CA Inter (IPCC)

Corporate Law (Company Act 2013) By CA. Dharani Dhara sha

Contents

Chapter 1 : History ,Meaning ,Definition and Characterstic

History:

The concept of the company was found out at England in the year 1844 by introducing the joint stock company . The word "company" derived from the Latin word "com" which means with or together and " Panies" which means Bread. Meaning of these two words may be association of person which get together to have their bread or meals.
The company concept was realized first time in India in the year of 1950 however, an exclusive company act covering the affairs of the corporate environment was made in 1956.the company act 1956 was derived from the England company law as that time at England.
There were many amendment or revision with respect to the company act 1956 was made after 1956 through various committee or bodies. Some of the details are as follows

Years	Committee	Contribution
1952 march	**Bhava committee (Company law committee)**	**Made the company act 1956 from England**
1960	**Sastri committee**	**Management of the company**
1963	**Amendment of the Act**	**Appointment of NCLT**
1988	**Sachar committee (Expert)**	**Streamlines of provision of company act – better working and administration**

History of company act 2013

The first step stone for making a company act was started from 2008. From 2008 till 2012, it has placed many time and could not be approved due to some avoidable as well as unavoidable reason. It got the approval from Lok sabha on 18th june 2012 and from rajya sabha on 8th Aug 2013. Finally consented from president on 29th Aug 2013..

In 2008, Indian law maker thought to amend the company act provision. There were many changes required to be incorporated therefore they thought to change the act rather to amend in the earlier law(company act 1956) The influence of new amendment is in respect of Governance, Corporate social responsibility, E-Management , Compliance, streamlining the provision of auditor and director, merger, related party and acquisition.

History Company act 2013 :

2008 – Company bill is made on 28th Oct 2008.
2009 – Company bill 2008 lapsed on 3rd Aug 2009 due to dissolution in lokSabha.
2010 – Company bill 2009 is placed on 31st Aug 2010.
2011 – Company bill 2011 again placed in lok sabha on 14th Dec 2011.
2012 – Company bill 2012 again amended and put in lok sabha on 18th Dec 2012.
2013 – Company bill 2013 passed by lok sabha on 08th Aug 2013

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Company bill got president assent on 29th Aug 2013

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Company act 2013

New concepts as taken under company act 2013 are as followes:

1. *Financial Year*
2. *Person Company*
3. A small company
4. *Dormant Company*
5. *Entrenchment Provisions*
6. *Corporate Social Responsibility ("CSR")*
7. *Auditor Rotation*
8. *Directors*
   - *no of director* have has been increased to 15 directors (12 in 1956)
   - *Female director*
   - *One resident director*
   - Independent director
   - Board meetings by telephone conference
9. *Related Party Transactions*
10. *Loans to Directors*
11. *Investments*
12. *Mergers and Amalgamations*
13. *Class Actions*

Contents of Company act 2013:

- *Chapter – 29*
- *Section – 470*
- *Schedule -7*
- *Definition – 95*
- *Requirement of Special resolution – 74 times*
- *Prosecution – 25 times*
- *CG approval – 15 time*
- *Imprisonment - 76 times*

Meaning

- *Company refers*
  - *Voluntary association of person , with an intention to carry on the business for profit or otherwise*
  - *Having contributed certain capital*
  - *Agreed to take some responsibility and liability*
  - *Registered under company act 2013 or any act earlier to that*
  - *Having with perpetual succession and common seal*

- *Company refers an association of many persons who contribute the money or money worth to a common stock and employ it in some trade or business*

Definition *As per section 2(20) A company incorporated under this act or under any previous company law.*

Characteristic :

1. ***Artificial judicial person:*** *Company is an Artificial person because , it is created by or closed up by human being by complying with law which after its registration get its separate existence and can able to justify its existence by its signature.*
2. ***Voluntarily association of person:*** *The person who have come forward to create the company or afterwards, must come voluntarily not by force.*
3. ***Corporate personality:*** *It has separate existence being a person in form of company, well be permitted to do every things what a natural person is permitted to do.*
4. ***Limited liability :*** *Liability refers How much /how the member of the company would held be liable to pay/contribute to the assets of the company at the time of winding up, in case the assert fall short than its liability. Normally liability of the member for all the company (Public & private) are limited.*
5. ***Perpetual succession:*** *The term "Perpetual Succession" means the continued existence. The continuous existence of the company will not be affected with the non- existence of any member or manager. The death or insolvency or unsoundness of mind of its member or transfer of share by its member does not in any way affect the existence of the company.*
6. ***Separate legal entity :*** *Company once register shall get its separate identity / existence than the member who has created the company.*
7. ***Transferability of share :****the characteristic of freely transferability of share is possessed by public company not by the private company. In a public company, share can be transferred from one person to another person.*
8. ***Common seal :*** *Common seal means official signature of the company. Since the company is AJP , cannot sighed in its name on the document , every company is required to have its common seal which to be affixed with all the document in order to create bindingness on the company*
9. ***Capacity to sue or to be sued:*** *Company in his capacity can sue to outsider and can be sued by outsider.*
10. ***Contractual right :*** *Company can be considered as sum up of many contract, which create legal right and obligation for the company.*
11. ***Limitation of action :*** *Company while register through many fundamental document. its major fundamental document called MOA(Memorandum of Association) establish the parameter or scope within which , company must act or exercise. Otherwise if any transaction enter beyond the scope shall not be permitted or be void .*
12. ***Separate management :*** *Management shall be separate than the ownership. There should be two major body having separate existence for management and ownership respectvily, which would help in better supervision, control.*
13. ***Termination of existence by law or voluntarily :*** *Company can get its end by two mode.*
    a. *Compulsory by law (existence of some particular circumstance)*
    b. *Voluntarily by the member by passing special resolution.*

Case law : Saloman v. saloman and company Ltd *: for the characteristic of Separate legal entity*
Case : *Saloman had a shoe business as a sol proprietor. he formed a company known as" saloman and saloman company Ltd" by converting that to public company,consisting 7 person he himself and his 4 son ,1 daughter and wife . the consideration to the shoe company was 30000 dollar being share capial of 20000 dollar and Debenture 10000 Dollar in the new public company. Other member are holding 1 share each . Company during the business obtained some other unsecured loan from outsider. When*

company face the financial difficulties after wards declared its winding up. Company realized its total assets 6000 Dollar buts its total loan is 17000 dollar (Saloman – 10000 dollar and other unsecured loan being 7000 dollar. Saloman adjusted his debt first then other creditor filled a complained against the company that saloman is the owner being the sole person having major share holder and control on the company , he can not be consider as outsider and be paid first hence , the adjustment is invalid.

Inference : *Saloman is entitle to get his due paid first.*

Corporate veil:

- Chief advantages of incorporation to get the nature of separate legal entity, Company is altogether different than those who have made it. In nature, a corporate façade/ veil is used to state " Every things whatever ,the people associated with company does, shall consider as if company has done that."
- However, in reality business is an artificial judicial person , hence carried on by some people, and they run it in their benefit. An analysis from some land mark case and practical situation, it would not be wrong to say only some individual or group are misusing the corporate personality to commit fraud and or fraudulent take their own advantages.
- Whenever any person so acted for company is found to have been committed some fraud and fraudulent purpose the corporate façade/ veil is lifted to identify the real person who has actually committed so. This is called lifting of corporate vail.

The circumstance under which court may lift the corporate vail can be classified in to following two way

A. Under Statutory Provision
B. Under Judicial interpretation

A. Under Statutory provision :

1. Reduction of membership Number- When the number of shareholder reduce the than the minimum statutory limit and company continue for more than 6 months. Business entity concept will not be given regards. Creditor are entitle to claim against the share holder by treating the shareholder and company as one.
2. Mis- presentation in prospectus (34& 35)-
3. Failure to return application money (39)-
4. Non- discloser of the representative capacity - where any officer or employee enter in to contract on behalf of the company ,without disclosing the capacity with they entered and the company whose behalf the contract is entered . such officer or employee shall personally be held liable for such act
5. Failure to deliver share certificate :
6. Mis-description of name
7. Holding – subsidiary company relationship
8. For facilitating the task of a inspector in carrying on the job (210, 213 and 219)
9. For investigation of ownership of the company (216)
10. Fraudulent conduct.(339)

B. Under judicial interpretation:

1. Protection of revenue (Sir Dinshaw Maneckjee Patit, Bom) – Sir dinshaw is very rich person getting huge dividend and interest hence he has incorporated four company and invested all those money being an agent through those company , so that he can
2. Prevention of fraud and improper conduct (Gilford motor company Vs. Horne)
3. Determination of enemy character of the company (Daimler company Ltd Vs. Continental tyre and Rubber Co. Ltd)
4. Formation of subsidiary to as an agent (Merchantise Transport Ltd Vs. Britiesh Transport commission)
5. Where a company act as an agent for his shareholder (Smith, stone,and Knight Vs Birmigham Corpo.)
6. In case of economic offence.

Section 3 : Formation of company :

1. **<u>Name approval</u>** (Section 4(4) and (5): With respect to approval of the name, following provision shall be followed :

- **Application for name :**As per section 4(4), A person so interested for incorporation shall make an application, in form INC 1 by complying the rule 8 and 9 of the Company incorporation)Rule 2014. By stating
  a) Name of the proposed company.
  b) Name in which company is proposed to change its name.
  (Rule 8 and 9 are given below)
- **Getting confirmation from ROC :** ROC after receipt of such application , may, on the basis of information and documents furnished along with the application, reserve the name within sixty days from the date of the application.
- **If the information given in course of incorporation found to be false:**
  A. If company is not Incorporated : ROC shall cancelled the name what is already reserved. And shall be punishable with Penalty which may extend to one lakhs
  B. If company is already incorporated : ROC after giving the company
  - Change the name by giving an opportunity of being heard within the period of three months
  - take action for striking off the name of the company from the register of companies after passing an ordinary resolution.

<u>Rule 8 of (company Incorporation) rule 2014 : Guideline for the application and confirmation of the name given as follows</u>

- **The name so proposed shall not be so identical with existing name**
  Note: While determining ensuring about the above rule, following shall be disregarded
  a) The word like private, Pvt , (p) Ltd, Ltd, Limited LLP etc
  b) The word use after the name Company, Co, Corporation, Corp
  c) Misspelled words, whether intentionally misspelled or not , do not conflict with similar, properly spelled words.
- In the following cases, name shall considerable as undesirable :
  a) The name is identical and too nearly resembles with the name already exist on that date.
  b) It is not consonance with the principal object of the company as set out in the MOA.
  c) If the company main business is Financing ,Leasing, Chit funds, investment, Securities or combination thereof. Such name shall not be allowed unless name is so indicative of such related financial activities.
  d) If the name is to popular or abbreviated description of an existing company and LLP.

2. **<u>Preparation of the document for the registration :</u>**

There are some documents which get part of its procedure which otherwise be used those documents are given as follows :

a. Memorandum of Association.
b. Article of Association.
c. Statement with regards to :
   i. Availability of name
   ii. Place where register office situated
   iii. Consent of director or managerial person
   iv. Statutory declaration.
   v. Power of attorney.
   vi. Statutory declaration in prescribed form (It the declaration with respect to the requirement under act for formation of company)
d. Declaration can be given promoters. That declaration must be signed by :
   i. An advocate of Supreme Court or high court.
   ii. An attorney or pledge.
   iii. A company secretary or a chartered accountant practicing in india.

3. **<u>Application for incorporation of the company :</u>**
   An application shall be filled , with the registrar with the jurisdiction where the registered office is situated in form No INC.2 in case of One Man Company and in form No INC.7 for company other than One man company.[As per the rule 12 of (Company incorporation) Rule 2014.]
4. **<u>Submission :</u>** Submission of document with ROC.

5. **Issue of COI :** ROC after verifying the document shall issue the certificate of incorporation.

Issue.1 *Can the word "purpose" used in section 3 and the word "Objects" used in section 4 of the company act 2013 having different meaning and interpretation or not ?*

Ans. As per the decision of Kolkata high court in the case of Indian iron & steal Co.ltd, it was interpreted that the *word "purpose" used in section 3 **(Formation of company)**and the word "Objects" used in section 4 **(Memorandum of association)** of the company act 2013 attempt to find the difference in provision without having difference.*

*The word **"object"** used in section 4 (Memorandum of association)prescribe the scope by drafting the object within which the company can act however the word **"purpose"** used in section 3 (Formation of company) describe the nature of business and transaction what company can deals with.*

Issue.2 Any business which involve an offence against the general law. Whether such kind of business is permitted to get registered.

Ans.
The word illegal refers the activities inconsistent with the law, irrespective of whether that is general or special law. If any company carrying out any transaction which is opposite to general law.

Issue .3 Can the motive with which the founder has come up to registered the company be interpreted as unlawful company?
Ans. The motive which induce the founder to create the company is not related to the scope as per section 3 of company act 2013, as it is not a field of enquiry which the section recognize as legitimate.

A right is given to every citizen to form a limited concern as long as there is nothing unlawful; or illegal in the object of the MOA. Hence Company shall consider as unlawful, if the business with which company start is decided as unlawful and illegal.

Effect of the registration u/s 9

Ans. After the certificate of incorporation is obtained , it would have following effect

- Such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company.
- Members are considered as body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and
- It create the feature of having perpetual succession and a common seal
- It give power to its member with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and
- It give right the company to sue and be sued,

Case-1 As per the **satyavari sidhantalankar Vs. Arya Samaj,** bombey high court has decided that, after the incorporation, company get its separate existence than the existence of the member who has constituted the company.

Case-2 As per **Lennard's carrying Co.ltd vs. Asiatic petroleum Co.Ltd ,** Company is the abstract form of the person who has created such company.

Its get active, its purpose, its directing mind and will of corporation, and the very ego decide the personality of the corporation

CLASSIFICATION OF COMPANIES

I . **Profit oriented company**

A. On the basis of Incorporation

1. Chartered Company.
2. Statutory company

3. Registered Company .
   i. Private company.
   ii. Public company.
   iii. One Person company.

Understanding :

Constitution ⇨ Where the constitution is considered in form of company ⇨ Chartered company ⇨ (Ex : England east India company

Act /Law created by constitution ⇨ Company created by constitution by special act / By Statutory ⇨ company (Ex: LIC, State bank of India etc)

Company created by any act as created by the constitution ⇨ It is the creation of the Act not the constitution ⇨ Registered Company (Ex: Private company, Public company and OPC)

B. On the basis of Liability

4. Company limited by Share.
5. Company limited by guarantee
6. Unlimited Company

C. On the basis of control

1. Government and non-government Company
2. Foreign and Domestic company
3. Holding and subsidiary company

II. Non Profit making company

On the basis of the incorporation :

CHARTERED COMPANY :

- This company is incorporated under special charter granted by king or queen of England
- Charter prescribes the nature of business power of the company. This is regulated by charter not by the company.
- **Example of such company are given:**

1. The east India co.
2. Bank of England.

STATUTORY COMPANY:

- It is the one which is created by special act of parliament or state legislation.
- These companies are created normally for public utility purpose.
- The nature, rules, power of such co. are laid down by the special act passed by Parliament or state legislation.
- Ex. UTI, LIC, RBI, SBI.

