1. Nature of Company

Company - As per Section 2(20) Company means a company incorporated under this act or any other previous acts

Features of the company

Incorporated Association	• With minimum number of members • Recognized & Registered as per law • Comes into existence after registration
Artificial Person	• Recognized in the eyes of law • Run by natural persons
Citizen or Not?	• Not a citizen
Separate legal entity	• Members are different from the company • Salomon Vs Salomon Co Ltd • Lee Vs Lee air farming ltd
Common seal	• Signature of the company • Authorises the documents
Perpetual succession	• Exists even if all the members die
Separate property	• Can have own property
Transferability of shares	• Freely transferable • Restrictions in private company
Separation of ownership from management	• Management is entrusted to Board of directors
Capacity to sue and be sued	• Outsiders cannot sue members in their individu capacities

Lifting & Piercing of corporate veil

To prevent illegal or improper activities	Horne Vs Gilford motors company ltd
To protect revenue of the government	Sir Dinshaw Maneckjee Petit
To prevent violation of welfare laws	Associated rubber industry ltd
To determine the enemy character of the company	Diamler company ltd Vs Continental tyre and rubber compa ltd
To determine the technical competence of the company	New Horizons India Ltd

2. Classification of Companies

On the basis of restrictions

Private Company [Section - 2(68)]

Nature of Restriction	Details
Transferability of shares	• Cannot be banned • Can only be restricted • By way of pre emption
Maximum number of members restricted 200	• Employees who became members by virtue of their employment are not considered • Joint share holders are considered as one
Cannot invite public to purchase its share	• Can only get monies from its existing share holders or through private placement
Minimum Amount of Share capital is Rs 100,000/-	
Minimum number of members – 2	

Public Company [Section - 2(71)]

- No above mentioned restrictions
- Minimum amount of share capital Rs 500,000 /-
- Minimum number of members - 7

One Person Company [Section - 2(62)]

- Minimum share capital - Rs 100,000 /-
- Only one person
- Nominee is compulsory
- One person or nominee can only hold one OPC
- Only resident of India can start OPC (those who resided for not less than 182 days in the preceeding financial year)
- Certain exemptions are provided in the Act
- Compulsory conversion into either private or public company if paid up share capital exceed Rs 5,000,000 /- (or) Average (preceding 3 years) annual turnover exceeds Rs 2 crores
- Can also be converted voluntarily

On the basis of liability

Limited by shares
Limited by guarantee
Unlimited liability

Section - 8 Company

- Not for profits. Established for promotion of commerce, health, research, social welfare, science, education, sports, religion & protection of environment or any such other acts

- Obtain licence from the central government
- The CG will direct the company upon contents of MOA & AOA
- Not to declare dividends
- Monies must be spent only for purpose for which it has been started
- Certain privileges are available in Act
- CG may cancel license by giving the company an opportunity of being heard

Holding - Subsidiary & Associate Companies

Holding company 2(46) controls the **Subsidiary Company 2(87)** either by
- controlling composition of directors
- controlling more than half of total share capital either directly or indirectly

Subsidiary company must not hold any shares in Holding company

Two companies are treated as **Associate companies 2(6)** if one company holds 20% or more in another. **(Significant interest)**

Government Company [Section 2(42)]

In which not less than 51% of paid up share capital is held by
- Central Government
- State Government(s)
- Central Government & State Government(s)

Includes even subsidiary of a Government Company
Government company is not considered as Government Department

Electoral Trust

Section 8 Company started in compliance with the provisions of CBDT rules in this regard.

Dormant Company

No significant accounting transaction

Foreign Company [Section 2(42)]

A company incorporated outside India but having place of business in India

Body Corporate [Section 2(11)]

Body corporate includes a foreign company but excludes co-operative society and entities notified by CG

Illegal Association [Section 464]

Any association for profit in which more than 100 members are associated
Exceptions:
- Company
- Registered under any other Act
- Service motive
- Single HUF
- Partnership formed by professionals

3. Promotion

Promoter [Section 2(69)]

A person who has been named as such in Annual return and prospectus
A person who controls affairs of the company either directly or indirectly as a shareholder, director or otherwise
A person in accordance with whose instructions the BODs will act

Duties of Promoter

Duty not to make secret profits
Duty to disclose the interest in transactions
Note: May get remuneration if there is written agreement

Remedies available to company

Rescission of contract
Suit for breach of trust

Validity of Pre-Incorporation contracts

Will be binding on the company if the company decides to adopt the same, otherwise the promoter will be liable.
The company may adopt if the contract was entered on condition of incorporation and for the object of the company.

Process of Incorporation (Section – 7)

Check name availability	Apply to ROC – ROC intimates within 7 days – Name is available for next 60 days.
Submission of documents	• MOA/AOA • Statutory Declaration • Address of Registered Office • Applicable forms for Incorporation • Particulars of Directors named in AOA
ROC issues certificate Incorporation	• Incorporation certificate dated and contains CIN • Incorporation certificate is conclusive and cannot questioned

4. Memorandum & Articles

Memorandum of Association [Section – 2(56)]

Format: Given in Table A, B, C, D & E of Schedule - I

Contents

Name clause	• Word Limited / Private Limited / OPC have to be added • Name must not be identical, undesirable, projecting connection to the Government, against Names & Emblems Act • Clearly engraved outside every place of business and printed on all letter head, bills, vouchers along with RO – address • If name is written wrong then the officer signing the document is personally liable
Situation clause	State of the RO
Objects Clause	• Not illegal • Main objects, Incidental objects & Other objects
Liability Clause	Liability of the members
Capital clause	• Authorised share capital • Total number of shares • Nominal value of shares
Subscription Clause	• At least 2 (or) 7 as the case may be • Minor cannot sign as subscriber • Each subscriber agrees to take at least on share • First members of the company
Nomination clause	Only for OPC

Alteration of Memorandum of Association [Section – 13]

