered AoA of the company.

Section 6 - Act to Override Memorandum, Articles, etc.

Save as otherwise expressly provided in this Act:

a. the provisions of this Act shall have effect notwithstanding anything to the contrary contained in:
   MoA/AoA | any agreement executed by co. | BoD resolution or SH resolution

b. any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

Relevant Doctrines

Doctrine of Ultra Vires

- Whatever is not stated in MoA as objects of the company is prohibited by doctrine of ultra vires.
- An act which is ultra vires is void and does not bind the company.
- Neither the company nor the contracting party can sue on it.
- The co. cannot make it valid, even if every member assents to it (i.e., such act cannot be ratified)

Important Case Laws:

Case Name	Case Scenario	Court Decision
Rajendra Nath Dutta vs. Shailendra Nath Mukherjee (1982)	Directors acted beyond their authority, but the act itself was within the company's main purpose (MoA).	Intra vires to the company and hence ratification by shareholders is possible.
Ashbury Railway Carriage and Iron Co. Ltd. v. Riche (1878)	Company having object of making railway engines financed construction of a railway line (which is outside its main purpose in MoA).	Ultra vires to the company and hence no ratification allowed. It is void ab initio.

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Doctrine of Indoor Management [Turquand Rule]: 1-3-

- Persons dealing with the co. cannot be assumed to have knowledge of internal problems of the co.
- Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that it is all done.
- The doctrine helps protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the RoC.

Doctrine of Indoor Management (DIM) vs Doctrine of Constructive Notice (DCN)

The DIM evolved around 150 years ago in the context of the DCN. The role of DIM is opposed to the role of DCN. Whereas the DCN protects a company against outsiders, the DIM protects outsiders against the actions of a company. This doctrine also is a possible safeguard against the possibility of abusing the DCN.

Relevant case law:

Name	Analysis	Conclusion
Royal British Bank v. Turquand (1856)	Company's directors borrowed money without the required resolution of the GM. Whether the company was bound by this act.	The company was held liable, and the DIM was recognized as an exception to DCN

Basis for Doctrine of Indoor Management

- What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but cannot know the information he/she is not privy to.
- If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Exceptions to DIM (i.e., Applicability of DCN):

a. Knowledge of irregularity: In case the 'outsider' has actual knowledge of irregularity within the company, the benefit under DIM would no longer be available. In fact, he/she may well be considered part of the irregularity.

b. Negligence: If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the DIM would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

c. Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

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d. Where the question is in regard to the very existence of an agency.

E.g.: Suppose a person claims to be a company's director and enters into a contract. Later, it turns out he was never appointed as a director at all. Here, an outsider cannot be protected under DIM. Since there was no agency in existence, the company cannot be bound.

e. Where the act is ultra vires to the company itself.

E.g.: If objects clause says it can do textile business only, but BoD enter into a contract for real estate, it is an ultra vires act. Outsiders cannot enforce such a contract on co. by relying on DIM.

Section 7 - Incorporation of Company (8) (33)

1. File the following documents and information with the Registrar within whose jurisdiction the Registered Office (RO) of a company is proposed to be situated:

MoA (eMoA in INC-33) & AoA (eAOA in INC-34) duly signed by subscribers	Declaration (INC-8), that requirement of act w.r.t., incorporation is complied with, by: 1. Advocate, CA, Cost Accountant, CS in practice engaged in formation of company, AND 2. Person named in AoA (director, manager or secretary)	Address for correspondence till RO is established

Particulars (name, residential address, nationality and others) of every subscriber along with Proof of identity	Particulars of first directors Names, DIN, residential address, nationality and other particulars + Proof of identity	Related to first directors: Interest in other firms/BC + consent (DIR -2) to act as directors filed with RoC in DIR-12

Declaration from each Subscribers and First Directors (INC 9) that:

a. he is not convicted of offence w.r.t., promotion, formation or management of any company, or
b. that he has not been found guilty of any fraud/misfeasance or breach of duty to any company during preceding 5 years AND
c. all documents filed with RoC for registration contain correct, complete and true information to best of his knowledge and belief.

Additional Points:

- Above documents shall be filed along with application for incorporation in SPICe+ form (INC-32). SPICE means Simplified Proforma for Incorporating a Company Electronically. It is mandatory application form for incorporating ALL companies.
- In case of OPC, written consent of nominee shall also be sent in addition to above docs.
- If a company's objects require prior approval from a sectoral regulator (e.g., RBI, SEBI, etc.), such approval must be obtained and attached with the declaration at incorporation.
- In case of incorporation of Nidhi Company, declaration u/s 406 from CG must be obtained before commencing business and must be filed at incorporation stage.

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Rule 13: MoA and AoA shall be duly signed by the subscribers in the following manner:

Subscriber	Manner of signature/authentication
Individual	Subscriber must add name, address, description, occupation. Sign in presence of at least 1 witness who attests. Witness must also sign and add same details.
Illiterate	Thumb impression/mark affixed. A writer must write illiterate subscriber's name near mark, authenticate with his signature, & state no. of shares taken.
Body Corporate	Signed by director/officer/employee authorized by Board Resolution. The person so authorized shall not himself be a subscriber.
LLP	Signed by a partner duly authorized by resolution of all partners. The person so authorized shall not himself be a subscriber.
Foreign national (residing abroad)	Signature, address and ID proof must be notarized by Notary Public.
Foreign national (visiting India)	Allowed if having a valid Business Visa. Business Visa N.A. for Person of Indian Origin (PIO) / Overseas Citizen of India (OCI).

2. Issue of Certificate of incorporation ("CoI"):
RoC shall, on basis of above document and information, register and issue a CoI in Form INC -11.

3. Allotment of Corporate Identity Number (CIN) - RoC shall allot to the company a CIN, which shall be a distinct identity for the company and which shall also be included in the CoI.

Decoding CIN of Infosys Limited is L85110KA1981PLC013115:

L	Status - Listed or Unlisted	1981	Year of incorporation
85110	Industry code	PLC	Public/Private /NPL (Not for profit)
KA	State of incorporation	013115	Registration no. with RoC

4. Co. shall maintain & preserve at its RO copies of all docs & info. as originally filed u/ss (1) till dissolution.

5. If person furnishes any false or incorrect particulars of information or suppresses any material info., of which he is aware in any of docs filed with RoC above, such person shall be liable u/s 447.

6. If after incorporation, it is proved that company is incorporated by furnishing false or incorrect info. or by suppressing any material info. for incorporating such company, or by any fraudulent action:
   a. promoters, first directors & persons making declaration above shall each be liable u/s 447
   b. Tribunal (NCLT) may, on an application made to it [MR. LOW]:
      - pass orders for regulation of Management of company including changes in its MoA or AoA, in public interest or in the interest of company and its members and creditors; or

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- direct that Liability of the members shall be unlimited; or
- direct Removal of the name of the company from the register of companies; or
- pass an order for the Winding up of the company; or
- pass such Other orders as it may deem fit.

Before making such orders, company shall be given reasonable opportunity of being heard (OOBH) and NCLT shall take into consideration transaction entered into by company.

Section 8 - Formation of companies with charitable objects: 9-10-11-12

Section 8 companies can be formed by:

- Incorporating a new company, or
- Conversion of an existing company into a section 8 company [except OPC]

Legal Provision:

1. Where CG (RoC) is satisfied that a person/AoP proposed to be registered as limited co (i.e., new company) or that an existing limited company:
   a. Has its objects to promote:

• Education	• Sports	• Charity
• Art	• Social Welfare	• Religion
• Commerce	• Research	• Other Object
• Science	• Protection of environment	

   b. intends to apply its profits, if any, or other income in promoting its objects; and
   c. intends to prohibit the payment of any dividend to its members,

   CG may issue a license and thereupon the RoC shall register such company as limited company.

Note: The suffix "Limited" or "Pvt. Ltd" need not be added to Sec 8 companies.

E.g: Tata Foundation and Azim Premji Foundation (CIN U93090KA2001NPL028740).

Rule 19: Steps to incorporate a section 8 company (new company):

1. Application to RoC in SPICe+ form along with prescribed fees.
2. Documents to be attached to such application:
   a. MoA (INC -13) and AoA (INC - 31)
   b. Estimated for income and expense of future 3 years
   c. Declaration by advocate, CA, CS, Cost Accountant in practice (INC-14) and by each person making application (INC-15) that:
      i. MoA/AoA is in conformity with provision of section 8
      ii. All requirements of Act w.r.t. registration of section 8 company is complied with.

2. Sec 8 company shall enjoy privileges and obligations of limited company.
3. A firm can be member of a section 8 company.

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4. Restrictions on section 8 companies:

- It shall not alter provision of MoA or AoA without prior approval of CG (RoC).
- It may be converted to any other kind of company after complying with provision given below.

Rule 21 and 22: Conversion of Section 8 company into other kind: 

- Pass SR at GM. Explanatory statement of such notice to set out details of conversion.

- The company should have filed FS and AR upto last FY.
  Additional FS - Where application is made after 3 months from end of last FY, attach a FS made upto date not more than 30 days of filing such application duly signed by CA.

- Serve a notice of such conversion to the following for representation, if any:

Income Tax Authority	Charity Commissioner	Chief Secretary of State where RO is situated	CG/SG department having jurisdiction

  Above authorities may make representations to RD within 60 days after OOBH to company.

- Apply to RD (INC-18) with fee + certified copy of resolution + proof of delivery of above notice.
- Forward a copy of the above application to RoC.
- Within a week of such application to RD, publish a notice (Form INC-19) at its own expense in 2 newspaper (vernacular + english) and its website.
- If RD is satisfied, approve conversion subject to terms and conditions imposed.
- Before rejecting application or imposing conditions - RD to give OOBH to such company.
- On receipt of such approval - Pass SR at GM for alteration of AoA/MoA.
- Copy of altered AoA/MoA to be filed with RoC. RoC to issue fresh CoI.

5. Existing company may also make an application to be converted into section 8 company u/ss (1).
Moreover, CG (RoC) may suo-motu issue license u/s 8 to existing companies.

5. Revocation of License and conversion to normal company:

Where the company:

a. contravenes any requirements of this section or
b. contravenes any conditions subject to which a license is issued or
c. the affairs of co. are conducted fraudulently/in manner violative of objects of co. to public int.,

CG (RD) may, by order (after reasonable OOBH):

- revoke license
- direct the company to convert its status and
- change its name to add the word" Limited" or "Private Limited", as the case may be, to its name and thereupon the Registrar shall register the company accordingly

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7. Where license is revoked, CG may, in public interest, order (reasonable OOBH):
   - winding up under this Act, or
   - amalgamate such company with other company registered under this section and having similar objects, constitution, powers, rights, etc. to be defined by CG

8. If on winding up, after satisfaction of its liabilities, there remains any asset, it may be:
   - transferred to another sec 8 co. having similar objects subject to T&C imposed by Tribunal, or
   - sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed u/s 224 of IBC

9. Section 8 company shall amalgamate only with another Sec 8 company having similar objectives

10. Punishment for default in complying with this section:

If a co. makes any default in complying with requirements of this section, the co. shall be punishable with fine which shall > Rs. 10 lakhs but which may extend to Rs. 1 crore AND the directors and every OID shall be punishable with fine which shall > Rs. 25,000 but which may extend to Rs. 25 lakhs. Provided that if it is proved that affairs of co. were conducted fraudulently, every OID liable u/s 447.

Concept Clarity Check:

1. Can a Sec 8 co. be incorporated with unlimited liability? – No. Sec 8 co. only be a limited company
2. Can an existing co. seek license u/s 8? – Yes. In such case, it will drop the suffix Ltd or pvt ltd.
3. Can a firm become member in a normal public co.– No. Partnership firm is not separate legal entity.

4. Exemptions to section 8 companies:

Section No.	Exemption / Relaxation
2(68) & 2(71)	No requirement of minimum PUSC for private / public cos. incorporated u/s 8.
2(85)	Definition of Small Company does not apply to Section 8 company
96(2)	Date, time & place of AGM may be decided by Board having regard to the direction given by members in its GM.
101(1)	Notice period for GM can be 14 clear days (instead of 21 days).
118	Sec 118 not fully applicable. Minutes may be recorded within 30 days if Articles provide for confirmation by circulation.
136(1)	Circulation of FS – Allowed 14 days before AGM (instead of 21 days).

Section 9 - Effect of Registration: 30

From the date of incorporation mentioned in CoI, such subscribers to MoA and all other persons, as may, from time to time, become members of the company, shall be:

- a body corporate by the name contained in the memorandum,
- capable of exercising all the functions of an incorporated company under this Act and
- having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

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Section 10 - Effect of Memorandum and Articles

1. Subject to the provisions of this Act, the MoA and AoA shall, when registered bind the company and the members thereof to the same extent as respectively signed by them and contained covenants on its and his part to observe all the provisions of the MoA/AoA.
2. All monies payable by any member to the company under MoA/AoA shall be a debt due from him to company (i.e., company can recover calls in arrears from members as if it a loan recovery)

Note: Company is liable to members and vice-versa. But members are not liable to each other.

Section 10A: Commencement of business etc.

1. A co. having a share capital shall not commence any business or exercise any borrowing powers unless:

declaration by a director, within 180 days of incorporation is filed with RoC that - As on date of declaration, every subscriber has paid the value of shares agreed to be taken	The company has filed with RoC a verification of RO provided u/s 12(2)

2. If any default under this section: Company – Rs. 50,000 and every OID – Rs. 1,000/day upto Rs. 1 lakh

3. If no declaration within 180 days AND RoC has reasonable ground to believe (RGTB) that company is not carrying on any business, RoC may initiate action for removal of name of company from register.

Rules 23A of Companies (Incorporation) Rules, 2014:

- Declaration u/s 10A by a director shall be in Form INC-20A and contents of the said form shall be verified by a CA or CS or Cost Accountant, in practice.
- In case of a company pursuing objects requiring registration or approval from any sectoral regulators such as RBI, SEBI, etc., the registration or approval from such regulator shall also be obtained and attached with the declaration.

Section 12: Registered Office of Company

. Within 30 days of incorporation and at all times thereafter, a company shall have a RO capable of receiving communication and notices.

2. Company to furnish to RoC verification of RO within 30 days of incorporation.

3. Every company shall:

a. paint or affix its name, address of its RO on the outside of every office/place in which its business is carried on, in a conspicuous position, in legible letters in languages in general use in that locality.

b. have its name engraved in legible characters on its seal; if any

c. get its name, address of its RO and the CIN along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and

d. have its name printed on hundies, promissory notes, bills of exchange and other prescribed docs.

Note: In case name change during the last 2 years, print or affix the former name as well.

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4. Change in RO:
   - Notice of change in RO shall be sent to RoC within 30 days of change (INC-22).
   - The RO of a company shall not be changed outside the local limits of any city, town or village where such office is situated, unless a SR is passed by the company to authorise such change.

5. Step in case RO is shifting from jurisdiction of one RoC to another within same state:
   - No company shall change RO from jurisdiction of one RoC to another RoC within the same State unless confirmed by RD on application made in this behalf.
   - On above application, RD to communicate confirmation within 30 days from receipt thereof.
   - On such confirmation, company to file the same with RoC within 60 days of date of confirmation.
   - RoC shall register the same and certify the registration within 30 days from filing such confirmation.
   - Such certificate shall be conclusive evidence that all requirement of this Act w.r.t., change of RO is complied with and such change shall be effective from date of certificate.

6. If any default is made in complying with this section: Company and every OID shall be liable to penalty of Rs. 1,000/day during which the default continues but not exceeding Rs. 1 lakh.

7. If RoC has RGTB that company is not carrying on any business or operations, he may cause a physical verification of the RO in prescribed manner and if any default is found to be made in complying with requirements of sub-section (1): Initiate action for the removal of the name of the company from register of companies.

Illustration to understand change in RO clause (Sec 12 and 13):

Ajeeb Ltd. has current Registered office at Dadar, Mumbai, Maharashtra under Mumbai RoC. It is considering changing the location of RO. Discuss the approvals required for such shifting of RO.

Proposed RO	RoC	Sec	BR	SR	CG (RD) Approval	Time for Compliances
Bandra (local Limits)	Mumbai	12	Yes	No	No	• Intimate RoC : 30 days
Thane	Mumbai	12	Yes	Yes	No	• Intimate RoC : 30 days
Pune, MH	Pune	12	Yes	Yes	Yes	• RD approval : 30 days
						• Submit to RoC : 60 days
						• RoC to register : 30 days
						(30-60-30)
Ahmedabad,	Gujarat	13	Yes	Yes	Yes	• RD approve : 60 days
						• RoC register : 30 days
						• Fresh CoI : 30 days
						(60-30-30)

Note: Can RO be different from Head Office or Corporate office? - Yes

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Section 13 - Alteration of Memorandum 14-16-17-

1. Company may alter provisions of MoA by a SR + complying with procedure of this section.

Filing with RoC: Company shall, in relation to any alteration of its MoA, file with the Registrar:
(a) the SR passed by the company above;
(b) the approval of CG u/ss (2), if alteration involves any change in the name of the company.

2. Name clause:
   - Change in name shall be effective only on approval of CG (RoC) in writing (INC-24) + Fee.
     Note: No approval if the only change is addition/deletion of word "Private" on conversion.
   - On change of name - RoC shall enter the new name in register of companies and issue new CoI.
     Name change effective from issue of fresh CoI (INC -25).

Restriction:
Change of name is not allowed if company has subsisting default in filing AR or FS or repayment of deposits or debentures or interest thereon.

3. Registered office (RO) clause [State change]:
Step 1: Approval of CG:
Alteration of RO from one state to another shall be effective only on approval of CG (RD) on application (INC-23).

Such application to CG (RD) shall be accompanied with:
- Copy of MoA with proposed alteration
- Copy of minutes of GM at which resolution authorizing such alteration was passed
- Copy of board resolution
- List of creditor and debenture holder
- Acknowledgement of service of copy of application to - RoC, Chief secretary of RO state.

On such application to CG for approval of change in state of RO:
a. CG to dispose application within 60 days.
b. Before passing order, may satisfy itself that:
   i. Alteration has the consent of creditors, DH and other persons concerned with company, or
   ii. sufficient provision has been made by co. for due discharge of all its debts & obligations or
   iii. adequate security has been provided for such discharge.

Note: Not more than 30 days before such application to CG, company to advertise in INC-26 in 2 newspapers (English and vernacular language of current RO).

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Step 2: CG approval to be forwarded to RoC and registration thereof:

- Certified copy of CG order approving such change shall be filed with RoC of each of the States. (INC-28 within 30 days of receipt of CG order)
- Such RoCs shall register the same, and
- Registrar of the State where the RO is being shifted to shall issue a fresh CoI

4. Change in object for which money raised from Public:

Company which has raised money from public through prospectus and has any unutilised amount, shall not change its objects for which it raised such money unless a SR (postal ballot) is passed and:

a. prescribed details (same as mentioned in sec 27) of such resolution shall be:
   - published in newspapers (English + vernacular which is circulation at RO) and
   - placed on website of the company, if any,

   indicating the justification for such change;
b. the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the SEBI.

5. Object clause: The RoC shall register any alteration of MoA w.r.t., objects of the company and certify the registration within 30 days from the date of filing of the SR to RoC.

6. No alteration made under this section shall have any effect until it is registered as per this section.

7. Any alteration in MoA of a co. ltd by guarantee and not having a share capital, purporting to give any person a right to participate in divisible profits of the co. otherwise than as a member, shall be void.

Section 14 - Alteration of articles

1. Company may, by SR, alter its AoA.

Alteration due to conversion:

Alteration of AoA includes conversion of:

a. Private company to public company
b. Public company to Private company (subject to approval of CG as given below)

An alteration having effect of converting public company to private shall not have effect unless approved by CG on application within 60 days from passing SR to RD in Form RD-1 with following docs:

- Draft MoA and AoA with proposed alteration
- Copy of minutes of GM in which such SR was passed
- Copy of Board resolution
- Declaration by KMP regarding compliances.

Note: Where a private co. alters its AoA such that it does not include restriction which a private co. is required to include in AoA as per Act, such co. shall cease to be private from date of alteration.

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2. Following shall be filed with RoC (INC 27), within 15 days of alteration, for registration:
   - Every Alteration of AoA
   - Approval of CG for such alteration
   - Printed copy of the altered articles,

3. Any alteration of AoA registered u/ss (2) shall be valid as if it were originally in the articles.

Relevant case law:

Andrews vs Gas Meter Company	Power to alter AoA vests with the Company. A company cannot divest itself of this power.

Section 15 - Alteration of MoA or AoA to be noted in every copy.

1. Every alteration in MoA or AoA shall be noted in every copy thereof.
2. Default: Company + OID shall be liable to penalty of Rs. 1,000 for every copy issued without alteration.

Section 16 - Rectification of Name of Company

1. If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which:
   a. in opinion of CG, is identical with or too nearly resembles the name by which a company in existence had been previously registered, it may:
      - direct the company to change its name and
      - the company shall change its name within 3 months from such direction, after passing an OR;

   b. on an application:
      - by a registered proprietor of a trade mark
      - made to CG within 3 years of incorporation or registration or change of name of the company
      - that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999,
      - in the opinion of CG, is identical with or too nearly resembles to an existing trade mark,
      - CG may direct the company to change its name and
      - the company shall change its name within 3m from such direction, after passing an OR;

2. Where a company changes its name or obtains a new name u/ss (1), it shall, within 15 days from date of such change, give notice of the change to Registrar along with CG's order, who shall carry out necessary changes in the CoI and memorandum.

3. If a company is in default in complying with any direction given u/ss (1):
   - CG shall allot a new name to the company in prescribed manner and
   - Registrar shall enter the new name in register of companies in place of the old name and
   - Issue a fresh CoI with the new name, which the company shall use thereafter.

Note: Company may subsequently change its name u/s 13.

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Section 17 - Copies of memorandum, articles, etc., to be given to members

1. Company shall, on being so requested by a member and on payment of prescribed fees, send to him within 7 days of request, a copy of following documents:
   Memorandum | Articles | agreement and resolutions u/s 117(1) not so included in MoA/AoA

2. If default u/s 17: Company + OID - Liable for each default - Rs. 1,000/day upto a max Rs. 1 lakh

Section 18 - Conversion of Companies Already Registered:

1. A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of its MoA and AoA as per the provisions of this Chapter.

2. Application to RoC for fresh CoI:
   On such conversion, RoC shall, on an application made by company, after satisfying himself that provisions of this Chapter is complied with:
   - close the former registration of the company and
   - after registering required docs, issue a CoI (as its first registration)

3. The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and it may be enforced in the manner as if such registration had not been done.

Section 19 - Subsidiary Company not to hold Shares in its Holding Company

1. Restriction:
   - No company shall (itself/nominees) hold any shares in its holding company, and
   - No holding company shall allot or transfer its shares to any of its subsy company and
   - any such allotment or transfer of shares to its subsy shall be void

   Provided that nothing above shall apply to a case:
   a. where subsy co. holds such shares as legal representative of a deceased member of holding co.;
   b. where the subsy company holds such shares as a trustee; or
   c. where subsy company is a SH even before it became a subsy company of the holding company

   Provided further that subsy co. referred to in the above proviso shall have a right to vote at a meeting of holding co. only w.r.t., the shares held by it as a LR or trustee. No right to vote in any other case.

2. Reference in this section to shares of a holding company which is a company not having share cap (ltd. by guarantee or unlimited), shall be construed as reference to interest of its members.

TELEGRAM: CA NOTES COMMUNITY

Summary da summary:

	Legal Representative	Trustee	SH before subsidiary
Voting Rights	Yes	Yes	No
Bonus shares	Yes	Yes	Yes
Right issue	No	No	No

Example 1:
HDFC Securities Ltd. holds 3% shares in HDFC Bank Ltd. (as of Jan 2026).
In April 2026, HDFC Bank gains majority stake in HDFC Securities, making it a subsidiary.

Q1 At HDFC Bank's AGM in Aug 2026, can HDFC Securities vote? - No. A subsidiary cannot exercise voting rights in its holding company except when shares are held as a LR or Trustee.

Q2 HDFC Bank Ltd. issue bonus shares to all its shareholders (1:1). Can HDFC Securities Ltd. be allotted such bonus shares? - Yes (there is no restriction for this in sec 19)

Example 2: A Ltd. has invested 51% in the shares of B Pvt. Ltd. on 31st March 2026. B Pvt. Ltd. have been holding 2% equity of A Ltd. since 2013. B Pvt. Ltd. cannot increase its equity beyond that 2% on or after 31st March 2026. However, it could continue to hold or reduce its initial 2% stake.

Relevant case law:

Himachal Telematics Ltd v Himachal Futuristic Communications Ltd, (1996)	Subsy can buy shares in its holding co. where it is a part of a scheme of amalgamation sanctioned by the court or tribunal

Section 20 - Service of Documents

Particulars	Document served on a co. or its officer	Document served on RoC or any member
Send it to	RO of company	Office or address
Mode of delivery	~~Post (ordinary post) or~~ Registered post or by speed post or by courier* or by leaving it at its RO or by other prescribed e-mode.	Post (ordinary post) or by registered post or by speed post or by courier* or by delivering at his office or address, or by other prescribed e-mode.
Additional Points	Where securities are held with a depository, records of beneficial ownership may be served by such depository on the company by e-mode.	Member may request for delivery through a particular mode, for which he shall pay such fees as determined in AGM**

*Courier means a courier that has proof of delivery.
**Author's Note - Law only provides for an option to pay extra fees and decide an alternate mode for receiving notice. However, the notice will still be sent at the registered address of the member only. Company is not responsible for sending the notice to any other address (even if extra fees is paid).

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Rule 35 of Companies (Incorporation) Rules, 2014

- Electronic transmission means a communication that creates a record that is capable of retention, retrieval and review (RRR), and which may later be rendered into legible tangible form. It includes:

fax	email	posting of electronic message board or network	other mode capable of verifying the sender

- In case of delivery by post, such service shall be deemed to have been effected:
  (i) in case of notice of meeting, at expiry of 48 hours after letter is posted; and
  (ii) in any other case, at time at which the letter would be delivered in the ordinary course of post

Exception to Nidhis:

In case of Nidhi Company, u/s 20 (2), docs may be served only on members who hold shares more than:

- Rs. 1,000 in face value or
- 1% of the total PUSC whichever is less.

For other shareholders, docs may be served by a public notice in newspaper circulated in the district where the RO of Nidhi is situated; and publication of the same on the notice board of the Nidhi.

Section 21 - Authentication of documents, proceedings and contracts

Save as otherwise provided in this Act,

a. a document or proceeding requiring authentication by a company; or

b. contracts made by or on behalf of a company,

may be signed by any KMP or an officer or employee of company duly authorised by Board.

Section 22 - Execution of bills of exchange (BOE), etc.

1. Negotiable instruments:
   BOE, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of company if it is made or drawn by any person acting under its authority, express or implied.

2. Other formal deeds:
   - A company may, by writing under its common seal, if any, authorise any person as its attorney to execute other deeds on its behalf in any place (India/outside India).
   - If the company has no common seal, such authorisation shall be made by 2 directors or by director + CS, wherever the company has appointed a CS.
   - Deeds signed by such an attorney on behalf of the company and under his seal shall bind the co.

The End

"Do something today that your future self will thank you for"

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Chapter 3 Prospectus and Allotment of Securities

Summary of Forms

Form No.	Section	Purpose
PAS - 1	27	Advertisement providing details of notice of SR for varying terms of contracts
PAS - 2	31	Information Memorandum
PAS - 3	39 & 42	Return of allotment of securities
PAS - 4	42	Private placements offer cum application letter (PPOCA)
PAS - 5	42	Record of Private placement offers

Summary of sections

Sec.	Section Name	Sec.	Section Name
23	Public Offer and Private Placement	33	Issue of Application Forms for Securities
24	Power of SEBI to Regulate Issue and Transfer of Securities, etc.	34	Criminal Liability for Misstatements in Prospectus
25	Document Containing Offer of Securities for Sale to be Deemed Prospectus	35	Civil Liability for Misstatements in Prospectus
26	Matters to be Stated in Prospectus	36	Punishment for Fraudulently Inducing Persons to Invest Money
27	Variation in Terms of Contract or Objects in Prospectus	37	Action by Affected Persons
28	Offer of Sale of Shares by Certain Members of Company	38	Punishment for Personation for Acquisition, etc., of Securities
29	Public Offer of Securities to be in Dematerialised Form	39	Allotment of Securities by Company
30	Advertisement of Prospectus	40	Securities to be Dealt with in Stock Exchanges
31	Shelf Prospectus	41	Global Depository Receipt
32	Red Herring Prospectus	42	Private Placement

Overview

This Chapter is divided in two parts:

Public Offer (Sec 23 - 41) Private Placement (Sec 42)

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Important Definitions:

Securities [Sec 2(81)]	Securities is a wider term and includes: Shares, bonds, debentures, derivatives, units of collective investment scheme, security receipts, units of mutual fund, government securities, etc. Exception: - Securities shall not include units of Unit Linked Insurance Policy (ULIP)
Prospectus [Sec 2(70)]	Any document described or issued as a prospectus and includes: a. Red Herring Prospectus (RHP) as per Sec 32 and b. Shelf Prospectus (SP) as per sec 31 c. Notice, circular, advertisement or other documents inviting offers from public for subscription or purchase of any securities of Body Corporate.

Section 23 - Public Offer (PO) and Private Placement (PP)

1. Public company may issue securities:

through prospectus to public (PO)	Private Placement	Right issue and Bonus issue as per this Act (and SEBI in case of listed company/company intending to get listed)

2. Private company may issue securities:

~~through prospectus to public~~	Private Placement	Right issue and Bonus issue as per this Act (and SEBI in case of listed company/company intending to get listed)

3. Notified class of public companies may issue securities for the purpose of listing on stock exchanges in permissible foreign jurisdiction. (Overseas direct listing)

Note: Public offer includes IPO, FPO and OFS.

Section 24 - Power of SEBI to regulate issue and transfer of securities:

- Provisions related to the following shall be administered by SEBI in case of listed companies or companies intending to get listed on RSE:
  a. issue and transfer of securities
  b. non-payment of dividend.
- In any other case, it shall be administered by Central Government.

Clarification: Powers relating to other matters such as prospectus, return of allotment, redemption of preference shares and others (as per Act), shall be administered by Central Government or Tribunal or RoC as the case may be. (even if it relates to a listed company.)

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Section 25 - Document Containing Offer of Securities for Sale to be Deemed Prospectus

A Ltd. → Issue House —Document = Deemed Prospectus→ Public

1. Where a company (A Ltd.) allots or agrees to allot any securities of the company with a view that those securities shall be offered for sale to public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus.

Effect of deeming provision: All the laws relating to content of prospectus and liabilities u/s 34 and 35 shall apply as if:

- the securities had been offered to the public for subscription, and
- persons accepting such offer were subscribers for those securities.

2. Presumptions: Unless the contrary is proved, it shall be evidence that an allotment of securities was made with a view to the securities being offered for sale to the public if it is shown:
   a. that offer for sale to public was made within 6m after the allotment or agreement to allot; or
   b. that at the date when the offer was made, whole consideration had not been received by co.

3. Following shall be the effect of section 26 on the deemed prospectus:
   - In addition to matter stated u/s 26, following additional matter is to be included in such doc:
     a. Net amt. of consideration received/to be received by the company
     b. time and place at which contract for allotment of said securities may be inspected
   - Persons making the offer were deemed to be persons named in a prospectus as Dirs. of a co.

4. Signature of deemed prospectus:

If the person making an offer (OFS) is:

- Company: Signed by 2 directors
- Firm: Signed by at least ½ of the partners.

Relevant case law:

SEBI v. Kunnamkulam Paper Mills Ltd.	If rights issue is renounced in favour of > prescribed no. of persons (sec 42), it becomes a public offer and offer document = deemed prospectus u/s 25.
Nash v. Lynde	A prospectus marked "strictly private" shared by a solicitor with his client does not amount to an issue to the public. Hence, sec 25 not applicable.

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Section 26 - Matters to be Stated in Prospectus

1. Every prospectus issued by or on behalf of public company shall be dated and signed.
Prospectus shall state info. and set out such reports on financial information as specified by SEBI in consultation with CG. Unless specified by SEBI, the regulations already made by SEBI shall apply.

Prospectus to include:
a. declaration about compliance with this Act, and
b. statement that nothing in prospectus is contrary to this Act, SEBI and SCRA.

2. Nothing u/ss (1) shall apply to the issue of prospectus relating to issue of shares or debentures:
a. to existing members or debenture holders, whether or not there is right to renounce u/s 62(1).
b. where such shares or debentures are uniform with the ones previously issued and are currently quoted on RSE.

3. Sec 26 applies to prospectus issued on formation of company or subsequently.
Note: Date indicated in prospectus shall be deemed to be the date of publication.

4. File prospectus with RoC: No prospectus shall be issued unless, on or before its publication, a copy thereof has been delivered to RoC for filing, signed by:
- every person who is named therein as a director or proposed director of the company or
- by his duly authorised attorney.

5. Prospectus shall not include a statement purporting to be made by an expert, unless:
- expert is a person who is not engaged or interested in formation or promotion/mgt. of co., and
- has given his written consent to the issue of the prospectus and
- has not withdrawn such consent before filing of such prospectus with RoC and
- a statement to that effect shall be included in the prospectus.

6. Every prospectus shall, on the face of it:
a. state that a copy has been delivered to RoC; and
b. specify docs attached to the copy so delivered

7. Prospectus not valid if issued more than 90 days after date of delivery of copy thereof to RoC

8. Contravention of Sec 26 - Co. and every person who is knowingly a party - Rs. 50,000 to Rs. 3 lakhs

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Section 27 - Variation in Terms of Contract or Objects in Prospectus

Company shall not vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except with:

a. Prior approval by way of special resolution in GM and:
b. prescribed details of such resolution shall be:
   - published in newspapers in Form PAS-1 (English + vernacular which is in circulation at place where RO is situated) and
   - placed on the website of the company, if any,

   indicating the justification for such change;
c. Amt so raised cannot be used for buying, trading/otherwise dealing in Equity shares of listed cos.
d. the dissenting shareholders shall be given an exit offer by the promoters and controlling shareholders in accordance with regulations to be specified by the SEBI.

Rule 7 of The Companies (Prospectus and Allotment of Securities) Rules, 2014:

SR u/s 27 shall be passed through Postal Ballot. Notice of proposed SR to contain following info:

Original purpose/ object	total money raised	money utilised for stated objects	extent (%) of achievement of proposed obj.
unutilised amount	particulars of the proposed variation	reason and justification for variation	risk factors pertaining to the new objects
proposed time limit within which proposed objects would be achieved		other relevant info	

Section 28 - Offer of Sale of Shares by Certain Members of Company

1. Authorise the company
   - Where certain members (individual or BC) of a company propose in consultation with BoD
   - To offer whole or part of their holding to public
   - the members shall then collectively authorize the company to take necessary action for OFS and
   - then they shall reimburse the company of all expense incurred.

2. Document by which such OFS is made to public shall be deemed to be a prospectus issued by the company and all provisions related to content and mis-statement shall apply.

Rule 8: The following provision of this chapter shall not be applicable in case of OFS:

a. the provisions relating to minimum subscription;
b. the provisions for minimum application value;
c. the provisions requiring any statement by BoD in respect of utilization of money; and
d. any other provision/information which cannot be compiled or gathered by the offeror, with detailed justifications for not being able to comply with such provisions.

Prospectus u/s 28 to disclose name of the person bearing cost of making the OFS.

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Section 29 - Public Offer of Securities to be in Dematerialized Form (Demat Form) -24-

1. Notwithstanding anything contained in any other provisions of this Act:
   a. every company making public offer; and
   b. such other class or classes of public companies as may be prescribed,
   shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.

2. In case of prescribed class of unlisted companies, the securities shall be held or transferred only in demat form in the manner laid down in the Depositories Act, 1996 and regulations made thereunder.
3. Any other company may convert its securities into demat form or issue its securities in physical form in accordance with the provisions of this Act or the Depositories Act, 1996 and the regulations made thereunder.

Rule 9B- Demat for private company

Every private company (other than small company) shall on or before 30th June 2025:

- Issue securities only in demat form, and
- Facilitate dematerialisation of all its securities.

Section 30 - Advertisement of Prospectus -3-

Where an advertisement of prospectus of a company is published in any manner, it is necessary to specify therein the contents of MoA as regards to:

Objects	Liability	Amount of SC of Company (ASC)	Names of the signatories	No. of shares subscribed by them	Capital Structure

Section 31 - Shelf Prospectus (SP) -4- -5-

Meaning:

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

Legal provision:

- Such class of companies as SEBI may provide by regulations, may file shelf prospectus with RoC.
- Such filing shall be done at the stage of first offer of securities included therein.
- It shall indicate the period of validity of such prospectus which shall not exceed 1 year.
- Validity shall commence from date of opening of first offer of securities under that prospectus.
- For second or subsequent offer of such securities issued, no further prospectus is required.

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Information Memorandum (IM): (Form PAS-2)

- Within 1 month prior to second or subsequent offer, a company has to file IM with RoC
- IM to contain material facts relating to:

New charges created	Changes in financial position of company between previous offer and subsequent offer	Other changes as prescribed

- Where a company has received applications for allotment of securities along with advance payments of subscription before making of any such change, the company shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company shall refund all the monies received as subscription within 15 days thereof.

Note:

1. IM together with shelf prospectus shall be deemed to be a prospectus.
2. As per SEBI regulations, Banks, NBFCs, Housing Finance companies etc. are allowed to issue SP.

Section 32 - Red Herring Prospectus (RHP)

Meaning:

Prospectus which does not include complete particulars of quantum and price of securities offered. Such quantum and price is determined on the basis of book building method.

Legal provision:

- Company proposing to make an offer of securities may issue a RHP prior to prospectus.
- File such prospectus with RoC at least 3 days prior to opening of subscription list and the offer.
- RHP to have same obligation as prospectus.
  Variation between RHP and prospectus to be highlighted as variation in prospectus
- Upon closing of offer, RHP prospectus stating therein the total capital raised and closing price and any other details as are not included in RHP shall be filed with the RoC and the SEBI.

Understanding basics of book building offer:

- Book building is a process of price discovery in a public issue.
- Company does not fix a single price but provides a price band (floor & cap price - 20% variation).
- Investors bid for the number of shares and the price they are willing to pay within this band.
- Demand at different prices is recorded in a "book."
- The final issue price (called the cut-off price) is decided based on this demand.
- Retail investors can apply at "cut-off," meaning they accept the final price decided.

TELEGRAM: CA NOTES COMMUNITY

Section 33 - Issue of Application Forms for Securities

1. Every application form for purchase of securities shall be accompanied by an abridged prospectus.

   Exception: Abridged prospectus shall not be required if application form is issued w.r.t.:
   a. bonafide invitation to a person to enter into an underwriting agreement; or
   b. in relation to securities which were not offered to the public (e.g., - private placement)
   c. where offer is made to existing members of the company

2. Copy of the prospectus shall, on a request being made by any person before the closing of the subscription list and the offer, be furnished to him.

3. Default u/s 33 - company shall be liable for Rs. 50,000 for each default.

Section 36 - Punishment for Fraudulently Inducing Persons to Invest Money

Any person shall be liable u/s 447 if he:

- either knowingly or recklessly
- makes any statement, promise or forecast which is false, deceptive or misleading or
- deliberately conceals any material fact,
- to induce another person to enter into any agreement:

for Subscribing, Acquiring, Disposing or Underwriting securities	the purpose of which is to secure a profit to any of the parties from such securities	for obtaining credit facilities from any bank or financial institution

Section 37 - Action by Affected Persons

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

Note: If M had subscribed to the shares based on misleading statement in the prospectus, only M can seek remedy u/s 37. N who subsequently purchases shares from M cannot seek such remedy.

TELEGRAM: CA NOTES COMMUNITY

Section 34 and Section 35 - Liability for Misstatement

A contract of shares is a contract of Uberrimae fides (Latin), which means 'utmost good faith'. It means all parties must deal in good faith, making a full declaration of all material facts. Mis-statement shall attract liabilities u/s 34 and 35.

Section 34 - Criminal Liability	Section 35 - Civil Liability
Applicability: If prospectus includes any statement - untrue or misleading, every person who authorizes the issue of such prospectus shall be liable under section 447.	Applicability: • Where a person has subscribed for securities of a co + • Acting on any statement included/omitted in prospectus which is misleading, and • has sustained loss or damage as a consequence thereof
Author's Note: Liability u/s 34 is attracted irrespective of whether: • Subscriber has sustained losses or not • Misstatement was intentional or unintentional.	Person Liable: Company and every person who is: • Director at the time of issue of prospectus or authorized himself to be named as director • Agreed to become director in future • Promoter of company • Authorized the issue of prospectus • Expert u/s 26(5) Above person shall be liable to pay compensation to every person who has sustained such loss or damage. If proven that prospectus issued with intent to defraud - every person u/ss (1) shall be personally responsible - without any limitation of liability
Exception: Such person shall not be liable if he proves that: • such statement or omission was immaterial or • that he had RGTB that statement was true or the inclusion or omission was necessary.	Exception: No person shall be liable if he proves that: • Having consent to become director, withdrew the consent and prospectus was issued without consent. • Prospectus issued without knowledge or consent and on becoming aware gave reasonable public notice • Such statement was made on basis of expert's report + such statement was true and fair representation of expert's statement + such person had RGTB that expert is competent + expert has given consent + not withdrawn consent.

TELEGRAM: CA NOTES COMMUNITY

Remedies for misrepresentation in Prospectus under Indian Contract Act:

Particulars	Right of Rescission	Right of Action for Damages
Ground	Prospectus contains untrue or misleading statements	Mis-statement amounts to FRAUD
Relief	Contract is voidable and subscriber may seek rescission in court	Investor may claim damages against the company (even after liquidation)
Effect	Subscriber's name removed from register; entitled to refund with interest along with compensation u/s 75 of Indian Contract Act	Investor can recover monetary compensation for loss suffered
Conditions or Limitations	Not available to subsequent purchasers from market or to subscribers of MoA.	Person must prove fraudulent misrepresentation of a material fact, and loss suffered

Another remedy under Indian Contract Act - Damages for Deceit

- Persons responsible for issue of prospectus can also be held liable in an action for deceit u/s 19 of the Indian Contract Act, 1872.
- This remedy is available even where rescission is lost (due to delay, negligence, etc.)

Pre-requisites to claim damages for deceit:

a. There was a fraudulent mis-statement related to some existing material facts.

b. The claimant is the original allottee and had seen the prospectus.

c. He has been actually deceived.

Relevant case law:

Peek v. Gurney	• Directors issued a fraudulent prospectus. • Peek bought shares months later from RSE (not on the basis of the prospectus). Court held directors not liable because Peek did not purchase on basis of prospectus.

Few examples of misleading statement in prospectus:

- Prospectus said directors and friends subscribed most of the capital, but in fact they had taken only a few shares - misleading.
- Prospectus said company regularly paid dividends, but it was actually making losses and dividends came from reserves - misleading.
- Prospectus said turnover - 1 cr., but this was only production capacity, not actual sales: misleading.

TELEGRAM: CA NOTES COMMUNITY

Sec 447: Punishment for Fraud

Without prejudice to any liability including repayment of any debt under this Act or any other law in force, any person guilty of fraud shall be liable as follows:

Amount involved in the fraud	At least Lower of: a. Rs. 10 lakhs b. 1% of T/O		Less than Lower of: a. Rs. 10 lakhs b. 1% of T/O
Whether public interest involved?	No	Yes	No
Jail	6m - 10 years	3 years - 10 years	Upto 5 years
And/or	AND	AND	OR
Fine	Up to 3x amt involved	Up to 3x amt involved	Upto Rs. 50 lakhs or both

Fraud bole toh?

- Fraud means any act, omission, concealment of facts, or abuse of position,
- done with intent to deceive, or to gain undue advantage, or to injure interests of any person,
- whether or not there is wrongful gain or wrongful loss.

Section 38 - Punishment for Personation for Acquisition, etc., of Securities

1. A person shall be liable for punishment u/s 447 if:
   a. He makes or abets the making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
   b. He makes or abets the making of multiple applications in different names or different combinations of his name or surname for acquiring or subscribing for its securities; or
   c. Otherwise induces, directly or indirectly a company to allot or register any transfer of any securities to him or to any other person in a fictitious name.
2. The provisions u/ss (1) shall be prominently reproduced in every prospectus /form of application.
   Note: A person who gets shares allotted in a fictitious name becomes liable as shareholder.
3. Where a person is convicted under this section, court may order disgorgement of gain made by him. The order may also include seizure & disposal of securities found in his possession.
4. Amount received through disgorgement or disposal of securities u/s (3) - Credited to IEPF.

Note: The purpose of the section is to prevent allotment of shares in fictitious names.

TELEGRAM: CA NOTES COMMUNITY

Section 39 - Allotment of Securities by Company

[Read with Companies (Prospectus and Allotment of Securities) Rules, 2014]

1. Company can allot share to public only when:
   a. amount stated in prospectus as minimum amount has been subscribed and
   b. sums payable on application have been paid by cheque or other instrument.

2. Application money shall not be less than 5% of nominal amount of securities or other % specified by SEBI through Regulations.

Relevant points for allotment:

- Re-issue of forfeited shares is not treated as a fresh allotment.
- As per SEBI Regulation:
  a. minimum subscription must be 90% of the entire issue.
  b. minimum sum payable on application is at least 25% of the issue price.
  c. In case of OFS, application money = 100% of issue price.
  d. Allotment cannot proceed unless actual cash is received by the company.

3. Refund of application money:

Company shall return the amount in prescribed manner if:

- Stated minimum amount has not been subscribed or
- Application money is not received within 30 days from date of issue of prospectus or such other time specified by SEBI.

Rule 11: Refund:

- Application money shall be repaid within 15 days from closure of the issue.
- If not so repaid: Directors who are OID shall be jointly and severally liable to repay with interest @ 15% per annum.
- Such refund shall be credited only to bank account from which subscription was remitted.

4. When a company having share capital makes any allotment, it shall file with RoC - Return of Allotment within 30 days of allotment of securities in Form PAS -3 along with prescribed fees.

Rule 12: Attachments to Return of Allotment:

In case of:	Attachments to Return of Allotment
Any allotment	List of allottees with name, address, occupation and no. of securities allotted.
	List to be certified by signatory of PAS-3 as complete and correct.

TELEGRAM: CA NOTES COMMUNITY

Securities (not being bonus shares) allotted as fully or partly paid up for consideration other than cash	• A copy of contract duly stamped together with any contract of sale if relating to a property or an asset, or a contract for services or other consideration. • If such above contract is not reduced to writing, complete particulars of the contract stamped with the same stamp duty as would have been payable if the contract had been reduced to writing. A report of registered valuer w.r.t. valuation of the consideration to be attached
Bonus securities	Copy of resolution passed in GM authorizing such issue
Shares u/s 62(1)(c) by company other than listed company	Valuation report of registered valuer

5. Default u/ss (3) and (4):
Company + OID - Liable - Rs. 1,000/day but not exceeding Rs. 1 lakh for each default

Section 40 - Securities to be Dealt with in Stock Exchanges 13-14-15

1. Company making public offer shall, prior to such offer, make an application to one or more RSE and obtain permission for securities to be dealt with in such RSE.

2. Where prospectus states application u/ss (1) has been made - Also state the names of RSE in which the securities shall be dealt with.

3. Application money from public shall be kept in a separate bank account in a scheduled bank and shall not to be utilised for any purpose other than:
   a. Adjustment against allotment where securities have been permitted to be dealt with on RSE
   b. Repayment within the time specified by SEBI if company is unable to allot securities

4. Any condition in prospectus binding an applicant to waive compliance with this section shall be void.
[e.g., If prospectus says applicants' money can be used for general purpose before allotment - void]

5. If a company defaults in complying with this section, it is liable to a fine of ₹5 lakh to ₹50 lakh, and every OID is liable to a fine of ₹50,000 to ₹3 lakh.

5. Underwriting commission:
Co. may pay comm. to any person w.r.t, subscription to its securities subject to prescribed conditions.

TELEGRAM: CA NOTES COMMUNITY

Rule 13 : Payment of Commission:

Commission can be paid subject to following conditions:

a. Such payments to be authorized by AOA.

b. Commission may be paid out of – (a) Proceeds of issue, or (b) Profit of company, or both.

c. Rate of commission:

In case of sec. issue being:	Commission shall NOT exceed
Shares	Lower of:
	a. 5% of price of share issue or
	b. Rate auth by AOA
Debentures	Lower of:
	a. 2.5% of price at which debenture issued or
	b. Rate auth. by AoA

d. Prospectus to disclose:

name of underwriters (u/w)	rate and amount of commission payable to u/w	no. of securites underwritten or subscribed by u/w

e. No commission to be paid if securities are not issued to public.

f. copy of the contract for payment of commission is delivered to RoC at the time of delivery of the prospectus for registration.

Concept clarity check:

1. A Ltd. applies in BSE and NSE for obtaining permission prior to IPO. Of them, NSE rejected the application and BSE approved such application. Can A Ltd. issue IPO? – No. All the RSE where application has been made has to approve such application
2. Can underwriting commission be paid in kind (say, in forms of flats) – Yes, there is no such restriction in law that commission has to be paid only in cash.

Section 41 - Global Depository Receipt (GDR):

(Read with The Companies (Issue of Global Depository Receipts) Rules, 2014)



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Meaning	GDR is an instrument in the form of a depository receipt created by a foreign depository outside India and authorised by a company making such issue.
Authority	A company may issue depository receipts in any foreign country after passing a Special Resolution in GM, subject to prescribed conditions.
Manner & Form	DRs may be issued by way of public offering, private placement, or any manner prevalent in the concerned jurisdiction. • DRs may be listed or traded on platforms in the concerned jurisdiction. • DRs may be issued against new shares or may be sponsored against existing shares held by shareholders, subject to CG or RBI conditions.
Underlying Shares	DR shall be issued by an overseas depository bank (ODB) appointed by the company and underlying shares shall be kept in custody of domestic custodian bank (DCB).
Voting Right	• Holder of DRs becomes a member and can vote only after conversion of DRs into underlying shares. • Until conversion, the overseas depository votes on behalf of DR holders as per the agreement between depository, DR holders, and the company.

Section 42: Offer or Invitation for Subscription of Securities on Private Placement (PP)

17 19 21 22

Definition:

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

Provision:

1. Subject to this section, a company may make private placement (PP) of securities

2. Private placement:
   - Private placement to be made only to select group of person identified by BoD (called as Identified Persons (IP).
   - Number of IPs shall not exceed 50 or higher number as may be prescribed (200 members in aggregate in FY)
   - Above limit of 200 not to include: QIBs and shares offered under ESOP u/s 62.

   [N.A. - NBFC and HFC if regulation by RBI or National Housing Bank complied with]

Explanation- It is hereby clarified that restrictions of 200 members would be reckoned individually for each kind of security that is equity share, preference share or debenture.

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Rule 14: Private Placement:

The proposal to make PP has to be previously approved by SH of company by a SR for each such PP.

