Chapter – 1
Basic Concept

Sections covered in this Chapter -

Sections	Old / New Act	Description
Section 1	New Act	Short title, extent, commencement and application
Section 2(20)	New Act	Definition of "Company"
Section 2(11)	New Act	Definition of "body corporate" and defines which entities includes in body corporates
Section 2(72)	New Act	Exceptions of Section 4A (1)
Section 2(60)	New Act	Meaning of "officer who is in default"
Section 2(77)	New Act	Meaning of Relatives
Section 11	Old Act	Illegal Association
Section 34 & 35	New Act	Misrepresentation in Prospectus
Section 39	New Act	Explains prohibition of allotment unless minimum subscription received
Section 45	Old Act	Says that "Members severally liable for debts where business carried on with fewer than seven, or in the case of a private company, two members"
Section 147	Old Act	Explain about publication of the name of the company
Section 542*	Old Act	Defines the liability for fraudulent conduct of business

- This section in the Course of IPCC/IPC

Landmark Judgments covered in this chapter:

1. Saloman Vs. Saloman Co. Ltd. (1897)
2. Macaura Vs. Northern Assurance Co. Ltd.
3. Abdul Haq Vs. Das (1910)
4. Dailmer Co. Ltd. Vs. Continental Tyre & Rubber Co. Ltd. (1916)
5. Sir Dinshaw Maneckjee Petit Case
6. Jones Vs. Lipman
7. F.G. Films Ltd.
8. Workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd.
9. Gilford Motor Co. Ltd. Vs. Horne
10. Bannett Coleman & Co. Vs. Union of India (1972)
11. State Trading Corporation of India Ltd. Vs. C. T. O. (1963)
12. Connors Vs. Connors Co. Ltd.
13. Shymlal Roy vs. Madhu Sudhan Roy (1959)
14. Madanlal vs. Janakipradsad 48 All. 319

1. Short Title, Extent, commencement and Application of New Companies Act, 2013

a.	This Act may be called the Companies Act, *2013.*
b.	It extends to the whole of India.
c.	**This section shall come into force at once and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.**
d.	The provisions of this Act shall apply to— ✓ Companies incorporated under this act or under any previous company law; ✓ Insurance companies; ✓ Banking companies; ✓ Companies engaged in the generation or supply of electricity; (Electricity Company) ✓ Any other company governed by any special act for the time being in force; ✓ Such body corporate, incorporated by any Act for the time being in force.

2. Meaning

a.	**The word company' is derived from the Latin word –** ***Com + panis = company*** and it originally referred to an association of persons who took their meals together.

3. Definition

a.	**As per Judicial Decision – By Haney** A 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.
b.	**As per Companies Act, 2013 – Section 2 (20)** **"company" means a company incorporated under this Act or under any previous company law;**

4. Characteristics of a Company

Voluntary Association	**Separate Legal Entity**	**Limited Liability**	**Peretual Succession**	**Common Seal**
Transfer Of Shares	**Property in its name**	**Sue and be Sued**	**Limitation of Action**	**Termination of Existence**

1.	**Voluntary Association**	➢ An association ➢ Contribute money ➢ Share the profit and loss & form voluntarily
2.	**Separate Legal Entity/Corporate Personality**	A Company is, in Law regarded as an entity separate from its members, i.e., it has an independent corporate existence.

Case Law

A. Salomon Vs. Salomon & Co. Ltd.

Facts	✓ 'S' sold his shoe business for £.38,782 to a newly formed company, ✓ 'S' took 20,000 shares of £ 1 each, debentures worth £ 10,000 & balance in cash for consideration. ✓ Wife, daughter and 4 sons took up one share each. ✓ Company liquidated with assets worth £ 6,000 & liabilities £.17,000. ✓ Payment made first to 'S' being secured creditor.
Petition	Unsecured creditors argued that 'S' can't be treated as secured creditor.
Decision	Co. is different from its members who form it and their liability is restricted to the extent of unpaid value of shares, if any.

B. Lee Vs. Lee Air Farming Ltd.

Facts	✓ 'L' had 2999 shares out of 3000 shares. He was the MD & chief pilot. ✓ 'L' died while working. ✓ His wife claimed compensation.
Petition	Insurance Co. challenged her claim.
Decision	'L' was a separate person distinct from the company he formed and hence compensation is payable to widow.

C. Kandoli Tea Company Ltd.

Facts	Persons transferred their properties on which tax was payable.
Petition	Claimed exemption from tax.
Decision	Co. is separate from shareholders and transfer was as much as conveyance. Hence transfer of shares was deemed to be taxed.

3.	**Limited Liability**	☞ **Limited by shares** – Limited to the unpaid value. ☞ **Co. limited by guarantee** – Limited to the amount guaranteed.
4.	**Perpetual Succession**	☞ Members may come, members may go but company goes on forever. ☞ Change or death or insolvency or retirement or transfer of share of some or even all members do not affect continuity of a Co.

5.	**Common Seal**	☞ Since the company has no physical existence, common Seal acts as the official signature of a company. ☞ The name of the company must be engraved on its common seal. ☞ A rubber stamp does not serve the purpose. ☞ A document not bearing common seal of the company is not authentic and has no legal force behind it.
6.	**Transferability of Shares**	☞ Freely transferable (Except for Pvt. Companies). ☞ However, the articles shall lay down the procedure of transfer of shares otherwise will govern by table A.
7.	**Own and Hold Property on its own name**	☞ Because of its corporate personality, a company can own and transfer property in its own name. ☞ Although the shareholders have contributed to the capital of the company, they do not become the part owners of its property. ☞ Property of the company should not be treated as member's property or vice versa.

Case Law

A. Macaura Vs. Northern Assurance Co. Ltd.

Facts	✓ Macaura, held all except one Share of a Timber Company , ✓ He Insured the Company's Timber in his personal name. ✓ Timber being destroyed by the fire.
Petition	Claim for want of Insurable interest.
Decision	Even where a Shareholder held almost entire Share Capital, he does not have an insurable interest in the Company's property. Hence by applying the principle of separate legal entity, it was held the Insurance Company was not liable to Macaura.

B. Perumal Vs. John Deavin

Decision	Held that member can claim himself to be the owner of the company's property during its existence or in its winding-up. A member does not even have an insurable interest in the property of the company.

8.	**Capacity to Sue and be Sued**	A company being a juristic person it can sue in its own name and be sued by others.

Case Law

A. Abdul Haq Vs. Das

Decision	It was held that for the recovery of the any amount, the remedy lies against the company and not against the directors or members of the company.

9.	**Limitation of action**	☞ A company cannot go beyond the power stated in the Memorandum of Association. ☞ In order to enable it to carry out its actions without such restrictions and limitations in most cases, sufficient powers are granted in the Memorandum of Association. ☞ But once the powers have been laid down, it cannot go beyond these powers unless the Memorandum of Association is itself altered prior to doing so.
10.	**Termination of Existence**	☞ A company, being an abstract and artificial person, does not die a natural death. ☞ It is created by law, carries on its affairs according to law throughout its life and ultimately is effaced by law. ☞ Generally, the existence of a company is terminated by means of winding up. ☞ However, to avoid winding up sometimes companies adopt strategies like reorganisation, reconstruction and amalgamation.

5. Distinction between Company and Partnership

S.N.	Aspect	Company	Partnership
a.	**Mode of Creation**	Only when registered under Companies Act	By Mutual agreement between partners. Registration is optional
b.	**Separate Legal Entity**	Yes	No
c.	**Own Property**	Yes	No
d.	**Agents**	Members are not the agent of company	Partners are agent of the Firm.
e.	**Transfer of Share**	Yes	No
f.	**Liability**	Limited	Unlimited
g.	**Perpetual Succession**	Yes	No
h.	**Minimum No. of Persons**	2 for Pvt. Ltd. and 7 for Public Ltd. and 1 for One Person Company	Two
i.	**Minimum Paid up capital**	1 lakh for Pvt. and 5 Lakhs for Public Ltd.	Not Applicable
j.	**Maximum No. of Person**	200 for Pvt. Ltd and Unlimited for Public Limited.	10 for Banking and 20 for any other Business
k.	**Audit**	Compulsory	Optional

6. Lifting of Corporate Veil

- From the juristic point of view, a company is a legal person distinct from its members **[Saloman vs. Saloman & Co. Ltd.].** This principle may be referred to as the veil of corporation. The effect of this principle is that there is a veil between the company and its members. That is the company has a corporate personality which is distinct from its members.
- The Court will break through the corporate shell and apply the principle of what is known as ―lifting of or piercing through 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.
- The Corporate entity will be disregarded in the following circumstances –

A. Cases falling under **Judicial Interpretation**

B. Cases falling under **Statutory Provision**

A. Cases falling under Judicial Interpretation

S.N.	Particular
1.	**For the protection of revenue** – If a company is used as a means to evade tax, the courts may disregard the corporate veil. **Sir Dinshaw Maneckjee Petit Case –** The facts of the case are that the assessee was a **wealthy man** enjoying large dividend and interest income. He **formed four private companies** and agreed with each to hold a block of investment as an agent for it. **Income received was credited in the accounts of the company but the company handed back the amount to him as a pretended loan.** This way he **divided his income in four parts in a bid to reduce his tax liability.** But it was held ―the company was formed by the assessee purely and simply as a means of avoiding super- tax and the company was nothing more than the assessee himself. **It did no business, but was created simply as a legal entity** to ostensibly receive the dividends and interests and to hand them over to the assessee as pretended loans. **The Court decided to disregard the corporate entity as it was being used for tax evasion.**
2.	**Determining enemy character of Company** – **In Daimler Co. Ltd. v. Continental Tyre & Rubber Co., (1916) 2 A.C. 307** – German company incorporated as England Company for the purpose of **selling tyres made in Germany. During First World War, Co. started recovering its debts.** It was held that a company will be regarded as **having enemy character,** if the persons having de facto control of its affairs are resident in an enemy country or, wherever they may be, are acting under instructions from or on behalf of the enemy.
3.	**Protection of Public Policy –** Where the corporate veil conflicts with public policy, the court lifts the veil for protecting the public policy. **(Connors Ltd. v. Connors)**

4.	**For preventing fraud or improper conduct –** **Jones Vs. Lipman –** **A** agreed to **sell certain land to B for £ 5250.** Pending completion of formalities of the said deal, A sold and transferred the land to a company which he had incorporated with a nominal capital of £100 and of which he and a clerk were the only shareholders and directors. This was done in order to escape a decree for specific performance in a suit brought by **B.** The Court held that the company was the creature of **A** and a mask to avoid recognition and that in the eyes of equity **A** must complete the contract, since he had the full control of the limited company in which the property was vested, and was in a position to cause the contract in question to be completed.
5.	**Company acting as mere Agents/Trustees of its Shareholders –** **F.G. Films Ltd. –** An American company produced a film in India technically in the name of a British Company, 90% of whose capital was held by the President of the American company which financed the production of the film. Board of Trade refused to register the film as a British film which stated that English company **acted merely as the nominee of the American corporation.**
6.	**Company avoiding legal obligation or welfare legislations –** **Workmen of Associated Rubber Industry Ltd. Vs. Associated Rubber Industry Ltd. –** The facts of the case were that a new company was created wholly by the principal company with no assets of its own except those transferred to it by the principal company, with no business or income of its own except receiving dividends from shares transferred to it by the principal company i.e. only for the purpose of splitting the profits into two hands and thereby reducing the obligation to pay bonus. The **Supreme Court of India held** that the new company was formed as a device to reduce the gross profits of the **principal company and thereby reduce the amount to be paid by way of bonus to workmen.** The amount of dividends received by the new company should, therefore, be taken into account as assessing the gross profit of the principal company.
7.	**Company mere sham or clock –** 'H', a former employee of 'G', was subject to a covenant not to solicit its customer. H formed a Company to carry on a business which solicited the customers of G. The Court gave an injunction both against H and his Company to restrain them from carrying on the business further.**(Gilford Motor Co. Ltd. Vs. Horne)**

B. Cases falling under Statutory Provision

S.N.	Particulars
1.	**Reduction in membership [Section 45] –** If a company carries not business of more than six months after the number of its members has been reduced below seven in case of a public company and two in case of private company, every person who was a member of the company during the time when it carried on business after those six months and who was aware of this fact shall be severally liable for all debts contracted after six months.

2.	**Mis-description of the company [Section 147]** – The name of the company should be fully and properly mentioned on all documents, instruments, etc. If an officer of a company or any other person acts on its behalf and enters into a contract or signs a negotiable instrument without fully writing the name of the company then such officer or person shall be personally liable.
3.	**Fraudulent trading [Section 542]** – Where in the course of winding up of a company it appears that the business of the company has been carried on with intent to defraud creditors of the company or any other person or for any fraudulent purpose, all those who were aware of such fraud shall be personally liable without any limitation of liability.
4.	**Holding act subsidiary company [Sections 212 – 214]** – In the eyes of law, the holding company and its subsidiary company have separate legal entities. It has been held that even a hundred per cent subsidiary is a separate legal entity and its holding company is not liable for its acts. Under Section 212 (1), a holding company is required to attach with its final accounts, a copy of the balance sheet, profit and loss account, directors report of each subsidiary. Sometimes the court may refuse to treat the subsidiary company as a separate entity and treat it as only a branch of the holding company.
5.	**Failure to Refund application money [Section 39(5) Co's Act 2013]** – If the application money of those applicants to whom shares have not been allotted, is not repaid within 15 days of the date of issue of the prospectus, then the directors shall be jointly and severally liable to repay that money with interest @ 15% p.a.
6.	**Misrepresentation in Prospectus [Section 34 – 35 Co's Act 2013]** – In case of misrepresentation in a Prospectus, every Director, Promoter and every other person who authorises the issue of such a prospectus incurs liability towards those who subscribe for shares on the faith of such a misrepresentation.
7.	**Ultra vires acts** – Directors of a company shall be personally liable for all such acts which they have done on behalf of the company if they are ultra vires the company or ultra vires the directors and the company does not ratify their acts.

7. Others

A. Body Corporate/Corporation – [Section 2 (11) Co's Act 2013]

"**Body Corporate" or "Corporation" includes a company incorporated outside India, but does not include—**

(i) A **Co-operative Society registered** under any law relating to co-operative societies; and

(ii) Any **other Body Corporate** (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

Note – Every incorporated company is a body corporate but the reverse is not true as there are many Body Corporate which are not incorporates as Companies.

B.	Citizenship of Company

Though, a company is regarded as a legal person, it is not a citizen under the citizenship Act 1955 or the constitution of India.

In **state trading corporation of India Ltd. V. C. T. O.** the supreme court held that STC though a legal person, was not a citizen, therefore, a **company does not have the right of citizenship.**

However certain fundamental rights enshrined in the constitution of India for protection of person, e.g., **right to equality (Article 14)** are available to a company.

It bennet coleman Co. v. Union of India the Supreme Court observed the fundamental rights of shareholders as citizens are not lost when the associate to form a company.

However, a Company has both **"Nationality and Residence". (Domicile also)**

C.	Public Financial Institution – [Section 2 (72) Co's Act 2013]

"Public financial institution" means—

1. **LIC,**
2. Specified company referred to in the **Unit Trust Of India** (transfer of undertaking and repeal) act, 2002 (58 of 2002);
3. The **Infrastructure Development Finance Company Limited**, referred to in clause (*vi*) of sub-section (1) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act.
4. **Institutions notified by the Central Government** under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act;
5. **Such other institution as may be notified by the central government** in consultation with the RBI.

Provided that no institution shall be so notified unless—

A. It has been **established or constituted by or under any central or state act**; or

B. **Not less than 51% of the paid-up share capital** is **held or controlled** by the **central government** or by any **state government** or governments or partly by the central government and partly by one or more state governments;

D.	Officer in Default – [Section 2 (60) Co's Act 2013]

"OFFICER WHO IS IN DEFAULT", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) **Whole-Time Director;**

(ii) **Key Managerial Personnel;**

(iii) Where there is **no KMP**, such **director or directors as specified by the board** in this behalf and who has or have given his or their consent in writing to the board to such specification, or all the directors, if no director is so specified;

(iv) Any person who, under the **immediate authority of the board or any KMP**, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) Any person in accordance with **whose advice, directions or instructions the board of directors of the company is accustomed to act**, other than a person who gives advice to the board in a professional capacity;

(vi) **Every director**, in respect of a contravention of any of the provisions of this act, **who is aware of such contravention** by virtue of the receipt by him of any proceedings of the board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) In respect of the issue or transfer of any shares of a company, the **share transfer agents, registrars and merchant bankers** to the issue or transfer;

E. Relatives – [Section 2 (77) Co's Act 2013]

"Relative", with reference to any person, means anyone who is related to another, if—

(i) They are **Members** of a **Hindu Undivided Family**;

(ii) They are **Husband and Wife;** or

(iii) One person is related to the other in such manner as may be **prescribed (see below)**;

The Companies (Specification of Definitions Details) Rules, 2014 – Rule 4

List of Relatives in terms of clause (77) of Section 2 – A person shall be deemed to be the relative of another, if he or she is related to another in the following manner –

1. Father • Step Father.	4. Daughter • Daughter's Husband.
2. Mother • Step Mother.	5. Brother • Step Brother.
3. Son • Step Son; • Son's Wife.	6. Sister • Step Sister.

F. Illegal Association – Section 11

Applicability	No company, association or partnership consisting of more than – ☞ Ten in the case of a Banking Business or ☞ Twenty persons in case of Other Business (other than Banking); Can be formed for the purpose of carrying on any business that has for its objects the acquisition of gains, **unless it is registered as a company under the Companies Act, or is formed in pursuance of some other Indian law.**

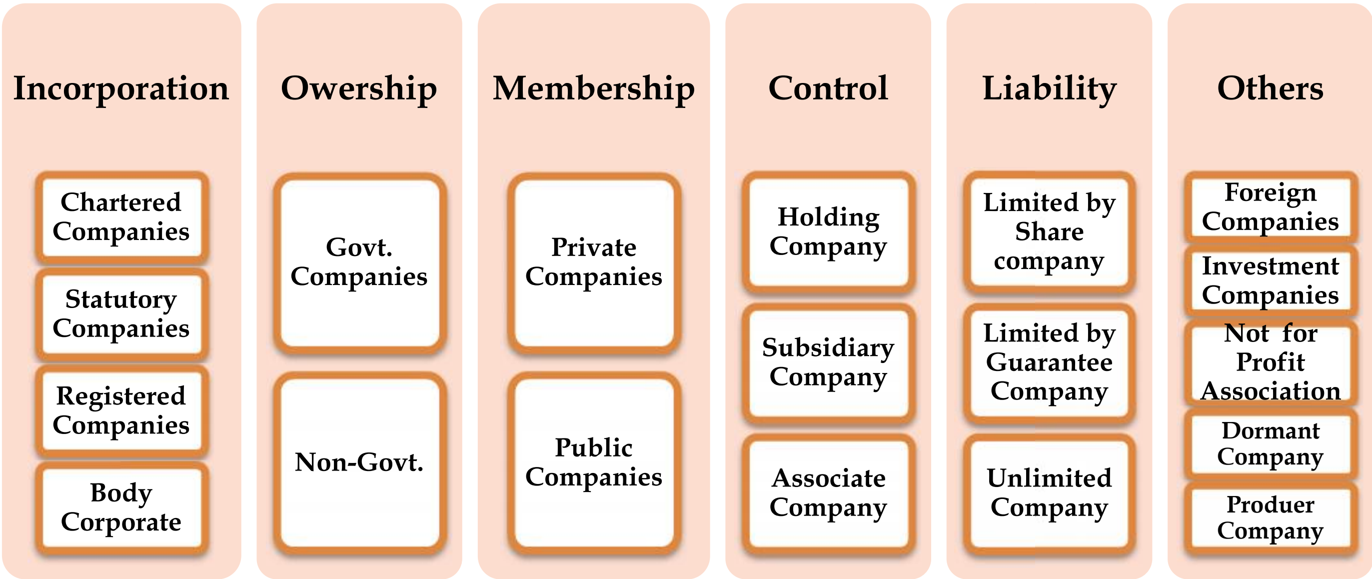
Exception	The provision is **not applicable to Joint Hindu family** carrying on a business. Note – Where **two or more joint families are carrying on a joint business, the provision will be applicable.** However, for the purpose of computing the number of persons carrying on the business, the **minor members** of such families are **not to be included. [*Shymlal Roy* vs. *Madhu Sudhan Roy AIR* 1959 Cat. 330]**
Consequences	1. Every person who is, or continues to be a member of an association, is **personally liable** for all liabilities incurred in such business. 2. Every member is in **addition punishable** with **fine** which may extend to **₹ 10,000/-** for trading or carrying on business under any name or title of which 'limited' is the last word, without being fully incorporated. 3. An association of more than 20 persons, if unregistered, is **invalid at its inception and cannot be validated by subsequent reduction** in the number of members below 20 ***[Madanlal vs. Janakipradsad 48 All. 319],*** 4. As a body, it will have **no legal existence** and it **cannot be wound** up under the Act, or even as an unregistered company. 5. **Neither a member** of it would be able to **sue it**, **nor** would **it** be able to **sue** the member.

Some Problems

Q.N.	Problems
P.1	Both the shareholders of the Private Company died in a car accident. Decide whether Company's existence also comes to an end.
P.2	In a private Company, after the death of Mr. X entire capital of the company is held by his son Y. Decide, whether Y can continue business of the co. with single shareholder.
P.3	The number of members in a public Company became reduced to six on the 10th September, 2013, the Company incurs trade debts on 11th September, 2013, 2nd February, 2014 and 17th March, 2014. How far are the remaining six members liable for the debts?
P.4	A public limited Company has only seven shareholders, all the shares being paid in full. All the shares of one such shareholder are sold by the court in an auction and purchased by another shareholder. The Company continues to carry on its business thereafter. Discuss the liabilities of the shareholders of the Company.
P.5	'A company is a person separate from its members'. Explain. Examine the circumstances under which the Courts may disregard the Company's Corporate Personality.
P.6	F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded.
P.7	Explain clearly the concept of "perpetual-succession "and "common-seal" in relation to a company incorporated under the Companies Act, 1956.

Chapter – 2
Kind of Companies

Classification on the basis of –



	Classification of Companies
	1. On the basis of Incorporation
A.	**Chartered companies** – Incorporated under a special charter granted by the king or queen of England.
B.	**Statutory Corporation** – ✓ These are created by a special act of the parliament/state assembly. ✓ Nature and powers of such companies are laid down in the special Act ✓ Audit is conducted under the control and supervision of the Comptroller Auditor General of India
C.	**Body Corporate – Same as discussed in Chapter – 1**
D.	**Registered Companies** – Which are registered under the companies Act, 1956 or under previous companies Acts. [**Section 2 (20) Co's Act, 2013]**
	2. On the Basis of Ownership
A.	**Government Companies** – Means any company in which a. Not less than fifty-one per cent of the paid-up share capital is held by ➢ The Central Government, or ➢ By any State Government or

	➢ Governments, or ➢ Partly by the Central Government and partly by one or more State Governments, b. And includes a company which is a subsidiary company of such a Government company. **[Section 2 (45) Co's Act, 2013]**
B.	**Non – Government Companies –** Companies other than Government Co's.
	3. On the Basis of Membership
A.	**"Public Companies" means a company which—** (a) Is not a private company; (b) Has a minimum paid-up share capital of five lakh rupees or such higher up capital, as may be prescribed. (c) Is a subsidiary of a company, not being a private company, shall be deemed public company for the purposes of this act even where such subsidiary company continues to be a private company in its articles. **[Sec. 2 (71) Co's Act, 2013]**
B.	**"Private Company"** other than **ONE PERSON COMPANY – [Section 2 (68) Co's Act, 2013]** **1.** A Private Company as one which by its Article of Association – (a) Restricts the right to transfer its shares; (b) Limits the number of its members to 200 which will not include – ☞ Members who are employee of the company, and ☞ Members who were ex – employees of the company and were members while in such employment and who have continued to be members after employment ceased. **Note –** Where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member (c) Prohibits any invitation to the public to subscribe for any securities of the company **2.** A private company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed.

Distinction between Private and Public Company

Basis	Public Company	Private Company
(a) Minimum Paid up Capital	₹ 5 Lakhs	₹ 1 Lakhs
(b) Acceptance of Public Deposits	Free to accept	Can't accept except from its members, directors & relatives
(c) Minimum Members	7 persons	2 persons
(d) Maximum Members	No restriction	200 persons

(e) Transferability of Shares	Freely Transferable	Restriction by its Articles
(f) Quorum	5 members personally present	2 members personally present
(g) Statutory Meeting	Compulsory	Not Applicable
(h) Director Consent	File written consent with ROC	Not Applicable
(i) Qualification Shares	Yes	Not Applicable
(j) Appointment of Directors	Separate Resolution for each	Single Resolution for All
(k) Increase in Directors	Approval from C.G. if no. exceeds 12	May increase without permission.
(l) Retirement of Directors	At least 2/3rd shall retire at each AGM by rotation	Directors need not to retire by rotation.
(m) Commencement of Business	'Certificate of Commencement of Business' from ROC	Immediately after Incorporation.

Note – There are 2 more concept i.e. **ONE PERSON COMPANY** and **SMALL COMPANY** **[Sec. 2 (62) & (85) respectively of Co's Act, 2013]**

Conversion of a Private into Public Company

Conversion by Default [Section – 43]	➢ Where a default is made by a private company in complying with the essential requirements of a private company, the company ceases to enjoy the privileges and exemptions conferred on a private company. ➢ In such a case the provisions of the companies Act apply to it as if it were not a private company. ➢ The National Central Govt. may relieve the company from the consequences as aforesaid. ➢ If it is of opinion that the non-compliance was accidental or due to inadvertence or other sufficient cause. ➢ It may also grant relief if on some grounds it is just and equitable. ➢ It may however, impose such terms and conditions as seem to it just and expedient.
Conversion by Choice or Volition [Section – 44]	If a private company so alters its articles that they do not contain the provision, which make it a private company. It shall then file with the Registrar, within 30 days, either a prospectus or a statement in lieu of prospectus. When this is done, the company becomes a public company. ***A private company which becomes a public company shall also*** – a. File a copy of the resolution altering the Articles, within 30 days of

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<tr><td></td><td>passing thereof with the registrar.
b. Take steps to raise its membership to at least 7 if it is below that number on the date of conversion and also increase number of its directors to more than 2 if it is below that number.
c. After the regulations contained in the Articles which are inconsistent with those of a public company.
The prospectus/statement in lieu of prospectus to be filed by a private company on its conversion.</td></tr>
<tr><td>Conversion of a Public Company into Private Company</td><td>➢ It is possible only in case of a public company having number within the limit prescribed for a private company.
➢ A public company may be converted into a private company by passing a special resolution.
➢ The special resolution should be to change the articles of the company so as to include the condition as prescribed in which make the effect of converting a public company into a private company shall have effect only when such alteration has been approved by the Central Government.
➢ Where the alternation has been approved by CG a printed copy of the article shall be filed with ROC within 1 month of receipt of approval.</td></tr>
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<tr><th colspan="2">4. <u>On the Basis of Control</u></th></tr>
<tr><td>A.</td><td><u>Holding Company</u> – In relation to one or more other companies, means a company of which such companies are subsidiary companies. [Section 2 (46) Co's Act, 2013]</td></tr>
<tr><td>B.</td><td><u>Subsidiary Companies</u> [Section 2 (87) Co's Act, 2013] – In relation to any other company (that is to say the holding company), means a company in which the holding company—
(i) Controls the composition of the Board of Directors; or
(ii) Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies –
Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.
<u>Explanation.—For the purposes of this clause</u>—
(a) A company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
(b) The composition of a company's board of directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
(c) The expression "company" includes any Body Corporate;
(d) "layer" in relation to a holding company means its subsidiary or subsidiaries;</td></tr>
</table>

Note	**The Ministry has clarified that the shares held by a company or power exercisable by it in another company in a fiduciary capacity shall not be counted for the purpose of determining whether the other company is subsidiary of the former. [Circular No. 20/2013 dated 27/12/2013]**
C.	**Associate Company** – In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. **[Section 2 (6) Co's Act, 2013]** **Explanation**—For the purposes of this clause, **"significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement.**
5. On the Basis of Liability	
A.	**Limited by Share Company** – Means a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. **[Section 2 (22) Co's Act, 2013]** **Note – Liability can be enforced during the lifetime of Company or upon winding up. Liability of members arises only in pursuance of Calls.**
B.	**Limited by Guarantee Company** – Means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up. **[Section 2 (21) Co's Act, 2013]** **Note – One will find companies limited by guarantee in the fields of associations of traders formed for trade promotion and protection and collection of relevant data and information or of associations formed for entertainment and promotion of cultural activities which are established for rendering service to members and not for earning profit.** **Company limited by guarantee can be formed with or without Share Capital. The liability of members is as under –**

Type of Company	**Member's Liability is limited to –**
Guarantee Company having no Share Capital	**Amount undertaken by the member in MOA.**
Guarantee Company having Share Capital	**Amount unpaid on Shares + Amount undertaken**

C.	**Unlimited Company** – Means a company not having any limit on the liability of its members. **[Section 2 (92) Co's Act, 2013]** **Note – Such Companies are uncommon and rare. The liability of each member extends to the whole amount of the company's liabilities. It may or may not have share capital. Must have its own AOA. Articles must state the amount of share capital and the amount of each share. Unlimited liability of members is towards creditors only, not towards company. May alter or reduce its share capital without any restriction.**

6. On the Basis of Others	
A.	**Foreign Companies – A** company incorporated outside India but having a place of business in India. **[Section 591]** A Company has a place of business in India if it carries on business at some specified or identified place such as office Godown or a storehouse. **Note – Within 30 days of establishment of business in India, a foreign company is required to file with ROC of the place where principal office of the company is situated and the ROC of New Delhi.**
B.	**Investment Company –** Principal business is the acquisition of shares, debentures etc.
C.	**Associate Company –** In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company. **[Section 2 (92) Co's Act, 2013]** **Explanation**—For the purposes of this clause, **"significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement.**
D.	**Not for Profit Association – Section 25** **(a) Registration of an association not for profit – C.G. permission.** **(b) With limited liability without using "Limited"/ "Private Limited".** (c) **Conditions for grant of licence –** 1. For promoting commerce, art, religion etc. 2. Prohibits payment of any dividend. 3. A licence subject to other conditions as think fit by C.G. 4. can't alter its objects clause in MOA without the approval of C.G. **(d) C.G may also grant exemption for other provisions.** (e) **Revocation of licence –** ✓ The C.G. may revoke if objects clause changed without the approval of the C.G. ✓ Upon revocation, the registrar shall add the word "Limited" or "Pvt. Ltd". ✓ Before a licence is revoked, the C.G. shall give an opportunity of being heard.

