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ABOUT THE AUTHOR

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ACADEMICS:

- First attempt Chartered Accountant at the age of 21.
- Secured 100/100 Marks in Accountancy & 92/100 Marks in Economics in HSSC Maharashtra State Board.
- Amravati City Topper in CA - CPT (May 2007).
- 48^{th} All India Rank (AIR) in CA - PCC (June 2009) (*Secured 93 marks in Accountancy Subject*)
- Attended 6 weeks residential training on Personality Development conducted by ICAI, Centre of Excellence, Hyderabad.

PRACTICAL EXPERIENCE:

- Worked at **ICICI Bank, Corporate Office, Mumbai** for around 15 months as a Risk Manager.
- Independent CA Practice Experience of 2 years at Amravati.
- Taken Guest lectures at Amravati Branch of ICAI for OTT and GMCS Program.
- Teaching Experience of more than 4 years at TLC.

ALL DISTINGUISH BETWEEN (16 Marks)

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

DEBENTURE	SHARES
Debenture holders are the creditors of the company	Shareholders are the owners of the company
Debenture holders have no voting right	Shareholders have voting rights and hence control the total affairs of the company
Debenture interest is paid at a predetermined fixed rate. It is payable whether there is any profit or not.	Dividend on shares is payable at a variable rate which is mainly affected by the profitability of the company.
Interest on debentures is a charge on the profits of the company and hence deductible as an expense under income tax	Dividends is the appropriation of the profits of the company hence are not deductible as an expense under income tax
In balance sheet, debentures are shown under secured loans	In balance sheet, shares are shown under share capital
Debenture can be converted into shares as per the terms of issue.	Shares cannot be converted into debentures under any circumstances
Debentures cannot be forfeited for non payment of calls money	Shares can be forfeited for non payment of allotment and call money
At the time of liquidation, debenture holders are paid off before the shareholders	At the time of liquidation, shareholders are paid at the last after debenture holders, creditors, etc
Debenture can be issued at a discount, no such restriction in companies act, 2013	Shares cannot be issued at a discount as per companies act, 2013
Maximum Underwriting commission on Debentures can be 2.5% of Issue price as per companies Act, 2013 or As authorised by Articles whichever is less.	Maximum Underwriting commission on Shares can be 5% of Issue price as per Companies Act, 2013 or As authorised by Articles whichever is less.

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

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

BASIS	LLP	COMPANY
Incorporation Process	Incorporation Process is reduced into a simple procedure of filling of the prescribed information in the Incorporation document and statement in Form No. 2.	As compared to LLP, Incorporation process is complex.
Agreement	In case of LLP, a limited liability partnership agreement (LLPA) is prepared.	In case of a Company, articles of association of a company are prepared.
Memorandum	The memorandum of a LLP is not required to name the state in which it is required to be incorporated.	The memorandum of a company is required to name the state in which it is required to be incorporated.
Change in Registered office	The detail procedure involved in changing the registered office from the state of incorporation to another state is not required to be followed in case of a LLP.	The detail procedure is required to be followed in case of a company.
Meeting	There is no such stipulation for meeting of partners.	Meeting of partners either periodically or compulsory as stipulated for

		directors and shareholders' meetings in the Companies Act.
Management & Ownership	There is no separation between management of the company and the ownership since all the partners, unlike all the directors, can take part in the day to day affairs of the LLP.	There is a separation between management of the company and the ownership.
Authority	In an LLP, each partner has the authority to do so unless expressly prohibited by the partnership terms.	In case of a company no individual director can conduct the business of the company.
Remuneration	There are no provisions in the LLP Act for remuneration payable to designated partners.	The Companies Act contemplates regulating the remuneration payable to directors.
Borrowing Powers	Unlike in the case of companies, there are no restrictions on the borrowing powers.	There are restrictions on borrowing powers in case of a company.
Maintenance of accounts	The LLP can choose to maintain the accounts on cash basis/accrual basis.	Whereas under the Companies Act, accrual method is compulsory.

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

BASIS	MEMBER'S WINDING – UP	CREDITOR'S WINDING – UP
Basic distinction	A member's voluntary winding up results where, before convening the general meeting of the company at which the resolution of winding up is to be passed, the majority of the directors 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	In a members' voluntary winding –	In a creditors' voluntary winding up,

liquidator	up the liquidator can exercise some of his powers with the sanction of a special resolution of the company;	creditors can do so with the sanction of the Court.

BASIS	PUBLIC COMPANY	PRIVATE COMPANY
Section Number	Section 2(71)	Section 2(68)
Minimum number of members	The minimum number of person required to form a public company is 7.	Minimum number of person required in a private company is only 2.
Maximum number of members	There is no limit on the maximum number of member of a public company	Private company cannot have more than 200 members excluding past and present employees.
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.
Managerial Remuneration	Total managerial remuneration in the case of public company cannot exceed 11% of net profits.	These restrictions do not apply to a private company.
Name	A public company has to use only the word 'Limited' at the end of its name.	A private company has to use words 'private limited' at the end of its name
Listing	Securities of Public Company can be listed on Recognized Stock Exchange	Securities of Private Company cannot be listed on Recognized Stock Exchange
Directors Retire by Rotation	Directors are liable to retire by Rotation	Directors are not liable to retire by Rotation

Basis	Private Company	OPC
Section Number	Section 2(68)	Section 2(62)
Board of directors	Minimum number of Directors required in a private company is 2.	Minimum Number of Directors required to form an OPC is 1.
Shareholding	In a private company minimum number of members is two, so entire shareholding cannot held by single person.	The 100% 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.
Compulsory Conversion	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.
Cash Flow Statement	Financial Statements of Private Company includes Cash Flow Statement	Financial Statements of OPC does not include Cash Flow Statement
AGM	Every Private Company must hold 1 AGM every year.	OPC need not hold an AGM.
Maximum Members	Private company can have maximum 200 members	OPC can have maximum 1 member.
Nominee	No need to declare a Nominee	OPC can be formed only after appointing a Nominee and after taking written consent from him.
Name	Name of a Private Company must end with the words "Private Limited"	Name of
Restrictions	There is no restriction on the activities that can be carried on by a private company	OPC cannot conduct Non Banking Financial Investment Activities including investment in shares of other Body Corporate.
Membership Restriction	Natural or Artificial, both can become member of a private company	Only Natural person can become member of OPC.

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 / KMP	INDEPENDENT DIRECTOR/ NON EXECUTIVE 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 50.
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.
Governing Law	Companies are governed by Companies Act, 2013	Partnership Firms are governed by Indian Partnership Act, 1932

BASIS	HUF	COMPANY
Registration	Not compulsory under any law	Compulsory under Company Laws
Membership	By virtue of birth	By virtue of contract
Authority to create debt	Retains with Karta only	Company itself has authority to create debt through its Directors subject to the provisions if MOA & AOA.
Management	Management lies in the hands of Karta	Management lies in the hands of Board of Directors
Liability	Karta's Liability is unlimited	Members liability is limited to the extent of unpaid amount on shares
Governing Law	HUF is governed by Hindu Law	Company is governed by Companies Act, 2013

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

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

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

INTERIM DIVIDEND	FINAL DIVIDEND
This dividend is paid before the finalization of accounts of the year	This dividend is paid after the finalization 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	Cannot be revoked in any circumstances

shareholders	
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 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.	A resolution relates to only such matters that are covered in notice of the meeting. No resolution can be 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

BASIS	FORFEITURE OF SHARES	SURRENDER OF SHARES
Initiative	In case of Forfeiture, The company takes the initiative	Initiative is taken by the member in case of surrender of shares
Reason	Shares can be forfeited for non-payment of call money	Surrender of shares may be accepted for other reasons eg. For exchange into new shares, etc
Object	The object of forfeiture is to penalize a member for non-payment of calls	The object of surrender of shares is when he cannot make payment of calls or when he wants to exchange new shares of same nominal value
Legal Technicalities	In case of forfeiture, the rules and regulations are to be followed exactly and carefully as a slight irregularity will invalidate the forfeiture	However, it not so in the case of surrender of shares

BASIS	CONSTRUCTIVE NOTICE	INDOOR MANAGEMENT
Meaning	Every person dealing with the company is deemed to have a Constructive Notice of the contents of MOA & AOA	Person dealing with the company are entitled to presume that the Internal Requirements prescribed by MOA & AOA have been properly observed by the Company.
To whom Protects	It protects company against the outsiders	It protects outsiders against the company
Affairs	It is confined to the external position and affairs of the company	It is confined to internal position and affairs of the company
Reason	The MOA & AOA are public documents.	The internal affairs need not be

	They must be registered with ROC and these are open to public for inspection.	registered. They are not open to public & third parties.
Effect	It operates as an Estoppel against the outsiders.	It mitigates the effect of the Doctrine of Constructive Notice.

BASIS	SHARE	STOCK
Nominal Value	A share has a nominal value. It is a separate unit.	A stock has no nominal value. It is lump sum holding
Original Issue	Shares are issued Originally	There can be no Original Issue of Stock. Shares are converted into Stock.
Paid up	Shares can be partly or fully paid up	Stock is always Fully paid up
Denomination	All shares of a class are of equal denomination	Stock may be of different denomination
Procedure for Issue	Registration of capital is necessary to issue shares	Authorised by Articles and the same needs to be passed by Resolution in General meeting.

