TALDA LEARNING CENTRE

Building Conceptions.......

CS EXECUTIVE

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COMPANY LAW

BY

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Contents

ALL DISTINGUISH BETWEEN (16 Marks)

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	Shares cannot be converted into debentures

per the terms of issue.	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 file with the Registrar a statutory declaration of solvency.	A creditor's voluntary winding up is one where no such declaration is filed.
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.
Commenceme nt 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	A private company has to use words

	word 'Limited' at the end of its name.	'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 cannot held by single person.	The 10% of share capital of OPC is 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	Preference shares can be converted into

	converted.	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

POINTS	INFORMATIONAL SERVICES	APPROVAL SERVICES
Meanings	Informational service cover those forms, which are to be filed with ROC for informational purposes, in compliance with the provisions of the Companies Act, 2013.	MCA, Regional Directors & ROCs are empowered to accord approval, or to give any direction in relation to the certain matters. Such services are known as approval services.
Example	Forms relating to following informational services are required to be filed: (a) Consent and withdrawal of consent of persons charged as officers in default (b) Voluntary Reporting of Corporate Social Responsibility (CSR) (c) Resolutions and agreements (d) Notice of address of place where books of account are kept (e) Information in relation to any offer of scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company (f) Order received from Court or Tribunal	ROC approval is required in following cases: (a) Extension of time period for holding AGM (b) Holding AGM at place other than registered address (c) Declaring of company as defunct (d) Extension of the period of annual accounts (e) Amalgamation of companies (f) Compounding of offences

BASIS	MOTION	RESOLUTION
Meaning	Motion is a proposal submitted for a discussion and a decision adopted by means of a resolution. A motion becomes a resolution only after the requisite majority of members have adopted it.	A resolution is the formal expression of the decision of the meeting when a motion has been duly voted and passed by the requisite majority.
Official decision	Every motion is not the official decision of the company	A resolution once adopted and recorded in the minutes becomes the official decision of the company.
Significance in meeting	In case of company meetings, only such motions are proposed as are covered by the agenda. However, certain motions may	A resolution relates to only such matters that are covered in notice of the meeting. No resolution can be

	arise out of the discussion and the standing orders of various bodies allow such motions to be discussed at the meeting without proper notice in writing.	passed in respect of matters which are not covered in notice of the meeting.

BASIS	RESERVE CAPITAL	CAPITAL RESERVE
Meaning	Reserve capital is that part of the uncalled capital of a company which the limited company has decided by **special resolution** not to call except in the event and for the purpose of the company being wound up.	Capital reserves are created out of capital profit. Capital reserve may be statutory capital reserve or non statutory capital reserve.
Mandatory	Creation of reserve capital is not mandatory.	Creation of capital reserve is mandatory in certain cases.
Balance Sheet disclosure	There is no need to disclose reserve capital in balance sheet.	Capital reserves are disclosed in balance sheet under the head "Reserve & Surplus"
Writing off losses	Reserve capital cannot be used to write-off capital losses.	Capital reserve can be used to write off capital losses.

BASIS	MORTGAGE	CHARGE
Mode of creation	A mortgage is created by Acts of the parties	A charge may be created through Act of parties or by operation of Law
Registration	A Mortgage requires registration under TOPA, 1882	A charge by operation of Law does not require registration but Charge created by act of parties requires registration
Term	A Mortgage is for a fixed term	A Charge may be in perpetuity
Effect	A Mortgage is a transfer of an interest in specific immovable property	A charge only gives a right to receive payment out of a particular property

SMALL COMPANY VS. INACTIVE COMPANY:

Small Company:
(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

Inactive Company:
"inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial 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></table></td></tr>
</table>

	Public Company | 3 | 15 Producer Company | 5 | 15 ❖ IF MORE THAN 15 DIRECTORS ARE PROPOSED TO BE APPOINTED THEN, SPECIAL RESOLUTION IN GENERAL MEETING.
INDEPENDENT DIRCTORS **L** **S = 10** **L = 50** **T = 100**	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 (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.

<table>
<tr><td>SITTING FEES (ALL DIRECTORS)</td><td>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.</td></tr>
<tr><td>ROTATION OF AUDITORS

L

PUBLIC “S=10”
PRIVATE “S=20”
ALL “L=50”</td><td>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.</td></tr>
<tr><td>INTER CORPORATE LOANS AND ADVANCES</td><td>HIGHER OF:
(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.</td></tr>
<tr><td>BORROWING BY DIRECTORS</td><td>100% of (Paid Up Share Capital + Free Reserves)

❖ If limit exceeds then, Special Resolution in General meeting.</td></tr>
<tr><td>ANNUAL GENERAL MEETINGS TIME LIMIT</td><td>❖ 1st AGM
A Company should convene its first AGM <u>within 9 months</u> from the end of its 1st Financial Year.

❖ 2ND & SUBSEQUENT AGM
Every company must hold subsequent AGM within <u>6 months from the closing of the financial year;</u> or

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

❖ <u>EXTENSION OF TIME OF 2ND & SUBSEQUENT AGM</u>
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.

<u>Note:</u> No such extension of time shall be granted by the ROC for the holding of the 1st AGM.</td></tr>
<tr><td>QUORUM OF GENERAL MEETINGS</td><td><table><tr><th></th><th>Public</th><th>Private</th></tr><tr><td>Members < 1000</td><td>5</td><td rowspan="3">2</td></tr><tr><td>Members >=1000<5000</td><td>15</td></tr><tr><td>Members > =5000</td><td>30</td></tr></table></td></tr>
<tr><td>ELIGIBLE</td><td></td></tr>
</table>

<table>
<tr><td>COMPANY FOR ACCEPTANCE OF PUBLIC DEPOSITS</td><td>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</td></tr>
<tr><td>MANAGERIAL REMUNERATION</td><td>
<table>
<tr><th>COMBINATION</th><th>LIMIT</th></tr>
<tr><td>One Manager</td><td>5% of Net Profits</td></tr>
<tr><td>More than One Manager</td><td>10% of Net Profits</td></tr>
<tr><td>Other Directors – if there is an MD</td><td>1% of Net Profits</td></tr>
<tr><td>Other Directors – if there is no MD</td><td>3% of Net Profits</td></tr>
<tr><td>Overall Limit</td><td>11% of Net Profits</td></tr>
</table>
</td></tr>
<tr><td>MANAGERIAL REMUNERATION IF CASE NO PROFITS/ INADEQUATE PROFITS</td><td>
(HIGHER OF A OR B)
TABLE – A (LOSS MAKING COMPANY)
<table>
<tr><th>Effective Capital</th><th>Remuneration (Annually)</th></tr>
<tr><td>Negative or less than 5 Crore</td><td>30 Lacs</td></tr>
<tr><td>More than 5 crore but less than 100 Crore</td><td>42 Lacs</td></tr>
<tr><td>More than 100 crore but less than 250 Crore</td><td>60 Lacs</td></tr>
<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>
</table>
</td></tr>
</table>

	<table><tr><td></td><td></td></tr><tr><td>**QUORUM of GM**</td><td>¼ of Total Members</td></tr></table>
APPLICATION FOR MISMANAGEMENT	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.
APPOINTMENT OF SMALL SHAREHOLDER DIRECTOR (For Listed Company Only)	Application by Whom: **Lower of:** i) 1000 Small Shareholders ii) $1/10^{th}$ 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*
ROTATION OF DIRECTORS	(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 public company 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 liable to retire by rotation or if their number is 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 SHORT NOTES

LIFTING OR PIERCING THE CORPORATE VEIL	**FRAUD**	Fraud vitiates everything. In **Gilford Motor Co. v. Horne**, a former employee of a company covenanted 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. In another case, **Jones v. Lipman**, 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.
	PUBLIC POLICY	Where there is a conflict with the public policy, the courts will pay regard to the substance and ignore the form. The courts will invariably lift the corporate veil for the purpose of protecting the public policy and prevent transactions contrary to public policy. **[Conors Bros. v. Conors]**
	FOR DETERMINING RESIDENCE AND CHARACTER	The Courts also look behind the façade of the company and its place of registration in order to determine its residence for the purposes of taxation or the character of the company, for example whether it is enemy. **[Daimler Co. Ltd. v. Continental Tyre& Rubber Co.]**
	IN THE INTEREST OF REVENUE	The Court has a power to disregard corporate entity if it is used for tax evasion or to circumvent tax obligations. **[CIT v. Meenakshi Mills Ltd.]**
	FORMATION OF COMPANIES TO DIVIDE INCOME AND AVOID TAX	Where it was found that the sole purpose for which the company was formed was to evade taxes, the Court will ignore the concept of separate entity and make the individuals liable to pay the taxes which they would have paid but for the formation of the company. **[Re. Sir Dinshav Manakjee Petit]**
	AVOIDANCE OF WELFARE LEGISLATION	Where it was found that the sole purpose for the formation of the new company was to use it as a device to reduce the amount of bonus to be paid to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction. **[The Workmen Employed in Associated Rubber Industries Limited v. Associated Rubber Industries Limited]** It will thus be noticed that as a result of statutory provisions and judicial pronouncements, the Salomon's

		Case no longer holds good. In appropriate cases, the courts disregard the corporate entity and look behind the legal person.
SMALL COMPANY	(1) The term 'small company' has been defined under **Section 2(85) of Companies Act, 2013.** As per this, small company means a company, **other than a public company, -** (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 **Ten 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 **One Hundred** crore rupees: (2) Provided that nothing in this clause shall apply to – (A) A holding company or a subsidiary company; (B) A company registered under section 8; or (C) A company or body corporate governed by any special Act. (3) Following are some of the important relaxations provided to a small company: (i). Financial statements of small company may not include the cash flow statement. (ii). Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days. (iii). Merger or amalgamation between two or more small companies have been simplified without the requirement of court process.	
DOCTRINE OF CONSTRUCTIVE NOTICE	(1) When the memorandum and articles of association of a company are registered, they become public documents and are open to inspection by anyone on payment of nominal fee. Hence, every person dealing with the company is under an obligation to know the contents of these documents. (2) In Kotla Venkata Swamy v. Ramamurthy, 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.	
DOCTRINE OF INDOOR MANAGEMENT	(1) While persons dealing with a company are presumed to have read the public documents and understood their contents and ascertain that the transaction is not inconsistent therewith, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is no part of the duty of an outsider to see how the company carries out its own internal proceedings or indoor management. He can assume that all is being done regularly. (2) The doctrine of indoor management, thus, imposes an important	

	restrictions on the scope of doctrine of constructive notice. While the doctrine of "constructive notice" seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company. (3) In Royal British Bank v. Turquand, 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. (4) The doctrine of indoor management is subject to the following exceptions or limitations :- 1. **Knowledge of Irregularity**: The rule does not protect any person who has actual or constructive notice of the want of authority of the person acting on behalf of the company. 2. **No Knowledge of Articles**: The rule cannot be invoked in favor of a person who did not in fact consult the company's memorandum and articles and consequently did not act in reliance of those documents. 3. **Negligence or Unusual Transaction**: If an officer of the company acts in a manner, which could not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority. If he fails to make enquiry, he cannot rely on the rule. [AnandBiharilal v. Dinshaw& Co.] 4. **Forgery**: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate foregery. [Ruben v. Great Fingall Consolidated Ltd.] 5. **Illegal Transactions**: The rule does not apply to transactions which are illegal or void-ab-initio.
ISSUE OF SWEAT EQUITY SHARES	Sweat Equity Shares means such Equity Shares as are issued by a company to its Directors or Employees at a Discount or for consideration, other than cash, for providing their Know How or making available rights in the nature of intellectual property rights or value additions, by whatever name called. [Section 2(88)] **Who shall be eligible for Sweat Equity Shares?** Employee means: (a) **Permanent employees**: A permanent employee of the company who has been working in India or outside India, for at least the last 1 year; or (b) **Directors:** A director of the company whether a Whole time director or not; (c) **Employees of Holding or Subsidiary Companies**: An employee or a director of a subsidiary or holding company whether in India or outside India;

CONDITIONS FOR ISSUING SWEAT EQUITY SHARES: (SECTION 54)

(a) The issue of sweat equity shares must be authorized by a **Special resolution**.

(b) The SR carries the **details** like number of shares, current market price, consideration, and the class of directors or employees to whom sweat equity shares are to be issued;

(c) The Sweat Equity Shares must be issued **at least 1 year after** the date of commencement of the business.

(d) In case of listed Company, the Sweat Equity shares are issued in accordance with the regulations made by **SEBI** and in case of unlisted company, the sweat equity shares are issued in accordance with **the companies act** and its rules.

