Basic Concepts

Company- Is an *Incorporated Association*, which is an *artificial person* created by law, having *a separate entity*, with a *perpetual succession* and a *common seal* **(Haney)**

Limited Liability

- *Company limited by shares*- members liability limited to share amount
- *Company limited by guarantee*- amount guaranteed by every member
- *Company limited by guarantee and having share capital*- unpaid amount and guaranteed amount

Transferability of shares

- *Private Company* - Transferability restricted
- *Public Company* - Freely Transferable

Separate Legal Entity related Case laws- Salomon Vs. Salomon & Co. Ltd.; Lee Vs. Lee Air Farming Ltd.; Bacha F. Guzdar Vs. Commissioner of Income Tax

Lifting of Corporate Veil (Ignoring Separate Legal Entity)	*As per statutory provisions* 1. **Reduction in membership below statutory minimum** [Section 45] and business continues for more than 6 months [*remember personally liable only for debts contracted after expiry of 6 months*]
	2. **Misdescription of name** [Section 147]-officer shall be personally liable
	3. Group accounts [Section 212] : Holding company to present annual accounts in consolidation with subsidiaries
	4. Fraudulent Trading [Section 542] : in case of winding up, if court feels that intention was to defraud creditors
	5. Arreas of Tax [Section 179 of IT Act] : directors jointly and severally liable
	As per Judicial decisions **1. Protection of revenue [Sir Dinshaw Manekjee Petit]** **2. Prevention of fraud or improper conduct [Gilford Motor Co. Ltd. v Horne]** **3. Determining the character of the company- whether enemy company [Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.]**

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[Section 2(7)] ***Body Corporate:***

includes company incorporated outside India

but does not include:
1. Corporation sole: President, Governor
2. Registered Co operative Society
3. Any other body corporate notified by CG

includes:
1. Public Financial Insitutes: ICICI, IDBI etc.
2. Notified PFI by CG(holds 51% or more paid up capital)

Nationalised Banks

Illegal Association [Section 11]	Unregistered Association of more than 20 persons [10 in case of banking companies] to carry on business for profit. Except HUF

Classes of Companies

- **Incorporation**
  - Chartered
  - Statutory
  - Registered
- **Liability**
  - Limited by shares
  - Limited by guarantee
  - unlimited
- **No. of members**
  - Private
  - Public
- **Control**
  - holding
  - Subsidiary
- **Ownership**
  - Government
  - Non Government
- **Others**
  - Foreign
  - Investment
  - Financial
  - Association not for Profit

Private Company- Restrictions in articles [Section 3(1) (iii)]

Transer of shares resticted
- Restricted doesnt mean PROHIBITED

number of members limited to 50
- Joint holders counted as 1
- employees becomind members not counted
- ex employees becoming members not counted

Prohibition in inviting public to subscribe for shares and debentures

Prohibited from Inviting or accepting deposits

Minimum Paid up Capital Rs.1 lakh

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Public Company [Section 3(1)(iv)]	Which is not a Private Company	Minimum paid up Capital Rs.5 lakh

Conversion of Private Company into a Public Company by Default [Section 43]

1. If company makes a default in complying with the conditions specified in Section 3(1)(iii)
2. Companies Act shall apply as if it were not a private company
3. If CLB satisfied , privileges maybe restored

Conversion of Private Company into Public Company by choice [Section 44]

1. Hold a Board meeting and pass Ordinary Resolution
2. Call for General Meeting and pass Special Resolution
3. File SR and Prospectus with Registrar within 30 days with ROC
4. Fresh Certificate of Incorporation will be issued. If converted after prescribed period, Certificate of Commencement shall not be required
5. Increase the Paid up Capital to Rs. 5 lakh

Conversion of Public Company into a Private Company [Section 31]