BASIS	BONUS SHARES	RIGHT SHARES
Meaning	Bonus shares are shares issued by company free of cost to its existing shareholders on a pro rata basis out of free reserves	When company issues further shares to existing shareholders in ratio of their holding such issue is called as Right Issue
Cash Flow	In a bonus issue, there is no cash flow	In case of Right Issue there is a cash flow to the company
Consideration	Company does not receive any consideration in case of bonus shares	Company receives consideration as shares are issued against cash
Authorization	Bonus issue is made on the recommendations of the Board and authorization from general meeting of company	In case of right issue, Authorization from Members through Ordinary or Special Resolution is necessary.
Market Value	Issue of Bonus Share does not affect the market value of company	Right Issue of Shares affect the market value of the company
Section	Section 63	Section 62

STATUTORY AUDITOR	INTERNAL AUDITOR
1. The extent of the work undertaken by statutory auditor arises from the responsibility placed on him by the statutes.	It is statutory requirement too as per section 138 of the Companies Act, 2013 where the Audit Committee of the company or the Board shall, in consultation with the Internal Auditor, Formulate the scope, functioning, periodicity and methodology for conducting the internal audit.
2. The approach of this auditor is governed by his statutory duty to satisfy himself that the accounts to be presented to the shareholder show a true and fair view of the financial position.	The approach of this auditor is with a view to satisfy that the accounting system is efficient, so that the accounting information presented to the management is accurate and discloses material facts.
3.This auditor is responsible directly to the shareholder.	This auditor is responsible to management.
4.External auditor is not the employee of the	If internal auditor is an employee of the company.

company so he has independent status.	He cannot enjoy independence that statutory auditor has.

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;

ADDITIONAL DIRECTOR VS. ALTERNATE DIRECTOR

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.

A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Alternative Director[Section 161(2)]:

The Board of Directors of a company may,
(i) if so authorized 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.

STATUTORY BOOKS VS. STATISTICAL BOOKS:

Statutory Books:

Every Company incorporated under the Act is required to keep at its registered office, the following statutory books and registers:

a) Register of Members
b) Register of Debenture Holders
c) Register of Deposit Holders
d) Register of Charges
e) Books of Accounts etc

Statistical Books:

Besides the above Statutory or compulsory books, other books and register are also generally maintained by companies which are called Statistical or optional or non-statutory books. Some examples are:

a) Share Call book
b) Share Certificate book
c) Share Transfer Book
d) Share Application & Allotment Book
e) Agenda Book

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>

<table>
<tr><td></td><td>
<table>
<tr><td>Public Company</td><td>3</td><td>15</td></tr>
<tr><td>Producer Company</td><td>5</td><td>15</td></tr>
</table>
❖ IF MORE THAN 15 DIRECTORS ARE PROPOSED TO BE APPOINTED THEN, SPECIAL RESOLUTION IN GENERAL MEETING.
</td></tr>
<tr><td>INDEPENDENT DIRCTORS

L
S = 10
L = 50
T = 100</td><td>Following Companies are required to have Independent Directors:
1. Every Listed Company
2. Unlisted Public company:
(a) Paid up share capital of Rs.10 crore or more; or
(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</td></tr>
<tr><td>AUDIT COMMITTEE

L
S = 10
L = 50
T = 100</td><td>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.</td></tr>
<tr><td>NOMINATION AND REMUNERATION COMMITTEE
L
S = 10
L = 50
T = 100</td><td>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.</td></tr>
<tr><td>STAKEHOLDERS' RELATIONSHIP COMMITTEE

S/D/D > 1000</td><td>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.</td></tr>
<tr><td>INTERNAL AUDIT

L

U-PUBLIC
D = 25
S = 50
L = 100
T = 200

U-PRIVATE
L = 100
T = 200</td><td>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.</td></tr>
</table>

<table>
<tr><td></td><td></td></tr>
<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>
</table>

ELIGIBLE COMPANY FOR ACCEPTANCE OF PUBLIC DEPOSITS

Eligible Company means a public company, having :

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

LIMIT OF DEPOSITS:

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

MANAGERIAL REMUNERATION

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

MANAGERIAL REMUNERATION IF CASE NO PROFITS/ INADEQUATE PROFITS

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

Effective Capital	Remuneration (Annually)
Negative or less than 5 Crore	60 Lacs
More than 5 crore but less than 100 Crore	84 Lacs
More than 100 crore but less than 250 Crore	120 Lacs
250 crore and above	120 Lakhs plus 0.01% of the effective capital in excess of Rs.250 Crore

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.

PRODUCER COMPANY

MEMBERS	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,
MEETINGS of BOARD	At Least 4 Meeting in a year At Least once in Each Quarter
QUORUM OF BOARD	$1/3^{rd}$ or 3 Whichever is Higher
AGM	1st AGM within 90 days of incorporation Gap between two AGMs cannot exceed 15 Months
EXTENSION	The Register may permit the extension of time for holding

	<table><tr><td></td><td>of an AGM (not being the first AGM) by a period not exceeding 3 months.</td></tr><tr><td>**QUORUM of GM**</td><td>¼ of Total Members</td></tr></table>
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	An Individual can audit 20 Companies. (No bifurcation of Public and Private) Firm (20 Companies per Partner who is not in full time employment)

BY AUDITOR	
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)

TIME LIMITS

Preservation of books of accounts by companies u/s 128	At least 8 years
Filing of Financial Statements to ROC	Within 30 days from AGM
Filing of Financial Statements to ROC by OPC	Within 180 days from closure of FY
Appointment of First Auditor by BOD	Within 30 days of Incorporation of Company
Appointment of Subsequent Auditor in case of Government Company	Within 180 days of Commencement of FY
Filing of Casual Vacancy of Auditor	Within 30 days
Appointment of Cost Auditor by Companies	Within 180 days of Commencement of FY
Notice of General Meeting (AGM/EGM) to shareholders	Not less than 21 clear days before the meeting
Notice of Board Meeting to All Directors	Not Less than 7 days before
Notice of General Meeting of Producer Companies	Not less than 14 days before the date of meeting
Filing of Return of Buy Back	Within 30 days of completion of buy back
Time limit of extinguishment of physical securities after buy back	Within 7 days of buy back
Filing of Copy of Prospectus with ROC	90 days before the date of issue of prospectus
Filing of Return of Allotment with ROC	Within 30 days
Recording of Minutes of General Meetings in Minute book	Within 30 days of Meeting
Filing of Report of AGM by Listed Companies u/s 121	Within 30 days of AGM
Filing of Return of Deposits	On or before 30th June every years
Payment of Dividend after declaration	Within 30 days
Transfer of Amount of Dividend declared in a separate bank account	Within 5 days of declaration
Transfer of unpaid dividend in a special bank account	Within 7 days from expiry of 30 days
Transfer of unpaid dividend from unpaid dividend account to IEPF	After the expiry of 7 years
1st Board Meeting	Within 30 days of incorporation
Subsequent board meetings	4 meetings in a FY & gap between two BM shall not be more than 120 days
Filing of Annual return by LLP	Within 60 days of end of FY

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 KotlaVenkataSwamy 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;

	<u>CONDITIONS FOR ISSUING SWEAT EQUITY SHARES: (SECTION 54)</u> (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. **<u>CONDITIONS AS PER RULE 8 OF COMPANIES (SHARE CAPITAL AND DEBENTURE) RULES, 2014:</u>** (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. **<u>ADDITIONAL REQUIREMENTS FOR SWEAT EQUITY SHARES:</u>** **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.

<u>BONUS SHARES</u> (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.

	Forfeiture/Refund: 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	**CONDITIONS:** 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) Explanatory Statement: 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) Validity of Special Resolution for Non-convertible debentures: 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) No Fresh Offer: 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) Public Offer: 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	**WHAT IS AN UNTRUE STATEMENT?** 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. **CRIMINAL LIABILITY FOR MIS – STATEMENTS** 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. **Onus for Proof of Mis-statement** 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.

(IEPF)	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. **UTILIZATION OF INVESTOR EDUCATION AND PROTECTION FUND** 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.

PROVISIONS RELATING TO BOOKS OF ACCOUNTS	**MEANING OF BOOKS OF ACCOUNT**	Books of Account 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.
	PLACE	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.
	PRESERVATION	for at least 8 years immediately preceding the current year.
	MAINTENANCE	• In electronic mode and/or in physical form. • retained completely in the format in which they were originally generated, sent or received

		• 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 relationshipwith 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 suo moto 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	**MEANING**: 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. **WHO SHOULD APPOINT KMP**: 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. 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.	