Some Problems

Q.N.	Problems
P.1	BS & Co. Ltd. is registered as a Private Limited Company. The shareholding pattern of the Company is under – **Category** — **No.** Directors & their relatives — 80 Employees — 45 Ex-employees (shares were allotted when they were employees) — 55 Twenty couples holding shares jointly in the names of husband and wife (40 x 2) — 80 Others — 40 *Total* — ***300*** Calculate the No. of Members to be counted for the purpose of section 2 (68) of Co's Act, 2013?
P.2	The paid up share capital of Advanced Castings Pvt. Ltd is ₹ 1,00,00,000 consisting of 8,00,000 Equity shares of ₹ 10 each fully paid up and 2,00,000 cumulative Preference shares of ₹10 each fully paid up. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd. are holding 3,00,000 Equity shares and 1,50,000 Equity shares respectively in Advanced Castings Pvt. Ltd. Quality Forgings Pvt. Ltd. and Supreme Engineering Pvt. Ltd are the subsidiaries of Unique Machineries Pvt. Ltd. Examine whether Advanced Castings Pvt. Ltd. is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. controls composition of Board of Directors of Advanced Casting Pvt. Ltd.?
P.3	On acceptance of deposits a private Company becomes a Public Company. True or False.
P.4	Two joint Hindu families carry on a business as joint-owners. The first family consists of 3 brothers and their respective sons being 12 in number. The second family consists of the father, 4 major sons and 2 minor sons. Is the association illegal?
P.5	In a private limited Company it is discovered that there are, in fact, 204 members. On an enquiry, it is ascertained that 6 of such members have been employees of the Company in the recent past and that they acquired their shares while they were still employees of the Company. Is it necessary to convert the Company into a public limited Company?
P.6	40% of Paid up Capital of Company A is held by C G and 11% by PFI like LIC and UTI. Is company A, a Government Co.?

Chapter – 3
Formation of Company

Sections covered in this Chapter -

Sections	Old / New Act	Description
Section 13	Old Act	Requirement with respect to memorandum
Section 15	Old Act	Printing and Signature of memorandum
Section 20	Old Act	Companies not to be registered with undesirable names
Section 33 (2)	Old Act	Registration of MOA and AOA (Statutory Declaration)
Section 34	Old Act	Effect of Registration
Section 35	Old Act	Conclusiveness of COI
Section 146	Old Act	Registered Office of Company (E-Form No. 18)
Section 149	Old Act	Restrictions on Commencement of Business

Landmark Judgments covered in this chapter:

1. **Jubilee Cotton Mills Ltd. v. Lewis**
2. **Moosa Gaoolam Ariff v. Ebrahim Goolam Ariff**
3. **Malabar Iron & Steel Works Ltd. v Registrar of Companies (1963)**

I. Procedure for Registration/Incorporation

a. Name Availability –

(i) **Section 20 –** 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 –**

- ✓ Is prohibited under the **Emblems and Names (Prevention of Improper Use) Act, 1950,**
- ✓ The name which **infringes the registered trademark** or trademark which is subject of an application for registration,
- ✓ The use of which will **constitute an offence** under any law for the time being in force, and
- ✓ **Offensive to any section of society.**

☞ For deciding the availability of names, the Ministry of Corporate Affairs has issued **Name Availability Guidelines, 2011 w.e.f. 24.07.2011.**

(ii) **Section 13 – 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.**

(iii) **The applicant should –**

- ✓ **Apply in E – Form 1A along with prescribed fees to the ROC of the State in which the Registered Office of the Company is to be situated.**
- ✓ Provide **3 names** in order of **priority.**
- ✓ A **fee of ₹ 1000** (**w.e.f. 24.07.11**) is to be paid along with e-Form 1A.

Note

This form has an **option** for **certification by professionals,** who will certify that he has used the search facilities available at MCA Portal **for checking the resemblance of the proposed name with already registered entities.**

He will **also certify that the proposed name is not an undesirable name** under the provision of Section 20 of the Act and is in conformity with Name Availability Guidelines, 2011.

	(iv)	**ROC shall intimate/communication the name availability within a reasonable period. (Generally same day because of E- Forms)**
	Note	☞ In order to give **ease to the corporate world to carry business in India,** the MCA vide **General Circular No. 49/2011 dated 23rd July, 2011** has modified the incorporation procedures to enable promoters to get their **companies incorporated online within 24 hours.** ☞ In case the e-forms 1, 18, 32 and e-form for Memorandum of Association (MOA) and Articles of Association (AOA) have been **certified by the practicing professional** regarding the correctness of the information and **declarations** given **by** the **subscribers, the application** shall **be processed electronically** and the **digital certificate of incorporation** shall be **issued immediately online** by the Registrar of Companies.
	(v)	✓ **The name sanctioned by the ROC will be valid for 60 days from the date the name is allowed.** ✓ If the name so allowed is not adopted on or before the expiry of the period of 60 days from the date it is allowed, the name allowed shall lapse and **no extension will be granted after expiry of 60 days from the date the name is allowed.**
b.	**Preparation of MOA and AOA –**	
	1.	✓ 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
	2.	The other important document is the **Articles of Association** which contains the **rules and regulations relating to the internal management of a company.**
c.	**Vetting of MOA and AOA, Printing, Stamping and Signing of the same**	
	1.	The **draft** of the Memorandum and Articles should be **prepared and typed before printing** the Memorandum and Articles of Association of a company.
	2.	It is usual for the **promoters to approach the ROC** concerned **for vetting the draft** Memorandum and Articles as the Registrar of Companies **may propose some changes.**
	Note	It has been clarified by the Department vide Circular No. 128(HCC) 64 dated 27.7.1964 that though it may **not be possible for the Registrars** to accept a definite commitment in this regard, the Registrar should to the extent possible, offer their help and advice to those who may approach them in drawing up the Memorandum and Articles. **This would be specially desirable in cases where promoters have no prior experience on company formation.**

	3.	✓ For **vetting** the Memorandum and Articles **no fee** is required to be paid by the promoters. ✓ The **promoters** may make a **written request on plain paper enclosing a copy of the draft** Memorandum and Articles, and **after the vetting** by the Registrar, the Memorandum and Articles may be **printed** as required under Section 15 of the Act.
	4.	The Memorandum and Articles have **to be stamped** and the value of stamp differs from State to State **as per respective State Stamp laws.**
	5.	**Section 15 – Also States that** ✓ **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.**
	6.	The **Articles of Association** should also be **signed separately by subscribers.** The signatures of the subscribers in the Articles of Association are also to be **attested by a witness.**
d.	**Power of Attorney**	✓ With a view to fulfill the various formalities that are required for incorporation of a company, the promoters may appoint an attorney empowering him to carry out the instructions/requirements stipulated by the Registrar. ✓ This requires execution of a Power of Attorney on a non- stamp paper of a value prescribed in the respective State Stamp Laws.
e.	**Additional Documents Required –**	
	(i)	**E-Form No. 18 (Notice of Registered address) –** Under Section 146, a company shall as from the **day on which it begins to carry on business, or as from the 30th day after the day of its incorporation whichever is earlier,** should have a registered office. ☞ Where the location of the registered office is **finalised prior to Incorporation** of a company by the promoters, the **promoters can also file** along with the Memorandum and Articles, **the notice of situation of the Registered office in e-Form 18.** ☞ Where the location of the **registered office is not finalised, e-Form 18** can be **filed later** but **within 30 days from the date of incorporation.**

	(ii)	**E–Form No. 32 (Particulars of Directors)** – Where a company by its Articles of Association appoints any person(s) who are to act as a director, manager or secretary it may also file their particulars, in **e-Form 32 with the Registrar at the time of registration.** However, **e-Form 32 can also be filed within 30 days of the registration of the company or appointment of first directors.**
	(iii)	**E-Form No. 29 – Consent of Directors** (To be Discussed in Director Chapter)
	(iv)	**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.** ☞ In the scenario of e-filing, DIN is a pre- requisite for filing of certain company related documents. ☞ Any individual who is a director or intends to be a director of a company should apply for DIN first. ☞ DIN has to be **obtained** by the directors of the company **before commencing the procedure for incorporation** of a company **(The reason is that DIN will be required at the time of filing e-form 32).**
f.	**Statutory Declaration in E-Form 1 – Section 33 (2)**	
	(i)	**Section 33(2) requires that a declaratio**n in e-Form 1, 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, practising 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, 1956 and the rules thereunder 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.**
	(ii)	The above **declaration** should be on a **non-judicial stamp paper of appropriate value** with reference to the State which the office of the Registrar of Companies is situated. Alternatively, non-judicial special adhesive stamps may also be affixed to the declaration.
	(iii)	**e-Form 1 is to be filed electronically and the original duly filled in and signed e- Form 1 on stamp paper are required to be sent to the concerned ROC simultaneously, failing which the filing will not be considered and legal action will be taken.**
g.	**Payment of Registration Fees**	☞ The **fee prescribed for registration of company** is required to be paid to the Registrar. ☞ The quantum of registration fees depends on the nominal capital of the company to be incorporated in case of companies having share capital which has been **prescribed in Schedule X to the Act.**

h.		**Certification of Incorporation –**
	(i)	If all the **documents mentioned above are complete** and the **Registrar of Companies is satisfied** that all the **requirements,** aforesaid, have been **complied** with by the company and that it is authorised to be registered under the Act, **he shall retain and register the Memorandum and Articles, if any.**
	(ii)	**On the registration** of the memorandum of a company, the **Registrar shall certify** under his hand that the **company is incorporated** and, in the case of a limited company that the company is limited company.
	(iii)	✓ From the date of Incorporation mentioned in the Certificate of Incorporation, ✓ The company, shall be a body corporate by the name contained in the Memorandum and ✓ Capable forthwith of exercising all the functions of an incorporated company and ✓ Having perpetual succession and a common seal, but with such liability on the part of the members to contribute to assets of the company in the event of its being wound up as mentioned in the Act **(Section 34).**
	(iv)	The **subscribers would become the members** of the company
	Note	A company **may also act, as trustee, executor or administrator,** provided its constitution, i.e., its **Memorandum of Association permits** or authorises the doing of such business.
	(v)	**Conclusive Evidence –** According to **Section 35** of the Act, a **Certificate of Incorporation** given by the Registrar in respect of any association **shall be conclusive evidence** that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorised to be registered and duly registered under the Act.
	Case	**Jubilee Cotton Mills Ltd. v. Lewis** The Registrar issued a certificate of incorporation on January 8th but dated it January 6th which was the date he received the documents. On January 6th the company mode an allotment of shares to Lewis. Held that the certificate was conclusive evidence of incorporation on January 6th and that allotment was not void on the ground that it was made before the company was incorporated.
	Case	**Moosa Gaoolam Ariff v. Ebrahim Goolam Ariff** M & A signed by 2 persons and a guardian on behalf of 5 minor members. The ROC issued COI. Plaintiff contended that COI should be declared void. The Court held that certificate to be conclusive.
	Note	Certificate of **incorporation does not legalise the illegal objects** and registration may be cancelled by Central Government after taking appropriate proceeding.

II	Commencement of Business – Section 149	
a.	✓ The date of incorporation of a company may not be the date of commencement of business. ✓ A private company and a public limited company not having share capital are not required to comply with any other formalities and may commence its business activities immediately after obtaining the certificate of incorporation from the concerned Registrar of Companies. ✓ A private limited company, which has converted into public limited company, is also not required to obtain certificate of commencement of business.	
b.	**Requirement for obtaining commencement of business certificate**	A public limited company having share capital cannot commence business until it has obtained the certificate to commence business (COB) from the concerned Registrar of Companies. Normally a new company will comply with the required formalities and obtain the commencement of business certificate (COB) from the Registrar as soon as possible after formation because it cannot commence any business activities or exercise its borrowing powers without it.
c.	**ACTION REQUIRED ON THE PART OF THE COMPANY TO OBTAIN COB**	
	(i)	**WHERE A COMPANY NOT ISSUES PROSPECTUS FOR PUBLIC SUBSCRIPTION**
		For obtaining a certificate to commence business, the following actions are required to be taken:— 1. The company shall file with the Registrar a statement in lieu of prospectus (SLP) (signed by every director) electronically at the MCA portal in the form given in Schedule III to Act together with the E-Form 62 and shall pay the prescribed fee by online or offline as per Schedule X of the Companies Act, 1956. 2. The directors should pay the value of the shares to the extent money is payable in cash with application/allotment; 3. A duly certified declaration shall be filed electronically at the MCA portal in the E-Form 20 and a stamped copy shall be simultaneously filed with the Registrar signed by a director/secretary or by secretary in practice where there is no secretary, to the effect that the requirements of section 149(2) have been complied with. 4. The company shall not allot any share or debenture at least for three days after filing of statement in lieu of prospectus with the Registrar. [Section 70(1)]; 5. The company shall pay the prescribed filing fee by online or offline under Schedule X on SLP and on e-Form 20 to the Registrar of Companies. **"The Registrar of Companies shall then issue the requisite certificate of commencement of business".**
	Case	It was decided in the case of *Malabar Iron & Steel Works Ltd. v Registrar of Companies (1963)* that COB cannot be issued if the company has not complied with the provisions of section 149(1), even though it has issued a SLP u/s 70.

	(ii)	**WHERE A COMPANY ISSUES PROSPECTUS FOR PUBLIC SUBSCRIPTION**
	(iii)	Where a company issues a prospectus immediately after its formation, it need not file a statement in lieu of prospectus. The following points have to be ensured in this connection:— 1. Shares arranging the amount at least equal to the amount of minimum subscription under section 69 have been allotted. [section 149(1)(*a*)] 2. Every director has paid to the company, in respect of shares taken or contracted to be taken by them subject to payment in cash, a sum equal to at least the amount payable on application and allotment on the shares offered to public for subscription. [section 149(1)(*b*)]; 3. Application has to be made to the recognised stock exchange for obtaining permission for dealing in shares/debentures; 4. Filing of following documents electronically with the roc is necessary:-- *(a)* **Prospectus;** *(b)* E-form 19 duly certified by a director/secretary or by secretary in whole time practice where there is no secretary declaring that all the conditions as stated in (*i*) to (*iii*), above have been duly fulfilled and stamped copy shall be physically delivered simultaneously to the Registrar. 5. Payment of prescribed filing fee under Schedule X on prospectus and E-Form 19 by online or off line system. **"The Registrar of Companies shall thereupon issue the requisite certificate of commencement of business".**
	(iii)	**Certificate to commence business is conclusive evidence** The Registrar, on perusal of the declaration in e-Form 19 or 20 and the statement in lieu of prospectus, as may be applicable, shall certify that the company is entitled to commence business and to exercise borrowing powers. The certificate shall be the conclusive evidence that the company is entitled to commence its business. [Refer Section 149(6)]
	(iv)	**Consequences on commencing business before obtaining certificate to commence business** ✓ If any public company commences business or exercises borrowing powers without obtaining the commencement certificate, every person who is responsible for the contravention shall be punishable with **fine of ₹ 5,000** for every day during which the contravention continues, under sub-sections (2A) and (6) of section 149 of the Companies Act, 1956. ✓ Also refer 433(*c*) which provides that a company may be **wound up by the High Court** (Tribunal) if it does not commence business within a year from its incorporation or suspends its business activities for a whole year.

Some Problems

Q.N.	Problems
P.1	The Registrar of Companies issued a Certificate of Incorporation Actually on 8th January, 2014. However, by mistake, the certificate was dated "5th January, 2014". An allotment of shares was made before the Company was incorporated?
P.2	Explain in brief the mode of incorporation of a company.
P.3	Which documents are required to be filed with the Registrar of Companies at the time of registration of a company under the provisions of the Companies Act, 1956?
P.4	What is the meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 1956?
P.5	State the conditions which are applicable for the purpose of commencement of business by a public company under the Companies Act, 1956.
P.6	What are the effects of registration of a company?
P.7	A Company was incorporated on 6th October, 2013. The certificate of incorporation of the company was issued by the Registrar on 15th October, 2013. The company on 10th October, 2013 entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act, 1956/2013, whether the company can be exempted from the said contractual liability.
P.8	Though six out of seven signatures to the Memorandum of Association of a company were forged, the company was registered and the Certificate of Incorporation was issued. Can the registration of the company be challenged subsequently on the ground of forged signatures?
P.9	The Memorandum of Association of a company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a Certificate of Incorporation. The plaintiff contended that (a) conditions of registration were not duly complied with, and (b) that there were no seven subscribers to the Memorandum. Will the Court uphold his contention?
P.10	Mr. Ram Lal and his friend desire to incorporate a Public Company and approach you for help. Advice.

Chapter – 4
Promoters and Contracts

Sections covered in this Chapter -

Sections	Old / New Act	Description
Section 2 (69)	New Act	Definition of Promoter
Section 34 & 35	New Act	Misrepresentation in Prospectus
Section 149	Old Act	Commencement of Business
Section 56	Old Act	Matters to be Stated and Reported to be set out in Prospectus
Section 203	Old Act	Power to restrain Fraudulent persons from managing Co's
Section 478	Old Act	Power to order public examination of the Promoter, etc
Section 543	Old Act	Power of Tribunal to assess damage against delinquent Directors, etc.
Section 149	Old Act	Restrictions on Commencement of Business

Landmark Judgments covered in this chapter:

1. **Erlanger v. New Sombrero Phosphate Co., (1878)**
2. *English & Colonial Produce Company* **(1906)**
3. **Kelner v. Baxter (1866)**
4. **Howard v. Patent Ivory Co. (1888)**

1. Promoters

S.N.	Aspects	Description
a.	Definition	**"Promoter" means a person [As per section 2 (69) of Co's Act, 2013] –** (a) Who has been **named** as such **in a prospectu**s or **is identified** by the company in the **annual return**; or (b) Who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or (c) In accordance with whose advice, directions or instructions the board of **directors of the company is accustomed to act**; Provided that **nothing** in sub-clause (c) **shall apply** to a person who is **acting** merely in a **professional capacity** [For e.g. - as solicitor valuer an accountant, banker]
Note		A director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter.
b.	Judicial Interpretation	"One who undertakes to form a company with reference to a given project and to set it going, and who takes the necessary steps to accomplish that purpose".
c.	Legal Position of a Promoter [Case Law]	While the accurate description of a promoter may be difficult, his legal position is quite clear held by Lord Cairns in ***Erlanger* v. *New Sombrero Phosphate Co.* (39 LT 269).** **1.** A promoter is neither an agent of the company. **2.** A Promoter nor a trustee for, the company. **3.** A Promoter occupies a fiduciary position (Trust and Faith) in relation to the company and therefore requires to make full disclosure of the relevant facts, including any profit made by him.
d.	Duties	As promoters stands in a fiduciary relationship with the company, which gives rise to the following duties – 1. **Not to make secret profits –** The Promoters can make profits. The bar is only on making secret profit, without the Company's knowledge and consent. 2. **Submission of any profits made to the Company after its Incorporation –** Where the Promoters is known to have made some secret profits, the Company can compel him to account for it. He has to give benefit of his negotiations to the Company. **3. He cannot make any profit at the expense of the Company.** 4. **To disclose all material facts relating to the formation of the Company –** Disclosure shall be made to the BOD after its formation. If not possible, it can be made in prospectus or to shareholder.

		5. **To disclose all material facts relating to the profit from sale of his own property to company.**
Case Law		**In Erlanger v. New Sombrero Phosphate Co., (1878) 3 A.C. 1218,** ✓ A syndicate of which E was the head purchased an island containing mines of phosphate for £ 5,000. E then formed a company to buy this island. ✓ A contract was made between X a nominee of the syndicate and the company for its purchase at £ 1,10,000. ✓ The details of the sale were not disclosed to the shareholders or to the independent Board of directors. ✓ The company now sought to rescind the contract of sale. ☞ **It was held that** as there had been no disclosure by the promoters of the profit they were making, the company was entitled to rescind the contract.
e.	**Remedies for Company**	**The company may either—** 1. **Rescind the contract** and if he has made a profit on some ancillary transaction that may also be recovered; or 2. **Retain the property**, paying no more for it than what the promoter has paid, depriving him of his profit; or 3. Where the above remedies would be inappropriate, such as when the property has been altered so as to render recession impossible and the promoter has already received his inflated price, **the company may sue him for misfeasance (breach of duty to disclose).** The measure of damages will be the difference between the market value of the property and the contract price.
f.	**Liabilities**	**A Promoter Is Subject To The Following Liabilities –** 1. A promoter is liable for any untrue statement in the prospectus to a person who has subscribed for any shares or debentures on the faith of the prospectus. **[Civil Liability Under Section 35 of Co's Act, 2013]** 2. **Section 56** and Schedule II of the Act lays down matters to be stated and reports to be set out in the prospectus. The promoter(s) may be held liable for the non-compliance of the provisions of this Section. 3. By virtue of **Section 203**, of the Companies Act, 1956 the Court may suspend a promoter from taking part in the management of a company for a period of 5 years (if convicted for an offence in relation to promotion, formation or management of the company) 4. **Besides civil liability section 35**, the promoters are criminally liable under **Section 34 of Co's Act, 2013** for the issue of prospectus containing untrue statements. **Section 63 [Section 447 of Co's Act, 2013]** imposes severe penalty on promoters who make untrue and deceptive statements in prospectus with a view to obtaining capital. **Imprisonment of 6 months to 10 years and fine amount = to fraud or upto 3 times of amount of fraud**.

		5. A promoter may be liable to public examination like any other director or officer of the company if the court so directs on a liquidator's report alleging fraud in the promotion or formation of the company **(Section 478).** 6. A company may proceed against a promoter on action for deceit or breach of **duty under Section 543**, where the promoter has misapplied or retained any property of the company or is guilty of misfeasance or breach of trust in relation to the company.
g.	**Rights of Promoters**	
1. Right to receive Preliminary Expenses		✓ The promoters are entitled to receive all the expenses incurred for in setting up and registering the company, from BOD's. ✓ The articles will have provision for payment of preliminary expenses to the promoters. ✓ The company may pay the expenses to the promoters even after its formation, but such payments should not be *Ultra Vires* the articles of the company. ✓ The Articles may have provision regarding payment of fixed sum to the promoters.
Case Law	A promoter has no legal right to claim promotional expenses for his services unless there is a valid contract. Without such a contract he is not even entitled to recover his preliminary expenses. [*Re. English & Colonial Produce Company* (1906) 2 Ch. 435 CA].	
2. Right to receive Remuneration		When a promoter makes proper disclosure, he may expect to be rewarded for his efforts. Therefore, when the company is registered, it may (and usually does) pay or agree to pay some remuneration for services rendered. In practice, a promoter is remunerated in any of the following ways – **1.** He may sell his own property to the company for cash or against fully paid shares in the company at an over valuation after making full disclosure to a disinterested Board of directors or to the intended shareholders. **2.** He may be given an option to buy further shares in the company at par. **3.** He may take commission on the shares sold. **4.** He may take a grant of some shares in the company. **5.** He may be paid a lump-sum by the company. **6.** The articles may provide for a fixed sum to be paid to him.
Note	Such a provision has no contractual effect and he cannot sue to enforce it, but if it is acted upon, the company cannot recover its money.	

2. Preliminary Contracts / Pre – Incorporation Contracts(PIC)

<table>
<tr><td>a.</td><td>Meaning
&
Basic</td><td>Preliminary contracts are contracts purported to be made on behalf of a company before its incorporation.

When the company is being formed, the promoters, purporting to act on behalf of the company, enter into contracts for the purchase of property, or for securing the services of managers or other experts. Such contracts are obviously made before the incorporation of the company.

There are three situations as discussed below in the case of a public company in which contracts are made –

<table>
<tr><td>a.</td><td>Contracts made on behalf of the company before its incorporation</td><td>Preliminary or pre-incorporation contracts</td></tr>
<tr><td>b.</td><td>Contracts made after incorporation but before obtaining the certificate to commence business</td><td>Provisional Contracts.</td></tr>
<tr><td>c.</td><td>Contracts made after obtaining the certificate to commence business.</td><td>Regular Contracts</td></tr>
</table>

However, in the case of a private company, there are only two situations in which contracts are made, i.e. contracts made on behalf of companies before incorporation and contracts made after incorporation.

Hence, there is no need for provisional contracts in the case of a Private company.</td></tr>
<tr><td>b.</td><td>Legal Position</td><td>✓ Generally PIC does not bind the Company.
✓ In order to ratify PICs, the Principal (Company) must be present at the time of entering in to such contracts.
✓ Since the Company does not exist prior to Incorporation, it cannot ratify any PIC.</td></tr>
<tr><td colspan="2">Case Law</td><td>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. [Kelner v. Baxter (1866)]</td></tr>
<tr><td colspan="2">Case Law</td><td>A company cannot ratify a pre-incorporation contract, but it is open to it to enter into a new contract after its incorporation to give effect to a contract made before its formation [Howard v. Patent Ivory Co. (1888)]</td></tr>
<tr><td>c.</td><td>Some Exemption to Companies</td><td>In order to facilitate Companies to ratify PIC special provisions are made in section 15 and 19 of the Specific Relief Act, 1963 –</td></tr>
</table>

Who can enforce?	Condition to be satisfied
PICs entered into by the Promoters of the Company, can be enforced – (a) **By the Company, or** (b) **Against the Company by the 3rd Parties.**	(a) **The Contract is for the purpose of the Company** (b) **The Contract is warranted by the terms** of its incorporation, i.e. within the scope of the Company's objects as given in its MOA, and (c) **The Company has accepted** the contract **and** has **communicated** such acceptance to **the other party.**

3. Provisional Contracts

a.	Meaning	**Contracts entered into by a Public Company after its incorporation and before it is entitled to commence business are called Provisional Contracts.** Those contracts shall not be binding on the Company until the company is entitled to commence business on the grant of the certificate. But on the issue of the certificate to commence business such contracts automatically become binding i.e. without any ratification — **Sub-section (4) of Section 149.**
b.	Valid Acts	**PCs are valid only to those acts which are expressly or impliedly authorised by its MOA. Any transaction which is not so authorised is ultravires, null and void ab inito. Neither the company, nor the other party to the contract can enforce it.**
3.	Validity of PCs	(see table below)

Certificate to Commence Business	Effect of PCs
Is not obtained by the Company	Automatically **Lapses.**
Is obtained by the Company	Automatically **binds the company. [No need to Ratify]**

Some Problems

Q.N.	Problems
P.1	The promoters of your Company, incorporated on 9th April, 2014, had entered into a contract with M on 8th March, 2014 for supply of goods. After incorporation, your Company does not want to proceed with the contract. As a Company secretary, advise the management.
P.2	XYZ Co. Ltd. was in the process of incorporation. Promoters of the Company signed an agreement for the purchase of certain furniture for the Company and payment was to be made to the suppliers of furniture by the Company after incorporation. The Company was incorporated and the furniture was used by it. Shortly after incorporation, the Company went into liquidation and the debt could not be paid by the Company for the purchase of above furniture. As a result suppliers sued the promoters of the Company for the recovery of money. Examine whether promoters can be held liable for payment in the following cases – (a) When the Company has already adopted the contract after incorporation (b) When the Company makes a fresh contract with the suppliers in terms of pre-incorporation contract
P.3	X a furniture dealer, entered into a contract with the Company for furnishing the Company's office before it could obtain certificate of commencement of business. Can X recover the price of the furniture?
P.4	Can contracts before incorporation be enforced against the company?
P.5	The promoters of your company incorporated on 10th September, 2013 have entered into a contract with 'A' on 7th August, 2013 for supply of goods. After incorporation, your company does not want to proceed with the contract. As a Company advisor, advise the management of the company, referring to the provisions of the Companies Act.
P.6	Distinguish between "pre-incorporation contracts" and "provisional contracts" under the Companies Act, 2013.
P.7	A Company was incorporated on 6th October, 2013. The certificate of incorporation of the company was issued by the Registrar on 15th October, 2013. The company on 10th October, 2013 entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act. Whether the company can be exempted from the said contractual liability.

