Nature of Company

As per Section 2(20) "Company" means a company incorporated under this Act or under any previous company law.

Characteristics of a company

Corporate Personality	✓ Once a Company Is incorporated it is distinct from the persons incorporated it. ✓ Members are different from the company ✓ Salomon Vs Salomon Co Ltd ✓ Lee Vs Lee air farming ltd
Limited Liability	✓ The liability of the members is limited to Nominal Value of shares held /guarantee given by them **Please NOTE** it is the liability of the members which is limited but Not the Company
Perpetual Succession	✓ Members may come and members may go but the company goes on forever ✓ Exists even if all the members die
Common Seal(optional Now)	✓ Signature of the company ✓ Authorises the documents
Capacity to sue and be sued	✓ A Company Once incorporated can be sued by outsiders and it can sue outsiders to protect its rights ✓ Outsiders cannot sue members in their individual Capacities
Separate property	✓ Can have own property
Transferability of Shares(Section 44)	✓ Freely transferable ✓ Restrictions in private company
Artificial Person	✓ Recognized in the eyes of law ✓ Run by natural persons As Soon As A Company is incorporated a NEW artificial person was born in the eyes of law
Citizen or Not?. In simple a Company is NOT a Citizen	✓ The company, though a legal person, is **not** a citizen under the Citizenship Act, 1955 or the Constitution of India
Company has Nationality and Residence	✓ Though it is not a citizen but it has Nationality and residence

Lifting 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 determine the enemy character of the company	▪ Diamler company ltd Vs Continental tyre and rubber company ltd
To prevent violation of welfare laws	▪ Workman employed in associated rubber industries ltd bhavnagar Vs The associated rubber industries Ltd.
To determine the technical competence of the company	▪ New Horizons India Ltd ▪ Progressive aluminium Ltd Vs ROC

How to form(incorporate) a Company?

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

(a) Private Companies;

(b) Public Companies; and

(c) One Person Company (to be formed as Private Limited)

As Per Section 3 of the Act a company can be formed for any lawful purpose by—

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

Or

- ✓ One person, where the company to be formed is to be One Person Company that is to say, a private company

By subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration

Procedure for Incorporation of a company

Step1: Apply for DSC of Directors

Step2: Apply for DIN for minimum of 2 directors [refer Section 152(3)][can be applied in **SPICE]**

Step3: Register a DSC to the DIN on MCAs Website

Step4: eformINC-1 for companies name approval

SIX names can be chosen in the ORDER of preference.

Step5: Incorporation eformINC-7 [in case of OPC eformINC-32**(SPICE)]**

Spice can be used to incorporate Private companies and public companies IF THE SUBSCRIBERS are 7 or less(if subscribers are more 7+ Only INC7)

Attachments:

a.MOA
b.AOA
Schedule I can be adopted (**should be signed by all subscribers**) in the presence of at least one witness.(witness will also sign)

c. FormINC-8 for Declaration by practicing professional CA/CS/CMA/advocate

d. Form INC-9 Affidavit Declaration by the subscriber and 1st directors

e. PAN of all promoters and directors+ Form No. **DIR-12**

f. Residence proof of all promoters and directors

g. In case of OPC Nominee consent form INC 3

Step6: Form INC22 for Notice of situation of registered office

Step7: Appointment of directors of the company

.step8: Apply for TAN/PAN

- The company shall maintain and preserve at its registered office copies of all incorporation documents and information as originally filed till its dissolution.
- Where the subscriber to the memorandum is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate **duly authorized** in this behalf by a resolution of the board of directors of the body corporate and where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership:

However in either case, the person so authorized **shall not, at the same time**, be a subscriber to the memorandum and articles of Association

- **The Certificate of Incorporation shall be issued by the Registrar in Form No. INC-11**.

