Note - *This notes are just a lucid presentation of study material covering atmost all relevant topics and provisions amended up-to date*

Short notes On Company Law

CS - EXECUTIVE

TYPSET – RAJNISH PANDEY

Based on study material + other sources

The Companies act – 2013 AND
The Companies Amendment act – 2015
And rules thereunder

PRELIMINARY

The concept of 'Company' or 'Corporation' in business is not new, but was dealt with, in 4th century BC itself during 'Arthashastra' days. Its' shape got revamped over a period of time according to the needs of business dynamics.
Company form of business has certain distinct advantages over other forms of businesses like Sole Proprietorship/Partnership etc. It includes features such as Limited Liability, Perpetual Succession etc.

Meaning of a Company

The word 'company' is derived from the Latin word (Com=with or together; panis =bread), and it originally referred to an association of persons who took their meals together. In the leisurely past, merchants took advantage of festive gatherings, to discuss business matters. Nowadays, the business matters have become more complicated and cannot be discussed at festive gatherings. Therefore, the company form of organization has assumed greater importance. It denotes a joint stock enterprise in which the capital is contributed by several people. Thus, in popular parlance, a company denotes an association of likeminded persons formed for the purpose of carrying on some business or undertaking. A company is a corporate body and a legal person having status and personality distinct and separate from the members constituting it.

Lord Justice Lindley has defined a company as *"an association of many persons who contribute money or money's worth to a common stock and employ it in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contributed in it or form it, or to whom it belongs, are members. The proportion of capital to which each member is entitled is his "share". The shares are always transferable although the right to transfer them may be restricted."*

Evolution of the companies act 2013

The Companies Act, 1956 was enacted with the object to amend and consolidate the law relating to companies. This Act provided the legal framework for corporate entities in India and was a mammoth legislation. As the corporate sector grew in numbers and size of operations, the need for streamlining this Act was felt and as many as 24 amendments had taken place since then. Major amendments were made through the Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee, and then again in 1998, 2000 and in 2002 through the Companies (Second Amendment) Act.

The response to the concept paper on Company Law was tremendous. The Government, therefore, felt it appropriate that the proposals contained in the Concept Paper and suggestions received thereon be put to merited evaluation by an independent Expert Committee. A Committee was constituted on 2nd December, 2004 under the Chairmanship of Dr. J J Irani, Director, Tata Sons, with the task of advising the Government on the proposed revisions to the Companies Act, 1956 with the objective to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable the adoption of internationally accepted best practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. The Committee submitted its report to the Government on 31st May 2005.

Companies Act 2013

Passed in Lok sabha	**December 18, 2012**
Passed in Rajya Sabha	August 08, 2013
President's assent	August 29, 2013
Total number of section	470
Total number of chapters	29
Total number of schedules	7
Number of sections notifies (282)	Section 1 on August 29, 2013 98 sections on September 12, 2013 183 sections on April 01, 2014
Total number of rules notified	Rules under 21 chapters notified

THE NEW CONCEPTS INTRODUCED

The Companies Act 2013 has introduced new concepts supporting enhanced disclosure, accountability, better board governance, better facilitation of business and so on. It includes the following aspects:-

1. Associate company
2. One person company
3. Small company
4. Dormant company
5. Independent director
6. Women director
7. Resident director
8. Special court
9. Secretarial standards
10. Secretarial audit

11. Class action
12. Registered valuer etc.

Distinction between Company and Partnership

The principal points of distinction between a company and a partnership firm are as follows:

- A company is a distinct legal person. A partnership firm is not distinct from the several persons who form the partnership.
- In a partnership, the property of the firm is the property of the individuals comprising it. In a company, it belongs to the company and not to the individuals who are its members.
- Creditors of a partnership firm are creditors of individual partners and a decree against the firm can be executed against the partners jointly and severally. The creditors of a company can proceed only against the company and not against its members.
- Partners are the agents of the firm, but members of a company are not its agents. A partner can dispose of the property and incur liabilities as long as he acts in the course of the firm's business. A member of a company has no such power.
- A partner cannot contract with his firm, whereas a member of a company can.
- A partner cannot transfer his share and make the transferee a member of the firm without the consent of the other partners, whereas a company's share can ordinarily be transferred.

Distinction between Company and HUF Business

- A company consists of heterogeneous (varied or diverse) members, whereas a Hindu Undivided Family Business consists of homogenous (unvarying) members since it consists of members of the joint family itself.
- In a Hindu Undivided Family business the Karta (manager) has the sole authority to contract debts for the purpose of the business, other coparceners cannot do so. There is no such system in a company.
- A person becomes a member of a Hindu Undivided Family business by virtue of birth. There is no provision to that effect in the company.
- No registration is compulsory for carrying on business for gain by a Hindu Undivided Family even if the number of members exceeds ***twenty [Shyamlal Roy v. Madhusudan Roy, AIR 1959 Cal. 380 (385)].*** Registration of a company is compulsory.

CHAPTER – 1
FORMATION OF COMPANY

A.		NAME AVAILABILITY
	(1)	**Section 4(4)** – A company shall not be registered by a name, which in the opinion of the Central Government, is undesirable. A name is deemed undesirable if it is identical to, or too near resembles that of an existing Company or infringes a registered trademark
	NOTE	**A company will not be allowed to use a name which –** **1.** Is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950, **2.** The name which infringes the registered trademark or trademark which is subject of an application for registration, **3.** The use of which will constitute an offence under any law for the time being in force, and Offensive to any section of society. The name of the Company should end with the word "Limited" in the case of Public Company and "Private Company" in case of Private Company having limit liability or in case of one person company OPC must be used.
		An application for the reservation of the name shall be made in **e-form INC-1** along with the prescribed fees of 1000 rupees containing 6 desirable names to the RoC.

B.	DRAFTING OF MoA OR AoA
	☞ The Memorandum of Association is the charter of a company. ☞ It is a document, which amongst other things defines the area within which the company can act. ☞ It is, therefore, required to state the object for which the company has been formed, the business that it would undertake, the liability, the capital which it shall be allowed to raise, the nature of liability of its members, the name of the State where the registered office of the company shall be located etc.
	➢ Every Memorandum should be signed by each subscriber who should add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any. ➢ In case of companies having share capital, the subscribers to the Memorandum should at least take one share each and they have to state clearly the number and nature of shares taken by them. Where necessary one witness can attest the signatures of all subscribers.

C.	Signing , Stamping or dating of MoA or AoA
	Every Memorandum should be signed by each subscriber who should add his address, description and occupation, if any, in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any.

	In case of companies having share capital, the subscribers to the Memorandum should at least take one share each and they have to state clearly the number and nature of shares taken by them. Where necessary one witness can attest the signatures of all subscribers.

D.	**STATUTORY DECLARATION**
	Section 7(1)(b) requires that a declaration in **e-Form INC-8 ,** by an advocate of the Supreme Court or a High Court, or an attorney or pleader entitled to appear before the High Court or a Secretary or a Chartered Accountant, practicing in India who is engaged in the formation of a company or by a person named in the Articles as a director, manager, or secretary of a company, that all the requirements of the Companies Act, 2013 and the rules there under have been complied with in respect of registration and matters precedent and incidental thereto to be filed with the Registrar. The Registrar may accept such a declaration as sufficient evidence of such compliance.

E.	**DIRECTOR IDENTIFICATION NO. [DIN]**
	Director's Identification Number (DIN) – MCA21 has introduced the concept of Director Identification Number (DIN) which is mandatory, unique and life time identification for all existing and prospective directors. 1. In the scenario of e-filing, DIN is a pre- requisite for filing of certain company related documents. 2. Any individual who is a director or intends to be a director of a company should apply for DIN first. 3. DIN has to be obtained by the directors of the company before commencing the procedure for incorporation of a company **DIR – 3.**

F.	**PERTICULAR DETAILS of members/subscribers**
	The particular details of every member / subscriber or shareholders is also required for incorporation of a company **in e form INC-7** Also with their signature and photograph **in e-form INC-10.**

G.	**Registered office of Company**
	The full details regarding address or place etc. of Registered office of company should be provided to RoC, so that he can easily communicate to the company Give the intimation of registered office of company to RoC. In **e- form INC-22**
H.	**Directors consent**
	The consent of the director that 'I am the director of such company or wanted to be a director in such company' is also required in **e-form DIR-12.**

I.	Corporate Identification No.
	After fulfilling all the above provisions related to registration if the registrar of companies is satisfied, he grants the CIN no. It should be preserved for lifetime or the company Now the RoC will examine all the documents submitted for the registration or incorporation of the company and if he satisfies then he will grant a Certificate of Incorporation of company.

List of important forms –

INC – 1	**Application for reservation of name**
INC – 2	**OPC – application for incorporation**
INC – 3	**OPC – nominee consent form**
INC – 4	**OPC – change in member/nominee**
INC – 5	**OPC – intimation of exceeding threshold**
INC – 6	**OPC – application for conversion**
INC – 7	**Application for incorporation of company other than OPC**
INC – 8	**Declaration**
INC – 9	**Affidavit**
INC- 10	**Form for verification of signature of subscribers**
INC – 11	**Certificate of incorporation**
INC – 12	**Application for grant of license U/S 8**
INC – 13	**Memorandum of association**
INC – 14	**Declaration**
INC – 15	**Declaration**
INC – 16	**License under section 8(1)**
INC – 17	**License under section 8(5)**
INC – 18	**Application to RD for conversion of OPC**
INC – 19	**Notice**
INC – 20	**Intimation to registrar for revocation/surrender of license issued under section 8**
INC – 21	**Declaration prior to CoB or exercising powers**
INC – 22	**Notice of situation or change in situation of registered office**
INC – 23	**Application to RD for approval to shift Registered office from 1 state to another state or 1 registrar to another registrar in same state**
INC – 24	**Application for approval of CG for change in name**
INC – 25	**Certificate of incorporation pursuant to change in name**
INC – 26	**Advertisement to be published for license for existing company**
INC – 27	**Conversion of PUBLIC company into PRIVATE company or vice-versa**
INC – 28	**Notice of order of court or any other competent authority**

CHAPTER – 2
INTRODUCTION TO COMPANY

MEANING AND DEFINITION OF COMPANY –

As per **section 2(20)** of companies act, “A company may be formed or registered under this act or any existing company formed or registered under any other previous company law.

CHARACTERISTICS / FEATURES OF A COMPANY –

1. SEPRATE LEGAL ENTITY –

A company incorporated under this Act is vested with a corporate personality so it bears its own name, acts under name, has a seal etc. it is capable of owning property, incurring debts, borrowing money. It can be sued and can sue because it performs as a separate legal entity or is distinct from its members/subscribers.

Case law- Salmon V/s Salmon Co. ltd.

In above case Salmon had 1 son, 4 daughter and his wife incorporated a company named Salmon Co. ltd. And after sometime he become secured creditor of the company and announced for unsecured creditor and a person Mr. X become so. After few years the company went into winding-up and unsecured creditor Mr. X gone to Court claiming his credit and saying that Salmon was liable and he has done all willingly.

The HOUSE OF LORDS said that the company is different from persons in the eyes of law so the case should be on company, not on Salmon. There Salmon States that the proper process of winding up was followed and there is nothing available to pay unsecured creditors.

CASE- LAW = Lee V/s Lee Air Farming ltd.

CASE- LAW = Abdul haq V/s Dasmal

2. LIMITED LIABILITY –

The liability of the company is limited up-to the face-value of shares or the amount guaranteed while in case of partnership firm the liability of partners is unlimited.

3. TRANSFERABILITY OF SHARES –

In case of any listed public company, there is no restriction on transferability of shares while a private company can-not do so to public but it can issue shares only to its employees, kith & keen etc.

4. Common seal –

A company is an artificial person so it can-not sign on important documents of the company so the substitute of the signature which is used in companies to sign on important document of company is known as common seal. In meeting one person is authorized by BoD to use the seal on behalf of company. E.g. C.A. C.S. etc.

5. Perpetual succession –

The company is artificial person and it never dies a natural death. It is continue forever, whether the members of company may die, resigned, expelled, insolvent etc. but all of this have no effect on company, the company shall run forever without any break. *"**Member's may come, members may go, but a company remains forever.**"*

CASE – LAW = pro. Grover's example.

6. Separate property –

A company has own personality, so it can own property or attach property in its own name and no members can claim on its property.

CASE – LAW = Macaura V/s Northern assurance company ltd.

Mrs. Bacha F. Guzdar v. The Commissioner of Income Tax, Bombay, A.I.R. 1955 S.C. 74 The Supreme Court in this case held that, though the income of a tea company is entitled to be exempted from Income-tax up to 60% being partly agricultural, the same income when received by a shareholder in the form of dividend cannot be regarded as agricultural income for the assessment of income-tax. It was also observed by the Supreme Court that a shareholder does not, as is erroneously believed by some people, become the part owner of the company or its property; he is only given certain rights by law, e.g., to receive notice of or to attend or vote at the meetings of the shareholders. The court refused to identify the shareholders with the company and reiterated the distinct personality of the company.

7. Capacity to sue and be sued –

A company being an artificial person can sue in its own name and can be sued by others. It has capacity to sue and be sued.

8. Limitation by MoA and AoA –

The company or its members has some limitations opposed by MoA or AoA. The company can not act beyond these limits otherwise it will be ultra-virus or intra-virus, as the case may be.

LIFTING OF CORPORATE VEIL –

The separate personality of a company is a statutory privilege and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The Court will break through the corporate shell and apply the principle/doctrine of what is called as "lifting of or piercing the corporate veil". The Court will look behind the corporate entity and take action as though no entity separate from the members existed and make the members or the controlling persons liable for debts and obligations of the company.

There are 2 ways for lifting out of corporate veil –

- **Lifting of corporate veil under statutory interpretation.**
- **Lifting of corporate veil under judicial interpretation.**

UNDER JUDICIAL INTERPRETETION – In this case the power to lift out the corporate veil is given to the court as in the following situations –

1. Determination of enemy character.
2. Where the corporate veil has been used for committing fraud or improper conduct.
3. The conduct conflicts with public policy.
4. Avoidance of welfare legislations.
5. Protection of revenue or tax avoidance or evasion.
6. Company acting in a manner other than what it is.

Example Case- law =

1. **Re. sir Dinshaw manakjee petit ; or**
2. **Kapila hingrani V/s State of Bihar ; or**
3. **Daimler co. ltd V/s Continental tyre & rubber co. etc.**

UNDER STATUTORY INTERPRETETION -

In this type of interpretation the power to lift out the corporate veil is given to company itself in such given cases –

1. Miss description of name of company.
2. Failure to refund the application money within 120 days.
3. Misrepresentation in prospectus of company.
4. Acts beyond MoA of the company.

If the 3RD point occurs then the penalty under section 447 of the Act will be applicable. Imprisonment – 6 months to 10 years; or Penalty - 3 times the amount involved in the fraud; or both. Where the fraud involves public interest then imprisonment should not be less than 3 years to the persons involved in making or drafting the prospectus –

1. Director.

2. Promoter.
3. Proposed director, if any.

ILLEGAL ASSOCIATION – A group of person is called association. There is a specified limit for partnership or other business association, which is 50. When this limit is exceeded then the association is called illegal association. [**Section 464**] However, an illegal association is liable to be ***taxed [Kumara Swamy Chattiar v. Income Tax Officer (1957) I.T.R. 457].*** The members of an illegal association are individually liable in respect of all acts or contracts made on behalf of the association; they cannot either individually or collectively, bring an action to enforce any contract so made, or to recover any debt due to the association ***[Wilkinson v. Levison (1925) 42 T.L.R. 97].***

CONSEQUENCES –

1. Any illegal association can-not inter into any contract because of its illegality.
2. That association will not have any legal existence.
3. It can-not sue to anyone.
4. The members of such association will be charged with a fine of rupees 100000 and will be personally liable.
5. If the said type of association earns any income the same will be taxable.

The provisions contained under this section shall not be applicable to –

1. In case of minor.
2. In case of HUF or joint Hindu family.
3. This section is also not applicable on the firm of CA's /CS's etc.

COMPANY AS A PERSON –

Generally speaking a Company is not a natural person but there is few circumstances in which it acts as a natural person. Such as –

1. Having its own bank A/c.
2. Having borrowing capacity.
3. Having contractual capacity.etc

CITIZENSHIP OF A COMPANY – As per The Citizenship Act – 1955 a company is not covered under this Act, so the company is not a citizen. As per the constitution fundamental rights and duties are given to every citizen of India but in case of a company there is no such provision so we can say that a Company is not a citizen of INDIA.

Bennet Coleman Co. v. Union of India, AIR 1973 SC 106
In this case, the Supreme Court stated that:
"It is now clear that the Fundamental Rights of shareholders as citizens are not lost when they associate to form a company. When their Fundamental Rights as shareholders are impaired by State action, their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the rights of the company are affected."

CHAPTER – 3
TYPES OF COMPANIES

INTRODUCTION –

The Companies Act, 2013 provides for the kinds of companies that can be promoted and registered under the Act. The three basic types of companies which may be registered under the Act are:

- Private Companies;
- Public Companies; and
- One Person Company (to be formed as Private Limited).

SECTION 3. (1) OF THE COMPANIES ACT 2013 states that a company may be formed for any lawful purpose by—

- Seven or more persons, where the company to be formed is to be a public company;
- Two or more persons, where the company to be formed is to be a private company; or
- One person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

A company formed under sub-section (1) may be either—

- A company limited by shares; or
- A company limited by guarantee; or
- An unlimited company.

Classification of Companies

❖ **PRIVATE COMPANY -** section 2(68)

In the last of the name of the company the word the Pvt. Ltd. Is used. As per **section 3 (1),** a private company may be formed for any lawful purpose by two or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration.

PROVISIONS –

1. There was requirement of rupees 100000 as paid up capital to incorporate a private company, which has been omitted by The Companies Amendment Act – 2015.
2. Minimum 2 members are required to incorporate a private company which may be extended to 200.

3. There are minimum 2 directors in a private company, which has no maximum limit as per the Act.
4. There is restriction on transfer of shares from one person to another in a private company.
5. The private company can-not accept deposits from public.

❖ PUBLIC COMPANY –

In the last of the name of a public company the word limited is used. As per **section 3 (1),** a public company may be formed for any lawful purpose by seven or more persons, by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration.

PROVISIONS –

1. There was requirement of rupees 5,00,000 as paid up capital to incorporate a public company, which has been omitted by The Companies Amendment Act – 2015.
2. There are minimum 3 directors in a public company, which may be extended subject to maximum limit as per the Act which is 15. After passing a special resolution this limit can also be extended.
3. Minimum 7 members are required to incorporate a public company. There is no limit about maximum members.
4. There is no any restriction prescribed on transfer of shares from one person to another in a public company.
5. The public company can accept deposits from public.

❖ ONE – PERSON COMPANY SECTION 2(62)

This is a new concept introduced in the Companies Act – 2013 on the recommendations of **J.J. Irani committee.** The person who wants to incorporate an OPC should be Indian or resident in India. Only 1 person can incorporate a Single OPC.

INCORPORATION OF OPC –

The name of the promoter along with the name of nominee shall be mentioned in the memorandum & articles of the OPC and such nomination should be in form **INC – 2** along with the consent of such nominee in form **INC – 3** and the prescribed fee.

Following documents shall be attached to registrar of companies for incorporation of an OPC-

- Memorandum and articles of the proposed company.
- Identity proof of the member.
- Residential proof of the member.
- Copy of the PAN card of the member.
- Consent of the nominee in form **INC – 3**.
- Affidavit from the subscriber in form **INC – 9.**

- Specimen signature in form **INC – 10**.
- Consent of the director or the person who wants to be director in form INC – 21.
- The other procedure are as same as to incorporation of public or private company discussed in chapter - 1.

OTHER TYPES OF COMPANIES –

THERE ARE MANY OTHER TYPE OF COMPANIES ARE ALSO DISCUSSED OR PROVIDED IN THE ACT, SUCH AS –

- Unlimited company; or
- Limited company; or
- Foreign company; or
- Dormant company; or
- Small company; or
- Government company; or
- Investment company; or
- Subsidiary/Holding and Associate company; or
- Association not for profit. Etc.

LIMITED COMPANY –

Limited company is a type of company in which the liability of the members is limited. There are 2 TYPES of such company as provided in the Act.

- Company limited by shares; or
- Company limited by guarantee.

A company limited by share is a company in which the liability of the members is limited up to face value of shares held by them.

A company limited by guarantee is a company in which the liability of the members is limited as defined or agreed in articles or memorandum. It means the members will contribute in the assets or liabilities of the company as agreed in the articles or memorandum at the time of winding up of the company.

The contributory may be –

- Existing members or present members; or
- The members who were members within 1 year from the date of winding up.

UNLIMITED COMPANY –

Unlimited company is a type of the company in which the liabilities of the members is unlimited. In unlimited company, the members are not directly liable to creditors because whenever the company goes to liquidation then it will appoint an official liquidator and the members will liable to liquidator directly not to the creditors while in a partnership firm the partners are liable to creditors directly.

ASSOCIATION NOT FOR PROFIT –

It is also known as licensing company which is defined under section 8 of the Companies act – 2013 as a Company engaged in trust, cultural purposes, and social, religious, scientific and research purpose is called Association not for profit.

If anyone wants to incorporate a new association not for profit or licensing company/ section 8 company, he should apply to Central Government and if C.G. satisfied it will grant a license of the status of an Association not for Profit Company.

If any existing or old public/private company wants to convert itself into section 8 company, then it shall apply to C.G., if the Central Government is satisfied then the existing company will be licensed as a section 8 company i.e. association not for profit, the old company will remove Pvt. Ltd. / ltd. From end of its name, as the case may be.

Note – the central government is empowered to revoke the license at any time.

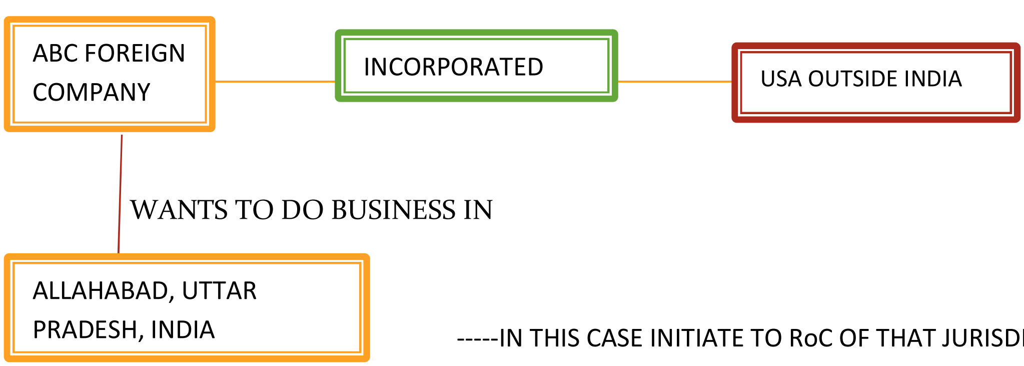
GOVERNMENT COMPANY SECTION 2 (45)

Any public company in **WHICH 51%** or more shares are held by Central Government, State Government or partly by Central Government and partly by State Government, is known as Government Company.