Chapter – 5
Memorandum of Association

Sections covered in this Chapter –

Sections	Old / New Act	Description
Section 2(56)	New Act	Definition of "MOA"
Section 9	Old Act	MOA not to in contrary to Co's Act
Section 13	Old Act	Clauses of MOA
Section 14	Old Act	Forms of MOA (Schedule – I)
Section 15	Old Act	Printing and Signing of MOA
Section 11	Old Act	Illegal Association
Section 20	Old Act	Undesirable Name
Section 147	Old Act	Publication of Name of Company
Section 610	Old Act	MOA is a Public Document

Landmark Judgments covered in this chapter –

1. **Chotalal v. Dal Sukhram**
2. **Seal vs. Claridges**
3. **Whitley Partners Ltd**
4. **Insullations India Pvt. Ltd. v. Regional Director, DCA, Chennai & Another**
5. **Ewing v. Buttercup Margarine Co. Ltd. (Imp)**
6. **Levessor v. Panchard Levessor Motor Co. Ltd. (Imp)**
7. **Dr. H.L. Batliwalla Sons & Company Ltd. v. Emperor**
8. **Ashbury Railway Carriage and Iron Co. Ltd. v. Riche. (Most Imp)**
9. **Attorney General v. Gr. Eastern Rly. Co.**
10. **Jehangir R. Modi v. Shamji Ladha**
11. **Madras Native Permanent Fund Ltd.**

1. Basic about MOA

<table>
<tr><th>S.N.</th><th>Aspects</th><th>Description</th></tr>
<tr><td>a.</td><td>Definition</td><td>As per section 2(56) of Co's Act, 2013 "Memorandum" means –
The Memorandum Of Association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.</td></tr>
<tr><td>Note</td><td colspan="2">The Memorandum of Association of a company is its charter, which contains the fundamental conditions upon which alone the company can be incorporated. It tells us the objects of the company's formation and the utmost possible scope of its operation beyond which its actions cannot go. Thus, it defines as well as confines the powers of the company. If anything is done beyond these powers that will be ultra vires (beyond powers of) the company and so void.</td></tr>
<tr><td>b.</td><td>Judicial Definition Case Law</td><td>Memorandum Of Association of a Company is its charter and defines the limitations of the powers of the Company. [Ashbury Railway Carriage & Iron Co. Ltd. v. Riche, (1875)]</td></tr>
<tr><td>c.</td><td>Purpose / Object</td><td>"Fundamentally, there are two objects in registering the memorandum". The purpose of the memorandum is to enable the shareholders, creditor and those who deal with the company to know that –
✓ Can know the purpose for which the funds are going to be used
✓ Whether the contractual relation they wish to enter is within its corporate objects</td></tr>
<tr><td>Note</td><td colspan="2">A memorandum is a public document under Section 610. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.</td></tr>
<tr><td>d.</td><td>Forms – Section 14</td><td>Schedule – I of Co's Act, 1956 contain Forms of Memorandum –
<table>
<tr><th>S.N.</th><th>Type of Company</th><th>Form</th></tr>
<tr><td>1.</td><td>Limited by shares</td><td>Table B</td></tr>
<tr><td>2.</td><td>Limited by guarantee only</td><td>Table C</td></tr>
<tr><td>3.</td><td>Limited by guarantee + share capital.</td><td>Table D</td></tr>
<tr><td>4.</td><td>Unlimited Company</td><td>Table E</td></tr>
</table></td></tr>
<tr><td>e.</td><td>Contains / Clauses – Section 13</td><td>
<table>
<tr><th colspan="6">Clauses of MOA</th></tr>
<tr><td>Name</td><td>State</td><td>Object</td><td>Liability</td><td>Capital</td><td>Association</td></tr>
</table></td></tr>
<tr><td>Note</td><td colspan="2">It may be noted that the memorandum of association of a company can not contain anything contrary to the provisions of the Companies Act. If it does then the same shall be void. (Section-9)</td></tr>
</table>

f.	Printing and Singing of MOA – Section 15	**(a)** The memorandum must be **printed, divided into paragraphs numbered consecutively and signed** by seven subscribers (two in the case of the private company) in the presence of at least one witness who shall attest the signatures. **(b)** Each subscriber **must state his address and occupation and the number of shares he takes opposite his name.** **(c)** Only a **person, capable** of entering into contract on his own can subscribe to the memorandum. **(d)** **Both artificial and natural persons** can subscribe to memorandum. **(e)** The memorandum **must be stamped** according to the Stamp Act of the State in which the registered office of the company is to be situated.

Case Law	☞ Where a company is a subscriber to the memorandum of association, it must be signed by a duly authorised agent. **[Whitley Partners Ltd. Re (1886)].** ☞ One witness can attest all the signatures provided he is not himself a subscriber to the memorandum **[Seal vs. Claridges, (1881)].** ☞ If the attestation of a memorandum of association which has been registered turns out to be irregular at a later stage it does not render the same void **[Chotalal v. Dal Sukhram, (1892)].**

2. Clauses of MOA

I – Name Clause

1.	Undesirable Name	**Section 20** provides that no company shall be registered by a name which, in the opinion of the Central Government, is undesirable.

Case Law	A name which is identical with or too nearly resembles, the name by which a company in existence has been previously registered, will be deemed to be undesirable. ***[Lords Insullations India Pvt. Ltd.* v. *Regional Director, DCA,* Chennai & Another (2004)]**
Case Law	***Ewing* v. *Buttercup Margarine Co. Ltd.* (1917**), the plaintiff, who carried on business under the name of the Buttercup Dairy Co., obtained an injunction against the defendant (Buttercup Margarine Co. Ltd.), on the grounds that the public might think that the two businesses were connected, the word Buttercup‖ being a fancy (Think/visualize) one.
Case Law	A Company cannot be registered with a name which is similar to a company's name having a market in that country, even if not registered in that country. **[Levessor v. Panchard Levessor Motor Co. Ltd., (1901)]**

2.	**Publication of Name – Section 147**	✓ The name of the company and the address of its registered office must be painted or affixed outside every office or place at which its business is carried on, in a clear position and in letters easily legible in English and in the language in general use in the locality. ✓ The name must also be engraved on the company's common seal. ✓ Further, the name of the company and the address of the registered office must be mentioned in legible characters in all business letters, in all its bill heads and in all its notices and other official publications, as well as in all negotiable instruments.
Case law	The words outside of every office do not mean outside the premises in which the office is situated. Where office is situated within a compound, the display outside the office room, though inside the building, is sufficient. **[Dr. H.L. Batliwalla Sons & Company Ltd. v. Emperor (1941)]**	
II.	**<u>Situation Clause</u>**	The **<u>name of the State</u>** in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. This can be filed with the Registrar of Companies separately in e-Form No. 18 **(New Form INC – 22) within 30 days of incorporation or on the day when it commence its business whichever is eailer.**
	<u>III</u> – <u>Object Clause</u>	
1.	**Division of OC**	**<u>Must divide their objects clause into two sub-clauses, namely</u> –** (a) **<u>Main objects</u> –** This sub-clause contains the main objects of the company to be pursued on its incorporation and objects incidental or ancillary to the attainment of the main objects. (b) **<u>Other objects</u> –** This sub-clause must state other objects which are not included in the Main objects and which may be pursued by the company at anytime in the future.
Note	✓ In the case of a company **whatever is not stated in the memorandum as the objects** or powers is prohibited by the **doctrine of ultra vires.** ✓ As a result, **an act which is ultra vires is void, and does not bind the company.** ✓ Neither the company nor the other contracting party can sue on it. ✓ Also, as stated earlier, the company cannot make it valid, even if every member assents to it.	

Case Law

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) .

The memorandum of the company in the said case defined its objects thus —
The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors.

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent denial of this contract by the company on the ground of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words general contractors in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so, because the contract was ratified by majority of shareholders.

The House of Lords **held that the contract was ultra vires the company and, therefore, null and void.** The term general contractor was interpreted to indicate as the makings generally of such contracts as are connected with the business of mechanical engineers.

The Court held that if every shareholder of the company had been in the room and had said, —

That is a contract which we desire to make, which we authorize the directors to make‖, still it would be ultra vires. The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

2. Effect of Ultra Vires Transaction

S.N.	Effect	Case Law
1.	**Void ab initio**	**Ashbury Railway Carriage and Iron Company v. Riche**
2.	**Injunction**	**Attorney General v. Gr. Eastern Rly. Co.**
3.	**Personal Liability**	**Jehangir R. Modi v. Shamji Ladha**
4.	Where a company‘s money has been used **ultra vires to acquire some property,** the company‘s right over such property	------
5.	**Ultra vires borrowing** does not create the relationship of creditor and debtor	**Madras Native Permanent Fund Ltd.**

3.	**Exception to the DUV**	**(a) UV the article** **(b) UV the powers of directors** **(c) Third Party has right to follow his money or property** if not spent or not lost respectively **(Sindain vs. Brongham).** **(d) If a director makes payment UV the company he can be compelled to refund to company.** However, person receiving the money knowing it to be UV can indemnify him.
Note	**Whether a transaction is UV the company, it can be decided on the basis of following –** **(a)** If a transaction entered into by a company **falls within the objects**, it is not ultra vires and hence not void. **(b)** If a transaction is **outside the capacity** (objects) of the company, it is ultra vires. **(c)** If a transaction **is in excess or abuse of the company's powers,** such transaction will be set aside by the shareholders.	
IV.	**Liability Clause – Clause must state that liability of the members is limited, if it is so intended that the company be limited by shares or by guarantee.** The effect of this clause is that, in a company limited by shares, no member can be called upon to pay more than what remains unpaid. For example, where a shareholder holding a share of ₹ 100 has paid ₹ 75 on it, he can be called upon to pay the balance of ₹ 25. In case, he has paid the full value of ₹ 100, he cannot be required to pay anything more even if the company owes huge debts to its creditors. In a company limited by guarantee, the liability clause will state the amount which each member should undertake to contribute to the assets of the company in the event of liquidation of the company. He cannot be called upon to pay anything before the company goes into liquidation.	
V.	**Capital Clause – Clause which must state the amount of the capital with which the company is registered, unless the company is an unlimited company.** The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. If there are both equity and preference shares, then the division of the capital is to be shown under these two heads. A company is not authorised to issue capital beyond its authorised/nominal/registered capital.	

<table>
<tr>
<td>VI.</td>
<td><u>Association Clause and Subscription</u></td>
<td>
Clause in which there is a declaration of association. The subscribers to the memorandum declare –

“We, the several persons whose names and addresses subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names”.

Then follow the names, address, occupations of the subscribers, and the number of shares each subscriber has taken and his signatures attested by a witness.

The statutory requirements regarding subscription of memorandum are that (Section 13) –

(a) The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signatures;
(b) Each subscriber must take at least one share;
(c) Each subscriber must write opposite his name the number of shares which he agrees to take.
</td>
</tr>
</table>

<u>Some Problems</u>

Q.N.	Problems
P.1	Advise Asiatic Government Security Life insurance Co. Ltd. Whether it can seek an injunction against ‘The New Asiatic Insurance Co. Ltd.’ Which was subsequently formed restraining it from having in its name the word ‘Asiatic’ on the ground that it has caused confusion and can deceive the public.
P.2	Eight signatories to the memorandum out of total ten were subsequently found to be forged. The memorandum was presented for registration and of registration was issued. The existence of the Company was disputed that the registration of the Company is void. Decide?
P.3	The registered office clause of the memorandum of association of A ltd. does not contained name of the city. Because of this registrar of Companies refused to registered the memorandum of association. Is it Correct?
P.4	X, a **chemical manufacturing company** distributed 20 lacs (₹ Twenty Lacs) to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 1956 decide whether the said distribution of money was "Ultra vires” the company?
P.5	Briefly explain the doctrine of “ultravires” under the Companies Act, 1956. What are the consequences of ultravires acts of the company?
P.6	Explain the doctrine of “Ultra-vires”. What are the legal effects of ultra-vires transactions under the Companies Act, 1956

Chapter – 6
Article of Association

Sections covered in this Chapter –

Sections	Old / New Act	Description
Section 2(5)	New Act	Definition of "AOA"
Section 26	Old Act	Registration of AOA
Section 27	Old Act	Specific Disclosures in AOA
Section 29	Old Act	Forms of AOA
Section 30	Old Act	Printing and Signing of AOA
Section 36	Old Act	Binding Effect
Section 610	Old Act	AOA is a Public Document

Landmark Judgments covered in this chapter –

(1) Ashbury v. Watson
(2) South Durham Brewery Company
(3) Naresh Chandra Sanyal vs. Calcutta Stock Exchange Association Ltd.
(4) Boreland's Trustee v. Steel Brother and Co. Ltd. (Most Imp.)
(5) Hoole v. Great Western Railway
(6) Eley v. Positive Govt. Security Life Ass. Co. (Most Imp.)
(7) Kotla Venkataswamy vs. Ramamurthy
(8) The Royal British bank v Turquand (Most Imp.)
(9) Rama Corporation v. Proved Tin & General Investment Co.
(10) Rouben v. Great Fingal Consolidated (Most Imp.)
(11) Anand Behari Lal vs. Dinshaw & Co. (Bankers) Ltd. (Most Imp.)
(12) Pacific Coast Coal Mines v. Arbuthnot

1. Basic about AOA

<table>
<tr><th>S.N.</th><th>Aspects</th><th>Description</th></tr>
<tr><td>a.</td><td>Definition</td><td>As per section 2(5) of Co's Act, 2013 "Memorandum" means –
The Article Of Association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.</td></tr>
<tr><td>Note</td><td colspan="2">The articles of association of a company are its by-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.</td></tr>
<tr><td>Case Law</td><td colspan="2">Only care has to be taken to see that regulations provided for in the articles do not exceed the powers of the company as laid down by its memorandum [Ashbury v. Watson, (1885)]</td></tr>
<tr><td>Case Law</td><td colspan="2">Even though the articles are subordinate to the memorandum yet if there be any ambiguity in the memorandum, the articles may be used to explain it but not so as to extend the objects. [South Durham Brewery Company (1885)]</td></tr>
<tr><td>b.</td><td>Judicial Definition Case Law</td><td>The AOA regulates the Internal Management of the Company. They define the powers of its Officers. They also establish a contract between the Company and the members and between members inter se. This contract governs the ordinary rights and obligations incidental to membership in the Company. [Naresh Chandra Sanyal vs. Calcutta Stock Exchange Association Ltd.]</td></tr>
<tr><td>c.</td><td>Registration of AOA – Section 26</td><td>
<table>
<tr><th>S.N.</th><th>Company</th><th>May/Shall</th><th>Particulars</th></tr>
<tr><td>1.</td><td>Public Co. Ltd. by Shares</td><td>May</td><td rowspan="4">Register its AOA prescribing regulations, along with its MOA.</td></tr>
<tr><td>2.</td><td>Unlimited Co.</td><td>Shall</td></tr>
<tr><td>3.</td><td>Guarantee Co.</td><td>Shall</td></tr>
<tr><td>4.</td><td>Private Co.</td><td>Shall</td></tr>
</table>
</td></tr>
<tr><td>d.</td><td>Form – Section 29</td><td>AOA shall be in any of the following forms or as near thereto as circumstances may admit –
<table>
<tr><th>S.N.</th><th>Type of Company</th><th>Form</th></tr>
<tr><td>1.</td><td>Public Co. Ltd. by Share (also called as no article company)</td><td>Adopt Table A or Complete Own or Own + Adopt (Mix)</td></tr>
<tr><td>2.</td><td>Private Co. Ltd. by Share</td><td>Complete Own</td></tr>
<tr><td>3.</td><td>Limited by guarantee + no share capital.</td><td>Table C</td></tr>
<tr><td>4.</td><td>Limited by guarantee + share capital.</td><td>Table D</td></tr>
<tr><td>5.</td><td>Unlimited Ltd.</td><td>Table E</td></tr>
</table>
</td></tr>
</table>

<table>
<tr><td>Note</td><td colspan="3">A Company may include any additional matters in its AOA in so far they are not inconsistent with the provision contained in Tables C, D and E, adopted by the Company. [Proviso to section 29]

<u>Specific Disclosure</u> –

The Articles of an unlimited company must state the number of members with which the company is to be registered and if it has a shares capital the amount of share capital with which it is to be registered [Section 27 (1)].

The Articles of a company limited by guarantee must state the number of members with the company is to be registered [Sec. 27 (2)]</td></tr>
<tr><td>Circular</td><td colspan="3">In the light of proviso to section 29, if there is a provision in the Articles empowering the Directors of the company to expel any member of the company under any of the given conditions, then such a provision shall be totally inconsistent with the provisions of Section 29 of the Act.

It is opposed to the fundamental principles of the company's jurisprudence and is ultra vires of the company. [(Circular No. 32 of 1975) dated 01.11.1975)]

Exception to above circular is Stock Exchange registered under Companies Act (E.g. BSE, NSE, etc)</td></tr>
<tr><td rowspan="2">e.</td><td rowspan="2">Contents</td><td colspan="2"><u>The AOA of a Company usually contain provision relating to</u> –</td></tr>
<tr><td>(1) Share capital;
(2) Rights of different classes of shareholders;
(3) Allotment of shares;
(4) Call on share;
(5) Lien on shares;
(6) Forfeiture of shares;
(7) Transfer of shares;
(8) Surrender of shares;
(9) Share certificate;
(10) Issue of share warrants;
(11) Increase of decrease of share capital;
(12) Conversion of shares into stock;
(13) Consolidation and sub-division of shares;</td><td>(14) Borrowing powers
(15) General meeting proceedings thereof and votes proxies and polls;
(16) Appointment of managerial personal e.g., directors their remuneration qualifications powers an proceedings of board meetings;
(17) Appointment and remuneration of auditors;
(18) Dividends and reserves;
(19) Accounts and audit;
(20) Adoptions of execution of preliminary contracts, if any;
(21) Capitalisation of profits;
(22) Notices; Common seal; and Winding up.</td></tr>
</table>

f.	Printing and Signing – Section 30	**Articles must be –** ✓ **Printed,** ✓ **Divided into paragraphs,** ✓ **Numbered consecutively,** ✓ **Stamped adequately,** ✓ **Signed by each subscriber to the memorandum,** ✓ **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.

2. Binding / Legal effect of AOA –

Binding Relationships in relation to MOA and AOA

- Members bound to company
- Company bound to Members
- Members bound to other Members
- Company and Members bound to outsider
- Director bound to Company

a.	Binding effect – Section 36	The memorandum and articles, when registered, **bind** the company and its members to the **same extent** as if they have been **signed** by the company and by each member to observe and be **bound** by **all the provisions** of the memorandum and of the articles. Also, all **moneys payable** by any **member to** the **company** under the memorandum or articles **shall be a debt due** from him to the company.
b.	Members bound to company	✓ The memorandum and articles **constitute a contract binding** the members of the company. ✓ The members, **as members (i.e. capacity) are bound to the company.** ✓ Each member must, therefore, observe the provisions of the memorandum and articles.

Case Law		✓ The articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons and at a price fixed by the directors. ✓ B, a shareholder was **adjudicated bankrupt.** ✓ His **trustee in bankruptcy claimed** that he was **not bound** by these provisions and should be at liberty to sell the shares at their true value. ✓ It was held that the **trustee was bound by the articles**, as the shares were purchased by B in terms of the articles. **[Boreland's Trustee v. Steel Brother and Co. Ltd. (1901)]**
c.	**Company bound to Members**	✓ The articles constitute a contract binding the company to its members in their capacity as members. ✓ A **member** can bring an action **against** the **company** for **infringement (breach)** by it of the memorandum or articles. ✓ The **company is bound to individual members** in respect of their **ordinary rights** as members, e.g. the right to receive share certificate in respect of shares allotted to them, or to receive notice of general meeting, etc. ✓ Normally, **action for breach** of articles against the company can be brought only by a **majority of the members.** ✓ **Individual or minority** members cannot bring such a suit except when it is intended for enforcement of **personal rights** of members or to prevent the company from doing any **ultra vires or illegal act, fraud, or oppression and mismanagement.**
Case Law		An individual member can sue the company for an injunction restraining it from improper payment of dividend **[Hoole v. Great Western Railway (1867)].**
d.	**Members bound to Members**	✓ As between the **members inter se** each member is bound by the articles to the other members but that **does not** mean the memorandum and articles **create an express contract among the members of the company.** ✓ Thus, a **member** of a company has **no right to bring a suit** to enforce the articles **in his own name** against **any other member** or members. ✓ It is the **company alone** which can **sue** the offender so as to protect the aggrieved member. ✓ It is in this way that the rights of members inter se are regulated. ✓ A **shareholder** may, however, **sue in his own name** to restrain another, or others from **doing fraudulent or ultra vires acts (exception).**
e.	**Company and Members bound to outsider**	✓ As between outsiders and the company, **neither the memorandum nor the articles** would give any **contractual rights** to **outsiders** against the company or its members. ✓ Even though the names of outsiders are mentioned in those MOA & AOA in connection with the arrangements that the company might have contemplated for carrying on its business. **(See Case Law)** ✓ The **articles do not** confer any **contractual rights** even upon a **member in a capacity other than that of a member.**

Case Law	✓ The **Articles** of a company contained a **clause** that **Eley** should be the **solicitor** of the **company for life.** ✓ He could be **removed** from office **only for misconduct.** ✓ **Eley accepted the assignment.** ✓ In lieu of his professional services rendered to the company, he was paid in cash and was also allotted shares. ✓ By this way, he became a shareholder. ✓ After some time the **company dismissed** him **without alleging misconduct.** ✓ **Eley sued** the company for damages for **breach of contract.** ✓ **<u>Held,</u>** Eley did not succeed as the Articles did not constitute any contract between the company and outsider. [**Eley v. Positive Govt. Security Life Ass. Co.]**

f.	**Directors bound to Company**	**<u>The question sometimes arises as to whether directors are bound by whatever is contained in the articles</u>?** ✓ In case the **directors contravene** the provisions in the **articles,** the **directors** render **themselves liable** to an **action** by members. ✓ On the other hand, **members can also ratify acts of directors. (Intra Vires)** ✓ If any **loss** is **incurred** by the **company, directors are liable** to reimburse to the company any loss so incurred.

3. <u>Doctrine of Constructive Notice, Doctrine of Indoor Management and Doctrine of Alter Ego</u>

a.	**Doctrine of Constructive Notice**	Every person who deals with the company whether shareholder or an outsider is presumed to have read these documents and understood them in their true perspective(**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**). This is known as Doctrine of constructive notice. **<u>For example,</u>** 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.

Case Law	✓ The articles required that all **documents** should be **signed** by the **managing director**, **secretary** and the **working director** on behalf of the company. ✓ A **deed of mortgage was executed** by the secretary and the working director only and the **court held that no claim would lie under such a deed.** ✓ The court said that the **mortgagee** should have **consulted the articles before the deed was executed.** ✓ Therefore, even though the **mortgagee** may have **acted in good faith** and the **money borrowed** applied for the **purpose of the company**, **the mortgage was nevertheless invalid. [Kotla Venkataswamy vs. Ramamurthy]**

<table>
<tr><td>Note</td><td colspan="2">Section 610 provides that MOA & AOA on registration these documents become public documents. These documents are available for public inspection either in the office of the company or in the office of the registrar of companies on payment of Rs.50 for each inspection</td></tr>
<tr><td>b.</td><td>Doctrine of Alter Ego</td><td>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.</td></tr>
<tr><td>c.</td><td>Doctrine of Indoor Management</td><td>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.</td></tr>
<tr><td>Case Law</td><td colspan="2"><u>The rule was first laid down in "The royal British bank v Turquand"</u>
✓ The directors of a banking company were authorised by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorised to borrow.
✓ The directors gave a bond to Turquand without the authority of any such resolution.
✓ It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed.
✓ Lord Hatherly observed – Outsiders are bound to know the external position of the company, but are not bound to know its indoor management‖</td></tr>
<tr><td>Note</td><td colspan="2">☞ 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.</td></tr>
<tr><td>d.</td><td colspan="2"><u>Exception to Doctrine of Indoor Management</u></td></tr>
<tr><td>1.</td><td>Knowledge of irregularity</td><td>✓ The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company.
✓ Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management</td></tr>
<tr><td>2.</td><td>No knowledge of MOA & AOA</td><td>The rule cannot be invoked in favour of a person who did not consult the memorandum and articles and thus did not rely on them.</td></tr>
</table>

<table>
<tr><td>Case Law</td><td colspan="2">✓ T was a director in the company.
✓ He, purporting to act on behalf of the company, entered into a contract with the Rama Corporation and took a cheque from the latter.
✓ The articles of the company did provide that the directors could delegate their powers to one of them.
✓ But Rama Corporation people had never read the articles.
✓ Later, it was found that the directors of the company did not delegate their powers to T.
✓ The Plaintiff relied on the rule of indoor management.
✓ Held, they could not because they even did not know that power could be delegated. [Rama Corporation v. Proved Tin & General Investment Co. (1952)]</td></tr>
<tr><td>3.</td><td>Forgery</td><td>The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal ab initio. In the case of forgery it is not that there is absence of free consent but there is no consent at all.</td></tr>
<tr><td>Case Law</td><td colspan="2">✓ Where the secretary of a company forged signatures of two of the directors required under the articles on a share certificate and issued certificate without authority, the applicants were refused registration as members of the company.
✓ The certificate was held to be nullity and the holder of the certificate was not allowed to take advantage of the doctrine of indoor management [Rouben v. Great Fingal Consolidated (1906)]</td></tr>
<tr><td>4.</td><td>Negligence</td><td>✓ The doctrine of indoor management', in no way, rewards those who behave negligently.
✓ Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority.
✓ If he fails to make an enquiry, he is estopped from relying on the Rule.</td></tr>
<tr><td>Case Law</td><td colspan="2">✓ An accountant of a company transferred some property of a company in favour of Anand Behari.
✓ On an action brought by him for breach of contract, the Court held the transfer to be void.
✓ It was observed that the power of transferring immovable property of the company could not be considered within the apparent authority of an accountant. [Anand Behari Lal vs. Dinshaw & Co. (Bankers) Ltd.]</td></tr>
<tr><td>5.</td><td>Per – condition required</td><td>This Doctrine is also not applicable where a pre-condition is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself — [Pacific Coast Coal Mines v. Arbuthnot (1917)]</td></tr>
</table>

Some Problems

Q.N.	Problems
P.1	A Limited Company is formed with its articles stating that one Mr. X shall be the solicitor for the Company, and that he shall not be removed except on the ground of misconduct. Can the Company remove Mr. X from the position even though he is not guilty of misconduct?
P.2	The Articles of a Company provided that the shares of a member who became bankrupt would be offered for sale to other shareholders at a certain price. Is the provision binding on the shareholder?
P.3	The plaintiffs contracted with a director of the defendant Company and gave him a cheque under the contract. The Director could have been authorised under the Company's articles, but was not in fact so authorized. The plaintiff had not seen the Articles. The Director misappropriated the cheque and the plaintiffs sued the Co. Is the Company liable?
P.4	A Company issued a bond under its common seal signed by two Directors. The Articles provided that the directors might borrow on bond such sums as they should be authorized by an ordinary resolution of the Company. No such resolution was passed. Is the Co. liable on the bond?
P.5	The authorised signatory of a Co. issued a share certificate in favour of X, which apparently complied with the Company's articles as it was purported to be signed by two directors and the secretary and it had the Company's common seal affixed to it. Infact, the secretary had forged the signatures of the Directors and affixed the seal without any authority. Will the certificate be binding upon the Company?
P.6	It is not necessary to present a copy of Articles of Association to the Registrar of the Companies at the time of incorporation of the Public Company limited by shares.
P.7	Explain clearly the doctrine of 'Indoor Management' as applicable in cases of companies registered under the Companies Act, 1956. Explain the circumstances in which an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.
P.8	A Managing Director of a company borrowed a sum of money by executing a document in which he forged the signature of two other directors who are required to sign as per requirements of articles. Can the company deny liability to creditors?
P.9	Explain the doctrine of 'Indoor management' in brief. The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.
P.10	Under the Articles of Association of Sunshine Ltd. Company, directors had power to borrow up to ₹ 10,000 without the consent of the general meeting. The Directors themselves lent ₹ 35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, whether the company is liable? If so, what is the extent of liability of the company in this case?
P.11	Briefly explain the doctrine of "Constructive Notice" under the Companies Act, 1956. Are there any exceptions to the said doctrine?

Chapter – 7
Alteration of Memorandum and Article of Association

Sections covered in this Chapter –

Sections	Old / New Act	Description
Section 16	Old Act	Alteration of MOA
Section 17	Old Act	SR and Confirmation by C.G. (RD) for alteration
Section 17A	Old Act	Change in Jurisdiction of ROC
Section 18	Old Act	Registration of alteration
Section 19	Old Act	Effect of Failure to register
Section 21	Old Act	Voluntary Change of Name
Section 22	Old Act	Compulsory Change of Name
Section 31	Old Act	Alteration in AOA
Section 32	Old Act	Change in liability clause for Unlimited Company
Section 38	Old Act	Change in liability clause for limited Company
Section 94	Old Act	Alteration in Share Capital
Section 95	Old Act	Notice to ROC for alteration in Share Capital
Section 149 (2A)	Old Act	Commencement of Other Business

Landmark Judgments covered in this chapter –

(1) Malhati Tea Syndicate Ltd. v. Revenue Officer

(2) Economic Investment Corporation Ltd. v. CIT

(3) Orient Paper Mills Ltd. vs. State of Orissa

(4) Minerva Mills Ltd. vs. Govt. of Maharashtra

(5) Juggilal Kamlapat Jute Mills Co. Ltd. v. Registrar of Companies

(6) Ganeshberi Tea Co. (Pvt.) Comp

(7) Madhava Ramachandra Kamath v. Canara Banking Corporation

(8) Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd.