1. Alter the articles by passing a special resolution
2. Must be approved by CG
3. Change the name by adding Private

Section 25 Not for Profit Company

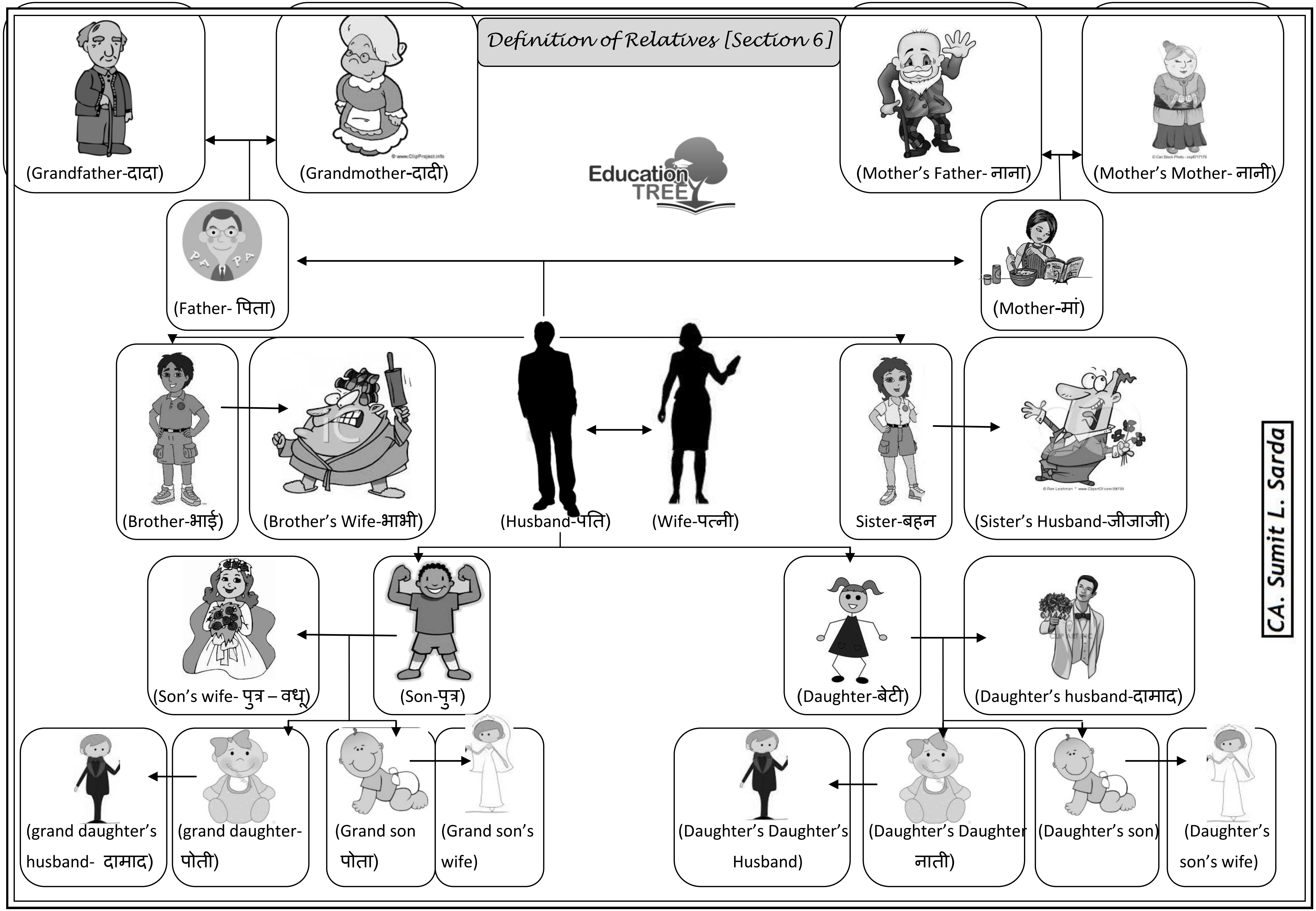
1. To promote commerce, art, science, religion, charity
2. Apply its income in promoting the objects
3. Prohibit payment of dividend

Not Required to use the words Ltd. or Pvt. Ltd.

For alteration in object clause, previous approval of CG required

Revocation of license if:

1. Alteration in objects without obtaining previous approval of CG
2. Violation of terms and conditions


Definition of Relatives [Section 6]
Education TREE
(Grandfather-दादा)
(Grandmother-दादी)
(Mother's Father- नाना)
(Mother's Mother- नानी)
(Father- पिता)
(Mother-मां)
(Brother-भाई)
(Brother's Wife-भाभी)
(Husband-पति)
(Wife-पत्नी)
Sister-बहन
(Sister's Husband-जीजाजी)
(Son's wife- पुत्र – वधू)
(Son-पुत्र)
(Daughter-बेटी)
(Daughter's husband-दामाद)
(grand daughter's husband- दामाद)
(grand daughter- पोती)
(Grand son पोता)
(Grand son's wife)
(Daughter's Daughter's Husband)
(Daughter's Daughter नाती)
(Daughter's son)
(Daughter's son's wife)
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Incorporation of Company