Classification of companies

PUBLIC COMPANY sec 2(71)

- 7 or more persons can form a public company
- a private company which is **subsidiary** of public company shall be treated as public company even if such private company has obtained the status of a private company in its articles

PRIVATE COMPANY sec 2(68)

- 2 or more persons can form a private company subject to a limit of maximum 200 members except in the case of one person company
- Right to transfer its shares is restricted
  Cannot go for public issue of securities

OPC sec 2(62)

- Only one person as member
  Should convert either as public/private company if paid up share capital is increased beyond 50,00,000/- rupees **or** its average annual turnover during the relevant period exceeds 2 crore rupees

Section 2(85) Small Company'

Small company means a company, **other than a public company**,—

(i) Having a paid-up share capital of which does not exceed 50 lakh rupees **and**

(ii) Turnover of which as per its last profit and loss account does not exceed2 crore rupees

Following companies cannot be a small company even if it is having Turn over & paidup capital below the above specified limits

- A holding company or a subsidiary company
- A company registered under section 8; or
- A company or body corporate governed by any special Act

On the basis of control

Section 2(46) Holding company

Holding company in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Section 2(87) Subsidiary Company

"Subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

- Controls the composition of the Board of Directors; or
- Exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies

Section 2(6) Associate Company

Associate company", in relation to another company, means a company in which that other company has **at least 20%**. of total share capital and **includes a joint venture company.**

On the basis of liability

Section 2(21) Company limited by guarantee

"company limited by guarantee" means a company having the **liability of its members limited by the memorandum** to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;

Section 2(22) Company limited by shares

Company limited by shares means a company having the liability of its members limited by the memorandum to the **amount, if any, unpaid on the shares** respectively held by them.

Section 2(92) Unlimited company

"Unlimited company" means a company **not having any limit** on the liability of its members

Other Companies

Section 2(42) Foreign company

Foreign company means any company or body corporate incorporated outside India which—Has a place of business in India whether by itself or through an agent, physically or through electronic mode; and conducts any business activity in India in any other manner.

Section 2 (45) Government company

Government company: " means any company in which not less than 51% of the paid-up share capital is held by-

- Central Government, or
- Any State Government or Governments, or
- Partly by the Central Government and partly by one or more State Governments, And the section **includes** a company which is a subsidiary company of such a Govt company

Non Profit Company Section 8

- Has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object
- Intends to apply its profits, if any, or other income in promoting its objects; and
- Intends to prohibit the payment of any dividend to its members,
- The Central Government will issue licence in **Form No. INC-16**

Dormant company.(Section 455)

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the ROC in Form No. MSC-1 for obtaining the status of a dormant company.

Nidhi Company [Section 406]

A company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Illegal association 464

No association or partnership consisting of more than 50 persons shall be formed for the purpose of carrying on **any business** that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force:

Exceptions:

- ✓ Company
- ✓ Registered under any other Act
- ✓ Service motive (non profit)
- ✓ Single HUF
- ✓ Partnership formed by professionals.

Memorandum and articles of association

2(56) Memorandum

Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

Contents of MOA

Name clause Section 4(1)(a) NOT APPLICABLE FOR SEC 8 COMPANY and Government company	✓ Word Limited / Private Limited / OPC have to be added ✓ Name must not be identical, undesirable, projecting connection to the Government, against Names & Emblems Act & RULE 8 ✓ 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 Section 4(1)(b)	State of the RO Example:-In the State Of Andhra Pradesh (NO need of complete address Just state name enough)
Objects Clause Section 4(1)(c)	✓ Not illegal ✓ Main objects, Incidental objects & Other objects
Liability Clause Section 4(1)(d)	✓ Liability of the members whether limited or unlimited
Capital Clause Section 4(1)(e)	✓ Authorised share capital ✓ Total number of shares ✓ Nominal value of shares ✓ The number of shares each subscriber to the memorandum intends to take, indicated opposite his name
Subscription Clause **It cannot be altered at any time**	✓ 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

A company can adopt **Model** memorandum and articles given in schedule I of the act.

