Corporate & Economic Laws

(CA FINAL - SPOM Set A)

COMPACT

KEEP
CALM
AND
COMPILE
CA-FINAL
LAWS

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SYLLABUS – SELF PACED

SET A - CORPORATE AND ECONOMIC LAWS *(100 Marks)*

PART I – CORPORATE LAWS (70 MARKS)

SECTION A: COMPANY LAW (50 MARKS)

Objective

To acquire the ability to analyse, interpret and apply the provisions of the Company Law in practical situations.

Contents

The Companies Act, 2013 and Rules framed thereunder in its entirety with specific reference to section 149 onwards:

1. Appointment and Qualifications of Directors
2. Appointment and Remuneration of Managerial Personnel
3. Meetings of Board and its Powers
4. Inspection, Inquiry and Investigation
5. Compromises, Arrangements and Amalgamatio
6. Prevention of Oppression and Mismanagement
7. Winding Up
8. Miscellaneous Provisions
9. Adjudication, Special Courts, National Company Law Tribunal
10. e-Filing

SECTION B: SECURITIES LAW (20 MARKS)

Objective

To acquire the ability to analyse the significant provisions of the **SEBI Act**.

Contents

Overview of the Securities Exchange Board of India Act, 1992, and references of following Regulations:

1. SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015
2. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
3. SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011
4. SEBI (Prohibition of Insider Trading) Regulations, 2015

PART II – ECONOMIC LAWS (30 MARKS)

Objective

To acquire the ability to analyse the significant provisions of select Economic Laws.

Contents

1. **The Foreign Exchange Management Act, 1999 and significant Rules and Regulations**: Introduction, Broad structure of FEMA, Definition, Regulation and Management of Foreign Exchange, Contraventions and Penalties in brief, Miscellaneous Provisions.

2. **The Foreign Contribution Regulation Act, 2010 and its Regulation**: Definitions, Regulation of Foreign Contribution and Miscellaneous Provisions.

3. **The Insolvency and Bankruptcy Code, 2016 and significant Rules and Regulations**: Significant concepts covered up till section 33 of the Code.

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CHAPTERS	TOPIC	SECTIONS	PAGES	
Chapter 1	Appointment and Qualification of Directors	149 – 172	1.1 – 1.5	50 marks
Chapter 2	Meeting of Board and its Powers	173 – 195	2.1 – 2.4	
Chapter 3	Appointment & Remuneration of Managerial Personnel	196 – 205	3.1 – 3.3	
Chapter 4	Inspection, Inquiry & Investigation	206 – 229	4.1 – 4.5	
Chapter 5	Compromise, Arrangements & Amalgamations	230 – 240	5.1 – 5.4	
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Chapter 8	Miscellaneous provisions - Registered Valuer - Striking-off (Removal of Name) - Dormant company - Government company - Nidhi company	 247 248 – 252 455 394 – 395 406	8.1 – 8.6	
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Chapter 11	Securities Law - SEBI Act, 1992 - SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 [LODR] - SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 [ICDR] - SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 [Takeover Code] - SEBI (Prohibition of Insider Trading) Regulations, 2015 [PIT]	Coverage as per Syllabus	11A.1 – 11A.5 11B.1 – 11B.3 11C.1 – 11C.2 11D.1 – 11D.4 11E.1 – 11E.6	20 marks
Chapter 12	The Foreign Exchange Management Act, 1999		12.1 – 12.6	30 marks
Chapter 13	The Foreign Contribution Regulation Act, 2010		13.1 – 13.5	
Chapter 14	The Insolvency & Bankruptcy Code, 2016		14.1 – 14.10	

Section 149 (Company to have Board of Directors)

Number of Directors

Minimum

3	Public
2	Private
1	OPC

Maximum – 15
(can be increased by SR)

Note – Maximum limit is N.A. to Sec. 8 & Govt. company

Woman Director

At least 1 woman director in every

Listed company	or	Public company having P ≥ 100 crore T ≥ 300 crore

Intermittent vacancy filled by Board
- Immediate next BM, or
- 3 months

} whichever is later

Note – Newly incorporated company needs to comply with this provision within 6 months of its incorporation

Resident Director

- Every company must have 1 resident director
- Meaning – who has stayed in India for ≥ 182 days during the FY
- For new Co., requirement to apply proportionately for first FY

Independent director (ID)

149(4)

Listed Public company	Public company having P ≥ 10 crore L > 50 crore T ≥ 100 crore
≥ 1/3rd of total directors	≥ 2 ID

- Intermittent vacancy filled by Board
  - Immediate next BM, or
  - 3 months

  } whichever is later
- If above limits breached once, will have to appoint ID for next 3 years
  If higher no. of ID required because of Audit committe, higher to be appointed.
- JV, WOS, Dormant company is NOT covered
- Other points
  - Comply with Schedule IV
  - Not entitled to ESOP
  - Not liable to retire by rotation
  - ID not required in case of Sec. 8 & specified IFSC Public Co.

Term

- First term of maximum 5 years (1st term by OR)
- And maximum 2 terms permitted (2nd term by SR)
- Cooling-off period of 3 years (not to be associated with the company in any capacity)

149(6)

Director other than MD, WTD or Nominee director

a.	Person of integrity, expertise & experience	
b.	– Not a promoter of CASH – Not related to P or D of CASH	
c.	No pecuniary relation with CASH or their P or D - 2 years	• Remuneration allowed • Transactions up to 10% of his total income allowed
d.	His relative is not 1. holding Security in CASH – 2 years 2. Indebted to CASH or P or D– 2 years 3. Guarantee or Security to CASH or P or D – 2 years 4. Any other pecuniary relation with CASH	 1. May hold upto FV ₹ 50 lakh or 2% of paid-up capital 2. Exception - ₹ 50 lakh 3. Exception - ₹ 50 lakh 4. Exception – 2% of turnover or income in combination of above
e.	He or his relative is not 1. KMP or employee of CASH – 3 years – However, relative can be employee 2. Not an Employee/ Proprietor/ Partner – 3 years – Auditor/ CS/ Cost auditor of CASH – Consulting firm of CASH deriving ≥ 10% of income 3. Holds with his relatives ≥ 2% voting power in company 4. CEO/ Director of NPO that – receives ≥ 25% from CASH or P or D of company – holds ≥ 2% voting power in Company	
f.	Possesses other prescribed qualification – appropriate skills in specified fields	

Note – ID shall at his first BM; then first BM every FY & whenever there is any change in his status as ID, give a declaration of independence

Note - ID and a NED (other than promoter or KMP), are only liable for the acts incurred with their knowledge attributable through Board process

Section 150 (Data Bank)

- CG may notify an institute (Indian Institute of Corporate Affairs, Manesar), which will maintain a data bank of persons eligible and willing to become independent director
- However, the company is responsible to exercise due diligence before selecting a person from the data bank

Inclusion of Name in Data-Bank

Every individual who intends to be appointed as ID, shall before such appointment

shall get his name included in Data Bank for
→ 1 year; or
→ 5 years; or
→ Life-time

till he continues to be ID

Note – Even an individual not having DIN, may apply voluntarily to be included in Data-Bank

Application for renewal shall be given for
→ 1 year; or
→ 5 years; or
→ Life-time
within 30 days from the expiry

Note – Renewal is not required if name was included on life-time basis

Note – ID shall submit a declaration of compliance of inclusion of name in Data-bank each time declaration is given u/s 149

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Online Proficiency Self-Assessment Test

Individual needs to pass
- → an Online Proficiency Self-assessment test
- → within 2 years from the date of inclusion of his name in data-bank
- → by securing ≥ 50% marks in aggregate
- → (NO limit on number of attempts)

↓ else

his name will be removed from the Data-Bank

↓ but

but by paying ₹1,000 he can apply for restoration, which the institute shall allow,

↓ but

Exception I – No need to pass test if he has served for ≥ 3 years as

1. Director or KMP in one or more; or
   - Listed Public Co.; or
   - Unlisted Public Co. having PSC ≥ ₹ 10 crore; or
   - Body corporate listed on any recognised stock exchange or in a country which is FATF Member + its securities market regulator is a member of International Organisation of Securities Commission; or
   - Bodies corporate outside India having PSC ≥ US$ 2 million
   - Statutory corporations
2. In the pay scale of Director or equivalent or above in any Ministry or Department of CG or State Govt + having experience in handling
   - Matters relating to commerce, corporate affairs etc.; or
   - Affairs related to Govt. companies or statutory corp.
3. In the pay scale of Chief General Manager or above in
   - SEBI or
   - RBI or
   - IRDA or
   - PFRDA

   Having experience in matters of corporate laws or securities laws or economic laws

Exception II – No need to pass test if he is or has been, for ≥ 10 years
- an advocate of a court; or
- in practice as a cost accountant; or
- in practice as a CA; or
- in practice as a CS,

- the name is shown in separate reserved category for 1 year → within which he passes test → then his name is included in data-bank → fees paid at initial registration continue to be valid for the period for which it was initially paid
- If he fails to pass the test within 1 year → name is removed from data-bank → then he needs to apply afresh

Section 151 (Small Shareholders' Director, SSD)

Applicability	Procedure to appoint	
• Every listed company • It may appoint 1 director elected by small shareholders • Meaning of small shareholder – one who holds shares of NOMINAL VALUE ≤ INR 20,000	Application to appoint SSD by ≥ 1,000 small shareholders, or ≥ 1/10th of total small shareholders } whichever is lower	• These small shareholders shall give a notice for appointing SSD at least 14 days before meeting • SSD need not be a shareholder • If satisfies section 149(6) & (7) will be ID

- SSD is not liable to retire by rotation
- 1 tenure of maximum 3 years
- No association with company for next 3 years
- A person can be SSD of maximum 2 companies provided these companies are not in competing business

Section 152 (Appointment of Directors)

First Directors	Other provisions
• Written in AOA • If not written, individual subscribers become the first directors • In case of OPC – the member becomes the first director These directors to hold office until director(s) are duly appointed in GM	• DIN is compulsory for a director • Appointed director to give his consent in DIR-2 (in case person is national of a country sharing land borders with India, security clearance of Home Ministry is required) • Company to file such consent with RoC in DIR-12

Retirement by Rotation – Applicable only to PUBLIC company

Note – Rotation N.A. to **UNLISTED** Govt. Co. or subsidiary of such Govt. Co.

i AOA may provide that ALL directors to retire

ii Else, ≥ 2/3rd of TNOD shall retire by rotation + should have been appointed in GM

Note – TNOD to exclude Independent Director

Note – For 2/3rd higher rounding off is done

TNOD means Total Number of Directors

Nominee Director pursuant to **Law - NOT COUNTED** in TNOD

Nominee Director pursuant to **Aggrement - COUNTED** in TNOD

When to retire	At AGM
How many directors to retire	1/3rd of those 2/3rd shall retire **Note** – In this case, nearest rounding off is done
Which director to retire first	Retire by rotation who have been longest in office → If appointed on same day → see agreement, if any, between the directors → else → Determined by lot
Who will fill such vacancy	Retiring director himself or some other person may fill. Further meeting may resolve NOT to fill the vacancy

Automatic re-appointment of retiring director

- If the vacancy is not so filled or it is not resolved not to fill the vacancy, meeting stands adjourned to the next week (same day, time & place → if that day is a national holiday, then to the next succeeding day which is not a holiday)
- If vacancy is not filled or it is not resolved not to fill the vacancy at adjourned meeting → retiring director stands automatically reappointed UNLESS

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Resolution for his appointment was lost	He is unwilling	He is disqualified
Section 162 is applicable	OR/ SR is required for his appointment as per provision of the Act	

Section 153	Every person intending to become director must apply for DIN in DIR-3	**Section 154**	CG to allot DIN within 1 month
Section 155	No person shall obtain more than 1 DIN	**Section 156**	Director must intimate his DIN to the company within 1 month
Section 157	Company to intimate details of DIN to RoC within 15 days	**Section 158**	DIN must be mentioned in every return, information etc.
Section 159 (Punishment)	For contravention of section 152, 155 & 156; ➡	– Penalty upto INR 50,000 – If continuing one, further penalty of INR 500/ day	

Steps to Obtain DIN

Step1
File information in Form DIR-3 for applying DIN

→ **Step2**
The form must be digitally verified by CS in full time employment or MD/ director of the company

→ **Step3**
After processing, system shall automatically generate an application number (provisional DIN)
If person applying is a national of a country sharing land borders with India, application number is not generated, unless security clearance from Home Ministry is attached with the application for DIN

→ **Step4**
When provisional DIN has been generated, CG shall process the application to decide on the approval or rejection

→ **Step5**
In case of approval, CG shall communicate to the applicant along with DIN allotted within 1 month

→ **Step6**
If CG on examination, finds any defect or incompleteness, then it may intimate such defects by placing it on the website and by e-mail to the applicant & ask the applicant to re-submit the application within 15 days

Note – Any change in the particulars of DIN shall be intimated to CG in form DIR-6 within 30 days

Cancellation or Surrender or Deactivation

Grounds of cancellation or deactivation of DIN

- DIN is found to be duplicated
- DIN was obtained in a wrongful or fraudulent manner
- Death of concerned individual
- Individual declared as unsound mind by competent court
- Adjudicated insolvent
- Application for surrender of DIN in form DIR -5 (CG shall verify e-records before deactivation)

CG may also deactivate DIN, if individual doesn't intimate his particulars in e-form DIR 3-KYC or DIR-3 KYC Web

DIN may be re-activated only after DIR-3 KYC or DIR-3 KYC Web is filed

Directors KYC

Every individual holding DIN as on 31st March, shall submit e-form DIR-3 KYC for said FY to CG on or before 30th September

Where DIR-3 KYC is filed, for subsequent years individual can submit web form DIR-3 KYC Web

Section 160 (Candidature for directorship)

- Any person himself may apply for directorship, or
- A member may propose him as director

Note - Section N.A. to a **Private company** & also not applicable in case of **director retiring by rotation** and **Wholly owned Govt co. + its WOS**

Conditions

- 14 days' notice before the meeting
- Deposit of INR 1 lakh

No need of deposit is candidate
1. In case of independent director
2. Director proposed by NRC
3. If no NRC, director proposed by Board

Deposit refunded if
- Gets elected, or
- Gets > 25% votes

Section 161

(1) – Additional Director
- Authorised by AOA
- Appointed by Board **(BM or RBC)**
- **Should not be a person rejected by GM**
- Holds office upto AGM **or Last due date**

(3) – Nominee Director
- Authorised by AOA
- Appointed by Board
- Appointed pursuant to some agreement or law

(4) – Casual Vacancy
- Casual vacancy of a director appointed in GM may be filled by Board at a MEETING
- It is subsequently approved in immediate next GM
- Hold office upto the date the director whose vacancy is filled would have held office

(2) – Alternate Director
- Authorised by
  - AOA or
  - OR
- Appointed by Board **(BM or RBC)**
- Appointed to act as an alternate for a director outside India for ≥ 3 months
- Existing director can't act as alternate director for any director
- Person shall be alternate director for only 1 director in the company
- Alternate director for an Independent director must be independent as well
- Automatic re-appointment N.A. to alternate director
- Hold office

– Upto tenure of original director	}	whichever is earlier
– Original director returns to India		

Section 162 (Single Resolution)

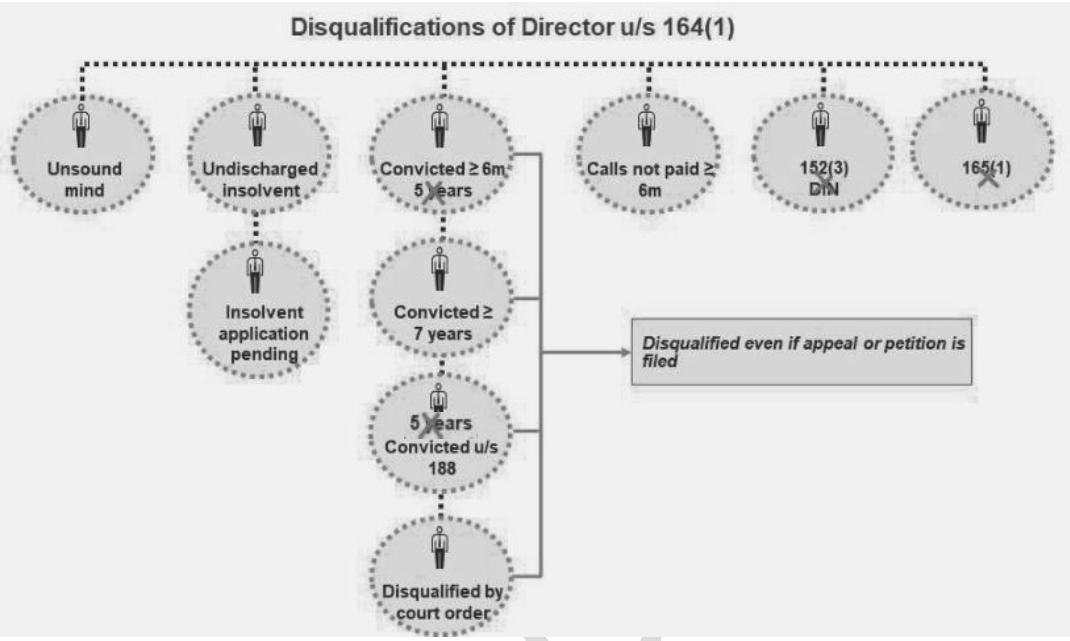
- 2 or more directors shall not be appointed by a single resolution, unless approved without any vote being cast against it
- If still appointed, the resolution shall be void

Section 163 (Proportional Representation)

- AOA may provide for appointment of ≥ 2/3rd directors by proportional representation
- Appointment made once in every 3 years & casual vacancy filled u/s 161(4)

Section 164 (Disqualifications)

164(1)



164(2)

No person who is or has been a director of a company, shall be re-appointed in the company or appointed in any other company as a director for 5 years, if that company

- has not filed financial statements or annual return for 3 continuous financial years
- has failed to repay 3D's for 1 year (Deposit, debenture, dividend)

Note – Any person newly appointed as director of company mentioned above shall not incur the disqualification for 6 months. **(Second disqualification is not applicable to Govt. company.)**

164(3)

Private company may, by its articles, provide for any other ground for disqualification

Section 165 (Number of Directorships)

- Maximum directorships = 20
- Section 8 & Dormant company not counted in 20

But, maximum 10 directorships in
- Public Co. or - Private Co. which is Holding or subsidiary of a Public Co.

Section 166 (Duties of a director)

- Act in accordance with AOA
- Act in good faith
- Exercise duties with due care
- Shall not involve in conflicting interest
- No undue advantage
- Shall not assign his office

Section 167 (Vacation of office)

- AOA of Pvt co. can provide additional grounds of disqualification.
- If all directors vacate their office, promoter or in his absence, CG shall appoint required no. of Directors

Grounds for vacation

• Disqualified u/s 164 But in case of 164(2), director shall vacate in all companies, except in which default incurs	• Absent from BM for 12 months	• Act in contravention of 184	• Fails to disclose interest u/s 184
• Disqualified by Court • Convicted for ≥ 6 months In these 2 cases, shall not vacate office for → Initial 30 days; → If appeal is preferred, until the expiry of 7 days from disposal of appeal; → If further appeal is preferred, until such further appeal is disposed of		• Removed u/s 169	• Ceases to hold office in Holding/ subsidiary/ associate pursuant to which appointed

Section 168 (Resignation)

- Director may resign by giving a notice in writing to the Company + MAY forward a copy to RoC in DIR-11
- Further, company shall also file DIR-12 with RoC + place the fact of resignation in next General Meeting
- Effective date of resignation is

Date on which notice is received by the company	}	whichever is later
Date, if any, specified in the notice		

- Director to remain liable for past offences
- If ALL directors resign or vacate their office → promoter, else CG, shall appoint required number of directors

Section 169 (Removal)	**A SPECIAL NOTICE (u/s 115) is required to** • Remove a director; or • To appoint somebody else in his place • OR is passed for removal • But to remove re-appointed Independent director, SR is required **Filing of vacancy** • A new director may be appointed at the same GM by giving special notice • If not so appointed, filled as casual vacancy • Term – date upto which predecessor would have held office	**Right of representation by Director being removed** • Director has right to be heard at the meeting • Further, he also has the right to make representation – Fact of representation shall be mentioned in the notice – If received timely – also sent to every member – If not received timely – must be read out at meeting – Provided it need not be sent/ read out if NCLT is satisfied that representation is being used to secure needless publicity for defamatory matter
Section 170 (Register of Directors, KMP & their shareholding)	Register of Director	Every company shall maintain a Register containing particulars of director/ KMP + their shareholding
	Return of Particulars	A return shall also be filed with RoC within 30 days of appointment or any change taking place
Section 171 (Members' right to inspect)	– Right to inspect register u/s 170(1) – Member shall have right to inspect during business hours + can take extracts	– Also, it should be open for inspection at every AGM – If company refuses → RoC, on application, shall order inspection
Section 172 (Punishment)	Residuary penalty for contravention of this Chapter	

On whom	Penalty
- Company; and - Every officer in default	• liable to a penalty of INR 50,000; • and if continuing failure, further penalty of INR 500 for each day during which such failure continues, subject to a maximum of - 3 lakh for company and 1 lakh for officer in default

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Section 173 (Board Meetings)

Frequency of BM

- 1st meeting within 30 days of incorporation
- 4 meetings in every calendar year + max. gap of 120 days b/w 2 meetings
- Section 8 company - 1 meeting in every 6 calendar months
- IFSC Co. to hold first meeting within 60 days of incorporation & then 1 meeting in each half of calendar year
- Following companies to hold 1 meeting in every 6 calendar months + min. gap of 90 days

Small Co.	Dormant
OPC	Start-up

Video conferencing

Directors may participate through video conferencing except for any matter which CG may prescribe

Note – For any matter prescribed by CG, if quorum is physically present, remaining director can participate through video conferencing even for these businesses **(Advance intimation to attend meeting by VC valid for 1 year)**

Notice

Not less than 7 days' notice in writing → In case shorter notice → At least 1 ID to be present → If not so present →
- Decision circulated to ALL directors
- Final only upon ratification by ID, if any

Section 174 (Quorum)

1/3rd of its total strength, or	}	whichever is higher
2 directors		

For section 8 company

8 members, or	}	whichever is less	BUT	≥ 2 members
25% of total strength				

If directors fall below quorum

continuing director may continue to act only for
- Increasing the directors to quorum, or
- Calling GM

If interested directors ≥ 2/3rd of total strength

Non-interested directors (being ≥ 2) shall be quorum

Meeting adjourned for the want of quorum

- Unless AOA specifies, adjourned to next week, same day, same time & place
- If national holiday, to next succeeding day (not being a holiday)

Section 175 (Resolution by Circulation, RBC)

- Resolution to be circulated in draft to ALL the directors at their registered address
- Approved by **MAJORITY** of directors **ENTITLED** to vote
- Resolution to be moved at MEETING if 1/3rd directors require the same
- Resolution passed by RBC to be noted at subsequent meeting

Section 176 (Defects in appointment

Past acts of directors not to be invalid if it is subsequently notice that appointment was invalid because of
- defect - disqualification - termination - AOA

However, once notice, then future acts will not be valid

Section 177 (Audit committee & Vigil Mechanism)

Companies required to appoint Audit Committee
↓
Similar to that prescribed for Independent director (I.D.)

Composition of Audit Committee

- Min. 3 directors → I.D. forming majority
- Majority members + Chairman → must be able to read & understand financials

Functions/ Roles of Audit Committee

Appointment & remuneration of Auditor	Monitor auditor's independence	Examine financials & audit report
End use of funds raised in Public offer	Scrutinize inter-corporate loans	Valuation
Internal financial controls	Approve RPT* Transactions other than 188 may be referred to Board	

***Note** – For RPT (other than RPT of section 188) –
- Where AC disapproves RPT, it shall make recommendation to the Board
- Further, approval is not required, if RPT with WOS

***Note** – Directors can enter RPT ≤ 1 crore and get it subsequently ratified by AC

Note – AC may give OMNIBUS APPROVAL for RPT ➡

Powers of Audit committee

- Call comments of auditor on internal control, scope of audit, financial statement etc.
- Discuss related issues with auditor or management
- Authority to investigate
- Authority to seek any professional advise

OMNIBUS APPROVAL

- AC shall specify the criteria for making omnibus approval
- Such approval shall indicate

- Name of party	- Max. amount
- Nature & duration of RPT	- Indicative base price

- Where need of RPT cannot be foreseen, max. approval of ≤ ₹ 1 crore per transaction
- It is valid for maximum 1 Financial Year
- Not allowed for the selling or disposing of the undertaking

Vigil mechanism – Formed by following companies

- Listed; or
- Accepting Public deposits; or
- Borrowings from Banks/ FI > INR 50 crore

⇨

Objectives

- Mechanism for directors/ employees to report concerns
- Safeguard against victimisation
- Direct access to Chairman in exception cases

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Section 178

NRC

NRC

Companies required to appoint Audit Committee

↓

Similar to that prescribed for I.D. & Audit Committee

Composition of NRC

- Min. 3 Non-executive directors → ≥ 50% I.D.
- Chairperson of company can be member but shall not chair NRC

Functions of NRC

- Identify persons qualified to become director
- Lay down criteria for qualifications & independence
- Formulate remuneration policy
- Policy disclosed in Board's report

SRC

Constituted by companies having >1,000 security-holders

Headed by Chairperson being Non-executive director and other members as decided by Board

Objective

Resolving grievances of security-holders

Section 179 (Powers of Board)

- Powers of Board are co-extensive with that of the company
- Power does not exercise powers reserved for GM

Following powers to be exercised only at Board MEETING

(a)	Making calls on shareholder
(b)	Authorising Buy-back
(c)	Issue securities
(d)	Borrow monies
(e)	Invest funds
(f)	Grant LGS
(g)	Approve financials & Board report
(h)	Diversify business
(i)	Approve amalgamation, merger etc.
(j)	Approve takeover
(k)	- political contribution – Appoint/ remove KMP - appoint internal or secretarial auditor

→ **Can be delegated**

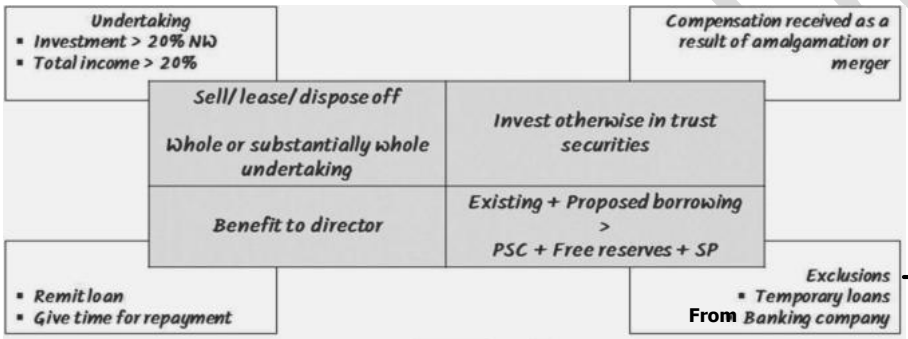
Note – For O/D & C/C, borrowing means availing such facility & not their day-to-day operation

Section 180 (Restriction on Powers of Board)

↓

Not applicable to Private company

Special Resolution is required for



Safeguard

- Buyer who acquired undertaking in good faith
- Sale or lease of undertaking in normal course of business
- Debt incurred in excess of prescribed limit will be valid → if lender gave the loan in good faith

Loan repayable on demand or within 6 Month BUT if used for capital exp, then NOT temporary

Section 181 (Charitable donations)

- Donation ≤ 5% of Average Net profits of past 3 years – Board resolution
- > 5% Average Net Profits of past 3 years – Ordinary Resolution

Section 182 (Political contribution)

Cases covered

Donation to Political party → Any purpose

Donation to Any person → Political purpose

Companies excluded

- Government company
- Company been in existence < 3 years

Limit

No limit, amount can be contributed after passing resolution at Board Meeting

Section 183 (NDF)

Board can contribute ANY amount to National Défense Fund or any other fund approved by CG for national defence

Section 184 (Disclosure of interest by Director)

Sub-section	Applicability
(1)	Public + Private Co.
(2)	Public Co.

(1) – Disclosure of interest by Director

Every director shall disclose his concern or interest in any body corporate or association in

- First BM
- First BM every in FY
- Change in disclosures

Note - No disclosure if shareholding ≤ 2%

(2) – No Participation by director if interest in a contract/ arrangement

- With a Body corporate in which such director holds > 2% or is a Promoter, manager, CEO
- With other entity in which such director is partner, owner or member

If contract still entered → voidable at the option of the company

Section 185 (LGS to Directors etc.)

185(1) LGS - NOT ALLOWED	185(2) LGS – ALLOWED if ▪ SR passed + ▪ used for principal business
1. **DIRECTOR** of Co. Director of Holding Co. Partner or Relative of such director	1. **PRIVATE COMPANY** of which such director is Director or member 2. **BODY CORPORATE** – director together with other holds ≥ 25% of voting power
2. **FIRM** in which such director or relative is partner	3. **BODY CORPORATE** – directors of which accustomed to act

Excpetions to sub-section (1) & (2)

Loans to MD/ WTD	▪ Condition of service; or ▪ Scheme approved by SR
LGS in ordinary course of business	Minimum interest charged as per 1/ 3/ 5/ 10 years government security
LGS to WOS	Used for principal business activities
GS to subsidiary	▪ Against loan taken from bank or financial institution ▪ Used for principal business activities

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Section 185 is not applicable to a Private company

a. in whose share capital no other body corporate has invested
b. borrowings from Banks or FI or any body corporate is less than lower of (2 X PSC) or ₹ 50 crore; and
c. there is no default in such borrowings

Note – Sale of flat on instalment basis to a director is NOT a loan

(Fredie Ardshire Mehta)

Section 186 (LGSI)

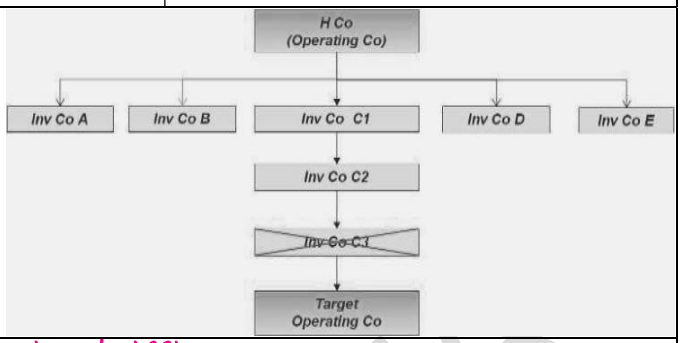
Maximum 2 layers of Investment Co. is allowed

Exception –

- Acquiring any company outside India where laws of such country allows more layers
- Subsidiary can have investment subsidiary if any law requires

Note - Investment Co. means a company whose

- **Assets in Investment form ≥ 50% of Total Assets OR**
- **Income from Investment ≥ 50% of Gross Income**



Conditions to make LGSI

1. Unanimous Resolution
2. If exceeds below limit – SR

- **60%** of its (PSC + FR + SP) or - **100%** of its (FR + SP)	}	whichever is **MORE**

3. PFI approval if term loan subsisting (No approval if within limit + no default)
4. ROI ≥ 1/ 3/ 5/ 10 year GOI securities' yield
5. No default of deposits
6. Register should be maintained

Exemption from ALL the above conditions

- LGS to **Employees.**
- LGSI by banking, insurance, Housing finance company
- LGSI by company engaged in industrial financing or providing infrastructure facilities
- Investment by NBFC (principal business being investment)
- Investment by investment company
- Rights issue

Exemption from passing SR

- LGS to WOS or JV
- Investment in securities of WOS

Section 187 (Investment in own name)

- All investments made by company shall be in its own name
- However, to meet statutory limit, shares in subsidiary can be held in the name of nominee

Exceptions

- Securities given to bank to collect dividend/ interest
- Securities given to bank to facilitate transfer
- Depositing securities as a security against loan
- Holding investments in Demat form

Section 188 (RPT)

Related Party

Director/ KMP	or his Relative
Firm	Where Director/ Manager/ Relative is Partner
Private Co.	Where Director/ Manager/ Relative is Director/ Member
Public Co.	Where Diirector/ Manager ▪ is a director; AND ▪ Holds with relative > 2% PSC
Body Corporate	Whose Board or MD or Manager is accustomed to act according to Director/ Manager
Any Person	On whose advise our Director / Manager is accustomed to act
Body corporate which is	Holding/ Subsidiary/ Associate/ Co-subsidiary/ Investing/ Venturer company **Note** – This point is exempt for Pvt Co.
Director (other than ID) + KMP	▪ of Holding company, or ▪ his relative

Transactions covered

a	Sale, purchase, supply of GOODS
b	Sale, purchase of PROPERTY of any kind
c	Leasing of PROPERTY of any kind
d	Availing or rendering any service
e	Appointing AGENT for a, b or d
f	Office or Place of Profit (OPP)
g	Underwriting of securities

CONDITIONS

- Board resolution at MEETING required
- If RPT exceeds below limits, OR also required
- Interested member shall not participate except in Private Co.
- Interested member may participate if ≥ 90% members are relatives of promoters or related parties

a + e	10% turnover
b + e	10% NW, or
c	10% turnover, or
d + e	10% turnover
f	INR 2,50,000 per month
g	1% NW

Exception

- Section not applicable on transactions entered at ALP
- OR is not required in case of RPT with WOS whose accounts are consolidated

Consequences of violation

- Contract is voidable at the option of the Board
- If contract entered with a director or employee → he shall make good the loss

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Section 189 (Register of contracts in which director interested)	• Every company shall maintain a register for contracts to which 184(2) & 188 applies • Register shall be placed in next BM & signed by ALL directors • Every director/ KMP shall within 30 days of his appointment or relinquishment disclose particulars u/s 184(1)	• Register is open to inspection by any MEMBER • Also, register is produced at every AGM **Exceptions** Nothing applies to – ▪ Sale/ purchase of goods & services ≤ INR 5 lakh in a FY ▪ Banking company for collection of bills
Section 190 (Employment contract with MD or WTD)	Every company to keep at registered office – • Contract of service with MD/WTD → if it is in writing, • Else, a written memorandum setting out the terms	• The contract is open to inspection by any member • Section is not applicable to a Private company
Section 191	No director is entitled to any compensation for loss of office resulting from • Transfer of undertaking or property, or • Transfer of shares unless → Disclosed to members & their approval has been obtained in GM **Note** – Nothing affects payment to MD/ WTD/ Manager within the limits of sec. 202	
Section 192 (Non-cash transactions involving directors)	A company AND director of the company/ holding/ subsidiary/ associate/ a person connected shall not enter into non-cash transactions unless – • Prior approval in GM is obtained, & • If director of Holding Co. – approval in GM of Holding Co. also required	**Consequences of contravention** Contract is VOIDABLE at the option of the company unless – • Restitution not possible + Co. is indemnified; or • Rights acquired bona-fide for value
Section 193 (Contract by OPC)	• Where OPC enters into contract with sole member who is also a director & it is not in writing then → Ensure terms contained in memorandum or recorded in first BM • Nothing applies to transactions entered in the ordinary course of business	
Section 194	---- Omitted ----	
Section 195	---- Omitted ----	

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Section 196 (Appointment of MD/ WTD/ Manager)

- No company shall appoint MD as well as Manager
- Tenure – 1 term of 5 years (no re-appointment earlier than 1 year)

Note – Procedure for appointment & **Max. tenure of 5 years** is **not** applicable to **Govt. Co.**

Procedure for Appointment

1	Resolution at BM
2	Approval by OR at next GM
3; or 4	CG approval; or Follow Schedule V

Note - File MR-1 within 60 days

Note – Where appointment is not approved in GM, acts done before such approval shall be valid

Note – Procedure for appointment is not applicable to Private Co.