Promoter

Meaning

1. who generates the idea of incorporation
2. instrumental in bringing into existence the company

Position

1. neither an agent nor a trustee. Similar to them

Functions

1. Generating idea & funds
2. feasibility study

Promoter should *not make secret profits*→Promoter is allowed to make profits and earn remuneration →NOT TO MAKE SECRETELY	
DISCLOSURE to be made to BOD (Full and Fare)	If DISCLOSURE NOT made →Contract stands *Rescinded* ➔ Company may sue promoter for breach of Trust
Right of Promoter to receive Remuneration	1. Receive remuneration or recover expenses incurred 2. Articles may also provide such clause but it is not binding on the company 3. Mode of payment a. Issue shares at discount b. Purchase property of promoter at higher price c. Paying lump sum remuneration d. Payment of commission

Section 34

Certificate of Incorporation

Company acquires legal recognition

Section 35

Conclusive evidence that

1. all requirements of incorporation have been complied with by the company
2. association is duly registered
3. no enquiry shall be allowed for incorrectness contained in COI

Remains valid even if

1. one person has signed on behalf of all
2. all signatories are minor
3. memorandum altered after signature by all
4. Illegal objects incorporated

However

COI does not make illegal object LEGAL

COI related case laws	Jubilee Cotton Mills Vs. Lewis ; Moosa Vs. Ebrahim

Education TREE

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Pre Incorporation Contract
- Contract entered by Promoters on behalf of *Proposed Company*

→ **Requirement**
- Contract entered before incorporation
- on behalf of proposed company
- must fall within the object clause of company

→ **Post Incorporation**
- Company must accept the contract after incorporation
- Acceptance must be communicated

→ **If company does not accept**
- Not binding on comapny
- promoters personally liable
- Even if company takes benefit of contract it is not binding

Certificate of Commencement (Only applicable to Public Company)	
If Prospectus issued [Section 149(1)]	If Prospectus not issued [Section 149(2)]
1. Apply for listing 2. Receive allotment money due from directors and managers 3. Minimum subscription received 4. Declaration filed with ROC	1. Statement in lieu or Prospectus filed 2. Receive allotment money due from directors and managers 3. Declaration filed with ROC

Effect of Certificate	Contract entered before issue of certificate but after COI shall become automatically binding to the company Company cannot exercise borrowing powers without certificate of commencement

Memorandum of Association	**Conditions of Memorandum [Section 13]**		Forms as prescribed in Schedule I
Objects for which the company is formed [Section 2(28)]- as originally framed or altered from time to time	1. Name Clause 2. Situation Clause 3. Object Clause	4. Situation Clause 5. Liability Clause 6. Subscription Clause	**Table B**: Company Ltd. by shares **Table C**: Company Ltd. by Guarantee having no share capital **Table D**: Company Ltd. by guarantee having Share Capital **Table E**: Unlimited Company

Name Clause [Section 20]	Not to be registered with →Name already in existence or previously registered →Registered TM, or a TM subject to registration →In opinion of CG is undesirable

Change of Name [Section 21]	**[Section 22]**	
	Rectification of Name suo motu	**Rectification on direction of CG**
1. Previous approval of ROC 2. Pass SR	1. Previous approval of RD- if RD of opinion that name is undesirable 2. Pass OR	1. RD opinion within 12 months of registration of company 2. Within 3 months of direction by RD 3. Pass OR

Situation Clause [Section 13 and 146]	→Name of the state in which registered office is situated →Within 30 days of incorporation or actual commencement

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Shifting of Registered Office [Section 146]	*(Following cases does not lead to alteration in Situation clause)*
Within local limits	→Pass BR →file with Registrar within 30 days
Outside local limits within same State	→Pass SR →File with Registrar within 30 days
Change in Jurisdiction from 1 ROC to another	→ Pass SR →Apply to RD who shall confirm within 4 weeks →File with Registrar within 2 months confirmation and Memorandum who shall within 1 month issue Certificate of Registration

Alteration in Situation clause [Section 17]	→ Pass SR →Application made to ROC →ROC to consider rights and interests of any creditors and members if hampered →may confirm or dispense with such cases → File with each State order of ROC and copy of memorandum within 3 months(further extendable by 3 months) →Registrar of new State to issue fresh Certificate within 1 month