(e) The holders of such shares **shall rank PariPassu** with other equity shareholders.

CONDITIONS AS PER RULE 8 OF COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014:

(a) **Special Resolution**: Issue of Sweat Equity shares to be authorized by Special Resolution at a General meeting.

(b) **Validity**: The Special Resolution shall be valid only for 12 months for allotment of sweat equity shares.

(c) **Maximum Limit**: 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.

(d) **Valuation**: The sweat equity shares to be issued shall be valued at a price determined by a registered valuer, if the shares to be issued for intellectual property rights. A copy of the valuation report obtained in both the above cases shall be sent to the shareholders along with the notice of the general meeting.

(e) **Register of Sweat Equity Shares**: The company shall maintain a register of sweat equity shares in form SH 3.

(f) **Lock in Period**: Sweat Equity Shares shall be non-transferable for 3 years from the date of allotment.

ADDITIONAL REQUIREMENTS FOR SWEAT EQUITY SHARES:

Part of Managerial Remuneration: The amount of Sweat Equity Shares issued shall be treated as part of managerial remuneration subject to the fulfillment of the following conditions:
(a) The Sweat Equity Shares are issued to the Director or Manager; and
(b) They are issued for consideration other than cash.

BONUS SHARES (SECTION 63 OF THE COMPANIES ACT. 2013)	Bonus shares means shares issued by the company to its existing shareholders at free of cost. A Company may capitalize its profits by issuing fully-paid bonus shares provided the company has provisions in this regard. When a company is prospectus and accumulates large distributable profits, it converts these accumulated profits into capital and divides the capital among the existing members in proportion to their entitlements. <u>Advantages</u> (a) Fund flow is not affected adversely. (b) Market value of the Company's shares comes down to their nominal value by issue of bonus shares. (c) Market value of the members' shareholding increases with the increase in number of shares in the company. (d) Bonus shares are not an income. Hence it is not a taxable income. (e) Paid-up share capital increases with the issue of bonus shares. <u>Sources</u> A company may issue fully paid-up bonus shares to its members by utilizing the following sources : (a) Free reserves; (b) The securities premium account; or (c) The capital redemption reserve account. **Note:** No bonus shares shall be issued by capitalizing reserves created by the revaluation of fixed assets. <u>Conditions</u>: No company shall capitalize its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless – (a) It is authorized by its articles; (b) It has, on the recommendation of the Board, been authorized in the general meeting of the company; (c) It has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it; (d) It has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus; (e) The partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up.
BUY BACK OF SECURITIES (SECTION 67 & 68)	**<u>Meaning:</u>** Buy Back of shares means purchase of its own shares by the company. In short, buy back is a process when a company makes an offer to buy back its own issued shares. **Sections 67 & 68 of Companies Act & Rule 17 of Companies (Share Capital and Debentures) Rules, 2014:** A company limited by shares or guarantee having a share capital cannot buy its own shares and this restriction is applicable on all types of companies. However, Section 68 allows a company to purchase its own shares or securities subject to certain conditions: **<u>Methods for Buy Back:</u>** the buyback may be: (a) From the existing shareholders;

	(b) From the Open Market; (c) by purchasing the securities from employees which have been issued under ESOP or Sweat Equity. **Authorisation & Approvals:** (a) **Authorisation in AOA**: Buy Back must be authorized by the articles of association of the company. In Case, there is no such provision, the company has to first alter the articles of association to authorize buy back. Buy Back can be made with the approval of Board of Directors or Shareholders by passing SR in GM, depending on the quantum of buy back. (b) **Approval by Board of Directors**: 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. (c) **Approval of Shareholders**: 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. **Sources of Buy Back:** A company may purchase its own shares or other specified securities out of: (a) its free reserves; or (b) the securities premium account; or (c) the proceeds of any shares of other specified securities **Conditions for Buy Back:** (a) **Power in AOA**: The buy back shall be **authorized by AOA**. (b) **Approved**: The buy back either **approved** by BOD or Shareholders. (c) **Debt Equity Ratio:** Debt Equity Ratio is **not more than twice** the capital and its free reserves after such buy back. (d) No Shares or Securities can be bought back unless they are **fully paid up**. (e) **Explanatory Statement:** The Notice of General Meeting shall be annexed with the Explanatory Statement and shall have the following details: (i) A full and complete disclosure of all material facts; (ii) The class of security intended to be purchased under the buy back; (iii) The necessity of Buy Back (iv) The amount to be invested under the buy back; (v) The time limit for completion of buy back; (f) **Completion of Buy Back:** The buy back should be completed within 1 year of the date of passing Board Resolution or Special Resolution as the case may be; (g) **Declaration of Solvency**: When a company proposes to buy back its own securities, shall file with ROC and SEBI (if Listed) a declaration of Solvency signed by at least 2 directors, one of whom shall be MD, if any, in Form SH 9 before making buy back.

	(h) **Extinguishment of Securities**: After completion of buy back the securities must be extinguished and physically destroyed within 7 days of the last date of completion of buy back. (i) **No further Issue**: After the completion of buy back, the company shall not make a further issue of shares or other specified securities for a period of 6 months except by way of bonus shares or in discharge of subsisting obligations such as conversion of options, etc. (j) **Buy Back Return**: A company shall file a return of buy back in form SH 15 within 30 days from the date of completion of buy back. Such form must be signed by two directors, one of whom shall be MD, if any, certifying that the buy back of securities has been made in compliance with the provisions of companies act, 2013 and its rules. (k) **Register of Buy Back**: The company has to maintain a register of securities so bought, the consideration paid for the securities bought back, the date of cancellation of securities, the date of extinguishing and physically destroying of securities and such other particulars as may be prescribed. **Prohibition of Buy Back:** A company cannot buy back shares or other specified securities, directly or indirectly; (a) through any subsidiary company including its own subsidiary; or (b) through investment or group of investment companies; or (c) when the company has defaulted in the repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of any term loan or interest thereon to any financial institution or bank; (d) Company has defaulted in: (i) Filing of Annual Return; (ii) Declaration of Dividend; (iii) Punishment for failure to distribute dividend; (iv) Giving financial statement;
EMPLOYEE STOCK OPTION (ESOP)(SECTION 2(37))	ESOPs means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officer or employees, the benefit or right to purchase or to subscribe for, the shares of the company at a future date at a pre-determined rate. **Rule 12 of Companies (Share Capital and Debenture) Rules, 2014:** Every company other than listed company is required to comply with the following requirements: The issue of ESOPs has been **approved by the Shareholders** of the company by passing a **Special Resolution**. ***Who are eligible for an ESOP Scheme?*** (a) A permanent employee of the company who has been working in India or Outside India; or

(b) A director of the company, whether a whole time director or not but excluding Independent Director; or
(c) An Employee of Subsidiary, in India or Outside India, or a Holding Company of the company or of an Associate Company;

Who are not eligible for an ESOP Scheme?

(a) Promoter Cum Employee: An Employee who is a Promoter or a person belonging to the Promoter Group;
(b) Director cum Employee: A director who either himself or through his relatives or through anybody corporate, directly or indirectly, hold more than 10% of the outstanding equity shares of the company;

Disclosures in Explanatory Statement of Notice for passing Special Resolution:

(i) Total number of Stock options to be granted;
(ii) Identification of classes of employees entitled to participate in ESOP;
(iii) The Appraisal process for determining the eligibility of employees to ESOP;
(iv) The requirements of vesting and period of vesting;
(v) The maximum period within which the options shall be vested;
(vi) The exercise price or formula used for arriving at the price;
(vii) The exercise period and process of exercise;
(viii) The Lock in period, if any;
(ix) The maximum number of options to be granted per employee or in aggregate;
(x) The conditions under which option vested in employees may lapse e.g. termination of employment for misconduct;

Varying the Terms of ESOP requires Special Resolution:

The company may by special resolution, vary the terms of ESOP not yet exercised by the employees provided such variation is not prejudicial to the interest of option holders.

The notice of passing special resolution for variation of terms of ESOP shall disclose full of the variation, rationale therefore, and the details of the employees who are beneficiary of such variation;

Minimum One year Vesting Period:

There shall be a minimum period of 1 year gap between the grant of options and vesting of option. In a case where options are granted by a company under its ESOP scheme in lieu of options held by same period under ESOP in another company, which has merged or amalgamated with the first mentioned company, the period during which the options granted by merging or amalgamating company were held by him shall be adjusted against the minimum vesting period required.

Company has freedom to specify the lock in period:

The Company shall have the freedom to specify the lock in period for the shares issued pursuant to exercise of option.

No Right of Dividend or Voting till exercise of option:

The employees shall not have right to receive any dividend or to vote in any manner enjoy the benefits of a shareholder in respect of option granted to them, till shares are issued on exercise of option.

	<u>Forfeiture/Refund:</u> The amount, if any, payable by the employees, at the time of grant of option: (a) May be forfeited by the company if the option is not exercised by the employees within the exercise period; or (b) the amount may be refunded to the employees if option are not vested due to non fulfillment of conditions relating to vesting of option as per the ESOP scheme.
CONDITIONS AND COMPLIANCES FOR PRIVATE PLACEMENT	**<u>CONDITIONS:</u>** 1. **APPROVALS:** The proposed offer of securities must have been previously approved by a special resolution of the shareholders of the company. Special Note : (a) <u>Explanatory Statement</u>: The explanatory statement to the notice in respect of special resolution for General Meeting must justify the price (including premium) at which the offer or invitation is being made. (b) <u>Validity of Special Resolution for Non-convertible debentures</u>: In case of offer or invitation for non-convertible debentures, it shall be sufficient if the company passes a previous special resolution only once in a year for all the offers or invitation for such debentures during the year. (c) <u>No Fresh Offer</u>: No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company. (d) <u>Public Offer</u>: Any offer or invitation not in compliance with the provisions of the Companies Act, 2013 shall be treated as a public offer, and the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992 shall be required to be complied with. 2. **MODE OF PAYMENT**: All monies payable towards subscription of securities shall be paid through cheque or demand draft or other banking channels but not by cash. 3. **TIME LIMIT FOR ALLOTMENT**: A company making an offer or invitation shall allot its securities within 60 days from the date of receipt of the application money for such securities. 4. **REFUND OF SUBSCRIPTION MONEY**: If the company fails to allot the securities within 60 days, then it shall repay the application money to the subscribers within 15 days from the date of completion of 60 days and if the company would not be able to repay the application money within 15 days, then such company shall be liable to repay the subscription money along with interest @ 12% P. A. after the expiry of 60 days. 5. **SUBSCRIPTION MONEY TO BE KEPT IN A SEPARATE BANK ACCOUNT**:The monies received as share application money shall be kept in a separate bank account in a scheduled bank and shall not be utilized for any purpose other than : (a) For adjustment against allotment of securities; or

	(b) For the repayment of monies where the company is unable to allot securities. **<u>COMPLIANCES RELATING TO PRIVATE PLACEMENT</u>** <u>Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014</u> (a) **<u>ISSUE OF PRIVATE PLACEMENT LETTER</u>**: A private placement offer letter shall be accompanied by an application form serially numbered and addressed specifically to the person to whom the offer is made and shall be sent to him, either in writing or in electronic mode, within 30 days of recording the names of such persons. No person other than the person so addressed in the application form shall be allowed to apply through such application form and any application not conforming to this condition shall be treated as invalid. **Note:**No company offering securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an offer. (b) **<u>RETURN OF ALLOTMENT</u>**: Whenever a company makes any allotment of securities, it shall file with the ROC a return of allotment along with the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information. **Penalty:**If a company makes any default of the provisions of the Companies Act, 2013, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved or Rs.2 crores, whichever is higher, and the company shall also refund all monies to subscribes within a period of 60 days of the order imposing the penalty.
DEEMED PROSPECTUS (SECTION 25)	If a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus. In short, any document issued on behalf of the company for the purpose to sale securities to the public shall be treated as deemed prospectus. Such a document shall be treated as a prospectus (unless the contrary is proved) where : 1. An offer of all or any of the securities for sale to the public was made within 6 months after the allotment or agreement to allot; or 2. At the date when the offer for sale to the public was made, the company had not received the whole consideration in respect of the said shares or debentures. The following additional information is required to be given in the deemed prospectus : 1. The net amount of the consideration received or to be received by the company in respect of the shares or debentures to which the offer relates; 2. The place and time at which the contract under which the said shares or debentures have been or are to be allotted may be inspected.