ES annexed to notice for SH approval shall made following disclosure:

a. particulars of the offer including date of passing of Board resolution;
b. kinds of securities offered and the price at which security is being offered:
c. basis or justification for the price (incl. premium, if any) at which offer/invitation is made;
d. name and address of valuer who performed valuation;
e. amount which the company intends to raise by way of such securities;
f. material terms of raising such securities

Note:

1. In case of offer for non-convertible debenture (NCD):

SR is not required in case of offer for NCD if amount raised <= limit u/s 180(1)(c) and in such case, BoD resolution is adequate.

However, if amount raised exceed limit u/s 180(1)(c) – It shall be sufficient if company passes a previous SR only once in a year for all such offers during the year.

2. In case of offer to QIBs:

If company passes previous SR only in a year for all such allotments during the year.

Exception:

No offer or invitation of any securities under this rule shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate have obtained Government approval under FEM (Non-debt Instruments) Rules, 2019 & such approval is attached with PPOCA.".

Author's Note: China, Pakistan, Bangladesh, Nepal, Bhutan, Myanmar, and Afghanistan are the countries sharing land border with India.

3. Company shall issue PPOCA in Form PAS-4 to IPs whose names and addresses are recorded by company.

Note: PPOs shall NOT carry right of renunciation.

Note: Deemed Public Offer:

- If a company makes an offer to allot securities to more than prescribed no. of IPs,
- the same shall be deemed to be an offer to public and
- shall accordingly be governed by the provisions of Part I of this Chapter
- irrespective of whether or not the payment for securities has been received or
- whether the company intends to list its securities or not on any RSE in or outside India

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4. Mode of payment of subscription money:

IPs willing to subscribe to PP issue shall apply in the PP and application issued to such person along with subscription money paid either by cheque/DD or other banking channel & not by cash.

Application money not to be utilized unless allotment made and return of allotment filed with RoC.

5. Prohibition on Fresh offer:

No fresh offer unless:

a. allotments w.r.t, any offer or invitation made earlier have been completed or
b. that offer or invitation has been withdrawn or abandoned by the company.

Concept clarity check:

The prohibition applies for different kind of securities also i.e., if PP of equity is yet to finish, you cannot start PP of debentures also unless PP of equity is completed or withdrawn.

6. Allotment:

- Company shall allot its securities within 60 days from receipt of application money
- If company fails to allot securities in 60 days - Repay same within 15 days from expiry of 60 days
- If company fails to repay – It shall be liable to repay that money + interest @ 12% p.a. from expiry of 60th day (read again, from which day?)

Application money shall be kept in a separate bank account in a scheduled bank + Not to be utilized for any purpose other than:

a. Adjustment against allotment
b. Repayment – If company unable to allot securities.

7. Such company shall NOT release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

8. Return of Allotment to be filed with RoC within 15 days from allotment date

Such company to file with RoC a "Return of Allotment" in Form PAS-3 within 15 days from date of allotment (including a list of all allottees, their full names, addresses, number of securities, etc.)

Rule 14: Private Placement (Continued)

Return of allotment in Form PAS-3 shall include the following details:

- the full name, address, permanent Account Number and E-mail ID of such security holder;
- the class of security held;
- the date of allotment of security ;
- no. of securities held, nominal value and amount paid on such securities; and particulars of consideration received if entire securities were issued for consideration other than cash.

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9. Default in filing Return of Allotment – Company, its promoters and directors – Fine Rs. 1,000 per day for each default upto Rs. 25 lakhs.

10. If such company is in contravention of this section - Company, its promoters and directors – Fine which may extend to amount raised through the PP or Rs. 2 crores, whichever is lower, and the company shall also refund all monies with interest (12%) within 30 days of order imposing the penalty.

Note:

- QIB means the "Qualified Institutional Buyer" as defined in SEBI Regulations.
- PPOCA letter shall be in Form PAS-4 serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in e-mode, within 30 days of recording the name of such person.
- Company to maintain complete record of such offers in Form PAS-5.
- Company shall issue PP offer only after relevant SR/BR filed with RoC
- Any offer or invitation which is not in compliance with the provision of Sec 42 shall be treated as public offer and relevant provisions shall apply accordingly.

Section 180(1)(c) – Restriction on power of Board w.r.t. Borrowing Money

Board can exercise the following power only with the consent of company by way of SR:

- Borrow money if money to be borrowed + already borrowed > PUSC + FR + SP

Important Note:

- If BoD borrow in excess of limits specified, shareholders may ratify.
- PUSC to include both – equity as well as preference.
- SR not applicable in case of temporary loans (payable on demand/within 6m) obtained from company bankers in OCOB.
- Temporary loan does not include loan raised to finance capital expenditure.

The End

"Study while they sleep. Work while they play. Live like they dream"

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Summary of Forms

Form No.	Section	Purpose
		Certificates & Registers
SH-1	46	Share Certificate (or duplicate thereof)
SH-2	46	Register of renewed & duplicate share certificates.
SH-3	54	Register of Sweat Equity Shares (SES).
		Transfer & Alteration
SH-4	56	Instrument of transfer (IOT) (for physical securities).
SH-5	56	Notice to transferee (when transferor alone applies for partly-paid shares).
SH-7	61, 64	Notice of alteration of share capital (with altered MOA).
		Buy-back of Shares
SH-8	68	Letter of offer for buy-back (filed before buy-back).
SH-9	68	Declaration of Solvency (before buy-back resolution).
SH-10	68	Register of bought-back shares/securities.
SH-11	68	Return of buy-back (filed with RoC & SEBI, if listed).
SH-15	68	Certificate by directors confirming compliance with buy-back rules (SH-11).
		Debentures
SH-12	71	Debenture Trust Deed (for protection of debenture holders).

Summary of sections

Sec.	Section Name	Sec.	Section Name
43	Kinds of Share Capital	58	Refusal of Registration and Appeal against Refusal
46	Certificate of Shares	59	Rectification of Register of Members
47	Voting Rights	61	Power of Limited Company to Alter its SC
48	Variation of Shareholders' Rights	62	Further Issue of Share Capital
49	Calls on Shares of to be Made on Uniform Basis	63	Issue of Bonus Shares
50	Calls in advance	64	Notice to be Given to Registrar for Alteration of Share Capital
51	Payment of Dividend in Proportion to Amount Paid-Up	66	Reduction of Share Capital
52	Application of Premiums Received on Issue of Shares	67	Restrictions on Purchase by Co. or Giving of Loans by it for Purchase of its Shares
53	Prohibition on Issue of Shares at Discount	68	Power of Company to Purchase its Own Securities
54	Issue of Sweat Equity Shares	69	Transfer of Certain Sums to CRR Account
55	Issue and Redemption of Pref. shares	70	Prohibition for Buy-Back
56	Transfer and Transmission of Securities	71	Debentures
57	Punishment for Personation of SH.		

* Sec 44, 45, 60, 65 and 72 are not applicable for exams.

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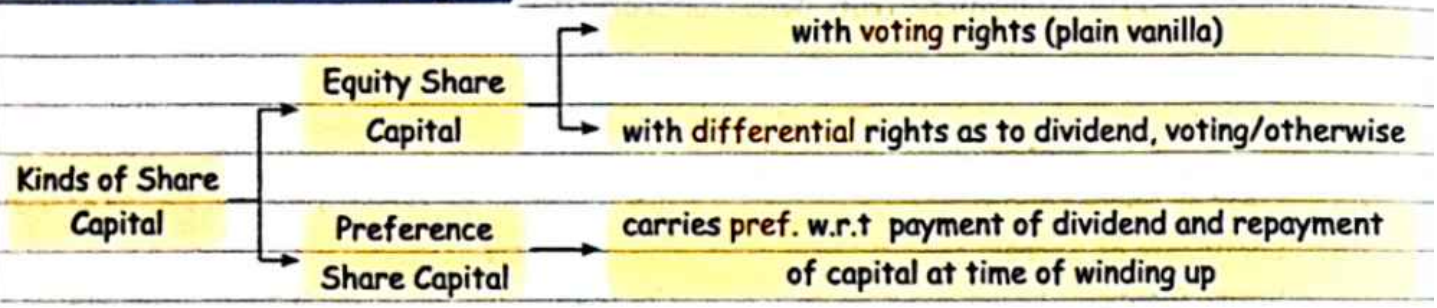
Shares vs Stock:

Share [2(84)]	"Share" means a share in the share capital of a company and includes stock.
Stock	Stock is a collection of fully paid up shares.
Difference between share and stock	Stock is stated in lump sum whereas a 'share' being the smallest unit. Originally shares are issued to shareholders while in case of stock, the fully paid-up shares of members are converted into 'stock' afterwards. Thus, 'stock' is not issued originally but is obtained by conversion of fully paid-up shares.
Author's Note	In India, shares and stock are treated the same.

Relevant Case Law:

Name	Definition of Shares
New London & Brazilian Bank v. Brockle Bank	A share is not a sum of money, but is an interest measured in a sum of money, and made up of various rights contained in the contract, including right to a sum of money of a more or less amount.
Borland's Trustee v Steel Brothers & Co Ltd	Share is the interest of shareholder in company measured by a sum of money, for the purpose of liability in the first place and of interest in the second, and also consists of a series of mutual covenants entered into by all shareholders .

Section 43 – Kinds of Share Capital



Explanations:

1. Equity share capital means all share capital which is not preference share capital;

2. Preference SC means that part of issued share capital which carries preferential right w.r.t.:
   a. payment of dividend (fixed amount or amount calculated at fixed rate)
   b. repayment, in the case of a winding up, of amount of paid up share capital.

3. Capital shall be deemed preference capital, even if:
   a. in respect of dividends, besides preferential right to fixed amount/rate, it also has right to participate with non-preference capital;
   b. in respect of capital, besides preferential right to repayment on winding up, it also has right to participate with non-preference capital in any surplus after full repayment.

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Note:

1. Preference SHs may also participate in equity pool post preferential entitlements (depending on the terms of AoA or terms of issue).
   Unless expressly stated, preference shares are presumed to be not participating in such surplus. [Scottish Insurance Corporation Ltd vs. Wilsons & Clyde Coal Co Ltd]
2. Preference shares are always presumed to be cumulative (unless AOA specifies otherwise)
3. A company cannot have PSC without issuing ESC.

Non-applicability of sec 43: Private company where MOA or AOA so provides for it.

Equity Shares with Differential Rights:

[Section 43 read with Rule 4 of Companies (Share Capital and Debentures) Rules, 2014]

Following are the conditions to issue equity shares with differential rights (DVR):

- AoA authorizes the issue of such shares.
- Such issue is authorized by an ordinary resolution passed at GM.
  If equity is listed on RSE – Seek OR through postal ballot.
- Voting Power (VP) of shares with DVR shall not exceed 74% of total VP (including VP on such DVR)
- Company has not defaulted in filing FS and annual return for 3 immediately preceding FY
- Company has no subsisting default in:

payment of declared dividend	repayment of matured deposit + interest	Redemption of preference shares	Redemption of debenture + interest

- Company has not defaulted in:

payment of dividend on preference shares	repayment of term loan + int. to PFI or Bank/other FI	Statutory dues w.r.t., Employee	Default in crediting amount in IEPF

  Provided that co. may issue DVR on expiry of 5 years from end of FY in which default made good.

- Company has not been penalized by court or tribunal during last 3 years of offence under the RBI Act, SEBI Act, SCRA Act, FEMA Act or any other special Act.

Relevant points:

- Explanatory statement annexed to notice for GM or postal ballot shall contain particulars of the issue such as issue size and other details.
- A company is prohibited from converting existing ESC with Voting Rights into DVR and vice versa.
- Details of such issue to be disclosed in BOD Report in the FY in which such issue is completed.
- Holders of such DVR shares shall enjoy all other rights such as bonus shares, rights shares etc., which holders of equity shares are entitled to, subject to DVR with which such shares are issued.
- Register of Members (sec 88) shall contain relevant details of such issue along with details of SHs.

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Section 46 - Certificate of Shares (SC)

1. Share certificate shall be prima facie evidence of title of such shares if certificate is issued under:

a. common seal, if any or

b. signed by 2 directors or by a director and CS, wherever the company has appointed a CS.

Note: If composition of BoD permits, at least 1 of above directors shall be other than MD or WTD.

Where share is held in depository form, record of depository is prima facie evidence of interest of beneficial owner.

2. Duplicate share certificate:

Duplicate certificate may be issued if:

a. it is proved to have been lost or destroyed; or

b. has been defaced, mutilated or torn and surrendered to company.

Rules: Duplicate share certificate:

- Share certificates (or duplicate) - Issue in Form SH-1. Specify name, shares and amount paid up.
- Such share certificates shall be issued pursuant to Board Resolution.
- Time period for issue of duplicate share certificate:

Unlisted company	Within 3 months from submission of complete docs.
Listed company	Within 45 days from submission of complete docs.

- Maintain register of every renewed or duplicate share certificates:

Form	SH-2 with cross reference to Register of Members
Location	RO or any place where Register of members is kept
Custody or authentication	CS or authorised person

- Upon sub-division or consolidation (sec 61), company may replace all share certificates without requiring old ones to be surrendered. In the new one, mention the fact that it has been replaced.

- Company may charge fees as Board may decide (<= 50). No fees where scheme is sanctioned by High Court or CG.

- On surrender of certificates - Immediately deface by stamping the word "Cancelled' and destroy after 3 years subject to BR and presence of authorised person.

- If company issues a duplicate certificate of shares with intent to defraud:

	Minimum	Maximum
Company	5x of FV of shares involved	Higher of 10x or Rs. 10 crores
OID	Liable for action u/s 447	

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Preserving of records and joint ownership:

- Records related to share certificates shall be preserved for 30 years. In case of dispute - permanently.
- In case of joint ownership, issue only 1 share certificate for all joint shareholders.

Section 47 - Voting Rights

1. Subject to other provisions of this Act:
   a. every member holding ESC shall have right to vote on every resolution placed before the company and
   b. his voting right on a poll shall be in proportion to his share in the paid-up ESC of the company.

In Nidhi company, no member shall exercise voting rights on poll in excess of 5% of total VR.

2. Every member holding preference share capital (PSC) shall have a right to vote only:
   a. on resolutions which directly affect the rights attached to his preference shares and,
   b. any resolution for the winding up of the company or
   c. for the repayment or reduction of its equity or PSC and

   his voting right on a poll shall be in proportion to his share in the paid-up PSC of the company

Note:

1. Proportion of voting rights of ESH to voting rights of PSH shall be in the same proportion as the ESC bears to PSC.
2. Where dividend in respect of a class of preference shares has not been paid for 2 years or more, such class of PSH shall have a right to vote on ALL resolutions placed before the company. (Once such arrears are paid, PSH lose their enhanced voting right.)
3. ESH with DVR shall exercise VP as per AOA and terms of issue rather than proportionate basis.

Non applicability of sec 47:

Private company where MoA or AoA so provides.

Section 48 - Variation of Shareholder's Rights (3)

1. How to vary the rights?
   - Rights attached to shares of any class may be varied with:
     - consent in writing of not less than 3/4th of issued shares of that class, or
     - special resolution (at a separate meeting of such class)

     if provision for such variation is contained in AoA or MoA or in absence of such provision, such variation is not prohibited by terms of issue of such shares.
   - If variation by one class of SH affects rights of any other class, consent of 3/4th of such other class of SH ~~or SR~~ shall also be obtained and provisions of this section shall apply to such variation.

TELEGRAM: CA NOTES COMMUNITY

2. Resistance to such variation



- Where holders of not less than 10% of issued shares of a class
- did not consent to such variation or vote in favour of SR
- they may apply to Tribunal to have variation cancelled.
- Where such application is made, variation shall not have effect until it is confirmed by Tribunal:

Procedure:

- Such application to be made within 21 days after date of consent or SR.
- Decision of Tribunal shall be binding on the shareholders.
- Company shall, within 30 days of date of order of Tribunal, file a copy thereof with RoC.

Crux of some of landmark judgements - to better understand the 'variation'

- New issue of preference shares ranking pari-passu with existing shares - not variation.
- Cancellation of shares and reduction of capital also - not variation.

Sec	Provision
49: Uniform	Where any calls for further share capital are made on shares of a class, such calls shall be made on uniform basis on all shares falling under that class. Note: 1. Shares of same nominal value with different PUSC = Not same class. 2. A shareholder may pay only part of the call amount; company cannot refuse such part payment and must accept it. i.e. call liability is not single indivisible debt.
50: Calls in Advance	1. Co. may, if authorized by AOA, accept from any member, the whole or a part of amt remaining unpaid on any shares held by him, even if such amt is not called up. 2. Such advance payment shall not entitle the member to any voting rights. Note: 1. SH may receive interest on such advance if AoA allows. Moreover, such rate of interest (as permitted by AoA) may be varied by shareholders in the general meeting. 2. No dividend shall be paid on such advanced.
51: Dividend	Company may, if authorised by AOA, pay dividends in proportion to amount paid- up.

TELEGRAM: CA NOTES COMMUNITY

Section 52 – Securities Premium Account and its application

1. Where company issues shares at premium (cash/otherwise), transfer such aggregate amount of premium to Securities Premium Account (SPA)

2. Application or use of amount in SPA account:
   a. towards issue of unissued shares of company to members as fully paid bonus shares
   b. write off preliminary expenses of the company
   c. write off expenses or commission paid or discount allowed on issue of shares or debentures.
   d. providing for premium payable on redemption of any redeemable pref. shares or debentures
   e. purchase of its own shares u/s 68 (buyback)

3. Notwithstanding above (1) and (2), in case of such class of companies. as may be prescribed and whose FS comply with prescribed AS u/s 133, the SPA shall be utilised for:
   a. towards issue of unissued shares of company to members as fully paid bonus shares
   ~~b. write off preliminary expenses~~
   c. write off – Expenses/Commission paid/Discount allowed on issue of shares/debentures of company
   ~~d. providing for premium payable on redemption of any redeemable pref. shares or any debentures~~
   e. purchase of its own shares u/s 68 (buyback)

Note:
- Provisions relating to reduction of share capital (sec 66) shall apply as if SPA = PUSC.
- SPA is not a free reserve.
- Power to issue shares at premium is given by law. It need not be specified in AoA.

Section 53 – Prohibition on Issue of Shares at Discount

1. Except as u/s 54, a company shall NOT issue shares at discount.
2. Any share issued by a company at a discount price shall be void.

Exception: It may issue shares at discount to creditors for conversion of debt into shares due to:
- statutory resolution plan or
- debt restructuring scheme as per RBI.

3. Default:
   - Company must refund all monies with 12% interest p.a. from date of issue.
   - Company and OID – Fine upto amount raised or Rs. 5 lakhs, whichever is less.

TELEGRAM: CA NOTES COMMUNITY

Section 54 - Issue of Sweat Equity Shares: 7 18 36

Meaning of Sweat Equity Shares [Sec 2(88)]

- Such equity shares as are issued by a company
- to its directors or employees
- at a discount or for consideration (other than cash),
- for providing their know-how or making available rights in the nature of intellectual property rights (IPRs) or value additions, by whatever name called;

Legal Provisions:

1. Notwithstanding anything contained in sec 53, company may issue sweat equity shares (SES) (of class of shares already issued), provided that:
   a. the issue is authorized by a SR
   b. Resolution specifies:
      No. of shares | Current market price | Consideration, if any | Issued to whom
   c. If equity shares are listed, such issue is as per SEBI Regulations. If not listed, as per Rules.

2. Rights, limitations and provisions of equity shares shall be applicable to sweat equity shares too and it shall rank pari passu with other equity shares.

Rule 8 - Issue of Sweat Equity Shares:

Employees means:	(a) a permanent employee who has been working in India or outside India, or
	(b) a director of the company, whether a whole-time director or not; or
	(c) Director or Employee as per (a) or (b) above of subsidiary (India or outside India) or of holding company.
Value additions means:	• Value additions are economic benefits, actual or anticipated, gained by co.
	• They arise from know-how or IPRs provided by the person receiving SES.
Validity of SR	Allotment of SES to be made within 12 months of passing SR
Maximum issue size per year	In a FY, company shall not issue SES > 15% of existing PUESC or issue value of Rs. 5 crores, whichever is higher.
	Note:
	At any time, max issue of SES shall not > 25% of PUESC.
	In case of Startup (upto 10 years of incorporation) - Issue shall not > 50% (instead of 25%) of its paid up ~~equity~~ share capital.
Lock in	3 years from date of allotment [mention lock-in in share certificate]
Issue price	To be determined by Registered Valuer (RV) with proper justification
Valuation	Valuation of value additions shall be done by RV with a proper report to BoD.
BoD report	Company to disclose specific details of such issue in BoD report
Register	Maintain register of SES in SH-3 at RO or such place as BoD may decide.

TELEGRAM: CA NOTES COMMUNITY

Treatment of non-cash consideration	a. If consideration is a depreciable/amortizable asset - Carry to BS as per AS b. Where clause (a) N.A. - Expense as per AS
Omitted	Earlier requirement that a company could issue SES only after completion of 1 year from commencement of business has been omitted.

Section 55 - Issue and Redemption of Preference Shares (PS)

1. No company shall issue preference shares that are irredeemable.
2. Conditions for issue of PS:
   a. The issue has to be authorized by AoA
   b. The issue has been authorised by passing SR in the GM.
   c. At the time of such issue - there is no subsisting default in:
      - Redemption of any preference share or
      - Payment of dividend due on preference shares.
   d. Such PS is redeemable within period not exceeding 20 years

   Note: Company engaged in setting up and dealing with infrastructural projects may issue PS for period exceeding 20 years but not exceeding 30 years provided that minimum 10% of such PS is redeemed each year from 21st year on proportionate basis at the option of PSH.

3. Redemption of preference share:
   - Redemption of PS shall be only on terms on which it was issued or varied u/s 48.
   - PS may be redeemed:

At a fixed time or happening of certain event	Any time at company's option	Any time at PSH option

   - Only fully paid-up preference shares can be redeemed
   - Source of redemption:

   Such shares shall be redeemed only out of -
   (i) profits of the company available for dividend or
   (ii) proceeds of fresh issue made for purpose of such redemption

   Creation of CRR:
   (i) Where such shares are proposed to be redeemed out of profits, transfer a sum = nominal value of shares to "Capital Redemption Reserve" A/C
   (ii) Provisions relating to reduction of share capital (sec 66) shall apply as if CRR = PUSC.
   (iii) CRR may be applied for - paying up unissued shares to be issued as fully paid bonus shares.

   - Premium on redemption of PS:

   a. Such premiums shall be provided for out of profits or SPA.
      However, in case of prescribed class of companies which complies with section 133, such premium shall be provided for out of profits ~~or SPA~~.
   b. Such premium shall be provided for before such redemption

TELEGRAM: CA NOTES COMMUNITY

4. Deemed to be redeemed:

Where a company is not in position to redeem or pay dividend on any PS, it may:

- with consent of 3/4th in value of PSH and
- approval of Tribunal on petition made by it

issue further redeemable PS = amount of unredeemed PS + dividend due thereon.

On such issue – Unredeemed PS shall be deemed to have been redeemed.

Provided that Tribunal shall, while giving approval, order redemption forthwith of PS held by such persons who have not consented to issue of further redeemable PS.

Note: Such issue of further redeemable PS or redemption of PS shall not be deemed to be an increase or reduction in share capital of company.

Example – Tata Steel 14.5% Preference Share (2017)

5. Note:

- Register of members u/s 88 shall contain particulars w.r.t, such PSH.
- If company intends to list such PS, it shall comply with SEBI regulations.

Concept clarity check:

A company proposes to redeem a PS of nominal value Rs. 100 with a premium of Rs. 20 per share. Such redemption was to be made by further issue of PS. Decide the amount to be transferred to CRR? – Zero! CRR is only needed when amount is paid out of profit.

Section 56 - Transfer and Transmission of Securities

1. Transfer:

Company shall not register transfer of securities (or interest) unless:

a. proper instrument of transfer (SH-4) duly stamped and dated has been executed by transferor (TOR) and transferee (TEE)
b. such instrument specifies the name, address and occupation of TEE.
c. such instrument has been delivered to company by TOR or TEE within 60 days of execution along with share certificate or letter of allotment (if no certificate is in existence)

2. Transfer of partly paid shares:

Where an application for registration of transfer of partly paid shares is made by TOR alone, such company shall not register unless:

- Company has given notice (SH -5) of such application to TEE and
- TEE to give no objection to the transfer within 2 weeks from receipt of notice.

If TEE fails to respond in 2 weeks, it shall be presumed that the assessee has no objection and company shall proceed with such registration. [Source: Format of SH-5]

TELEGRAM: CA NOTES COMMUNITY

3. Transfer of any security of a deceased person made by his legal representative (LR) shall, even if the LR is not a holder thereof, be valid as if he is holder at the time of execution of trf. deed.

4. Additional points related to transfer:

- When securities are held in demat form, and both parties are registered beneficial owners with the depository, Section 56 transfer formalities are not needed.

- If the transfer deed is lost or not delivered to the company timely, the company may still register the transfer. But before doing so, the BoD may ask the parties to give an indemnity (i.e., a written promise to protect the company from any future loss or claim).

- Exemption to Government company:

Full exemption:	Partial exemption (trf. of bonds issued by Govt. company):
Sec 56 shall not apply in case of transfer of securities held by the nominees of Government.	• No requirement of formal, stamped & duly executed trf deed. • Transferee shall give intimation specifying his name, address and occupation, and • deliver the bond certificate or, letter of allotment to the co.

5. Transmission:

Company can register transmission of any right to securities by operation of law on receipt of intimation from any person to whom such right is transmitted.
(i.e., transfer deed is not required in case of transmission. Instead, it requires intimation)

Illustrative cases of Transmission:

Death (to Legal Rep)	Insolvency (to resolution professional)	Lunacy (to administrator appointed by Court)

6. Delivery of certificates:

Company shall deliver certificates of all securities allotted, transferred or transmitted:

In case of:	Time period
Subscribers to memorandum	• within 2m of incorporation
Any allotment of its shares	• within 2m of allotment
Transfer or transmission	• within 1m from date of receipt of transfer deed or intimation
Allotment of debentures	• within 6m from date of allotment

If securities are held in demat form, co. to intimate details of allotment to depository immediately.

7. Punishment:

- If a company makes any default u/s 56 - Company and OID - Liable to a penalty of ₹50,000.
- Where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable u/s 447.

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Forgery on transfer:

- Forgery is nullity and forged transfer is void ab initio and gives no legal title to the transferee.
- The original shareholder remains the real owner, and the company must restore his name in the Register of Members and pay him dividends due.
- Even if the company issues a share certificate on the basis of a forged transfer, it does not validate the transferee's ownership.
- A subsequent bonafide purchaser (without knowledge of forgery) also gets no valid title, as the buyer's title is only as good as that of the seller.
- The company, while restoring the original shareholder's name, may need to compensate the innocent purchaser who acted in good faith and in turn, company may recover indemnity from the person who lodged the forged transfer.
- Case law (e.g., Barton v. North Staffordshire Railway Company) and Sec. 46 support this: a share certificate is only prima facie evidence and cannot override forgery.

Example:

Mr. A is shareholder of RIL. Mr. Chor forged A's signature and transferred his shares to Mr. B. B then transferred the shares to Mr. C, and RIL registered the transfer.

Answer:

- Company must restore ownership to Mr. A; it has no liability to B or C.
- Genuine buyer C can claim indemnity from B.
- B, after indemnifying C, may proceed against Chor.

Section 57 - Punishment for Personation of Shareholder

- If any person deceitfully personates as owner of any security or interest, and
- thereby obtains or attempts to obtain any such security or interest, or receives or attempts to receive any money due to any such owner,
- he shall be punishable with imprisonment – 1 year to 3 years AND with fine Rs. 1 lakh to Rs. 5 lakhs.

TELEGRAM: CA NOTES COMMUNITY

Section 58 - Refusal of registration and appeal against refusal.

Refusal in case of Private Company	Refusal in case of Public Company
Notice of refusal:	
Such company may refuse to register transfer/ transmission under its AoA or otherwise, but it must send notice of refusal with reasons to TOR and TEE or person giving intimation - within 30 days of delivery.	• Securities of public companies are freely transferable. • Any contract w.r.t., trf of securities shall be a valid contract and enforceable.
Appeal to Tribunal	
TEE may appeal to Tribunal against such notice: - within 30 days from receipt of notice, or - if no notice given, within 60 days from delivery of instrument/intimation.	If a public company without sufficient cause refuses to register transfer within 30 days of delivery of instrument/intimation, transferee may appeal to Tribunal: - within 60 days of refusal or, - if no intimation received, within 90 days of such delivery.

On such appeal, Tribunal may dismiss such appeal or order:

a. registration of transfer/transmission within 10 days of receipt of order; or

b. rectification of register and payment of damages to aggrieved party.

Contravention of Tribunal's order: Imprisonment 1-3 years and fine Rs. 1 lakh to Rs. 5 lakh.

Section 59 - Rectification of Register of Members

1. Application for Rectification of Register of Member (RoM):

If without sufficient cause, the name of any person is:

entered into RoM | omitted from RoM | unnecessary delay in entering/removing name

Aggrieved person or any member may make an application for rectification of RoM to:

a. Tribunal, or

b. Competent court outside India specified by CG (in case of foreign members or debenture holder)

2. Tribunal may either dismiss the appeal or by order:

a. Direct co. to register trf/transmission and co. to comply within 10 days of receipt of order, or

b. Direct rectification of the register and also direct the co. to pay damages to party aggrieved.

3. The sections shall not restrict the holder of the sec. from transferring such sec. and any person acquiring such sec. shall be entitled to voting rights.

4. Where a trf. is made in contravention of any Law, Tribunal may, on application to it, direct the company or depository to set right the contravention and rectify registers.

TELEGRAM: CA NOTES COMMUNITY

Section 61 - Power of Limited Company to Alter its Share Capital

1. A limited company having a share capital may, if so authorised by its AoA, alter its MoA in its GM to:
   a. increase its authorised share capital (ASC) by such amount as it thinks expedient;
   b. consolidate & divide its share capital into shares of a larger amount than its existing shares.
      Note: no consolidation and division which results in changes in voting % of SHs shall take effect unless approved by Tribunal on an application in prescribed manner;
   c. convert its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
   d. sub-divide its shares into shares of smaller amount than is fixed by the memorandum.
      Note: In such sub-division, the proportion between the amount paid and the amount unpaid on each reduced share shall be same as it was earlier;
   e. cancel shares which have not been taken by any person and diminish amount of its share capital by amount of the shares so cancelled.

2. The cancellation of shares u/ss (1) shall not be deemed to be a reduction of share capital.

Note: The capital clause of memorandum, if authorised by the articles, shall be altered by passing an ordinary resolution (and not SR) u/s 61 (1) of the Companies Act, 2013.

Section 62 - Further Issue of Share Capital

1. Where a company proposes to increase its subscribed capital, by issue of further shares, such shares shall be offered to:
   a. to existing equity shareholders (i.e. right issue) subject to following conditions:

Condition	Provision
Offer	To existing ESH in proportion to PUSC by sending a letter of offer.
Notice content	Specifying number of shares offered and time limit for acceptance.
Dispatch mode	Registered post, speed post, courier or e-mode having proof of delivery.
When to dispatch	Dispatched to all existing SHs, at least 3 days before opening of issue.
Time limit to accept	Not less than 15 days (or lesser number of days as prescribed – 7 days) and not more than 30 days.
Relaxation to private company	In case of a private company, offer period may be shortened to any period if 90% members consent in writing.
Deemed decline	If such offer is not accepted within time limit - deemed to be declined.
Renunciation	• Unless AoA provides otherwise, above offer shall be deemed to include right to renounce shares offered. • A statement to this effect is to be included in the offer.
Disposal	After expiry of time limit or receipt of intimation declining offer, BoD shall dispose such shares in manner not disadvantageous to SH and Company

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b. to employees under ESOPs by passing special resolution and subject to prescribed conditions. For ESOPs, listed companies shall comply with SEBI Guidelines. Others to comply with Rules.

Rule 12 - Issue of Employee Stock Options (ESOP)

Employee means:	• permanent employee who has been working in India or outside India; or • a director, whether whole time or not but excludes independent dir; or • an employee referred in (a) or (b) of a subsidiary (India or outside) or of a holding company. but does not include: • employee who is a promoter or person belonging to promoter group; or • director who (himself or via relative/any BC) holds more than 10% of outstanding equity shares of the company. Note: In case of Startups (first 10 years) - Above 2 exceptions N.A.
Pvt. company relaxation	In case of private company in compliance with Sec 92 and 137, OR will be sufficient to issue ESOP.
Amalgamation	In case of amalgamation, adjust the period for which options were held in prior company, with minimum vesting period.

Rules to issue ESOPs:

Such issue is approved by way of SR	Co. to make specified disclosure in ES annexed to notice	Co. has freedom to determine "Exercise Price"
Min. period of 1 year between grant and vesting of options*	Co. has freedom to specify lock in period.	No right to vote or receive dividend unless option is exercised
Options are non-transferrable	Options cannot be pledged, hypothecated, etc	No person other than employee entitled to ESOPs.
In case of death - options shall vest with legal heirs or nominees	In case of permanent incapacity - Option shall vest on such employees on that day	In case of resignation/ termination - option to expire.

c. Offer to any person:

if it is authorised by SR	either for cash or consideration other than cash.	if the prices to be determined by a valuation report by RV

2. Covered above

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3. Provision of this section - N.A. in case of conversion of debenture/loan by way of exercise of option as per terms attached to such debt issued/loan raised. Provided that such an option in the issue of debenture/loan raised was approved by SR.

4. Conversion of debenture issued to Government:
- Notwithstanding provision u/ss(3),
- where any debentures/loan has been obtained from any Government, and
- if that Govt. considers it necessary in public interest so to do,
- it may, by order, direct that debentures/loans or part thereof shall be converted into shares
- on terms as may appear reasonable to Govt.
- even if terms of debentures/loan do not include option for such conversion.

Provided that where terms of such conversion are not acceptable to company, it may, within 60 days from date of communication of such order, appeal to Tribunal.

5. In determining the terms, Govt. shall have due regard to:
Financial Position | terms of issue of such debt | rate of interest | Others

6. Effect of Govt passing such order + No appeal or where appeal is made has been dismissed, if the order has effect of increasing the Authorise share capital:
a. the Memorandum of Association stands altered
b. ASC stands increased by amt equal to value of shares to which such debt/loan is converted into.

Section 63 - Issue of Bonus Shares (17) (32) (35)

A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of:
Free Reserve | SPA | CRR

Provided that no issue of bonus to be made by capitalizing reserves created by revaluation of assets.

Conditions for issuing bonus shares:
No company shall capitalise its profits or reserves for issuing fully paid-up bonus shares, unless:

- Authorised by AOA
- On recommendation* of BoD - Authorised in GM

- Not defaulted in payment of intt/ principal w.r.t., fixed deposit or debt security issued by it
- No default - Stat due of employees

- Partly paid up shares are made fully paid up

*Bonus once recommended by BoD, cannot be withdrawn

TELEGRAM: CA NOTES COMMUNITY

Concept clarity check:

1. Can company issue bonus out of revaluation reserve after complying with above 6 conditions? - No!
2. Bonus shares shall not be issued in lieu of dividend.

Section 64 - Notice to be Given to Registrar for Alteration of Share Capital

In the following cases:

Alteration u/s 61(1) | Increase in ASC u/s 62(6) | Redemption of PS u/s 55

Company shall file a notice (SH - 7) along with Altered MoA to RoC within 30 days of such action.

Contravention - Co. & OID - Fine of Rs. 500 / day subject to max. Rs. 5 lakhs (Co) or Rs.1 lakh (OID)

Section 66: Reduction in Share Capital

A company may reduce its share capital subject to:

a. Confirmation by Tribunal on application by company, and
b. By a Special Resolution, and
c. Alter MoA by reducing the amount of share capital and no. of shares.

Manner of Reduction in SC:

i. Extinguish or reduce the liability on any shares not paid up
ii. With or without extinguishing or reducing liability on its shares:
    1. Cancel any PUSC which is LOST or is unrepresented by available asset.
    2. Pay off any PUSC which is in excess of the wants of the company

Provided that no such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, or the interest payable thereon.

On receipt of application u/ss (1), the Tribunal shall give a notice thereof to:

CG | RoC | Creditors of company | SEBI (in case of Listed Company)

and shall take into consideration the representation, if any, made within 3 months of such notice.

If no representation - Presume no objection.

Tribunal to order confirming such reduction subject to such conditions as it may deem fit only when it is satisfied that debt/claim of every creditors has been discharged or has been secured or his consent is obtained.

Auditor's certificate:

Tribunal shall not sanction any application unless: A/C treatment, proposed by co. for such reduction is in conformity with AS u/s 133 + Certificate by company's auditor has been filed with Tribunal.

Order of Tribunal shall be published in manner as directed by Tribunal.

TELEGRAM: CA NOTES COMMUNITY

5. Company to deliver copy of order of Tribunal and of a minute approved by Tribunal showing the following with ROC within 30 days of receipt. RoC shall register and issue a certificate thereof.

The minute approved by Tribunal shall include the following info:

Amount of SC	No. of shares into which it is to be divided	Amt. of each share	Amt. at the date of registration deemed to be paid up

6. In case of buy-back u/s 68 – Sec 66 shall not be applicable.

7. Member (past or present) shall not be liable to any call/contribution exceeding difference between:
   - Amount deemed to have been paid up and
   - Amount of share as fixed by the order of reduction (i.e., nominal value of reduced shares).

8. Creditor whose name is not entered in list of creditor:
   - If the name of a creditor is not entered in the list of creditors (because of his ignorance of the reduction proceedings or otherwise), and
   - After reduction u/s 66, the company commits a default in respect of that creditor's debt, then:

If company is in operation	If the company is being wound up
• Every member on the date of registration of such reduction with RoC • Liable to contribute for such debt • upto the amount he would be liable in case of winding up of the company	Tribunal may, on the creditor's application and proof of ignorance: • settle a list of contributories and • enforce calls on them like as if they were ordinary contributories.

9. If any officer of the company:
   a. knowingly conceals the name of any creditor entitled to object to the reduction;
   b. knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
   c. abets or is privy to any such concealment or misrepresentation as aforesaid

   he shall be liable under section 447.

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Section 67: Restrictions on Purchase by Company or Giving of Loans by it for Purchase of its Shares

1. No company shall have power to buy its own shares without consequent reduction in SC.

Sec 67(1) N.A. to Nidhi co. when shares are purchased from members on ceasing to be a depositor.

2. No public company shall give any loans, guarantee or provide security or any financial assistance for purchase or subscription of shares of the company or its ~~subsidiary~~ holding company.

Exception:

a. lending of money by a banking company in the ordinary course of its business (OCOB);

b. ESOP:

- Provision of money for the purchase of fully paid-up shares in company or its holding company
- which shall be held by trustees for benefit of employees
- as per any scheme approved through SR along with prescribed conditions.

Rule 16: Provision of money for purchase of shares by trustee on behalf of employees:

1. In case of listed companies, such purchase shall be made only through RSE.
2. In case of unlisted company, valuation of such shares shall be made by Registered Valuer.
3. Value of shares purchased not exceed 5% of (PUSC + FR)
4. Disclosures w.r.t. voting rights not directly exercised by employees – Make in BoD report.

c. Loan to employee for purchase of shares of company: 20- 21- 22-

- Giving of loans by a company to employees (other than directors or KMP),
- for an amount not exceeding 6m salary or wages
- with a view to enabling them to subscribe for fully paid-up shares in company or its holding co.

3. Contravention:

Company - Rs. 1 lakh to Rs. 25 lakh and OID – Jail upto 3 years and fine Rs. 1 lakh to 25 lakhs.

4. Non applicability of Section 67:

Pvt company (92+137) where all the condition is fulfilled:

- In whose share capital, no other BC has invested
- Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
- Company has no subsisting default in repayment of borrowing.

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Section 68: Power of Company to Purchase its Own Securities (Buy-back)

'23 '24 '25 '26 '27 '28

Introduction:

- Sec 68 talks about purchase of own shares or other specified securities.
- Specified Securities include ESOPs or securities notified by CG.

Legal Provision:

1. Notwithstanding other provision of the Act, company may buy-back out of:

   Free Reserve | SPA | Proceeds of issue of any share or other securities*

   *Buy-back of any securities shall NOT be made out of proceeds of an earlier issue of the same kind.

2. Conditions to be fulfilled prior to buy-back:
   - Authorised by AoA
   - Authorised by SR in the GM

     SR not applicable if:

     a. Buy-back does not exceed 10% of total PUESC + FR, and
     b. It is authorised by a board resolution.

   - Buy-back does not exceed 25% of total PUSC + FR

     [In case of buy-back of equity share in any FY, limit shall be 25% of PUESC + ~~FR~~ in that FY]

   - Ratio after buy-back:

     $$\frac{\text{Debts (secured + unsecured)}}{\text{Paid up ~~Equity~~ Capital + FR}} = \text{Not more than 2 (or higher ratio by CG)}$$

   - All the shares or other specified securities for buy-back are fully paid up.
   - If securities are listed on RSE, buy-back as per SEBI Regulations. If not listed, then – Co. Act.

3. Covered at the end of this section.

4. The ES of the notice of meeting at which SR is proposed to be passed shall state: [Necessity FACT]

   necessity for the buy-back; | full disclosure of material Facts; | amount to be invested; and | class of securities to be bought back; | time-limit for completion

5. Buy-back may be from:

   Existing SH on prop. basis | Open Market | Sec. issued to employee (ESOP or sweat shares)

6. Declaration of Solvency:
   - Before making buy-back, company to file with RoC and SEBI (only if listed),
   - a declaration of solvency in Form SH-9

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- signed by at least 2 directors (1 MD compulsory).
- verified by an affidavit stating:
  a. BoD has made full inquiry into affairs of company and are of opinion that it is capable of meeting liabilities and
  b. It will not be rendered insolvent within 1 year from date of declaration adopted by BoD.

Such declaration of solvency is also applicable to unlisted company who are making buy-back.

7. Prohibition of further issue post buy-back:

After buy-back, a company shall NOT make further issue of shares or securities of the same kind including allotment u/s 62(1)(a) [i.e. right issue] within 6m.

Exception: Fresh issue is allowed by way of bonus shares or shares to discharge subsisting obligations such as conversion of warrants, ESOPs, sweat equity or conversion of PS/debentures into equity.

8. Default under this section:

Company and OID - Rs. 1 lakh to Rs. 3 lakhs

Important time limits related to buy-back:

Time limit	Provision
Completion	Buy-back shall be completed within 1y from date of passing SR/BR as the case may be
Destroy	After buy-back, company shall extinguish and physically destroy the share so bought back within 7 days of last date of completion of buy-back.
Fresh buy-back	Buy-back shall NOT be made within 1 year reckoned from date of closure of preceding buy-back
Fresh issue	No further issue of securities of same kind within 6 months after closure of buy-back.

Forms related to buy-back:

SH-8	Before buy-back, company shall file letter of offer with RoC along with fees.			
SH-9	Declaration of solvency (discussed above)			
SH-10	Company to maintain register of buy-back showing:			
	securities bought back	consideration paid	date of cancellation of such securities	date of extinguishing/ physically destroying shares
	Such register shall be kept in RO in custody of CS or authorised person.			
SH-11	Return of buy-back:			
	Within 30 days after completion of buy-back, it shall be filed with RoC and SEBI (listed).			
SH-15	Along with SH-11, file a certificate (in Form SH-15) signed by 2 directors (1 MD) stating that buy-back is in compliance with this Act.			

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Procedural requirement of buy back:

- Before buy-back, letter of offer (SH-8) shall be filed with RoC.
- After such filing, immediately (but not later than 20 days), dispatch the letter of offer to SHs
- Offer remains open for not < 15 days but not > 30 days.
  (If all members agree, it may remain open for < 15 days)
- In case of oversubscription, buy-back may be done on proportionate basis.
- Company must verify offers within 15 days of closure; securities are deemed accepted unless rejection is communicated within 21 days of closure.
- Company must make cash payment within 7 days of verification for accepted securities and return certificates for securities not accepted (or partly accepted).

Section 69: Transfer of Certain Sums to Capital Redemption Reserve Account

1. Where a company purchases its own shares out of free reserves or SPA, a sum equal to the nominal value of shares so purchased shall be transferred to CRR account.
2. Details of such transfer shall be disclosed in the balance sheet.
3. CRR A/C may be applied by the company, in issue of bonus shares.

Concept clarity check -

A company does buy-back from proceeds from issue of any other shares. How much amount is to be trf to CRR? None! Trf. to CRR is to be done only in case of purchase out of FR or SPA

Section 70: Prohibition for Buy-Back in Certain Circumstances:

1. No company shall directly or indirectly purchase its own shares or other specified securities:
   a. through any subsidiary company including its own subsidiary companies; (Section 19)
   b. through any investment company or group of investment companies; or
   c. if a default, is made by the company, in the repayment of deposits + interest payment thereon, redemption of debentures or pref. shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any banking company or FI:
   Provided that the buy-back is not prohibited, if the default is remedied and 3 years has lapsed after such default ceased to subsist.

2. No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

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Section 71: Debentures 30-33

[Read with Rule 18 of Companies (Share Capital and Debenture) Rules, 2014]

Section 2(30) - Debenture:

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

Provided that, following instrument shall not be treated as debenture:

a. instruments referred to in Chapter III-D of the RBI Act, 1934; and

b. such other instrument, as may be prescribed by CG in consultation with RBI, issued by a company.

1. A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at time of redemption.
   Provided that the issue of such convertible debentures shall be approved by a SR passed at a GM.

2. No company shall issue any debentures carrying any voting rights.

3. Secured debentures may be issued by a company subject to such terms as may be prescribed.

Rule: Issue of Secured Debenture:

a. **Redemption period**

In case of secured debenture, the date of redemption shall not > 10 years from date of issue.

Provided that, in following class of cos, it may exceed 10 years but not exceeding 30 years:

Companies engaged in setting up infra projects	Infra finance co.	Infra debt fund NBFCs	Company as may be permitted by CG or RBI or NHB for > 10 years

b. **Creation of charge:**

Such an issue of debentures shall be secured by:

- creation of a charge on movable or immovable properties or assets
- in favor of debenture trustee
- of company or its subsidiaries or holding or associates companies [CASH],
- having value which is sufficient for due repayment of the debentures and interest thereon

- In case of NBFCs, the charge or mortgage may be created on any movable property.
- In case of issue of debentures by Govt. company which is fully secured by guarantee, given by CG or one or more SG or by both, as per requirement for creation of charge under rule 18(1) of the Companies (Share Capital and Debenture) Rules, 2014 shall not apply.

4. **Appointment of debenture trustee:**

- Co. shall appoint debenture trustee ("DT") before issue of prospectus for such debentures and
- execute a debenture trust deed ("deed") in Form SH-12 within 3m from closure of issue to protect the interest of DHs.

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5. Creation of DRR and Deposit of sums:

- Company shall create a Debenture Redemption Reserve (DRR) account
- out of the profits available for distribution as dividend, and
- DRR account shall be utilised only for redemption of debentures.

Rule: Creation of DRR and investment of sums for redemption of Debentures:

Adequacy of DRR:

Type of company	Adequate DRR amount
All India Financial Institution and Banking company or Registered NBFC/HFC or other FI u/s 2(72)	Exempt
Listed companies (other than AIFIs and Banks)	Exempt
Unlisted companies (other than AIFIs and Banks) or unregistered NBFCs/HFC	10% of outstanding debentures.

Note: In case of partly convertible debenture, DRR shall be created w.r.t. non-convertible portion.

Deposit/Investment:

Company which has raised debentures shall:

- on or before 30th April in each year,
- in respect of debentures issued by such company, invest or deposit,
- a sum not less than 15% of amount of debentures maturing on 31st March of next year
- in any one or more methods of investments or deposits as follows:

deposit with scheduled bank	unencumbered securities of CG/SG	unencumbered securities as per Indian trust Act	unencumbered bonds of any other cos. notified under Indian trust Act.

Minimum investment or deposit:

Amount invested or deposited shall not:

- at any time fall below 15% of amount of debentures maturing during the year ending on 31st day of March of that year.
- be used for any purpose other than redemption of debentures maturing during the year

5. Prior to issue of prospectus to the public or to its members exceeding 500 for subscription of its debentures, company shall appoint one or more debenture trustees.

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Rule: Eligibility of Debenture Trustee

Compay shall appoint DT after complying with following conditions:

- Name of DT to be stated in prospectus or letter of offer and in subsequent communications
- Before appointment, written consent of DT obtained and statement to that effect included in the letter of offer.

- A person shall not be appointed as DT if he:
  a. Beneficially holds shares in company
  b. is promoter, director or KMP or other officer or employee of CASH
  c. beneficially entitled to moneys to be paid by the company (other than remuneration as DT)
  d. indebted to CASH or subsidiary of such holding company
  e. furnished guarantee in respect of principal debts secured by debentures
  f. has pecuniary relationship with company >= Lower of [2% of Gross T/O or total income or 50 lakhs or higher amount as may be prescribed] in preceding 2 FY or CY
  g. Relative of [promoter or director or KMP] of the company

- Board to fill casual vacancy in office of trustee (in case of resignation, obtain written consent of majority of DH prior to filling such vacancy)
- DT may be removed if approved by not less than 3/4th in value of DHs

5. A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.

Rule: Meeting of DHs:

Meeting of all the DHs shall be convened by the DT on:

a. requisition in writing signed by DHs holding >= 1/10th in value of outstanding debentures:
b. happening of any event, which constitutes breach, default or which in the opinion of DT affects interest of DHs.

7. Any provision in trust deed which has the effect of exempting DT from liability for breach of trust or indemnifying him where he fails to due care and diligence shall be void.

Note: Liability of DT may be exempted if agreed by majority of DHs holding not less than 3/4th in value of total debentures.

8. Company shall pay interest and redeem debentures as per the terms and conditions of their issue.

9. If DT comes to conclusion that assets of company are insufficient or likely to become insufficient to discharge principal amount when it becomes due, DT may file petition before Tribunal.
Tribunal may, after hearing, impose restriction on further liability of company (in interest of DH)

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10. If company fails to redeem debentures on date of maturity or fails to pay interest when due, Tribunal may, on application of DHs or DT, order company to redeem it forthwith with payment of principal and interest thereon.