(9) Pyare Lal Sharma v. Managing Director, J.K. Industries Ltd.

1. Alteration of Memorandum of Association

<table>
<tr><th>S.N.</th><th>Aspects</th><th>Description</th></tr>
<tr><td>a.</td><td>Alteration in MOA – Section 16</td><td>For the purpose of amendment different clauses of the memorandum are broadly classified into two parts, namely,
(a) Part relating to conditions, (i.e. Clauses) and
(b) Part relating to other provisions.</td></tr>
<tr><td>Note</td><td colspan="2">(a) For the alteration of those conditions in the memorandum of association –
✓ Prescribed procedure is to be followed and strict compliance of the procedure is demanded by law.
✓ Failure to comply with the express provisions made under the Act for the purpose of alteration of the conditions contained in the memorandum will be deemed as a nullity.
(b) Other provisions –
These may be generally altered in the same manner as the articles of the company unless there are any specific directions as to the procedure to be followed made in the Act.
(For E.g. – Appointment of a managing director or manager fall in the category of other provisions in the memorandum)</td></tr>
<tr><td>b.</td><td colspan="2">The procedure for the alteration of the compulsory clauses or conditions of the memorandum is as follows –</td></tr>
<tr><td>1.</td><td>Change in name clause</td><td>
<table>
<tr><th>Type</th><th>Voluntary Change
(Sec. – 21)</th><th>Compulsory Change
(Sec. – 22)</th></tr>
<tr><td>Situation</td><td>The company desires to change name , voluntarily</td><td>Where a Company has been registered either unintentionally or otherwise, with a name, which –
a. Is identical with or too closely resembles.
b. Infringes a registered trade – mark.</td></tr>
<tr><td>Resolution</td><td>Special</td><td>Ordinary</td></tr>
<tr><td>Approval</td><td>ROC (C.G. power delegated to ROC Notification dt. 17/03/2011)</td><td>RD (C.G. power delegated to RD Notification dt. 17/03/2011)</td></tr>
<tr><td>Procedure.</td><td>(a) Ascertain the name availability (e-Form 1A)
(b) Call GM and pass SR
(c) File e-form 23 + copy of SR + Explanatory Statement = 30 days of</td><td>(a) The Co. may change its name by OR + Approval of C.G. in writing.
(b) Name rectification shall be done within 12 months from the date of registration.</td></tr>
</table>
</td></tr>
</table>

			passing SR. (d) Approval of the C.G. is not necessary if the change relates to the addition/deletion of the word private in name	(c) **Comply** with direction of C.G. within **3 months** from date of direction. (d) Non – compliance of (c) **fine ₹ 1000 per day** (Co. + Officer in default).
		Effects	1. Upon compliance with sec. 21/22, the ROC shall enter the new name on the Register in the place of old name and shall issue fresh COI with necessary alterations. 2. Change in name shall be effective and complete only upon the issue of fresh COI. 3. The ROC shall also make necessary alteration in the MOA. 4. Change of name shall not affect any rights / obligations of the Co. or render the same defective in legal proceedings by or against it. Any legal proceedings which have been continued or commenced by or against the Co. by its former name may be continued by or against the Co. by its new name.	
Case Law	Where a company changes its name and the new name has been registered by the Registrar, the commencing of **legal proceedings** in the **former name is not competent** **[Malhati Tea Syndicate Ltd. v. Revenue Officer, (1973)]**			
Case Law	It was held that by **change of name, the constitution of the company is not changed, only the name changes.** It is not similar to the reconstitution of a partnership which means creation of a new legal entity altogether. **[Economic Investment Corporation Ltd. v. CIT (WB) (1970)]**			
2.	**Change in Registered Office**	See table below		

Case	From	To	MOA Change	Resolution	Procedure
I.	**One Premises**	**Another Premises (same Town/ Village)**	**No**	**Board Resolution**	**Form 18 should be filed with ROC with 30 days, giving notice of change and new location of RO**
II.	**One City/ Town/ Village**	**Another City/ Town/ Village (same state)**	**No**	**Special Resolution**	**See (A) below**
III.	**One State**	**Another State**	**Yes**	**Special Resolution**	**See (B) below**

(A) Procedure for change in RO from one city to another city in the same state –	
Step	**Procedure**
1.	**Call General Meeting → Pass SR**
2.	**File with ROC → Form 23 (within 30 days)**
3.	**Notice to ROC → For new location in form 18 (within 30 days of change)**
4.	**After filing forms → ROC shall register the above and certify the registration within 1 month from the date for filing (the certificate shall be conclusive evidence)**
Note	**If the jurisdiction changes from one ROC to another ROC in that state – Section 17A** ✓ **RD –** Apply to the Regional Director – **confirmation within 4 weeks.** ✓ **ROC –** File with ROC a S.R. + Form 23 within 30 days of passing SR + confirmation by RD to new ROC within 2 months + printed copy of alter MOA

(B) Procedure for change in RO from one state to another state –	
Step	**Procedure**
1.	**Call General Meeting** → Pass SR
2.	**File with ROC** → Form 23 (within 30 days)
3.	**Make Petition to the C.G. for confirmation of alteration**
4.	**After making the petition the C.G. will serve a copy of notice on ROC asking him his suggestion / objection if any, with respect to confirmation to alteration**
5.	**After step 4. C.G. may –** (a) order for confirming the alteration with terms and conditions, if any and (b) an order for costs as it thinks proper.
6.	**File with ROC of each state** → Certified copy of order within 3 months from date of order + printed copy of altered MOA
7.	**Notice to ROC** → For new location in form 18 (within 30 days of change)
8.	**Registration** → ROC shall register the above and certify the registration within 1 month from the date for filing (the certificate shall be conclusive evidence)
Note	**If the documents required to be filed with the registrar are not filed within the prescribed time, the alteration shall become void and inoperative at the expiry of such period – Sec. 19**

Some other points to be checked where there is change in state – Section 17	
Circumstances for allowing change of RO – Section 17	✓ To carry on business more **economically** or more **efficiently**. ✓ To **attain** its **main purpose** by new means. ✓ To **enlarge or change** the local area of **operations.** ✓ To start **new business** which under existing circumstances can **advantageously be combined.** ✓ To **restrict or abandon any** of the **objects** specified in the memorandum. ✓ To **sell or dispose** the whole or any part of the undertakings of the company. ✓ To **amalgamate** with any other company.

Regards to Rights and interests – Section 17	**Central Government have regard to the rights and interests of the –** ✓ Every class of **Members** ✓ Every class of **Creditors**
Arrangements – Section 17	**Central Government may, if it thinks fit, –** ✓ Adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members; and ✓ May give such directions and make such orders as it thinks fit for facilitating or carrying into effect, any such arrangement. ✓ However no part of the capital of the company, may be expended in any such purchase
Confirmation – Section 17	**Central Government must be satisfied, before confirming the alteration in the memorandum that –** ✓ **Notice** has been given to **debenture holder** and to every person whose interest will be affected by the alteration. ✓ **Consent** to the alteration has been obtained from **every creditor** or others who is entitled to object.

Case Law	A state whose interests are affected by change of RO to the different state has a locus standi (Right) to oppose shift of RO of the Company. Orissa High Court declined to confirm change of RO from Orissa to West Bengal, on the ground that in a Federal Constitution, **every state has the right to protect its revenue and therefore, the interest of the state must be taken into account. [Orient Paper Mills Ltd. vs. State of Orissa]**
Case Law	CLB can't refuse confirmation of shifting of RO on the ground that change would cause the loss of revenue to a state or would have adverse effects on the general economy of the state. **Question of loss of revenue to one state would have to be considered in the prospects of Total Revenues for the Republic of India** and no parochial considerations should be allowed to turn the scale in regard to change of RO from one state to another state within India. **[Minerva Mills Ltd. vs. Govt. of Maharashtra]**

3.	**Change in Object Clause**	**(a)** **Circumstance for allowing change of Object Clause –** Same as given in Circumstance for change in RO clause – Section 17 (1) **(b)** **Procedure for alteration –** same as discussed in change in RO clause Case – III all the steps except 7

Note	**If the documents required to be filed with the registrar are not filed within the prescribed time, the alteration shall become void and inoperative at the expiry of such period. – Sec. 19**
Note	Even for deleting any portion of the Object Clause, the procedure laid down in Sec. 17 has to be followed.
Case Law	The business must remain substantially the same, and the additions, alterations and changes should only be steps-in-aid to improve the efficiency of the company. **[Delhi Bharat Grain Merchant Assn. Ltd.,**
Case Law	A company doing jute business can alter its memorandum so as to do business in rubber if that can conveniently and efficiently be carried on with the existing business **[Juggilal Kamlapat Jute Mills Co. Ltd. v. Registrar of Companies].**

<table>
<tr><td colspan="2">Case Law</td><td>In deciding as to whether a company should be allowed to start additional business an application made in this behalf is not to be disallowed merely because the business is wholly different form and bears no relation to the existing business of the company. All that is essential is that it should be capable of being conveniently and advantageously combined with the existing business and is not destructive of or inconsistent with the existing business”. [Ganeshberi Tea Co. (Pvt.) Comp]</td></tr>
<tr><td>4.</td><td>Starting a business for which there is no provision in the Object Clause</td><td><u>Commencement of other business [Section 149 (2A)]</u> – A public limited company from commencing any business other than that covered by the main objects of the company only if –
(a) It has by a special resolution, approved of the commencement of such business and
(b) A duly verified declaration by one of its directors or its secretary that such a resolution has been passed or as the case may be the provisions of section 149(2B) have been complied with.</td></tr>
<tr><td>Note</td><td colspan="2">An ordinary resolution would be sufficient if, in addition the Central Government, on an application by the Board of Directors, allows the company to commence such a business [Section 149(2B)].</td></tr>
<tr><td>5.</td><td>Change in Liability Clause</td><td>
<table>
<tr><th>Limited Liability
(Sec. 38)</th><th>Unlimited Company
(Sec. – 32)</th></tr>
<tr><td>✓ Members Liability cannot be increased unless he agrees in writing.
✓ Members consent may be given either before or after the alteration.
Exception –In case the company is a club or similar association and alteration in the memorandum requires the member to pay recurring charge at a higher rate, although he does- not agree in writing to be bound by the alteration.</td><td>✓ Unlimited liability of shareholders can be made limited.
✓ Pass a special resolution and fill it within 30 days.
✓ Obtain tribunal sanction and fill it within 3 months of the date of order.
✓ Alteration will be effective from date of registration.
✓ Does not affect any debts, liabilities etc.</td></tr>
</table>
</td></tr>
<tr><td>6.</td><td>Change in Capital Clause</td><td><u>A company can make the following types of alterations by an ordinary resolution, if authorised by its articles to do so (Section 94)</u> –
<table>
<tr><th colspan="3">A. <u>Alteration</u> – A Company Limited by Shares may alter the Capital Clause of the MOA with regards to –</th></tr>
<tr><td>1.</td><td>Increase</td><td>Increase its authorised share capital by issue of new shares</td></tr>
<tr><td>2.</td><td>Consolidate</td><td>Consolidate existing shares into shares of larger amount than existing.</td></tr>
</table>
</td></tr>
</table>

3.	**Convert**	Convert fully-paid shares into stock or vice versa
	Sub divide	Sub-divide its shares or any of them into shares of smaller amount than is fixed by memorandum such that the proportion between the amount paid and unpaid shall remain the same.
	Cancel	Cancel shares which have not been taken or agreed to be taken by any person and to that extent diminish the amount of its share capital.
	B. Filing with ROC – Section 95	
1.	**Notice**	Alterations are, required to be notified giving details of the share consolidated, divided, converted, sub-divided, redeemed or cancelled or the stock reconverted, as the case may be, and a copy of the resolution should be filed with the Registrar within 30 days of the passing of the resolution.
2.	**Recording**	✓ The Registrar shall record the notice and make any alteration which may be necessary in the company memorandum or articles or both. ✓ It must be noted that cancellation of shares in pursuance of this section does not amount to reduction of share capital.
Note	**All such alterations do not require the confirmation by the Company Law Board/Court/C.G.**	

2. Alteration of Articles of Association

A. Alteration of AOA – [Section 31]

Condition	Procedure
(a) Subject to the provisions of the Act and the conditions contained in its memorandum, (b) A company may, by **SR**, alter its articles (c) Any alteration so made shall be as **valid as if originally** contained in the articles. (d) No alteration made in the articles which has the effect of converting a public company into private company shall have effect unless such alteration has been approved by the C.G.	**(a) Call General Meeting → Pass SR** **(b) File with ROC → Form 23 (within 30 days)** **(c) File printed copy of altered AOA, with ROC within 1 month of the date of approval of C.G. where applicable.**

B. Limitation on the Powers to alter articles –		
S.N.	**Aspects**	**Description**
1.	**Not to be inconsistent with MOA**	The alteration must not exceed the powers given by the memorandum. In the event of conflict between the memorandum and the articles, it is the memorandum that will prevail.
	Not to be inconsistent with Statue	The alteration must not be inconsistent with any provisions of the Companies Act or any other statute.
Case Law	Where a resolution was passed expelling a member and authorising the director to register the transfer of his shares without an instrument of transfer, the resolution was held to be invalid as being against the provisions of the Act. **[Madhava Ramachandra Kamath v. Canara Banking Corporation]**	
3.	**Not to be inconsistent with a order made by Court**	The alteration must not be inconsistent with an order of the Court under Sections 397 or 398 and 404.
4.	**Not to have illegal provision**	The Articles must not include anything which is illegal or opposed to public policy.
5.	**Not to constitute Fraud on Minority**	✓ The alteration must not constitute a fraud on the minority by a majority. If the alteration is not for the benefit of the company as a whole, but for majority of shareholders, then the alteration would be bad. ✓ An alteration to the articles must not discriminate between the majority shareholders and the minority shareholders so as to give the former an advantage over the latter.
Case Law	The Kerala High Court held that no majority of shareholders can, by altering the article retrospectively, affect, the prejudice of the consenting owners of shares, the right already existing under a contract nor take away the right accrued, e.g., after a transfer of share is lodged, the company cannot have a right of lien so as to defeat the transfer. **[Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd.]**	
6.	**Not to be Malafide**	The alteration must be **bona fide** for the benefit of the company as a whole.
Case Law	The Articles of Association cannot be altered so as to have retrospective effects. The articles only operate from the date of the amendment. **[Pyare Lal Sharma v. Managing Director, J.K. Industries Ltd.]**	
7.	**Not to increase liability of Member**	Articles cannot be altered so as to compel an existing member to take or subscribe for more shares or in any way increase his liability to contribute to the share capital, unless he gives his consent in writing **(Section 38)**.

Some Problems

Q.N.	Problems
P.1	A Company filed a petition before the C.G. for shifting its registered office to another state. The S.G. objected against such shifting on the ground that it would adversely effect the government revenues and employment. Decide whether objection of the State Government is tenable.
P.2	The Directors of a company registered and incorporated in the name "Mars Textile India Ltd." desire to change the name of the company entitled "National Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 1956?
P.3	India Cosmetics Limited was a registered company under the Companies Act, 1956. Later on, another company, India Cosmetics and Accessories Limited was formed and registered. There being similarity in the names of both the Companies, India Cosmetics Limited lodged a complaint against India Cosmetics and Accessories Limited, with the Registrar of Companies, stating that there is sufficient similarity between these two names which may mislead or defraud the public. India Cosmetics and Accessories Limited is intending to alter its name. Advise India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 1956
P.4	Explain the procedure for change of name of a company, as provided in the Companies Act, 1956.
P.5	M/s India Computers Ltd. was registered as a Public Company on 1st July, 2013 in the State of Maharashtra. Another company by name M/s All India Computers Ltd. was registered in Delhi on 15th July, 2013. The promoters of India Computers Ltd. have failed to persuade the management of All India Computers Ltd. to change the company's name, as it closely resembles with the name of the first registered company. Advise the Management of India Computers Ltd. about the remedies available to them under the provisions of the Companies Act, 1956.
P.6	Explain the steps to be taken by a company for transfer of its registered office from one State to another?
P.7	M/s ABC Ltd. a company registered in the State of West Bengal desires to shift its registered office to the State of Maharashtra. Explain briefly the steps to be taken to achieve the purpose. Would it make a difference, if the Registered Office is transferred from the Jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies within the same State?
P.8	VD Company Ltd. is registered in Tamil Nadu within the jurisdiction of the Registrar of Companies, Chennai. The company proposes to shift its registered office to a place within the jurisdiction of Roc, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office.

P.9	XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 1956 for shifting its registered office as stated above? Explain.
P.10	A Company, in which the directors hold majority of the shares, altered its articles so as to give power to directors to acquire shares of any shareholder, who competed with the Company's business, to transfer his shares, at their full value, to any nominee of the directors. S had some shares in the Company, and he was in competition with the Company. Is S bound by the alteration?
P.11	State with reason, whether the following statement is correct or incorrect, according to the Companies Act, 1956. Change of Registered Office of Company from one place to another within a State requires confirmation by the Regional Director.
P.12	What is the importance of registered office of a company? State the procedure for shifting of registered office of the company from one State to another State under the provisions of the Companies Act, 1956.
P.13	The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities a company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.
P.14	The management of Ambitious Properties Ltd., has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the object clauses of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause.
P.15	A company was started with the object of building 'A mall with shops'. The building was destroyed by fire and the company wanted to alter the objects clause in the memorandum by substituting the words 'A mall with shops' with the words "Shops, Residential buildings and Warehouses for letting purposes.' Will this alteration of the memorandum for the purpose be permissible? Decide referring to the provisions of the Companies Act, 1956.
P.16	Explain the steps to be taken by a company for starting a business for which there is no provision in the objects clause of the Memorandum of Association.
P.17	RSP Limited, with a limited liability of its members by guarantee of `10 lac to each member. The company increases the liability of the members from ` 10 to 15 lac by an alteration made in the liability clause of the Memorandum of Association. Referring to the provisions of the Companies Act, 1956 decide, whether the members of the company are liable for the increased liability.
P.18	Explain the limitations relating to alternation of Articles of Association of a company.

Chapter – 8
Prospectus

Sections covered in this Chapter –

Sections	Old / New Act	Description
2(70)	New Act	Meaning of Prospectus
2(38)	New Act	Definition of Expert
23	New Act	Public Offer & Private Placement
24	New Act	Power of SEBI to Regulate Issue and Transfer of Securities
25	New Act	Dox containing offer of securities for sale to be Deemed Prospectus
27	New Act	Variation in the terms of Contract or Objects in Prospectus
29	New Act	Public offer of securities to be in dematerialised form
30	New Act	Advertisement of Prospectus
31	New Act	Shelf Prospectus
32	New Act	Red Herring Prospectus
33	New Act	Issue of application forms for securities
34	New Act	Criminal Liability
35	New Act	Civil Liability
36	New Act	Punishment for fraudulently inducing persons to invest money
37	New Act	Action by affected Persons
38	New Act	Punishment for Personation for acquisition of securities.
39	New Act	Allotment of Securities by Company.
56	Old Act	Matters to be stated in Prospectus
57	Old Act	
58	Old Act	
59	Old Act	

Landmark Judgments covered in this chapter –

(1) Pramatha Nath Sanyal v. Kali Kumar Dutt
(2) Nash v. Lynde
(3) Govt. Stock and Other Securities Investment Co. Ltd. v. Christopher
(4) PEEK VS GURNEY
(5) New brunswick. & Canada Rly. & Land Co. v Muggeridge
(6) Rex v. Kylsant

1. Basic of Prospectus

<table>
<tr><th>S.N.</th><th>Aspects</th><th>Description</th></tr>
<tr><td>a.</td><td>Meaning – Section 2(70)</td><td>Prospectus means –
☞ Any document described or
☞ Issued as a prospectus and
Includes –
✓ A red herring prospectus or
✓ Shelf prospectus 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</td></tr>
<tr><td>Note</td><td colspan="2">Conditions to be satisfied to be an Prospectus –
✓ There must be an invitation to the public.
✓ The invitation must be made “by or on behalf of the company or in relation to an intended company
✓ The invitation must be “to subscribe or purchase
✓ The invitation must relate to Securities.
☞ Prospectus is not an offer in itself but an invitation to make an offer, signifying thereby that on acceptance of such an invitation by any member of the public, no binding contract between him and the company comes into being.
☞ Application for purchase of shares or debentures or for making a deposit constitutes an offer by the subscriber to the company and it is only on its acceptance by the company that a binding contract comes into existence.</td></tr>
<tr><td>b.</td><td colspan="2">The prospectus must be in writing. An oral invitation to subscribe for shares will not be considered prospectus. Television or film advertisement cannot be treated as prospectus.</td></tr>
<tr><td>c.</td><td>Test of Invitation to Public</td><td><table><tr><th>Constituting offer to Public</th><th>Not amounting to Offer to Public</th></tr><tr><td>✓ Invitation to public at large including invitation to any section of the public, (Like members or debenture-holders or Creditors or as Clients)
✓ Offer or invitation to subscribe for shares or debentures made by a company to 50 persons or more will be treated as a public offers.</td><td>✓ It is directed to a specified person or a group of persons, and it is not calculated to result in the shares or debentures becoming available to other persons.
✓ If invitation to existing members or debenture holders to subscribe to shares or debentures by a way of right.
✓ If invitation to subscribe to any Shares / Debentures of the same class which are already issued and quoted in Recognised Stock Exchange.</td></tr></table></td></tr>
</table>

Note	**The test is not who receives the document, but who can apply for shares in response to the invitation contained in it.**
Case Law	Advertisement in news paper to invite application for purchase of remaining shares of a company according to the terms of Prospectus was held to be prospectus. **[Pramatha Nath Sanyal v. Kali Kumar Dutt]**
Case Law	✓ A single private communication does not satisfy the term "issue", Even if several copies of a document marked "strictly confidential" and containing particulars of a proposed issue of shares was passed on privately through a small circle of friends of the directors. ✓ **It is open to anyone who brings his money and apply for shares in response to the invitation.** **[Nash v. Lynde]**
Case Law	A circular issued by a company to the shareholders of other companies to acquire their shares held in those companies and issue its own shares in exchange of those shares did not amount to be a prospectus, as there is no public issue. **[Govt. Stock and Other Securities Investment Co. Ltd. v. Christopher]**

d. **Prospectus is not required to be issued**

Public Companies , in respect of –		**Private Co's**
Underwriting	Where a person is a bona fide invitee to enter into an underwriting agreement with regard to shares or debentures **[Sec. 56(3)]**	**Generally Exempted**
No Public Issue	Where the shares or debentures are not offered to public. **[Sec. 56(3)]**	
Repeat issue of Quoted Security	Where the issue relates to shares or debentures uniform in all respects, with the shares or debentures already issued and dealt in or quoted at a recognised stock exchange **[Section 56(5)].**	
Right Issue	Where the shares or debentures are offered to the existing holders of shares or debentures **[Section 56(5)].**	

<table>
<tr><td>e.</td><td>Statutory Requirement</td><td>
<table>
<tr><td>Approval of Draft Prospectus</td><td>By intermediaries to the issue (e.g. Lead Manager, Stock Exchange, Lead Financial Institutions, Underwriters).</td></tr>
<tr><td>Registration</td><td>ROC before issue.</td></tr>
<tr><td>Date</td><td>Must be dated, such date shall be considered as date of publication.</td></tr>
<tr><td>Time Limit for Issue</td><td>Within 90 days from Registration.</td></tr>
<tr><td>Contents/ Disclosure/ Declaration</td><td>(a) Copy thereof has been delivered to the ROC for Registration.
(b) Specify documents attached with the Copy.
(c) Endorsement that the consent of Experts has been obtained.</td></tr>
<tr><td>Signature</td><td>By every Director (Proposed Directors) or his authorised agent. (before copy is sent to ROC)</td></tr>
<tr><td>Penalty</td><td>Without Registration fine ₹ 50000/- to company and every other party to the issue.</td></tr>
</table>
</td></tr>
<tr><td>Note</td><td>Definition of Expert</td><td>"Expert" includes an engineer, a valuer, a chartered accountant, a company secretary, a cost accountant and any other person who has the power or authority to issue a certificate in pursuance of any law for the time being in force. [Section 2(38) Co's Act, 2013]</td></tr>
<tr><td>Note</td><td>Condition for Expert Statement – [Sec. 56 & 57]</td><td>(a) Must have given his consent.
(b) Not withdrawn his consent before delivery of prospectus to ROC.
(c) The prospectus must disclose the fact that expert had given his consent, and has not withdrawn his consent.
(d) The expert is not, and was never, engaged or interested in the promotion or formation or management of the company. [Section 57]</td></tr>
</table>

f.	**Refusal of ROC**	**Section 60(3) provides that the Registrar shall not register a prospectus if —** **(1)** It is not dated — Section 55; **(2)** It does not comply with the requirements of Section 56 as to the matters and reports to be set out in it; **(3)** It contains statements or reports of experts engaged or interested in the formation or promotion or management of the company — Section 57; **(4)** It includes a statement purported to be made by an expert without a statement that he has given and has not withdrawn his consent to the manner of its inclusion therein; **(5)** It does not contain consent in writing of directors, a copy of the documents mentioned in Section 60(1) has been filed or does not comply with regard to the fact that a copy of it has been filed with Registrar; **(6)** It is not accompanied by the consent in writing of the auditor, legal adviser, attorney, solicitor, Issue House, banker, managers to the issue or broker, if named in prospectus to act in that capacity — Section 60(3).

2. Modes of Issue of Securities

1.	**In case of Public Company – [Section 23(1) of Co's Act, 2013]**	**A public company may issue securities —** (a) To public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or ~~(b) Through private placement by complying with the provisions of Part II of this Chapter; or~~ (c) Through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act, 1992 and the rules and regulations made thereunder.
2.	**Definition of Public Offer**	"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. **[Explanation to Section 23(2) of Co's Act, 2013]**

3. Power of SEBI to regulate issue and Transfer of Securities

<table>
<tr><td rowspan="3">1.</td><td rowspan="3">Administration of provisions contained in Chapter – III/IV and in Section 127 of Co's Act, 2013</td><td>Admin. w.r.t</td><td>Listed Co's</td><td>Intended to List</td><td>In any other Case</td></tr>
<tr><td>Issue and Transfer of Securities and</td><td colspan="2" rowspan="2">Shall be administered by the Securities Exchange Board of India by making Regulation.</td><td rowspan="2">Shall be administered by Central Govt.</td></tr>
<tr><td>Non Payment of Dividend</td></tr>
</table>

Note	**Explanation to Section 24(1)(b) of Co's Act, 2013**	For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and **any other matter** specifically provided in this Act, **shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.**

4. Types of Prospectus

A. Deemed Prospectus (Offer for Sale) – [Section 25 of Co's Act, 2013]

1.	**Meaning / Conditions [sub section (1)]**	✓ Where a **company allots or agrees to allot any securities** of the company ✓ With a view to all or any of those securities being offered for sale to the public, ✓ **Any document by which the offer for sale to the public is made** shall, for all purposes, be deemed to be a prospectus issued by the company
2.	**Effect [sub section (1)]**	✓ All enactments and rules of law as to the **contents of prospectus and liability** (i.e. Mis-statements in and omissions from prospectus) **shall apply** with the modifications specified in sub-sections (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,**
Note	It must be noted that liability , if any, of the persons by whom the offer is made (Director) in respect of mis-statements contained in the document will not be prejudice,	
3.	**Confirmation / Presumption to Deemed Prospectus [sub section (2)]**	**Unless the contrary is proved, be evidence(confirm)** that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown— (a) That an offer of the securities or of any of them for sale to the public was **made within 6 M after the allotment or agreement to allot**; or (b) That at the **date when the offer** was made, the **whole consideration to be received** by the company in respect of the securities **had not been received by it.**
4.	**Contain [sub section (3)]**	(a) **Contents specified u/s 56** read with schedule II of the Co's Act, 1956. (b) The **net amount of the consideration** received or to be received by the company in respect of the securities to which the offer relates; and (c) The **time and place** at which the contract where under the said securities have been or are to be allotted may be **inspected.**
5.	**Sign [sub section (4)]**	Where a person making an offer to which this section relates is a company or a firm, it **shall be sufficient if the deemed prospectus is signed by –** (a) In the case of the **company by two directors** of the company or (b) In the case of **Firm by atleast one-half of the partners** in the firms.