Object clause [Section 13] Contains →Main clause, incidental & ancillary clause →other objects	Alteration in Objects Clause *only for SPECIFIED PURPOSES* [Section 17] 1. Carry on business more efficiently and effectively 2. Attain main purpose by new or improved means 3. Enlarge or change local area of operations 4. Some business which can be conveniently or advantageously be combined with the business of the company 5. Restrict or abandon any objects specified 6. Sell or dispose of whole or any of the undertaking 7. amalgamate
Alteration in Objects clause 1. only for specified purpose → 2. pass SR 3. no approval of CLB/RD required	

Liability clause		
Company Limited by Shares	*Company Limited by Guarantee*	*Limited by Guarantee and Share capital*
Must state the fact that liability of members is limited	Must state that members shall be liable in the event of winding up	Both the facts stated in left to be specified
Alteration in Liability clause [Section 38]	Only by unanimous Resolution	EXCEPTION: club which wants to increase periodical subscription amount

Capital clause	→no. of shares →nominal value of each share →capital with which company is to be registered
Subscription clause	→no. of subscribers →no. of shares subscribed →witness →no alteration

Articles of Association	
Section 2(26)	**Meaning**
As originally framed and altered from time to time	Rules and regulations framed by the company for governance
Amendment of articles	SR required
Contents of Articles	1. Unlimited company: No. of members; amount of share capital if any 2. Company Ltd. by guarantee: No. of members 3. Private Company: Section 3(1)(iii)

Doctrine of Ultra vires

- Act is ultra vires if-
  - Not permitted by law
  - falls outside objects clause
  - its attainment is not incidental or ancilliary to main clause

Effect

- Transaction is void ab initio
- no ratification possible
- Directors personally liable to the company
- Utra vires property can be held by the company

Doctrine of Constructive notice

- ➔ MOA and AOA are public documents and any person entering into a contract with the company is assumed to have read the same
- ➔ Operates in favor of the company
- ➔ Case law- Kotla Venkataswamy V. C Rammurthi

Doctrine of Indoor Management	
➔ Outsider is not required to know the internal irregularity in the company ➔ Operates in favor of outsider ➔ Case law- Royal British Bank V. Turquand	Exceptions →Outsider had knowledge of irregularity →Negligence on the part of Outsider i.e. suspicious transaction →Illegal Transactions →.Forgery

Prospectus

Any notice, circular, advertisement inviting deposits from the public or inviting offers from the public

Invitation to offer

Includes	Does not include
1. Members or debenture holders of the company 2. Clients of the company	Offer made to a particular person. However offer made to 50 or more persons amounts to invitation to offer

Prospectus not required if	→Offer made to existing members →invitation to subscribe for shares and debentures uniform to previous issue and quoted in RSE →where no invitation or offer made to public →shares and debentures of a private company

Abridged Prospectus: memorandum containing salient features of prospectus as prescribed by CG

Section 56(3):
1. Must be attached to every application form
2. Prospectus must be furnished if demanded

not required:
1. underwriting agreement
2. not offered to public

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Deemed Prospectus
• document by which offer of sale to the public is made is deemed to be the prospectus

Section 64
• if offer made within 6 months of allotment to existing share/debenture holders • only part consideration was received

Shelf Prospectus [Section 60A]	1. Issued by Financial Institution or Bank for specified issues 2. Valid for 1 year from the date of 1st Issue & no prospectus required to be filed during this period 3. Each time offer is made an updated INFORMATION MEMORANDUM is required to be filed	
Information Memorandum	Process undertaken to determine demand, price and terms of issue prior to filing of prospectus	
Red Herring Prospectus	Does not contain complete information on price and quantum of securities offered. To be filed atleast 3 days before offer is made	
Variations from RHP	1. To be highlighted 2. Individually intimated to proposed investors	1. Not to encash advance received on subscription as each investor has the option to withdraw after changes intimated in RHP and prospectus
	If above steps not taken, ALLOTMENT stands VOID	

Golden RULE	→Prospectus must disclose all information →must not be misleading (Cese law: Rex v Kylsant)	
Remedies against such misstatement	Rescission of contract and claim damages only if- 1. Acted on such misstatement 2. Reasonable time has not lapsed 3. Liquidation proceedings not started	Who is liable →Directors →Promoters →Expert
Defense available to Directors	**Defense available to Expert**	
If he withdrew the consent before issue of prospectus	1. Competent and had reasonable grounds to believe that such statements were true 2. Withdrew the consent before issue of prospectus 3. Withdrew on becoming aware of untrue statement and gave reasonable notice	
Liability of indemnity	→If a person was named as expert or director but such person had not consented regarding the same →Every director and other person so authorized shall indemnify and shall extend to all damages, costs and expenses incurred by such person	
Defense available for omission of facts	→if director had no knowledge →it was honest mistake →omission was immaterial →court feels omission can be excused	

