

PREFACE TO THE EDITION

Dear Students,

Welcome to the most important step towards Final preparation –

COMPANY LAW REVISION NOTES....!

I have been teaching **COMPANY LAW** for **past 12 years** & I take pride in stating that over **10,000 students** of Nagpur & outstation have taken benefit through Face to Face as well as Video Classes.

I feel privileged while giving you this Intense yet **Short Revision Notes** almost covering all important provisions of **UPDATED COMPANIES ACT, 2013** in just **150 pages** for purpose of Quick Revision.

In last few days of exams just remember few points:

- **Stop stressing....** you are still going to have to take the test whether you stress or not.... so given that, it's not worth stressing about.
- **Definitely get a good night's sleep... 7 hours...** so that you are fresh and can think.... it will do no good to cry now... what you don't know, you don't know.
- **Eat a good breakfast....** not a huge one, or else it would make you sleepy during the test. A bowl of cereal, a banana, toast and some juice will do the trick.
- **Solve & practice CASE LAWS** and don't just keep mugging up law theory
- Remember every provision in just **few words** with help of **MIND REVISION**
- And **KEEP IT COOL.....!**

I wish you all the very best for your upcoming exams & I am sure that you guys are going to rock in exams & soon I will be able to see you as **Qualified Professional**.

😊 *Happy studying*

CS TUSHAR PAHADE

FCS, LL.B, M.COM, D.F.M., AMFI Certified, Ph.D (Pursuing)

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ENFORCEMENT STATUS OF THE COMPANIES ACT 2013

Before starting Companies Act 2013 it is necessary that you should have some basic knowledge regarding origin of Company law and Companies Act 2013.
(Read it very carefully)

DEVELOPMENT OF INDIAN COMPANY LAW

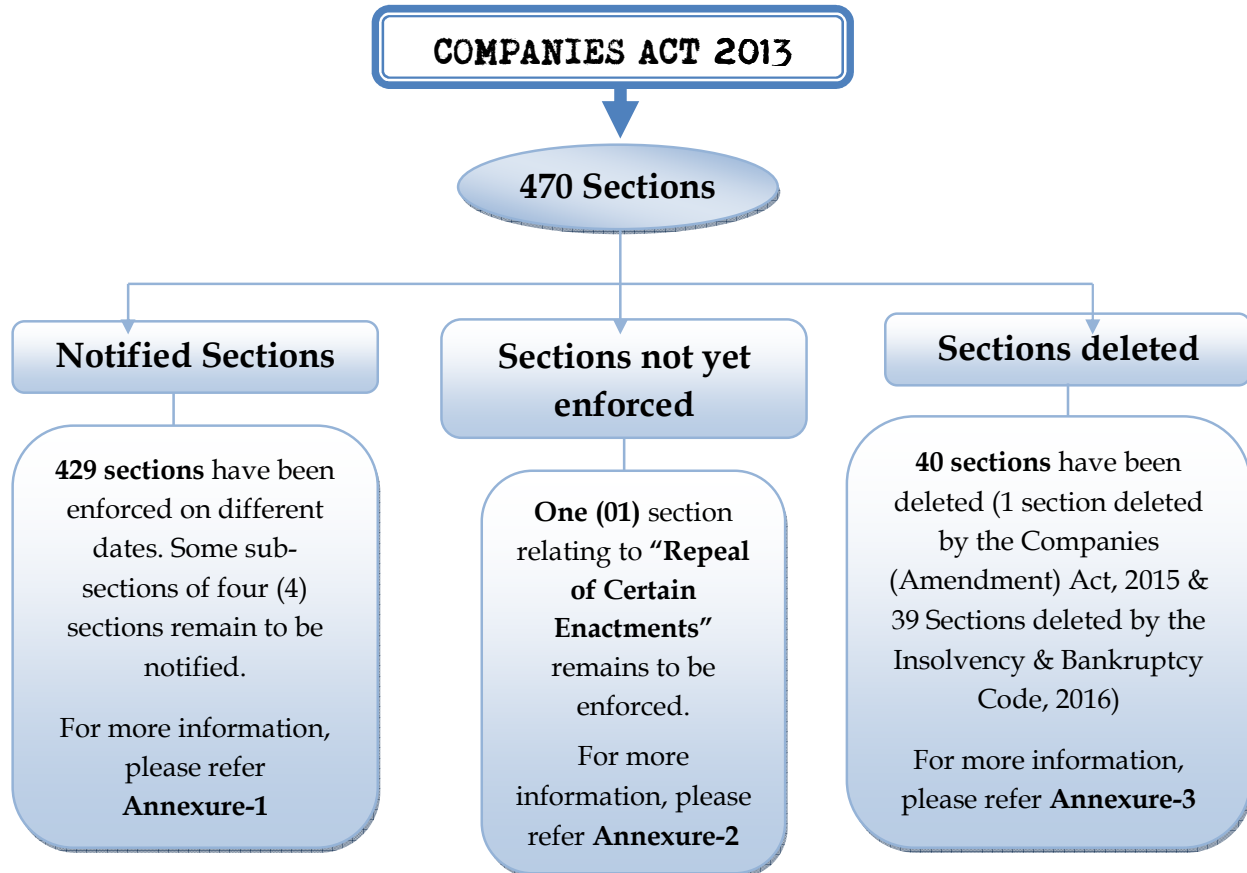
COMPANY LAW IN INDIA IS THE CHERISHED CHILD OF THE ENGLISH PARENTS

The history of Indian company law began with the Companies act 1850, modelled on British Company act 1844. Between 1850 and 1882, the Companies act was amended many times and the act of 1882 repealed all the previous laws and remained in force till 1912, through amended many times. The Indian Companies act of 1913 was based on British Companies act of 1908. Subsequent amendments were in 1914, 1915, 1920, 1926, 1930, 1932 and 1936. The amendment in 1936 was based on the lines of the British companies Act of 1929 and became operative from 15th January, 1937. After independence it was found that the company law should again be amended. Therefore The Companies Act, 1956 was passed and it came into in 1st April 1956. This Act was also amended subsequently.

After the independence, it was found that the existing companies act should be amended to suit the changed condition in the condition in the country. In line with Cohen Committee of England, the central government appointed a 12-member company law committee in October 1950 under the chairmanship of Mr. C. H. Bhabha (known as Bhabha Committee) and submitted their report in April 1952. The central government brought a bill in parliament on 2nd September, 1953. The parliament appointment a joint parliamentary committee in May 1954 to go into the recommendation of the Bhabha committee and to suggest any modification or changes. On the basis of the recommendation of the joint parliamentary committee, the parliament passed the new act in November, 1955 which received the president's assents on 18th January, 1956, this act came into force with effect from April, 1956. It consists of 658 sections and 14 schedules.

Companies Bill, 2012 was passed by the LOK SABHA in 18th December, 2012 and by the RAJYA SABHA on 8th August, 2013. On receiving the assent of August 30, 2013 as the Companies Act, 2013.

Companies Act 2013 has replaced the Companies Act 1956 (in a partial manner) after receiving the assent of the President of India in 29th August 2013. (Provisions of NCLT also got effective from 1st June 2016)



COMPANY LAW – ADMINISTRATION

MINISTRY OF CORPORATE AFFAIRS (MCA)

MCA regulates **cooperate affairs in India** through the **Companies Act 1956, 2013** and other allied Acts, Bills and Rules. MCA also protects investors and offers many important services to stakeholders. Ministry of cooperate Affairs (MCA) is also entrusted with rule making power.

REGIONAL DIRECTORS (R.D)

The **seven Regional Directors (R.D)** are in-charge of the respective regions, each region comprising a number of states and union territories. They supervise the working of the offices of the registrars of the companies and the official Liquidators working in regions.

REGISTRAR OF COMPANIES (R.O.C)

Registrars of companies (ROC) are **vested with the primary duty** of registering companies floated in the respective states and the union territories and ensuring that such companies comply with statutory requirements under the act.

| S.NO. | REGION | AREA |
|-------|----------------------|-----------|
| 1. | Eastern Region | Kolkata |
| 2. | Northern Region | New Delhi |
| 3. | Southern Region | Chennai |
| 4. | Western region | Mumbai |
| 5. | North Western Region | Ahmedabad |
| 6. | South East Region | Telangana |
| 7. | North Eastern Region | Shillong |

ROC OFFICES IN INDIA

| S.NO. | AREAS | ROC |
|-------|---|-----------------------------------|
| 1. | Andhra Pradesh & Telangana | (ROC Hyderabad) |
| 2. | Bihar | (ROC Patna) |
| 3. | Jharkhand | (ROC Ranchi) |
| 4. | Goa Daman & Diu | (ROC Goa) |
| 5. | Jammu & Kashmir | (ROC cum OL) J & K |
| 6. | Kerala | (ROC Ernakulam) |
| 7. | Maharashtra | (ROC Mumbai) (ROC Pune) |
| 8. | Puducherry | (ROC Puducherry) |
| 9. | Rajasthan | (ROC Jaipur) |
| 10. | Uttar Pradesh & Uttarakhand | (ROC Kanpur & Nainital) |
| 11. | Assam, Meghalaya, Manipur, Tripura, Mizoram, Nagaland & Arunachal Pradesh | (ROC Shillong) |
| 12. | Chhattisgarh | (ROC cum-OL for Bilaspur) |
| 13. | Delhi & Haryana | (ROC Delhi) |
| 14. | Gujrat | (ROC Ahmedabad) |
| 15. | Karnataka | (ROC Bangalore) |
| 16. | Madhya Pradesh | (ROC Gwalior) |
| 17. | Orissa | (ROC Cuttack) |
| 18. | Punjab, Chandigarh & Himachal Pradesh | (ROC Chandigarh & Shimla) |
| 19. | Tamil Nadu | (ROC Chennai) (ROC Coimbatore) |
| 20. | West Bengal | (ROC Kolkata) |

ARRANGEMENT OF SECTIONS

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GENERAL PROCEDURE UNDER COMPANY LAW WHERE SHAREHOLDERS AND OTHER AUTHORITIES APPROVAL REQUIRED

While following any procedure under company law refer first this master procedure

1. Send the notices of board meeting to all directors as per law.
2. Convene and hold a Board Meeting, for the following purposes:-
 - ❖ Pass board resolution for relevant activity subject to approval of shareholders and other authority.
 - ❖ To decide day, date, time and venue of the general meeting where resolution is proposed to be passed;
 - ❖ To approve the notice of general meeting to be issued; and
 - ❖ To authorize the Company Secretary/ Director to issue the notice of general meeting.
3. Issue the notice of general meeting to all the members as per law.
4. At the general meeting, pass the required resolution. (O.R. / S.R. as the case may be).
5. Within 30 days of passing of the special resolution, the following shall be filed with the Registrar of Companies: - e-Form No. MGT-14 after paying requisite fees; (standard rule).
6. File application to other authorities if required by law for their approval. (ROC, R.D., HIGH COURT etc.)
7. Obtain their approval by filling relevant form as prescribed under law.
8. After obtaining the approval of NCLT and HIGH COURT/ NCLT file e-form INC 28 to ROC.
9. Make alteration in MOA and AOA if required.

PENALTIES AND PUNISHMENT UNDER COMPANIES ACT 2013

| Section | Heading | Provision |
|---------|--|--|
| 447 | Punishment of fraud which involves an amount less than ten lakh rupees or one per cent. of | <p>If any person is found guilty of fraud, he is punishable with</p> <ul style="list-style-type: none"> • Imprisonment for a term which may extend to five years or Fine which may extend to twenty lakh rupees or Both • Fine which shall not be less than amount involved in fraud, but which may extend to 3 times amount involved |

| | | |
|-----|---|--|
| | the turnover of the company, whichever is lower, and does not involve public interest | in any fraud. |
| | In other cases | <ul style="list-style-type: none"> • Imprisonment for a term which shall not be less than six months but which may extend to ten years • Fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud. |
| 448 | Punishment for false statement | <p>If any person gives false statement or makes false material particular or omit any material fact in any of following documents with knowledge</p> <ul style="list-style-type: none"> • Any return or certificate under Companies Act, 2013 • Prospectus under Companies Act, 2013 • Statement or other documents required to be made under Companies Act, 2013 and its rule. <p>He is liable to punishment as per section 447 of Companies Act, 2013:</p> |
| 449 | Punishment for false evidence | <p>Any person is liable for punishment, if he intentionally gives false evidence:</p> <ul style="list-style-type: none"> • Upon any examination on oath under act or • In any affidavit or any documents deposited about winding up of company or • Any matter arising under Companies Act. <p>HE IS PUNISHABLE FOR</p> <ul style="list-style-type: none"> ❖ imprisonment for period not less than 3 years but extend to 7years and ❖ fine up to Rs. 10 lac. |
| 450 | Punishment where no specific penalty is provided | Where no specific penalty is provided under Act for contravention of any provision of the, Act or rules made there under. As per section 450 fine upto Rs. 10,000 plus a fine upto Rs. 1000 per day where the offence is of continuing nature. |
| 451 | Punishment in case of repeated default | <p>If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of 3 years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.</p> <p>This section is not applicable to the offence repeated after a</p> |

| | | |
|-----|---|---|
| | | period of three years from the commitment of first offence. |
| 452 | Punishment for wrongful withholding of property | <ul style="list-style-type: none"> ❖ If any officer, employee or ex-employee of company has wrongfully obtained the possession of property or wrongfully withholding the property, including cash of company, he is punishable for fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 lakh. ❖ Section 452 is applicable where employee applies the property of company for any other purpose other than specified or authorised by article. |
| 453 | Punishment for improper use of "limited" or "private limited" | <p>If any person</p> <ul style="list-style-type: none"> ❖ use name "limited" or "Private Limited" without registration of company. ❖ Omit word "limited" or private Limited" while entering into contract or acting on behalf of company. <p>He is punishable with fine which shall not be less than Rs. 500 but may extend to Rs. 2000 for every day for which that name or title has been used.</p> |

| POWER OF CG (UNDER COMPANIES ACT, 2013) | | |
|---|---|---|
| Section | Heading | Provision |
| 443 | Power to appoint company prosecutors | <p>Central Government is empower to appoint company prosecutor to conduct prosecution arising out of this act:</p> <ul style="list-style-type: none"> ❖ For Any case or ❖ For Specified class or ❖ For Local area or ❖ Against one or more persons <p>Company prosecutor has same power as public prosecutor has power under section 24 of Criminal Procedure Code.</p> |
| 458 | Power of delegation | <p>Central Government may delegate any of its power or function under this Act by notification to any authority or officer. However it can't delegate its power to make rule to anyone. Notification should be placed before both houses of parliament.</p> <p>Delegation can be made with subject to conditions, limitations and restrictions.</p> |
| 462 | Power to exempt class of companies- Section | <p>Central Government may exempt any class of companies from any Provision of act or modify application of any provision subject to following conditions:</p> <ul style="list-style-type: none"> ❖ It is in public interest. |



| | | |
|-----|------------------------------|--|
| | | <ul style="list-style-type: none">❖ It shall publish notification.❖ Notification before publication should be placed before each house of parliament. Both house of parliament should agree for it. |
| 467 | Power to amend schedules | <p>Central Government may by notification alter any regulation, rules, tables, forms and other provision of any schedule of Act.</p> <p>Alteration will not be effective to any company with retrospective effect. It will be applicable from date of publication of notification or date mentioned in notification.</p> <p>Alternation should be placed before both houses of parliament.</p> |
| 469 | Power to make rules | <p>Central Government may by notification make rules to carrying out provisions of Act.</p> <p>Above rules may provide that any contravention thereof shall be punishable with:</p> <ul style="list-style-type: none">❖ Fine upto Rs. 5000 and❖ Fine of Rs. 500 per day in case of continuing offence. <p>Above rules are required to be placed before both houses of parliament</p> |
| 470 | Power to remove difficulties | <p>If any difficulty arises in giving effect to the provisions of this act, the central government may, by order published in official gazette, make such provisions to remove difficulty.</p> <ul style="list-style-type: none">❖ Such provisions should not inconsistent with provisions of Act.❖ Order make provisions shall be made within period of 5 years from commencement of section 1 of Companies Act, 2013❖ Order should be placed before both houses of parliament. |

PRELIMINARY

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—13

REGISTERED NO. DL—(N)04/0007/2003—13



असाधारण

EXTRAORDINARY

भाग II— खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 27] नई दिल्ली, शुक्रवार, अगस्त 30, 2013/भाद्रपद 8, 1935 (शक)
No. 27] NEW DELHI, FRIDAY, AUGUST 30, 2013/BHADRAPADA 8, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30th August, 2013/Bhadrapada 8, 1935 (Saka).

The following Act of Parliament received the assent of the President on the 29th August, 2013, and is hereby published for general information:—

Regulatory Framework for PRELIMINARY

| | |
|---------------------|--------------------------------------|
| Applicable Chapter | Chapter I of the Companies Act, 2013 |
| Applicable Sections | Section No. 1 & 2 |
| Applicable Rules | NA |

Section Numbers & Particulars

| | |
|-----------|-------------|
| Section 1 | Preliminary |
| Section 2 | Definitions |

Preliminary Chapter of the Act Covers

Short title, Extent & Commencement

Applications

Definition

INTRODUCTION

The Companies Act, 2013 is an Act to consolidate and amend the law relating to companies. The legislation was necessitated to meet changes in the national and international economic environment and for expansion and growth of economy of our country.

The Companies Act, 2013 received the assent of the Hon'ble President of India on 29th August, 2013 and was notified in the Official Gazette on 30th August, 2013 for public information stating that different dates may be appointed for enforcement of different provisions of the Companies Act, 2013, through notifications.


Example: Section 1 came into force on 30th August, 2013; 98 sections came into force on 12th September, 2013; 143 sections were enforced from 1st April, 2014 and so on.

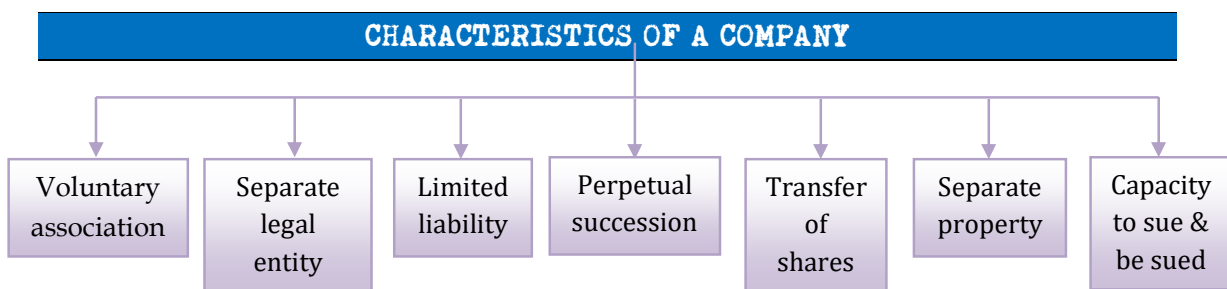
The Companies Act, 2013 is rule based legislation with 470 sections and seven schedules. The entire Act has been divided into 29 chapters. Each chapter has at least one set of Rules. The Companies Act, 2013 aims to improve corporate governance, simplify regulations and strengthen the interests of investors. Thus, the enactment making our corporate regulations more contemporary.



SHORT TITLE, EXTENT & COMMENCEMENT AND APPLICATION

| Title | Extent | Commencement | Application |
|-------------------------|----------------|---|--|
| The Companies Act, 2013 | Whole of India | Section 1 came into force at once and the remaining provisions on different dates through Notifications | Companies Insurance companies Banking companies Companies producing/supplying electricity Company regulated by special Act |

INTRODUCTION

| | | |
|-------------------|---|---|
| Meaning | <p>Word "Company" is derived from the Latin word Com=with or together; panis =bread.</p> <p>Presently, it denotes a joint stock enterprise in which the capital is contributed by a large number of people.</p> |  |
| Definition | <p>Section 2(20) of the companies Act, 2013 defines "Company means a company formed and registered under this Act or an existing company." It is a voluntary association formed for some common purpose.</p> | |



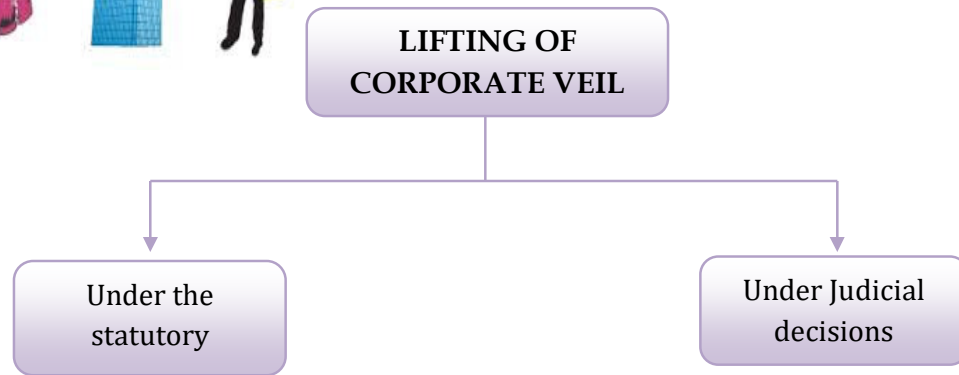
| | | |
|--------------------------------------|---|---|
| Voluntary association | <ul style="list-style-type: none"> ❖ An association ❖ Contribute money ❖ Share the profit & loss & formed voluntarily | |
| Separate legal entity | A company is a separate legal entity distinct from its members (Salomon Vs. Salomon & Co Ltd.) | |
| Limited liability | <ul style="list-style-type: none"> ❖ Limited by shares - limited to the unpaid amount ❖ Limited by guarantee - limited to the amount guaranteed ❖ Unlimited company |  |
| Perpetual succession | <ul style="list-style-type: none"> ❖ Members may come, members may go but company goes on forever ❖ Change or death of some or even all members do not affect continuity of a co. | |
| Transfer of shares | Freely transferable (except for Pvt. Companies) |  |
| Separate property | Capable of acquiring in its own name. | |
| Capacity to sue & be sued | Any litigation by or against the company can be conducted in the company's corporate name (Abdul Haq Vs. Das Mal) | |

| ADVANTAGES AND DISADVANTAGES OF CORPORATE FORM OF ENTERPRISE | |
|--|--|
| ADVANTAGES | DISADVANTAGES |
| <ul style="list-style-type: none"> ❖ Corporate Personality of its own: ❖ Limited Liability of members ❖ Perpetual succession ❖ Transferability of shares ❖ It can have separate property in its own name. | <ul style="list-style-type: none"> ❖ Cumbersome formalities and expenses ❖ Compulsory corporate disclosures ❖ Owners may not have much direct control ❖ Greater tax burden in certain cases ❖ Detailed winding-up procedure |

LIFTING OF CORPORATE VEIL



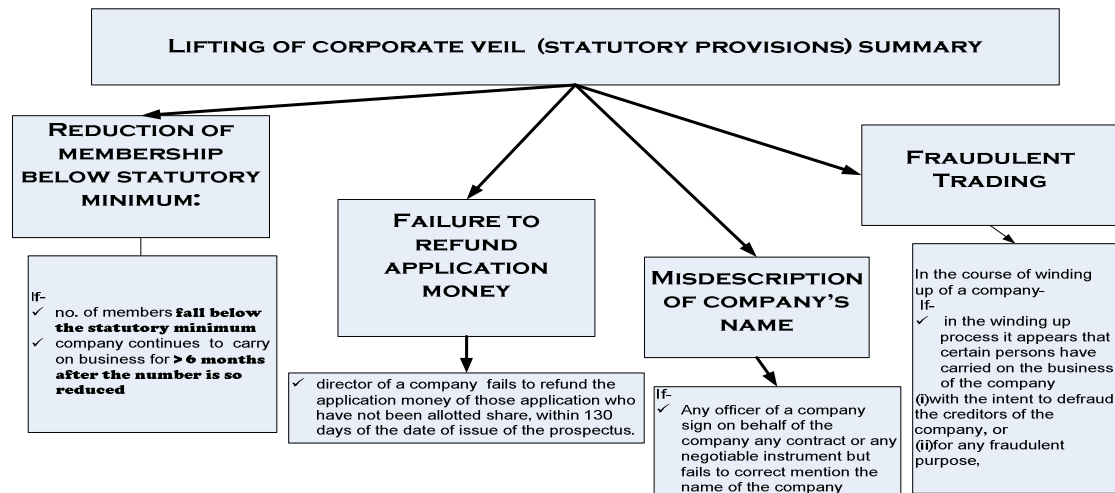
Where a fraudulent and dishonest use is made of the legal entity the individuals concerned will not be allowed to take shelter behind the corporate personality.



UNDER THE STATUTORY PROVISIONS

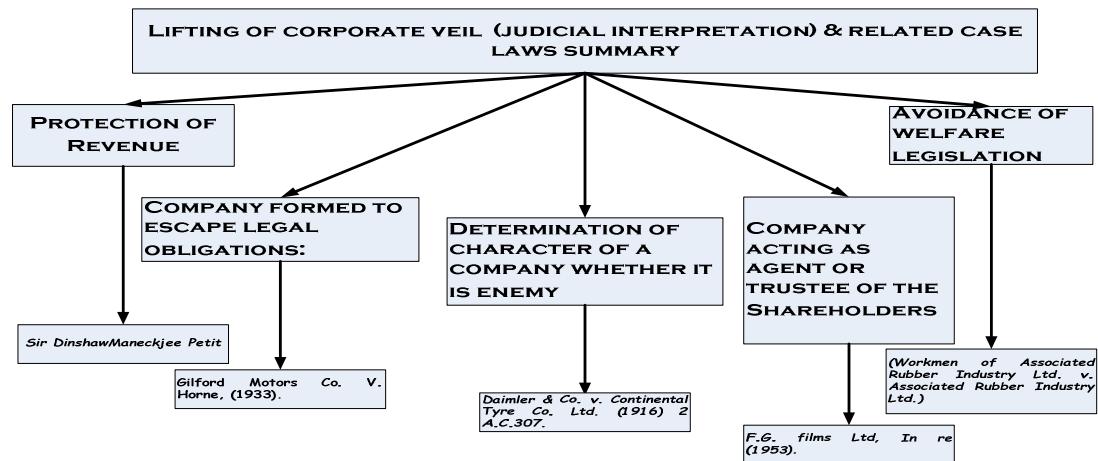
- ❖ **Reduction of membership below statutory limit (Sec 3A) ****
 - ✓ The no. of members should not fall below the statutory, minimum.
 - ✓ If the company continue to carry on business for more than 6 months with reduced members.
 - ✓ Every member who knows this fact is jointly liable for the whole of the debts.

**** Amended as per Companies Amendment Act, 2017**
- ❖ **Improper use of name (Sec 12)**
 - ✓ Every officer who signs on behalf of the co. shall be personally liable.
- ❖ **Failure to refund application money (Sec 39)**
 - ✓ Must be refunded with in such time as prescribed.
 - ✓ Otherwise, directors shall be personally liable to pay money with interest.
- ❖ **Fraudulent trading (Sec 339)**
 - ✓ With the intent to defraud the creditors of the company, or
 - ✓ For any fraudulent purpose,
 - ✓ Such persons can be made personally liable



UNDER JUDICIAL DECISIONS

| | |
|--|---|
| Protection of Revenue | <p>Sir Dinshaw Maneckjee petit</p> <ul style="list-style-type: none"> ❖ D was enjoying large profit and income in the form of interest and dividend ❖ Formed four new private companies and transferred interest income to them ❖ Returned income to 'D' in the form of pretended loan ❖ D and all the four companies were treated as one. |
| Prevention of fraud or improper conduct | <p>Gilford Motor Co. Ltd Vs Horne</p> <ul style="list-style-type: none"> ❖ H a former employee of 'G' was subject to not solicit its customers. ❖ H incorporated a company to solicited customers of 'G'. ❖ The court passed an injunction order. |
| Determination of character of a company whether it is enemy | <p>Daimler Co. Ltd Vs Continental Tyre And Rubber Co. Ltd.</p> <ul style="list-style-type: none"> ❖ German Company Incorporated As England Company For The Purpose Of Selling Tyres Made In Germany. ❖ During First World War, co. started recovering its debts. ❖ Court held this as trading with an enemy. |
| Company acting as agent or trustee of the Shareholders | <p>F . G . Films Ltd.</p> <ul style="list-style-type: none"> ❖ An American company produced a film in India, actually in the name of British company. ❖ The sensor board refused to register the film as a British film. |
| Avoidance of welfare legislation | <p>Workmen of Associated Rubber Industries Ltd. Vs Associated Rubber Industries Ltd.</p> <ul style="list-style-type: none"> ❖ A subsidiary co. was formed wholly by the Holding company only to receive dividends from shares transferred. ❖ Court held that the new company was formed to reduce the bonus to workmen. |
| Protecting public policy | <p>Connors Bros. Vs Connors.</p> |



ILLEGAL ASSOCIATION

Section 464 of the Companies Act 2013, no company, association or partnership consisting of **more than 100 persons**, can be formed for the purpose of carrying on any business for gain, unless it is registered as a company under the Companies Act, or is formed in pursuance of some other Indian Law, or is a Joint Hindu Family carrying on business for gain.

As per Rule 10 of Companies {Miscellaneous} Rules, 2014, Current Maximum Limit of Illegal Association is 50.

Law does not recognize an illegal association. It-

- ❖ Cannot enter in to any contract.
- ❖ Cannot sue any member, or outsider, not even if the company is subsequently registered.
- ❖ Cannot be sued by a member, or an outsider for, it cannot contract any debts;
- ❖ Cannot be wound up by order of the Court.

(Babu Lal Vs. Laxmi Bharat Trading Co.)

Exceptions:

Nothing of above shall apply to

1. Hindu Undivided Family (HUF)
2. Any Association or Partnership, governed by Special Acts.

Penalty:

Punishable with Fine which may extend to Rs. 1 Lac & shall also be liable for all the liabilities.



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INCORPORATION OF COMPANY AND INCIDENTAL MATTERS

Regulatory Framework for Incorporation

| | |
|---------------------|--|
| Applicable Chapter | Chapter II of the Companies Act, 2013 |
| Applicable Sections | Section No. 3 to Section No. 22 |
| Applicable Rules | Companies (Incorporation) Rules, 2014 (as amended) |

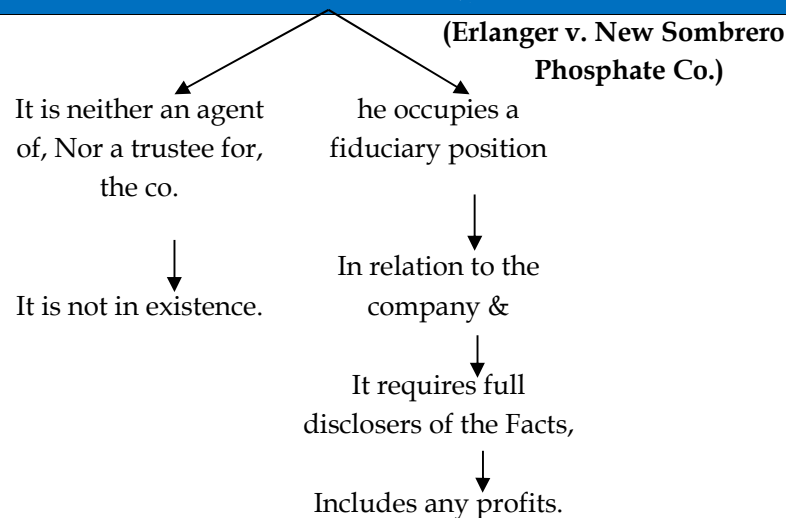
Section Numbers & Particulars

| | |
|--------------|--|
| Section 3 | Formation of company |
| Section 4 | Memorandum of Association |
| Section 5 | Articles of Association |
| Section 6 | Act to over-ride Memorandum, Articles etc. |
| Section 7 | Incorporation of Companies |
| Section 8 | Formation of Companies with Charitable Objects, etc. |
| Section 9 | Effect of Registration |
| Section 10 | Effect of Memorandum and Articles |
| Section 10 A | Certificate of Commencement of Business |
| Section 12 | Registered office of the Company |
| Section 13 | Alteration of Memorandum of Association |
| Section 14 | Alteration of Articles of Association |
| Section 15 | Alteration of Memorandum and Articles to be noted in every copy |
| Section 16 | Rectification of the name of company |
| Section 17 | Copies of Memorandum and Articles to be given to members etc. |
| Section 18 | Conversion of Companies already registered |
| Section 19 | Subsidiary company not to hold any shares in its holding company |
| Section 20 | Service of Document |
| Section 21 | Authentication of documents, proceedings and contracts |
| Section 22 | Execution of Bill of Exchange etc. |

Promotion & Formation of Company

| | |
|---|---|
| Definition of Promoter [sec 2 (69)] | <ul style="list-style-type: none"> ❖ Named as such in a prospectus or is defined as promoter by the company in the annual return ❖ Has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or ❖ In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act. Not in professional capacity. |
| Functions of a Promoters | <ul style="list-style-type: none"> ❖ It performs various function like conceiving the scheme for the formation of a company; ❖ Getting together the subscriber to the memorandum, ❖ Getting the Memorandum & Articles prepared, ❖ Executed and registered. ❖ Finding the bankers, Broker & legal advisers, |
| Promoters' contract-ratification Thereof | <ul style="list-style-type: none"> ❖ Act provides that the other party can also enforce the contract if the company has adopted it after incorporation and the contract is within the terms of incorporation. ❖ As long as the company does not ratify, the promoter is personally liable to third parties (Kelner v. Baxter LR) |

LEGAL POSITION OF A PROMOTER



DUTIES OF A PROMOTER

- ❖ To Disclose secret profit (sec. 102)
- ❖ To Disclose all Material Facts
- ❖ To compensate for losses of company
- ❖ Not to use position unfairly
- ❖ To act diligently

Must Read Case - *Erlanger Vs. New Sombrero Phosphate Co.*

REMEDIES AVAILABLE TO THE COMPANY AGAINST THE PROMOTER

If the promoter fails to disclose any secret profits made by him:

- ❖ Cancel the contract or
- ❖ Retain the property & pay not more than what the promoter actually paid for purchase of it.
- ❖ Claim damages for violation of duty of disclosure.