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<u>Individual Limit to directors other than MD, WTD or Manager</u>

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.
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<td>REMUNERATION BY COMPANIES HAVING NO PROFITS OR INADEQUATE PROFITS WITHOUT C G APPROVAL</td>
<td>
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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>60 Lacs</td></tr>
<tr><td>More than 5 crore but less than 100 Crore</td><td>84 Lacs</td></tr>
<tr><td>More than 100 crore but less than 250 Crore</td><td>120 Lacs</td></tr>
<tr><td>250 crore and above</td><td>120 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.
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<td>COMPENSATION FOR LOSS OF OFFICE
(section 202)</td>
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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 thereconstruction/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
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	years immediately preceding the date on which he ceased to hold office, or 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) *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;* 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. **Explanation**.—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) Social Welfare Work : Eradicating poverty and malnutrition, providing preventive health care and sanitation and making available safe drinking water; (b) Promotion of Education : Promoting education including special education and employment enhancing vocation skills especially among children, women and others; (c) Promotion of Gender Equality : Promoting gender equality, empowering women, setting up homes and hostels for women and orphans etc.; (d) Environment Protection : Ensuring environment sustainability, ecological balance, animal welfare, conservation of natural resources and maintaining quality of soil, air and water; (e) Protection of national heritage : Protection of national heritage, art and culture including restoration of building and sites of historical important and works of art; (f) Contribution to the Prime Minister's National Relief Fund: 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.
LIST OF CSR ACTIVITIES ALLOWED	(i) **eradicating hunger, poverty and malnutrition, promoting health** care including preventive health care and sanitation including contribution to the **Swach Bharat Kosh** set-up by the Central Government for the promotion of sanitation and making available safe drinking water. (ii) promoting education, including special education and employment enhancing vocation skills especially among children, women, elderly and the differently abled and livelihood enhancement projects. (iii) **promoting gender equality, empowering women**, setting up homes and hostels for women and orphans; setting up old age homes, day care centres and such other facilities for senior citizens and measures for reducing inequalities faced by socially and economically backward groups; (iv) **ensuring environmental sustainability**, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water including contribution to the **Clean Ganga Fund** set-up by the Central Government for rejuvenation of river Ganga; (v) **protection of national heritage, art and culture** including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts; (vi) measures for the **benefit of armed forces veteran**, war widows and their dependents;

	(vii) training to **promote rural sports** nationally recognized sports and Olympic sports; (viii) **contribution to the Prime Minister's National Relief Fund** or any other fund set up by the Central Government for socio-economic development and relief and welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women; (ix) contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government; (x) **rural development** projects. (xi) **slum area development**
WHICH ACTIVITIES DO NOT QUALIFY FOR CSR	• The CSR projects or programs or activities that benefit only the employees of the company and their families. • One-off events such as marathons/awards/charitable contribution/advertisement/ sponsorships of TV programmes etc. • Expenses incurred by companies for the fulfillment of any other Act/Statute of regulations (such as Labour Laws, Land Acquisition Act, 2013, Apprentice Act, 1961 etc.) • Contribution of any amount directly or indirectly to any political party. • Activities undertaken by the company in pursuance of its normal course of business. • The project or programmes or activities undertaken outside India.

CSR FAQs

1. Whether the 'average net profit' criteria for section 135(5) is Net profit before tax or Net profit after tax?

Computation of net profit for section 135 is as per section 198 of the Companies Act, 2013 which is primarily PROFIT BEFORE TAX (BT).

2. **Can contribution of money to a trust/Society/Section 8 Companies by a company be treated as CSR expenditure of the company?**

General Circular No. 21/2014 Of MCA Dated June 18, 2014 Clarifies That
Contribution To Corpus Of A Trust/Society/Section 8 Companies Etc. Will Qualify As CSR Expenditure As Long As:

(a) The Trust/Society/Section 8 company etc. is created exclusively for undertaking CSR activities or

(b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

3. Whether CSR expenditure of a company can be claimed as a business expenditure?

The amount spent by a company towards CSR cannot be claimed as a business expenditure. The Finance Act, 2014 provides that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.

4. **Can the CSR expenditure be spent on the activities beyond Schedule VII?**
General Circular No. 21/2014 dated June 18, 2014 of MCA has clarified that the statutory provision and provisions of CSR Rules, 2014, is to ensure that activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act, 2013. The entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule. The items enlisted in the Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities. The General Circular also provides an illustrative list of activities that can be covered under CSR. In a similar way many more can be covered. It is for the Board of the company to take a cal on this.

5. **What tax benefit can be availed under CSR?**
No Specific Tax Exemptions Have Been Extended To CSR Expenditure Per Se. The Finance Act, 2014 Also Clarifies That Expenditure On CSR does not form part of business expenditure. While no specific tax exemption has been extended to expenditure incurred on CSR, spending on several activities like contributions to Prime Minister's Relief Fund, scientific research, rural development projects, skill development projects, agricultural extension projects, etc., which find place in Schedule VII, already enjoy exemptions under different sections of the Income Tax Act, 1961.

6. Whether it is mandatory for Foreign Company to give report on CSR activity?
In case of a foreign company, the balance sheet filed under sub-clause (b) of sub-section (1) of section 381 shall contain an Annexure regarding report on CSR.

7. If a company spends in excess of 2% of its average net profit of three preceding years on CSR in a particular year, can the excess amount spent be carried forward to the next year and be offset against the required 2% CSR expenditure of the next year?

Any excess amount spent (i.e., more than 2% as specified in Section 135) cannot be carried forward to the subsequent years and adjusted against that year's CSR expenditure.

8. Can the unspent amount from out of the minimum required CSR expenditure be carried forward to the next year?

The Board is free to decide whether any unspent amount from out of the minimum required CSR expenditure is to be carried forward to the next year. However, the carried forward amount should be over and above the next year's CSR allocation equivalent to at least 2% of the average net profit of the company of the immediately preceding three years.

9. Can CSR funds be utilized to fund Government Scheme?
The objective of this provision is indeed to involve the corporates in discharging their social responsibility with their innovative ideas and management skills and with greater efficiency and better outcomes. Therefore, CSR should not be interpreted as a source of financing the resource gaps in Government Scheme. Use of corporate innovations and management skills in the delivery of 'public goods' is at the core of CSR implementation by the companies. Inprinciple, CSR fund of companies should not be used as a source of funding Government Schemes. CSR projects should have a larger multiplier effect than that under the Government schemes.

However, under CSR provision of the Act and rules made thereunder, the Board of the eligible company is competent to take decision on supplementing any Government Scheme provided the scheme permits corporates participation and all provisions of Section 135 of the Act and rules thereunder are complied by the company.

10. Who is the appropriate authority for approving and implementation of the CSR programmes/projects of a Company? What is Government's role in this regard?

Government has **no role** to play in this regard. Section 135 of the Act, Schedule VII and Companies CSR Policy Rules, 2014 read with General Circular dated 18.06.2014 issued by the Ministry of Corporate Affairs, provide the broad contour with which eligible companies are required to formulate their CSR policies including activities to be undertaken and implement the same in the right earnest. Therefore, **all CSR programmes/projects should be approved by the Boards on the recommendations of their CSR Committees**.

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.
Restriction on Non-Cash Transactions Involving Directors (Section 192) (Situation)	Where a Company enters into an agreement by which- (a) a **director** of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or (b) the **company acquires** or is to acquire assets for consideration other than cash, **from such** director or person so connected. The company then need the **prior approval** for such arrangement accorded by a **resolution of the company in general meeting** and if the director or

	connected person is a director of its holding company, approval shall also be required to be obtained by passing a resolution in general meeting of the holding company. The notice for approval of the resolution by the company or holding company in general meeting shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer. Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be **voidable at the instance of the company**. The arrangement will be valid if the restitution of any money or other consideration which is the subject matter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.
Contract by One Person Company with sole member (Section 193) (Situation)	Where One Person Company limited by shares or by guarantee enters into a contract **except** in its ordinary course of business **with the sole member** of the company who is also the director of the company, the company shall ensure that the contract **is in writing**. If the contract is **not in writing**, it ensure that the terms of the contract or offer are **contained in a memorandum** or are **recorded in the minutes** of the first meeting of the Board of Directors of the company held next after entering into contract. The company is required to inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its Board within a period of fifteen days of the date of approval by the Board.
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.
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 awhole year; or (d) the number of its members in the case of a public company is reduced below seven and in the caseof 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 withfine 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 tothe company by such number of members holding not less than 1% of total voting power or holding shareson which such aggregate sum not exceeding Rs.5,00,000/- as may be prescribed has been paid-up and thecompany 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 COMPANY	1) Where a company is formed and registered under this Act for: • a future project or • to hold an asset or intellectual property and • has no significant accounting transaction, Such a company or an inactive company may make an application to the 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	➢ <u>Step – 1</u> : 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. ➢ <u>Step – 2</u> : 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. ➢ <u>Step – 3</u> : 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. ➢ <u>Other Important Steps</u> : (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. **<u>ITEMS OF BUSINESS WHICH SHALL BE PASSED ONLY BY POSTAL BALLOT</u>** A listed company shall get following resolution passed by postal ballot, instead of transacting the business in general meeting of the company : 1. alteration of the objects clause of the memorandum and in the case of the company in existence immediately before the commencement of the Act, alteration of the main objects of the memorandum. 2. alteration of articles of association in relation to insertion or removal of provisions which are required to be included in the articles of a company in order to constitute it a private company 3. change in place of registered office outside the local limits ofany city, town or village

	4. change in objects for which a company has raised money from public through prospectus and still has any unutilized amount out of the money so raised 5. issue of shares with differential rights as to voting or dividend or otherwise 6. variation in the rights attached to a class of shares or debentures or other securities 7. buy-back of shares by a company 8. appointment of a Director elected by small shareholders 9. sale of the whole or substantially the whole of an undertaking of a company or where the company owns more than one undertaking, of whole or substantially the whole of any of such undertakings 10. giving loans or extending guarantee or providing security in excess of the limit specified 11. any other Resolution prescribed under any applicable law, rules or regulations
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) **Totalwithdrawal 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 Incometax 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)] (Amendment)	❖ 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 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