NOTE – Employees or workers of a government company are not government employees.

FOREIGN COMPANY SECTION 2(42)

A company which is incorporated outside INDIA but which has a place of business in INDIA is called as a Foreign Company.



-----IN THIS CASE INITIATE TO RoC OF THAT JURISDICTION AND THE RoC OF NEW DELHI.

AND send the following documents to the RoC.

- MoA/AoA of the company.
- Address of the head office of the company.

- Address of the place of business in INDIA.
- Particulars of employees whether NRI or Resident.
- Particulars of the company secretary, if any.

HOLDING / SUBSIDIARY COMPANY AND ASSOCIATE COMPANY –

If any company holds 50% or more shares of any other company and controls the board of directors or management of the other company and holds **50%** or more of the voting rights of the another company, then the company which is holding such powers/shares is called as HOLDING Company whereas the other is called SUBSIDIARY to it.

If any company holds **20% share** capital of any other company then it will be associate company to that particular company.

INVESTMENT COMPANY –

It is a type of the company which main business as defined in its memorandum is to deal in securities (shares, debentures, bonds, mutual fund etc.), is known as Investment Company.

SMALL COMPANY –

Small company is just like a private company, which paid up capital is rupees 50 lakh or more but not exceeding 2 crores or which annual turnover is more than 2 crores but less than 20 crores.

DORMANT COMPANY –

Dormant company is a company which has been incorporated and it is inactive i.e. not carrying on any activities or business but which has a chance to do business in future.

List of some important forms

URC – 1	**Application by a company for registration U/S 366**
FC – 1	**Information to be filed by foreign company**
FC – 2	**Return of alteration in the documents filed for registration by foreign company**
FC – 3	**List of all principal place of business in INDIA established by foreign company**
FC – 4	**Annual return of foreign company**
GNL – 1	**Form for filling an application with registrar of companies**
GNL – 2	**Form for submission of any documents with registrar of companies**
GNL – 3	**Particular of persons**
ADJ 40	**Memorandum of appeal**
MSC - 1	**Application to ROC for obtaining the status of section 8 company**
MSC – 3	**Return of dormant company**
MSC – 4	**New form application for seeking status of active company**

CHAPTER – 4
MEMORANDOM OF ASSOCIATION & ARTICLE OF ASSOCIATION

MEMORANDUM OF ASSOCIATION

According to **Section 2(56)** of the Companies Act, 2013 "memorandum" means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any previous company law or this Act.

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

The name stated in the memorandum shall not—

1. be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
2. be such that its use by the company—
   (*i*) will constitute an offence under any law for the time being in force; or
   (*ii*) is undesirable in the opinion of the Central Government

A company shall not be registered with a name which contains—

1. Any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
2. Such word or expression, as prescribed in the Companies (Incorporation) Rules, 2014. Un-less the previous approval of the Central Government has been obtained for the use of any such word or expression.

A person may make an application **in Form No. INC.1** along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 to the registrar for the reservation of a name set out in the application as-
(*a*) The name of the proposed company;
(*b*) The name to which the company proposes to change its name
The Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

If the company has not been incorporated, the reserved name shall be cancelled and the person making application shall be liable to a penalty which may extend to Rs.1,00,000 /-

If the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard— Either direct the company to change its name within a period of three months, after passing an ordinary resolution; Take action for striking off the name of the company from the register of companies; Make a petition for winding up of the company.

Form of Memorandum:

The memorandum of a company shall be in respective forms as outlined below

S. NO.	TABLE	PROVIDES FORM FOR
1	TABLE A	MOA of a company limited by shares
2	TABLE B	MOA of a company limited by guarantee and not having share capital
3	TABLE C	MOA of a company limited by guarantee and having share capital
4	TABLE D	MOA of an unlimited company and not having share capital
5	TABLE G	MOA of an unlimited company and having share capital

CONTENTS OF MEMORANDUM –

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

- The name of the company with "Limited" as its last word in the case of a public company; and "Private Limited" as its last words in the case of a private company;(Name Clause)
- The State place where the registered office of the company is to be situated;(Situation Clause)
- The objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;(objects clause)
- The liability of members of the company, whether limited or unlimited, —(Liability Clause)
- In the case of a company having a share capital,—(Capital Clause)
    - the amount of share capital with which the company is to be registered
    - the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
- In the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

ALTERATION OF MEMORANDUM OF ASSOCIATION

Section 13(1) of the Companies Act, 2013 provides that save as provided in section 61, a company may, by a **special resolution** and after complying with the procedure specified in this section, alter the provisions of its memorandum. The memorandum of association of a company may be altered in the following respects:

- ☞ By changing its name [Sections 13(2)].
- ☞ By altering it in regard to the State in which the registered office is to be situated [Section 13(4) & (7)].
- ☞ By altering its objects [Section 13 (1) & (9).
- ☞ By altering its share capital (Section 61).
- ☞ By reorganizing its share capital (Sections 230 to 237).
- ☞ By reducing its capital (Section 66).

ALTERATION OF NAME CLAUSE – The name of a company can be altered by a special resolution and with the prior approval of the central government in writing –

TYPE	VOLUNTARY CHANGE OF NAME	RACTIFICATION OF NAME
SITUATION	**The company wants to change the name of company, voluntarily**	**Where a company is registered with a name which is –** ☞ **Identical or too closely resembles.** ☞ **Infringes a trademark and rectify the name**
RESOLUTION	**SPECIAL RESOLUTION**	**ORDINARY RESOLUTION**
APPROVAL	**Prior approval of C.G. after passing such resolution**	**Prior approval of C.G. after passing the ordinary resolution at general meeting.**

ALTERATION OF REGISTERED OFFICE CLAUSE –

CASE	FROM	TO	RESOLUTION	PROCEDURE
1.	**One premises of a city**	**Other premises in same City**	**BOARD RESOLUTION**	Pass B.R. and give notice of change in INC-22 within 15 days of such change to RoC.
2.	**One City or town**	**Another City or Town in same state**	**SPECIAL RESOLUTION**	Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14
3.	**One State**	**Another State**	**SPECIAL RESOLUTION**	Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC.
4.	**One RoC**	**Another RoC IN same City [Maharashtra etc.]**	**Special resolution + Regional directors consent in INC-23**	Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC.

ALTERATION OF OBJECT CLAUSE – If a Company wants to change or alter its object, then it is required to pass Special Resolution and define that why the object is to be altered. **Such as reason given below –**

- Lack of demand of goods of the company.
- Lack of fuel to company.
- The market distance is more than usual.
- Lack of workers in the company.
- Any natural calamity arises.

ALTERATION OF LIABILITY CLAUSE –

According to **section 13(1),** a company may, by a **special resolution** and after complying with the procedure specified in this section, alter the provisions of its memorandum. It means that a company can change the liability clause of its memorandum of association by passing a special resolution. Further **section 13(6) (a)** provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).

ALTERATION OF CAPITAL CLAUSE –

A limited company having a share capital may make the following types of alterations in its memorandum by an **ordinary resolution**, if so authorized by its articles, at its general meeting **to (Section 61)**

- Increase its authorized share capital by such amount as it thinks expedient ;

A company may at any time increase its authorized share capital by the alteration of its memorandum. Although, **section 61(1) (a)** of the Companies Act, 2013 refers to the issue of new shares, it really deals with a case of increase in the authorized share capital, and not increase of the issued share capital. The case of increase of the issued or subscribed capital is dealt with separately by **section 62** of the Act.

- Consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
- Convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that the proportion between the amount paid and unpaid shall remain the same.
- 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.

These alterations are required to be notified and a copy of the resolution should be filed with them Registrar within 30 days of the passing of the resolution along with an altered memorandum. [**Section 64**(1)]

ALTERATION OF MEMORANDUM OF ASSOCIATION

<table>
<tr><td>Name Clause change</td><td colspan="3">Pass Special Resolution
Approval of Central Government
To delete the word ''PRIVATE'' approval from Central Government is Not required in case of conversion of private company to public company.</td></tr>
<tr><td rowspan="2">CHANGE IN REGISTERED OFFICE</td><td>Change within local limits</td><td>Change Of State</td><td>Change in jurisdiction of Registrar</td></tr>
<tr><td>Pass Board Resolution.

Notice of change to RoC in INC – 22 within 15 days of such change.</td><td>Pass Special Resolution.

Notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC.</td><td>Special resolution + Regional director's consent in INC- 23.

Pass S.R. and give notice of change in INC-22 within 15 days of such change to RoC along with form MGT-14 and also send an altered copy of MoA to RoC</td></tr>
<tr><td>Change In Object clause</td><td colspan="3">Pass Special Resolution.
From the date of filing Special Resolution the Registrar should within 30 days, certify the same.</td></tr>
<tr><td>Change In Liability</td><td colspan="3">Needs Special Resolution to be passed.
File the same with Registrar in form MGT. 14</td></tr>
<tr><td>Change in Capital</td><td colspan="3">Alteration of capital clause to be authorized by the Articles of Association [section 61]; Ordinary Resolution.
If by division or consolidation in capital the voting % gets affected then a confirmation from Tribunal is mandatory.
Notify the alterations made and a copy of Resolutions passed shall be filed with Registrar within 30 days.
Registrar shall record the notice and make alterations required.</td></tr>
</table>

ARTICLES OF ASSOCIATION –

According to **Section 2(5)** of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company.

In terms of **section 5(1),** the articles of a company shall contain the regulations for management of the company. The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company inter se. They are subordinate to and are controlled by the memorandum of association. **The articles of a company are subordinate to and subject to the memorandum of association and any clause in the Articles going beyond the memorandum will be ultra vires.**

REGISTRATION OF ARTICLES –

S. NO.	TABLE	APPLICABLE FOR
1.	TABLE - F	Any Public Company.
2.	TABLE - G	Company Limited By Guarantee Having Share Capital.
3.	TABLE - H	Company limited by guarantee does not Having Share Capital.
4.	TABLE - I	Unlimited company having share capital.
5.	TABLE - J	Unlimited Company does not having Share Capital.

STATUTORY REQUIREMENTS –

The articles **must be printed, divided into paragraphs, numbered consecutively, stamped adequately, signed by each subscriber** to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or ultra vires the memorandum, nor should it be contrary to the provisions of the Companies Act, 2013.

CONTENTS OF ARTICLES –

The articles set out the rules and regulations framed by the company for its own working. The articles should contain generally the following matters:

- Adoption of preliminary contracts.
- Number and value of shares.
- Issue of preference shares.
- Allotment of shares.
- Calls on shares.
- Lien on shares.
- Transfer and transmission of shares, etc.

ENTRENCHMENT PROVISIONS –

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with**.** [**Section 5** (3)]

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed. [**Section 5** (5)]

ALTERATION OF ARTICLES OF ASSOCIATION

A company has a statutory right to alter its articles of association. But the power to alter is subject to the provisions of the Act. A company can alter its article of association simply by passing a Special Resolution in General Meeting.

Section 8(4)(i) provides that a company registered under section 8 i.e. companies with charitable objects shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. A company is not prevented from altering its Articles on the ground that such an alteration would be breach of a contract but an action for damages may lie against the company. [***Southern Foundries v. Shirlaw , [1940] AC** 701*].

CONSTRUCTIVE NOTICE OF MEMORANDUM AND ARTICLES

The memorandum and articles, when registered, become public documents and can be inspected by anyone on payment of nominal fee. Therefore, every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors, and of any limitations placed upon the exercise of these powers. In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning ***[Griffith v. Paget, (1877) Ch. D. 517].***

For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed; otherwise he cannot claim under it.

DOCTRINE OF INDOOR MANAGEMENT

While the doctrine of 'constructive notice" seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down ***in Royal British Bank v. Turquand, (1856) 119 E.R. 886,*** persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see that the company carries out its own internal regulations.

EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT –

- Where the outsider had knowledge of irregularity.
- No knowledge of memorandum and articles.
- The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio.
- The 'doctrine of indoor management', in no way, rewards those who behave negligently.
- The doctrine of indoor management does not apply where the question is in regard to the very existence of an agency.
- This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power.

DOCTRINE OF ALTER EGO

It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

CHAPTER – 5
Contracts and Conversions

PRELIMINARY CONTRACTS –

Company being an artificial person can contract only through its agents. A contract will be binding on a company only, if it is made on its behalf by any person acting under its authority, express or implied. The powers of the company are defined by its Memorandum of Association and any contract made beyond the limits laid down in the Memorandum of Association, will be ultra vires to the company and void even if all the shareholders assent to it.

Pre-incorporation Contracts –

Preliminary contracts are contracts purported to be made on behalf of a company before its incorporation. Before incorporation, a company is non-existent and has no capacity to contract. Consequently, nobody can contract as agent on its behalf because an act which cannot be done by the principal himself cannot be done by him through an agent. Further even after incorporation such a purported contract cannot be ratified by the company. The persons purporting to act as agents on behalf of the company would be personally liable. Such contract is void-ab-initio.

For such contract –

- The company cannot be bind.
- The company cannot be sued.
- If any person done such type of contract, he will be personally liable.

Provisional Contracts –

In the case of a company having a share capital whether public or private, contracts made after incorporation but before the company becomes entitled to commence business in terms of section 11 are provisional and are not binding on the company until the company becomes so entitled after filing of the prescribed declaration by its director and verification of its registered office with the Registrar under that section. But after the company becomes entitled to commence business such contracts automatically become binding i.e. without any ratification.

CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY

As per Section 14(1),When a company being a private company alters its articles in such a manner that they no longer include any of the three restrictions and limitations which are required to be included in the articles of a private company. The company shall, as from the date of such alteration, cease to be a private company. It also ceases to have the privileges and exemptions conferred on it by the Act as a private company. It becomes a public company and all the provisions of the Act applicable to such companies become applicable to it. It means to alter the articles of the company now pass a special resolution and apply the all provisions thereunder.

CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE COMPANY –

The second proviso to Section 14(1) states that any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit. A public company can be converted into a private company only after the approval of the Central Government. It cannot be treated as a private company till the Central Government accords its approval.
Conversion of a public company into a private company will require:

- Passing of a special resolution authorizing the conversion and altering the Articles so as to include the matters specified in Section 3(1) (iii). In case of listed company the same has to be passed through postal ballot.
- Changing the name of the company by special resolution.
- Obtaining the approval of the Central Government.
- Filing of printed copy of the articles as altered within one month of the receipt of the approval.

As per section 2(71) of the companies act – 2013, a company which is subsidiary of a company, not being a private company, shall be deemed to be public company

Section 18(1) of the companies act – 2013 provides that a company of any class registered under this act may convert itself as a company of other class under this act by alteration of its MoA OR AoA of the company in accordance with the provision of chapter 2 of the act.

CONVERSION OF SECTION 8 COMPANY -

Section 8(4)(ii) provides that a company registered under section 8 i.e. companies with charitable objects may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

Conditions –

- Conversion requires Special Resolution.
- The explanatory statement annexed to the notice convening the general meeting shall set out in detail the reasons for opting for such conversion send to shareholders or members.
- Certified copy of Special Resolution to be filed in **Form No MGT-14.**
- The company shall file an application in Form **No.INC. - 18** with the Regional Director with the fee along with a certified true copy of the special resolution.
- A copy of the application with annexures as filed with the Regional Director shall also be filed with the Registrar.

- The company shall, within a week from the date of submitting the application to the Regional Director, publish a notice in news-paper.
- The Board of directors shall give a declaration to the effect that no portion of the income or property of the company has been or shall be paid or transferred directly or indirectly by way of dividend or bonus.
- No objection certificate from relevant authorities, in case of special status.
- The company should have filed all its financial statements and Annual Returns upto the financial year
  preceding the submission of the application to the Regional Director.
- Attach certificate of compliance for conversion.
- Company to give up concessions enjoyed or being enjoyed.
- On receipt of the approval of the Regional Director, the company shall convene a general meeting of its members to pass a special resolution for amending its memorandum of association and articles of association.
- The Company shall thereafter file with the Registrar.-
  - A certified copy of the approval of the Regional Director within thirty days from the date of receipt of the order in Form **No.INC.20** along with the fee;
  - Amended memorandum of association and articles of association of the company.
  - A declaration by the directors that the conditions, if any imposed by the Regional Director have been fully complied with.
- On receipt of the documents referred above, the Registrar shall register the documents and issue the fresh Certificate of Incorporation.

Conversion of opc to public company or private company –

It should be done according to RULE – 6 of Companies incorporation rules – 2014. For such conversion following conditions must be satisfied –

- If the paid-up capital of an OPC exceeds Rs 50, 00,000.
- If its annual turnover of the relevant period exceeds Rs 2,00,00,000 .
  Then it shall ceases to be entitled as a OPC. Minimum no. of members or directors has to be increased accordingly. Other provisions related to private/public company will be also applicable as the case may be.

The One Person Company shall alter its memorandum and articles by passing a resolution to give effect to the conversion and to make necessary changes incidental thereto. The One Person Company shall within period of sixty days from the date of applicability, give a notice to the Registrar in **Form No.INC.5** informing that it has ceased to be a One Person Company.

CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY –

A private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting.

- ❖ Before passing such resolution, the company shall obtain No objection in writing from members and creditors. The company shall file an application **in Form No.INC.6** for its conversion.
- ❖ The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT.14.**
- ❖ The directors of the company shall give a declaration by way of affidavit.

CHAPTER – 6
CONCEPT OF SHARE CAPITAL

MEANING OF THE TERM "CAPITAL –

In relation to a company limited by shares, the word "capital" means the share capital i.e., the capital in terms of rupees divided into specified number of shares of a fixed amount each. For e.g. share capital of a company is 1,00,000 which can be divided into 10,000 shares of `10 each or 1,000 shares of `100 each, whichever is feasible to the company.

In Company Law, the "Capital" is the share capital of a company, which is classified as:

- **Nominal, authorized or Registered Capital: -** "authorized capital" or "nominal capital" means such capital as is authorized by the memorandum of a company to be the maximum amount of share capital of the company.
- **Issued Capital: -** "issued capital" means such capital as the company issues from time to time for subscription. It is that part of the authorized or nominal capital which the company issues for the time being for public subscription and allotment.
- **Subscribed Capital: -** "subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company. It is that portion of the issued capital which has been subscribed for or taken up by the subscribers of shares in the company.
- **Called up Capital: -** "called-up capital" means such part of the capital, which has been called for payment. It is that portion of the subscribed capital which has been called up or demanded on the shares by the company.
- **Paid-up Share Capital: -** "paid-up share capital" or "share capital paid-up" means such aggregate amount of money credited as paid-up as is equivalent to the amount received as paid-up in respect of shares issued and also includes any amount credited as paid-up in respect of shares of the company.
- **Preference and Equity Share Capital: -**
  "equity share capital", with reference to any company limited by shares, means all share capital which is not preference share capital;
  "preference share capital", with reference to any company limited by shares, means that part of the issued share capital of the company which carries or would carry a preferential right over equity share capital with respect to—
  - payment of dividend,
  - repayment, in the case of a winding up etc.\

Nature of a Share –

- A share is a right to a specified amount of the share capital of a company, carrying with it certain rights and liabilities;
- A share is the interest of a shareholder in the company measured by a sum of money,

- A share is a right to participate in the profits made by a company,
- A share is not a sum of money but a bundle of rights and liabilities. These rights and liabilities are regulated by the articles of a company.

Section 43 of the Companies Act, 2013 permits a company limited by shares to issue two classes of shares,

(a) Equity share capital—

1. with voting rights; or with differential rights as to dividend, voting or
2. Otherwise in accordance with such rules as may be prescribed.

(b) Preference Share Capital.

PREFERENCE SHARES COMPARED WITH EQUITY SHARES –

Preference share capital	Equity share capital
Preference shares are entitled to a fixed rate of dividend.	The rate of dividend on equity shares depends upon the amount of profit available and the funds requirements of the company for future expansion etc.
Dividend on the preference shares is paid in preference to the equity shares.	The dividend on equity shares is paid only after the preference dividend has been paid.
In case of winding up, preference share holder get preference over equity share holders with regard to the payment of capital.	In case of winding up, equity share holder get payment of capital after the payment of capital to preference shareholders.
Dividend on preference share may be cumulative.	The dividend on equity shares is paid only after the preference dividend has been paid and it is not cumulative
A preference shareholder can vote only when his special rights as a preference shareholder are being varied	An equity shareholder can vote on all matters affecting the company.
No bonus shares/right shares are issued to preference shareholders.	A company may issue rights shares or bonus shares to the company's existing equity shareholders.
Redeemable preference shares may be redeemed by the company.	Equity shares cannot be redeemed except under a scheme involving reduction of capital or buy back of its own shares.
Voting right of a preference shareholders on a poll shall be in proportion to his share in the paid-up preference share capital of the company.	Voting right of an equity shareholders on a poll shall be in proportion to his share in the paid up equity share capital of the company.

A company may issue securities at a premium when it is able to sell them at a price above par or above nominal value. The Companies Act, 2013, does not stipulate any conditions or restrictions regulating the issue of securities by a company at a premium. However, the Companies Act does impose conditions regulating the utilization of the amount of premium collected on securities.

Utilization of Securities premium –

In accordance with the provisions of **Section 52(2)** of the Act, the securities premium can be utilized only for:

- Issuing fully paid bonus shares to members;
- Writing off the balance of the preliminary expenses of the company;
- Writing off commission paid or discount allowed, or the expenses incurred on issue of shares or debentures of the company;
- For providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- For the purchase of its own shares or other securities under section 68.