REMUNERATION TO PROMOTERS

No right to remuneration if there is no express contract. If there is an express contract, the remuneration in one of the following ways:

- ❖ Sell his own property at a profit provided he makes a disclosure of it.
- ❖ Option to buy shares at a lesser price.
- ❖ Commission on the shares sold.
- ❖ Fixed sum.

(In Re. National Motor Mali Coach Co.)

FORMATION OF COMPANY [SEC 3]

In terms of Section 3 (1), A company may be formed for any lawful purpose by –

- ❖ 7 or more persons (public company)
- ❖ 2 or more persons (a private company)
- ❖ 1 person (One Person Company)

by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

Subscriber to MOA of OPC to appoint a nominee in case of death or incapability to contract
To become member of OPC

Reduction in Number of Members (Sec 3A as amended by Companies Amendment Act)

All the members shall be severally liable in case the company carries on business for more than 6 months while the number of members is reduced below 7 or 2, in case of a public company or a private company, respectively.

INCORPORATION OF OPC [Sec.2 (62)]

Rule 3 of the Companies (Incorporation) Amendment Rules, 2015, the following points must be complied with while incorporating a OPC:

1. OPC have a max. paid up capital of **Rs. 50 Lakhs** or turnover of **Rs. 2 Crores**
2. Required natural person who is an **Indian Citizen** and **resident in India** for becoming nominee & member.
(Resident in India - Person stayed in India for a period of not less than **182 days** in previous FY.)
3. A **minor person shall not** be a member or nominee in OPC.
4. Such company shall **not be converted into a Section 8 Company**.
5. One person can be member or nominee **at one time**
6. Such company **cannot carry** non-banking investment/financial investment activities including investment in securities of any-body corporate.

7. No company can convert itself voluntarily to any other kind of company unless 2 years expired from incorporation except when threshold limit is breached.

Rule 4

The subscriber to the memorandum of OPC shall nominate a person, after obtaining prior written consent, become the member of that OPC

MEMORANDUM OF ASSOCIATION
(Sec 4)

The Memorandum of Association is a document which sets out the constitution of the company and as such is the foundation on which the structure of the company stands. It defines the scope of the company's activities and its relations with the outside world.

According to [Section 2(56)] of the Companies Act, "Memorandum" means memorandum of association of a company as originally framed or altered from time to time in pursuance of any previous companies law or this Act. (*Ashbury Railway Carriage & Iron Co. Ltd. Vs. Riche*)

FORM OF MEMORANDUM OF ASSOCIATION

- ❖ Section 4 of the Companies Act provides that the memorandum of association should be in any one of the Forms (or in any form as near to them as possible) specified in:


| Type of Company | Form of MOA as per Schedule I |
|---|-------------------------------|
| Company limited by shares | Table A |
| Company limited by guarantee and not having share capital | Table B |
| Company limited by guarantee and having share capital | Table C |
| Unlimited Company not having share capital | Table D |
| Unlimited company having share capital | Table E |

CONTENTS OF MEMORANDUM

As per Section 4(1), the memorandum of a limited company must contain the following clauses:

- | | |
|--------------------|-----------------------|
| ❖ Name clause | ❖ Liability clause |
| ❖ Situation clause | ❖ Capital clause |
| ❖ Objects clause | ❖ Subscription clause |

| | |
|--------------------|--|
| Name clause | A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. ❖ In case of company with limited liability the name will be followed by the word "Limited", |
|--------------------|--|

| | |
|--|--|
| | <ul style="list-style-type: none"> ❖ In the case of a private company the last words will be “private Limited”. ❖ In case of One man company, the words “One Person Company” shall be mentioned in brackets below the name of such company. ❖ Clause a) of Section 4(1) shall not be applicable to Section 8 Company and Government Company. <p>However u/s 8, the Central Government may, by license direct that the association maybe registered as a company with limited liability without adding the words “limited” or “private limited”.</p> <p>[Atlas Cycles (Haryana) Ltd. Vs. Atlas Products Pvt. Ltd] (Ewing Vs. Buttercup Margarine Co. Ltd.)</p> |
| <p>Registered office clause</p>  | <ul style="list-style-type: none"> ❖ Here, the state in which the registered office of the company will be situated will be given and not the actual address as it determines the residence of company for tax and communication purpose. ❖ A notice of the situation of the registered office shall be given to the Registrar within 15 days after the date of incorporation of the company. ❖ The company must also furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation in such manner as may be prescribed. ❖ It fixes the jurisdiction of the Registrar of companies as well as that of the courts. ❖ Notices, letters, and other documents have to be served / issued to the company at its registered office only. |
| <p>Objects clause (section 4(1)(c))</p> | <p>This is the most important clause of the memorandum. The powers of the company are limited to -</p> <ul style="list-style-type: none"> ❖ Powers expressly given by the memorandum (i.e. express powers) or conferred by statue, ❖ Powers reasonably incidental or necessary to the company’s main purpose (i.e. implied powers) <p>There are, however, 2 restrictions on the selection of ‘objects’ for a company.</p> <p>(i). The objects should not include anything which is illegal or contrary to law or public policy, and</p> <p>(ii). The objects should not contemplate doing anything, which is prohibited by the companies Act.</p> <p>“The narrower the objects appended in the memorandum, the lesser are the subscriber’s risk; the wider these objects, the greater is the security of those who transact business with company”.</p> |
| <p>Liability clause</p> | <ul style="list-style-type: none"> ❖ This clause indicates the liability of the members. ❖ If it is a company limited by shares or guarantee, it shall be stated that the liability of the members is limited. <p>In the case of unlimited companies this clause is absent from its memorandum.</p> |

| | |
|----------------------------|---|
| Capital clause | <ul style="list-style-type: none"> ❖ This clause must state the amount of the capital with which the company is registered, unless the company is an unlimited company. ❖ The capital is variously described as “nominal”, “authorised” or “registered”. ❖ The amount of nominal capital is determined having regard to the present as well as future requirements of the company with reference to its objects. |
| Subscription clause | <ul style="list-style-type: none"> ❖ The memorandum concludes with the subscription clause in which there is a declaration of association. ❖ After the declaration follow the names, address, occupations of the subscribers, and the number of shares each subscriber has taken and his signatures attested by a witness. ❖ The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signatures |

ARTICLES OF ASSOCIATION

[Sec. 5]

| | | |
|---|--|--------------------|
| Meaning: | The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. | |
| Significance of Articles: | <ul style="list-style-type: none"> ❖ Articles provide the manner in which the objects are to be carried out. ❖ Business document regulates the domestic management of a company ❖ Bye-laws of the company | |
| Contents and model of articles of association: | <ul style="list-style-type: none"> ❖ Contain the regulations for management of the company. ❖ The articles may contain provisions for entrenchment (to protect something) and entrenchment shall only be made either <ul style="list-style-type: none"> ✓ on formation of a company or ✓ by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. ✓ Forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable ✓ May adopt all or any of the regulations contained in the model articles | |
| Form of Articles of Association: | Type of company | Form of AOA |
| | Public company limited by shares | Table F |
| | Company limited by guarantee and having share capital. | Table G |
| | Company limited by guarantee and not having share capital. | Table H |
| | Company with unlimited liability and having share capital | Table I |
| | Company with unlimited liability and not having share capital | Table J |

ACT TO OVERRIDE MEMORANDUM, ARTICLES, ETC.

[SECTION 6]

The provisions of this Act shall have over riding effect on provisions contained in memorandum or articles or in an agreement or in resolution passed by the company in the general meeting or by its board of directors, whether they are registered, executed or passed before or after the commencement of this Act.

Any provision contained in any of the above mentioned document, shall be void, to the extent to which it is inconsistent to the provisions of this Act

PROCEDURE TO INCORPORATE A COMPANY

[SECTION 7]

STEP - I

Apply for Name Approval

A. Login on MCA website

Applicant have to login into their account on MCA Website.

(Pro-existing users can use earlier account or new users have to create a new account.)

After Login user have to click on the icon "RUN" in MCA Service. An online form shall be open Applicants have to fill the information online.

(This form can't be download)

Note* Since 26th January, 2018 e-form INC-1 has been omitted from the Companies Act, 2013.

B. Details required to be mentioned in online form:

- i. Entity type (i.e. Part 1, OPC, Section 8 etc.) (below table taken from MCA link:<http://www.mca.gov.in/MinistryV2/runServicerFAQ.html>)
- ii. CIN (Corporate Identification Number and it has to be entered only when an existing company wishes to change its name and is using RUN to reserve a new name)
- iii. Proposed name (auto Check Facility)
- iv. Comment (Mention Objects of the proposed Company and any other relevant information Like Trade Mark etc.)
- v. Choose File (Any attachment)

C. Choose File:

This option is available to upload the PDF documents. If applicant want to attach any file, can be upload at this option.

D. Submission of Form on MCA website:

After completion of above steps user shall submit the Form with MCA website.

E. Payment of Fees:

There is no option of pay later challan in RUN. Applicant has to pay fees immediately after submission of form. After payment challan shall be generated.

I. **Validity of Reserved Name:**

- i. 20 days from the date of approval or ***such other period as may be prescribed* (in case name is being reserved for a new company) or
- ii. 60 days from the date of approval (in case of change of name of an existing company)

****Amended in Companies Amendment Act, 2017**

STEP - II

Preparation of Documents for Incorporation of Company

After approval of name or for Incorporation of Company applicant have to prepare the following below mentioned Documents;

INC - 9 Affidavit** / ****Declaration** by first subscriber(S) and director(S) (on duly authorized Stamp Papers).

****Amended in Companies Amendment Act, 2017**

DIR - 2 Declaration from first Directors along with Copy of Proof of Identity and residential address.

NOC from the owner of the property.

Proof of Office address (Conveyance/ Lease deed/ Rent Agreement etc. along with rent receipts);

Copy of the utility bills (not older than two months)

In case of subscribers / Director does not have a DIN, it is mandatory to attach: Proof of identity and residential address of the subscribers

All the Subscribers should have Digital Signature.

STEP - III

Fill the Information in Form

Once all the above mentioned documents / information are available. Applicant has to fill the information in the e-form **"Spice" INC-32**.

Features of SPICe (INC-32) form:

- Maximum details of subscribers are **SEVEN (7)**. In case of more subscribers, physically signed MOA & AOA shall be attaching in the Form.
- Maximum details of directors are **TWENTY (20)**.
- Maximum **THREE (3)** directors are allowed for filing application of allotment of DIN while incorporation a Company.
- Person can apply the Name also in this form.
- By affixation of DSC of the subscriber on the **INC-33 (e-moa)** date of signing will be appear automatically by the form.
- In case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees **Ten Lakhs** or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC - 32 (SPICe) shall not be applicable

Single Window Form:

Earlier if a Person wants to incorporate Company then it has to apply for the DIN, Approval of the Name Availability, separate form for first Director, Registered office address, PAN, TAN etc. But this form is a single window for Incorporation of Company.

This form can be used for the following purposes:

- Application of DIN (upto 3 Directors)
- No need to file separate form for first Director (**DIR-12**)
- No need to file separate form for address of registered office (**INC-22**)
- No need to file separate form for PAN & TAN

STEP - IV
Preparation of MOA & AOA

After proper filing of SPICE form applicant has to download the e-form INC-33 (MOA) and INC-34 (AOA) form the MCA site. After downloading of form fill all the information in the forms as per requirement of Table A to J of Schedule I.

After completely filing of the form affix DSC of all the subscribers and professional and subscriber sheet of the MOA & AOA.

STEP - VI
Submission of INC-32,33,34 on MCA

Once all the 3 forms ready with the applicant, upload all three documents as Linked form on MCA website and make the payment of the same.

Step - VII
Certificate of Incorporation

Incorporation certificate shall be generating with CIN, PAN & TAN.

CORPORATE IDENTITY NUMBER (CIN)

CIN is a **21 digit** number assigned to every company incorporated on or after **November 1, 2000**. The CIN allotted to a company indicates listing status, economic activity (industry), State, year of incorporation, ownership and sequential number assigned by ROC (Registration number).

| | |
|------------------|-----------------------------------|
| 1st Digit | Listing Status |
| Next 5 Digits | Economic Activity (industry) |
| Next 2 Digits | State |
| Next 4 Digits | Year of Incorporation |
| Next 3 Digits | Ownership |
| Last 6 Digits | Sequential number assigned by ROC |



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Central Registration Centre

Certificate of Incorporation

[Pursuant to sub-section (2) of section 7 and sub-section (1) of section 8 of the Companies Act, 2013 (18 of 2013) and rule 18 of the Companies (Incorporation) Rules, 2014]

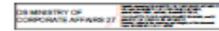
I hereby certify that BANG BUILDCON AND FIRETECH SERVICES PRIVATE LIMITED is incorporated on this Fifth day of September Two thousand nineteen under the Companies Act, 2013 (18 of 2013) and that the company is limited by shares.

The Corporate Identity Number of the company is U45309MH2019PTC330200.

The Permanent Account Number (PAN) of the company is AAICB6276E *

The Tax Deduction and Collection Account Number (TAN) of the company is NGPB04623D *

Given under my hand at Manesar this Fifth day of September Two thousand nineteen .



Digital Signature Certificate
ALOK TANDON
Deputy Registrar Of Companies
For and on behalf of the Jurisdictional Registrar of Companies
Registrar of Companies
Central Registration Centre

Disclaimer: This certificate only evidences incorporation of the company on the basis of documents and declarations of the applicant(s). This certificate is neither a license nor permission to conduct business or solicit deposits or funds from public. Permission of sector regulator is necessary wherever required. Registration status and other details of the company can be verified on www.mca.gov.in

Mailing Address as per record available in Registrar of Companies office:

BANG BUILDCON AND FIRETECH SERVICES PRIVATE LIMITED
CARE OF MR. JAIKISHAN GOPIKISHAN BANG, WARD NO 6, HOUSE
NO 786, NAGPUR, RAIPUR(DISTRICT), Nagpur, Maharashtra, India,
441110



* as issued by the Income Tax Department

COMMENCEMENT OF BUSINESS (Section 10A)

A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless –

- a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and
- The company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.]

The declaration under section 10A by a director shall be in **Form No, INC-20A** and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a company Secretary or a chartered Accountant or a cost Accountant. in practice: Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.

(Rule 23A) (w.e.f. 18th December 2018)

ALTERATION OF MEMORANDUM OF ASSOCIATION

Section 13(6) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).

Further, any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. [Section 13 (11)]

ALTERATION IN NAME CLAUSE

[SEC.13 (2)]

| | |
|---|---|
| Where a company voluntarily changes its name | <ul style="list-style-type: none"> ❖ Special resolution ❖ Apply for availability in RUN ❖ Filing INC-24 for approval of ROC |
| Name change requirement under clause 32 of listing Agreement | <ul style="list-style-type: none"> ❖ Opinion of company ❖ Approval of ROC ❖ Ordinary resolution |
| Rectification of name-on a direction by central government | <ul style="list-style-type: none"> ❖ CG is empowered to direct the company to rectify its name. ❖ Within 12 month of registration of the company or registration by new name. ❖ Rectification by company within 3 month of date of direction ❖ Pass ordinary resolution |
| Registration of change of name | <ul style="list-style-type: none"> ❖ The Registrar shall - <ul style="list-style-type: none"> ✓ enter the new name in the register, ✓ issue a fresh certificate of incorporation in form no.INC 25 ✓ make the necessary alteration in the memorandum of the company |

| | |
|---------------------------------|--|
| Effect of change of name | <ul style="list-style-type: none"> ❖ The change of name shall not affect any rights or obligations of the company. ❖ Legal proceedings shall be continued by its new name. |
|---------------------------------|--|

(Asiatic government security life insurance Co Ltd Vs. The New Asiatic Insurance Co Ltd.)

ALTERATION IN REGISTERED OFFICE CLAUSE
[SEC 13(4) & (7)]

| | |
|--|--|
| Shifting of office within same city, town, village | <ul style="list-style-type: none"> ❖ Pass Board Resolution ❖ Notification to registrar require in form no. INC 22. ❖ Within 30 days of the change of address. |
| Shifting of registered office from one city to another city within same state and ROC | <ul style="list-style-type: none"> ❖ Pass Board Resolution ❖ Call General Meeting ❖ Pass Special Resolution in from MGT 14. ❖ Notification to registrar require in form no. INC 22. ❖ Within 30 days of the change of address |
| Shifting of registrar office from one city to another within same state but different ROC | <ul style="list-style-type: none"> ❖ Pass Board Resolution ❖ Call General Meeting ❖ Pass Special resolution in from MGT 14. ❖ Permission of regional director ❖ Company shall make an application in the form no. INC 23 to the RD ❖ The confirmation shall be communicated to the company within 4 weeks. ❖ File INC-22 with the Registrar within 30 days. ❖ The Registrar shall register the same and certify the registration under his hand within 1 month from the date of filing of such document. |
| Inter-state shifting of the registered office | <ul style="list-style-type: none"> ❖ Pass Board Resolution ❖ Call General Meeting ❖ Pass Special Resolution in form MGT 14. ❖ Before filing INC-23, advertise in form INC-26 and send individual notices to shareholders and debenture holders. ❖ Application for seeking approval of Central Government shall be made by company in INC-23 ❖ Central Government dispose off the application within 60 days. ❖ If C.G. approves then Notify to registrar in form no. INC 22. |

ALTERATION IN OBJECT CLAUSE [SEC 13(1) & (9)]

- ❖ To carry business Economically
- ❖ To attain main purpose by New or improved means
- ❖ To enlarge local area of operation
- ❖ To carry on business which can be combined with other business
- ❖ Restrict or abandon objects in MOA
- ❖ To sell or dispose any part of undertaking
- ❖ To Amalgamate with other company

Procedure

- ❖ A special resolution must be passed and form MGT 14 must be filed by the company **within 1 month from date of resolution (+) altered copy of MOA**
- ❖ Registrar shall register and certify the registration within 1 month
- ❖ If documents are not filed within 1 month, then the alteration lapses.

ALTERATION IN LIABILITY CLAUSE [SEC.13(1)]

Change of liability clause of memorandum:

- ❖ Special resolution + file with the Registrar of Companies
- ❖ It does not affect any debts, liabilities etc. incurred before alteration.

Unlimited company to provide for reserve share capital on conversion into limited company

- ❖ Increase the nominal amount of its share capital
- ❖ Provide a specified portion which shall be called only at the time of winding up

ALTERATION IN CAPITAL CLAUSE [SEC.61]

Authorized by its articles + resolution in general meeting

- ❖ **Increase** its authorized capital
- ❖ **Consolidate** existing shares:
- ❖ **Convert** fully paid-up shares into stock
- ❖ **Sub-divide** its shares
- ❖ **Cancel** shares which have not been taken.

ALTERATION OF ARTICLES

[SEC.14]

- ❖ Special resolution – MGT 14
- ❖ Alteration to include conversion of private company into a public company vice versa
- ❖ Where a private company removes restrictions, from the date of such alteration cease to be a Private company
- ❖ Conversion public company to private requires approval of the ~~Tribunal~~ Central Govt. *(Inserted by Companies Amendment Ordinance, 2018 w.e.f 2nd November 2018)*
- ❖ Shall file with the Registrar copy of the altered articles **within 15 days**
- ❖ Altered articles are valid as if it were originally contained in the articles.
- ❖ Alteration made in articles of a company shall be noted in every copy of the articles
- ❖ A company cannot deprive itself of these powers.

Limitations to alteration:

- ❖ Only by passing a special resolution.
- ❖ Must not exceed the powers given by MOA
- ❖ It must not be against any provisions of the Companies Act.
- ❖ It must not be against to any provisions of any other law
- ❖ The alteration shall not be illegal or opposed to public interest.
- ❖ It must be for the benefit of the company as a whole.
- ❖ The alteration must not be against to an order of the court.
- ❖ The articles should not be in fraud on minority
- ❖ For converting a Public Co. into a Private Co., the approval of the C.G. is necessary.

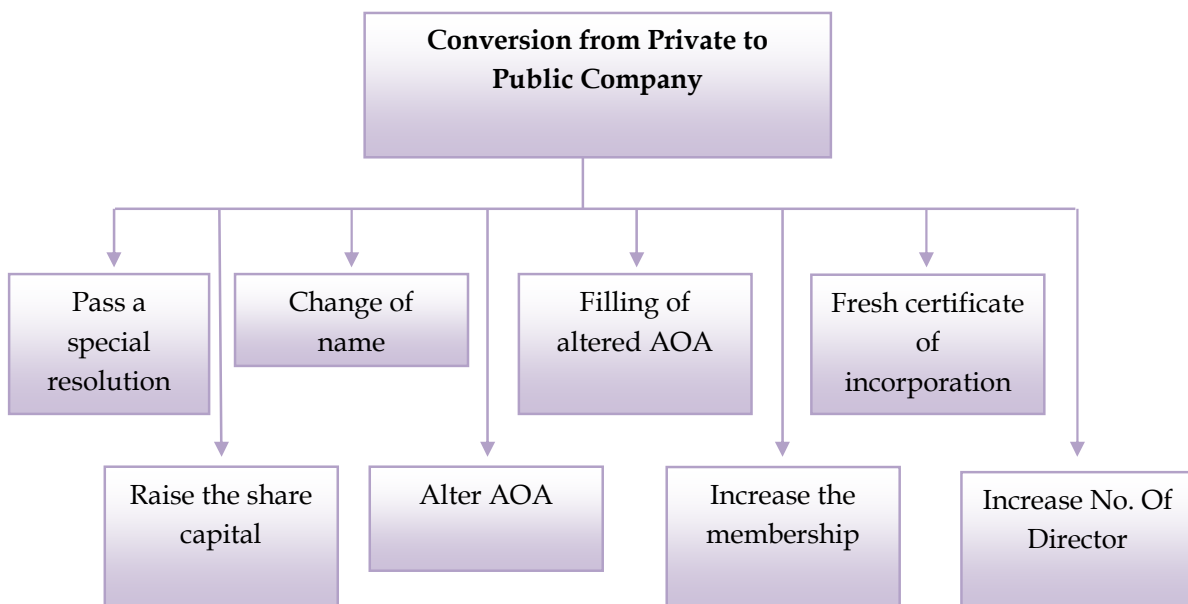
(Re. South Durham Brewery Company)

**CONVERSION OF COMPANIES ALREADY REGISTERED
[SECTION 18]**

CONVERSION OF PRIVATE COMPANY INTO PUBLIC COMPANY

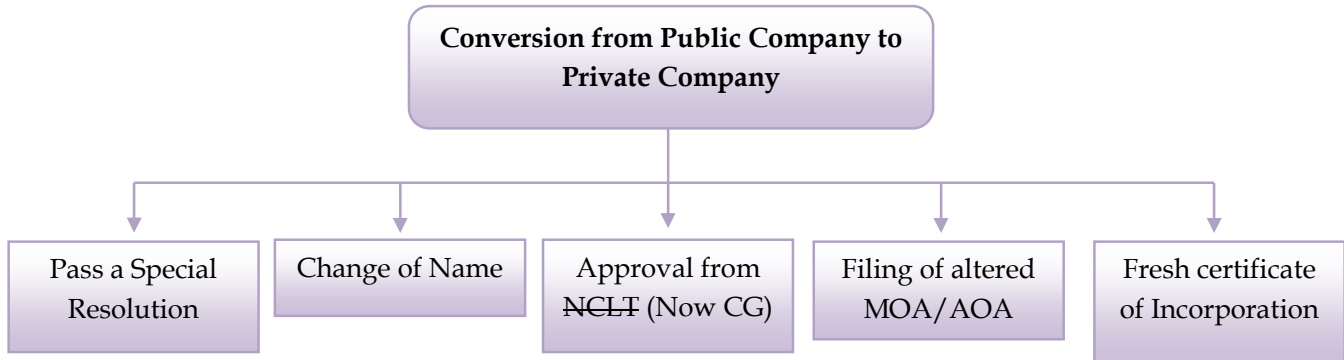
- ❖ **By choice or violation:** The conversion of a Private Company into Public Company by choice will require the following:
 - ✓ Alteration of it Articles of Association by special resolution in such a manner that they no longer include the restrictive provision of Sec 2(68).
 - ✓ Alteration of name of the company by special resolution by deleting the word "private".
 - ✓ Minimum Directors-3
 - ✓ At least Members-7

- ❖ **Conversion by default:** If a private company fails to comply with any of the four restrictive provisions required by Section 2(68) to be incorporated in its articles, the company ceases to be a private company and ceases to have the privileges and exemptions conferred on it by the Act as a private company.



CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY

- ❖ Passing of a resolution authorizing the conversion and altering the articles so as to include the matters specified in Sec 2(68).
- ❖ Changing the name of the company by special resolution.
- ❖ Approval of ~~NCLT~~ Central Government within 3 months

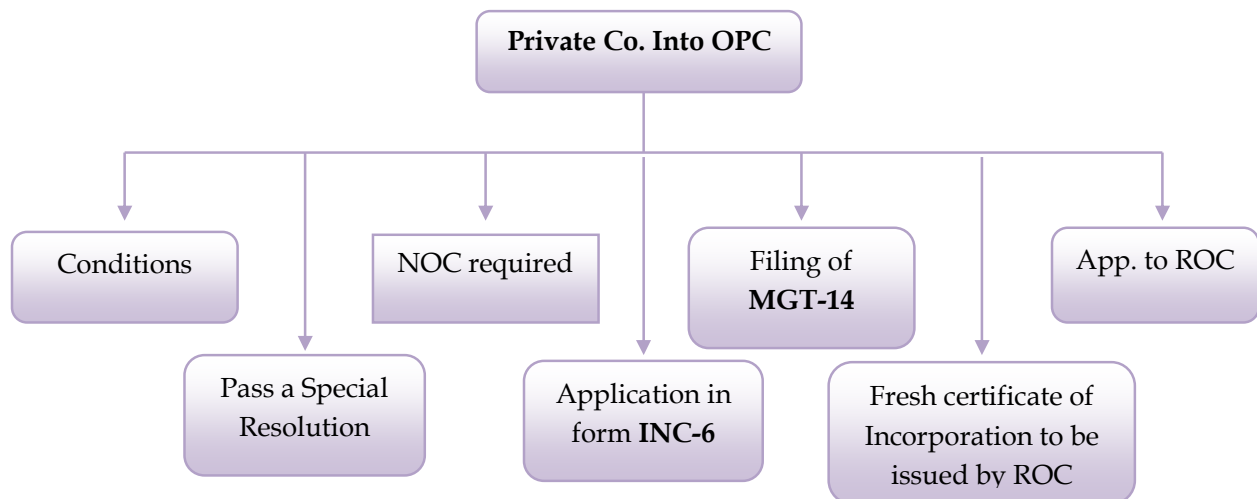


CONVERSION OF OPC INTO PUBLIC COMPANY OR PRIVATE COMPANY

- ❖ Company having paid up share capital 50 lakhs Or average annual turnover during relevant period is 2 crore **or more** shall cease to be entitled to continue as OPC
- ❖ Requirements of conversion
 - In private minimum 2 members & 2 director
 - In public minimum 7 members & 3 director
- ❖ Alter MOA & AOA
- ❖ Give notice to ROC in Form **INC.5** within 60 days

CONVERSION OF PRIVATE COMPANY INTO OPC

- ❖ Company having paid up share capital 50 lakhs Or average annual turnover during relevant period is 2 crore **or less**
- ❖ Shall obtain 'No objection' in writing from Members & Creditors
- ❖ Special resolution should be passed
- ❖ Form **MGT.14** should be filled to ROC
- ❖ Shall file an application in Form **INC.6**





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PROSPECTUS AND ALLOTMENT OF SECURITIES

Regulatory Framework for Prospectus & Allotment of Securities

| | |
|---------------------|--|
| Applicable Chapter | Chapter III of the Companies Act, 2013 |
| Applicable Sections | Section No. 23 to Section No. 42 |
| Applicable Rules | Companies (Prospectus & Allotment of Securities), 2014 |

Section Numbers & Particulars

| | |
|------------|--|
| Section 23 | Public offer & Private Placement |
| Section 24 | Power of SEBI to Regulate issue and transfer of securities etc. |
| Section 25 | Document containing offer of securities for sale to be deemed prospectus |
| Section 26 | Matters to be stated in prospectus |
| Section 27 | Variation in term of contracts or objects in prospectus |
| Section 28 | Offer of sale of share by certain members of the company |
| Section 29 | Public offer of securities to be in dematerialized form |
| Section 30 | Advertisement of Prospectus |
| Section 31 | Shelf Prospectus |
| Section 32 | Red herring prospectus |
| Section 33 | Issue of application form for securities |
| Section 34 | Criminal liability for mis-statement in prospectus |
| Section 35 | Civil liability for mis-statement in prospectus |
| Section 36 | Punishment for fraudulently inducing person to invest money |
| Section 37 | Action by affected person |
| Section 38 | Punishment for personation for acquisition etc. of securities |
| Section 39 | Allotment of securities by company |

Section 40

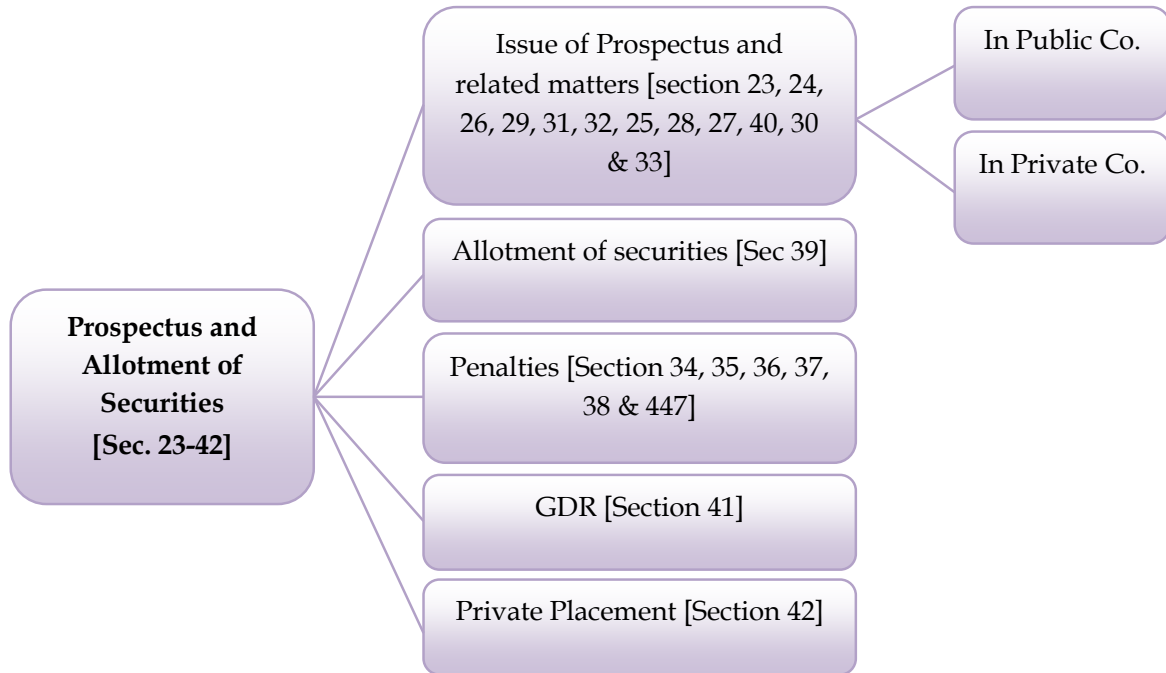
Securities to be dealt with in Stock Exchange

Section 41

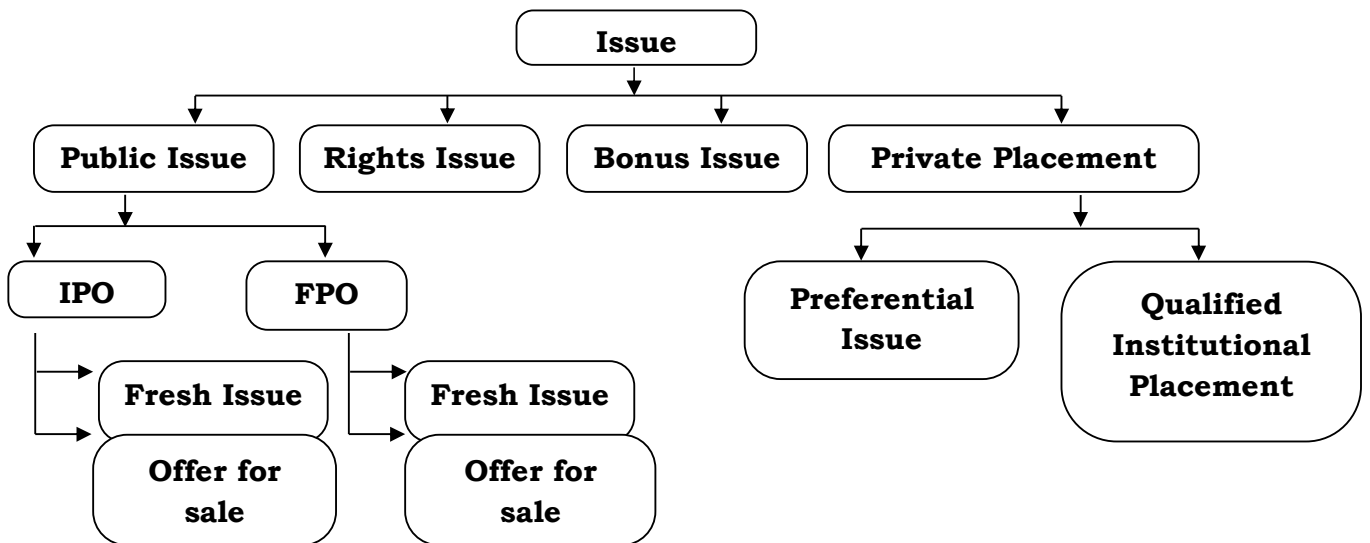
Global Depository Receipt

Section 42

Offer or Invitation for subscription of securities on Private Placement



PUBLIC OFFER AND PRIVATE PLACEMENT



MEANING AND DEFINITION OF PROSPECTUS SEC. 2 (70)

Any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any

- ❖ any notice,
- ❖ circular,
- ❖ advertisement or
- ❖ other document



Inviting offers from the public for the subscription or purchase of any securities of a body corporate.