REGISTERED COMPANY:

- Company Registered under companies act 2013 or in any earlier acts is called registered company.
- These companies are governed by the provision as prescribed under Indian company Act
- These co, are of two types:

1. Private company
2. Public company
3. One person company

- **There are specific provisions which are not applicable for private companies.**

Private company u/s 2(68) A company shall considered as a private company where such company having following future:

a. Having requirement of minimum of 2 members
b. Minimum capital contribution of one lakh.
c. Minimum no. of director -2

d. Maximum no. of director is restricted to 200.

e. Restriction on

i. issue of shares in and debenture of the company.

ii. Accepting the deposit.

iii. Restriction on transfer of share.

iv. invitation to the public to subscribe for any securities of the company.

Public company u/s 2(71) : The company which is not a private co. Is considered as a public co.

a. There is no such restriction on transfer of shares or issue of shares or inviting public deposits.

b. Minimum paid up capital 500000

c. Minimum no. is seven.

d. Minimum director is 3.

e. Max no. of director is 20 after 20 it need central govt. approval.

Definition : section 2(71)"public company" means a company which
(a) is not a private company;
(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act evenwhere such subsidiary company continues to be a private company in its articles ;

<u>On the basis of the liability :</u>

❖ **Company Limited by shares :**

1. A company in which the liabilities of the members is limited to the extent of unpaid value on the call made on the shares held by shareholders, these members shall considered a company "limited by shares".
2. If a member paid full amount payable on shares (call made on shares). Liability shall be nil.
3. Company limited by shares can be both private and public.

❖ **Company Limited by guarantee:**

(a) A company, whose members liability is limited to the guarantee given as per memorandum of company, to be paid at the time of winding up.

(b) Normally, these co. are formed for promotion of arts, science and commerce.

(c) These company can be of both private and public.

(d) Company limited by guarantee may have share capital.

❖ **Unlimited company:**

1. An unlimited co. is a co. whose members liability is not limited to any extent that of memorandum of association and article of association.
2. In this case member's personal property shall be liable for co. debt.
3. MOA shall disclose as if the liability is unlimited.
4. Such company can be either public or private.
5. Such company may or may not have share capital.

Government Company :

1. Any company in which at least 51% of paid up share capital is held by :

a. By central govt, or
b. By state govt.
c. Partly by state govt. and partly by the central govt.
d. Partly by one or more state govt.
e. By company which is subsidiary by govt, company.

2. In case of a govt company provision of company act 2013 shall be applicable to the govt company respectively.

3. Central govt. may by notification in official gazette direct for the applicability or non applicability of the provision as prescribed under company. act.

Non government company : Which is not a govt. company.

Foreign co.:

- It means a company which incorporated in a company other than India and having place of the business in India.
- After incorporation, within 30 days from that day, following doc. Shall be submitted a certificate copy of charter or status.
    - **a.** Full address of the register office.
    - **b.** List of directors and secretary of the company.
    - **c.** The name, address of the person resident in India, who would authorise to accept on behalf of company, service or legal notice and any notice on company.
    - **d.** Full address of companies principal business place in India.

Domestic co.: A company which is incorporated in a country (India).

Holding company

1. A company shall considered be holding company of any other company,

a) If the former company Having Shareholding not less than 51% of paid up share capital in the latter company.

b) If the former company Having Power for the composition of board of director in the latter company.

c) Any company which is subsidiary of a company , which is subsidiary of the former company

Subsidiary Company:

2. A company shall consider be subsidiary of any company, if the latter company

- ✓ has hold at least or not less than 5% of share capital or
- ✓ Control on compensation of board of directors of **X** has power of companies that of 1^{st} company.
- ✓ The 1^{st} company is subsidiary of any company which is subsidiary of latter company **(** Y is subsidiary of X **)**

Q. 1 Can a subsidiary company be a member of its holding company

- A body corporate cannot be a member of holding company
- Any allotment or transfer of shares on a company to its subsidiaries ,shall be void
- This section/ provision will not apply :-
    - Where subsidiary company is a legal or representative of a deceased member of the holding company
    - If subsidiaries act as a trustee of the member

NOTE:- Subsidiaries company can purchase its own share or other its holding company under the scheme of Amalgamation.

CASE : - Himachala Telematics VS. Himachala futuristic communication ltd.

<u>Section 4. MEMORANDUM OF ASSOCIATION</u>

A.MEANING

- It is the chartered company
- MOA express the scope, very effidice on which the total setup company is build up
- It is constitution which lays down the fundamental condition upon which the company get formed.
- Details of form for the memorandum of association as prescribed by schedule 1 of company act 2013, are given as follows:
    - a. Table A – MOA of company limited by share
    - b. Table B – MOA of company limited by guarantee not having share
    - c. Table C – MOA of company limited by guarantee having share

B.PURPOSE

- **Use of money :** To enable the shareholder to know that the scope. So that they will ensure about the use of their money (that has invested).
- **Dealings with the company :** It will help in the following manner :
  i. **OUTSIDERS** It will enable the outsider to know, the deal what they are interested to make , whether that is within the scope of the company .
  ii. **COMPANY** To know the scope or area within which company can act or operate.

C.CLAUSES

1. **Name Clause:** In case of private company the word pvt ltd, should be added with the name and in public company ltd should be added.
2. **Statute clause / Situation clause :** Address where register office is situated.
3. **Object clause :** Shall mention the object for which the company proposed to incorporated and any matter considered to thereof.
4. **Capital clause :** The aim of capital with which company is going to incorporated and division thereof and no of shares. Whether limited or unlimited
5. **Liability Clause:** Nature of liability, with which company get incorporated.Ex: public company, private Company and one person company
6. **Associate clause :** Name, address of the subscribers, no of shares hold by them.

Issue : 1 *X want to incorporated as a company with a name infotech pvt lt. Guide him as per company rules with relation to name of the company?*

- MOA deals with clause called "name clause" where, company name is written.
- Name shall not be such
  - That is Identical with or too resemble to the name of an existing company registered under this act or earlier act thereto.
  - That the use of such name by company will constitute an office under any law
  - That, which is undesirable at the opinion of Central Government.
  - That, which use any word or expression which is likely to give an impression that the company is in connection with, or having the patronage of
    a) Central Govt.
    b) State Govt.
    c) Local authority
    d) Broadly constituted by Cent. Govt. or State Govt.

Therefore ,it would be advisable to get complied with the provision of section 3 of company act while selecting the name of the company.

Section 13: Alteration of memorandum.

- Introduction / Understanding: Changes in MOA means changes in the clauses of the MOA i.e Name. State, Object, Liability clause etc .

1. **Changes in Name clause :**
   - Changes shall be made subject to the provision of sub section (2),(3) of the section 4 of company act 2013
   - Changes must be made by passing special resolution in GM
   - Changes shall not have effect , unless central government approval is obtained.
   - Changes of name shall consider as complete where,
     - ✓ Registrar shall enter the new name in the register of companies in place of the old name ,
     - ✓ Issue a fresh certificate of incorporation with the new name
     - ✓ The change in the name shall be complete and effective only on the issue of such a certificate.

Note -Approval of CG shall not be necessary where the changes is made only of addition or deletion of word "private company" with the name of the company by virtue of the conversion.

- **As per the rule 29(1) of the company (incorporation) Rule 2014, Changes of the name of the defaulting company not allowed:** The change of the name shall not be allowed to a company
  - which has defaulted in filling with ROC the following :
    - ✓ Its Annual return or
    - ✓ Financial statement or
    - ✓ Any document due .

- which has defaulted in repayment of mature deposit or debenture or interest on deposit or debenture or dividend

Procedure : As per the rule 29(2) of the company (incorporation) Rule 2014

1. Step 1 : an application shall be filed in form number INC 24 along with the fee in the changes in the name of the company
2. Step 2 : The ROC shall enter the new name in the register in the place of the old name ,
3. Step 3: ROC shall issue fresh certificate in form number INC 25 shall be issued to the company consequent upon change of the name

2. **Changes in State clause :**

A. **Changes of registered office between the state :**
   - **Step 1: Convened the Board meeting, decide the Date , Place, Time for GM.**
   - **Step 2: Send notice to share holder for GM, along with the explanatory note for passing the special resolution with that effect.**
   - **Step 3: Application shall be made to central government for the approval of such changes in the manner as prescribed in the provision.**
   - **Step 4: CG shall dispose the application within the period of sixty days.**
   - **Step 4: CG shall ensure the following before approving.**
     a. The changes so proposed had consent of creditors, debenture-holders and other persons concerned with the company.
     b. The sufficient provision has been made by the company either for the due discharge of all its debts and obligations or
     c. That adequate security has been provided for such discharge.

B. **When registered office changes from one state to another state :** Changes shall be made after complying with the following provision. **{ Rule 30 & 31 of company (Incorporation) Rule 2014}**
   - One application shall be made for the changes of registered office from one state to another to <u>state government</u> or union in form no INC. 23.
   - An advertisement shall be made in a vernacular language or regional language , where the registered office is situated (section 13(4)}
   - Such alteration shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.
   - The Central Government shall dispose of the application within a period of sixty days {(section 13(5)}.
   - Before passing this order, CG may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.
   - Application shall be made by accompanying the following document u/s 13(6).
     1. Memorandum of association.
     2. Copy of notice of convening the along with explanatory statement
     3. Copy of Special resolution
     4. An affidavit verifying the position
     5. The list of creditor and debenture holder who are entitle to object .
     6. Document in relation to the payment of the application money.
   - A certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

❖ **<u>Changes of registered office address within same state u/s 12:</u>**

- **Notice of changes u/s 12(*4*) :** Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within **<u>fifteen days</u>** of the change, who shall record the same.
- **Special resolution in GM is required where:**
  a. Where changes is made beyond the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later.

- Regional director confirmation : changes required the regional direct confirmation - change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State
  - ✓ Application shall be made to the regional director in the prescribed manner u/s 12(5)
  - ✓ The communication shall be made to ROC within 30 days from the date of receipt of application by RD (regional Director) u/s 12(6)
  - ✓ Company shall fill the confirmation of RD within 60 days of such confirmation with ROC u/s 12(6)
  - ✓ ROC will certify and get registered such confirmation within 30 days from the date of filing of such confirmation (12(6)
  - ✓ The certificate as issued by ROC shall be considered as conclusive evidence with respect to change of registered office u/s 12(7).

❖ Consequences of contravention u/s 12(8):
- Nature of contravention : non- compliance of any requirement of this provision
- Consequences : company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.

Rule 25 of company(incorporation) Rule 2014, is given as follows:

His rule deals with the manner of application, which are given as follows:
- The verification of the registered office shall be filled in form INC22 along with the fee
- There shall be attached to said form any of the following documents:
  1. The registered document of the title of the premises of the registered office
  2. The notarized copy of the lease or rent agreement and rent paid receipt not older than one month.
  3. The authorization form of the owner or authorized occupier of the premises.
  4. The proof of any following :
     - Telephone bill
     - Gas Bill
     - Electricity **Bill**

     Depicting the address of the premises in the name of the owner of the document as the case may be, which is not older than two month.

3. Changes of Object Clauses:

❖ Normally member will expect their investment would be utilized for the object for which they have invested. therefore it would not merely be easy to alter the object clause.

❖ Changes of object clause is permissible only for the following purpose.
- ***(a)*** To carry on business more economically
- ***(b)*** To attend the main purpose of the company by or in improve means
- ***(c)*** To carry on some business which under the existing circumstance may conveniently or advantageously be combined with the existing business
- ***(d)*** To change and enlarge the local area of operation
- ***(e)*** To restrict or abandon any of the existing objects
- ***(f)*** To sale or dispose of the whole or any part of the undertaking
- ***(g)*** To amalgamate any other object or body or operation

❖ As per the rule 32 of company (Incorporation) rule 2014, where money raised for some purpose, changes of object would not be permitted unless the money so raised has utilized for such purpose.

❖ The advertisement for giving the details of each resolution to be passed for changes in object which shall be published simultaneously with the dispatch of the postal ballot notices to shareholder.

❖ The notices shall also be placed on the website of the company if any.

4. Alteration of liability clause:

❖ In case of registration of unlimited company as a limited company , the liability may either be reduced , such an alteration by way of changes of registration of such company shall not ,alter any debt, liability, obligation or contract incurred or enter in to by or on behalf of the company be of the existing before the registration .

- No member of a company shall be bound by an alteration made in the MOA or AOA after the date on which he become a member,
  if such an alteration required him to take or subscribe for more share should then the number held by him as the date of alteration or in any way increase his liability.

Section 5 : ARTICLE OF ASSOCIATION

- Meaning: AOA is the internal by law which deals with internal rules and regulation for the management of internal affairs.
- The rules and regulations of AOA contains such fact or matters
  i. As per prescribed by law
  ii. As decided by management from time to time by amending article.
- AOA guides the director or officers, in accordance of which management is been made. Some of the matter which normally used to be in AOA are
  i. Accounts and audit
  ii. Director
  iii. Meeting
  iv. Notice, Quorum, Resolution, Business and Minutes
  v. Contract
  vi. Dividend etc.
- The form of AOA as prescribed under schedule 1 of company act 2013 are given as follows
  a. Table F – AOA of a company limited by share capital
  b. Table G – AOA of a company limited by guarantee having share capital
  c. Table I – AOA of an unlimited company having share capi
  d. Table J – AOA of an unlimited company not having share

- **Printing and signing of AOA**
  - As per provision 5 of companies act 2013, AOA must be printed or signed by at least 7 person in case of public company and at least by two person in private company.
  - The person signing the articles are called subscribers. They must sign the AOA in the presence of at least one witness.

Q.1 *Management want to implement a new information system for payroll, do the AOA is required to be amended or altered ? What is the provision in the company Act for this ?*

Ans:

- Article may contain provision for the entrenchment (when from any established system or totaling a possession situation of its own to any other system) of by altering / modifying/ updating any provision as it think fit.
- **Entrenchment** is possible by passing resolution as prescribed under law.
  i. In private company – All the member should agree on that
  ii. In public company – By passing special resolution
- When article is amended with respect to the entrenchment, company shall give notice by complying within the rule 11 of company(incorporation) Rule 2014.
- **Form and manner** as prescribed by rule 11 of Company (Incorporation) Rule 2014
  - Company shall give notice to ROC in form number along with the fee
    a. at the time of incorporation of the company - INC 2 or
    b. in case of existing company - form INC 7
- Company shall file the form MGT 14 {company (management and administration) Rule 2014, along with fee within 30days from the date of entrenchment of the AOA

Section 14: Alteration of the Article of Association

- Article shall be altered subject to the following provision
  (a) By passing special resolution at GM.
  (b) Alteration can be made for conversion of-
  - ✓ a private company into a public company; or

- ✓ a public company into a private company:

(c) **manner of alteration :** Where a company being a private company alters its articles in such a Manner that they no longer include the restrictions and limitations which are required to be Included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company{ **First proviso** to section 14(1)}

(d) **Tribunal approval :** As per the **2nd proviso** of section 14(1), any alteration of AOA having the effect of conversion of a public company in to a private company shall not take effect without the approval of the tribunal which shall make such order as it may deem fit.