11. A contract with company to take up and pay for any debentures may be enforced by a decree for specific performance.

Company to file return of allotment in Form PAS -3 within 30 days of allotment of such debentures

The End

"The more you sweat in peace,
the less you bleed in war"

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Chapter 5 Acceptance of Deposits

Summary of Forms

Form No.	Section	Purpose
DPT-1	73 & 76	Circular or advertisement in a newspaper inviting deposits
DPT-2	76	Deposit trust deed (DTD)
DPT-3	73 & 76	Return of deposits

Summary of sections

Section	Purpose
73	Prohibition on acceptance of deposits from public
74	Repayment of deposits accepted before commencement of Act
76	Acceptance of deposits from public by eligible companies
76A	Punishment for contravention of sections 73 or 76

Deposit [Sec 2(31)]	• Includes any receipt of money by way of deposit or loan or in any other form by a co.,
	• but does not include such amount as prescribed in consultation with RBI. (Rule 2)
	Note:
	1. Repayment of 'deposit' is time-bound.
	2. It can be secured (by charge on tangible asset) or unsecured.
Depositor means	• any member of company (public or private) who has made a deposit u/s 73(2), or
	• any person who has made a deposit with a public company u/s 76;

Rule 2 of the Companies (Acceptance of Deposit by Company) Rules, 2014:



Deposits shall NOT include the following:

SN	From	Amount received from:
1	Government	• CG or SG or Local Authority
		• Statutory Authority constituted under any Central or State Act
		• Any other source where repayment is guaranteed by CG or SG
2	Foreign Source (subject to FEMA)	• Foreign Government,
		• Foreign or international banks,
		• Multilateral financial institutions (such as international bank)
		• Foreign authorities or person resident outside India.
3	Banks, PFIs or Insurance companies	Amount received as a loan or facility from
		• any banking company or SBI or subsidiary or co-operative bank
		• public financial institutions or
		• Insurance companies
4	Issue of CPs	Amount received against issue of Commercial Papers or other instruments as per RBI Guidelines

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5	Inter-company deposit (ICD)	Any amount received by a company from any other company;
6	Application Money	Amount received pursuant to an offer made towards subscription to any securities, including share application money, pending allotment. Explanation – If securities for which application money was received is not allotted within 60 days from receipt thereof or is not refunded within 15 days from completion of 60 days, such amount = Deposit. Any adjustment, other than what is allowed of such application money, will NOT be considered as refund.
7	Director	Amount received from person, who at the time of such receipt, was: a. Director of the company (public or private), or b. Relative of the director of the company (only in case of private co.) Following conditions are to be met: • At the time of giving such money, dir./relative to furnish a declaration to co. that such amt. is not being given out of loans/borrowings from others • Company shall disclose money so accepted in board's report.
8	Bonds or Debentures [Secured or Convertible or Listed]	Amount raised by issue of: • Bonds or debentures secured by a first charge or pari passu with first charge on any assets referred to in Sch III, excluding intangible asset (provided, amt. of such bond/debt <= MV of such asset as assessed by RV) • Bonds or debentures compulsorily convertible into shares within 10y • Non-convertible ~~bond~~ debenture unsecured & listed on RSE as per SEBI
9	Sec. deposit from employee	Amount received from employee of company <= annual salary in nature of non-interest-bearing security deposit.
10	Trust	Any non-interest-bearing amount received and held in trust
11	In course of business	Any amount received in course of business of co: i. As an advance for supply of goods/services provided that such advance is appropriated against supply of goods/services within 365 days of acceptance of such advance (except where advance is subject matter of any legal proceeding) ii. as advance received towards consideration for an immovable property as per an agreement provided that such advance is adjusted against such property as per the terms of agreement iii. as security deposit for performance of contract for supply of goods or services iv. as advance received under long term projects for supply of capital goods except those covered under item (b) above

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		v. as an advance towards consideration for providing future services in form of a warranty or maintenance contract as per written agreement, provided that period for providing such services is not > 5 years or period as per common business practice whichever is less; vi. as advance received & as allowed by sectoral regulator or as per CG or SG vii. as an advance for subscription towards publication, whether in print or in electronic to be adjusted against receipt of such publications; Provided that if amount received under (a), (b) and (d) above becomes refundable (with or without interest) due to reasons that the company does not have necessary permission to deal in goods or properties or services for which advance is received - on expiry of 15 days from date they become due for refund, it shall be deemed to be a deposit.
12	Promoters	Any amount brought in by promoters of company by way of unsecured loan subject to following conditions that the: a. loan is brought in pursuance of stipulation imposed by lending institutions or banks on promoters to contribute such finance b. loan is provided by promoters themselves or their relatives or both; & c. exemption under this sub-clause shall be available only till the loans of financial institution or bank are repaid and not thereafter
13	Nidhi company or Chit fund	Amount accepted by Nidhi company u/s 406 or amount received by way of subscription of a chit under the Chit Fund Act, 1982.
14	CIS	Amount received under any collective investment scheme as per SEBI
15	Start-Up Convertible Note	Amount not less than Rs. 25 lakhs received by a start-up company, by way of a convertible note (convertible into equity shares or repayable within period not > 10 years from date of issue in a single tranche) from a person. Explanation: For this sub-clause: Convertible Note means an instrument: • evidencing receipt of money initially as a debt, • which is repayable at the option of holder, or • which is convertible into such number of equity shares of the company upon occurrence of specified events and as per other T&C agreed.
16	Amount received from AIF	Any amount received by a company from: • Alternate Investment Funds (AIFs), • Domestic Venture Capital Funds (VC), • Infrastructure Investment Trusts (InvIT) • Real Estate Investment Trusts (REIT) and • Mutual Funds registered with SEBI

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Section 73: Prohibition on Acceptance of Deposits from Public (5)-(19)

1. On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter.

Provided that nothing in this sub-section shall apply to:

- Banking company and NBFC as per RBI Act and
- (8) Housing Finance Company
- Such other company as CG + RBI may specify in this behalf.

2. A company may, subject to passing a resolution (ordinary) in GM, accept deposit from its members after complying with the following conditions:

a. Issuance of circular to members (Form DPT -1) authorized by BoD including statement showing:

Financial position	Credit Rating Obtained	Total no. of depositors	Amount due towards previously accepted deposit	Other particulars

Rules relating to Circulars:

Manner of issuance	• Issue to all members by RPAD or Speed post or e-mode • Publish in newspaper – English + Vernacular. • Place on website of the company
Attachments to form DPT-1	Certificate from statutory auditor stating that: • Company has not defaulted in repayment of deposit + interest or • Default, if any, has been made good and 5 years have lapsed from the date such default was made good.
Register with RoC	Company to send to RoC – Copy of circular signed by majority of the directors – At least 30 days prior to issue for registration
Validity of circular in form of advertisement:	Earliest of: • Until 6 months from date of closure of FY in which it is issued, or • Date on which FS is laid in AGM • If AGM not held – Last date for holding AGM
Fresh circulars	To be issued, in each succeeding FY for inviting deposits during that FY.

b. Filing copy of circular + statement with RoC within 30 days before issue of the circular;

c. Deposit Repayment Reserve – Refer common points after Sec 76

d. Company to certify that no default in repayment of deposits + Interest and where default had occurred, it was made good, and 5 years have lapsed since date of making the default good.

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e. Providing security, if any, for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Note: In case where a co. does not secure the deposits or secures partially, then, such deposits shall be termed as "unsecured deposits" & shall be so quoted in every doc. related to such issue. (i.e., partly secured deposits are treated as unsecured)

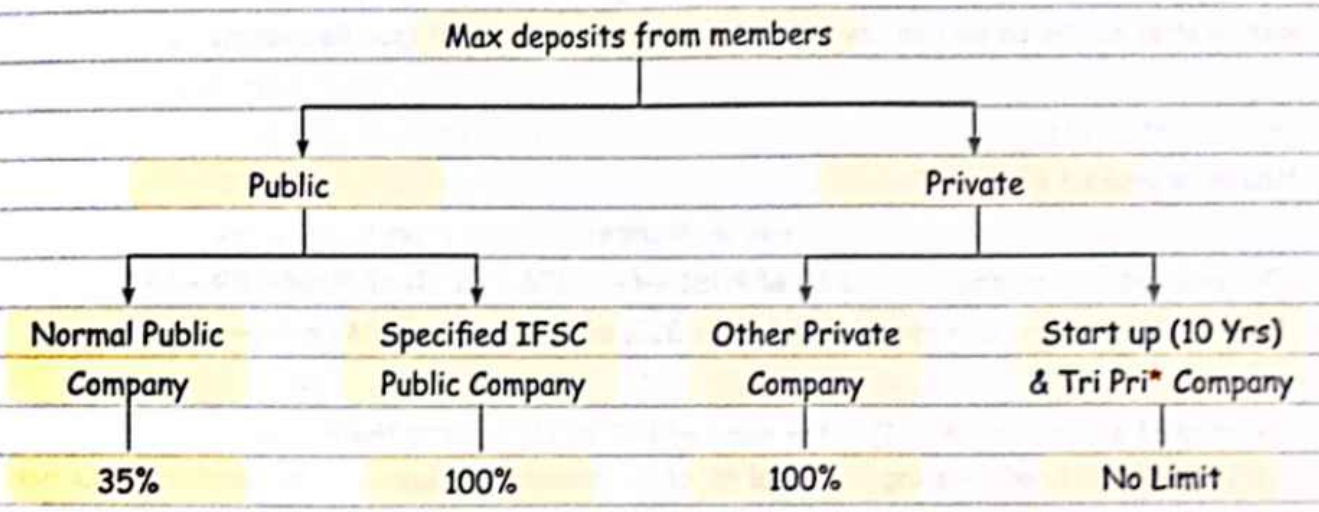
Exemption to Private Companies:

The above provision of Sec 73(2) clause (a) to (d) shall not apply to a private company which:

a. accepts from its members' monies not exceeding 100% of PUSC + FR + SPA; or
b. is a start-up (for ~~10~~ 5 years from the date of incorporation); or
c. Fulfils ALL the following conditions:
   - Not an associate or subsidiary of any other company
   - Borrowings from banks/FI or BC is lower of - 2x PUSC or Rs. 50 crores, AND
   - Co. has no subsisting default in repayment of borrowing at time of accepting deposit.

However, the above companies will have to file details of deposit accepted with RoC (DPT-3).

Limit on maximum amount of deposit from members:



Note: Such start-up (10y) and Tri-Pri companies shall file details of such deposit with RoC (DPT-3)

*Tri-Pri Companies (not a legal word, a word used by author for ease of remembering)

Means a private company which fulfils ALL the following conditions:

- Not an associate or subsidiary of any other company, and
- Borrowings from banks or FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND
- Company has no subsisting default in repayment of borrowing at time of accepting deposit

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Section 76: Acceptance of Deposits from Public by Certain Companies

Eligible Company means a public company, having

i. a net worth of not less than Rs. 100 crores or

ii. a turnover of not less than Rs. 500 crores and

iii. which has obtained the prior consent in general meeting by means of a SR* and

iv. filed the said resolution with RoC before any invitation to public for acceptance of deposits

*Eligible co. accepting deposits within limits u/s 180 (1) (c), may accept it by means of an ~~SR~~ OR

1. Eligible companies may accept deposits from public (i.e., persons other than its members) subject to:
   - Passing SR (or OR) and filing the same with RoC
   - Compliance with requirements u/s 73(2) and
   - Rules as CG + RBI may prescribe.

2. Such eligible companies shall obtain credit rating (i.e., net worth, liquidity and ability to repay) from recognised credit rating agency (as approved for NBFCs) and inform such rating to public.

Rule 3: Credit Rating:

- Rating shall be obtained every year during the tenure of deposits.
- Copy of credit rating shall be filed with RoC along with Return of Deposits in Form DPT-3.
- Rating shall not be below min. investment grade rating or other specified rating for FDs.

Other relevant points:

a. Maximum amount of Deposit:

	From Members	From Public (other than members)
Other Eligible Companies	10% of PUSC + FR + SPA	25% of PUSC + FR + SPA
Eligible Government company	35% of PUSC + FR + SPA (in aggregate)	

b. Issuance of a circular (DPT -1) in the name of BoD of company to the members including:

Financial position	Credit Rating Obtained	Total no. of depositors	Amount due towards previously accepted deposits	Other particulars

As per Rules relating to Circulars:

Manner of issuance	~~• Issue to all members by RPAD or Speed post or e-mode~~
	• Publish in newspaper - English + Vernacular.
	• Place on website of the company
Circular to be signed and registered	Company to send to RoC - Copy of circular signed by majority of the directors
	- At least 30 days prior to issue for registration

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Validity of Circular in form of advertisement	Earliest of: • Until 6m from date of closure of FY in which it is issued, or • Date on which FS is laid in AGM • If AGM not held – Last date for holding AGM
Fresh Circulars	To be issued, in each succeeding FY for inviting deposits during that FY.
Effective Date	Date of issue of advertisement =Date on which advt. appeared in newspaper Date of issue of circular = Date on which the circular was dispatched.

Common Points of Deposits u/s 73 and 76

[Companies (Acceptance of Deposit) Rules, 2014]

1. Deposit Repayment Reserve A/C (DRR):

Company to deposit, on or before 30th April each year, sum >= 20% of amount of deposit maturing during following FY & keep in a scheduled bank in separated bank a/c called – DRR A/C

16 Purpose - The amount so deposited shall not be utilised for purpose other than repayment of deposit.

Minimum Balance – 20% of amount maturing in CURRENT FY

2. Tenure of deposit – A company cannot accept deposit which is:
   - Repayable on demand, or
   - Repayable within 6 months*
   - Maximum period more than 36 months

8 *Exception: Company may accept deposit repayable within 6m for short term fund requirement if:
   - Deposit less than or equal to 10% of PUSC + FR + SPA, AND
   - Deposit repayable on or after 3 months from date of such deposit.

3. Creating of charge in case of secured deposits: 15
   - Within 30 days of acceptance.
   - In favour of deposit holders or trustee for the depositor as per prescribed rules
   - Amount of charge (value of security) shall >= Amount of deposits accepted (& interest thereon)
   - Market value of such asset to be determined by RV.
   - Charge to be created only on its tangible assets. (Rule 6)

4. Appointment of trustee for depositors: 6
   - One or more trustees to be appointed by the company for creating security for deposits.
   - Obtain written consent of trustee prior to appointment.
   - Statement that the trustees have given their written consent shall appear in the circular.
   - Company to execute a deposit trust deed (DTD) at least 7 days before issuing circular (DPT-2).

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Qualification of Trustee:

Person (including a company) shall NOT be appointed as a trustee if such person:

a. is a director, KMP or any other officer/employee of CASH or a depositor in the company;
b. is indebted to CASH or a subsidiary of such holding company (SOH);
c. has any material pecuniary relationship with the company;
d. has entered into guarantee arrangement w.r.t, principal debts secured by the deposits\int. thereon;
e. is related to any person specified in clause (a) above.

Removal of Trustee:

- Consent of all the directors present at a meeting of the board.
- In case company is required to have independent director - At least 1 ID present in such meeting

Rule 9: Meeting of deposit holders:

Meeting of all the deposit holders shall be convened by the trustee on:

(a) requisition in writing signed by deposit holders having >= 1/10th in value of outstanding deposits;
(b) happening of event, which constitutes default/which in opinion of trustee affects int. of depositors.

5. Register of Deposits:

Details of	Deposits accepted or renewed
Kept at	RO
Entries to be made	Within 7 days of issuance of deposit receipt
Authenticated by	Director or CS
Preserve in good order	Min 8 years from FY in which the latest entry is made in the register.

Enter the following details of each depositor in such register:

name, address & PAN	particulars of the guardian (in case of minor)	particulars of the nominee	deposit receipt number	date & amt of each deposit

duration & repayment date	rate of interest	due date for pmt. of interest	mandate & instructions for payment of interest & for non- deduction of tax at source

date on which the payment of interest shall be made	charge created for repayment of deposits	any other relevant particulars

6. Premature Repayment of Deposits:

- After 6 months but before expiry of actual date of maturity,
- If depositor requests for premature repayment
- Rate of interest shall be 1% less than what would be payable for period for which deposit has actually run.

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Note: Where deposit had run contains any part of a year, then, if such part is <6m - Exclude.
If such part is >=6m, it shall be reckoned as 1 year.

Reduction of rate of interest (i.e., 1%) is not applicable in the following cases:
Where the deposit is prematurely repaid in order to:

- Comply with Rule 3 i.e., tenure of deposit under this new Act; or
- provide for war risk or other related benefits to the personnel of naval, military or air forces or to their families during emergency declared under Article 352 of the constitution.

7. Premature closure of deposit by holder to earn higher rate of interest:
In case a depositor desires to avail higher rate of interest by renewing the deposit before its actual maturity date, the company shall pay him the higher rate of interest only if the deposit is renewed for a period longer than the unexpired period of deposit.

8. Ceiling on rate of interest and brokerage payable on deposits:
Maximum - As prescribed by RBI in case of NBFC for acceptance of deposit.
Brokerage payable only to those who are auth. by company to solicit deposit.

9. Depositor to file application form and declaration:
Company can accept deposit only when application is submitted by intending depositor
Along with application - Declaration that money is not borrowed from any other person.

10. Deposit in Joint Names - Not > 3.
A joint deposit may be accepted with or without any of the clauses, namely, "Jointly", "Either or Survivor", "First named or Survivor", "Anyone or Survivor". These clauses operate on maturity.

11. Depositor may nominate a person at any time.

12. Deposit Receipt: Within 21 days from date of receipt of money or realization of cheque/date of renewal, company to furnish receipt to depositor/agent - Deposit Receipt - Signed by duly authorized officer and state date, name & address, amount, rate of interest & maturity date.

13. Filing of return of deposit with RoC - A duly audited return in Form DPT-3 containing info upto 31st March of that year to be filed on or before 30th June and declaration to that effect shall be submitted by the auditor in DPT-3.
Note: DPT-3 shall include particulars of deposits or transactions not considered as deposits or both

14. No right to alter T&C:
After circular is issued and deposits are accepted, Company has no right to alter any T&C of deposit, deposit trust deed & deposit insurance which may prove detrimental to interest of depositors

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15. Disclosure in FS by way of a note -

- Public company shall disclose about money received from its directors/~~relatives~~
- Pvt. company shall disclose about the money received from directors/relatives thereof

16. Penal rate of interest: In case co. fails to repay deposits (both secured and unsecured) on maturity, after they are claimed, it shall pay penal rate of interest of 18% per annum for the overdue period.

17. Punishment for contravention: If company inviting deposits or any other person contravenes any of the 'deposit rules' for which no punishment is provided in Act, the co. and OID shall be liable as under:

- With fine extendable to Rs. 5,000; and
- Continuing one - Further fine up to Rs. 500/day after first during which the contravention continues.

Section 76A - Punishment for Contravention of Section 73 or Section 76

- Where company, accepts or invites or causes any other person to accept any deposit in contravention of provision,
- if co. fails to repay deposit or any interest due thereon within the time specified u/s 73 or 76:

Penalty:

a. Co. shall, in addition to the pmt of the amt of deposit or part thereof & interest due, be punishable with fine - From (Rs. 1 crore or 2x Amt of deposit whichever is lower) to Rs. 10 crore; and
b. OID - Jail upto 7 years AND with fine - Rs. 25 lakh to Rs. 2 crore.

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action u/s 447.

Section 74: Repayment of Deposits, etc., Accepted Before Commencement of this Act

- Co. which had accepted deposits before 1-4-2014 shall file with RoC, within 3m of commencement of this Act, a statement of all such deposits & sums unpaid with arrangements for repayment.
- Such deposits shall be repaid within 3 yrs from 1-4-2014 or before expiry of original period, whichever is earlier.
- NCLT may allow extra time for repayment considering company's financial position.
- Punishment for Non-Repayment of Deposits:
  Company - Fine Min. of Rs. 1 crore and Max. of Rs. 10 crore; and
  OID - Jail upto 7 years or with fine Rs. 25 lakh to Rs. 2 crore or with both.

The End

"Your only limit is YOU"

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Chapter 6 Registration of Charge

Summary of Forms

Form No.	Section	Purpose
		Creation & Modification of Charge
CHG-1	77	Registration of charge (other than debentures) / Modification of charge.
CHG-9	77	Registration or modification of charge for debentures.
		Certificate of Registration
CHG-2	77	Certificate of registration of charge issued by Registrar.
CHG-3	77/79	Certificate of modification of charge issued by Registrar.
		Satisfaction of Charge
CHG-4	82	Intimation of satisfaction of charge (loan repaid/discharged).
CHG-5	82/83	Certificate of registration of satisfaction of charge.
		Registers & Records
CHG-6	84	Notice of appointment or cessation of receiver/manager of charged property.
CHG-7	85	Register of charges to be maintained at company's registered office.
		Rectification
CHG-8	87	Application to Central Government for rectification of omission/misstatement or extension of time.

Summary of Sections

Sec.	Section Name
77	Duty to register charges (on creation, modification).
78	Application for registration of charge by charge-holder (if company fails).
79	Registration of charge on acquisition of property subject to charge & modification of charge.
80	Deemed notice of charge (constructive notice to all).
81	Register of charges to be kept by Registrar.
82	Company to report satisfaction of charge.
83	Power of Registrar to make entries of satisfaction/release even without intimation.
84	Intimation of appointment/cessation of receiver or manager.
85	Register of charges to be maintained by company at its registered office.
86	Punishment for contravention of provisions (penalties).
87	Rectification by Central Government of register of charges in case of omission or misstatement.

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Charge [Sec 2(16)]	Charge means: • an interest or lien • created on the property or assets of a company or any of its undertakings or both • as security (for repayment of loan) and • includes a mortgage.

Fixed Charge vs Floating Charge:

Fixed Charge	Floating Charge
Charge on specific asset of borrowing company	Charge on assets which are of fluctuating nature or changing in nature
Ex - Land & Building, office premises, machinery, etc.	Ex - Raw material, stock-in-trade, debtor, etc.
Usually, mortgage or deposit of title deeds	-
Not allowed to sell (except with permission of charge holder). But can use.	Permitted to use for trading or producing final goods for sale.
Vacated when money repaid in full	Crystallization of floating charge - Enforce security or company goes into liquidation

Crystallization of a Floating Charge

In the following events, a floating charge will get crystallised or fixed:

(i) When the creditor enforces security due to the breach of T&C of floating charge like there is non-payment of interest or default in repayment of instalments as per the terms of agreement.

(ii) When the company ceases to continue its business.

(iii) When the borrowing company goes into liquidation.

A floating charge remains dormant until it becomes fixed or crystallised. On crystallisation, the security (i.e. raw material, stock-in-trade, etc.) becomes fixed & is available for realization.

Is charge passed on to the buyer in case of sale of goods which is under floating charge? - No!

Section 77: Duty to Register Charges:

1. **Charge to be registered:**
   - It shall be the duty of every company creating a charge (in or outside India)
   - to register the particulars of the charge signed by company and charge holder together with instrument creating such charge [CHG-1 (for other than debentures) & CHG-9 (for debentures)]
   - within 30 days of creation such charge.

Note: All the following charges need to be registered:

a. Charge created within India or outside India

b. Charge created on property or asset which is situated within India or outside India

c. Charge on tangible asset, intangible asset, or financial asset

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Rule 3 of Company (Registration of Charges) Rule, 2014:

Time limit for registration of charge:

Normal	Such charge shall be duly registered by company within 30 days of creation thereof.
Extension	• On appln. by company (showing sufficient cause) and payment of additional fee • RoC may allow registration to be made within 60 days of creation (i.e., extension of 30 days)
Further extension	Where company fails to register charge within 60 days also, RoC is empowered to allow such registration within further 60 days on payment of ad valorem fees.
Application form	Such application shall be made in Form CHG-1 or CHG-9 (as the case may be) along with declaration by CS or director that it shall not affect right of any creditors.

Verification of instruments of charge filed with RoC:

a. Where underlying property is situated outside India - Verify by a certificate issued under:

- seal of the company, if any
- hand of any dir/CS or auth. officer of charge holder
- hand of some person other than the company who is interest in such charge

b. Where underlying property is situated in India - Verify by a certificate issued under:

- ~~seal of the co., if any~~
- hand of any dir/CS or auth. officer of charge holder
- ~~hand of some person other than the company who is interest in such charge~~

This Rue shall N.A. to charge created or modified by banks in favour of RBI when any loan has been given to such banks under RBI Act, 1934

2. Issuance of Certificate of Registration (CoR):

On registration u/ss (1), RoC to issue a CoR of such charge to charge holder and the company in:

- Form CHG-2 - Fresh registration or
- Form CHG-3 - Modification of charge.

CoR = Conclusive evidence that requirements of this Act w.r.t, charge have been complied with.

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3. Consequence of non-registration:

- Notwithstanding anything contained in any other law for the time being in force,
- Such charge shall NOT be taken into account by:
  a. Liquidator (appointed under this Act or IBC, 2016) or
  b. any other creditor
- unless it is duly registered and CoR is issued.

However, it shall not impact any contract or obligation for repayment of money secured by a charge

Important consequence of non-registration or delayed registration - Charge-holder loses priority.

Section 78: Application for Registration of Charge (by Charge holder) ?10

Charge-holder may apply for Registration:

- Where a company fails to register the charge within 30 days u/s 77,
- such person in whose favor charge is created may apply to Registrar for registration (along wi instruments) in prescribed manner, and
- the Registrar may, on such application, within 14 days after giving notice to the company, allo such registration on payment of such fees, as may be prescribed, unless
  a. the company itself registers the charge or
  b. shows sufficient cause why such charge should not be registered.

Recovery of Fees - Charge holder shall be entitled to recover from company the amount of any fe or additional fees paid by him to the Registrar for the purpose of registration of charge.

Section 79: Section 77 to Apply in Certain Matters. ?18

The provisions of section 77 shall apply to:

a. a company acquiring any property subject to a charge; or
b. any modification in T&C or the extent or operation of any charge registered under that section.

Modification includes change in T&C of the underlying borrowing (including change in rate of interes

Certificate of modification:

Where such modification is registered u/s 79, RoC shall issue Certificate of Modification [CHG 3]

Section 80: Registration to act as Constructive Notice (deemed knowledge) ?15 ?6

- Where any charge is registered u/s 77,
- any person acquiring such property, assets, undertakings or part thereof
- shall be deemed to have notice of the charge from the date of such registration.

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Section 81: Register of Charges by Registrar:

1. RoC shall, in respect of every company, maintain register of charges registered with RoC.
   Note: Particulars of charges maintained on MCA Portal - Deemed register u/s 81

2. The register shall be open to inspection by any person on payment of fee as may be prescribed.

Section 82: Company to Report Satisfaction of Charge 5 7 19

On payment or satisfaction of any charge registered under this chapter:

a. Company to intimate RoC in Form CHG-4 within 30 days of such payment or satisfaction.
   Extension: On application by the company or charge holder, RoC may allow such intimation within 300 days of payment or satisfaction with additional fees.

b. Notice to Charge Holder:
   - On receipt of intimation u/ss (1), Registrar shall cause a notice to be sent to charge holder
   - calling upon him to show cause within time specified in notice (not > 14 days),
   - as to why payment or satisfaction in full should NOT be recorded.

   Response by charge holder:

If no cause is shown:	If cause is shown:
• RoC shall order that memorandum of satisfaction shall be entered in RoC's register u/s 81, and • Inform the company (CHG-5)	• RoC shall record a note to that effect in register u/s 81, and • inform the company

   Such notice to charge holder is not required if intimation u/ss (1) is signed by such charge holder.

c. Preserve instrument creating charge or modification - 8 years from satisfaction of charge.

Section 83: Power of RoC to Make Entries of Satisfaction & Release in Absence of Intimation 8

RoC may, on evidence being given to his satisfaction w.r.t. any registered charge that:

a. the debt for which the charge was given has been paid or satisfied; or

b. part of property or undertaking charged has been released or ceased to form part thereof, it may enter in register of charges:
   - memorandum of satisfaction in whole or in part, or
   - fact that part of the prop/undertaking has been released or ceased to form part,

   Notwithstanding the fact that no intimation has been received by him from the company. (i.e., suo -motu registration of satisfaction)

   The Registrar shall inform the affected parties within 30 days of making such entry. (& issue CHG-5)

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Section 84: Intimation of Appointment of Receiver or Manager

If any person appoints a receiver or manager, to manage the property subject to charge, by virtue o

- order of court or
- any power contained in any instrument creating charge.

a. he shall, within 30 days from date of such order or appointment, give notice of such appointme to company and Registrar along with a copy of the order or instrument and

b. the Registrar shall, on payment of prescribed fees, register particulars of the receiver, pers or instrument in the register of charges.

Cessation:

Any person appointed above shall, on ceasing to hold such appointment, give to the company and t Registrar a notice to that effect and the Registrar shall register such notice. (Form CHG-6)

Section 85: Company's Register of Charges

1. Every company shall keep at its RO, a register of charges in Form CHG-7 and enter the following:
   - all charges registered with RoC
   - property acquired which is subject to charge
   - any modification of charge and satisfaction of charge

Note:

- Such entries shall be made forthwith.
- Entries shall be authenticated by directors, CS or any other person authorised by board
- Copy of instrument creating charge shall also be kept at RO along with such register
- Preserve such Register – permanently and instrument – 8 years from satisfaction

2. Above register and instrument shall be open for inspection during business hours:
   - by any member or creditor without fees
   - other person – on payment of prescribed fees

subject to restrictions as company may impose by its articles.

Section 86: Punishment for Contravention

If company is in default under this Chapter, penalty: Company – Rs. 5 lakhs and OID – Rs. 50,000

If willfully furnishes any false or incorrect information – Liable for action u/s 447

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Section 87: Rectification by CG in Register of Charge (or Extension of Time Limit)

The CG on being satisfied that:

- Omission to give intimation to RoC of satisfaction of charge within required time
- Omission or misstatement of any particular in any filing made with RoC w.r.t. creation, modification of satisfaction of charge

→ Was accidental or due to inadvertence, or it is not of a nature to prejudice

It may, on the application of the company (in Form CHG – 8) or any person interested and on such T&C as it deems just, direct that the time for the giving of intimation of payment/satisfaction shall be extended or, as the case may require, that omission or misstatement shall be rectified.

Signing of e-forms by in case of resolution or liquidation:

CHG-1, CHG-4, CHG-8 and CHG-9 shall be signed by Insolvency resolution professional or resolution professional or liquidator for cos. under resolution or liquidation, as the case may be and filed with RoC.

Chapter in Glance – Registration of Charges

1. Creation / Registration of Charge (Sec. 77-79)

- Charge [Sec. 2(16)] - Interest or lien on assets or undertaking of a company, including mortgage.
- Types - Fixed charge (on specific assets, not saleable without consent). Floating charge (on fluctuating assets, crystallises on default or liquidation).
- Register [Sec. 77] - Company must register charge with RoC in CHG-1 / CHG-9 within 30 days.
- Extension of time - Additional 30 days with additional fees; further 60 days with ad valorem fees.
- Default [Sec. 78] - Charge-holder may apply; RoC issues notice and registers if no valid objection.
- Acq. of charged property / modification [79] - Acquiring company must register charge in its own name; modification (change in terms, limits, rate, pari passu, release, etc.) also requires registration.
- Verification of instrument - Property o/s India - seal, director, CS, authorised officer/interested person. Property in India - only by director, CS or authorised officer of charge-holder.

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- CoR - RoC issues CHG-2 (new charge)/CHG-3 (modification) - conclusive evidence.

- Effect of non-registration - Charge becomes void against liquidator and other creditors, and charge-holder loses priority. Debt remains valid but unsecured.

2. Satisfaction of Charge (Sec. 82-83)
   - Company to intimate [Sec. 82] - File Form CHG-4 within 30 days of payment or satisfaction. RoC may allow up to 300 days on additional fees.

   - RoC action - RoC issues notice to charge-holder; if no cause shown within 14d, satisfaction is recorded & CHG-5 issued. No notice when CHG-4 is signed by charge-holder.

   - Preservation - Instrument creating or modifying charge to be kept for 8yrs from satisfaction.

   - RoC suo motu [Sec. 83] - RoC may record satisfaction or release on evidence, even if company has not filed. Must inform parties within 30 days and issue CHG-5.

3. Other Provisions
   - Register - RoC [81] - RoC keeps register of charges. Inspection by any person on payment of fees

   - Register - Company [85] - Company keeps register of charges (CHG-7) at RO. Includes all charges, acquired property, modifications & satisfaction. Entries authenticated by dir., CS/ authorised officer. Register preserved permanently. Inspection: members/creditors (free), others (fees).

   - Appt. of Receiver, manager [84] - Appointment/cessation must be notified to company and RoC within 30 days (CHG-6).

   - Penalty [86] - Company - ₹5 lakh; OID - ₹50,000. False info/suppression liable for fraud u/s 447.

   - Rectification [87] - CG/Regional Director may allow rectification or extension of time for omission, mis-statement or delay, if due to accident or inadvertence and not prejudicial. Apply in CHG-8.

The End

Motivation is like fire — unless you keep
adding fuel to it, it dies.

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Summary of Forms

Form No.	Section	Purpose
		Registers
MGT-1	88	Register of members
MGT-2	88	Register of the debentures
MGT-3	88	Notice of situation/change/discontinuance of foreign register
		Declaration and returns
MGT-4	89	Declaration by registered owner
MGT-5	89	Declaration by beneficial owner
MGT-6	89	Return of declaration
		Annual return/compliance
MGT-7	92	Annual return (except for OPC and Small company)
MGT-7A	92	Annual return for OPC and Small company
MGT-8	92	Certificate by a company secretary
		Meeting procedures
MGT-11	105	Appointment of Proxy for a meeting
MGT-12	109	Polling paper for voting at GM
MGT-13	109	Scrutiniser's report to the chairman pertaining to the poll
MGT-14	117	Filing of company resolutions and agreements with the RoC
MGT-15	121	Filing report on AGM
		Significant beneficial owner
BEN-1	90	Declaration by significant beneficial owner
BEN-2	90	Return of significant beneficial owner to RoC
BEN-3	90	Register of significant beneficial owner
BEN-4	90	Notice by company to suspected significant beneficial owner

Summary of Sections

Sec.	Section Name	Sec.	Section Name
88	Register of Members, etc.	106	Restriction on Voting Rights
89	Declaration of Beneficial Interest	107	Voting by Show of Hands
90	Register of significant beneficial owners	108	Voting through Electronic Means
91	Power to Close Registers Security	109	Demand for Poll
92	Annual Return	110	Postal Ballot
		111	Circulation of Members' Resolution
94	Place of Registers, Returns, etc.	112	Repr. of President & Governors in Meetings
95	Registers, etc., to be Evidence.	113	Repr. of Corporations at Co and crs meetings

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96	Annual General Meeting	114	Ordinary and Special Resolutions
97	Power of Tribunal to Call AGM	115	Resolutions Requiring Special Notice
98	Power of Tribunal to call Meetings, etc.	116	Resolutions Passed at Adjourned Meeting
99	Punishment for default u/s 96 to 98	117	Resolutions and Agreements to be Filed
100	Calling of EOGM	118	Minutes of meeting
101	Notice of Meeting	119	Inspection of Minute-Books of GM
102	Statement to be Annexed to Notice	120	Maintenance & Inspection of doc in e-form
103	Quorum for Meetings	121	Report on Annual General Meeting
104	Chairman of Meetings	122	Applicability to OPC
105	Proxies		

Section 88: Register of Members, etc.

1. Every company shall keep and maintain following registers in prescribed manner:

Register of Members (RoM) for ESH and PSH (MGT 1)	Register of Debenture Holders (DH) (MGT 2)	Register of Other Security Holders (MGT 2)

Rule: Format of register of members:

Company Type	Requirement / Details to be Maintained
Limited by shares	Must maintain ROM in Form MGT-1 from the date of registration.
Not having share capital	Register of members to contain following particulars for each member: • Basic details of members (name, address, e-mail, PAN or CIN) In case member is a minor, name of the guardian and DOB of member; Name and address of nominee; • Date of becoming member or date of cessation; • Amount of guarantee, if any; • Any other interest if any; and • Instructions, if any, given by the member w.r.t. sending of notices.

Rules: Other points relating to register u/s 88:

- Entry to be made within 7 days of BoD approval for allotment or transfer of securities.
- RoM shall be maintained at RO. However, SR in GM is passed to keep register at:
  a. Any other place within city, town, or village of RO, or
  b. Any place within India in which > 1/10th of total members (as in RoM) reside.
- If any securities are attached by SEBI or any competent authority giving directions for remittance of dividend or interest thereon, mention the same in the Registers.
- In case of listed shares, mention the details of pledge, charge, lien w.r.t. the securities of company held by promoter along with the name of pledgee - Within 15 days of event.
- Changes, if any, in the status of members/DH/OSH on account of death, insolvency or transfer of shares to IEPF or any other reason - Record such change in registers

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Every register maintained u/ss (1) shall include an index of the names included therein.

Maintenance of index is not necessary in case the number of members < 50.

Register and index of beneficial owners (BO) maintained by depository = deemed compliance of Act

Foreign Register:

- If so authorized by AoA, company may keep outside India
- a part of the register u/ss (1) called Foreign register,
- containing names and other particulars of members, DH, OSH or BO residing outside India.

Rule 7: Foreign Register (FR):

Particulars	Details
File with RoC	Company shall, within 30 days of opening or change in situation or closing of such foreign register - File a notice of situation of office (MGT-3) with RoC + fees.
FR = PR	Foreign register is deemed to be part of company's register (principal register)
Inspection and closing of FR	• It shall be open to inspection and may be closed, and • Extracts /copies may be taken in same manner as is applicable to principal register. Exception: Advertisement before closing FR shall be inserted in at least 2 newspapers circulating in the place wherein FR is kept.
Entry in FR	After BoD approves allotment
Transmit data to RO	• Copy of each entry to be sent to RO in India within 15 days. • Co. to maintain a duplicate register of each foreign register, duly updated.
Discontinue FR	Company may discontinue FR. All entries in such FR shall be transferred to: • some other FR kept by the company outside India (any other FR) or • to principal register.

i. Failure to maintain register u/s 88: Company - Penalty of Rs. 3 lakh ; OID - Rs. 50,000

Concepts based on ICAI's illustrations:

1. Can a minor's name be entered in RoM? - No. Only legal guardian's name can be entered
2. Joint Share holders:
   - Joint SHs may request the company to:
     a. Enter their names in the RoM in a specific order, OR
     b. Split their holdings so that part is shown under one holder and part under another.
   - However, it is not possible that name of only one joint holder is written in RoM.
   - However, names may be arranged so that the desired person's name appears first in order.
   - Seniority among joint holders is decided by the order of names in the RoM, as per AoA.

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Section 89: Declaration in Respect of Beneficial Interest in any Share

[Read with Rule 9 of Companies (Management and Administration) Rules, 2014]

Meaning of beneficial interest (BI):

For sec 89 and 90, BI in a share means right or entitlement of a person to:

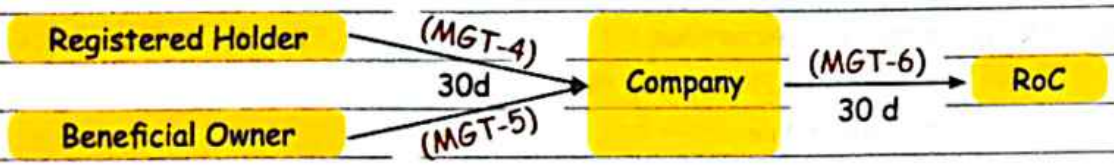
- exercise any or all of the rights attached to such share; or
- receive or participate in any dividend or other distribution in respect of such share.

1. Where registered holder of shares does not hold beneficial interest (BI) on it, such person shall:
   - within 30 days of entry of name in RoM,
   - make a declaration (MGT 4) to company specifying name and other particulars of beneficial owner.

2. Every person who acquires such BI in share shall:
   - within 30 days of acquiring such BI,
   - make a declaration (MGT-5) to company specifying nature of his interest, particulars of registered holder and other prescribed details

3. Where any change occurs in BI of such shares, such person and BO shall – within 30 days from date of such change, make a declaration to the company in prescribed form.

4. On receipt of such declaration, the company shall:
   - make note thereof in concerned register and
   - within 30 days of receipt of declaration, file a return in Form MGT-6 with Registrar + Fees



Rule: Designation of responsibility to furnish information to RoC:

- Every company shall designate a person responsible for furnishing MGT-6 to RoC.
- Following person may be designated:

CS	KMP, other than CS	If no CS or KMP - every director

- Until a person is so designated, following shall be deemed to be the designated person:

CS, if any	If no CS is appointed - every MD or Manager, or	If no CS, MD or manager - every director.

- Company shall inform details of designated person in Annual Return.
- Change in designated person – Intimate to RoC in e-form GNL-2.

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5. Where declaration required under this section is not made by BO (MGT-5) - No rights in respect of such shares shall be enforceable by him.

6. Company shall pay dividend only to members (not beneficial owner)

7. Penalty:

Failure to make declaration to company - Rs. 50,000 + 200/day - Max 5 lakh

Failure of company to file MGT 6 - Company + OID - Rs, 1,000/day - Max 5 lakh (co) and 2 lakh (OID)

Non-applicability: Section 89 shall not apply to:

- Government companies (in compliance with sec 92 and sec 137)
- Trust created to set up mutual fund, venture capital fund or other SEBI approved fund

Section 90: Register of significant beneficial owners in a company 46-52

Who is a significant beneficial owner (SBO)

SBO in relation to a reporting company means:

- an individual (acting alone or through one or more persons or trust),
- possesses one or more of the following rights in such reporting company:
  - (i) holds indirectly, or together with any direct holdings >= 10% of the shares;
  - (ii) holds indirectly, or together with any direct holdings >= 10% of voting rights;
  - (iii) through indirect holdings, or together with any direct holdings has right to receive >= 10%, of total distributable dividend in a FY;
  - (iv) through indirect holdings ~~or together with direct holdings~~ has right to exercise significant influence* or control in such company.

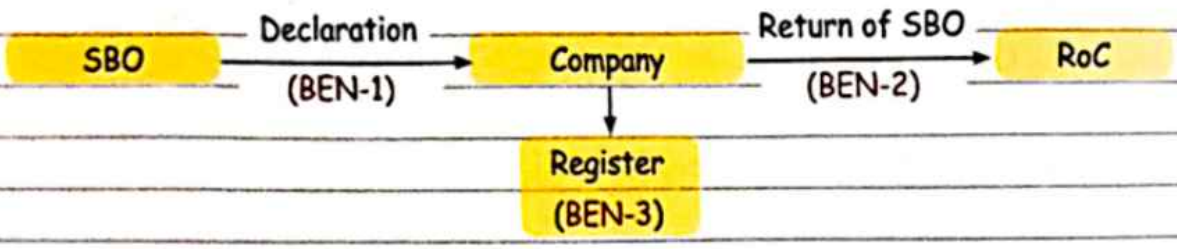
*Significant influence means power to participate, directly or indirectly, in financial and operating policy decisions of reporting company but is not in control of those policies

Note: If individual does not hold any right indirectly under (i), (ii) or (iii) - not considered to be SBO.

Legal provision

Declaration (BEN-1)	Every SBO shall make a declaration to the company, specifying the nature of his interest and other particulars, in Form BEN-1 within 30 days of becoming SBO.
Return (BEN-2)	Every company shall file a return of SBO and changes therein in Form BEN-2 with RoC containing names, addresses & other details within 30 days of receipt of BEN-1
Register (BEN-3)	Maintain a register of SBO & changes therein (Form BEN-3) including name of individual, his date of birth, address, details of ownership and other prescribed details. Such register shall be open to inspection during business hours (or reasonable time not < 2 hours), on every working day by any member on payment of specified fee (not > Rs. 50 for each inspection)

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Onus on reporting company to identify SBO

Notice by company (BEN-4)	Company shall give notice (BEN-4) to any person (whether or not a member) whom the company knows or has reasonable grounds to believe (RGTB): (a) to be SBO of the company; (b) to be having knowledge of identity of SBO or; (c) to have been SBO of company at any time during 3 years immediately preceding the date on which the notice is issued, and who is not registered as SBO with the company as required under this section.
Reply to notice	Concerned person shall furnish info. required in such notice within 30 days of date of the notice.
Application to tribunal	Where that person fails to give info. within specified time or info. given is unsatisfactory, company shall apply to tribunal within 15 days of expiry.
Order of tribunal	Tribunal may, after giving OOBH to parties concerned, make such order restricting the rights attached with the shares within 60 days of receipt of application: • restrictions w.r.t. transfer of interest, • suspension of rights (dividend, VR, etc.) • other restrictions
Relaxation	Company or aggrieved person may apply to Tribunal for relaxation or lifting of such restrictions, within 1 year from the date of such order. If no appln. made within 1 year - such shares shall be transferred to IEPF Authority

Penalty u/s 90:

Sub -section	(10)	(11)		(12)
Failure	Person fails to make declaration (BEN-1)	Company fails to maintain register (BEN-3) or allow inspection thereof		Person wilfully furnishes false or incorrect info. or suppresses material info.
Liable	Person	Company	OID	Such person shall be liable
Penalty	Rs. 50,000	Rs. 1 lakh	Rs. 25,000	for action u/s 447
Continuing Failure	Rs. 1,000/day	Rs. 500/day	Rs. 200/day	
Maximum	Rs. 2 lakh	Rs. 5 lakh	Rs. 1 lakh	

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Non-Applicability

SBO rules shall not be applicable to the extent the share of the reporting company is held by:

(a) IEPF Authority (constituted u/s 125)

(b) Its holding reporting company (provided details of such holding company is reported in BEN-2)

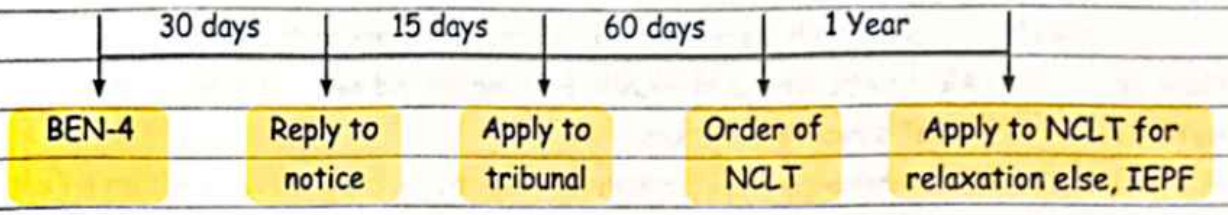
(c) CG, SG or Local Authority

(d) A reporting company or BC or entity controlled by CG or SG or partly both

(e) SEBI registered Investment vehicles such as mutual funds, AIF, REITs and InVITs

(f) Investment Vehicles regulated by RBI or IRDA or Pension Fund Authority.

Summary of BEN-4 timeline:



Section 91: Power to Close Register of Members or Debenture-Holders or Other Security Holders.

1. A company may close the registers for any period, subject to:
   - not exceeding in aggregate 45 days in each year and not exceeding 30 days at any one time.
   - prior notice of at least 7 days (or such lesser period as specified by SEBI for listed companies or companies intending to get listed)
   - has to be given in prescribed manner (1 vernacular + 1 english newspaper + website)

2. In case of contravention u/ss (1), penalty shall be:

Company and OID - Rs. 5,000 for every day during which register was closed subject to max. Rs. 1 lakh.

Private companies are exempted from issuing public notice in newspaper provided min. 7 day's notice given to members prior to closure of register.

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Section 92: Annual Return (1-3-31-40)

Form	• Other companies: MGT-7 • OPC & small companies: MGT-7A (abridged format of annual return)
Sign	• Other companies: By a director + CS (where no CS, by CS in practice) • OPC & small company and start-up co.: Signed by CS. If no CS, by a director.
(49) Certified by CS in Practice (MGT-8)	Annual return filed by: • Listed company • Co. having PUSC not less than 10 crores or turnover not less than 50 crores shall be certified by CS in practice in Form MGT-8 stating that: • AR discloses the facts correctly and adequately and • company has complied with all the provisions of this Act
Place on website	AR shall be placed on website of company and web-link thereof shall be disclosed in BoD's report
File with RoC [Section 96(4)]	Every company shall file with the Registrar a copy of annual return (+Fees): • within 60 days from date on which AGM is held or • where no AGM is held in any year, within 60 days from date on which AGM should have been held + statement specifying reasons for not holding AGM
Penalty	Company fails to file AR within prescribed time, penalty of: Company – Rs. 10,000 + Rs. 100/day upto max Rs. 2 lakh OID – Rs. 10,000 + Rs. 100/day upto max Rs. 50,000
Penalty on CS in practice	If CS in practice certifies the AR otherwise than in conformity with the requirements of this section, he shall be liable to a penalty of Rs. 2 lakh

Content of Annual Return:

Annual return shall contain the following details as on close of FY:

RO, principal business activities	Particulars of holding, associate or subsy (Group cos)	Shares, debentures or other securities and SH pattern	Members, DH, OSH and change since previous FY (Holders)
Promoter/Dir/KMP and changes since PFY	Meetings - GM, BoD, committee and attendance details	Remuneration of director/KMP	Penalty on company, director or officers + compounding + appeals
Certification of compliance	Details of shares held by Foreign Institutional Investors	Other matters	

BGR SH KMP CFO

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Section 94: Place of keeping and Inspection of Registers, Returns, etc.

Registers u/s 88 and copy of AR filed u/s 92 shall be kept at the RO of the company.

Provided that such registers or AR may also be kept at any other place in India in which > 1/10th of the total no. of members (as per RoM) reside, if approved by SR passed at GM

(3 conditions - Such place is within India, more than 1/10th members reside and SR is passed)

Preserve and custody:

Type	Period	Custody
Register of members	Permanently	CS or person
Foreign Register of members	Permanently, unless discontinued.	authorised by
Register of DH or OSH	8 years from date of redemption	Board.
Foreign register of DH or OSH	8 years from date of redemption	
AR u/s 92	8 years from filing with RoC	

2. Inspection of Registers, index and AR:

Open for inspection during business hours (at such reasonable time >= 2 hours on working day):

- By members, DH or OSH - without any fees
- By any other person - on payment of such fees as may be prescribed.

3. Extract or copies by ANY person:

Any member, DH, OSH or BO or any other person may—

- take extracts from any register, or index or return without payment of any fee; or
- require a copy thereof on payment of fees as per AoA (not > Rs. 10/page).

Company to provide copies within 7 days.

4. On refusal of any inspection or making extract or copy:

- Company and every OID - Liable for each such default, to a penalty of Rs. 1,000/day subject to a max of Rs. 1 lakh during which the refusal or default continues.
- CG (RD) may also, by order, direct:
  a. an immediate inspection of the document, or
  b. that extract required shall forthwith be allowed to be taken by person requiring it.

Note: The following particulars of register or index or return in respect of members shall not be made available for any inspection or for extracts or copies:

address or registered address (in case of a body corporate);	e-mail ID	Unique Identification Number	PAN Number

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Section 95 - Registers, etc., to be Evidence:

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

Section 96: Annual General Meeting

1. Time limit for AGM:
   - Every company (other than OPC) shall hold AGM each year*.
   - First AGM to be held within 9m of closing of first FY.
   - Subsequent AGM to be held within 6m from closing of each FY.
   - RoC may, for any special reasons, extend the time within which AGM (other than first AGM) shall be held by not > 3m.
   - Not more than 15m shall elapse between two AGMs
   - If first AGM is held as aforesaid – No AGM necessary in year of incorporation.

*As per Secretarial Standard-2, "each year" refers to "calendar year".

2. AGM shall be:
   - called during business hours (9AM to 6PM)
   - on any day other than national holiday (as declared by CG)
   - held at RO or some other place within city, town or village (CTV) where RO is situated.

   Exception:

Unlisted company	Held at any place in India if consent in writing + e-mode by ALL members in advance.
Govt. company	RO or within CTV where RO is situated or other place approved by CG.

Section 97: Power of Tribunal to call AGM:

1. If a company fails to hold AGM u/s 96, Tribunal may, on application by any member, call or direct calling of AGM & give such consequential directions.

   Note: Such directions may include that 1 member present in person or proxy shall be deemed to constitute a meeting.

2. GM held u/ss (1) – deemed AGM of company.

Section 98: Power of Tribunal to call meeting of members, etc (applicable only for EGM. Not AGM)

1. Other than AGM, if it is impracticable to call a meeting or conduct it in manner prescribed (as per Act or AoA), Tribunal may, either:
   - either suo-motu, or
   - on application of director or member entitled to vote at the meeting

   order a meeting to be called, held and conducted in manner as Tribunal thinks fit, and give such ancillary directions as may be expedient.