WHEN PROSPECTUS NEED NOT BE ISSUED

- ❖ When shares or debentures are **offered to existing holders** of shares or debentures.
- ❖ When the issue relates to shares or debentures **uniform in all respects** with shares or debentures previously issued and dealt in or quoted in a recognized stock exchange.
- ❖ Where a person is bonafide invited to enter into an **underwriting agreement**.
- ❖ Where shares are **not offered to the public**

SOME IMPORTANT JUDICIAL PRONOUNCEMENT ABOUT AN INVITATION TO BE TERMED AS AN INVITATION TO PUBLIC

- Advertisement in newspaper to invite application for purchase of remaining shares of a company is prospectus (*Pramatha Nath Sanyal v. Kali Kumar Dutt*, A.I.R. 1925 Cal. 714). In this case directors were penalized for not complying with the requirements of filing a copy thereof with Registrar of Companies.
- A single private communication does not satisfy the term “issue” [*Nash v. Lynde (1929) A.C. 158*]. In this case, several copies of a document marked “strictly confidential” and containing particulars of a proposed issue of shares, were sent accompanied with application form by the managing director who, in turn, gave it to a client who passed it on to a relation. Thus, the document was passed on privately through a small circle of friends of the directors. The House of Lords held that there had been no issue to the public and any action for compensation by the allottee for loss sustained by reason of an omission in the document, failed.
- In *Rattan Singh v. Managing Director, Moga Transport Co. Ltd.* (1959) 29 Com Cases 165 it was held that offer to buy one’s kith and kin cannot be considered to be an invitation to public. Offer to buy shares made to an individual as such is not within the definition of the word public as used in Section 67.
- In the case of *Govt. Stock and Other Securities Investment Co. Ltd. v. Christopher*, (1956) I.W.L.R. 237 it was held that a circular issued by a company to the shareholders of other companies to acquire their shares held in those companies and issue its own shares in exchange of those shares did not amount to be a prospectus, as there is no public issue. It was pointed out that the circular did not involve an offer for the purchase of any

shares. The shares in question were unissued shares of new company, so that they could not be the subject of an offer for purchase. Thus, the circular was not a prospectus, but only the communication of an offer to exchange shares in the new company for shares in the other existing companies.

- In *Re. South of England Natural Gas and Petroleum Co. Ltd.*, (1911) 1 Ch. 573 it was held that "Public" is a general word, and includes any section of the public. If a document inviting persons to buy shares is issued, for example, to all advocates, or to all doctors, or to all foreigners living in India, or to all Indian citizens, or to all shareholders in a particular company, it will still be deemed to be issued to the public within the meaning of the Act. In the aforesaid case, 3,000 copies of a document in the form of a prospectus were sent out and distributed among the members of certain gas companies only. It was held that the document so sent and distributed was a prospectus issued to the public.

DEEMED PROSPECTUS (Sec 25)

If a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus.

In short, any document issued on behalf of the company for the purpose to sale securities to the public shall be treated as deemed prospectus.

MATTER TO BE STATED IN PROSPECTUS (Sec 26)

According to Section 26 (1), every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and ***state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.*

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.]

****Amended in Companies Amendment Act, 2017**

VARIATION IN TERMS OF PROSPECTUS (Sec 27)

Section 27 of the Companies Act, 2013: A company shall vary the terms of a contract or objects as referred to in the prospectus for which the prospectus was issued, subject to the approval via Special Resolution passed by the shareholders.

In this regard, notice shall be sent to shareholders and shall also be published in English and in vernacular language.

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

- Notice of the proposed special resolution
- Publication in the Newspaper
- Publication on the website

EXIT OPTION TO THE DISSENTING SHAREHOLDERS: The dissenting shareholders (who have not agreed to the proposal to vary the terms of contracts), shall be given an exit offer by promoters or controlling shareholders at exit price as may be specified by the SEBI.

**Offer of sale of shares by certain members of company
(Section 28)**

Sections 28 of the Act deals with the Offer for sale of securities by certain members of company.

Where certain members of a company propose, in consultation with the Board to offer, in accordance with the provisions of any law for the time being in force, whole or part of their holding of shares to the public, they may do so in accordance with such procedure as may be prescribed.

**Public offer of securities to be in dematerialized form
(Section 29)**

Section 29 of the Act provides that every company making public offer of any security, shall issue the securities only in dematerialized form by complying with the provisions of Depositories Act, 1996 and the regulations made there under.

According to Rule 9 of Companies (Prospectus and Allotment of Securities) Rules, 2014 made under **Chapter III** of the Act, the promoters of every public company making a public offer of any convertible securities may hold such securities only in dematerialized form.

**ADVERTISEMENT OF PROSPECTUS
(Section 30)**

As per Section 30 where an advertisement of any prospectus of a company is published in any manner, the following shall be specified in the advertisement:

- ❖ The contents of its memorandum as regards the objects, the liability of members and the amount of share capital of the company, and
- ❖ The names of the signatories to the memorandum and the number of shares subscribed for by them, and its capital structure

**SHELF PROSPECTUS
(Section 31)**

As per **Section 31** 'Shelf prospectus' means

- ❖ Prospectus which can be issued by any class or classes of companies as prescribed by SEBI
- ❖ For period upto 1 yr from 1st issue

- ❖ An information memorandum is required to be filed by a company filing a shelf prospectus
- ❖ Information memorandum shall be filed in **Form PAS -2** and filed with ROC

Form PAS 2 provide for the following information to be disclosed

- ❖ Change in financial position
- ❖ Change in share capital
- ❖ Change in accounting policies
- ❖ Change in risk factors
- ❖ Economic changes
- ❖ Significant changes
- ❖ Changes in the total turnover
- ❖ Significant legal proceedings

RED-HERRING PROSPECTUS [SEC.32]

"Red Herring Prospectus" means a prospectus which does **not include** complete particulars of the **quantum or price** of the securities included therein.

- ❖ A Company proposing **to make an offer of securities** may **issue a red herring prospectus prior to the issue** of a prospectus.
- ❖ A company proposing to issue a red herring prospectus shall file it with the Registrar at least **3 days** prior to the **opening of the subscription list** and the offer.

ABRIDGED PROSPECTUS (SEC 33)

- ❖ Contains **salient features** of prospectus specified by SEBI
- ❖ It must be attached to application forms
- ❖ Furnishing copy of full prospectus to requested person

Not Required

- ❖ When invitation to enter into underwriting agreement
- ❖ When no securities are offered to public

THE GOLDEN RULE OR GOLDEN LEGACY

It is the duty of those who issue the prospectus to be truthful in all respects. This Golden Rule was enunciated by Kinderseley V.C. and according to this, public is invited to take shares on the faith of the representation contained in the prospectus and therefore everything must be stated with strict accuracy. Nothing should be stated as a fact which is not so and no material fact should be omitted

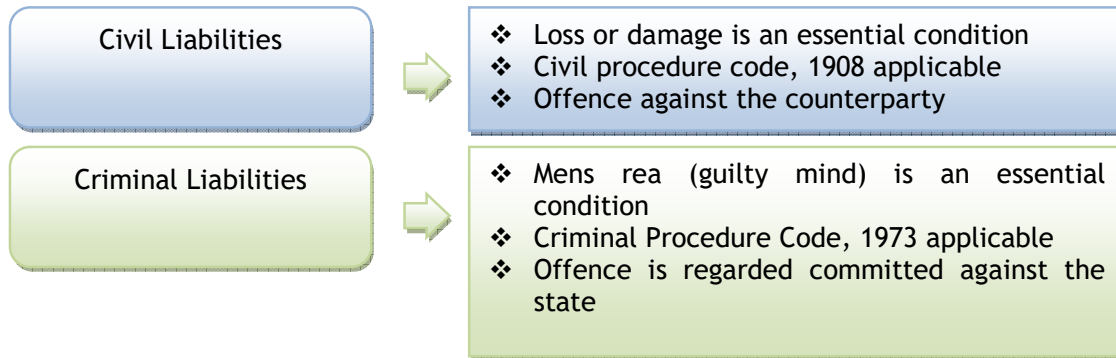
(R.V. kysant (1932) K.B. 442)

MIS-STATEMENTS IN PROSPECTUS

(Section 34)

In common parlance, mis-statement is the act of stating something that is false or not accurate. It could either be by commission or by omission or by both.

Mis- statement of prospectus is a serious offence which attracts **section 34** and / or **section 35**. Liabilities can be classified under two headings:



What is an Untrue Statement?

Section 65 of the Act provides that a statement included or omitted in a prospectus shall be deemed to be untrue, if the statement or its omission is misleading in the form and content in which it is included. Suppression of material facts may cause the prospectus to be fraudulent.

Onus for Proof of Mis-statement

The burden of proof for mis-statement is on the allottee of shares or debentures. He must prove the following:

- ❖ The misrepresentation was of a material fact;
- ❖ He acted on the misrepresentation; and
- ❖ He has suffered damages in consequence.

SECTION 447: PUNISHMENT FOR FRAUD

Any person who is found to be guilty of fraud (involving an amount of **at least Rs.10,00,000 or 1% of turnover** of company, whichever is **lower**), shall be punishable with **imprisonment** for a term which shall **not be less than six months** but which may **extend to ten years** and shall also be liable to **fine** which shall **not be less than the amount involved in the fraud**, but which may **extend to three times the amount involved in the fraud**.

Provided that where fraud in question **involves public interest**, the term of **imprisonment** shall **not be less than 3 years**.

Provided further that where the fraud involves amount **less than Rs.10,00,000 or 1% of turnover of the company**, whichever is **lower**, and does **not involve public interest**, any person guilty of such fraud shall be punishable with **imprisonment** for a term which may **extend to 5 years** or with **fine** which may **extend to Rs.20,00,000** or with **both**.

REMEDIES FOR MISREPRESENTATION IN PROSPECTUS

First remedy against the company is to rescind the contract

- ❖ Can file case against striking off his name from the register of members
- ❖ He may also claim money back
- ❖ But allottee must act within a reasonable time

Second remedy against the company is to sue for damages for deceit

- ❖ Allottee may recover all the damages from the company
- ❖ Allottee cannot both retain the shares and get damages
- ❖ Damages are claimed by the directors, promoters and other authorized person

**PRIVATE PLACEMENT
(SECTION 42)**

- ❖ Any offer of securities or invitation to subscribe securities to a **select group of persons** by a company (other than by way of public offer) through issue of a private placement offer letter.
- ❖ A company may make an offer or invitation of securities through issue of a private placement offer letter in **Form PAS-4**.
- ❖ The offer of securities or invitation to subscribe securities shall be made to such number of persons **not exceeding fifty at a time and not exceeding 200** in aggregate in a **financial year excluding QIB** and employees who is offered securities under.
- ❖ Minimum Investment Size - **Rs. 20,000 FV**
- ❖ Subscription money to be paid either by cheque or demand draft or other banking channel and not by cash;
Also it has to be paid from the bank account of the person whose name appears first in the application.
- ❖ A company making an offer or invitation shall **allot** its securities **within 60 days** from the date of receipt of the **application money** for such securities.
If the company **fails** to allot the securities within 60 days, then it shall **repay** the application money to the subscribers **within 15 days** from the date of completion of 60 days and if the company would not be able to repay the application money within 15 days, then such company shall be liable to repay the subscription money along with **interest @ 12% p.a. after the expiry of 60th day**.
- ❖ File with registrar, a **return of allotment within 15 days** from date of allotment.
- ❖ Monies received as share application money shall be kept in a separate bank account in a **scheduled bank**
- ❖ If a company whether listed or unlisted, makes an offer of securities to more than **prescribed number of persons** whether the payment for the securities or not on any recognised stock exchange in or outside India, the same shall be **deemed to be a public offer**.

As per Companies Amendment Act, 2017, Whole section has been substituted.
Major amendments are:

- The group of persons whom the offer is to be made is to be **identified** by the Board.
- Private Placement offer and application shall not carry **right of renunciation**.
- Requirement to file **Form GNL-2** gets discontinued;
- Companies cannot use funds till **return of allotment** has been filed with **ROC within 15 days** from the date of allotment. Separate penalty provided for default in filing of return of allotment.
- Companies can simultaneously take up **more than one issue** of securities.
- **Penalty Up to amount** raised through private placement, or **INR 2 crore**, whichever is lower



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SHARE CAPITAL AND DEBENTURES

Regulatory Framework for Share Capital & Debentures

| | |
|---------------------|---|
| Applicable Chapter | Chapter IV of the Companies Act, 2013 |
| Applicable Sections | Section No. 43 to Section No. 72 |
| Applicable Rules | Companies (Share capital and Debenture) Rules, 2014 (as amended) |

Section Numbers & Particulars

| | |
|-----------------|---|
| Section 43 | Share Capital - Types |
| Section 45 & 46 | Basic Requirements |
| Section 47 & 48 | Rights and Variation of Rights |
| Section 51 | Calls and Incidental Matters |
| Section 52 & 55 | Issue of Shares at Premium or Discount |
| Section 56 & 59 | Transfer & transmission of Securities & the Allied Provisions |
| Section 60 | Publication of Authorized, subscribed and paid-up capital |
| Section 61 | Alteration of share capital |
| Section 62 | Further issue of share capital - Rights Issue; Preferential Allotment |
| Section 63 | Issue of bonus shares |
| Section 64 | Notice to be given to Registrar for Alteration of Share Capital |
| Section 65 | Unlimited company to provide for Reserve Share Capital on Conversion into Limited Company |
| Section 66 | Reduction of share capital |
| Section 67 | Shares |
| Section 68 | Power of company to purchase its own securities |
| Section 69 | Transfer of certain sums to capital Redemption Reserve account |

| | |
|-------------------|--|
| Section 70 | Prohibition for buy-back in certain circumstances |
| Section 71 | Debenture |
| Section 72 | Power to Nominate |

| Share Capital and Debentures (Section 43-72) | | |
|---|---|-----------------------------------|
| Concepts related to shares (Section 43 -70) | Concepts related to debentures (Section71) | Power to nominate (Section 72) |
| SHARES | | |

Shares and debentures are financial instruments for raising funds for the company. Under the Companies Act, 2013, these are jointly referred to as "Securities".

Generally, shares depict ownership interest in a company with entrepreneurial risks and rewards whereas debentures depict lender's interest in the company with limited risks and returns.

Both these financial instruments are presented on the liabilities side of the issuer company and on the assets side of the investor or lender respectively.

STOCK

- ❖ **Section 61** allows the company to convert its fully paid-up shares into stock, and it is, therefore, important to understand the nature of stock and the advantages which it may have.
- ❖ Burden Of Shares To Carry Decreases When Converted Into Stock
- ❖ After converting shareholder is known as stock holder
- ❖ Stockholder has same rights as to dividend as share holder
- ❖ Only fully paid up shares can be converted into stock
- ❖ No direct issue of stock by company is lawful

DIFFERENCE BETWEEN SHARE AND STOCK

| SHARE | STOCK |
|--|--|
| Shares in physical form bear distinct numbers | Stocks are the consolidated value of share capital |
| Shares may or may not be fully paid-up | Stock is always fully paid-up |
| Shares have a nominal value | stock does not have any nominal value |
| All shares are of equal denomination | Denomination of stocks varies |
| It is not possible to transfer shares into fraction | Stock is divisible into any amount required. Thus, it is possible to transfer even into fractions |

SOURCES OF CAPITAL

| | |
|---|---|
| Raising of capital from promoter | Initially it is mostly raised from promoters/ directors of company and their relatives. |
|---|---|

| | |
|--|---|
| Raising of capital form public | <p>By issuing prospectus</p> <ul style="list-style-type: none"> ❖ Company invites offer from public to subscribe its shares ❖ Investor studies prospectus and applies for shares <p>By offer for sale</p> <ul style="list-style-type: none"> ❖ Company wants to invite public to subscribe its shares but does not want to issue any addition security ❖ The document which is offered is deemed to be prospectus <p>By private placement</p> <ul style="list-style-type: none"> ❖ By broker or underwriter ❖ They act merely as agent and his function is to procure buyers for shares ❖ no need to issue prospectus, as no public offer is made |
| Raising capital from existing shareholder | By issue of right issue to existing shareholders in proportion to their share holding |

CLASSIFICATION OF CAPITAL

| | |
|--|--|
| Authorized share capital [Sec.2(8)] | It is the sum stated in the memorandum as the capital of the company with which it is to be registered being the maximum amount which it is authorized to raise by issuing shares, and upon which it pays the stamp duty. |
| Issued capital [Sec.2(50)] | It is that part of authorized capital which is offered by the company for subscription and includes the shares allotted for consideration other than cash. |
| Subscribed share capital | It is the nominal amount of shares taken up by the public. |
| Called up capital [Sec.2(15)] | It is the total amount called up on the shares issued. Paid-up capital is the total amount paid or credited as paid up on shares issued. It is equal to called up capital less calls in arrears. |

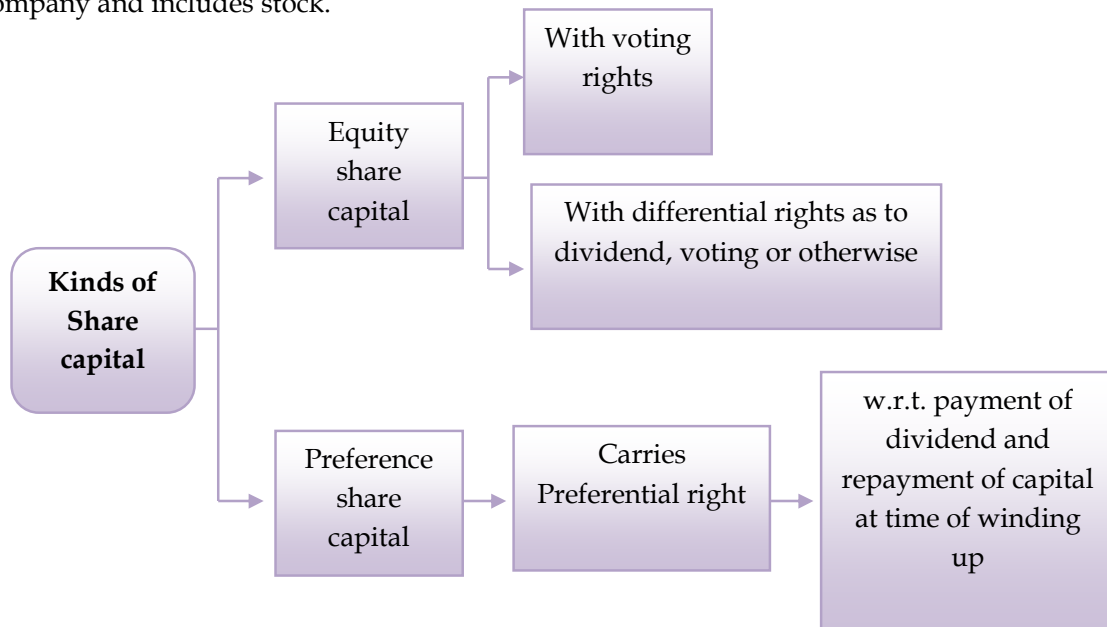
DIFFERENCE

| RESERVE CAPITAL | CAPITAL RESERVE |
|--|--|
| It is that part of uncalled capital which the company cannot demand except company being wound up. | It is created by the accumulation of profits out of capital profit or earning |
| Creation of reserve capital is not mandatory | It is mandatory and compulsory to create capital reserve in case of profit |
| Disclosure of reserve capital is not entertained in the balance sheet of company | Capital reserve is disclosed under the head reserve and surplus on the liabilities side of balance sheet |
| Reserve capital cannot be used to write off capital losses | Capital reserve can be used to write off capital losses or for the issue of bonus shares |

SHARE CAPITAL - TYPES

[SECTION 43]

Section 2(84) of the Companies Act, 2013 defines share as a share in the share capital of a company and includes stock.



ISSUE OF SHARES WITH DIFFERENTIAL VOTING RIGHTS

[SECTION 43(A)(II)]

In Indian listed companies, there are two companies which have issued differential voting rights shares (DVRs):

- ❖ Tata Motors
- ❖ Future retail

Empirically, aforesaid DVRs (no voting rights) are traded at lower valuations vis-à-vis their counterparts with voting rights, other things being equal.

A DVR is like an ordinary equity share, but it provides fewer voting rights.

- ❖ **Articles to authorize** the issue
- ❖ **Ordinary resolution** to be passed and if shares are listed then approval through postal ballot.
- ❖ Not to exceed **26% of total post issue paid up equity capital** including shares with differential voting rights at any point of time
- ❖ The company **not to be penalized** under specified legislature in last 3 years
- ❖ **No default in filing financial statements** in the last 3 years.
- ❖ No default in payment of dividend
- ❖ the company has **not been penalized** by Court or Tribunal
- ❖ Restriction on conversion of equity share capital with voting rights into equity share capital carrying differential voting rights
- ❖ Rights to the holders of the equity shares with differential rights

(In **Chowgule & Co. (P) Ltd.**)

ISSUE OF SECURITIES AT PREMIUM (SEC. 52)

- ❖ Premium means a sum over and above face or par value of a security.
- ❖ It is the amount which is excess of the issue price of shares over its face value and is referred to as Securities Premium.
- ❖ Section 52(1) states that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to aggregate amount of premium on those shares shall be transferred to account known as 'Securities Premium Account'.

Purpose for using Security Premium

- ❖ Issue as fully paid up bonus shares
- ❖ To write off preliminary expenses
- ❖ Write off commission paid/ discount on issue of shares or debentures
- ❖ For premium payable on redemption
- ❖ For purchase of its own shares or other securities under Section 68.

ISSUE OF SECURITIES AT DISCOUNT (SEC. 53)

- ❖ **Sec. 53(1)** - Except as provided in Section 54 (Sweat Equity), a company shall not issue shares at discount.

- ❖ **Sec. 53(2)** - Any shares issue at discounted price shall be void

Sec. 53(2A) – Notwithstanding anything contained in sub-section (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with RBI guidelines or provisions of Banking Regulation Act.

**** Companies Amendment Act, 2017**

- ❖ **Sec. 53(3)** Sub-section (3) is substituted with following –

(3) Where any company fails to comply with the provisions of this section,

- ✓ such **company and every officer who is in default** shall be liable to a **penalty** which may extend to an amount equal to the amount raised through the issue of shares at a discount or INR 5 lakh, whichever is less, and
- ✓ the company shall also be **liable to refund** all monies received **with interest** at the rate of **12% p.a.** from the date of issue of such shares to the persons to whom such shares have been issued

**** Companies (Amendment) Ordinance, 2019**

ISSUE OF SWEAT EQUITY SHARES [SECTION 54]

- ❖ Issued to directors/employees
- ❖ Issued at discount/consideration/other than cash
- ❖ For providing know how or making available rights in nature of IPR or value addition
- ❖ If company's shares are listed in stock exchange then such shares issued according to SEBI guidelines

PROCEDURE FOR ISSUE OF SWEAT EQUITY SHARES

- ❖ Pass special resolution in GM
(the special resolution shall be valid for making allotment within period of not more than 12 months)
- ❖ Resolution shall specify
 - number of shares
 - current market price
 - consideration
 - class or classes of directors or employees
- ❖ Lock in period-3 year
- ❖ Register shall be maintained in **form no SH-3**
- ❖ Company not issue such shares for more than **15% of existing paid up equity share capital** in a year or shares of issue value **Rs. 5 crores (W.I.H)**
- ❖ Issue shall **not exceed 25%** of paid up equity share capital at any time.

ISSUE & REDEMPTION OF PREFERENCE SHARES

[SECTION 55]

- ❖ Issue to be authorized by special resolution
- ❖ Explanatory statement to be annexed to the notice of general meeting containing the relevant material facts
- ❖ No company limited by shares shall issue irredeemable preference shares.
- ❖ However, a company limited by shares may, if authorised by AOA, issue preference shares for period not exceeding 20 years from last date of their issue.
- ❖ No such shares shall be redeemed unless they are fully paid
- ❖ Infrastructural companies may issue preference shares for a period exceeding 20 years but not exceeding 30 years subject to redemption of minimum 10% per year from 21st year onwards or earlier on proportionate basis.

FURTHER ISSUE OF SHARE CAPITAL

(SECTION 62)

Where a company proposes to increase its subscribed share capital by issue of further shares, it shall be offered in following ways:

| | |
|--|--|
| Right Issue of Shares (Sec. 62(1)(a)) | <ul style="list-style-type: none"> ❖ Such shares shall be offered to persons who, at the date of offer, are holders of equity shares of the company. ❖ Company to give notice to equity shareholder giving him 15-30 days to decide ❖ The notice shall be sent at least 3 days before opening of issue. ❖ Company can issue shares to other than existing share holder for cash or other than cash if a special resolution is obtained ❖ Notice shall inform about right to renounce in favour of another person ❖ If the person declines the shares offered to him, then the BOD may disposed them off in a manner beneficial to company ❖ New shares is offered to public if special or ordinary resolution is |
|--|--|

| | |
|---|--|
| | <p>passed and CG approval is obtained</p> <ul style="list-style-type: none"> ❖ Price to be determined by the registered value's report ❖ The provisions of section 62 are applicable to all type of companies |
| Employee Stock Option (Sec. 62(1)(b)) | <ul style="list-style-type: none"> ❖ Allotting shares to it employees under scheme of Employee Stock Option, subject to Special resolution passed by the company ❖ Gives benefit and right to purchase at future dates ❖ Approval of shareholders is required |
| ESOP rules 12 of the company (shares capital and debentures) rules, 2012 | <ul style="list-style-type: none"> ❖ Pass special resolution ❖ Disclosures to be made in explanatory statement ❖ Free pricing in conformity with accounting policies ❖ Separate resolution to be obtained for granting options to employees of holding/subsidiaries ❖ Minimum 1 year period between grant of options and vesting of option ❖ Company is free to set lock-in period ❖ Option granted shall not be transferable, pledged, hypothecated, mortgaged in any manner ❖ Disclosures to be made in board report ❖ Register to be maintained in form SH-6 ❖ Listed companies to comply with SEBI guidelines |
| Issue of shares on Preferential Basis (Sec. 62(1)(c)) | <p>Allotting of shares to any person other than those covered in Section 62(1)(a) and Section 62(1)(b), if authorized by special resolution, either for cash or some other consideration, if the price of shares is determined by valuation report of registered valuer subject to compliance with applicable provisions of Chapter III of Companies Act, 2013.</p> <p>Report of registered valuer under section 62(1)(c) shall now be subject to compliance of Chapter III of the Act and any other conditions as may be prescribed.</p> <p>** Companies Amendment Act, 2017</p> <p>Procedure to issue-</p> <ul style="list-style-type: none"> ❖ AOA authorise. ❖ Hold General meeting and pass Special resolution. File MGT-14. ❖ Such allotment has to be completed within 12 months from date of passing special resolution. ❖ Filing of PAS-3 with ROC. |

BONUS SHARES [SECTION 63]

- ❖ Bonus shares refers to further issue of shares made by a company having share capital to its existing shareholders without receipt of any consideration from shareholders for issuance of such shares. It is an offer of **free** additional shares to existing shareholders in proportion to their holding.

- ❖ **Sources** of Bonus issue – Free reserves, Securities Premium account or capital redemption reserve account.
- Conditions for issue-**
- ❖ No company shall issue bonus share unless Authorized by articles
- ❖ Authorized on Recommendation of board
- ❖ The partly paid up shares, if any, shall be made fully paid up.
- ❖ Bonus shares shall not be issued in lieu of dividend.
- ❖ Not defaulted in payment of interest or principal
- ❖ Not defaulted in payment of statutory due of employees
- ❖ A return shall be filed within 30 days in **E-FROM-SH3**
- ❖ Share certificate to be delivered within **2 months**.

**BUY BACK OF SHARES
(SECTION 68)**

- ❖ **Reason for buyback**
 - ✓ Company is prosperous
 - ✓ Cash remains idle
 - ✓ Earnings per share increases
 - ✓ to Pay off liability
 - ✓ To avoid hostile takeover
- ❖ **Source of purchase**
 - ✓ out of free reserves
 - ✓ out of securities premium account
 - ✓ proceeds of earlier issue other than fresh issue

| No special resolution required | Special resolution required |
|---|--|
| <ul style="list-style-type: none"> ❖ Buyback is 10% or less of ❖ Paid up equity capital (+) free reserves ❖ Resolution passed at board meeting | <ul style="list-style-type: none"> ❖ Buyback is more than 10% but less than 25% ❖ Paid up capital (+)free reserves ❖ Resolution passed at general meeting |

MAXIMUM LIMIT – upto 25% of total paid up equity in a financial year.

Notice shall be accompanied with statement stating :

- ❖ Full disclosure of material facts
- ❖ Necessity of buyback
- ❖ Class of securities to be purchased
- ❖ Amount to be invested
- ❖ Time limit of completion

Buy back from whom:

- ❖ Existing shareholders
- ❖ From open market
- ❖ From odd lots
- ❖ Purchasing securities from employees

| TIME PERIOD | |
|--|---|
| Within 15 days form date of closure | Verification of offer |
| Within 21 days form date of closure | Deemed acceptance unless a communication of rejection is made |
| Min 15 days and not exceeding 30 days | Buy back to be open |
| Within 7 days of last day of completion of buyback | Extinguish and physically destroy securities |
| Till 6 months No further issues | |

LIST OF FORMS REQUIRED TO BE FILED

| | |
|----------------------|--|
| Form no. SH-8 | Letter of offer to be filed with Roc |
| Form no.SH-9 | file Declaration of solvency with registrar and SEBI |
| Form no.SH-10 | Maintenance of register at registered office |
| Form no.SH-11 | Return of buy back shall be file with registrar and SEBI |

CIRCUMSTANCES PROHIBITING BUY BACK (SECTION 70)

No company shall buy back any shares:

- a) Through any **subsidiary company** including its own subsidiary companies
- b) Through any **investment company** including its own investment companies
- c) If default is made in:
 - i. Repayment of **deposit** or interest therein
 - ii. Redemption of **debentures or preference shares**
 - iii. Payment of **dividend** to any shareholders
 - iv. Repayment of any term **loan or interest**

However buy back in not prohibited, if **default remedied** and **3 years elapsed** after such default ceased to subsist.
- d) If default made in provisions relating to Annual return, declaration of dividend, failure to distribute dividend or provisions relating to financial statements.

DEBENTURES [SECTION 71]

Concept -

A debenture is an instrument of debt executed by the company acknowledging the debt and its obligation to repay the sum at a specified rate and also carrying an interest.

Definition (Section 2(30)) -

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

Provided that -

- a) Instruments referred to in Chapter III-D of the RBI Act, 1934 and
- b) Such other instruments, as may be prescribed by Central Government in consultation with RBI, issued by the company

Shall **not be treated as debenture**.