	It is sufficient if the prospectus is signed on behalf of the company or firm by 2 directors of the company or by not less than ½ of the partners in the firm, as the case may be, either themselves or by their agents authorised in writing.
ABRIDGED PROSPECTUS (SECTION 33)	"Abridged Prospects" means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf. In other words, abridged prospectus means a summarized version of a prospectus and contains all the salient features of a prospectus : Section 33 of the Companies Act, 2013: The form is application for purchase of any of the securities of a company shall be issued along with an abridged prospectus. It means no application form can be issued for shares or debentures unless accompanied by a memorandum containing salient features of the prospectus. In the following cases, abridged prospectus does not apply : (a) **Underwriting Agreement** : Where the offer is made in connection with the bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; (b) **No offered to the Public**: Where the securities are not offered to the public; (c) **Rights Issue**: Where the offer is made only to the existing members or debenture holders of the company with or without a right to renounce; (d) **Uniform Shares**: Where the shares or debentures offered are in all respects uniform with shares or debentures already issued and quoted on a recognized stock exchange. **Penalties**: If a company makes any default, it shall be liable to a penalty of Rs.50,000/- for each default.
SHELF PROSPECTUS (SECTION 31)	Shelf Prospectus means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In other words, shelf prospectus means a prospectus issued by any financial institution or bank for one or more issues of securities specified in the prospectus. The concept of shelf prospectus has been introduced to save expenditure and time of the companies in issuing a new prospectus every time. **CONDITIONS FOR SHELF PROSPECTUS** (a) **Eligibility for issue of Shelf Prospectus**: Any class of companies (i. e. Any public financial institution, public sector bank or scheduled bank whose main object is financing), as prescribed by the Securities and Exchange Board may file a shelf prospectus with the ROC at the stage of the first offer of securities. (b) **Validity Period**: The shelf prospectus shall not be valid for more than 1

	year from the date of opening of the first offer of securities under the shelf prospectus. Further, in respect of a second or subsequent offer issued during the period of validity of shelf prospectus, no further prospectus is required. (c) **No requirement of filing fresh prospectus within 1 year**: A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within the validity period of 1 year from the date of opening of the 1st issue of securities. (d) **Changes in the Material Information**: A company filing a shelf prospectus shall be required to file an information memorandum in respect of any change in material facts i. e. Creation of new charges, changes in the financial position occurred between the first offer of securities of the previous offer of securities and the succeeding offer, with the ROC prior to second or subsequent issue. (e) **Refund of Money without filing Information Memorandum**: If a company has received application for the allotment of securities along with advance payments before filing the required changes with ROC. If the applicants express a desire to withdraw their application, the company shall refund subscription within 15 days from the date of his withdrawal application. (f) **Filing with ROC**: Any class or classes of companies as may be prescribed by the SEBI, shall file a shelf prospectus with ROC. **Special Note**: The information memorandum with ROC along with shelf prospectus shall be deemed to be a prospectus. The information memorandum shall be prepared in Form PAS – 2 and filed with ROC along with the fee within 1 month prior to the second or subsequent issue under the shelf prospectus.
RED – HERRING PROSPECTUS (SECTION 32)	Red Herring Prospectus (RHP) means a prospectus which does not include complete particulars of the quantum or price of the securities included therein. In other words, Red Herring Prospectus is a prospectus, which does not have details of either price or number of shares being offered, or the amount of issue. **Important Provisions :** (a) **Issue of RHP prior to Prospectus**: A company proposing to issue of securities, issues a RHP prior to the issue of a prospectus. (b) **Filing with ROC**: A company proposing to issue a RHP shall file it with ROC at least 3 days prior to the opening of the offer. (c) **Variation in the RHP**: A RHP shall carry the same obligations as applicable to a prospectus. Any variation between the RHP and a prospectus shall be highlighted as variations in the prospectus. (d) **Registration of RHP (Prospectus)**: Upon the closing of the offer of

	securities, the prospectus must state all the details which have not been covered in the RHP shall file with the ROC and SEBI. **Note**: RHP is issued when company comes with a public issue under book building process. RHP contains either the floor price of securities offered or a price band along with the range within which the Bids can move. **Special note:**In the case of book-built issue which is also known as price discovery mechanism. In this method, the price cannot be determined until the bidding process is completed. Hence, such details are not to be shown in the Red Herring prospectus filed with ROC as per the Companies Act, 2013. Only on completion of the bidding process, the details of the final price are included in the offer document. The offer document filed thereafter with ROC is called a prospectus.
LIABILITY FOR UNTRUE STATEMENT	**<u>WHAT IS AN UNTRUE STATEMENT?</u>** An untrue statement means a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included. In other words, an untrue statement or misstatement is one, which is misleading, in the form and context in which it has been included in the prospectus. Further, where any inclusion or omission of any matter in a prospectus is likely to mislead, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included. **<u>CRIMINAL LIABILITY FOR MIS – STATEMENTS</u>** Where any prospectus is issued or circulated or distributed, which includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, then every person who authorizes the issue of such prospectus shall be liable for fraud. Exception : If a person proves that : (a) Such statement or omission was immaterial, or (b) He had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary. **Penalty & Prosecution (Sec. 447)**: A promoter shall be liable for imprisonment not less than 6 months but not more than 10 years and shall also be liable for fine of not less than the amount involved in the mis-statement, but not more than 3 times the amount involved. If the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years. **<u>Onus for Proof of Mis-statement</u>** The burden of proof in a suit by an allottee that he has been misled by the mis-statement in the prospectus lies on the allottee. He must prove the

following :
(i) The misrepresentation was of a fact;
(ii) It was in respect of a material fact. What is a material statement of fact will depend upon the circumstances of each case;
(iii) He acted on the misrepresentation; and
(iv) He suffered damages in consequence.

CIVIL LIABILITY FOR MIS-STATEMENTS

Where any person subscribes for securities on the basis of misleading statements or inclusion or omission of any matter in the prospectus resulting in any loss or damages, then the company and every person who has authorized the issue of such prospectus or a director, promoter and the other, whosoever is liable shall have to compensate every person who has sustained such loss or damage.

Note: In case, a prospectus has been issued with intent to defraud the applicants for the securities of a company, every person involved in such issue shall be personally responsible without any limitation of liability for all losses incurred by the subscribers.

WHEN CIVIL LIABILITY CAN BE AVOIDED?

No person shall be liable for civil action if he proves that :

(a) When he withdrew his consent before the issue of the prospectus, and such prospectus was issued without his consent; or

(b)When the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave reasonable public notice that it was issued without his knowledge or consent.

Note: An expert may also escape his liability if he proves that he withdrew his consent before delivery of a copy of prospectus for registration to ROC.

WHO IS ENTITLED TO REMEDIES?

The right to claim compensation for any loss or damage sustained by reason of any untrue statement in a prospectus is available only to a person who has “subscribed” for securities on the faith of the prospectus containing untrue statement.

Note: A subsequent purchaser of shares in the open market has no remedy against the company or the directors or promoters.

Case Law : Peek v. Gurney (1873)

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. Section 37 of the Companies Act, 2013: A suit may be filed or any other action may be taken by any person, group of persons or any association of persons who have been affected by any misleading statement in the prospectus.
CRYSTALLISATION OF FLOATING CHARGE	A floating charge crystallizes and the security becomes fixed in the following cases : (i) When the company goes into liquidation; (ii) When the company ceases to carry on the business; (iii) 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; (iv) On the happening of the event specified in the deed. (normally, Continuous Default in repayment) **EFFECT OF CRYSTALLIZATION OF A FLOATING CHARGE** On crystallization, the floating charge converts itself into a fixed charge on the property of the company. It has priority over any subsequent equitable charge and other unsecured creditors. But preferential creditors who have priority for payment over secured creditors in the winding – up get priority over the claims of the debenture holders having floating charge. (***Will be covered in Detail in the Chapter Winding up***) **POSTPONEMENT OF A FLOATING CHARGE** The creation of a floating charge leaves the company free to create a legal and equitable mortgage on the same property until the floating charge crystallizes. Where such a mortgage is created it has priority over the floating charge which gets postponed. The floating charge is postponed in favour of the following persons if they act before the crystallization of the security : (i) A landlord who distrains for rent; (ii) A creditor who obtains a garnishee order absolute; (iii) A judgment creditor who attaches goods of the company and gets them sold (But if the goods are not sold and the debenture holders take action in the meantime, the floating charge has priority); (iv) The employees of the company, as well as other preferential creditors in the event of winding-up of the company; (v) The supplier of goods to the company under a hire-purchase agreement on terms that goods are to remain the property of the seller until they are paid for in full, has priority over the floating charge. **INVALIDITY OF FLOATING CHARGE** Section 332: A floating charge on the property of the company, which is created within 12 months immediately preceding the commencement of the winding up proceedings of a company shall be invalid, unless it is proved

	that the company was solvent immediately after the creation of the charge.
DEPOSITS	**<u>WHAT IS DEPOSITS? SECTION 2(31) OF THE COMPANIES ACT, 2013</u>** Deposit includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India. **<u>WHAT IS NOT A DEPOSIT?</u>** (a) Any amount received from the Central Government (CG) or a State Government (SG); (b) Any amount received from foreign Governments, foreign/international banks, multilateral financial Institutions, foreign government owned development financial institutions, foreign export credit agencies, foreign collaborators, foreign bodies corporate and foreign citizens etc.; (c) Any amount received as a loan or facility from any banking company or from the State Bank of India; (d) Any amount received as a loan or financial assistance from Public Financial Institutions notified by the Central Government in this behalf in consultation with the Reserve Bank of India; (e) Any amount received against issue of commercial paper or any other instrument issued in accordance with the guidelines or notification issued by the Reserve Bank of India; (f) Any amount received by a company from any other company; (g) Any amount received from a person who was a director of the company at the time of receipts; (h) Any amount received from an employee not exceeding his annual salary, under a contract of employment with the company in the nature of non-interest bearing security deposit; (i) Any amount received as security deposit for the performance of the contract for supply of goods or provision of services; (j) Any amount brought in by the promoters of the company by way of unsecured loan. **Who is depositor?** Depositor [Rules 2(1)(d)] means : (a) Any member of the company who has made a deposit with the company. (b) Any person who has made a deposit with a public company.
INVESTOR EDUCATION AND PROTECTION FUND	The Central Government has established an Investor Education and Protection Fund for the purpose to educate investors and to protect the interest of investors.

<table>
<tr><td>(IEPF)</td><td colspan="2">The following amount is being credited to this fund :
(a) Amounts in the unpaid dividend accounts of companies;
(b) Unpaid or unclaimed application moneys received by companies for allotment of any securities and due for refund;
(c) Unpaid or unclaimed amount of matured deposits with companies;
(d) Unpaid or unclaimed amount of matured debentures with companies;
(e) The interest accrued on the account referred to in clauses (a) to (d);
(f) Grants and donations given to the Fund by the Central Government, State Governments, companies or any other institutions for the purposes of the Fund; and
(g) The interest or other income received out of the investments made from the Fund.

<u>UTILIZATION OF INVESTOR EDUCATION AND PROTECTION FUND</u>

The amount of IEPF shall be utilized for :
(a) The refund in respect of unclaimed dividends, matured deposits, matured debentures, the application money due for refund and interest thereon;
(b) Promotion of investors’ education, awareness and protection;
(c) Distribution of any disgorged amount among eligible and identifiable applicants for shares or debentures, shareholders, debenture – holders or depositors who have suffered losses due to wrong actions by any person, in accordance with the orders made by the Court which had ordered disgorgement;
(d) Reimbursement of legal expenses incurred in pursuing class action suits by members, debenture – holders or depositors as sanctioned by the NCLT; and any other purpose.</td></tr>
<tr><td rowspan="4">PROVISIONS RELATING TO BOOKS OF ACCOUNTS</td><td>MEANING OF BOOKS OF ACCOUNT</td><td><u>Books of Account</u> include the records maintained in connection with :
(a) All sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
(b) All sales and purchases of goods and services by the company; and
(c) The assets and liabilities of the company.</td></tr>
<tr><td>PLACE</td><td>At its registered office. The books of accounts may be kept at other place in India as decided by the Board of Directors.