Name Clause	**Voluntary Change** • ***[Special Resolution – CG Approval – Inform ROC within 30 days]*** • Alteration of words 'Private' CG approval not required • Listed companies some additional procedures **Change in name by CG order [on own or on application]** • ***[Ordinary Resolution – Inform ROC within 15 days]*** • Comply with directions within 3 months
Situation Clause	**Within city limits** • ***[Board Resolution – Inform ROC within 15 days]*** **From one city to another (no change in ROC)** • ***[Special Resolution – Inform ROC within 30 days]*** **From one city to another (change of ROC)** • ***[Special Resolution – RD Permission - Inform ROC within 60 days of order]***

	From one state to another • ***[Special Resolution – CG Approval – Inform ROC within 30 days of order]*** • No reduction in employees, no pending investigations, repay or provide security to creditors
Objects Clause	**Company not issued prospectus** • ***[Board Resolution – Inform ROC within 30 days]*** **Company issued prospectus** • ***[Special Resolution by postal ballet – Inform ROC within 30 days]***
Liability Clause	**Limited to Unlimited** • ***[Ordinary Resolution – Inform ROC within 30 days]*** **Unlimited to Limited – Re registration**
Capital Clause	Increase Authorised Share Capital Consolidate or Split the Shares Reduce the balance of Authorised Share Capital Convert Shares into Stock and Vice Versa • ***[Ordinary Resolution – Inform ROC within 30 days]***
Subscription Clause	Cannot be changed
Nomination Clause	At any time by informing to ROC

Articles of Association [Section – 2(5)]

Format: Given in Table F, G, H, I & J of Schedule - I

Contents:

- Rights of each class of share holders
- Procedure for allotment of securities, increase or decrease in share capital, transfer of securities, issue of share certificates
- Procedure to appoint directors, audit & accounts
- Constitution of committees
- Borrowing powers of board etc.

Alteration of AOA

- ***[Special Resolution – Inform ROC within 15 days***
- ***CG permission if converts public company into a private company***

Entrenchment Provision

- Stricter provision for altering AOA
- Must be included in AOA at the time of incorporation
- ***Can be included afterwards (private company – unanimous resolution) (Public company – special resolution)***

Conversion of Companies [Section – 18]

Private to Public	• Alter AOA removing restrictions • Increase SC & members
Public to Private	• Alter AOA including restrictions • NCLT approval
OPC to Private or Public	**Voluntary Conversion** • Minimum 2 years from incorporation • Increase members • Alter MOA & AOA **(Compulsory Conversion discussed already)**
Private to OPC	• Alter MOA & AOA • NOC from creditors • Submit documents to ROC

Effect of MOA & AOA

Member bound to company	Boreland's trustee Vs steel brother & co Ltd
Company bound to member	Wood Vs Odessa water work co.
Members bound to member	Ray field Vs Hands
Company not bound to outsiders	Eley Vs Positive life insurance co
Directors bound to company	

Ultra vires

Richie Vs Ashbury Railway Carriage and Iron Company Ltd

- Beyond the powers of AOA – Voidable
- Beyond the powers of MOA – Void
- Beyond the Act – Void

Doctrine of Constructive Notice (Protects Company)

Kotla Venkata swamy Vs Rammurthy

AOA & MOA are public documents; every person dealing with the company is expected to have knowledge of these provisions.

Doctrine of Indoor Management (Protects Outsiders)

Turquand Vs Royal British Bank

Every person dealing with the company can assume that internal procedures are complied

Exceptions

Knowledge of irregularity	Howard Vs Patent ivory manufacturing co
Negligence	Anand biharilal vs Dinshaw & Company
No knowledge of AOA	Rama corporation Vs Proved tin & General investment co
Forgery	Ruben Vs Great Fingall Company Ltd
Ultra vires transactions	Void ab initio

5. Membership

Section 2(55) says Member includes

- All the subscribers to the memorandum
- Those who have agreed in writing to become the member of the company and their names are entered in the Members register
- Those who are named as beneficial owners in the depositories books

Modes of becoming a Member

- By subscribing to MOA
- By purchasing shares of the company
- By providing guarantee
- By applying in writing for membership and their name entered in members register
- By becoming beneficial owner
- Member by Estoppel
- By transfer & transmission

“All share holders are members, but all members need not be share holders” (Exceptions)

Capacity to become Member

Minor	No	• Mehri Bibi Vs Dharmodas Gosh • No contractual capacity • Repudiate if accidentally becomes a member • Partly paid share cannot be transferred to minor however fully paid shares can be
Company	Yes	• Provided in MOA • Subsidiary cannot become member of Holding
Firm	No	• But can become member of Section – 8 company
Co – operative Society	Yes	
HUF	No	
Trade union	Yes	
Insolvent	No	• Discharged insolvent can become a member
Trust	No	

Members Register, Annual Return (Section – 88 ,92)

- **Contents –** Name, Address, No. of shares held, Amount of guarantee given, class of shares etc
- **Index –** For more than 50 members
- **Kept at –** RO of the company, A copy of register can be kept outside India for the purpose of members outside India
- Can be kept any other place where more than 10% of its members reside by passing a special resolution and intimation to ROC

- **Closure –** 30 days at a stretch & 45 days in total in a year (7days notice must be given) **(Rs 5,000 per day penalty)**
- **Annual return –** To be file within 60 days of AGM (if no AGM 60 days from the last day on which AGM should have been held)
- Must be signed by 2 directors and CS
- **Inspection –** Every member, debenture holder, other security holder can inspect without any fees. Outsiders upon payment of fees.
- Only during business hours & working days
- **Extracts & Copies –** Members, debenture holders, and other security holders can request copies. Company shall provide within 7 days. (Rs 1,000 per day penalty)

6. Allotment

I. **Proper Authority –** Board or Committee

II. **Written Application**

III. **Minimum Subscription (Section – 39(1)) –**
   - 90% offer made
   - Mentioned in prospectus
   - No allotment if not received in 30 days of issue of prospectus
   - Return within 15 days
   - Otherwise directors personally liable for interest @ 15% p.a