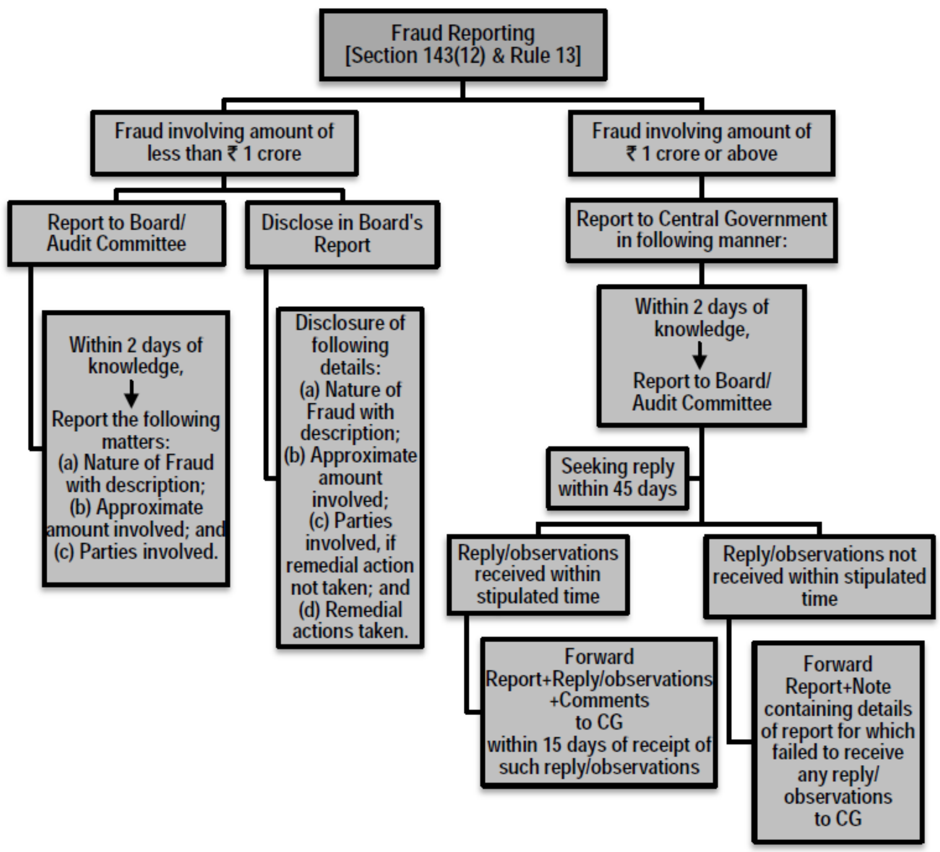
Section 177 or to the Board immediately but not later than 2 days of his knowledge of the fraud and he shall report the matter specifying the following:

- Nature of Fraud with description]
- Approximate Amount involved
- 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:

- Nature of Fraud with description
- Approximate Amount involved
- Parties involved, remedial action not taken
- 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) **No participation**: 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) **Time of disclosure**: Every interested director shall disclose his interest at the meeting held immediately after the date of the board notice. (c) **Preservation of record**: 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 provisionsof 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 withoutpayment 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 ofsuch fees as may be prescribed. • If any inspection or the making of any extract or copy required under this section isrefused, the company and every officer of the company who is in default shall be liable, foreach such default, to a penalty of one thousand rupees for every day subject to a maximumof 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.*
COMPANIES NOT ELIGIBILE FOR FAST EXIT SCHEME	The fast track exit mode is not being extended to the following companies namely:- (i) **listed companies**; (ii) companies that have been de-listed due to non-compliance of Listing Agreement or any other statutory Laws, (iii) companies registered under section 25 of the Companies Act, 1956;**(Not for Profit Companies)** (iv) **vanishing companies;** (v) companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court; (vi) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;(vii) companies against which prosecution for a non-compoundable offence is pending in court; (viii) companies accepted **public deposits** which are either outstanding or the company is in **default in repayment** of the same; (ix) **company having secured loan** ; (x) company **having management dispute**; (xi) company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority; (xii) company having **dues towards income tax** or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

IMPORTANT CASE STUDIES

<table>
<tr>
<td>1. 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>
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<td>2. 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>
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<td>3. 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>
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<tr>
<td>4. 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 performance in a suit brought by Jones. The Court asked the company to</td>
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	transfer its land to Jones.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

10. 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.
11. 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.
12. 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. **Judgment**: 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.
13. 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.
14. Sri Gopal Jalan & 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 authorized and unappropriated capital.

15. 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.
16. 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.
17. Macaura v. Northern Assurance Company Ltd *"Member does not have even the insurable interest in the company"*	No member can claim himself to be the owner of the company's properties either during its existence or in it winding up. A member does not even have an insurable interest in the property of the company. A person, for example, for the holder of nearly all the shares except one of a timber company and he was also a substantial creditor, he insured the company's timber in his own name. The timber having been destroyed by fire, the insurance company was held not liable to him.
18. Raghubar Dayal v. The Sarafa Chamber and others	The law does not recognize illegal association and therefore it cannot be wound up by order of court. In fact, the Court cannot entertain a petition for its winding up of a company formed in contravention of the provision of Section 464. The winding up of unregistered companies though lawfully formed cannot be done under the provisions of this Act.
19. Erlanger vs. New Sombrero Phosphate & Co	In *Erlanger v. New Sombrero Phosphate Co.,* (1878) 3 A.C. 1218, a syndicate of which E was the head purchased an island containing mines of phosphate for £ 5,000. E then formed a company to buy this island. A contract was made between X a nominee of the syndicate and the company for its purchase at £ 1,10,000. The details of the sale were not disclosed to the shareholders or to the independent Board of directors. The company now sought to rescind the contract of sale. It was held that as there had been no disclosure by the promoters of the profit they were making, the company was entitled to rescind the contract. In case, therefore, the promoter wishes to sell his own property to the company, he should either disclose the fact: (a) to an independent Board of directors; or (b) in the articles of association of the company; or (c) in the prospectus; or (d) to the existing and intended shareholders directly.
20. Lydney and	The question whether a person is or is not a promoter is a **question of**

Wigpool Iron Ore Co. v. Bird	**fact** depending upon the role performed by him in the formation of the company. But a person who merely acts in a professional capacity on behalf of the promoter, such as a solicitor or an accountant and who is paid by him is not a promoter. The most important criteria, for a person being treated as promoter, is that he should have **personal business interest** in the company.

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.
CONSEQUENCES OF RESIGNATION OF ALL THE DIRECTORS (SITUATION)	• If all the directors of a company resign from their office or vacate their office under section 167, **the promoter or in his absence the Central Government** shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting. • Where all the directors of a company resign and as a consequences the digital signature certificates (DSC) of all the directors are deactivated, DIR-12 cannot be filed by the company due to lack of an authorized signatory director. • In order to enable the filing of DIR-12 in such a case, the Registrar are authorized, on request from the stakeholder, and after due examination, to allow any one of the resigned director who was an authorized signatory director for the purpose of filing DIR-12 only. (General circular No. 03/2015 dated 03.03.2015).
DIRECTORS CAN NOT BE REMOVED UNDER SECTION 169 (SITUATION)	**(a)** Directors appointed by the Central Government under section 161(3) of the Act. **(b)** Directors appointed by the Tribunal under section 242 of the Act. **(c)** Directors appointed by way of proportional representation under section 163 of the Act.

	Example: Where a company has appointed 4 directors out of total 6 directors, by way of proportional representation, only these 4 directors cannot be removed; the remaining 2 directors may be removed under section 169 of the Act. **(d)** Nominee directors appointed by any financial institution constituted under a special Act of Parliament, if the provisions contained in the special Act restrain removal of such nominee directors by the members.

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 ₹ 10 Crores Officer: Fine of not less than ₹ 25 Lakhs but maximum ₹ 2 Crores Imprisonment of upto 7 years.
CONTRAVENTION WITH THE REGULATIONS OF ALTERATION OF SHARE CAPITAL	Fine which may extend to ₹ 1,000/- for each day during which such default continues, or ₹ 5 Lakhs, whichever is less.
NON SUBMISSION OF COPY OF PROSPECTUS WITH ROC	Against Company: Fine which shall not be less than ₹ 50,000/- but which may extend to ₹ 3 Lakhs 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 ₹ 50,000/- but which may extend to ₹ 3 Lakhs, or with both.
CONTRAVENTION WITH ISSUE OF ABRIDGED PROSPECTUS	₹ 50,000 for each default
ILLEGAL ASSOCIATION CARRYING ON BUSINESS	Upto ₹ 1,00,000
DEFAULT IN REGISTRATION OF CHARGE	Company: ₹ 1 Lakh to ₹ 10 Lakhs Officers: ₹ 25,000 to ₹ 1 Lakh& Imprisonment not exceeding 6 months
RETURN OF ALLOTMENT	Company & Officers: ₹ 1,000 each day or Maximum ₹ 1,00,000. No Criminal Liability