ISSUE OF SWEAT EQUITY SHARES –

According **to SECTION 2(88),** sweat equity shares mean equity shares issued by a company to its directors or employees at a discount or for consideration, other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Conditions for Issue of Sweat Equity Shares –

Section 54(1) provides that a company can issue sweat equity shares, of a class of shares already issued, if the following conditions are satisfied:

- The issue has been authorized by a **special resolution** passed by the company in the general meeting.
- As on the date of issue, at **least one year should have elapsed from the date on which the company had commenced business.**
- A company whose shares are listed on a recognized stock exchange issuing sweat equity shares should comply with the regulations made in this behalf by SEBI.
- A company whose shares are not so listed should issue sweat equity shares in compliance with the rules made in this behalf by the Central Government.
- The following are clearly specified in the resolution:
  (a) number of shares;
  (b) current market price;
  (c) consideration, if any; and

(d) class or classes of directors or employees to whom such equity shares are to be issued.

SHARES WITH DIFFERENTIAL VOTING RIGHTS –

Section 43 enables companies to issue a variety of equity shares with differential rights etc. Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 states the following conditions regarding shares with differential voting rights.

- The articles of association of the company authorizes the issue of shares with differential rights;
- Pass an **ordinary resolution at a general meeting** /When the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot ;
- The shares with differential rights **shall not exceed twenty-six percent** of the total post-issue paid up equity share capital.
- The **company having consistent track record of distributable profits for the last three years;**
- The company **has not defaulted in filing financial statements** and annual returns for **three financial years** immediately preceding the financial year.
- The company has **no subsisting default in the payment of a declared dividend** to its shareholders or repayment of its matured deposits or redemption of its preference shares or debentures.
- The company has not defaulted in payment of the dividend on preference shares or repayment of any term loan.
- The company **has not been penalized by Court or** Tribunal during the last three years of any offence under any law.

ISSUE AND REDEMPTION OF PREFERENCE SHARES –

Section 55. (1) states that no company limited by shares shall, after the commencement of this Act, issue any preference shares which are irredeemable. **Section 55(2)** further states that a company limited by shares may, if so authorized by its articles, issue preference shares which are liable to be redeemed within a period not exceeding twenty years from the date of their issue subject to such conditions as may be prescribed.

Type of business of company	Normal business	Company engaged in infrastructure business
Redemption period	20 years	30 years Subject to redeem 10% every year after expiry of 20 years

BONUS SHARES – section 63

A company may, if its Articles provide, capitalize its profits by issuing fully-paid bonus shares. The issue of bonus shares by a company is a common feature. When a company is prosperous and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. Members do not have to pay any amount for such shares. They are given free. The bonus shares allotted to the members do not represent taxable income in their hands.

Conditions for issue of Bonus Shares –

In terms of section 63(2), no company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless—

- It is authorized by its articles;
- It has, on the recommendation of the Board, been authorized in the general meeting of the company;
- It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- 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;

EMPLOYEE STOCK OPTION SCHEME –

As per **Section 2(37) of companies Act 2013,** "employee stock option" means the option given to the directors, officers or employees of the company or its holding company or subsidiary company or companies, if any, which gives such mentioned persons, the benefit or right to purchase or subscribe for, the shares of the company at a future date at a pre-determined price.

Any promoters, outsider or any Directors which holds more than 10% of shares in company, are not covered under this scheme. It is an open ended scheme or regular nature of scheme, perpetual scheme and continuous scheme.

1. It is required to pass a **Special Resolution** in general meeting to issue ESOS.
2. There is minimum **one year's vesting period** in ESOS.
3. The company offering such scheme is **free to determine lock-in period.**
4. If the **company issues more than 1% of its share capital to anyone under this scheme, then the same must be disclosed in General Meeting**.
5. The **compensation committee is established** to watch the ESOS.
6. Till the exercise of the scheme, there is no right of any voting or dividend in ESOS.
7. It is required to maintain a **Register of this scheme in form no. SH-6.**

8. Whenever the company allots the shares, now file the **return of allotment to RoC in e-form no. PAS – 3.**
9. **Deliver the share certificates to shareholders of ESOS within 2 months from such allotment.**
10. Now **inform to depositaries.**

EMPLOYEE STOCK PURCHASE SCHEME –

It is just like employee stock option scheme but the following points differs –

1. It is a close ended scheme, which is part of public issue.
2. It can be issued to outsiders.
3. There is a fixed lock-in period of 1 year.
4. It is required to pass a **Special Resolution** in general meeting to issue ESPS.
5. If the company issues **more than 1% of its share capital** to anyone under this scheme, then the same must be disclosed in General Meeting.
6. The compensation committee is established to watch the ESPS.
7. Till the exercise of the scheme, there is no right of any voting or dividend in ESPS.
8. It is required to maintain a Register of this scheme in form no**. SH-6.**
9. Whenever the company allots the shares, now file **the return of allotment to RoC in e-form no. PAS – 3.**
10. Deliver the share certificates to shareholders of ESPS within 2 months from such allotment.
11. Now inform to depositaries.

FURTHER ISSUE OF SHARES

Section 62 of the Companies Act provides for the issue of "**Rights Shares**" and states that whenever at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to the existing holders of equity shares in proportion to the paid-up share capital on their shares at the time of further issue by sending a letter of offer. For listed companies, the information as regards the quantum of such issue and the proportion in which rights shall be offered shall be supplied to the concerned Stock Exchanges in advance.

The company must give notice to each of the equity shareholders, giving him option to take the shares offered to him by the company. The shareholder must be informed of the number of shares he has opted to buy giving **him at least 15 days** but not **more than 30 days to decide**. The said notice shall be despatched through registered post or speed post or through **electronic mode to all the existing shareholders at least 3 days before the opening of the issue**. If the shareholder does not convey to the company his acceptance of the company's offer of further shares he shall be deemed to have declined the offer. Unless the articles of the company otherwise provide, the directors must state in the notice of offer of rights shares the fact that the **shareholder has also the right to renounce the offer in whole or in part, in favour of some other persons.**

SECTION 62(1)(C) ***deals with issue of shares to persons other than existing shareholders and provides that a company can issue further shares to persons other than existing shareholders either for cash or for a consideration other than cash, if —***

1. ***The company in General Meeting passes a special resolution to this effect; and***
2. ***The price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.***

Form	Purpose of the form
SH – 1	**Share certificate**
SH – 2	**Register of renewed and duplicate share certificate**
SH – 3	**Register of sweat equity share**
SH – 4	**Securities transfer form**
SH – 5	**Notice of transfer of partly paid securities**
SH – 6	**Register of employees stock option scheme**
SH – 7	**Notice to RoC of any alteration of share capital**
SH – 8	**Letter of offer**
SH – 9	**Declaration of solvency**
SH – 10	**Register of share or other securities buy - backed**
SH – 11	**Return in respect of buy – back of securities**
SH – 12	**Debenture trust – deed**
SH – 13	**Nomination form**
SH – 14	**Cancellation of variation of nomination**
SH – 15	**Certificate of compliance in respect of buy – back of securities**

CHAPTER – 7

ALTERATION OF SHARE CAPITAL

ALTERATION OF SHARE CAPITAL –

Section 61 of the Companies Act, 2013 provides that a company limited by shares or guarantee and having a share capital may, if so authorized by its articles, alter, by an ordinary resolution, its memorandum in the following ways:

- It may increase the authorized share capital by such amount as it thinks fit.
- It can issue new shares in the market, i.e. further issue of shares.
- It can consolidate its existing shares into larger denomination.
- It can sub-divide its existing shares into smaller denomination.
- It can convert all or any of its fully paid-up shares into stock or vice-versa.
- It may cancel shares which have not been taken up nor agreed to be taken by anyone and diminish the amount of shares capital by the amount so canceled.

And all other provisions as specified in the Act should be followed.

DIFFERENCE B/W SHARES AND STOCK –

	SHARES		STOCK
1.	Shares in physical form bear distinct numbers.	1.	Stocks are the consolidated value of share capital.
2.	Shares may or may not be fully paid-up.	2.	Stock is always fully paid-up.
3.	Shares have a nominal value.	3.	Stock does not have any nominal value.
4.	All shares are of equal denomination.	4.	Denomination of stocks varies.
5.	It is not possible to transfer shares into fraction.	5.	Stock is divisible into any amount required. Thus, it is possible to transfer even into fraction.
6.	Shares comes into existence before the stock and it is issued initially.	6.	Stock comes into existence after conversion of shares into stock and on conversion of shares into stock, the provisions of the Act governing the shares shall cease to apply to the share capital as it is converted into stock.

REDUCTION OF SHARE CAPITAL (SECTION 66) (SECTION 66 IS YET TO BE NOTIFIED) –

As per companies act – 1956 this is to be done because section 66 of the Companies Act -2013 is yet to be notified.

- Reduction of share capital means reduction of issued, paid-up, subscribed capital of the company.
- The reduction must be authorized in the articles of the company.
- Pass a special resolution in general meeting for reduction of share capital.
- It is required to get sanction of court/tribunal to complete the reduction of share-capital.

Reduction of share-capital can also be completed without sanction of court in following cases –

- Surrender of shares.
- Forfeiture of shares.
- Buy-back of shares.
- Redemption of preference share.
- Diminution of share-capital.

BUY – BACK OF SECURITIES – SECTION 68

Buy – back is to be done -

- To improve earnings per share; or
- For the defense mechanism of the company

SOURCES OF BUY BACK –

According to section 68(1) of the companies act – 2013, a company may purchase its own shares or other specified securities out of –

- Its free reserves;
- The securities premium A/c;
- The proceeds of any shares or other specified securities.

CONDITIONS FOR BUY BACK –

- The primary requirement is that the articles of association of the company should authorize buyback.
- **Board can authorize buy back up-to 10% equity capital and free reserves** in a resolution passed at the Board Meeting.

- **Shareholders can authorize buy back by special resolution up-to 25% of the total paid-up capital and free reserves** of the company and in a financial year, up-to 25% of total equity capital in that year.
- **More than 25% of paid-up share capital + free reserves can-not be buy backed.**
- There **must be 1 year gap between two consecutive buy back.**
- **All the shares or other specified securities for buy-back are to be fully paid-up.**
- After buy back the **debt: equity ratio should be 2:1.**
- The whole procedure of **buy back must be completed within 1 year from the date of passing of special resolution or board resolution** as the case may be.
- After completion of buy back **destroy the shares within 7 days,** which are buy backed.
- Now inform to the stock – exchange where the securities of the company is listed.
- File the letter of offer to the registrar of companies in form **SH – 8**, **within 30 days.**
- After completion of buy back the **company can-not issue same kind of shares till 6 months**.
- **Declaration of solvency by board of directors in e – form SH – 9** after passing a board resolution must be filed with the registrar of companies.
- File the **return of buy back to the registrar of companies in form SH – 11** and to the SEBI in form **SH – 15** duly signed by at-least 2 directors of the company.

PENALTY –

If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, in case of listed companies, the **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** of the company who is in default shall be punishable **with imprisonment for a term which may extend to three years or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.**

CIRCUMSTANCES PROHIBITS BUY-BACK (SECTION 70(1)

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 the company has defaulted in -
  - **Section 92** – filling of annual return.
  - **Section 123** – declaration of dividend.
  - **Section 127** – distribution of declared dividend.
  - **Section 129** – financial statements.
  - Repayment of deposits/ payment of interest/ redemption of preference shares/ redemption of debentures/ repayment of any loan.

DIFFERENCE IN ALTERATION OF SHARE CAPITAL AND REDUCTION OF SHARE CAPITAL –

The main point of distinction between alteration and reduction are as following –

ALTERATION OF SHARE CAPITAL		REDUCTION OF SHARE CAPITAL	
1.	Alteration of share capital is governed by the provisions of section 61 of the Companies Act, 2013.	1.	Reduction of share capital is governed by the provisions of section 66 of the Companies Act, 2013.
2.	Alteration of share capital is required to be done by ordinary resolution.	2.	Reduction of share capital is required to be done by special resolution.
3.	Alteration of share capital is not required to be confirmed by the Tribunal.	3.	Reduction of share capital is to be confirmed by the Tribunal.
4.	Alteration of share capital may be done in the following manner:- ➢ Increasing its nominal capital by issuing new shares ➢ Consolidating and dividing all or any of its share capital into shares of large denomination ➢ Converting fully paid up shares into stock or vice versa ➢ Sub dividing its shares or any of them into shares of smaller amount ➢ Canceling shares which have not been taken up and diminishing the amount of share capital by the amount of the shares so cancelled.	4.	Reduction of share capital may be done in the following manner: ➢ Extinguishing or reducing the liability of members in respect of the capital not paid-up ➢ Writing off or canceling any paid up capital which is in excess of the needs of the company ➢ Paying off any paid up share capital which is in excess of the needs of the company

CHAPTER – 8
PRIVATE PLACEMENT & PROSPECTUS

MEANING AND DEFINITION OF PROSPECTUS –

Section 2(70) of the Companies Act, 2013 defines a prospectus as "any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate."

According to section 23 (1) of the companies act 2013 a company may issue securities:-

- To public through prospectus;
- Through private placement;
- Through a right or bonus issue.

Section 23(2) again lays down that a private company may issue securities:-

- By way of right issue or bonus issue;
- Through private placement.

LIST OF IMPORTANT FORMS

FORM	PURPOSE OF FORM
PAS – 1	Advertisements giving details of notice of special resolution for varying the terms of any contract referred to in the prospectus or altering the objects for which the prospectus was issued
PAS – 2	Information memorandum
PAS – 3	Return of allotment
PAS – 4	Private placement offer - letter
PAS – 5	Record of a private – placement offer to be kept by the company

PRIVATE PLACEMENT –

Section 42(2), "private placement" means any offer of securities or invitation to subscribe securities to **a select group of persons** by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies the conditions specified in section 42.

- ❖ Private placement is not issued to outsiders.
- ❖ Private placement is issued to existing employees for subscription of securities.
- ❖ It is issued to selected group of persons but not more than specified limit.

- The company has to issue private – placement offer letter in **e- form PAS-4.**
- If a company wants to issue securities through private-placement then it is required to pass a Special Resolution for such issue.
- The securities should be allotted within 60 days from the date of receipt of application money.
- Money received shall be kept in a separate bank A/c in a scheduled bank.
- The offer-letter should be made to specifically addressing people.
- There should be no public advertisement for private placement.
- Return of allotment of securities along with details of subscribers, file to RoC in form **PAS-3.**
- Maintain a complete record of private-placement in form **PAS-5.**

If there is any contravene of the above mentioned provisions, then the promoters, director of company shall be liable to a penalty which may extent to the amount involved or 2 Crore, whichever is higher.

WHAT IS PUBLIC OFFER?

Section 23 states that, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

DEEMED PROSPECTUS

Section 25(1) states that when 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; and
- All enactments and rules of law as to the contents of prospectus, shall apply with the modifications specified in subsections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

MATTERS TO BE STATED IN THE PROSPECTUS

Section 26(1) states that every prospectus issued by or on behalf of a public company shall be dated and signed and shall state the information given below –

- Names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

- Dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;
- a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilized and unutilized monies out of the previous issue in the prescribed manner;
- Details about underwriting of the issue
- The consent in writing of the directors, the auditors, bankers to the issue, expert's opinion, if any, all the persons named in the prospectus and of such other persons, as may be prescribed;
- The authority for the issue and the details of the resolution passed therefor;
- Procedure and time schedule for allotment and issue of securities;
- Capital structure of the company in the prescribed manner;
- Main objects of public offer, terms of the present issue and such other particulars as may be prescribed;
- Main objects and present business of the company and its location, schedule of implementation of the project;
- Minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;
- Disclosures in such manner as may be prescribed about sources of promoter's contribution;
- Details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed.

TYPE OF PROSPECTUS –

There are various types of prospectus mentioned under the companies act, main type of prospectus are as following.

- **Red-herring prospectus.**
- **Shelf prospectus.**
- **Abridged prospectus.**
- **Deemed-prospectus.**

RED-HERRING PROSPECTUS-

Section 32 of the Act deals with 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.

Red herring prospectus is issued during book building process. Red herring prospectus contains either the floor price of securities offered or a price band along with the range within which the Bids can move. The applicants bid for the shares quoting the price and the quantity that they would like to bid at.

SHELF PROSPECTUS -

"Shelf Prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. It is normally issued for 1 year. Accordingly as per **Section 31—**

Information Memorandum to be filed before the issue of a second or subsequent offer of securities under the shelf prospectus in PAS-2 and file it with the registrar of companies.

ABRIDGED PROSPECTUS – section 2(1)

It is such as a short prospectus. It contains all the silent features of a prospectus. I accompanies the application form of public issue.

Where, there is no need to file abridged prospectus –

1. If a company does not issuing securities to public.
2. In case of underwriting agreement.
3. If the company is issuing shares to existing shareholders.
4. If the whole of work of company is performed by recognized stock-exchange.

GOLDEN RULE OR THE GOLDEN LEGACY –

It is the duty of those who issue the prospectus to be truthful in all respects.

This Golden Rule was ***pronounced by Kinderseley, V.C. in New Brunswick, etc., Co. v. Muggeridge*** and has come to be known as the "golden legacy". Public is invited to take shares on the faith of the representation contained in the prospectus. The public is at the mercy of company promoters. Everything must, therefore, be stated with strict and scrupulous accuracy. Nothing should be stated as a fact which is not so and no fact should be omitted. Everything stated should be as which is simply understandable by one person.

Where an untrue statement occurs in a prospectus, there may arise –

- Civil liability.
- Criminal liability.

Every person who is a director of the company at the time of the issue of the prospectus, every promoter of the company and every person, including an expert, who has authorized the issue of a prospectus, shall be liable.

REMEDIES FOR MISREPRESENTATION IN PROSPECTUS -

- The first remedy against the company is to rescind the contract.
- The second remedy against the company is to sue for damages for deceit.

Remedies against Directors or Promoters –

A person who subscribed for shares on the faith of a false prospectus may claim from directors or promoters:

1. Damages for fraudulent misrepresentation,
2. Compensation under Section 35 of the Act,
3. Damages for non-compliance with the requirements of Section 26 of the Act.

Criminal Liability for Mis-statements in Prospectus –

Section 447 provides that any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less **than six months but which may extend to ten years** and shall also be liable to fine which **shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud**.

However, where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

CHAPTER - 9

CREATION AND REGISTRATION OF CHARGES

DEFINITION OF A CHARGE -

A charge is a security given for securing loans or debentures by way of a mortgage on the assets of the company. A company, like a natural person, can offer security for its borrowings. Normally, the debentures and other borrowings of the company are secured by a charge on the assets of the company. Where property, both existing and future, is agreed to be made available as a security for the repayment of debt and creditors have a present right to have it made available, there is a charge created.
According to **Section 2(16)** of the Act, "charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

A charge on the property of the company as security for debts may be of the following kinds, namely:

- Fixed or specific charge;
- Floating charge.

A charge is called **FIXED OR SPECIFIC** *when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge e.g., land, building, or plant and machinery.*

A **FLOATING CHARGE**, *as a type of security, is peculiar to companies as borrowers. A floating charge is not attached to any definite property but covers property of a fluctuating type e.g., stock-in-trade and is thus necessarily equitable.*

Crystallization of Floating Charge -

A floating charge attaches to the company's property generally and remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right. A floating charge crystallizes and the security becomes fixed in the following cases:

- When the company goes into liquidation;
- When the company ceases to carry on its business;

- ❖ When the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged;
- ❖ On the happening of the event specified in the deed.

In the aforesaid circumstances, the floating charge is said to become fixed or to have crystallized. Until the charge crystallizes or attaches or becomes fixed, the company can deal with the property so charged in any manner it likes.

On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors.

Postponement of a Floating Charge

The floating charge is postponed in favour of the following persons if they act before the crystallization of the security:

- ❖ A landlord who distrains for rent;
- ❖ A creditor who obtains a garnishee order absolute;
- ❖ A judgement creditor who attaches goods of the company and gets them sold (But if the goods are not sold and the debenture holders take action in the meantime, the floating charge has priority);
- ❖ The employees of the company, as well as other preferential creditors in the event of winding-up of the company;
- ❖ The supplier of goods to the company under a hire-purchase agreement on terms that goods are to remain the property of the seller until they are paid for in full.

❖ **Postponement means the property gets free from floating charges.**

Form no.	Purpose of the form
CHG - 1	Application for registration of certain Creation / modification of charges. Other than related to debenture.
CHG - 2	Certificate of registration of charges.
CHG - 3	Certificate of registration of modification of charges.
CHG - 4	Intimation of satisfaction to registrar of companies.
CHG - 5	Issue of memorandum of satisfaction by registrar of companies.
CHG – 6	Notice of Appointment or cessation of receiver or manager.
CHG – 7	Register of charges.
CHG – 8	Application for condonation of delay to the Central Government.
CHG – 9	Application for Charges related to debentures.
CHG – 10	Application for condonation of delay to the Registrar of companies.

A floating charge remains afloat until a winding up commences, unless it has already crystallised through the intervention of the debenture holders or the creditors. Also, a floating charge is valid only against the unsecured creditors, whether in a winding- up or otherwise.

Difference between Mortgage and Charge

S. no.	MORTGAGE	CHARGES
1.	A mortgage is created by the act of the parties.	A charge may be created either through the act of parties or by operation of law.
2.	A mortgage requires registration under the Transfer of Property Act, 1882.	A charge created by operation of law does not require registration But a charge created by act of parties requires registration.
3.	A mortgage is for a fixed term.	The charge may be in perpetuity.
4.	A mortgage is a transfer of an interest in specific immovable property.	A charge only gives a right to receive payment out of a particular property.
5.	A mortgage is good against subsequent transferees.	A charge is good against subsequent transferees with notice.
6.	A simple mortgage carries personal liability unless excluded by express contract.	In case of charge, no personal liability is created. But where a charge is the result of a contract, there may be a personal remedy.
7.	A mortgage is a transfer of an interest in a specific immovable property.	There is no such transfer of interest in the case of a charge. Charge does not operate as transfer of an interest in the property and a transferee of the property gets the property free from the charge provided he purchases it for value without notice of the charge.

- **Section 77(1)** states that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, with the Registrar within thirty days of its creation.
- **Section 77(1)** states that the Registrar may on an application by the company in e-form **CHG – 10** allow registration of charge **within three hundred days** of creation or modification of charge on payment of additional fee.
- If company fails to register the charge even within **this period of three hundred days**, it may seek extension of time in accordance with **Section 87** from the Central Government in e-form **CHG- 8.**
- According to **Section 77(2)**, when a charge is registered with the Registrar, Registrar shall issue a **certificate of registration of charge in Form No.CHG-2** and for registration of **modification of charge in Form No.CHG-3** to the company and to the person in whose favour the charge is created.
- According to **section 82** read with the rules, the company shall give intimation to the Registrar of the payment or satisfaction in full of any charge within a period of thirty days from the date of such payment or satisfaction in **Form No.CHG-4** along with the fee.
- Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge in **Form No.CHG-5.**

- In accordance with **section 81** and the rules the Registrar of Companies shall maintain a register containing particulars of the charges registered in respect of every company. The particulars of charges maintained on the Ministry of Corporate Affairs portal (**www.mca.gov.in/MCA21**) shall be deemed to be the register of charges for the purposes of section 81 of the Act.
- **Section 84** provides that 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 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 of the making of the appointment, give notice of such appointment to the company and the Registrar.