Statement in lieu of Prospectus
- if offer not required to be made in public

Section 70
- signed by every director and filed 3 days before allotment

not applicable to
- Private company
- Company having no share capital
- subsequent allotment by public company

Underwriter [Section 76]	1. Who undertakes to subscribe for security if not fully subscribed 2. Can be paid in respect of those shares or debentures which are offered to the public 3. Commission payable: Max 5% for shares of issue price & Max 2.5% of price of debentures. *Articles may provide lower rate*

Rules of Allotment	**Listing in Stock Exchange [Section 73]**	If permission not received within **10 weeks** from date of allotment, it stands void
		If permission received excess money from oversubscription must be returned to the shareholders
	Minimum subscription	90% of shares offered to the public
		If not received within **90 days** application money to be refunded
		Application money shall not be less than **5%** of nominal value of share
	Money to be kept in separate bank account unless above conditions satisfied and shall not be used	

Irregular Allotment

- Void — Shares not listed within 10 weeks
- Voidable —
  1. minimum subscription not received
  2. Application money less than 5%
  3. Application money not kept is Scheduled bank
- Valid — Copy of Prospectus not received by Registrar

Education TREE

Voting Rights [Section 87]	
Equity Shareholders	Can vote on each and every resolution placed before company
Preference Shareholder	Only on resolutions which directly affect his rights Can vote on every resolution if →Cumulative Preference shares if dividend remains unpaid for aggregate period of 2 yrs prior to meeting →Non Cumulative Preference Shares if dividend unpaid for 2 consecutive years or any 3 FY falling in block of 6 FY

Redemption of Preference Shares
Must be fully paid up →Out of profits or fresh issue of shares →Creation of CRR is mandatory if redeemed out of Profits →Equal to nominal value of Preference shares

Classification of Capital				
Authorized	Issued	Subscribed	Called up	Paid up

Equity shares with differential voting rights[Section 86]			
Must have distributable profits in 3FY preceding current FY	Not defaulted in filing annual accounts and statements for 3FY preceding current FY	No failure in payment of debts	No conviction of company
Approval requirement			
Must be authorized by articles	OR to be passed	Not to exceed 25% of total share capital	

Reduction of Share Capital [Section 100-104]	Reduction in unpaid Capital	Extinguish liability on unpaid capital
	Cancellation of lost capital	Pay back the excess funds available
	Paying off excess paid up capital	Write off the losses against capital
Steps	1. Authorized by articles, SR to be passed 2. Confirmation of court required 3. Court to secure the interest of the creditors	
Diminution of Capital [Section 94]	Cancellation of Authorized Share Capital	

Issue of shares at Premium [Section 78]	**Issue of shares at Discount** [Section 79]
➔ No Provision in articles is required ➔ Transferred in Securities premium account used for issue of bonus shares, writing of preliminary expenses, writing off discount, providing premium on redemption, buy back	➔ Must belong to class of shares already issued ➔ OR in GM, must specify rate of discount, maximum rate 10% ➔ CLB approval required ➔ At least 1yr completed by company

Sweat Equity shares

Issued by company to directors or employees at discount or consideration other than cash

Section 79A

1. SR required in GM

2. Company must have completed 1yr

Provision applicable

Listed Company- SEBI guidelines

Unlisted Company- CG

Reserve Capital- Section 99

- Portion of Capital uncalled, to be called in the event of winding up. SR requird to be passed

Buy Back of shares [Section 77A]	
Must be authorized by the articles	
SR required to be passed	SR not required if- ➔ Buy back authorized in BM ➔ Does not exceed 10% of paid up capital and free reserves ➔ Similar buy back shall not be made in next 365 days
Limits of buy back	➔ Not to exceed 25% of paid up capital and free reserves ➔ Shares not to exceed 25% of paid up equity capital ➔ Debt Equity ratio to be maintained to 2:1 after buy back
Shares must be fully paid up	
Buy back to be completed within 12months from date of SR	
Declaration of solvency to be filed that company will not be declared insolvent in coming 1yr	
Similar issue shall not be made in next 6 months	
Prohibition on buy back if →default in filing of annual return → payment of dividend →annual accounts true & fair presentation →repayment of deposits, debentures →preference shares	