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Note: Such directions may include that 1 member present in person or proxy shall be deemed to constitute a meeting.

Any meeting held u/ss (1) - Deemed to be a meeting of company duly called, held and conducted

Section 99: Punishment for default u/s 96 to 98.

If default is made in holding meeting u/s 96, 97 or 98 or in complying Tribunal's directions:
Company and OID - Fine which may extend to Rs. 1 lakh + Continuing default - Further Rs. 5,000/day.

Section 100: Calling of Extraordinary General Meeting (EGM) 7 13 36

Board may, whenever it deems fit, call an EGM of the company.
Place - EGM shall be held at a place in India (except in case of wholly owned subsidiary of a company incorporated outside India)

2. Board shall, at the requisition made by following, call an EGM of the company:

Co. having share capital - Members holding not less than 1/10th of total PUSC that carries voting rights.	Co. not having SC - Members having not less than 1/10th of total voting power.

3. The requisition made u/ss (2) shall:
   a. Set out matters for consideration at the meeting
   b. Signed by requisitionists, and
   c. Sent to RO of the company.

4. The Board shall:
   a. Call for such meeting within 21 days from receipt of valid requisition
   b. Meeting to be called on a day not later than 45 days from date of receipt of valid requisition

5. On failure of board to call such meeting - Requisitionists may themselves call and hold such meeting within 3 months of date of requisition.

6. Meeting by requisitionists to be called, held & conducted in same manner as it is done by BoD.

7. Reasonable expenses of such meeting to be reimbursed to requisitionists by company and such sum shall be deducted from remuneration u/s 197 of directors who were in default in calling the meeting.

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Rule 17: Calling of EGM by requisitionists:

- Requisition has to be in writing or e-mode at least 21 clear days prior to proposed date of EGM.
- Notice to specify place, date, day, and hour of meeting & contain business to be transacted.
  The meeting shall be convened at RO or in the same city or town where RO is situated on any day except national holiday.
- If SR is proposed to be passed in such EGM, notice to comply with section 114(2).
- The notice shall be signed by all requisitionists or by requisitionists duly authorized in writing.
- No explanatory statement to be annexed to notice for such EGM. Requisitionists may disclose reasons for proposed resolutions at the meeting (not mandatory).
- Notice shall be given to those members whose names appear in RoM within 3 days of receipt of a valid requisition by the company
- Where meeting is not convened, the requisitionists shall have a right to receive:
  a. list of members
  b. their registered address and
  c. number of shares held and
  the co. is bound to give such information as on 21st day from date of receipt of valid requisition. Company shall give such information before expiry of 45 days from receipt of valid requisition.
- Mode of sending notice - Speed post or registered post or through e-mode.
- Accidental omission to give notice or non-receipt thereof by any member shall not invalidate the proceedings of the meeting.

Section 101: Notice of meeting

1. GM may be called by giving not less than clear 21 days' notice in writing/e-mode in prescribed manner.

Clear days means - exclude date on which notice is served AND date of meeting.

Shorter notice:

GM may be called after giving shorter notice if consent is accorded:

In case of AGM:	In case of any EGM:
By not less than 95% of members entitled to vote thereat	a. In case of company having SC - Majority in numbers + representing not less than 95% of PUSC b. In case of company not having SC - members having not less than 95% of total voting power

2. Notice to specify place, date, day and hour of meeting & contain business to be transacted.

3. Notice to be given to **MAD** :

Every member of the company (LR of deceased member or assignee of insolvent member)	Auditors of the company, and	Every director of the company

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4. Accidental omission to give notice to, or the non-receipt of such notice by, any member shall not invalidate the proceedings of the meeting

Rule 18: Sending Notice via e-mode

- Sending of notices through electronic mode (e-mode) has been statutorily recognized
- Notice may be sent through e-mail as a text, attachment or URL.
- E-mail to be addressed to entitled person (as per records of depository)
- Company shall allow changing or adding email IDs at least once in a FY
- Subject line of email - State the name of company, notice of type of meeting, place and date.
- Place notice on website of company and other website notified by CG
- E-mode means:
  a. any communication sent by company through authorized & secured computer programme
  b. capable of producing confirmation and
  c. keeping record of such communication addressed to the person entitled to receive
  d. at the last e-mail address provided by the member.

Concept clarity check:

1. Where notice is sent by post, it shall be deemed to be served on expiry of 48 hours after the same is posted. (Section 20)
   Illustration: AGM to be held on 7th Nov. Notice was posted on 16th Oct. Is the notice valid?
   Notice is invalid as it is of only 19 clear days (deemed served on 18th Oct)
2. Can an individual director call for GM? - No. Individual director is not authorized. Only BoD can. However, if individual director ends up calling, BoD can later, ratify the same.
3. Company's obligation to send notice shall be satisfied when it transmits the email. Company cannot be held responsible for transmission of email beyond control.
4. If an entitled members fails to provide email address, company shall not be in default for not delivering notice via email.
5. Companies Act does not provide anything specific regarding condonation of delay in giving notice.
6. In case of section 8 company (92 + 137), notice shall be sent within ~~21 days~~ 14 days.

Section 102: Statement to be annexed to notice (Explanatory statement)

Ordinary Business vs Special Business:

In case of AGM, all business shall be deemed special, other than:

consideration of FS and reports of BoD & auditors	declaration of dividend	appointing of director in place of those retiring	appointment of and fixing remuneration of auditors

In case of EGM - All business shall be deemed to be special in EGM (no ordinary business).

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Legal provision:

1. A statement setting out following material facts concerning each item of special business shall be annexed to notice calling such meeting:

the nature of interest (financial or otherwise) in respect of each items of: - every director & manager - every other KMP - relatives of above	other info & facts that may enable to understand meaning, scope and implication of items of business and take decisions

Consequence of non-disclosure:

Where, as a result of non-disclosure or insufficient disclosure of interest (as required above), if any benefit accrues to promoter, director, manager, KMP or their relatives, they shall hold such benefit in the trust of the company and liable to compensate the company to extent of such benefit.

2. Disclosure of extent of shareholding-
   - Where any special business relates to or affects another company (say, A Ltd),
   - The ES shall disclose the extent of shareholding in that other company (A Ltd) of
   - every promoter, director, manager, KMP of the first mentioned company
   - if it is >=2% of PUSC of that company (A Ltd).

3. Where any item of business refers to any docs, which is to be considered at the meeting, the time and place where such docs can be inspected shall be specified in ES.

4. Contravention of this section: Every promoter, director, manager, KMP ~~or their relatives~~ who is in default - Liable to penalty which is higher of:
   - Rs. 50,000 or
   - 5x the amount of benefits accrued to such promoter, director, manager, KMP or their relative.

Section 103: Quorum for meetings

11 12 14 15 17 41

1. Unless articles provide for a larger number, following shall be the quorum for a meeting:
   a. In case of a public company:

No. of members as on date of meeting	Members personally present
Not more than 1,000	5
More than 1,000 but up to 5,000	15
> 5000	30

   b. In case of a private company - 2 members personally present

Note: Proxy shall not be counted for quorum.

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2. If quorum is not present within half an hour from appointed time:

Generally	Adjourned to same day, next week at same time and place or such other date as board may determine.
Meeting called by requisitionists u/s 100	Stands cancelled

Notice in case of adjourned meeting or change in day, time or place:

Company shall give not less than 3 days notice to members either individually or publish advertisement in newspaper (1 english + 1 vernacular) in circulation where RO is situated.

3. If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum.

Concepts related to Quorum as per Secretarial Standard-2:

- 1 person can be authorised representative (AR) for multiple BCs. He will be counted as multiple members for quorum (i.e., 1 person representing 5 BCs shall be counted as 5)
  However, if quorum = 5, AR representing 5 cos. alone cannot form quorum. At least one more member must be present.
- Quorum must exist throughout the meeting, not just at the start.
- Members who have voted through REV can attend GM, and their presence counts for quorum.
- Related party, even if not entitled to vote on a particular item, is still counted for quorum.
- Quorum requirement does not apply to items transacted through postal ballot.
- Presence of a single member can never be counted as quoram.

Additional points:

- If GM is adjourned for reasons other than lack of quorum, the adjourned meeting is treated as a fresh meeting, so quorum must be checked again.
  If in such adjourned meeting, quorum is not present, it shall be ~~deemed quorum~~ further adjourned.
- On matters where PSH are not entitled to vote, they shall not be counted for quorum.

Section 104: Chairman of meetings

1. Unless AoA provides otherwise, members personally present shall elect one of themselves to be chairman thereof on a show of hands.

2. If poll is demanded on election of chairman, it shall be taken forthwith and:

- Chairman elected u/ss (1) by show of hands shall continue to be chairman until some other person is elected chairman by way of poll.
- Such other person to be chairman for rest of the meeting.

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Powers of chairman (additional points):

- Chairman is a person who manages meetings and ensures decorum is maintained.
- Chairman has prima facie authority to decide all questions arising in the meeting.
- Chairman has casting vote or second vote in BM and GM (only if empowered by AoA)

In case of private company, sec 104 shall apply unless otherwise specified in AoA.

Section 105: Proxies

1. Any member entitled to attend and vote at a meeting shall be entitled to appoint another person (in Form MGT-11) as a proxy to attend and vote on his behalf.

Note:

1. Proxy shall have no right to speak at such meeting and is entitled to vote only on a poll.
2. Proxy need not be a member of the company (except in case of section 8 company)

Limit of members for which a person can act as proxy:

- A person can act as proxy on behalf of members not exceeding 50 and holding (aggregate) not > 10% of total share capital of the company carrying voting rights.
- A person holding > 10% of SC may appoint a single person as proxy and such person shall not act as proxy for any other shareholder.

2. Every notice calling for meeting shall include a statement that:
   - a member entitled to attend & vote is entitled to appoint proxy (one or more if allowed) and
   - that proxy need not be a member

3. Default u/ss (2) - OID liable to penalty of Rs. 5,000

4. Deposit of proxy form:

48 hours before meeting, proxy form or any other doc. necessary to show validity of such appointment shall be deposited with the company (even if articles provide for longer period)

Such instrument appointing proxy shall be in writing and be signed by:

- appointer or duly authorized attorney in writing or
- if appointer is BC - under its seal or be signed by an officer or duly authorized attorney

5. A company cannot send proxy invitations at its own expense suggesting any specific person(s) to be appointed as proxy by members.
   If the company issues such invitation, officers responsible shall be liable for penalty Rs. 50,000 except where such issue is at the member's request in writing.

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6. An instrument appointing proxy in Form MGT - 11 shall not be questioned on the grounds that it fails to comply with special requirements by the AoA.

7. Inspecting proxy forms by member:

A member shall be entitled to inspect proxies lodged.

- Inspect during period - 24 hours before time fixed for commencement of meeting and ending with conclusion of meeting during business hours
- Not less than 3 days' notice in writing of intention given to company.

Concept clarity check:

1. In case where member and proxy both are present in a GM -
   The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority
2. AoA provides that the proxy form should be received at least 60 hours before the GM. Is such provision valid? - No! The limit of 48 hours cannot be increased in any case.

Section 106: Restriction on voting rights: 20 21

1. Only if provided in the AoA, a member shall not exercise voting right in respect of the shares registered in his name on which:
   - call or other sum is unpaid, or
   - company has exercised any right of lien.
2. Except above, company shall NOT prohibit member from voting right on any other ground.
3. In case of poll - Member (or his proxy) entitled to more than one vote need not use all his votes or cast in the same way all the votes he uses. (i.e., he can split his votes for and against same resoln)

Voting in case of joint shareholders:

- Unless AoA provides otherwise, joint shareholders must concur in voting.
- In case of joint shareholder, voting is done in order of seniority.

Section 107: Voting by show of hands:

1. Any resolution put to vote at a GM shall be decided by show of hands, unless poll is demanded u/s 109 or voting is carried out electronically.
2. Following shall be conclusive evidence of fact of passing of resolution or otherwise:
   a. Declaration by chairman of passing of such resolution, and
   b. Entry to that effect in the minutes of the meeting

Can insolvent SH vote by show of hands? Yes (as long as his name appears in RoM)

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Section 108: Voting through electronic means.

CG may prescribe class of cos. and manner in which member may exercise voting rights by e-means.

Rule 20: Voting through e-means: 

1. Following companies shall provide facility to vote by e-means:
   a. Every company having listed its equity shares in a RSE and
   b. Every company having >= 1000 members

   Exception: Nidhis or enterprise as per SEBI Regulations (such as SMEs) are not required to provide such facilities.

2. Companies providing facility of voting by e-means shall comply with following procedures:

Particulars	Detail
Notice	To be sent to - All members, auditors, and directors.
	Mode - Registered post, speed post or e-means or by courier service
Place notice	On website of - Company and Agency (NSDL/CDSL)
Notice to state:	a. Company is providing facility for voting by e-means.
	b. That the facility - either EVS or ballot or polling paper shall also be made available at meeting and members attending the meeting who have not already cast vote via remote e-voting shall be able to exercise their right at meeting
	c. Members who have cast vote by remote voting prior to meeting may also attend meeting but not vote again. (will be counted as quorum)
Notice shall:	a. indicate process and manner for voting by e-means;
	b. indicate time schedule including time period during which the votes may be cast by remote e-voting;
	c. provide login ID details and process for generating password and voting.
Publication in newspaper	Co. shall cause a public notice by way of advertisement (1 english + 1 vernacular) - Immediately on dispatch of notices but at least 21 days before date of GM specifying the following:
	1. statement that business may be transacted by e-voting.
	2. date and time of commencement of remote e-voting
	3. date and time of end of remote e-voting
	4. cut-off date (not earlier than 7 days before date of GM for determining eligibility to vote)
	5. manner in which person who became members after dispatch of notice may obtain login ID and password.
	6. the statement that:
	a. remote voting shall not be allowed beyond said date and time.
	b. manner in which company shall provide for voting at the meeting.
	c. member may participate in GM even after remote voting but not allowed to vote again.

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	d. person named in RoM as on cut off date only - entitled to vote
	e. website of the company and agency
	f. name, designation, etc. of person responsible for grievances addressal
Remote voting	• Remain open for >= 3 days. Shall close at 5PM on date preceding date of GM.
	• Members holding shares as on cut-off date may vote
	• Vote once cast - cannot be subsequently changed.
	• At the end - facility to be forthwith blocked.
	Provided that - If a company decides to use the same EVS as used in remote e-voting for voting during the GM, the said facility shall be operational till all resolutions are voted upon in the meeting.
Scrutiny	• BoD to appoint one or more scrutinizers (CA, CS or Cost Accountant, in practice or advocate or any person not in employment + Person of repute) to scrutinize the voting process in fair and transparent manner.
	• Scrutinizer may take assistance - Not an employee and well versed with EVS.
	• Scrutiniser shall be willing to be appointed and be available for ascertaining requisite majority.
Counting votes	Scrutiniser shall, immediately after conclusion of voting at GM:
	• first count votes cast at GM,
	• thereafter unblock votes cast through remote e-voting in presence of at least 2 witnesses not in employment of company and
	• make (within 3 days of conclusion of GM), a consolidated scrutiniser's report of total votes cast in favor or against, if any, to Chairman or a person authorised by him in writing who shall countersign the same.
	• Thereafter, CM or authorised person to declare result of voting forthwith;
	• Votes (of remote e-voting) to remain secret till the votes are cast at GM.
	• Result of resolution - Place on website - Co + Agency + RSE (if listed)
	• Register and all other documents to remain in safe custody of scrutinizer till approval of minutes by chairman. Thereafter, hand over to company.
Prevent dual votes	To ensure that members who voted via e-voting do not vote again in GM - Scrutinizer to have access to details of shareholders who voted but not the manner in which they have cast their votes.
Register of assent/dissent	Scrutiniser to maintain a register (manually or electronically) to record assent or dissent received, mentioning particulars of name, address, folio number etc.;
Deemed date of resolution	Date of GM
Withdrawn	Resolution proposed to be considered through e-voting shall not be withdrawn.

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Section 109: Demand for poll

1. Before or on declaration of result of voting on any resolution on show of hands:
   - a poll may be ordered to be taken by the Chairman on his own motion, and
   - shall be ordered to be taken by him on a demand made in that behalf:

In case of company having SC –	In case of other company –
By members present in person or proxy having >= 1/10th of total VP or holding shares in aggregate having PUSC >= Rs. 5 lakh or higher amount prescribed	By members present in person or proxy having >= 1/10th of total VP

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

3. A poll demanded shall be taken:

For any question (other than below)	At such time as Chairman of the meeting may direct. (within 48 hours from time it was demanded)
For adjournment of meeting or appointment of Chairman	Forthwith

4. Where poll is to be taken, the Chairman shall appoint such number of persons, as he deems necessary, to scrutinize the poll process and votes given on poll and to report to him in manner prescribed.

5. Chairman of the meeting shall have power to regulate the manner in which the poll shall be taken.

6. Result of poll shall be deemed to be decision of meeting on the resolution on which the poll was taken

Rule 21: Manner in which chairman shall get the poll process scrutinized:

Chairman of the meeting shall ensure the following:

- Scrutinizers are provided with:
  a. RoM, specimen signs of members, attendance and proxy register
  b. All documents pursuant to sec 105, 112 and 113

- Scrutinizers to arrange polling papers (MGT-12) & distribute it to members & proxies present
  In case of joint SH – Give polling paper to first named holder (in his absence – joint holder)

- Scrutinizers to keep record of the polling papers received in response to poll, by initialing it.

- Scrutinizers shall lock and seal an empty polling box in presence of members and proxies.
  Such box shall be opened in presence of at least 2 witnesses.

- In case of ambiguity about validity of a proxy, scrutinizers and Chairman to decide validity.

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- Ensure that if member (who has appointed proxy) has voted in person, proxy's vote disregarded.

- Where voting is conducted by e-means u/s 108, company shall provide all necessary support, technical and otherwise, to Scrutinizers in orderly conduct of voting and counting the result.

- Scrutinizers' report and result
  a. Scrutinizers shall count votes and prepare a report (MGT-13) addressed to the Chairman.
  b. It shall be signed & submitted within 7 days from date of poll. Chairman to counter-sign.
  c. Report to state: total votes cast, valid votes, votes in favour and against including invalid votes.
  d. Chairman to declare result of voting on poll (either himself or authorizing a person in writing)

Section 110: Postal Ballot

Postal ballot [2(65)] means voting by post or through e-mode.

Legal Provision:

1. A company:

shall w.r.t. such items of business as CG may declare to be transacted only by means of postal ballot; and	may transact any business by postal ballot other than: - ordinary business and - business w.r.t. which directors or auditors have right to be heard at meeting,

Note: If a company is required to provide e-voting u/s 108, any business that is otherwise required to be transacted only by postal ballot may instead be transacted at GM through such e-voting.

2. If a resolution is approved by requisite majority of SHs by means of postal ballot, it shall be deemed to have been duly passed at a GM convened in that behalf.

Rule 22: Procedure of postal ballot:

Particulars	Detail
Notice	Where a co. is required or decides to pass resolution by postal ballot - send notice to all SHs + draft resolution explaining reasons & requesting to send their assent or dissent in writing on a postal ballot within 30 days from dispatch of notice.
Notice of meeting	To be sent to - All members, ~~directors and auditors~~ Mode - Registered post, speed post or e-means or by courier service
Place notice	On website of company - Remain on website till last date of receipt of PB forms

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Publication in newspaper	Company shall publish an advertisement (1 english + 1 vernacular) specifying: • statement that business may be transacted by postal ballot including e-voting • date of completion of dispatch of notice • date of commencement of voting • date of end of voting • the statement that: a. postal ballot received beyond date is invalid and voting shall not be allowed beyond said date and time b. members who have not received such forms may apply to co. for duplicate. • name, designation, address, of person responsible for grievances addressal
Scrutiny	• BoD to appoint one/more scrutinizers who is not in employment to scrutinize the postal ballot process in fair and transparent manner • Scrutiniser shall be willing to be appointed and be available for ascertaining requisite majority • Postal ballot received back from SH to be kept in safe custody of scrutinizer and no person shall deface or destroy it or declare the identity of the SH. • Scrutinizer shall submit his report as soon as possible after last date of receipt of postal ballots but not later than 7 days thereof. • Such register and other papers to remain in safe custody of scrutinizer till approval of minutes by chairman. Thereafter, hand over to company to preserve • Result shall be declared by placing it on website of company
Register of assent/dissent received	• Scrutiniser to maintain a register (manually or electronically) to record assent or dissent received, mentioning particulars of name, address, folio number etc. and details of postal ballot defaced, if any. • Assent or dissent received after 30 days = treat as no reply.
Rule 20 to apply	Provisions of rule 20 regarding voting by e-means shall apply, as far as applicable, mutatis mutandis to this rule in respect of voting by e-means.
Postal Ballot ONLY	Following items of business shall be transacted only through postal ballot:

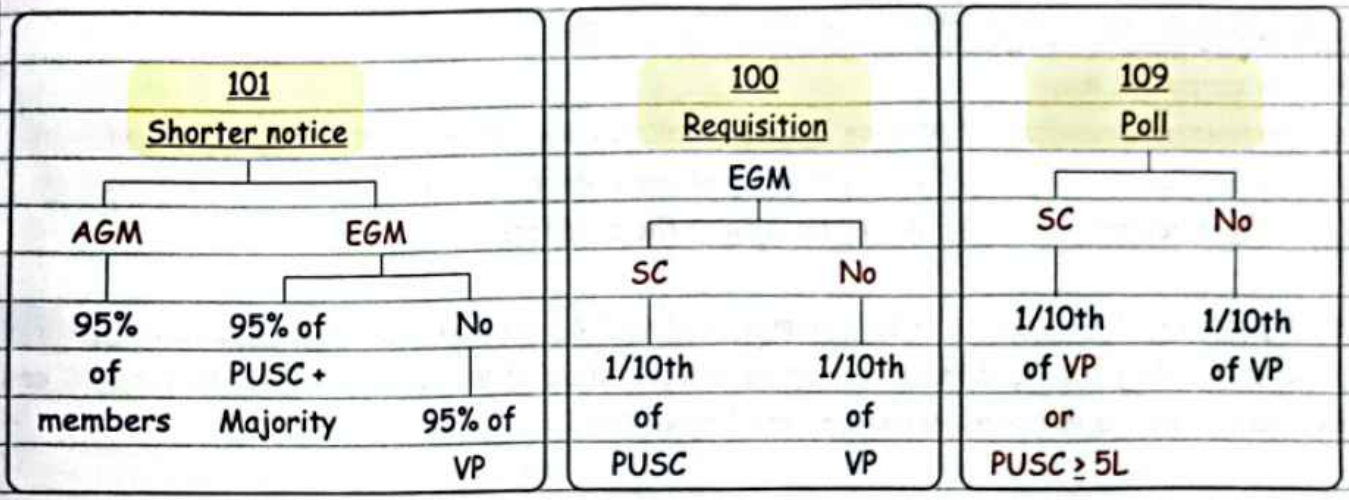
Section	Business
13	Alteration of object clause of MoA
2(68)	Alteration of AoA to insert or remove provisions which are to be included in AoA of private company
12	Change in RO outside local limits of city/town/village
13/27	Change in object for which money raised from public
43	Issue of shares with differential rights
48	Variation in rights attached to class of shares

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68	Buy-back
151	Election of a director by small shareholder.
180	Sale of undertaking of company
186	Giving loans, guarantees in excess of limit

Exception: OPC and companies (public or private) having members upto 200 are NOT required to transact any business through postal ballot

Summary of Limits in Chapter 7



Section 111: Circulation of Member's Resolutions

1. On requisition in writing by such number of members as u/s 100, a company shall:
   a. give notice to members of any resolutions intended to be moved at the meeting, and
   b. circulate to members - any statement w.r.t. matters referred to in proposed resolution

2. A company shall not be bound u/ss (1) unless:
   a. Copy of signed requisition is deposited at the RO:
      i. In case of requisition requiring notice of resolution – Not less than 6 weeks before meeting
      ii. In case of any other requisition – Not less than 2 weeks before meeting
   b. Along with requisition, deposit a sum reasonably sufficient to meet company's expense

Note: If after the requisition requiring notice is deposited at the RO and AGM is called on a date within 6 weeks after deposit thereof – It shall be deemed to have been properly deposited.

3. Where an application is made to CG by the company or aggrieved person, and CG declares that rights in this section are being abused to secure needless publicity for defamatory matter - The company shall not be bound to circulate any statement u/ss (1)(b)
   Note – Cost of such application to CG – CG may order requisitionists to pay such cost.

4. Default – Co and OID – Penalty of Rs. 25,000.

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Section 112: Representation of President and Governors in Meetings

12 17

1. The President of India or the Governor of a State who is a member of a company, may appoint a person to act as his representative at any meeting of the company (authorised representative)

2. Such representative shall be deemed to be a member and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or Governor could exercise as a member of the company.

Note: AR enjoys same rights as member i.e., even AR can appoint proxy and vote in postal ballot.

Section 113: Representation of body corporates

12 17

1. A body corporate may:

If member of a company	Authorise, by BoD resolution, any person to act as its representative:
If creditor or debenture holder	- At any meeting of the company (GMs) - At any meeting of the creditors.

2. Such person shall be deemed to be a member and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot in the same manner as that BC could exercise if it were an individual member, creditor or DH.

Example: Evaluate whether quorum is satisfied:

A Ltd is a company having 1,200 members. Evaluate whether quorum is met on presence of following:

Type of person	Include in Quorum?
A,B and C - Shareholders of A Ltd	
D and E - Joint shareholders of 200 equity shares	
F, G and H - PSH (business of GM does not affect them)	
X and Y - Proxies representing 4 shareholders together.	
P - Representative of President	
Q - Representative of Governor	
R - Representative of BC	
M - Representative of BC3 and BC4	
Total members counted in quorum	

Section 114: Ordinary and Special Resolutions

23 24 26

1. A resolution shall be an OR if:
   - notice has been duly given and
   - it is required to be passed i.e., votes cast (show of hands or e-voting or poll) in favour, including casting vote, if any, of CM, by members (personally or via proxy where allowed),
   - exceed the votes, if any, cast against the resolution by members, so entitled and voting.

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2. A resolution shall be a SR when–

a. the intention to propose the resolution as a SR has been duly specified in the notice calling the GM or other intimation given to the members of the resolution;

b. the notice required under this Act has been duly given; and

c. the votes cast in favor (show of hands, poll or e-voting), by entitled members (in person or proxy or postal ballot) is not less than 3x number of votes, if any, cast against such resolution.

Concept clarity check:

1. Whether 2 or more resolutions can be moved together at the same time in a GM? - Yes, there is nothing illegal with the same. Except in case of resolution to appoint directors (Sec 162 requires one resolution for each director)
2. At a GM, 40 members are present. 20 votes in favor, 5 voted against. 5 votes were invalid and 10 members abstained from voting. Is SR passed? - Yes. Abstentions or invalid votes, if any, are not to be taken into account.

Section 115: Resolutions Requiring Special Notice

- Where special notice is required for any resolution (by any provision of Act or AoA)
- notice of intention to move such resolution to be given by such members as may be prescribed
- and company shall give its members notice of the resolution in prescribed manner.

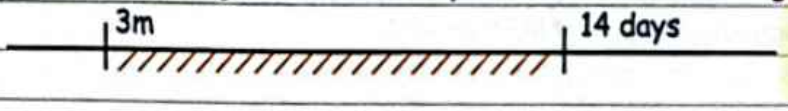
Rule 23 - Special Notice (SN)

1. SN shall be signed (individually/collectively) and given by such number of members holding:

a. not less than 1% of total VP or

b. holding shares on which not less than Rs. 5 lakh is paid up on the date of the notice.

2. Time period of sending notice - Notice to be sent to company not earlier than 3 months but at least 14 days before date of meeting, exclusive of day on which the notice is given and day of meeting.



3. Immediately on receipt of notice - Company to give notice to its members of the resolution - At least 7 days before meeting (exclusive of date of dispatch and day of meeting)

4. Where it is not practicable to give notice u/ss (3) in same manner as notice of GM - Publish notice in newspaper (english/vernacular) and post it on the website of company.

5. The notice shall be published at least 7 days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

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As per Companies Act, special notice is required in following cases:

Section	Provision
140(4)	Appointment of auditor other than retiring auditor
140(4)	Retiring auditor shall not be reappointed
169(2)	Removal of director
169(2)	Appointment of another person as director in place of remove director

Section 116: Resolutions passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of company, shareholders or BoD - It shall be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Example: EGM dated - 23rd Sept. Quorum absent. Adjourned - 30th Sept. Two resolutions passed in adjourned meeting. Effective date of resolution = 30th Sept. (and not 23rd sept)

Section 117: Resolutions and Agreements to be Filed

1. A copy of following resolution or agreement along with ES u/s 102 (if any) shall be filed with RoC in Form MGT-14 within 30 days of passing or making thereof:

Special Resolution	Resolution agreed to by all the members	agreement executed by co. related to appointment, re-appointment or variation of terms of MD
Board resolutions	resolutions or agreements which have been agreed to by any class of members	resolution to be wound up voluntary (as per IBC)
resolutions passed u/s 179 (3)**	any other resolution or agreement	

** No person shall be entitled u/s 399 to inspect copies of resolution u/s 179(3).
Moreover, this clause is N.A. to resolution passed to grant loans, etc. u/s 179(3)(f) in ordinary course of business (OCOB) by a banking company, NBFC or HFC.

2. Where such resolution or agreement has effect of altering AoA, annex such resolution/agreement to every copy of AoA issued thereafter.

3. In case of failure to make such filing with RoC, penalty:

Company	Rs. 10,000 + Rs. 100/day after first	Max - Rs. 2 lakh
OID	Rs. 10,000 + Rs. 100/day after first	Max - Rs. 50,000

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Section 118: Minutes of proceedings of GM, Board Meeting and Resolutions passed by Postal ballot

Company shall cause the minutes of the proceedings of the following to be prepared, signed and kept in the minute books (with pages consecutively numbered) within 30 days of conclusion thereof:

- GM of any class of SH or creditors
- board meetings or meetings of any committee thereof
- resolutions passed by postal ballot.

Prepare the minutes:

- Minutes shall contain fair and correct summary of the proceedings.
- Every company shall observe secretarial standard issued by ICSI.
- Appointments made at any meetings shall be included in minutes.
- In case of meeting of BoD or committee thereof, the minutes shall also include:
  - Names of directors present
  - where a resolution is passed, the names of dissenting dir.

- The following matters shall not be included in the minutes which, in opinion of Chairman, is:
  - reasonably be regarded as defamatory of any person
  - irrelevant or immaterial to proceedings
  - detrimental to interest of company

- Chairman shall exercise absolute discretion w.r.t. inclusion or exclusion of any matter.
- Minutes shall be evidence of the proceedings recorded therein.
- Where minutes are prepared and kept, until the contrary is proved, it shall be deemed that:
  a. Meeting has been duly called and held.
  b. Proceedings have duly taken place and resolutions duly passed.
  c. All appointments of director, KMP, etc. are valid.
- A company cannot, at its cost, advertise any report of GM unless it fully includes all particulars that are legally required in the minutes of that meeting.

Minute Books:

1. Distinct minute books shall be maintained for each type of meeting - GM, creditors meet, BM, etc.
   Note - Resoln. by postal ballot shall be recorded in minute of GM in which it is deemed to be passed

2. Minute of proceeding to be entered into such book within 30 days of conclusion of meeting.

3. In case of resolution by postal ballot, include the following in the minute books within 30 days:
   - resolution proposed
   - result of voting
   - summary of scrutinizer's report

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Signature in minute book:

- Each page of minute book - Initialed or signed.
- Last page of the record of proceeding shall be dated and signed by:

Minutes of proceedings of	Signed by:
BoD or committee meeting	By chairman of said meeting or chairman of next succeeding meeting
General Meeting	By chairman of same meeting within 30 days
	In event of death or inability of CM - a director duly authorized by the BoD
Resolution passed by postal ballot	By chairman of the BoD within 30 days
	In event of there being no CM or death or inability of CM - a director duly authorized by the BoD

Preserving (keeping) minute books:

	General Meeting	BoD or committee
Kept at	RO ~~or such place as BoD may decide~~	RO or such place as BoD may decide
Preserve	Permanently	Permanently
Custody	CS or director duly authorized by BoD	CS or director duly authorized by BoD

Punishment:

- Default under this section - Company - Rs. 25,000 and OID - Rs. 5,000
- Person found guilty of tampering with minutes - Jail upto 2 years AND Fine - Rs. 25k to Rs. 1 lakh

Sec 8 cos. (in compliance with Sec 92 and 137) are exempt from Sec 118 except that:

- they must record minutes within 30 days and
- may confirm such minutes by circulation (if AoA so provides)

Section 119: Inspection of minute-books of GM:

1. Minute books of proceeding of any GM, ~~BoD meeting~~ or of resolution by postal ballot shall be:
   a. kept at RO of the company
   b. open to inspection by any member, without any charge, during business hours, subject to imposing reasonable restriction by AoA or in GM. However, not < 2 hours in each business day are allowed for inspection.
2. On request to the company and on payment of fees as specified in AoA (max Rs. 10 per page), copy of minutes to be furnished to member within 7 working days.

A member who has requested for soft copy of minutes of any previous GM held during immediately preceding 3 FY shall be entitled to be furnished, with the same free of cost.

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3. If inspection is refused or copy of minutes is not furnished, Penalty:
Company -Rs. 25,000 ; OID - Rs. 5,000

4. In case of such refusal or default, Tribunal may, by order:
- direct an immediate inspection of the minute-books or
- direct that the copy required shall forthwith be sent to person requiring it.

Can a member authorize his friend to inspect minute book on his behalf by signing a power of authority? - No, sec 119 does not provide for authorizing anyone else to inspect the minute book.

Section 120: Maintenance and Inspection of Documents in Electronic Form:

Any document, record, registers or minutes required to be kept or allowed to be inspected under this Act, may be kept/inspected in e-form in prescribed manner.

Rules:

- Every listed company or a company having >= 1000 SH, DH and other security holders, ~~shall~~ may maintain its records under this Act in e-form.
- MD, CS or any other director or officer as BoD may decide shall be responsible for such e-records.
- Records in e-form shall be available for inspection in e-form (on payment not > Rs. 10/page)

Rule 27 and 28 as per ICAI Module has not been fully included here due to limited relevance.

Section 121: Report on AGM: ₹30/- ₹50/-

1. Every listed public company shall prepare a report on each AGM including confirmation that the meeting was called, held and conducted as per this Act .

2. Such report shall be filed with Registrar within 30 days of conclusion of AGM in Form MGT-15.

3. Failure to file such report with RoC - Penalty:
Company - Rs. 1 lakh + Rs. 500/day after the first subject to maximum Rs. 5 lakh
OID - Not less than Rs. 25,000 + Rs. 500/day after the first subject to maximum Rs. 1 lakh

Rule 31:

a. Report u/s 121 shall be in addition to minutes of GM
b. Report shall be signed & dated by CM and CS.
In case of inability of CM - Sign by 2 directors (1MD, if any) and CS

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c. Report shall contain following details: A BOLD MCQ

day, date, hour and venue of AGM (Details)	confirmation w.r.t. appt. of Chairman of AGM	no. of Members attending AGM
confirmation of Quorum	confirmation w.r.t compliance of the Act and Rules, secretarial std. made there under w.r.t. conducting AGM; (Law)	
Business transacted and result thereof	particulars w.r.t any Adjournment, postponement of meeting, change in venue	any Other relevant points

Section 122: Applicability of this chapter to OPC:

Provision of Sec 98 and 100 to 111 shall not apply to OPC.

Manner of passing resolution in case of OPC:

Any business at AGM or EGM	Business at BoD meeting
Any business to be transacted at AGM or EGM OR or SR, it shall be sufficient if, in case of OPC: • resolution is communicated by member to company, • entered in minutes-book u/s 118, • signed and dated by member and • such date shall be deemed to be the date of meeting for all the purposes under this Act	Where there is only 1 director in BoD of OPC – any business to be transacted at BoD meeting, it shall be sufficient if, in case of OPC: • the resolution by such director is entered in minute book u/s 118 and • signed and dated by such director and • such date = deemed to be the date of BoD meeting for all the purposes under this Act

Rule 30: Penalty for contravention of Rules of this chapter:

Provision Violated	Penalty
Default in compliance with any provision	Fine up to Rs. 5,000
Continuing contravention	Additional fine up to Rs. 500 per day after first
Default by the company, officers, etc.	Fine up to Rs. 5,000

The End

"The harder you work the luckier you get; the luckier you get, the harder you work"

TELEGRAM: CA NOTES COMMUNITY



Chapter 8 Declaration and Payment of Dividend

Summary of Sections

Sec.	Section Name	Sec.	Section Name
123	Declaration and Payment of Dividend	126	Right of Dividend, Rights Shares and Bonus Shares to be held in Abeyance pending registration of transfer of shares
124	Unpaid Dividend Account		
125	Investor Education and Protection Fund (IEPF)	127	Punishment for Failure to Distribute Dividends within 30 Days

Definition:

Dividend [2(35)]	Dividend includes any interim dividend

Basics of dividend:

- It is a distribution of profits.
- Final dividend is declared & approved by SH (by OR at AGM) on recommendation of Board
- The rate of dividend declared by SH shall not exceed the amount recommended by BOD.
- Dividend % is a proportion of nominal value / face value (unless AoA provides PUSC - Refer sec 51)

Classification of Dividend:

Interim Dividend vs. Final Dividend

Particulars	Interim Dividend	Final Dividend
Announcement	Announced and declared by SH BOD at any time during the FY or from closure of FY till the AGM.	Recommended by BoD and declared by shareholders at the AGM of the company
Source (adequate profit)	• Surplus in P&L or • CY profit (till preceding quarter) • ~~Free reserves~~	• CY profits • Prior years undistributed profit (P&L or free reserve).
In case of loss	Max interim dividend - Average rate of dividend declared in last 3 FYs.	Rule 3 shall be applicable.
Revocation	Can be revoked with consent of ALL shareholders.	Once declared by SH, it cannot be revoked.

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Dividend on Preference share vs Equity Shares

Type of Share	Dividend Characteristics
Cumulative Preference Shares	• Unpaid dividend accumulates. • Arrears paid from future profits. • No equity dividend until pref. arrears fully paid.
Non-Cumulative PS (Default)	• Dividend payable only in year of profit. • No carry-forward i.e., right lapses if not declared.
Equity Shares	Dividend rate varies as per policy & available profits, after paying PSH.

Section 123: Declaration of Dividend

1, 2, 3, 7, 12, 15, 17, 18, 20, 21

1. Source of final dividend: Dividend shall be declared or paid by a company for any FY out of:

Profits for that FY (current) arrived at after providing for depreciation (Sch II)	Undistributed profits of any previous FYs after providing for dep. as per Sch II (i.e., surplus in P&L & free reserves)	Both [current + prior profits]	Money provided by CG / SG for payment of dividend as per guarantee given by the Govt

Note: While calculating profits, exclude:

- unrealised gains, notional gains, or revaluation of assets, and
- any change in carrying amount of an asset/liability on measurement at fair value.

Transfer to reserves: A company MAY, before declaration of dividend in any FY, transfer such % of its profits for that FY as it may consider appropriate to reserves of the company.

Conceptual Clarity Check:

1. Can capital reserve be used for payment of dividend? – No! Only free reserves can be used.
2. Carried over PY losses and depreciation not provided in PY has to be set off against CY profits before declaration of dividend.
3. Capital profits are not earned in normal course of business. Hence, N.A. for distribution.
4. Is it okay if a company decides not to transfer any amount to reserves before dividend? – Yes! Whether or not to transfer and what % to be trf to reserve is left to discretion of company.

2. Depreciation shall be provided in accordance with Sch II

3. Source of interim dividend:

Board may declare interim dividend during any FY or at any time from closure of FY till AGM out of:

- Surplus in the P&L account or
- Profits of the FY for which such interim dividend is sought to be declared, or
- Profits generated in the FY till the quarter preceding date of declaration of interim dividend

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Interim Dividend in case of loss in current FY:

In case the company has incurred loss during the current FY up to the end of quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate exceeding average dividends declared by company during immediately preceding 3 FYs.

No upper limit for % of interim dividend in case if there is profit in current FY. The above limit is only in case of loss.

Rule 3: Final dividend in case of inadequacy or absence of profit:

In the event of inadequacy or absence of profits in any year, company may declare dividend out of free reserves subject to the fulfilment of the following 3 conditions:

Rate shall not exceed	Total amount drawn from accumulated profits <=	Balance in reserves
Average of dividend of 3 immediately preceding FY*	1/10th of [PUSC + FR] as per latest audited FS	after such withdrawal not < 15% of PUSC as per latest audited FS
	Such amount drawn shall first be utilised to set off losses of current FY	

* This sub-rule shall not apply if a company has not declared any dividend in each of 3 preceding FY.

Note: Rule 3 conditions are not applicable to 100% Government companies.

4. Dividend shall be deposited in separate a/c with scheduled bank within 5 days from declaration.

5. Dividend shall be paid by a company only to the:
   - Registered shareholder of such share or
   - to his order or
   - to his banker and

   Dividend shall only be paid in cash (i.e., not in kind).

   [However, it does not prohibit capitalisation of profits or reserves for issuing fully paid-up bonus shares or paying up unpaid amount on partly paid up shares]

In case of Nidhis, any dividend payable in cash may be credited to account of member if not claimed within 30 days of declaration.

Conceptual Clarity Check: • Can a company issue bonus shares in lieu of dividend – No. Dividend can only be paid in cash. • Can a company pay dividend via bank? – Absolutely Yes. Cash doesn't mean hard cash. It means – Cash, cheque, dividend warrant or via any other mode. But not in kind.

6. A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares.

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- Section 8 companies are prohibited from paying any dividend to its members.
- Record date: It is the date announced by the Board for determining members who are entitled to dividend. All persons whose name is included in RoM on record date shall be entitled to dividend.

Section 124: Unpaid Dividend Account

1. Where a dividend is declared but not paid or claimed within 30 days from the date of declaration,
   - the company shall, within 7 days from the expiry of the said 30 days,
   - transfer the total unpaid or unclaimed amount of dividend to a special account (with scheduled bank) called the Unpaid Dividend Account (UDA)

2. Preparing of Statement of the Unpaid Dividend
   - Within 90 days of transferring any amount to the Unpaid Dividend Account
   - prepare a statement containing the following:
     Name | Last known address | Unpaid dividend amount
   - and place it on website and on any other website approved by CG for this purpose.

3. Payment of Interest on default

   If default is made in transferring the total amount to UDA, company shall:
   - Pay interest @12% p.a. from the date of such default
   - Interest accruing on such amount shall ensure to benefit of members in proportion to amount remaining unpaid to them.

4. Claimant shall apply to company concerned for payment of unpaid amount (prior to trf. to IEPF)

5. Transfer of unclaimed or unpaid amount to Investor Education and Protection Fund (IEPF)
   - If remains unpaid or unclaimed for 7 years from the date of such transfer
   - It shall be transferred by the company along with interest to the IEPF, and
   - A prescribed statement containing details of such transfer shall be sent to IEPF Authority &
   - Authority to issue receipt as evidence of such transfer.

6. Transfer of Shares to IEPF

   All shares in respect of which dividend has not been paid/claimed for >= 7 consecutive years shall be transferred by the company in the name of IEPF along with a statement containing such details.

   Note: any claimant of shares transferred above shall be entitled to claim such shares from IEPF with such procedure and on submission of such documents as may be prescribed.

Explanation:

In case any dividend is paid or claimed for any year during the said period of 7 consecutive years, the shares shall not be transferred to IEPF.

TELEGRAM: CA NOTES COMMUNITY

7. Punishment for Contravention of this section:

	Company	Officer in default
Penalty	Rs. 1 lakh + Rs. 500/day after first	Rs. 25,000 + Rs. 100/day
Max penalty	Rs. 10 lakh	Rs. 2 lakh

Section 125: Investor Education and Protection Fund

[Read with IEPF Authority (Accounting, Audit, Transfer and Refund) Rules, 2016]

1. The CG shall establish a Fund to be called IEPF.

2. Following amount shall be credited to the Fund:

Categories	Source of credit
Govt. Grants & donations	• Amount given by CG by way of grants after due appropriation made by Parliament for being utilised for purposes of Fund. • Donations given by CG, SGs, Cos. or any other institution for the Fund.
Transfers from UDA or earlier IEPFs	• Amount lying in UDA transferred u/s 124(5). • Amount in General Revenue A/c of CG earlier • Amount lying in old IEPF u/s 205C of the 1956 Act.
Income & Recoveries	• Interest or other income received from investments made from the Fund. • Amount received u/s 38(4) through disgorgement or disposal of securities seized from persons convicted for personation in acquisition of securities.
Shares - 90(9)	Shares held by IEPFA u/s 90(9) and all resultant benefits arising therefrom.
Unclaimed / Unpaid Amounts from Companies	• Application money for allotment of securities, due for refund. (>= 7 yrs) • Matured deposits (other than banking Cos.) [>= 7 yrs] • Matured debentures [>= 7 yrs] • Interest accrued on above amts. • Sale proceeds of fractional shares from issue of bonus shares or merger or amalgamation remaining unclaimed for >= 7 yrs. • Redemption amount of PS remaining unpaid or unclaimed for >= 7 yrs. • Any other amount as may be prescribed.

Summary da summary

Grants and donation	Amount of UDA	Old IEPF or General Revenue a/c	Interest or other income	Disgorged u/s 38(4)
Application money (>= 7 years)	Deposit or debenture + Intt. (>7 yrs)	sale proceeds of fractional shares (>=7 yrs)	Redemption of PS (>=7 yrs)	Shares held by IEPFA u/s 90(9) + Benefits thereon

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3. The Fund shall be utilised for:

a. the refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon

b. promotion of investors' education, awareness and protection;

c. distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who suffered losses due to wrong actions by any person, as per the orders made by Court which had ordered disgorgement;

d. reimbursement of legal expenses incurred in pursuing class action suits u/s 37 and 245 by members, debenture holders, or depositors as may be sanctioned by the Tribunal; and

e. any other purpose incidental thereto, in accordance with such rules as may be prescribed:

Note: Where amount had been transferred from old IEPF (1956 Act) to new IEPF (2013 Act), claimant (SH, etc.) shall be entitled to claim refund from the new IEPF.

4. Any person claiming to be entitled to such amount may apply to IEPFA for payment thereof.

IEPF Authority (as per Rules)

- IEPF authority is responsible for administration and maintenance of records of IEPF.
- IEPFA shall be constituted by CG consisting of:

Chairperson	CEO	Members not > 7
[Ex-officio - Secretary, MCA]	(appointed by CG)	(including CP and CEO)

- CG may provide to IEPFA such offices, officers, employees, etc. - as prescribed.
- IEPFA shall administer the Fund and maintain separate accounts and other relevant records in w.r.t. Fund in prescribed form after consultation with C&AG of India.
- It shall be competent for IEPFA to spend money out of Fund for carrying out the objects of IEPF.
- Accounts of the Fund shall be audited by the C&AG of India (at specified intervals). Audited accounts + audit report to be forwarded annually by IEPFA to the CG.
- Annual Report:
  a. IEPFA to prepare its annual report (each FY)
  b. Giving full account of its activities during the FY and
  c. Forward a copy thereof to the CG and
  d. CG shall cause annual report + audit report to be laid before each House of Parliament

TELEGRAM: CA NOTES COMMUNITY

126. Right to dividend, rights & bonus shares to be held in abeyance pending registration of transfer

- Notwithstanding anything contained in any other provision of this Act,
- Where any instrument of transfer of shares has been delivered to company for registration and
- Such transfer has not been registered by the company,
- Such company shall:

Transfer the dividend w.r.t. such shares to UDA account (unless the company is authorised, in writing, by registered holder to pay such dividend to transferee specified in instrument)	+	in relation to such shares, keep in abeyance any offer of right shares u/s 62(1)(a) or issue of fully paid up bonus shares

Section 127: Punishment for failure to distribute dividends

1-5-8-9-11-13-19

- Where a dividend has been declared
- But, within 30 days of such declaration, it has not been paid or warrant has not been posted, to entitled shareholder,
- Punishment shall be:

	Every Director who is knowingly a party to default	Company
Imprisonment	Extend to 2 years AND	NA
Fine	>= Rs. 1,000 per day if default continues	Simple Interest 18% p.a.

Company's duty ends on posting dividend warrant within 30 days; delay in receipt by shareholder doesn't attract penalty.

Provided that no offence under this section shall be deemed to have been committed where:

a. the dividend could not be paid by reason of the operation of any law. LADDO

b. SH has given directions to company regarding payment of dividend and those directions cannot be complied with and the same has been communicated to him
(3 conditions - Given directions + cannot comply + communicate)

c. there is a dispute regarding right to receive the dividend;

d. the dividend has been lawfully adjusted by the company against any sum due from shareholder; (for example - adjustment of calls in arrears), or

e. for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to default on part of company.

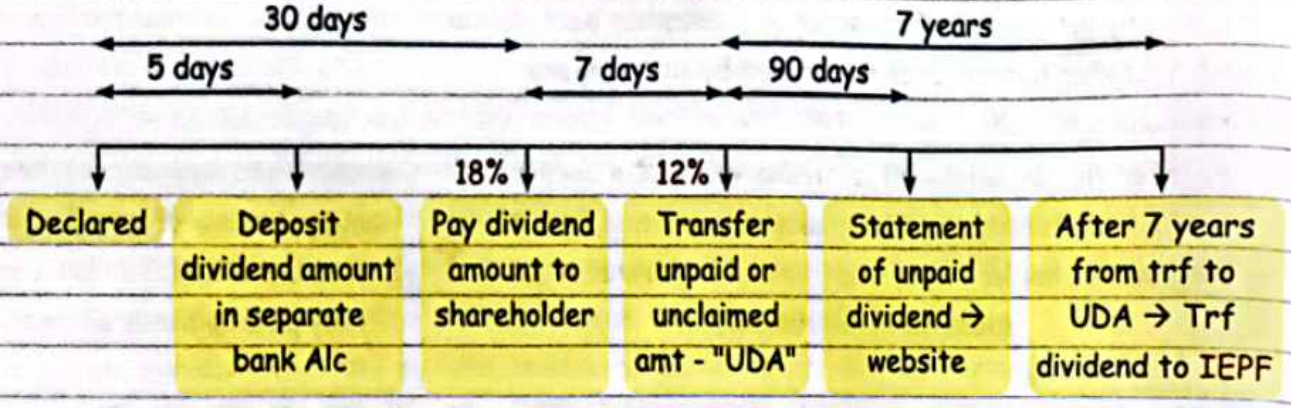
Modification for Nidhi Company (w.r.t. Sec 127):

In case of Nidhi Co., where dividend payable is <= Rs 100, it shall be sufficient compliance of sec 127 if:

- declaration of dividend is announced in local language in one local newspaper of wide circulation.
- announcement is also displayed on the notice board of the Nidhi for at least 3 months.