B. Abridged Prospectus – [Section 33 of Co's Act 2013]

1.	**Meaning [Section 2(1) of Co's Act, 2013]**	"Abridged Prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf.
2.	**Mandatory to attach Abridged [Sub Section (1)]**	**No form of application** for the purchase of any of the securities of a company **shall be issued unless such form is accompanied by an abridged prospectus.**
3.	**Exception to point No. 2 [Proviso to Sub Section (1)]**	Provided that **nothing in this sub-section shall apply** if it is shown that the form of application was issued – (a) In connection with a **bona fide invitation to a person** to enter into an **underwriting agreement** with respect to such securities; or (b) In relation to securities which were **not offered to the public.**
4.	**Furnishing of prospectus on demand**	A **copy** of the prospectus shall, on a **request being made by any person before the closing of the subscription list and the offer, be furnished to him. [Sub Section (2)]**

C. Self Prospectus – [Section 31 of Co's Act, 2013]

<table>
<tr><td>1.</td><td>Meaning</td><td colspan="2">"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. [Explanation to Section 31]</td></tr>
<tr><td>2.</td><td>Applicability [Sub Section (1)]</td><td colspan="2">Any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf. [Sub Section (1)]</td></tr>
<tr><td rowspan="3">3.</td><td rowspan="3">Requirements for Issue of SP [Sub Section (1)]</td><td>With whom</td><td>With the ROC</td></tr>
<tr><td>When</td><td>At the stage of the first offer of securities</td></tr>
<tr><td>Validity</td><td>✓ A period not exceeding 1 year as the period of validity of such prospectus.
✓ Commence from the date of opening of the first offer of securities under that prospectus, and
✓ In respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.</td></tr>
<tr><td rowspan="2">4.</td><td rowspan="2">Information Memorandum [Sub Section (2)]</td><td>When</td><td>A company filing a shelf prospectus shall be required to file an information memorandum prior to the issue of a second or subsequent offer of securities under the shelf prospectus.</td></tr>
<tr><td>What</td><td><u>Containing all material facts relating to</u> –
✓ New charges created,
✓ Changes in the financial position of the company as</td></tr>
</table>

			have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities and ✓ **Such other changes as may be prescribed.**
		With whom	**With the ROC within the prescribed time.**
4.	**Intimation of variations and opportunity to withdraw applications [Proviso to sub section (2)]**	✓ Where a company or any other person has received applications for the allotment of securities along with **advance payments of subscription before the making of any such change,** the company or other person **shall intimate the changes to such applicants** and ✓ If they express a desire to **withdraw their application**, the company or other person shall refund all the monies received as subscription **within 15 days thereof.**	
Note	Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus. **[Sub Section (3)]**		

D. Red Herring Prospectus – [Section 32 of Co's Act, 2013]

1.	**Meaning**	"Red Herring prospectus" means a prospectus which **does not include complete particulars of the quantum or price of the securities included therein. [Explanation to Section 32]**	
2.	**Applicability [Sub Section (1)]**	A company proposing to make an offer of securities may **issue a red herring prospectus prior to the issue of a prospectus.**	
3.	**Requirement for Issue of RHP**	**With whom**	With the **ROC [Sub Section (2)]**
		When	**At least 3 days prior to the opening** of the subscription list and the offer. **[Sub Section (2)]**
		Same obligation as Prospectus	A red herring prospectus **shall carry the same obligations as are applicable to a prospectus. [Sub Section (3)]**
		Highlighting Variation	Any **variation between the red herring prospectus and a prospectus shall be highlighted as variations** in the prospectus. **[Sub Section (3)]**
4.	**On Closing of Offer [Sub Section (4)]**	Upon the **closing of the offer of securities** under this section, the prospectus stating therein **shall be filed with the Registrar and the SEBI** – ✓ **The total capital raised, whether by way of debt or share capital,** and ✓ The **closing price** of the securities and ✓ **Any other details** as are **not included in the red herring prospectus.**	

E. Statement in Lieu of Prospectus – [Section 70]

1.	**Who can issue**	**Only public company** which does not invite public for subscription can issue this prospectus.
Note	Responsibility will be same as that when actual prospectus is issued.	

2.	Applicability	✓ Where it does **not issue a prospectus** (because it feels that it can raise enough capital without inviting a subscription from the public); or ✓ Where it **issues a prospectus but has not proceeded to allot any of the shares offered to the public for subscription** (because the issue has been a failure and the minimum subscription has not been received)
3.	Time limit	Statement in lieu of prospectus must be **filed with ROC at least 3 days before any allotment** of shares or debenture is made.
4.	Form	✓ Schedule III contains a model form of a statement in lieu of prospectus in pursuance of section 70; ✓ Schedule IV contains a model form of a statement in lieu of prospectus when a private company is converted into a public company in pursuance of section 44.
5.	Consequences/ Penalty for misstatement in, or not filing of, SLP	✓ If the allotment of shares or debenture is made **without filing the statement in lieu of prospectus.** ✓ The allottee may **avoid (withdraw) the allotment within 2 months** after the **statutory meeting**, or where no such meeting is held, within 2 months **of the allotment [section 71(1)]** ✓ The person who authorized the delivery of SLP may be **punished** with **imprisonment upto 2 years or with fine ₹ 50,000 or with both. [section 70(5)]**

5. Contents of Prospectus

Part I of Sch. II	Part II of Sch. II	Part III of Sch. II
(1) General information. (2) Capital structure. (3) Term of the present issue. (4) Particular of the issue. (5) Co's management and project. (6) Particular in regard to any other listed co. under the same mgt. (7) Pending litigation. (8) Mgt. perception of risk factor.	(1) General information (2) Financial information (3) Statutory and other information	It contains explanation of certain terms and expressions used under Part I and Part II of the schedule. It also requires a declaration that all relevant provisions of the act and the guidelines issued by the government have been complied with and nothing has been stated in the prospectus that is contrary to the provisions of the companies Act.

SEBI Guidelines –

✓ SEBI has directed the lead managers to ensure, proper disclosure to the investors by keeping in mind their increased responsibilities consequent upon the notification.

✓ The lead manager should give adequate disclosure but also ensure due compliance to guideline for disclosure and investor protection issue by SEBI both in letter and in spirit.

✓ Following information should be included by the lead managers in the prospectus to be issued by the company:-

1. **Disclosure Clause –** The disclosure is to be printed in the bold in the offer of documents in Part I after issuing details under the head general information.
2. **Stock market date – Clear information** must be given of the stock market date alongwith the high; low and average prices of the company during the preceding three years.
3. Performance vis-à-vis promises relating to previous issues.
4. Reservation is done for NRI's overseas corporate bodies in public issue. When the amounts are paid in foreign currency then only NRI's application is to be accepted.
5. Buy-back arrangement for purchase of non-convertible portion or partly convertible debentures.
6. Development of proceed of the issue.
7. Manner of getting the stock investments and its disposal.
8. Statement relating to allotment and refund. The lead managers are to ensure themselves about it

6. Mis – Statement and Liabilities

Liability for Mis-statements in a Prospectus

- Civil Liability (Sec. 35 , 36 of Co's Act, 2013 and 56 of 1956)
  - Against the company
    - Recession of Contract
    - Claim for Damages
  - Against the promoters, Directors, other officers and Experts, etc.
    - Damages under section 36
    - Compensation under section 35 and 56
- Criminal Liability (Sec. 34)
  - Against the company
    - Refer Section 447 of Co's Act, 2013
  - Against the promoters, Directors, other officers (not available against Experts)
    - Imprisonment 6 m/3y upto 10 years + Fine = amt. of fraud upto 3 times of Fraud

A. Civil Liability

An allottee of shares, who had applied for shares on the faith of a prospectus containing untrue statements has remedies available against different persons, i.e. the company (under the Indian contract Act, 1872), directors, promoters and experts.

1.	**Remedies against the Company**	Any person who, relying on a prospectus contain mis-statement or omission of material facts takes shares from the company may – **(a) Rescind the contract to take the shares** (b) **Claim damages.**
(a)	**Rescind the Contract to take the Shares**	The shareholders give up the shares and get back his money with interest. He must however take action to rescind the contract – 1. Within a reasonable time

		2. Before proceeding to wind up the company have commenced and 3. Before he does anything (after he comes to know of the mis-statement in the prospectus); which is inconsistent with the right to repudiate e.g. to accept dividends.
Note	**Conditions for Rescission**	The allottee can claim relief only if he can show that the mis-statement or omission was – ✓ **One of fact and not an expression of opinion** ✓ **Material Fact and Misleading** ✓ **Acted upon by him** ✓ **He has suffered Loss**
Case Law		✓ **<u>Primary market</u> –** Only to a person who has "subscribed" for shares or debentures. ✓ **<u>Secondary market</u> –** Has no right to claim compensation. ✓ A **subscriber to the memorandum** has no right to claim compensation. **(PEEK VS GURNEY)**
(b)*	**Suit of Damage**	In order to succeed, the allottee must, in addition to the three facts mentioned above (in connection with the rescission of contract), prove – ✓ That those acting on behalf of the company acted fraudulently; ✓ That those purporting to act on behalf of the company were authorized to act on its behalf; ✓ That he suffered a loss or damages.
Note	It is important to remember that the allottee cannot both retain the shares and get damages from the company. Has no right to claim compensation.	
2.	**Remedies against Directors or Promoters – Applicability**	A shareholders who had been induced to take shares may claim from the directors or promoters or from anyone else responsible for untrue statement occurring in the prospectus – **(a) Punishment for fraudulent misrepresentation u/s 36 (To be discussed Later)** **(b) Compensation under section 35 of Co's Act, 2013** (c) **Damages for non compliance with the requirement of section 56 regarding contents of the prospectus.**
(a) <u>Punishment for Fraudulently Inducing Person to Invest Money u/s 36 of Co's Act, 2013</u>		
(i)	**Applicability**	Any person who, either knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,— (a) Any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or (b) Any agreement, the purpose or the pretended purpose of which is to

		secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or (c) Any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution,
(ii)	**Punishment**	Such person shall be liable for action under section 447.
	(b) Compensation u/s 35 of Co's Act, 2013	
(i)	**Applicability**	Where a person has subscribed for securities of a company acting on any statement included, or the inclusion or omission of any matter, in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof.
(ii)	**Persons Liable for Misstatement**	1. The company; 2. Every person who is a director of the company at the time of the issue of the prospectus; 3. Every person who has authorised himself to be named and is named in the prospectus as a director of the company, or has agreed to become such director, either immediately or after an interval of time; 4. Every person who is a promoter of the company; 5. Every person who has authorised the issue of the prospectus; and 6. Every person who is an expert.
(iii)	**Punishment**	**Every person liable for misstatement shall be liable for –** ✓ **To pay compensation to every person who has sustained such loss or damage.** ✓ **Punishment for fraudulently inducing any person to invest money under section 36**
(iv)	**Exception to (iii)**	**No person shall be liable under section 35, if he proves—** (a) That, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or (b) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
(v)	**Personal Liability in case of fraud**	Where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person referred to in section 35 shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.

(c) Liability for Omission of Facts under section 56 of Co's Act, 1956		
(i)	**Condition**	The following may give rise to an action for damages at the instance of subscriber for shares if – ✓ An omission from prospectus of a matter required to be disclosed under section 56 read with Schedule II. ✓ Loss is caused to the investor by subscribing for shares. ✓ The investor relied and acted upon the prospectus.
(ii)	**Defence available to Directors etc.**	A director or other person sued under Section 56 may defend himself by showing – (a) That he had **no knowledge** of the matter not disclosed; or (b) That the contravention arose out of an **honest mistake of fact**; or (c) In the **opinion of the Court**, non-compliance or contravention was **not material** or that the person sued **ought reasonably to be excused**, having regard to all the circumstances of the case.
B. Criminal Liability – [Section 34 of Co's Act, 2013]		
1.	**Applicability**	Where a prospectus, issued, circulated or distributed under this Chapter, includes any statement which is **untrue or misleading** in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead,
2.	**Punishment**	**Every person who authorizes the issue of such prospectus shall be liable under section 447**
3.	**Exception**	**Nothing in this section shall apply to a person –** (a) If he proves that such statement or omission was immaterial or (b) If he proves that – ✓ He had reasonable grounds to believe, and ✓ Did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
C. Punishment For Personation For Acquisition, etc., Of Securities – [Section 38 of Co's Act, 2013]		
1.	**Punishable Offence**	(a) Makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or (b) Makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or (c) Otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name

2.	**Punishment**	Any person who contravenes section 38 shall be liable for action u/s 447
3.	**Disclosure Requirement**	**The provisions of 38 shall be prominently reproduced in –** ✓ Every prospectus issued by a company and ✓ Every form of application for securities.
4.	**Disgorgement**	☞ Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person. ☞ The amount received through disgorgement or disposal of securities shall be credited to the Investor Education and Protection Fund.

D. Action by Affected Person – [Section 37 of Co's Act, 2013]

A suit may be filed or any other action may be taken under section 34 or section 35 or section 36 by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

E. Punishment For Fraud – [Section 447 of Co's Act, 2013]

1.	**Applicability**	Where any person is found guilty for fraud.
2.	**Punishment**	(see table below)
3.	**Other Liabilities remains unaffected**	**The person liable u/s 447 shall continue to any liable including repayment of any debt under this Act or any other law for the time being in force.**

Punishment	Fraud related to public	Fraud in other case
Min. Imprisonment	**3 Years**	**6 Months**
Max. Imprisonment	**10 Years**	**10 Years**
Min Fine	**Fine = Fraud amount**	**Fine = Fraud amount**
Max. Fine	**Fine = 3 x Fraud Amt.**	**Fine = 3 x Fraud Amt.**

7. Some Miscellaneous Points

A. Advertisement of Prospectus – [Section 30 of Co's Act, 2013]

1.	**Contents of advertisement of prospectus**	Where an advertisement of any prospectus of a company is published in any manner, it shall be necessary to specify therein – (a) The contents of its memorandum as regards – ✓ The objects, ✓ The liability of members and ✓ The amount of share capital of the company, and (b) The names of the signatories to the memorandum and the number of

		shares subscribed for by them, and **(c)** Its capital structure.
B. Public Offer of Securities to be in Dematerialised Form – [Section 29 of Co's Act, 2013]		
1.	**Mandatory Demat**	(a) Every company making public offer; and (b) Such other class or classes of public companies as may be prescribed, Shall issue the securities only in dematerialised form by complying with the provisions of the Depositories Act, 1996 and the regulations made thereunder.
2.	**Optional Demat**	**Any other company may –** (a) Convert its securities into dematerialised form or (b) Issue its securities in physical form in accordance with the provisions of this act or (c) Issue its securities in dematerialised form in accordance with the provisions of the depositories act, 1996 and the regulations made thereunder.
C. Golden Rule For Framing the Prospectus –		
1.	**Meaning of 'Untrue Statement' and Prospectus Containing Untrue Statement'**	**According to section 65(1) of the Act –** **(a)** A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included and **(b)** Where the omission from a prospectus of any matter is calculated to mislead, the prospectus shall be deemed in respect of such omission be a prospectus in which untrue statement is included.
2.	**Golden Rule –** **It is the duty of those who issue the prospectus to be truthful in all respects –** **By Kinderseley, V.C.**	**(a) New brunswick. & Canada Rly. & Land Co. v Muggeridge (1869)** ✓ Those who issue a prospectus hold out to the public great advantage which will accrue to the persons who will take shares in the proposed undertaking. ✓ The public is at the mercy of company promoters. ✓ Everything must therefore be state with strict and scrupulous accuracy. ✓ Nothing should be stated as fact which is not so and no fact should be omitted. ✓ In other words, the true nature of the company's venture should be disclosed. ✓ A half truth for instance represented as a whole truth may tantamount to a false statement.

		(b) In Rex v. Kylsant ✓ The prospectus stated that dividends of 5 to 8 per cent hand been regularly paid over a long period. ✓ The truth was that the company had been incurring substantial losses during the seven years preceding the date of the prospectus and dividends had been paid out of the realised capital profit. ✓ Held, the prospectus was false and misleading.

Some Problems

Q.N.	Problems
P.1	A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividend were not paid out of trading profit, but out of capital profit. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.
P.2	The directors of M/s. Reckless Investments Ltd. have allotted to shares to the investors of the company without issuing a prospectus or filling a statement in lieu of prospectus with the Registrar of Companies, Mumbai. Explain the remedies available to the investors in this regard.
P.3	With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received a copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares though the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provision of the companies Act, 1956/2013 examine whether X's claim for damages is justified.
P.4	A applied for 200 shares on the basis of a prospectus which contains some mis-statement. The shares are allotted to him. A afterwards transfers the shares to B. Can B bring an Action for a rescission on the ground of mis-statement?
P.5	Amar subscribed shares issued by F Ltd. The prospectus of F Ltd. included a statement which was misleading in the forms and contents. On the faith of the prospectus believing it to be a true, Amar subscribed for shares and sustained loss. Can Amar sue for compensation of loss? If so, who will be sued for such loss?
P.6	All statements in a prospectus issued by X & Co. Ltd. were literally true, but it failed to disclose that the dividends stated in it as paid were not paid out of revenue profits, but out of realised capital profits. The statement that the Company had paid dividends for a number of years was true. But the Company had incurred losses for all those years; however, no disclosure of this was made in the prospectus. An allottee of shares wanted to avoid the allotment on the ground that the prospectus did not disclose this fact which, in his opinion, was very material. Would he succeed?
P.7	An allottee of shares in the Company has brought an action against director Q in the Company in respect of false statements in the prospectus. The director has contended that the statements were prepared by promoters and he had relied on them. Is the director liable?
P.8	No additional information in addition to the statutory requirements can be given in the prospectus.

P.9	In a scheme of amalgamation shareholders of Company 'A' was offered shares of Company 'B' in lieu of shares held by them in Company 'A'. The offer letter issued by Company B to the shareholders of Company A can be regarded as prospectus?
P.10	Explain the meaning and role of the Prospectus
P.11	State the conditions whereunder the issuing of prospectus is not necessary under the provisions of the Companies Act, 1956.
P.12	What are the requirements as to the issue of the Prospectus?
P.13	What is meant by "Abridged Prospectus"? Is it necessary to furnish abridged form of prospectus along with the application form for shares? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form
P.14	Who is an 'Expert'? When an expert is not liable for the mis-statement in the prospectus of a public company?
P.15	What is the extent of liability of an expert, in relation to publication of prospectus, for any mis-statement in the report given by him?
P.16	When is a company required to issue a 'shelf prospectus' under the provisions of the Companies Act, 2013? Explain the provisions of the Act relating to the issue of 'shelf prospectus' and filing it with the Registrar of Companies.
P.17	What is meant by 'Red-herring prospectus'? State the circumstances under which such prospectus is required to be filed with the Registrar of Companies. What is the requirement relating to filing of final prospectus in such cases?
P.18	When director is not liable for a misstatement in a prospectus?
P.19	State the remedies available against a company to a subscriber for allotment of shares on the faith of a misleading prospectus. What conditions must be satisfied by such a subscriber before opting for the remedies?
P.20	Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement. Mr. X purchased some partly paid shares of the company in good faith on the Stock Exchange. Subsequently, the company was wound up and the name of Mr. X was in the list of contributors. Decide: a. Whether Mr. X is liable to pay the unpaid amount? b. Can Mr. X sue the directors of the company to recover damages?
P.21	M applies for share on the basis of a prospectus which contains mis–statement. The shares are allotted to him, who afterwards transfers them to N. Can N bring an action for a rescission on the ground of mis-statement? Decide under the provisions of the Companies Act, 1956.
P.22	Modern Furnitures Limited was willing to purchase teakwood estate in Chhattisgarh State. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh State. The report was found inaccurate. Mr. 'X' purchased the shares of Modern Furnitures Limited on the basis of the above statement in the prospectus. Will Mr. 'X' have any remedy against the company? When will an expert not be liable? State the provisions of the Companies Act, 1956 in this respect.
P.23	Explain the concept of "Deemed Prospectus" under the Companies Act, 1956. Point out the circumstances where under issuing the prospectus is not mandatory.

Chapter – 9
Allotment of Securities & Underwriting

Sections covered in this Chapter -

Sections	Old / New Act	Description
Section 39	New Act	Statutory Provision
Section 40	New Act	Securities to be dealt with a Stock Exchange
Section 71	Old Act	Irregular Allotment
Section 75	Old Act	Return of Allotment
Section 76	Old Act	Payment of Underwriter Commission

Landmark Judgments covered in this chapter:

1. **Shri Gopal Jalan and company V. Calcutta Stock Exchange Association ltd.**
2. **Coregam Gold Mining Co. of India V. Roper, (1892**
3. **Madan Lal Fakir Chand v. Shree Changdeo Sugar Mills Ltd. MR (1962)]**

1. Allotment of Shares

<table>
<tr><th>S.N.</th><th>Aspects</th><th colspan="2">Description</th></tr>
<tr><td>a.</td><td>Meaning of Allotment</td><td colspan="2">Allotment is the acceptance by the company of such offers to take shares.
The word allotment gives us the notion of a lot. Therefore, there must first be a lot of shares, then the division of them into value or classes and lastly allocation of them among various applicants</td></tr>
<tr><td colspan="2">Case Law</td><td colspan="2">Allotment has been clearly defined in the case of Shri Gopal Jalan and company V. Calcutta Stock Exchange Association ltd. as “the appropriation out of the previously unappropriated capital of the company of a certain number of shares to a person.”
<u>That is why, if the shares which have been forfeited are reissued, you cannot call it an allotment.</u></td></tr>
<tr><td>Note</td><td colspan="3">An allotment creates a binding contract between the parties</td></tr>
<tr><td>b.</td><td>Some General Provision for Allotment</td><td colspan="2">✓ Allotment by proper authority i.e. board of directors
✓ Allotment against application only. This means allotment cannot be oral
✓ Allotment not to contravene any other provision of the law
✓ Reasonable time- 30 days from the close of issue the allotment should be done. If it is not allotted within 30 days the application money is to be returned with 15% of interest.
✓ Commission of the allotment should be done to applicant.
✓ Allotment should be absolute and unconditional
✓ Revocation (forfeiture of shares is a mode of revocation of acceptance)</td></tr>
<tr><td rowspan="2">c.</td><td rowspan="2">Statutory Provision – [Section 39 of Co’s Act, 2013]</td><td>Condition w.r.t. Minimum Subscription</td><td>No allotment of any securities of a company offered to the public for subscription shall be made unless 2 conditions are satisfied –
(a) The amount stated in the prospectus as the minimum amount has been subscribed and
(b) The sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.</td></tr>
<tr><td>Amount of Application</td><td>The amount payable on application on every security shall not be less than –
(a) 5% of the nominal amount of the security or
(b) Such other percentage or amount, as may be specified by the securities and exchange board by making regulations in this behalf.</td></tr>
</table>

		Time Limit	If the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of 30 days from the date of issue of the prospectus, or such other period as may be specified by the SEBI, the amount received shall be returned within such time and manner as may be prescribed (15% interest).
		Penalty on Default	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/- for each day during which such default continues or ₹ 100000/- whichever is less.
e.	**Securities to be dealt with a SE – [Section 40 of Co's Act, 2013]**	**Application for permission for Listing**	Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.
		Disclosures in Prospectus	Where a prospectus states that an application has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with
		Application moneys to be kept in separate bank account	All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than – (a) For adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or (b) For the repayment of monies within the time specified by the securities and exchange board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.
		No waiver	Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.
		Penalty for default	If a default is made in complying with the provisions of this section – (a) The company shall be punishable with a fine which shall not be less than ₹ 5,00,000/-but which may extend to ₹ 50,00,000/- and (b) Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than ₹ 50,000/- but which may extend to ₹ 3,00,000/-, or with both.

d.	**Irregular Allotment**	When the allotment of shares is made in contravention of the provision of the act then the allotment is termed as irregular. An allotment will be considered irregular in the following cases – ✓ Where minimum subscription is not received ✓ Where a copy of the prospectus has not been filed with the Registrar of Companies. ✓ Where a copy of the statement in lieu of prospectus has not been delivered to the Registrar of Companies at least 3 days before the allotment. ✓ Where application money has not been received, kept in a scheduled bank. ✓ Where application money to a minimum of 5% of the nominal value has not been received.	
e.	**Return of Allotment – Section 75**	**Time Limit**	After the allotment of the shares by any company a return of Allotment in the prescribed form must be filed with the Registrar of Companies within 30 days of the allotment.
		Contents in Case of Shares Allotted in Cash	Return must state the number of shares, nominal amt. of the share, address, occupation of the allottee, amt. paid or payable for each share.
		Contents in Case of Shares Allotted other than Cash	(a) A written contract constituting title of the allottee of the share. (b) The contract of sale or for service or other consideration for which the allotment was made. (c) The number of such share than the nominal amount of the shares, amount paid or payable in form of consideration for such allotted shares.
		Contents in Case of Bonus Shares	(a) A copy of resolution authorizing the issue of such share. (b) Number of shares, nominal value of shares, name and address and occupation of the allottee etc.
		Contents in Case of Shares issued at Discount	(a) A copy of resolution authorising the issue of such shares. (b) Copy of the order of Company Law Board. (c) If the rate of discount exceeds 10% of the copy of document issued by the Central Government permitting such issue.
		In case of Re – issue of Forfeited Shares	No need to file return of allotment to the Registrar of Companies.
Note	'Cash' here does not necessarily mean the current coin of the country. It means "such transaction as would in an action at law for calls, support a plea of payment." **[Coregam Gold Mining Co. of India V. Roper, (1892)]**		

2. Underwriter

S.N.	Aspects	Description
a.	**Meaning of Underwriting**	'Underwriting' is a contract entered into between the company and certain parties before the issue of the shares or debentures to the public for subscription. In other words, the contract entered into between the two is that if in case the whole or an agreed portion of the shares or debentures are not applied, then the underwriters themselves will take the unsubscribed share or debentures.
Note	The company has no interest in knowing how the Underwriters procure the purchases. Thus, the underwriter exposes themselves to great risk, by placing the shares before the public. In return of this risk they get commission which is called Underwriting commission. Underwriting is on the nature of insurance against the possibility of inadequate subscription.	
b.	**Meaning of Underwriter**	The Person/s who undertakes the activity is called as Underwriter/s
c.	**Condition for Underwriting**	**Section 76 allows the payment of underwriting commission subject to the compliance of the following conditions –** 1. The payment of commission must be authorized by the articles of the company. 2. The names and address of the underwriters should be disclosed. 3. A disclosure must be there about the Underwriting commission in the prospectus or statement in lieu of prospectus. 4. The amount of the Underwriting commission payable should not exceed 5% in case of shares and 2.5% in case of debentures. If the Articles permit the company can have lesser percent of commission. 5. The commission can be paid in cash or in kind as agreed between two parties. 6. A disclosure should also be there in relation to the number of shares or debentures which the person have agreed to subscribe absolutely or conditionally. 7. A copy of contract in relation to the payment of commission should be delivered to the Registrar of Companies. 8. Underwriting commission may be paid in respect of debentures offered to the members or a right basis. 9. The Underwriting commission will not be paid on the shares or debentures, which are not offered to public for subscription. But where a person has subscribed or agreed to subscribe – (a) For any issue in or debenture of the company and before the issue of the prospectus statement in lieu thereof any other person or persons has or more subscribed for any or all those shares & debentures. (b) The fact together will the aggregate amount of commission payable

		under this section in respect of such subscription is disclosed in the prospectus or statements then the company will pay commission to first mentioned persons [section 76(4A)]
Case Law		The BOD can pay Underwriting Commission both out of capital as well as out of profits. **[Madan Lal Fakir Chand v. Shree Changdeo Sugar Mills Ltd. MR (1962)]**
d.	**Meaning of Brokerage**	Brokerage [u/s. 76(3)] is a reward paid to the middleman or mediator who brings about a bargain between the seller and purchaser of shares and debentures.
e.	**Provision relating to Brokerage**	1. It is paid even if it is not authorized by the Articles of Association. 2. Brokerage is paid only on those shares, which are sold by the broker. 3. The rate of the brokerage is not fixed it depends upon the company. 4. Brokerage is paid for every share while it is issued to the public. 5. It is not necessary to disclose the name of contract and brokerage

Some Problems

Q.N.	Problems
P.1	A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividend were not paid out of trading profit, but out of capital profit. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide.
P.2	State briefly the provisions relating to minimum subscription and consequence of non-receipt of minimum subscription as per the Companies Act, 1956 and the provisions as per SEBI guidelines.
HINT	As per SEBI Regulations, the minimum subscription in respect of public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities. In case of non-receipt by the company of 90% of the issued amount from public subscription plus accepted development from underwriters or from other sources in case of under-subscribed issues, within 60 days from the date of closure of the issue, the company shall refund forthwith the subscription amount in full without interest and with interest @15% p.a. if not paid within 10 days after expiry of the said 60 days.
P.3	When is an Allotment of Shares treated as an irregular allotment? State the effects of an irregular allotment.
P.4	After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 1956. Comment.

P.5	Mars India Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil. Examine the validity of these allotments in the light of the provisions of the Co's Act.
P.6	Explain the provisions and main contents of "Return of Allotment" under the CO's Act, 1956.
P.7	Explain clearly the meaning of the term 'Underwriting' and 'Underwriting Commission'. In what way, does the Companies Act, 1956 regulate payment of such Commission? Explain. **OR** In what way does the Companies Act, 1956 regulate the payment of 'underwriting commission'? Explain the provisions of the Act, state the conditions to be complied with before payment of such commission can be made to underwriters of the company.
P.8	The Board of Directors of a company decide to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 1956?
P.9	The Articles of Association of MSW Ltd. contained a provision that upto 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The Board of directors decided to pay 5% underwriting commission. Can the Board of directors do so? State the provisions of law in this regard as stated under the Indian Companies Act, 1956.
P.10	Unique Builders Limited decides to pay 2.5 % of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 % underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 1956.

