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Building conceptions…..

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COMPANY LAW

CS EXECUTIVE

BY
CA. AMIT TALDA

ABOUT THE AUTHOR:

- ✓ **1st Attempt Chartered Accountant at the age of 21.**
- ✓ **Teaching Experience of more than 3 years.**
- ✓ **AIR 48 in CA IPC**
- ✓ **Scored 93 in Accounts subjects of CA IPC.**
- ✓ **Scored 100/100 in XII Accounts**
- ✓ **Working Experience of more than 2 years.**

VARIOUS LIMITS UNDER COMPANY LAW

<table>
<tr><td>SMALL COMPANY

S < 50 Lakhs
AND
T < 2 Crores</td><td>(i) Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; AND
(ii) Turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees</td></tr>
<tr><td>SWEAT EQUITY SHARES</td><td>A company cannot issue sweat equity shares not more than 15% of the existing paid up equity share capital in a year or shares of the issue value of 5 crores, whichever is higher and 25% of paid up share capital of the company at any time.</td></tr>
<tr><td>EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS</td><td>The shares with differential rights shall not exceed 26% of the total post issued paid up share capital including the equity shares with differential rights issued at any point of time.</td></tr>
<tr><td>ASSOCIATE COMPANY

20%</td><td>As per Section 2(6), 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.

Explanation to Section 2(6) provides that Significant Influence means control of at least 20% of the total share capital, or of business decisions under an agreement.</td></tr>
<tr><td>MAXIMUM BUY BACK

25% OF NW</td><td>The Board of Directors can buy back upto 10% of total paid up Equity Share Capital and Free Reserves of the company by passing Board Resolution.

The shareholders can buy back upto 25% of the total paid up Equity Share Capital and Free Reserves of the company by passing SR in GM.</td></tr>
<tr><td>WOMEN DIRECTOR
L
S = 100
T = 300</td><td>The following class of companies must appoint at least 1 woman director on its Board :
(i) Every listed company;
(ii) Every Unlisted public company having :-
(a) Paid-up share capital of Rs.100 or more; or
(b) Turnover of Rs.300 crore rupees or more.</td></tr>
<tr><td>SECRETARIAL AUDIT
L
S = 50
T = 250</td><td>The following companies are required to do the secretarial audit :
(a) Every listed companies; or
(b) Every public company having a paid – up share capital of Rs.50 crore or more; or
(c) Every public company having a turnover of Rs.250 crore or more.</td></tr>
<tr><td>CSR
NP = 5
NW = 500
T = 1000</td><td>A CSR Committee is required to be constituted if a Company has :
(a) Net worth of Rs.500 crores or more or
(b) Turnover of Rs.1,000 crores or more or
(c) Net profit of Rs.5 crores of more during any financial year</td></tr>
<tr><td>DIRECTORS MIN/MAX</td><td>
<table>
<tr><th></th><th>Minimum</th><th>Maximum</th></tr>
<tr><td>OPC</td><td>1</td><td>15</td></tr>
<tr><td>Private Company</td><td>2</td><td>15</td></tr>
<tr><td>Public Company</td><td>3</td><td>15</td></tr>
<tr><td>Producer Company</td><td>5</td><td>15</td></tr>
</table>

❖ IF MORE THAN 15 DIRECTORS ARE PROPOSED TO BE APPOINTED THEN, SPECIAL RESOLUTION IN GENERAL MEETING.</td></tr>
<tr><td>INDEPENDENT DIRCTORS

L</td><td>Following Companies are required to have Independent Directors:
1. Every Listed Company
2. Unlisted Public company:
(a) Paid up share capital of Rs.10 crore or more; or</td></tr>
</table>

S = 10 **L = 50** **T = 100**	(b) Turnover of Rs.100 crore or more; or (c) In aggregate, outstanding loans, debentures and deposits, exceeding Rs.50 crore. *Minimum 1/3rd Directors Should be Independent Directors*
AUDIT COMMITTEE **L** **S = 10** **L = 50** **T = 100**	1. Every listed Companies; or 2. Unlisted public companies having: (a) Paid up Share capital of Rs.10 crore or more; (b) Turnover of Rs.100 Crore or more; (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore or more.
NOMINATION AND REMUNERATION COMMITTEE **L** **S = 10** **L = 50** **T = 100**	1. Every listed Companies; or 2. Unlisted public companies having: (a) Paid up Share capital of Rs.10 crore or more; (b) Turnover of Rs.100 Crore or more; (c) Aggregate, outstanding loans or borrowings or debentures or deposits exceeding Rs.50 crore or more.
STAKEHOLDERS' RELATIONSHIP COMMITTEE **S/D/D > 1000**	A company has to constitute a "Stakeholders Relationship Committee" where such company has more than 1000 shareholders, debenture – holders, deposit – holders and any other security holders at any time during a financial year.
INTERNAL AUDIT **L** **U-PUBLIC** **D = 25** **S = 50** **L = 100** **T = 200** **U-PRIVATE** **L = 100** **T = 200**	Internal Audit applies to all companies as under : 1. Every **listed** company; 2. Every **unlisted** public company having : (a) Paid – up share capital of Rs.50 crore or more during the preceding financial year; or (b) Turnover of Rs.200 crore rupees or more during the preceding financial year; or (c) Outstanding loans from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year; or (d) Outstanding deposits of Rs.25 crore or more at any point of time during the preceding financial year; and 3. Every **private** company having : (a) Turnover of Rs.200 crore or more during the preceding financial year; or (b) Outstanding loans from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year.
SITTING FEES (ALL DIRECTORS)	The maximum sitting fees payable to the **each director** for attending the Board Meeting or any committee meeting **shall not exceed Rs.1 lakh per meeting**.
ROTATION OF AUDITORS **L** **PUBLIC "S=10"** **PRIVATE "S=20"** **ALL "L=50"**	As per rules prescribed in Companies (Audit and Auditors) Rules, 2014, for applicability of section 139(2) the class of companies shall mean the following classes of companies **excluding one person companies and small companies**:- (I) all unlisted public companies having paid up share capital of rupees ten crore or more; (II) all private limited companies having paid up share capital of rupees twenty crore or more; (III) all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.
INTER CORPORATE	HIGHER OF:

LOANS AND ADVANCES

(i) 60% of (Paid up Share Capital + Free Reserves + Securities Premium)
(ii) 100% of (Free Reserves + Securities Premium)

- If limit exceeds then, Special Resolution in General meeting.