The book of accounts of the branch office relating to transactions of a branch office may be kept at that office. However, the branch office must send summarized books of accounts of branch at intervals of not more than 3 months to the registered office.</td></tr>
<tr><td>PRESERVATION</td><td>for at least 8 years immediately preceding the current year.</td></tr>
<tr><td>MAINTENANCE</td><td>• In electronic mode and/or in physical form.
• retained completely in the format in which they were originally generated, sent or received</td></tr>
</table>

		• Shall be capable of being displayed in a legible form.
	INSPECTION	(a) **Director:** A director can inspect the books of accounts and relevant papers during business hours of a Company. A director may also appoint his agent or representative to inspect the books of accounts of the company during business. (b) **Inspection by the ROC/Officers of SEBI**: The ROC and any other officer authorised by the Central Government to carry out inspection of books of account. The books of account can also be inspected by officers of the SEBI. (c) **Member's right of inspection of accounting records**: Members of a company do not have a right of inspection of its accounting records except as authorised by the Board or the company in general meeting. The right of inspection of documents and books of a company is not limited to the Board of Directors. (d) **Auditor's right of inspection of accounts**: An auditor has the right to access at all time to the company's accounts, whether kept at the head office of the company or elsewhere.
	PERSONS RESPONSIBLE FOR KEEPING THE BOOKS OF ACCOUNT	(a) Managing Director, (b) Whole – Time Director, in charge of finance, (c) Chief Financial Officer, (d) Any other person of a company charged by the Board.
	FINANCIAL STATEMENT	(a) Balance Sheet (b) Profit and Loss account or Income and Expenditure account (c) Cash flow Statement (d) Statement of change in equity, if applicable (e) Any explanatory notes annexed to or forming part of financial statements, giving information required to be given and allowed to be given in the form of notes The financial statement shall be laid in the AGM of that financial year. In case of Holding Companies, the company shall prepare a consolidated financial statement of the Company including its subsidiaries and lay before the AGM.
DISQUALIFICATION OF AN AUDITOR	**BODY CORPORATE**	(a) A Body Corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

	OFFICER OR EMPLOYEE	(b) An Officer Or Employeeof the company;
	PARTNER/ EMPLOYEE	(c) a person who is a partner, or who is in the employment, of an officer or employee of the company;
	HOLDING ANY SECURITY OF OR INTEREST	(d) A person who, or his relative or partner - (i) Is HOLDING ANY SECURITY OF OR INTERESTin the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company: **Provided that** the relative may hold security or interest in the company of face value not exceeding rupees one lakh; **Provided that** the condition of rupees one lakh shall, wherever relevant, be also applicable in the case of a company not having share capital or other securities: **Provided further that** in the event of acquiring any security or interest by a relative, above the threshold prescribed, the corrective action to maintain the limits as specified above shall be taken by the auditor within sixty days of such acquisition or interest. (ii) is **INDEBTED TO THE COMPANY**, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of rupees five lakh; or (iii) has given a **GUARANTEE** or provided any **SECURITY** in connection with the indebtedness of any third person to the Company or its Subsidiary, or its Holding or Associate Company or a Subsidiary of such Holding Company, in excess of one lakh rupees;
	BUSINESS RELATIONSHIP	(e) a person or a firm who, whether directly or indirectly has business relationship with the Company, or its Subsidiary, or its Holding or Associate Company or Subsidiary of such holding company or associate company, of such nature as may be prescribed; Student may note that for the purpose of clause (e) above, the term “business relationship” shall be construed as any transaction entered into for a commercial purpose, **except** – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountants Act, 1949 and the rules or the

		regulations made under those Acts; (ii) commercial transactions which are in the ordinary course of business of the company at arm's length price - like sale of products or services to the auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.
	RELATIVE IS A DIRECTOR OR IS IN THE EMPLOYMENT	(f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel; **<u>Meaning of Relative:</u>** i) Members of HUF; ii) They are husband & Wife; iii) They are related to another in the following manner: a. Father b. Mother c. Son d. Daughter e. Brother f. Sister
	FULL TIME EMPLOYMENT ELSEWHERE OR BREACH OF CEILING	(g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such person or partner is at the date of such appointment or reappointment holding appointment as auditor of **MORE THAN TWENTY COMPANIES**;
	OFFENCE	(h) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.
	PROVIDING CONULSTING & SPECIALISED SERVICES	(i) Any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialized services as provided in section 144. Section 144 of the Companies Act, 2013 is a new provision which prescribes certain services not to be rendered by the auditor. An auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company), namely: (i) accounting and book keeping services; (ii) internal audit;

			(iii) design and implementation of any financial information system; (iv) actuarial services; (v) investment advisory services; (vi) investment banking services; (vii) rendering of outsourced financial services; (viii) management services; and (ix) any other kind of services as may be prescribed. **Provided that** an auditor or audit firm who or which has been performing any non-audit services on or before the commencement of this Act shall comply with the provisions of this section **before the closure of the first financial year after the date of such commencement**.
DISQUALIFICATIONS OF A DIRECTOR	A person shall not be eligible for appointment as a director of a company, if : (a) He is of **unsound mind** and stands so declared by a competent court; (b) He is an **undischarged insolvent.** (c) He has applied to be adjudicated as an **insolvent** and his application is pending; (d) He has been **convicted** by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence. **Note:** If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall never be eligible to be appointed as a director in any company. (e) An order **disqualifying him for appointment** as a director has been passed by a court or Tribunal and the order is in force; (f) He has **not paid any calls** in respect of any shares of the company held by him, whether alone or jointly with others, and 6 months have elapsed from the last day fixed for the payment of the call; (g) He has been convicted of the offence dealing with **related party transactions** at any time during the last preceding 5 years; or (h) He has not got the **DIN.** **ADDITIONAL DISQUALIFICATION** based on Non-Compliances **(Section 164(2) :** A Director shall also be treated as disqualified in case of non-filing of financial statements or annual returns. **What are the Non-Compliances?** (a) Non-filing of financial statement and annual return for continuous 3 financial year; or (b) Defaulted in payment of debentures/deposit/dividend in any year. Impact of the above Disqualifications : Such director shall not be eligible for appointment as director in any company and also for re-appointment in the		

	same company for 5 years from the date of default.
SMALL SHAREHOLDERS DIRECTORS	Terms and Conditions for appointment of small shareholder's director : (i) **Applicability on Companies:** A listed company, may upon notice of not less than 1000 or 1/10 of the total number of small shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders. A listed company may also suomoto opt to have a director representing small shareholders. (ii) **Notice:** The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall give a signed notice to the company at least 14 days before the meeting. (iii) **Attachment of the Notice:** The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders' director stating (a) His Director Identification Number; (b) That he is not disqualified to become a director under the Act; and (c) His consent to act as a director of the company. (iv) **Eligible as Independent Director:** If proposed director is qualified for appointment as an independent director and has given declaration for his independence then such director shall be considered as an independent director. (v) **Tenure:** The director's tenure as small shareholders' director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further, he shall not be eligible for reappointment after the expiry of his tenure. (vi) **Appointment only in two Companies:** A small director shall not hold the office of small shareholders' director in more than two companies. If second company is in competitive business or is in conflict with business of the 1st company then he shall not be appointed in second company. (vii) **No Appointment for 3 years:** A small director shall directly or indirectly not be appointed or associated in any other capacity with the company for a period of 3 years from the date of cessation as a small shareholder's director.
DIRECTOR INDENTIFICATION NUMBER [DIN]	**PROCEDURE FOR ALLOTMENT OF DIN** **Application for DIN:** Every individual, who is to be appointed as director shall make an application electronically in Form DIR – 3 to the Central Government for the allotment of a DIN. **File an application:** The applicant should file an application in DIR – 3 for the allotment of DIN on the website of the Ministry of Corporate Affairs (i. e. www.mca.gov.in). **Submission of documents:** The applicant shall attach the following documents along with DIR – 3 : (a) Photograph; (b) Proof of identity; (c) Proof of residence; and verification by the applicant in Form DIR – 4.

	Note: The specimen signature of the applicant should be duly verified and sign the form digitally. Form DIR – 3 shall be signed and submitted electronically by the applicant using his or her own DSC and shall also be **verified digitally** by : (i) A chartered accountant in practice or a company secretary in practice or a cost accountant in practice; or (ii) A company secretary in full time employment of the company or by the managing director or director of the company in which the applicant is to be appointed a director; **Special Note:** (a) The Central Government shall **within 1 month** from the receipt of the application for allotment of a Director Identification Number to an applicant. (b) The Central Government shall reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective; (c) The DIN so allotted under these rules is **valid for the life-time** of the applicant and shall not be allotted to any other person. **CANCELLATION OF DIN** The Regional Director (North) may cancel or deactivate the DIN in the following cases : (a) The DIN is found to be **duplicated** in respect of the same person; (b) The DIN was obtained in a **wrongful manner** or by **fraudulent means**; (c) In case of the **death** of the concerned individual; (d) The concerned individual has been declared as a **lunatic or unsound mind**; (e) If the concerned individual has been **adjudicated an insolvent**.
KEY MANAGERIAL PERSONNEL	<table><tr><td>**MEANING**</td><td>Key Managerial Personnel, in relation to a company, means: (a) The Chief Executive Officer or the managing director or the manager; (b) The Company Secretary; (c) The Whole – Time Director; (d) The Chief Financial Officer; and (e) Such other officer as may be prescribed.</td></tr><tr><td>**WHO SHOULD APPOINT KMP**</td><td>Every listed company and every unlisted public company having a paid – up share capital of Rs.10 crores or more shall appoint following whole – time key managerial personnel: (a) Managing Director, or Chief Executive Office or Manager and in their absence, a whole – time director; (b) Company Secretary; and (c) Chief Financial Officer.</td></tr></table>

		A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole – time company secretary other than the KMP as given in Rule 8.
	APPOINTMENT	Every whole – time key managerial personnel of a company shall be appointed by passing a Board Resolution containing the terms and conditions of the appointment include the remuneration.
	HOLDING OF OFFICE AS KMP	Whole – time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. However, he can hold directorship in other companies with the permission of the Board.
	VACANCY OF KMP	If the office of any whole – time key managerial personnel is vacated, the resulting vacancy shall be filled – up by the Board within 6 months from the date of such vacancy.
	TENURE	A company shall not appoint or re – appoint any person as its MD, WTD or Manager for a term exceeding 5 years at a time and no reappointment shall be made earlier than one year before the expiry of his term.
	DISQUALIFICATION	No company shall appoint or continue the employment of any person as its MD, WTD or Manager who: (a) Is less than 21 years or has attained the age of 70 years; (A person, who has attained 70 years, may be appointed by passing a special resolution.) (b) Is an undischarged insolvent or has at anytime been adjudged as an insolvent; or (c) Has suspended the payments to his creditors; (d) Has convicted by a court of an offence and sentenced for a period of more than 6 months.
MANAGERIAL REMUNERATION (SECTION 197)	The maximum ceiling for payment of managerial remuneration by a public company to its MD, WTD and which shall not exceed 11%of the net profit of the company in a particular financial year. This section only applies to public company or a private company which is a subsidiary of a public company. **<u>Individual limit of Managerial Remuneration to MD, WTD or Manager</u>** The remuneration payable to any one MD or WTD or Manager shall not exceed 5% of the net profits and if there are more than one such directors and manager, remuneration shall not exceed 10% of the net profits. **<u>Individual Limit to directors other than MD, WTD or Manager</u>**	

<table>
<tr><td></td><td>The remuneration payable to Non – Executive directors shall not exceed:
(a) 1% of the net profits, if there is a MD, WTD or Manager;
(b) 3% of the net profits in any other case.</td></tr>
<tr><td>REMUNERATION BY COMPANIES HAVING NO PROFITS OR INADEQUATE PROFITS WITHOUT C G APPROVAL</td><td>Higher of table A or B

TABLE – A (LOSS MAKING COMPANY)
<table><tr><th>Effective Capital</th><th>Remuneration (Annually)</th></tr><tr><td>Negative or less than 5 Crore</td><td>30 Lacs</td></tr><tr><td>More than 5 crore but less than 100 Crore</td><td>42 Lacs</td></tr><tr><td>More than 100 crore but less than 250 Crore</td><td>60 Lacs</td></tr><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>COMPENSATION FOR LOSS OF OFFICE (section 202)</td><td>A company may make payment to a MD, WTD or Manager, but not to any other director, by way of compensation for loss of office, or as consideration for loss of office.

No payment shall be made in the following cases:

(a) In case of resignation by the directors due to reconstruction/amalgamation of the company and is appointed as the MD, WTD or Manager or other officer of the resulting company;

(b) Where the director resigns from his office otherwise than on the reconstruction/amalgamation of the company.