(e) Alteration of AOA for incorporating entrenchment provision in case of private company, the changes so made shall be possible if Consented by all member (section 5(4).

(f) As per section 8(4)(i), for the change of AOA for non -profit making company , such alteration of AOA cannot be done, unless the pervious approval of CG shall be obtained.

- **Document to be filled with ROC u/s 14(2):**
  - **Document involve** :
    a. Altered article
    b. Special resolution passed at GM
    c. Tribunal approval
    d. CG approval , if any
  - **Time limit for filling :** within a period of fifteen days in such manner as may be prescribed.{ section 14(2)}
- The alteration of article shall not be inconsistent with :-
  i. Provision of any act
  ii. Memorandum
- Alteration of Article shall not increase the existing liability of the member.
- Can article be altered with retrospective effect ?
  - Alteration of article is permitted by passing prescribed resolution in GM
  - Alteration of article is subject of modification of or amendment in the rules, regulation of AOA which may have retrospective effect
  - As per the provision of companies act, alteration of article with retrospective effect would not be invalid if :-
  i. It don't affect the things already done.
  ii. It a beneficiary for the company as a whole.
- Alteration is bonafide even though interest of the members in private company are adversely effected.
- **Validity :** As per section 14 (3), Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it was originally made.

<u>Rule 33 of company (Incorporation) rule 2014</u>

- ***For effecting the conversion of the private company in to a public company, or vice versa the application shall be filled in form number INC 27 with the prescribed fee.***
- ***The copy of the order by competent authority approving the alteration , shall be filled with the ROC in form no INC 27 with the prescribed fee together with the printed copy of the altered AOA within 15days of the receipt of the order from the CG.***

Case law 1 : AOA can not restrict the scope of MOA **(Lakshmanaswami Mudaliar vs LIC , SC)**
Normally speaking, MOA has to be read along with AOA . where ever there are confusion or terms are ambiguous or silent , AOA explain the MOA but can not extend the scope of MOA

Case law 1 MOA do not create contract between the company and member**(Ramkumar potdar VS Sholapur SPg. & wvg.** Co Ltd - MOA does not constitute the contract between the company and any person who are not the member of the company , if that fact is in related to the internal affairs of the company.

<u>Section 10: Effect of Memorandum of Association and Article of Association :</u>

- **Intention :** understanding the consequences of preparation and filling the MOA with ROC
- **Provision :** After giving regard to the provision of company act 2013, The Memorandum and articles when registered shall have following binding effect.
  i. Bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and

ii. The company and its member are supposed to have promised to observe all the provisions of the memorandum and the article u/s 10(1)

iii. All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company u/s 10(2).

<u>Case law analysis:</u>

1. Article are binding on its members - **Link industries ltd**, Madras High court
2. Article constitute a contract between a member in his capacity as member and company- **Hickman vs. Kent**
3. The contract between the member and company created binding limit to the extent of ordinary right as a member – **Mothey Krishna Rao vs. Gandhi Anjaneyulu** by Madras high court
4. Article create contract between the shareholder and the internal management and administration of the company- **Hyder Ali Khan Vs ROC**

<u>Section 15 : Alteration to be noted</u>

- Provision u/s 15 : Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be u/s 15(1).
- Consequences of contravention u/s15 (*2*) : If a company makes any default in complying with this provisions
  - Company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

<u>Action Against</u>

1. **Ultra Virus Act**.

   a. Maintainability of action by single member against ultra vires act – if the company is about to start an ultra vires act, even a single member can get an order of injunction from a court restraining the company from going ahead with ultra vires act.- **Attorny general vs. G.R eastern railway company.**

   b. Time limit within which , the complain for the ultra vires act to be filled with court – within 6 months from the date of knowledge –**(NEPC India ltd vs. ROC, Mad)**

<u>Section 8 Company for charitable purpose ;</u>

<u>Content</u>

[A] Meaning
[B] Basic Provision
[C] Grant of license
[D] Revocation of license
[E] Amalgamation
[F] Consequences

- **<u>Meaning u/s 8(1)</u>**: Any company which :
  a) Is incorporated with an object of promotion of commerce, Arts, Science, Sports, Education and research Social welfare , Religion ,Charity, Protection of environment or any other object which is not profit oriented.
  b) Company having intention to apply its profit if any or other object or for the purpose of the promotion of the above purpose.
  c) Prohibition of payment of the dividend.
- **Provision with regards to company for the charitable purpose:**
  a) License from central government must be obtained.
  b) A firm /Company can be a manner of charitable trust u/s 8(3).
  c) The changes in memorandum / Article shall not be made unless prior central government approval is obtained u/s 8(4).

d) This kind of company can be converted in to private/public Company by complying with the condition as prescribed by this act u/s 8(4).
e) The company so registered under this section shall enjoy all the privilege and be subject to all obligations of limited company u/s 8(2).

- **License to be granted by CG**
  a) As per section 8(1)(c), Central government may by license issue in such manner as may be prescribed with such condition as it deemed fit for it
     - To a person
     - Any association

     To be registered as limited company under this section.

  b) These companies are permitted to be used the word "limited"(Ltd) or " Private Limited " (Pvt. Ltd) on the application given on the prescribed form in prescribed manner by such person or association.
- **Revocation of license :**
  (a) The revocation of license can be made by CG by issuing order
  (b) CG shall revoke or cancel the license granted to that company if :
     - The company contravene any one of the requirement of this section.
     - Company contravene any of the condition, subject to which license was granted.
     - The affairs of the company is conducted fraudulently.
     - The affairs of the company is conducted in such a a manner which is violative with respect to -
       i. Object of the company
       ii. Public interest
       iii. Interest of the company
       iv. Any other provision.

  (c) The order for revocation shall not be made unless the company has given an opportunity of being heard and such order shall be filled with the registrar.
  (d) Where the license granted to the company registered under this section , company shall apply to registrar in form no INC 20 along with fee to convert its status and change of name accordingly.
  (e) Central government if certified may in public interest permit the company
     - To get winding up under this act
     - Amalgamation with another company with same object.
- **Amalgamation of company with charitable purpose:**
  (a) As per the provision of section 8(8) CG may permit any company for charitable purpose for amalgamating with company registered for same purpose.
  (b) The object is the important fact to be consider for both the company for affecting the amalgamation.
  (c) Amalgamation may be permitted with such constitution, Properties, power, right, interest, authority, privilege and with such liability , duties and obligation as may be specified in the order.
- **Consequences of contravention to the requirement of this provision:**
  Any company in default in complying with any of the requirement laid down in this section, be punishable with fine, which shall be less than 10 lakhs and can be extended up to 1 Crores.
  The director and every officer of the company shall be punishable with
  - Imprisonment – may extended to 3 years
  - Fine – Not less than 25,000 may extend to 25,00,000.
  - Both

Issue :1 Can a person other than the member an application to court for relief ?
Ans: As per the case of Gomathi Nayagam Pillai vs Sri Manthiramurthi high school committee, Madras court has decided as follows

✓ There is no such provision in company act which prohibit/ restrict the person other than the member of section 8 company to apply for the relief.
✓ Beneficiary of a trust under section 92 of code of civil procedure and provision of the company act is permitted to file a complaint for the breach of trust.

Issue : 2 Do the amalgamation of a trading company with section 8 company is permitted ?
Ans : No

Whether refusal of amalgamation can be made on groud of violation of any term and condition of license granted?
Ans: No refusal of amalgamation on the ground of violation of term and condition shall be permitted. However the refusal of such can be entertained if the object of both company does not match. (Bombay high court in case of Walvis flour mills company Pvt. Ltd)

Section 11 : Commencement of the business

Commencement of the business

Company having share capital → **Cannot commence the business unless the COC is obtained**

Company having no share capital → **Is permitted to commence the business or start borrowing**

- **Meaning :** A certificate of commencement of business is a certificate which entitle a company to commence the business and to exercise the borrowing power.
- **Provision : As per section 11(1), A company having share capital shall not commence any business** or exercise Any borrowing powers unless—

i. **A declaration** is filed by a director 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 and the paid-up share
   - Capital of the company is not less than the minimum paid up value as required by the law. on the date of making of this declaration.

Note – Declaration shall be made in form no INC 21 and shall be verified by company secretary in practice and a chartered accountant or cost accountant

ii. Intimating about the verification of its registered office with ROC as given u/s 12(2).

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If The above provision not get complied with

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- Consequences of contravention :
  - Penalty shall be given as follows:

1. Company : To the extend of 50000 rupee
2. Every officer : 1000/day during which default continue

  - If default is in relation to the filling of the declaration with ROC: understanding of the provision are given as follows:

Situation :
a. If the declaration is not filled within 180 days from the date of incorporation
b. ROC has reasonable belief that company is not carrying any business and operation

Consequences:
ROC by intimating to the company remove the name of the company from the register of the company.

Section 12 Registered office of the company:

- **Intention :** To have an understanding about the address of registered office which is decided at the time of incorporation or after wards and other requirement like intimating the address, changes of that, writing such address etc
- **Provision :** In order to understand the provision following interpretation can be drawn :

1. **What is registered office :** The office which is capable of receiving and acknowledging all the communication in relation to the company it concern.
2. **When the address shall be selected u/s 12(1) :** the address of registered office may be selected
   a. At the time of incorporation
   b. Subsequently **within fifteen days** from the date of incorporation.
3. **When the address shall be furnished to ROC:** as per section 12(*2*) The company shall furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as prescribed under **rule 25 of the companies (incorporation) rule 2014**
4. **Where the address is to be used and how u/s 12(3) :** Every company shall
   (a) **Where :** Paint or affix its name, and the address of its registered office, and keep the same painted or affixed,
   - On the outside of every office ,or
   - In any place in which its business is carried on,
   - Get its name, address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
   - Have its name printed on promissory notes, bills of exchange and such other documents as may be prescribed.

   (b) How :
   - In a conspicuous position (something people can see easily and notice them very easily), in legible letters, and
   - **If the language is not generally used language :** If the characters employed there for are not those of the language or of one of the languages in general use in that locality
     - ✓ In the characters of that language or of one of those languages.
   - Have its name written in legible characters on its seal.

Section 16: Rectification of name of the company

❖ When rectification of name is required :

➢ In the opinion of the Central Government, The name is identical with or too nearly resembles to the name by which a company in existence had been previously registered, whether under this Act or any previous company law,

A. **For company name :** If a company on its first registration or on its registration by a new name, is registered by a name which,
   - CG shall direct to company to change its name
   - The company shall change its name or new name, as the case may be, within a period of **three months** from the issue of such direction,
   - Such changes shall be made by passing an **ordinary resolution** for the purpose

B. **For registered trade mark:**
   - An application shall be made by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999,
   - Central Government **within three years** of incorporation or registration or change of name of the company, whether under this act or any previous company law shall permit to changes.
   - It is permitted where the name is identical with or too nearly resembles to an existing trade mark,
   - It may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

C. **Consequences for non compliance u/s 16(*2*) :**
   - Where a company changes its name or obtains a new name, it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.
   - As per section 16 (*3*) : If a company makes default in complying with any direction given, the company shall be punishable with fine of one thousand rupees for every day during which the

default continues and every officer who is in default shall be punishable with fine which shall not be less than Rs 5000/- but which may extend to Rs 1,00,000/-

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

- Provision : A company shall, on being so requested by a member, send to him within seven days of the request and subject to the payment of such fees as may be prescribed, a copy of each of the following documents, namely:—
- the memorandum
- the articles and
- Every agreement and every resolution if and in so far as they have not been embodied in the memorandum or articles.
- If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Contracts:

A contract can be classified in to two type

1. **Provisional contract**
2. **Preliminary contract**

1. Provisional Contract :

- These are those contract which are entered in to by the company after obtaining COI before obtaining COC.
- This contract are not binding on the company , can neither rectifiable nor adoptable,
- On issue of certificate, this kind of contract automatically enforce at court of law.
  (Case law: Otto Electrical Co,1906)
- It is applicable to public company only.
- Contract is between company and outsider

2. Preliminary contract :

- These are those contract which are entered in to by the company before incorporation of company.
- This contract are purely provisional in nature, hence if any contract enter provisionally shall not have any legal bindingness , if company fails to obtain the COC.
- This is applicable to Private and public company both
- Contract between promoter and outside

Doctrine of Indoor management:

- In general, AOA is the fundamental document which explain the internal rule and regulation for the internal management, shall not have binding influence to outsider.
- Outsider are not presumed to have the knowledge about AOA(Internal rule and regulation)
- Any contract which are enter in to with outsider with contravention of AOA shall make company bound on such contract, company cannot escape from the liability by showing that there was some irregularities in relation to the compliance of internal rule and regulation.
- It act to protect outsider from the company
- The decision taken in the cases of **Royal British bank Vs. Turquand** , any irregularities in relation to non- compliance of the AOA i.e taking approval from any specific person, passing special resolution etc cannot be enforced against outsider , hence company shall held be liable for all such transaction. Provided
  a. The person dealing with the company must have knowledge of MOA
  b. The person dealing with the company must not have knowledge about the irregularities
  c. There must be a procedural or an integral internal irregularities.
  d. There must not be any ultra vires act or illegality.

Case law :

1. **Anand bihari lal vs Dinshaw & Co -**

- An accountant of a company sold a property to outsider which is not considered within the apparent authority of the accountant. This is beyond his power as per the AOA,MOA and even the normal commercial practice criticized this act .
- The buyer should have enquiry about the ownership and the authority of the accountant for doing so.
- Even the delegate clause of AOA cannot be enough for validating that transaction.
- **Decision :** Sale would considered as invalid, hence company is not bound to sale that property.

Doctrine of constructive notice :

- MOA and AOA when registered with ROC become public document . they are open for the inspection by any one on making payment of nominal fee.
- Any outsider enter in to any contract , they are presumed to have been read out the MOA and AOA of the company
- Therefore, where the outsider are presumed to have read these document and know the power, scope, what the company can deals with. Any contract with outsider beyond the power or scope of the company shall not be binding on the company.
- It protect company for ac act with outsider

Promoter :

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- **A promoter is one who identify a business opportunities or idea analysis its prospects and take the step for its incorporation.**
- **A company may have more than one promoter and they may be Individual, firm, AOP or a body corporate.**
- **It is short and convenient way of designating those who set in motion the machinery by which the act enable them to create an incorporated company.**
- **Following person are not considered as promoter"**
  1. **Person acting in a professional capacity**
  2. **Merely signatories to the MOPA or financer for formation expenses**
  3. **Merely vendor of the property**
- **Function of the promoter :**
  1. **To conceive the business idea**
  2. **To make the details investigation**
  3. **To organize the resources**
  4. **To obtained the consents of the person willing to act as first director**
  5. **To decide the name of the company**
  6. **To get the necessary document prepared**
  7. **To arrange the filling of th**

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

- Normally **SEBI**(Securities and exchange board of India) is the central authority who control the aspect related to the security which are
  a. Listed in any recognized stock exchanges, or
  b. Intended to list in the recognized stock exchanges.
- Matter which , SEBI may regulate are as follows:
  a. Issue and transfer of securities, and
  b. No payment of dividend.
- Any other case shall be administered by Central Government.
- **As per the explanation to section 24 :** Matter to be consider by CG, Tribunal and ROC are given as follows:
  a. Return of allotment
  b. Redemption of preference share.
  c. Any other matter as specified by the Act asked for .