Chapter – 10
Shares and Share Capital

Sections covered in this Chapter -

Sections	Old / New Act	Description

Landmark Judgments covered in this chapter:

1. Introduction to Shares

S.N.	Aspects	Description
a.	**Definition**	"Share" means a share in the share capital of a company and includes stock
b.	**Meaning of Shares**	The shares or debentures or other interest of any member in a company shall be movable property transferable in the manner provided by the articles of the company. [Section – 81]
c.	**Numbering of Shares – Section 83**	Every share in a company having a share capital shall be distinguished by its distinctive number **Provided** that nothing in this section shall apply to a share held by a person whose name is entered as holder of beneficial interest in such share in the records of a depository.
d.	**Nature of Shares**	In India, a share is registered as 'goods'. Section 2(7) of the sale of goods act, 1930 defines 'goods' to mean any kind of movable property other than actionable claims and money includes stock and shares. However, section 82 of the companies Act, while recognizing share as movable property, suggests that they shall be transferable only in the manner provided by the Articles of Association of the company.
Case Law		Shree Gopal Paper Mills Ltd. Vs. CIT, the learned judged observed that the share when it becomes associated with a member becomes a movable property. It is, however **not a movable property whose transfer is solely regulated by the sale of goods act.** Its transfer is also governed by the companies Act, and/or Articles of Association of the company. Each share again bears a distinguishing number. It is, however, not a tangible property for it is not the share certificate; it only consists of a bundle of rights and obligations.

2. Kinds of Shares

a.	**Restriction on Company limited by Share Capital**	The share capital of a company limited by shares formed after the commencement of this Act, or issued after such commencement shall be of two kind only namely (a) Equity share capital ✓ With voting rights; or ✓ With differential rights as to dividend voting or otherwise in accordance with such rule and subject to such condition as may be prescribes. (b) Preference share capital.

a.	**Preference Share**	✓ According to section 85 of the companies Act, 1956, preference share capital means that part of the share capital, which fulfills both the following requirements:- ☞ On the winding up or the liquidation of the company it carries or will carry a preferential right to be paid that is amount paid on the preference shares must be paid back before anything is paid to equity shareholders. ☞ During the life of the company, it must be assured of preference dividend. The preferential dividend may consist of a fixed amount payable to preference shareholder before anything else is paid to the equity shareholders. Alternatively, the amount so payable as preferential dividend may be calculated at fixed rate.
b.	**Equity Share**	✓ The equity shares are those shares which are not preference shares. ✓ In other words, shares which do not enjoy any preferential right in the matter of payment of dividend or repayment of capital are known as equity shares. ✓ After satisfying the rights of preference shares, the equity shares shall be entitled to shares in the remaining amount of distributable net profits of the company. ✓ The dividend on equity shares is not fixed and may vary from year to year depending upon the amount of profits available. ✓ The rate of dividend is recommended by the Board of directors of the company and declared by shareholders in the annual general meeting.

3. Voting Right of Shareholders

Section 87	Equity shareholders have a right to vote on every resolution placed in the meeting and the voting rights shall be in proportion to the paid-up equity capital. As compared to this, the holders of preference shares can vote only on such resolution which directly affects the rights attached to the preference shares. However, if the preference dividend is not paid fully for more than two years, the preference shareholders shall also get voting right on every resolution placed before the company [section 87].

4. Classification of Share Capital

a.	**Authorised Capital**	"Authorised capital" or "nominal capital" means such capital as is authorised by the memorandum of a company to be the maximum amount of share capital of the company. **[Section 2 (8) Co's Act, 2013]**
b.	**Issued Capital**	"Issued capital" means such capital as the company issues from time to time for subscription. **[Section 2 (50) Co's Act, 2013]**
c.	**Subscribed Capital**	"Subscribed capital" means such part of the capital which is for the time being subscribed by the members of a company. **[Section 2 (86) Co's Act, 2013]**

d.	**Called Up Capital**	"Called-up capital" means such part of the capital, which has been called for payment. **[Section 2 (15) Co's Act, 2013]**
e.	**Paid Up 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, but does not include any other amount received in respect of such shares, by whatever name called. **[section 2 (64) co's act, 2013]**

5. Publication of Authorised, Subscribed & Paid Up Capital

a.	**Disclosures Required – [Section 60 (1) of Co's Act, 2013]**	✓ Where any notice, advertisement or other official publication, or any business letter, billhead or letter paper of a company ✓ Contains a statement of the amount of the authorised capital of the company, ✓ Such notice, advertisement or other official publication, or such letter, billhead or letter paper shall also contain a statement, ✓ In an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed & the amount paid-up.
b.	**Penalty in case default**	If any default is made in complying with the requirements of sub-section (1) – ☞ The company shall be liable to pay a penalty of ₹ 10,000 and ☞ Every officer of the company who is in default shall be liable to pay a penalty of ₹ 5,000, for each default.

6. Kinds of Preference Shares

a.	**Redeemable Preference Shares**	**Basic Concept**	✓ These shares are redeemable even before the winding up of the company. ✓ The paying back of capital is called redemption. ✓ After the commencement of the companies act, no company limited by shares shall issue any preference share, which is irredeemable or is redeemable after the completion of a period of 20 year from the date of issue.
		Conditions	1. Fully paid up shares only 2. Redeemed only out of – ✓ Profits available for dividend ✓ Out of the proceeds of a fresh issue of shares 3. CRR must be created if redeemed otherwise than out of proceeds of fresh issue of shares 4. Premium is to be provided out of the profits of the company or out of the company's security premium.

			5. Premium in any case is to be provided out of the profits of the company or out of the company's security premium shall be subject to the provisions of sec 80. 6. Give notice to the ROC within 30 days of redemption 7. Default shall be punishable with fine which may extend upto ₹ 10,000
b.	**Participating**	Such shares are entitled to a fixed preferential dividend and along with it, carry a right to participate in surplus profits along with equity shareholders after dividend at a certain rate has been paid to equity shareholders.	
	Non Participating	These shares are entitled on to the fixed dividend and do not have the right to further participate in the surplus profit.	
	Cumulative	These shares confer a right on its holder to claim fixed dividend of the past and current year out of future profits. The fixed dividend keeps on accumulating until it is fully paid.	
	Non Cumulative	These shares give right to its holder to a fixed amount or a fixed percentage of dividends out of the profits every year. If no profits are available in any year the shareholders get nothing, nor can they claim unpaid in any subsequent year.	
	Convertible	The holder of such shares is given the right of conversion. With the help of such right the preference shares can be converted into equity shares at future date	
	Non Convertible	The holder of such shares does not get a right to convert such shares into equity shares at later date.	

7. Reduction of Share Capital – Section 100 to 104

a.	**Modes of Reduction**	1. By reducing or extinguishing the liability of members in respect of uncalled or unpaid capital 2. By paying off or returning paid up capital not wanted for the purposes of the co. 3. By paying off the paid up capital on the footing that it may be called up again 4. By following a combination of any of the preceding methods. 5. By writing off or canceling the capital which has been lost or is unrepresented by the available assets.
b.	**Procedure**	✓ Articles Permit ✓ S.R pass ✓ Apply to Tribunal ✓ **Notice to creditors:** should be given to every creditor ✓ **List:** The Tribunal then settles a list of such creditor ✓ **Creditor does not consent:** The Tribunal will order the co. to either pay his debt or provide any security. ✓ **Pass an order:** If the Tribunal is satisfied, it will pass an order confirming

		the reduction ✓ The Tribunal can order the Co. to add 'And reduced' after its name, for a fixed time. ✓ Liability of members in respect of reduced share ✓ The amount paid on shares or reduced amount if any and ✓ The amount of shares as fixed by the minutes of reduction.

c. **Reduction of capital related to issued capital whereas diminution of capital is done of authorized and non-issued capital**

Sr.	Basis	Reduction	Diminution
1.	**Meaning**	Reduction of capital involves reduction of subscribed capital of paid up capital.	Diminution of capital is the cancellation of the subscribed part of the issues of capital.
2.	**Nature of resolution**	It is affected by special resolution.	It is affected by ordinary resolution.
3.	**Notice to Registrar of Companies**	No time for notice to Registrar of Companies.	A notice is to be sent to the Registrar of Companies within 30 days from the date of cancellation.
4.	**Confirmation of court**	It requires confirmation of court.	It does not require confirmation of court.
5.	**The word reduced**	Court may give order to add the word 'and reduced'	No such order is given.

8. Issue of Security at Premium – Section 78

a.	**No Condition.**	Permission of AOA & TRIBUNAL is not required.
b.	**Issue of Shares for cash or otherwise is immaterial**	Section 78 of the companies Act, 1956 contains the provision regarding the issue of shares at premium by a public company. This section provides that where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the value of the premium on those shares should be transferred to an account called the "Security Premium Account".
c.	**Utilisation of Premium**	The share premium may be applied by the company for following purposes:- (a) In writing off the preliminary expenses of the company or (b) In issuing to the members of the company fully paid bonus shares; or (c) In writing off the expenses or the commission paid or discount allowed on any issue of shares or debentures of the company. (d) In providing for the premium payable on redemption of any redeemable preference share or any debenture of the company. (e) For Buy Back of Shares

Note	Issue of the securities at differential premium is allowed. The value which the acquirer of securities may pay in excess of the par value for acquiring the shares depends upon the contract between the company and acquirer of such securities.

9. Issue of Security at Discount – Section 79

	Meaning	Shares are said to be issued at a discount when they are issued at a price lower than the face value. The excess of the face value over the issue price is called the amount of discount.
	Conditions	(a) The issue must be a class or classes of shares already issued. The shares of the class issued for the first time are not allowed to be issued at a discount. (b) Not less than 1 year, has at the date of issue, elapsed since the date for which the company became entitled to commence business. (c) The issue of shares at a discount must have been authorized by a resolution passed by the company in general meeting and sanctioned by the Company Law Board/Central Government. (d) Specification must be made in the resolution about the maximum rate of discount, at which the share are to be issued. By virtue of the provision added to section 79 by the amendment Act, 1974, no such resolution should be sanctioned by C.G., if the maximum rate of discount specified in the resolution exceeds 10% unless the C.G. is of the opinion that a higher percentage of discount may be allowed in the special circumstances of the case. (e) After the date of the sanction, the shares to be issued at the discount must be issued within 2 months, the time period can be extended if C.G permits. (f) Each and every prospectus relating to the issue of the shares must have the particular of the discount allowed on the issue of the shares or so must of that discount as has not been written off at the date issue of the prospectus. (g) On default the company and every officer of the company who is in default shall be punishable with a fine which may extend to ₹ 500.

10. Issue of Sweat Equity Shares

a.	**Definition – [Section 2(88) Co's Act, 2013]**	"Sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.
b.	**Condition – Section 79A**	(a) Must be of class already issued. (b) At least 1 year must have completed (c) S.R. (d) The resolution should specify the number of shares, Current maker price, Consideration if any and the class or classes of Directors or Employees.

		(e) Only to permanent employees (f) Listed and Unlisted companies – ☞ **Listed co.** – SEBI Regulations (Issue of Sweat Equity), 2002 to be followed. ☞ **Unlisted Companies** – Unlisted Co's (Issue of Sweat Equity Shares) Rules, 2003 to be followed.

11. Issue of Right Shares or Right of Pre – emption – Section 81

a.	**Meaning**	Further shares must be offered to the existing equity shareholders in proportion to the capital paid up on those shares.
Note	If Public co. wishes to issue further shares, the co. must first offer such further shares to existing equity shareholders.	
b.	**Time Limits**	Where at any time – (a) After the expiry of 2 years from the formation of the co. Or (b) After the expiry of 1 year from the allotment of shares made for the first time after its formation whichever is earlier,
c.	**Content of Notice**	(a) Number of shares offered and (b) Giving not less than 15 days for acceptance of offer, (c) Failing to give acceptance within that date is deemed as offer having been declined, (d) Either decline the offer or can renounce in favour of any other person. (e) Declines the offer – BOD may dispose in such a manner as they think most beneficial to the Company.
d.	**Issue of Right Shares Other than Existing Shareholders**	(a) The company may by special resolution in general meeting decide that the directors need not offer the shares in the further issue to the existing equity shareholders, and that they may dispose them off in any manner whatsoever. (b) But where it has been possible to muster ordinary majority only than approval of the central govt. is to be obtained.
e.	**Not Applicable**	Section 81 does not apply to – ✓ A private company. ✓ In case of issue of shares against conversion of loans or debentures.
d.	**Power of C.G. to convert debentures into shares –** Sec.81 does not apply to increase of subscribed capital caused in the following situations –	

Situation	Conversion option attached [Sec 81(3)]	CG Direction [Sec 81(4)]
Description	By exercise of conversion option attached to debentures/Loans.	Conversion of Whole / Part of debentures / Loans, in pursuance of CG direction.

Conditions	**Such issue –** (a) Has been approved by the CG before their issue and (b) Approved by SR.	**CG shall consider following –** (a) Financial position. (b) Terms of issue of debentures/loans. (c) Rate of interest payable. (d) Capital of the Co. (e) Loan liabilities of Co. (f) Reserves of company. (g) Profits of the previous 5 years. (h) Current market price.	

12. Issue of Bonus Shares

(a) It is allotted to the equity shareholders of the company only.
(b) Since it is capitalization of company, it should have undistributed profit left with the company.
(c) It should be mentioned in the Articles.
(d) Special resolution in general meeting should be filed.
(e) Return should be filed within 30 days to the Registrar of Companies.

13. Issue of Shares for Consideration Other than Cash

(a) A company is permitted to issue shares for a consideration other than cash u/s.75.
(b) Cancellation of a debt by mutual consent will be treated as payment in cash.
(c) However, shares cannot be allotted without consideration.

14. Buy Back / Purchase of its own Shares

a.	**Source of Funds**	A Company possesses the right to purchase its own shares or other specific securities. The funds that can be utilized by the company for purchasing its own share should be out of – (a) Its free reserves (b) The security premium account (c) The proceeds of any shares or other specified securities. According to section 77A(1), the buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the similar kind of shares or other specified securities.
Note	Employees' stock option or other securities as may be noticed by the central government from time to time may be included in specified securities.	

b.	**Source of Shares**	**The buy-back may be** – (a) From the existing security holders on a proportionate basis or (b) From the open market or (c) From odd lots or (d) By purchasing the securities issued to employees under stock option or sweat equity.
C.	**Requirement to be complied before Buy Back**	A company cannot purchase its own shares or other securities unless they fulfill the following conditions – [Section 77A(2)] (a) There should be an authorization in the articles for the buy-back. (b) A special resolution must be passed in the general meeting for authorizing the buy-back. (c) The buy-back must be or less than 25% of the total paid up capital and free reserves of the company. (d) In any financial year, the buy-back of equity shares shall not exceed 25% of the total paid up equity share (e) The ratio of the debt owed by the company must not be more than twice the capital and free reserves after such buy-back. (f) The central Government has the power to increase the ratio of the debt, than specified in the clause for the class or classes of companies. (g) All the amounts unsecured and secured debts are included in the term debt. (h) 'Free reserves' includes in it the reserves which as per latest audited balance sheet of the company are free for distribution as dividend ad it will also include in it the balance to the credit of the securities premium account. (i) The shares or other specified securities which are to be buy-back by the company must be listed on any recognized stock exchange in reference with the regulation made by SEBI in its behalf. (j) Buy-back must be done on the shares and securities which are fully paid up. (k) The notice of the meeting at which the special resolution is proposed to be passed should include with it the statement stating – [Section 77A(3)] 1. A full and complete disclosure of all material facts 2. The reason behind the buy-back must be disclosed 3. The types of securities which are to be purchased under buy-back. 4. The amount to be involved under the buy-back. 5. And lastly the time within which the buy-back will be completed

c.	**Requirement to be complied after Buy Back**	Section 77A of the companies Act, 19565 deals with the requirement to be fulfilled after buy-back. They are as follows – (a) According to section 77A (7) the securities which are bought back should be extinguished and physically destroyed within 7 days after the completion of buy-back. (b) A company is not permitted to issue same kind of shares or securities which were brought back for a period o 24 months. However, the following are permitted – 1. Bonus shares 2. Sweat equity 3. Stock option to employees 4. Issue of securities of a different class than is other than one which was earlier bought back 5. Subsisting obligation such as conversion of warrants (c) Conversion of preference or debentures into equity shares [section 77A(8)] (d) A register must be maintained by the company showing securities bought back, consideration paid for the buy-back, date of cancellation of securities, date of extinguishment and physical destruction of securities and other prescribed particulars [section 77A(9)] (e) After the buy-back is over, a return must be filed with the registrar of companies and SEBI, if the company is listed within 30 days giving details as prescribed [section 77A(10)]
d.	**Other Requirement to be complied after Buy Back – Section 69 of Co's Act, 2013**	(a) Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and (b) Details of such transfer shall be disclosed in the balance sheet. (c) **Utilisation of CRR –** The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares.
e.	**Prohibition of Buy Back u/s 70(1) of Co's Act, 2013**	No company shall directly or indirectly purchase its own shares or other specified securities— (a) Through any subsidiary company including its own subsidiary companies; (b) Through any investment company or group of investment companies; or (c) If a default, is made by the company, in – ✓ The repayment of deposits accepted or interest payment thereon, ✓ Redemption of debentures or preference shares or ✓ Payment of dividend to any shareholder, or ✓ Repayment of any term loan or interest payable thereon to any financial institution or banking company.

Note	The buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.	
f.	**Prohibition of Buy Back in case of non – compliances u/s 77B(2)**	No Company shall directly or indirectly, buy back its own shares or other specified securities if it has not complied with the provision of – (a) Section 159 (Filling of Annual Return); (b) Section 207 (Payment of dividend within 30 days); or (c) Section 211 (Annual a/c to present True & Fair View)

Chapter – 11
Public Deposit

Sections covered in this Chapter -

Sections	Old / New Act	Description
58A	Old Act	Provisions for Public Deposit
58AA	Old Act	Provision for Small Depositors
Rule 2b	Old Rule	Amount not be included in Deposit
Rule 7	Old Rule	Contain of Intimation

1. Introduction to Public Deposit

S.N.	Aspects	Description
1.	**Meaning of Deposit**	Deposit to mean any deposit of money with and includes any amount borrowed by a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. **[Explanation to Section 58A(10)]**
2..	**Amount not to be included in Deposit Rule 2(b)**	**Deposit does not include –** 1) Any amount received from the Govt. Or is guaranteed by Govt. Or local Indian authority or foreign Govt. Or foreign citizen ; 2) Any amount received as a loan from any banking company; 3) Any amount received from any of the notified financial institutions ; 4) Any amount received by a company from any other company; 5) Any amount received from employee of a company by way of security deposit; , 6) Any amount received by way of security or as an advance from any purchasing agent, selling agent or other agents; 7) Any amount received by way of subscriptions to any shares, stock, bonds, or debentures pending the allotment and any amount received by way of calls in advance; 8) Any amount received in trust or any amount in transit; 9) Any amount received from a director of company; 10) Any amount raised by issue of the bonds or debentures secured by the mortgage of any immovable property or with an option to convert them into shares in the company; 11) Any amount brought in by the promoters by way of unsecured loans in pursuance of stipulations of financial institutions subject to the fulf1lment of the following conditions, namely – (a) The loans are brought in pursuance of the stipulation imposed by the financial institutions; (b) The loan are provided by the promoters themselves and/or by their relatives; (c) The exemption shall be available only till the loans of financial institutions are repaid and thereafter.
3.	**Deposit in case of default in repayment**	A Company shall also be not entitled to invite deposits if it has made any default in the repayment of any deposit or part thereof and thereof any interest thereupon in accordance with the terms and conditions of such deposit.
4.	**Repayment of Deposit**	Every deposit by a company, unless renewed in accordance with the rules made under Sub- Section 58A, shall be repaid in accordance with the terms and conditions of such deposit.

5.	**Declaration by the Depositor**	The form of application shall contain a declaration by the depositor that the money in not being deposited out of funds acquired by him by borrowing or accepting deposits from any other person.
6.	**Nomination**	A depositor may at any time make a nomination and the provisions of Sections 109A and 109B, shall apply to nomination.

2. Rules related to Invitation & Acceptance of Deposit

1.	**Basic**	Section 58A and Companies (acceptance of Deposits) Rules, 1975, imposed certain restriction and limitation on the invitation or acceptance of deposit by the companies.		
2.	**Eligibility**	The companies which have net owned fund of Rs. 1 Crore are allowed to invite or accept deposits.		
3.	**Ceiling on Deposit**	**In case of Government Co.**	Max. 35% of PSC + Free Reserve	
		In case of Other Co.	**From Shareholder**	Max 10% of PSC + Free Reserve
			From Public	Max 25% of PSC + Free Reserve
4.	**Payable on Demand (Time Limit)**	**Maximum**	A Company cannot accept deposits payable before 6 months, However, deposits for less than 6 months but not less than 3 month may be accepted provided such deposits do not exceed 10% of the paid-up capital and free reserves.	
		Minimum	36 Months	
5.	**Interest Rate**	Maximum rate of Interest shall not exceed as may be such rate as may be prescribed.		
6.	**Advertise for Invitation**	**When**	Before inviting any Deposit	
		By Whom	By the BOD	
		What (content)	✓ Details, ✓ Terms & Conditions of acceptance, ✓ Date of approval of advertisement by BOD & ✓ Statement that advertisement is issued on authority of BOD	
		Declaration	(a) Complied with provisions of Companies (Acceptance of Deposits) Rules, 1975. (b) Compliance with above rules does not imply that repayment of deposits is guaranteed by CG. (c) Deposits are unsecured & shall rank Pari Passu with other unsecured liabilities. (d) No default in repayment of any deposit is subsisting.	
		Validity	Upto 6 month from end of FY or date on which B/S laid in AGM, whichever is earlier.	

<table>
<tr><td rowspan="4">7.</td><td rowspan="4">Maintenance of Liquid Assets</td><td>Amount</td><td>Minimum 15% deposits maturing upto 31st March following year invested in liquid assets.</td></tr>
<tr><td>Meaning of Liquid Assets</td><td>✓ Deposit with any scheduled bank
✓ Unencumbered securities of CG or SG
✓ Unencumbered securities listed in Indian Trusts Act, 1882.</td></tr>
<tr><td>Time Limit</td><td>On or before 30th April of each year.</td></tr>
<tr><td>Utilisation</td><td>Shall be utilized for repayment of deposits maturing during year only</td></tr>
<tr><td>8.</td><td>Application Form</td><td colspan="2">(a) Application form is mandatory for Acceptance & renewal of any deposit
(b) <u>Declaration by depositor</u> – Declaration by depositor that deposit not from borrowed money
(c) <u>Contents</u> – Text of advertisement + Terms and conditions.</td></tr>
<tr><td>9.</td><td>Issue of Deposit Receipt</td><td colspan="2">(a) <u>Time limit for issue</u> – Within 8 weeks from date of receipt of money or realization of cheque.
(b) <u>When required</u> – Acceptance of deposits & renewal of deposits.
(c) <u>No alternations</u> – After acceptance, no alternations in terms which are prejudicial to depositor.</td></tr>
<tr><td>10.</td><td>Repayment of Premature Deposit</td><td colspan="2">Repaid before date of maturity, but after 6 M. Rate of interest reduced by 1%</td></tr>
<tr><td rowspan="3">11.</td><td rowspan="3">Register of Deposit – Rule 7</td><td>Where</td><td>Register Office of Company</td></tr>
<tr><td>What (Content)</td><td>(a) Name and address of the depositor;
(b) Date and amount of each deposit;
(c) Duration of the deposit and the date on which each deposit is repayable;
(d) Rate of interest;
(e) Date/s on which repayment of interest will be made;
(f) Any other particulars relating to the deposit ;</td></tr>
<tr><td>Time Limit</td><td>Minimum 8 yrs from end of FY in which last entry is made</td></tr>
<tr><td rowspan="2"></td><td rowspan="2">Failure to repay deposit</td><td>Order of CLB</td><td>CLB may order to repay deposit</td></tr>
<tr><td>Interest Rate</td><td>18% compoundable (annually) interest if failure to pay matured deposits. (20% if small depositors)</td></tr>
<tr><td rowspan="4">13.</td><td rowspan="4">Return of Deposit</td><td>By Whom</td><td>By every co. which has accepted deposits</td></tr>
<tr><td>When</td><td>On or before 30th June of every year</td></tr>
<tr><td>What (Content)</td><td>As on 31st March of the year</td></tr>
<tr><td>Certificate</td><td>Auditor of Co. shall certify the return</td></tr>
</table>

14.	Brokerage	**Term of Deposit**	**Maximum rate of Brokerage**
		Upto 1 year	**1%**
		Upto 2 years	**1.5%**
		More than 2 years	**2%**
15.	**Statement in Lieu of Advertisemt.**	If deposits from public are not invited, Board shall file with ROC a statement in lieu of advertisement. All terms & conditions same as advertisement for prospectus	

3. Rules related to Small Depositors – [Section 58AA]

1.	**Meaning**	Depositor whose deposit in FY is upto ₹ 20,000 & includes successors, nominees & legal representatives of small depositor.	
2.	**Intimation of defaults to CLB**	**When**	Default in repayment of deposit (whole or in part) or interest of any small depositor.
		Time Limit	Intimation on monthly basis & within 60 days from date of default.
		What (Content)	**For every depositor in respect of whom default is made** – ✓ His name & address, ✓ Principal amount of deposits due to him & ✓ Interest accrued on his deposit.
		Action of CLB	✓ Order company to repay such deposit. ✓ Order within 30 days. ✓ Order even after 30 days if opportunity of being heard is given to small depositor.
3.	**No further deposit**	Default in payment of interest/repayment, co shall not accept any further deposit from any person until such default is made good.	
4.	**Disclosure of Default**	(a) **When disclosure required** – Default in payment of principal/interest shall make disclosure of same. (b) **Manner of disclosure** – All future advertisement & application forms issued after date of default (c) **Nature of disclosure** – No. of small depositors in respect of whom default was made & amount due to them.	

4. Offence under Section 58A & 58AACognizable

(a) Every offence connected with or arising out of acceptance of deposits u/s 58A or 58AA shall be cognizable offence under Code of Criminal Procedures, 1973.

(b) No court shall take cognizance of any offence unless the complaint is made by CG or any officer authorized by CG in this behalf.

Chapter – 12
Debenture

Sections covered in this Chapter -

Sections	Old / New Act	Description
	New Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	

1. Basic Concepts

S.N.	Aspects	Description
1.	**Definition – Section 2(30) of Co's Act, 2013**	"Debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company or not.
Note		The definition given above does not explain the term clearly. So, the correct definition of debenture is give n by Gower L.C.B. according to him "debenture is a name applied to a certain types of documents evidencing an indebtness which is normally but not necessarily secured by a charge over property."
2.	**Features of Debentures**	**The usual features of a debenture are as follows –** (a) A debenture is usually in the form of a certificate (like a share certificate) issued under the common seal of the company. (b) The certificate is an acknowledgement by the company of indebtedness to a holder. (c) A debenture usually provides for the payment of a specified principal sum at a specified date. But that is not essential. (d) A debenture usually provides for payment of interest until the principal sum is paid back. But this again is not essential. Interest may be made payable subject to contingencies of uncertain nature. (e) A debenture is, as a rule, on of a series, although a single debenture is not uncommon. (f) A debenture generally contains a charge on the undertaking of the company, or on some class of its assets or on some part of its profits. Again, this is riot an essential element.
3.	**Debenture vs. Shares**	**Difference between Debenture & Shares –**

S.N	Basis	Debenture	Shares
a.	**Ownership**	Debentures holders are creditors.	Shareholders are the owner of the company
b.	**Part of capital**	Debenture constitutes a loan	Shares are a part of the capital of the company
c.	**Voting Right**	Debenture holders do not have voting right.	Shareholder generally enjoys the voting right.
d.	**Charge**	Debentures have a charge on the assets of the company	Shares do not carry any charge.
e.	**Interest or Dividend**	Interest on debenture is to be paid out even if there is no profit.	Dividend can be paid to shareholders only out of the profits of the company.

f.	**Rate of Int. or Dividend**	The rate of dividend is fixed in case of debentures.	On equity shares the dividend may vary from year to year.
g.	**Priority**	Debentures get priority over the shares.	In the event of liquidation of the company the shareholders are payable at the last.
h.			

2. How Debentures are issued

1.	**General**	(a) Company can issue debentures only when it is authorized by the MOA & AOA. (b) Debentures can be issued at discount by passing resolution. (c) The company has to get debentures rating by CRISIA and CARC. (d) Register of debenture holder is to be maintained.
2.	**SEBI Guidelines**	**SEBI guidelines of the protection of the interest of debenture holders are as follows –** (a) For protecting the interest of debenture holders, the trustee to the debenture issue shall be vested with the required power such as a right to appoint a nominee director on Board of the company is consultation with institutional debenture holder. (b) For the proper utilization of the funds the institutional debenture holder should obtain a certificate from the company's auditor. (c) Supervision of the trustee and the debenture redemption reserve and for the creation of security. (d) Investment institution will look after the progress in respect of debentures for project finance, modification etc. Debentures raised for working capital funds will be monitored by the lead bank. (e) Debenture issued by companies belonging to the groups for financing/replenishing funds or acquired share holding in other company will not be permitted. (f) Along with the application the company has to file with SEBI, certificate from the bankers or the solicitors that the assets on which security is to be created are free from any charge, or no objection has been taken making second charge where assets are already encumbered. (g) The security is to be created in 6 months or up to 12 months for any special reason. If it is failed to do so 2% per month interest is payable. (h) A meeting of debenture holder is to be called if security is not created after 18 months and the reason for the delay is to be explained.