CHARACTERISTICS OF DEBENTURES

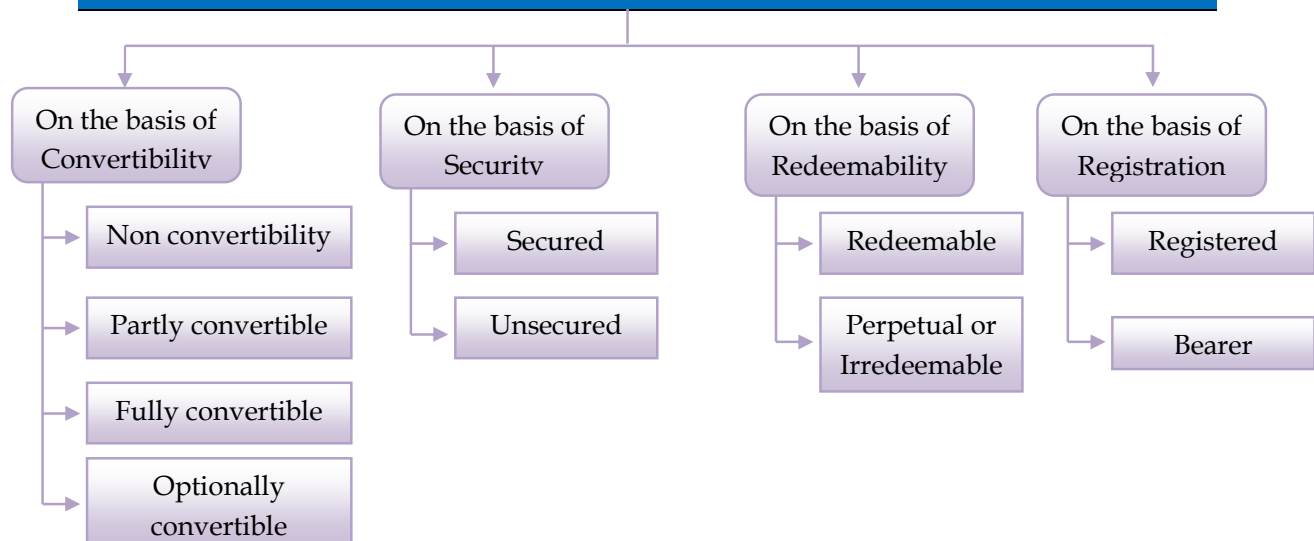
- ❖ Usually in the form of a certificate issued under the common seal
- ❖ It usually provides for the payment of interest until the principal sum is paid back
- ❖ It is an acknowledgement of the company of its indebtedness
- ❖ Contains charge on undertaking, part of profit, class of asset of the company
- ❖ Generally debentures are issued in series (rarely debenture can be issued to single person also)
- ❖ Carry no voting rights

JUDICIAL PRONOUNCEMENT ABOUT DEBENTURES

The following kinds of documents have been held to be treated as debentures:

- A. A legal mortgage of freehold and leasehold land [*Knightsbridge Estates Trust Ltd. v. Byrne*, 1940 AC 613: (1940) 2 All 401];
- B. A series of income-bonds by which a loan to the company was repayable only out of its profits [*Lemon v. Austin Friars Investment Trust Ltd.* 1926 Ch 1 (CA)];
- C. A note by which a company undertook to pay a loan but gave no security [*British India Steam Navigation Co. v. IRC*, (1881) 7 QBD 165];
- D. A receipt or a certificate for a deposit made with a company (other than a bank) when the deposit was repayable after a fixed period after it was made, [*United Dominions Trust Ltd. v. Kirkwood*, (1966) 2 QB 43].
- E. The definition of debenture is so wide as to include any security of a company whether constituting a charge on the company’s assets or not [*Cf. Pearl Assurance Co. Ltd. v. West Midlands Gas Board*, (1950) 2 All ER 844 (ChD)]

KINDS OF DEBENTURES



SIGNIFICANT FEATURES REGARDING ISSUE OF DEBENTURES

- ❖ Power to issue is set out in moa
- ❖ Issued in same manners as shares
- ❖ Can be issued at discount or at premium
- ❖ They can be issued by any type of company.
- ❖ Debentures cannot have voting rights
- ❖ For issue of convertible debentures, a special resolution should be passed at a general meeting.
- ❖ Interest payable on them is a debt and can be paid out of capital

DEBENTURES STOCK

- ❖ Instead of issuing one debentures, company may raise one aggregate loan fund or composite stock known as 'debenture stock'
- ❖ A debenture stock is a borrowed capital consolidated into one mass for the sake of convenience.
- ❖ He has a certificate entitling him to a certain sum being a portion of one large loan.
- ❖ It is generally secured by a trust deed
- ❖ The difference between 'debentures' and 'debentures stock' is that while debenture is the description of an instrument, debentures stock is the description of a debt or sum secured by an instrument

DEBENTURES TRUST DEED

- ❖ Debenture trust deed is a written instrument legally conveying property to a trustee for the purpose of securing a loan or mortgage. It is the document creating and setting out the terms of trust.
- ❖ A copy of trust deed shall be open to inspection to any member or debenture holder on the terms and conditions as are applicable for the inspection of register of members.
- ❖ A copy of trust deed shall be forwarded to any member or debenture holder of the company, at his request, **within 7 days** of request and on payment of fees.
- ❖ Debenture trust deed shall be in **Form SH-12** and shall be executed by company in favour of debenture trustees **within 60 days** of allotment of debentures.
- ❖ If a copy of the trust deed is **not made available** for inspection or is not given to on demand by, any member or debenture holder, the company and the officer of the company who is in default shall be punishable for each offence, with **fine** which may extend to **five hundred rupees** for every day during which the offence continues

DUTIES OF THE DEBENTURE TRUSTEES (SECTION 71 (6))

- ❖ The debenture trustees shall take steps to protect the interest of holders of debentures and to redress their grievances. It shall be duty of every debenture trustee to
 - To ensure that the assets are sufficient to discharge the principal amount
 - satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed;
 - To ensure that the company does not commit any breach of covenants and provisions of the trust deed;

- To take such reasonable steps to remedy any breach of the covenants' of the trust deed or the terms of issue of debentures;
- To take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

REGISTER OF DEBENTURE HOLDERS

Section 88 of the Act requires every company to keep a **register of debenture holders** giving the following particulars:

- ❖ The name, address and occupation of each debenture holder
- ❖ The number of debentures held by each debenture holder together with their distinctive numbers
- ❖ except where such debentures are held with a depository and the amount paid or agreed to be considered as paid
- ❖ The date at which each person was entered in the register as a debenture holder; and
- ❖ The date at which any person ceased to be a debenture holder

REDEMPTION OF DEBENTURES HOLDER

- ❖ The debentures which are redeemable are to be repaid by the company in accordance with the terms and conditions.
- ❖ Debentures may be redeemed either out of the proceeds of a fresh issue of debentures or shares or by creating Debenture Redemption Reserve by setting aside certain sums out of annual profits of the company as provided under Section 88 of the Act.
- ❖ The debentures may be redeemed at the end of the period for which they are issued or they may be redeemed periodically by means of drawings by lots.

DEBENTURE REDEMPTION RESERVE (SECTION 71 (4))

The **conditions** for creation of DRR are as follows –

1. **On or before 30th day of April each year**, invest or deposit, a sum which shall **not be less than 15%** of amount of its debentures maturing during year ending on 31st day of March next year.
2. Amount credited to such account shall **not be utilized** by the Company **except for redemption of debentures**.
3. The company shall create a DRR account out of the profits of the company available for payment of dividend.
4. In case of partly convertible debentures, DRR shall be created in respect of non-convertible portion of debenture issue.

DEBENTURE TRUSTEE (SECTION 71 (5))

- A Debenture trustee means a trustee of a trust deed for securing any issue of debentures of a body corporate. The section states that no company shall issue a prospectus or make an offer or an invitation to the public or to its members **exceeding 500** for subscription of its debentures, unless the company has, before issue or offer, **appointed one or more debenture trustees**.

- To act as a debenture trustee, the entity should either be a scheduled bank carrying on commercial activity, a public financial institution, an insurance company, or a body corporate. The entity should be registered with SEBI to act as a debenture trustee.
- The other conditions are specified in Rule 18(2) of the Companies (Share Capital and Debentures) Rules, 2014.

Procedure for roll over of non-convertible portion of partly convertible debt instruments under SEBI (Issue of Capital and Disclosure Requirements) Regulations:

The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which **exceeds Rs. 50 lakh**, may be rolled over without change in interest rate, subject to following **conditions**:

- a) **75% of holders** of convertible debt instruments of the issuer have, through resolution, **approved** the roll over through postal ballot.
- b) The issuer has sent, alongwith notice, an **auditor's certificate** on cash flows and comment on liquidity position.
- c) The issuer has **undertaken to redeem** non-convertible portion of partly convertible debt instruments of all holders of the convertible debt instrument who have not agreed to the resolution.
- d) **Credit rating** has been obtained from at least one credit rating agency.

The creation of fresh security and execution of fresh trust deed not be mandatory if existing trust deed provide for continuance of security till redemption of secured convertible debt instruments.

**POWER TO NOMINATE
(SECTION 72)**

- Every security holder to appoint a nominee who shall be the owner of the instrument in the event of death of the holder or the joint holder unless the nomination is **varied or cancelled**.
- The section provides that every holder of securities of a company may, at any time, nominate, in the prescribed manner, any person to whom his **securities shall vest in the event of his death**.
- Where the securities of a company are held by more than one person jointly, the **joint holders may together nominate**, in the prescribed manner, any person to whom all the rights in the securities shall vest in the event of death of all the joint holders.
- According to the rules any holder of securities of a company may, at any time, nominate, in **Form No. SH-13**, any person as his nominee in whom the securities shall vest in the event of his death.
- A **nomination may be cancelled**, or varied by nominating any other person in place of the present nominee, by the holder of securities who has made the nomination, by giving a notice of such cancellation or variation, to the company in **Form No. SH-14**.
- **Further** where the **nominee is a minor**, the holder of the shares or debentures, making the nomination, may appoint a person in **Form No. SH-17** who shall become entitled to the securities of the company, in the event of death of the nominee during his minority.



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ACCEPTANCE OF DEPOSITS BY COMPANIES

Acceptance of Deposits



Regulatory Framework for Acceptance of Deposits

| | |
|---------------------|---|
| Applicable Chapter | Chapter V of the Companies Act, 2013 |
| Applicable Sections | Section No. 73 to Section No. 76 |
| Applicable Rules | Companies (Acceptance of Deposit) Rules, 2014 (as amended) |

Section Numbers & Particulars

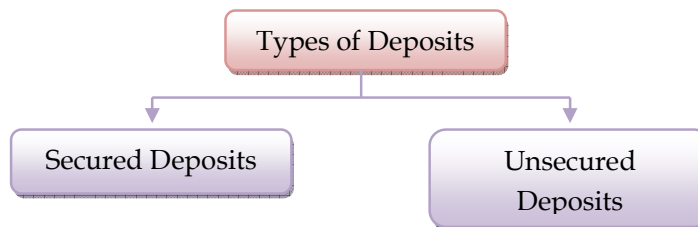
| | |
|-------------|--|
| Section 73 | Prohibition on Acceptance of Deposits from Public |
| Section 74 | Repayment of Deposits, Etc, Accepted before Commencement of this Act |
| Section 75 | Damages for Fraud |
| Section 76 | Acceptance of Deposits from Public by Certain Companies |
| Section 76A | Punishment for Contravention of section 73 or section 76 |

INTRODUCTION OF DEPOSITS

- ❖ **Section 73 to 76 of the Companies Act, 2013**
 - ✓ Regulate the invitation and acceptance of deposits.
 - ✓ It prohibits acceptance of deposits except from the members through ordinary resolution or acceptance deposits by “eligible company” being a public company
- ❖ **Proviso to Section 73(1) read with rule 1(3) of Companies**
 - ✓ excludes banking Companies, non-banking financial companies, a housing finance company
 - ✓ Any other company as may be specified by the government in this regard.

WHAT IS DEPOSIT

Section 2(31) of the Companies Act (herein after called the act) defines deposit as under “deposit” includes any receipt of money by way of deposit or loan or in any other form by a company.



WHAT IS NOT DEPOSIT? (RULE 2(1)(c))

- ❖ Any Amt received from
 - CG /SG /local or statutory authority
 - Foreign Govt/bank/multilateral financial institution etc
 - As a loan from banking Company /SBI/ Banking institution (notified by cg)
 - As a loan from public financial institution(notified by cg)
- ❖ Against issue of commercial papers or any other instrument
- ❖ Inter corporate deposit
- ❖ Towards subscription of securities
- ❖ From a person who was director of company
- ❖ Raised by issue of bonds/debentures
- ❖ From employee not exceeding annual salary
- ❖ Non-interest bearing amount received or held in trust
- ❖ In course of or for purpose of business
- ❖ As advance for the supply of goods
- ❖ As advance in connection with consideration of property
- ❖ As security deposit
- ❖ As advance received under long term projects
- ❖ Amount brought in by the promoters of company by way of unsecured loan
- ❖ Any accepted by Nidhi company

WHO IS DEPOSITOR

Rule 2(1)(d) under Chapter XV defines depositor as under 'Depositor' means- Any member or person of the company who has made a deposit

- ❖ with sub-section (2) of section 73 of the Act, or
- ❖ with a public company in accordance with section 76 of the Act.

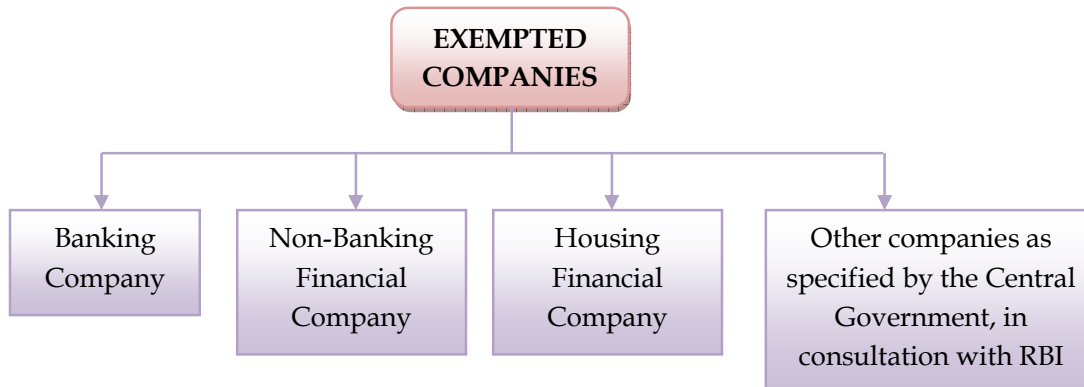
WHO IS ELIGIBLE COMPANY

Rule 2(1)(e) of Rules made under Chapter V defines eligible company as under:

"Eligible company" means a public company as referred to in sub-section (1) of section 76, having a **net worth** of not less than **one hundred crore rupees** or a **turnover** of not less than **five hundred crore rupees** and which has obtained the prior consent of the company in general meeting by means of a special resolution

PROHIBITION ON ACCEPTANCE OF DEPOSITS FROM PUBLIC

Section 73(1) states that, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided in this Chapter.



CONDITIONS FOR ACCEPTANCE OF DEPOSITS FROM MEMBERS

Section 73(2) states that a company may, subject to

Company may accept deposit from its members for repayment of such deposit with interest

- ❖ Subject to passing resolution in GM
- ❖ Such rules as may be prescribed in consultation with RBI subject to following conditions

Conditions

- a) Issuance of **circular** to its members in **DPT-1**
- b) Filing a copy of circular with **registrar within 30 days** before the date of issue of circular
- c) **Depositing** such sum which shall **not be less than 20%** of amount of deposit maturing in **Deposit Repayment Reserve** account
- d) ~~Providing for Deposit Insurance **~~
- e) Certifying that the company has **not committed** any **default** in repayment of deposits
***and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default*
- f) Providing **security** for due repayment of amount of deposit

a) to e) shall not apply to following companies -

- Private Company/Specified IFSC Public Company which accepts from its members monies not exceeding 100% of (PUC+FR+SP)
- Start up Private company for first 5 years of its incorporation
- Private Company if it satisfies some conditions

DEPOSIT ACCEPTED BEFORE THE COMMENCEMENT OF THE ACT

Section 74(1) states that when, in respect of any deposit accepted by a company before the commencement of this Act, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall –

- ❖ file, within a period of three months from such commencement
- ❖ Repay within ~~one year~~ ** *three years* from such commencement or from the date on which such payments are due, whichever is earlier.

Section 74(3) punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.

DAMAGES FOR FRAUD (Sec. 75)

Where company fails to repay deposit and it is proved that deposits had been accepted with intent to defraud the depositors Every officer responsible for acceptance shall be **personally liable** for all or any of the damage(without any limitation of liability)

ACCEPTANCE OF DEPOSIT FROM PUBLIC BY CERTAIN COMPANIES (Sec. 76)

- ❖ An Eligible Public company may accept deposit from persons other than members subject to certain terms and conditions.
- ❖ Such company required to obtain credit rating from recognized credit rating agency and such rating should be obtained every year.
- ❖ Every company accepting secured deposits from public shall within 30 days, Create a charge on its assets of an amount not less than amount of deposit accepted in favour of deposit holders.

PUNISHMENT FOR CONTRAVENTION OF SECTION 73 or 76 (Sec. 76A)

For Company -

- Payment of amount of deposit
- Payment of interest due
- Fine which shall not be less than Rs.1 crore or twice the amount of deposit accepted by company whichever is lower but which may extend to Rs.10 crore.

For Officer in Default -

- Imprisonment which may extend to 7 years and
- Fine which shall not be less than Rs. 25 lakh but extend to Rs. 2 crore or
- With both



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CREATION AND REGISTRATION OF CHARGES

Regulatory Framework for Charges

| | |
|---------------------|---|
| Applicable Chapter | Chapter VI of the Companies Act, 2013 |
| Applicable Sections | Section No. 77 to Section No. 87 |
| Applicable Rules | Companies (Registration of Charges Rules), 2014 |

Section Numbers & Particulars

| | |
|------------|---|
| Section 77 | Duty to registered charges (Primary duty is of the company) |
| Section 78 | Application for registration of charge (by charge holder in case of failure of the Company) |
| Section 79 | Section 77 to apply in certain matters (in case property is acquired which is already subject to charge) |
| Section 80 | Date of Notice of charge (Deemed notice to acquirer of charged property) |
| Section 81 | Register of Charges to be kept by registrar (online data relating to charge available at MCA website is deemed to be ROC's register) |
| Section 82 | Company to report Satisfaction of Charge |
| Section 83 | Power of registrar to make entries of and release in absence of intimation from company. |
| Section 84 | Intimation of appointment of receiver or manger |
| Section 85 | Company's register of charge (in format CHG-7) |
| Section 86 | Punishment for contravention |
| Section 87 | Rectification by Central Government in register of Charge/Condonation of Delay by Central Government. |

DEFINITION OF A CHARGE

Section 2(16) of the Companies Act, 2014 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Essential features of the charge which are as under:

- 1) There should be *two parties* to the transaction, the creator of the charge and the charge holder.
- 2) The *subject-matter* of charge, which may be current or future assets and other properties of the borrower.
- 3) The intention of the borrower to offer one or more of its specific assets or properties as *security for repayment* of the borrowed money together with payment of interest at the agreed rate should be manifested by an agreement entered into by him in favour of the lender, written or otherwise.
- 4) A charge may be *fixed or floating* depending upon its nature.

| | |
|---------------------------------|--|
| Fixed or Specific Charge | A charge is fixed or specific when it is made specifically to cover assets which are or are capable of being ascertained and definite at the time of creating charge. |
| Floating Charge | A floating charge is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type like stock-in-trade. |

| Fixed charge | Floating charge |
|---|--|
| It is a legal charge | It is an equitable charge |
| It is charge on specific, ascertained and existing assets. | It is a charge on present and future assets and not on any specific assets .it is a charge on assets of changing nature. |
| Company cannot deal with the assets except with the consent of the charge-holder. | Company is free to use or deal with the assets the way it likes until the charge crystallizes i.e. become fixed. |
| fixed charge has always priority over floating charge. | Ambulatory and shifting in character. |

CRYSTALLISATION OF FLOATING CHARGE

A floating charge attaches to the company's property generally and remains dormant till it crystallises or becomes fixed. A floating charge crystallizes and the security becomes fixed in the following cases:

- ❖ when the company goes into **liquidation**;
- ❖ when the company **ceases to carry on the business**;
- ❖ when the creditors or the debenture holders take steps to **enforce their security** e.g. by appointing receiver to take possession of the property charged;
- ❖ on the happening of the **event specified in the deed**.

(In Government Stock Investment Co. Ltd. Vs. Manila Railway Co. Ltd.)



It was said in **Maturi U. Rao v. Pendyala A.I.R. 1970 A.P. 225**, “the essence of a floating charge is that the security remains dormant until it is fixed or crystallised”. But a floating security is not a future security. It is a present security, which presently affects all the assets of the company expressed to be included in it. On the other hand, it is not a specific security; the holder of such charge cannot affirm that the assets are specifically mortgaged to him. The assets are mortgaged in such a way that the mortgagor i.e. the company can deal with them without the concurrence of the mortgagees.



In *Re. Borax Co.*, (1901) 1 CH 325, it was held that a company may sell the whole of its undertaking if that is one of the objects specified in its memorandum. Unless specifically precluded, the company can create fixed charge subsequent to floating charges over the same property [*Wheatly v. Silkstone & High Moor Coal Co. Ltd.*, (1885) 54 L.J. Ch 78



Official Liquidator v. Sri Krishna Deo, (1959) 29 Com Cases 476: AIR 1959 All 247 and *Roy & Bros. v. Ramnath Das*, (1945) 15 Com Cases 69, 75 (Cal)]. The plant and machinery of a company embedded in the earth or permanently fastened to things attached to the earth became a part of the company’s immovable property and therefore apart from the registration under the Companies Act, registration under the Indian Registration Act would also be necessary to make the charge valid and effective.



Cosslett (Contractors) Ltd., Re, (1996) 1 BCLC 407 (Ch D) A construction company’s washing machine which was in use at the site was declared under the terms of the contract to be the employer’s property during the period of construction. This was held to have created a fixed charge and not a floating charge on the machine because the machine was only one fixed item and was not likely to change.



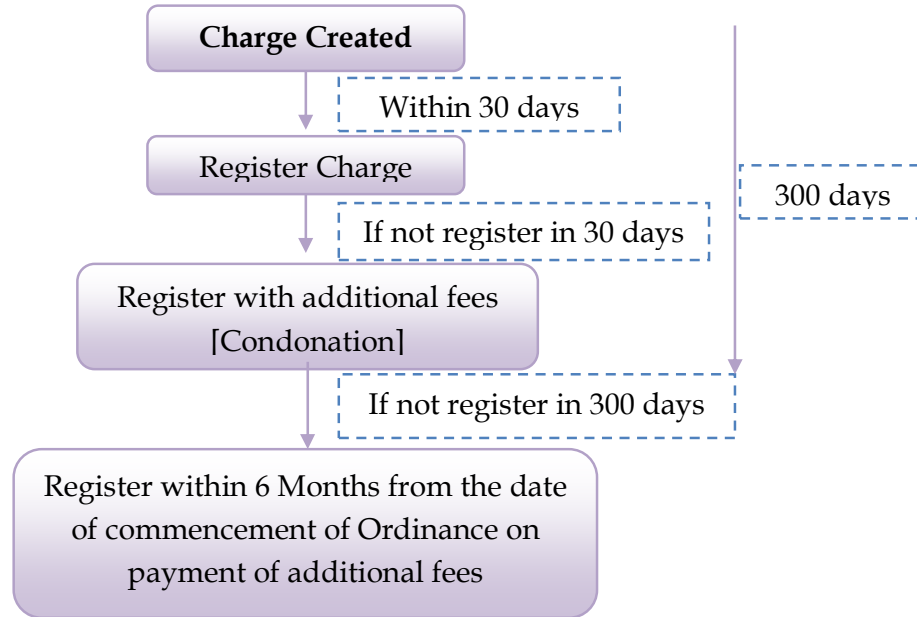
A “floating security”, observed *Lord Macnaghten in Government Stock Investment Company Ltd. v. Manila Rly. Company Ltd.*, (1897) A.C. 81, “is an equitable charge on the assets for the time being of a going concern. It attaches to the subject charged in the varying condition in which it happens to be from time to time. It is the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern, or until the person in whose favour the charge is created intervenes”.

EFFECT OF CRYSTALLIZATION OF A FLOATING CHARGES

- ❖ On crystallization floating charge converts itself into a fixed charge priority over subsequent equitable charge and unsecured creditors
- ❖ Preferential creditors get priority over claims of debenture having floating charge (In *Government Stock Investment Co. Ltd. Vs. Manila Railway Co. Ltd*)

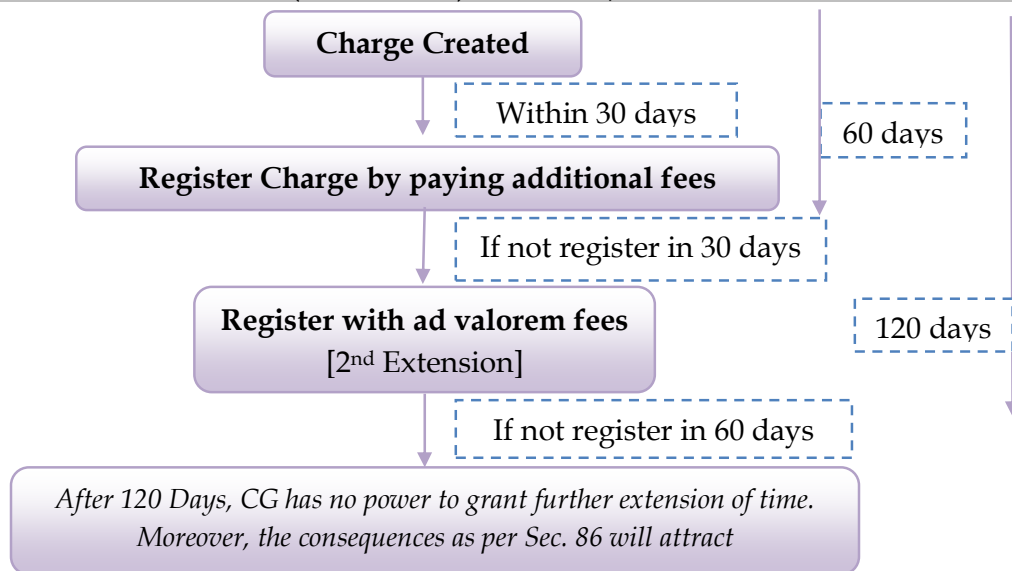
**DUTY TO REGISTER CHARGES, ETC.
[SECTION 77]**

In case of charges created before the commencement of the Companies (Amendment) Ordinance, 2019



*** Now After Companies Amendment Ordinance Act, 2019, there is no scope of getting Extension by Central Government by filing Form No. CHG 10, which was possible before this Ordinance.*

In case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2019



❖

How to Register ??

- ❖ Under **Section 77** of the Companies Act, 2013 every company creating a charge shall **register** the particulars of charge signed by the company and its charge holder
 - ❖ Particulars of charges shall be filed through **Form No. CHG-1** (for **other than Debentures**) & **form no.**
 - ❖ **Form No. CHG-9** (for debenture holder)
 - ❖ By use of DSC document format & authenticated by MD ,CS, director, person specified in ACT
- (T.R. Thyagarajan V. official Liquidator)

APPLICATION OF REGISTRATION OF CHARGE (SECTION 78)

- If company fails to register within time limits given by CG & ROC, the **charge holder may apply** to ROC for registration of the charge within such time and in such form and manner as may be prescribed.
- On receipt of such an application, the ROC shall forward a notice in this regard to the company and within a period of **14 days after the notice**, the registrar shall register the charge unless the company either itself registers the charge or shows sufficient cause why such charge should not be registered.
- The charge holder can **recover the amount** of any fees paid for registration purpose from the company.

NOTICE OF CHARGE (SECTION 80)

- ❖ Any person acquiring property shall be deemed to have notice of charge
- ❖ People who are not aware of it, may serve purpose of preventing fraudulent & belated claim at winding up

Certificate of registration

- ❖ Issue of certificate in form no **CHG-2**
- ❖ Registration of modification of charge in form no **CHG-3**

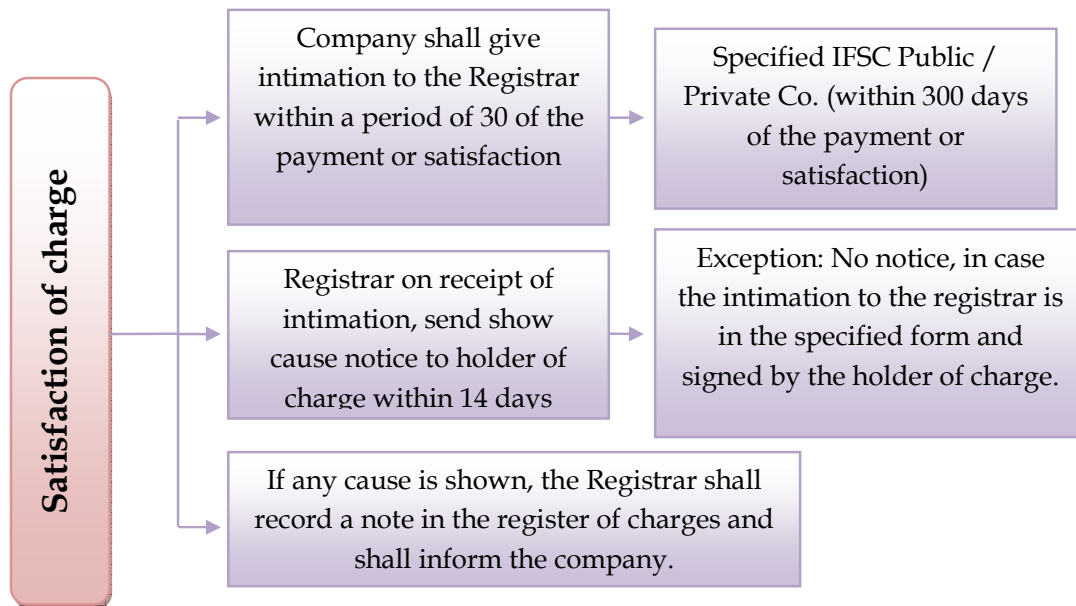
REGISTER OF CHARGES IN ROC'S OFFICE (SECTION 81)

- ❖ Registrar shall maintain register containing particular of charges of every company.
- ❖ As per **Rule 7** of Companies (Registration of Charges) Rules, 2014, the particulars of charges maintained on MCA portal shall be deemed to be Register of Charges for purpose of Section 81.

SATISFACTION OF CHARGES (SECTION 82)

The company shall give intimation to the registrar of the payment **within 30 days**

- ❖ From the date of such payment or satisfaction in **Form No.CHG-4** along with the fee.
- ❖ If the charge is **not filed within thirty days**, ~~the registrar shall not register the same unless the delay is condoned by the Central Government.~~ **



****Companies (Amendment) Act, 2017**

According to The Companies (Amendment) Act, 2017, the Registrar of Companies may, on an application by the Company or the Charge holder, allow such intimation of payment of satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.**

POWER OF REGISTRAR TO MAKE ENTRIES OF SATISFACTION AND RELEASE IN ABSENCE OF INTIMATION FROM COMPANY [SECTION 83]

Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

INTIMATION OF APPOINTMENT OF RECEIVER OR MANAGER (SECTION 84)

Notice of appointment or cessation of a person to manage the property shall be filed with registrar in **Form no CHG-6 (+) fees within 30 days** from the appointment or cessation.

COMPANY'S REGISTRAR OF CHARGES (SECTION 85)

- Every company shall keep at its registered office, a register of charges in **format CHG 7**.
- All the entries in the register shall be **authenticated** by a director or secretary or any other person authorised by the Board for the purpose.
- The **register** shall be **preserved permanently** and **instrument** creating a charge or modification thereof shall be preserved for **8 years from date of satisfaction of charge** by the company.

Inspection of charges

- ❖ Register and instrument of charges shall be kept open for inspection during business hrs
- ❖ For members without fees and for other person with fees

**PUNISHMENT FOR CONTRAVENTION
(SECTION 86)**

Penalty for Company

- Minimum Rs. 1 Lac
- Maximum Rs 10 Lacs

Penalty for Officer in Default

- Imprisonment which may extend to 6 Months
- with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees
- with Both

*** Wilful furnish of false or incorrect information or knowingly suppressing any material information w.r.t chapter VI pertaining to registration of charges shall be liable to fraud and attract action under Section 447.*

****Companies Amendment Ordinance Act, 2019**

**RECTIFICATION BY CENTRAL GOVERNMENT IN REGISTER OF CHARGES/
CONDONATION OF DELAY (SECTION 87)**

If the Central Government is satisfied, on an application by Company or any person interested in **form CHG-8**, that:

- Any omission to file particulars with the registrar or
- Any omission to register charge creation/modification or satisfaction

Was accidental or due to inadvertence or other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company.

In such a case, the Government may direct that the time for filing of particulars or registration or intimation shall be extended or that the omission/mis-statement shall be rectified.

| <i>S.No.</i> | <i>E-Form</i> | <i>Purpose</i> |
|--------------|---------------|---|
| 1 | CHG-1 | Creating or modifying the charge (for other than Debentures) |
| 2 | CHG-2 | Certificate of registration |
| 3 | CHG-3 | Certificate of modification of charge |
| 4 | CHG-4 | Intimation of the satisfaction to the Registrar |
| 5 | CHG-5 | Memorandum of satisfaction of charge |
| 6 | CHG-6 | Notice of appointment or cessation of receiver or manager |
| 7 | CHG-7 | Register of charges |
| 8 | CHG-8 | Application for condonation of delay shall be filed with the Central Government |
| 9 | CHG-9 | Creating or modifying the charge in (for debentures including rectification) |



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MANAGEMENT AND ADMINISTRATION



Regulatory Framework for Management & Administration

| | |
|---------------------|---|
| Applicable Chapter | Chapter VII of the Companies Act, 2013 |
| Applicable Sections | Section No. 88 to Section No. 122 |
| Applicable Rules | Companies (Management & Administration) Rules, 2014 |

Section Numbers & Particulars

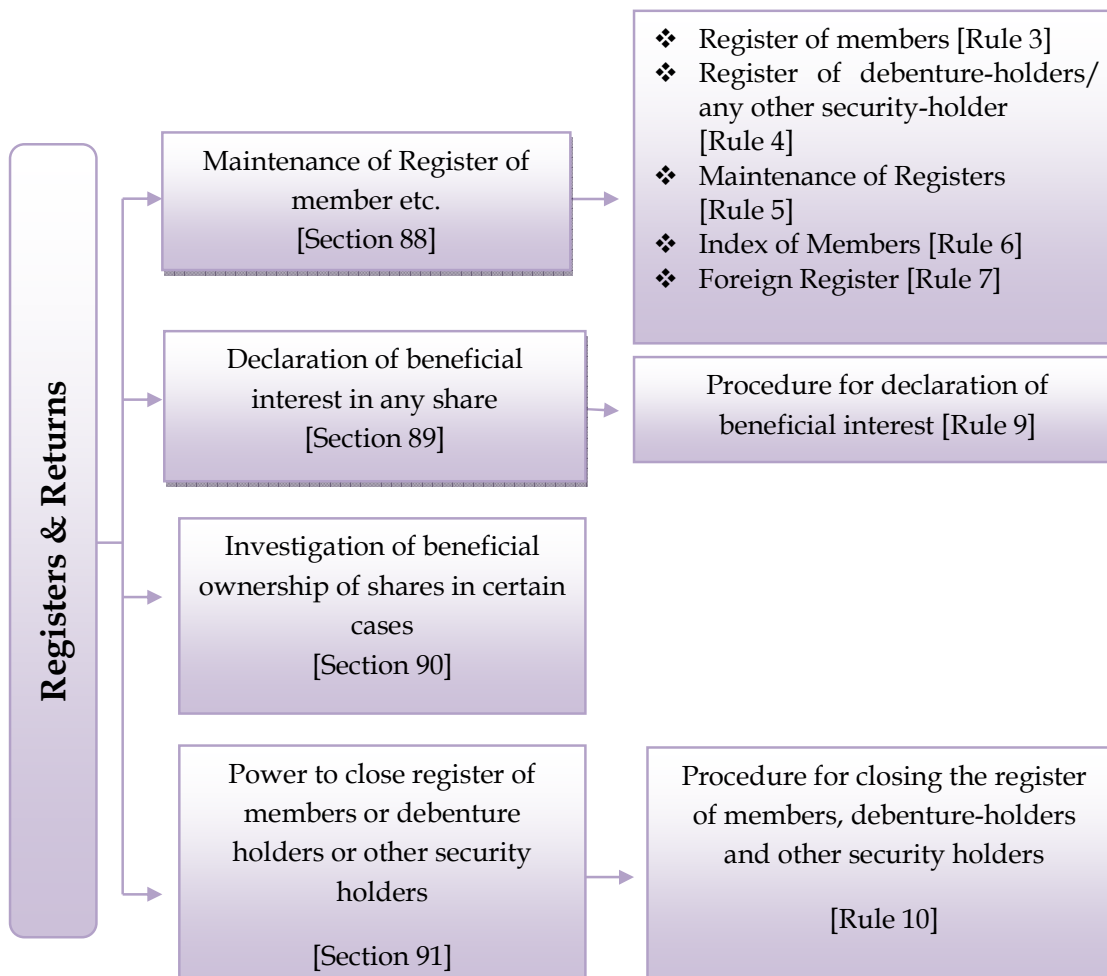
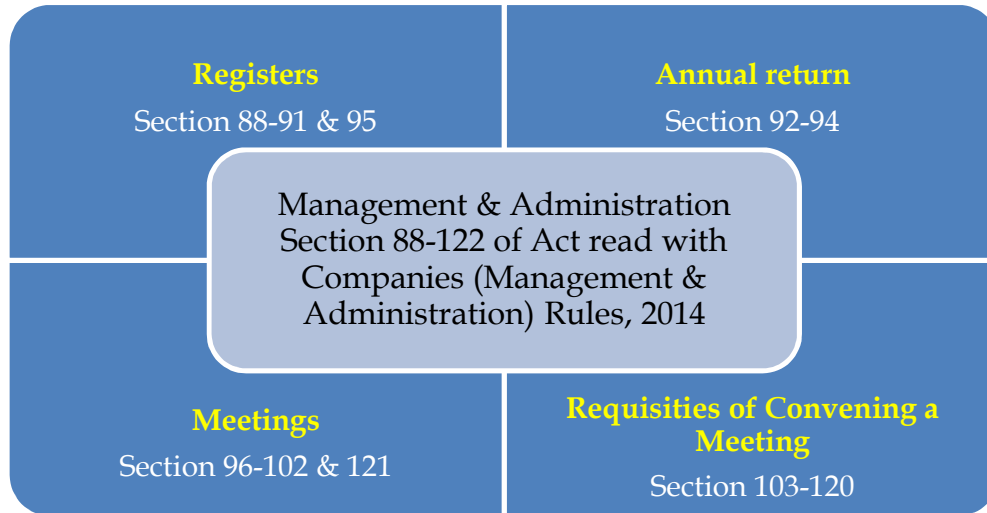
| | |
|------------|---|
| Section 88 | Register of Members |
| Section 89 | Declaration in respect of beneficial interest in any shares |
| Section 90 | Register of significant beneficial owners in a company |
| Section 91 | Closing of Register of Members |
| Section 92 | Annual Return |
| Section 93 | Return to be filed with Registrar in case of Promoters |



| | |
|-----------------|---|
| | Stake Change |
| Section 94 | Place of Keeping & Inspection of Registers, Returns etc. |
| Section 95 | Registers etc. to be evidence |
| Section 96 | Annual General Meeting |
| Section 97 | Power of Tribunal to call annual general meeting |
| Section 98 | Meeting call by Tribunal |
| Section 99 | Penalty |
| Section 100 | Extraordinary General Meeting |
| Section 101 | Notice |
| Section 102 | Statement to be annexed to Notice |
| Section 103 | Quorum |
| Section 104 | Chairperson |
| Section 105 | Proxy |
| Section 106 | Restriction on Voting Rights |
| Section 107-108 | Voting |
| Section 109 | Demand for Poll |
| Section 110 | Postal ballot |
| Section 111 | Circulation of member resolution |
| Section 112 | Representation of President and Governors in Meeting |
| Section 113 | Representation of Corporations at Meeting of Companies and of Creditors |
| Section 114 | Ordinary & Special Resolution |
| Section 115 | Resolution Required Special Notice |
| Section 116 | Resolution pass at Adjourned Meeting |
| Section 117 | Resolutions & Agreements to be filed |
| Section 118 | Minutes |
| Section 119 | Inspection of Minute Book of General Meeting |
| Section 120 | Maintenance and Inspection of Documents in Electronic Form |
| Section 121 | Report on Annual General Meeting |
| Section 122 | Applicability of Chapter VII to OPC |

Introduction

To begin with, let us understand the structure of this Chapter of Companies Act, 2013 which deals with the provisions related to Management & Administration of Company. It runs from Section 88 to 122 and is divided under the following headings



REGISTERS & RETURNS

Section 2(55) of the Companies Act 2013 defines 'Member' as-

- The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register of members
- Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall be a member of the company.
- Every person holding shares of a company and whose name is entered as a beneficial owner in the records of a depository shall be deemed to be a member of the concerned company.