Section 25 : Document containing offer of securities for sale to be deemed prospectus :

- **Concept of deemed Prospectus :** Where 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 issued by the company u/s 25(1).

- As per section 25(2),unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown—
  - That an offer of the securities or of any of them for sale to the public was made **within six months** after the allotment or agreement to allot; or
  - That at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.
- Section 26 as applied by this section shall have effect as if ,
  - It required a prospectus to state in addition to the matters required by that section to be stated in a prospectus
  - The net amount of the consideration received or to be received by the company in respect of the securities to which the offer relates; and
  - The time and place at which the contract where under the said securities have been or are to be allotted may be inspected;
  - The persons making the offer were persons named in a prospectus as directors of a company.
- **Signing on the document ,where offer is made by a company or form** u/s 25(4) : it shall be sufficient if the document through which offer is made is signed on behalf of the

  A. **Company** - by two directors of the company or
  B. **firm** by not less than one-half of the partners
  C.

Section 26 : Matter to be stated in the prospectus

A → Company related
B → Issue related
C → Financial status related
D → Others

A. Company related :

a. Name of the company and the address of registered office .
b. Name ,address of the Director
c. Capital structure of the company
d. Main object of the company, its location
e. The core operation of the company

B. Issue related :

a. Date of opening and closing for the issue of share (Rule 3)
b. Term and condition of the issue.
c. Consent of directors, auditor ,banker to the issue
d. Expert opinion on the issue
e. Procedure and time schedule for allotment and issue of escurites

C. Financial statement And audit related:

a. Various report relating u/s 26(1)(b) :
   - Auditor report for five continuous financial year.(Rule 4)
   - The business or transaction to which the proceed to be applied .
b. Aggregate share holding by issuer company and its subsidiary company.(Rule 5)
c. Summary of reservation or qualification or adverse remark during last 5 financial year

D. Other matter (rule 5)

a. Prospectus shall content the report regarding, if the proceeds expected for the issue is directly or indirectly to be used for the purpose of
   i. In purchase of any business
   ii. Purchase of any interest in any business.
   iii. Purchase or acquisition of any immovable property
   iv. For acquisition of any share in any body corporate

b. Related party transaction entered in last 5 financial years
c. Details of any enquiry , investigation initiated or conducted under company act.
d. Details of material fraud committed during last 5previous 5 FYs.

- **Procedure of issue of prospectus**
  1. Drafting of prospectus u/s 26(1)
  2. Registration of prospectus **u/s 26(4)**: has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorized attorney.
  3. Expert statement **u/s 26(5)**: A prospectus issued shall not include a statement purporting to be made by an expert unless
     a. The expert is a person who is not, and has not been, engaged or
     b. He is interested in the formation or promotion or management, of the company and
     c. He has given his written consent to the issue of the prospectus and
     d. He has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.
  4. The statement must state on the face of it as prospectus **u/s 26(6)**
  5. ROC will not registered the prospectus, unless Consent of every body those whose name is mentioned in the prospectus , has given on it **u/s 26(7)**
  6. Issue of security shall be made within 90 days from the date , when ROC registered such prospectus **u/s 26(8)**
  7. Penalty on contravention **u/s 26(9):**
     - Company : Fine – Not less than 50,000/- , but may extend to 3,00,000/-.
     - Every officer -:
       - Imprisonment – may extend to 3 years
       - Fine- Not less than 50,000/- , but may extend to 3,00,000/-
       - Both

Note – Explanation to section 26(3) , the date indicated in the prospectus shall be deemed to be the date of its publication

Section 27 : Variation in terms of contract of the object in prospectus

- **Meaning of the variation under this section :** The terms "variation" used under this section can have the following meaning :
  a. Changing of nay terms of condition , subject to which share to be issued
  b. Changing of object if any prescribed on the issue i.e the object here means , the object for which issue is initiated / the object for which the proceed shall be utilized.
- **Provision:**
  - A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued,
  - However, the variation is possible subject to
    1. The approval of it by Special Resolution(SR),
    2. an authority given by the company in general meeting by way of SR
  - As per the first proviso to section 27(1), justification of the variation shall be indicated in the notice in respect of such resolution to the share holder and such notice shall be published in the news paper in the city where registered office of the company situated.
  - Notice of such variation shall also be placed on website of the company.
  - As per second proviso, the amount so expected to proceed cannot be used for purchasing share in any other listed company.
- **Dissenting shareholder to be given an exit offer u/s 27 (*2*) :** The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Section 28: Offer of the share by certain member of the company

- **Situation :** where any share either as individual or as group proposed to the company for offering to public as public offer
- Intention : To find out the guideline for the company, while offering any share to public which is belonging to any particular share holder or group.

- Provision :

  a. The proposal can only be made by the member.
  b. Proposal can be made for Whole or any part o the share holding
- As per section 28(2), The offer so made by company be treated in all respect as prospectus and all laws and rules made there under as to the contents of the prospectus and as to liability in respect of mis - statements in and omission from prospectus or otherwise relating to prospectus shall apply as if this is a prospectus issued by the company.
- As per the section 28 (*3*),The members, so proposed to company to offer the share shall authorized to company for doing so.

Section 29: Public offor should be with dematerialized form

- Intention : to make mandatory requirement for issuing share in dematerialized form for certain company.
- Provision :
  - Nature of provision : this provision having the specific nature. It has overriding power over all other section.
  - Company ,it applicable : Every company making public offer
  - Act to be complied with : Depository Act 1996 and company act 2013
  - Securities falling under this requirement : Any convertible securities (Rule 9)

Section 30: Advertisement of prospectus

- **Intention :** This section will specify the requirement to be complied with while doing advertisement for the issue of share and debenture.
- **Provision :** If a company want to do advertisement in any manner for issuing prospectus , that shall specify –

  a. The content of MOA as regards to the object, the liabiulity of member and amount of share capital of the company.
  b. The name of the signatories to the MOA and number of share subscribed by them
  c. Its capital structure

Section 31 : Self Prospectus

- Applicability : Applicable for that class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf
- Nature :

  a. **When to file** : shelf prospectus may be filled with the Registrar at the stage of the first offer of securities included therein
  b. **Periodicity** : Period not exceeding one year as the period of validity of such prospectus.
  c. **Period start from** : period commenced from the date of opening of the first offer of securities under that prospectus,
  d. **For subsequent offer :** No further prospectus is required to be issued.
  e. **Validity :** As per section 31(*2*), A company filing a shelf prospectus shall be required to file an information memorandum containing
     - All material facts relating to new charges created.
     - Changes in the financial position of the company as have occurred between the first offer of securities.
     - The previous offer of securities.
     - The succeeding offer of securities.
     - Such other changes as may be prescribed.

With the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:

- Where company or any person who has received the application for allotment along with the advance :Proviso to section 31(2) state that,
  - Intimation shall be made to the applicant about the change they are interested to make , where a company or any other person has received applications for that.
  - Applicant having right to withdraw their application
  - The application money so received shall be refunded to the applicant within 15 days there of.
- The Self prospectus along with Information memorandum as filled with ROC shall deemed as prospectus u/s 31(3).

32. Red herring prospectus

- **What is red herring prospectus :** Red herring prospectus means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.
- **Applicability u/s 32(1) :** To every company proposed to issue securities
- **When to be filled u/s 32(2) :** Red herring prospectus shall be filed with ROC at least three days prior to opening of subscription list and offer.
- A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the information memorandum.
- **On closing of the offer of securities :** The details which are not stated in the red herring prospectus shall be given in the prospectus like
  a. The total capital raised, whether by way of debt or share capital, and
  b. The closing price of the securities and
  c. Any other details as are

not included in the red herring prospectus shall be filed with the **Registrar** and the **Securities and Exchange Board.**

Concept of opening of subscription list and closing subscription list

opening of subscription list :

- **Meaning :** The meaning of opening of the subscription list would be as follows:
  - The 5th day or such later time as may be specified by the prospectus.
  - The 5th day to be counted from the day when prospectus was published in a news paperor was notified to public
  - The beginning of the 5th day shall considered as opening of subscription list
- **Object :**The object of this provision enable the public to go through the contents in the prospectus and to decide, whether to invest or not.
- **Legal requirement :** no allotment can be made until the beginning of the 5th day or such latter time as prescribed in the prospectus

Closing subscription list :

- Company act is silent about the closing subscription list
- According to the stock exchanges regulation, where the stocks are listed in any stock exchanges , the subscription list must kept open for at least 3 working day and the discloser to that effect must be made in the prospectus (minimum time)
- Maximum time :
  a. Where the issue is underwritten : maximum period of 10 working days .
  b. Where the issue is not underwritten : maximum period of 21 working days.

33 Issue of application form for securities:

- Intention : Company during the course of issuing the application form shall comply with certain requirement otherwise, the application form will not rendered its validity and company will be subject to some liability.
- Provision :
  a. **Attachment of abridge prospectus along with Application form u/s 33(1):** No form of application for the purchase of any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus.
  b. **Copy of prospectus to be furnished u/s 33(2) :** A copy of the prospectus shall be given to each applicant on their request before closing of subscription list.
  c. **Punishment for the default in complying the said provision :** Company –Fine – 50000/- rupee for each default
- Not applicability : As per the proviso to section 33(1) there are certain situation , where the above requirement is not required
  i. Where issue of form is in connection with bonafide invitation to a person to enter in to an underwriting agreement with respect to such securities.
  ii. Where the issue in such form in relation to the securities which were not offered to public
- What is abridge prospectus : A memorandum containing such salient features of prospectus as may be specified by SEBI by making regulation in this behalf.

Section 34 : Criminal liability for mis statement in prospectus :

- Nature of contravention : prospectus so issued includes any statement
  a. which is **untrue or misleading** in form or context in which it is included or

b. where any inclusion or omission of any matter is likely to mislead,
- Who would held be liable : Every person who authorizes the issue of such prospectus shall be liable.
- When the person so involve can escape from their liability : in the following case the liability can be waived up
  a. If he proves that such statement or omission was immaterial or
  b. He had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
- **Punishment :** As prescribed under section 447(Punishment for fraud) given as follows
  - Any person :
    - ✓ **Imprisonment** -For a term which shall not be less than six months but which may extend to ten years and
    - ✓ **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:
    - ✓ **where the fraud in question involves public interest** - the term of imprisonment shall not be less than three years.

Note : The above liability would be imposed in addition to any liability including repayment of any debt under this Actor any other law for the time being in force

Section 35 : Civil liability for the mis- statement in the prospectus :

- **Nature of contravention :** The prospectus which is misleading and has sustained any loss or damage as a consequence thereof,
- Who would be punishable
  a. The company, and
  b. Every person
- Who are consider as person : The person , who
  - Is a **director** of the company at the time of the issue of the prospectus;
  - has authorized himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time;
  - is a **promoter** of the company;
  - has authorized the issue of the prospectus;**(Authorized person)** and
  - is an **expert** referred to in sub-section (*5*) of section 26, shall, without prejudice to any punishment to which any person may be liable under section36, be liable to pay compensation to every person who has sustained such loss or damage.
- No person shall be liable under section , if he proves—
  a. That, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
  b. That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
- Person issued prospectus with an intention to defraud the applicant or for fraudulent purpose u/s 35(*3*)
  a. shall personally be responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

36 Punishment for the fraudulently inducing the person to invest money:

- Person involve : Any person
- Act involve : Any person who, either knowingly or recklessly makes any
  a. statement,
  b. promise or
  c. forecast

Which is **<u>false, deceptive or misleading, or deliberately conceals any material facts</u>**, to induce another person to enter into, or to offer to enter into,
(*a*) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or
(*b*) any agreement, the purpose or the pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or
(*c*) any agreement for, or with a view to obtaining credit facilities from any bankor financial institution;

shall be liable for action under section 447.

37 Action by affected party:

- Who can be a person : any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus
- Action van be taken : A suit may be filed or any other action may be taken

38 Punishment for pursonation for acquisition of any securities:

- Intention : Provide provision for the person who are holding Any person who—
  a. makes or abets(the person who help another in doing any criminal act) making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
  b. makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or
  c. otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.
- Punishment u/s 38(3) : the person so involved would be given an order by court for
  a. disgorgement of gain, if any.
  b. Seizure and disposal of the securities in possession of, such person.

- The amount so received through disgorgement or disposal of securities shall be credited to the Investor Education and Protection Fund u/s 38(4).

39 Allotment of securities by company :

- **Intention :** This provision provide the legal requirement of allotment of share i.e Minimum subscription
- **What is minimum subscription :** Minimum subscription refers to that amount which is mandatorily be raised by issue of share within the prescribed period out of the application money other wise the whole issue get cancelled .
- **Provision as to the minimum subscription :**
  a. **where to be written :** The amount to be raise as minimum subscription shall be disclosed in the prepectus
  b. **Quantum of application money : shall not be less than 5%** of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board by making regulations in this behalf u/s 39(2).
  c. **Quantum of MS : 90% of the issue amount (90% of application money)**
  d. Period within which it has to obtained : within period of thirty days from the date of issue of the prospectus. Or such period as prescribed by SEBI.
  e. If the MS amount not obtained u/s 39(3) :
    - the amount received shall returned u/s 39(1) .
    - If the amount not returned, within 15 days from the closer of the issue .
    - The application money to be refunded to the share holder along with interest @ 15% Pa
  f. On such failure , the director of the company , who are called officer in default shall jointly and severally be liable to repay that amount alon with interest of 15%P.A**(as per the Rule 11 of the prospectus and allotment of securities) rule 2014)**
  g. Return of the allotment to be filled with ROC within 30days in **form PAS 3.(rule 12)**
- Punishment under the contravention of this provision:
  a. Contravention : contravention under this section refers
    - Failure to return the application money.
    - Failure to fill the return of allotment.
  b. Punishment : Company and every officer of the company shall held be liable for the penalty which may extend to 1000/- for every day during which default continue and 10000/- which ever is less

<u>Section 40 : Security to be dealt with Stock exchanges</u>

- **Listing permission must obtain u/s 40(1):** Every company interested for public issue shall obtained permission from the recognized stock exchange or exchanges and obtaining permission for dealing with the securities with that RSE.
- **Discloser in prospectus u/s 40(2):** Prospectus issue for the public issue must disclose the fact that application has been made to any stock exchange or exchanges and the name of RSE, to which application is made
- The application money to be kept in a separate account u/s 40(3)
- **Utilization of money:** Such money shall not be utilized for a purpose otherthan
  a. For adjustment against the allotment of securities.
  b. For the repayment of money within the time period as prescribed by SEBI.
- Any agreement which Waive up any of the requirement shall considered be void u/s 40(4)
- Consequences of contravention : in the defaulr made with compliance of any provision under this section -
    - Company – fine – not less than 5,00,000/- may extend to 50,00,000/-
    - Officer
      - ✓ Imprisonment – the term , may extend to one year
      - ✓ Fine – not less than 50,000/- may extend to 3,00,000/-

<u>Section 41: issue of global depository receipt :</u>

- Meaning global depository :

- Provision/ legal requirement : Every company who are interested to issue GDR , shall passed a Special resolution to in GM to that effect

Chapter IV
Share capital and debenture

Section Applicable 43 to section 72 of company act 2013 & Company (share capital and debenture) Rule 2014

49. Calls on shares of same class to be made on uniform basis

- **Intention:** The pricing to be made for the call or on the further share to be issued.
- **Requirement:** Where any calls or further share capital are made on the shares of a class, such calls shall be made on a uniform basis on all shares falling under that class.
- **What is same class** – Same class of share capital with respect to the type and other feature of the share.
- **What does not include in same class :** share capital for the purposes of this section, shares of the same nominal value on which different amounts have been paid-up shall not be deemed to fall under the same class.