BORROWING BY DIRECTORS

100% of (Paid Up Share Capital + Free Reserves)

- If limit exceeds then, Special Resolution in General meeting.

ANNUAL GENERAL MEETINGS TIME LIMIT

- **1st AGM**

A Company should convene its first AGM within 9 months from the end of its 1st Financial Year.

- **2ND & SUBSEQUENT AGM**

Every company must hold subsequent AGM within 6 months from the closing of the financial year; or

The gap between two annual general meetings should not exceed 15 months whichever is earlier.

- **EXTENSION OF TIME OF 2ND & SUBSEQUENT AGM**

In case, it is not possible to hold a 2nd & subsequent AGM within the prescribed time, the Registrar may grant extension of time. Such extension can be for a period *not exceeding 3 months.*

Note: **No such extension of time shall be granted by the ROC for the holding of the 1st AGM.**

QUORUM OF GENERAL MEETINGS

	Public	Private
Members < 1000	5	2
Members >=1000<5000	15	
Members > =5000	30	

ELIGIBLE COMPANY FOR ACCEPTANCE OF PUBLIC DEPOSITS

Eligible Company means a public company, having :

(a) A net worth of not less than Rs.100 crore; or
(b) A turnover of not less than Rs.500 crore

LIMIT OF DEPOSITS:

i) From Members: 10% of Aggregate of Paid up Share capital + Free Reserve
ii) From Outsiders: 25% of Aggregate of Paid up Share capital + Free Reserve

MANAGERIAL REMUNERATION

COMBINATION	LIMIT
One Manager	5% of Net Profits
More than One Manager	10% of Net Profits
Other Directors – if there is an MD	1% of Net Profits
Other Directors – if there is no MD	3% of Net Profits
Overall Limit	11% of Net Profits

MANAGERIAL REMUNERATION IF CASE NO PROFITS/ INADEQUATE PROFITS

(HIGHER OF A OR B)
TABLE – A (LOSS MAKING COMPANY)

Effective Capital	Remuneration (Annually)
Negative or less than 5 Crore	30 Lacs
More than 5 crore but less than 100 Crore	42 Lacs
More than 100 crore but less than 250 Crore	60 Lacs

<table>
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<table>
<tr><td>250 crore and above</td><td>60 Lakhs plus 0.01% of the effective capital in excess of Rs.250 Crore</td></tr>
</table>
Note: The above limits shall be doubled if a special resolution is passed by the shareholders. It is clarified that for a period less than one year, the limits shall be pro – rated.

TABLE – B (A COMPANY HAVING INADEQUATE PROFIT)
In the case of managerial person who was not a shareholder, employee or a Director of the company at any time during the 2 years prior to his appointment as managerial person: 2.5% of the current relevant profit.
</td>
</tr>
<tr>
<td>PRODUCER COMPANY</td>
<td>
<table>
<tr><td>MEMBERS</td><td>Any 10 or more individuals;
Being a producer or 2 or more producer institutions or
A combination of ten or more individuals and producer institutions,</td></tr>
<tr><td>MEETINGS of BOARD</td><td>At Least 4 Meeting in a year
At Least once in Each Quarter</td></tr>
<tr><td>QUORUM OF BOARD</td><td>1/3rd or 3 Whichever is Higher</td></tr>
<tr><td>AGM</td><td>1st AGM within 90 days of incorporation
Gap between two AGMs cannot exceed 15 Months</td></tr>
<tr><td>EXTENSION</td><td>The Register may permit the extension of time for holding of an AGM (not being the first AGM) by a period not exceeding 3 months.</td></tr>
<tr><td>QUORUM of GM</td><td>¼ of Total Members</td></tr>
</table>
</td>
</tr>
<tr>
<td>APPLICATION FOR MISMANAGEMENT</td>
<td>If the company has share capital, the application must be signed by –
(a) At least 100 members of the company or at least 1/10 of the total number of the members of a company, whichever is less:
(b) Any member or members holding not less than 1/10 of the issued share capital of the company.

2. If the company has no share capital, the application has to be signed by at least 1/5 of the total number of its members.</td>
</tr>
<tr>
<td>APPOINTMENT OF SMALL SHAREHOLDER DIRECTOR (For Listed Company Only)</td>
<td>Application by Whom:

Lower of:
i) 1000 Small Shareholders
ii) 1/10th Of total number of Small Shareholders

"Small shareholder" means a shareholder holding shares of nominal value of not more than Rs.20,000/- or such other sum as may be prescribed</td>
</tr>
<tr>
<td>ROTATION OF DIRECTORS</td>
<td>(a) Articles of a public company have the provisions relating to retirement of the all directors by rotation.

(b) If there is no provision in the AOA, then not less than 2/3 of the total number of directors of a <u>public company</u> shall be persons whose period of office is liable to retire by rotation and eligible to be reappointed at AGM.