Disqualifications

- Min. age → 21 years; Max. age → 70 years
  (can appoint if > 70 years by passing SR → if SR failed, but votes in favour > votes against, he may still be appointed with CG approval)
- Undischarged insolvent + adjudged insolvent
- Suspended payment to creditors or made compromise with them
- Convicted for > 6 months for any offence

Schedule V

- Not subject to imprisonment or fine > INR 1,000 under the prescribed **19** Acts
- Not detained for COFEPOSA Act
- Min. age 21 years; Max. age – 70 years (can appoint if > 70 years by SR)
- Resident in India (staying in India for continuously 12 months preceding the date of appointment) **(This condition NOT applicable to SEZ companies.)**

Section 197 (Director's remuneration)

Limit to director's salary

Conditions	% of Net Profits	Condition to exceed limits
Overall	11%	GM + Sch. V
1 MD/ WTD/ Manager	5%	SR
> 1 MD/ WTD/ Manager	10%	
Non-executive director(s) • If MD/ WTD there • If MD/ WTD not there	 1% 3%	

Note – Where company defaulted in payment of Bank, PFI, NCD or other secured creditor, their prior approval also required before obtaining approval in GM

Net Profit – Computed u/s 198 w/o deducting director's remuneration

Note - Salary is exclusive of any sitting fees

Sitting fees

- Max. which Board can prescribe is INR 1 lakh per meeting
- Sitting fees to I.D. and Woman director can't be less than others

Note – Salary includes remuneration payable in any other capacity, other than

- Services of professional nature + requisite qualification is there
- Guarantee commission

Mode of paying remuneration

- Monthly remuneration; or
- % of Net profits; or
- Mix of both

Other points

- Director is liable to refund any excess salary within 2 years (Co. can waive it by SR + approval of financial institutions, if default is there)
- Listed Co. to disclose ratio with median salary in Board's report
- Insurance premium paid for indemnity insurance included in salary → only if director is proved guilty

Options to pay salary in case of NO or Inadequate profits

Section II of Part II of Schedule V

Part A

Effective capital #	Yearly remuneration in case of Managerial Person	Yearly remuneration in case of other director
< 5 cr	60 lakhs	12 Lakhs
≥ 5 cr but < 100 cr	84 lakhs	17 Lakhs
≥ 100 cr but < 250 cr	120 lakhs	24 Lakhs
≥ 250 cr	120 lakhs+ 0.01% of capital above 250 cr	24 Lakhs + 0.01% of capital above 250 cr

Note – Remuneration in excess of above may be paid by passing SR

Part B

Remuneration as per Part A may be paid if

- Functioning in professional capacity
- No direct or indirect interest in share capital of Co./ Holding/ Subsidiary (can hold upto 0.5% pursuant to ESOP etc.)
- No direct or indirect interest in Director or Promoter of Co./ Holding/ Subsidiary in last 2 years
- Possess graduate level experience with expertise & specialised knowledge

i. Payment approved by Board and also by NRC, if covered u/s 178
ii. No default in payment of bank, PFI, NCD or other secured creditor → if defaulted, obtained their prior approval
iii. Part A – OR/ SR is passed, as the case may be; Part B – SR is passed → for a period ≤ 3 years
iv. Requisite disclosures made in a Statement along with the notice of GM

Meaning of Effective Capital

	Paid-up share capital (excluding share application pending allotment)	xxx
+	Share premium account	xxx
+	Reserves & Surplus (excluding revaluation reserve)	xxx
+	Long term loans & deposits payable after 1 year (excluding working capital loans, O/D etc.)	xxx
(-)	Investments (except in case of Investment company)	(xxx)
(-)	Accumulated losses	(xxx)
(-)	Preliminary expenses not written-off	(xxx)
	Effective Capital	**xxx**

Effective capital of which date to be checked?

- Where appointment is made during the year of incorporation → Effective capital to be calculated as on the date of appointment
- In any other case → Effective capital to be calculated as on the last date of preceding FY

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	Managerial Person is eligible for following **PERQUISITES** which are not included in the ceiling of remuneration – • Contribution to PF, Superannuation or annuity fund, to the extent they are exempt in Income-tax • Gratuity ≤ half month's salary for each completed year of service • Leave encashment	Further, **Expatriate Managerial Person**, is eligible for following extra **PERQUISITES**, which are not included in the ceiling – • Children's education allowance → limited to maximum ₹ 12,000 per month per child or actual expense, whichever is less → allowed for maximum 2 children • Return holiday passage to India of children & family staying abroad → once in a year by economy class or once in 2 years by first class • Return passage for self & family → if company has specified that leave be spent in home country & not in India

Section 198 (Calculation of Profits)	In the Net Profit Before Tax –	
	Add – Following expenses are added back if they were deducted while computing Net Profit Before Tax • Provisions (but deduct actual expense, if not already deducted) • Damages or compensation paid voluntarily (i.e. not paid by virtue of liability arising from breach of contract) • Loss of capital nature like loss on sale of undertaking (but if fixed asset is sold, excess of WDV over selling price is not a loss of capital nature) • Repairs of capital nature	**Less** – Following incomes are deducted if they were included while computing Net Profit Before Tax • Profit on sale of shares or debentures (except in case of Investment company) • Profit on sale of forfeited shares • Profit of capital nature like profit on sale of undertaking • Profit on sale of fixed asset (except where the business of company is selling these assets) ➢ If Selling price < Original cost; do not deduct ➢ If Selling price > Original cost; deduct the difference between Selling price & Original cost • Any unrealised or notional gain
	Note – Under section 198, director's remuneration is also deducted, but while using these Net Profits for section 197, director's remuneration is added back **Note** – Actual expenses like working charges, depreciation as per Schedule II, interest, insurance, actual bad debts, repairs of revenue nature, donations etc. are to be deducted, if not already deducted **Note** - Bounties or subsidies received from any Govt. are to be added, if not already credited (unless the Govt. directs otherwise)	
Section 199 (Recovery of remuneration)	If company is required to re-state its financial statements due to fraud or non-compliance ⟹ Company shall recover excess remuneration from MD/ WTD/ Manager/ CEO	
Section 200 (Company may fix limit on remuneration)	Company may, while giving approval, fix limits on remuneration in cases of inadequate or no profits.	Certain factors to be considered while fixing limits, which inter-alia includes – Financial position of company Remuneration drawn in any other capacity Remuneration drawn from other company Professional qualifications & experience Financial & operating performance in 3 FYs Relationship b/w remuneration & performance
Section 201 (Filing with CG)	Every application to CG under this chapter shall be in Form MR-2	Before giving application, general notice to members shall be given + it shall also be published and their copies are attached with the application
Section 202 (Compensation for loss of office of MD/ WTD/ Manager)	A company may pay compensation for loss of office to MD/ WTD/ Manager, but NOT to any other director	**Non-eligibility** • Director resigns in case of reconstruction & gets employed with reconstructed company • Director resigns in any other case • Vacation of office u/s 167(1) • Company wound up due to default of director • Director guilty of fraud or breach of trust • He instigated in termination of his office **Limits on compensation** Lower of average remuneration* for – Remainder of his term; or – 3 years *Average remuneration means average salary during the lesser of • Period of office; or • 3 years
Section 203 (Appointment of KMP)	Following whole-time KMPs mandatory in • MD or CEO or Manager or WTD • CS • CFO } • Listed company; or • Public company having PSC ≥ INR 10 crore Whole-time CS mandatory in } • Any Private company having PSC ≥ INR 10 crore	
	Chairperson + MD/ CEO Same person shall not be Chairperson & MD/ CEO, unless • AOA provides; or • Company carries on single business ⇩ Further above restriction N.A. for following companies, if into multiple businesses & has CEOs for each business Public companies having – PSC ≥ INR 100 cr; and – Turnover ≥ INR 1,000 cr	**Conditions for appointment** • Every whole time KMP appointed by resolution at BM • He shall not hold office in more than one company → except subsidiary company • A person may be appointed as MD, if he is MD/ Manager of one other company → with UNANIMOUS resolution with consent of ALL the directors present **Casual Vacancy** Vacancy of whole-time KMP shall be filled up by Board within 6 months

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Section 204 (Secretarial Audit)	Following companies shall get Secretarial audit done and annex secretarial audit report to Board's report. **Note** – Secretarial audit can be done by only CS in practice.	• Listed company • Public Co. having – PSC ≥ INR 50 cr – Turnover ≥ INR 250 cr • Every company having loans from banks & PFIs ≥ INR 100 cr **Note** – Limits need to be seen on the last day of preceding FY	**Duty of Company** • Company shall give assistance to CS in practice • Explain any qualifications or observation in Board's report

Section 205 (Functions of CS)

• Report to Board about compliance with Act, rules etc.	• Provide needed guidance to Board	• Obtain requisite approvals
• Ensure compliance with Secretarial Standards	• Convene meetings & make minutes	• Represent company before various authorities
• Assist Board in conduct of affairs	• Ensure good corporate governance	• Do such other duties assigned

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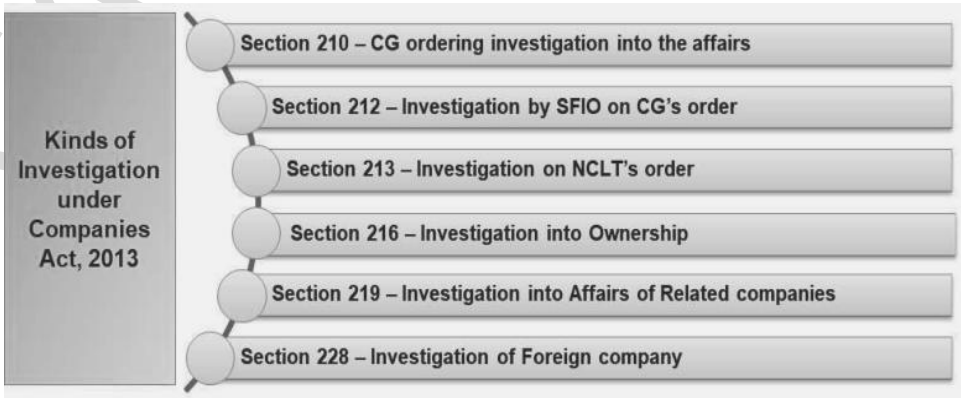
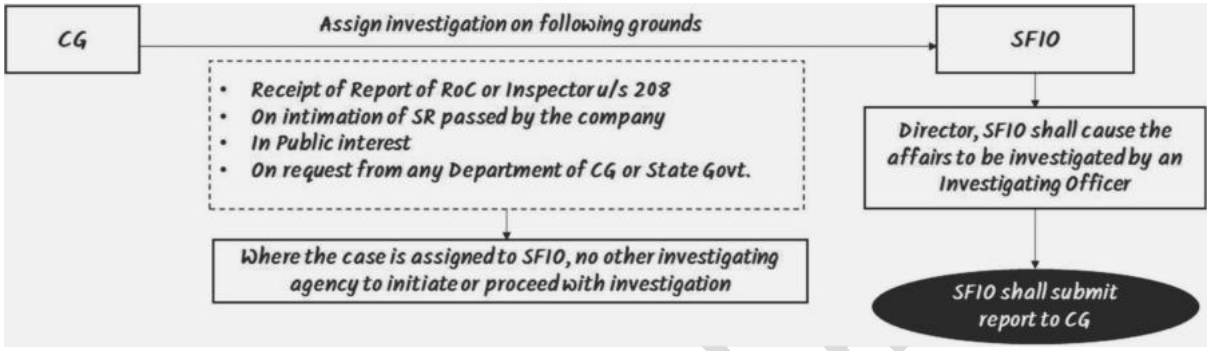
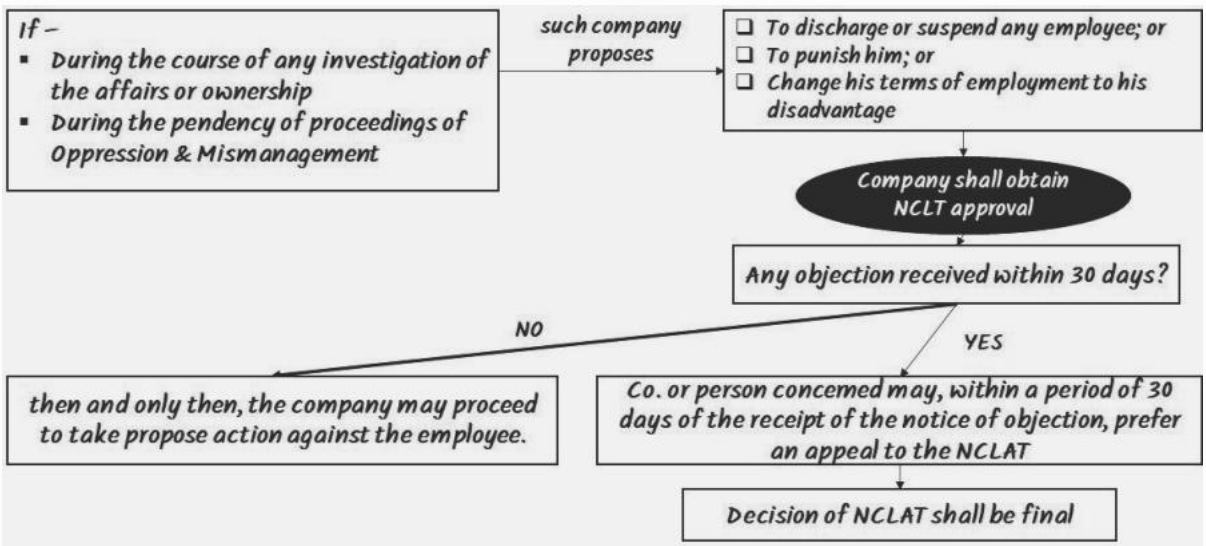
Sec. 206 (Power to Call for information, inspection & inquiries)	**Power of RoC to call for information**	If necessary, RoC may, by written notice, require the company to furnish required information & documents within specified time
	Duty of company & its officers	→ It is the duty of the company and its officers to furnish such information & documents to RoC → Where the information pertains to PAST PERIOD, the officers during such period, if so called upon by RoC through written notice, shall also furnish such information
	Additional written notice by RoC	If no or inadequate information is furnished, RoC may by another written notice, call on the company to produce for his inspection such books & explanation as he may require
	Inquiry	If RoC is satisfied that • the business of Co. is carried on for fraudulent purpose; or • investors' grievances are not being addressed he may by written order → → call on the company to furnish written explanation; and → carry out Inquiry **Note** – If circumstances so warrant, CG may also direct RoC or an Inspector to carry out inquiry
	Inspection of Books	CG may direct inspection of books of a company by an Inspector or Statutory Authority.
Sec. 207 (Conduct of Inspection & Inquiry)	**Duty of officers & employees**	Where RoC or Inspector calls for books of accounts u/s 206, it shall be the duty of every officer & employee to produce such information & render all the required assistance **Note** – If any director or officer is convicted under this section, he shall be deemed to have vacated his office & shall be disqualified from holding office in any company
	Power of RoC & Inspector	During such inquiry or inspection, RoC or Inspector may • make copies of books of accounts; or • place identification marks Further, they shall have the following powers of the Civil Court → Discovery & production of books of accounts at required place & time → Summoning & enforcing the attendance of persons & examining them on oath → Inspection of books & other documents of company at any place
Sec. 208 (Report on Inspection)	After the inspection of books or an inquiry, RoC or Inspector shall ➡	→ submit a REPORT in writing to CG; and → such report may include a recommendation for further Investigation into the affairs
Sec. 209 (Search & Seizure)	**Circumstances for Seizure**	Where RoC or Inspector has reasonable ground to believe that books & papers of company are likely to be destroyed, mutilated, altered, falsified or secreted → he may, after obtaining an order from Special Court for seizure → enter & search the place where books are kept; and → seize such books & papers
	Period of Seizure	RoC or Inspector shall return the books within 180 days after seizure However, books & papers may be called for by RoC or Inspector for a further period of 180 days by an order in writing **Note** – Before returning the books, RoC or Inspector may take copies or extracts from them or place identification marks on them



CA HARSH GUPTA

Sec. 210 (Investigation into Affairs of Co.)	**Investigation in the opinion of CG**	CG may order Investigation into the Affairs of a company 1. on receipt of Report by RoC or Inspector u/s 208 2. On intimation of SR passed by the company 3. In Public Interest
	Inspection on the order of Court or Tribunal	Where an order is passed by COURT or TRIBUNAL, CG shall order an investigation into the affairs
	Appointment of Inspectors	CG may appoint Inspector(s) to investigate into the affairs of the company
Sec. 211 (Establishment of SFIO)	**Setting up of SFIO**	CG shall establish SFIO to investigate frauds relating to a company
	Composition	CG shall appoint → Director of SFIO CG may appoint → Experts and other officers and employees of SFIO
Section 212 (Investigation by SFIO)		
	Offence u/s 447 to be cognizable	**Offence u/s 447** shall be cognizable and no accused shall be released on bail unless – ▪ the Public Prosecutor has been given an opportunity to oppose the application for release; and ▪ where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty and that he is not likely to commit any offence while on bail. **Provided** that a person, who, - is under the age of 16 years or - is a woman or - is sick or infirm, may be released on bail, if the Special Court so directs. **Provided further** that the Special Court shall not take cognizance of any offence u/s 447 EXCEPT upon a complaint in writing made by – i. the Director, SFIO; or ii. any officer of the CG authorised
	Arrest of guilty person	
	Reporting by SFIO	→ CG may direct SFIO to submit an interim report. → On completion of the investigation, the SFIO shall submit the investigation report to the CG. → A copy of the investigation report may be obtained by any person by making an application to the court
	Powers of CG	→ Direct SFIO to initiate prosecution → In case of fraud, file an application before NCLT for orders of disgorgement of assets and for holding such person personally liable without limitation of liability
	Co-operation with other agencies	→ In case SFIO has been investigating any offence, any other investigating agency having any information in respect of such offence shall provide all such information to the SFIO; → The SFIO shall share any information available with it, with any investigating agency which may be relevant or useful for them.

Sec. 213 (Investigation on NCLT's order)	**On an application, supported by evidence, made by** Co. having S/C: ≥ 100 members; ≥ 1/10th of Total Voting power Co. NOT having S/C: ≥ 1/5th of Total number of members **OR** **On an application by ANY PERSON, on the following grounds –** ▪ Business of company is being conducted in fraudulent manner or oppressive to members ▪ Persons in control or management have been guilty of fraud or misfeasance ▪ Members have not been given all the reasonable information → **NCLT may order that** • Affairs of the company ought to be investigated by inspector appointed by CG; and • CG shall appoint such inspector(s) → **If fraud is established, person guilty shall be punishable u/s 447**
Sec. 214 (Security & expenses of investigation)	CG may, before appointing an inspector under section 210(1)(b) or section 213, require the applicant to give security, which shall be refunded if the investigation results in prosecution **Turnover as per last B/S** — **Security Amount (INR)** ≤ 50 crore — 10,000 > 50 crore & ≤ 200 crores — 15,000 > 200 crore — 25,000
Sec. 215	No firm, body corporate or other association shall be appointed as an inspector.
Sec. 216 (Investigation into Ownership)	CG may appoint Inspector(s) to investigate into membership for determining the true persons ▪ who are financially interested in the success or failure of Company ▪ who control or materially influence the policy of the company ▪ who has beneficial interest in the shares **or** CG shall appoint Inspector(s) to investigate the membership, if so directed by NCLT **Note** – While appointing an inspector, CG may define the scope of investigation
Sec. 217 (Procedure & Powers of Inspectors)	
	Power to order Production of Books — ▪ Inspector is empowered to make an order to produce books of accounts ▪ It shall be the duty of officers & employees to give all the assistance
	Power to Retain books — Inspector can keep the books in his custody for 180 days + further 180 days (if needed)
	Power to examine on oath — An inspector may examine on oath – ▪ any officer, employee or agent of a company; and ▪ with the prior approval of the CG, any other person, and require those persons to appear before him personally. **Provided** that in case of an investigation under section 212, the prior approval of Director, SFIO shall be sufficient under clause (b)
	Powers of Civil Court — a. The discovery and production of books of account and other documents, at such place and time as may be specified by such person; b. Summoning and enforcing the attendance of persons and examining them on oath; and c. Inspection of any books, registers and other documents of the company at any place
	Notes of examination — The notes of any examination shall be → taken down in writing and → shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him

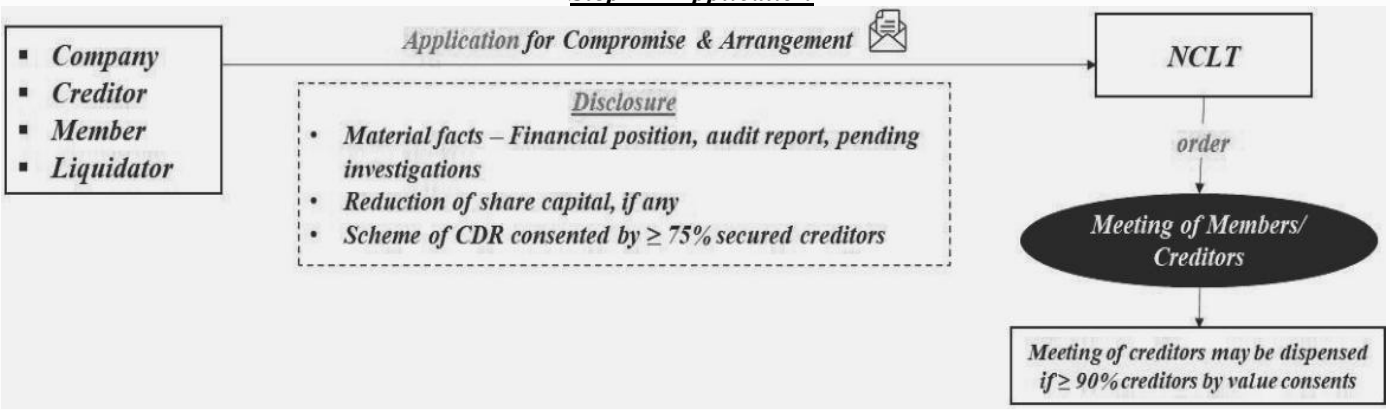
Sec. 218 (Protection of Employees)	
Sec. 219 (Investigation of Related Companies)	With the prior approval of CG, an inspector may also investigate affairs of – a. any other Body Corporate which is a subsidiary, holding company or co-subsidiary company b. any other Body corporate managed as MD or Manager by the MD or Manager of the company c. any other Body corporate whose Board of Directors comprises nominee of the company or is accustomed to act in accordance with the company or its directors d. Company's MD, Manager or Employee
Sec. 220 (Seizure of Documents during Investigation)	Where inspector believes that any books are likely to be destroyed, he may – ▪ enter the place where such books and papers are kept; and ▪ seize books and papers after allowing the company to take copies or extracts The inspector shall keep in his custody the books and papers seized for such a period not later than the conclusion of the investigation **Provided** that the inspector may, before returning such books and papers, take copies of, or extracts from them or place identification marks.
Sec. 221 (Freezing of Assets)	→ Where it appears to the NCLT, on a reference made to it by • CG; or • in connection with an inquiry or investigation into the affairs of the company under this Chapter; or • on a complaint made by such number of members as specified under section 244(1); or • a creditor having ₹ 1 lakh amount outstanding against the company; or • any other person having reasonable ground to believe → that the transfer of ASSETS of the company is likely to take place in a manner that is prejudicial to the interests of the company, shareholders or creditors or in public interest, → it may by order direct that ▪ such transfer shall not take place during such period not exceeding 3 years or ▪ may take place subject to such conditions and restrictions as NCLT may deem fit.
Sec. 222 (Imposition of restriction upon securities)	→ In connection with ▪ any investigation under section 216 or ▪ on a complaint made by any person in this behalf, → NCLT may impose such restrictions on SECURITIES as it may deem fit for such period not exceeding 3 years.
Sec. 223 (Inspector's Report)	→ An inspector appointed under this Chapter may, and if so directed by the CG shall, submit INTERIM reports to CG, and on the conclusion of the investigation, shall submit a FINAL report to the CG. → A copy of the report may be obtained by any person concerned, by making an application to CG. → Inspector's report shall be admissible as evidence in all legal proceedings
Sec. 224 (Action to be taken)	1. On the basis of Inspector's report, CG may prosecute a person 2. CG may filed a petition with NCLT for – ▪ winding up of the company; ▪ Oppression and mismanagement under section 241; or ▪ both. 3. If from any such report, it appears to the CG in public interest that proceedings ought to be brought by the company whose affairs have been investigated - a. for the recovery of damages in respect of any fraud; or

	b. for the recovery of any property which has been misapplied or wrongfully retained, the CG may itself bring proceedings for winding up in the name of such company. **4.** In case of fraud by any person, CG may file an application before NCLT for orders of disgorgement of assets and for holding such person personally liable without limitation of liability
Sec. 225 (Expenses of Investigation)	The expenses of an investigation under this Chapter shall be defrayed in the first instance by CG, but shall be reimbursed by the following persons to the extent mentioned below – any person who is prosecuted and convicted, or who is ordered to pay damages or restore any property u/s 224 — to the extent ordered by the court any company in whose name proceedings are brought — Amount of damages or property recovered If prosecution u/s 224 is not instituted– — to such extent as the CG may direct. **(i)** any company, MD or manager dealt with by the report of the inspector; and **(ii)** the applicants for the investigation, where the inspector was appointed under section 213,
Sec. 226 (Voluntary winding up etc.)	Investigation may be initiated or continued even if- **a.** an application has been made under section 241 **(oppression)**; **b.** the company has passed a special resolution for voluntary winding up; or **c.** any other proceeding for the winding up is pending before NCLT.
Sec. 227 (Legal advisers & bankers not to disclose information)	Nothing in this Chapter shall require the disclosure - ▪ by a legal adviser, of any privileged communication, except as respects the name and address of his client; or ▪ by the bankers, of any information as to the affairs of any of their customers, OTHER THAN such company, body corporate, or person.
Sec. 228 (Investigation of Foreign Companies)	The provisions of this Chapter shall apply mutatis mutandis to inspection, inquiry or investigation in relation to FOREIGN COMPANIES.
Sec. 229 (Penalty for destroying documents)	Where a person, during the course of inspection, inquiry or investigation - **a.** destroys, falsifies, conceals or tampers, documents of the company; **b.** makes a false entry in any document; or **c.** provides an explanation which is false, he shall be punishable u/s 447.

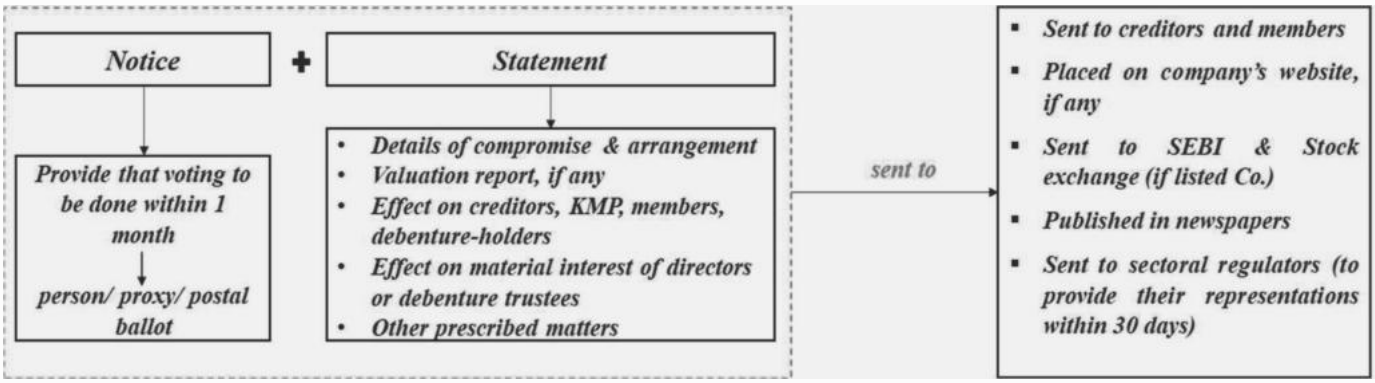
CA HARSH GUPTA

Section 230
(Power to Compromise or make arrangements with Creditors & Members)

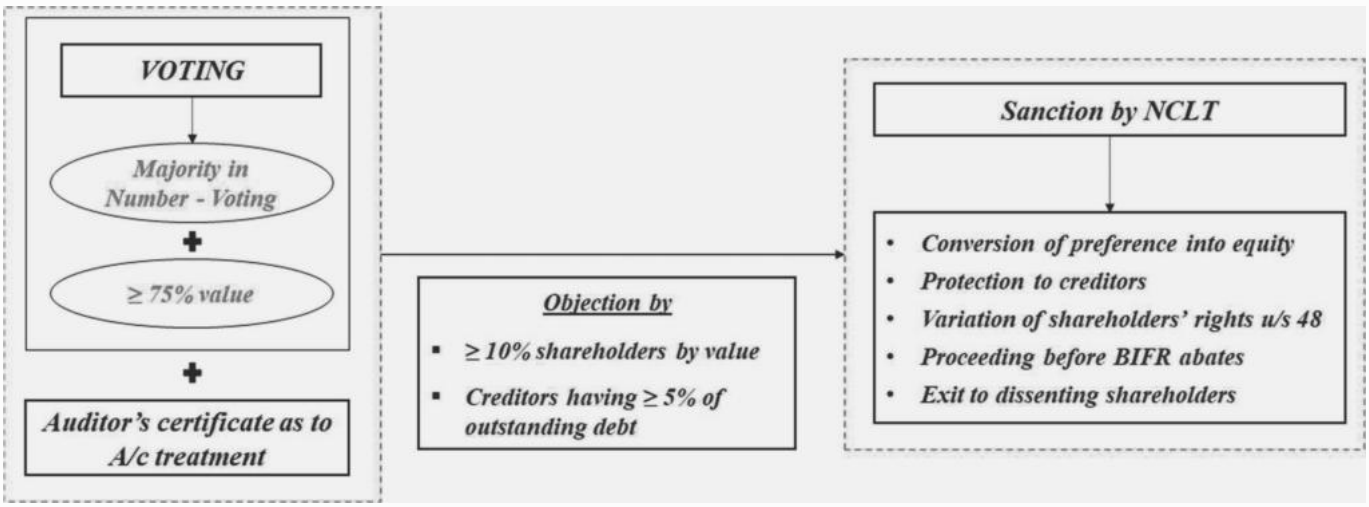
Step 1 – Application



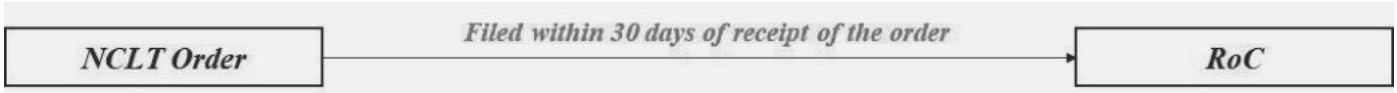
Step 2 – Notice of Meeting



Step 3 – Approval by Members/ Creditors + Sanction by NCLT



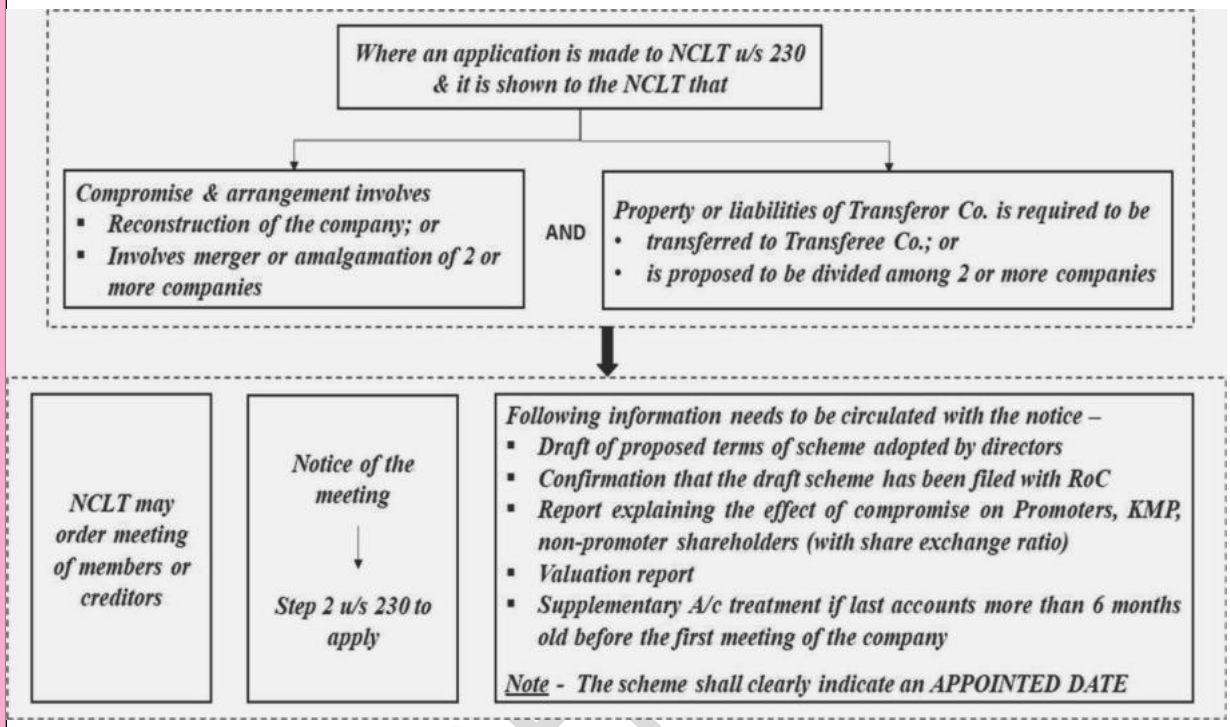
Step 4 – Filing of Order with RoC



Note – In case of a Government company, CG shall have power to sanction compromise & arrangement

Section 231 (Powers of NCLT)	**Power of NCLT to supervise** NCLT ▪ shall have power to supervise the implementation of the compromise or arrangement; and ▪ may give such directions or make such modifications as it may consider necessary for the proper implementation of the compromise or arrangement	**Winding-up order** If NCLT is satisfied that the sanctioned compromise or arrangement cannot be implemented and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company.