Issue : 1 When the call is said to have been made

- *A call become due , then notice is give for the payment of such call. When notice is nmade that is the point, when it is said as if call become due **(G.P gnanasambandam vs. transport (Coimbatore) (p) Ltd Mad}***
- *When the call is payable : The day subsequent to the call made shall be the date when that get payable.*
- *How to pay the call: call can be paid in money's worth other than cash – in white star line ltd cases*

50. Company to accept unpaid share capital, although not called up

- **Intention :** Enable to company to accept the amount remain unpaid on the share on which call is not made
- Provision :
  a) AOA Authorization is required
  b) Amount to be accepted may be of whole or partial
  c) Not making call on the share s)all not prevent the company to accept such amount
  d) A member of the company limited by shares shall not be entitled to any voting rights in respect of the amount paid by him under sub-section (1) until that amount has been called up u/s 50(2).

Section 51 : Payment of dividend in proportion to amount paid-up

- Intention : Payment of dividend in proportion to amount paid-up
- Requirement :If so authorised by its articles,

Section 52 :Application of premiums received on issue of shares

- **What is the meaning of share issued at premium :** The share is said to be issued at premium whaere the share is issued at a price higher than the price than its face value.
- **Provision :**
  - ✓ Share can be issued for cash or otherwise.
  - ✓ A sum equal to the aggregate amount of the premium received on those shares shall be credited to a "securities premium account u/s 52(1) and
  - ✓ The provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid up share capital of the company.
- **Application of "securities premium account u/s 52(2)** : SPA shall be used for the following purpose :
  a) Towards the members of the company as fully paid bonus shares,
  b) In writing off the preliminary expenses of the company;
  c) In writing off the preliminary expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
  d) In providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
  e) for the purchase of its own shares or other securities under section 68.

Issue :

1. Even if share are salable at premium in market , company is not obliged to sale its share at a price more than par- **Hildar vs. dexter**
2. If company charge different rate , where all the share holder are agrred , company law has noting to say about

that – **CIT vs. Standard vacuum oil co**

3. Adjustment of the loss or reduction of the share capital against the share premium is not permissible other than the loss arise in case of diminution or reduction of share –**Hill crest reality sdd. Bhd. Vs Ram parshotam mittal , (Del,2010)**
4. Bad debt cannot be charged against the Share premium account – **Global trust bank ltd**

Section 53 : Prohibition on issue of shares at discount

- **What is share issued at discount :** The share is said to be issued at Discount where the share is issued at a price higher than the price than its face value.
- **Provision :**
  - Company is prohibited from issuing share at discount u/s 53(1).
  - Any share issued by a company at a discounted price shall be void.
  - There is no provision or condition has prescribed for the company for issuing share at discount like the provision under company act 1956.

- Consequences of contravention : Contravention to this section shall be punishable by the following ;
  a) Company - fine which shall not be less than one lakh rupees but which may extend to five lakh rupees
  b) Every officer –
     - Imprisonment - for a term which may extend to six months
     - Fine - which shall not be less than one lakh rupees but which may extend to five lakh rupees, or
     - with both.

Issue

1. if the partly paid share , which have been forfeited are re- allotted for less than the amount remain unpaid on them, it amount to issue of share in discount- **(Bio chemical & Synthetic product Ltd Vs. ROC, AP)**
2. **it would not be considered a** When the share are issued to creditor in course of compromise and arrangement at the price less than that of Par. It would not be considered as share issued at discount

Section 54 & Rule 8: Issue of sweat equity shares

- **What is sweat equity share :** The expression "sweat equity shares" means
  - ✓ *Type of share* - equity shares
  - ✓ *Issued to whom* – Issued by the company to employees or directors or director of the subsidiary and holding company of that company.

Note – The word employee means a permanent employee, the director whether whole time or not and the director

  - ✓ *Consideration* - At a discount or for consideration other than cash
  - ✓ *Why* –
    (a) For providing know-how or
    (b) For making available rights in the nature of intellectual property rights or
    (c) For any value additions,
    by whatever name called

Note – The word value addition refers any actual or anticipated economic benefit derived or to be derived by the company.

- **Provision (legal requirement) – Condition :**

(a) *Special resolution* - The issue must be authorized by a special resolution passed by the company

(b) *Content of Special resolution* - The resolution specifies
  - ✓ the number of shares,
  - ✓ the current market price,
  - ✓ consideration, if any, and
  - ✓ the class or classes of directors or employees to whom such equity shares are to be issued;

(d) ***When can be issued*** – company can not issue such share till the expiry of one year from the date of commencement.

(e) **Where company is listed company** – The sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and

(f) **Where company is not listed company -** if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.

- **Validity of SR :** the special resolution so passed for issuing sweat equity share shall be valid for making allotment of such share for a period not more than 12 months from the date of passing such resolution.
- **Limit on such issue :**
  a. *Limit for a year :* company sha;ll not issue sweat equity share for more than 15% of the existing paid up equity share capital uin a year or the share of issue value 5 crore , which ever is higher .
  b. *Limit at any time* : Issue of this share in the company at any time shall not exceed 25%bof paid up share capital.
- **Lock in period :** the share so issued shall not be transferred or be in lock in period for a period of three years from the date of allotment.
- **Value of the share** : shall be valued by registered valuer
- **Maintenance of register** : company shall maintained a registered of sweat equity share in form no SH 3, at registered office or any other place as BOD decided and the entries in that register shall be authenticated by Company secretary
- **Nature of the share holding by the share holder :** The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank ***pari passu*** with other equity shareholders.

Section 55 & rule 9 : Issue and redemption of preference shares

- What is **redeemable preference share:**
- **Which company can issue redeemable preference share** - No company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable. i.e A company limited by share can issue redeemable share capital.
- Provision : Company limited by share can issue redeemable preference share subject to compliance of the following procedure u/s 55(2) :
  - ✓ **AOA Authorization** - authorized by its articles must exist.
  - ✓ **Period for which redeemable preference share can be issued** - Preference share which are redeemable are liable to be redeemed within a period not exceeding twenty years from the date of their issue.

Note - A company may issue preference shares for a period exceeding twenty years for infrastructure projects, subject to the redemption of such percentage of shares as may be prescribed on an annual basis at the option of such preferential shareholders**(Section 55(2) & Rule 10 of companies (Share capital and Debenture) rule 2014**

- ✓ **Sources of redemption** : no such shares shall be redeemed except

a) out of the profits of the company which would otherwise be available for dividend or

b) out of the proceeds of a fresh issue of shares made for the purposes of such redemption;

- ✓ No such shares shall be redeemed unless they are fully paid;
- ✓ **Creation of CRR account:** where such shares are proposed to be redeemed out of the profits of the company, there shall, out of such profits, be transferred, a sum equal to the nominal amount of the shares to be redeemed, to a reserve ,called Capital Redemption Reserve Account, and the provisions of this Act relating to reduction of share capital of a company shall eve as provided in this section, apply as if the Capital Redemption Reserve Account w ere paid-up shore capital of the company.
  - If Company is not able to redeem its redeemable preference share-
  - As per section 55(3) Where a company is not in a position to redeem any preference shares or to pay dividend, if any, on such shares in accordance with the terms of issue shall have following consequences -

- ✓ Issue of further redeemable share .
  - Condition – consent of the holders of three-fourths in value of such preference shares and
  - with the approval of the Tribunal on a petition made by it
- ✓ Issue value – Amount equal to the amount due, including the dividend thereon, in respect of the unredeemed preference shares, and on the issue of such further redeemable preference shares, then unredeemed preference shares shall be deemed to have been redeemed.

Section 56 Transfer and transmission of securities

❖ What is transfer and transmission of share:

- **Share transfer** means voluntary transfer of share from a person who want to cease to be member to a person who wish to be a member.
- **Transmission of share** means the transfer of share under the operation of law on the death / insolvency of the member

❖ Provision/ Condition –

- **Where company not having share capital** , A company shall not register
  - ✓ A transfer of securities of the company, or
  - ✓ The interest of a member in the company ,

  other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository,
    - unless a proper instrument of transfer is given
    - in such form as may be prescribed,
    - duly stamped, dated and executed by or on behalf of the transferor and the transferee
- **Contents of such instrument** –The instrument shall specify the name, address and occupation, if any, of the transferee which has been delivered to the company by the transferor or the transferee
  - ✓ **Period** - within a period of sixty days from the date of execution,
  - ✓ **Document required** – Instrument shall be given along with
    - **a.** the certificate relating to the securities - where certificate is available
    - **b.** letter of allotment of securities - if no such certificate is in existence

❖ **Transfer of party paid share :** Where an application is made by the transferor alone and relates to partly paid shares, the transfer shall not be registered, unless

- Company gives the notice of the application, in such manner as may be prescribed, to the transferee and
- The transferee gives no objection to the transfer within **two weeks** from the receipt of notice.

❖ **Allotment of Certificate** - Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted—

(a) within a period of **two months** from the date of incorporation, in the case of subscribers to the memorandum;

(b) within a period of **two months** from the date of allotment, in the case of any allotment of any of its shares;

(c) within a period of **one month** from the date of receipt by the company of the instrument of transfer or transmission.

(d) within a period of **six months** from the date of allotment in the case of any allotment of debenture:

❖ **Consequences of contravention**: As per section 56(6) Where any default is made in complying with this provisions. Consequences shall be as follows –

- ✓ ***Company*** - fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, and
- ✓ ***Every officer*** - fine- which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
- ✓ ***Other*** - where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under section 447.

Section 56 : Punishment for personation of shareholder

❖ **Situation**

✓ Nature of Contravention- If any person deceitfully personates as an

- owner of any security or
- interest in a company, or
- of any share warrant or
- coupon issued in pursuance of this Act, and

✓ Benefit obtained out of such above contravention –

- obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or
- receives or attempts to receive any money due to any such owner,

❖ **Punishment-**

- **Imprisonment** - for a term which shall not be less than one year but which may extend to three years and
- **Fine** - which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 57 : Refusal of registration and appeal against refusal

❖ **Can a company refuse to transfer / Transmission of share** :

- ✓ ***Type of company*** - Private company limited by shares
- ✓ Refusal can be made by virtue of Article , or otherwise
- ✓ **Period:** Company shall within a period of thirty days, refuse for such transfer or transmission by sending notice to the person who had delivered the document for such transfer or transmission.
- ✓ **In case of public company :** share shall be freely transferable Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract. '

❖ **Appeal on refusal of transfer of share:**

- ✓ ***Where notice is receipt:*** The transferee may appeal to the Tribunal against the refusal within a period of **thirty days** from the date of receipt of the notice or
- ✓ ***Where no notice has been receipt:*** The company, within a period of **sixty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

❖ **Where refusal made without sufficient cause :**

- ✓ If a public company without sufficient cause refuses to register the transfer of securities within a period of **thirty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company,
- ✓ The transferee may within a period of sixty days of such refusal where intimation is received from company, or

- ✓ Where, no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

❖ **Power of tribunal :** The Tribunal, while dealings may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and
(b) the company shall comply with such order within a period of ten days of the receipt of the order; or
(c) direct rectification of the register and
(d) direct the company to pay damages, if any, sustained by any party aggrieved.

❖ **Contravention of tribunal order or direction :** If a person contravenes the order of the Tribunal under this section, he shall be punishable with

- imprisonment - for a term which shall not be less than one year but which may extend to three years and
- Fine - which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 57 : Rectification of register of members:

❖ **Issue involved :** The name of any person is, without sufficient cause, either

- entered in the register of members of a company, or
- after having been entered in the register, is, without sufficient cause, omitted there from, or
- If a default is made, or unnecessary delay takes place in entering in the register.

The fact of any person having become or ceased to be a member.

❖ **What protection under the provision :** The person so aggrieved, or any member of the company,

- Indian Member : Tribunal in india.
- Foreign member : to a competent court outside India,

Specified by the Central Government by notification.

❖ **Power of tribunal :** The Tribunal may, after hearing the parties to the appeal by order

- Dismiss the appeal or
- Direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or
- Direct rectification of the records of the depository or
- The register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.

❖ **Contravention of provision compliance of any other law:** Where the transfer of securities is in contravention of any of the provisions of

a. The Securities Contracts (Regulation) Act, 1956,
b. The Securities and Exchange Board of India Act, 1992 or
c. This Act or any other law for the time being in force,

The Tribunal may. on an application made by the depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

- The company- Fine - shall not be less than Rs 1,00,000/- but which may extend to Rs 5,00,000/-
- Every officer-
  - ✓ imprisonment for a term which may extend to one year or
  - ✓ fine which shall not be less than Rs 1,00,000/- but which may extend to Rs 3,00,000/-
  - ✓ with both.

<u>**Case law :**</u>

- Transfer related back to the date of execution of instrument of transfer. **(Howrah trading company vs CIT ,Sc)**

Section 60 : Publication of authorized, subscribed and paid-up capital

- **Discloser of details share capital information :** Where any notice, advertisement or other official publication, or any ' business letter, or letter paper of a company contains a statement of the amount of the authorized capital of the company, such notice, advertisement or ***other*** official publication, or such letter, billhead or letter paper shall also contain a statement refarding :
  - Subscribed and
  - the amount paid-up,
- Consequences of contravention :
  - the company – Fine – Shall be liable to pay a penalty of ten thousand rupees (Rs 10000/-),and
  - Every officer- shall be liable to pay a penalty of five thousand rupees, for each 15 default.