3.	**Terms of Issue of Debenture**	**Debenture with pari passu clause**	Every debenture holder issued with pari passu clause shall be entitled to share the proceeds of the security realised, even though these debentures were issued at different points of time
		Without pari passu clause	The debenture holder shall be entitled to share the proceeds of the security realised on FIFO basis(i.e. priority according to date of issue or according to serial no.)
		Restriction on the powers of the company	Company is not entitled to issue a new series of debentures having Priority or Ranking **Pari Passu** over earlier series of debentures unless such right is expressly reserved under terms of earlier series of debentures.

3. Provision for Debenture

1.	**Special Provision**	Cannot issue debentures carrying voting rights.[Section 117]	
2.	**Debenture Trust deed – Section 117A**	**Form**	Prescribed by CG
		Time pd.	As prescribed by CG.
		Inspections & Copies	Members & Debenture holders
3.	**Debenture Trustees – Section 117B**	**Mandatory Appointment**	Debenture trustee appointed if co. issues prospectus to public for subscription
		When(Time)	Appointed before the issue of prospectus.
		Consent of Trustee	The person proposed to be appointed as DH shall given his/her consent to the Company & such fact must be stated on the face of prospectus
		Disqualified	A person cannot be appointed as debenture trustee, if **shareholder or Creditor of company or given guarantee** for repayment of debentures or interest
		Function	(a) Protect interest of debenture holders. (b) Creation of securities within stipulated time (c) Redressal of grievances. (d) Steps to remedy any breach of terms of trust deed (e) Call a meeting of debenture holders
		Objective	**To ensure –** (a) Assets are sufficient to discharge debentures. (b) Prospectus does not contain any matter inconsistent with terms of debentures/trust deed (c) Company does not commit breach of provision of trust deed.
		Right of DH to apply to CLB	(a) **Grounds for application** – Assets of Co. are insufficient to discharge principal when it becomes due. (b) **Powers of CLB** – To impose restrictions on incurring of further liabilities as it thinks necessary.

4.	**Liability of Co. to create security & DRR – Section 117C**	**Creation of DRR**	It is mandatory to create DRR
		Credit to DRR	Adequate amounts out of profits every year until debentures are redeemed
		Use of DRR	Utilised only for redemption of debenture
		Payment of Interest & Principle	On debentures in accordance with terms & conditions of issue of debentures
		Right of DH to apply to CLB	If Company failed to redeem debentures on maturity + CLB may order co to redeem debentures forthwith.
5.	**Right to obtain copies & Inspect – Section 118**	**Nature of Right**	Debenture holder & member right to Inspect trust deed & Obtain copies of trust deed within 7 days of demand made.
		Order by CLB	Default by co. in inspection/copies CLB may direct co to allow inspection/forward copies.
6.	**Liability of Debenture Trustees – Section 119**	**For Damage**	Debenture trustee is guilty of breach of trust or fails to show care & diligence & Loss is caused to debenture holders. Than debentures trustee shall be liable for damages.
		Exemption or Indemnity	Provisions providing exemption or indemnity to debenture trustee shall be void
7.	**Perpetual Debenture – section 120**	Co shall have power to issue Irredeemable debentures or redeemable only on happening of a contingency or on expiration of period, however long	
8.	**Power to Reissue redeemed Debenture – Section 121**	(a) Redeemed debentures can be re –issued. (b) **Cases in which redeemed debentures cannot be re-issued –** Prohibited by AOA or Terms& conditions of issue of such debentures (c) Payment of stamp duty on re-issue	
9.	**Remedies available to DH**	**Where debenture are not secured**	(a) Suit against the company (b) Petition to the court for winding up of the company (c) Prove debts before liquidator (d) Application to CLB (Section 117C)
		Where debenture are secured	(a) Application for foreclosure (b) Appointment of receiver (c) Claim as unsecured creditor

Chapter – 13
Charges

Sections covered in this Chapter -

Sections	Old / New Act	Description
	New Act	
	New Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	

1. Basic Concepts

S.N.	Aspects	Description
1.	Definition	"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. [**Section 2(16) of Co's Act, 2013]** **"Charge include mortgage" as per section 124**
2.	Meaning	✓ A charge is a security given for securing loans or debentures by a mortgage on the assets of the company. ✓ Charge covers mortgage, hypothecation & pledge. However, pledge does not require registration with ROC
3.	Fixed Charge or Specific Charge	A fixed or specific charge is one which attaches to a particular piece of property which is identified when the charge is created, and the identity of the property does not change during the subsistence of the charge.
4.	Floating Charge	☞ A floating charge, as a security, is peculiar to companies as borrowers. A floating charge does not attach to any definite property but covers property of a fluctuating type. ☞ It is of the essence of such a charge that it remains dormant until the undertaking charged ceases to be a going concern until the person in whose favour the charge is created, intervenes. ☞ The governing idea of a floating security is to allow a going concern to carry on its business in the ordinary course, as if no charge has been created.
5.	Crystallisation of Floating Charge	Crystallization means conversion of a floating charge into a fixed charge on the assets in the class charged. A floating charge crystallizes when – (a) The company discontinues carrying on business. (b) The company goes into liquidation (c) A receiver is appointed for. (d) A default is made in paying the principal on interest and the holder or the charge brings an action to enforce his security specified in the deed.

2. Provision for Creation of Charge

1.	Registration by Whom	✓ It is the duty of the Company to register charge or ✓ The Charge may also be registered by Charge holder
2.	With Whom	The Charge must be registered to the ROC
3.	When (Time Limit)	30 day from creation of charge + 30 days additional time upon additional fees & sufficient reasons (to ROC).

<table>
<tr><td>4.</td><td>Charge requiring registration – Section 125</td><td colspan="2">(a) A charge for the purpose of security any issue of debentures;
(b) A floating charge;
(c) A charge on uncalled share capital;
(d) A charge on calls made but not paid;
(e) A charge on any immovable property, wherever situated, or any interest therein;
(f) A charge on ship or any share in a ship ;A charge on any book debts of the company;
(g) A charge on goodwill, on a patent or a Licence under a patent; on a trade mark or on a copyright or a Licence under a copyright
(h) A charge, not being a pledge, on any movable property of the company</td></tr>
<tr><td>5.</td><td>Result of Non – Registration</td><td colspan="2">In the case of liquidation Unregistered chargeholder becomes unsecured creditor + Money secured by charge becomes payable immediately.</td></tr>
<tr><td>Note</td><td colspan="3">The company may create a subsequent charge having priority over the unregistered charge.</td></tr>
<tr><td>6.</td><td>Deemed notice of creation of Charge</td><td colspan="2">Charge is registered u/s 125 , than any person acquiring charge property shall be deemed to have notice of charge</td></tr>
<tr><td>7.</td><td>Certification of Charge</td><td colspan="2">Certificate of registration of charge shall be given by ROC is conclusive evidence</td></tr>
<tr><td>8.</td><td>Modification of Charge – Section 135</td><td colspan="2">The modification of Charge must be register & Same provisions as are applicable to registration of charges</td></tr>
<tr><td>9.</td><td>No right to create a Charge</td><td colspan="2">On Books Of Account & Reserve Capital</td></tr>
<tr><td rowspan="3">10</td><td rowspan="3">Co's Register of Charge – Section 143 & 144</td><td>Location</td><td>Every co. shall keep register of charge at RO. [Section 130]</td></tr>
<tr><td>Content</td><td>Description of property charged + amount secured + Name of charge holder</td></tr>
<tr><td>Inspection</td><td>Charge deed + Register of charges can be inspected during business hours by any creditor/member without fee. Or other person on payment of prescribed fees. If refused CLB direct (through order) to allow immediate inspection.</td></tr>
<tr><td>11.</td><td>Register of Charge to be kept at RO – Section 130</td><td colspan="2">(a) <u>Particulars of Register</u> – Date of creation of charge, acquisition of property, description of property charged, amount secured by charge, name of chargeholder.
(b) <u>Inspection</u> – By any person on payment of prescribed fees.
(c) Signing & numbering of every page</td></tr>
</table>

12.	**Rectification of Charge – Section 141**	(a) **Nature of relief –** CLB may extend time for Registration /modification of charge/intimation of satisfaction of charge & by order rectification of misstatement in Register of charges. **(b) Condition for Granting relief –** Delay/Misstatement was accidental or shall not prejudice position of creditor's shareholders or just/equitable grounds. **(c) Application** by Co. or interested person. **(d) Order of CLB –** Terms & conditions & at such costs as it may think fit.	
13.	**Satisfaction of Charge – Section 138**	**Intimation by Company**	**Intimation by company** to ROC within 30 days of satisfaction of charge.
		Procedure by ROC	(a) **Issue of SCN to** chargeholder for (b) **Objection** within time by ROC (Not being less than 14 days) (c) **Entry of satisfaction** made by ROC in Register of charges If charge holder does not object (d) **Effect of objection** – Record objections in Register of charges & inform Co.
14	**Punishment for Contravene – Section 86 of Co's Act, 2013**	**Company**	Fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 10 Lakhs
		Officer of the company who is in default	(a) Imprisonment for a term which may extend to 6 Ms or (b) Fine which shall not be less than ₹ 25000/- but which may extend to ₹ 1 lakh, or (c) Both.

Chapter – 14
Membership

Sections covered in this Chapter -

Sections	Old / New Act	Description
	New Act	
	New Act	
	Old Act	
	Old Act	

Landmark Judgments covered in this chapter:

(a) **Devan Singh Vs. Minerva Films Ltd**

(b) Dept. of Company affairs in Bajaj Auto Ltd. V. N.K. Tarodia

1. Basic Concepts

S.N.	Aspects	Description
1.	**Definition – Section 2(55) of Co's Act, 2013**	**"Member", in relation to a company, means –** (a) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members; (b) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company; (c) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository
2.	**Modes of becoming the Members**	(a) By subscribing to the memorandum of association. (b) Upon application and allotment (c) By transfer (d) By transmission (e) **By Estoppels –** This arises when a person holds himself out as a member or knowingly allows his name to remain his name on register of member when actually has parted his with his shares. (f) By agreeing to purchase qualification shares.

2. Who can Become Member

1.	**Minor**	**Where allotment was in the neglecting the Minority**	(a) Minor & Guardian not be liable to pay unpaid calls (b) Minor can repudiate allotment & entitled to paid amount
		Where Minor become Major	(a) Does not automatic becomes member. (b) Minor does anything which shows that he has accepted membership, minor deemed to be member.
Case Law	It was held that there is no legal bar to a minor becoming a member of a company by acquiring shares provided the shares are fully paid up. **[Devan Singh Vs. Minerva Films Ltd.]**		
2.	**Partnership Firm**	A Firm cannot become the member of the Company but there is exception that is a Firm can become member of company which is formed u/s 25.	
3.	**Trade Union**	Trade Union registered under Trade Unions Act, 1926 can become member	
4.	**HUF**	HUF cannot become a member.	
5.	**Company**	Can become member of any other company if authorised by MOA.	

Note	**Section 19 of Co's Act, 2013**	**Restriction on Shareholding of Holding Co.**	No company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.
		Exception	(a) Where the subsidiary company holds shares as the legal representative of a deceased member of the holding company; or (b) Where the subsidiary company holds shares as a trustee; or (c) Where the subsidiary company is a shareholder before it became a subsidiary company of the holding company.
		Right of Voting	If due to Exception (a) & (b) Subsidiary Company becomes member shall have a right to vote at a meeting of the holding company only in respect of the shares held by it.
6.	**Co-operative Society & Society**	Cooperative society can become member but Society when registered under Societies Registration Act, 1860 can become a member	
7.	**Trust**	Trust cannot become a member	
8.	**Joint Holder**	Two or more persons may hold shares in their joint names.	
9.	**Foreigner**	A foreigner can become a member by complying FEMA, 1999. If war breaks with foreign country, foreigner cannot enforce any right	
10	**Government**	CG or SG can become a member	
11.	**Insolvent**	Shares of insolvent vest in official receiver/assignee Insolvent continues as member until his shares are sold by them. Until insolvent is discharged, he cannot become member of new company. Notice of GM is also given to official assignee/official receiver. Insolvent has right to vote	

3. Termination of Membership

1.	**Voluntary**	(a) By transfer of shares (b) By forfeiture of shares (c) By surrender of shares (d) By exercising lien by the company. (e) By issue of share warrants (f) By redemption of shares (g) By the buyback of shares by the company (h) By irregularity in allotment

2.	**Compulsory**	(a) By termination of shares (b) By insolvency (c) By the order of court on acquiring shares (d) By dissolution

4. Right's of Member

(a) To have the certificate of shares;
(b) To have his name entered in the Register of members;
(c) To transfer shares;
(d) To receive notices of meetings;
(e) To inspect various resisters and get extract therefrom;
(f) To obtain copy of MOA & AOA;
(g) To participating in the election of directors;
(h) To get a copy of the B/S & P&L account
(i) To apply to the court to have any variation of shareholders' right'
(j) To obtain, on request, minutes of proceeding at general meetings ;
(k) To participate in the removal of directors
(l) To petition to the Court for prevention of mismanagement and oppression ;
(m) To petition to the Court for an order of injunction;
(n) To petition for compulsory winding up;
(o) To participate in passing a special resolution for voluntary or compulsory winding up;
(p) To participate in the surplus assets

5. Some Miscellaneous

1.	**Liability of Member**	**(a)** In case of company limited by shares, liability will be limited only to the extent unpaid. **(b)** In case of company limited by guarantee, liability will be limited to the amount guaranteed. **(c)** In case of company with unlimited liability, the members are liable in full for all the debts of the company.
2.	**Can a Member be expelled**	A member cannot be expelled even by altering the Articles. (Dept. of Company affairs in Bajaj Auto Ltd. V. N.K. Tarodia) such an alteration will be opposed to the fundamental principles of the company's jurisdiction and is ultravires the company
3.	**Can a Member be suspended**	A member can be suspended but temporarily provided the power to suspend is contained in the Articles and the same is exercised, bonafide by the managing director of the company

4.	**Difference between Member & Shareholder**	The persons who collectively constitute the separate entity are the 'members' or 'shareholder' of a company. These words are used interchangeably. In case of a company limited by shares, a company limited by guarantee and having share capital and an unlimited company whose capital is held in definite shares these words are synonymous. Whereas in case of an unlimited company or a company limited by guarantee having no share capital a member may not be a shareholder.	
S.N.	**Basis**	**Member**	**Shareholder**
a.	**Registration**	A registered shareholder is a member	A registered member may not be a shareholder
b.	**On the death of member**	A legal representative may not be a member until he applies for registration	The legal representative remains a shareholder though his name does not appear on the register
c.	**Share Warrant**	Holder of share warrant is not a member his name is struck off	A person who owns a share warrant is a shareholder
d.	**On Subscription**	A person who subscribes to the MOA immediately become the member	When the shares are allotted to the subscriber they become shareholder
e.	**On the transfer**	On the transfer of share the person remains the member till the time the transfer is registered in the name of the transferee	A person who transfers his shares ceases to be a holder of shares from the date of transfer.

Chapter – 15
Transfer & Transmission of Shares

Sections covered in this Chapter -

Sections	Old / New Act	Description
	New Act	
	New Act	
	New Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	
	Old Act	

1. Basic Concepts

S.N.	Aspects	Description	
1.	General Right	Transferability of shares is an absolute right of the shareholder which cannot be denied even by the articles.	
2.	Nature of Share	Section 44 of Co's Act, 2013	The shares or debentures or other interest of any member in a company shall be movable property + transferable in the manner provided by the articles of the company.
		Section 58 of Co's Act, 2013	Shares in a public company are freely transferable
		Section 58 of Co's Act, 2013	A private company may impose reasonable restrictions on transferability of shares.
3.	Mode of Transfer ownership	Transfer	Voluntary transfer of shares from one person to another
		Transmission	Transfer of ownership of shares by operation of law.

2. Provision for Transfer of Shares

1.	Instrument of Transfer – Section 108	Form	Form prescribed (also known as Transfer deed or Transfer form or share Transfer form)		
		Presentation & Stamping	ROC & the ROC will stamp or otherwise endorse thereon the date on which it is so presented to him.		
		Timing of Presentation	Before it is signed by transferor & before any entry is made who shall affix a stamp showing date of presentation of transfer deed		
		Execution of Deed	After stamping, it shall be filled up & signed by transferor/transferee along with payment of stamp duty		
		Submission of Transfer form – Section 110	What	Submission of transfer deed to Co.	
			By Whom	By transferor or transferee	
			With	Along with share certificate	
			Time	Listed	Date of closure of ROM after stamping or 12 Ms from date of stamping , whichever is later
				Unlisted	Within 2 Ms from date of stamp.
		Notice of Transferee	By Whom	Company to Transferee	
			When	**Both the Conditions are fulfilled** – Transfer deed presented by transferor + Shares not fully paid up	
			Objection	Transferee has right to object to transfer within 2 weeks.	

<table>
<tr><td rowspan="14">2.</td><td rowspan="14">Section 58 of Co’s Act, 2013</td><td rowspan="6">Refusal to Register Transfer & Transmission – Section 58(1)</td><td>Company</td><td colspan="2">Private company Limited by Share.</td></tr>
<tr><td>How</td><td colspan="2">By exercising any power of the company under its articles or otherwise,</td></tr>
<tr><td>For What</td><td colspan="2">To register the transfer of, or the transmission by operation of law of the right to, any securities or interest of a member in the company,</td></tr>
<tr><td>Intimation</td><td colspan="2">With 30 days from the date on which the instrument of transfer, or the intimation of such transmission was received to the company</td></tr>
<tr><td>How to intimate</td><td colspan="2">Send notice of the refusal & giving reasons for such refusal</td></tr>
<tr><td>To Whom</td><td colspan="2">✓ To the transferor and
✓ The transferee or
✓ To the person giving intimation of such transmission</td></tr>
<tr><td>Exception – Section 58(2)</td><td colspan="3">Without prejudice to sub-section (1), the securities or other interest of any member in a public company shall be freely transferable.
Provided that any contract or arrangement between two or more persons in respect of transfer of securities shall be enforceable as a contract.</td></tr>
<tr><td rowspan="5">Appeal against Refusal in case of Pvt. Company – Section 58 (3)</td><td>To Whom</td><td colspan="2">Tribunal</td></tr>
<tr><td>By Whom</td><td colspan="2">Transferee or,
Person giving intimation of transmission</td></tr>
<tr><td rowspan="2">Time</td><td>Notice recd.</td><td>30 days from the date of receipt of the notice</td></tr>
<tr><td>No Notice</td><td>60 days from the date on which the instrument of transfer or the intimation of transmission.</td></tr>
<tr><td>Order – Section 58 (5)</td><td colspan="2">✓ After hearing the parties,
✓ May either dismiss the appeal, or by order –
(a) Direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or
(b) Direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.</td></tr>
<tr><td rowspan="2">Appeal against Refusal in case of Public</td><td rowspan="2">Time</td><td>Notice recd.</td><td>60 days from the date of receipt of the notice.</td></tr>
<tr><td>No Notice</td><td>90 days from the date on which the instrument of transfer or the intimation of transmission.</td></tr>
</table>

		Company – Section 58 (4)	**Reason for Appeal**	If a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company
			Order	Same as in the case of Private Company
3.	**Penalty for Contravention of order of Tribunal – Section 58 (6)**	**Imprisonment**	Minimum 1 years upto Maximum 3 years &	
		Fine	Minimum ₹ 1 lacs upto Maximum ₹ 5 lacs	
4.	**Section 59 of Co's Act, 2013**	**Reason for Rectification**	**<u>If the name of any person is, without sufficient cause</u>** – ✓ Entered in the register of members of a company, or ✓ After having been entered in the register, is, ✓ Omitted therefrom, or ✓ If a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member	
		By Whom	The person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed	
		TO Whom	✓ To the Tribunal, or ✓ To a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.	
		Order of Tribunal	The Tribunal may, after hearing the parties to the appeal by order, either dismiss the appeal or direct that the transfer or transmission shall be registered by the company within a period of 10 days of the receipt of the order or direct rectification of the records of the depository or the register and in the latter case, direct the company to pay damages, if any, sustained by the party aggrieved.	
		Right of person is not prejudice	The provisions of this section shall not restrict the right of a holder of securities, to transfer such securities and any person acquiring such securities shall be entitled to voting rights unless the voting rights have been suspended by an order of the Tribunal.	
		Application by Specified person to set the right the	**By Whom**	✓ Depository, ✓ Company, ✓ Depository Participant,

		contravention and rectify		✓ Holder of the securities or ✓ Securities and Exchange Board
			For What	Where the transfer of securities is in contravention of any of the provisions of the – ✓ Securities Contracts (Regulation) Act, 1956, ✓ SEBI Act, 1992 or ✓ Companies Act 2013 or ✓ Any other law for the time being in force
			To Whom	To Tribunal
			Order	Tribunal direct any company or a depository to set right the contravention and rectify its register or records concerned.

5.	**Nomination of Member – Section 109A & 109B**	**Applicability**	✓ To all the Company ✓ Nomination is optional
		By Whom	Every individual member
		Who can be nominee	Individual + singly/jointly (minor provided name of guardian is mentioned in documentation form, who shall be entitled to shares until minor become an adult)
		Form	Prescribed form
		When	At any time
		Modification	Variation or Cancellation of nomination anytime
		Death of Member	Shares vest in nominee + nomination valid overriding will/other law
		Right of Nominee	(a) **Right to become member – A**pplication + death certificate submitted to company (b) **Right to transfer shares – T**ransfer deed signed by nominee + Death certificate submitted to company (c) **No Right to vote at any GM – N**ominee no right to vote in GM until he is registered as a member

3. Some Miscellaneous

1	**Certification of Transfer OR Splitting of shares or Partial Transfer of shares – Section 112**	(a) **Need for certification** – Transfer part of shares in one share certificate Or intends to transfer shares in one share certificate to two or more than two person. (b) **Submission of documents to company** – Transfer deed + Share certificate. (c) **Certifications made by company** – Company retains share certificate+ certification on transfer deed + return share transfer decd (after certification) to member. (d) **Certification to be prima facie evidence** – That S/H submitted share certificate to company + contained such number of shares specified (by certification) in transfer deed.

<table>
<tr><td rowspan="3">2.</td><td rowspan="3">**Forged Transfer**</td><td>**Meaning**</td><td colspan="2">Transfer of shares on basis of Transfer deed on which transferor's signatures are forged</td></tr>
<tr><td>**Transfer of Void ab inito**</td><td colspan="2">A forged transfer is a nullity (i.e., without any legal effect).</td></tr>
<tr><td>**Right of Parties**</td><td colspan="2">If forged transfer registered than transferee does not become owner + original owner continues to be shareholder. If co. has registered transferee as S/H on basis of forged transfer –
(a) Original owner can compel co. to restore his name in ROM
(b) Company may cancel share certificate issued to transferee
(c) If transferee has already, transferred shares to an innocent purchaser –
✓ Company can refuse to register new purchaser
✓ New purchaser shall have right to claim damages
✓ Company right to recover damages from person who lodged forged transfer deed.</td></tr>
<tr><td rowspan="6">3.</td><td rowspan="6">**Blank Transfer**</td><td>**Meaning**</td><td colspan="2">Sign of transferor + not contain particulars of transferee</td></tr>
<tr><td>**Procedure**</td><td colspan="2">Transferor delivers to buyers share certificate+ blank share transfer deed.</td></tr>
<tr><td rowspan="2">**Effect**</td><td>**Option 1**</td><td>**<u>The buyer may become owner of such shares</u> –**
(a) Buyer does not become owner on receipt of above + gets implied authority to complete transfer deed.
(b) Owner only when completes blanks blank transfer deed + delivers share certificate + filled transfer deed to company.</td></tr>
<tr><td>**Option 2**</td><td>**<u>The buyer may transfer such shares</u> –**
Buyer does not intend to become owner but he can transfer by delivering share certificate + blank transfer deed to a new buyer</td></tr>
<tr><td>**Who is Transferee**</td><td colspan="2">last holder of blank transfer deed who complete the deed & Until some buyer is registered, transferor continue to be owner</td></tr>
<tr><td>**Validity**</td><td colspan="2">Blank transfer deed valid only for such period as is prescribed u/s 108.</td></tr>
</table>

Chapter – 16
MEETING

Sections covered in this Chapter -

Sections	Old / New Act	Description
	New Act	
	New Act	
	New Act	
	New Act	
	New Act	
	New Act	
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	Old Act	
	Old Act	
	Old Act	
	Old Act	

Landmark Judgments covered in this chapter

(a) Sree Meenakshi Mills Co. Vs. Assistant ROC

(b) Madan Gopal Dey vs. State of West Bengal

(c) Hungerford Investment Trust Ltd. V Turner Morrison & Co Ltd

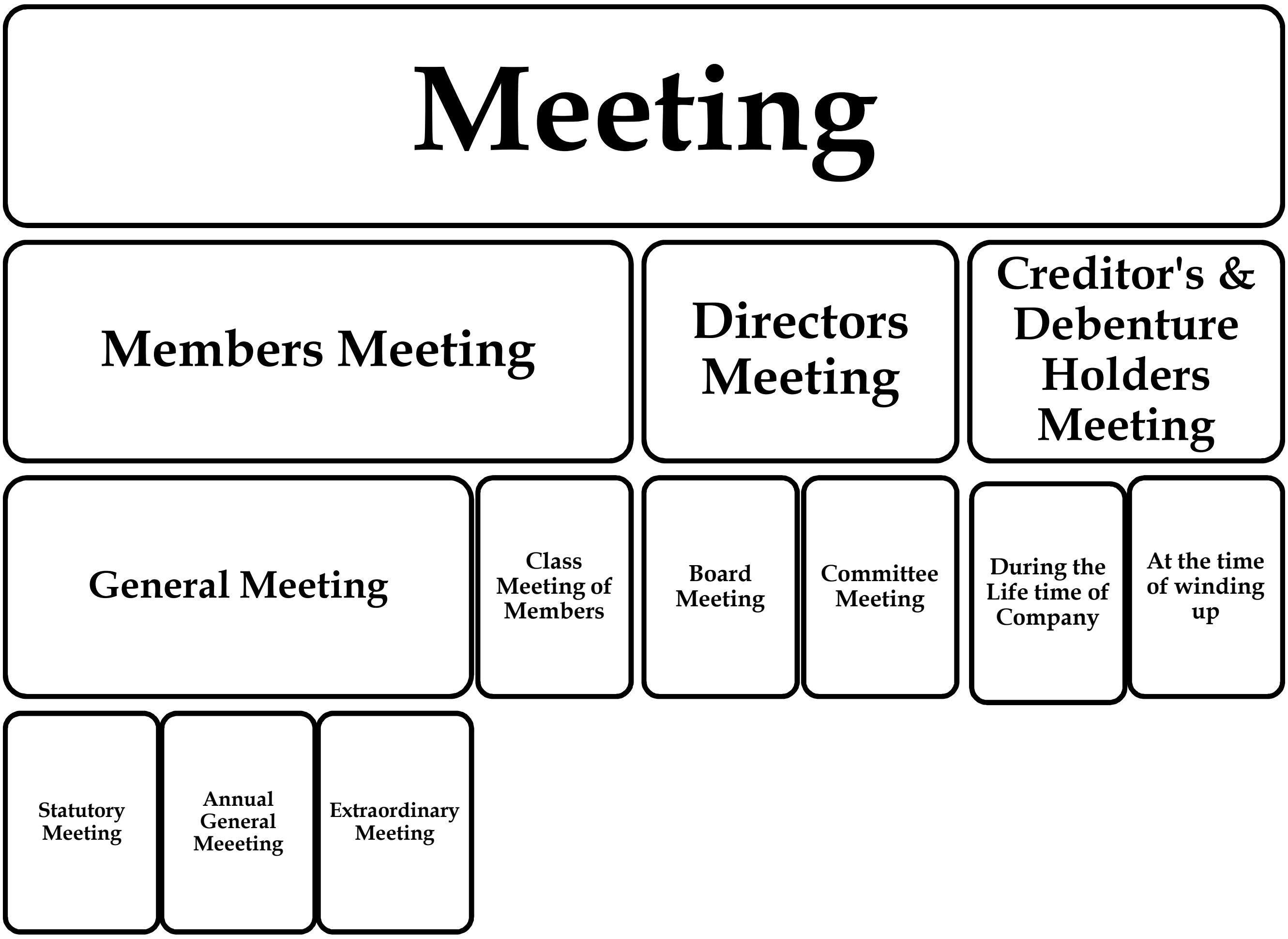
(d) Bejoy Kumar Karnani vs. Assistant ROC

(e) Bharat Commerce and Industries Ltd. ROC

(f) R Chettiar vs. M Chettiar

(g) LIC vs. Escorts Ltd.