Section 232 (Merger & Amalgamation of Companies)



Order of NCLT

NCLT may make provisions for the following matters –

- Transfer of property & liabilities to the Transferee Co.
- Allotment of securities by Transferee Co. (but Transferee Co. cannot hold shares in its own name)
- Continuation of legal proceedings
- Dissolution, without winding up of Transferor Co.
- Provision to be made for dissenting shareholders
- Allotment to Non-resident shareholders in the specified manner
- Transfer of employees
- Transferee Co. to remain unlisted company even if Transferor Co. was listed
- Set-off of fees paid on authorised share capital
- Incidental matters

Note – Certificate from company's auditor need to be obtained as to conformity of accounting treatment as per AS

Filing order with RoC

The order of NCLT shall be filed with RoC within 30 days of the receipt of the order

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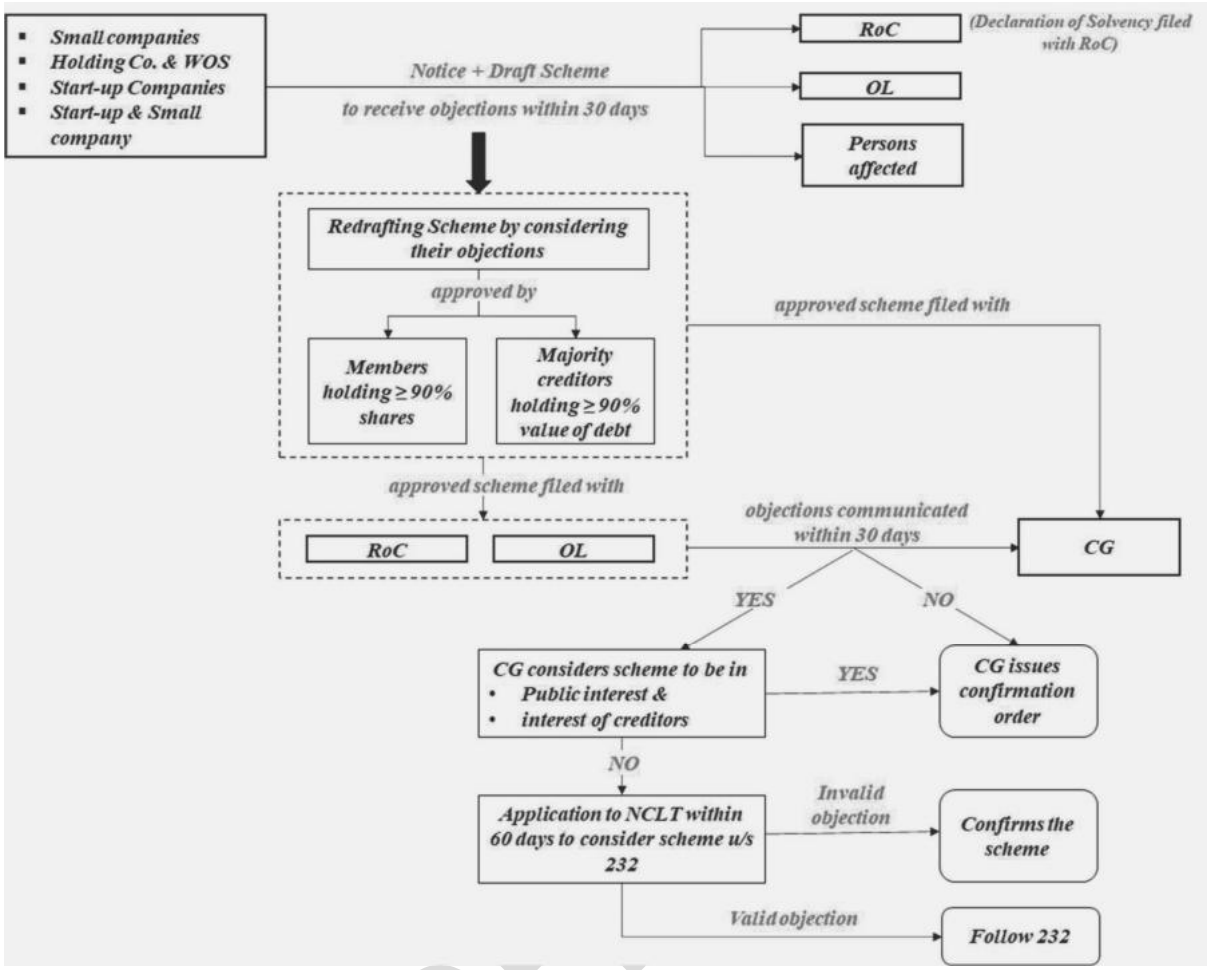
Section 233 (Fast Track Merger)

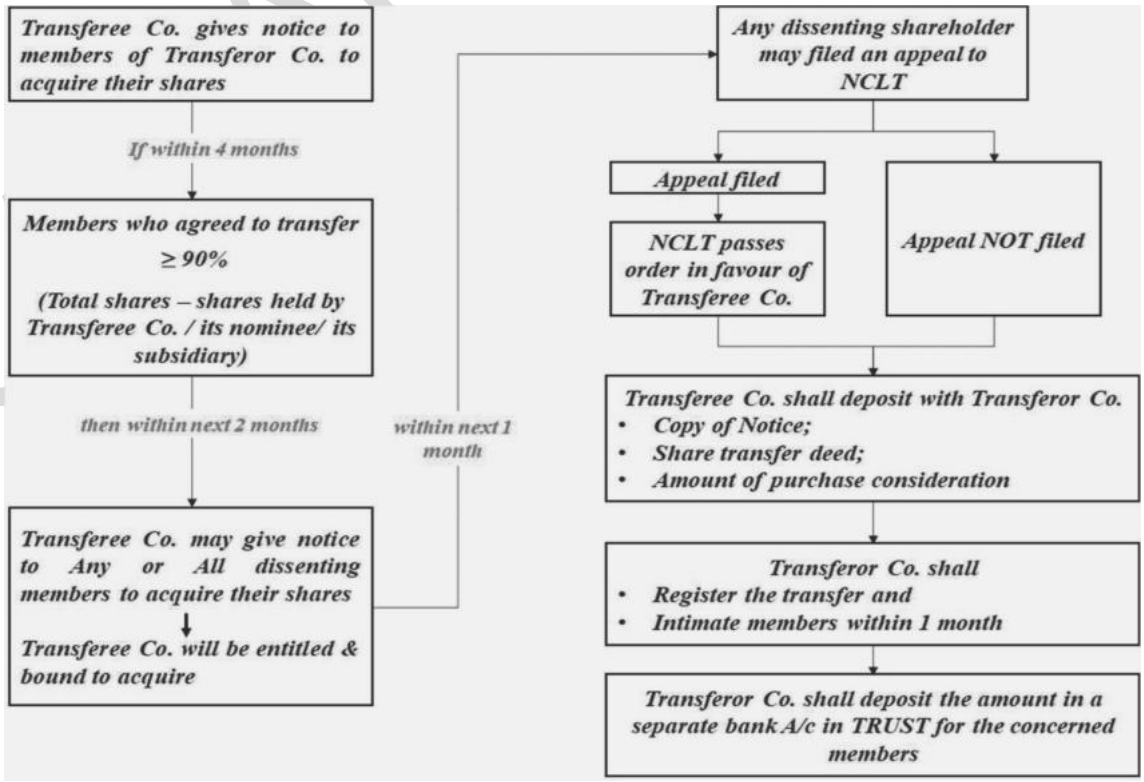


Section 234 (Cross-Border Mergers)

The provisions of this chapter shall apply mutatis mutandis to mergers & amalgamations between companies registered under this Act and companies incorporated in jurisdictions of notified countries	A foreign company may merge into a company registered under this Act or vice-versa with the prior approval of RBI

Section 235 (Power to acquire shares of dissenting shareholders)

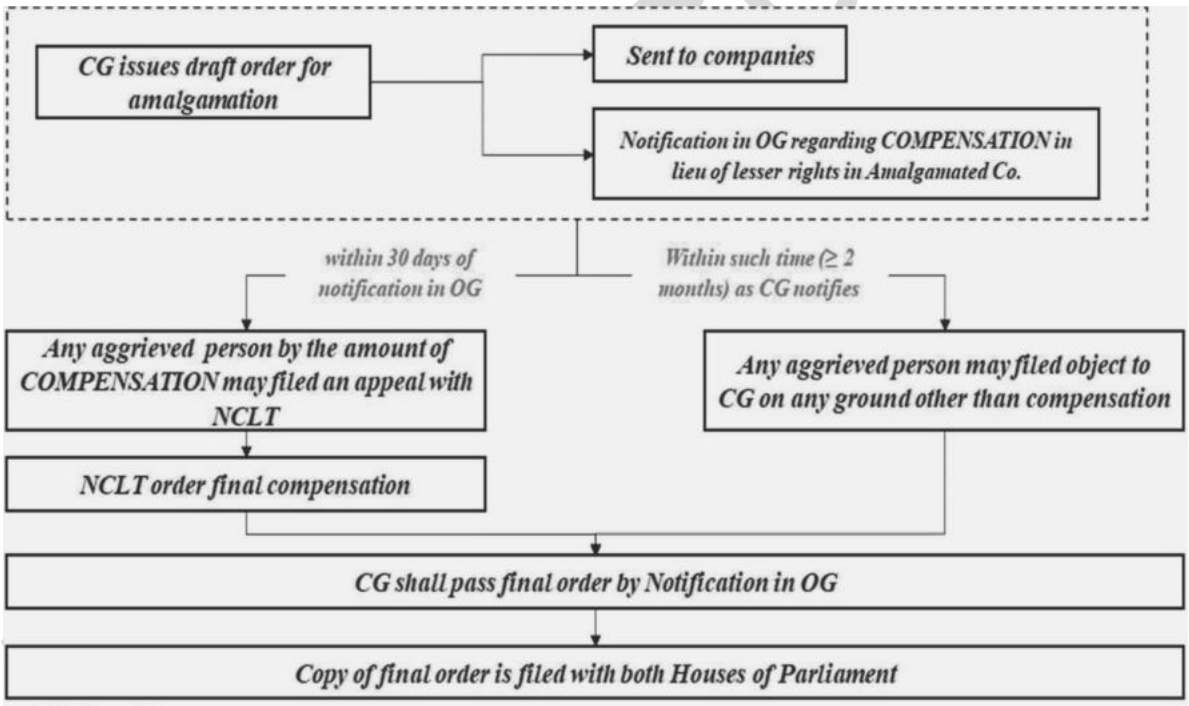
Procedure of Takeover



Section 236 (Purchase of Minority shareholding)	**Notice to Company on acquiring 90%**	→ In the event of an ACQUIRER, becoming registered holder of ≥ 90% EQUITY share capital, or → such acquirer shall notify the company of their intention to buy the remaining equity shares.
	Offer to Minority	The acquirer shall offer to the minority shareholders for buying their equity shares at a price determined on the basis of valuation by a registered valuer
	Right of Minority	The minority shareholders MAY offer to the majority shareholders to purchase their shareholding
	Deposit of Amount	The majority shareholders shall → deposit an amount equal to the value of shares to be acquired by them in a separate bank account → to be operated by company whose shares are being transferred for at least 1 year for payment to the minority shareholders and → such amount shall be disbursed to the entitled shareholders within 60 days
	Company to act as Transfer Agent	→ Company whose shares are being transferred shall act as a transfer agent → In the absence of a physical delivery of shares by the shareholders within the time specified by the company, ▪ the share certificates shall be deemed to be cancelled, and ▪ company whose shares are being transferred shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer
	Sharing of additional compensation	→ Where shareholders holding ≥ 75% of MINORITY EQUITY SHAREHOLDING, receives any additional compensation, → It shall be shared between all the minority shareholders on pro-rata basis

Section 237 (Power of CG to amalgamate companies in Public Interest)

Power of CG to amalgamate companies in Public Interest



Section 238 (Registration of Schemes involving Transfer of shares)	In relation to every scheme involving transfer of shares u/s 235 ▪ every circular containing such offer to the members by its directors to accept such offer shall be accompanied by prescribed information; ▪ every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and ▪ every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered	▪ Registrar may refuse to register such circular within 30 days of application ▪ An appeal shall lie to NCLT against refusal of RoC
Section 239 (Preservation of Books)	The books of amalgamated company shall not be disposed of without the prior permission of CG	Before granting such permission, CG may order examination of the books
Section 240 (Liability of officers)	The liability in respect of offences committed by officers in default of the Transferor company ➡ shall continue after the merger, amalgamation or acquisition	

Rule of Majority (Foss vs. Harbottle)	Exceptions to the Rule of Foss vs. Harbottle
• If the majority shareholders have made a decision to take or not to take certain action, it shall be respected. • Allowing the petition of every 2-3 shareholders will result in the multiplicity of litigations	• Ultra vires or Illegal acts • Fraud on minority • Resolutions requiring special majority • Personal Rights

Section 241 (Application to NCLT in case of oppression etc.)	**Right of Member to apply**	Members authorised u/s 244 can apply to NCLT on the following grounds	
		Oppression	Affairs of the company is being conducted in a manner prejudicial to → Public interest; or → Member(s); or → Interests of the company
		Mismanagement	→ Material change has taken place in the management of control of the company; and → By reason of such change, its affairs are likely to be conducted in a manner prejudicial to the interest of company or member(s)
	Right of CG to apply	CG may apply to NCLT if affairs of a company are being conducted in a manner prejudicial to public interest	
	Application for evaluating eligibility for directorship	CG may make an application to NCLT to inquire and record a decision as to whether a person is fit & proper to hold office of director, where 1. Any person in the management of the company is guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations 2. Business of the company is not conducted in accordance with sound business principles 3. Company is managed by such person in a manner which caused serious injury or damage to interest of busines 4. Busines conducted with the intent to defraud its creditors, members or any other person or prejudicial to pubic interest	
		Application by CG – a. Shall contain a concise statement of such materials as CG considers necessary for inquiry b. Shall be signed & verified in the manner laid down in CPC, for signature & verification of a plaint in a suit filed by CG **Note** – Person against whom the application is filed shall be joined as respondent to the application	
Section 242 (Powers of NCLT)	**NCLT may make such orders as it thinks fit if it is of the opinion that**	Company's affairs are prejudicial to • member(s); or • public interest; or • company's interest **AND** Facts would justify winding up of the company but winding up would unfairly prejudice member(s)	
	NCLT may provide for	▪ Regulation of affairs of the company in future ▪ Purchase of shares of member by other member or company ▪ In case of purchase by company, consequent capital reduction ▪ Restriction on transfer or allotment of shares ▪ Termination, setting aside or modification of agreement with MD, director or manager ▪ Termination, setting aside or medication of agreement with any other person after obtaining consent of the third party ▪ Setting aside any transfer of property being a fraudulent preference done within 3 months before the date of application ▪ Removal of MD, manager or director ▪ Recovery of undue gains made by MD, manager or director ▪ Manner in which new MD or manager may be appointed ▪ Appointment of requisite number of directors by NCLT who may be required to report to NCLT ▪ Imposition of costs ▪ Any other matter	
	Filing order with RoC	A certified copy of order of NCLT shall be filed by company with RoC within next 30 days	
	Interim order	▪ NCLT may make interim order for regulating the affairs of the company ▪ Where application for evaluating eligibility for directorship was filed, NCLT shall, at the conclusion of hearing, record its decision as to whether the respondent is a fit and proper person to hold the office of director	
	Restrictions to alter MOA or AOA	→ Where NCLT makes any alteration in MOA or AOA; then the company shall not have any power to make any alteration without the leave of NCLT → An order of NCLT altering MOA or AOA shall be filed with RoC within 30 days	

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Section 243 (Consequences of termination of agreements)	**Where an order u/s 242 terminates, sets aside or modifies an agreement**	▪ Such order shall not give rise to any claims against the company for damages or compensation for loss of office ▪ MD, manager or director whose agreement is so terminated, shall not be appointed as MD, manager or director for 5 years, without the leave of NCLT
	Where an order restricting the person to be eligible to act as director is passed	▪ Such person shall not hold office of director or any office connected with management of the company for 5 years ▪ CG may, with the leave of NCLT, permit such person to hold such office ▪ Further, on removal, such person shall not be entitled to any compensation for loss of office

Section 244 (Right to apply u/ 241)

In case of a company having a share capital		In case of a company NOT having a share capital
▪ ≥ 100 members, or ▪ ≥ 1/10th of the total number of members	whichever is less	≥ 1/5th of the total number of its members.
OR		
Any member(s) holding ≥ 1/10th of the **ISSUED** share capital of the company, provided the applicant(s) have paid all calls and other sums due on his or their shares;		

Note – NCLT may waive all or any of the requirements

Note – Joint-holder may be counted as one member

Note - The consent to be given by a shareholder is reckoned at the BEGINNING of the proceedings. The withdrawal of consent by any shareholder during the proceedings shall not affect the maintainability of the petition.
(Rajahmundry Electric Supply Co. v. Nageshwara Rao - Supreme Court)

Section 245 (Class Action)

Application to NCLT on behalf of members

Member(s) or Depositor(s) specified below may file an application on behalf of members or depositors, if they are of the opinion that affairs of the company are being conducted in prejudicial manner, for seeking following orders –

- Restraining company from committing ultra-vires act
- Restraining company from committing breach of memorandum or articles;
- Declaring a resolution altering the memorandum or articles void if it was passed by suppression of material facts or mis-statement to the members or depositors;
- to restrain the company and its directors from acting on such resolution;
- to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- to restrain the company from taking action contrary to any resolution passed by the members;
- to claim damages or compensation or demand any other suitable action from or against –
  - → company or its directors;
  - → auditor including audit firm;
  - → expert, advisor or consultant
- to seek any other remedy

Joint & several liability of partners of audit firm

Where the members or depositors seek any damages from or against an audit firm, the liability shall be of the firm as well as of each partner.

Required number of members for application

Requisite number of MEMBERS for making application are –

In case of a company having a share capital		In case of a company NOT having a share capital
▪ ≥ 100 members, or ▪ ≥ 5 % of the total number of members	whichever is less	≥ 1/5th of the total number of its members.
OR		
→ Member(s) holding ≥ 5% of the issued share capital, in case of an unlisted company; → Member(s) holding ≥ 2% of the issued share capital, in case of a listed company.		

Requisite number of DEPOSITORS for making application are –

▪ ≥ 100 depositors, or ▪ ≥ 5% of the total number of depositors	whichever is less
OR	
Any depositor(s) to whom the company owes 5% of total deposits	

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	Requirement for consideration of application	In considering the application, NCLT shall take into account – ▪ whether the member or depositor is acting in good faith; ▪ any evidence before it as to the involvement of any person; ▪ whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section; ▪ any evidence before it as to the views of the members or depositors of the company who have no personal interest in the matter being proceeded under this section; ▪ where the cause of action is an act or omission that is yet to occur, or would be likely to be – - authorised by the company before it occurs; or - ratified by the company after it occurs; ▪ where the cause of action is an act or omission that has already occurred, or would be likely to be, ratified by the company.
	Action in case of admission of application	In case application is admitted, NCLT shall have regard to the following – ▪ public notice shall be served to all the members or depositors; ▪ all similar applications should be consolidated into a single application and - the class members or depositors should be allowed to choose the lead applicant and - in the event the members or depositors of the class are unable to come to a consensus, NCLT shall have the power to appoint a lead applicant, ▪ two class action applications for the same cause of action shall not be allowed; ▪ the cost or expenses for class action shall be defrayed by the company or any other person responsible for any oppressive act.
	Binding effect	Order passed by NCLT shall be binding on the company, members, depositors, auditors &b experts or consultants
Section 246 (Application of certain provisions)	The provisions of sections 337 to 341 (both inclusive) shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241or section 245.	

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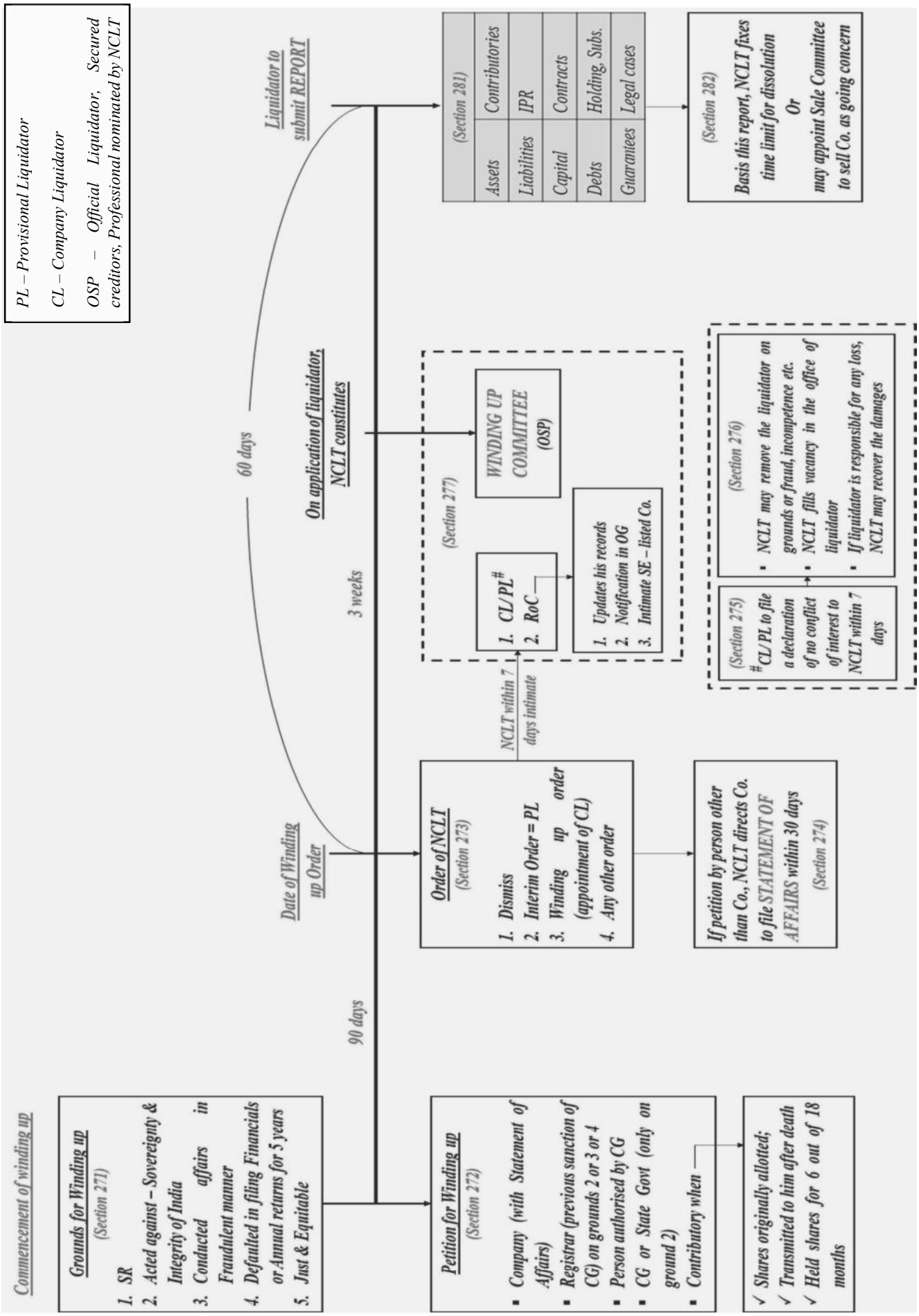
PL – Provisional Liquidator
CL – Company Liquidator
OSP – Official Liquidator, Secured creditors, Professional nominated by NCLT
Commencement of winding up
Grounds for Winding up
(Section 271)
1. SR
2. Acted against – Sovereignty & Integrity of India
3. Conducted affairs in Fraudulent manner
4. Defaulted in filing Financials or Annual returns for 5 years
5. Just & Equitable
90 days
Petition for Winding up
(Section 272)
Company (with Statement of Affairs)
Registrar (previous sanction of CG) on grounds 2 or 3 or 4
Person authorised by CG
CG or State Govt (only on ground 2)
Contributory when
✓ Shares originally allotted;
✓ Transmitted to him after death
✓ Held shares for 6 out of 18 months
Date of Winding up Order
60 days
Order of NCLT
(Section 273)
1. Dismiss
2. Interim Order = PL
3. Winding up order (appointment of CL)
4. Any other order
If petition by person other than Co., NCLT directs Co. to file STATEMENT OF AFFAIRS within 30 days
(Section 274)
3 weeks
NCLT within 7 days intimate
On application of liquidator, NCLT constitutes
(Section 277)
1. CL/PL#
2. RoC
WINDING UP COMMITTEE
(OSP)
1. Updates his records
2. Notification in OG
3. Intimate SE – listed Co.
(Section 275)
#CL/ PL to file a declaration of no conflict of interest to NCLT within 7 days
(Section 276)
NCLT may remove the liquidator on grounds or fraud, incompetence etc.
NCLT fills vacancy in the office of liquidator
If liquidator is responsible for any loss, NCLT may recover the damages
Liquidator to submit REPORT
(Section 281)
Assets
Contributories
Liabilities
IPR
Capital
Contracts
Debts
Holding, Subs.
Guarantees
Legal cases
(Section 282)
Basis this report, NCLT fixes time limit for dissolution
Or
may appoint Sale Committee to sell Co. as going concern

Stay of suits (Sec. 279)	→ When PL is appointed or a winding up order has been passed, → no suit or other legal proceeding shall be commenced or continued, by or against the company, → except with the leave of the Tribunal (application seeking leave to be disposed of by NCLT within 60 days)	This section shall not apply to any proceeding pending in appeal before the Supreme Court or a High Court
Settlement of List of Contributories (Sec. 285)	**Settling List of Contributories**	After winding up order, NCLT shall settle a list of contributories and shall cause the assets of the company to be applied for the discharge of its liability **Provided** that where it appears to the Tribunal that it would not be necessary to make calls, the Tribunal may dispense with the settlement of a list of contributories.
	Liability of Members	While settling the list of contributories, NCLT shall include every member, who shall be liable to contribute to the assets of the subject to the following conditions, namely – **(a)** a member shall not be liable to contribute if he has ceased to be a member for the preceding ≥ 1 year before the commencement of the winding up; **(b)** a member shall not be liable to contribute in respect of any liability of the company contracted after he ceased to be a member; **(c)** no person who has been a member shall be liable to contribute unless it appears to NCLT that the present members are unable to satisfy the contributions; **(d)** in the case of a company limited by shares, no contribution shall exceed the amount unpaid on the shares **(e)** in the case of a company limited by guarantee, no contribution shall exceed the guarantee amount
Advisory Committee (Sec. 287)	NCLT may, while passing winding up order, direct that there shall be an ADVISORY COMMITTEE to advise the Liquidator consisting of ≤ 12 members	

Powers & Duties of CL (Sec. 290 to 294)

Powers of Liquidator	▪ to carry on the **BUSINESS** of the company ▪ to execute all **DEED AND DOCUMENTS** on behalf of the company; ▪ to **SELL** the **PROPERTY** and actionable claims of the company; ▪ to **SELL** the whole of the **UNDERTAKING** of the company as a going concern; ▪ to **RAISE** any **MONEY** required on the security of the assets of the company; ▪ to institute or defend any **SUIT** on behalf of the company; ▪ to invite and settle **CLAIM** of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act; ▪ to **INSPECT** the records and returns of the company; ▪ to **PROVE RANK & CLAIM** in the insolvency of any contributory for any balance against his estate; ▪ to draw, accept, make and endorse any **NEGOTIABLE INSTRUMENTS** in the name and on behalf of the company; ▪ to obtain any **PROFESSIONAL ASSISTANCE** from any person or appoint any professional, in discharge of his duties and for protection of the assets of the company, appoint an agent; ▪ to take all such actions, steps, or to execute any **BOND OR INSTRUMENT** as may be necessary - - for winding up of the company; - for distribution of assets; - in discharge of his obligations as Company Liquidator; and ▪ to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.
Professional Assistance	The Liquidator may, with the sanction of NCLT, appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners or such other professionals, to assist him in the performance of his duties under this Act
Control of CL's powers	**(1)** The Liquidator shall, in the distribution of the assets of the company, have regard to any directions which may be given by the resolution of the creditors or contributories or by the advisory committee. **(2)** Any directions given by the creditors or contributories shall override any directions given by the advisory committee. **(3)** The Liquidator - **(a)** MAY summon meetings of the creditors or contributories, whenever he thinks fit; and **(b)** SHALL summon such meetings whenever requested in writing to do so by ≥ 1/10th in value of the creditors or contributories. **(4)** Any person aggrieved by any decision of the Liquidator may apply to NCLT, and NCLT may confirm, reverse or modify the decision
Books by Liquidator	The Liquidator shall keep proper books, in which he shall cause minutes to be made of proceedings at meetings and of such other matters as may be prescribed, which can be inspected by a creditor or contributory
Audit of accounts of Liquidator	→ The Liquidator shall, not less than twice in each year, present to NCLT an account of the receipts and payments. → NCLT shall cause the accounts to be audited and may require the production of, and inspect, any books of account kept by the Liquidator. → One copy of audit report shall be filed by the Liquidator with NCLT and Registrar

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	→ Where an account relates to a Government company, the Company Liquidator shall forward a copy thereof - ▪ to CG, if that Government is a member of the Government company; or ▪ to any State Government, if that Government is a member of the Government company; or → The Liquidator shall cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy of the accounts or summary thereof by post to every creditor and contributory

Payments by Contributory (Sec. 295)	NCLT may pass an order requiring any contributory to pay any money due to the company, exclusive of any money payable by him by virtue of any call.	
Arrest of person leaving India (Sec. 301)	If NCLT is satisfied that a person having property or accounts of the company is about to leave India or is about to remove or conceal any of his property, for the purpose of evading payment of calls or avoiding any examination, NCLT may cause – **(a)** the person to be detained until such time as NCLT may order; and **(b)** his books and papers and property to be seized and safely kept until such time as NCLT may order.	
Dissolution (sec. 302)	On completion of winding up, Liquidator shall make an application to NCLT for winding up	▪ NCLT to order dissolution of the company ▪ NCLT shall within 30 days - Forward a copy of order to RoC - Direct the company liquidator to forward a copy of order to RoC

Provisions applicable to every mode of winding up		
Overriding Preferential Payments (Sec. 326)	In winidng-up, following debts shall be paid in priority to all other debts a. Workmen dues b. Secured credior	→ However, workman's wages & accrued holdiay remuneration outstanding for a period of 2 years preceding the winding up order, → shall be paid in priority to all other debts (including in priority to secured creditors)
Preferential Payments (Sec. 327)	Subject to sec. 326, there shall be paid in priorty to all other debts – a. taxes, cess and rates due to Govt. or local authority during last 12 months b. wages & salary of Employees for ≤ 4 months within last 12 months c. accrued holiday remuneration of employees d. All contributions payable to Employees' State Insurance during last 12 months e. Compensation payable on death or disablement of Employee f. Amount payable to employee from PF, pension fund, gratuity or other welfare fund g. Expenses on investigation	
Fraudulent Preference (Sec. 328)	**Fradulent preference to Creditors** Where a company → has given preference to a creditor, and → the company does anything which has the effect of putting that person into a position → better than the position he would have been in, if that thing had not been done prior to **6 months** of making winding up application, → NCLT, if satisfied that, such transaction is a FRAUDULENT PREFERENCE → may order for restoring the position to what it would have been if the company had not given that preference	**Power of NCLt** NCLT may declare such transaction invalid and restore the position.
Transfers not in good faith (Sec. 329)	**Meaning** → Any Transfer of property or, made by a company, → if made within a period of **1 year** before the presentation of a petition for winding up → shall be void against the Liquidator	**Exception** Following transfer shall be valid – → Transfer in the ordinary course of business → Transfer in good faith and for valuable consideration
Effect of Floating Charge (Sec. 332)	**Meaning** → Where a company is being wound up, → a FLOATING CHARGE created within the 12 months immediately preceding the commencement of the winding up, → shall be invalid,	**Exception** → It shall be valid if it is proved that the company immediately after the creation of the charge was solvent, or → It shall be valid to the extent of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5% p.a. or such other rate as may be notified by CG in this behalf.
Disclaimer of Onerous Property (Sec. 333)	**Disclaimer of Onerous Property**	Where any part of the property of a company which is being wound up consists of – ▪ land of any tenure, burdened with onerous covenants; ▪ shares or stocks in companies; ▪ any other property which is not saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or ▪ unprofitable contracts,

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		Liquidator may disclaim the property, with the leave of NCLT, at any time within 12 months after the commencement of the winding up Where Liquidator had not become aware of the existence of any such property within 1 month from the commencement of the winding up, the property can be disclaimed within 12 months after he has become aware thereof
	Effect of Disclaimer	The company shall be relieved from all the liabilities in respect of such property.
	Damages to other party	The Tribunal may award damages to the other party for non-performance of the contract. Such party shall be deemed to be a creditor of the company to the extent of the damages.
	No right to disclaim	→ The Liquidator shall NOT be entitled to disclaim any property in any case → where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim and → the Liquidator has not given notice to the applicant of his intention to disclaim the property, within 28 days

Transfer after winding up (Sec. 334)	→ Any disposition of the property of the company and any transfer of shares in the company or alteration in the status of its members, → made after the commencement of the winding up → shall, unless the Tribunal otherwise orders, be VOID	
Certain void attachments (Sec. 335)	Where any company is being wound up by the Tribunal – **(a)** any attachment or execution put in force, without leave of the Tribunal against the estate of the company, after the commencement of the winding up; or **(b)** any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement, shall be VOID.	Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Government.
Offences by Officers (Sec. 336)	If any officer of a company which is being wound up – **a.** does not fully and truly disclose to the Liquidator all the property of the company; **b.** does not deliver up to the Liquidator all such property of the company as is in his custody; **c.** does not deliver up to the Liquidator all such books and papers of the company as are in his custody; **d.** within the 12 months immediately before the commencement of the winding up – ▪ conceals any part of the property of the value ≥ INR 1,000, or conceals any debt due to or from the company; ▪ fraudulently removes any part of the property of the value ≥ INR 1,000; ▪ conceals, or falsifies any book or paper affecting or relating to, the property or affairs of the company; ▪ makes any false entry in any book relating to affairs of the company; ▪ fraudulently alters or makes any omission in, any book or paper relating to the affairs of the company; ▪ by any false representation or other fraud, obtains any property on credit, for or on behalf of the company, which the company does not subsequently pay for; ▪ under the false pretence that the company is carrying on its business, obtains any property on credit, on behalf of the company, which the company does not subsequently pay for; or ▪ pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless it is in the ordinary course of business of the company; **e.** makes any material omission in any statement relating to the affairs of the company; **f.** knowing that a false debt has been proved by any person under the winding up, fails for a period of 1 month to inform the Liquidator thereof; **g.** prevents the production of any book or paper affecting or relating to the property or affairs of the company; **h.** attempts to account for any part of the property of the company by fictitious losses or expenses; or **i.** is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors, to an agreement with reference to the affairs of the company or to the winding up, he shall be punishable with: imprisonment = 3 years to 5 years and fine = INR 1 lakh to INR 3 lakh	

Statement that company is in Liquidation (Sec. 344 to 347)	
Statement that company is in liquidation	Where a company is being wound up, every invoice, order for goods or business letter issued by or on behalf of the company, shall contain a statement that the company is being wound up.
Books & papers of the company to be evidence	Where a company is being wound up, all books and papers of the company and of the Liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein.
Inspection of Books	At any time after the winding up order, any creditor or contributory may inspect the books and papers of the company only in accordance with such rules as may be prescribed.

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Disposal of Books & Papers	When the affairs of a company have been completely wound up, the books and papers of such company and those of the Liquidator may be disposed of in such manner as the Tribunal directs.	After the expiry of **5 years** from the dissolution of the company, no responsibility shall devolve on the company, the Liquidator, or any person to whom the custody of the books and papers has been entrusted.
Information as to pending liquidations (Sec. 348)	▪ If the winding up of a company is not concluded within 1 year after its commencement, the Company Liquidator shall, within 2 months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year, file a statement with respect to the proceedings in the liquidation, with the Tribunal ▪ A copy of the statement shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.	▪ Where a statement relates to a Government company in liquidation, the Company Liquidator shall forward a copy thereof - - to CG, if that Government is a member of the Government company; - to any State Government, if that Government is a member of the Government company; or ▪ Any creditor or contributory of the company shall be entitled to inspect the statement, and to receive a copy thereof or an extract therefrom.
Company Liquidation Dividend & Undistributed Assets Account (Sec. 352)		
Credit to CLDUA A/c	(1) Where any company is being wound up and the liquidator has under his control any money representing – a. dividends payable to any creditor but which had remained unpaid for 6 months after the date on which they were declared; or b. assets refundable to any contributory which have remained undistributed for 6 months after the date on which they become refundable, the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account (CLDUA A/c) maintained in a scheduled bank. (2) The liquidator shall, on the dissolution of the company, pay into the CLDUA A/c any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution	
Furnishing statement to RoC	(3) The liquidator shall, when making any payment, furnish to the Registrar, a STATEMENT, setting forth, ▪ the nature of the sums, ▪ the names and addresses of the persons entitled to participate therein, ▪ the amount to which each is entitled and ▪ the nature of his claim thereto, and ▪ such other particulars as may be prescribed.	
Discharge of Liquidator	(4) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it, and such receipt shall be an effectual discharge of the Liquidator in respect thereof.	
Claim from CLDUA A/c	(5) Any person CLAIMING to be entitled to any money paid into the CLDUA A/c, may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due **Provided** that the Registrar shall settle the claim of such person within a period of 60 days, failing which the Registrar shall make a report to RD giving reasons of such failure.	
Transfer of unclaimed amount	(6) Any money paid into the CLDUA A/c, which remains unclaimed thereafter for a period of **15 years**, shall be transferred to the general revenue account of CG, but a claim to any money so transferred may be preferred and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.	
Action in case of default	(7) Any liquidator retaining any money which should have been paid by him into the CLDUA A/c shall – (a) pay interest on the amount so retained at the rate of 12% p.a. and also pay such penalty as may be determined by the Registrar **(CG may remit the interest)** (b) be liable to pay any expenses occasioned by reason of his default; and (c) be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.	
Dissolution to be declared Void (Sec. 356)	**Dissolution to be void** Where a company has been dissolved, the Tribunal may at any time within **2 years** of the date of the dissolution, on application by the Liquidator or by any other person who appears to the Tribunal to be interested, make an order, declaring the DISSOLUTION to be VOID	**Intimation to RoC** The Tribunal shall - • forward a copy of the order, within 30 days from the date thereof, to the Registrar who shall record the same; and • direct the Company Liquidator or the person on whose application the order was made, to file a certified copy of the order, within 30 days from the date thereof or such further period as allowed by the Tribunal, with the Registrar who shall record the same.