(c) Where the office of the director is vacated due to disqualification;

(d) Where the company is being wound up due to the negligence or default of the director;

(e) Where the director has been found guilty of fraud or breach of trust or gross negligence or mismanagement; and

Note: Any payment made to a MD, WTD or Manager shall not exceed the remuneration which he would have earned if he had been in office for his remaining term or three years, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or</td></tr>
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	where he held the office for a lesser period than three years, during such period.
DIRECTOR'S RESPONSIBILITY STATEMENT	The Director's Responsibility Statement includes the statement about: (a) The applicable accounting standards had been complied with along with proper explanation relating to material departures; (b) The directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period; (c) The directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities; (d) The directors had prepared the annual accounts on a going concern basis; and (e) The directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively. **Note:** Internal financial controls as the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information.
RELATED PARTY & RELATED PARTY TRANSACTIONS	**RELATED PARTIES (Section 188 of the Companies Act, 2013)** A related party means and includes: (a) A director or his relative, (b) Key Managerial Personnel or their relative, (c) A firm in which a director, manager or his relative is a partner, (d) A private company in which a director or manager is a director or members, (e) A public company in which a director or Manager is a director or holds along with his relatives more than 2% of its paid – up share capital, (f) A person on whose advice, directions or instruction (except given in professional capacity) a director or manager is accustomed to act, (g) A holding/subsidiary or associate company, subsidiary's subsidiary, and such person as would be prescribed. **RELATED PARTIES TRANSACTIONS(Section 188(1) Of The Companies Act, 2013)** The following contracts or arrangements come under the category related party transactions: (a) Sale, purchase or supply of any goods or materials; (b) Selling or otherwise disposing of, or buying, property of any kind;

	(c) Leasing of property of any kind; (d) Availing or rendering of any services; (e) Appointment of any agent for purchase or sale of goods, materials, services or property; (f) Such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and (g) Underwriting the subscription of any securities or derivatives thereof, of the company.
RESTRICTION ON POWERS OF BOARD (SECTION 180)	The Board can exercise the following powers only with the approval via special resolution passed by the shareholders: (a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings; (b) To Invest Otherwise In Trust Securities The Amount Of Compensation Received By It As A Result Of any merger or amalgamation; (c) <u>*To borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid – up share capital, free reserves and Securities Premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business;*</u> Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause. <u>**Explanation**</u>.—For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature; (d) To remit, or give time for the repayment of, any debt due from a director. The special resolution relating to borrowing money exceeding paid – up capital and free reserves specify the total amount up to which the money may be borrowed by Board.
CORPORATE SOCIAL RESPONSIBITY COMMITTEE (Section 135)	As per section 135 of the Companies Act, 2013, certain class of companies must constitute a CSR Committee for formulation and implementation of CSR policy. <u>**Constitution of CSR Committee**</u>: Every company has to constitute a CSR

	Committee which is having: (a) Net worth of Rs.500 crore or more or (b) Turnover of Rs.1000/- crore or more or (c) Net profit of Rs.5 crore or more **Note:** If a company crosses the above limits in respect of net worth or turnover or net profit during immediately preceding financial year, such company has to constitute a CSR committee. **<u>Members</u>:** The CSR Committee shall consist of 3 or more Directors, out of which at least one Director shall be an Independent Director. *Provided that where a company is not required to appoint an independent director under sub-section (4) of section 149, it shall have in its Corporate Social Responsibility Committee two or more directors.* **<u>COMPOSITION OF CSR COMMITTEE</u>** (a) For Listed Company : The CSR committee shall consist of 3 or more directors, out of which one director shall be an independent director. (b) For Unlisted Public or Private Company : In case of an unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without the independent director. Example: A private company having only two directors on its Board shall constitute its CSR Committee with two such directors. (c) For Foreign Company: With respect of foreign company, the CSR Committee shall comprise of at least two persons out of which one person resident in India and another person may be from foreign country duly nominated by the foreign company. **<u>FUNCTIONS OF THE CSR COMMITTEE</u>** The Committee formulate a CSR Policy and recommend to the Board which shall indicate the activities to be undertaken by the company in future. The Committee shall recommend the amount of expenditure to be incurred on the activities. Further, the CSR Committee is under an obligation to monitor the implementation of the CSR policy from time to time. The CSR activities shall be completed by way of the following methods : (a) <u>By Charity</u> : A company can donate money to various charitable trusts, societies, NGOs etc. who work for social economic welfare of society. (b) <u>By Contract</u> : A company can make a contract with an NGO or any other agency for carrying out the CSR Activities for and on behalf of the company. (c) <u>By itself</u>: A company can take up any CSR activities on its own or create its own trust for CSR Activities. **As per the Companies Act, 2013, the following shall be treated as CSR Activities:**

	(a) <u>Social Welfare Work</u> : Eradicating poverty and malnutrition, providing preventive health care and sanitation and making available safe drinking water; (b) <u>Promotion of Education</u> : Promoting education including special education and employment enhancing vocation skills especially among children, women and others; (c) <u>Promotion of Gender Equality</u> : Promoting gender equality, empowering women, setting up homes and hostels for women and orphans etc.; (d) <u>Environment Protection</u> : Ensuring environment sustainability, ecological balance, animal welfare, conservation of natural resources and maintaining quality of soil, air and water; (e) <u>Protection of national heritage</u> : Protection of national heritage, art and culture including restoration of building and sites of historical important and works of art; (f) <u>Contribution to the Prime Minister's National Relief Fund</u>: Contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio – economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women.
ROLE & RESPONSIBILITIES OF NOMINATION AND REMUNERATION COMMITTEE **(June 2016)**	(a) Identifying the persons who are qualified to become Directors and who may be appointed in senior management; (b) Recommend to the Board the appointment and removal of any director; *(c) shall specify the manner for effective evaluation of performance of Board, its committees and individual directors to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency and review its implementation and compliance*; (d) Formulation of the parameters for determining qualifications, positive attributes and independence of a Director; and (e) Recommend a policy relating to the remuneration for the Directors, KMP and other employees.
ROLE OF AUDIT COMMITTEE	(a) The recommendation for appointment, remuneration and terms of appointment of auditors; (b) Review and monitor the auditors' independence and performance, and effectiveness of audit process; (c) Examination of the financial statement and the auditors' report thereon; (d) Approval or any subsequent modification of transactions of the company with related parties; *Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such*

	conditions [as may be prescribed](#) (e) Scrutiny of inter – corporate loans and investments; (f) Valuation of undertakings or assets of the company, wherever it is necessary; (g) Evaluation of internal financial controls and risk management systems; (h) Monitoring the end use of funds raised through public offers and related matters.
SEPARATE MEETINGS OF INDEPENDENT DIRECTORS	The independent directors shall hold at least 1 meeting in a year without the presence of non-independent directors (i. e. MD/WTD) and members of management (i. e. Employee). All independent directors of the Company shall make every effort to be present at the meeting of Independent Director. The meeting of Independent Director shall: (a) Review the performance of non – independent directors and the Board as a whole; (b) Review the performance of the Chairperson of the company, taking into account the views of executive directors and non – executive directors; (c) Assess the quality, quantity and timeliness of flow of information between the company management.
VACATION OF OFFICE OF DIRECTOR [SECTION 167]	The office of a director shall become vacant in case : (a) He disqualifies as per section 164; *Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.* (b) He absents himself from all the Board meetings during a period of 12 months with or without leave of absence from the Board; (c) He acts in contravention of the provisions of section 184 relating to entering into contracts or arrangement in which he is directly or indirectly interested; (d) He fails to disclose his interest (direct or indirect) in any contract or arrangement; (e) He becomes disqualified by an order of a court or the Tribunal; (f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months : *Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)—* *(i) for thirty days from the date of conviction or order of disqualification;* *(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or* *(iii) where any further appeal or petition is preferred against order or sentence*

	within seven days, until such further appeal or petition is disposed of (g) He is removed in pursuance of the provisions of this Act; (h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company. **Imprisonment & Fine:** In case of failure to vacate the position of directorship, the person shall be liable for punishment for a term which may extend to 1 year or with fine not less than Rs.1,00,000/- but not more than Rs.5,00,000/- or with both.
ADDITIONAL DIRECTOR [SECTION 161 (1)]	The Board can appoint additional directors provided they are authorized by the Articles of Association of the Company. The additional director shall hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. In case, the AGM gets postponed due to any reason, the additional director has to vacate his office on the date of AGM. **Note:** A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.
ALTERNATE DIRECTOR [SECTION 161 (2)]	The Board of Directors of a company may, (i) if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company *or holding directorship in the same company*, to act as an alternate director for a director during his absence for a period of not less than three months from India: Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act: Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India: Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director
NOMINEE DIRECTORS [SECTION 161 (3)]	The Board of directors may appoint any person as a director nominated by any financial institution/Bank or also by private equity partners. The appointment of Nominee Director is based on the agreement between the financial institution/Bank for providing loan to the Company. The Company and the Board of directors have no option except to appoint such nominated person as nominated by the Bank/Financial Institution. Nominee director are appointed only for the purpose to take care interest of

	the Bank/Financial Institution.
DUTY OF AUDITOR TO INQUIRE ON CERTAIN MATTERS [SECTION 143(1)]	It is the duty of auditor to inquire into the following matters: (a) Whether loans and advances made by the company on the basis of security have been **properly secured** and whether the terms on which they have been made are prejudicial to the interests of the company or its members; (b) Whether transactions of the company which are represented merely by **book entries** are prejudicial to the interests of the company; (c) Where the company not being an investment company or a banking company, whether so much of the assets of the company as consist of shares, debentures and other securities have been sold at a price less than that at which they were purchased by the company; (d) Whether **loans and advances** made by the company have been shown as deposits; (e) Whether **personal expenses** have been charged to revenue account; (f) Where it is stated in the books and documents of the company that any shares have been allotted for cash, whether cash has actually been received in respect of such allotment, and if no cash has actually been so received, whether the position as stated in the account books and the balance sheet is correct, regular and not misleading. The opinion of the Research Committee of the Institute of Chartered Accountants of India on section 143(1) is reproduced below : "The auditor is not required to report on the matters specified in sub-section (1) **unless he has any special comments to make** on any of the items referred to therein. If he is satisfied as a result of the inquiries, he has no further duty to report that he is so satisfied. In such a case, the content of the Auditor's Report will remain exactly the same as the auditor has to inquire and apply his mind to the information elicited by the enquiry, in deciding whether or not any reference needs to be made in his report. In our opinion, it is in this light that the auditor has to consider his duties under section 143(1)." Therefore, it could be said that the auditor should make a report to the members in case he finds answer to any of these matters **in adverse**.
XBRL	• XBRL is a **language** for the **electronic communication of business and financial data** which is revolutionizing business reporting around the world. • It provides major benefits in the preparation, analysis and communication of business information. • It offers **cost savings, greater efficiency and improved accuracy** and reliability to all those involved in supplying or using financial data.