- For MOA Table A, Table B , Table C , Table D , Table E
- For AOA Table F, Table G ,Table H , Table I , Table K
  - Tables Depending upon the **type** of company proposing to be incorporated

Articles can be amended by passing special resolution section 14
Every special resolution should be filed with ROC within 30 days

Alteration of memorandum

Name clause change Fresh Certificate of Incorporation in Form No. INC-25	▪ Pass special resolution ▪ Approval of CG required ▪ To delete the word private approval of CG is not required in case of conversion of private company to public

Change in Registered office

Change within local limits	Change outside local limits	Change outside local limits and change in jurisdiction of ROC	Change of state
*Pass BR *File INC-22 with ROC within 15 days of such change *NO amendment required in MOA *Creditors consent NOT required section 12	*Pass SR *File INC-22 with ROC within 15 days of such change+MGT14 within 30 days *NO amendment required in MOA *Creditors consent NOT required section 12	*pass SR *Approval of RD is required in **FORM INC23** *file approval with ROC within 30 days of confirmation *Inc22+MGT14 *Requires amendment in articles *Creditors consent required section 13	*Pass SR *Approval of central government is required in **FORM INC23** *file approval with ROC INC28 *Inc22+MGT14 *Requires amendment in articles *Creditors consent required section 13

- The shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.
- On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed

Change in object	*Pass SR *File MGT-14 within 30 days to ROC *ROC will certify the same

Change in liability	*Pass SR *File MGT-14 within 30 days to ROC *ROC will certify the same
Change in capital clause	*alteration of capital clause to be authorised by the Articles of Association [section 61]; *Ordinary Resolution *If by division or consolidation in capital the voting % gets affected then a confirmation from Tribunal is mandatory. *Notify the alterations made and a copy of Resolutions passé shall be filed with Registrar within 30 days. *Registrar shall record the notice and make alterations required.

Prospectus and allotment of securities

As per section 2(70) of the Companies Act, 2013 defines a prospectus as "any document described or issued as a prospectus and includes

- A red herring prospectus referred to in section 32 or
- Shelf prospectus referred to in section 31 or
- Any notice,
- Circular,
- Advertisement or
- Other document

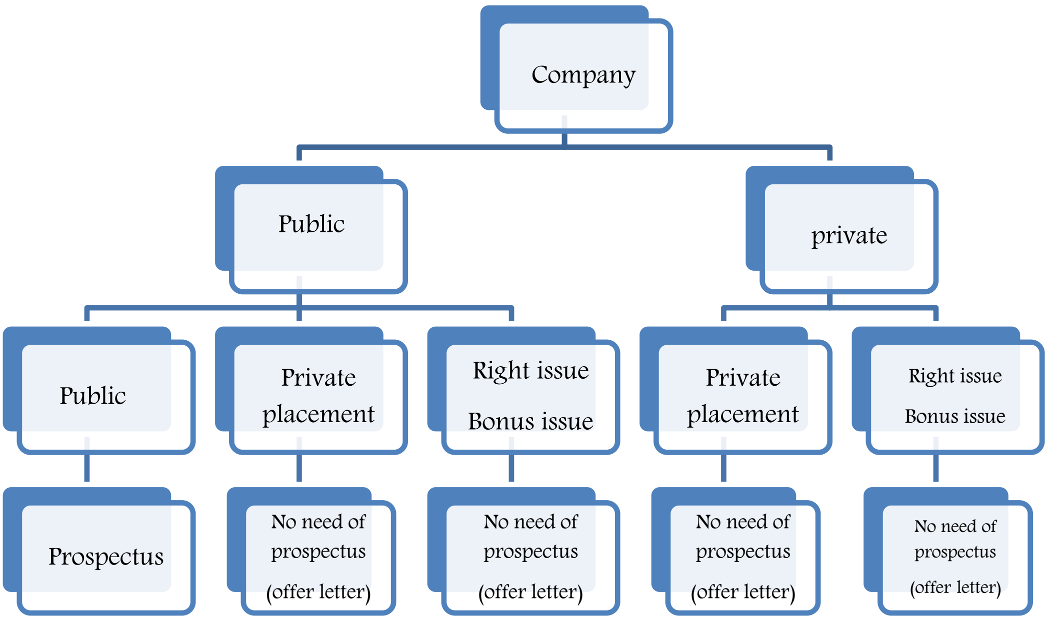
Inviting offers from the public for the subscription or purchase of any securities of a body corporate."