A person may acquire the membership of a company:

1. By subscribing to the Memorandum of Association (deemed agreement); or
2. By agreeing in writing to become a member:
 - i. By making an application to the company for allotment of shares; or
 - ii. By executing an instrument of transfer of shares as transferee; or
 - iii. By transmission; or
 - iv. By acquiescence or Estoppel.
3. By holding equity share capital of a company whose name is entered as beneficial owner in the records of a depository (Under the Depositories Act, 1996),

WHO MAY BECOME A MEMBER???

| | | |
|--|--|--|
| Company as a member of another company | | |
| Partnership firm as member | | |
| Sec 8 companies | | |
| Foreigner as member | | |
| Minor as member | | |
| Insolvent as member | | |
| Pawnee | | |
| Bankrupt | | |
| Person taking shares in fictitious names | | |
| Trade union as member | | |

SUBSCRIBERS TO THE MEMORANDUM

- ❖ Subscriber to MOA are **Ipsa Facto**(by default) member
- ❖ Each subscriber must agree to take **minimum 1 share** in share capital of the proposed company
- ❖ The subscriber has to **sign and write** in own handwriting the personal details.
- ❖ By subscribing to the memorandum, the person is **deemed** to have agreed to become a member. On registration of the company, the subscribers become members of the company and their names entered in the register of members.
- ❖ **Liable** for shares subscribed
- ❖ Subscriber **cannot rescind** the contract even on grounds of fraud

(In Kumaran Potty Vs. Venad Pharmaceuticals & Chemicals Ltd.)

REGISTER PRIMA FACIE EVIDENCE

- ❖ Share certificate=May be forged
 - ❖ Register of member=Reliable and prima facie evidence
- (Re. M.F.R.D. Cruz)

CESSATION OF MEMBERSHIP =NAME REMOVED FROM REGISTER OF MEMBERS

This may happen if

- ❖ Shares are transferred
- ❖ Shares are forfeited
- ❖ Shares are sold to enforce a lien
- ❖ Shareholder dies
- ❖ Shareholder is adjudged insolvent and official assignee disclaims his shares
- ❖ Redeemable preference shares are redeemed
- ❖ Rescind the contract of membership
- ❖ Shares are purchased under an order by court
- ❖ A company is a member in another company and the member company wounds up
- ❖ If the company who has members wind up
- ❖ On cancellation of contract of membership
- ❖ Share warrant is issued in exchange of fully paid shares
- ❖ In case if buy back of shares takes place by company

REGISTER OF MEMBERS SECTION 88 (1)

- ❖ Every company shall, from date of its registration, keep and maintain a register of members in one or more book in **Form no. MGT-1**
- ❖ Register of members should contain
 - Name ,address and occupation of member
 - No. of shares held and amount paid of those shares
 - Date at which name was entered in the register
 - Date at which any person ceased to be a member
- ❖ The defaulter is punishable with fine of Rs. 500 per day till default continues

INDEX OF MEMBERS (SECTION 88(2))

- ❖ Every register shall include an index of names
- ❖ The index should contain sufficient indication to enable
 - ❖ entries relating to folio in the register
- ❖ The entries should be made in index simultaneously with allotment or transfer
- ❖ **Not necessary if members are less than 50**

FOREIGN REGISTER (SEC 88 (4))

- ❖ A foreign register should be maintained in all such countries where the company has large number of shareholders/debenture holders/ security holders.
- ❖ **Within 30 days** from date of opening of foreign register, the company shall file **Form MGT-3** with ROC.
- ❖ Entries in foreign register shall be made simultaneously after the BOD approves allotment/transfer.
- ❖ The company shall transmit copy of every entry in foreign register within 15 days and maintain a duplicate foreign register

CLOSING OF REGISTER (SECTION 91)

- ❖ A company may close its registers for a period not exceeding **45 days in a year**. However, the register cannot be closed for more than **30 days at a time**
- ❖ It can be closed after giving at least **7 days previous notice** or such lesser notice as specified by SEBI.
- ❖ The notice shall be by way of advertisement, at least once in a vernacular newspaper and at least once in English newspaper having wide circulation in the district where registered office is located and also public notice on website.
- ❖ The requirement of advertisement giving notice of closure is **not applicable to a private company** provided that **notice has been served** on all members **not less than 7 days prior** to closure of register.
- ❖ It is closed before Annual general meeting (for giving notice, to pay dividend etc) or before Rights or Bonus issue (for finding out eligibility)

ANNUAL RETURN (SECTION 92)

The provisions of preparation and filing of annual return of a company are contained in section 92 of the Companies Act, 2013.

The section is particularly important from the compliance point of view, since this is an annual compliance and essentially captures all the important events that have taken place in the company during the financial year. Every company is required to file with the ROC, the annual return as prescribed in section 92, in **Form MGT - 8** as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows-

- a) Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.
- b) Its shares, debentures and other securities and shareholding pattern
- e) ~~Its indebtedness~~
- d) Its members and debenture-holders along with the changes therein since the close of the previous financial year

- e) Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.
- f) Meetings of members or a class thereof, Board and its various committees along with attendance details.
- g) Remuneration of directors and key managerial personnel
- h) Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment.
- i) Matters relating to certification of compliances, disclosures.
- j) Details in respect of shares held by or on behalf of the Foreign Institutional investors ~~including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.~~
- k) Such other matters as may be prescribed.

***Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.*

- ❖ The afore-mentioned annual return has to be signed by a director of the company and the company secretary; and in case, there is no company secretary, by a company secretary in practice. However, in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
- ❖ As per Rule 11(2) of the Companies (Management & Administration) Rules, 2014, the annual return, filed by a listed company or a company having paid-up share capital of Rs.10 crore or more; or a turnover of Rs.50 crore or more, shall be certified by a Company Secretary in practice and the certificate shall be in **Form MGT - 8**. It must state that the annual return discloses the facts correctly and adequately and that the company has complied with all the provisions of the Act.
- ~~❖ The extract of annual return shall be attached with the Board's Report in **Form MGT - 9**, as per section 92(3) read with rule 12(1).~~

Every company shall place a copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.
- ❖ The annual return shall be file with the ROC in **Form MGT - 7** within 60 days from which the Annual General Meeting ('AGM') is held or should have been held in any year, along with the reasons for not holding the AGM ~~within the time specified under section 403.~~

****Companies (Amendment) Act, 2017**

There are various amendments in this Sections, relating to indebtedness, FII Details, Website inclusions and penalties etc.

This all changes were done in connection to provide ease of Business for the Companies.

PLACE OF KEEPING REGISTERS (SECTION 94)

- ❖ Registers , indices, copies of returns shall be kept at registered office
- ❖ **Unless a special resolution** is passed at general meeting authorising
- ❖ The keeping of register at any other place within the city, town or village in which the registered office of the company situated or
- ❖ at any place in India in which **more than 1/10th members** of the total members resides
- ❖ in case if shares are held by members in electronic mode, the register and index of beneficial owners maintained by a depository under Section 11 of Depositories Act, 1996 shall be deemed to be corresponding register and index.

RIGHTS OF MEMBERS

- ❖ Equity Shareholders:
 - Right to vote on **every resolution**
 - The **voting right on a poll** shall be in **proportion** to his share in the paid up share capital of the company
- ❖ Preference Shareholders:
 - Right to vote only on **resolutions which directly affect the rights** attached to his preference shares
 - Right to vote on resolution relating to **winding up and reduction of capital**
 - If **dividend** in respect of class of preference shares has **not been paid for 2 years or more**, then such shareholders have right to vote on **all resolutions**.
- ❖ Right to receive copies of documents of company
- ❖ Right to inspect the registers of company
- ❖ Right to attend meeting of shareholders and vote personally or through proxy
- ❖ Except these the members have other rights
 - To receive share certificate
 - To transfer shares
 - To resist about increase in liability
 - To receive dividend
 - To have right shares
 - To appoint director
 - To share surplus asset on winding up

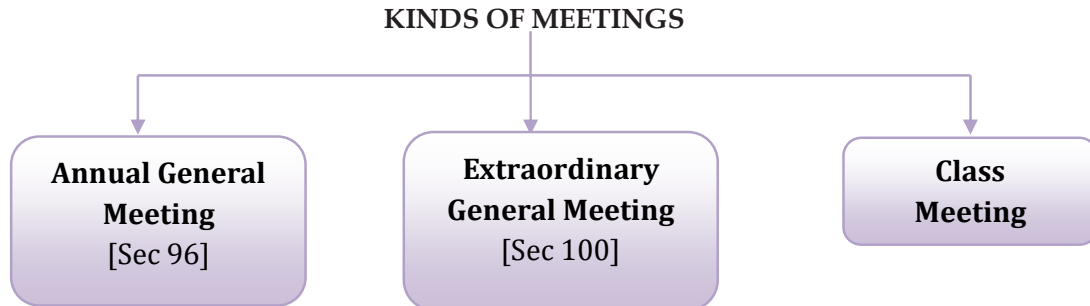
LIABILITY OF MEMBERS

- ❖ Members in liable for the full nominal value as and when called.
- ❖ Liability becomes unlimited in no. of members falls below statutory limit.
- ❖ If whole amount is not called, and company goes into liquidation, member is liable to extent of the unpaid value.

| | |
|---|-------------------------------------|
| Company with unlimited liability | Liable in full |
| Company limited by guarantee | Liable till the amount of guarantee |
| Company limited by shares | Liable till the unpaid amount |

ALL ABOUT GENERAL MEETINGS

The decision making powers of a company are vested in the Members and the Directors and they exercise their respective powers collectively through Resolutions passed in various meetings.



ANNUAL GENERAL MEETING - AGM (Sec 96)

- ❖ Section 96 provides that **every** company, **other than OPC** is required to hold an AGM every year
- ❖ AGM is regular meeting held annually for transacting **ordinary business**

1st AGM ❖ Within 9 months
❖ From closing of F.Y

2nd AGM ❖ AGM must be hold every calendar yr
❖ Gap between 2 AGM cannot be more than 15 months
❖ Within 6 months from the end of F.Y.

W.I.E

EXTENSION OF VALIDITY PERIOD OF AGM

If it is not possible for a company to hold AGM within prescribed time, the Registrar may, for any special reason, **extend** the time within which any AGM shall be held. However, such extension can be for **maximum 3 months**.

No such extension is allowed for holding of first AGM.

TIME DATE AND PLACE

- ❖ During business hours (**9am - 6pm**)but not on holiday
- ❖ Held at registered office or other place near registered office
** *Annual general meeting of an unlisted company may be held at any place in India subject to prior consent of all the members of the company in writing or by electronic mode.*
- ❖ Private company fix time and place by its articles or resolution passed at previous AGM or passing resolution agreed by all member for any other place
- ❖ Public company fix time of AGM by articles or by resolution passed at previous AGM

POWER OF TRIBUNAL – In case of AGM

[Sec 97]

- ❖ If any default made in holding AGM, any member of the company may make an application to Tribunal to call or direct calling of AGM and give such ancillary direction as it thinks fit
- ❖ One of direction may be one person present in person or by proxy shall be deemed to constitute the quorum
- ❖ GM held in pursuance of sub section (1) shall be deemed to be an AGM

POWER OF TRIBUNAL – Other than AGM

[Sec 98]

If it is impracticable for a company to call a meeting of the company (Other than AGM) the Tribunal may order a meeting of the company to be called, held and conducted in the manner as the Tribunal may direct. Tribunal may make the order on its own motion or an application of director or member of the company. One of the directions may be that one person present in person or by proxy shall be deemed to constitute the quorum. The Tribunal's **power u/s 98** is discretionary and not mandatory.

PENALTY

[Sec 99]

If the default is made in holding meeting of a Company, the company & every officer of the company, who is in default shall be punishable with fine which may extent to **Rs. 1 lakh** and in case continuing default, with further fine which may extent to **Rs. 5 thousand** for each day during which the default continues

REPORT ON AGM [Sec 121]

- ❖ Every **listed public company** required to prepare a report on each AGM including confirmation to the effect that meeting was convened, held and conducted as per Act.
- ❖ A copy of report shall be filed to registrar **within 30 days** of conclusion of AGM in **FORM MGT 15** with prescribed fees
- ❖ It shall be prepared in addition to minutes of general meeting.
- ❖ Such report shall contain fair and correct summary of proceedings of the meeting.
- ❖ If company fails to file report within specified period, the company shall be punishable with fine of Rs 1 lakh to 5 lakh
- ❖ Every defaulting officer shall be punishable with fine of Rs 25000 to Rs. 1 lakh

EXTRAORDINARY GENERAL MEETING

(SEC 100)

Any general meeting other than an AGM is called as an Extra Ordinary General Meeting. All business items to be transacted at EGM are special business.

An EGM may be convened:-

- ❖ By the BOD on its own or
- ❖ By the BOD on the requisition of members.
- ❖ By the Requisitionist themselves on the failure of the Board to call the meeting.

❖ By the Tribunal

| | |
|---|--|
| By the Board of Directors On their own | The Board may, whenever it deems fit, call an extraordinary general meeting of the company. Provided that an EGM of company, other than wholly owned subsidiary of company incorporated outside India, shall be held at a place in India. |
| On requisition of members | The members of the company may also ask for an EGM to be held. |
| Person entitled to Requisition | <ul style="list-style-type: none"> ❖ If the company has share capital, members holding not less than 10% of the paid up share capital of the company as on that date carrying voting rights. ❖ If the company does not have share capital, members having 10% of the voting power of all the members |
| Compliance of requisition | <ul style="list-style-type: none"> ❖ A notice convening the EGM must be given by the board within 21 days of the deposit of requisition giving at least 21 days notice of the meeting, and ❖ Meeting must be held within 45 days of the date of deposit of the requisition. |

BY REQUISITIONIST THEMSELVES

- ❖ If the Board does not within 21 days from date of receipt of valid requisition, proceeds to call meeting, then, the meeting may be called and held by requisitionist themselves **within 3 months** from date of requisition.
- ❖ Reasonable expenses incurred by requisitionist in calling such meeting shall be reimbursed by company. The company in turn will recover such expenses from defaulting directors.
- ❖ If **quorum is not present** within half hour from time appointed for holding the meeting, the meeting shall **stand cancelled**.

Convening and Conduct of General Meeting

Before we move on to our next concept of types of meetings and the procedure to convene them, as per the Companies Act, 2013, let us take a turn and swot the terms which are important to know for convening the meeting.

| Before Meeting | During Meeting | Post - Meeting |
|--|---|---|
| <ul style="list-style-type: none"> ❖ Notice of meeting- section 101 ❖ Explanatory Statement to be annexed with notice- Section 102 | <ul style="list-style-type: none"> ❖ Quorum for meeting- Section 103 ❖ Chairman of meetings - Section 104 ❖ Proxies - section 105 ❖ Voting - Section 106-110 ❖ Resolutions- Sections 111, 114 - 117 | <ul style="list-style-type: none"> ❖ Minutes of Meeting - Section 118, 119 Maintenance & inspection of documents - section 120 |

**NOTICE OF MEETING
(SEC 101)**

| | |
|--|---|
| GM may be called | <ul style="list-style-type: none"> ❖ By giving Not less than 21 days clear notice ❖ In writing or in electronic mode ❖ Notice shall not be sent through Ordinary post if the company provides e-voting facility or if item of business to be transacted through postal ballot. |
| May be called on shorter notice | <ul style="list-style-type: none"> ❖ Consent in writing or electronic mode ❖ By min 95% of members entitled to vote |
| Contents of notice | <ul style="list-style-type: none"> ❖ Place, date, day and hour of meeting ❖ EGM can be held on any day (Public Holiday/Sunday) ❖ Statement of business to be transacted |
| Person entitled | <ul style="list-style-type: none"> ❖ Member (includes preference shareholders and depositories) ❖ Legal representative ❖ Assignee of insolvent ❖ Auditor ❖ Director |

**STATEMENT TO BE ANNEXED TO NOTICE
(SECTION 102)**

| | |
|------------------------------------|--|
| In case of Special Business | A statement setting out the following material facts, shall be annexed to the notice calling the meeting |
|------------------------------------|--|

- ❖ The nature of concern or interest, financial or otherwise, if any, in respect of each item of:
 - every director and the manager, if any;
 - every other key managerial personnel; and
 - relatives of the persons mentioned above.
- ❖ Any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

In the case of an AGM, following business is to be transacted are regarded as ordinary business

- i) the consideration of financial statements and the reports of the BOD and auditors;
- ii) the declaration of any dividend;
- iii) the appointment of directors in place of those retiring;
- iv) the appointment of, and the fixing of the remuneration of the auditors; and

In the case of an AGM and any other meeting, all business shall be deemed to be special

QUORUM (103)

Quorum refers to **minimum number of members** required to constitute a **valid meeting**.

| COMPANY | NO.OF MEMBERS (as on date of meeting) | MINIMUM REQUIREMENT |
|----------------|--|------------------------|
| Public | Upto 1000 | 05 |
| | More than 1000 but upto 5000 | 15 |
| | More than 5000 | 30 |
| Private | In any case | 02 |

**** Articles of Private Company may provide for higher number as quorum.**

If members not present within half an hour

- ❖ Meeting shall stand adjourned to same day in next week
- ❖ If meeting is called by requisitioner , then shall stand cancelled

No quorum present in adjourned meeting - Members present shall be quorum

Some other important points-

1. Members need to be personally present at a meeting to constitute quorum
2. Proxies shall be excluded for determining quorum.
3. However, following persons attending meeting would be considered as members personally present and hence included to constitute meeting-
 - Representative of President/Governor
 - Representative of Body Corporate

CHAIRMAN OF THE MEETING (SEC 104)

- ❖ Unless the articles provide otherwise, the members personally present at the meeting shall elect one of themselves to be the Chairman thereof on show of hands.
- ❖ If a poll is demanded on election of Chairman, it shall be taken forthwith in accordance with provisions of this Act and Chairman elected on show of hands shall continue to be the Chairman of the meeting until some other person is elected as Chairman as a result of poll and such other person shall be the Chairman for rest of meeting.

PROXIES (SEC 105)

- ❖ Any member entitled to vote or speak at meeting can appoint another person as proxy to attend and vote at the meeting
 - Proxy **does not have** right to speak or vote **except on poll**
 - A person appointed as proxy shall not act as **proxy** on behalf of **more than 50 members and** members holding in aggregate **more than 10%** if total share capital of the company carrying voting rights.
- ❖ Every notice of meeting shall contain a statement that a member entitled to attend and vote can appoint proxy
 - If default is made, every office in default shall be **punishable with fine up to Rs 5000**

- ❖ The instrument appointing proxy shall be in **Form no. MGT-11** should be filed before **48 hrs**
 - The instrument shall be in writing and signed by appointer
 - If appointer is body corporate, it should seal and signed by officer
- ❖ If instrument is signed by shareholder and proxy, no one can question proxy form
 - Member entitled to vote can inspect the proxies lodged, **if min 3 days' notice** to inspect is given by them to company

RESTRICTION ON VOTING RIGHTS (Sec 106)

The section overrules the whole of the Company's Act, 2013 and provides that the articles of association of a company may provide that no member shall exercise any voting right in respect of any share registered in his name on which any amount is due from him on calls or any other sums payable to the company, or in regard to which the company has exercised the right of lien. Also, such member can't sign a requisition for an extraordinary general meeting

VOTING (SEC 107-108)

| | |
|--------------------------------|---|
| By show off hands | <ul style="list-style-type: none"> ❖ A resolution put to vote shall be decided on a show of hands unless a poll demanded or electronic voting is carried out ❖ Resolution passed and recorded in minutes by show off hands shall be the conclusive evidence |
| Through electronic mode | <ul style="list-style-type: none"> ❖ Voting by e-mode means a process for recording votes by members using computer based machine to display an electronic ballot and to record vote and also number of votes polled in favour or against in such a way that entire voting gets registered and counted in a electronic registry at centralized server. ❖ <i>Every listed company whose equity shares are listed on a recognised stock exchange or a company having not less than 1000 shareholders may provide facility to exercise right to vote electronically.</i> ❖ Nidhi Company not required to provide e-voting facility. |

**** Show of hands not to be allowed in case of e-voting**

DEMAND FOR POLL (SEC 109)

- ❖ Company having share capital
 - By member or proxy **having min 1/10th** of total voting power
 - Holding shares amounting to **min 5 lakhs**
- ❖ Any other company
 - By member or proxy having **min 1/10th** of total voting power
- ❖ Poll demanded for appointment of chairman or adjournment of meeting
 - **Immediately**
- ❖ Poll demanded on any other question
 - **Within 48 hrs** from time when demand was made

POSTAL BALLOT (SEC 110)

- ❖ Postal Ballot means voting by post or through any electronic mode
- ❖ Company shall transact the business by postal ballot as CG has declared by notification
- ❖ Company shall transact the business by postal ballot other than
 - ordinary business in AGM and
 - business in respect of which director or auditor have right to be heard
- ❖ Resolution assented by majority of shareholders by postal ballot, it shall be deemed to have been duly passed
- ❖ OPC and **companies having members upto 200** are **not required** to transact business through postal ballot.

Representation of President and Governors in Meeting (Section 112)

Section 112 of the Companies Act, 2013 provides that the President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting and shall be entitled to exercise the same rights and powers including the right to vote to proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

Representation Of Corporations at Meeting Of Companies And Creditors (Section 113)

Section 113 of the Companies Act, 2013 seeks to provide that where a body corporate is member or creditor of the company, they may authorize a person to act as its representative in the meeting of the company. The provision is as under-

1. **Appointment of representative by a body corporate:** A body corporate, whether a company within the meaning of this Act or not, may-
 - a) **If it is a member of company-** by resolution of its Board of Directors or other governing body, authorize such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company;
 - b) **if it is a creditor, including a holder of debentures,** of a company-, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of this Act or of any rules made there under, or in pursuance of the provisions contained in any debenture or trust deed, as the case maybe.

ORDINARY & SPECIAL RESOLUTION (SEC114)

| | |
|----------------------------|---|
| Ordinary Resolution | Requires consent of at least 50% of members present |
| Special Resolution | Requires consent of at least 75% of members present |

ORDINARY RESOLUTION

In favors of resolution including the casting vote shall **exceed** the votes cast against the resolution.

SPECIAL RESOLUTION

- ❖ When there is an intention to propose the resolution as special resolution
- ❖ The notice shall be given
- ❖ The vote cast in favors of the special resolution shall **not be less than 3 times** the number of votes cast against the resolution
- ❖ Form MGT.14 to be filed along with explanatory statement .

SPECIAL NOTICE (SEC 115)

| | |
|--|--|
| Special notice shall be signed by members | Holding min 1% of total voting power or Holding shares on which sum of min 5lakh is paid up |
| Notices shall be sent by members | Not earlier than 3 months but at least 14 days before the meeting |
| The company shall give members notice of members | At least 7 days before the meeting exclusive of day of dispatch and day of meeting |
| Where it is impracticable to give notice | The notice shall be published in English newspaper in English language and vernacular language in vernacular newspaper |

RESOLUTION REQUIRING SPECIAL NOTICE

Following resolutions shall require special notice-

- ❖ To remove director before expiry of his office
- ❖ To appoint another director in place of removed director
- ❖ At an AGM to provide that retiring auditor shall not be re-appointed.
- ❖ At an AGM to appoint and auditor, other than retiring auditor.
- ❖ Where articles provide for special notice for a specified matter.

Resolution passed at adjourned meeting (Section 116)

- ❖ A resolution passed at adjourned meeting of
- ❖ A company , holders of any class of shares in company, the BOD of company
- ❖ Shall be treated as passed on date on which it was in fact passed

Resolutions And Agreements To Be Filed (Section 117)

Section 117 of the Companies Act, 2013 talks about the resolutions and agreements which are to be filed with the Registrar of Companies, together with the explanatory statement, within 30 days of its passing.

Applicability of the section -

Section 117 (3) states that the following resolutions and agreements shall be filed with The RoC in Form MGT - 14 within 30 days of its passing -

- ❖ Special Resolutions
- ❖ Unanimous Resolutions, i.e. resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions;
- ❖ Resolution or agreement of appointment or re-appointment of Managing Director;

MINUTES (SEC. 118)

- ❖ Every company shall cause minutes of
 - Every general meeting
 - Of any class of shareholders or creditors
 - Every resolution passed by postal ballot
 - Every meeting of BOD
 - Every committee of board
- ❖ To be prepared , signed and kept **within 30 days** of conclusion of such meeting
- ❖ The minutes shall contain fair and correct summary
- ❖ All appointments shall be included in minutes
- ❖ In case of meeting of BOD or of committee ,minute shall contain
 - name of director present
 - name of directors dissenting with resolution
- ❖ Minutes shall not include any matter which
 - is irrelevant or immaterial
 - is detrimental to interest of company
 - is regarded as defamatory
- ❖ Where the minutes has been kept, until the contrary is proved
 - The meeting shall be deemed to have duly called and held
 - All proceedings to have duly taken place
 - The resolution passed by postal ballot to have been passed
 - All appointments shall be deemed to be valid
- ❖ No document purporting to be report of gm shall be circulated or advertised at expense of company unless it includes the matters contained in minutes
- ❖ In case of default , company shall be liable to penalty of Rs 25000 and defaulting office to penalty of Rs 5000
- ❖ Person found guilty of tampering with minutes, a fine of Rs 25000-1 lakh and 2 yr imprisonment is punishable

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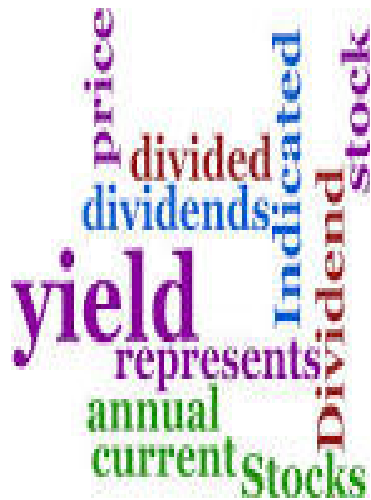


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DIVISIBLE PROFITS AND DIVIDENDS



LEARNING OBJECTIVES

- Declaration and Payment of Dividend
- It broadly covers transfer of profits to reserves
- Maximum dividend that can be declared, in case of inadequacy of profits, transfer of Unpaid Dividend to Unpaid Dividend Account and Investor Protection and enhanced penalty etc.,
- Transfer of unpaid dividend to unpaid dividend account.
- Investor Education and Protection Funds(Sources and uses

Regulatory Framework for Dividend

| | |
|---------------------|---|
| Applicable Chapter | Chapter VIII of the Companies Act, 2013 |
| Applicable Sections | Section No. 123 to Section No. 127 |
| Applicable Rules | Companies (Declaration & Payment of Dividend Rules), 2014 |
| Applicable Standard | SS 3 |

Section Numbers & Particulars

| | |
|-------------|---|
| Section 123 | Declaration of Dividend |
| Section 124 | Unpaid Dividend Account |
| Section 125 | Investor Education and Protection Fund (IEPF) |
| Section 126 | Right to Dividend, rights share and bonus shares to be held in abeyance pending registration of transfer of shares. |
| Section 127 | Punishment for failure to distribute dividend |

DEFINITION AND MEANING OF DIVIDEND

- ❖ Dividend word has been derived from the word “Dividendum”
- ❖ Dividend is the return on the share capital subscribed for and paid to a company by its shareholders.
- ❖ “Dividend” has been defined under section 2(35) as “dividend” includes any interim dividend

DIFFERENCE BETWEEN DIVIDEND AND INTEREST

| | DIVIDEND | INTEREST |
|-----------|--|---|
| PAID ON | Equity and pref. shares | Long/ short term loans (including fixed deposits) |
| PAID FROM | Becomes debt only after being declared and paid out of profits available | It is a debt and paid out of company's assets |
| NATURE | Appropriation of profit | Charge on profit |

(Bacha F Guzdar V. CIT)

TYPES OF DIVIDEND

| | |
|-------------------------------------|--|
| Final dividend | <ul style="list-style-type: none"> ❖ It is recommended by the Board of Directors ❖ It is declared by the shareholders at the AGM ❖ Shareholder cannot increase the rate or amount of dividend than the one recommended by the Board. ❖ Dividend once declared becomes a debt |
| Interim dividend | <ul style="list-style-type: none"> ❖ Sec 2(35) defines ‘dividend’ to include interim dividend. ❖ It is paid between 2 AGM ❖ Declared by BOD ❖ Section 123(3) of the Co. Act,13 make provisions for declaration of interim dividend. <ul style="list-style-type: none"> ✓ Board declare dividend out of the surplus in the profit and loss account. ✓ If co. incurs loss in FY, dividend shall not be declared at rate higher than Average dividend in last 3 FY |
| Dividend on preference share | A preference share carries a fixed and preferential right to dividend in accordance with the term of issue and the articles of association, subject to the availability of distributable profits and declaration of dividends on preference shares- it may be cumulative or non cumulative the other class. |
| Dividend on equity shares | <ul style="list-style-type: none"> ❖ Dividend on equity shares are paid as per the rights of the respective classes of shares and after all dividends on preference shares have been paid to date - The rate of dividend may be even higher than the rate of preference shares ❖ Balance in Securities Premium Account cannot be used to distribute dividend |

DECLARATION OF DIVIDEND (Sec. 123)

Sec. 123(1) - Dividend can be declared or paid by company for any financial year only out of the following:

- a) Out of profits of the company for that year arrived (after depreciation) or out of profits of previous years (after depreciation) and remaining undistributed or out of both.
- b) Out of money provided by Central Government and State Government

Provided that the Company may transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Provided further that due to inadequacy or absence of profit, if a company decides to declare dividend out of accumulated profits of previous year which are transferred in free reserves, then such declaration shall be made in accordance with Companies (Declaration and Payment of Dividend) Rules, 2014.

(This proviso not applicable to Government companies in which entire share capital held by Central or State Government or in combination)

Provided also that no dividend shall be declared or paid by company from its reserves other than free reserves.

Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous years are set off against profit for current year.

| | |
|----------------------|--|
| Sec. 123(2) - | Depreciation shall be provided in accordance with Schedule II. |
| Sec. 123(3) - | Interim Dividend |

BOD may declare such dividend during any financial year or at any time during period from closure of financial year till holding of AGM.

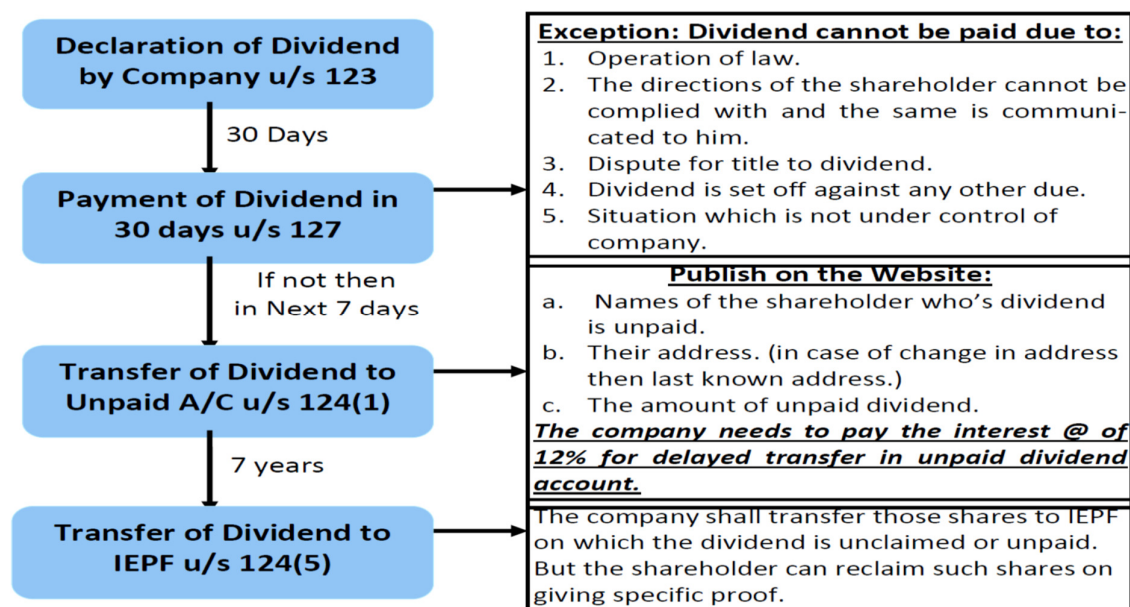
However if company has **incurred loss** during current financial year upto end of quarter immediately preceding date of declaration of interim dividend, then such dividend shall not be declared at rate higher than average dividends declared by company during immediately preceding 3 financial years.

Sec. 123(4) - The amount of dividend, shall be deposited in a scheduled bank in a separate bank account **within 5 days** from date of declaration of dividend.

(This proviso not applicable to Government companies in which entire share capital held by Central or State Government or in combination)

| | |
|----------------------|--|
| Sec. 123(5) - | No dividend shall be paid by company except to registered shareholder of such share or to his order or to his banker and shall not be payable except in cash (cash means by cash/cheque/warrant/e-mode) |
| Sec. 123(6) - | a company which fails to comply with provisions of Section 73 and 74 shall not, as long as such failure continues, declare any dividend on its equity shares. |

| UNPAID DIVIDEND ACCOUNT (sec 124) | |
|--|--|
| Sec. 124(1) - | When dividend declared but not paid or claimed Within 30 days from date of declaration , then the company shall Transfer the total amount of dividend which remains unpaid or unclaimed to special Account in schedule bank to be called Unpaid Dividend Account Within 7 days from expiry of 30 days |
| Sec. 124(2) - | the company shall, within 90 days of making transfer to Unpaid dividend Account, prepare a statement containing names, their last known address and such other details and place it on website of company. |
| Sec. 124(3) - | If any default is made, 12% pa interest on such amt shall be paid |
| Sec. 124(4) - | Any person claiming to be entitled to any money transferred to unpaid account may apply to company for money claimed. |
| Sec. 124(5) - | any money transferred to Unpaid Dividend Account, which remains unpaid or unclaimed for 7 years from date of such transfer, shall be transferred to IEPF Account . |
| Sec. 124(6) - | any shares transferred to Unpaid Dividend Account, which remains unpaid or unclaimed for 7 years from date of such transfer, shall be transferred to IEPF Account . |
| Sec. 124(7) - | any claimant of shares transferred above shall be entitled to claims the transfer of shares from IEPF in accordance with such procedure and on submission of such documents as may be prescribed |
| Sec. 124(8) - | the company shall be punishable with fine which shall not be less than Rs.5,00,000 but which may extend to Rs.25,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs.1,00,000 but which may extend to Rs.5,00,000. |



**ESTABLISHMENT OF INVESTOR EDUCATION and PROTECTION FUND (IEPF)
(Sec. 125)**

| | |
|----------------------|--|
| Sec. 125(1) - | CG establish a fund to be called investor education and protection fund. |
| Sec. 125(2) - | Amount credited to fund <ul style="list-style-type: none"> ➤ Unpaid dividend accounts(+) Interest accrued ➤ Matured debentures(+) Interest accrued ➤ App money received and due for refund ➤ Matured deposits ➤ Donation by CG ,SG, companies or any other institution ➤ Interest or income received out of investment ➤ Amount lying in IEPF created under Companies Act, 1956 ➤ Such other amount as prescribed. |
| Sec. 125(3) - | The fund shall be utilized for: <ul style="list-style-type: none"> ➤ Refunds ➤ Promotion of Investors education, awareness and protection ➤ Distribution of any disgorged amount to eligible and identifiable applicants for shares or security holders who have suffered losses ➤ Reimbursement of legal expenses ➤ Any other purpose incidental thereto |

**RIGHT TO DIVIDEND, RIGHT SHARES, BONUS SHARES WHERE REGISTRATION
PENDING (Sec. 126)**

Where any instrument of transfer has been delivered to any company for registration and transfer of such shares has not been registered by company, it shall-

- a) Transfer the dividend to Unpaid Dividend Account unless company authorized by registered holder of shares in writing to pay such dividend to transferee **and**
- b) Keep in abeyance, in relation to such shares, any offer of right shares or bonus shares.

PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDEND (Sec. 127)

Where dividend has not been paid or warrant has not been posted within 30 days from date of declaration to any shareholder entitled to payment of dividend, then every director of company (who is knowingly a party to default), be punishable with imprisonment which may extend to 2 years and fine which shall not be less than Rs.1000 every day during which default continues and company shall be liable to pay simple interest of 18% pa during period for which default continues.

Provided that no offence under this Section deemed to have been committed where Dividend could not be paid by reason of operation of law

- a. where the dividend could not be paid by reason of the operation of any law;
- b. where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- c. where there is a dispute regarding the right to receive the dividend;

- d. where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- e. where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

DECLARATION OF DIVIDEND OUT OF RESERVES
Rule 3 - Companies (Declaration & Payment of Dividend Rules), 2014

Rule 3 of the Companies (Declaration and Payment of Dividend) Rules 2014 makes rules for declaration of dividend out of reserve.

In the event of adequacy or absence of profits in any year, a company may declare dividend out of surplus subject to the fulfilment of the following conditions, namely:-

- (1) The rate of dividend declared shall not exceed the average of the rates at which dividend was declared company, which has not declared any dividend in each of the **three** preceding financial year.
- (2) The total amount to be drawn from such accumulated profits shall not exceed **one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement.**
- (3) The amount so drawn shall first be utilised to set off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared.
- (4) The balance of reserves after such withdrawal shall not fall below fifteen percent of its paid up share capital as appearing in the latest audited financial statement.

| Important Case Laws to Remember | | |
|---------------------------------|--|---|
| S.NO. | CASE NAME | PROVISIONS |
| 1. | Burland vs. Earle | (1902) How much of the profit shall be distributed to shareholders in the form of dividend is matter of internal management of company. The court will not interfere with their discussion. |
| 2. | Oxford benefit Building & Investment Society, In re (1886) | Directors who knowingly paid dividends out of capital shall be held personally liable to make good the amount to the company. |
| 3. | Baharat fire and General Insurance Ltd. Vs. CIT (1964) | Amount standing to the credit of the securities premium account can't be distributed by way of dividend to the shareholders |
| 5. | [Bishwanath Prasad Khaitan v. New Central Jute Mills] | It is beyond the powers of a company to declare a further dividend after the declaration of a dividend at the AGM. However, a company, which could not declare a dividend at an AGM, may do so at a subsequent EGM. |



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ACCOUNTS OF THE COMPANY



Regulatory Framework of Accounts of the Company

| | |
|---------------------|---------------------------------------|
| Applicable Chapter | Chapter IX of the Companies Act, 2013 |
| Applicable Sections | Section No. 128 to Section No. 138 |
| Applicable Rules | Companies (Accounts) Rule, 2014 |

Section Numbers & Particulars

| | |
|-------------|---|
| Section 128 | Books of Accounts |
| Section 129 | Financial Statement |
| Section 130 | Reopening of account |
| Section 131 | Voluntary of financial statement |
| Section 132 | Constitution of NFRA |
| Section 133 | CG prescribed AS |
| Section 134 | Financial statement, board report etc |
| Section 135 | CSR |
| Section 136 | Right of member to copies of audited FS |
| Section 137 | Copy of FS to file with Registered |
| Section 138 | Internal Audit |

INTRODUCTION

- ❖ The shareholders provide capital to the company for running the business. They are in a way, the owners of the company. But, all of them cannot take part in managing the affairs of the company as their number is usually much more.
- ❖ Compulsory disclosure about the working and financial positions Enables shareholder to exercise a purposeful control over company

REQUIREMENT OF KEEPING BOOKS OF ACCOUNT [SECTION 128]

- ❖ Maintenance of books of account would mean records maintained by the company to record the specified financial transaction.
- ❖ This section specifies the main features of proper books of account as under:-
 - ✓ The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013.
 - ✓ Must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.
 - ✓ Must be kept on accrual basis and according to the double entry system of accounting.
 - ✓ Must give a true and fair view of the state of the affairs of the company or its branches.

PLACE OF KEEPING BOOKS OF ACCOUNTS [SEC 128(1)]

- ❖ Every company shall prepare and keep at its registered office books of accounts and other relevant books and papers and financial statement for every financial year which give a true and fair view of state of affairs of the company including its branch offices, if any.
- ❖ Provided that the company may keep such books of account in electronic mode in such manner as prescribed.
- ❖ The basic/primary accounts are to be kept and maintained at registered office of the company. However, they can be kept and maintained at a **place other than registered office** of company within India, if the company, **within 7 days** thereof, files with ROC, a notice on writing giving full address of other place in **AOC-5** and also **MGT-14**
- ❖ **Section 128(2)** - where the company has branch office in or outside India, it shall be deemed to have complied with provisions of section 128(1), if proper books of accounts relating to transactions effected at branch office are kept at branch office and proper summarised returns are sent by branch office to company at its registered office.

BOOKS OF ACCOUNT IN ELECTRONIC FORM

- ❖ Electronic mode is permitted and optional
- ❖ Books must be accessible in India
- ❖ Information received from branch offices shall not be altered and shall be kept in original manner.
- ❖ Information shall be displayed in legible form.

- ❖ Proper system of storage, retrieval, display or printout of records
- ❖ Shall not be disposed of unless permitted by law
- ❖ Company shall intimate ROC
 - ✓ Name
 - ✓ IP address
 - ✓ Service provider
 - ✓ Location Of service provider where it is maintained

INSPECTION OF BOOKS OF ACCOUNTS (SEC. 128(3))

- ❖ The books of accounts & other books and papers maintained by company within India shall be open for inspection at registered office or at such other place, by **any** directors during business hours
- ❖ Inspection of books of accounts of subsidiary Authorization by way of resolution of BOD
- ❖ If financial information is maintained outside India, copies of such information shall be made available for inspection by any Director and Such info shall be provided **within 15 days** of receipt of written request. Such information shall be sought by director himself and not by or through his POA holder or agent or representative.
- ❖ **Section 128(4)** - where inspection is made under Section 128(3), the officers and employees of company shall extend all assistance as company may reasonable be expected to give.

PERIOD FOR WHICH BOOKS TO BE PRESERVED (SEC. 128(5))

- ❖ Required to be preserved in good order by the company for a period of not less than **eight years** immediately preceding the relevant financial year.
- ❖ If an investigation has been ordered in respect of a company under Chapter XIV, the Central Government may direct that the books of account may be kept for such period longer than 8 years.

PERSONS RESPONSIBLE TO MAINTAIN BOOKS

- ❖ Managing Director,
- ❖ Whole-Time Director, in charge of finance
- ❖ Chief Financial Officer
- ❖ Any other person of a company charged by the Board with duty of complying with provisions of section 128.

PENALTY (SEC. 128(6))

Punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or both.

FINANCIAL STATEMENT SECTION 129

- ❖ **Section 129(1)** - This Section seeks to provide that the financial statements shall give a true and fair view of the state of affairs of the companies, comply with accounting standards and shall be in form as given in Schedule III.

Nothing contained in this section shall apply to a Insurance /banking/ generation of electricity or any other company which is governed by separate act.

- ❖ **Section 129(2)** - At every AGM, the BOD of company shall lay before such meeting financial statement for the financial year.
- ❖ **Section 129(3)** - where a company has one or more subsidiaries or associate companies or joint venture company, it shall, in addition to financial statement prepare a consolidated financial statement of the company and all the subsidiaries or associate companies in same form and manner as that of its own, which shall also be laid before the AGM.

Provided that the company also attach to financial statement, a separate statement containing salient features of financial statement of its subsidiaries or associate companies in **Form AOC-1**

- ❖ **Section 129(6)** - The consolidation of financial statements of company shall be made in accordance with provisions of Schedule III of Act and applicable accounting standards.

Provided that nothing in this rule shall apply in respect of preparation of consolidated financial statements by a company if it meets following conditions:

- It is a wholly owned subsidiary or is partially owned subsidiary of another company and all its members, who are intimated in writing with proofs of such intimation available, do not object to company not presenting financial statement.
- It is a company whose securities are not listed or are not in process of listing on any stock exchanges, whether in or outside India and
- Its ultimate or any intermediate holding company files consolidated financial statements with ROC which are in compliance with applicable accounting standards.

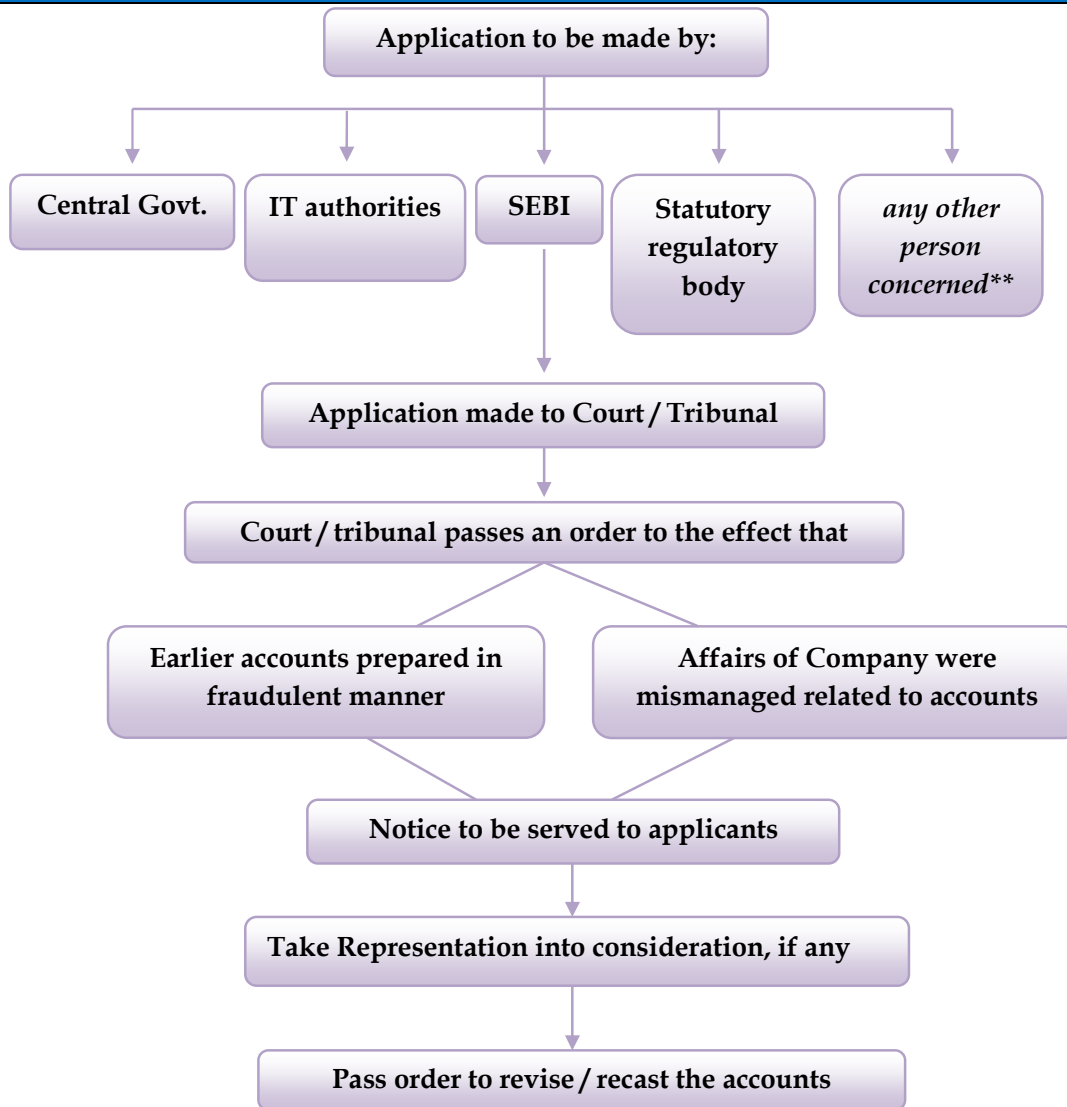
PERSONS RESPONSIBLE FOR COMPLIANCE

- ❖ Managing Director
- ❖ Whole-Time Director
- ❖ CFO
- ❖ Other person of a company charged by the Board with the duty of complying with requirements of section 129.

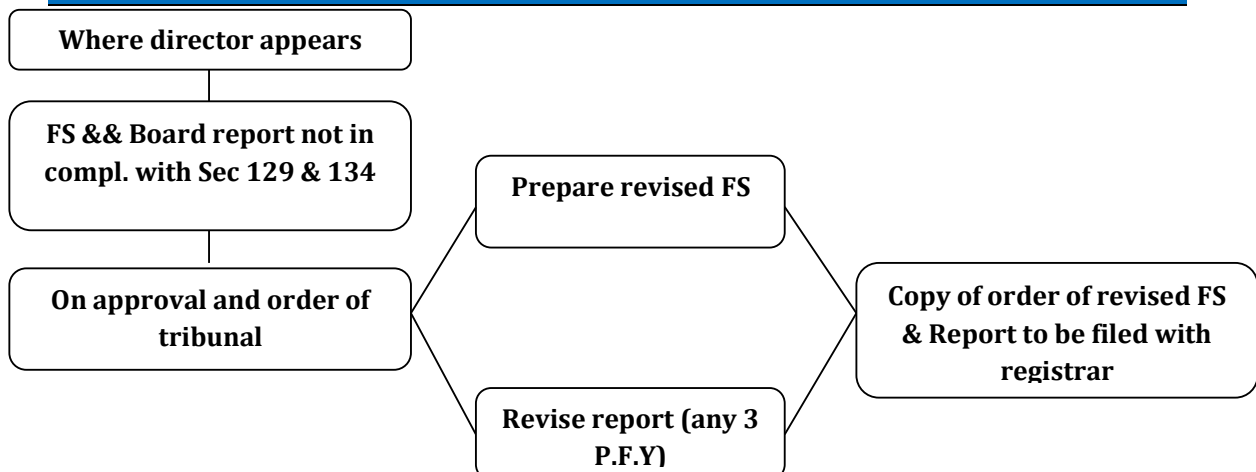
PENALTY

Punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

**RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL ORDERS
[SECTION 130]**



**VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT
SECTION 131**



CENTRAL GOVERNMENT TO PRESCRIBE ACCOUNTING STANDARDS
SECTION 133

- ❖ The Central Government may prescribe the standards of accounting or any addendum thereto, as recommended by the Institute of Chartered Accountants of India, constituted under section 3 of the Chartered Accountants Act, 1949.

FINANCIAL STATEMENT, BOARDS REPORT
SECTION 134

- ❖ **Section 134(1)** - The financial statement, including Consolidated financial statements, if any, shall be approved by BOD before they are signed on behalf of Board by:
 - Chairperson of company (if authorised by Board) or Two directors (out of which one shall be MD, if any) and
 - CEO (if appointed) and
 - CFO (if appointed) and
 - CS (if appointed)

In case of OPC, it should be signed by only one director.

- ❖ **Section 134(2)** - the Auditor's report shall be attached to every financial statement.
- ❖ **Section 134(3)** - Contents of report by BOD
Section 134(3) provides that there shall be attached to the statement laid before a company in general meeting a report by its Board of Director with respect to:
 - ~~a) Extract of annual return~~
 - b) Number of meetings of board
 - c) Director's responsibility statement
 - Ca) Details in respect of frauds reportable by auditors under 143(12) other than those reportable to Central Government
 - d) A statement on declaration by Independent director
 - e) If section 178 is applicable then also include company's policy on director's appointment and remuneration
Point (e) not applicable to Government Company
 - f) Explanation or comments by Board on every qualification, reservation or adverse remark made by auditor in his report or PCS in secretarial audit report
 - g) Particulars of loans, guarantees or investments
 - h) Particulars of contracts or arrangements with related parties
 - i) A state of company affairs
 - j) Amount which it proposes to carry to reserves
 - k) Amount which it recommends to be paid by way of dividend
 - l) Material changes and commitments affecting financial position of company
 - m) Conservation of energy, technology absorption, foreign exchange earnings & outgo
 - n) Statement indicating development and implementation of risk management policy
 - o) Details about policy developed and implemented by company on CSR initiative taken during the year
 - p) In case of listed company and every other public company with paid up share capital of Rs.25 crore or more, statement on formal annual evaluation.
 - q) Such other matter.

- ❖ **Section 134(3A)** - the Central Government may prescribe an abridged Board's report, for the purpose of compliance with this section by OPC or Small company

DIRECTOR'S RESPONSIBILITY STATEMENT

[SECTION 134(3)(c)]

The Board's Report shall also include a Director's Responsibility Statement as required under Section 134(3) indicating therein

- ❖ Accounting standards has been followed
- ❖ Accounting policies are selected and followed consistently
- ❖ Proper and sufficient care has been taken for maintenance of adequate accounting records
- ❖ Annual accounts are prepared on going concern basis
- ❖ Directors has laid down internal financial controls
- ❖ Had devised proper system to ensure compliance with provisions

RIGHT OF MEMBERS TO COPIES OF AUDITED F/S OTHER COMPANY

SECTION 136

- ❖ **Section 136(1)** - Copy of F/S along with documents and reports which are to be laid before a company in its general meeting, shall be sent to entitled persons at least 21 days before date of meeting.

In case of section 8 company - at least 14 days before date of meeting

Provided that if such documents are sent less than 21 days before, they shall, notwithstanding the fact, be deemed to have been duly sent if it is so agreed by members:

- If company has share capital : Majority in number entitled to vote and who represent not less than 95% of paid up capital
 - If company does not have share capital : having not less than 95% of total voting power.
- ❖ **Section 136(2)** - a company shall allow every member or debenture trustee to inspect financial statements during business hours.
A separate audited/unaudited financial statement in respect of each of its subsidiary shall be provided to any member of company who asks for it.

COPY OF F/S TO BE FILED WITH ROC

SECTION 137

- ❖ Every company shall file F/S (+) consolidated F/S in AOC -4 with registrar **within 30 days** (+)fees from day on which AGM was held and adopted F/S
- ❖ If F/S are not adopted at AGM or adjourned AGM, Such statement (+)other documents filed with **ROC in 30 days** from AGM, Registrar shall take them into records as provisional
- ❖ If AGM is not held, file F/S (+)statement of facts for not holding AGM With roc in 30 days from last day before which the AGM should have been held
- ❖ OPC shall file copy of f/s duly adopted **within 180 days** from closure of financial yr



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AUDIT AND AUDITORS



Regulatory Framework for Audit & Auditors

| | |
|---------------------|--------------------------------------|
| Applicable Chapter | Chapter X of the Companies Act, 2013 |
| Applicable Sections | Section No. 139 to Section No. 148 |
| Applicable Rules | Companies (Audit & Auditors), 2014 |

Section Numbers & Particulars

| | |
|-------------|---|
| Section 139 | Appointment of Auditor |
| Section 140 | Removal, Registration of Auditor And giving of Special Notes |
| Section 141 | Eligibility, qualification and disqualification of Auditor |
| Section 142 | Remuneration of Auditor |
| Section 143 | Powers and Duties of Auditors & Auditing Standards |
| Section 144 | Auditor not render certain service |
| Section 145 | Auditor to sign audit reports etc. |
| Section 146 | Auditors to attend General Meeting |
| Section 147 | Punishment for contravention |
| Section 148 | Central Government to specify audit of item of cost in respect of certain companies |

WHAT IS AUDIT?

Audit is an examination of accounting records undertaken with a view to establishing the correctness or otherwise of the transactions reflected therein. It involves the intelligent scrutiny of the books of account of a company with reference to documents, vouchers and other relevant records to ensure that the entries made therein give a true picture of the business conducted during the period under review, that every transaction has been properly authorised by the appropriate authority and that effect of all the entries in the books of account has been duly reflected in the final accounts.

TERM OF AUDITOR

- ❖ Appoint or reappoint of auditor for **1 term of 5 yrs** & audit firm for **2 term of 5 yrs** each
- ❖ Listed /unlisted company having paid up capital 10 cr or more
- ❖ All private companies having paid up capital 20 cr or more
- ❖ Companies having public borrowings from FI ,banks ,public deposit 50 cr or more
- ❖ Reappointed after cooling off period of 5 yrs
- ❖ 3 yr transition period to comply this requirement

CONDITIONS FOR APPOINTMENT

- ❖ Certificate stating
- ❖ Eligibility for appointment and is not disqualified
- ❖ Appointment is as per term & within limits laid down under act
- ❖ List of proceedings pending with respect to professional misconduct
- ❖ Written consent must be taken before
- ❖ Company can appoint the auditor of his appointment
- ❖ File notice of such appointment with ROC in **Form ADT -1** within 15 days of meeting

ELIGIBILITY AND QUALIFICATION

- ❖ CA or CA firm (majority practicing in India)
- ❖ Firm (including LLP)
- ❖ Only the partners who are CA

DISQUALIFICATION OF AUDITOR

- ❖ Persons not eligible for appointment
- ❖ Body corporate(except LLP)
- ❖ Officer or employee of Co.
- ❖ Partner/employee of officer or employee
- ❖ Person himself or relative holding security or interest
- ❖ Relative holding security or interest (exceeding 1 lac F.V)
- ❖ Relative/partner has given guarantee for indebtedness(exceeding 1 lac)
- ❖ having business relationship with Co.

RETIRING AUDITOR SHALL BE REAPPOINTED EXCEPT

- ❖ Not qualified for reappointment
- ❖ Notice in writing of his unwillingness
- ❖ SR passed appointing somebody else

ROTATION OF AUDITORS SEC 139(3) (AUDIT FIRM)

- ❖ Auditing partner and his team shall be rotated
- ❖ More than 1 auditor required to conduct audit
- ❖ 3 yr transition period to comply with the provision

RETIREMENT OF AUDITOR IN GOVT COMPANY

| By whom??? | Time limit |
|---------------------------|--|
| First auditor | |
| C&AG | Within 60 days of incorporation. |
| BOARD | Within 30 days |
| MEMBERS | Within 60 days |
| Subsequent auditor | |
| C&AG | Within 180 days from commencement of F.Y |

- ❖ Company whose accounts are subject to audit by an auditor appointed by C&AG
- ❖ By C&AG within 30 days
- ❖ if C&AG doesn't fill vacancy, BOD shall fill within next 30 days

POWER OF CG TO APPOINT AUDITORS

- ❖ If no auditors are appointed at AGM
- ❖ Notify the CG
- ❖ CG will appoint a person
- ❖ If fails to notify, company and every officer punishable to fine of Rs 5000

REMOVAL, RESIGNATION OF AUDITOR AND GIVING OF SPECIAL NOTICE [SECTION 140]

REMOVAL OF AUDITOR BEFORE THE EXPIRY OF HIS TERM [SECTION 140(1)]:

1. The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company and after obtaining the previous approval of the Central Government by making an application in **Form ADT-2** and shall be accompanied with the prescribed fees.
2. The application shall be made to the Central Government within 30 days of the resolution passed by the Board.
3. The Company shall hold the general meeting within 60 days of receipt of approval of the Central Government for passing the special resolution.
4. **Giving opportunity of being heard** (Audi Alteram Partem): Before taking any action for removal of auditor before the expiry of his term, the auditor concerned shall be given a reasonable opportunity of being heard.

RESIGNATION BY AUDITOR [SECTION 140(2) & (3)]

1. If the Auditor has resigned from the company, he shall file within a period of 30 days from the date of resignation, a statement in the form ADT-3 with the company and the Registrar.
2. The auditor shall indicate the reasons and other facts as may be relevant with regard to his resignation, in the statement.
3. In case of government companies or company controlled by Central Government or State Government, the auditor shall also file such statement with the Comptroller and Auditor-General of India also along with company and the Registrar.
4. If the auditor does not comply with aforesaid provision, he or it shall be ~~punishable with fine~~ liable to penalty which shall not be less than Rs.50,000 but which may extend to ~~Rs.5 Lacs~~ the remuneration of the auditor, whichever is less, but which may extend to five lakh rupees

****Companies (Amendment) Act, 2017**

This Proviso to section has been revised.

The intent to reduce the penalty to be imposed on the auditor is that the auditor should not be penalized for more than what he received as remuneration from the company.

REMUNERATION OF AUDITORS

SECTION 142

- ❖ The Board fixes the remuneration of the first auditor,
- ❖ Central Government makes an appointment as per Sub-section (4) of Section 224, it may fix the remuneration.
- ❖ Where the auditor is appointed or re-appointed by the general meeting, the remuneration is fixed by the general meeting.
- ❖ Where the Central Government appoints the auditors but does not fix their remuneration.

POWER OF AUDITORS

SECTION 143

1. **Access to books of accounts and vouchers:** Every auditor of a company shall have a right of access at all times to the books of accounts and vouchers of the company, whether kept at the registered office of the company or at any other place.
2. **Entitled to have necessary information and explanation:** He shall be entitled to require from the officers of the company such information and explanations as the auditor may consider necessary for the performance of his duties as auditor.
3. **Access to record of all its subsidiaries & Associates**:** The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries & associates in so far as it relates to the consolidation of its financial statements with that of its subsidiaries & associates.

AUDITOR NOT TO RENDER CERTAIN SERVICES
[SECTION 144]

Section 144 of the Companies Act, 2013 provides for Auditor not to render certain services. According to this section:

1. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely –
 - ❖ accounting and book keeping services;
 - ❖ internal audit;
 - ❖ design and implementation of any financial information system;
 - ❖ actuarial services;
 - ❖ investment advisory services;
 - ❖ investment banking services;
 - ❖ rendering of outsourced financial services;
 - ❖ management services; and
 - ❖ any other kind of services as may be prescribed. [However no other kind of services has been prescribed till date]

RENDERING OF SERVICES 'DIRECTLY OR INDIRECTLY'

| In case of auditor being INDIVIDUAL | In case of auditor being FIRM |
|---|---|
| <ul style="list-style-type: none"> ❖ Self ❖ Relatives ❖ Other person connected or associated with such individual ❖ Entity in which such individual has significant influence or control ❖ Entity whose name or trade mark or brand is used by such individual | <ul style="list-style-type: none"> ❖ Firm ❖ Partners of firm ❖ Parent of firm ❖ Subsidiary of firm ❖ Associate entity of firm ❖ Entity in which the firm has significant influence ❖ Entity whose name or trade mark or brand is used by the firm or any of its partners |

AUDITORS TO SIGN AUDIT REPORTS, ETC.
[SECTION 145]

Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

- ❖ The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).
- ❖ The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

AUDITORS TO ATTEND GENERAL MEETING
[SECTION 146]

Section 146 of the Companies Act, 2013 provides for auditors to attend general meeting. According to this section:

- ❖ All notices of, and other communications relating to, any general meeting shall be forwarded to the auditor of the company.
- ❖ The auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorized representative, who shall also be qualified to be an auditor, any general meeting.
- ❖ The auditor shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

PUNISHMENT FOR CONTRAVENTION
[SECTION 147]

Section 147 of the Companies Act, 2013 provides for punishment for contravention. According to this section:

1. Penalty on company [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than Rs.25,000 but which may extend to Rs.5 Lacs *or four times the remuneration of the auditor, whichever is less.*

****Companies (Amendment) Act, 2017**

2. Penalty on officers [Section 147(1)]:

If any of the provisions of sections 139 to 146 (both inclusive) is contravened, every officer of the company who is in default shall be punishable with

- ❖ imprisonment for a term which may extend to 1 year or
- ❖ With fine which shall not be less than Rs.10,000 but which may extend to Rs.1 Lac; or
- ❖ Both with imprisonment and fine.