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Registered Valuer

Sec. 247 – Valuation by Registered Valuers

When a valuation is required under this Act

- it shall be made by Registered Valuer
- appointed by Audit Committee or in its absence by Board of Directors

The valuer shall
- → make an impartial valuation
- → exercise due diligence
- → follow rules
- → not undertake valuation of any asset in which he has interest during 3 years prior to his appointment or 3 years after

Where the valuer is confided, he shall –
- refund the remuneration; &
- pay damages

Valuation Rules

Eligibility (Rule 3)

For Firms/ Companies

Not eligible if
- Set up for objects other than rendering professional or financial services
- Co. is a subsidiary, JV or associate co.
- Undischarged bankrupt or undergoing insolvency resolution
- 3 or all partners or directors, whichever is lower, are not registered valuers
- None of its partners or directors is a registered valuer for the required asset class
- All partners or directors are not eligible in these points

For Individuals

- Member of RVO
- Recommended by RVO for registration as valuer
- Passed valuation exam within last 3 years
- Possesses qualification under Rule 4

- Not a minor
- Not of Unsound mind
- Not an undischarged bankrupt or has not applied for bankruptcy
- Person Resident in India
- Fit & Proper Person

- Convicted for imprisonment > 6 m or moral turpitude in last 5 years
- Convicted for imprisonment ≥ 7 years
- Liable u/s 271J of IT Act in last 5 years

Rule 4

- Post-graduation degree + 3 years' experience
- Bachelor's Degree + 5 years' experience
- Membership of Professional Institute + 3 years' experience

Valuation Examination	To be conducted by IBBI for different asset class	
Application for Registration	**Application** → Form A – for individuals → Form B – for firm/ company → Submission of additional documents, if required within 21 days	**Certificate of Registration** IBBI to grant certificate of registration for the relevant asset class within 60 days of application excluding 21 days given for additional documents

Conditions for Registration

R	Rules 3 & 4 are complied
E	Ensure compliance with Acts, Rules & Bye-laws
G	Grievance redressal → steps taken
I	In case of firm or company

S	Shifting of membership with permission of IBBI
T	Turn down valuation of other assets class
E	Ensure compliance of Code of Conduct
R	Records maintained for 3 years

In case of firm or company

- Allow only the partner or director for the requisite asset class to sign
- Disclose to the Co. concerned, the extent of capital contribution of partner or director in the firm or Co.
- Be jointly & severally liable with the partner/ director who signs
- Inform the authority about removal of the partner/ director

Conduct of Valuation	▪ The registered valuer shall comply with the VALUATION STANDARDS ▪ The registered valuer may → obtain inputs for his valuation report or get a separate valuation for an asset class conducted from another registered valuer, → in which case he shall fully disclose such details in his report and → the liabilities against the resultant valuation shall remain of the first mentioned registered valuer. ▪ The valuer shall, in his report, state the prescribed points
Temporary surrender	▪ A registered valuer may temporarily surrender his registration certificate. ▪ RVO shall inform IBBI about surrender within 7 days ▪ Every RVO shall place, on its website, the details of its members who have surrendered or revived their memberships
Eligibility for RVO	1. An organisation that meets requirements under sub-rule (2) may be recognised as RVO if - ▪ it has been registered section 8 with the sole object of dealing with matters relating to regulation of valuers and has in its bye laws the requirements specified in Annexure-III; ▪ it is professional institute established by Parliament enacted for the purpose of regulation of a profession; Provided that a SOCIETY or TRUST may also be recognised as RVO, but should be converted into a Section 8 company within next 1 year 2. The organisation referred to in sub-rule (1) shall be recognised if it – ▪ conducts EDUCATIONAL COURSES in valuation, for individuals who may be its valuer members, and delivered in class room or through distance education modules and which includes practical training; ▪ GRANTS MEMBERSHIP or certificate of practice to individuals, ▪ conducts TRAINING for the individual members; ▪ lays down and enforces a CODE OF CONDUCT for its members; ▪ provides for continuing EDUCATION of its members; ▪ monitors and REVIEWS THE FUNCTIONING of its members; and ▪ has a mechanism to ADDRESS GRIEVANCES and conduct disciplinary proceedings against its members.

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Striking-off of Name

Sec. 248 – Removal of Name

Suo-moto by RoC

- When a company fails to commence business within 1 year of incorporation; or
- Company is not carrying on business for 2 financial years + not applied for status of Dormant Co.
- Subscribers to MOA haven't paid subscription + a declaration to this effect is not filed within 180 days of incorporation u/s 10A
- Co. is not carrying on business as revealed after physical verification u/s 12(9)

RoC shall send NOTICE to company & all its directors

- of his intention to remove the name; and
- Requesting them to send their representations within 30 days

Removal on Company's application

A Co. (other than Sec. 8 Co.) after extinguishing all its liabilities

- by a Special Resolution; or
- Consent of 75% members as per paid-up capital

may file an application with RoC

For removal of name on any of the grounds mentioned before
In case of Co. regulated under Special Act, approval of regulatory body shall be enclosed with application

ROC shall cause a Public notice to be issued

The notice shall be published in prescribed manner & also in Official Gazette

At expiry of time mentioned in notice

- RoC may strike off the name &
- Publish Notice in Official Gazette

On Publication, Co. shall stand dissolved

Before passing an order, RoC shall satisfy himself that

- Sufficient provision is made for realisation of amount due to Co.
- For discharge of liabilities
- If necessary, obtain undertakings from the management

Note – The liability of any officer or member may be enforced as if the company has not been dissolved
Note - Nothing shall affect the power of NCLT to wind-up the company

Sec. 249 (Restriction on Applying)	A company shall not apply for strike-off u/s 248, if at any time in previous 3 months, the company A → Application for winding-up accepted B → Business or any other activity carried on except the one necessary for making application for strike-off or concluding the affairs C → Compromise or arrangement application is pending D → Disposal of property or rights were made E → Even for once has changed its name or shifted its registered office from one State to another
Sec. 250 (Effect)	Where a company stands dissolved u/s 248, it shall → cease to operate as a company and → the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for discharge of obligations of the company
Sec. 251 (Fraudulent application for removal)	Where an application for strike-off by company is made for ▪ evading liabilities ▪ deceiving its creditors ▪ defrauding any person ➡ Person in charge of management shall be jointly & severally liable for loss & be punishable u/s 447
Sec. 252 (Revival of Co.)	An application for restoration of name shall be made to NCLT by RoC → within 3 years Co., member, creditor or workman → within 20 years Any person aggrieved → within 3 years The order of NCLT shall be filed with RoC within 30 days ↓ RoC shall restore the name ↓ Roc to issue a fresh certificate of incorporation

Dormant Co.

Sec. 455 (Dormant Co.)	A company can make an application to RoC in Form MSC-1 to obtain the status of Dormant Co. if it is formed → for a future project; or → to hold an asset or IPR; and → has no significant accounting transactions ➡ Significant accounting transaction means any transaction other than – ▪ Payment of fees to RoC ▪ Payment made to comply with legal requirements ▪ Allotment of shares to fulfil legal requirement ▪ Payment for maintenance of offices & records OR Inactive company ➡ Inactive company means a company which ▪ Has not been carrying on business; or ▪ Has not made significant accounting transaction during last 2 FYs; or ▪ Has not filed financial statements or annual returns during last 2 FYs	
	On application, RoC shall allow the status of Dormant Co. in form MSC-2	RoC shall maintain a register of Dormant Co. on the website of MCA
	In case a company has not filed financial statements or annual return for 2 FYs consecutively, RoC shall issue a notice & enter the name of the company in the register of Dormant Co.	Dormant Co. may again become active company on an application to RoC

The Companies (Miscellaneous) Rules, 2014

Application for status of Dormant Co.	Application shall be made in form MSC-1 ➡ ▪ after passing SR; or ▪ after obtaining written consent of 3/4th shareholders by value	
	An application shall be made only if ➡ ▪ No inspection, inquiry or investigation is pending ▪ No prosecution is pending ▪ No dispute in management or ownership ▪ No security is listed	▪ No outstanding public deposits ▪ No outstanding loans ▪ No outstanding statutory dues ▪ No default in workmen dues
Minimum number of Directors	▪ 3 in Public Co. ▪ 2 in Private Co. ▪ 1 in OPC Rotation of auditors is not applicable on dormant co.	**Return of Dormant Co.** — Dormant Co. shall file an annual return in Form MSC-3 within 30 days from end of FY
Application for status of Active Co.	▪ An application for seeking status of Active Co. shall be made in form MSC-4 ▪ RoC shall initiate the process of strike-off if company remains dormant for 5 years	▪ Where company omits to do any act mentioned in form MSC-1, directors shall within 7 days apply for status of Dormant Co. ▪ Where RoC has reasonable cause to believe, he may initiate proceedings for enquiry u/s 206 & if company is found functioning, he may treat the company as active co.

Government Co.

Sec. 2(45) (Govt. Co.)	Means a company in which ≥ 51% paid-up share capital (In case DVR is issued, ≥ 51% of TVP) is held by → CG → Stater Government(s) → Partly by both Subsidiary of a Govt. Co. is also a Govt. Co.	Employees of Govt. Co. are not Govt. employees
Sec. 394 & 395 (Annual Report on Govt. Co.)	Where CG is a member of Govt Co. ➡ An annual report of Govt. Co. shall be laid in both Houses of Parliament within 3 months of AGM Where State Govt. is also a member ➡ It shall be laid before State Legislature	

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Nidhi Co.

Sec. 406 (Nidhi Co.)	(1) "Nidhi" means a company which CG may, by notification in the Official Gazette, declare to be a Nidhi. (2) CG may, by notification in the Official Gazette, exempt any Nidhi company from any provision of this Act (3) A copy of every exemption notification, shall be laid in draft before each House of Parliament for a total period of 30 days (4) In reckoning any such period of 30 days, no account shall be taken of any period during which the House is adjourned for more than 4 consecutive days.
Meaning	▪ Incorporated as Nidhi ▪ Exclusive Object ♣ Cultivating the habit of thrift and savings among its members ♣ Receiving deposits from only members ♣ Lending to only members, for their mutual benefit ▪ Complies with Rules prescribed by CG **Note** – Although activities of a Nidhi company are like that of a NBFC, however that have been exempted from the purview of RBI Act, 1934 by virtue of the RBI Master Direction – Exemption from the provisions of RBI Act, 1934

Nidhi Rules, 2014

Declaration of Nidhis

For Nidhi Companies incorporated before 19th April, 2022

Form NDH-4 needs to be filed for declaration as Nidhi Co and for updating the status

Particular	Due Date
Form NDH-4 shall be filed	Within 60 days after the expiry of ▪ 1 year from the date of its incorporation or ▪ extended period as granted by RD*

*Note – RD may extend the period upto 1 year from the date of the application

Note – In case company fails to comply with the above requirement, any deposit raised shall be deemed to have been raised under the Chapter of Deposits

For Nidhi Companies incorporated on or after 19th April 2022

(1) On and after 19th April, 2022, public company desirous to be declared as a Nidhi
→ shall apply, in Form NDH-4, within a period of 120 days of its incorporation for declaration as Nidhi,
→ if it fulfils the following conditions –
I. it has not less than 200 members; and
II. it has Net Owned Funds of INR 20 lakhs or more.

(2) The company shall also attach with Form NDH-4, the declaration about fulfilment of fit and proper person criteria by all the promoters and directors of the company.

(3) Whether any promoter or director is a FIT AND PROPER PERSON, the following shall be considered –
(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person; and
(b) the person not incurring any of the following disqualifications, namely -
- criminal complaint or information under section 154 of CrPC is pending;
- charge sheet has been filed by any enforcement agency in matters concerning economic offences which is pending;
- an order of restraint, prohibition or debarment has been passed by any regulatory authority or enforcement agency in any matter concerning company law, securities laws or financial markets which is in force;
- an order of conviction has been passed by a court for any offence involving moral turpitude;
- such person has been declared insolvent and not been discharged;
- such person has been found to be of unsound mind by a competent court;
- such person has been categorised as a willful defaulter;
- such person has been declared a fugitive economic offender;
- such person
  → is a DIRECTOR in 5 or more Nidhi companies, or
  → is a PROMOTER of 3 or more Nidhi companies.

(4) CG, shall examine the application filed in Form NDH-4 and convey its decision within 45 days, else deemed approval after 45 days

(5) On being satisfied that the company meets the requirements under sub-rules (2) and (3), CG, shall notify in the Official Gazette, declaring it as a Nidhi
[Decision of CG is filed wih RoC alongwith Form INC-20A, filed under section 10A]
[The company shall commence its business only once the approval of CG is obtained]

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	(6) If company does not comply with sub-rule (1), it shall not be allowed to file Form No. SH-7 (Notice to Registrar of any alteration of share capital) and Form PAS-3 (Return of allotment). Note – Every Nidhi company is required to file half yearly return with Registrar in Form NDH-3 within 30 days from conclusion of each half year duly certified by a CS in practice or CA in practice or Cost Accountant in practice.
Incorporation & incidental matters	▪ Public company ▪ Paid-up capital ≥ INR 10 lakh ▪ Companies existing on 19th April 2022 to comply within 18 months ▪ Only fully paid-up equity shares to be issued of nominal value ≥ INR 10 each ▪ Part of name 'Nidhi Limited'
Membership	▪ No. of members ≥ 200 ▪ Not to be admitted as member – Body corporate, Trust, Minor ▪ Deposits may be made in the name of Minor by legal guardian ▪ Member shall not transfer > 50% of his shares (on date of availing loan or making deposit) during the subsistence of such loan or deposit ▪ But a member shall retain the minimum number of shares at all the times
Net Owned funds	▪ Net Owned funds ≥ INR 20 lakh (or higher amount prescribed by CG) Net Owned Funds = Aggregate of Paid-up equity capital + free reserves – accumulated losses and intangible assets as per latest audited balance sheet **Note** - Companies existing on 19th April 2022 to comply within 18 months ▪ Ratio of Net Owned Funds to deposits not more than 1:20 ▪ Unencumbered term deposits ≥ 10% of the outstanding deposits
General restrictions & prohibitions	**Businesses Prohibited** - Chit fund - Hire purchase finance - Leasing finance - Insurance - Acquisition of securities - Raising loan from banks or other source for advancing loan to members **Businesses permitted** - Borrowing or lending only to and from members - Locker facilities to members if rental income ≤ 20% of gross income **Issue of securities prohibited** - Preference shares - Debentures - any other debt security **Other prohibitions** – Entering into partnership its borrowing or lending activities – Opening current account with its members – Pledge of assets lodged by the member – Take deposits from or lend to any body corporate – Issue any advertisement in any form for soliciting deposits (However, private circulation of fixed deposit Schemes among the members of the Nidhi carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits – Pay any brokerage or incentive for mobilising deposits from members or granting loans – Need Special Resolution and RD's approval for acquiring control over another company
Dividend	▪ Maximum rate = 25%
Directors	▪ Disqualifications – same as u/s 164 ▪ Director must be a member ▪ Maximum term of 10 years ▪ Reappointment only after 2 years of cessation
Auditors	▪ **Individual:** 1 term of 5 consecutive years; **Firm:** 2 terms of 5 consecutive years ▪ Cooling off period – 2 years **Note** - The Auditor of the company shall furnish a certificate every year that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

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Sec. 420 (Orders of NCLT)	**Reasonable opportunity of being heard**	The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
	Amendment in order	The Tribunal may, at any time within **2 years** from the date of the order amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties **Provided** that no such amendment shall be made if appeal has been preferred under this Act.
	Sending copies to parties	The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

Sec. 421 (Appeal from orders of NCLT)	**Appeal to NCLT** → Any person aggrieved by an order of NCLT may prefer an appeal to NCLT → No appeal shall lie from an order made by the NCLT with the consent of parties	**Time for filing appeal** Appeal shall be filed within **45 days** from the date on which copy of NCLT's order is made available NCLAT may allow further 45 days on sufficient cause	**Orders of NCLAT** → On the receipt of an appeal, NCLAT shall pass orders, confirming, modifying or setting aside the order appealed against. → NCLAT shall send a copy of every order made by it to NCLT and the parties to appeal

Sec. 422 (Expeditious disposal)	NCLT & NCLAT shall endeavour to dispose of the application or appeal within **3 months** If not so disposed of, President or Chairperson may extend the period by not exceeding 90 days	**Sec. 423 (Appeal to SC)**	Appeal against NCLAT may be filed with SC on any question of law within **60 days** from the date of receipt of order SC may allow further 60 days on sufficient cause

Sec. 424 (Procedure before NCLT & NCLAT)	**Procedure before NCLT & NCLAT**	NCLT & NCLAT shall not be bound by CPC, 1908 but shall be guided by the principles of natural justice & shall have power to regulate their own procedure
	Powers of Civil Court	They shall have the same powers as Civil Court, namely – ▪ summoning and enforcing the attendance of any person and examining him on oath; ▪ requiring the discovery and production of documents; ▪ receiving evidence on affidavits; ▪ requisitioning any public record or document from any office; ▪ issuing commissions for the examination of witnesses or documents; ▪ dismissing a representation for default or deciding it ex-parte; ▪ setting aside any order of dismissal of any representation for default or any order passed by it ex-parte; and ▪ any other matter which may be prescribed
	Power of Execution of orders	→ Any order made by NCLT or NCLAT may be enforced in the same manner as if it were a decree made by a court in a suit pending therein, and → it shall be lawful for NCLT or NCLAT to send for execution of its orders to the court within the local limits of whose jurisdiction - ▪ in the case of an order against a company, the registered office of the company is situated; or ▪ in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain
	Judicial Proceedings	→ All proceedings before NCLT or NCLAT shall be deemed to be judicial proceedings within the meaning of the Indian Penal Code, and → NCLT & NCLAT shall be deemed to be civil court

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Miscellaneous Provisions		
Power to Punish for Contempt (Sec. 425)	→ NCLT & NCLAT shall have the same authority in respect of contempt of themselves as the High Court has and → may exercise the powers of the Contempt of Courts Act, 1971, with the modifications that – ▪ the reference therein to a High Court shall be construed as including a reference to NCLT & NCLAT; and ▪ the reference to Advocate-General in the said Act shall be construed as a reference to such Law Officers as CG may, specify in this behalf	
Delegation of Powers (Sec. 426)	NCLT or NCLAT may direct any of its officers or employees or any other person	→ to inquire into any matter connected with any proceeding before it and → to report to it
Protection of action taken in good faith (Sec. 428)	→ No legal proceeding shall lie against NCLT, NCLAT or their members, employees or any other person authorised by them for the discharge of any function → in respect of any loss or damage caused by any act which is done in good faith.	
Power to seek assistance of Chief Metropolitan Magistrate, etc. (Sec. 429)	→ NCLT may, in any proceedings for winding up of a company; → in order to take into custody the property, books of account or other documents, → request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, within whose jurisdiction any such property, books of account or other documents of such company are situated, to take possession thereof, and → such authority, shall - ▪ take possession of such property, books of account or other documents; and ▪ cause the same to be entrusted to NCLT	No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector shall be called in question in any court or before any authority on any ground whatsoever.
Civil Court not to have jurisdiction (Sec. 430)	→ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the NCLT or NCLAT is empowered to determine	→ No injunction shall be granted by any court or other authority in respect of any action taken by the Tribunal or the Appellate Tribunal.
Validity of acts (Sec. 431)	No act or proceeding of the NCLT or NCLAT shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the NCLT or NCLAT.	
Right to Legal Representation (Sec. 432)	A party to any proceeding or appeal before the NCLT or NCLAT, may either → appear in person or → authorise one or more ▪ chartered accountants ▪ company secretaries ▪ cost accountants ▪ legal practitioners ▪ any other person to present his case before the NCLT or NCLAT.	
Limitation (Sec. 433)	The provisions of the Limitation Act, 1963 shall apply to proceedings or appeals before NCLT or NCLAT.	

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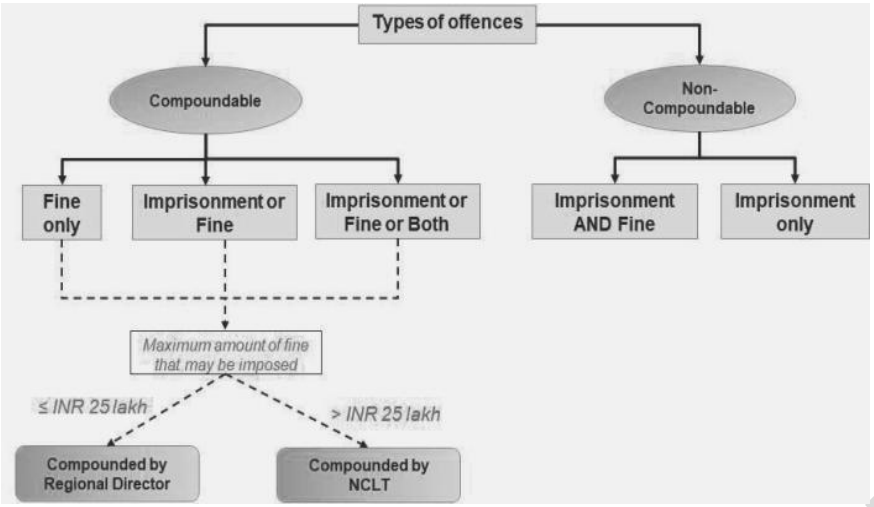
Section 435 (Establishment of Special Courts)	For speedy trial of offences, except the offence under section 452, CG may establish Special Courts	A Special court shall consist of • in case of offences punishable with imprisonment of ≥ 2 years — a single Judge holding office as Session Judge or Additional Session Judge • in the case of other offences — a Metropolitan Magistrate or a Judicial Magistrate of the First Class who shall be appointed by CG with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working
Sec. 436 (Offences Triable by Special Court)	**Offences triable by Special Courts**	→ all offences specified under section 435 shall be triable only by the Special Court established for the area in which the registered office of the company is situated or → where there are more than one Special Courts, by such one of them as may be specified the High Court;
	Where a person accused of the commission of, an offence under this Act	Such person is forwarded to a Magistrate under CrPC, → such Magistrate may authorise the detention of such person for ≤ 15 days where such Magistrate is a Judicial Magistrate and → 7 days where such Magistrate is an Executive Magistrate **Provided** that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
	Powers under CrPC	The Special Court may exercise, in relation to the person forwarded to it above, the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of CrPC; and
	Cognizance of offence by Special Court	A Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

	Summary Trial	• the Special Court may try in a SUMMARY way any offence under this Act — which is punishable with imprisonment ≤ 3 years
		• In the case of any conviction in a summary trial — No sentence of imprisonment for a term exceeding 1 year shall be passed
		• When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that — the Special Court shall proceed to hear the case in accordance with the procedure for the regular trial.
		  ▪ the nature of the case is such that the sentence of imprisonment for a term exceeding 1 year may have to be passed or
		  ▪ that it is, for any other reason, undesirable to try the case summarily

Sec. 437 (Appeal & Revision)	The High Court may exercise all the powers of appeals and revision conferred by CrPC on a High Court, as if a Special Court were a Court of Session	
	Sec. 438 (Application of CrPC)	The provisions of the CrPC shall apply to the proceedings before a Special Court as if → the Special Court is a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class and → the person conducting a prosecution before a Special Court is a Public Prosecutor.
Sec. 439 (Offences to be Non-cognizable)	**Offences to be non-cognizable**	→ Every offence under this Act shall be deemed to be non-cognizable → Except the offences referred to in section 212(6) [i.e. offence covered under section 447]
	Cognizance of offence	No court shall take cognizance of any offence unless the complaint in writing is made by – ▪ Registrar, ▪ member or ▪ a person authorised by the CG The court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the SEBI This sub-section shall not apply to a prosecution by a company of any of its officers.
	Personal presence not required	Where the complainant is the Registrar or a person authorised by the CG, the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.
	Action by Liquidator	The provisions of point (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX (winding up) or in any other provision of this Act relating to winding up of companies

CA HARSH GUPTA

Sec. 441 (Compounding)



Any offence committed within **3 years** from the date on which a similar offence was compounded, is not compoundable

Sec. 442 (Mediation & Conciliation Panel)

Object of Mediation and Conciliation Panel	→ CG shall maintain a panel of experts to be called as the Mediation and Conciliation Panel → for mediation between the parties during the pendency of any proceedings before CG or the Tribunal or the Appellate Tribunal
Reference to Panel upon Party's request	→ Any of the parties to the proceedings may, → at any time during the proceedings before CG or the Tribunal or the Appellate Tribunal (authorities), → apply to these authorities, for referring the matter to the Mediation and Conciliation Panel and → these authorities, shall appoint one or more experts from the panel.
Suo-moto reference to Panel	These authorities before which any proceeding is pending may, suo-moto, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel
Procedure of the Panel	→ The Mediation and Conciliation Panel shall dispose of the matter referred to it within a period of 3 months and forward its recommendations to the authorities. → Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the authorities

Sec. 443 (Power of CG to appoint Company Prosecutors)

CG may appoint one or more persons, as company prosecutors
- for the conduct of prosecutions arising out of this Act and
- the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

Sec. 444 (Appeal against Acquittal)

→ CG may direct any company prosecutor
→ to present an appeal from an order of acquittal passed by any court, other than a High Court, and
→ an appeal presented by such prosecutor shall be deemed to have been validly presented to the appellate court.

Sec. 445 (Compensation)

The provisions of section 250 of the CrPC shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court

Sec. 446 (Application of Fines)

The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied
→ in or towards payment of the costs of the proceedings, or
→ in or towards the payment of a reward to the person on whose information the proceedings were instituted.

Sec. 446A (Factors for determining level of punishment)

The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely –

(a) size of the company;
(b) nature of business carried on by the company;
(c) injury to public interest;
(d) nature of the default; and
(e) repetition of the default

Sec. 446B (Lesser Penalties)

→ If any penalty is payable for non-compliance of any provision
→ OPC, Small Co, Start-up or Producer company & their officer in default
→ shall be liable to a penalty not more than one-half, subject to maximum
- INR 2 lakh in case of Company
- INR 1 lakh in case of officer in default

Sec. 447 (Punishment for Fraud)

Serious Fraud

Where any person is found to be guilty of fraud involving an amount of AT LEAST

– INR 10 lakh, or – 1 % of the turnover of the company	}	whichever is lower

shall be punishable with

Non-serious Fraud

Where the fraud involves an amount LESS THAN

– INR 10 lakh, or – 1 % of the turnover of the company	}	whichever is lower

and does NOT INVOLVE PUBLIC INTEREST, any person guilty of such fraud shall be punishable with

Imprisonment and	Fine
6 months to 10 years	100% to 300% of amount involved in fraud

Provided that where the fraud in question INVOLVES PUBLIC INTEREST, the minimum imprisonment shall be 3 years.

Imprisonment, or	Fine, or both
Up to 5 years	Up to INR 50 lakh

Sec. 448 (Punishment for False Statement)

If in any document, any person makes a statement –

(a) which is false in any material particulars, knowing it to be false; or
(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

Sec. 449 (Punishment for False Evidence)

If any person intentionally gives false evidence –

(a) upon any examination on oath or solemn affirmation, or
(b) in any affidavit, deposition or solemn affirmation,

Imprisonment, and	Fine
3 years to 7 years	Up to INR 10 lakh

Sec. 450 (Residuary Penalty)

Penalty	In case of continuing contravention, further penalty
INR 10,000	Up to INR 1,000/ day after the first during which the contravention continues, subject to a maximum of • INR 2 lakh in case of a company and • INR 50,000 in case of an officer who is in default or any other person

Sec. 451 (Punishment for Repeated Default)

If the same offence is committed for the second or subsequent occasions within a period of 3 years, then,

Imprisonment	Fine
Same as that provided for that offence	2 times the amount of fine for such offence

Sec. 452 (Wrongful withholding of property)

If any officer or employee of a company -

(a) wrongfully obtains possession of any property, including cash of the company; or
(b) having any such property in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall be punishable with
Fine = INR 1 lakh to INR 5 lakh

The Court trying an offence may also order such officer or employee

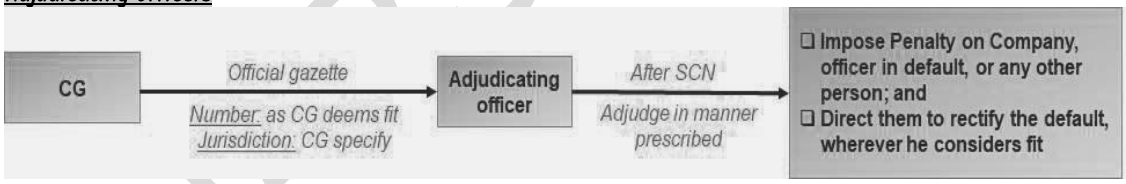
→ to deliver up or refund any such property or cash wrongfully obtained or knowingly misapplied, the benefits that have been derived from such property or cash or in default,
→ to undergo imprisonment up to 2 years.

Imprisonment shall not be ordered for wrongful possession of a dwelling unit; it company has not paid any amount relating to

→ PF, pension fund, gratuity etc.
→ Compensation in respect of death or disablement

Sec. 454 (Adjudication of Penalties)

Adjudicating officers



Note – Where the default related to non-filing of annual return or financial statements has been rectified within 30 days of issue of notice by adjudicating officer, no penalty shall be imposed

Appeal against the order

Consequences of non-compliance

When	Punishment on company	Punishment on officer who failed to pay
Fails to comply with order of Adjudicating officer or RD within 90 days	INR 25,000 to INR 5 lakh	- Imprisonment ≤ 6 months, or - Fine: INR 25,000 to INR 1 lakh, or - Both

Sec. 454A (Penalty for repeated defaults)

→ Where a company or any officer or any other person having already been subjected to penalty for default under any provisions of this Act,
→ again commits such default within a period of 3 years
→ it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default

features of MCA portal	• Online portal • commentment • easy and secure access • Full authorisation • Multiple payment options • Service request number (SRN)	**Facilities available on MCA portal**	• Registration of documents and file documents • view Public documents • efficient services by professionals to clients • Financial institutions can register and track changes • MCA officials can delier best services • MCA can play its regulatory role in a better manner
features of MCA portal	Companies required to file their financial statements in **XRBL format -** • Listed and their Indian subsidiaries • companies with paid up capital ≥ 5 crores OR • companies with turnover ≥ 100 crores OR • companies covered under Ind-AS **Exceptions - Banking, Insurance, NBFC, HFC**	**features of MCA portal**	CG may make rules regarding • filing of documents in electronic mode • sending of documents in electronic mode • filing of financials and returns in electronic mode
Sec 400	CG may also provide in their rules made under section 398 that the electronic form for the purposes specified in these sections shall be exclusive or in the alternative or in addition to the physical form thereof.	**Sec 401**	CG may provide such value added services through the electronic form and levy such fees thereon at may be prescribed
Sec 402	All the provisions of the information technology act 2000 relating to the electronic records, including the manner and format in which the electronic records shall be filed in so far as they are not inconsistent with this act, shall apply in relation to the records in electronic form specified under section 398	**Sec 403**	Any document required to be submitted, filed, registered or recorded or any fact or information required or aurthorised to be registered under this act, shall be submitted, filed, registered or recorded within the time specified in the relevant provisions on payment of such fees as may be prescribed.