Company's Register of Charges

Section 85 read with rule 10 provides that every company shall keep at its registered office a register of charges in **Form No. CHG.7** which shall include therein all charges and floating charges affecting any property or assets of the company or any of its undertakings, indicating in each case such particulars as may be prescribed.

All the entries in the register shall be authenticated by a director or the secretary of the company or any other person authorized by the Board for the purpose.

The register of charges shall be preserved permanently and the instrument creating a charge or modification thereon shall **be preserved for a period of eight years** from the date of satisfaction of charge by the company. A copy of the instrument creating the charge shall also be kept at the registered office of the company along with the register of charges.

CHAPTER – 10
Allotment of Securities And Issue of Certificates

SECURTIES

According to 2(81) of Companies Act, 2013 "securities" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.

As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956 "securities" include—

- shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- derivative / units or any other instrument issued by any collective investment scheme to the investors in such schemes;]
- Government securities;
- rights or interests in securities;

GENERAL PRINCIPLES REGARDING ALLOTMENT

"Allotment" of shares means the act of appropriation by the Board of directors of the company out of the previously un-appropriated capital of a company of a certain number of shares to persons who have made applications for shares.

The following general principles should be observed with regard to allotment of securities:

- The allotment should be made by proper authority, i.e. the Board Directors of the company, or a committee authorized to allot securities on behalf of the Board.
- Allotment of securities must be made within a reasonable time.
- The allotment should be absolute and unconditional.
- The allotment must be communicated.
- Allotment against application only
- Allotment should not be in contravention of any other law.

Provisions relating to allotment of securities – Companies Act 2013

- **Section 39(1)** states that no allotment of any securities of a company offered to the public for subscription shall be made unless the amount stated in the prospectus as the minimum amount has been subscribed = **90%.**
- Application money **should not be less than 5%** of the nominal value of the shares.

- If the stated minimum amount has not been subscribed within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by the Securities and Exchange Board, the amount so **received shall be returned within 15 days from the closure of the issue**. If any such money is not so repaid within such period the directors of the company who are officers in default shall jointly and severally be liable to repay that money with **interest at 15% P.A.**
- Whenever a company having a share capital makes any allotment of securities, it shall file with the Registrar a return of allotment in **Form PAS-3.**
- In case of any default, the company and its officer who is in default shall be liable to a penalty, for each default, of **1000 rupees for each day** during which such default continues **or rupees 100000, whichever is less.**

ISSUE OF SHARE CERTIFICATE –

In terms of Section 46(1) of the Act, a certificate under the common seal of the company is prima facie evidence of the title of the person to the shares specified therein. The certificate is the only documentary evidence of title in the possession of the shareholder. But it is not a warranty of title by the company issuing it.

The power to issue share certificate Is given to the board of directors of the company.

ISSUE OF SHARE CERTIFICATE	ISSUE OF RENEWED OR DUPLICATE SHARE CERTIFICATE
Pass board resolution	Renewal to be made only on surrender of old certificate
Letter of offer surrendered to company if the letter is lost or destroyed the board may impose reasonable terms	Company may charge fee for duplicate share certificate as the board decides but not exceeding rupees 50 per certificate.
Certificate shall be issued in **Form No. SH-1** and shall specify the name of person in whose favour the certificate is issued	Company shall not issue any duplicate share certificate in lieu of those lost or destroyed without the prior consent of Board
Certificate shall be issue under the common seal of the company	If the company is listed then the duplicate share **certificates shall be issued within 15 days and if the company is unlisted it shall issue the certificates in 3 months**
Particulars of shares certificates to be entered in the Register of Members.	The particulars of renewed and duplicate share certificate to be entered in **Form No. SH.2**
	The register to be kept at registered office of the company
The certificate shall be signed by – ❖ Two directors duly authorized by the board if the composition of board permits at least one of the aforesaid two directors shall be a person other than managing or whole time director ❖ The secretary or any person authorized by the board	❖ On fraudulent issue the company shall be punishable with: fine which shall not be less than five times the face value of of shares involved which may extend to ten times ❖ Officer in default shall be liable under **section 447**

Calls -

A company issuing shares to its members may call the money due on shares at intervals depending upon the requirements for funds for implementing the project and the shareholders also prefer to pay the nominal value on their shares in installments as and when demanded by the company.

- **The power to make calls is exercised by the Board in its meeting by means of a board resolution [Section 179(3) (a)].**
- Given **14 days prior notice** to the shareholders regarding the call money.
- There **should be 2 months gap between two calls.**
- **At once only 1/4TH of the nominal value of shares can be called.**
- If some persons had taken shares jointly, they will be personally liable to call.
- The all calls made should be bona-fide to the company.
- The board of **directors can postpone or revoke the call by passing a board resolution at board meeting.**
- If any-one defaulted in the payment of a valid call, there will be no voting rights to such defaulter.
- In case the call is not paid at time, interest will be charged or it can be forfeited.

Forfeiture of Shares –

Forfeiture of shares means taking back of shares by the company from the shareholders. If the shareholder makes default in payment of calls on shares, then the company can use the option of forfeiting the shares. For a valid forfeiture, satisfaction of following conditions is necessary:

- Articles of Association must authorize the forfeiture of shares.
- Article 30 of the Table F provides that if the defaulting shareholder does not pay the amount within the specified time as required by the notice, the directors may pass a board resolution forfeiting the shares.
- Before the shares of a member are forfeited, a proper notice to that effect must have been served. Regulation 29 of Table F provides that a notice shall name a further day (not less than 14 days from the date of service of the notice) on or before which the payment is to be made.
- Power of forfeiture must be exercised bona fide and for the benefit of the company.

The forfeited shares can be reissued to anyone. In case, the defaulting shareholder approaches the Board to cancel the forfeiture, the Board is empowered to cancel such forfeiture and claim the due amount with interest. Where the forfeited shares are re-issued, the new shareholders will not only be liable for the balance amount remaining on the shares but he will also not be entitled to voting rights so long as calls payable by the original shareholder remain unpaid, if the company's articles so provide, as stated in Section 106.

Surrender of shares –

A company cannot accept a surrender of its shares "as every surrender of shares, whether fully paid-up or not involves a reduction of capital which is unlawful...forfeiture is a statutory exception and is the only exception"**. [Bellerby v. Rowland and Marwood's S.S. Co. Ltd., (1902) 2 Ch 14].**

But a surrender may be dealt directing that the shares be held in the name of a nominee as trustee for the company.

However, a surrender can be accepted in circumstances absolutely parallel to the requirements of a forfeiture, the only difference being that instead of going to the length of the formalities of a forfeiture, the company accepts in good faith in its own interest the shares which the shareholder is voluntarily surrendering. The other advantage to the company is that the shareholder becomes estopped from questioning the validity.

[**Collector of Moradabad v. Equity Insurance Co. Ltd., AIR 1948 Oudh 197].**

CHAPTER – 11

MEMBERSHIP IN A COMPANY

A company is composed of members, though it has its own separate legal entity. The members of a company are the persons who, for the time being, constitute the company, as a corporate entity. In **Herdilia Unimers Ltd. v. Renu Jain [1995] 4 Comp. LJ. 45 (Raj.),** it was held that the moment the shares were allotted and share certificate signed and the name entered in the register of members, the allottee became the shareholder, irrespective of whether the allottee received the shares or not.

DEFINITION OF 'MEMBER

According to **Section 2(55)** of the Companies Act, 2013:

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

MODES OF ACQUIRING MEMBERSHIP

As per Section 2(55) of the Companies Act, 2013, a person may acquire the membership of a company:

- By subscribing to the Memorandum of Association (deemed agreement); or
- By agreeing in writing to become a member:
    - By making an application to the company for allotment of shares; or
    - By executing an instrument of transfer of shares as transferee; or
    - By consenting to the transfer of share of a deceased member in his name; or
    - By acquiescence or estoppel.
- By holding shares of a company and whose name is entered as beneficial owner in the records of a depository (Under the Depositories Act, 1996),

And on his name being entered in the register of members of company. Also every such person holding shares of the company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be the member of the concerned company.

WHO MAY BECOME MEMBER –

Subject to the Memorandum and Articles, any Sui juris (a person who is competent to contract) except the company itself, can become a member of a company.

- ❖ A company is a legal person and so is competent to contract. Therefore, it can become a member of any other company, but some exceptional cases are given below in which it can-not be said to be a member –
  - ☞ Where the subsidiary company holds such shares as a trustee; or
  - ☞ Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company; or
  - ☞ Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company.
- ❖ Limited Liability Partnership, being an incorporated body under the statute, can become a member of a company.
- ❖ A non-profit making company licensed under Section 8 of the Companies Act, 2013 can become a member of another company if it is authorised by its Memorandum of Association.
- ❖ An insolvent may be a member of a company as long as he is on the register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver.
- ❖ An agreement in writing for a minor to become a member may be signed on behalf of the minor by his lawful guardian.
- ❖ A pawnee cannot be treated as the holder of the shares pledged in his favour, and the pawner continues to be a member and can exercise the rights of a member.
- ❖ A receiver whose name is not entered in the register of members cannot exercise any of the membership rights.
- ❖ A trade union registered under the Trade Union Act, can be registered as a member and can hold shares in a company in its own corporate name.
- ❖ A person who takes shares in the name of a fictitious person, becomes liable as a member.
- ❖ A foreigner may take shares in an Indian company and become a member subject to the provisions of the Foreign Exchange Management Act, 1999.

MINIMUM NUMBER OF MEMBERS

Section 3(1) of the Companies Act, 2013 provides that a company may be formed for any lawful purpose by -

- ❖ Seven or more persons, Where the company to be formed is to be a public company;
- ❖ Two or more persons, Where the company to be formed is to be a private company;

- one person, Where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration.

CESSATION OF MEMBERSHIP

A person ceases to be a member of a company when his name is removed from its register of members, which may occur in any of the following situations:

- He transfers his shares to another person, the transfer is registered by the company and his name is removed from the register of members;
- His shares are forfeited;
- His shares are sold by the company to enforce a lien;
- He dies; (his estate, however, remains liable for calls);
- He is adjudged insolvent and the Official Assignee disclaims his shares;
- His redeemable preference shares are redeemed;
- He rescinds the contract of membership on the ground of fraud or misrepresentation or a genuine mistake;
- His shares are purchased either by another member or by the company itself under an order of the Tribunal under Section 242 of the Companies Act, 2013;
- The member is a company which is being wound-up in India, and the liquidator disclaims the shares;
- The company is wound up.

PERSONATION AND PENALTY

Section 57 of the Companies Act, 2013 provides for penalty for personation of a shareholder.

"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 thereby 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, 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 **with fine** which shall not be less than one lakh rupees but which may extend to five lakh rupees."

REGISTER OF MEMBERS

Section 88 of the Companies Act, 2013 lays down:

- Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—
  - Register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
  - Register of debenture-holders; and
  - Register of any other security holders.
- The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.
- Foreign register.
- If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh 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."
- Registers (including Register of members) and copies of Annual Return to be kept at the registered office. Such 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.

Preservation of registers

- **The register of members** along with the index shall be **preserved permanently** and shall be kept in the custody of the company secretary of the company or any other person authorized by the Board for such purpose; and
- **The register of debenture holders** or any other security holders along with the index shall be **preserved for a period of eight years** from the date of redemption of debentures or securities, as the case may be.
- **Copies of all annual returns prepared under section 92** and copies of all certificates and documents required to be annexed thereto **shall be preserved for a period of eight years from the date of filing with the Registrar.**
- **The foreign register of members shall be preserved permanently**, unless it is discontinued and all the entries are transferred to any other foreign register or to the principal register.

Inspection of Registers

According to **section 94(2)** states that the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be specified in the articles of association of the company but not exceeding rupees 50 for each inspection.

As per Section 94(3) any such member, debenture-holder, other security holder or beneficial owner or any other person may—

- ☞ Take extracts from any register, or index or return without payment of any fee; or
- ☞ Require a copy of any such register or entries therein or return on payment of such fees as may be specified in the Articles of Association of the company but not exceeding Rs 10 for each page.

RIGHTS OF MEMBERS

When once a person becomes a member he is entitled to exercise all the rights of a member until he ceases to be a member in accordance with the provisions of the Act. These rights are derived by virtue of the membership contract between the company and the member and the general law. Some of these rights can be exercised by him individually and others along with other members unless member himself holds shares equivalent to the minimum holding prescribed under the various provisions of the Companies Act, 2013.

INDIVIDUAL RIGHTS:-

Members of a company enjoy certain rights in their individual capacity, which they can enforce individually. These rights are contractual rights and cannot be taken away except with the written consent of the member concerned. These rights can be categorized as under:

- ❖ Right to receive copies of –
  - ☞ Abridged financial statement and auditor's report in the case of a listed company (Section 136).
  - ☞ Report of the Cost Auditor, if so directed by the Government.
  - ☞ Notices of the general meetings of the company (Sections 101-102).
- ❖ Right to inspect –
  - ☞ Statutory registers/returns.
  - ☞ Debenture trust deed (Section 71);
  - ☞ Register of Charges and instrument of charges (Section 85 & 87);
  - ☞ Contract of employment with Managing or Whole-time directors.
  - ☞ Shareholders' Minutes Book (Section 119);

- ☞ Register of Contracts.
- ☞ Register of directors and key managerial personnel.

❖ Right to attend meetings of the shareholders and exercise voting rights at these meetings either personally or through proxy (Sections 96, 100, 105 and 107).

❖ Other rights as defined in the act, such as –

- ☞ Collective membership rights.
- ☞ Voting rights of members.
- ☞ Shareholders pre-emptive rights with regard to further issue of share-capital.

❖ Nomination by security holders (section 72).

LIABILITY OF MEMBERS

The liability of a member depends on the nature of the company. If the company is registered with unlimited liability, every member is liable in full for all the debts of the company contracted during the period of his membership. Where the company is limited by guarantee, each member will be bound to contribute in the event of winding up a sum specified in the liability clause of the memorandum of association. In case of company limited by shares, each member is bound to contribute the full nominal value of shares and his liability ends there. If before the full nominal value of the shares is paid, the company goes into liquidation, the member becomes liable as contributory to pay the balance when called upon to pay, by the liquidator of the company.

CHAPTER – 12
TRANSFER AND TRANSMISSION OF SECURITIES

TRANSFERABILITY-

One of the most important characteristics of a company is that its shares are transferable as a Movable property, in the manner provided by the articles of the company. Section 56 of the companies act deals with transfer and transmission of securities.

FORMALITIES FOR TRANSFER OF SHARES

- **As per Section 56(1) of the Companies Act, 2013**, a company, shall not register a transfer of securities of, the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or transferee within a period of sixty days from the date of execution along with the certificate relating to the securities, or if no such certificate is in existence, then along with the related letter of allotment of securities.
- An instrument of transfer of securities held in physical form shall be in **Form No.SH.4.**
- A company shall not register a transfer of partly paid shares, unless the company has given a notice in **Form No. SH.5** to the transferee and the transferee has given no objection to the transfer within two weeks from the date of receipt of notice.
- **Proviso to Section 56(4)** states that where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

REGISTRATION OF TRANSFER OF SHARES

Whenever the securities are transferred, it must be registered by the company. If it is registered then the certificate of registration should be sent to the transferee within 1 months.

If the public company denied to register such transfer, then –

- If notice is not given, then within 60 days he can go to the court.
- If notice is given, then within 30 days he can go to court.

If the private company denied to register such transfer, then –

- If notice is not given, then within 90 days he can go to the court.
- If notice is given, then within 60 days he can go to court.

PENALTY –
When any default is made in complying with the provisions, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

TRANSMISSION OF SECURITIES

As per section 56(2), a company shall have power to register on receipt of an application or intimation of transmission of shares. **Secretarial Standard SS-6** on transmission of shares and debentures by ICSI provides for the procedure to be followed for transmission.

In case any casualty arises and the shareholder died, then his shares will be transferred to the nominee and such transfer is called as transmission of securities.

It is arisen by the law. There is no stamp duty payable on transmission and it does not requires to prepare any transfer-deed.

REGISTRATION – Nominee will go to company for registration of transmitted securities. If the company refused to register then –

If the public company denied to register such transfer, then –

- If notice is not given, then within 90 days he can go to the court.
- If notice is given, then within 60 days he can go to court.

If the private company denied to register such transfer, then –

- If notice is not given, then within 60 days he can go to the court.
- If notice is given, then within 30 days he can go to court.

In case of transfer of debentures, a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and the transferee should be delivered to the company by the transferor or transferee within a period of sixty days from the date of execution along with the certificate relating to the debentures or if no such certificate is in existence with the letter of allotment of debentures.

TRANSFER OF SHARES TO MINOR

As we know that a minor is not capable to entering into any contract, so it not possible to transfer the securities to a minor but on behalf of his guardian, it is possible to transfer shares to the minor but he will not be entitled as a member of the company. The articles of association of a company cannot impose a blanket ban prohibiting transfer of shares in favour of a minor, as such a restriction is unreasonable and not sustainable.

DISTINCTION BETWEEN TRANSFER AND TRANSMISSION

TRANSFER OF SECURITIES	TRANSMISSION OF SECURITIES
❖ **Transfer takes place by a voluntary act of the transferor.**	❖ **Transmission is the result of the operation of law.**
❖ **An instrument of transfer is required in case of transfer.**	❖ **No instrument of transfer is required in case of transmission.**
❖ **Transfer is a normal course of transferring property.**	❖ **Transmission takes place on death or insolvency of a holder of securities.**
❖ **Transfer of securities is generally made for some consideration.**	❖ **Transmission of securities is generally made without any consideration.**
❖ **Stamp duty is payable on transfer of securities by a holder of securities.**	❖ **No stamp duty is payable on transmission of securities.**

BLANK TRANSFER

When a shareholder signs the transfer form without filling in the name of the transferee and the date of execution and hands it over with the share certificate to the transferee thereby enabling the transferee to deal with the shares, he is said to have made a transfer 'in blank' or a 'blank transfer'. Shares are usually transferred in blank when a shareholder borrows money on its security, e.g., by pledging the shares; the pledgor make default in payment of the amount due at the time appointed for repayment, the pledgee or the holder of the share certificate and the blank transfer instrument has implied power to fill up the blanks in the instrument by inserting the date and his own name as transferee and to get himself registered as a member of the company. The pledgor is under an implied obligation not to prevent or delay such registration. This right to get himself registered as a member is available to the transferee even after the death of the transferor [**In Re. Bengal Silk Mills Co. Ltd., (1942) Com Cases 206**].

FORGED TRANSFER

It may happen that a forged instrument of transfer is presented to the company for registration. In order to avoid the consequences which will follow a forged transfer, companies normally write to the transferor about the lodgement of the transfer instrument so that he can object if he wishes. The company informs him that if no objection is made by him before a day specified in the notice, it would register the transfer.

A forged transfer is a nullity and, therefore, the original owner of the shares continues to be the shareholder and the company is bound to restore his name on the register of members ***[People's Ins. Co. v. Wood and Co., 1961 (31) Com Cases 61].***

CHAPTER – 13
INSTITUTION OF DIRECTORS

With all the strapping of a legal person, a company is unlike a living human being. It has no physical existence. It has no eyes to see, no ears to hear, no hands to sign and execute documents, no brain to think and no nerves to communicate among its various limbs. In order to enable a company to live and to achieve its objects as enshrined in the objects clause of its Memorandum of Association, it has necessarily to depend upon some agency, known as Board of directors. The Board of directors of a company is a nucleus, selected according to the procedure prescribed in the Act and the Articles of Association. The directors of a company are its eyes, ears, brain, hands, nerves and other essential limbs, upon whose efficient functioning depends the success of the company. The directors formulate policies and establish organisational set up for implementing those policies and to achieve the objectives as contained in the Memorandum, muster resources for achieving the company objectives and control, guide, direct and manage the affairs of the company.

MINIMUM/MAXIMUM NUMBER OF DIRECTORS IN A COMPANY- SECTION 149(1)

Minimum number of directors-

Public Company-3 Directors

Private Company - 2 directors

One Person Company (OPC) - 1 Directors.

Maximum Number of Director is 15, which can be increased by passing a special Resolution.

NUMBER OF DIRECTORSHIPS- SECTION 165

Maximum number of directorships, including any alternate directorship a person can hold is **20.** It has come with a sublimit that number of directorships in public companies/ private companies that are either holding or subsidiary company of a public company shall be limited to **10.** Further the members of a company may restrict abovementioned limit by passing a special resolution.

SECTION 149 (3) of the Act has provided for residence of a director in India as a compulsory i.e. every company shall have at least one director who has stayed in India for a total period of not less than 182 days in the previous calendar year.

WOMAN DIRECTOR

Second proviso to section 149 provides following class or classes of companies in which, shall have at least 1 women director.

1. Every listed company; or
2. Every other public company having –

- Turnover or 300 crore or more , or
- Paid-up share capital of 100 crore or more.

Director elected by Small Shareholders- Section 151

"Small shareholder" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed. A listed company, May upon notice of not less than 1000 or one-tenth of the total number of small shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders. A listed company may sue Moto opt to have a director representing small shareholders.

The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a signed notice of their intention with the company at least 14 days before the meeting specifying the their details and proposed director's details. The details include name, address, shares held and folio number etc. He may be removed at any time and can hold the office up to 3 years.

APPOINTMENT OF FIRST DIRECTORS – SECTION 152

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed. In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed

- Except as provided in the Act, every director shall be appointed by the company in general meeting.
- Director Identification Number is compulsory for appointment of director of a company.
- A person appointed as a director shall on or before the appointment give his consent to hold the office of director in physical form DIR-2 i.e. Consent to act as a director of a company.
- Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee.
- Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting.

NOTE - At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place. If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting,

APPOINTMENT OF ADDITIONAL DIRECTOR- SECTION 161 (1)

The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only up to the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

APPOINTMENT OF ALTERNATE DIRECTOR- SECTION 161 (2)

The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India. If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors. An alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India. He is to be appointed in the general meeting by passing a special resolution.