DEFAULT IN HOLDING AGM	Company: Fine upto ₹ 1,00,000 & in case of Continuing default ₹ 5,000 per day.
CONTRAVENTION WITH RULES OF MINUTES	Company: Fine upto ₹ 25,000 Officer: Fine upto ₹ 5,000.
TAMPERING WITH MINUTES	Officers: Fine not less than ₹ 25,000 but maximum ₹ 1,00,000. Imprisonment of upto 2 Years.
DEFAULT IN FILING REPORT ON AGM (ONLY FOR LISTED COMPANY)	Company: Fine not less than ₹ 1 lakh and Maximum ₹ 5 Lakhs Officers: Fine not less than ₹ 25,000 but upto ₹ 1 Lakh No Criminal Liability
NON MAINTENANCE OF REGISTER OF RELATED PARTY	Every Director shall be liable for a penalty of ₹ 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 ₹ 1,00,000 but Not more than ₹ 5,00,000 or both.
CONTRAVENTION WITH NUMBER OF DIRECTORSHIPS	Not Less than ₹ 5,000 but not more than ₹ 25,000 for every day after the first day of contravention.
CONTRAVENTION WITH CSR ACTIVITIES	For Company: Not Less than ₹ 50,000 which may extend to ₹ 25 Lakhs. For Every Officer: Not Less than ₹ 50,000 which may extend to ₹ 5 Lakh or Imprisonment upto 3 Years or Both.
CONTRAVENTION WITH BOARD REPORT PREPARATION	For Company: not less than ₹ 50,000/- which may extend upto ₹ 5,00,000/-, For every officer in default: Imprisonment upto 3 years, or fine from ₹ 50,000/- to ₹ 5,00,000/- or Both
DEFAULT IN TRANSFER TO INVESTOR EDUCATION AND PROTECTION FUND	For Company : Fine – Minimum ₹ 5 lakh & Maximum ₹ 25 lakh, For Officer: Fine – Minimum ₹ 1 lakh & Maximum ₹ 5 lakh
CONTRAVENTION IN SECRETARIAL AUDIT	Not Less Than Rs. 1,00,000 but which may extend to Rs. 5,00,000.
CONTRAVENTION WITH PROVISION OF LOANS AND INVESTMENT BY COMPANY	Company: Fine not less than ₹ 25,000 but which may extend to ₹ 5,00,000. Officer: Imprisonment which may extend to 2 Years or Fine not less than ₹ 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 ₹ 25 lakhs. Director: Imprisonment which may extend to 6 Months or Fine Not less than ₹ 5 Lakhs but which may extend to ₹ 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 ₹ 5,00,000 or both.
FAILURE TO DISTRIBUTE DIVIDEND AFTER DECLARATION	Director: Imprisonment of Upto 2 Years or Fine not less than ₹ 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 ₹ 1 lakh but which may extend to ₹ 5 Lakh Officer: Imprisonment of upto 6 months or Fine not less than ₹ 1 lakh but which may extend to ₹ 5 Lakh or both.
FAILURE TO FILE ANNUAL RETURN	Fine on company – shall not be less than ₹50,000 but which may extend to ₹5,00,000 for officers fine shall not be less than ₹50,000 but may extend to ₹5,00,000.
ACTING AS DIRECTOR IN MORE THAN 20 COMPANIES	Fine not less than ₹5,000 but may be extended to ₹25,000 for each day of default.
GENERAL PENALTY (SECTION 450)	Fine up to ₹10,000 and further fine up to ₹1,000 for each day of default in case of contravention continues.
FAILURE TO INTIMATE FRAUD BY AUDITOR TO CENTRAL GOVERNMENT U/S 143(12)	Fine not less than ₹1 lakh but may be extended to ₹25 lakh.
ANY PERSON OR OFFICE GUILTY OF FRUAD (SECTION 447)	Any person who is found guilty of fraud involving an amount of at least 10 Lakhs or 1% of turnover of company, whichever is lower, shall be punishable with 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. Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

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 ofvaluation ; (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 theirrelationship 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 andhow 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) dilutedEarning Per Share pursuant to the issue of sweat equity shares , calculated in accordancewith 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 unrealized 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 fifty one per cent. of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, 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;

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.

CONFUSION AREAS (Common 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 authorized 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 annexure thereto under sub-section (3) shall be signed by: (i) its chairperson of the company if he is authorized by the Board and (ii) where he is not so authorized, 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.

NCLT & NCLAT PROVISIONS

DISSOLUTION OF COMPANY LAW BOARD	According to this notification Company Law Board (CLB) stand dissolved w.e.f. 1st June, 2016. Notification of this section 466 makes last Chairman of CLB as Provisional and first Chairman of NCLT.
MEANING OF NCLT & NCLAT	The NCLT or "Tribunal" is a quasi-judicial authority created under the Companies Act, 2013 to handle **corporate civil disputes** arising under the Act. It is an entity that has powers and procedures like those vested in a court of law or judge. NCLT is obliged to objectively determine facts, decide cases in accordance with the principles of natural justice and draw conclusions from them in the form of orders. Such orders can remedy a situation, correct a wrong or impose legal penalties/costs and may affect the legal rights, duties or privileges of the specific parties. The Tribunal is not bound by the strict judicial rules of evidence and procedure. It can decide cases by following the principles of natural justice. NCLAT or "Appellate Tribunal" is an authority provided for dealing with appeals arising out of the decisions of the Tribunal. It is formed for correcting the errors made by the Tribunal. It is an intermediate appellate forum where the appeals lie after order of the Tribunal. The decisions of Appellate Tribunal **can further be challenged in the Supreme Court**. Any party dissatisfied by any order of the Tribunal may bring an appeal to contest that decision. The Appellate Tribunal reviews the decisions of the Tribunal and has power to set aside, modify or confirm it.
NOTIFICATION OF NCLT	Provisions for constitution of NCLT and NCLAT were notified on 1st June 2016. In the first phase powers of CLB are transferred to NCLT. In the next stage the government will move for second set of notifications by which powers of High Courts and BIFR will also be vested with NCLT. Along with transfer of powers to NCLT, new powers and functions are also vested in NCLT.
TRANSITION FROM CLB TO NCLT	The Act has set out in detail the procedure to deal with cases which are pending in various forums in Section 434. The Government has notified 1st June 2016 for transfer of matters from CLB to NCLT. On that date, all the pending proceedings before CLB will be transferred to NCLT and Tribunal will dispose of such matters in accordance with the provisions of law. Tribunal has discretion to take up the pending CLB proceeding from any stage. At its discretion, it can take up the matter at stage where it was left by CLB or start the proceedings afresh or from any stage it deems fit.
ADVANTAGES OF NCLT & NCLAT	• It shall avoid multiplicity of litigation before various Forums (High Courts, CLB, BIFR. AAIFT). Thus there will be a consolidation of Corporate Jurisdiction. • There shall be at least 11 benches of the NCLT, thereby providing justice almost at one's doorstep. • This tribunal shall comprise of technical experts who will provide more concrete and precise decision. • There will be mixture of judicial and equitable jurisdiction while deciding matters. • There shall be reduction in period of winding up from 20-25 years to 2

	years. • Reduction in pendency of cases, expeditious disposal of cases.
CONSITITUTION OF NCLT	**NCLT & NCLAT Consist**: • There are two classes of members to the National Company Law Tribunal; Judicial Members and Technical Members. • The Tribunal shall be headed by the President while the Appellate Tribunal by Chairperson. • NCLAT not exceeding eleven members for hearing appeals against the orders of the Tribunal.
ROLE OF COMPANY SECRETARY	The establishment of NCLT/NCLAT shall offer various opportunities to Practicing Company Secretaries as they have been authorized to appear before the Tribunal/ Appellate Tribunal. Therefore, Practicing Company Secretaries would for the first time be eligible to appear for matters which were hitherto dealt with by the High Court viz. mergers, amalgamations under Section 391-394 and winding up proceedings under the Companies Act, 1956. Areas opened up for company secretaries in practice under NCLT are briefly stated hereunder: **PCS as Member of NCLT:** A Practicing Company Secretary can be appointed as a Technical Member of NCLT, provided he has 15 years working experience as secretary in whole-time practice. **Appearance before National Company Law Appellate:** Tribunal As stated earlier a Practicing Company Secretary has been authorized to appear before National Company Law Appellate Tribunal. **Insolvency Process:** Currently, the law does not support effective participation of professionals and experts in the Insolvency process. There is no shortage of quality professionals in India. Disciplines of chartered accountancy, company secretary ship, cost and works accountancy, law etc can act as feeder streams, providing high quality professionals for this new activity. In fact, private professionals can play a meaningful role in all aspects of process.