	• It is an open standard, free of licence fees, being developed by a non-profit making international consortium. • Other pages on this web site provide detailed information on XBRL, its technical features and its business opportunities. • **XBRL is a data-rich dialect of XML (Extensible Markup Language), the universally preferred language for transmitting information via the Internet**. • It was developed specifically to communicate information between businesses and other users of financial information, such as analysts, investors and regulators. XBRL provides a common, electronic format for business reporting. • It **does not change** what is being reported. • It only changes how it is reported. • XBRL is a **world-wide standard**, developed by an international, non-profit-making consortium, XBRL International. • XBRL International is made up of many hundred members, including government agencies, accounting firms, software companies, large and small corporations, academics and business reporting experts. XI has agreed the basic specifications which define how XBRL works.
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INDEPENDENT DIRECTOR	**Meaning/Definition of Independent Director** As per Section 2(47), "independent director" means an independent director referred to in sub-section (5) of section 149; Section 149 (6) contains that – An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director,— (a) who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience; (b) (i) who is or was not a promoter of the company or its holding, subsidiary or associate company; (ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company; (c) who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;

	(d) none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, 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; (e) who, neither himself nor any of his relatives— (i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed; (ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of— (A) a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or (B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm; (iii) holds together with his relatives two per cent. or more of the total voting power of the company; or (iv) is a Chief Executive or director, by whatever name called, of any nonprofit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company; or (f) who possesses such other qualifications as prescribed below: An independent director shall possess appropriate balance of skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.
GROUNDS ON WHICH COMPANY MAY BE WOUND UP BY COURT	(a) the company has passed a special resolution of its being wound up by the Court; or (b) default is made in delivering the statutory report to the Registrar or in holding the statutory meeting; or (c) it does not commence business within a year from its incorporation or suspends business for a whole year; or (d) the number of its members in the case of a public company is reduced below seven and in the case of a private company, below two; or (e) it is unable to pay its debts; or

	(f) the Court is of the opinion that it is just and equitable that it should be wound up. (g) the company has made a default in filing with the registrar its balance sheet and profit and loss account or annual returns for any five consecutive financial years. (h) the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or
COMPOUNDING OF OFFENCES (SECTION 441)	• Any offence punishable (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, may, be compounded by the Regional Director; • Any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only and where the maximum amount of fine which may be imposed for such offence exceeds five lakh rupees, may, be compounded by the Tribunal; • The offences which are punishable with Fine or Imprisonment; fine or Imprisonment or with both may be compoundable with the permission of Special Court. • Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable. • Offences may be compounded by Regional Director National Company Law Tribunal Special court
RESOLUTIONS REQUIRING SPECIAL NOTICE	Section 115 provides that where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and the company shall give its members notice of the resolution in the following manner as prescribed in Rules. **Provisions contained in the Act requiring special notice:** The matters in respect of which special notice is required are: (a) A resolution for appointment of a person as auditor at the annual general meeting other than the retiring auditor for providing expressly that the retiring auditor shall not be re-appointed [Section 140(4)]; (b) A resolution for removing a director before the expiry of the period of his office and appointing someone in the place of the director so removed.
DORMANT	1) Where a company is formed and registered under this Act for:

COMPANY	• 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 Registrar in such manner as may be prescribed for obtaining the status of a dormant company. 2) In case of a company which has ***not filed financial statements or annual returns for two financial years consecutively***, the Registrar shall issue a notice to that company and enter the name of such company in the register maintained for dormant companies. (Deemed Dormant Company) 3) Rotation of auditors shall not apply to a dormant company. 4) A dormant company shall have such minimum number of directors, file such documents and pay such annual fee as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed. 5) A dormant company shall file an annual "Return of Dormant Company" in form MSC-3 which indicates the financial position of the company and which shall be duly audited by a chartered accountant in practice. This should be filed within 30 days from the end of each financial year. i.e. on or before 30th April every year. 6) Proviso to Rule 8 of the Companies (Miscellaneous) Rules, 2014 says that a dormant company cannot remain as a dormant company for more than 5 consecutive financial years. If it remains so, then the Registrar shall commence the process of striking off the name of the company from the Records, i.e. the company will be removed. So maximum tenure for a dormant company is 5 consecutive financial years
COMPULSORY CONVERSION OF OPC INTO A PUBLIC COMPANY OR A PRIVATE COMPANY	Where the paid up share capital of an One Person Company exceeds fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees, it shall cease to be entitled to continue as a One Person Company. Here, 'relevant period' means the period of immediately preceding three consecutive financial years. Such One Person Company shall be required to convert itself, within six months of the date on which its paid up share capital is increased beyond fifty lakh rupees of the last day of the relevant period during which its average annual turnover exceeds two crore rupees as the case may be, into either a private company with minimum of two members and two directors or a public company with at least of seven members and three directors in accordance with the provisions of section 18 of the Act. The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto. The One Person Company shall within period of sixty days from the date of ceasing to be an OPC, give a notice to the Registrar in **Form No. INC.5**

	informing that it has ceased to be a One Person Company and that it is now required to convert itself into a private company or a public company by virtue of its paid up share capital or average annual turnover, having exceeded the threshold limit laid down above. If One Person Company or any officer of the One Person Company contravenes the provisions of these rules, One Person Company or any officer of the One Person Company shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first during which such contravention continues.
CONVERSION OF PRIVATE COMPANY INTO ONE PERSON COMPANY (OPC) **(June 2016)**	A private company other than a company registered under section 8 (non-profit company) of the Act having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting. Before passing such resolution, the company shall obtain No objection in writing from members and creditors. The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in **Form No. MGT.14.** The company shall file an application in **Form No. INC.6** for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely :- - The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital company is fifty lakhs rupees or less or average annual turnover is two crores rupees or less, as the case may be; - The list of members and list of creditors; - The latest Audited Balance Sheet and the Profit and Loss Account; and - The copy of No Objection letter of secured creditors. On being satisfied and complied with requirements stated herein the Registrar shall issue the Revised Certificate of Incorporation, mentioning that now it has become a One Person Company.
CONVERSION OF A PRIVATE COMPANY INTO A PUBLIC COMPANY	A private company can be converted into a public company by complying with following requirements : ➢ Alteration of its articles thereby deleting the three restrictions of a private company, by passing a Special Resolution as per Section 14; and ➢ Changing its name thereby deleting the word 'private' from its name, by passing a Special Resolution as per Section 13. Further, if the number of members is below 7, steps should be taken to increase the number of members to atleast 7 and that the number of directors should be increased to atleast 3, if they are only 2 directors.

	The company becomes public from the date the special resolution is passed u/s 14. But the change in its name, by deleting the word 'private' becomes effective only on the issue of fresh certificate of incorporation by the Registrar of Companies.
CONVERSION OF A PUBLIC COMPANY INTO A PRIVATE COMPANY	A public company having a share capital and membership within the limits imposed upon private companies can be converted into a private company by complying with following requirements : ➢ Alteration of its articles thereby adding the three restrictions of a private company, by passing a Special Resolution and obtaining National Company Law Tribunal (NCLT) Approval as per Section 14; and ➢ Changing its name thereby adding the word 'private' to its name, by passing a Special Resolution as per Section 13. It should be noted that although the company becomes a private company as soon as the approval of the NCLT for the conversion under section 14 is received but the change in its name becomes effective only on the issue of fresh certificate of incorporation by the Registrar in the changed name.
CHANGE FROM ONE STATE TO ANOTHER STATE [SEC. 13]:	If a company wants to shift its registered office from one State to another State; a special resolution in general meeting is required to be passed, which must be confirmed by the Central Government (Power delegated to Regional Director). This change involves alteration of MOA. The Central Government shall dispose of the application within a period of sixty days. The Central Government, before passing its order, may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debt and obligations or that adequate security has been provided for such discharge. A certified copy of the order of the Central Government approving the alteration for change in the registered office from one State to another shall be filed by the company, together with an altered copy of MOA, with the Registrar of each of the States within such time and in such manner as may be prescribed. The ROC of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indication the alteration. **Form No. MGT.14** shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Also within **30 days** of the change of the registered office, a notice to the Registrar should be given of the new location of the office in **Form No. INC.22.**
PROXY (SECTION 105)	A member, who is entitled to attend to vote, can appoint another person as a proxy to attend and vote at the meeting on his behalf. Provisions related to proxy : (a) Any member of a company who is entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.

	(b) A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. **Note :** ▪ A member of a company not having share capital cannot appoint proxy except the articles of such company provide otherwise. ▪ A person may act as proxy for not exceeding 50 members. ▪ The proxy form (MGT – 11) shall be deposited with the Company 48 hours before the general meeting of a company. ▪ The instrument appointing a proxy shall : (a) Be in writing; and (b) Be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
DUTIES OF CHAIRMAN	(i) He must ensure that the meeting is properly convened and constituted (i. e. proper notice has been served and quorum has also been observed). (ii) He must ensure that the provisions of the Act and the articles in regard to the meeting and its procedures are observed, and that the business is taken in the order set out in the agenda, and that the business is within the scope of the meeting. (iii) He must act at all times bonafide and in the interest of the company as a whole. He must give a reasonable chance to the members present, to discuss any proposed resolution and ensure that views of all are adequately heard. (iv) He must decide questions arising for decisions during the meeting and must ensure that the majority hears the minority. (v) He must ensure that the sense of the meeting is properly ascertained in regard to any question before it. (vi) He must exercise correctly his powers of adjournment. He has no powers to adjourn the meeting at his own will and pleasure. (vii) It is his duty to preserve order and to see that the business is properly conducted. (viii) He must ensure the preparation of the minutes of meeting.
METHODS OF EXERCISING SHAREHOLDERS RIGHTS WITH REGARD TO VOTING	**VOTING BY SHOW OF HANDS :** In this method, the Chairman calls upon the persons present who are entitled to vote to raise hands in favour of the motion and on counting them he proceeds to count the hands raised against the motion also. On comparison of the hands shown for and against the motion, the Chairman announces his verdict whether the resolution is carried or lost. Each member, irrespective of his shareholding, or voting right, has one vote. **VOTING BY POLL :** Poll means counting of heads. In this method, the poll is taken if the Chairman or a prescribed number of members are dissatisfied with the result of voting by show of hands. In a poll, since the votes are counted on the basis of shareholdings of members, the true sense of meeting can e ascertained. Further in a poll proxies can also exercise their vote. In this system, the poll papers are given to persons who are entitled to vote

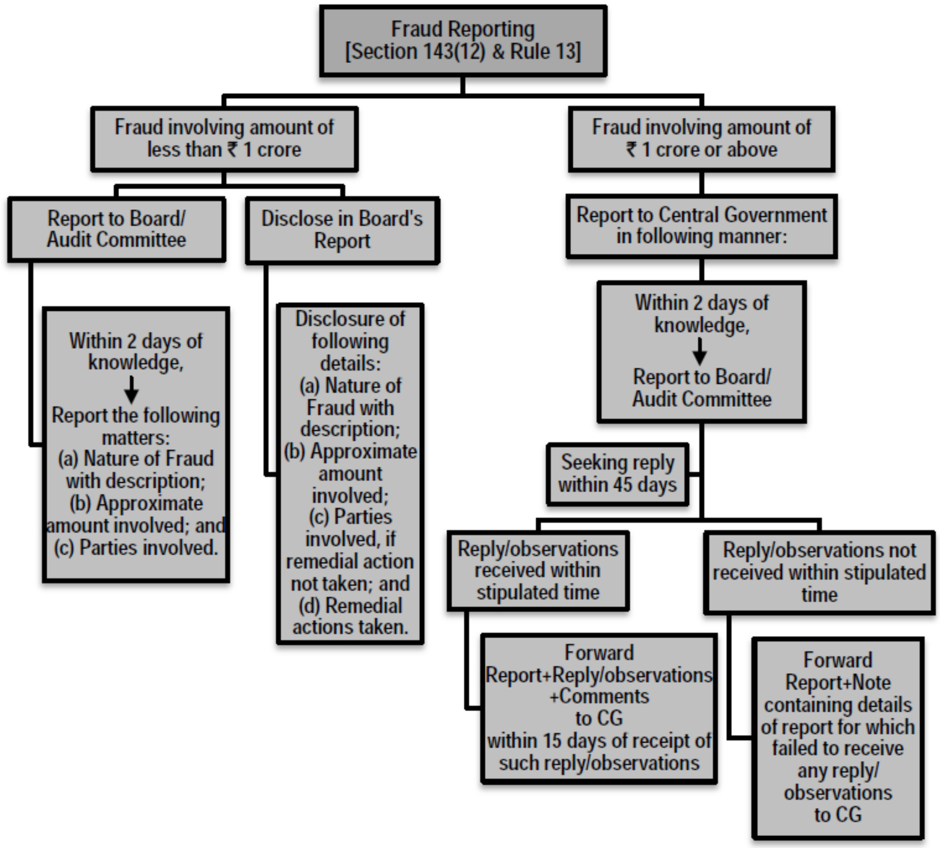
	who indicate on them their names and whether they are voting for or against the motion and also indicate therein the number of votes which they are entitled to. The Chairman appoints two scrutinizers to scrutinize these poll papers and submit the report to him, who declares the result of the poll. **VOTING BY POSTAL BALLOT** Where a company decides to pass a resolution by postal ballot, it shall send notice to all the shareholders along with a draft resolution. In this method, MCA has notified certain business only to be transacted through the Postal Ballot like merger & amalgamation. In the notice, the shareholders are asked to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter. Such notice must be sent by registered post acknowledgement due or by any other method as may be prescribed by the Central Government. **VOTING BY ELECTRONIC MODE:** Every listed company or a company having five hundred or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system. Voting by electronic or Electronic voting system means a 'secure system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security'.
PROCESS FOR POSTAL BALLOT	➢ Step – 1 : Where a listed company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore, and requesting them to send their assent or dissent in writing on a postal ballot within a period of 30 days from the date of posting of the letter. ➢ Step – 2 : The notice shall be sent by registered post acknowledgement due, or by any other method as may be prescribed by the Central Government in this behalf. Also with the notice, there shall be included a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period. ➢ Step – 3 : If resolution is assented to by a requisite majority of the shareholders by means of postal ballot, it shall be deemed to have duly passed at general meeting convened in that behalf. ➢ Other Important Steps : (i) The board of directors shall appoint one scrutinizer, who is not in