61. **Power of limited company to alter its share capital**

- **What is alteration of share capital :**

(a) Increase *its authorized share capital* by such amount as it thinks expedient;

(b) *consolidate and divide* all or any of its share capital into shares of a larger amount than its existing shares:
Note - No consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

(c) *convert* all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;

(d) *sub-divide* its shares, or any of them, into shares of smaller amount than is fixed by the memorandum,

(e) *cancel* shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

- **Provision :**
  - ✓ **Applicable:** this provision is applicable to a limited company having a share capital.
  - ✓ **Condition –**

  a. AOA Authorization
  b. Changing the MOA : Altering its memorandum in its general meeting to this effect
  c. Ordinary resolution to be passed in GM with this effect.
  d. Notice to registrar notice of such alteration shall be given within 30 days from the date of passing such resolution.

  1956 student
- **Default in compliance** – Company and every officer in default shall be punishable with fine up to Rs.500/day during which default continue.

Note – As per section 61(2), The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.

Section 62: Further issue of share capital

- **What is Further issue of share capital :** Where at any time, a company having a share capital proposes to increase its subscribed capital. It can be made by issuing share to the existing share holder by the issue of further shares . that is called further issue of share .

- **Provision and Condition :**
  - **To whom** – the persons who, at the date of the offer, are holders of equity shares of the company.
  - **How** - in proportion, to the paid- up share capital on those shares held by them.
  - **Process** - by sending a letter of offer subject to the following conditions,
    a) The offer shall be made by notice specifying the number of shares offered and
    b) limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.
    c) There are three option at the hand of share holder
      - ✓ He can exercise
      - ✓ He can renounced to any other his right
      - ✓ He can cancelled his right

    d) **Disposal of such offer** –
      - ✓ After the expiry of the time specified in the notice aforesaid, or
      - ✓ On receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered,

  Note - The Board of Directors may dispose them in such manner which is not disadvantageous to the shareholders and the company;

- **Can issued be made to employee** –
  - ➢ under a scheme of employees' stock option,
  - ➢ After passing special resolution by company, and
  - ➢ After putting such condition as may be prescribed; or
- **Issue to any persons –**
  - ➢ If it is authorized by a special resolution,
  - ➢ Either for cash or for a consideration other than cash,

Section 63 : Issue of bonus shares .

- **What is bonus share :** Bonus share are the share that are issued without any consideration by converting eligible profit or reserve in ti share capital.
- **Provision :**
  - *Nature of share* - fully paid-up share to be issued as bonus shares to its members
  - *Manner* – as prescribed under act
  - *Sourses to be utilized* –
    a) its free reserves
    b) the securities premium account, or
    c) the capital redemption reserve account.

Note - Provided that no issue of bonus shares shall be made by capitalizing reserve created by the revaluation of assets. [Proviso to section 63(1)]

Vcs

- **Condition** - As per provision u/s 63(2), company can capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), where
  - *AOA authorization* - it is authorized by its articles;
  - *Resolution passed at GM* - it has, on the recommendation of the Board, been authorized in the general meeting of the company;

- *No default in payment of*
  I. **interest or principal -** it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
  II. **Statutory due** -it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;

❖ **Issue in lieu of dividend :** The bonus shares shall not be issued in lieu of dividend u/s 63(3).

Section 64 : Notice to be given to Registrar for alteration of share capital

❖ Where a company alters its share capital in any manner specified in sub-section section 61(1)

(b) an order made by the Government to effect of increasing authorized capital of a company; or

(c) a company redeems any redeemable preference shares,

the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

❖ Consequences of contravention: If a company and any officer shall be *punishable* with fine which may extend to one thousand rupees for each day during which sue *i* default continues, or five lakh rupees, whichever is less.

Section 65 Conversion of Unlimited company to limited company :

❖ Section 65 provide that an unlimited company having a share capital may be converted as a limited company shall comply with following provision :
  a) by increasing the nominal amount of each share.
  b) This section further provides that the company cannot call unpaid portion of share capital except in the event of winding up.

Section 66 : Reduction of share capital

❖ **Which company shall be considered for reduction of share capital** :As per section 66(1) following company are permitted to reduce the share capital after complying with the prescribed provision.
  - a company limited by shares having a share capital
  - limited by guarantee having a share capital

❖ **Mode of reduction of share capital u/s 66(1) :**

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up, or

(b) either with or without extinguishing or reducing liability on any of its shares
  - ➢ Cancel any paid-up share capital which is lost or is unrepresented by available assets, or
  - ➢ Pay off any paid-up share capital which is in excess of the wants of the company.

(a) Alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

Note – No such reduction shall be made if the company is in arrears in the repayment of any deposits accepted by it, either before or after the commencement of this Act, or the interest payable thereon. **[Proviso to section 66(1)]**

❖ **Provision to be complied :**

(b) special resolution to be passed for reducing the share capital in any manner

(c) confirmation by the Tribunal must obtained by giving an application by the company,

❖ **Procedure undertaken by the tribunal : As per section 66(2)**

Step -1 Applying to tribunal by the company

Step -2 Tribunal shall give notice of every application made to it to Central Government, Registrar and SEBI, in the case of listed companies, and the creditors of the company.**[section 66(2)]**

Step -3 Tribunal shall take into consideration the representations, if any, made to it by them. if representation is not receipt within a period of three months from the date of receipt of the notice. it shall be presumped that they have no objection to the reduction. **(Proviso to section 66(2)**

Step-4 The Tribunal may determine and confirm such reduction after getting assurance that debt or claim of every creditor has been discharged **u/s 66(3)**

Step -5 The order of confirmation of the reduction of share capital by the Tribunal shall be published by the company in such manner as the Tribunal may direct **u/s 66(4)**

Step -6 As per section 66(5), The company shall deliver a certified copy of the order of the Tribunal and of a minute approved by the Tribunal showing

a) The amount of share capital
b) The number of shares into which it is to be divided
c) The amount of each share and
d) The amount, if any, at the date of registration deemed to be paid-up on each share,

To the Registrar **within thirty days** of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

- Nothing in this section shall apply to buy-back of its own securities by a company u/s 66(6)
- **Liability of member u/s 66(7) :** A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.
- **Punishment for concealing the creditor u/s 66(10) :** If any officer of the company

a) knowingly conceals the name of any creditor entitled to object to the reduction
b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
c) Abets privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

- **Contravention of the compliance of this provision by company u/s 66(11) :** If a company fails to comply with this provisions, it shall be punishable with fine which shall not be less than Rs 5,00,000 but which may extend to Rs 25,00,000.

Section 67: Restrictions on purchase by company or giving of loans by it for purchase of its shares

- **Intention :** Creation of provision for enabling company to make loan by it for purchasing its own share :
- **Giving loan :** Giving loan include giving loan, guarantee, providing security or any financial assistance, for the purpose of or connected to the purchase of any share in

a) In company
b) In holding company.

Note – The word "any other financial assistance" means financial assistance must be in form of securities (Share, debenture) other than Loan and guaranties and securities (mortgages) what already prescribed in this section.

Example : "H" lend to "P" Rs 25000 for purchase of share in XYZ Ltd, which give Acknowledgement of debt as debenture to 'H". in this case

- **Provision :**

➢ *As per section 67(1), following company can not purchase its own share.*
  a) company limited by shares having a share capital
  b) Company limited by guarantee having a share capital

➢ **Restriction :** Section 67(2) state that, No public company shall give, whether directly or indirectly whether by means of any loan, guarantee, security, or otherwise any financial assistance for the purpose of or in connection with purchase of its own share.

➢ ***Not applicable :*** Section 67(3) state that, following transaction and falling outside the previews of this section :
  a) The lending of money by a banking company in the ordinary course of its business.
  b) Where the holder of the share hold the share as trusty for the benefit of employee.
  c) The giving of loans by a company to persons in the employment of the company other than its directors or key managerial personnel, for the amount not exceeding their salary or wages for a period of **six months** with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

4. **Contravention of this provision :** As per section 67(5)
   - *Company* - shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupee.
   - *Every officer*
     - ✓ *Imprisonmcompany on his own chare ent* - may extend to three years and
     - ✓ *Fine* - which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Case Law :

1. Normally provision has restriction on the company, that it can not be the member of its own, however, no provision in the company law has restriction for the company from being the beneficial owner of any own share,being the nominee . hence beneficial interest can be enjoyed by company on its own share **[Castiglione will trust in re case]**

2. A company can not purchase it own share in execution of decree held by it against the judgment debtor –[**Chotangpur banking association limited Ltd Vs Rajib nath Mukherji]**

Section 68 : Power of company to purchase its own securities

- **What is buy back of share:** Where company purchase its own share.
- **Sources of fund :**

(a) its free reserves;-
(b) the securities premium account; or
(c) the proceeds of the issue of any shares or other specified securities:

Note - Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

- **From whom :**
  a) From the existing security holder on proportionate basis
  b) From the open market
  c) From odd lots(Where lots of security of Public company listed in the RSE , marketable in small lots size as specified by the SE)
  d) From the Employee(If any security is issued)
- **Condition :** No company shall purchase its own shares or other specified securities unless—
  a) The buy-back is *authorized by its articles*
  b) A *special resolution* has been passed at a general meeting of the company authorizing the buy-back:

  Note- SR in GM is not required, where
  e. The buy-back is, *ten per cent, or less* of the total paid-up equity (capital and free reserves of the company) and
  f. such buy-back has been *authorized by the Board* by means of a *resolution passed at its meeting*.
  c) The buy-back is *twenty-five percent or less* of the aggregate of paid-up capital and free reserves of the company in any financial year.
  d) *Debt –Equity ratio :* Twice the paid-up capital and its free reserves:

  Note - Central Government may, by order, notify a higher ratio of the debt to capital and free reserves for a class or classes of companies
  e) all the shares or other specified securities for buy-back are *fully paid-up*
  f) The buy-back of the shares or other specified securities listed on any recognized stock exchange is in accordance with the regulations made by the Securities and Exchange Board in this behalf and
- **Content of Notice for GM :** The notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating.
  a) a full and complete disclosure of all material facts.
  b) The necessity for the buy-back.
  c) The class of shares or securities intended to be purchased under the buy- back.
  d) The amount to be invested under the buy-back; and
  e) The time-limit for completion of buy-back.
- **Period of completion of such Buyback :**
  ✓ Every buy-back shall be completed within a period of *one year from the date of passing of the special resolution*,
  ✓ Provided that nothing contained in this clause shall apply to a case where—
  The buy-back is, *ten per cent*, or less of the total paid-up equity .capital and free reserves of the company;

and

- **Extinguish and physically destroy the shares or securities :** Where a company buys back its own shares or other specified securities, it shall extinguish and physically destroy the shares or securities so bought back within seven days of the last date of completion of buy-back.
- **No further issue of such share :** The company so bought the share not make a further issue of the same kind of shares or other securities within the period of six months except
  - by way of a bonus issue or
  - in the discharge of subsisting obligations such as conversion of warrants, stock option schemes, sweat equity or
  - conversion of preference shares or debentures into equity shares.
- **Maintain ace of register :** As per section68(5) , company shall maintain a register with respect to the share so bought back. The register so to be maintained shall contained the following fact :
  a) the shares or securities so bought,
  b) the consideration paid for the shares or securities .'bought back,
  c) the date of cancellation of shares or securities,
  d) the date of extinguishing and physically destroying the shares or
  e) securities and such other particulars as may be prescribed.
- **Filling a return u/s 68(6) :** A company shall, after the completion of the buy-back under this section, file a return containing such particulars relating to the buy-back within thirty days of such completion with
  - the Registrar and
  - the Securities and Exchange Board

Note - Provided that no return shall be filed with the ***Securities*** and Exchange Board by a company whose shares are not listed on any recognised stock exchange.

- **Contravention of the provision of this section :** Consequences of any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board shall be as follows :
  - ***Company*** - shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, and
  - ***Every officer –***
    - imprisonment - for a term which may extend to three years or
    - fine - which shall not be less than one lakh rupees but which may extend to three lakh rupees, or
    - with both.

Note – 1 "specified securities includes employees' stock option or other securities as may be notified by the Central Government from time to time.

Note – 2 For the purposes of this section, "free reserves" includes securities premium account.

Case : Every company which has free reserve or security premium account or proceeds of any share or any other specified securities may resorts buy back of its own share and at that time company must seek sanction form the court for the reduction of share capital **[Chetan G. Cholera vs. Rockwool (India) Ltd(2010),AP]**

Explanation: Reduction of share capital is sometimes considered as buy back of share capital. Where reduction of share capital made by way of

- Extinguishing or reducing the liability on any of its share in respect of paid up share capital and
- Cancellation of paid up share capital which is not represented by the company assets with or without extinguishing or reducing the liability on any of its share.
- Pay off any paid up share capital , which is in excess of the want of the company

Hence in this case requirement of court sanction is mandatory

Inference : Every type of reduction of share capital is not the buy back of share capital however every type of buy back, may considered as reduction of share capital.

Section 69 : Transfer of certain sums to capital redemption reserve account:

- **Intention :** CRR is created for the purpose of protecting to the existing share holder for the value reduced out of their fund (from reserve).which otherwise be used for the disbursing to share holder for issuing fully paid bonus share.
- **Provision:** Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
- **Use of CRR :** The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.

Section 70 : Prohibition for buy-back in certain circumstances

- **Company to whom restriction apply :**No company shall directly or indirectly purchase its own shares or other specified securities—
  - Through any subsidiary company including its own subsidiary companies;
  - Through any investment company or group of investment companies; or

  If company is subject to the default as given below :
- **Default by company :** Where default is made by company in
  - The repayment of deposits with interest payment thereon,
  - redemption of debentures or preference shares or
  - payment of dividend to any shareholder, or
  - repayment of any term loan or interest payable thereon to any financial institution or banking company:
- Restriction subject to the compliance other section: No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the following provisions:
- sections 92- Filling annual Return
- sections 123-Declaration of dividend
- sections 127- Punishment for failure to distribute the dividend
- section 129- Financial statement

<u>Section 71 : Debentures</u>

- **What is debenture :** Debenture implies the acknowledgement of the debt
  Debenture include debenture , stock, bond and any other security of a company whether consulting a charge on the company or not.
- **Can a company issue debenture for a option to convert that in to share :** A company may issue debentures with an option to convert such debentures into shares, either wholly or partly at the time of redemption subject to the special resolution passed at the general meeting.
- No company shall issue any debentures carrying any voting rights.
- **Provision regarding to the issue of debenture:** Secured debentures may be issued by a company subject to such terms and conditions as may be prescribed.
- **Creation of Debenture redemption account:** As per section 71(4)Where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilized by the

company except for the redemption of debentures.

- **Requirement of appointment of debenture trusty:** No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees
- **Duty of debenture trusty :** A debenture trustee shall take steps to protect the interests of the debenture-holders and redress their grievances in accordance with such rules as may be prescribed.