Share Certificate [Section 84 & 119]	Share Warrant [Section 114 & 115]
1. Mandatory for every company	1. Optional only to public company
2. Contains details of the member	2. Is a bearer instrument
3. Can be partly paid	3. Must be fully paid
4. Trasfered by transfer deed	4. Transferred by mere delivery
5. Holder is a member of the company	5. Holder not a member of the company
6. No approval of CG is required	6. Approval of CG is required
7. Must be issued within 3months of allotment or 2 months of transfer deed	7. No time limit specified

Forfeiture of shares

→ Must be given in the articles → Generally on the ground of nonpayment of call → valid call must have been made → before forfeiture notice to be given to shareholder specifying *last date of payment(min 14 days), amount payable, warning that if not paid shares shall be forfeited* → board resolution to be passed for forfeiture

Calls in advance [Section 92 & 93]

→ amount paid by shareholder but not called →company may pay dividend in proportion to amount paid or interest on such advance @6%p.a. → it must be authorized by the articles → not entitled to additional voting rights

Rights Shares [Section 81]

→ further issue to be offered to existing shareholders if expiry of 2yrs from formation of company or 1yr from first allotment of shares whichever is earlier → notice given to every shareholder on no. of shares offered, time to exercise minimum 15 days and shareholder having right to renounce to any other person → if SR passed in GM, further issue need not be offered to existing shareholders

Conversion of borrowings from govt. [Section 81(4)]	Issue of convertible debentures [Section 81(3)]
➔ CG may order in public interest that debentures issued to/loans received from govt. to be converted into shares ➔ Company may go to appeal against the order to the court within 30 days	➔ Convertible debentures or loans with option to convert into shares at the end of the term provided SR was passed during such issue specifying conversion option

Refusal against transfer of shares [Section 111 & 111A]
➔ Where a **Private Company** refuses to transfer the shares based on reasonable grounds or **Public Company** refuses for sufficient cause as contravention to SEBI Guidelines ➔ Notice of such refusal to be served within 2 months of receipt of valid transfer deed ➔ Appeal to CLB can be filed by Transferor, Transferee or person giving intimation of Transmission ➔ To be filed within 2 months of notice of receipt of refusal or 4 months of submission of transfer deed if company failed to send notice of refusal ➔ CLB also has power to order for rectification in case name of a person is entered or removed from register of members or unnecessary delay takes place in entering the name as member without reasonable cause
Common grounds of refusal in Pvt. Company
→ malafide object →transferee being rival →transferor indebted to the company →management prejudicial to the company →transferee incapable of paying calls or is a minor → invalid transfer deed →1st offer to existing shareholders

Transmission of Shares	→ Transfer by operation of law →in case of joint holders transmission takes place when all holders die →does not require stamp duty
Forged Transfer	→ transferors signature is forged → it is void ab initio → innocent purchaser may claim damages form the company →companymay claim damages from person who lodged forged transfer → failure to reply to an intimation by the company to the shareholder does not amount to negligence on part of shareholder(**Barton v London North Western Railway**)
Blank Transfer	→ if it contains signature of transferor but does not contain name of the transferee → transfer takes place by mere delivery → transferee may register himself as member ones he completes the blanks

Member [Section 2(27) & 41]	Shareholder
➔ Does not include the bearer of share warrant ➔ Subscriber to memorandum ➔ Beneficial owner of shares ➔ Named in register of members	➔ Beneficial owner of shares ➔ Holder of share warrant is a shareholder
Person who signs memorandum is a member	Person who signs memorandum becomes shareholder if he subscribes for shares
Unless the name is not removed from register of members a person continues to be the member	On transfer of shares person ceases to be a shareholder

Minor as member	➔ Only for fully paid up shares ➔ For partly paid he cannot be compelled to pay not his guardian. If minor repudiates the contract he shall receive back the calls paid
Company as member	➔ If authorized by its memorandum can buy shares
Partnership firm	➔ Not a legal person hence cannot hold shares in its own name

Charges, Debentures and Public Deposits

Power to borrow money

- if objects clause permits
- not to borrow unless certificate of commencement received
- power exercisable by passing resolution in BM only
- not to borrow in excess of Paid up capital and free reserves unless sanction received from shareholders by OR