WINDING UP

INTRODUCTION	Winding up involves various steps such as administration of properties for the benefit of members and creditors, appointment of administrators/liquidators, members/creditors meeting, as the case may be. Winding up may be voluntary winding up or by Court. Voluntary winding up may be member's voluntary winding up or creditor's voluntary winding up.
WINDING – UP	Winding – up is the process by which management of a company's affairs is taken out of its directors' hands, its assets are realized by a liquidator and its debts are discharged out of proceeds of realization. Any surplus of assets which remains after such discharge is returned to its members or shareholders. In simple words, it is a process whereby the life of a company is ended and its property administered for the benefits of its creditors and members. An administrator duly appointed by court is called a liquidator and he takes control of Company, realizes its assets, pays debts and finally distributes surplus, if any among members.
METHODS OF WINDING – UP (Section 270)	The winding up of a company may be either— (a) by the Tribunal; or (b) voluntary.
WINDING UP BY TRIBUNAL (Section 271)	• A company may, on a petition under section 272, be wound up by the Tribunal,— **(Circumstances)** (a) if the company is unable to pay its debts; (b) if the company has, by special resolution, resolved that the company be wound up by the Tribunal; (c) if 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; (d) if the Tribunal has ordered the winding up of the company under Chapter XIX; (e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up; (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or (g) if the Tribunal is of the opinion that it is just and equitable that the

	company should be wound up. • A company shall be deemed to be unable to pay its debts,— (a) if a creditor, by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty-one days after the receipt of such demand or to provide adequate security or re-structure or compound the debt to the reasonable satisfaction of the creditor; (b) if any execution or other process issued on a decree or order of any court or tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or (c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.
WHO MAY FILE WINDING UP PETITION (Section 272)	• Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by— (a) the company; (b) any creditor or creditors, including any contingent or prospective creditor or creditors; (c) any contributory or contributories; (d) all or any of the persons specified in clauses (a), (b) and (c) together; (e) the Registrar; (f) any person authorised by the Central Government in that behalf; or (g) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government. • A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.
VOLUNTARY WINDING UP	**<u>Circumstances in which company may be wound up voluntarily (Section 304)</u>** A company may be wound up voluntarily,— (a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or (b) if the company passes a special resolution that the company be wound up voluntarily. **<u>Declaration of Solvency (Section 305)</u>**

- Where it is proposed to wind up a company voluntarily, its director or directors, or in case the company has more than two directors, the majority of its directors, shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and they have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.

- A declaration made under sub-section (1) shall have no effect for the purposes of this Act, ***unless***—

(a) it is made within five weeks immediately preceding the date of the passing of the resolution for winding up the company and it is delivered to the Registrar for registration before that date;

(b) it contains a declaration that the company is not being wound up to defraud any person or persons;

(c) it is accompanied by a copy of the report of the auditors of the company prepared in accordance with the provisions of this Act, on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on that date which would also contain a statement of the assets and liabilities of the company on that date; and

(d) where there are any assets of the company, it is accompanied by a report of the valuation of the assets of the company prepared by a registered valuer.

- Where the company is wound up in pursuance of a resolution passed within a period of five weeks after the making of the declaration, but its debts are not paid or provided for in full, it shall be presumed, until the contrary is shown, that the director or directors did not have reasonable grounds for his or their opinion under sub-section (1).

- Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Meetings of Creditors (Section 306)

- The company shall along with the calling of meeting of the company at which the resolution for the voluntary winding up is to be proposed, cause a meeting of its creditors *either on the same day or on the next day* and shall cause a notice of such meeting to be sent by registered post to the creditors with the notice of the meeting of the company under section 304.

	• The Board of Directors of the company shall— (a) cause to be presented a full statement of the position of the affairs of the company together with a list of creditors of the company, if any, copy of declaration under section 305 and the estimated amount of the claims before such meeting; and (b) appoint one of the directors to preside at the meeting. • Where *two-thirds in value of creditors* of the company are of the opinion that— (a) it is in the interest of all parties that the company be wound up voluntarily, the company shall be wound up voluntarily; or (b) the company may not be able to pay for its debts in full from the proceeds of assets sold in voluntary winding up and pass a resolution that it shall be in the interest of all parties if the company is wound up by the Tribunal in accordance with the provisions of Part I of this Chapter, the company shall within fourteen days thereafter file an application before the Tribunal. • The notice of any resolution passed at a meeting of creditors in pursuance of this section shall be given by the company to the Registrar within ten days of the passing thereof. • If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees and the director of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both. **Publication of Resolution to wind up voluntarily (Section 307)** Where a company has passed a resolution for voluntary winding up and a resolution under sub-section (3) of section 306 is passed, it shall within fourteen days of the passing of the resolution give notice of the resolution by advertisement in the Official Gazette and also in a newspaper which is in circulation in the district where the registered office or the principal office of the company is situate. If a company contravenes the provisions of sub-section (1), the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues. **Appointment of Company Liquidator (Section 310)** • The company in its general meeting, where a resolution of voluntary winding up is passed, shall appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator. • Where the creditors have passed a resolution for winding up the company

	under sub-section (3) of section 306, the appointment of the Company Liquidator under this section shall be effective only after it is approved by the majority of creditors in value of the company: Provided that where such creditors do not approve the appointment of such Company Liquidator, creditors shall appoint another Company Liquidator. • On appointment as Company Liquidator, such liquidator shall file a declaration in the prescribed form within seven days of the date of appointment disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors and such obligation shall continue throughout the term of his or its appointment.
WINDING UP AND DISSOLUTION	The entire procedure for bringing about a lawful end to the life of a company is divided into two stages: (a) Winding up: Winding – up is the process by which management of a company's affairs is taken out of its directors' hands, its assets are realized by a liquidator and its debts are discharged out of proceeds of realization. Any surplus of assets which remains after such discharge is returned to its members or shareholders. (b) Dissolution: Dissolution is the **last stage of liquidation**, the process by which a company (or part of a company) is brought to an end, and the assets and property of the company redistributed. **Distinguish between winding up and dissolution**

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.

Comment on the following:

- "In case of a company, the terms Winding Up and Dissolution convey the same meaning. (June 2009)

- “the terms Winding Up and Dissolution are not one and the same thing.” (Dec 2010)
- “Winding up is only a process while dissolution puts an end to the existence of the company.” (Dec 2012)

CREDITOR’S VOLUNTARY WINDING UP

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.

VOLUNTARY WINDING UP

Chapter V of the Insolvency and Bankruptcy Code of India 2016 deals with the Voluntary Liquidation ofCorporate Persons.

Section 59

(1) A corporate person who intends to liquidate itself voluntarily and has *not committed any default* mayinitiate voluntary liquidation proceedings under the provisions of this Chapter.

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions (3)and procedural requirements as may be specified by the Board.

(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate personregistered as a company shall meet the following conditions, namely:—

	(a) a *declaration from majority of the directors* of the company verified by an affidavit stating that— (i) they have made a *full inquiry* into the affairs of the company and they have formed anopinion that either the company has no debt or that it will be able to pay its debts in fullfrom the proceeds of assets to be sold in the voluntary liquidation; and (ii) the company is *not being liquidated to defraud any person*; (b) the *declaration* under sub-clause (a) shall be accompanied with the following documents,namely:— (i) audited financial statements and record of business operations of the company for theprevious two years or for the period since its incorporation, whichever is later; (ii) a report of the valuation of the assets of the company, if any prepared by a registeredvaluer; (c) within four weeks of a declaration under sub-clause (a), there shall be— (i) a special resolution of the members of the company in a general meeting requiring thecompany to be liquidated voluntarily and appointing an insolvency professional to act asthe liquidator; or (ii) a resolution of the members of the company in a general meeting requiring the company tobe liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by itsarticles or on the occurrence of any event in respect of which the articles provide that thecompany shall be dissolved, as the case may be and appointing an insolvency professionalto act as the liquidator: Provided that the company owes any debt to any person, creditorsrepresenting two thirds in value of the debt of the company shall approve the resolutionpassed under sub-clause (c) within seven days of such resolution. (4) The company shall notify the Registrar of Companies and the Board about the resolution under subsection (3) to liquidate the company within seven days of such resolution or the subsequentapproval by the creditors, as the case may be. (5) Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings inrespect of a company shall be deemed to have commenced from the date of passing of theresolution under sub-clause (c) of sub-section (3). (6) The provisions of sections 35 to 53 of Chapter III and Chapter VII shall apply to voluntary liquidationproceedings for corporate persons with such modifications as may be necessary. (7) Where the affairs of the corporate person have been completely wound up, and its assetscompletely liquidated, the liquidator shall make an application to the Adjudicating Authority for thedissolution of such corporate person. (8) The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), passan order that the corporate debtor shall be dissolved from the date of that order and the corporatedebtor shall be dissolved accordingly. (9) A copy of an order under sub-section (8) shall within fourteen days from the date of such order, beforwarded to the authority with which the corporate person is registered.