- **Duty of company :** A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.
- **Power of debenture trusty to file petition with tribunal :** Where at any time the debenture trustee comes to a conclusion that
  - The assets of the company are insufficient or
  - Are likely to become insufficient

  To discharge the principal amount as and when it becomes due,
  - ✓ The debenture trustee may file a petition before the Tribunal and
  - ✓ The Tribunal may, after hearing the company and any other person interested in the matter,
  - ✓ Order, and impose such restrictions on the incurring of any further liabilities by the company as the Tribunal may consider necessary in the interests of the debenture-holders.
- **Failure of company to redeem the Debenture :** Where a company fails to
  - redeem the debentures on the date of their maturity or
  - fails to pay interest on the debentures when it is due,

  The Tribunal may, on the application of any or all of the debenture-holders, or debenture trustee and, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith on payment of principal and interest due thereon.
- **Default on complying with the tribunal order -**
  - **every officer –**
    - Imprisonment- for a term which may extend to three years or
    - Fine - which shall not be less than two lakh rupees but which may extend to five lakh rupees, or
    - With both.

Case :

- Books of account refers register , record statement etc

Section 71 give right to debenture holder to inspect the debenture trust deed and to obtain the a copy of it.

Section 94 Provide right to inspect the (a) register of member (b) register of index of debenture holder (c) Copy of annual report and (d0 copy of certifiocate and document annexed there to.

Does this means , Debenture holder can inspect the BOA – As per **Bombay high court order in the case of Narotam Das and Trikam Das Toprani Vs Bombey Dyeing & Mfg Co.Ltd**, Debenture holder is not permitted to inspect the BOA except those which are specifically permitted to inspect.

- When company decided to issue preferential debenture to the share holder of the other company by passing special resolution in GM. The share holder of that company can not start argument against the company for doing so- **[N . Parth Sarathy Vs. Controller or Capital issues Company, Supreme Court]**
- Normally debenture holder can file the petition for winding up of the company with the court, If any person who is acting as bearer of the debenture to get the benefit of such debenture, he shall entitle to file the petition with court for winding up **[Shankarlal Aggrwala Vs Shankarlal poddar , SC]**

Section 72 : Power to nominate

- **What is the Nomination/ Who is nominee :**
  - Nominee the person who shall be entitled to all those right on then share in case of death of the share holder.
  - 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.
- **Nominee where joint holding exist :** 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.
- **What is the rule, if nominee is the minor :** Where the nominee is a minor, it shall be lawful for the holder of the securities, making the nomination to appoint, in the prescribed manner, any person to become entitled to the securities of the company, in the event of the death of the nominee during his minority.

CHAPTER VI

REGISTRATION OF CHARGES

REGISTRATION OF CHARGES

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Meaning and de

- Charge … ws.
- Charge i … a little property is passed by way of security money borrow
- Under t … gal right of the property only get the right to have the security made available in order
- Charge i
- Charge … ting
- As per section 2(10) charge means an interest or Lien created on the property or assets of a company , or any of its undertaking or both as securities and include a mortgages.

Understanding :

It can be understood that, where Ina transaction for value , both party evidence the intention that property existing or future shall be made available security for the payment of the debt and that the creditor / mortgages shall have present right to have made available . there is charge

What are the asset can be given under charge

1. Issue of debenture
2. Uncalled share capital of the company
3. An immovable property and the interest on such property
4. Book debt of the company
5. Unpaid call
6. On goodwill, patent and a copyright.
7. Stock in trade.

Type of charges :

<u>Fixed charges :</u>

- A charges is said to be fixed or specific , when it is made specifically to cover the assets which are ascertained or Definite or are capable of being defined or ascertained at the time of creating the charge (Land ,Building and heavy machinery)
- It is charge on specific and ascertained and Existing assets .
- Registration o fixed charge on movable asset is not compulsory.
- Fixed charge always get priority over floating charge
- Company loose the right to dispose such property, which one, the company has put on the charge for some loan.
- Company can Deals, subject to the condition of the fixed charge.

Floating charge

- A floating charge is a charge on class or classes of the assets present and future which in the ordinary course of business is changing from time to time and leave the company free to deal with the property as it fit until the holder of the charge to take step to enforce their security.

- The company in this type of charge, can in ordinary course of business, deals with the property in any manner until the charge attached , upon happening of any of the event set out in the deed of the floating charge, this charge crystallizes become fixed there after the assets comprise in the charge are subject to the same restriction is under a fixed charges
- Floating charge is an equitable charge which is not specific charge on any property of the company
- It is peculiar to the type of company and borrower.

Section 77 : Duty to register charges, etc.

- **Understanding :** Where in any transaction, company create debt, in order to secure(i.e for providing security for such debts) such debt, company used to provide some mortgage.
- **What can be given as mortgages:**
  Existing property – cash, bank, FA, Inventory.
  Future property – B/R,Dabtor,et
- **What is Charges :** Charge means security given by the company on account of any loan(debenture) taken without actually delivering the possession of such security .
  Note – The charge made for the loan help outsider to know , how much assets are subject to that charges which are encumbered company property.
- **Provision :**
  1. **Registration of charge :**As per section 77(1), it is the duty of the company to register the charge with ROC with the necessary paper signed by the company and the charge-holder together with the instruments, if any, creating such charge
     - ✓ in such form,
     - ✓ on payment of such fees and
     - ✓ in such manner as may be prescribed,
     - ✓ with the Registrar within **thirty days** of its creation:
  2. **Nature of assets :** The assets so registered as charges may be the property situated –
     - ✓ within or outside India,
     - ✓ tangible or otherwise,
  3. **Period of charge ROC may permit :** The Registrar may, on an application by the company, allow such registration to be made within a period of **three hundred days** of such creation on payment of such additional fees as may be prescribed:

Note – **Period 30days Vs 300 days** : 30 days to be considered for registering the charge however, if any company could not registered such charge within 30 days, it is permitted by ROC to get it registered within 300 days from such creation

  4. **If registration not made within that period :** if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:
  5. **Issue of certificate:** on the registration, ROC shall issue a certificate of registration of such charge
     - ✓ in such form and in such manner as may be prescribed to the company and,
     - ✓ as the case may be, to the person in whose favour the charge is created.

- **When charges shall be considered by liquidator :** Where,
  a) It is duly registered , and
  b) A certificate of registration of such charge is given by the Registrar .

Section 78 : Application for registration of charge, in case of failour of company:

- **Situation:** where, company fails to register the charge within the prescribed period as prescribed by law.
- **Action:** The person in whose favour the charge is created , on an application made to ROC, can make registration of the charge along with the instrument created for the charge, within such time and in such form and manner as may be prescribed
- **Step taken by ROC :** The Registrar may, on such application, within a period of **fourteen days** after giving notice to the company, unless the company.
  - ✓ itself registers the charge or
  - ✓ shows sufficient cause why such charge should not be registered,

  allow such registration on payment of such fees, as may be prescribed:
  - ✓ Where registration is affected on application of the person in whose favour the charge is created, that person shall be entitled to recover from the company the amount of any fees or additional fees paid by him to the Registrar for the purpose of registration of charge.

Section 79: Application of registration of charge section for some particular situation:

The provision of registration of charges shall, so far as may be, apply to—-

(a) a company acquiring any property subject to a charge within the meaning of that section; or

(b) any modification in the terms or conditions or the extent or operation of any charge registered under that section.

Section 80: Date of notice of charge

Date of registration of the charge shall be the date, which shall be consider as the date of notice for the persons acquiring such property, assets, undertakings or part thereof or any share or interest therein

Section 81: Maintenance of Register for charges to be kept by Registrar

- **Who maintain such register:** The Registrar shall, in respect of every company, keep a register containing particulars of the charges registered under this Chapter in such form and in such manner as may be prescribed.
- **Inspection of such register:** A register kept in pursuance of this section shall be open to inspection by any person on payment of such fees as may be prescribed for each inspection.

Section 82 : Company to report satisfaction of charge

- **Procedure of certification of charge :**
  - ✓ **Intimation of certification to ROC :** A company shall give intimation to the Registrar in the prescribed form, of the payment of satisfaction in full of any charge registered under this Chapter within a period of **<u>thirty days</u>** from the date of such payment.
  - ✓ **Notice to be sent by ROC :** Notice shall be given to the holder of the charge calling upon him to show cause within such time not exceeding fourteen days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar,
  - ✓ notice under this section shall not be required to be sent, in case
    - The intimation to the Registrar in this regard is in the specified form, and
    - signed by the holder of charge.
  - ✓ Registrar shall record a note to that effect in the register of charges regarding the cause shown.

Section 83: Power of Registrar to make entries of satisfaction and release in absence of intimation from company

(1) The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—

(a) that the debt for which the charge was given has been paid or satisfied in whole or in part; or

(b) that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

enter in the register of charges .

Section 84: Intimation of appointment of receiver or manager

1. If any person obtains an order for the appointment of a receiver of, or of a person to manage, the property, subject to a charge, of a company or
2. if any person appoints such receiver or person under any power contained in any instrument,

he shall, within a period of thirty days from-

- ✓ the date of the passing of the order or
- ✓ the making of the appointment, give notice of such appointment to the company and the Registrar along with a copy of the order or
- ✓ instrument and the Registrar shall, on payment of the prescribed fees, register particulars of the receiver, person or instrument in the register of charges.

Section 85: Company's register of charges

- ❖ ***Duty of the company :*** Every company must keep at its register office a register of charge
- ❖ ***Contents :*** Following particular shall form part of such register ;
  - ✓ The short description of the property charged.
  - ✓ The amount of charges
  - ✓ Excepts in case of securities to bearer , the name of persons entitled to charge.
- ❖ **Penalty :** Every officer- Fine to the extend 5000

Section 86: Punishment for contravention

1. The company shall- fine –which shall not be less than one lakh rupees but which may extend to ten lakh rupees, and
2. Every officer –
   - Imprisonment - for a term which may extend to six months
   - fine - which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or
   - both.

Section 87 : Rectification by Central Government in register of charges

- ❖ The Central Government on being satisfied that—

a) The omission to file with the Registrar the particulars of any charge created

b) The omission to register any charge within the time required under this Chapter or

c) The omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

d) The omission or ***mis***-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made.

e) On any other grounds,

- ✓ if it is just and equitable to grant, it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified

(b) by any other person on payment of such fees as may be prescribed, subject to such reasonable restrictions as the company may, by its articles, impose.

Case law :

1. **The loan raised under the security of " undertaking and all sums of money arising there from, the term undertaking means all the property present and future (Panama New Zealand Etc. Co.)**
2. **Company can change specific charge of the property already subject to a floating charge without the consent of the holder of the charges and register of mortgages shall have propriety over the charges (Theatly Vs Silkstone Co)**

CHAPTER VII MANAGEMENT AND ADMINISTRATION

Section 88 : Register of members, etc.

1. **Maintenance of register by every company :** Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely-
   a) **Register of members -** indicating separately for each class of equity and preference shares held by each member residing in or outside India
   b) Register of debenture-holders and
   c) Register of any other security holders.
2. Index of the name shall be included in the register as maintained for the member.
3. **Keeping such registration outside India :**
   a) if so authorized by its articles,
   b) Register shall be kept in any country outside India, in such manner as may be prescribed,
   c) It may contain details of the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India. as part of such main register called foreign register
4. **Consequences of contravention :**
   - The company and every officer - Be punishable with fine which shall not be less than fifty thousand rupees(Rs 50000/-) but which may extend to three lakh rupees(Rs 3 lacs) and
   - where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

89. Declaration in respect of beneficial interest in any share

I. **Who shall declare :**
   a) Members of a company as the holder of shares.
   b) Every person who holds or acquires a beneficial interest in share 0f a company

II. **Details of the declaration :** The above persons shall make a declaration to the company specifying
   a)its nature of his interest,
   b) particulars of the person in whose name the shares stand registered in the books of the company and
   c)such other particulars as may be prescribed.

III. **In case of changes :** Where any change occurs in the beneficial interest in such shares, such changes shall be declared within' a period of thirty days from the date of such change

IV. **Other :**
   a) The Central Government may make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section.
   b) Contravention of the provision: If any person fails, to make a declaration as required , without any reasonable cause, he shall be punishable with :
      - fine - which may extend to fifty thousand rupees and
      - where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.

Section 90: Investigation of beneficial ownership of shares in certain *:*

Where it appears to the Central Government that there are reasons so to do, it may appoint one or more competent persons to investigate the report to beneficial ownership with regard to any share or class of share.

Section 91 : Power to close register of members or debenture-holders or security holders

I. **What is closer of register :**Closing of the register of member, debenture holder and other security holder after accomplishment of the obligation.

II. **Process of closer :** Following process shall covered for the closer of above register:

a. Previous notice of at least seven days or such lesser period as may be specified by Securities and Exchange Board for listed companies or the companies which intend to get their share listed.
b. Closer of register : Within 30 days at one time,and
c. For any period or periods not exceeding in the aggregate forty-five days in each year,.

111. **Contravention of the section :** The company and every officer of the company who is in default shall be liable to a penalty of five- thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.

Section 92 : Annual return

- Even company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—
  - Company related :
    a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
    b) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year,
    c) its members and debenture-holders along with changes therein since the close of the previous financial year;

  - Security related :
    a) its shares, debentures and other securities and shareholding pattern
    b) its indebtedness;
    c) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
  - Other / management related :
    a) Meetings of members or a class thereof, Board and its various committees along with attendance details
    b) Remuneration of directors and key managerial personnel,
    c) 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;
    d) matters relating to certification of compliances, disclosures as may be prescribed;
    e) such other matters as may be prescribed,
- **Signed by whom :**
  - signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:
  - 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.

(2) **Period within which AR to be filled :**

- Who will file : Every company
- With whom : with the Registrar
- When :

▪ **Where AGM is held -** within sixty days from the date on which the annual general meeting is held or

- **where no annual general meeting is held :**
  Consequences are as follows :
  - Company - Fine - which may extend to five lakhs rupees ,and

.

Section 93 : Return to be filed with Registrar in case promoters' stake changes

Ever/ listed company shall file a return in the prescribed form with the Registrar with respect to change in the number of shares held by promoters and top ten shareholders of such company, within fifteen days of such change.

Section 93 : Place of keeping and inspection of registers, returns, etc.

1. **At register office :** The registers required to be kept and maintained by a company under section and copies of the annual return filed under section 92 shall be kept at the registered office of the company:
2. **Any other place , in india :** registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside,
   - if approved by a special resolution passed at a general meeting of the company and
   - the Registrar has been given a copy of the proposed special resolution in advance
   - period for which the registers, returns and records are required to be kept shall be such as may be prescribed.
3. **Inspection of such register :** inspection is permited by
   I. by any member,
   II. debenture-holder,
   III. other security holder or
   IV. beneficial owner,

During business hours without payment of any lees and by any other person on payment of such fees as may be prescribed.

4. **Taking copy :** Any such member, debenture-holder, other security holdei or beneficial owner or any other person may—
   I. take extracts from any register, or index or return without payment of fee; or
   II. require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.
4. **If refused :** If any inspection or the making of any extract or copy required under this section is refused,
   - the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.
5. **The Central Government power to inspect :** CG may also, by order, direct an immediate inspection of the document, or direct that the extract required shall forthwith be allowed to be taken by the person requiring it.