TELEGRAM: CA NOTES COMMUNITY

Dividend Timeline:



The End

"You can either have excuses or a CA degree, not both"

TELEGRAM: CA NOTES COMMUNITY

Summary of Forms

Form No.	Section	Purpose
		Financial Statements / Disclosures
e-AOC-1	129	Statement containing salient features of subsidiary/ associate/JV FS to be attached
e-AOC-2	134	Disclosure of related party transactions approved u/s 188 (1)
AOC-3/AOC-3A (Ind AS)	136	Statement of salient features of FS sent to members of listed companies
AOC-4	137	Filing of stand-alone FS with RoC
AOC-4 CFS	137	Filing of consolidated FS
AOC-4 NBFC (Ind AS)	137	Filing of stand-alone FS by NBFC complying with Ind AS
AOC-4 CFS NBFC (Ind AS)	137	Filing of consolidated FS by NBFC complying with Ind AS
AOC-4 XBRL	137	Mandatory XBRL filing for listed/large/Ind AS entities
		Books of Account
AOC-5	128	Notice to RoC for address of place (other than RO) where books of account are kept
		Corporate social responsibility
CSR-1	135	Registration of implementing agency (Section 8 company / trust / society)
CSR-2	135	Annual CSR report filed as addendum to AOC-4 series
		Tribunal/Authority
NCLT-1	131	Application to Tribunal for revision of FS or Board report
NFRA-1	132	Intimation to NFRA of auditor details by body corporate (other than company)
NFRA-2	132	Annual Return to be filed by specified auditor with NFRA

Summary of sections

Sec.	Section Name	Sec.	Section Name
128	Books of Account, etc.	133	CG to Prescribe AS
129	Financial Statement	134	Financial Statement, Board's Report, etc.
129A	Periodical Financial Results	135	Corporate Social Responsibility (CSR)
130	Re-opening of Accounts on Court's or Tribunal's Orders	136	Right of Members to Copies of Audited Financial Statement
131	Voluntary Revision of FS or Board's Report	137	Copy of FS to be Filed with Registrar
132	Constitution of NFRA	138	Internal Audit

TELEGRAM: CA NOTES COMMUNITY

Important Definitions:

9 "Books of account": includes records maintained in respect of:

sums of money received and expended	sales and purchase	assets and liabilities	items of cost u/s 148

"Book and Paper" and "Book or Paper": Includes: WARM DVD

Books of Accounts	Deeds	Voucher	Writings	Documents	Minutes	Registers

maintained on paper or in electronic form;

"Financial statement": As discussed in Chapter 1.

Section 128: Books of account and other relevant documents to be kept by company:

1. Company to prepare BoA: 1 1A 26 28

Every company shall prepare and keep BOA and FS at its RO every FY

- giving a true and fair view of state of the affairs
- of the company, including that of its branch office, and
- explaining all such transactions and
- such books shall be kept on accrual basis and as per the double entry system of accounting.

Note: Such BOA may be kept at such other place in India as BoD may decide. Inform RoC within 7 d of such decision by filing a notice in writing (AOC-5) giving full address of such place.

Books in e-mode:

Companies may keep books in e-mode in prescribed manner.

Rule 3: Manner of maintaining books in e-form:

- It shall remain accessible in India at all times so as to be usable for subsequent reference.
- Features of accounting software:

  Every co. using accounting software for BOA shall use such software which has these feature

recording audit trail of every transaction and	ensures that audit trail cannot be disabled, and	creating an edit log of each chang made with date of such changes.

- BoA shall be retained completely in original format & info. shall remain complete & unaltered.
- Info. received from branch shall not be altered and must depict what was originally received.
- E-record should be capable of being displayed in legible form.
- There shall be proper system for storage, retrieval, display or printout of the e-records
- E-records shall not be disposed of or rendered unusable, unless permitted by law.
- Backup of such e-records shall be kept in servers physically located in India on daily basis.

TELEGRAM: CA NOTES COMMUNITY

- Company to intimate the following to RoC on an annual basis at time of filing FS:

Name of service provider (SP)	internet protocol (IP) address of SP	location of SP*	where BOA are maintained on cloud, such address as provided by SP.

*Where SP is located outside India, name & address of person in control of BoA in India.

2. Where a company has branch office (India or outside India), it shall be deemed to have complied with provisions of BoA, if:
   - proper BOA relating to transactions effected at branch office are kept at that office and
   - proper summarized returns periodically are sent to company at its RO or other place as u/ss (1)

Note:

i. Such BoA can be maintained at branch even if such branch is outside India

ii. Rule 4 

Such summarized returns for BoA kept outside India shall be sent to RO at quarterly intervals, which shall be kept & maintained at RO & kept open to directors for inspection.

3. BOA open for inspection for directors only:

BOA maintained within India	• open for inspection at RO or other place in India • by any ~~members~~ director • during business hours
BOA maintained outside India	• Director shall furnish request to company setting out full details of the financial info. sought and period for which it is sought. • Company shall produce such info. to director within 15 days of date of receipt of the written request. • Such info shall be sought for by the director himself and not by or through his power of attorney holder or agent or representative.

Inspection of BoA of any subsy company shall be done by person authorised by a Board resolution.

4. Where inspection is done, officers & employees of company to give all assistance to such director.

5. BOA to be kept in good order:

BOA (together with vouchers relevant for entries) pertaining to the period:
- not less than 8 FY immediately preceding a FY, or
- where company had been in existence for <8 yrs, w.r.t. all preceding years

shall be kept in good order.

Note - If investigation ordered - CG may direct that BoA may be kept for longer period.

TELEGRAM: CA NOTES COMMUNITY

6. In case of contravention of such provision, following shall be responsible:

MD	WTD in charge of finance	CFO	Any other person of company charged by BoD with such duty

for a fine which shall not be less than Rs. 50,000 which may extend up to Rs. 5 lakh

Note: This section majorly talks about books of accounts and books and paper. Although, FS is mentioned in the first sub-section, but details of FS is discussed in Sec 129 below.

Section 129: Financial Statement

1. Financial statement shall:

give a true and fair view of state of affairs of the co	comply with the AS notified u/s 133, and	shall be in form as prescribed in Sch III

Exception to special companies:

- Section 129(1) shall N.A. to insurance, banking, electricity and company formed under special Act
- If matters not required to be disclosed by the Act governing such company (e.g. Insurance Act IRDA, Banking Regulation Act, etc.), is not disclosed (because not required by governing Act), FS shall still be considered to be giving true and fair view.

2. BoD shall lay the FS for the FY in every AGM.

3. Consolidated FS (CFS):

Where a company has one or more subsidiaries, it shall prepare CFS (in addition to FS) in manne prescribed and it shall be laid in the AGM along with FS.

Note: Company shall also attach along with its FS, a separate statement containing the salient feature of FS of its subsidiary, associates or JV in e-Form AOC - 1.

Rule 6: Manner of Consolidation

- CFS shall be made as per the provisions of Sch III + Applicable AS (AS/Ind AS)
- However, if a company is not required to prepare CFS under the AS, it shall be sufficient if i complies with Sch III for consolidation.
- A company need not prepare CFS if all three conditions below are satisfied:
  - i. it is wholly/partially owned subsidiary of another company and
    - all its other members having been intimated in writing and
    - do not object to the company not presenting CFS
  - ii. securities are not listed or are not in the process of listing (in or outside India), and
  - iii. ultimate or intermediate holding company files CFS with RoC in compliance with applicable AS

TELEGRAM: CA NOTES COMMUNITY

4. Provisions applicable to preparation, adoption and audit of FS of holding company shall, mutatis mutandis, apply to the CFS.

5. Where FS do not comply with AS, company shall disclose in its FS:

deviation from AS | reasons for deviation | financial effects, if any, of such deviation

6. CG may, on its own or on application by cos, exempt any class of companies from complying with this section, if it is considered necessary in public interest.

7. If company contravention this section, following shall be responsible:

MD | WTD in charge of finance | CFO | Any other person of company charged by BoD with such duty

or in absence of any officer mentioned above, all directors

Punishable with - Jail up to 1 year or fine Rs. 50,000 to Rs. 5 lakhs or BOTH

Section 129A. Periodical financial results

CG may require such unlisted companies (as may be prescribed) to comply with the following:

prepare financial results on such periodical basis and in prescribed form; | to obtain approval of BoD & complete audit/limited review of such results in prescribed manner; | file copy with RoC within 30 days of completions of relevant period + fees.

Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders:

1. A company shall not re-open its BOA and not recast its FS unless:
   - An application to Court or Tribunal in this regard is made by:
     CG | Income tax authorities | SEBI | Other statutory body | Person concerned
   - And an order is made by court or Tribunal to this effect that:
     a. the relevant earlier accounts were prepared in a fraudulent manner, or
     b. the affairs of company were mismanaged - casting doubt on reliability of FS.

   Note: Court or Tribunal shall give notice to CG, ITA, SEBI, etc. and consider their representation, if any, before passing orders.

2. The accounts so revised or re-casted u/ss(1) shall be final.

3. No order shall be made u/ss (1) for re-opening of BOA relating to a period earlier than 8 FY immediately preceding current FY.

Exception: On investigation, where CG has directed to keep BOA for > 8 years, the BOA may be ordered to be re-opened within such longer period.

TELEGRAM: CA NOTES COMMUNITY

6. In case of contravention of such provision, following shall be responsible:

MD	WTD in charge of finance	CFO	Any other person of company charged by BoD with such duty

for a fine which shall not be less than Rs. 50,000 which may extend up to Rs. 5 lakh

Note: This section majorly talks about books of accounts and books and paper. Although, FS is mentioned in the first sub-section, but details of FS is discussed in Sec 129 below.

Section 129: Financial Statement

1. Financial statement shall:

give a true and fair view of state of affairs of the co	comply with the AS notified u/s 133, and	shall be in form as prescribed in Sch III

Exception to special companies:

- Section 129(1) shall N.A. to insurance, banking, electricity and company formed under special Act.
- If matters not required to be disclosed by the Act governing such company (e.g. Insurance Act, IRDA, Banking Regulation Act, etc.), is not disclosed (because not required by governing Act), FS shall still be considered to be giving true and fair view.

2. BoD shall lay the FS for the FY in every AGM.

3. Consolidated FS (CFS):

Where a company has one or more subsidiaries, it shall prepare CFS (in addition to FS) in manner prescribed and it shall be laid in the AGM along with FS.

Note: Company shall also attach along with its FS, a separate statement containing the salient features of FS of its subsidiary, associates or JV in e-Form AOC - 1.

Rule 6: Manner of Consolidation

- CFS shall be made as per the provisions of Sch III + Applicable AS (AS/Ind AS)
- However, if a company is not required to prepare CFS under the AS, it shall be sufficient if it complies with Sch III for consolidation.
- A company need not prepare CFS if all three conditions below are satisfied:
  - i. it is wholly/partially owned subsidiary of another company and
    - all its other members having been intimated in writing and
    - do not object to the company not presenting CFS
  - ii. securities are not listed or are not in the process of listing (in or outside India), and
  - iii. ultimate or intermediate holding company files CFS with RoC in compliance with applicable AS

TELEGRAM: CA NOTES COMMUNITY

Provisions applicable to preparation, adoption and audit of FS of holding company shall, mutatis mutandis, apply to the CFS.

Where FS do not comply with AS, company shall disclose in its FS:

deviation from AS | reasons for deviation | financial effects, if any, of such deviation

CG may, on its own or on application by cos, exempt any class of companies from complying with this section, if it is considered necessary in public interest.

If company contravention this section, following shall be responsible:

MD	WTD in charge of finance	CFO	Any other person of company charged by BoD with such duty

or in absence of any officer mentioned above, all directors

Punishable with - Jail up to 1 year or fine Rs. 50,000 to Rs. 5 lakhs or BOTH

Section 129A. Periodical financial results (21)

CG may require such unlisted companies (as may be prescribed) to comply with the following:

prepare financial results on such periodical basis and in prescribed form; | to obtain approval of BoD & complete audit/limited review of such results in prescribed manner; | file copy with RoC within 30 days of completions of relevant period + fees.

Section 130 - Re-opening of Accounts on Court's or Tribunal's Orders: (2)

A company shall not re-open its BOA and not recast its FS unless:

- An application to Court or Tribunal in this regard is made by:

  CG | Income tax authorities | SEBI | Other statutory body | Person concerned

- And an order is made by court or Tribunal to this effect that:

  a. the relevant earlier accounts were prepared in a fraudulent manner, or

  b. the affairs of company were mismanaged - casting doubt on reliability of FS.

Note: Court or Tribunal shall give notice to CG, ITA, SEBI, etc. and consider their representation, if any, before passing orders.

2. The accounts so revised or re-casted u/ss(1) shall be final.

3. No order shall be made u/ss (1) for re-opening of BOA relating to a period earlier than 8 FY immediately preceding current FY.

Exception: On investigation, where CG has directed to keep BOA for > 8 years, the BOA may be ordered to be re-opened within such longer period.

TELEGRAM: CA NOTES COMMUNITY

Section 131 - Voluntary Revision of FS or Board's Report (after ~~Court~~ Tribunal's approval): 3

1. If it appears to directors of a company that:

   FS do not comply with Sec 129 or BoD report do not comply with Sec 134

   they may prepare revised FS or BoD report w.r.t. any of 3 preceding FY after approval of Tribunal.

Approval of Tribunal:

- Application shall be made by the company in Form NCLT 1 within 14 days of BoD decision and
- Application shall contain following particulars:
  a. FY or period to which such accounts relates
  b. Name and details - MD, CFO, CS, Directors and officers responsible for making BoA/FS
  c. Where accounts are audited - Name and details of auditor
  d. Copy of board resolution
  e. Grounds for seeking such revision
  f. Disclose facts if majority of dir./auditor has changed immediately before application.
- Company to advertise application - At least 14 days before date of hearing.
- Tribunal to give notice to CG & ITA and consider representation before passing any order.
- Tribunal to issue notice to auditor of original FS and give OOBH.
- Tribunal to pass appropriate orders as it may deem fit.
- A certified copy of order passed by Tribunal shall be filed with RoC within 30 days of receipt.

Revision of FS in a GM after Tribunal's approval:

- On receipt of Tribunal's approval, call for a GM and notice thereof to be published in 2 newspapers.
- In such GM, revised FS, statement of directors and auditors shall be put up for consideration.
- On approval in GM, file such revised FS + statement with RoC within 30 days

Note:

- Such revised FS or report shall not be prepared or filed more than once in a FY.
- Detailed reasons for such revision shall be disclosed in Board's report in the relevant FY.

A Ltd. applied to the Tribunal in Dec 2026 for revision of FS, which was approved and revised. Later, it applied again in Mar 2027 for revision of Board's Report - It is a valid application.
The restriction of "once in a FY" applies separately to each of FS and Board's Report.
Hence, one revision of FS and one revision of BoD Report can both be made in same year.

2. **How much can you alter FS or report of previous FYs?**

Where copies of previous FS or report have been sent out to members or delivered to RoC or laid in GM, the revisions must be confined to:

- correction w.r.t. which previous FS/report do not comply with provisions of sec 129 or 134; and
- the making of any necessary consequential alternation.

TELEGRAM: CA NOTES COMMUNITY

CG may prescribe rules w.r.t. auditor's and directors' duties relating to revised FS or BoD report.

Section 132 - Constitution of National Financial Reporting Authority

CG may constitute NFRA to provide for matters w.r.t. Accounting & Auditing Standards (ASS).

Functions of NFRA: NFRA shall:

a. make recommendation to CG on formulation of accounting and auditing policies and standards for adoption by companies or their auditors,
b. monitor and enforce compliance with such AAS in prescribed manner
c. oversee quality of service of the professions associated with ensuring compliance with such AAS and suggest measures for improvement in quality of service.
d. perform such other functions as may be prescribed.

Rules: NFRA shall exercise the following function:

- Maintain records of auditors appointed in specified companies and BCs.
- Recommend AAS for CG approval. (NFRA to seek and consider ICAI's recommendation)
- Monitor and enforce compliance with such standards.
- Oversee quality of audit services and suggest measures for improvement.
- Promote awareness regarding compliance with such AAS.
- Co-operate with national & international audit regulators for ensuring adherence to standards.
- Perform any incidental or related functions necessary for carrying out the above duties.

Constitution of NFRA: NFRA shall consist of:

- Chairperson (CP): appointed by CG, having expertise in accountancy, auditing, finance or law, and
- upto 15 other members consisting of part-time & full-time members as prescribed.

Note:

1. Each division of NFRA shall be presided over by CP or full-time member authorised by CP.
2. There shall be an executive body of NFRA consisting of CP & full-time members of NFRA for efficient discharge of its functions.

Such chairperson and members shall:

give declaration to CG regarding no conflict of interest or lack of indepedence	not associate with any audit firm (or related consultancy firm) during course of such appt + 2 years after ceasing

TELEGRAM: CA NOTES COMMUNITY

Following shall be appointed as part time members of NFRA:

Position	Designation
MCA Representative	Joint Secretary (ex-officio)
CAG of India Representative	Accountant General or Principal Director (ex-officio)
RBI Representative	Executive Director (ex-officio)
SEBI Representative	Executive Director (ex-officio)
President, ICAI	Ex-officio
Chairperson, AS Board, ICAI	Ex-officio
Chairperson, AAS Board, ICAI	Ex-officio
Two experts	From the field of accountancy, auditing, finance, or law

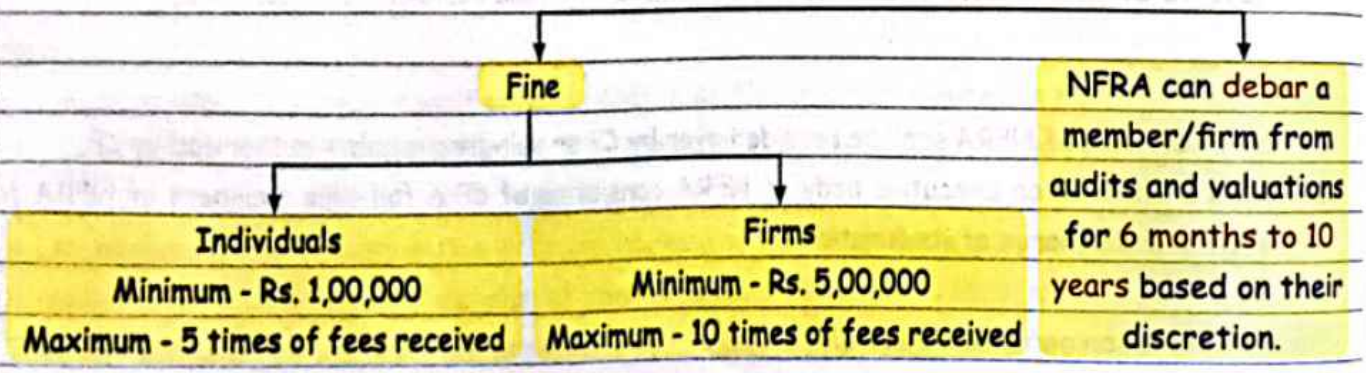
4. Powers to investigate: The NFRA shall:

- have power to investigate, either suo motu or on reference by CG into matters of professional or other misconducts under CA Act, 1949

  Note: Where NFRA has initiated such investigation, no other institute shall initiate or continue any proceedings in such matter of misconduct.

- have same power as vested in civil court:
  a. Discovery and production of books and other docs at specified place & time;
  b. summoning and enforcing the attendance of persons and examining them on oath; and
  c. inspection of any books, registers and other docs. at any place.
  d. issuing commissions for examination of witnesses or documents;

- where professional or other misconduct is proved, have the power to make order for:



Note: Any person aggrieved by such order of NFRA - may prefer an appeal before Appellate Tribunal.

Additional points of NFRA:

Head office	New Delhi
Meeting	At any place in India as it may deem fit
Books of accounts	Maintain in manner as prescribed in CG in consultation with C&AG
Audit	C&AG

TELEGRAM: CA NOTES COMMUNITY

Annual Report	Each FY, giving full account of its activities during FY
Forward to CG (annually)	• Accounts as certified by C&AG
CG to lay these reports before	• Auditor's report thereon
each House of Parliament	• Annual Report

Rule 3: Classes of companies or BC governed by NFRA:

NFRA may undertake investigation of auditors of following classes of companies and BC:

- companies whose securities are listed on any stock exchange in India or outside India;
- unlisted public companies having:

PUSC not less than 500 crores, or | T/O not less than Rs. 1,000 crore | outstanding loans, debentures and deposits of not less than Rs. 500 crores

as on the 31st of March of immediately preceding FY

Where PUSC or T/O or o/s loans fall below limit for 3 consecutive years – NFRA stops governing.

- insurance cos., banking companies, electricity companies or companies governed by special Act.
- any BC or company or person, etc. – on a reference made to NFRA by CG in public interest
- BC incorporated outside India which is subsidiary or associate of any of the above mentioned companies if the income or net worth of such subsidiary or associate company > 20% of consolidated income or net worth of such above mentioned companies,

Rule 7: Accounting Standard

To ensure compliance with Accounting Standard, NFRA:

- may review FS and request additional info. from company or auditor
- may require personal presence of officers and auditors for additional info
- shall publish its findings on non-compliance on its website unless not in public interest
- where NFRA finds violations of AS, it may further investigate.

Rule 8: Auditing Standard

To ensure compliance with auditing standard, NFRA may:

- review working papers and communications related to the audit.
- evaluate the auditor's quality control system and documentation.
- perform other testing of audit and quality control procedures as necessary.
- require auditors to report on governance practices and risk reduction measures.
- seek additional information or the personal presence of the auditor for clarifications.
- shall monitor and enforce through experienced officers or experts in audit.
- shall publish findings on non-compliances, with exceptions for public interest and confidentiality.
- send a separate report with proprietary information to the CG.
- investigate or take enforcement action if laws or standards are violated by an auditor

TELEGRAM: CA NOTES COMMUNITY

Rule 9: Overseeing quality of service:

- NFRA may instruct auditors to improve audit quality, specifying a detailed plan with time limits. Auditors must implement the required improvements and report compliance to NFRA.
- NFRA monitors auditor's progress and takes appropriate actions based on improvements made.
- NFRA may refer cases related to auditors' quality of service to the Quality Review Board or request reports from the Board.
- NFRA may seek assistance from experts for oversight and monitoring activities.

Reporting:

NFRA-1	Every BC formed in India [other than co. u/s 2(20)] shall within 15d of appointment of an auditor u/s 139, inform the particulars of the auditor so appointed to NFRA in NFRA-1.
NFRA-2	Every auditor of companies and BC governed by NFRA shall file a return on or before 30th November every year in Form NFRA-2.

If a company or its officer or auditor or any person contravenes NFRA Rules, punishable u/s 450.

Section 133: CG to prescribe Accounting Standards (AS):

CG may prescribe AS or any addendum thereto, as recommended by ICAI in consultation with and after examination of recommendations made by NFRA.

Exercising powers conferred u/s 133, MCA (on behalf of CG) has notified:

- Companies (AS) Rules, 2021; and
- Companies (Ind AS) Rules, 2015.

Section 134: Financial Statement, Board's Report, etc. 5 6 7 8 23

1. Authentication of FS:

FS (including CFS) shall be approved by BoD before it is signed on behalf of BoD by:

- Chairperson of the company (if authorized by BoD) or else - 2 directors (1MD), AND
- CEO, CFO and CS

before it is submitted to auditor for his report thereon.

In case of OPC: Sign by one director only.

2. Auditor's report shall be attached to every FS.

3. In every FS laid in GM, a Board's report shall be attached.
CG may prescribe abridged Board's report for OPC and small company.

TELEGRAM: CA NOTES COMMUNITY

In case of OPC, BoD report shall mean a report containing explanations by the Board on every qualification, reservation or adverse remark or disclaimer made by auditor in his report.

Director's responsibility statement shall state that: (AS AP Care GC Control Law)

a. in preparation of the annual accounts, the applicable AS had been followed along with proper explanation relating to material departures;

b. Directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of FY and of the P&L for that period;

c. Directors had taken proper and sufficient care for maintenance of adequate accounting records as per this Act for:
   - safeguarding the assets of the company and
   - for preventing and detecting fraud and other irregularities;

d. the Directors had prepared the annual accounts on a going concern basis; and

e. the Directors, in the case of a listed company, had laid down internal financial controls (IFC) to be followed by the company and that such IFC are adequate and were operating effectively.

   Explanation: For this clause, "IFC" means:
   - the policies and procedures adopted by the company
   - for ensuring the orderly and efficient conduct of its business,
   - including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information;

f. the Directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

6. Authentication of Board's report:
Chairman of the company (if so authorised by Board). Or else - 2 directors (1 MD) ~~CEO+CFO+CS~~
If company has only one director – such one director shall sign.

7. A signed copy of every FS (including CFS) shall be issued, circulated or published along with:
any notes annexed to or forming part of such FS | auditor's report | Board's report
i.e., FS cannot be circulated without auditor's report or Board report thereon.

8. Default u/s 134 - Company liable to penalty of Rs. 3 lakhs; OID shall be liable to penalty of Rs. 50,000

TELEGRAM: CA NOTES COMMUNITY

Matters to be included in Board Report

✓ Web address of annual return u/s 92	✓ No. of board meetings	✓ Directors's responsibility statement	✓ Details of fraud reported 143(12) other than those reportable to CG
Statement on declaration given by ID u/s 149(6)	✓ Explanation on every remarks by auditor or by CS in practice in his secretarial audit report	✓ state of company's affairs	particulars of loan, guarantee investments u/s 186
✓ material change affecting financial position between end of FY and date of report	✓ contracts with related parties u/s 188 (e-Form AOC -2)	amount proposed to be carried to any reserve	the conservation of energy, tech absorption, forex earnings and outgo as prescribed
recommended amount of dividend	risk mgt. policy and risks identified therein	Policies on director's appointment and rem. (u/s 178)	CSR policy
listed company or public company [PUSC >= Rs. 25cr] - statement indicating manner of formal annual evaluation of performance of Board, its Committees and of individual Directors		Other matters - prescribed (Rule 8)	

Rule 8: Matters to be Included in Board's Report

1. BoD's report shall be prepared based on standalone FS of the company and shall report on highlights of performance of subsy, associates and JVs and their contribution to overall performance of company

2. Additionally, BoD report shall include following information:
   - The financial summary or highlights: ✓
   - The change in nature of business, if any;
   - Details of directors or KMP - appointed or resigned during the year; ✓
   - Opinion of Board w.r.t. integrity, expertise and experience of ID appointed during the year
   - Names of cos. - become or ceased to be its subsy, JV or assoc. during the year;
   - Details w.r.t. deposits accepted during the year, remaining unpaid at the end and default.
   - Details of deposits which are not in compliance with this Act.
   - Significant orders passed by regulators/courts/tribunals impacting the going concern status; ✓
   - Adequacy of IFC w.r.t. FS
   - Disclosure whether cost records as specified by CG u/s 148 is maintained.
   - Company has constituted internal complaints committee under Sexual Harassment Act and report no. of: complaints received during the year, complaints disposed off and cases pending > 90d.
   - Application made or any proceeding pending under IBC during the year along with its status.

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- Details of difference between amount of valuation done at time of one time settlement and the valuation done while taking loan from the Banks or FI along with reasons thereof.
- Statement w.r.t. compliance with provision of Maternity Benefit Act, 1961.

✔ represents the disclosure to be made in abridged board report [OPC and small company].

Note:

1. Where above disclosures are made in FS already, such disclosures shall be referred to instead of repeating it in BoD's report.
2. Where company's policies are hosted on its website, it is sufficient compliance if Board report mentions - salient features of the policy, any changes made and web address thereof.
3. Rule 8 N.A. to OPC and small company - Rule 8A applies. [abridged]

Section 135: Corporate Social Responsibility (CSR): 10 11 12 13 14 24 25 30

[Read with Companies (Corporate Social Responsibility Policy) Rules, 2014]

Important definitions [Rule 2]:

CSR	means activities undertaken in pursuance of its statutory obligation u/s 135, but shall not include the following:
	(i) activities undertaken in normal course of business of the company.
	Exception: COVID-related R&D in vaccines, drugs etc. qualifies as CSR (20-21 to 22-23) only if done with Sch VII institutes and disclosed in Board's CSR Report.
	(ii) any activity undertaken by company outside India except training of Indian sports personnel representing state or national level or India at international level;
	(iii) contribution of any amount directly or indirectly to any political party u/s 182;
	(iv) activities benefitting employees of the company;
	(v) activities supported by cos. on sponsorship basis for marketing its products;
	(vi) activities for fulfilment of any other statutory obligations under any other law.
Admin overhead	means:
	• expenses incurred for 'general mgt. and admin' of CSR functions
	• but shall not include expenses directly incurred for designing, implementation, monitoring, and evaluation of a particular CSR project or programme
Net profit	means net profit as per its FS, but shall not include the following:
	(i) profit arising from overseas branch of company, and
	(ii) any dividend received from other companies in India complying with CSR.
	Note: Net profit to be consider as per Sec 198 i.e., Profit Before Tax.
Ongoing Project means	• a multi-year project undertaken in fulfilment of its CSR obligation having timelines <= 3 years excluding FY in which it was commenced, and
	• such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by Board (reasonable justification)

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Legal Provision:

1. Applicability of CSR committee:

Every company having:

- net worth >= Rs. 500 crore, or
- turnover >= Rs. 1,000 crore or
- net profit >= Rs. 5 crore

} During immediately preceding FY

shall constitute CSR Committee

Note:

a. CSR provisions also apply to foreign company u/s 2(42) having branch/project office in India.
b. Company having any amount in its unspent CSR account u/s 135(6) - mandatory to constitute CSR committee and comply with CSR provisions.
c. Where CSR amount to be spent <= Rs. 50 lakhs, CSR committee - N.A. BoD to discharge function of CSR committee.
d. If any of the limits above is not met for 3 consecutive FYs - Sec 135 stops to apply.

Composition of CSR committee:

Such committee shall consist of 3 or more directors [at least 1 ID (independent director)]

Company Type	CSR Committee Composition
Company is not required to appoint ID	2 or more directors (without any ID)
Private company with only 2 directors	Such 2 directors
Foreign company	At least 2 persons - one as per section 380(1)(d) & one nominated by such foreign company.

2. Board report u/s 134 to disclose the composition of CSR committee

3. Function of CSR committee:

- Formulate and recommend to board CSR policy indicating activities to be undertaken (Sch VII)
- Recommend amount of expenditure to be incurred on such activity
- Monitor CSR policy of company.

Rule 5: CSR Committee to recommend to BoD an annual action plan under the CSR Policy, covering:

a. the list of CSR projects that are approved to be undertaken in areas specified in Sch VII;
b. the manner of execution of such projects;
c. the modalities of funds utilisation and implementation schedules;
d. monitoring & reporting mechanism; and
e. details of need and impact assessment.

Note: Board may alter such plan at any time during FY, on recommendation of its CSR Committee with reasonable justification.

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4. The Board of such company shall:

a. after considering committee's recommendation, approve CSR Policy and disclose contents in its report and place it on website.

b. ensure that activities as are included in CSR Policy are undertaken by the company.

5. Amount of CSR:

The Board shall ensure that the company spends, in every FY,

- at least 2% of average net profits
- made during the 3 immediately preceding FY or

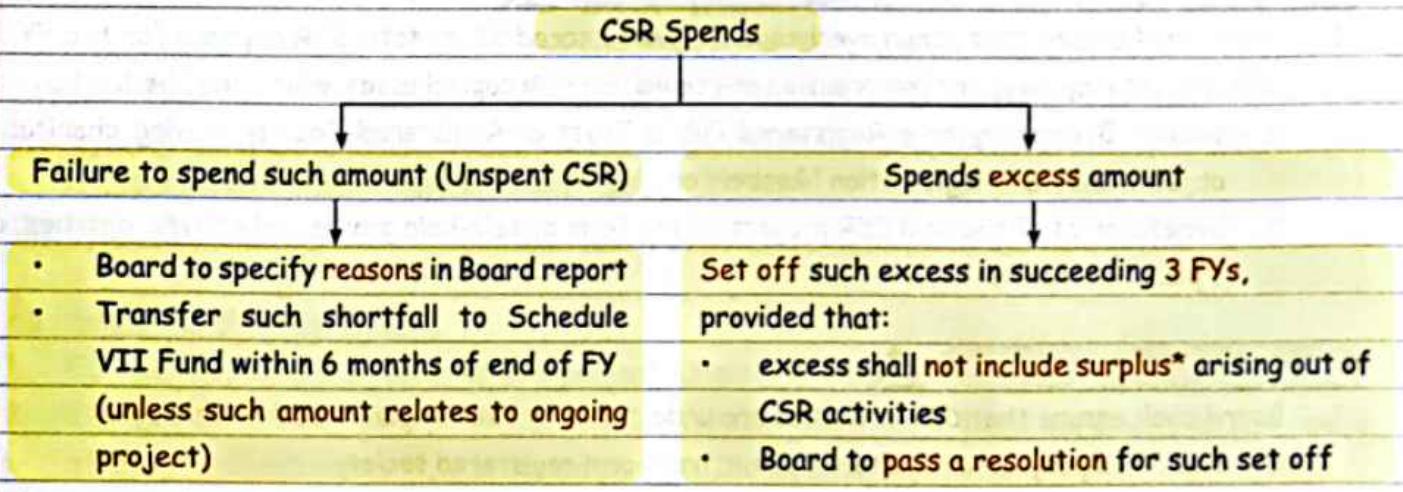
in pursuance of its CSR Policy.

Note:

a. For CSR spends, company shall give preference to the local area (of operation).

b. If company is less than 3 years old, take average net profit of all completed FYs since incorporation.

Unspent CSR amount or excess spends of CSR:



*Surplus from CSR activities:

Any surplus arising out of CSR activities shall:

- not form part of business profit of a company and
- shall be ploughed back into same project or
- transferred to unspent CSR Account and spent as per CSR policy or
- transfer to Sch VII Fund within 6 months of end of FY.

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6. Transfer CSR amount of ongoing project to special account:

Unspent CSR amount w.r.t. to any ongoing project shall be:

- transfer to "Unspent CSR account" (a special account opened with scheduled bank) within 30 days from end of FY and
- spend it as per CSR Policy within 3 FY from date of such transfer
- failing which, the company shall transfer the same to Sch VII Fund within 30 days from date of completion of 3rd FY.

7. Default u/ss (5) or (6):

Company shall be liable to penalty – Lower of:	OID shall be liable to penalty – Lower of:
• 2x of (amount required to be transferred to the Fund or unspent CSR account) or • Rs. 1 crore	• 1/10th of (amount required to be transferred to the Fund or unspent CSR account) or • Rs. 2 lakhs

Other points from Rules:

Rule 7: Admin overhead and acquisition of capital asset:

1. Board shall ensure that admin overheads shall not exceed 5% of total CSR expense for the FY.
2. CSR amount may be spent for creation or acquisition of a capital asset, which shall be held by:
   a. section 8 company or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number; or
   b. beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
   c. a public authority:

Rule 4: CSR Implementation

1. Board shall ensure that CSR activities are undertaken by the company itself or through:
   a. Sec 8 company, or a registered public trust or a registered society
      - established under Income Tax Act or
      - established by CG or SG; or
      - having an established track record of at least 3 years in undertaking similar activities
   b. any entity established under an Act of Parliament or a State legislature; or

2. Registration to undertake CSR:

Every entity who intends to undertake CSR activity shall register itself by filing CSR-1 with RoC.
(CSR-1 to be signed and submitted electronically, verified digitally by CA/CS/CMA in practice)
On submission of CSR-1, a unique CSR Registration Number shall be generated automatically.

3. A company may engage international organisations for designing, etc. of the CSR projects as per its CSR policy as well as for capacity building of their own personnel for CSR.

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4. A company may also collaborate with other companies for undertaking projects in such a manner that CSR committees of respective cos. are in a position to report separately on such project.

5. Board shall satisfy itself that funds so disbursed have been utilised for purposes as approved and CFO (or person responsible for fin. mgt.) shall certify to the effect.

6. In case of ongoing project, Board shall monitor the implementation of the project w.r.t. the approved timelines and year wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

Rule 8: CSR Reporting and Impact Assessment:

1. Board Report pertaining to any FY shall include an "Annual report on CSR".
2. In case of a foreign company, Balance Sheet u/s 381 of the Act, shall contain annual report on CSR.
3. Impact assessment:
   a. Every co. having avg CSR obligation >= Rs. 10 crores in 3 immediately preceding FYs, shall:
      - undertake impact assessment through an independent agency,
      - of their CSR projects having outlays >= Rs. 1 crore, and
      - which have been completed not less than 1 year before undertaking the impact study.
   b. Impact assessment reports - Place before BoD & annexed to the annual report on CSR.
   c. Such impact assessment cost may be considered as CSR for that FY, upto higher of:
      - 2% of total CSR exp. for that FY or
      - Rs. 50 lakhs

Additional clarifications on CSR:

1. CSR activity should be taken up as a project. One-off events such as marathon won't qualify
2. Expense incurred by foreign holding company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, it is routed through Indian subsy.
3. Contribution made to PM CARES Fund shall qualify as CSR expenditure.
4. For "Harr Ghar Tiranga" campaign, activities such as mass production of National Flag = CSR.
5. Read Sch VII from ICAI Module (not imp. from exam point of view. Just read casually)
6. Entries in Sch VII is to be interpreted liberally.

COVID related (irrelevant in today's time): Following spendings are eligible CSR activity:

- COVID-19 related activities
- Creating health infrastructure for COVID
- Establishment of medical oxygen generation and storage plants
- Mfg. and supply of oxygen concentrators, ventilators, cylinders, etc. for countering COVID-19
- COVID- 19 vaccination for persons other than the employees and their families
- Carrying out awareness campaigns or public outreach campaigns on COVID vaccination program.
- Setting up makeshift hospitals and temporary COVID Care facilities

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Section 136: Right of member to copies of audited financial statement

1. **Send FS to members:**

Copy of following docs laid before GM:	→	Shall be sent to every:	→	Not less than 21 ~~clear~~ days before the date of GM (14 days for sec 8 company)
• FS (including CFS) • auditor's report • other docs. attached to FS		• member • trustee of debenture holders • all other entitled person		

Shorter period:

If such docs are sent less than 21 days before the meeting, it shall be deemed to have been duly sent if it is so agreed by members:

If company has share capital:	If company has no SC:
Majority in numbers + 95% of PUSC	95% of total VP

Note: A company holding GM after giving shorter notice u/s 101 may also circulate FS and other documents at such shorter notice (no further approval required).

Relaxation for listed companies:

For a listed company, it shall be deemed to have complied with this provision if:

- Docs. are made available for inspection at RO during working hours 21 days before meeting,
- Statement containing salient features of such docs is sent in Form AOC-3 [AOC-3A for Ind AS] not less than 21 days before meeting unless shareholder requests for full FS.

Moreover,

- Listed companies shall also place its FS (including CFS) and other docs on its website.
- Listed companies having subsidiary shall place separate audited accounts w.r.t. each of subsidiary on its website, if any.
- Listed companies having subsidiary incorporated outside India [foreign subsidiary (F-sub)]:

where such F-sub is statutorily required to prepared CFS under law of the country of incorporation - upload such CFS on website of listed company.	where F-sub is not required to get FS audited and hence does not get FS audited - place unaudited FS on website*

*Where FS is in language other than English, place a translated copy in English on the website.

Mode and manner of circulation:

In case of all listed companies and public companies (net worth > 1 cr and turnover > 10 cr), FS may be sent:

Through e-mode	Demat form + email IDs registered or
	Other than demat form but members have consented for e-mode
Physical copies dispatched u/s 20	In all other cases

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2. Company shall allow members/DT to inspect the above documents at its RO during business hours.

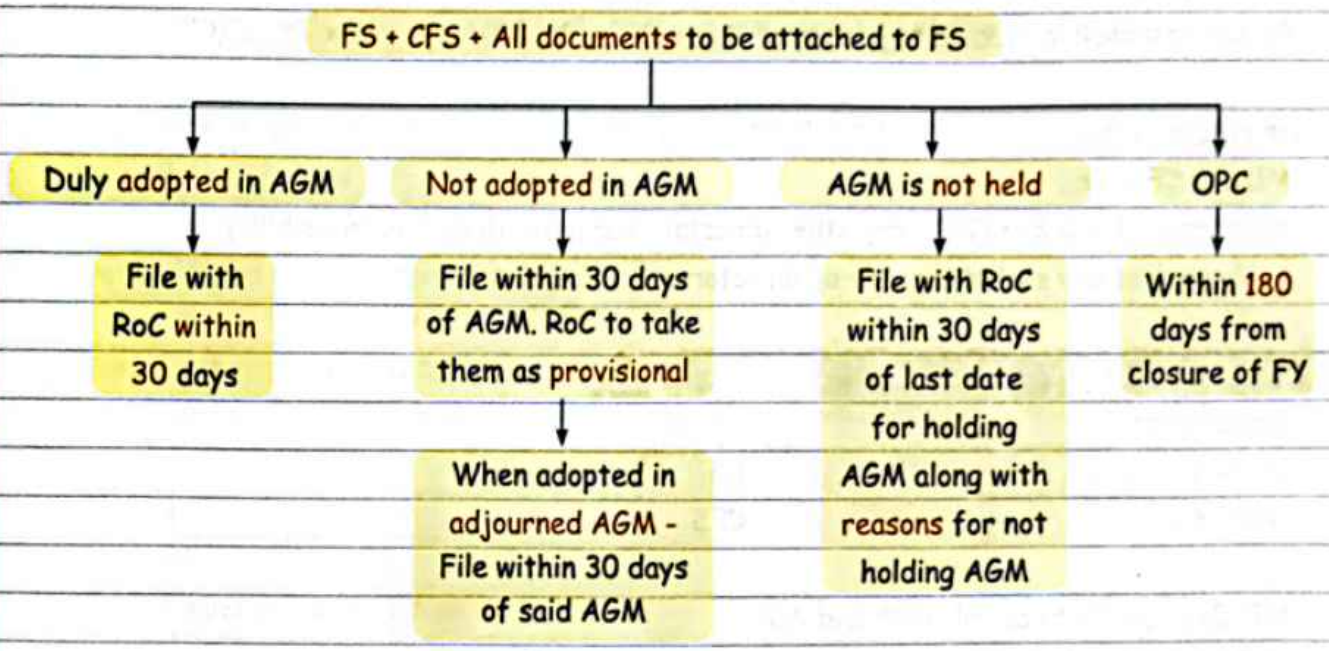
Note: Companies having subsy shall provide a copy of separate audited or unaudited FS, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

3. Default in complying with this section:

Company - Liable to penalty of Rs. 25,000 ; OID - Liable to penalty of Rs. 5,000

Exception to Nidhi company - Same as Sec 20.

Section 137: Copy of FS to be filed with RoC: '16 '20



1. Where AGM is held and FS is duly adopted at AGM:

A copy of FS (incl. CFS) along with all docs attached to FS, duly adopted at AGM shall be filed with RoC within 30 days of AGM in Form AOC-4.

[OPC: File FS duly adopted by its member within 180 days from closure of FY]

Where AGM is held but FS is not adopted in such AGM or adopted in adjourned AGM:

- Such unadopted FS shall be filed with RoC within 30 days of date of AGM.
- RoC to take it in records as provisional till FS are filed after adoption in the adjourned AGM
- Where FS gets adopted in adjourned AGM - File with RoC within 30 days of such adj. AGM

Where AGM is not held within due date

FS and all documents duly signed shall be filed with RoC within 30 days of last date before which AGM should have been held along with reasons for not holding AGM.

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Companies having foreign subsidiaries:

- Along with such FS, company shall attach accounts of its subsy incorporated outside India (foreign subsidiary) and which have not established their place of business in India.
- Format of accounts of foreign subsidiary should be as per this Act (as far as possible). Else give a statement indicating reasons for deviation.
- If such foreign subsy is not required to get FS audited under law of such country and does not get it audited – holding Indian company to file unaudited FS + declaration to such effect to RoC.
- Where such FS is in language other than English – translated copy to be sent.

2. Company fails to file copy of FS:

- Company – Liable to penalty of Rs. 10,000 + Rs. 100/days – Max. Rs. 2 lakhs
- Person responsible - Liable to penalty of Rs. 10,000 + Rs. 100/days – Max. Rs. 50,000

Person responsible –

- MD and CFO, or
- in absence of MD and CFO - any other director charged with such responsibility
- in absence of any such director – all directors.

Rule 12: Forms for filing of FS and CFS with RoC:

1. Basic forms:

AOC 4	FS
AOC 4 CFS	CFS

NBFCs required to comply with Ind AS:

AOC-4-NBFC (Ind AS)	NBFCs to file FS
AOC-4 CFS NBFC (Ind AS)	NBFCs to file CFS

Every company filing FS in above e-forms shall also file extract of:

- Board's report
- Auditor's Report (standalone and consolidated, if any)

2. AOC-4 XBRL (Extensible Business Reporting Language)

Following class of companies shall file FS and other documents in e-form AOC-4 XBRL:

company listed in India and their Indian subsy	Company having PUSC >= 5 cr.	Company having turnover >= 100 cr.	Cos. required to prepare FS as per Ind AS

Note: Once you come in purview of above limit, continue to file AOC-4 XBRL.

Along with XBRL forms, company must attach PDF copies of signed & authenticated FS (u/s 134) including Board's Report, Auditor's Report and all related documents.

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15 **Exemption:** NBFCs, HFCs and companies engaged in banking or insurance sector exempted from filing FS in XBRL format.

3. Every company covered u/s 135(1) shall furnish a CSR report in Form CSR-2 to RoC as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

Section 138: Internal Audit 17 18 19

[Read with Rule 13 of Companies (Accounts) Rules, 2014]

Who can be an internal auditor?	• Either individual or partnership firm or body corporate • CA or cost accountant, or such other professional as may be decided by the Board. • An internal auditor may or may not be an employee.
Role	To conduct internal audit of functions and activities of the company

Applicability: Following cos. are required to conduct internal audit:

a. every listed company,

b. every unlisted public company having:

PUSC >= Rs. 50 crores | T/O >= Rs. 200 crores | outstanding loans or borrowings from banks or PFIs exceeds Rs. 100 cr | outstanding deposit >= Rs. 25 crores

(PUSC / T/O) → during preceding FY

(outstanding loans / outstanding deposit) → At any point during preceding FY

c. every private company having:

T/O >= Rs. 200 crores | outstanding loans or borrowings from banks or PFIs exceeds Rs. 100 cr

If an unlisted company has outstanding loan of Rs. 100 crores exactly, in such case, internal audit is not required. Law says u/s loan, etc. exceeding Rs. 100 crores. So exact 100 crore is not included.

The End

"You either suffer the pain of sacrifices or the pain of regret. Choose your pain wisely."

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Summary of Forms

Form No.	Section	Purpose
		Appointment
ADT-1	139	Notice to RoC for appointment of auditor within 15 days of AGM.
		Removal/Resignation
ADT-2	140	Application to CG (RD) for removal of auditor before expiry of term.
ADT-3	140	Statement by auditor on resignation filed with Company and RoC (and CAG, if Govt Company) within 30 days.
		Fraud reporting
ADT-4	143	Report by auditor to CG for fraud involving ₹1 crore or more.
		NFRA compliance
NFRA-1	139	Intimation to NFRA about appointment of auditor by BC other than co.
NFRA-2	132	Annual return by auditor to NFRA.
		NCLT proceedings
NCLT-1	140	Application to NCLT when rights u/s 140 are abused by auditor or company
NCLT-9	140	Application to NCLT by CG or any person for removal

Summary of sections

Sec.	Section Name	Sec.	Section Name
139	Appointment of Auditors	144	Auditor not to Render Certain Services
140	Removal, Resignation of Auditor and Giving of Special Notice	145	Auditor to Sign Audit Reports etc.
		146	Auditor to Attend General Meeting
141	Eligibility, Qualifications and Disqualifications of Auditors	147	Punishment for Contravention
		148	CG to Specify Audit of Items of Cost in Respect of Certain Companies
142	Remuneration of Auditors		
143	Powers and Duties of Auditors and Auditing Standards		

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Section 177(1): Applicability of Audit Committee:

Following companies are required to constitute audit committee (AC):

- Listed Public Companies
- Unlisted public co having:
  a. PUSC >= 10 crore
  b. T/O >= 100 crore
  c. O/S loan, debentures, and deposits (in aggregate) > 50 crore

Note:

1. If a company ceases to fulfill conditions for 3 consecutive years - AC not applicable
2. Limits to be checked as existing on last date of latest audited FS.

Section 139: Appointment of auditors

[Read with Companies (Audit and Auditors) Rule, 2014]

1. Appointment of first auditor in case of Company (other than Govt company)
   - The first auditor of a company (other than Govt. co) shall be appointed by ~~SH~~ BoD
   - within 30 days from the date of registration of company and
   - in case of failure of BoD to appoint such auditor - Inform the members, who shall within 90 days at an EGM appoint such auditor and
   - such auditor shall hold office till conclusion of the first AGM.

2. Appointment of subsequent auditors in case of Company (other than Govt company)
   - Every company shall, at the first AGM appoint an indv. or firm (including LLP) ~~or BC~~ as an auditor,
   - who shall hold office from conclusion of that meeting till conclusion of 6th AGM and,
   - thereafter, till conclusion of every 6th AGM, and
   - the manner of selection of auditor shall be as may be prescribed.

Rule 3: Manner of selection of Auditor:

- Who will select the auditor?

In case where a company is:	Competent Authority:	Responsibility: MCQ
Required to constitute audit committee (AC)	Such AC shall	• take into consideration Qualification and experience (Q&E) of proposed auditor • whether such Q&E are Commensurate with size and requirements of the company • while considering appointment, have regard to any order or pending proceeding related to professional Misconduct before ICAI or court.
Not required to constitute such AC	the Board shall	

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- AC/Board may call for such other info. from proposed auditor as it may deem fit.
- Recommendation of name of auditor:

Where AC is constituted	Such AC shall recommend name of indv/firm as auditor to Board for consideration.
Other case	Board shall consider and recommend an indv/firm as auditors to members in AGM for appointment.

a. If Board agrees with AC recommendation - further recommend to member in AGM for appt.
b. If Board disagrees - refer back to AC for reconsideration citing reasons for disagreement
c. If AC decides not to reconsider original recommendation?

Board shall record reasons for its disagreement with AC and send its own recommendation for consideration of members in AGM; and	if Board agrees with recommendations of AC, it shall place the matter for consideration by members in AGM.

Before such appointment, the following shall be obtained from the auditor:

- Written consent of such auditor to such appointment.
- Certificate from the auditor stating that: *LET the Proceedings begin!*

indv/firm is Eligible for appt. and is not disqualified under this Act or CA Act	proposed appt. is as per the Terms provided in this Act	proposed appt. is within Limits laid down by or under authority of the Act

list of Proceedings against auditor/audit firm or any partner thereof pending w.r.t. professional matters of conduct, as disclosed in the certificate, are true and correct

Certificate shall also indicate whether auditor satisfies criteria u/s 141

After appointment of auditor: The company shall:

- inform the auditor concerned of his or its appointment, and
- file notice of appt. (ADT-1) with RoC within 15 days of meeting in which auditor is appt.

Explanation: For this Chapter, "appointment" includes reappointment.

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3. **Appointment of first auditor in case of a Govt company**

- In case of Govt. company or any other company owned/controlled (directly or indirectly) by CG or SG or partly by CG/SG,
- first auditor shall be appointed by C&AG within 60 days from date of registration of company and
- In case C&AG fails to appt. such auditor within 60 days - BoD shall appt. within next 30 days;
- and in case of failure of BoD to appoint within next 30 days - Inform the members, who shall within 60 days at an EGM appoint such auditor and
- such auditor shall hold office till conclusion of the first AGM.