	employment of the company; (ii) The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots; (iii) The scrutinizer will be willing to be appointed and he is available at the Registered Office of the company for the purpose of ascertaining the requisite majority; (iv) The scrutinizer shall maintain a register to record the consent or otherwise received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-voting rights and the Scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form.
PENAL PROVISIONS FOR DEFAULT IN REDEMPTION OF DEPOSITS (Section 76A)	If company contravenes Section 73 or Section 76 or fails to repay the deposit or part thereof or interest due thereon within the time or time allowed by Tribunal then: 1. The Company shall be liable to pay in addition to the deposits & its interest thereon, also liable to pay Rs. 1 Crore *or twice the amount of deposit accepted by the company, whichever is lower* but which may extend to Rs.10 crores. 2. Every officer of the Company who is in default shall be punishable with imprisonment which may extend to 7 years or with the fine between Rs. 25 lacs and Rs.2 crores or with both. Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.
DIVIDEND IN CASE OF ABSENCE OR INADEQUACY OF PROFITS	In case of inadequacy or absence of profits in any financial year, any company may declare the dividend out of the previous year's accumulated profits. **Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014** In the event of inadequacy or absence of profits in any year, a company may declare dividend out of previous year surplus subject to the fulfillment of the following conditions : (a) **Rate of dividend**: The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by it in the 3 years immediately preceding that year. **Note:** This rule shall not apply to a company which has not declared any dividend in immediately preceding 3 financial years. (b) **Total withdrawal from accumulated profits**: The total amount to be drawn from such accumulated profits shall not exceed 1/10 of the sum of its paid – up share capital and free reserves as per the latest audited financial statement. (c) **Setting off the losses**: The amount so drawn shall first be utilized to set

	off the losses incurred in the financial year in which dividend is declared before any dividend in respect of equity shares is declared. (d) **To maintain reserve** : The balance of reserves after withdrawal shall not fall below 15% of its paid – up share capital as per the latest audited financial statement. (e) **Dividend to be declared only from free reserves:** No dividend shall be declared or paid by a company from its reserves other than free reserves.
PUNISHMENT FOR FAILURE TO DISTRIBUTE DIVIDENDS (SECTION 127) **(June 2016)**	When a dividend has been declared by a company but has not been paid within 30 days from the date of declaration to any shareholder entitled to the payment of the dividend, **every director** of the company shall, if he is knowingly a party to the default, be punishable with imprisonment which may extend to 2 years and with fine which shall not be less than Rs.1000/- for every day during which such default continues **and the company** shall be liable to pay simple interest at the rate of 18% per annum during the period for which such default continues. **EXCEPTIONS:** Proviso to section 127 has provided a list where no offence under this section shall be deemed to have been committed :- (a) Where the dividend could not be paid by reason of the operation of any law; (b) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him; (c) Where there is a dispute regarding the right to receive the dividend; (d) Where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder; or (e) Where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.
RE-OPENING OF ACCOUNTS ON COURT'S OR TRIBUNAL ORDER (SECTION 130) (JUNE 2016)	(1) A company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory regulatory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect that— (i) the relevant earlier accounts were prepared in a fraudulent manner; or (ii) the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements: Provided that the court or the Tribunal, as the case may be, shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body or authority concerned and shall take into consideration the representations, if any, made by that Government or the authorities, Securities and Exchange Board or the body or authority concerned before passing any order under this section. (2) Without prejudice to the provisions contained in this Act the accounts so revised or re-cast under sub-section (1) shall be final.

	(3) No order shall be made under sub-section (1) in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year: Provided that where a direction has been issued by the Central Government under the proviso to sub-section (5) of section 128 for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened within such longer period.
VOLUNTARY REVISION OF FINANCIAL STATEMENTS OR BOARD'S REPORT (SECTION 131)	(1) If it appears to the directors of a company that— (a) the financial statement of the company; or (b) the report of the Board, do not comply with the provisions of section 129 or section 134 they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year: Provided also that the detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made (2) Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to— (a) the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and (b) the making of any necessary consequential alteration. (3) The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular— (a) make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made; (b) make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report; (c) require the directors to take such steps as may be prescribed.
DUTY TO REPORT ON FRAUDS [Section 143(12)]	❖ If an auditor of a company, in the course of the performance of his duties as auditor, **has reason to believe** that an offence involving fraud is being or has been committed against the company by officers or employees of

(Amendment)	the company, which involves or is expected to involve individually an amount of Rs. 1 Crore or above, he shall immediately report the matter to the Central Government within such time and in such manner prescribed in Rule 13. ❖ Auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud but not later than 2 days, seeking their reply or observations within forty-five days; ❖ On receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations; ❖ In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of forty-five days, he shall forward his report to the Central Government alongwith a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time. ❖ Further, the report shall be sent to the Secretary, Ministry of Corporate Affairs in a sealed cover by Registered Post with Acknowledgement Due or by Speed post followed by an e-mail in confirmation of the same. This report shall be on the letter-head of the auditor containing postal address, e-mail address and contact number and be signed by the auditor with his seal and shall indicate his Membership Number. The report shall be in the form of a statement as specified in Form ADT-4. ❖ No duty to which an auditor of a company may be subject to shall be regarded as having been contravened by reason of his reporting the matter above if it is done in good faith. It is very important to note that the provision of this rule shall also apply, mutatis mutandis, to a cost auditor and a secretarial auditor during the performance of his duties under section 148 and section 204 respectively. If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12) of section 143, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees) ❖ In case of a fraud involving lesser than the amount of Rs. 1 Crore, the auditor shall report the matter to Audit Committee constituted under Section 177 or to the Board immediately but not later than 2 days of his knowledge of the fraud and he shall report the matter specifying the following: o Nature of Fraud with description] o Approximate Amount involved o Parties involved ❖ The following details of each of the fraud reporting to the Audit Committee or the Board shall be disclosed in the Board's Report: o Nature of Fraud with description

	o Approximate Amount involved o Parties involved, remedial action not taken o Remedial actions taken ❖ The provision of this Rule shall also apply mutatis mutandis to a Cost auditor and a Secretarial Auditor during the performance of his duties under section 148 & 204 respectively. 
Disclosure of Interest by Director (Section 184)	Every director shall disclose his interest or concern in any company or firms or other association of individuals in writing in **Form MBP – 1** at the 1st Board Meeting after his appointment as director ad also at 1st Board Meeting of every financial year. In addition to the above disclosure, the director shall also disclose any change after previous disclosure in next board meeting. (a) **<u>No participation</u>**: Every director is required to disclose his interest at the Board Meeting in which such contract or arrangement is discussed. The participation of the interest of director is not allowed in such meeting. (b) **<u>Time of disclosure</u>**: Every interested director shall disclose his interest at the meeting held immediately after the date of the board notice. (c) **<u>Preservation of record</u>**: All notices shall be kept at the registered office and preserved for a period of 8 years from the end of the financial year. **Note:** If a contract entered into by the company without disclosure of interest

	by director or with participation by a director who a interested whether directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company. **Exemption from this Section:** Nothing in this section— (a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company; *(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate.* **Penalty for Non – Disclosure**: Punishment – upto 1 year or with fine which may extend to Rs.1,00,000/- or both.
INSPECTION OF DOCUMENTS, PAPERS, REGISTERS, ANNUAL RETURN, ETC (SECTION 94)	• The registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and **by any other person on payment of such fees** as may be prescribed. • Any such member, debenture-holder, other security holder or beneficial owner or **any other person** may— (*a*) take extracts from any register, or index or return without payment of any fee; or (*b*) require a copy of any such register or entries therein or return on payment of such fees as may be prescribed. • If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.
APPLICABILITY OF XBRL **(June 2016)**	The following class of companies shall file their financial statement and other documents under section 137 of Act, with ROC in e-form AOC 4 XBRL on or after 01.04.2014 using XBRL namely: (i) All companies listed on any stock exchange in India and their Indian Subsidiaries; (ii) All companies having paid up capital of Rs. 5 Crores or above; (iii) All companies having turnover of Rs. 100 Crores or above; (iv) All company which were hitherto covered under Companies (filing of Documents and forms in XBRL) Rules 2011 *Provided that the companies in Banking, insurance, Power Sector and NBFC are exempted from XBRL Filing.*

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 can be regarded as Experience of Company”</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 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.</td></tr>
<tr><td>Gilford Motor Co. v. Horne</td><td>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.</td></tr>
<tr><td>Jones v. Lipman

“Lifting of Corporate Veil”</td><td>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</td></tr>
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	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, <u>Ashbury Railway Carriage and Iron Co. Ltd. v. Riche.</u> 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.
Kotla Venkata Swamy 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.
Shri Nirmal 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. Fredie Ardesir Mehta v. Union of India *"Deferred Credit terms does not amount to loan"*	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.
Dushyant D. Anjaria v. Wall Street Finance Ltd	**Facts:** In this case, a director intimated resignation to the company and the company failed to communicate the same to ROC. **Judgment:** In this case, the Bombay High Court held that the resignation of a Director would be effective from the date it was submitted because the letter brings out clearly his intentions to resign. However, the delayed intimation to the ROC was delayed on the part of the company about the date of the resignation; the resigning Director could not be burdened with responsibility and liability for such delay.

IMPORTANT PENALTIES

CONTRAVENTION	PENALTY PRESCRIBED
MISSTATEMENT IN PROSPECTUS	Against Company: Fine of Not Less than Amount Involved but not more than 3 times of Amount Involved Against Officer/Directors: 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	Company: Fine of Not less than 1 Crore but maximum Rs. 10 Crores Officer: 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	Against Company: Fine which shall not be less than Rs.50,000/- but which may extend to Rs.3 lacs Against Officer/Director: 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	Company: Fine upto Rs. 1,00,000 & in case of Continuing default Rs. 5,000

HOLDING AGM	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	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.

LOANS AND INVESTMENT BY COMPANY	25,000 but which may extend to 5,00,000.
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.
FAILURE TO FILE ANNUAL RETURN	Fine on company – shall not be less than Rs. 50,000 but which may extend to Rs. 5,00,000. for officers fine shall not be less than Rs. 50,000 but may extend to Rs. 5,00,000
PENALTY WHERE NO SPECIFIC PENALTY IS PROVIDED (SECTION 450)	Company and Every Officer in Default shall be punishable with a fine upto Rs. 10,000 and where the contravention is of continuing nature Rs. 1,000 per day till the default continues.
REPEATED DEFAULTS (section 451)	In the case of repeated default committed for the second or subsequent occasions within a period of **three years**, then the company and every officer thereof who is in default is punishable with **twice** the amount of fine for such offence, in addition to any imprisonment for the same.