MCA 3.0
• E-scrutiny by central scrutiny cell of staright through processing forms • E-adjudication • E-consultation • Compliance management system (CMS) to identify non compliant companies or LLP • MCA lab to keep check on all these modules of MCA 3.0

SEBI ACT, 1992

Objectives of SEBI	P Protecting interest of investors in securities market P Promoting development R Regulating securities market	→ This Act came into force on 30th January 1992 → SEBI is a body corporate, having its head office in Mumbai

Management of SEBI (Section 4)

(a)	(b)	(c)	(d)
a Chairman ↓ appointed by CG	2 members ↓ Nominated by CG from officials of Ministry dealing with finance and administration of Companies Act	1 member ↓ Nominated by RBI	5 other members (appointed by CG) ↓ Out of whom at least 3 shall be the whole-time members

Term of Office (Section 5)

TERM	TERMINATION	RELINQUISHMENT	REMOVAL (Section 6)
– 5 years – Maximum age 65 years – Can be Re-appointed by CG	CG shall have a right to terminate by giving • 3 months' notice; or • 3 months' salary	Chairman or member may relinquish his office by giving 3 months' notice in writing to CG	CG can remove on following grounds 1. Insolvent 2. Declared to be of Unsound mind by competent court 3. Convicted for moral turpitude 4. Abused his position detrimental to public interest – given SCN before removal

Meetings

- SEBI may meet at such time & place as may be specified by Regulations
- In absence of Chairman, members present will select one to preside at meeting
- All questions decided by majority. Chairman/ presiding member to have casting vote

Member who is
- Director of a company and has
- Pecuniary interest in any matter before SEBI shall

⬇

→ Disclose his interest; &
→ Shall not participate in meeting

No act of SEBI shall be invalid merely by
- Any vacancy or defect in constitution of SEBI
- Any defect in appointment of a member
- Irregularity in procedure of SEBI

Functions of SEBI (Section 11)

(1)

P – Protect
P – Promote
R – Regulate

(2A)

SEBI may INSPECT books of Listed companies on ground of
- insider trading &
- unfair trade practice

(2)

SEBI may take the following **MEASURES**

Regulate	• Stock exchanges	• Takeovers
Registering & regulating working of	• Intermediaries	• VCF, CIS and mutual funds
Prohibiting	• Unfair trade practice	• Insider trading
Calling of information from	• Stock exchange & intermediaries • Other authorities, in or outside India	• Any person (bank or authorities constituted under other laws), relevant to any investigation • Agencies, specified by SEBI
Other functions	• Promoting investors education • Performing powers of SCRA Act	• Levying fees • Conducting research

(3) – Powers of Civil Court

- discovery & production of books
- summoning the attendance of person & examining them on oath
- inspection of books of intermediaries
- inspection of books of listed companies
- issuing commissions for examination of witness

(4) – Passing ORDER

- suspension of trading of any security
- restraining persons from accessing securities market
- suspending office-bearers of stock exchange
- impound and retain proceeds or securities
- direct intermediary not to dispose off asset
- attaching property for ≤ 90 days of property involved in violation. Further, SEBI shall obtain confirmation of said attachment from a Special Court within 90 days of attachment

(4A) – Penalty

SEBI may levy penalty after holding an enquiry

(5) – IPEF

Amount disgorged shall be credited to IPEF established by SEBI

Regulation Prospectus (Section 11A)

SEBI by REGULATIONS, may specify
- matters related to issue & transfer of securities
- manner of disclosure of such matters

SEBI by general or special ORDERS
- prohibit any company from issuing prospectus
- specifying conditions, subject to which, prospectus may be issued

Note – As per Section 25, SEBI is exempt from Income-tax, wealth tax

CIS (Section 11AA)

Covered under Sub-section (2) or (2A)	CIS ✓
Covered under Sub-section (3)	CIS ✗
Neither registered nor covered under sub-section (3); but Corpus ≥ INR 100 crore	Deemed CIS

(2) – Conditions for CIS

1. contributions made by investors are pooled & utilised for a scheme
2. with a view to receive profits
3. contributions are managed on behalf of investors
4. investors do not have day to day control

(2A)

Any scheme satisfying the conditions of SEBI (CIS) Regulations

(3) – Exceptions

• co-operative society	• NBFCs
• Insurance	• Provident Fund
• Deposits under Companies Act, 2013	• Nidhi Co.
• Chit business	• Mutual fund
• Any scheme notified by CG	

Power to issue directions (Section 11B)

- SEBI has the power to issue directions to intermediaries or listed companies
- SEBI has the power to levy penalty

Investigation (Section 11C)

SEBI may appoint Investigating Authority (IA) on following grounds	– Transactions detrimental to interest of investors or market – Intermediary or any person violated any provision
Furnishing Information to IA	Duty of every officer/ employee of intermediary or person to preserve and produce books to IA
Powers of IA	Examine person on oath
Notes of Examination	Taken down in writing & read over to & signed by person examined

Failure in Compliance

• Produce books or documents • Furnish any information • Appear before IA • Sign the notes on examination	Imprisonment upto 1 year; or Fine upto ₹ 1 crore; or Both Further fine upto ₹ 5 lakh/ day after first

Seizure of Records

- IA may make an application to Magistrate or Judge of designated court to seek an order for seizure of books
- He may also requisition services of any police officer or any officer of CG

Order of Court

- Enter the premises
- Search that place
- Seize the books

IA shall keep the books in his custody only till conclusion of the investigation and inform the Magistrate or Judge of such return

Cease & Desist Proceedings (Section 11D)

If SEBI finds that any person has violated or likely to violate any provisions of the Act ➡ It may pass an order to cease and desist such person from committing such violation

Registration of Intermediaries (Section 12)

- No intermediary shall deal in securities except in accordance with Certificate of Registration
- SEBI may suspend or cancel a certificate of registration in the manner specified in regulations

Prohibitive transactions (Section 12A)

- Use any manipulative device in relation to securities
- Employ any scheme to defraud
- Engage in any act which would operate as fraud or deceit upon any person
- Insider trading
- Takeover in contravention of regulations

Grants by CG (Section 13)

CG may make grant to SEBI, after due appropriation by Parliament

SEBI General Fund (Section 14)

Composition	Utilisation
– all grants, fees & charges received by SEBI – sum received from sources decided by CG	– remuneration of members, officers & employees – expenses of SEBI in discharging its function – expenses for purposes of this Act

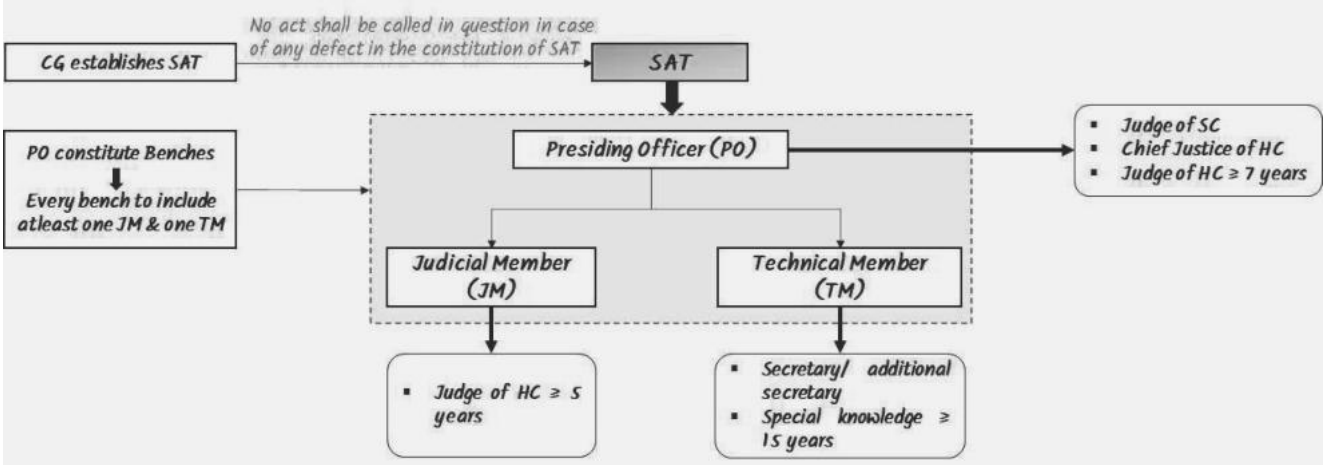
Accounts & Audit (Section 15)

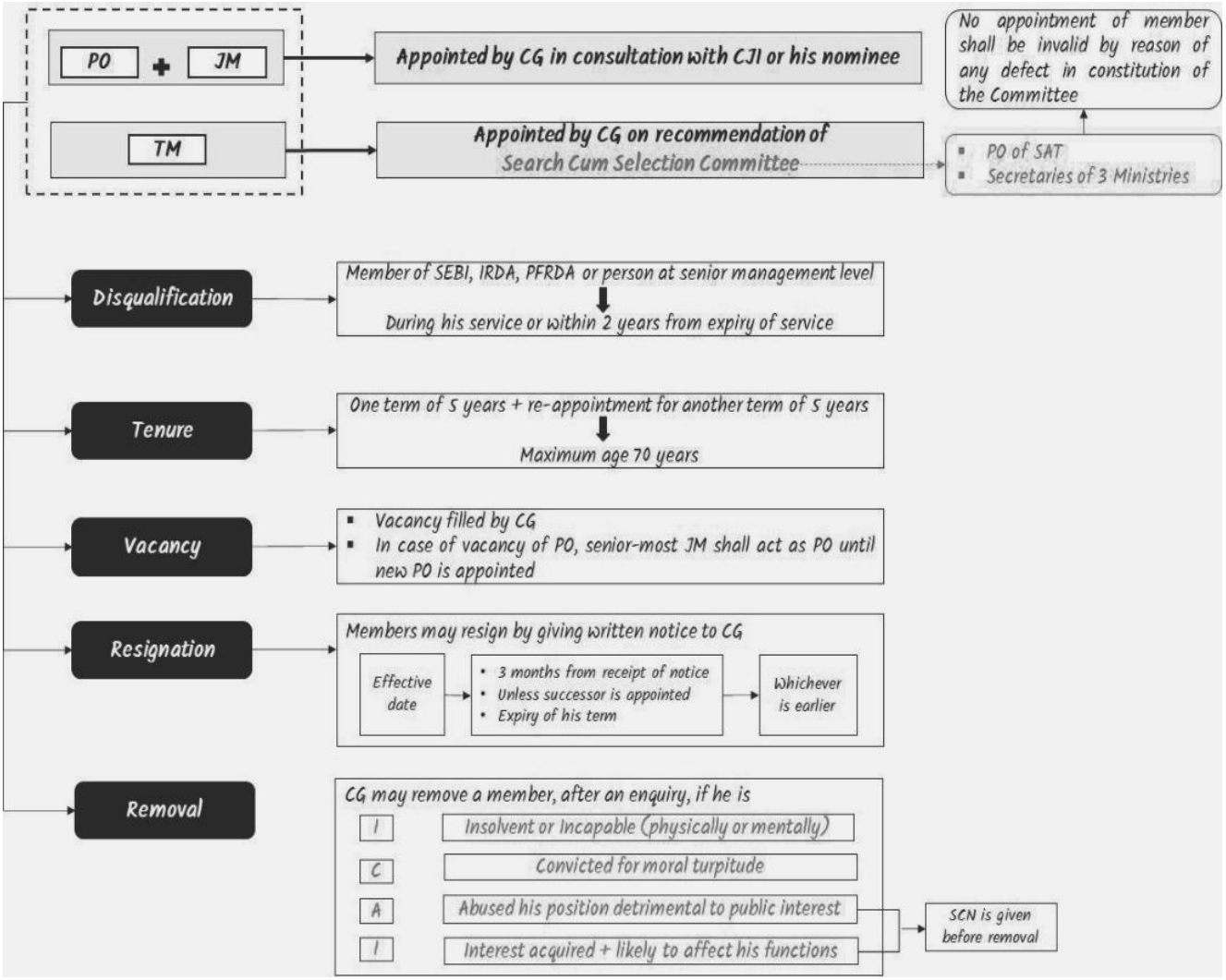
- SEBI shall prepare annual statement of accounts
- Accounts are audited by CAG
- CAG has same rights & privileges as in connection with audit of Govt accounts
- Accounts as certified by CAG shall be forwarded annually to CG & CG shall lay them before each House of Parliament

Penalties under SEBI Act					
Section	**Nature of default**			**Penalty**	
				Min.	**Max.**
15A	Failure to furnish information or furnishing any false information			₹ 1 lakh	₹ 1 lakh/ day upto ₹ 1 crore
15B	Failure of intermediary to enter into any agreement with the client				
15C	Failure of any intermediary or listed company to redress investors' grievances				
15D	Mutual fund or CIS carries on scheme without registration				
	Where registered Mutual fund or CIS	▪ fails to comply with T&C of registration ▪ fails to make an application for listing of it schemes	▪ fails to dispatch unit certificates ▪ fails to refund application money ▪ fails to invest money		
15E	AMC of mutual fund fails to comply with the regulations				
15EA	AIFs, REITs or INVITs fails to comply with the regulations			₹ 1 lakh	₹ 1 crore or 3 x gains whichever is higher
15EB	Investment adviser or Research Analyst fails to comply with the regulations			₹ 1 lakh	₹ 1 lakh/ day upto ₹ 1 crore
15F	Fails to issue Contract Notes			₹ 1 lakh	₹ 1 crore
	Fails to deliver security or make any payment			₹ 1 lakh	₹ 1 lakh/ day upto ₹ 1 crore
	Charges excess brokerage			₹ 1 lakh	5 x excess brokerage
15G	Insider Trading (deals, communicates, counsels)			₹ 10 lakh	₹ 25 crore or 3 x gains whichever is higher
15H	Non-compliance of Takeover Code				
15HA	Person indulged in Fraudulent & Unfair Trade Practice			₹ 5 lakh	₹ 25 crore or 3 x gains whichever is higher
15HAA	– knowingly alters any information relating to inquiry, audit – Accesses database without authorisation	– downloads regulatory data without authorisation – Introduces computer containment	– disrupts functioning of database – Knowingly destroys regulatory data	₹ 1 lakh	₹ 10 crore or 3 x gains whichever is higher
15HB	Residuary Penalty			₹ 1 lakh	₹ 1 crore

Power to Adjudicate (Section 15I)	SEBI may appoint any officer (not below Division Chief) to be an adjudicating officer	**Powers of Adjudicating Officer** – Power to summon – Enforce attendance of person – Impose penalty	**If order erroneous** → SEBI may examine the record of any proceeding, and → pass an order enhancing penalty Note – Order shall be passed within 3 months from the date of order or disposal of appeal u/s 15T, whichever is earlier	
Factors to be considered while adjudging penalty (Section 15J)	• amount of gain or unfair advantage • amount of loss to an investor • repetitive nature of default		**Penalties credited to (Section 15JA)**	**Consolidated Fund of India**
Settlement of Civil proceedings (Section 15JB)	• Any person against whom any civil proceedings have been initiated, may apply to SEBI proposing for settlement/ Consent order • SEBI may agree to the proposal on terms specified in the regulations		• No appeal shall lie to SAT in case settlement is opted • All settlement amounts shall be credited to Consolidated Fund of India	

Composition of SAT





Appeal to SAT (Section 15T)	**Appealable Orders** ▪ Order of SEBI ▪ Order of Adjudicating authority ▪ Order of IRDA & PFRDA	**Time for Appeal** – Within 45 days of receipt of copy of the order – SAT may allow further extension	**Order of SAT** → Confirm, modify or set aside the order appealed against → SAT shall endeavour to dispose of appeal within 6 months	**Appeal to SC (Section 15Z)**	– Appeal against order of SAT can be filed with SC within 60 days on QUESTION OF LAW – SC may allow further period of 60 days for appeal
Procedure & Powers of SAT (Section 15U)	• Summoning persons & examining on oath • Requiring production of documents • Receiving evidence on affidavits • Issuing commission for examining witness • Reviewing decision • Dismissing appeal ex-parte		**Other points**	▪ Person may appear in person or authorise one or more CA or CS or Cost Accountant or legal practitioners or its officers to appear before SAT ▪ Provision of Limitation Act shall apply to appeal to SAT	

Power of CG to supersede (Section 16)	**GROUNDS** CG may supersede SEBI for ≤ 6 months on following GROUNDS ▪ SEBI is unable to discharge its functions ▪ Persistent default in complying with CG's directions or discharging its functions due to which the financial position has deteriorated ▪ Necessary in public interest	**EFFECT** ▪ All members shall vacate their office ▪ All functions are discharged by persons directed by CG, until the Board is reconstituted ▪ All property of SEBI shall vest in CG **Note** - On expiry of supersession, CG may reconstitute the Board **Note** - CG shall cause full report to be laid before each house of Parliament
Returns & Reports (Section 18)	▪ SEBI shall furnish to CG, such returns and statements as CG may require	▪ Within 90 days from end of FY, submit a report on its accounts, policy & programmes to CG, which is also laid before each House of Parliament

Offences

Offences (Section 24)	If a person contravenes the provisions of this Act Imprisonment; or: Upto 10 years Fine; or: ₹ 25 crore Both	If any person fails to pay penalty Imprisonment; or: Upto 10 years Fine; or: ₹ 25 crore Both
Compounding (Section 24A)	Any offence other than an offence punishable ▪ with imprisonment only, or ▪ with imprisonment AND also with fine, ➡ may either before or after the institution of any proceeding, be compounded by SAT or a court before which such proceedings are pending.	
Immunity (Section 24B)	**Grant of Immunity** → If a person who has violated any provision, makes a full and true disclosure in respect of violation → CG may grant him immunity from prosecution or penalty **Note** - No immunity, where the prosecution has been instituted before date of application for immunity	**Withdrawal of Immunity** → If person does not comply with the condition of immunity or gives false evidence, → CG may withdraw immunity
Cognizance of Offences (Section 26)	No court shall take cognizance of any offence under this Act, save on a complaint made by SEBI.	
Special Courts (Section 26A to 26E)	**Establishment**	▪ CG to establish Special Courts ▪ Consisting of a Single Judge who is appointed by CG with concurrence of Chief Justice of HC ▪ Only Sessions Judge & Additional Sessions Judge qualified for appointment
	Offences triable	▪ All offences shall be tried by the Special Court established for the area in which the offence is committed or ▪ where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by HC concerned.
	Appeal & Revision	▪ Order of special court is appealable to HC
	CrPC	▪ CrPC shall apply to Special Court as Court of Session ▪ Person conducting prosecution before Special Court shall be deemed to be a Public Prosecutor

Contravention by Companies (Section 27)	▪ If contravention is committed by company, every person in charge as well as company shall be guilty **Exception** – If he proves that offence was committed without his knowledge	Further, if it is proved that offence committed with consent of any director, manager, secretary or other officer, such officer shall also be guilty	**Company** means any body corporate & includes firm or other association of individuals **Director** in relation to firm means partners
Recovery of Amounts (Section 28A)	If a person ▪ Fails to pay penalty ▪ Fails to refund money ▪ Fails to comply with directions of disgorgement ▪ Fails to pay any fees **Recovery officer may** →	▪ Attach & sell his movable property ▪ Attach bank accounts ▪ Attach & sell his immovable property ▪ Arrest the person ▪ Appoint a receiver for management of his property	→ His property shall include any property transferred to his spouse or minor child or son's wife or son's minor child otherwise than for adequate consideration → Recovery officer may seek assistance of any local district administration
Continuation of Proceedings (Section 28B)	→ If a person dies, his legal representative shall be liable to pay any sum which deceased would have been liable to pay, if he had not died → In case of PENALTY, legal representative is liable only if penalty has been imposed before the death	Any proceeding for disgorgement, refund or an action for recovery, except a proceeding for levy of penalty If initiated before his death → May be continued against the legal representative Which could have been initiated against the deceased if he survived → May be initiated against the legal representative	
	Note – Legal representative shall be liable to the extent to which the estate of the deceased is capable of meeting the liability		

Applicability of Regulations	→ Listed Specified securities ↓ Equity shares + Convertible securities	→ Non-convertible securities → IDRs → Securitised Debt Instruments	→ Security Receipts → Mutual Fund's units

Common Obligations of Listed Entity

Reg. 5 – General obligation of Compliance

The listed entity shall ensure that KMP, directors, promoters or any person dealing with the listed entity, complies with obligations assigned to them under these regulations

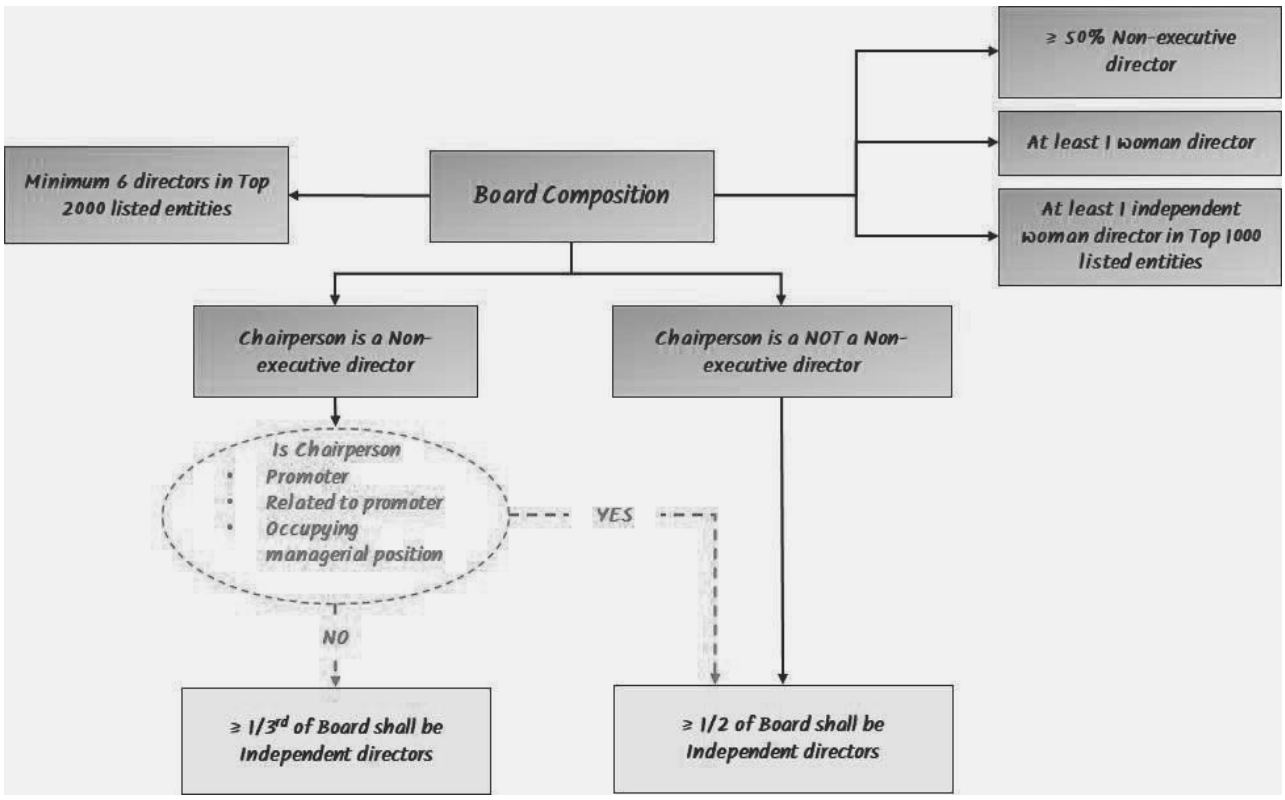
Reg. 7 – Share Transfer Agent

The listed entity shall appoint a share transfer agent or manage the share transfer facility in-house

Reg. 6 – Role of Compliance Officer

C	• Conformity with regulatory provisions • Co-ordination with SEBI, stock exchange, depositories • Correct procedures need to be followed to ensure authenticity of information & reports
O	• Official e-mail address of Grievance Redressal division to be monitored

Board of Directors (Reg. 17)



Note – In case listed entity has outstanding SR equity shares, ≥ 50% of the board shall comprise of Independent Directors

- For appointing Non-Executive director of age ≥ 75 years, SR needs to be passed
- For appointment of any Director or Manager, approval of shareholders shall be taken
  - at the next general meeting;
  - within 3 months of appointment, whichever is earlier
- But for appointing a person, who was earlier rejected by shareholders, prior approval of shareholders is required

- Board shall meet ≥ 4 times a year, with maximum gap of 120 days between 2 meeting
- QUORUM for Top 2000 listed entities

– 1/3rd of total strength – 3 directors	whichever is higher	Including at least 1 independent director

Maximum number of Directorship (Reg. 17A)

• A person shall not be a director in more than 7 listed entities • He shall not serve as ID in more than 7 listed entities	• A person who is MD/ WTD in any listed entity, shall not serve as ID in more than 3 listed entities	Listed entities here means an entity whose EQUITY SHARES are listed

Reg.	Committees	Composition	Quorum	Frequency of Meetings
18	Audit Committee	▪ ≥ 3 directors as members ▪ ≥ 2/3rd members shall be ID ▪ In case of SR equity shares, all members should be ID ▪ All members → financially literate & at least 1 member → accounting & financial management expertise ▪ Chairperson shall be ID and shall be present at AGM ▪ Company secretary shall act as secretary to the committee	▪ Either 2 members; or ▪ 1/3rd of the members of committee whichever is greater But ≥ 2 ID	≥ 4 times a year and maximum gap of 120 days between 2 meetings
19	NRC	▪ ≥ 3 directors as members ▪ ≥ 2/3rd directors shall be ID ▪ All members shall be NED ▪ Chairperson shall be ID and shall be present at AGM ▪ Chairperson of the company can be appointed as member of NRC but shall not chair NRC	▪ Either 2 members; or ▪ 1/3rd of the members of committee whichever is greater But ≥ 1 ID	At least once in a year
20	SRC	▪ ≥ 3 directors as members ▪ ≥ 1 ID ▪ In case of SR equity shares, 2/3rd ID ▪ Chairperson shall NED and shall be present at AGM	Regulations are silent	At least once in a year
21	Risk Management Committee	▪ Applicable only to Top 1000 listed entities or high value debt listed entity ▪ ≥ 3 members with majority directors, including ≥ 1 ID ▪ In case of SR equity shares, ≥ 2/3rd ID ▪ Chairperson shall be a director	▪ Either 2 members; or ▪ 1/3rd of the members of committee whichever is greater But ≥ 1 director	At least twice in a year & not more than 180 days shall elapse between 2 meetings
Restrictions on Committee Membership (Reg. 26)		A director shall not be → a MEMBER in more than 10 committees or → act as CHAIRPERSON of more than 5 committees → across all listed entities in which he is a director which shall be determined as follows ➡	(a) the limit of the committees on which a director may serve in → all public limited companies, whether listed or not, shall be included and → all other companies including private limited companies, foreign companies, high value debt listed entities and Sec. 8 companies shall be excluded; (b) for the purpose of determination of limit, chairpersonship and membership of the Audit Committee and the SRC alone shall be considered.	

CORPORATE GOVERNANCE REQUIREMENTS WITH RESPECT TO SUBSIDIARY OF LISTED ENTITY

1. Unlisted Material subsidiary

Unlisted Material subsidiary means a subsidiary whose Income or Net worth	> 20% of consolidated Income or Net worth of listed entity in preceding year

At least one ID on board of listed entity shall be a director on the board of unlisted material subsidiary (whether in India or not)

2. Unlisted subsidiary

- The Audit Committee of listed entity shall review financial statements, including investments made by, unlisted subsidiary,
- The minutes of board of unlisted subsidiary shall be placed at board meeting of listed entity
- The management of unlisted subsidiary shall bring a statement of all significant transactions or arrangement before the board of listed entity

Significant transaction or arrangement	> 10% of total revenues/ expenses/ assets/ liabilities of the unlisted subsidiary in preceding year

3. Material subsidiary

Material subsidiary means a subsidiary whose Income or Net worth	> 10% of consolidated Income or Net worth of listed entity in preceding year

➡

- Listed entity shall not dispose of SHARES in material subsidiary
  - → resulting in reduction in shareholding (either at its own or together with other subsidiaries) to ≤ 50%; or cease the control
  - → without SR
-

Selling, disposing & leasing of assets	> 20% of assets of the material subsidiary

↓

SR needs to be passed

Exception – No need of SR if divestment under a scheme duly approved by Court/ Tribunal or under a Resolution Plan under IBC (Such event is disclosed to RSE within 1 day of resolution plan being approved)

QUARTERLY compliance of Listed entity			
Regulation		**Particulars**	**Time Limit**
13(3)	Grievance Redressal Mechanism	File with RSE on quarterly basis • Complaints pending at beginning of quarter • Those received • Disposed of • Remaining unresolved	21 days from end of quarter
27(2)	Other Corporate Governance Requirements	Quarterly compliance report on Corporate Governance Material transactions with related parties shall be disclosed along with the report The report shall be signed either by the compliance officer or CEO	21 days from end of quarter
31(1)	Holding of Specific Securities & shareholding pattern	Statement showing holding of securities & shareholding pattern within following timelines ▪ 1 day prior to listing ▪ 21 days from end of quarter ▪ Within 10 days of any capital restructuring resulting in > 2% change in Paid up capital	21 days from end of quarter
32(1)	Statement of deviations & variations	Submit on quarterly basis for public issue, rights issue, preferential issue etc. a. Indicating deviations of the use of proceeds from stated objects b. Indicating category wise variation between projected & actual utilisation	-
33(3)	Financial Results	a. Submit quarterly & Year-to-date financial results within 45 days b. Quarterly & Year-to-date results may be audited or unaudited subject to ▪ In case of audited – accompanied by audit report ▪ In case of unaudited – subject to Limited review by statutory auditor c. Annual audited financials along with audited or limited reviewed financial results for last quarter shall be submitted within 60 days from end of FY	45 days from end of quarter & for last quarter, along with results of FY

YEARLY compliance of Listed entity			
Regulation		**Particulars**	**Time Limit**
33(3)	Annual Financial Results	Submit annual financial results along with audit report	60 days from end of FY
34	Annual Report	Submit to the stock exchange and publish on its website a. a copy of the ANNUAL REPORT is sent to the shareholders along with the notice of AGM not later than the day of commencement of dispatch to its shareholders b. in the event of any changes, the revised copy along with the details of and explanation for the changes shall be sent not later than 48 hours after the AGM	
36(2)	Annual Report to shareholders	Annual report	Not less than 21 days before AGM

EVENT-BASED compliance of Listed entity			
Regulation		**Particulars**	**Time Limit**
29(1) & (2)	Financial Results	Prior intimation to stock exchange about the board meeting in which financial results are due to be considered.	at least 5 working days in advance (excluding date of intimation & date of meeting)
	Other matters	Prior intimation to stock exchange about the board meeting in which the following matters are due to be considered ▪ buy-back ▪ voluntary delisting ▪ fund raising ▪ bonus securities ▪ dividend or issue of convertible securities	at least 2 working days in advance (excluding date of intimation & date of meeting)
29(3)	Prior intimation of alteration	Intimate stock exchange(s) about any of the following proposal which is placed before the board of directors – i. any alteration in the form or nature of any of its securities that are listed or in the rights or privileges of the holders thereof. ii. any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.	At least 11 working days in advance
42(2)	Record or closure date	The listed entity shall give notice of record date to all the stock exchange(s) In case of Rights issue	7 working days in advance 3 working days in advance
42(3)	Dividend	The listed entity shall recommend or declare all dividend before the record date fixed for the purpose.	5 working days in advance (excluding the date of intimation and the record date)
46(3)	Change in website	A listed entity shall update any change in the content of its website	2 working days from date of change

SEBI (ICDR)

IMPORTANT DEFINITIONS

Book Building	It means a process undertaken to elicit demand and to assess the price for determination of the quantum or value of specified securities	Specified Securities	Equity shares + Convertible securities
SR Equity shares	Equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer	Public Issue	IPO + FPO

Applicability (Reg 3)

These regulations shall apply to –

• IPO by unlisted issuer	• Rights issue ≥ 50 crore by listed issuer	• FPO by listed issuer	• Preferential issue or Qualified Institutional Placement by listed issuer by listed issuer
• Bonus issue by Listed issuer	• IPO or Rights issue of IDR	• IPO by SME	• Listing on Innovators Growth Platform

Entities NOT eligible to make IPO (Reg 5)

An issue shall not be eligible to make an IPO →
- If issuer, promoter or directors are debarred from capital market
- If promoter or director is a promoter or director of another company debarred from capital market
- Issuer, promoter or director is a wilful defaulter
- Promoter or director is a fugitive economic offender

An issuer shall not be eligible to make an IPO if there any outstanding convertible securities or any other right entitling an option to receive equity shares → exception
- ESOP
- Full paid securities required to be converted before filing of the prospectus

Eligibility for IPO (Reg 6)

Reg 6(1) – An issuer is eligible to make an IPO only if

NET TANGIBLE ASSETS ≥ 3 crore, on restated & consolidated basis, in each of preceding 3 full years, of which ≤ 50% are held in monetary assets If > 50% are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project Limit of 50% not applicable in case of OFS	AVERAGE OPERATING PROFIT of ≥ 15 crore, calculated on a restated & consolidated basis, during the preceding 3 years, with operating profit in each of these preceding years	NET WORTH of at least 1 crore in each of the preceding 3 full years, calculated on a restated & consolidated basis	If it has changed its NAME within the last 1 year, ≥ 50% of the revenue, calculated on a restated & consolidated basis, for the preceding 1 full year has been earned by it from the activity indicated by the new name

Reg 6(2)

An issuer not satisfying Reg 6(1), can make IPO through book-building process & by allotting ≥ 75% net offer to QIBs

Reg 6(3)

If an issuer has issued SR equity shares, it is allowed to do an IPO of only ordinary shares, subject to following conditions –

- Issuer shall be intensive in the use of technology
- Net worth of SR shareholder ≤ 1,000 crore (in net-worth investment in other listed companies is considered but not that of in the issuer company)
- SR shares were issued only to promoter/ founder holding an executive position
- SR have been held for ≥ 3 months prior to issue of the prospectus
- Issue of SR share was authorised by SR
- Voting rights on SR shares is minimum 2:1 to upto 10:1 compared to ordinary shares & in whole numbers only
- Same face value as ordinary shares
- Only one class of SR equity share
- Equivalent to ordinary shares, except for having superior voting rights

General Conditions (Reg 7)

Issuer shall ensure that
- In-principle listing approval has been obtained from stock exchange(s)
- Agreement with depository for Dematerialisation
- All securities of Promoters are in Demat form
- All existing equity shares are fully paid
- Firm arrangements of finance have been made towards 75% of the stated means of finance for Project cost excluding IPO proceeds

Limit on General Corporate Purpose
- Amount for general corporate purpose shall not exceed 25%
- Amount for general corporate purpose + objects where the issuer has not identified investment target shall not exceed 35%

Additional conditions for OFS (Reg 8 & 8A)

Only the fully paid-up shares held by the sellers for 1 year can be offered for sale

Condition of 1 year shall not apply –
- In case of OFS of a government company or statutory authority engaged in infrastructure
- Equity shares acquired in a transferee company in lieu of 1 year old investment in transferor company
- Bonus shares acquired against the equity shares held for 1 year

In case of issues under Reg 6(2)

Sellers are holding more than 20% of pre-issue shareholding	Cannot sell more than 50% of their holding
Sellers are holding less than 20% of pre-issue shareholding	Cannot sell more than 10% of their holding

Minimum Promoter's contribution (Reg 14)	**Computation of Minimum Promoters' Contribution**

IPO

Particulars				Case A	Case B
2014	Year of incorporation	Private Placement of 100 crore equity shares @ 10 each	Existing Promoters' holding	40 crore shares (40%)	30 crore shares (30%)
2018	IPO	Public issue of 100 crore equity shares @ 10 each			
Post-issue capital		200 crore equity shares @ 10 each			
Minimum promoters' contribution required –					
20% of post-issue capital (20% x 200 crore) Less: Existing promoters' holding				40 crore shares (40 crore shares)	40 crore shares (30 crore shares)
Minimum shares required to be obtained in IPO				NIL	10 crore shares

Lock in of securities held by Promoters (Reg 16)			If money is raised for capital expenditure
	Minimum promoter's contribution	Locked in for 18 months	Locked in for 3 years
	Holding in excess of minimum promoter's contribution	Locked in for 6 months	Locked in for 1 year
Holding of other persons (Reg 17)	The entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of 6 months from the date of allotment in the IPO		
Face value of shares (Reg 27)	The disclosure about the face value of equity shares shall be made in the draft offer document, offer document, advertisements and application forms, along with the price band or the issue price in identical font size	Price & Price Band (Reg 29)	105% of Floor Price ≥ Cap Price ≤ 120% of the Floor price
Differential pricing (Reg 30)	The issuer may offer its securities at different prices, subject to the following – • Retail individual investors or employees may be offered a price not lower than by more than 10% of issue price • In case of book-building, price offered to anchor investors shall not be lower than price offered to others • Discount, if any, shall be expressed in rupee terms		
Minimum subscription (Reg 45)	The minimum subscription to be received in the issue shall be at least 90% of the offer through the offer document, except in case of an OFS of specified securities	Provided that the minimum subscription to be received shall be subject to the allotment of minimum number of specified securities, as prescribed under the Securities Contracts (Regulation) Rules, 1957.	
Period of subscription (Reg 46)	IPO shall be kept open for at least 3 working days and not more than 10 working days	In case of a revision in the price band, the Issuer shall extend the bidding (issue) period disclosed in the red herring prospectus, for a minimum period of 3 working days	
Application value (Reg 47)	The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of INR 10,000 to INR 15,000.	Invite applications in multiples of the minimum application value Minimum application value = 25% of Issue price (100% in case of OFS)	
Manner of calls (Reg 48)	Outstanding subscription money shall be called within 12 months from the date of allotment	If applicant fails to pay the call within 12 months, his shares shall be forfeited	
Allotment (Reg 49)	Issuer shall not make allotment if prospective allottees is < 1,000		

Note – The author has just covered the key provisions of SEBI (ICDR) Regulations. For detailed coverage, kindly refer the study material of the institute.

Prohibition of Insider Trading

Insider means any person who is

1. a CONNECTED PERSON; or
2. in possession of or having access to UNPUBLISHED PRICE SENSITIVE INFORMATION;

Trading means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities

Connected Person

Connected person means any person → who is or has during the 6 months prior to the concerned Act been associated with a company, or indirectly, in any capacity including → By reason of frequent communication with its officers or → By being in a contractual, fiduciary or employment relationship or → By being a director, officer or an employee of the company or → Holds any position including a professional or business relationship between himself and the company whether temporary or permanent → that allows such person, directly or indirectly, access to UPSI or is reasonably expected to allow such access.