4. **Appointment of subsequent auditor in case of a Govt company**

- In case of Govt. company or any other company owned/controlled (directly or indirectly) by CG/SG or partly CG/SG,
- the C&AG shall, in respect of a FY, appoint an auditor duly qualified to be appointed,
- within 180 days from commencement of FY,
- who shall hold office till conclusion of AGM.

5. **Applicability of Rotation of auditor and cooling period:**

The following companies (except OPC and small cos):

Listed company	UPC having PUSC >= 10 cr	Private Ltd. cos. having PUSC >= 50 cr	All companies having public borrowings from bank/PFI or public deposit >= 50 cr

shall not appoint or re-appoint:

a. an individual as auditor for > 1 term of 5 consecutive years; and

b. an audit firm as auditor for > 2 terms of 5 consecutive years each.

- Can a person be appointed as auditor for 4 years - No. Cannot be less than 5 years.
- Break in term for 5 continuous years shall be considered as fulfilling requirement of rotation;

Cooling period:

individual auditor who has completed his term under clause (a)

Audit firm which has completed its term under clause (b)

→ shall not be eligible for re-appointment as auditor in the same company for 5 years from the completion of his term.

- Can such auditor be appointed as internal auditor during cooling period in same company - Yes
- Can he be appointed as statutory auditor in subsidiary company - Yes.

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Restriction w.r.t. incoming auditors (audit firms):

- On date of appt., no audit firm having common partner(s) to other audit firm, whose tenure has expired immediately preceding the FY, shall be appt. as auditor of same company for 5y.

- Incoming auditor shall not be eligible if it is associated with outgoing auditor under the same network of audit firms.

  Same network = firms operating under same Brand name, Trade name or Common Control (BTC)

- If a partner, who is in charge of an audit firm and also certifies the FS, retires from said firm and joins another firm of CAs, such other firm shall also be ineligible to be appt. for 5y.

Manner of rotation of auditor:

Where company is required to constitute AC	Where AC is not required
AC shall recommend to Board – Name of indv/firm who may replace incumbent auditor on expiry of term. Board shall consider recommendation of AC.	Board shall itself consider rotation of auditors and recommend for appt. of next auditors by members in AGM.

Rotation in case of joint auditor: Where co. has appointed joint auditors, it may follow rotation in such a manner that all the joint auditors do not complete their term in the same year.

Transitional provision (not relevant now): For rotation of auditor, period for which it has held office prior to commencement of the Act shall be taken into account for calculating 5 or 10 consecutive yrs.

Note: Nothing contained in this sub-section shall prejudice the right of the company to remove an auditor or the right of the auditor to resign from such office of the company.

Rotation of partners internally in an audit firm:

Subject to the provisions of this Act, members of a company may resolve to provide that:

a. in the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or

b. the audit shall be conducted by more than one auditor.

Casual Vacancy:

Any casual vacancy in the office of an auditor shall:

Normal companies	• By BoD – 30 days [If vacancy due to resignation, appointment to be approved at GM (OR) within 3 months of BoD recommendation] • Hold office till conclusion of next AGM.
Government companies	C&AG to fill vacancy within 30 days. Failure of C&AG – BoD to fill vacancy – Next 30 days

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8. Re-appointment of retiring auditor:

A retiring auditor may be re-appointed at an AGM, if:

a. he is not disqualified for re-appointment;

b. he has not given a notice of his unwillingness to be re-appointed in writing; and

c. SR has not been passed at that meeting for:

appt. some other auditor or | providing expressly that he shall not be re-appointed.

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

10. Where a company is required to constitute AC u/s 177, all appointments, including the filling of a casual vacancy of auditor shall be made after taking into account recommendations of such AC.

However, if AC is not required u/s 177 but constituted voluntarily, Board may or may not consider its recommendation.

Section 140: Removal, resignation of auditor and giving of special notice 12 13 14 27

1. Removal of auditor:

Auditor appointed u/s 139 may be removed from his office before expiry of his term only by:

- Passing a board resolution (BR) to that effect.
- Within 30 days of BR, make an application to CG (Form ADT-2) + Fees for approval
- Within 60 days of receipt of CG approval, company to hold GM to pass SR.

Note: Before any such action, auditor shall be given reasonable OOBH. (Audi Alteram Partem i.e., principle of natural justice to give OOBH)

12 Author's Note - Same process of removal shall apply in case of first auditor also

2. Resignation of auditor:

- Auditor who has resigned shall,
- file within 30 days from date of resignation,
- a statement in Form ADT-3 with the company and Registrar and C&AG (only in case of Govt. co)
- indicating reasons and other facts as may be relevant with regard to his resignation.

3. Contravention: Auditor fails to comply with provision u/ss (2) - Liable to:

Penalty of - Lower of Rs. 50,000 or an amount equal to remuneration of auditor

In case of continuing failure - Further penalty of Rs. 500/day after the first - Max Rs. 2 lakh

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4. Special notice for removal of auditor and representation thereon by auditor

- Special notice (u/s 115) shall be required for resolution at AGM for:
  a. appointing some other person as auditor, or
  b. providing expressly that retiring auditor shall not be re-appointed,

  except where retiring auditor has completed consecutive tenure of 5/10 years.

- Upon receipt of such special notice, company shall forthwith send a copy to the retiring auditor.

- The retiring auditor may make a written representation (not exceeding reasonable length) to the company and request that it be notified to members.

- Unless the representation is received too late, the company shall:
  a. State in the notice to members that such representation has been made; and
  b. Send a copy of that representation to every member of the company to whom notice of the meeting is sent.

- If representation not sent to members
  a. Either because it was received too late, or due to company's default, the auditor may require that the representation be read out at the meeting.
  b. A copy of such representation shall also be filed with the Registrar.

- If the Tribunal (NCLT) is satisfied, on an application (NCLT-1) by the company or aggrieved auditor, that the rights conferred u/s 140 are being abused, it may order that:
  a. The representation need not be sent to members, and
  b. It need not be read out at the meeting.

5. Change of auditor by Tribunal:

- Tribunal may:

  suo motu | application by CG (NCLT-9) | application by person concerned (NCLT-9)

- if it is satisfied that auditor has (directly or indirectly):
  a. acted in a fraudulent manner or
  b. abetted or colluded in any fraud by company, its directors or officers,
- it may, by order, direct the company to change its auditors.

Instead of directing the company, Tribunal may itself change auditor:

If application is made by CG and Tribunal is satisfied that any change of the auditor is required it shall, within 15 days of receipt of such appln, make an order that:

- he shall not function as an auditor and
- the CG may appoint another auditor in his place.

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Debarring: Such auditor (indv/firm) against whom final order has been passed shall:

- not be eligible to be appt. as an auditor of any company for 5 years from passing of such order and
- the auditor shall also be liable for action u/s 447.

Note: In case of a firm, the liability shall be of the firm and that of every partner (s) who acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the co., dir. or officers.

Author's Note:
Sec 140(1) deals with removal of auditor before expiry of his term i.e., during the tenure of auditor.
Sec 140(4) applies at the time of re-appointment i.e., where the retiring auditor's term is ending and, though eligible for re-appointment, company or SHs decide not to continue with him.

Section 141: Eligibility, qualifications and disqualifications of auditors

1. Eligibility: 3 15 16 17 18 19 20 32

- A person shall be eligible for appointment as auditor only if he is a CA (in practice).
- A firm where majority (not all) of partners are CAs practicing in India, such firm may be appt.

2. Who will sign on behalf of firm: Where a firm including LLP is appointed as an auditor - only the partners who are CAs shall be authorised to act and sign on behalf of the firm.

3. Disqualification: Following persons shall not be eligible for appt. as auditor of a company:

a. Body Corporate (other than LLP)
b. an officer or employee of the company;
c. a person who is a partner or employee of an officer or employee of the company;
d. a person who, or his relative or partner:
   (i) is holding any security of CASH OR SOH.

   Exception:
   Relative may hold security in company ~~or ASH~~ of face value not > Rs. 1 lakh.
   However, if relative acquires security > Rs. 1 lakh, corrective action to maintain limits shall be taken by the auditor within 60 days of such acquisition.

   Note:
   1. Holding of all the relatives shall be taken in aggregate to check threshold.
   2. Where relative of a partner holds securities > Rs. 1 lakh, not only the partner but the firm also shall be disqualified.

   (ii) is indebted to the CASH or SOH > Rs. 5 lakh
   (iii) has given guarantee or provided security w.r.t., indebtedness of any third person to CASH or SOH > Rs. 1 lakh.

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e. a person or a firm who, whether directly or indirectly, has business relationship with CASH or SOH or associate of such holding company.

Business Relationship: Any transaction entered into for a commercial purpose, except:
(i) transactions which are in nature of prof. services permitted to be rendered by auditor;
(ii) transactions in OCOB of company at arm's length price

f. person whose relative is a director or is in employment of company as a director or KMP;

g. a person who is in full time employment elsewhere, or,
a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of > 20 cos;

While calculating the limit of 20 companies:
1. Exclude:
• OPC, Small company, Dormant company
• Private cos. (92+137) having PUSC < Rs. 100 crore
2. In case of firm, the limit of 20 shall be for each partner.

h. a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction;

i. a person who, directly or indirectly, renders any service referred to in section 144 to the company or its holding company or its subsidiary company ~~or its associate~~.

4. Where person appt. as an auditor incurs any disqualifications mentioned u/ss (3) after appt., he shall vacate his office and it shall be deemed to be a casual vacancy in the office of the auditor.

Section 142: Remuneration of auditors

1. Remuneration to be fixed at GM or in such manner as may be determined in such GM.
For first auditor – BoD to fix remuneration.
2. Remuneration shall, in addition to fee payable to an auditor, include:
   - expenses incurred in connection with such audit and
   - any facility extended to him

   but does not include any remuneration paid to him for any other service rendered at request of company.

Can engagement letter be signed without stating fees and merely stating that fees shall be decided mutually? – Yes! Such engagement letter is valid.

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Section 143: Power and duties of auditors and auditing standards

1. **Power of auditors:** Every auditor of a company shall:
   - have right of access at all times to BoA and vouchers (kept at RO or any other place) &
   - be entitled to require from officers such info & explanation (I&E) as may be necessary for performance of his duties, and
   - have right to access records of all its subsidiary or associate cos. in so far as it relates to the consolidation of its FS with that of its subsidiary and associate cos.

   Inquiry by auditor: Amongst other matters, auditor shall inquire into following matters:
   a. whether loans & advances on the basis of security have been properly secured and whether terms thereof is prejudicial to interest of company or members.
   b. whether transactions which are represented merely by book entries are prejudicial to interest of company
   c. whether assets of company which consist of shares, debentures or other securities have been sold at price < purchase price (except in case of investment company or banking company)
   d. whether loans & advances have been shown as deposits.
   e. whether personal expenses have been charged to revenue account
   f. where it is stated in books that shares have been allotted for cash:
      - whether cash is actually received, and
      - if no cash is received, whether BoA and Balance sheet is correct, regular and not misleading.

2. **Auditor Report:** Auditor shall make a report to members of the company:

Report on:	After taking into account:	Express opinion:
• Accounts examined. • Every FS laid in GM	• Provisions of this Act • AS and SAs • Matters to be included in Auditor's report.	• To the best of his info. & knowledge • A/c. and FS give true & fair view of state of co's affairs at end of FY.

3. **Auditor's report shall also state:**
   a. **Information and explanations (I&E):**
      - Whether he sought and obtained all I&E which to best of his knowledge is necessary for audit
      - If not, details thereof and effect of such info. on FS

   b. **Books of accounts:**
      - Whether, in his opinion, proper BoA as per law have been kept by co. (as per his examination)
      - Proper returns adequate for his audit have been received from branches not visited by him:

   c. **Branch auditor's report**
      - Whether any branch office audit report person other than co's auditor has been sent to him,
      - and manner in which he has dealt with it in preparing his report;

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d. Whether BS and P&L dealt with in report are in agreement with BOA and returns;

e. Whether FS comply with the Accounting Standards;

f. Observations or comments of auditors on financial transactions or matters which have any adverse effect on the functioning of the company;

g. Whether any director is disqualified u/s 164(2);

h. Any qualification, reservation or adverse remark relating to maintenance of accounts and other matters connected therewith;

i. Whether company has adequate IFC w.r.t FS in place and operating effectiveness of such controls

Reporting on IFC shall not apply to a private co (92+137):
a. Which is OPC or small company, or
b. Which has T/O < Rs. 50 crore and aggregate borrowing from bank/PFI < Rs. 25 crore

j. Such other matters as may be prescribed

Rule 11: Other matters to be included in Auditor's report:

Include their views and comments on the following matters, namely:

(i) Whether company has disclosed impact of pending litigations on its financial position in its FS;

(ii) Whether company has made provision (as per law or AS) for material foreseeable losses, if any, on long term contracts including derivative contracts;

(iii) Whether there is any delay in transferring amount to IEPF by the company.

(iv) <u>Ultimate Beneficiaries:</u>

Whether management has represented that:

a. Company has not given any funds to any person or entity (intermediary) with an understanding that such intermediary will lend (or invest or give guarantee) to any ultimate beneficiary.

b. Company has not received any funds from any person (funding party) with an understanding that the company will lend (or invest or give guarantee) to any ultimate beneficiary.

Whether, based on audit procedures, nothing has come to auditor's notice to suggest that these management representations are false or materially misstated.

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(v) whether the dividend declared or paid during the year is in compliance with sec 123.

(vi) whether company has used accounting software for maintaining BoA which:

a. has a feature of recording audit trail facility and
b. same has been operated throughout the year for all transactions recorded therein &
c. audit trail feature has not been tampered with and
d. audit trail has been preserved as per statutory requirements for record retention.

4. Where any matter included in audit report is answered in negative or with a qualification, the report shall state the reasons therefor.

5. In case of Govt company or Govt controlled companies:

- C&AG to appoint auditor u/s 139(5) or 139(7)
- Direct such auditor the manner in which accounts are to be audited, and
- Auditor to submit a copy of audit report to C&AG which will include:

Directions issued by C&AG | Action taken thereon | Impact on accounts and FS

6. C&AG may order supplementary audit.

C&AG shall, within 60 days of receipt of audit report, have right to:

a. conduct supplementary audit of FS by person as he may authorise in this behalf.
For the purpose of such audit, authorized person may require info. as C&AG may direct.

b. comment upon or supplement such audit report.
Provided that any such comments by C&AG shall be:
- sent by company to every person entitled to copies of audited FS u/s 136 and
- also be placed before AGM along with audit report.

7. C&AG may (if necessary) by an order cause test audit to be conducted of the BoA of such Govt cos.

8. Branch office:

Branch is in India:	Branch is outside India:
Where company has a branch office, BoA of branch office shall be audited either by:	Where company has a branch office outside India, BoA shall be audited either by:
• Auditor appointed for co. (Co's auditor), or	• Company's auditor, or
• By any other person qualified for appt. as auditor of company & appointed as such for branch audit	• accountant or any other person duly qualified to act as auditor as per law of that country.

Note:

- Duties and power of company's auditor w.r.t. branch audit shall be as per Sec 143(1) to (4)
- Branch auditor to prepare report on BoA of branch examined by him and send it to Co's auditor
- Co's auditor shall deal with such report in his report in manner as he considers necessary.

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9. Every auditor shall comply with the auditing standards (SAs).

10. CG may prescribe SAs as recommended by ICAI (in consultation with NFRA)

Note: Until such SAs are notified, SAs notified by ICAI shall be deemed SAs

11. CG may (in consultation with NFRA) direct that auditor's report may include specified matters.

12. Reporting of Fraud by Auditor:

- If an auditor of a company,
- in course of performance of his duties as statutory auditor,
- has reasons to believe that an offence of fraud, involving individually amount >= Rs. 1 crore,
- is being committed against the company by its officers or employees,
- the auditor shall report the matter to CG.

Report to CG as under:

Inform AC/BoD	Auditor to report matter to AC or BoD immediately (not > 2 days) of his knowledge seeking reply within 45 days
Forward to CG	On receipt of reply - Auditor to forward his report + AC/BoD reply + his comments thereon to CG within 15 days of reply.
	In case of no reply - Forward his report + note that details were forwarded to AC/BoD for which no reply received (within 15 days)
Form	The report shall be filed electronically in Form ADT - 4
Fraud < Rs. 1 cr.	Auditor shall report the matter to AC or BoD immediately (not > 2 days) of his knowledge and report the following matter [NAP]:

Nature of fraud with description	Approx. amount involved	Parties involved

Of each fraud reported above, following details shall be disclosed in BOD report:

Nature of fraud with description	Approx. amount involved	Parties involved, if remedial action not taken	remedial action taken

Above provision to apply mutatis mutandis to cost auditor & secretarial auditor.

Auditor needs to do fraud reporting appropriately in CARO report (covered in Audit)

13. Report fraud can never lead to contravention of duty (E.g., - confidentiality):

No duty of an auditor shall be regarded as having been contravened by reason of his reporting the matter u/ss (12) if it is done in good faith.

Penalty: If any auditor, cost accountant or CS in practice do not comply with provisions u/ss (12):

a. in case of a listed company, be liable to a penalty of Rs. 5 lakh; and
b. in case of any other company, be liable to a penalty of Rs. 1 lakh

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Concept clarity check:

If some of the employee did fraud of Rs. 10 crore on the company and such fraud was brought to the notice of the auditor by the management of the co., would auditor be required to report it to CG?
No. As per sec 143(12), only fraud that the auditor identified himself in course of audit is to be brought to attention of CG. Here, the auditor just need to report to AC/BoD. Not CG.

Section 144: Auditor not to render certain services. (7) (23)

An auditor appointed under this Act shall:

- provide to company only such other services as are approved by AC/BoD but
- which shall not include following services (directly or indirectly) to CASH, namely (KIS A BF OM)

accounting and book keeping services;	internal audit	design and implementation of any financial info. system	actuarial services
investment advisory and banking services	rendering of outsourced financial services	management services	others as prescribed

For this section, "directly or indirectly" shall include rendering of services by auditor:

Individual	Himself, relative, other connected person or entity in which he has significant influence
Firm	Itself, partners, parent, subsidiary or associate entity or other entity in which firm/ partner has significant influence.

- Can a statutory auditor be appointed as GST auditors or tax auditors? Absolutely, yes.
- Can a statutory auditor be appointed as cost auditors? No. Specifically restricted u/s 148.

Section 145: Auditor to sign audit reports, etc. (21)

Auditor shall sign Auditor's report or sign or certify any other doc. as per sec 141(2), and	Qualification, observation and comments on financial transactions having adverse effect on functioning of company mentioned in auditor's report shall be: • Read out before company in GM. • Open to inspection by any member

Section 146: Auditors to attend general meeting (22)

Notice related to GM to be sent to auditor	Auditor to attend GM either himself or through Auth. Rep. (qualified to be auditor) (unless exempted by company)	Auditor shall have right to be heard on business which concerns him as auditor

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Section 147: Punishment for contravention

Contravention u/s 139 to 146:

Company – Fine – Rs. 25,000 to Rs. 5 lakhs

OID – Fine – Rs. 10,000 to Rs. 1 lakh

Auditor contravenes u/s 139, 144, 145:

Fine – Rs. 25,000 to Lower of (Rs. 5 lakhs or 4x remuneration of auditor)

If such contravention is knowingly or wilfully to deceive company/SHs or crs or tax authorities:

Imprisonment – Up to 1 year AND

Fine – Rs. 50,000 to Lower of (Rs. 25 lakhs or 8x remuneration of auditor)

Where auditor is convicted u/ss (2), he is liable to:

a. refund remuneration
b. pay damages to company or stat bodies or members or creditors for loss arising out of incorrect or misleading statements made in his audit report.

CG to notify authority/officer to ensure prompt pmt of damages. Authority to report to CG after pmt.

In case of an audit firm, it is proved that partner(s) of such firm:

- acted in a fraudulent manner or
- abetted/colluded in any fraud against company

the liability (civil or criminal) as per this Act or other law, for such act shall be of partners concerned of the audit firm and of firm - jointly and severally

In case of criminal liability, punishable with only imprisonment - only concerned partners liable

Section 148: CG to specify audit of items of cost in respect of certain companies.

[Read with Companies (Cost Records and Audit) Rules 2014]

Who shall prepare cost records ?

CG may prescribe such class of companies in whose case particulars relating to utilisation of material or labour or other items of cost as may be prescribed shall be included in BoA.

Note: Prior to passing such order for companies regulated under special Act, CG shall consult the concerned regulatory body.

Rule 3: Applicability of cost records:

- Companies (including foreign company)
- engaged in production of goods or providing services as specified in
- Table A (6 regulated sectors – e.g. telecom, electricity, petroleum, etc.) and
- Table B (33 non regulated sectors)

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- having overall turnover of >= Rs. 35 crore in immediately preceding FY
- shall maintain such cost records.

Exemption: Micro or small ~~or medium~~ enterprises (per MSME Act 2006)

2. CG may order audit of such cost records:
   - If CG considers it necessary, it may order cost audit of such companies (which are already required to maintain cost records) having prescribed net-worth / turnover.
   - Audit u/s 148 is in addition to statutory audit u/s 143.

3. Cost statements shall be signed on behalf of BoD (by a director authorised by BoD) before they are submitted to cost auditor for reporting.

4. Appointment & Qualification of Cost Auditor
   - Only a Cost Accountant in practice can be appointed.
   - Includes a firm or LLP of cost accountants.

   Note:
   - Statutory auditor cannot be appointed as cost auditor, and vice-versa.
   - The cost auditor shall comply with Cost Auditing Standards issued by the ICMAI with CG's approval.

5. Rights, Duties & Obligations of Cost Auditor
   - The qualifications, disqualifications, rights, duties and obligations of the cost auditor are the same as those of a company auditor u/s 141 & 143.
   - The company must provide all assistance and facilities to the cost auditor.
   - The report of the cost auditor shall be submitted to the Board of Directors (not to members).

6. Submission of cost auditor report to CG:

   The company shall, within 30 days of receipt of the cost audit report, furnish the CG with:
   - a copy of the report, and
   - full information & explanations on every reservation or qualification contained therein.

   If, after considering the report, the CG requires further information/explanation, the company must furnish it within the period specified by the CG.

7. Default under this section:

   Company and OID - Punishable u/s 147 (1)

   Cost auditor - Punishable u/s 147 (2) to (4)

The End

"If you can dream it, you can do it.
Arise, awake and stop not till the goal is reached"

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Chapter 11 Companies Incorporated Outside India

Summary of Forms

Form No.	Section	Purpose
FC-1	380	Registration of Foreign Company in India
FC-2	380	Intimation of Alteration in Filed Documents or Particulars
FC-3	381	Filing of List of Places of Business and Related Statements
FC-4	384	Filing of Annual Return of Foreign Company

Summary of sections

Sec.	Section Name	Sec.	Section Name
379	Application of Act to FC	387	Dating of Prospectus and Particulars to be
380	Documents, etc., to be Delivered		Contained Therein
	to Registrar by Foreign Companies	388	Provisions as to Expert's Consent and Allotment
381	Accounts of Foreign Company	389	Registration of Prospectus
382	Display of Name, etc., of FC	390	Offer of Indian Depository Receipts (IDRs)
383	Service on Foreign Company	391	Application of Sections 34 to 36 and Chapter XX
384	Debentures, Annual Return,	392	Punishment for Contravention
	Registration of Charges, Books of	393	Co's Failure to Comply with Provisions of this
	Account and their Inspection		Chapter not to Affect Validity of Contracts, etc.
385	Fee for Registration of Documents	393A	Power of Central Government to Make Rules for
386	Interpretation		Chapter XXII (notified enabling provision)

Foreign Company [Sec 2(42)]: 2 4 9 10 11 14 18 19 22

Foreign company means a company or body corporate incorporated outside India which:

- has a place of business (POB) in India (whether by itself or through agent, physically or through e-mode), AND
- conducts any business activity in India in any manner.

Place of Business via electronic mode bole toh?

Carrying out following business electronically, whether or not the main server is in India or outside:

- business to business (B2B) or business to consumer (B2C) Transactions, data interchange or other digital supply transaction.
- offering to accept, inviting or accepting deposits or subscription to securities in India or from citizens of India

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- Following Services:

Fin. settlement [E.g. Paypal]	Web based mkt. [Eg. Google Ads]	Advisory and transactional service	Database services	Supply chain Mgt.

- Online services:

Telemarketing	Telecommuting	Telemedicine [Online doc consultation]	Education & info research

- All related data communication services via email, mobile devices, social media, etc.

Note: E-offering of securities (subscription or listing thereof) in IFSCs shall not be construed as an e-mode.

- Branch offices of a company incorporated outside India = POB for conducting business activities.
- Foreign company is not a company u/s 2(20) but a BC u/s 2(11) because (inc. outside India).
- If BoD of a company incorporated outside India meets and executes business decision in India, would it make it a FC? - No.

Section 379: Application of Act to foreign companies

1. Sec 380-386 and 392 and 393 shall apply to FCs (i.e., 387 to 391 - N.A.)

2. Where not less than 50% of PUSC (equity/preference) of FC is held (singly/aggregate) by:
   - one or more citizen of India
   - one or more companies or BC incorporated in India
   - one or more citizens of India and one or more cos. or BC incorporated in India,

   such foreign company shall comply with provisions of this Chapter and such other provisions of this Act as may be prescribed, in respect of its Indian business, as if it were company incorporated in India.

Conceptual Clarity:

1. An Indian citizen incorporated a company in Singapore for business in Singapore. Is it a FC? - No. Fact that founder of a co. is Indian would not impact the decision whether it is a FC or not.
2. A company is incorporated in India having 100% Foreign Shareholding. Is it a FC? - No. Company incorporated in India is a company u/s 2(20) and not FC.

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Section 380: Documents, etc., to be delivered to Registrar by foreign companies

1, 2, 6, 7, 11, 12

1. Every FC shall within 30 days of establishment of POB in India deliver the following to Registrar, Central Registration Centre, in Form FC-1 for registration:

Certified Charter Docs - MoA/ AoA or any other instrument defining constitution [Certified translation in English language]	Full Address of principal office of company (not in India)	Full Address of office of company deemed to be principal POB in India	List of all Directors/ secretary of company [Name, father's name, DOB, address, nationality, passport, PAN, DIN, etc]
Name and Address of PRI auth. to accept notices/ other docs served on co. [Auth. Representative (AR)]	Particulars of Opening/ Closing of POB in India in earlier occasions	Declaration that none of director/AR (not secretary) are convicted/debarred from formation of company/mgt. thereof - India/Abroad	Other prescribed info.

Rules: Companies (Registration of FC) Rules, 2014:

- Above application to be supported with an attested copy of:
  a. approval of RBI under FEMA and approval from other regulators if required or
  b. declaration from AR that no such approval is required
- If a FC ceases to have POB in India, it shall forthwith give notice to RoC and from date of such notice, obligation to file docs with RoC ceases, provided no other POB.

2. Alteration to documents already submitted in FC-1 :
Inform RoC, ~~ERE~~ New Delhi within 30 days of alteration in Form FC-2

Documents for registration of FCs shall be delivered to Registrar, Central Registration Centre.
All subsequent documents (including FC-2), filings and returns shall be delivered to RoC, New Delhi.

Section 381: Accounts of foreign company

3, 15, 17, 21

1. Every foreign company shall, in every calendar year,
   a. make a balance sheet (BS) and profit and loss (P&L) account in prescribed manner, and
   b. deliver a copy to RoC

2. CG may exempt any foreign company from applicability of this.

3. If such BS, P&L or documents not in English - certified translation in English to be annexed.

4. Along with above docs, send to RoC: list of POB in India as on BS date (FC-3)

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Rules: Companies (Registration of FC) Rules, 2014:

1. **Preparation of FS:**

Every FC must prepare FS of its Indian business operations for each FY as per Sch III.

The following documents or statements shall be annexed (along with FS) [as per Chap IX - Accounts]

- Statement w.r.t, Related Party Transactions (RPT)
- Statement of repatriation of profit
- Statement of transfer of funds (including dividend)

Time limit for delivery of above docs to RoC:

- within 6 months from close of FY
- RoC may on application, extend the time limit by 3 months.

2. A copy of the latest CFS of the parent foreign company shall also be filed with the RoC.

3. **Audit of such FS:**

- FCs shall get its accounts w.r.t. Indian business audited by a CA in Practice in India or Firm/LLP
- Provisions of Chapter X (Audit & Auditors) shall apply mutatis mutandis to FCs.

4. **Annual Return:**

Every FC shall prepare and file Annual Return in Form FC-4 + fees, within 60 days from last day of FY i.e., by 30th May, to RoC containing particulars as on close of FY.

Section 382: Display of name of Foreign Companies: (23)

Every foreign company shall conspicuously exhibit:

Where?	Outside of every office or POB in India	Business letters, bill-heads, letter papers, & all notices and other publications,
What?	• Name of the company • Country of incorp. • State whether liability of members of company is limited	• Name of the company • Country of incorp. • State whether liability of members of company is limited
Language?	• Letters easily legible in English, & • Language used in locality - POB is situated	• Letters easily legible in English, ~~Local Language~~

Section 383: Service on Foreign Company: (16) (22)

- Any notice or other documents required to be served on foreign company, shall be deemed to be sufficiently served if:
  a. Addressed to Authorised Representative of such company (as per Sec 380), and
  b. left at or sent by post or e-mode at such address (registered with RoC)

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Section 384: Debentures, annual return, registration of charges, books of account and their inspection

Following provision of Companies Act shall apply to Indian business of foreign companies:

Section	Provisions related to:	Applicable to Indian business of FCs
71	Debentures	Mutatis mutandis
92 & 135	Annual return and CSR	Subject to modifications as per Rules
128	Books to be kept by company.	To the extent that BoA to be kept at POB in India
Chap VI	Registration of Charges	Mutatis mutandis
Chap XIV	Insp., Inq. and Investigation	Mutatis mutandis

Section 386: Interpretation:

For the purpose of this chapter:

Certified	means certified to be a true copy or correct translation.
Director (w.r.t. FC)	includes person on whose direction or instruction, BoD is accustomed to act.
Place of Business	includes Share Transfer Office and Share Registration Office (STO & SRO)

Section 387: Dating of prospectus and particulars to be contained therein

No prospectus offering to subscribe to any securities shall be issued or circulated by a company incorporated outside India unless such prospectus is dated and signed and:

- contains particulars w.r.t., following matters:
  a. instruments defining constitution of the company,
  b. enactments or provisions under which company was incorporated.
  c. address where (i) and (ii) above or english translation thereof can be inspected
  d. date and country of incorporation
  e. whether company has established POB in India. If so, address of principal POB.
- states matter specified u/s 26

N.A. if prospectus is issued > 2 years after date of entitlement to commence business.

Compliance with above conditions cannot be waived off on any grounds.

Application forms for securities of such companies shall be issued subject to following:

- Such form is issued with prospectus which is in compliance with this Chapter &
- Such issue does not contravene provision of sec 388 (Expert's consultation)

Exception: Where such form for application is issued to a person to enter into underwriting agreement.

Sec 387 N.A. to issue of prospectus:

- relating to issue of securities to existing members or DH, (right issue) or
- offering securities which is uniform with securities previously issued and listed on RSE (except for dating of prospectus).

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Section 388: Provisions as to expert's consent and allotment: (20)

1. Where the prospectus includes expert's statement, no such prospectus shall be issued or circulated by a company incorporated outside India, unless such expert:
   - has given written consent to issue
   - has not withdrawn, before delivery of the prospectus for registration, such written consent
   - a statement appears in the prospectus that expert's written consent is given and not withdrawn.

2. A statement shall be deemed included in prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein.

Section 389: Registration of prospectus: (5) (21)

No prospectus shall be issued or circulated unless all the following conditions are satisfied:

- a certified copy has been delivered for registration to RoC
  Certification to be done by Chairperson and 2 directors (as approved by resoln. of managing body)
- Prospectus states on the face that a copy has been so delivered,
- Consent (of expert) to issue the prospectus is attached.
- Such other prescribed documents is attached

Rule: Following docs to be annexed to prospectus:

a. Expert's consent u/s 388
b. Copy of contract or memorandum for appt. of MD/Manager
c. Copy of material contracts in last 2 years not in OCOB
d. Copy of underwriting agreement
e. Copy of power of attorney if prospectus is signed by auth. agent of directors

Section 390: Offer of IDRs

Indian Depository Receipts (IDR)	means any instrument in the form of a depository receipt (DR) created by a Domestic Depository (DD) in India and authorized by a company incorporated outside India making an issue of such DR.

Legal provision:

According to section 390, the CG may make rules applicable for:

- offer of IDR,
- requirement of disclosures in prospectus w.r.t. IDR,
- manner in which IDR shall be dealt with in a depository mode and by custodian and underwriters;
- the manner of sale, transfer or transmission of IDR, by a company incorporated outside India, whether having POB in India or not.

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Rule 13:

Companies incorporated outside India cannot issue IDR without complying with specified conditions, alongside adhering to regulations by SEBI and directions from RBI.

Standard Chartered PLC was the first global company to issue IDRs in India (in 2010).

Applicability of Section 234 of the Companies Act 2013

- Section 234 deals with merger or amalgamation of an India co. with a foreign co., or vice versa.
- CG, in consultation with RBI, may create rules for such mergers and amalgamations.
- Procedure of such merger:
  a. Prior approval of RBI
  b. The T&C of scheme of merger may provide for payment of consideration to SHs of the merging company in cash or DR or partly both as may be specified in scheme of merger.

For this section, foreign co. = company or BC incorporated outside India having POB in India or not.

Section 391: Application of Sec 34 to 36 and Chap XX (Winding up)

The provisions of sections 34 to 36 (both inclusive) shall apply to:

- issue of a prospectus by a company incorporated outside India u/s 389 as they apply to prospectus issued by an Indian company;
- issue of IDR a foreign company.

2. Winding up provision shall also apply to foreign company.

Section 392: Punishment for Contravention 1

If a foreign company contravenes provision of this chapter:

	Foreign Company	OID
Fine	Rs. 1 lakh to Rs. 3 lakhs	Rs. 25,000 to Rs. 5 lakhs
Additional Fine	Rs. 50,000/day	NA
Jail	NA	-

Section 393: Failure to comply with this chapter not to affect validity of contracts: 8 15 24

- Co's failure to comply with this Chapter
- shall not affect validity or contracts, etc entered into by such company or its liability to be sued in respect thereof,
- but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or initiate any legal proceeding w.r.t. such contract until company has complied with this Chapter.

If a person not being an FC carries on business as a FC, he shall be liable for investigation u/s 210.

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Section 393A: Exemption by CG

CG may, by notification, exempt from this chap, any company incorporated outside India (whether having POB in India or not) in so far as they related to offering of securities, relating to prospectus or incidental matters in the IFSC set up u/s 18 of SEZ Act, 2005

Copy of such notification should be laid before House of Parliament (HoP).

For student's knowledge (not covered in ICAI Module)

Who shall authenticate translation (to english language) of documents?

13- Where a translation is to made within India, it shall be authenticated by:

a. an advocate, attorney or pleader entitled to appear before any High Court; or
b. an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

17- Where translation is done outside India, it shall be authenticated by signature and seal of:

a. an official having custody of the original, or
b. Notary of the country where company is incorporated

The End

"The days that break you are
the days that make you"

TELEGRAM: CA NOTES COMMUNITY



Chapter 12 General Clause Act

Introduction:

- The General Clauses Act, 1897 was enacted on 11th March, 1897 to consolidate and extend the GCA, 1868 and 1887.
- It contains 'definitions' of certain terms and general principles of interpretation.
- The GCA also comes for a rescue in the absence of clear definition in the specific Acts.
- Objects of the Act are:
  a. to shorten the language of Central Acts;
  b. to provide for uniformity of expression by giving definitions for common terms;
  c. to state explicitly certain convenient rules for interpretation of Central Acts;
  d. to guard against slips and oversights by importing certain common clauses.

Application of the General Clause Act

Act does not define any "territorial extent" clause. It applies to the Central Acts.

The Central Acts to which this Act applies are:

(a) Acts of Indian Parliament (Central Act)

(b) Acts of Dominion Legislature (15th August 1947 to 26th of January 1950)

(c) Acts passed before the Constitution by the Governor-General in Council.

Article 367 of the Constitution of India makes GCA applicable for interpretation of constitution.

Basic Understanding of Legislation

Preamble	• Expresses scope, object & purpose of an Act; reveals lawmaker's intention. • Used as aid to construction when provision is ambiguous. • Cannot override clear provisions.
Definition	• Usually in Sec 2 (but sometimes in Sec 3 or initial sections). • Words are defined in the respective Act. Sometimes, definitions are referred to other statutes. • If words are not defined or not referred – take meaning from GCA.

Section 1: Preliminary

Short Title: "This Act may be called the General Clauses Act, 1897."

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Section 3: Definitions

Act	'Act', used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions.
Affidavit	'Affidavit' shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing. The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority. Note: The terms "Affidavit", "Oath" & "Swear" have same definitions in the Act.
Central Govt	After the commencement of the Constitution - means the President
Commencement	• The day on which the Act or Regulation comes into force; • Coming into force refers to the process by which legislation comes to have legal force and effect. *State of Orissa v. Chandrasekhar Singh Bhoi* • Law comes into force only when brought into operation by legislature or competent authority. • The theory of a statute being "in operation in a constitutional sense" though it is not in fact in operation has no validity.
Document	Document shall include • any matter written, expressed or described upon any substance • by means of letters, figures or marks or by more than one of those means • which is intended to be used or which may be used, • for the purpose or recording that matter. For example, book, file, painting, inscription and even computer files are all documents. However, it excludes - Indian currency notes.
Enactment	• It includes a Regulation and any provision contained in any Act or Regulation. • It means any law made by Parliament or a State Legislature. • When only a particular section or clause of an Act is repealed, it is still treated as repeal of an enactment u/s 6.
Financial year	FY shall mean the year commencing on the first day of April.
Year	Means - A year reckoned according to the British calendar (Jan to Dec)

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Good Faith	• A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not; • The test is honesty of intention, not the absence of negligence. • Anything done honestly & without malafide motive is presumed to be in good faith. • It is a question of fact, to be decided from the circumstances of each case. • The term "good faith" has been defined differently in different enactments. • This definition of good faith does not apply to the Acts which contains special definition "good faith" and definition given in that Act to be followed. Judicial view: Maung Aung Pu v. Maung Si Maung • Court observed that Indian Contract Act, 1872 does not define good faith. • The definition given in the GCA does not expressly apply to the Contract Act. • As per civil law understanding, an act done without due care and attention cannot be said to be done in good faith. • A man of ordinary prudence is expected to act with proper care and enquiry. • Hence, an honest purchase made carelessly, without proper enquiry, is not considered to be made in good faith so as to convey a valid title.
Immovable Property	shall include: • Land, • Benefits to arise out of land, and • Things attached to the earth, or • Permanently fastened to anything attached to the earth. Comprehensive illustration:

Item / Right / Property	IP
Trees (Shantabai v. State of Bombay)	✓
Timber	✗
Forest produce - tendu leaves, timber, bamboos	✓
Soil for making bricks	✓
Right to build on and occupy land for business	✓
Right to grow new trees and obtain leaves	✓
Right of way to access from one place to another	✓
Right to drain water	✗
Machinery fixed to the soil	✓
Standing crops	✓
Insurance Policies covering immovable property	✗
Right to catch fish (Ananda Behera v. State of Orissa)	✓
[IP includes benefits to arise out of land, and fishery rights are such a benefit (profit à prendre)]	

Note: If in any Act, definition of IP is not exhaustive, GCA definition will apply.

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8	Government	shall include both the Central Government and State Government.
33	Movable Property	mean property of every description, except immovable property. Includes debts, shares, electricity, etc.
10	Imprisonment	• mean imprisonment of either description as defined in Indian Penal Code (IPC); • Sec 53 of IPC states that imprisonment is of two descriptions, namely, rigorous (with hard labor) and simple. • So, when an Act provides that an offence is punishable with imprisonment, the Court may, in its discretion, make the imprisonment rigorous or simple.
24	Official Gazette or Gazette	• Means the Gazette of India or the Official Gazette of a State. • A public journal & authorised legal document published by Dept. of Publication, Ministry of Housing & Urban Affairs; • It is authentic in content, accurate & strictly in accordance with the Govt. policies & decisions. The Gazette is printed by the GoI Press.
33	Oath /Swear	Same as Affidavit.
37	Person	Includes Company, AOP and BoI , whether incorporated or not
	Writing	Includes printing, lithography, photography and other visible modes of representing or reproducing words.

Section 4 is transition provision and hence intentionally not covered here

Section 5: Coming into operation of enactment 15

- Where any Central Act has not specifically mentioned a date for its enforcement, it comes into force on the day it receives the assent:
  a. of the Governor-General, in case of Central Acts made before the Constitution, and
  b. of the President, in case of Acts of Parliament after the Constitution.
- If specific date is mentioned in the Official Gazette, the Act shall come into force from that date.

Example:

- Companies Act, 2013 received President's assent on 29.08.2013 and was notified in OG on 30.08.2013 hence came into force on that date.
- SEBI (ICDR) (Amendment) Regulations, 2015 – notified on 14.08.2015, but came into force from 01.01.2016 as stated in the notification.

Notes:

- Where an Act empowers the government to bring any of the provisions into operation on any day which it deems fit, no Court can issue a mandamus with a view to compel the Government to bring the same into operation on a particular day.
- If a sufficient time has elapsed since an Act or any of its provisions has been passed and it has not been brought into force (operation) by the Government, the Court through a writ can direct the Government to consider the question as to when the same should begin to operate.

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- Rules come into force only when published in the Official Gazette, not from the date of their preparation.
- Law takes no cognizance of fraction of a day. It comes into force from midnight.
  Example - Law which comes into force on 1st Jan shall apply from midnight of 31st December.
- All laws are applicable prospectively unless otherwise mentioned specifically.

Section 6: Effect of Repeal

Where any Central Act or Regulation repeals another enactment, such repeal does not:

- Revive anything not in force at the time of repeal.
- Affect previous operation of the repealed enactment or anything duly done or suffered under it.
- Affect any right, privilege, obligation or liability acquired, accrued under the repealed law.
- Affect any penalty, forfeiture or punishment incurred for offences committed under repealed law.
- Affect any investigation, legal proceeding or remedy for enforcement of such right or liability.

Note: These proceedings may be continued as if the repeal had not been made.

Important Case Laws:

Kolhapur Canesugar Works Ltd. v, Union of India [SC]	Held that Sec 6 only applies to repeal and not to omissions and applies when repeal is of a Central Act or Regulation and not of a Rule.
Navrangpura Gam Dharmada Milkat Trust v. Ramtuji Ramaji	• 'Repeal' of provision is in distinction from 'deletion' of provision. • 'Repeal' ordinarily brings about complete obliteration of the provision as if it never existed. • 'Deletion' ordinarily takes effect from date of legislature effecting the said deletion, never to effect total wiping out of the provision.
State of U.P. v. Hirendra Pal Singh	A repealed Act is considered as if it never existed, except for purposes saved u/s 6.

Section 6A: Repeal of Act making textual amendment in Act or Regulation

- Where any Central Act or Regulation repeal any enactment
- then such repeal shall not affect continuance of any amendment or insertion made by the enactment so repealed.

Section 7: Revival of repealed enactments

- A repealed law does not revive automatically.
- To revive it wholly or partly, the new Act must expressly state the intention to do so.

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Section 8: Construction of references to repealed enactments

- Where any Central Act repeals and re-enacts any provision of a former enactment,
- then references in any other enactment to the provision so repealed shall unless a different intention appears, be construed as references to the provision so re-enacted.

Important Case Laws:

Gauri Shankar Gaur v. State of U.P.	the Court held that each Act stands on its own. If a new law only refers to an earlier law, that reference automatically includes all future amendments or repeals of the earlier law, unless the new law specifically states otherwise.

Example:

Co. Act 1956 was repealed and re-enacted as Co. Act, 2013. In such case, every other Act which had reference to Co. Act 1956 will be construed as reference to 2013 unless different intention appears.

Under Section 115JB, Income-tax Act, 1961, book profits were to be computed as per the Company Act, 1956. After the Co. Act, 2013, Sec 8 of GCA allows reference to be read as reference to 2013.

Section 9: Commencement and termination of Time

In calculating any period of time under an Act:

- The word "from" - exclude the first day.
- The word "to" - includes the last day.

Example:

Dividend declared on 30.09.2026 - 30 days to pay is to be counted from 01.10.2026 to 30.10.2026. (First day excluded; last day included.)

Section 10: Computation of time

- Whereby any legislation or regulation,
- any act is directed to be done in any court or office on a certain day or within prescribed period
- then, if the Court or office is closed on that day or last day of the prescribed period,
- the act shall be considered as done in due time if it is done on the next day afterwards on which the Court or office is open.

Note: Even if the offices or Court are closed because of some random holiday or Sunday or Saturday or any reason, this provision will still apply.

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Section 11: Measurement of Distances (17)

Unless a different intention appears, measure in a straight line on a horizontal plane.

Example: Distance between two cities by roadways is 100 kms and by water ways 80 kms. For purpose of any Central Act under GCA, distance shall be measured in a straight line on a horizontal plane.

Section 12: Duty to be taken pro rata in enactments (34)

- Whereby any enactment, any duty of customs or excise or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandise,
- then a like duty is leviable according to the same rate on any greater or less quantity.

Section 13: Gender and number (13)-(32)

In all legislations and regulations, unless there is anything repugnant in the subject or context-

- Words importing the masculine gender shall be taken to include females, (i.e., he includes she) and
- Words in singular shall include the plural and vice versa.

Exception: Where word used conveys a specific gender, there is a presumption that provisions of GCA do not apply. For example:

1. the word 'bullocks' could not be interpreted to include 'cows'.
2. The word 'male descendants' cannot be interpreted to include females

Section 14: Power and Functionaries

Powers conferred by Central Acts may be exercised from time to time as occasion requires.

Section 15: Power to appoint includes power to appoint ex-officio

- Whereby any legislation or regulation,
- a power to appoint any person to fill any office is conferred, then unless otherwise provided,
- any such appointment, may be made either by name or by virtue of office.

Example: "The Finance Secretary shall be the ex-officio Chairperson" means whoever is the Finance Secretary automatically becomes Chairperson.

Section 16: Power to appoint to include power to suspend or dismiss (20)

- The authority having for the time being power to make the appointment
- shall also have power to suspend or dismiss any person so appointed

Example - A court that appoints a receiver can also remove him OR The Chief Justice who appoints High Court staff can also suspend or dismiss them.

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Section 17: Substitution of Functionaries

- A law may simply mention the official title of an officer (e.g., "Collector", "Registrar") to apply to whoever holds that office at the time.
- The law remains valid even if the person holding that post changes.

Section 18: Successor

- When a law relates to an office that continues forever (like a govt. department), it automatically covers its successors too.
- No need to rewrite the law each time the officeholder changes.

Section 19: Official Chiefs and subordinates

A law applicable to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior.

Section 20: Construction of orders, etc., issued under enactments

- Whereby any legislation or regulation,
- a power to issue any notification, order, scheme, rule, form, or by-law is conferred,
- then expression used in such notification, etc., shall, unless otherwise specified, have the same respective meaning as in the Act or regulation conferring power.

Example: The word Collector in Rule 4 of the Land Acquisition Rules, 1963 has the same meaning as in Section 3(c) of the Land Acquisition Act, 1894.

Section 21: Power to issue includes power to amend, vary or rescind

- Where any legislation or regulation confers the power to issue notifications, etc.,
- it shall be deemed to include power to add, to amend, vary or rescind such notifications, etc.

Note: Authority empowered to issue a notification has an undoubted power to withdraw or modify it.

Section 22: Making of rules or orders between passing and commencement of enactment

- If an Act is passed but not yet in force, any power to make rules, etc. for implementing that Act may be exercised after its passing but before its commencement.
- However, such rules or orders take effect only from the date the Act comes into force.

Note: This section is enabling and preparatory. It allows authorities to frame necessary rules in advance so the Act can start smoothly once it is notified.

Section 23: Publication for public comments:

Where the power to make rules, etc. is subject to the condition that such rules shall be made after previous publication, following provision shall apply:

1. Authority having power shall publish a draft of the proposed rules, etc. for the information of persons likely to be affected thereby (publish in manner prescribed)

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2. Along with the draft, publish a notice specifying a date on or after which the draft will be taken into consideration.
3. Authority having power shall consider any objection or suggestion which may be received from any person w.r.t. draft before the date so specified;
4. Publication of such rule, etc. in the Official Gazette shall be conclusive proof that the rule, etc., has been duly made.
(i.e., any irregularity in publication cannot be questioned after Gazette notification).

Re-publication:

- Authority may make suitable changes in the draft before final issue.
- It is not necessary for that authority to re-publish the amended form before their final issue as long as the changes made are ancillary to the earlier draft and cannot be regarded as foreign to the subject matter thereof.

Section 24: Continuation of orders etc., issued under enactments repealed and re- enacted

When a law is repealed and replaced by another, everything validly made under old law such as appointments, notifications, rules, etc. will continue to operate under new law unless stated otherwise.

If the new law is substantially the same as the old one, all old rules and notifications remain valid until they are changed or withdrawn.

However, if the new law is materially different, only those parts of the old rules that conflict with the new law will cease to apply.

Example: The Mines Act of 1923 was repealed and replaced by the Mines Act of 1952. Safety Rules made under the 1923 Act continued automatically under the 1952 Act until new rules were issued.

Section 25: Recovery of fines:

- The provision of Sec 63 to 70 of the Indian Penal Code (IPC) and
- provisions of Code of Criminal Procedure
- w.r.t issue and execution of warrants for levy of fines
- shall apply to all fines imposed under any Act, Regulation, etc., (unless otherwise specified)

Section 26: Provision as to offence punishable under two or more enactments

- Where an act or omission constitutes an offence under two or more laws,
- then offender shall be liable to be prosecuted & punished under either or any of those enactments,
- but shall not be punished twice for the same offence.

Note: As per Supreme Court, a plain reading of sec 26 shows that there is no bar to trial or conviction of an offender under 2 enactments, but there is only a bar to punishment twice for the same offence.

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Additional Points:

1. When there are 2 alternative charges in same trial, e.g., sec 409 of IPC and sec 5(2) of Prevention of Corruption Act, the fact that accused is acquitted of one of the charges will not bar his conviction on the other. [M.P. v. V.R. Agnihotri]
2. This provision applies only when 2 offences which form the subject of prosecution is the same, i.e., the ingredients which constitute the two offences are the same. If the offences under the two enactments are distinct and not identical, none of these provisions will apply.

Section 27: Meaning of service by post: 25 26 27

Where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

(i) Properly Addressing

(ii) Pre-paying, and

(iii) Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Important Case Laws:

United Commercial Bank v. Bhim Sain Makhija	If a rule specifically requires "registered post acknowledgment due," sending only by "registered post" is not proper service.
Jagdish Singh.v Natthu Singh	If a notice sent by registered post is returned marked "refused," it is deemed served.
Smt. Vandana Gulati v. Gurmeet Singh	Endorsements like "not claimed" or "not met" are enough to prove service.