3. Penalty on auditor [Section 147(2) & (3)]:

- ❖ If an auditor of a company contravenes any of the provisions of section 139, section 143, section 144 or section 145, the auditor shall be punishable with fine which shall not be less than Rs.25,000 but which may extend to Rs.5Lacs.
- ❖ If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with
 - ✚ imprisonment for a term which may extend to 1 year and
 - ✚ fine which shall not be less than ~~Rs.1 Lac~~ Rs. 50,000 but which may extend to Rs.25 Lacs *or four times the remuneration of the auditor, whichever is less*
- ❖ Further, where an auditor has been convicted as above, he shall be liable to—
 - ✚ refund the remuneration received by him to the company; and
 - ✚ pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

4. The Central Government shall, by notification, specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or the persons. Such body, authority or officer shall after payment of damages to such company or persons file a report with the Central Government in respect of making such damages in such manner as may be specified in the said notification. [Section147(4)]

5. Liability of Audit firm [Section 147(5)]:

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or a betted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in the Companies Act, 2013, or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally and shall also be liable under section 447.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable

****Companies (Amendment) Act, 2017**

INTERNAL AUDIT (SEC 148)

- ❖ Every Listed Company
- ❖ Unlisted public company
 - Paid up capital of 50 crore or more during preceding FY or
 - Turnover of 200 crore or more during preceding FY or
 - Outstanding loans or borrowings from bank or PFI exceeding 100 crore at any point of time during preceding FY or
 - Outstanding deposit of 25 crore or more at any point of time during preceding FY
- ❖ Private company
 - Turnover of 200 crore or more during preceding FY or
 - Outstanding loans or borrowings from bank or PFI exceeding 100 crore at any point of time during preceding FY or

WHO CAN BE INTERNAL AUDITOR

- ❖ Chartered accountant who is member of ICAI holding valid Certificate of practice
- ❖ Cost accountant
- ❖ Such other profession as may be decided by board



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APPOINTMENT AND QUALIFICATION OF DIRECTORS

Regulatory Framework for Appointment & Qualification of Directors

| | |
|---------------------|--|
| Applicable Chapter | Chapter XI of the Companies Act, 2013 |
| Applicable Sections | Section No. 149 to Section No. 172 |
| Applicable Rules | Companies (Appointment & Qualification of Director) Rules, 2014 (as amended) |

Section Numbers & Particulars

| | |
|----------------|--|
| Section 149 | Company to have Board of Director |
| Section 149(1) | Read with Rule 3: Woman Director |
| Section 150 | Manner of Appoint Independent Director & Maintain databank of independent director |
| Section 151 | Appointment of Director elected by Small Shareholder |
| Section 152 | Appointment of Director |
| Section 153 | Application for allotment of DIN |
| Section 154 | Allotment of DIN |
| Section 155 | Prohibition to obtain more than one DIN |
| Section 156 | Director to intimate DIN |
| Section 157 | Company to inform DIN to Registrar |
| Section 158 | Obligation to indicate DIN |
| Section 159 | Punishment for contravention |
| Section 160 | Right of Person other than retiring directors to stand for directorship |
| Section 161 | Appointment of Additional Director, Alternate Director & Nominee Director |
| Section 162 | Appointment of director to be voted individually |
| Section 163 | Option to adopt principle of proportional representation appointment of directors |
| Section 164 | Disqualification for appointment of director |

| | |
|-------------|---|
| Section 165 | Number of directorship |
| Section 166 | Duties of director |
| Section 167 | Vacation of office of director |
| Section 168 | Resignation of director |
| Section 169 | Removal of director |
| Section 170 | Register of Directors and key Managerial Personnel and their Shareholding |
| Section 171 | Members Right to Inspect |
| Section 172 | Punishment |

DEFINITION OF DIRECTOR

Section 2 (34) of the Act prescribed that “**director**” means a director appointed to the Board of a company. Thus, any person who is not appointed to the Board, is not a Director.

Thus, a director is a person appointed to perform duties and functions of director of a company in accordance with provisions of Companies Act, 2013.

CONCEPT OF BOARD

Section 2 (10) of the Companies Act, 2013 defined that “**Board of Directors**” or “**Board**”, in relation to a company, means the collective body of the directors of the company.

- ❖ The persons who are in charge of management
- ❖ Collectively known as board of directors
- ❖ Occupies a pivotal position
- ❖ And take all the decision in board meeting

POSITION OF DIRECTORS

| | |
|------------------------------|--|
| Directors as Trustees | <ul style="list-style-type: none"> ❖ A trustee is a person whom is vested the legal owner ship of the assets which has administers for the benefit of another or other. ❖ Directors are regard as trustee of the company’s assets, and power of visit in them because they administer those assets and perform duties in the interested of company and not for their own personal advantage. |
| Directors as Agents | <ul style="list-style-type: none"> ❖ The company itself cannot act in its own person for it has no person ❖ It can only act through directors and the case is as regards those directors merely the ordinary case of principal and agent. ❖ Wherever an agent is liable those directors would be liable; where the liability would attach to the principal and principal only the liability is the liability of the company |

**MAXIMUM AND MINIMUM NO. OF DIRECTORS
(SEC. 149(1))**

| | MINIMUM | MAXIMUM |
|----------------|---------|---------|
| OPC | 01 | 15 |
| Private | 02 | |
| Public | 03 | |

- ❖ A company may appoint more than 15 directors by passing special resolution in general meeting.

**MAXIMUM NUMBER OF DIRECTORSHIP
(SEC. 165)**

- ❖ **Maximum** number of directorship, **including any alternate directorship**, a person can hold is **20**.
- ❖ However, the number of directorship in **public company** shall be limited to **10**.
- ❖ Further, the members of the company may restrict above mentioned limit by passing special resolution.
- ❖ For purpose of counting directorship in public company, directorship in private companies that are either holding or subsidiary of public company shall be included.
- ❖ The directorship in **dormant company** shall **not be included** in counting directorship.
- ❖ **Section 165 not apply to Section 8 company.**

****Amended as per Companies Amendment Ordinance 2019**

For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.

~~If a person accepts appointment as a director in contravention of the above provisions, he shall be punishable with fine which shall not be less than Rs.5000 but extend to Rs.25,000 for every day after the first day during which contravention occurs.~~

****Amended as per Companies Amendment Ordinance 2019**

If a director contravene the maximum limit of directorship as provided in section 165 of the Act, he/she shall be punishable with a penalty of rupees five thousand everyday till the contravention continues.

On similar lines, the default under this section has been categorised as a 'civil default' with the defaulting company and officers liable to penalty only.

WOMAN DIRECTOR [Second proviso to Sec 149 (1)]

Read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014

As per this rule, the following classes of companies shall have at least 1 woman director:

- Listed Company
- Every other public company having **paid up share capital of Rs. 100 crores**
- Every other public company having **turnover of Rs. 300 crore** or more (as on the last date of latest audited financial statements)

Further if there is **any intermittent vacancy** of a woman director then it shall be **filled up by the board of directors within 3 months from the date** of such vacancy or **not later than immediate next board meeting**, whichever is later.

**Resident Director
(Section 149(3))**

Every company shall have at least one director who has stayed in India for a total period of not **less than 182 days** in previous ~~calendar year~~ financial Year

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

****Companies (Amendment) Act, 2017**

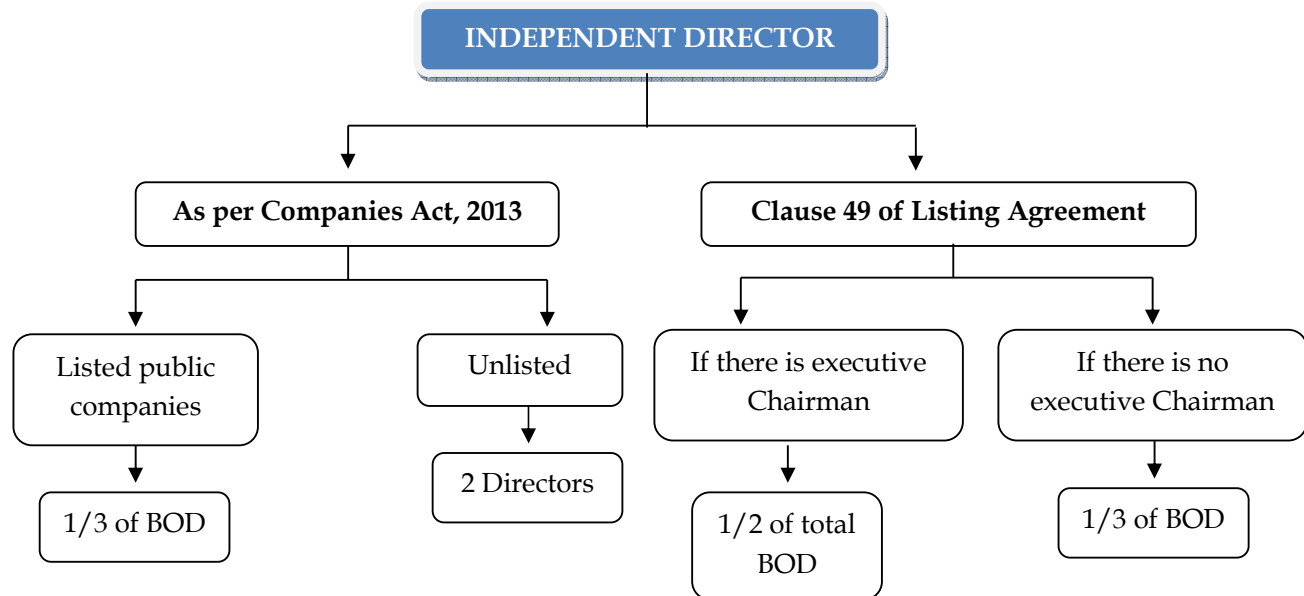
This Proviso to section has been inserted and has been notified w.e.f. 07 May 2018.

INDEPENDENT DIRECTOR

- ❖ As per **Section 2(47)**, Independent director means a director referred to in Section 149(4).
- ❖ **Section 149(4)** : Every **listed public company** shall have at least **one-third** of the total number of directors as independent directors
- ❖ As per **Rule 4** of Companies (Appointment and Qualification of Directors) Rules, 2014, following classes of Public Companies shall have at least **2 directors** as independent directors:
 - paid up share capital of **Rs. 10 crore** or more;
 - or turnover of **Rs. 100 crore** or more; or
 - In aggregate, outstanding loans/borrowings/debentures/deposits/ exceeding **Rs. 50 crore** or more.

If the company **ceases to satisfy** any of the above 3 conditions for **3 consecutive years**, then it shall **not be required to comply** with provisions until such time as it meets any of such conditions.

- ❖ Unlisted public company which is a joint venture, a wholly owned subsidiary and a dormant company are not required to have Independent directors.
- ❖ Any **vacancy** in position of such director shall be filled up by BOD **within 3 months** from date of such vacancy or **at next Board meeting**, whichever is **later**.



CRITERIA OF INDEPENDENT DIRECTOR [SEC 149(6)]

Independent director means Director other than a managing director or a whole time director or a nominee director who does **not have pecuniary or material relationship** with the company/directors. Following are the criteria-

- ❖ Who in the opinion of BOD, is a person of integrity and possess industrial expertise
- ❖ Shall not be promoter or related to promoter of company or its holding, subsidiary or associate
- ❖ Such individual must not have pecuniary relationship (other than remuneration as such director or having transaction not exceeding 10% of his total income or such amount as prescribed) during the **two preceding F.Y** or during the current F.Y with the company or its promoters/directors/holding/subsidiary/ associate company
- ❖ None of whose **relatives**
 - Is holding any security of or interest in the company, its holding, subsidiary or associate during 2 immediately preceding or during current financial year
 - Provided that relative may hold security or interest in company of face value not exceeding Rs.50 lakh or 2% of paid up capital of company or its holding, subsidiary or associate.
 - Is indebted to company or its associate or subsidiary or holding or their promoters or directors in excess of such amount as may be prescribed during 2 immediately preceding financial years or during current financial year.
 - Has given a guarantee or provided any security in connection with indebtedness of any third person to the company, its holding, subsidiary or associate or their promoters or directors for such amount as prescribed during 2 immediately preceding financial years or during current financial year.
 - Has any other pecuniary relationship or transaction with company or its subsidiary or holding or associate amounting to 2% or more of its gross turnover or total income singly or in combination with transaction referred to in above clauses
- ❖ He must not directly or through his relative
 - Hold or has held position of KMP or been employee of company / its holding /subsidiary/associate in last 3 preceding F.Y.
 - Is or has been an employee or proprietor or partner in firm of auditors, practicing CS or cost auditors, legal firm, consulting firm of company or its holding, subsidiary or associate
- ❖ Holds together **with his relatives 2%** or more of total voting power
- ❖ Is a CEO or director of **NPO that receives 25%** or more of its receipts from company, promoters, directors or its holding, subsidiary or associate or that holds 2% or more of total voting power of company, then also he is not eligible for office of independent director.
- ❖ Who possess such other qualification of independent director as prescribed in Rule 5.

DECLARATION BY INDEPENDENT DIRECTOR (SEC. 149(7))

Every independent director shall give a declaration that he meets criteria of independence when:

- He attends first meeting of Board as director
- Thereafter at first meeting of Board in every financial year and
- Whenever there is change in circumstances which may affect his status as independent director

REMUNERATION [Sec 149(9)]

An independent director shall not be entitled to any stock option. He may **receive remuneration by way of sitting fee, reimbursement of expenses** incurred for participation in the Board and other committee meetings.

APPOINTMENT OF AN INDEPENDENT DIRECTOR [SEC. 149(10)]

- ❖ Subject to the provisions of **Section 152**, an independent director can be appointed for a term of up to **five consecutive years**
- ❖ **reappointment** for further **five year** then special resolution passed in general meeting
- ❖ he shall not hold office for more than 2 consecutive terms.
- ❖ Further independent director can be considered for re-appointment after **expiration of three years of ceasing** to become an independent director
- ❖ The retirements of directors by rotation are not applicable on Independent director. **{Section 149 (13)}**

MEETING OF INDEPENDENT DIRECTOR

Independent directors of company shall at least have one meeting in a financial year without attendance of non-independent directors and members of management.

LIABILITY OF INDEPENDENT DIRECTOR (Sec. 149(12))

An independent director and a non-executive director shall be held liable only in respect of such acts of omission or commission by company which had occurred with his knowledge, attributable through Board processes and with his consent or where he had not acted diligently.

MANNER OF SELECTION [Sec 150]

- ❖ Selected from **Data Bank** maintained by agency.
- ❖ Data bank should be on website of MCA
- ❖ Appointment must be approved by members in GM
- ❖ Application to agency in Form No **DIR 1** for inclusion of name in data bank
- ❖ Intimation of any change **within 15 days**

RESIGNATION OR REMOVAL

- ❖ Director who resigns or is removed shall be replaced within a period of not more than **180 DAYS from the date of such resignation or removal**
- ❖ If the board fulfil the requirement without filling vacancy , then new independent director is or not required

Appointment of a Director by Small Shareholders (Section 151)

- ❖ “Small shareholder” means a shareholder holding shares of nominal value of not more than **twenty thousand rupees** or such other sum as may be prescribed.
- ❖ As per Rule 7 a listed company may appoint a small shareholder’s director if application is received by
 - Not less than 1000 small shareholders or
 - 1/10th of total number of small shareholders, **whichever is lower**.
- ❖ Notice must be signed and **sent at least 14 days** before the meeting about the proposed person
- ❖ Vacation of office
 - ceases to be a small shareholder
 - incurs any disqualifications U/S 164
 - ceases to meet criteria of independence
 - office becomes vacant U/S 167

DIRECTOR IDENTIFICATION NUMBER (DIN) (Section 153)

Read with Companies (Appointment and Qualification of Directors) Rules, 2014

Every individual, who is to be appointed as director of a company shall make an application electronically in **Form DIR-3** (Application for allotment of Director Identification Number) to the Central Government.

DIN is a unique identification number allotted to an existing director or a person intending to become a director of a company

Rule 9:-

- 1) The **Central Government shall provide an electronic system** to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.
- 2) The applicant shall download Form DIR-3 from the portal, fill in the required particulars and attaching photograph; proof of identity; proof of residence; and verification by the applicant in **Form DIR-4**, specimen signature duly verified and signs the form digitally.
- 3) The DIN so allotted is valid for life time of applicant and shall not be allotted to any other person.

Rule 11:-

Cancellation or surrender or deactivation of DIN in such cases-

- DIN found to be duplicate
- Obtained by wrongful manner or fraudulent means
- Death of concerned individual
- Concerned individual declared as lunatic by competent court
- Concerned individual adjudicated as insolvent.

Rule 12A Directors KYC (As per Companies (Amendment) Act, 2017)

1. Every individual who has been allotted DIN as on 31st March of a financial year shall submit e-form **DIR-3 KYC** to Central Government **on or before 30th April** of immediate next financial year.
2. Provided that every individual who has already been allotted DIN as at 31st March, 2018 shall submit e-form **DIR-3 KYC** on or before 31st August, 2018.
3. Filing **DIR-3 KYC** is **mandatory for disqualified directors** also.

APPOINTMENT OF DIRECTORS

| | |
|--|---|
| First Directors [Sec 152] | <ul style="list-style-type: none"> • First directors of most of the companies are named in their articles. • If they are not so named, then subscribers to the memorandum who are individuals shall be deemed to be the first directors • In the case of a One Person Company, an individual being a member shall be deemed to be first director unless directors are duly appointed by member. |
| Second & subsequent Directors | <p>General provisions relating to appointment of directors</p> <ul style="list-style-type: none"> ❖ Every director shall be appointed by the company in general meeting. ❖ Director Identification Number is compulsory ❖ person proposed to be appointed as a director shall furnish his DIN and a declaration ❖ person should not be disqualified ❖ person give his consent to hold the office of director in physical form DIR-2. ❖ Company shall file Form DIR-12, within 30 days of the appointment of a director, necessary fee. |

**RETIREMENT OF DIRECTORS
(Section 152(6))**

- Articles of the Company may provide the provisions relating to **retirement** of the all directors. If there is no provision in the article, then **not less than two-thirds** of the total number of directors of a public company shall be persons whose period of office is **liable** to determination by **retirement by rotation** and **1/3rd** (or the number nearest to 1/3) of such directors should **retire** from office.
- The directors to retire by rotation at every AGM shall be those who have been **longest in office** since their last appointment, but as between persons who became directors on same day, those who are to retire shall be determined by lot subject to any agreement amongst themselves.
- At AGM at which director retires aforesaid, the company may fill up the vacancy by appointing retiring director or some other person.
- Further **independent directors** shall **not be included** for the **computation** of total number of directors.
- If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same

day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

**APPOINTMENT OTHER THAN RETIRING DIRECTOR
(SEC. 160)**

1. A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director has **not less than 14 days** before the meeting, left at registered office, a **notice in writing** under his hand signifying his or member's intention to declare his candidature as director.
2. **Deposit of Rs.1,00,000** or such higher amount for nomination shall be made to the company. The **fees** will be **refunded** if proposed person **gets elected as director** or **gets more than 25% of total valid votes cast** (show of hand/poll)
3. Provided that requirement of **amount** shall **not apply** in case of-
 - appointment of independent director or
 - *director recommended by Nomination and Remuneration Committee or*
 - *a director recommended by BOD.*
4. In case of Nidhi Company, instead of Rs.1,00,000, only Rs.10,000 shall be deposited.
5. This section not apply to Private and Government companies

**APPOINTMENT OF DIRECTORS BY THE BOARD
(Sec. 161)**

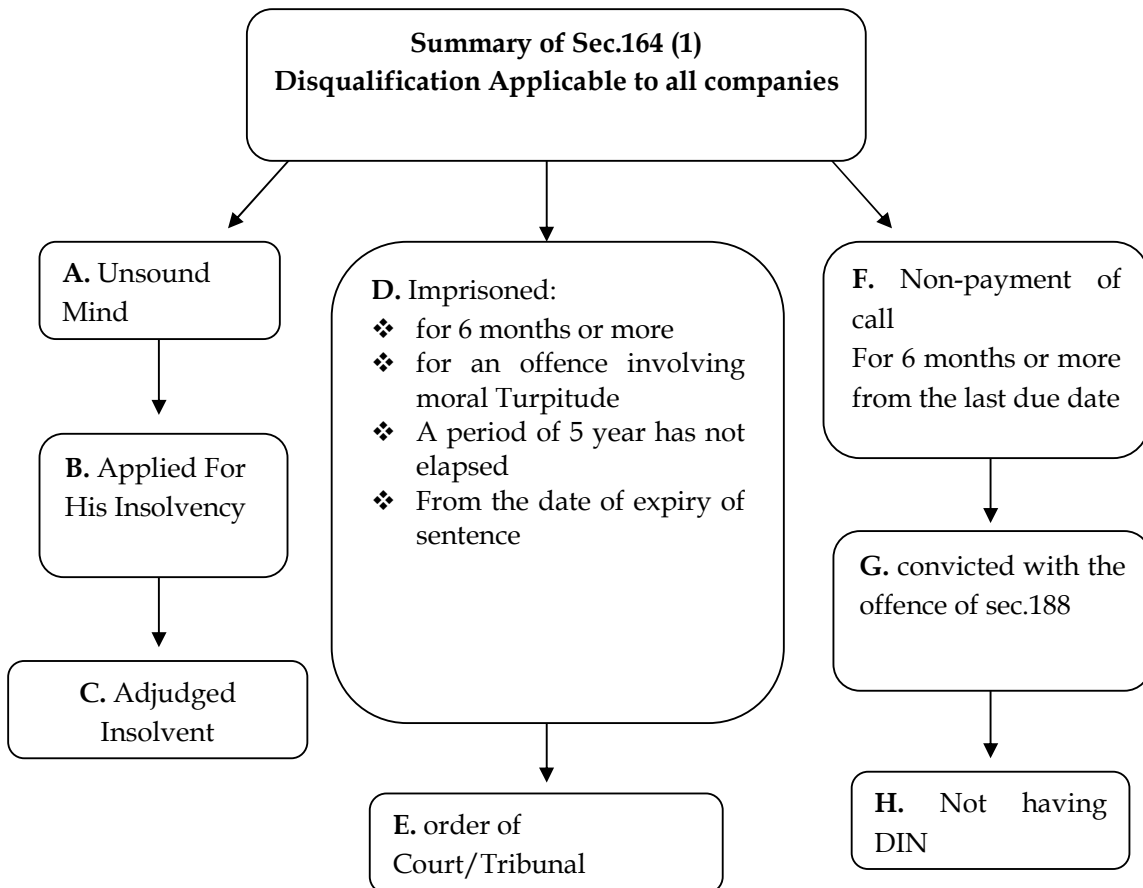
| | |
|---|---|
| Additional Directors [Sec 161(1)]: | <ul style="list-style-type: none"> ❖ BOD can appoint additional directors, if such power is conferred on them by the AOA. ❖ Such additional directors hold office only upto the date of next AGM or the last date on which the AGM should have been held(whichever is earlier) ❖ A person who fails to get appointed as a director in general meeting cannot be appointed as additional director |
| Alternate Director [Sec 161(2)] | <ul style="list-style-type: none"> ❖ Board May Appoint Alternate Director ❖ The director in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India. ❖ An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India. ❖ If it is proposed to appoint an alternate director for Independent director then the alternate director shall also satisfy criteria of Independent director. |
| Directors by Nomination [Sec. 161(3)] | The Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company. |
| Directors in causal | ❖ If any vacancy is caused (before his office expires in normal term) in the position of a director appointed by the shareholders in General |

| | |
|--|--|
| <p>vacancy [Sec. 161 (4)]</p> | <p>meeting, the Board of directors can appoint a director to fill up such vacancy and the Board shall ensure that such appointment be approved by members in immediate next general meeting.</p> <ul style="list-style-type: none"> ❖ The appointed director hold office only upto term of director in whose place he is appointed. |
|--|--|

DIRECTOR APPOINTED ON PROPORTIONAL REPRESENTATION
(Sec. 163)

- ❖ The articles of company may provide for appointment of not less than 2/3rd of total number of directors of company in accordance with principle of proportional representation, whether by single transferable vote or by system of cumulative voting or otherwise and such appointment may be made once in every 3 years.
- ❖ Casual vacancy shall be filled by BOD
- ❖ This section not apply to Government companies.

DISQUALIFICATIONS OF DIRECTORS
(SECTION 164)



New Amendment as per Companies Amendment Ordinance 2019

Sec 164 (1) (i) - If a director does not comply with the number of directorships i.e. maximum ten public companies and maximum twenty in other companies he/she shall be disqualified under section 164 of the Act.

Disqualification Applicable in Special Circumstances [Sec. 164 (2)]

- ❖ Directors of a Public company shall be disqualified
- ❖ For appointment or reappointment
- ❖ In any other Public company for 5 years

Non-Filing

- ❖ Annual Accounts
- ❖ Annual Return for
Continuous 3 FYs

Non-Payment

- ❖ Dividend
- ❖ Debentures
- ❖ Deposits or Interest on deposits
- ❖ If such failure continues for 1 year or more

**VACATION OF OFFICE OF DIRECTOR
(SEC 167)**

- ❖ Disqualified u/s 164
Provided that where he incurs disqualification under section 164(2), the office of director shall become vacant in all companies, other than company which is in default under section 164(2)
**** Companies Amendment Act, 2017**
- ❖ Absent himself from all the Board Meetings held during 12 months with or without seeking leave of absence from Board
- ❖ Contravened the provisions of sec 184 (RTP)
- ❖ fails to disclose his interest in any contract
- ❖ Disqualified by an order of court
- ❖ Removed in pursuance by act
- ❖ He, having been appointed a director by virtue of his holding any office or other employment, ceases to hold such office or other employment in the company
- ❖ He is convicted by court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months. The director will vacant the office even if he has filed an appeal against order of such court.
- ❖ Private company can provide any other ground for vacation
- ❖ Further, office of director shall not be vacated for below period under section 167(1)(e) and(f):
 - for thirty days from the date of conviction or order of disqualification;
 - where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
 - where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.

RESIGNATION OF DIRECTOR (SEC 168)

- ❖ By giving a Notice in writing
- ❖ The **Board** shall, on receipt of notice, **within 30 days** intimate ROC in Form no. **DIR 12** and also place fact of such resignation in Director's report in subsequent general meeting.
- ❖ ~~The **Director** may also forward copy of resignation along with detailed reasons for resignation to ROC in form **DIR-11** within 30 days from date of resignation.~~

Director is not necessarily required to file a copy of resignation with ROC.

*** Companies Amendment Act, 2017*

- ❖ liable for offences occurred during his tenure
- ❖ If all directors resign promoter or CG shall appoint such number of directors till next GM

REMOVAL OF DIRECTOR (SEC 169)

- ❖ A company may remove a director before expiry of his term of office if following conditions are fulfilled-
 - An ordinary resolution for removal is passed
 - A reasonable opportunity of being heard given to such director
- ❖ However, this section not applicable to-
 - If company has availed option to appoint director under principle of proportional representation.
 - Director is appointed by NCLT



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MEETING OF BOARD AND ITS POWERS

Regulatory Framework for Meeting of Board & its Powers

| | |
|---------------------|--|
| Applicable Chapter | Chapter XII of the Companies Act, 2013 |
| Applicable Sections | Section No. 173 to Section No. 195 |
| Applicable Rules | Companies (Meeting of Board & its Powers) Rules, 2014 (as amended) |

Section Numbers & Particulars

| | |
|-------------|---|
| Section 173 | Meetings of Board |
| Section 174 | Quorum for Meetings of Board |
| Section 175 | Passing of Resolution by Circulation |
| Section 176 | Defects in Appointment of Directors not to Invalidate Actions Taken |
| Section 177 | Audit Committee |
| Section 178 | Nomination and Remuneration Committee and Stakeholders Relationship Committee |
| Section 179 | Power of board |
| Section 180 | Restriction of power of board |
| Section 181 | Charitable fund |
| Section 182 | Political contribution |
| Section 183 | Contribution to National Defence Fund |
| Section 184 | Discloser by director his interest |
| Section 185 | Loans to director |
| Section 186 | Loans & Investments by Company |
| Section 187 | Loans & Investments held in own name |
| Section 188 | Related party transaction |
| Section 189 | Registered of contract or arrangement in which director are interested |
| Section 190 | Contract with managing director/ whole time director |

MEETINGS OF THE BOARD (SECTION 173)

- ❖ **1st board meeting**
 - ✓ Within 30 days
 - ✓ From date of incorporation
- ❖ **2nd and subsequent**
 - ✓ Gap between 2 consecutive B.M.=max 120 days
 - ✓ **4 board** meeting should be taken every year
 - ✓ In the year of incorporation, these 4 board meetings shall be in addition to first board meeting.
- ❖ **One Person Company/Small co./Dormant co./ Sec.8 co./ Start up Pvt. Co.**
 - ✓ At least 1 B.M in each half of calendar yr
 - ✓ Gap between 2 B.M =min 90 days

NOTICE (SEC. 173(3))

- ❖ The Act requires that **not less than 7 days'** notice in writing shall be given to every director
- ❖ The notice can be given by hand delivery or by post or by electronic means.
- ❖ In case notice is sent by speed post, registered post or courier, additional 2 days shall be added for service of notice.
- ❖ In case the **shorter notice**, at least **one independent director** shall be present at the meeting. If he is not present, then decision of meeting shall be circulated to all the directors and it shall be final only after ratification of decision by at least one independent director.
- ❖ If two meetings are held on same day, it would be valid second meeting notice if it states that meeting will be held after conclusion of first meeting
- ❖ *Directors may attend the meeting by audio/video conferencing for all the items subject to presence of quorum in person for such matters for which electronic participation is restricted by Central Government.*
** *Companies Amendment Act 2017*

QUORUM (SEC. 174)

- ❖ **One third** of total strength or **two directors**, whichever is **higher**, shall be the quorum for a meeting.
- ❖ The participation by a director through Video Conferencing or other audio visual means shall also be counted.
- ❖ If due to resignation or removal of directors, the number of directors is reduced below quorum as fixed by AOA of company, then continuing directors may act for purpose of increasing number of directors to that required for quorum or for summoning general meeting of company. It shall not act for any other purpose.

- ❖ If at any time the number of interested directors exceed or is equal to $2/3^{\text{rd}}$ of total strength of BOD, the number of directors who are not interested and present at meeting, being not less than 2 shall be quorum.
- ❖ In case of **Section 8 company**, quorum shall be **8 members** or **25% of total strength**, whichever is less. (subject to minimum 2)
- ❖ **Sec. 174(4)** - where meeting of Board could not be held for want of quorum, then unless Articles provide otherwise, the meeting shall stand adjourned to same time and place in next week and if that day is a national holiday, then next succeeding week.

PASSING OF RESOLUTION BY CIRCULATION (SEC. 175)

A company may pass resolutions by circulation. The resolution in draft form together with necessary papers may be circulated to directors or members of committee at their address registered with company in India or through electronic means.

The said resolution must be passed by majority of directors or members entitled to vote.

DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTIONS TAKEN (SEC. 176)

All acts done by directors shall be valid notwithstanding that it is subsequently noticed that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of provisions of Act or Articles

But this section does not give validity to any act done by directors whose appointment has been noticed to be invalid or terminated.

BOARD COMMITTEE'S

- ❖ Formed As Means Of Improving board effectiveness & efficiency
- ❖ Discussions regarding more focused ,specialized & technical are required
- ❖ Report at subsequent BM
- ❖ Enables better management of board's time and allow in-depth scrutiny
- ❖ Strengthening board's governance role

AUDIT COMMITTEE (SEC. 177)

Audit Committee is the gatekeeper of financial information of the company.

Companies required to constitute audit committee

- ❖ Every **Listed company**
- ❖ Every **other public company** having
 - Paid up capital of 10 cr Rs or more
 - Turnover of 100 cr Rs or more
 - Having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more
- ❖ A joint venture, a wholly owned subsidiary and dormant company not required to have Audit Committee and Nomination and Remuneration Committee.

| | |
|------------------------------------|--|
| Composition | Minimum 3 directors (majority of independent directors). The majority of members including chairperson shall be person with ability to read and understand financial statement. |
| Quorum | Either 2 members or 1/3 rd of total number of members (min. 2 independent members present) |
| Meeting of audit committee: | At least four times in a year and not more than 120 days shall elapse between two meetings. |

ESTABLISHMENT OF VIGIL MECHANISM TO REPORT GENUINE CONCERNS

- ❖ The companies which accept deposit from public
- ❖ Borrowing from bank & public FI (more than 50 cr)

POWERS

- ❖ To investigate any activity within its terms
- ❖ To seek info from any employee
- ❖ To obtain legal & professional advice

NOMINATION/REMUNERATION COMMITTEE (SEC. 178(1))

- ❖ This committee helps the BOD in preparations relating to election of members of BOD and handling related matters.
- ❖ Following required to constitute such committee-
 - Every **Listed company**
 - Every **other public company** having
 - Paid up capital of 10 cr Rs or more
 - Turnover of 100 cr Rs or more
 - Having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more
- ❖ It shall consist of 3 or more non-executive directors out of which not less than ½ shall be independent directors.
- ❖ This section is not applicable to Section 8 company

DUTIES

- ❖ Identifying persons who are qualified to become directors And who may be appointed in senior management
- ❖ Recommend to board their appointment/ removal
- ❖ Carry out evaluation of directors performance
- ❖ Formulate the criteria for determining qualifications, positive attributes & independence of directors

STAKEHOLDER RELATIONSHIP COMMITTEE (SEC. 178(5))

The Board of a company that has **more than 1000** shareholders, debenture-holders, deposit-holders and any other security holders at **any time** during a financial year is required to constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director

Such committee shall consider and resolve grievances of security holders of company

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

- ❖ One of key changes in companies act 2013
- ❖ The section applies to the following classes of companies during immediately preceding F.Y -
 - Companies having net worth of Rs.500 crore or more
 - Companies having turnover of Rs.1000 crore or more
 - Companies having net profit of Rs.5 crore or more

FEATURES

- ❖ The committee shall consist of 3 or more directors out of which at least 1 should be independent director. Provided that if company not required to appoint independent director, then CSR committee shall have 2 or more directors.
- ❖ Company shall give preferences to local area & areas around it where it operates
- ❖ Eligible companies shall spend **at least 2%** of average net profit made during 3 immediately preceding FY
- ❖ If fails to spend the amount, Reasons for not spending shall be specified in board's report

VIGIL MECHANISM (SEC. 177(9))

- ❖ The following classes of companies shall establish a vigil mechanism for their directors and employees to report genuine concerns
 - Listed company
 - Companies which accept deposits from public
 - Companies which have borrowed money from banks and public financial institutions in excess of Rs.50 crore.
- ❖ The vigil mechanism shall provide, in exceptional cases, direct access to chairperson of audit committee or director nominated to play role of audit committee.