Charge [Section 124 to 127]	➔ Charge includes mortgage ➔ Means making property available as security for payment of debt ➔ Charge includes hypothecation, pledge however pledge does not require registration ➔ In case of default of payment, charge holder hay enforce repayment in court for sale of asset and right to sell asset and retain sale proceeds, however excess money to be refunded ➔ Charge requiring registration: Secured Debentures; charge on calls made but not paid; charge on immovable property; floating charge; charge on a ship ➔ Time limit: 30 days of creating a charge ➔ Consequences of non registration: charge *shall be void against liquidator; charge holder as good as unsecured creditor*; company may create subsequent charge having priority over unregistered charge ➔ *No charge can be created on reserve capital*
Deemed notice of charge	➔ If any person acquires property from the company ➔ On which charge has been registered by the company ➔ Shall be deemed to have notice regarding the same

Rectification of register of charges **[Section 141]**
→ ROC may extend time for registration or modification of charge → if the delay was accidental or shall not prejudice position of shareholders → application by company or interested person
Satisfaction of charge [Section 138]
➔ Charge is satisfied in full → within 30 days of satisfaction of charge → to the registrar → registrar to issue notice to charge holder to invite objection if any

Fixed Charge

- Created on some identifiable property
- without consent of chargeholder company cannot deal in such asset
- generally created on Fixed Assets

Floating Charge

- created on class of assets present as well as future
- Company can deal in such assets without obtaining consent of chargeholder
- generally created on Current Assets

Crystallization of charge	→ Right of company to deal in the asset comes to an end → generally takes place when company being wound up; ceases to carry on business → makes default in payment of interest or repayment of debt

Debentures	
Meaning	Name applied to certain type of documents evidencing indebtedness which is normally but not necessarily secured by a charge over property
Terms of issue	→ Debentures are issued with *pari passu* clause i.e. **ranking equally** even if they are issued at different point of time → Without *pari passu* clause they shall rank according to date of issue and if on same date as per serial number → No new series of debentures having priority over previous issue can be issues *unless specified expressly in earlier issue*
Voting rights	Cannot issue debentures with voting rights
Debenture Trust Deed	Executed within the period prescribed by CG, can be inspected by Members or Debenture holders
Debenture Trustees **[Section 117B]**	→ When debentures offered to public through prospectus, debenture trustee is appointed *before* issue of prospectus → Trustee *cannot be* beneficial holder of shares; creditor to the company; guarantor of repayment of debentures and interest → His duty is to ensure *assets are sufficient to discharge debentures; prospectus does not contain inconsistent terms; call meeting of debenture holders when necessary* → If assets are insufficient or likely to be insufficient to discharge principal, he may apply to CLB → If found guilty, debenture trustee shall be liable for damages for which no indemnity can be given [Section 119]
Debenture Redemption Reserve **[Section 117C]**	→ Company has to *create DRR out of profits of the company every year* until debentures are redeemed → Utilized for the purpose of redemption
Reissue of Redeemed Debentures	→ If articles provide, re issue of debentures redeemed can be done, they will be treated as new debentures for the purpose of stamp duty

Public Deposits

[Section 58A]
Company with minimum NOF of Rs.1 Crore

Limits

- Govt. Company- 35% of Paid up Capital and Free Reserves(SC & R)
- Others
  - From Shareholders- 10% of SC & R
  - Public- 25% of SC & R

Period of Deposit

- Minimum 6 months
  - Short term upto 10% can be for 3 months
- Maximum 36 months
- Before issue, advertisement to be issued by Board

Maintenance of liquid assets	→ 15% of amount maturing upto 31st March of the year →with Scheduled bank; securities of CG or SG → to be made before 30th April every year
Deposit Receipt	To be issued within 8 weeks of receipt of money in case of acceptance or renewal
Premature repayment	Only after 6 months have expired; rate of interest to be reduced by 1%
Filing of return	On or before 30th June every year by auditor of the company
Register of deposits	Kept at Registered Office for atleast 8yrs
Ceiling on brokerage	→ 1% for deposit upto 1yr → 1.5% for deposit upto 2yr → 2% for deposit more than 3yrs maturity
Statement in lieu of advertisement	If deposits are not invited; to be filed with Regiatrar

Small Depositors [Section 58AA]

- → Deposit less than Rs.20,000
- → If default made in repayment of such depositors, intimation by company to CLB within 60 days from date of default
- → CLB to pass such orders as it deems fit within 30 days
- → Company not to accept further deposit unless default made good
- → All future advertisements shall include disclosure that company has made a default in repayment to small depositors

General Meetings

Power to Call GM		
Board	**Members**	**CLB**
→ Individual director cannot call for meeting → Secretary cannot call for meeting	→ Members holding 1/10th of the paid up share capital	