Section 28 - Citation of Enactments

- Any law can be referred to by its short title, number and year, and any provision can be referred to by its section or sub-section.
- When part of another law is cited, it includes everything between the beginning and end of the portion mentioned.

Section 29 - Saving for Previous Enactments

- The interpretation rules given in the GCA apply only to laws made after it came into force and do not change the meaning of older laws that were continued or amended later.

Section 30 - Application to Ordinances

GCA also applies to Ordinances made by the President, just as it applies to Central Acts.

The End

Train like a beginner,
perform like a champion

TELEGRAM: CA NOTES COMMUNITY



Chapter 13 Interpretation of Statutes

Part 1-Introduction

Q1. What is the definition of statute?

- The term "Statute" generally refers to laws and regulations of various kinds, irrespective of the source from which they emanate.
- In India, a statute means an enacted law, i.e., law made by the Parliament or a State Legislature.
- A Bill, when passed by both Lok Sabha and Rajya Sabha and after receiving the assent of the President of India, becomes an Act of Parliament or Statute.
- Statutes are enacted or written laws, as distinguished from unenacted or unwritten laws.

Q2. Explain the meaning and essential elements of a "Document."

Document is a paper or other material thing giving information, proof, or evidence of anything

- As per Section 3(18) General Clause Act,1897, A document is any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.
- Elements of document: A document generally comprises the following four elements -
  a. Matter: Anything that contains information or evidence.
  b. Record: There must be something written, printed or expressed to make a record.
  c. Substance: The material or surface on which the matter is recorded — like paper, metal plate, etc.
  d. Means: The method used for recording — such as letters, marks, figures or symbols.

Q3. How will you interpret the term "Instrument" used in a statute? 4

- In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form.
- It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

Q4. What are Deeds?

- A deed is an instrument in writing (or other legible representation such as words on parchment or paper) which purports to effect a legal disposition.
- All deeds are instruments, though not all instruments are deeds.
- In India, no clear distinction is made between instruments and deeds.

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Q5. What do you mean by Interpretation of Statutes?

- Interpretation means ascertaining the true meaning of the words used in a statute.
- It is the process of finding out the intention of the legislature from the language of the law.
- The primary rule is to give words their natural, ordinary and grammatical meaning, unless doing so leads to absurdity.
- Courts interpret statutes to apply them correctly to the facts before them.
- Interpretation helps in removing ambiguity or confusion that may arise from the language of law.

Q6. Why is interpretation necessary in law? (36)

- Language of law is not always clear or complete.
- Same word can have different meanings in different contexts.
- Situations arise that the legislature did not foresee.
- Courts must interpret to ensure justice and consistency with the legislative intent.
- Ambiguities may arise due to:
  Vague language, Contradictions within provisions, Omissions or drafting errors, Changes in social or technological conditions
- Hence, interpretation ensures that the law keeps pace with changing times while staying true to its object.

Q7. Distinguish between Interpretation and Construction. (1)

- Interpretation is the process of finding out the true sense or meaning of the words used in a statute, whereas construction is the drawing of conclusions from subjects that lie beyond the direct expression of the text.
- When the legislature uses words having a definite meaning over time, it is presumed that such words are used in the same sense.
- Where the court adheres to the plain meaning of the language, it applies interpretation; but where the meaning is not plain, the court decides whether the wording was meant to cover the situation before it, which is construction.
- The two terms overlap each other, and it is difficult to precisely state where interpretation ends and construction begins.
- Though often used interchangeably, the terms have different connotations. Interpretation determines meaning, while construction extends or limits that meaning to fulfil legislative intent.
- Conclusions drawn by construction are within the spirit though not necessarily within the letter of the law.
- Case: Bhagwati Prasad Kedia v. C.I.T - Interpretation is the art of finding the true sense of the author's words.
- Case: State of Madras v. Gannon Dunkerly Company – Courts must give effect to the meaning of the Act as can be fairly gathered from the words used.

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Q8. What is the object of interpretation?

- The main object is to discover the intention of the legislature.
- It ensures that law is fairly and reasonably applied.
- Courts must neither add nor subtract words, only interpret what is enacted.
- The guiding principle is to make the statute effective and workable.
- *Maxim: Ut res magis valeat quam pereat* - statute must be interpreted so as to make it operative and not inoperative.

Q9. Explain the different types of interpretation.

Interpretation is broadly divided into two types:

- Literal or Grammatical Interpretation
  a. Words must be understood in their natural, ordinary and grammatical meaning.
  b. When words are clear, courts must give effect to them irrespective of consequences.
  c. This rule presumes that legislature means what it says.
- Logical or Functional Interpretation
  a. Applied when literal meaning fails to convey the true intention of the legislature.
  b. Courts interpret with reference to the object of the Act and overall context.
  c. Used to prevent absurd, unjust or inconsistent results.

Q9. What are the exceptions to Grammatical Interpretation ? 2 3

- 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole criterion allowable.
- The Court cannot take from or add to modify the letter of the law. This rule, however, is subject to some exceptions:
  a. Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature.
  In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.
  b. If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such an impasse by inferring logically the intention of the legislature.

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Part 2-Rules of interpretation

Q1. Explain the Rules of Literal Construction 9-10-19

- The Rule of Literal Construction is the cardinal rule of Construction, requiring that words must be given their natural, ordinary, and grammatical meaning, even if the result appears unfair or inconvenient.
- The rule is based on the maxim *Absoluta sententia expositore non indiget* - meaning "plain words need no explanation."
- A statute must first be understood in its natural, ordinary, or popular sense and construed according to its plain, literal, and grammatical meaning.
- When the language of the statute is clear, unambiguous and admits of only one meaning, the court shall construe the meaning of provision based on grammatical meaning.
- Grammatical interpretation is concerned with what the law says.
- Technical words are to be interpreted in their technical sense, while popular words are to be understood in their popular meaning.
- If the literal interpretation leads to absurdity, repugnancy, or inconsistency with the object or purpose of the Act, the grammatical sense may be modified or abridged only to the extent necessary to avoid such inconvenience.
- In such cases, the court may adopt a reasonable or harmonious construction to ensure the statute remains effective and consistent with legislative intent.
- *Case: Ramavtar v. Assistant Sales Tax Officer (SC)* - The Court held that betel leaves must be interpreted in their ordinary and popular sense, not by their technical or botanical meaning. Hence, their sale was liable to sales tax.

Q2. Explain the Rule of Reasonable Construction.

- The rule ensures that interpretation should lead to a sensible and reasonable meaning and not to absurdity or injustice.
- When two interpretations are possible, the one that furthers the object and policy of the Act must be preferred over one that defeats it.
- Generally, the words of a statute are to be given their ordinary grammatical meaning, but when such meaning leads to manifest absurdity or inconsistency, courts may depart from the grammatical meaning to make the enactment consistent and effective.
- Logical construction is concerned with what the law means.
- The rule is based on the Latin maxim *Interpretatio fienda est ut res magis valeat quam pereat* - meaning interpretation should make the statute operative and not ineffective.
- Courts may slightly modify the literal meaning only to the extent necessary to avoid absurdity, but not beyond that.
- This rule is also called as the Golden rule of interpretation.

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Q3. Explain the rule of harmonious construction. 10

- The Rule of Harmonious Construction applies when two provisions of a statute appear to be in conflict with each other.
- The rule requires that such provisions must be interpreted in a manner that harmonizes them and makes the enactment a consistent whole.
- The statute must be read as a whole, and all parts must be construed together to make a consistent meaning of the entire enactment.
- The intention of the legislature is that every part of the statute shall be operative, and no part should be rendered redundant or inoperative.
- If it is not possible to reconcile the provisions, the specific provision shall prevail over the general one, in accordance with the maxim "*generalia specialibus non derogant.*"

Q4. Explain the meaning and difference between the expressions "Subject to," "Notwithstanding," and "Without Prejudice."

- The expressions "subject to," "notwithstanding," and "without prejudice" are commonly used in statutes and legal documents to define the relationship between provisions.
- The term "subject to" indicates that the provision in which it occurs is subordinate to another provision. It means that the provision will yield or give way to the section referred to.

  Example - Section 13(2) of the Companies Act, 2013

  "Any change in the name of a company shall be subject to the provisions of sub-sections (2) and (3) of section 4 and shall not have effect except with the approval of the CG in writing."
- The term "notwithstanding" has the opposite effect. It means inspite of or without being affected by anything contrary contained in the referred provision. It gives the provision an overriding effect.

  Example - Section 42(11) of the Companies Act, 2013

  "(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable."
- A clause that begins with the word "notwithstanding anything", contained is called a "non-obstante" clause.
- The expression "without prejudice" signifies that an act, statement, or provision is made without affecting or compromising any existing right or claim. It is used to preserve rights while taking certain actions.

  Example - Section 4(3) of the Companies Act, 2013

  "Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains....."

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Q5. Explain the Rule in Heydon's Case or the Mischief Rule of Interpretation. 37

- The Mischief Rule, also known as the Rule in Heydon's Case (1584), directs that a statute should be interpreted to suppress the mischief and advance the remedy.
- The rule focuses on identifying the defect or mischief that existed before the enactment of the law and the remedy introduced by the legislature to cure it.
- In applying this rule, the court must consider the following four matters:
  a. What was the law before the Act was made?
  b. What was the defect or mischief for which the law did not provide?
  c. What remedy has Parliament resolved and appointed to cure the disease?
  d. What is the true reason of the remedy?
- The rule enables a purposive interpretation and prevents a narrow or technical reading that could defeat the object of the law.
- *Case: CIT v. Sodra Devi* – the Supreme Court emphasised that the mischief rule is applied to discover the real intention of the legislature and to ensure that the purpose of the statute is achieved.
- *Case: RMD Chamarbaugwalla v. Union of India (AIR 1957 SC 628)*
  Applying the Mischief Rule, the Court examined the object and history of the Prize Competition Act, 1955, and held that the mischief sought to be remedied was gambling competitions. Hence, the Act applies only to competitions of chance, not to those involving substantial skill.

Q6. Explain the Rule of Beneficial Construction. 37 38

- The Rule of Beneficial Construction is not a rule of law but a method of liberal interpretation to give effect to the intention of the legislation.
- It is applied to social welfare or remedial statutes framed to improve the condition of under-privileged or unfairly treated classes.
- Courts may give an extended or liberal meaning to words to ensure the benefit intended by the law is achieved.
- Such liberal interpretation is allowed only when two constructions are reasonably possible.
- The rule aims to advance the remedy and suppress the mischief without rewriting the statute.
- Guided by the maxim *Ut res magis valeat quam pereat* – meaning it is better for a thing to have effect than to be void.

Q7. Explain the Rule of Exceptional Construction.

- The Rule of Exceptional Construction is applied to obtain a sensible and reasonable meaning of a statute when the literal interpretation leads to absurdity or inconsistency.
- Under this rule, courts may modify or adjust the grammatical meaning of words to give effect to the true intention of the legislature.
- The word "and" is conjunctive and denotes connection or addition, while "or" is disjunctive and denotes an alternative.

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- However, to fulfil the legislative intent, "and" may be read as "or" and "or" may be read as "and."
- Similarly, "may" generally denotes permission or discretion, while "shall" denotes obligation or command.
- But in certain cases, "may" may be read as "shall," and "shall" as "may," depending on the context, purpose, and object of the statute.

Q8. Differentiate a Mandatory Provision from a Directory Provision. (18)

- The practical distinction between a mandatory and a directory provision is that when a provision is mandatory, it must be strictly observed, whereas when it is directory, substantial compliance is sufficient.
- The substance and not merely the form of the provision determines its character. An enactment framed in mandatory form may be directory in substance, and conversely, a directory form may be mandatory in effect.
- Hence, it is the substance that prevails over form, and the true intention of the legislature must be considered.
- When a provision gives a power coupled with a duty, it is generally mandatory in nature.
- Whether a provision is mandatory or directory depends on:
  a. The nature of the act to be done,
  b. The object for which it is required, and
  c. The person or class for whose benefit the power is conferred.
- The rule ensures that statutory powers are exercised purposefully and that the legislative intent is not defeated by mere procedural irregularities.

Q9. Explain the Rule of Ejusdem Generis. (28) (29)

- Meaning: The term Ejusdem Generis means "of the same kind or nature."
  When specific words of a particular class or category are followed by general words, the general words are limited to things of the same kind as those specified.
- This rule only applies when:
  a. The statute contains an enumeration of specific words.
  b. The subject of enumeration forms one class or category.
  c. The class or category is not exhausted by the enumeration.
  d. The general term follows the enumeration.
  e. There is no indication of a different legislative intent.
- Object: The rule is based on the idea that if the legislature intended the general words to be used in an unrestricted sense, there would be no need to mention specific words.
- The rule does not apply:
  a. If the preceding words are general and not specific.
  b. If the specific words are very different in nature and do not form a single category.
  c. If the context of the statute shows a contrary intention.

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d. If the general words are used to cover all possible cases, not just those of the same type.

- Judicial View: Courts apply this rule with caution – it is a rule of reason, not of law. It is used only to reconcile conflicts between specific and general terms and not to restrict clear legislative intent.

Part 3-Doctrines

Q1. Explain the Doctrine of Noscitur a Sociis or "Associate words to be understood in common sense manner". (9)

- The term 'Noscitur a Sociis' means 'it is known by its associates', i.e., the meaning of a word is to be judged by the company it keeps.
- When two or more words are susceptible of analogous meaning are coupled together, they are understood in their cognate sense, taking their color from each other.
- The more general word is restricted to a sense analogous to that of the less general word.
- The rule is wider than Ejusdem Generis and applies even when the associated words are not of one precise class.
- Case: *Commissioners v. Savoy Hotel* - it was held that fresh orange juice was not fruit juice within the expression 'manufactured beverages including fruit juices and bottled waters.
- Case: *Dr. Devendra M. Surti v. State of Gujarat*- it was held that a private dispensary was not a commercial establishment, as the term 'profession' took its color from 'businesses and 'trade'.
- Example - Full title of the Supreme Court Advocates (Practice in High Courts) Act, 1951 specify that this is an Act to authorize Advocates of the Supreme Court to practice as of right in any High Court.

Q2. Explain the Doctrine of Contemporanea Expositio. (31)

- This doctrine is based on the idea that a statute is to be interpreted according to the meaning given by contemporary authority.
- The maxim *Contemporanea Expositio est optima et fortissinia in lege* means 'contemporaneous exposition is the best and strongest in law'.
- Thus, a law should be understood in the sense in which it was understood at the time when it was enacted.
- The maxim *Optima legum interpres est consuetude* means 'custom is the best interpreter of law'.
- This doctrine applies primarily to ancient statutes and not to modern Acts.

Part 4-Internal aids to construction

Q1. Explain the significance of the Title of an Act. (12)

- The title gives a general idea of the subject-matter of the statute.
- There are two types - Short Title and Long Title.
- The short title identifies the Act, e.g., Companies Act, 2013.
- The long title describes the scope, object and purpose (SOP) of the Act.

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- Long title is a part of the Act.
- When language is ambiguous, the title may be used as an aid to interpretation.
- The title may explain the object but cannot control clear provisions.
- Case: *Aswini Kumar Ghose v/s Arabinda Bose* - The Court held that technical words must be understood in their technical sense.

2. Explain the role of the Preamble as an internal aid. (12)-(21)-(22)-
   - The preamble expresses the object, purpose and policy of the Act.
   - It acts as a key to legislative intent and may be used when words are ambiguous.
   - It cannot override clear provisions of the Act.
   - When doubt exists, the preamble helps to choose between two possible meanings.
   - If there is a conflict, the main provision prevails, not the preamble.
   - Helps determine legislative intent when words appear too general or wide.
   - Case: *Gullipoli Sowria Raj v. Bandaru Pavani* - Court interpreted the word "may" in Section 5 of the Hindu Marriage Act as mandatory, since the Preamble clearly states that the Act was enacted "to amend and codify the law relating to marriage among Hindus." Hence, a marriage between a Christian and a Hindu under this Act was held void, as it goes beyond the object and scope of preamble

3. What are Headings and Titles of a chapter? (34)-
   - Headings and titles may be referred to for construing the enactment or it parts, particularly to determine the sense of any doubtful expression under that heading.
   - They cannot control the plain meaning of the words of the enactment, though they may assist in interpretation if there is ambiguity in the section.
   - Headings may be used to know the scope of a section, just like the preamble, but they cannot control or override a section.
   - Case: *Official Assignee v. Chuni Ram* – Held that a heading cannot override the clear words of a section.

4. What is the importance of Marginal Notes? (13)-
   - Marginal notes are summaries and side notes often found at the side of a section or group of sections in an Act, for purporting to sum up the effect of that section.
   - They are not a part of the enactment, they were not present when the Act was passed in Parliament, but inserted after the Act has been so passed.
   - Hence, they are generally not an aid to construction. However, reference to marginal notes may be permissible in exceptional cases for construing a section in a statute.
   - Marginal notes appended to Articles of Constitution have been held to be part of the Constitution as passed by Constituent Assembly, and therefore have been used in construing the Articles.

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Q5. Explain the role of the Definition Clause as an internal aid to interpretation. (8)

- The legislature has power to embody in a statute the definitions of its language.
- It is common for statutes to include definitions of words and expressions used in the body of the Act.
- When a term is specifically defined, that meaning must be applied while interpreting the section, unless the context requires otherwise.
- Such a definition is called an exhaustive definition.
- The Court cannot ignore an exhaustive statutory definition and substitute its own meaning.
- Purpose of a Definition Clause:
  a. To provide a key to the proper interpretation of the enactment.
  b. To shorten the language of the statute by avoiding repetition of long phrases every time the term occurs.

Q6. Explain ambiguous definitions and definitions subject to contrary context. (30)

- Ambiguous definitions: Sometimes the definition section itself may be ambiguous, and hence it has to be interpreted in the light of other provisions of the Act and with regard to the ordinary meaning of the word defined.
  a. Such a definition is not to be read in isolation but must be understood in the context of the phrase it defines.
  b. The function of a definition is to provide accuracy and certainty to a word or phrase which would otherwise be vague or uncertain, but not to contradict or depose it altogether.
- Definitions subject to a contrary context: When a word is defined to bear a number of inclusive meanings, the sense in which the word is used in a particular provision must be ascertained from the context of the scheme of the Act, the language of the provision and the object intended to be served thereby.
- *Case: Anil Bapurao Karase v. Krishna Sahkari Sakhar Karkhana & S.M. Nilajkar v. Telecom District Manager, Karnataka* - The term "retrenchment" under the Industrial Disputes Act, 1947 was ambiguous. The Court clarified that termination of a seasonal worker after completion of work is not retrenchment, but termination of a daily wager without prior intimation that employment will end on project completion amounts to retrenchment.

Q7. How are Definition interpreted when (i) subject to context, (ii) ambiguous?

- If statute says, "unless context otherwise requires", definition is not rigid.
- Words may bear different meaning as per object and context.
- If definition ambiguous, read it with whole Act for true meaning.
- Context and purpose decide which sense applies.
- Definitions are guides, not substitutes for the text.

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8. What do you mean by Restrictive and extensive definition? / Distinguish between the use of the words "means" and "includes." 17 25

- The definition of a word or expression may either restrict its ordinary meaning or may be extensive of it.
- When a word is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive
- The meaning of the word is limited only to what is stated in the definition.
- When a word is defined to "include" such and such, the definition is prima facie extensive
- The meaning is not restricted to what is stated; it also adds to or widens the ordinary meaning.
- If a word is defined as "means and includes", the definition is considered exhaustive.
- If a word is defined as "to apply to and include", the definition is understood as extensive.
- Example: The word "any" indicates wide meaning and excludes limitation in its use.
- Example - If A is deemed to be B, compliance with A is in law compliance with B and contravention of A is in law contravention of B.

9. What is the role of Illustrations in a statute? 39

- Illustrations are examples added under specific sections to explain the application of the provision.
- Illustrations help in understanding the intent of law.
- They form part of the statute and have interpretative value.
- They cannot restrict the scope of the main provision but help clarify its intention.

0. What is the effect of a Proviso? 11

- A proviso is an exception or qualification to the main provision.
- It must be read along with the main section to give it full effect.
- It operates only within the field of the main provision.
- It cannot enlarge or restrict the scope of the main provision beyond its language.
- The purpose of a proviso is to remove doubts and limit the operation of the main section.
- A proviso carves out an exception to the general rule.
- *Case: Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax* - A proviso embraces only the field covered by the main provision and cannot extend beyond it.
- Example - The Privy Council held that Section 73 of the Indian Contract Act, 1872 does not allow interest as damages for mere detention of debt. It clarified that illustrations cannot override or modify the language of the section, as only the section itself forms the enactment.

1. Distinguish between a Proviso, Exception, and Saving Clause. 11

- A Proviso is used to except something out of the enactment or to qualify something stated in it, which would otherwise fall within the general scope of the section.
- The object of a proviso is to remove special cases from the general enactment and to provide for them separately.

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- An Exception Clause is intended to restrain the enacting clause to particular cases and exclude them from the general operation of the statute.
- A Saving Clause is used to preserve from destruction certain rights, remedies, or privileges that already exist before the enactment.
- As a cardinal rule of interpretation, a proviso or exception applies only to the main provision to which it is attached and carves out an exception to that provision.
- *Case: Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax* – it was held that a proviso embraces only the field covered by the main provision and cannot extend beyond it.

Q12. What is the role of an Explanation? 11 14

- An Explanation is sometimes appended to a section to clarify the meaning of the words or expressions used in that section.
- It may be added to include something within the section or to exclude something from its operation.
- The purpose of an Explanation is to harmonise with and clear up any ambiguity in the main section.
- An Explanation should not be construed to widen the ambit of the main provision.
- The meaning to be given to an Explanation depends upon its own terms and not on any presumed purpose.
- *Case: Sundaram Pillai v. Pattabiraman Fazal Ali* – Explanation should harmonise with and clarify ambiguity, not widen ambit of main provision.

Q13. What is the role of Schedules?

- Schedules form part of an Act and must be read together with the main Act for all purposes of interpretation.
- They usually contain details, forms, or procedural matters to implement the main provisions of the statute.
- The Schedule cannot override or control the language of the main enactment.
- If there is any conflict between the Schedule and the Act, the Act shall prevail.
- Schedules to the Companies Act, 2013 and the Constitution of India provide supporting details and formats to give effect to the main provisions.

Q14. What does the principle of "reading the statute as a whole" imply in the interpretation of statutes?

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- It is an elementary principle of interpretation that a statute must be read as a whole and not in isolated parts.
- The true meaning of a provision can be ascertained only by considering all its clauses together and not by interpreting one clause independently.
- Every clause and word should be interpreted harmoniously with other provisions, provided such interpretation does not do violence to the natural meaning of the words.
- The same principle applies equally to Acts and Rules framed under the authority of the legislature.
- One of the safest guides to interpret general words is to examine similar expressions in the same

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statute to determine what limitations and qualifications have been applied to them.

- If a pattern of consistent limitation or qualification is found in other parts of the statute, it serves as a strong argument for applying a similar limitation or qualification to the disputed expression.
- This rule ensures that the statute operates as a coherent whole, maintaining unity and consistency in its interpretation.
- Example - When an Act simply states that notice should be given, a verbal notice is sufficient. However, if the Act specifies that notice must be served or left with a person in a particular manner or place, it clearly implies that a written notice is required.

Part 5-External aid to construction

Q1. What are External Aids to Interpretation?

- External aids are materials outside the statute which help to find the true intention of the legislature.
- They are used when internal aids fail to provide a clear meaning.
- These aids are supplementary, not substitutes for the statutory language.
- *Case: State of West Bengal v. Union of India* - external aids may be referred to only when internal aids are insufficient.

Q2. Explain Historical Setting as an external aid to interpretation. 26

- The historical setting or background of legislation refers to the history of external circumstances which led to the enactment of a law.
- It includes social, political, and economic conditions prevailing at the time when the statute was passed.
- The history of external circumstances is of great significance in the construction of a statute, as it reveals the mischief or defect the legislature intended to remedy.
- While interpreting a statute, courts may take help from all historical facts necessary to understand the subject matter, scope, and object of the law.
- Such background assists in discovering the legislative intent and ensures that the statute is applied in harmony with its purpose.
- The rule ensures that words of a statute are read in the light of the conditions existing at the time of its enactment.

Q3. Explain the use of Dictionaries as an aid to interpretation. 20 27

- Dictionaries are used when a word is not defined in the statute.
- Courts rely on dictionary meaning to know the ordinary or popular sense of a term.
- However, dictionary meaning must be consistent with the context and subject of the Act.
- When a technical term is used, the technical meaning is preferred over the ordinary dictionary meaning.
- *In pari materia meaning* Statutes dealing with the same subject matter should be read together to ensure uniform and consistent interpretation.

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Q4. Explain the role of Usage or Custom as an external aid to interpretation. (23)

- Usage or custom is used as an external aid when the meaning of statutory language is doubtful or uncertain.
- It helps to determine the true meaning of expressions which have acquired a special or technical sense through long and consistent use.
- Usage means the way in which language has been interpreted and acted upon over a long period of time by those who are concerned with its application.
- When a legislative provision of doubtful meaning has been consistently interpreted in a particular way and that interpretation has been generally accepted by the public and authorities, courts may rely on such usage to clarify its meaning.
- This principle recognises that practical interpretation applied over time reflects the intention of the legislature.
- However, usage cannot override the clear and express language of a statute; it applies only when the wording is ambiguous.
- *Maxim: Optima legum interpres est consuetudo* - custom is best interpreter of law.
- *Maxim: Contemporanea expositio est optima et fortissini in lege* - contemporaneous exposition is strongest interpretation.

Q5. Explain the use of Foreign Decisions as an aid to interpretation. (26)

- Foreign judgments are referred to when Indian law is based on foreign statutes, or the issue involves comparative principles.
- They are persuasive, not binding, and used only when Indian law is silent.
- Courts adopt them when the language of the foreign statute is identical or when interpreting common-law principles.

Q6. Write a short note on the Interpretation of Deeds and Documents. (16)

- The primary rule is to determine what a reasonable person, acquainted with the surrounding circumstances, scope, and intent of the document, would understand by its words.
- It is inexpedient to construe one deed by reference to another, and the same word cannot have two meanings in the same document unless the context compels it.
- The Golden Rule is to ascertain the intention of the parties from all the words used in their ordinary and natural sense, considering the document as a whole.
- The circumstances in which words are used and the status or training of the parties must be taken into account, since the same words may bear different meanings for different persons.
- When a word can be understood in two senses, the meaning that gives effect to all clauses should be preferred over one that makes any clause ineffective.
- If there is a conflict between two clauses, courts must reconcile them to give effect to both. If reconciliation is impossible, the earlier clause prevails over the latter.

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SUMMARY OF MAXIMS

Absoluta sententia expositore non indigent	A plain sentence needs no explanation. When statutory language is clear and unambiguous, it must be given its ordinary meaning without referring to external aids. Foundation of the literal rule of interpretation.
Ejusdem generis	Of the same kind. When general words follow specific words forming a class, the general words take meaning from those specific ones. Example: 'Dogs, cats, and other animals' = domestic animals.
Noscitur a sociis	A word is known by the company it keeps. Ambiguous words take meaning from those surrounding them to avoid absurdity.
Ut res magis valeat quam pereat	Interpret law so that it is effective, not void. Courts prefer an interpretation that sustains validity of statute.
Interpretatio fienda est ut res magis valeat quam pereat	Interpretation must make the statute operative rather than inoperative. Courts should prefer a construction that gives effect to legislative intent and makes the law work.
Generalia specialibus non derogant	General provisions do not override special ones. In case of conflict, the specific provision prevails.
In pari materia	Statutes dealing with the same subject matter should be read together to ensure uniform and consistent interpretation.
Optima legum interpres est consuetude	Custom is best interpreter of law.
Contemporanea expositio est optimaet fortissini in lege	A statute or a document is to be interpreted by referring to the exposition it has received from contemporary authority.

The End

"Intelligence can fail, but hard work never fails"

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Chapter 14 Foreign Exchange Management Act, 1999

Short forms used in this chapter:

AP	Authorized Person	Forex	Foreign Exchange
AOB	Agency, Office or Branch	Forse	Foreign Securities
CAT	Capital Account Transaction	IC	Indian Currency
CUAT	Current Account Transaction	TC	Travellers' cheque
FC	Foreign Currency		

Purpose of the Act (Preamble):

An Act to consolidate and amend the law relating to foreign exchange with the objective of:

- facilitating external trade and payments and
- for promoting the orderly development and maintenance of forex market in India

With liberalization of Indian economy in 1991, the flow of forex into India increased thus increasing the Foreign Exchange Reserve substantially. This Act enables management of such reserves..

Enforcement of the Act:

Although RBI exercises overall control over forex transactions under FEMA, enforcement is vested in the Directorate of Enforcement (known as ED).

FERA vs FEMA:

- Foreign Exchange Regulation Act was enacted in 1947 which was later replaced with FERA, 1973.
- FEMA, 1999 was enacted and made effective w.e.f. 1st June 2000.

Difference:

	FERA	FEMA
Objective of Act	Conserve Forex	Promote and develop the forex
PRI	Based on citizenship	Based on stay in India
Strictness	Forex transaction is prohibited unless permitted	Forex transaction is permitted unless restricted
Mens-rea (guilty mind)	Presumption of existence of mens-rea	Mens-rea not presumed. Responsibility of prosecution to prove
Compounding of offence	Not allowed	All offences are compoundable

Sec 1: Applicability

- This Act extends to whole of India.
- It also applies to all AOB outside India owned or controlled by PRI.

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Sec 2: Definition

Authorised Person (AP) [Sec 2(c)]	Means: • Authorised dealer • Money changer • Off-shore banking unit • Person authorised u/s 10.
Currency [Sec 2(h)]	Includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, travellers' cheques, letters of credit, bills of exchange and promissory notes, credit cards or such other similar instruments, as notified by RBI.
Currency Notes	Means and includes cash in the form of coins and bank notes.
Export	Means: • the taking out of India to a place outside India any goods; and • provision of services from India to any person outside India.
Foreign Currency [Sec 2(m)]	Means any currency other than Indian Currency (IC)
Foreign Exchange [Sec 2(n)]	Means foreign currency (FC) and includes: • deposits, credits and balances payable in any foreign currency; • drafts, travelers' cheques, letters of credit or bills of exchange: a. expressed or drawn in IC but payable in FC; b. drawn by banks, institutions or PROI, but payable in IC.
Foreign Security [Sec 2(o)]	• any security in form of stock, shares, bond, debentures or other instrument. • denominated in FC, • and includes any securities denominated in FC but redemption or returns (interest or dividend) payable in IC.
Import	Means bringing into India any goods or services.
Transfer	Includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.
Person [Sec 2(u)]	i. an individual, ii. a HUF, iii. a company, iv. a firm v. an association of persons or body of individual vi. every artificial juridical person, and vii. any agency, office or branch owned or controlled by such person;
Person Resident outside India [Sec 2(w)]	PROI means a person who is not Resident in India
PRI [Sec 2(v)]	Defined below

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Section 2(v) - "Person Resident in India" means: 1 5 8 9 10 27 32

In case of Individual	Artificial Person
A person residing in India for more than 182 days during the course of the preceding FY but does not include:	any person or body corporate registered or incorporated in India
(A) a person who has gone out of India or who stays outside India, in either case:	↓
a. for or on taking up employment outside India, or	any AOB in India owned or controlled by a person resident outside India
b. for carrying on a business or vocation outside India, or	↓
c. for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;	a AOB outside India owned or controlled by a person resident in India
(B) a person who has come to or stays in India, in either case. However, if such person has come to or stays in India for any of the following purpose, he shall be considered as PRI (irrespective of no. of days of stay in India in preceding FY):	
a. for or on taking up employment in India, or	
b. for carrying on a business or vocation in India, or	
c. for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;	

Concept clarity check:

1. Where a student is leaving India for higher studies, RBI has clarified that they shall be treated as PROI majorly because of their intention to stay outside India for an uncertain period and the fact that they start working there to take care of their expenses.

2. Citizenship is not relevant for determining PRI or PROI

3. Residential status is not for a year. It's on a particular date (unlike Income Tax Act, 1961)

4. Is it mandatory for a person to reside in India for more than 182 days in the previous FY to be considered as PRI? - Umm, No. If he resides for <=182 days in preceding FY, but comes to India in the current year for the 3 purpose, he will become PRI in current year.

Illustration:

1. If in FY 2025-26, Mr. Z stays in India for > 182 days. On 1st June 2026, the person leaves India for higher studies. Determine residential status? From 01.04.26 to 01.06.26 - PRI. From 02.06.26 onwards - PROI (irrespective of the fact that he resides for > 182 days in preceding FY)

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2. Mr. S comes to India on 01.06.25 for visiting his parents. However, his parents fall sick and he is certain that he will not be able to return for a year. He ends up staying with them till 31.07.26. Is he a PRI in FY 26-27? No, in FY 26-27, Mr. S is PROI. Even though he resided in India for > 182 days in FY 25-26, he has not come for any of the 3 purpose and hence he is not a PRI.

Sec 3: Dealing in Foreign Exchange, etc.

No person shall:

Deal in or transfer Forex or Forse to any person other than AP	make any payment to/for credit of PROI	Receive any payment from PROI otherwise through an AP*	Enter into Financial Transaction in India as consideration for acquisition of asset o/s India

*Where any such payment is received without corresponding inward remittance, it shall be deemed to be received through person other than AP

Note:

- Financial transaction means:

payment to/credit of any person or	receiving payment for or on behalf of any person or	to draw/issue/ negotiate any BoE or	trf. security or acknowledge debt

- Purpose of this section is to regulate inflow and outflow of forex through APs only.
- The above restricted transactions may be carried on:
  a. If otherwise provided in this Act, Rules or Regulation, or
  b. With permission of RBI (general or special)

Examples to understand Sec 3:

Clause	Example	Explanation
(a)	A PROI visits India and sells USD 1,000 to his Indian friend.	Not permitted – it amounts to dealing in foreign exchange without RBI authorisation.
(b)	PROI holds an Indian insurance policy and asks his brother (in India) to pay premium.	Not permitted – this is payment in India for credit of a non-resident.
(c)	Foreign tourist pays $25 in cash at an Indian restaurant.	Not permitted – the restaurant cannot accept FC directly; only an AP can receive it.
(d)	PRI gives ₹70k in India to a dealer, who arranges for $ 1k in Dubai (hawala).	Not permitted – such hawala transactions involve unauthorised trf/settlement of forex.

Sec 4: Holding of Forex

Except as provided in this Act, no PRI shall Acquire, Hold, Own, Possess or Transfer any forex, forse or immovable property situated outside India.

Example: If a PRI receives in London $100 in bank account from his uncle, he cannot hold such funds abroad. He should remit it back to India.

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Sec 5: Current Account Transactions: 12-21-30-

Current Account Transaction [Sec 2(j)] means transaction other than CAT.

Without prejudice to the generality of the definition, CUAT includes:

Payments w.r.t., foreign trade, current business, services, & short-term banking & credit facility in OCOB	Payments w.r.t., interest on loans & as net income from investments	Remittances for living expenses of parents, spouse and children residing abroad	Expense w.r.t. foreign travel, education and medicare of parents, spouse and children

Legal Provision:

- Any person may sell or draw forex to or from an AP if such sale or drawal is a CUAT.
- Generally speaking - CUAT is freely permitted unless specifically restricted.
- CG may, in consultation with RBI, impose reasonable restrictions on CUAT.
  (RBI cannot impose restriction on its own for CUAT. It can be imposed by CG + RBI)

Examples:

1. Import of machinery for installation in factory from a UK vendor by payment in cash - CUAT
2. Import of machinery for installation in factory from a UK vendor on credit for 3 months - CUAT
   (because short term banking and credit facilities)
3. PRI gifts $1,000 to PROI - CUAT (note: Gift is given in FC)
4. Gift (say Rs. 1,000) by a PRI to PROI in India – This will be a CAT and not CUAT as this results in alteration of asset of the PROI in India.

Foreign Exchange Management (Current Account Transaction) Rules, 2000

Schedule I: Drawal of forex by any person for following purpose is prohibited:

2-4-6-13-14-17-18-38-

1. Remittance out of lottery winnings,
2. Remittance of income from racing or riding etc. or any other hobby,
3. Remittance for purchase of lottery tickets, banned magazines, football pools, sweepstakes etc.,
4. Payment of commission on exports made towards equity investment in Joint ventures or wholly owned subsidiaries abroad of Indian cos.,
5. Remittance of dividend by any company to which the requirement of dividend balancing is applicable,
6. Payment of commission on exports under Rupee State Credit Route
   (except commission upto 10% of invoice value of exports of tea and tobacco)
7. Payment related to Call Back Services of telephones,
8. Remittance of interest income on funds held in Non-Resident Special Rupee Scheme Account

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Schedule II - Transactions which require prior approval of Government of India for drawal of forex

2 3 4 11 13 16 17 20 29 34 36

Purpose of Remittance	Ministry or Department who approval is required
Cultural Tours	Ministry of (M/o) Human Resources Development, Dept. of Education and Culture (Now known as Ministry of Education)
Advertisement in foreign print media by GG SG & its PSUs > $ 10,000. Except where such advt. is for the purposes of: • promotion of tourism, • foreign investments and • international bidding	Ministry of (M/o) Finance, Dept. of Economic Affairs
Remittance of freight of vessel chartered by a PSU	M/o Surface Transport (Chartering Wing)
Payment of import (through ocean transport) by a Govt. Department or a PSU on C.I.F. basis (i.e., other than F.O.B and F.A.S. basis)	M/o Surface Transport (Chartering Wing)
Multi-modal transport operators making remittance to their agents abroad	Registration Certificate from Director General of Shipping (DGS)
Remittance of hiring charges of transponders: • TV Channels • Internet service providers	 • M/o Info and Broadcasting • M/o Communication & IT
Remittance of container detention charges > rate prescribed by DGS.	M/o Surface transport, DGS.
Remittance of prize money or sponsorship of sports activity abroad by a person other than International, National or State Level sports bodies, if the amount involved > US$ 100,000	M/o HR Development, Dept of Youth Affairs & Sports (Now - M/o Youth Affairs and Sports)
Remittance for membership of P & I Club (protection and indemnity insurance)	M/o Finance (Insurance Division)

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Schedule III – Transactions which in excess of limits require prior approval of RBI:

[Liberalised Remittance Scheme] 3 4 5 6 7 17 18 19 33 34

1. **Individuals** – Avail forex facility for the following purpose within limit of USD 2,50,000 only. Additional remittance beyond limit shall require prior approval of RBI:
   a. Private visits to any country (except Nepal and Bhutan)
   b. Gift or donation
   c. Going abroad for employment
   d. Emigration (permanently settling in a country)*
   e. Maintenance of close relatives abroad
   f. Travel for:

business	attending a conference	specialized training	for meeting expense of medical treatment/ check up abroad or accompanying a patient

   g. Expenses in connection with medical treatment abroad*
   h. Studies abroad*
   i. Any other current account transaction

Note:

*1. For (d), (g) and (h), individual may avail forex facility > $2,50,000 if it so required by country of emigration, medical institute offering treatment or the university, respectively.
2. Where individual remits any amount under this scheme in a FY, the applicable limit shall be reduced from $250K by such amount remitted (i.e., limit of $250K is aggregate in FY)

Concept of PRI but not permanently resident in India:

A PRI but not permanently resident may remit his net salary (after taxes, PF, and other deductions) abroad, if he satisfies any of the following:

a. is a citizen of a foreign State (other than Pakistan); or
b. is a citizen of India on deputation to branch of a foreign company, subsidiary, or JV in India.

Explanation:

A person is PRI but not permanently resident if he resides in India for employment, deputation, or a specific job/assignment of limited duration (not > 3 years).

Note: Person other than indv. (e.g., company, firm, etc.) may also use forex facilities under the LRS, mutatis mutandis within prescribed limits for the same purposes covered above.

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2. **Facilities for person other than individuals:** (29)

Following shall require prior permission of RBI:

Particulars	Purpose	Exceeding (>):
Donation	Donation for: a. creation of chairs in reputed educational institution, b. contribution to funds (not being an investment fund) promoted by educational institution; and c. contribution to a technical inst or body in the field of activity of the donor company	Lower of 1% of forex earnings during last 3 FY or $5Million
Sale of flats/ plots in India	Commission (per transaction) to agent abroad for sale of residential flats or commercial plots in India	Higher of $25,000 or 5% of Inward Remittance
Consultancy per project	Remittance for any consultancy w.r.t Infra projects and	upto $10 Million per project
	For other consultancy procured from o/s India	upto $1 Million per project
Pre-incorp expense	Remittance as reimbursement of pre-incorporation expense	Higher of 5% of Investment brought into India or $100K

Note:

1. Procedure for drawal or remittance of forex under Sch III shall be same as applicable under LRS.
2. If the remitter is a minor, LRS form must be countersigned by the natural guardian.
3. Family members' remittances can be consolidated if each member complies with LRS conditions.
4. Clubbing for CAT is not allowed unless the family members are co-owners of the overseas asset.
5. If a CUAT is not listed in any of the 3 schedule, it can be freely undertaken.

Exemptions:

Particulars	Exemption
Remittance from Resident Foreign Currency (RFC) Account	No approval required for transactions listed in Schedule II and III if made from RFC account.
Remittance from Exchange Earners' Foreign Currency (EEFC) Account	No approval required for transactions listed in Sch II and III if made from EEFC account, except for: • Remittance for membership of P & I Club. • Commission to agents abroad or commission for pre-incorporation expense (in excess of limits)
Payment by International Credit Card while on a visit abroad	Person on a visit abroad can incur expenditure stated in Sch III through an ICC (to extent of card limit) without approval.

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Section 6: Capital Account Transaction (22)

Capital Account Transaction [Sec 2(e)]	means a transaction which alters: • asset or liabilities (including contingent liability) outside India of a PRI, or • asset or liability (~~including contingent liability~~) in India of a PROI.

Legal provision:

1. Subject to sub-section (2), a person may sell or draw forex to or from an AP for CAT.

2. RBI (in consultation with CG) may specify:
   - class of CAT involving debt instruments, which is permissible,
   - limits for such permissible transactions
   - conditions placed on such transactions

(23) Note: RBI or CG shall not impose restriction on drawal of forex for:
- payment due on account of amortization of loans or repayment of loans
- depreciation of direct investment in ordinary course of business (OCOB)

Debt instrument means such instrument as determined by CG (+RBI)

3. CG (in consultation with RBI) may specify:
   - Class of CAT not involving debt instruments, which is permissible
   - limits for such permissible transactions
   - conditions placed on such transactions

4. PRI may hold, own, transfer or invest in: (31)

Foreign Currency | Foreign Security | Immovable Property Outside India

Provided that it was
- acquired, held or owned by such person when he was PROI, or
- inherited from a PROI

RBI Clarification: (15) (24)

The following transactions are covered u/s 6(4):
1. FC accounts opened and maintained by such person when he was PROI.
2. Income from employment, business, vocation, investment, gift or inheritance while he was a PROI.
3. Forex (including income therefrom) held abroad by PRI acquired by inheritance from PROI.
4. PRI may freely utilize eligible assets abroad or income/sales proceeds therefrom after returning to India for making payment or fresh investments abroad without approval of RBI, provided that cost of investments is met completely out of eligible assets.

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5. PROI may hold, own, transfer or invest in: ₹25/-

Indian Currency	Indian Security	Immovable Property in India

Provided that it was

- acquired, held or owned by such person when he was PRI, or
- inherited from a PRI (not PROI)

6. RBI may impose restrictions on branch or office or other place in India of PROI.

7. CAT is broadly split into following categories as per FEM (Permissible CAT) Regulations 2000:

Sch I: Permissible Transaction for PRI	Sch II: Permissible Transaction for PROI	Prohibited CAT

Category	Sch I:* Permissible transaction for PRI	Sch II: ₹35/- Permissible transaction for PROI
Investment	Investment by PRI in foreign securities.	Investment in India by PROI: (i) subscription to securities of Indian entities; (ii) capital contribution to a firm etc.
Immovable property	Transfer outside India by PRI.	Acquisition or transfer in India by PROI.
Guarantees	Guarantee by PRI in favour of PROI.	Guarantee by PROI in favour of, or on behalf of PRI.
Deposits	-	Deposits between PRI and PROI
Export import	Export, import and holding of currency or currency notes by PRI.	Export, import and holding of currency or currency notes by PROI.
FC accounts in India	FC accounts in India and outside India of PRI.	FC accounts in India of PROI.
Capital assets remittance	Remittance outside India of capital assets of PRI.	Remittance outside India of capital assets in India of PROI.
Derivatives	Undertake derivative contracts.	Undertake derivative contracts.

<u>* Following are the permissible transactions made by PRI</u>

1. Loans or Overdrafts by a PRI from a PROI.
2. Foreign currency Loans raised India and abroad by a PRI.
3. Taking out insurance policy by a PRI from company outside India.

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Prohibited CAT [Regulation 4]: 23-36-39-

PROI shall not make investment in India in any company or partnership firm or proprietary or any entity which is engaged or proposes to engage **N CRAFT**

in the business of Chit fund, or	Nidhi Company	agricultural or plantation activities	real estate business	construction of farm houses	trading in TDRs

Note:

- PROIs are restricted from investment (equity or capital investment, etc.) in business of chit funds but may be eligible to subscribe to such chits provided approval of Registrar of Chits or officer of SG concerned is sought and in compliance with RBI T&Cs.

- Real estate business shall not include:

development of townships,	construction of residential/commercial premises, roads or bridges and	registered REITs.

- **Transferable Development Rights (TDR)**
  When a landowner gives their land to CG/SG for public purpose without taking money, the Govt gives them a certificate in return. This certificate allows the owner to use or transfer development rights (like permission to build extra area) partly or fully to someone else.

Restriction: No PRI shall undertake any CAT with a citizen or resident or entity of Democratic People's Republic of Korea ("North Korea"), unless approval from CG.
Note: Existing transaction with North Korea – liquidate within 180 days of notification (unless specific approval of CG)



Key points related to drawal of forex for CAT:

- No person shall undertake, sell, or draw forex for any CAT without prior approval of RBI.
- PRI (indv) may draw forex up to $250k per FY (or such amount as decided by RBI) for Sch I - CAT.
- For drawal beyond this limit, specific limits in respective RBI regulations will apply.
- For PRI (indv), drawal of forex for CUAT under Sch III (CUAT Rules) is included within the same $250k limit. [i.e., Sch III (CUAT) + Sch I (CAT) = $250k]
- No part of $250k drawn shall be used for remittance to non-cooperative countries or territories [NCCTs] identified by Financial Action Task Force [FATF] and notified by RBI.

The End

"Dreams are not those which you see while sleeping,
dreams are those that don't let you sleep"

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Chapter 15 The Limited Liability Partnership Act, 2008

Summary of sections

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3	LLP as Body Corporate	33	Obligation to Contribute
4	Non-Applicability of Indian Partnership Act, 1932	34	Maintenance of Books of Account, Other Records and Audit
5	Partners	34A	Accounting and Auditing Standards
6	Minimum Number of Partners	35	Annual Return
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8	Liabilities of Designated Partners	37	Penalty for False Statement
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Introduction:

- LLP Act, 2008 received President's assent on 7th Jan 2009 and was enacted on Jan 9, 2009.
- It comprises 81 sections and 4 schedules.

Schedules:

I	Rights of partner and LLP in the absence of formal agreement
II	Converting a firm into LLP
III	Converting a private company into LLP
IV	Converting an unlisted company into LLP

Need and benefits: 1

- Traditional partnerships expose partners to unlimited personal liability.
- Companies provide limited liability but involve rigid statutory compliance.
- Hence, lawmakers felt a need for a hybrid structure combining:
  a. Limited liability (like a company), and
  b. Operational flexibility (like a partnership).
- LLP is an alternative corporate business vehicle which provides this hybrid structure.

Characteristics of an LLP 4

Body Corporate	Perpetual Succession	Separate Legal Entity	Mutual Agency
LLP Agreement	Common Seal	Limited Liability	Business for profit only
Compromise or Arrangement	Conversion into LLP	E-filing of documents	Foreign LLPs

Special characteristics worth understanding in detail:

Mutual Agency	All partners are agents of LLP alone. No one partner can bind other partner by his act
Limited Liability	The liability of partners will be limited to their agreed contribution in LLP. Such contribution may be of tangible or intangible nature or both

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Definitions:

Address [Sec 2(1)(a)]: "Address" in relation to a partner of LLP, means:

a. If he is an individual, his usual residential address; and

b. If it is a body corporate, the address of its registered office.

Body Corporate [Section 2(1)(d)]:

Means:	Includes:	Excludes:
A company	• LLP registered under this Act	• Corporation Sole.
	• LLP incorporated outside India and	• Co-operative Society
	• Company incorporated outside India.	• Any other body corporate notified by CG

Business [Sec 2(1)(e)] includes every trade, profession, service and occupation except any activity which CG may, by notification, exclude.

Financial Year [Sec 2(1)(l)]: means period from 1st April of a year to 31st March of following year. However, in the case of a LLP incorporated after 30th September of a year, FY may end on 31st March of next following year.

Example: LLP incorporated on 15/10/24 - FY will be 15/10/24 - 31/03/26

Foreign LLP [Sec 2(1)(m)]: It means an LLP formed, incorporated or registered outside India which establishes a place of business within India.

LLP Agreement [Sec 2(1)(o)]: means any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that LLP.

Small LLP [Sec 2(1)(ta)]: means an LLP (12)-

a. Having contribution <= 25 lakh or higher amount as may be prescribed not > Rs. 5 crores and

b. Turnover as per "Statement of Accounts and solvency" <= 40 lakh or such higher amount as may be prescribed not > Rs. 50 crores or

c. meets such other terms and conditions as may be prescribed.

Section 4: Non-Applicability of Indian Partnership Act, 1932

Save as otherwise provided, Indian Partnership Act, 1932 shall not apply to LLP's.

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Section 5: Partners: (2)

Individual or body corporate may become partners in LLP <u>but</u> exclude an individual if:

- He has been declared of having unsound mind by competent court.
- He is an undischarged insolvent.
- He has applied to be adjudicated as an insolvent and his application is pending.

<u>Concept clarity check:</u>

1. HUF is not a BC and hence cannot become partner in LLP.
2. Can one LLP become partner in another LLP? - Yes. Because LLPs are BC and BC can become partner. Similarly, foreign LLPs, foreign companies, etc. can also become partner in LLP.

Section 6: Minimum number of Partners: (10)

Minimum- 2 Partners; Maximum- No Limit.

<u>Note:</u> If no. of partners is reduced below 2 and LLP carries on business for > 6 months, such partner having knowledge thereof shall be personally liable for obligations incurred by LLP after 6 months.

Section 7: Designated Partner (DP): (3) (8) (18)

1. At least 2 individuals ~~or BC~~ as DP and at least 1 DP shall be resident of India.
   Resident in India means a person who has stayed in India for >= 120 days during the FY.

   <u>What if all partners are BC?</u>
   If all partners are BC or if one or more partners are individual and BC - 2 individual partners or nominees of BC shall act as DP.

   <u>Failure to appoint 2 DP:</u> Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every partner.

2. <u>Appointment:</u>
   - Persons specified in incorporation document as DP becomes so on incorporation.
   - If such document states "every partner shall be DP", all partners are treated as such.
   - Thereafter, any partner may become or cease to be a DP as per LLP Agreement.