95. Registers, etc., to be evidence .

The registers, their indices and copies of annual returns maintained under sections 88 and 94 shall be ***prima facie*** evidence of any matter directed or authorized to be inserted therein by or under this Act.

a. Within 9months from date of closing FY - Within 6 months from closing date of

Section 96 : Annual general meeting

- **What is AGM:** Every company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting.
- **Period when to held :**

First AGM	Subsequent AGM
Period city to held the meeting : earlier to ❖ Within 9months from the date of closing of the first financial year ❖ If company hold its first AGM as stated above , it need not held any AGM in the year of its incorporation. **[2nd proviso to section 96(1)]** **Extension:** ❖ Extension of first AGM is not permissible	**Period city to held the meeting : earlier to** ❖ End of the year ie by 31st dec year ❖ Within 6 months from the date of closing of the financial year ❖ Not more than the 15 months from the date of previous AGM. **[1st proviso to section 96(1)]** **Extension:** ❖ Extension of AGM can be made by ROC for 3 months

- **Which company :** Every company other than a One Person Company
- **Time/ period/day of calling AGM :**
  - ***Time :*** During business hours, that is, between 9 a.m.?and 6 p.m.
  - ***Day :*** on any day that is not a National Holiday and
  - ***Place :*** shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate:
- **Exemption by CG:** Provided that the Central Government may exempt any company from the provisions of this sub-section subject to such conditions as it may impose.

Case law :

- **For convening a meeting ,there must be at least two person [sharp vs Dawes]**
- **AGM should be held whether annual account are ready or not [ROC vs Radhika Prasad Nanda, Orissa**
- **Meeting adjourned to the next calander year does not means meeting of that calander year [shree meenakshi mills co.ltd vs Asst or registrar Of joint stock company]**
- **Where are member are the director of that company, a BM shall well be treated as AGM**

Section 97 : Power of Tribunal to call annual general meeting

- **Provision :**
  - If any default is made in holding the annual general meeting of a company
  - The Tribunal may, direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal after considering the following :
    - Irrespective of any provision under this act. the articles of the company,
    - on the application of any member of the company,
- **Quorum :** in this meeting , one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Extra – ordinary general meeting : Extra ordinary general meeting can be called by the following :

1. Calling of EGM by board of director on sue moto **[section 100(1)]**
2. Calling of EGM by BOD on members requisition **[section 100(2) and (3)]**
3. EGM called and held by the requisitionlist on failour of BOD **[section 100(4) to (6)]**
4. Tribunal power to call EGM [Section 98)

1. Calling of extraordinary general meeting by BOD u/s 100(1) and (2)

- **Who shall call** – BOD whenever it deems fit, call an extraordinary general meeting of the company based on the requisition made to it..
- **Who can send requisition u/s 100(2)** : requisite number of person , who can send the requisition for the AGM.
  - I. ***In the case of a company having a share capital,***
    Not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
  - II. ***in the case of a company not having a share capital,***
    not less than one-tenth of the total voting power of all the members having on the said

date a right to vote,

- **Period within which EGM to be held u/s 100(4) :**
  - The Board shall , within twenty-one days from the date of receipt of a valid requisition in regard to any matter call an EGM.
  - If not possible, at least EGM shall be not later than forty-five days from the date of receipt of such requisition,
  - If not held within 45 days, the meeting may be called and held by the requisiteness themselves within a period of three months from the date of the requisition.**[rule 17 of the companies [management and administration) rule 2014]**
- **Expenses incurred in holding EGM u/s 100(6):** Any reasonable expenses incurred by the requisitionists in calling a meeting shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under section 197(Managerial remuneration) payable to such of the directors who were in default in calling the meeting.

Rule 17 of the companies [management and administration) rule 2014

Applicable : where the meeting is not convened by the BOD after the application / requisition given by the member on that behalf, Requisitionlist can call an EGM by complying with following Rule

- Notice shall be given to those member whose name is appear in the register of member within 3 days from the date of deposit of notice for convening EGM
- Notice shall be given not less than 21 days prior to the date of EGM u/r 17(1)
- Notice can be given by Speed post/registered post or through electronic mode.
- Signing of notice : by all requisitionalist or by any requisitionalist who is duly autopsied by all
- No explanatory statement is required to be given
- It is not mandatory for the requisitionalist to disclose reason for proposed resolution to be passed at EGM. **[LIC vs Escort, SC]**

Case law: during the course of amalgation scheam, which is at court proceeding, any requisition given by member for convening EGM shall not be considered as incalid be permitted **[pravin kantilal vakil vs Mrs Rohini Ramesh , Bom]**

Section 98 : Power of Tribunal to call meetings of members, etc.(EGM)

- **Situation :**
  - it is impracticable
    - to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or
    - to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company,
- **Provision :** the Tribunal may, either ***suo motu*** or on the application of any director or member of the company who would be entitled to vote at the meeting,
  - order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit and
  - give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:
  - to call, held and conduct in accordance with any order made shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Section 99 : Punishment for default in complying with provisions of sections 96 to 98

- company and every officer of the company

  fine - which may extend to one lakh rupees and

  in the case of a continuing default- with a further fine which may extend to five thousand rupees for every day during which such default continues.

Section 101 : Notice of meeting

- **What is notice :** Notice is the written intimation about the meeting and the transaction to be held.
- **Provision :**
  - Must be writing or in Electronic mode
  - Shall be given not less than clear twenty-one days' notice .
  - Date of sending the notice and date of meeting shall be excluded.(2days)
  - **If send through Post:** Service notice of the meeting shall be deemed to have been effected after expiry of 48 hour. (2days)
  - **Short notice :** GM may be called with shorter notice also, if consent is given in writing or by electronic mode by not less than ninety-five per cent, of the members entitled to vote at such meeting.

Example : AGM date – 2nd Dec 2013, Notice was posted on 11th Nov 2005.

Notice is invalid because:

No of days from 2.12.2013 to 11.11.2013		23days
Less : Date of notice and meeting	-	2 days
Days taken for post		2days
Remaining clear days		19days
Clear days notice required		21days

- **Contents of the Notice :** Every notice for the GM shall specify
  a) the place, date, day and the hour of the meeting and
  b) a statement of the business to be transacted at such meeting.
- **Notice to Whom :**

(a) every member of the company,
(b) legal representative of any deceased member or
(c) the assignee of an insolvent member;
(d) the auditor or auditors of the company; and

- **Every director of the company.**

Accidental omission to send notice : Any accidental omission to give notice to, or the non-receipt of such notice by, any member or other person who is entitled to such notice for any meeting shall not invalidate the proceedings of the meeting.**[Maharaja Export Promotion Council]**

Issue :

- Omission to serve the notice of meeting on a member on the mistaken ground that he is not the shareholder is not considered as omission to serve the notice accidentally
- Can private company through its AOA decided the party to serve notice of AGM- yes
- Whether a beneficial owner and legal reprehensive are entitle to get the notice – The beneficial owner is not entitle to get the notice however the representative(who is legally entitle to represent the shareholder) is entitle to receive the notice
- A couple of shareholder cannot be permitted to defeat the interest of the large body of shareholder by saying the short notice unless that is prejudicial to the interest of complaining shareholder: **Sailesh Harilal Shah Vs Mutushree Textile Ltd , Bombay]**

Section 102 : Statement to be annexed to notice

(1) A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—

- every director and the manager, if any;
- every other key managerial personnel; and (in) relatives of the persons mentioned in sub-clauses (/) and (z7);

b) any other information and facts that may enable members to understand

- **Business :**

  (a) in the case of an annual general meeting, all business to be transacted thereat shall be deemed special, other than-

  1. the consideration of financial statements and the reports of the board of Directors and auditors.
  2. the declaration of any dividend.
  3. the appointment of directors in place of those retiring.
  4. the appointment of, and the fixing of the remuneration of, the auditors.

- **Consequences :** If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

Section103: Quorum for meetings

- **What is quorum :** Minimum number of member that must be present in order to constitute a valid meeting and to transact business threat
- **Power to fixed Quorum :**
  - Company Act
  - AOA
- **Provision :** Unless the articles of the company provide lor a larger number,—

  (c) **in case of a public company,**

Sl no	No of member	Quorum personally present
1	Not more than 1000	5
2	1000- 5000	15
3	More than 5000	30

Note- AOA may provide higher number

- if the number of members as on the date of meeting is not more than one thousand - five members personally present
- If the number of members as on the date of meeting is more than one thousand but up to five thousand- fifteen members personally present
- If the number of members as on the date of the meeting exceeds five thousand – 30 member personally present.

c) in the case of a private company, two members personally present, shall be the quorum for a meeting of the company.

- **Other provision :**

1. If the quorum is not present within half-an-hour from the time appointed for holding a meeting

of the company—

- the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or .
- The meeting, if called by requisitionists under section 100, shall stand cancelled:
- in case of an adjourned meeting or of a change of day, time or place of meeting under clause (a), the company shall give not Jess than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated.
- If at the adjourned meeting also, a quorum is not present within half-an- hour from the time appointed for holding meeting, the members present shall be the quorum.

Section 104 : Chairman of meetings

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

Section 105 : Proxies:

- **Meaning :** proxies are the person appointed / send/ represented by the member of the company for attending and voting at the meeting. proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll.
- **Provision :**
  - Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting.
  - **Not applicable –**
    - company not having a share capital, if AOA not prescribed.
    - Member of class an classes of company , if CG specifically prescribed for that.
  - A single proxies can represent on behalf of maximum up to 50 member and such number of shares as may be prescribed.
  - Proxy need not to be a member
- **Contravention :**

  Every officer – fine- five thousand rupees.

Section 106 :Restriction on voting rights:

- **Voting right not due :** the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

- A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

Section 107 : Voting by show of hands

- At any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands.
- A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Section 108 : Voting through electronic means

The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

Section 111 : Circulation of members' resolution

- A company shall, on requisition in writing of such number of members, as required in section 100,—
  - ✓ give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting, and
  - ✓ Circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting.
- **Condition to circulate the resolution :** A company shall not be bound under this section to give notice of any resolution or to circulate any statement unless—
  - ✓ a copy of the requisition signed by the requisitionists (or two or more copies which, between them, contain the signatures of all the requisitionists) is deposited at the registered office of the company,—
    - In the case of a requisition requiring notice of a resolution, not less than **six weeks before** the meeting;
    - In the case of any other requisition, not less than **two weeks before** the meeting.
- Expenses of such resolution: there is deposited or tendered with the requisition, a sum reasonably sufficient to meet the company's expenses in giving effect there to.

Section 112 : Representation of President and Governors in meetings:

- **Where The President of India or the Governor of a State is the member of any company:** may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company.
- **Right and power:** he shall be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company.

Section 113 :Representation of corporations at meeting of companies and of creditors.

- A body corporate, whether a company within the meaning of this Act or not, may,— &
  - **member meeting -** 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 the company, or at any meeting of

any class of members of the company;

- **creditor meeting :** by resolution of its directors or other governing body, authorize 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 may be.

❖ Power of such authorized person : the person so authorized by resolution shall be entitled to exercise the same rights and powers, including the right to vote by proxy and by postal ballot, on behalf of the body corporate which he represents as that body could exercise if it were an individual member, creditor or holder of debentures of the company.

114. Ordinary and special resolutions

(1) A resolution shall be an ordinary resolution if :

- the notice required under this Act has been duly given and
- it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll,

(2) A resolution shall be a special resolution when—

- the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- the notice required under this Act has been duly given; and
- the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

115. Resolutions requiring special notice

❖ Where special notice is required :

- By any provision contained in this Act or
- in the articles of a company,

❖ Provision of sending special notice:

- Notice of the intention to move such resolution shall be given lo the company by such number of members holding not less than one per cent, of total voting power or
- Holding shares on which such aggregate sum not exceeding 35 five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

116. Resolutions passed at adjourned meeting

Where a resolution is passed at an adjourned meeting of

- a company; or
- the holders of any class of shares in a company; or
- the Board of Directors of a company,

The resolution shall, for all purposes, be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date.

117. Resolutions and agreements to be filed

❖ Concept of filling :

- What to file :
  a. A copy of every resolution or any agreement,
  b. the explanatory statement under section 102, if any, annexed to the notice calling the meeting
- With whom to be filed : ROC

- When to be filed : within thirty days of the passing or making such resolution.
- Manner : in such manner and with such fees as may be prescribed within the time specified under section 403:

- Consequences of contravention :

  Company – Fine - which shall not be less than five lakh rupees but which may extend to twenty-five Jakh ***rupees*** and ever'

118. Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot

- Meaning of minutes: Details records of meeting proceedings.
- Provision: Every company shall cause minutes of the proceedings of
  - every general meeting of any class of shareholders or creditors, and
  - every resolution passed by postal ballot and
  - every meeting of its Board of Directors or
  - of every committee of the Board,

  to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing, of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered.

- Other provision :

1. Fair and correct summery : The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat.
2. Details information : All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting.
3. BOD meeting : In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain—
   - the names of the directors present at the meeting; and
   - in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution.
4. Information not to be included : There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting,—
   a. is or could reasonably be regarded as defamatory of any person, or
   b. is irrelevant or immaterial to the proceedings; or
   c. is detrimental to the interests of the company.
5. Chairman power : The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in subsection (5).
6. As Evidence : The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein.
7. Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid.
8. No document purporting to be a report of the proceedings of any general meeting of a company

shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting.

9. Following secretarial standard : Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

10. On default:

- Company – fine- shall be liable to a penalty ***of twenty***-five thousand rupees and
- every officer – Fine - shall be liable to a penalty of five thousand rupees.

11. Person found tempering with minutes : shall be punishable as followes :

- Imprisonment - for a term which may extend to two years and
- fine - which shall not be less than twenty- five thousand rupees but which may extend to one lakh rupees.

119. Inspection of minute-books of general meeting

❖ Where to be kept : The books containing the minutes of the proceedings of any general meeting of a company or of a resolution passed by postal ballot, shall be kept at the registered office of the company; and

❖ Inspection of such minutes :

- When : be open, during business hours,
- By whom : by any member without charge,
- Manner : with such reasonable restrictions as the company may, by its articles or in general meeting, impose,
- Period of permission : not less than two hours in each business day are allowed for inspection.

❖ Where any member want to inspect :

- Made a request within seven working days
- payment of such fees as may be prescribed,

❖ If inspection id refused :

- company – fine - twenty-five thousand rupees and
- every officer – fine - five thousand rupees for each such refusal or default, as the case may be.

120. Maintenance and inspection of documents in electronic form

❖ Can a company maintain and inspect the document in electronic form : any document, record, register, minutes, etc.,—

(a) required to be kept by a company, or

(b) allowed to be inspected or copies to be given to any person by a company under this Act, may be kept or inspected or copies given, as the case may be, in electronic form in such form and manner as may be prescribed.