At every Annual General Meeting of a public company 1/3 of total number of the directors for the time being as are <u>liable to retire by rotation</u> or if their number is</td>
</tr>
</table>

	neither 3 nor a multiple of 3, then the number nearest to 1/3, shall retire from office. The directors to retire by rotation at every annual general meeting shall be those who have been **longest in office** since their last appointment.
APPOINTMENT OF KMP	1. Every Listed Company 2. Unlisted Public Company having Paid up Share Capital of 10 Crores or More shall appoint whole time KMP But Unlisted Public Company having Paid Up Share Capital of 5 Crores or more shall appoint a Whole Time Company Secretary.
POLITICAL CONTRIBUTIONS	1. No Political Contribution can be made by Government Company and Company who has not completed 3 years. 2. Company other than Government Company and Company who has existence of more than 3 years can make political contributions not exceeding 7.5% of average net profits of past 3 years.
MAXIMUM AUDITS BY AUDITOR	An Individual can audit 20 Companies. (No bifurcation of Public and Private) Firm (20 Companies per Partner who is not in full time employment)
MAXIMUM DIRECTORSHIP BY A PERSON	A person can be a director of maximum 20 Companies (out of which Maximum 10 public Companies can be there)

IMPORTANT CASE STUDIES

<table>
<tr><td>The Case of Salomon Vs. Salomon & Co. Ltd

“Company is a separate person apart from its members”</td><td>The above case has clearly established the principle of separate legal entity. Salomon has, for some years, carried on a prosperous business as a leather merchant and boot manufacturer. He formed a limited company consisting of himself, his wife and a daughter, and his four sons as the shareholders, all of whom subscribed for one share of 1 pound each. Salomon was the managing director and two of his sons where other directors.

Salomon sold his business (which was perfectly solvent at that time) to the Company for the sum of 38,782 pounds. He got the following payments :-
<table><tr><td>10,000 Secured Debentures of 1 pound each</td><td>10,000 pounds</td></tr><tr><td>20,000 Fully – paid Shares of 1 pound each</td><td>20,000 pounds</td></tr><tr><td>Cash</td><td>8,782 pounds</td></tr></table>
The company soon ran into difficulties and the debenture holders appointed a receiver and the company went into liquidation. The total assets of the company amounted to 6,050 pounds, its liabilities were 10,000 pounds secured debentures and 8,000 pounds owing to unsecured trade creditors. The unsecured trade creditors claimed the whole of the company’s assets, viz. 6,050 pounds on the ground that as the company was a mere agent for Salomon and thus they were entitled to payment of their debts in priority to debentures.

The House of Lords rejected these contentions and held that a company, on registration, has its own existence or personality separate and distinct from its members and, as a result, a shareholder cannot be equated with a company, even if he holds virtually the entire share capital of the company.</td></tr>
<tr><td>New Horizons Ltd. v. Union of India

“Whether Experience of Members</td><td>Is the legendary case in regard to whether experience of a shareholder can be regarded as experience of a company.

In general, the experience of a shareholder cannot be regarded as experience of a</td></tr>
</table>

can be regarded as Experience of Company"	company. However, in the case, of joint venture companies the experience of the company can only mean the experience of the constituent of the joint venture. This is so because a joint venture company is in the nature of a partnership between the two or more constituent companies and each constituent company undertakes to contribute towards the resources of joint venture company in the form of machines, equipment, expertise, etc.
Gilford Motor Co. v. Horne	In **Gilford Motor Co. v. Horne**, a former employee of a company agreed not to solicit its customers. He formed a company to carry on his business and it undertook the solicitation. An injunction was granted against him and the company to restrain them.
Jones v. Lipman *"Lifting of Corporate Veil"*	Lipman agreed to sell certain land to Jones. Pending completion of formalities of the said deal, Lipman sold and transferred the land to a company, which he had incorporated with a nominal capital of 100 pounds 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 Jones. The Court asked the company to transfer its land to Jones.
Boreland's Trustee v. Steel Brother and Co. Ltd *"Members bound to the Company by Articles"*	The articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons at a price fixed by the directors. Boreland, a shareholder, was adjudicated bankrupt. His trustee in bankruptcy claimed that he was not bound by the 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 Boreland in terms of the articles of the company.
Wood v. Odessa Waterworks Co *"Company bound to Members by Articles"*	The articles provided that the directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members. Instead of paying the dividend in cash to the shareholders a resolution was passed to give them debentures/bonds. The directors were restrained from acting on the resolution.
Rayfield v. Hands *"Members bound to Members by Articles"*	The plaintiff was a shareholder of a company. The articles required him to inform the directors of his intention to transfer his shares and the directors (who were also members) were to take those shares at a fair price. The plaintiff notified the directors, who contended that they were not bound to take the shares and pay for them. It was held that the articles were binding upon the plaintiff as a member and the directors as members, so that the member-directors were bound to purchase plaintiff's shares and pay for them.
Eley v. Positive Life Insurance Co *"Company not bound to Outsiders"*	The articles provided that Eley should act as a solicitor for life to the company and should not be removed from office except for misconduct. Eley acted as a solicitor to the company and also became a member of the company. The company, however, discontinued his services, whereupon he sued the company for damages for breach of contract. It was held that he had no cause of action because the articles did not constitute any contract between the company and himself as solicitor. His action was dismissed.
Ashbury Railway Carriage and Iron Co. Ltd. v. Riche *"Doctrine of Ultra Vires"*	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. 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 repudiation 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 making generally of such contracts as are connected with the business of mechanical engineers. Further, the Court held that the company cannot make an "ultra vires" act to be valid, even if every shareholder of the company assents to it.
KotlaVenkataSwamy v. Ramamurthy *"Doctrine of Constructive Notice"*	The articles required that all deeds etc. should be signed by the managing director and the secretary but the plaintiff accepted the deed not signed by the managing director. It was held that the plaintiff could not claim under this deed and thus every person dealing with the company is deemed to have notice of the contents of its memorandum and articles and also to have understood them according to their proper meaning.
Royal British Bank v. Turquand *"Doctrine of Indoor Management"*	The directors of a banking company were authorized 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 authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. The shareholders claimed that there had been no such resolution authorizing the loan and therefore it was taken without their authority. Once it was found that the directors could borrow subject to a resolution, Turquand had the right to conclude that the necessary resolution must have been passed. It was held that Turquand could sue the company on the bond as he was entitled to assume that the necessary resolution has been passed.
In re. R. V. Kylsant *"Golden Rule or Golden Legacy"*	**Facts**: All statements in the prospectus were literally true but it failed to disclose that the dividends stated in it as paid, were not paid out of trading profits, but out of realized capital profits (secret reserves). 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 (1921 – 27) and no disclosure was made of this fact. **Judgement**: The prospectus was held to be false in material particulars and the managing director and chairman, who knew that it was false, were held guilty of fraud.
Peek v. Gurney *"Misstatement in Prospectus"*	**Facts:** A deceitful prospectus was issued by the directors on behalf of the company, P received a copy of it but did not take any shares originally in the company. The allotment of shares to applicants was completed, and several months afterwards he bought 2,000 shares on the stock exchange. His action against the directors for deceit was rejected. **Judgement:** It was observed by the Court that the offer of a prospectus is to invite persons to become allottees, and, allotment having been completed, such offer is exhausted and liability to allottees does not follow the shares into the hands of subsequent transferees.
Sri GopalJalan& Co. v. Calcutta Stock Exchange Association Ltd *"No Return of Allotment for Reissue of Forfeited Shares"*	**Facts:** In this case, Calcutta Stock Exh. (Company) was not file return of allotment after re-issue of forfeited shares with the Registrar of Companies. **Judgment:** In this case, the Supreme Court held that the Calcutta Stock Exchange was not liable to file any return of the forfeited shares under Section 75(1) of the Companies Act, 1956 [Corresponds to section 39 of the Companies Act, 2013] when the same were re-issued. The Court observed that when a share is forfeited and re-issued, there is no allotment, in the sense of appropriation of shares out of the authorised and unappropriated capital.