Deemed to be connected person, unless the contrary is established	• IMMEDIATE RELATIVE of connected persons mentioned above; or • holding; associate or subsidiary COMPANY; or • an INTERMEDIARY as specified in section 12 of the SEBI Act or an employee or director thereof; or • an INVESTMENT COMPANY, trustee company, AMC or an employee or director thereof; or • an official of a STOCK EXCHANGE or of CLEARING HOUSE or corporation; or • a member of board of trustees of a MUTUAL FUND or a member of the board of directors of the AMC of a mutual fund or is an employee thereof; or • a member of the board of directors or an employee, of a PUBLIC FINANCIAL INSTITUTION as defined in the Companies Act, 2013; or • an official or an employee of a SELF-REGULATORY ORGANIZATION recognised or authorized by the Board; or • a BANKER of the company; or • a concern, firm, trust, HUF, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has > 10% of the holding or interest;
Immediate Relative	
Spouse	includes parent, sibling, and child of such person or of the spouse, any of whom is → either dependent financially on such person, or → consults such person in taking decisions relating to trading in securities;

UPSI

→ Any information, relating to a company or its securities, directly or indirectly, → that is not generally available (i.e. accessible to public on non-deprecatory basis) → which upon becoming generally available, is likely to materially affect the price of the securities and	→ shall, ordinarily include but not restricted to, information relating to the following – ▪ financial results; ▪ dividends; ▪ change in capital structure; ▪ mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions; ▪ changes in KMP

Communication or Procurement of UPSI (Reg 3)

No insider shall COMMUNICATE UPSI to any person including other insiders	No person shall PROCURE any UPSI
EXCEPTION	
In furtherance of LEGITIMATE PURPOSES ▪ Board of listed company shall make a policy for determination of legitimate purposes ▪ Legitimate purpose shall include sharing of UPSI in ordinary course of business with business partners or consultants for bona-fide purposes Note – Person in receipt of UPSI shall be an insider	In connection with a transaction that would 1. Entail an OPEN OFFER obligation under takeover regulations 2. Does not attract open offer obligation but sharing information is in best interest of the company as per Board + the UPSI is generally made available at least 2 trading days prior to proposed transaction Note – The parties shall execute confidentiality agreement
Board of every organisation required to handle UPSI shall maintain a Structured Digital Database containing	→ Nature of UPSI → Name & PAN of the persons with whom UPSI is shared It is preserved for 8 years after completion of the relevant transaction

Trading when in possession of UPSI (Reg 4)	→ No insider shall TRADE when in possession of UPSI → It is presumed that his trades were motivated by the knowledge of such UPSI ↓ he may prove his innocence by demonstrating that 1. It was an off-market inter-se transfer between insiders in possession of same UPSI Transaction should be reported to the company within 2 working days Company shall report it to the stock exchange within 2 trading days (UPSI should not have been obtained under second exception of Reg. 3) 2. Transaction was carried out through block deal mechanism between persons in possession of UPSI (UPSI should not have been obtained under second exception of Reg. 3) 3. Transaction was carried out pursuant to a statutory obligation 4. Transaction was undertaken pursuant to the exercise of stock option at pre-determined price 5. In case of non-individual insiders, Individuals in possession of UPSI were different from individuals taking trade decisions 6. Trades were pursuant to Trading Plan in accordance with Regulation 5	**Burden of Proof** In case of connected person → on such connected person Other cases → on SEBI

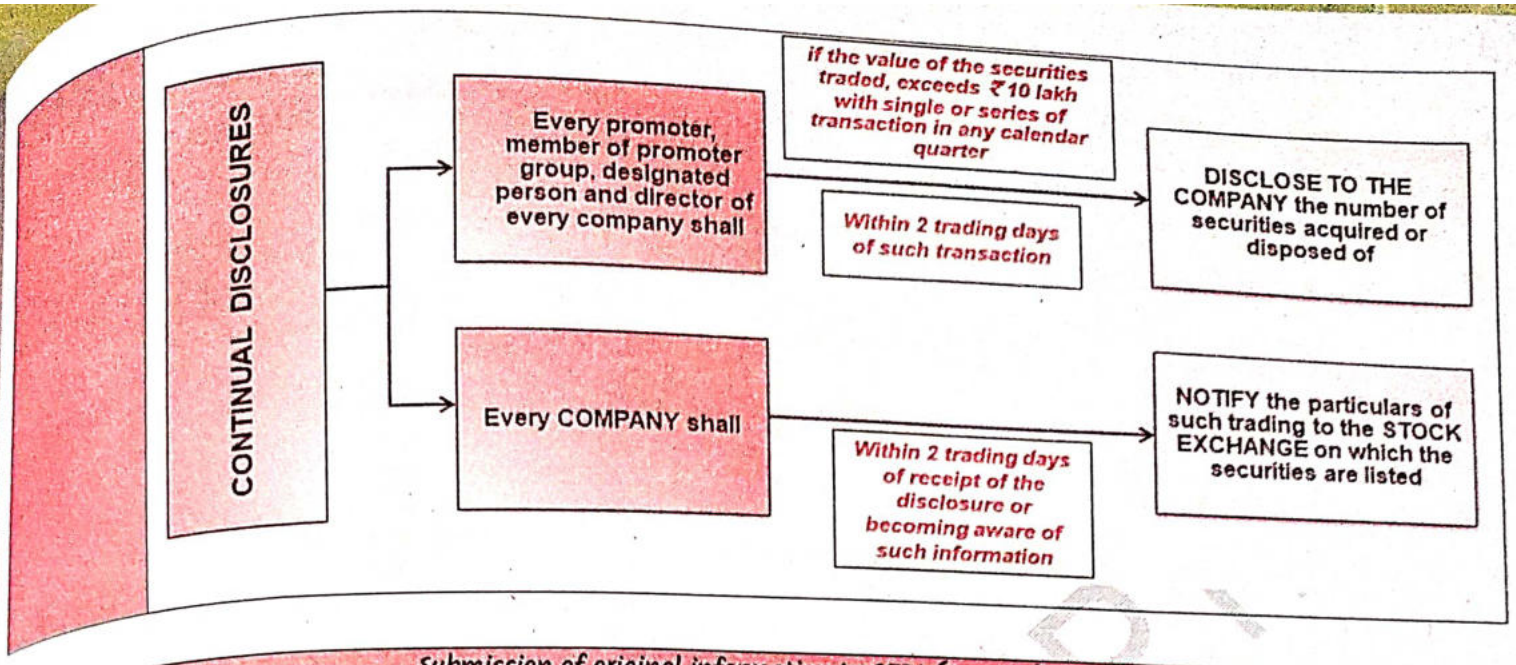
Trading Plan (Reg 5)	**Requirements of Trading Plan** 1. Insider shall submit trading plan to the compliance officer for approval & public disclosure 2. Trading can commence only after 6 months from public disclosure of plan. 3. No trading between → 20th day prior to closure of financial period and → 2nd trading day after disclosure of financial results 4. Submitted for a minimum period of 12 months. 5. No overlapping of 2 trading plans 6. It shall set out either the value of trades to be effected or the number of securities to be traded along with: → the nature of the trade and → the intervals at, or dates on which such trades shall be effected 7. Not to entail trading in securities for market abuse	**Other points** → Compliance officer to approve the plan → Pre-clearance of trades shall not be required for a trade executed as per an approved trading plan → Further, trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan → The trading plan once approved shall be IRREVOCABLE and the insider shall mandatorily have to implement the plan Provided that the implementation of the trading plan shall be deferred if any UPSI in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation → Upon approval of the trading plan, the compliance officer shall notify the plan to the stock exchanges

DISCLOSURES OF TRADING BY INSIDERS

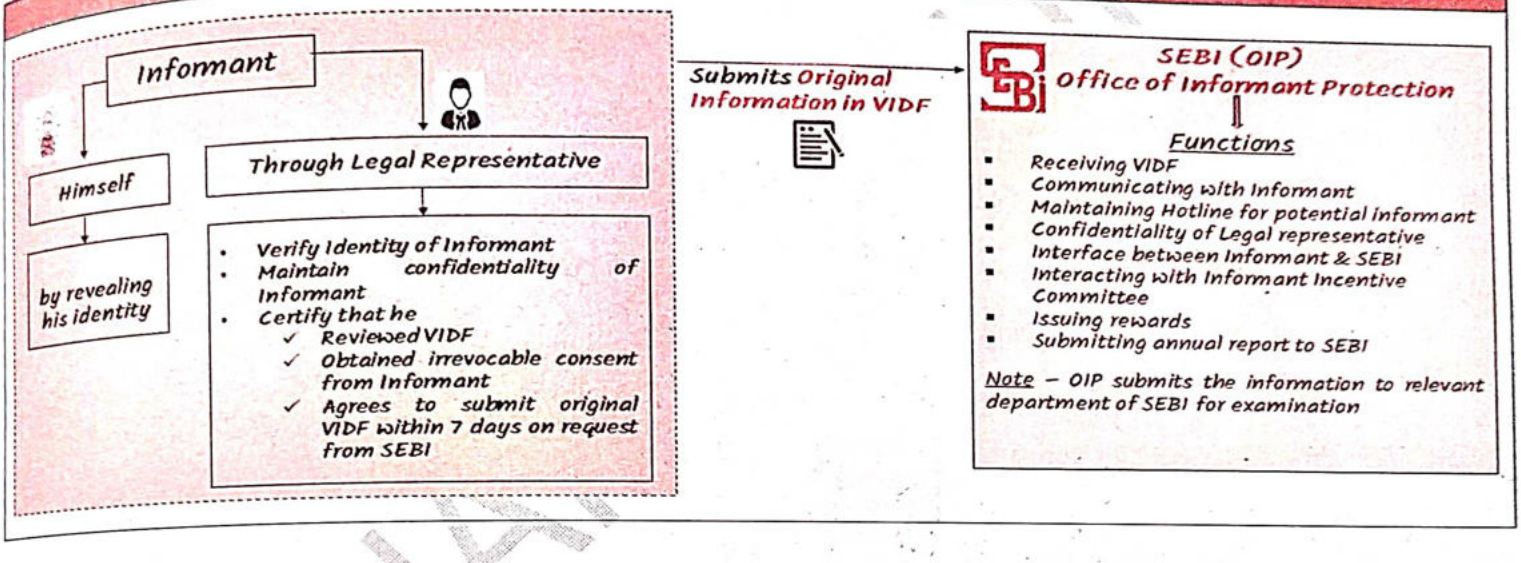
General Provisions (Reg. 6)	Disclosure to be made by any person shall include those related to trading by → such person's immediate relative → by any person for whom such person takes trading decisions	Disclosures of trading in securities shall also include derivatives Disclosures shall be maintained by company for minimum 5 years

Disclosures by certain persons (Reg. 7)

INITIAL DISCLOSURES → Every person on appointment as a KMP or a director of the company or upon becoming a promoter or member of promoter group → shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter or member of promoter group, to the company → Within 7 days of such appointment or becoming a promoter or member of promoter group



Submission of original information to SEBI (Reg. 7B)



CODE OF FAIR DISCLOSURE AND CONDUCT

Code of Fair disclosure (Reg. 8)	The board of directors of every listed company shall publish on its website, a CODE OF practices and procedures for FAIR DISCLOSURE to adhere to principles set out in Schedule A	Every such code shall be promptly intimated to the stock exchanges
Code of Conduct (Reg. 9)	Code of conduct by Listed company and intermediary	The board of directors of listed company and every intermediary shall ensure that the CEO or managing director or every other person who is required to handle UPSI during business operations shall – ▪ formulate a code of conduct, with their approval, to monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance ▪ adopt the minimum standards set out in Schedule B (in case of LISTED company) and Schedule C (in case of an INTERMEDIARY) to these regulations
	Code of conduct by Professionals	The board of directors of every other person who is required to handle UPSI in the course of business operations → shall formulate a code of conduct to monitor and report trading by their designated persons and immediate relative of designated persons → towards achieving compliance with these regulations, adopting the minimum standards set out in SCHEDULE C to these regulations Note – Professional firms such as auditors, law firms etc. are referred to as fiduciaries in these regulations

	Designated Persons	The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct and shall include – ▪ Employees of such listed company, intermediary or fiduciary; designated based on their functional role or access to UPSI in the organization by their board of directors or analogous body; ▪ Employees of material subsidiaries of such listed companies; designated based on their functional role or access to UPSI in the organization by their board of directors; ▪ All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries; ▪ CEO and employees upto two levels below CEO of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to UPSI; ▪ Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to UPSI
Penalty	If any insider who – ▪ deals in securities based on UPSI; or ▪ communicates any UPSI to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or ▪ counsels, or procures for any other person to deal in any securities based on UPSI	shall be liable to a penalty → which shall not be less than INR 10 lakh → but which may extend to the higher of • INR 25 crore; or • 3 times the amount of profits made out of such failure

CA HARSH GUPTA

Takeover Code

Acquirer

Means any person who,
- → directly or indirectly,
- → acquires or agrees to acquire

whether by himself, or through, or with persons acting in concert (PAC) with him,

- → shares or voting rights in a target company, or
- → control over a target company

Control

Control includes right to	Exercisable	By virtue of
• Appoint majority of directors • Control the management • Control policy decision	• By a person individually • By PACs • Directly or indirectly	• Shareholding • Management rights • Shareholders' agreement • Voting agreements • Any other manner Whether or not exercised by virtue of such position

Immediate relative

- → Spouse
- → includes parent, brother, sister or child of such person or spouse

Offer Period

Offer period" means the period between
- → the date of entering into an agreement to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and
- → the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn

Persons acting in concert (PAC)

Persons who,
- → with a common objective of acquisition of shares or voting rights in, or exercising control over a target company,
- → pursuant to an agreement or understanding, formal or informal,
- → directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company

Persons falling within the following categories shall be DEEMED TO BE PAC with other persons in the same category, unless the contrary is established –

a COMPANY	its holding company, subsidiary company and any company under the same management or control
a COMPANY	its directors, and any person entrusted with the management of the company
DIRECTORS of companies referred in point (i) and (ii) above and associates of such directors	
PROMOTERS and members of the promoter group	
IMMEDIATE RELATIVES	
MUTUAL FUND	its sponsor, trustees, trustee company, and asset management company
CIS	its collective investment management company, trustees and trustee company
VENTURE CAPITAL FUND	and its sponsor, trustees, trustee company and AMC
ALTERNATE INVESTMENT FUND	and its sponsor, trustees, trustee company and manager
MERCHANT BANKER	and its client, who is an acquirer
PORTFOLIO MANAGER	and its client, who is an acquirer
BANKS, financial advisors and stock brokers	of the acquirer or of any company which is a holding or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations
INVESTMENT COMPANY OR FUND	and any person who has an interest in such investment company or fund as a shareholder or unitholder having ≥ 10% of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds ≥ 10% of the paid-up capital of that investment company or unit capital of that fund Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with SEBI

Explanation – For the purposes of this clause "associate" of a person means –
- any immediate relative of such person;
- trusts of which such person or his immediate relative is a trustee;
- partnership firm in which such person or his immediate relative is a partner; and
- members of HUF of which such person is a coparcener;

Shares	Means shares in the EQUITY share capital of a target company carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights	Shares will include all depository receipts carrying voting rights	
Target company	"Target Company" means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, where shares are LISTED on a stock exchange		
PSU	PSU means a target company → in which, directly or indirectly, → majority of shares or voting rights or control → is held by the Central Government or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments	Disinvestment	Means the direct or indirect sale by the Central Government or any State Government or by a government company, of shares or voting rights in or control over, a target company, which is a PSU

Reg 3 - SUBSTANTIAL ACQUISITION OF SHARES AND VOTING RIGHTS

25% shares or voting rights (Initial Trigger)

→ No acquirer shall acquire shares or voting rights in a target company
→ which taken together with shares or voting rights, if any, held by him and by PAC in such target company,
→ entitle them to exercise 25% OR MORE of the VOTING RIGHTS in such target company
→ unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company

Name	% Holding	Further Acquisition	Post Holding	Applicability of SEBI Takeover Regulation, 2011
P	24%	2%	26%	Open Offer Obligations
Q	8%	2%	10%	-

Creeping acquisition limit

→ No acquirer, who together with PAC,
→ has acquired and holds 25% or more of the VOTING RIGHTS in the target company
→ but less than the maximum permissible non-public shareholding,
→ shall acquire WITHIN any FINANCIAL YEAR ADDITIONAL shares or voting rights in such target company entitling them to exercise MORE THAN 5% of the voting rights,
→ unless the acquirer makes a public announcement of an open offer

Provided that such acquirer shall not be entitled to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding

Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the IBC, 2016 shall be exempt from the obligation under the above proviso

Explanation - For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation –

(i) Netting-off is not allowed –

Gross acquisitions alone shall be taken into account, regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company

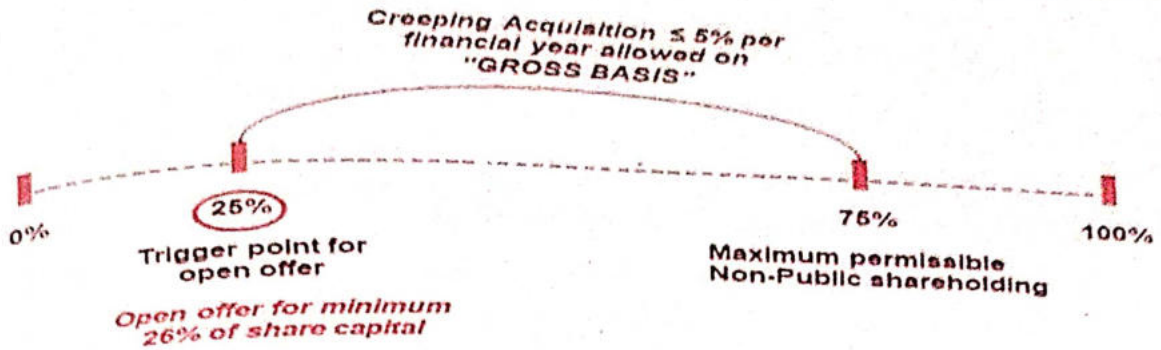
(ii) Incremental voting rights in case of fresh issue –

In the case of acquisition of shares by way of issue of new shares by the target company, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition

→ For the purposes of both the triggers above, acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer irrespective of whether there is a change in the aggregate shareholding with PAC.

→ Nothing contained in this regulation shall apply to acquisition of shares by the promoters or shareholders in control, in terms of the provisions of Chapter VI-A of SEBI (ICDR) Regulations, 2009.
[Manner of providing exit opportunity in terms of section 13(8) or 27(2) of Companies Act, 2013]

→ For the purpose of this regulation, any reference to 25% in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as 49%.



Reg 4 – ACQUISITION OF CONTROL

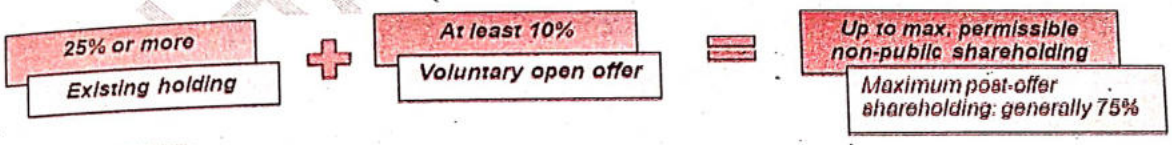
- Irrespective of acquisition or holding of shares or voting rights in a target company,
- no acquirer shall acquire CONTROL over such target company
- unless the acquirer makes a public announcement of an open offer

SNAPSHOT SO FAR

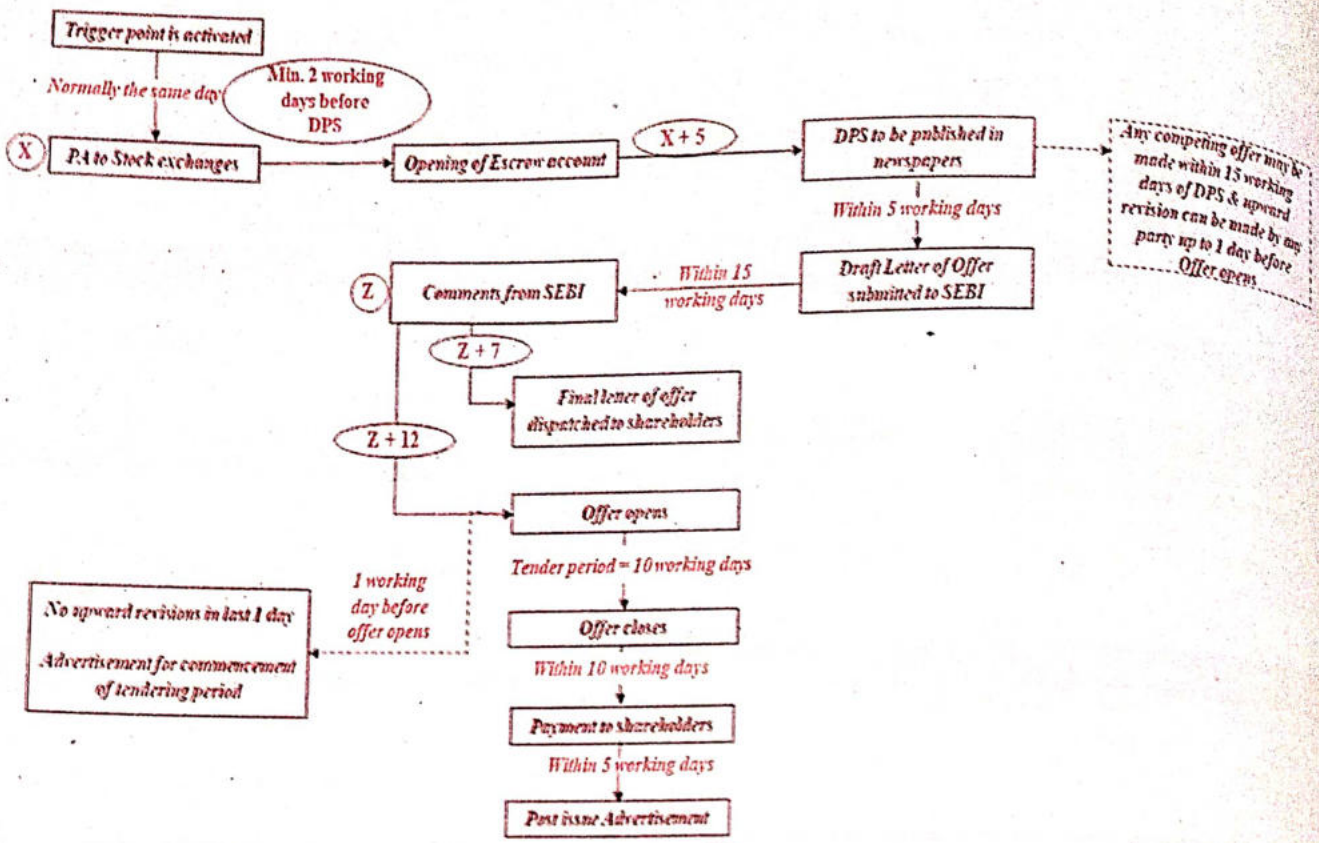
Regulation	Existing equity holding	Post-acquisition holding	Remarks
3(1)	< 25%	25% or more voting rights	Initial Trigger
3(2)	Between 25% to 75%	Increased by > 5% in a FY	Creeping acquisition Trigger
4	Acquisition of control over the target company irrespective of acquisition or holding of shares or voting rights in a target company		Control Trigger

Reg 6 – VOLUNTARY OFFER

- An acquirer, who together with PAC with him,
- holds SHARES or VOTING RIGHTS in a target company entitling them to exercise 25% or more
- but less than the maximum permissible non-public shareholding,
- shall be entitled to VOLUNTARILY make a Public Announcement of an open offer,
- subject to their aggregate shareholding after completion of the open offer not exceeding the maximum permissible non-public shareholding



Open Offer Process



OTHER OBLIGATIONS		
Directors of Target company (Reg 24)	During the offer period, no person representing the acquirer or any PAC with him shall be appointed as DIRECTOR on the board of directors of the target company, whether as an additional director or in a casual vacancy Provided that after an initial period of 15 working days from the date of DPS, → appointment of persons representing the acquirer or PAC with him on the board of directors may be effected → in the event the acquirer deposits in cash in the escrow account, → the entire amount payable under the open offer Provided further that where the acquirer has specified conditions to which the open offer is subject in terms of regulation 23(1)(c), → no director representing the acquirer may be appointed to the board of directors during the offer period → unless the acquirer has waived or attained such conditions and → complies with the requirement of depositing cash in the escrow account	
	Where an OPEN OFFER is made CONDITIONAL upon minimum level of acceptances, → the acquirer and PAC shall, → regardless of the size of the cash deposited in the escrow account, → not be entitled to appoint any director	During the pendency of COMPETING offers, → regardless of the size of the cash deposited in the escrow account → there shall be no induction of any new director to the board of directors of the target company Provided that in the event of death or incapacitation of any director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot
	In the event the acquirer or any PAC is already represented by a director on the board of the target company, such director shall not participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer	
Obligations of the Acquirer (Reg 25)	Prior to making PA of an open offer, → the acquirer shall ensure that firm FINANCIAL ARRANGEMENTS have been made for fulfilling the payment obligations and → that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary	
	In the event → the acquirer has NOT declared an intention in DPS and the letter of offer to ALIENATE ANY MATERIAL ASSETS of the target company or of any of its subsidiaries, → the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of 2 years after the offer period	

Provided that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a SPECIAL RESOLUTION passed by shareholders of the target company, by way of a postal ballot

The acquirer shall ensure that the contents of PA, DPS, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects	The acquirer and PAC with him shall not sell shares of the target company held by them, during the offer period The acquirer and PAC with him shall be jointly and severally responsible for fulfilment of applicable obligations under these regulations.

Obligations of Target company (Reg 26)

Upon PA of an open offer being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice

Unless SR is passed by postal ballot, the board of directors of either the target company or any of its subsidiaries shall NOT –	• alienate any material ASSETS;
	• effect any material BORROWINGS;
	• issue or allot any authorised but unissued SECURITIES entitling the holder to voting rights
	Provided that the target company or its subsidiaries may, –
	  • issue or allot shares upon conversion of convertible securities issued prior to PA of the open offer, in accordance with pre-determined terms of such conversion;
	  • issue or allot shares pursuant to any public issue in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or
	  • issue or allot shares pursuant to any rights issue in respect of which the record date has been announced prior to the public announcement of the open offer;
	• implement any BUY-BACK of shares or effect any other change to the capital structure of the target company;
	• enter into, amend or terminate any MATERIAL CONTRACTS to which the target company or any of its subsidiaries is a party,
	• accelerate any contingent vesting of a RIGHT of any person to whom the target company or any of its subsidiaries may have an obligation, whether by way of employee stock options or otherwise

• In any general meeting of a subsidiary of the target company in respect of the matters referred to above, the target company and its subsidiaries, if any, shall vote in a manner consistent with the SR passed by the shareholders of the target company	• The target company shall be prohibited from fixing any record date for a corporate action on or after the 3rd working day prior to the commencement of the tendering period and until the expiry of the tendering period • The target company shall furnish to the acquirer within 2 working days from the identified date, a list of shareholders as per the register of members

• Upon receipt of DPS, the board of directors of the target company shall constitute a COMMITTEE of INDEPENDENT DIRECTORS to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations
 	
Provided that such committee shall be entitled to seek external professional advice at the expense of the target company
	• The COMMITTEE of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published, at least 2 working days before the commencement of the tendering period, in the same newspapers where the PA of the open offer was published, and simultaneously, a copy of the same shall be sent to, –
	  ▪ SEBI;
	  ▪ stock exchanges; and
	  ▪ to the manager to the open offer, and
	  ▪ where there are competing offers, to the manager to the open offer for every competing offer
	• The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer
	• The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer
	• Upon fulfilment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall register the transfer of shares acquired by the acquirer in physical form

Obligations of Manager to open offer (Reg 27)

→ Prior to PA being made, the MANAGER to the open offer shall ensure that, –
- the acquirer is able to implement the open offer; and
- firm arrangements for funds through verifiable means have been made by the acquirer

→ The manager to the open offer shall ensure that the contents of PA, DPS and the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects

→ The manager to the open offer shall furnish to SEBI a due diligence certificate along with the draft letter of offer

→ The manager to the open offer shall ensure that market intermediaries engaged for the purposes of the open offer are registered with SEBI

→ The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations

→ The manager to the open offer shall not deal on his own account in the shares of the target company during the offer period

→ The manager to the open offer shall file a report with SEBI within 15 working days from the expiry of the tendering period

DISCLOSURES OF SHAREHOLDING & CONTROL

Disclosures Related Provisions (Reg. 28)

→ The disclosures shall be of the aggregated shareholding of the acquirer or promoter of the target company or every PAC with him.

→ For the purposes of this Chapter, the acquisition and holding of any convertible security shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly

→ The term "encumbrance" shall include -
- any restriction on the free and marketable title to shares;
- pledge, lien, negative lien, non-disposal undertaking; or
- any covenant, transaction, condition or arrangement in the nature of encumbrance

→ Upon receipt of the disclosures, the stock exchange shall forthwith disseminate the information so received

Disclosure of Acquisition and Disposal (Reg. 29)

EVENT BASED DISCLOSURES

	Made by	Trigger	Time Period	Made to
29(1)	Acquirer	Acquirer + PAC acquiring ≥ 5% SHARES of the target company	Within 2 working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights or the disposal	Stock exchange where the shares are listed and the target company
29(2)	Acquirer	→ When acquirer + PAC is holding ≥ 5% of SHARES or VOTING RIGHTS in target company and → there is change in shareholding or voting power > 2% from last disclosure made under 29(1) or 29(2), → even if such change results in shareholding falling below 5%, → shall disclose the number of shares or voting rights held and change in shareholding or voting rights **Note** - In case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to "5%" shall be read as "10%" and any reference to "2%" shall be read as "5%".		

Note -
- Shares taken by way of encumbrance shall be treated as an "acquisition"
- Share given upon release of encumbrance shall be treated as a "disposal"
- The requirement as listed above shall not apply to a Scheduled Commercial bank or PFI or a Housing Financial Company or a Systemically Important NBFC as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Disclosure of encumbered shares (Reg. 31)

DISCLOSURES OF PLEDGING/ ENCUMBERED SHARES

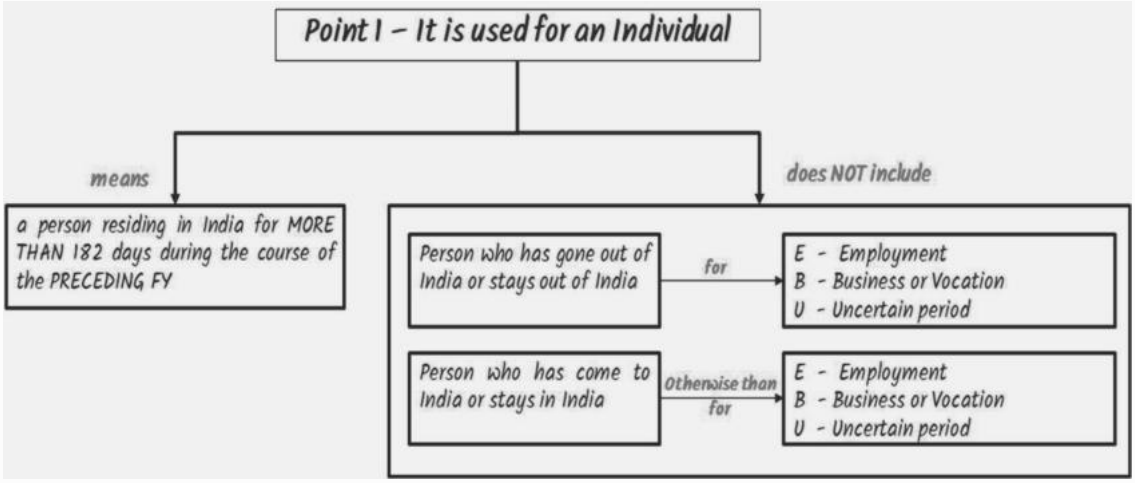
	Made by	Trigger	Time Period	Made to
31(1)	Promoter	Promoter + PAC pledging or creating encumbrance on the shares of the target company	Within 7 working days from the creation, invocation or release of pledge	Stock exchange where the shares are listed and target company
31(2)	Promoter	Invocation or release of the pledge or encumbrance on the shares of the target company		
31(4)	Promoter	Promoter shall declare that he + PAC has not made any encumbrance, directly or indirectly, other than those disclosed during the FY	Within 7 working days from end of the Financial year	Stock exchange where the shares are listed and audit committee of the target company

FEMA, 1999

This Act extends to Whole of India	It also applied to branches, offices & agencies outside India owned or controlled by a Person Resident in India	The expression "Foreign Currency" means any currency other than Indian currency

Person Resident in India			
Person	It includes • Individual • HUF • Company • Firm • AOP or BOI, whether incorporated or not • Artificial juridical person • Agency, office or branch controlled by such person	**PROI**	Means a person who is not a PRI

PRI



- Any person or body corporate incorporated in India
- Any office, branch or agency in India controlled by PROI
- Any office, branch or agency outside India controlled by PRI

Note – Citizenship is not a relevant criterion

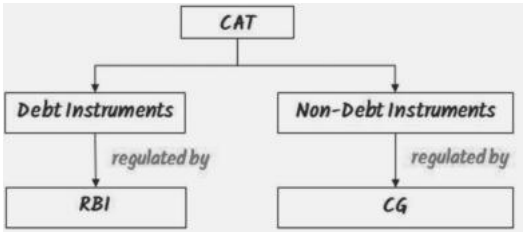
Note – Residential status is for a particular date & not for a year

CAPITAL ACCOUNT TRANSACTIONS (CAT) - Section 2(e) + Section 6

Definition	Means a transaction, which alters the assets or liabilities ▪ Outside India of PRI; or ▪ In India of PROI

Regulation of CATs

Control over CAT



CAT that cannot be prohibited

Amortisation of loans etc.	Assets acquired outside India when person was PROI	Assets acquired in India when person was PRI
No restriction can be imposed for payment due on account of ▪ Amortisation of loans ▪ Depreciation of direct investments	PRI may continue to hold or transfer foreign exchange assets if they were acquired ▪ When he was PROI; or ▪ Inherited from a person who was PROI	PROI may continue to hold or transfer foreign exchange assets if they were acquired ▪ When he was PRI; or ▪ Inherited from a person who was PRI

	Permissible transactions by PRI	Permissible transactions by PROI
Permissible CAT	▪ Investment in foreign securities. ▪ Foreign currency loans raised in India and abroad ▪ Transfer of immovable property outside India. ▪ Guarantees issued by a PRI in favour of a PROI. ▪ Export, import and holding of currency/currency notes. ▪ Loans and overdrafts by a PRI from a PROI or vice-versa ▪ Maintenance of foreign currency accounts in or outside India ▪ Taking out of insurance policy from an insurance company outside India. ▪ Remittance outside India of capital assets of a PRI. ▪ Undertake derivative contracts	▪ Investment in India by a PROI, i.e. - issue of security by an entity in India and investment therein by a PROI; and - investment by way of contribution by a PROI to the capital of a firm or a proprietorship concern or an AOP in India. ▪ Acquisition and transfer of immovable property in India by a PROI. ▪ Guarantee by a PROI in favour of, or on behalf of, a PRI. ▪ Import and export of currency/currency notes into/from India by a PROI. ▪ Deposits between a PRI and a PROI. ▪ Foreign currency accounts in India of a PROI. ▪ Remittance outside India of capital assets in India of a PROI. ▪ Undertake derivative contracts

Prohibited CAT	a. No CAT is permitted, save as those provided in the Act, rules or regulations ↓ CATs are prohibited, unless permitted	But → A RESIDENT INDIVIDUAL may draw ≤ $ 2,50,000 per FY for a CAT (Similar limit for CuAT shall be clubbed) For drawal > $ 2,50,000; limit specified in relevant regulations to apply **Note** – This $ 2,50,000 shall not be remitted to non-cooperative countries
	b. No PROI shall make investments in →	• Chit fund business • Nidhi company • Agricultural or plantation activities • Trading in Transferable Development Rights • Real estate business or construction of farm houses ↓ does not include Development of township, construction of residential/ commercial premises, roads, bridges & REITs
	c. No PRI shall undertake CAT with Democratic Republic of Korea, unless approved by CG – Order dated April 21, 2017	
	d. Existing investment transactions with Korea, which is not permitted, shall be closed & settled within 180 days of the order	

CURRENT ACCOUNT TRANSACTIONS (CuAT) – Section 2(j) + Section 5

Definition	Means a transaction, other than CAT & includes ▪ Payment due in connection with foreign trade & short-term credit facilities in ordinary course of business; ▪ Remittance for living expenses of parents, spouse & children residing abroad ▪ Payment of interest on loans & net income from investments ▪ Expenses in connection with foreign travel, education & medical care of parents, spouse & children	
Regulation of CuATs		
→ CuATs are always permitted unless prohibited → CG has the power to impose restrictions on CuAT		
Prohibited CuAT	1. Remittance out of lottery winnings 2. Remittance of income from racing/ riding etc. or any other hobby 3. Remittance for purchase of lottery tickets, banned/ prescribed magazines, football pools, sweepstakes etc. 4. Payment related to Call Back Services of telephones	5. Payment of commission on equity investment in JV/ WOS abroad 6. Payment of commission on exports under Rupee State Credit Route, EXCEPT upto 10% of invoice value of exports of Tea & Tobacco 7. Remittance of dividend by a company to which dividend balancing is applicable 8. Remittance of interest income on funds held in Non-Resident Special Rupee Scheme A/c
Transactions requiring prior approval of CG	1. Remittance of freight of vessel charted by PSU 2. Payment of import through ocean transport by a Govt Department or PSU on CIF basis (other than FOB and FAS basis) 3. Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping 4. Remittance of hiring charges of transponders by TV channels or Internet Service Providers. 5. Multi-modal transport operators making remittance to agents abroad	6. Cultural Tours 7. Advertisement in foreign print media by State Govt and PSU exceeding $ 10,000 Exception – No restriction if for promotion of tourism, foreign investments and international bidding 8. Remittance of prize money/ sponsorship of sports activity abroad by a person other than International/ National/ State Level Sports Bodies, if amount involved > $ 1,00,000 9. Remittance of membership of P&I Club
Transactions requiring prior approval of RBI	**Facilities for Individuals**	→ Individuals can avail foreign exchange upto $ 2,50,000 in a FY for CuATs → For additional remittance, approval of RBI is required → For the following purposes, individuals may avail foreign exchange > $ 2,50,000 if required by respective foreign country without RBI approval • Emigration • Expenses in connection with medical treatments abroad • Studies abroad → The limit of $ 2,50,000 for CuAT shall be clubbed with LRS + CATs → Remittance up to net salary can be done by a Person who is resident but not permanently resident in India & • is a citizen of a foreign state other than Pakistan; or

		• is a citizen of India, who is on deputation to office or branch of a foreign company or subsidiary or JV in India of such foreign company **Note** - A person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed 3 years, is a resident but not permanently resident **Note** - Any person, other than individual, may also avail the facility of LRS
	Facilities for persons other than Individuals	

a.	Donations for • creation of Chairs in reputed educational institutes, • contribution to funds (not being an investment fund) promoted by educational institutes; and • contribution to a technical institution or body or association in the field of activity of the donor Company.	exceeding ▪ 1% of their foreign exchange earnings during the previous 3 FYs or ▪ USD 50,00,000 whichever is LESS
b.	Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India	exceeding ▪ USD 25,000 or ▪ 5% of the inward remittance whichever is MORE
c.	Remittances ▪ for any consultancy services in respect of infrastructure projects ▪ for other consultancy services procured from outside India	▪ exceeding USD 1,00,00,000 per project ▪ exceeding USD 10,00,000 per project
d.	Remittances by an entity in India by way of reimbursement of pre-incorporation expenses.	exceeding ▪ 5% of investment brought into India or ▪ USD 1,00,000 whichever is MORE

Remittance from RFC A/c	No approval from CG or RBI is required for any remittance out of RFC A/c
Remittance from EEFC A/c	No approval from CG or RBI is required for any remittance out of EEFC A/c However, approval is required for the following transactions - Remittance for membership of P & I Club. - Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding USD 25,000 or 5% of the inward remittance whichever is more. - Remittances exceeding 5% of investment brought into India or USD 100,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.
International Credit Card	If a person is on a visit abroad, he can incur expenditure stated in Schedule III if he incurs it through International credit card.