When prospectus is not required

- ✓ Right issue
- ✓ Bonus issue
- ✓ Private placement
- ✓ Conversion of loan into debt

Shelf prospectus

- A shelf prospectus is a prospectus. Hence it must comply with the provisions of prospectus
- Shelf prospectus is issued by companies subject to SEBI regulations
- Maximum validity 1 year from date of opening of 1st offer
- During the period of 1 year as many offers can be given(no limit)
- Information memorandum means its a document containing information



Red herring prospectus Section 32

"Red herring prospectus" means a prospectus which does not include complete particulars of the quantum **or** price of the securities included therein. In simple terms a red herring prospectus contains most of the information pertaining to the company's operations and prospects, but does not include key details of the issue such as its price and the number of shares offered. A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

DRAFT RED HERRING PROSPECTUS
September 9, 2016
Please read Section 32 of the Companies Act, 2013
This Draft Red Herring Prospectus will be updated upon filing of the Red Herring Prospectus with the RoC
Book Building Offer

BSE LIMITED

BSE was corporatised and demutualised in accordance with the Demutualisation Scheme. BSE was incorporated as a public limited company at Mumbai, under the name of "Bombay Stock Exchange Limited" under the Companies Act, 1956 and received a certificate of incorporation dated August 8, 2005. The name of BSE was subsequently changed to "BSE Limited" and BSE received a fresh certificate of incorporation pursuant to change of name dated July 8, 2011. For details of changes to the name of BSE and status of BSE, please see "*History and Certain Corporate Matters*" on page 161 of this Draft Red Herring Prospectus.

Registered and Corporate Office: 25th Floor, P. J. Towers, Dalal Street, Mumbai 400001, Maharashtra, India; **Telephone**: +91 (22) 2272 1233/ 34; **Facsimile**: +91 (22) 2272 1003; **Contact Person**: Prajakta Powle, Company Secretary and Compliance Officer; **Email**: bse.ipo@bseindia.com; **Website**: www.bseindia.com; **Corporate Identity Number**: U67120MH2005PLC155188

BSE is professionally managed and does not have an identifiable promoter in terms of the ICDR Regulations (as hereinafter defined)

INITIAL PUBLIC OFFERING OF UP TO 29,955,434 EQUITY SHARES OF FACE VALUE OF ₹ 1 EACH ("EQUITY SHARES") OF BSE LIMITED ("EXCHANGE" OR "ISSUER" OR "BSE") FOR CASH AT A PRICE OF ₹ [•] PER EQUITY SHARE (INCLUDING A SHARE PREMIUM OF ₹ [•] PER EQUITY SHARE, AGGREGATING UP TO ₹ [•] MILLION CONSISTING OF AN OFFER FOR SALE BY PERSONS LISTED IN ANNEXURE A ("OFFER"). THE OFFER SHALL CONSTITUTE UP TO [•]% OF THE FULLY DILUTED POST-OFFER PAID-UP EQUITY SHARE CAPITAL OF BSE.

THE FACE VALUE OF THE EQUITY SHARES IS ₹ 1 EACH. THE PRICE BAND AND ANY RETAIL DISCOUNT WILL BE DECIDED BY BSE IN CONSULTATION WITH THE ADVISORY COMMITTEE OF SHAREHOLDERS AND GLOBAL CO-ORDINATORS AND BOOK RUNNING LEAD MANAGERS, BOOK RUNNING LEAD MANAGERS AND CO-BOOK RUNNING LEAD MANAGERS ("MANAGERS") AND THE MINIMUM BID LOT WILL BE DECIDED BY BSE IN CONSULTATION WITH THE MANAGERS, AND ADVERTISED IN [•] EDITIONS OF [•], [•] EDITIONS OF [•] AND [•] EDITIONS OF [•] (WHICH ARE WIDELY CIRCULATED ENGLISH, HINDI AND MARATHI NEWSPAPERS, RESPECTIVELY, MARATHI BEING THE REGIONAL LANGUAGE OF MAHARASHTRA, WHERE OUR REGISTERED OFFICE IS LOCATED), AT LEAST FIVE WORKING DAYS PRIOR TO THE OFFER OPENING DATE IN ACCORDANCE WITH THE SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2009, AS AMENDED ("ICDR REGULATIONS") AND SUCH ADVERTISEMENT SHALL BE MADE AVAILABLE TO NATIONAL STOCK EXCHANGE OF INDIA LIMITED ("NSE") FOR THE PURPOSE OF UPLOADING ON ITS WEBSITE.