IV. **Application Monies [39(2)]**
   - Not less than 25% of nominal value
   - Must be kept in separate bank account
   - Not used for other purposes

V. **Listing of shares [40(1)]**
   - Mandatory for issue of shares to public
   - To be mentioned in Prospectus

VI. **Return of Allotment**
   - Filed within 30 days to ROC
   - Not required for reissue of forfeited shares

Underwriting [Section 40(6)]

- Commission not exceeding 5% for shares, 2.5% for debentures
- Lower rate may be prescribed in AOA
- Only when offered to public
- Sub underwriting can be done by main underwriters

Brokerage

- No limit
- Only for professional brokers

7. Prospectus

Section 2(70) defines Prospectus as any document named as prospectus and includes Red herring prospectus, Shelf prospectus, Any notice, circular, advertisement or any other document inviting offer from public for subscription and purchase of shares of the company

Oral invitation not a prospectus

When Prospectus is not required

- Right issue or further issue
- Private placement
- Conversion of loan or debenture or PSC
- Bonus issue
- ESOPs
- Issued to QIBs
- Application for underwriting
- Listed company – similar issue as earlier

Contents of Prospectus (26)

- **A**ll about the company
- **B**usiness plan
- **C**apital Structure
- **D**etails of persons connected
- **E**arlier public issue & utilization & **E**xpert statement
- **F**ailure to obtain minimum subscription

Last 5 years Audit reports & financial statements must be attached to prospectus

Prospectus must contain a declaration that all the provisions of this act, SCRA and SEBI are complied.

Prospectus must also contain consent given by every person named in prospectus

Prospectus is by every director

Registration Prospectus

- Before issue to public copy must be given to ROC
- No prospectus can be issued 90 days after submission to ROC
- Date of prospectus is the date which is printed in prospectus

If above provisions are not satisfied then penalty of Rs 50000 - 300000

Advertisement of Prospectus

Not mandatory but company can on its own. Advertisement must give details like liability of company, company's object, capital structure and amount of SC

Abridged Prospectus (33)

Summary of prospectus attached with application. Member may request for detailed prospectus.

Shelf Prospectus (31)

- In case of similar issues of a listed company which is valid for 12 months from the date of opening of subscription list for first offer.
- Information memorandum has to be filed explaining the changes during the period.

Deemed Prospectus (25)

In case of issue through ISSUE HOUSE

The prospectus must contain additional details

- Net consideration receivable by company
- Place, date, time where the agreement can be verified

Red herring Prospectus (32)

- Incomplete prospectus (No. of shares & Issue price will be missing)
- The missing details will be filed at least 3 days before the opening of subscription list

Misstatement in Prospectus (34,35)

- **Remedies Available** – Rescind the contract & Sure for the damages
- **Civil Liability** – Every Person connected is liable for reimbursement of damages
- **Criminal liability** – Every person connected if liable for penalty which may extend up to 3 times the amount of fraud & Imprisonment from 6 months to 10 years
- ***Defence – Not given consent, with drawn consent, believed to be genuine, immaterial***

8. Share Capital

As per Section 2(84) Share means a share in the share capital of a company and includes stock.

Kinds Of Shares

Preference Share: Carries preferential right in respect of payment of dividend; and repayment of capital. A company can issue only redeemable preference shares

Equity Share: Which has equal rights; The Company may issue equity shares with differential rights

Issue of Shares

Public Offer

- Pass a special resolution
- Get listed
- Open a separate bank account for application monies
- Enter into agreements with underwriters & broker
- Prepare prospectus
- Submit prospectus to ROC
- Print the prospectus and issue the applications to public
- Open Subscription list
- Receive application monies
- Close the subscription list
- Calculate minimum subscription
- Allot shares or refund monies
- Only in Dematerialised form
- File return of allotment with ROC

Further Issue (or) Rights Issue

- Pass a board resolution
- To the existing share holders in proportion of their holding
- At least 3 days notice before opening of subscription list
- Give 15 days' time for the share holders to decide
- Member can renounce the rights unless restricted by Articles
- Board may deal with the shares not applies or renounced as they wish
- File return of allotment with ROC

Private Placement

- Pass a special resolution
- Mention the names in register to whom private placements can be made
- Send private placement offer letter to the proposed investors
- No advertisement
- File return of allotment with ROC

Conversion of loan/ debentures into shares (Section – 62)

- No special resolution is required
- The government in public interest may order the company to convert

- Company must file appeal within 60 days to NCLT

Sweat equity shares (54)

- Can be issued at discount
- Special resolution has to be passed
- Notice must be detailed
- Company may place restrictions on transferability
- File return of allotment with ROC

Bonus shares

- Only with respect to fully paid shares
- Authorization in AOA
- Pass ordinary resolution
- No default in redemption, payment of dividend & statutory dues relating to labour
- File return of allotment with ROC

Issue of shares at premium

- Security premium account can be used for bonus shares, write off preliminary expenses, write off issue expenses, payment of premium on redemption, and buy back.