Repatriation of Sale Proceeds of Immovable Property	1. A PROI referred to in section 6, or his successor, shall not repatriate sale proceeds of immovable property, except with prior approval of RBI 2. In event of sale of immovable property in India, other than agricultural land or farm house or plantation property, by NRI or Overseas Citizen of India, the AD may repatriate sale proceeds outside India, subject to the following conditions a. The property was acquired in accordance with foreign exchange law b. Amount for acquisition was paid in foreign currency received through banking channels or out of funds held in Foreign Currency Non-Resident A/c or Non-Resident External Rupee A/c c. In case of residential properties, repatriation is restricted to 2 properties 3. In the event of failure in repayment of ECB availed by a PRI, authorised dealer may permit the overseas lender or the security trustee to sell the immovable property on which the said loan has been secured	
Export (Sec. 7)	**Exporter of Goods**	→ Exporter of goods shall furnish to RBI or such other authority a declaration • containing correct particulars including full export value • if full export value is not ascertainable, the value expected to be received → Furnish such other information as specified by RBI **Note** – Declaration to RBI is not required in case of gifts ≤ ₹ 5 lakh.
	Exporter of Services	Exporter of services shall furnish to RBI or such other authority a declaration, containing the correct material particulars in relation to payment for such services

Regulation & Management of Foreign Exchange

Dealing in Foreign Exchange (Sec. 3)	Save as otherwise provided, No person shall **a.** Deal in or transfer any foreign exchange or security to any person not being an AP **b.** Make any payment to or for the credit of any Person resident outside India in any manner **c.** Receive any payment on behalf of Person resident outside India, otherwise than through AP **d.** Enter into any financial transaction in India as a consideration for transfer of a right to acquire any asset outside India by any person (Hawala)
Holding of Foreign Exchange (Sec. 4)	Save as otherwise provided in this Act, → no PRI shall → acquire, hold, own, possess or transfer → any foreign exchange, foreign security or any immovable property situated outside India.
Realisation & Repatriation of Foreign Exchange (Sec. 8)	Save as otherwise provided in this Act, → where any amount of foreign exchange has accrued to any PRI, → such person shall take all reasonable steps to realise and repatriate to India such foreign exchange → within such period and in such manner as may be specified by RBI
Exemption from Realisation & Repatriation (Sec. 9)	Section 4 and 8 shall not apply to **a.** Possession of foreign currency or foreign coins by any person — up to such limit as RBI may specify **b.** Holding and operating foreign currency account — up to such limit as RBI may specify **c.** Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means — up to such limit as RBI may specify **d.** Other receipts — As specified by RBI
Authorised Person (AP)	**Procedure for appointment as AP** → Any person desirous of being AP shall make an application to RBI → On authorisation by RBI, such person shall be called as AP
	Revocation of authorisation → RBI may REVOKE authorisation in public interest → Authorisation may be revoked if the following 2 conditions are satisfied – • AP has failed to comply with condition of authorisation or this Act • A reasonable opportunity is given to AP
	Duties of AP **Comply with RBI directions** — AP shall comply with directions given by RBI from time to time **Not to engage in unlawful transactions** — AP shall obtain the previous permission of RBI before entering into any transaction in foreign exchange or foreign security which is not in confirmity with the terms of his authorisation **To obtain declaration** — → Before undertaking a transaction in foreign exchang, AP shall require every person to make a DECLARATION specifying that the transaction is not designed to contravene any provision of this Act → AP shall refuse in writing to undertake the transaction where a person refuses to make declaration or give information
Power of RBI to issue directions to AP (Sec. 11)	→ RBI may issue directions to AP for the purpose of securing compliance with the provisions of Act, etc. → RBI may direct any AP to furnish required information Where AP contravenes ▪ Penalty ≤ ₹ 10,000 ▪ In case of continuing default, additional penalty ≤ ₹ 2,000 per day
Power of RBI to inspect AP (Sec. 12)	RBI may get the business of AP inspected by an authorised officer for the purpose of ▪ Verifying the correctness of information furnished to RBI ▪ Obtaining any information which AP has failed to furnish ▪ Securing compliance with this Act It shall be duty of every AP to produce to officer making inspection the required information

Penalties & Compounding

Penalties (Sec. 13)	The following penalty can be imposed for contravention of any provisions of this Act ▪ Up to 3 times the sum involved in the contravention ▪ Up to ₹ 2,00,000, if not quantifiable ▪ Up to ₹ 5,000 per day, where the contavention is continuing	**Other consequences** → Any currency/ security/ any other money/ property in respect of which contravention has taken place may be confiscated → Foreign exchange holdings of the accused person may be ordered to be brought back into India
Failure to pay penalty (Sec. 14)	If any person fails to pay penalty within 90 days, he shall be liable to civil imprisonment	For amount ≥ ₹ 1 crore: Up to 3 years In any other case: Up to 6 months
Recover arrears of penalty (Sec. 14A)	AA may authorise an officer of Enforcement not below the rank of Assistant Director to recover arrears of penalty	
Compounding (Sec. 15)	→ Any contravention u/s 13 may be compounded within 180 days from the date of receiving application by ED → Where contravention is compounded, no proceeding shall be initiated or continued	

Adjudication & Appeal

Appointment of Adjudicating Authorities (Sec. 16)	CG may appoint Adjudicating Authorities (AA)	**Powers & Duties of AA** • AA adjudicates penalty • Where a person is likely to abscond the payment of penalty, directing such person to furnish bond or guarantee • AA shall endevour to dispose of the complaint within 1 year

Orders passed by AA

Assistant or Deputy Director — 45 days + further extension allowed, if any

Other than Assistant or Deputy Director — 45 days + further extension allowed, if any

Special Director (Appeals)

45 days + further extension allowed, if any

Appellate Tribunal

Question of Law — 60 days + 60 days, if allowed

High Court

Enforcement Directorate

Directorate of Enforcement (Sec. 36)	→ CG shall establish Directorate of Enforcement with a director & other prescribed officers of ED → CG may authorise following officers to appoint officers of ED below the rank of Assistant Director of Enforcement ▪ Director of Enforcement, ▪ Additional Director of Enforcement ▪ Special Director of Enforcement ▪ Deputy Director of Enforcement
Empowering other officers (Sec. 38)	CG may, authorise any officer of customs or any central excise officer or any police officer or any other officer of CG or a State Government to exercise such of the powers and discharge such of the duties of the officers of Enforcement Directorate.

Miscellaneous			
Powers of CG	→ CG may, by notification, suspend or relax the operation of all or any provisions of this Act → CG may give directions to RBI & RBI shall discharge its functions in compliance with such directions		
Contravention by Companies	If contravention is committed by company, every person in charge as well as company shall be guilty **Exception** – If he proves that offence was committed without his knowledge	Further, if it is proved that offence committed with consent of any director, manager, secretary or other officer, such officer shall also be guilty	**Company** means any body corporate & includes firm or other association of individuals **Director** in relation to firm means partners
Death or Insolvency in certain cases	→ Any right, obligation, liability, proceedings or appeal arising in relation to the provision of section 13 shall not abate by reason of death or insolvency of the person liable under that section and → upon such death or insolvency such rights and obligations shall devolve on the legal representative of such person or the official receiver or the official assignee, as the case may be **Provided** that a legal representative of the deceased shall be liable only to the extent of the inheritance or estate of the deceased.		
Bar Legal Proceedings	No suit, prosecution or other legal proceeding shall lie against CG or RBI or their officers, for anything in good faith done or intended to be done under this Act.		

Note – Owing to the limited applicability for examination purposes, the following Master Directions have not been covered in this summary

- Import of Goods & Services
- Export of Goods & Services
- External Commercial Borrowings, Trade Credits & Structured Obligations
- Overseas Investment

FCRA, 2010

Preamble	An act to consolidate the law → To Regulate or Prohibit acceptance & utilisation of Foreign Contribution or Foreign Hospitality → For matters incidental thereto	This Act extends to whole India & shall apply to → Citizen of India outside India; and → Branches, subsidiaries outside India of body corporates in Inia

Foreign Contribution (FC)	It means the donation, delivery or transfer by any FOREIGN SOURCE → 1. Article (excluding gift of ≤ ₹ 1,00,000 for personal use) 2. Currency 3. Security		
	Donation, transfer or delivery of ACS by a person who has received it from foreign source, shall also be deemed to be FC	Interest or any other income accrued on FC, shall also be FC	Amount received from any foreign source by way of fee or cost towards goods or services rendered in ordinary course of business shall be EXCLUDED
Foreign Hospitality	It means any offer by a FOREIGN SOURCE → For providing a person with the costs of travel to any foreign country or with free boarding, lodging, transport or medical treatment		
Foreign Source	* Govt. of foreign country * FOREIGN COMPANY * Corporation incorporated in foreign country * MNC	* International agency → other than → UN, IMF, World Bank, Agencies notified by CG (117) * Company under Co. Act, 2013 whose > 50% Nominal capital is held by → Foreign Govt, citizens, corporations, trust, societies, companies etc. → Where Nominal capital is held within limits of FEMA → NOT a foreign source	* Trade union in foreign country * Foreign trust or Foundation * Foreign society, club etc. * Citizen of Foreign Country
Foreign Company	Means a company incorporated outside India & includes – 1. Foreign company as per Co. Act, 2013 2. Subsidiary of foreign company 3. Registered office or place of business of company referred in above 2 points 4. MNC	A corporation incorporated in a foreign country shall be deemed to be MNC if such corporation – Has a subsidiary or branch or place of business in ≥ 2 countries; or – Carries on business or otherwise operates in ≥ 2 countries	
Person	Includes • Individual • HUF • Association • Sec. 8 Co.	**Relative**	As defined in Section 2(77) of Co. Act, 2013

REGULATION OF FC & FOREIGN HOSPITALITY

Prohibition to accept FC (Sec. 3)	1. No FC shall be accepted by any – • Candidate for election • Correspondent, columnist, cartoonist, editor, owner, printer, publisher of registered newspapers • Public servant, Judge, Govt. servant, employee of any corporation controlled by Govt. • Member of any Legislature • Political party or office-bearer thereof • Organisation of Political nature specified by CG • Association or company engaged in production or broadcast of audio-visual news • Correspondent, columnist, cartoonist, editor, owner of association or company referred to in above point	2. Following are also Prohibited Person resident in India & Indian citizen resident outside India → Shall not accept FC on behalf of persons mentioned in point 1; Shall not deliver currency accepted from foreign source to person mentioned in point 1, directly or indirectly

Sec. 4 = Sec. 3 shall not apply to acceptance of FC by way of

• Remuneration due to him from foreign source	• Payment in ordinary course of international business	• As agent of foreign source in relation to any transaction made by foreign source with Govt.	• Scholarship or stipend
• Gift made to him as a member of Indian delegation, accepted in accordance with CG rules	• From his RELATIVE → If FC ≥ ₹ 10 lakh in a FY, he shall inform CG in Form FC-1 within 3 months	• Remittance received in ordinary course of business though any official channel, post office or authorised person under FEMA	

Restriction on Foreign Hospitality (sec. 6)	Following persons require Prior Permission of CG before accepting Foreign Hospitality • Members of Legislature • Office bearers of Political party • Judges • Govt. servants • Employees of corporation controlled by Govt	**Exception** → It shall not be necessary to obtain any such permission for an emergent medical aid needed on account of sudden illness contracted during a visit outside India. → But, where such foreign hospitality has been received, the person shall intimate CG within 1 month from the date of receipt of such hospitality, and the source from which, and the manner in which, such hospitality was received. ↓ No intimation is required if value of such hospitality is ≤ ₹ 1 lakh

Prohibition to transfer FC to another person (Sec. 7)	No person who → is registered and granted certificate or has prior permission; and → receives any FC shall transfer such FC to any other person

Restriction to utilise FC (Sec. 8)	FC shall not be utilised for	
	1. Speculative business ↓ → Activity that has element of risk of appreciation or depreciation of original investment (e.g. mutual funds, shares etc.) → Participating in schemes promising high returns like chits, land etc.	2. Not use FC > 20% to meet Administrative purposes. ↓ However, > 20% may be defrayed with prior approval of CG

Power of CG to prohibit FC (Sec. 9)	If acceptance of FC or Foreign Hospitality is likely to affect prejudicially ▪ Sovereignty or integrity of India ▪ Public interest ▪ Freedom of election to any legislature ▪ Relations with foreign state ▪ Harmony between religious, social groups	CG may → Prohibit any person from accepting FC → Require any person to obtain Prior Permission → Require any person to furnish intimation
(Sec. 10)	Where a person is in possession of Article, Currency or Security accepted in contravention of this Act, CG may prohibit such person from transferring or dealing with it	

REGISTRATION

Registration of Certain Persons with CG (Sec. 11)	Persons having definite cultural, economic, educational, religious or social programme shall not accept FC unless they Obtain REGISTRATION from CG or Obtain PRIOR PERMISSION of CG
Grant of Registration (Sec. 12)	**CONDITIONS to be met for grant of registration or prior permission**

a. The person making an application

• Is not fictitious or benami	• Has not contravened this Act	• Not been prohibited to accept FC
• Not likely to use FC for personal gains or undesirable purposes	• Not been guilty of diversion or misutilisation of funds	• Not engaged in propagation of sedition
• Not been prosecuted for ➡	→ Activities aimed at conversion from one religious faith to another → Creating communal tension or disharmony	

b.

Person making an application for REGISTRATION	Has undertaken reasonable activity in its chosen field for the benefit of society (in existence for 3 years + have spent ≥ INR 15 lakh on its core activities for benefit of society during the last 3 FYs)
Person making an application for PRIOR PERMISSION	Has prepared a reasonable project for the benefit of society

c.

Person being an individual Person being other than an individual, any of its directors or office bearers	Has neither been convicted nor any prosecution is pending

d. Acceptance of FC is not likely to prejudice

Sovereignty & integrity of India	Security, strategic, scientific, economic interest of India	Public interest
Freedom of election	Friendly relation with any foreign state	Harmony between social groups

e. Acceptance of FC shall not lead to incitement of offence or shall not endanger the life or safety of person

	Procedure for grant of Registration			
	Application shall be made to CG Mention "FCRA Account" details in application If not in prescribed form, CG shall reject	If CG deems fit, it may ordinarily within 90 days grant registration or prior permission	Where CG refuses, it shall record in its order the reasons therefor	▪ The registration shall be valid for **5 years** ▪ The prior permission shall be valid for specific purpose or amount
Power of CG to require Identification document (Sec. 12A)	CG may require that any person who seeks → prior permission under section 11, or → makes an application for grant of certificate under section 12, or → for renewal of certificate under section 16, shall provide as identification document.	• For citizens of India Aadhaar number of all its office bearers or Directors or other key functionaries shall be provided. • In case of foreigner, a copy of Passport or Overseas Citizen of India Card shall be provided.		
Suspension of Certificate (Sec. 13)	**Period of Suspension** Pending consideration of cancellation of registration u/s 14, CG may suspend the certificate for 180 days or such further period of ≤ 180 days, as may be specified	**Effect of Suspension** A person shall not receive FC, except on permission of CG	A person shall utilise FC in his custody in prescribed manner 25% of unutilised amount — May be spent for declared objects with prior approval of CG Remaining 75% — Shall be utilised only after	
Cancellation of Certificate (Sec. 14)	**Conditions for Cancellation by CG** • He has made a false statement • Violated T&C of certificate • Necessary in public interest • Violated this Act • Not been engaged in reasonable activity in chosen field for 2 years		A person whose certificate is cancelled, not be eligible for registration for **3 years**	
Surrender of certificate (Sec. 15)	→ On a request being made, → CG may permit any person to surrender the certificate,	→ If it is satisfied that such person has not contravened any of the provisions of this Act, and	→ the management of FC has been vested in the authority as provided in section 15	
Management of FC of person whose certificate is cancelled or surrendered (Sec. 15)	The FC & assets created out of FC in the custody of person whose certificate has been cancelled or surrendered shall vest in banking authority concerned till CG issues further directions	Such authority may → Manage the activities of the person as CG may direct & → Utilise FC or dispose of the assets in case adequate funds are not available	The authority shall return the FC or assets, if such person is subsequently registered	
Renewal of certificate (Sec. 16)	• Person shall get the certificate renewed within 6 months before the expiry • In case of sufficient ground, application for renewal may be admitted within 1 year after expiry with late fee	Application for renewal is made to CG	CG shall ordinarily within 90 days renew the certificate for 5 years	

ACCOUNTS, AUDIT & DISPOSAL OF ASSETS, ETC.					
FC through Scheduled Bank (Sec. 17)	FC shall be received in "FCRA Account" of SBI, New Delhi	He may open another "FCRA Account" in any scheduled bank for keeping or utilising FC	He may open one or more accounts in scheduled banks to which he may transfer & utilise FC	No funds other than FC shall be deposited in such A/c	Every bank shall report to specified authority the prescribed details
Intimation (Sec. 18)	Every person with Registration or Prior Permission shall give intimation to CG within 9 months from end of FY about + Bank statement (which needs to be preserved for 6 years)	• Amount of each FC received • Source from which & manner in which FC was received • Purpose for which utilised	**Maintenance of A/c (Sec. 19)**	Every person with registration or prior permission shall maintain account of FC received & utilised	
Audit of A/c (Sec. 20)	Where any person with registration or prior permission ▪ Fails to furnish any information ▪ Information furnished not in accordance with law	CG may, by order, authorise a Gazetted Officer to audit books of account			
Disposal of Assets (Sec. 22)	Where any person who was permitted to accept FC Cease to exist or becomes defunct → All assets of such person shall be disposed of in accordance with the provisions of law under which person was registered In the absence of any such law → CG may specify that assets should be disposed of by such authority in prescribed manner				

ADJUDICTION

Adjudication of Confiscation

Confiscation of any article, currency or security seized under the Act may be adjudged

After giving a reasonable opportunity of making a representation against such confiscation

If value of such article or currency ≤ 10 lakh	If value of such article or currency > 10 lakh
Adjudication of confiscation by such officer, not below the rank of an Assistant Sessions Judge, as CG may notify	Adjudication of confiscation by the Court of Session
Appeal within 1 month + further period of 1 month may be allowed	
Court of Session	High Court

Any person, aggrieved by an order made by CG

→ rejecting the application for registration or prior permission, or

→ cancelling the certificate of registration may,

Within 60 days

prefer an appeal to the High Court

Revision of Orders by CG

CG may

revise an order passed by it

of its own motion

OR

on an application for revision by the person registered under this Act

CG shall not of its own motion revise any order if the order has been made more than 1 year previously.

The application must be made within 1 year from

- the date on which the order in question was communicated to him or
- the date on which he otherwise came to know of it,

whichever is earlier

Provided that on sufficient cause, CG may admit an application made after the expiry of that period

OFFENCES & PENALTIES

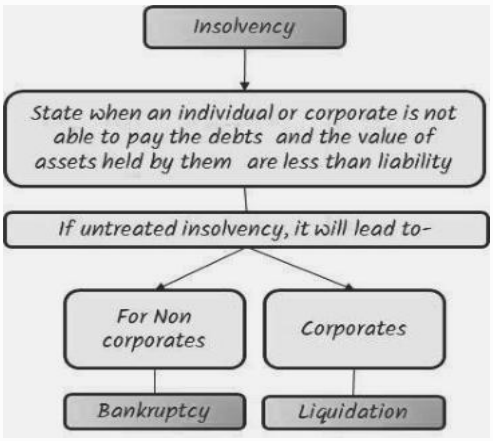
Types of Offence	Punishment
Any person who gives false intimation to CG or seeks prior permission or registration by means of fraud	Imprisonment upto 6 months or Fine or Both
Any person who transacts in contravention of prohibitory order u/s 10	Imprisonment upto 3 years or Fine or Both Court may impose additional fine equal to the value of Article, currency & security
Whoever accepts or assists in accepting FC in contravention of this Act	Imprisonment upto 5 years or Fine or Both
A person whose article, currency or security is liable to confiscation, if it is not available for confiscation	Fine not exceeding 5 times the value of article, currency or security or ₹ 1,000; whichever is more
Residuary penalty	Imprisonment upto 1 year or Fine or Both
Whoever is again convicted under these 2 provisions	Shall not accept FC for another 5 years

Offence by Companies	If contravention is committed by company, every person in charge as well as company shall be guilty **Exception** – If he proves that offence was committed without his knowledge	Further, if it is proved that offence committed with consent of any director, manager, secretary or other officer, such officer shall also be guilty	**Company** means any body corporate & includes firm or other association of individuals **Director** in relation to firm means partners
Bar on prosecution	No court shall take cognizance of any offence under this Act, except with the previous sanction of CG or any officer authorised by CG in this behalf.		
Compounding of Offence (Sec. 41)	Any offence (other than that punishable with imprisonment only) may be compounded by officers authorised by CG	If similar offence is repeated within 3 years, it is not compoundable	Where offence is compounded, No prosecution shall be instituted

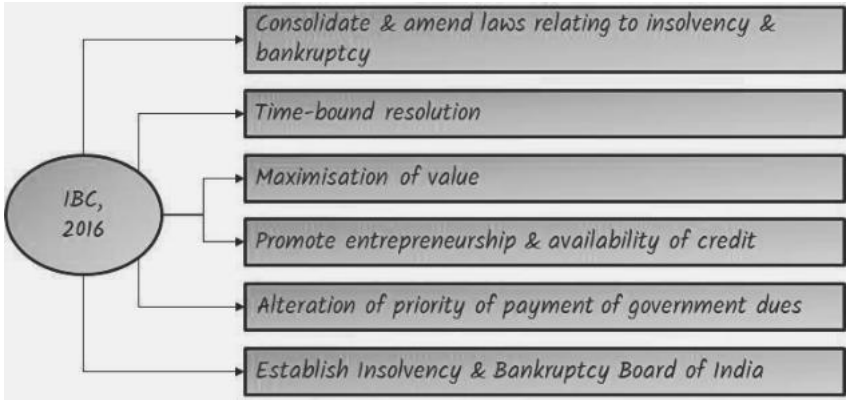
MISCELLANEOUS

Power to call information & investigation	Inspecting officer, authorised by CG, may ▪ Call for information ▪ Require any person to produce any document ▪ Examine any person acquainted with facts	**Powers of CG**	→ Giving directions → Making rules → Giving exemptions

Note – This Act shall not apply to transactions between Govt of India & Foreign Govt.



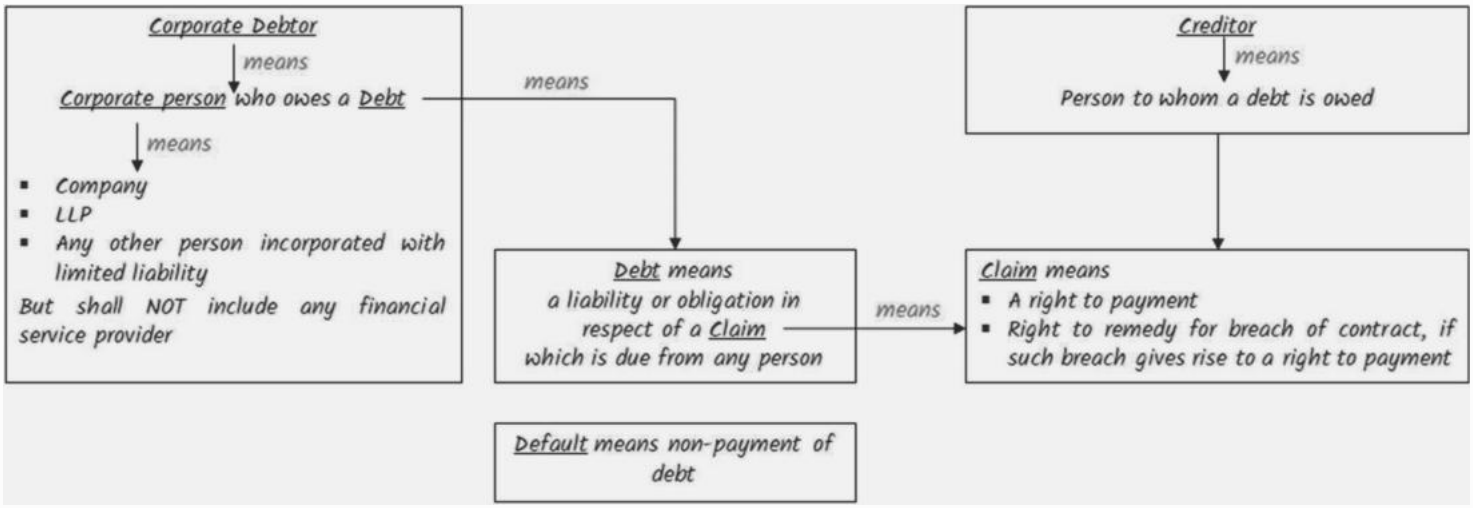
Preamble



This Code extends to Whole of India	This code shall apply to • Company under Co. Act, 2013 • LLP • Company under Special Act • Body corporate notified by CG • Person guarantors to corporate debtors • Partnership or proprietorship firms • Individuals

IMPORTANT DEFINITIONS

Board means Insolvency & Bankruptcy Board of India (IBBI)



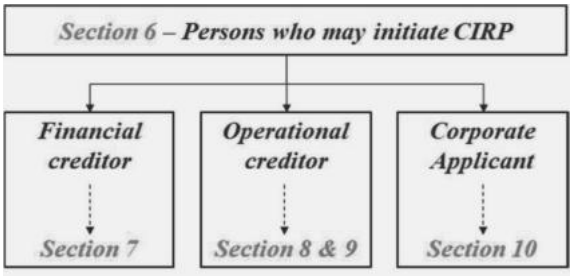
INSOLVENCY RESOLUTION & LIQUIDATION OF CORPORATE PERSONS

Application (Sec. 4)	• This Part shall apply to insolvency of CORPORATE DEBTORS where minimum amount of default is ₹ 1 crore • For MSMEs, where the amount of default is ≥ ₹ 10 lakh, there is an alternate mechanism of Pre-Packaged Insolvency Resolution Process (PIRP)

Adjudicating Authority	Corporate Applicant	Corporate Guarantor	Dispute
NCLT	Means ▪ Corporate debtor ▪ Member or partner of corporate debtor authorised to make an application for CIRP ▪ Individual in charge of managing the operations of corporate debtor ▪ A person having control over financial affairs of corporate debtor	Means a corporate person who is surety in a contract of guarantee to corporate debtor	Includes a suit or arbitration proceedings relating to → Existence of amount of debt → Quality of goods & services → Breach of a representation or warranty

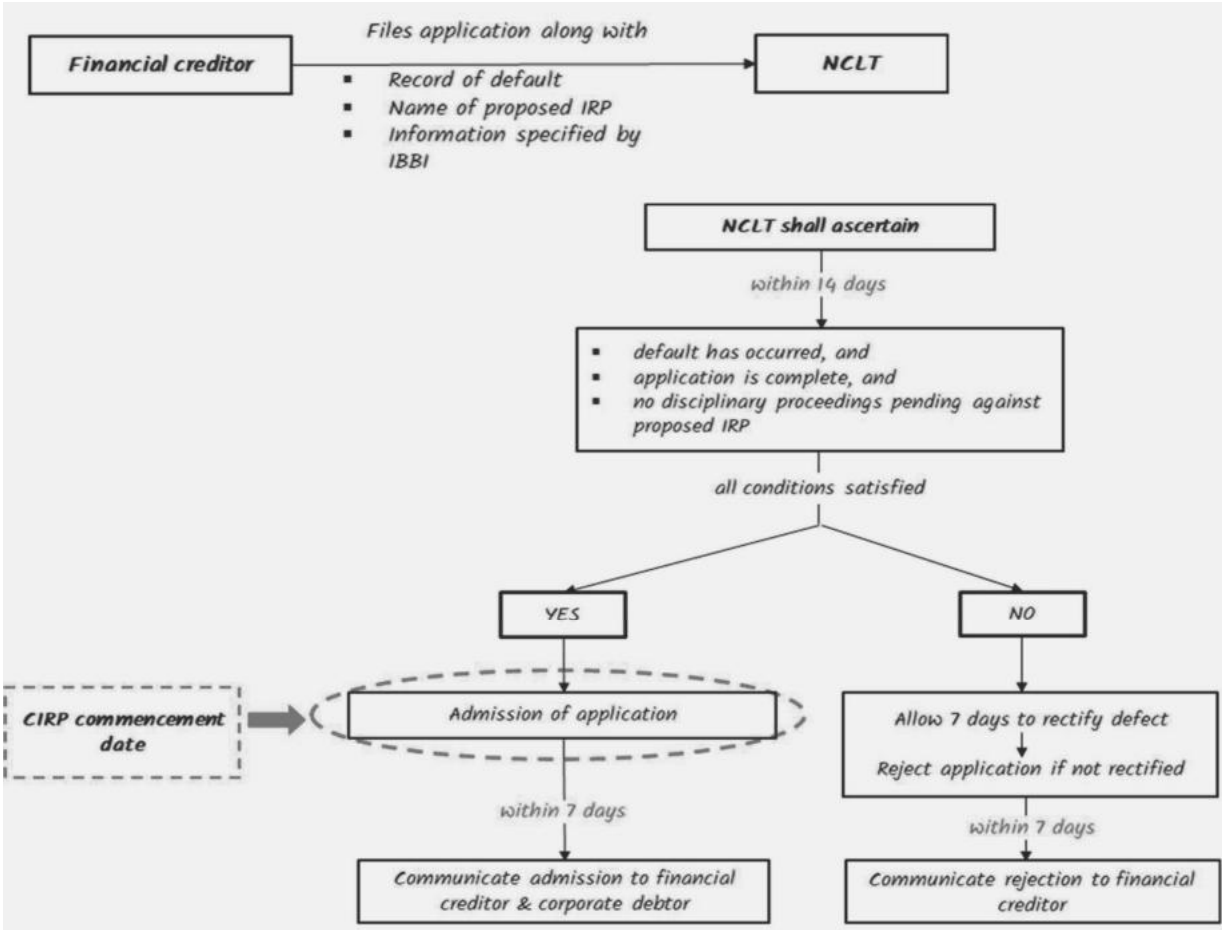
Resolution Applicant	Resolution Plan	Resolution Professional
Person who submits resolution plan to resolution professional	Plan proposed for insolvency resolution of the corporate debtor as a going concern	Means Insolvency Professional (IP) appointed to conduct CIRP & includes Interim Resolution Professional (IRP)