APPOINTMENT OF DIRECTORS BY NOMINATION SECTION 161(3)

It states that subject to the articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company. It is also called as appointment by third parties. Whenever a company takes capital from third parties like bank, FI etc. and the third parties think that the company is misappropriating their capital, they can appoint a directors on their own expenses, who will hold the office up to 3 years.

APPOINTMENT OF DIRECTORS IN CAUSAL VACANCY- SECTION 161 (4)

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of directors can appoint a director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

APPOINTMENT OF DIRECTORS TO BE VOTED INDIVIDUALLY- SECTION 162 (1)

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

Proportional representation for appointment of directors- Section 163

The articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in subsection (4) of section 161.

RIGHT OF PERSONS OTHER THAN RETIRING DIRECTORS TO STAND FOR DIRECTORSHIP- SECTION 160

A person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than 25% of total valid votes cast either on show of hands or on poll on such resolution.

DIRECTOR IDENTIFICATION NUMBER (DIN)

Procedure for application for allotment of DIN - Section 153 & Rule 9 and Procedure for Allotment of DIN- Section 154 and Rule 10.

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

Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital Signature Certificate and shall be verified digitally by -:

- A chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or
- A company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed a director;

On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode the provisional DIN shall be generated by the system automatically which shall not be utilized till the DIN is confirmed by the Central Government. The Director Identification Number so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

First of all a provisional DIN is allotted and if there is any wrong details then it should be removed within 15 days by applying to the authority.

The Competent Authority (Central Government/RD (North),Noida/ Authorised Officer by the RD) may, upon being satisfied on verification of particulars or documentary proof attached with the application received from any person, cancel or deactivate the DIN in certain cases.

Intimation of change in particulars of Director to be given to the Central Government = DIR-6.

Verification of applicant for change in DIN particulars = DIR-7.

If a company fails to furnish Director Identification Number under section 157 (1), before the expiry of the 270 days period from the date by which it should have been furnished with additional fee, the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000 and every officer of the company who is in default shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs. 1,00,000.

STEPS TO OBTAIN DIN NO. -

- Made application for the allotment of DIN through the portal on the website of the MCA in DIR – 3
- The form must be digitally signed by the practicing professional.
- After processing the application, system shall automatically generate a Provisional DIN.
- When Provisional DIN has been generated Central Government shall process the application received for allotment of DIN, decide on the approval or rejection.

- If Central Government, on examination, finds any defects or incompleteness. Then it may intimate such defects by placing it on website.
- And resubmit the application after rectify the defects within 15 days.
- In case of the approval by way of letter by post or electronically within a period of 1 month.
- Intimation of DIN by every director to the company within 1 month of the receipt of DIN.
- Company's duty to inform the registrar within 15 days of receipt of intimation by director.

DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR - SECTION 164

A person shall not be eligible for appointment as a director of a company, if —

- He is of unsound mind and stands so declared by a competent court;
- He is an undischarged insolvent;
- He has applied to be adjudicated as an insolvent and his application is pending;
- He has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence.
  If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;
- An order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force;
- He has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;
- He has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or
- He has not got the DIN.

DUTIES OF DIRECTORS- SECTION 166

For the first time, duties of directors have been defined in the Act. A director of a company shall –

- Act in accordance with the articles of the company.

- ☞ Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
- ☞ Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- ☞ Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- ☞ Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- ☞ Not assign his office and any assignment so made shall be void.
- ☞ If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000.

VACATION OF OFFICE OF DIRECTOR- SECTION 167

The office of a director shall become vacant in case —

- ☞ He incurs any of the disqualifications specified in section 164;
- ☞ He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- ☞ He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- ☞ He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested
- ☞ He becomes disqualified by an order of a court or the Tribunal;
- ☞ He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months; Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;
- ☞ He is removed in pursuance of the provisions of this Act;

RESIGNATION OF DIRECTOR- SECTION 168 & RULE 15, 16

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website. The director shall also forward a copy of resignation along with detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation. The notice shall become effective from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

REMOVAL OF DIRECTORS- SECTION 169

A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution. A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Form no.	Purpose of the form as per the Companies Act - 2013
DIR – 1	Application for inclusion of name in the databank of independent director
DIR – 2	Consent to act as director of the company
DIR – 3	Application for allotment of DIN No.
DIR – 4	Verification of application for allotment of DIN No.
DIR – 5	Application for surrender of DIN No.
DIR – 6	Intimation of change in particulars of director to be given to the central government
DIR – 7	Verification of application for change in DIN particulars
DIR – 8	Intimation by director
DIR – 9	Report by company to registrar
DIR – 10	Form of applicant for removal of his disqualification of directors
DIR – 11	Notice of resignation of directors to the registrar
DIR – 12	Particulars of appointment of director and KMP

CHAPTER – 14
INDEPENDENT DIRECTOR

Section 149(6) gives the definition of Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director,-

- Who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
- Who is or was not a promoter of the company or its holding, subsidiary or associate company;
- Who is not related to promoters or directors in the company, its holding, subsidiary or associate company;
- Who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year.
- Who or whose relatives does not hold any position in the company and does not acquire any securities of the company.
- Who does not holds together with his relatives two per cent or more of the total voting power of the company.
- Who possesses such other qualifications as may be prescribed.

Section 149(4) provides that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.
Provided that the following class or classes of companies shall have at least two directors as independent directors –

- The Public Companies having **paid up share capital of ten crore rupees or more**; or
- The Public Companies having **turnover of one hundred crore rupees or more**; or
- The Public Companies which have, in aggregate, **outstanding loans, debentures and deposits, exceeding fifty crore rupees.**

According to section 150 (1) of the Act, independent directors may be selected from a data bank of eligible and willing persons maintained by the agency (Any body, institute or association as may be authorised by Central Government). Such agency shall put data bank of independent directors on the website of Ministry of Corporate Affairs or any other notified website. Company must exercise due diligence before selecting a person from the data bank referred to above, as an independent director.
This section further stipulates that the appointment of independent directors has to be approved by members in a General meeting and the explanatory statement annexed to the notice must indicate justification for such appointment. Any person who desires to get his name included in the data bank of independent directors shall make an application to the

agency **in Form DIR-1.** The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.

CODE FOR INDEPENDENT DIRECTORS

Section 149 (8) of the Act prescribes that the company and independent directors shall abide by the **provisions specified in Schedule IV regarding code for independent directors**. It is a guide to professional conduct for independent directors.

Code of Conduct includes

- Guidelines of professional conduct,
- Role and functions, duties,
- Manner of appointment, re-appointment,
- Resignation or removal,
- Separate meetings,
- Evaluation mechanism.

Section 149(10) provides *that subject to the provisions of section 152(Appointment of Directors), an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.*
Section 149(11) states that without contravening the section 149(10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director.

APPOINTMENT OF INDEPENDENT DIRECTOR

The power to appoint the independent director in a company is given or authorized with the shareholders of that company, for such appointment it is required to pass an ordinary resolution at the general meeting. Such person will hold office for 5 year and after 5 year to reappoint it is required to pass a special resolution at the general meeting of the company. The appointment of independent director shall be formalized trough a letter of appointment which should contain –

- The term of appointment.
- The expectations of board of director from him.
- The fiduciary duties of such person.
- Provisions of directorships and officers.
- The list of action which he should not conduct.
- The other conditions of appointment.

Chapter – 15
Board and its powers

MEETINGS OF THE BOARD: - SECTION 173

Every company has mandatory to held board meetings. Whenever a company is incorporated, within 30 days the 1ST board meeting must be held. There shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings.

In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days.

MATTERS NOT TO BE DEALT WITH IN A MEETING THROUGH VIDEO CONFERENCING OR OTHER AUDIO VISUAL MEANS

Rule 4 prescribe restriction on following matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means:

- The approval of the annual financial statements;
- The approval of the board's report;
- The approval of the prospectus;
- The audit committee meetings for consideration of accounts; and
- The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Every officer of the company who is duty bound to give notice under this section if fails to do so shall be liable to a penalty of twenty five thousand rupees.

Quorum for Board Meetings: Section 174

One third of the total strength of two directors whichever is lower is the quorum of the meeting.

If due to resignations or removal of director(s), the number of directors of the company is reduced below the quorum as fixed by the Articles of Association of the company, then, the continuing Directors may act for the purpose of increasing the number of Directors to that required for the quorum or for summoning a general meeting of the Company. It shall not act for any other purpose.

For the purpose of determining the quorum, the participation by a director through Video Conferencing or other audio visual means shall also be counted. The meeting shall be adjourned due to want of quorum, unless the articles provide shall be held to the same day at the same time and place in the next week or if the day is National Holiday, the next working day at the same time and place.

Passing of Resolution by Circulation: Section 175

A company may pass the resolutions through circulation. The resolution in draft form together with the necessary papers may be circulated to the directors or members of committee at their address registered with the company in India or through electronic means which may include e-mail or fax.
The said resolution must be passed by majority of directors or members entitled to vote. If more than one third of directors require that the resolution must be decided at the meeting, the chairperson shall put the resolution to be decided at the meeting.

All acts done by directors shall be valid notwithstanding that it is subsequently noticed that his appointment was invalid by reason of any defect or disqualifications or had terminated by virtue of the provisions of Companies Act or the articles of the company.

SECTION 177: AUDIT COMMITTEE

The Act has enlarged the responsibilities of auditors to include monitoring of auditors' independence, evaluation of their performance, approval of modification of related-party transactions, scrutiny of loans and investments, valuation of assets and evaluation of internal controls and risk management. They have to establish a vigil mechanism and protection for any whistle-blower. The members must be able to understand financial statements and have a majority of Independent Directors. Large companies must mandatorily have professional internal auditors.

The requirement of constitution of Audit Committee has been limited to :

1. Every listed Companies; or
2. The following class of companies –

- All public companies with a paid up capital of ten crore rupees or more;
- All public companies having turnover of one hundred crore rupees or more;
- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

- **The Committee shall comprise of minimum 3 directors with majority of the directors being Independent Directors.**
- The audit committee hold the authority to investigate into matters or referred by the Board and have the powers to obtain professional advice from external sources and have full access to records of the company.

- In addition to the auditor, the KMP shall also have a right to be heard in the meetings of the Audit Committee.
- All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- The Chairman of the Audit Committee shall be an independent director;
- The Company Secretary shall act as the secretary to the committee.

The audit committee is now mentioned in SEBI(LODR) REGULATIONS – 2015 under regulation – 18

The audit committee should meet at least four times in a year and not more than 120 days shall elapse between two meetings.

The audit committee shall have powers, which should include the following:

- *To investigate any activity within its terms of reference.*
- *To seek information from any employee.*
- *To obtain outside legal or other professional advice.*
- *To secure attendance of outsiders with relevant expertise, if it considers necessary*

Nomination and Remuneration committee

Section 178(1) mandates all the listed company and such other class or classes, as may be prescribed to have nomination and Remuneration committee.

The following class of companies shall have constitute Nomination and Remuneration Committee:-

- All public companies with a paid up capital of ten crore rupees or more;
- All public companies having turnover of one hundred crore rupees or more;
- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Section 178(4) The board's Report shall disclose such policy according to which the Nomination and Remuneration Committee ensure that –

- The level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully.
- Relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and

- Remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goal.
- **Role and responsibilities of COMMITTEE-**
  - Identify the person who is qualified to become director.
  - Recommend the board relating to appointment and removal of any director.
  - Evaluation of every director's performance.
  - Formulation of parameters for determine qualification and independence of director.
- The nomination and remuneration committee shall comprised of 3 non-executive director out of which not less than 50% shall be independent director.

NOMINATION AND REMUNERATION CMMITTE UNDER SEBI (LODR) 2015

The regulation 19 of SEBI (LODR) regulations 2015 is applicable to listed companies only. As per **regulation 19** –

1. The board of director shall constitute a N/R committee as following –
   - The committee shall consist of at least 3 director.
   - All the director of the committee shall be non – executive director.
   - At least 50% shall be independent director.
2. The chairman of the N/R committee shall be an independent director.
3. The chairman will attend the AGM and answerable to the shareholders query.

The Board of directors of following companies shall constitute Nomination and Remuneration Committee of the Board :

1. *Every listed Companies; or*
2. *The following class of companies –*
   - *All public companies with a paid up capital of ten crore rupees or more;*
   - *All public companies having turnover of one hundred crore rupees or more;*
   - *All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.*

CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

THE PROVISIONS OF THE SECTION MAY BE SUMMARIZED AS UNDER:

1. The Section applies to the following classes of companies during any financial year:
   - Companies having Net Worth of rupees five hundred crore or more;
   - Companies having turnover of rupees one thousand crore or more;
   - Companies having Net Profit of rupees five crore or more

2. The companies specified above shall constitute a Corporate Social Responsibility Committee (CSR Committee) of the Board.
3. The CSR Committee shall **consist of three or more Directors**, out of which at least one Director shall be an Independent Director.
4. After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.
5. The contents of the Policy shall be disclosed in the Board's report.
6. It shall also be placed on the Company's website, if any, in a manner to be prescribed by the Central Government.
7. The Board shall ensure that the activities as are included in the CSR Policy (from the activities as specified in Schedule VII) are undertaken by the Company.

The eligible companies are required to spend in every financial year, at least two per cent of the Average Net Profits of the Company made during the three immediately preceding financial years in pursuance of its CSR Policy. For this purpose, "Average Net Profit" shall be calculated in accordance with the provisions of Section 198 of the Companies Act, 2013.

The amount of CSR fund to be utilized in –

The company shall prefer local areas and areas around it operates. If the company fails to spend the amount then report of reasons shall be specified by board of directors for not spending the amount of CSR fund.

Following are some activities as defined or given in schedule 7 of the Act –

1. Social welfare work,
2. Promotion of education,
3. Promotion of gender equality,
4. Environmental protection,
5. Protection of national heritage,
6. Contribution to the prime minister national relief fund etc.

Stakeholder relationship committee (Sction178 (5))

A company has to constitute a SRC where such company has more than 1000 shareholders/ 1000 debenture holders or any other security holder at any time during the financial year. The committee shall resolve the grievances of the security holders. The chairman of the committee shall be non – executive director. If the chairman of the committee is absent then any other member of the committee duly authorized by him shall attend the EGM of the company.

SRC under regulation 20 of SEBI (LODR)

The purpose of constitution of SRC is to look into mechanism of resolving of grievances of the securities holders of the company. The chairman of the committee shall be a non-executive director. Other points are same as under the Companies Act – 2013.

PENALTY - **The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine not less than rupees twenty five thousand but which may extend to one lakh rupees or with both.**

Risk management committee Regulation 21

THIS provision of SEBI (LODR) regulations 2015 is applicable only and only on listed companies.

- The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures.
- The Board shall be responsible for framing, implementing and monitoring the risk management plan for the company.
- The company shall also constitute a Risk Management Committee. The Board shall define the roles and responsibilities of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.

POWER OF BOARD: SECTION 179

Section 179 of the Act deals with the powers of the board; all powers to do such acts and things for which the company is authorised is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting. Such as =

- To make calls on shareholders in respect of money unpaid on their shares;
- To authorise buy-back of securities under section 68;
- To issue securities, including debentures, whether in or outside India;
- To borrow monies;
- To invest the funds of the company;
- To grant loans or give guarantee or provide security in respect of loans;
- To approve financial statement and the Board's report;
- To diversify the business of the company;
- To approve amalgamation, merger or reconstruction;
- To take over a company or acquire a controlling or substantial stake in another company;
- To make political contributions;

- ❖ To appoint or remove key managerial personnel (KMP);
- ❖ To take note of appointment(s) or removal(s) of one level below the Key Management Personnel;
- ❖ To appoint internal auditors and secretarial auditor;
- ❖ To take note of the disclosure of director 's interest and shareholding;
- ❖ To buy, sell investments held by the company (other than trade investments), constituting five percent or more of the paid–up share capital and free reserves of the investee company;
- ❖ To invite or accept or renew public deposits and related matters;
- ❖ To review or change the terms and conditions of public deposit;
- ❖ To approve quarterly, half yearly and annual financial statements or financial results as the case may be.

Section 180: Restriction on Powers of Board

The board can exercise the following powers only with the consent of the company by special resolution, namely –

- ❖ To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings.
- ❖ To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- ❖ To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business;
- ❖ To remit, or give time for the repayment of, any debt due from a director.

Section 181: Contributions to Charitable Funds and Political Parties

The power of making contribution to 'bona fide' charitable and other funds is available to the board subject to certain limits.
Further, the permission of company in general meeting is required if such contribution exceeds five percent of its average net profits for the three immediately preceding previous years.

Section 182: Prohibitions and Restrictions Regarding Political Contributions

- The non-government company or the company which has been in existence less than three financial years may contribute any amount directly or indirectly to any political party.
- Further, the limit of contribution to political parties is 7.5% of the average net profits during the three immediately preceding financial years.
- If the expenditure incurred on advertisement in any publication souvenir, brochure, tract, pamphlet or the like is deemed as political contribution if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.
- The company is required to disclose in its profit and loss account any amount or amounts contributed by it to any political party during the financial year.

The contribution in contravention of the provisions of this section, the company shall be punishable for an amount of which may extend to five times of the amount so contributed and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times of the amount so contributed.

Section 183: Power of Board and other Persons to make Contributions to National Defence Fund, etc.

The Board is authorised to contribute such amount as it thinks fit to the National Defence Fund or any other fund approved by the Government for the purpose of national defence. The company is required to disclose in its profit and loss account the total amount or amounts contributed by it during the financial year.

Section 184: Disclosure of Interest by Director

Every director is required to disclose the nature of his concern or interest at the meeting of board in which the contract or arrangement is discussed and he has not to participate in such meeting.

The abovementioned interest may be direct or indirect and relating to some contract or arrangement or proposed contract or arrangement entered into or to be entered into with a body corporate in which such director or such director in association with other director holds more than two percent shareholding or is a promoter, manager, Chief Executive Officer of that body corporate or with a firm or other entity in which such director is a partner, owner or member as the case maybe.

It shall be the duty of the director giving notice of interest to cause it to be disclosed at the meeting held immediately after the date of the notice. (Rule 9(2)). If a director is not concerned or interested at the time of contract but, subsequently becomes concerned or interested is required to disclose his interest or concern at the first meeting of the board.

The contravention of the provisions leads to punishment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or both.

Any contract or arrangement entered into or to be entered into between two companies, where any director of any company holds more than two percent of the paid up capital in other company, the provisions of this section shall not apply.

Section 185: Loans to Directors, etc.

No company shall directly or indirectly advance any loan to any of its directors or to any person in whom director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

But a company may advance loan to managing or whole-time director as part of the conditions of service extended by the company to all its employees or pursuant to any scheme approved by the members by a special resolution or the company provides loans or gives guarantee or securities for the due repayment of any loan in due course of its business.

Any loan made by a holding company to its wholly owned subsidiary company or any guarantee given or security provided by a holding company in respect of any loan made to its wholly owned subsidiary company is exempted from the requirements under this section and any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its subsidiary company is exempted from the requirements under this section; provided that such loans are utilised by the subsidiary company for its principle business activities.

Rate of interest to be charged = The rate of interest should not be less than the rate prescribed by RBI from time to time.

PENALTY - The contravention of provisions of this section leads to punishment with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees. The director or to whom loan or advance is given or guarantee or security is given or provided shall be imprisonment which may extend to six months or with fine mentioned above or with both.

Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, **maintain a register in Form MBP 2 a**nd enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition. The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.

Pass an special resolution -

Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under section 186 no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

The contravention of the provisions of this section imposes punishment for the company with fine which shall not be less than twenty five thousand rupees but may extend to five lakh rupees.
Every officer of company in default shall be punishable with imprisonment for term which may extend to two years and with fine not less than twenty five thousand rupees but which may extend to five lakh rupees.

Section 187: Investments of Company to be held in its Own Name

All investment made or held by a company in a property, security or other asset must be made and held by it in its own name.
The company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

Section 188: Related Party Transactions Related Party

With reference to company, the term 'related party' means and includes the following:

- *A director or his relative,*
- *KMP or their relative,*
- *A firm in which a director, manager or his relative is a partner,*
- *A private company in which a director or manger is a director or members,*
- *A public company in which a director or Manager is a director or holds along with his relatives more than 2% of its paid up share capital.*

- *A person on whose advice, directions or instruction (except given in professional capacity) a director or manager is a accustomed to act,*
- *A holding/ subsidiary or associate company, subsidiary's subsidiary, and such person as would be prescribed.*

The scope of dealing with Related Party Transactions has been widened in Companies Act, 2013. The contracts or arrangements with related party which comes with respect to the following shall be covered under the scope of this provision:

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

RELATED PARTY TRANSACTIONS REQUIRING ORDINARY RESOLUTION

1. **Company having paid-up capital of ` 10 crore or more.**
2. **Sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding 25% of the annual turnover.**
3. **Selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding 10% of net worth.**
4. **Leasing of property of any kind exceeding 10% of the net worth or exceeding 10% of turnover.**
5. **Availing or rendering of any services directly or through appointment of agents exceeding 10% of the net worth.**
6. **Appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding 2,50,000 rupees.**
7. **Remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding 1% of the net worth.**

The expression "office or place of profit" means any office or place—

- where such office or place is **held by a director**, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

- where such office or place **is held by an individual other than a director** or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

Section 190 : Contract of Employment with Managing Director or Whole-Time Directors

Every company which is not a private company is required to keep the copy of contract if in writing with a managing director or whole-time director for contract of service or a written memorandum setting its terms if not in writing.
The abovementioned copies required to be kept open to inspection for any member of the company free of cost.

Every company is required to keep one or more register and record all transactions with related party. The register shall be kept at registered office of the company and should be open for inspection during business hour.

CHAPTER – 16

APPOINTMENT AND REMUNERATION OF KEY MANAGEMENT PERSONNEL

The executive management of a company is responsible for the day to day management of a company. The companies Act, 2013 has used the term key management personnel to define the executive management. The key management personnel are the point of first contact between the company and its stakeholders. While the Board of Directors are responsible for providing the oversight, it is the key management personnel who are responsible for not just laying down the strategies as well as its implementation.

KEY MANAGERIAL PERSONNEL

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

- The Chief Executive Officer or the managing director or the manager;
- The company secretary;
- The whole-time director;
- The Chief Financial Officer; and
- Such other officer as may be prescribed.

Appointment of KMP SECTION 203

Every listed company and every unlisted company having paid up share capital of rupees 10 crore shall appoint whole time key managerial personal.

Listed company – mandatory.