Calls

- Made by board of directors
- Not more than 25% of face value
- At least 14 days notice
- No voting rights till calls are paid
- Gap between two calls at least 1 month
- Interest on calls unpaid

Calls paid in advance

- Can pay interest on advance
- Can pay dividend
- No additional voting rights
- No refund
- In liquidation these will be paid before payment of share capital

Forfeiture

- Authorised by AOA
- Fully paid shares can also be forfeited
- BOD’s decision
- At least 14 days notice
- Can be re issued
- Re issue price must not be less than the amounts due from defaulting SH
- Profit on reissue may be given to defaulting share holder if articles permit

Surrender

- Same as forfeiture
- As per the provisions of articles

- Profit on reissue may be given to defaulting share holder if articles permit

Lien on shares

- With respect to other amounts due to the company from SH
- To be provided in Articles

Buy back of shares

- **Purposes -** To improve EPS, avoid hostile takeover, return surplus cash, provide SH option to exit
- **Eligibility -** No default in redemption of PS/Debenture/Deposits/Bank loans, payment of interest & dividend (Ban for 3 years). Must have filed Annual returns, followed Schedule – III
- **Limit –**
  - 25% of equity paid up capital at a time
  - Amount to be withdrawn – 10% of (PUSC+FR) [Board's Permission]
    - 25% of (PUSC+FR) [Special Resolution]
  - Debt equity ratio after buy back not more than 2:1
  - Amounts required can be withdrawn from either FR, Security premium or fresh issue (not same class)
  - If Security premium account used create capital redemption reserve
- **Time limits –**
  - To be completed within 1 year from resolution
  - Gap between two buy backs at least 1 year
  - No issue of same class of shares for next 6 months
  - Within 30 days from completion of buy back intimate ROC
- **Other Conditions –**
  - Solvency certificate
  - Destroy SC within 7 days
  - Disclose failure to buy back in Director's report
  - Penalty Rs 1lac – 3 lacs & Imprisonment – 3 years
  - Only fully paid shares

Redemption of Preference Shares

- Pass a board resolution
- Out of FR & Fresh issue
- Premium can be paid out of Security premium account
- Unable to redeem – Issue fresh preference shares if 75% of value agrees
- Exit option to dissenting SH
- Within 30 days from completion of buy back intimate ROC

Share Certificate

- Estoppel as to title & Estoppel as to payment
- Prevails over members register
- Proper authority – 2 director & 1 CS should sign
- Duplicate share certificate – upon submission of Indemnity bond
- Penalty for impersonation Rs 500,000 /-

Nomination

- Minor, Firm, HUF, Trust cannot be nominated
- To be recorded within 2 months
- Can be changed at any time

Transfer & Transmission

- Apply company within 60 days of instrument of transfer
- Partly paid – Company has to obtain NOC from transferee within 2 weeks
- Joint holders – Transposition not a transfer
- Transfer must be registered within 1 month from receipt of all documents
- If rejected by company – intimate transferee within 30 days from application
- Transferee may appeal to NCLT
- NCLT within 10 days issues an order

9. Charges

Charge means an interest or lien created on the property or assets of a company, it includes mortgage & hypothecation [Section – 2(16)]

Fixed Charge: created on some identifiable property

Floating Charge: created on class of assets, present and future

Crystallization of Floating charge: liquidation; closure of business; creditors enforce their security; on happening of event specified.

Registration:

- within a period of 30 days from the date of creation of charge, can be extended up to 300 days by ROC, Beyond 300 days – CG
- Even oral charges
- May be registered by ROC up on application from creditor by giving 14 days notice to the company
- Once charge registered – any person dealing with such property is deemed to have been given notice
- If unregistered, the obligation is on company but in liquidation such creditor becomes unsecured creditor
- Penalty – Company (Rs 100,000 – 1,000,000) Officer (Rs 25,000 – 100,000 & 6 months imprisonment)

Note: Provisions applicable to assets acquired with charge & any modifications afterwards.

Register

- Maintained by ROC can be accessed in MCA21
- Company must maintain one register in Form – CHG – 7
- Inspection by any person upon payment of certain fees (Members & Creditors no fees)

Satisfaction of Charges

- Within 30 days company should inform ROC
- No extension of time
- ROC may on its own enter satisfaction of charges, inform parties within 30 days

10. Debentures

As per Section 2(30) Debenture includes debentures stock, bonds and other instrument of a company evidencing a debt whether constituting a charge on the assets on the company or not

Company can issue only secured debentures

Procedure

Debenture Trustee

- If issue is for more than 500 members
- Name of trustee must be stated in every notice
- Written consent from trustee
- Trustee must be an independent person (Not a share holder, officer, director, promoter, KMP, Creditor, Customer, Relative of officer – promoter – KMP – Director)
- Casual vacancy to be filled by Board (If due to resignation to be filled by written consent of majority
- Removal if approved by 75% of value holding debenture holders
- **Duties:** Ensure that letter of offer does not contain inconsistent matters with trust deed; terms not prejudicial; Get periodical performance reports; Communicate promptly the defaults made by company; Appoint a nominee director; ensure sufficiency of assets
- If found negligent then liable for damages (can escape if 75% consents)

Trust deed must be entered within 60 days of allotment of debentures

Debenture Redemption Reserve

- The company shall create DRR equivalent to at least 50% of the amount raised from the debenture issue before debenture redemption commences.
- Every company required to create DRR shall on or before the 30th day of April in each year, invest or deposit, as the case may be, a sum not be less than 15% of the amount of its debentures maturing during the year ending on 31" March of the next year

Failure to redeem or pay interest - NCLT may impose 18% P.a penal interest & repayment immediately otherwise penalty [up to Rs 5 lacs] & Imprisonment 3 years

Remedies available Proceed on security, Apply to NCLT, Apply to court for winding up

11. Deposits

As per Section 2(31) Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories or amount as may be prescribed in consultation with the RBI. (**A**dvance, **B**orrowings, **C**ommercial Paper & calls in advance, **D**ebentures unsecured, **E**mployees, **F**oreign Govt & Foreign Bank)

Procedure

From Members:

- Any company
- Ordinary Resolution
- No default earlier in interest & repayment
- Enter into Deposit insurance at least 30 days before circulation of notice
- File circular with ROC 30 days before its circulation
- At least 7 days before circulation appoint a trustee
- Circular to all its members
- Circular valid till 6 months after closure of FY
- Issue Deposit Receipt within 21 days from receipt of money
- Within 30 days of acceptance create security (Charge + Insurance = Value of Deposits)
- (Deposits outstanding + Deposits to be taken or renewed) must not exceed 25% of PUSC + FR

From Public:

- Only eligible companies (Public company – Net worth not less than Rs 100 Crores or TO not less than Rs 500 crores)
- Board Resolution if total borrowings do not exceed (PUSC + FR), otherwise Special resolution
- Obtain credit rating from a recognised credit rating agency
- No default earlier in interest & repayment
- Enter into Deposit insurance at least 30 days before circulation of notice
- File circular with ROC 30 days before its circulation
- At least 7 days before circulation appoint a trustee
- Circular in form of advertisement
- Circular valid till 6 months after closure of FY
- Issue Deposit Receipt within 21 days from receipt of money
- Within 30 days of acceptance create security (Charge + Insurance = Value of Deposits)
- Maximum [10% of PUSC + FR from members, 25% of PUSC + FR from public]

Terms & Conditions

Period – Not less than 6 months & not more than 36 months (less than 6 months up to 10% of PUSC + FR)

Interest rate should not exceed rate prescribed for NBFCs

Register of Deposits

- Contents: Details of depositor, Date, Amount, Duration, Interest rate, Interest payment dates, other details
- Place: Registered Office
- Period: Eight years from end of FY in which latest entry is made

Premature surrender of deposits: Reduce 1% interest from the rate applicable

Return of Deposits: Every year 30th June

12. General Meetings

Types of General Meetings

- Annual General Meeting
- Extra Ordinary General Meeting
- Class Meeting

Annual General Meeting

- Applicable for Every Company except OPC
- **First AGM:**
  - Within 9 months from the conclusion of first FY
  - No extension can be granted
- **Subsequent AGMs:**
  - Every calendar year must have one AGM
  - Gap between 2 AGMs must not be more than 15 months
  - Within 6 months from the conclusion of FY
  - ROC can extend up to 3 months

Requirements of valid meeting

- Properly Convened (Proper Authority, Notice)
- Properly Constituted (Quorum, Chairman)
- Properly Conducted (Resolutions, Minutes, ROC filing)

Proper Authority

AGM	• **Board of Directors** (96) • **NCLT** on application from any member (will also give certain directions) (97) • **Date & Time** – Not a national holiday & only during business hours (Exceptions: Section – 8 company, resolution passed fixing a particular date etc) • **Place** – Only at registered office or some other place in same city
EGM (100)	• **Board of Directors** • **Board of director upon receipt of request from members** holding at least 1/10th of voting power (Within 21 days give notice, within 45 days conduct meeting)

	• **Requisitionists by themselves**
	  ◦ within 3 months from request to board
	  ◦ Reimbursement of expenses by board personally
	• **EGM called by NCLT** on own or upon application
	• **Date, Time & Place:** No restrictions but within India

Class meetings	• **Board of Directors**

Notice to GM (Section – 101)

Time

- Not less than 21 clear days notice either in writing or through electronic mode (excluding date of notice, date of meeting & 2 days for transmission)
- Shorter notice can be ratified by 95 % of number of members either before or at meeting

Contents:

- Date, Time & Place
- Agenda/ Business
- Right to appoint proxy

Sent to:

- Every member/ Legal representative/ official assignee
- Auditor(s)
- Directors
- Failure to send notice to eligible person invalidates the meeting (Exception – When it is unintentional)

Business

- Ordinary Business
  - Consideration of Accounts
  - Declare dividend
  - Retirement & appointment if directors & auditors
- Special business (Other than ordinary)

Explanatory statement

- Only for special business
- **Contents:** Material facts, Interests of directors, Inspection of documents relating
  (For non disclosure every officer in default will get a fine of Rs 50000/- or % times the benefit)

Quorum (Section – 103)

Private Company – 2 members personally present

Public Company -

Up to 1000 members	5 members personally present
More than 1000 but up to 5000 members	15 members personally present
More than 5000 members	30 members personally present

AOA may mention higher quorum

Need not be present throughout the meeting

Person	• Considered for Quorum
Member present in person	• Yes
Preference share holders	• Depends
Proxies	• No
Authorised representatives of corporate members	• Yes
Joint holders	• One
Dual capacity	• More than one

Consequences if there is no quorum within 30 minutes from scheduled time

Meeting is called upon requisition members	Meeting shall stand dissolved
Other case	Meeting shall be adjourned to: the same day in next week, at the same time and place, or such other day, time and place as determine by the Board
Adjourned meeting	Members present shall be the Quorum.

<u>Single person cannot be considered as quorum</u>

Proxies (Section – 105)

- Need not be member of company
- Anyone can appoint proxy
- Specified form given by company
- Must be deposited at least 48 hours before meeting or such less time prescribed by articles
- Also valid for Adjourned meeting
- May even specially be appointed for adjourned meeting
- Not counted for quorum
- No participation
- Cannot inspect minutes book
- Only votes in poll
- Can demand poll
- One person can act as proxy for different members (maximum 50)
- Members can inspect proxies list by giving 3 days notice to company
- If member attends himself proxy is cancelled
- Remains valid even if member has died or insolvent

Chairman (Section – 104)

Appointment

- Board's chairman = General meetings chairman
- If not present within 15 minutes directors will select one among them
- If no director is willing then the members will select one among them

- Either by show of hands or poll

Power of casting vote (additional vote) if authorised by AOA

Resolutions (Section – 114 & 115)

- **Ordinary Resolution:** vote cast in favour of the resolution exceeds votes cast against it
- **Special Resolution:** votes, cast in favour of the resolution are not less than 3 times the votes cast against the resolution
- **Resolution requiring special notice:**
    - By members holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than Rs 5,00,000 is paid up.
    - Atleast 14 days before meeting
    - Company must circulate it before 7 clear days if not possible give an advertisement

Voting (106 – 109)

- No restrictions unless AOA (only valid reasons)
- Members can use votes differently