*Discount of ₹ [•] per Equity Share to the Offer Price may be offered to Retail Individual Bidders ("**Retail Discount**").

In case of a revision in the Price Band, the Offer Period will be extended by at least three additional Working Days after revision of the Price Band, subject to the Offer Period not exceeding 10 Working Days. Any revision in the Price Band and the revised Offer Period, if applicable, will be widely disseminated by notification to NSE, by issuing a press release and also by indicating the change on the websites of the Managers and at the terminals of the Syndicate Members.

As per section 2(1) "abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

- Shorter version of general prospectus (summary) abridged prospectus

Underwriting commission

As per Rule 13 section 40(6)

- The payment of such commission shall be authorized in the company's articles of association
- The commission may be paid out of proceeds of the issue or the profit of the company or both;
- The rate of commission paid or agreed to be paid shall not exceed,

In case of	AOA rate or below rate which ever is lower
Shares	5 % of issue or AOA rate ↓
Debentures	2.5 % of issue or AOA rate ↓

- There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription

Under writing commission can be paid in KIND

Share capital

Types of share capital

Equity share capital, means all share capital which is not preference share capital;

Preference share capital, means that part of the issued share capital of the company which carries or would carry a preferential right with respect to—

- Payment of dividend,
- Repayment of capital of a winding up or
- **Equity shares with differential rights section 43 read with Rule 4**

Nature of shares or debentures.

- The shares or debentures or other interest of any member in a company shall be **movable property** transferable in the manner provided by the articles of the company. Section 44

Numbering of shares

- Every share in a company having a share capital shall be distinguished by its **distinctive number** Section 44

Application of premiums received on issue of Shares

Usage of securities premium

- To issue bonus shares
- To write off the preliminary expenses
- To write off the commission paid or discount allowed on, any issue of shares or debentures
- To pay Premium payable on the redemption of preference shares or of any debentures.
- Buyback

Buyback section 68

Authority	Quantum
Board	10% of (paid up EQUITY + FR)
Members in GM by way of Special resolution	25% of (Paid up CAPITAL+FR)

In Case of equity share capital it should be read construed as 25% Total paid up equity

- Where a company purchases its own shares out of free reserves or securities premium account, a sum equal to the nominal value of the shares so purchased shall be transferred to the capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.
- The capital redemption reserve account may be applied by the company, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares. **Section 69**

Prohibition for buy-back in certain circumstances. Section 70

No company shall directly or indirectly purchase its own shares or other specified securities

(a) Through any subsidiary company including its own subsidiary companies;

(b) Through any investment company or group of investment companies; or

(c) If a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:

- Buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.

No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

Debentures sec 71

DEBENTURES

As Per Section 2(30) of Companies Act 2013 "debenture" includes debenture stock, bonds or any other instrument of a company evidencing a debt, whether constituting a charge on the assets of the company **or not.**

Salient features OF DEBENTURES

- The debentures can be issued in the same manner as shares in a company. But unlike shares Section 53(Prohibition on issue of shares at discount), **debentures can be issued at a discount**. The Companies Act, 2013 places no restriction in this.
- Debentures can be issued by any type of company- one person company, small company, private company public company or listed company.
- Debentures **cannot** have voting rights Section 71(2).
- A company shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue. Interest payable on them is a debt and can be **paid out of capital**. There is no ceiling, minimum or maximum, for the rate of interest payable on debentures
- Any company can issue secured or unsecured debentures
- A debenture is usually in the form of a certificate(like share certificate)issued under the common seal of a company if any(common seal optional now)
- After the commencement of the Companies Act, 2013, now a company cannot issue perpetual or irredeemable debentures
- Maximum term of secured debentures is 10 years from the date of issue

Appointment of debenture trustees

As per section 71(5) No company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding 500 for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. [Rule 18 (2) read with Rule 18(6)]

A person shall not be appointed as a debenture trustee, if he-

- ✓ Beneficially holds shares in the company.
- ✓ Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company.
- ✓ Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee.