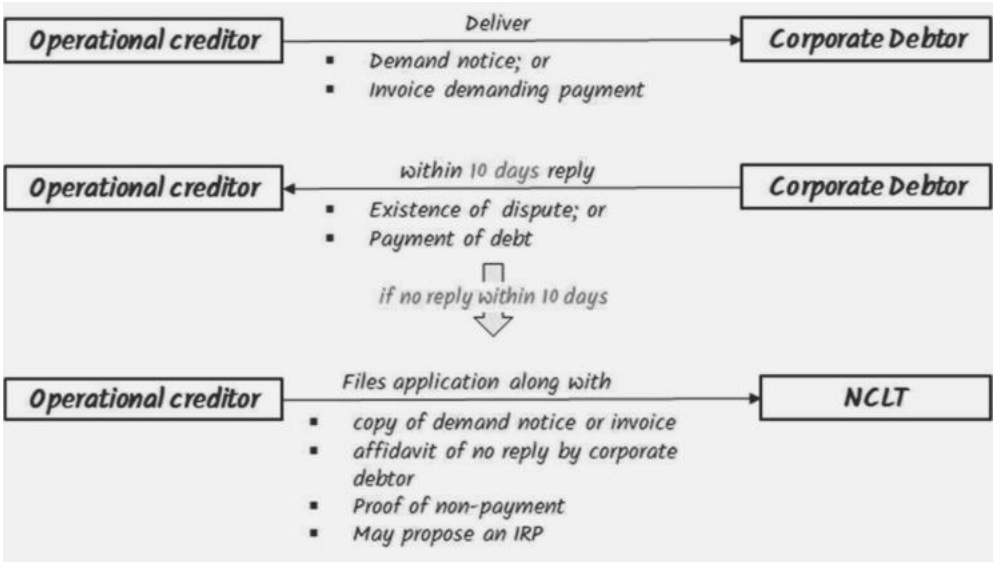
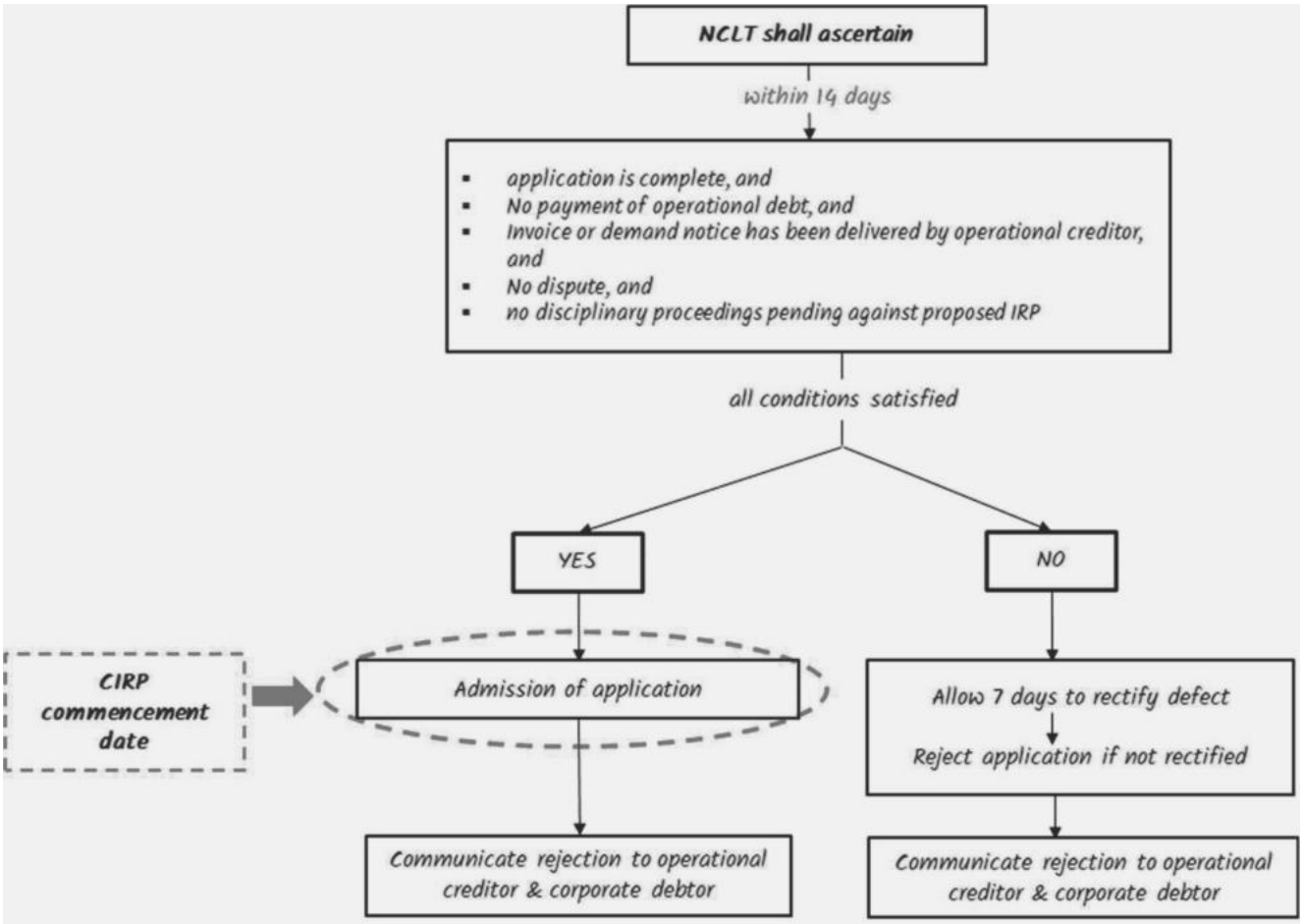
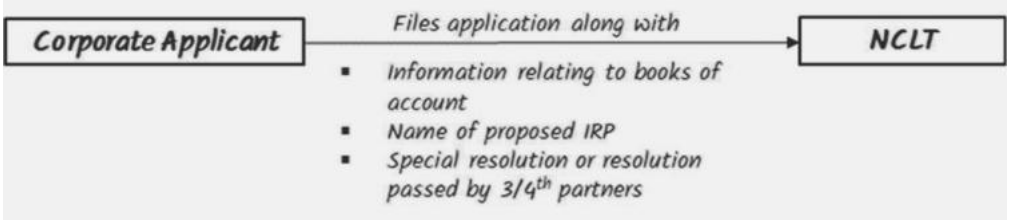
Financial Creditor (FC)	Operational Creditor (OC)
means A person to whom a **financial debt** is owed & includes a person to whom such debt has been legally assigned Financial debt means a debt along with interest, which is disbursed against the consideration for the time value of money & includes ▪ Money borrowed against payment of interest ▪ Amount raised by acceptance under acceptance credit facility ▪ Amount raised pursuant issue of debentures, bonds, notes or similar instrument ▪ Liability in respect of any lease or hire purchase contract which is deemed as financial lease ▪ Receivables sold or discounted other than on non-recourse basis ▪ Amount raised under any transaction, including forward sale, having the commercial effect of borrowing (e.g. – amount raised from an allottee under a real estate project) ▪ Derivative transaction entered into for protection against the fluctuation in any rate or price ▪ Counter-indemnity obligation in respect of guarantee, indemnity or other instrument issued by bank or FI ▪ Amount in respect of any indemnity or guarantee for above-mentioned items	means A person to whom an **operational debt** is owed & includes a person to whom such debt has been legally assigned Operational debt means ▪ a claim in respect of the provision of goods or services ▪ including employment ▪ a debt payable to Govt. or local authority in respect of dues arising under any law

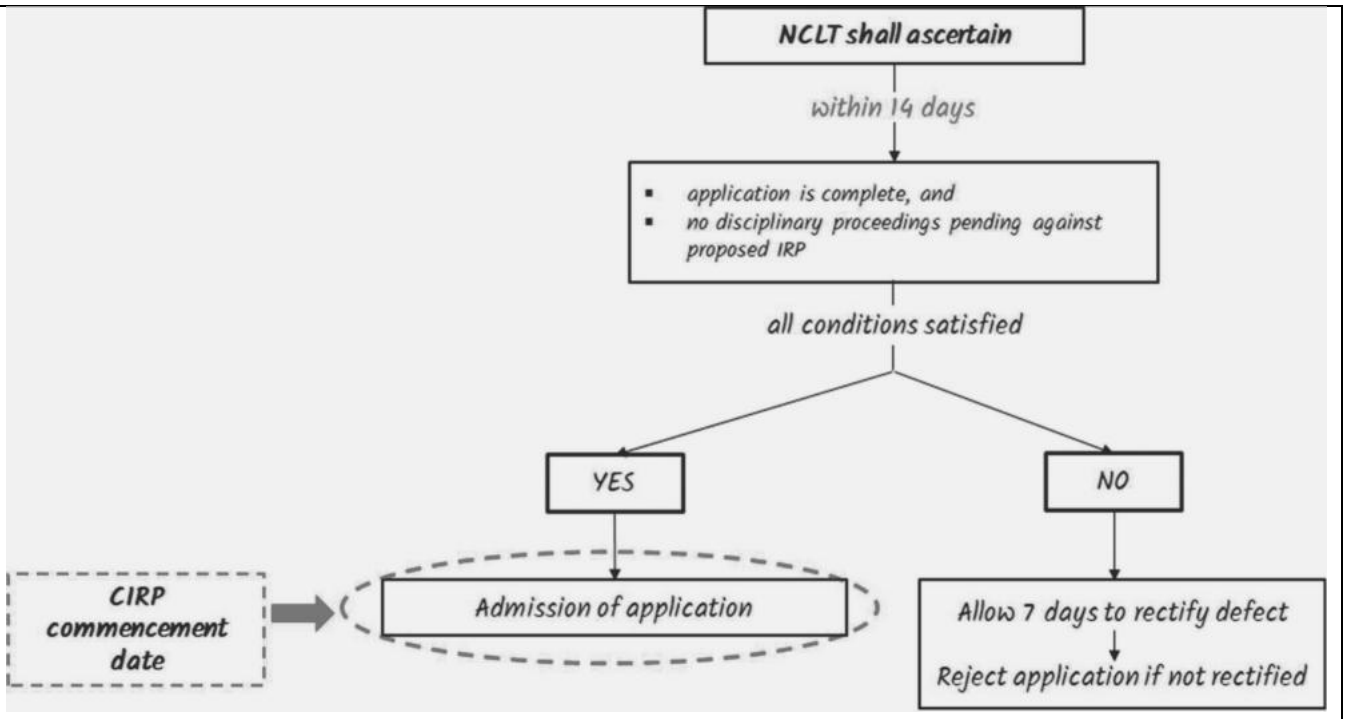


Initiation of CIRP by Financial Creditor

(Sec. 7)



Initiation of CIRP by Operational Creditor (Sec. 8 & 9)	 
Initiation of CIRP by Corporate Applicant (Sec. 10)	



Persons not entitled to make application (Sec. 11)	The following persons are not entitled to make application to initiate CIRP	a. corporate debtor undergoing CIRP or PIRP b. FC or OC of a corporate debtor undergoing PIRP c. corporate debtor having completed CIRP 12 months preceding the date of making application d. corporate debtor having completed PIRP 12 months preceding the date of making application e. corporate debtor or financial creditor who has violated the terms of resolution plan which was approved 12 months preceding the date of making application f. corporate debtor under liquidation **Note** – Nothing shall prevent a corporate debtor to initiate CIRP against another corporate debtor
Time limit for CIRP (Sec. 12)	CIRP shall be completed within 180 days from the date of commencement of CIRP	**Extension of CIRP period** If instructed by 66% vote of CoC, Resolution professional shall file an application to NCLT to extend the period NCLT can extend the period by ≤ 90 days. ↓ No extension shall be granted more than once ↓ CIRP shall mandatorily be completed within 330 days from CIRP commencement date including any extension or time taken in legal proceedings
Withdrawal of application (Sec. 12A)	→ NCLT may allow withdrawal of applicationu/s 7, 9 or 10 → on application by approval 90% vote of CoC	
Moratorium & Public announcement (Sec. 13)	After admission of application u/s 7, 9 or 10, NCLT shall by an order Declare a MORATORIUM – Sec. 14 Cause a PUBLIC ANNOUNCEMENT of initiation of CIRP & call for submission of claims – Sec. 15 Appoint an IRP – Sec. 16	
Moratorium (Sec. 14)	On CIRP commencement date, NCLT shall declare moratorium for prohibiting all of the following – a. institution of suits or continuation of pending SUITS against corporte debtor b. transferring or disposing of ASSETS by corporate debtor c. action to foreclose, recover or enforce any SECURITY INTEREST created by corporate debtor d. RECOVERY of any property by an owner or lessor where such property is occupied by corporate debtor **Exception** – Supply of essential goods or services shall not be terminated during moratorium, except where dues has not been paid for such supply	**Date of effect of order** Moratorium shall have effect from the date of such order till completion of CIRP Where during CIRP, NCLT approves resolution plan or passes order for liquidation, moratorium shall cease to have effect
Public Announcement (Sec. 15)	IP shall make a public announcement of initition of CIRP within 3 days of his appointment as IRP Expenses of this shall be borne by the applicant, unless reimbursed by CoC	**Public announcement contains the following information** • Name & address of corporate debtor • Last date for submission of claims • Penalties for false claims • Name of authority with which debtor is registered • Details of IRP • Date on which CIRP shall be closed

Appointment of IRP (Sec. 16)	NCLT shall appoint IRP on insolvency commencement date		IRP shall continue till appointment of RP
	Application for CIRP by FC or Corporate debtor	RP proposed by them in application shall become IRP, if no disciplinary proceedings are pending	
	Application for CIRP by OC	**IRP is not proposed**	NCLT shall make a reference to IBBI for the recommendation of an IP who may act as IRP IBBI shall recommend the name within 10 days
		IRP is proposed	RP proposed by them in application shall become IRP, if no disciplinary proceedings are pending

Management of affairs by IRP (Sec. 17)	**Powers of IRP**		**Duties of IRP**
	▪ Management of affairs of corporate debtor ▪ Exercising powers of Board or partners ▪ Officers of debtor shall report to IRP ▪ Financial institutions maintaining A/c of debtor shall act on instuctions of IRP	▪ Execute deeds & documents on behalf of corporate debtor ▪ Take actions specified by IBBI ▪ Have authority to access electronic records from information utility ▪ Have authority to access the books & records ▪ Responsible for carrying out compliance with the legal requirements	• Collect all information relating to financial position of debtor • Get valuation of debtor done, if necessary • Receive & collate all claims • Constitute a CoC • Monitor assets & manage operations till appointment of RP • File information collected with information utility • Take control & custody of assets

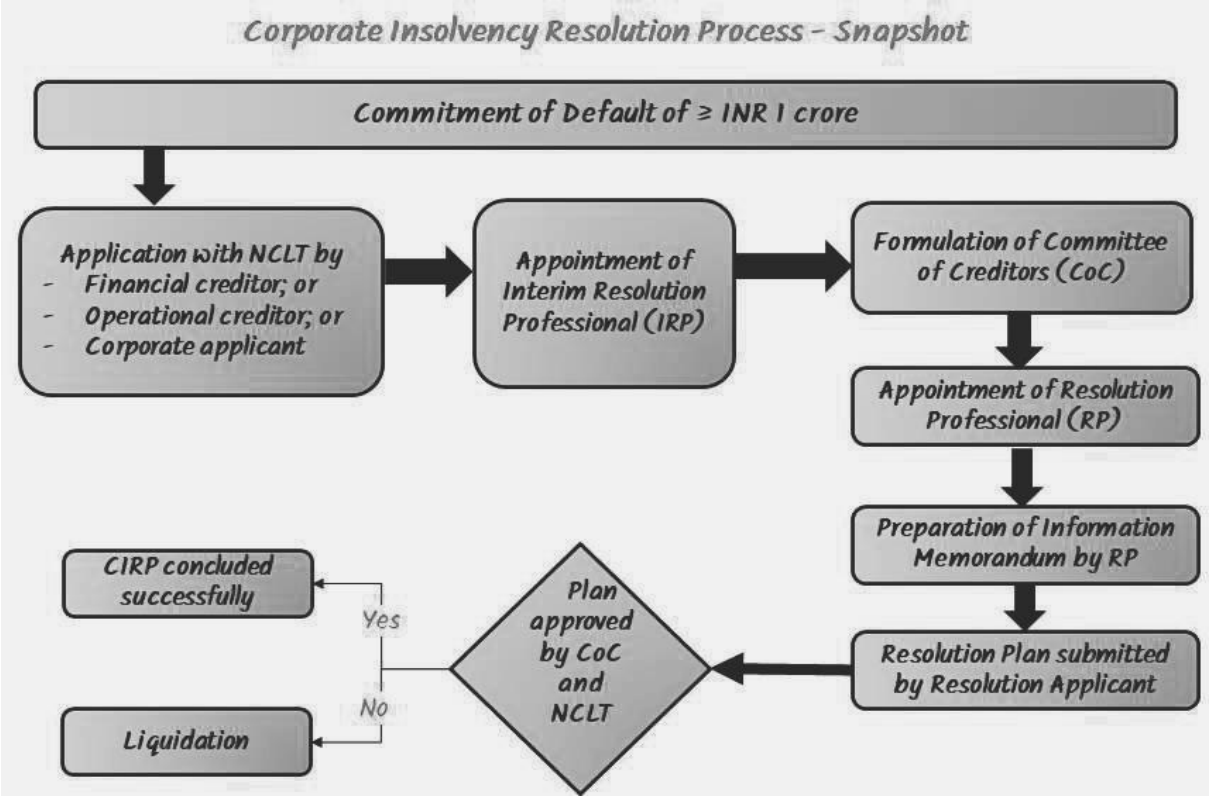
Committee of Creditors (Sec. 21)	**Constitution of CoC**	IRP shall, after collation of all claims, constitute a CoC In case of consortium agreement, each FC shall be a part of CoC	CoC shall comprise of all FC If FC is related party, it shall have no right to participate in meeting of CoC ↓ exception FC regulated by financial sector regulator, if it is a related party solely on account of conversion of debt into equity
	Where person is both FC & OC	▪ Such person shall be FC to the extent of financial debt & shall be included in CoC with voting shares proportionate to financial debt ▪ Where OC has assigned any operational debt to FC, the assignee shall be considered to be OC	
	Financial debt as consortium arrangement	Where consortium arrangement provides for a single trustee or agent, each FC may → Authorise trustee or agent to act on his behalf in CoC → Exercise his right to vote to the extent of his voting share	
	Authorised Representative	▪ Financial debt in form of securities or deposits & terms of financial debt provide for appointment of trustee or agent ➡ Such trustee or agent shall act as authorised representative on behalf of such FCs ▪ Financial debt is represented by a guardian, executor or administrator ➡ Such person shall act as authorised representative on behalf of FC such authorised representative shall attend meetings of CoC & vote on behalf of FC	
	Vote in the Meeting	Save as otherwise provided, all decisions of CoC shall be taken by ≥ 51% voting share of FC Where debtor doesn't have FC, CoC shall comprise of	

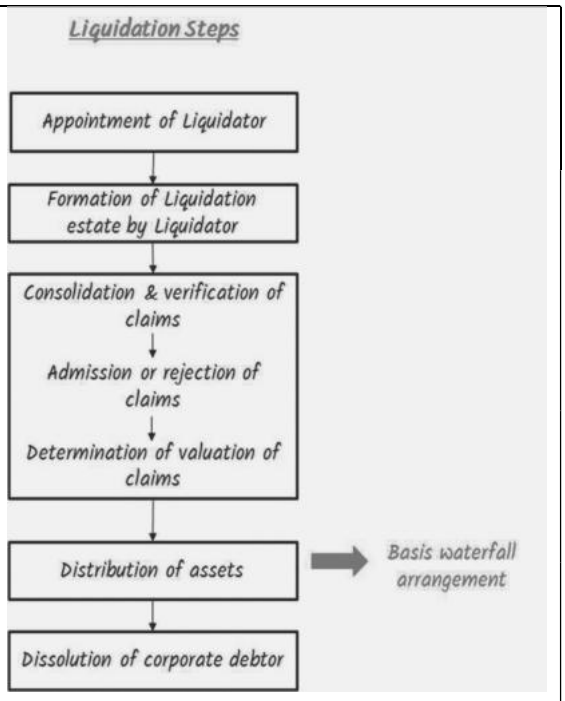
18 largest OCs by value Where OCs is < 18, all such OCs shall be member	1 representative elected by all workmen	1 representative elected by all employees

	Furnishing information to CoC	→ CoC can require RP to furnish any financial information relating to corporate debtor → RP shall make available such information within 7 days	
Meeting of CoC (Sec. 24)	All meetings of CoC shall be conducted by RP	**Notice** RP shall give notice of meeting to → Members of CoC, including authorised representatives → Members of suspended Board or partners → OCs if their aggregate dues is ≥ 10% of debt Directors, partners & 1 representative of OCs may attend the meeting but shall have no right to vote	**Quourum** Quorum ≥ 33% of voting rights present in person or through audio-video means If quorum is absent, meeting shalll automatically adjourn at same time & place next day At adjourned meeting, members present shall be the quourum
Appointment of RP (Sec. 22)	First meeting of CoC shall be held within 7 days of constitution of CoC	At first meeting, by ≥ 66% vote, CoC	

Appoint IRP as RP	Communicate its decision to IRP, debtor & NCLT
Replace IRP by another RP	File an application before NCLT for appointment of proposed RP ↓ NCLT shall forward the name of proposed RP to IBBI for confirmation ↓ If IBBI doesn't confirm within 10 days NCLT shall order IRP to continue as RP until IBBI confirms

Duties of RP (Sec. 25)	**RP shall preserve & protect the assets of corporate debtor**	To protect the assets following ACTIONS can be taken • Take immediate custody of all assets • Act on behalf of corporate debtor with third parties • Raise interim-finance • Appoint accountants & other professionals • Maintain updated list of claims • Convene meetings of CoC • Prepare Information Memorandum • Invite prospective resolution applicants • Present all Resolution Plans to CoC
	Eligibility of IP to be appointed as RP	a. He is eligible to be appointed as INDEPENDENT DIRECTOR of debtor, where debtor is a company b. He is NOT a RELATED PARTY of debtor c. He is NOT an EMPLOYEE, PROPRIETOR or PARTNER of a firm of auditors or secretarial auditors or cost auditor of debtor in last 3 years d. He is NOT an EMPLOYEE, PROPREITOR or PARTNER of a legal or consulting firm having transaction with debtor of ≥ 5% of gross turnover in last 3 years **Note** – Fees payable to RP & any costs in running the business shall be included in the insolvency resolution process cost.
Replacement of RP (Sec. 27)	CoC with ≥ 66% vote replace RP	CoC shall forward the name of proposed RP to NCLT NCLT shall forward the same to IBBI for confirmation as provided u/s 16
Approval of CoC for certain actions (Sec. 28)	RP needs prior approval of CoC with ≥ 66% votes for the following transactions • Raising interim finance • Debit transactions > specified amount • Disposal of shares of any shareholder • Creating security interest • Related party transactions • Change in management • Change in capital structure • Amend constitutional documents • Transfer of debts • Change in ownership interest • Delegating its authority • Change in contracts of specified personnel or auditors	▪ Action taken without prior approval is void ▪ CoC may report the actions of RP to IBBI
Resolution Plan (Sec. 29)	RP shall prepare Information Memorandum for formulating Resolution Plan	RP shall provide required information to Resolution Applicant RP shall examine the Resolution Plan & submit the same to CoC
Persons not eligible to be Resolution Applicant (Sec. 29A)	▪ Undischarged insolvent ▪ Wilful defaulter ▪ Disqualified to act as director ▪ Prohibited from trading by SEBI ▪ Has given a guarantee in favour of a creditor, whose application has been admitted under IBC & guanartee has been invoked ▪ Convicted with imprisonment ≥ 2 years – Act under 12th Schedule ≥ 7 years – Any other law But eligible after 2 years of his release from imprisonment	▪ At the time of submission of Plan - Has an A/c classified as NPA - Is Promoter or is under management or control of corporate debtor whose A/c is classified as NPA & 1 year has elapsed from such classification till commencement of CIRP But is eligible if makes payment before submission of Plan ▪ Is a Promoter or in management or control of a corporate debtor in which - A Preferential Transaction - Undervalued Transaction - Extortionate Credit Transaction - Fradulent Transaction has taken place & an order has been made by NCLT But this clause shall not apply if transaction has taken place by Resolution Applicant pursuant to a Resolution Plan
	▪ He is subject to above-mentioned disabilities under any law outside India ▪ Has a connected person not eligible under all the above-mentioned clauses	
Submission of Resolution Plan (Sec. 30)	▪ Resolution Applicant may submit a RESOLUTION PLAN ▪ RP shall examine that each plan - Provides for payment of insolvency resolution process cost - Provides for payment of debts of OCs - Provides for mangement of affairs of debtor - Implementation & supervision of plan - Doesn't contravene the law - Confirms to the requirements specified by IBBI ▪ RP shall present such resolution plans to CoC ▪ CoC may approve a resolution plan by 66% vote ▪ RP shall submit the approved resolution plan with NCLT	
Approval of Resolution Plan (Sec. 31)	NCLT shall by order approve or reject the resolution plan	Resolution applicant shall obtain necessary approvals required under any law within 1 year of approval of plan by NCLT or time provided in such law, whichever is later In case Sec. 5 of Competition Act is applicable, approval of CCI shall be obtained, prior to approval of plan by CoC
	Grounds for filing appeal against approval of Resolution Plan by NCLT	a. The plan is in contravention of any law b. Material irregularity in exercise of powers by RP c. Debts of OCs have not been provided for in the plan d. Insolvency resolution process cost has not been provided e. Doesn't comply with criteria specified by IBBI



Initiation of Liquidation (Sec. 33)	NCLT shall order liquidation of corporate debtor in following cases – → NCLT doesn't receive resolution plan → NCLT rejects resolution plan → Where RP intimates NCLT the decision of ≥ 66% vote of CoC to liquidate		
	→ Where an approved resolution plan is contravened by concerned corporate debtor, → any person who is prejudicially affected (other than the corporate debtor), → may make an application to NCLT for liquidation	➡ Where NCLT determines that corporate debtor has contravened the resolution plan, it shall pass a liquidation order	
	When liquidation order is passed, no suit or legal proceeding shall be instituted against the corporate debtor, without prior approval of NCLT		
	The order of liquidation shall be deemed to be a notice of discharge to officers & employees except when the business is continued during liquidation process		
Appointment of Liquidator (Sec. 34)	On liquidation order → RP shall act as liquidator unless replaced by NCLT → All powers of board shall be vested in liquidator	**Powers & Duties of Liquidator (Sec. 35)**	▪ To verify all the claims of the creditors. ▪ To take all the property and actionable claims of the Corporate Debtor into his custody. ▪ To evaluate the assets and property of the Corporate Debtor. ▪ To carry out the business of Corporate Debtor for its beneficiary liquidation. ▪ To make the Progress Report of the Corporate Debtor.
Liquidation Estate (Sec. 36)	**Liquidation Estate shall comprise of** ▪ Assets over which debtor has ownership rights ▪ Assets that may or may not be in possession of debtor ▪ Tangible & intangible assets ▪ Assets subject to determination of ownership by court ▪ All proceeds of liquidation as & when realised		**Liquidation estate shall NOT include** ▪ Assets owned by third party in possession of debtor ▪ Assets in security collateral held by financial service providers & subject to netting & set-off ▪ Personal assets of shareholder or partner ▪ Assets of subsidiary

Consolidation of Claims **(Sec. 38)**	→ Liquidator shall receive the claims within 30 days of commencement of liquidation → FC may submit claim via. Information utility or in the manner used by OC → OC may submit claim in the manner specified by IBBI → Creditor may withdraw or vary claim within 14 days of submission	**Verification of claims** **(Sec. 39 & 40)**	Liquidator may admit or reject the claim & shall communicate his decision within 7 days

Preferential Transaction
(Sec. 43)

Relevant Time

Related Party (other than employee)	2-years preceding CIRP commencement
Other than a related party	1-year preceding CIRP commencement

Effect

Where liquidator or RP is of the opinion that debtor has at a relevant time given a preference, he shall apply to NCLT for avoidance of preferential transactions

Deemed Preferential Transaction

→ Transfer of property for the benefit of creditor; and
→ such transfer has the effect of putting such creditor in a beneficial position than it would have been as per waterfall arrangement

Exceptions

1. Transfer in the ordinary course of business
2. Transfer creating a security interest to the extent that
   - Security interest secures new value & was given at or after signing of security agreement & was used by debtor to acquire such property; and
   - Such transfer was registered with information utility within 30 days of receiving possession of property

Undervalued transactions
(Sec. 45 to 49)

Relevant Time

Related Party	2-years preceding insolvency commencement
Other than a related party	1-year preceding insolvency commencement

Effect

Liquidator or RP shall apply to NCLT to declare such transaction void

Meaning of undervalued transaction

1. Gift
2. Transaction for a consideration the value of which is significantly less than the consideration provided by debtor & not in ordinary course of business

Application by Creditor/ Member/ Partner

→ Where liquidator or RP has not reported undervalued transaction,
→ Creditor, member or partner may make an application to NCLT

If satisfied, NCLT shall pass an order to reverse the transaction & requiring IBBI to initiate disciplinary proceedings against liquidator or RP

Powers of NCLT

Where debtor has entered into undervalued transaction & NCLT is satisfied that such transaction was entered into deliberately
- For keeping assets beyond reach of any person to make a claim; or
- To adversely affect the interest of such a person in relation to claim

➡ NCLT shall order
→ Restoring the position as it existed before such transaction; and
→ Protecting interest of persons who are victims of transaction

Extortionate credit transactions
(Sec. 50)

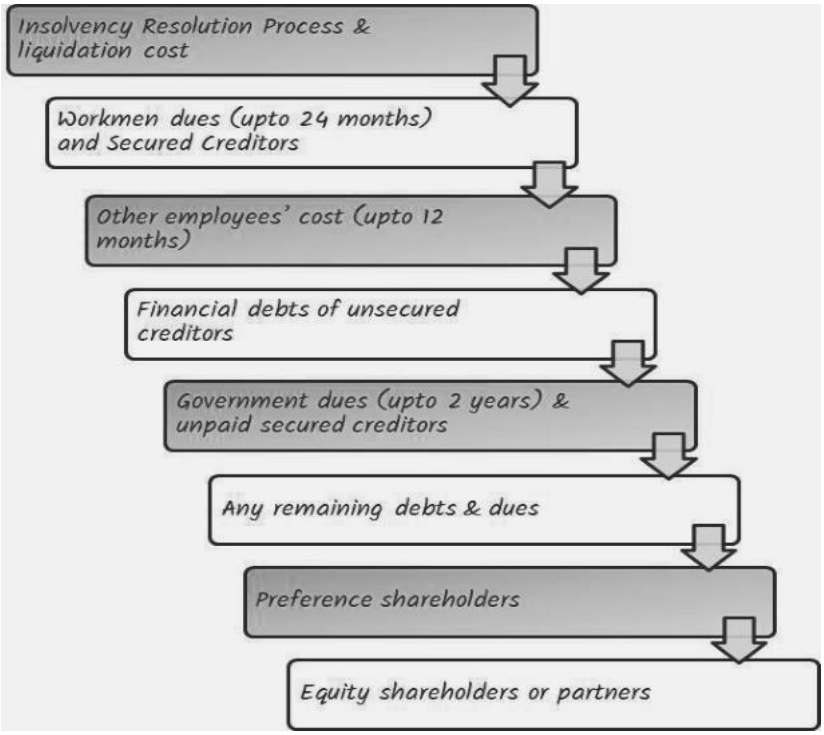
→ Where the corporate debtor has been a party to an extortionate credit transaction
→ involving the receipt of financial or operational debt during the period within 2 years preceding the insolvency commencement date,
→ the liquidator or the RP, may make an application for avoidance of such transaction to the NCLT
→ if the terms of such transaction required exorbitant payments to be made by the corporate debtor.

Secured creditor in liquidation proceedings
(Sec. 52)

A secured creditor who seeks to realise its security interest, shall intimate liquidator of the price at which he proposes to realise its secured asset

Where amount realised > debts	➡	Creditor shall tender surplus funds to liquidator
Where amount realised < debts	➡	Unpaid debts shall be paid by liquidator u/s 53

If secured creditor faces resistance from debtor in realisation, he may make an application to NCLT

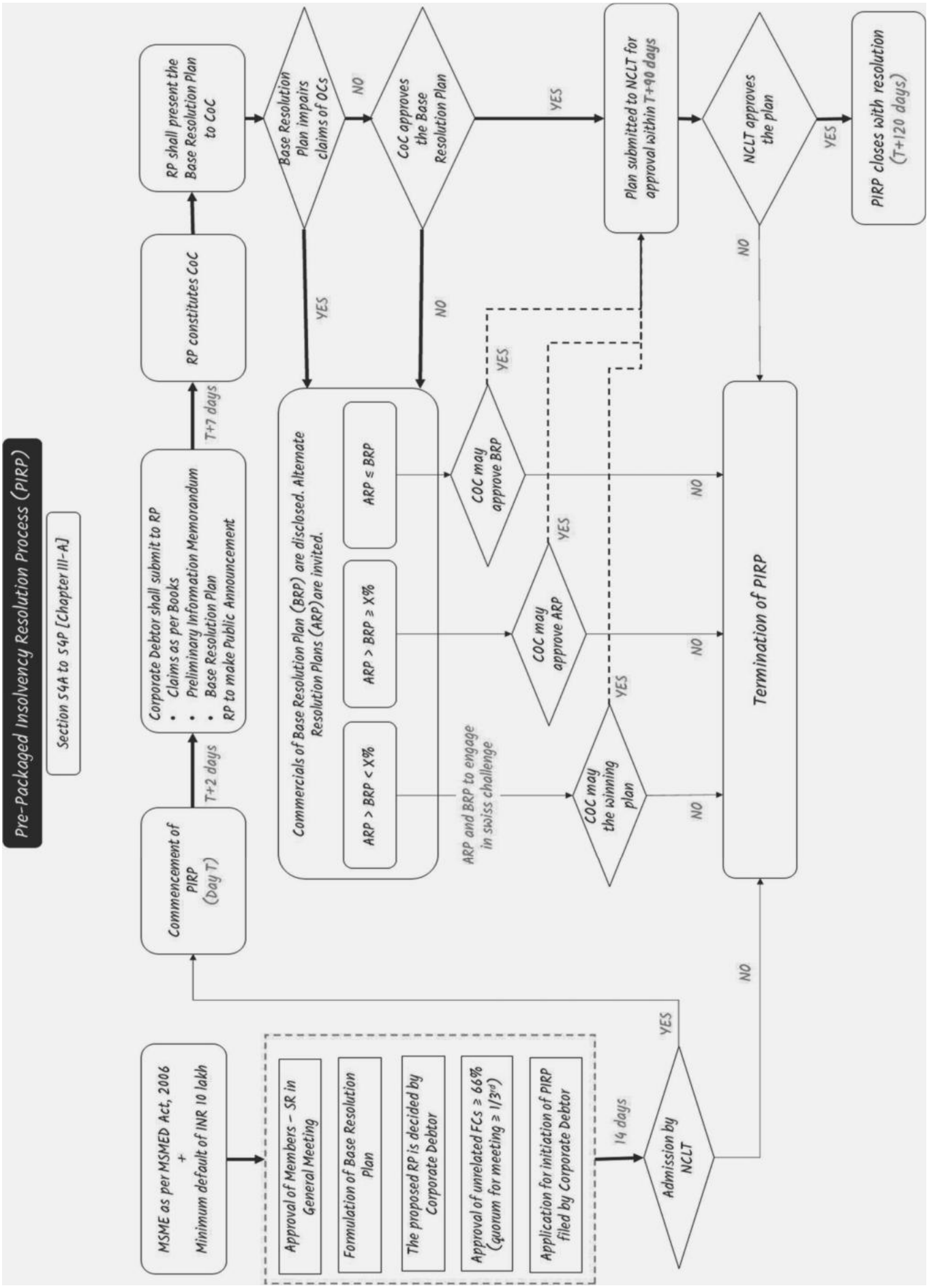
Waterfall Arrangement (Sec. 53)		**Dissolution (Sec. 54)**
		→ Where assets have been completely liquidated, liquidator shall make an application to NCLT for dissolution → NCLT shall then pass dissolution order → Order shall be forwarded to the authority with which the corporate debtor is registered within 7 days

VOLUNTARY LIQUIDATION

Step 1	Declaration from Majority of directors, stating that the company will be able to pay its dues and is not being liquidated to defraud any person;	Declaration is accompanied by ▪ Audited financial statements for last 2 years ▪ Valuation report of assets
Step 2	Passing of Special Resolution for approving the proposal of voluntary liquidation and appointment of liquidator, within 4 weeks of the aforesaid declaration(s). However, OR is required in case the company is liquidated as a result of Expiry of duration, if fixed by articles / On the occurrence of event, specified in Articles, invoking dissolution If a corporate person owes debts, approval of 2/3rd majority creditors would also be required;	
Step 3	Intimation to the ROC and the Board about the Approval, within 7 days of such Approval;	
Step 4	When the affairs are wound up, the Liquidator shall make an application to NCLT for the dissolution;	
Step 5	NCLT passed the order of dissolution which is forwarded to the concerned ROC within 14 days of the receipt of order.	

FAST TRACK CIRP

Applicability	Time-limit	Extension of CIRP period	
▪ Small Co. ▪ Start-up (other than partnership firm) ▪ Unlisted Co. whose total assets ≤ ₹ 1 crore Application for CIRP may be filed with a creditor or corporate debtor alongwith proof of default	CIRP shall be completed within 90 days from the date of commencement of CIRP	If instructed by 75% vote of CoC, Resolution professional shall file an application to NCLT to extend the period	NCLT can extend the period by ≤ 45 days. ↓ No extension shall be granted more than once


Pre-Packaged Insolvency Resolution Process (PIRP)
Section S4A to S4P [Chapter III-A]
MSME as per MSMED Act, 2006 + Minimum default of INR 10 lakh
Approval of Members – SR in General Meeting
Formulation of Base Resolution Plan
The proposed RP is decided by Corporate Debtor
Approval of unrelated FCs ≥ 66% (quorum for meeting ≥ 1/3rd)
Application for initiation of PIRP filed by Corporate Debtor
14 days
Admission by NCLT
YES
NO
Commencement of PIRP (Day T)
T+2 days
Corporate Debtor shall submit to RP
• Claims as per Books
• Preliminary Information Memorandum
• Base Resolution Plan
RP to make Public Announcement
T+7 days
RP constitutes CoC
RP shall present the Base Resolution Plan to CoC
Base Resolution Plan impairs claims of OCs
YES
NO
CoC approves the Base Resolution Plan
YES
NO
Commercials of Base Resolution Plan (BRP) are disclosed. Alternate Resolution Plans (ARP) are invited.
ARP > BRP < X%
ARP > BRP ≥ X%
ARP ≤ BRP
ARP and BRP to engage in swiss challenge
COC may the winning plan
YES
NO
COC may approve ARP
YES
NO
COC may approve BRP
YES
NO
Plan submitted to NCLT for approval within T+90 days
NCLT approves the plan
YES
NO
PIRP closes with resolution (T+120 days)
Termination of PIRP