ShriNirmal Kumar v. Jaipur Metal and Electrical Limited *"Refusal to register Shares in the name of an Employee"*	**Facts :** A company was refused to register the transfer of shares in favour of its employee on the following grounds : (a) The employee would create nuisance in general meetings, and (b) Would seek access to the records of the company. **Judgement:** In this case, the court held that refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason.
Dr. FredieArdesir Mehta v. Union of India *"Deferred Credit terms does not amount to oan"*	In this case, the Bombay High Court held that where company sells flat to one of its directors on receipt of 50% cash and 50% agrees to receive by instalments does not amount to loan. It is like a sale credit and shall not be treated loan to directors, therefore section 185 does not attract.

Important Penalties for CS Executive/IPC

CONTRAVENTION	PENALTY PRESCRIBED
MISSTATEMENT IN PROSPECTUS	<u>Against Company:</u> Fine of Not Less than Amount Involved but not more than 3 times of Amount Involved <u>Against Officer/Directors:</u> Fine of Not Less than Amount Involved but not more than 3 times of Amount Involved Imprisonment of Not less than 6 months but not more than 10 years. If public interest is involved than not less than 3 years.
CONTRAVENTION WITH PRIVATE PLACEMENT REGULATIONS	Not Less than Amount involved or 2 Crores; Whichever is Higher
DEFAULT IN PROVISIONS OF DEPOSITS	<u>Company</u>: Fine of Not less than 1 Crore but maximum Rs. 10 Crores <u>Officer</u>: Fine of not less than Rs. 25 Lakhs but maximum Rs. 2 Crores Imprisonment of upto 7 years.
CONTRAVENTION WITH THE REGULATIONS OF ALTERATION OF SHARE CAPITAL	Fine which may extend to Rs.1,000/- for each day during which such default continues, or Rs.5 Lacs, whichever is less.
NON SUBMISSION OF COPY OF PROSPECTUS WITH ROC	<u>Against Company:</u> Fine which shall not be less than Rs.50,000/- but which may extend to Rs.3 lacs <u>Against Officer/Director:</u> Every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine not less than Rs.50,000/- but which may extend to Rs.3 lacs, or with both.
CONTRAVENTION WITH ISSUE OF ABRIDGED PROSPECTUS	Rs. 50,000 for each default