Methods

- By acclamation
- By voice
- By division
- By show of hands
- By poll
    - By chairman himself
    - By members & Proxies
    - By members holding not less than 10% of total voting power or holding shares on which an aggregate sum of not less than Rs 5,00,000 is paid up.
    - Demand can be with drawn
    - Poll within 48 hours of demand (Exceptions – Adjournment of meeting and removal of chairman has to be taken immediately)
    - Scrutiniser appointed by chairman
- By postal ballot (100)
    - Not for ordinary items
    - Not for those decisions where auditors or directors have to be given an oppourtunity of being heard
    - Mandatory when CG specifies
    - Member has to send reply within 30 days
    - Scrutiniser submits report within 7 days

Minutes (Section – 118 & 119)

- Record of business transacted
- Book form, pages serially numbered
- Initialled on every page & signed at the end of matter relating to that meeting by chairman within 30 days (if chairman is unable to sign then by one director authorised by board)

- Chairman may exclude any matters (cannot be questioned)
- Kept at registered office
- Permanently
- Open for inspection daily for at least 2 hours
- Minutes act as evidence
- Cannot be published
- Can be inspected by any member without any fees
- Can also take copies upon certain fees

	The Payment of Bonus Act, 1965	The Payment of Gratuity Act, 1972	The EPF & MP Act, 1952
Applicable to	• Factory • Establishments employing 20 or more members • Establishments notified by CG • Public Sector Establishments (Competing with private sector and revenue from such product is not less than 20% of total revenue)	• Factory, Mine, Oil field, Plantation, Port, Railway Company • Establishments employing 10 or more members • **Even Service oriented organisations**	• Factory and every other establishment employing 20 or more members • **Even Service oriented organizations**
Not Applicable to	• Certain PSEs • Departments of Government • Service oriented organizations • Public Financial Institutions • Seamen, Dock workers, Inland water transport		• Co operative Society employing less than 50 persons working without aid of power. • Establishment belonging to CG/SG or set up under any Central/State Act, having contributory provident fund or old age pension.
CG's Power to grant exemption	Section – 36 In public interest if the entity is suffering heavy losses.	Section – 5 If the establishment is having more beneficial provision than Act	Section - 16 If the establishment is having more beneficial provision than Act & considering financial position of the entity
Benefits available	Bonus	Gratuity on retirement	Provident fund Service & Family Pension Life insurance
When to be paid	Every Accounting year	At the time of termination of employment by superannuation, retirement, death or inability.	At the time of termination of employment by superannuation, retirement, death or inability.
Burden on?	Employer	Employer	Both Employee & Employer
Who is an Employee?	Salary not exceeding Rs 10,000 per month	Same as bonus act but without limit on salary drawn	Same as bonus act (Salary limit is Rs 15,000)

<table>
<tr><td></td><td>Includes temporary workman, employee of a seasonal factory, part time employee, retrenched employee, probationer, dismissed employee reinstated with back wages, piece-rated worker, Employees employed through contractors on building operations
Excludes Apprentice, Dismissed employee, partner</td><td>Includes even a director working as an employee</td><td>but includes even an Apprentice</td></tr>
<tr><td>Eligibility?</td><td>Every employee who worked for not less than 30 working days in an AY</td><td>Every employee who has rendered five years of continuous service (Exception death, inability)</td><td>Every Employee
Provident Fund (All employees)
Pension Fund (less than or ET Rs 15,000 salary)
Insurance Fund (All employees)</td></tr>
<tr><td>Minimum & Maximum Limits</td><td>Minimum Bonus – 8.33% of Salary or wages
Maximum Bonus – 20% of Salary or wages</td><td>Minimum Gratuity – 15 days salary for every completed year of service
Maximum Gratuity – Rs 10 lakhs</td><td><table><tr><td></td><td>Employee</td><td>Employer</td></tr><tr><td>EPF</td><td>10/12 %</td><td>10/12 %</td></tr><tr><td>EPS</td><td>Nil</td><td>8.33% of EPF</td></tr><tr><td>EDLI</td><td>Nil</td><td>1% + 0.25%</td></tr></table></td></tr>
<tr><td>Salary or Wage</td><td>BS+DA+FFA+CCA
Does not include – Bonus, HRA, Commission, Overtime, Travel concession etc</td><td>BS+DA
Does not include – Bonus, HRA, Commission, Overtime, Travel concession etc</td><td>BS+DA+RA
Does not include – Bonus, HRA, Commission, Overtime, Travel concession etc</td></tr>
<tr><td>Working Days</td><td>Include Paid leaves, Maternity leave, Laid off period, Absent due to accident</td><td>Include Paid leaves, Maternity leave, Laid off period, Absent due to accident</td><td>Include Paid leaves, Maternity leave, Laid off period, Absent due to accident</td></tr>
<tr><td>Due date</td><td>Within 8 months, AG may extend up to 2 years</td><td>Employee applies within 30days, Employer pays within next 30 days</td><td>Within 30 days</td></tr>
</table>

Mode of payment	Only in cash	Only in cash	Only in cash
Interest	@ 12%	@ 12%	@ 12%
Recovery	As land revenue	As land revenue	As land revenue
Exemption to new entities	Up to 5 years	No exemption	Up to 3 years
Authorities	Appropriate Government Controlling Authority	Appropriate Government Controlling Authority	Central Board State Board Provident Fund Commissioner Appellate tribunal
Nomination	Not required	Required (After completing one year of service)	Required (at the time joining)
Investments/ Contributions	Not required	Insurance is required unless own fund is maintained	Own fund can be maintained
Transfer of accounts	Not required	Not required	Required

Special Provisions of Bonus Act:

Calculation of Bonus	If allocable surplus is less than minimum bonus – Minimum Bonus If allocable surplus is more than maximum bonus – Maximum Bonus If allocable surplus is more than minimum bonus but less than maximum bonus – Allocable Surplus
Gross Profit (4)	In case of banking company – First Schedule Second Schedule in case of others
Available Surplus (5)	**Gross profit** **Less** Depreciation as per Income Tax Act Development rebate (or) Investment allowance (or) Development allowance Direct taxes payable for the accounting year Specified sums in Third schedule Tax saving on amount of bonus allowed in the preceding accounting year
Allocable Surplus	In case of employer being company other than banking company which has not made arrangements for declaration and payment of dividends - **67% of Available Surplus** In case of other employers - **60% of Available Surplus**
Set off & Set on	Allocable Surplus is less than Min Bonus: Such deficiency shall be ***carried forward*** and ***set off*** in the next 4 AY. Allocable Surplus is more than Max Bonus: Such excess shall be ***carried forward*** and ***set on*** in the next 4 Accounting years. (Subject to a maximum of maximum bonus)
Registers	Register in Form A showing the computation of the allocable surplus Register in Form B showing the set on and set-off of the allocable surplus Register in Form C showing the details of the amount of bonus due to each of the employees, the deductions under Sections 17 and 18 and the amount actually disbursed to the employees.
Deductions from Bonus	• Puja bonus or other customary bonus to any employee (Section: 17) • Employee is found guilty of misconduct causing financial loss to the employer (Section: 18)(only from that year's bonus)(Fraud & Dismissed – Bonus for all years will be lost)

Production Linked Bonus (31A)	Employer can pay bonus on basis of production. However this is also subject to minimum and maximum bonus.

Special Provisions of Gratuity Act:

Deemed Continuous Year	• Seasonal Establishment - not less than 75 % of the number of days on which the establishment was in operation • Others (5day week) - 190 days (6 day week) – 240 days • Deemed 6 months completion (5 days week) – 95 days & (6 days week) – 120 days
Gratuity Calculation	**In case of establishments which are in operation throughout the period** – 15 days salary * Completed years of service **In case of establishments which are in operation only for a season** – 7 days salary * Completed years of service (15 days or & days salary is calculated treating the month to be having 26 days)
Employee Disabled & reemployed	For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement. For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.
Forfeiture	• Any damage due to negligence or misconduct not involving moral turpitude – Only to the extent of loss • Involving Moral turpitude – Total Gratuity (Bharath Gold Mines Ltd)
Nominations (6)	Within 30 days after completion of 1 year of service Only family member Not having family – Any person Subsequently acquires family – Change old nomination within 90 days Can be modified at any time
Compulsory Insurance 4A	Only with LIC or Other recognized insurance companies CG may exempt if employer has an established gratuity fund & number of employees is 500 or more
Disputes	Proceed to controlling authority within 90 days Aggrieved by controlling authority's order prefer an appeal to Appropriate Government within 60 days

Special Provisions of EPF & MP Act:

Permission to maintain own accounts (16A) (CG)	• No default under this act in preceding 3 years • Employing 100 or more employees • Should maintain proper records • Submit timely returns • Cancelled if any default is made
EDLI Compensation	Average monthly wages drawn during last 12 months (Subject to a maximum of Rs 15,000) * 20 Or Average balance in the account in preceding 12 months or during his membership whichever is less. However if the average balance exceed Rs 50,000 then the amount payable shall be Rs 50,000 plus 60% of the amount in excess of Rs 50,000 (Subject to a maximum of Rs 100,000)
Transfer of accounts	Can be done
Transfer of entity	Both the transferor & transferee will be liable for contribution and other sums up to the date of transfer of establishment. However the liability of transferee shall be limited to the value of assets obtained by him.
No reduction in wages	No employer by the reason only of his contribution to the funds listed here under the Act reduce whether directly or indirectly the wages of any employee or the quantum of benefits in gratuity, pension, provident fund, life insurance to which the employee is entitled.

Negotiable Instruments Act, 1881

Promissory Note – Section (4)

Definition

An instrument in writing, (not being a bank-note or a currency-note) containing an unconditional undertaking, signed by the maker, to pay a certain sum of money only to a certain person; or the order of a certain person, or ~~(the bearer of the instrument).~~

Parties Maker & Payee

Requirements of valid promissory note

Writing – Promise to Pay – Unconditional – Definite sum of money – Stamped – Signed by maker

Not required Date – Payee – Place

Bill of exchange – Section (5)

Definition

An instrument in writing containing unconditional order signed by the maker directing a person to pay a certain sum of money only to a certain person, or the order of certain person, or the bearer of the document

Parties Drawer – Drawee – Payee

Drawee in case of need - The name of a person is entered in the bill, in addition to the name of the Drawee, to be approached in case of need

Requirements of valid BOE

Writing – Express order to pay – Unconditional – Definite sum – Signed by drawer – Stamped – Drawee's Acceptance

Not required – (Need not be three parties always – Date – Payee – Place)

Cheque – Section (6)

It is a bill of exchange drawn on a specified banker and payable only on demand

Parties – Drawer – Drawee – Payee

Requirements – (Specified Banker – On demand only – Signed)

Does not require – (Stamping – Drawee's Acceptance)

Electronic Cheque - It means a cheque which contains exact mirror image of a paper cheque. It is signed by using digital signature.

Truncated Cheque – This is scanned image of original cheque generated for the purpose of electronic transmission.

Crossing of cheques

Meaning Specific direction by drawer that cheque must not be paid at counter

General Crossing – Simple two parallel lines

Special crossing – Banker name between those parallel lines

Not negotiable Crossing – Words Not Negotiable between the lines. Is still transferable but the transferee's title depends on transferor's title.

Account Payee Crossing – Words Account Payee in between the lines. The cheque cannot be endorsed.

Crossing after –

- If the cheque has not been crossed, the holder may cross it either generally or specially, issue
- If crossed generally, the holder may cross it specially.
- If crossed generally or specially, the holder may add the words 'not negotiable:
- Special crossing cannot be converted into general crossing.