EXPLANATORY STATEMENTS

SWEAT EQUITY SHARES	(a) the date of the Board meeting at which the proposal for issue of sweat equity shares was approved; (b) the reasons or justification for the issue; (c) the class of shares under which sweat equity shares are intended to be issued; (d) the total number of shares to be issued as sweat equity; (e) the class or classes of directors or employees to whom such equity shares are to be issued; (f) the principal terms and conditions on which sweat equity shares are to be issued, including basis of valuation ; (g) the time period of association of such person with the company; (h) the names of the directors or employees to whom the sweat equity shares will be issued and their relationship with the promoter or/and Key Managerial Personnel; (i) the price at which the sweat equity shares are proposed to be issued; (j) the consideration including consideration other than cash, if any to be received for the sweat equity; (k) the ceiling on managerial remuneration, if any, be breached by issuance of such sweat equity and how it is proposed to be dealt with; (l) a statement to the effect that the company shall conform to the applicable accounting standards; and (m) diluted Earning Per Share pursuant to the issue of sweat equity shares , calculated in accordance with the applicable accounting standards.
ISSUE OF EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS	(a) the total number of shares to be issued with differential rights; (b) the details of the differential rights ; (c) the percentage of the shares with differential rights to the total post issue paid up equity share capital including equity shares with differential rights issued at any point of time; (d) the reasons or justification for the issue; (e) the price at which such shares are proposed to be issued either at par or at premium; (f) the basis on which the price has been arrived at; (g) (i) in case of private placement or preferential issue- (a) details of total number of shares proposed to be allotted to promoters,

	directors and key managerial personnel; (b) details of total number of shares proposed to be allotted to persons other than promoters, directors and key managerial personnel and their relationship if any with any promoter, director or key managerial personnel; (ii) in case of public issue - reservation, if any, for different classes of applicants including promoters, directors or key managerial personnel; (h) the percentage of voting right which the equity share capital with differential voting right shall carry to the total voting right of the aggregate equity share capital; (i) the scale or proportion in which the voting rights of such class or type of shares shall vary; (j) the change in control, if any, in the company that may occur consequent to the issue of equity shares with differential voting rights; (k) the diluted Earning Per Share pursuant to the issue of such shares, calculated in accordance with the applicable accounting standards; (l) the pre and post issue shareholding pattern along with voting rights as per clause 35 of the listing agreement issued by Security Exchange Board of India from time to time.
ISSUE OF ESOPs	(a) total number of stock options to be granted; (b) identification of classes of employees entitled to participate in the Employees Stock Option Scheme; (c) the appraisal process for determining the eligibility of employees to the Employees Stock Option Scheme; (d) the requirements of vesting and period of vesting; (e) the maximum period within which the options shall be vested; (f) the exercise price or the formula for arriving at the same; (g) the exercise period and process of exercise; (h) the Lock-in period, if any ; (i) the maximum number of options to be granted per employee and in aggregate; (j) the method which the company shall use to value its options; (k) the conditions under which option vested in employees may lapse e.g. in case of termination of employment for misconduct; (l) the specified time period within which the employee shall exercise the vested options in the event of a proposed termination of employment or

	resignation of employee; and (m) a statement to the effect that the company shall comply with the applicable accounting standards.
BUY BACK OF EQUITY SHARES	(a) the date of the board meeting at which the proposal for buy-back was approved by the board of directors of the company; (b) the objective of the buy-back; (c) the class of shares or other securities intended to be purchased under the buy-back; (d) the number of securities that the company proposes to buy-back; (e) the method to be adopted for the buy-back; (f) the price at which the buy-back of shares or other securities shall be made; (g) the basis of arriving at the buy-back price; (h) the maximum amount to be paid for the buy-back and the sources of funds from which the buy-back would be financed (i) the time-limit for the completion of buy-back;

IMPORTANT DEFINITIONS

PROMOTER	As per Section 2(69), promoter means a person: (a) Who has been **named** as such in a prospectus or is identified by the company in the annual return; or (b) Who has **control** over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or (c) In accordance with **whose advice**, directions or instructions the Board of Directors of the company is accustomed to act (but does not include a person who is acting merely in a professional capacity).
MEMBER	According to Section 2(55) of the Companies Act.2013 : "(1.) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on registration, shall be entered as members in its register o members. (2.) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members shall, be a member of the company. (3.) Every person holding shares of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be member of the concerned company."
FINANCIAL STATEMENT	"financial statement" in relation to a company, includes— (i) a balance sheet as at the end of the financial year; (ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year; (iii) cash flow statement for the financial year; (iv) a statement of changes in equity, if applicable; and (v) any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv): Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement;
FREE RESERVES	"free reserves" means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend: Provided that— (i) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or (ii) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, shall not be treated as free reserves;
PUBLIC FINANCIAL INSTITUTION (JUNE 2016)	"public financial institution" means— (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; (ii) the Infrastructure Development Finance Company Limited, referred to in clause (vi) of sub-section (1) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act; (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002; (iv) institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 so repealed under section 465 of this Act;

	(v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India: Provided that no institution shall be so notified unless— (A) it has been established or constituted by or under any Central or State Act; or (B) not less than fifty-one per cent. of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments;
NIDHI COMPANY	"Nidhi" means 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.
FOREIGN COMPANY	"foreign company" means any company or body corporate incorporated outside India which— (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and (b) conducts any business activity in India in any other manner.
NET WORTH	"net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits, ***securities premium account and debit or credit balance of Profit or Loss Account***, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation;
TURNOVER	"turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'.
SWEAT EQUITY SHARES	"sweat equity shares" means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;
KEY MANAGERIAL PERSONNEL * **	"key managerial personnel", in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed;
GOVERNMENT COMPANY	"Government company" means any company in which not less than fiftyone per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;
CONTROL	"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting

	individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner;
BOOKS OF ACCOUNT	“books of account” includes records maintained in respect of— (i) all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place; (ii) all sales and purchases of goods and services by the company; (iii) the assets and liabilities of the company; and (iv) the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;
ASSOCIATE COMPANY	“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.—For the purposes of this clause, “significant influence” means control of at least twenty per cent. of total share capital, or of business decisions under an agreement;

SITUATIONS

Appointment of directors to be voted individually	A single resolution shall not be moved for the appointment of 2 or more persons as directors unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.
No Quorum	Unless otherwise provided in the Articles, if the quorum is not present within half-an-hour from the time appointed for holding a meeting : (a) The meeting shall stand adjourned to the same day in the next week at the same time and place; or (b) To such other date and such other time and place as fixed by the Board; or (c) The meeting, if called by requisitionists shall stand cancelled.
No Quorum on Adjourned Meeting	If at the adjourned meeting also, a quorum is not present within ½ an hour from the time appointed for holding meeting, the members present shall form the quorum.
Which Resolutions can be passed only at a meeting i.e Video Conferencing not allowed	The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual mode: (a) The approval of the annual financial statements; (b) The approval of the Board's report, (c) The approval of the prospectus; (d) The Audit Committee Meetings for consideration of accounts; and (e) The approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Short title, application and commencement	(1) This Order may be called the **Companies (Auditor's Report) Order, 2016**. (2) It shall apply to every company including a foreign company as defined in clause (42) of section 2 of the Companies Act, 2013 (18 of 2013) [hereinafter referred to as the Companies Act], except– (i) a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949); (ii) an insurance company as defined under the Insurance Act,1938 (4 of 1938); (iii) a company licensed to operate under section 8 of the Companies Act; (iv) a One Person Company as defined under clause (62) of section 2 of the Companies Act and a small company as defined under clause (85) of section 2 of the Companies Act; and (v) a private limited company, not being a subsidiary or holding company of a public company, having a paid up capital and reserves and surplus not more than rupees one crore as on the balance sheet date and which does not have total borrowings exceeding rupees one crore from any bank or financial institution at any point of time during the financial year and which does not have a total revenue as disclosed in Scheduled III to the Companies Act, 2013 (including revenue from discontinuing operations) exceeding rupees ten crore during the financial year as per the financial statements.
Auditor's report to contain matters specified in paragraphs 3 and 4	Every report made by the auditor under section 143 of the Companies Act, 2013 on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after 1st April, 2015, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable: Provided the Order shall not apply to the auditor's report on consolidated financial statements.
Matters to be included in the auditor's report	The auditor's report on the accounts of a company to which this Order applies shall include a statement on the following matters, namely:- (i) (a) whether the company is maintaining proper records showing full particulars, including quantitative details and situation of fixed assets; (b) whether these fixed assets have been physically verified by the management at reasonable intervals; whether any material discrepancies were noticed on such verification and if so, whether the same have been properly dealt with in the books of account; (c) whether the title deeds of immovable properties are held in the name of the company. If not, provide the details thereof; (ii) whether physical verification of inventory has been conducted at reasonable intervals by the management and whether any material discrepancies were noticed and if so, whether they have been properly dealt with in the books of account; (iii) whether the company has granted any loans, secured or unsecured to

	companies, firms, Limited Liability Partnerships or other parties covered in the register maintained under section 189 of the Companies Act, 2013. If so, (a) whether the terms and conditions of the grant of such loans are not prejudicial to the company's interest; (b) whether the schedule of repayment of principal and payment of interest has been stipulated and whether the repayments or receipts are regular; (c) if the amount is overdue, state the total amount overdue for more than ninety days, and whether reasonable steps have been taken by the company for recovery of the principal and interest; (iv) in respect of loans, investments, guarantees, and security whether provisions of section 185 and 186 of the Companies Act, 2013 have been complied with. If not, provide the details thereof. (v) in case, the company has accepted deposits, whether the directives issued by the Reserve Bank of India and the provisions of sections 73 to 76 or any other relevant provisions of the Companies Act, 2013 and the rules framed thereunder, where applicable, have been complied with? If not, the nature of such contraventions be stated; If an order has been passed by Company Law Board or National Company Law Tribunal or Reserve Bank of India or any court or any other tribunal, whether the same has been complied with or not? (vi) whether maintenance of cost records has been specified by the Central Government under sub-section (1) of section 148 of the Companies Act, 2013 and whether such accounts and records have been so made and maintained. (vii) (a) whether the company is regular in depositing undisputed statutory dues including provident fund, employees' state insurance, income-tax, sales-tax, service tax, duty of customs, duty of excise, value added tax, cess and any other statutory dues to the appropriate authorities and if not, the extent of the arrears of outstanding statutory dues as on the last day of the financial year concerned for a period of more than six months from the date they became payable, shall be indicated; (b) where dues of income tax or sales tax or service tax or duty of customs or duty of excise or value added tax have not been deposited on account of any dispute, then the amounts involved and the forum where dispute is pending shall be mentioned. (A mere representation to the concerned Department shall not be treated as a dispute). (viii) whether the company has defaulted in repayment of loans or borrowing to a financial institution, bank, Government or dues to debenture holders? If yes, the period and the amount of default to be reported (in case of defaults to banks, financial institutions, and Government, lender wise details to be provided). (ix) whether moneys raised by way of initial public offer or further public offer (including debt instruments) and term loans were applied for the purposes for which those are raised. If not, the details together with delays or default and subsequent rectification, if any, as may be applicable, be reported;

	(x) whether any fraud by the company or any fraud on the Company by its officers or employees has been noticed or reported during the year; If yes, the nature and the amount involved is to be indicated; (xi) whether managerial remuneration has been paid or provided in accordance with the requisite approvals mandated by the provisions of section 197 read with Schedule V to the Companies Act? If not, state the amount involved and steps taken by the company for securing refund of the same; (xii) whether the Nidhi Company has complied with the Net Owned Funds to Deposits in the ratio of 1: 20 to meet out the liability and whether the Nidhi Company is maintaining ten per cent unencumbered term deposits as specified in the Nidhi Rules, 2014 to meet out the liability; (xiii) whether all transactions with the related parties are in compliance with sections 177 and 188 where applicable and the details have been disclosed in the Financial Statements etc., as required by the applicable accounting standards; (xiv) whether the company has made any preferential allotment or private placement of shares or fully or partly convertible debentures during the year under review and if so, as to whether the requirement of section 42 of the Companies Act, 2013 have been complied with and the amount raised have been used for the purposes for which the funds were raised. If not, provide the details in respect of the amount involved and nature of non-compliance; (xv) whether the company has entered into any non-cash transactions with directors or persons connected with him and if so, whether the provisions of section 192 have been complied with; (xvi) whether the company is required to be registered under section 45-IA of the Reserve Bank of India Act, 1934 and if so, whether the registration has been obtained.

Misc Topics

Signing of Financial Statements	Signing of Board's Report	Signing of Annual Return
The financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by : (i) the chairperson of the company where he is authorised by the Board or (ii) by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or (iii) in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.	The Board's report and any annexures thereto under sub-section (3) shall be signed by: (i) its chairperson of the company if he is authorised by the Board and (ii) where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.	signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice: Provided that in relation to 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.

Place of Holding Board Meeting	Place of holding AGM	Place of holding EGM
Board meeting can be held anywhere in the world as there is no such provision regarding the place of holding board meeting. Board meeting can be done by the way of video conferencing provided that the Notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode and director intending to participate through video conferencing shall give prior intimation to that effect in advance so that company is able to make suitable arrangements in this behalf.	An annual general meeting should be held: i) Either at the registered office of the company; or ii) At some other place within the city, town or village in which the registered office of the company is situate. *Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.*	An EGM shall be held: i) Either at the registered office of the company; or ii) At some other place within the city, town or village in which the registered office of the company is situate. *Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.*

Notice of Board Meeting	Notice of AGM	Notice of EGM
7 Clear Days before the date of meeting A Board Meeting can be called at a shorter notice provided at least one independent director shall be present at the meeting in which it was decided for shorter notice. If the Independent Director is not present, then decision of the meeting shall be circulated to all directors and it shall be final only after ratification of decision by at least one Independent Director.	An AGM be called by giving ***not less than 21 clear days' notice*** either in writing or through electronic mode. A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.	An EGM to be called by giving ***not less than 21 clear days' notice*** either in writing or through electronic mode. A general meeting may be called after giving a shorter notice also if consent is given in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.