ILLEGAL ASSOCIATION CARRYING ON BUSINESS	Upto Rs. 1,00,000
DEFAULT IN REGISTRATION OF CHARGE	Company: Rs. 1 Lakh to Rs. 10 Lakhs Officers: Rs. 25,000 to Rs. 1 Lakh& Imprisonment not exceeding 6 months
RETURN OF ALLOTMENT	Company & Officers: Rs. 1,000 each day or Maximum Rs. 1,00,000. No Criminal Liability
DEFAULT IN HOLDING AGM	Company: Fine upto Rs. 1,00,000 & in case of Continuing default Rs. 5,000 per day.
CONTRAVENTION WITH RULES OF MINUTES	Company: Fine upto Rs. 25,000 Officer: Fine upto Rs. 5,000.
TAMPERING WITH MINUTES	Officers: Fine not less than Rs. 25,000 but maximum Rs. 1,00,000. Imprisonment of upto 2 Years.
DEFAULT IN FILING REPORT ON AGM (ONLY FOR LISTED COMPANY)	Company: Fine not less than Rs. 1 lakh and Maximum Rs. 5 Lakhs Officers: Fine not less than Rs. 25,000 but upto Rs. 1 Lakh No Criminal Liability
NON MAINTENANCE OF REGISTER OF RELATED PARTY	Every Director shall be liable for a penalty of Rs. 25,000/-
CONTRAVENTION WITH CONTRIBUTIONS (CHARITABLE/POLITICAL)	Company:5 Times of amount so contributed Officer: Imprisonment which may extend to 6 months or Penalty of 5 Times or Both
CONTRAVENTION WITH VACATION OF OFFICE	Director: Imprisonment which may extend to 1 Year or Penalty not less than Rs. 1,00,000 but Not more than Rs. 5,00,000 or both.
CONTRAVENTION WITH NUMBER OF DIRECTORSHIPS	Not Less than Rs. 5,000 but not more than Rs. 25,000 for every day after the first day of contravention.
CONTRAVENTION WITH CSR ACTIVITIES	For Company: Not Less than Rs. 50,000 which may extend to Rs. 25 Lakhs. For Every Officer: Not Less than Rs. 50,000 which may extend to Rs. 5 Lakh or Imprisonment upto 3 Years or Both.
CONTRAVENTION WITH BOARD REPORT PREPARATION	For Company: not less than Rs.50,000/- which may extend upto Rs.5,00,000/-, For every officer in default: Imprisonment upto 3 years, or fine from Rs.50,000/- to Rs.5,00,000/- or Both
DEFAULT IN TRANSFER TO INVESTOR EDUCATION AND PROTECTION FUND	For Company : Fine – Minimum Rs.5 lakh & Maximum Rs.25 lakh, For Officer: Fine – Minimum Rs.1 lakh & Maximum Rs.5 lakh
CONTRAVENTION IN SECRETARIAL AUDIT	Not Less Than Rs. 1,00,000 but which may extend to Rs. 5,00,000.
CONTRAVENTION WITH PROVISION OF LOANS AND INVESTMENT BY	Company: Fine not less than Rs. 25,000 but which may extend to 5,00,000. Officer: Imprisonment which may extend to 2 Years or Fine not less than Rs. 25,000 but which may extend to 5,00,000.

COMPANY	
LOAN TO DIRECTORS CONTRAVENTION	Company: Fine Not less than 5 Lakhs but which may extend to Rs. 25 lakhs. Director: Imprisonment which may extend to 6 Months or Fine Not less than 5 Lakhs but which may extend to Rs. 25 lakhs or both
DEFAULT IN MAINTENANCE OF BOOKS OF ACCOUNTS	Company & Officer: Imprisonment of upto 1 Year or Fine not less than 50,000 which may extend to Rs. 5,00,000 or both.
FAILURE TO DISTRIBUTE DIVIDEND AFTER DECLARATION	Director: Imprisonment of Upto 2 Years or Fine not less than Rs. 1,000 per day of default AND Company: Simple Interest @ 18% p.a till the default continues.
ISSUE OF SHARES AT DISCOUNT	Company: Fine not less than Rs. 1 lakh but which may extend to Rs. 5 Lakh Officer: Imprisonment of upto 6 months or Fine not less than Rs. 1 lakh but which may extend t o Rs. 5 Lakh or both.

ALL DISTINGUISH BETWEEN

PRE-INCORPORATION CONTRACTS	PROVISIONAL CONTRACTS
A contract entered into by the promoters on behalf of a proposed company i.e. before incorporation of a company	Any contract made by a company before the date at which it is entitled to commence business
A Pre-Incorporation contract is governed by Specific Relief Act, 1963.	A Provisional Contract is governed by Companies Act, 2013.
The term Pre-Incorporation Contract is relevant for public as well as private company	The term Provisional Contract is not relevant for Private Company
The term Pre-Incorporation Contract is relevant for every company, even though it has no share capital	The term Provisional Contract is not relevant for a company not having share capital.
A Pre-Incorporation contract is not binding unless the company adopts the contract.	A provisional contract becomes binding on the company when it obtains the certificate of commencement.

MOA	AOA
Fundamental Document (charter)	Subordinate Document (internal)
Memorandum prevails over Articles	Articles cannot override Memorandum
Memorandum cannot be amended retrospectively	Articles can be amended retrospectively
Every company must have its own memorandum	A public company limited by shares may adopt Table A and in such a case it need not have its own articles.
Memorandum has 6 clauses	The Act has not prescribed any contents of articles.
Alteration is difficult and length procedures with lots of approvals	Alteration is relatively easy and do not require much approvals.
Any act done beyond Memorandum is Ultra Vires i.e Void	Any act done beyond Articles can be ratified retrospectively by amending articles.

DEBENTURE	SHARES
Debenture holders are the creditors of the company	Shareholders are the owners of the company
Debenture holders have no voting right	Shareholders have voting rights and hence control the total affairs of the company
Debenture interest is paid at a predetermined fixed rate. It is payable whether there is any profit or not.	Dividend on shares is payable at a variable rate which is mainly affected by the profitability of the company.

Interest on debentures is a charge on the profits of the company and hence deductible as an expense under income tax	Dividends is the appropriation of the profits of the company hence are not deductible as an expense under income tax
In balance sheet, debentures are shown under secured loans	In balance sheet, shares are shown under share capital
Debenture can be converted into shares as per the terms of issue.	Shares cannot be converted into debentures under any circumstances
Debentures cannot be forfeited for non payment of calls money	Shares can be forfeited for non payment of allotment and call money
At the time of liquidation, debenture holders are paid off before the shareholders	At the time of liquidation, shareholders are paid at the last after debenture holders, creditors, etc
Debenture can be issued at a discount, no such restriction in companies act, 2013	Shares cannot be issued at a discount as per companies act, 2013
Maximum Underwriting commission on Debentures can be 2.5% of Issue price as per companies Act, 2013 or As authorised by Articles whichever is less.	Maximum Underwriting commission on Shares can be 5% of Issue price as per Companies Act, 2013 or As authorised by Articles whichever is less.