POWER TO MAKE COMPROMISE OR MAKE ARRANGEMENTS WITH MEMBERS OR CREDITORS	Section 230(1) states that when a compromise or arrangement is proposed— (a) between a company and its creditors or any class of them; or (b) between a company and its members or any class of them, the Tribunal may, on the application of the (i) company, or (ii) any creditor or (iii) member of the company, or(iv) in the case of a company which is being wound up, of the liquidator, appointed under this Act or under Insolvency and Bankruptcy Code, 2016 order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs. For the purposes of this sub-section, arrangement includes a reorganization of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both these methods.
AFFIDAVIT BY APPLICANT TO DISCLOSURE CERTAIN MATERIAL FACTS	Section 230(2) states that the company or any other person, by whom an application is made under subsection(1), shall disclose to the Tribunal by affidavit— (a) *all material facts* relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company; (b) *reduction of share capital* of the company, if any, included in the compromise or arrangement; (c) *any scheme of corporate debt restructuring* consented to by not less than seventy-five per cent of the secured creditors in value, including— (i) a creditors' responsibility statement in the prescribed form; (ii) safeguards for the protection of other secured and unsecured creditors; (iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board; (iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.
NOTICE OF THE MEETING	Section 230(3) states that when a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to allthe members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by ➢ a statement disclosing the details of the compromise or arrangement, ➢ a copy of the valuation report, if any, and ➢ explaining their effect on creditors, key managerial personnel, promoters

	and non-promoter members, and the debenture-holders, and ➢ the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and ➢ such other matters as may be prescribed:
WHO CAN OBJECT TO THE SCHEME	Any objection to the compromise or arrangement shall be made only by persons holding: ⇨ not less than ten per cent of the shareholding or ⇨ having outstanding debt amounting to not less than five per cent of the total outstanding debt as per the latest audited financial statement.
NOTICE TO BE SENT TO THE REGULATORS SEEKING THEIR REPRESENTATION	Section 230(5) states that a notice under sub-section (3) along with all the documents in such form as maybe prescribed shall also be sent to: ⇨ the Central Government, ⇨ the Income-tax authorities, ⇨ the Reserve Bank of India, ⇨ the Securities and Exchange Board, ⇨ the Registrar, ⇨ the respective stock exchanges, ⇨ the Official Liquidator, ⇨ the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and ⇨ such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made bythem *shall be made within a period of thirty days* from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.
APPROVAL & SANCTION OF SCHEME	Section 230(6) states that when at a meeting held in pursuance of sub-section (1), majority of persons representing ***three-fourths in value*** of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, *the same shall be binding on the company, all the creditors, or class of creditors or members or class of members*, as the case may be, or, in case of a company being wound up, on the liquidator appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be and the contributories of the company.
ORDER OF TRIBUNAL	An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:— (a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable; (b) the protection of any class of creditors; (c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48; (d) if the compromise or arrangement is agreed to by the creditors under sub-

	section (6), any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate; (e) such other matters including exit offer to dissenting shareholders, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement. Section 230(8) states that the order of the Tribunal shall be filed with the Registrar by the company within a period of *thirty days* of the receipt of the order.
POWER OF TRIBUNAL TO ENFORCE COMPROMISE OR ARRANGEMENT	As per section 231(1), when the Tribunal makes an order under section 230 sanctioning a compromise or an arrangement in respect of a company, it— (a) shall have *power to supervise* the implementation of the compromise or arrangement; and (b) may, at the time of making such order or at any time thereafter, *give such directions* in regard to any matter or *make such modifications* in the compromise or arrangement as it may consider necessary *for the proper implementation* of the compromise or arrangement. Sub-section (2) states that if the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 *cannot be implemented satisfactorily* with or without modifications, and the company is unable to pay its debts as per the scheme, ***it may make an order for winding-up the company*** and such an order shall be deemed to be an order made under section 273.
MERGER & AMALGAMATION OF COMPANIES	**TRIBUNAL'S POWER TO CALL MEETING OF CREDITORS OR MEMBERS** Section 232(1) states that when an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal— (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, *order a meeting of the creditors or class of creditors or the members or class of members*, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply *mutatis mutandis*. **CIRCULATION OF DOCUMENTS FOR THE MEETINGS:**

Section 232(2) states that when an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate thefollowing for the meeting so ordered by the Tribunal, namely:—

(a) the *draft of the proposed terms* of the scheme drawn up and adopted by the directors of the merging company;

(b) *confirmation* that a copy of the draft scheme has been *filed with the Registrar*;

(c) a *report* adopted by the directors of the merging companies explaining effect of compromise on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the *report of the expert* with regard to valuation, if any;

(e) a *supplementary accounting statement* if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

SANCTIONING OF SCHEME BY TRIBUNAL:

Section 232(3) states that the Tribunal, after satisfying itself that the procedure specified in sub-sections (1)and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the *transfer* to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a *date to be determined by the parties* unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) *the allotment or appropriation by the transferee company* of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

No transferee company can hold shares in its own name or under any trust

A transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares *shall be cancelled or extinguished*;

(c) the *continuation* by or against the transferee company of *any legal proceedings pending* by or against any transferor company on the date of transfer;

(d) *dissolution*, without winding-up, of any transferor company;

	(e) the provision to be made for *any persons* who, within such time and in such manner as the Tribunal directs, *dissent from the compromise or arrangement*; (f) where share capital is held by any *non-resident shareholder* under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order; (g) the *transfer of the employees* of the transferor company to the transferee company; (h) when the *transferor company is a listed company and the transferee company is an unlisted company*,— (A) the transferee company shall remain an unlisted company until it becomes a listed company; (B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal: The amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it; (i) where the transferor company is dissolved, the *fee*, if any, paid by the transferor company *on its authorised capital shall be set-off* against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and (j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out.
AUDITORS CERTIFICATION FOR COMPLIANCE WITH ACCOUNTING STANDARDS	No compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in thescheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.
ANNUAL STATEMENT CERTIFIED BY CA/CS/CWA TO BE FILED WITH ROC	Section 232 (7) states that every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.
PUNISHMENT	Section 232(8) states that if a transferor company or a transferee company contravenes the provisions of this section, ***the transferor company or the transferee company***, as the case may be, shall be punishable with fine which shall not be less than one lakh rupees but

	which may extend to twenty-five lakh rupees and ***every officer of such transferor or transferee company*** who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.
MERGER & AMALGAMATION OF CERTAIN COMPANIES	Section 233 prescribes simplified procedure for Merger or amalgamation of — ⇨ two or more small companies, or ⇨ between a holding company and its wholly-owned subsidiary company or ⇨ such other class or classes of companies as may be prescribed. **Merger of small companies/holding and subsidiary companies** Accordingly, sub-section (1) of Section 233 states that notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into ***between two or more small companies*** or ***between a holding company and its wholly-owned subsidiary company*** or such other class or classes of companies as may be prescribed, subject to the following, namely:— (a) a ***notice*** of the proposed scheme ***inviting objections or suggestions***, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is ***issued by the transferor company*** or companies and the transferee company; (b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares; (c) each of the companies involved in the merger ***files a declaration of solvency***, in the prescribed form, ***with the Registrar*** of the place where the registered office of the company is situated; and (d) the scheme is ***approved by majority representing nine-tenths in value*** of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing. Section 233(2) states that the transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated. **APPLICATION BY CG TO TRIBUNAL:** Section 233(5) states that if the Central Government after receiving the objections or suggestions or for any reason is of the opinion that such a ***scheme is not in public interest or in the interest of the creditors***, it may filean application before the Tribunal ***within a period of sixty days*** of the receipt of the scheme under sub-section(2) stating its objections and ***requesting that the Tribunal may consider the scheme*** under section 232.

	<u>TRIBUNAL'S ACTION TO CG APPLICATION:</u> Section 233(6) states that on receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered asper the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit: If the Central Government does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme. **<u>EFFECTS OF REGISTRATION OF SCHEME:</u>** (a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities ofthe transferee company; (b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company; (c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and (d) where the scheme provides for purchase of shares held by the dissenting shareholders orsettlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall becomethe liability of the transferee company.
MERGER OR AMALGAMATION OF A COMPANY WITH A FOREIGN COMPANY	Section 234(2) states that subject to the provisions of any other law for the time being in force, a foreign company, may <u>*with the prior approval of the Reserve Bank of India*</u>, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company <u>*in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts*</u>, as the case may be, as per the scheme to be drawn up for the purpose. For the purposes of sub-section (2), the expression "foreign company" means any company or bodycorporate incorporated outside India whether having a place of business in India or not. Section 234(1) states that the provisions of this Chapter unless otherwise provided under any other law forthe time being in force, shall apply *mutatis mutandis* to schemes of mergers and amalgamations betweencompanies registered under this Act and companies incorporated in the jurisdictions of such countries asmay be notified from time to time by the Central Government. The Central Government may make rules, inconsultation with the Reserve Bank of India, in connection with mergers and amalgamations provided underthis section.
POWER TO ACQUIRE SHARES OF DISSENTING SHAREHOLDERS	Section 235(1) provides that where a scheme or contract involving the transfer of shares or any class ofshares in a company (the transferor company) to another company (the transferee company) has, within fourmonths after making of an offer in that behalf by the transferee company, been approved by the holders ofnot less than nine-tenths in value of the shares whose transfer is

	involved, other than shares already held atthe date of the offer by, or by a nominee of the transferee company or its subsidiary companies, thetransferee company may, at any time within two months after the expiry of the said four months, give noticein the prescribed manner to any dissenting shareholder that it desires to acquire his shares. Section 235(2) provides that where a notice under sub-section (1) is given, the transferee company shall,unless on an application made by the dissenting shareholder to the Tribunal, **within one month from thedate on which the notice** was given and the Tribunal thinks fit to order otherwise, be entitled to and boundto acquire those shares on the terms on which, under the scheme or contract, the shares of the approvingshareholders are to be transferred to the transferee company. Section 235(3) provides that where a notice has been given by the transferee company under sub-section (1)and the Tribunal has not, on an application made by the dissenting shareholder, made an order to thecontrary, the transferee company shall, on the expiry of one month from the date on which the notice hasbeen given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after thatapplication has been disposed of, send a copy of the notice to the transferor company together with aninstrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferorcompany and on its own behalf by the transferee company, and pay or transfer to the transferor company theamount or other consideration representing the price payable by the transferee company for the shareswhich, by virtue of this section, that company is entitled to acquire, and the transferor company shall— (a) thereupon register the transferee company as the holder of those shares; and (b) within one month of the date of such registration, inform the dissenting shareholders of the fact ofsuch registration and of the receipt of the amount or other consideration representing the pricepayable to them by the transferee company. Section 235(4) states that any sum received by the transferor company under this section shall be paid into aseparate bank account, and any such sum and any other consideration so received shall be held by thatcompany in trust for the several persons entitled to the shares in respect of which the said sum or otherconsideration were respectively received and shall be disbursed to the entitled shareholders within sixtydays.
POWER OF CG TO PROVIDE FOR AMALGAMATION IN PUBLIC INTEREST	**<u>Power of CG:</u>** Section 237(1) states that when the Central Government is satisfied that it is essential in the public interestthat two or more companies should amalgamate, the Central Government may, by order notified in theOfficial Gazette, provide for the amalgamation of those companies into a single company with suchconstitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities,duties and obligations, as may be specified in the order. **<u>No effect on Pending Legal Proceedings:</u>** Section 237(2) states that the order under sub-section (1) may also provide for the continuation by or againstthe transferee company of any legal proceedings pending by or against any transferor company and suchconsequential,