Other than listed company – the limit of paid up capital should exceed 10 crore.

As per rule 8 a company having paid up capital of rupees 5 crore or more shall have a whole time company secretary other than KMP

If the CEO is absent / not appointed then a whole time director will act as a CEO of the company.

Appointment of KMP by BoD

Every whole time KMP should be appointed by boerd of directors simply by passing a BOARD RESOLUTION in board meeting and also mention the term and any condition of appointment including remuneration to be payable to him.

No KMP shall become the chairman of any meeting unless authorized by AoA.

Whole time KMP shall not hold office in more than one company except in subsidiary company.

Reappointment of KMP by BoD – if the office of whole time KMP is vacated then such vacancy shall be filed by BoD within 6 months from the date of such vacancy.

Appointment of Managing Director, Whole-Time Director or Manager

Section 196 of the Companies Act, 2013 provides that no company shall appoint or employ at the same time a Managing Director and a Manager. Further, **a company shall not appoint or reappoint any person as its Managing Director, Whole Time Director or manager for a term exceeding five years at a time and no reappointment shall be made earlier than one year before the expiry of his term.**

The appointment of a managing director or whole-time director or manager and the terms and conditions of such appointment and remuneration payable thereon must be first approved by the Board of directors at a meeting and then by an ordinary resolution passed at a general meeting of the company.

A company shall file a return of appointment of a Managing Director, Whole Time Director or Manager, Chief Executive Officer (CEO), Company Secretary and Chief Financial Officer (CFO) within sixty days of the appointment, with the Registrar in Form No. MR.1 along with such fee as may be specified for this purpose.

Appointment with the Approval of Central Government

1. Convene a board meeting –
   - To appoint whole-time director of the company ill the ensuing General Meeting of the company.
   - To fix date, time, place etc. of the general meeting in order to take approval of the shareholders to appoint whole-time director of the company.
2. File e-form MGT-14 and DIR-12 along-with necessary attachments with the ROC within 30 days from the date of appointment as an additional director of the company.
3. Convene Extra-ordinary general meeting of the Company and take shareholder's approval for the appointment of the whole-time director of the company.
4. File e-form MR-2 to obtain approval of the central government with regard to appointment of whole-time director of the company.
5. File e-form DIR-12 within 30 days from the date of general-meeting for regularization of whole-time director.

6. File e-form MR-1 (return of appointment) within 60 days of the date of appointment in the board-meeting with regard to the appointment of whole-time director.

Conditions for appointment of MD under schedule V

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

1. He had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely:-
   I. The Indian Stamp Act, 1899
   II. The Central Excise Act, 1944,
   III. The Industries (Development and Regulation) Act, 1951,
   IV. The Prevention of Food Adulteration Act, 1954 ,
   V. The Essential Commodities Act, 1955,
   VI. The Companies Act, 2013 etc.
2. He had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.
3. He has completed the age of 21 years and has not attained the age of 70 years:
4. Where he is a managerial person in more than one company, he draws remuneration from one or more companies subject to the ceiling provided in section V of Part II;
5. He is resident in India.

Case law –

A managing director must hold and continue to hold the office of director. A managing director is first a director and then a managing director with certain additional powers ***[Shanta Shamsher Jung Bahadur v. Kamani Brothers P. Ltd. (1959) 29 Com Cases 501 (Bom)]***

Functions of Company Secretary

According to Section 205 the functions of the company secretary shall include,—

- To report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
- To ensure that the company complies with the applicable secretarial standards;
- To discharge such other duties as may be prescribed.
- To provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;

- To facilitate the convening of meetings and attend Board, committee and general meetings, and maintain the minutes of these meetings;
- To obtain approvals from the Board, general meetings, the Government and such other authorities as required under the provisions of the Act;
- To represent before various regulators, Tribunal and other authorities under the Act in connection with discharge of various functions under the Act;
- To assist the Board in the conduct of the affairs of the company;
- To assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
- To discharge such other duties as may be assigned by the Board from time to time;
- Such other duties as have been prescribed under the Act and Rules.

And any other duties imposed by the BoD.

Remuneration to Managerial Personnel

- Section 197 of the Companies Act, 2013 prescribed the maximum ceiling for payment of managerial remuneration by a public company to its managing director whole-time director and manager which shall not exceed 11% of the net profit of the company in that financial year.
- The remuneration payable to any one managing director or whole- time director or manager shall not exceed 5% of the net profits of the company and if there are more than one such director remuneration shall not exceed 10% of the net profits to all such directors and manager taken together.
- Except with the approval of the company in general meeting, the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,
    - 1% of the net profits of the company, if there is a managing or whole-time director or manager.
    - 3% of the net profits in any other case.
- If, in any financial year, a company has no profits or its profits are inadequate, the company shall pay to its directors, including managing or whole time director or manager, any remuneration exclusive of any fees payable to directors in accordance with the provisions of Schedule V.
- The Central Government through rules prescribed that the amount of sitting fees payable to a director for attending meetings of the Board or committees thereof may be such as may be decided by the Board of directors or the Remuneration Committee thereof which **shall not exceed the sum of rupees 1 lakh per meeting** of the Board or committee thereof.

Managerial Remuneration under Schedule V

Section 1: Remuneration by Companies having Profits

A company having profits in a financial year may pay remuneration to its managerial persons in accordance with **Section 197**.

Section 2: Remuneration by Companies having no profits or inadequate profits without Central Governement approval

PART – A OF SCHEDULE V

Where the effective capital is	*Limit of yearly remuneration payable shall not exceed (Rs)*
Negative or less than 5 Crore	30 Lakhs
5 Crore and above but less than 100 Crore	42 Lakhs
100 Crore and above but less than 250 Crore	60 Lakhs
250 Crore and above	60 Lakhs plus 0.01% of the effective capital in excess of Rs. 250 Crore

NOTE – If a special resolution is passed by the shareholders, the above limits shall be doubled.

PART B OF SCHEDULE V

In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the two years prior to his appointment as managerial person- **2.5% of the current relevant profit.**
If a special resolution is passed by the shareholders, this limit shall be doubled.

Remuneration by unlisted company in case of inadequate profit or no profit

A company must comply with the following conditions then remuneration shall be paid according to schedule V without prior approval of central government.

1. Approval by board of directors and N/R committee;
2. No default in payment of deposit, interest on debenture etc.
3. Approval from shareholders by passing a special resolution in general meeting.
4. All the statement is given to shareholders like as general information regarding the company or information regarding the appointee.

Remuneration if the company having profit or inadequate profit

The company can pay remuneration to its managerial person in access of amount as mentioned in schedule V without central government approval.

The following company are covered in this provision –

1. Foreign company.
2. Newly incorporated company (for a period of 7 years from the date of incorporation).
3. Sick company (5 year from the date of order passed by BIFR/NCLT).

Meaning or calculation of effective capital

	Particulars	Amount
	Paid up share capital	**Xxx**
+ + +	Reserve and surplus Securities premium Long term borrowing/deposits which is repayable after 1 year (excluding working capital loan, overdraft, interest due on loan, bank guarantee and short-term arrangements)	**xxx** **xxx** **xxx**
-	Aggregate of any investment (Except in case of investment by an investment company whose principal business is acquisition of shares, stock, etc.)	**Xxx**
total	**TOTAL EFFECTIVE CAPITAL**	**XXX**

PERQUISITES NOT FORMING PART OF MANAGERIAL REMUNERATION

The following perquisites shall not be included in the computation of ceiling limit on remuneration specified in table A or table B.

- Contribution to provident fund/ remuneration fund/ annuity.
- Gratuity.
- Leave-incashment.
- Children education allowances.
- Leave travel concession etc.

Compensation for loss of office of MD or WTD or manager section 202

Section 202 provides that a company may make payment to a managing or whole-time director or manager, but not to any other director, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.

However, No payment shall be made in the following cases:—

- Where the director resigns from his office as a result of the reconstruction/ amalgamation of the company and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company/of resulting company from the amalgamation;

- Where the director resigns from his office otherwise than on the reconstruction/ amalgamation of the company;
- Where the office of the director is vacated due to disqualification;
- Where the company is being wound up due to the negligence or default of the director;
- Where the director has been guilty of fraud or breach of trust or gross negligence or mismanagement of the conduct of the affairs of the company or any subsidiary company or holding company; and
- Where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.

SECRETARIAL AUDIT

Secretarial Audit is a compliance audit and it is a part of total compliance management in an organization. The Secretarial Audit is an effective tool for corporate compliance management. It helps to detect noncompliance and to take corrective measures.

Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 mandates every listed company and such other class of prescribed companies to annex a Secretarial Audit Report, given by a company secretary in practice with its Board's report. The Central Government through rules has prescribed such other class of companies as under-

- Every public company having a paid-up share capital of fifty crore rupees or more; or
- Every public company having a turnover of two hundred fifty crore rupees or more.

CHAPTER – 17
GENERAL MEETINGS

INTRODUCTION

A meeting may be generally defined as a gathering or assembly or getting together of a number of persons for transacting any lawful business. There must be at least two persons to constitute a meeting. Therefore, one shareholder usually cannot constitute a company meeting even if he holds proxies for other shareholders. However, in certain exceptional circumstances, even one person may constitute a meeting.

MEETINGS OF MEMBERS

ANNUAL GENERAL MEETING | **EXTRA-ORDINARY GENERAL MEETING** | **CLASS MEETING**

ANNUAL GENERAL MEETING (SECTION 96)

Annual general meeting (AGM) is an important annual event where members get an opportunity to discuss the activities of the company. Section 96 provides that every company, other than a one person company is required to hold an annual general meeting every year. Following are the key provisions regarding the holding of an annual general meeting:

- Annual general meeting should be held once every year.
- First annual general meeting of the company should be held within 9 months from the closing of the first financial year. Hence it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation.
- Subsequent annual general meeting of the company should be held within 6 months from the closing of the financial year.
- **The gap between two annual general meetings should not exceed 15 months.**
- In case, it is not possible for a company to hold an annual general meeting within the prescribed time, the Registrar may, for any special reason, extend the time for a period not exceeding 3 months.
- An annual general meeting can be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday. It should 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.
- **Section 99** provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to 1 lakh and in case of continuing default, with a further fine which may extend to Rs. 5,000/- for each day during which such default continues.

- **Business to be transacted at annual general meeting:**

Ordinary Business	Special Business
following are special business: ➢ the consideration of financial statements and the reports of the Board of Directors and auditors; ➢ the declaration of any dividend; ➢ the appointment of directors in place of those retiring; ➢ the appointment of, and the fixing of the remuneration of, the auditors.	Any other matter other than ordinary business if discussed in AGM then it is called as special business

EXTRA ORDINARY GENERAL MEETING (SECTION 100)

CALLING OF EGM

- BY BOARD
- BY BOARD ON REQUISITION OF SHAREHOLDERS
- BYREQUISITIONISTS
- BY TRIBUNAL.

All general meetings other than annual general meetings are called extraordinary general meetings. All businesses items can be transacted at the extraordinary general meetings are special business.

- The Board may, whenever it deems fit, call an extraordinary general meeting of the company.
- The Board must call an extraordinary general meeting on receipt of the requisition from the following number of members:
    - In the case of a company having a share capital - members who hold not less than one-tenth of such of the paid-up share capital of the company
    - In the case of a company not having a share capital - members who have not less than one-tenth of the total voting power.
- The Board must, within 21 days from the date of receipt of a valid requisition, proceed to call a meeting on a day not later than 45 days from the date of receipt of such requisition.
- If the Board does not within prescribed time, proceed to call a meeting for the consideration the meeting may be called and held by the requisitonists themselves. However in such case, the meeting should be held within a period of 3 months from the date of the requisition.
- Reasonable expenses incurred by the requisitionists in calling such a meeting shall be reimburse .recover such expenses from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting. [Section 100(6).

- In case, the quorum is not present within half-an-hour from the time appointed for holding a meeting called by requisitionists, the meeting shall stand cancelled. [Section 103(2)(b)]
- A general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Also a shorter notice of 14 clear days can be sent if there is 95% consent of members.
- **Contents of Notice –**
    - Place of meeting (Section 96).
    - Day of meeting (Section 96)
    - Time of meeting (Section 96)
    - Agenda (Section 102)
    - Proxy clause with reasonable prominence [Section 105(2)]

Chairman of Meetings (Section 104) :

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.

Proxies (Section 105):

Appointment of a proxy is an important right of a member of the company. 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 on his behalf.

A proxy shall not have the right to speak at the meeting. A proxy shall be entitled to vote only on a poll. The instrument appointing the proxy must be deposited with the company, 48 hours before the meeting. Any provision contained in the articles, requiring a longer period than 48 hours shall have effect as if a period of 48 hours had been specified.

The instrument appointing a proxy must be in Form No**. MGT. 11.** It needs to be in writing and signed by the appointer or his attorney duly authorized in writing.

Every member entitled to inspect the proxies lodged with the company, if at least 3 days notice is given to the company. Such inspection can be taken during the period beginning 24 hours before the time fixed for the commencement of the meeting, during the business hours of the company, and ending with the conclusion of the meeting.

Voting through Electronic Means (Section 108)

Every listed company or a company having five hundred or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. a member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system .
A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure:

- The notices of the meeting shall be sent to all the members, auditors of the company, or directors either - (a) by registered post or speed post ; or (b) through electronic means like registered e-mail id; (c) through courier service. The notice shall also be placed on the website of the company. The notice of the meeting shall clearly mention that the business
- The notice shall clearly indicate the process and manner for voting by electronic means and time schedule including the time period during which the votes may be cast, address of places for casting votes duly sorted in order of name of states or union territories, where the members can cast their votes electronically.
- The notice shall clearly indicate the process and manner for voting by electronic means and time schedule including the time period during which the votes may be cast, address of places for casting votes duly sorted in order of name of states or union territories, where the members can cast their votes electronically
- The e-voting shall remain open for not less than one day and not more than three days. Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting;
- Once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently. At the end of the voting period, the portal where votes are cast shall forthwith be blocked.
- The Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in practice or an advocate and is a person of repute who, in the opinion of the Board can scrutinize the e- voting process in a fair and transparent manner.
- The scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman.
- The scrutinizer shall maintain a register either manually or electronically to record the consent or otherwise, received, mentioning the particulars of members.
- The register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the register and other related papers to the company.
- The results declared along with the scrutinizer's report shall be placed on the website of the company.

Demand for Poll (Section 109)

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf by the following person(s):
(a) in the case a company having a share capital: by the members present in person or by proxy, where allowed, and **having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than Rs.5,00,000/- or such**

higher amount as may be prescribed, has been paid-up; and
(b) in the case of any other company: by any member or members present in person or by proxy, where allowed, and **having not less than one-tenth of the total voting power.**

- **The demand for a poll may be withdrawn at any time by the persons who made the demand.**
- A poll shall be taken at such time, **not being later than 48 hours** from the time when the demand was made on any other question.
- Where a poll is to be taken, the Chairman of the meeting shall appoint such number of persons, as he deems necessary, to scrutinise the poll process and votes given on the poll and to report thereon to him in the manner as may be prescribed.
- The result of the poll shall be deemed to be the decision of the meeting on the resolution on which the poll was taken.
- The scrutinizer/s appointed for the poll, shall submit a report to the Chairman of the meeting **in Form No. MGT No. 13.** The report shall be signed by the scrutinizer / all the scrutinizers, in case there is more than one scrutinizer, and be submitted by them to the Chairman of the meeting **within 7 days from the date the poll is taken.**

And other provisions are same for scrutinizer as in the e- voting .

Postal Ballot (Section 110)

As per **section 2(65)** "postal ballot" means voting by post or through any electronic mode.

- Where a company is required or decides to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and **requesting them to send their assent or dissent** in writing on a postal ballot or by electronic means **within a period of thirty days** from the date of dispatch of the notice.
- The notice shall be sent either **(a)** by Registered Post or speed post, or **(b)** through electronic means like registered e-mail id or **(c)** through courier.
- An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and at least once in English language in an English newspaper.
- The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members.
- The Board of directors shall appoint one scrutinizer ,who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.
- Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer.
- The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but **not later than seven days** thereof;
- The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of members.

- The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company who shall preserve such ballot papers and other related papers/register safely;
- The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.
- The resolution shall be deemed to be passed on the date of declaration of its result.

The rules provide that the following items of business shall be transacted only by means of voting through a postal ballot-

- Alteration of the objects clause of the memorandum
- Alteration of articles of association in order to constitute it a private company;
- Change in place of registered office outside the local limits of any city, town or village as specified in sub-section (5) of section 12.
- Change in objects for which a company has raised money from public through prospectus.
- Issue of shares with differential rights as to voting or dividend.
- Variation in the rights attached to a class of shares or debentures or other securities.
- Buy-back of shares by a company.
- Election of a director under section 151 of the Act.
- Sale of the whole or substantially the whole of an undertaking of a company.
- Giving loans or extending guarantee or providing security in excess of the limit.

Maintenance of Minutes of Meetings (section 118)

Section 118 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of share-holders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. In case of meeting of Board of Directors or of a committee of Board, the minutes shall contain name of the directors present and also name of dissenting director or a director who has not concurred the resolution.
A distinct minute book shall be maintained for each type of meeting.
Minutes of proceedings of each meeting shall be entered in the books maintained for that purpose along with the date of such entry **within thirty days** of the conclusion of the meeting.

Each page of every such book shall be initialed or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed.

Minute books of general meetings shall be kept at the registered office of the company. Minutes of the Board and committee meetings shall be kept at the registered Office or at such other place as may be approved by the Board. Minutes books **shall be preserved permanently** and kept in the custody of the company secretary of the company or any director duly authorized by the Board for the purpose.

In terms of Section 119, the minute's book of general meetings shall be kept at the registered office of a company and shall be open for inspection to members during business hours without any charge subject to such restrictions as the company may impose. A member shall be entitled for a copy of any minutes subject to payment of fees as may be specified in the Articles of Association of the company, but not exceeding a sum of ten rupees for each page or part of any page. The copy should be made available to him within seven days of his making request. Where the company refuses inspection or fails to furnish a copy of minutes within specified time, the Tribunal is empowered to direct immediate inspection or sending a copy of minutes in the matter and the company and every officer of the company shall be punishable with fine.

CHAPTER – 18

LOANS AND INVESTMENTS BY COMPANIES

INTRODUCTION

The power to invest the funds of the company is the prerogative of the Board of Directors. This power is derived by the Board under Section 179 of the Act. However, the Companies Act, 2013 contains provisions for restrictions on investments that a company can make and loans it can provide. Moreover, giving corporate guarantee or security is also as good as giving a loan, because the person to whom guarantee or security is given can decide to enforce the guarantee or security in certain conditions and in such a situation, the company will have to pay the amount. Thus apart from loan and investments, restrictions are also placed on the guarantees which the company can give or security it can provide for a loan.

Form no.	Purpose of the form as per the Companies Act - 2013
MBP – 1	Notice of interest by director
MBP – 2	Register of loans, guarantee, security and acquisition made by the company
MBP – 3	Register of investment not held in its own name by the company
MBP – 4	Register of contracts with related party and contracts and bodies etc. in which director are interested

LOANS AND INVESTMENTS BY COMPANIES (Section 186)

- A company shall unless otherwise prescribed, make investment through not more than two layers of investment companies. [Sub-section (1) of section 186] However, the aforesaid provisions shall not affect,—
  - Θ A company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
  - Θ Subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force. [Proviso to sub-section (1) of section 186].
- No Company shall, directly or indirectly:
  - Θ Give any loan to any person or other body corporate;

- Θ Give any guarantee, or provide security, in connection with a loan to any other person body corporate or person; and
- Θ Acquire, by way of subscription, purchase or otherwise the securities of any other body corporate;

Exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more unless the same is previously authorized by a special resolution passed in a general meeting.

- ❖ No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all directors present at the meeting.
- ❖ The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.
- ❖ Sub-section (9) of section 186 provides that every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed. Maintain a register in Form MBP-2.
- ❖ No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.
- ❖ Loan given under this section shall carry the rate of interest not lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.

Inspection of Register

Sub-section (10) of section 186 provides that the register referred to in sub-section (9) shall be kept at the registered office of the company and —

- ❖ Shall be open to inspection at such office; and
- ❖ Extracts may be taken therefrom by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

Offence and Penalty

If a company contravenes the provisions of section 186, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. *[Section 186(3)]*

Investments to be held in company's own name

According to Sub-section (1) of Section 187, all investments made or held by a company in any property, security or other asset shall be made and held by it in its own name.

As per proviso to section 187(1), the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

CASE - LAW

Where the shares of a company were registered in the joint names of the company and one of its directors, it was held that the director was a nominee of the company for that purpose and could only act jointly as he had no rights of his own. ***[Exchange Travel (Holdings) Ltd. Re, (1991) BCLC 728 (Ch D)].*** *If company holds shares in dematerialized form, the name of depository is entered in the register of members as member of the company and the name of the investing company as the beneficial owner of the said shares.*

Exemptions from applicability of Section 187(1)

In terms of the provisions of Section 187(2), Section 187(1) does not prevent a company:

- From depositing with the bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or
- From depositing with or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof. However, if within a period of 6 months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable, after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or
- From depositing with, or transferring to, any person any shares or securities, by way of security for the re-payment of any loan advanced to the company or the performance of any obligation undertaken by it.
- From holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

According to section 187(4), if a company contravenes the provisions of section 187, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

CHAPTER – 19
DEPOSITS

SECTION 73 TO 76 of the Companies Act regulate the invitation and acceptance of deposits. It prohibits acceptance of deposits except from the members through ordinary resolution or acceptance deposits by ''eligible company" being a public company, subject to conditions specified in the rules**. (Eligible company** is defined under the rules based on net worth and turnover).

- Section 2(31) of the Companies Act defines deposit as under "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India;
- 'Depositor' means-
    1. Any member of the company who has made a deposit with the company in accordance with subsection (2) of section 73 of the Act, or
    2. Any person who has made a deposit with a public company in accordance with section 76 of the Act.

Section 73(1) states that, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under Chapter V.
Proviso to Section 73(1) prohibition, does not apply to

- ***A banking company and***
- ***Non- banking financial company as defined in the Reserve Bank of India Act, 1934 and***
- ***To such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.***

Section 73(5) states that the *deposit repayment reserve account* referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

Who is an Eligible Company?

"Eligible company" means a public company as referred to in sub- section (1) of section 76, **having a net worth** of not less than one hundred crore rupees or a **turnover of** not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits.