1. Types of Meeting



2. Basic Concepts

S.N.	**Aspects**	**Description**
1.	**Meaning of Meeting**	☞ A meeting is generally a gathering of a number of persons for some purpose or object. ☞ In the same sense, a company meeting is the gathering of Board of Directors, members, shareholders for discussing any matter of the company. ☞ There must be at least two persons to constitute a valid meeting. However, in some cases, even one person may constitute a valid meeting.
2.	**Requisites of a valid meeting**	**It must be properly convened** The meeting must have been convened by the proper authority. The proper authorities are – (a) **Board of Directors –** General Meeting (b) **Shareholders –** Extra ordinary General Meeting (c) **The Company Law Board –** For AGM and EGM on petition from the directors or shareholders.

		It must be legally constituted	(a) Proper and adequate notice must have been served to all those entitled to attend the meeting. [Section 171 & 172 of Co's Act, 1956 and Section 102 of Co's Act, 2013] (b) For a valid meeting the provision given in the AOA as to the quorum is to be followed.[Section 103 Co's Act, 2013] (c) For a meeting to precede a 'chairman' is to be elected as per the provision of the AOA.[Sec. 104 of Co's Act, 2013]
		It must be properly conducted.	(a) Proper transaction of business must be at the Meeting [i.e. by resolution (by voting show hands and on poll must be proper)] [Section 179, 1180, 184, 185, 190 & 192 of Co's Act, 1956 and Section 105 – 107, 112 – 114 & 116 of Co's Act 2013] (b) Proper minutes of the meeting are to be kept by the proper authority. [Section 193 – 197 of the Co's Act, 1956]

3. Length of Notice for Calling GM – Section 171

1.	**21 days clear Notice – Section 171(1)**	1) 21 clear days notice must be given in writing. 2) Clear day's means the days must be calculated excluding the day on which the notice is served, and the day on which the meeting is to be held. 3) Where notice is sent by post another 48 hours are to be added. [Section 53(2)(b)(i)] (21 clear days will in effect, mean 24 days)
E.1	If a meeting is to be held on the 25th of a month, notice is to be dated and posted not later than 24 days before that date i.e. 1st of the month.	
2.	**Short Notice – Section 171(2)**	The valid meeting may be held at a notice shorter than 21 clear days if the same is ratified – 1) In the case of the AGM by all the members entitled to vote there at and 2) In the case of any other meeting by members of the company (a) If the company has a share capital, hold not less than 95 % of such part of the paid-up share capital, or (b) If the company has no share capital not less than 95 % of the total voting power.
Note	Consent may be given either at or before Meeting.	

4. Notice to Whom? – Section 172 (2)

Notice of every General meeting must be sent to –

1. Every member at his registered address in India.
2. The legal representative (s) of a deceased member.
3. The official assignee or official of an insolvent member.
4. The auditor (s) of the company.

Note	**Omission to give notice** – [u/s. 172(3)] Deliberate omission to give notice of the meeting to the members or to a single member will make the meeting invalid. But an accidental omission to give notice to or non-receipt of the notice by any member shall not invalidate the proceedings at the meeting.

5. Content of Notice – Section 172 (1)

Notice must contain particulars regarding place, day and time of the meeting. Agenda. The notice must be accompanied by a statement of business transacted at the meeting (called agenda).

6. Statement to be annexed to Notice – Sec. 102 of Co's Act, 2013

1.	**Business to be transacted – Section 102(1)**	**In the case of AGM**	**Ordinary Business**	(i) The consideration of financial statements and the reports of the BOD and auditors; (ii) The declaration of any dividend; (iii) The appointment of directors in place of those retiring; (iv) The appointment of, and the fixing of the remuneration of, the auditors
			Special Business	All business other than above to be transacted at AGM shall be deemed special.
		In the case of Other Meeting	In the case of any other meeting, all business shall be deemed to be Special Business.	
2.	**Material Facts to be given in statement (Explanatory Statement)**	**Material Fact to be set out – Section 102(1)**	A statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely – (a) The nature of concern or interest (financial or otherwise), if any, in respect of each items of – (i) Every director and the manager, if any; (ii) Every other key managerial personnel; and (iii) Relatives of the persons mentioned in sub point (i) & (ii); (b) **Any other information and facts** that may enable members to understand **the meaning, scope and implications** of the items of business and to take decision thereon. (c) Where any item of special business relates to or affects any other company, **the extent of shareholding interest** in that other company of every promoter, director, manager, if any, and of every other KMP shall, also be set out in the statement (if the extent of such shareholding is **not less than 2%** of the paid-up share capital of that company). Where any item of **Special Business refers to any document**,	

<table>
<tr><td></td><td></td><td></td><td colspan="2">which is to be considered at the meeting, the time and place where such document can be inspected shall be specified in the statement</td></tr>
<tr><td></td><td></td><td rowspan="3">Result of non Disclosure – Section 102(4)</td><td>Applicability</td><td>Non-disclosure or Insufficient disclosure in any statement u/s 102(1) (i.e. above) for, any benefit which accrues to such promoter, director, manager or other key managerial personnel or their relatives, either directly or indirectly.</td></tr>
<tr><td></td><td></td><td>By Whom</td><td>☞ Promoter,
☞ Director,
☞ Manager, if any, or
☞ Other KMP</td></tr>
<tr><td></td><td></td><td>Effect</td><td><u>The person referred above</u> –
(a) Shall hold such benefit in trust for the company.
(b) Shall compensate the company to the extent of benefit derived by such person.
(c) Shall, be liable to any other action being taken against him under this Act or under any other law for the time being in force,</td></tr>
</table>

<table>
<tr><td rowspan="4">3.</td><td rowspan="4">Penal Provision – Section 102(5)</td><td>Applicability</td><td colspan="2">If any default is made in complying with the provisions section 102 of Companies Act, 2013.</td></tr>
<tr><td>To whom</td><td colspan="2">Every promoter, director, manager or other key managerial personnel who is in default.</td></tr>
<tr><td rowspan="2">Punishment</td><td rowspan="2">Fine whichever is more</td><td>Upto ₹ 50000/- or</td></tr>
<tr><td>5 times the amount of benefit accruing to the such persons or any of his relative</td></tr>
</table>

7. <u>Quorum For General Meeting – Sec. 103 of Co's Act, 2013</u>

<table>
<tr><td>1.</td><td>Meaning</td><td colspan="3">Means minimum strength of members required to be present in meeting for conduct a valid meeting.</td></tr>
<tr><td rowspan="4">2.</td><td rowspan="4">Quorum for Public Company – Section 103(1)(a)</td><td>S.N.</td><td>No. of Member on the date of meeting</td><td>Quorum for Meeting</td></tr>
<tr><td>1.</td><td>Not more than 1000 members</td><td>5 Members</td></tr>
<tr><td>2.</td><td>More than 1000 but Less than 5000 Members</td><td>15 Members</td></tr>
<tr><td>3.</td><td>More than 5000 Members</td><td>30 Members</td></tr>
<tr><td>Note</td><td colspan="4">Member must be personally present in the quorum for meeting.</td></tr>
<tr><td>3.</td><td>Quorum for Private Company</td><td colspan="3">In the case of a private company, two members personally present, shall be the quorum for a meeting of the company.</td></tr>
</table>

<table>
<tr><td>Note</td><td colspan="4">AOA of the company (whether Public or Private Company) may provide for a larger number</td></tr>
<tr><td rowspan="5">4.</td><td rowspan="5">Effect Non Presence of quorum</td><td>Time for Present</td><td colspan="2">If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company</td></tr>
<tr><td>In the case of EGM u/s 100</td><td colspan="2">The meeting, if called by requisitionists u/s 100, shall stand cancelled</td></tr>
<tr><td rowspan="3">In the case of other Meetings</td><td>Adjourn Meeting</td><td>(a) The meeting shall stand adjourned to the same day in the next week at the same time and place, or
(b) To such other date and such other time and place as the Board may determine</td></tr>
<tr><td>Notice of Adjourn Meeting</td><td>Atleast 3 days notice of meeting shall be given to the members –
✓ Either Serving Individual
✓ Or Publishing in newspaper as advertisement (Local + English)</td></tr>
<tr><td>Quorum at Adjourn Meeting</td><td>If at the adjourned meeting also, a quorum is not present within half-an-hour from the time appointed for holding meeting, the members present shall be the quorum</td></tr>
</table>

8. Chairman Of General Meeting – Sec. 104 of Co's Act, 2013

<table>
<tr><td rowspan="5">1.</td><td rowspan="5">Election for Chairman</td><td rowspan="2">By Whom – Section 104(1)</td><td>As per AOA</td><td>AOA may provide for election of Chairman</td></tr>
<tr><td>By Member</td><td>If there is no provision at AOA than Members present at meeting shall elect one chairman among themselves</td></tr>
<tr><td rowspan="3">Methods of Election – Section 104 (1)/(2)</td><td>AOA</td><td>AOA may provide method for election of Chairman</td></tr>
<tr><td>Show of hands –</td><td>The members personally present at the meeting shall elect one of themselves to be the Chairman thereof on a show of hands</td></tr>
<tr><td>Poll</td><td>✓ If a poll is demanded on the election of the Chairman,
✓ It shall be taken forthwith in accordance with the provisions of this Act and
✓ The Chairman elected on a show of hands under sub-section (1)
✓ Shall continue to be the Chairman of the meeting</td></tr>
</table>

				✓ Until some other person is elected as Chairman as a result of the poll, and ✓ Such other person shall be the Chairman for the rest of the meeting
2.	**Casting Vote of Chairman**	**When – Regulation 54 of Table A**	(a) In the case of equality of votes, the Chairman of the meeting has second or casting vote. (b) Therefore it is used only for ordinary resolution and not for special Resolution.	
		In other Case	The chairman has a casting vote if so provided by the AOA	
		Discretion of Chairman	✓ It is on the Chairman whether to use or not casting vote ✓ Casting vote can be used before declaration of result.	

9. Proxies – Sec. 105 of Co's Act, 2013

1.	**By Who – Section 105(1)**	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
Note	A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll	
2.	**Non Applicable**	(a) Subject to AOA section 105 (1) is not applicability to company not having share capital. ~~(b) The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.~~ ~~(c) A person appointed as proxy shall act on behalf of such member or number of members not exceeding fifty and such number of shares as may be prescribed.~~
3.	**Disclosure in Notice of GM – Section 105(2)**	In every notice calling a meeting of a company which has a share capital, or the articles of which provide for voting by proxy at the meeting there shall appear with reasonable prominence a statement that – (a) **Member entitled to attend and vote is entitled to appoint a proxy**, or (b) Where that is allowed, one or more proxies, to attend and vote instead of himself, and that a proxy need not be a member
4.	**Non Compliance of Section 105(2)**	If default is made in complying with section 102(2), every officer who is in default shall be punishable with fine which may upto ₹ 5000/-. [Section 105(3)]
5.	**Valid Form**	The proxy form shall be in writing & signed

6.	**Submission of Proxy Form – Section 105 (4)**	(a) Any provision contained in the articles of a company (b) Which specifies or requires a longer period than 48 hours before a meeting of the company, for depositing with the company relating to the appointment of a proxy, (c) Shall have effect as if a period of 48 hours had been specified in or required by such provision for such deposit.
7.	**No special requirement in proxy form**	✓ Proxy forms as per Schedule IX. ✓ It shall not to be questioned on ground that it fails to comply with special requirements of AOA. [Section 176 (6) of Co's Act, 1956]
8.	**Right**	✓ Proxy can demand & vote on poll u/s 109 of Co's Act, 2013. ✓ Proxy can vote on show of hands if AOA provide.
9.	**Restriction**	No right to speak + not counted for quorum
10.	**Inspection of Proxies**	By any member during business hours if 3 days notice is given to co. beginning with 24 hours before start of GM & ending with conclusion meeting.
11.	**Revocation of Proxy**	(a) After appointment of proxy, member himself attends meeting, automatic revocation of proxy. (b) Once proxy has voted, it cannot be revoked. (c) Proxy remains valid inspite of death/insanity of principal or revocation of proxy unless intimation received by co before commencement of meeting.

10. Representation of President or Governor – Sec. 112 of Co's Act, 2013

1.	**Appointment of Proxy**	The President of India or the Governor of a State, if he is a member of a company, may appoint such person as he thinks fit to act as his representative at any meeting of the company or at any meeting of any class of members of the company. [Section 112 (1)]
2.	**Right of Proxy**	A person appointed to act under sub-section (1) shall, for the purposes of this Act, be deemed to be a member of such a company and shall be entitled to exercise the same rights and powers, including the right to vote by proxy and postal ballot, as the President or, as the case may be, the Governor could exercise as a member of the company. [Section 112(2)]

11. Representation of Corporation – Sec. 113 of Co's Act, 2013

1.	**Appointment of Proxy**	If Body Corporate is a member of a company, by resolution of its Board of Directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company, or at any meeting of any class of members of the company. [Section 113(1)(a)]
2.	**Right of Proxy**	Same as give in Section 112(2). [Section 113(2)]

12. Manner of Voting – Sec. 107 of Co's Act, 2013 +179 of 1956

<table>
<tr><td rowspan="1">1.</td><td>Voting by show of hands</td><td colspan="4">(a) At any general meeting, a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is demanded under section 109 [Section 179 of 1956] or ~~the voting is carried out electronically~~. [Section 107(1)]
(b) A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands under sub-section (1) and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise. [Section 107(2)]</td></tr>
<tr><td rowspan="9">2.</td><td rowspan="9">Voting by Poll</td><td rowspan="4">Demand or Order for Poll – Section 179 of Co's Act, 1956</td><td colspan="3">a. Suo moto by chairman
b. Obligatory to order poll – If a demand is made by</td></tr>
<tr><td>Public Co. Having SC</td><td>Private Co. having SC</td><td>In case of any other Company.</td></tr>
<tr><td><u>Member holding–</u>
✓ 1/10 of total voting power or
✓ Paid up share capital of ₹ 50,000 or more.</td><td>✓ 1 member if upto 7 members are personally present or
✓ 2 members if more than7 members are personally present.</td><td>Any member (s) having 1/10 of total voting power.</td></tr>
<tr><td colspan="3">(c) <u>Time of ordering poll</u> – Before declaration or on declaration result of voting on show of hands;
(d) <u>Withdrawal of demand for poll</u> – Anytime (before declaration of result of poll) by person who made it.</td></tr>
<tr><td rowspan="3">Time of Taking poll – Section 180</td><td>Question on which poll is demanded</td><td colspan="2">Time of taking poll</td></tr>
<tr><td>Adjournment & Election of Chairman</td><td colspan="2">Poll shall be taken forthwith</td></tr>
<tr><td>On other question</td><td colspan="2">Poll taken at such time as directed by Chairman (but within 48 hours of demand for poll).</td></tr>
<tr><td>Scrutineers at poll – Section 184</td><td colspan="3">Chairman shall appoint 2 scrutineers. One of scrutineers shall be a member (not being an officer/employee of co)</td></tr>
<tr><td>Chairman's Powers – Section 185</td><td colspan="3">Power to regulate manner in which poll shall be taken & may remove a scrutineer before result of poll is declared.</td></tr>
</table>

13. Restriction on Voting Right – Sec. 106 of Co's Act, 2013

1.	**Voting Right is Absolute**	A company shall not, except on the grounds specified in point (b), prohibit any member from exercising his voting right on any other ground. [Section 106 (2)]
2.	**Ground for Restriction on Voting**	Notwithstanding anything contained in this Act, **the articles of a company may provide** that **no member shall exercise any voting right** in respect of any shares registered in his name on which **any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien. [Section 106(1)]**
2.	**Use of Vote Differently – Section 106(3)**	On a poll taken at a meeting of a company, a Member or Proxy may be, need not – ✓ Use all his votes or ✓ Cast in the same way all the votes he uses.

14. Circulation of Members Resolution – Sec. 111 of Co's Act, 2013

<table>
<tr><td rowspan="3">1.</td><td rowspan="3">Member eligible to make requisition – Section 111(1)</td><td colspan="3">A company shall, on requisition in writing of such number of members, as required u/s 100 call EGM.</td></tr>
<tr><td>Company having Share Capital</td><td colspan="2">Member/s holding $\geq 1/10^{th}$ of PSC (Equity Share)</td></tr>
<tr><td>Company not having SC</td><td colspan="2">Member/s holding $\geq 1/10^{th}$ of Total Voting Power</td></tr>
<tr><td>2.</td><td>Right of member making requisition</td><td colspan="3">(a) Give notice to members of any resolution which may properly be moved and is intended to be moved at a meeting; and
(b) Circulate to members any statement with respect to the matters referred to in proposed resolution or business to be dealt with at that meeting</td></tr>
<tr><td rowspan="6">3.</td><td rowspan="6">Legal requirement of a valid requisition – Section 111(2)</td><td>Signed</td><td colspan="2">By the requisitionists</td></tr>
<tr><td>Place of Submission</td><td colspan="2">Registered office</td></tr>
<tr><td>Deposit of Money</td><td colspan="2">A sum reasonably sufficient to meet the company's expenses must be deposited</td></tr>
<tr><td rowspan="2">Tome limit for submission of requisition</td><td>Requisition for proposes a resolution</td><td>Not less than 6 weeks before the meeting. [See Note Below]</td></tr>
<tr><td>In any other case</td><td>Not less than 6 weeks before the meeting</td></tr>
<tr><td>Note</td><td colspan="2">If, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called on a date within 6 weeks after the copy has been deposited, the copy, although not deposited within the time required by this sub-section, shall be deemed to have been properly deposited</td></tr>
</table>

4.	**Non Circulation of Notice**	**(a)** The company shall not be bound to circulate any statement as required by point (b) (b), if on the application either of the company or of any other person who claims to be aggrieved, the Central Government, by order, declares that the rights conferred by this section are being **abused to secure needless publicity for defamatory matter. [Section 111 (3)]** (b) An order made under sub-section (3) may **also direct that the cost incurred** by the company by virtue of this **section shall be paid to the company by the requisitionists,** notwithstanding that they are not parties to the application. [Section 111(4)]
5.	**Penal Provision – Section 111(5)**	If default is made in complying with this section, the company & every officer who is in default shall be liable to pay penalty of ₹ 25000/-

15. Ordinary & Special Resolution – Sec. 114 of Co's Act, 2013

1.	**Ordinary Resolution – Section 114(1)**	(a) A resolution shall be an ordinary resolution if – (b) The notice required under this Act has been duly given and it is required to be passed by the votes cast, in favour of the resolution, exceed the votes cast against the resolution by members		
2.	**Special Resolution – Section 114(2)**	(a) The notice required under this Act has been duly given; and (b) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution; (c) The votes cast in favour of the resolution, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members		
3.	**Manner of casting votes**	**Way of casting vote –** ✓ Show of hands, or ✓ Electronically or ✓ Poll ✓ Postal ballot	**Who can cast vote –** ✓ Members present at meeting ; or ✓ Proxies (if allowed)	Vote cast shall include the casting vote of the Chairman, if any.

16. Resolution Requiring Special Notice – Sec. 190 of Co's Act, 1956

1.	**Requirement**	14 days clear days notice of intention to move resolution be given to co. before meeting
2.	**Notice of resolution sent by the company to member**	At least 7 clear days before GM + same manner as company gives notice of GM or by advertisement in newspaper or other mode under AOA

3.	**Resolution require Special Notice**	(a) Resolution providing retiring auditor shall not be reappointed. (b) Resolution appointing person, other than retiring auditor as auditor (c) Resolution for removing director before expiry of term (d) Resolution for appointing director (in place of a director removed)

17. Minutes Of General Meeting – Sec. 193 to 197 of Co's Act, 1956

1.	**Time Limit**	Within 30 days from conclusion of GM.
2.	**Signing of Minutes**	(a) Each page initialed/signed. (b) Last page dated & signed by Chairman of same meeting or director authorised by Board on death or inability of chairman.
3.	**Power of Chairman**	(a) Absolute discretion with inclusion/non inclusion of matter in minutes. (b) Defamatory or irrelevant or immaterial or detrimental matters can be excluded
4.	**Minutes to be correct & fair**	Minutes shall contain a fair and correct summary of the proceeding of a meeting
5.	**Presumption drawn from minutes**	(a) Meeting called & held. (b) Proceedings taken place & (c) Appointment of directors/officers valid. [Section 195]
6.	**Evidential value of minutes**	Minutes kept as per section 193 shall be evidence of proceedings recorded therein. [Section 194]
7.	**Method of preparation of minutes books**	(a) **Requirements of Act** – Shall not be attached to minute book by pasting. [Section 193] (b) **No action by DCA if minutes are kept in loose leaf form** – Serially numbered + safeguard against falsification + proper locking + bound at reasonable intervals..
8.	**Numbering**	Consecutively Numbering of Minutes book.
9.	**Inspection – Section 196**	(a) Inspection during business hours (atleast 2 hours per day for inspection) (b) Any member without fees. (c) Copies of book on payment of prescribed fees available to any member within 7 days of request. (d) On default CLB may compel immediate inspection /direct company to send copy
10.	**Publication of reports of Proceedings**	No Circulation or Advertisement at the expenses of the company of reports of proceedings of general meetings unless it includes the matters by section 193 to be contained in minutes of the proceedings of such meeting. [Section 197]

18. Passing the Resolution by Postal Ballot – Sec. 192A of Co's Act, 1956

1.	**Applicability**	Listed public company
2.	**Meaning**	"Postal Ballot" means voting by post or through any electronic mode. **[Section 2(65) of Co's Act, 2013]**
3.	**Postal Ballot Mandatory – Rule 5 of Co's (Passing the Resolution by Postal Ballot) Rules, 2011**	(a) Alteration of Object Clause of MOA (b) Change in place of Registered office outside local limit (c) Alteration of AOA inserting provisions defining private company (d) Buy- back of own shares by company (e) Issue of shares with differential voting rights (f) Variation in rights u/s 106 (g) Sale of whole or substantially whole of undertaking of company
4.	**Procedure for passing resolution**	(a) **Documents sent by company** – Notice + Draft resolution + Reasons for passing resolution by postal ballot + Prepaid reply cards. (b) **Mode of Sending documents by company** – Registered post or other method prescribed CG. (c) Issue of Ad in leading English Newspaper & Local Newspaper stating that ballot papers dispatched. (d) Appointment of scrutinizer by Board (not an employee).Retired judge/person of repute. (e) Reply by members within 30 days. (f) Maintenance of Register by Scrutinizer in which consent/dissent is recorded. (g) **Report of scrutinizer** – Submit after last date of receipt of postal ballot.
Note	Resolution by Postal ballot Deemed to be passed in GM	

19. Resolution at Adjourned Meeting – Sec. 116 of Co's Act, 2013

Where a resolution is passed at an adjourned meeting of –

(a) A company; or

(b) The holders of any class of shares in a company; or

(c) The board of directors of a company,

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

20. Statutory Meeting & Statutory Report – Sec. 165 of Co's Act, 1956

<table>
<tr><td>1.</td><td>Applicability</td><td colspan="2">Public Company having share Capital</td></tr>
<tr><td>2.</td><td>Time Limit</td><td colspan="2">After I month & before 6 month from date of commencement of business</td></tr>
<tr><td rowspan="3">3.</td><td rowspan="3">Statutory Report</td><td>Sent to Members</td><td>At least 21 clear days before SM. If less consent of all members required</td></tr>
<tr><td>Certification</td><td>By 2 directors (including MD) + Auditors</td></tr>
<tr><td>Content</td><td>Shares + Cash received + Receipts and Payments A/c + Directors and Auditors + Underwriting contract + Arrears of calls + Commission or brokerage</td></tr>
<tr><td rowspan="4">4.</td><td rowspan="4">Procedure of Meeting</td><td>List of Members</td><td>Open & accessible during SM + Contain Name/address/occupation/Number of shares held by every member.</td></tr>
<tr><td>Discussion</td><td>Discuss any matter relating to formation of company + statutory report</td></tr>
<tr><td>Passing of resolution</td><td>No resolution without previous notice</td></tr>
<tr><td>Adjournment</td><td>Any resolution may be passed of which notice has been given whether before or after former meeting.</td></tr>
<tr><td rowspan="2">5.</td><td rowspan="2">Default</td><td>Fine</td><td>Upto ₹ 5000/- to company & every officer in default</td></tr>
<tr><td>Winding Up</td><td>The Company may be wound up by the court</td></tr>
</table>

21. Annual General Meeting – Sec. 166 to 168 of Co's Act, 1956

<table>
<tr><td rowspan="2">1.</td><td rowspan="2">Time Period – Section 166 & 210)</td><td>1st AGM</td><td>✓ Within 18 months of incorporation + within 9 months of close of F/Y.
✓ <u>If AGM is so held</u> – No AGM required in year of incorporation or following year</td></tr>
<tr><td>Subsequent AGM</td><td>Each calendar year + within15 months of close of last AGM + within 6 months of close of F/Y. (ROC has discretion to grant extension upto 3 months)</td></tr>
<tr><td>2.</td><td>Meaning of Financial Year</td><td colspan="2">Period for which P&L A/c is prepared+ less or more than calendar year + cannot exceed 15 months + extend to 18 months, if ROC grants special permission u/s 210. [Section 210 (4)]</td></tr>
<tr><td>3.</td><td>Time, Date & Venue of AGM</td><td colspan="2">Business hours + Day not public holiday + Registered Office/other place within city, town or village of state of Registered Office</td></tr>
<tr><td colspan="2">Case Law</td><td colspan="2">As held in the case that AGM and Adjourned AGM must be completed within the statutory period specified u/s 166 + 210. [Bejoy Kumar Karnani vs. Assistant ROC]</td></tr>
</table>

<table>
<tr><td rowspan="2">4.</td><td rowspan="2">Power of CLB to call AGM</td><td colspan="3">(a) CLB may, on application of any member.
(b) Call GM deemed as AGM + give such directions as it thinks fit (including a direction that one member present in person or proxy shall be quorum).</td></tr>
<tr></tr>
<tr><td rowspan="3">5.</td><td rowspan="3">Penalty for default in holding AGM</td><td>Who shall be liable</td><td colspan="2">The Company & Every Officer in Default</td></tr>
<tr><td rowspan="2">Quantum of Fine</td><td>Fine</td><td>Upto ₹ 50000/-</td></tr>
<tr><td>Additional Fine</td><td>Upto ₹ 2500 per day</td></tr>
<tr><td>6.</td><td>Validity of AGM beyond the statutory time</td><td colspan="3">AGM held beyond due date is not void & resolutions passed are valid. Involves penalty.
[Hungerford Investment Trust Ltd. V Turner Morrison & Co Ltd]</td></tr>
<tr><td colspan="2">Case Law</td><td colspan="3">Where AGM called on 30/12/1934 was adjourned to 31/03/1935 and the next AGM was held on 28/01/1936, it was held to be a contravention of Section 166.
[Sree Meenakshi Mills Co. Vs. Assistant ROC]</td></tr>
<tr><td colspan="2">Case Law</td><td colspan="3">The face that the company did not start functioning is no excuse for not holding AGM.
[Madan Gopal Dey vs. State of West Bengal]</td></tr>
</table>

22. Extraordinary General Meeting – Sec. 100 of Co's Act, 2013

<table>
<tr><td rowspan="3">1.</td><td rowspan="3">Who can call – Section 100 (1)/(2)</td><td>BOD</td><td colspan="2">The Board may, whenever it deems fit, call an EGM</td></tr>
<tr><td rowspan="2">Member</td><td>Company having Share Capital</td><td>Member/s holding ≥ 1/10th of PSC (Equity Share)</td></tr>
<tr><td>Company not having SC</td><td>Member/s holding ≥ 1/10th of Total Voting Power</td></tr>
<tr><td>2.</td><td>Essentials of a valid requisitions – Section 100(3)</td><td colspan="3">(a) The Requisition shall set out the matters for the consideration of which the meeting is to be called and
(b) Shall be signed by the requisitionists and
(c) Sent to the registered office of the company.</td></tr>
<tr><td rowspan="4">3.</td><td rowspan="4">Time for Calling – Section 100 (4)/(5)/(6)</td><td>By BOD</td><td colspan="2">On the receipt of valid requisition, the BOD shall within 21 days proceeds to call an EGM to be held not later than 45 days from the date of deposit of requisition.</td></tr>
<tr><td rowspan="3">By Requisitionists</td><td>When</td><td>If BOD fails</td></tr>
<tr><td>Time period</td><td>The EGM shall be held within 3 months from the date of deposit of the requisition.</td></tr>
<tr><td>Manner of calling</td><td>In the same manner in which the meeting is called and held by the Board.</td></tr>
</table>

			Repay of Expenses	✓ Any reasonable expenses incurred by the requisitionists in calling a meeting u shall be reimbursed to the requisitionists by the company and ✓ The sums so paid shall be deducted from any fee or other remuneration under section 197 payable to such of the directors who were in default in calling the meeting
Case Law				
Case Law				
Case Law				
4.	**Power of CLB to call EGM – Section 186**	(a) **Impracticable to call an EGM –** Impracticable to call/hold/conduct EGM, CLB may order EGM to be called, held and conducted in such manner as it thinks fit. (b) **Power of CLB** – To give directions as fit including that one member present in person/proxy shall be quorum). (c) **Where are the power exercisable by CLB –** Application of member/director or/Suo motu		