- ✓ Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.
- ✓ Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon.
- ✓ Has any pecuniary relationship with the company amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year.
- ✓ Is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Company shall create Debenture Redemption Reserve (DRR) in accordance with following conditions

Debentures issued by	For Public Placed	For Private Placed
All India Financial Institutions (AIFIs) regulated by Reserve Bank of India and Banking Companies	No DRR is required	No DRR is required
Financial Institutions (FIs) within the meaning of section 2(72) of the Companies Act	DRR will be 25% of the value of debentures issued	No DRR is required
NBFCs registered with the RBI	DRR will be 25% of the value of debentures issued	No DRR is required
other companies including manufacturing and infrastructure companies(for listed)	DRR will be 25% of the value of debentures issued	25% DRR is required
for unlisted companies specified above	unlisted cannot go Public	25% DRR is required

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

Deposits [Sections 73-76A]

Applicability:-

Rule 1(3) of Deposits chapter says. These rules shall apply to a company other than –

- ✓ A banking company
- ✓ A NBFC registered with the Reserve Bank of India
- ✓ A housing finance company and
- ✓ A company specified by the CG under the section 73 of the Act.

Section 73(1) read with rule 1(3) of Companies (Acceptance of Deposits) Rules 2014

What is Deposit?

As Per Section 2(31) of the Act read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014 "deposit" includes any receipt of money by way of **deposit or loan** or **in any other form** by a company, but **does not include**

Who is an Eligible Company [Rule 2(1)(e)]

"Eligible company" means a public company referred in Section 76 having a Net worth of not less than 100 crore rupees **or** a turnover of not less than 500 crore rupees **and** which has obtained the **prior** consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies and where applicable, with the Reserve Bank of India before making any invitation to the Public for acceptance of Deposits

Who is depositor?

As Per Rule 2(1)(d) 'Depositor' means-

(i) Any member of the company who has made a deposit with the company in accordance with section 73(2) of the Act, or

(ii) Any person who has made a deposit with a public company in accordance with Sec 76

- **Period** – Not less than 6 months & not more than 36 months
- **Interest rate** should not exceed rate prescribed for NBFCs
- **Premature surrender of deposits:** Reduce 1% interest from the rate applicable
- **Return of Deposits:** Every year 30th June

LIMITS up to which companies can accept deposits Rule 3(3), 3(4), 3(5) Read With Sections 73 and 76