Rules under Chapter V

- **Rule 3** under Chapter V states that on and from the commencement of these rules,—
  No company under sub-section (2) of section 73 and no eligible company shall accept or renew any deposit, whether secured or unsecured, which is repayable on demand or upon receiving a notice, within a period of less than six months or more than thirty-six months from the date of acceptance or renewal of such deposit:
- A company may, for the purpose of meeting any of its short-term requirements of funds, accept or renew such deposits for repayment earlier than six months from the date of deposit or renewal, as the case may be, subject to the condition that-
  1. Such deposits shall not exceed ten per cent of the aggregate of the paid up share capital and free reserves of the company, and
  2. Such deposits are repayable not earlier than three months from the date of such deposit or renewal thereof.
- **Rule 3(3)** states that no company referred to in sub-section (2) of section 73 shall accept or renew any deposits if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal of such deposits exceeds 25 per cent of the aggregate of the paid-up share capital and free reserves of the company.
- Deposits may be accepted in joint names not exceeding three, with or without any of the clauses, namely, “Jointly”, “Either or Survivor”, “First named or Survivor”, “Anyone or Survivor”, if the depositors desires so. [**Rule 3(2)**].
- **Rule 3(4)** states that no Eligible company shall accept or renew
  1. Any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent of the aggregate of the paid-up share capital and free reserves of the company;
  2. Any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in (a), outstanding on the date of acceptance or renewal exceeds 25% aggregate of the paid-up share capital and free reserve of the company.
- No Government company eligible to accept deposits under section 76 shall accept or renew any deposit, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds thirty five percent of the aggregate of its paid up share capital and free reserves of the company.
- **Rule 3(6)** states that no company under sub-section (2) of section 73 or any Eligible company shall invite or accept or renew any deposits in any form, carrying a rate of interest or pay brokerage thereon at a rate exceeding the maximum rate of interest or brokerage prescribed by the Reserve Bank of India for acceptance of deposits by non-banking financial companies.
- **Rule 4**- Form and particulars of advertisements/circulars.
- Every company referred to in sub-section (2) of section 73 and every other eligible company inviting deposits shall enter into a contract for providing deposit insurance at

least thirty days before the issue of circular or advertisement or at least thirty days before the date of renewal, as the case may be. For the purposes of this sub-rule, the amount as specified in the deposit insurance contract shall be deemed to be the amount in respect of both principal amount and interest due thereon.

- No company under sub-section (2) of section 73 or any eligible company shall issue a circular or advertisement inviting secured deposits unless the company has appointed one or more deposit trustees for depositors for creating security for the deposits. A written consent shall be obtained from the deposit trustee(s) before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the deposit trustee(s) have given their consent to the company to be so appointed.

RULE 8 DUTIES OF DEPOSIT TRUSTEES

- ✓ *Ensure that the assets of the company on which charge is created together with the amount of deposit insurance are sufficient to cover the repayment of the principal amount of secured deposits outstanding and interest accrued thereon;*
- ✓ *Satisfy himself that the circular or advertisement inviting deposits does not contain any information which is inconsistent with the terms of the deposit scheme or with the trust deed and is in compliance with the rules and provisions of the Act;*
- ✓ *Ensure that the company does not commit any breach of covenants and provisions of the trust deed;*
- ✓ *Take such reasonable steps as may be necessary to procure a remedy for any breach of covenants of the trust deed or the terms of invitation of deposits;*
- ✓ *Take steps to call a meeting of the holders of depositors as and when such meeting is required to be held;*
- ✓ *Supervise the implementation of the conditions regarding creation of security for deposits and the terms of deposit insurance;*
- ✓ *Do such acts as are necessary in the event the security becomes enforceable;*
- ✓ *Carry out such acts as are necessary for the protection of the interest of depositors and to resolve their grievances.*

- The meeting of all the depositors shall be called by the deposit trustee on- (1) requisition in writing signed by at least one-tenth of the depositors in value for the time being outstanding; (2) the happening of any event, which constitutes a default or which in the opinion of the deposit trustee affects the interest of the depositors.
- A depositor may, at any time, make a nomination and the provisions of section 72 shall, as far as may be, apply to the nomination made under this Rule.
- ***Every company shall, on the acceptance or renewal of a deposit, furnish to the depositor or his agent a deposit receipt for the amount received by the company, within a period of two weeks from the date of receipt of money or realization of chequs which shall be signed by an officer of the company duly authorized by the board in this behalf and shall state the date of deposit, the name and address of the depositor, the amount received by the company as deposit, the rate and periodicity of interest payable thereon and the date on which the deposit is repayable.***

- Every company accepting deposits shall, from the date of such acceptance, keep at its registered office one or more separate registers for deposits accepted/renewed, in which there shall be entered separately in the case of each depositor the following particulars, namely:
    1. Name, address and PAN of the depositor/s
    2. Particulars of guardian, in case of a minor;
    3. Particulars of the nominee;
    4. Deposit receipt number etc.
- ***When a company makes a repayment of deposits, on the request of the depositor, after the expiry of a period of six months from the date of such deposit but before the expiry of the period for which such deposit was accepted, the rate of interest payable on such deposit shall be reduced by one percent from the rate which the company would have paid had the deposit been accepted for the period for which such deposit had actually run and the company shall not pay interest at any rate higher than the rate so reduced.***
- ***Every company to which these rules apply, shall on or before the 30th day of June, of every year, file with the Registrar, a return in Form DPT-3 along with the fee as provided in Companies (Registration Offices and Fees) Rules, 2014 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company.***
- Every company shall pay a penal rate of interest of **EIGHTEEN PERCENT PER ANNUM** for the overdue period in case of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.
- If any question arises as to the applicability of these rules to a particular company, such question shall be decided by the Central Government in consultation with the Reserve Bank of India.

Damages for fraud

Section 75(1) states that when a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified in sub-section (1) of that section or such further time as may be allowed by the Tribunal under sub-section (2) of that section, and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to the provisions contained in subsection (3) of that section and LIABILITY UNDER SECTION 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors. Section 75(2) states that any suit, proceedings or other action may be taken by any person, group of persons or any association of persons who had incurred any loss as a result of the failure of the company to repay the deposits or part thereof or any interest thereon.

Other remedies provided under Companies act 2013

As per Section 245(1)(g) requisite number of depositor or depositors may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the depositors for seeking orders including claiming damages or compensation or demand any other suitable action from or against—

- *The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;*
- *The auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or*
- *Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;*
- *To seek any other remedy as the Tribunal may deem fit.*

Section 245(3) (ii) states that the requisite number of depositors shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

Quantum of deposits

Types of company	From members	From public
Any eligible company (special resolution)	Up-to 10% of its total paid-up share capital and free reserves	Up-to 25% of its total paid-up share capital and free reserves
Other than eligible company (ordinary resolution)	Up-to 25% of its total paid-up share capital and free reserves	**Prohibited**
Any government company (ordinary resolution)	**Prohibited**	Up-to 35% of its total paid-up share capital and free reserves

List of important form

DPT – 1 = Circular or circular in the form of advertisement.

DPT – 2 = Deposit trust-deed.

DPT – 3 = Return of deposit file with RoC.

DPT – 4 = Register or record of deposits.

How to accept deposits

- If any company whether eligible company or any other company want to accept deposits, then it is must to issue offering circular and advertisement regarding such acceptance along-with the full details of company, maturity date, rate of interest etc. as may be specified in form DPT – 1.
- The same offering circular issued by the company must be displayed at the website of the company, if any.
- It is also required to take a credit rating from a registered credit rating agency before acceptance of deposit from public and the same rating should be disclosed in the offering letter and the website.
- The offering letter issued by company will be valid till 6 months from the end of financial year in which it was issued or the date on which AGM is held, whichever is earlier.
- The deposit shall not be payable on demand or upon receiving a notice of less than 6 months or more than 3 years.
- The offering circular mmust be signed with the majority of the directors and should be sent to RoC within 30 days.
- A return of deposit must be filed on or before 30TH June of every year including the fees in form DPT-3.
- In case deposit became matured and claimed, but remain unpaid then a penal rent of interest 18% per annum shall be payable for overdue period.
- In case of pre-mature payment of deposit 1% shall be reduced from the agreed rate of interest.
- The rate of interest agreed to be paid should not be more than the rate of interest specified by the reserve bank of India.

The all provisions of deposit under companies act 2013 shall not be applicable to

- **Any banking company**
- **Any NBFC's**
- **Housing/finance companies.**

CHAPTER – 20
ACCOUNTS AND AUDIT

For preparation of annual accounts the maintenance of proper books of account is a must. Section 128 of the Companies Act, 2013 contains the provisions for books of account etc. to be kept by company.

Requirement of keeping books of account (section 128)

It has been specifically provided that every company shall keep proper books of account. This section specifies the main features of proper books of account as under –

- The company must keep the books of account with respect to items specified in clauses (i) to (iv) of sub-section 2(13) of the Companies Act, 2013 hereinafter referred as Act, which defines "books of account".
- The books of account must show all money received and expended, sales and purchases of goods and the assets and liabilities of the company.
- The books of account must be kept on accrual basis and according to the double entry system of accounting.
- The books of account must give a true and fair view of the state of the affairs of the company or its branches.

Section 128(1) requires every company to prepare and keep the books of account and other relevant books and papers and financial statements at its registered office. However, all or any of the books of accounts may be kept at such other place in India as the Board of directors may decide. When the Board so decides the company is required within seven days of such decision to file with the Registrar a notice in writing giving full address of that other place.

- ***The branches of the company, if any, in India or outside India shall also keep the books of account in the same manner as specified in sub- section (1), for the transaction effected at the branch office. Further the branch offices are required to send the proper summarized return at quarterly intervals to the company at its registered office and kept open to directors for inspection.***

Inspection by directors

As provided in sub-section (3) of Section 128, any director can inspect the books of accounts and other books and papers of the company during business hours. Such inspection may be done by

any type of director- nominee, independent, promoter or whole time. The proviso to sub-section 3 provides that a director of the Company can inspect the books of accounts of the subsidiary, only on authorisation by way of the resolution of Board of Directors.

The books of accounts, together with vouchers relevant to any entry in such books, are required to be preserved in good order by the company for a period of not less than eight years immediately preceding the relevant financial year.

Persons responsible to maintain books

The person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be: (sub-section 6)

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

SECTION 129: FINANCIAL STATEMENT

Financial Statement is defined under Section 2 (40), to include –

- Balance Sheet
- Profit and Loss account or Income and Expenditure account
- Cash flow Statement
- Statement of change in equity, if applicable
- Any explanatory notes annexed to or forming part of financial statements, giving information required to be given and allowed to be given in the form of notes.

However, the financial statement with respect to one person Company, small company and dormant company, may not include the cash flow statement. Financial statements should be prepared for financial year and shall be in form as per Schedule III.

Other Requirements for financial statements

- Financial statements and items contained should comply with accounting standards notified under section 133.

- financial statement shall be in form or forms as provided for different class or classes of companies in Schedule III;
- Financial statements shall lay before the board of the directors in every annual general meeting of a company.
- Where financial statements of the company do not comply with the applicable accounting standards, the company shall disclose the following:
  - the deviation from the accounting standards
  - the reason for such deviation and
  - financial effects arising out of such deviation
- Central Government may exempt any class or classes of the companies from complying with any of the requirements of this section or the rules there under, either conditionally or unconditionally as may be specified in the notification.

PENALTY -

In case persons referred to in sub-section (7) fail to take reasonable steps to secure compliance or contravene provisions of this section, they shall in respect of each offence be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

NATIONAL FINANCIAL REPORTING AUTHORITY *(This section not notified)*

Through Section 132 of the Companies Act, 2013, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

The objectives of National Financial Reporting Authority inter alia shall be as follows:

- Make recommendations on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
- Monitor and enforce the compliance with accounting standards, monitor and enforce the compliance with auditing standards;
- Oversee the quality of service of professionals associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service, and
- Perform such other functions as may be prescribed in relation to aforementioned objectives.

SECTION 138: INTERNAL AUDIT

Who can be an internal Auditor?

- *A Chartered Accountant or;*
- *A Cost Accountant or;*
- *Such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the Company.*

The following class of companies shall be required to appoint an internal auditor or a firm of internal auditors:

- **Every listed company;**
- **every unlisted public company having –**
  - **Paid up share capital of fifty crore rupees** or more during the preceding financial year;
  - **Turnover of two hundred crore rupees** or more during the preceding financial year; or
  - **Outstanding loans or borrowings** from banks or public financial institutions **exceeding one hundred crore rupees** or more at any point of time during the preceding financial year; or
  - **outstanding deposits of twenty five crore rupees** or more at any point of time during the preceding financial year; and
- **Every private company having –**
  - **Turnover of two hundred crore rupees** or more during the preceding financial year; or
  - **Outstanding loans or borrowings** from banks or public financial institutions **exceeding one hundred crore rupees** or more at any point of time during the preceding financial year.

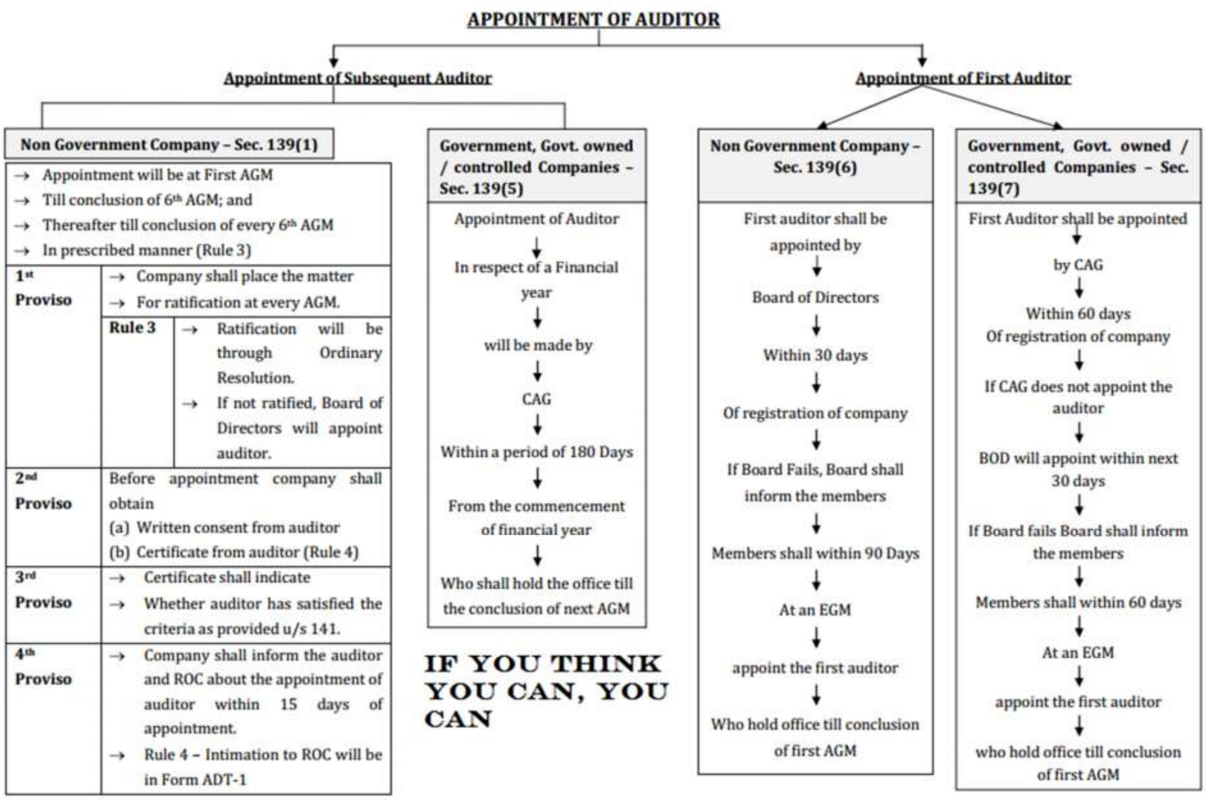
Appointing authority for auditors in company

In term of **section 139(1) of the Companies Act, 2013** read with rule 3 of Companies (Audit and Auditors) Rules, 2014 every company shall at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting (AGM) and thereafter till the conclusion of every sixth meeting and the manner and procedure of selection of auditors by the members of the company at such meeting shall be such as prescribed under:

- In case of a company that is required to constitute an Audit Committee under section 177, such committee, and, in cases where such a committee is not required to be constituted, the Board shall take into consideration the qualifications and experience of the individual or the firm proposed to be considered for appointment as auditor and whether such qualifications and experience are commensurate with the size and requirements of the company.
- Where a company is required to constitute the Audit Committee, the committee shall recommend the name of an individual or a firm as auditor to the Board for consideration

and in other cases, the Board shall consider and recommend an individual or a firm as auditor to the members in the AGM for appointment.

- The auditor appointed in the AGM meeting shall hold office from the conclusion of that meeting till the conclusion of the sixth annual general meeting, with the meeting wherein such appointment has been made being counted as the first meeting.
- Section 139(6) of the Act stipulated that first Auditor of the Company other than Government Company, shall be appointed by the Board within 30 days of its date of registration and in case of failure to do so by Board of Directors, the members shall be informed and they shall appoint the same within 90 days from incorporation, who shall hold office till conclusion of first annual general meeting.



Eligibility & qualifications of auditor

Section 141 (1) & (2) of the Act prescribed the following eligibility and qualifications of auditor which are as under:-

- ❖ Only a Chartered Accountant (individual) or a firm where majority of partners practicing in India are Chartered Accountants can be appointed as auditor.
- ❖ Where a firm including a limited liability partnership (LLP) is appointed as an auditor of a company, only the partners who are chartered accountants shall be authorized to act and sign on behalf of the firm.

Term of auditor- section 139 (2)

Listed company or all unlisted public companies having paid up share capital of Rs. 10 crore or more, all private limited companies having paid up share capital of Rs. 20 crore or more, all companies having public borrowings from financial institutions, banks or public deposits of Rs. 50 (fifty) crores or more shall not appoint or re-appoint an individual as auditor for more than one term of 5 consecutive Years; and an audit firm as auditor for more than two terms of 5 consecutive years. These auditor (either individual/audit firm) can be re-appointed after cooling off period of 5 years. Three years transition period will be given to comply with this requirement.

No audit firm shall be appointed as auditor of the company for a period of five years, if same firm presently having a common partner(s) to the previous audit firm, whose tenure has expired in a company immediately preceding the financial year.

Rotation of auditors- section 139(3)

Members of a company can provide for following by passing a resolution:

- In the audit firm appointed by it, the auditing partner and his team shall be rotated at such intervals as may be resolved by members; or
- The audit shall be conducted by more than one auditor.

A transition period of 3 years from the commencement of the Act has been prescribed for the company existing on or before the commencement of the Act, to comply with the provisions of the rotation of auditor.

Removal of auditor-section 140 (1)

The auditor appointed under section 139 may be removed from his office before the expiry of the term only by –

- Obtaining the prior approval of the Central Government by filling an application in form ADT-2 within 30 days of resolution passed by the Board
- The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution.
- The auditor concerned shall be given a reasonable opportunity of being heard.

Resignation of auditor- section 140 (2), 140 (3)

The auditor who has resigned from the company shall file a statement in Form ADT-3 indicating the reasons and other facts as may be relevant with regard to his resignation as follows:

- In case of other than Government Company, the auditor shall within 30 days from the date of resignation, file such statement to the company and the registrar.

- In case of Government Company or government controlled company, auditor shall within 30 days from the resignation, file such statement to the company and the Registrar and also file the statement with the Comptroller and Auditor General of India (CAG).

Section 142 of the Act prescribed that the remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. Board may fix remuneration of the first auditor appointed by it. The remuneration will be in addition to the out of pocket expensed incurred by the auditor in connection with the audit of the company and any remuneration paid to him for any other service rendered by him at the request of the company.

AUDIT REPORT

Section 143 (2) prescribed that auditor shall make a report to the members of the company on the accounts examined by him and on every financial statement which is required to be laid in the general meeting of the company. **Section 143 (3) laid down that auditor's report shall also state other details which are as under:**

- Whether he has sought and obtained all the information and explanations which were necessary and if not, the details thereof and the effect of such information on the financial statements;
- Whether, in his opinion, proper books of account as required by law have been kept by the company and proper returns adequate for the purposes of his audit have been received from branches not visited by him;
- Whether the branch audit report prepared by a person other than the company's auditor has been sent to him;
- Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;
- Whether, in his opinion, the financial statements comply with the accounting standards;
- The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- Whether any director is disqualified from being appointed as a director under section 164 (2);
- Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith;
- Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

Cost records & audit– section 148

Section 148(2) states that if the Central Government is of the opinion, that it is necessary to do so, it may, by order, direct that the audit of cost records of class of companies, which are covered under sub-section (1) and which have a net worth of such amount as may be prescribed or a turnover of such amount as may be prescribed, shall be conducted in the manner specified in the order.

Section 148(3) states that the audit under sub-section (2) shall be conducted by a Cost Accountant in practice who shall be appointed by the Board on such remuneration as may be determined by the members in such manner as may be prescribed.

Further that **no person appointed under section 139 as an auditor of the company shall be appointed for conducting the audit of cost records and the auditor conducting the cost audit shall comply with the cost auditing standards.**

CHAPTER – 21
Divisible Profits and Dividends

Dividend defined under section 2(35) of the Companies Act, 2013, includes any interim dividend. Dividend means the portion of the profit received by the shareholders from the company's net profits, which is legally available for distribution among the members. Therefore, dividend is a return on the share capital subscribed for and paid to its shareholders by a company.

TYPES OF DIVIDEND

- **Final dividend** = Dividend is said to be a final dividend if it is declared at the annual general meeting of the company. Final dividend once declared becomes a debt enforceable against the company. Final Dividend can be declared only if it is recommended by the Board of Directors of the Company. In accordance with Section 134(3)(k), Board of directors must state in the Directors' Report the amount of dividend, if any, which it recommends to be paid.
- **Interim dividend** = Dividend is said to be an interim dividend, if it is declared by the Board of Directors between two annual general meetings of the company. However, all the provisions relating to the payment of dividend shall be applicable on the interim dividend also.

Sources of declaration of dividend

Section 123(1) of Companies Act 2013 provides that no dividend shall be declared or paid by a company for any financial year except—

- Out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or
- Out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or
- Out of both; or

For the above purpose, **depreciation shall be provided in accordance with the provisions of Schedule II.**

☞ out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government.

A company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company.

Second proviso to Section 123(1) states that owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf.