3. Every partner appointed as DP shall give prior consent to LLP. Thereafter, LLP shall file particulars of such DP with ROC within 30 days of his appointment in prescribed manner.

   Failure to file with ROC: Liable for Rs. 5,000 + Rs.100/day max. up to Rs. 50,000 (LLP) & Rs.25,000 (DP).

4. Every DP of LLP shall obtain Designated Partner Identification Number (DPIN) from CG.
   <u>Note:</u> Director Identification Number (DIN) and DPIN can be used interchangeably.

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Section 8: Liabilities of a DP

Unless otherwise provided, DP shall be

a. responsible for doing all acts of LLP including filing of documents, returns, statements etc.

b. liable to all penalties imposed on LLP.

Section 9: Changes in DP in case of vacancy

LLP may appoint DP within 30 days of vacancy due to any reason.

If at any time there is no DP or only 1 DP, each partner shall be deemed as DP.

Contravention: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every partner.

Section 11: Incorporation document

Incorporation document shall

a. have 2 or more persons as subscribers to carry on lawful business with a view to earn profit

b. include a statement that all requirements of this Act and rules have been complied with:
   - made by advocate, CA, CS, Cost Accountant engaged in formation of LLP, AND
   - by any one of the subscribers,

c. be filed with ROC, Central Registration Centre ~~in which RO is proposed to be situated.~~

Incorporation Document to include the following:

Name of LLP	Proposed Business	Address of RO	Name & Address of each Partner and DP	Other info.

If a person makes a statement
- knowing it to be false, or
- does not believe it to be true.

shall be punishable for imprisonment up to 2 years AND fine of Rs. 10k - Rs. 5 lakh.

An LLP can be incorporated with profit motive. It cannot be an NPO.

Section 12: Incorporation by Registration

On receipt of incorporation documents and statements u/s 11, Registrar shall retain such documents and within 14 days:
- Register the incorporation document, and
- Give the LLP a certificate of incorporation.

  Such certificate shall be signed by RoC and authenticated by official seal. It shall be conclusive evidence of incorporation of LLP with name specified therein.

Statement delivered u/s 11 - Sufficient evidence of compliance with clause (a) of Sec 11.

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Section 13: Registered Office of LLP and Change therein

1. Every LLP shall have a RO to which all notices and communication may be addressed and received.

2. A document may be served at RO on an LLP or its Partner or DP by
   - Sending it by post
   - Registered post
   - Any other manner prescribed.

3. Change in RO- File notice to ROC in prescribed manner.
   Penalty- Rs. 500/day up to Rs.50,000 for LLP and its Partners ~~(not DP)~~.

Section 14: Effect of Registration

On registration LLP shall be capable of
- Suing or being sued
- Doing and suffering all other acts BC may do and suffer
- Acquiring, owning, holding or disposal of property.
- Having a common seal.

Section 15: Name

1. Every LLP shall add suffix - LLP or Limited Liability Partnership to its name.
   Example: ABC LLP or ABC Limited Liability Partnership.

2. No LLP shall be registered with a name, which in opinion of CG is:
   - Undesirable
   - Identical or closely resemble to name of existing LLP or company or registered trademark.

Author's Note - Sec 15 of LLP prohibits from using a name identical to that of existing company. However, sec 4 of companies act, did not prohibit using name of existing LLP. This is merely a lacunae in law and may be rectified in future by amendment.

Section 16: Reservation of name

1. A person may apply to ROC in prescribed manner + fees for reservation of:
   - Name of proposed LLP
   - Name to which LLP proposes to change its name
2. ROC on satisfaction that the name is not identical or undesirable as per CG, reserves the name for 3 months from date of intimation.

Note: In Companies Act, as per Sec 4, name of company could only be reserved for 20/60 days.

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Section 17: Rectification of name of LLP

Notwithstanding anything contained in sec 15 & 16, during its first registration or upon registration with new name, if LLP is inadvertently registered with name identical or too similar to:

- Any other LLP, OR
- A registered trademark under Trade Marks Act, 1999

CG, upon application by affected LLP, trademark proprietor, or company, may direct LLP to change its name within 3 months from date of such direction.

Note: Application by proprietor is to be made within 3y of incorporation or change of name.

On such change of name - notify ROC within 15 days. RoC to make changes in CoI within 30 days.

If LLP is in default in complying with any direction, CG shall allot a new name and the RoC shall enter the new name in register in place of the old name and issue a fresh CoI with new name.

Note: Nothing shall prevent a LLP from subsequently changing its name.

Note: Unlike sec 16 of Companies Act, here CG cannot suo-motu order for rectification of name.

Summary of steps to incorporate LLP

Reservation of name : Applicant has to file e-Form RUNLLP for the same.	→	File e-Form FiLLiP for incorporating new LLP.	→	Execution of LLP agreement and and shall be filed within 30 days of incorporation in e-form 3

Section 22: Eligibility to be partners

On incorporation of a LLP, the persons who subscribed names to incorporation document shall be its partners and any other person may become partner of LLP in accordance with the LLP agreement.

Section 23: Relationship of partners

1. Save as otherwise provided, the mutual rights and duties of:
   - Partners of a LLP (inter-se), and
   - LLP and its partners

   shall be governed by the LLP agreement.
2. LLP agreement & any changes made therein shall be filed with the RoC in prescribed manner + Fees.
3. Any agreement in writing between LLP and subscribers before incorporation shall be valid only if ratified by ALL partners upon incorporation.
4. In absence of agreement, the mutual rights and duties shall be determined by the First Schedule.

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Section 24: Cessation of Partnership Interest

1. A person may cease to be a partner:
   - in accordance with LLP agreement with other partners or,
   - in absence of agreement, by giving notice in writing ≥ 30 days to other partners of his intention

2. A person shall cease to be a partner of LLP in case of

Death of partner or Dissolution of LLP	Declared to be of unsound mind by competent court	applied to be adjudged as an insolvent or declared as an insolvent.

3. Where a person has ceased to be a partner of a LLP, the former partner is to be regarded as still being a partner of the LLP unless-
   - the person has notice that former partner has ceased to be a partner, or
   - Notice that former partner has ceased to be a partner is delivered to RoC.

4. Cessation of partner does not discharge a partner of obligation incurred while being a partner.

5. Where a partner of a LLP ceases to be a partner, the former partner or a person entitled to his share case of the death or insolvency, shall be entitled to receive from the LLP-
   - Actual partner contribution made by such former partner,
   - Right to share in accumulated profit after deduction of accumulated losses.

6. Former partner or entitled person (death/insolvency) shall not have any right to interfere in management of LLP.

Section 25: Registration of changes in partners

1. Partner shall inform LLP of any change in name or address within 15 days of such change.

2. A LLP shall file a notice with RoC within 30 days from the date when he becomes/ceases to be a partner in case or when there is any change in the name or address of a partner.

3. Such notice filed with RoC shall be-
   - In prescribed manner + Fees
   - Signed by DP
   - If relates to incoming partner, shall contain a statement that he consents to become a partner, signed & authenticated in prescribed manner.

4. Penalty:
   If LLP contravenes - Rs. 10,000 for LLP & each DP.
   If individual partner contravenes - Rs. 10,000 for such partner.

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Former partner may file the above notice with RoC if he has reasonable cause to believe that LLP may not file such notice. RoC shall thereafter obtain confirmation from LLP w.r.t. such cessation.
If no confirmation is given by LLP in 15 days, RoC shall register such notice.

Section 26: Partner as agent

Partners are agent of the LLP but not of other partners.

Section 27: Extent of liability of LLP

LLP is not bound by an act of a partner if-

- Such partner has no authority of doing such act.
- The person knows that he has no authority or does not know or believe him to be partner.

LLP is liable to any person for wrongful act or omission by partner in course of business.

The obligation of LLP shall be solely obligation of LLP.

The liability of LLP shall be met out of property of LLP.

Section 28: Extent of liability of partner

He is not personally liable, directly or indirectly for obligation solely by reason of being partner.

A partner shall be personally liable for his own wrongful act or omission but not for wrongful act or omission of other partner.

Section 29: Holding out

1. Where any person
   - who by words spoken or written or by conduct,
   - represents himself or knowingly represents himself as partner of LLP,
   - such person is liable to any person who has on the faith such representation
   - given credit to LLP (whether or not the person representing himself to be a partner knows that such representation led to the person giving LLP the credit)

   However, the LLP receiving such credit shall also be liable to extent of credit received.

2. Where after a partner's death the business is continued in the same LLP name shall not by itself make his LR or his estate liable for any act of the LLP done after his death.

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Section 30: Unlimited liability in case of fraud

1. **Unlimited liability in case of fraud:**
   - where act is carried out by LLP or any of its partner
   - with an intent to defraud any creditor or any other person
   - the liability of LLP & responsible partners shall be unlimited for all debts & other liabilities.

   However, where such act is done by partner, Liability of LLP = Liability of partner, unless partner has acted without authority.

2. Every person who was knowingly involved shall be punishable with
   - Imprisonment upto 5 years and
   - Fine Rs.50,000 to Rs.5 Lakh.

3. Where an LLP or partners or employee has conducted business in fraudulent manner- Liable to compensate to any person who suffered losses or damages.
   However, LLP shall not be liable if the above person acted without knowledge of LLP.

Section 31: Whistle blowing (11) (16)

1. Court/Tribunal may reduce or waive penalty against any partner or employee if it is satisfied that
   - he has provided useful information during investigation of such LLP; or
   - when information given by him leads to LLP or any partner or employee being convicted.

2. No partner or employee may be

   Discharged | Suspended | Demoted | Threatened | Harassed

   merely because he provided information to court or tribunal.

Section 32: Form of contribution

1. Partner contribution may consist of tangible (movable/immovable) or intangible property or other benefits including money, promissory notes, and agreements to contribute cash or property, etc.
2. The monetary value of partner's contribution shall be accounted and disclosed in the accounts.

Section 33: Obligation to contribute

1. The obligation to contribute shall be as per LLP agreement.
2. A creditor may enforce partners to contribute as per original obligation if he extends credit by relying on such original obligation as per the LLP agreement.

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Section 34: Maintenance of books of account, other records and audit, etc.

1. Proper Books of account (BOA) shall be maintained on cash or accrual basis as per double entry system at RO for prescribed period of time.

2. Statement of Account and Solvency (SAS): Every LLP shall prepare such statement within 6 months from end of FY signed by all DP's and filed with RoC in prescribed manner.

3. Accounts of LLP shall be audited as may be prescribed. CG may exempt certain LLP from audit.

4. Penalty for contravention:

Nature of contravention	Penalty
Non-compliance of filing with RoC	LLP: Rs. 100/day up to 1 Lakh
	Every DP: Rs. 100/day up to 50,000
Non-compliance of	
• Maintenance of BOA	LLP- 25,000 to 5 Lakh
• Maintenance of SAS	Every DP- Rs. 10,000 to Rs. 1 Lakh
• Audit of BOA	

Section 34A: Accounting and auditing standards

CG in consultation with NFRA to prescribe Accounting & Auditing std (as recommended by ICAI)

Section 35: Annual Return

1. Every LLP shall file an annual return duly authenticated with RoC within 60d of closure of FY.
   Example: Closure of FY- 31st March, then due date of filing - ~~31st~~ 30th May.

2. Penalty: Rs.100/day max. up to Rs. 1 lakh for LLP and Rs. 50,000 for every DP.

Section 36: Inspection of document by registrar

Following documents:

Incorporation doc. | Name of partner & changes | SAS | Annual Return

shall be available for inspection to any person as per prescribed rules.

Section 37: Penalty for false statement

If in any return, statement or other document any person makes a statement

- which is false in any material particular, knowing it to be false; or
- which omits any material fact knowing it to be material

will be punishable with imprisonment up to 2 years AND fine 1 lakh to 5 lakh.

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Section 38: Power of registrar to obtain information

1. RoC may require any person (including any present or former partner or DP or employee) of LLP to answer any question or supply any details or particulars in writing within a reasonable period.
2. Failure to provide above info. - RoC shall have power to summon that person to appear in person.
3. Contravention: Fine Rs. 2,000 to 25,000.

Section 39: Compounding of offences

For this section, RD means Regional Director or officer not below rank of RD authorised by CG

1. RD may compound any offence which is punishable with fine only by collecting a sum which may extend up to max. fine for such offence but not less than min. fine for such offence.

2. Compounding shall not apply to offence committed within 3 years from the date on which similar offence was compounded.
   Note: Second or subsequent offence after 3 years shall be deemed to be first offence.

3. Procedure for compounding:
   - Application to be made to RoC who shall forward it, together with his comments thereon, to RD.
   - Where any offence is compounded (whether before or after institution of prosecution), intimate RoC within 7 days from date on which offence is so compounded.

4. Consequences of compounding:
   - Where compounded before institution of prosecution - No prosecution shall be instituted
   - Where compounding is made after institution of prosecution – RoC to intimate such compounding to court where prosecution is pending & thereafter offender shall be discharged.

5. While dealing with proposal of compounding, RD may direct DP, partner or employees to file such return, account or other doc. as may be specified in the order.
   Failure to comply with above order – Max amount of fine – Twice the amount provided in corresponding section in which punishment for such offence is provided.

Assignment And Transfer Of Partnership Right

Section 42: Partners transferable interest (13)

1. Rights of a partner to:
   - a share of profits & losses and
   - receive distributions as per LLP agreement

   are transferable either wholly or in part.

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Transfer of any such rights does not by itself:

- cause disassociation of partner or dissolution or winding up of LLP.
- entitle transferee to participate in management or access information w.r.t. LLP transactions

Conversion into LLP

Sec	Conversion	As per provision of:
55	Firm to LLP	Second Schedule
56	Private company to LLP	Third Schedule
57	Unlisted public company to LLP	Fourth Schedule

Section 58: Registration and effect of conversion

Registration:

- On satisfying that firm, private company or unlisted public company has complied with schedules,
- RoC shall register documents & issue certificate of registration.
- LLP shall be effectively incorporated from the date mentioned in the certificate of registration.

LLP shall, within 15 days of date of registration, inform Registrar of Firms or RoC about such conversion & particulars of LLP in prescribed manner.

Upon such conversion, LLP and partners of such LLP shall be bound as per respective schedule.

Effect of Registration:

Notwithstanding anything contained in any other law, from date of registration:

- There shall be LLP by name specified in certificate of registration registered under this Act;
- All tangible (movable/immovable) & intangible property, all assets, interests, rights, privileges, liabilities & whole undertaking of firm/co. shall be transferred to and shall vest in the LLP; and
- firm or company, shall be deemed to be dissolved & removed from records of Registrar.

Section 59: Foreign LLPs

CG may prescribe rules in this behalf (similar to Companies Act 2013).

Section 60: Compromise or arrangement (C/A) of LLP

Where a C/A is proposed between

LLP and its creditors; or LLP and its partners

- On application of LLP or of any creditor or partner or liquidator (in case of winding up),
- Tribunal may order meeting of creditors/partners to be called, held & conducted as prescribed.

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2. Sanction of C/A:
   - If majority representing 3/4th in value of creditors/partners agree to any C/A, and
   - Such C/A is sanctioned by the Tribunal by order
   - Such C/A shall be binding on all creditors /partners / LLP / liquidator and contributories.

   No order sanctioning any C/A shall be made by Tribunal unless it is satisfied that LLP has disclosed
   - All material facts including latest financial position; and
   - pendency of any investigation proceedings.

3. File with RoC:
   Tribunal's order shall be filed by LLP with RoC within 30 days after making such order and shall have effect only after it is filed.

   Penalty for non-filing: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh (for LLP) & Rs. 50,000 (for DP).

4. The Tribunal may, at any time after an application has been made, stay the commencement or continuation of any suit or proceeding against LLP on such terms as the Tribunal thinks fit, until the application is finally disposed off.

Section 61: Power of Tribunal to enforce compromise or arrangement

1. Where the Tribunal makes an order sanctioning a C/A in respect of a LLP, it:
   - shall have power to supervise the carrying out of C/A, and
   - may, give directions in regard to any matter or make such modifications in the C/A as it may consider necessary for the proper working of C/A.
2. If the Tribunal is satisfied that a C/A sanctioned cannot be worked satisfactorily, it may,
   - either on its own motion or
   - on the application of any person interested in the affairs of LLP,

   make an order for winding up the LLP.

Section 62: Provisions for facilitating reconstruction or amalgamation of LLP

1. Where an application is made to the Tribunal u/s 60 and it is shown that:
   - C/A has been proposed for a scheme for reconstruction or amalgamation of >=2 LLP; &
   - Under the scheme, whole or any part of undertaking, property or liabilities (UPL) of any LLP concerned is transferred to another LLP

   Tribunal may, either by order sanctioning the C/A or by a subsequent order, make provisions for all or any of the following matters, namely:
   a. transfer to the transferee LLP of whole or any part of the undertaking, property and liability of any transferor LLP;
   b. continuation by/against transferee LLP of any legal proceedings pending by/against transferor;
   c. dissolution, without winding up, of any transferor LLP;

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d. provision for person dissenting from C/A;
e. such incidental, consequential and supplemental matters as are necessary.

No such C/A proposed amalgamation shall be sanctioned by Tribunal unless the Tribunal has received a report from RoC and Official Liquidator that affairs of LLP have not been conducted in a manner prejudicial to interests of its partners or to public interest.

Where an order provides for transfer of any property or liabilities, then, by virtue of the order, it shall be freed from any charge (only if the order so directs)

File certified copy of NCLT order with ROC - Within 30 days

Penalty: Rs. 10,000 + Rs.100/day max. up to Rs. 1 lakh (LLP) and Rs. 50,000 (DP)

Note: Compliance of Sec 62 is in addition to compliance with provision of section 60.

Section 63: Winding up and dissolution

The winding up of LLP may be either voluntary or by Tribunal and LLP, so wound up may be dissolved.

Section 64: Circumstances in which LLP may be wound up by Tribunal

LLP may be wound up by Tribunal where:

- LLP decides that LLP be wound up by Tribunal;
- For more than 6 months, number of partners of LLP is reduced below two;
- LLP has acted against interests of sovereignty and integrity of India, security of the State or public order;
- LLP has made default in filing with the RoC, the SAS or AR for any 5 consecutive FY or
- Tribunal is of the opinion that it is just and equitable that the LLP be wound up.

Section 66: Business Transactions of Partner with LLP

Partner may lend money & transact business with LLP & has same rights and obligation as non-partner.

Section 67: Application of the Provisions of the Companies Act

CG may, by notification direct that provisions of Companies Act shall apply to LLP with such exception, modification & adaptation as may be specified.

A copy of every notification proposed - Lay before Parliament and get it approved.

Section 69: Payment of Additional Fee

Any document or return to be registered or filed with RoC is not filed within prescribed time, it may be registered or filed after that time, on payment of such additional fee as may be prescribed.

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Section 70: Enhanced Punishment

The LLP or any partner or DP shall, for second or subsequent offence, be punishable with

- imprisonment as provided, but
- with a fine which shall be twice the amount of fine for such offence.

Differences with other forms of organisations

LLP vs Partnership Firm

Basis	LLP	Partnership Firm
Regulating Act	LLP Act, 2008.	Indian Partnership Act, 1932.
Body corporate	Yes	Not a body corporate
Separate legal entity	Yes	No
Creation	By registration under LLP Act	By agreement between partners
Registration	Mandatory	Voluntary
Perpetual succession	Members may join or leave but its existence continues forever.	It has no perpetual succession.
Suffix	Limited liability Partnership (LLP)	No guidelines
Liability	Limited to agreed contribution	Liability of partner - Unlimited.
Mutual agency	Partner can bind the LLP by his own acts but no other partners.	Each partner can bind firm as well as other partners by his own acts.
Designated partners	>= 2 DP & >= 1 resident in India.	No such provision
Common seal	It may have its common seal	No such concept in partnership
Legal compliances	DPs are responsible for all the compliances and penalties	All partners are responsible for all the compliances and penalties
Annual filing	File SAS and Annual Return.	No such requirement
Foreign partnership	Foreign nationals can be partner	Cannot be a partner.
Minor as partner	Not allowed (even for benefit)	Yes. Can be admitted to benefits.

LLP and Limited Liability company

Basis	LLP	Limited Company
Regulating Act	The LLP Act, 2008	The Companies Act, 2013.
Contributors are called	Partners	Members
Internal governance	Governed by LLP agreement	Regulated by statute i.e. Co. Act
Suffix	Limited Liab partnership or LLP	Private Limited or Limited
Numbers of partners/ members	Min. 2; Max - No limit	Pvt company: Min. 2; Max. 200 Public co: Min. 7; Max. No limit
Liability	To extent of agreed contribution	Limited to unpaid amount of shares
Management	Managed by DPs	Managed by BoD
Min. no. of directors/DP	Minimum 2 DP	Pvt. Co.- 2 ; Public co. 3 directors

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Summary of Time Limits in LLP Act, 2008

Sec	Task / Compliance	Time Limit
7	Definition of resident in India for DP	≥ 120d in FY
7	LLP to file ind's consent to act as DP with ROC	30d of appointment
9	LLP to appoint DP on vacancy	30d of vacancy
12	ROC to register incorporation docs & issue CoI	14d of compliance
16	Validity of reserved name	3m from intimation by RoC
17	CG direction to change name (undesirable/similar)	3m from date of direction
17	Trademark proprietor rectification appln maintainable within	3y from inc./registration/ name change
17	LLP to update LLP Agreement after name change	30d of change in CoI
17	LLP to notify ROC of name change	15d of change
23	Filing of LLP Agreement (Form 3)	30d of incorporation
24	Partner's resignation notice (no agreement)	≥ 30d written notice
25	Partner to inform LLP of change in name/address	15d of change
25	LLP to file notice - person becomes/ceases partner	30d of event
25	LLP to file notice - change in partner name/address	30d of change
25	ROC to confirm notice of ceasing partner	15d
34	LLP to prepare SAS	6m from FY end
35	LLP to file Annual Return to RoC	60d of FY closure
39	Subsequent offence deemed as first	After 3y from prev compounding
39	Intimation of compounding to ROC	7d of compounding
58	LLP to intimate conversion to ROC/Firms	15d of LLP registration
60	LLP to file Tribunal order (compromise/arrangement)	within 30d after order is made
62	LLP to file order (reconstruction/amalgamation)	within 30d after order is made
64	Winding up - LLP runs with < 2 partners	> 6m
64	Winding up - default in filing SAS/AR	5 consecutive FYs

The End

"Push harder than yesterday if you want a better tomorrow"

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Summary of CG's Powers delegated to RoC or RD

Section No.	Power of CG	Delegated to
4(3)	Determining whether a proposed name is undesirable.	ROC
8	Approval for registration (to the extent of granting license and initial registration) [except conversion]	ROC
8	Revocation of the license of section 8 company	RD
8	Approval for alteration of MoA or AoA of section 8 company (except in case of conversion)	ROC
8(4)	Approval for alteration of MoA in case of conversion into another kind of company.	RD
13(2)	Approval in writing for change of company name.	ROC
13(4)	Approval for alteration of MoA relating to the place of the RO from one State to another.	RD
13(5)	Disposal of the application for change of RO (from one State to another) within 60 days.	RD
16	Power of CG to direct rectification of name suo-motu or on application	RD
66(2)	Tribunal shall give notice of application u/s 66 to CG, Registrar, SEBI and creditors	RD
87	Ordering rectification of the Register of Charges in cases of default (omission or misstatement).	RD
94(5)	CG may direct for immediate inspection of Annual Return and other documents.	RD
111(3)	CG may declare that members' rights to circulate resolutions are being abused (to secure needless publicity for defamatory matter).	RD
140(1)	Previous approval for removal of an auditor before the expiry of their term.	RD

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Matters requiring Ordinary Resolution of the Shareholders

Sec	Provision
4	Name Clause - If reservation of name is done using wrong information, RoC may direct company to change name in 3 months by passing OR
16	Rectification of Name
43	Issue of Differential Voting Right (DVR) Shares
61	Alteration of capital clause of MOA, if authorized by the articles as per sec 62(1).
62(b)	Issue of further shares to employees under a scheme of Employee Stock Option Plan (ESOP) - In case of Private Company and Specified IFSC Public Company.
63	Capitalizing of its profits or reserves for issuing fully paid-up bonus shares
73	Resolution for accepting deposit u/s 73
102(2)	Declaration of any dividend at the AGM is an ordinary business requiring OR
139	The appointment of an auditor by a company other than in case of the first auditors.
148	Remuneration of cost accountant recomm. by audit committee & considered by board

Matters requiring Special Resolution of the Shareholders

Sec	Provision
5	Inclusion of the Entrenchment provision in AoA of public company.
8	A company registered u/s 8 which intends to convert into a company of any other kind.
12	For change of RO of the company outside the local limits of any city, town or village.
13	For change in MOA-name clause, domicile clause, objects clause, liability/capital clause.
14	For alteration of AOA of the company.
27	For variation in terms of contract or objects for issuance of prospectus.
41	To issue Global Depository Receipts in any foreign country.
42	To make an offer or invitation to subscribe to securities through private placement.
48	For variation of the rights attached to the shares of any class.
54	To issue Sweat Equity Shares.
55	For issue of preference shares subject to authorisation by articles.
62	To issue ESOPs by public company (except specified IFSC public cos. requiring OR).
	For determining terms of issuing optionally convertible debentures or loan.
66	A co. limited by shares or by guarantee + having a SC, to reduce the SC in any manner.
68	For authorisation of Buy-back.
71	To issue convertible debentures
94	To keep registers or copies of return at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside.
140	For removal of the auditor appointed under section 139 from his office before the expiry of his term, subject to obtaining the prior approval of the CG.

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Important limits in Companies Act, 2013

Section	Provision	Limits
2(6)	Associate company	Significant Influence means control >= 20% of the total VP or participation in business decisions under agreement.
2(45)	Government Company	➢ PUSC > = 51% held by CG, any SG, partly by CG + partly by 1 or more SG; ➢ Includes subsidiary of such CG.
2(85)	Small Company	Other than a public company having: ➢ PUSC <= 4 crores, and ➢ T/O <= Rs. 40 crores. Exception - Holding/subsidiary, special act company and section 8 company
2(87)	Subsidiary Company	A company in which the holding company: ➢ Controls more than 1/2 of total VP on its own or with other subsy; or ➢ Controls the composition of BOD.
Rule 9A	Incorporation	1. Reservation of Name: a. Upon receipt of appln u/ss (4), the Registrar may, on the basis of info. and docs furnished with application, reserve the name: For 20 days — From approval or such other prescribed period in case of New Company For 60 days — From approval in case of Existing Company. RULE 9A Application for extension of time can be made before expiry of 20 days as follows: Another 20 days (Total 40 days) — Fees Rs. 1,000 Further 20 days (Total 60 days) — Fees Rs. 2,000 40 days in one go (Total 60 days) — Fees Rs. 3,000
8	Section 8 Company	1. For the Company: ➢ Fine: Minimum ₹10 lakhs, extending up to ₹1 crore. 2. For Directors and Officers in Default: ➢ Fine: Minimum ₹25,000, extending up to ₹25 lakhs.
15	Alteration in MOA/ AOA	(1) Default → Co. + OID - Liable to penalty of Rs. 1,000 for every copy issued without alteration.
17	Alteration in MOA/AOA	If default u/s 17, the such company and every OID shall be liable for each default - Rs. 1,000/ day upto max Rs. 1 lakh.
20	Service of Documents	In case of Nidhi Company, u/s 20 (2), docs may be served only on members who hold shares more than: Rs. 1,000 in face value or 1% of the total PUSC whichever is less.

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26	Prospectus	Issue of prospectus in contravention of this section - Company and every person who is knowingly a party - Rs. 50,000 to Rs. 3 lakhs
39, Rule 11	Application money	If minimum amt not subscribed + Application money not received within prescribed time - Application money to be repaid within 15 days from close of issue. If not repaid - Directors who are OID - Jointly & severally liable to repay with intt. @15% p.a.
40	Underwriting	Brokerage or commission rate - Max 5% of issue price (shares) or Max 2.5% of price (debenture) or rates as per AOA - Whichever is lower.
42, Rule 14	Private Placement	Identified Person shall <= 200 in aggregate in a FY for each kind of security. Exclude QIB and employees to whom shares issued under ESOP • shall allot its securities within 60 days from receipt of application money • Company If co. fails to allot securities in 60 days - Repay same within 15 days from expiry of 60 days • If company fails to repay - It shall be liable to repay that money + Intt. @ 12% p.a. from expiry of 60th day (read again, from which day?)
48	Variation in the rights of SH	Consent of >= 3/4th of issued shares of that class or by SR passed at a separate meeting. For other class of SH getting affected - Consent of 3/4th ~~or SR~~. Appeal against variation to NCLT- Holders having >= 10% issued shares of that class, did not give consent or voted in favour of the SR.
53	Issue of share at discount	Default under this section: • Co. and OID - Fine up to amt. raised through such issue or Rs. 5 lakhs, whichever is less, and • Company shall also be liable to refund such money + Intt. @12% p.a. from date of issue of such shares
54	Equity share	

Maximum issue size per year:	In a FY, a company shall NOT issue SES > 15% of existing PUESC or issue value of Rs. 5 crores, whichever is higher Provided that, issuance shall not > 25% of PUESC at any time. Prov. further that - In case of Startup - Issue not > 50% (instead of 25%) of its Paid up ~~equity~~ share capital upto 10 years from incorp.

55	No. of years of pref. shares	➢ Redeemable Preference shares for <= 20 years. ➢ For infra company - 30 years + Redemption option >= 10% from 21st year onwards on proportionate basis.

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56(4)	Time for delivery of share certificate	Delivery of certificates of all securities, in case of: Subscribers to MOA within 2 months from date of incorporation. ➢ Allotment of shares within 2 months from date of allotment. ➢ Transfer/transmission - Within 1m from receipt of instrument. ➢ Allotment of debentures within 6 months from date of allotment.
62	Further issue of SC	As per Rule 12A, CG has prescribed time to accept offer shall not be < 7d. In Pvt. co (92 + 137) - If 90% of member give consent, then < 15d allowed
67(3)(c)	Restrictions on purchase of own share	Public company cannot give loan to its employees (other than its directors or key managerial personnel)>= 6 months of their salary/wages to purchase or subscribe for fully paid-up shares in the company
68	Buyback of securities	➢ Without SR - Authorized by AoA + BR where <= 10% of PUESC + FR ➢ Max buyback in a FY - 25% of PUSC + FR ➢ Max buyback in case of equity shares - 25% of PUESC.
71 , Rule 18	Debenture	Deposit/Investment: Company which has raised debentures shall: • on or before 30th April in each year, • in respect of debentures issued by such company, invest or deposit, • a sum not less than 15% of amount of debentures maturing on 31st March of next year
73	Prohibition or excepting deposit	<u>Exemption to Private Companies:</u> The above provision of Sec 73(2) clause (a) to (d) shall not apply to a Pvt. company which: a. accepts from its member's monies not > 100% of PUSC + FR + SPA; or b. is a start-up For 5 years from the date of its incorporation; or c. Fulfils ALL the following conditions: • Not an associate or subsidiary of any other company • Borrowings from banks/FI or BC is < Lower of - 2x PUSC or Rs. 50 crores, AND • Co. has no subsisting default in repayment of borrowing at time of accepting deposit. However, the above cos. will have to file details of deposit accepted with RoC (Form DPT-3).
76	Deposit	➢ DRR - At least 20% of deposits maturing the next year on or before April 30th of each year.
	General points of Deposit	➢ Less than 6m deposits? - May be accepted, but min. 3m, up to: 10% of PUSC+ FR+SPA. ➢ Max amount of deposit that can be received by: <u>From Public and member (Sec 76)</u> Eligible Co: Members - 10% of PUSC+FR+SPA, Public - 25% PUSC+ FR+SPA

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<table>
<tr><td></td><td></td><td>Eligible Government Company: 35% of PUSC+FR+SPA</td></tr>
<tr><td></td><td></td><td><u>From members only (Sec 73):</u></td></tr>
<tr><td></td><td></td><td>Other Co: 35% of PUSC+ FR+SPA.</td></tr>
<tr><td></td><td></td><td>IFSC or Private Co: 100% of PUSC+ FR+SPA</td></tr>
<tr><td>76</td><td>Deposits from public</td><td>Eligible public co:
Net worth >= Rs. 100 crores or
Turnover >= Rs. 500 crores
Has passed SR [or OR in case where deposit is within limits u/s 180(1)(c)] and filed the same with ROC</td></tr>
<tr><td>86</td><td>Registration of Charges</td><td>If company is in default in complying with any of the provisions under this Chapter, penalty: Company - Rs. 5 lakhs and OID - Rs. 50,000

If willfully furnishes any false/incorrect info- Liable for action u/s 447</td></tr>
<tr><td>90</td><td>Significant beneficial owner</td><td>
<table>
<tr><td>Sub -section</td><td>(10)</td><td colspan="2">(11)</td><td>(12)</td></tr>
<tr><td>Failure</td><td>Fails to make declaration u/ss (1)</td><td colspan="2">Co. fails to maintain register or allow inspection thereof</td><td>Willfully furnishes false info.</td></tr>
<tr><td>Liable</td><td>Person</td><td>Company</td><td>OID</td><td>Such person shall be liable for action u/s 447</td></tr>
<tr><td>Penalty</td><td>Rs. 50,000</td><td>Rs. 1 lakh</td><td>Rs. 25,000</td><td></td></tr>
<tr><td>Continuing</td><td>Rs. 1,000/ day</td><td>Rs. 500/day</td><td>Rs. 200/day</td><td></td></tr>
<tr><td>Maximum</td><td>Rs. 2 lakhs</td><td>Rs. 5 lakhs</td><td>Rs. 1 lakh</td><td></td></tr>
</table>
</td></tr>
<tr><td>92(2)</td><td>Annual Return</td><td>Annual return to be certified by CS in practice in case of:
- Listed Company; or
- Companies having PUSC >= 10 crore; or Turnover >= 50 crore.
Such certificate shall be in Form MGT-8</td></tr>
<tr><td>94</td><td>Place of registers</td><td>Register or copies of annual return can be kept at any other place in India where > 1/10th members reside subject to approval by GM-SR.
Index to be maintained if >= 50 members</td></tr>
<tr><td>96</td><td>AGM</td><td>Every company (other than OPC) shall, in each year, in addition to other meetings, hold AGM, and shall specify as such in the notices, and not more than 15m shall elapse between two AGMs

Provided that - First AGM to be held within 9m of closing of first FY. Thereafter, within 6m from closing of each FY.</td></tr>
<tr><td>100(2)</td><td>EOGM</td><td>Requisitionists for calling EGM:
➢ Company having SC, members having >= 1/10th of PUSC.
➢ Company not having a SC, members having ≥ 10% total voting power.</td></tr>
</table>

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101	Notice of meeting	Shorter notice if consent of: ➢ AGM >= 95% members entitled to vote; and ➢ Any other GM: Does company have share capital? • Yes: Majority in No. + 95% total PUSC • No: 95% total voting power.
103	Quorum for meetings	For Pvt Company - 2 members personally present. For Public Co: ➢ Upto 1000 members - 5 members personally present. ➢ > 1,000 but upto 5000 members - 15 members personally present. ➢ > 5,000 members - 30 members personally present.
105, Rule 19	Proxies	1. A member of sec 8 co. can only appoint another member ONLY of the co. as proxy 2. A person can act as proxy on behalf of members not exceeding 50 and holding (aggregate) not > 10% of total share capital of the company carrying voting rights Provided that a person holding > 10% of SC may appoint a single person as proxy and such person shall not act as proxy for any other SH 3. Appointment of proxy shall be in Form MGT 11
108	Voting through e-means	E-voting mandatory for: ➢ Listed Company or ➢ Every Company having members ≥ 1,000.
109	Demand for Poll	Demand of Poll by: ➢ Company having S/C ≥ 1/10th of total VP or PUSC of >= Rs. 5 lakhs. ➢ Any other Company >= 1/10th of total VP.
115	Special notice	Eligible members for Special Notice: ➢ Having >= 1% of total VP; or PUSC of Rs. 5 lakhs.
120, Rule 27	Preservation of documents in Electronic form	Every listed company or a company having >= 1000 SH, DH and other security holders, ~~shall~~ may maintain its records, as required to be maintained under the Act or rules, in electronic form.
121	AGM Report	Listed companies only. Report to ROC within 30 days in MGT 15.
124	Unpaid dividend account	Payment of Interest on default If default is made in transferring the total amount u/ss (1) to UDA, company shall: • Pay interest @12% p.a. from the date of such default • Interest accruing on such amount shall ensure to benefit of members of the company in proportion to amt. remaining unpaid to them.

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127	Dividend	<table><tr><td></td><td>Every Director who is knowing a party to default (not OID)</td><td>Company</td></tr><tr><td>Imprisonment</td><td>Extend to 2 years AND</td><td>NA</td></tr><tr><td>Fine - During the period where default continues</td><td>Not < Rs. 1k / day - Default continues</td><td>Simple Interest 18% p.a.</td></tr></table>
132	NFRA	NFRA may undertake investigation of auditor of following: ➢ Listed company in India or outside India. ➢ Unlisted Public co - PUSC >= 500 cr; T/O >=1,000 cr or O/S LDD >= 500 cr ➢ Insurance, banking, electricity company or other special company ➢ Any BC on a reference made by CG in public interest, ➢ BC incorporated o/s India which is subsidiary or associate of above companies if income or net worth > 20% of consolidated.
135	CSR committee	CSR committee applicable to companies having: ➢ Net Worth ≥ Rs. 500 crores; or ➢ Turnover ≥ Rs. 1,000 crores; or ➢ Net Profits ≥ Rs. 5 crores. *(take NP before tax)* Exception - Where CSR expense is <= Rs. 50 lakhs - CSR committee N.A. However, if company has any amount in unspent CSR A/C - CSR committee applies.
135	CSR	<u>Other limits:</u> Amount to be spent on CSR ≥ 2% of average Net Profits for last 3 FYs. Admin overhead - Max 5% of CSR expense
135	CSR Impact Assessment	Every co. having avg CSR obligation >= Rs. 10 crores in 3 immediately preceding FYs, shall: • undertake impact assessment, • through an independent agency, • of their CSR projects having outlays >= Rs. 1 crore, and which have been completed not less than 1 year before undertaking the impact study Impact assessment - Higher of 2% of CSR or Rs. 50 lakhs
136	Copy of FS in shorter period	FS to be sent to entitled person at least 21 days before GM. Exception - FS can be sent in shorter period if approved by: In case of company having SC - Majority + 95% of PUSC (dual majority) In case of not having SC - 95% of VP In case of listed company and public company having NW > Rs. 1 crore AND

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137	Copy of FS to be filed with Registrar	T/O > Rs. 10 cr - Send FS via e-mode or other mode u/s 20. XBRL filing mandatory for: ➢ Listed + their Indian subs. ➢ Company with PUSC ≥ Rs.5 crores. ➢ Company with turnover ≥ Rs.100 crores. ➢ Company covered under Ind-AS Banks, Insurance, NBFCs & HFCs are exempt from AOC - 4 XBRL.
138	Internal audit	➢ Internal Audit applicable on: ➢ Every Listed Company ➢ Every unlisted public company having: • O/s Deposit >= Rs.25 crores at any point of time during PFY • PUSC >= Rs. 50 crores during PFY • O/s Loans > Rs. 100 crores at any point of time during PFY • Turnover ≥ Rs. 200 crores during PFY ➢ Every Private company having: • Turnover ≥ Rs. 200 crores during PFY • O/s Loans > Rs. 100 crores at any point of time during PFY
139 , Rule 3	Appointment of Auditor	Tenure, re-appointment and cooling period of an auditor: (For other companies, there is no tenure/cooling period) The following companies (except OPC and small cos):

Listed co.	UPC having PUSC >= 10 cr	Private Ltd. cos. having PUSC >= 50 cr	All companies having public borrowings from bank/PFI or public deposit >= 50 cr

143(3)(i)	Reporting on IFC in Auditor's Report	N.A to: - OPC and Small company - Pvt co - T/O < Rs. 50 crores AND Borrowing from banks/PFI < Rs. 25 crores.
143(12)	Fraud	Amount >= Rs. 1 crore - Report to CG Amount < Rs. 1 crore - No need to report to CG Note - Reporting to CG applies where amount is exact Rs. 1 crore also.
147	Penalty	1. Contravention u/s 139 to 146: Company - Fine - Rs. 25,000 to Rs. 5 lakhs OID - Fine - Rs. 10,000 to Rs. 1 lakh 2. Auditor contravenes u/s 139, 144, 145: Fine - Rs. 25,000 to Lower of - (Rs. 5 lakhs or 4x remuneration of auditor) If such contravention is knowingly or wilfully to deceive company/SHs or crs or tax authorities: Imprisonment - Up to 1 year AND Fine - Rs. 50,000 to Lower of - (Rs. 25 lakhs or 8x remuneration of auditor)

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		For contravention under sub-section 2 he shall also be liable to: a. Refund the remuneration received by him to company b. Pay for damages to the company , statutory bodies or authorities or members or creditors of the company for loss
149(4) And 177	Applicability of ID and Audit Committee	Independent Director and Audit committee shall apply to: ➢ Listed company ➢ Unlisted public co - PUSC >= 10 cr, T/O >= 100 cr. or O/S loan, deposit or debenture exceeding Rs. 50 crores. Exception - JV, WOS and Dormant company
180(1)(c)	Board to take SR	In case where existing and proposed borrowing exceeds 100% of (PUSC + FR + SPA), then SR is required. Otherwise, BR is enough. For above calculation, exclude temporary loan taken in OCOB from company's bank (6m or demand). However, loan used to finance capital expenditure is not temporary loan.
379	Foreign company	Where not less than 50% of PUSC (Equity/Preference) of Foreign company is held (singly/ aggregate) by: a. one or more citizen of India b. one or more companies or BC incorporated in India c. one or more citizens of India and one or more cos. or BC incorporated in India, such company shall comply with provision of this Chapter, in respect of its Indian business, as if it were company incorporated in India.

392 Foreign company

	Foreign Company	OID
Fine	Rs. 1 lakh to Rs. 3 lakhs	Rs. 25,000 to Rs. 5 lakhs
Additional Fine	Rs. 50,000/day	NA
Jail	NA	NA [Amendment]

447 Fraud

Amount involved in the fraud	At least Lower of:	Less than Lower of:
	a. Rs. 10 lakhs	a. Rs. 10 lakhs
	b. 1% of T/O	b. 1% of T/O

Whether public interest involved?	No	Yes	No
Jail	6m - 10 years	3 years - 10 years	Upto 5 years
And/or	AND	AND	OR
Fine	Up to 3x amt involved	Up to 3x amt involved	Upto Rs. 50 lakhs or both

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All you need to know about Specified IFSC companies

Relevant Definitions:

IFSC	• Stands for - International Financial Service Centre. • An IFSC is a special financial zone in India where international financial products and services are offered, largely in foreign currency, under a single regulator (IFSCA), enabled by SEZ Act, 2005. • India's operational IFSC is GIFT City, Gandhinagar (Gujarat)
SEZ	Special Economic Zone (SEZ) is a specifically notified area within a country treated as a foreign territory for trade and economic purposes, created to promote exports, investment, and employment by offering special tax and regulatory benefits.
Specified IFSC Public company	An unlisted public company which is licensed to operate by the RBI or SEBI or IRDA from the IFSC located in an approved multi-service SEZ set up under SEZ Act, 2005.
Specified IFSC Private co.	A private company which is licensed to operate by the RBI or SEBI or IRDA from the IFSC located in an approved multi-service SEZ set up under SEZ Act, 2005.

Exemptions/Modifications applicable for Specified IFSC Public or Private companies or Both

Section No.	Normal provision	Apply	IFSC exemption / modification (summary)
2(41) (Financial year)	Susby aligning FY with foreign holding normally needs NCLT approval.	Both	If IFSC co. is a subsidiary of a foreign company, it may align FY with its foreign holding; no Tribunal approval required.
3(2) (Type at formation)	May be limited by shares or guarantee, or unlimited.	Both	Must be formed only as a company limited by shares.
4(1)(a) (Name)	Name to include required suffixes.	Both	Must carry suffix "International Financial Service Company" or "IFSC".
4(1)(c) (Objects)	MOA states lawful objects	Both	Objects must be "financial services activities" as permitted under SEZ Act consistent with licence from RBI, etc.
12(1) (Registered office)	RO to be situated as per normal law;	Both	RO must be at the IFSC (in approved multi-services SEZ) at all times.
12 (Verify RO)	Verify RO - 30d of Inc.	Both	Instead of 30d, it can verify within 60d.
12 (Notice of change)	Notice of RO change: 15d	Both	Instead of 15d, it can verify within 60d.
12 (Change of RO)	Board may change RO within same CTV.	Both	RO cannot be moved outside the IFSC; IFSC - BR (SR/RD approval not needed).
21 (Authentication)	Docs/notice verified by "an officer".	Both	Read "an officer" as "an officer or any other person".

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43 (Kinds of SC)	-	Public	Sec 43 shall N.A if MOA/AOA so provide
47 (Voting rights)	-	Public	Sec 47 shall N.A. if MOA/AOA so provide.
56(4) (Delivery of certificates)	-	Both	Deliver certificates within 60 days after inc. or allotment or trf. or transmission.
62(1)(a) (Rights issue period)	Offer to remain open min 15 days (etc.);	Public only	Shorter periods than 15 days allowed if 90% members consent. (same as pvt. co.)
62 (ESOP approval)	SR required.	Public	Instead of SR - OR is sufficient.
67 (Restrictions on purchase by company of its own shares)	-	Public only	Section 67 shall N.A. to Specified IFSC public company if all 3 conditions met [same conditions as Tri-Pri private co.]
73(2)(a)-(e) (Deposits from members)	Stringent conditions (deposit insurance, reserve, etc.).	Public only	Clauses (a)-(e) not apply where such co. accepts from members ≤ 100% of PUSC + FR (and files such details in DPT-3).
73 - Maximum amount of deposit	Normally 35% of PUSC + FR + SPA	Both	May accept upto 100% of PUSC + FR + SPA (file DPT-3)
82(1) (late registration)	Delayed registration	Both	RoC may allow registration to co. within 300 days of creation (+ additional fees)
92(3) (Annual return)	Place weblink of AR in BoD Report	Both	Not applicable.
100(1) (EGM place)	EGM not allowed to be held o/s India	Both	Board may, with consent of all SH, hold EGM at any place within or outside India.
101-107 & 109	Apply generally to public companies.	Public only	These sections shall apply to such co. unless AoA provide otherwise.
117(1) (Filing of resolutions)	File within 30 days.	Both	60 days instead of 30 days.
117(3)(g)	Filing of resolution passed u/s 179(3)	Public only	Not applicable.
118(1) (Minutes - preparation & signing timeline)	Sign minutes within 30 days	Both	Minutes of Board/Comm. to be prepared & signed at or before the next Board/Comm. meeting and kept in proper books.
118(10) (Sec. Std.)	SS-1/SS-2 mandatory.	Both	Not applicable.
135 (CSR)		Both	CSR shall not apply for 5 years from commencement of business
138 (Internal audit)	-	Both	Sec 138 shall applies only if AoA provide.
140(1) (Auditor removal - CG approval)	CG approval required	Both	If CG has not approved within 60 days of application, deemed approved; company must appoint new auditor within 3m after that 60-day expiry.

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Exemptions to private companies

Provisions of the Companies Act, 2013	Exceptions to Private Companies
2(40)	Financial Statement includes CFS: Private companies (start-ups) need not prepare CFS.
2(76)	Words "holding, subsidiary or associate company of such company" and "director or KMP of the holding company or his relative" shall not apply: these persons/entities not treated as related parties.
43 & 47	Not applicable if MoA / AoA provide otherwise
62(1)(a)	Rights-issue notice period (15–30 days) may be shorter if ≥ 90 % members consent in writing/e-mode.
62(1)(b)	Ordinary resolution is sufficient for ESOP issue (no need for special resolution).
67	Restriction on giving financial assistance for purchase of own shares not applicable if it's a Tri-Pri company (no body corporate investor, borrowings < 2× PUSC or ₹50 cr, no default).
73(2)(a)–(e)	Clauses (a)–(e) inapplicable if: (a) deposits ≤ 100 % of (PUSC + FR + SPA); or (b) it's a start-up (for 5 yrs from incorporation); or (c) it's a Tri-Pri company.
92	In start-up private companies, annual return may be signed by a director if no CS is appointed.
101–107 & 109	GM procedure (notice, quorum, proxy, voting, poll) not applicable unless AoA otherwise provide.
117(3)(g)	Filing of certain Board resolutions u/s 179(3) with RoC not required.
141(3)(g)	Private companies with PUSC < ₹100 cr excluded from 20-audit company limit for auditors.
143(3)	Clause (i) (report on IFC) not applicable to OPCs, small companies, or companies having turnover < ₹50 cr and aggregate borrowings < ₹25 cr from any bank/FI/BC.

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Exemption to Government Companies

Provisions of the Companies Act, 2013	Exceptions to Government Companies
Sec 4: Mandatorily use of last word	Not required to use "Ltd" or "Pvt. Ltd" with its name.
Sec 56: Trf and Transmission of Shares	If person acting as a nominee of govt. co. SH- 4 N.A
Sec 89: Declaration of Beneficial	NA
Interest in any share	
Sec 90: Register of SBO	NA
Sec 96(2): Venue of AGM	AGM can be held at any other place within city, town or
	village of RO or any other place approved by CG.
Sec 123(1) – Rules for Dividend in case	NA to wholly owned government companies.
of inadequacy/absence of profit	
Sec 123(4): Depositing dividend in a	NA to wholly owned government companies.
Scheduled Bank in a separate account	
within 5 days of declaration	
Sec 129: Financial Statements	N.A to Govt Cos. engaged in defence production to extent
	of application of relevant AS on segment reporting.
Sec 134(3)(e): Disclosure in Board	Not required to disclose company's policy on director's
Report	appointment and remuneration.
Sec 134(3)(p)	NA in case the directors are evaluated by the CG, or as
	the case may be, by SG.

Exemptions to Nidhi comapnies

Provisions of the Cos. Act, 2013	Exceptions to Nidhi Companies
Sec 20 – Service of documents	Docs need be served to members holding > ₹1,000 face value or >
	1 % of PUSC (whichever is less). Others: sufficient if public notice
	in local newspaper + display on notice board.
Sec 47(1)(b) – Voting rights	No member shall exercise > 5 % of total equity voting rights.
Sec 62 – Further issue of SC	Not applicable.
Sec 67(1) – Purchase of own	Not applicable when purchased from member on his ceasing to be
shares	depositor / borrower; not treated as capital reduction u/s 66.
Sec 108 – E-voting facility	Nidhi Co. not required to provide facility through E-means.
Sec 123(5) – Dividend payment	May credit dividend directly to member's account; if unclaimed
in cash	within 30 d: deemed compliance.
Sec 124(1) – Unpaid Dividend	If dividend ≤ ₹100: sufficient if announced in local-language
transfer + newspaper notice	newspaper & displayed on notice board for ≥ 3 m.
Sec 136(1) – Circulation of FS	For members holding ≤ ₹1,000 shares or ≤ 1 % PUSC: public notice
21 d before AGM	+ FS on notice board = sufficient.

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