POWER OF BOARD [SEC 179]

BOD is entitled to exercise all such powers & things, Co is authorized to do, except those powers that Co is entitled to exercise only in general meeting by AOA/MOA/other Acts

- ❖ Exclusive powers of board sec 179(3)
- ❖ Powers with confirmation of members **Sec 180(1)**
- ❖ As per Companies Act, 2013

EXCLUSIVE POWER OF BOARD (SEC 179)

- ❖ To make calls
- ❖ To authorize buy back of securities
- ❖ Issue securities (including debentures)
- ❖ To borrow monies
- ❖ To invest the funds
- ❖ To grant loans/ give guarantee / provide security
- ❖ To approve F/S
- ❖ To diversify business
- ❖ To approve amalgamation
- ❖ To take over a company
- ❖ To make political contribution
- ❖ To appoint or remove KMP
- ❖ To take note of appointment
- ❖ To appoint internal auditors
- ❖ To take note of disclosure
- ❖ To buy or sell investment
- ❖ To invite or accept public deposits
- ❖ To review or change the T&C of public deposits
- ❖ To approve financial statements

RESTRICTION ON POWER OF BOARD [SEC 180(1)]

Exercise The Powers Only with the consent of the company by SR

- ❖ To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking
- ❖ To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation
- ❖ To borrow money which exceed aggregate of its paid up share capital, FR & ***Securities Premium Account*
- ❖ To remit, or give time for the repayment of, any debt due from a director

CONTRIBUTION OF CHARITABLE FUNDS (SEC. 181)

- ❖ The Board can make contribution to bona fide charitable and other funds.
- ❖ **Upto 5 %** of its avg net profit for 3 immediately preceding FY
- ❖ The permission of company in general meeting is required if contribution exceeds 5%.

POLITICAL CONTRIBUTION (SEC. 182)

- ❖ This section is **not applicable** to-
 - All Government companies
 - Companies in existence for less than 3 years
- ❖ Such contribution must be authorised by Board by way of Board Resolution.
- ❖ Disclose in its P&L A/c of such contribution

NATIONAL DEFENCE FUND (SEC. 183(1))

- ❖ Can contribute in NDF or any other fund approved by govt. for national defence any amount that it thinks fit.
- ❖ The company is required to Disclose in its P&L A/c of such contribution

DISCLOSURE OF INTEREST BY DIRECTORS

[SEC 184]

- ❖ Disclosure by directors at first meeting of board after being appointed and at first meeting of Board of every financial year in writing in **form MBP 1** (relating his interest any company)
- ❖ If he is interested in company about whom the contract is discussed ,he shall not participate
- ❖ **In case of Private company, the interested director may participate after disclosing his interest.**
- ❖ It is duty of the director giving notice to cause it to be disclosed at the meeting held after the date of the notice.
- ❖ If subsequently becomes interested, disclose at first board meeting
- ❖ All notices shall be kept at the registered office in custody of CS
- ❖ notices shall be preserved for a period of eight years
- ❖ Contract entered without such disclosure, voidable at option of company
- ❖ Punishment= 1 yr or fine Rs 50000 to 1 lac or both
- ❖ Nothing in this section -
 - Shall be taken to prejudice operation of any rule of law restricting a director of company from having any concern or interest in any contract or arrangement with company
 - Shall apply to any contract or arrangement entered into or to be entered into between 2 companies or one company and body corporate where any director individually (or in combination) or body corporate holds not more than 2% of paid up share capital in the other company.

LOANS TO DIRECTORS

[SEC. 185]

- ❖ No company shall directly or indirectly :
 - advance Any loan including any loan represented by book debt or
 - give guarantee or
 - Provide any security in connection with loan taken by
 - Any director of a company or a company which is its holding company or any partner or relative of any such director or
 - Any firm in which any such director or relative is a partner
- ❖ A company may advance any loan including loan represented by book debt or give guarantee or provide any security in connection with loan taken by any person in whom any of director of company is interested, subject to condition that:
 - a) A special resolution is passed by company in general meeting and
 - b) Loans are utilised by borrowing company for its principal business activities

- ❖ Nothing contained in Section 185(1) and (2) shall apply to:
 - Company may advance loan to managing or WTD as part of conditions of service extended by company to all its employees or
 - Pursuant to scheme approved by members by special resolution
 - A company which in ordinary course of business provides loans or guarantees or securities can give loan provided rate of interest is not below bank rate prescribed by RBI for 1,3,5,10 years Government securities closest to tenure of loan
 - Any loan made or guarantee given or security provided by Holding company to its wholly owned subsidiary.

INVESTMENTS & LOANS AND ADVANCES

SECTION 186 (1)

Companies shall make investments through not more than two layers of investment companies subject to exceptions which includes company incorporated outside India.

The provisions of 186(1) shall not have effect in the following cases:

- If a company acquires any company which is incorporated outside India and such company has investment subsidiaries beyond 2 layers as per the law of such country
- A subsidiary company from having any investment subsidiary for the purposes of meeting requirement under law.

SECTION 186 (2)

- ❖ No company shall directly or indirectly
- ❖ give loan /Gurantee /security to any person or other body corporate
- ❖ exceeding **60% of paid up Capital plus Free reserves and security premium A/c or 100% of FR and security premium A/c (W.I.H)**

SECTION 186 (3)

- ❖ No loan /advances /guarantee/security shall be given **Unless** resolution is passed at board With consent of all directors
- ❖ However, **exceeding** 60% of paid up capital, FR & SP account OR 100% of FR & SP account (W.I.H) Shall be approved at the general meeting by way of **special resolution**

SECTION 186 (4)

The company shall disclose full particulars and such other details of loan/guarantee/security in the financial statements.

SECTION 186 (5)

- ❖ The company has to obtain prior approval of the public financial institution concerned where any term loan is subsisting.
- ❖ It provides that no investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it
- ❖ No prior approval of public financial institution If it does not exceed the limit or No default in payment of loan instalments and interest

SECTION 186 (6)

Companies registered under **Section 12** of SEBI Act, 1992 **cannot take** loans or deposits exceeding prescribed limit.

SECTION 186 (7)

- No loan shall be given under this section at rate of interest **lower than** prevailing yield of 1,3,5,10 years Government security **closest to tenure** of loan
- This sub-section **not apply** to a company on which **26% or more** of paid up share capital is held by Central/State Government and such company has provided loan for **funding Industrial research and development**.

SECTION 186 (8)

No company which is in default in repayment of any deposits or payment of interest, shall give loan/guarantee/security till default subsisting.

SECTION 186 (9) READ WITH RULE 12

- ❖ Every company giving loan or giving guarantee or providing security shall, from the date of its incorporation, maintain a register in **Form MBP 2**.
- ❖ The entries in the register shall be made chronologically **within seven days**.
- ❖ The entries in the register (either manual or electronic) shall be authenticated by the company secretary
- ❖ The register shall be preserved **permanently**.

SECTION 186 (10)

The register referred in 186(9) shall be kept at registered office.

The register shall be open for inspection and extracts may be furnished to any member on payment of such fees as prescribed in Articles which shall not exceed Rs. 10 per page.

EXEMPTIONS (SECTION 186 (11))

Nothing contained in section 186, except 186(1), shall apply to –

- ❖ Any Loan/Guarantee/Security/Investment made by Banking company, Insurance company, Housing Finance company in ordinary course of business Company established with object of and engaged in business of financing industrial enterprises or providing infrastructural facilities
- ❖ Any investment made by –
 - ❖ Investment company
 - ❖ Made in shares allotted in pursuance of section 62(1)(a) or rights issue.
 - ❖ Made in respect of investment or lending activities, by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

PENALTY (SECTION 186(13))

The contravention of the provisions of the **section 186** imposes punishment for the

- **company** with fine which shall not be less than twenty five thousand rupees but may extend to five lakh rupees and

- **every officer** punishable with imprisonment for term which may extend to two years and with fine not less than twenty five thousand rupees but which may extend to 1 lakh rupees.

SECTION 186 COMPARED WITH SECTION 185

- ❖ loan is given by a company to another private company in which a director of the first company is a director or member.
- ❖ such a loan would be void unless it is given to a managing director or whole-time director
- ❖ Pursuant to a scheme approved by the members by way of a special resolution.
- ❖ Where one or more directors of the a company exercise 25% or more of the total voting power

INVESTMENTS OF COMPANY TO BE HELD IN ITS OWN NAME [SEC 187]

- ❖ **Section 187 (1)** - All investment made or held by a company in a property, security or other asset must be made and held by it in its own name.
Provided that the company may hold any shares in its subsidiary in the name of any nominee to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.
- ❖ **Section 187(2)** - Nothing contained in this section shall be deemed to prevent a company -
 - from depositing with bank, being bankers of the company, any shares or securities in which for collection of dividend or payment of interest
 - From depositing with or holding shares/securities in name of bankers in order to facilitate transfer thereof
 - From depositing with or transferring to any person, any share or securities by way of security for repayment of loan advanced to company or performance of any obligation.
 - Holding investment in name of depository when such investment is held as a beneficial owner

PUNISHMENT

According to section 187(4), if a company contravenes the provisions of section 187,

- the **company** shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and
- **every officer** punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

RULE 14 OF COMPANIES (MEETINGS OF BOARD AND ITS POWERS) RULES, 2014

- ❖ Every company shall, from the date of its registration, maintain a register in **Form MBP 3**
- ❖ The register shall be maintained at the registered office of the company.
- ❖ The register shall be preserved permanently and shall be kept in the custody of the company secretary.

RELATED PARTY TRANSACTIONS [SECTION 188]

It states that no company shall enter into a contract or arrangement with a related party with respect to:

- ❖ sale, purchase or supply of any goods or materials;
- ❖ selling or otherwise disposing of, or buying, property of any kind;
- ❖ leasing of property of any kind;
- ❖ availing or rendering of any services;
- ❖ appointment of any agent
- ❖ such related party's appointment to any office or place of profit in the company
- ❖ Underwriting the subscription of any securities or derivatives thereof, of the company

The above transactions can be entered into with consent of Board by way of Board resolution.

As amended Rule 15 of Companies (Meeting of Board and its Powers) Rules, 2017, **Ordinary resolution** in general meeting will be required in cases where threshold limit is crossed.

Related Party Sec.2(76)

- A director or his relative
- A KMP or his relative
- A firm, in which a director, manager or his relative is a partner
- A private company in which a director or manager or his relative is a member or director
- A public company in which director or manager is a director and holds along with his relatives, more than 2% of its paid up capital
- Any body corporate whose BOD/MD/Manager is accustomed to act in accordance with the advice, directions of a director or manager. (Except persons giving advice in professional capacity)
- Any person on whose advice, directions a director or manager is accustomed to act. (Except persons giving advice in professional capacity)
- Any company is:
 - Holding, subsidiary or an associate company of such company or
 - A subsidiary of a holding company to which it is also a subsidiary
 - The above clause is not applicable to Private Company with respect to Section 188
 - Such other person as may be prescribed. (A director (other than independent director) or KMP of holding company or his relative with reference to a company, shall be deemed to be related party.)

DUTIES OF DIRECTORS [SEC. 166]

- ❖ For 1st time duties have been defined in act
- ❖ Director of company shall
- ❖ Act in accordance with AOA
- ❖ Act in good faith in order to promote the objects
- ❖ Exercise his duties with due & reasonable care
- ❖ Not involve in situation which may conflict with interest of company
- ❖ Not achieve any undue gain



- ❖ Not assign his office
- ❖ If contravenes the provision, Fine of Rs 100000 to 500000

CONTRACT BY OPC (SEC 193)

- ❖ If OPC enters into contract with sole member, ensure that contract is in writing
- ❖ If not in writing, ensure that terms of contract are in MOA & are recorded in minutes in BM held after entering into contract
- ❖ Inform registrar **within 15 days** of date of approval

FORWARD DEALINGS IN SECURITIES OF COMPANY (SECTION 194)

Director or KMP are prohibited from buying in company or its holding/subsidiary/associate

- ❖ A right to call for delivery
- ❖ A right as he may elect to call for delivery

INSIDER TRADING (SEC 195)

- ❖ Act of communicating any non public price sensitive information by any person of company who is reasonably expected to have access to such info to any other person
- ❖ Insider trading is prohibited (including trading by director & KMP)
- ❖ Any communication in ordinary course of business is not insider trading
- ❖ **Punishment:** Imprisonment for 5 yrs or Fine of Rs 5 lac to 25 cr or 3 times the amount of profit made (W.I.H) or with both



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APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL



Regulatory Framework of Appointment & Remuneration of Managerial Personnel

| | |
|---------------------|--|
| Applicable Chapter | Chapter XIII of the Companies Act, 2013 |
| Applicable Sections | Section No. 196 to Section No. 205 |
| Applicable Rules | Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 |

Section Numbers & Particulars

| | |
|-------------|---|
| Section 196 | Appointment of Managing Director, Whole-time Director or Manager |
| Section 197 | Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits |
| Section 198 | Calculation of Profits |
| Section 199 | Recovery of Remuneration in Certain Cases |
| Section 200 | Central Government or Company to Fix Limit with Regard to Remuneration |
| Section 201 | Forms of, and Procedure in Relation to, Certain Applications |
| Section 202 | Compensation for Loss of Office of Managing or Whole-time Director or Manager. |
| Section 203 | Appointment of Key Managerial Personnel |
| Section 204 | Secretarial Audit for Bigger Companies |
| Section 205 | Functions of Company Secretary |

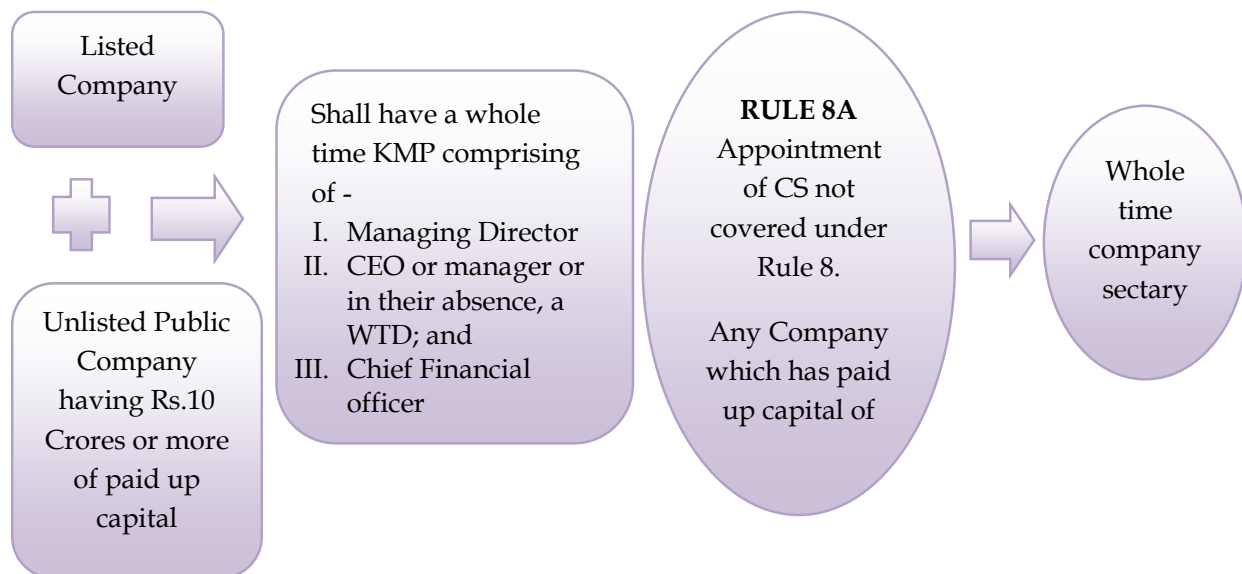
KEY MANAGERIAL PERSONNEL

The Companies Act, 2013 has for the first time recognized the concept of Key Managerial Personnel. As per **section 2(51)** “key managerial personnel”, in relation to a company, means—

- i. the Chief Executive Officer or the managing director or the manager;
- ii. the company secretary;
- iii. the whole-time director;
- iv. the Chief Financial Officer; and
- v. Such other officers not more than one level below the directors who is in whole time employment, designated as KMP by the Board and.
- vi. Such other officers as may be prescribed

APPOINTMENT OF KEY MANAGERIAL PERSONNEL

[SEC. 203]



- ❖ An individual shall not be appointed or re-appointed as chairperson as well as MD or CEO at same time unless authorized by articles
- ❖ In case of multiple business = 1 or more CEO can be appointed.
- ❖ Whole time KMP shall not hold office in **more than 1 company except subsidiary company** at same time.
- ❖ In case of **vacancy** of any whole time KMP, it shall be filled up by Board at meeting of Board **within 6 months** from date of such vacancy.

MANAGING DIRECTOR

Sec. 2(54)

- ❖ “Managing director” means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of

the company and includes a director occupying the position of managing director, by whatever name called.

- ❖ Substantial power **excludes administrative acts of a Routine Nature** when so authorized by the board.
- ❖ A managing director of a limited company may have a dual capacity. He may both be a director as well as an employee.

(G. Subba Rao V. Rasmi Die-Casting Ltd.)

| | |
|---|--|
| <p>Appointment [Sec. 196]</p> | <ul style="list-style-type: none"> ❖ No company shall appoint or employ at the same time a Managing Director and a Manager. ❖ company shall not appoint or reappoint any person as its Managing Director for a term exceeding five years ❖ no reappointment shall be made earlier than one year before the expiry of his term. ❖ The terms and conditions of such appointment and remuneration payable shall be approved by BOD which shall be subject to approval by a resolution at the next general meeting of the company and by the Central Government in case such appointment is at variance to the conditions specified in Schedule V. ❖ A return in the prescribed form viz. MR.1 is required to be filed with Registrar within 60 days from the date of such appointment. ❖ DIR-12 should also be filed by company for appointment within 30 days ❖ Where an appointment is not approved by Company at General meeting, then any act done by him before such approval shall not be deemed to be invalid. |
| <p>Appointment with approval of CG</p> | <ul style="list-style-type: none"> ❖ If provisions of schedule V is not fulfilled ❖ An application seeking approval for appointment shall be made to central govt in e-form no MR-2 ❖ This provision is not applicable to Private Company ❖ While giving approval ,company & CG shall have regard to <ul style="list-style-type: none"> ➤ Financial position ➤ Remuneration or commission drawn in any other capacity ➤ Remuneration and commission drawn from any other company ➤ Professional qualification and experience ➤ Such other matters as may be prescribed |
| <p>Disqualifications sec 196 (3)</p> | <p>No company shall appoint or continue the employment of any person as its MD, WTD, or Manager who</p> <ul style="list-style-type: none"> ❖ Is below age of 21 years or has attained age of 70 years. The appointment of person who has attained 70 years may be made by passing Special Resolution. ❖ is an undercharged insolvent or has at anytime been adjudged as insolvent ❖ Has any time suspended the payment to creditors or makes or has |

| | |
|-----------------------------|--|
| | <p>at any time made composition with them</p> <ul style="list-style-type: none"> ❖ Has at any time been, Convicted by court of an offence and sentenced for more than 6 months ❖ 5 additional conditions must be satisfied <ul style="list-style-type: none"> ➤ Has completed age of 21 years and not attained age of 70 yrs ➤ Had not been sentenced to imprisonment for any period or to a fine exceeding Rs.1000 for conviction of offence under prescribed acts ➤ Had not been detained under conservation of foreign exchange and prevention of smuggling act, 1974 ➤ Where he is a managerial person in more than one company, he draws remuneration from 1 or more company subject to ceiling limit ➤ Must be resident in India |
| Powers [sec. 179] | <ul style="list-style-type: none"> ❖ A managing director acts subject to the superintendence, direction and control of the Board of director ❖ He derives powers from the company or it's Board. ❖ Articles of the Company contain provision regarding the powers ❖ shall have general conduct and management of the whole of the business and affairs ❖ Authenticate promissory note. ❖ enjoys the power to vary the duties of employees, Buying fixed assets, selling assets, borrowing ,investing, entering into contract , appointment of senior personnel. |
| Duties | <ul style="list-style-type: none"> ❖ Managing director are set out in detail in the document by which he is appointed. ❖ He is a fully answerable to, and function under the overall supervision, guidance and control of the Board of director. ❖ The board cannot divest itself of the power it has to exercise under the act and under the memorandum and articles of association of the company |
| Liabilities | <ul style="list-style-type: none"> ❖ liable for breach, whether willful or unintentional, of any of the duties and powers entrusted to him under the terms and conditions of his appointment, ❖ by virtue of any provisions of the memorandum and articles of association of the company or under the provisions of any other law which he is bound as managing director to honor and to comply with. ❖ He is liable for fraudulent conduct of business of the company, for improper use of the company's funds and properties. ❖ also liable both in a prospectus issued by the company ❖ His named is included as an 'officer in default' and can be made liable accordingly. |

DISQUALIFICATIONS



Section 196(3) of the Act makes a specific prohibitory provision with regard to the appointment of managing director, whole time director or manager. The section lays down that **no company shall appoint or continue** the employment of any person as its managing director who –

- (a) is an **undischarged insolvent** or has at anytime been adjudged as an insolvent;
- (b) has at any time suspended **payment to his creditors**, or makes, or has at any time made, a composition with them; or
- (c) has at any time been, **convicted by a court** of an offence and sentenced for a period of **more than six months**.

Apart from this, **Part I of Schedule V** contains five conditions which must be satisfied by a person to be eligible for appointment as managing director, whole-time director or manager without the approval of the Central Government. These conditions are as below:

(A) is below the age of **twenty-one years** or has attained the age of seventy years:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

Provided further that where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made

****Companies (Amendment) Act, 2017**

This Proviso to section has been deleted and substituted by the following New proviso and has been notified w.e.f. 12th September 2018.

(B) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:-

- (i) the Indian Stamp Act, 1899,
- (ii) the Central Excise Act, 1944,
- (iii) the Industries (Development and Regulation) Act, 1951,
- (iv) the Prevention of Food Adulteration Act, 1954 ,
- (v) the Essential Commodities Act, 1955,
- (vi) the Companies Act, 2013,
- (vii) the Securities Contracts (Regulation) Act, 1956,
- (viii) the Wealth-tax Act, 1957,
- (ix) the Income-tax Act, 1961,
- (x) the Customs Act, 1962,
- (xi) the Competition Act, 2002,
- (xii) the Foreign Exchange Management Act, 1999,
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985,

- (xiv) the Securities and Exchange Board of India Act, 1992,
- (xv) the Foreign Trade (Development and Regulation) Act, 1992;
- (xvi) the Prevention of Money Laundering Act, 2002;

(C) he had not been detained for any period under the Conservation of **Foreign Exchange and Prevention of Smuggling Activities Act, 1974**;

Provided that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval;

(D) where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in **section V of Part II**;

(E) he is **resident in India**.

Explanation: For the purpose of above, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India:

- (i) for taking up employment in India, or
- (ii) for carrying on a business or vocation in India.

But this condition shall not be applicable to the companies in Special Economic Zones, as may be notified by Department of Commerce from time to time.

However, a person, being a non-resident in India, shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and the terms and conditions of such person's appointment.

REMUNERATION TO MANAGERIAL PERSONEL

(Sec 197)

The **maximum ceiling** for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall **not exceed 11% of the net profit** of the company in that financial year computed in accordance with section 198 except that the remuneration of the directors shall not be deducted from the gross profits.

Further, the company in general meeting may, with the approval of the Central Government, authorize the payment of remuneration

Exceeding 11% of the net profits of the company, **subject to the provisions of Schedule V**.

The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

The remuneration payable to any **one managing director** or whole time director or manager shall **not exceed 5%** of the net profits of the company and if there is **more than one** such director remuneration shall **not exceed 10%** of the net profits to all such directors and manager taken together.

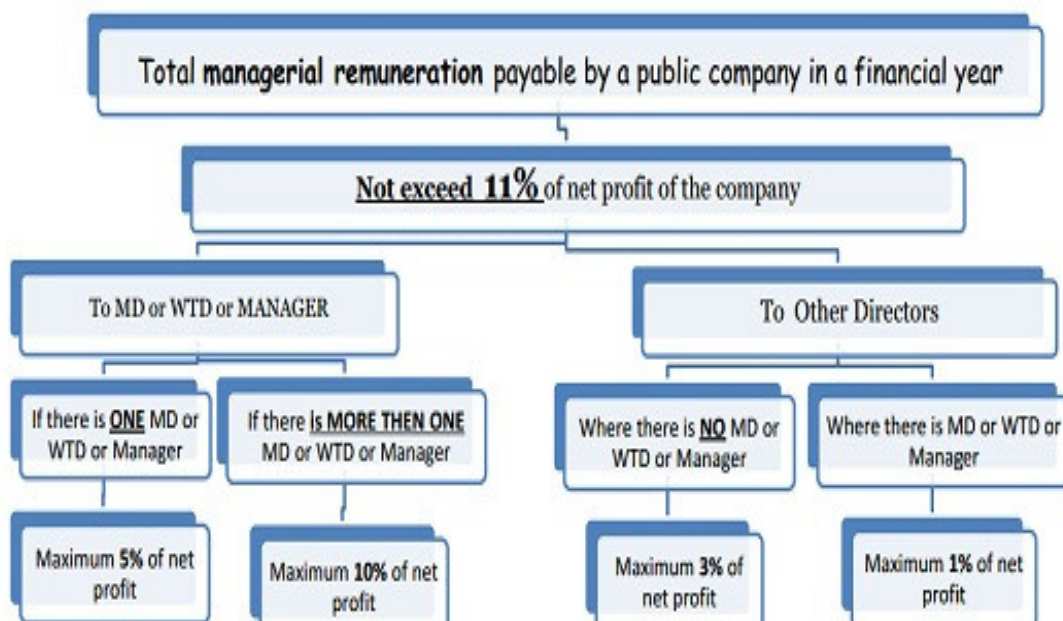
Except with the approval of the company in general meeting, the remuneration payable to **directors who are neither managing directors nor whole-time directors shall not exceed, –**

– **1%** of the net profits of the company, **if there is a managing or**

whole-time director or manager;

– **3%** of the net profits in any other case.

The percentages aforesaid shall be exclusive of any fees payable to directors for attending the meeting of the board/committees or for such other purposes as decided by the board.



Remuneration by a Company having no Profit or Inadequate Profit

→ If, in any financial year, a company has **no profits** or its profits are inadequate, the company shall **not pay to its directors**, including managing any remuneration exclusive of any fees payable to directors except in accordance with the provisions of Schedule V and if it is not able to comply with Schedule V, **with the previous approval of the Central Government.**

→ In cases, where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule and if such conditions are not being complied, the approval of the Central Government had been obtained.

| | |
|--------------------------------------|--|
| Negative to Rs. 5 Crore | Rs. 60 Lakh yearly (earlier 30 lakh) |
| Rs. 5 crore to Rs. 100 Crore | Rs. 84 Lakh yearly (earlier 42 lakh) |
| Rs. 100 crore to Rs.250 Crore | Rs. 120 Lakh yearly (earlier 60 lakh) |
| Rs. 250 Crore and above | Rs. 120 lakh + 0.01% of EC above these Rs. 250 Crore |

WHOLE TIME DIRECTOR

| | |
|--------------------------------|--|
| Definition [sec. 2(94)] | “Whole-time director” as a director in the whole-time employment of the company. |
| Appointment | The substantive provisions with regard to appointment and reappointment of whole-time director are similar to that of managing director which have been discussed earlier. |
| Role and powers | <ul style="list-style-type: none"> ❖ co-ordinate activities of various divisions and departments of the company ❖ ensures that the short-term and long-term policies and plans of the company are executed and implemented ❖ he is duty bound to bring the fact to the notice of the Board so that causes of the delay may be analyzed and remedial action can be taken ❖ future plans and policies be modified. |
| Duties | <ul style="list-style-type: none"> ❖ duties and responsibilities of an executive director or whole-time director are governed by the terms and conditions of their appointment ❖ responsibilities entrusted to them by the Board of directors from time to time or by the shareholders at their general meetings. ❖ an executive director or a whole-time director is not entrusted by the company with substantial powers. ❖ They are bound to act in strict compliance with duties and powers entrusted to them under the overall direction of the managing director |
| Liabilities | <p>NO PERSONAL LIABILITY</p> <ul style="list-style-type: none"> ❖ An executive director and a whole-time director are not personally liable on the contracts made by them for the company with the third parties ❖ Even where a contract is ultra-vires their powers(where they have no authority to contract, they are not personally liable on the contracts.) <p>PERSONAL LIABILITY</p> <ul style="list-style-type: none"> ❖ contract on their own name ❖ for fraudulent act |

| MANAGER | |
|-----------------------------------|--|
| Definition [sec. 2(53)] | Defines “manager” as an individual who, subject to the superintendence, control and direction of the Board of Directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not. |
| Appointment | A manager may be appointed or reappointed by the Board unless the articles of a company vest that power in the company to be exercised at a general meeting. |
| Disqualification | No company shall appoint or employ any firm, body corporate or association as its manager. A manager must be an individual. He must not be disqualified. If he is a director he must not be disqualified under Section 164 as far as his office of director is concerned. |
| Powers | <ul style="list-style-type: none"> ❖ The manager of a company may be a director or may only be an employee of the company. ❖ he has all the powers of a managing director ❖ The Board of directors or the Articles of Association of the company may also confer certain powers to a manager. |

| COMPANY SECRETARY [SEC 2(24)] | |
|--|---|
| “Company secretary” or “secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act; | |
| Appointment | ❖ Company having a paid up share capital of 5 cr or more needs to appoint Full time CS (compulsory) |
| Powers | <ul style="list-style-type: none"> ❖ All functions which he is required to perform under various acts ❖ All acts which BOD direct him to perform ❖ All acts which enables him to discharge the duty of administrative head ❖ Statutory officer ❖ Coordinator ❖ Administrative officer |
| Three fold capacity | <ul style="list-style-type: none"> ❖ As agent of BOD ❖ As an officer in charge of secretarial work ❖ As a chief business executive |
| Rights | <ul style="list-style-type: none"> ❖ To control and supervise the working of his department ❖ Sign a document ❖ To be indemnified by company ❖ To receive remuneration |
| Liabilities | <ul style="list-style-type: none"> ❖ Shall not allow his personal interest to clash ❖ Shall not make personal profit |

- ❖ Personally liable for loss to third party
- ❖ Liable for damages
- ❖ Cannot reveal trade secrets

Role & Responsibilities of Company Secretary

Under the Companies Act, the role of a secretary is **three-fold**, viz., as a statutory officer, as a coordinator and as an administrative officer if so authorized. Similarly, the responsibility of company secretaries extends not only to a company, but also to its shareholders, depositors, creditors, employees, consumers, society and government.

The role of a company secretary may conveniently be studied from three different angles:

- a. as a **statutory officer**,
- b. as a **coordinator**,
- c. as an **administrative officer**.

Statutory Officer: officer responsible for compliance with numerous legal requirements under different Acts including the Companies Act, 2013.

Responsibilities of company secretary has also increased as he has been included in the definition of Key Managerial Personnel as defined in **section 2(51)** of the Act, who are also liable to punishment by way of imprisonment, fine or otherwise for violation of the provisions of the Companies Act which hold the “**officers in default**” under **Section 2(60)**.

However, **Company Secretary is not a ‘managerial personnel’ for purpose of restriction on remuneration under section 197 of Companies Act, 2013**. His salary is not considered for purpose of computation of ‘managerial remuneration’ under section 197 of the Companies Act, 2013, unless he is also a director of the company.

Thus the responsibility of a secretary as a statutory officer has been greatly expanded by enactment of various economic statutes, like Competition Act, Industries (Development and Regulation) Act, Foreign Exchange Management Act, SEBI Act, SCRA and Depositories Act.

Co-ordinator: On dealing with the Board functions, **Peter Drucker has this to say –**

“But there are real Functions which only a Board of directors can discharge. Somebody has to give final approval to the objectives; the company has set for itself and the measurements it has developed to judge its progress towards these objectives. Somebody has to look critically at the profit planning of the company, its capital investment policy and its managed expenditure budget. Somebody has to discharge the final judicial function in respect of organisational problems.”

This concept of Peter Drucker provides for the company secretary to co-effectively play a co-ordinating role to achieve the tasks the Board has set itself to.

Administrator- The principal duty of a secretary as an administrator is to ensure that the activities of a company are in conformity with the company’s policy. In his role as an administrator, the secretary provides the very foundation on which the entire structure of company administration is constructed.

The role of a company secretary as an administrator can be sub-divided into **organisational, financial, office and personnel administration**.

Statutory Duties and Liabilities of a Company Secretary

Apart from general secretarial duties with regards to organizing Board and general meetings, keeping minutes of meeting, recording approved share transfers, corresponding with directors and shareholders, maintaining statutory records, filing necessary returns with Registrar of Companies etc., the Companies Act, 2013 has also prescribed some duties and authorities, which are as follows—

1. Declaration regarding compliance with requirement of registration
2. Authentication of documents, proceedings and contracts [Section 21]
3. Signing share certificate
4. Signing annual return
5. Signing of financial statements
6. Appear before NCLT
7. Secretary of audit committee
8. Secretary as Compliance Officer of listed company
9. Demat shares
10. Additional duties

In addition to statutory duties of company secretary, he is often entrusted with additional duties like looking after legal matters, personnel matters, finance and sometime even general administration.

SECRETARIAL AUDIT

- ❖ Secretarial Audit is a compliance audit and it is a part of total compliance management
- ❖ Helps to detect non-compliance and take corrective measures
- ❖ To check compliance with provision of various laws
- ❖ Secretarial audit report to be annexed with its board report by following companies-
 - Listed Company
 - every public company having:
 - ✓ paid up cap= 50 cr or more
 - ✓ Turnover= 250 cr or more
- ❖ The format secretarial audit report shall be in MR-3
- ❖ duty of company to provide assistance to CS for auditing
- ❖ Its is independent objective assurance to add value and improve an organization's operations
- ❖ The provisions of Section 143 (Duty to report fraud) apply, mutatis mutandis, to Company Secretary in practice in conduct of secretarial audit.



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