	incidental and supplemental provisions as may, in the opinion of the Central Government, benecessary to give effect to the amalgamation. **No effect on Rights of Members, Debentureholders or Creditors:** As per Section 237(3), every member or creditor, including a debenture holder, of each of the transferorcompanies before the amalgamation shall have, as nearly as may be, the same interest in or rights againstthe transferee company as he had in the company of which he was originally a member or creditor, and incase the interest or rights of such member or creditor in or against the transferee company are less than hisinterest in or rights against the original company, he shall be entitled to compensation to that extent, whichshall be assessed by such authority as may be prescribed and every such assessment shall be published inthe Official Gazette, and the compensation so assessed shall be paid to the member or creditor concernedby the transferee company. **Appeal to Tribunal:** As per Section 237(4), any person aggrieved by any assessment of compensation made by the prescribedauthority under sub-section (3) may, within a period of thirty days from the date of publication of suchassessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of thecompensation shall be made by the Tribunal. **APPROVAL OF EACH HOUSE OF PARLIAMENT:** As per Section 237(6), the copies of every order made under this section shall, as soon as may be after ithas been made, be laid before each House of Parliament. **PRESERVATION OF BOOKS OF ACCOUNTS:** As per section 239, the books and papers of a company which has been amalgamated with, or whoseshares have been acquired by, another company under this Chapter **shall not be disposed of without theprior permission of the Central Government** and before granting such permission, that Government mayappoint a person to examine the books and papers or any of them for the purpose of ascertaining whetherthey contain any evidence of the commission of an offence in connection with the promotion or formation, orthe management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

INTRODUCTION	Presently, the concept of shareholders' democracy means the shareholders' supremacy in the governance of the business and affairs of corporate sector either directly or indirectly. The powers for governing a company are divided into two parts: one is the Board of Directors and the other is of shareholders. The directors exercise their powers via Board Meetings whereas shareholders exercise their powers via General Meetings (i. e. Board Meeting, AGM, or EGM). As per Section 291 of the Companies Act, 1956: A general power has been conferred on the Board of directors. The section provides that "Subject to the provisions of this Act, the Board of Directors of a company shall be entitled to exercise all such powers and to do all such acts and things, as the company is authorized to exercise and do." The Companies Act, 2013 & the Old Companies Act, 1956 demarcate the area of control of directors as well as of shareholders.
SHAREHOLDER'S POWER	(a) Alteration of Memorandum of Association and Articles of Association. (b) To reduce the share capital of the company. (c) To shift the registered officer of the company outside from one State to another State. (d) To appoint auditors in case of companies where 25% or more of the paid – up share capital is held by Central/State Government or public financial institutions or any of their constituents. (e) To approach Central Government for investigation into the affairs of the company. (f) Appointment of sole selling agents where paid – up share capital is beyond Rs.50 Lakhs. (g) To allow a director, partner or his relative to hold office or place of profit. (h) To make loans, to extend guarantee or provide security to other companies or make investment beyond the limit specified. (i) To appoint directors. (j) To increase, or reduce the number of directors within the limits laid down in AOA. (k) To cancel, redeem debentures etc. (l) To make contribution to funds not related to the business of the company.
POWERS OF MAJORITY	Every member of a company which is limited by shares, holding any equity shares shall have a right to vote in respect of such capital on every resolution. Member's right to vote is recognized as right of property and the shareholder may exercise it as he thinks for according to his choice and interest. **<u>Section 47 of the Companies Act, 2013:</u>** (a) Every member of a company limited by shares and holding equity share capital therein, shall have a right to vote on every resolution placed before the company; and (b) His voting right on a poll shall be in proportion to his share in the paid –

	up equity share capital of the company. Therefore, the majority of the members enjoy the supreme authority to exercise the powers of the company and generally to control its affairs. <u>Limitations of power for the majority of members:</u> (a) The power of the majority of members is always subject to the Company's MOA & AOA. (b) The resolution of a majority must not be inconsistent with the provisions of the Companies Act, 2013 or constitute a fraud on minority depriving their legitimate rights.
PRINCIPLE OF NON – INTERFERENCE BY THE MINORITY SHAREHOLDERS	This principle says that the court will not intervene at the instance of shareholders in matters of internal administration, and will also not interface with the management of a company by its directors till the time they are acting within the powers of the articles of the company. Whereas the company law provides for adequate protection for the minority shareholders when their rights are crushed by the majority of shareholders but the protection of the minority is not generally available when the majority does anything within their power. **Case Law: Foss v. Harbottle** **Facts:** There are two shareholders (Foss and Turton) brought an action on behalf of themselves and all other shareholders against the directors and solicitor of the company. They alleged that the director of the Company had carried out various fraudulent and illegal transactions whereby the property of the company was wasted and lost. On the basis of such allegations, the minority shareholders brought an action against the directors of the Company. The majority shareholders resolved the action taken by the directors alleging that they were not responsible for the loss to the Company. **Judgment:** In this case, the court dismissed the suit filed against the directors of the Company since the acts of directors were confirmed by the majority of shareholders of the company. In this case, the court further observed that if the alleged wrong can be confirmed or ratified by a simple majority of the members in a General Meeting, then the court will not interface. **Advantages of the Rule in Foss v. Harbottle** (a) Recognition of the separate legal personality of a company. (b) It preserves the right of majority to decide how the affairs of the company shall be conducted. It is fair that the wishes of the majority should prevail. (c) Multiplicity of futile suits can be avoided. (d) Litigation at suit of a minority is futile if the irregularity complained of is one which can bee subsequently ratified by the majority. <u>**EXCEPTIONS TO THE RULE IN FOSS V. HARBOTTLE**</u>

	The cases in which the majority rule does not prevail are commodity known as exceptions to the rule in Foss v. Harbottle and are available to the minority. (a) **Ultra Vires Acts:** Where the directors representing the majority of shareholders perform an illegal or ultra vires act for the company, an individual shareholder has right to bring an action. The majority of shareholders have no right to confirm an illegal or ultra vires transaction of the company. (b) **Fraud on Minority:** Where an act done by the majority amounts to a fraud on the minority; an action can be brought by an individual shareholder. (c) **Wrongdoers in Control:** If the wrongdoers are in control of the company, the minority shareholders' representative action for fraud on the minority will be entertained by the court. (d) **Resolution requiring Special Majority but is passed by a simple majority:** A shareholder can sue if an act requires a special majority but is passed by a simple majority. Simple or rigid, formalities are to be observed if the majority wants to give validity to an act which purports to impede the interest of minority. (e) **Personal Actions:** Individual membership rights cannot be invaded by the majority of shareholders. An individual shareholder can insist on the strict compliance with the legal rules, statutory provisions. Provisions in the memorandum and the articles are mandatory in nature and cannot be waived by a bare majority of shareholders. An individual shareholder is entitled to enforce his individual rights against the company, such as, his right to vote, the right to have his vote recorded, or his right to stand as a director of a company at an election. (f) **Breach of Duty:** The minority shareholder may bring an action against the company, where although there is no fraud, there is a breach of duty by directors and majority shareholders to the detriment of the company. (g) **Prevention of Oppression and Mismanagement:** The minority shareholders are empowered to bring action with a view to preventing the majority from oppression and mismanagement. *Comment on the following*: "Law will not interfere with the internal management of companies acting within their powers." (June 2012)
PREVENTION OF OPPRESSION (Section 241)	• Any member of a company who complains that— (a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or (b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of

	Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter. • The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.
POWERS OF THE TRIBUNAL [SECTION 242]	• If, on any application made under section 241, the Tribunal is of the opinion— (a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit. • Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for— (a) the regulation of conduct of affairs of the company in future; (b) the purchase of shares or interests of any members of the company by other members thereof or by the company; (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital; (d) restrictions on the transfer or allotment of the shares of the company; (e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case; (f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e): Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

	(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; (h) removal of the managing director, manager or any of the directors of the company; (i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims; (j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h); (k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; (l) imposition of costs as may be deemed fit by the Tribunal; (m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made. • A certified copy of the order of the Tribunal under sub-section (1) shall be ***filed by the company with the Registrar*** within thirty days of the order of the Tribunal. • The Tribunal may, on the application of any party to the proceeding, make any ***interim order*** which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable. • A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same. • If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
WHO CAN APPLY	• The following members of a company shall have the right to apply under section 241, namely:—

	(a) in the case of a company *having a share capital*, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares; (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members: Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241. Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member. • Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.