TRANSFER OF SHARES	TRANSMISSION OF SHARES
• Transfer takes place by a voluntary act of the transferor.	• Transmission is the result of the operation of law i. e. death or insolvency.
• Transfer deed is required.	• No instrument of transfer is required.
• Transfer is a normal course of transferring property.	• Transmission takes place on death or insolvency of a shareholder.
• Generally made for some consideration.	• No consideration payable.
• Stamp duty is payable by a member.	• No stamp duty is payable.

BASIS	LLP	PARTNERSHIP
Distinctive	LLP is a separate legal entity and therefore, can be sued or it can sue others	A partnership firm is not distinct from the several persons who compose it.
Liability	Partners have Limited Liability	Partner of a firm would have unlimited liability.
Dissolution	The retirement or death of a partner would not dissolve the LLP	The death or retirement of a partner would dissolve the partnership firm.
Firm's Property	Property belongs to the LLP and not to the individuals comprising it	The property of the firm is the property of the individuals comprising it.
Legality	LLP is formed by an incorporation document and an LLP agreement, thus, giving it a legality	A partnership can be formed either orally or by a deed of agreement whether registered or not.
Max No. of Partners	No upper limit has been laid down by the Act	A registered or unregistered partnership cannot have more than 50 partners.
Perpetual Succession	The death or insolvency of a shareholder or all of them does not effect the life of the LLP	The death or insolvency of a partner dissolves the firm, unless otherwise provided.
Capacity	A partner of LLP in his separate capacity as a legal person can do business with the LLP since the LLP is a separate legal entity by itself	An individual partner would not be able to conduct business transaction with the partnership firm of which he is a partner.

BASIS	LLP	COMPANY
Incorporation Process	Incorporation Process is reduced into a simple procedure of filling of the prescribed information in the Incorporation document and statement in Form No. 2.	As compared to LLP, Incorporation process is complex.
Agreement	In case of LLP, a limited liability partnership agreement (LLPA) is prepared.	In case of a Company, articles of association of a company are prepared.
Memorandum	The memorandum of a LLP is not required to name the state in which it is required to be incorporated.	The memorandum of a company is required to name the state in which it is required to be incorporated.
Change in Registered office	The detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.	The detail procedure is required to be followed in case of a company.
Meeting	There is no such stipulation for meeting of partners.	Meeting of partners either periodically or compulsory as stipulated for directors and shareholders' meetings in the Companies Act.
Management & Ownership	There is no separation between management of the company and the ownership since all the partners, unlike all the directors, can take part in the day to day affairs of the LLP.	There is a separation between management of the company and the ownership.
Authority	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a company no individual director can conduct the business of the company.
Remuneration	There are no provisions in the LLP Act for remuneration payable to designated partners.	The Companies Act contemplates regulating the remuneration payable to directors.
Borrowing Powers	Unlike in the case of companies, there are no restrictions on the borrowing powers.	There are restrictions on borrowing powers in case of a company.
Maintenance of accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Whereas under the Companies Act, accrual method is compulsory.

BASIS	WINDING – UP	DISSOLUTION
Basic distinction	Winding up is the 1st stage in the process whereby assets are realized, liabilities are paid off and the surplus, if any, distributed among its members.	Dissolution is the final stage whereby the existence of the company is withdrawn by the law.
Appointment of liquidator	The liquidator appointed by the company or the Court carries out the winding up proceedings.	The order for dissolution can be passed by the Court only.
Representation by the liquidator	The liquidator can represent the company in the process of winding up. This can be done till the order of dissolution is passed by the Court.	Once the Court passes dissolution orders the liquidator can no longer represent the company.
Debts to be proven by the creditors	Creditors can prove their debts in the winding up of a Company.	Creditors cannot prove their claim on the dissolution of the company.

BASIS	MEMBER'S WINDING – UP	CREDITOR'S WINDING – UP
Basic distinction	A member's voluntary winding up results where, before convening the general meeting of the company at which the resolution of winding up is to be passed, the majority of the directors	A creditor's voluntary winding up is one where no such declaration is filed.

	file with the Registrar a statutory declaration of solvency.	
Participation in liquidation	In a member's voluntary winding up, the creditors do not participate directly in the control of the liquidation, as the company is deemed to be solvent.	In a creditors' voluntary winding up, the company is deemed to be insolvent and, therefore, the control of liquidation remains in the hands of the creditors.
Appointment of Liquidator	There is no meeting of creditors in a members' voluntary winding up and the liquidator is appointed by the company.	In a creditors' voluntary winding up, meetings of creditors have to be called at the beginning and subsequently the liquidator is appointed by the creditors.
Power of liquidator	In a members' voluntary winding – up the liquidator can exercise some of his powers with the sanction of a special resolution of the company;	In a creditors' voluntary winding up, creditors can do so with the sanction of the Court.