Note = Transfer of unpaid dividend to unpaid Dividend Account (Section 124)

Section 124(1) states that when a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

Section 124 (5) states that any money transferred to the Unpaid Dividend Account of a company in pursuance of this section which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Fund established under sub-section (1) of section 125 (Investor Education and Protection Fund) and the company shall send a statement in the prescribed form of the details of such transfer to the authority which administers the said Fund and that authority shall issue a receipt to the company as evidence of such transfer.

Section 124(7) provides that if a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Utilisation of investor education and protection fund

Section 125 (3) Provides the Fund shall be utilised for—

- The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
- Promotion of investors' education, awareness and protection;
- Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture-holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
- Reimbursement of legal expenses incurred in pursuing class action suits under **sections 37 and 245** by members, debenture-holders or depositors as may be sanctioned by the Tribunal; and

❖ Any other purpose incidental thereto, in accordance with such rules as may be prescribed:

Punishment for failure to distribute dividends

Section 127 of Companies Act 2013 provides that when a dividend has been declared by a company but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to two years and with fine which shall not be less than one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent. per annum during the period for which such default continues.

Proviso to **section 127** has provided a list where no offence under this section shall be deemed to have been committed:—

- Where the dividend could not be paid by reason of the operation of any law;
- Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- Where there is a dispute regarding the right to receive the dividend;
- Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or
- Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

A Preference share carries a preferential right as to dividend in accordance with the term of issue and the articles of association, subject to the availability of distributable profits. The preferential right to a dividend could either be a fixed amount or an amount calculated at a fixed rate. It may be cumulative or noncumulative. Preference shares can carry dividend of a fixed amount, before any dividend is paid on the equity shares. If there are two or more classes of preference shares, the shareholders of the class which has priority are similarly entitled to their preferential dividend before any dividend is paid in respect of the other class.

CHAPTER – 22
Board's Report and Disclosures

Disclosure and transparency are of utmost importance in a fiduciary relationship between the directors and shareholders. Boards' Report or Directors' Report is an important tool for the stakeholders to judge or analyse the performance and corporate governance measures adopted by the company.
Company Secretary guides the directors in preparation of this report; they are expected to be well versed with the related provisions.

Disclosures under section 134 of the Com. Act – 2013

Section 134(3) Provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include –

- The extract of the annual return as provided under Section 92(3).
- Number of meetings of the Board;
- Directors' Responsibility Statement
- A statement on declaration given by independent directors under section 149(6).
- Particulars of loans, guarantees or investments under section 186.
- The state of the company's affairs.
- The amounts, if any, which it proposes to carry to any reserves.
- The amount, if any, which it recommends should be paid by way of dividend.
- Particulars of contracts or arrangements with related parties (section 188(1)).
- The details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year.
- Material changes and commitments, if any, affecting the financial position of the company.
- Such other matters as may be prescribed.

Independent Director

An Independent Director is a person who is not related to the promoters or the other members of the company. As per section 149(10) an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

Board's Report shall disclose the composition of audit committee under section 177(8) and also discloses the recommendation of the audit committee which is not accepted by the board along with reason thereof.

Nomination and Remuneration committee

Section 178(1) mandates all the listed company and such other class or classes, as may be prescribed to have nomination and Remuneration committee.

The following class of companies shall have constitute Nomination and Remuneration Committee:-

- All public companies with a paid up capital of ten crore rupees or more;
- All public companies having turnover of one hundred crore rupees or more;
- All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more.

Section 178(4) - The board's Report shall disclose such policy according to which the Nomination and Remuneration Committee ensure that –

- The level and composition of remuneration is reasonable and sufficient to attract, retain and motivate directors of the quality required to run the company successfully.
- Relationship of remuneration to performance is clear and meets appropriate performance benchmarks; and
- Remuneration to directors, key managerial personnel and senior management involves a balance between fixed and incentive pay reflecting short and long-term performance objectives appropriate to the working of the company and its goal.

Liability for mis – statement

Section 448 provides that same as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

- which is false in any material particulars, knowing it to be false; or
- which omits any material fact, knowing it to be material,

He shall be liable under section 447.

Punishment of Fraud (Under Section 447)

Any person who is found to be guilty of fraud shall be punishable with Imprisonment Mini- 6 months, Maxi- 10 years; and Fine Mini- amount of fraud, Maxi-3 times of amount of Fraud

DISCLOSURES BY BOARD

Disclosures under section 134	Other disclosures under companies act 2013	Disclosures under various rules made under the companies act	Disclosure pursuant to listing agreement
Report by board of directors shall include the following: ❖ An extract of annual return under section 92(3) ❖ Number of meetings of board ❖ Director's responsibility statement ❖ Statement on declaration given by independent director under section 149(6) ❖ Particulars of loan, guarantees or investments under section 186 ❖ The state of company's affairs ❖ Particulars of contracts and arrangements with related parties ❖ Statement relating to risk management policy ❖ Statement on corporate social responsibility ❖ The amount proposed to carry to any reserve conservation of energy, technology absorption, foreign exchange earnings and outgo.	❖ Appointment of independent director ❖ Disclosure about the composition of audit committee under section 177(8) and also the recommendation of audit committee ❖ Details of establishment of vigil mechanism [section 177(9)] ❖ Policies by the nomination and remuneration committee ❖ Secretarial report given by a company secretary in practice.	❖ Disclosure under Rule 8 of Companies (Accounts) Rules, 2014 ❖ Disclosure under Companies (Share Capital and Debentures), Rules, 2014 ❖ Disclosure under Rule 5 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, 2014 ❖ Disclosure under Rule 8 of Companies (Corporate Social Responsibility) Rules, 2014.	❖ Management and discussion analysis report ❖ Corporate governance report ❖ Code of conduct for board members ❖ Disclosures by board under clause 32: ❖ If the shares are delisted then the fact of delisting together with reasons therefore ❖ If the securities are suspended from trading the reason therefore ❖ The name and address of each stock exchange at which the company's securities are listed and confirmation about payment of annual

CHAPTER - 23
Inspection and Investigation

Section 206 of the Companies Act 2013 deals with inspection of documents and books and papers of any company. The section empowers the Registrar or Inspectors appointed by Central Government to conduct inspection in order to ascertain that all the transactions have been validly entered into and recorded in appropriate books and those applicable laws, rules and procedures have been compiled by the company. The section provides some penal provisions for the every defaulting officer of the company if it is clear from the inspection that the company is being or has been carried on for a fraudulent or unlawful purpose.

Purpose of conducting Inspection

Some of the objectives of conducting such inspections may be thus:

- To detect concealment of income by falsification of accounts.
- To secure knowledge about the mismanagement of the business of a company and transactions entered into with an intent to defraud creditors, shareholders or otherwise for fraudulent or unlawful purposes.
- To ascertain whether the statutory auditors have discharged their functions and duties in certifying the true and fair view of a company's accounts and their proper maintenance.
- To enable the Government to ascertain the quantum of profits accrued but not adequately accounted for.
- To detect misapplication of funds leading a company to a state of perpetual financial crisis.
- To keep a watch on performance of a company.
- To detect misuse of fiduciary responsibilities by the company's management for personal aggrandizement.

PREPARATION BY A COMPANY SECRETARY TO FACE INVESTIGATION

Before an inspector commences investigation into the affairs of a company, it is advisable for the Secretary to prepare a report touching upon various aspects of the activities of his company particularly those transactions in respect of which fraud or misfeasance or mismanagement is alleged. The aspects which should be considered by the secretary include: -

- Basic information about the company
- Business activities
- Debentures, bank finance and deposits.
- Foreign collaboration agreements.
- Management of the company

- Whether all the statutory registers including minute's books are being maintained up-to-date?
- Whether the internal checks and internal control system is being properly followed?
- Working results and financial position
- Compliance by the company and its officers with the provisions of the Companies Act.
- Compliance with the provisions of other Acts applicable to the company.
- And other information's.

KINDS OF INVESTIGATION UNDER COMPANIES ACT 2013
Entral government ordering investigation into affairs of a company (section 210)
Investigation by serious fraud investigation office (section 212)
TRIBUNAL'S ORDER FOR INVESTIGATION [SECTION 213] (Not yet enforced)
Investigation about ownership of company [section 216)
Investigation of affairs of related companies [section 219]
Investigation of foreign company [section 228]

CHAPTER – 24
LIMITED LIABILITY PARTNERSHIP

In order to cope with and conform to the rapid changes taking place in the industry and business, a form of business organization combining the vital aspects of a partnership firm and the advantages of a limited liability company was essential. This need gave birth to the new form of organization called "Limited Liability Partnership", which is more popularly known as LLP.

INTRODUCTION

Limited Liability Partnership (LLP) is an incorporated partnership formed and registered under the Limited Liability Partnership Act 2008 with limited liability and perpetual succession. The Act came into force, for most part, on 31st March 2009 followed by its Rules on 1st April 2009 and the registration of the first LLP on 2nd April 2009.

LLP is viewed as an alternative corporate business vehicle that provides the benefits of limited liability but allows its partners the flexibility of organizing their internal structure as a partnership based on a mutually arrived agreement.

SALIENT FEATURES of LLP

- The LLP is a body corporate and a legal entity separate from its partners. Any two or more persons, associated for carrying on a lawful business with a view to profit, may by subscribing their names to an incorporation document and filing the same with the Registrar, form a Limited Liability Partnership. The LLP has a perpetual succession
- The mutual rights and duties of partners of an LLP inter se and those of the LLP and its partners shall be governed by an agreement between partners or between the LLP and the partners subject to the provisions of the proposed legislation. There would be flexibility to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the proposed legislation;
- A LLP is a separate legal entity, liable to the full extent of its assets, with the liability of the partners being limited to their agreed contribution in the LLP which may be tangible or intangible in nature or both tangible and intangible in nature. No partner would be liable on account of the independent or un-authorized acts of other partners or their misconduct;
- Every LLP shall have at least two partners and shall also have at least two individuals as Designated Partners, of whom at least one shall be resident in India.
- A LLP shall maintain annual accounts reflecting true and fair view of its state of affairs. A statement of accounts and solvency shall be filed by every LLP with the Registrar every

year. The accounts of LLPs shall also be audited, subject to any class of LLPs being exempted from this requirement by the Central Government;

- ❖ The Central Government has power to investigate the affairs of an LLP, if required, by appointment of competent inspector for the purpose;
- ❖ The Indian Partnership Act, 1932 shall not be applicable to LLPs. A partnership firm, a private company and an unlisted public company may convert themselves to LLP in accordance with provisions of the proposed legislation;
- ❖ The Central Government has made rules for carrying out the provisions of the LLP Act.

Distinction b/w LLP and partnership

Limited liability partnership	Partnership
LLP is a separate legal entity and therefore, can be sued or it can sue others without involving the partners	A partnership firm is not distinct from the several persons who compose it.
The partners of a LLP would have limited liability i.e. they would not be liable beyond the money contributed by them	Whereas, partners of a firm would have unlimited liability
The retirement or death of a partner would not dissolve the LLP.	On the other hand, the death or retirement of a partner would dissolve the partnership firm.
In a partnership, the property of the firm is the property of the individuals comprising it.	In a LLP, it belongs to the LLP and not to the individuals comprising it.
LLP is formed by an incorporation document and an LLP agreement, thus, giving it a legality.	Whereas a partnership can be formed either orally or by a deed of agreement whether registered or not
LLP can have more than that number since no upper limit has been laid down by the Act.	Whereas a registered or unregistered partnership cannot have more than 20 partners
A LLP has perpetual succession, i.e. the death or insolvency of a shareholder or all of them does not affect the life of the LLP	The death or insolvency of a partner dissolves the firm, unless otherwise provided.
A partner of LLP in his separate capacity as a legal person can do business with the LLP since the LLP is a separate legal entity by itself.	An individual partner would not be able to conduct business transaction with the partnership firm of which he is a partner

DISTINCTION BETWEEN LLP AND COMPANY

- ❖ In case of LLP, the need for classifying the object clauses into main, ancillary and other objects as well as framing the Share Capital clause in the memorandum for incorporating a company is reduced into a simple procedure of filling of the prescribed information in the Incorporation document and statement in Form No. 2.

- In case of LLP, a 'limited liability partnership agreement' (LLPA) is prepared which is a variant of the 'articles of association' of a company.
- Whereas the memorandum of a company is required to name the state in which it is required to be incorporated, there is no such obligation in the case of LLP. Consequently, the detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.
- In the LLP Act, there is no such stipulation for meeting of partners either periodically or compulsory at the year-end as stipulated for directors and shareholders meetings in the Companies Act.
- There is no separation between management of the company and the ownership as is observed in a company since all the partners, unlike all the directors, can take part in the day to day affairs of the LLP.
- In case of a company no individual director can conduct the business of the company but in an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.
- Whereas, the Companies Act contemplates regulating the remuneration payable to directors, there are no corresponding provisions in the LLP Act for remuneration payable to designated partners. The same could be as per the LLP Agreement.
- In the case of LLP, unlike in the case of companies, there are no restrictions on the borrowing powers.
- The LLP can choose to maintain the accounts on cash basis/accrual basis whereas under the Companies Act, accrual method is compulsory.
- Audit of a company is compulsory. Conversely, the audit of LLP is not compulsory if the capital contributed does not exceed ` 25 lakh or if the turnover does not exceed ` 40 lakhs.
- Cost audit as contemplated in Section 233B of the Companies Act, 1956 has not been prescribed for LLPs.
- The appointment of Company Secretaries as required under Section 383A of the Companies Act, 1956 is not provided in the LLP Act. However, the annual return of a LLP in form 11 is to be certified as 'true and correct' by a Company Secretary in practice.

INCORPORATION OF LLP

According to section 11 (1) of the Limited Liability Partnership Act, 2008, for a limited liability partnership to be incorporated—

- *Two or more persons associated for carrying on a lawful business with a view to profit shall subscribe their names to an incorporation document;*
- *The incorporation document shall be filed in such manner and with such fees, as may be prescribed with the registrar of the state in which the registered office of the limited liability partnership is to be situated; and*

- *A statement in the prescribed form shall be filed along with the incorporation document, made by either an advocate, or a Company Secretary or a Chartered Accountant or a Cost Accountant, who is engaged in the formation of the limited liability partnership and by any-one who subscribed his name to the incorporation document, that all the requirements of this Act and the rules made thereunder have been complied with, in respect of incorporation and matters precedent and incidental thereto.*

The incorporation document shall –

- *Be in form 2 as per rule 11.*
- *State the name of the limited liability partnership;*
- *State the proposed business of the limited liability partnership;*
- *State the address of the registered office of the limited liability partnership;*
- *State the name and address of each of the persons who are to be partners of the limited liability partnership on incorporation;*
- *State the name and address of the persons who are to be designated partners of the limited liability partnership on incorporation;*
- *Contain such other information concerning the proposed limited liability partnership as may be prescribed.*

REGISTERED OFFICE OF LLP

Every limited liability partnership shall have a registered office to which all communications and notices may be addressed and where they shall be received. [(**Section 13(1)**)]

The limited liability partnership may change its registered office from one place to another by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place: Provided that where the change in place of registered office is from one state to another state, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Name of LLP -

According to section 15(1), every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name. Section 15 (2) prohibits registration of a LLP with a name that is either undesirable in the opinion of the Central Government or that is identical with or that which too nearly resembles to the name of any existing partnership firm or a LLP or a body corporate or a trade mark registered or pending registration under the Trade Marks Act, 1999.

Rule 20 (1) provides that the limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

LLP AGREEMENT

It has been provided under Section 23 – Save as otherwise provided by this Act, the mutual rights and duties of the partners of a limited liability partnership, and the mutual rights and duties of a limited liability partnership and its partners, shall be governed by the limited liability partnership agreement between the partners, or between the limited liability partnership and its partners. Limited liability partnership agreement should be filed with the Registrar within 30 days of incorporation in form 3. A person becomes a Partner by virtue of LLP agreement. This means that the LLP agreement is a must and it serves as a basic document and, to a certain extent, takes the place of MOA and AOA applicable in the case of a company registered under the Companies Act, 1956. Any change in the LLP agreement is also required to be notified to the Registrar of Companies. The importance of the said document lies in the fact that it is a public document and it is open to public inspection being on the records of the Registrar. In the absence of agreement as to any matter, the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and the partners shall be determined by the provisions relating to that matter as are set out in the First Schedule.

PARTNERS AND DESIGNATED PARTNERS

Any person can be a 'partner' in the limited liability partnership in accordance with the LLP agreement. Every LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India.

Section 5 provides that any individual or body corporate may be a partner in limited liability partnership. However, an individual shall not be capable of becoming a partner of a limited liability partnership, if

- *He has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force,*
- *He is an undischarged insolvent; or*
- *He has applied to be adjudicated as an insolvent and his application is pending.*

Section 7 provides *that every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Provided that in case of a limited liability partnership in which all the partners are body corporates, at least two partners shall nominate their respective individuals who are to act as "designated partners" and one of the nominees shall be a resident of India.*

Any person, who desires to become a designated partner in a Limited Liability Partnership, has to obtain DIN by filing e-form DIN-1. If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under Limited Liability Partnership Act, 2008. If a person has been allotted DPIN, the said DPIN will also be used as DIN for all the purposes under Companies Act, 1956. If a person has been allotted both DIN and DPIN, his DPIN will stand cancelled and his DIN will be used as DIN as well as DPIN for all purposes under Limited Liability Partnership Act, 2008 and Companies Act, 1956. Every *designated partner, shall intimate his consent to become a designated partner to the limited liability partnership and DPIN, in Form 9 and the LLP shall intimate such DPIN to Registrar in Form 4.*

Disqualification of a designated partner

If he

- Has at any time within the preceding five years been adjudged insolvent; or
- Suspends, or has at any time within the preceding five years suspended payment to his creditors and has not at any time within the preceding five years made, a composition with them,
- Has been convicted by a Court for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months; or
- Has been convicted by a Court for an offence involving section 30 of the Act.

(Section 30 deals with punishment for carrying out acts by the LLP or its partners with intent to defraud its creditors or for a fraudulent purpose).

ADVANTAGES & DISADVANTAGES OF LLP

ADVANTAGES	DISADVANTAGES
Separate legal entity: A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.	***Lack of privacy:*** Disclosure of financial information required under Section 34.
Perpetual Succession: A limited liability partnership shall have perpetual succession. In other words, partners may come and partners may go but a LLP will go on till the winding up of its affairs.	***Requirement of a LLP agreement:*** A LLP agreement is a necessity so as to avoid the application of default provisions (First Schedule) and to provide for matters not covered in the default provisions.
Limited Liability: reduced risk to personal wealth from creditors' claims.	
Internal flexibility: allows for participation in management and maintenance of ethos of partnership.	***Legal uncertainty:*** This being a newly introduced concept in the corporate world, it is yet to prove itself as a commercial entity.

A limited liability partnership whose turnover does not exceed, in any financial year, forty lakh rupees or whose contribution does not exceed twenty-five lakh rupees is not required to get its accounts audited.

MAINTENANCE OF BOOKS AND ACCOUNT (RULE 24 OF LLP RULES)

Every limited liability partnership shall keep books of accounts which are sufficient to show and explain the limited liability partnership's transactions and are such as to

- ❖ Disclose with reasonable accuracy, at any time, the financial position of the limited liability partnership at that time; and
- ❖ Enable the designated partners to ensure that any Statement of Account and Solvency prepared under this rule complies with the requirements of the Act. [**Rule 24(1)**]

☞ The books of accounts shall be preserved for eight years from the date on which they are made. [**Rule 24(3)**]

☞ Every limited liability partnership shall file the Statement of Account and Solvency in Form 8 with the Registrar, within a period of thirty days from the end of six months of the financial year to which the Statement of Account and Solvency relates. [**Rule 24(4)**]

☞ A limited liability partnership's Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners. [**Rule 24(6)**]

The books of account shall contain

- ❖ particulars of all sums of money received and expended by the limited liability partnership and the matters in respect of which the receipt and expenditure takes place;
- ❖ A record of the assets and liabilities of the limited liability partnership;
- ❖ Statements of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold; and
- ❖ Any other particulars which the partners may decide. [Rule 24(2)]

As per Section 35(1), every limited liability partnership shall file an annual return with the Registrar in Form 11. The annual return of an LLP having turnover upto Rs. five crore rupees during the corresponding financial year or contribution upto Rs. fifty lakh rupees shall be accompanied with a certificate from a designated partner, other than the signatory to the annual return, to the effect that annual return contains true and correct information. In all other cases, the annual return shall be accompanied with a certificate from a Company Secretary in practice to the effect that he has verified the particulars from the books and records of the limited liability partnership and found them to be true and correct.

FOREIGN LIMITED LIABILITY PARTNERSHIP

As per rule 34(1) of the LLP Rules, a foreign limited liability partnership shall, within thirty days of establishing a place of business in India, file with the Registrar in Form 27

- ❖ A copy of the certificate of incorporation or registration and other instrument(s) constituting or defining the constitution of the limited liability partnership;

- The full address of the registered or principal office of the limited liability partnership in the country of its incorporation;
- The full address of the office of the limited liability partnership in India which is to be deemed as its principal place of business in India; and
- List of partners and designated partners, if any, and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the limited liability partnership, service of process and any notices or other documents required to be served on the limited liability partnership.

WINDING UP OF LLP

The winding up of a limited liability partnership may be either voluntary or by the Tribunal. Limited liability partnership, so wound up may be dissolved. (Section 63)

Circumstances in which limited liability partnership may be wound up by Tribunal (Section 64)

A limited liability partnership may be wound up by the Tribunal

- If the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- If, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;
- If the limited liability partnership is unable to pay its debts.
- I the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order.
- If the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

CHAPTER – 25
PRODUCER COMPANIES

There are different forms of business organizations. The company form of business organization is one of them. A producer company is one of the said company form of business organization. These types of companies are working like co-operative societies. Mainly these types of companies are registered in rural areas by the producers. These companies are incorporated to develop the rural economies and bridge the gap between industry and agriculture, rural and urban area and industry and labour etc. These companies are basically for the promotion of rural economies.

OBJECTS OF PRODUCER COMPANY

A Producer company means a body corporate, having objects or activities specified in Section 581B and registered as Producer Company. Hence, the objectives for which Producer Companies may be formed are laid down in Section 581B. These include inter alia, production, marketing, export of primary produce of members, processing, packaging of produce of its members; manufacture, sale of machinery etc. mainly to its members, generation and distribution of power, insurance of producers/primary produce, rendering technical/ consultancy services, promoting mutual assistance, welfare measures and any other activity for the benefit of members.