Liability of Paying Banker

Liable only if generally crossed cheque is paid in counter (or) specially crossed cheques is not paid to specified banker

Reasons for dishonor

- Undated
- Stale cheque
- Post dated
- Inchoate (Incomplete) Cheque
- Material alteration
- Funds not available
- Funds not applicable
- Receipt of notice of death or insolvency of drawer
- Stop payment order
- Garnishee order
- Notice of account closure
- Assignment of funds by drawer

Liability of drawer

- Only for lawful debt
- Within 30 days of dishonor notice must be sent to drawer demanding the payment
- If darwer fails to pay within 15 days the holder can file case in court with in 0ne month
- 2 years imprisonment & Penalty of 2 times the cheque amount

Note: Drawer cannot be held liable if cheque is not presented with in reasonable time and mean while the banker has become insolvent

Classification of Negotiable Instruments

- **Order Instruments** – Payable to specified person or his order
- **Bearer Instruments** - Payable to the bearer
- **Demand Instruments** – Payable at any time on demand
- **Time Instruments** – Payable on specified date
- **Inland Instruments** – Made & Payable in India (or) Drawee is Resident Indian
- **Foreign Instrument** – Other than Inland Instrument
- **Ambiguous Bill** – Can be construed either as bill or promissory note

- **Inchoate (Incomplete) Instrument –**
    - Wholly or partially blank
    - Stamped & Signed
    - Holder can fill the amount authorised
    - Holder in due course can fill the total amount due to him

Maturity of Negotiable Instrument

Payable on demand – No grace days

Payable otherwise on demand (Specified day, upon event, Specified number of days after sight) – 3 days grace

If date of maturity is public holiday it has to be paid on the preceding day

Payment in due course – Section – 10

- Payment is made as per apparent tenor
- Made in good faith
- Made in money only
- To the holder only
- No negligence

Holder in due course (Section – 8 & 9)

- Holder – Payee, endorsee of order instrument & Bearer of bearer instrument
- Holder in due course – Holder + Consideration + before maturity + Good Faith

Privileges of HDC –

- Can fill total amount due to him in incomplete instrument
- Can make all prior parties liable
- Protection in case of fictitious bill (Drawee fictitious)
- Instrument cleansed of all defects
- Protection in case instrument is obtained by illegal means
- Validity of instrument cannot be questioned (Drawer, Drawee or endorser is a minor)
- Protection in case of instruments without consideration (Gifted to endorser)
- Protection in case of conditional delivery

Endorsement

Mode of transferring

Must be written & signed by the endorser

- **Blank Endorsement** – Endorsee's name not filled. Converts order instrument to blank instrument (Pay ……)
- **Special Endorsement** – Endorsee's name specified (Pay Mr.X)
- **Restrictive Endorsement** – Payable only to endorsee. Cannot be negotiated. (Pay Mr.X only)
- **Partial Endorsement** – Endorsed to two parties for partial amounts. This is invalid
- **Conditional Endorsement** – Endorsed upon a condition. Payable to endorsee only if the condition is satisfied (Pay Mr. X up on safe delivery of goods at Vijayawada)

- **Sans Recourse** – Endorser excludes his liability. Endorsee can not proceed on endorser (Pay Mr.X Sans recourse)
- **Negotiation back**
    - Endorser becomes the holder again before the maturity of the instrument
- **Effects of, Negotiation Back:**
    - The holder can only enforce payment against all the parties to whom he was not previously liable. But, he cannot claim the amount and enforce payment against an intermediate party to whom he was previously liable.
    - However, in case of sans recourse endorsement, the holder can sue all the prior parties including all intermediate parties to whom he was previously liable.

Material Alteration

What is Material Alteration	What is not a Material Alteration
• Date • Time for payment • Place • Adding new party • Amount • Cancelling the crossing • Converting the order cheque into bearer	• Filling incomplete instrument • Blank endorsement to special • Crossing cheque • General crossing to Special • Converting bearer instrument order • Alteration consented by all parties

Any material alteration will make the NI void

Acceptance for honour

- The person who accepts the bill for the honour of any other person is called as an acceptor for honour

Liability of acceptor for honour [Section 111]:

- He is liable to pay the amount of the bill, if the drawee does not pay.
- He is liable only to the parties subsequent to the party for whose honour the bill is accepted.

Rights of acceptor for honour:

- He is entitled to recover the amount paid by him from the party for whose honour the bill was accepted and from all the parties prior to such party.

Acceptance

- When instrument is payable after sight or when there is specific condition for acceptance before payment
- Within 48 hours

Who can accept?

- Drawee
- Drawee in case of need
- Acceptor for honour
- Agent of above

Requirements – (Signed with or with out words accepted & Delivered to the holder)

Types of acceptance

- Unconditional – Without any condition
- Conditional – Payable upon a condition
- If all parties accept to condition then they will remain liable
- If any dissent to the condition then they will be discharged

Dishonour

- Dishonour by non acceptance – Not accepted by acceptor
- Dishonour by nonpayment – Drawee refuses to pay

Noting

It is the recording of the fact of dishonour on the negotiable instrument. It is a convenient mode of authenticating the fact that the bill or note has been dishonored.

Protest:

It is a formal certificate issued by Notary Public stating the fact of dishonour. When an instrument has been dishonored, the holder may cause the fact not only to be noted, but also to be certified by a Notary Public that the bill has been dishonored.

Discharge of a NI

- Payment in due course
- Release of primarily liable party
- Insolvency of primarily liable party
- Material alteration

Discharge of Party

- Cancellation or release of secondary liable party
- Payment by secondary liable party
- Allowing drawee more than 48 hours for acceptance
- Conditional acceptance
- Alteration not consented by all parties
- Negotiation back
- Secondary liable party insolvent

Hundis

Nam Jog Hundi	It is a Hundi payable to a party named in the Hundi or to his order.
Dhani Jog Hundi	It is a Hundi payable to the Dhani or the owner, i.e., the bearer
Darshani Hundi	It is a Hunch payable at sight
Muddati Hundi	It is a Hundi payable after a specified period of time; It is called Muddati in Bengali.
Shahjog Hundi	Apart from drawer and drawee, there is another party. The function of Shah is that he presents the hundi, and acts like a banker.
Jokhmi Hundi	It is a Hundi drawn in respect of goods shipped on the vessel, and is payable only when the goods reach their destination