BASIS	PRIVATE COMPANY	PUBLIC COMPANY
Minimum number of members	The minimum number of person required to form a public company is seven	Minimum number of person required in a private company is only two.
Maximum number of members	There is no limit on the maximum number of member of a public company	Private company cannot have more than fifty members excluding past and present employees.
Commencement of Business	A public company shall not commence its business immediately unless it has been granted the certificate of commencement of business.	A private company can commence its business as soon as it is incorporated.
Invitation to public	A public company by issuing a prospectus may invite public to subscribe to its shares	A private company cannot extend such invitation to the public.
Transferability of shares	There is no restriction on the transfer of share	A private company by its articles must restrict the right of members to transfer the share.
Number of Directors	A public company must have at least three directors	A private company may have two directors.
Statutory Meeting	A public company must hold a statutory meeting and file with the register a statutory report.	In a private company there are no such obligations.
Managerial Remuneration	Total managerial remuneration in the case of public company cannot exceed 11% of net profits, but in the case of inadequacy of profit a minimum of Rs. 50, 000 can be paid.	These restrictions do not apply to a private company.
Name	A public company has to use only the word 'Limited' at the end of its name.	A private company has to use words 'private limited' at the end of its name

BASIS	PRIVATE COMPANY	OPC
Board of directors	Minimum number of Directors required in a private company is two.	There is no concept of directors in OPC, as the entity managed by single person.
Number of persons required for Incorporation	To incorporate a private company minimum 2 persons are required.	To incorporate a OPC minimum 2 persons are required, the director of OPC & nominee director.
Shareholding	In a private company minimum number of members is two, so entire shareholding	The 10% of share capital of OPC is held by single person.

	cannot held by single person.	
NRI or Foreign nationals	Private company can be started & managed by NRI's foreign nationals.	Only Indian citizen or Indian national are allowed to start OPC.
Conversion limitation	No such limitation or compulsion of conversion.	OPC must be mandatorily converted into private Company: • If annual Sales turnover exceeds Rs 2 Crore; or • Paid up capital exceeds Rs 50 Lakhs.

BASIS	PRIVATE COMPANY	PRODUCER COMPANY
Number of persons required for Incorporation	The private company can be formed by two members.	Producer company can be formed by minimum 10 members.
Name	A private company has to use words 'private limited' at the end of its name	A producer company has to use words "Producer Company Limited" at the end of its name.
Minimum number of directors	Minimum number of Directors required in a private company is only two.	Minimum number of Directors required in a producer company is only Five.
Tenure of directors	The tenure of directors is not fixed by law	The tenure of directors is minimum period of 1 year & maximum 5 years.
1st AGM	The first AGM is required to be held within 18 months from the date of incorporation.	The first AGM is required to be held within 90 days from the date of incorporation.
Notice of the meeting	Notice of the meeting should be given not less than 21 days from the date of meeting.	Notice of the meeting should be given not less than 14 days from the date of meeting.
Share Capital	The share capital of private company may be consists of equity, preference or any "other class".	The share capital of producer company consists of equity shares only.

BOARD MEETING	GENERAL MEETING
Notice Must be sent at least 7 days before the date of meeting	Notice Must be sent at least 21 days before the date of meeting
Quorum is 1/3rd Directors or 2 whichever is higher	It depends on the number of members of the company. Public Company : 5 and Private Company: 2.
Board Meeting is for Directors	General Meeting is for members of company
Minimum 4 Board Meetings in a years should be held	AGM: 1 EGM: no such Limit on number of meetings
1st Board meeting should be held within 30 days of incorporation	1st AGM shall be held within 9 months of incorporation
Gap between two board meeting should not be more than 120 days	Gap between two board meeting should not be more than 15 months
Board meetings can be attended by director through video conferencing	Members cannot attend general meetings through video conferencing

EXECUTIVE DIRECTOR	INDEPENDENT DIRECTOR
This is an employee of company	This is not an employee of company
ESOPs can be granted to such director	ESOPs cannot be granted to such director

They are liable to retire by rotation	They are not liable to retire by rotation
They are appointed for one year and can be reappointed	They can be appointed for 5 years at a time and can serve 2 consecutive terms.
They cannot become chairman of various committees of board	Chairman of committees of board has to be independent director
They can have monetary relationship with the company	They cannot have any monetary relationship with the company
No Need to hold a separate meeting of executive directors only	At least one meeting must be held of Independent directors only
No minimum number of executive directors required to be appointed	Listed: 1/3rd of total director must be independent directors Unlisted: at least 2 directors should be independent directors
Every Company is required to appoint executive directors	Only companies fulfilling certain parameters are required to appoint independent directors

BASIS	COMPANY	PARTNERSHIP
Registration	A company cannot come into existence unless it is registered.	In a partnership firm registration is not compulsory.
Minimum no of members	The minimum number in a public company is seven and in case of a private companies two.	Partnership the minimum number of partners is two.
Maximum no of members	The maximum limit of members in case of a private company is fifty but in case of public company there is no maximum limit.	The maximum limit of partners under partnership is 20, while in case of banking business it is ten.
Liability	In case of joint stock company the liability of shareholders is limited (except in case of unlimited companies) to the extent of face value of shares or to the extent of guarantee.	In case of partnership the liability of partners is unlimited.
Management	The affairs of a company are managed by its directors. Its members have no right to take part in the day to day management	Every partner of a firm has a right to participate in the management of the business unless the partnership deed provides otherwise.
Legal Status	A company has a separate legal status distinct from its shareholders.	A partnership firm has no legal existence distinct from its partners.
Insolvency/ Death	Insolvency or death of a shareholder does not affect the existence of a company.	A partnership ceases to exist if any partner retires, dies or is declared insolvent.

BASIS	HUF	COMPANY
Registration	Not compulsory under any law	Compulsory under Company Laws
Membership	By virtue of birth	By virtue of contract
Authority to create debt	Retains with Karta only	Company itself has authority to create debt through its Directors subject to the provisions if MOA & AOA.