Length of calling a GM **[Section 171]**	→ 21 CLEAR DAYS → Notice issued is assumed to be served *in 48hrs* (in addition to time above) → Date of meeting not included in CLEAR DAYS → Shorter notice can be served if *consent received by all members* in case of AGM and 95% members holding voting power in case of other GM
Content of notice **[Section 172]**	→ Place day and hour of meeting → Business to be transacted → Served to every member; auditor → Accidental omission does not invalidate meeting but deliberate does
Ordinary business & Special business **[Section 173]**	→ **Ordinary business** →consideration of a/c →declaration of dividend →retirement/appointment of directors →retirement/appointment of auditors → **Special business** →all except above →notice must specify that business is special & Explanatory notes to be attached to the same
Quorum **[Section 174]**	→ **5 members for public company and 2 members for pvt.** (articles may provide large no.) must be personally present within half n hr of start of meeting → If not present meeting stands *adjourned to same day in next week same time & place*; however if EGM called at requisition of members, *meeting stands dissolved* for lack of quorum → At adjourned meeting, if quorum not present in half n hr then present members shall be the quorum
Chairman **[Section 175]**	→ **Members present in meeting shall elect one of them as chairman** by show of hands or if poll demanded then as such → Chairman has casting vote if provided in the articles; such vote is at the discretion of the chairman
Proxies **[Section 176]**	→ Any member may appoint another person to vote on his behalf in a meeting → Does not apply to pvt. Company; company not having share capital → Notice of proxy to be submitted to company *atleast 48hrs* before the meeting → Proxy can *only vote on poll*; articles may permit him to vote by hands. He has no right to speak or be counted for quorum → If member attends the meeting, proxy stands automatically revoked
Representative **[Section 187 & 187A]**	→ **Body corporate** may by resolution in BM appoint a person as his representative to attend meeting in which it is member → **President of India or Governor of State** if member of company, may appoint a representative on their behalf → Such person *is deemed to be the member* of the company

Voting **[Section 177 to 180, 184, 185 & 191]**	➔ By show of hands unless poll is demanded (poll may be suo moto by chairman) ➔ Demand shall be from person holding 1/10th of voting power or Rs.50000 paid up share capital in case of public company or **1 member/2 member** in pvt. Company where meeting is attended by **less than 7 members/more than 7 members** respectively
Restrictions on voting rights of members	➔ If calls are not paid by the member
Circulation of members resolution **[Section 188]**	➔ Members holding 1/20th fo total voting power or 100 members holding paid up capital of Rs.1 lakh ➔ May propose a resolution to be discussed in AGM; such resolution must be signed by such members and deposited at the registered office atleast 6 weeks before AGM or 2weeks before EGM
OR & SR **[Section 189]**	➔ OR- votes cast in favour exceeds votes cast against ➔ SR- votes cast in favor exceed 3 times votes cast against a resolution
Minutes **[Section 193 to 197]**	➔ 30 days of conclusion of meeting, prepare minutes of meeting by Secretary signed by Chairman or director duly authorized ➔ Chairman has absolute discretion to remove any content from minutes found defamatory or immaterial ➔ Maybe kept in loose leaf if serially numbered, safeguards taken to avoid falsification and bound within say 6 months ➔ Available for inspection during business hours without any fees, however prescribed fees to be paid to take copy of the same

Statutory Meeting [Section 165]

→ ONLY TO PUBLIC COMPANY → between *1 month to 6 months* from date of commencement of business → notice shall be given of atleast 21 clear days along with *Statutory report certified by 2 directors and auditors* → Statutory report contains details of shares allotted, cash received, directors & auditors → Underwriting contract → arrears of calls → Commission or brokerage → no resolution can be passed in the meeting for which notice is not given

Annual General Meeting [Section 166 to 168]

- ➔ *1st AGM to be held in 18 months of incorporation or 9 months from close of financial year*
- ➔ Subsequent AGM to be held in Each financial yr or 15 months from last AGM or 6 months from close of Financial year
- ➔ Financial year can be upto 15 months or may extend to 18 months by ROC permission →AGM cannot be held on Public Holiday → Held at Registered office or some other place within same city →AGM including its adjournment should be completed within the time specified
- ➔ If accounts are not ready ROC may extend the time upto 9 months from close of financial year

Extra ordinary General Meeting [Section 169]

→ by members holding 1/10th paid up equity share capital →It shall specify matters for consideration → to be called within 21-45 days of requisition → to be held within 3 months

Education TREEY

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