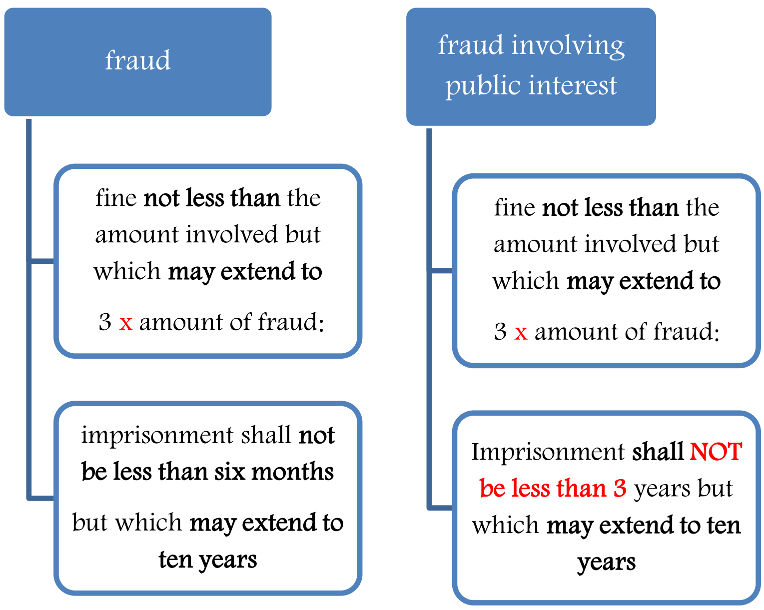
The Quantum of deposits

Type of company	Members	Public
Eligible Company	Upto **10%** of aggregate of the paid up share capital, free reserves and securities premium account	Upto **25%** of aggregate of the paid up share capital, free reserves and securities premium account
Company referred in Section 73(2)	Upto **35%** of aggregate of the paid up share capital, free reserves and securities premium account	Prohibited
Govt Company Eligible under section 76	-	Upto **35 %** of aggregate of the paid up share capital, free reserves and securities premium account

Penal rate of interest.- Rule 17

Every company shall pay a penal rate of interest of 18%. per annum for the overdue period of deposits, whether secured or unsecured, matured and claimed but remaining unpaid.

Section 447 Punishment for fraud



Charges [Sections 77-87]

What is a Charge?

A charge is a right created by any person including a company (artificial person) referred to as "the borrower" on its assets and properties, present and future, in favour of a financial institution or a bank, referred to as "the lender", which has agreed to extend financial assistance.

As Per Section 2(16) of the Companies Act, 2013 defines charges so as to mean an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Kinds of Charges

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

- Fixed or specific charge
- Floating charge.

Fixed or Specific Charge

A charge is called fixed or specific when it is created to cover assets which are **ascertained and definite or are capable of being ascertained and defined**, at the time of creating the charge e.g., land, building, or plant and machinery. A fixed charge, therefore, is a security in terms of certain specific property, and the company gives up its right to dispose off that property until the charge is satisfied.

Floating Charge

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

Crystallisation of Floating Charge

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

A floating charge crystallises and the security becomes fixed in the following cases:

- When the company goes into liquidation
- When the company ceases to carry on its business
- When the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged
- On the happening of the event specified in the deed.

When Charge should be registered?

Charges to be registered under **section 77**

1.Charges created within/outside india

2.Charge on its property or assests or undertakings

3.Whether tangible or otherwise,and situated in/outside India

Shall be registered in FORM CHG-1(for other than debentures) CHG9 for debentures within 30 days of its creation(Registrar can register upto 300 days) Section 77

Company failing to register under section 77 **(beyond 300+)** may seek extenstion from CG in form CHG-8 **Section 87**

File order of the CG with ROC in form **INC-28**

Once charge is registered – any person dealing with such property is deemed to have been given notice Section 80

Punishment for contravention of this Chapter charges

Punishment for	Fine	Imprisonment	BOTH
Company and	Not less than 1,00,000/- May extend to 10,00,000/-	-	-
Every Officer in default	Not less than 25,000/- May extend to 1,00,000/- Or	May extend to 6 months Or	✓

General meetings

Register of members

Every company shall keep and maintain the following registers

- Register of members indicating separately for **each class** of equity and preference shares held by each member residing in or outside India; [Form No. MGT-1]
- Register of debenture-holders Form No. MGT-2] and
- Register of any other security holders. [Form No. MGT-2]
- If number of members exceed 50 index of members should be maintained.

Annual Return Section 92 Form NO MGT-7

Every company shall file with the Registrar a copy of the annual return, **within 60days** from the date on which the AGM is held or where **NO AGM** is held in any year **within 60 days** from the date on which the AGM should have been held **together with** the statement specifying the reasons for not holding the AGM

Who will sign the annual return?

- Annual return will be signed by a director and the company secretary, or where there is no company secretary, by a PCS
- In case of One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

AGM Sec 96

Every company Other than OPC shall in each year hold an AGM.

- AGM is to be held in each **calendar year**

First Annual General Meeting:

In case of the first annual general meeting, it shall be held within a period **of nine months** from the date of closing of the first financial year of the company.

3 national holidays
26^{th} jan 15^{th} aug 2^{nd} oct

Holding of subsequent AGM:

- Gap between two AGMs shouldn't exceed 15Months
- AGM is to be held **within 6 months** of close of financial year (by 30th sep)
- ROC can extend upto 3 more months. However ROC Cannot extend for first AGM

Proper Authority to call AGM

- BOD has power to call for a GM.
- An individual director Or secretary has no power to call a GM.