Management	Management lies in the hands of Karta	Management lies in the hands of Board of Directors
Liability	Karta's Liability is unlimited	Members liability is limited to the extent of unpaid amount on shares
Governing Law	HUF is governed by Hindu Law	Company is governed by Companies Act, 2013

BASIS	EQUITY SHARES	PREFERENCE SHARES
Meaning	Equity shares are the ordinary shares of the company representing the part ownership of the shareholder in the company.	Preference shares are the shares that carry preferential rights on the matters of payment of dividend and repayment of capital.
Payment of dividend	The dividend is paid after the payment of all liabilities.	Priority in payment of dividend over equity shareholders.
Repayment of capital	In the event of winding up of the company, equity shares are repaid at the end.	In the event of winding up of the company, preference shares are repaid before equity shares.
Rate of dividend	Fluctuating. Depends upon distributable profits	Fixed Rate of dividend
Redemption	Equity Shares are always irredeemable. They are payable only at the time of liquidation	Preference shares are always redeemable. Maximum tenor cannot exceed 20 years.
Voting rights	Equity shares carry voting rights.	Normally, preference shares do not carry voting rights. However, in special circumstances, they get voting rights.
Convertibility	Equity shares can never be converted.	Preference shares can be converted into equity shares.
Accumulation of dividend	Dividend cannot be accumulated in any case	Dividend gets accumulated if not paid.

AGM	EGM
First AGM should be held within 9 months of incorporation	No such stipulation
AGM has to be held at least once in a year	No such stipulation
Ordinary business can be conduction in AGM only	Ordinary business cannot be conducted in EGM. Only special business can be conducted in EGM
Can be held on any day except National Holiday	Can be held on any day including National Holiday
Can be held during business hours only	Can be held at any time during the day
If AGM is not held, company and officer be liable to penalty of upto Rs. 1,00,000 and Rs. 5,000 per day	No such penalty prescribed under the law
AGM cannot be held on requisition by members	EGM can be held on requisition by members

ESOP	SWEAT EQUITY SHARES
ESOPs are given in the nature of Incentive and retention plan these can be issued to employees and officers. ESOPs cannot be issued to Promoter or person belonging to the promoter group.	Sweat Equity Shares are issued as consideration for creation or transfer of IPRs to the company or as other value addition these can be issued to employees, Officers and Directors of the Company.

These options can be issued with conversion right at a pre-determined price. The issue price can be less than the intrinsic value of the shares.	These shares can be issued at discounted price or free for know-how and services to the company.
The consideration has to be paid in cash.	The consideration can be partly cash and partly IPRs/value addition or fully non-cash consideration.
These are generally issued based on a scheme to be formulated by the company stipulating the eligibility criteria such as number of years of services, employee grade etc.	These are mainly intended to be issued to build up equity for directors or promoters with technical capability but with meager financial resources.
Lock-In period is not specified for the ESOP.	These Shares have compulsory Lock-In Period of 3 years.
No Pricing guidelines are defined.	Pricing Guidelines are defined for Sweat Equity Shares.
There is no separate register required to be maintained.	A separate register of Sweat Equity Share issued has to be maintained.
Sweat Equity shares cannot be issued by Unlisted Public Company more than 15% without the approval of Central Government.	There is no such restriction on ESOP.

INTERIM DIVIDEND	FINAL DIVIDEND
This dividend is paid before the finalisation of accounts of the year	This dividend is paid after the finalisation of account of the year
This dividend is declared by Board of Directors	This dividend is recommended by BOD but approved by Shareholders in General meeting
Can be revoked with the consent of all the shareholders	Cannot be revoked in any circumstances
Not defined under companies act	Defined under companies act
Rate of interim dividend is always less than the rate of final dividend	Rate of final dividend is always higher than interim dividend

CS FOUNDATION DECEMBER 2016

SUBJECT	FACULTY	DURATION	FEES
ACCOUNTS & AUDITING	CA AMIT TALDA	4 MONTHS	6,000/-
ECONOMICS & STATS	ARUN RAI & VAISHALI BHATTAD	4 MONTHS	5,000/-
BUSINESS MANAGEMENT & ETHICS & COMMUNICATION	ARUN RAI	4 MONTHS	5,000/-
BUSINESS ENVIRONMENT & ENTREPREUNERSHIP	CA AMIT TALDA & ARUN RAI	4 MONTHS	4,000/-
ALL SUBJECTS			18,000/-

BATCHES STARTING FROM 6TH JUNE 2016

TALDA LEARNING CENTRE

http://taldalearningcentre.webs.com/ Building Conceptions

TLC PASSOUTS


Rahul Mehta


Payal Agrawal


Sagar Charliya


Shrihari Waychal


Anu Choubey


Akshay Gundiyal


Riya Gailwar


Vaibhav Kalkar


Bhavika bajaj


Rahul Thakur

EXECUTIVE BATCH DETAILS

2ND GROUP: 6TH JUNE 2016

1ST GROUP: 15TH JULY 2016

IMPORTANT SHORT NOTES

1. Key Managerial Personnel
2. Bonus Issue
3. Equity Shares with differential Voting Rights
4. Sweat Equity Shares
5. Buy Back of Shares
6. Disqualification of Auditors
7. Disqualification of Directors
8. Loss of Office for Profit
9. Red Herring Prospectus
10. Shelf Prospectus
11. Deemed Prospectus
12. Lifting of Corporate Veil
13. Entrenchment Provisions in AOA
14. Doctrine of Constructive Notice
15. Doctrine of Indoor Management
16. Doctrine of Ultra Vires
17. Golden Rule or Legacy
18. ESOPs
19. Abridged Prospectus
20. Depository System
21. Directors Responsibility Statement
22. Rotation of Auditors
23. Duties of Auditors
24. Fraud Reporting by Auditors u/s 143(12)
25. Secretarial Audit
26. Cost Audit
27. DIN
28. Independent Directors
29. Audit Committee
30. CSR
31. LLP
32. XBRL