Date, time and place of AGM:

- Every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday at Registered office of company

EGM Section 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)
- If called by requisitionists on any day except national holiday**(amendment)**

MCA NOTIFICATION 5th June 2015 → Very Very Very Important DATE

- For Private companies Incase MOA,AOA contains **any specific provisions** they will **prevail** over the sections 101,102,103,104,105,106,107,109 In simple MOA **or** AOA of Pvt company > Above sections

Length of Notice for calling GM: Section 101

- A General Meeting can be called by giving **at least 21 clear days** notice in writing.
- For Section 8 Companies, the length of Notice is 14 Days
- In case of post an additional two days should be added Section 20
- For any shorter notice, approval of members shall be obtained in writing or in electronic mode for a GM from members who are entitled to vote on such meeting **95% approval shall be obtained.**

To whom notice shall be sent?

Notice of every meeting should be given to every member, director auditors of the company, Secretarial auditor and Debenture trustees if any.(SS-2 issued by ICSI)

Notice shall specify the

- Day,
- Date,
- Time, and
- full address of the venue of the Meeting including route map and prominent land mark for easy location
- Nature of the meeting
- Business to be transacted at the meeting

- Resolution for each item of special business supported by explanatory statement
- Resolution for items of ordinary business which pertain to ADDA
- Details relating to e-voting

Quorum for General Meeting: Section 103

Based on Number of Members in the company as on the date of Meeting.

- **For Public**

Upto 1,000	5 members personally present
More than 1,000 but upto 5,000	15 members personally present
Exceeds 5,000	30 members personally present

- **For Private**

2 members personally present or Quorum fixed in Articles which ever is higher

If tribunal calls for AGM/EGM even a single person/Proxy can **form QUORUM** sec 97 & 98

Lack of quorum:

The meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine. **Provided** In case of an adjourned meeting or of a change of day, time or place of meeting **under above**, the company shall give **not less than three days** notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated. **Refer regulation (49) of Table F. in Schedule I**

Proxy: Section 105 Form MGT 11

A member of a company can appoint a person as his proxy to attend and vote in the meeting instead of himself. (proxy is agent of member)

- A proxy can vote only on a Poll
- A Proxy can demand a poll
- A proxy cannot vote on a show of hands
- A proxy has no right to speak at the meeting
- A proxy is not counted for the purpose of quorum
- Proxy form must be deposited at least 48 hours before meeting.
- Appointment of 2nd proxy will result in automatic revocation of 1st appointed proxy
- In case of section 8 company only member can be appointed as an PROXY
- A person can be a proxy of maximum 50 members

Section 112 & 113

- Representative of the President of India, Governor of a State or if Company is a member, then a representative can be appointed. The Representative shall have same powers as that of a Member.
- In simple the proxy appointed under section 112 &113 is deemed to be a Member. He has all rights as a member

Section 106. Restriction on voting rights

A member can be restrained from voting in GM only on TWO grounds

1. He didn't Paid his call money on shares when company called for
2. He owes debt to the company and he didn't paid even it was matured(in capacity OTHER than as shareholder)

On above two grounds company can exercise lien on his shares

Section 107. Voting by show of hands

One Person One Vote **Irrespective** of his shareholding

Section 109. Demand for poll.

In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having **not less than one-tenth** of the total voting power or holding shares on which an **aggregate sum of not less than five lakh rupees** and

In the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power.

- Once Poll is demanded the results on show of hands gets **NULLIFIED**
- Polling Paper in Form No.MGT-12 and report of scrutinizer in Form No.MGT-13.

Section 108 E-voting

Applicability

- Listed companies
- Companies having members 1000 or more
- E-voting shall remain open for **not less than three days** and shall close at 5.00 p.m. on the date preceding the date of the general meeting

Section 110 Passing of Resolution by Postal Ballot: Rule 22

Applicability

- Listed companies
- Every Other company having members **Beyond 200.**